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Community Plan Evaluation Appeal

344 14th Street

DATE: October 4, 2019
TO: Angela Calvillo, Clerk of the Board of Supervisors
FROM: Lisa Gibson, Environmental Review Officer – (415) 575-9032
Sherie George, Senior Planner – (415) 575-9039
RE: Board File Number 190890, Planning Department Case No. 2014.0948ENV
Appeal of Community Plan Evaluation for the 344 14th Street Project
HEARING DATE: October 8, 2019

PROJECT SPONSOR: John Kevlin, Reuben, Junius & Rose, on behalf of MM Stevenson, LLC,
(415) 567-9000
APPELLANT(S): Larisa Pedroncelli and Kelly Hill, on behalf of Our Mission No Eviction,
(415) 317-0832

INTRODUCTION

This memorandum is a response (“supplemental appeal response”) to the appellant’s September 27, 2019 submission (“supplemental appeal letter”) to the Board of Supervisors (the “board”) regarding the Planning Department’s (the “department”) issuance of a community plan evaluation (CPE) under the Eastern Neighborhoods Rezoning and Area Plans Programmatic Final Environmental Impact Report (Eastern Neighborhoods PEIR, or PEIR) in compliance with the California Environmental Quality Act (CEQA determination) for the proposed 344 14th Street project (the “project”). Department staff submitted an appeal response memorandum on September 30, 2019 (“Original Appeal Response”), addressing concerns raised in the original August 26, 2019, Letter of Appeal (“Original Appeal Letter”). This response only addresses aspects of the appellant’s September 27, 2019 supplemental appeal letter that require clarification, a more detailed response, or to address a new issue raised by the appellant. Many of the issues raised by the appellant in the September 27, 2019 supplemental appeal letter were adequately addressed in the department’s September 30, 2019 appeal response.

Please refer to the department’s original appeal response for a description of the CEQA determination for the proposed project.

The decision before the board is whether to uphold the planning department’s determination that the project is not subject to further environmental review beyond that conducted in the CPE initial study and the PEIR pursuant to CEQA section 21083.3 and CEQA Guidelines section 15183 and deny the appeal, or to overturn the department’s CPE determination for the project and return the CPE to the department for additional environmental review. The board’s decision must be based on substantial evidence in the record. (See CEQA Guidelines section 15183(b) and (c).)

SITE DESCRIPTION AND EXISTING USE

Please refer to the department's original appeal response for a description of the site and its existing use.

PROJECT DESCRIPTION

Please refer to the department's original appeal response for a description of the project.

BACKGROUND

Please refer to the department's original appeal response for background information on the project's CEQA determination.

PLANNING DEPARTMENT RESPONSES

The concerns raised in appellant's supplemental appeal letter dated September 27, 2019 repeat some of the appellant's previous concerns stated in the original appeal letter, among them that the project would result in significant direct and cumulative impacts related to geology, hydrology, and soils; impacts to utilities and service systems; and impacts to cultural resources. The department has provided responses to these concerns in the department's original appeal response and those responses are incorporated herein by reference.

The department supplements its response to the appellant's more detailed concerns raised in the appellant's September 27, 2019 supplemental appeal letter. For clarity, this supplemental appeal response (referred to below) continues the sequencing of the department's original appeal response.

Response 6: The geotechnical investigation evaluates ground improvement recommendations and the potential impacts related to flooding. That analysis finds that the proposed project would not affect existing drainage patterns in a way that could increase flooding. The department's analysis is based on substantial evidence; the appellant has not demonstrated otherwise.

The appellant continues to contend that the geotechnical report is inadequate. In the supplemental appeal letter, the appellant expresses a concern that the CPE initial study and the PEIR did not consider relevant climate predictions as it relates to the geotechnical report. CEQA requires a lead agency to identify the significant effects of a project on the environment, not the effect of the environment on the project. However, as stated in the department's original appeal response, while the geotechnical investigation analyses were performed at the end of a drought, they expressly considered the existing groundwater level data in combination with estimated historic high groundwater elevation in its engineering analysis to recommend the appropriate groundwater design level, foundation systems, and measures to address any identified hazards. Groundwater was observed at between 11.2 to 12.5 feet below ground surface (bgs); the geotechnical report recommended a design groundwater level of 8 feet bgs, to account for non-drought conditions. The approved project design would only extend 4 feet bgs and, thus, would be unlikely to

encounter groundwater. As a result, the fact that the groundwater analyses were performed at the end of a period of drought do not make their conclusions unreliable, as suggested by appellant.

The effects of climate change may be experienced in various ways, including the likelihood of drought and flooding. While the geotechnical investigation did not analyze climate change directly, it did consider severe weather conditions, which are anticipated effects of climate change. For example, the cone penetration tests were taken during a period of extended drought (an anticipated effect of climate change) and the geotechnical report accounts for higher groundwater levels by recommending a design groundwater level that is 3 to 4 feet above the observed groundwater level. In this way, the geotechnical report accounts for fluctuations in groundwater that may result from increased rainfall.

Furthermore, the department has coordinated with staff at the San Francisco Public Utilities Commission (SFPUC) who have confirmed that the sewer system in the vicinity of the project site meets the sewer system level of service.¹ The project site is not located within the SFPUC's 100-Year Storm Flood Risk Map. The model underlying this map includes an assumption for the impacts from sea level rise for the purposes of evaluating flooding from rainfall (not inundation from the Bay or Ocean).²

Lastly, as stated in the original appeal response (Response 3) and CPE initial study (p. 48), the project site is an existing parking lot and, therefore, the project would not increase impervious surfaces. Stormwater entering the sewer system would likely be reduced from existing conditions as a result of compliance with the Stormwater Management Ordinance. Therefore, there is no evidence that the project would cause an increase in flooding from rainfall around the area or exceed the capacity of the sewer system.

As pointed out in the appellant's September 27, 2019 supplemental appeal letter, the geotechnical report prepared for the project recommends monitoring ground movement during construction for any effects to adjacent buildings. The planning department has confirmed with staff at the building department that the type of monitoring that is recommended in the geotechnical report is both commonly recommended in geotechnical reports, and is undertaken as a standard practice for similar projects. Therefore, it can be reasonably expected that the monitoring recommended in the geotechnical report will be conducted. In addition, at time of permit issuance, the building department would determine whether additional special inspections are required in accordance with the building code and Administrative Bulletin 46, and may require special inspections during the construction process. Special inspections include monitoring of materials and workmanship that are critical to the integrity of building structures or are otherwise required for public safety. Special inspection is intended to assure that the approved plans and specifications are being followed and that relevant codes and ordinances are being observed. The special inspection process is in addition to the regular inspections conducted by the building department's inspectors and the engineer of record. Finally, the engineer of record and the special inspector are each required to provide a

¹ Minick, Sarah, Utility Planning Division Manager, Wastewater, San Francisco Public Utilities Commission, personal communication with Jessica Range, Principal Planner, San Francisco Planning Department, October 2, 2019.

² How, Kevin, Engineering Management Bureau, San Francisco Public Utilities Commission, personal communication regarding 100-Year Storm Flood Risk Map Modeling, with Jessica Range, Principal Planner, San Francisco Planning Department, October 2, 2019.

final report to the building department indicating that the work has been conducted in accordance with the approved plans and specifications.³

The department's conclusion that the project would not result in significant effects related to groundwater, flooding, and any associated secondary impacts on adjacent buildings is based on substantial evidence. The appellant has not demonstrated otherwise.

Response 7: The department's analysis of project impacts related to population and housing was conducted in accordance with the requirements of CEQA. The department's determination is based on substantial evidence; the appellant has not demonstrated otherwise.

As discussed in the department's original appeal response, the pace of development with respect to the PEIR's growth projections does not, in itself, constitute a new or more severe adverse environmental impact than disclosed in the PEIR. The growth projections informed the analysis of some, but not all, of the environmental analyses in the PEIR. Furthermore, the CPE initial study prepared for the project does not rely solely on growth projections considered in the Eastern Neighborhoods PEIR in examining whether the project would have significant impacts that are peculiar to the project or the project site. For each environmental topic, the department conducted a project-specific impact analysis and an updated cumulative impact analysis to determine whether the proposed project would result in a new significant impact not previously disclosed in the PEIR. This issue was thoroughly discussed in the department's original appeal response.

The appellant claims that the CPE initial study used faulty methodology in evaluating the cumulative impacts of population and housing by comparing cumulative growth in the department's development pipeline with the Association of Bay Area Governments (ABAG) citywide growth projects instead of the growth projection in the Eastern Neighborhoods PEIR. In 2018, the California Natural Resources Agency updated the CEQA guidelines to conform with CEQA caselaw and provide clarification for certain topics. In their revisions, the California Natural Resources Agency revised Appendix G to clarify the questions under the topic of population and housing. The revisions are provided below with new text in underline:

Would the project:

- a) Induce substantial unplanned population growth in an area, either directly (for example, by proposing new homes and businesses) or indirectly (for example, through extension of roads or other infrastructure)?

The California Natural Resources Agency explains the reasoning for this clarification on p. 69 of their *Final Statement of Reasons for Regulatory Action*,⁴ stating:

³ San Francisco Department of Building Inspection, Administrative Bulletin 46. Available online at: <https://sfdbi.org/sites/default/files/ftp/uploadedfiles/dbi/downloads/AB-046.pdf>. Accessed October 4, 2019.

⁴ California Natural Resources Agency, *Final Statement of Reasons for Regulatory Action, Amendments to the State CEQA Guidelines, OAL Notice File No. Z-2018-0116-12*. November 2018. This document is available online at: http://resources.ca.gov/ceqa/docs/2018_CEOA_Final_Statement_of%20Reasons_111218.pdf. Accessed October 2, 2019.

Population Growth: Appendix G currently asks whether a project will cause substantial population growth. The Agency clarified that the question should focus on whether such growth is unplanned. Growth that is planned, and the environmental effects of which have been analyzed in connection with a land use plan or a regional plan, should not by itself be considered an impact.

The CPE initial study's evaluation of cumulative population and housing is consistent with the California Natural Resources Agency's clarifying direction. The CPE initial study's analysis compares cumulative population growth from the city's development pipeline, which constitutes reasonably foreseeable projects, with ABAG projections for San Francisco. These projections are the same growth projections that the Metropolitan Transportation Commission used when preparing the environmental impact report for Plan Bay Area 2040, a regional land use and transportation plan. Therefore, the environmental effects of citywide growth have already been considered in connection with a regional plan. The CPE initial study then evaluates whether the proposed project plus cumulative development in the city's development pipeline exceeds ABAG's planned population growth, finding that it does not. Therefore, the proposed project plus reasonably foreseeable cumulative projects would not cause substantial unplanned growth. This conclusion is based on substantial evidence and the appellant has not demonstrated otherwise.

Response 8: The department's conclusion that the proposed project would not result in new or more severe transportation impacts than already disclosed in the PEIR is supported by substantial evidence; the appellant has not demonstrated otherwise.

Trip Generation Methodology and VMT Analysis

The appellant states the proposed project's mode share analysis fails to consider TNCs relying on an outdated methodology from the 2000 census. The appellant cites to a background document prepared for a former iteration of the proposed project, prior to the department's 2019 *Transportation Impact Analysis Guidelines for Environmental Review* (TIA Guidelines). Contrary to the appellant's assertion, the cited report is not the basis for the analysis in the CPE initial study.⁵ The proposed project's trip generation and mode share, as discussed in the department's original appeal response and on p. 29 of the CPE initial study, is analyzed using the 2019 TIA Guidelines. The methodology for trip generation and travel mode split (walk, drive, transit, etc.) relies on observational and intercept survey data collected from recently completed projects in the Mission and elsewhere in San Francisco. The data collected to support updated trip generation rates and mode share were collected in 2016 and 2017, when TNCs were widely in use, and therefore take into account estimates of the number of for-hire vehicles (taxis/TNCs) from new development.

The appellant states that the CPE initial study's VMT analysis is invalid because it relies on data prior to the recent increase in TNCs and delivery services. The increased prevalence of for-hire vehicles, like TNCs and delivery services in San Francisco has changed the way people travel and interact with goods. However, the VMT estimates for the project site are well below the VMT threshold of significance and any VMT increase from the increased prevalence of for-hire vehicles and delivery services would be unlikely

⁵ The department has since updated the administrative record to reflect the correct transportation background document on file for the proposed project that are available for review online through the San Francisco Property Information Map, <https://sfplanninggis.org/pim>.

to change the CPE initial study VMT analysis conclusions. No recent studies, including the various studies cited by the appellant, allow for the department to make VMT estimates at the project level and, based on inference of available data, recent studies do not indicate a magnitude of an increase in VMT that would change the conclusions in the CPE initial study.

Loading Analysis

The department appropriately conducted project-level analysis of the potential loading impacts of the proposed project through a project-level transportation analysis conducted by planning staff. Based on this project-level review, the department determined that the proposed project would not cause a significant impact as it relates to loading, and no further analysis was required. This project-level analysis calculated loading demand using the methodology identified in the updated TIA Guidelines. The project is estimated to require less than one peak hour loading space to meet both passenger and freight loading demand and 3.7 total daily deliveries. The project sponsor would request from San Francisco Municipal Transportation Agency a 30-foot passenger loading zone on 14th Street, which would accommodate vehicle loading (see Figure 2 in the CPE initial study, p. 8). Furthermore, the project's proposed streetscape plan has been reviewed and approved by the Streetscape Design Advisory Team (SDAT). SDAT is an advisory body composed of members from the planning department, the San Francisco Municipal Transportation Agency, and other city agencies. In its review, SDAT recommended loading for the project be located on 14th Street.⁶

The department's conclusion that the proposed project would not result in significant individual or cumulative transportation impacts or effects that are more severe than already disclosed in the PEIR is supported by substantial evidence; the appellant has not demonstrated otherwise.

Response 9: The CPE initial study and additional department analyses have considered and do not identify adverse physical environmental effects due to gentrification and displacement of businesses, residents, or nonprofits. The department's determination is based on substantial evidence; the appellant has not demonstrated otherwise.

The appellant claims that the Eastern Neighborhoods PEIR made no mention of gentrification that has led to displacement of long-time residents, businesses and non-profits, nor the physical changes that would accompany it. This is incorrect. As stated on CPE initial study p. 21:

The PEIR determined that implementation of the rezoning and area plans would not have a significant impact from the direct displacement of existing residents, and that each of the rezoning options considered in the PEIR would result in less displacement as a result of unmet housing demand than would be expected under the No-Project scenario because the addition of new housing would provide some relief to housing market pressure without directly displacing existing residents. However, the PEIR also noted that residential displacement is not solely a function of housing supply, and that adoption of the rezoning and area plans could result in indirect, secondary effects through gentrification that could displace some residents. The PEIR discloses that the rezoned districts could transition to higher-value housing, which could result in

⁶ San Francisco Planning Department, Street Design Advisory Team (SDAT), <https://sfplanning.org/project/street-design-advisory-team>, accessed September 12, 2019.

gentrification and displacement of lower-income households, and states moreover that existing lower-income residents of the Eastern Neighborhoods, who also disproportionately live in crowded conditions and in rental units, are among the most vulnerable to displacement resulting from neighborhood change. The PEIR found, however, that gentrification and displacement that could occur under the Eastern Neighborhoods Rezoning and Area Plans would not result in increased physical environmental impacts beyond those disclosed in the PEIR.

Under CEQA, socioeconomic effects may be considered only to the extent that a link can be established between anticipated socioeconomic effects of a proposed action and adverse physical environmental impacts. The CPE initial study and additional department analyses conducted for the 2675 Folsom Street CEQA appeal (board file no. 1611467) and 2918-2924 Mission Street CEQA appeal (board file no. 180019) have considered and do not identify adverse physical environmental effects due to gentrification and displacement of businesses, residents, or nonprofits beyond that disclosed in the Eastern Neighborhoods PEIR. There is no substantial evidence in the record, or additional information provided by the appellant, indicating that the project would cause adverse physical environmental impacts due to gentrification and displacement of existing residents and businesses.

However, the department recognizes that gentrification and displacement are a concern and that the Mission is undergoing socioeconomic changes that are affecting existing residents, local small businesses, employment, and the character of the Mission community. The department is actively engaging with the community, the Board, the Mayor's Office, and other City departments in initiatives designed to ease the socioeconomic pressures on the community. These efforts include the Calle 24 Special Use District, Mission Action Plan 2020 ("MAP2020"), and the Community Stabilization Initiative, and the Cultural Districts, among others.

While the department recognizes the impacts of displacement in the Mission, the department disagrees with the appellant's position that gentrification and displacement has resulted in more severe environmental effects than disclosed in the Eastern Neighborhoods PEIR. Gentrification and displacement were considered as part of the Eastern Neighborhood PEIR development process. The Population, Housing, Business Activity, and Employment section of the Eastern Neighborhoods PEIR included a thorough analysis of these issues, examining, among other things, whether development under the rezoning and area plans would cause or contribute to gentrification or displacement. The department has conducted additional analyses of possible environmental impacts resulting from gentrification and displacement and have not found evidence of significant physical environmental impacts beyond that disclosed in the Eastern Neighborhoods PEIR. The impacts of growth afforded under the rezoning and area plans on the physical environment are evaluated and disclosed in both the plan-level and project-level CEQA documents under the relevant resource topics such as population and housing, transportation, air quality, noise, parks and open space, and public services.

Response 10: The appellant's concerns regarding the Eastern Neighborhoods community benefits are not valid grounds for an appeal of the proposed project's CPE because they do not demonstrate that the

⁷ The department's September 30, 2019 appeal response incorrectly references the board file number for the 2675 Folsom Street CEQA appeal. The correct board file number is provided here.

project would result in significant effects that are peculiar to the project or its site and that were not disclosed in the Eastern Neighborhoods PEIR, or which substantial new information shows will be more significant than described in the PEIR.

The appellant's concerns regarding the funding and implementation of Eastern Neighborhoods community benefits do not demonstrate that the project would result in significant environmental effects that are peculiar to the project or its site and that were not disclosed in the Eastern Neighborhoods PEIR, nor do they demonstrate substantial new information showing that the project's impacts would be more significant than described in the PEIR. Therefore, these concerns are not valid grounds for an appeal of the CEQA determination.

For informational purposes, however, the following discussion about the status of the community benefits identified in the CEQA findings and statement of overriding considerations for the adoption of the Eastern Neighborhoods Area Plans is provided. The public benefits program consists of:

- 1) an improvements program that addresses needs for open space, transit and the public realm, community facilities and affordable housing;
- 2) a funding strategy that proposes specific funding strategies and sources to finance the various facilities and improvements identified in the improvements plan, and matches these sources to estimated costs; and
- 3) a section on program administration that establishes roles for the community and City agencies, provides responsibilities for each, and outlines the steps required to implement the program.

Some of the benefits were to be provided through requirements that would be included in changes to the Planning Code. For example, under Planning Code section 423 (Eastern Neighborhoods Community Infrastructure Impact Fee), fees are collected for transit, complete streets, recreation and open space, child care, and in some portions of the Mission District and the South of Market Area, affordable housing.

The public benefits program was not intended to be a static list of projects; rather, it was designed to be modified by a citizens advisory committee as needs were identified through time. It is important to note that the public benefits program is not a set of mitigation measures. No impacts identified in the PEIR are determined to be less than significant based on the adoption of the public benefits program. Even if none of the elements of the public benefits program were implemented, the conclusions reached in the PEIR regarding environmental impacts would not change. Therefore, the perceived lack of funding and implementation of the public benefits program does not constitute evidence that there are new or more severe environmental impacts than were identified in the PEIR.

Also, as discussed above, based on the available evidence, the public benefits included in the public benefits program are in the process of being provided under the Eastern Neighborhoods Area Plans. As is generally the case with development fee-based provision of community benefits, capital facilities are constructed as fees are collected and are rarely provided in advance of development. The Eastern Neighborhoods Community Advisory Committee is the central community advisory body charged with providing input to City agencies and decision makers with regard to all activities related to implementation of the Eastern Neighborhoods Area Plans. Members of the public may contact the citizens advisory committee with concerns about the pace or direction of public benefits program implementation.

CONCLUSION

The planning department's determination that the proposed project qualifies for a community plan evaluation pursuant to CEQA section 21083.3 and CEQA Guidelines section 15183 is supported by substantial evidence in the record. The appellant has not provided evidence to demonstrate otherwise. The planning department conducted necessary studies and analyses and provided the planning commission with the information and documents necessary to make an informed decision at a noticed public hearing in accordance with the planning department's CPE initial study and standard procedures, and pursuant to CEQA and the CEQA Guidelines. Therefore, the planning department respectfully recommends that the board of supervisors uphold the department's determination that the CPE conforms with the requirements of CEQA and reject the appeal.