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November 1, 2019

Board President Norman Yee and
Members of the Board of Supervisors
c/o Ms. Angela Calvillo, Clerk of the Board
of Supervisors
City and County of San Francisco
City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102-4689

**Re: 3333 California Street Project- Laurel Heights Partners LLC Response to EIR
Certification Appeal (File No. 191035)**

Dear Board President Yee and Members of the Board of Supervisors:

We respond on behalf of our client, Laurel Heights Partners LLC ("Project Sponsor"), to the appeal filed by the Laurel Heights Improvement Association ("LHIA") challenging the EIR certification for the 3333 California Street Project. The appeal is scheduled for consideration by the Board of Supervisors on November 5, 2019 (with a proposed continuance to November 12, 2019), along with appeals of the Conditional Use Authorization/Planned Unit Development and the Tentative Map.

The EIR Appeal fails to meet LHIA's evidentiary burden, is without merit, and should be denied. We respectfully request that the Board of Supervisors affirm the Planning Commission's EIR certification, approve the Planning Commission's decision to approve a Conditional Use Authorization and Planned Unit Development, and approve the Department of Public Works' decision to approve the Tentative Map. The remainder of this letter focuses on the EIR Appeal, and explains the bases for upholding and affirming the Planning Commission's EIR certification.

I. The 3333 California Street Project Provides Critically Needed Residential Units and Substantial Community Benefits, and Is the Culmination of Five Years of Collaboration with the Community and the City.

The Project Sponsor proposes to redevelop an underutilized 10.25-acre site with up to 744 residential units, including 185 on-site senior affordable housing units (and one manager's unit), approximately 34,500 square feet of neighborhood-serving retail/commercial uses located along California Street in alignment with the existing Laurel Village shopping center on California Street, a child care facility that could accommodate up to 175 children, and

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approximately 5.3 acres of open or landscaped space, of which approximately 2.9 acres would be publicly accessible.

The Project will construct 13 new residential and mixed-use buildings, and will adaptively reuse the existing office building, dividing it into two separate buildings and converting it to residential use, and demolishing the remainder. The Project's open space is designed to include publicly accessible pathways running north-south and east-west, weaving the site back into the neighborhood's urban fabric and street grid, encouraging walkability, and conforming to key urban design principles. The Project will provide hundreds of new trees, while retaining certain existing trees. It will also provide substantial streetscape improvements, including corner bulb-outs, landscaping, and other pedestrian friendly improvements.

The Project is anticipated to generate up to 675 construction-related jobs, and upon completion, approximately 206 net new permanent jobs to support Project operations. It will add approximately \$10 million annually in property taxes, and will provide substantial community benefits and pay significant development impact fees, as described in more detail in Section III below.

Over the past five years, the Project Sponsor has worked closely with the City and the community to refine and improve the Project, participating in more than 170 meetings with individual neighbors and other stakeholders and community groups. Many key features of the Project are directly responsive to feedback received from the community and the City. Two key examples are (1) the creation of 744 residential units with 25 percent affordable senior housing units, made possible by a reduction of the originally proposed commercial square footage, and (2) modified plans for the existing office building to allow new, open air north-south and east-west connections to incorporate the Project into the existing street grid.

Simply put, this Project will thoughtfully provide 744 critically necessary residential units in a new, mixed-use community that can be integrated into the existing neighborhood, with substantial community benefits and increases in property tax revenue to fund City programs. Opposition from LHIA cannot be permitted to further delay this important and timely Project, which was the subject of careful, rigorous, and comprehensive environmental review.

II. The Recycled Arguments in the EIR Appeal Are Without Merit, Fail to Meet LHIA's Substantial Evidence Burden, and Should Be Rejected.

LHIA's EIR appeal largely recycles and rehashes arguments made in its comments on the Draft EIR, letters to the Planning Commission submitted prior to the certification of the EIR, and a letter submitted at the Planning Commission certification hearing. LHIA raises 18 separate arguments, all of which are without merit and fail to meet LHIA's burden to provide substantial evidence demonstrating that the EIR fails to comply with CEQA's requirements.

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"Substantial evidence" is defined by CEQA to include "fact, a reasonable assumption predicated upon fact, or expert opinion supported by fact."¹ It does not include "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 environment."²

LHIA has not and cannot provide the substantial evidence necessary to support its contention that the Board of Supervisors should overturn the EIR certification. Its arguments mischaracterize applicable CEQA law and fail to provide sufficient facts, reasonable assumptions predicated upon facts, or expert opinion supported by fact, particularly in light of the City's rigorous environmental review of the Project.

The vast majority (15) of LHIA's 18 appeal arguments were raised by LHIA as formal comments on the EIR during the comment period, and were responded to comprehensively in the Planning Department's Response to Comments document. These are LHIA Appeal arguments 3 (project description stability), 4 (project objectives), 5 (shadow), 7, 8, and 9 (plans and policies consistency), 10 (geology and soils), 11 (biological resources—trees), 12 (biological resources—birds), 13 (hazards/hazardous materials), 14 (construction noise), 15 (parking and VMT), 16 (VMT forecasting), 17 (GHG analysis), and 18 (consistency with zoning controls).

The Planning Department's formal Appeal Response for the Board explains that none of the LHIA appeal letter's revisions and additions to these 15 appeal arguments provides substantial evidence demonstrating that the Planning Department's prior responses to those comments are inadequate, inaccurate, or insufficient. The Planning Commission correctly determined that the Responses to Comments document adequately considered and addressed these LHIA arguments; the Board should do the same, and reject any contention to the contrary by LHIA.

LHIA's three remaining appeal arguments recycle content from its August 28, 2019 and September 5, 2019 letters to the Planning Commission. These are the remaining LHIA Appeal arguments 1 (historic resource impacts), 2 (adequacy of alternatives analysis), and 6 (CEQA Findings). These arguments are similarly without merit and are unsupported by substantial evidence, as discussed in greater detail below.

¹ Public Resources Code Sections 21080(e)(1), 21082.2(c).

² Public Resources Code Sections 21080(e)(2), 21082.2(c).

Appeal Argument 1: Historic Resources Impacts

Appeal argument 1 is LHIA's attempt to recast its four proposed alternatives—already evaluated and determined to be not considerably different from those prepared and analyzed in the EIR—as project mitigation measures. LHIA contends that the EIR needed to identify and describe individual components of the LHIA alternatives as "design mitigation measures" to reduce the Project's historic resources impact. According to LHIA, "some" of the design changes proposed by LHIA in its alternatives could have been used to mitigate the Project's impacts, and the City's decision not to do this was "prejudicial." Mitigation measures, if feasible, are to be included if they would "substantially lessen"³ or "clearly lessen"⁴ a significant environmental effect.

Reviewing the various components of the LHIA alternatives, implementing "some" of those components as mitigation would not "clearly lessen" or "substantially lessen" the historic resources impact. The resource determined by the City to be historic is the entirety of the property, the existing office building and the integrated landscape which occupies a 10.25 acre site, not any particular component of the building or the landscape. Groups of design changes were appropriately and thoughtfully packaged together for identification in the EIR as preservation alternatives, two full and two partial, analyzed in a 218-page section of the EIR. The Planning Department correctly determined that the four LHIA-proposed alternatives were not "considerably different"⁵ from the preservation alternatives analyzed in the EIR, and provided supporting substantial evidence in both the Response to Comments and its September 4, 2019 memorandum to the Planning Commission.

The Planning Commission and the public had ample opportunity to consider both the four EIR alternatives and the four considerably similar LHIA alternatives providing all of the information that Appellant has raised—there is no new information here. Any suggestion that the Planning Commission lacked sufficient information to evaluate historic resources impacts, and that this was "prejudicial," is simply incorrect.

Appeal Argument 2: Adequacy of Alternatives Analysis

Appeal argument 2 attempts to critique the EIR's alternatives analysis, asserting that the six alternatives included in the EIR—a no project alternative, two full preservation alternatives, two partial preservation alternatives, and a code-confirming alternative—were not enough.

³ CEQA Guidelines Section 15021(a)(2).

⁴ CEQA Guidelines Section 15088.5(a)(3).

⁵ CEQA Guidelines Section 15088.5(a)(3).

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LHIA unreasonably asks the City to analyze four more alternatives, for a total of ten, notwithstanding the Planning Department's well-reasoned determination that all of LHIA's proposed alternatives are "not considerably different" from alternatives contained in the EIR.

CEQA requires analysis of a reasonable range of alternatives designed to eliminate or reduce one or more significant environmental effects.⁶ As stated in the CEQA Guidelines, "an EIR need not consider every conceivable alternative to a project. Rather, it must consider a reasonable range of potentially feasible alternatives that will foster informed decisionmaking and public participation."⁷ The Guidelines state also that "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 a reasoned choice."⁸ There is substantial evidence in the record supporting the reasonableness of the range of alternatives analyzed in the EIR.

Indeed, the range of alternatives presented fostered substantial public participation from LHIA, which put forth its own proposals largely taken from those presented in the EIR. The range of alternatives permitted and resulted in informed decisionmaking. The ultimate rejection of the EIR's alternatives in favor of the Project reflected consideration of the project objectives, the desperate need for new housing in San Francisco, and key urban design principles. LHIA's appeal argument 2 is without merit.

Appeal Argument 6: CEQA Findings

Appeal argument 6 incorrectly contends that the CEQA Findings were conclusory, inaccurate, and not supported by substantial evidence. LHIA's argument fails on both procedural and substantive grounds.

Procedurally, the CEQA Findings are not appealable to the Board of Supervisors. Under San Francisco Administrative Code Section 31.16(a), certification of an EIR by the Planning Commission is appealable. Administrative Code Section 31.16(c)(3) goes on to explain that "the grounds for appeal of an EIR shall be 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."

Accordingly, allegations regarding the sufficiency of the Commission's CEQA Findings and statement of overriding considerations related to its project approval actions are not within

⁶ CEQA Guidelines Section 15126.6(a) and (c).

⁷ CEQA Guidelines Section 15126.6(a).

⁸ CEQA Guidelines Section 15126.6(f).

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the scope of the grounds for appeal as set forth in Section 31.16(c)(3). The Board of Supervisors may, of course, adopt, modify, or reject the Commission's CEQA Findings and statement of overriding considerations in connection with any other project approvals that require action by the Board of Supervisors, but the Commission's CEQA Findings themselves are not a proper subject of appeal.

The Commission's thorough CEQA Findings and the underlying record provide substantial evidence regarding the rejection of project alternatives as infeasible, because the alternatives fail to meet certain City goals, plans, and policies to the same extent as the Project, and they fail to meet project objectives to the same extent as the Project. Similarly, the CEQA Findings and the underlying record provide substantial evidence that the overriding benefits of the Project independently and collectively outweigh the significant and unavoidable environmental effects of the Project.

LHIA takes issue with several specific components of the alternative infeasibility determinations, but only one example is necessary to show that its assertions are without merit. LHIA argues that the Commission's findings for the Full Preservation—Office Alternative are inadequate and ambiguous regarding that alternative's failure to provide active ground floor retail uses or activated neighborhood-friendly spaces along the adjacent streets. LHIA ignores the CEQA Findings' clear statements that the existing perimeter brick wall bordering the north and west (partial) boundaries of the Project Site would be retained, and that new residential buildings along California Street "would have no ground-floor retail along California Street or child care uses as they would with the Project."⁹ By taking phrases out of context, and ignoring relevant content, LHIA attempts to argue that there is "ambiguity" in the CEQA Findings where there is none.

On both procedural and substantive grounds, LHIA's contentions regarding the CEQA Findings should be rejected.

III. The Substantial Community Benefits Provided by the Project Should Not Be Jeopardized by LHIA's Appeal, Which Is Without Merit.

As discussed above, the Project will provide numerous and substantial community benefits, will create significant new property tax revenue, and will generate significant development impact fee revenue to fund City projects. These project benefits are too important to allow LHIA to delay the development process any further:

- Approximately 744 new residential units, 325 of which will contain two or more bedrooms, providing much needed, family-friendly housing;

⁹ CEQA Findings p. 34.

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- Twenty-five percent of the Project's units will be designated for qualified senior households with an average income of not more than 59% of MOHCD AMI;
- Substantial development impact fees, including contribution to the City's Auxiliary Water Supply System ("AWSS") and payment of the jobs-housing linkage fee and the transportation sustainability fee;
- The Project's circulation and open space plan includes multiple new public pedestrian entrances into and through the Project Site in order to integrate the site into the surrounding neighborhood and street network.¹⁰ The proposed north-south pedestrian connection (Walnut Walk) and the proposed east-west pedestrian connection (Mayfair Walk) will be open to the public and will provide the primary points of access to other publicly accessible common open spaces, plazas, squares, and vista points within the Project Site. The proposed Walnut Walk will align with Walnut Street to the north and the intersection of Euclid and Masonic to the south, incorporating the site into the surrounding street grid;
- Approximately 206 new and permanent on-site retail/commercial jobs, child care jobs, and jobs related to the maintenance and management of the Project;
- While the Project is only required to provide 50% of the target points applicable under the Transportation Demand Program, the Project Sponsor has committed to implement 75% of the applicable target points;
- A child care facility for approximately 175 children, with at least 10% of the capacity made affordable to children from low-income households; and
- Approximately 34,500 square feet of neighborhood-serving retail/commercial space located in the buildings fronting California Street (Plaza A, Plaza B and the Walnut Affordable Senior Housing Building). This retail/commercial corridor is aligned with the existing Laurel Village shopping center on California Street and will be designed to enhance the retail/commercial offerings for the neighborhood.

¹⁰ The Project's open space is designed with one of the Project's key objectives in mind – to "[o]pen and connect the site to the surrounding community by extending the neighborhood urban pattern and surrounding street grid into the site through a series of pedestrian and bicycle pathways and open spaces, including a north-south connection from California Street to Euclid Avenue that aligns with Walnut Street and an east-west connection from Laurel Street to Presidio Avenue."

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IV. The Board of Supervisors Should Reject the EIR Appeal, Uphold and Affirm the Planning Commission's EIR Certification, and Approve the Project.

For all the foregoing reasons and based on the thorough and extensive record before you, we urge the Board of Supervisors to reject the EIR Appeal and to approve the 3333 California Street Project. This unique project would transform an underutilized site into a vibrant mixed-use community with 744 new homes, including 185 affordable units for seniors, at a time when San Francisco and the region desperately need new housing. Thank you for your careful consideration of this timely and important project.

Respectfully submitted,

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