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September 17, 2020

Attn: Angela Cavillo, Clerk of the Board of Supervisors
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Via email: Board.of.Supevisors@sf.org, bos.legislation@sf.org

RE: Planning Case Number 2018-012648CUA - Saint Ignatius Stadium Lighting Project

Honorable Members of the Board of Supervisors:

I am writing on behalf of the Saint Ignatius Neighborhood Association (“SINA”) concerning the proposal to install stadium lighting towers and a wireless telecommunications facility at the J.B. Murphy Field Stadium (“stadium” or “field”) of Saint Ignatius College Preparatory (“Saint Ignatius” or “school”) located at 2001 37th Avenue. Saint Ignatius is a private secondary school located in a residential neighborhood in the Outer Sunset District.

SINA is an association comprised of over 165 neighbors who live in the area surrounding the school. The organization was formally registered as a community/neighborhood organization with the San Francisco Planning Department (“Department”) in October 2016.

The Planning Commission granted Conditional Use Authorization (“CUA”) for the stadium lighting project (“Project”) on July 23, 2020 (Motion No. 20769, Case No. 2018-012648CUA)¹. Pursuant to San Francisco Administrative Code Section 308.1, SINA submitted a timely CUA appeal on August 21, 2020².

This letter supplements the CUA appeal filing with more information in support of the appeal. It expands upon SINA’s previous submittals for the Planning Commission hearings (May 6, 2020 and June 9, 2020³, and July 22, 2020⁴) and includes results of CHEE’s review and analysis of the proposed Project in relation to the Planning Code and other relevant City codes.

¹BOS File No. 200996 <https://sfgov.legistar.com/View.ashx?M=F&ID=8761935&GUID=CC045236-5338-4B44-9F81-4D846A69C42B>

² <https://sfgov.legistar.com/View.ashx?M=F&ID=8761935&GUID=CC045236-5338-4B44-9F81-4D846A69C42B> .

³ Included as Exhibit J in the July 23, 2020 Commission hearing packet.
<https://commissions.sfplanning.org/cpcpackets/2018-012648CUAc1.pdf>

⁴ Available at https://docs.google.com/document/d/1tnLYBpZMoCu-rsKzRUBUmcrwFZ_lSXNcAwL3cmhrOgc/edit?usp=sharing

Qualifications of the Center for Health, Energy & the Environment, LLC

The Center for Health, Energy & the Environment, LLC (“CHEE”) is a boutique consulting firm specializing in environmental and regulatory analysis, permitting, and compliance monitoring. Our staff have over 40 years of technical expertise in regulatory interpretation and review at the federal, state and municipal levels; development planning and permitting; and regulatory compliance plans and training. We have provided services across more than 30 states including California for clients such as federal and state agencies, multi-national corporations, regional planning commissions, municipalities and non-profit organizations. A sample of CHEE’s project experience relevant to this CUA appeal is summarized in Attachment 1.

Project Summary

The Project Sponsors (Saint Ignatius and Verizon Wireless) propose to add four 90-foot tall lighting towers to the stadium which borders Rivera Street and 39th Avenue. The area is zoned as residential, single family district with a 40-foot height restriction (RH-1 40X). The lighting towers are intended to allow for 150 nights a year of weekday evening use for athletic practices, games and events lasting until 9 pm, and until 10 pm on 20 Friday or Saturday nights per year. In addition, on the proposed northwest light tower (at 39th Avenue near Quintara Street), the Project Sponsors seek to install and operate a wireless telecommunications service facility, consisting of antennas, remote radio units, and surge suppressors located at a height of 34.75 to 66 feet above ground on the tower, as well as ancillary equipment in a ground-based lease area within a fenced compound adjacent to 39th Avenue near Quintara Street.

At this time there is no lighting at the stadium, which means the Project would constitute a significant expansion of use of the field on virtually every weekday evening in the late fall, winter, and early spring seasons, as well as on some weekends - from the time of sunset between 5 and 6 pm without field lights - to 9 to 10 pm under the proposed Project. The school currently has field lighting at their smaller practice field, authorized under a separate CUA (Case No. 2003.1273C, Motion No. 16770). Practice field lighting is authorized for use only until 7:30 pm.

Additional information related to the CUA appeal filing

CHEE has conducted a detailed review of the Project’s application documents, the Commission’s draft and final CUA Motions, SINA’s prior submittals (May 6, 2020 and June 9, 2020, July 22, 2020) for the Commission hearing that approved the Project, SINA’s CUA appeal filing dated August 21, 2020, and applicable sections of the Planning Code (“Code”), the Police Code, and the General Plan.

We also reviewed the Department’s September 15, 2020 memorandum⁵ in response to SINA’s CUA appeal. We note that the memorandum contains numerous errors including the document date, incorrect date of the Commission hearing, reference to a Medical Cannabis Dispensary (MCD), incorrect Motion number, and incorrect geographic locations of the athletic field and surrounding structures).

⁵ <https://sfgov.legistar.com/View.ashx?M=F&ID=8788124&GUID=CC64FDB5-09B6-4450-BD9D-6ED57523BBAD>

Summary of CUA Issues

The Commission Motion and the Department's response memorandum state in several places that the Project is "on balance" in compliance with the Planning Code including Section 101.1(b) – General Plan Consistency, Section 209.1 – Residential RH District, Section 303 – Conditional Uses, and Section 304 – Planned Use Developments. The Motion also states that the Project is consistent with the General Plan's Objectives and Policies, and with the Wireless Telecommunications Services Facilities Siting Guidelines.

The term "on balance" means "after considering all the facts" or "after taking all factors into consideration". The Department has failed to explain exactly how the Project is in compliance with the Code provisions included in the Motion's findings. Rather, the Department continues to assert, without any underlying rationale or evidence to support the assertion, that:

- The Project would maintain and expand educational and recreational uses, "which are uses in support of families and children in San Francisco";
- That the lighting system would have a "nominal impact" of light and glare to the surrounding residential areas;
- That nighttime use of the field "is not expected to adversely impact traffic and parking" in the neighborhood; and
- That the Project is desirable because it "promotes the operation of a neighborhood-serving school".

In order to be approved, it is reasonable to expect the Project to be fully in compliance and consistent with all applicable requirements - not in partial compliance with them, or consistent with only some requirements, while totally inconsistent with other relevant and fundamentally important requirements and policies intended to protect the neighborhood character and ensure that residents are not unduly impacted by this new development.

Our review finds that the proposed Project does not fully meet the requirements of several applicable sections of the Planning Code, and it is not at all consistent with the Wireless Siting Guidelines. The Project also does not meet the objectives, policies, spirit or intent of applicable portions of the San Francisco General Plan.

These matters are discussed in detail below, but for one example - the Project is required to have a 25% rear yard setback under Code Section 134. However, the Department dismisses this requirement entirely by simply stating that the Commission "approved a rear yard modification" under Section 304 (Planned Unit Development), despite providing no justification for that approval other than the Planned Unit Development itself (see Section 1.b below).

The Project is also unlikely to meet applicable sections of the Police Code (noise restrictions) and the school may be currently out of compliance with that code.

The school is also not in compliance with, and has repeatedly violated, the conditions of its practice field lighting CUA (No. 2003.1273C) by leaving those lights on well after the 7:30 pm

shut off restriction, according to neighbor testimony. Lastly, the school has repeatedly violated Code Section 205.4(b) for past unauthorized use of temporary lighting on the athletic field.

The Department's appeal response memorandum states that the Police Code and Planning Code Section 205.4(b) are not subject to the CUA findings and were not considered in the CUA approval. We disagree. For example, State law requires that the General Plan address seven issues: land use, circulation, housing, conservation, open space, noise and safety. Noise is regulated under the Police Code rather than the Planning Code, but noise is still clearly applicable to this Project within the context of the General Plan.

The Board of Supervisors and the Commission must consider these additional requirements, as well as the past violations of an existing CUA approval when looking "on balance" to approve a new CUA. A Project Sponsor or a Planned Unit Development that has shown past disregard for important City codes must have new applications scrutinized closely to assure that any new project or development will remain in compliance with new approvals.

Our analysis of the Project's non-compliance with applicable Code and General Plan requirements is provided below. Section 1 deals with the Planning Code, Section 2 with the Wireless Guidelines, Section 3 with the General Plan, and Sections 4 and 5 with other codes and past violations. Many aspects of these issues are also discussed in the following documents related to the Project:

- CUA appeal filing, August 21, 2020
- Expert testimonial letters from CHEE and Kera Lagios in support of the CEQA appeal, filed September 17, 2020
- Neighbor testimony submitted with SINA's appeal letter, filed September 17, 2020
- Over 40 recent letters from neighbors to the Board of Supervisors
- SINA's three prior submittals to the Commission (also filed with the Board, September 17, 2020)

1. The Project does not meet numerous Planning Code requirements

The following discussion follows the order of applicable Planning Code Sections. Our comments lay out the purpose of each applicable Code Section precisely to highlight the many ways in which the Commission has not considered these in their "on balance" determination that the Project should be approved.

- a. Section 101 states that the purpose of the Planning Code is to "promote and protect the public health, safety, peace, morals, comfort, convenience and general welfare" including the following specific purposes related to this Project (paraphrased):

101(b): To protect the character of residential areas within the City, and to promote the orderly and beneficial development of such areas

101(c): To provide adequate privacy and convenience of access to property

Section 101.1(b) discusses priority policies under General Plan and 101.1(b)(2) reiterates that existing housing and neighborhood character be conserved and protected in order to preserve the cultural and economic diversity of our neighborhoods.

Installation of stadium lighting for evening and night time athletic games and practices on 150 nights per school year does not in any way meet these requirements despite numerous Commission findings to the contrary (Finding 14A, 14B, the second Finding No. 6, 6A on page 9 of the Motion, Finding 16B, and Finding 17) . The lighting Project would irreparably harm the neighborhood character due to the daily impacts of the lighting and the associated increased noise, which would disturb the peacefulness of the neighborhood. Traffic and parking impacts including residents' blocked driveways would clearly disrupt neighbor convenience and lead to public safety concerns during athletic field use. The aesthetic impact on the neighborhood due to the presence of 90-foot towers in a residential 40-foot height district also does not protect the neighborhood character. See also the CEQA appeal and CEQA expert testimonial letters for more detail on these issues.

- b. Section 134(a)(2) states that the purpose of rear yard setbacks is to “maintain a scale of development appropriate to each district, complementary to the location of adjacent buildings” [emphasis added]. Section 134(c)(1) dictates current minimum rear yard setbacks within this RH-1 district to be 30% of the total depth of the rear yard and no less than 15 feet. We understand that since the original Project application was submitted prior to January 15, 2019, the minimum rear yard depth was based on the minimum setback in effect at the time, or 25% ⁶.

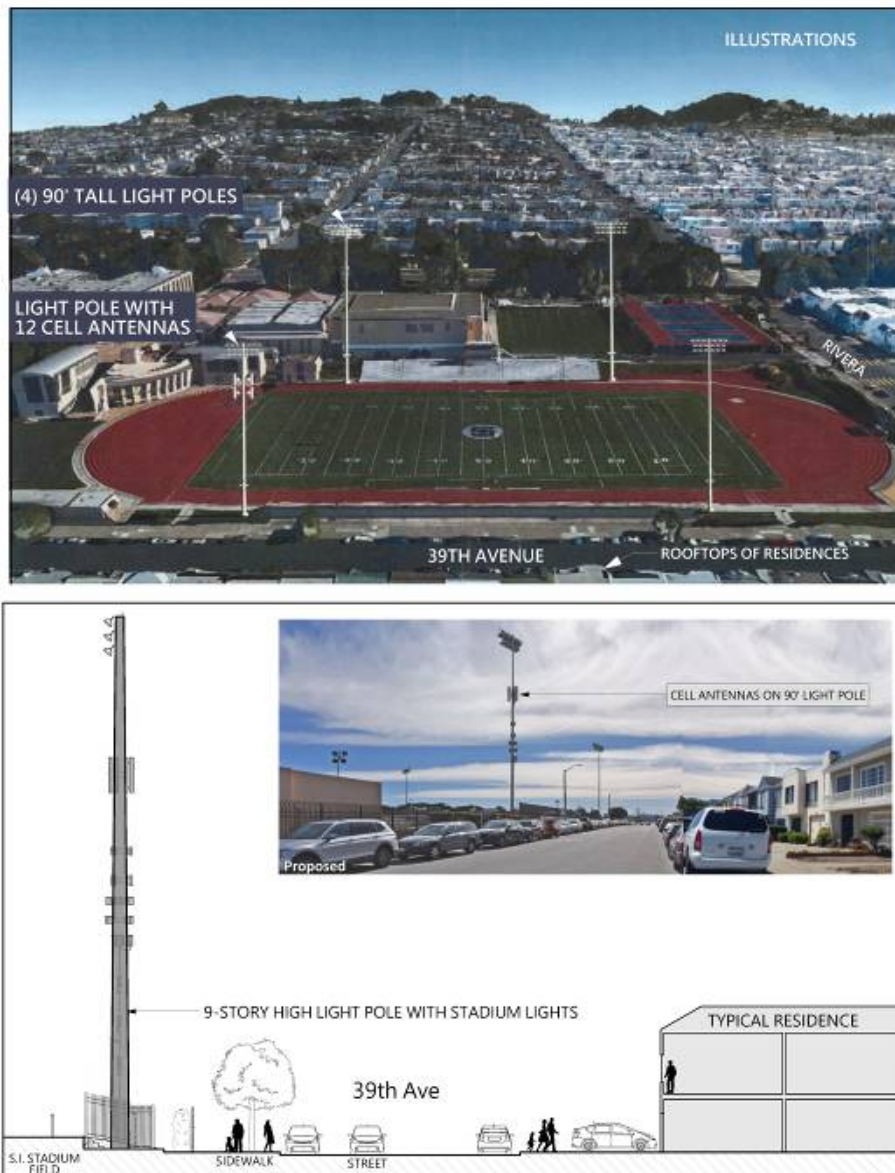
The school's rear yard borders on 39th Avenue with homes directly across the street. According to the Motion (Finding 13B) the Project seeks to “encroach into the rear yard”. The minimum 25% setback for the rear yard is 137.5 feet (the Motion's second Finding No. 6, 6A on page 9). Our review of the Project plans finds that the edge of the Verizon ground-based lease area would be located only 6.5 feet from the property line and two of the four 90-foot light towers would be located only about 11.5 feet from the property line, directly across the street from the homes on 39th Avenue and within about 85 feet of them.

The Department justifies this grossly out-of-scale project at the very edge of the rear yard under Code Section 304, Planned Use Development (PUD) (Findings 13A, 13B, and the second Finding No. 6, 6A on page 9 of the Motion). Section 304 allows modifications to certain Code requirements “for projects that produce an environment of stable and desirable character which will benefit the occupants, the neighborhood and the City as a whole”.

⁶ Section 134 of the Code was amended effective October 14, 2019 under Ordinance 206-19, changing the minimum rear yard setback from 25% to 30%.

Figure 1 below is from SINA’s July 22, 2020 Commission hearing submittal⁷ and illustrates the Project’s scale in relation to the surrounding neighborhood. While the Verizon ground-based lease area might be relatively unobtrusive, it strains credulity that the scale of the lighting towers so close to the property line is in keeping with the intent of the rear yard setback requirements - under a PUD or not. This non-existent rear yard setback cannot reasonably constitute a “modification”; rather the Commission completely disregards the setback requirement in its entirety. We fail to see how such a gross disregard for a basic Code requirement promotes or maintains an appropriate scale of development in this neighborhood.

Figure 1. Scale of light towers in relation to neighborhood and 39th Avenue homes



⁷ Op. cit. Footnote 4, Appendix 1 therein.

- c. Section 138.1(a) purpose is to “establish requirements for the improvement of the public right-of-way associated with development projects, such that the public right-of-way may be safe, accessible, convenient and attractive to pedestrian use and travel by all modes of transportation consistent with the San Francisco General Plan”.

Specifically, Section 138.1(c)(1) requires street tree planting for development projects in accordance with the Public Works Code, Article 16 – Urban Forestry Ordinance for projects that add 500 gross square feet or more (Section 806(d)(1)(E)). This Project will add nearly 500 square feet (about 477 sq. ft for lease area and towers).

The Department makes an argument (Finding 15) that: “The Project will minimize disruption by expanding the school vertically...” [emphasis added] to support supposed consistency with Policy 11.8 in the housing element of the General Plan (see Section 3 below). **This is an absurd argument;** however, using the Department’s own logic would imply that the total new square footage must also include the height of the towers - each 90 feet tall. That amount of additional area would greatly exceed the 500 square foot threshold for street trees.

The Motion also states that the Project requires no additional street treatment since the lights will be equipped with spill and glare shielding such that light and glare “would be nominal on surrounding residential areas”.

We refer you to the CEQA appeal expert testimonial letter from Kera Lagios, a lighting expert who refutes this baseless contention.

Street trees could also serve to diffuse a small amount of the Project’s lighting and noise effects (see CEQA appeal expert testimonial letter from CHEE). Given the proximity of the Project directly adjacent to 39th Avenue and Rivera Street; the disregard for the rear yard setback requirement; and the fact that the ground disturbance area is nearly 500 square feet, makes it important for street trees to be required. But to be clear, street trees offer no panacea to mitigate the overall impacts of this Project.

- d. Code Section 202(c) states: “No use shall be permitted in any R District...which by reason of its nature or manner of operation creates conditions that are hazardous, noxious or offensive through emission of odor, fumes, smoke, cinders, dust, gas, vibration, glare, refuse, water-carried waste, or excessive noise”.

The Department completely ignored this section in the Motion. In fact, the Project will create noxious and offensive conditions including glare from the stadium lighting, refuse from attendees left in the neighborhood/resident yards after games, and excessive noise from the public address system, game whistles, and game crowds (see CEQA appeal, K. Lagios and CHEE CEQA letters). Neighbor testimony confirms that these emissions are noxious and/or offensive (see SINA’s September 17, 2020 letter Attachments 2-5).

- e. Section 209.1 requires a Conditional Use Authorization for PUDs in residential districts. Section 102 defines “Conditional Use” as one that allows the Commission to consider a

project for approval if it is necessary or desirable in a particular neighborhood [emphasis added] but is not normally allowed within a particular zoning district.

While the wireless installation Project may be desirable because it may enhance wireless service in the neighborhood, Saint Ignatius has not demonstrated that the stadium lighting Project is necessary for the school's athletic program (no other high school in the City has such lights) nor how the lighting Project would be desirable in, or for, this particular neighborhood. Yet the Commission persists in promoting the Project's desirability (Finding 14A, 14C, the second Finding No. 6, 6A on page 9, and Finding 15).

As the SINA discussed in their June 9, 2020 submittal, the wireless installation and the stadium lights have been cleverly combined into one project in order to justify the other's purported benefits. Without the wireless component, the stadium lights have no benefit to the public or the neighborhood. We suggest that these obvious two separate projects must be decoupled and evaluated, each on their own merits, under the Planning Code. See also Sections 2 and 3 below.

- f. Section 251 states the purpose of height and bulk districts is to implement the Urban Design element and other elements of the General Plan, including these applicable provisions (paraphrased):

251(a) Relating the height of buildings to the height and character of existing development

251(b) Relating the bulk of buildings to the prevailing scale of development to avoid an overwhelming or dominating appearance in new construction

251(d) Promotion of harmony in the visual relationships and transitions between new and older buildings

251(e) Protection and improvement of the neighborhood environment

There are no buildings or structures including light standards or wireless installations in the surrounding neighborhood that even approach the 90-foot height of the proposed lighting towers. As discussed above, the Project is not in keeping with the character of the existing neighborhood and would certainly not serve to protect and improve the neighborhood environment. The towers would dominate the area (Figure 1) and do not support visual harmony. Yet the Commission justifies this Project as a conditional use (Finding 13C) under Section 253 and Section 260 (see Section 1.i below).

- g. Section 253(a) allows the Commission to approve conditional uses that exceed District height restrictions. However, the Department (Finding 13C) completely ignores Section 253(b)(1) which states: "The Planning Commission shall consider the expressed purposes [emphasis added] of this Code, of the RH, RM, or RC Districts, and of the height and bulk districts...as well as the criteria stated in Section 303(c) of this Code and the objectives, policies and principles of the General Plan".

As noted throughout this discussion, the Commission has dismissed rather than thoughtfully considered the express purposes of any applicable Codes or policies. More importantly, the Commission has not articulated how the Project satisfies those purposes.

- h. Section 303(c) (Motion Finding 14A, 14B) requires that a CUA can be granted only if the facts presented are such to establish that [emphasis added here and below]:

303(c)(1) The proposed use or feature, at the size and intensity contemplated and at the proposed location, will provide a development that is necessary or desirable for, and compatible with, the neighborhood or the community.

If the proposed use exceeds the non-residential use size limitations for the district, additional aspects must be considered. Those applicable to the stadium lighting Project include:

303(c)(1)(B) The proposed use will serve the neighborhood, in whole or in significant part...

303(c)(1)(C) The building in which the use is to be located is designed in discrete elements which respect the scale of development in the district

303(c)(2) Such use or feature as proposed will not be detrimental to the health, safety, convenience or general welfare of persons residing or working in the vicinity, or injurious to property, improvements or potential development in the vicinity, with respect to aspects including but not limited to the following:

303(c)(2)(A) The nature of the proposed site, including its size and shape, and the proposed size, shape and arrangement of structures

303(c)(2)(B) The accessibility and traffic patterns for persons and vehicles, the type and volume of such traffic, and the adequacy of proposed off-street parking and loading and of proposed alternatives to off-street parking...

303(c)(2)(C) The safeguards afforded to prevent noxious or offensive emissions such as noise, glare, dust and odor

303(c)(2)(D) Treatment given, as appropriate, to such aspects as landscaping, screening, open spaces, parking and loading areas, service areas, lighting and signs

303(c)(3) Such use or feature as proposed will comply with the applicable provisions of this Code and will not adversely affect the General Plan; and

303(c)(4) Such use or feature as proposed will provide development that is in conformity with the stated purpose of the applicable Use District.

As shown throughout these comments and in the CEQA appeal expert testimonial letters, the facts presented in the Project application documents do not clearly establish that the Project as a whole meets these requirements. The Motion does not provide any facts at all, merely contentions.

It is possible that the wireless installation as a stand-alone project could meet some of these Code and General Plan requirements (see Section 2 below), but the stadium lighting Project does not. Therefore, it is our opinion that a CUA is inappropriate and should not be granted in this case.

- i. The Project was approved under Code Section 304, Planned Unit Developments or PUDs. Despite reference to the limitations in Section 304(d), the Department ignores some that are relevant to the Project, including these requirements:

304(d)(1) That the Project affirmatively promote applicable objectives and policies of the General Plan.

See Section 3 below for discussion of General Plan applicability.

304(d)(2) Provide off-street parking appropriate to the occupancy proposed.

The Motion simply states: “The Project is not required to provide off-street parking” (second Finding No. 6, 6B.2 on page 9).

While the school itself may not be required to provide off-street parking for normal school use, that is no justification for not requiring additional off-street parking for the stadium lighting Project. CHEE’s CEQA appeal testimonial letter goes into great detail about the expected numbers of game attendees, the lack of existing neighborhood parking, the parking impacts of the Project, and the inadequacy of the school’s Large Event Management Plan to provide sufficient parking capacity.

304(d)(6) That the Project be not excepted from any height limit unless it is explicitly authorized by the Code.

Technically the Project could be exempt from the 40-foot height restriction in Section 253 based on Section 260(b)(2)(I) and (b)(2)(J) which allow height exceedances for wireless facilities and other antennas, and “warning and navigation signals and beacons, light standards, and similar devices...”, respectively (Motion second Finding No. 6, 6B.6).

However, it is profoundly unreasonable to consider 90-foot tall towers to be “light standards” at all, as if they were of similar scale to standard street light poles.

We challenge the Department to provide evidence of CUA approvals for such tall towers on non-public property in an RH-1 district. There are tall lighting towers at Kezar Stadium, Beach Chalet and South Sunset Playground, but these are all public facilities that provide public benefit to their local neighborhoods and the City at large.

Furthermore, the wireless installation does not require a 90-foot tower since the wireless equipment would be located at a maximum height of 66 feet. While still much higher than 40 feet, the wireless installation would have less of an overall visual impact on the neighborhood.

2. The Verizon Wireless project does not meet the requirements of the Wireless Telecommunications Services Facilities Siting Guidelines

The Motion's Finding No. 6 (the first No. 6 on pp. 4-5) summarizes Section 8.1 of the Wireless Telecommunication Services Facilities Siting Guidelines ("Guidelines")⁸. Finding 7 states the wireless installation would qualify as a Location Preference 2 Site (Co-Location Site), making it a "desired location".

The Wireless Guidelines are very clear in on what constitutes a preferred location, yet the Department's appeal response memorandum states: "on balance, the wireless portion of the Project is consistent with the Guidelines" and the General Plan. We believe that the Project should fully meet the Guideline requirements and it does not. The Department's "on balance" argument has no legitimacy, as discussed below.

- a. Section 5 of the Guidelines relate wireless installations to the General Plan including the Urban Design and Commerce and Industry Elements.
- b. Section 6 discusses "Quality of Life Considerations" for wireless installations. The first three considerations are the most important for this Project and all are related to the visual impacts of antennas.

The Department has not considered or even mentioned the visual aspects associated with the wireless equipment, which would be located at a height of 34.75 feet to 66 feet above ground on the 90-foot lighting tower, rather only the ground-based lease area visual impacts are considered.

- c. Section 7 of the Guidelines includes fifteen policies intended to address public concerns over wireless installations, three of which are directly applicable to this Project.
 - Policy LU2 is intended to ensure that a wireless facility "is compatible with the scale of the locale" or if not, that it is "necessary at that location".
 - Policy LU6 is intended to ensure that wireless siting is mitigated for and will positively address [emphasis added] the eight priority policies in Code Section 101.1 as well as the General Plan's Urban Design Element and its Neighborhood Environment section.
 - Policy UD1 is intended to ensure that wireless installations protect the scale, character and visual continuity of the neighborhood, and minimize visual obtrusion so as to protect the City's vistas and beauty. That Policy notes that wireless facilities "should be made as unobtrusive as possible".

The scale of the Project has been discussed throughout this letter, SINA's prior submittals, and in the CEQA appeal. Again, the Project is strikingly incompatible with

⁸ <https://default.sfplanning.org/currentplanning/wireless/wtsguidelines.pdf>

the scale or character of the neighborhood and would disrupt the visual continuity due to the height of the lighting tower to which the wireless installation would attach. Nor has Verizon equivocally shown that the wireless installation is necessary at this particular location.

- d. Wireless Guideline Section 8.1 - Location Preferences is of primary importance here since the Department mis-applies location site preferences. Section 8 states: “The following location preferences...are intended to ameliorate any potential visual or neighborhood livability concerns” [emphasis added], while still allowing for vital telecommunication services. Figure 2 is a summary of the wireless location preferences⁹.

The Guidelines define a Preference 2 Co-Location Site as “any existing site on which a legal wireless telecommunications facility is currently located” [emphasis added]. Such locations are also subject to Code Section 101.1 and the General Plan.

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https://sfplanning.org/sites/default/files/documents/publications/GeneralInfo_Wireless_Telecommunications_Services.pdf

Figure 4. Wireless Guideline Location Preference Chart



The Department completely ignores the fact that this location is not an existing co-location site and would require construction of a new tower. There are no other wireless installations on a lighting tower that itself does not already exist. We note ~~that~~ there are other (non-Verizon) wireless installations located on one or more of the school's rooftops which are relatively unobtrusive.

This is reason enough to separate the wireless installation and stadium lighting proposals (see Section 1.e above) so that each Project can be evaluated separately under the

Planning Code such that the purported benefits of each stand alone on their own merits and are not used to justify the other's purported benefits.

The Project cannot be considered a Co-Location Site, given that there is no pre-existing 90-foot tower and no pre-existing wireless installation on the non-existent tower. The only applicable site category is a Location 7 - Disfavored Site since even Location 6 – Limited Preference Sites are not applicable in an RH-1 District per the Guidelines.

Importantly, a Location 7 Site requires alternative site analysis, but Verizon did not conduct one stating, stating only “not applicable” in their March 28, 2020 CUA Application.

It violates the Guidelines for this wireless installation to be approved without an alternative site analysis that shows no other viable alternatives. We further contend that are likely to be alternative sites (e.g., Location 1 or 2) on public structures or buildings in the area and Verizon must be required to conduct the alternative site analysis.

3. The Project is not consistent with the General Plan

The CUA approval (Finding 14C, Finding 15) is based in part on Code Section 304(d) for Planned Unit Developments that require the Project to meet the conditional use criteria in Section 303(c) and elsewhere in the Code [emphasis added].

In addition, the Project “shall affirmatively promote applicable objectives and policies of the General Plan” [emphasis added]. The Department’s appeal response memorandum also refers to the Section 303 requirement that the Project “will not adversely affect the General Plan” [emphasis added].

The appeal response memorandum justifies General Plan consistency by stating that the Commission “must often balance competing policies” yet the Department has not articulated exactly which policies were balanced or which policies compete with the few selective policies used to support the consistency determination.

When balancing competing policies, it is incumbent upon the Commission to err on the side of protection not on the side of unnecessary development.

The General Plan “is intended to be an integrated, internally consistent and compatible statement of objectives and policies, and its objectives and policies are to be construed in a manner which achieves that intent”¹⁰ [emphasis added]. It is designed as a guide to the attainment of six general goals¹¹, three of which apply to this Project:

¹⁰ https://sfgov.org/sfplanningarchive/ftp/General_Plan/index.htm

¹¹ <https://generalplan.sfplanning.org/introduction.htm>

- Protection, preservation, and enhancement of the economic, social, cultural, and esthetic values that establish the desirable quality and unique character of the city.
- Improvement of the city as a place for living, by aiding in making it more healthful, safe, pleasant, and satisfying...for all residents and by providing adequate open spaces and appropriate community facilities.
- Coordination of the varied pattern of land use with public and semi-public service facilities required for efficient functioning of the city, and for the convenience and well-being of its residents, workers, and visitors.

The only support for the consistency determination is the Department's restated contention that the Project would expand educational and recreational uses, that the lighting would have "nominal impact" on the neighborhood, that the night time use "is not expected to adversely impact traffic and parking", and that the Project "is desirable because it promotes the operation of a neighborhood-serving school". No evidence is provided that supports the truth of these statements, and therefore, they cannot be considered a valid basis for the consistency determination.

It is highly debatable that these statements are even true as the CEQA appeal and CEQA expert testimonials conclude relative to lighting, traffic and parking. Further, the school is not primarily a neighborhood serving school. The Project's educational and recreational uses are limited to their private students only and are not available to the broader neighborhood. It is common knowledge that few students live in the neighborhood and thus it is not a neighborhood-serving school as is the case with the two adjacent public schools.

We reviewed the public letters submitted to the Commission in support of the Project. Excluding duplicate letters, we identified only 16% of letters that came from the immediate neighborhood and only 18% from parents of current students. It is reasonable to expect that there should be many more supporting letters from neighbors if they had a direct connection to the school and would benefit from the Project.

The Commission claims that the Project is, "on balance", consistent with the General Plan; and that it "complies with and promotes many [emphasis added] of the Objectives and Policies of the General Plan" (Finding 14D).

However, consideration of consistency was limited to the few General Plan elements, objectives, and policies that could be leveraged to make the Project appear to be consistent, when it is clearly not.

The Commission did not consider several pertinent aspects and ignores the spirit and intent of the General Plan as a whole.

SINA's July 22, 2020 submittal to the Commission¹² went into great detail about the many ways the Project fails to meet the General Plan criteria. Section B therein summarizes the gross inadequacy of the Commission's General Plan evaluation and findings.

In particular, these aspects of the General Plan were completely ignored but are applicable and must be considered:

Environmental Protection Element

Objective 1 "Principles for City Pattern" table lists considerations including street trees (see Section 1.c above); and recommends that the local streets such as those abutting the school's athletic field should have lighting that is "low glare and warm color light".

Refer to CEQA appeal, K. Lagios expert testimonial letter which discusses that the proposed lighting would be a "cold" light in the blue color range.

Policy 11.1 discourages new uses in areas in which noise levels exceed the noise compatibility guidelines for the new use.

Refer to CHEE's CEQA appeal submittal Section 1 which discusses ambient neighborhood noise levels in comparison to the noise levels expected from the Project that would exceed noise compatibility guidelines.

Urban Design Element

Policy 1.1 addresses the importance of protecting major views in the city and seeks to protect viewpoints and limit obstructions that interfere with them.

The addition of four 90-foot towers with large lighting arrays at the top in a 40-foot height District clearly constitutes an obstruction that would adversely impact viewpoints from locations such as Golden Gate Heights Park, Larson Peak, and Sunset Reservoir Park – all of which have sweeping views of the Sunset District and ocean.

Policy 1.12 addresses the special character of some neighborhoods with "unusually fortunate relationships of building scale, landscaping, topography and other attributes".

As noted in Section 1 above, the addition of 90-foot towers would greatly impinge upon the existing scale of the neighborhood given their vast size and scale that would loom over the street directly across the street from front windows of neighboring homes.

Similarly, Objective 2 covers conservation of resources and the "Fundamental Principles for Conservation" table, item #17 states: "Blocking, construction or other impairment of pleasing street views of the Bay or Ocean, distant hills, or other parts of the city can destroy an important characteristic of the unique setting and quality of the city."

¹² Op. cit. Footnote 4. https://docs.google.com/document/d/1tnLYBpZMoCu-rsKzRUBUmcrwfZ_ISXNcAwL3cmhrOgc/edit?usp=sharing

The addition of 90-foot towers with large lighting arrays would certainly impair the pleasing street views from east of the school toward the ocean and from west of the school up toward the Inner Sunset District and open hillsides.

Objective 3 covers neighborhood environments including health and safety, especially traffic. The Objective states: “Some neighborhoods have greater needs because their residents live in conditions of greater density, or because the residents include more children and older people who tend to live within a smaller world in which the resources close at hand are the most important.”

The neighborhood surrounding the school has a large population of elderly and families with small children, along with two public schools, a library, and a public recreation area used by neighborhood children and adults. Neighborhood residents would definitely be affected by the increased traffic and related health and safety impacts that the stadium lighting project would bring. Refer to the neighbor testimonials in the Attachments to SINA’s September 17, 2020 appeal submittal, and Section 2 of CHEE’s CEQA appeal submittal which discusses the potential impacts of the Project on traffic, parking, and public safety.

Objective 4 covers improving neighborhood environments to increase personal safety, comfort, pride and opportunity. Importantly, the preamble to Objective 4 Policies states: “Neighborhood quality is of overriding importance to the individual, since the most basic human needs must be satisfied close to home... [p]eople wish to have a tolerable and comfortable living environment, safe and free from stress, and the elements that make up such an environment are easily described. People also wish to know that their neighborhoods will be guarded against physical deterioration, and that any elements they consider deficient are likely to be improved”.

Policy 4.1 states: “In order to reduce the hazards and discomfort of traffic in residential neighborhoods, a plan for protected residential areas should be put into effect...”

We note that the area surrounding the school between Noriega and Taraval Streets is a protected residential area¹³ and if this designation is to have any real meaning, it must be taken into consideration when considering traffic impacts from the Project.

Policy 4.14 addresses distracting and cluttering elements and states: “Every other element in street areas...should be examined with a view toward improvement of design and elimination of unnecessary elements.”

Clearly, 90-foot towers with their large light arrays constitute significant clutter that is unnecessary for the neighborhood and should be avoided in the protected residential area. Stadium lighting is not necessary for the school’s athletic program to continue be successful as demonstrated by other, larger schools in the City that do not need lights.

Policy 4.15 addresses protection of the livability and character of residential properties from the intrusion of incompatible development including regulated setbacks. The Policy states that setback standards, and other standards that “contribute to the livability and character of residential neighborhoods, should be safeguarded and strengthened.”

¹³ https://generalplan.sfplanning.org/images/15.urban_design/urb_map7.pdf

Allowing the school to modify its rear yard setback restriction down to virtually no setback in an RH-1 district and allowing 90-foot towers in a 40-foot height district even if exempted, is inconsistent with this policy.

Commerce and Industry Element

Policy 6.9 is ignored. It goes into great detail about conducting evaluations of traffic and parking and requires consideration of the surrounding residential neighborhoods. Most importantly, the Policy states that the proposed use should not be allowed if there is significant traffic congestion or inadequate parking.

Refer to the CEQA appeal and CHEE's CEQA expert testimonial letter for details on the current and expected level of traffic and parking impacts from the Project.

Housing Element

Policy 10.1 provides important context relevant to the lighting project. The policy states in part: "There is a clear public benefit to creating, and applying, a strict approach to regulatory land use controls" [emphasis added].

As discussed in Section 1 above, the rear yard setback modification and the allowance of 90-foot "light standards" under Code Section 260(b)(2)(J) that would allow two of the stadium lights and the Verizon wireless ground-based installation directly inside the property line. These allowances are abnormal applications of the Planning Code and ignore the spirit and intent of the General Plan's strict approach.

Policy 11.3 states: "Ensure growth is accommodated without substantially and adversely impacting existing residential neighborhood character" [emphasis added].

It has been shown clearly through SINA's prior submittals, the CEQA appeal and expert testimonials, and neighbor testimony, that the stadium lighting would substantially, adversely, and permanently impact the neighborhood's character - from a Project that cannot be considered necessary growth since there is no "growth" associated with this Project (e.g., the school has not expanded its enrollment).

Most of the stated Project benefits delineated in the Motion for the few General Plan elements that were considered apply only to the wireless installation and not to the lighting project at all. Again, this is sufficient reason to decouple the two projects and evaluate them separately for General Plan consistency. Other Plan elements that were considered were mostly mis-applied to the lighting project in ways that ignore the spirit and intent of them. We will not review those here (refer instead to Section B of SINA's prior submittal¹⁴). However, the Commission should re-consider them and provide a sound rationale for each in response to SINA's prior comments.

Ultimately, the wholesale-dismissal and/or mis-application of numerous General Plan aspects cannot support the Department's "reasonable" finding of "balancing competing policies" or of General Plan consistency.

¹⁴ Op. Cit. Footnote 10.

4. The Lighting Project may not meet Police Code Noise requirements

The Summary of CUA Issues above notes that the Board of Supervisors and the Commission must consider the Planning Code and other applicable Codes within the context of the General Plan. State law requires that the General Plan address seven specific issues including noise¹⁵. The California Supreme Court has also held that the purview of the General Plan extends beyond zoning and land use¹⁶.

Our review of the regulations, discussed below, clearly demonstrates that Project-related noise are subject to other applicable codes and must be considered as part of the CUA evaluation and General Plan consistency determination.

Noise is regulated under the Police Code rather than the Planning Code. Article 1, Section 49 regulates unnecessary noise and references other sections of the Police Code that are also applicable to this Project.

- Section 49(a) states: “Except as provided in Article 15.1 of this Code...it shall be unlawful for any person to use, operate, maintain, or permit to be played, used, or operated any...broadcasting equipment, or other machine or device for the producing, reproducing, or amplification of sound or human voice in such manner as to produce raucous noises or in such manner so as to disturb the peace, quiet, and comfort of persons in the neighborhood [emphasis added], or with volume louder than is necessary for convenient hearing for the person or persons for whom said machine, instrument, or device is operated.
- Section 49(c) states: “The operation of any such...broadcasting equipment, machine, or device at any time in such a manner as to cause a noise level in excess of the standards set forth in Article 29 of this Code shall be prima facie evidence of a violation of this Section 49 [emphasis added].”
- The referenced Police Code Article 15.1, Section 1060.16 regulates outdoor amplified sound under the Code’s entertainment permit regulations.
 - Section 1060.16(a) states in part: “The use or operation of amplified sound equipment to project sound outside of any building or at any location out of doors in the City may be detrimental to the health, welfare, and safety of the inhabitants of the City, in that such use or operation diverts the attention of pedestrians and vehicle operators in the public streets and places, thus increasing traffic hazards and potentially causing injury to life and limb. Further, such use or operation may disturb the public peace and comfort and the peaceful enjoyment by the people of their rights to use the public streets and places for street and other public purposes, and may disturb the peace, quiet, and comfort of the neighboring inhabitants” [emphasis added].

¹⁵ https://sfgov.org/sfplanningarchive/ftp/General_Plan/index.htm

¹⁶ <https://sfplanning.org/project/san-francisco-general-plan>

- Section 1060.16(b)(2) states: “Amplified speech and music shall not be unreasonably loud, raucous, or jarring to persons of normal sensitivities within the area of audibility, nor louder than permitted...”.
- Section 1060.16(b)(3) states: “The volume of outdoor sound shall be controlled so that it will not be audible for a distance in excess of 250 feet from the property line of the Business or premises or from the periphery of the attendant audience”.
- The referenced Police Code Article 29 provides noise limits for various use categories. The associated Noise Guideline¹⁷ provides a table in Appendix A that lists applicable noise standards and thresholds for different sources of noise emission. There is no category for educational institutions nor is there an applicable exemption for schools, therefore the most applicable category is for commercial/industrial property noise regulated under Section 2909(b).
 - Section 2909(b) sets a noise limit not to exceed eight decibels above the ambient at any point outside of the property plane, from any combination of mechanical device(s) and implied sound systems(s).

CHEE’s CEQA appeal expert testimonial letter (September 17, 2020) discusses ambient noise levels in the immediate neighborhood and analyzes the noise levels expected at Saint Ignatius that result from amplified sound as well as crowd noise and game or practice whistles.

That analysis shows that noise levels are likely to exceed 8 decibels above ambient and it is quite likely that the school is currently violating this standard even without stadium lighting.

Neighbor testimony including audio recordings of day time noise from practices supports our CEQA analysis and demonstrates the history of neighbor noise complaints for day time use, and evening football games conducted under temporary lighting (see Attachments 2 – 5 in SINA’s appeal letter, September 17, 2020).

Therefore, noise levels from the Project must be considered as part of the CUA evaluation and General Plan consistency determination.

5. The school has repeatedly violated the practice field lighting CUA No. 2003.1273C and Planning Code Section 205.4(b)

As noted in the Summary of CUA Issues above, we contend that the Board of Supervisors and the Commission must consider the school’s past violations when looking “on balance” to approve a new CUA. A Project Sponsor or a Planned Unit Development that has shown past disregard for important City codes must have new applications scrutinized closely to assure that any new project or development will remain in compliance with new approvals.

¹⁷ Op. cit. Footnote 4.

- The CUA that authorized practice field lighting included Condition 3 that requires lights to be shut off by 7:30 pm any time they are in use.


Neighbors have reported that the shut off restriction is not followed by the school and not enforced. For example, one neighborhood testimonial email to the Commission¹⁸ noted that the school's practice field lights "are meant to be turned off at 7:30 but are routinely left on past 9 pm. When calling the school, they refuse to turn these lights off". Other neighbors have reported similar violations of that CUA since its 2003 authorization.

- Code Section 205.4 regulates temporary uses and requires authorization for outdoor intermittent activities that occur occasionally but with some routine or regularity. The school has rented temporary lights for use at the stadium for several years, but we could find no authorizations for such use in the school's Planning Department records. In 2019 these rentals took place for an 8 week period according to neighbor testimony, and the lights were left in place the entire time. The lights were brought back in early 2020 for a two-week period. The school informed neighbors of the 2019 plan for temporary lighting but failed to notify neighbors of the 2020 usage, stating they "forgot" to do so. The school representative also stated that a permit was not needed.
- Code Section 205.4(b) disallows intermittent activities in a RH District only if it is located on a parcel that contains or is part of a hospital, a post-secondary educational institution, or a public facility.

As a secondary educational institution in an RH-1 District, the school is not even allowed to conduct such activities. Had the school sought approval, the Department should have informed them that the temporary use could not be authorized. Therefore, the school has operated in violation of this Code.

In conclusion, this analysis shows the myriad aspects of the Project that the Commission has not adequately considered. Therefore, in my professional opinion, the CUA cannot be approved until all applicable codes and policies are evaluated and the Project can demonstrate compliance with applicable codes and the General Plan.

Sincerely,



Maryalice Fischer
Executive Director, CHEE LLC

Attachment 1. Abbreviated list of related CHEE projects

¹⁸ Attachment 2 in SINA's September 17, 2020 appeal letter

Attachment 1

Abbreviated list of projects relevant to this CUA appeal that were completed by CHEE, or independently by CHEE staff

Regulatory Compliance and Oversight

- Assessed regulatory requirements at the federal, state and local levels; developed detailed comprehensive regulatory compliance implementation plans; conducted staff training; and/or assisted in permit applications and permit compliance reporting for the following organizations:
 - US Internal Revenue Service
 - US National Park Service
 - US Food Safety and Inspection Service
 - New Hampshire Department of Transportation
 - Siemens Industry, Inc.
 - Granite State Electric Company
 - New England Power Inc.
 - TransCanada
 - North American Energy Services
 - Constellation Energy
 - Dominion Energy
- Conducted confidential audits of regulatory compliance with applicable federal and state statutes and their implementing regulations, and with local codes and ordinances; reported findings and made detailed recommendations on compliance needs to upper management of the following organizations:
 - US General Services Administration - Hartford CT
 - US Geological Survey - Sacramento CA and Pawtuxent MD
 - US National Park Service at over 30 national park and historic sites in 13 states
 - US Generating Company (then a subsidiary of Pacific Gas & Electric Co.) at facilities in six states