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RE: Planning Case Number 2018-012648CUA - Saint Ignatius Stadium Lighting Project - Rebuttal to Responses of SI and Planning Department on CEQA Issues

Honorable Members of the Board of Supervisors:

I am writing on behalf of the Saint Ignatius Neighborhood Association (SINA or Appellant) in response to the submissions of Saint Ignatius (SI) and the San Francisco Planning Department on the CEQA issues raised in this appeal.

The approach taken by the Planning Department in this case to exempt this major project from any CEQA review is contrary to law and renders the City vulnerable to a successful legal challenge. In the big picture, that would be an unfortunate result. SINA's purpose in this appeal is not to engage in successful litigation, but instead to require this project to undergo a full environmental review process to evaluate which alternatives or mitigation might avoid or substantially lessen the significant impacts that will be imposed on the local community by an expansion of stadium field operations with lights on most nights in the fall and winter evenings. Such an evaluation is required by CEQA. *See* Pub. Res. Code § 21002.

SI's and the Planning Department's submissions attempt to portray SINA as trying to stop the project at all costs. This is false and is not supported by the record. SINA requests that SI follow the law, as required by all institutions operating in the City of San Francisco (City).

A. This Project is Not Eligible for a CEQA Exemption

SI and the Planning Department argue the project is exempt from CEQA review because it is a small structure that does not involve an "expansion of an existing use."

This argument is inconsistent with the claimed exemptions, which are limited to small structural additions to an existing development that involves negligible to no expansion of use. *See* 14 Cal. Code Regs. §§ 15301, 15303. In contrast, the project in this case involves the construction of large light towers that will expand the existing use into the evening hours on a regular basis for up to 150 nights a year.

In interpreting whether this is a non-negligible expansion of use, the City must be guided by CEQA's maxim that potentially significant project impacts must be evaluated in a CEQA review process. Here, for purposes of measuring impacts, the project 'expands' use by expanding activities from the day time to the evening time frame when impacts may be more significant, as well as requiring constant lighting, which has *its own particular impacts* that do not occur for daytime use. Further, the 90 foot light towers erected to allow for nighttime sports activities in a residential neighborhood is a completely different project than the 'small structures' described in the Class 3 exemption such as a garage, patio or a residence.

B. The Planning Department Rebuttal Does Not Correctly State the Law on Whether Unusual Circumstances Justify an Exception to the Exemption.

Even if an exemption *were* to apply, SINA's appeal shows that exceptions to the exemptions apply pursuant to CEQA Guideline § 15300.2. In particular, Appellant has submitted substantial evidence demonstrating the potential that this project will have significant impacts due to unusual circumstances. *See* 14 Cal. Code Regs. § 15300.2(c).

The Planning Department's response argues that Appellant has not shown that the impacts of the project in this case are due to unusual circumstances, based on the theory that lighted fields near residential areas are not 'unusual' in San Francisco. Setting aside the disputed factual question of whether there are other large lighted sports facilities in the City so close to a residential neighborhood as is true in this case, the Planning Department's analytical approach does not comport with the existing case law as set forth by the Supreme Court in *Berkeley Hillside Preservation v. City of Berkeley* (2015) 60 Cal.4th 1086. *Berkeley Hillside* does not evaluate whether there are other similar projects existing in the region, but instead whether the project is unusual *compared to projects that normally fall within the claimed exemption* class:

> A party invoking the exception may establish an unusual circumstance without evidence of an environmental effect, by *showing that the project has some feature that distinguishes it from others in the exempt class*, such as its size or location. In such a case, to render the exception applicable, the party *need only show a reasonable possibility of a significant effect due to that unusual circumstance*. Alternatively, under our reading

> of the guideline, a party may establish an unusual circumstance with evidence that the project will have a significant environmental effect. That evidence, if convincing, necessarily also establishes "a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances."

Id. at 1105 (emphasis added.) *See also San Francisco Beautiful v. City and County of San Francisco* (2014) 226 Cal.App.4th 1012, 1024 (to determine whether unusual circumstances exist, agency must consider whether "the circumstances of a particular project (i) differ from the general circumstances of the projects covered by a particular categorical exemption, and (ii) those circumstances create an environmental risk that does not exist for the general class of exempt projects."); *Santa Monica Chamber of Commerce v. City of Santa Monica* (2002) 101 Cal.App.4th 786, 800 ("[W]hether a circumstance is 'unusual' is judged relative to the typical circumstances related to an otherwise typically exempt project.") (emphasis added.)

This project differs considerably from the small structural alteration of an existing facility with negligible expansion of use (Class I) or a small-scale construction of infill development (Class 3) in that it creates a new, lighted use allowing for nighttime sports activities in a residential neighborhood. Under the applicable test, these are 'unusual circumstances' justifying an exception from the exemption. In contrast, under the Planning Department's approach, the mere presence of an existing lighted stadium in the vicinity of a proposed project would justify that project's exemption from CEQA even if the existing lighted stadium had itself already gone through a full CEQA review. That result would be nonsensical and contrary to CEQA policies.

C. The Light Impacts of the Project are Potentially Significant and Have Not Been Mitigated Through the Adoption of Enforceable Mitigation.

SI and the Planning Department argue that there is no possibility of light pollution impacts from this project, relying on a host dubious assertions challenging the basis of Appellant's expert's scientific findings submitted with this appeal.

In considering these issues, the Board should be aware that at the categorical exemption stage, substantial evidence showing the potential for significant impacts requires further CEQA review, based on the fair argument standard, even if there is other 'evidence' presented from the project applicant that no significant impacts will occur. *See Berkeley Hillside Preservation v. City of Berkeley, supra,* 60 Cal.4th at 1111. Appellant's expert's comments on this project constitute substantial evidence of significant impacts, notwithstanding so-claimed 'contrary' evidence such as the highly questionable assertion that glare does not become a significant impact under it reaches the jarring level of 25,000 candelas. Here, for example, the best available science is based on the CIE 2017 standards, which show that nightly glare levels of around 1,000 cd are potentially significant.

Other arguments raised are equally specious. The Planning Department's response, for example, provides general and essentially meaningless narrative arguments such as Musco's

system is 'state of the art' or that light control are designed to concentrate the light on the field area with minimal light emitted outside the targeted areas. Notwithstanding these claims, Musco's own readings demonstrate the potential for significant light pollution impacts.

Another argument is that the lighting system is capable of being switched to a 'dimmed' setting and that this feature would allow the lights to be turned down during events. However, there is no requirement that lights be dimmed, nor does the applicant's potential ability to dim light levels constitute enforceable mitigation as required by CEQA.

D. The Social Effects of Nighttime Events that Cause Impacts to the Physical Environment Must be Considered under CEQA.

SI and the Planning Department assert that the social effects of the project on the neighbor citizens need not be addressed under CEQA. This is false where such social effects are a direct consequences of changes to the physical environment. *See* 14 Cal Code Regs. §§ 15064(e); 15131(b) (social effects may be considered when those impacts are themselves caused by changes to the physical environment.); *Christward Ministry v. Superior Court* (1986) 184 Cal. App. 3d 180, 197 (the effects of a project caused by increased noise and traffic on petitioner's religious retreat activities had to be reviewed under CEQA).

Here, as testified by numerous citizens, the social effects of physical changes to the environment caused by light pollution, noise, traffic, parking and public safety impacts from the project will be undoubtedly significant. CEQA requires an analysis of these effects, which have been ignored in this instance through the adoption of a categorical exemption for the project. *See e.g.,Oro Fino Gold Mining Corp. v. County of El Dorado* (1990) 225 Cal.App.3d 872, 882-883 (evidence may be established by relevant personal observations.)

E. CEQA Review is Appropriate for a Project of this Size and Potential for Disturbance to the Local Neighborhood.

The Planning Department's response memo reads like an opposition brief in litigation, with false factual references, arguments that run contrary to CEQA law and general statements that attempt to denigrate the good faith of the neighbor citizens who have collectively filed this appeal to the Board. This is an unfortunate result. The purpose of CEQA is not to stop projects, but to ensure that, where possible, projects with the potential for significant impacts are modified through mitigation or alternatives that avoid or minimize such impacts. As the Supreme Court has noted, the EIR is a document of accountability, which communicates to citizens that the agency has considered the potential impacts of its actions, and done all that it can to avoid or substantially lessen those impacts. *See Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 408*;* Pub. Res. Code § 21002.

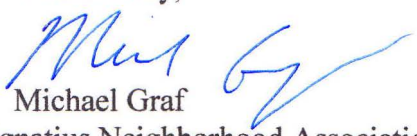
In this case, there are clearly a host of potential mitigation and alternatives that could avoid or substantially lessen the worst impacts of this project, beginning with feasible lower light

levels given the anticipated stadium attendance, as well as design and configuration standards shown to actually reduce light impacts, noise analyses that incorporate the use of a PA system, or parking, traffic and public safety plans that have been vetted and approved through a CEQA review process.

In contrast, the proposed CEQA exemption for this project undermines citizens' faith in their elected officials, furthering cynicism with the public process of the City. Here, the Board should have concerns that the Planning Department appears intent on subverting this process, thus rendering the Board's actions unaccountable towards its own citizenry.

To avoid this result, the Board should grant this appeal.

Yours Truly,



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On Behalf of Saint Ignatius Neighborhood Association