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CEQA Guidelines Section 15065. MANDATORY FINDINGS OF SIGNIFICANCE

(a) A lead agency shall find that a project may have a significant effect on the environment and thereby require an EIR to be prepared for the project where there is substantial evidence, in light of the whole record, that any of the following conditions may occur:

(4) The environmental effects of a project will cause substantial adverse effects on human beings, either directly or indirectly

The Project Sponsors and the Planning Department also state that the Appellants have not provided any evidence or standards by which to determine an appropriate measure of adequate light and shadow impacts. We submitted substantial evidence for the record at the second Planning Commission hearing on the Project in response to the Project Sponsor's supplemental shadow analysis. The Appellants' evidence was to show the actual impact of the loss of light within their homes by using Lux measures and the materials it could appropriate from the Project Sponsor's analysis. The Project Sponsor's shadow analysis only bolstered its position that no further mitigation measures were necessary. The Appellants were not given adequate time to present its evidence at that hearing by being limited to one (1) minute increments of testimony, which forced multiple residents to try and distill a 45-page report of charts and graphs in one (1) minute increments.

While the Project Sponsor claims no substantial evidence was submitted to support the argument that there is sufficient controversy over the analysis, the Project Sponsor had its shadow consultant prepare a seven-page response as to why the Appellants' report was not substantial. The shadow consultant for the Project Sponsor did try to refute the Appellants' analysis by saying that the analysis was mixing two different types of measures, that certain measures such as LUX measures used by the Appellant may not have been accurate where they had been taken and that certain methodologies may not be correct. However, it should be noted that the Appellants asked the Project Sponsor to share the base materials in its initial shadow analysis so we may be more accurate in determining potential light and shadow impacts and the Project Sponsor categorically denied any access to those materials. For the record, the major differences in the approaches to determine light and shadow impacts on the adjacent neighbors was that the Project Sponsor's study focused on the shadow that would hit the exterior of the Austin building while the Appellants' study focused on the light that would be experienced inside the dwelling units. Clearly, these are different standards and measures and by establishing these differences it is the ultimate justification for requiring an EIR to further understand and resolve the differences. In that way, appropriate mitigation measures may be fashioned to address the Project's negative impacts but still go forward with a Project.

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The Planning Department also states that the Appellants do not present any measures for potential mitigation measures. However, if it had examined the report even in a cursory manner, it would have noticed that it presented various light and shadow impacts based on different heights for the proposed Project building. Examples of the amount of light and shadow for the adjacent neighbors was given at the existing height, a 65-foot height building and a 4-story building.

To repeat my statement from the original appeal letter, by just reviewing the history of this Project, it is unquestionable that there is significant legitimate controversy over the shadow impacts that require an EIR. First, a shadow study was prepared for the PMND; then widespread testimony at the hearing caused the Commission to disapprove the Project and ask for improvements to address the shadow impacts; then the Project Sponsor prepared a supplemental shadow analysis to attempt to minimize the shadow impacts; then, even after a minimal presentation of additional data on shadow impacts by the Appellants; the Commission barely approves the Project with one Commissioner voting for approval "reluctantly" because he believes the State Density Bonus Law required the City to do so. Can there be any doubt that the shadow impacts are significant enough to require further analysis through the EIR process?

- **We Have Always Supported Saving the Grubstake**

The Appellants from the very beginning of this process was that the Grubstake was a significant historic resource and that stronger conditions, i.e., detailed mitigation measures should be imposed on the Project to guarantee that it be saved in the best condition to reflect its storied history. The Project Sponsor is being disingenuous when it says the Appellants are trying to stop the Grubstake from being saved. It helps with their marketing campaign against the Appellants, but nothing could be farther from the truth.

The Appellants have said that the Grubstake should be considered a historic resource in, and of, itself, not just because it is a contributor to the Polk Gulch LGBTQ Historic District, as it is eligible for listing in the California Register. The PMND cited the CEQA Guidelines that a historical resource is materially impaired when a project "demolishes or materially alters in an adverse manner those physical characteristics of a historical resource that conveys its historical significance."

However, the MND says the demolition of the Grubstake " would not cause a substantial change in the significance of [the] historical resource" so the demolition of the Grubstake is "Less than Significant".

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To summarize, the Grubstake is a historic resource and a contributor to a historic district, its building has retained its integrity to the historic district and the total demolition of the building is "less than significant". We believe this is inconsistent with the CEQA guidelines and CEQA.

However, the Project Sponsor says our appeal is threatening the saving of the Grubstake. Yet, in the Project Sponsor's response and the Planning Department response to our Appeal, both parties insist no further assurances are necessary, the building is only a contributor and it can be demolished without any specific mitigation measures. (It is noted that there are conditions in the Planning Commission Motion that attempts to require that features of the Grubstake be replicated within the proposed new building by removing and reincorporating specific features in the new project. We just don't believe it's enough; there is no guarantee that these efforts would occur.) The Planning Department and the Project Sponsor have written exhaustive arguments in response to our appeal that nothing further needs to be done to ensure the protections of restoring the Grubstake. We hope they are right!

If an EIR is prepared, detailed mitigation measures would be possible to guarantee is preserved as the community would want it to be.

Cumulative Impacts of Transportation and Circulation

The MND identifies that within a quarter-mile of the proposed project there are developments which are either under construction or being processed by the Department for 522 dwelling units, 155,770 square feet of medical office, commercial or office uses. It should also be noted that only about 300 parking spaces will be added with all this cumulative development. The MND does not make any reference to the negative environmental impacts on traffic created by the COVID-19 pandemic of 2 years. Public transit is down dramatically, Uber and Lyft usage is up dramatically but there is not a word of this in the MND. No other segment of our society believes it will be going back to the ways things were done but we are to assume that there will be no changes to traffic and circulation either now in the midst of the pandemic or after it.

The MND then concludes without any detailed analysis of COVID or the potential impacts of all this development in this neighborhood that there will be no significant impacts to transportation or circulation. We can agree that the Project itself will not have a Significant traffic or circulation impact.

However, it's the cumulative impact of all this development and COVID which would mean that cumulative development, within a quarter-mile of the project, conservatively would be in excess of 3,000 vehicle trips; 6,000 walking trips; 700 transit trips; and 2000 other modes of

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trips. Yet, the MND has done no significant analysis to determine this would create significant environmental impacts. Public Transit Must be Impacted Significantly

More specifically, the MND concludes that no mitigation measures are necessary for mitigating the potential impacts on Public Transit.

There is Public Transit on Pine, Polk and Sutter Streets and Van Ness Avenue. Only about 300 parking spaces will be added within all the cumulative development projects. So public transit must bear the burden of accommodating all the transportation needs of this cumulative development. How many vehicles will be circling these few blocks in this neighborhood while trying to find parking to go home or those looking for parking before their doctor's appointments? None of this traffic would delay or interrupt Public Transit? No analysis of any intersections was done in the MND. Further, no analysis of the impacts on pedestrians along Polk Street, Austin Alley, Pine Street or Van Ness will be impacted. This is seriously deficient.

The MND focuses its analysis of Vehicle Miles Traveled ("VMT") solely on the impacts within Transportation Analysis Zone 327 (TAZ 327). It concludes that there would be no significant impacts and no mitigation measures would be necessary. The size of TAZ 327 is approximately 4 blocks from Van Ness Avenue to Leavenworth. Of the 522 dwelling units and 155,700 square feet of commercial space of cumulative development only 5 new dwelling units are within TAZ 327. To repeat, in addition to the Project, only 5 new units are in TAZ 327--- 517 dwelling units and 155,700 square feet of commercial space are entirely ignored. We agree there would not be any significant impacts if only considering the Project plus 5 new dwelling units. Yet, the analysis completely ignores the cumulative impacts of the remaining 517 dwelling units and 155,700 square feet of medical offices and commercial space. Yet the MND concludes that no significant impact will occur, and no mitigation measures are necessary.

Wind Analysis

The wind impacts from the proposed project have not been adequately analyzed. It is clear that there are sensitive receptors **immediately adjacent to the proposed development at 1545 Pine Street.** We have previously identified the senior housing facilities and medical facilities in the neighborhood whose residents would be particularly impacted by the wind conditions immediately adjacent to the Project and such wind impacts should be considered in light of frail elderly and medical patients .

This potential negative impact is foreseeable and significant and should be analyzed before this MND could be considered complete and adequate.

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Key Events in the History of the Project

I add this section only to give a complete picture of the discussions surrounding this Project during the approval process. Patricia and Claire Rose filed an appeal of the Preliminary Mitigated Negative Declaration on February 6, 2021. On May 6, 2021 the Planning Commission heard the Appeal and additional comments from multiple other neighbors and after considerable discussion between the Planning Commissioners the Appeal was denied and the MND was approved.

After considerable discussion by the Commissioners of the considerable light and shadow impacts, a Motion was made to approve the Project. That Motion to Approve failed by a vote of 4-3 thereby disapproving the Project. [*Planning Code Section 306.5 prevents the Planning Code from reconsidering the application that was disapproved that is the "same or substantially the same as that which was disapproved" for one year.*] The Commission then moved to continue the Project Application to June 22, 2021 with direction to the Project Sponsor to address the concerns of the shadow impacts on the adjacent neighbors. The Commission did not rescind its first vote; the Commission did not say there would be a "substitute" motion to continue. {The Project Sponsor, and possibly the Planning Commission, attempts to argue that there was no disapproval of the project by referring to the Planning Commission's Procedures. These Procedures are not part of the Planning Code and while they do reference a possible manner to rescind a vote and continue the matter, the Procedures also specifically states that a Motion to Approve a Conditional Use with less than 4 votes is a disapproval.}

The Project Sponsor did not reach out to the adjacent neighbors about any possible mitigations to the shadow impacts but instead chose to supplement its earlier shadow impacts analysis and so requested to continue the June 22 Hearing to July 22, 2021. The supplemental shadow analysis was completed and presented to the Commission and the public approximately a week before the July 22 Hearing. That supplemental analysis suggested that new lights being added to the Project directed at the adjacent residents of 1545 Pine Street would mitigate the light and shadow impacts on the adjacent neighbors. As mentioned previously, the neighbors were not given adequate time to present their analysis of the light impacts on their homes.

The Planning Commission deliberated extensively over what their authority was related to the State Density Bonus Law that added two additional floors to the Project. They sought advice from the Planning Department and the City Attorney's Office about the authority the Commission might have in rejecting some of the exceptions and conditions granted through the State Density Bonus Law. They were advised that they had no authority to overrule the State Density Bonus Law unless they found direct, significant, objective health reasons to overturn the State Density Bonus Law. When the final vote was taken, the vote was 4-2. One of the Commissioners said he was voting in favor of approval reluctantly. It is my opinion, and that of

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others, that he interpretation given to the Commissioners is not the prevailing interpretation of the State Density Bonus Law. I refer you to the comments of Assemblyman David Chiu during a housing conference on September 19, 2021.

Conclusion: At a Minimum an EIR should be Required for Further Review and Mitigation Measures for Shadow Impacts and Preserving the Grubstake

The Appellants have never spoken in opposition to this Project going forward. The primary goals have been to protect the light and air to their homes and preserve the history of their great neighbor, The Grubstake.

The lack of a true analysis of the loss of light and the shadow impacts are the most glaring omission in the MND as it did not take into consideration the substantial and significant loss of natural sunlight to residents of the adjacent property at 1545 Pine Street. The Project Sponsor, without any consultation with the neighbors at 1545 Pine Street, made the meager offering of useless inadequate lighting on their building directed at the lightwell of 1545 Pine Street. The Appellants' analysis shows that the loss of light to their homes will create unhealthy dark and pitch-black conditions. These conditions do not have to be forced on the adjacent neighbors to the Project.

Further, the demolition of the Grubstake diner which is an identified historic resource, contributor to a historic district and is eligible for inclusion to the California Register, has inexplicably not been treated as a historic resource. There are no specific, detailed mitigation measures to mitigate the loss of the historic resource. Moreover, there are no identifiable overriding circumstances that have been prepared to justify the loss of the historic resource.

To repeat, CEQA requires mandatory findings of significance and requires an EIR when it can be shown there are environmental impacts on humans. CEQA doesn't say the humans have to be in parks or on sidewalks to experience negative environmental impacts.

In closing, it should be noted that many, if not all, of the impacts we have identified which are potentially significant negative impacts appear to be a direct result of the increased height being proposed for the Project through the State Density Bonus. An EIR should show the differences in the impacts to Traffic, Wind and Shadow for a project without the State Density Bonus. This would be more appropriately reviewed as an Alternative Project in an Environmental Impact Report. There are ten exceptions identified in the MND that are being sought through the State Density Bonus--- height, bulk, rear yard, usable open space, permitted obstructions, dwelling unit exposure, setbacks on narrow streets, ground-floor ceiling height, ground floor transparency and fenestration. It was never contemplated that the State Density

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Bonus would be used to grant so many exceptions particularly when the resulting project would create so many significant environmental impacts.

We urge you to require the further analysis of an Environmental Impact Report to adequately review the significant environmental impacts and the Alternatives for the proposed Project. Thank you for your attention.

Very truly yours,



DAVID P. CINCOTTA
Law Offices of David P. Cincotta

DPC/lw