Dear Ms/Sir,
Find attachment 9 the cover sheet "Notice of Completion & Environmental Document Transfer SCH #2017092053."

I have further attached our comments submitted to the San Francisco Planning Department' Initial Study: Case No. 2015-014028ENV regarding this project.
I believe our comments are self explanatory but feel free to contact us.
Attachment 7 identifies 3333 California St. as a State of California registered Historic Place.

I would like to go on record that at no time was the public notified of this submission made to your department. I can only comment that any open, honest and transparent process involving the rights of the citizens of California would call for notifying all the stakeholders involved but apparently this is no longer the case.
We received no notification from your department, from the developer or from the San Francisco Planning Department.

The attachments are in the following order(hopefully);

1. Kathryn Devincenzi's comments pages 1-32
2. Kathryn Devincenzi's comments pages 32-61
3. Richard Frisbie's comments on Greenhouse Gas Emissions.
4. Richard Frisbie's comments on Hydrology and Water Quality.
5. Cover Letter to attachment 4.
6. Drought map to attachment 4.
7. Letter of Notification: Fireman's Fund Insurance Company, Determination of Eligibility National Register of Historic Places.
8. Notice of Completion & Environmental Document Transmittal SCH # 2017092053.

Thank you,
Richard Frisbie

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BY HAND DELIVERY June 8, 2018

City and County of San Francisco
San Francisco Planning Department
c/o Julie Moore, Senior Environmental Planner
1650 Mission Street, Suite 400
San Francisco, CA 94103

RECEIVED
JUN 08 2018
CITY & COUNTY OF S.F.
DEPT. OF CITY PLANNING
RECEPTION

Re: 3333 California Street, Mixed-Use Project
Initial Study: Case No. 2015-014028ENV

These preliminary comments are submitted as to the Initial Study but are not required by June 8, 2018, because the Planning Department has confirmed that the City will not issue a negative declaration after the public comment period on the Initial Study and the City will prepare an Environmental Impact Report (EIR) under the California Environmental Quality Act, Public Resources Code sections 21000 *et seq*. (CEQA) as to this proposed project. The EIR on the project has not yet been released, and under applicable law, comments on the potentially significant environmental impacts and other analyses required by CEQA are not due until the end of the public review period on the draft EIR or hearing held by the decisionmaker on the proposed project. Ex. A, e-mails dated March 22 and 28, 2018 with Planning Department.

Also, the Initial Study ("IS") does not provide the complete CEQA analyses of significant impacts on traffic, air quality, noise and historical resources, and those analyses may contain information pertinent to the IS's evaluations of impacts the City proposes to treat as not significant under CEQA. Based on the additional information provided in the Draft EIR, comments as to significant impacts and nonsignificant impacts may be provided after the Draft EIR is released.

In addition, pertinent information is missing from the Initial Study, and complete copies of all the reference materials cited in the Initial Study were not provided as of June 4, 2018. Further, the Initial Study is incomplete, inaccurate and/or inadequate to support determinations that certain impacts of the proposed project would not be significant. Under CEQA Guidelines section 15063(d)(3), an Initial Study must include sufficient information to support its conclusions, but the IS does not include such sufficient information.

Governing Principles

It is important to recognize that a significant effect on the environment is defined in CEQA as a substantial or potentially substantial adverse change in the environment. Public Resources Code

sections 21068, 21100(d). 14 California Code of Regulations ("CCR") section 15382 defines a "significant effect on the environment" as " a substantial, or potentially substantial, adverse change in any of the physical conditions within the area affected by the project including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance." Under 14 CCR section 15064(a)(1), if there is substantial evidence in light of the whole record before an agency that a project may have a significant effect on the environment, the agency must prepare a draft EIR.

In preparing an EIR, the agency must consider and resolve every fair argument that can be made about the possible significant environmental effects of a project irrespective of whether an established threshold of significance has been met with respect to any given effect. *Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal.App.4th 1099, 1106-07.

As used in this submission, "project" will mean the proposed project as well as the proposed project variant, unless otherwise indicated.

1. The Proposed Project Would Have a Significant Adverse Impact on Geology and Soils.

Under Appendix G of the CEQA Guidelines and the Initial Study (p. 205) a project would have a significant impact on the environment if it would:

a. Expose people or structures to potential substantial adverse effects, including the risk of loss, injury, or death involving:
   i. Seismic-related ground failure, including liquefaction
   ii. Landslides
b. Result in substantial soil erosion or loss of topsoil, or
c. Be located on a geologic unit or soil that is unstable, or would become unstable as a result of the project, and potentially result in on- or off-site landslide, lateral spreading, subsidence, liquefaction or collapse. Ex. B, 14 California Code of Regulations ("CFR") section 15000 *et seq.* ("CEQA Guidelines"), Appendix G.

Also, under the Initial Study (p. 205) a project would have a potentially significant impact on geology and soils if it would:

d. Directly or indirectly destroy a unique paleontological resource or site or unique geological feature.

Under the standards identified in the San Francisco 2004 and 2009 Housing Element EIR ("Housing Element EIR"), a project would normally have a significant effect if it would:

> "Change substantially the topography or any unique geologic or physical features of the site." Ex. C, San Francisco 2004 and 2009 Housing Element EIR ("Housing Element EIR"), p. V.O-25.

In addition, according to the EIR for the Pier 70 Mixed-Use District Project, a project would have a significant impact if it would "substantially change the topography or any unique geologic or physical features of the site." Ex. D, excerpt of EIR for Pier 70 Mixed-Use District Project, p. 4.N.32. "Unique geologic or physical features" include those which "embody distinctive characteristics of any regional or local geologic principles." *Ibid.*

A. The Proposed Project Would Result in Substantial Soil Erosion or Loss of Topsoil.

Construction of the proposed project or project variant would require earthwork activities across the entire project site. According to the Initial Study, the depths of excavation would range from 7 to 40 feet below the existing grade, with a total of approximately 241,300 net cubic yards of excavated soils generated during the approximately 7 to 15-year construction period. Only approximately 3,700 cubic yards of excavated soils would be reused on the project site as fill. IS p. 207. Evidence of the method used to calculate the amounts of excavated soils was not included in the IS and must be provided in the Draft EIR to afford an opportunity for public comment on the accuracy of the calculation and severity of resulting impacts.

Many areas to be excavated are now covered by topsoil and extensively planted with grasses, shrubs, and various vegetation. The project's geotechnical consultant Langan Treadwell Rollo recommended that "all areas to receive improvements should be stripped of vegetation and organic topsoil." (LTR p. 14)

As explained in the EIR for the 2009 Housing Element:

> "New construction could result in impacts related to soil erosion and the loss of topsoil if new housing.... would result in grading activities, or if new development would require much more extensive grading. This exposure could result in erosion or loss of topsoil. The 2004 and 2009 Housing Element policies that promote increased density could result in heavier buildings on soil types or in proximity to slopes that are susceptible to erosion. Heavier buildings would require stronger and deeper foundations, involving more excavation than lighter buildings. Ex. C, San Francisco 2004 and 2009 Housing Element EIR. p. V.O-46.

As evidenced by the Langan Treadwell Rollo report and the Initial Study, substantial amounts of existing topsoil would be removed to construct underground parking garages in the Masonic Building, Mayfair Building, Plaza A and B Buildings and Walnut Building and new multi-unit

buildings. Paved pathways and stairways would be constructed on areas which are now planted with vegetation and grasses. 37 percent of the site is now landscaping or landscaped open space. IS p. 210.

The Initial Study fails to analyze the impact of project excavation and construction on the substantial loss of topsoil and erroneously bases its determination that the impact would not be significant on operational conditions existing after the topsoil has been excavated. The Initial Study states that at buildout, the project site would be more intensely developed and landscaped with limited to no open areas susceptible to erosion or loss of topsoil. IS. p. 211. Since substantial existing topsoil will have been lost as a result of construction of the project, it is irrelevant to the loss of existing topsoil from construction and excavation that later operation on the paved and built areas would not expose the minimal topsoil that may be reused or replaced to erosion or loss. *Ibid.* An EIR must analyze the changes which the project would have to the existing environment.

The EIR must analyze the substantial loss of existing topsoil as a significant impact of the proposed project and analyze alternatives and mitigation measures that would avoid or reduce the impact.

B. The Proposed Project Would Substantially Alter the Existing Topography and Unique Geologic or Physical Features of the Site.

The proposed project would have a significant impact because it would directly or indirectly destroy substantial portions of Laurel Hill, which is a unique geological or physical feature and embodies distinctive characteristics of local geologic principles. As explained in the Laurel Heights Improvement Association's nomination of the site for listing on the National Register of Historic Places, which was granted by the State of California Historic Resource Commission on May 17, 2018:

> "the site is part of a cluster of low hills associated with Lone Mountain whose several high points were developed as cemeteries in the nineteenth century. The Fireman's Fund site was previously a portion of the Laurel Hill Cemetery, and was long recognized for its views. Today there are distant views from the property to the southeast and downtown, to the northwest and a partial view of the Golden Gate Bridge, and to the west into the Richmond District." (Ex. E, excerpts from Nomination of Laurel Heights Improvement Association for listing of Fireman's Fund Insurance Company Home Office in the National Register of Historic Places, p. 6) [Note that the copy of the nomination included in the City's reference materials was a draft version; although the final version of the nomination was provided to the San Francisco Planning Department, that Department has not included the final version of the nomination in the reference materials provided with

the Initial Study.]

The plaque previously placed on the site to commemorate the former site of Laurel Hill Cemetery 1854-1946, California Historical Landmark #760, recognized the site as "the most revered of San Francisco's hills." (Ex. F, excerpts from State Office of Historic Preservation file on California Historical Landmark #760) The remarks of Gardiner Johnson of the California Historical Society recognized that when the new cemetery grounds were located on Laurel Hill:

> "From the summit of this beautifully-shaped hill it was then possible to obtain one of the finest and most extensive views of both land and water." (*Id.* p. 1-2)

The existing Terrace on the 3333 California Street site, "as the 'centerpiece' of the landscape, designed to integrate the architecture of the building with the site and with the broader setting (through views of San Francisco)" currently exists on the site and overlooks views of San Francisco. (Ex. E, Nomination p. 28)

The proposed project would have a significant impact on the environment because it would result in excavation of substantial portions of Laurel Hill and alter existing slopes, including the areas known for its views of the City. (See Ex. G, photographs of areas of Laurel Hill proposed for excavation)

The Initial Study recognizes that the topography exhibits a generally southwest-to-northeast downslope, with a grade change of approximately 65 feet. (IS p. 206) On the south and east portions of the site, bedrock is relatively shallow, at 7 to 17 feet below ground surface. IS p. 206.

The Masonic Building would be a four- to six-story, 40 foot-tall building. Due to the site's slope, the Masonic Building's first level would be a partially below-grade parking garage with a residential lobby at the northeast corner of the floor adjacent to the proposed garage entry. IS pp. 41-43. The Euclid Building would be a four- to six-story, 40-foot-tall building. Due to the site's slope, the Euclid Building would have a partially below-grade floor. IS pp. 44-45.

Construction of the Masonic and Euclid Buildings would excavate the existing slope of Laurel Hill along Masonic and Euclid. As a result of the proposed excavation and construction, the existing slopes of Laurel Hill along Masonic and Euclid would be substantially altered and their distinctive characteristics of providing views of San Francisco substantially degraded by the structures erected in these slopes. On the south and east portions of the site, bedrock is relatively shallow, at 7 to 17 feet below ground surface. IS p. 206. The excavations on the south and central portions of the project site would encounter bedrock. IS p. 207. The Mayfair building on Laurel Street would also have a below-grade garage with access from Laurel Street. IS p. 47.

The EIR must analyze the substantial alteration of the south, east and western slopes of Laurel

Hill as a result of construction of the Euclid, Masonic and Mayfair buildings and underground garages as a significant impact and analyze alternatives and mitigation measures that would avoid or reduce the impact.

C. The Proposed Project Would Expose People or Structures to Potential Substantial Adverse Effects Including the Risk of Loss, and/or Would Be Located on a Geologic Unit or Soil That is Unstable or Would Become Unstable as a Result of the Project and Potentially Result in On-Site or Off-Site Landslide, Lateral Spreading, Subsidence, Liquefaction or Collapse.

The Langan Treadwell Rollo Preliminary Geotechnical Investigation dated 3 December 2014 (Ex. H "LTR") constitutes expert evidence supported by fact that all of the aforementioned potentially significant impacts could occur as a result of the proposed project. The Initial Study violates the requirements of CEQA because it fails to analyze these impacts a significant impacts and fails to require binding and enforceable mitigation measures to reduce or avoid these significant effects as a condition of approval of the project.

The Revised Environmental Evaluation explains that massive excavation would occur on the project site for below-grade parking garages, the basement levels of buildings and site terracing, as the project would excavate approximately 61 percent of the surface of the site (274,000/446,479 square feet) at depths of 7 to 40 feet. Revised Environmental Evaluation p. 28. The Initial Study estimates that 241,300 net cubic yards of soils would be excavated (which is 2,171,700 square feet of soils). IS p. 207. Approximately 288,300 cubic yards of demolition debris and excavated soils would be removed from the project site, and approximately 3700 cubic yards of soil would be reused on the project site as fill. IS p. 78.

LTR advises that adverse effects could occur onsite that could result in damage from the following conditions that could result from project activities:

- the presence of fill and loose sand will affect foundation support and excavation support (p. 9).

- the new building to be constructed adjacent to the parking garage may impose surcharge on the basement wall of the parking garage; to avoid surcharging the wall, the western perimeter wall of the new building may need to be supported on drilled piers that gain support in the bedrock below the elevation of the bottom of the parking garage. (LTR, p. 10).

- the proposed single basement will require an excavation of approximately 12 feet below the ground surface; the primary considerations related to the selection of the shoring system are the presence of fill and loose to medium-dense sand and the potential settlement of adjacent structures and improvements caused by movement of temporary shoring (LTR, p. 10).

- to retain the excavation sides for the multi-level basements, a retaining system with tiebacks may have been used; therefore, tiebacks may be encountered during basement excavation for new structure located east of the parking garage (LTR, p. 10).

- drilling of shafts for the soldier piles will likely require casing and/or use of drilling mud (slurry) to prevent caving; to prevent settlement of adjacent improvements, soldier piles should not be installed by driving or vibratory methods; a monitoring program should be established to evaluate the effects of the construction on the adjacent buildings and surrounding ground (LTR, p. 10-11).

- sand with low fines content was encountered within the zone of excavation.; to reduce caving, lagging boards should be placed with every foot of excavation to limit caving; voids that result from caving soil behind wood lagging should be grouted before proceeding to the next row of lagging (LTR, p. 11).

- the bottom of the excavation should be above the groundwater level; during drilling of the soldier-pile holes, groundwater or perched water may be encountered; to keep the holes from caving, casing and/or drilling slurry may be needed; alternatively, the soldier piles may be installed using auger-case method (LTR, p. 11).

- generally, soldier piles can be installed under the City's sidewalk provided that the top 3 feet of the soldier piles are removed after the permanent basement wall is cast; if tiebacks are needed, it has been our experience that using hollow-stem augers to install tiebacks in sand will result in loss of ground; therefore, tiebacks, if required, should be installed using smooth-cased method (such as a Klemm rig) to reduce loss of ground (LTR, p. 11).

- the soil at subgrade should consist of stiff to very stiff clay, medium dense sand, and bedrock; therefore, the slabs may be supported on grade; if weak soil is present at subgrade level, the weak soil should be removed and replaced as engineered fill (LTR, p. 11).

- the near surface soil was determined to be moderately corrosive; the corrosive soil will adversely affect below grade improvements, such as foundations and utilities; recommendations for protection of buried structures presented in Appendix D are that all steel, iron, etc, should be properly protected against corrosion depending upon the critical nature of the structure; all buried metallic pressure piping should be protected against corrosion (LTR, p. 11).

- if the site grading is scheduled for the rainy season, the near-surface soil may be too wet to achieve adequate compaction during site preparation and fill placement and may deflect significantly under the weight of construction equipment; for these conditions, moisture conditioning of the material and the use of lightweight equipment may be required to lower the soil to a moisture level that will promote proper compaction; methods of moisture conditioning

include mixing and turning (aerating) the soil to naturally dry the soil and lower the moisture content to an acceptable level; aeration typically requires at least a few days of warm, dry weather to effectively dry the material (LTR, p. 12).

- if localized soft or wet areas are encountered, it may be necessary to over-excavate to a depth of 18 to 24 inches, place a layer of stabilizing geo-synthetic, and backfill with granular material to stabilize the subgrade and bridge the soft material (LTR, p. 12)

- bedrock encountered in the borings consists of serpentinite and sandstone; serpentinite contains naturally occurring asbestos; therefore a Site Mitigation Plan may be needed to be prepared prior to construction; bedrock handling and disposal should be performed in accordance with the Site Mitigation Plan. (LTR, p. 12)

- inclinations of temporary slopes should not exceed those specified in local, state or federal safety regulations; at a minimum the requirements of the current OSHA Health and Safety Standards for Excavations (29 CFR Part 1926) should be followed; temporary slopes less than 10 feet high should be inclined no steeper than 1.5: 1 (horizontal to vertical); in addition, all vehicles and other surcharge loads should be kept at lease 10 feet away from the tops of temporary slopes (LTR, p. 13).

- all areas to receive improvements should be stripped of vegetation and organic topsoil; voids resulting from the demolition activities should be properly backfilled with lean concrete or engineered fill as described in the LTR recommendations (LTR, p. 14).

- prior to placement of any engineered fill, the onsite soil exposed by stripping should be scarified to a depth of at least 12 inches, moisture-conditioned to at least three percent above optimum moisture content, and compacted to at least 95 and 90 percent relative compaction for sand and clay, respectively; the soil subgrade should be kept moist until it it covered by select fill (LTR, p. 14).

- if soft areas are encountered during site preparation and grading, the soft material should be removed and replaced with engineered fill; if the soft material is deeper than 24 inches, LTR recommends over-excavating to a depth of 18 to 24 inches, placing a geotextile fabric at the bottom of the excavation, and backfilling with granular material (LTR, p. 14).

- fill should consist of onsite or imported soil that is non-corrosive, free of organic matter or other deleterious material, contains no rocks or lumps larger than four inches in greatest dimension, has a liquid limit of less than 25 and a plasticity index lower than 8, and is approved by the geotechnical engineer (LTR, p. 14).

- fill should be placed in horizontal lifts not exceeding eight inches before compacted,

moisture-conditioned to above optimum moisture content, and compacted to at leaset 90 percent relative compaction; fill thicker than five feet and-or consisting of clean sand or gravel should be compacted to at least 95 percent relative compaction (LTR, p. 14).

- LTR should be provided with samples of proposed fill at least three days before use at the site; the grading contractor should provide analytical test results or other suitable environmental documentation indicating the imported fill is free of hazardous materials at least three days before use at the site; a bulk sample of approved fill should be provided to LTR at least three working days before use at the site so a compaction curve can be prepared (LTR, p. 14-15)

- where necessary, trench excavations should be shored and braced to prevent cave-ins and/or in accordance with safety regulations; if trenches extend below the groundwater level, it will be necessary to temporarily dewater them to allow for placement of the pipe and/or conduits and backfill (LTR, p. 15).

- if fill with less than 10 percent fines is used, the entire depth of the fill should be compacted to at least 95 percent relative compaction; jetting of trench backfill should not be permitted; special care should be taken when backfilling utility trenches in pavement areas; poor compaction may cause excessive settlements resulting in damage to the pavement section (LTR, p. 15).

- to reduce the potential for water to become trapped in trenches beneath the building or pavements, which trapped water can cause heaving of soils beneath slabs and softening of subgrade soil beneath pavements, an impermeable plug consisting of either native clay or lean concrete, at least five feet in length, should be installed where the trenches enter the building or cross planter areas and pass below asphalt or concrete pavements (LTR, p. 15).

- to reduce the potential for differential movement and cracking, exterior concrete slabs should be underlain by at least 4 inches of Class 2 aggregate base, and the upper 12 inches of the soil subgrade should be compacted to at least 95 and 90 percent relative compaction for sand and clay, respectively (LTR, p. 15).

- the foundation subgrade should be free of standing water, debris, and disturbed materials prior to placing concrete; if fill, soft, or loose soil is present at the foundation subgrade, it should be removed to expose competent material and be replaced by lean concrete (LTR, p. 17).

- to avoid surcharging the basement wall of the parking garage, the western perimeter wall of the new building may need to be supported on drilled piers that gain support in the bedrock below the elevation of the parking garage (LTR, p. 17).

- drilled piers should be installed by a qualified contractor with demonstrated experience in this type of foundation; loose material may potentially cave during drilling, thus casing and/or drilling fluid may be required (LTR, p.18).

- where space does not permit a sloped excavation, shoring will be required, and a cantilever soldier pile and lagging shoring system is the most appropriate for the depth of the excavation planned and types of soil present; penetration of soldier piles should be sufficient to provide lateral stability (LTR, p. 18).

- a soldier pile and lagging system is relatively flexible, and movement should be anticipated; if the shoring system is properly designed and installed, movements at the top of the shoring should not exceed one inch (LTR, p. 19).

- because the site is in a seismically active region, the wall design should be checked for seismic condition; seismic design parameters recommended for areas in the northwwest portion of the site where bedrock is relatively deep or in the eastern and southern portions of the site where bedrock is relatively shallow, should be followed (LTR, p. 21-22).

Significantly, LTR concludes by recommending in-person observation of various operations to check that the contractor's work conforms to the geotechnical aspects of the plans and specifications:

> "Prior to construction, we should review the project plans and specifications to check their conformance to the intent of our recommendations. During construction, we should observe excavation, temporary shoring and foundation installation, subgrade preparation and compaction of backfill. These observations will allow us to compare the actual with the anticipated subsurface conditions and check that the contractor's work conforms to the geotechnical aspects of the plans and specifications...Actual subsurface conditions may vary. If any variations or undesirable conditions are encountered during construction, or it the proposed construction will differ from that described in this report, Langan Treadwell Rollo should be notified to make supplemental recommendations, as necessary." (LTR, p. 22)

This recommendation is evidence that the existence of various Building Code provisions, the preparation of plans by a qualified geotechnical engineer, and the review of construction plans by the Department of Building Inspection cannot be relied upon as providing adequate or effective mitigation for the hazards described above, given the reality that the project proponent and/or contractor will focus on minimizing costs of construction and the fact that regulatory standards are subject to interpretation. LTR did not rely upon an expectation of regulatory compliance as mitigation for these potentially significant adverse effects of the project. Rather, LTR

recommended that on-site monitoring of various excavation and construction activities by a licensed geotechnical professional would be required to mitigate the potential adverse impacts of this project. While LTR recommended that such on-site monitoring be performed, the project does not incorporate it as an enforceable, binding mitigation measure imposed as a condition of approval of the project.

In addition, the Initial Study recognizes that in the event of an earthquake that exhibits strong to very strong seismic ground shaking, "considerable damage could occur to buildings on the project site, potentially injuring building occupants and neighbors." IS p. 209.

In order to reduce the severity of the aforementioned significant impacts, the following mitigation measures should be imposed in the EIR as conditions of approval of the project:

> "**MITIGATION MEASURE**. Prior to construction, Langton Treadwell Rollo (or an equivalently qualified geotechnical professional licensed in the State of California, herein "LTR")) should review the project plans and specifications to check their conformance to the intent of LTR's recommendations in its Preliminary Geotechnical Investigation, 3333 California Street dated December 3, 2014. At all times during construction, LTR should observe excavation, temporary shoring and foundation installation, subgrade preparation and compaction of backfill. These observations will allow LTR to compare the actual with the anticipated subsurface conditions and check that the contractor's work conforms to the geotechnical aspects of the plans and specifications...Actual subsurface conditions may vary. If any variations or undesirable conditions are encountered during construction, or if the proposed construction will differ from that described in this report, LTR should be notified to make supplemental recommendations, as necessary."
>
> **MITIGATION MEASURE**. Since bedrock encountered in the borings consists of serpentinite and sandstone and serpentinite contains naturally occurring asbestos, a Site Mitigation Plan to reduce or eliminate any exposures of workers or nearby residents to asbestos will be prepared prior to excavation by a qualified, licensed professional and reviewed by LTR prior to excavation; such Site Mitigation Plan will be included in the Draft EIR and will be released for public comment; bedrock handling and disposal must be performed in accordance with the Site Mitigation Plan.
>
> **MITIGATION MEASURE**. Since up to 15 feet of loose to medium dense sand was encountered above the water table, and loose and medium dense sand may densify during an earthquake (IS p. 210), most of the soil susceptible to seismic densification must be removed during excavation; at the conclusion of excavation, LTR will perform any necessary or advisable investigation of the site and verify in writing that most of the soil subject to seismic densification has been removed from the site.

> **MITIGATION MEASURE**. Project sponsor will be required to maintain a water truck on site during all excavation, demolition, filling and other activities that could cause dust and will wet down dust sufficiently to prevent its blowing onto residences across the street from the site on Laurel, Euclid, Presidio and California streets.

Residents are very concerned that the 7-10 year proposed duration of construction would be too impactful for this residential area, especially since there would be substantial excavation from 7 to 40 feet below grade to accommodate underground garages and foundations. Residents recently learned of this proposed duration, and the developers stated that they would seek a development agreement that would permit them to construct the project over a 15 year period so that "if conditions do not exist to build out the entire project, we can phase construction in order to align with market conditions and financing availability." (See Ex. I, October 12, 2017 email from Dan Safier) Since the Initial Study indicates that the developers would seek the right to apply for additional zoning changes after a certain period, the developers could seek approval for increases in the project from the Board of Supervisors, so the project could become more impactful. *Ibid.* The EIR must address all phases of the project, including foreseeable future expansion that could increase impacts of the project.

2. The Proposed Project Would Have a Potentially Significant Impact on Biological Resources and Would Conflict With Local Policies or Ordinances Protecting Biological Resources.

The proposed project would have a significant adverse impact on the environment because it would remove 185 onsite trees to allow for demolition, excavation and site preparation, including 19 onsite Significant Trees (i.e. trees within 10 feet of the public right-of-way that meet specific height, trunk, diameter, and canopy width requirements) and 15 protected street trees along California Street, and adequate mitigation is not included as a condition of approval of the proposed project. (IS p. 69)

The Initial Study failed to evaluate impacts of the proposed project against the applicable significance standards. Both CEQA Appendix G and the Housing Element EIR acknowledge that a proposed project would normally have a significant effect on the environment if it would:

> "Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special-status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service;
>
> Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations or by the California Department of Fish and Game or U.S. Fish and Wildlife Service;

> Have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means;
>
> Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites;
>
> Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance; or
>
> Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan." (Ex. B, excerpts from CEQA Appendix G; and Ex. C, excerpts from Housing Element EIR, p. V.N-29.

The Initial Study fails to analyze whether the proposed project would conflict with any local policies and only analyzes select provisions of one local ordinance, the San Francisco Urban Forestry Ordinance (SFUFO), which it misinterprets.

The Initial Study fails to analyze the proposed project's conflict with the stated purposes of the San Francisco Urban Forestry Ordinance, article 16, sections 801 *et seq.*, of the San Francisco Public Works Code ("SF UFO") to "realize the optimum public benefits of trees on the City's streets and public places, abatement of air and noise pollution, enhancement of the visual environment and others;" to integrate street planting and maintenance with other urban elements and amenities, including but not limited to utilities, and enhancement of views and solar access; to recognize that "the removal of important trees should be addressed through appropriate public participation and dialogue, including the California Environmental Quality Act (Public Resources Code Sections 21000 et seq.)", to "recognize that green spaces are vital to San Francisco's quality of life as they provide a range of environmental benefits, protect public safety, and limit conflicts with infrastructure." SF UFO section 801.

Under SF UFO section 807, removal of significant trees "shall be subject to the the applicable rules and procedures for removal set forth in Sections 806, 810, or 810A" of the SF UFO. Also, protection of such trees during construction shall be required in accordance with Section 808(c) of the SF UFO.

Under SF UFO section 810A (b), removal of a significant tree(s) on privately-owned property shall be subject to the rules and procedures governing permits for removal of street trees as set forth in Section 806(b). Under those rules, the Department must give all Interested San

Francisco organizations and, to the extent practical, all owners and occupants of properties that are on or across the from the block face where the affected Tree is located, 30 days notice of the proposed removal and also post a notice on the affected Tree 30 days before the proposed removal. SF UFO section 806 (a) (2). If during that notice period, any person files with the Department written objections to the Removal, the Director shall hold a hearing to consider public testimony concerning the proposed Tree Removal. Under SF UFO section 806(a)(3)(A), seven days notice must be given of the hearing date in the manner provided in SF UFO section 806(a)(3(A). Under SFO section 806(a)(3)(C), the Director's decision is appealable to the Board of Appeals.

Also under SF UFO section 810A, as "part of the Director's determination to authorize removal of a significant tree, the Director shall consider the following factors related to the tree:

(1) Size, age, and species;
(2) Visual and aesthetic characteristics, including the tree's form and whether it is a prominent landscape feature or part of a streetscape;
(3) Cultural or historic characteristics, including whether the tree has significant ethnic appreciation or historical association or whether the tree was part of a historic planting program that defines neighborhood character;
(4) Ecological characteristics, including whether the tree provides important wildlife habitat, is part of a group of interdependent trees, provides erosion control, or acts as a wind or sound barrier;
(5) Locational characteristics, including whether the tree is in a high traffic area or low tree density area, or provides shade or other public benefits;
(6) Whether the tree constitutes a hazard tree as set forth in Section 802(o); and
(7) Whether the tree has been maintained as set forth in Section 802(1)."

The standards for new street trees require, among other things, that the new street trees "be of a species suitable for the site conditions," and the Director may "waive or modify the number of and/or standards for Street Trees" if other pre-existing surface, sub-surface, or above-grade features render installation of the required Street Tree(s) in the required fashion impossible, impractical, and/or unsafe." SF UFO section 806 (d). For each required street tree that the Director waives, the applicant shall pay an in-lieu fee or provide alternative landscaping, including sidewalk landscaping.

Thus, decision to remove a tree is a discretionary one which is to be made with consideration of the policies and factors stated in the SF UFO. The Initial Study and Arborist Report (p. 4) prepared by SBCA Tree Consulting, amended 10-19-15, erroneously portray the decision to remove significant trees as automatically granted whenever they would be in the way of construction as long as some kind of replacement trees would be provided.

However, some of the onsite significant trees are prominent landscape features and others have

significant historical association because they were present while the historically significant Laurel Hill cemetery was located on the site, so removal of the onsite significant trees would conflict with the policies stated above. The EIR should identify the trees which were present on the Laurel Hill cemetery. Due to this conflict, the proposed removal of Significant Trees is a significant impact that must be evaluated in the EIR.

In addition, the San Francisco Urban Forest Plan (SF UFP) recognizes that "trees and other vegetation clean our air and water, create greener neighborhoods, calm traffic, improve public health, provide wildlife habitat and absorb greenhouse gases." Ex. J, SF UFP p. 1. Among the strategies required to achieve the SF UFP, Strategy 2.2.2 to "Encourage developers to incorporate existing trees into building and site designs" provides that "[c]onsideration should be given during review of building plans to the existing trees on the site, especially 'significant' trees (20 feet or more in height, 15 feet or greater canopy width, and/or 12 inches or greater in trunk diameter." SF UFP pp. 39, 47. Also, Strategy 2.2.4 to ["r]equire contractors to carry Tree Protection Bonds during construction projects" recognizes that "[c]onstruction activities frequently result in accidental damage or loss of trees - including street trees. Development projects with the potential to disturb existing trees should be required to carry Tree Protection Bonds as insurance. Such bonds would allow recourse in the event that significant damage to trees occurs during the development process through fines, tree replacement or other measures." SF UFP pp. 47. Strategy 2.2.5 to "[i]mprove process for approving Tree Protection Plans for construction projects" states that "[c]urrently Tree Protection Plans are collected by the Planning Department. Review of these plans should take place with appropriate urban forestry staff. The inspection and enforcement of plans should be carried out. These plans include important provisions to protect trees such as protective barriers, construction exclusion zones, and the restriction of material and equipment storage within tree drip zones." *Ibid.*

The SF UFP also recognizes that Public Works Code section 810A "describes trees that are automatically protected under Significant Tree designation and "additional consideration that will be taken into account for tree removal applications." SF UFP p. 73.

The proposed project would have a significant impact on the environment because it would require the removal of Significant Trees and would conflict with the above-described policies of the SF Urban Forestry Plan, including policies that support preserving significant trees on construction sites and require specific mitigation measures such as Tree Protection Bonds and improved process for approving Tree Protection Plans for construction projects by including appropriate urban forestry staff in the approval, inspection and enforcement of plans. In addition, the proposed project would conflict with the policies stated in the SF Urban Forestry Ordinance for consideration of the historical association, size, age, species and visual and aesthetic characteristics, including the tree's form and whether it is a prominent landscape feature or part of the streetscape. The EIR should analyze whether the project as proposed could be built without the removal of each of the Significant Trees.

The IS's reliance on regulatory compliance to prevent significant adverse impacts to these resources was not sufficient because it was not based on a project specific analysis of potential impacts and the specific effect of regulatory compliance. Such project specific analysis of potential impacts and the specific effect of regulatory compliance was not included in the Initial Study. The effect of regulatory compliance on these resources cannot be determined because the decision to remove a Significant Tree is discretionary. Also, the environmental evaluation did not commit the project sponsor to implementation of specific performance criteria as mitigation measures agreed as a condition of approval of the project or objective performance criteria for measuring whether the goals related to these resources would be achieved. Such specific measures were not provided or agreed to as mitigation measures adopted as a condition of approval of the proposed project.

Absent a binding agreement or approval decision which implements specific mitigation measures that contain objective performance criteria that would measure whether the policy goals for protection of these resources would be achieved, the substantial adverse impact from removal of 185 onsite trees, including 19 onsite Significant Trees and 15 protected street trees remains significant and must be analyzed as a significant impact in the EIR.

Mitigation measures imposed as a condition of approval of the proposed project should include the following:

> **MITIGATION MEASURE**. Project sponsor will be required to employ a contractor who maintains in effect during all excavation and/or construction performed while trees are present on the site Tree Protection Bonds which would allow recourse in the event that significant damage to trees occurs during the development process through fines, tree replacement or other measures." Ex. J, SF UFP pp. 47.
>
> **MITIGATION MEASURE**. Prior to their approval, all Tree Protection Plans will be reviewed by appropriate urban forestry staff, and urban forestry staff will be required to perform onsite inspection and enforcement of the Tree Protection plans.

3. The Proposed Project Would Have a Potentially Significant Adverse Effect, Either Directly or Through Habitat Modifications, on Resident or Migratory Birds.

The proposed project would remove 185 onsite trees to allow for demolition, excavation and site preparation, including 19 onsite Significant Trees (i.e. trees within 10 feet of the public right-of-way that meet specific height, trunk, diameter, and canopy width requirements) and 15 protected street trees along California Street. (IS p. 69)

In addition to the significance standards stated in the preceding section, the Housing Element EIR acknowledges that "new construction could result in impacts related to biological resources

if new housing would result in disturbance from construction activities, tree removal...interference with migration, construction of tall buildings with glass walls that could increase bird strikes and possibly interrupt a migration corridor...". (Ex. C, p. V.N-30, 46)

The Initial Study acknowledges that the proposed project "would result in the temporary loss of nesting and foraging habitat through the removal of onsite trees and vegetation during construction" and states that "after the approximately 7- to 15-year construction period and incorporation of site landscaping (including the planting of up to 250 new trees on the project site) birds would be expected to inhabit the project site." IS p. 199. The IS does not state how soon after the incorporation of site landscaping bird habitation would be expected to occur on site. The Initial Study also discloses that tree removal and construction-related activities associated with the proposed project could adversely affect bird breeding "at the project site and in the immediate vicinity." IS 199. "Construction activities that may cause visual disturbance or alter the ambient noise environment include vegetation removal, demolition of existing buildings, and construction of foundations and new buildings." IS p. 199-200. The Initial Study also acknowledges that "landscaped areas within the project site may provide suitable habitat for resident and migratory birds covered under the Migratory Bird Treaty Act (MBTA) of 1918 (16 U.S.C. 703-711) and the California Fish and Game Code (sections 3503 and 3503.5). IS p. 199.

The information set forth above supports a fair argument that the proposed project could have a substantial adverse effect, either directly or through habitat modifications, on a species identified as a candidate, sensitive, or special-status species by the California Department of Fish and Wildlife or U.S. Fish and Wildlife Service. The information set forth above also provides a fair argument that the proposed project would interfere substantially with the movement of native resident or migratory wildlife species or impede the use of native wildlife nursery sites. This impact would be significant under the standards of Appendix G of the CEQA Guidelines and the Housing Element EIR set forth above. The impact on habitat interference would be substantial since it would last at least 7 years and possibly more than 15 years, given the need for the newly planted, unestablished trees to grow to sufficient size to support bird habitat. The Initial Study provides no mitigation for this potentially significant impact on biological resources, so the impact is significant and must be evaluated as a significant impact in the EIR, along with mitigation measures and alternatives that could reduce or avoid the impact. The Initial Study provides potential mitigation only for interference with onsite bird nests.

In addition, the Initial Study admits that the proposed project "would increase the number of new buildings at the project site and the heights of existing buildings, which could create potential obstacles for resident or migratory birds. This could result in an increase in bird injury or mortality in the event of a collision. The existing office building at the center of the site would be partially demolished and separated into two buildings connected by a bridge at the fourth floor. The separated buildings (i.e. Center Buildings A and B) would be adaptively reused as residential buildings and would include two- to three-story vertical additions, increasing the

height from approximately 55.5 feet tall to up to 92 feet tall, and a connecting bridge at the fourth floor. In addition, the proposed project includes the construction of 3 new structures at the site ranging from 37 to 45 feet in height (37 to 67 feet for the project variant), some of which would include balconies. San Francisco Planning Code section 139 addresses 'feature-related hazards', which are defined as 'free-standing glass walls, wind barriers, skywalks, balconies, and greenhouses on rooftops that have unbroken glazed segments 24 square feet and larger in size.' The proposed project or project variant would comply with the feature-related standards of planning code section 139 by using bird-safe glazing treatment on 100 percent of any feature-related hazards (e.g. balconies, free-standing glass walls, or skywalks). With planning code section 139 compliance and implementation of Mitigation Measure M-B1-1, the proposed project or project variant would not interfere substantially with the movement of any native resident or migratory wildlife species or with established native resident or migratory wildlife corridors. This impact therefore, would be less than significant with mitigation." IS p. 201-202.

However Mitigation Measure M-B1-1 pertains only to interference with onsite bird nests. The remainder of the discussion amounts only to an argument that regulatory compliance would be sufficient to mitigate significant impacts. However, Planning Code section 139 allows the Zoning Administrator to waive the requirements contained within Section 139(c)(2) or modify such requirements to allow equivalent Bird-Safe Glazing Treatments upon the recommendation of a qualified biologist. Also, Planning Code section 139(c)(2)(B) allows general exceptions for historic buildings and, pursuant to the Secretary of Interior Standards for Rehabilitation of Historic Properties, requires treatment methods such as netting, glass films, grates, and screens. Thus, compliance with Planning Code section 139 may not result in use of bird-safe glazing treatment on 100% of the feature-related hazards. Since regulators are allowed to use discretion in applying the subject regulations, the specific effect of the application of the regulations cannot be determined.

The IS's determination that regulatory compliance will be sufficient to prevent significant adverse impacts was not based on a project specific analysis of potential impacts and the specific effect of regulatory compliance. Such project specific analysis of potential impacts and the effect of regulatory compliance was not included in the Initial Study. Also, the environmental evaluation did not commit the project sponsor to implementation of specific performance criteria as objective criteria for measuring whether the goal would be achieved. Such specific measures were not provided and adopted as a condition of approval of the proposed project. Further, under Planning Code section 139(a), structures that create a feature-related hazard "are required to treat all of the feature-related hazard." Mitigation Measure M-B1-1 does not incorporate this measure. Absent an agreement to implement specific mitigation measures that contain specific performance criteria and objective criteria for measuring whether the goal would be achieved, the substantial adverse impact of interference with the movement of native resident or migratory birds remains significant and must be analyzed in the EIR as a significant impact.

In addition, the Initial Study's assertion that "the proposed project or project variant would comply with the feature-related standards of planning code section 139 by using bird-safe glazing treatment on 100 percent of any feature-related standards of planning code section 139 (e.g., balconies, free-standing glass walls, or skywalks" conflicts with the standards of Planning Commission Resolution 9212, which states that "clear, untinted glass should be used at and near the street level." Ex. C, excerpts from Housing Element EIR, p. V.A-35. The EIR should also analyze any and all conflicts between the bird-safe glazing treatment and the Planning Commission Resolution 9212 standards for clear, untinted glass at and near street level, because conflicts between applicable plans indicate that the impact may not be insignificant as a result of regulatory compliance.

Renderings of the proposed project show clear glass walls and do not depict frosted glass, permanent stencils, or the like. The EIR should identify specific mitigation measures that would be used to provide bird-safe glazing treatment and incorporate them as a condition of approval of the proposed project.

4. The Proposed Project Would Have a Significant Impact on the Environment Because the Project Would Conflict With Applicable Land Use Plans or Regulations and Would Have a Substantial Impact Upon the Existing Character of the Vicinity.

A. Urban Design Element of San Francisco General Plan and Residential Design Guidelines

The proposed project would conflict with the following policies of the Urban Design Element, among others:

> Policy 1.1: Recognize and protect major views in the city, with particular attention to those of open space and water.
>
> > Visibility of open spaces, especially those on hilltops, should be maintained and improved, in order to enhance the overall form of the city, contribute to the distinctiveness of districts and permit easy identification of recreational resources. The landscaping at such locations also provides a pleasant focus for views along streets.
>
> Objective 3: Moderation of major new development to complement the City pattern, the resources to be conserved and the neighborhood environment.
>
> Policy 3.3: Promote efforts to achieve high quality design for buildings to be constructed at prominent locations.

Policy 3.4: Promote building forms that will respect and improve the integrity of open spaces and other public areas.

Policy 3.5: Relate the height of buildings to important attributes of the city patterns and to the height and character of existing development.

Policy 3.6: Relate the bulk of the buildings to the prevailing scale of development to avoid an overwhelming or dominating appearance in new construction....

> When buildings reach extreme bulk, by exceeding the prevailing height and prevailing horizontal dimensions of existing buildings in the area, especially at prominent and exposed locations, they can overwhelm other buildings, open spaces and the natural land forms, block views and disrupt the city's character. Such extremes in bulk should be avoided by establishment of maximum horizontal dimensions for new construction above the prevailing height of development in each area of the city...

Policy 3.7: Recognize the special urban design problems posed in development of large properties.

Policy 3.8: Discourage accumulation and development of large properties, unless such development is carefully designed with respect to its impact upon the surrounding area and upon the City.

Policy 3.9: Encourage a continuing awareness of the long-term effects of growth upon the physical form of the city.

Policy 4.1: Protect residential areas from the noise, pollution and physical danger of excessive traffic.

Policy 4.2: Provide buffering for residential properties when heavy traffic cannot be avoided. Ex. V, Urban Design Element of San Francisco General Plan.

The proposed project would also conflict with the following provisions of the Residential Design Guidelines:

DESIGN PRINCIPLE: Design buildings to be responsive to the overall neighborhood context, in order to preserve the existing visual character.

Many neighborhoods have defining characteristics such as street trees, buildings with common scales and architectural elements, and residential and commercial uses that make

the neighborhood identifiable and an enriching place to be. The neighborhood is generally considered as that area around a home that can easily be traversed by foot....

Though each building will have its own unique features, proposed projects must be responsive to the overall neighborhood context. A sudden change in the building pattern can be visually disruptive. Development must build on the common rhythms and elements of architectural expression found in a neighborhood. In evaluating a project's compatibility with neighborhood character, the buildings on the same block face are analyzed. However, depending on the issues relevant to a particular project, it may be appropriate to consider a larger context.

Broader Neighborhood Context: When considering the broader context of a project, the concern is how the proposed project relates to the visual character and scale created by other buildings in the general vicinity.

Defined Visual Character

GUIDELINE: In areas with a defined visual character, design buildings to be compatible with the patterns and architectural features of surrounding buildings.

On some block faces, there is a strong visual character defined by buildings with compatible siting, form, proportions, texture and architectural details. On other blocks, building forms and architectural character are more varied, yet the buildings still have a unified character. In these situations, buildings must be designed to be compatible with the scale, patterns and architectural features of surrounding buildings, drawing from elements that are common to the block.

III. Site Design

DESIGN PRINCIPLE: Place the building on its site so it responds to the topography of the site, its position on the block, and to the placement of surrounding buildings.

TOPOGRAPHY

Guideline: Respect the topography of the site and the surrounding area.

New buildings and additions to existing buildings cannot disregard or significantly alter the existing topography of the site. The surrounding context guides the manner in which new structures fit into the streetscape, particularly along slopes and hills. This can be achieved by designing the building so it follows the topography in a manner similar to surrounding buildings.

Similarly, a proposed project may be located next to a historic or architecturally significant building that is set back from the street or is on a wider lot with front and side gardens. The front setback of the proposed project must respect the historic building's setbacks and open space. Additionally, the front setback must serve to protect historic features of the adjacent historic building.

SIDE SPACING BETWEEN BUILDINGS

GUIDELINE: Respect the existing pattern of side spacing.

Side spacing is the distance between adjacent buildings...Projects must respect the existing pattern of side spacing.

VIEWS

GUIDELINE: Protect major public views from public spaces.

The Urban Design Element of the General Plan calls for protection of major public views in the City, with particular attention to those of open space and water. Protect major views of the City as seen from public spaces such as streets and parks by adjusting the massing of proposed development projects to reduce or eliminate adverse impact on public view sheds.

IV. Building Scale and Form

DESIGN PRINCIPLE: Design the building's scale and form to be compatible with that of surrounding buildings, in order to preserve neighborhood character.

BUILDING SCALE

GUIDELINE: Design the scale of the building to be compatible with the height and depth of surrounding buildings.

The building scale is established primarily by its height and depth. It is essential for a building's scale to be compatible with that of surrounding buildings, in order to preserve the neighborhood character.

Building Scale at the Street

GUIDELINE: Design the height and depth of the building to be compatible with the existing building scale at the street.

If a proposed building is taller than surrounding buildings, or a new floor is being added to an existing building, it may be necessary to modify the building height or depth to maintain the existing scale at the street. By making these modifications, the visibility of the upper floor is limited from the street, and the upper floor appears subordinate to the primary facade.

In modifying the height and depth of the building, consider the following measures; other measures may also be appropriate depending on the circumstances of a particular project:

- Set back the upper story. The recommended setback for additions is 15 feet from the front building wall.
- Eliminate the building parapet by using a fire-rated roof with a 6-inch curb.
- Provide a sloping roofline whenever appropriate.
- Eliminate the upper story.

Building Scale at the Mid-Block Open Space

GUIDELINE: Design the height and depth of the building to be compatible with the existing building scale at the mid-block open space.

BUILDING FORM

GUIDELINE: Design the building's form to be compatible with that of surrounding buildings.

Though the Planning Code establishes the maximum building envelope by dictating setbacks and heights, the building must also be compatible with the form of surrounding buildings.

GUIDELINE: Design the building's facade width to be compatible with those found on surrounding buildings.

Proportions

GUIDELINE: Design the building's proportions to be compatible with those found on surrounding buildings.

Proportions are the dimensional relationships among the building's features, and typically involve the relationship between the height and width of building features....Building features must be proportional not only to other features on the building, but also to the features found on surrounding buildings.

Rooflines

GUIDELINE: Design rooflines to be compatible with those found on surrounding buildings.

V. Architectural Features

DESIGN PRINCIPLE: Design the building's architectural features to enhance the visual and architectural character of the neighborhood.

In designing architectural features, it is important to consider the type, placement and size of architectural features on surrounding buildings, and to use features that enhance the visual and architectural character of the neighborhood. Architectural features that are not compatible with those commonly found in the neighborhood are discouraged.

VI. Building Details

DESIGN PRINCIPLE: Use architectural details to establish and define a building's character and to visually unify a neighborhood.

The use of compatible details visually unifies a neighborhood's buildings, providing continuity and establishing the architectural character of the area.

WINDOWS

GUIDELINE: Use windows that contribute to the architectural character of the building and the neighborhood.

Windows are one of the most important decorative features, establishing the architectural character of the building and the neighborhood.

EXTERIOR MATERIALS

GUIDELINE: The type, finish, and quality of a building's materials must be compatible with those used in the surrounding area.

When choosing building materials, look at the types of materials that are used in the neighborhood, and how those materials are applied and detailed. Ensure that the type and finish of these materials complement those used in the surrounding area, and that the quality is comparable to that of surrounding buildings. Ex. K, Residential Design Guidelines, excerpts.

Defining characteristics of the single-family residential buildings on Laurel Street across the street from the site include one-story in height at the front, with a second set-back story, sloped roofs, consistent entrance and front setback patterns and compatible stucco materials. Defining characteristics on Euclid Avenue across the street from the site are two-unit flats or multiple-unit apartment buildings with rear yards sloping toward the site. Defining characteristics of the residences on California Street and Presidio Avenue are approximately four-story buildings designed with traditional architectural forms. The proposed project conflicts with the prevailing character of the surrounding areas and neighborhood in these and other respects, including the existing pattern of mid-block open space, as can be seen in the plans showing the incongruent scale and building forms of the proposed project. Also, the new buildings and additions to existing buildings proposed in the project would disregard or significantly alter the existing topography of the site.

B. The Proposed Project Would Have a Significant Impact on the Environment Because the Project Would Conflict With Applicable Land Use Plans or Regulations and Would Have a Substantial Impact Upon the Existing Character of the Vicinity.

The Housing Element EIR state that a proposed project would normally have a significant effect on the environment if it would:

> "Conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project (including, but not limited to the general plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect; or
>
> Have a substantial impact upon the existing character of the vicinity." Ex. C, p. V.B-27-28.

On the Figure IV-3 of the Housing Element EIR, the Generalized Citywide Zoning Map, the project site is shown in a "Residential" area. Ex. C, 2014 Housing Element EIR, p. IV-14-15 and Figure IV-3.

"Figure IV-4 shows a generalized height map of the City." Ex. C, 2014 Housing Element EIR, p. IV-14 and Figure IV-4. This map shows that the project site is in a height district of "40 ft" or less.

Map 06 of the 2014 Housing Element shows average generalized permitted housing densities by Zoning Districts as 54 average units per acre in medium density areas. Ex. L, 2014 Housing Element p. I.70. Policy 11.4 of the 2014 Housing Element refers to this map and states the policy to:

> "Continue to utilize zoning districts which conform to a generalized residential land use and density plan and the General Plan." Ex. L, p. 37

Policy 11.4 text provides that:

> "The parameters contained in the Planning Code under each zoning districts [sic] can help ensure that new housing does not overcrowd or adversely affect the prevailing character of existing neighborhoods. The City's current zoning districts conform to this map and provide clarity on land use and density throughout the city. When proposed zoning map amendments are considered as part of the Department's community planning efforts, they should conform generally to these [sic] this map, although minor variations consistent with the general land use and density policies may be appropriate. They should also conform to the other objectives and policies of the General Plan. Ex. L, p. 37.

Housing Element policies do not provide for zoning changes to allow retail or commercial office uses. 2014 Housing Element Policy 1.6 provides:

> "Consider greater flexibility in number and size of units within established building envelopes in community based planning processes, especially if it can increase the number of affordable units in multi-family structures.
>
> However, in some areas which consist mostly of taller apartments and which are well served by transit, the volume of the building rather than number of units might more appropriately control the density.
>
> Within a community based planning process, the City may consider using the building envelope, as established by height, bulk, set back, parking and other Code requirements, to regulate the maximum residential square footage, rather than density controls that are not consistent with existing patterns. In setting allowable residential densities in established neighborhoods, consideration should be given to the prevailing building type in the surrounding area so that new development does not detract from existing character." Ex. L, p. 10.

In addition, Housing Element Policy 7.5 supports process and zoning accommodation for affordable housing, as it provides that:

> "Encourage the production of affordable housing through process and zoning accommodations, and prioritize affordable housing in the review and approval process....
>
> Local planning, zoning, and building codes should be applied to all new development, however when quality of life and life safety standards can be maintained zoning

> accommodations should be made for permanently affordable housing. For example, exceptions to specific requirements, including open space requirements, exposure requirements or density limits, where they do not affect neighborhood quality and meet with applicable design standards, including neighborhood specific design guideline, can facilitate the development of affordable housing. Current City policy allows affordable housing developers to pursue these zoning accommodations through rezoning and application of a Special Use District (SUD)." Ex. L, p. 29.

Thus, the proposed project would conflict with the Housing Element of the General Plan because the proposed project would seek to use a Special Use District to change the permitted uses to allow retail uses, new commercial office uses and public parking uses and to increase height and/or bulk limits, which would not be zoning accommodations "for permanently affordable housing." Also, the proposed project would be inconsistent with the prevailing building type in the surrounding area and/or detract from existing character, detract from neighborhood quality and/or conflict with provisions of the Residential Design Guidelines and Urban Design Element, for the reasons stated herein.

For these reasons, the proposed project would also conflict with the following other policies of the 2014 Housing Element:

> Policy 11.3 Ensure growth is accommodated without substantially and adversely impacting existing residential neighborhood character.
>
> Accommodation of growth should be achieved without damaging existing residential neighborhood character. ...In existing residential neighborhoods, this means development projects should defer to the prevailing height and bulk of the area.
>
> Policy 11.5 Ensure densities in established residential areas promote compatibility with prevailing neighborhood character." Ex. L, p. 37.
>
> The Housing Element EIR explains that:
>
> "The San Francisco Planning Code, which incorporates by reference the City's Zoning maps, governs permitted uses, densities and the configuration of buildings in San Francisco. Permits to construct new buildings (or to alter or demolish existing ones) cannot be issued unless either the proposed action conforms to the Planning Code, or an exception if granted pursuant to provisions of the Planning Code, or a reclassification of the site occurs....
>
> Section 263 of the Planning Code contains special exceptions to the height limits for certain uses within certain areas. Buildings and structures exceeding the prescribed

height may be approved by the Planning Commission according to the procedures for conditional use approval in Section 303 of the Planning Code; provided, however, that such exceptions may be permitted only in the areas specified and only to the extent stated in each section." Ex. C, p. V-A-32-33.

The City's Preliminary Project Assessment ("PPA") states that:

"various aspects of the project conflict with both the current RM-1 Zoning of the site, as well as City Planning Commission Resolution No. 4109. The Preliminary Project Assessment application indicates the intent of the property owner to pursue a rezoning, potentially to an NC District. Additionally, as noted in the comments below, a special Use District overlay to the current RM-1 District may also be a potential path for rezoning, In either case, rezoning of the property requires approval by the Board of Supervisors....various components of the project exceed the current 40 foot height limit. Accordingly, a height district reclassification of the property must be sought. This also requires approval by the Board of Supervisors." Ex. M, PPA, p. 10.

As further explained in the City's Preliminary Project Assessment:

"The project proposes a combination of residential, office, commercial parking, retail and entertainment uses. Of these proposed land use categories, only residential uses are currently permitted in the existing RM-1 District. Accordingly, pursuing the project as proposed would require a rezoning of the subject property. The project description provided in the Preliminary Project Assessment application indicates the owner's interest in pursuing a rezoning of the property to an NC (Neighborhood commercial) district, but does not specify which type of NC District...

The project proposed retail uses throughout the property.

The demolition of existing structures or conversion of floor area dedicated to the site's 363,218 square feet of existing nonconforming office use is an abandonment of that nonconforming use per Planning Code Section 183. Therefore, to re-establish office uses in the proposed new structures, the uses must comply with any applicable zoning controls.

The project includes 60 off-street parking spaces as part of a 'Public Parking Garage' defined in Planning Code Section 102. The existing RM-1 district does not permit public parking garages and, at this time, it is unclear if the described 60 'paid public parking spaces for community use' are legally noncomplying with regard to the Planning Code. Additional information is needed regarding the existing and proposed location of these

spaces and the date of their establishment to make that determination...

The site has subsequently undergone additional rezoning, as it is now within an RM-1 District. However, the stipulations of future development as outlined in Resolution 4109 continue to apply, absent modification by the Board of Supervisors per Planning Code Section 174....In the project comments that follow, when there is an inconsistency, the more restrictive is noted as the guiding control. As indicated in the Preliminary Project Assessment application, the project may result in the rezoning of the property which requires review and approval by the Board of Supervisors. Amending Resolution 4109 would also require review and approval by the Board of Supervisors....

In general, the RM-1 District controls are more restrictive than the Stipulations of Resolution 4109. However, the stipulations are more restrictive when defining the density and buildable area requirements as applicable to a portion of the subject property fronting on Laurel and Euclid Avenues. At present, the project does not comply with these restrictions and would require amending the Resolution...

The subject property is within an RM-1 District which permits a residential density of up to one unit per 800 square feet of lot area. However, as a Planned Unit Development the proposal may seek approval for a density equal to one less unit than what is permitted by the district with the next greater density (RM-2)...While additional information is necessary to calculate the exact maximum density for the area subject to Resolution 4109, initial calculations estimate approximately 508 units are allowed pursuant to the current RM-1 zoning and Resolution an upon seeking the additional density allowed as a Planned Unit Development, the estimated maximum is 660 dwelling units. If the Resolution did not apply, these respective amounts become 558 and 743...

The subject property is within a 40-X Height and Bulk District, restricting the maximum height of buildings to 40 feet above grade, as measured generally from curb at the center of each existing and proposed building. The upper measurement of the height limit changes depending on the grade at that location per Planning Code Section 260(a)(1). Additionally, the upper measurement of the height of a building varies based on the roof form per Planning Code Section 260(a)(2). While in general the proposal accurately applies these methodologies, curbs along the Walnut Street extension may not be used as the base of measurements because the Walnut Street extension is not a public right-of-way...The additional stories proposed for the altered structures will require that the project seek a Height District reclassification which is reviewed and approved by the Board of Supervisors...

The existing office building is 66.5 feet tall from the existing grade to the finished roof...

> The project proposed a lot line adjustment that would extend the property's Masonic Avenue Boundary into the public right-of-way. This adjustment requires a General Plan Referral because it includes the vacation of a public way and transportation route owned by the City and County. This adjustment will also require review by the Department of Public Works as a partial street vacation request...
>
> Open Space. Additional information is needed to determine how the project complies with this requirement for each individual unit and to confirm that the spaces comply with the dimensional requirements for either private or common spaces... (Ex. M, PPA. pp. 12-17.

Planning Code section 209.2 provides that in an RM-1 district, the "Residential Density, Dwelling Units" is [u]p to one unit per 800 square feet of lot area." Retail uses and commercial uses are not permitted.

As acknowledged in the Housing Element EIR, a proposed project "could result in impacts related to conflicts with existing land use policy, plans, or regulations" if it "resulted in housing development that was not consistent with zoning and land use designations as outlined in the governing land use plans and/or the City's Planning Code to the extent those regulations help to avoid or mitigate potential environmental impacts." Ex. C, p. V.B-29. In addition, there could be "impacts related to land use character if new housing is substantially out of scale with development in an existing neighborhood, or if new development is so different than existing development that the new development would change the existing character of an area." Ex. 2, p. V.B-33. "Similarly, substantial increases in residential densities in traditionally low-density neighborhoods could result in changes to land use character." Ex. C, p. V.B-33.

The Initial Study admits that the "project as proposed is not consistent with the provisions set forth in the planning code for the RM-1 Zoning District and would not comply with development restrictions identified in Resolution 4109, described below. The existing office use within the project site, as well as the scale of the existing office building within the project site, does not conform to the low-density residential character described for the RM-1 Zoning District." IS p. 22. The Initial Study misinterprets Resolution 4109 and fails to mention that it contains a limitation on the aggregate gross floor area of all buildings on the property of a gross floor area that "shall not exceed the total area of the property allotted to such use," a limitation of 50% as to lot coverage of residential development, and a prohibition on any residential dwelling other than a one-family dwelling or a two-family dwelling occupying any portion of the property which is within 100 feet of the Euclid Avenue boundary line thereof, or which is within 100 feet of the easterly line of Laurel Street and south of the northerly line of Mayfair Drive extended, occupying a parcel of land having an area of less than 3300 square feet, and a requirement that such buildings be set back 12 feet from any other building and 10 feet from any street . The new buildings proposed on the site propose to violate these limitations, including the gross floor area

limitations, and the Mayfair and Euclid Buildings propose to violate the prohibition on any residential dwelling other than a one-family dwelling or a two-family dwelling being erected at the locations of the proposed buildings and/or would also violate the use limitations which prohibit retail uses. The Initial Study failed to analyze these provisions of Resolution 4109, and retail uses are not allowed under that Resolution. Ex. N, Resolution 4109 and Stipulation as to Character of Improvements.

The Initial Study states that the "proposed project would include amendments to the planning code and zoning maps to rezone a portion of the site from the current RM-1 zoning and 40-X Height and Bulk Districts." IS p. 22. First, the proposed planning code and zoning map amendments were not provided in the Initial Study, so the IS is incomplete and its description of the proposed project is inadequate and incomplete. Also, the Initial Study states that these:

> "changes would be implemented through the creation of a Special Use District (SUD) that would establish land use zoning controls for the project site. An ordinance establishing the SUD would require a recommendation by the Planning Commission and approval by the Board of Supervisors. In addition, the project sponsor would seek approval of a Conditional Use authorization/Planned Unit Development to permit development of buildings in excess of 50 feet in height; to allow for more units than principally permitted in the RM-1 Zoning District, to allow certain planning code exceptions to open space requirements, dwelling unit exposure, and rear yard setback requirements mandated by the planning code in an RM-1 Zoning District; and to provide a waiver or modification of any applicable conditions of Resolution 4109." IS p. 23.

As discussed above, the City's Preliminary Project Assessment stated that amending Resolution 4109 would require review and approval of the Board of Supervisors.

Since the proposed project is within a 40-X Height and Bulk District, it does not meet the criteria required to allow the Planning Commission to increase the height limit pursuant to Planning Code section 253, which provides that "wherever a height limit of more than 40 feet in a RH District, or more than 50 feet in a RM or RC District, **is prescribed by the height and bulk district in which the property is located**, any building or structure exceeding 40 feet in height in a RH District, or 50 feet in height in a RM or RC District, shall be permitted only upon approval by the Planning Commission according to the procedures for conditional use approval in Section **303** of this Code." Further, under Planning Code section 253:

> "In reviewing any such proposal for a building or structure exceeding 40 feet in height in a RH District, 50 feet in height in a RM or RC District, or 40 feet in a RM or RC District where the street frontage of the building is more than 50 feet the Planning Commission shall consider the expressed purposes of this Code, of the RH, RM, or RC Districts, and of the height and bulk districts, set forth in Sections **101**, **209.1**, **209.2**, **209.3**,

> and **251** hereof, as well as the criteria stated in Section **303**(c) of this Code and the objectives, policies and principles of the General Plan, and **may permit a height of such building or structure up to but not exceeding the height limit prescribed by the height and bulk district in which the property is located**. (Emphasis added.)

Since the property has a height limit of 40 feet in an RM-1 district, Planning Code section 253 does not authorize a height limit increase.

In addition, the proposed project would not meet the criteria applicable to conditional uses as stated in Section **303**(c) and elsewhere in the Planning Code and further would not meet the requirements of Planning Code section 304 for a Planned Unit Development, including that the requirements that the project shall:

(1) Affirmatively promote applicable objectives and policies of the General Plan;
(2) Provide off-street parking adequate for the occupancy proposed;
(3) Provide open space usable by the occupants and, where appropriate, by the general public, at least equal to the open spaces required by this Code;
(4) Be limited in dwelling unit density to less than the density that would be allowed by **Article 2** of this Code for a district permitting a greater density, so that the Planned Unit Development will not be substantially equivalent to a reclassification of property;
(5) In R Districts, include Commercial Uses only to the extent that such uses are necessary to serve residents of the immediate vicinity, subject to the limitations for NC-1 Districts under this Code, and in RTO Districts include Commercial Uses only according to the provisions of 231 of this Code;
(6) Under no circumstances be excepted from any height limit established by **Article 2.5** of this Code, unless such exception is explicitly authorized by the terms of this Code. In the absence of such an explicit authorization, exceptions from the provisions of this Code with respect to height shall be confined to minor deviations from the provisions for measurement of height in Sections **260** and **261** of this Code, and no such deviation shall depart from the purposes or intent of those sections."

The IS has not explained the nature of the "minor deviations" from the provisions for measurement of height that would be sought, so the IS is incomplete, and the EIR must identify them so the nature of the project can be known, and comments can address inaccuracies and conflicts with land use policies.

The proposed project would fail to affirmatively promote applicable objectives and policies of the General Plan as to density and height.

Approval of a Planned Unit Development cannot be substantially equivalent to a reclassification of property, which it would if misused in this matter, because the 744 residential units in the

project variant would exceed the additional density of 660 units allowed as a Planned Unit Development above existing density limits (which include Resolution 4109) and the 558 project units would exceed the approximately 508 units allowed under the applicable stipulations as to future development contained in Resolution 4109, which can only be changed by the Board of Supervisors. (See Ex. O, developer's calculation of permitted densities under alleged PUD boost)

Moreover, the proposed project ,which is located in an R District, would not "include Commercial Uses **only to the extent that such uses are necessary to serve residents of the immediate vicinity**, subject to the limitations for NC-1 Districts under this Code." The Initial Study does not state that a rezoning from the RM-1 District would be sought. The project site is directly adjacent to the Laurel Village neighborhood commercial area, and one block away from the Sacramento Street neighborhood commercial area and one block away from Trader Joe's. Residents of the immediate vicinity are adequately served by retail uses.

Thus, the project may under no circumstances be excepted from any height limit established by **Article 2.5** of this Code under the Planned Unit Development provisions, because no exception is explicitly authorized by the terms of the Planning Code in a 40-foot Height and Bulk District. The Initial Study fails to substantiate the nature of the proposed deviations from the provisions for the measurement of height as being minor and fails to establish that such deviation shall not depart from the purposes or intent of Planning Code sections 260 and 261. The Preliminary Project Assessment already warned the project proponent not to attempt to measure heights from the Walnut Street extension because it is a walkway and not a public right-of-way.

Further, the project would not provide open space usable by the occupants and, where appropriate, by the general public, at least equal to the open spaces required by this Code.

Since plan sheet G3.03 shows that the project proponent counted the paved Lower Walnut walkway and the approximately 16 foot front set back in front of proposed retail uses on California Street (described as California Plaza) as open space, the project does not comply with the open space requirements of Planning Code section 135 that "[u]sable open space shall be composed of an outdoor area or areas designed for outdoor living, recreation or landscaping, including such areas on the ground and on decks, balconies, porches and roofs, which are safe and suitably surfaced and screened, and which conform to the other requirements of this Section." Moreover, the Initial Study admits that "the network of proposed new common open spaces, walkways, and plazas within the project site" "would be shaded mostly by proposed new buildings for much of the day and year." IS p. 161. For this reason, as well, such network of new common open spaces does not qualify as open space under Planning Code section 135 because it is not "designed for outdoor living, recreation or landscaping."

The Housing Element EIR further explains that:

> "For construction of new residential buildings and alteration of existing residential buildings in R Districts, Section 311 of the Planning Code requires consistency with the design policies and guidelines of the General Plan and with the Residential Design Guidelines that are adopted for specific areas. ...The guidelines apply to development in all RH and RM districts, and are intended to maintain cohesive neighborhood identity, preserve historic resources, and enhance the unique setting and character of the City and its residential neighborhoods.
>
> The guidelines are based on the following design principles, which are also used to determine compliance with the guidelines:
>
> - Ensure that the building's scale is compatible with surrounding buildings.
> - Ensure that the building respects the mid-block open space.
> - Maintain light to adjacent properties by providing adequate setbacks.
> - Provide architectural features that enhance the neighborhood's character.
> - Choose building materials that provide visual interest and texture to a building.
> - Ensure that the character-defining features of an historic building are maintained." Ex. C, p. V.A-34.

The Housing Element EIR also explains that Proposition M, codified in Planning Code section 101.1, established eight Priority Policies including "protection of neighborhood character," "landmark and historic building preservation," "protection of open space," and "preservation and enhancement of neighborhood-serving retail uses." Ex. C, p. V.A-41-42.

The Housing Element EIR explains that "[s]ection 263 of the Planning Code contains special exceptions to the height limits for certain uses within certain areas. Buildings and structures exceeding the prescribed height limit may be approved by the Planning Commission according to the procedures for conditional use approval in Section 303 of the Planning Code; provided, however, that such exceptions may be permitted only in the areas specified and only to the extent stated in each section." Ex. C, p. V.B-2. None of these exceptions apply to the proposed project.

The Initial Study uses an erroneous legal standard in determining that the project's potential conflicts with land use plans (and other impacts analyzed in the IS) need not be studied as a significant impact in the EIR. As explained in the Initial Study for the 1629 Market Street Project :

> "The Initial Study evaluates the proposed 1629 Market Street Mixed Use Project to determine whether it would result in significant environmental impacts. The designation of topics as 'Potentially Significant' in the Initial Study means that the EIR will consider the topic in greater depth and determine whether the impact would be significant." Ex. P,

p. 4.

The Initial Study for the 3333 California Street project acknowledges that the proposed project "would not conform to the existing RM-1 zoning and 40-X Height and Bulk District, and amendments to the planning code would be required as part of the proposed project or project variant." The Initial Study then puts forth the erroneous conclusion that if "the Board of Supervisors finds that amendments to the planning code are warranted to allow for implementation of the proposed project or project variant, the Board of Supervisors would adopt amendments to establish the Special Use District, which would resolve any conflicts between the planning code and the proposed project or project variant. To approve the proposed project or project variant, the city would be required to make findings of project consistency with the planning code. The proposed project or project variant, as approved, would thus be consistent with relevant plans and policies once amended." IS. p. 110-111. The project's proposed misuse of Special Use District procedures and other procedures was explained above.

The Initial Study errs in claiming that to approve the proposed project, the city would be required to make findings of project consistency with the planning code. In certain circumstances, the city is required to find that a proposed project is consistent with provisions of the General Plan. Planning Code section 101.1. The proposed project would be inconsistent with provisions of the Urban Design Element and Housing Element of the General Plan for the reasons set forth above, including that the bulk of the buildings does not relate to the prevailing scale of development and would have an overwhelming or dominating appearance, and that the height of buildings does not relate to important attributes of the city patterns and the height and character of existing development. Urban Design Element Policies 3.5 and 3.6. Policy 3.6 explains that it was intended to avoid disruption to the city's character from buildings that reach extreme bulk, by exceeding the prevailing height and prevailing horizontal dimensions of existing buildings in the area which " can overwhelm other buildings, open spaces and the natural land forms, block views." Thus, these provisions of the general plan were adopted for the purpose of mitigating or avoiding an environmental effect. At the project site, the proposed new buildings would block public views from the open green spaces and significantly shadow open spaces and overwhelm other buildings.

Also, application of a Special Use District is authorized by the Housing Element to encourage production of affordable housing, not to authorize deviations from residential use district classifications for retail or commercial uses. The Housing Element EIR identified "Policy 7.5: Encourage the production of affordable housing through process and zoning accommodations and prioritize affordable housing in the review and approval processes" as one of the "Policies With Potential for Physical Environmental Impacts." Ex. C, p. IV-35. The Housing Element EIR acknowledged that "[i]mplementation of the 2009 Housing Element could result in impacts related to existing character if new housing is out of scale with development in an existing neighborhood or if new development is so different it would change the existing character of an

area." Such impacts would occur if a Special Use District or other deviations were used for the purposes proposed by the project proponent, especially for the improper purposes set forth above. The new buildings would still be out of scale with surrounding development and disrupt the area's character through their dominating appearance, so the significant adverse physical impacts would remain despite approval of an Special Use District under the circumstances requested by the project proponent. The project approval would not result in consistency with the policies of the Urban Design Element or Housing Element, because the IS does not identify those elements of the General Plan as proposed to be amended in connection with approval of the proposed project. IS p. 86.

The Initial Study also improperly asserted that the impact on land use plans and policies would be less than significant because that the proposed project "would adhere to applicable environmental regulations, and therefore, would not conflict with policies or regulations adopted for the purpose of avoiding or mitigating an environmental effect such that a substantial adverse physical change in the environment related would result." IS p. 111. This is an unsupported conclusion which is inadequate under CEQA and is contradicted by the evidence discussed herein. No explanation is provided as to the nature of the environmental regulations that would be complied with, the performance standards that would result in compliance or the specific expected management actions that would be taken. The IS's determination that regulatory compliance will be sufficient to prevent significant adverse impacts was not based on a project specific analysis of potential impacts and the specific effect of regulatory compliance.

Thus, the EIR must analyze the potentially significant impacts which the proposed project would have on conflicts with numerous applicable land use plans, policies and regulations, including those discussed herein, and the substantial impact that the proposed project would have upon the existing character of the vicinity. In the cumulative impact discussion, the Initial Study acknowledges that to some extent conflicts with land use plans and policies under the proposed project "could be embodied in a considerable contribution to a cumulative physical environmental impact" and "such cumulative physical impacts are addressed and analyzed under the specific environmental topics section in the initial study and will also be addressed in Chapter 4, Environmental Setting and Impacts, of the EIR." This statement constituted recognition that plans and policies with which the project would conflict were adopted for the purpose of avoiding or mitigating an environmental effect.

In addition, the Housing Element EIR recognized that :

> "Implementation of the 2004 Housing Element and 2009 Housing Element could result in impacts related to conflicts with existing land use policy, plans, or regulations if the Housing Elements resulted in housing development that was not consistent with zoning and land use designations as outlined in governing land use plans and/or the City's Planning Code to the extent those regulations help to avoid or mitigate potential

> environmental impacts. For example, if a height limit in a particular area was designed to avoid impacting a view from a public vantage point, there could be an impact from a policy that increased the height limits." Ex. C, p. V.B-29.

The proposed project's increased heights and bulk would conflict with existing public views from the publicly accessible open space that currently exists on the project site, including on Euclid, Laurel and Presidio avenues and the Terrace.

5. The Project Could Have Significant Shadow Impacts on Existing Open Spaces that Have Been Used by the Public for Recreational Purposes, on Sidewalks on the East Side of Laurel Street, and on Publicly Accessible Open Space Proposed by the Project.

The City's Shadow Analysis Procedures and Scope Requirements state that the proposed project is subject to review under CEQA if it "would potentially cast new shadow on a park or open space such that the use and enjoyment of that park or open space could be adversely affected," and such procedures describe potentially affected properties as including "parks, publicly-accessible open spaces, and community gardens." (Ex. Q) Also, the 2017 Notice of Preparation of an EIR for a mixed use project states that "the topic of shadow will include an evaluation of the potential for the proposed project to result in shadow impacts on nearby sidewalks." (Ex. P, Initial Study for 1629 Market Street Project, p. 19)

The Initial Study states that the "threshold for determining the significance of shadow impacts under CEQA is whether the proposed project or project variant would create new shadow in a manner that substantially affects the use and enjoyment of outdoor recreational facilities or other public areas." IS p. 156.

The San Francisco Planning Department Shadow Analysis Procedures and Scope Requirements provide that a a shadow analysis would be required:

"If the proposed project is subject to review under the California Environmental quality Act (CEQA) and would potentially cast new shadow on a park or open space such that the use of enjoyment of that park or open space could be adversely affected." Ex. Q, p. 1.

Those procedures further provide that:

"Potentially Affected Properties. Potentially affected properties including: parks, publicly-accessible open spaces, and community gardens identified in the graphical depictions should be listed and described. The description of these properties should include the physical features and uses of the affected property, including but not limited to: topography, vegetation,

structures, activities, and programming. Each identified use should be characterized as 'active' or passive.' Aerial photographs should be included, along with other supporting photos or graphics. The programming for each property should be verified with the overseeing entity, such as the Port of San Francisco, the Recreation and Parks Department, etc. Any planned improvements should also be noted." Ex. Q, p. 2.

The Initial Study failed to analyze the significance of the shadow impact upon the entire open green spaces used by the public for recreational purposes on the project site.

The Initial Study inaccurately stated that "UCSF currently grants public access" to two existing open green spaces at the perimeter of the project site. In fact, these areas have been used by the public without the permission of the property owner for many years. At the time of issuance of the Initial Study, there were no signs posted indicating that use of the open space was under the permission of the property owner. As explained in the attached letter from attorney Fitzgerald, the public has acquired permanent recreational rights to the open space at the site; the rights were obtained by implied dedication prior to the enactment of Cal. Civil Code section 1009 in 1972. Ex. R) The public has also "acquired a prescriptive easement over the recreational open space. The recreational use has been continuous, uninterrupted for decades, open and notorious and hostile (in this context, hostile means without permission.) Every day, individuals and their dogs use the green space along Laurel, Euclid and along the back of the Site at Presidio. Individuals ignore the brick wall along Laurel and regularly use the green space behind the wall as a park for people and for their dogs. The use of the Site has not been permissive." *Ibid.*

The Initial Study failed to analyze the impact of shadows on the entire open green space along Laurel, and excluded the open green space along Presidio, because the project proponent seeks permission to build upon, or alter, some of those areas. This is not an of-right project. As explained by the City's Preliminary Project Assessment, the proposed project fails to comply with numerous requirements of the Planning Code, and rezonings and discretionary approvals would be required to be granted by the Planning Commission and Board of Supervisors. Under applicable discretionary review procedures, the Planning Commission could scale the project back to avoid construction on, or alteration of, the currently publicly-accessible open spaces, and/or make other modifications.

Under Public Resources Code section 21068, a "Significant effect on the environment" means a substantial, or potentially substantial, adverse change in the environment.

Under the CEQA Guidelines, 14 Cal. Code of Regulations section 15382, "Significant effect on the environment" means a substantial, or potentially substantial, adverse change in any of the physical conditions within the area affected by the project, including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance. An economic or social change by itself shall not be considered a significant effect on the

environment. A social or economic change related to a physical change may be considered in determining whether the physical change is significant." To assess the changes to the environment that will result from the project, the agency treats existing conditions as the environmental baseline against which the project's changes to the environment are measured. 14 Cal. Code of Regulations section 15152.

As established by the nomination of the property to the National Register of Historic Places, the "landscape design connects the outdoors with the indoors both functionally and conceptually." Ex. E, Nomination, p. 5. Among the character defining features of this historically significant resource, the nomination listed "Vegetation features that helps to integrate the character of the Fireman's Fund site with that of the surrounding residential neighborhoods including (1) the large trees in and around the East and West parking Lots, (2) the lawns on the west, south and east sides of the property, and (3) the planted banks along laurel and masonic streets." The subject lawn areas and the Terrace are currently used as publicly-accessible open spaces, and it is possible that the approving agencies will retain them as open spaces. These areas would be significantly shaded by the proposed project, with the 2-3 floors proposed to be added to the top of the building. Thus, significantly shading these areas should be treated as a potentially significant impact on the environment in the EIR.

However, the Initial Study failed to analyze the significance of the shadow impact on the entire open green areas and merely analyzed the potential impact upon the portions of these areas that the project proponent proposes not to build upon. However, Figure 37, Extent of Net New Project Shadow Throughout the Day and Year, shows the entire open green spaces along Laurel Street and Presidio Avenue as in the "frequent shadow" zone. IS p. 158. The area in which the Terrace is located would also be frequently shadowed, and the project as proposed would remove the Terrace. The Initial Study shows that there would be a significant adverse shadow impact upon the areas along Laurel Street, Presidio Avenue and the Terrace which the project proponent proposes to build upon or alter, and the Initial Study failed to analyze the potentially significant impact of shadows on these publicly-accessible areas and failed to make a determination that impacts on these areas would not be significant. Thus, the EIR should analyze the potential shadow impacts on these areas as potentially significant impacts under CEQA. Approving authorities may retain some or all of these open spaces. The Initial Study failed to use the correct significance standard, which required it to analyze whether impacts on these areas could be "potentially significant." The Initial Study's exclusion of these areas because they would possibly be within part of the built project was erroneous. The Initial Study acknowledges that the decision-makers could modify the project to continue the usability of these spaces. IS p. 160.

Since the evidence shows that new shadows would be frequent on the publicly-accessible open spaces, the EIR should evaluate these shadows as a potentially significant impact on the environment. As acknowledged in the Initial Study for 1629 Market Street Project, the "designation of topics as 'Potentially Significant' in the Initial Study means that the EIR will

consider the topic in greater depth and determine whether the impact would be significant." Ex. P, p. 4.

Similarly, the Initial Study shows that the proposed project would cause frequent shadows on the sidewalks on the east side of Laurel Street. The Initial Study failed to specifically determine that the proposed project would not create new shadow on the sidewalks on the east side of Laurel Street in a manner that substantially affects public areas. Instead, it determined that impact would not be significant by using a lesser standard, stating that "[o]verall, the proposed project or project variant would not increase the amount of shadow on the sidewalks above levels that are common and generally expected in developed urban environments." IS p. 160. Since the evidence shows that the new shadow would be frequent on sidewalks on the east side of Laurel Street, the EIR must evaluate this shadow as a potentially significant impact on the environment and make a determination of whether the impact would be significant under the correct significance standard.

As acknowledged in the Initial Study for 1629 Market Street Project, to determine the impact insignificant, a determination must be made under CEQA that the proposed project's net new shadows would not be anticipated to substantially affect the use of "any publicly-accessible areas, including nearby streets and sidewalks." Ex. P, p. 66.

In addition, the Initial Study shows that the proposed project would cause new shadows on the open space proposed to be used in the project, which would be open to the public. " The Initial Study admits that "the network of proposed new common open spaces, walkways, and plazas within the project site" "would be shaded mostly by proposed new buildings for much of the day and year." IS p. 161. Thus, the EIR must analyze shadow impacts on these publicly-accessible areas as significant impacts, but the IS improperly excluded them from analysis as significant impacts. Many of these areas are not now significantly shaded as part of the existing environment, but would be a a result of the proposed project.

The EIR should follow the City's shadow analysis procedures and identify and describe all the potentially newly shadowed areas discussed above in graphic depictions together with aerial photographs and provide a quantitative analysis of the impacts that would result from the project. Ex. Q, p. 4.

In addition, it is inaccurate to state that under the proposed project, the Euclid Green "would be developed as common open space that would be open to the public." IS p. 160. That green open space is currently used as recreational open space by the public, as I have observed.

It should be noted that shadows are physical impacts, not aesthetic impacts exempt from CEQA in certain transit-served areas. The EIR on the Housing Element of the San Francisco General Plan clearly treats shadows as a physical effect along with wind impacts and analyzes aesthetic

impacts in a separate section. Ex. C - Final EIR 2004 and 2009 Housing Element p. V.J-3, V.C-1. As further explained in that EIR:

> "Shadow is an important environmental issue because the users or occupants of certain land uses, such as residential, recreational/parks, churches, schools, outdoor restaurants, and pedestrian areas have some reasonable expectations for direct sunlight and warmth from the sun. These land uses are termed 'shadow sensitive.' (Ex. C - Final EIR 2004 and 2009 Housing Element p. V.J-3)

Thus, shadows are a physical impact and are not an aesthetic impact.

6. The Proposed Project Could Have a Significant Hazard and Hazardous Materials Impact.

The Initial Study states that hazards or hazardous material would be significant if the project would:

> Create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials,
>
> Create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment.
>
> Emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school.
>
> Be located on a site which is included on a list of hazardous materials sites complied pursuant to Government Code Section 65962.5 and, as a result, would it create a significant hazard to the public or the environment. IS p. 227-228.

The Initial Study acknowledges that during construction, particularly excavation and grading, construction workers would be exposed to chemicals in the soil and groundwater through skin contact, ingestion or inhalation of airborne dust or vapors, and the "public, including nearby offsite residents and future site occupants, could be exposed to these chemicals through inhalation of airborne dust or vapors or contact with accumulated dust if proper precautions were not implemented." IS p. 232.

Langan Treadwell Rollo evaluated the additional samples collected in August 2014 from the location of the former onsite USTs following removal of the waste oil UST against the environmental screening levels for commercial uses, but the San Francisco Health Department

requested that the soil gas results for the site be compared to current environmental screening levels for residential uses. IS p. 229-230. Volatile organic compounds were detected in soil gas at concentrations exceeding residential environmental screening levels, at two of seven sampling locations. IS p. 230. "The health department also requested that a site mitigation plan and a demolition and construction dust control plan be prepared for the site. The site mitigation plan would include soil and groundwater handling procedures, designs for minimization measures that control human exposure to remaining hazardous substances, an environmental contingency plan, and a health and safety plan....All compliance documentation would be reviewed and approved by the health department." IS p. 230.

However, the Housing Element EIR states that "redevelopment of former commercial and industrial sites to residential uses would be required to undergo remediation and cleanup under DTSC and the SFBRWQCB before construction activities could begin. If contamination at any specific project were to exceed regulatory action levels, the project proponent would be required to undertake remediation procedures prior to grading and development under the supervision of the City's SFDPH, HMUPA, or the SFBRWQCB (depending on the nature of any identified contamination). Ex. C, p. V.Q-42.

The Initial Study does not disclose the mitigation measures that the site mitigation plan would provide, including soil and groundwater handling procedures, designs for minimization measures that control human exposure to remaining hazardous substances, an environmental contingency plan, and a health and safety plan. An agency may not rely upon a corrective action plan to mitigate potential impacts of site contamination when the plan's mitigation measures are not disclosed in the record. *Citizens for Responsible Equitable Environmental Development v. City of Chula Vista* (2011) 197 Cal.App.4th 327, 332. Since the Initial Study has not disclosed the mitigation measures that would be used, the EIR must analyze the project's impact from hazardous materials as a significant impact, and analyze mitigation measures. The Initial Study has not disclosed the soil and groundwater handling procedures, designs for minimization measures that control human exposure to remaining hazardous substances, an environmental contingency plan, or a health and safety plan, which the public health department would require.

Since specific mitigation measures have not been developed, disclosed and adopted as a condition of approval of the project, the potentially significant impacts from hazards and hazardous materials has not been mitigated to a level of insignificance. The IS's determination that regulatory compliance will prevent significant adverse impacts was not based on a project specific analysis of potential impacts, potential mitigation measures and the specific effect of regulatory compliance. The Initial Study has not explained the effect of regulatory compliance, identified methods the agencies will consider for mitigating the impact or indicated the expected outcome. By relying on a hope of compliance with regulations that apply to transitory conditions, such as excavation or construction activities that could release hazardous substances, and do not require onsite monitoring to determine compliance, the IS failed to perform a careful

analysis that would be sufficient to find the impact not significant. Thus, the impact remains significant and must be fully analyzed in the EIR, with review and mitigation approved by all agencies with jurisdiction over the nature of any identified contaminants.

Since LTR compares soil gas results to the Environmental Screening levels published by the San Francisco Regional Water Quality Control Board, review and approval of mitigation plans by DTSC and the SFBRWQCB may be required in addition to review and approval by the San Francisco Department of Public Health. The EIR should analyze the whether the soil gas detections are under the jurisdiction of DTSC and the SFBRWQCB or other agencies besides the San Francisco Department of Public Health and whether the mitigation plan conforms with the supplemental vapor intrusion guidance document for conducting uniform vapor intrusion evaluations in California expected to be released in mid-2018 by the State Water Resources Control Board, the San Francisco Bay Regional Water Quality Control Board, and the Department of Toxic Substances Control. IS, FN302.

Moreover, the Initial Study evaluates only whether the low levels of volatile organic compounds which were detected in soil gas would pose a vapor intrusion concern for commercial or residential residents at the Plaza A building. However, the impact could be significant if a member of the public, such as a resident across the street from the project site, could be exposed to such soil gas released during construction. The EIR should analyze potential impacts on the public and nearby residents of release into the air of such soil gas and also analyze whether such emissions could be emitted within one-quarter mile of a school.

In addition to contamination from the USTs, the Initial Study discloses that "the site may contain onsite hazardous waste associated with medical uses, such as radioactive materials or other contaminants that may be contained within the existing onsite fume hoods, centrifuges, refrigerators, and waste storage containers. There is also the potential for contaminants, including minor radioactive contamination, in the facility plumbing system from disposal of secondary washes. Currently this hazardous waste is properly disposed of offsite under manifest." IS p. 233.

While UCSF would remove much of the chemicals and radioactive materials as part of their relocation, the date of their relocation is uncertain, as is the manner of disposal of the remaining materials. What is the date on which UCSF employees would be relocated from the site? The Initial Study states that any remaining medical hazardous waste would be disposed of in an approved facility during building demolition or reuse and would not pose a significant hazard to the public or the environment if applicable federal, state and local regulations are followed. IS 233. The Initial Study does not indicate the identified methods the agencies will consider for mitigating the impact, adopt specific mitigation measures, explain the effect of regulatory compliance or indicate the expected outcome. Thus, the potentially significant impact from medical hazardous waste, including radioactive contamination in the plumbing system from

disposal of secondary washes, must be analyzed as a potentially significant effect in the EIR, together with all appropriate mitigation measures. The EIR should include as a mitigation measure the preclusion of connection of the piping system used for disposal of secondary washes containing minor radioactive contamination with the proposed graywater reeycling system proposed to be installed and used on the property. Without such mitigation, water containing radioactive waste contamination could be used for irrigation onsite and the radioactive materials could be spread onsite.

> **MITIGATION MEASURE.** No piping onsite which was used for medical uses, including disposal of secondary washes containing radioactive material, may be connected with any piping used in the graywater recycling system proposed to be installed on the property and used for onsite irrigation and other uses. The project proponent will be required to execute a binding agreement to implement such mitigation measure as a condition of approval of the project.

In addition, the Initial Study states that the building may contain hazardous building materials such as asbestos, lead-based paint, electrical transformers containing PCBs, flourescent light ballasts containing PCBs or other contaminants, and flourescent light tubes containing mercury vapors, which could escape in the environment and pose concerns for construction workers and the public if not properly handled or disposed of in accordance with applicable regulations. Again, the impact must be evaluated as a significant impact in the EIR because the Initial Study does not indicate the identified methods the agencies will consider for mitigating the impact, adopt specific mitigation measures, explain the effect of regulatory compliance or indicate the expected outcome. The project proponent proposes to expose substantial amounts of such materials, as it proposes to demolish substantial portions of the existing building and cut a large hole in the building for a passageway.

Also, the Initial Study states that bedrock which would be encountered during site excavation includes serpentinite, which contains naturally occurring asbestos, and during project excavation, naturally occurring asbestos minerals may present a human health hazard if they become airborne and are inhaled. IS p. 235. The Initial Study states that the construction contractor would be required to prepare an asbestos dust mitigation plan specifying measures that would be taken to ensure that no "visible" dust crosses the property boundary during construction. However, the Initial Study indicates that the 17 California Code of Regulations section 93105 requires the use of best available dust mitigation measures to prevent the offsite migration of asbestos-containing dust. Again, the impact must be evaluated as a significant impact in the EIR because the Initial Study does not indicate the identified methods the agencies will consider for mitigating the impact, adopt specific mitigation measures, explain the effect of regulatory compliance or indicate the expected outcome.

Also, under Appendix G of the CEQA Guidelines project hazards and hazardous materials would

be significant impact if the project would:

> "Emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school." Ex. B.

The Housing Element EIR uses the same significance standard Ex. C, p. V.Q-40.

The Initial Study identifies several schools/daycare centers are located within a quarter mile of the project site, that states that demolition and construction activities would require handling and transport of hazardous wastes. However, the IS improperly relies upon unspecified future regulatory compliance as the basis for a conclusion that "there would be limited potential for such materials to affect the nearest school." IS p. 237. The significance standard is triggered by a release within one-quarter mile of an existing school. For the reasons stated above, reliance upon unspecified future regulatory compliance is not sufficient to mitigate the adverse impact, and the potential that such materials could be emitted within one-quarter mile of a school requires the potentially significant impact to be analyzed in the EIR as a significant impact, together with specified mitigation measures that will be incorporated as conditions of approval of the proposed project.

The Initial Study admits that the project site is currently on the Leaking Underground Storage Tank Sites list maintained by the State Water Resources Control Board and "is included on other lists of hazardous materials sites compiled pursuant to Government Code section 65962.5. The listings are related to public notice requirements for permitted activities such as air emissions reporting for onsite activities, small quantity generation of hazardous waste in the medical laboratories, and the former USTs discussed in Impact HZ-2." IS p. 238. However, the Initial Study is incomplete and inadequate because it does not identify the other lists of hazardous materials sites compiled pursuant to Government Code section 65962.5 on which the project site is included. The EIR must disclose each such site which lists the project site and the nature of the listing so that potential impacts from hazards and hazardous materials can be evaluated.

Thus, the City has failed to comply with the procedures required by CEQA, because Public Resources Code section 21092.6 requires the agency to include in the draft EIR any information derived from consultation of Government Code section 65962.5 (the Cortese list), but the Initial Study states that it will not further address the issue of hazardous materials or waste. Ex. S, CEB, *Practice Under CEQA*, section 13.65 p. 13-74. The City has failed to include in the IS the information "on other lists of hazardous materials sites compiled pursuant to Government Code section 65962.5. The listings are related to public notice requirements for permitted activities such as air emissions reporting for onsite activities, small quantity generation of hazardous waste in the medical laboratories, and the former USTs discussed in Impact HZ-2." IS p. 238. The City must state all information contained in the listings on such other sites in the Draft EIR.

7. The Proposed Project Could Have a Significant Adverse Impact on Greenhouse Gas Emissions.

The Initial Study states that the project's impact on greenhouse gas emissions ("GHG") would be significant if it would:

> "Generate greenhouse gas emissions, either directly or indirectly, that may have a significant impact on the environment" or
>
> "Conflict with any applicable plan, policy or regulation adopted for the purpose of reducing the emissions of greenhouse gases." IS p. 146.

New CEQA Guideline section 15064.4, on the determination of significance of GHG emissions, reflects the existing CEQA principle that there is no iron-clad definition of "significance." CEQA Guidelines section 15064(b). Accordingly, lead agencies must use their best efforts to investigate and disclose all that they reasonably can regarding a project's potential adverse impacts. *Berkeley Keep Jets Over the Bay Com. v. Board of Port Comm.* (2001) 91 Cal.App.4th 1344, 1380-81; Ex. T, California Natural Resources Agency, *Final Statement of Reasons for Regulatory Action, Amendments to the State CEQA Guidelines Addressing Analysis and Mitigation of Greenhouse Gas Emissions Pursuant to SB97*, December 2009. Section 15064.4 is designed to assist lead agencies in performing that required investigation. *Id.*, p. 20; In particular, it provides that lead agencies should quantify GHG emissions where quantification is possible and will assist in the determination of significance, or perform a qualitative analysis, or both as appropriate in the context of the particular project, in order to determine the amount, types and sources of GHG emissions resulting from the project. *Ibid.* Regardless of the type of analysis performed, the analysis must be based "to the extent possible on scientific and factual data." *Ibid.* In addition, lead agencies should also consider several factors. *Ibid.*

As further explained in *Amendments to the State CEQA Guidelines Addressing Analysis and Mitigation of Greenhouse Gas Emissions Pursuant to SB97*, December 2009, pp. 21-22:

> "With the foregoing principles in mind, the quantification called for in proposed section 15064.4(a)(1) is reasonably necessary to ensure an adequate analysis of GHG emissions using available data and tools, in accordance with Public Resources Code Section 21083.05. Even where a lead agency finds that no numeric threshold of significance applies to a proposed project, the holdings in the *Berkeley Jets and Protect the Historic Amador Waterways cases,* described above, require quantification of emissions if such quantification will assist in determining the significance of those emissions. OPR and the Resources Agency find that quantification will, in many cases, assist in the determination of significance, as explained below. (State CEQA Guidelines, § 15142 ("An EIR shall be prepared using an interdisciplinary approach which will ensure the integrated use of the

natural and social sciences and the consideration of qualitative as well as quantitative factors.").)

First, quantification of GHG emissions is possible for a wide range of projects using currently available tools. Modeling capabilities have improved to allow quantification of emissions from various sources and at various geographic scales. (Office of Planning and Research, *CEQA and Climate Change: Addressing Climate Change Through the California Environmental Quality Act Review*, Attachment 2: Technical Resources/Modeling Tools to Estimate GHG Emissions (June 2008); CAPCOA White Paper, at pp. 59-78. Moreover, one of the models that can be used in a GHG analysis, URBEMIS, is widely used in CEQA air quality analyses. (CAPCOA White Paper, at p. 59) Second, quantification informs the qualitative factors listed in proposed section 15064.4(b). Third, quantification indicates to the lead agency, and the public, whether emissions reductions are possible, and if so, from which sources. Thus, if quantification reveals that a substantial portion of a project's emissions result from energy use, a lead agency may consider whether design changes could reduce the project's energy demand.

Proposed section 15064.4(a)(1) also reflects existing case law that reserves for lead agencies the precise methodology to be used in a CEQA analysis. (See, e.g. *Eureka Citizens for Responsible Gov't v. City of Eureka* (2007) 147 Cal.App.4th 357, 371-373.) As indicated above, a wide variety of models exist that could be used in a GHG analysis. (CAPCOA White Paper, at pp. 59-78.) Further, not every model will be appropriate for every project. For example, URBEMIS may be an appropriate tool to analyze a typical residential subdivision or commercial use project, but some public utilities projects, such as waste-water treatment plants, may require more specialized models to accurately estimate emissions. (*Id.* at pp. 60-65.) The requirement to disclose any limitations in the model or methodology chosen also reflects the standard for adequacy of EIRs in existing State CEQA Guidelines section 15151...

If the lead agency determines that quantification is not possible, would not yield information that would assist in analyzing the project's impacts and determining the significance of the GHG emissions, or is not appropriate in the context of the particular project, section 15064.4(a) would allow the lead agency to consider qualitative factors or performance criteria...

The existing CEQA Guidelines state that the determination of significance requires a lead agency to use its judgment based on *all* relevant information. (State CEQA Guidelines, § 15064(b); see also *Id.* at §§ 15064.7 (thresholds may be qualitative), 15142 (analysis should be interdisciplinary and both qualitative and quantitative.).)

Subdivision (a) would also allow a lead agency to rely on performance-based standards to

assist in the determination of significance. Just as with quantification, the purpose of engaging in a qualitative or performance standard based analysis is to develop information relevant to a significance determination. Several examples exist of the types of performance standards that might appropriately be used in determining the significance of greenhouse gas emission. Proposed section 15183.5(b)(1)(D), for example, contemplates that a plan for the reduction of greenhouse gas emissions may contain performance based standards. Where such standards are developed as part of such a plan, a lead agency would have evidence indicating that compliance with such standards would indicate that the impact of greenhouse gas emissions would be less than significant. Further, in adopting SB375, the Legislature acknowledged that regional transportation plans, and the environmental impact reports prepared to analyze those plans, may contain performance standards that would apply to transit priority projects. (See, e.g., Public Resources Code, § 21155.2.) Other potential examples include the Bay Area Air Quality Management District's proposed Best Management Practices for Construction Greenhouse Gas Emissions (calling for use of alternative fuels, local building materials and recycling), and the California Public Utilities Commission's Performance Standard for Power Plans [sic] (requiring emissions no greater than a combined cycle gas turbine plant). Compliance with such standards may be relevant to the significance determination, when considered in conjunction with the project's total projected emissions...

Similar to use of a significance threshold, a lead agency must exercise care to ensure that performance standards do not replace a full analysis of all potential emissions. *(Protect the Historic Amador Waterways, supra*, 116 Cal.App.4th at 1109 ("in preparing and EIR, the agency must consider and resolve every fair argument that can be made about the possible significant environmental effects of a project, irrespective of whether an established threshold of significance has been met with respect to any given effect.).) For example, while a Platinum LEED ® rating could assist a lead agency in determining whether emissions related to a building's energy use may be significant, that performance standard may not reveal sufficient information to evaluate transportation-related emissions associated with that proposed project.

As indicated above, even a qualitative analysis must be based to the extent possible on scientific and factual data. Further, the type of analysis that is required will depend on the context of a particular project....The following hypothetical examples may illustrate, however, how section 15064.4(a) could operate:

> **Project 2**: a large commercial development is proposed in an suburban context. Heavy-duty machinery would be required in various construction phases spanning many months. Following construction, the development would rely on electricity, water and wastewater services from the local utilities. Natural gas burners would be used on site. The development would employ several hundred workers and

> attract thousands of customers daily. A traffic study has been prepared for the project. The local air quality management district's guidance document recommends that projects of similar size and character should use URBEMIS, or another similar model, to estimate the air quality impacts of the development.

In the context of Project 2 a quantitative analysis would likely be appropriate. The URBEMIS model, which would likely be used to analyze other emissions, could also be used to estimate emissions from both project-related transportation and on-site indirect emissions (landscaping, hot-water heaters, etc.) Modeling is typically done for projects of like size and character. Other models are readily available to estimate emissions associated with utility use. In the context of Project 2, a lead agency may find it difficult to demonstrate a good faith effort through a purely qualitative analysis. (See, e.g., *Berkeley Keep Jets Over the Bay Com. v. Board of Port Comm.* (2001) 91 Cal.App.4th 1344, 1370...

Factors Potentially Indicating Significance

The qualitative factors listed in the proposed secton 15064.4(b) are intended to assist lead agencies in collecting and considering information relevant to a project's incremental contribution of GHG emissions and the overall context of such emissions. Notably, while subdivision (b) provides a list of factors what should be considered by public agencies in determining the significance of a project's GHG emission, other factors can and should be considered as appropriate.

Determine Whether Emissions Will Increase or Decrease

The first factor in subdivision (b), for example, asks lead agencies to consider whether the project will result in an increase or decrease in different types of GHG emissions relative to the existing environmental setting. All project components, including construction and operation, equipment and energy use, and development phases must be considered in this analysis. (State CEQA Guidelines, § 15378 (Project includes "the whole of the action").)...

This section's reference to the 'existing environmental setting' reflects existing law requiring that impacts be compared to the environment as it currently exists. (State CEQA Guidelines, § 15125.) This clarification is necessary to avoid a comparison of the project against a 'business as usual' scenario as defined by ARB in the Scoping Plan. Such an approach would confuse 'business as usual' projections used in ARB's Scoping Plan with CEQA's separate requirement of analyzing project effects in comparison to the environmental baseline. (*Compare* Scoping Plan, at p. 9 ('The foundation of the Proposed Scoping Plan's strategy is a set of measures that will cut greenhouse gas

> emissions by nearly 30 percent by the year 2020 as compared to business as usual.' *with Fat v. County of Sacramento* (2002) 97 Cal.App.4th 1270, 1278 (existing environmental conditions normally constitute the baseline for *environmental* analysis); see also *Center for Bio. Diversity v. City of Desert Hot Springs*, Riverside Sup. Ct. Case No. RIC464585 (August 6, 2008) (rejecting argument that a large subdivision project would have a 'beneficial impact on CO2emissions' because the homes would be more energy efficient and located near relatively uncongested freeways). Business as usual may be relevant, however, in the discussion of the 'no project alternative' in an EIR. (State CEQA Guidelines, § 15126(e)(2) (no project alternative should describe what would reasonably be expected to occur in the future in the absence of the project).)...

Thresholds of Significance

The second factor in subdivision (b) asks whether a project exceeds a threshold of significance for GHG emissions...

> Several agencies have developed, or are in the process of developing, thresholds of significance for GHG emissions. For example, thresholds are currently being developed, or have already been adopted by the Bay Area Air Quality Management District for operations and construction, the City of Davis for residential developments, and the South Coast Air Quality Management District for industrial projects. Regardless of the threshold chose, however, this section does not alter the pre-existing rule under CEQA that if substantial evidence supports a fair argument that a project may result in significant impacts, despite *compliance* with a threshold, an EIR must be prepared. (*Meija v. City of Los Angeles* (2005) 130 Cal. App.4th 322, 342.) Further, 'in preparing an EIR, the agency must consider and resolve every fair argument that can be made about the possible significant environmental effects of a project, irrespective of whether an established thrshold of significance has been met with respect to any given effect." (*Protect the Historic Amado Waterways, supra,* 116 Cal.App.4th at 1109.)
>
> Consistent with the above, if relying on a threshold developed by another agency, lead agencies must exercise caution in selecting a threshold to ensure that the threshold is appropriately applied...Some agencies have adopted 'thresholds' pursuant to other laws that may not be applicable in the CEQA context. ARB has adopted several thresholds pursuant to AB32, for example, to address specific purposes that are unrelated to CEQA. For example, the *de minimus* threshold governs the level at which emissions will be regulated by ARB's AB 32 regulations. (Health & Safety Code, § 38561(e); Scoping Plan, at pp. 96-97.) CEQA does not permit use of a *de minimus* threshold, however...Additionally, the Reporting Threshold is the level at which emissions from large industrial sources are required to be reported.

Consistency with a Plan or Regulation

Finally, the third factor in subdivision (b) directs consideration of the extent to which a project complies with a plan or regulation to reduce GHG emissions. That section further states, however, that to be used for the purpose of determining significance, a plan must contain specific requirements that result in reductions of GHG emissions to a less than significant level. This clarification is necessary because of the wide variety of climate action plans and GHG reduction plans that are currently being adopted by public agencies. ARB, for example, recently adopted its statewide Scoping Plan. That plan may not be appropriate for use in determining the significance of individual projects, however, because it is conceptual at this state and relies on the future development of regulations to implement the strategies identified in the Scoping Plan. (Scoping Plan, at p. 9.) Regulations that will require actual reductions of GHG emissions may not be adopted until 2012. (*Ibid.*) Once those regulations are adopted and being implemented, they may, if appropriate, be used to assist in the determination of significance, similar to the current use of air quality, water quality and other similar environmental regulations. (*CBE, supra* 103 Cal.App.4th at 111...

In addition to the regulations that will be developed to implement the Scoping Plan, this factor would also allow lead agencies to consider plans that are developed to reduce GHG emissions on a regional or local level. (Scoping Plan, at p. 26.) The proposed section 15064.4(b)(3) is intended to be read in conjunction with the section 15064(h)(3), as proposed to be amended, and proposed section 15183.5. Those sections each indicate that local and regional plans may be developed to reduce GHG emissions. If such plans reduce community-wide emissions to a level that is less than significant, a later project that complies with the requirements in such a plan may be found to have a less that significant impact.

Notably, CEQA does not provide a specific definition of 'comply' in the context of determining a project's consistency with a particular plan. Some guidance may be gleaned, however, from case law interpreting the requirements that a local government's activities be consistent with its General Plan. In that context, a 'zoning ordinance [for example] is consistent with the city's general plan where, considering all of its aspects, the ordinance furthers the objectives and policies of the general plan and does not obstruct their attainment.' (*City of Irvine v. Irvine Citizens Against Overdevelopment* (1994) 25 Cal.App.4th 868, 879.) **Reading section 15064.4 together with 15064(h)(3), however, to demonstrate consistency with an existing GHG reduction plan, a lead agency would have to show that the plan actually addresses the emissions that would result from the project.** Thus, for example, a subdivision project could not demonstrate 'consistency' with the ARB's Early Action Measures because those measures do not address emissions resulting from a typical housing subdivision. (ARB,

Expanded List of Early Action Measures for Reduce Greenhouse Gas Emissions in California Recommended for Board consideration, October 2007; see also State CEQA Guidelines, §§ 15063(d)(3) (initial study must be supported with information to support conclusions), 15128 (determination in an EIR that an impact is less than significant must be briefly explained).) (Emphasis added)

SECTION 15064.7. THRESHOLDS OF SIGNIFICANCE

Specific Purposes of the Amendment

Proposed subdivision (c) of section 15064.7 would allow a lead agency to adopt a threshold developed by another agency, or recommended by experts, provided that such threshold is supported with substantial evidence...In adopting any threshold of significance, including one developed by an expert or agency with specialized expertise, the lead agency must support the threshold with substantial evidence in the administrative record. (State CEQA Guidelines, § 15064.7(b).)...Because any threshold must be supported with substantial evidence, and must be adopted through a public process, any threshold recommended by an expert that is ultimately adopted will undergo sufficient scrutiny to ensure its legitimacy. (State CEQA Guidelines, § 15064.7(b).)

SECTION 15126.4 CONSIDERATION AND DISCUSSION OF MITIGATION MEASURES PROPOSED TO MINIMIZE SIGNIFICANT EFFECTS.

Specific Purposes of the Amendment.

Section 21083.05 of the Public Resources Code expressly requires OPR and the Resources Agency to develop regulations on the 'mitigation of greenhouse gas emissions.' The goals of this legislative mandate are to (1) reduce GHG emissions and (2) to provide consistency in the development of GHG emissions reduction measures...

Existing section 15126.4 provides guidance on CEQA's general mitigation requirements. To emphasize that mitigation of GHG emissions is subject to those existing CEQA requirements, OPR and the Natural Resources Agency added a new subdivision (c) to the existing section 15126.4. The Amendments identify five general methods of mitigation that may be tailored to the specific circumstances surrounding a specific project...

<u>Mitigation of Greenhouse Gas Emissions</u>

Comments submitted on the Amendments indicated general concerns that mitigation for GHG emissions may not be effective or reliable. To further clarify the existing mitigation requirements that would apply to measures to reduce greenhouse gas emissions, the

Natural Resources Agency revised the lead-in sentences in subdivision (c). Specifically, the Natural Resources Agency added that all mitigation must be supported with substantial evidence and be capable of monitoring or reporting. This addition reflects the requirement in Public Resources Code that a lead agency's findings on mitigation be supported with substantial evidence and that it must adopt a mitigation monitoring and reporting program along with the project if mitigation measures are required. (Public Resources Code, §§ 21081(a)(1), 21081.6.)...

Consistent with section 15126.4)a), a lead agency must support its choice of, and its determination of the effectiveness of, any reduction measures with substantial evidence. Substantial evidence in the record must demonstrate that any mitigation program or measure is [sic] will result in actual emissions reductions...

Measures to be Implemented on a Project-by-Project Basis

Finally, the fifth type of measure that could reduce GHG emissions at a planning level is the development of binding measures to be implemented on a project-specific basis. Proposed subdivision (c)(5) recognizes that, for a planning level decision, appropriate mitigation of GHG emissions may include the development of a program to be implemented on a project-by-project basis...

This type of mitigation is subject to the limits of existing law, however, Thus, proposed subdivision (c) (5) should not be interpreted to allow deferral of mitigation. Rather, it is subject to the rule in existing section 15126.4 (a) (1)(B) that such measures 'may specify performance standards which would mitigate the significant effect of the project and which may be accomplished in more than one specified way.'

SECTION 15130. DISCUSSION OF CUMULATIVE IMPACTS

Specific Purposes of the Amendment

<u>Section 15130(b)(1)(B)</u>

Section 21083(b) of the Public Resources Code requires that an EIR be prepared if the 'possible effects of a project are individually limited but cumulatively considerable.' that section further defines 'cumulatively considerable' to mean that 'the incremental effects of an individual project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.'

In determining whether a project may have significant cumulative impacts, a lead agency

> must engage in a two-step process. First, it must determine the extent of the cumulative problem. To do so, a lead agency must examine the 'effects of past projects, the effects of other current projects, and the effects of probably future projects.' Once it does so, the lead agency then determines whether the project's incremental contribution to that problem is cumulatively considerable...
>
> The existing Guideline section 15130(b) addresses the first step of the process. It offers two options for estimating the effects resulting from past, present and reasonably foreseeable projects. A lead agency may either rely on a list of such projects, or a summary of projections to estimate cumulative impacts. Existing section15130(b)(1)(B) allows a lead agency to rely on projections in a land use document or certified environmental document that addresses the cumulative impact under consideration...
>
> The proposed amendments would also allow a lead agency to rely on information provided in regional modeling programs. The best projections of the cumulative effect of GHG emissions may be available in up-to-date models such as the International Council for Local Environmental Initiative's Local Government GHG Protocol and the California Climate Action Reserve's Registry general, industry and project type protocols. (Ex. T, California Natural Resources Agency, *Final Statement of Reasons for Regulatory Action, Amendments to the State CEQA Guidelines Addressing Analysis and Mitigation of Greenhouse Gas Emissions Pursuant to SB 97,* pp. 20-28, 30, 46, 49, 50, 53, 54)

The Initial Study failed to quantify GHG emissions that could result from the proposed project, and such quantification is reasonably necessary to ensure adequate analysis of GHG emissions using available data and tools, and such quantification would assist in determining the significance of those emissions. URBEMIS is one model that is widely used in CEQA air quality analyses and can also be used to analyze a project's GHG emissions. In fact, the local air quality management district's guidance document recommends that projects of a similar size and character to a large commercial development proposed in a suburban context "should use URBEMIS, or another similar model, to estimate the air quality impacts of the development..." Ex. T, p. 23.

In addition, in June 2010, the BAAQMD adopted recommended thresholds with two alternatives for determining significance for most nonindustrial development projects. One is a bright-line threshold of 1100 MT/year of carbon dioxide equivalent emissions. The other recommended threshold is a per capita threshold of 4.6 MT/yr of CO2-equivalent emissions, based on the service population of the project. Ex. S, CEB, *Practice Under the California Environmental Quality Act,* § 20.81A, p. 20-100.

The Housing Element EIR states that BAAQMD has updated their CEQA air quality guidelines and "adopted significance standards for GHGs on June 2, 2010." The updated CEQA Air

Quality Guidelines includes significance thresholds, assessment methodologies, and mitigation strategies for GHG emissions. Ex. C, p. V.I-12. The recently adopted GHG thresholds of significance, as discussed in BAAQMD's May 2010 CEQA Air Quality Guidelines, includes two sets of GHG thresholds: one that would apply to specific development projects, and another threshold that would apply to plan-level CEQA analysis. *Ibid.*

The California Resources Agency has identified "the Bay Area Air Quality Management District's proposed Best Management Practices for Construction Greenhouse Gas Emissions (calling for use of alternative fuels, local building materials and recycling" as performance-based standards that are appropriate to use in determining significance of GHG emissions. Ex. T, p. 22.

The Initial Study has not provided substantial evidence that the project's GHG emissions, and/or the project's percentage reduction from business as usual ("BAU") correlates with statewide, regional or local goals. The IS's claim that GHG impacts would not be significant was not supported by substantial evidence that the project's energy-efficiency goals, construction- related GHG emission goals, and transportation-related GHG emission goals would be reached.

Moreover, the IS failed to consider "whether the project will result in an increase or decrease in different types of GHG emissions relative to the existing environmental setting. All project components, including construction and operation, equipment and energy use, and development phases must be considered in this analysis." Ex. T, p. 24. Instead, the IS evaluated the project's consistency with applicable local and regional plans for GHG reduction rather than considering whether the project will "result in an increase or decrease in different types of GHG emissions relative to the existing environmental setting." Thus, the IS erroneously used existing plans as the baseline against which potential project effects were analyzed, instead of increases or decreases in different types of GHG emissions relative to the existing environment.

The IS's consistency evaluation was supported by the bald claim that the project would comply with various regulations and programs relating to energy efficiency, waste reduction, tree planting and landscaping, etc. This analysis was inadequate because it was not based on a project specific analysis of potential impacts and the specific effect of regulatory compliance. Also, the environmental evaluation did not commit the project sponsor to implementation of specific performance criteria as mitigation measures agreed as a condition of approval of the project or objective performance criteria for measuring whether the project would achieve the goals of such programs or regulations.

The Initial Study states that "construction-related emissions would still have the potential to conflict with or obstruct implementation of the applicable air quality plan...Both construction and long-term operational emissions have the potential to result in emissions that could conflict with or obstruct implementation of the applicable air quality plan. IS p. 144. "As described above, construction and operation of the proposed project or project variant would generate criteria air

pollutant and ozone precursor emissions that would contribute to regional air emissions and affect regional air quality. It is possible that the levels of emissions generated during construciton or operation could violate or contribute substantially to an existing or projected air quality violation." IS pp. 144-145.

The Initial Study's claim that the project would comply with various plans or regulations to reduce GHG emissions is also deficient because the IS has failed to show that the plans or regulations contain specific requirements that would result the proposed project's reducing GHG emissions to a less than significant level. Ex. T, p. 26. The IS has failed to show that the referenced plans or regulations actually address that emissions that would result from this proposed project or project variant. Ex. T, p. 27.

Thus, the IS has failed to comply with CEQA because it has failed to determine the extent to which the proposed project either increases or decreases GHG emissions, by comparing the project's emissions to the current environment and whether the anticipated GHG emissions associated with the project exceed a threshold of significance set by the lead agency or another agency with jurisdiction over resources affected by the project.

Moreover, the IS's GHG analysis is deficient under CEQA because it failed to provide substantial evidence that the proposed project's percentage reduction in GHGs from business as usual would correlate with achieving AB 32's statewide goal of reducing emissions by approximately 30 percent below BAU by 202, or other applicable goals of the City or other agencies. The IS lacks substantial evidence to show that the proposed project would reduce its GHG emissions to levels that would be consistent with achieving applicable state, regional, local or other agency GHG reduction goals.

The IS does not present substantial evidence demonstrating that project GHG emissions would be consistent with SB 32's goal of reducing GHG emissions by 40% below 1990 levels by 2030 (IS p. 147, fn. 124), of the goals of Executive Order S-3-05 to reduce emissions to 1990 levels by 2020, and to reduce emissions to 80% below 1990 levels by 2050 (IS p. 147 fn. 121), or the targets of Executive Order B-30-15 of reducing GHG emissions to 40 percent below 1990 levels by 2030. (IS p. 147, fn. 122) Also, the IS inadequately relied on the claim that San Francisco has met the State and regional 2020 GHG reduction targets citywide, but this proposed project would have significant adverse air emissions from 7-15 years of construction and operations which would result for years after 2020, so the GHG analysis analysis should have been performed for a a longer time-range.

In addition, the IS failed to implement mitigation measures requiring as a condition of approval that during operations and construction the project proponent implement enforceable measures that would ensure that targeted reductions in GHG emissions would be met, and that compliance with applicable programs and regulations would actually occur.

For the reasons stated above, the IS failed to follow CEQA procedures in determining the significance of the project's effect on GHG emissions, failed to support with substantial evidence in the record its determination that the project's and project variant's effect on GHG emissions would not be significant, and failed to provide substantial evidence in the record showing that the project and project variant's percentage reduction in GHGs in comparison with business as usual would correlate with achieving state, regional or local goals.

8. The Determination that the Project Could Not Have Significant Growth-Inducing Impacts is Not Supported by Substantial Evidence.

As required by section 15126.2(d) of the CEQA Guidelines, an EIR must consider the ways in which the proposed project could directly or indirectly foster economic or population growth, or the construction of additional housing, either directly or indirectly, in the surrounding environment.

Implementation of the proposed project would require numerous zoning changes to establish new land use controls for the project site. As previously discussed herein, retail and new office uses are not allowed by the existing zoning set forth in Resolution 4109, and the project would propose to construct housing units in excess of the approximately 508 housing units allowed under Resolution 4109. The zoning changes sought and resulting land uses would change the mix and types of land uses that could be developed on the project site, and would allow for increased building heights and density.

The EIR should analyze whether the proposed project and project variant would result in residential development at a greater average housing density per acre than currently exists on the project site or in the immediate project vicinity.

Also, implementation of the proposed project would include the expansion of infrastructure for the provision of new or expanded distribution lines for water, gas and electrical service and sewer system lines.

The proposed project could be growth inducing if it would extend water supply infrastructure and/or gas and electric distribution infrastructure or sewer service infrastructure beyond what is necessary to serve uses proposed under the project.

The IS states that the project would include construction of new natural gas and sewer lines to serve the project site. IS p. 119. However, the IS provides no support for its conclusion that this infrastructure would not indirectly induce substantial population growth in the project area because the project site is an infill site surrounded by existing development and "the proposed infrastructure improvements would be sized to meet only project needs and would not enable additional development." IS p. 119. The project description did not include specifications as to

the sizing of new or expanded infrastructure or impose limitations on its size as an enforceable condition of approval of the project.

The following mitigation measure should be adopted as a condition of approval of the proposed project:

> **MITIGATION MEASURE.** The EIR will set forth technical specifications that show without question that proposed infrastructure improvements installed in connection with the project would be sized to meet only the needs of the project or project variant as proposed in the project description in the EIR and would not enable additional development; a qualified professional engineer will review the proposed specifications and sign a report verifying that such specifications will allow such infrastructure to only meet the needs of the project or project variant as proposed in the project description in the EIR and would not enable additional development; such report will be included in the Draft EIR and submitted for public comment; and the project approval will incorporate as enforceable mitigation measures such technical specifications that specifically provide that infrastructure installed on and/or nearby the project site would be sized to meet only the needs of the project or project variant as proposed in the project description in the EIR and would not enable additional development.

Absent substantial evidence to support the conclusion that no indirect impacts related to population growth as a result of expansion of infrastructure would occur, the evidence contained in the IS supports a fair argument that the expansion of infrastructure could indirectly foster population growth. The EIR must analyze this impact as a potentially significant impact.

Also, CEQA Guidelines section 15126.2(d) recognizes that increases in the population may tax existing community service facilities, requiring construction of new facilities that could cause significant environmental effects. The EIR should analyze in detail whether the project's demand for water, gas, electricity and sewer service could adversely affect the current supply of water, gas, electricity and sewer service to residences surrounding the site or in the immediate vicinity, so that new or expanded connections could be required.

9. The Project Description is Not Stable.

For purposes of CEQA, a "project" is defined as comprising "the whole of an action " that has the potential to result in a direct or reasonably foreseeable indirect physical change to the environment. 14 CCR section 15378(a).

The Initial Study lists approval of a subdivision map by San Francisco Public Works as an approval that would be required to implement the proposed project or project variant. IS p. 86.

However the Initial Study fails to provide any information on the nature of the subdivision that would be sought, including whether spaces proposed to be used for retail or office uses would be subdivided. The EIR should disclose all information in the possession of the City as to the nature of the subdivision that would likely be sought.

In addition, the Initial Study indicates that the Walnut Street extension would be a pathway, and the EIR should clarify that approval would not be sought to make the Walnut Street extension a public street or public right of way. The EIR should also clarify that approval would not be sought to divide the project site into blocks, because the whole site is now one lot and block.

The project description and objectives are artificially narrow and preclude consideration of reasonable alternatives for achieving the project's underlying purpose. By describing the project as "mixed-use," the Initial Study seeks to prejudice the consideration of other adaptive reuse alternatives, such as all-residential development, which would conform with the existing zoning. The proposed project, however, would conflict with the existing land use controls, including controls prohibiting retail uses and new office uses at the site, heights in excess of 40-feet, violation of open space and rear yard requirements, and would seek other deviations. The project description and objectives would require numerous zoning changes, so is not an of-right project. The community has supported new residential construction, and the project objectives should be corrected to seek to achieve adaptive reuse of this historically significant resource in a manner which complies with applicable land use controls and avoids or substantially reduces significant impacts on the environment under CEQA standards. An all-residential alternative should be included in the EIR so as not to artificially limit alternatives considered by omitting information from the EIR that is highly relevant to the Board of Supervisors, which would have to approve zoning changes to permit the project as proposed to proceed.

Further, the report of the project sponsor's consultant as to preservation alternatives states that all new construction proposed in the preservation alternative has been designed to the greatest extent that is technically feasible "to be comparable in square footage to the proposed Project or Project Variant." Ex. U, Page & Turnbull, 3333 California Street, Preservation Alternatives Report, excerpts, p. 8. According to the IS, the proposed project would have a total of 1,372,270 gross square feet, whereas the existing uses on the site occupy a total of 469,000 gross square feet. IS pp. 9, 21. The project variant would occupy a total of 1,476,987 gsf. Ex. U, p. 82. The EIR must clarify the actual objectives of the proposed project so as not to preclude consideration of reasonable alternatives for achieving the project's underlying purpose. Considering this information, together with the other information in the IS, it is unclear whether the project objectives are to build mixed-use development, to rezone the site to allow retail and new office uses and increased height limits, to achieve an amount of square footage of development that is now sought by the proposed project or project variant, or to achieve feasible adaptive reuse of a historically significant resource.

In addition, the project description is unstable in that the Initial Study indicates that the project proponent would seek a development agreement that would permit a 15-year period for construction and "limit the City's ability to rezone the site for a set period of time." IS p. 23. Thus, the development described in the Initial Study may not be the full extent of the contemplated development, especially in view of the proposed removal of the 4th floor of the existing office building and the strengthening of the building to accommodate additional floors.

The EIR must disclose all information as to the number of additional floors that the strengthening of the structure is being designed to accommodate and all other designs that are being prepared to accommodate expansion. Is the strengthening of the building being designed to accommodate more floors than three, and if so, how many such additional floors? The Initial Study discloses only that two to three stories are proposed to be added to the existing building. Also, are any of the new buildings being designed to accommodate expansion, and how many additional floors are they being designed to accommodate? An Initial Study must consider all phases of project planning, including phases planned for future implementation. 14 CCR section 15063(a)(1). The EIR must also disclose all available information as to the terms of the proposed development agreement that the project proponent and/or the City is considering.

Additional floors added to buildings would allow space for more residential units or other uses sought by the developer, and could increase the number of occupants or users of the site, and the consequent volumes of traffic, air emissions, noise and shadows. The impact of shadow would be greater if more than two to three additional stories were added to the existing building. Thus, the information sought is relevant to analysis of environmental impacts.

Very truly yours,

Kathryn Devincenzi

ATTACHMENTS

Ex. A - E-mails dated March 22 and 28, 2018 with Planning Department

Ex. B - 14 California Code of Regulations section 15000 *et seq.* ("CEQA Guidelines"), Appridix G, excerpts

Ex. C - San Francisco 2004 and 2009 Housing Element EIR, excerpts

Ex. D - EIR for Pier 70 Mixed-Use District Project, excerpts

Ex. E - Nomination of Fireman's Fund Insurance Company Home Office for Listing in the National Register of Historic Places, excerpts

Ex. F - State Office of Historic Preservation File on California Historical Landmark #760, excerpts

Ex. G - Photographs

Ex. H - Langan Treadwell Rollo Preliminary Geotechnical Investigation dated 3 December 2014, excerpts

Ex. I - October 12, 2017 e-mail from Dan Safier

Ex. J - San Francisco Urban Forest Plan, excerpts

Ex. K - Residential Design Guidelines, excerpts

Ex. L - 2014 San Francisco Housing Element, excerpts

Ex. M - Preliminary Project Assessment, excerpts

Ex. N - Resolution 4109 and Stipulation as to Character of Improvements

Ex. O - Developer's calculation of permitted densities

Ex. P - Initial Study for 1629 Market Street, excerpts

Ex. Q - San Francisco Planning Department Shadow Analysis Procedures and Scope Requirements

Ex. R - February 28, 2016 Letter from Fitzgerald to San Francisco Planning Department

Ex. S - CEB, *Practice Under CEQA*, excerpts

Ex. T - California Natural Resources Agency, *Final Statement of Reasons for Regulatory Action, Amendments to the State CEQA Guidelines Addressing Analysis and Mitigation of Greenhouse Gas Emissions Pursuant to SB97*, excerpts

Ex. U - Page & Turnbull, *3333 California Street, Preservation Alternatives Report*, excerpts

Ex. V - Urban Design Element of San Francisco General Plan, excerpts

525 Laurel St.

San Francisco, CA 94118

8 June, 2018

Julie Moore,

Senior Planner

Environmental Planning Division

San Francisco Planning Department

1650 Mission St., San Francisco

Dear Ms. Moore,

Find enclosed my comments to the "Initial Study 3333 California Street Mixed Use Project", Planning Department Case No. 2015-014028ENV dated April 25, 2018.

As the Environmental Planning Division would not grant my request for an extension while I await answers to a series of questions previously submitted I will be submitting subsequent comments.

As of this date I am still not in possession of the answers to those questions.

I look forward to receiving them in a timely fashion.

Respectfully

F. Richard Frisbie

RECEIVED

JUN 08 2018

CITY & COUNTY OF S.F.
DEPT. OF CITY PLANNING
RECEPTION

COMMENTS ON 3333 CALIFORNIA STREET INITIAL STUDY DATED APRIL 25, 2018

AND VERSION 2, DATED MAY 14, 2018

GREENHOUSE GAS EMISSIONS (see note 1)

EXECUTIVE SUMMARY

The Initial Study's (Reference 4 to this submission) conclusion on page 146 per the Table, items 7(a) and (b) as well as on page 148 "Impact C-GG-1" that the construction phase of the project will generate "Less than significant" Greenhouse Gases is incomplete, inaccurate, inadequate and invalid.
The approximate 105,500 tons of Greenhouse Gases generated as a consequence of the construction phase of the proposed development plan submitted by PSKS is approximately 3% of San Francisco's Total Citywide goal for the year 2025; hardly a "less than significant" tonnage.

The All Residential(AR) alternative supported by the coalition of neighbors surrounding 3333 will generate less than a third (32,250 tons) of the Greenhouse Gases generated by the PSKS plan as a consequence of their construction phase but will also fully protect all of the historically significant main building and landscaping.

The City has not adequately analyzed the significant and harmful Greenhouse Gases generated as a consequence of the construction phase. This needs addressing in the upcoming EIR study. The facts are overwhelming.

Notes:
(1) This document focuses on the generation and release of Carbon Dioxide generated as a consequence of the construction phase.
However, the other Greenhouse Gases associated with this type of work –methane, nitrous oxide, etc.- although present at much lower levels than carbon dioxide have a GWP (Global Warming Potential) anywhere from 25-300 times greater than carbon dioxide (Reference 11).
This impact has not been taken into account in our numbers but it is assumed that the EIR addresses **ALL** of the harmful Greenhouse Gases generated as a consequence of the construction phase.
This note applies to ALL Greenhouse Gas tonnages in this document.

INTRODUCTION

Reference 4 Section E. 7 - Greenhouse Gas Emission pages 146-150:
Impact C-AQ-1 (Potentially Significant). "Potential cumulative air quality impacts will be addressed in the EIR."

Table: 7 GREENHOUSE GAS EMISSIONS (page 146)

Would the project:

(a) "Generate greenhouse gas emissions, either directly or indirectly (underline added), that may have a significant impact on the environment?"
"Less Than Significant" is checked.

(b) "Conflict with any applicable plan, policy or regulation adopted for the purpose of reducing emissions of greenhouse gases?"
"Less Than Significant" is checked.

Not a single calculation, analysis, compilation or comparison is presented to support these inadequate conclusions of "Less Than Significant."
These conclusions are incomplete, inaccurate, inadequate and invalid in toto.
The project proposed by the developers (PSKS) would generate as a consequence of the construction phase alone approximately

105,500 TONS OF GREENHOUSE GASES (see Note 1)

which is approximately 3% of San Francisco's Total Carbon Emissions Goal of 3,721,169 for the year 2025 (Reference 3).
Due to the complete absence of any supporting data, as well as Planning's delayed response to relevant questions, it has been necessary to make some assumptions in analyzing details of the PSKS plans.
By comparison, the All Residential alternative supported by the coalition of neighbors surrounding 3333 would generate Greenhouse Gases at levels **less than a third (32,250 tons)** of the PSKS levels and less than 1% of the City-wide goal for year 2025.
The All Residential alternative represents a 70% mitigation of these harmful gases to our environment.

Thus, without the relevant data and corresponding analyses based on available air emission models, Planning's conclusions have no basis in fact and are incorrect, incomplete, inadequate and invalid.

On page 148, first paragraph, of reference 4, it is stated "The following analysis of the proposed project....."
In reality there is no analysis whatsoever in the referenced document as to the Greenhouse Gases generated as a consequence of the construction phase which, as shown above, produces significant amounts of harmful Greenhouse gases.
Pages 148-150 speak exclusively to the Operational phase of the project while completely omitting even a reference to the construction phase.

There is no reference made to the type of construction proposed, the material selections made, etc. all of which have profound implications as to the levels of Greenhouse Gases emitted into the atmosphere as a consequence of the construction phase.
I am still awaiting answers to question submitted to Planning on related issues.
It would appear that no analyses have been made, certainly none are presented, as to the Embodied Energy content of the construction methods and materials.
Such analyses would immediately highlight the significant levels of Greenhouse Gases that would be generated as a consequence of the construction phase and highlights the need for mitigation measures.

Due to the absence of data it was necessary to use information listed in the references to develop the approximate levels of Greenhouse Gas tonnages generated as a consequence of the construction phase.
Had the Initial Study, which forms the basis for the EIR, carried out some fairly straightforward analyses we could have compared the results to determine where additional work is required.
At such time as the City provides the necessary technical data, such as the energy required to recycle the main building debris (see note 1), volume of concrete and weight of steel required for the re-construction, etc. the estimated Greenhouse Gas tonnages generated as a consequence of the construction phase could be re-calculated accordingly.

Notes:

1. There appears to be no calculation or consideration in any of the City's documents that addresses the Greenhouse Gases generated by the recycling of the debris from the main building.
   Recycling steel and concrete is energy intensive and needs to be properly accounted for in the Greenhouse Gases budget.
   The only thing more harmful is to simply dispose of reusable materials in a landfill.

DISCUSSION

The Greenhouse Gases generated as a consequence of the Construction phase will be discussed in the following order:

1. Demolition of portions of main building, service building, parking lots, garage ramps.
2. Removal of Debris generated in 1. Above.
3. Excavation of site for underground parking, building foundations, etc.
4. Removal of Spoils generated in 3. Above.
5. Reconstruction, strengthening and increased height of the main building.
6. Construction of underground parking garages.
7. Construction of Masonic, Euclid and Mayfair buildings.
8. Construction of Plaza A & B and Walnut buildings.
9. Construction of Laurel St. duplexes.

1-4: DEMOLTION, EXCAVATION AND REMOVAL OF DEBRIS AND SPOILS.

The first four activities, 1-4, listed above will be looked at together as they basically utilize energy to carry out the activity.

PSKS proposes to demolish approximately 50% of the existing main historic building as well as most of the historic landscaping. In addition, the various parking lots and roadways on the site will be demolished as well as the circular garage ramps. After demolition the debris will be removed and the site will be excavated and the spoils hauled away. Reference 26 shows the approximate amount of fuel, diesel and gasoline, and electricity consumed. Some of this is spread over the construction phase of the building cycle. As items such as the map of the routes selected (Reference 9) have not been made available, but have been requested, it is impossible to judge the reasonableness of some of these calculations.

It should be noted that the 0.05 gallons per horsepower-hour used in the Reference 26 is 10-15% lower than industry data available from multiple sources (see Reference 29, the value 0.056, as an example).

Also of significance, which is not addressed, is the volume of serpentine that could be present and which requires significantly more energy to remove than soils and clays.

The five primary boring sites related to geology are of considerable interest.

Major excavation will take place along Masonic and Euclid and yet no borings were made at any intermediate location along this >600ft segment of the property.

The boring sites appear in Reference 30.

A boring (B-3) was done at Masonic and Presidio where no excavation will take place.

The only other boring on the southern half of the property was taken very near the Euclid-Laurel intersection (B-4) where, again, no excavation will take place.

So, all the excavation for the Masonic and Euclid buildings will be done without any specific first-hand knowledge of the geology at those locations.

And yet it was deemed appropriate to do boring B-5, a site where the Laurel St. duplexes will be constructed and which require significant less critical subsoil information as they do not have underground garages supporting major buildings.

Outcrops of serpentine exist throughout this general area so it is probable that these areas of excavation will encounter significant deposits of serpentine, the excavation of which is far more difficult and energy intensive than for stiff clays etc. as well as posing a health risk which could be of a much greater magnitude than that presented in the Initial Study.
Frankly one could conclude that the boring sites were carefully selected to avoid discovering any controversial conditions that may well underlay the site!

The net result is that the energy discussed in Reference 26 must be considered to be at the very low end of likelihood.
Higher values should be expected and this likelihood should be addressed in the Air Quality and Greenhouse Gas Emissions analyses of the upcoming EIR.
Despite the optimistic view of Reference 26, these phases of the project will still generate approx.

10,500 TONS OF GREENHOUSE GASES

As noted above in the Introduction, no consideration appears to have been made for the energy associated with the recycling of the reusable components of the debris from the main building.
So, what would be a more realistic estimate?
The All Residential alternative would generate approx. a third of that, **3,750 tons,** of Greenhouse Gases.

5. RECONSTRUCTION, STRENGTHENING AND INCREASED HEIGHT OF MAIN BUILDING

First, the remaining portions of the historical main building will require strengthening as it was not originally designed or built to accommodate three additional floors and their related infrastructure.
The volumes of concrete and steel involved will result in significant generation of Greenhouse Gases, no mention of which appears anywhere in the Initial Study!
The EIR should disclose the volumes of concrete and/or weight of wood, as well as the weights of steel and glass that would be used in the PSKS proposed development. This information is relevant to the calculation of Greenhouse Gas Emissions.
Projects involving buildings of this size, and larger, have seen savings of 23,000-100,000 tons of Greenhouse Gases saved through re-use of the building as opposed to major demolition and re-construction.
So, conservatively it can be estimated that this new construction will generate approx.

14,500 TONS OF GREENHOUSE GASES

Had we been provided with information regarding volumes of concrete and weight of steel required for this rebuild, strengthening and height increases, we could have provided a more specific estimate.
It should be noted that concrete has an Embodied Energy Content of 12.5MJ/kg, Steel 11.0MJ/kg. and Wood 2.0MJ/kg.

Concrete is an energy intensive product and generates its own weight in Greenhouse Gases during its production process so a cubic yard of concrete is responsible for 4,000 lbs. of Greenhouse Gases being released into our atmosphere. See References 16, 17, 18 and 23.

This estimated amount of Greenhouse Gas generated would hardly seem to be compatible with Page 146 and the "Less Than Significant" conclusion by the City, further reinforcing the conclusion that the Initial Study is inaccurate, inadequate, incomplete and invalid.

The All Residential alternative generates **0 tons** of Greenhouse Gas emissions.

There is no demolition of the main building; no additional strengthening or structure for additional floors; no rebuilding of the exterior of the main historic building.

However, to take into account modifications for providing sunlight courts, let's assign a number of 2,000 tons of Greenhouse Gases.

6. CONSTRUCTION OF UNDERGROUND PARKING GARAGES.

The site will underpinned by underground parking garages over approx. 60% of the site.

Along California St. these are two and three levels.

Under Masonic, Euclid and Mayfair these are one level.

Construction is assumed to be steel reinforced concrete designed to support the buildings that are above all the parking garage areas.

The EIR should disclose whether this construction would be of reinforced steel as well as provide the volumes of concrete and weight of steel required.

Concrete's Embodied Energy is 12.5MJ/kg., weighs approx. 2 tons per cubic yard and emits its own weight in Greenhouse Gases during the manufacture and construction processes.

As no volumes of concrete or weight of reinforcing steel has been provided by the City, the calculations of Greenhouse Gases generated as a consequence of the construction phase has used industry standards for parking garages (Reference 25).

These are all above ground garages without any overlying buildings so the calculations should be considered on the low end when applied to an underground complex supporting 4-7 story buildings above.

The average cubic yards of concrete to square foot of structural slab ratio varies from 4.5% to 10% (Reference 25).

My calculations assume a 6% ratio which is conservative due to the nature of the complex AND <u>excludes any consideration of the required reinforcing steel.</u>

When Planning provides the necessary information, these calculations can be updated.

Again, with apparently no information, no calculations, etc. Planning concluded that the

<u>49,500 TONS OF GREENHOUSE GASES</u>

generated as a consequence of the construction of the underground parking garages are "Less Than Significant" on page 146 of the Initial Study.

The All Residential alternative generates approx. **18,000 tons** of greenhouse gases, as it requires only a new single level residential parking garage along California St.

7. CONSTRUCTION OF MASONIC, EUCLID AND MAYFAIR BUILDINGS.

Once again it is necessary to include the following caveat "the Initial Study provides no information as to the construction methodology proposed nor the volumes of concrete and weight of steel required."
However, at public meetings, as well as smaller private ones, it was indicated that reinforced concrete and glass would be the primary components of construction so these assumptions have been adopted herein.
Applying References 16-24 with included references to the proposed buildings for reasonably equivalent sized buildings, the proposed buildings would generate approx.

12,000 TONS OF GREENHOUSE GASES.

If Planning will provide the appropriate information concerning construction methodology, materials, volumes of concrete, weight of steel, etc. we can adjust the calculations accordingly.
The All Residential alternative will generate **ZERO tons** of Greenhouse Gases as we do not intend to destroy these historically significant landscaped areas.

8. CONSTRUCTION OF PLAZA A & B AND WALNUT BUILDINGS.

The same assumptions as to construction methodology applied in 7 above is utilized herein.
These three buildings will generate

18,500 TONS OF GREENHOUSES GASES WITH THE VARIANT PROPOSED.

The All Residential alternative would generate less than **8,500 tons** of greenhouse gases. For details refer to References 16-24 with included references. For consistency I have used a 7 story Walnut Building for this 8,500 tons estimate although the All Residential alternative achieves 558 residential units with a 4 story Walnut Building. The 8,500 tons is therefore a very high number.

9.CONSTRUCTION OF LAUREL ST. DUPLEXES.

It is assumed that these are constructed predominantly of wood should generate less than

500 TONS OF GREENHOUSE GASES.

If this assumption is incorrect the tonnage of greenhouse gases generated would be significantly higher.
I await Planning's information on construction methodology.
The All Residential alternative concept will generate **ZERO tons** of Greenhouse Gases as it does not envision destruction of the historic nature of that area.

REFERENCES

1. FN120a: Executive Order 5-3-05
2. FN122: Executive Order B-30-15
3. San Francisco Planning Department (Planning): "Strategies to Address Greenhouse Gas Emissions, 6 pgs.
4. Initial Study 3333 California St. Mixed Use Project (3333) Case No. 2015-014028ENV April 28, 2018
5. Version 2 of Reference 4 dated May 14, 2018.
6. FN118: Planning "2017 Green house Gas Reduction Strategy Update" Revised July 2017.
7. FN130: Planning "Compliance Checklist Greenhouse Gas Analysis.
8. FN39: "Cut and Fill Calculation Overall" Webcor Builders dated 4/12/17.
9. FN38: Email series beginning from Brad Denney to Peter Alexander Mye et al Dated October 23, 2017.
10. Email, Pedro Wong to Julie Moore dated May 25, 2018 EIR Scoping Comments.
11. "Fuel Economy Ranges for Light and Heavy Vehicles" Fact 626 DOE dated June 7, 2010.
12. "Greenhouse Gas Emissions from a Typical Passenger Vehicle" EPA-420-F-18-008 dated March 2018.
13. "Calculation Sheet-Combustible Emissions" including all references; EPA.
14. "Greenhouse Gas Benefits of Building Re-Use versus New Construction-A Presentation before the Federal Facilities Council", National Academy of Sciences dated January 29, 2013.
15. "Preserving Historical Buildings: The Most Sustainable Thing is Not to Build New Stuff" The Guardian dated 12 October 2016.
16. "Estimation and Minimization of Embodied Carbon of Buildings-A Review" including all references; published In "Buildings" 4 January 2017.
17. "Carbon dioxide reduction in building life cycle: a critical review" including all references; published as Paper No. 11000005 in The Institute of Civil Engineering, ICE, 31/07/2012.
18. "The Environmental Impact of Concrete" published in "en.n.wikipedia.org including all references.
19. "What Building Material-Wood, Steel, Concrete- has thye Smallest Environmental Impact?"; published as "umass.edu/natsci397a" including all references.
20. "Evaluating the Carbon Footprint of Wood Buildings-Reducing Greenhouse Gases"; published by "reThinkwood.com" March/April 2013 issue of Green Source, including all references.
21. 21. "The Carbon Footprint of a Renovation versus New Construction"; published in "Sustainable Product Design March 18, 2008.
22. "Plyscrapers" published in "futurism.com/plyscrapers " August 26 2017.

23. "Cutting Embodied Carbon in Construction Projects", published by Wrap "Material Change for a Better Environment" including all references.
24. "Energy and CO2 Advantages of Wood for Sustainable Buildings", Andy Buchanan University of Canterbury including all references.
25. "Parking Garages" www.clevelandcement.com.
26. FN317 "3333 California Street Mixed Use Development Energy Assessment" prepared by SWCA dated April 12 2018.
27. U.S. Energy Information Administration "How much carbon dioxide is produced per kilowatt of U.S. energy generation?" updated April 5 2018.
28. Pacific Gas and Electric Company "Carbon Footprint Calculator Assumptions" 3 pages.
29. "Diesel engine power to Fuel Consumption" published my Barrington Diesel Club, 10-01-2017
30. FN40 "Site Plan with Boring Locations" from Langan Treadwell Rollo Report.

SUMMARY OF GRRENHOUSE GENERATED (tons)

PHASE of PROJECT	GREENHOUSE GASES-TONS	
	PSKS	AR (1)
Demolition of portions of main building, service building, parking lots, garage ramps; Removal of Debris generated above; Excavation of site for underground parking, building foundations, etc.; and Removal of Spoils generated above. References: 26, 27, 28. x	10,500 (2)	3,750
Reconstruction of main building with strengthening and additional floors. References: 14 thru 19.	14,500	2,000
Construction of underground parking garages.	49,500 (3)	18,000
Construction of Masonic, Euclid & Mayfair buildings.	12,000	0
Construction of Plaza A & B and Walnut buildings.	18,500	8,500 (4)
Construction of Laurel St. duplexes.	500	0
TOTALS (5)	105,500	32,250

1. AR: All Residential alternative supported by the coalition of neighbors surrounding the site.
2. The literature indicates that the fuel consumption listed in Reference 26 is approx. 10-15% lower than other industry consumption figures. The lower SWCA (reference 26) number is used.
3. Low estimate: approx. 26,000 cubic yards of concrete; no reinforcing steel included.
4. As noted previously this number is based on a 7 story Walnut Building to be consistent with the PSKS Variant. The All Residential alternative envisions a 4 story Walnut Building which achieves the requisite 558 residential units.
5. At such time as Planning provides all the relevant data associated with the project the Greenhouse Gas tonnage estimates can be revised.
   However, regardless of revisions to the tonnages, the All Residential alternative will <u>always</u> represent a small, less than one third, portion of the PSKE proposed development and the required mitigation measures will have to reflect this.

COMMENTS TO E 14: HYDROLOGY AND WATER QUALITY; INITIAL STUDY 3333 CALIFORNIA STREET MIXED USE PROJECT

Planning Department Case No. 2015-014028ENV April 25, 2018(reference 1)

On page 216 of the Initial Study (IS), reference 1, the IS states that the project could have significant impact if it could:

c) "Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, in a manner that would result in substantial erosion or siltation on- or off-site?"
This is restated in Impact HY-3 on page 222 of reference 1.
An underground stream or flow of water is equally as relevant (and potentially more impactful) as a more visible surface stream. There is no indication in the Initial Study that this has been considered.
Planning nevertheless checked "Less Than Significant Impact."

d) "Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, or substantially increased the rate or amount of surface runoff in a manner that would result in flooding on- or off-site?"
This is also restated In Impact HY-3 on page 222.
Again, as noted above, underground flow of water is equally as important and requires equal consideration.
Planning checked "Less Than Significant Impact."

As discussed below these conclusions are not supported by substantial evidence inasmuch as the factual data and analysis upon which they are based are insufficient to support the determination of "no-significant impact."
The City failed to use best efforts to investigate and disclose all that it reasonably can with respect to the project's potential adverse impacts.
The IS's analysis failed to consider the impact of the project on underground flows of water and did not make a finding as to whether the existing underground drainage patterns of the site or area could be affected.

DISCUSSION

The Preliminary Geotechnical Investigation conducted (FN40) by Langan Treadwell Rollo dated 3 Dec. 2014 (Reference 2), page 5, table 1 shows 5 borings with Depth to Groundwater varying from 18.8 feet to 38.8 feet.
However the Phase I Environmental Site Assessment (FN244) by Langan Treadwell Rollo dated 3 Dec. 2014 (Reference 3) page 8 states "However, two borings at the Firemen's Credit Union site (northeast of the site) encountered groundwater levels as shallow as 13 feet bgs."
The Firemen's Credit Union is immediately adjacent to 3333, and is part of the same block. It is not a separate site geologically or hydrologically.

Reference 3 further states "The direction of groundwater flow is *assumed* (italics and underlining added) to be to the northeast, based on topography and the groundwater monitoring reports for 3201 California Street; *however* the site is located near the boundary between the Downtown and Westside Groundwater Basins, *so it is possible* that the groundwater flow direction *varies* across the site."
It is clear from the above that Langan Treadwell Rollo, as well as Planning, has not conducted an investigation that would be adequate to assess the hydrology of the site, including the direction to which the groundwater flows.

The IS states that dewatering the groundwater would likely be required during construction because the depth of excavation would be up as much as 40 feet below ground surface and the groundwater level at the project site is "about 18 to 39 feet below ground surface (IS, page 219).
Actually the groundwater is almost certainly much closer to the surface as noted in reference 3 above as well as for reasons that will be discussed in this section.

There is clearly a subsurface flow of this groundwater. What is it, what is its flow rate and in what direction does it flow?
It would appear prudent to better understand the situation before beginning to excavate up to 40 feet bgs as well as essentially building a concrete dam in the form of underground garages that would stretch from Laurel St. to Presidio Ave., and completely block off any flow across the entire site.
At present there is only minimal obstruction, as the underground garage is a very small portion of the Laurel to Presidio distance and the buildings foundations present a minimal barrier to this subsurface flow.

What is the underground water going to do if this project is constructed?
We know the groundwater under the site will be diverted.
It is reasonable (if we had better data it would probably show with certainty) to conclude that the groundwater diverted by the below ground construction will have considerably higher flow velocities and energy at whatever point(s) it departs the site as the flow will be concentrated at the end(s) of the underground concrete barrier (parking garages).
We know that these higher subsurface flow rates and energies will create higher erosion rates and could lead to flooding at a downstream location due to these higher flow rates.
What are these higher erosion rates going to do to the foundations of buildings exposed to an entirely

new flow regime, none of which existed when they were constructed?
What analysis has been done concerning these potential impacts on the buildings along the lower portion of Laurel St and Presidio Ave.?

Unfortunately these are not the only shortcomings of the data presented in the Initial Study.
Nor are they the most damaging to the conclusions reached as to Impact HY-3.
A review of the boring logs indicates the borings were carried out August 20-26, 2014 and generated the groundwater bgs data that appears in table 1, page 5 of FN40, reference 2.
The August 2014 date leaps out like a red flag; as it should have for everyone associated with FN 40 and the Initial Study.

California entered the most severe drought in its history in 2011 and did not exit it until 2017.
August 2014 is the approximate midpoint in this period so any of the FN40 groundwater levels quoted are those determined three years into a prolonged severe drought.
Essentially such data are irrelevant for a normal year(s) and consequentially egregiously understate the hydrological condition of the site.

According to Wikipedia (with additional support in the article's references), "2011-2017 California Drought" (reference 4) page 2: "By February 1, 2014, Felicia Marcus, the chairwoman of the State Water Resources Control Board, claimed the 2014 drought 'is the most serious drought we've faced in modern times.'"
On the same page; "According to NASA, tests published in January 2014 have shown that the twelve months prior to January 2014 were the driest on record, since record-keeping began in 1885."
The references included in this document further reinforce the historic shortfalls of rain during this drought.

Per weather.com/science/environment/news/california-drought-seconds-20141009 (reference 5) page 1: "As a result, 2013 was California's **driest year ever recorded** (emphasis in the report).
San Francisco, which usually averages 23.65 inches of rain a year, only experienced 5.60." This is approximately 24% of a normal year.
The map on page 16 of "275 California drought maps show deep drought and recovery" LA Times April 7, 2017 (reference 6), included at the end of this document, shows the extent and severity of the drought as of Aug.3, Aug. 12, Aug. 19, Aug. 26, Sept.2 – which is the precise period in which the borings took place.

So, in the midst of a record drought, one that was already three years in extent; after the driest year on record (2013); after a year that produced less than 24% of the normal rainfall; and then after five months of a normal zero rainfall dry season the developer commissioned Langan Treadwell and Rollo to carry out borings with one of the specific objectives to determine the depth of groundwater below surface!
It is inconceivable, literally, to conjure up a more perfect set of circumstances to produce a more misleading series of conclusions more amenable and favorable to the developers' plan.
It is also perplexing that Planning has accepted these results on face value, has done no analysis or

research of its own to validate the reasonableness of these results; and has used these results as the basis for a finding of “Less Than Significant.”

As a minimum, the conclusions of Impact HY-3 are inaccurate, inadequate, incomplete and invalid. Due to the total absence of relevant analysis and data, the IS failed to consider the impact on the existing underground drainage patterns of the site. The IS discusses impacts on surface runoff and fails to analyze the impact of the construction of the project on the alteration of the existing drainage pattern of the site, including through the alteration of the course of a subsurface stream or river.
The EIR should analyze whether the project could alter the existing drainage pattern of groundwater or alter the course and/or characteristics of the underground water flows.
It should also analyze the potential impact on existing buildings in the vicinity of the site as a result of the alterations to underground water flows.

REFERENCES

1. Initial Study 3333 California Street Mixed Use Project Planning Department Case No. 2015-014028ENV dated April 25, 2018.
2. FN40: Langan Treadwell Rollo " Preliminary Geotechnical Investigation 3333 California Street" dated 3 Dec. 2014.
3. FN244: Langan Treadwell Rollo "Phase I Environmental Site Assessment 3333 California Street" dated 3 Dec. 2014
4. "2011-2017 California Drought" www.en.wikipeida.org and references.
5. "weather.com/science/environment/news/california-drought-seconds-20141009
6. "275 California drought maps show deep drought and recovery" LA Times April 7, 2017 with data from US Drought Monitor.

525 Laurel St.

San Francisco, CA 94118

27 June, 2018

Julie Moore,

Senior Planner

Environmental Planning Division

San Francisco Planning Department

1650 Mission St., San Francisco

Dear Ms. Moore,

Find enclosed my comments to Section E 14: Hydrology and Water Quality contained in the "Initial Study 3333 California Street Mixed Use Project", Planning Department Case No. 2015-014028ENV dated April 25, 2018.

I will hand deliver a copy of the comments within the next few days. As previously noted, I can provide copies of the references if you are unable to access them online as I did.

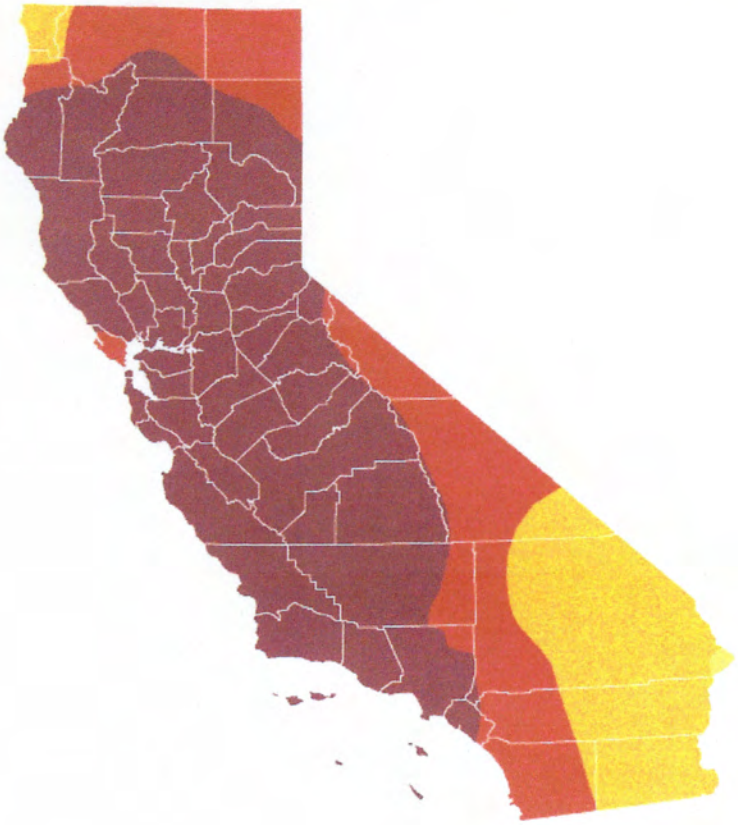
In addition, as the Environmental Planning Division would not grant my request for an extension while I was awaiting answers to a series of questions previously submitted I will be submitting subsequent comments based on the responses.

As of this date I am still not in possession of the responses to those questions.

I look forward to receiving them in a timely fashion.

Respectfully

F. Richard Frisbie



Aug. 5

Aug. 12

Aug. 19

Aug. 26

Sept. 2

Sept. 09

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SACRAMENTO, CA 94296-0001
(916) 445-7000 Fax: (916) 445-7053
calshpo@parks.ca.gov

August 31, 2018

John Rothman, President
Kathryn Devincenzi, Vice President
Laurel Heights Improvement Association of San Francisco
22 Iris Avenue
San Francisco, California 94118

RE: **Fireman's Fund Insurance Company, Determination of Eligibility National Register of Historic Places**

Dear Mr. Rothman and Ms. Devincenzi:

I am writing to inform you that on August 29, 2018, Fireman's Fund Insurance Company was determined eligible for the National Register of Historic Places (National Register). As a result of being determined eligible for the National Register, this property has been listed in the California Register of Historical Resources, pursuant to Section 4851(a)(2) of the California Code of Regulations.

There are no restrictions placed upon a private property owner with regard to normal use, maintenance, or sale of a property determined eligible for the National Register. However, a project that may cause substantial adverse changes in the significance of a registered property may require compliance with local ordinances or the California Environmental Quality Act. In addition, registered properties damaged due to a natural disaster may be subject to the provisions of Section 5028 of the Public Resources Code regarding demolition or significant alterations, if imminent threat to life safety does not exist.

If you have any questions or require further information, please contact Jay Correia of the Registration Unit at (916) 445-7008.

Sincerely,

Julianne Polanco
State Historic Preservation Officer

Enclosure

Print Form

Appendix C

Notice of Completion & Environmental Document Transmittal

Mail to: State Clearinghouse, P.O. Box 3044, Sacramento; CA 95812-3044 (916) 445-0613
For Hand Delivery/Street Address: 1400 Tenth Street, Sacramento, CA 95814

SCH # 2017092053

Project Title: 3333 California Street Mixed-Use Project

Lead Agency: San Francisco Planning Department — Contact Person: Julie Moore
Mailing Address: 1650 Mission Street, 4th Floor — Phone: (415) 575-8733
City: San Francisco — Zip: 94103 — County: San Francisco

Project Location: County: San Francisco — City/Nearest Community: San Francisco
Cross Streets: California Street, Presidio, Masonic, and Euclid avenues, Laurel Street, and Mayfair Drive — Zip Code: 94118
Longitude/Latitude (degrees, minutes and seconds): 37° 47′ 10.3″ N / 122° 26′ 52.5″ W — Total Acres: 10.25 acres
Assessor's Parcel No.: Assessor's Block 1032 / Lot 003 — Section: N/A — Twp.: N/A — Range: N/A — Base: N/A
Within 2 Miles: State Hwy #: State Hwy 1, U.S. 101 — Waterways: San Francisco Bay
Airports: None — Railways: SF Muni, BART — Schools: Presidio Early Educatio

Document Type:

CEQA: ☐ NOP ☐ Early Cons ☐ Neg Dec ☐ Mit Neg Dec ☐ Draft EIR ☐ Supplement/Subsequent EIR (Prior SCH No.) ____ Other: ____
NEPA: ☐ NOI ☐ EA ☐ Draft EIS ☐ FONSI
Other: ☐ Joint Document ☐ Final Document ☐ Other: ____

Local Action Type:

☐ General Plan Update ☐ General Plan Amendment ☐ General Plan Element ☐ Community Plan
☐ Specific Plan ☐ Master Plan ☐ Planned Unit Development ☐ Site Plan
☐ Rezone ☐ Prezone ☐ Use Permit ☐ Land Division (Subdivision, etc.)
☐ Annexation ☐ Redevelopment ☐ Coastal Permit ☒ Other: AB900

Development Type:

☒ Residential: Units 558 Acres ____
☒ Office: Sq.ft. 49,999 Acres ____ Employees ____
☒ Commercial: Sq.ft. 54,117 Acres ____ Employees ____
☐ Industrial: Sq.ft. ____ Acres ____ Employees ____
☐ Educational: ____
☐ Recreational: ____
☐ Water Facilities: Type ____ MGD ____
☐ Transportation: Type ____
☐ Mining: Mineral ____
☐ Power: Type ____ MW ____
☐ Waste Treatment: Type ____ MGD ____
☐ Hazardous Waste: Type ____
☒ Other: Childcare 14,690 sq. ft.

Project Issues Discussed in Document:

☐ Aesthetic/Visual
☐ Agricultural Land
☐ Air Quality
☐ Archeological/Historical
☐ Biological Resources
☐ Coastal Zone
☐ Drainage/Absorption
☒ Economic/Jobs
☐ Fiscal
☐ Flood Plain/Flooding
☐ Forest Land/Fire Hazard
☐ Geologic/Seismic
☐ Minerals
☐ Noise
☐ Population/Housing Balance
☐ Public Services/Facilities
☐ Recreation/Parks
☐ Schools/Universities
☐ Septic Systems
☐ Sewer Capacity
☐ Soil Erosion/Compaction/Grading
☐ Solid Waste
☐ Toxic/Hazardous
☒ Traffic/Circulation
☐ Vegetation
☐ Water Quality
☐ Water Supply/Groundwater
☐ Wetland/Riparian
☐ Growth Inducement
☐ Land Use
☐ Cumulative Effects
☒ Other: Greenhouse Gas

Present Land Use/Zoning/General Plan Designation:

Residential, Mixed, Low Density [RM-1] Zoning District and 40-X Height and Bulk District

Project Description: *(please use a separate page if necessary)*

Conversion of a 10.25-acre office campus, most recently occupied by the University of California San Francisco, to a mixed-use (primarily residential) development. An existing annex building, surface parking lots and garage ramp structures would be demolished. The existing office building would be partially demolished and divided into 2 separate buildings, expanded to include new levels and adapted for residential use. The project proposes 13 new buildings on the perimeter of the site. At buildout the project will have 558 dwelling units; 49,999 gross sq. ft. of office space; 54,117 gross sq. ft. of retail space; a child care center; garages with 895 parking spaces; and approx. 236,000 sq. ft. of open areas. A variant is being considered that would eliminate the office use and provide 186 additional dwelling units for a total of 774 units, and 971 parking spaces.

Note: The State Clearinghouse will assign identification numbers for all new projects. If a SCH number already exists for a project (e.g. Notice of Preparation or previous draft document) please fill in.

Revised 2010