

Law Offices of  
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Received in  
Committee - 11/9/15  
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November 9, 2015

Budget and Finance Committee  
San Francisco Board of Supervisors  
c/o Ms. Angela Calvillo  
Clerk of the Board of Supervisors  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102-4689

Re: November 9, 2015 Budget and Finance Committee, Warriors Arena Project CEQA Findings, Resolution 150994

Dear Committee Members:

This office represents the Mission Bay Alliance ("Alliance"), an organization dedicated to preserving the environment in the Mission Bay area of San Francisco, regarding the project known as the Event Center and Mixed Use Development at Mission Bay Blocks 29-32 ("Warriors Arena Project" or "Project"). The Mission Bay Alliance objects to approval of the Project for the following reasons.

1. The Project SEIR does not comply with CEQA, as described in the Alliance's many comments on the SEIR submitted to the Successor Agency. Over the last three months, the Mission Bay Alliance has reviewed and commented on material inadequacies in the Project's expedited environmental review process. This Committee and the Board of Supervisors cannot fully consider and adequately mitigate the Project's many significant impacts without the benefit of an EIR that complies with CEQA.

The CEQA findings adopted by the OCII and the SFMTA are, therefore, premature and unsupported, as explained in the Alliance's comments on the Draft Subsequent Environmental Impact Report ("DSEIR"), as well as letters submitted following the Final SEIR.

Please refer to the following letters previously submitted and incorporated by reference:

From the Law Offices of Thomas N. Lippe:

- (1) November 2, 2015, letter to OCII and Planning Department re: Comments on Final Subsequent Environmental Impact Report for the Warriors Arena Project Re Air Quality, Transportation, Hydrology, Water Quality, Biological, and Noise Impacts, including:
- (2) As Exhibit A thereto, a November 2, 2015, letter from John Farrow, including

- (3) As Exhibit 1 to Exhibit A, November 2, 2015, letter report from Paul Rosenfeld and Jessie Jaeger of SWAPS to Thomas Lippe, re Comments on the Event Center and Mixed-Use Development Project at Mission Bay Blocks 29-32.
- (4) As Exhibit C thereto, a November 2, 2015, report by Greg Gilbert, Autumn Wind Associates.
- (5) As Exhibit F thereto, a November 2, 2015, letter from Dan Smith.
- (6) As Exhibit G thereto, a November 2, 2015, letter from Larry Wymer.
- (7) As Exhibit H thereto, a November 2, 2015, letter from Matt Hageman.
- (8) As Exhibit I thereto, a November 2, 2015, letter from Erik Ringelberg and Kurt Balasek.
- (9) As Exhibit J thereto, a November 2, 2015, letter from Erik Ringelberg.
- (10) As Exhibit K thereto, a July 16, 2015, BSK Technical Memorandum Regarding the Proposed Warrior Arena Wetland Features by Erik Ringelberg and Kevin Grove.
- (11) As Exhibit L thereto, an October 29, 2015, Draft Waters and Wetland Delineation Report Proposed Mission Bay Development, Blocks 29-32 San Francisco, California, by Erik Ringelberg and Kevin Grove of BSK Associates.
- (12) November 2, 2015, letter to OCII re: Warriors Arena Project: Violation of Variance Requirement.
- (13) November 5, 2015, letter to Planning Commission re: Warriors Arena Project: Planning Codes section 321 and 305, General Plan Inconsistency and CEQA Findings.
- (14) July 24, 2015, letter regarding impacts on Hydrology, Water Quality, and Biological Resources, including:
- (15) July 21, 2015, letter report authored by Matt Hageman, P.G., C.Hg., QSD, QSP;
- (16) July 21, 2015, letter report authored by Erik Ringelberg, B.Sc., M.Sc., Ph.D candidate; and Kurt Balasek, PG, CHg, QSD.
- (17) July 25, 2015, letter regarding impacts on Noise and Vibration, including:
- (18) July 24, 2015, letter report authored by acoustic engineer Frank Hubach.

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- (19) July 26, 2015, letter regarding impacts on Air Quality, including:
- (20) July 19, 2015, letter report authored by Greg Gilbert; and
- (21) July 20, 2015, letter report authored by Paul Rosenfeld, Ph.D, and Jessie Jagger.
- (22) July 27, 2015, letter regarding impacts on Transportation, including:
- (23) July 23, 2015, letter report authored by traffic engineer Dan Smith; and
- (24) July 21, 2015, letter report authored by traffic engineer Larry Wymer.

From the law firm of Soluri Meserve:

- (25) November 3, 2015, Letter to the San Francisco Municipal Transportation Agency, Board of Directors regarding their November 3, 2015, Agenda Item No. 13.
- (26) November 2, 2015, Letter to the OCII and San Francisco Planning Department regarding the Environmental Review for Warriors Event Center and Mixed-Use Development at Mission Bay Blocks 29-32.
- (27) October 20, 2015, letter to the San Francisco Planning Department regarding Supplemental Comments on Environmental Review for Warriors Event Center and Mixed-Use Development at Mission Bay Blocks 29-32 - Updated Soil and Screening Levels.
- (28) October 7, 2015, Letter to the San Francisco Planning Department regarding Supplemental Comments on Environmental Review for Warriors Event Center and Mixed-Use Development at Mission Bay Blocks 29-32 - Clean Water Act 404 and CZMA Consistency.
- (29) July 9, 2015, Letter to the San Francisco Planning Department regarding Notice of Incomplete Record for Warriors Event Center Environmental Review.
- (30) 9. July 26, 2015, letter regarding impacts on Geology and Soils, Recreation, Hazardous Materials, , Greenhouse Gases, Wind and Shadow, Utilities and Service Systems, Public Services, Energy and Urban Decay, including:
- (31) July 22, 2015, letter report authored by air quality professionals Patrick Sullivan, CPP, REPA, and Joh Henkelman, regarding Greenhouse Gas Emissions;
- (32) July 22, 2015, letter report authored by geotechnical engineer Lawrence Karp, CE, CEG, regarding Geology and Soils impacts;

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(33) July 22, 2015, letter report authored by engineering geologist Marin Cline, CEG, and hydrogeologist Kurt Balasek, PG, CHg, QSD, regarding Geology and Soils impacts);

(34) July 22, 2015, letter report authored by geotechnical engineer Martin Cline, GEG and Kurt Balasek, PG, CHg, QSD, regarding Hazardous Materials; and

(35) July 22, 2015, letter report authored by economist Philip King, Ph.D., regarding Urban Decay.

(36) June 29, 2015, letter regarding the City's failure to comply with AB 900 record keeping procedures and the resultant ineligibility of the Project for AB 900's litigation fast track procedures.

From the Brandt-Hawley Law Group:

(37) October 13, 2015, letter to the OCII the potentially-feasible alternate site adjacent to Pier 80.

(38) November 3, 2015, letter to the OCII regarding inadequate CEQA findings and inadequate SEIR responses to comments relating to land use plan inconsistencies, potentially-feasible project alternatives, and cultural resources.

(39) 8. July 26, 2015, letter regarding impacts on Land Use, Aesthetics, Cultural Resources, and Project Alternatives.

From Thomas Lippe, Susan Brandt-Hawley, Patrick Soluri, and Osha Meserve jointly:

(40) July 26, 2015, letter regarding EIR tiering;

(41) July 26, 2015, letter regarding litigation streamlining under AB 900.

2. The Project does not comply with the Mission Bay South Redevelopment Plan as discussed in my November 5, 2015, letter to the Planning Commission attached as Exhibit 1.

3. The Project does not comply with the San Francisco General Plan as discussed in my November 5, 2015, letter to the Planning Commission attached as Exhibit 1.

4. The Project does not comply with Proposition M, as codified at Planning Code Section 320 et seq and Planning Commission Motion 17709, and is it is ineligible for allocation of any office space under Planning Code section 321 and Motion 17709, as discussed in my November 5, 2015, letter to the Planning Commission attached as Exhibit 1.

5. The Board of Supervisors cannot find that "Impact AQ-4: Potential conflicts with



BAAQMD's 2010 Clean Air Plan" is less than significant with mitigation because the City and Project Sponsor refuse to agree to BAAQMD's offset fees per Mitigation Measure M-AQ-2b. (See Exhibits 4 and 5.) There is also no evidence that the "Option 2" offset idea within Mitigation Measure M-AQ-2b is feasible. There are too many unanswered questions regarding Option 2, including lack of assured verification of offsets to ensure their effectiveness, and lack of assurance that offset sources are available in the quantity required. BAAQMD's offset program at least answers some, if not all, of these questions.

The Commission cannot find that all feasible mitigation measures that would substantially reduce "Impact AQ-1: Impacts of Criteria Air Pollutants from Construction" have been adopted as required by CEQA section 21081, because there is no evidence that paying the offset fees demanded by BAAQMD is infeasible. Also, as discussed above, there is no evidence that the "Option 2" offset idea within Mitigation Measure M-AQ-2b is feasible; therefore, it is not an adequate substitute for BAAQMD's offset program. This also applies to:

- Impact AQ-2: Impacts of Criteria Air Pollutants from Project Operations; and
- Impact C-AQ-1: Project Contribution to Regional Air Quality Impacts.

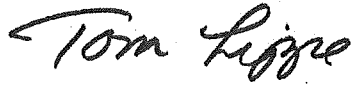
6. The Commission cannot find that feasible alternatives that would substantially reduce the Project's significant impacts have been adopted. The SEIR does not analyze the alternate site proposed by the Alliance near Pier 80, and did not circulate that analysis for public comment. Neither OCII nor this Commission has the basis to make conclusory findings rejecting the alternative. Among the relevant facts not considered in the findings is that the site is three times as large as would be required for the Event Center project and need not utilize any of the City-owned property nor any particular configuration of the privately-owned lots should there be an unwilling seller. There is no evidence provided that the site could not be acquired within a reasonable time period.

Case law confirms that assuring a site's consistency with city plans and zoning is within the City's power. Similarly, the scheduling of transportation services to the site can be increased, and the findings provide no studies to back up conclusory statements regarding traffic, air quality, hydrology, or water quality impacts. Since only a third of the site is needed to accommodate the event center, all of the impacts (if shown to have concern after sufficient technical review) can be avoided or mitigated. As stated in the Alliance letter to OCII that proposes this site for consideration as an alternative, here incorporated by reference, the SEIR failed to consider a potentially-feasible off-site alternative and must be revised and recirculated to do so before findings of infeasibility may be considered or adopted. The site suggested by the Alliance is potentially feasible and deserving of study.

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Thank you for your attention to this matter.

Very Truly Yours,

A handwritten signature in black ink that reads "Tom Lippe". The signature is written in a cursive, flowing style.

Thomas N. Lippe

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November 5, 2015

President Rodney Fong and Members of the Planning Commission  
City and County of San Francisco  
1650 Mission Street, Suite 400  
San Francisco, CA 94103

**Re: Warriors Arena Project: Planning Codes section 321 and 305, General Plan  
Inconsistency and CEQA Findings.**

Dear Commission President Fong and Members of the Commission:

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This office represents the Mission Bay Alliance (“Alliance”), an organization dedicated to preserving the environment in the Mission Bay area of San Francisco, regarding the project known as the Event Center and Mixed Use Development at Mission Bay Blocks 29-32 (“Warriors Arena Project” or “Project”). The Mission Bay Alliance objects to approval of this Project and certification of the Project SEIR.

**1. The Project is ineligible for any office space allocation under Planning Code section 321 and Motion 17709.**

**a. This Project does not comply with the Design for Development.**

Resolution 14702 and Motion 17709 require that any project in the Alexandria District must comply with the Mission Bay South Design for Development in order to be eligible for any office space allocation. (See Motion 17709, p. 9, Finding 9,<sup>1</sup> Finding 10<sup>2</sup>.)

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<sup>1</sup>“This schedule of phased authorization will ensure that, in accord with Resolution 14702, adequate office space can be allocated to those projects within the Development District that are determined to be in compliance with the D for D requirements, while also complying with Section 321 of the Planning Code forbidding exceedance of the square footage available for allocation in any given annual cycle.”

<sup>2</sup>“Pursuant to Resolution 14702, the Commission is charged with determining whether a project seeking authorization conforms to applicable standards in the D for D Document, which supersedes the criteria set forth in Section 321 and other provisions of the Code except as provided in the MBS Plan. The projects previously approved were determined to have met the MBS Redevelopment Plan and the D for D Document standards and guidelines, and requirements for childcare, public art, and other provisions of the Plan Documents, and retain

This Project does not comply with the Design for Development, as evidenced by the many amendments that the Successor Agency made to the Design for Development to accommodate the Project. Therefore, it is ineligible for allocation of any office space under Planning Code section 321 and Motion 17709.

**b. This Project is inconsistent with the Redevelopment Plan.**

A basic premise of the Planning Commission decisions in Resolution 14702 and Motion 17709, and a fundamental rationale for “superseding” section 321’s guidelines in favor of the Redevelopment Plan and Redevelopment Plan documents, were the Commission’s findings that the Redevelopment Plan met standards set in section 321, the San Francisco Master Plan, the priority policies in Planning Code section 101.1, and the requirements of redevelopment law. In short, in order to be eligible for the office space allocation available under motion 17709, the Project must be consistent with the Redevelopment Plan.

This Project is inconsistent with the Redevelopment Plan because, as demonstrated in the November 2, 2015, letter from Susan Brandt-Hawley, my co-counsel for the Alliance (attached as Exhibit 1), this Project is not an allowable secondary use under the Redevelopment Plan. However, in the alternative, as shown in my November 2, 2015, letter (attached as Exhibit 2), if the Project is an allowable secondary use under the Redevelopment Plan, then it requires a variance under section 305 of the Plan before Project approval.

**2. The office space allocation requested for this Project exceeds the amount authorized for the Alexandria District.**

In 1986, San Francisco voters passed Proposition M, a referendum limiting the amount of office space that can be approved each year. Codified as Section 321 of the San Francisco Planning Code, it provides that “[n]o office development may be approved during any approval period if the additional office space in that office development, when added to the additional office space in all other office developments . . . would exceed 950,000 square feet.” (San Francisco Planning Code § 321(a)(1).) Office space is defined to mean “construction . . . of any structure” that has the “effect of creating additional office space.”

The current Project plans call for the construction of two office towers on Mission Bay South Parcels 29 and 31, comprising 309,436 square feet and 267,486 square feet of office space, respectively, for

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that design approval, along with all previously imposed conditions of approval. Future projects requesting authorization will be brought before the Commission for design review in accord with Resolution 14702, and upon determination by the Commission that such proposals are in conformity with the D for D and other applicable requirements, office space may be allocated for such new structures from the unassigned amount available in the Development District.”

a total of 576,922 square feet of office space. (Executive Summary, p. 2.)

In 2008, the Planning Commission adopted Motion No. 17709. Motion 17709 approved a cumulative total office space allocation for all projects within the Alexandria Development District of 1,350,000 gross square feet. (Motion 17709, p. 9, Finding 9.) Of that amount, 1,222,980 was allocated before the adoption of Motion 17709. (Motion 17709, p. 5, Finding 4, Table 1.) Therefore, at the time Motion 17709 was proposed, 227,020 gsf of unallocated office remained for allocation. (Motion 17709, p. 9, Finding 9, Table 4.)

According to Motion 17709, there were three pending projects at that time, at 600 Terry Francois, 650 Terry Francois, and 1450 Owens Street. Motion 17709 states that these projects represented 665,880 square feet of "potential office space." (Motion 17709, p. 5, Finding 5, Table 2.) Motion 17709 also states an intent to authorize only 57% of "potential office space" for actual office space after 10/18/09, 53% of "potential office space" for actual office space after 10/18/10, and 50% of "potential office space" for actual office space after 10/18/11.

Motion 17709 does not state how much actual office space was approved for the three pending projects at 600 Terry Francois, 650 Terry Francois, and 1450 Owens Street. The Planning Department's Office Development Annual Limitation Program record (attached as Exhibit 3) shows "0\*" in the "size" column for these projects. (Exhibit 3, p. 19.) Assuming the Planning Commission allocated office space to these projects at the 57% ratio, that amount is 379,552 gsf (665,880 x .5). **This amount exceeds the remaining office space available for allocation at that time (i.e., 227,020 gsf).**

According to Motion 17709, there were two additional areas where the applicant indicated an intent to develop "potential office space," namely, MB South Blocks "29 and 31" and "33-34." (Motion 17709, p. 5, Finding 6, Table 3.) Motion 17709 states that these possible future projects represented 915,700 square feet of "potential office space," with Blocks "29 and 31" at 515,700 GSF. (Motion 17709, p. 5, Finding 6, Table 3.)

Assuming, again, that the Planning Commission allocated office space to these areas at the 50% ratio, that amount is 457,850 GSF (915,700 x .5), with 257,850 allocated to Blocks "29 and 31" at 257,850 gsf (515,700 x .5).

The Draft Motion proposed for adoption at today's hearing states that "Blocks 29-32 are included in the Development District and have been allocated a total of 677,020 sf of office space pursuant to Motion No. 17709." (Draft Motion, p. 3.) This is incorrect in at least four ways.

First, it is unclear and unstated how Planning staff derived the 677,020 gsf number.

Second, after approval of the office space allocation for the three pending projects at 600 Terry Francois, 650 Terry Francois, and 1450 Owens Street, there was no office space left in the

Alexandria District to allocate - as discussed above.

Third, even if one adds together the “potential office space” numbers for Blocks 29-32 in Motion 17709, the sum is 1,119,999 gsf, and 50% of that is only 560,000 gsf. The two office towers proposed for this Project require 576,922 gsf. (See Executive Summary, pp. 1-2: 309,436 gsf in the South tower and 267,486 gsf in the 16<sup>th</sup> Street tower). This number exceeds 560,000 gsf.

Fourth, when one adds the 25,000 gsf for office space in the arena building (see SEIR p. 3-17), the office space for this project totals 601,922 gsf (i.e., 576,922 plus 25,000), which also exceeds 560,000 gsf.

Fifth, to the extent there was any office space left for Motion 17709 to allocate after approval of the office space allocation for the three pending projects at 600 Terry Francois, 650 Terry Francois, and 1450 Owens Street, Motion 17709 allocated only 257,850 gsf to Blocks 29 and 31 (i.e., 50% of 515,700) pursuant to Finding 6, Table 3. **The 576,922 gsf of office space in the two office towers for this Project are located in Blocks 29 and 31; and the total of 576,922 gsf vastly exceeds the 257,850 gsf that may arguably be available.**

Because the office towers called for in the Project exceed the allowable office space cap, Section 321(a)(1) and Motion 17709 require the Planning Commission to deny approval of the Project and of the requested allocations of office space.

### 3. General Plan Inconsistency: BAAQMD.

San Francisco Master Plan Policy 4.1 states:

Support and comply with objectives, policies, and air quality standards of the Bay Area Air Quality Management District.

Regionwide monitoring of air quality and enforcement of air quality standards constitute the primary means of reducing harmful emissions. The conservation of San Francisco's air resource is dependent upon the continuation and strengthening of regional controls over air polluters. San Francisco should do all that is in its power to support the Bay Area Air Quality Management district in its following operations:

- Monitoring both stationary and mobile sources of air pollution within the region and enforcing District regulations for achieving air quality standards.
- Regulating new construction that may significantly impair ambient air quality.
- Maintaining alert, permit, and violations systems.
- Developing more effective controls and method of enforcement, as necessary

The attached letter from the Bay Area Air Quality Management District (Exhibit 4) and the City's response (Exhibit 5) show that this Project does not comply with this policy.

The Alliance previously commented on the Draft SEIR (Comment AQ-7) that the per ton charge for emission offsets is too low to achieve complete offset of the Project's emissions. The City's response to comments on this point is cagey, but it does suggest what now turns out to be fact - that the BAAQMD agreed with the comment - because the response states:

SF Planning has been in communication with BAAQMD with regard to its suggestion that a higher fee may be warranted to offset project emissions to a less than significant level and found that BAAQMD could not establish that an increased rate beyond that of the Carl Moyer Program plus a five percent administrative fee could meet the "rough proportionality" standard required under CEQA.

(RTC, p. 13.13-67.) The RTC's rationale for contending that a higher offset fee would not meet the "rough proportionality" standard is that offset fees in other areas of the state are not higher than the offset fee proposed in the DSEIR. This is an error of law. The "rough proportionality" requirement requires a comparison of the cost of the mitigation to the degree of severity of the impact. The fees charged in other areas of the state are irrelevant to "rough proportionality."

#### **4. CEQA Findings: General**

The Commission cannot make any CEQA findings required by CEQA section 21081 or CEQA Guidelines 15091, 15093, 15096(f), because the Project SEIR does not comply with CEQA and is not certifiable, for the reasons described in the Alliance's comments on the SEIR.

#### **5. CEQA Findings: BAAQMD.**

The Commission cannot find that "Impact AQ-4: Potential conflicts with BAAQMD's 2010 Clean Air Plan" is less than significant with mitigation because the City and Project Sponsor refuse to agree to BAAQMD's offset fees per Mitigation Measure M-AQ-2b. (See Exhibits 4 and 5.) There is also no evidence that the "Option 2" offset idea within Mitigation Measure M-AQ-2b is feasible. There are too many unanswered questions regarding Option 2, including lack of assured verification of offsets to ensure their effectiveness, and lack of assurance that offset sources are available in the quantity required. BAAQMD's offset program at least answers some, if not all, of these questions.

The Commission cannot find that all feasible mitigation measures that would substantially reduce "Impact AQ-1: Impacts of Criteria Air Pollutants from Construction" have been adopted as required by CEQA section 21081, because there is no evidence that paying the offset fees demanded by BAAQMD is infeasible. Also, as discussed above, there is no evidence that the "Option 2" offset idea within Mitigation Measure M-AQ-2b is feasible; therefore, it is not an adequate substitute for BAAQMD's offset program. This also applies to

- Impact AQ-2: Impacts of Criteria Air Pollutants from Project Operations"; Impact C-AQ-1: Project Contribution to Regional Air Quality Impacts;

- Impact C-AQ-1: Project Contribution to Regional Air Quality Impacts.

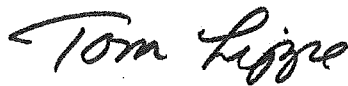
**6. CEQA Findings: Pier 80 Alternate Site.**

The Commission cannot find that feasible alternatives that would substantially reduce the Project's significant impacts have been adopted. The SEIR does not analyze the alternate site proposed by the Alliance near Pier 80, and did not circulate that analysis for public comment. Neither OCII nor this Commission has the basis to make conclusory findings rejecting the alternative. Among the relevant facts not considered in the findings is that the site is three times as large as would be required for the Event Center project and need not utilize any of the City-owned property nor any particular configuration of the privately-owned lots should there be an unwilling seller. There is no evidence provided that the site could not be acquired within a reasonable time period.

Case law confirms that assuring a site's consistency with city plans and zoning is within the City's power. Similarly, the scheduling of transportation services to the site can be increased, and the findings provide no studies to back up conclusory statements regarding traffic, air quality, hydrology, or water quality impacts. Since only a third of the site is needed to accommodate the event center, all of the impacts (if shown to have concern after sufficient technical review) can be avoided or mitigated. As stated in the Alliance letter to OCII that proposes this site for consideration as an alternative, here incorporated by reference, the SEIR failed to consider a potentially-feasible off-site alternative and must be revised and recirculated to do so before findings of infeasibility may be considered or adopted. The site suggested by the Alliance is potentially feasible and deserving of study.

Thank you for your attention to this matter.

Very Truly Yours,



Thomas N. Lippe



## Brandt-Hawley Law Group

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November 2, 2015

Tiffany Bohee, OCII Executive Director  
c/o Brett Bollinger, San Francisco Planning Department  
via email [warriors@sfgov.org](mailto:warriors@sfgov.org)

Subject: Warriors Event Center & Mixed Use Development  
Inconsistency with Mission Bay South Redevelopment Plan  
'Secondary Use' Classification

Dear Director Bohee and Mr. Bollinger:

The Mission Bay Alliance (the Alliance) contends that the Warriors' Event Center is unlawfully inconsistent with every use allowed by the Mission Bay South Redevelopment Plan (the Plan). Although the Alliance raised this issue in comments on the Draft Subsequent EIR (DSEIR), both the Responses to Comments in the Final SEIR and OCII's findings of project consistency remain materially inadequate.

The Plan designates uses allowed at a 'Commercial Industrial/Retail' site. The Alliance notes that while OCII now concedes that a sports arena is not within the scope of allowed 'principal uses' in that zoning, OCII contends that an arena is consistent with 'secondary uses.' As this letter will explain, all such secondary uses are similarly and demonstrably insufficient to permit the Warriors' sports arena.

**Nighttime Entertainment.** The Initial Study concluded, in error, that the DSEIR did not need to address land use issues — at all. It asserted that the entire Event Center, including the sports arena use, somehow met the secondary 'Nighttime Entertainment' use analyzed in the 1998 Plan EIR. Secondary uses were then generally referenced in the DSEIR (*e.g.*, pp. 3-8, 3-51, 4-5, 5.2-115), but there was no discussion of which category of secondary use would be allocated to the Event Center, inferring acceptance of the Nighttime Entertainment category.

The Plan describes Nighttime Entertainment in terms of small-scale local uses like dance halls, bars, nightclubs, discotheques, nightclubs, private clubs, and

restaurants. (Plan, p. 50.) At the time of the 1998 EIR, several small neighborhood bars occasionally offered nighttime entertainment, consistent with the secondary use category. Such minor uses were compatible with the 3rd Street Corridor and the waterfront. Clearly, no mammoth regional entertainment venue was anticipated in Mission Bay South and no such use was considered in the 1998 Plan EIR.

And while professional basketball games are held at night, the Event Center also projects 31 annual events “related to conventions, conferences, civic events, corporate events and other gatherings,” with an estimated attendance of between 9,000 and 18,500 patrons. “[T]he majority of events are expected to occur during day time hours.” Such events are not ‘Nighttime Entertainment.’

The Director’s currently-proposed findings that the sports arena is ‘Nighttime Entertainment’ contemplated as a secondary use in the Plan are unsupported. The findings fail to match the scope and impacts of a professional sports venue with the analysis or description of uses in the Plan or in the 1998 EIR. The findings are fatally conclusory; that somehow a professional sports venue would be “similar” to a nightclub or bar use in the ‘Nighttime Entertainment’ category “because” it will serve alcohol, provide amplified live entertainment, and provide a venue for evening gatherings. The findings fail to address the core inconsistency of a regional sports arena with the intent of the adopted Plan and the Design for Development, which focus on commercial entertainment uses in Mission Bay North to complement the Giants’ ballpark.

OCII’s reliance on the negative; to wit, that the ‘Nighttime Entertainment’ secondary use has no specific size limitations, is not enough. The Plan provides for the continued development of Mission Bay South as a walkable urban community intended to facilitate world-class medical and biotechnology development. The Event Center project violates the Plan Area Map carefully designed in classic, walkable Vara Blocks. (Plan, Attachment 2, p. 40.) Neither the Plan nor the Design for Development contemplate any uses comparable in scope or impact to the Event Center as ‘Nighttime Entertainment.’

That being said, in fact in the Final SEIR and as reflected in the proposed Plan consistency findings, OCII now implicitly agrees with the Alliance that the ‘Nighttime Entertainment’ secondary use standing alone does not encompass a sports arena. Now, OCII additionally relies on the Plan’s alternate ‘secondary uses.’ No such uses are consistent with the Plan, as explained below.

**Recreation Building.** One of the Plan's secondary use categories is for an undefined 'Recreation building.' (Plan, p. 15.) The Plan describes 'Outdoor Recreation' as "an area, not within a building, which is provided *for the recreational uses of patrons* of a commercial establishment." (Plan, p. 50, italics added.)

OCII's proposed findings as to the 'Recreation building' category stretch the regional sports arena use not only beyond what was contemplated by the Plan or studied in the 1998 EIR, but beyond logic. To state the obvious: there is a difference between 'recreation' and 'entertainment.' Both involve enjoyment and leisure, and may involve ancillary eating and drinking, and the Alliance has no quarrel with the Director's reference to recreation as "something people do to relax or have fun; activities done for enjoyment." (OCII Proposed Secondary Use Determination, p. 6.) But myriad dictionary definitions confirm and it cannot readily be denied that 'recreation' is commonly understood to involve one's personal physical activities while 'entertainment' refers to events or performances designed to entertain others.

None of the Plan's various references to 'entertainment' include athletic activities normally considered 'recreation:' Adult Entertainment [bookstore or theater], Amusement Enterprise [video games], Bar [drinking and theater], Theater [movies and performance]. (Plan, Attachment 5, pp. 44-51.) Consistently, the 1998 EIR's discussion of 'recreational' land uses focused in turn on open space, bicycles, parks, and water-based activities. (Mission Bay EIR, Volume IIB, pp. V.M. 15-28.).

In context, the Plan's reference to 'Recreation building' as a secondary use contemplates participatory recreational uses like the 'recreation facilities' referenced in the 1998 Plan EIR for the existing golf driving range and in-line hockey rink, with the expressed expectation that the size of recreational 'facilities' would decrease as redevelopment of the Plan area progressed. (OCII Proposed Secondary Use Determination, p. 6.)

Reliance on the secondary use of 'Recreation building' is unsupported.

**Public Structure or Use of a Nonindustrial Character.** As presented in the Plan, the category of "other secondary uses" labeled 'Public structure or use of a nonindustrial character' references *one* secondary use, not *two*. (Plan, p. 13.) The use is required to be public, and either a structure *or* a use.

The interpretation urged by the Director is, again, strained beyond the plain words of the Plan. 'Public' is not defined in the Plan and so its common meaning is assumed. But as proposed in the consistency findings, OCII interprets a 'public' use as simply requiring that the public be somehow 'served.' That would encompass every kind of principal and secondary use listed in the Plan, from child care to animal care to hotel, *etc.*, and renders the category meaningless: *i.e.*, "Any use is ok."

Instead, a public structure or use is commonly understood to be under the control and management of a public agency for the benefit of its constituency — such as the University of California<sup>1</sup> or the City of San Francisco. The Plan provides a description of a range of anticipated public improvements in Attachment 4. This list includes both public buildings and public uses. None of the public improvements listed in Attachment 4 include anything like a private professional sports arena.

The Event Center is a private project and is not within the scope of the secondary use category for a public structure or use of a nonindustrial character.

**Director's Findings.** As explained, the sports arena uses that are the impetus for the Event Center project are not allowed by the Plan's allowed principal or secondary uses. An allowed use is prerequisite for a finding of Plan consistency. The Alliance will not belabor the myriad other inconsistencies with the Plan's objectives, design, incompatibility with UCSF, and creation of significant environmental impacts, as those have been described in the DSEIR comments and throughout the administrative record, but hereby objects to their insufficiencies and lack of supporting substantial evidence for the Plan consistency finding.

Consideration of the Event Center project must be preceded by amendment of the Plan to be consistent with the delineated principal and secondary uses and the adopted Plan Area Map of the Mission Bay South Redevelopment Plan.

Thank you.

Sincerely yours,

  
Susan Brandt-Hawley  
Attorney for Mission Bay Alliance

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<sup>1</sup> See attached 2005 Resolution and Secondary Use finding regarding the "UCSF hospital" as a "public structure or use of a non-industrial character" for "a public body specifically created by the California Constitution."

## **RESOLUTION NO. 176-2005**

Adopted November 1, 2005

### **APPROVING A MEMORANDUM OF UNDERSTANDING WITH THE REGENTS OF THE UNIVERSITY OF CALIFORNIA, A CALIFORNIA PUBLIC CORPORATION, AND ACKNOWLEDGING THE EXECUTIVE DIRECTOR'S FINDINGS OF CONSISTENCY WITH THE MISSION BAY SOUTH REDEVELOPMENT PLAN, FOR THE EXPANSION OF UCSF FACILITIES IN THE MISSION BAY SOUTH REDEVELOPMENT PROJECT AREA; MISSION BAY SOUTH REDEVELOPMENT PROJECT AREA**

#### **BASIS FOR RESOLUTION**

1. On September 17, 1998, by Resolution No. 193-98, the Redevelopment Agency of the City and County of San Francisco's (the "Agency") Commission (the "Agency Commission") conditionally approved the Mission Bay South Owner Participation Agreement (the "South OPA") and related documents between Catellus Development Corporation (the "Owner") and the Agency for development in the Mission Bay South Redevelopment Project Area (the "Project Area").
2. On November 2, 1998, the Board of Supervisors of the City and County of San Francisco (the "Board") by Ordinance No. 335-98 approved and adopted the Redevelopment Plan for the Mission Bay South Redevelopment Project Area (the "Plan"). The Board's adoption of the Plan satisfied the conditions to the effectiveness of Agency Resolution No. 193-98.
3. On November 16, 1998, the Agency entered into the South OPA with the Owner. The South OPA sets forth phasing principles that govern the development of property in the Project Area. Those principles include the Owner's obligations to deliver to the Agency affordable housing sites as market rate housing is built in the Project Area. They also include the Owner's commitments to construct public open space and other public infrastructure adjacent to – or otherwise triggered by – development on any of the private parcels governed by the South OPA.
4. Under the South OPA and the related Mission Bay South Tax Increment Allocation Pledge Agreement (the "Pledge Agreement"), dated as of November 16, 1998, between the Agency and the City and County of San Francisco (the "City"), approximately 20% of the total property tax increment (plus certain excess tax increment) generated by development in the Project Area is contractually dedicated to develop affordable housing units on parcels that the Owner will contribute to the Agency, to achieve the affordable housing program contemplated by the Plan.

5. The South OPA requires the Owner to construct the public infrastructure directly related to each of the major phases in accordance with the incremental build-out of each project. Under the South OPA and the Pledge Agreement, the Agency is obligated to fund, repay or reimburse the Owner, subject to certain conditions, for the direct and indirect costs of constructing the infrastructure. The Agency has established a Community Facilities District ("CFD") for infrastructure in the Project Area. The Agency has also established a separate CFD to pay the costs of maintaining the public open space in the Project Area.
6. The South OPA provides that as a condition to any transfer of property in the Project Area, the Owner must obtain the agreement of the transferee to assume all of Owner's obligations under the South OPA with respect to the transferred parcels.
7. The Project Area includes an approximately 43-acre biomedical research and educational campus site (the "Campus Site") for the University of California, San Francisco ("UCSF"). UCSF has already invested about \$675 million on projects completed or underway on the Campus Site within the Plan Area and has plans to invest another \$225 million on projects in design.
8. The Regents of the University of California, a California public corporation ("The Regents") wishes to lease or acquire, and the Owner wishes to transfer Parcels 36, 37, 38 and 39 in the Project Area, comprising approximately 9.65 acres of land for the possible expansion of UCSF in Mission Bay (the "Expansion Parcels"). These parcels are not part of the 43 acres that the Plan originally designated as the Campus Site.
9. On November 30, 2004, The Regents released proposed amendments in draft form to its long range development plan, as LRDP Amendment #2. Those amendments contemplate an expansion of UCSF facilities onto the Expansion Parcels, including the possibility of developing by 2012 new integrated specialty Children's, Women's and Cancer hospitals containing about 210 beds, together with ambulatory and research facilities. In March 2005, The Regents approved LRDP Amendment #2 (the "Project") and certified a related final environmental impact report (the "LRDP #2 FEIR") which analyzed the environmental effects of the proposed UCSF development on the Expansion Parcels. Copies of the LRDP #2 FEIR are on file with the Agency Secretary.
10. The Owner and The Regents have entered into an Option Agreement and Grant of Option to Lease, dated as of January 1, 2005 (the "Option to Lease"), which provides that upon the satisfaction of certain conditions and the exercise by The Regents of its option (i) Catellus, as landlord, and The Regents, as tenant, will enter into a long-term ground lease of the Expansion Parcels (the "Lease") and (ii) the Owner and The Regents will at the same time enter into an Option Agreement and Grant of Option to Purchase (the

"Option to Purchase") under which The Regents will have an option to purchase the Expansion Parcels.

11. If The Regents exercises the Option to Lease within the option term, the Lease would allow for The Regents to develop up to 1,020,000 leasable square feet on the Expansion Parcels, provided that (a) any development of those parcels is the subject of further environmental review under the California Environmental Quality Act ("CEQA"), and (b) the Owner does not lose any of its entitled development potential for the balance of its land nor lose any of its other rights and privileges under the South OPA.
12. Pursuant to Section 302 of the Plan, the development of the contemplated UCSF facilities on the Expansion Parcels is permitted as a subset of "Other Uses" as a secondary use. Such secondary uses are permitted provided that such use generally conforms with redevelopment objectives and planning and design controls established pursuant to the Plan and based on certain findings of consistency by the Agency's Executive Director (the "Consistency Findings"). The Executive Director has made the Consistency Findings, and such findings are hereby incorporated herein by this reference as if fully set forth.
13. The City must make substantial improvements to San Francisco General Hospital ("SFGH") by 2013 and is evaluating a number of alternatives, including rebuilding on site and co-locating a new SFGH with new UCSF medical facilities in Mission Bay.
14. As a State agency, The Regents is exempt under the State Constitution from local land use regulation and property taxes to the extent it uses property exclusively in furtherance of its educational mission.
15. The Agency, City and The Regents negotiated a non-binding term sheet to guide the preparation of final transactional and related documents, such as a Disposition and Development Agreement ("DDA") for The Regents to acquire property for, and to construct and subsidize, affordable housing for low-income workers of UCSF, which DDA is being considered by the Agency Commission concurrently with this Resolution, pursuant to Resolution No. 160-2005, and provided terms for a Memorandum of Understanding regarding design standards and cooperation on the development of the Expansion Parcels (the "MOU"). The Agency Commission approved the non-binding term sheet on May 17, 2005 by Resolution No. 81-2005.
16. The proposed MOU addresses, among other things: the potential loss of tax increment from the transfer of the Expansion Parcels to a tax-exempt entity; the obligations to build infrastructure associated with development on the Expansion Parcels; the potential assistance of UCSF in the planning of the co-location, if any, of SFGH with the new UCSF facilities; the standards for design review for construction on the Expansion Parcels; local hiring and

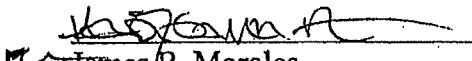
equal opportunity for jobs associated with the development on the Expansion Parcels; and other matters designed to provide the Agency and City with significant public benefits.

17. Agency staff is recommending that the Agency Commission approve the MOU, and the associated Consistency Findings.
18. The Agency Commission has reviewed and considered the information contained in the LRDP #2 FEIR.
19. The Agency Commission hereby finds that the MOU is an action in furtherance of the implementation of the Project for purposes of compliance with CEQA.
20. By Resolution 175-2005, the Agency Commission adopted environmental findings related to the LRDP #2 FEIR, pursuant to CEQA and the CEQA Guidelines (the "Findings"). Such Findings are made pursuant to the Agency's role as the responsible agency under CEQA for the Project. The Findings are hereby incorporated herein by this reference as if fully set forth.

#### **RESOLUTION**

**ACCORDINGLY, IT IS RESOLVED** by the Redevelopment Agency of the City and County of San Francisco that the findings of consistency with the Mission Bay South Redevelopment Plan are approved and the Executive Director is authorized to execute the "Expansion of UCSF Facilities in Mission Bay South Redevelopment Project Area (Blocks 36-39) Memorandum of Understanding", substantially in the form lodged with the Agency General Counsel; Mission Bay South Redevelopment Project Area.

**APPROVED AS TO FORM:**

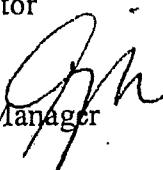
  
James B. Morales  
Agency General Counsel



MEMORANDUM

126-03405-001  
October 12, 2005

To: Marcia Rosen  
Executive Director

From: Amy Neches   
Senior Project Manager

Re: Secondary Use Finding Recommendation for UCSF Hospital in Mission Bay South Redevelopment Area

Pursuant to a Term Sheet dated as of August 1, 2005 between the City, the Agency and The Regents of the University of California, which was endorsed by the Commission on May 17, 2005 (Resolution No. 81-2005), the Agency is considering agreements, including a Memorandum of Understanding ("MOU"), under which the University of California at San Francisco ("UCSF") may develop a hospital in the Mission Bay South Redevelopment Area ("Redevelopment Area").

The UCSF hospital would be located on Blocks 36-39 within the Commercial Industrial land use district of the Redevelopment Area, as described in the Mission Bay South Redevelopment Plan (the "Plan"). The UCSF hospital development may also include all or portions of Block X3 within the Commercial Industrial/Retail land use district. In both of these land use districts "public structure or use of a non-industrial character" is permitted as a subset of "Other Uses" as a secondary use.

The University of California, of which UCSF is a component, is a public body specifically created by the California Constitution. A hospital or medical center is described in §790.44 of the San Francisco Planning Code as a "public or private institutional use which provides medical facilities for inpatient care, medical offices, clinics, and laboratories." The proposed UCSF hospital development will include these components. The hospital will not including manufacturing, warehousing, or distribution of goods, and can reasonably be considered a "non-industrial use." This interpretation is supported by the San Francisco Planning Code, under which hospitals are permitted as a conditional use in all C districts and NC-3 districts.

Section 302 of the Plan provides as follows:

"Secondary uses shall be permitted in a particular land use district...provided that such use generally conforms with redevelopment objectives and planning and design controls established pursuant to this Plan and is determined by the Executive Director to make a positive contribution to the character of the Plan Area, based on

a finding of consistency with the following criteria: the secondary use, at the size and intensity contemplated and at the proposed location, will provide a development that is necessary or desirable for, and compatible with, the neighborhood or the community.”

Staff believes that the UCSF hospital is appropriate as a secondary use, based on the following:

- 1) The proposed hospital will be located on approximately 10 to 14 acres of land adjacent to the Mission Bay UCSF research campus that have been determined to be blighted and are affected by environmental contamination. UCSF plans close integration of its basic academic research activities with the teaching, research and patient care activities within the planned hospital. The plan for development of the UCSF hospital generally conforms to the Redevelopment Project Objectives as described in §103 of the Plan, particularly with objective A of eliminating blight and correcting environmental deficiencies, and objective B of retaining and promoting UCSF's research and academic activities within the City and County of San Francisco.
- 2) Under the MOU, the UCSF hospital development will generally conform to the planning and design controls established pursuant to the Plan, including the street layout, setbacks, and streetscape plan. To accommodate the needs of the hospital, the MOU will include specific adjustments to the existing height and bulk standards of the Commercial Industrial and Commercial Industrial/Retail land use zones of the Mission Bay South Design for Development. These changes will lower the maximum height of a hospital to 105 feet, compared to the existing 160 foot limit, but would allow for somewhat greater bulk in the mid-rise area. These changes have been studied and presented to the public at two well-noticed public meetings. In staff's opinion, the proposed adjustments represent reasonable variation from the existing standards, which will have little if any negative effect on the surrounding community in the context of overall Mission Bay development.
- 3) The hospital will contain no more development, as calculated under the Plan in leasable square feet, than would have been permitted under the principal uses permitted in these land use districts, and there will be no net increase in the overall size of development within the Redevelopment Area. The hospital will be developed on parcels that would otherwise likely have been developed with commercial office or life science/biotechnology uses. These uses would have been constructed in buildings of reasonably similar size and appearance as the proposed hospital use.
- 4) The proposed hospital will allow UCSF to continue to provide needed tertiary health care to the residents of San Francisco in a modern seismically safe hospital, and will assist UCSF in furthering its research and academic mission.

Based on these factors, staff believes that it is appropriate to make the finding of consistency cited above, and recommends that the Executive Director permit the development of the UCSF hospital as a secondary use in Mission Bay, subject to the approval of the MOU by the Commission.

Approved on October 12, 2005:

A handwritten signature in cursive script that reads "Marcia Rosen". The signature is written in dark ink and is positioned above a horizontal line.

Marcia Rosen  
Executive Director

Law Offices of  
THOMAS N. LIPPE, APC

201 Mission Street  
12th Floor  
San Francisco, California 94105

Telephone: 415-777-5604  
Facsimile: 415-777-5606  
Email: [Lippelaw@sonic.net](mailto:Lippelaw@sonic.net)

November 2, 2015 [2 of 2]

By personal delivery at Nov. 3, 2015, hearing to:  Commission on Community Investment and Infrastructure Attn: Claudia Guerra, Commission Secretary Office of Community Investment and Infrastructure 1 South Van Ness Avenue, 5th Floor San Francisco, CA 94103  and email to: <a href="mailto:claudia.guerra@sfgov.org">claudia.guerra@sfgov.org</a>	By email to: <a href="mailto:warriors@sfgov.org">warriors@sfgov.org</a> :  Ms Tiffany Bohee OCII Executive Director c/o Mr. Brett Bollinger San Francisco Planning Department 1650 Mission Street, Suite 400 San Francisco, CA 94103
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**Re: Warriors Arena Project: Violation of Variance Requirement.**

Dear Ms Bohee and Mr. Bollinger:

This office represents the Mission Bay Alliance (“Alliance”), an organization dedicated to preserving the environment in the Mission Bay area of San Francisco, regarding the project known as the Event Center and Mixed Use Development at Mission Bay Blocks 29-32 (“Warriors Arena Project” or “Project”). The Mission Bay Alliance objects to approval of this Project and certification of the Project SEIR.

I write today regarding the OCII’s failure to require a variance or “variation” for this Project under section 305 of the Mission Bay South Redevelopment Plan (“Plan”). The November 2, 2015, letter from Susan Brandt-Hawley, my co-counsel for the Alliance, demonstrates this Project is not an allowable secondary use under the Plan. Thus, a variance is not available because, as shown by Brandt-Hawley, the Project “will change the land uses on this Plan.” (Plan, § 305.) However, in the alternative, if the Project is an allowable secondary use under the Plan, then the OCII must process this Project application as a variance and make the findings required by Plan section 305 before Project approval.

Both California and San Francisco planning law provide a process for landowners to obtain a “variance” from the “uniformity” of zoning limits that, while appropriate for the zone district in general, would impose undue hardship due to unique characteristics of a specific parcel. Government Code section 65906 governs the grant of zoning variances by municipalities and prohibits local agencies from granting “special privileges” to individual landowners. Similarly, San

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Francisco Planning Code, section 305, subdivision (a), provides that a variance permit must be approved for any exception to the requirements of the Planning Code. Subdivision (c) thereof mirrors the requirements of state law, and requires a finding that “owing to such exceptional or extraordinary circumstances the literal enforcement of specified provisions of this Code would result in practical difficulty or unnecessary hardship ....”

Similarly, the Plan includes a variance provision that reflects the same substantive requirements as Government Code section 65906 and Planning Code section 305:

The Agency may modify the land use controls in this Plan where, owing to unusual and special conditions, enforcement would result in undue hardships or would constitute an unreasonable limitation beyond the intent and purposes of these provisions. Upon written request for variation from the Plan’s land use provisions from the owner of the property, which states fully the grounds of the application and the facts pertaining thereto, and upon its own further investigation, the Agency may, in its sole discretion, grant such variation from the requirements and limitations of this Plan. The Agency shall find and determine that the variation results in substantial compliance with the intent and purpose of this Plan, provided that in no instance will any variation be granted that will change the land uses on this Plan.

(Plan, § 305.)

Because the Plan’s variance provision imposes virtually identical requirements as Planning Code section 305, both apply. (Plan, §’s 101 [“Regardless of any future action by the City or the Agency, whether by ordinance, resolution, initiative or otherwise, the rules, regulations, and official policies applicable to and governing the overall design, construction, fees, use or other aspect of development of the Plan Area shall be (i) this Plan and the other applicable Plan Documents, (ii) to the extent not inconsistent therewith or not superseded by this Plan, the Existing City Regulations and (iii) any new or changed City Regulations permitted under this Plan”]; 304.9.C.(iv)).

Here, the Project creates at least sixteen inconsistencies with the Design for Development (D4D). The OCII now proposes to amend the D4D, the Owner’s Participation Agreement (OPA), and other Plan documents to resolve these inconsistencies by, including but not limited to, raising maximum height limits from 90 to 135 feet, allowing a second 160+ foot tower, increasing bulk limits to accommodate the arena, and changing arena setbacks, street wall heights, view corridors, public rights of way, and parking standards. (See e.g., Draft SEIR, pp. 4-7 - 4-9, § 4.2.4; Proposed Resolution 2015, exhibit A; Memorandum to the OCII from Executive Director Tiffany Bohee for Items 5(a), 5(b), 5(c), 5(d) & 5(e) the November 3, 2015, CCII meeting agenda, pp. 4, 22.)

Even if the Project’s land uses are allowable secondary uses, these amendments “modify the land use controls in this Plan” as provided in Plan section 305. But the Project Sponsor has made

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no showing that due to “unusual and special conditions, enforcement would result in undue hardships or would constitute an unreasonable limitation beyond the intent and purposes of these provisions.” (Plan, § 305.)

“Variances are, in effect, constitutional safety valves to permit administrative adjustments when application of a general regulation would be confiscatory or produce unique injury.” (Curtin’s California Land Use and Planning Law, p. 55.) Variance requirements also implement the State Planning and Zoning Law’s requirement of “uniformity” of zoning rules within zoning districts. (See Gov. Code, § 65852 [“All such [zoning] regulations shall be uniform for each class or kind of building or use of land throughout each zone, but the regulation in one type of zone may differ from those in other types of zones;” *Neighbors in Support of Appropriate Land Use v. Cnty. of Tuolumne* (2007) 157 Cal.App.4th 997, 1008 (*Neighbors*).) The State Planning and Zoning Law also requires vertical consistency between local agencies general plans, zoning ordinances, and land use permits. (Gov. Code, § 65860, subd. (c) [“County or city zoning ordinances shall be consistent with the general plan of the county or city... .”]; see *DeVita v. Cnty. of Napa* (1995) 9 Cal.4th 763, 772 [“A general plan is a ‘constitution’ for future development [citation omitted] located at the top of ‘the hierarchy of local government law regulating land use’”].)

California courts have vigorously enforced the requirements for granting a variance, and have developed extensive jurisprudence to corral the many stratagems local agencies have used to avoid its requirements. (See e.g., *Topanga Association v. County of Los Angeles* (1974) 11 Cal.3d 506, 511-12 (*Topanga*); *Orinda Assn. v. Board of Supervisors* (1986) 182 Cal.App.3d 1145, 1166 (*Orinda Assn*) [“A zoning scheme, after all, is similar in some respects to a contract ... If the interest of these parties in preventing unjustified variance awards for neighboring land is not sufficiently protected, the consequence will be subversion of the critical reciprocity upon which zoning regulation rests...”].)

Variance findings must focus on a comparison of the subject property to other properties in the zone district with which the variance is intended to bring it into parity, and the benefits to the community or “public interest” associated with a zoning exception are irrelevant. (*Orinda Assn, supra*, at p. 1166.) By amending the Plan documents to accommodate this Project, the OCII would cast these requirements aside and grant a “special privilege” to this Project Sponsor.

In *Neighbors*, rather than adopt a rezone or grant a variance, the County created a special exception to the zoning ordinance for one landowner by including it in a development agreement adopted under the development agreement law. (*Neighbors, supra*, 157 Cal.App.4th at p. 1003.) In rejecting this stratagem, the Court in *Neighbors* noted that there are limits on the power to rezone: “The foundations of zoning would be undermined, however, if local governments could grant favored treatment to some owners on a purely ad hoc basis ... [R]ezoning, even of the smallest parcels, still necessarily respects the principle of uniformity.” (*Id.* at pp. 1009-10.)

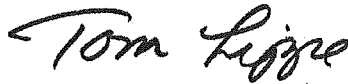
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A similar result occurred in *Trancas Prop. Owners Assn. v. City of Malibu* (2006) 138 Cal.App.4th 172 (*Trancas*). In *Trancas*, the court held an exemption from a city's zoning requirements accomplished by contract functionally resembled a variance, and held that "such departures from standard zoning by law require administrative proceedings, including public hearings ... followed by findings for which the instant [density] exemption might not qualify... Both the substantive qualifications and the procedural means for a variance discharge public interests. Circumvention of them by contract is impermissible." (Id. at p. 182.)

In sum, the OCII's proposed grant of zoning exceptions to this Project by way of amending the Plan documents rather than by variance violates the Plan, the variance requirements of the San Francisco Planning Code and state law, and the uniformity requirement of state law.

Thank you for your attention to this matter.

Very Truly Yours,

A handwritten signature in black ink that reads "Tom Lippe". The signature is written in a cursive, slightly slanted style.

Thomas N. Lippe

## Office Development Annual Limitation ("Annual Limit") Program

The Office Development Annual Limit (Annual Limit) Program became effective in 1985 with the adoption of the Downtown Plan Amendments to the Planning Code (Sections 320-325) and was subsequently amended by Propositions M (1986) and C (1987). The Program defines and regulates the allocation of any office development project that exceeds 25,000 gross square feet (gsf) in area.

A total of 950,000 gsf of office development potential becomes available for allocation in each approval period, which begins on October 17th every year. Of the total new available space, 75,000 gsf is reserved for Small Allocation projects (projects with between 25,000 and 49,999 gsf of office space), and the remaining 875,000 gsf is available for Large Allocation projects (projects with at least 50,000 gsf of office space). Any available office space not allocated in a given year is carried over to subsequent years.

This document reflects the status of the Annual Limit Program, including current availability and summaries of previously approved and pending projects.

Information in this document was last updated on **September 1, 2015**. Inquiries should be directed to Corey Teague at (415) 575-9081 or [corey.teague@sfgov.org](mailto:corey.teague@sfgov.org).

### Summary of Key Figures

Small Allocation Projects (<50,000 gsf of office space)	Current Availability Current total square footage available for allocation.	Pending Availability Currently available square footage less 285,550 gsf of pending* projects.	Pipeline Availability Currently available square footage less 285,550 gsf of pending* projects and 126,975 gsf of pre-application** projects.
	1,188,805 gsf	903,255 gsf	776,280 gsf
Large Allocation Projects (>50,000 gsf of office space)	Current Availability Current total square footage available for allocation.	Pending Availability Currently available square footage less 3,108,554 gsf of pending* projects.	Pipeline Availability Currently available square footage less 3,108,554 gsf of pending* projects and 6,850,617 gsf of pre-application** projects.
	1,429,763 gsf	-1,678,791 gsf	-8,529,408 gsf

\* A 'pending project' is one for which an office allocation application has been submitted but not yet acted upon.

\*\* A 'pre-application' project is one for which an environmental review application, preliminary project assessment application, or other similar application has been submitted but for which no office allocation application has yet been submitted.

## EXHIBIT 3



## PENDING OFFICE PROJECTS\*

\*Projects that have submitted an application (B or OFA) pursuant to Planning Code Section 321 (Office Development Annual Limit) but on which no Commission action has yet occurred.

Small Office Cap					
Case No.	Address	Sq. Ft.	Status	Staff	Comments
2009.0065	3433 Third Street	49,229	B filed 1/27/09	Julian Banales	New 5-story office building for Carpenter's Union on vacant lot. May be cancelled due to inactivity (2/18/14).
2014.0567	2101 Mission Street	48,660	B filed on 4/17/14	Brittany Bendix	Legalize change of use from retail and warehouse to office. Planning Commission hearing scheduled for 9/3/15.
2012.1410	77-85 Federal Street	49,730	B filed on 6/5/14	Scott MacPherson	Demo two existing office buildings and construct a 5-story building with ground floor retail and office above.
2015-000509	1125 Mission Street	37,944	B filed on 1/15/15	Julian Banales	Change of use from auto repair.
2014.1315	135 Townsend Street	49,995	B filed on 3/11/15	Rich Sucre	Conversion of existing self storage building.
2013.1511	360 Spear Street (aka 100 Harrison St)	49,992	B filed on 4/3/15	Rich Sucre	Partial conversion of existing ISE.
<b>Subtotal</b>		<b>285,550</b>			

Large Office					
Case No.	Address	Sq. Ft.	Status	Staff	Comments
2012.0640	598 Brannan Street	700,456	B filed on 10/24/12	Elizabeth Purl	Demo of 2 industrial buildings; 2 new office buildings (Central SoMa Project).
2013.1545	645 Harrison Street	99,698	B filed on 7/18/13	Kimberly Durand	LoD confirmed 14,520gsf as existing legal office space. Revised proposal to convert additional 99,698gsf, plus retain 33,758gsf of PDR on first and second floors.
2013.1593	2 Henry Adams	245,697	B filed on 2/6/14	Rich Sucre	Owner-initiated Article 10 Landmark designation and an Office Allocation. Eligible area limited by recent legislation.
2011.0409	925 Mission Street	803,300	B filed on 8/19/14	Kevin Guy	"5M" Project. Planning Commission informational hearing scheduled for 9/3/15.
2006.1523	50 First Street	1,050,000	B filed on 6/4/14	Kevin Guy	Demo and construction of a mixed-use building with two towers.
2014-002701	GSW Development	0	B filed on 12/12/14	David Winslow	Design approval only. Allocation already approved in Alexandria District.
2014.1063	633 Folsom Street	89,804	B filed on 12/23/14	Mark Luellen	Four story office addition to existing seven story building.
2014.0154	1800 Mission Street	119,599	OFA filed on 1/27/15	Rich Sucre	Conversion in the Armory.
<b>Subtotal</b>		<b>3,108,554</b>			

# PRE-APPLICATION OFFICE PROJECTS\*

\*Projects that have submitted for initial Department review (e.g. environmental review (EE) or Preliminary Project Assessment [PPA]), but have not submitted an application pursuant to Planning Code Section 321 (Office Development Annual Limit).

Small Office Cap					
Case No.	Address	Sq. Ft.	Status	Staff	Comments
2014.1616	1200 Van Ness Ave	27,000	PPA issued 1/14/15.	Mary Woods	Exact office square footage TBD.
2015-010219	462 Bryant Street	49,995	PPA filed on 8/12/15.		An existing single story office building and basement will remain, and five stories of new office space will be added (approximately 49,995 gsf of new office space).
2015-010374	598 Bryant Street	49,980	PPA filed on 8/12/15.	Kansai Uchida	Demo existing gas station and construct a 9-story mixed-use office building with underground parking.
<b>Subtotal</b>		<b>126,975</b>			
Large Office Cap					
Case No.	Address	Sq. Ft.	Status	Staff	Comments
2005.0759	725-735 Harrison	730,940	PPA letter issued 5/16/2013. Revised EE pending.	Debra Dwyer	"Harrison Gardens" (Central SoMa Project). Original proposal changed to office per 2/21/13 application amendment.
2014.0416	610-620 Brannan Street	561,065	EE filed 6/19/14	Elizabeth Purl	Demo and new 11-story mixed use bldg (Central SoMa Project).
2013.0478	559 6th Street	123,972	PPA issued on 6/17/13. PPA expired on 12/17/14.	Kimia Haddadan	Demolish 3 bldgs and construct a mixed-use project (Central SoMa Project)
2013.0970	Pier 70 (Forest City Only)	1,810,000	EE filed on 11/10/14	Andrea Contreras	SF Port project
n/a	2525 16th Street	60,980	Legitimization request filed 11/30/12	Corey Teague	EN Legitimization
2014.0858	565-585 Bryant Street	188,280	PPA issued on 7/25/14	Jeremy Shaw	Demo four existing bldgs and construct an 11-story mixed-use bldg. 2nd PPA proposes only 46,990sf of office (Central SoMa Project).
2014.0405	330 Townsend Street	394,300	PPA issued on 5/15/14	Steve Wertheim	Demo existing bldg and construct a 21-story office bldg. 2nd PPA proposes only 212,300sf of office (Central SoMa Project).
2013.0208	SWL 337 ("Mission Rock")	1,300,000	EE filed on 6/4/13	Josh Switzky	Large mixed-use project on Port property.
2015-004256	630-698 Brannan St	1,512,260	PPA issued on 7/24/15. EE filed 7/24/15.	Lisa Chen	Flower Mart replacement project (Central SoMa Project). Two Previous PPAs. 2015-001903 analysed proposed 1,492,450gsf. 2013.0370 was under different ownership, only included Lot 5, and analysed 655,150gsf.

2014.1208	1500 Mission Street	0	EE filed on 10/23/14	Chelsea Fordham	Demo and new construction of mixed use bldg with 462,800gsf of <b>City</b> office space.
2015-009704	505 Brannan Street	168,820	PPA filed on 7/27/15	Steve Wertheim	"Phase II" addition (165', 11 stories) of office space onto an approved 85' "Phase I" office building approved by the Planning Commission on 12/11/14. With this newly planned addition, total building height would now be 250' and contain a total of 306,266 sf.
<b>Subtotal</b>		<b>6,850,617</b>			

# ANNUAL LIMIT FOR "SMALL" SAN FRANCISCO OFFICE DEVELOPMENT

Amount Currently Available:	1,188,805
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Approval Period <sup>1</sup>	Unallocated Sq. Ft. <sup>2</sup>	"Small" Office Annual Limit	Adjusted Annual Limit	Project Address	Case No.	Project Allocation	Total Allocated	Comments
1985-1986	0	75,000	75,000	No Projects	N/A	0	0	
1986-1987	75,000	75,000	150,000	1199 Bush	1985.244	46,645	46,645	
1987-1988	103,355	75,000	178,355	3235-18th Street	1988.349	45,350	45,350	aka 2180 Harrison Street
1988-1989	133,005	75,000	208,005	2601 Mariposa	1988.568	49,850	49,850	
1989-1990	158,155	75,000	233,155	No Projects	N/A	0	0	
1990-1991	233,155	75,000	308,155	No Projects	N/A	0	0	
1991-1992	308,155	75,000	383,155	1075 Front	1990.568	32,000	32,000	
1992-1993	351,155	75,000	426,155	No Projects	N/A	0	0	
1993-1994	426,155	75,000	501,155	No Projects	N/A	0	0	
1994-1995	501,155	75,000	576,155	No Projects	N/A	0	0	
1995-1996	576,155	75,000	651,155	No Projects	N/A	0	0	
1996-1997	651,155	75,000	726,155	No Projects	N/A	0	0	
1997-1998	726,155	75,000	801,155	No Projects	N/A	0	0	
1998-1999	801,155	75,000	876,155	1301 Sansome	1998.362	31,606	31,606	
1999-2000	844,549	75,000	919,549	435 Pacific	1998.369	32,500		
				2801 Leavenworth	200.459	40,000		
				215 Fremont	1998.497	47,950		
				845 Market	1998.090	49,100	169,550	
2000-2001	749,999	75,000	824,999	530 Folsom	2000.987	45,944		
				35 Stanford	2000.1162	48,000		
				2800 Leavenworth	2000.774	34,945		
				500 Pine	2000.539	44,450	173,339	See also 350 Bush Street - Large
2001-2002	651,660	75,000	726,660	No Projects	N/A	0	0	
2002-2003	726,660	75,000	801,660	501 Folsom	2002.0223	32,000	32,000	
2003-2004	769,660	75,000	844,660	No Projects	N/A	0	0	
2004-2005	844,660	75,000	919,660	185 Berry Street	2005.0106	49,000	49,000	
2005-2006	870,660	75,000	945,660	No Projects	N/A	0	0	
2006-2007	945,660	75,000	1,020,660	No Projects	N/A	0	0	
2007-2008	1,020,660	75,000	1,095,660	654 Minnesota	no case number	43,939	0	UCSF
2008-2009	1,095,660	75,000	1,170,660	No Projects	N/A	0	0	
2009-2010	1,170,660	75,000	1,245,660	660 Alabama Street	2009.0847	39,691	39,691	
2010-2011	1,205,969	75,000	1,280,969	No Projects	N/A	0	0	
2011-2012	1,280,969	75,000	1,355,969	208 Utah / 201 Potrero	2011.0468	48,732		EN Legitimization

# ANNUAL LIMIT FOR "SMALL" SAN FRANCISCO OFFICE DEVELOPMENT

Amount Currently Available:	1,188,805
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Approval Period <sup>1</sup>	Unallocated Sq. Ft. <sup>2</sup>	"Small" Office Annual Limit	Adjusted Annual Limit	Project Address	Case No.	Project Allocation	Total Allocated	Comments
				808 Brannan Street	2012.0014	43,881		EN Legitimization
				275 Brannan Street	2011.1410	48,500		
				385 7th/1098 Harrison	2011.1049	42,039		EN Legitimization
				375 Alabama Street	2012.0128	48,189	231,341	EN Legitimization
2012-2013	1,124,628	75,000	1,199,628	No Projects	N/A	0	0	
2013-2014	1,199,628	75,000	1,274,628	3130 20th Street	2013.0992	32,081		
				660 3rd Street	2013.0627	40,000	72,081	
2014-2015	1,202,547	75,000	1,277,547	340 Bryant Street	2013.1600	47,536		
				101 Townsend Street	2014-002385	41,206	88,742	
				<b>Total</b>		<b>1,105,134</b>		

<sup>1</sup> Each approval period begins on October 17

<sup>2</sup> Carried over from previous year

# ANNUAL LIMIT FOR "LARGE" SAN FRANCISCO OFFICE DEVELOPMENT

Amount Currently Available:	1,429,763
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Approval Period <sup>1</sup>	Unallocated Sq. Ft. <sup>2</sup>	"Large" Office Annual Limit <sup>3</sup>	Reduction per Section 321.1	Adjusted Annual Limit	Project Address	Case No.	Project Allocation	Total Allocated	Comments
1985-1986	0	875,000	(475,000)	400,000	No Projects	N/A	0	0	
1986-1987	400,000	875,000	(475,000)	800,000	600 California	1986.085	318,030		
					235 Pine	1984.432	147,500		
					343 Sansome	1985.079	160,449	625,979	
1987-1988	174,021	875,000	(475,000)	574,021	No Projects	N/A	0	0	
1988-1989	574,021	875,000	(475,000)	974,021	No Projects	N/A	0	0	
1989-1990	974,021	875,000	(475,000)	1,374,021	150 California	1987.613	195,503	195,503	
1990-1991	1,178,518	875,000	(475,000)	1,578,518	No Projects	N/A	0	0	
1991-1992	1,578,518	875,000	(475,000)	1,978,518	300 Howard	1989.589	382,582	382,582	aka 199 Fremont Street
1992-1993	1,595,936	875,000	(475,000)	1,995,936	No Projects	N/A	0	0	
1993-1994	1,995,936	875,000	(475,000)	2,395,936	No Projects	N/A	0	0	
1994-1995	2,395,936	875,000	(475,000)	2,795,936	No Projects	N/A	0	0	
1995-1996	2,795,936	875,000	(475,000)	3,195,936	No Projects	N/A	0	0	
1996-1997	3,195,936	875,000	(475,000)	3,595,936	101 Second	1997.484	368,800	368,800	aka One Second Street
1997-1998	3,227,136	875,000	(37,582)	4,064,554	55 Second Street	1997.215	283,301		aka 275 Saramento Street
					244-256 Front	1996.643	58,650		aka 699-08th Street
					650 Townsend	1997.787	269,680		State office building - see also Case No. 1993.707
					455 Golden Gate	1997.478	420,000		
					945 Battery	1997.674	52,715		
					475 Brannan	1997.470	61,000		
					250 Steuart	1998.144	540,000	1,685,346	aka 2 Folsom/250 Embarcadero
1998-1999	2,379,208	875,000	0	3,254,208	One Market	1998.135	51,822		
					Pier One	1998.646	88,350		Port office building
					554 Mission	1998.321	645,000		aka 560/584 Mission Street
					700 Seventh	1999.167	273,650		aka 625 Townsend Street
					475 Brannan	1999.566	2,500	1,061,322	addition to previous approval - 1997.470
1999-2000	2,192,886	875,000	0	3,067,886	670 Second	1999.106	60,000		
					160 King	1999.027	176,000		
					350 Rhode Island	1998.714	250,000		
					First & Howard	1998.902	854,000		First & Howard bldg #2 (405 Howard), #3 (505-525 Howard) & #4 (500 Howard)
					235 Second	1999.176	180,000		
					500 Terry Francois	2000.127	280,000		Mission Bay 26a
					550 Terry Francois	2000.329	225,004		Mission Bay 28
					899 Howard	1999.583	153,500	2,178,504	
2000-2001	889,382	875,000	0	1,764,382	First & Howard	1998.902	295,000		First & Howard bldg #1 (400 Howard)
					550 Terry Francois	2000.1293	60,150	355,150	Additional allocation (see also 2000.329)
2001-2002	1,409,232	875,000	0	2,284,232	350 Bush	2000.541	344,500		See also 500 Pine Street - Small
					38-44 Tehama	2001.0444	75,000		

# ANNUAL LIMIT FOR "LARGE" SAN FRANCISCO OFFICE DEVELOPMENT

Amount Currently Available:	1,429,763
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Approval Period <sup>1</sup>	Unallocated Sq. Ft. <sup>2</sup>	"Large" Office Annual Limit <sup>3</sup>	Reduction per Section 321.1	Adjusted Annual Limit	Project Address	Case No.	Project Allocation	Total Allocated	Comments
					235 Second	2000.319	64,000		modify 1999.176
					250 Brannan	2001.0689	113,540		
					555 Mission	2001.0798	549,000		
					1700 Owens	2002.0300	0*	1,146,040	Alexandria District - West Campus (160,100)
2002-2003	1,138,192	875,000	0	2,013,192	7th & Mission GSA	No Case	514,727	514,727	Federal Building
2003-2004	1,498,465	875,000	0	2,373,465	Presidio Dig Arts	No Case	839,301	839,301	Presidio Trust
2004-2005	1,534,164	875,000	0	2,409,164	No Projects	N/A	0	0	
2005-2006	2,409,164	875,000	0	3,284,164	201 16th Street	2006.0384	430,000	430,000	aka 1409/1499 Illinois
2006-2007	2,854,164	875,000	0	3,729,164	1500 Owens	2006.1212	0*		Alexandria District - West Campus (158,500)
					1600 Owens	2006.1216	0*		Alexandria District - West Campus (228,000)
					1455 Third Street/455 Mission Bay South Blvd/450 South Street	2006.1509	0*		Alexandria District - North Campus (373,487)
					1515 Third Street	2006.1536	0*		Alexandria District - North Campus (202,893)
					650 Townsend	2005.1062	375,151		
					120 Howard	2006.0616	67,931		
					535 Mission	2006.1273	293,750		
					100 California	2006.0660	76,500	736,832	
2007-2008	2,992,332	875,000	0	3,867,332	505-525 Howard	2008.0001	74,500		Additional allocation for First & Howard Building #3
					680 Folsom Street	No Case	117,000		Redevelopment - Yerba Buena
					Alexandria District	2008.0650	1,122,980		Establishes Alexandria Mission Bay Life Sciences and Technology Development District ("Alexandria District") for which previously allocated office space and future allocations would be limited to 1,350,000 gsf to be distributed among designated buildings within district.
					600 Terry Francois	2008.0484	0*		Alexandria District - East Campus (312,932)



# ANNUAL LIMIT FOR "LARGE" SAN FRANCISCO OFFICE DEVELOPMENT

Amount Currently Available:	1,429,763
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Approval Period <sup>1</sup>	Unallocated Sq. Ft. <sup>2</sup>	"Large" Office Annual Limit <sup>3</sup>	Reduction per Section 321.1	Adjusted Annual Limit	Project Address	Case No.	Project Allocation	Total Allocated	Comments
					650 Terry Francois	2008.0483	0*		Alexandria District - East Campus (291,367)
2008-2009	2,476,352	875,000	0	3,351,352	1450 Owens	2008.0690	0*	1,390,980	Alexandria District - West Campus (61,581)
2009-2010	3,351,352	875,000	0	4,226,352	No Projects	N/A	0	0	
					850-870 Brannan Street	2009.1026	138,580		aka 888 Brannan Street
					222 Second Street	2006.1106	430,650	569,230	LEED
2010-2011	3,657,122	875,000	0	4,532,122	350 Mission Street	2006.1524	340,320		
					Alexandria District	n/a	200,000		
					Treasure Island	2007.0903	0	540,320	under terms of Motion 17709
2011-2012	3,991,802	875,000	0	4,866,802	Alexandria District	n/a	27,020		Priority Resolution Only
					850-870 Brannan St	2011.0583	113,753		under terms of Motion 17709
					444 DeHaro St	2012.0041	90,500		aka 888 Brannan Street
					460-462 Bryant St	2011.0895	59,475		
					185 Berry St	2012.0409	101,982		
					100 Potrero Ave.	2012.0371	70,070		aka China Basin Landing
					601 Townsend Street	2011.1147	72,600	535,400	EN Legitimization
2012-2013	4,331,402	875,000	0	5,206,402	101 1st Street	2012.0257	1,370,577		EN Legitimization
					181 Fremont Street	2007.0456	404,000		Transbay Tower; aka 425 Mission new office/residential building
					1550 Bryant Street	2012.1046	108,399		EN Legitimization
					1100 Van Ness Ave	2009.0885	242,987		CPMC Cathedral Hill MOB
					3615 Cesar Chavez	2009.0886	94,799		CPMC St. Luke's MOB
					345 Brannan Street	2007.0385	102,285		
					270 Brannan Street	2012.0799	189,000		
					333 Brannan Street	2012.0906	175,450		
					350 Mission Street	2013.0276	79,680		
					999 Brannan Street	2013.0585	143,292		Salesforce (No. 2)
					1800 Owens Street	2012.1482	700,000	3,610,469	EN Legitimization - Dolby Mission Bay Block 40
2013-2014	1,595,933	875,000	0	2,470,933	300 California Street	2012.0605	56,459		
					665 3rd Street	2013.0226	123,700		
					410 Townsend Street	2013.0544	76,000		
					888 Brannan Street	2013.0493	10,000		AirBnB - See Also 2011.0583B
					81-85 Bluxome Street	2013.0007	55,000	321,159	
2014-2015	2,149,774	875,000	0	3,024,774	501-505 Brannan Street	2012.1187	137,446		
					100 Hooper Street	2012.0203	284,471		
					390 Main Street	n/a	137,286		
					250 Howard Street	2014-002085	766,745		MTC Project - Verified on 4/14/15
					510 Townsend Street	2014.0679	269,063	1,595,011	aka Transbay Block 5 (195 Beale St)
					<b>Total</b>		<b>19,082,655</b>		

<sup>1</sup> Each approval period begins on October 17



## ANNUAL LIMIT FOR "LARGE" SAN FRANCISCO OFFICE DEVELOPMENT

Amount Currently Available:	1,429,763
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Approval Period <sup>1</sup>	Unallocated Sq. Ft. <sup>2</sup>	"Large" Office Annual Limit <sup>3</sup>	Reduction per Section 321.1	Adjusted Annual Limit	Project Address	Case No.	Project Allocation	Total Allocated	Comments
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<sup>2</sup> Carried over from previous year

<sup>3</sup> Excludes 75,000 gsf dedicated to "small" projects per Section 321(b)(4)

# SMALL OFFICE APPROVALS - STATUS OF ALL PROJECTS

COMPLETE									
REVOKED									
18 MOS. EXPIRED									
NO INFORMATION / NOT APPLICABLE									
UNDER CONSTRUCTION									
AWAITING ADDITIONAL INFORMATION									
Date	Case No.	Address	APN	Size	Motion	Status	Completion	Comments	
1986-1987	1985-244	1199 Bush	0280-031	46,645	11026	complete	1991	St. Francis Hospital	
1987-1988	1988-349	3235-18th Street	001030	45,350	11451	complete		P&E: aka 2180 Harrison Street	
1988-1989	1988-568	2801 Mariposa	4016-001	49,850	11598	complete	1991	KQED	
	1988-287	1501 Sloat	7255-002	39,000	11567	doesn't count	n/a	revoked 12/00	
1989-1990									
1990-1991	1990-238	350 Pacific	0165-006	45,718	13114	doesn't count	n/a	revoked 12/00	
1991-1992	1990-568	1075 Front	0111-001	32,000	13351	complete	1993		
	1987-847	601 Duboce	3539-001	36,000	13254	doesn't count	n/a	revoked 12/00	
1992-1993								No Projects Approved During Allocation Period	
1993-1994								No Projects Approved During Allocation Period	
1994-1995								No Projects Approved During Allocation Period	
1995-1996								No Projects Approved During Allocation Period	
1996-1997								No Projects Approved During Allocation Period	
1997-1998								No Projects Approved During Allocation Period	
1998-1999	1998-362	1301 Sansome	0085-005	31,606	14784	complete	1999		
1999-2000	1998-369	435 Pacific	0175-028	32,500	14971	complete	2003		
	2000-459	2801 Leavenworth	0010-001	40,000	15922	complete	2001	The Cannery	
	1998-497	215 Fremont	3738-012	47,950	15939	complete	2002		
	1999-668	38-44 Tehama	3736-111	49,950	15967	doesn't count	n/a	reapproved as large project	
	1998-090	845 Market	3705-09-18 into 3705-049	49,100	15949	complete	2006	Bloomingdale's	
2000-2001	1999-821	178 Townsend	3788-012	49,002	16025	doesn't count	n/a	18mos exp 5/21/02; 2005-04-70 new E & K appl for residential, building permit application no. 200608290851 for residential submitted on 8/29/07; 9/4/08 CPC approves conversion to Residential (M17688) - Revoked on 1/23/09	
	2000-987	530 Folsom	3736-017	45,944	16023	complete	2006	18mos exp 6/7/02; permit 200502185310 filed 2/05 - 12/15/08 - Building Permit Application No. 200811136470 issued for demolition of two buildings on property. To be used for temp transbay facility. REVOCATION LETTER ISSUED 3/16/09	
	1999-300	272 Main	3739-006	46,500	16049	doesn't count	n/a		
	2000-1162	35 Stanford	3788-038	48,000	16070	complete	2007		
	2000-774	2800 Leavenworth	007008	34,945	16071	complete	2001	The Anchorage	
	2000-552	199 New Montgomery	3722-021	49,345	16104	doesn't count	n/a	revoked 1/6/05	
	2000-1269	3433 Third	5203-23	42,000	16107	doesn't count	n/a	building permit application no. 200011014657 withdrawn on 11/9/06. REVOCATION LETTER ISSUED 9/25/07 -	

# SMALL OFFICE APPROVALS - STATUS OF ALL PROJECTS

Date	Case No.	Address	APN	Size	Motion	Status	Completion	Comments	COMPLETE REVOKED 18 MOS. EXPIRED NO INFORMATION / NOT APPLICABLE UNDER CONSTRUCTION AWAITING ADDITIONAL INFORMATION
	1999.795	177 Townsend	3794-4.7	46,775	16122	doesn't count	n/a	revoked 1/6/05	
	2000.539	500 Pine	258-4 to 9033	44,450	16113	approved	n/a	18mos exp 9/15/02 - CPC received project status update on 10/11/07 (project is associated with 350 Bush Street - Large Office Approval). Building permit application no. 200011024683 approved by CPB on 9/4/08. Building permit application no. 200806275535 submitted for shoring work (9/4/08 - under review by DPW-BSM)	
	2000.986	150 Powell	327-22	39,174	16118/164	doesn't count	n/a	time limit for construction extended (see Case No. 2002.03638). Project converted to residential use (see Case No. 2006.1299)	
	1998.281	185 Berry	3803-005	49,500	16143	doesn't count	n/a	new approval 2005	
	2000.190	201 Second	3736-097	44,500	16148	doesn't count	n/a	converted to residential use	
	2000.660	35 Hawthorne	3735-047	40,350	16174	doesn't count	n/a	converted to residential use - see 2004.0852 and building permit application no. 200509082369	
	2000.122	48 Tehama	3736-084/085	48,300	16235	doesn't count	n/a	revoked at Planning Commission hearing on 6/9/11	
	2000.723	639 Second	3789-005/657-971	49,500	16241	doesn't count	n/a	revoked 1/6/05	
	1999.423	699 Second	004/657-971	49,500	16240	doesn't count	n/a	revoked 1/10/05	
2001-2002	2001.0050	3251 18th Street	3591-018	49,500	16451	doesn't count	n/a	6/28/07 - building permit application no. 200706285450 submitted to revise project and reduce office space to approx. 10,000 gsf - REVOCATION LETTER ISSUED 8/16/07	
2002-2003	2002.0223	501 Folsom Street	3749-001	32,000	16516	complete	2006	No Projects Approved During Allocation Period	
2003-2004	2003.004					complete	2008	No Projects Approved During Allocation Period	
2004-2005	2005.0106	185 Berry Street	3803-005	49,000	17070	complete	2009	No Projects Approved During Allocation Period	
2005-2006	No Case	654 Minnesota	042-003 & 004	43,939	none	complete	2011	Confirmed by UCSF via 7/13/2007 letter from UCSF and associated LoD	
2006-2007						complete	2013	No Projects Approved During Allocation Period	
2007-2008						complete	2015	18mos exp 7/14/10 - E appealed to BoS and overturned on 3/17/09. Application withdrawn and case closed on 12/30/09.	
2008-2009	2006.1294	110 The Embarcadero	3715-002	41,940	17804	doesn't count	n/a	CFC for building permit application no. 201001144798 issued on 3/23/11	
2009-2010	2009.0847	660 Alabama Street	4020-002	39,691	17973	complete	2011	No Projects Approved During Allocation Period	
2010-2011						complete	2012	BPA No. 201205090083	
2011-2012	2011.0468	208 Utah / 201 Potrero	3932-017	48,732	18608	complete	2013	BPA No. 201201031584	
	2012.0014	808 Brannan Street	3780-004D	43,881	18559	complete	2013	BPA No. 201209210308	
	2012.0128	375 Alabama Street	3966-002	48,189	18574	complete	2013	BPA No. 201212115895	
	2011.1049	385 7th / 1098 Harrison	3754-017	42,039	18700	complete	2013	BPA No. 201207164925	
2012-2013	2011.1410	275 Brannan Street	3789-009	48,500	18672	complete	2015	No Projects Approved During Allocation Period	
								BPA No. 201409297004 for change of use approved by Planning on 1/6/15 and now awaiting changes from architect as requested by DBI as of 2/3/15.	
2013-1014	2013.0992	3130 20th Street	4083-002	32,081	19188			BPA No. 20141252480 issued on 2/24/15.	
	2013.0627	680 3rd Street	3788-008	40,000	19234	complete	2015		

# SMALL OFFICE APPROVALS - STATUS OF ALL PROJECTS

COMPLETE						
REVOKED						
18 MOS. EXPIRED						
NO INFORMATION / NOT APPLICABLE						
UNDER CONSTRUCTION						
AWAITING ADDITIONAL INFORMATION						
Date	Case No.	Address	APN	Size	Motion	Status
2014-2015	2013.1600	340 Bryant Street	3764-061	47536	19311	Under construction
Comments						
BPA 201305177188 issued 7/15/15.						

# LARGE OFFICE APPROVALS - STATUS OF ALL PROJECTS

COMPLETE									
REVOKED									
18 MOS. EXPIRED									
NO INFORMATION / NOT APPLICABLE									
UNDER CONSTRUCTION									
AWAITING ADDITIONAL INFORMATION									
Date	Case No.	Address	APN	Size	Motion	Status	Completion	Comments	
1986-1987	1986.085	600 California	0241-003 into 0241-027	318,030	11077	complete	1992		
	1984.432	235 Pine	0267-015	147,500	11075	complete	1991		
	1984.274	33 Columbus	0195-004	81,300	11070	doesn't count	n/a	revoked 12/00	
	1985.079	343 Sansome	0239-002	160,449	11076	complete	1991		
1987-1988								No Projects Approved During Allocation Period	
1988-1989	1984.199	524 Howard	3721-013	199,965	11683	doesn't count	n/a	reapproved in 1998 under Case No. 1998.843.	
1989-1990	1987.613	150 California	0236-003 into 0236-019	195,503	11828	complete	2001		
1990-1991	1989.589	300 Howard	3719-005 into 3719-018	382,582	13218	complete	2001	aka 199 Fremont Street	
1991-1992								No Projects Approved During Allocation Period	
1992-1993								No Projects Approved During Allocation Period	
1993-1994								No Projects Approved During Allocation Period	
1994-1995	1994.105	101 Second Street	3721-072	386,655	13886	doesn't count	n/a	Reapproved in 1997 under Case No. 1997.484.	
1995-1996								No Projects Approved During Allocation Period	
1996-1997	1997.484	101 Second Street	3721-72:75 into 3721-089	368,800	14454	complete	2000		
1997-1998	1997.215	55 Second Street	3708-019A/033/034 into 3708-096	283,301	14542	complete	2002	aka One Second Street	
	1996.643	244-256 Front	0236-018	58,650	14601	complete	2001	aka 275 Sacramento Street	
	1997.787	650 Townsend	3783-009	269,680	14520	complete	2001	aka 699-08th Street	
	No Case	455 Golden Gate	0765-002/003	420,000	none	complete	1998	State office building. See also case no. 1993.707.	
	1997.674	945 Battery	0135-001	52,715	14672	complete	1998		
	1997.470	475 Brannan	3787-031	61,000	14685	complete	2001		
	1998.144	250 Steuart	3741-028 into 3741-035	540,000	14604	complete	2002	aka 2 Folsom/250 Embarcadero	
1998-1999	1998.135	One Market	3713-006	51,822	14756	complete	2000		
	1998.843	524 Howard	3721-013	201,989	14801	doesn't count	n/a	revoked 6/11 under Case No. 2011.0503	
	1998.646	Pier One	9900-001	88,350	none	complete	2003	Port office building	



COMPLETE
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AWAITING ADDITIONAL INFORMATION

# LARGE OFFICE APPROVALS - STATUS OF ALL PROJECTS

LARGE OFFICE APPROVALS - STATUS OF ALL PROJECTS

Date	Case No.	Address	APN	Size	Motion	Status	Completion	Comments
	2000.127	500 Terry Francois	3838; 3839 into 8721-001/010	280,000	15010	complete	2008	MB 26a
	1998.766	535 Mission	3721-068	252,000	15027	doesn't count	n/a	revoked and reapproved as residential project converted to residential - allocation revoked 1/10/05
	1998.635	2101 Bryant	4080-007	148,000	15044	doesn't count	n/a	
	2000.329	550 Terry Francois	3839; 3840 into 8721-001/011	225,004	15055	complete	2002	MB 28
	1999.583	899 Howard	3733-079	153,500	15062	complete	2005	
2000-2001	1998.902	First & Howard	3720-008	295,000	16069	complete	2008	First & Howard - Building #1 (400 Howard)
	2000.1293	550 Terry Francois	3839; 3840 into 8721-001/011	60,150	16110	complete	2002	addition to 2000.329.
	2000.1295	Mission Bay 26/2	3840; 3841 into 8721-001-012	145,750	16111	doesn't count	n/a	AKA MB 26 East. returned to cap for approval of 2002.0301
	1999.603	555 Mission	3721-69,70,78...	499,000	16130	doesn't count	n/a	project revised - allocation revoked and reapproved under Case No. 2007.0798.
	2000.277	801 Market	3705-48	112,750	16140	doesn't count	n/a	project abandoned per letter from sponsor
								18mos exp 5/8/03 - CPC received project status update on 10/11/07 (associated with 500 Pine Street - Small Office Approval). Sponsor email reports that 18-month period expired May 22, 2005 due to appeals. Building permit application no. 200708078938 currently under review by DBI/FD/DPW.
2001-2002	2000.541	350 Bush	269-2,2a,3,22...	344,500	16273	approved	n/a	
	2001.0444	38-44 Tehama	3736-111	75,000	16280	complete	2003	modify 1999.176 - convert warehouse from PDR to office.
	2000.319	235 Second	3736-61,62,64-67	64,000	16279	complete	2002	
	2001.0689	250 Brannan	3774-25	113,540	16285	complete	2002	
	2001.0798	555 Mission	3721-69,70,78-81,120	549,000	16302	complete	2008	
	2002.0301	Mission Bay 42/4	8709-10	80,922	16397	doesn't count	n/a	revoked and reapproved as 2002.1216 (1600 Owens)
	2002.0300	1700 Owens	8709-007	0*	16398	complete	2007	Alexandria District (160,100). West Campus. 164,828
2002-2003	No Case	7th/Mission GSA	3702-15 ...	514,727	none	complete	2007	Federal Building
	2002.0691	499 Illinois/201-16th Street	3940-001	429,542	16483	doesn't count	n/a	revoked and reapproved as 2006.0384 (201 16th Street) MB Block x

# LARGE OFFICE APPROVALS - STATUS OF ALL PROJECTS

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UNDER CONSTRUCTION								
AWAITING ADDITIONAL INFORMATION								
Date	Case No.	Address	APN	Size	Motion	Status	Completion	Comments
2003-2004	2001.1039	55 9th Street	3701-063	268,000	16760	doesn't count	n/a	200408111247 issued 5/19/05 - Authorization REVOKED by Planning Commission Motion Nos. 17521 and 17522 for proposal to convert project to residential use.
	2000.1229	Pier 30-32	3770-001	370,000	none	doesn't count	n/a	E, K & I Cases created, no B case created. BCDCC permit approved in 2003 and allocation made for accounting purposes, but permit never acted upon. 2/09 - 370,000 added back to cap because project does not appear to be moving forward.
	No Case	Presidio - Letterman Digital Arts		839,301	none	complete	2006	
2004-2005								No Projects Approved During Allocation Period
2005-2006	2006.0384	201-16th Street	3940-001	430,000	17223	complete	2008	aka 1409-1499 Illinois/MB Block X-4. 18 mos exp 10/6/07. Project (200607186938) complete 11/19/08
								Alexandria District - West Campus (158,500); 200611298694 issued 5/24/07 (aka MBS Blk 41-43, Parcel 5). Under construction. Estimated completion in March 2009.
2006-2007	2006.1212	1500 Owens	8709-006	0*	17333	complete	2009	Blk 41-43, Parcel 4. 200711097802 issued 6/3/08. Piles driven, no further work performed. Not currently active 5/18/2011
	2006.1216	1600 Owens	8709-004/010	0*	17332	approved	n/a	MBS Blk 26, Parcels 1-3, project proposes 3 buildings - building permit application no. 200704279921 (455 Mission Bay South Blvd.) COMPLETE on 11/17/09 for 5 story office/lab; 200705090778 (450 South Street) COMPLETE on 10/23/09 for "parking garage with 7 stories new building." 200806104062 filed on 6/10/08 for new 10-story office building - Issued 4/23/10, but not under construction.
	2006.1509	Alexandria District - North Campus (MB 26/1-3; 1455 Third Street/455 Mission Bay South Blvd/450 South Street)	8721-012/8720-011/016/017	0*	17401	complete/approved	n/a	MBS Blk 27, Parcel 1 see also 2006.1509.
	2006.1536	1515 Third Street	8721-012	0*	17400	approved	n/a	200806265407 filed 6/26/08 for 6-story office building - currently (9/29/08) being reviewed by SFFD. Sold to salesforce.com with 202,983 sf allocation as of April 2011.
	2006.1062	650 Townsend	3783-009	375,151	17440	complete	2009	18 mos exp 12/7/08. 200705151356 issued 2/20/08 - Conversion of existing structure into office - no major construction required. Final Inspection (3/16/09)



## LARGE OFFICE APPROVALS - STATUS OF ALL PROJECTS

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AWAITING ADDITIONAL INFORMATION									
Date	Case No.	Address	APN	Size	Motion	Status	Completion	Comments	
	2006.0616	120 Howard	3717-019	67931	17466	complete	n/a	Construction completed in 2012	
	2006.1273	535 Mission	3721-068, 083	293,750	17470	approved	n/a	18 mos exp 2/2/09; 2/12/08 - 200508049463 issued by CPB on 8/21/08. Appealed to Board of Permit Appeals on 8/29/08 (Appeal No. 08-137) - appeal withdrawn and permit reinstated on 8/29/08. Separate permits issued for pile indicators, site cleanup and fencing. 10/24/08 - Construction started in early 2013.	
								18 mos exp 7/31/09. No building permit on file as of 5/18/11. Beacon Capital started the process and then allegedly sold to Broadway Partners, who are reputed to be current owners- no current status	
2007-2008	2006.0660	100 California	0236-017	76,500	17544	approved	n/a	6/16/14 update - Broadway Partners website lists the property as theirs. No building permits relating to project on file. Site visit on 6/17/14 shows no signs of upcoming construction activity.	

# LARGE OFFICE APPROVALS - STATUS OF ALL PROJECTS

COMPLETE						
REVOKED						
18 MOS. EXPIRED						
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AWAITING ADDITIONAL INFORMATION						
Date	Case No.	Address	APN	Size	Motion	Status
						Comments
	2008.0001	505-525 Howard	3736-001:004/114/121	74,500	17641	approved
	No Case	680 Folsom Street	3735-013	117,000	none	n/a
						Redevelopment (Yerba Buena)
	2008.0850	Alexandria District	various	1122980	17709	approved
	2008.0484	600 Terry Francois	8722-001	0*	17710	n/a
	2008.0483	650 Terry Francois	8722-001	0*	17711	n/a
	2008.0690	1450 Owens	8709-006	0*	17712	n/a
2008-2009						No Projects Approved During Allocation Period
2009-2010	2009.1026	850-870 Brannan Street	3780-006/007/007A/072	138,580	18095	complete
						aka 888 Brannan Street
	2007.0946	Candlestick Point - Hunter's Point	Candlestick Point and Hunter's Point Shipyard	800000	18102	approved
	2008.1106	222 Second Street	3735-063	430,650	18170	approved
2010-2011	No Case	Alexandria District	various	200000	17709	approved
	2008.1524	350 Mission Street	3710-017	335,000	18268	approved
	2007.0903	Treasure Island	1939-001/002	0	18332	approved
2011-2012	No Case	Alexandria District	various	27020	17709	approved
	2011.0583	850-870 Brannan Street	3780-006, 007, 007A, and 072	113,753	18527	approved
	2011.1147	601 Townsend Street	3799-001	72,600	18619	approved
	2009.0885	1100 Van Ness Ave	0694-010	242,987	18599	doesn't count
	2011.0895	460-462 Bryant St	3763-015A	59,475	18685	under construction
	2012.0041	444 DeHaro St	3799-001	90500	18653	under construction
	2012.0409	185 Berry St	3803-005	101,982	18690	under construction
						aka China Basin Landing.
						aka 888 Brannan Street
						BPA No. 201408063120 approved by Planning on 8/8/14, but not yet issued by DBI.
						CPMC - Cat Hill MOB; rescinded & reallocated in 2013 cycle
						BPA No. 201312194664 issued on 5/22/14.
						BPA No. 201312194626 issued on 12/31/13.
						aka China Basin Landing.

# LARGE OFFICE APPROVALS - STATUS OF ALL PROJECTS

COMPLETE									
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18 MOS. EXPIRED									
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AWAITING ADDITIONAL INFORMATION									
Date	Case No.	Address	APN	Size	Motion	Status	Completion	Comments	
	2012.0371	100 Potrero Ave.	3920-001	70070	18704	complete	2013	EN Legitimization. BPA No. 201212286973 issued 5/6/13.	
	2009.0886	3615 Cesar Chavez	6576-021	99,848	18595	doesn't count	n/a	CPMC - St. Luke's MOB; rescinded & reallocated in 2013 cycle	
2012-2013	2012.0257	101 1st Street	3720-001	1,370,577	18725	under construction	n/a	Transbay Tower, aka 425 Mission St. BPA No. 201303132080.	
	2007.0456	181 Fremont Street	0308-001	361038	18764	under construction	n/a	BPA No. 201305015894 issued 12/26/13.	
	2012.1046	1550 Bryant Street	3923-006	108,399	18732	complete	2013	EN Legitimization. BPA No. 201302069627	
	2012.1482	1800 Owens	8727-005	700000	18807	approved	n/a	currently under review at OCII, DBI and SFFD. Approved 2/14/13	
	2009.0885	1100 Van Ness Ave	0694-010	242987	18890	under construction	n/a	CPMC - Cat Hill MOB	
	2009.0886	3615 Cesar Chavez	6576-021	94,799	18886	approved	n/a	CPMC - St. Luke's MOB	
	2007.0385	345 Brannan Street	3788-039	102285	19000	under construction	n/a	Construction started in early 2014.	
	2012.0799	270 Brannan Street	3774-026	189000	18988	under construction	n/a	BPA No. 201312174402 issued on 4/25/14. Foundation and Superstructure Addendum approved. Architectural Addendum under review by DBI/DPW/PUC.	
	2012.0906	333 Brannan Street	3788-042	175,450	18952	under construction	n/a	"Groundbreaking" in August 2014.	
	2013.0276	350 Mission Street	3710-017	79,680	18956	under construction	n/a	BPA No. 201306280744 issued 1/5/14. Planning approved Arch addendum on 2/20/14.	
	2013.0585	999 Brannan Street	3782-003	143292	18950	complete	2014	Salesforce (No. 2). BPA No. 201108011461 issued 9/5/12. Planning approved Arch addendum on 9/11/14.	
2013-2014	2012.0605	300 California Street	0238-002	56459	19034	complete	n/a	EN Legitimization. BPA No. 201306280728 issued 4/28/14.	
	2013.0226	665 3rd Street	3788-041	123,700	19012	complete	2013	Approved 12/5/13. No BPA filed.	
	2013.0544	410 Townsend Street	3785-002A	76000	19062	approved	n/a	BPA No. 201311222636 issued on 12/31/13 to legalize office space.	
	2013.0493	888 Brannan Street	3780-006, 007, 007A, and 072	10000	19049	complete	2014	BPA No. 201306280587 approved by Planning on 7/30/14, but now "in hold" at DBI as of 12/3/14.	
	2013.0007	81-85 Bluxome Street	3786-018	55,000	19088	under construction	n/a	AirBnB (No. 2) to convert GF parking to office.	
2014-2015	2012.1187	501-505 Brannan Street	3786-038	137446	19295	approved	n/a	BPA No. 201404072588 issued 12/17/14. Arch addendum approved by all agencies except Planning. No BPA filed. The approved six-story office building project recently submitted a PPA to Planning proposing a "Phase II" for an additional 11 stories and 168,820 sf of office space.	
	2012.0203	100 Hooper Street	3808-003	284471	19315	approved	n/a	BPA NOS. 201410239755 and 201410209377 approved by Planning on 4/13/15, approved by DBI 6/24/15. Currently under review by SFFD and SFPUC.	



**BAY AREA  
AIR QUALITY  
MANAGEMENT  
DISTRICT**

November 2, 2015

Tiffany Bohee  
Executive Director  
Office of Community Investment and Infrastructure  
One S. Van Ness Ave., 5<sup>th</sup> Floor  
San Francisco, CA 94103

**ALAMEDA COUNTY**  
Tom Bates  
Margaret Fujlola  
Scott Haggerty  
Nate Milley

Subject: Response to Comments on the DSEIR for the Event Center & Mixed-Use Development at Mission Bay Blocks 29-32 (Project).

Dear Ms. Bohee:

**CONTRA COSTA COUNTY**  
John Gioia  
David Hudson  
Karen Mitchoff  
Mark Ross

The Bay Area Air Quality Management District (Air District) is willing to assist the City and County of San Francisco (City) by administering an off-site mitigation program to reduce this Project's significant air quality impacts to the extent feasible. As we have discussed extensively with City staff, the \$321,646 identified in M-AQ-2b is not sufficient to achieve the 17 tons per year of ozone precursor emission reductions needed for this Project. Due to the nature of air quality impacts that need to be mitigated, comparison of the Air District off-site mitigation program identified for this Project to other air district programs is inappropriate and incorrect.

**MARIN COUNTY**  
Katie Rice

**NAPA COUNTY**  
Brad Wagenknecht

**SAN FRANCISCO COUNTY**  
John Avalos  
Edwin M. Lee  
Eric Mar  
(Vice-Chair)

The amount of funds required to reduce 4.4 tons of reactive organic gases (ROG) and 12.6 tons of oxides of nitrogen (NOx), including a 5 percent administration fee, is \$620,922. This amount is based on a study of the Air District's Vehicle Buy Back (VBB) program funds spent over the last 3 years and represents the average cost of reducing ROG and NOx during that three year period. Only through the VBB program can the Air District achieve the contemporaneous emission reductions and other conditions set forth in M-AQ-2b.

**SAN MATEO COUNTY**  
David J. Canepa  
Carole Groom  
(Chair)

**SANTA CLARA COUNTY**  
Cindy Chavez  
Liz Kniss  
(Secretary)  
Jan Pepper  
Rod G. Sinks

**SOLANO COUNTY**  
James Sperling

**SONOMA COUNTY**  
Teresa Barrett  
Shirlee Zane

Air District staff continues to be willing to assist the City in implementing an off-site mitigation program. However, the Final Environmental Impact Report Response to Comments includes the following statement:

"Acceptance of this fee by the BAAQMD shall serve as an acknowledgement and commitment by the BAAQMD to: (1) implement an emissions reduction project(s) within one year of receipt of the mitigation fee to achieve the emission reduction objectives specified above [i.e. 17 tons of ozone precursors per year]". Given this language, unless the City amends M-AQ-2b to fund this feasible mitigation measure at the \$620,922 level previously discussed with City staff, the Air District will be unable to participate in offsetting this Project's air quality impacts.

Jack P. Broadbent  
EXECUTIVE OFFICER/APCO

**EXHIBIT 4**

Tiffany Bohee

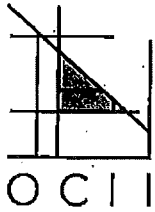
November 2, 2015

If you have any questions, please contact Allison Kirk, Senior Environmental Planner, at (415) 749-5169 or [akirk@baaqmd.gov](mailto:akirk@baaqmd.gov).

Sincerely,

  
Jean Roggenkamp  
Deputy Executive Officer

cc: BAAQMD Vice Chair Eric Mar  
BAAQMD Director John Avalos  
BAAQMD Director Edwin M. Lee



office of  
COMMUNITY INVESTMENT  
and INFRASTRUCTURE

DATE: November 2, 2015

TO: Tiffany Bohee, OCII Executive Director

FROM: Chris Kern, City Planning Department  
Sally Oerth, OCII Staff

SUBJECT: BAAQMD November 2, 2015 letter re Ozone Precursors Offset Mitigation Fee

The City Planning Department and the staff of the Office of Community Investment and Infrastructure (OCII) have reviewed the November 2, 2015 letter from the Bay Area Air Quality Management District regarding the Warriors Event Center and Mixed Use Development Subsequent Environmental Impact Report (SEIR). The letter states that the \$18,030 per weighted ton per year plus a 5% administrative fee mitigation fee identified in Mitigation Measure M-AQ-2b of the SEIR is insufficient to achieve the required reduction of 17.0 tons per year of ozone precursors. The letter proposes that the mitigation fee should be based on the BAAQMD's Vehicle Buy Back Program, at a cost of \$620,922 (or approximately \$36,525 per weighted ton per year) to achieve the required emissions reduction.

As discussed in the Draft SEIR (pages 5.4-41 through 5.4-42) and the Responses to Comments document (pages 13.13-65 through 13.13-69), the offset fee identified in Mitigation Measure M-AQ-2b is based on the California Air Resources Board (CARB) Carl Moyer program cost-effectiveness criteria. These criteria were developed by CARB to establish the upper limit for emissions offset projects eligible to receive funding through the Carl Moyer program.

Planning staff has been in communication with BAAQMD with regard to its suggestion that a higher fee may be warranted to offset project emissions to a less than significant level and found that BAAQMD could not establish that an increased rate beyond that of the Carl Moyer Program plus a five percent administrative fee could meet the "rough proportionality" standard required under CEQA. The Carl Moyer fee structure was reviewed and updated by CARB in March of 2015 and became fully implemented on July 1, 2015. The offset costs cited in Mitigation Measure M-AQ-2b Emission Offsets are consistent with those of the CARB and other operating California air districts. For example, in the Sacramento Metropolitan Air Quality Management District, the off-site construction mitigation fee rate is \$18,030 per ton of excess NOx emissions as of July 1, 2015 (plus an administrative fee of 5 percent) and is based on the cost effectiveness formula established in California's Carl Moyer Incentive Program. In the San Joaquin Valley Air Pollution Control District, the Indirect Source Review (ISR) program requires that an offsite reduction fee of \$9,350/ton plus a 4 percent administration fee be applied

Edwin M. Lee  
MAYOR

Tiffany Bohee  
EXECUTIVE DIRECTOR

Mara Rosales  
CHAIR

Miguel Bustos  
Marilyn Mondejar  
Leah Pimentel  
Darshan Singh  
COMMISSIONERS

One S. Van Ness Ave.,  
5th Floor,  
San Francisco, CA  
94103

415 749 2400

www.sfocil.org

EXHIBIT 5

for NOx emission reductions that cannot be achieved through onsite emission reduction measures. Furthermore, the offset costs in Mitigation Measure M-AQ-2b is consistent or even higher than comparable offset programs in the SFBAAB.<sup>1</sup>

The BAAQMD's November 2, 2015, letter does not establish that the CARB cost-effectiveness criteria are inappropriate for determining the offset costs under Mitigation Measure M-AQ-2b. Based on the information and analysis presented in the Draft SEIR, the Responses to Comments and supporting technical analyses, Planning Department and OCII staffs continue to believe that the offset fee established in Mitigation Measure M-AQ-2b is sufficient to achieve the required emissions offsets. In addition, as discussed in the Responses to Comments document, Mitigation Measure M-AQ-2b has been revised since publication of the Draft SEIR to allow the project sponsor to directly implement an emissions offset project as an alternative to entering into an agreement with the BAAQMD.

Therefore, for the reasons summarized above and discussed in greater detail in the SEIR and Responses to Comments, the November 2, 2015, letter from the BAAQMD does not alter the analysis or conclusions reached in the SEIR.

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<sup>1</sup> Keinath, Michael, Rambol Environ, 2015. Analysis of the Proposed Offset Program for the Golden State Warriors. October 19, 2015.