



**APPEAL OF CERTIFICATION OF  
FINAL SUBSEQUENT ENVIRONMENTAL IMPACT REPORT**  
**Event Center and Mixed-Use Development at Mission Bay Blocks 29-32**

**Supplemental Appeal Response**

**DATE:** December 7, 2015

**TO:** Angela Calvillo, Clerk of the Board of Supervisors

**FROM:** Tiffany Bohee, Executive Director  
Sally Oerth, Deputy Director  
Chris Kern, Case Planner, Environmental Planning, (415) 575-9037

**RE:** Board of Supervisors File No. 150990  
OCII Case No. ER 2014-919-97;  
Planning Department Case No. 2014.1441E

**Appeal of Certification of Final Subsequent Environmental Impact  
Report on the Event Center and Mixed-Use Development at Mission  
Bay Blocks 29-32**

**HEARING DATE:** December 8, 2015

**ATTACHMENTS:** Exhibit A — Supplemental Appeal Materials, Appellant's Partial Brief,  
submitted on November 30, 2015

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**PROJECT SPONSOR:** GSW Arena LLC

**PROJECT CONTACT:** David Kelly, (510) 986-2200

**APPELLANT:** Mission Bay Alliance

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## INTRODUCTION

This memorandum and the attached documents (referred to as the "Supplemental Appeal Response") comprise a response to the supplemental appeal materials submitted to the Board of Supervisors ("the Board") regarding the issuance of a Final Subsequent Environmental Impact Report ("Final SEIR") on the proposed Event Center and Mixed-Use Development at Mission Bay Blocks 29-32 (the "proposed project" or "project"). The Final SEIR consists of the Draft SEIR, published by the Office of Community Investment and Infrastructure ("OCII") on June 5, 2015, and the Responses to Comments ("RTC") document, published on October 23, 2015. The Commission on Community Investment and Infrastructure ("OCII Commission") certified the Final SEIR on November 3, 2015. The Mission Bay Alliance<sup>1</sup> ("Appellant") filed an appeal ("Appeal Letter") on November 13, 2015, and OCII submitted an Appeal Response to the Board on November 30, 2015. The Appellant submitted supplemental appeal materials ("Supplemental Appeal") to the Board on November 30, 2015, consisting of two "Appellants' Partial Briefs," one submitted by Thomas N. Lippe and one submitted by Patrick M. Soluri. The Supplemental Appeal materials are included as Exhibit A of this Supplemental Appeal Response.

The decision before the Board is whether to uphold the OCII Commission's decision to certify the Final SEIR and deny the appeal, or to overturn the OCII Commission's decision to certify the Final SEIR and return the project to OCII for further action to address any problems the Board found with the Final SEIR.

## SUMMARY OF SUPPLEMENTAL APPEAL ISSUES AND OCII RESPONSES

The original Appeal Letter filed by the Mission Bay Alliance was a 30-page letter plus 6 exhibits; a total of 210 pages. The Appeal Letter identified the following 19 issue areas lettered from A to S: public comment; project description; tiering; AB 900 and administrative record; alternatives; air quality; transportation; hydrology, water quality and biological resources; noise; greenhouse gases emissions; geology and soils; hazards and hazardous materials; urban decay; wind; recreation; utilities and energy; land use; cultural resources; and CEQA findings and statement of overriding considerations. The grounds for the appeal were mainly a compilation and reiteration of comments on a wide range of issues that were previously submitted by the Appellant, either on the Draft SEIR, the RTC document, or the Final SEIR, with the Appeal Letter including over 350 references to previously submitted materials. OCII's Appeal Response provided written responses to the Board on all issues raised in the Appeal Letter.

The Supplemental Appeal consists of two reports ("Lippe Supplemental Appeal" and "Soluri Meserve Supplemental Appeal") augmented by 22 exhibits, for a total of 428 pages. Similar to the Appeal Letter, the Supplemental Appeal indicates that the grounds for the appeal are set forth in all previously submitted Appellant comment letters and their exhibits. The

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<sup>1</sup> The Mission Bay Alliance is represented by four law firms and multiple counsel including: (1) Thomas N. Lippe, Law Offices of Thomas N. Lippe, APC; (2) Patrick M. Soluri and Osha R. Meserve, Soluri Meserve, a Law Corporation; (3) Susan Brandt-Hawley, Brandt-Hawley Law Group; and (4) Boies, Schiller & Flexner LLP.

Supplemental Appeal discusses a number of these grounds in more detail, and specifically the following 15 issue areas: public comment; air quality; transportation; hydrology/water quality; biological resources; noise; project description; tiering, AB 900, greenhouse gas emissions; geology and soils; hazards and hazardous materials; urban decay; wind and shadow; and recreation. In multiple instances, the Appellant asserts that recirculation is required.

In general, the issues raised in the Supplemental Appeal are the same as comments previously submitted by the Appellant. OCII has already prepared—and submitted to the Board—written responses to all previously submitted comments, either in the RTC document, dated October 23, 2015, and/or in the Appeal Response, dated November 30, 2015. Table 1 of this Supplemental Appeal Response lists the issues raised in the Supplemental Appeal (using the verbatim text from the Appellant). Rather than repeating information already provided to the Board, the table identifies the section and page number of the previously prepared written responses. In a few cases, however, the Supplemental Appeal material included slight variations of previous arguments, new analysis, or new information. Responses to these new issues are presented below in the same order those issues are described in the Final SEIR.

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**TABLE 1**  
**RESPONSE TO SUPPLEMENTAL APPEAL TO CERTIFICATION OF FINAL SUBSEQUENT ENVIRONMENTAL IMPACT REPORT**  
**SUBMITTED TO THE SF BOARD OF SUPERVISORS NOVEMBER 30, 2015**

Thomas N. Lippe, Appellants' Partial Brief ("Lippe Supplemental Appeal" with page number preceded by "L")  
Patrick M. Soluri and Osha R. Meserve, Appellants' Partial Brief ("Soluri Meserve Supplemental Appeal" with page number preceded by "S")

Appellant Ref. No.	Issue as Stated by the Appellant	Page No. of Appellant Brief	Location of Detailed Response in Appeal Response and/or RTC Document	Page No. of Response
<b>A. PUBLIC COMMENT (Lippe Supplemental Appeal)</b>		L-3		
1.	The OCII Thwarted Public Comment on the SEIR.	L-3	Appeal Response, Exhibit A, Issue A.1., and Exhibit D, Response to Late Comment ERP-4	A-5 D-89
<b>B. THE SEIR IS NOT SUFFICIENT AS AN INFORMATIONAL DOCUMENT WITH RESPECT TO AIR QUALITY IMPACTS (Lippe Supplemental Appeal)</b>		L-4		
1.	The City Cannot Use the SEIR's Thresholds of Significance for Criteria Air Pollutants until it Formally Adopts Them in a Rule-making Procedure.	L-4	Appeal Response, Exhibit A, Issue F.2; RTC Section 13.13.2, Response AQ-1a	A-10 RTC 13.13-4
2.	The DSEIR's Numerical Thresholds of Significance for Criteria Pollutants (Ozone Precursors, PM10, PM2.5) Borrowed from the BAAQMD Are Invalid.	L-5	Appeal Response, Exhibit A, Issue F.3, and Exhibit D, Response to Late Comment AQ-4; RTC Section 13.13.2, Response AQ-1b <b>See also OCII Response to Supplemental Appeal Issue AQ-1</b>	A-10 D-240 RTC 13.13-13
(a)	The DSEIR's impact assessments for construction related criteria pollutants (ozone precursors, PM10, PM2.5) and TAC emissions are invalid.	L-11	<b>Validity of thresholds</b> addressed in 2, above. <b>Availability of Tier 2 or better equipment:</b> Appeal Response, Exhibit A, Issue F.4, and Exhibit D, Response to Late Comment AQ-2; and RTC Section 13.13.7, Response AQ-6a <b>Haul trip length assumption:</b> Appeal Response, Exhibit A, Issue F.3; RTC Section 13.13.4, Response AQ-4	A-13 D-216 RTC 13.13.53  A-11 RTC 13.13-40
(1)	Mitigation Measure M-AQ-1 does not comply with CEQA's legal requirements.	L-12	<b>Availability of Tier 2 or better equipment:</b> Appeal Response, Exhibit A, Issue F.4, and Exhibit D, Response to Late Comment AQ-2;and RTC Section 13.13.7, Response AQ-6a <b>Truck Idling Exceptions:</b> Appeal Response, Exhibit A, Issue F.4(b) RTC Section 13.13.7, Response AQ-6b <b>See also OCII Response to Supplemental Appeal Issue AQ-2</b>	A-13 D-216 RTC 13.13-53  A-13 RTC 13.13-54
a.	The Response to Comment AQ-6a is Inadequate.	L-12	Appeal Response, Exhibit A, Issue F.4, and Exhibit D, Response to Late Comment AQ-2; RTC Section 13.13.7, Response AQ-6a	A-13 D-216 RTC 13.13-53

**TABLE 1 (Continued)**  
**RESPONSE TO SUPPLEMENTAL APPEAL TO CERTIFICATION OF FINAL SUBSEQUENT ENVIRONMENTAL IMPACT REPORT**  
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<b>B. THE SEIR IS NOT SUFFICIENT AS AN INFORMATIONAL DOCUMENT WITH RESPECT TO AIR QUALITY IMPACTS (Lippe Supplemental Appeal) (cont.)</b>		L-4		
b.	The Response to Comment AQ-6e is Inadequate.	L-13	Appeal Response, Exhibit A, Issue F.4, and Exhibit D, Response to Late Comment AQ-2; and RTC Section 13.13.7, Response AQ-6c and RTC Section 13.13.7, Response AQ-6e	A-13 D-218 RTC 13.13-55 RTC 13.13-59
(b)	The DSEIR's impact assessments for operational criteria pollutants (ozone precursors, PM10, PM2.5) and TAC emissions are invalid.	L-15	Appeal Response, Exhibit A, Issue F.3; RTC Section 13.13.5, Response AQ-4c	A-10 RTC 13.13-48
(1)	The SEIR fails to include vehicle emissions from Warriors game traffic in its analysis of operational emissions.	L-16	Appeal Response, Exhibit A, Issue F.3(d), and Exhibit D, Response to Late Comment AQ-5; RTC Section 13.13.5, Response AQ-4a	A-10 D-243 RTC 13.13-44
(2)	Mitigation Measure M-AQ-2b does not comply with CEQA's legal requirements.	L-17	Appeal Response, Exhibit A, Issues F.3, Exhibit A, Issue F.5, Exhibit A, Issue F-12, Exhibit D, Response to Late Comment AQ-1; RTC Section 13.13.8, Response AQ-7	A-10 A-15 A-20 D-207 RTC 13.13-65
a.	The Response to Comment AQ-7 is Inadequate.	L-18	Appeal Response, Exhibit A, Issues F.3, Exhibit A, Issue F.5, Exhibit A, Issue F-12, Exhibit D, Response to Late Comment AQ-1; RTC Section 13.13.8, Response AQ-7	A-10 A-15 A-20 D-207 RTC 13.13-65
b.	New information and the refusal of the project sponsor to agree to Mitigation Measure M-AQ-2b since publication of the DSEIR require recirculation of a revised DSEIR.	L-19	Appeal Response, Exhibit D, Response to Late Comment AQ-1 <b>See also OCII Response to Supplemental Appeal Issue AQ-3</b>	D-207
3.	Changes to the Project Since Publication of the DSEIR Require Recirculation of a Revised DSEIR Due to New and More Severe Significant Impacts.	L-20	Appeal Response, Exhibit D, Response to Late Comment AQ-8	D-249
4.	The SEIR's Cancer and Health Risk Assessment for Toxic Air Contaminants Is Invalid, Based on Legal Errors and Not Supported by Substantial Evidence.	L-21	Appeal Response, Exhibit A, Issue F.6, and Exhibit D, Response to Late Comment AQ-3	A-16 D-233
(a)	The SEIR's threshold of significance for what is a cumulatively significant TAC impact is legally flawed.	L-21	Appeal Response, Exhibit A, Issue F.6, and Exhibit D, Response to Late Comment AQ-3	A-16 D-233
(b)	The SEIR's reliance on "the ambient cancer risk in the most pristine portions of the Bay Area" to support its chosen threshold of significance for TACs is incoherent and inconsistent with CEQA.	L-24	Appeal Response, Exhibit A, Issue F.6 RTC Section 13.13.2, Response AQ-1c <b>See also OCII Response to Supplemental Appeal Issue AQ-4</b>	A-16 RTC 13.13-27

**TABLE 1 (Continued)**  
**RESPONSE TO SUPPLEMENTAL APPEAL TO CERTIFICATION OF FINAL SUBSEQUENT ENVIRONMENTAL IMPACT REPORT**  
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Appellant Ref. No.	Issue as Stated by the Appellant	Page No. of Appellant Brief	Location of Detailed Response in Appeal Response and/or RTC Document	Page No. of Response
<b>B. THE SEIR IS NOT SUFFICIENT AS AN INFORMATIONAL DOCUMENT WITH RESPECT TO AIR QUALITY IMPACTS (Lippe Supplemental Appeal) (cont.)</b>		L-4		
(c)	The SEIR is inadequate because it omits a project-specific assessment of TAC health risks.	L-27	Appeal Response, Exhibit A, Issue F.6, and Exhibit D, Response to Late Comment AQ-3 <b>See also OCII Response to Supplemental Appeal Issue AQ-4</b>	A-16 D-233
(d)	The SEIR's assessment of cumulative TACs is invalid because it fails to include all sources of related impacts.	L-35	Appeal Response, Exhibit A, Issue F.6, and Exhibit D, Response to Late Comment AQ-3	A-16 A-235
(e)	The FSEIR fails to provide good-faith response to comments objecting to the analysis of TAC health risks, and the TAC analysis is inadequate because OCII failed to use its best efforts to use current science.	L-36	Appeal Response, Exhibit A, Issue F.6, and Exhibit D, Response to Late Comment AQ-3	A-16 A-236
5.	Changes to the Project since Publication of the DSEIR Require Recirculation for Public Comment Due to New and More Severe Significant Impacts.	L-40	Appeal Response, Exhibit A, Issue F.11, and Exhibit D, Response to Late Comment AQ-8	A-19 D-249
<b>C. THE SEIR IS NOT SUFFICIENT AS AN INFORMATIONAL DOCUMENT WITH RESPECT TO TRANSPORTATION IMPACTS (Lippe Supplemental Appeal)</b>		L-41		
1.	The SEIR's Analysis of the Project's Construction-related Traffic Congestion and Delay Impacts Is Based on Invalid Criteria.	L-41	Appeal Response, Exhibit A, Issue G.5, and Exhibit D, Response to Late Comment TR-14; and RTC Section 13.11.11, Response TR-10	A-24 D-189 RTC 13.11-155
2.	The SEIR Fails to Assess the Project's Traffic Impacts on the Entire Affected Environment.	L-44	Appeal Response, Exhibit A, Issue G.2, and Exhibit D, Response to Late Comment TR-2; and RTC Section 13.11.3, Response TR-2b <b>See also OCII Response to Supplemental Appeal Issue TR-2</b>	A-22 D-148 RTC 13.11-25
3.	The SEIR Fails to Disclose the Severity of the Project's Impacts on Intersections and Freeway Ramps Which the Project Will Cause to Deteriorate to Level of Service (LOS) F.	L-51	Appeal Response, Exhibit A, Issue G.3 Exhibit D, Response to Late Comment TR-6; and RTC Section 13.11.3, Response TR-2f	A-23 D-162 RTC 13.11-48
4.	The SEIR Fails to Identify the Significance and Severity of the Project's Impacts on Intersections Where the Project Will Use Parking Control Officers.	L-54	Appeal Response, Exhibit A, Issue G.4 Exhibit D, Response to Late Comment TR-6; and RTC Section 13.11.3, Response TR-2f	A-23 D-162 RTC 13.11-52
5.	The SEIR's Analysis of the Project's Operational Traffic and Transit Congestion and Delay Impacts Is Legally Flawed.	L-55	Appeal Response, Exhibit A, Issue G.6, Exhibit D, Response to Late Comment TR-1, Exhibit D, Response to Late Comment TR-6; and RTC Section 13.11.3, Response TR-2a, RTC Section 13.11.3, Response TR-2d	A-25 D-143 D-158 RTC 13.11-8 RTC 13.11-41

**TABLE 1 (Continued)**  
**RESPONSE TO SUPPLEMENTAL APPEAL TO CERTIFICATION OF FINAL SUBSEQUENT ENVIRONMENTAL IMPACT REPORT**  
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<b>C. THE SEIR IS NOT SUFFICIENT AS AN INFORMATIONAL DOCUMENT WITH RESPECT TO TRANSPORTATION IMPACTS (Lippe Supplemental Appeal) (cont.)</b>		L-41		
(a)	The DSEIR understates traffic and transit volumes in the PM peak period of 4:00 to 6:00 PM by using “time of arrival” at the Arena as a proxy measurement for “time of travel.”	L-55	Appeal Response, Exhibit A, Issue G.6, and Exhibit D, Response to Late Comment TR-4; and RTC Section 13.11.3, Response TR-2d	A-25 D-158 RTC 13.11-41
(b)	The DSEIR only analyzes impacts of weeknight basketball games that start at 7:30 PM, not at other start times closer to the PM peak.	L-59	Appeal Response, Exhibit A, Issue G.6, and Exhibit D, Response to Late Comment TR-1; and RTC Section 13.11.3, Response TR-2a	A-25 D-143 RTC 13.11-8
6.	The SEIR’s Analysis of the Project’s Cumulative Transportation Impacts Does Not Comply With CEQA.	L-59	Appeal Response, Exhibit A, Issue G.7, and Exhibit D, Response to Late Comment TR-8; and RTC Section 13.11.3, Response TR-2h, and RTC Section 13.11.3, Response TR-2i	A-26 D-169 RTC 13.11-65 RTC 13.11-70
(a)	The 5% threshold of significance for impacts at intersections and freeway ramps operating at LOS E or F violates CEQA.	L-59	Appeal Response, Exhibit A, Issue G.7; and RTC Section 13.11.3, Response TR-2i	A-26 RTC 13.11-70
(b)	The year 2040 baseline for assessing the significance of the Project’s cumulative impacts violates CEQA	L-61	Appeal Response, Exhibit A, Issue G.7, and Exhibit D, Response to Late Comment TR-8; and RTC Section 13.11.3, Response TR-2h	A-26 D-169 RTC 13.11-65
(c)	The SEIR’s use of a “projection” based approach to the Project’s cumulative impacts is misleading	L-62	Appeal Response, Exhibit A, Issue G.7, and Exhibit D, Response to Late Comment TR-8	A-26 D-169
7.	The DSEIR’s Methodology for Analyzing Project Impacts on the Transit System Is Legally Flawed.	L-63	Appeal Response, Exhibit A, Issue G.6, Appeal Response, Exhibit A, Issue G.8, Exhibit D, Response to Late Comment TR-4 Exhibit D, Response to Late Comment TR-8 RTC Section 13.11.3, Response TR-2d, and RTC Section 13.11.3, Response TR-2g	A-25 A-27 D-158 D-165 RTC 13.11-41 RTC 13.11-59
(a)	The DSEIR’s use of transit screenline and route capacities is misleading and unsupported.	L-63	Appeal Response, Exhibit A, Issue G.8, and Exhibit D, Response to Late Comment TR-8; RTC Section 13.11.3, Response TR-2g	A-27 D-165 RTC 13.11-59
(b)	The SEIR’s Cumulative Analysis Fails to Consider and Analyze the Project in the Context of the City’s Proposal to Remove the Northern Portion of I-280 as Far South as the Mariposa Street Interchange.	L-66	Appeal Response, Exhibit A, Issue G.7, and Exhibit D, Response to Late Comment TR-8 RTC Section 13.11.3, Response TR-2h	A-26 D-170 RTC 13.11-67

**TABLE 1 (Continued)**  
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<b>C. THE SEIR IS NOT SUFFICIENT AS AN INFORMATIONAL DOCUMENT WITH RESPECT TO TRANSPORTATION IMPACTS (Lippe Supplemental Appeal) (cont.)</b>		L-41		
8.	The SEIR's Discussion of Transportation Impacts Is Incomplete.	L-66	Appeal Response, Exhibit A, Issue G.16 RTC Section 13.11.3, Response TR-2j	A-32 RTC 13.11-74
(a)	The SEIR fails to disclose the significance or severity of transportation impacts when both a Giants game and a Warriors game occur without the Special Events Transit Service Plan.	L-66	Appeal Response, Exhibit A, Issue G.16, and Exhibit D, Response to Late Comment TR-8 RTC Section 13.11.3, Response TR-2a	A-32 D-141 RTC 13.11-8
(b)	The SEIR fails to disclose traffic delays the Project's office and retail operations will cause on days with Giants games but without Project-related events.	L-68	<b>See also OCII Response to Supplemental Appeal Issue TR-2</b>	
9.	The SEIR Impermissibly Characterizes Mitigation Measures for the Project's Transportation Impacts as Components of the Project.	L-69	Appeal Response, Exhibit A, Issue G.11, and Exhibit D, Response to Late Comment PD-1	A-30 D-107
(a)	The SEIR fails to consider other measures to reduce transportation impacts.	L-69	Appeal Response, Exhibit A, Issue G.11, and Exhibit D, Response to Late Comment PD-1	A-30 D-107
(b)	The SEIR fails to identify enforceable mitigation.	L-69	Appeal Response, Exhibit A, Issues G.12, Exhibit A, Issues G.13, and Exhibit D, Response to Late Comment PD-1; RTC Section 13.2.2, Response GEN-1, and RTC Section 13.7.3, Response IO-2 <b>See also OCII Response to Supplemental Appeal Issue TR-3</b>	A-30 A-31 D-107 RTC, 13.2-3 RTC, 13.7-3
10.	The SEIR's Identification of Numerous Mitigation Measures is Unlawful for Several Reasons, Including Deferral of Development and Lack of Evidence of Unavoidability.	L-73	Appeal Response, Exhibit A, Issue G.9, Appeal Response, Exhibit A, Issue G.10, and Exhibit D, Response to Late Comment TR-16 RTC Section 13.11.3, Response TR-12d	A-28 A-29 D-192 RTC 13.11-199
(a)	The SEIR Improperly Defers the Development of Mitigation Measures to Reduce the Project's Construction-related Traffic Impacts to less than Significant.	L-81	Appeal Response, Exhibit A, Issue G.10, and Exhibit D, Response to Late Comment TR-14 RTC Section 13.11.11, Response TR-10	A-28 D-189 RTC 13.11-157
11.	The SEIR's Transit and Traffic Analyses Understate Impacts Because They Rely on Outdated Baseline Data.	L-82	Appeal Response, Exhibit A, Issue G.14, Appeal Response, Exhibit A, Issue G.15, and Exhibit D, Response to Late Comment TR-3 RTC Section 13.11.3, Response TR-2c	A-31 A-32 D-153 RTC 13.11-31



**TABLE 1 (Continued)**  
**RESPONSE TO SUPPLEMENTAL APPEAL TO CERTIFICATION OF FINAL SUBSEQUENT ENVIRONMENTAL IMPACT REPORT**  
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<b>C. THE SEIR IS NOT SUFFICIENT AS AN INFORMATIONAL DOCUMENT WITH RESPECT TO TRANSPORTATION IMPACTS (Lippe Supplemental Appeal) (cont.)</b>		L-41		
12.	The SEIR Fails to Consider the Disruptive Impacts of the At-grade Rail Crossing on LOS at 7th/ Mississippi and 16th Street.	L-83	Appeal Response, Exhibit A, Issue G.18, and Exhibit D, Response to Late Comment TR-3 RTC Section 13.11.3, Response TR-2f	A-33 D-163 RTC 13.11-55
13.	The SEIR concludes, without adequate foundation, that the project would not have an adverse impact on emergency access to UCSF hospitals.	L-83	Appeal Response, Exhibit A, Issue G.20, and Exhibit D, Response to Late Comment TR-13 RTC Section 13.11.10, Response TR-9	A-34 D-185 RTC 13.11-148
14.	The New Project Variant disclosed in the FSEIR requires recirculation due to new and more severe significant impacts.	L-83	Appeal Response, Exhibit A, Issue G.22 Exhibit D, Response to Late Comment TR-14	A-35 D-190
<b>D. THE SEIR IS NOT SUFFICIENT AS AN INFORMATIONAL DOCUMENT WITH RESPECT TO HYDROLOGY, WATER QUALITY, AND BIOLOGICAL IMPACTS (Lippe Supplemental Appeal)</b>		L-84		
1.	The DSEIR Is Not Sufficient as an Informational Document with Respect to the Project's Wastewater Treatment Infrastructure Impacts (Comment UTIL-3).	L-84	Appeal Response, Exhibit A, Issue H.2, and Exhibit D, Response to Late Comment UTIL-1	A-37 D-272
(a)	The Response to Comment UTIL-3 is Inadequate.	L-86	Appeal Response, Exhibit A, Issue H.2, and Exhibit D, Response to Late Comment UTIL-1	A-37 D-272
2.	The DSEIR Is Not Sufficient as an Informational Document with Respect to the Project's Contaminated Wastewater (i.e., Combined Sewage and Stormwater) Impacts on San Francisco Bay Water Quality or Biological Resources (Including from Inadequately Treated Sewage and Toxic Chemicals (e.g., PCB's and Metals).	L-87	Appeal Response, Exhibit A, Issue H.3, and Exhibit D, Response to Late Comments HYD-1, HYD-3, and HYD-4	A-38 D-313, 324, and 328
(a)	The Responses to Comments Hyd-3 - Hyd-6 are Inadequate.	L-93	Appeal Response, Exhibit A, Issue H.3, and Exhibit D, Response to Late Comments HYD-1, HYD-3, and HYD-4	A-38 D-313, 324, and 328
3.	The DSEIR Is Not Sufficient as an Informational Document with Respect to Project Impacts on Biological Resources, Including Wetlands and Wildlife.	L-96	Appeal Response, Exhibit A, Issues H.4, and Exhibit D, Response to Late Comment BIO-1 Exhibit D, Response to Late Comment BIO-3 RTC Section 13.19.2, Response BIO-1	A-40 D-291 D-299 RTC 13.19-3
(a)	The SEIR's exclusion of the Project's impacts on biological resources is erroneous.	L-96	RTC Section 13.19.2, Response BIO-1	RTC 13.19-3

**TABLE 1 (Continued)**  
**RESPONSE TO SUPPLEMENTAL APPEAL TO CERTIFICATION OF FINAL SUBSEQUENT ENVIRONMENTAL IMPACT REPORT**  
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<b>D. THE SEIR IS NOT SUFFICIENT AS AN INFORMATIONAL DOCUMENT WITH RESPECT TO HYDROLOGY, WATER QUALITY, AND BIOLOGICAL IMPACTS (Lippe Supplemental Appeal) (cont.)</b>		L-84		
(b)	The SEIR's exclusion of the Project's impacts on biological resources is erroneous because the lead agency failed to prepare any CEQA document that adequately describes the Project's environmental setting to allow an assessment of the Project's impacts on biological resources.	L-97	Appeal Response, Exhibit D, Response to Late Comment BIO-2 RTC Section 13.19.3, Response BIO-2	D-294 RTC 13.19-11
(c)	There is substantial evidence supporting a fair argument the Project will have a significant adverse effect on biological resources.	L-97	Appeal Response, Exhibit D, Response to Late Comment BIO-3, and Response to Late Comment BIO-4  RTC Section 13.19.2, Response BIO-1 RTC Section 13.19.4, Response BIO-3 RTC Section 13.19.5, Response BIO-4 RTC Section 13.19.6, Response BIO-5 RTC Section 13.19.7, Response BIO-6	D-299 D-302  RTC 13.19-3 RTC 13.19-13 RTC 13.19-19 RTC 13.19-31 RTC 13.19-43
(d)	The Response to Comment Bio-5 is Inadequate.	L-100	Appeal Response, Exhibit A, Issues H.4, H.5, and Exhibit D, Response to Late Comment BIO-1; and RTC Section 13.19.6, Response BIO-5	A-40, A-41 D-291 RTC 13.19-31
<b>E. THE SEIR IS NOT SUFFICIENT AS AN INFORMATIONAL DOCUMENT WITH RESPECT TO NOISE IMPACTS (Lippe Supplemental Appeal)</b>		L-102		
1.	The SEIR's Thresholds of Significance Are Unlawful under CEQA.	L-102	Appeal Response, Exhibit A, Issue I.2, and Exhibit D, Response to Late Comment NOI-1	A-45 D-197
(a)	The SEIR's use of regulatory thresholds of the San Francisco Noise Ordinance as its CEQA thresholds of significance is an error of law.	L-102	Appeal Response, Exhibit A, Issue I.2, and Exhibit D, Response to Late Comment NOI-1	A-45 D-197
(b)	The SEIR fails to use thresholds of significance based on human health and welfare.	L-103	Appeal Response Exhibit A, Issues I.3 and I.4, and Exhibit D, Response to Late Comment NOI-1	A-46 D-197
2.	The SEIR's Use of "Ambient plus Increment" Thresholds of Significance for All Noise Impacts Is Legal Error.	L-105	Appeal Response, Exhibit A, Issue I.3, and Exhibit D, Response to Late Comment NOI-1	A-46 D-197
3.	The Construction Refinements and New Project Require Recirculation.	L-106	Appeal Response, Exhibit D, Response to Late Comment NOI-2	D-200

**TABLE 1 (Continued)**  
**RESPONSE TO SUPPLEMENTAL APPEAL TO CERTIFICATION OF FINAL SUBSEQUENT ENVIRONMENTAL IMPACT REPORT**  
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Appellant Ref. No.	Issue as Stated by the Appellant	Page No. of Appellant Brief	Location of Detailed Response in Appeal Response and/or RTC Document	Page No. of Response
<b>A. PROJECT DESCRIPTION (Soluri Meserve Supplemental Appeal)</b>		S-2		
	The SEIR repeatedly presents a shifting and inconsistent project description.	S-2	Appeal Response, Exhibit A, Issue B.1 <b>Events at Oracle Arena:</b> RTC Section 13.5.3, Response PD-2 <b>Two Office Towers:</b> Appeal Response, Exhibit D, Response to Late Comment GHG-1 <b>Open Space within the project site:</b> Appeal Response, Exhibit D, Response to Late Comment WS-1	A-5  RTC 13.5-12  D-260  D-263
<b>B. TIERING (Soluri Meserve Supplemental Appeal)</b>		S-3		
	The SEIR attempts to rely on and tier from EIRs prepared in 1990 and 1998 for Mission Bay Redevelopment planning efforts, yet tiering is not permissible because the Project is different than the project described in the prior EIRs.	S-3	Appeal Response, Exhibit A, Issue C.1 and Exhibit D, Response to Late Comment ERP-2; and RTC Section 13.3.8, Response ERP-7	A-6 D-74 RTC 13.3-22
<b>C. AB 900 AND ADMINISTRATIVE RECORD (Soluri Meserve Supplemental Appeal)</b>		S-5		
	The City has failed to comply with applicable requirements to compile and maintain a complete and adequately indexed Record, and also failed to timely make the Record made available online at the time of release of the DSEIR.	S-5	Appeal Response, Exhibit A, Issue D.1 and Exhibit D, Response to Late Comment AB-1; and RTC Section 13.4.3, Response AB-2	A-6 D-100 RTC 13.4-16
<b>D. THE SEIR IS NOT SUFFICIENT AS AN INFORMATIONAL DOCUMENT WITH RESPECT TO GREENHOUSE GAS EMISSION IMPACTS (Soluri Meserve Supplemental Appeal)</b>		S-5		
	The SEIR is not sufficient as an informational document with respect to greenhouse gas emission impacts.	S-5	Appeal Response, Exhibit A, Issue J.1 and Exhibit D, Response to Late Comment GHG-1; and RTC Section 13.14.3, Response AB-2	A-48 D-256 RTC 13.14-5
<b>E. THE SEIR IS NOT SUFFICIENT AS AN INFORMATIONAL DOCUMENT WITH RESPECT TO GEOLOGY AND SOILS IMPACTS (Soluri Meserve Supplemental Appeal)</b>		S-8		
	Special attention to geologic and seismic impacts of the proposed project is necessary because the arena is classified as a public use building (Risk Category 3).	S-8 – S-9	Appeal Response, Exhibit A, Issue K.1 Exhibit D, Response to Late Comment GEO-2 <b>See also OCII Response to Supplemental Appeal Issue GEO-1</b>	A-51 D-307
	There is substantial evidence supporting a fair argument that the Project will result in potentially significant Geology and Soils impacts or, alternatively, supplemental review is required under Public Resources Code section 21166.	S-9	Appeal Response, Exhibit A, Issue K.4 Exhibit D, Response to Late Comment GEO-1	A-55 D-304
	Reliance on the 1998 Mission Bay FSEIR is impermissible because the project is different than what was planned under the Mission Bay Plan. The SEIR and FSEIR provide no analysis at all of Geology and Soils impacts.	S-9, S-10 – S-11	Appeal Response, Exhibit A, Issue K.2 Exhibit D, Response to Late Comment GEO-1	A-52 D-304

**TABLE 1 (Continued)**  
**RESPONSE TO SUPPLEMENTAL APPEAL TO CERTIFICATION OF FINAL SUBSEQUENT ENVIRONMENTAL IMPACT REPORT**  
**SUBMITTED TO THE SF BOARD OF SUPERVISORS NOVEMBER 30, 2015**

Appellant Ref. No.	Issue as Stated by the Appellant	Page No. of Appellant Brief	Location of Detailed Response in Appeal Response and/or RTC Document	Page No. of Response
<b>E. THE SEIR IS NOT SUFFICIENT AS AN INFORMATIONAL DOCUMENT WITH RESPECT TO GEOLOGY AND SOILS IMPACTS (Soluri Meserve Supplemental Appeal) (cont.)</b>		S-8		
	The SEIR impermissibly defers development of mitigation measures necessary to ensure that Geology and Soils impacts are mitigated to a less than significant level.	S-9	Appeal Response, Exhibit A, Issue K.3 Exhibit D, Response to Late Comment GEO-2	A-54 D-307
	The FSEIR fails to adequately respond in good faith to comments regarding the inadequacy of the Geology and Soils impacts.	S-10	Appeal Response, Exhibit A, Issue K.5	A-56
<b>F. THE SEIR IS NOT SUFFICIENT AS AN INFORMATIONAL DOCUMENT WITH RESPECT TO HAZARDS AND HAZARDOUS MATERIALS IMPACTS (Soluri Meserve Supplemental Appeal)</b>		S-11		
	The Phase II report for the project identified significant additional new contamination in the site soils that was not addressed in the 1998 Risk Management Plan or the 2006 Revised Risk Management Plan. This information was withheld from public disclosure in the NOP/IS and DSEIR and represents new information and/or changed circumstances requiring analysis and disclosure in a recirculated DSEIR.	S-11 – S-12	Appeal Response, Exhibit A, Issue L.3 Exhibit D, Response to Late Comment HAZ-1	A-59 D-336
	The DSEIR did not previously acknowledge the presence of asbestos on-site. The newly discovered presence of asbestos in the on-site soils represents a new significant impact of the project that requires recirculation. Mitigation Measure M-HZ-1b, included for the first time in the IS/NOP, is inappropriate in that it was formulated to address a new potentially significant impact that was not the subject of any EIR.	S-11 – S-12	Appeal Response, Exhibit A, Issue L.4 Exhibit D, Response to Late Comment HAZ-2 <b>See also OCII Response to Supplemental Appeal Issue HAZ-1</b>	A-61 D-343
	Screening levels have been updated since the 1999 Risk Management Plan was prepared, and 19 of the chemicals detected in the 2015 Phase II Environmental Site Assessment exceed at least one screening level. The contaminated fill is the result of backfilling activities in approximately 2015, subsequent to preparation of the 1999 Risk Management Plan.	S-12 – S-13	Appeal Response, Exhibit A, Issue L.3 Exhibit D, Response to Late Comment HAZ-1	A-59 D-336
	The 1999 Risk Management plan is outdated and no longer adequate to protect human health. Oversight by the RWQCB is no longer adequate to effectively manage the site for the protection of construction workers and the public.	S-13 – S-14	Appeal Response, Exhibit A, Issue L.2 Exhibit D, Response to Late Comment HAZ-1	A-57 D-336
	The information submitted by the Alliance constitutes substantial evidence of a fair argument that the Project will have a significant adverse effect regarding hazardous materials. In the alternative, per CEQA section 21166 and CEQA Guidelines section 15162, the facts described above constitute a change in circumstances since the 1998 Mission Bay FSEIR involving, and significant new information showing, a new significant effect not previously analyzed in the 1998 FSEIR.	S-14	Appeal Response, Exhibit A, Issue L.1 Exhibit D, Response to Late Comment HAZ-1 Exhibit D, Response to Late Comment HAZ-2	A-56 D-336 D-343

**TABLE 1 (Continued)**  
**RESPONSE TO SUPPLEMENTAL APPEAL TO CERTIFICATION OF FINAL SUBSEQUENT ENVIRONMENTAL IMPACT REPORT**  
**SUBMITTED TO THE SF BOARD OF SUPERVISORS NOVEMBER 30, 2015**

Appellant Ref. No.	Issue as Stated by the Appellant	Page No. of Appellant Brief	Location of Detailed Response in Appeal Response and/or RTC Document	Page No. of Response
<b>G. THE SEIR IS NOT SUFFICIENT AS AN INFORMATIONAL DOCUMENT WITH RESPECT TO URBAN DECAY IMPACTS IN OAKLAND (Soluri Meserve Supplemental Appeal)</b>		S-14		
	The SEIR is not sufficient as an informational document with respect to urban decay impacts in Oakland.	S-14	Appeal Response, Exhibit A, Issue M.1 to M.3, and Exhibit D, Response to Late Comment GEN-3 RTC Section 13.2.5, Response GEN-4	A-62 to A-63 D-60 RTC 13.2-18
<b>H. THE SEIR IS NOT SUFFICIENT AS AN INFORMATIONAL DOCUMENT WITH RESPECT TO WIND AND SHADOW IMPACTS (Soluri Meserve Supplemental Appeal)</b>		S-16		
	The SEIR is not sufficient as an informational document with respect to wind and shadow impacts.	S-16	Appeal Response, Exhibit A, Issues N.1 to N.3, and Exhibit D, Response to Late Comment WS-1; RTC Section 13.15.2, Response WS-1	A-64 D-263 RTC 13.15-1
<b>I. THE SEIR IS NOT SUFFICIENT AS AN INFORMATIONAL DOCUMENT WITH RESPECT TO RECREATION IMPACTS (Soluri Meserve Supplemental Appeal)</b>		S-18		
	The SEIR is not sufficient as an informational document with respect to recreation impacts.	S-18	Appeal Response, Exhibit A, Issue O.1 to O.5 and Exhibit D, Response to Late Comment WS-1; RTC Section 13.16.2, Response REC-1 RTC Section 13.22.10, Response HAZ-9	A-65 to A-66 D-268 RTC 13.16-2 RTC 13.22-37

## Fiscal Feasibility

### *Supplemental Appeal Issue GEN-1*

GEN-1. The Supplemental Appeal included a new technical report from Jon Haveman of Marin Economic Consulting dated November 29, 2015 regarding the effect of the project on San Francisco's General Fund, and updates a previous report by the same name and author dated November 2, 2015. (See Soluri Meserve Supplemental Appeal, Exhibit 4)

### *OCII Response to Supplemental Appeal Issue GEN-1*

This response supplements Response to Late Comment GEN-1, Fiscal Feasibility, included in the Appeal Response, Exhibit D, starting on page D-27.

On November 29, 2015, Jon Haveman of Marin Economic Consulting submitted a 24-page report entitled "Warriors Stadium Economics: Uncertainty and Alternatives" as Exhibit 4 to the appellant's brief. The report proposes a biotechnology office alternative and provides the consultant's analysis of its relative economic value to the City.

In the report, Mr. Haveman claims that the arena funding estimates are "far from conservative" and they should exclude \$1,709,165 in off-site transient occupancy and gross receipts taxes as "there is no way to accurately estimate NEW off-site revenues" and doing so "represents bad accounting, bad economics, and disingenuous communication with the public on the part of the City." This opinion directly contradicts an opinion that Mr. Haveman has previously expressed with respect to projects in the City. In his last analysis for the City and County during the 34th America's Cup in 2013, Mr. Haveman included IMPLAN modeling of Regional Economic Accounts and Social Accounting Matrices to "construct region-level multipliers that describe the response of the relevant regional economy to a change in demand or production as a result of the activities and expenditures related to the America's Cup."<sup>2</sup> In that earlier document, Mr. Haveman stated, "impact studies operate under the basic assumption that any increase in spending then has three effects: First, there is a direct effect on that industry itself. Second, there is a chain of indirect effects on all the industries whose outputs are used by the industry under observation. Third, there are induced effects that arise when employment increases and household spending patterns are expanded." The vast majority of America's Cup expenditures were necessarily off-site (including the associated revenue in the form of collection of transient occupancy, parking, sales and gross receipts taxes) and were included in his 2011 and 2013 Economic Impact studies. Therefore, while OCII agrees that off-site revenues are more difficult to accurately estimate, they can and regularly are estimated, and this is neither uncommon nor "far from conservative."<sup>3</sup>

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<sup>2</sup> "The America's Cup: Economic Impacts of a Match on San Francisco Bay" prepared by the Bay Area Council Economic Institute (BACEI) and Beacon Economics, 2010. See Appendix B: IMPLAN Input-Output Methodology.

<sup>3</sup> Some recent examples in San Francisco all of which similarly estimate the economic impact of offsite spending and increases to employment and tax receipts include for the 5M project (Office of Economic Analysis, *5M Project Development Agreement: Economic Impact Report*, November 5, 2015); UCSF (Economic and Planning Systems, Inc., *A Study of Economic and Fiscal Impact of the University of California, San Francisco*, June 2010), 34th America's Cup (*America's Cup: Economic Impacts of a Match on San Francisco Bay*, Bay Area Council Economic Institute (BACEI) and Beacon Economics, 2010); San Francisco Film Office (ICF Consulting, *San Francisco Film Cluster Economic Analysis*, April 2007); San Francisco Nightlife Businesses (Office of Economic Analysis, *The Economic Impact of San Francisco's Nightlife Businesses*, March 5, 2012); and the Moscone Convention Center (Office of Economic Analysis, *Certificates of Participation to Fund the Moscone Expansion Project: Economic Impact Report*, January 20, 2012).

The EPS and KMA estimates were constructed under specific City guidance to be conservative wherever uncertainty existed and are based on 205 events per year (20 fewer than the 225 assumed in the Final SEIR). KMA further independently concluded, “it is appropriate to include these off-site revenues for the following reasons:

- a. Only demand generated by the event center has been included in the analysis – not demand generated by the 630,000+ square feet of office and retail tenants;
- b. The assumed demand factors are based on a conservative application of the findings of the traffic demand study. For example, the transient occupancy tax projections reflect the assumption that only 10% of event attendees are potential overnight visitors and, of that potential, only 50% (or 5% of total attendees) generate hotel demand that is included in the study.” (Page 3 of *Peer review of “San Francisco Multi-Purpose Venue Project: Fiscal Impact Analysis – Revenues” prepared by Economic & Planning Systems, Inc.* September 25, 2015)

Furthermore, the City’s transportation service and public safety plans are scaled to match the needs of varying attendance levels. Should “attendance fail to materialize as predicted,” the City’s annual operating costs would be reduced commensurately. If there are fewer events or fewer attendees at the same number of events or “ride sharing or autonomous vehicles take over,” the demand for City services would proportionately decrease and the City could downsize its operational plans and deploy fewer bus drivers, transit fare inspectors, police officers, parking control officers and/or street sweepers. The risk to the City and County is the fixed cost of providing the physical infrastructure to enable better transit. The City has proposed to apply one-time revenues of \$25.4 million generated by the project to one-time capital costs of \$55.3 million to increase the capacity of the transit network in San Francisco’s neighborhood of greatest growth. While some of these expenditures are specific to the arena, many of them (new rail vehicles, augmented power, new crossover tracks) arguably would be required — or at least confer a significant benefit on the City — regardless of the final land use type onsite.

The Controller’s Office and SFMTA Finance teams are currently working on a plan of finance to cover the remaining \$29.9 million in costs, the annual expenditure for which the Budget Analyst estimates to be approximately \$2.1 million per year or less than 20 percent of anticipated revenues. Unlike more speculative one-time special events such as the America’s Cup or emerging businesses with less certain futures, it is hard to imagine a scenario where an established NBA franchise would not seek to recover its estimated \$1.4 billion upfront investment by seeking to boost attendance and thereby fail to generate even 20 percent of anticipated City revenues. Thus, although there is always some uncertainty associated with making assumptions about future revenue, in this instance the Project Sponsor, having made a capital investment of \$1.4 billion, will have significant incentive to achieve a reasonable rate of return on that investment and, in the process, to generate revenue for the City.

Mr. Haveman correctly separates the estimated \$2.6 million in dedicated and restricted funds for voter-mandated set-asides such as the Children’s, Library and Open Space funds and excludes them from estimated revenues. While OCII agrees that these funds are not and should not be eligible to cover arena-related expenses and are therefore separated in the

City's proposal, OCII disagrees that they should be excluded from the calculation of public benefit to the City.

In defense of the argument that project revenues are overestimated, Mr. Haveman points to the EPS Fiscal Feasibility real property transfer tax estimate of \$4.2 million which is based on an estimated land sale of \$172.5 million and notes that the actual sale was \$150 million resulting in a transfer tax of \$3.7 million. Mr. Haveman's statement is inaccurate. The land sale closed on October 9, 2015 for \$155.1 million and did not include the separate transaction for rights to 132 parking spaces at 450 South Street, an estimated \$5 million purchase. Taken together, these two property transfers produce an estimated \$4 million transfer tax or less than a 5 percent difference between estimated and actual receipts. Mr. Haveman also points to a reduction in the Stadium Admissions Tax for the San Francisco Giants as evidence that "should the Warriors be granted a similar concession would turn the small surplus into a deficit." However, the voters enacted the Stadium Admissions Tax and the reduction for what is now AT&T Park was authorized at the ballot. For the Warriors to "be granted a similar concession" they would need to mount a campaign and have the voters of San Francisco support a reduction at the ballot or file a legal challenge arguing that the tax somehow does not apply to the arena. The City has no other way to grant a similar concession. The notion that the Warriors will wage such a campaign is purely speculative. OCII has heard nothing indicating that the Warriors have any interest in pursuing such a strategy. Whether such a strategy would succeed is also purely speculative. The City's estimate of Stadium Admissions Tax revenue is based on existing law. Any other approach would be speculative.

Mr. Haveman then concludes that because revenues are overestimated and uses may be underestimated there is a "razor thin margin for benefit" and a significant "likelihood of the City's General Fund running a deficit in any given year." This conclusion is perhaps the single largest error in the analysis. The Mission Bay Transportation Improvement Fund (MBTIF) preserves the aforementioned \$2.6 million in dedicated and restricted funds and limits the City's commitment to a Maximum Annual Funding Amount equal to 90 percent of the remaining estimated revenues generated by the project in any given year. The MBTIF requires the Controller to update the Maximum Annual Funding Amount at least every five years, or more often if the Controller deems it necessary. This means that at a minimum, regardless of revenues collected, the City and County will receive all dedicated and restricted funds plus 10 percent of all remaining estimated revenues.

Should costs ever exceed revenues in any given year, responsibility for maintaining a set of quantifiable and enforceable performance standards – maximum auto mode share, transit performance and reliability, bicycle and pedestrian safety – will transfer to the project sponsor as detailed in Mitigation Measures M-TR-2b and M-TR-18. In no circumstance will the City be required to fund any more than the Maximum Annual Funding Amount on City services for the project.

Finally, Mr. Haveman proposes an alternative development that replaces the 18,000-seat arena with 522,000 square feet of biotech space and preserves the proposed 522,000 square feet of office space, 125,000 square feet of retail and 950 on-site parking spaces. This alternative incorrectly assumes that the site includes enough Floor Area Ratio and Prop M



office allocation to accommodate these total square footages. A more realistic alternative, based on real-world experience, would be consistent with the proposal by salesforce.com on the site in 2010. The salesforce.com proposal included 1 million square feet of office and 30,000 square feet of retail (139,000 less total square footage than Mr. Haveman's proposal). A March 2015 analysis by EPS of this non-arena alternative indicates that it would have generated \$9.5 million in TIDF (rather than Mr. Haveman's estimated \$10.9 million) and \$6.7 million in annual revenues. On both accounts, this is approximately half of what the proposed arena project would generate. Mr. Haveman represents that replacing the arena with more space than is available "represents four times more employment for biotechnology than for the Event Center." In addition to overestimating biotechnology employment, Mr. Haveman uses the FTE employment of the Warriors at Oracle Arena as its denominator and excludes the up to 1,100 special event staff that serve concessions, run ticketing, hospitality and security during events. Converting the biotechnology numbers to available square footage and temporary arena staff to FTE equivalents would present a more balanced comparison of the jobs created in each proposal. Finally, Mr. Haveman uses the TIDF estimate as a proxy for one-time capital impacts for transportation but attributes zero operating costs to housing approximately 4,000 office employees. While it is true that office employees would not generate the same peaked arrivals and departures as an arena and therefore would not require an enlarged rail platform or additional parking control officers it is misleading to represent that they will not add any operating costs to the City's transportation or public safety networks particularly as they are more likely to travel during the peak morning and evening commute periods, and predominantly in the same direction as existing commuters.

## City's Role in the Permit Process

### *Supplemental Appeal Issue ERP-1*

ERP-1. The Appellant asserts that the City, and not OCII, is the lead agency under CEQA.  
(See Lippe Supplemental Appeal, pp. 2-3)

### *OCII Response to Supplemental Appeal Issue ERP-1*

The Appellant argues that the CEQA appeal is authorized and governed by Public Resources Code sections 21151(c) and 21177 (from CEQA), not just OCII Commission Resolution No. 33-2015, and, therefore, the Board of Supervisors, must decide whether to certify the SEIR and whether it can make findings required by CEQA Guidelines section 15090(a) based on its consideration and determination of all issues presented using the Board's independent judgment. The Appellant argues also that OCII is a department of the City.

Please see Exhibit D, Response ERP-5 (pages D-90 to D-92) regarding (1) why the Board of Supervisors, acting in its capacity as the governing body of the successor agency to the redevelopment agency, together with OCII, to whom the Board, acting in such capacity, delegated decision-making authority over this project, is a separate legal entity from the City and County of San Francisco, and (2) why CEQA section 21151(c) is inapplicable to the project because the Board of Supervisors, acting in its capacity as the governing body of the successor agency, is not an elected decision-making body for this purpose.

Consistent with CEQA Guidelines section 15090, the Final SEIR was presented to the decision-making body, the OCII Commission, for OCII as the lead agency; and the decision-making body reviewed and considered the information contained in the Final SEIR prior to approving the project at the OCII Commission hearing held on November 3, 2015. As to the action that the Board of Supervisors will take in its capacity as the governing body of the successor agency, should it choose to affirm OCII Commission Resolution 69-2015 certifying the Final SEIR, the Board of Supervisors would adopt the proposed motion affirming the certification, in Board File No. 150991, which includes the findings required by CEQA Guidelines section 15090(a) regarding a determination that the Final SEIR was completed in compliance with CEQA, and the Final SEIR reflects the lead agency's independent judgment and analysis.

Following such action, the Board of Supervisors, acting in its capacity as the governing body of the City and County of San Francisco (and not as the governing body of the successor agency), and as a responsible agency under CEQA, may then choose to take discrete approval actions related to the project. If it does so, as a responsible agency, and in accordance with CEQA Guidelines Section 15096, the Board will adopt CEQA Findings required by CEQA Guidelines Sections 15091(a) and 15093. Those findings will state that the Board has considered the information contained in the final SEIR prior to taking such approval actions.

The Appellant acknowledges that "OCII is a separate legal entity with discrete responsibilities under the redevelopment law." (Brandt-Hawley Comment Letter, p. 1.) The Appellant is incorrect that OCII is a department of the City and, therefore, the Planning Commission and Board should certify the EIR and adopt lead agency findings. A similar argument was rejected in *No Wetlands Landfill Expansion v. County of Marin* (2012) 204 Cal.App.4th 573 (*No Wetlands*). In *No Wetlands*, the court held that the Marin County Environmental Health Services ("Marin EHS") was a separate and distinct agency from Marin County, and independently served as the lead agency for projects subject to its authority. Rather, EHS acted as an agent of the State of California (specifically of the State agency known as "Cal Recycle"). In reaching its holding, the court acknowledged that Marin EHS generally follows the Marin County's Environmental Impact Review Guidelines. Prior to Marin EHS taking action to certify an EIR, Marin EHS also provides the Marin County Planning Commission an opportunity to review such EIRs in an advisory role.

In *No Wetlands*, the interrelationship between Marin County and Marin EHS did not somehow transform the County Board of Supervisors into a lead agency decision-making body. The same is true here. The primary approval actions necessary for the project to proceed - approval of amendments to the Mission Bay South Design for Development, approval of the major phase and basic concept schematic design applications, and approval of secondary use findings by the Executive Director — are all actions related to "land use, development and design approval." OCII is properly acting as the lead agency under CEQA because it is "the public agency which has the principal responsibility for carrying out or approving the project which may have a significant effect upon the environment." (Pub. Resources Code, § 21067.) Under Health & Safety Code, § 34173, subd. (g), "[a] successor agency is a separate public entity from the public agency that provides for its governance and *the two entities shall not merge*." (Emphasis added.) As a separate legal entity from the

City and County of San Francisco, OCII properly prepared, reviewed, and certified the Final SEIR for the project, a project in a redevelopment plan area for which the California Department of Finance (“DOF”) has finally and conclusively determined completion of the Mission Bay South Owner Participation Agreement to be an enforceable obligation pursuant to the Redevelopment Dissolution Law. (See Letter, J. Howard, DOF, to T. Bohee, OCII, Re: Request for Final and Conclusive Determination (Jan. 24, 2014), available at: [http://www.dof.ca.gov/redevelopment/final\\_and\\_conclusive/Final\\_and\\_Conclusive\\_Letters/documents/San\\_Francisco\\_F&C\\_EO\\_Items\\_84-88\\_220\\_&\\_226.pdf](http://www.dof.ca.gov/redevelopment/final_and_conclusive/Final_and_Conclusive_Letters/documents/San_Francisco_F&C_EO_Items_84-88_220_&_226.pdf) )

The 1998 Redevelopment Plan for the Mission Bay South Redevelopment Project (“Plan”) was jointly certified by the Planning Commission and the San Francisco Redevelopment Agency. But, under California Redevelopment Law, the Board of Supervisors had to approve the establishment of a redevelopment area and new redevelopment plan. (See Health & Safety Code, §§ 33007, 33346, 33351.) Once the ordinance approving the Plan was adopted and filed, the Redevelopment Agency was “vested with the responsibility for carrying out the plan.” (Health & Safety Code, § 33372; see also SF Ordinance No. 335-98, § 6 (Nov. 2, 1998) [stating that “the Redevelopment Agency shall be vested with the responsibility for carrying out the [Mission Bay South] Redevelopment Plan”].) Under CEQA, this statutory authorization to carry out the Plan established the Redevelopment Agency as the lead agency for purposes of CEQA implementation. (CEQA Guidelines, § 15051, subd. (a).)

Under Redevelopment Dissolution Law, Health & Safety Code § 34170 et seq., successor agencies “succeed[ed] to the organizational status of the former redevelopment agency” to complete approved enforceable obligations. (Health & Safety Code, § 34173, subd. (g).) Although the dissolution of redevelopment agencies precludes the establishment of new redevelopment areas, the Redevelopment Dissolution Law provides successor agencies with the state authority to implement redevelopment plans for the purpose of completing those projects that survived the dissolution process. The Board of Supervisors, acting as the governing body of the separate legal entity that is the successor agency to the former San Francisco redevelopment agency, has delegated to the OCII Commission authority to:

“approve all contracts and actions related to the assets transferred to or retained by the Successor Agency, including without limitation, the authority to exercise land use, development and design approval authority for [Mission Bay].”

(SF Ordinance No. 215-12, Section 6.)

The Plan confirms the Redevelopment Agency’s primary authority for implementation and provides the City with the limited role of cooperation with the Agency. The Plan unequivocally establishes that the Redevelopment Agency is the decision-maker with the “powers, duties, and obligations to implement and further the program generally formulated in this Plan for the redevelopment, rehabilitation, and revitalization of the Plan Area.” (Plan, Section 101; see also id. at Section 700 [“Except as otherwise specified in Section 600 ... [which provides that ‘The City shall aid and cooperate with the Agency in carrying out this Plan . . .’], the administration and enforcement of this Plan, including the preparation and execution of any documents implementing this Plan, shall be performed by the Agency”].) Thus the OCII, as the successor to the Redevelopment Agency, is the agency with principal responsibility under CEQA for carrying out or approving the GSW Event Center project.

## Transportation

### *Supplemental Appeal Issue TR-1*

TR-1. The Supplemental Appeal included a new technical report from Dan Smith of Smith Engineering dated November 17, 2015 regarding the proposed modification to the Muni UCSF T Third Station. (See Lippe Supplemental Appeal, Exhibit 11)

### *OCII Response to Supplemental Appeal Issue TR-1*

The Appellant states that the light rail platform operations assessment in the SEIR is flawed, and that the Muni UCSF/Mission Bay Station Variant would result in significant construction-related transportation impacts.

Impact TR-4 on SEIR pp. 5.2-142 – 5.2-143 presents the assessment of pre-event and post-event operations at the Muni UCSF/Mission Bay Station northbound and southbound platforms. The analysis was conducted in coordination with SFMTA based on its experience with pre-event and post-event conditions at AT&T Park.

The platforms are of standard width as their dimensions are similar to those found elsewhere on the T Third line. The quantitative analysis of the southbound platform was based on standard transit station capacity methodology and indicated that adequate room to accommodate passengers for pre-event conditions is available on the platform during a large event, at crowded but acceptable service levels. Passengers in the light rail vehicle are not trapped, as stated by the commenter, in the event that a train operator does not open the doors until the queue on the platform and ramp is dissipated. This is standard operating practice; for example, in the Market Street tunnel during peak passenger demand periods light rail vehicles wait, when necessary, for the preceding train to depart prior to pulling all the way into the station and opening the doors. Improvement Measure I-TR-4: Operational Study of the Southbound Platform at the T Third UCSF/Mission Bay Station was proposed as an improvement measure to further study platform operations and determine the feasibility and efficacy of enlarging the southbound platform to provide additional queuing area for passengers on the platform.

The Appellant's assertion that SFMTA PCOs would be unable to manage passenger flows is not supported. The techniques that would be employed pre-event and post-event at the proposed project site are based on extensive experience, and numerous discussions and assessment by the SFMTA staff that are responsible for managing pedestrians, vehicles and transit at AT&T Park and for the numerous special events in San Francisco. Mr. Smith's disagreement with this conclusion is noted. Nevertheless, SFMTA's experience shows that PCOs are effective at managing passenger flow.

As described on SEIR p. 5.2-143, with the extension of the northbound platform, two, two-car light rail trains would be accommodated at the platform. In addition, the existing painted median area adjacent to the northbound tracks between South and 16th Streets would be raised 6 inches, which would allow for additional staging of northbound light rail vehicles south of the northbound platform. The SEIR does not state that the southbound platform would be used as a staging point for light rail vehicles heading north.

Subsequent to the Draft SEIR, SFMTA engineers, including those reviewing the transit analysis included in the Draft SEIR, identified a different approach that would not require the extension of just the northbound platform; and this option is incorporated into the Final SEIR as the Muni UCSF/Mission Bay Station Variant. The fact that the variant may be preferable to extension of the northbound platform only, does not invalidate the analysis within the SEIR, which determined Muni transit impacts related to light rail platform operations to be less than significant.

Impact analysis of the Muni UCSF/Mission Bay Station Variant is presented on SEIR pp. 12-23 to 12-34 at an equal level of detail as the proposed project. The addition of the Muni UCSF/Mission Bay Station Variant does not result in new or substantially more severe construction-related transportation impacts than previously disclosed in the SEIR.

As indicated on SEIR pp. 12-25 to 12-26, during construction activities that involve track work or staging within the track area, motor coach substitution would be proposed for a portion of Muni's T Third light rail service. "Shoofly trackage around the entire construction site," as suggested in the comment, is not identified in the SEIR as a technique to maintain light rail service during construction of the platform, and would not be constructed. Furthermore, as stated on SEIR p. 12-25, construction activities would not be continuous for the entire period of 14 months, and would be limited to shorter periods of construction, generally on weekends during periods of low passenger demand and when traffic volumes on Third Street are lower. Temporary suspension of rail service and replacement with bus service in order to improve future Muni operations is standard practice. For example, the recent Central Subway Fourth and King Streets track installation project to connect the existing Muni T Third to the under-construction Central Subway, included a temporary bus substitution for the T Third light rail between the Sunnysdale and Embarcadero stations. The SEIR determines that the Muni UCSF/Mission Bay Station Variant's construction-related transportation impacts would be similar to the proposed project, and not the same as stated by the commenter. While construction of a single center platform as part of the variant would involve more construction activities than the extension of the northbound platform as part of the proposed project, impacts on the transportation network would be similar, and would be less than significant.

The Appellant's allegations related to analysis of the proposed project's construction-related transportation impacts were addressed in RTC document Chapter 13, Section 11, Response TR-10 and Appeal Response Exhibit D, Late Comment Response TR-14.

### *Supplemental Appeal Issue TR-2*

TR-2. The Supplemental Appeal included a new technical report from Dan Smith of Smith Engineering dated November 28, 2015 regarding walking distance to the proposed project, key intersection on emergency routes omitted from the analysis, severity of impact issues in the 16th Street corridor, failure to consider a critical scenario, and effect of at-grade rail crossing at 16th Street. (See Lippe Supplemental Appeal, Exhibit 12)

The Appellant also raised the issue regarding failure to include a scenario when both a Giants game and a Warriors game occur without the Special Events Transit Service Plan. (See Lippe Supplemental Appeal, page 68)

## ***OCII Response to Supplemental Appeal Issue TR-2***

This response addresses each of the issues raised in the November 28, 2015 Smith Engineering technical report.

### **Walking Distance**

The Appellant refers to SEIR RTC Response TR-2b on SEIR pp. 13.11-27 – 13.11-28, and writes that the response states “people who work downtown would walk to the Warriors arena because people who work downtown tend to walk to AT&T Park.” This is not accurate. The commenter has apparently misunderstood references to the fact that people walk from downtown to AT&T Park.

RTC Response TR-2b on SEIR p. 13.11-27 specifically states “Modes of travel and place of origin surveys of basketball game attendees conducted by the SF Giants, as well as available parking occupancy surveys, suggest that many of those game attendees that drove to work at their jobs in the Financial District and SoMa areas, tend to walk, ride transit, or take a taxi to AT&T Park, leaving their cars at their commuter parking locations in order to avoid the evening commute congestion that typically occurs near I-80 and AT&T Park, and having to re-park their cars at game-day rates. It is likely that a similar condition would occur with the proposed project, with many of those working in downtown riding Muni or special event shuttles, and taking taxis or TNC vehicles, such as Uber or Lyft to the event center, rather than driving and having to park again with limited space availability.” This RTC Response TR-2b does *not* predict that people will walk from downtown to the proposed event center.

Thus, to summarize, Response TR-2b states that SF Giants game attendees who work in the Financial District and SoMa areas currently walk, ride transit, or take a taxi to AT&T Park, and further the response states that that event center attendees who work in the Financial District and SoMa areas would ride Muni or the special event shuttles, or take taxis or TNC vehicles (and therefore, would not walk). Thus, SEIR pp. 13.11-27 and 13.11-28 do not state that event attendees that work in downtown would walk to the event center.

The Appellant provides copious information regarding walking distances for non-event related travel, and primarily between mixed-use development and transit stations. As noted in RTC document Response TR-13, studies of sport facilities and special events have documented that most attendees will walk up to about 0.3 miles between their parking location and the nearest entrance to their destination, with even greater distances being acceptable at high attendance events. This acceptable greater walking distance for event attendees is supported by field observations of many SF Giants game attendees who currently walk along The Embarcadero or SoMa streets between AT&T Park and the Embarcadero Muni/BART station (a distance of approximately 1.2 miles), or those who currently park at the project site and then walk to AT&T Park (a distance of about 0.6 miles). Because OCII has not assumed that people will walk from downtown to the event center, the inclusion of the walking distance information does not affect any of the travel demand assumptions, impact analyses, or impact determinations contained in the SEIR.

### **Key Intersections on Emergency Routes Omitted from the Analysis**

The Appellant states that intersections on The Embarcadero are along emergency routes to UCSF facilities and should have been included as part of the traffic analysis in the SEIR, and

cites information obtained through UCSF's website to support this claim. The UCSF Medical Center website referred to in the comment provides a link for Google Maps for directions to the hospital from an address, and does not provide a UCSF-determined "primary recommended route" or "advised emergency access route" as stated in the comment. Thus, the Appellant's claim that The Embarcadero is an emergency access route to the UCSF hospitals, and therefore should be analyzed in the SEIR is not supported by UCSF data.

The issue related to analysis locations is addressed in RTC document Chapter 13, Section 11, Response 2b and Appeal Response Exhibit D, Late Comment Response TR-2.

#### **Severity of Impact Issues in the 16th Street Corridor**

The issue related to presenting levels of severity for LOS F conditions is addressed in RTC document Chapter 13, Section 11, Response 2f and Appeal Response Exhibit D, Late Comment Response TR-6. The SEIR accurately presents the project-related traffic impacts at the intersections along the 16th Street corridor.

#### **SEIR Fails to Consider a Critical Scenario**

The Appellant states that traffic impacts at the intersection of Seventh/Mississippi/16th were not disclosed because the SEIR does not analyze the existing plus No Event scenario with an overlapping SF Giants evening game at AT&T Park. The No Event scenario includes the travel demand associated with the proposed office, retail and restaurant uses with no event at the project site, and was analyzed for the weekday p.m. peak hour as it represents the peak period during which background traffic volumes and travel demand associated with the office uses would be greatest. The SEIR identified project-specific traffic impacts at the intersection of Seventh/Mississippi/16th during the weekday p.m. peak hour for the existing plus project conditions without a SF Giants evening game at AT&T Park for the No Event, Convention Event and Basketball Game scenarios. The SEIR also identified a project-specific impact at this intersection during the weekday p.m. peak hour for the existing plus Basketball Game scenario with an overlapping SF Giants evening game at AT&T Peak. Thus, an additional scenario of existing plus No Event scenario with an overlapping SF Giants evening game at AT&T Park is not needed to confirm what the SEIR discloses – that the proposed project would result in a significant traffic impact at the intersection of Seventh/Mississippi/16th during the weekday p.m. peak hour without or with an overlapping SF Giants evening game. Having looked at a common scenario with a higher level of impact, OCII was not also required to look at an additional scenario with a lesser level of impact.

#### **Effect of At-Grade Rail Crossing of 16th Street**

The issue related to presenting levels of severity for LOS F conditions were addressed in RTC document Chapter 13, Section 11, Response TR-2f and Appeal Response Exhibit D, Late Comment Response TR-3. The SEIR accurately presents the project-related traffic impacts at the intersections along the 16th Street corridor.

#### ***Supplemental Appeal Issue TR-3***

TR-3. The Appellant states that the SEIR fails to identify enforceable mitigation, related primarily to the funding of transportation improvements. (See Lippe Supplemental Appeal, page 69)

*OCII Response to Supplemental Appeal Issue TR-3*

The issue related to funding of the Muni Special Event Transit Service Plan and mitigation funding is discussed, as shown in Table 1, in RTC document Response GEN-1a and GEN-1b, Appeal Response Exhibit A, Issue G.12, and Exhibit A, Issue G.13.

On November 3, 2015, the SFMTA Board of Directors unanimously adopted the Resolution adopting the CEQA findings, approving the capital improvements and operating commitments, recommending that the Board of Supervisors adopt the Mission Bay Transportation Improvement Fund; and on November 9, 2015, the Board of Supervisors' Budget and Finance Committee unanimously recommended the ordinance creating the Mission Bay Transportation Improvement Fund.

The Appellant claims that the funding estimates are "far from conservative" and should exclude off-site transient occupancy, gross receipts and parking taxes. However, the Economic & Planning Systems and Keyser Marston Associates estimates are based on 205 events per year (20 fewer than the 225 assumed in the Final SEIR), and were constructed under specific City guidance to be conservative wherever uncertainty existed. Keyser Marston Associates further independently concluded that it is appropriate to include these off-site revenues for the following reasons:

- a. Only demand generated by the event center has been included in the analysis – not demand generated by the 630,000+ square feet of office and retail tenants.
- b. The assumed demand factors are based on a conservative application of the findings of the travel demand estimates. For example, the transient occupancy tax projections reflect the assumption that only 10 percent of event attendees are potential overnight visitors and, of that potential, only 50 percent (or 5 percent of total attendees) generate hotel demand that is included in the study." (Page 3 of Peer review of "San Francisco Multi-Purpose Venue Project: Fiscal Impact Analysis – Revenues" prepared by Economic & Planning Systems, Inc. September 25, 2015)
- c. Furthermore, the City's transportation service and public safety plan is designed to meet the needs of varying attendance levels. Should "attendance fail to materialize as predicted" as suggested by the Appellant, the City's annual operating costs will be reduced commensurately leaving only the fixed costs of providing the physical infrastructure (four new light rail vehicles, T Third platform expansion, etc.). The Controller's Office and SFMTA Finance teams are currently working on a plan of finance to cover these costs, the annual expenditure for which is estimated to be approximately \$2.7 million/year or less than twenty percent of anticipated revenues. Unlike more speculative one-time special events or untested emerging businesses, it is hard to imagine a scenario where an established NBA franchise would not seek to recover its estimated \$1.4 billion investment by boosting attendance and therefore fail to generate even 20 percent of anticipated City revenues.

Mitigation Measure M-TR-18: Auto Mode Share Performance Standard and Monitoring was developed specifically to address impacts of the proposed project if for some unknown reasons in the future, the City is unable to implement the Muni Special Event Transit Service Plan. As part of this mitigation measure, the project sponsor would be responsible for



implementing TDM measures intended to reach an auto mode share performance standard for different types of events. This mitigation measure provides the flexibility for the project sponsor to implement feasible measures necessary to meet the identified performance standards, and it identifies the monitoring and reporting program for assessing compliance. The performance standard itself must be achieved; therefore, the mitigation measure is an enforceable obligation on the project sponsor if all or a portion of the Muni Special Event Transit Service Plan is not provided.

## Air Quality

### *Supplemental Appeal Issue AQ-1*

AQ-1. The Appellant suggests that an appropriate ozone precursor standard would be the Best Available Control Technology (BACT) trigger levels. (See Lippe Supplemental Appeal, page 7)

### *OCII Response to Supplemental Appeal Issue AQ-1*

The Appellant's disagreement over the selected significance threshold is noted; however a lead agency is vested with discretion to choose the proper significance threshold and does not violate CEQA when it chooses to reject different thresholds proposed by a project opponent. (See *Citizens for Responsible Equitable Environmental Development v. City of Chula Vista* (2011) 197 Cal.App.4th 327, 335-336 ("CREED") [rejecting petitioners' argument that the City erred by not applying a different significance threshold]; *California Oak Foundation v. Regents of University of California* (2010) 188 Cal. App. 4th 227, 282 [rejecting petitioner's argument that a lead agency used the incorrect significance threshold in evaluating the biological significance of tree impacts]; *National Parks & Conservation Assn. v. County of Riverside* (1999) 71 Cal. App. 4th 1341, 1356-1357 [upholding a biological significance threshold used by Riverside County as supported by substantial evidence].)

The Appellant states that the New Source Review (NSR) standards are not appropriate CEQA significance thresholds. The Appellant also states that using the Best Available Control Technology (BACT) trigger levels in the NSR standards would be an appropriate threshold. The BACT trigger levels are lower than NSR standards; under permitting regulations adopted by the Bay Area Air Quality Management District (BAAQMD), BACT is required when ozone precursor (ROG or NOx) emissions exceed 10 pounds per day.

OCII disagrees with the Appellant's assertion. The significance criteria for ozone precursors used in the SEIR are based on standards recommended by the BAAQMD and are used for CEQA review of projects throughout San Francisco and the Bay Area. Moreover, BAAQMD advises that, "...utilization of the BACT Requirements as thresholds of significance for CEQA would result in achieving considerably more emission reductions from land use development than is needed to achieve air quality goals."<sup>4</sup> Thus, the BACT trigger levels are not appropriate CEQA significance thresholds because projects that emit ozone precursors at or above those levels would not necessarily violate air quality standards, contribute to an

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<sup>4</sup> BAAQMD. *Revised Draft Options and Justification Report, California Environmental Quality Act Thresholds of Significance*. October 2009. Page 26.

existing or projected air quality violation, or result in a considerable net increase in criteria air pollutants in a non-attainment region. For this reason, NSR standards continue to be appropriate thresholds for purposes of determining whether air pollutant emissions are significant, as recommended by BAAQMD.

***Supplemental Appeal Issue AQ-2***

AQ-2. The Appellant asserts that Mitigation Measure M-AQ-1 does not comply with CEQA legal requirements. (See Lippe Supplemental Appeal, page 12)

***OCII Response to Supplemental Appeal Issue AQ-2***

OCII responded to all aspects of this issue in Appeal Response, Exhibit D, Response to Late Comment AQ-2 regarding mitigation of construction-related impacts (pp. D-216 to D-220). As part of this response, the Appeal Response included examples of compliance submittals to the SF Planning Department pursuant to a construction emissions minimization plan (CEMP). Further examples of CEMPs as additional documentation of the monitoring and enforcement of construction equipment mitigation requirements include the following projects: 510-520 Townsend Street project, 101 Polk Street project, and Town School project.<sup>5</sup> The record thus shows that Mitigation Measure M-AQ-1 is a reasonable and effective approach towards addressing the project's construction-related air pollutant emissions.

***Supplemental Appeal Issue AQ-3***

AQ-3. The Appellant asserts that BAAQMD announced that it would not participate in Mitigation Measure M-AQ-2b, emission offsets, because the City and project sponsor refuse to agree to BAAQMD's offset fees. (See Lippe Supplemental Appeal, page 19)

***OCII Response to Supplemental Appeal Issue AQ-3***

The Appellant misinterprets the BAAQMD letter dated November 2, 2015 as well as the City and project sponsor's intentions. As stated in Appeal Response, Exhibit D, Response to Late Comment AQ-1 (page D-207), the BAAQMD letter states that the mitigation fee identified in the Draft SEIR is insufficient to achieve the required reduction of 17 tons per year of ozone precursors; the letter states that, in BAAQMD's view, the amount of the fee should be \$620,922 in order to achieve this reduction. The letter thus indicated that paying the fee is an appropriate form of mitigation; the difference of opinion focuses solely on the amount of the fee. In response to the BAAQMD letter, Mitigation Measure M-AQ-2b has been amended such that the amount of the BAAQMD offset fee is not capped. This revision will enable the project sponsor to continue discussions with BAAQMD to determine the amount of the appropriate fee. If BAAQMD and the project sponsor are unable to reach agreement, then this fee will not be paid to BAAQMD. If this were to occur, Mitigation Measure M-AQ-2b provides the project sponsor with a second option to directly implement an emissions offset project as an alternative to entering into an agreement with the BAAQMD.

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<sup>5</sup> Construction Emissions Minimization Plan information on 510-520 Townsend Street project, 101 Polk Street project, and Town School project.

In order to investigate the feasibility of Mitigation Measure M-AQ-2b, OCII and its consultant have conducted further research as to the appropriateness of the identified offset fee and BAAQMD's current practices regarding emissions reduction credits. The results indicate that the identified offset fee is adequate and appropriate, and that emissions reductions credits are available to cover the project. In particular, this investigation shows that the offset fee identified in Mitigation Measure M-AQ-2b is well above the current market prices for such offsets.<sup>6</sup>

#### ***Supplemental Appeal Issue AQ-4***

AQ-4. The Supplemental Appeal included a new technical report from Paul Rosenfeld and Jessie Jaeger of SWAPE dated November 20, 2015 regarding the adequacy of the health risk assessment. (See Lippe Supplemental Appeal, Exhibit 1)

The SWAPE report includes assertions that the SEIR's reliance on "the ambient cancer risk in the most pristine portions of the Bay Area" to support its chosen threshold of significance for TACs is incoherent and inconsistent with CEQA. (See Lippe Supplemental Appeal, page 24)

#### ***OCII Response to Supplemental Appeal Issue AQ-4***

This response address the following issues raised by the SWAPE report: adequacy of project health risk assessment; inclusion of all local sources in cumulative analysis; regional sources of toxic air contaminants; updated health risk assessment guidelines; and health risk at the Appellant-proposed alternative site near Pier 80.

#### **Adequacy of Project Health Risk Assessment**

The Appellant asserts that the RTC document failed to assess the project-specific health risks. This statement is incorrect. The FSEIR includes project-specific health risk assessments for both the proposed project and the Muni Center Platform Variant. The RTC document in fact tabulates the results of the project-specific health risk assessment (HRA) in Tables 5.4-10, Revised, and 5.4-11, Revised, (pages 14-120 and 14-121) and Appendix AQ2 (Refined Table 6.1-6 and Refined Table 6.1-8). For the Muni Variant, the results of the HRA are reported in RTC document Chapter 12 Table 12-5. Project-specific impacts are disclosed and supported by the documentation in Appendices AQ and AQ2 of the Draft SEIR and RTC document.

The Appellant states that the RTC document does not reduce the project's health risk impacts to "below applicable significance thresholds," going on to state that the RTC document incorrectly relies on a cumulative threshold of significance. Again, the Appellant's assertions are incorrect. As stated in the FSEIR, health risk impacts surrounding the project site are below the health risk threshold of significance, (see Tables 5.4-10, Revised, and 5.4-11, Revised, (pages 14-120 and 14-121), and Appendix AQ2, Refined Table 6.1-6 and Refined Table 6.1-8). Response AQ-1c of the RTC document addresses the Appellant's comments concerning the threshold used in the analysis, as does Response to Late Comment AQ-3 in the OCII Appeal Response, Exhibit D.

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<sup>6</sup> Michael Keinath and Catherine Mukai, Ramboll Environ. Memo to Paul Mitchell, ESA, regarding Ozone Precursor Offsets in the BAAQMD, dated December 3, 2015.

The Appellant states the project-specific threshold of 10 in one million increased cancer risk in the BAAQMD's May 2011 Draft CEQA guidance should have been used as a relevant threshold of significance. The BAAQMD draft CEQA guidance actually recommends two health risk thresholds: "Compliance with a Qualified Community Risk Reduction Plan OR Increased cancer risk of >10.0 in a million<sup>7</sup>." The significance thresholds used in the FSEIR were developed as part of San Francisco's preparation of a qualified Community Risk Reduction Plan (CRRP). While that effort is ongoing, the City-wide HRA modeling that was completed as part of the CRRP provides recent and comprehensive health risk information at a level of detail not available in most jurisdictions and is appropriate for use in CEQA documents in San Francisco. BAAQMD collaborated with the City in performing this modeling.

The significance thresholds used in the Final SEIR are the same as those used in the CRRP and have been developed with staff at BAAQMD and the San Francisco Department of Public Health. Furthermore, the City has proceeded with implementing early actions in the CRRP, namely updates to Health Code Article 38 (requiring enhanced ventilation; amended in 2014) and the Clean Construction Ordinance (requiring public projects to use the cleanest available construction equipment; amended in 2015). These legislative initiatives use the standards in the CRRP as a basis for determining when additional health protective actions are necessary. Thus, the CRRP's standards have been codified in City regulations used to protect the public from the adverse health effects of air pollution and are appropriate for use in the Final SEIR.

SF Planning has consistently used the CRRP standards as the threshold of significance under CEQA since approximately 2013.<sup>8</sup> The EIRs cited by the commenters are from before the advent of the City-wide HRA and development of CRRP standards. Because these EIRs predate the City's development of a City-wide HRA, these EIRs rely on the BAAQMD draft CEQA guideline numerical risk thresholds for individual projects (i.e., increased cancer risk of >10.0 in a million). The San Francisco City-wide HRA did not exist for the two EIRs cited by the commenters; therefore, it was impossible to apply the same methodology to those projects.

### **Inclusion of All Local Sources in Cumulative Analysis**

The Appellant reiterates an earlier comment that the project HRA does not include all local mobile sources or foreseeable sources of particulate matter, particularly traffic from a full build-out of Mission Bay. The Appellant is mistaken. Build out of the Mission Bay Redevelopment Plan is accounted for in the CRRP. As part of the San Francisco City-wide CRRP, BAAQMD and the San Francisco Department of Public Health evaluated two time horizons, 2014 and 2025 and evaluated traffic based on the San Francisco County Chained Activity Modeling Process (SF- CHAMP) model. SF-CHAMP, the official travel forecasting tool for San Francisco, is an activity-based model that predicts future travel patterns for the city. The SF-CHAMP model files used to estimate traffic for the CRRP include activity for a number of large, foreseeable projects in the south-eastern part of the City, including Pier 70,

<sup>7</sup> Bay Area Air Quality Management District, *CEQA Air Quality Guidelines*, May 2011, page2-2.

<sup>8</sup> See: 320-400 Paul Avenue Internet Services Exchange Final Mitigated Negative Declaration (Planning Department Case No. 2013.0522E), 200 Paul Avenue Final Mitigated Negative Declaration (Planning Department Case No. 2012.0153), Sunnydale-Velasco HOPE SF Master Plan Final EIR (Planning Department Case No. 2010.0305E), and 5M Project Final EIR, 925-967 Mission Street (Planning Department Case No. 2011.0409E).

Mission Rock, Candlestick Point – Hunter’s Point Ship Yard and full buildout of Mission Bay. As such, the traffic identified by the comment has been explicitly evaluated and incorporated into the cumulative health risk analysis.

The project-specific HRA relies on the 2014 CRRP database for cumulative contributions. The 2014 database is the conservative choice for cancer risk, as the cumulative cancer risk declines over time in the CRRP. This is described more fully in the CRRP technical support documentation. PM<sub>2.5</sub> concentrations from on-road exhaust will decline over time as well, while PM<sub>2.5</sub> concentrations from fugitive emissions will increase over time. However, the changes to PM<sub>2.5</sub> concentrations in the 2025 CRRP—which includes additional on-road trips in Mission Bay and reasonably foreseeable projects—are not large enough to change the significance of the project PM<sub>2.5</sub> impact. The City also conducted modeling of 2040 roadways. Using the 2040 roadway results, changes to cancer risk and PM<sub>2.5</sub> impacts are not large enough to change the significance of the Project cancer risk or PM<sub>2.5</sub> impacts.

Therefore, the project HRA includes sources within the zone of influence and foreseeable project as explained in Appeal Response F.6(e) of the OCII Appeal Response, Exhibit A. The project HRA and the San Francisco City-wide HRA encompass the sources of air pollution determined to be relevant and in the zone of influence in preparation of the San Francisco CRRP. The methodology used to perform the project cumulative HRA is consistent with the methodology of the San Francisco City-wide CRRP.

### **Regional Sources of Toxic Air Contaminants**

The Appellant states that the analysis of cumulative health risk impacts is inadequate because it does not consider regionally-transported contributions of risk.

As noted by the Appellant, the PM<sub>2.5</sub> concentrations do include the modeled effects of local sources of PM<sub>2.5</sub> as well as the ambient background of PM<sub>2.5</sub>. The Appellant fails to indicate that there are both state and federal ambient air quality standards for PM<sub>2.5</sub>, which provide a well-defined target for evaluation of a cumulative impact.

Unlike for PM<sub>2.5</sub>, there is no state or federal ambient air quality standard for cumulative risk. As such, the BAAQMD relied upon federal risk assessment guidance, among other factors, in setting the cumulative risk threshold of 100 in a million, upon which the FSEIR’s significance threshold is based.

As stated on page 13.13-27 of the RTC document, when BAAQMD developed its 100 in one million cumulative criterion characterized in its CEQA Air Quality Guidelines as reflective of air quality in a “pristine” portion of the Bay area, it was originally designated as its “Point Reyes” approach,<sup>9</sup> reflecting the air quality in this National Seashore that the U.S. Park Service identifies as a Class I Park and wilderness area. Consequently, even such pristine areas as Point Reyes National Seashore can have a sizeable background cancer risk, largely due to cumulative global atmospheric transport.

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<sup>9</sup> BAAQMD, Bay Area Air Quality Management District CEQA Guidelines Public Workshop Presentation, “Developing Thresholds of Significance”, Slide 10, February 26, 2009.

As stated on page A-16 of the Appeal Response, the SEIR's cancer risk threshold was developed in close coordination with BAAQMD staff and is based not solely on EPA regulations for what constitutes an "acceptable risk" level, but also on regional modeling demonstrating that the threshold of 100 per one million population reflects the air quality in the most pristine portions of the Bay Area (e.g., Point Reyes).

Thus, the City's health risk assessment threshold of 100 in one million considers the regional contribution of risk in a pristine location relative to the contributions from definable local sources for the purposes of a project-level analysis outside of an Air Pollution Exposure Zone, such as the project site. The fact that this threshold is derived from regional contributions does not preclude its use as a tool for assessing localized impacts under CEQA.

### **Updated Health Risk Assessment Guidelines**

The Appellant states that there are 2015 guidance documents from the Cal/EPA Office of Environmental Health Hazard Assessment (OEHHA), and that the Health Risk Assessment should adhere to this guidance. This point is the same as made in the Appellant's comments on the Draft SEIR and RTC document and is addressed in Response AQ-5 of the RTC document and Appeal Response F.6(f) of the OCII Appeal Response, Exhibit A. Response to Late Comment AQ-3 in the OCII Appeal Response Exhibit D notes that BAAQMD is responsive to the amplified health effects on child receptors and has required the use of an Age Sensitivity Factor in health risk assessments since 2010. The project HRA uses Age Sensitivity Factors (ASF) to account for the increased sensitivity of child receptors. It is not clear whether SWAPE has considered the use of the ASF in the RTC document in preparing the revised tables on page 9 of its letter.

The Appellant states that the data required to update the cumulative analysis to its satisfaction were not available. OCII disagrees. The *Technical Support Documentation* for the San Francisco CRRP data is well documented and publicly available, and the database itself is available upon request from the San Francisco Planning Department.

### **Pier 80 Alternative, Health Risk**

SWAPE notes that the Mission Bay Alliance identified an alternative site, the Pier 80 Alternative, which should be considered since it would "substantially reduce environmental impacts." This site and the surrounding area is primarily in an Air Pollutant Exposure Zone (APEZ). SWAPE claims that this site should be developed preferentially due to lack of nearby sensitive receptors. However, SWAPE admits that it did not perform a thorough sensitive receptor search, stating, "[w]e relied upon resources provided by the San Francisco Planning Department to determine if there were existing sensitive receptors within the area." In a brief search of the area, two condominium complexes were found to be directly north of the Pier 80 Alternative site. The closest is directly across the street from the site on the northeast corner of the intersection at Cesar Chavez Street and Indiana Street (1588 Indiana Street), and the other is another block north at the southeast corner of the intersection of 25th Street and Indiana Street. Both of these locations are within an APEZ, which means that either the modeled cancer risk already exceeds 100 in one million or the modeled PM<sub>2.5</sub> concentration is higher than 10 micrograms per cubic meter.

SWAPE also states that the “the entire site is not located within an APEZ,” and notes that the arena could be built primarily in the non-APEZ area. However, the emissions of a development at this site would affect the surrounding area, most of which is considered an APEZ. Development in this region would cause further impacts to residents that are already in a health vulnerable area. Therefore, OCII disagrees with SWAPE’s statement that “the proposed alternative would have a substantially reduced health impact.”

For a discussion of other reasons why OCII rejected this alternative location proposed by the Appellant from further consideration, see Appeal Response, Exhibit D, Response to Late Comment ALT-1, page D-349.

## Greenhouse Gases Emissions

### *Supplemental Appeal Issue GHG-1*

GHG-1. The Appellant repeats assertions that the greenhouse gases emissions impact analysis in the SEIR is not adequate. (See Soluri Meserve Supplemental Appeal, pp. 5-8)

### *OCII Response to Supplemental Appeal Issue GHG-1*

The Supplemental Appeal materials do not raise any issues concerning the greenhouse gas (GHG) analysis that have not already been addressed by OCII. (See Table 1 of this Supplemental Appeal Response for location of relevant responses.) However, OCII notes that a recent California Supreme Court decision, *Center for Biological Diversity v. California Department of Fish and Wildlife (CBD v. DFW)*, provides lead agencies with further guidance on evaluating GHG emissions pursuant to CEQA. Specifically, *CBD v. DFW* addresses DFW’s determination that the GHG impacts caused by an approximately 12,000 acre development in Southern California accommodating approximately 58,000 new residents in a “new town” were less than significant under DFW’s selected significance threshold. As explained herein, this decision does not affect the validity of OCII’s Final SEIR.

In *CBD v. DFW*, the Court upheld the respondent lead agency’s significance threshold – whether the project was consistent with meeting statewide emission reduction goals under AB 32 – as “a legally permissible criterion of significance.” (Slip Opinion, p. 2.) However, in addressing the EIR’s significance determination, the Court held that the EIR’s “finding that the project’s emissions would not be significant under that criterion is not supported by a reasoned explanation based on substantial evidence.” (Slip Opinion, p. 2.) Specifically, the Court found the EIR failed to support its conclusion that the project’s 31 percent reduction in GHG emissions as compared to “business as usual” levels (which assume no regulatory actions were taken to address climate change) was sufficient to meet the statewide emission reduction goal of 29 percent as set forth in the “Scoping Plan” prepared by the California Air Resources Board in accordance with AB 32. In other words, the Court faulted the EIR for assuming that a 31 percent GHG reduction from a specific land use project would be consistent with the 29 percent reduction goal for the State. (*Id.*, p. 22.) Because the EIR lacked substantial evidence supporting this assumption, the Court found that “the analytical gap left by the EIR’s failure to establish, through substantial evidence and reasoned explanation, a quantitative equivalence between the Scoping [P]lan’s statewide comparison and the EIR’s

own project-level comparison deprived the EIR of its ‘sufficiency as an informative document.’” (*Id.*, p. 23.)

Here, the Final SEIR did not measure the significance of GHG emissions based upon the project’s consistency with the State-wide Scoping Plan. Rather, the Final SEIR identified a significance threshold and a methodology for ascertaining the significance of GHG emissions that is based upon a project’s consistency with San Francisco’s adopted Greenhouse Gas Reduction Ordinance. The City has developed a strategy and documented its actions to achieve the goals of the Greenhouse Gas Reduction Ordinance in its Greenhouse Gas Reduction Strategy, which the BAAQMD has reviewed and concluded serves “as a model from which other communities can learn” in its “aggressive GHG reduction targets and comprehensive strategies . . . to help the Bay Area move toward reaching the State’s AB 32 goals.” (SEIR Volume 2, p. 5.5-9.)

Because the analysis in the Final SEIR does not rely on a comparison of project emissions to the statewide emissions reductions goals set forth in CARB’s Scoping Plan, the Supreme Court’s holding in *CBD v. DFW* is not applicable to the proposed project. Of note, however, the approach adopted by OCII to assess GHG impacts was identified by the Supreme Court as one potentially viable means of CEQA compliance. Specifically, the Court noted that local governments can rely on “geographically specific greenhouse gas emission reduction plans to provide a basis for the tiering or streamlining of project-level CEQA analysis,” and further stated that CARB’s Scoping Plan “encourages local jurisdictions to develop ‘climate action plans’ or greenhouse gas ‘emissions reduction plans’ for their geographic areas, and several jurisdictions have adopted or proposed such plans as tools for CEQA streamlining.” (*Id.*, p. 26.) As explained in the Final SEIR and appeal responses, San Francisco’s Greenhouse Gas Reduction Ordinance, implementing actions set out in the Greenhouse Gas Reduction Strategy, and latest update on the progress in achieving its goals set out in the San Francisco Climate Action Strategy, 2013 Update, is similar to the climate action plan referenced by the Court and, in fact, San Francisco’s GHG Reduction Strategy actions have already resulted in the City exceeding the statewide AB 32 GHG reduction goals. (SEIR, Volume 2, p. 5.5-8.) The Final SEIR’s determination that the project would not result in significant GHG impacts was based primarily on the project’s consistency with the City’s aggressive GHG Reduction Ordinance goals and GHG Reduction Strategy actions (SEIR, Volume 5, p. 13.14-6), and therefore is consistent with the Supreme Court’s guidance on this issue.

## Geology and Soils

### *Supplemental Appeal Issue GEO-1*

GEO-1. The Appellant states that special attention to seismic impacts are needed and includes a new email from its geotechnical consultant. (See Soluri Meserve Supplemental Appeal, Exhibit 3)

### *OCII Response to Supplemental Appeal Issue GEO-1*

The Appellant provides a new email from its geotechnical consultant (Exhibit 3) to provide evidence of why it is important that public use facilities are designed to current building code standards. The email states that had the deteriorated concrete bleachers of the stadium Candlestick Park not been rebuilt to then current building standards, there may have been



injuries when the 1989 Loma Prieta Earthquake occurred at the same time as the World Series. This email is not applicable to the proposed project because the project does not include the renovation of any old structures. The project would be built according to current building code requirements as discussed in Impact GE-1 of the Initial Study, Response to Comment GEO-1, and Responses to Late Comments GEO-1 and GEO-2.

## Hazards

### *Supplemental Appeal Issue HAZ-1*

HAZ-1. The Appellant asserts that asbestos is present on the project site. (See Soluri Meserve Supplemental Appeal, page 11 and Exhibits 5, 6 and 7)

### *OCII Response to Supplemental Appeal Issue HAZ-1*

The Appellant provides new information related to sampling of stockpiled soil near the project site by BAAQMD (Exhibit 5), U.S. EPA guidance regarding cleanup levels for asbestos in soil (Exhibit 6), and email correspondence with the Regional Water Quality Control Board (RWQCB) regarding asbestos containing material that was moved from the GSW project site (Exhibit 7).

The Appellant's statement that the soil sampled by the BAAQMD in August of 2015 was moved from the project site is incorrect. The soil sampled by the BAAQMD was stockpiled at the location of future Bayfront Park parcel P22 and portions of adjacent existing or future rights-of-way, all within the Mission Bay Plan area.<sup>10</sup> This location is not within the project site at Mission Bay Blocks 29-32. The stockpiled soil was originally excavated from locations wholly within public infrastructure improvement project areas serving the Mission Bay Plan area, and not from Blocks 29-32.

All soils within the Mission Bay Plan area are managed by multiple protective environmental requirements. Soils must be excavated and managed in accordance with an approved Risk Management Plan and Dust Mitigation Plan, which is overseen by the RWQCB and supported by other applicable agencies such as BAAQMD. Articles 22A and 22B of the San Francisco Health Code, which address among other things dust control and mitigation requirements, are incorporated as a part of the Risk Management Plan. Moreover, Asbestos Dust Mitigation Plans are either under review or have been approved for use within the Mission Bay Plan area for projects that are subject to the Asbestos Airborne Toxics Control Measure. The Asbestos Dust Monitoring Plans are consistent with the California Air Resources Board Asbestos Airborne Toxics Control Measure. Therefore, while a select sample of soil stockpiled at Parcel P22 (again, not on the site of the proposed project) may have contained chrysotile asbestos at concentrations greater than 3 percent, soil excavation and management throughout the Mission Bay Plan area is being managed appropriately under protective environmental requirements.

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<sup>10</sup> Email from Luke Stewart, Director of Design and Planning, Mission Bay Development Group, to Mary McDonald, Orion Environmental Associates. Mission Bay Soil Stockpile. December 4, 2015.

The information provided by the Appellant regarding sampling of the stockpiled soil is irrelevant to the proposed project because the stockpiled soil was neither excavated from nor stored on the project site. In fact, as also discussed in Response to Late Comment HAZ-2 (Appeal Response, Exhibit D, page D-343), the project sponsor has adequately addressed the presence of asbestos in soils that are within the project site through the completion of an Asbestos Dust Monitoring Plan prepared in accordance with Mitigation Measure M-HZ-1b of the Initial Study, and as required by BAAQMD under the Asbestos Air Toxics Control Measure. On November 16, 2015, BAAQMD concluded that the plan submitted by the project sponsor meets the requirements of the Asbestos ATCM and approved the Asbestos Dust Monitoring Plan. Impacts associated with exposure to naturally-occurring asbestos are adequately addressed in Impact HZ-1 of the Initial Study, which was circulated for public review along with the Notice of Preparation prior to publication of the Draft SEIR; no comments relating to naturally-occurring asbestos were received during the scoping period. The Initial Study is also included as an appendix of the SEIR. Thus, this is not a new impact identified subsequent to publication of the SEIR.

Information regarding cleanup levels for asbestos in soil are also irrelevant to the proposed project because once the project is constructed there would be no exposure to naturally-occurring asbestos in soil at the site. Site excavation would remove soil to a minimum depth of 12 feet as part of the site development, and clean engineered backfill would be used where needed. The site would be occupied by buildings or paved, and none of the existing soil on the site would be exposed at grade.

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In sum, like the Appeal Letter, none of the issues raised in the Supplemental Appeal present new information that affects the analysis or conclusions of the Final SEIR on the project. The Appeal Response and the RTC document provide abundant substantial evidence that none of the circumstances identified in the CEQA Guidelines for recirculation apply to the SEIR and that recirculation is not warranted.

## CONCLUSION

As recognized in a recent appellate court decision, *City of Irvine v. County of Orange* (2015) 238 Cal.App.4th 526, “the comment-and-response process can . . . be abused. At its worst, it could become an end in itself, simply a means by which project opponents can subject a lead agency’s staff to an onerous series of busywork requests and ‘go fetch’ demands. As Presiding Justice McConnell wrote in *Citizens for Responsible Equitable Environmental Development v. City of San Diego* [citation omitted], the point of CEQA “‘is to inform government decision makers and their constituency of the consequences of a given project, not to derail it in a sea of administrative hearings and paperwork.’” This case is an example of the drowning in ‘paperwork’ Presiding Justice McConnell warned about.” (*City of Irvine v. County of Orange*, *supra*, 238 Cal.App.4th at p. 558.)

OCII staff conducted an in-depth and thorough analysis of the potential physical environmental effects of the proposed project, consistent with CEQA and the CEQA Guidelines. Neither the Appeal Letter nor the Supplemental Appeal has demonstrated that

the Final SEIR is insufficient as an informational document, or that the OCII Commission's findings and conclusions, as set forth in the Final SEIR and certification resolution, are unsupported by substantial evidence. OCII staff conducted all necessary studies and analyses, and provided the OCII Commission with all necessary information and documents in accordance with the Planning Department's environmental checklist and Consultant Guidelines, and pursuant to CEQA and the State CEQA Guidelines. Substantial evidence supports the OCII Commission's findings and conclusions as set forth in the Final SEIR.

For the reasons provided in this Supplemental Appeal Response, OCII believes that the Final SEIR complies with the requirements of CEQA and the CEQA Guidelines, provides an adequate, accurate, and objective analysis of the potential environmental impacts of the proposed project, is sufficient as an informational document, is correct in its conclusions, and reflects the independent judgment and analysis of the OCII, and that the OCII Commission's certification findings are correct. Therefore, OCII respectfully recommends that the Board uphold the OCII Commission's certification of the Final SEIR.

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