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Tiffany Bohee, OCII Executive Director
Brett Bollinger, EIR Coordinator
via email warriors@sfgov.org

Subject: Comments on the Final Subsequent EIR
Warriors Event Center & Mixed Use Development

Dear Director Bohee and Mr. Bollinger:

The Mission Bay Alliance is concerned about many ongoing defects in the CEQA process for the proposed Warriors Event Center. These include violations of CEQA's procedural mandates, material inadequacies of the Subsequent EIR, and OCII's unsupported substantive findings. In the minimal 11-day time frame allotted for public review of the new and voluminous OCII CEQA documents, including the Final SEIR, technical reports, and proposed findings, my co-counsel and I have done our best to bring these issues to the attention of the Commission on behalf of the Alliance.

1. The Final SEIR Must Be Certified by the Planning Commission

Approval of a CEQA document must comply with local ordinances as well as with California environmental law. (*E.g., Citizens for the Restoration of L Street v. City of Fresno* (2014) 229 Cal.App.4th 340.) While OCII is a separate legal entity with discrete responsibilities under redevelopment law, it is under the legislative control of the Board of Supervisors per state statutes and local ordinances. For CEQA purposes, OCII's duties align with those of the City of San Francisco. The Planning Department was thus identified as a co-lead agency in the CEQA process for the 1998 Mission Bay South Redevelopment Plan.

CEQA is a process-driven statute that must be followed to the letter. The Event Center's Subsequent EIR reflects its preparation by the City Planning Department and the City will consider many of the Event Center's required approvals. If the current SEIR is certified, the Board of Supervisors will decide administrative appeals of its inadequacy as the elected decision-making body. The Planning Code requires initial consideration of the certification of the Final SEIR to be conducted by the San Francisco Planning Commission, and that must happen before its consideration by OCII. The current process violates CEQA.

2. The Final SEIR Responses to Comments is Inadequate

Every lead agency is required to provide a “good faith, reasoned analysis” in responses to comments on the EIR; “[c]onclusory statements unsupported by factual information will not suffice.” (Guidelines, § 15088, subd.(b); see *Laurel Heights Improvement Association. v. Regents of the University of California* (1993) 6 Cal.4th 1112, p. 1124.) When a comment raises a significant environmental issue, the EIR must respond in detail, providing reasons why the comment was not accepted.

Sutter Sensible Planning, Inc. v. Board of Supervisors (1981) 122 Cal.App.3d 813 explains that detailed EIR responses “insure the integrity of the process of decision by precluding stubborn problems or serious criticism from being swept under the rug.” (*Id.*, p. 820.) *Flanders Foundation v. City of Carmel-by-the Sea* (2012) 202 Cal.App.4th 603 ordered issuance of a writ when an EIR failed to respond to a comment proposing a reduced-size parcel for an environmentally damaging project. (*Id.*, pp. 616-617.)

a. Land Use. The Alliance submitted a letter from the undersigned counsel on November 2, 2015, reiterating in detail how the proposed Event Center’s sports arena is not consistent with any of the principal or secondary uses allowed by the Mission Bay South Redevelopment Plan, including the secondary uses now being invoked by OCII for the first time in the Final SEIR. That letter is here incorporated by reference. The Draft SEIR did not address land use issues because the Initial Study and Notice of Preparation posited that all of the uses proposed by the Event Center were encompassed within the ‘Nighttime Entertainment’ secondary use that had been analyzed in the 1998 Mission Bay EIR.

That EIR’s refusal to analyze the project’s land use inconsistencies has not been cured by the Responses to Comments, which now fails and/or inaccurately responds to the Alliance’s DSEIR comments about secondary use categories, the Event Center’s conflicts with Mission Bay South design criteria, including Vara Blocks, and impacts to community character. The inadequate Responses to Comments as to these land use inconsistencies constitutes a separate ground of legal error.

The SEIR should be revised and recirculated after amendment of the Mission Bay South Redevelopment Plan to provide for a consistent principal or secondary use.

b. Alternatives. The Alliance commented on the SEIR’s inadequate analysis of the ‘no project’ alternative and failure to include a potentially-feasible off-site alternative. Following the SEIR comment period, the Alliance informed OCII that it had located a

feasible off-site alternative that met project objectives and reduced impacts, and requested its consideration. This should still happen, and the site at Pier 80 should be considered in a revised and recirculated EIR.

In response, the Final SEIR offers rote statements like “CEQA does not require analysis of ‘every imaginable alternative’ but rather it gives agencies the flexibility to eliminate certain alternatives that either do not reduce environmental impacts or do not further the project’s main objectives.” The Alliance agrees, but the statement neither addresses nor cures this particular EIR’s failure to analyze the ‘no project’ alternative or a potentially-feasible off-site location.

As to the ‘no project’ alternative, the Alliance finds the Responses to Comments again inadequate. Among other things, the responses both dismiss and acknowledge that the UCSF-owned Block 33 is eligible for a tower. That opportunity remains relevant to the discussion as it impacts the extent of reasonably foreseeable development at the Event Center project site if the project does not proceed. The EIR responses also continue to overestimate the traffic impacts of ‘no project’ by speculative assumptions as to the parking likely to be provided by developers for proposed retail uses.

The EIR’s refusal to consider a potentially-feasible off-site alternative violates CEQA, which repeatedly confirms that consideration of alternatives is the key to reducing project impacts while accomplishing objectives. The SEIR responses to this issue treat CEQA like a game, tangentially acknowledging that the initial site at Piers 30-32 was too expensive and would require a public vote for a site so unpopular that the Warriors abandoned it, but then repeating over and over that the site is at least “potentially feasible for purposes of this SEIR.” (Responses, 13.24-8.) In other words, the rejected site is not feasible in the real world, but can somehow be considered adequate to comply with CEQA under the substantial evidence standard of review. Not so, both as to the site and standard of review. The infeasibility of the site is reflected in the CEQA findings that dismiss it, citing its uncertain approval and significantly more severe impacts than the Mission Bay project.

c. Cultural Resources. In response to the Alliance’s references to new information regarding archaeological impacts and inadequate studies, the SEIR provides a conclusory reference to new archaeological study in October 2015 that resolves concerns. As with the other new studies provided within the 11-day review period for the SEIR Responses to Comments, the public has not had sufficient opportunity to review the technical information. Further, the Responses to Comments is insufficient as an informational document because it fails to provide analysis regarding its conclusory

dismissal of archaeological concerns based on the referenced new studies. There is thus insufficient basis for findings that archaeological impacts are infeasible.

3. The Proposed Findings on Alternatives are Inadequate

The SEIR does not analyze the alternate site proposed by the Alliance near Pier 80, nor circulate that analysis for public comment and so has no basis to make conclusory findings rejecting the alternative. The reasons provided in OCII's proposed findings are unsupported and inadequate. The site is three times as large as would be required for the Event Center project and need not utilize any of the City-owned property nor any particular configuration of the privately-owned lots should there be an unwilling seller. There is no evidence provided that the site could not be acquired within a reasonable time period.

Further, case law confirms that potential zoning adjustments are not grounds for infeasibility, as they are within the City's power. It is self-evident that the claimed limits to transportation services under current schedules are easily remedied, and the findings do not provide any studies to back up conclusory statements regarding traffic, air quality, hydrology, or water quality impacts. Again, since only a third of the site is needed to accommodate the event center, all of the impacts (if shown to have concern after sufficient technical review) can be avoided or mitigated. As stated above and in the Alliance letter proposing this site for consideration as an alternative, the EIR is inadequate for failing to consider an off-site alternative and must be revised and recirculated to do so before any findings of infeasibility can be made. The site near Pier 80 is suggested by the Alliance as potentially feasible and deserving of study.

Thank you for your attention.

Sincerely yours,


Susan Brandt-Hawley