



MISSIONBAY
ALLIANCE

July 26, 2015

Ms Tiffany Bohee
OCII Executive Director
c/o Mr. Brett Bollinger
San Francisco Planning Department
1650 Mission Street, Suite 400
San Francisco, CA 94103
warriors@sfgov.org

Re: Comments on Draft Subsequent Environmental Impact Report for the Event Center and Mixed Use Development at Mission Bay Blocks 29-32 (Warriors Arena Project); San Francisco Planning Department Case No. 2014.1441E; State Clearinghouse No. 2014112045: **EIR Tiering**

Dear Director Bohee and Mr. Bollinger:

The undersigned counsel for the Mission Bay Alliance write on the Alliance's behalf regarding a threshold procedural issue affecting the Draft Subsequent EIR ("DSEIR") for the Warriors Event Center & Mixed Use Development (the "Project"). The DSEIR unlawfully tiers to prior CEQA documents.

The Mission Bay Alliance objects to the improper use of "tiering" to avoid analysis of important environmental issues in the DSEIR. Both the NOP/IS and the DSEIR announce that they "tier" to the 1998 Mission Bay EIR pursuant to CEQA Guideline 15168(c). (NOP/IS, pp. 23-24; DSEIR, pp. 1-1, 5.1-2, 3.) Both the NOP/IS and the DSEIR exclude resource topics from the DSEIR based on standards CEQA provides to determine when a subsequent EIR is required under Public Resources Code ("CEQA") section 21166 and Guideline section 15162. (See NOP/IS, pp. 23-25; DSEIR, p. 5.1-3.)

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Based on these predicates, the City prepared a focused EIR and conducted no environmental review regarding Biological Resources, Aesthetics, Land Use, Cultural Resources, Paleontological Resources, Geology and Soils, Recreation, Hazardous Materials, and Population and Housing. The exclusion of those topics from the DSEIR is erroneous as a matter of law and precludes informed public review.

“Tiering” under CEQA is not permitted where the later project is a separate project from the earlier project, where the EIR for the earlier project did not include an analysis of the environmental impacts of the later project, or where the later project is inconsistent with the “program, plan, policy, or ordinance for which an environmental impact report has been prepared and certified” or is inconsistent with “applicable local land use plans and zoning of the city, county, or city and county in which the later project would be located.” (*Center for Sierra Nevada Conservation v. County of El Dorado* (2012) 202 Cal.App.4th 1156, 1173 (*Sierra Nevada Conservation*); *Sierra Club v. County of Sonoma* (1992) 6 Cal.App.4th 1307, 1318; CEQA, § 21094(b).)

Here, as shown in the “Land Use” section of the July 26, 2015, letter from the Brandt-Hawley Law Group, the Project is not consistent with the Mission Bay Redevelopment Plan or with the land use plans and zoning controls that are subordinate to the Mission Bay Redevelopment Plan. None of them include, anticipate, or allow a 750,000 square foot Event Center! The 2015 DSEIR also states that the Project requires “amendments to the Mission Bay South Design for Development, and modifications to the Mission Bay South Signage Master Plan and Mission Bay South Streetscape Plan, and conditions of approval,” among other changes, in the list of approvals required for the Project. (DSEIR, p. 3-51.)

These major differences between the project described in the 1998 FSEIR (that evaluated the effects of developing the Mission Bay plan area as described in 1998 [see DSEIR Figure 3-7]) and the Warriors Event Center and Mixed Use Development now being proposed, preclude tiering under CEQA section 21094. Therefore, the City cannot use a “tiered” EIR and the DSEIR must be reissued in “non-tiered” form.

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Further, the exclusion of resource topics from the DSEIR is not, as the NOP/IS and DSEIR presume, governed by CEQA section 21166 and Guideline section 15162 or their standards. Pursuant to section 21151, the DSEIR must analyze the Project's impacts on any environmental resource for which substantial evidence supports a fair argument of significant impact. (*Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal.App.4th 1099 ["EIRs must "consider and resolve every fair argument that can be made about the possible significant effects of a project."]; see also, *Sierra Nevada Conservation, supra*, 202 Cal.App.4th 1156, 1173 ["If a proposed new activity is a separate project, the "fair argument" test should apply to an agency's decision whether to require a tiered EIR.] Sierra Nevada Conservation cited the holding of *Sierra Club v. County of Sonoma, supra*, 6 Cal.App.4th 1307, 1318, that under the fair argument test, "deference to the agency's determination is not appropriate and its decision not to require an EIR can be upheld only when there is no credible evidence to the contrary." (Ibid.) *Sierra Club* applied the fair argument standard to a proposed project that was not "either the same as or within the scope of" the program described in the EIR. (*Sierra Club, supra*, 6 Cal.App.4th 1307, 1321.)

As discussed in comment letters submitted on behalf of the Mission Bay Alliance, evidence relating to these excluded resource topics meets the "fair argument" standard. Although CEQA section 21166 does not apply here, its standards are also met. Therefore, the City must prepare and recirculate for public review a Revised Draft EIR addressing all Project-related environmental impacts. (Since this is a stand-alone EIR, the title 'Subsequent' is a misnomer.)

To the extent the City chooses to use data from the 1990 or 1998 Mission Bay EIRs, that information must be restated in the Revised Draft EIR in a manner that results in a single, cohesive, understandable document meeting CEQA's mandates for adequacy, completeness, and a good faith effort at full disclosure. (Guideline § 15151.)

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Thank you for your attention to this matter.

Sincerely,



Thomas N. Lippe



Susan Brandt-Hawley



Osha Meserve

Patrick Soluri

cc: Bruce Spaulding

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