



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](mailto: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: **AB 900 and Litigation Streamlining**

Dear Director Bohee and Mr. Bollinger:

The undersigned counsel for the Mission Bay Alliance write on the Alliance's behalf regarding the Draft Subsequent EIR ("DSEIR") for the Warriors Event Center & Mixed Use Development (the "Project"). The City's failure to post online administrative record documents before starting the DSEIR comment period renders the Project ineligible for the litigation streamlining provisions of AB 900.

On July 9, 2015, the Mission Bay Alliance advised the City that it had failed to post available portions of the administrative record online as required by CEQA section 21186, subdivision (b), and as a result, the 45-day comment period on the DSEIR could not commence. The City responded on July 16, 2015, stating that the record was complete and that the documents alleged to be missing were not considered by the City in preparing the DSEIR. The City also extended the public comment period by a mere seven days, a decision it explained elsewhere was to "account for any time off that the public may have enjoyed over the Independence Day holiday." (July 15, 2015, Letter from OCII to Tom Lippe.)

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The City's position ignores CEQA's statutory language regarding the required content of the record. Under CEQA section 21186, subdivision (a), preparing the "administrative record pursuant to this division" means that the record posted must include all of the available documents that are part of the record as defined by section 21167.6, subdivision (e).<sup>1</sup> The 45-day public comment period cannot begin until all existing administrative record documents are posted to the City's record website.

Regarding specific documents the City has omitted from its record website, the City has taken the position that references cited in the 2015 DSEIR, 2014 NOP/Initial Study, the 1998 Mission Bay SEIR and the 1990 Mission Bay EIR are not part of the record and that the online record is complete. But this position is entirely at odds with the City's reliance on a tiered SEIR. Since the 2015 DSEIR relies completely on analyses found in prior environmental review documents to avoid analysis in the DSEIR of at least half the CEQA mandated resource areas, it is essential that the public have access to all of the documents that form the basis for these analyses.

Additionally, the online record is missing additional categories of documents. For example, the City has failed to post correspondence among City employees and with consultants regarding the project. The Mission Bay Alliance understands that several different consultants and City agencies are involved in the project, yet there is not even a category on the record website for this correspondence. These materials are part of the record. (CEQA §

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<sup>1</sup>The City cannot argue AB 900 implicitly repealed section 21167.6 because the Legislature is presumed aware of existing law when it acts (see, e.g., *Voters for Responsible Retirement v. Board of Supervisors* (1994) 8 Cal.4th 765, 779, fn. 3). This is especially true here, where the relevant definition is within the same statute the Legislature amended.

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21167.6, subd. (e)(2).) The City has also failed to post agendas and staff notes from ongoing weekly City meetings regarding this Project and its environmental review.<sup>2</sup>

There has also been staff correspondence regarding the procedures applicable to the online record, such as a June 10, 2015, ESA memorandum entitled: AB 900 Administrative Record Update Procedures for the Golden State Warriors Event Center and Mixed Use Development at Mission Bay Blocks 29-32.

These are just a few examples of how the City has not carried out its obligation to post all available record documents online before commencing the 45-day comment period. Contrary to the position taken in the City's July 16, 2015, letter, which implies the public must identify the missing documents, it is the City's duty to locate, index, and post the documents comprising the record.

AB 900 requires the City to post all available record documents online when the DSEIR is issued in order to receive its litigation streamlining benefits. For this purpose, "record documents" is defined in CEQA section 21167.6, subdivision (e). The City cannot have it both ways. It cannot violate AB 900's record posting requirements and at the same time enjoy the benefits of AB 900's litigation streamlining provisions. Therefore, in order to take advantage of AB 900's litigation streamlining provisions, the City must post all existing record documents before commencing the 45-day comment period. Otherwise, the Project is ineligible for the streamlining provisions of AB 900.

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<sup>2</sup>To the extent these documents are posted, they are not individually indexed as required. (See Cal. Rules Court, rule 3.2205.)

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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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