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SENT BY U.S. MAIL AND EMAIL (warriors@sfgov.org)

Tiffany Bohee
c/o Brett Bollinger
San Francisco Planning Department
1650 Mission Street, Suite 400
San Francisco, CA 94103

**RE: Supplemental Comments on Environmental Review for Warriors
Event Center and Mixed-Use Development at Mission Bay Blocks 29-
32 – Clean Water Act 404 and CZMA Consistency**

Dear Ms. Bohee:

This firm represents the Mission Bay Alliance (“MBA”) with respect to the Warriors Event Center Project (“Project”). These comments supplement MBA’s prior comments on the Draft Subsequent Environmental Impact Report for the Event Center and Mixed Use Development at Mission Bay Blocks 29-32 (“DSEIR”).

As described in the July 24, 2015, comment letter submitted by the Law Offices of Thomas Lippe regarding Hydrology, Water Quality and Biological Impacts (“Hydro Comments”), the Project site contains a wetland feature that is likely jurisdictional and will require permits from the U.S. Army Corps of Engineers (“Corps”) and/or the State Water Resources Control Board in order to lawfully fill. (See Hydro Comments, pp. 11-15, and Exhibit 2, pp. 2-3.) Specifically, the Project site contains a wetland area consisting of a large, permanent pond created by a narrow channel that seasonally contains surface waters and creates further, seasonal wetland features. (Exhibit 2, p. 2.) The area is replete with shrubs and riparian plants, and it serves as habitat for various species, including nesting and foraging sites for native birds. (*Id.* at pp. 2-3.)

Despite the existence of likely jurisdictional wetlands on the site, the DSEIR does not include the Clean Water Act (“CWA”) 404 fill permit that will be needed to fill the wetland in the list of project approvals. (DSEIR, pp. 3-51 to 52.) The need for a 404 fill permit also requires the Corps to prepare a Coastal Zone Management Act (“CZMA”) consistency finding, as required by the Bay Conservation Development Commission

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("BCDC") Management Program (see 16 U.S.C., § 1456, subd. (c)(3)), which should also be on the list of project approvals. (See CEQA Guidelines, § 15124, subd. (d).)

Under the CZMA, any applicant for a federal permit to conduct an activity, regardless of its location, will be required to certify its consistency if that activity will affect a land use, water use, or natural resource of the coastal zone. (See, e.g., *Amber Res. Co. v. United States* (Fed.Cir. 2008) 538 F.3d. 1358, 1363-1364; *Southern Pacific Transp. Co. v. California Coastal Com.* (N.D.Cal. 1981) 520 F.Supp. 800, 802-803.) Effects on coastal uses and resources need not be direct, but may include "any reasonably foreseeable effect," including "indirect (cumulative and secondary) effects which result from the activity and are later in time or further removed in distance, but are still reasonably foreseeable." (15 C.F.R., § 930.11, subd. (g).) It is likely that this Project will have effects on coastal resources, as the area to be filled is adjacent to the coastal zone. Coastal resources include biological and physical resources, such as vegetation and animals that are found in the state's coastal zone on a regular or cyclical basis. (15 C.F.R., § 930.11, subd. (b).) This Project site provides nesting and foraging habitat for several such species of birds. (See Hydro Comments, Exhibit 2, p. 3.) Thus, a consistency determination is necessary.

In summary, the DSEIR omits necessary project approvals and overlooks impacts associated with the Project's inconsistency with the BCDC Management Program. These omissions from the Project description and lack of analysis must be corrected prior to certification of the EIR. Thank you for considering these supplemental comments. Please feel free to contact my office with any questions.

Very truly yours,

SOLURI MESERVE
A Law Corporation

By: 
Osha R. Meserve