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November 2, 2015

By personal delivery to:  Commission on Community Investment and Infrastructure Attn: Claudia Guerra, Commission Secretary Office of Community Investment and Infrastructure 1 South Van Ness Avenue, 5th Floor San Francisco, CA 94103  and email to: <a href="mailto:claudia.guerra@sfgov.org">claudia.guerra@sfgov.org</a>	By email to: <a href="mailto:warriors@sfgov.org">warriors@sfgov.org</a> :  Ms Tiffany Bohee OCII Executive Director c/o Mr. Brett Bollinger San Francisco Planning Department 1650 Mission Street, Suite 400 San Francisco, CA 94103
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**Re: Warriors Arena Project: Secondary Use Finding, Lack of Fair Trial, and Request for Documents under the California Public Records Act and the San Francisco Sunshine Ordinance.**

Dear Ms Bohee and Mr. Bollinger:

This office represents the Mission Bay Alliance (“Alliance”), an organization dedicated to preserving the environment in the Mission Bay area of San Francisco, regarding the project known as the Event Center and Mixed Use Development at Mission Bay Blocks 29-32 (“Warriors Arena Project” or “Project”). The Mission Bay Alliance objects to approval of this Project and certification of the Project SEIR.

I write today regarding the discussion of secondary uses in Attachment C to the Memorandum to the CCII from Executive Director Tiffany Bohee for Items 5(a), 5(b), 5(c), 5(d) & 5(e) the November 3, 2015, CCII meeting agenda. The short time period between the October 29, 2015, publication of this memorandum and the November 3, 2015, OCII hearing to determine the “secondary use” question for the public to respond deprives my client of a fair trial under subdivision (b) of section 1094.5 of the Code of Civil Procedure.

The November 17, 2014 Initial Study for the Project asserted the event center is an allowable secondary use under the Redevelopment Plan because “The proposed event center uses are

Commission on Community Investment and Infrastructure

Ms Tiffany Bohee

Mr. Brett Bollinger

Warriors Arena Project: Secondary Use Finding, Lack of Fair Trial, and Request for Documents  
under the California Public Records Act and the San Francisco Sunshine Ordinance

November 2, 2015

Page 2

considered ‘nighttime entertainment uses.’”<sup>1</sup>

Then on July 26, 2015, Susan Brandt-Hawley, my co-counsel for the Alliance, submitted a letter to OCII arguing that “The Event Center is not ‘Nighttime Entertainment’ as Defined in the Mission Bay South Redevelopment Plan.” (July 26, 2015, Brandt-Hawley Law Group letter, p. 3.)

Now, almost a year after the Initial Study and three months after Ms Brandt-Hawley’s letter, the first suggestion that OCII might change its position on whether or how the event center is an allowable secondary use under the Redevelopment Plan is a short line in the Responses to Comments published on October 23, 2015, stating that “the Mission Bay Redevelopment Plan analyzed under the 1998 SEIR permits all of the project uses as either principally permitted uses (Office, Retail, Arts Activities, Open Recreation / Outdoor Activity Areas, Parking) or as secondary uses (Assembly and Entertainment Uses, including Nighttime Entertainment and Recreation building uses, as well as other uses such as Public Structures and Uses of a Nonindustrial Character).” (FSEIR/RTC, Volume 4, p. 13.3-27.)

Then, only three business days before the OCII hearing to determine this question, Ms. Bohee’s memorandum for the first time publicly asserts a rationale for considering the event center an allowable secondary use as either a “recreation building” or a “public structure or use of a nonindustrial character.” (See Attachment C, pp. 6-7.) Aside from the substantive inadequacy of the rationale, which will be the topic of separate correspondence, this short turnaround time on a question of this importance deprives the public, and my client, of a fair trial under subdivision (b) of section 1094.5 of the Code of Civil Procedure.

In addition, Attachment C states that the “determination” that the event center is a “public structure or use of a nonindustrial character” is “consistent with OCII precedent; for example, in approving the UCSF Medical Center the Executive Director found that it constituted a secondary use as a public structure notwithstanding those members of the public generally pay for medical services provided at the center.” (Attachment C, p. 7.)

My client hereby requests, under the fair trial requirement of Code of Civil Procedure section 1094.5(b), the California Public Records Act, and the San Francisco Sunshine Ordinance, that OCII produce to my office, immediately and before the November 3, 2015, OCII hearing, a copy of any

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<sup>1</sup>“The proposed project would result in the construction and operation of an event center, office and retail uses, parking facilities and open space areas within the project site. The retail and office uses would be generally consistent with the previously proposed uses for the site, such that no new or more severe conflicts with land use character would occur. The proposed event center uses are considered “nighttime entertainment uses....” (Initial Study, p. 33)

Commission on Community Investment and Infrastructure

Ms Tiffany Bohee

Mr. Brett Bollinger

Warriors Arena Project: Secondary Use Finding, Lack of Fair Trial, and Request for Documents  
under the California Public Records Act and the San Francisco Sunshine Ordinance

November 2, 2015

Page 3

documents that memorialize any previous determinations by the OCII, the Redevelopment Agency, or the Executive Director on whether a proposed building in the Mission Bay South Redevelopment Plan area is an allowable as a secondary use because it is either (1) a place for night time entertainment, (2) a recreation building, or (3) a public structure or use of a nonindustrial character; including any document memorializing the Executive Director's finding that the UCSF Medical Center "constituted a secondary use as a public structure."

Thank you for your attention to this matter.

Very Truly Yours,



Thomas N. Lippe