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SENT BY U.S. MAIL AND EMAIL (Board.of.Supervisors@sfgov.org)

Budget and Finance Committee
City and County of San Francisco
Board of Supervisors
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

**RE: Comments on November 9, 2015 Agenda Item Nos. 1-4 re: Warriors
Event Center at Mission Bay, Mission Bay Transportation
Improvement Fund and Related Actions**

Dear Budget and Finance Committee Members:

This firm represents the Mission Bay Alliance (the “Alliance”) with respect to the Warriors Event Center Project (“Project”). These comments address the Final Subsequent Environmental Impact Report for the Event Center and Mixed Use Development at Mission Bay Blocks 29-32 (“SEIR”) as well as the Budget and Finance Committee’s consideration and approvals for the Project itself.

As explained in this firm’s November 3, 2015, Letter to the San Francisco Municipal Transportation Agency (“MTA”), Board of Directors regarding their November 3, 2015, Agenda Item No. 13, the SEIR is defective as an informational document with respect to the analysis and public disclosure of impacts and mitigation measures regarding transportation under the California Environmental Quality Act (Pub. Resources Code, §§ 21000 et seq. (“CEQA”). Specifically, the SEIR does not describe the approval of the Mission Bay Transportation Improvement Fund (“MBTIF”) as a mitigation measure. Yet the MBTIF is essential to the City’s attempts to mitigate the Project’s transportation-related impacts. The City’s strategy of conflating analysis of the Project’s design features and mitigation measures violates CEQA. (See, e.g., *Lotus v. Department of Transportation* (2014) 223 Cal.App.4th 645.) The prejudice associated with the City’s strategy, in addition to obscuring the City’s public subsidy for the Project, is that the EIR “fail[s] to consider whether other possible mitigation measures would be more effective.” (*Id.* at 657.)

The City also appears to rely on the incorporation of the MBTIF into the Project description in order to conceal from the public the City’s failure to require full mitigation of the Project’s impacts from the applicant. A fundamental principle of CEQA is that

development projects should mitigate their impacts to the extent feasible. (See, e.g., Pub. Resources Code, § 21002; see also CEQA Guidelines, § 15126.4.) With respect to the Project's transportation impacts, the City deviates from this principle and instead adopts an odd, ad hoc "fair share" fee program to mitigate Project-level impacts. (*Anderson First Coalition v. City of Anderson* (2005) 130 Cal.App.4th 1173 (*Anderson First*)). As a threshold matter, the SEIR never discloses to the public that it essentially relies upon "fair share" payments from the Project in order to mitigate its Project-level transportation impacts, which renders the SEIR defective as an informational document. Had the SEIR described the Project's approach to mitigating transportation impacts, it would have been apparent that the SEIR failed to disclose necessary information about this fair share program.

The payment of "fair share" impact fees may constitute adequate mitigation if the payments "are part of a reasonable plan of actual mitigation that the relevant agency commits itself to implementing." (*Id.* at 1188-1189.) The *Anderson First* decision identified the information that is required in an EIR to establish the adequacy of a "fair share" mitigation measure, which includes the following:

- (i) An identification of the required improvement;
- (ii) An estimate of the cost of the required improvement;
- (iii) Sufficient information to determine how much the project would pay towards the improvement; and
- (iv) The fees must be part of a reasonable, enforceable plan or program sufficiently tied to the actual mitigation of the impacts at issue.

(*Ibid.*)

The SEIR fails to provide this necessary information, and never even mentions the MBTIF. While the SEIR does mention the Transportation Management Plan ("TMP") and Transit Service Plan ("TSP") as addressing the Project's transportation impacts, the SEIR fails to identify the total costs of the improvements, the Project's allocated contribution, and the enforceable plan or program to contribute the Project's "fair share." The new information contained within this Committee's agenda packet regarding the MBTIF and other related matters cannot substitute for full disclosure of the selected approach to mitigation of transportation related impacts in the SEIR.

In addition, the actions on November 6, 2015, by the MTA, and this Committee's planned actions today with respect to approval of the MBTIF and the grant of street and easement vacations are contrary to California public disclosure laws with respect to economic development subsidies. California law requires the City to provide public notice and a public hearing, as well as detailed information about the purpose, nature, extent and effect subsidies, prior to commitment. (Gov. Code, § 53083.) The Budget and

Legislative Analyst's Memorandum ("BLA Memo"), along with the SFMTA Cost Estimate spreadsheet make clear that there is an estimated revenue shortfall of \$29,916,666, which will be financed through sale of SFMTA revenue bonds or other City financing source. (BLA Memo, pp. 7-8.) Payment of these Project mitigation costs by the City is an economic development subsidy, even if the loan is eventually repaid. (Gov. Code, §53083, subd. (g)(1).) Moreover, the summary vacation of streets and easements likely has value, yet no value is disclosed. Thus, the City must now comply with the substantive and procedural mandates of Government Code section 53083 prior to approving subsidies in the form of loans and other benefits included in the MBTIF and other related City actions and approvals, that provide transportation, infrastructure, public safety and other mitigation for Project impacts.

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Please feel free to contact my office with any questions about the information contained in this letter.

Very truly yours,

SOLURI MESERVE
A Law Corporation

By:



Osha R. Meserve

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