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November 10, 2015

SENT BY PERSONAL DELIVERY AND VIA EMAIL (commissioner.btan@gmail.com)

Bryant Tan, President
and Members of the Entertainment Commission
City and County of San Francisco
1 Drive Carlton B. Goodlett Place
San Francisco, CA 94102

RE: Comments on November 10, 2015, Regular Agenda Item (a)
Golden State Warriors Event Center
Place of Entertainment Permit and CEQA Findings

Dear President Tan and Commissioners:

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") and the Entertainment Committee's consideration of the Place of Entertainment Permit and CEQA Findings.

We have reviewed this Commission's agenda and proposed Resolution provided to us today, but have been informed that there is neither an explanatory staff report nor analysis accompanying the Commission's proposed actions.

Consideration of the Place of Entertainment Permit is premature and unlawful because the entertainment uses proposed by the Warriors sports arena are not a primary or secondary use allowed under the Mission Bay South Redevelopment Plan, as explained by my co-counsel Susan Brandt-Hawley on behalf of the Alliance in submissions to the OCII in July, October, and November 2015, and testimony before the OCII on November 3, 2015.

The Event Center Project SEIR does not comply with CEQA, as described in the Alliance's many comments on the SEIR submitted to OCII. Over the last three months, the Alliance has reviewed and commented on material inadequacies in the expedited environmental review process. This Commission and the Board of Supervisors cannot fully consider and adequately mitigate the Event Center's many significant impacts without the benefit of an EIR that complies with CEQA.

The CEQA findings adopted by the San Francisco Municipal Transportation Agency ("MTA") and being considered by this Commission are premature and unsupported, as explained in the Alliance's comments on the Draft Subsequent Environmental Impact Report ("DSEIR"), as well as letters submitted following the Final SEIR by this office and by Alliance co-counsel Thomas Lippe and Susan Brandt-Hawley.

As explained in this firm's November 3, 2015, letter to the MTA, Board of Directors regarding their November 3, 2015, Agenda Item No. 13, incorporated by reference, the SEIR is defective and cannot be relied upon 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. The MBTIF is essential to the City's attempts to mitigate the Project's transportation-related impacts and its omission from the SEIR precludes this Commission's consideration of a Place of Entertainment Permit. 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 SEIR's inadequate traffic analysis is explained in reports and letters submitted to the City and OCII throughout the administrative process for this project, as noted above, all of which are incorporated by reference. In particular, I respectfully direct the Commission's attention to the attached letters and reports from my co-counsel Thomas Lippe and experts Smith Engineering & Management, and Larry Wymer & Associates, Traffic Engineering.

The Alliance requests that the Commission decline to make CEQA findings and decline to approve the Place of Entertainment Permit.

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: 
Patrick Soluri

PS/mre

Attachments:

November 10, 2015, Letter from Smith Engineering & Management (2 letters)
November 9, 2015, Letter from Soluri Meserve, A Law Corporation
November 2, 2015, Letter from Larry Wymer & Associates
November 2, 2015, Letter from Smith Engineering & Management
July 27, 2015, Letter from Thomas N. Lippe

SMITH ENGINEERING & MANAGEMENT

November 10, 2015

Mr. Tom Lippe
Law Offices of Thomas N. Lippe, APC
201 Mission Street, 12th Floor
San Francisco, CA 94105

Subject: Responses to Comment on Draft Subsequent Environmental Impact Report for Event Center and Mixed Use Development at Mission Bay Blocks 29-32. SCN:2014112045

P15003

Dear Mr. Lippe:

This is a continuation of my November 2, 2015 review of the Responses to Comment ("the RTC") on the Draft Subsequent Environmental Impact Report (hereinafter “the DSEIR”) on the above referenced Project in the City and County of San Francisco (hereinafter “the City”). As I was a commenter on the DSEIR in regard to matters involving transportation and circulation in a letter dated July 26, 2015 which was transmitted as Exhibit 1 to your comment letter of July 27, 2015, my current comments focus on the responses to my own comments and yours on that subject. In addition, several others including representatives of BARTD, Caltrans, Caltrain, UCSF and other have filed comments that parallel and reinforce our own. I address the responses to those comments as well.

My qualifications to perform this review were thoroughly documented in my letter of comment on the DSEIR dated July 26, 2015 and are incorporated herein by reference.

This continuation of my comments focuses on emergency response and considerations of emergency access to the UCSF hospitals adjacent to the Project site.

Emergency Response and Hospital Access

Our comments of November 2, 2015 concluded with the very brief remarks on SEIR Response TR – 9 which concerned comments on emergency response and UCSF hospital access. These additional comments offer more detailed observations on that response.

Inadequacy of Analysis of Congestion and Delay at Critical Intersection of Sixteenth – Seventh and Mississippi Streets

Response TR-9 states that under existing-plus-Project conditions, the majority of the study intersection in the vicinity of the Project site and the UCSF Medical Center Phase One site are projected to operate at LOS E or better. The exception is the intersection of Seventh, Mississippi and Sixteenth Streets which would change from LOS E to dysfunctional LOS F. The problem with the response is twofold. First, this overburdened intersection is on the primary emergency access routes to the UCSF hospitals from the East Bay, Downtown San Francisco, SOMA and most of the central and northern parts of the City. Hence, the so called "exception" is actually a critical failure. Second, the SEIR's analysis of the intersection understates the level of congestion there because it fails to account for the portion of time when train movements at the adjacent at-grade crossing block movements on Sixteenth. In the 5 –to – 6 pm commute peak hour, according to current Caltrain schedules, between 10 and 12 trains preempt this crossing, and 9 to 10 in the 6 – to – 7 pm hour. This means that the Sixteenth Street leg of the intersection will be blocked for about 9 minutes or more in the 5 –to-6 pm peak and about 7.5 minutes or more in the 6 – to – 7 pm hour. In other words, movements to and from Sixteenth east of the subject intersections will be blocked between 12.5 and 15 percent of the time in these hours – and the effect of this blockage wasn't accounted for in the SEIR analysis.

Lack of Any Traffic Analysis of Intersections of Eighth – Harrison and Eighth – Bryant and Related I-80 Ramps That Are on Critical Access Routes to UCSF Hospitals

Another problem with the SEIR response regarding the Project's effects on emergency response and emergency access is that the SEIR failed to analyze the complex of the intersections of Eighth with Harrison and Eighth with Bryant and their related I-80 ramps at all. These heavily congested intersections are on the primary emergency access routes to the UCSF Mission Bay hospitals from the East Bay and from Downtown, most of the SOMA and northern San Francisco. The access route via these intersections on Eighth are particularly crucial whenever there is an overlapping Giants event that tends to preempt access via the Third/Fourth Street corridor.

SEIR's Underestimate of Numbers of Arena Event Attendees Traveling in 5-to-6 PM Evening Commute Peak Conceals the Extent of Impact on Emergency Services and Access to UCSF Hospitals

The SEIR, based on data on time of turnstile entry to the "paid" area of the Warriors current venue, Oracle Arena and at the Barclay Center in Brooklyn (home count of the Nets), that only about 5 percent of weekday arena event attendees traveling to an event starting at 7:30 pm would be traveling on the transportation system between 5 and 6 pm (the pm commute peak hour). Our comments of July 26, 2015 and November 2, 2015 presented cogent reasons why those turnstile based assumptions grossly understate the number of attendees to a 7:30 pm start basketball game would be traveling on the transportation system in the 5-to-6 pm peak commute hour. Those reasons include:

- The offset between getting off the transit system or out of a car in a parking spot and the time of actual passage through the ticket turnstiles, even for people who go straight in after arrival,
- The offset between arena turnstile passage time and the actual duration of travel time on the transportation system that would put people on the system during the peak hour.
- The offset between turnstile passage time and actual arrival time in the arena area for those who go into nearby restaurants and bars to eat a meal or have a drink before entering the arena or those who just hang around outside to meet up with friends traveling independently, especially perhaps to exchange a ticket.

The SEIR has ignored these considerations and persisted in assuming that only a tiny fraction of arena attendees would be traveling in the 5-to-6 pm evening commute peak hour.

In our prior comments, we have pointed out that national TV broadcasts of weeknight Warrior games which typically start at 6 pm, (and possibly national broadcasts of other arena events) would also cause a very high portion of event attendees to be traveling in the 5-to-6 pm commute peak hour and requested that this be analyzed as a separate case in the SEIR. The SEIR persists in refusing to consider this scenario.

Both of these considerations – the attendees who travel to the Project area long before passing through the arena turnstiles and the attendees coming to a national TV game start – would intensify emergency service and hospital access problems in the 5-to-6 pm commute peak hour well beyond anything analyzed in the SEIR and most importantly, compound the critical emergency service and UCSF hospital access problem issues related to the Sixteenth – Seventh – Mississippi – Caltrain

rail crossing complex as well as the Eighth – Harrison / Eighth – Bryant / I-80 ramps complex as described above.

The SEIR Refuses To Quantify Impacts on Emergency Vehicle Travel

Another commenter requested that the SEIR estimate emergency vehicle travel times with and without an event for the proposed Project. SEIR Response TR-9 refuses to do so. It claims that because the infrastructure supporting UCSF hospital facilities is currently incomplete, such a projection is it feasible. We note, however, that the SEIR has not hesitated to estimate LOS and delay times on the incomplete is roadway network for ordinary predictions of Project traffic impacts (for instance, at Owens and Sixteenth without Owens yet connected through to Mariposa). This inconsistency is an unacceptable evasion. If the SEIR is unable to estimate emergency response time, then the entire analysis of effects on all emergency services is without foundation, uselessly conclusory and inadequate.

Public Relations Response To Emergency Access Impacts Irrelevant

SEIR Response TR-9 continues, stating that strategies to provide attendees with suggested driving routes to and from the 950 parking spaces within the Project site would alleviate interference of that traffic with emergency vehicle traffic. However, most of the on-site spaces would be held by VIP season ticket holders. These drivers will determine quickly various routes that work to their own advantage to minimize their own travel time, rather than following suggested routes to fine-tune recommended event access/egress routes that avoid primary emergency vehicle routes. The notion that pre-event and post-event recommended driving routes all could be revised based on monitoring is nonsense because knowledgeable regular attendees will follow their own notion of what works best for them, not public relations advisories.

Effects of Event Coordinator and PCO Management Doubtful

The next section of SEIR Response TR-9 indicates that at the times when northbound lanes of third closed in between Sixteenth and South Streets (mostly during post-event times), PCO's would be available to open the emergency barricades to allow northbound emergency vehicle traffic through. While the PCOs may get the emergency barricades out of the way, whether they can safely clear swarming pedestrians from the “closed” street section is an open question.

The response indicates that the Event Transportation Coordinator would inform emergency service dispatchers of the dates and times when there would be temporary closure of Third Street following an event so that emergency vehicles could be advised to take routes other than Third Street. However this is not very

useful if the location of the emergency dictates that emergency services really need to travel on Third Street.

This response also observes that drivers must comply with California vehicle code article 21806 requiring the drivers to clear a way to for authorized emergency vehicles, drive to the right road curb, stop, and remain stopped until the emergency vehicle has passed. This is a nonsensical evasion of the key issue which is that when traffic is queued in gridlock, it becomes very difficult and potentially dangerous for drivers to clear the way for emergency vehicles.

For smaller events where there are fewer PCOs, the response claims that PCOs would be stationed at key locations monitoring traffic conditions and could be reassigned to respond to conflicts between event center traffic and UCSF hospital access. It is questionable that PCOs could relocate quickly enough to be of effective assistance in an emergency access matter at another location.

Effective Facilitation of Privately Driven Vehicles in Emergencies Doubtful

The next section of the ResponseTR-9 claims that persons accessing UCSF medical Center emergency room and Urgent Care Center using private vehicles rather than authorized emergency vehicles would be able to use the transit-only lanes provided for the 22 Fillmore transit priority on 16th Street. This begs the questions of how anxious non-professional drivers, probably making their first emergency trip of this nature, would know the bus lanes are there, that they're eligible to use them, or how they will safely get around the lumbering, overloaded buses using the lanes and how they would be distinguished from casual bus lane violators.

Failure to Address Access to Hospitals for Doctors, Other Caregivers and Support Staff

UCSF's comments on the DSEIR included the observation that adverse traffic impacts on the hospitals is not limited to emergency vehicles. Doctors, other care-givers and support staff must have reasonably unobstructed access to and from the facilities at all times. Nowhere does the SEIR address this issue.

Conclusion

Because of all of the foregoing, the SEIR's conclusions regarding the Project's impacts on emergency access are unsupported and unsupportable. A more realistic appraisal of the Project's impacts on emergency service and hospital access is required as is a more realistic set of mitigation measures.

Sincerely,

Smith Engineering & Management
A California Corporation

Daniel T. Smith Jr., P.E.

SMITH ENGINEERING & MANAGEMENT

November 10, 2015

Mr. Tom Lippe
Law Offices of Thomas N. Lippe, APC
201 Mission Street, 12th Floor
San Francisco, CA 94105

Subject: Responses to Comment on Draft Subsequent Environmental Impact Report for Event Center and Mixed Use Development at Mission Bay Blocks 29-32. SCN:2014112045

P15003

Dear Mr. Lippe:

This is a continuation of my November 2, 2015 review of the Responses to Comment ("the RTC") on the Draft Subsequent Environmental Impact Report (hereinafter “the DSEIR”) on the above referenced Project in the City and County of San Francisco (hereinafter “the City”). As I was a commenter on the DSEIR in regard to matters involving transportation and circulation in a letter dated July 26, 2015 which was transmitted as Exhibit 1 to your comment letter of July 27, 2015, my current comments focus on the responses to my own comments and yours on that subject. In addition, several others including representatives of BARTD, Caltrans, Caltrain, UCSF and other have filed comments that parallel and reinforce our own. I address the responses to those comments as well.

My qualifications to perform this review were thoroughly documented in my letter of comment on the DSEIR dated July 26, 2015 and are incorporated herein by reference.

This continuation of my comments focuses on use of certain sites owned by the Port of San Francisco for parking in support of the Warriors Arena Project.

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The revised parking analysis, SEIR Appendix TR-X, identifies additional parking areas to the south of the Project site that are not addressed in the DSEIR. We note that the nearer site, described as 'the Nineteenth Street site' in Appendix TR-X, is located within the Port of San Francisco's Port Waterfront Land Use Plan Southern Waterfront Subarea and designated as part of the Pier 70 Waterfront Opportunity Area. The site is within the Union Iron Works Historic District (listed on the National Register of Historic Places. Building 40 within the site has been determined to be a contributing resource to the Historic District although the Port has determined that its removal would not affect the historic significance of the District. The Port currently plans to construct a 250 space parking lot on the site. SEIR Appendix TR-X assumes the Port will have done so and that the parking lot will be operational prior to completion of the proposed Project and that it will be made available for use of Project arena event attendees. However, given the complications of the Historic designation, compatibility with the Pier 70 Plans and with the Port's own purposes in developing this parking for support of Pier 70 and the Historic District, the assumptions that this parking will be developed in advance of completion of the proposed Project and will be made available to support the Project's arena event parking over the long term are extremely optimistic and inconsistent with the good faith effort to disclose impact required by
CEQA.

The other parking site identified in Appendix TR-X is located on the Southern Waterfront with its nearest corner 1.2 miles south of the nearest corner of the Project site. Portions of the site are located within the San Francisco Bay Conservation and Development Commission's (BCDC) shoreline band jurisdiction. The site is currently used for off-site storage of trailers supporting Moscone Center. The site could support development of an up to 800 space parking lot. Because of the distance from the proposed Project site, it would require shuttle bus service connections. Because considerations such as BCDC approval, development of a suitable place for relocating the off-site trailer parking that supports Moscone Center and whether parking this far from the proposed Project site and located in a remote industrial wasteland would be attractive to patrons have not been addressed, the suitability of this parking area remains speculative. Hence, Response TR-9's assumptions regarding dispersal of parking locations itself remains speculative.

Conclusion

Because of the speculative nature of these parking proposals with respect to service of events at the proposed arena, they cannot be considered clear elements that support the project or disperse its traffic.

Sincerely,

Smith Engineering & Management
A California Corporation

Daniel T. Smith Jr., P.E.

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November 9, 2015

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.

* * *

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

ORM/mre

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November 2, 2015

Tom Lippe
Law Offices of Thomas N. Lippe APC
201 Mission St., 12th Floor
San Francisco, CA 94105

RE: Responses to RTC - Responses to Comments on the Draft Subsequent Environmental Impact Report- Event Center and Mixed Use Development at Mission Bay Blocks 29-32 (SCN:2014112045)

Mr. Lippe,

This letter summarizes my responses to the Response to Comments published on October 23, 2015. These are the professional opinions of Larry Wymer, licensed California Traffic Engineer (#1955).

OPINION 1 - The DSEIR's Transportation and Circulation analysis does not adequately analyze the entirety of the study area impacted by the development

OPINION 2 - The DSEIR's Transportation and Circulation analysis does not analyze impacted study intersections and ramps in the SoMa and North Mission Bay areas, most notably those between Market Street and King Street

I maintain the opinion that the study area should be expanded beyond those assumed within the SEIR to the SoMa area to incorporate relevant travel patterns which would exist for both the proposed project and the "the previous proposed arena site as described within the memorandum report titled *"Travel and Parking Demand Estimates for the Proposed Event Center and Mixed Use Development at Piers 30-32 and Seawall Lot 330"* which was dated August 9, 2013.

The RTC states that my comment:

> *"...noted that because some of the basketball game attendees would be arriving from the San Francisco downtown and Financial District areas, they would be required to pass through SoMa to arrive at the project site, so that additional intersections in the SoMa area would have to be evaluated. Mode of travel and place of origin surveys of baseball game attendees conducted by the SF Giants, as well as available parking occupancy surveys, suggest that many of those game attendees that drove to work at their jobs in the Financial District and SoMa areas, tend to walk, ride transit, or take a taxi to AT&T Park, leaving their cars at their commuter parking locations in order to avoid the evening commute congestion that*
>
> *typically occurs near I-80 and AT&T Park and having to re-park their cars at game-day rates. It is likely*
>
> *that a similar condition would occur with the proposed project, with many of those working in downtown*

riding Muni or special event shuttles, and taking taxis or TNC vehicles2, such as Uber or Lyft to the event center, rather than driving and having to park again with limited space availability."

The SEIR itself, as noted within Table 1 of my original comment letter (provided below) identified several corridors to/from the SoMa neighborhood with substantial trip percentages up to 32% of project traffic.

Table 1
Project Vehicle Trip Patterns to Major Parking Facilities
North Mission Bay & South SoMa

Figure	Page	Figure Title	Trip Assignment Along Roadway			
			Seventh St s/o Townsend St	Fourth St s/o Townsed St	King St e/o Third St	from WB I-80 to Fifth St
5.2-14A	5.2-95	Project Vehicle Trip Patterns to Major Parking Facilities - Inbound Weekday PM Peak Hour - No Event and Convention Event	18% / 22%	7% / 7%	5% / 11%	8% / 7%
5.2-14B	5.2-96	Project Vehicle Trip Patterns to Major Parking Facilities- Outbound Weekday PM Peak Hour - No Event and Convention Event	19% / 19%	7% / 12%	5% / 5%	8% / 8%
5.2-14C	5.2-97	Project Vehicle Trip Patterns to Major Parking Facilities - Inbound Saturday Evening Peak Hour - No Event	20%	8%	5%	9%
5.2-14D	5.2-98	Project Vehicle Trip Patterns to Major Parking Facilities - Outbound Saturday Evening Peak Hour - No Event	20%	8%	5%	7%
5.2-14E	5.2-99	Project Vehicle Trip Patterns to Major Parking Facilities - Inbound Weekday and Saturday Peak Hours - Basketball Game Without a SF Giants Evening Game	31% / 32%	13% / 13%	9% / 11%	29% / 30%
5.2-14F	5.2-100	Project Vehicle Trip Patterns to Major Parking Facilities - Outbound Weekday Late Evening Peak Hour - Basketball Game Without a SF Giants Evening Game	31%	13%	11%	20%

Source: "Event Center and Mixed Use Development at Mission Bay Blocks 29-32" DSEIR (June 5, 2015)

It is not reasonable to discount the trips clearly represented by these trip pattern percentages established within the SEIR as irrelevant or unworthy of analysis because they may not be entirely comprised of trips within personal vehicles of those traveling through the SoMa area from the financial district. Even if attendees utilize alternate transportation such as taxis, Uber or Lyft, they will still be new trips added to the roadways which will potentially significantly impact intersections north of the area studied.

The RTC also states:

"The previously proposed center at Piers 30-32 was located at the intersection of The Embarcadero and Bryant Street, with very different access patterns compared to the proposed project."

While true, generally the same level of traffic will be generated by both alternatives, and trips originating from the financial district would still be required to travel through the SoMa area. While admittedly traveling along some different arterials through the SoMa district, the previous analysis considered intersections within SoMa whereas the SEIR does not.

Please feel free to give me a call if you have any questions.

Sincerely,

Larry Wymer & Associates Traffic Engineering

Larry Wymer, CA T.E. 1955

SMITH ENGINEERING & MANAGEMENT

November 2, 2015

Mr. Tom Lippe
Law Offices of Thomas N. Lippe, APC
201 Mission Street, 12th Floor
San Francisco, CA 94105

Subject: Responses to Comment on Draft Subsequent Environmental Impact Report for Event Center and Mixed Use Development at Mission Bay Blocks 29-32. SCN:2014112045

P15003

Dear Mr. Lippe:

Per your request, I have reviewed the Responses to Comment ("the RTC") on the Draft Subsequent Environmental Impact Report (hereinafter "the DSEIR") on the above referenced Project in the City and County of San Francisco (hereinafter "the City"). As I was a commenter on the DSEIR in regard to matters involving transportation and circulation in a letter dated July 26, 2015 which was transmitted as Exhibit 1 to your comment letter of July 27, 2015, my current comments focus on the responses to my own comments, those of yourself and affiliated consultant Larry Wymer. In addition, several others including representatives of BARTD, Caltrans, Caltrain, UCSF and other have filed comments that parallel and reinforce our own. I address the responses to those comments as well.

My qualifications to perform this review were thoroughly documented in my letter of comment on the DSEIR dated July 26, 2015 and are incorporated herein by reference.

My current comments follow. They are organized in the order the City chose to respond to my and others, not in order of comments or order of importance.

Section 13.11.3, Response TR-2a

This section, in part, replies to our comments now labeled by the City as O-MBA10L4-15 and O-MBA10L4-17.

Re MBA10L4-15:
MBA10L4-15 points out that while the DSEIR evaluated the Project's transportation *with* implementation of a Special Events Transit Service Plan in the context of *six* different event scenarios, it only evaluates the Project's transportation impacts *without* the a Special Events Transit Service Plan in the context of *only one* event scenario (without Giants game but with Basketball game). It requests the analysis *without* the a Special Events Transit Service Plan in the context of for *all six* of the event scenarios that were evaluated assuming the Special Events Transit Service Plan was in place.

There are several problems with the City's reply to this comment.

- The reply claims that the scenario of an overlapping evening game at AT&T Park with a Basketball event at the proposed Project without the Special Event Transit Services Plan taking place is a "worst-of-the-worst scenarios" that could only happen about 9 times a year, and then only if Muni were unable to deliver those services. However, with the Project located just a block from the emergency entrances to the UCSF hospitals, "worst-of-the-worst scenarios" are germane considerations for potential impacts on patient access to emergency facilities and the ordinary or special access/egress of emergency service providers.
- Despite the City's assertion that funding of Muni's Special Event Transit Services Plan is guaranteed, this funding is dependent on allocation of General Funds and discretionary transportation funds to this purpose, with such future allocations not guaranteed.
- The response also points to Mitigation Measure M-TR-18: Auto Mode Share Performance Standard and Monitoring as providing measures that could be implemented in the event Muni's Special Event Transit Services Plan is not implemented. However, many of the potential action measures in M-TR-18 are vague and conditional, and strict monitoring and enforcement is unlikely if the City through Muni has failed to deliver its promised Special Event Transit Services Plan.
- The response, although admitting no quantitative analysis of an overlapping Giants event at AT&T Park with an evening Basketball event at the Project and without implementation of the Muni Special Event Transit Services Plan was prepared, claims that the DSEIR essentially covers this situation for intersections and freeway ramps by having quantitatively analyzed the scenario of an evening Basketball Event with no Giants Event and no Special Event Transit Services Plan (Impacts TR-18 and TR-19) by virtue of having stated that these impacts would be additive to impacts in the "existing conditions without evening Giants event scenario" (Impacts TR-2 and TR-3) or to Impacts TR-11 and TR-12 (existing conditions with a Giants Event at AT&T Park). The problem with this is that the simple statement that the impacts are additive provides the public with no measure of the severity of the combined impacts.

- The response also notes that Impact TR-20 presents Muni transit impacts for the weekday evening Basketball scenario without an overlapping Giants game or implementation of the Muni Special Event Transit Services Plan and adds text stating as follows: "Impacts to the T Third and 22 Filmore would be in addition to the significant impacts identified for the proposed project with implementation of the Muni Special Event Transit Services Plan in Impact TR-13 for conditions with an overlapping SF Giants evening game." It then concludes, "The revision does not change the analysis or conclusions presented in the SEIR." The problem with this part of the response, like that related to the impacts on intersections and freeway ramps is that the simple statement that the impacts are additive fails to inform the public of the extent of the change in severity of the impacts.
- With regard to failure to consider cumulative scenarios that lack implementation of the Muni Special Event Transit Services Plan, this failure is not remedied by addition of text to the SEIR that specify that cumulative analysis for the Basketball game scenarios include assumption of implementation of the Muni Special Event Transit Services Plan. Since the SETSP is not guaranteed funding in perpetuity and there is no assurance that Muni vehicles and personnel resources will be able to be devoted to this special service in lieu of serving regular transit needs, this change in language does not relieve the deficiency of the SEIR's failure to consider the cumulative scenario in absence of the Muni Special Event Transit Services Plan.

As a consequence of these flaws, Response TR-2a related to MBA10L4-15 is inadequate.

Re MBA10L4-17

Comment O-MBA10L4-17 is part of a stream of comment demonstrating why the DSEIR is inadequate for having unreasonably understated the amount of weekday evening arena event access travel would occur during the evening commute peak hour (see our comment now labeled O-MBA10L4-16 for related discussion). Responding to this apart from the related issues in O-MBA10L4-16 evades the compelling nature of the joint comments that the DSEIR has understated the numbers of weekday evening basketball event attendees actually traveling on the transportation system in the evening commute peak hour (5 to 6 PM).

As to the direct substance of the comment and response, the DSEIR's decision to base the analysis of weekday evening games on a presumed starting time of 7:30 was predicated on experience over 3 seasons when the Warriors were a poor to marginal team and games starting earlier in the evening (at about 6 pm) averaged only 2.5 games per season. The comment documented that based on the 2014/2015 season performance, the combined total of weeknight regular season and playoff games starting at 6 pm (the normal start time for nationally televised weeknight games played on the West Coast) could easily be 16 games per season

over the next several years or beyond. The inadequacies of the SEIR reply are as follows:

- The reply notes that the 2 to 3 preseason and up to 16 postseason games - number variable - (and in actuality, though not admitted in the response, a number of regular season games as well) could have a 6pm weekday start time. It also admits that such games would worsen traffic in the weekday peak commute period from conditions reported in the SEIR (failing to admit also adversely impacting transit and also failing to quantify the increase in severity of impacts on weekday pm commute peak. It claims that these start times are driven by such factors as TV deals, other team's travel schedules and outcomes of postseason series that are beyond the abilities of the Warriors to control - although it is nonsense for the response to imply that those considerations make the Project's significant impacts in the circumstances of these earlier-start events any less significant.
- The response claims that the quality of the team will vary from year to year and claims that this will make the situation of large numbers of national telecasts that might start at 6 pm inconsistent over the time horizon considered in the SEIR. This is a speculation not consistent with precedent. Once a team has achieved an iconic status and national following (as the Warriors have done in the recent season with winning the league championship and the most valuable player award and with the shiny new venue comprised by the Project reinforcing that iconic status), the number of nationally televised weeknight games (6 pm starts) is likely to increase over the next several seasons, and to reoccur despite hiccups in individual seasons (witness the pervasive national attraction to the Lakers and Celtics despite several bad seasons, or, in another sport, Notre Dame football). Moreover, the project arena may be used for other major weekday capacity events such as the NCAA basketball tournament quarter- and semi-finals that would have start times dictated by national TV (that is, 6 pm). Hence, the response's conclusion that "it is unlikely that this scenario [a large number of nationally televised weekday games starting at 6 pm] *would occur on a regular basis during the time horizon addressed by the SEIR*" is non-factual, speculative and inconsistent with the good faith effort to disclose impact that CEQA demands.
- Finally, the response claims that "consistent with common practice in the transportation planning profession, the SEIR includes an analysis of the highest demand with the most frequent conditions for evening events ...". We agree that the 7:30 start time is probably the most frequent weekday evening start time likely to occur. But the SEIR is in error and misleading in proclaiming that it is consistent with common practice in the transportation planning profession to only study the high-demand situation that occurs most frequently. In fact, when a high demand scenario that is not the most frequently occurring but is one that occurs frequently enough to be significantly impactful, it is the common practice in the transportation planning

profession to study that frequent-enough circumstance as a separate scenario on a CEQA or other analysis. A good example of this is normal transportation planning practice with respect to major regional shopping centers. Studies are performed for an average weekday, and because shopping centers have their highest travel peaks on Saturday, for an average Saturday; these are the most frequently occurring peak conditions. But because shopping center travel has its highest peaks in the Thanksgiving to day-after-New Year holiday season and because the peaks in that approximately 38 day season occur frequently enough to be significantly impactful on their own and pose impacts of different severity than on the average weekday and average Saturday, normal transportation planning practice is to evaluate holiday shopping season weekday and Saturday impacts as separate scenarios. Another example is in the Napa Valley. There, it is the practice to evaluate a project's transportation impacts for the average weekday and average Saturday (which are the most frequently occurring impact situations) and to also evaluate impacts in the "crush" (harvest) season as a separate case as well because those impacts, occurring over a four to six week period are frequent enough and of such severity in comparison to annual averages to warrant consideration as a separate impact case.

- This matter cannot be dismissed as a disagreement among experts. A compelling argument that the SEIR should have evaluated a case scenario for weeknight capacity Basketball games starting at 6 pm is the fact that the SEIR did evaluate a scenario where there are an overlapping capacity Basketball event at the proposed Project and a Giants game at AT&T Park on a weekday evening. The SEIR claims that that type of overlapping event is likely to occur only about 9 times per year. It is obvious that, if a nine times per year occurrence rate is sufficient to require the SEIR to evaluate the Project in the context of that overlapping scenario, then the SEIR should also evaluate the weeknight 6 pm Basketball start scenario which is likely to occur more than 9 times per year in many years of operation.
- The fact that two hospital emergency entrances and the entries for emergency caregivers are located within a block of the Project site make the need for the SEIR to specifically evaluate impacts and mitigation in the 6 pm weekday event start scenario all the more compelling.

Hence, considering all of the above, the SEIR should have evaluated weekday Basketball events starting at 6 pm and is inadequate for not having done so.

Section 13.11.3, Response TR-2b

This section purports to respond to our comments now labeled by the City as O-MBA10L4-2, O-MBA10L4-20, O-MBA10L4-39A and those of Caltrans (A-Caltrans-5) and others. These comments concern the SEIR's lack of analysis at intersections

and freeway ramps that are on obvious approach and/or departure routes to/from and that are obviously or potentially capacity-challenged already.

The response begins by reciting the 6 freeway ramps and their related surface street intersections where analysis was conducted, a point not at issue in the comment. The key point of the comment is the locations the SEIR failed to analyze, not the places it did so. The reply continues, adding that the depth and approach is similar to other studies of completed and ongoing major project studies in San Francisco, and noting that the 1998 Mission Bay FSEIR did not address freeway ramp operations and queuing at all. However, what other studies did or didn't do is immaterial. What is material is what this SEIR should have studied but failed to do, and the response attempts to evade this.

The response continues for two paragraphs describing the configurations and conditions at the I 280 Mariposa off-ramp - one of the locations the SEIR did study. This section, not related to the issue of the ramps and ramp intersections that the SEIR should have but failed to study, concludes by observing that the LOS F conditions on the off ramp in the evening peak hour would be cured by Mitigation Measure M-TR-11c involving stationing a PCO at the ramp terminus intersection and waving traffic turning right to Mariposa eastbound through the traffic signal at the end of the off-ramp. But that conclusion is completely speculative. This commenter was a long term Giants season ticket holder at AT&T Park and this particular off ramp was on my normal route to the Park. The problem there is not that the signal causes queues to back up the ramp and onto the freeway mainline. It is that once a driver reaches the end of the ramp and has a green light, there is often no place to turn to on Mariposa because eastbound traffic is queued all the way back from Third Street. So placing a PCO there will be largely useless.

The response then discusses the I-80 westbound off-ramp to Fifth Street, and concludes that mitigation measure M-TR-2b, vague measures of unquantifiable effect to encourage travel by non-automotive modes would reduce the Project's impacts at this location. Again, this discussion of a location the SEIR did study is irrelevant to the issue that the SEIR should have but failed to study other locations - unless the implicit message is that, had it done so and discovered impacts, it would have just proposed vague, unquantifiable and ineffectual mitigations and declared the impacts mitigated.

Finally, after four lengthy paragraphs of largely irrelevant matter, the reply turns to the subject of the intersections and ramps that should have been studied and were not. The response notes that under CEQA Guidelines § 15130, defining the location or locations for study "*is within the lead agency's reasonable discretion*" and fundamentally claims that in defining what intersections and ramps were analyzed in this SEIR the City has exercised reasonable discretion. However, this assertion is undermined by content in the comments demonstrating that by prior and ongoing

studies in the general area and by common observation, the City knew or should have known that certain intersections and ramps in the SOMA and Mission Bay area that are on logical access and egress routes to the Project site are capacity challenged and are likely to be adversely impacted by the Project, yet it did not study them in the SEIR. Hence, rather than exercising "*reasonable discretion*" as required by CEQA Guidelines, the City, in failing to study these locations, abused its discretion and failed to undertake the good faith effort to disclose impact demanded by CEQA.

That the City has failed to exercise reasonable discretion in this matter is reinforced by two considerations.

- Two UCSF hospitals are located a block from the Project site. Many of the intersections and ramps on logical access/egress routes to/from the Project that, at the City's discretion, the SEIR failed to analyze are on the advised emergency access routes from various points in the City and region to the hospitals and are posted on the UCSF web site. In excluding these intersections and ramps, the City clearly ignored public safety impacts of that decision.
- The State of California Department of Transportation (Caltrans) has commented on the DSEIR as follows. "Project-related queuing impacts on nearby State facilities should be analyzed" (see comment now labeled in SEIR A-Caltrans-5). Caltrans clearly believes the DSEIR has not assessed impacts on a sufficient number of freeway mainline, ramps and ramp intersections that are likely to be impacted by the Project. Caltrans opinion is due the same deference in this matter as that of the City.

The City's response continues, attempting to explain why individual or groups of intersections and ramps were excluded from study in the DSEIR. For example, the response cites 9 intersections along the Embarcadero and 15 along or east of Fourth Street that we claimed should have been studied. It claims that because the Project is shifted to its current location farther south-west from the originally proposed location on Piers 30-32, the primary routes to and from the Project site from Downtown, SOMA, the northern parts of the City and from the North Bay and the I-80 ramps would be shifted farther west, away from these intersections. But this is not true. Except for the relatively few instances in which there is a concurrent evening Giants game at AT&T park, the routes along the Embarcadero and along and east of Fourth Street remain the most effective and imageable routes to the currently proposed Project site and the parking facilities that serve it from much of the Downtown, SOMA, northern parts of the City, the North Bay and the I-80 ramps to and from the East Bay. Those paths are only likely to be altered on evenings with a concurrent Giants game. And if a massive shift of traffic further west was assumed in the City's thinking as it scoped the current SEIR and excluded the intersections along the Embarcadero and on and east of Fourth on that assumption, why didn't it add more intersections in the Eighth Street corridor (including but not

limited to the ramps and intersections at Eighth and Harrison, Eighth and Bryant) and other intersections in the Van Ness, Franklin, Gough, Octavia corridors for example? The City has no good answer.

The response also claims that traffic passing through the Embarcadero intersections and the intersections along and east of Fourth would be less significant because a survey of baseball attendees at AT&T park *suggested* that many attendees who worked Downtown or in SOMA and drove to work left their cars at their commute parking locations and walked, used transit or took cabs to and from the ballpark. This type of data is of course irrelevant because those considerations should have already been taken into account in the SEIR's assumptions about mode split to the park from those districts. Moreover, this type behavior is likely to become increasingly uncommon as surface parking in those districts disappears and is replaced by parking garages that tend to close earlier than parkers could travel back to them at the conclusion of ballpark or arena events.

The response also cites new study of a single intersection, that of Eighth and Bryant as exemplar of why additional study intersections are not justified. This intersection is an anomalously complex intersection, and the effects of its complexities on traffic operations are difficult to replicate in theoretical delay/level of service calculations. Part of the complexity is that Eighth Street, which is one-way southbound north of Brannan becomes two-way south of Brannan. The complexity is compounded because columns that support I-80 as it crosses above Eighth between Bryant and Brannan are located in the center of Eighth Street and force southbound drivers that want to turn left at Brannan or go through or right there to pick the correct lane before departing the heavily congested intersection of Eighth and Bryant. Moreover, from this point of choice, drivers' views of what choices they must make before moving along Eighth toward Brannan are obscured by the columns and I-80 structure. In general, calculations of LOS at one location are poor predictors of delay/LOS conditions somewhere else. Moreover, in this case, the unique geometrics of the subject intersection and their unusual effects on driver behavior make the outcome of theoretical delay/LOS calculations anomalous rather than exemplar of anything elsewhere.

The City's response is clearly grasping straws to avoid analyzing the full array of intersections and ramps that, in a good faith effort to disclose impact, the SEIR should have evaluated. The City's response to the subject comment set is inadequate, and in continuing to evade analysis of potentially adversely affected freeway segments, intersections and ramps, the SEIR is defective and unsuited for certification.

Section 13.11.3, Response TR-2c

Response TR-2c replies to our comments O-MBA10L4-21 and -22, and those of others that the DSEIR understates transit and traffic impacts because it is based on outdated traffic and transit data unrepresentative of existing conditions at the time of filing the Notice of Preparation (NOP) for the SEIR.

The initial point in the response in Response TR-2c is to deny that the baseline data relied upon in the DSEIR was stale, and to claim that the City and its consultants took steps to assure that they relied upon data as up-to-date as feasible. This assertion is factually untrue.

Here we briefly review the facts of the situation, first with regard to transit data.

- The NOP for the Project was circulated on November 19, 2014.
- The data document relied on in the DSEIR transit impact analysis for Muni operations in the City states that this data was collected in the fall of 2010 and at some time in 2011.
- The data relied upon for services in the regional transit corridors serving the City was drawn from a SFMTA TEP project published in October 2012. Obviously, the regional transit corridor data published in that study reflects observations some time before October, 2012.
- Since those times of data collection, there have been a large number of development projects completed and occupied in the C-3, SOMA and Mission Bay and yet others were approved and under construction. In addition, the recovering economy has added considerable numbers of riders to the local and regional transit systems.

Clearly the transit data relied upon in the DSEIR was stale at the time the analysis was performed and this should have been obvious to the City and its consultants. Moreover, contrary to the claim in Response TR-2c that the City and its consultants took steps to assure that they relied upon data as up-to-date as feasible, new information released as part of Response TR-2c makes obvious that this is not the case.

- Several weeks before the DSEIR was circulated, the City issued updated summarizations of Muni patronage data and regional transit service data.
- Several weeks before the DSEIR was circulated, the City had BART patronage data that was very current – actually through April, 2015.

Yet the City did not update the transit analysis in light of this data before circulating the DSEIR or even acknowledge the existence of newer data in any way in that document. This is improper.

Response TR-26 does not present in full the new transit data set, the San Francisco Planning Department Memorandum *Transit Data for Transportation Impact Studies* dated May 15, 2015. Instead it presents a composite table compiled from the

information in the cited memorandum (Table 5.2-43) sourced to Adavant Consulting/Fehr & Peers/LCW Consulting and dated 2015. This composite table omits key data from the actual May 15, 2015 San Francisco Planning Department Memorandum (a copy of which is appended hereto as Exhibit 1) that indicate the data reflected therein were collected in 2013 for Muni operations and in 2012 for regional transit operations. This raises two key issues:

- Although the revised analysis presented in Response TR-2c is based on newer data, that data is also stale.
- In omitting, in the summary table published in Response TR-2c, the notations indicating the dates on which the newer data was collected, the response either deliberately or inadvertently misleads the public to believe the analysis in the response is based on current 2015 data, which it is not.

Although Response TR-2c mentions having BART's April, 2015 ridership data and claims to have relied on it, there is no evidence in the response of how and where the SEIR made use of it in any way. Although the City has placed the raw BART of April ridership data, ascribed to a May 1, 2015 submission by Val Menotti, Bart Chief Planning & Development Officer, on the SEIR web site, the transmittal narrative is not presented nor is its translation into the regional screenline format relied on in the SEIR. We hereby demand that the conversion of the subject BART ridership data release be provided to the Mission Bay Alliance and its consultants in the format of the regional screenline analysis of the SEIR and that the period of comment be extended beyond the date of its provision to allow adequate time for review and comment on its implications. We also note that BART's own letter of comment on the DSEIR (now Comment A-BART) in its second paragraph of comment (a paragraph the SEIR ignores rather than enumerating for response (see SEIR page COM-19) notes as follows: *"Given strong job expansion in San Francisco, BART has experienced unprecedented ridership growth (~25% over the last four years) which creates a number of peak period capacity challenges."* This statement clearly demonstrates that any reliance on regional transit data as old as 2012 (which the SEIR continues to rely on) is an inaccurate portrayal of the background conditions on which the Project imposes impacts. Response TR-2c claims to have used the April, 2015 BART data

Response TR-2c presents a reassessment of impacts on the 22 – Fillmore and the T-Third lines based on the purportedly 'new' baseline data set and finds that deficiencies on these lines are not Project impacts because the Project's contribution to ridership does not exceed 5 percent of total ridership at the maximum load points. However, this finding of lacking a ridership contribution in excess of 5 percent at the maximum load point comes about only because of the failure to consider the scenario of weekday Basketball event starts at 6 pm and the SEIR's illogical refusal to consider that there is an offset between the time attendees pass through the arena turnstiles and the time those attendees are traveling on and impacting the transportation system (see our comments O-MBA10L4-17, O-MBA10L4-7, O-

MBA10L4-16 and our comments herein with respect to Response to Comments TR-2a and TR-2d. Had either or both the 6 pm game start scenario and the proper offset between arena turnstile passage time and time traveling on the transportation system been considered, there would be much more Project travel on the subject lines during the pm peak commute hour (5-6 pm) than is considered in the SEIR and significant impacts on these lines would be disclosed.

Response TR-2c claims that use of the updated transit data does not result in any changes to impact determination for Muni transit presented in Impact TR-4. This conclusion is incorrect and misleading because the analysis was not performed on *adequately updated* (still stale) transit ridership data and because it was performed without considering reasonable Project contributions to evening commute peak hour transit ridership (because of failure to consider a 6 pm game start scenario and failure to consider the offset between time riding transit and time passing through arena turnstiles for the 7:30 game start scenario).

Response TR-2c also opines that, since ridership figures for the 22 Fillmore and T Third routes were obtained from SFMTA and reflect City's plans for changing the 22-Filmore and completing the Central Subway by year 2020, the SEIR analysis for these lines accounts for development that occurred and is probable to occur through 2020. However, we note that the planning studies for those transit service changes on those lines were performed several years ago and the SEIR presents no clear evidence whether or not the SFMTA projections for those transit projects reasonably reflects the development boom that has occurred in the C-3, SOMA and Mission Bay in the intervening years and whether or not job infill in existing development due to a revitalized economy was reflected.

A final section of Response TR-2c attempts legalistic evasion of the issue of stale existing conditions data. This section starts by stating: "*Overall the transit impact analysis presents a reasonable representation of transit conditions based on available data for the Muni and regional transit providers and additional analysis is not required. Nor have commenters identified any flaws in the analysis that built upon the transit impact analysis."* This statement is contrary to fact. Four year old data collected at a time when the job and development economy was just starting to begin recovering from a period of stagnation and decline is clearly not representative of conditions after four subsequent years of aggressive development and job boom. And for our part, in our comment letter of July 26, 2015 comprises 27 pages identifying flaws in the analysis that are compounded by the flawed and outdated transit data base assumed as "existing" conditions in the DSEIR. The response goes on to state: *"Although a somewhat different, and yet technically plausible, approach might have been possible, the City's approach is abundantly supported by substantial evidence and represents a reasonable exercise of technical judgment. In general, a lead agency's determination regarding how 'existing physical conditions without the project' could 'most reasonable be measured' is 'quintessentially a*

discretionary determination". This statement misrepresents the issue in order to bend the framing of it to fit legal case precedents which are then cited in the response. However, this is absolutely not a technical disagreement about how to go about collecting or reasonably measuring existing transit conditions data. The issue is that the old transit data the City had on hand is simply not representative of the transit conditions that existed in late November, 2014 when the NOP was circulated.

With regard to the issue of stale traffic data (Comment O-MBAL4-21), Response TR-2c reiterates that the DSEIR adjusted the original counts to account for the opening of the UCSF Medical Center Phase 1 and the Public Safety Building that were nearing completion after the traffic counts were taken. This adjustment for those buildings was acknowledged in our comment O-MBAL4-21 and is not a matter of question. Response TR-2c goes on to state that subsequent traffic counts taken at three intersections in April 2015 confirm that the adjustments to the earlier traffic counts reasonably reflect the added traffic associated with the newly opened facilities cited above. This point is also not challenged in our comment, at least with respect to the three particular intersections counted. However, Response TR-2c then concludes: *"Because the adjusted volumes used in the analysis were similar to or higher than those collected in the field in April 2015, it can reasonably be inferred* [emphasis added] *that the traffic volumes used in the existing and existing plus project analyses also adequately reflect any changes that may be associated with newly completed projects further afield (e.g., in SoMa)."* The idea that this conclusion can reasonably inferred is utter nonsense. The DSEIR made no attempt to quantify what projects in northern Mission Bay, SOMA and the C-3 were completed after 2013 or nearing completion by early 2015, how much traffic they would generate and where most of that traffic would go and what study intersections it would affect. The intersections that were counted in April 2015 (Third with Sixteenth, Fourth with Sixteenth and Fourth with Mariposa) are indeed "*far afield*", being well to the southeast from new developments in northern Mission Bay, the SOMA and C-3 and are unlikely to be affected much by developments in those areas[1]. But other intersections in the Project's scope of study are much closer to those development areas and are likely to be considerably more affected by traffic generated by the uncounted developments there as well as increased traffic to/from those areas due to job growth within existing uses due to the improved economy. The April 2015 counts do nothing more than show the SEIR traffic adjustments for UCSF Medical Center Phase 1 and for the Public Safety Building came reasonably close to getting it right for those particular facilities and those particular intersections. They carry no inference for other new development and for other study intersections farther afield.

[1] This is because traffic from northern Mission Bay, the SOMA and C-3 would likely take other routes journeying to and from the southeast that would not pass through the 3 intersections counted in April 2015.

Because of these considerations, Response TR-2c is inadequate and the comment that the SEIR traffic baseline is stale remains unrefuted.

Section 13.11.3, Response TR-2d

Response TR-2d concerns our comments now O-MBA10L4-7, O-MBA10L4-7, Caltrans (A-Caltrans-1) and others.

Our comments concern the fact that the DSEIR relies on turnstile data[2] on time of arrival at the Golden State Warriors current venue site (Oracle Arena) and other basketball venues to estimate how many attendees traveling to a game with a 7:30 PM start time would be traveling on the area transportation system in the 4 to 6 PM peak commute period versus in the 6 to 8 PM early evening peak shoulder period without considering the reasonable offsets between the time attendees enter the "paid" areas of the arena and the time when they were actually traveling on the transportation system.

Response TR-2d begins by stating as follows: "*For reasons explained below, the City disagrees with those comments and stands by its analysis, which reflects a number of evidence-backed, conservative assumptions. While some of the points raised in the comments seem intuitively believable, actual data from comparable situations show that the comments have exaggerated the likely numbers of people would arrive* [sic] *before 6 pm for a 7:30 pm event."*

Let us parse this introductory section of the response before moving to the further details.

Re: "*points raised in the comments seem intuitively believable",*

- It is undeniable fact that attendees occupy capacity on the transportation for a period of time that depends on the length of their journey and mode and that the period they occupy capacity on the transportation system occurs before the time they pass through the arena turnstiles.
- It is undeniable fact that even for attendees who go directly through the turnstiles into the paid section of the arena at the end of their trip to the site, there is a time offset between the time when they stop occupying capacity on the transportation system - when they debark onto the T Third platform, or the 22 Fillmore stop or find a parking place nearby or perhaps even start walking from BART, Caltrain or the other Muni-Metro lines - and the time they pass through the turnstiles.
- It is fact that some attendees wait outside the venue, perhaps to meet up with companions traveling separately (possibly to hand them their tickets, just soak in the atmosphere of the crowd arriving or for other reasons). So the

[2] The time attendees actually enter the "paid" areas of the arena.

time these attendees occupy capacity on the transportation system is even more offset than those who enter the arena directly.

- It is fact that some choose to have drinks or meals at restaurants and bars outside the venue before entering the arena and that the offset between when these attendees occupy capacity on the transportation system and the time they pass through the arena turnstiles is even greater yet.

These considerations are not just "*intuitively believable"*; they are undeniable fact and the SEIR's analysis has failed to take them into account.

Re: "*the comments have exaggerated the likely numbers of people would arrive* [sic] *before 6 pm for a 7:30 pm event."*

The fact that time of arena event attendees' time on the transportation system is offset from the time they pass through the arena turnstiles for the reasons stated above is not a newly-discovered concept or theory; it is a fact the City and its consultants knew or should have known. It is the City's responsibility to have reasonably considered the offset factors in the SEIR and, based on that, reasonably estimated the number of arena attendees who would be impacting the transportation system during the evening commute peak hour in the case of a weekday evening arena event starting at 7:30 pm. We have made a reasoned effort to estimate how many attendee's travel to such an evening event would be offset into the evening commute peak hour. The City and its consultants have made absolutely no attempt to consider the offset factors in estimating impacts of travelers to a 7:30 pm arena event start on the transportation system in the evening commute peak hour. Hence, the City is in no position to opine that our reasonable estimate based on those offset factors is "*exaggerated"* since it didn't try to make such an estimate at all.

Re: "*the City disagrees with those comments and stands by its analysis…"*"

This is an attempt to transform what is a matter of fact into a disagreement among experts in the hope that courts will grant deference to the City's opinion in the matter. However, since this is a clear matter of fact, the response is inadequate and the City has refused to make the good faith effort to disclose impact that CEQA demands.

Here we consider of details of Response TR-2d.

Response TR-2d in the last paragraph of Volume 4, page 13.11-41 states:

"As shown in the table on SEIR p. TR-37 of Volume 3 of the SEIR, multiple basketball venues from various sources were evaluated to derive the arrival patterns at the

> proposed project arena. Of these, two locations (Oracle Arena in Oakland and Barclays Center in Brooklyn) separately reported arrivals occurring more than one and a half hour prior to the start of a basketball game The remaining facilities reported all arrivals occurring more than one hour before to the start of a game, most likely because those occurring more than one and a half hour prior to the game represent a small fraction of the total attendance. The average percentage of arrivals occurring between 5:00 and 6:00 p.m. for those instances where arrivals occurring more than one and a half hour prior to the start of a basketball game (i.e., between 5:00 and 6:00 p.m. for a typical game starting at 7:30 p.m.) is less than 2.5 percent. Thus, to account for potential daily variability in arrival patterns, as well as the additional time it may take for attendees to enter to the event center after their arrival at the site or nearby vicinity, the SEIR conservatively assumed that more than twice as many attendees as the average (i.e., 5 percent) would arrive between 5:00 and 6:00 p.m."

This section of the response is misleading in several respects. Although Volume 3, page TR 37 presents 7 data sets obtained for 6 NBA basketball venues, examination reveals all of the data is turnstile entry data and only 3 of the data sets for 2 venues provided useful data measuring turnstile arrival times earlier more than 1.5 hours before game start time (which would definitely put travel by those attendees into the 5 to 6 pm evening commute peak period). One of those is for the Warriors at their current venue, Oracle Arena, and shows only 1 % of attendees arriving more than 1.5 hours before game start time. The other two are for the first two years of operations of the Barclays Center in Brooklyn which respectively showed 2.0 and 4.1 percent of attendees arriving more than 1.5 hours before the start of an evening basketball game.

Let us put this data in perspective. The Oakland-Alameda Coliseum complex on which the Oracle Arena sits has a total of almost 10,000 parking spaces, more than enough spaces to accommodate the entire Arena capacity attendance if attendees arrived at two persons per car occupancy. This facility is noted for tailgating before basketball games as well as before other events. In addition, persons arriving at the complex by BART can readily be observed joining friends who drove and parked at their tailgates. Because of this, the observed 1 percent of attendees turnstile count for Oracle is probably under-representative of the numbers of attendees who actually arrive on the premises more than 1.5 hours before game start by a factor of 25- to 30-fold or so.[3]

The other data sets from Brooklyn show turnstile counts at the Barclays Center more than 1.5 hours before game start at 2 percent in the initial year and 4.1 percent in the second year of operation. These percentages likely reflect in part attendees unfamiliar with a new venue and adapting their pregame behavior as they become more knowledgeable. But neither of the two years turnstile data provides any

[3] We note that it would not have been difficult or costly for the City, its consultants or the Project sponsor to have taken aerial photos of parking at the complex 1.5 hours before game start and again some time after game start, counted the cars in each, and used the relative numbers as a reasonable surrogate measure of what percentage of attendees arrive 1.5 hours before event start.

indication of how many of the attendees actually arrived in the vicinity of the Barclays Center more than 1.5 hours before event start (hence actually traveling on the transportation system in the pm commute peak period).

The SEIR takes these three data sets, averages them, finds them to be less than 2.5 percent of total attendees, doubles that to 5 percent and assumes that becomes a "*conservative*" estimate covering all the considerations why attendees might have arrived in the Project area 1.5 hours or more before event start (hence been traveling on the transportation system in the pm peak commute hour.). The problem with this is, there is nothing that connects the turnstile percentage of attendees entering the arena more than 1.5 hours before event start to the percentage who arrive near the venue site 1.5 hours before or indicates that double that turnstile count is a "*conservative*" estimate of that latter item. The claimed "*evidence backed, conservative assumptions*" the City claims to have made in this matter has no direct quantified or quantifiable relationship to the "*evidence*" the SEIR cites. The City, its consultants or the Project sponsor could easily have easily and inexpensively measured attendee arrivals to the Warriors current venue environs (the Oakland Alameda Coliseum property) via motor vehicle and BART, but they failed to do so. By 'deeming this unnecessary' as it does on page 13.11-42, Response TR-2d expresses preference for the SEIR's own unsubstantiated guess as to how many attendees of a 7:30 pm start basketball event are actually traveling on the transportation in the pre-6 pm evening commute peak hour rather than having reliably measured data. And that guess is highly favorable to the Project since the low number of travelers in it minimize the chance of Project impacts on the transportation system being disclosed for the pm commute peak hour. The response is inadequate and inconsistent with the good faith effort to disclose impact that CEQA demands.

Section 13.11.3, Response TR-2f

Response TR-2f replies to our comments O-MBA10L4-3, O-MBA10L4-4, O-MBA10L4-23, O-MBA10L4-24, and O-MBA10L4-27. The first and fourth of these comments relate to the SEIR's failure to define the severity of the Project's traffic impacts. The second and third of these comments relate to failure to evaluate impacts at intersections under PCO control and the fifth relates to the SEIR's failure to account for the effects of train passage in the analysis of the intersection of Sixteenth, Seventh and Mississippi. Both of these latter matters also ultimately go to the issue of failure to define severity of impacts.

With regard to the failure to address changes in severity to impacts at locations already operating under conditions qualifying as impacted, the first three paragraphs of the response are padding, reciting definitions of LOS that are not in dispute in the comments. The next three paragraphs of the response on page are legalistic arguments about whether CEQA requires disclosure of distinctions in severity to

impacts where conditions are already in a state considered impacted. Without engaging in the argument of legal matters, we can state that from an engineering perspective, distinctions in severity of impacts represented by changes in delay in the LOS/delay computations are highly significant. If the computations at a ramp or intersection already at LOS F show changes of a couple seconds of delay or so, this is hardly perceptible to drivers and is not indicative of meaningful change in severity of impact. But if the computations show changes of, for example, a half-minute or a minute or more, this is indicative of a dramatic change in severity that is highly perceptible and involves potential for queue blockages of additional lanes or upstream locations. Since the calculation procedures are capable of generating these estimates of delay and distinction of severity, this information should not be suppressed and ignored – doing so appears to be inconsistent with the good faith effort to disclose impact that CEQA demands.

The response goes on for four more paragraphs discussing the evolution of LOS computation techniques, the City's practices in use of them, and the technical meaningfulness of them. The single point in these paragraphs worthy of consideration can be summarized as follows: Calculation procedures to determine delay have been validated for instances where the subject location is below or slightly above capacity; in circumstances where capacity is greatly exceeded the validation is less strong and therefore the delay predictions are less reliable. We acknowledge this. But it is still clear if, say, an intersection or ramp is a couple seconds over the LOS F threshold in the existing condition and addition of project traffic computes to add a half minute or minute or more of delay, those are significant changes in severity. This is regardless of the fact, because of the lower reliability of the delay calculation in the LOS F zone, that if the traffic were actually added in the field and the changes in delay were measured, the results might be 27 seconds added instead of a half-minute or 55 seconds added instead of a minute.

Response TR-2f continues for another page-and-a-half of irrelevant speculation that in the future, consideration of LOS/delay may be excluded from CEQA consideration. For the present, LOS is a CEQA consideration, the City has relied on it and that portion of the response can safely be dismissed.

Response TR-2f continues, replying to the issues in O-MBA10L4-4, O-MBA10L4-23, concerning failure to evaluate LOA/delay impacts at intersections under PCO control. This comment concerns specific tables in DSEIR Volume 1 that are explicitly identified in the comments, Tables 5.2-47 and 5.2-48, respectively located on pages 5.2-172 and 5.2-174. These tables have no entries for LOS or delay at certain intersections, with the normal space for delay and LOS entries in those tables filled with the notation "PCO Controlled". The response points to completely different tables, Tables 5.2-34, 5.2-35 and 5.2-36 as having delay and LOS entries for those intersection locations. This response evades the following questions:

- What is LOS and delay at the times these intersections are PCO controlled?

- Does the SEIR conclude that PCO control mitigates significant impacts at these locations or do they remain significantly and unavoidably impacted?

The response is inadequate.

The final portion of Response TR-2f concerns the apparent lack considering the effect of Caltrain train movements on delay and LOS at the intersection of Seventh, Sixteenth and Mississippi. The response confirms that the SEIR analysis did not attempt to analyze the effect of Caltrain train movements on the LOS/delay compiled for the intersection of Seventh-Sixteenth and Mississippi. It points out that the SEIR analysis shows that with the reductions in general traffic lanes associated with the 22 Fillmore Transit Priority project, together with Project traffic, with or without overlapping Giants games, this location would be at LOS F. It then claims that, because the computation of delay is less reliable when LOS F conditions are already evident, there would be no point to attempting to further quantify the situation with respect to the effects on the subject intersection by Caltrain movements on the immediately adjacent grade crossing of Sixteenth. This absurd response ignores and attempts to evade the key point of the comment which is that had Caltrain movements been considered, there is a good prospect the analysis might have shown that traffic on Sixteenth would queue to an extent that might obstruct the intersections of Sixteenth with Owens, Sixteenth with Fourth, and even Sixteenth with Third. Since these locations are on a critical emergency and regular access route to the UCSF hospitals it is imperative that such an analysis be done (a good case for micro-simulation) and the SEIR is critically deficient for having failed to perform it.

Section 13.11.3, Response TR-2g

This response replies to our comments O-MBA10L4-3-13a and O-MBA10L4-18 which concerns the criteria the City uses to define impacts on transit.

To our comment that the ordinary transit impact criterion, ridership in excess of 85 percent of screenline capacity based on scheduled service, or by scheduled line service where an individual line evaluation is ordered, is unreasonable and unrealistic. Our reasoning is based on the fact that Muni rarely, if ever actually delivers the effective capacity of full scheduled service due to missed runs, bunching and skip-stopping and other issues related to lack of schedule reliability or on-time performance. The response describes how passengers are counted, but this clearly does not include those left standing at bus stops and LRT platforms. It also claims that the procedure takes into account the schedule reliability and on-time performance issues, but demonstrates no clear way that this is true. It also fails to address the issue that, when only a screenline analysis is performed, this assumes the excess capacity on one line is available to serve the excess ridership on another, while in reality, most people's travel patterns are well served by only a single line.

The response then moves to a key issue, that the City has relaxed the normal threshold of impact from 85 percent to 100 percent of capacity for this particular Project. One of our criticisms is that relaxation of the normal threshold of significant impact for one favored project is inconsistent with the good faith effort to disclose impact that CEQA demands. The response's reply to this is that San Francisco already did the same for the 34th America's Cup competition event and New York City does it all the time for large special events. But the America's Cup competition is/was fundamentally different from the proposed Project in that it involved large-attendance spectator event competition occurring over just a few days in a single year; the Project involves events on over 200 days per year repeated over many, many years. Moreover, the fact that nobody noticed that the City changed the rules for that specific event does not make it right then and does not justify making a special change of the impact criteria for this Project or for any project. As regards to what New York City does for transit impact criterion with respect to large special events there, that is irrelevant to San Francisco.

A key issue identified in the comments is that while event-attendees may tolerate 100 percent-of-capacity crush loads (a justification the DSEIR used for the relaxed impact criterion), the problem is that this imposes a special misery on the people who are normal users of the affected lines at the times. Response TR-2g fails to address this relevant point. Furthermore, the issue of who the regular riders who are adversely impacted when special event attendees overcrowd and slow the operation of the affected transit lines has Social Justice implications. We explore this topic, which the SEIR fails to address, below.

Other commenters provide evidence that the community south of the Project site served by the T Third line is a disadvantaged community that is adversely impacted by the effects of transit services to the Project that create social justice issues unaddressed in the SEIR. Here we discuss transit operations considerations that lend support to the assertion that the SEIR has failed to address social justice issues.

- Regular users of the T Third will suffer unpleasant overcrowding due to event-goers in the pre-event and post-event periods, having to deal with scarcity of seating and uncomfortable sharing of standing space with boisterous pre-event goers and over-exuberant or angrily depressed (and often liquor-fueled) departing event goers.
- The City's decision to reduce the threshold of significant impact from the normal 85 percent of capacity to 100 percent of capacity exacerbates the overcrowding impacts on the regular user community.
- Special T Third shuttle services to the Project site that turn back near the intersection of Sixteenth and Third occupy time slots that could be filled by runs that serve the community to the south in this corridor.

- Heavy boardings and alightings associated with event arrival and departure travel increase station dwell times, slowing service to normal users south of the Project site. Delays associated with shuttle operation turn-backs do the same. Also, turn-backs tend to create big gaps in service south of the Project site, as is reportedly already evidenced as the result of Giants games.
- Reconstruction of the T Third station platform near the intersection of Third with Sixteenth to accommodate Project crowds, a reconstruction that will require over a year, will inevitably delay T Third services to the disadvantaged community to the south over the duration of the construction period. At times this may even require substitution of inferior bus services.

All of these constitute transit operational reasons why the SEIR should have included a Social Justice Impact section that has not been provided.

Section 13.11.3, Response TR-2h

This response replies to our comments O-MBA5-6, O-MBA10L4-9, O-MBA10L4-10, O-MBA10L4-11. O-MBA10L4-12, O-MBA10L4-26 and O-MBA10L4-36 and those of others. The points of these comments are summarized as follows:

- The cumulative analysis, pegged to Year 2040, 25 years from now, is purely speculative.
- While a speculative look at conditions 25 years hence is not objectionable, overlooking a cumulative scenario 10 years hence misses the most active concerns of the current residents of San Francisco and the region, hence the SEIR is defective as an information document.
- Absent inclusion of a shorter time-frame cumulative analysis, the long-term cumulative analysis deludes the public as to the nearer-term cumulative consequences of the Project.
- Given the rapid pace of development approvals including frequent planning and zoning variances, a 25 year forward cumulative analysis based on General Plan development quantifications is irrelevant.
- The transportation planning forecast tool used to prepare the travel forecasts for the 2040 cumulative analysis has a greater validation error (by a factor of 2) than the threshold of Project cumulative impact.
- The City is actively planning massive changes to the transportation network that would substantially alter (seemingly to the Project's detriment and to make it more impactful) transportation conditions in the immediate Project vicinity and that are as reasonably foreseeable as the plan development totals relied on in the 2040 analysis. The SEIR has failed to assess these transportation network changes.
- The SEIR uses an improper baseline for assessing cumulative transportation impacts. It assesses the Project's impacts relative to 2040 conditions that are assumed to exist without the Project. Per CEQA, it should evaluate the Project's impacts, in combination with those of other present and

> reasonably foreseeable future projects on the existing environment. The essential difference is that what the SEIR has done is to compare a projection to a projection. CEQA requires comparison of a joint projection to a known (the existing condition). These are different things.

Response TR-2h begins with a laborious 4-page description of the City's ordinary practices in cumulative analysis and of the SF-CHAMP transportation model. The discussion fails to address any of the issues in the comments and, in particular, the SF-CHAMP model's calibration error being double the threshold of impacts that it is being relied upon to disclose.

Response TR-2h continues in an attempt to justify the distant year cumulative analysis as follows:

> The 2040 cumulative horizon year is preferable to shorter period because the 25 - year horizon year more accurately accounts for land use changes and their associated transportation network changes, as well as other planned transportation improvements. Future growth occurs according to the vagaries of variable economic conditions, development trends, changing sponsor development priorities, and legal actions that delay or curtail proposed development, and therefore, short - term land use growth patterns cannot be accurately predicted in five - year increments. In particular, redevelopment projects such as those included in the 2040 growth forecasts (e.g., Mission Bay Plan, Candlestick Point - Hunters Point Shipyard Plan, redevelopment of Pier 70 and Seawall Lot 337), often take longer than anticipated to be completed. For example, the Mission Bay Plan was anticipated to be substantially built - out by 2015, which is the cumulative analysis year for transportation conditions in the Mission Bay FSEIR; however, construction of development is still underway and the UCSF Mission Bay campus is anticipated to be completed by 2019. Nearby, the Candlestick Point - Hunters Point Shipyard Phase II Development Plan identified completion of about 3,100 residential units by 2017; however, only about 240 of the 3,100 residential units are anticipated to be completed by the end of 2015. Construction of development part of the Pier 70 project is anticipated to continue through 2030. Thus, because larger multi - year development proposals would be built over a number of years, a future cumulative analysis year considers completion of buildout of these projects. Therefore, the cumulative impact analysis presented on SEIR pp. 5.2 - 208 – 5.2 - 232 (i.e., Impact C - TR - 1 though Impact C - TR - 10) adequately reflects the proposed project's impacts in combination with other past, present, and reasonably foreseeable future projects, and a different or additional cumulative analysis year is not warranted.

This response begs the question: If all this is true, why didn't the City use a 50, 60 or 100 year period for the cumulative analysis. The response, although seemingly filled with factual information, is nonsense relative to the issues.

Also, nothing in the response addresses the final bulleted point above or its elaboration in the original comments. CEQA requires evaluation of the

cumulative condition, including the Project in combination with other foreseeable in comparison to the existing environment, not a comparison of two hypothetical future conditions.

Section 13.11.6 – Response TR-5

This response relates to comments by BART (Comments A-BART-1, -4, -5, -7, -8, and -9) and ourselves (O-MBA10L4-19) supplying a station-level analysis of impacts on BART that was critically missing in the DSEIR. This station-level analysis provides completely new information, including Table 13.11-2, and conclusions that were previously missing. Consequently, the information should be available for review for the full 45 day review period in Recirculated Draft status under CEQA.

Section 13.11.6 – Response TR-8

This response replies to our comment O-MBA10L4-28 concerning truck loading. The response indicates that new (un-numbered and untitled) figures showing truck turning templates for each loading are presented with the response. It is not evident if and where the said figures are actually provided. Hence, the response is inadequate.

Section 13.11.6 – Response TR-9

This reply responds to our comment and those of others regarding access impacts to emergency vehicles attempting to reach UCSF hospitals located in the immediate vicinity of the Project. The response consists of a repetition and elaboration of the description of the ineffectual measures that prompted the comment rather than proposing clear mitigation to resolve the issues. We note that the critical traffic LOS deficiency at the intersection of Seventh, Sixteenth and Mississippi, which is on advertised emergency routes to the UCSF hospitals is unmitigated and that the SEIR analysis at this location has failed to consider the effects of train crossings of Sixteenth Street, which could cause traffic on Sixteenth to queue into the intersections of Sixteenth with Owens and Sixteenth with Fourth, which are intersections crucial to hospital access, both emergency and normal. The response is inadequate.

Section 13.11.6 – Response TR-10

This response, which concerns construction impacts, is merely a reprise of the inadequate information and findings in the DSEIR that prompted our and several other comments. Of particular concern is the failure to address construction impacts associated with the reconstruction of the LRT station by the Project site on Third

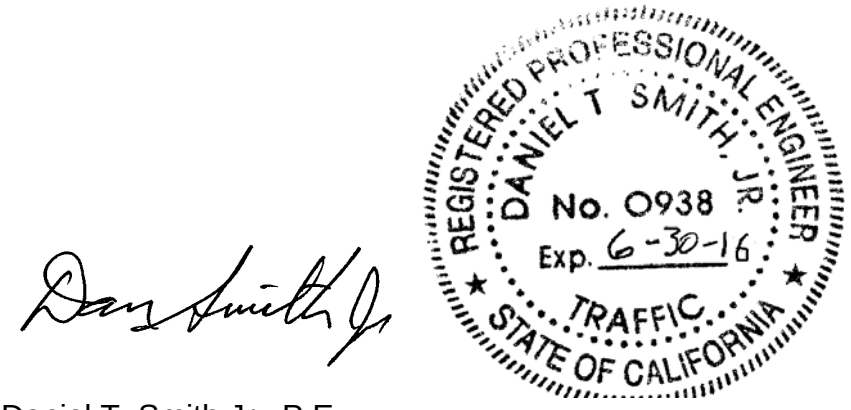
Street, a reconstruction which poses impacts for ordinary traffic on Third Street, emergency vehicle traffic on Third Street and for operations of the T Third Muni LRT line itself, which may impose social justice transportation impacts on the disadvantaged communities located further south in the T Third LRT corridor. These social justice impacts in specific have not been addressed.

Conclusion

Due to all of the foregoing and other issues not yet addressed in these comments, the SEIR transportation and circulation section is inadequate and unsuited for certification.

Sincerely,

Smith Engineering & Management
A California Corporation



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July 27, 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: **Transportation Impacts** - 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

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 this EIR for the reasons stated in this letter.

This letter incorporates by reference, as comments on the DSEIR, all of the comments on the DSEIR contained in the July 23, 2015, letter report authored by traffic engineer Dan Smith (attached as Exhibit 1), and the July 21, 2015, letter report authored by traffic engineer Larry Wymer (attached as Exhibit 2).

I. THE DSEIR IS NOT SUFFICIENT AS AN INFORMATIONAL DOCUMENT WITH RESPECT TO TRANSPORTATION IMPACTS.

A. The DSEIR Fails to Assess the Project Traffic Impacts on the Entire Affected Environment.

The DSEIR studies Project-induced increases in congestion and delay, for both incremental and cumulative impacts, at twenty-two (22) intersections and six (6) freeway ramps, as shown in Table 1.

Table 1

Incremental Impact Assessment (With Implementation of the Special Events Transit Service Plan)	Incremental Impact Assessment (Without Implementation of the Special Events Transit Service Plan)	Cumulative Impact Assessment
Intersections at DSEIR, p. 5.2-18, Table 5.2-34 p. 5.2-121, Table 5.2-35 p. 5.2-123, Table 5.2-36 p. 5.2-172, Table 5.2-47 p. 5.2-174, Table 5.2-48	Intersections at DSEIR, p. 5.2-192, Table 5.2-53 p. 5.2-193, Table 5.2-54	Intersections at DSEIR, p. 5.2-214, Table 5.2-59 p. 5.2-217, Table 5.2-60.
Freeway ramps at DSEIR, p. 5.2-133, Table 5.2-37 p. 5.2-133, Table 5.2-38 p. 5.2-134, Table 5.2-39 p. 5.2-181, Table 5.2-49 p. 5.2-181, Table 5.2-50	Freeway ramps at DSEIR, p. 5.2-198, Table 5.2-55 p. 5.2-198, Table 5.2-66	Freeway ramps at DSEIR, p. 5.2-221, Table 5.2-61 p. 5.2-221, Table 5.2-62

Remarkably, the DSEIR fails to disclose the criteria the City used to select these intersections and freeway ramps. More importantly, the DSEIR fails to disclose the criteria the City used to *exclude* other intersections and freeway ramps. The omission of this fundamentally important information renders the DSEIR so legally inadequate as an informational document that it frustrates CEQA's goal of providing the public with a meaningful opportunity to comment on the DSEIR.

Also, as shown in the attached report from traffic engineers Larry Wymer and Dan Smith, the DSEIR omitted from its area of study numerous intersections and freeway ramps that will also suffer potentially substantial increases in traffic congestion and delay. The omission of these intersections and freeway ramps from the DSEIR's analysis of the Project's effect on traffic also renders the DSEIR so legally inadequate as an informational document that it frustrates CEQA's goal of providing the public with a meaningful opportunity to comment on the DSEIR.

How did this happen? The DSEIR simply states: "The traffic impact assessment for the proposed project was conducted for 23 study intersections and six freeway ramp locations in the vicinity of the project site" (DSEIR, p. 5.2-72),[1] with no further explanation. The same is true for

[1]The DSEIR actually studies 22 intersections, not 23, in the tables listed in footnote 1.

the six freeway ramps. (DSEIR, p. 5.2-74.)

The DSEIR does inform the reader that:

> The impacts of the proposed project on the surrounding transportation network were analyzed using the Transportation Impact Analysis Guidelines issued by the Planning Department in 2002 (SF Guidelines 2002), which provides direction for analyzing transportation conditions and in identifying the transportation impacts of a proposed project.

(DSEIR, p. 5.2-69.) These Guidelines provide:

> 2. Project Setting
> The setting information shall be presented immediately following the Project Description as a discrete chapter or report section. The goal is to provide a brief but complete description of existing transportation infrastructure and conditions in the vicinity of the project. Normally, the described vicinity is a radius between two blocks and 0.25 mile, however, a larger area may be determined in the scoping process. *The specific perimeters of the study area, for both setting and project impact analysis, are to be confirmed as part of the approval for the scope of work.*

(Transportation Impact Analysis Guidelines (October 2002), pp.6-7 (italics added).) Based on this text, the reader would expect to find the criteria and rationale for delimiting "the specific perimeters of the study area" in the Scope of Work which the City approved pursuant to these Guidelines as a prerequisite to preparation of the DSEIR. Unfortunately, this expectation is disappointed, because the City-approved Scope of Work is also silent on the topic. (DSEIR, Appendix TR, pp. TR-8 to TR 14.)

Consequently, the City must revise the DSEIR to include an analysis of the Project's congestion and delay impacts on the excluded intersections and freeway ramps and then recirculate the Revised DSEIR for at least 45 days for public review and comment.

B. The DSEIR Fails to Disclose the Severity of the Project's Impacts on Intersections and Freeway Ramps which the Project Will Cause to Deteriorate to Level of Service (LOS) F.

As explained by Dan Smith in his attached report, the DSEIR fails to disclose the severity of the Project's congestion and delay impacts on intersections and freeway ramps which the Project will cause to deteriorate to Level of Service (LOS) F.

The DSEIR discloses the Project will cause significant congestion and delay impacts at

numerous intersections and freeway ramps in the "study area," where Project-induced increases in congestion and delay will cause deterioration in Level of Service (LOS) to LOS E or F. (See intersections and freeway ramps listed in footnote 1.) For the intersections and freeway ramps in the "study area" where Project-induced increases in congestion and delay will cause deterioration to LOS E, the DSEIR provides a measurement of the degree of severity of the significant impact (i.e., average delay for intersections or average density for freeway ramps).

However, for the intersections and freeway ramps in the study area where Project-induced increases in congestion and delay will cause deterioration to LOS F, the DSEIR fails to provide a full measurement of the degree of severity of the significant impact. Instead, for intersections pushed to LOS F, instead of presenting a measure of average delay, the DSEIR provides a "greater than" measurement of "80 seconds per vehicle." (See 5.2-74 and Tables cited above.) For freeway ramps pushed to LOS F, instead of providing the average density, the DSEIR provides no measurement of "existing plus project" density. Instead, the severity of the Project's impacts at intersections and freeway ramps pushed to LOS F has no upper limit, and remains undisclosed, other than to note that "demand exceeds capacity." (See 5.2-75, Table 5.2-19 and Tables cited above.)

Thus, the DSEIR fails to comply with CEQA because, beyond making the binary determination that the Project's impacts on these intersections and freeway ramps are significant, the DSEIR fails to disclose the severity of these significant impacts. (See *Santiago County Water Dist. v. County of Orange* (1981) 118 Cal.App.3d 818, 831 ["The conclusion that one of the unavoidable adverse impacts of the project will be the 'increased demand upon water available from the Santiago County Water District' is only stating the obvious. What is needed is some information about how adverse the adverse impact will be"].) Consequently, the City must revise the DSEIR to include this missing information, then recirculate the Revised DSEIR for at least 45 days for public review and comment.

C. The DSEIR Fails to Identify the Significance and Severity of the Project's Impacts on Intersections Where the Project Will Use Parking Control Officers.

In its impact assessment tables for "Intersection Level of Service - Existing plus Project Conditions - With a SF Giants Evening Game – Weekday PM and Saturday Evening Peak Hour" (DSEIR, p. 5.2-172, Table 5.2-47) and "Intersection Level of Service - Existing plus Project Conditions - With a SF Giants Evening Game – Weekday Evening and Late Evening Peak Hour" p. 5.2-174, Table 5.2-48), the DSEIR measures the significance of impacts by the use of Level of Service (LOS) and delay measurements.

But for two intersections, King and Third streets, and King and Fourth streets, the DSEIR provides no LOS or delay measurements, and therefore, no information on whether the Project's congestion and delay impacts on these intersections are significant, and if so, the severity of these significant impacts.

Instead, the DSEIR indicates that the Project calls for posting Parking Control Officers (PCOs) at these intersections at the times indicated. But the adoption of a mitigation measure cannot substitute for disclosing whether the Project's impacts on these intersections are significant or their severity.[2]

D. The DSEIR's Analysis of the Project's Construction-Related Traffic Congestion and Delay Impacts Is Legally Flawed.

The DSEIR's analysis of the Project's construction related traffic congestion and delay impacts is legally flawed because it is based on invalid criteria, it fails to lawfully assess the Project's cumulative construction period impacts, and it improperly defers the development of mitigation measures to reduce the Project's construction-related traffic impacts to less than significant.

The DSEIR states "Construction related impacts generally would not be considered significant due to their temporary and limited duration." (DSEIR, p. 5.2-46.) This statement is placed in the section describing the DSEIR's thresholds of significance. Therefore, it appears this conclusion reflects a policy decision rather than a fact-based assessment.

In the impacts analysis section, the DSEIR states: "Construction related impacts generally would not be considered significant due to their temporary and limited duration." (DSEIR p 5.2-111). Elsewhere the DSEIR quantifies the construction period's "temporary and limited duration" as 26 months. (DSEIR, p. 5.2-112.) However, the notion that the DSEIR can determine the Project's construction related traffic impacts to be "less than significant" based primarily on their temporary duration is legally and logically flawed because from a cumulative standpoint, the Project's construction impacts are part of an essentially permanent, not temporary, condition of ongoing construction in this part of San Francisco.

Indeed, the DSEIR's discussion of the Project's cumulative construction period impacts recognizes there are numerous other construction projects planned in Mission Bay and that the construction related traffic impacts of these projects will combine with this Project's construction related impacts. (DSEIR, p. 5.2-210 (Impact C-TR-1.)

However, the DSEIR's discussion of the Project's cumulative construction period impacts

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[2]CEQA does not permit an agency to simply adopt mitigation measures in lieu of fully assessing a project's potentially significant environmental impacts because mere acknowledgment that an impact would be significant is inadequate; the EIR must include a detailed analysis of "how adverse" the impact would be. (*Lotus v. Department of Transportation* (2014) 223 Cal.App.4th 645, 655-56' *Galante Vineyards v. Monterey Peninsula Water Management Dist.* (1997) 60 Cal.App.4th 1109, 1123*; Santiago County Water Dist. v. County of Orange* (1981) 118 Cal.App.3d 818, 831.)

is flawed because it is constrained by several artificial limits.

First, as discussed in section I.A above, the impact assessment is limited to impacts and intersections and freeway ramps within the artificially restricted geographic "study area."

Second, the impact assessment considers only construction projects within the Mission Bay neighborhood without regard to whether other "past, present, or reasonably foreseeable future projects" may be "closely related" because their impacts may combine with the Project's impacts.

Third, the DSEIR's analysis of cumulative traffic impacts for *construction* of the project only references a handful of foreseeable projects located very close to the Project, and the DSEIR's discussion of these projects is solely in terms of whether their construction periods overlap with construction of this Project, as if the operational impacts of other "past, present, and reasonably foreseeable future projects" are not "closely related." (See DSEIR, p. 5.2-10 and 11.)[3] This is incorrect because "closely related" simply means the other projects' impacts may combine with the Project's impacts.

Table 3 in the attached report by Larry Wymer shows that it is possible to include a broader range of projects - across both time and area - in the assessment of the Project's cumulative construction period traffic impacts, and that when this is done, there are many Projects that will be under construction or operational in the period before, during, and after construction of the Project whose effects will combine with those of the Warriors Arena construction. Therefore, the Project's construction impacts are part of an essentially permanent, not temporary, condition of ongoing construction in this part of San Francisco and the DSEIR errs by basing its determination of significance on the "limited duration" of the construction period. (DSEIR, p. 5.2-212.)

The second basis for the DSEIR's less-than-significant determination is the DSEIR's statement that "construction activities would be ... required to be conducted in accordance with City

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[3]These projects are:
• 1.13 million gsf of UCSF LRDP projects under construction at the Mission Bay Campus, including, the UCSF East Campus project on Blocks 33/34,
• Construction of Bayfront Park,
• realignment of Terry A. Francois Boulevard,
• construction of a neighborhood park on the north side of Mariposa Street east of Owens Street,
• the Exchange project on Mission Bay Block 40,
• the Family House project on Mission Bay Block 7 East,
• the Residential and Hotel project on Mission Bay Block 1,
• the 360 Berry Street project on Mission Bay Block N4/P3, and
• Caltrain's Peninsula Corridor Electrification Project.

requirements." (DSEIR, p. 5.2-212.) This vague assurance is meaningless because the DSEIR does not specify what these " City requirements" are, does not specify a performance standard that these City requirements would either impose or achieve, and presents no evidence that these unspecified "City requirements" are likely to avoid significant cumulative construction related traffic effects. (See *Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, 95 (*CBE*); *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359; 1394 (*Gentry*).

The third and final basis for the DSEIR's less-than-significant determination is "Improvement Measure I-TR-1: Construction Management Plan and Public Updates." The DSEIR suggests this Plan would help avoid significant cumulative construction related traffic effects. (DSEIR, p. 5.2-212.) But it is improper for the DSEIR to rely on Improvement Measure I-TR-1 to help reduce impacts to less than significant because it is not identified as a mitigation measure necessary to substantially reduce significant Project impacts; therefore, it is not enforceable. (CEQA Guideline 15126.4(a)(4).)

Finally, the DSEIR fails to quantify the Projects' construction period impacts, presumably based on its qualitative conclusion that unspecified "City requirements" and "Improvement Measure I-TR-1" will avoid significant impacts. This puts the cart before the horse.[4]

E. The DSEIR's Analysis of the Project's Operational Traffic and Transit Congestion and Delay Impacts Is Legally Flawed.

1. The DSEIR understates traffic and transit volumes in the PM peak period of 4:00 to 6:00 PM by using "time of arrival" at the Arena as a proxy measurement for "time of travel."

In modeling traffic and transit impacts, the DSEIR assumes only 5% of basketball game attendees will be traveling in the "study area" in the PM peak period of 4:00 to 6:00 p.m. Table 5.2-21 states that 5% of arrivals are expected before 6:00 p.m. for 7:30 p.m. weekday basketball games; another 11% will arrive between 6:00 and 6:30 p.m. (DSEIR, p. 5.2-83.) This data is based on turnstile counts of people entering the arena.

As explained by Dan Smith in his attached report, this proxy measurement does not provide reliable data as to when game or event attendees are actually traveling through affected intersections or freeway ramps or using affected transit routes:

> These considerations are so obvious to any transportation professional knowledgeable about sports stadium transportation issues that the analysis presented

[4]See footnote 2 above.

> in the DSEIR cannot be said to constitute the good faith effort to disclose impact that the California Environmental Quality Act demands. Since the entire analysis of transportation impacts flows from the estimate of trip generation and time-of-travel analysis, the entire transportation impact component of the DSEIR must be redone to accurately reflect the time that event attendees are actually traveling on the transportation system instead of the time they enter the event venue.

(Exhibit 1, p. 3.)

> In his analysis, Mr. Smith found:
>
> it seems highly probable that as much as one-third or more of the trips that the DSEIR considers to take place in the 6 to 7 PM period and the 7 to 8 PM period would actually be on the transportation system in the more critical 5 to 6 PM commute peak hour. That would put 7,466 event-related travelers on the transportation system in the 5 PM to 6 PM period instead of the 1,866 assumed in the DSEIR, a difference that would likely result in transportation impacts not disclosed in the DSEIR and/or intensification of impacts and mitigation needs of those that were disclosed.

(Exhibit 1, p. 3.)

Even just applying common sense to the DSEIR's data indicates that many or most of the 11% that the DSEIR says arrive at the turnstile between 6:00 and 6:30 p.m. would be traveling to the event in the PM peak period of 4:00 to 6:00 pm. This minimal adjustment alone changes the assumption on which the modeling is based from 5% to 16% traveling in the "study area" in the PM peak period of 4:00 to 6:00 pm. As shown by Mr. Smith, this minimal adjustment more than doubles the Project's contribution of traffic to affected intersections, and would change the DSEIR's determination from less-than-significant to significant at some intersections. (Exhibit 1, p. 4.)

This issue was flagged in public scoping comments on the DSEIR. (DSEIR, p. 2-15.) Yet, somehow, the DSEIR did not adjust its reliance on turnstile data to develop a reliable metric to use instead. Instead, the DSEIR offers a series of weak or irrelevant rationales for its methodology, including:

> because basketball games typically start at 7:30 p.m. a higher percentage of inbound event attendees would travel to the event center during the 6:00 to 8:00 p.m. period than during the 4:00 to 6:00 p.m. commute peak period.

(DSEIR p. 5.2-71); and

> the SF Guidelines do not include travel demand characteristics for the specialized uses (e.g., sports events, conventions, and other events) that would take place at the proposed event center. Similarly, standard trip generation resources, such as the Institute of Transportation Engineer's Trip Generation Manual, do not include sufficiently detailed trip generation data for such specialized uses. Therefore, the travel demand for the event center component of the proposed project was based on the estimated attendance, as well as information on current travel characteristics of Golden State Warriors basketball attendees at the Oracle arena in Oakland.

(DSEIR, p. 5.2-81); and

> The data are based on information provided by the Golden State Warriors for their current facility, which was then adjusted to provide for earlier arrival patterns based on comparable information collected at similar NBA facilities to account for the increased availability of retail and restaurant uses at the proposed project site compared to Oracle Arena in Oakland. A summary of this data is provided in the travel demand technical memorandum included in Appendix TR.

(DSEIR, p. 5.2-82.)[5]

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[5] In the "Travel Demand Methodology and Results" section of Chapter 5.2, the DSEIR states:

> The Basketball Game scenario reflects the travel demand of the office, retail and restaurant uses, plus an evening basketball game. The transportation impact analysis of the Basketball Game scenario was conducted for four analysis hours (weekday p.m., weekday evening, weekday late evening, and Saturday evening), for conditions without and with an overlapping SF Giants evening game at AT&T Park.
>
> Table 5.2-21 presents the expected temporal distribution of arrival and departure patterns for basketball game attendees of the proposed project. The data are based on information provided by the Golden State Warriors for their current facility, which was then adjusted to provide for earlier arrival patterns based on comparable information collected at similar NBA facilities to account for the increased availability of retail and restaurant uses at the proposed project site compared to Oracle Arena in Oakland. A summary of this data is provided in the travel demand technical memorandum included in Appendix TR. Based on this information, it was assumed that approximately 5 percent of arrivals to a basketball game would occur during the p.m. peak hour (5:00 to 6:00 p.m.), and up to 66 percent of arrivals would occur during the evening peak hour (7:00 to 8:00 p.m.). Similarly, up to 70 percent of the departures would occur during the late evening peak hour (9:00 to 10:00 p.m.).

A discussion and summary of the data from other venues than Oracle is provided in DSEIR, Appendix TR, at pp. TR-21 to TR-25 and TR-37 [Appendix A, p. A-9]. The table at page TR-37 provides time of arrival data from, in addition to Oracle, six purportedly "comparable" venues, namely: Icon Venue Group, Houston, Phoenix, Sacramento, Brooklyn (2013-2014), and Brooklyn (2014-2015). An interesting fact about this table is that the data for 4:00 to 6:00 p.m. arrivals at four of these six venues (i.e., Icon Venue Group, Houston, Phoenix, Sacramento) is "included in" the data for later time periods. So, in fact, the only purportedly comparable venue for which the DSEIR presents supporting data is Brooklyn (2013-2014 and 2014-2015). The venue with the largest proportion of arrivals in the 4:00 to 6:00 p.m. period is Brooklyn (2014-2015), with 4.1%.

In short, the City and the Warriors failed to develop reliable accurate, reliable data on the key variable in the entire transportation analysis, i.e., the number of people traveling to events in the peak PM time period when traffic and transit crowding are at their worst. A lead agency "must use its best efforts to find out and disclose all that it reasonably can." (CEQA Guideline, § 15144.)

The above quoted rationales do not excuse this failure. The scoping comments flagging this issue were submitted to the City between November 19, 2014, and December 19, 2014, during the middle of the basketball season. (DSEIR, p. 2-8 and 2-9, 2-15.) The Warriors played fifty-seven (57) games between December 19, 2014, through the close of the regular season on April 15, 2015.[6] There are thirty (30) teams in the NBA.[7] That means there were approximately eight-hundred and fifty five (i.e., 15 x 57 = 855) regular season games played in the 2014-2015 regular season after December 19, 2014. In the playoffs following the regular season, sixteen teams played a total of seventy-nine games after April 15, 2015.[8]

Therefore, both the Warriors and the City had ample opportunity to conduct market research by interviews and exit polling of a sample of the hundreds of thousands of fans attending these games to discover how far in advance of arriving at the turnstile they traveled through the traffic and transit impacted area surrounding the venue. The City's and Warriors' decision to pass up this opportunity after being informed of the issue does not satisfy their duty to use best efforts to find out

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> Event staff for basketball games would be expected to arrive between 4:30 and 5:00 p.m. and would be on post prior to the gate opening time; event staff would leave between 11:00 and 11:30 p.m.

(DSEIR, p. 5.2-82.)

[6]http://www.nba.com/warriors/schedule,

[7]http://www.nba.com/teams/?ls=iref:nba:gnav

[8]http://www.nba.com/playoffs/

and disclose all they reasonably can.

Indeed, the City was fully aware of the need to gather information more relevant to fans "time of travel" than turnstile counts and made some efforts to do so. But it failed to disclose that there are alternative metrics for "time of travel" or the results of its efforts in this regard. For example, an email exchange dated January 12, 2015, between the City's EIR consultant (ESA) and City Planning officials includes data on arrivals before 6:00 p.m. at the Arco Arena parking lot for a 7:00 p.m. Sacramento Kings game and arrivals before 6:00 p.m. in buildings for other NBA venues. Thus, the City was aware of other measurements (e.g., parking lot entry rather than turnstile counts) that could more accurately predict peak PM period travel to games.

Also, the arrival numbers cited in this email exchange show 14% arriving at the Arco Arena parking lot before 6 p.m. for one 7 p.m. game and 9% arriving before 6 p.m. in buildings for other NBA venues. These numbers indicate the DSEIR's assumption that 5% of fans will be traveling through the study area before 6 p.m. for 7:30 p.m. games is vastly understated. Yet the DSEIR fails to reference these numbers.

The DSEIR must be revised to provide accurate peak period traffic data and analysis

2. The DSEIR's Analysis of the Project's Cumulative Impacts Does Not Comply With CEQA.

a. The 5% threshold of significance for impacts at intersections and freeway ramps operating at LOS E or F violates CEQA.

For intersections operating at LOS E or F, the DSEIR uses a threshold of significance of "a contribution of 5 percent or more to the traffic volumes at the critical movements operating at LOS E or LOS F" (DSEIR, p. 5.2-73-74.) For freeway ramps operating at LOS E or F, the DSEIR uses a threshold of significance of "a contribution of 5 percent or more to the traffic volumes on the ramp." (DSEIR, p. 5.2-74.)[9]

No rationale for the 5% threshold is provided. Indeed, blind reliance on this number ignores the law governing the assessment of cumulative impacts, which requires a fact based assessment that takes into account the severity of preexisting impacts. A one-size-fits-all "ratio" violates CEQA. (See *Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal.App.4th 98, 120 ("*Communities*"); *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d

[9]"The project may result in significant adverse impacts at intersections that operate at LOS E or LOS F under existing conditions depending upon the magnitude of the project's contribution to the worsening of the average delay per vehicle." (DSEIR, p. 5.2-45.)

692, 720-21 (*Kings County*). *Communities* and *Kings County* teach that the significance of a cumulative impact depends on the environmental setting in which it occurs, especially the severity of existing environmental harm, and that focusing on the magnitude (i.e., "ratio") of the Project's incremental contribution to severe preexisting harm is inconsistent with the definition of cumulative impacts under CEQA.[10]

b. The year 2040 baseline for assessing the significance of the Project's cumulative impacts violates CEQA.

The DSEIR assesses the Project's incremental traffic and transit impacts and its cumulative traffic and transit impacts pegged to the year 2040, which is 25 years in the future.[11] While the Alliance supports such long range forecasting in general, as used in this DSEIR the year 2040 baseline for assessing the significance of the Project's cumulative impacts is misleading, for two reasons.

First, this approach overlooks the Project's cumulative traffic and transit impacts pegged to its first 1 to 10 years of operations. This time period is of immediate interest to the citizens of San Francisco because the traffic mess predicted by the DSEIR will be upon them then. And who among them know whether they will even be in the City by the year 2040. Thus, while including a year 2040 baseline is not in itself objectionable, the omission of a baseline 5 to 10 years in the future

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[10](*Communities,* 103 Cal.App.4th at p. 120 ["[T]he relevant question"... is not how the effect of the project at issue compares to the preexisting cumulative effect, but whether "any additional amount" of effect should be considered significant in the context of the existing cumulative effect. [footnote omitted] In the end, the greater the existing environmental problems are, the lower the threshold should be for treating a project's contribution to cumulative impacts as significant. [footnote omitted]"]; *Kings County,* 221 Cal.App.3d at pp. 720-21 ["They contend in assessing significance the EIR focuses upon the ratio between the project's impacts and the overall problem, contrary to the intent of CEQA.... We find the analysis used in the EIR and urged by GWF avoids analyzing the severity of the problem and allows the approval of projects which, when taken in isolation, appear insignificant, but when viewed together, appear startling. Under GWF's 'ratio' theory, the greater the overall problem, the less significance a project has in a cumulative impacts analysis. We conclude the standard for a cumulative impacts analysis is defined by the use of the term 'collectively significant' in Guidelines section 15355 and the analysis must assess the collective or combined effect of energy development"].)

[11]"Future 2040 cumulative traffic volumes were estimated based on cumulative development and growth identified by the San Francisco County Transportation Authority SF-CHAMP travel demand model, using model output that represents Existing conditions and model output for 2040 cumulative conditions." (DSEIR, p. 5.2-110.)

renders the DSEIR informationally defective.

Second, by using a baseline projected to the year 2040, the DSEIR inflates the denominator in the 5% "ratio" it uses to determine the significance of Project cumulative impacts at LOS E and F intersections, thereby masking actual significant effects. (See Exhibit 2 (D. Smith), p. 25.)

c. The DSEIR's use of a "projection" based approach to the Project's cumulative impacts is misleading.

The DSEIR states that:

> Future 2040 cumulative traffic volumes were estimated based on cumulative development and growth identified by the San Francisco County Transportation Authority SF-CHAMP travel demand model, using model output that represents Existing conditions and model output for 2040 cumulative conditions. .... The 2040 cumulative traffic volumes take into account cumulative development projects in the project vicinity, such as the build-out of the Mission Bay Area, completion of the UCSF Research Campus and the UCSF Medical Center, the Mission Rock Project at Seawall Lot 337, Pier 70, etc., as well as the additional vehicle trips generated by the proposed project.

(DSEIR, p. 5.2-110.)[12]

The DSEIR presents no evidence supporting the DSEIR's assumption that the year 2040 projection is reliable for predicting future traffic and transit demand, other than the vague assertion that the "SF-CHAMP travel demand model, using model output that represents Existing conditions and model output for 2040 cumulative conditions ... has been validated to represent future

[12]In the section titled "Approach to Cumulative Impact Analysis" (DSEIR 5.1-6, § 5.1.5), the DSEIR asserts that the CEQA Guidelines provide "two approaches to a cumulative impact analysis ... (a) the analysis can be based on a list of past, present, and probable future projects producing related or cumulative impacts; or (b) a summary of projections contained in a general plan or related planning document can be used to determine cumulative impacts. The projections model includes individual projects and applies a quantitative growth factor to account for other growth that may occur in the area." (DSEIR, p. 5.1-7.) The DSEIR asserts that "The analyses in this SEIR employ both the list-based approach and a projections-based approach, depending on which approach best suits the individual resource topic being analyzed ... the Transportation and Circulation analysis relies on a citywide growth projection model that also encompasses many individual projects anticipated in and surrounding the project site vicinity, which is the typical methodology the San Francisco Planning Department applies to analysis of transportation impacts." (DSEIR, p. 5.1-7.)

transportation conditions in San Francisco." (DSEIR, p. 5.2-110.) But, as explained by Mr Smith, the SF-CHAMP model's margin of error is greater than the 5% threshold used to determine the significance of Project cumulative impacts at LOS E and F intersections. (See Exhibit 2 (D. Smith), p. 25.) Therefore, SF-CHAMP is the wrong tool for the task.

Further, given the sheer number of developments in this area of the City (see table 3 of Mr. Wymer's report) and the breakneck pace of their approval and implementation, the projection approach is misleading, not informative. Therefore, the DSEIR's cumulative impact assessment must use a list based approach to forecast reasonably foreseeable travel demand, and do so in a meaningful time frame.

F. The DSEIR's Methodology for Analyzing Project Impacts on the Transit System Is Legally Flawed.

The DSEIR summarizes its methodology for analyzing Project Impacts on the transit system, as follows:

> The impact of additional transit ridership generated by the proposed project on local and regional transit providers was assessed by comparing the projected ridership to the available transit capacity at the maximum load point. Transit "capacity utilization" refers to transit riders as a percentage of the capacity of the transit line, or group of lines combined and analyzed as screenlines across which transit lines travel. The transit analyses were conducted for the peak direction of travel for each of the analysis time periods.

(DSEIR, p. 5.2-75.)

This methodology contains two flaws. First, it suffers from the same unwarranted and unsupported assumptions about basketball fans' time of travel to the arena for games described above. Second, the DSEIR's use of transit screenline and route capacities is also misleading and unsupported.

1. The DSEIR's use of transit screenline and route capacities is misleading and unsupported.

For its Project specific (or incremental) transit impact analysis, the DSEIR uses the following thresholds of significance:

> The proposed project was determined to have a significant transit impact if project-generated transit trips would cause downtown or regional screenlines, and, where applicable, directly affected routes, operating at less than its capacity

> utilization standard under existing conditions, to operate at more than capacity utilization standard. For Muni, the capacity utilization standard is 85 percent for conditions without an event at the project site, and 100 percent for conditions with an event at the project site. For regional operators, the capacity utilization standard is 100 percent for conditions without and with an event at the project site.

(DSEIR, p. 5.2-76, 77.)

For its cumulative transit impact analysis, the DSEIR uses the following thresholds of significance:

> Under 2040 cumulative conditions, the proposed project was determined to have a significant cumulative impact if its implementation would cause the capacity utilization at the Muni and regional screenlines and/or corridors within the screenlines to exceed the capacity utilization standard noted above for conditions without and with an event at the project site, or if its implementation would contribute considerably to a screenline or corridor projected to operate at greater than the capacity utilization standard under 2040 cumulative plus project conditions (i.e., a contribution of 5 percent or more to the transit ridership on the screenline or route). In addition, if it was determined that the proposed project would have a significant project-specific transit impact under existing plus project conditions, then the impact would also be considered a significant cumulative impact under 2040 cumulative conditions.

(DSEIR, p. 5.2-76, 77.)

For both Project specific (incremental) and cumulative impacts, the DSEIR uses "capacity utilization standards" as baselines against which to measure the Project's impacts. Capacity utilization standards are specific percentages of the theoretical maximum capacity of a transit screenline or transit line.

For Project specific (or incremental) thresholds of significance for Muni, the DSEIR uses two different capacity utilization standards against which to measure the Project's impacts. For conditions without an event at the Project site, the capacity utilization standard is 85 percent of maximum theoretical capacity of the transit screenline or line. For conditions with an event at the Project site, the capacity utilization standard is 100 percent of maximum theoretical capacity.

If the question to be answered by the transit impact analysis is whether the Project will inflict significant suffering on people riding Muni, why does the DSEIR use two different baselines for its impact assessment. If exceeding 85% inflicts suffering without an event, then exceeding 85% will inflict suffering with an event.

The DSEIR does not examine this use of inconsistent baselines. However, the June 21, 2013, Planning Department Memorandum "Transit Data for Transportation Impact Studies" (at Appendix-TR, p. TR-624) states:

> The SFMTA Board has adopted an "85 percent" capacity utilization standard for transit vehicle loads. In other words, transit lines should operate at or below 85 percent capacity utilization. The SFMTA Board has determined that this threshold more accurately reflects actual operations and the likelihood of "pass-ups" (i.e., vehicles not stopping to pick up more passengers). The Planning Department, in preparing and reviewing transportation impact studies, has similarly utilized the 85 percent capacity utilization as a threshold of significance for determining peak period transit demand impacts to the SFMTA lines.

(DSEIR, Appendix-TR, p. TR-624.) Thus, the 85 percent capacity utilization threshold apparently has nothing to do with the suffering of Muni's passengers; it simply reflects the reality of Muni's operations. And even if 85% of capacity is the break point at which Muni drivers tend to refuse to pick up more passengers due to overcrowding, then using 100% of capacity as a threshold of significance is entirely unsupportable.

For its cumulative impact analysis, the DSEIR uses the same baselines and thresholds of significance discussed above plus one more if the Project "would contribute considerably to a screenline or corridor projected to operate at greater than the capacity utilization standard under 2040 cumulative plus project conditions (i.e., a contribution of 5 percent or more to the transit ridership on the screenline or route)."

The 5% threshold for determining a Project's contribution to be "considerable" is stated at Appendix-TR, p. TR-625. No rationale for this number is provided. A Project contributing 1% more capacity utilization to a screenline that usually operates at 84%, resulting in a total capacity utilization of 85%, may not contribute considerably to a significant impacts, while a Project contributing 1% more capacity utilization to a screenline that usually operates at 94%, resulting in a total capacity utilization of 95%, may well contribute considerably to a significant impact. A one-size-fits-all "ratio" violates CEQA. (See *Communities, supra; Kings County, supra*.)

G. The DSEIR Unlawfully Defers the Development of Mitigation Measures.

The DSEIR sketches out a number of concepts for mitigating the Project's significant transportation effects where it defers the development of specific mitigation measure until a future date. The DSEIR's deferral all of the mitigation measures listed below in this section does not meet CEQA requirements to identify specific mitigation measures in the Draft EIR so the public may meaningfully review and comment on them. These measures violate CEQA's requirements for deferred mitigation because the DSEIR does not specify binding performance standards by which

the measures' success can be judged, there is no evidence it is impracticable to develop and include the specific measures in the DSEIR, there is no evidence the measures will be effective, there is no evidence the measures are feasible, there is no evidence the measures will be implemented because the Project Sponsor may deem them infeasible, and the measures are not enforceable. (See *Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, 95 (*CBE*); *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359; 1394 (*Gentry*).

The listed measures are qualified by language such as "if feasible" or "could include" (e.g., Measure M-TR-2b). Such qualifications render the measures illusory, unenforceable, and ineffective for purposes of the DSEIR's claim of substantial reductions in impact or reductions in impact to less-than-significant levels. (See *Federation of Hillside & Canyon Associations v. City of Los Angeles* (2000) 83 Cal.App.4th 1252, 1260-1262; *Lincoln Place Tenants Association v. City of Los Angeles* (2005) 130 Cal.App.4th 1491, 1508 ["mitigating conditions are not mere expressions of hope..."].)

Even the listed measures that include performance standards (e.g., Measure M-TR-18) do not require they be achieved. For example, Measure M-TR-18 only requires that the Project Sponsor "work to achieve" the performance standards. CEQA requires that deferred mitigation measures include binding performance standards.

- Mitigation Measure M-TR-2b: Additional Strategies to Reduce Transportation Impacts. (DSEIR, p. 1-15.)

- Mission Bay FSEIR Mitigation Measure E.47: Transportation System Management Plan. (DSEIR, p. 1-17.)

- Mitigation Measure M-TR-5a: Additional Caltrain Service. (DSEIR, p. 1-18.)

- Mitigation Measure M-TR-5b: Additional North Bay Ferry and/or Bus Service. (DSEIR, p. 1-19.)

- Mitigation Measure M-TR-9a: Crane Safety Plan for Project Construction. (DSEIR, p. 1-20.)

- Mitigation Measure M-TR-9d: Event Center Exterior Lighting Plan. (DSEIR, p. 1-21.)

- Mitigation Measure M-TR-11b: Participation in the Ballpark/Mission Bay Transportation Coordinating Committee. (DSEIR, p. 1-22.)

- Mitigation Measure M-TR-11c: Additional Strategies to Reduce Transportation Impacts of Overlapping Events. (DSEIR, p. 1-23.)

- Mitigation Measure M-TR-13: Additional Muni Transit Service during Overlapping Events.

(DSEIR, p. 1-24.)

- Mitigation Measure M-TR-14: Additional BART Service to the East Bay during Overlapping Events. (DSEIR, p. 1-24.)

- Mitigation Measure M-TR-18: Auto Mode Share Performance Standard and Monitoring. (DSEIR, p. 1-25.)

H. The DSEIR's Discussion of Transportation Impacts Is Incomplete.

The DSEIR analyzes transportation impacts in two broad scenarios: with and without implementation of the Special Events Transit Service Plan.

In the scenario "With Implementation of the Special Events Transit Service Plan" the DSEIR analyzes two narrower scenarios: with and without a Giants game. In each Giants game scenario, the DSEIR analyzes three narrower scenarios: no event, convention event, and basketball game. The result is six scenarios applied to ten different transportation resources, as shown in Table 2.

Table 2

With Implementation of the Special Events Transit Service Plan					
Without Giants game			With Giants game		
No event	Convention event	Basketball game	No event	Convention event	Basketball game
TR-1 Construction - Traffic LS TR-2 Traffic - Intersections SUM TR-3 Traffic - Freeway Ramps SUM TR-4 Transit - Muni LS TR-5 Transit - Regional - Caltrain SUM TR-6 Pedestrian LSM TR-7 Bicycle LS TR-8 Loading LS TR-9a Construction Helipad LSM TR-9b Const. Lights Helipad LS TR-9c Operation Helipad LS TR-9b Operation Lights Helipad LSM TR-10 Emergency Vehicle Access LS			TR-1 Construction - Traffic LS TR-11 Traffic - Intersections SUM TR-12 Traffic - Freeway Ramps SUM TR-13 Transit - Muni LSM TR-14 Transit - Regional -All SUM TR-15 Pedestrian LSM TR-16 Bicycle LS TR-17 Emergency Vehicle Access LS		

In the scenario "Without Implementation of the Special Events Transit Service Plan"

the DSEIR analyzes only one narrower scenario: without a Giants game and with a basketball game. The result is one scenario applied to ten different transportation resources, but the omission of the other five scenarios, as shown in Table 3.

Table 3

Without Implementation of the Special Events Transit Service Plan	
Without Giants game	
Basketball Game	
TR-1 Construction - Traffic	LS
TR-18 Traffic - Intersections	SUM
TR-19 Traffic - Freeway Ramps	SUM
TR-20 Transit - Muni	SUM
TR-21 Transit - Regional	SUM
TR-22 Pedestrian	LSM
TR-23 Bicycle	LS
TR-24 Loading	LS
TR-25Emergency Vehicle Access	LS

Since the scenario "Without Implementation of the Special Events Transit Service Plan" is likely enough to justify including it in the DSEIR, the DSEIR should include the other five omitted scenarios.

In addition, the DSEIR's cumulative impact analysis does not even inform the reader if it is performed for the "with" or "without" scenario for "Implementation of the Special Events Transit Service Plan." The cumulative impact analysis should include both scenarios, and should inform the reader which is which.

Thank you for your attention to this matter.

Very Truly Yours,

Tom Lippe

Thomas N. Lippe

List of Exhibits

1. July 23, 2015, letter report authored by traffic engineer Dan Smith.

2. July 21, 2015, letter report authored by traffic engineer Larry Wymer.

3. January 12, 2015, email exchange dated between the City's EIR consultant (ESA) and City Planning officials.

4. December 2013, Final Report, San Francisco Transportation Plan 2040, prepared by San Francisco County Transportation Authority.

5. Final Report Appendices, Appendix B: White Paper, TRANSPORTATION NEEDS, San Francisco Transportation Plan 2040, prepared by San Francisco County Transportation Authority.

6. Final Report Appendices, Appendix C: CORE CIRCULATION STUDY, San Francisco Transportation Plan 2040, prepared by San Francisco County Transportation Authority.

7. Final Report Appendices, Appendix K: SF TRAVEL AT A GLANCE, San Francisco Transportation Plan 2040, prepared by San Francisco County Transportation Authority.

8. May 21, 2013, San Francisco Transportation Plan Update, SPUR Annie Alley Forum, San Francisco Transportation Plan 2040, prepared by San Francisco County Transportation Authority.