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July 15, 2016

*Via Hand and Electronic Delivery*

**RE: Appeal of the certification of the EIR for the 901 16th Street and  
1200 17th Street Mixed Use Project**

Dear Members of the Board of Supervisors,

These comments are submitted on behalf of Appellants, Grow Potrero Responsibly and Save the Hill ("Citizens", hereafter).

The proposed Project is one of the largest projects to be proposed in the history of Potrero Hill; it is positioned at the gateway of the Potrero Hill community and covers 3.5 acres; and it has the capacity to alter the very nature of the Potrero Hill community.

The Environmental Impact Report (EIR) fails to adequately analyze impacts in the areas of cumulative impacts, traffic and circulation, transportation, aesthetics and views, shadows, land use, cultural and historic, and consistency with area plans and policies; fails to adequately review alternatives; and the Final EIR (sometimes referred to as the RTC or Responses to Comments) fails to respond adequately to substantive comments made on the Draft EIR. The Project EIR and Community Plan Exemption (CPE) tiers off of and relies upon the EIR prepared for the Eastern Neighborhoods Area Plan (PEIR; sometimes referred to as the EN Plan EIR). The PEIR did not provide for the impacts of a project at this site at this height and scale and with these traffic impacts; and it underestimated the level of development of residential units and the loss of Production, Distribution and Repair (PDR) uses throughout the Potrero Hill / Showplace Areas. The EIR is defective in its reliance on the PEIR in the areas that affect these issues.

Potrero Hill is poorly served by area transit, yet the developer asserts the Project's addition of 395 residential units, with admitted impacts to traffic and loss of PDR, is a transit friendly project merely because the site is located within a Transit Priority Area. Citizens will show that the EIR's reliance on this assertion is misplaced.

The Project admittedly results in impacts to traffic and circulation and loss of PDR. Two of the alternatives reviewed in the EIR substantially lessen or avoid these impacts and comment letters in the Final EIR show that there is overwhelming support for the adoption of this alternative. Planning's Findings assert alternatives are infeasible based upon a flawed developer study that used land value instead of land acquisition costs, which artificially reduced profits and skewed the feasibility analysis; neglected to include data about the Project that would allow a fair comparison of the costs and profits of the Project to the alternatives; and unnecessarily burdened alternatives with flaws that made them appear to result in more severe traffic impacts and less profit. When considering a project with admitted impacts, as here, the City is required to fairly consider and adopt feasible alternatives that would substantially reduce Project impacts prior to considering adoption of a Statement of Overriding Considerations and did not.

For ease of review, this letter summarizes the main facts and legal issues at stake in the appeal. The attached Memos augment the facts cited herein and offer extensive analysis on the issues of concern. **Exhibit E**, Memos 1-7: 1 Transportation; 2, Cumulative Impacts; 3, Public Views; 4, Loss of PDR; 5, Historic Resources; 6, Objectivity; 7, Shadows and Open Space; and 8, Alternatives. Citizens include the Draft Eastern Neighborhoods Monitoring Report, the TSF Nexus Study and the TIS traffic study, 2/20/15 Ed Lee letter, 2015 State of Local Manufacturing (SFMade), and evidence regarding historic resources and view corridors, in **Exhibit F** and information received from the City *via* a Public Records Act Record in **Exhibit G**.

### **Alternatives Analysis**

If a project will result in significant environmental impacts that will not be avoided or substantially lessened by mitigation measures, the agency must consider the environmentally superior alternatives identified in the EIR and find that they are "infeasible" before approving the project. (Pub. Res. Code § 21081(a)(3), *See also* CEQA Guidelines 14 Cal. Code Regs. § 15091(a)(3).) Feasible means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, technological, and legal factors. (Pub. Res. Code § 21061.1; Guidelines §15364.) The requirement for an infeasibility finding flows from the public policy that states:

It is the policy of the state that public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects of such projects...the Legislature further finds and declares that in the event specific economic, social, or other conditions make infeasible such project alternatives or such mitigation measures, individual projects may be approved in spite of one or more significant effects thereof.

(Pub. Res. Code § 21002.) Reflecting this policy, Public Resources Code section 21081(a)(1)-(3) provides that if one or more significant impacts will not be avoided or substantially lessened by adopting mitigation measures, alternatives described in the EIR that can avoid or reduce the impact must be found infeasible if they are not adopted. Under this scheme, a public agency must avoid or reduce a project's significant environmental effects when it is feasible to do so. (Pub. Res. Code §§ 21002, 21002.1(b); 14 Cal. Code Regs §§ 15021(a) and 15091(a)(1).) As explained by the California Supreme Court in *Mountain Lion Foundation v. Fish & Game Commission* (1997) 16 Cal.4<sup>th</sup> 105, 124, "Under CEQA, a public agency must . . . consider measures that might mitigate a project's adverse environmental impact and adopt them if feasible. (Pub. Res. Code §§ 21002, 21081.)" The Court reiterated "CEQA's substantive mandate that public agencies refrain from approving projects for which there are feasible alternatives or mitigation measures." (*Id.* at 134.) CEQA's substantive mandate was again underscored by the California Supreme Court in *Vineyard Area Citizens v. City of Rancho Cordova* (2007) 40 Cal.4<sup>th</sup> 412; *City of Marina v. Board of Trustees of the California State University* (2006) 39 Cal.4<sup>th</sup> 341, and by the Court of Appeal in *County of San Diego v. Grossmont-Cuyamaca Community College District* (2006) 141 Cal.App.4<sup>th</sup> 86 and *Preservation Action Council v. City of San Jose* (2006) 141 Cal.App.4<sup>th</sup> 1336.

Increased costs of an alternative do not equate to economic infeasibility: "[t]he fact that an alternative may be more expensive or less profitable is not sufficient to show that the alternative is financially infeasible. What is required is evidence that the additional costs or lost profitability are sufficiently severe as to render it impractical to proceed with the project." (*Citizens of Goleta Valley v. Board of Supervisors (Goleta I)* (1988) 197 Cal.App.3d 1167, 1181. *See also Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 736; *City of Fremont v. San Francisco Bay Area Rapid Transit District* (1995) 34 Cal.App.3d 1780 (addition of \$60 million in costs rendered subterranean alternative for BART extension infeasible.) In *Citizens of Goleta Valley v. County of Santa Barbara (Goleta I)* (1988) 197 Cal.App.3d 1167, the court found that the record included no analysis of the comparative costs, profits, or economic benefits of scaled down project alternative and was insufficient to support finding of economic infeasibility. In *Uphold Our Heritage v. Town of Woodside* (2007) 147 Cal.App.4<sup>th</sup>

587, a project applicant's preference against an alternative does not render it infeasible. In *County of San Diego v. Grossmont Cuyamaca Community College Dist.* (2006) 141 Cal.App.4th 86, 108, the court found that a community college's proportional share of cost of off-campus traffic mitigation measures could not be found economically infeasible in absence of cost estimates. In *Burger v. County of Mendocino* (1975) 45 Cal.App.3d 322, the court found that an infeasibility finding based on economic factors cannot be made without estimate of income or expenditures to support conclusion that reduction of motel project or relocation of some units would make project unprofitable.

Here, the EIR has conceded significant traffic and circulation impacts and the Project's contribution to the cumulative loss of PDR; the EIR is thus required to adequately analyze a reasonable range of alternatives that reduce all potentially significant environmental impacts. Citizens assert that substantive comments on the Draft EIR provide the bases for finding substantial environmental impacts due to aesthetics and views, inconsistency with area plans, land use, growth inducing and cumulative impacts and shade and shadow of area parks.

When a project results in admitted environmental impacts, a lead agency cannot merely adopt a statement of overriding considerations and approve it; the agency must *first* adopt feasible alternatives and mitigation measures. (*Friends of Sierra Madre v. City of Sierra Madre* (2001) 25 Cal.4th 165, 185; *City of Marina v. Board of Trustees of the California State University* (2006) 39 Cal.4th 341 ["CEQA does not authorize an agency to proceed with a project that will have significant, unmitigated effects on the environment, based simply on a weighing of those effects against the project's benefits, unless the measures necessary to mitigate those effects are truly infeasible."])

### ***Metal Shed Reuse Alternative***

The EIR identified a feasible alternative that Citizens argue, would reduce impacts to traffic and loss of PDR and yield sufficient profits, yet the EIR determined that the Metal Shed Reuse alternative is infeasible, asserting additional costs and loss of profit. Numerous residents and the Historic Preservation Commission offered extensive comments on the advantages of the alternative and recommended its adoption. (RTC pgs. 131-157; Memo 8; *see also* Memo 5, recommending adoption of the alternative as it relates to historic resources.) Citizens concur with this recommendation and encourage the Board to adopt the Metal Shed Reuse alternative.

The determination of infeasibility is based upon the recently submitted developer prepared financial study. Citizens reference Memo 3 that details the reasons why the alternative is feasible and shows how the developer's study is

inadequate and incomplete and fails to show that that additional costs or loss of profits would render the project impractical to proceed.

The developer's study cites to a targeted range of margins of profit but fails to provide actual cost and profit information. It is impossible to make an effective comparison without this information and runs counter to the requirements set forth for feasibility findings in *Citizens of Goleta Valley v. County of Santa Barbara (Goleta I)* (1988) 197 Cal.App.3d 1167.

Even using the target profit margin asserted by the developer, the alternative should be found feasible. The Planning Department stated that assessing feasibility was based upon land acquisition costs, whereas the developer's study used current "land value" instead of land cost data, thereby inflating the costs of the Project considerably. Utilizing land cost data, the Metal Shed Alternative meets the targeted 18%-25% profit margin cited by the developer. Other errors in the study include the use of outdated information regarding the value of rental square footage in PDR uses. The study assumed a \$2.50 per square foot value, whereas current figures are estimated at nearly twice that, at \$4.00/ square foot, thereby considerably devaluing the alternative's profit.

The EIR also fails to support its allegation that the greater percentage of PDR in the Metal Shed alternative would render higher traffic counts. The Final EIR does not adequately respond to comments asking why a lower density, PDR-focused project would not result in significantly lower traffic impacts. Planning inexplicably chose to use "office" rather than "manufacturing" rates from the Transportation Impact Analysis Guidelines, even though the PEIR specifically stated that "PDR" was less impactful than "office" using the same Guidelines. The analysis using TSF Nexus Rates appears to cherry pick data, rather than doing the complete analysis. The Planning Department also chose the most intensive commercial use (restaurant) for nearly half of the non-PDR commercial space in the Metal Shed Alternative. The calculations are therefore unfairly skewed to make the Metal Shed Alternative appear more impactful under Transportation Impact Analysis rates when they would be actually be substantially less. Using the full set of motorized TSF rates for PDR, non-PDR commercial and residential shows that the Metal Shed Alternative will have the lowest impact on traffic. Without this impediment, the alternative would have been considered the environmentally superior alternative. For the foregoing reasons, the determination that the Metal Shed Reuse Alternative is infeasible and results in the same or higher traffic impacts is not supported by substantial evidence.

### ***Reduced Density Alternative***

The EIR states

The Reduced Density Alternative is identified as the environmentally superior alternative because it would “to some extent” meet the project sponsor’s basic objectives, while avoiding all but one of the traffic-related significant unavoidable impacts of the proposed project. This impact reduction would be achieved because the alternative would have fewer residential units and commercial space at the site compared to the proposed Project, and therefore have associated reductions in vehicle traffic compared to the proposed project. (DEIR pg. S-22.)

The EIR states that this alternative would include 273 residential units, 16,880 square feet of commercial space and have more open space that would total 56,850 square feet. (DEIR pg. S-23.) The Project would have 395 residential units, 24,968 square feet of commercial / public space and 50,932 square feet of open space. A reduction of 122 residential units and 8,088 square feet of commercial space would mitigate the traffic impact to insignificance and produce 5,918 more square feet of open space. (RTC pgs. 131-157; Memo 8.) The chart at page S-25 also shows that the Reduced Density Alternative would mitigate the traffic impacts to insignificance. The EIR states that the financial feasibility of the Reduced Density Alternative is unknown. (DEIR pg. S-24.) As noted, an alternative need not meet every project objective to be considered feasible. Similar to the analysis of the Metal Shed Reuse Alternative, the developer’s study asserts the alternative would not yield sufficient profits to be considered feasible. As noted, the developer’s study utilized a flawed analysis to determine infeasibility and the determination of infeasibility is not supported.

### **Failure to Respond Adequately to Comments**

Responses should explain any rejections of the commentors’ proposed mitigations and alternatives. Evasive, conclusory responses and mere excuses are not legally sufficient. (*Cleary v. County of Stanislaus* (1981) 118 Cal.App.3d 348, 355-360 (failure to adequately respond to any significant public comment is an abuse of discretion); Guideline §15088(b).) A general response to a specific question is usually insufficient. (*People v. County of Kern* (1976) 62 Cal.App.3d 761 [when a comment questioned the availability of water, a response was ruled inadequate when it stated that “all available data” showed underground water supplies to be sufficient]; *Friends of the Eel River v. Sonoma County Water Agency* (2003) 108 Cal.App.4<sup>th</sup> 859 [specific comments regarding Eel River environmental setting and pending diversions required additional responses].) Comments from responsible experts or sister agencies that disclose new or conflicting data, or opinions that the agency may not have fully evaluated the project and its alternatives, may not be ignored and there must be a good faith, reasoned analysis in response. (*Berkeley Keep Jets over the Bay Committee v. Board of Port Commissioners of the City of Oakland* (2001) 91 Cal.App.4<sup>th</sup> 1344, citing *Cleary v.*

*County of Stanislaus* (1981) 118 Cal.App.3d 348, 357.) The FEIR fails to conform to these requirements in responding to comments in the areas discussed below.

### **Cumulative Impacts**

The EIR's cumulative impacts analysis relies on the information regarding projected growth in the Eastern Neighborhoods Plan EIR (PEIR) cumulative impacts analysis that is eight years old and is now shown to be outdated. (Memo 2, Cumulative impacts and 4, PDR loss; Exhibit F [Monitoring Report]; RTC pgs. 158-164.) Given the unanticipated level of development in the Showplace Square/Potrero Hill Area, the assumption that cumulative impacts were addressed in the PEIR is no longer true. As a result, the EIR's analysis and determinations are materially flawed. In fact, the City already has more residential units constructed, entitled or in the pipeline for the Showplace Square/Potrero Area than were anticipated to be built in the area by the year 2025.

In 2008, the PEIR adopted a **3180** residential unit scenario for the Showplace Square/Potrero Hill area. (FEIR I.2-3.) The Project EIR states that as of February 23, 2016, **3315** units have been completed or are planned to complete environmental review within the area, whereas, additional analysis conducted for the *2010-2015 Eastern Neighborhoods Monitoring Report* reveals that the Showplace/Potrero Hill Area actually had **4526** residential units under construction, entitled or under review. (FEIR IV.55) This is well in excess of the numbers analyzed in the PEIR and the figures used in the EIR. Notably, the *Monitoring Report* indicates that the entire Eastern Neighborhoods Area has exceeded those estimated in the PEIR (9785) by nearly 2000 units. (Exhibit F, Eastern Neighborhoods Monitoring Report 2011-2015 Draft Executive Summary pg. 7)

The Project EIR erroneously concludes:

Growth that has occurred within the Plan area since adoption of the *Eastern Neighborhoods PEIR* has been planned for and the effects of that growth were anticipated and considered in the *Eastern Neighborhoods PEIR*.

(FEIR IV.54)

The Project EIR claims that although the residential land use category is approaching projected levels, non-residential uses have not been exceeded. (RTC IV.54) However, the residential levels have been exceeded and the primary goal of the Eastern Neighborhoods Plan is to provide a balance between land uses, therefore, it is critical that the environmental review consider the impacts of this exceedence.

**At their core, the Eastern Neighborhoods Plans try to accomplish two key policy goals:**

1) They attempt to ensure a stable future for Production, Distribution and Repair (PDR) businesses in the city, mainly by reserving a certain amount of land for this purpose; and

2) they strive to provide a significant amount of new housing affordable to low, moderate and middle income families and individuals, along with “complete neighborhoods” that provide appropriate amenities for these new residents.

(Showplace Square/Potrero Hill Area Plan, pg. v.)

Because many of the assumptions regarding cumulative impacts in the underlying PEIR were based on unanticipated levels of residential development, the project EIR fails to adequately examine cumulative impacts.

Perhaps the most devastating failure of the Eastern Neighborhoods Plan for the Potrero Hill and Showplace Square residents has been the failure to provide the Community Benefits asserted in the PEIR and that are needed to enable, what amounts to, a near doubling of population. The Eastern Neighborhoods Plan took the long view, seeking to balance growth over a period of 25 years, but instead, growth is being compressed into several short years with almost no support for that growth. By relying on inaccurate assumptions regarding cumulative growth and together with the gap in adequate infrastructure provisions and benefits, the EIR does not address the level of development Potrero Hill has undergone and its cumulative analysis fails as an informational document for this reason.

A Nexus Study was prepared in 2007 to determine the cost of the impacts identified in the PEIR with the idea that developers would pay impact fees to fund infrastructure improvements. Unfortunately, due to concerns that development would lag during the 2008 recession, impact fees were set at only 1/3 of the actual amount needed and adequate alternative funding sources have never been identified. The Showplace Square Potrero Plan included a mandate to provide four acres of new open space to accommodate expected growth. (Showplace Square/Potrero Hill Area Plan, pg. 51.) To date only one acre of public open space has been provided at Daggett Park, which is just enough to

provide open space for the 1000 new residents moving into 1010 Potrero. Finally, transit improvements were studied for an inadequate system that was already at capacity. Despite the Eastern Neighborhood Transit Implementation Planning Study (ENTRIPS) and the subsequent Transit Effectiveness Plan (TEP), the area has never received the transit improvements it needs.

A draft version of the EIR noted that the analysis in the EIR on this issue was based upon a “soft site” analysis and “not based upon the created capacity of the rezoning options (the total potential for development that would be created indefinitely.” The City attorney noted the legal vulnerability in that statement and proposed its deletion, stating that the EIR must consider the most conservative estimate of those effects and must also consider direct and indirect impacts of the Project. Citizens concur that the most conservative standard must be considered for review of indirect and cumulative impacts in order to satisfy CEQA’s full disclosure requirements and was not.

Regarding the issues relating to the cumulative loss of PDR, please refer to Memo 4.

#### **Inconsistency with Area Plans and Policies**

The FEIR fails to respond adequately to comments made about the Project’s inconsistency with area plans and policies, including the Showplace Square/Potrero Area Plan and the Urban Design and Housing Elements of the City’s General Plan. The EIR disregards established City policies and fails to adequately respond to comments regarding the Project’s conflicts with neighborhood scale and character, the requirement to provide adequate infrastructure, and the preservation of PDR uses. (RTC pgs. 38-44.)

Objective 3 of the San Francisco General Plan’s Urban Design Element requires: “Moderation of major new development to complement the city pattern, the resources to be conserved, and the neighborhood environment.” The scale and density of the Project are substantially greater than existing surrounding Potrero Hill land uses and the project would be inconsistent with the established land use character of the neighborhood.

The Project conflicts with a number of Area Plan objectives including Objective 1.2 of the Showplace Square/Potrero Hill Area Plan, which promotes development in keeping with neighborhood character. This project is inconsistent with the established neighborhood character of Potrero Hill. Policy 3.1.6 of the Showplace Square/Potrero Hill Area Plan, states, “new buildings should epitomize the best in contemporary architecture, but should do so with a full awareness of, and respect for, the height, mass, articulation and materials of the best of the older buildings that surrounds them.” As proposed, the Project’s

16<sup>th</sup> Street building is inconsistent with the height, mass, and articulation of existing buildings in the Potrero Hill vicinity and provides little awareness of surrounding neighborhood structures.

Policy 2 of the City's General Plan states, "existing housing and neighborhood character be conserved and protected in order to preserve the cultural and economic diversity of our neighborhoods." The Project is not consistent with this policy because its scale, mass, bulk and height are inconsistent with and will negatively impact established neighborhood development patterns and character. The proposed development is dramatically out of scale with nearby residences and small businesses.

The FEIR brushes off these and like comments on these critically important issues by broadly claiming that inconsistency with area plans does not relate to environmental impacts. (RTC pg. 43.) This is false; the reason EIRs are required to analyze a project's consistency with area plans is that inconsistency may result in impacts to, among other things, land use, traffic and circulation and influence the consideration of cumulative impacts. The FEIR fails to adequately respond to comments made about the inconsistency of the Project with area plans and policies concerning these issues.

### **Scale / Height / Density**

The scale, height, and density of the proposed Project (72 to 83 feet and 395 residential units) is inconsistent with numerous provisions of the Showplace/Potrero Hill Area Plan and the Final EIR fails to adequately respond to comments on this issue. (Memo 3; RTC pgs. 35-38.)

Prior analysis in the PEIR, relied upon by City Planning for all new development in the Eastern Neighborhoods, is now eight years old and did not adequately evaluate or anticipate a project of commensurate size, height, or density as the Project. All of the analyses completed for the PEIR anticipated a height on the Project parcel of 68 feet – not 72 to 83 feet as proposed by the Project. As shown in height maps, the PEIR actually anticipated and analyzed lower heights at the site of 40 feet to 45 feet.

In accordance with the Showplace Square/Potrero Hill Area Plan policy that calls for lowered heights on the south side of 16<sup>th</sup> Street, the underlying PEIR addresses heights rising 65 feet to 68 feet – but only on the north side of 16<sup>th</sup> Street – not the south side of 16<sup>th</sup> where the Project is proposed. Objective 3.1/Policies 3.1.1 & 3.1.2 state that heights should be adopted that respect, "the residential character of Potrero Hill", "Respect the natural topography of Potrero Hill", and that "Lowering heights from the north to the south side of 16<sup>th</sup> Street would help accentuate Potrero Hill." The Final EIR fails to adequately respond to

comments that the size and scope of the Project conflicts with policies that provide a mechanism to avoid land use impacts.

Assertions by City Planning that the density and height for the Project were adequately evaluated in the PEIR are inaccurate and misleading. In July of 2014, senior City Planner Wade Wietgreffe inaccurately cited information in the PEIR. Wietgreffe claimed the following.

... As noted on page C&R-5, the preferred project changed between publication of the Draft EIR and publication of the C&R document. Therefore, the C&R document analyzed the environmental effects from the proposed changes, as well as responding to comments received on the Draft EIR. Figure C&R-2 identifies the heights for the Eastern Neighborhoods Plan, which includes 68-foot designations along 16<sup>th</sup> Street.

In actuality, the PEIR addressed heights rising to 65-68 feet on the north side of 16<sup>th</sup> but not the south side of 16<sup>th</sup> Street, consistent with the Showplace Square/Potrero Hill Area Plan policy calling for lowered heights on the south side of 16<sup>th</sup> Street. The PEIR cited a map showing frontages along 16<sup>th</sup> Street had been raised to 65 feet in comparison to Option B (one of the iterations of the project proposed for consideration in the PEIR) yet the analysis emphasized that the added height would remain on the *north* side of 16th Street (Showplace Square) and *not the south side of 16<sup>th</sup>* (Potrero Hill). As stated in “Changes by Neighborhood — Showplace Square/Potrero Hill” page 12:

No changes in height limits are proposed on Potrero Hill. The Preferred Project would establish height limits of 65 - 68 feet within the core of Showplace Square between US-101 and I-280, north of 16th and south of Bryant Streets.” This statement is repeated on page C&R-21: “In Showplace Square/Potrero Hill plan area, height limits would be similar to those analyzed for Options B, with minor height increases (to 45 feet as opposed to 40 feet in the DEIR) proposed to areas north of Mariposa Street, between De Haro Street and Seventh/Pennsylvania Streets. Height limits in the established residential areas of Potrero Hill would remain unchanged at 40 feet. The Preferred Project establishes heights of 65-68 feet within the core of Showplace Square between U.S. 101 and I-280, north of 16th and south of Bryant Streets.

The PEIR repeatedly uses the above phrasing regarding limiting the height increase to the north side of 16<sup>th</sup> and not the south side of 16<sup>th</sup> Street.

The PEIR did not address or analyze issues about heights or zoning at the Project site. As stated on page 147:

A number of comments were directed at the proposed rezoning and area plans, and do not address the adequacy or accuracy of the EIR. Because these comments do not address the adequacy or accuracy of the EIR, no responses are required.

As shown in the PEIR, the Project sponsor lobbied to overturn the proposed 40 to 45 foot height at the Project site stating:

Sixteenth Street should be designated a “transit corridor” with a height limit of 65 feet near Mission Bay and Interstate 280. Seventh Street should have a height limit of 55 feet.

### **Aesthetics / Public View Corridors and Scenic Vistas**

The EIR acknowledges that “views from surrounding public vantage points would be altered” but claims the Project need not consider aesthetic or views impacts because it meets the definition of a mixed-use residential project on an infill site within a transit priority area as defined by Public Resources Code section 21099(a). Nonetheless the EIR provided a curtailed analysis of aesthetics and views impacts. (Draft EIR S-2; RTC 36-38; 42-44; Memo 3.) While the Project is identified as being within a transit priority area, the area is admittedly underserved by transit and proposed upgrades to transit are tenuous, such that, the Project should not be exempted from review of aesthetics and views impacts. The PEIR noted that in the Potrero Hill/Showplace area, transit was subject to “relatively long headways between buses and indirect lines limits the usability of service” and that “steep topography of Potrero Hill and the discontinuous street network in some parts of the subarea can also be limiting in terms of accessibility, as the closest stop may not be easily reached by a direct route.” (PEIR, IV. Environmental Setting and Impacts E. Transportation, pg. 257; Exhibit F.)

The Project’s single massive structure positioned at the base of Potrero Hill, along with its height, bulk, and massing will obscure a cherished landmark of Potrero Hill – scenic public views of downtown San Francisco. Potrero Hill, like San Francisco as a whole, is known for its dramatic City views and sweeping vistas. The height, bulk, and mass of the proposed Project would effectively wall off a large portion of lower Potrero Hill from public views of downtown enjoyed by neighborhood visitors for generations. Just like the recent campaign against “walling off” the waterfront, we believe Potrero Hill should be protected from “walls” of out-of-scale development.

This conflicts with long-standing City and state policies regarding protection of public scenic vistas. The Project is inconsistent with multiple Area Plan principles including provisions to “respect the natural topography of Potrero Hill”, to lower building “heights from the north to south side of 16th

Street” and to “promote preservation of other buildings and features that provide continuity with past development.” Policy 3.1.5 of the Showplace Square/Potrero Hill Area Plan states:

San Francisco’s natural topography provides important way finding cues for residents and visitors alike, and views towards the hills or the bay enable all users to orient themselves vis-à-vis natural landmarks. Further, the city’s striking location between the ocean and the bay, and on either side of the ridgeline running down the peninsula, remains one of its defining characteristics and should be celebrated by the city’s built form.

As noted, the scale, height, and density of the Project (72 feet to 83 feet, including parapet and mechanical penthouses, and 395 residential units) are inconsistent with numerous terms set out in the Showplace/Potrero Hill Area Plan. Prior study contained in the PEIR, produced and relied upon by City Planning for all new development, is now eight-years old and did not adequately evaluate, analyze, consider or anticipate a specific project of the size, height, or density proposed by the developer at this location. All of the analyses completed for the Eastern Neighborhoods Plan anticipated a height on this parcel of 40 to 45-feet, not 83-feet as proposed by the Project.

The EIR failed to provide accurate and adequate 3-D modeling visual simulations on the impacts of the project (including stair, elevator, mechanical penthouses) to public scenic views of downtown. The visual simulations offered by the Project sponsor for the EIR remain inadequate and do not accurately reflect the impact on scenic public vistas of a 72 to 83 foot high building in lower Potrero Hill. The visual simulations were effectively limited to a single North-South Street (Texas Street) and failed to include other North-South streets as well including Mississippi, Pennsylvania Streets, and Missouri Streets. (DEIR Chapter II, Project Description, pages II.26 – II.36.) Moreover, the Texas Street visuals are misleading because they are framed from a single vantage point in the middle of the roadway looking directly north and do not capture varied and wider angles, for example, from the north west). The significant impacts of added height due to roof top mechanical penthouses and massing are not presented.

The Project would also contribute to the cumulative loss of public view corridors. Review of photo simulations of building development in Potrero Hill over the past several years shows the significant and destructive impact on Potrero Hill’s cherished public view corridors. The continuing loss of public view corridors due to Mission Bay and 1010 16<sup>th</sup> Street Daggett/Equity Residential developments has been incremental but dramatic. The Project would contribute significantly to this continuing erosion of Potrero Hill’s public scenic view corridors.

The significant impacts on aesthetics, public views and cumulatively significant impacts have not been adequately evaluated in the EIR and the FEIR inadequately responds to comments on this issue.

### **Traffic / Transportation**

The PEIR, upon which the EIR relies, did not fully consider the traffic impacts of a residential project of this size at this location, thus the EIR's traffic analysis of direct and cumulatively significant impacts is inadequate and incomplete; the EIR fails to adequately consider or adopt feasible mitigation measures; and the findings are not supported by substantial evidence. (Memo 1; Exhibit F; RTC pgs. 59-63; 71-98; 101-107)

The PEIR's evaluation of traffic impacts extending to the year 2025, upon which the FEIR relies, were based on assumptions about the level of development that is now outdated. Most of the traffic counts studied in the TIS were from 2013 and 2014, before the UCSF hospital had opened. 14 intersections were studied but key intersections were left out along Mariposa Street and 17<sup>th</sup> Streets. Additional studies, completed in 2015 (FEIR, Appendix C) for five of the intersections also omitted the intersections along Mariposa and 17<sup>th</sup> Streets.

Although the proposed project is in a Transit Priority area, public transit service is inadequate with most commuters have to rely on other modes of travel. Traffic congestion in the immediate area of the project is already a fact of life, with multiple intersections operating at F levels. Contrary to the principles of the City's Transit First Policy, the project was granted an exception to the parking maximum requirement of .75. The TIS studies extrapolated 2025 cumulative conditions based on outdated growth assumptions and neglected to consider large projects such as the Warriors Arena. (Exhibit F.) Four intersections were identified in the DEIR as impacted, with no identified mitigations, while mitigations for a fifth were based on reasonable assumptions, with no supporting evidence.

As the record shows, Potrero Hill is poorly served by area transit, yet the EIR claims that the Project's traffic impacts are offset because the Project is located within a transit area and is "within close proximity to numerous transit routes."(DEIR III.11.)

The draft Showplace/Potrero Monitoring Report shows that transit use in the area is at 24%, lagging well behind the City as a whole. The PEIR noted that in the Potrero Hill/Showplace area, transit was subject to "relatively long headways between buses and indirect lines limits the usability of service" and that "steep topography of Potrero Hill and the discontinuous street network in

some parts of the subarea can also be limiting in terms of accessibility, as the closest stop may not be easily reached by a direct route.” (PEIR, IV. Environmental Setting and Impacts E. Transportation, pg. 257; Exhibit F.)

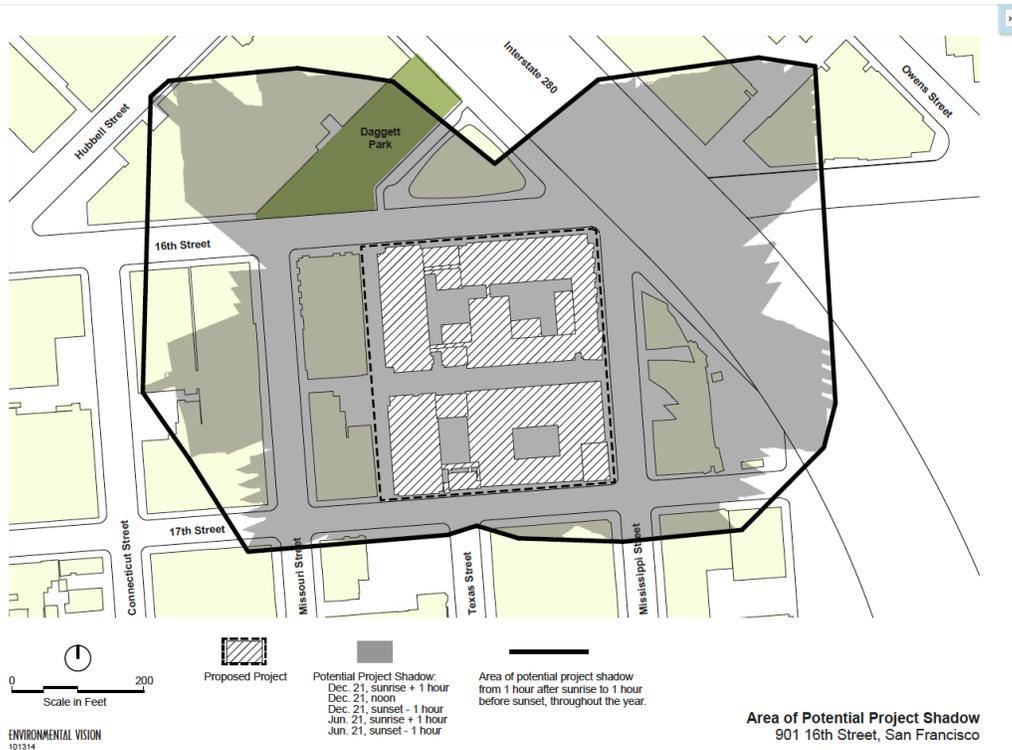
The *only* transit that is currently within a 5-minute walk from 901-16<sup>th</sup> Street is the temporary 55-16<sup>th</sup> route (which will eventually be replaced with the re-routed 22) and all other routes are nearly a half-mile or more away. The 10-Townsend (currently operating at or above capacity) and 19-Polk (which is expected to stop service to this area) are .4 miles away. Caltrain is .7 miles away and involves a walk over a steep hill (not the half mile claimed in the DEIR) and the T-Third is .5 miles away, a 9-minute walk. The 2.2 mile Transit to downtown (Montgomery and Market) takes an average of 30 minutes, excluding headways of 9-10 minutes or more; walking the route would take 43 minutes. While the 22 Fillmore will eventually become a BRT route and there are streetscape improvements slated for 16<sup>th</sup> Street, there is currently no other targeted funding to directly improve transit in the area or fill the need for better transit to serve a growing population. Impact fees have been reduced and partially replaced by the TSP (Transit Sustainability Program) that benefits the city as a whole but are inadequate to fully fund SFMTA deficits.

### **Open Space / Recreation / Shadow**

The Showplace Square / Potrero Hill Area is underserved in terms of open space. Citizens assert additional shadow on Daggett Park, the only area of new open space identified in the PEIR that serves this area, will add to the incremental shadowing of the park and compromise the neighborhood’s limited recreational opportunities. At 68+ feet, the proposed Project will individually and cumulatively cast shadow on the park; 1010 Potrero which surrounds Daggett park on the north, east and west sides, also casts shadows on Daggett Park. (RTC pgs. 175-179; Memo 7.)

Because of unanticipated growth in the Showplace/Potrero Area, cumulative impacts on Recreation were not anticipated in the Eastern Neighborhoods Plan. The studies in the PEIR were based on outdated population data, with acquisition policies based on need using population levels in the 2000 census. (PEIR IV.H. pg. 370.) The PEIR did not identify adequate funding sources to meet the needs of the Eastern Neighborhoods for either maintenance of existing parks and recreation facilities or for the acquisition of new open space. The Showplace Square/Potrero Hill Plan specifically called for four acres of new space for the Area: “Analysis reveals that a total of about 4.0 acres of new space should be provided in this area to accommodate expected growth.” But only one acre of new space has been provided, Daggett Park, so far.

A shadow study dated October 13, 2014 prepared by Environmental Vision found that the Project would cast shadows on nearby Daggett Park but determined that the amount of area shadowed by the Project is minimal, the duration of shadow is limited, and the amount of the sunlight to this type of open space is acceptable. (Motion 19645, pg. 31.)



The CPE Checklist identified new net shadow from the Project in the mornings between mid-fall and mid-winter. (CPE, pg. 44) It also identified cumulative shadowing that would result in the Park being “largely” shadowed from 8:00 to 11:00 AM between mid-fall and mid-winter and notes that the Project related net new shadowing would impact lawn areas during the morning hours but the Project would not “substantially” contribute to shadowing in the afternoon. The conclusion was made that the lack of substantial afternoon shadowing, would result in overall less than significant impacts despite the addition of substantial morning shadowing. The impact of cumulative shadow was not considered.

Because the Project adds new net and cumulative shadow to Daggett Park, the City should consider adoption of an alternative that reduces the height of the building along 16<sup>th</sup> Street and increases setbacks. Additionally the rooftop mechanical structures should be designed to minimize shadow and reduce overall height.

On the topic of Recreation, the Community Plan Exemption (CPE) Checklist states that the project is within the development projected under the Eastern Neighborhoods Plan and that there would be no unanticipated impacts. (CPE Checklist pg. 49.) The Final EIR reiterates this without adequately responding to concerns about excessive residential growth. The Final EIR states “Recreation was addressed in the CPE Checklist which determined that the proposed project would be within the development projected in the Eastern Neighborhoods Rezoning and Area Plans.”

The shadowing of Daggett Park is in conflict with the General Plan provision, which protects open space from shadowing including the recommendation that “our parks and open space and their access to sunlight and vistas be protected from development.” The Final EIR doesn’t respond directly to stated concerns about this inconsistency, claiming that, “project related policy conflicts and inconsistencies do not constitute, in and of themselves, significant environmental impacts.” (RTC pg. 179; PO-2.)

### **Cultural and Historic Resources**

The DEIR does not adequately or accurately address issues related to the historic merit and integrity of the existing metal warehouses. (RTC pgs. 113-126; Memo 5; 7/11/16 letter from historic expert Katherine Petrin.) The EIR rejects arguments supporting historic integrity of the metal buildings, including the research and opinion of highly respected architectural historian, Katherine Petrin. Petrin’s expert testimony demonstrates these buildings remain historic despite alterations and company mergers over the years. In her compelling report, Petrin documents a strong case for finding historic integrity, among other things, she stated the Period of Significance was longer than City Planning’s claim of 1906 – 1928, it should be extended through at least to mid 1947. While the steel warehouses may have been altered to some degree over the years, modifications in industrial spaces are to be expected given the utilitarian purpose of these buildings and the need for flexible space. Collectively, the Potrero Hill industrial complex contains the last remaining structures of the Pacific Rolling Mill, which began operating in the Central Waterfront in 1868 before reorganizing and relocating to Potrero Hill in the early 1900s. The buildings are also the last remaining extant structures of the merged companies, Judson Pacific Company (1928), and Judson Pacific Company (1945) in San Francisco. Petrin, along with numerous others, urged the adoption of the Metal Shed Reuse Alternative.

For the foregoing reasons, Citizens request the Board uphold the appeal.

Thank you for your consideration,

A handwritten signature in blue ink, appearing to read "Rachel Mansfield-Howlett". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Rachel Mansfield-Howlett