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San Francisco Planning Commission  
Planning Department  
1650 Mission Street, Suite 400  
San Francisco, CA 94103

May 11, 2016

*Via email and hand delivery*

Re: Environmental Review and Approval of 901-16th Street/ 1200-17th Street Project

Dear Commissioners:

On behalf of the citizens' groups, Grow Potrero Responsibly and Save the Hill, ("Citizens", hereafter), thank you for the opportunity to comment on the environmental review and proposed approval for the above named Project. As you are aware, the Project is one of the largest, densest 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. The Project deserves heightened scrutiny because it is likely to change the very nature of the Potrero Hill community. For the following reasons the EIR fails to adequately analyze impacts and alternatives and to respond adequately to comments made on the Draft EIR. The proposed Statement of Overriding Considerations is not supported by substantial evidence. Fortunately there is a feasible alternative that would reduce the Project's impacts, the Metal Shed Reuse alternative; Citizens urge the Commission to fairly consider the adoption of this alternative.

**Statement of Overriding Considerations**

The lead agency cannot merely adopt a statement of overriding considerations and approve a project with significant impacts; it must *first*

adopt feasible alternatives and mitigation measures. (*Friends of Sierra Madre v. City of Sierra Madre* (2001) 25 Cal.4<sup>th</sup> 165, 185; *City of Marina v. Board of Trustees of the California State University* (2006) 39 Cal.4<sup>th</sup> 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.”] 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.

Here, the EIR has conceded significant traffic and circulation impacts and the cumulative loss of PDR; the EIR is thus required to adequately analyze a reasonable range of alternatives that reduced all potentially significant environmental impacts. Comments on the Draft EIR assert and have provided 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. The EIR identified a feasible alternative that would reduce impacts in each of these areas yet determined that the Metal Shed Reuse alternative is infeasible – asserting additional costs and loss of profit. This determination lacks credible support and is not supported by substantial evidence. The EIR also failed to note that the Historic Preservation Commission has recommended incorporation of Metal Shed Reuse alternative. Citizens concur with this recommendation and encourage the Commission to adopt the Metal Shed Reuse alternative.

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; Guideline §15364.) 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. Here, the recently submitted developer prepared financial study shows that the alternative would result in less profit but fails to show that additional costs would render the project impractical to proceed.

The EIR also fails to support its allegation that the greater percentage of PDR in the Metal Shed alternative would render higher traffic counts. As the FEIR noted, traffic congestion is no longer established by traffic counts but through Vehicle Miles Traveled (VMT). Using this analysis, the alternative should be rendered feasible on this issue.

For the foregoing reasons, the EIR’s determination that the Metal Shed Reuse Alternative is infeasible is not supported by substantial evidence. And as Citizens’ members have repeatedly stated, the cumulative impacts of this and other proposed projects have not been adequately addressed. Because the City has failed to propose adequate funding to provide the necessary infrastructure and community benefits identified in the Eastern Neighborhoods Plan, the claimed benefits in the

City's Statement of Overriding Considerations cannot be supported.

A Statement of Overriding Considerations may not be considered prior to the adequate review of impacts and methods to avoid those impacts; the City must first fairly consider all alternatives and mitigation measures prior to considering whether the benefits of the Project outweigh its impacts.

### **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.

### *Cumulative and Growth Inducing Impacts*

The Eastern Neighborhoods Program EIR approved in 2008 identified the impacts associated with building 3180 residential units in the Showplace Square/Potrero Hill Area. Recent Planning Department analysis indicates that as of February 23, 2016 projects containing 3315 units in the Area have been completed or are currently proposed for implementation. By approving this Project, the City will exceed the number of units evaluated in the 2008 EIR. 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 indirect impacts of the loss of PDR and the most conservative standard must be considered in order to satisfy CEQA’s full disclosure requirements.

*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.

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 DEIR and Response to Comments fail to acknowledge and consider that the Daggett Triangle development at 1010 16<sup>th</sup> Street in Showplace Square, as well as other large developments in nearby Mission Bay, are in separate and distinct neighborhoods that are not part of the Corovan site in Potrero Hill.

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. This is a false statement. The reason EIRs are required to analyze the Project’s consistency with area plans is that inconsistency may result in impacts to land use, aesthetics, traffic and circulation and lead to growth inducing and cumulative impacts. The FEIR fails to adequately respond to comments made about the inconsistency of the Project with area plans and policies concerning land use.

#### *Scale/Height/Density*

The scale, height, and density of the proposed project (72 feet to 83 feet and 395 residential units) remain inconsistent with numerous provisions of the Showplace/Potrero Hill Area Plan. Prior study contained in the Eastern Neighborhoods EIR, that was 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 project of the size, height, or density. All of the analyses completed for the Eastern Neighborhoods EIR anticipated a height on the Corovan parcel of 45 feet to 50 feet – not 72 feet to 83 feet as proposed by the developer.

The developer’s drawings indicate 72’ to 83’ high mechanical/stair/elevator penthouses that push the building heights well above the 68 feet height limit. The developer’s proposed project and penthouses will also contribute to obscuring a cherished landmark of

Potrero Hill – scenic public views of downtown San Francisco. This conflicts with long-standing city and state policies regarding protection of public scenic vistas. City Planning ignored calls to provide accurate and adequate computer generated 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 in the DEIR remain inadequate and highly misleading. The DEIR and Response to Comments do not adequately address or respond to these issues.

In accordance with the Showplace Square/Potrero Hill Area Plan policy that calls for lowered heights on the south side of 16th Street, the underlying final Eastern Neighborhood EIR 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 proposed project is proposed. Objective 3.1/Policies 3.1.1 & 3.1.2 states: Adopt heights that respect, “the residential character of Potrero Hill”... “Respect the natural topography of Potrero Hill” ... “Lowering heights from the north to the south side of 16th Street would help accentuate Potrero Hill.” The FEIR 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.

#### *Public View Corridors*

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.”

By proposing a single massive structure at the base of Potrero Hill the developers completely ignore the natural environment surrounding the site. The height, bulk, and mass, of their project will undermine (and in some cases destroy) Potrero Hill’s visual integration with downtown. The significant impacts on aesthetics including public views have not been adequately or properly evaluated in the DEIR and the FEIR inadequately responds to comments on this issue.

## **Omissions and Inaccuracies**

FEIR Response TR-8 inaccurately states:

This comment states that adjacent roadways are Truck Routes and that impairment of these routes would impact the flow of materials and commerce and provides anecdotal evidence of commercial vehicle actions at congested intersections. Map 15 in the Transportation Element of the San Francisco General Plan identifies routes with significant truck traffic, but contrary to this comment, neither 17th Street nor Mississippi Street are identified as routes having significant truck traffic and San Francisco does not otherwise designate "Truck Routes."

Mississippi to 17<sup>th</sup> is a designated truck route that is heavily used by trucks – especially trucks exiting off or entering I-280. Mariposa Street between Connecticut and Mississippi Street is a restricted truck route (no vehicles over three tons). There is signage on Mariposa at Mississippi Streets stating: "Truck Route" directing large trucks to turn North onto Mississippi. The EIR does not adequately address significant impacts of the proposed project regarding truck traffic. Furthermore, the FEIR omits discussion of the impacts related to SFMTA's proposal to place a commuter Shuttle stop at the 17<sup>th</sup> and Mississippi Street intersection.

Thank you for your consideration,

A handwritten signature in black ink, appearing to read "Rachel Mansfield-Howlett". The signature is stylized and cursive.

Rachel Mansfield-Howlett