



Honorable David Chiu, President
San Francisco Board of Supervisors
City Hall, 1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94103

May 17, 2011

Re: 800 Presidio Avenue –**Notice of Appeal of Certification of Final EIR**

Dear President Chiu and Members of the Board:

INTRODUCTION

Neighbors For Fair Planning are residents and owners of property in the immediate vicinity of the low density, Victorian era neighborhood surrounding the site of the proposed out-of scale project at The Booker T. Washington Community Service Center, (BTW). We have been working closely with Supervisor Farrell to reach a compromise and actually reluctantly agreed to *not oppose* a four story --40 unit project with restrictions on parking. The developer refused any compromise and refused to cut its \$1.5M fee and is insisting on the absurd, 70,000 square foot building which violates numerous provisions of the Planning Code and all common sense or fairness in planning.

BTW is located at 800 Presidio, at the corner of Sutter Street and Presidio Avenue.



The above view is from Masonic Avenue looking east at BTW across the Muni yard —Note Adjacent TWO story buildings misidentified in the EIR. The EIR incorrectly identifies more than 25 buildings (a majority) on the subject block.

The site is currently zoned RM-1, Residential Mixed Use-Low Density, has a 40 foot height limit and is surrounded on all sides by small wooden Victorian era houses of one and two stories. (NOT three stories as again mistakenly set forth in the Final EIR—See, C&R-124, Revised Figure 12) The EIR is simply incorrect on the scale of the area and the “setting” or scope for the project. Accordingly, it also follows that it misjudges the impacts and potential impacts of the project by failing to establish an accurate baseline.

Many buildings on the block and in the surrounding area are historically significant and date from the late 1870’s-1880’s when the area was first settled as part of the “western addition” to San Francisco. There are some apartment buildings dating from the early 1900’s across Sutter Street to the north. BTW is located on a large lot of a little more than ½ acre in size and has residential uses on all sides. Historically, the subject lot was part of the Sutter Street Cable Car turnaround in conjunction with the Muni Building and bus yard are located across Presidio Avenue to the west. Presently BTW fits in with the residential neighborhood and blends in seamlessly because of its relatively small scale.

Under the proposal the square footage on the lot would increase from its current 11,600 s.f to an astounding increase of more than 500% to 70,000 s.f.



Above is the same view with the new proposed “monster” project which unfairly exceeds the maximum zoning in all categories.

The project is so far out of step with the zoning of the area that the only way to achieve the overambitious project is to “spot re-zone” this particular lot and to amend the Planning Code and create the “Presidio Sutter Special Use District at 800 Presidio” just for its lot. This unfair spot zoning will create exceptions to the Planning Code which will allow BTW to replace the one story 11,600 square foot building at the site with a new

building at 70,000 square feet (more than 500% larger). The proposed project will also exceed the height limit of 40 feet and be 55 feet tall on Presidio and up to 65 feet tall as it moves down the hill on Sutter Street. The maximum density of the current zoning is 28 dwelling units; the project would nearly double that maximum density at 50 units (leaping up not just one zoning classification but four). The project would eliminate the rear yard requirements and would extend some 25 feet into the required minimum rear yard. The project is presented as a Planned Unit Development in order to eliminate required parking and will have 22 spaces (11 are “tandem”) instead of 62 required because of the 200 seat gym.

Hundreds of neighboring residents and homeowners oppose the project as do the associated near-by Neighborhood Groups, Pacific Heights Residents’ Association, Jordan Park Improvement Association, The Presidio Heights Association of neighbors and the Laurel Heights Improvement Association. The neighbors and residents believe the proposed project is grossly out of scale and far too bulky, tall and dense to fit in with this low density, smaller scale historic neighborhood. The neighbors believe this project represents the worst type of “spot-zoning” and special gift for a particular lot and a particular development and developer. It is an unfair and inequitable increase in density without respect for numerous provisions of the Planning Code which controls and binds all other lots in the vicinity. The neighbors are requesting that any project at the site conform to the Planning Code as all other lots must and that it be dramatically reduced in size and scale to be compatible with this historic neighborhood.

CEQA ISSUES

1. The EIR Should Have Been Recirculated for Comment

Under CEQA, a Draft EIR is normally circulated for one public review period, and recirculation for a second public review period is the exception to this normal rule. Under the case law and the CEQA Guidelines, recirculation is required when significant new information is added to the EIR after public notice is given of the availability of the Draft EIR for public review but before certification. (14 Cal. Code Regs. § 15088(a))

The Comment period was closed on the EIR more than eight months ago in August 2010. Significant new information was added to the EIR and the Section of the EIR dealing with “Alternatives” was essentially completely rewritten as were other sections. The public was entitled to an opportunity to comment on those new and revised alternatives, which have the potential to mitigate to a less than insignificant the acknowledged, unmitigated and overwhelmingly significant impacts of the proposed project.

The revised EIR describes a feasible project alternative or mitigation measure considerably different from others previously analyzed which would clearly lessen the environmental impacts of the project, but the project proponents decline to adopt it; and the EIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded because the public was not given an opportunity to comment on reasonable and feasible alternatives.

2. The Project Has Been Improperly “Pre-Approved” and the EIR Process is a Sham to Justify What has Already Been Approved and Paid for by the City

The EIR review process “is intended to be part of the decision making process itself, and not an examination, *after the decision has been made*, of the possible environmental consequences of the decision.” *Save Tara v. City of West Hollywood*

This project has already been “approved” because the City has already committed substantial overwhelming funding to the project as an affordable housing project and all other alternatives are foreclosed. The Mayor’s Office of Housing is already paying the developer, the architect, the environmental consultant (and many others) directly hundreds of thousands of dollars. This is not BTWCC’s project, it belongs to the MOH and although the Final EIR took great pains to delete the phrase “in association with the Mayor’s Office of Housing” from dozens of entries in the EIR, they had it right the first time. THE MOH HAS ALREADY PAID OUT APPROXIMATELY \$500,000 FOR THIS PROJECT. MOH documents show payments of \$300,000 in February 2011 and \$150,000 last July. All before the environmental review was completed. This was a MOH project and MOH took great pains to remove its name as the “proposing” and sponsoring party from the EIR. However, the damage was done and the die was cast long ago.

This project violates CEQA as a “pre-approval.” The circumstances demonstrate that an agency (MOH) has already fully and completely committed itself to the project, and therefore, the approval has already occurred. Numerous courts have held this is improper and violates CEQA. The CEQA Guidelines define agency approval as occurring upon the agency’s “*earliest* commitment” to a project (this is a quote from the CEQA Guidelines, Cal. Code Regs., tit. 14, §15352(b)). The City’s own Administrative Code and sunshine ordinance also define this project as having been “approved” because of the funding dumped into it many months before the CEQA process was completed.

MOH has signed commitments for millions and already paid some \$500,000 for the proposed project. Awarding these funds at a time when the City is cutting basic services everywhere else is “approving” the project as defined by the City’s own Codes. The project has already acquired so much “bureaucratic and financial momentum” that a strong incentive existed to ignore environmental concerns. The money awarded to Booker T. Washington is part of a binding written agreement between BTWCSC and the City and completely undermines CEQA’s goal of demonstrating to the public that the environmental implications of a project have in fact been analyzed. Instead, such pre-approvals make clear that the EIR will be what it already appears to be, as a *post hoc* rationalization of the agency’s action. The MOH paid the architect to draw a particular project and ignored all others. This is a violation of CEQA and none of the myriad of reasonable alternatives were considered.

The courts have made clear the general principle: Before conducting CEQA review, agencies must not ‘take any action’ that significantly furthers a project in a manner that forecloses alternatives or mitigation measures that would ordinarily be part of CEQA

review of that public project. That is exactly what a \$500,000 dollar award as part of a multimillion dollar award has done. The MOH has already told the community that the project must be an oversized monster and cannot be reduced (or mitigated) because of economic considerations. Its award of these funds is nothing short of full and final approval of the project as it is proposed or at least at something very close to what is proposed. This completely eliminates the agencies (and the other City agencies) discretion based on the eventual environmental findings.

The recent California Supreme court case of *Save Tara v. City of West Hollywood* is directly on point in this instance. To assist in making the determination, the court set forth a two-step approach: (i) whether the agency, in taking action indicated it would perform environmental review before making any further commitment to the project, and if so, whether the agency nevertheless limited its discretion regarding environmental review; and (ii) whether the record showed the agency committed significant resources to shape the project and foreclosed consideration of meaningful alternatives (citations and quotations omitted). In Tara, the commitment of \$500,000 was enough to persuade the Court that “approval” had occurred and that other alternatives were foreclosed. In this case, just as in the Tara Case, both the provisions in the City’s agreements and the surrounding factual circumstances make clear that the City has improperly committed itself to a definite course of action regarding the project before fully evaluating its environmental effects. That is what sections 21110 and 21151 of the Public Resources Code prohibit.

3. The Conclusions of “Less Than a Significant Impact” Are Not Credible and are Based on an Incorrect Analysis of the Surrounding Neighborhood

The logic employed in the EIR is muddy or simply not credible. The conclusion of the final EIR in regard to the General Plan and its numerous mandates that new construction be “compatible” with existing neighborhoods are gleaned from thin air. The bare conclusions of the final EIR that the new proposed building will not have negative visual impacts and is “generally compatible” in scale with the existing neighborhood is absurd and unsupported. In fact, the EIR continues to be mistaken about the neighborhood and fails to note that the adjacent buildings on Presidio are two stories tall, not three stories.

The Dept simply has the nature of this neighborhood completely wrong AGAIN. It is as if those drafting the EIR and Comments & Responses HAVE NEVER VISITED THE NEIGHBORHOOD. The (Revised) diagrams and figures in the EIR illustrating heights in the neighborhood are completely and utterly wrong AGAIN. In its zeal to make the neighborhood seem over grown the EIR ignores all TWO STORY STRUCTURES. Twenty five buildings are incorrectly depicted as three stories in height. The conclusions in the FEIR and in the staff report on the project are drawn from patently incorrect data. The environmental setting and impacts section utilizes completely false data to conclude: “The proposed five-story (above ground) building would be only slightly taller or similar in height to other residential and non-residential buildings in the general project

area...”(C&R-p.123) This is completely in error and the actual height of the proposed monster building will exceed 65 feet as it moves down the steep slope of Sutter Street.

The building will actually be more than six stories on Sutter Street and as is clear from the data used, the EIR is simply and completely in error about this neighborhood and this statement is false. Since the EIR has the Environmental Setting and the Impacts completely wrong, it has not provided information to the decision-makers which allowed for informed intelligent decisions, options or choices.

4. The Alternatives to the Project Are Preferable and Should be Recommended

The EIR proposed completely inadequate “no project alternative” and acknowledged that the proposed plan policies have the potential to create impacts on historic resources yet the impacts were not quantified and no mitigation proposed. The revised EIR should be recirculated so that comments may be made on the completely rewritten “alternatives” portion of the document.

The “code compliant” and new “preservation alternatives” are far preferable to the proposed project and the public should have been given a chance to comment on those alternatives.

5. The Building is the Significant Work of an Important Architect and the Site is Surrounded by Historic Resources

In the EIR the author stated that “Queries about Gartner found no other information about his like or work.” Apparently the first EIR was written by someone without computer access because Lloyd Gartner was one of the most successful and active architects of his time. The conclusion in the revised EIR that he “must not be a master” because of the abject failure to find information about him is absurd. Information was as close as a “Goggle” search and the EIR was just poorly and haphazardly written. The modern style employed at the subject building is echoed in his other work at that time which was “cutting edge” development with the era’s most famous and important builder Henry Doelger. Gardner teamed with Doelger in the same time period to build Westlake Shopping Center

Just as the Dept and the FEIR misjudges the scope, scale and nature of the neighborhood, it also misses the rich nearly unbroken patterns of known and acknowledged historic resources in the immediately vicinity. The area is replete with historic resources and the subject block could certainly fall within a potential historic district. Many of the buildings are listed in HERE TODAY. These are all overlooked by the HRE and HRER. The Dept only conclusion is that the subject building would not be included in such a historic district; however, it completely overlooks the fact that this monster building would destroy and overwhelm any such district and will negatively impact historic resources for blocks around. No mention is made at all of the negative impact this project would have on off-site resources and the resources have not even been identified.

Initially it should be noted that no survey of historic resources in the area in the immediate vicinity of the project was conducted. The methodology of the “reconnaissance” is not explained and is entirely incomplete and incorrect on many points. In fact, it now appears no “survey” was done at all as the Dept is unable to produce ANY documentation of the alleged survey. When asked to produce the “survey” for review the Dept stated that “no survey forms were submitted” for the claimed 12 block survey of the area by Historian Mark Hulbert, the same researcher who could find no evidence at all on the architect Lloyd Gartner.

The Application miss-identifies the location of important resources in the area. The Department’s initial broad brush analysis was that the project would have no significant impacts on nearby historic resources and that no mitigation measures are necessary, again stands as a bare conclusion without adequate discussion or support. Not only is this position wrong as a matter of law, even to the casual observer, it was obvious from the beginning that it was reasonable to believe that that the project, unless mitigated *may* lead to some adverse impacts.

The FEIR (quoting from the HRE states at page iv-41:

“Throughout these blocks, there are many surviving structures from the period of the late-1880s to 1915, and especially so in the northern half of the vicinity, consisting of four blocks in particular: from Sutter to Pine in the north-south direction, and east-west from Lyon to Broderick. The primary concentration of unique older residential architecture is centered at Baker and Pine Streets, located two blocks northeast of the project site.”

This is incorrect and moves the focus on the resources away from the project site. There are many more buildings within one block or less of the site dating from much earlier in the 1870’s (not late 1880’s as asserted in the EIR).

The subject block itself contains rows of unbroken Victorian structures. Numerous other buildings date from the 1870’s in the vicinity and from the early 1880’s making them some of the oldest intact structures in the City as a whole. The unique and interesting thing about this neighborhood is that there are unbroken rows of these structures which have survived. Nearly the entire block face of the 2600 and 2700 block of Sutter and the 2600 and 2500 block of Post Streets have not been broken up with more modern structures. There are no photos included in the EIR to illustrate these rows of intact resources nor has any explanation of the alleged “evaluation” done in the HRER or the EIR been explained or documented.

What is required is a comprehensive Neighborhood Historic Resources Survey (Survey), of potentially eligible properties within the larger neighborhood area. The blocks of the “impact zone” of the project area are all fully developed blocks that are characterized by numerous potential and acknowledged historic resources that are predominantly over 100 years of age and some more than 130 years old. These resources represent a variety of important architectural styles from the mid to late 19th and early 20th century. This neighborhood also exhibits a consistent development pattern including height, scale,

bulk, massing, rhythm, architectural detail and use of materials that creates cohesive groupings of buildings, districts and neighborhoods.

The EIR indicates numerous potential and acknowledged historic resources and potential historic districts will not be evaluated but concludes without explanation that no impacts will occur. Therefore, the EIR and HRER do not meet accepted professional standards. By design, a Survey or HRER is intended to prioritize the evaluation of properties that are directly impacted by the proposed project. The approach used here is inadequate as a matter of law. The full and complete analysis of the impacts of the project cannot be deferred or separated from approval and certification of the final EIR. In order to comply with law the FEIR must adequately and completely fully disclose all potential impacts to the historic resources in the area impacted by the project.

The EIR inadequately identifies or discusses the numerous important known historic resources in the direct area which will be visible and actually shadowed by the new development. There are four buildings included in *Here Today* in the 2600 block of Post Street. There are five buildings in the 2600 block of Sutter Street which are unmentioned. These are KNOWN resources within one block of the subject site. This is an area that is rich beyond imagination in historic resources which have mostly gone untouched and unaltered. A "Sutter Hill Historic District which would include nearly every building on both sides of the 2700 and 2600 block of Sutter and on the 2600 and 2500 block of Post is entirely viable and should be surveyed before this highly visible and disruptive project is allowed to go forward. Without the survey and without the discussion the EIR is completely inadequate.

More specifically, the EIR analysis is inadequate because it fails to include a comprehensive up-to-date historic resources survey of the properties in the impacted project area. Sierra Club v. State Board of Forestry (1994) 7 Cal.4th 1215 held that the Forest Practice Act and CEQA were violated because of a failure to collect adequate information regarding old-growth-dependent species. Said failure to proceed in the manner required by law precluded adequate environmental analysis of the impacts of timber harvesting.

A parallel scenario involving water resources was addressed in Cadiz Land Company v. County of San Bernardino (2000) 83 Cal.App.4th 74, where the Court of Appeal found that it was not possible to assess water supply impacts without full knowledge of the underlying water resources that would be affected. The court concluded that the very purpose of CEQA is to fully inform Public Officials and the public *before* the project is accepted or certified. not only the environment but also informed self-government demands that all of the information be reviewed.' (Laurel Heights Improvement Assn. v. Regents of University of California] [(1988)] 47 Cal.3d [376,] 392 [253 Cal.Rptr. 426, 764 P.2d 278].)" (Citizens of Goleta Valley, supra, at p. 564.)

In this regard the court stated:

"Because the EIR must be certified or rejected by public officials, it is a document of accountability. If CEQA is scrupulously followed, the public will know the basis on which its responsible officials either approve or reject environmentally significant action, and the public, being duly informed, can respond accordingly to action with which it disagrees. [Citations.] The EIR process protects not only the environment but also informed self government." (Laurel Heights Improvement Assn. v. Regents of University of California, supra, 47 Cal.3d 376, 392; Citizens of Goleta Valley v. Board of Supervisors, supra, 52 Cal.3d at p. 564.)

The EIR lacks an analysis of impacts on the potential historic resources in the proposed project neighborhood and simply concludes the historic resources are too remote from the site to be impacted. In lieu of the Survey being completed there is no analysis as to how this conclusion is reached. A specific analysis of the impact on the potential historic properties requires that an Application be adequate, complete, and a good faith effort at full disclosure per Guideline 15151. Further, the EIR needs to have sufficient analysis to provide decision makers with information to make a decision that intelligently takes account all known or potential environmental consequences and evaluates what is reasonably feasible. If the historic resources in the immediate vicinity are not identified, how can an honest assessment of the impacts be completed?

This is an environmental setting problem per Guideline 15151. The lack of a comprehensive survey (or any survey) to determine first what historic resources are in the vicinity and second what impact the project could have makes the APPLICATION inadequate. Much smaller project in areas of the City with far fewer historic resources have been required to conduct surveys to protect the historic resources nearby. It is unthinkable that this project could go forward without such a survey. The lack of comprehensive survey shifts the burden of monitoring to the neighborhood, creates a reactive process rather than proactively planning for the treatment of historic resources, and leaves open the potential for development decisions to be made about properties without the benefit of knowing whether they are historic resources.

6. The EIR Fails to Analyze a Reasonable Range of Alternatives

Feasible alternatives are available which would reduce or mitigate the severe impacts the project will have and which are acknowledged. The focus is solely on pushing the project through and no reasonable discussion is included which explores alternatives. The Project Sponsors goals are made absolutely paramount in the discussions of the EIR and all other "goals" or reasonable alternatives are ignored. If the Project will be considered further on its merits, the EIR must be made legally adequate. Currently, it omits adequate analysis of a reasonable range of alternatives that are formulated to reduce the project's impacts below significant levels. Instead, the alternatives analyzed in the EIR present a discussion centered mostly on variations of the proposed project. Additionally, the EIR fails to adequately disclose and analyze the Project's adverse environmental impacts on traffic, land use, the historic resources in the neighborhood, aesthetics, parking, hazardous materials, solid waste, and other

areas. Further, the EIR rejects feasible mitigation measures and impermissibly defers mitigation. Therefore, the EIR must be revised to include all missing impact and mitigation information and should be recirculated to the public before it may be certified by the City. The California Environmental Quality Act (CEQA) was enacted to ensure environmental protection and encourage governmental transparency. (*Citizens of Goleta Valley v. Bd. of Supervisors* (1990) 52 Cal. 3d 553, 564.) CEQA requires full disclosure of a project's significant environmental effects so that decision makers and the public are informed of these consequences before the project is approved, to ensure that government officials are held accountable for the consequences. (*Laurel Heights Improvement Ass'n of San Francisco v. Regents of the University of California* (1988) 47 Cal.3rd 376, 392) In order to satisfy CEQA, protect integrity of the neighborhood, and the quality of life in the surrounding area, Appellant requests that if the Project is not rejected outright, that the EIR be revised to address the deficiencies identified in these comments and be recirculated to the public prior to certification of the final EIR

7. EIR Does not Analyze the Violations of the General Plan

The Department has already determined this project violates the Urban Design Element of the General Plan and yet that fact has never been adequately addressed. The Dept and the developer offer no support or discussion of the Elements of the General Plan and the impacts of the project. The neighborhood is one of the oldest in the City and virtually intact with many buildings dating from the 1870's-1890's. Before the project goes forward a complete Historic Resources Survey of the buildings from Geary Street to California and from Divisadero to Presidio should be completed. The Application is inadequate and contains insufficient information to allow the decision makers to reach correct conclusions and findings regarding the project's impact on historical resources and the existing neighborhood. Cumulative impacts and the development of other sites are also completely unstudied based on completely incorrect information. The project calls for a new Special Use District ("SUD") and would relax existing development standards creating new incentives for development of other near-by lots and thereby threatening known and potential historic resources in historically sensitive neighborhoods—that too has not been reviewed or discussed in the Application.

8. The City May Not Approve the Project on the Basis of a Statement of Overriding Considerations Because Feasible Alternatives Exist

EIR identified some significant, unavoidable impacts, including loss of a historical resource and others. These significant impacts are caused by the proposed Project's massive size. In addition to the significant impacts acknowledged in the EIR, there are visual and land use impacts that could result from the Project though the EIR does not acknowledge the significance of these. This is an error. Any one of the Project's significant unavoidable would require

disapproval of the proposed Project unless feasible mitigation measures or alternatives do not exist *and* specific benefits outweigh the significant impact. (Pub. Resources Code §21081.) CEQA requires public agencies to deny approval of a project with significant adverse effects when feasible alternatives or feasible mitigation measures can substantially lessen such effects. (Pub. Resources Code § 21002; *Sierra Club v. Gilroy City Council* (6th Dist. 1990) 222 Cal.App.3d 30, 41.) The Legislature has stated:

“[I]t 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.” (Pub. Resources Code § 21002.)

The CEQA Guidelines require an agency to —Disclose to the public the reasons why a governmental agency approved the project in the manner the agency chose if significant environmental effects are involved.¶ In order to implement this policy, the CEQA Guidelines specify that:

“A public agency may approve a project even though the project would cause a significant effect on the environment if the agency makes a fully informed and publicly disclosed decision that:

(a) There is no feasible way to lessen or avoid the significant effect...¶ (CEQA Guidelines § 15043.) Feasible means —capable of being accomplished in a successful manner within reasonable period of time, taking into account economic, environmental, social, and technological factors.¶ (Public Resources Code § 21061.1) Project Alternatives remain feasible—even if these alternatives would impede to some degree the attainment of the project objectives, or would be more costly.¶ (CEQA Guidelines § 15126.6(b).)

CEQA’s purpose of avoiding or substantially reducing environmental impacts of a project through the adoption of feasible alternatives is defeated where an EIR fails to ensure that information about potentially feasible alternatives is subject to public and decision maker review. It also fails where an EIR fails to include alternatives that actually reduce a project’s impact below thresholds of significance. Smaller scale versions of the proposed project that avoid or reduce significant impacts would meet most of the objectives and should be adequately analyzed in the EIR

It is clear that the EIR fails to analyze that a scaled down version of the project would meet most of the Projects’ goals. Perhaps most importantly, the projects objectives do not require a project of any specific size or scale; *all of the City’s*

objectives could be met with a scaled-down project that requires little, if any diversion from existing land use regulations.

Further, off-site alternatives were never considered at all. A clear error and violation of the EIR process. California courts have endorsed the use of rigorous off site alternatives analyses. (See, for example, *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal. 3d 553 [upholding EIR in part because of adequate analysis of an offsite alternative] and *Save Round Valley Alliance v. County of Inyo* (2007) 157 Cal. App. 4th 1437 [EIR found inadequate for failure to assess an offsite alternative that would have reduced impacts].) In *Save Round Valley*, the court considered evaluation of an offsite alternative essential, even though the project applicant had stated that he did not wish to develop at other locations, and wanted to develop the specific site chosen because of its proximity to water and views of the Sierras. (*Id.* at 1457, 1465.) In the litigation over the Home Depot proposed nearby on Studebaker, the court rejected the applicant's rejection of off Site alternatives without a declaration that they were truly infeasible.

In this instance those alternatives were never considered at all. The multiple millions being spent by the Mayor's Office of Housing could achieve the goals of the Project more cheaply elsewhere. Further, we know for a fact that the MOH will cover any shortfalls in the expenses as it has offered to do so. Project proponents have reportedly asserted that various alternatives are financially infeasible. However, the EIR does not include financial information on the various alternatives considered. To support any findings ultimately made regarding the feasibility of alternatives and mitigation measures, the City must require the disclosure of this financial information and must provide the type of comparative economic data and analysis that will allow the public and the decision makers to fully understand why certain courses of action could be rejected as infeasible. This information should be in the EIR.

Our Supreme Court recognizes the need for economic analysis to be included as part of an EIR. In *Laurel Heights Improvement Association v Regents of the University of California* (1988) 47 Cal. 3d 376, the Court vacated an inadequate EIR and required the University of California to —explain in meaningful detail in a new EIR a range of alternatives to the project and, if [found] to be infeasible, the reasons and facts that...support its conclusion. (*Id.* at 407: see also *Citizens of Goleta Valley v. Board of Supervisors*, (1990) 52 Cal.3d 557, 569 (—*Goleta II*) [EIR must set forth facts and—meaningful analysis of alternatives rather than —just the agency's bare conclusions or opinions].) Numerous appellate courts have reached similar conclusions: see *Citizens of Goleta Valley v. Board of Supervisors* (1988) 197 Cal. App. 3d 1167, 1180-81 (—*Goleta II*) [—in the absence of comparative data and analysis, no meaningful conclusions regarding the feasibility of the alternative could [be] reached]; *Planning and*

Conservation League v. Department of Water Resources (2000) 83 Cal. App. 4th 892; *Save Round Valley Alliance v. County of Inyo* (2007) 157 Cal. App. 4th 1437, 1461-62 [EIR deficient in part because there was —nothing in the EIR that informs the public or decision makers about the price or comparative value of a rejected alternative].)

We urge the City to correct the omission of financial data from the EIR and to provide sufficiently detailed economic analysis, including but not limited to comparative analysis, in a recirculated EIR so that the public and decision makers can understand why some alternatives and mitigation measures might be selected while others might be rejected.

CONCLUSION

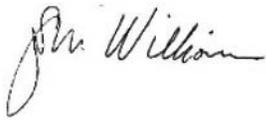
The Department is presenting an EIR to the Board which is incomplete and is based on completely wrong information. A request for certification on such a document is directly contrary to CEQA. "The courts have looked not for perfection but for adequacy, completeness, and a good faith effort at full disclosure." (CEQA Guidelines, 15151.)

The ultimate decision of whether to approve a project, be that decision right or wrong, is a nullity if based upon an EIR that does not provide the decision-makers, and the public, with the information about the project that is required by CEQA.' " (San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus, *supra*, 27 Cal.App.4th at pp. 721-722, quoting *Santiago County Water Dist. v. County of Orange* (1981) 118 Cal.App.3d 818, 829 [173 Cal.Rptr. 602].) If the description of the environmental setting of the project site and surrounding area is inaccurate, incomplete or misleading, the EIR does not comply with CEQA. Without accurate and complete information pertaining to the setting of the project and surrounding uses, it cannot be found that the EIR adequately investigated and discussed the environmental impacts of the development project.

Neighbors for Fair Planning believes the Project, as currently conceived, is the wrong project for this area of San Francisco because it is completely at odds with existing planning and should have been rejected wholesale. The Neighbors would welcome in a smaller scale project. The Project will also set precedents for land use decisions that will undermine the comprehensive stakeholder planning efforts that went into the City "Better Neighborhoods" planning and numerous other programs and policies to assure compatible uses in the residential neighborhoods. If the City does not reject the proposed Project altogether, we strongly recommend that the EIR be revised to remedy the informational deficiencies identified in this letter and be recirculated to the public. We look forward to analysis of alternatives that are not reliant on an excessively sized project. An analysis of an off-site alternative location for the Project should also be included.

May 17, 2011

Sincerely,

A handwritten signature in cursive script that reads "Stephen M. Williams". The signature is written in black ink and is positioned above the printed name.

Stephen M. Williams