

File No. 111358

Committee Item No. _____

Board Item No. 29

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Board of Supervisors Meeting

Date January 24, 2012

Cmte Board

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OTHER

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<input type="checkbox"/>	<input checked="" type="checkbox"/>	Appeal - Appellant (Keith G. Wagner on behalf of various community organizations)
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<input type="checkbox"/>	<input checked="" type="checkbox"/>	*Draft Environmental Impact Report, Vol. 1-8 -Planning Dept.
<input type="checkbox"/>	<input checked="" type="checkbox"/>	2 nd Appeal - Appellant (Sierra Club)
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<input type="checkbox"/>	<input checked="" type="checkbox"/>	2 nd Appeal - Appellant Response (Tom Lippe on behalf of various community organizations)

Completed by: Andrea Ausberry Date January 18, 2012

Completed by: _____ Date _____

*An asterisked item represents the cover sheet to a document that exceeds 25 pages. The complete document is in the file.

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January 17, 2011

Board President David Chiu
and Members of the Board of Supervisors
c/o Ms. Angela Calvillo
Clerk of the Board of Supervisors
City of San Francisco
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

RECEIVED
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Via Personal Delivery and E-Mail (Angela.Calvillo@sfgov.org)

Re: Appeal of Certification of Final EIR and Adoption of CEQA Findings 34th
America's Cup and James R. Herman Cruise Terminal and Northeast Wharf Plaza
Projects (Case No. 2010-0493E) *[[Errata Corrected]]*

Dear President Chiu and Supervisors:

I write on behalf of appellants San Francisco Tomorrow, Golden Gate Audubon Society, Waterfront Watch, Telegraph Hill Dwellers and the Sierra Club to supplement their notices of appeal of the Planning Commission's certification of the Final Environmental Impact Report ("EIR") for the 34th America's Cup and James R. Herman Cruise Terminal and Northeast Wharf Plaza Projects ("Project") and to confirm their continuing objections to the City's violation of the California Environmental Quality Act (CEQA) and the City's Administrative Code regarding this Project.

The City has failed to correct the array of procedural and substantive violations of CEQA raised in Appellants' comments to date, including those raised by them as participants in the Americas Cup Environmental Council. Accordingly, Appellants hereby incorporate by reference and re-raise each and every objection to the EIR presented to the City to date as if set forth in full in this letter. In addition, this letter summarizes a number of the EIR's major deficiencies.

1. The Planning Commission Violated CEQA By Certifying the EIR as "Project-Level" Environmental Review for Granting Long-Term Development Rights to the Authority.

The Host and Venue Agreement includes provisions that provide the America's Cup Event Authority LLC with the long-term use and rights for development of the following sites: Piers 30-32, Seawall Lot 330, and Piers 26, 28, 19, 19 ½, 23 and 29 after conclusion of the AC34 race events, depending on the level of infrastructure investment. However, neither the Event Authority nor the City currently has specific plans for development of any of the venues that may be subject to Disposition and Development Agreements (DDAs). The FEIR acknowledges that Project's long-term development plans are entirely vague:

There are no specific development proposals under consideration at this time at any of the potential long-term development sites. Other than Seawall Lot 330 and Piers 30-32, the number of sites that may be subject to long-term development rights under the Host Agreement will not be known until the full extent of the Event Authority's investment in infrastructure is known.

(C&R, page 12.6-22.)

The Planning Commission's certification of the EIR's assessment of the impacts of granting the Authority long term development rights as "project-level" rather than "program-level" environmental review is an unlawful attempt to evade full CEQA review of those long-term development projects. A project-level EIR is adequate only if it 1) includes an accurate and stable description of the "whole" of the project; 2) includes an accurate and complete description of the affected environment; 3) fully discloses and considers the project's cumulative effects; 4) does not defer development and adoption of mitigation measures until after project approval; and 5) discloses "significant new information" required to fully understand and comment on the project's significant adverse impacts. Here, the EIR meets none of these requirements. (See, e.g., *Sierra Club v. County of Sonoma* (1992) 6 Cal.App.4th 1307, 1316 ["The 1981 ARM Plan EIR accurately defines itself as a program EIR. It was not focused narrowly on a specific development project, but instead addressed the environmental effects of a complex long-term management plan for obtaining future supplies of aggregate resources from existing and potential resource areas county-wide, and of the ordinances and standards necessary for implementing that plan."].)

When an agency prepares a program-level EIR pursuant to CEQA's "tiering" provisions, future environmental review of site-specific development proposals under a plan is required. (§§ 21068.5, 21093, 21094; Guidelines, § 15152, 15168.) The tiering process provides the flexibility necessary for an agency to review and approve broad plans prior to the development of site-specific projects-it recognizes that the detailed, site-specific information necessary for full CEQA review may not be feasible at the time of plan approval, but ensures that all significant impacts will be disclosed and mitigated before the plan is implemented. (See *id.*) In contrast, CEQA review following a project-level is required only in those narrow circumstances where "significant new information"-such as a major departure from a proposed project or revelation of a previously unknown impact-necessitates "subsequent" or "supplemental" review. (§ 21166; Guidelines, §§ 15062-15064.) Review under section 21166 rests on the presumption that a prior EIR has accurately disclosed, analyzed, and mitigated the project-level details of the "whole" of a CEQA project and is, accordingly, severely limited. By preparing a "Project" EIR for the Plan, prior to the development of site-specific projects, the City dramatically diminished its CEQA obligations and unlawfully tilted the future playing field in favor of the Plan's developers and against future Boards of Supervisors and the public.

Once an agency decides to proceed with project-level CEQA review, it must provide

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sufficient detail and specificity in its EIR to meaningfully disclose the nature and extent of each project activity's impacts that would allow the lead agency to adopt, at the time of approval, a Mitigation and Monitoring Plan, that includes the site- and project-specific, enforceable mitigation measures that will be implemented to reduce each specifically identified project impact. (§ 21086.1.) By certifying the EIR as constituting project-level CEQA review, the City has not merely unlawfully "deferred" disclosure and mitigation of impacts of all of the activities and phases constituting the "whole" project (*Stanislaus Natural Heritage Project v. County of Stanislaus* (1996) 48 Cal.App.4th 182, 195), but has affirmatively attempted an end run around CEQA's "fair argument" standard for the preparation of tiered environmental review. (§ 21094(c); Guidelines, § 15152(f); *Sierra Club v. County of Sonoma*, 6 Cal. App. 4th at pp. 1316-1318).

The "fair argument" test is derived from section 21151, which requires an EIR on any project which "may have a significant effect on the environment." That section mandates preparation of an EIR in the first instance "whenever it can be fairly argued on the basis of substantial evidence that the project may have significant environmental impact." [citation] If there is substantial evidence of such impact, contrary evidence is not adequate to support a decision to dispense with an EIR. [citations]; Section 21151 creates a low threshold requirement for initial preparation of an EIR and reflects a preference for resolving doubts in favor of environmental review when the question is whether any such review is warranted. [citations] For example, if there is a disagreement among experts over the significance of an effect, the agency is to treat the effect as significant and prepare an EIR. [citations] (*Sierra Club v. County of Sonoma*, *supra*, 6 Cal. App. 4th at 1316.)

In contrast, CEQA provides that once a project-level EIR is certified, no subsequent or supplemental EIR for that project may be required by any agency, unless one or more of the following events occurs: (a) substantial changes are proposed in the project which will require major revisions of the EIR; (b) substantial changes occur with respect to the circumstances under which the project is being undertaken which will require major revisions in the EIR; or (c) new information, which was not known and could not have been known at the time the EIR was certified as complete, becomes available. (CEQA Section 21166.) The City's certification of its EIR as a project-level CEQA document, when it is not, is calculated to tilt future judicial review against the environment, the public and future Boards of Supervisors, by allowing the developer to block any such review or mitigation requirements so long as any substantial evidence supports the developer's self-interested view that there are no changed circumstances, regardless of the amount and weight of evidence the City and public have to the contrary. As noted in *Sierra Club v. County of Sonoma*, *supra*, 6 Cal.App.4th at p. 1320: "[S]ection 21166 comes into play precisely because in-depth review has already occurred, the time for challenging the sufficiency of the original EIR has long since expired [citation], and the question is whether circumstances have changed enough to justify repeating a substantial portion of the process. [citation] Under section 21166, an agency's determination not to require a subsequent EIR must be based on substantial evidence in the record; if there are conflicts in the evidence, their resolution is for the agency. [citation]." (emphasis added).

The *Sierra Club* court summarized the differences between sections 21151 and 21166 as follows:

A court reviewing an agency's decision not to prepare an EIR in the first instance must set aside the decision if the administrative record contains substantial evidence that a proposed project might have a significant environmental impact; in such a case, the agency has not proceeded as required by law. [citation] Stated another way, the question is one of law, i.e., "the sufficiency of the evidence to support a fair argument." [citation] Under this standard, deference to the agency's determination is not appropriate and its decision not to require an EIR can be upheld only when there is no credible evidence to the contrary. [citation] [] But when a court reviews an agency decision under section 21166 not to require a subsequent or supplemental EIR on a project, the traditional, deferential substantial evidence test applies.

(*Sierra Club v. County of Sonoma*, *supra*, 6 Cal.App.4th at pp. 1317-18.)

Here, the EIR's conceptual approach to the Authority's long term development rights would not cause great concern if the EIR had been certified as program-level CEQA review, precisely because a "tiered," project-level EIR would be required under CEQA's "fair argument" standard, as each development phase is actually proposed, reviewed and approved. The Planning Commission's project-level EIR certification gives the developer a strong hand to unilaterally block the preparation of EIRs for any project exercising its long term rights by producing any substantial evidence that no significant impacts will occur, regardless of the amount and weight of any evidence to the contrary.

The responses to comments asserts that "The Host Agreement directs that any such future development plans and uses would be required to undergo separate environmental review to comply with CEQA, when site-specific development program details are proposed." C&R, p. 12.6-22. This response is disingenuous because it ignores the distinction between CEQA review consisting of an "addendum" under CEQA section 21166 concluding that no subsequent EIR is warranted versus a subsequent EIR under CEQA sections 21094(c) and 21151.

2. The EIR illegally defers the development of mitigation measures to reduce significant impacts from granting Long-Term Development Rights to the Authority.

As to unknown future projects that will result from the long-term development rights granted to the Event Authority, the EIR illegally defers the development of mitigation measures and excludes public review opportunities with respect to the future development of Piers 26, 28, 19, 19 ½ and 23. See Comment O-WW.

For example, Mitigation Measure M-LT-CP: concedes that performance standards or criteria are not specified; they will be "will be developed" later:

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"To mitigate potential impacts on historic piers that may result from the future long-term development for which there are no design details available at this time, the Port will develop design and performance criteria to guide the proposed improvements so that the work would be consistent with Port Resolution 04-89, which requires review of proposed projects for consistency with the Secretary's Standards. These design criteria and performance measures will seek to address the character defining features of typical historic pier structures that may be impacted by the proposed work."

The performance criteria may include items such as the following:

1. All proposed repairs, alterations and improvements would be subject to Port Commission Resolution No. 04-89, which requires all projects on Port property within the Embarcadero Historic District to be reviewed for consistency with the Secretary's Standards.
2. The proposed construction of accessible offices or mixed use in the bulkhead shall attempt to retain the sense of open interior spatial qualities of the bulkhead and pier shed so as to maintain the sense of the historic volume. The build-out of offices should avoid obstructing existing windows and doors and obscuring the interior structural elements such as columns and trusses."

Because this mitigation measure fails to specify the specific performance standards that the measures must achieve, the DEIR illegally defers the development of the specific mitigation measures described for the reasons described below.

First, as explained in my August 25, 2011 comment letter on the DEIR (Comment O-WW) submitted on behalf of Waterfront Watch, the case law regarding the illegal deferral of the development of mitigation measures to reduce a project's identified significant effects is well established. The general rule is that where an EIR identifies one or more significant environmental effects, the EIR's identification and discussion of mitigation measures may not rely on mitigation measures to be developed after project approval except in the limited circumstances where: (1) the mitigation measures require compliance with other existing regulatory requirements; or (2) "[F]or kinds of impacts for which mitigation is known to be feasible, but where practical considerations prohibit devising such measures early in the planning process . . . , the agency can commit itself to eventually devising measures that will satisfy specific performance criteria articulated at the time of project approval." (*Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, 1394-1395 [emphasis added].) "Reliance on tentative plans for future mitigation after completion of the CEQA process significantly undermines CEQA's goals of full disclosure and informed decisionmaking...." (*Communities for a Better Environment v. City of Richmond* ("CBE v. Richmond") (2010) 184 Cal.App.4th 70, 92.)

Second, this measure relies in part on the unproven assumption that future projects would be reviewed for "consistency with the Secretary's Standards." As discussed our August 25, 2011 comment letter, the Secretary's Standards are not performance standards and "compatibility" is an aesthetic judgement, not an objective performance standard the achievement of which can be objectively measured. Consequently, it is not possible to judge whether this mitigation measure will be effective in either substantially reducing significant impacts or reducing them to less-than-significant. Therefore, it does not fall within the exceptions to the general rule against deferring the development of mitigation measures set forth in Gentry.

3. The EIR Fails to Lawfully Assess Water Quality, Public Safety and Recreational Impacts in Aquatic Park.

The fails to lawfully assess or respond to comments submitted by America's Cup Environmental Council (ACEC), the National Park Service (NPS) and the Dolphin Club regarding potentially significant impacts on water quality, public safety and recreation from extensive dredging and other soil disturbing activities, especially in Aquatic Park. With regard to in-water construction activities including dredging, anchored moorings, pile driving and floating dock and barge installation, the DEIR states:

These in-water construction activities would result in short-term disturbance of localized Bay sediments, which could result in adverse water quality effects because the sediments may contain chemicals from historic activities, and disturbance of the sediments could temporarily increase turbidity and resuspend these sediments in Bay waters.

(DEIR page 5.16-63.)

The National Park Service noted in its comment letter that: "Additional moorings and increased yacht discharges at Fort Mason would disturb marine sediments and create water quality issues...."and further that: "Additional moorings in Aquatic Park could disturb sediments and affect water quality."

The Dolphin Club and South End Rowing Club stated in its comment letter that: "The installation, either permanent or temporary, of a large video screen on a floating platform and the associated devices such as a cable for electrical supply, and the mooring of large concrete blocks potentially connected can have a heavy ecological impact to Aquatic Park, the Marina and the Piers. Such installations will modify the currents today established in Aquatic Park and the associated dredging activity may result in moving large quantities of sediments. This would disturb the toxic heavy metals and other pollutants known to be trapped in the mud and sediments of Aquatic Park and lead to a pollution event in Aquatic Park and in the adjacent areas, Marina and Piers. These impacts are not addressed."

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America's Cup Environmental Council commented in its letter on the DEIR that the dredging operations "will result in significant short-and long-term impacts to benthic communities and disturbance to contaminated sediments, which shall make available for biotic uptake a number of pollutants known to be found in elevated concentrations at the proposed dredging sites." ACEC further stated that the EIR should include an analytical analysis of bay sediment in areas where dredging and installation of moorings are proposed to occur.

The FEIR's response to these comments is inadequate in concluding that:

water quality effects related to short-term disturbance of sediments during the installation of moorings and pile driving would be less than significant because they would be temporary and, consistent with the requirements of a new Section 10 permit issued by the Corps [of Engineers] and a water quality certification from the RWQCB, the project sponsor would implement best management practices such as the use of silt curtains to minimize water quality effects during in-water construction activities. Therefore, with compliance with permitting requirements, there would be no adverse effect on human health or aquatic life as a result of changes in water quality due to sediment disturbance, and no mitigation is necessary."

(Response HY-5, page 12-22-12.)

First, the fact that this effect is "temporary" does not mean it is less-than-significant nor excuse the EIR from analyzing the contaminated sediments in Aquatic Park and other locations where dredging and installation of moorings will occur, the disturbance of which could result in significant short-as well as long-term impacts on water quality and its health impacts on recreational users. Impacts are not insignificant simply because they are short-term. Moreover, it is improper to assume that the Project is temporary when the DEIR recognizes that if the "home team" wins the AC34 events, the event may stay in San Francisco in future years. (See DEIR p. 3-93; Comment O-WW, p. 47.)

Second, it is well-settled that compliance with other regulatory standards, here a Section 10 permit to be issued in the future by the United States Corps of Engineers and a future water quality certification from the Regional Water Quality Control Board (RWQCB), cannot be used under CEQA as a basis for finding that a project's effects are less than significant, nor can it substitute for a fact-based analysis of those effects in the EIR. (See Comment O-WW, p. 29 and case law cited in footnote 7.)

Specifically as to Aquatic Park, not only does the final EIR fail to quantitatively analyze the contaminated sediments of Aquatic Park cove that would be disturbed, but it also fails to consider the air pollution and possible diesel fuel leaks from the operation of the JumboTron. The final EIR fails to disclose and consider the fact that Aquatic Park was the historic site of a the Selby Smelter run by the Selby Smelter and Lead Company, which for twenty years from 1865-1885 discharged

highly toxic materials into Aquatic Park.

Because the EIR finds the impacts less than significant, it concludes that no mitigation is necessary. Yet the final EIR presents a "preliminary" site plan for Aquatic Park, which proposes a 100-150-foot wide "clear zone" around the perimeter of the of the cove - around the edge of the proposed AC34 boat exhibitions/video barge -- for swimmers, rowers and kayakers. (Figure 11-10, page 11-50.) This "preliminary" site plan does nothing to address water or air quality impacts of the giant diesel-generated video barge, nor is it a substitute for a fact-based analysis of the impacts of disturbing contaminated bay sediment. As pointed out in the letter to the Board of Supervisors from the South End Rowing Club and Dolphin Club, this preliminary "clear zone" is not a safety improvement. Not only do swimmers kayakers, and rowers move in all directions in Aquatic Park, depending on the tides, water conditions and weather, but the "clear zone" is flawed in two other ways:

- (a) There are no designated boat ingress/egress channels, which potentially enables boats to cross the so-called safe zone with impunity at both openings to the Cove (between Muni Pier and the west end of the breakwater, and between the breakwater and Hyde Street Pier);
- (b) At low tide, it effectively pushes swimmers onto shoreline rocks and exposes swimmers to underwater hazards adjacent to the Sea Scout boathouse in the Cove."

There is no question that the proposed JumboTron in the waters of Aquatic Park represents a significant impact on the regular recreational users of this waterfront treasure that has not been adequately considered or mitigated in the EIR.

4. Air Quality Impacts

With respect to the Project's significant impacts on Air Quality, the EIR (1) improperly rejects feasible mitigation measures, (2) underestimates localized impacts of shore-side power decommission, and (3) fails to present evidence that its proposed mitigation measures are feasible and capable of being implemented.

One of the most significant impacts of the AC34 and Cruise Ship Terminal Project is to the air quality of the City and the Bay Area. The EIR identifies the short- and long-term and cumulative impacts on air quality as "significant and unavoidable" yet underestimates their real impact, avoids recommending feasible mitigation measures that would lessen these impacts, and includes mitigation measures without real teeth.

These "significant and unavoidable" impacts to air quality - the numerous violations of air quality standards and substantial concentrations of toxic air contaminants to which the citizens will be exposed -- are listed in the Planning Commission motion certifying the EIR which is the subject

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of this appeal. (See Planning Commission Motion, Section 8.A.j, k, l and m; Section 8.C; Section 9.A.b; and Section 9.B.d, on pages 3 through 5.)

CEQA requires that all feasible mitigation measures must be implemented to minimize or avoid these significant impacts on air quality. Unfortunately, as explained below, the EIR rejects a feasible mitigation measure recommended by the Bay Area Air Quality Management District (AQMD); ignores a significant increase in localized impacts from decommissioning the shoreside power facility at Pier 27; and fails to provide evidence that the mitigation measures it does propose are financially feasible and capable of being implemented as required by CEQA.

- a. The off-site mitigation program recommended by AQMD is feasible and should be included as a mitigation measure in the EIR and required as a condition of project approval.**

According to a December 15, 2011 letter from the AQMD to letter to Bill Wycko on the final EIR (attached as Exhibit 1 hereto and incorporated by reference), the amount of the Project's significant air pollutant emissions estimated to be generated from operational-related activities associated with AC34 in 2012 and 2013 could be fully mitigated through an in-lieu payment to an off-site mitigation program. The BAQMD states that an offsite mitigation program is feasible and can demonstrate a direct nexus and rough proportionality to the impacts identified in the EIR.

According to the BAQMD's letter:

The off-site mitigation program recommended by the District would be used to fund projects that replace older, high emitting, gasoline powered harbor craft (commercial and recreational) engines operating in the Bay Area with newer, cleaner, more efficient engines, thereby removing ROG and NOx air pollutant emissions from the San Francisco Bay Area Air Basin (SFBAAB) from the exact sources of emissions that resulted in the significant and unmitigable impacts identified in the DEIR and FEIR. The amount of emissions targeted for the offsite mitigation program would be the amount of emissions estimated to be over the District's significance thresholds.

A similar offsite mitigation program was implemented recently by the District through a the Conoco Phillips EIR settlement agreement with the Attorney General's office...The District is positioned to operate an offsite mitigation program for the AC34 event.

This mitigation measure proposed by the AQMD was improperly rejected by the EIR and should be added to the Mitigation and Monitoring Report to be implemented (and funded) by the America's Cup Event Authority as a condition of Project Approval.

- b. **New information regarding more severe, significant air quality impacts from decommissioning shore-side power at Pier 27 requires recirculation of a revised Draft EIR.**

The final EIR revealed that a much higher number of cruise ships with shoreside power capability are expected to call at the Port while the shore-side power is decommissioned than was previously assumed in the Draft EIR. The number of shore-side power-capable cruise ships increased from 17 (in the DEIR) to 40 cruise ships (in the FEIR) for the years 2012, 2013 and 2014, which means a corresponding increase in the number of cruise ships during that period that would generate air pollutant emissions by use of those cruise ships' auxiliary engines when docked. (C&R, page 11-21 and 11-22.) The increase in air emissions associated with the loss of shore-side power at Pier 27 represents a more than 100% increase in emissions than that assumed in the DEIR.

Although the FEIR finds that this significant increase in air pollutant emissions from cruise ships would be off set by a revised estimated reduction in the number of spectator and race support vessels, the AQMD disagrees with this conclusion. As stated in its letter of December 15, 2011 (Exhibit 1):

[T]he FEIR does not clearly demonstrate why the revised estimates of spectator and support vessels are more accurate than those presented in the DEIR. The increase in the number of ships running their auxiliary engines for hoteling within the SFBAAB will result in more criteria air pollutant emissions, but also result in potentially more localized impacts to sensitive receptors along the Embarcadero from emissions from cruise ships.

As a result, this impact is much more severe than acknowledged in the Draft EIR, requiring recirculation of a revised Draft EIR under CEQA section 21092.1 and CEQA Guidelines 15088.5.

- c. **The Planning Commission proceeded unlawfully in finding that Impact AQ-4e is "unavoidable."**

The FEIR proposes a new mitigation measure to offset the emissions associated with the decommissioning of shoreside power at Pier 27 as a result of the operation of the AC34 events, as follows:

Mitigation Measure M-AQ-4e: Long-term Shoreside Power at Pier 70

The project sponsor shall develop shoreside power at an offsite location that would consist of constructing 12 MW of shoreside power at the Port's Drydock #2 at Pier 70 to serve large cruise, military and other vessels while they are in drydock.

Should it be determined by the project sponsor that this measure is infeasible, the

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project sponsor shall document, to the satisfaction of the Environmental Review Officer, that the project sponsor has complied with this mitigation measure to the extent feasible and indicate why full compliance with the mitigation measure is infeasible.

(C&R, Volume 6, page 12.13-37.) The FEIR's states that "due to funding uncertainties regarding this mitigation measure, this impact remains significant and unavoidable." (C&R, Volume 6, page 12.13-37.)

The Planning Commission found the impact this measures addresses to be "significant and unavoidable," and based on that finding, that this impact is acceptable due to the Project's overriding benefits. However, the City cannot lawfully make these findings unless the measure is "truly infeasible." (*City of Marina v. Board of Trustees of California State University* (2006) 39 Cal.4th 341, 368-369.) Here, the alleged "uncertainty" regarding the feasibility of this measure is artificially self-inflicted by the Authority - its just a question of money. As the AQMD states (at Exh 1, p. 5): "all of the information is available today to determine the feasibility of implementing this measure." Therefore, the City cannot find this impact to be unavoidable.

5. A change in the Project to include Pier 54 in the Authority's long term development rights requires recirculation of a revised Draft EIR.

The Disposition and Development Agreement approved by the Port Commission on December 16, 2011 added Pier 54 to the areas where the City is granting long term development rights to the Authority. This is a major change in the Project description requiring recirculation of a revised Draft EIR under CEQA section 21092.1 and CEQA Guidelines 15088.5.

6. The Port Commission unlawfully approved the Project in violation of City Administrative Code section 31.16.

San Francisco Administrative Code § 31.16(a)(3) provides that "[w]hile the appeal [of the Planning Commission's certification of an EIR] is pending, and until the EIR is affirmed or re-certified as may be required by the Board, the City shall not carry out or consider the approval of a project that is the subject of the EIR on appeal"

Here, Appellants submitted their appeal on the morning of December 16, 2011 before 10:00 a.m. On December 16, 2011, at a public session beginning after 10:00 a.m. the Port Commission approved the Mitigation and Monitoring Plan, Disposition and Development Agreement, CEQA Findings and other Project documents, in violation of section 31.16.

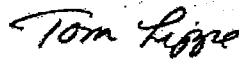
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7. Conclusion.

Appellants respectfully request that you grant their appeal, decertify the EIR, decline to approve the Project documents and remand the matter to the Planning Commission to issue a revised Draft EIR for public review and comment.

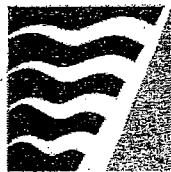
Thank you for your attention to this matter.

Very Truly Yours,



Thomas N. Lippe

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December 15, 2011

EXHIBIT 1

Bill Wycko
Environmental Review Officer
San Francisco Planning Department
1650 Mission Street, Suite 400
San Francisco, CA 94103

Subject: The 34th America's Cup and James R. Herman Cruise Terminal and Northeast Wharf Plaza Final Environmental Impact Report

Dear Mr. Bill Wycko:

Bay Area Air Quality Management District (District) staff has reviewed your agency's Final Environmental Impact Report (FEIR) prepared for the 34th America's Cup (AC34), and the James R. Herman Cruise Terminal and Northeast Wharf Plaza (Cruise Terminal) projects. According to the FEIR, the shore-side electrical power installation that was supported by funding from the District and put into place by the Port of San Francisco (Port) at Pier 27 in 2010 will be decommissioned due to construction of the Cruise Terminal and AC34-related activities, and is assumed to be unavailable in 2012, 2013 and possibly 2014 (pg. 12.13-13 & 12.13-18).

District staff has the following specific comments on the changes to the DEIR from the new environmental impact analysis provided in the FEIR.

Updated and Augmented Air Quality Mitigation Measures

The District is pleased to see the mitigation measures that have been either updated or augmented in the FEIR, which will help reduce the significant and unavoidable impacts from construction- and operational-related air pollutant emissions associated with AC34 and the Cruise Terminal.

The most effective mitigation measure identified to substantially lessen the significant and unavoidable impacts from AC34 and the Cruise Terminal is **M-AQ-4e**, electrification at Pier 70. However, as discussed in more detail below, the implementation of this measure cannot be assured due to the wording of the mitigation measure. If **M-AQ-4e** is amended in the FEIR to require implementation (and the language regarding feasibility is removed), then it can be assumed that this measure will take place and substantively reduce the overall impact associated with the decommission of the shore-side power at Pier 27, as well as emissions from operational-related activities associated with AC34. In addition, the recommended implementation of an off-site mitigation program, as discussed below, would not be needed with the assured implementation of **M-AQ-4e**.

Updated Air Quality Assumptions and Analyses

The FEIR includes changes to portions of the air quality analysis presented in the DEIR, including a revision to the project description assumptions regarding the number of spectator and support vessels anticipated at the AC34 events in 2012 and 2013. The

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methodology used in the DEIR, and the FEIR, to determine the number of vessels and spectators is critical to the validity of the subsequent air quality analysis and impact determination.

The updated estimates of criteria pollutants and toxic air contaminants for the anticipated spectator and support vessels in the FEIR are lower than what is presented in the DEIR due to changes in the methodology used to determine the number of spectator and support vessels. For example, the FEIR revised the estimated number of spectator/recreational boats during an average peak weekend day from 2,200 to 800 during the AC34 2013 event, and from 1,833 to 332 during the AC34 2012 event.

Accordingly, the estimated operational-related criteria air pollutant emissions associated with spectator and support vessels were revised in the FEIR and are substantially lower than what is presented in the DEIR.

To develop an attendance projection and estimate visitation patterns, the DEIR utilized the "penetration rate analysis" methodology. The goal of the penetration rate analysis is to not only understand the number of spectators but also to estimate their likely location (for example water vs. land). To develop spectator projections and visitation patterns, the methodology relied on a number of key assumptions and considerations (including the uniqueness of every America's Cup event; the increased visibility of the races and events provided by the geography of San Francisco; etc.) and utilized data from past America's Cup events. According to the DEIR (pg. PD1-6), the penetration rates for AC34 were developed based on the experience of three fairly recent America's Cup events (in Valencia, Spain and New Zealand), the key differentiating qualitative factors between previous America's Cups and AC34, and an examination of attendance at events in San Francisco (including Fleet Week, various parades/celebrations, San Francisco Giants games, etc.). Finally, the DEIR used the penetration rate analysis to estimate the locations from which spectators would likely view the race: on land or water.

The FEIR includes a three-page addendum to the AC34 visitation analysis in the DEIR which provides refined on-the-water visitation estimates yielded from a boat count during the Fleet Week 2011 event. While the FEIR states that the analysis in the addendum builds on the methodology used in the DEIR which is (in part) based on the number of boats for an average peak day during Fleet Week, the number of boats counted during Fleet Week 2011 was found to be much lower than originally estimated and the projections in the FEIR were adjusted. However, the addendum does not provide the methodology for how the Fleet Week 2011 boat count was conducted, nor does the addendum clearly state whether the methodology used for the boat count is the same as the methodology used for the boat counts for previous Fleet Week events, nor is the actual number of boats counted during Fleet Week 2011 included in the addendum. The FEIR also does not include the methodology or assumptions relied upon to refine the number and type of support boats anticipated at the AC34 events.

It appears that the FEIR utilized a different methodology than the DEIR for estimating the number of boats for AC34. For example, as stated on pg. PD1A-3, the DEIR estimated the number of spectators for an average AC34 peak day (amongst other factors) based on Fleet Week boat estimates from previous years. When revising those estimates it appears that the FEIR omits certain elements of the analysis, such as boat count estimates from previous years for Fleet Week, and instead used the data from only one Fleet Week (2011) day rather than from a number of years (as was used in the DEIR). In addition, the DEIR states (at length) the various assumptions, factors and methodology used to conduct attendance projection and visitation patterns for AC34, which includes data from three

recent America's Cup events, and attendance at various events in San Francisco which includes parades, baseball games, Fleet Week and others. The FEIR did not explain how those assumptions and methodology were utilized in the revised spectator and support vessel count estimates, nor did the FEIR clearly demonstrate how the number of boat counts from one Fleet Week day could so drastically alter the estimates presented in the DEIR. The FEIR did not explain why the revised vessel estimates should be considered more accurate than those provided in the DEIR. If a different methodology altogether was utilized to estimate spectator vessels for AC34 in the refined FEIR, it was not stated nor justified in the addendum in the FEIR.

Finally, the revised and much lowered boat estimates in the FEIR appear to be in contrast with the findings of the visitation analysis in the DEIR. The DEIR states on pg. PD1-9 that the overall attendance projection is higher for AC34 than previous America's Cup events, and provides a number of factors considered in the analysis that contributed to the increased attendance estimate. However, while the FEIR found a significant decrease in spectator and support vessel estimates than what was presented in the DEIR, the FEIR did not update or provide further analysis on the number of and/or location of land-based visitors, nor was the total projected attendance for AC34 amended according to the substantial decrease in expected spectator and support vessels.

It does not appear that the revised methodology and assumptions used in the FEIR to estimate the number of spectator and support vessels is consistent with the assumptions and methodology used in the DEIR. The FEIR does not provide full disclosure justifying the changes and providing for an independent analysis of which methodology was the most appropriate. It appears that the revised decrease in boat estimates in the FEIR may underestimate the operational-related criteria air pollutant emissions associated with AC34.

Off-site Mitigation of Criteria Air Pollutant Emissions

According to the FEIR, mitigating criteria air pollutant emissions through an in-lieu payment to an off-site mitigation program does not have an essential nexus and rough proportionality to the Project's significant impact. The District respectfully disagrees.

The DEIR and FEIR identified significant and unmitigable impacts from operational-related criteria air pollutant emissions associated with AC34 activities. Accordingly, all feasible mitigation measures should be implemented to reduce this impact to the maximum extent feasible. In addition to the mitigation measures outlined in the FEIR, the District believes that an offsite mitigation program is feasible and can demonstrate a direct nexus and rough proportionality to the impacts identified in the FEIR.

According to the visitation analysis in the DEIR, a vast majority of the spectators at the AC34 event will be local and from the Bay Area. According to the revised analysis in the FEIR, local private spectator vessels account for approximately 28-35% of the total estimated ROG and NOx emissions from operational-related activities associated with AC34 in 2012 and 2013. The offsite mitigation program recommended by the District would be used to fund projects that replace older, high emitting, gasoline powered harbor craft (commercial and recreational) engines operating in the Bay Area with newer, cleaner, more efficient engines, thereby removing ROG and NOx air pollutant emissions from the San Francisco Bay Area Air Basin (SFBAAB) from the exact sources of emissions that resulted in the significant and unmitigable impacts identified in the DEIR and FEIR. The amount of emissions targeted for the offsite mitigation program would be the amount of emissions estimated to be over the District's significance thresholds. Therefore, an offsite mitigation

program would provide for emission reductions from the same sources of emissions contributing to the significant impact thus providing the nexus and in direct proportion to the amount of emissions above the thresholds.

Assuming a cost-effectiveness of \$8,000 per weighted ton of criteria air pollutants, the cost to offset the emissions from small and private vessels, according to the refined operational emissions analysis for AC34 in the FEIR, is approximately \$1.2 million. This calculation utilizes emissions from the highest year (2013) as the basis for the reductions.

A similar offsite mitigation program has been implemented recently by the District through the Conoco Phillips DEIR settlement agreement with the Attorney General's office. The District received \$4.4 million to offset significant air quality impacts identified in the Conoco Phillips DEIR, in which projects were funded by the District within the Bay Area that achieved substantial GHG emission reductions that otherwise would not have occurred. The District is positioned to operate an offsite mitigation program for the AC34 event.

Shore-side Power Decommission

The FEIR also included updated Cruise Terminal Port Call Assumptions which are based upon confirmed bookings for 2012 by shore-side power-capable ships. The number of shore-side power-capable ships in the updated emissions analysis has increased from 17 (in the DEIR) to 40 cruise ships in the FEIR for the years 2012, 2013 and 2014. According to the FEIR, this would represent an increase in hoteling emissions when compared to the emissions estimated in the DEIR (pg. 12.13-4). This increase in emissions identified in the FEIR associated with the loss of shore-side power at Pier 27 represents a more than 100% increase in the emissions estimated in the DEIR.

The FEIR states that the increased number of cruise ships with shore-side power-capability in 2012 and 2013 would increase criteria air pollutant emissions, but that when considered in combination with the reduced spectator and race support vessel estimates the change would not substantially increase the severity of a significant impact. District staff respectfully disagrees because, as noted above, the FEIR does not clearly demonstrate why the revised estimates of spectator and support vessels are more accurate than those presented in the DEIR. The increase in the number of ships running their auxiliary engines for hoteling within the SFBAAB will result in more criteria air pollutant emissions, but also result in potentially more localized impacts to sensitive receptors along the Embarcadero from emissions from cruise ships.

In addition, according to pg. 12.13-14 of the FEIR, because of the interrelationship of the AC34 and Cruise Terminal projects, the emissions associated with the temporary decommissioning of shore-side power are addressed under several impacts in the FEIR, depending on the scenario. The calculations of criteria air pollutants from the decommissioning of shore-side power were assigned to either the *construction* of the Cruise Terminal or to the *operation* of the AC34 events (to avoid double counting). Therefore, the increase in criteria pollutants associated with an increase in the actual number of shore-side power-capable ships identifies a substantial increase in the environmental impacts in Impact AQ-10, Impact AQ-4, and Impact AQ-19. While additional and augmented mitigation measures were included in the FEIR to reduce the impacts, according to the FEIR, adoption of the mitigation measures will not reduce the impacts to a level of insignificance.

Long-Term Shore-side Power at Pier 70

Mitigation measure M-AQ-4e states that the "project sponsor shall develop shore-side power at an offsite location that would consist of constructing 12 MW of shore-side power at the Port's Drydock #2 at Pier 70 to serve large cruise, military and other vessels while they are in drydock". Mitigation measure M-AQ-4e also states that should it be determined by the project sponsor that this measure is infeasible, the project sponsor shall document, to the satisfaction of the Environmental Review Officer, that the project sponsor has complied with this mitigation measure to the extent feasible and indicate why full compliance with the mitigation measure is infeasible.

The District believes the implementation of mitigation measure M-AQ-4e, if conducted prior to the start of AC34 in 2012, would be a positive step in off-setting the criteria air pollutant emissions associated with the shore-side decommission at Pier 27. However, the feasibility of M-AQ-4e should have been assessed and discussed fully in the FEIR. District staff believes that all of the information is available today to determine the feasibility of implementing this measure. As written, implementation of this mitigation measure cannot be assured and therefore may not lessen the significant environmental impacts identified in the DEIR and FEIR. However, if M-AQ-4e is amended in the FEIR to require implementation (and the language regarding feasibility is removed), then it can be assumed that this measure will take place and emission reductions will substantially reduce the environmental impact from de-commission of the shore-side power at Pier 27, as well as emissions from operational-related activities associated with AC34, to an acceptable level. Implementation of the off-site mitigation measure identified previously in this letter would not be needed.

District staff is available to assist City staff in addressing these comments. If you have any questions, please contact Jackie Winkel, Environmental Planner, (415) 749-4933.

Sincerely,



Jean Roggenkamp
Deputy Air Pollution Control Officer

cc: BAAQMD Director John Avalos
BAAQMD Director Edwin M. Lee
BAAQMD Director Eric Mar
City & County of San Francisco Planning Commission President Christina Olague
Port of San Francisco Special Projects Manager Brad Benson
City & County of San Francisco Mayor's Office Johanna Partin



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Notice of Document Transmittal

**Planning Department Response to the
Second Appeal of Final Environmental Impact Report for
The 34th America's Cup and James R. Herman Cruise
Terminal and Northeast Wharf Plaza Project**

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DATE: January 13, 2012
TO: Joy Lamug, Assistant Clerk of the Board of Supervisors
Victor Young
Rick Caldeira
FROM: Bill Wycko, Environmental Review Officer – (415) 558-9048
Joy Navarrate, Senior Environmental Planner (415) 575-9040
RE: BOS File No. 111358 [Second Appeal of Final EIR, Planning Department Case
Nos. 2010.0493E – 34th America's Cup and James R. Herman Cruise Terminal
and Northeast Wharf Plaza]
HEARING DATE: January 24, 2012

The Planning Department is transmitting the following documents in response to the Second Appeal of Final EIR, Planning Department Case Nos. 2010.0493E – 34th America's Cup and James R. Herman Cruise Terminal and Northeast Wharf Plaza Project for distribution to board members, appellant, city attorney and BOS files:

- 18 CDs, which include the Second Appeal Response Memorandum
- 1 print copy of the Department's Appeal Response letter

One print copy of the Draft EIR and Comments and Responses document has been transmitted for the BOS files with the first appeal response submittal.

Thank you.



SAN FRANCISCO PLANNING DEPARTMENT

APPEAL OF EIR CERTIFICATION The 34th America's Cup & James R. Herman Cruise Terminal and Northeast Wharf Plaza Projects

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DATE: January 13, 2012

TO: President David Chiu and Members of the Board of Supervisors

FROM: Bill Wycko, Environmental Review Officer — (415) 575-9048
Joy Navarrete, Case Planner — (415) 575-9040

RE: File No. 111358, Planning Department Case No. 2010.0493E,
Second Appeal of Certification of the Environmental Impact
Report on the 34th America's Cup and James R. Herman Cruise
Terminal and Northeast Wharf Plaza (See Memorandum on
Appeal of EIR Certification dated December 30, 2011 for the first
appeal under the same Board of Supervisors File No. 111358 and
Planning Department Case No. 2010.0493E)

PROJECT SPONSORS: 34th America's Cup Project: America's Cup Event Authority and
City and County of San Francisco
James R. Herman Cruise Terminal and Northeast Wharf Plaza
Project: Port of San Francisco

APPELLANT #2: Rebecca Evans, Chair, Sierra Club, San Francisco Group

HEARING DATE: January 24, 2012

ATTACHMENT: A. Second Appeal (letter dated January 4, 2012) from Rebecca
Evans, Chair, Sierra Club, San Francisco Group

INTRODUCTION

This memorandum is a response to a second letter of appeal to the Board of Supervisors ("Board") regarding the Planning Commission's ("Commission") certification of a Final Environmental Impact Report ("FEIR") under the California Environmental Quality Act ("CEQA") for the proposed 34th America's Cup and James R. Herman Cruise Terminal and Northeast Wharf Plaza Projects ("Projects"), Case No. 2010.0493E. A first letter of appeal dated December 16, 2011 ("First Appeal") regarding the certification of this same FEIR is included and responded to in a memorandum to President David Chiu and Members of the Board of Supervisors dated December 20, 2011 ("First Response").

The FEIR on the Projects was certified on December 15, 2011 under San Francisco Planning Commission Motion No. 18514 which is presented in Attachment A of the First Response. The second appeal to the Board was filed on January 4, 2012 ("Second Appeal") by Rebecca Evans, Chair, Sierra Club, San Francisco Group ("Appellant #2"). The Second Appeal is included as Attachment A to this memorandum.

Appeal of FEIR Certification
Hearing Date: January 24, 2012

File No. 111358, Planning Case No. 2010.0493E
34th America's Cup & Cruise Terminal Project

As described in the First Response, the FEIR consists of the Draft EIR ("DEIR") published on July 11, 2011 and the Comments and Responses document published on December 1, 2011. Copies of the FEIR were provided to the Board via delivery to the Clerk of the Board on December 30, 2011.

The decision before the Board is whether to uphold the Planning Commission's decision to certify the FEIR and deny the appeal, or to overturn the Commission's decision to certify the FEIR and return the Projects to the Planning Department for additional environmental review.

PROJECT DESCRIPTION

See First Response for descriptions of the proposed 34th America's Cup ("AC34" or "AC34 Project") and the proposed cruise terminal and Northeast Wharf Plaza (together, "Cruise Terminal Project").

ENVIRONMENTAL REVIEW PROCESS FOR THE PROJECTS

See First Response for a description of the environmental review process for the Projects.

CEQA GUIDELINES

The FEIR has been prepared in accordance with CEQA, as established under the California Public Resources Code Sections 21000 et seq., the CEQA Guidelines (a part of the California Code of Regulations), and local CEQA procedures under Chapter 31 of the San Francisco Administrative Code. The purpose of the EIR is to disclose any potential impacts on the physical environment resulting from implementation of the proposed Projects and allow a time for public review and comment, before decision makers decide to approve or deny the Projects.

APPELLANT ISSUES AND PLANNING DEPARTMENT RESPONSES

The concerns raised in the Second Appeal (see Attachment A of this memo) include a brief statement of the grounds for appeal and indicate that further documentation in support of this appeal will be submitted at a later date prior to the appeal hearing. The grounds for appeal cited in the Second Appeal are summarized and followed by the Planning Department's responses. Responses to any additional issues submitted subsequent to the Second Appeal, if any, will be addressed in a separate memorandum as necessary. The Second Appeal presents six issues, three of which are the same as those raised in the First Appeal, but all six issues are described and responded to below.

Issue #1. The Second Appeal states concern with "the EIR's failure to perform a quantitative analysis of bay sediment in areas where dredging and installation of moorings will occur. Without this information, the potentially significant impacts to water quality from the project's extensive dredging activities cannot be assessed.

Response #1. The FEIR provides an analysis of proposed dredging and mooring installation activities in sufficient detail to disclose potential impacts on water quality, and based on historic data of sediment quality, existing regulatory requirements, and established permitting procedures for dredging in San Francisco Bay, the analysis determined that impacts would be less than significant.

Chapter 3, Project Description, describes the location and amounts of dredging proposed as part of the AC34 Project (the Cruise Terminal Project would not involve any dredging), and location and types of in-water construction proposed as part of the AC34 and Cruise Terminal Projects. Chapter 5, Section 5.16, Hydrology and Water Quality, provides an analysis of the water quality impacts of proposed dredging associated with the AC34 Project, and other in-water construction activities under the AC34 and Cruise Terminal Projects, within the context of existing conditions and regulatory framework. Section 5.16.1.5 (pages 5.16-18 to 5.16-20) describes sediment quality at AC34 Project sites from previous sampling in the project area as an indication of historic sediment quality and indicates that additional sampling would be required to establish existing sediment quality prior to any dredging activities. Section 5.16.2 (pages 5.16-44 to 5.16-46) summarizes the established regulatory standards and permitting requirements relevant to dredging of sediment, including the long-term management strategy for the placement of dredged material in the San Francisco Bay region promulgated by the United States Army Corps of Engineers, the United States Environmental Protection Agency, the San Francisco Bay Development and Conservation Commission, the California State Lands Commission, and the San Francisco Bay Regional Water Quality Control Board, through the jointly-administered Dredged Material Management Office, with participation by the California Department of Fish and Game, the National Marine Fisheries Service, and the United States Fish and Wildlife Service. Permitting requirements for dredging activities include best management practices to minimize impacts on water quality as well as standard testing to characterize the sediment to determine chemical concentrations, toxicity, and bioavailability to determine the suitability for reuse or disposal.

Impact HY-1 (pages 5.16-61 to 5.16-64) includes a discussion of water quality impacts that could occur as a result of proposed dredging and in-water construction activities from the AC34 Project. These impacts include the potential for increased turbidity, reduced levels of dissolved oxygen, increased salinity, decreased light penetration, and increased nutrient loading for temporary period following sediment disturbance. However, given the availability of chemical data on sediment quality in the project area and the established regulatory and permitting requirements for dredging activities, a quantitative analysis of potential water quality impacts is not necessary to determine the impact significance. The AC34 Project would be subject to separate permits and approvals for dredging and in-water construction work from the United States Army Corps of Engineers, the San Francisco Bay Regional Water Quality Control Board, State Lands Commission, and the San Francisco Bay Development and Conservation Commission. A Sampling and Analysis Plan ("SAP") consistent with United States Environmental Protection Agency guidance and approved by the Dredged Material Management Office ("DMMO") is required to conduct sediment testing and determine sediment suitability for reuse or disposal. The permitting agencies, through the DMMO process, review and approve the SAP. After the SAP is approved by the DMMO, field sampling is conducted and chemical and biological analysis of sediment is conducted as described in the approved SAP. Preliminary chemistry is submitted to the DMMO for review and for approval of tissue chemistry analysis. A Sampling Analysis Result ("SAR") report will be prepared and submitted to DMMO for final disposal suitability determination. Measures that would be required to be implemented during dredging include using floating debris booms/silt curtains to contain turbidity and suspended sediments, and use of a clamshell bucket with a maximum capacity of 10 cubic yards that minimizes turbidity. With implementation of water quality control measures specified in the permitting requirements, impacts on water quality as a result of dredging and in-water construction activities would be less than significant. Furthermore, due to the use of construction equipment for in-water construction activities, including

dredging activities and installation of moorings, the EIR determined that potential impacts on water quality would be reduced to less than significant with implementation of Mitigation Measure M-HY-1 (Water Quality Best Management Practices) that would place restrictions on use and maintenance of in-water construction equipment and fueling activities.

Chapter 12, Section 12.22, Responses HY-4 and HY-5 (pages 12.22-8 to 12.22-15) provides further elaboration and clarification of the potential impacts on water quality associated with dredging and in-water construction activities.

Issue #2. The Second Appeal states "the EIR failed to analyze the water pollution impacts from dredging to install the JumboTron planned for the waters of Aquatic Park — as well as air pollution and possible diesel fuel leaks from the operation of the JumboTron — and the resulting impacts on the regular recreational users of this waterfront treasure."

Response #2. The FEIR contains a thorough and complete analysis of potential environmental impacts to Aquatic Park due to proposed AC34 Project activities, including those from the proposed video barge, and describes impacts related to air quality, water quality, and recreational resources. The FEIR provides feasible mitigation measures to reduce the severity of identified significant impacts.

The FEIR described the proposed installation of temporary anchoring systems for the AC34-related video barge and exhibition boats at Aquatic Park cove. No dredging is proposed within Aquatic Park cove as part of the AC34 Project. Chapter 3 in the FEIR (page 3-83) discussed the potential for two types of anchoring systems to be installed as AC34 venues: anchor blocks and soil anchors. At this time, the project sponsor proposes to use four 125-cubic foot (i.e., 5 foot x 5 foot x 5 foot) cement anchor blocks for the temporary mooring of the video barge and eight 125-cubic foot cement anchor blocks for exhibition and race boats in Aquatic Park. As discussed in the FEIR, anchor blocks are simply lowered to the seafloor via barge (as opposed to soil anchors, which are installed in the seabed using an underwater hydraulic torque motor). The FEIR also states that the proposed anchoring systems at the Aquatic Park venue would be installed prior to the AC34 2012 event, remain in place between the AC34 2012 and 2013 events, and be permanently removed following the AC34 2013 event.¹ This approach would limit in-water construction activities associated with the anchoring systems at Aquatic Park to one installation and one removal.

Potential water quality impacts related to in-water construction activities, including installation of temporary moorings at Aquatic Park, are addressed in Impact HY-1 in Chapter 5, Section 5.16, Hydrology and Water Quality, and further in Response HY-5 in Chapter 12, Section 12.22 in the FEIR. As discussed in this impact analysis, water quality effects related to short-term disturbance of sediments during the installation of moorings would be less than significant because they would be temporary and, consistent with the requirements of a new Section 10 permit issued by the United States Army Corps of Engineers and a water quality certification from the San Francisco Bay Regional Water Quality Control Board. Therefore, with implementation of water quality protection measures in compliance with permitting requirements, there would be no adverse effect on human health or aquatic life as a result of changes in water quality due to in-water construction activities, and no mitigation under CEQA is

¹ The video barge and exhibition boats, however, would be removed between the AC34 2012 and 2013 events.

necessary. For other proposed in-water construction activities associated with use of construction equipment, the EIR determined that potential impacts on water quality would be reduced to less than significant with implementation of Mitigation Measure M-HY-1 (Water Quality Best Management Practices) that would place restrictions on use and maintenance of in-water construction equipment and fueling activities.

Potential hazards associated with use of generators, such as the portable generator that would be onboard the video barge to power the video screen, during the AC34 events are addressed in Chapter 5, Section 5.17, Hazards in the EIR. The operation of the video barge generator would be required to be conducted in compliance with all applicable state and local regulations, including the San Francisco Fire Code. Compliance would include provisions for secondary containment, and spill protection and overflow protection for tank filling activities. Compliance with these requirements would ensure the proper and safe handling of diesel fuel associated with generator use during the AC34 events.

Potential short-term increases in air emissions from the proposed generators to be used at the AC34 venues, including the portable generator that would be onboard the video barge, are addressed in Chapter 5, Section 5.8, Air Quality, and further in Response AQ-5 in Section 12.13 and Response RE-2 in Section 12.15 in the FEIR. Mitigation Measure M-AQ-5 (Clean Sources for Temporary Power at Venues) as described and augmented in Response AQ-5 in the FEIR specifies measures that would reduce air emissions from generators to the extent feasible, including use of alternative fuels and emission-control performance levels for engines. Air quality impacts from generator use on the video barge would be short-term and temporary (i.e., video screen operating hours would be focused on the periods during racing) and consequently, no long-term environmental effects would occur. This would also be true for potential short-term noise increases, including those from the video barge portable generator and the video screen speakers. It should be noted that the proposed video barge generator would incorporate a number of sound-attenuating features, including sound baffles, critical-grade exhaust silencer, two layers of acoustical insulation, and engine-mounted isolators to reduce vibration.

Potential AC34 Project impacts to recreational uses, including at Aquatic Park, are addressed in Chapter 5, Section 5.11 and further in Response RE-1 in the FEIR. As demonstrated in the FEIR, the AC34 Project would not result in substantial physical deterioration of Aquatic Park or other recreational areas, and consequently, the project impact to recreational resources was determined to be less than significant. Nevertheless, in acknowledgment of the unique recreational attributes of Aquatic Park, the intended AC34 use of the Aquatic Park cove area during the AC34 events was clarified and refined in the FEIR. As described in detail in Chapter 11 and further in Response RE-2 in Section 12.16 in the FEIR, the inner perimeter of the Aquatic Park cove would be retained as clear space throughout the duration of the AC34 events for swimming, rowing, kayaking, and other ongoing uses. The clear zone would be a minimum of 100 feet wide along the Municipal Pier perimeter and approximately 100 feet wide between the swim marker buoys and the proposed AC34 boat exhibitions/video barge. The video barge and boats would remain completely outside of the identified clear zone, and once anchored would not be relocated within the defined boundaries. The refinements to the Aquatic Park venue plan would allow continued recreational use of the Aquatic Park cove for swimming, rowing, and kayaking throughout the duration of the AC34 events. Establishment of the clear zone and the secure mooring of the limited AC34-related exhibits would allow for safe movement within the cove by swimmers, rowers, and kayakers.

Issue #3. The Second Appeal states "the EIR further fails to adequately respond to the majority of the comments submitted."

Response #3. The FEIR addresses all comments submitted during the environmental review process, including consideration of comments on the Notice of Preparation and written responses to comments on the DEIR.

To initiate the EIR process, the Planning Department issued a Notice of Preparation to governmental agencies and organizations and persons interested in the Projects and conducted a 30-day public scoping period from February 9 through March 11, 2011, which included two public scoping meetings during this period. The DEIR acknowledged and addressed comments received during the public scoping period, as described in EIR Chapter 2, Table 2-1 (pages 2-5 to 2-9). During the public scoping period, the Planning Department received formal comments from Appellant #2 during the scoping meeting on February 24, 2011.² All comments received during the public scoping period, including those from Appellant #2, were considered in determining the scope of the EIR.

Further, as described in EIR, Chapter 12, Section 12.3, Response INT-4 (page 12.3-7), the Planning Department engaged in additional public outreach during preparation of the DEIR, subsequent to the scoping period and prior to DEIR publication. Appellant #2 participated in the review and comment of administrative draft sections of the EIR. The Planning Department integrated the input from this review process into the DEIR as appropriate.

The publication of the DEIR on July 11, 2011 represented the start of a 45-day public review period ending on August 25, 2011, which included a public hearing to receive oral comments on the DEIR that was held before the Planning Commission on August 11, 2011. During this public review period, the Planning Department received written and oral comments on the DEIR, and the Comments and Responses document, published on December 1, 2011, provides detailed responses to all substantive comments submitted on the DEIR. Chapter 10 of the Comments and Responses document lists all persons submitting comments on the DEIR, and Chapter 12 of the FEIR presents the responses to all substantive comments received on the DEIR.³ No comments on the DEIR were received from Appellant #2.

Issue #4. The Second Appeal states "the EIR fails to adequately address and mitigate transportation/traffic impacts on adjacent neighborhoods. The Planning Commission's Motion of Findings lists transportation/traffic impacts but does not adequately mitigate them."

Response #4. The FEIR contains comprehensive identification of impacts and mitigation measures regarding transportation and traffic impacts at proposed project sites and adjacent neighborhoods. The FEIR provides detailed, project-specific, feasible transportation mitigation measures that would

² During the scoping period, the Planning Department received a letter from the Environmental Council dated March 11, 2011, which included Appellant #2 representing one of the 18 organizations listed as part of the Environmental Council. Comments from the Environmental Council letter of March 11, 2011 were considered in determining the scope of the EIR.

³ During the DEIR public review period, the Planning Department received a letter from the Environmental Council dated August 25, 2011, which included Appellant #2 as one of the 17 organizations listed under the Environmental Council. This letter (coded as O-ACEC) is shown in its entirety in Appendix COM, pages COM-103 to COM-182. The FEIR includes written responses to all substantive comments from the Environmental Council.

reduce the severity of identified impacts, but in some cases, impacts would remain significant and unavoidable even with implementation of identified mitigation measures.

Chapter 5 of the EIR, as augmented in Chapter 11 of the FEIR, identifies the environmental setting, impacts and mitigation measures of the Projects. Impacts on adjacent neighborhoods are identified in the EIR where appropriate, including transportation impacts for both Projects as presented in Chapter 5, Section 5.6 as follows:

For the AC34 Project, Impacts TR-1 through TR-16 and TR-38 through TR-59 (EIR pages 5.6-73 to 5.6-84 and 5.6-116 to 5.6-123) addresses traffic impacts at intersections at and adjacent to the AC34 project sites, including adjacent neighborhoods; Impacts TR-17 through TR-28 and TR-60 through TR-71 (EIR pages 5.6-86 to 5.6-105 and 5.6-123 to 5.6-131) addresses transit impacts in the vicinity of the AC34 project sites, including adjacent neighborhoods; Impacts TR-29 to TR-30 and TR-72 to TR-73 (EIR pages 5.6-105 to 5.6-106 and 5.6-131 to 5.6-132) address bicycle impacts in the vicinity of the AC34 project sites, including adjacent neighborhoods; Impacts TR-31 to TR-32 and TR-74 to TR-75 (EIR pages 5.6-106 to 5.6-107 and 5.6-132 to 5.6-133) address pedestrian impacts in the vicinity of the AC34 project sites, including adjacent neighborhoods; Impacts TR-34 and TR-77 (EIR pages 5.6-108 to 5.6-109 and 5.6-134 to 5.6-135) addresses emergency access impacts in the vicinity of the AC34 project sites, including adjacent neighborhoods; Impacts TR-35 to TR-36 and TR-78 to TR-79 (EIR pages 5.6-109 to 5.6-112 and 5.6-135 to 5.6-138) address construction impacts on transportation and circulation in the vicinity of the AC34 project sites, including adjacent neighborhoods; and Impacts TR-37 and TR-80 (EIR pages 5.6-113 to 5.6-114 and 5.6-138 to 5.6-140) address impacts on transportation and circulation in the vicinity of the AC34 project sites, including adjacent neighborhoods, during other special events.

Similarly, for the Cruise Terminal Project, Impacts TR-81 through TR-83 (EIR pages 5.6-141 to 5.6-148) addresses traffic impacts at intersections at and adjacent to the Cruise Terminal project site, including adjacent neighborhoods; Impacts TR-84 to TR-85 (EIR pages 5.6-149 to 5.6-155) addresses transit impacts in the vicinity of the Cruise Terminal project site, including adjacent neighborhoods; Impact TR-86 (EIR pages 5.6-155 to 5.6-156) addresses bicycle impacts in the vicinity of the Cruise Terminal project site, including adjacent neighborhoods; Impact TR-87 (EIR pages 5.6-156 to 5.6-160) addresses pedestrian impacts in the vicinity of the Cruise Terminal project site, including adjacent neighborhoods; Impact TR-89 (EIR page 5.6-163) addresses emergency access impacts in the vicinity of the Cruise Terminal project site, including adjacent neighborhoods; and Impact TR-90 (EIR pages 5.6-163 to 5.6-165) addresses construction impacts on transportation and circulation in the vicinity of the Cruise Terminal project site, including adjacent neighborhoods.

Planning Commission Motion 18514 (see Attachment A of the First Response) summarizes the significant and unavoidable transportation/traffic impacts of the Projects identified in the FEIR. For all of these impacts, Chapter 5, Section 5.6, as augmented in Chapter 12, Section 12.11, identifies feasible, detailed, project-specific mitigation measures that would reduce the severity of the impacts but even with implementation of these measures, the FEIR determined that these impacts would remain significant and unavoidable.

The transportation mitigation measures identified in the FEIR include: Mitigation Measure M-TR-1 (People Plan Specific Provisions, including Traffic Monitoring and Management Program, Transit

Operating Plan, Satellite Parking Facility Program, and Public Information Program); Mitigation Measure M-TR-17 (Additional Muni Transit Service); Mitigation Measure M-TR-18 (Additional PresidiGo Shuttle Service); Mitigation Measure M-TR-19 (Additional AC Transit Capacity); Mitigation Measure M-TR-20 (Additional BART Transit Service); Mitigation Measure M-TR-21 (Additional WETA Transit Service); Mitigation Measure M-TR-22 (Additional Golden Gate Transit Service); Mitigation Measure M-TR-23 (Additional Blue & Gold Transit Service); Mitigation Measure M-TR-24 (Additional Caltrain Transit Service); Mitigation Measure M-TR-25 (Additional SamTrans Transit Service); Mitigation Measure M-TR-26a (Barricade to Protect Transit Lanes); Mitigation Measure M-TR-26b (Traffic Control Officers at Key Intersections); and Mitigation Measure M-TR-85 (Additional F-Market & Wharves or E-Embarcadero Service).

Issue #5. The Second Appeal states "an analysis of the cumulative noise of event helicopters is missing."

Response #5. The FEIR included noise modeling of proposed helicopter operations associated with the AC34 events. Temporary noise increases generated by proposed helicopters were determined to be less than significant with respect to both project-level and cumulative impacts.

As discussed in Chapter 3 (page 3-50 to 3-51) of the EIR, helicopters would be used to serve broadcasting and media operations for the AC34 races in 2012 and 2013. Impact NO-4 in Section 5.7 (pages 5.7-41 to 5.7-46) in the FEIR evaluated all transportation noise sources that would be generated during operation of the AC34 events, including noise from proposed helicopter operations as well as other mobile sources of noise such as vehicular traffic and marine vessel noise. A noise model approved by the Federal Aviation Administration (Integrated Noise Model Version 7.0b) was used to quantify helicopter noise exposure in the vicinity of a helipad and along the race course, based on three helicopters operating on event days and six races per event day. The average annual day helicopter operations for 2012 and 2013 were determined not to generate noise levels equal to or greater than the 65 dB CNEL threshold established by Caltrans over any noise-sensitive land use in proximity to the race course circuit. Therefore, temporary increases in noise from helicopter operations around the racing circuit would result in a less-than-significant impact related to increase in ambient noise levels. Notwithstanding this less-than-significant contribution of noise levels from helicopters, Impact NO-4 identified transportation noise sources as a significant and unavoidable impact, because of localized increases in roadway traffic noise during weekend peak events.

Project helicopter operations would be temporary and primarily limited to the periods on event days when AC34 races would occur. As discussed in Chapter 11 in the FEIR, the Water and Air Traffic Plan developed by the AC34 project sponsors, in cooperation with the United States Coast Guard and Federal Aviation Administration, would establish effective enforcement mechanisms for traffic controls in the defined race area airspace, and include operational restrictions for rotary-wing aircraft operating during the event, with additional parameters for helicopters using the proposed AC34 helipad.

The FEIR presented a list of cumulative projects (Table 5.1-1 in Section 5.1) in the AC34 project vicinity that were considered in the analysis of cumulative noise impacts in Impact C-NO (pages 5.7-56 to 5.7-57). Cumulative projects that would potentially be developed within the same time frame as the activities of the America's Cup venues or the cruise terminal include, but are not limited to, Brannan Street Wharf, the extension of F-line cars to Fort Mason, developments at Seawall Lot 351 and 8 Washington Street, and

renovations of the San Francisco Marina. None of the cumulative projects would generate helicopter use during their construction or operation. Given the relatively brief window of AC34 events that would involve helicopter operations, the contribution of temporary helicopter noise from the AC34 events to cumulative noise from other foreseeable projects in the project area would be less than significant. Furthermore, since the AC34 use of helicopters would be a temporary condition, the AC34 Project would not contribute to any long-term cumulative operational impacts.

Issue #6. The Second Appeal is concerned with "the EIR's failure to fully and adequately identify and mitigate the impacts of the project. The EIR does not contain adequate detail as to how the EIR's mitigation measures will be implemented, monitored, and enforced. Absent a commitment of adequate financial resources for implementation and monitoring, such measures are not feasible."

Response #6. The FEIR contains comprehensive identification of impacts and mitigation measures, including description of how mitigation measures would be implemented.

Identification of Impacts and Mitigation Measures. Chapter 5 of the FEIR, as augmented in Chapter 11 of the FEIR, identifies the environmental setting, impacts and mitigation measures of the Projects. The FEIR addresses the full range of environmental topics identified in CEQA Guidelines Appendix G as well as additional topics required by the San Francisco Planning Department as provided for under Chapter 31 of the San Francisco Administrative Code. In total, the FEIR presents 277 separate impact statements and discussions for the two Projects under the following 18 resource areas: Land Use, Aesthetics, Population and Housing, Cultural and Paleontological Resources, Transportation and Circulation, Noise and Vibration, Air Quality, Greenhouse Gas Emissions, Wind and Shadow, Recreation, Utilities and Service Systems, Public Services, Biological Resources (Upland and Marine), Geology and Soils, Hydrology and Water Quality, Hazards and Hazardous Materials, Mineral and Energy Resources, and Agriculture and Forest Resources. For the impacts determined to be significant or potentially significant, the FEIR identifies 61 distinct project-specific mitigation measures for the AC34 Project events and facilities, 14 broad mitigation measures for long-term development rights impacts under the AC34 Project, and 19 distinct project-specific mitigation measures for the Cruise Terminal Project.

Implementation, Monitoring, and Enforcement of Mitigation Measures. Chapter 12, Section 12.6, Impact Overview, Response IO-4, of the FEIR (pages 12.6-12 to 12.6-18) specifically responds to comments concerning the implementation and enforcement of mitigation measures identified in the DEIR. As stated in this response, the EIR identifies mitigation measures for each impact determined to be significant or potentially significant based on the significance criteria specific to each resource topic listed in each resource sub-section of Chapter 5. Consistent with CEQA Guidelines Section 15126.4, the EIR describes feasible measures that could minimize significant adverse impacts by avoiding or lessening the severity of the impact, as determined by the Planning Department. In accordance with CEQA Guidelines Section 15370, the mitigation measures either avoid an impact altogether or minimize the impact by limiting the degree or magnitude of an action or its implementation. During preparation of the EIR, the project sponsors for both the AC34 and Cruise Terminal Projects reviewed the mitigation measures identified in the EIR with respect to their ability and responsibility to implement the identified measures if the Projects were to be approved.

As described in the FEIR (Chapter 2, Section 2.3.3, page 2-4), the City and Port of San Francisco ("Port") must consider the certified FEIR before making a decision to approve, disapprove, or modify the Projects. The formal process for considering the FEIR includes the development of CEQA findings, which consist of facts and decisions regarding the project description and objectives, significant impacts, mitigation measures, and alternatives based on information presented in the FEIR. An attachment to the CEQA findings, the Mitigation Monitoring and Reporting Program ("MMRP"), consists of all mitigation measures identified in the FEIR and specifies responsible parties for implementing, monitoring, and reporting each measure in accordance with CEQA Guidelines Section 15097. CEQA requires the adoption of findings (including the MMRP) prior to approval of a project for which a certified EIR identifies significant environmental effects. Therefore, adoption of the CEQA findings and MMRP represents a requirement by the project sponsors to include and implement all mitigation measures identified in the FEIR as part of the Projects. The MMRP provides assurance that mitigation measures will be implemented, monitored, and enforced as appropriate.

With regard to enforcement of mitigation measures, adoption of the MMRP as part of the CEQA findings in concert with project approval constitutes a commitment by the project sponsors to include and implement all mitigation measures identified in the FEIR as part of the Projects. Mitigation measures are designed to be enforceable through permit conditions, agreements, or other legally binding instruments such as contracts with construction contractors. CEQA does not create new authority for agencies to carry out or enforce mitigation measures.

In parallel with the CEQA process, the project sponsors are currently working with regulatory agencies to secure the necessary permits and approvals, as identified in FEIR Chapter 3, Section 3.7.1, pages 3-115 to 3-116, as updated in Chapter 11, Section 11.2.4, pages 11-12 to 11-15. Implementation of the AC34 Project may be subject to the permit conditions of the following federal, state, and regional agencies: United States Coast Guard, Federal Aviation Administration, United States Army Corps of Engineers, United States Fish and Wildlife Service, National Marine Fisheries Service, National Park Service, Presidio Trust, San Francisco Bay Conservation and Development Commission, California State Lands Commission, California Regional Water Quality Control Board, California Department of Fish and Game, State Historic Preservation Officer, and Bay Area Air Quality Management District. While permit conditions are not in and of themselves intended to serve as CEQA mitigation measures, in many cases the permit conditions are in fact the same as the FEIR mitigation measures, though often with more specific details included in the permit conditions. Insofar as the CEQA mitigation measures are within the jurisdiction and enforcement authority of the permitting agencies, those measures would be fully enforceable through these federal, state, and regional agencies. In addition, the City and Port maintain enforcement authority through contractual agreements (including lease and license agreements) over properties within their jurisdiction within their legal rights, including local zoning and related land use regulations. Enforcement of all existing regulations and laws would be same as under existing conditions, regardless of the Projects; the effectiveness of the enforcement of existing regulations and laws is beyond the scope of the CEQA review process.

Appeal of FEIR Certification
Hearing Date: January 24, 2012

File No. 111358, Planning Case No. 2010.0493E
34th America's Cup & Cruise Terminal Project

CONCLUSION

The Planning Department conducted an in-depth and thorough analysis of the potential physical environmental effects of the proposed 34th America's Cup and James R. Herman Cruise Terminal and Northeast Wharf Plaza Projects consistent with CEQA, CEQA Guidelines, and Chapter 31 the San Francisco Administrative Code. Appellant #2 has not provided any substantial evidence to refute the adequacy, accuracy, or objectivity of the FEIR. Moreover, Appellant #2 does not provide evidence that the impact analysis presented in the FEIR is inaccurate or incomplete.

For the reasons provided in this appeal response, the Planning Department believes that the FEIR complies with the requirements of CEQA and the CEQA Guidelines and provides an adequate, accurate, and objective analysis of the potential impacts of the Projects. Therefore, the Planning Department respectfully recommends that the Board uphold the Planning Commission's certification of the FEIR.

**Appeal of FEIR Certification
Hearing Date: January 24, 2012**

**File No. 111358, Planning Case No. 2010.0493E
34th America's Cup & Cruise Terminal Project**

ATTACHMENT A

**Second Appeal (letter dated January 4, 2012 from
Rebecca Evans, Chair, Sierra Club, San Francisco Group)**



SAN FRANCISCO GROUP

85 Second Street, Second Floor San Francisco CA 94105-3441

January 4, 2012

Board President David Chiu
And Members of the Board of Supervisors
c/o Ms. Angela Calvillo
Clerk of the Board of Supervisors
City & County of San Francisco
1 Dr. Carlton B. Goodlett Place
Room 244
San Francisco, CA 94102-4689

RECEIVED
BOARD OF SUPERVISORS
SAN FRANCISCO
2012 JAN -4 PM 2:57

Re: Appeal of Planning Commission EIR Certification
34th America's Cup and James R. Herman Cruise Terminal and Northeast Wharf Plaza
Projects (Case No. 2010-0493E)

Dear President Chiu and Supervisors:

On behalf of the San Francisco Group of the Sierra Club, I hereby appeal the Planning Commission's certification of the Environmental Impact Report (EIR) for the proposed 34th America's Cup and James R. Herman Cruise Terminal and Northeast Wharf Plaza Projects. A copy of the Planning Commission's motion adopted on December 15, 2011 is attached. Further documentation in support of this appeal will follow prior to the Board hearing.

The Sierra Club is particularly concerned with the EIR's failure to perform a quantitative analysis of bay sediment in areas where dredging and installation of moorings will occur. Without this information, the potentially significant impacts to water quality from the project's extensive dredging activities cannot be assessed. Specifically, the EIR failed to analyze the water pollution impacts from dredging to install the JumboTron planned for the waters of Aquatic Park -- as well as air pollution and possible diesel fuel leaks from the operation of the JumboTron -- and the resulting impacts on the regular recreational users of this waterfront treasure.

The EIR further fails to adequately respond to the majority of the comments submitted. For example, the EIR fails to adequately address and mitigate transportation/traffic impacts on adjacent neighborhoods. The Planning Commission's Motion of Findings lists transportation/traffic impacts but does not adequately mitigate them. As another example, an analysis of the cumulative noise of event helicopters is missing.

The Sierra Club is seriously concerned with the EIR's failure to fully and adequately identify and mitigate the impacts of the project. The EIR does not contain adequate detail as to how the EIR's mitigation measures will be implemented, monitored and enforced. Absent a commitment of adequate financial resources for implementation and monitoring, such measures are not feasible.

Thank you for your consideration of this appeal.

Sincerely,



Rebecca Evans
Chair, San Francisco Group

Cc: Bill Wycko, Environmental Review Officer



AC34 Comment

Kimberly Pross

to:

Board.of.Supervisors, bill.wycko, David.Chiu

01/13/2012 11:19 AM

Hide Details

From: Kimberly Pross <kimrows@gmail.com>

To: Board.of.Supervisors@sfgov.org, bill.wycko@sfgov.org, David.Chiu@sfgov.org

BDS-11
C-page

File #111358

1 Attachment



SERC-DC EIR Letter to BOS (Jan 2012).pdf

On behalf of the South End Rowing Club and the Dolphin Swimming and Boating Club I submit the following letter regarding America's Cup. Thank you for your time and consideration.

Kimberly Pross

South End Rowing Club, Vice President

Board President David Chiu
and Members of the Board of Supervisors c/o Ms. Angela Calvillo
Clerk of the Board of Supervisors
City & County of San Francisco
1 Dr. Carlton B. Goodlett Place, Room 244 San Francisco, CA 94102-4689

RE: 34th America's Cup and James R. Herman Cruise Terminal and Northeast Wharf Plaza Projects

Dear President Chiu and Supervisors,

On January 24, 2012, the Board of Supervisors is scheduled to decide whether to accept the Planning Commission's certification of the Environmental Impact Report (EIR) for the proposed the 34th America's Cup (AC34) or remand it back to the Planning Commission. On behalf of the Dolphin Club and South End Rowing Club (collectively, the "Clubs"), we respectfully submit our joint comments on the EIR for the Board's consideration. These comments reflect the official position of the Clubs; individual members may have views that do not reflect this position.

At the outset, we would like to reiterate our general support for the AC34. We have repeatedly maintained that AC34 has the potential to transform San Francisco and the waterfront in an enormously positive way. We are excited to be part of this historic event.

The Clubs have existed since the 1870s, have approximately 2,000 members and are open to the public. We have been located in Aquatic Park for more than a century and see ourselves as stewards of both Aquatic Park and SF Bay. In that capacity, our Clubs have health and safety concerns over certain elements of the EIR, which, on balance, appear to be rather ancillary to the overall success of the event.

Video Barge in Aquatic Park. The Clubs have great concern over the proposed video barge in Aquatic Park. The proposed barge is massive: approximately 140 feet

Hon. David Chiu and Members of the Board of Supervisors AC34 – South End Rowing Club and Dolphin Club Comments January 11, 2012
Page 2 of 3

with a screen dimension of approximately 44 feet by 22 feet. The video barge is to be powered by a diesel generator. The Club's concerns relate to:

- The video barge's mooring- which would stir up potentially toxic sediment on the Bay floor in Aquatic Park. The massive screen also has the effect of a sail which could tip over or even break in a high wind, presenting a safety hazard to swimmers.
- Containment strategies for any spills in fueling the generator – these would have direct localized impact on our swimming area. We all know the extent to which recreational activities in the Bay can be affected by oil spills and other toxic events.
- Noise abatement strategies – there is no discussion as to decibel levels and periods of operation.

The EIR glosses over these concerns by stating: "the EIR does not identify any significant environmental impacts associated with the temporary placement of the AC34 video barge and exhibition boats in Aquatic Park" (page 12.16--7).

Boat Traffic and Management. The Clubs are concerned by an anticipated large increase in boat traffic in and around Aquatic Park. Boats represent an immediate safety risk to swimmers. The more boats, the greater the risk. The EIR states (page 12.10--29), without any apparent basis, that "the number of recreational boats in the vicinity of Hyde Street Pier

and Municipal Pier and the nature of their activities would be expected to be similar to what occurs under existing conditions during Fleet Week or other major boating events on the Bay . . . Therefore, the increase in boating activities associated with the AC34 project would not result in substantial changes compared to existing conditions . . . No additional mitigation measures are warranted."

Fleet Week boat traffic presents a huge safety risk to swimmers. The impact, however, is essentially on two days. The sailing events in 2012 and 2013 span several weeks each. The EIR ignores the fact that there has never been a "major boating event" in the Bay as major as AC34, nor has any boating event ever proposed to make Aquatic Park an official viewing area and center of activities.

Other Impacts on Aquatic Park. The EIR contains a misleadingly named section entitled "Impacts on Aquatic Park" (page 12.10--28). In fact, that section does not address impacts on the Cove at all; rather it focuses on Hyde Street Pier and Muni Pier, and concludes that as to the former, NPS staff will control access; and as to the latter, it will be closed. This section continues (on page 12.10--29) to refer to the temporary nature of the various mooring installations in Aquatic Park. It incorrectly states that Table 3--11, page 3--80 (of the Draft EIR) covers temporary installations in Aquatic Park. In fact, this Table does not address Aquatic Park at all.

Hon. David Chiu and Members of the Board of Supervisors AC34 – South End Rowing Club and Dolphin Club Comments January 11, 2012
Page 3 of 3

Ultimately, the EIR simply asserts that there will be "no substantial changes" in Aquatic Park (page 12.10--29). This position is incredulous given the context of installing a massive, diesel-generated video barge.

The EIR identifies a "clear space" that would enable safe swimming around the inner circumference of Aquatic Park. The "clear zone", however, is not a safety improvement. The rationale in the EIR seems to be as follows: "Currently, most Aquatic Park swimmers . . . swim within the cove on either side of marker buoys installed roughly parallel to a section of the beach." (page 12.16--5) In fact, swimmers, kayakers, and rowers swim in all directions in Aquatic Park, depending on the tides, water conditions and weather. While the clear space presumably will be demarcated for swimmers, the concept (as shown in Figure 11--10) has two significant flaws:

- (a) There are no designated boat ingress/egress channels, which potentially enables boats to cross the so-called safe zone with impunity at both openings to the Cove (between Muni Pier and the west end of the breakwater, and between the breakwater and Hyde Street Pier);
- (b) At low tide, it effectively pushes swimmers onto shoreline rocks and exposes swimmers to underwater hazards adjacent to the Sea Scout boathouse in the Cove.

The Clubs would embrace the opportunity to work with the National Park Service and other agencies in crafting an appropriate boat management plan in and around Aquatic Park. However,

we have yet to be provided with any meaningful analysis to allay our concerns over the proposed video barge.

We respectfully request that the Board either (1) approve the EIR if and only if the Project Description is amended to remove the video barge element, or (2) remand the EIR back to the Planning Commission to require additional analysis of the environmental impacts that have not been adequately analyzed or mitigated in the EIR.

Very truly yours,

Patrick Allen
President
South End Rowing Club

CC: Bill Wycko, Environmental Review Officer

Reuben Hechanova President
Dolphin Club

January 7, 2012

Angela Calvillo
Clerk of the Board
Room 244
City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

File 111358
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City Atty. C page
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BOARD OF SUPERVISORS
SAN FRANCISCO
2012 JAN 10 AM 10:48
BY Ak

RE: File No. 111358 Certification of a Final Environmental Impact Report identified as
Planning Case No 2010.0493E aka America's Cup 34

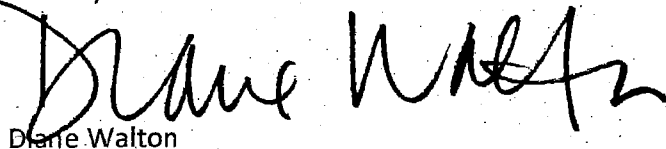
The Planning Commission has forwarded you an inadequate Environmental Impact Report, which you will be considering on January 24, 2012. Many issues were raised; the responses were certainly too few, and occasionally perhaps even dismissive. I am sure that others will detail the inadequacies.

At the least, I recommend that you return the Certification to the Planning Commission for additional work, noting the lack of adequate consideration of the impacts on water quality.

The temporariness of the Event, given the length of time on the clock, on the Bay, in 2012 and 2013 for the Races, is somehow found to relieve us of our stewardship responsibilities to the Bay. I could not disagree more.

I urge you to find your way both to be stewards of the Bay and to welcome America's Cup 34. From a far lesser height, I will do the same.

Thank you.

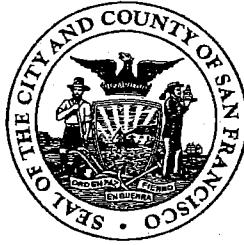


Diane Walton

1410 Taylor Street
San Francisco, CA 94133

walton. 415.244.6264.

BOARD of SUPERVISORS



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

SECOND NOTICE OF PUBLIC HEARING

BOARD OF SUPERVISORS OF THE CITY AND COUNTY OF SAN FRANCISCO

NOTICE IS HEREBY GIVEN THAT the Board of Supervisors of the City and County of San Francisco will hold a public hearing to consider the following proposal and said public hearing will be held as follows, at which time all interested parties may attend and be heard:

Date: Tuesday, January 24, 2012

Time: 4:00 p.m.

Location: Legislative Chamber, Room 250 located at City Hall, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102

Subject: File No. 111358. Hearing of persons interested in or objecting to the Planning Commission's decision, dated December 15, 2011, Certification of a Final Environmental Impact Report identified as Planning Case No. 2010.0493E, through its Motion No. 18514 for a proposed project involving America's Cup Sailing Races in the Summer/Fall of 2012 and 2013, including various waterfront venues, and a proposed project involving construction of the James R. Herman Cruise Terminal and Northeast Wharf Plaza at Piers 27-29. (District 3) (Appellants: Keith G. Wagner on behalf of San Francisco Tomorrow, Golden Gate Audubon Society, Waterfront Watch, and Telegraph Hill Dwellers, Filed December 19, 2011; Rebecca Evans on behalf of the San Francisco Group of the Sierra Club, Filed January 4, 2012).

Note: A second appeal was filed, therefore, the first appeal filed on December 19, 2011, has been continued to consolidate with this second appeal filed on January 4, 2012.

Pursuant to Government Code Section 65009, notice is hereby given, if you challenge, in court, the matter described above, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the Board of Supervisors at, or prior to, the public hearing.

In accordance with Section 67.7-1 of the San Francisco Administrative Code, persons who are unable to attend the hearing on these matters may submit written comments to the City prior to the time the hearing begins. These comments will be made a part of the official public records in these matters, and shall be brought to the attention of the Board of Supervisors. Written comments should be addressed to Angela Calvillo, Clerk of the Board, Room 244, City Hall, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102. Information relating to this matter is available in the Office of the Clerk of the Board and agenda information will be available for public review on Thursday, January 19, 2012.

A handwritten signature in black ink, appearing to read "Angela Calvillo".

Angela Calvillo
Clerk of the Board

MAILED/POSTED: January 13, 2012



BOS-11
City Atty-1

SAN FRANCISCO GROUP
85 Second Street, Second Floor San Francisco CA 94105-3441

January 4, 2012

Board President David Chiu
And Members of the Board of Supervisors
c/o Ms. Angela Calvillo
Clerk of the Board of Supervisors
City & County of San Francisco
1 Dr. Carlton B. Goodlett Place
Room 244
San Francisco, CA 94102-4689

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2012 JAN -4 PM 2:57

Re: Appeal of Planning Commission EIR Certification
34th America's Cup and James R. Herman Cruise Terminal and Northeast Wharf Plaza
Projects (Case No. 2010-0493E)

Dear President Chiu and Supervisors:

On behalf of the San Francisco Group of the Sierra Club, I hereby appeal the Planning Commission's certification of the Environmental Impact Report (EIR) for the proposed 34th America's Cup and James R. Herman Cruise Terminal and Northeast Wharf Plaza Projects. A copy of the Planning Commission's motion adopted on December 15, 2011 is attached. Further documentation in support of this appeal will follow prior to the Board hearing.

The Sierra Club is particularly concerned with the EIR's failure to perform a quantitative analysis of bay sediment in areas where dredging and installation of moorings will occur. Without this information, the potentially significant impacts to water quality from the project's extensive dredging activities cannot be assessed. Specifically, the EIR failed to analyze the water pollution impacts from dredging to install the JumboTron planned for the waters of Aquatic Park -- as well as air pollution and possible diesel fuel leaks from the operation of the JumboTron -- and the resulting impacts on the regular recreational users of this waterfront treasure.

The EIR further fails to adequately respond to the majority of the comments submitted. For example, the EIR fails to adequately address and mitigate transportation/traffic impacts on adjacent neighborhoods. The Planning Commission's Motion of Findings lists transportation/traffic impacts but does not adequately mitigate them. As another example, an analysis of the cumulative noise of event helicopters is missing.

The Sierra Club is seriously concerned with the EIR's failure to fully and adequately identify and mitigate the impacts of the project. The EIR does not contain adequate detail as to how the EIR's mitigation measures will be implemented, monitored and enforced. Absent a commitment of adequate financial resources for implementation and monitoring, such measures are not feasible.

Thank you for your consideration of this appeal.

Sincerely,

A handwritten signature in cursive script, appearing to read "Rebecca Evans".

Rebecca Evans
Chair, San Francisco Group

Cc: Bill Wycko, Environmental Review Officer



SAN FRANCISCO PLANNING DEPARTMENT

Planning Commission Motion 18514

HEARING DATE: December 15, 2011

Hearing Date: December 15, 2011
Case No.: 2010.0493E
Project Address: various
Zoning: various
Block/Lot: various
Project Sponsors: San Francisco Office of Economic and Workforce Development
1 Dr. Carlton Goodlett Place
San Francisco, CA 94102

Port of San Francisco
Pier 1
San Francisco, CA 94111

34th America's Cup Event Authority
160 Pacific Avenue
San Francisco, CA 94111

Staff Contact: Joy Navarrete – (415) 575-9040
Joy.Navarrete@sfgov.org

1650 Mission St.
Suite 400
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CA 94103-2479

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415.558.6378

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Planning
Information:
415.558.6377

ADOPTING FINDINGS RELATED TO THE CERTIFICATION OF A FINAL ENVIRONMENTAL IMPACT REPORT FOR (1) A PROPOSED PROJECT INVOLVING AMERICA'S CUP SAILING RACES IN THE SUMMER / FALL OF 2012 AND 2013, INCLUDING VARIOUS WATERFRONT VENUES, AND (2) A PROPOSED PROJECT INVOLVING CONSTRUCTION OF THE JAMES R. HERMAN CRUISE TERMINAL AND NORTHEAST WHARF PLAZA AT PIERS 27-29.

MOVED, that the San Francisco Planning Commission (hereinafter "Commission") hereby CERTIFIES the Final Environmental Impact Report identified as Case No. 2010.0493E, (hereinafter "Project"), based upon the following findings:

1. The City and County of San Francisco, acting through the Planning Department (hereinafter "Department") fulfilled all procedural requirements of the California Environmental Quality Act (Cal. Pub. Res. Code Section 21000 *et seq.*, hereinafter "CEQA"), the State CEQA Guidelines (Cal. Admin. Code Title 14, Section 15000 *et seq.*, (hereinafter "CEQA Guidelines") and Chapter 31 of the San Francisco Administrative Code (hereinafter "Chapter 31").
 - A. The Department determined that an Environmental Impact Report (hereinafter "EIR") was required and provided public notice of that determination by publication in a newspaper of general circulation on February 9, 2011.

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- B. On July 11, 2011, the Department published the Draft Environmental Impact Report (hereinafter "DEIR") and provided public notice in a newspaper of general circulation of the availability of the DEIR for public review and comment and of the date and time of the Planning Commission public hearing on the DEIR; this notice was mailed to the Department's list of persons requesting such notice.
 - C. Notices of availability of the DEIR and of the date and time of the public hearing were posted near the project site by Department staff on July 11, 2011.
 - D. On July 11, 2011, copies of the DEIR were mailed or otherwise delivered to a list of persons requesting it, to those noted on the distribution list in the DEIR, to adjacent property owners, and to government agencies, the latter both directly and through the State Clearinghouse.
 - E. Notice of Completion was filed with the State Secretary of Resources via the State Clearinghouse on July 11, 2011.
- 2. The Commission held a duly advertised public hearing on said DEIR on August 11, 2011, at which opportunity for public comment was given, and public comment was received on the DEIR. The period for acceptance of written comments ended on August 25, 2011.
 - 3. The Department prepared responses to comments on environmental issues received at the public hearing and in writing during the 45-day public review period for the DEIR, prepared revisions to the text of the DEIR in response to comments received or based on additional information that became available during the public review period, and corrected errors in the DEIR. This material was presented in a Draft Comments and Responses document, published on December 1, 2011, distributed to the Commission and all parties who commented on the DEIR, and made available to others upon request at the Department.
 - 4. A Final Environmental Impact Report (hereinafter "FEIR") has been prepared by the Department, consisting of the DEIR, any consultations and comments received during the review process, any additional information that became available, and the Comments and Responses document all as required by law.
 - 5. Project EIR files have been made available for review by the Commission and the public. These files are available for public review at the Department at 1650 Mission Street, Suite 400, and are part of the record before the Commission.
 - 6. On December 15, 2011, the Commission reviewed and considered the FEIR and hereby does find that the contents of said report and the procedures through which the FEIR was prepared, publicized, and reviewed comply with the provisions of CEQA, the CEQA Guidelines, and Chapter 31 of the San Francisco Administrative Code.
 - 7. The Planning Commission hereby does find that the FEIR concerning File No. 2010.0493E, the 34th America's Cup & James R Herman Cruise Terminal & Northeast Wharf Plaza reflects the independent judgment and analysis of the City and County of San Francisco, is

adequate, accurate and objective, and that the Comments and Responses document contains no significant revisions to the DEIR, and hereby does CERTIFY THE COMPLETION of said FEIR in compliance with CEQA and the CEQA Guidelines.

8. The Commission, in certifying the completion of said FEIR, hereby does find that the 34th America's Cup project described in the EIR:

A. Will have a significant project-specific effect on the environment by:

- a. reducing levels of service at 18 signalized and unsignalized intersections;
- b. impacting other signalized and unsignalized intersections;
- c. resulting in a significant impact on traffic operations;
- d. exceeding available transit capacity of Muni lines, PresidiGo shuttle service, AC Transit lines, BART lines, WETA lines, Golden Gate Transit bus and ferry lines, Blue & Gold ferry lines, Caltrain service, and SamTrans lines;
- e. impacting transit operations related to additional congestion resulting from the project;
- f. disrupting regular scheduled ferry operations;
- g. resulting in potentially significant impacts to the transportation network in combination with other special events occurring simultaneously in San Francisco;
- h. resulting in exposure of persons to or generation of noise levels in excess of standards established in the *San Francisco General Plan* or San Francisco Noise Ordinance;
- i. resulting in a temporary and periodic increase in ambient noise levels in the project vicinity above levels existing without the project associated with increased traffic levels on weekends;
- j. resulting in construction emission of criteria pollutants and precursors that would violate an air quality standard or contribute substantially to an existing or projected air quality violation;
- k. resulting in exposure of sensitive receptors to substantial concentrations of toxic air contaminants or respirable particulate matter (PM2.5) associated with construction;
- l. violating an air quality standard or contribute substantially to an existing or projected air quality violation associated with operations;

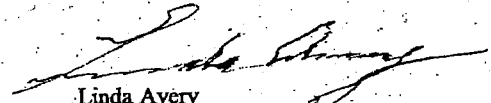
- m. exposing sensitive receptors to substantial concentrations of toxic air contaminants or respirable particulate matter (PM2.5) associated with operations.
- B. Potential long-term development as a result of the AC34 project will have a significant conceptual effect on the environment, to be further analyzed at a project-specific level when proposed, by:
- a. conflicting with BCDC policies adopted for the purpose of mitigating environmental effects;
 - b. resulting in redevelopment of existing Port properties at Piers 30-32, which could result in a significant impact to cultural resources;
 - c. resulting in significant traffic and transit impacts;
 - d. resulting in construction and operational air pollutant emissions;
- C. Will have a significant cumulative effect on the environment in that it would result in significant adverse cumulative impacts on air quality.
9. The Commission, in certifying the completion of said FEIR, hereby does find that the James R. Herman Cruise Terminal and Northeast Wharf Plaza project described in the EIR.
- A. Will have a significant project-specific effect on the environment by:
- a. contributing to existing exceedance of capacity utilization standard on the F-Market & Wharves historic streetcar line;
 - b. resulting in emission of criteria pollutants and precursors associated with construction that would violate an air quality standard or contribute substantially to an existing or projected air quality violation
- B. Will have a significant cumulative effect on the environment in that it would:
- a. result in significant project and cumulative impacts at the intersections of The Embarcadero/ Broadway, The Embarcadero/ Washington, The Embarcadero/ Mission, The Embarcadero/ Howard;
 - b. result in significant project and cumulative impacts on the F-Market & Wharves historic streetcar;
 - c. result in significant and unavoidable adverse cumulative noise impacts;
 - d. result in significant adverse cumulative impacts on air quality

Motion No. 18514.
Hearing Date: December 15, 2011

CASE NO. 2010.0493E

11. The Planning Commission reviewed and considered the information contained in the FEIR.

I hereby certify that the foregoing Motion was ADOPTED by the Planning Commission at its regular meeting of December 15, 2011.



Linda Avery
Commission Secretary

AYES: 5
NOES: 0
ABSENT: Fong & Sugaya were recused
ADOPTED: December 15, 2011



SAN FRANCISCO PLANNING DEPARTMENT

APPEAL OF EIR CERTIFICATION

The 34th America's Cup & James R. Herman Cruise Terminal and Northeast Wharf Plaza Projects

DATE: December 30, 2011

TO: President David Chiu and Members of the Board of Supervisors

FROM: Bill Wycko, Environmental Review Officer -- (415) 575-9048
Joy Navarrete, Case Planner -- (415) 575-9040

RE: File No. 111358, Planning Department Case No. 2010.0493E
Appeal of Certification of the Environmental Impact Report on the
34th America's Cup and James R. Herman Cruise Terminal and
Northeast Wharf Plaza

PROJECT SPONSORS: 34th America's Cup Project: America's Cup Event Authority and City
and County of San Francisco
James R. Herman Cruise Terminal and Northeast Wharf Plaza
Project: Port of San Francisco

APPELLANT: Keith G. Wagner of Lippe Gaffney Wagner LLP on behalf of San
Francisco Tomorrow, Golden Gate Audubon Society, Waterfront
Watch, and Telegraph Hill Dwellers

HEARING DATE: January 10, 2012

ATTACHMENTS: A. Planning Commission EIR Certification Motion No. 18514
B. Appeal Letter (letter dated December 16, 2011 from Keith G.
Wagner, Lippe Gaffney and Wagner, LLP)

INTRODUCTION

This memorandum and the attached documents are a response to the letter of appeal to the Board of Supervisors ("Board") regarding the Planning Commission's ("Commission") certification of a Final Environmental Impact Report ("FEIR") under the California Environmental Quality Act ("CEQA") for the proposed 34th America's Cup and James R. Herman Cruise Terminal and Northeast Wharf Plaza Projects ("Projects"), Case No. 2010.0493E. The FEIR was certified on December 15, 2011 under San Francisco Planning Commission Motion No. 18514, which is presented in Attachment A to this memorandum. The appeal to the Board was filed on December 19, 2011 by Keith G. Wagner of Lippe Gaffney Wagner LLP on behalf of San Francisco Tomorrow, Golden Gate Audubon Society, Waterfront Watch, and Telegraph Hill Dwellers (collectively, "Appellant" and individually, "Appellant organizations"). The Appeal Letter is included as Attachment B to this memorandum.

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The FEIR consists of the Draft EIR ("DEIR") published on July 11, 2011 and the Comments and Responses document published on December 1, 2011. Copies of the FEIR are being provided to the Board under separate cover to the Clerk of the Board on December 30, 2011.

The decision before the Board is whether to uphold the Planning Commission's decision to certify the FEIR and deny the appeal, or to overturn the Commission's decision to certify the FEIR and return the Projects to the Planning Department for additional environmental review.

PROJECT DESCRIPTION

The 34th America's Cup and James R. Herman Cruise Terminal/Northeast Wharf Plaza are two related but independent projects, with overlapping project locations and project construction activities and interrelated operational schedules.

The 34th America's Cup Project

The proposed 34th America's Cup ("AC34" or "AC34 Project") is a series of international sailing races and related events to be hosted by the City and County of San Francisco ("CCSF") in summer-fall 2012 and summer-fall 2013. The CCSF and the America's Cup Event Authority ("Event Authority") are the project sponsors for the AC34 Project. The AC34 race events would be held in central San Francisco Bay ("Bay"). In 2012, the race area would be primarily along San Francisco's northern shoreline between Pier 27 on the east and the Golden Gate Bridge on the west and south of Alcatraz. In 2013, the race area would be slightly larger, extending between Pier 27 and a short distance west of the Golden Gate Bridge, and about 1/2-mile north of Alcatraz. Access to shipping lanes on the Bay would be maintained throughout the duration of the races.

A number of project sites, or venues, would be required to accommodate all aspects of AC34 facilities and services needed to support the events. The venues would include team bases and operations, support space, media operations, hospitality services, sponsored commercial space, and entertainment and spectator areas. At most locations, the AC34 Project would require construction of only temporary facilities and installations to be removed after the 2012 and/or 2013 events, although at some locations permanent improvements (such as seismic upgrades, fire, safety, and access improvements; roof, deck, and wall repairs; and dredging) would be needed.

Several of the venues proposed for AC34 events are areas and facilities managed by the Port of San Francisco ("Port"), including certain piers (from north to south: Pier 29 1/2, Piers 27-29, Pier 23, Pier 19 1/2, Pier 19, Pier 9, Pier 26, Pier 28, Piers 30-32, and Pier 80), water basins/water areas (from north to south: Piers 29-31 water area, Northeast Wharf Open Water Basin between Piers 19 and 27, Pier 9 water area, portion of Rincon Point Open Water Basin south of Pier 14 and water area north of Pier 14, Piers 26-28 water area, Piers 28-30 water area, and the Brannan Street Wharf Open Water Basin from Pier 32 to Pier 36), and Seawall Lot 330. Other venues proposed for spectator- or sponsor-related activities are under the jurisdiction of other city, state, or federal agencies; these venues include Crissy Field, Crissy Field East/Marina Green West, Marina Green, Fort Mason, Aquatic Park, Alcatraz Island, Fort Baker Pier at Cavallo Point (near Sausalito in Marin County), San Francisco Civic Center, Union Square, and Justin Herman Plaza. The America's Cup Village, the primary programmed spectator site and a center of

operations for the AC34 events, would be located at Marina Green in 2012 and at Piers 27-29 in 2013. A helipad located on the southeast corner of Treasure Island would be used to serve as a temporary staging location for broadcasting and media operations.

It is expected that most existing tenants currently leasing and occupying Port facilities that would be used for AC34 venues would be displaced prior to the AC34 2012 event consistent with the terms of their existing leases. Current uses of other proposed venue sites are open space and recreation.

As part of the AC34 Project, the project sponsors have developed a number of event-related implementation plans to support the AC34 2012 and 2013 events, including plans that address transportation management, waste management, parks event operations, sustainability, environmental and safety requirements, water and air traffic management, public safety, youth involvement and workforce development.

In addition, the AC34 Project would include temporary public access improvements for use during the AC34 events along The Embarcadero Promenade and at the Pier 43 Promenade as well as permanent public access improvements for use after the AC34 events at Pier 19, Pier 23, and in the open space at the intersection of Third Street and Cargo Way in the southern waterfront.

As part of the proposed AC34 Project, the Port or the Event Authority have initiated a request to amend the San Francisco Bay Conservation and Development Commission ("BCDC") *San Francisco Waterfront Special Area Plan* ("SAP") to permit temporary berthing at Brannan Street Wharf, Rincon Point, Broadway, and Northeast Wharf Open Water Basins during the AC34 events. The amendments would also include a determination of public benefits that could trigger fill removal at a number of sites along the Port's waterfront properties (including various dilapidated piers, wharfs, and remnant pilings) in the context of the proposed amendments to the SAP for the AC34 Project. The BCDC will hear the amendments after the resolution of this appeal if the certification of the EIR is upheld. The Event Authority recently indicated it may revise its application to limit berthing at the Rincon Point Open Water Basin.

The terms of the AC34 Project are based on the 34th America's Cup Host and Venue Agreement between the project sponsors. Under this agreement, the AC34 Project would also provide the Event Authority with certain conditional long-term development rights at selected Port facilities, including Piers 30-32, Pier 26, Pier 28, Pier 29, and Seawall Lot 330. In addition, long-term developments of permanent marinas may occur in the Brannan Street Wharf Open Water Basin between Pier 32 and the northern edge of the water area portion of the former Pier 38 lease premises, and at Pier 54. There are currently no specific development proposals for any of these sites, and any future development plans and uses allowed under the Host and Venue Agreement would be required to undergo separate environmental review for CEQA compliance.

James R. Herman Cruise Terminal and Northeast Wharf Plaza Project

The Port proposes to develop a new passenger cruise terminal at Piers 27-29 designed to meet modern ship and operational requirements of the cruise industry. Currently, the Port's primary cruise terminal is located at Pier 35, and the Pier 27 shed and berth serve as a secondary terminal when there are multiple cruise calls. Pier 35 has become increasingly constrained for accommodating modern cruise ship operations. Under the proposed Project, the Port would demolish the existing Pier 27 shed and construct a new facility which would become the primary cruise terminal; Pier 35 would be retained as a secondary terminal. The

proposed cruise terminal would be designed to better accommodate newer, larger ships holding larger numbers of passengers than are currently served at Pier 35. In concert with the cruise terminal facility, the Port also proposes to construct the Northeast Wharf Plaza, a public open space along the west end of Pier 27. Together, the proposed cruise terminal and Northeast Wharf Plaza are referred to as the Cruise Terminal Project.

The proposed cruise terminal structure would consist of two stories approximately 91,200 square feet in size and would occupy a footprint of approximately 46,100 square feet. A new cruise terminal building would be sited within the larger footprint of the Pier 27 shed, which would be demolished during construction. The cruise terminal building would contain a large baggage claim area; check-in and waiting/seating areas; Customs and Border Protection and other security offices, processing and screening facilities, storage, utilities, and other facilities.

Vehicular access to and from The Embarcadero would be provided at a new driveway located south of the Pier 29 shed. This access point would provide direct connection to the cruise facility's proposed ground transportation area located within the center of the triangular-shaped Piers 27-29. The approximately 3-acre ground transportation area would provide space for access, dropoff, and exiting by trucks, taxis, buses, and passenger vehicles. The proposed provisioning facilities, including an off-loading dock, and space for staging and security check, would be located east of the cruise terminal building. The proposed provisioning area and associated security fencing and vehicle circulation would be designed to allow public access to occur on the west side of Pier 29 on all days, regardless of whether a cruise ship is in port. When cruise ships are not in port, the cruise terminal facilities would be used to accommodate shared use such as conferences and public or private gatherings, and maritime-oriented events.

The Northeast Wharf Plaza would provide an approximately 2½-acre open space at the west end of Pier 27, fronting along The Embarcadero Promenade, and would be designed to serve as a major waterfront park resource to support passive recreational enjoyment and provide expansive public views of the Bay consistent with planning policies and objectives in Port and BCDC plans. The plaza design would integrate the historic Pier 29 Belt Line office building and proposed landscaping and restroom facilities. Hardscaping at the plaza would include pavers, concrete seating/steps, and planters. The multi-use recreational space would consist of a natural turf underlaid by a soil bed and base drain mat.

Construction of the Cruise Terminal Project would be carried out in two phases. Construction of Phase 1 would be timed to accommodate the AC34 Project, and would include demolition of the existing Pier 27 shed, a portion of the Pier 29 shed, and the Pier 27 annex building and construction of the cruise terminal core building and shell. The core building and shell would then be used for the AC34 events at Piers 27-29 during 2013. After the conclusion of the AC34 race events, the Port would implement Phase 2 of the construction, involving further construction and improvements to complete the Cruise Terminal Project, including completion of certain interior space and facilities within the cruise terminal building, installation of exterior maritime equipment, finishing of the ground transportation area, and construction of the Northeast Wharf Plaza.

The Port has applied for an amendment to the BCDC's SAP to build the proposed James R. Herman Cruise Terminal and the Northeast Wharf Plaza and to allow berthing of cruise vessels in the Northeast Wharf Open Water Basin. The amendment request was initiated by BCDC through adoption of a brief descriptive

notice in May 2011. To approve the proposed amendment to the SAP, BCDC must determine that the amendment would retain a balance between the public benefits and private development opportunities. In addition to the components of the Cruise Terminal Project described above, the proposed package of public benefits include phased public access improvements and new openings to view the Bay.

ENVIRONMENTAL REVIEW PROCESS FOR THE PROJECTS

Environmental Review Application

On December 31, 2010, the Event Authority, CCSF, and Port initiated the environmental review process with the Planning Department regarding CEQA requirements for the Projects.

Notice of Preparation of an Environmental Impact Report

The Planning Department determined that an Environmental Impact Report ("EIR") on both of the Projects was required, and on February 9, 2011, published a Notice of Preparation of an EIR and Notice of Public Scoping Meetings. The Planning Department provided public notice thereof by publication in newspapers of general circulation to solicit comments regarding the content of the combined EIR to be prepared for the Projects. The Planning Department held one public scoping meeting on February 23, 2011 at San Francisco City Hall and a second public scoping meeting on February 24, 2011 at the Port, and accepted written comments through March 11, 2011 to receive public input regarding the proposed scope of the EIR analysis.

Draft Environmental Impact Report

The Planning Department published the DEIR on July 11, 2011, and copies of the DEIR and the Notice of Availability of the DEIR were mailed or otherwise delivered to a list of persons requesting it, to adjacent property owners, and to affected governmental agencies. The Planning Department accepted public comments on the DEIR for a 45-day period from July 11 through August 25, 2011. During this public review period, the Planning Department duly advertised the date and location of a public hearing on the DEIR, held on August 11, 2011 at San Francisco City Hall. Following the close of the public review and comment period, the Planning Department prepared written responses that addressed all of the substantive written and oral comments on the DEIR, and the EIR was revised accordingly.

Comments and Responses Document

The Planning Department prepared responses to comments on environmental issues received at the public hearings and in writing during the 45-day public review period for the DEIR, prepared revisions to the text of the DEIR in response to comments received or based on additional information that became available since publication of the DEIR, and corrected errors in the DEIR. This material was presented in a Comments and Responses document, published on December 1, 2011 and mailed or otherwise delivered to all parties who commented on the DEIR and other interested parties. The Planning Department also provided the Comments and Responses document to others upon request. The Comments and Responses document did not substantially revise the DEIR, and therefore no recirculation was required under CEQA Guidelines Section 15073.3.

Environmental Impact Report Certification

On December 15, 2011, the Planning Commission reviewed and considered the FEIR, found that the contents of said report and the procedures through which the FEIR was prepared, publicized, and reviewed comply with the provisions of CEQA, the CEQA Guidelines, and Chapter 31 of the San Francisco Administrative Code, and certified the FEIR as adequate, accurate and objective and in compliance with CEQA and the CEQA Guidelines under Planning Commission Motion No. 18514 (see Attachment A). The Planning Commission certified the FEIR by a unanimous vote of 5 to 0.

CEQA GUIDELINES

The FEIR has been prepared in accordance with CEQA, as established under the California Public Resources Code Sections 21000 et seq., the CEQA Guidelines (a part of the California Code of Regulations), and local CEQA procedures under Chapter 31 of the San Francisco Administrative Code. The purpose of the EIR is to disclose any potential impacts on the physical environment resulting from implementation of the proposed Projects and allow a time for public review and comment, before decision makers decide to approve or deny the Projects.

APPELLANT ISSUES AND PLANNING DEPARTMENT RESPONSES

The concerns raised in the Appeal Letter (see Attachment B) include a brief statement of the grounds for appeal and indicate that further documentation in support of this appeal will be submitted at a later date prior to the appeal hearing. The grounds for appeal cited in the Appeal Letter are summarized and followed by the Planning Department's responses. Responses to any additional issues submitted subsequent to the Appeal Letter, if any, will be addressed in a separate memorandum as necessary. A SFGate.com article was submitted along with the Appeal Letter, however, the Appeal Letter does not reference this article, nor does the article raise any new issues. For completeness, this article is also included in Attachment B, although no response to this article is required.

Issue #1. The Appeal Letter states the following: "The subject EIR is not procedurally or substantively adequate, accurate, or objective. The EIR fails to fully and adequately identify and mitigate the impacts of the projects. The Final EIR, in particular fails to adequately respond to the majority of the comments submitted by our clients. With particular regard to the FEIR, the document does not contain adequate detail in response to public comment as to how the DEIR's mitigation measures will be implemented, monitored, and enforced."

Response #1. The environmental process for the Projects was conducted in an adequate, accurate, and objective manner in full compliance with CEQA requirements. The FEIR contains comprehensive identification of impacts and mitigation measures and comprehensive responses to comments submitted by the Appellant, including description of how mitigation measures would be implemented.

Adequacy, Accuracy, and Objectivity of the EIR. The FEIR has been prepared in compliance with CEQA (California Public Resources Code, Sections 21000 et seq.), the CEQA Guidelines (Title 14, California Code of Regulations, Chapter 3, Guidelines for Implementation of the California Environmental Quality Act), and Chapter 31 of the San Francisco Administrative Code. This includes compliance with all aspects of the environmental review process for the Projects as required under CEQA Guidelines Article 7, EIR

Process (Sections 15080 to 15097) and Article 8, Time Limits (Sections 15100 to 15112). Furthermore, the contents of the FEIR are in full compliance with CEQA Guidelines Article 9, Contents of Environmental Impact Reports (Sections 15120 to 15132) and Article 10, Considerations in Preparing EIRs and Negative Declarations (Sections 15140 to 15151). In particular, consistent with CEQA Guidelines Section 15151, the FEIR was prepared with sufficient degree of analysis to provide decision makers with information which enables them to make an informed decision in consideration of the environmental consequences. Environmental professionals with qualifications and experience in the appropriate technical fields have prepared the EIR in accordance with accepted professional practices and under the oversight of the Planning Department. Scientific literature, public plans, policies, and regulations, and other information that were used in the environmental analysis are referenced and cited in the EIR and are available for public review at the Planning Department.

Identification of Impacts and Mitigation Measures. Chapter 5 of the EIR, as augmented in Chapter 11, identifies the environmental setting, impacts and mitigation measures of the Projects. The EIR addresses the full range of environmental topics identified in CEQA Guidelines Appendix G as well as additional topics required by the San Francisco Planning Department as provided for under Chapter 31 of the San Francisco Administrative Code. In total, the EIR presents 277 separate impact statements and discussions for the two Projects under the following 18 resource areas: Land Use, Aesthetics, Population and Housing, Cultural and Paleontological Resources, Transportation and Circulation, Noise and Vibration, Air Quality, Greenhouse Gas Emissions, Wind and Shadow, Recreation, Utilities and Service Systems, Public Services, Biological Resources (Upland and Marine), Geology and Soils, Hydrology and Water Quality, Hazards and Hazardous Materials, Mineral and Energy Resources, and Agriculture and Forest Resources. For the impacts determined to be significant or potentially significant, the EIR identifies 61 distinct project-specific mitigation measures for the AC34 Project events and facilities, 14 broad mitigation measures for long-term development rights impacts, and 19 distinct mitigation measures for the Cruise Terminal Project.

Consideration of Comments on the Notice of Preparation and Responses to Comments on DEIR. To initiate the EIR process, the Planning Department issued a Notice of Preparation to governmental agencies and organizations and persons interested in the Projects and conducted a 30-day public scoping period from February 9 through March 11, 2011, which included two public scoping meetings during this period. The DEIR acknowledged and addressed comments received during the public scoping period, as described in EIR Chapter 2, Table 2-1 (pages 2-5 to 2-9). During the public scoping period, the Planning Department received formal comments from the Telegraph Hill Dwellers (letter dated March 11, 2011) and San Francisco Tomorrow (oral comments presented at the scoping meeting on February 24, 2011). The Planning Department did not receive comments from Golden Gate Audubon Society or Waterfront Watch during the scoping period.¹ All comments received during the public scoping period, including those from the Appellant organizations, were considered in determining the scope of the EIR.

¹ During the scoping period, the Planning Department received a letter from the Environmental Council dated March 11, 2011, which included three of the four organizations that comprise the Appellant (i.e., Golden Gate Audubon Society, San Francisco Tomorrow, and Telegraph Hill Dwellers). This letter from the Environmental Council represented a total of 18 organizations, of which 3 are Appellant organizations. Comments from the Environmental Council letter of March 11, 2011 were considered in determining the scope of the EIR.

Further, as described in EIR, Chapter 12, Section 12.3, Response INT-4 (page 12.3-7), the Planning Department engaged in additional public outreach during preparation of the DEIR, subsequent to the scoping period and prior to DEIR publication. Two of the Appellant organizations that were identified as members of the Environmental Council — San Francisco Tomorrow and Telegraph Hill Dwellers — participated in review and comment of administrative draft sections of the EIR, and the Planning Department integrated the input from this review process into the DEIR as appropriate.

The publication of the DEIR on July 11, 2011 represented the start of a 45-day public review period ending on August 25, 2011, which included a public hearing to receive oral comments on the DEIR that was held before the Planning Commission on August 11, 2011. During this public review period, the Planning Department received written and oral comments on the DEIR, and the Comments and Responses document, published on December 1, 2011, provides detailed responses to comments submitted on the DEIR. Chapter 10 of the Comments and Responses document lists all persons submitting comments on the DEIR, and Chapter 12 presents the responses to all substantive comments. Comments on the DEIR were received from the Appellants (i.e., San Francisco Tomorrow, Golden Gate Audubon Society, Waterfront Watch, and Telegraph Hill Dwellers), as listed in Table 10-2 (pages 10-4 to 10-5), and these comments are reproduced in their entirety in EIR Volume 7, Appendices COM and PH. The comments received from these organizations were individually coded and bracketed, as shown in the margins of each of the letters/public hearing transcript in the following locations in the EIR: public hearing comments on August 11, 2011 from San Francisco Tomorrow (coded as O-SFT) in Appendix PH, page PH-35; public hearing comments on August 11, 2011 from Golden Gate Audubon Society (coded as O-GGAS1) in Appendix PH, pages PH-27 to PH-28; comment letter dated August 25, 2011 from Golden Gate Audubon Society (coded as O-GGAS2) in Appendix COM, pages COM-214 to COM-218; comment letter dated August 25, 2011 from Waterfront Watch (coded as O-WW) in Appendix COM, pages COM-267 to COM-291; and public hearing comments on August 11, 2011 from Telegraph Hill Dwellers (coded as O-THD) in Appendix PH, pages PH-21 to PH-22.²

For each distinct comment, the topic codes shown in the margin of each comment letter or public hearing transcript corresponds to a comprehensive response in Chapter 12 that addresses that specific topic. The FEIR contains a complete response to all substantive comments on the DEIR, including those submitted by the Appellant — San Francisco Tomorrow, Golden Gate Audubon Society, Waterfront Watch, and Telegraph Hill Dwellers.

Implementation, Monitoring, and Enforcement of Mitigation Measures. EIR Chapter 12, Section 12.6, Impact Overview, Response IO-4 (pages 12.6-12 to 12.6-18), specifically responds to comments concerning the implementation and enforcement of mitigation measures identified in the EIR. As stated in this response, the EIR identifies mitigation measures for each impact determined to be significant or potentially significant based on the significance criteria specific to each resource topic listed in each resource

² During the DEIR public review period, the Planning Department received a letter from the Environmental Council dated August 25, 2011 (coded as O-ACEC), which included two of the four organizations that comprise the Appellant (i.e., San Francisco Tomorrow and Telegraph Hill Dwellers), and shown in Appendix COM, pages COM-103 to COM-182. It should be noted that the August 25, 2011 letter from the Environmental Council represented different organizations than those listed in their March 11, 2011 letter; of the 17 organizations listed, only 13 organizations were the same. One Appellant organization, Golden Gate Audubon Society, that was listed as a member of the Environmental Council in their letter dated March 11, 2011 was not listed as a member in the August 25, 2011 letter. The FEIR also responded to the comments from the Environmental Council.

sub-section of Chapter 5. Consistent with CEQA Guidelines Section 15126.4, the EIR describes feasible measures that could minimize significant adverse impacts by avoiding or lessening the severity of the impact, as determined by the Planning Department. In accordance with CEQA Guidelines Section 15370, the mitigation measures either avoid an impact altogether or minimize the impact by limiting the degree or magnitude of an action or its implementation. During preparation of the EIR, the project sponsors for both the AC34 and Cruise Terminal Projects reviewed the mitigation measures identified in the EIR with respect to their ability and responsibility to implement the identified measures if the Projects were to be approved.

As described in the EIR (Chapter 2, Section 2.3.3, page 2-4), the CCSF and Port must consider the certified FEIR before making a decision to approve, disapprove, or modify the Projects. The formal process for considering the EIR includes the development of CEQA findings, which consist of facts and decisions regarding the project description and objectives, significant impacts, mitigation measures, and alternatives based on information presented in the EIR. An attachment to the CEQA findings, the Mitigation Monitoring and Reporting Program ("MMRP"), consists of all mitigation measures identified in the EIR and specifies responsible parties for implementing, monitoring, and reporting each measure in accordance CEQA Guidelines Section 15097. CEQA requires the adoption of findings (including the MMRP) prior to approval of a project for which a certified EIR identifies significant environmental effects. Therefore, adoption of the CEQA findings and project approval also represent a commitment by the project sponsors to include and implement all mitigation measures identified in the EIR as part of the Projects.

With regard to enforcement of mitigation measures, adoption of the MMRP as part of the CEQA findings in concert with project approval constitutes a commitment by the project sponsors to include and implement all mitigation measures identified in the EIR as part of the Projects. Mitigation measures are designed to be enforceable through permit conditions, agreements, or other legally binding instruments such as contracts with construction contractors. CEQA does not create new authority for agencies to carry out or enforce mitigation measures.

In parallel with the CEQA process, the project sponsors are currently working with regulatory agencies to secure the necessary permits and approvals, as identified in EIR Chapter 3, Section 3.7.1, pages 3-115 to 3-116, as updated in Chapter 11, Section 11.2.4, pages 11-12 to 11-15. Implementation of the AC34 Project may be subject to the permit conditions of the following federal, state, and regional agencies: United States Coast Guard, Federal Aviation Administration, United States Army Corps of Engineers, United States Fish and Wildlife Service, National Marine Fisheries Service, National Park Service, Presidio Trust, San Francisco Bay Conservation and Development Commission, California State Lands Commission, California Regional Water Quality Control Board, California Department of Fish and Game, State Historic Preservation Officer, and Bay Area Air Quality Management District. While permit conditions are not in and of themselves intended to serve as CEQA mitigation measures, in many cases the permit conditions are in fact the same as the EIR mitigation measures, though often with more specific details included in the permit conditions. Insofar as the CEQA mitigation measures are within the jurisdiction and enforcement authority of the permitting agencies, those measures would be fully enforceable through these federal, state, and regional agencies. In addition, the CCSF and Port maintain enforcement authority through contractual agreements (including lease and license agreements) over properties within their jurisdiction within their legal rights, including local zoning and related land use regulations.

Enforcement of all existing regulations and laws would be same as under existing conditions, regardless of the Projects; the effectiveness of the enforcement of existing regulations and laws is beyond the scope of the CEQA review process.

Issue #2. The Appeal Letter states the following: "The EIR certified by the Planning Commission has precluded meaningful public participation or ability of the Port Commission to render an informed decision about the 'whole' of the projects or their impacts. The EIR's inaccurate and incomplete description of the projects or their affected environment has, among other things, excluded a complete and informationally adequate study of impacts on adjacent neighborhoods. The EIR is also procedurally inadequate in refusing to disclose or analyze the cumulative impact of continuation of the America's Cup into future years or the long-term development triggered by the event, to the extent such impact might somehow be considered separate projects from the projects described or analyzed in the EIR."

Response #2. As part of the environmental review process for the Projects, the Planning Department conducted a robust public participation program for the Projects in compliance with CEQA. The EIR contains a complete and accurate project description, a description of the affected environment in sufficient detail to understand the impact analysis, and a thorough and complete analysis of impacts on adjacent neighborhoods. The EIR provides a comprehensive analysis of cumulative impacts that addresses impacts of reasonably foreseeable future projects (including potential long-term development rights provided for under the Host and Venue Agreement), consistent with CEQA requirements. Because continuation of the America's Cup into future years is considered speculative, this scenario is not included in the cumulative impact analysis.

Public Participation. As described above, the environmental review process for the Projects was completed as required under CEQA Guidelines Article 7, EIR Process (Sections 15080 to 15097), including preparation and distribution of a Notice of Preparation, early public consultation during the scoping period through formal scoping meetings, preparation and distribution of the DEIR for public review, and conduct of a public hearing on the DEIR. Further as described in EIR Chapter 12, Section 12.2, Response GEN-1 (pages 12.2-3 to 12.2-5), the project sponsors have conducted public outreach beyond that required under CEQA, including numerous meetings and workshops with public agencies; non-governmental organizations, and concerned citizens. Input and advice from public agencies, non-governmental organizations, and concerned citizens have guided and informed many aspects of the EIR as well as development and design of the Projects. As discussed above, two of the Appellant organizations reviewed and commented upon the administrative draft of the EIR as members of the Environment Council. The Port Commission has been a key agency involved in both the development of the Projects and their environmental review, and all pertinent information regarding the Projects and their potential environmental impacts has been readily accessible and available to members of the Port Commission.

Project Description, Setting, and Impact on Adjacent Neighborhoods. EIR Chapter 3, as augmented by Chapter 11, provides a thorough and complete description of both Projects. The EIR project description contains all technical information required by CEQA Guidelines Section 15124, including the location and boundaries of the proposed project (see EIR pages 3-5 to 3-24, 3-94, and 3-97); a statement of project objectives (see EIR pages 3-3 and 3-4); a general description of the project's characteristics (see EIR pages 3-25 to 3-113); and a statement describing the intended uses of the EIR (i.e., a list of agencies expected to

use the EIR in their decision-making, a list of permits and other approvals required to implement the project, and a list of related environmental review and consultation requirements required by applicable laws, regulations, and policies) (see EIR pages 3-114 to 3-117). The project description includes all reasonably foreseeable activities associated with the project, including construction, short-term and long-term operational components, and potential long-term development rights (associated with the AC34 venues). The project description also includes information on existing uses and conditions at the project sites, and provides extensive graphics showing existing and proposed uses. EIR Chapter 5 provides a detailed description of the affected environment — or setting — at and near the project sites with respect to each of the specific resource areas that could be potentially affected by construction or operation of the Projects. The setting description is presented at an appropriate level of detail to allow the reader to understand the impact analysis.

Impacts on adjacent neighborhoods are identified in the EIR where appropriate. Generally, the EIR focuses on identifying the reasonable worst-case scenario for potential impacts of the Projects. In most cases, this scenario focuses on impacts occurring at and immediately adjacent to the project sites. If impacts at these locations are determined to be less than significant, with or without implementation of mitigation measures, then the natural attenuation of the severity of impacts would typically result in reduced impacts at adjacent neighborhoods. For example, the analysis of noise impacts focuses on identifying and mitigating noise levels at the closest sensitive receptors (e.g., the closest residence); mitigating noise levels at these locations would necessarily also reduce noise impacts at adjacent neighborhoods. Similarly, air quality impacts identify potential air pollutant risk and hazards impacts to the maximally exposed individual and provide mitigation measures to reduce those impacts; mitigating air pollutant emissions at these locations would necessarily also reduce air quality impacts at adjacent neighborhoods.

The EIR also identifies potential impacts at secondary viewing areas. Chapter 5, Section 5.1, pages 5.1-4 to 5.1-9, defines secondary viewing areas—both land-based and water-based locations—as areas that are not specifically identified as proposed sites for AC34-sponsored activities but nonetheless are locations that may attract numerous visitors and spectators due to their potential viewing opportunities for the AC34 races. The EIR includes analysis of potential impacts at the secondary viewing areas in order to encompass the full range of indirect impacts of the AC34 events. Within San Francisco, these secondary viewing areas could include the waterfront and shoreline areas and north-facing slopes of the Presidio, Pacific Heights, Russian Hill, and various vista points, such as Coit Tower, within the Telegraph Hill neighborhood. These secondary viewing areas and associated neighborhoods are specifically addressed and analyzed for potential indirect impacts of AC34 as appropriate throughout each of the resource topics in Chapter 5. In particular, potential impacts at adjacent neighborhoods are identified in EIR Sections 5.5 (Cultural Resources), 5.6 (Transportation and Circulation), 5.11 (Recreation), and 5.16 (Hydrology and Water Quality) as follows:

- *Cultural Resources:* Impact CP-1 (EIR page 5.5-95) describes potential impacts on historic resources associated with AC34 spectators at publicly accessible areas along San Francisco's northern waterfront and hillside locations and along Marin's southern waterfront.
- *Transportation and Circulation:* For the AC34 Project, Impacts TR-1 through TR-16 and TR-38 through TR-59 (EIR pages 5.6-73 to 5.6-84 and 5.6-116 to 5.6-123) addresses traffic impacts at intersections at and adjacent to the AC34 project sites, including adjacent neighborhoods; Impacts

TR-17 through TR-28 and TR-60 through TR-71 (EIR pages 5.6-86 to 5.6-105 and 5.6-123 to 5.6-131) addresses transit impacts in the vicinity of the AC34 project sites, including adjacent neighborhoods; Impacts TR-29 to TR-30 and TR-72 to TR-73 (EIR pages 5.6-105 to 5.6-106 and 5.6-131 to 5.6-132) address bicycle impacts in the vicinity of the AC34 project sites, including adjacent neighborhoods; Impacts TR-31 to TR-32 and TR-74 to TR-75 (EIR pages 5.6-106 to 5.6-107 and 5.6-132 to 5.6-133) address pedestrian impacts in the vicinity of the AC34 project sites, including adjacent neighborhoods; Impacts TR-34 and TR-77 (EIR pages 5.6-108 to 5.6-109 and 5.6-134 to 5.6-135) addresses emergency access impacts in the vicinity of the AC34 project sites, including adjacent neighborhoods; Impacts TR-35 to TR-36 and TR-78 to TR-79 (EIR pages 5.6-109 to 5.6-112 and 5.6-135 to 5.6-138) address construction impacts on transportation and circulation in the vicinity of the AC34 project sites, including adjacent neighborhoods; and Impacts TR-37 and TR-80 (EIR pages 5.6-113 to 5.6-114 and 5.6-138 to 5.6-140) address impacts on transportation and circulation in the vicinity of the AC34 project sites, including adjacent neighborhoods, during other special events.

Similarly, for the Cruise Terminal Project, Impacts TR-81 through TR-83 (EIR pages 5.6-141 to 5.6-148) addresses traffic impacts at intersections at and adjacent to the Cruise Terminal project site, including adjacent neighborhoods; Impacts TR-84 to TR-85 (EIR pages 5.6-149 to 5.6-155) addresses transit impacts in the vicinity of the Cruise Terminal project site, including adjacent neighborhoods; Impact TR-86 (EIR pages 5.6-155 to 5.6-156) addresses bicycle impacts in the vicinity of the Cruise Terminal project site, including adjacent neighborhoods; Impact TR-87 (EIR pages 5.6-156 to 5.6-160) addresses pedestrian impacts in the vicinity of the Cruise Terminal project site, including adjacent neighborhoods; Impact TR-89 (EIR page 5.6-163) addresses emergency access impacts in the vicinity of the Cruise Terminal project site, including adjacent neighborhoods; and Impact TR-90 (EIR pages 5.6-163 to 5.6-165) addresses construction impacts on transportation and circulation in the vicinity of the Cruise Terminal project site, including adjacent neighborhoods.

- *Recreation:* Impact RE-1 (EIR pages 5.11-41 to 5.11-43) describes potential impacts on recreational resources associated with AC34 spectators at publicly accessible areas along San Francisco's northern waterfront and hillside locations and along Marin's southern waterfront.
- *Hydrology and Water Quality:* Impact HY-1 (EIR page 5.16-69) describes potential impacts on water quality (specifically littering) associated with AC34 spectators at publicly accessible areas along San Francisco's northern waterfront locations and along Marin's southern waterfront.

Cumulative Impacts of Future America's Cup Events. The EIR addresses the potential for the continuation of the America's Cup into future years in Chapter 3 (page 3-93) and in Chapter 12, Response PD-8 (pages 12.4-37 to 12.4-38). This scenario, referred to as the Successive Defense Option, is not considered a reasonably foreseeable use of the AC34 Project, or a reasonably foreseeable future cumulative project, but rather, a speculative future condition. One of the fundamental purposes of the AC34 sailing races is for teams to compete to determine a winner, and there is no basis to assume in the EIR that the Golden Gate Yacht Club ("GGYC"), the defending champion, would win AC34. While various defenders have won America's Cup events in the past, recent history with the America's Cup events has demonstrated that various challengers have also had success in winning the America's Cup. As explained on page 3-93 of the EIR, the Host and Venue Agreement provides that the Event Authority's leases of project venues may be extended for future America's Cup events, but only on condition that any such future events would be

subject to a new Host and Venue Agreement with the CCSF along with associated environmental review under CEQA and other applicable permits and approvals. Thus, it would be inappropriate to combine AC34 Project impacts with those effects of a potential Successive Defense Option, or to consider potential Successive Defense Option effects in a cumulative context in this EIR.

Cumulative Impacts of Long-Term Development Rights. As described in EIR Chapter 5 (pages 5.1-12 to 5.1-14), the EIR analyzes the potential cumulative impacts associated with impacts of the Projects in combination with past, present, and reasonably foreseeable future projects. The cumulative impacts are analyzed and discussed as a discrete sub-section under each of the resource topics in Chapter 5. With respect to the AC34 Project, the long-term development rights are considered part of the AC34 Project in the context of the cumulative impact analysis.

EIR Chapter 12, Section 12.6, Response IO-5 (pages 12.6-21 to 12.6-24) discusses the approach to analyzing the potential impacts of the long-term development rights. To the extent that such development might be considered separate projects from the AC34 or Cruise Terminal Projects, impacts of the long-term development rights are also analyzed and discussed as a discrete sub-section under each of the resource topics in Chapter 5. The EIR includes a conceptual level of analysis of the potential future long-term development at certain Port properties that could occur as a result of conditions of the Host and Venue Agreement because the Event Authority has not made any specific development proposals for any of the potential long-term development sites. This level of analysis provides decision-makers at this time with an understanding of the nature of future environmental effects that could occur and the range of mitigation measures that could be required, with the intent of providing the best information available to fully inform the discretionary action for the AC34 Project. The DEIR (page 5.1-11) states that when site-specific development or construction proposals are available, those development proposals will be subject to subsequent, project-specific CEQA review. The Planning Department will make the determination of the appropriate type and level of CEQA review at that time depending on details of the long-term development proposals.

CONCLUSION

The Planning Department conducted an in-depth and thorough analysis of the potential physical environmental effects of the proposed 34th America's Cup and James R. Herman Cruise Terminal and Northeast Wharf Plaza Projects consistent with CEQA, CEQA Guidelines, and Chapter 31 the San Francisco Administrative Code. The Appellant has not provided any substantial evidence to refute the adequacy, accuracy, or objectivity of the FEIR, including the responses to comments previously submitted by the four organizations represented by Appellant. Moreover, the Appellant does not provide evidence that the project description or impact analysis presented in the FEIR are inaccurate or incomplete.

For the reasons provided in this appeal response, the Planning Department believes that the FEIR complies with the requirements of CEQA and the CEQA Guidelines and provides an adequate, accurate, and objective analysis of the potential impacts of the Projects. Therefore, the Planning Department respectfully recommends that the Board uphold the Planning Commission's certification of the FEIR.

Appeal of FEIR Certification
Hearing Date: January 10, 2012

File No. 111358, Planning Case No. 2010.0493E
34th America's Cup & Cruise Terminal Project

ATTACHMENT A

Planning Commission EIR Certification Motion No. 18514



**SAN FRANCISCO
PLANNING DEPARTMENT**

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BOARD OF SUPERVISORS
SAN FRANCISCO

2011 DEC 19 PM 3:10

A A

Planning Commission Motion 18514

HEARING DATE: December 15, 2011

Hearing Date: December 15, 2011
Case No.: 2010.0493E
Project Address: various
Zoning: various
Block/Lot: various
Project Sponsors: San Francisco Office of Economic and Workforce Development
1 Dr. Carlton Goodlett Place
San Francisco, CA 94102

Port of San Francisco
Pier 1
San Francisco, CA 94111

34th America's Cup Event Authority
160 Pacific Avenue
San Francisco, CA 94111

Staff Contact: Joy Navarrete - (415) 575-9040
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1650 Mission St.
Suite 400
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ADOPTING FINDINGS RELATED TO THE CERTIFICATION OF A FINAL ENVIRONMENTAL IMPACT REPORT FOR (1) A PROPOSED PROJECT INVOLVING AMERICA'S CUP SAILING RACES IN THE SUMMER / FALL OF 2012 AND 2013, INCLUDING VARIOUS WATERFRONT VENUES, AND (2) A PROPOSED PROJECT INVOLVING CONSTRUCTION OF THE JAMES R. HERMAN CRUISE TERMINAL AND NORTHEAST WHARF PLAZA AT PIERS 27-29.

MOVED, that the San Francisco Planning Commission (hereinafter "Commission") hereby CERTIFIES the Final Environmental Impact Report identified as Case No. 2010.0493E, (hereinafter "Project"), based upon the following findings:

1. The City and County of San Francisco, acting through the Planning Department (hereinafter "Department") fulfilled all procedural requirements of the California Environmental Quality Act (Cal. Pub. Res. Code Section 21000 *et seq.*, hereinafter "CEQA"), the State CEQA Guidelines (Cal. Admin. Code Title 14, Section 15000 *et seq.*, (hereinafter "CEQA Guidelines") and Chapter 31 of the San Francisco Administrative Code (hereinafter "Chapter 31").
- A. The Department determined that an Environmental Impact Report (hereinafter "EIR") was required and provided public notice of that determination by publication in a newspaper of general circulation on February 9, 2011.

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- B. On July 11, 2011, the Department published the Draft Environmental Impact Report (hereinafter "DEIR") and provided public notice in a newspaper of general circulation of the availability of the DEIR for public review and comment and of the date and time of the Planning Commission public hearing on the DEIR; this notice was mailed to the Department's list of persons requesting such notice.
 - C. Notices of availability of the DEIR and of the date and time of the public hearing were posted near the project site by Department staff on July 11, 2011.
 - D. On July 11, 2011, copies of the DEIR were mailed or otherwise delivered to a list of persons requesting it, to those noted on the distribution list in the DEIR, to adjacent property owners, and to government agencies, the latter both directly and through the State Clearinghouse.
 - E. Notice of Completion was filed with the State Secretary of Resources via the State Clearinghouse on July 11, 2011.
2. The Commission held a duly advertised public hearing on said DEIR on August 11, 2011, at which opportunity for public comment was given, and public comment was received on the DEIR. The period for acceptance of written comments ended on August 25, 2011.
 3. The Department prepared responses to comments on environmental issues received at the public hearing and in writing during the 45-day public review period for the DEIR, prepared revisions to the text of the DEIR in response to comments received or based on additional information that became available during the public review period, and corrected errors in the DEIR. This material was presented in a Draft Comments and Responses document, published on December 1, 2011, distributed to the Commission and all parties who commented on the DEIR, and made available to others upon request at the Department.
 4. A Final Environmental Impact Report (hereinafter "FEIR") has been prepared by the Department, consisting of the DEIR, any consultations and comments received during the review process, any additional information that became available, and the Comments and Responses document all as required by law.
 5. Project EIR files have been made available for review by the Commission and the public. These files are available for public review at the Department at 1650 Mission Street, Suite 400, and are part of the record before the Commission.
 6. On December 15, 2011, the Commission reviewed and considered the FEIR and hereby does find that the contents of said report and the procedures through which the FEIR was prepared, publicized, and reviewed comply with the provisions of CEQA, the CEQA Guidelines, and Chapter 31 of the San Francisco Administrative Code.
 7. The Planning Commission hereby does find that the FEIR concerning File No. 2010.0493E, the 34th America's Cup & James R Herman Cruise Terminal & Northeast Wharf Plaza reflects the independent judgment and analysis of the City and County of San Francisco, is

adequate, accurate and objective, and that the Comments and Responses document contains no significant revisions to the DEIR, and hereby does CERTIFY THE COMPLETION of said FEIR in compliance with CEQA and the CEQA Guidelines.

8. The Commission, in certifying the completion of said FEIR, hereby does find that the 34th America's Cup project described in the EIR:

A. Will have a significant project-specific effect on the environment by:

- a. reducing levels of service at 18 signalized and unsignalized intersections;
- b. impacting other signalized and unsignalized intersections;
- c. resulting in a significant impact on traffic operations;
- d. exceeding available transit capacity of Muni lines, PresidioGo shuttle service, AC Transit lines, BART lines, WETA lines, Golden Gate Transit bus and ferry lines, Blue & Gold ferry lines, Caltrain service, and SanTrans lines;
- e. impacting transit operations related to additional congestion resulting from the project;
- f. disrupting regular scheduled ferry operations;
- g. resulting in potentially significant impacts to the transportation network in combination with other special events occurring simultaneously in San Francisco;
- h. resulting in exposure of persons to or generation of noise levels in excess of standards established in the *San Francisco General Plan* or San Francisco Noise Ordinance;
- i. resulting in a temporary and periodic increase in ambient noise levels in the project vicinity above levels existing without the project associated with increased traffic levels on weekends;
- j. resulting in construction emission of criteria pollutants and precursors that would violate an air quality standard or contribute substantially to an existing or projected air quality violation;
- k. resulting in exposure of sensitive receptors to substantial concentrations of toxic air contaminants or respirable particulate matter (PM2.5) associated with construction;
- l. violating an air quality standard or contribute substantially to an existing or projected air quality violation associated with operations;

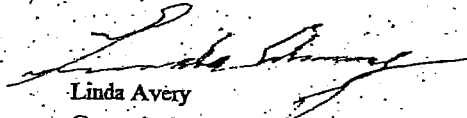
- m. exposing sensitive receptors to substantial concentrations of toxic air contaminants or respirable particulate matter (PM_{2.5}) associated with operations.
- B. Potential long-term development as a result of the AC34 project will have a significant conceptual effect on the environment, to be further analyzed at a project-specific level when proposed, by:
 - a. conflicting with BCDC policies adopted for the purpose of mitigating environmental effects;
 - b. resulting in redevelopment of existing Port properties at Piers 30-32, which could result in a significant impact to cultural resources;
 - c. resulting in significant traffic and transit impacts;
 - d. resulting in construction and operational air pollutant emissions;
- C. Will have a significant cumulative effect on the environment in that it would result in significant adverse cumulative impacts on air quality.
- 9. The Commission, in certifying the completion of said FEIR, hereby does find that the James R. Herman Cruise Terminal and Northeast Wharf Plaza project described in the EIR.
 - A. Will have a significant project-specific effect on the environment by:
 - a. contributing to existing exceedance of capacity utilization standard on the F-Market & Wharves historic streetcar line;
 - b. resulting in emission of criteria pollutants and precursors associated with construction that would violate an air quality standard or contribute substantially to an existing or projected air quality violation
 - B. Will have a significant cumulative effect on the environment in that it would:
 - a. result in significant project and cumulative impacts at the intersections of The Embarcadero/ Broadway, The Embarcadero/ Washington, The Embarcadero/ Mission, The Embarcadero/ Howard;
 - b. result in significant project and cumulative impacts on the F-Market & Wharves historic streetcar;
 - c. result in significant and unavoidable adverse cumulative noise impacts;
 - d. result in significant adverse cumulative impacts on air quality

Motion No. 18514.
Hearing Date: December 15, 2011

CASE NO. 2010.0493E

11. The Planning Commission reviewed and considered the information contained in the FEIR.

I hereby certify that the foregoing Motion was ADOPTED by the Planning Commission at its regular meeting of December 15, 2011.



Linda Avery
Commission Secretary

AYES: 5
NOES: 0
ABSENT: Fong & Sugaya were recused
ADOPTED: December 15, 2011

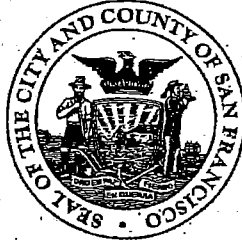
Appeal of FEIR Certification
Hearing Date: January 10, 2012

File No. 111358, Planning Case No. 2010.0493E
34th America's Cup & Cruise Terminal Project

ATTACHMENT B

Appeal Letter (letter dated December 16, 2011 from
Keith G. Wagner, Lippe Gaffney and Wagner, LLP)

BOARD of SUPERVISORS



City Hall
Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 544-5227

December 19, 2011

Keith G. Wagner
Lippe/Gaffney/Wagner LLP
On behalf of San Francisco Tomorrow,
Golden Gate Audubon Society, Waterfront Watch, and
Telegraph Hill Dwellers
9333 Sparks Way
Sacramento, CA 95827

Subject: Appeal of Final Environmental Impact Report - 34th America's Cup Sailing Races, James R. Herman Cruise Terminal, and Northeast Wharf Plaza

Dear Mr. Wagner:

The Office of the Clerk of the Board is in receipt of your appeal filed on December 19, 2011, from the decision of the Planning Commission's December 15, 2011, Certification of a Final Environmental Impact Report identified as Planning Case No. 2010.0493E, through its Motion No. 18514, for the proposed project involving 34th America's Cup Sailing Races in the Summer/Fall of 2012 and 2013, including various waterfront venues, James R. Herman Cruise Terminal, and Northeast Wharf Plaza at Piers 27-29.

A hearing date has been scheduled on **Tuesday, January 10, 2011, at 4:00 p.m.**, at the Board of Supervisors meeting to be held in City Hall, Legislative Chamber, Room 250, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

Please provide 18 copies to the Clerk's Office by:

8 days prior to the hearing: any documentation which you may want available to the Board members prior to the hearing;
11 days prior to the hearing: names of interested parties to be notified of the hearing in label format.

If you have any questions, please feel free to contact Legislative Deputy Director, Rick Caldeira, at (415) 554-7711 or Assistant Committee Clerk, Andrea Ausberry, at (415) 554-4442.

Sincerely,

A handwritten signature in black ink, appearing to read "Angela Calvillo".

Angela Calvillo
Clerk of the Board

c:

Cheryl Adams, Deputy City Attorney
Kate Stacy, Deputy City Attorney
Marlena Byrne, Deputy City Attorney
Scott Sanchez, Zoning Administrator, Planning Department
Bill Wycko, Environmental Review Officer, Planning Department
AnMarie Rodgers, Planning Department

Tina Tam, Planning Department
Nannie Turrell, Planning Department
Linda Avery, Planning Department
Joy Navarrete, Planning Department
Project Sponsors: Office of Economic and Workforce
Development, Port of San Francisco, and 34th
America's Cup Event Authority

Lippe Gaffney Wagner LLP

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SACRAMENTO • 9333 Sparks Way, Sacramento, CA 95827 • T 916.361.3887 • F 916.361.3897

Thomas N. Lippe
Brian Gaffney
Keith G. Wagner
Celeste C. Langille
Kelly A. Franger

December 16, 2011

Via Hand Delivery

Board President David Chiu
and Members of the Board of Supervisors
c/o Ms. Angela Calvillo
Clerk of the Board of Supervisors
City & County of San Francisco
1 Dr. Carlton B. Goodlett Place
Room 244
San Francisco, CA 94102-4689

2011 DEC 19 PM 3:10

RECEIVED
BOARD OF SUPERVISORS
SAN FRANCISCO

RE: Appeal of Planning Commission EIR Certification
34th America's Cup and James R. Herman Cruise Terminal and Northeast Wharf Plaza
Projects (Case No. 2010.0493E)

Dear President Chiu and Supervisors:

On behalf of San Francisco Tomorrow, Golden Gate Audubon Society, Waterfront Watch and Telegraph Hill Dwellers, I hereby appeal the Planning Commission's certification of the Environmental Impact Report (EIR) for the proposed 34th America's Cup and James R. Herman Cruise Terminal and Northeast Wharf Plaza Projects. A copy of the Planning Commission's motion adopted on December 15, 2011 is attached. Further documentation in support of this appeal will follow prior to the Board hearing.

The subject EIR is not procedurally or substantively adequate, accurate, or objective. The EIR fails to fully and adequately identify and mitigate the impacts of the projects. The Final EIR, in particular, fails to adequately respond to the majority of the comments submitted by our clients. With particular regard to the FEIR, the document does not contain adequate detail in response to public comment as to how the DEIR's environmental mitigation measures will be implemented, monitored and enforced.

The EIR certified by the Planning Commission has precluded meaningful public participation or the ability of the Port Commission to render an informed decision about the "whole" of the projects or their impacts. The EIR's inaccurate and incomplete description of the projects or their affected environment has, among other things, excluded a complete and informationally adequate study of impacts on adjacent neighborhoods. The EIR is also procedurally inadequate in refusing to disclose or analyze the cumulative impacts of continuation of the America's Cup into future years or the long-term development triggered by the event, to the extent such impact might somehow be considered separate projects from the projects described or analyzed in the EIR.

San Francisco Board of Supervisors: Appeal of Certification of 34th America's Cup EIR
December 16, 2011
Page 2 of 2

Our clients' arguments on the forgoing points will be supplemented prior to the appeal hearing with further details and citations to regulations, statutes, and case law.

Thank you for your consideration of this appeal.

Sincerely,


Keith G. Wagner

cc: Bill Wycko, Environmental Review Officer

SFGate.com

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S.F. planners OK impact report on America's Cup

Stephanie Lee, Chronicle Staff Writer

Friday, December 16, 2011

The America's Cup is set to descend on San Francisco beginning next summer - but a crew of opponents is threatening to knock it off course.

In the year since the city was chosen to host the world-famous regatta in 2012 and 2013, organizers have raced to finalize plans. The culmination of those efforts, an analysis of the regatta's impacts on the city, was approved by the Planning Commission 5-0 Thursday night.

The decision clears the way for construction on the waterfront, provided the Board of Supervisors approves the project in January.

And there's virtually no room for delay. In just eight months, the first yachts are scheduled to hit the water under the gaze of hundreds of thousands of spectators.

The report "demonstrated what we can do when we work together as a city," Commissioner Michael Antonini said at the close of a two-hour meeting, which was attended by about 100 people. "I was very impressed."

Mayor Ed Lee agreed, saying in a statement: "This is an exciting moment in our efforts to bring the America's Cup to San Francisco, the only major international sporting event coming to the United States in the next decade," and noting that the project benefited from "valuable input from many individuals, groups and agencies across the Bay Area."

But even as commissioners sang the project's praises, a coalition of environmentalists and neighborhood activists was preparing to file an appeal that could cause lengthy delays.

The state-required environmental impact report, released earlier this month, does not fully outline ways to prevent traffic jams, damage to plant life and other problems, argue the dozen opponents, including the Sierra Club, the California Native Plant Society and the Telegraph Hill Dwellers.

Concerns addressed

The groups, which spent months consulting with Cup and city officials, concede their concerns

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A black and white advertisement for a 'RED ZONE clearance' sale. The top half features a large '\$10 off' in a stylized font. Below this, it says 'no exclusions!' and 'on all family apparel, accessories, shoes, jewelry & home'. At the bottom, it reads 'RED ZONE clearance' in bold, followed by '80% FINAL off MARKDOWNS' and '50-70% off NEW MARKDOWNS'. There is a small link 'view today's ad' on the left.

about water and air quality were addressed. Still, they wanted more time to review the report, and some said they would try to block it if the Planning Commission approved it.

"We're puzzled and dismayed that our expertise, efforts and goodwill and that of city staff have resulted in a document that, massive though it is, fails to provide the environmental certainty required by law," the activists wrote in a letter to the commission.

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"A judge could halt it or not," said Jane Sullivan, the city's spokeswoman for the America's Cup. "It doesn't necessarily preclude things from beginning."

Things get going

The Planning Commission's approval of the report triggers a flurry of activity.

This morning, the Port Commission is expected to decide whether to open the waterfront to the regatta. Commissioners are also scheduled to vote on a relocation plan for tenants displaced by construction.

An appeal, if it materializes, could stall construction of the America's Cup Village, the walkable area planned to spring up at Piers 27 to 29 by July 2013. Pier 27 would be the main location to watch races begin and end.

Another delay?

Depending on when it is filed, an appeal could also delay a separate port project at Pier 27. Slated for construction are the James R. Herman Cruise Terminal - an 88,000-square-foot facility for cruise ships - and the Northeast Wharf Plaza, a 2.5-acre public space. Demolition could start as soon as the Port Commission approves funding today.

The final environmental analysis of the America's Cup, which spans a sprawling eight volumes, was released Dec. 1. It proposes solutions to issues ranging from curbing air pollution to recreational access for swimmers and kayakers. Race organizers say they are confident the document is thorough enough to withstand a lawsuit.

E-mail Stephanie Lee at slee@sfchronicle.com.

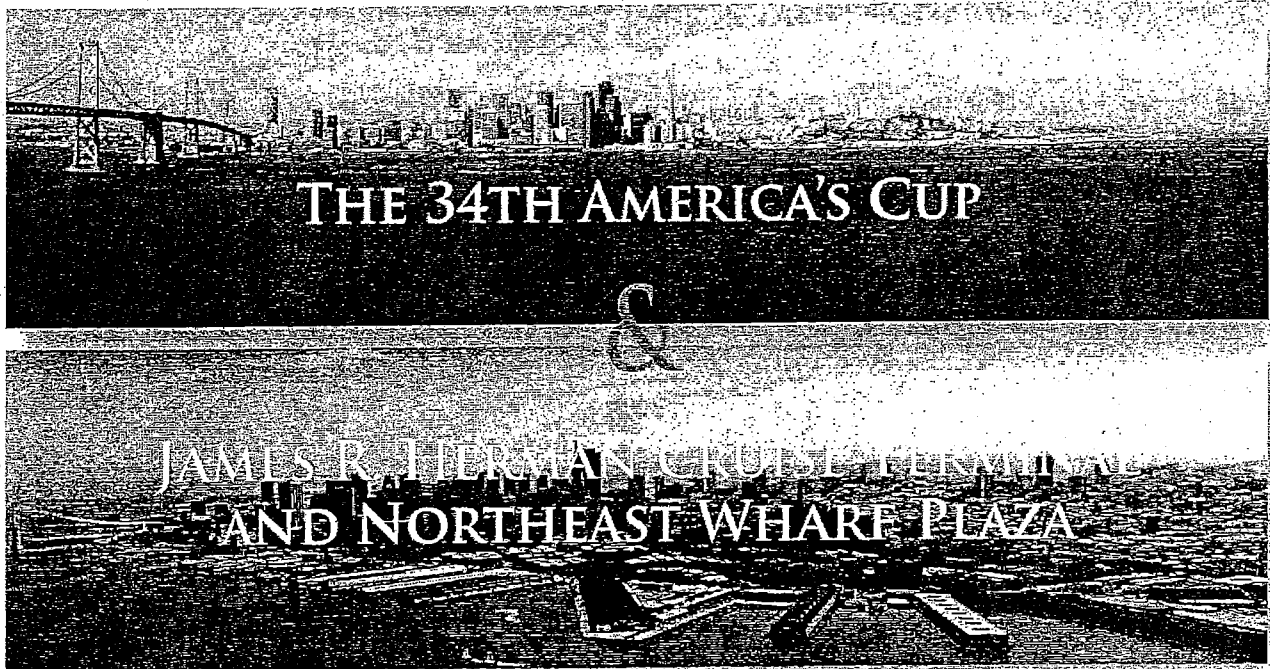
<http://sfgate.com/cgi-bin/article.cgi?f=/c/a/2011/12/16/MNEV1MCN37.DTL>

This article appeared on page A - 1 of the San Francisco Chronicle

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VOLUME 1

DRAFT ENVIRONMENTAL IMPACT REPORT



SAN FRANCISCO PLANNING DEPARTMENT CASE NO. 2010.0493E
STATE CLEARINGHOUSE NO. 2011022040

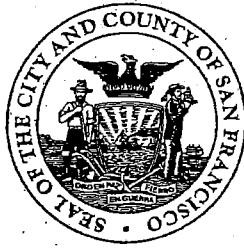
DRAFT EIR PUBLICATION DATE: JULY 11, 2011
DRAFT EIR PUBLIC HEARING DATE: AUGUST 11, 2011
DRAFT EIR PUBLIC COMMENT PERIOD: JULY 11, 2011 – AUGUST 25, 2011

WRITTEN COMMENTS SHOULD BE SENT TO THE
ENVIRONMENTAL REVIEW OFFICER
1650 MISSION STREET, SUITE 400
SAN FRANCISCO, CA 94103



SAN FRANCISCO
PLANNING
DEPARTMENT

BOARD of SUPERVISORS



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

NOTICE OF PUBLIC HEARING

BOARD OF SUPERVISORS OF THE CITY AND COUNTY OF SAN FRANCISCO

NOTICE IS HEREBY GIVEN THAT the Board of Supervisors of the City and County of San Francisco will hold a public hearing to consider the following proposal and said public hearing will be held as follows, at which time all interested parties may attend and be heard:

Date: Tuesday, January 10, 2012

Time: 4:00 p.m.

Location: Legislative Chamber, Room 250 located at City Hall, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102

Subject: File No. 111358. Hearing of persons interested in or objecting to the Planning Commission's decision, dated December 15, 2011, Certification of a Final Environmental Impact Report identified as Planning Case No. 2010.0493E, for a proposed project involving America's Cup Sailing Races in the Summer/Fall of 2012 and 2013, including various waterfront venues, and a proposed project involving construction of the James R. Herman Cruise Terminal and Northeast Wharf Plaza at Piers 27-29. (District 3) (Appellant: Keith G. Wagner on behalf of San Francisco Tomorrow, Golden Gate Audubon Society, Waterfront Watch, and Telegraph Hill Dwellers) (Filed December 19, 2011)

Pursuant to Government Code Section 65009, notice is hereby given, if you challenge, in court, the matter described above, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the Board of Supervisors at, or prior to, the public hearing.

In accordance with Section 67.7-1 of the San Francisco Administrative Code, persons who are unable to attend the hearing on these matters may submit written comments to the City prior to the time the hearing begins. These comments will be made a part of the official public records in these matters, and shall be brought to the attention of the Board of Supervisors. Written comments should be addressed to Angela Calvillo, Clerk of the Board, Room 244, City Hall, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102. Information relating to this matter is available in the Office of the Clerk of the Board and agenda information will be available for public review on Thursday, January 5, 2012.

A handwritten signature in black ink, appearing to read "Angela Calvillo".

Angela Calvillo
Clerk of the Board

MAILED/POSTED:

December 23, 2011
1123

Lippe Gaffney Wagner LLP

www.lgwlawyers.com

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SACRAMENTO • 9333 Sparks Way, Sacramento, CA 95827 • T 916.361.3887 • F 916.361.3897

Thomas N. Lippe
Brian Gaffney
Keith G. Wagner
Celeste C. Langille
Kelly A. Franger

December 16, 2011

Via Hand Delivery

Board President David Chiu
and Members of the Board of Supervisors
c/o Ms. Angela Calvillo
Clerk of the Board of Supervisors
City & County of San Francisco
1 Dr. Carlton B. Goodlett Place
Room 244
San Francisco, CA 94102-4689

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SAN FRANCISCO
2011 DEC 19 PM 3:10

RE: Appeal of Planning Commission EIR Certification
34th America's Cup and James R. Herman Cruise Terminal and Northeast Wharf Plaza
Projects (Case No. 2010.0493E)

Dear President Chiu and Supervisors:

On behalf of San Francisco Tomorrow, Golden Gate Audubon Society, Waterfront Watch and Telegraph Hill Dwellers, I hereby appeal the Planning Commission's certification of the Environmental Impact Report (EIR) for the proposed 34th America's Cup and James R. Herman Cruise Terminal and Northeast Wharf Plaza Projects. A copy of the Planning Commission's motion adopted on December 15, 2011 is attached. Further documentation in support of this appeal will follow prior to the Board hearing.

The subject EIR is not procedurally or substantively adequate, accurate, or objective. The EIR fails to fully and adequately identify and mitigate the impacts of the projects. The Final EIR, in particular, fails to adequately respond to the majority of the comments submitted by our clients. With particular regard to the FEIR, the document does not contain adequate detail in response to public comment as to how the DEIR's environmental mitigation measures will be implemented, monitored and enforced.

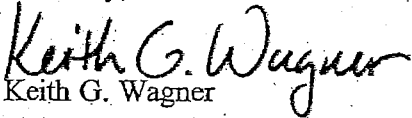
The EIR certified by the Planning Commission has precluded meaningful public participation or the ability of the Port Commission to render an informed decision about the "whole" of the projects or their impacts. The EIR's inaccurate and incomplete description of the projects or their affected environment has, among other things, excluded a complete and informationally adequate study of impacts on adjacent neighborhoods. The EIR is also procedurally inadequate in refusing to disclose or analyze the cumulative impacts of continuation of the America's Cup into future years or the long-term development triggered by the event, to the extent such impact might somehow be considered separate projects from the projects described or analyzed in the EIR.

San Francisco Board of Supervisors: Appeal of Certification of 34th America's Cup EIR
December 16, 2011
Page 2 of 2

Our clients' arguments on the forgoing points will be supplemented prior to the appeal hearing with further details and citations to regulations, statutes, and case law.

Thank you for your consideration of this appeal.

Sincerely,


Keith G. Wagner

cc: Bill Wycko, Environmental Review Officer



**SAN FRANCISCO
PLANNING DEPARTMENT**

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SAN FRANCISCO

2011 DEC 19 PM 3:10

AA

Planning Commission Motion 18514

HEARING DATE: December 15, 2011

Hearing Date: December 15, 2011
Case No.: 2010.0493E
Project Address: various
Zoning: various
Block/Lot: various
Project Sponsors: San Francisco Office of Economic and Workforce Development
1 Dr. Carlton Goodlett Place
San Francisco, CA 94102

Port of San Francisco
Pier 1
San Francisco, CA 94111

34th America's Cup Event Authority
160 Pacific Avenue
San Francisco, CA 94111

Staff Contact: Joy Navarrete – (415) 575-9040
Joy.Navarrete@sfgov.org

1650 Mission St.
Suite 400
San Francisco, CA 94103-2479

Reception:
415.558.6378

Fax:
415.558.6409

Planning
Information:
415.558.6377

ADOPTING FINDINGS RELATED TO THE CERTIFICATION OF A FINAL ENVIRONMENTAL IMPACT REPORT FOR (1) A PROPOSED PROJECT INVOLVING AMERICA'S CUP SAILING RACES IN THE SUMMER / FALL OF 2012 AND 2013, INCLUDING VARIOUS WATERFRONT VENUES, AND (2) A PROPOSED PROJECT INVOLVING CONSTRUCTION OF THE JAMES R. HERMAN CRUISE TERMINAL AND NORTHEAST WHARF PLAZA AT PIERS 27-29.

MOVED, that the San Francisco Planning Commission (hereinafter "Commission") hereby CERTIFIES the Final Environmental Impact Report identified as Case No. 2010.0493E, (hereinafter "Project"), based upon the following findings:

1. The City and County of San Francisco, acting through the Planning Department (hereinafter "Department") fulfilled all procedural requirements of the California Environmental Quality Act (Cal. Pub. Res. Code Section 21000 *et seq.*, hereinafter "CEQA"), the State CEQA Guidelines (Cal. Admin. Code Title 14, Section 15000 *et seq.*, hereinafter "CEQA Guidelines") and Chapter 31 of the San Francisco Administrative Code (hereinafter "Chapter 31").
 - A. The Department determined that an Environmental Impact Report (hereinafter "EIR") was required and provided public notice of that determination by publication in a newspaper of general circulation on February 9, 2011.

www.sfplanning.org

- B. On July 11, 2011, the Department published the Draft Environmental Impact Report (hereinafter "DEIR") and provided public notice in a newspaper of general circulation of the availability of the DEIR for public review and comment and of the date and time of the Planning Commission public hearing on the DEIR; this notice was mailed to the Department's list of persons requesting such notice.
 - C. Notices of availability of the DEIR and of the date and time of the public hearing were posted near the project site by Department staff on July 11, 2011.
 - D. On July 11, 2011, copies of the DEIR were mailed or otherwise delivered to a list of persons requesting it, to those noted on the distribution list in the DEIR, to adjacent property owners, and to government agencies, the latter both directly and through the State Clearinghouse.
 - E. Notice of Completion was filed with the State Secretary of Resources via the State Clearinghouse on July 11, 2011.
- 2. The Commission held a duly advertised public hearing on said DEIR on August 11, 2011, at which opportunity for public comment was given, and public comment was received on the DEIR. The period for acceptance of written comments ended on August 25, 2011.
 - 3. The Department prepared responses to comments on environmental issues received at the public hearing and in writing during the 45-day public review period for the DEIR, prepared revisions to the text of the DEIR in response to comments received or based on additional information that became available during the public review period, and corrected errors in the DEIR. This material was presented in a Draft Comments and Responses document, published on December 1, 2011, distributed to the Commission and all parties who commented on the DEIR, and made available to others upon request at the Department.
 - 4. A Final Environmental Impact Report (hereinafter "FEIR") has been prepared by the Department, consisting of the DEIR, any consultations and comments received during the review process, any additional information that became available, and the Comments and Responses document all as required by law.
 - 5. Project EIR files have been made available for review by the Commission and the public. These files are available for public review at the Department at 1650 Mission Street, Suite 400, and are part of the record before the Commission.
 - 6. On December 15, 2011, the Commission reviewed and considered the FEIR and hereby does find that the contents of said report and the procedures through which the FEIR was prepared, publicized, and reviewed comply with the provisions of CEQA, the CEQA Guidelines, and Chapter 31 of the San Francisco Administrative Code.
 - 7. The Planning Commission hereby does find that the FEIR concerning File No. 2010.0493E, the 34th America's Cup & James R Herman Cruise Terminal & Northeast Wharf Plaza reflects the independent judgment and analysis of the City and County of San Francisco, is

adequate, accurate and objective, and that the Comments and Responses document contains no significant revisions to the DEIR, and hereby does CERTIFY THE COMPLETION of said FEIR in compliance with CEQA and the CEQA Guidelines.

8. The Commission, in certifying the completion of said FEIR, hereby does find that the 34th America's Cup project described in the EIR:

A. Will have a significant project-specific effect on the environment by:

- a. reducing levels of service at 18 signalized and unsignalized intersections;
- b. impacting other signalized and unsignalized intersections;
- c. resulting in a significant impact on traffic operations;
- d. exceeding available transit capacity of Muni lines, PresidiGo shuttle service, AC Transit lines, BART lines, WETA lines, Golden Gate Transit bus and ferry lines, Blue & Gold ferry lines, Caltrain service, and SamTrans lines;
- e. impacting transit operations related to additional congestion resulting from the project;
- f. disrupting regular scheduled ferry operations;
- g. resulting in potentially significant impacts to the transportation network in combination with other special events occurring simultaneously in San Francisco;
- h. resulting in exposure of persons to or generation of noise levels in excess of standards established in the *San Francisco General Plan* or San Francisco Noise Ordinance;
- i. resulting in a temporary and periodic increase in ambient noise levels in the project vicinity above levels existing without the project associated with increased traffic levels on weekends;
- j. resulting in construction emission of criteria pollutants and precursors that would violate an air quality standard or contribute substantially to an existing or projected air quality violation;
- k. resulting in exposure of sensitive receptors to substantial concentrations of toxic air contaminants or respirable particulate matter (PM2.5) associated with construction;
- l. violating an air quality standard or contribute substantially to an existing or projected air quality violation associated with operations;

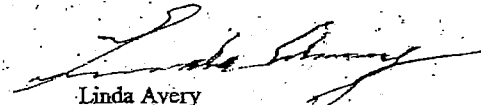
- m. exposing sensitive receptors to substantial concentrations of toxic air contaminants or respirable particulate matter (PM2.5) associated with operations.
- B. Potential long-term development as a result of the AC34 project will have a significant conceptual effect on the environment, to be further analyzed at a project-specific level when proposed, by:
 - a. conflicting with BCDC policies adopted for the purpose of mitigating environmental effects;
 - b. resulting in redevelopment of existing Port properties at Piers 30-32, which could result in a significant impact to cultural resources;
 - c. resulting in significant traffic and transit impacts;
 - d. resulting in construction and operational air pollutant emissions;
- C. Will have a significant cumulative effect on the environment in that it would result in significant adverse cumulative impacts on air quality.
- 9. The Commission, in certifying the completion of said FEIR, hereby does find that the James R. Herman Cruise Terminal and Northeast Wharf Plaza project described in the EIR.
 - A. Will have a significant project-specific effect on the environment by:
 - a. contributing to existing exceedance of capacity utilization standard on the F-Market & Wharves historic streetcar line;
 - b. resulting in emission of criteria pollutants and precursors associated with construction that would violate an air quality standard or contribute substantially to an existing or projected air quality violation
 - B. Will have a significant cumulative effect on the environment in that it would:
 - a. result in significant project and cumulative impacts at the intersections of The Embarcadero/ Broadway, The Embarcadero/ Washington, The Embarcadero/ Mission, The Embarcadero/ Howard;
 - b. result in significant project and cumulative impacts on the F-Market & Wharves historic streetcar;
 - c. result in significant and unavoidable adverse cumulative noise impacts;
 - d. result in significant adverse cumulative impacts on air quality

Motion No. 18514.
Hearing Date: December 15, 2011

CASE NO. 2010.0493E

11. The Planning Commission reviewed and considered the information contained in the FEIR.

I hereby certify that the foregoing Motion was ADOPTED by the Planning Commission at its regular meeting of December 15, 2011.



Linda Avery
Commission Secretary

AYES: 5
NOES: 0
ABSENT: Fong & Sugaya were recused
ADOPTED: December 15, 2011

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S.F. planners OK impact report on America's Cup

Stephanie Lee, Chronicle Staff Writer

Friday, December 16, 2011

The America's Cup is set to descend on San Francisco beginning next summer - but a crew of opponents is threatening to knock it off course.

In the year since the city was chosen to host the world-famous regatta in 2012 and 2013, organizers have raced to finalize plans. The culmination of those efforts, an analysis of the regatta's impacts on the city, was approved by the Planning Commission 5-0 Thursday night.

The decision clears the way for construction on the waterfront, provided the Board of Supervisors approves the project in January.

And there's virtually no room for delay. In just eight months, the first yachts are scheduled to hit the water under the gaze of hundreds of thousands of spectators.

The report "demonstrated what we can do when we work together as a city," Commissioner Michael Antonini said at the close of a two-hour meeting, which was attended by about 100 people. "I was very impressed."

Mayor Ed Lee agreed, saying in a statement: "This is an exciting moment in our efforts to bring the America's Cup to San Francisco, the only major international sporting event coming to the United States in the next decade," and noting that the project benefited from "valuable input from many individuals, groups and agencies across the Bay Area."

But even as commissioners sang the project's praises, a coalition of environmentalists and neighborhood activists was preparing to file an appeal that could cause lengthy delays.

The state-required environmental impact report, released earlier this month, does not fully outline ways to prevent traffic jams, damage to plant life and other problems, argue the dozen opponents, including the Sierra Club, the California Native Plant Society and the Telegraph Hill Dwellers.

Concerns addressed

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"We're puzzled and dismayed that our expertise, efforts and goodwill and that of city staff have resulted in a document that, massive though it is, fails to provide the environmental certainty required by law," the activists wrote in a letter to the commission.

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E-mail Stephanie Lee at slee@sfchronicle.com.

<http://sfgate.com/cgi-bin/article.cgi?f=/c/a/2011/12/16/MNEV1MCN37.DTL>

This article appeared on page A - 1 of the San Francisco Chronicle

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San Francisco Tomorrow

Since 1970, Working to Protect the Urban Environment

August 29, 2011

John Rahaim
Director of City Planning
1650 Mission St., Ste. 400
San Francisco, CA 94103

RE: Request for Fee Waiver as a neighborhood organization

Dear Director Rahaim,

I am writing this letter to confirm that San Francisco Tomorrow (SFT) is a neighborhood organization according to the definition specified by your department. Our organization was established in 1971 to protect and preserve San Francisco's neighborhoods, and have frequently acted in that role. We have been listed on the Planning Department's list of neighborhood organizations for many years.

In the matter of the appeal of the Conditional Use of Verizon antennas at Kaiser Permanente SF at 498 6th Ave (No: 2010.0951C), I have authorized Jacquelyn and Sophia Coo, as well as Sandra Fenn, to represent our organization.

Sincerely,

Jennifer Clary
President

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