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**RECEIVED**

January 28, 2015

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CITY & COUNTY OF S.F.  
PLANNING DEPARTMENT  
RECEPTION DESK

The Honorable President Wu and Commissioners  
San Francisco Planning Commission  
1650 Mission Street, Suite 400  
San Francisco, CA 94103

Ms. Sarah Jones  
Environmental Review Officer  
San Francisco Planning Department  
1650 Mission Street, Suite 400  
San Francisco, CA 94103

Re: 2014 Housing Element  
Case No: 2014.1327E  
EIR: San Francisco 2004 and 2009 Housing Element, 2007.1275E SCL No. 2008102033,  
certified March 24, 2011, re-certified April 24, 2014  
Addendum to EIR: Released January 22, 2015  
Hearing Date: February 5, 2015

On behalf of San Franciscans for Livable Neighborhoods, which I represent, we object to the approval of the 2014 Housing Element and the Environmental Review Officer's issuance of the January 22, 2014 Addendum to the Environmental Impact Report for the San Francisco 2004 and 2009 Housing Element on the grounds set forth herein.

In summary, the bulk of the 2014 Housing Element has been carried forward from the policies, objectives and implementations set forth in the 2009 Housing Element, but the 2009 Housing Element has not finally completed environmental review. The EIR for the San Francisco 2004 and 2009 Housing Element ("FEIR") is currently being reviewed for legal adequacy by the California Court of Appeal in an appeal brought by San Franciscans for Livable Neighborhoods.

Accordingly, if the Court of Appeal or other appellate court rules the FEIR legally invalid in any respect, conclusions and/or analyses in the FEIR will be invalid and the 2009 Housing Element will not have completed environmental review as required by CEQA. The need to subject the 2009 Housing Element to further environmental review under CEQA will render invalid the Addendum's claim that the conclusions of the FEIR remain valid as to the potentially significant effects of policies that were carried forward from the 2009 Housing Element into the 2014 Housing Element and potential alternatives and mitigation measures therefor.

The City would act at its own risk if it were to approve the 2014 Housing Element before the appellate proceedings as to the adequacy of the FEIR and any further related proceedings were concluded, as the City would be subject to further injunctive relief as to reliance on the policies of the 2009 Housing Element that would have been carried forward into the 2014 Housing Element. Thus, the City should refrain from relying upon the FEIR as the basis for environmental review of the bulk of the 2014 Housing Element until all appellate proceedings and related further proceedings are concluded. SFLN objects to the City's approving any amendment to the 2009 Housing Element before conclusion of all such judicial proceedings because the validity of such approval would be conditioned upon the final determination of the courts as to the adequacy of the FEIR and any related proceedings.

In addition, the Addendum is invalid and premature as the City failed to prepare an initial study evaluating whether modifications to the proposed project could have a significant environmental effect, as required by San Francisco Administrative Code section 31.19(b)(2) and CEQA. The Addendum does not cite or provide substantial evidence in support of its conclusions.

Further, the abbreviated Addendum inaccurately characterizes the statements and analyses in the FEIR, and only the contents of the certified FEIR constitute the basis on which the previous environmental review of the 2009 Housing Element was conducted under CEQA.

Also, under San Francisco Charter section 4.105, the Planning Commission "shall periodically recommend to the Board of Supervisors for approval or rejection proposed amendments to the General Plan." Thus, the Commission alone may not approve the 2014 amendments to the general plan, as erroneously indicated in the Commission's January 8, 2015 Initiation packet. The Board of Supervisors must make the final determination as to whether the proposed amendments to the General Plan are to be adopted.

**1. Since the Court of Appeal has Not Determined Whether the FEIR is Adequate Under CEQA, the 2009 Housing Element Has Not Finally Completed Environmental Review.**

The Notice of Issuance of the Addendum states in pertinent part that:

"The proposed revision of the Project is to amend the 2009 Housing Element to account for the updated regional housing need allocation as determined by the Association of Bay Area Governments. The amended 2009 Housing Element is identified as the '2014 Housing Element.'...The proposed 2014 Housing Element retains the existing 2009 Housing Element objectives, policies, and implementation measures, and adds five new policies and three new implementation measures...

The Addendum evaluates the environmental effects of the amendments found in the 2014 Housing Element, which is based on the same significance criteria, setting information and environmental resource areas as presented in the FEIR. Where applicable, the same mitigation measures identified in the FEIR for the 2009 Housing Element would be implemented for the 2014 Housing Element. The Addendum also demonstrates why the amendments found in the 2014 Housing Element would not require major revisions in the FEIR.

As shown in the Addendum, in all cases, the 2014 Housing Element would result in determinations of the same impacts in comparison to the project described in the FEIR. The modified project would not result in any new significant effects beyond those identified in the FEIR or substantially increase the severity of a significant impact, and no new mitigation measures would be required.

Based on the information and analysis contained in the Addendum, the San Francisco Planning Department concludes that the analyses conducted and the conclusions reached in the FEIR certified on March 24, 2011, and re-certified on April 24, 2014, remain valid. The proposed revisions to the project would not cause new significant impacts not identified in the FEIR, and no new mitigation measures would be necessary to reduce significant impacts. Other than as described in the Addendum, no project changes have occurred, and no changes have occurred with respect to circumstances surrounding the proposed project that would cause significant environmental impacts to which the project would contribute considerably, and no new information has become available that shows that the project would cause significant environmental impacts. Therefore, no supplemental environmental review is required beyond the Addendum.”

The Addendum clearly states that “the 2014 Housing Element would continue most of the 2009 Housing Element policies (with minor changes).” (Addendum, p. 11) The Addendum itself “describes the changes in the 2014 Housing Element from the current 2009 Housing Element, analyzes the proposed project in the context of the previous environmental review (the 2004 and 2009 Housing Element FEIR), and summarizes the potential environmental effects that may occur as a result of implementing the changes found in the proposed 2014 Housing Element.” (Addendum, p. 1) The Addendum states that the “2014 Housing Element is the continuation of the 2009 Housing Element analyzed in the FEIR, with several updates as outlined herein.” (Addendum, p. 3) The Addendum maintains that the 2014 Housing Element is largely comprised of the 2009 Housing Element with minor changes that would not have a potentially significant impact that was not previously analyzed in the EIR for the 2004 and 2009 Housing Element. The Addendum states that “[a]s discussed under the Analysis of Potential Environmental Effects, below, the five added policies and three added implementation programs included in the 2014 Housing Element would not be expected to result in any new physical

impact that was not previously identified in the FEIR, or a substantial increase in the severity of any impact that was previously identified in the FEIR.” (Addendum, p. 3)

With respect to updated implementation programs in the 2014 Housing Element, the Addendum states that “most of them implement existing objectives and policies in the 2009 Housing Element,” and “there is no evidence that they would result in any new physical impacts or a substantial increase in the severity of any previously identified impact.” (Appendix, p. 7)

The Addendum concludes that “[o]verall, it is not anticipated that any of the policy or implementation program revisions or deletions discussed above or in the Appendix would result in a physical effect on the environment, or an impact that is more severe than identified in the 2009 Housing Element FEIR. This is because such revisions update statistical information and other data, and no evidence exists that they would have substantial direct or indirect impacts on the environment.” (Addendum, p. 7) The Addendum also relied upon the analysis of cumulative impacts in the FEIR, stating that the “proposed revisions to the Housing Element would not be expected to increase the contribution of the Housing Element to cumulative growth or physical change, as described in the FEIR,” and that therefore, “there would be no new or substantial increase in the severity of the project’s contribution to cumulative impacts.” (Addendum, p. 7)

The January 8, 2015 Executive Summary of the initiation of the 2014 Housing Element update states that then “proposed 2014 Housing Element Update includes a major update on the data and needs analysis (Part I), some updates to the Housing Element policies and implementation measures to reflect changes since 2011, and a few new policies and implementation measures to reflect the ongoing and detailed conversations about affordable housing in the City.” (Executive Summary, p. 2) The January 2015 draft of the 2014 Housing Element included in the initiation hearing packet highlights in yellow the changes from the 2009 Housing Element embodied in the 2014 Housing Element.

The California Court of Appeal is currently considering SFLN’s appeal as to the adequacy under CEQA of the FEIR which the City certified for the 2004 and 2009 Housing Element. As seen from the Court’s January 22, 2015 notice attached hereto, the City has been ordered to file its respondent’s brief within 15 days of the notice or the cause may be submitted based on the record and appellant’s opening brief.

Due to the pending appeal as to the adequacy of the FEIR which considered the bulk of 2009 Housing Element policies that have been carried over into the 2014 Housing Element, the City proceeds at its own risk if it approves the proposed 2014 Housing Element pending final determination of the above-described legal action or proceeding. The Addendum clearly relies upon, and tiers upon, the environmental review conducted in the FEIR as to potential significant environmental impacts of the bulk of the policies contained in the 2014 Housing Element, which

were carried forward from the 2009 Housing Element. Under *Friends of the Santa Clara River v. Castaic Lake Water Agency* (2002) 95 Cal.App.4th 1373, if the EIR for the 2009 Housing Element is found legally inadequate or decertified, the reliance of the Board of Supervisors and Planning Commission on the FEIR and any findings they may make asserting that the analysis conducted, and the conclusions reached, in the FEIR remain valid and the 2014 Housing Element will not cause new significant impacts not identified in the EIR, etc., will be invalid, unlawful and subject to further injunctive relief. Accordingly, pursuant to Public Resources Code section 21167.3 and CEQA Guidelines section 15233, the validity of any approval of the 2014 Housing Element would be conditioned upon final determination of the pending legal proceedings as to adequacy of the FEIR for the 2004 and 2009 Housing Element.

As the City is relying on FEIR for the 2004 and 2009 Housing Elements to support the adoption of nearly identical policies in the 2014 Housing Element, SFLN's previous objections to the legal adequacy of the FEIR are equally applicable to the proposed approval of the 2014 Housing Element. SFLN thus reiterates all the grounds of objection and evidence (including expert statements) set forth in prior comments and objections submitted in relation to the FEIR for the 2004 and 2009 Housing Element and the proposed 2009 Housing Element project and SFLN's legal challenges as set forth in the applicable legal proceedings, which SFLN incorporates by reference as though fully set forth herein, as SFLN's objections to the proposed approval of the 2014 Housing Element and the City's proposed reliance upon the FEIR and Addendum to EIR.

Thus, the City should refrain from relying upon the FEIR as the basis for environmental review of the bulk of the 2014 Housing Element until all appellate proceedings and related further legal proceedings are concluded. On the bases set forth above, SFLN objects to the City's approving any amendment to the 2009 Housing Element based on reliance upon said FEIR before final conclusion of all such judicial proceedings, because the validity of such approval would be conditioned upon the final determination of the courts as to the adequacy of the FEIR and any related proceedings.

**2. The Addendum to EIR is Invalid and Premature because the City Failed to Prepare the Initial Study Required by CEQA and the San Francisco Administrative Code to Evaluate Whether a Modified Project Requires Further CEQA Review.**

San Francisco Administrative Code section 31.19(b)(2) provides as to evaluation of modified projects that "[i]f the Environmental Review Officer determines that the modified project is not exempt, an initial study shall be conducted as provided in this Chapter." The Environmental Review Officer has determined that the modified project is not exempt from environmental review and has approved an Addendum to Environmental Impact Report as the

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environmental review document that is applicable to the proposed modified project. However, the Environmental Review Officer has stated that an initial study has not been conducted to evaluate whether the proposed changes in the project would have a potential significant impact that was not previously evaluated in the FEIR. An initial study is not contained in the materials submitted to the Planning Commission in connection with the proposed project or Addendum. This defect is prejudicial because the Addendum does not cite or provide substantial evidence in support of its conclusions.

SFLN thus objects to approval of the proposed 2014 Housing Element on the basis that the Environmental Review Officer failed to comply with the above-described provision of San Francisco Administrative Code section 31.19(b)(2) which requires that an initial study be prepared to evaluate whether further environmental review is required in relation to proposed modifications to the 2009 Housing Element embodied in the 2014 Housing Element. SFLN further appeals to the Environmental Review Officer her decision that the changes from the 2009 Housing Element contained in the proposed 2014 Housing Element are not substantial modifications that could have a potential significant impact that must be subjected to further environmental review under CEQA, and SFLN requests that the Environmental Review Officer reverse her approval of the Addendum and render a new CEQA decision for the proposed project consisting of the 2014 Housing Element after completion of an initial study under CEQA.

SFLN further objects to the Planning Commission's consideration of the proposed 2014 Housing Element and the Planning Commission's proposed recommendation of, or adoption of, the proposed 2014 Housing Element on the basis of the CEQA review set forth in the Addendum, and SFLN appeals to the Planning Commission to reverse the Environmental Review Officer's approval of the Addendum to the EIR, on the grounds that the City failed to comply with the provisions of CEQA and the San Francisco Administrative Code section 31.19(b)(2), which require that an initial study be prepared to evaluate whether further environmental review under CEQA is required for the modified 2014 Housing Element project before the Environmental Review Officer can make a legally valid determination that further environmental review under CEQA is not required or can legally approve an Addendum to EIR or other environmental document.

Thus, the Addendum to Environmental Impact Report which the Environmental Review Officer issued on January 22, 2015 is invalid and premature. The City must comply with the requirements of CEQA and San Francisco Administrative Code section 31.19(b)(2) and prepare a lawful and adequate initial study before the City may lawfully make a determination that the proposed 2014 Housing Element does not contain substantial modifications that require further environmental review under CEQA.

The Environmental Review Officer has stated that the Addendum to EIR is not an

exemption determination. If the City claims to the contrary, SFLN requests that a written determination of exemption be issued and documented as required by CEQA and the SF Administrative Code.

**3. The Addendum Inaccurately Characterizes the Statements and Analyses in the Certified FEIR for the 2004 and 2009 Housing Element.**

Only the terms of the certified FEIR for the 2004 and 2009 Housing Element constitute the basis on which environmental review under CEQA was conducted for the general plan changes embodied in the 2009 Housing Element.

The abbreviated discussion of the prior environmental review set forth in the Addendum is highly inaccurate in many respects. Thus, the Environmental Review Officer and Planning Commission should reject the Addendum and decline to recommend adoption of the 2014 Housing Element until an accurate supplemental environmental review document or addendum is prepared.

The Addendum inaccurately states that the FEIR noted that “the proposed project does not propose new housing development projects and would not directly or indirectly result in the construction of residential units,” and that “similar to the 2009 Housing Element, the 2014 Housing Element” does not propose or include “revisions that could directly or indirectly result in new development not already authorized under existing regulations.” (Addendum, p. 10) These assertions are absurd, as 2009 Housing Element policies are intended to increase housing production by employing increased density-related building standards and utilizing ongoing community planning processes as a means to increase the density of housing that will be constructed in the City. The Addendum also contradicts the foregoing assertion by stating that the 2014 Housing Element “provides policies to ensure that such development is not unreasonably constrained, and includes policies and objectives to guide the future development of housing.” (Addendum, p. 10)

As another example, as to land use, the FEIR states that “the 2009 Housing Element does not, overall citywide, promote increased residential densities more so than the 1990 Residence Element.....Although the 2009 Housing Element promotes housing in certain areas of the City, including within commercial developments and near transit, the proposed 2009 Housing Element would not change allowable land uses.” The Addendum does not mention these reasons for the conclusion that the impact on land use would not be significant.

As to aesthetics, the Addendum fails to discuss the statements in the FEIR that:

“As discussed in Impact AE-1, the 1990 Residence Element promotes increased density on a broader, citywide, scale to a greater extent than the 2009 Housing Element. Some policies in the 2009 Housing Element could promote density near [sic] for affordable housing projects and as a strategy to be pursued through community planning processes. Promoting increased density could result in taller and bulkier buildings, thereby affecting the overall visual character of the area. Nonetheless, the 2009 Housing Element, when compared to the 1990 Residence Element, does not aggressively promote density more so than the 1990 Residence Element. Therefore, when taken as a whole, the 2009 Housing Element would have less of a potential to result in impacts related to neighborhood character as a result of promoting increased density for new development.” FEIR V.C-27.

The Addendum refers to 2009 Housing Element policies that would direct growth to certain areas but fails to mention 2009 policies that could promote density for affordable housing projects or through community planning processes and also ignores the FEIR’s acknowledgment that “[p]romoting increased density could result in taller and bulkier buildings, thereby affecting the overall visual character of the area.” Since 1990 Residence Element policies did not include policies that promote increased density-related building standards, such as those included in the 2009 Housing Element (see FEIR IV-34-35, the claim in the FEIR that the 1990 Residence Element promotes increased density “on a broader, citywide, scale to a greater extent than the 2009 Housing Element,” relates to not directing new housing growth to certain areas rather than to the taller and bulkier buildings that result from promoting increased density. Thus, the conclusion in the FEIR that taken as a whole the 2009 Housing Element would have less of a potential to result in impacts related to neighborhood character as a result of promoting increased density for new development does not follow from the analysis and is not supported by a fair argument.

The Addendum also ignored the clearly incorrect claim in the FEIR that “the differences between 2009 Housing Element Policy 11.1 and 1990 Residence Element Policy 12.4 are not significant and would not represent a shift in policy. 1990 Residence Element policy 12.4 provides guidelines for development that are intended to preserve neighborhood character....2009 Housing Element Policy 11.1 would ensure that future development would be consistent with existing neighborhood character.” FEIR V.C-28. 2009 Policy 11.1 utilizes a subjective standard and promotes the construction and rehabilitation of well-designed housing that emphasizes beauty, flexibility, and innovative design, and “respects existing neighborhood character.” In contrast, 1990 Policy 12.4 used the objective standard “Promote construction of well designed housing that conserves existing neighborhood character.

SFLN reserves the right to supplement its objections to the January 22, 2015 Addendum and the proposed approval of the 2014 Housing Element in further submissions.



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### **Conclusion**

Based on the foregoing, SFLN objects to the City's approval of the 2014 Housing Element or any amendment to the 2009 Housing Element, reliance upon the FEIR for the 2004 and 2009 Housing Element, and/or reliance upon the Addendum to the FEIR until final conclusion of all judicial proceedings that are pending as to the 2009 Housing Element and its FEIR and all related judicial proceedings, including any legal proceedings that may be brought as to the 2014 Housing Element and the adequacy of CEQA review or compliance relating thereto. Prior to such final conclusion, reliance on the challenged policies in the 2009 Housing Element and the re-adoption of those policies in the 2014 Housing Element is done at the risk of the City and any project proponent.

Very truly yours,

A handwritten signature in cursive script that reads "Kathryn R. Devincenzi".

Kathryn R. Devincenzi

Attachments - Court of Appeal January 22, 2015 Notice

COURT OF APPEAL, FIRST APPELLATE DISTRICT  
350 MCALLISTER STREET  
SAN FRANCISCO, CA 94102  
DIVISION 4

January 22, 2015

Audrey Williams Pearson  
Office of the City Attorney  
City Hall - Room 234  
1 Dr. Carlton B. Goodlet Place  
San Francisco, CA 94102

RE: SAN FRANCISCANS FOR LIVABLE NEIGHBORHOODS,  
Plaintiff and Appellant,  
v.  
CITY AND COUNTY OF SAN FRANCISCO,  
Defendant and Respondent.

A141138  
San Francisco County No. CGC11513077

Dear Counsel:

If respondent's brief is not filed within 15 days after the date of this notice, this cause may be submitted for decision based on the record and appellant's opening brief, unless respondent shows good cause for an extension of time (Cal. Rules of Court, rule 8.220(a)(2)).

Very truly yours,  
Diana Herbert  
Clerk of the Court

**A. Reasoner**

Deputy Clerk

cc: Kathryn R. Devincenzi  
Amy Christine Minter