



CITY OF SAUSALITO

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Denis J. Mulligan, General Manager
Golden Gate Bridge Highway & Transportation District
PO Box 9000
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San Francisco, California 94129-0601

August 22, 2016

Dear Mr. Mulligan,

The City acknowledges receipt of your letter dated August 18, 2016 to Adam Politzer enclosing revised plans for the Golden Gate Bridge, Highway and Transportation District's ("District") proposed major alternations, improvements and additions to the Sausalito Ferry Terminal (the "Project"), and requesting the City initiate another 45 day review period to determine whether or not the City will consent to the Project pursuant to Section 5.4 of the Lease of Public Tides and Submerged Lands between the City and the District executed as of December 1, 1995 (the "Lease").

Your letter, however, implies, incorrectly, that the City previously failed to timely deny consent to the District's plans submitted on March 24, 2015 within the 45-day review period under the Lease because it did not "inform" the District of its denial until June 6, 2015. But in fact, the City denied consent by Resolution adopted by the City Council during its public hearing on May 5, 2015, within the 45-day review period. You and other District representatives attended and testified before the City Council during that hearing. Moreover, on May 6, 2015, I provided you and other District representatives with formal written notice of the City Council's May 5, 2015 decision, enclosing a copy of the City's Resolution denying consent.

Additionally, your brief description of the history of the parties' collective efforts to reach agreement regarding the Project omits certain facts and information that are important both for a more accurate understanding of past events, and to explain the City's and the District's remaining legal obligations as responsible and lead agencies, respectively, for the Project under California's Environmental Quality Act ("CEQA") that are relevant to the District's request to initiate the City's 45-day review period under the Lease.

As you know, the District as lead agency for the Project adopted a Mitigated Negative Declaration ("MND") prepared in September 2012 for the Project. The City has discretionary approval authority over the Project pursuant to Section 5.4 of the Lease, as well as the authorization required by the Project in order to construct the temporary ferry terminal and locate a portion of the Project outside the existing Lease area. (See District statement prepared for the City Joint Planning Commission and Historic Landmark Board, March 11, 2015 Study Session at p. 12.) As such, the City is a responsible agency. (CEQA Guideline §15381 ["...the term 'responsible agency' includes all public agencies other than the lead agency which will

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have discretionary approval power over the project.”]; *Lexington Hills Assn. v. State of California* (1988) 200 Cal. App. 4th 415, 431 [responsible agency authority extends to any agency whose approval is required for “any ‘activity’ integral to the project....”].)

CEQA mandates that the City as responsible agency consider the environmental effects of the Project as shown in the MND prior to reaching its discretionary decisions on the Project. (CEQA Guidelines, § 15096(f).) Additional environmental review is required where substantial Project changes or changed circumstances under which the Project is undertaken subsequent to the District’s adoption of the MND require major revisions to the MND. Additional environmental review also is required where new information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time of the District’s adoption of the MND shows, among other things, that the Project will have one or more significant effects not discussed in the MND. (Pub. Res. Code § 21166; CEQA Guidelines, § 15162.) An addendum to the MND may be prepared if none of the conditions described in Section 15162 have occurred. (CEQA Guidelines, § 15164(b).) A responsible agency’s determination regarding whether supplemental environmental review is warranted must be supported by substantial evidence. (*American Canyon Community United for Responsible Growth v. City of American Canyon* (2006) 145 Cal. App. 4th 1062, 1083.)

The City is aware of new information and changed circumstances since the District’s adoption of the MND that may trigger CEQA’s requirements for supplemental environmental review.

The MND states that the Project’s “Objectives/Purpose and Need” are: (1) improved accessibility; (2) emergency preparedness; (3) sustainability goals; (4) increased operational efficiency; and (5) future flexibility. (MND, pp. 1-4-1-5.) Operational efficiency is described as resulting from standardized boarding procedures and equipment that would reduce staff training time, and would give the District the ability to move staff between the three terminals seamlessly as needed. (*Id.*, p. 1-5.) There is no reference to any objective, purpose or need to expand the size of the terminal to accommodate, encourage or facilitate projected passenger growth. Instead, the MND states that the capacity of the terminal would be unaffected, the operation of the ferry terminal would be similar to existing conditions, and that the Project does not “facilitate nor support” the establishment or expansion of service. (MND, pp. 1-5, 1-6, 2-52-2-53.)

Subsequent to the District’s adoption of the MND and prior to the City’s decision on the District’s March 2015 proposed plans, the District provided inconsistent and incomplete information to the City regarding the District’s passenger growth projections and the nature and extent to which those projections dictated the substantial increases in size of the proposed new float and gangway from existing conditions.

On the one hand, the District informed the City in written materials on March 11, 2015 that the Project was designed to accommodate a projected 4% annual increase in passengers; although no information was provided as to how those projections necessitated the District’s proposal to increase the size of the float from existing 110’ long x 42’ wide to 150’ long x 53’ wide, and the size of the gangway from existing 70’ long x 5.9’ wide to 90’ long x 18.3’ wide. On the other hand, you informed the City Council in your testimony before them during the City

Council's public hearing on May 5, 2015 that the District's passenger growth projections "don't affect the fundamental size of the float or gangway." You explained further that the proposed dimensions of the float and gangway are "dictated by the geometry of the Americans with Disabilities Act..." and that "[i]f there was no growth, or if there's a doubling, it wouldn't affect the fundamental size of the float and the gangway." You added: "[t]oday's operational needs, as well as accessibility standards, indicate that these dimensions are appropriate." (City Council Minutes, May 5, 2015 at 19:13-26.)

During the May 5, 2015 public hearing, the City Council denied consent to the District's March 2015 proposed plans based in part on its findings that the overall size of the project was too large, and because of insufficient information to confirm full compliance with CEQA. The City's Resolution denying consent stated in relevant part: "[w]hile the MND states that the capacity of the Ferry Terminal would be unaffected by the Project, new information recently provided by the District suggests that the Project will increase the capacity of the terminal."

On March 2, 2016, the District submitted revised plans for the Project. On March 4, 2016, the District's outside legal counsel, Michael N. Conneran, confirmed in writing to me that the District agrees that the 45-day review period under the Lease "will not apply to the [District's] submittal." Notably, although the District previously informed the City that the size of the new float and gangway proposed in the District's March 2015 plans were dictated by requirements under the Americans with Disabilities Act ("ADA") and current passenger use and therefore could not be reduced, the District's March 2016 plans reduced the length of the proposed float from 150' to 145.5', and the width of the proposed gangway from 18' to 16'. The District, however, still did not fully disclose its underlying passenger growth projections; nor any engineering calculations demonstrating how the District's growth projections necessitate the size of the proposed float and gangway in the March 2016 plans; which remained multiple times larger than the existing terminal. Moreover, your letter to the City of March 2, 2016 accompanying the District's revised plans reiterated that while the Project has been downsized in many ways, "[o]ne exception is the size of the float, which is mandated by ADA requirements, particularly those related to providing slopes that are readily accessible....The District cannot and will not build a facility that is not readily accessible by individuals with disabilities." (Mulligan March 2, 2016 letter at p. 2.)

Because of the foregoing unanswered questions and seemingly inconsistent information, in May 2016, the City retained the well-regarded engineering firm of COWI North America ("COWI") to peer review the District's revised Project plans.¹ In response to COWI's requests for information, the District explained on June 16, 2016 that its proposed new float includes a 16-foot wide central walkway that is not mandated by ADA requirements, but rather by the District's operational desire that the width of the central walkway correspond to the District's two, 8-foot wide vessel doors. The District also first disclosed that the size of the proposed float

¹ The City also retained the professional planning and design firm, Environmental Vision, to peer review the District's computer-generated visual simulations of the proposed Project from eight viewpoints. On June 1, 2016, Environmental Visions reported that several of the District's simulations were inaccurate. Two of the viewpoints depicted the scale of the ramp and float at 75% and 80% of their correct size, respectively. The District in response agreed to provide revised renderings, which were provided on August 16, 2016.

and gangway is dictated by the District's desire to have the operational ability in the future to unload and load a total of 920 passengers (408 unloading and 512 loading) within 15 minutes. These passenger counts represent 85% of the District's assumed maximum passenger use in the year 2029, based on an annual 4% growth rate commencing in 2014. The District's reliance on 2014 passenger counts as the baseline for its 2029 passenger projections obviously is information that was not known, and could not have been known at the time the District adopted the MND in 2012.

More recently, on August 11, 2016, the District provided the City with additional new information that was not known, and could not have been known in 2012. First, the District provided the City with actual daily ferry passenger counts from 2014 to the present, which revealed that the District's passenger assumptions underlying the current plans exponentially exceed actual, existing use. Second, the District provided monthly bike counts from 2012 to the present, showing the number of ferry passengers disembarking and loading with bikes. This data confirmed and quantified substantially changed circumstances since the District's adoption of the MND. In 2012, monthly bike use averaged 9,200, with a high mark of 16,469 bikes in July. This figure soared in 2014 to a monthly average of 16,007 bikes, with a high mark of 29,796 in August. Finally, the District revealed for the first time that the size of the proposed Project is dictated in part by the District's operational desire and mission to facilitate and increase ferry ridership, drawing regionally from traffic along the 101 corridor. (District August 11, 2016 response, p. 2.) This new information is inconsistent with multiple statements in the MND, as well your letter to the City of March 2, 2016 in which you stated that "[t]he Project was not intended to increase ridership, but merely to replace an aging facility with one that met applicable accessibility requirements." (Mulligan March 2, 2016 letter at p. 6.)

The foregoing new information and changed circumstances at a minimum raises the potential for new and significant growth inducing, recreation and public services impacts that were not adequately evaluated in the MND. CEQA's requirement to consider growth inducing impacts broadly includes a discussion of the "characteristic of some projects which may encourage and facilitate other activities that could significantly affect the environment, either individually or cumulatively." (CEQA Guidelines, § 15126.2(d).) Here for example, the bike count data the District provided on August 16, 2016 reveals that bike use significantly declined between 2014 and 2015, from a monthly average of 16,007 bikes to 14,401. The current Project, given the District's stated objective to construct a terminal large enough to facilitate, and indeed encourage more passengers (and bikes), may reverse the current trend and increase the number of tourists with bikes in Sausalito, thereby raising the potential for new and significant recreational and public service impacts.

CEQA expressly provides that "[i]t must not be assumed that growth in any area necessarily is beneficial, detrimental, or of little significance to the environment." (CEQA Guidelines, § 15126.2(d).) Consistent with that statement of law, the *Final Program EIR for the Expansion of Ferry Transit Service in the San Francisco Bay Area* similarly stated regarding that project's potential for growth inducing impacts in relevant part that "[g]rowth can be considered negative or positive, depending on the objectives of the local government and community. Local governments have the responsibility to make land use decisions. Potential growth inducing impacts should be considered by planning staffs at the local level to ensure that specific projects

do not induce unplanned or unwanted growth.” (*Executive Summary, Final Program Environmental Impact Report, Expansion of Ferry Transit Service in the San Francisco Bay Area*, prepared by URS Corporation (2003), at p. ES-10.)

Prior to receipt of your August 18, 2016 letter, the City retained LSA Environmental Associates, Inc. to investigate whether Project changes, changed circumstances or new information trigger CEQA’s requirements for further environmental review with respect to potential growth inducing, recreation and public service impacts.² LSA estimates completing this investigation by the end of next month. The District’s request to initiate the City’s 45-day review period under the Lease compels the City to make its decision on whether or not to grant consent to the Project by September 30, 2016, prior to the City’s completion and full consideration of LSA’s CEQA analysis and findings.

We therefore request that the District agree to extend the City’s 45-day review period under the Lease by two weeks, to October 14, 2016, so that the City Council may make its decision with the benefit of all the information it requires to fulfill its separate responsibilities as landlord under the Lease and responsible agency under CEQA.

Thank you for your consideration of this request, and we look forward to your response.

Sincerely,



Mary Anne Wagner, City Attorney

cc: Adam Politzer, City Manager
Danny Castro, Community Development Director
Lilly Schinsing, Assistant City Manager/City Clerk
Michael Conneran, Esq.
John Bowers, Esq.

² As responsible agency, the City is responsible for considering only the effects of those activities involved in a project which it is required by law to carry out or approve. (Pub. Res. Code § 211002.1(d).) The District, however, as lead agency is responsible for considering the effects, both individual and collective, of all activities involved in a project. (*Ibid.*) Because the District must provide further discretionary approvals for the Project, it must consider prior to those approvals the extent to which project changes, changed circumstances or new information trigger CEQA’s requirement that it conduct further environmental review. (CEQA Guidelines, § 15162(c).)