

May 24, 2017

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File Number: 56RZ-257264

**VIA ELECTRONIC MAIL
AND OVERNIGHT COURIER**

President and Board of Directors and
Building and Operating Committee
Golden Gate Bridge, Highway and
Transportation District
Administration Building, Golden Gate Bridge
Toll Plaza
San Francisco, CA 4129-0601
DistrictSecretary@goldengate.org

Re: Proposal To Approve Addendum To the Initial Study/Mitigated Negative Declaration for the Sausalito Ferry Terminal And Authorize Implementation of Modified Project

To the President and Board of Directors and Members of the Building and Operating Committee:

We submit the following comments regarding the above-referenced matter on behalf of the City of Sausalito. Sausalito opposes and urges the Committee to recommend denial and the District Board to deny the proposed Addendum to the District's September 2012 Initial Study/Mitigated Negative Declaration (Addendum) and request for authority to implement the Modified Project (Modified Project).

The District's ferry terminal in Sausalito is located on certain tide and submerged lands owned by Sausalito as public trustee under grants from the State of California. The District operates the ferry terminal pursuant to the terms of a lease agreement dated December 1, 1995 (Lease). Under Section 5.4, subsection (a) of the Lease, the District must obtain Sausalito's consent for any major alterations, improvements, or additions to the ferry terminal. The District must obtain Sausalito's consent under the Lease for the Modified Project because it constitutes a major alteration, improvement and/or addition within the meaning of the Lease.

Because Sausalito has discretionary approval authority over the Modified Project as trustee under the Public Trust Doctrine and landlord under the Lease, it also is a responsible agency under California's Environmental Quality Act (CEQA). The proposed Addendum violates CEQA's mandatory procedural and substantive requirements as set forth below.

First, the District violated CEQA's requirement to consult with Sausalito as responsible agency. The leading CEQA treatise states "[t]he relationship between lead and responsible agencies should be cooperative..." (Remy, Thomas et al., *Guide to CEQA* (11th ed.), p. 395 (Solano Press 2006)). Here, however, the District first informed Sausalito of its decision to

prepare the Addendum on May 19, 2017, *after it was completed* and just one week before the District Board is scheduled to consider it. The District thus thwarted Sausalito's ability as responsible agency to comment and consult with the District as lead agency regarding the adequacy of the District's proposed environmental review for the Modified Project, in violation of CEQA's procedures specified under CEQA Guideline section 15096.

Additionally, separate and apart from Sausalito's status as responsible agency, the District violated CEQA's requirements regarding adequate notice and opportunity to comment applicable to all public agencies and the public. CEQA Guideline section 15203 provides that "the lead agency shall provide adequate time for other public agencies and members of the public to review and comment on a draft EIR or negative declaration that it has prepared." There is no reasoned basis to interpret this requirement as excluding Addendums, particularly where, as is the case here, the District's determination to prepare an Addendum is not supported by substantial evidence and a fair argument supports the District's requirement under Public Resources Code section 21166 and CEQA Guideline section 15162 to prepare a supplemental Mitigated Negative Declaration (MND) or Environmental Impact Report (EIR). The District's actions further impeded and therefore violated CEQA Guideline section 15209, which provides: "[e]very public agency may comment on environmental documents dealing with projects which affect resources with which the agency has special expertise regardless of whether its comments were solicited or whether the effects fall within the legal jurisdiction of the agency." Here, Sausalito has such special expertise warranting the District's consideration deriving from its status as public trustee, landlord and responsible agency. The District, however, has denied Sausalito a reasonable opportunity to consider and provide comments on the Addendum and Modified Project.

Second, the Addendum is legally deficient because it does not adequately describe the changes to the proposed project. "The first step in determining whether supplemental environmental review is required under section 21166 is to identify the changes in the project that were not considered in the original environmental review document." (*American Canyon Community United for Responsible Growth v. City of American Canyon* (2006) 145 Cal. App. 4th 1062, 1073-1074.) As examples:

- Figure 4 of the Addendum reveals that the location and orientation of the permanent float has moved substantially (*compare* Figure 3 with Figure 4), yet this significant project change is not mentioned, discussed or analyzed (Addendum, pp. 2-4-2-6);
- While the Addendum identifies an 8,000 square foot area within Sausalito's municipal parking lot adjacent to the ferry terminal for project construction, no information is provided regarding: (1) the number of parking spaces removed for these operations; (2) the specific construction activities to occur at this location (i.e., equipment, operations, personnel, timing, public and environmental safety conditions); and (3) the proximity of this location to sensitive and other receptors (Addendum, p. 2-6.);
- The Addendum explains that under the previously approved project, the District would seek a lease amendment from Sausalito to include all temporary and permanent

structures. The Addendum thus implies, but does not identify the modifications to the project, if any, in this regard. (Addendum, pp. 2-4 – 2-6.)

Third, the District must prepare a subsequent MND or EIR for the Modified Project rather than an Addendum for several reasons. An addendum to an adopted negative declaration may be prepared if only minor technical changes or additions are necessary. (CEQA Guideline § 15164(b).) Additionally, a lead agency's decision to prepare an addendum must be supported by substantial evidence. (CEQA Guidelines, § 15164 (e); *American Canyon, supra*, 145 Cal. App. 4th at 1080 [observing that in cases upholding agency's decision under Section 21166, "the court was able to identify specific, solid evidence in the record supporting the agencies' determination that project changes would not have significant environmental effects requiring supplemental environmental review."].) Finally, "a negative declaration requires a major revision – *i.e.*, a subsequent EIR or mitigated negative declaration—whenever there is substantial evidence to support a **fair argument** that proposed changes **might** have a significant environmental impact not previously considered in connection with the project as originally approved." (*Friends of the College of San Mateo Gardens v. San Mateo Community College District* 2017 WL 1829176 (First District Court of Appeal, May 5, 2017 [emphasis added])). Applying the foregoing legal principles, the District may not approve the Addendum for the Modified Project because: (1) the project changes are substantial rather than minor or technical; (2) the Addendum's finding that the Modified Project does not trigger CEQA's requirements for supplemental environmental review is not supported by substantial evidence; and (3) there is evidence supporting a fair argument that the Modified Project might have a significant environmental impact not previously considered.

The proposed modifications to the design of the project, the identification of the location of an 8,000 square foot construction area within Sausalito's municipal parking lot, the movement and reorientation of the float, and the apparent decision to no longer request a lease amendment from Sausalito for the permanent and temporary components of the project, both individually and collectively are not "minor technical" changes, but instead substantial changes that are legally inappropriate for review under an addendum to any MND, much less the District's MND approved five years ago.

Additionally, the Addendum's findings are unsupported by substantial evidence in numerous respects:

- Aesthetics. The Addendum failed to consider or analyze the movement and reorientation of the permanent float. Consequently, the Addendum's findings regarding this potential impact are unsupported by substantial evidence.
- Construction. The District's identification of a specific 8,000 square foot area within Sausalito's adjacent municipal parking lot for temporary construction activity and a significantly longer utility trench reaching to the transformer on Anchor Street constitute substantial project changes and new information. The originally approved MND contained no environmental analysis whatsoever regarding the use of this location for construction activities and the utility trench. The Addendum also fails to provide this missing analysis. The Addendum does not describe and therefore did not analyze any specific construction activity that will occur

at this location. No information is provided regarding the proposed nature of work to be performed, equipment to be used, or number of construction workers and vehicles at this location. The Addendum thus provides no analysis of the potential noise, vibration, air quality impacts from construction activities at this location; notwithstanding the fact that this area is in close proximity to the historic Sausalito Yacht Club building as well as numerous ferry riders who may be in a queue to board the ferry. The Addendum also fails to identify the number of parking spaces removed from use during construction, and lacks any analysis regarding the potential parking and traffic circulation impacts resulting from the loss of these spaces and the middle parking row. Accordingly, the Addendum's determination that there is no potential for significant environmental impacts during construction at the newly identified parking lot location is not supported by substantial evidence.

Moreover, there is substantial evidence supporting a fair argument that the Modified Project might cause significant environmental impacts not previously considered in the prior MND. "Substantial evidence" under CEQA means "enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached." (CEQA Guidelines, § 15384(a).) "Substantial evidence shall include facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts." (CEQA Guidelines, § 15384(b).)

Construction Impacts: As noted above, the Addendum contains no analysis of the potential environmental impacts resulting from construction activity at the newly identified 8,000 square foot parking lot location and from the extended utility trench, specifically including noise, vibration, air quality, parking, and traffic circulation impacts. There are sensitive uses nearby, including the historic Sausalito Yacht Club building located just 136 feet from this location (Exhibit A), the Inn Above Tide, located less than 200 feet from this location, numerous commercial and hotel uses located a short distance away along Anchor Street, El Portal Street and Bridgeway, and two public parks (Gabrielson Park and Vina Del Mar Park) located immediately adjacent to the ferry parking lot. The originally approved MND explains that under BAAQMD guidelines, an offset distance of no less than 328 is required to ensure that sensitive receptors would have a less than significant impact from combined cancer risks from diesel particulate matter and acrolin. (MND, p. 2-12.)

Moreover, the Addendum does not analyze whether the construction activities proposed for this area would comply with the City's noise regulations. (Sausalito Municipal Code, Chapter 12.16). In particular, the Addendum provides no analysis of the standards in Municipal Code section 12.16.050, including the proximity of the construction activities to residential sleeping facilities such as The Inn Above Tides, Hotel Sausalito, and Casa Madrona Hotel & Spa. Moreover, Municipal Code section 12.16.110 makes it unlawful to create noise that unreasonably interferes with the workings of a City building, yet the Addendum does not disclose much less analyze the potential construction noise impacts on the City's Visitor Information Kiosk which is located within the parking lot.

Land Use/Planning Impacts: A project may have a significant environmental impact if it conflicts with any applicable land use plan, policy or regulation... adopted for the purpose of avoiding or mitigating an environmental effect. (CEQA Guidelines, appen. G, §IX, subd. (b);

Pocket Protectors v. City of Sacramento (2005) 124 Cal. App. 4th 903, 929.) The District's proposal to occupy 8,000 square feet of Sausalito's adjacent municipal parking lot for project construction conflicts with Sausalito's Ordinance No. 1128, which amended Sausalito's General Plan in part by limiting the use of this parking lot, absent voter approval, to public parking uses. As discussed above, it may also conflict with the City's adopted noise regulations (Sausalito Municipal Code, Chapter 12.16), yet the Addendum failed to analyze the potential new construction noise impacts altogether.

Growth Inducing Impacts: The Addendum acknowledges that since the District's adoption of the prior MND, the popularity of recreational bicycling and therefore the number of ferry passengers (primarily tourists) with bicycles using the Sausalito ferry to return to San Francisco has exponentially increased. (Addendum, p. 2-2). The exponential increase in the number of ferry passengers with bicycles, and related congested management problems, constitutes changed circumstances since the District's adoption of the prior MND. (Exhibit B [excerpts from February 29, 2017 presentation by Sausalito's Pedestrian and Bicycle Advisory Committee to the Sausalito City Council.]) The Addendum contends that the Modified Project would improve overcrowding conditions by facilitating timelier passenger loading and unloading. However, no analysis or supporting data is provided or discussed in the Addendum to support this conclusion. Moreover, a well-recognized and often resulting consequence of infrastructure improvements is *increased* demand. However, the Addendum provides no analysis in light of the changed circumstances regarding increases in bicycle use and congestion management issues regarding whether the Modified Project would increase demand, which in turn might cause and/or exacerbate significant growth inducing and related traffic, noise, air quality and public service impacts. The Addendum is legally deficient because it lacks this analysis. (See *Barnes v. US Dept. of Transportation*, 655 F.3d 1124, 1137-1139 (9th Cir. 2011) [holding that agency violated NEPA by failing to take the required "hard look" at whether airport runway expansion and improvements would increase demand and resulting growth inducing impacts].)

Fourth, the Addendum is further legally deficient because it fails to disclose Sausalito's status as responsible agency for the Modified Project, as well as the approvals from Sausalito under the Lease and the Public Trust Doctrine required for the Modified Project. At a minimum, the Addendum must disclose the pending litigation between the District and Sausalito. Failure to do so violates CEQA's broad information disclosure obligations.

For all of the foregoing reasons, Sausalito respectfully requests that the Committee recommend denial and that the District Board deny the proposed Addendum and requested authority to implement the Modified Project. Sausalito additionally reiterates its request that the District comply with the its obligations under the Lease by submitting the proposed ferry terminal project to the City Council for its consent.

SheppardMullin

President and Members of the Board
May 24, 2017
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Very truly yours,



Arthur J. Friedman
for SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

SMRH:482850878.2

cc: Mary A. Wagner, Esq. Sausalito City Attorney

EXHIBIT A

(Letter from City Engineer re Proximity of Sausalito Yacht Harbor)



CITY OF SAUSALITO

Ray Withy, Mayor

Adam Politzer, City Manager
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May 23, 2017
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Re: Engineering Analysis of Modified Sausalito Ferry Terminal Vessel Boarding Rehabilitation Project

Dear Ms. Wagner:

In my capacity as Assistant Engineer for the City of Sausalito, I reviewed the proposed Addendum to the Initial Study/Mitigated Negative Declaration for the modified Sausalito Ferry Terminal Vessel Boarding Rehabilitation Project, specifically including "Figure 4" which shows the location of the proposed construction area within the City's parking lot adjacent to the ferry terminal.

On May 22, 2017, I visited the project site to evaluate the potential effects of the proposed construction area on the City's parking lot and its proximity to the Sausalito Yacht Club. I determined that the construction area would occupy City parking spaces 35 to 65. I also measured the distance from the construction area to the entrance of the Sausalito Yacht Club using a Keson MP401 Metal Professional Wheel. The following is a summary of these measurements:

The distance from the westerly point on the corner of the sidewalk outside of the Yacht club to the easterly corner of parking stall #48 was measured by

- The distance from the westerly point on the corner of the sidewalk outside of the Yacht club to the easterly corner of parking stall #48 was measured by walking the wheel. The measurement was made three times and the shortest measurement was 142 feet.
- The distance from the westerly point on the corner of the sidewalk outside of the Yacht club to the easterly corner of parking stall #49 was measured by walking the wheel. The measurement was made three times and the shortest measurement was 136 feet.

The shortest measurement represents the straightest line walked. The distances that were measured were of the closest two parking stalls to the entrance of the Yacht Club.

Attached as Exhibit A are my notes from the site visit; attached as Exhibit B is a markup of Figure 4 depicting the measurements; and attached as Exhibit C are supporting photographs showing the measurement locations.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Bryant Ho', written in a cursive style.

Bryant Ho
Assistant Engineer for City of Sausalito

SMRH:483014787.2

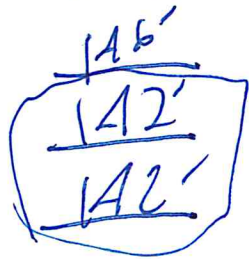
EXHIBIT A

Site Visit Notes:

2017.05.22

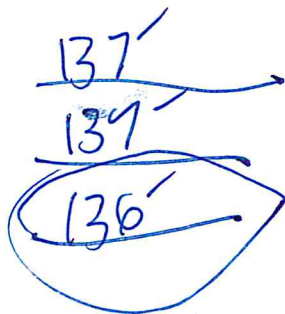
Measurement Method: Keson MP 401
Metal Professional Wheel

3 Measurements from the ^{Easterly} ~~Western~~ corner
of parking stall #48 to the westerly corner
of the landing in front of the Yacht Club



Shortest
~~Average~~ distance 142'

3 Measurements from the Easterly corner
of parking stall #99 to the westerly corner
of the landing in front of parking in front of
The Yacht Club.

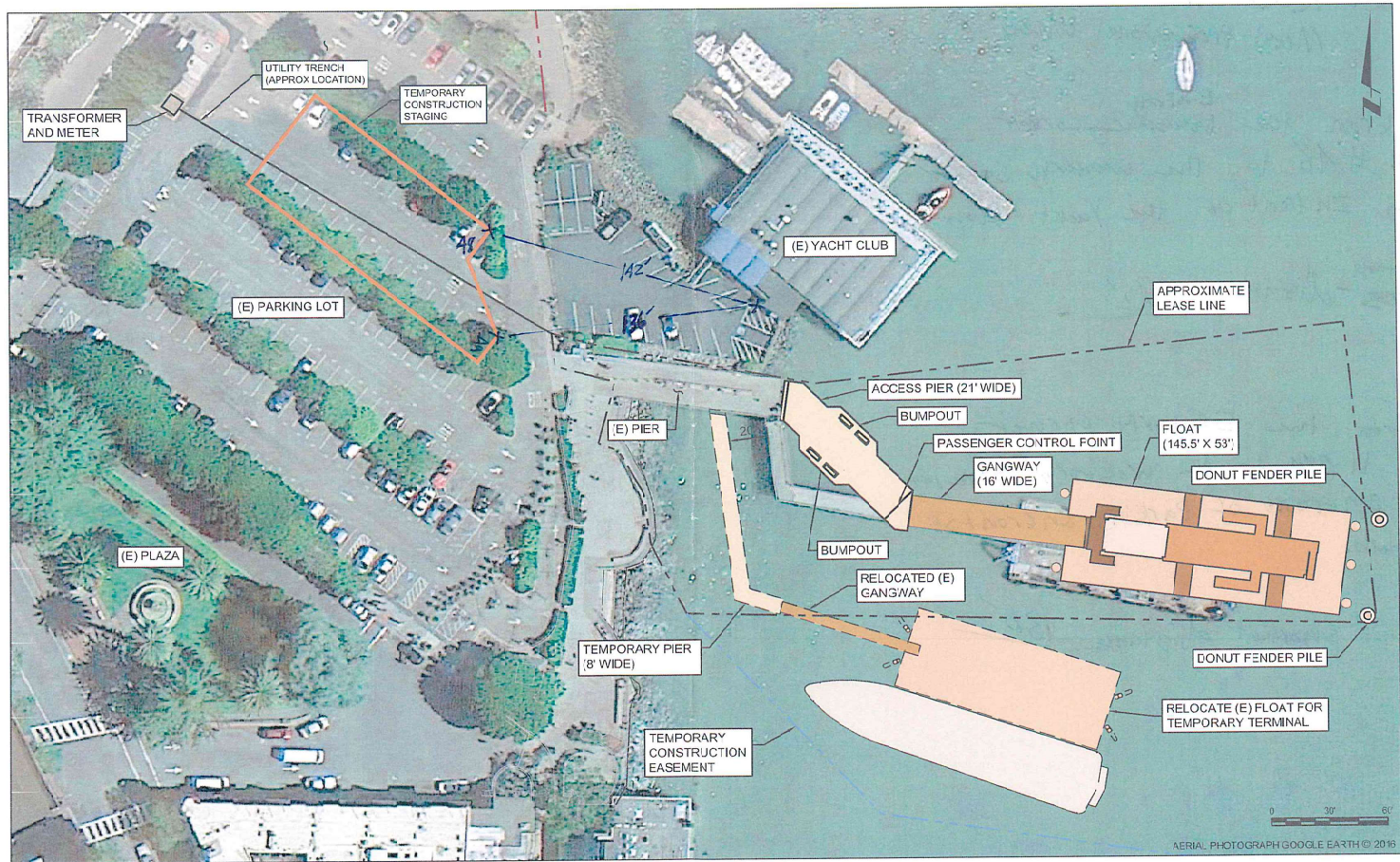


Shortest distance 136'

Bryan Ho EIT

EXHIBIT B

122
123



SOURCE: Moflatt & Nichol; ESA

Golden Gate Ferry Sausalito Terminal Vessel Boarding Rehabilitation - 209308

Figure 4

Modified Project Concept Plan

EXHIBIT C







EXHIBIT B

(Excerpts from February 29, 2017 Presentation)

2016 Bike Counts: 13% Increase

51 Ambassador Program Year-Over-Year Data/Results										
Bike Counts - Station 1		Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday	Total	Change
2015										
June 1 - June 7		921	952	982	776	950	1090	1220	6007	
June 8 - June 14		888	798	868	998	1888	1448	1888	7888	
June 15 - June 21		798	698	668	522	1171	1457	1144	6307	
June 22 - June 28		718	887	748	1187	1316	1151	981	7188	
June 29 - June 30		1,288	887						2,175	
									29949	
2016										
June 1 - June 5				438	717	900	1315	1502	4032	
June 6 - June 12		948	1087	1048	711	1097	1917	1711	7109	
June 13 - June 19		888	1027	887	518	1048	1481	1884	6987	
June 20 - June 26		1259	1021	1101	1090	1420	2210	1737	8847	
June 27 - June 30		1888	1171	1087	1888				6,032	
									56550	21%

Bike Counter - Station 1		Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday	Total
2015									
July 1 - July 5				1087	1088	1817	1888	1718	6880
July 6 - July 12		1077	1027	1017	1111	1111	1111	1111	6880
July 13 - July 19		1500	1107	1070	1371	1500	1500	1120	10070
July 20 - July 26		1102	1170	1000	1772	2202	2270	1727	11917
July 27 - July 31		1807	1847	1289	1817	1912			8888
									48778
2016									
July 1 - July 3				1020	900	1011	1111	1111	6000
July 4 - July 10		1520	1207	1020	900	1010	1111	1111	11071
July 11 - July 17		1001	1000	1074	1000	1732	2270	1030	11000
July 18 - July 24		1772	1818	1853	1480	2158	2772	2088	15827
July 25 - July 31		1847	1888	1734	1474	1777	1174	1888	11770
Valet Parking - Income:									10%

Bike Counts - Station 1		Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday	Total
2015									
August 1 - August 7							2687	2218	4905
August 8 - August 14		1980	1909	1618	1809	2095	2451	2554	14536
August 15 - August 21		1503	1370	1367	1632	2410	2345	1908	13095
August 22 - August 28		1260	1496	1467	1086	1264	2204	1495	10281
August 29 - August 30		1157	1548	1840	1188	1270	1407	1288	9011
31-Aug		802							802
									51596
2016									
August 1 - August 7		2350	1830	2379	1800	1725	1759	2071	14520
August 8 - August 14		2011	2209	1930	1744	2281	2961	2131	15273
August 15 - August 21		1102	1000	1204	1032	1705	2153	2070	12202
August 22 - August 28		2504	2050	1980	1981	1800	1802	1625	10441
August 29 - August 31		1184	1141	784					3109
Valet Parking - Income									7% increase

Bike Counts - Station 1		Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday	Total
2015									
October 1 - October 4					916	1574	1391	852	4733
October 5 - October 11		1017	860	929	963	1578	1019	1077	7443
October 12 - October 18		1686	1124	955	1050	1780	1053	926	8574
October 19 - October 25		673	1013	908					2594
October 26 - October 31									23141
2016									
October 1st - October 2nd							1952	978	2930
October 3rd - October 9th		0	737	517	757	860	2306	1621	6910
October 10th - October 16th		910	761	554	783	0	0	0	3014
October 17th - October 23rd		1106	852	586	594	1050	2116	1023	7787
October 24th - October 30th		530	0	895	0	0	1172	0	2607
October 31st									0

Queuing



Ferry Bike Line goes up Tracy Way

Around the Corner

And down to Spinnaker





Anchor Street
Sidewalk "Closed"

Tracy Way Sidewalk
"Closed"

Queuing



Current Status of BofA Bike Parking: The Jungle

