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Thomas N. Lippe
Brian Gaffney
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February 14, 2013

Roberta Boomer
Secretary to the Board of Directors
San Francisco Municipal Transportation Agency
One South Van Ness Avenue, 7th Floor
San Francisco, CA 94103

Jonas P. Ionin
Acting Commission Secretary
San Francisco Planning Commission
1650 Mission Street, Suite 400
San Francisco, CA 94103-2414

Angela Calvillo
Clerk of the Board
San Francisco Board of Supervisors
1 Dr. Carlton B. Goodlett Place
City Hall, Room 244
San Francisco, Ca. 94102-4689

Re: Central Subway Project: Use of the Pagoda Theater Parcel to remove the TBM machines.

Dear Chairman Nolan and Members of the SFMTA Board of Directors;
President Fong and Members of the San Francisco Planning Commission; and
President Chiu and Members of the San Francisco Board of Supervisors:

This office represents Howard Wong and SaveMuni.com with respect to the construction of the Central Subway Project. I am writing on their behalf to submit additional comments on:

(1) The SFMTA's current proposal to alter the alignment and terminus of the subway tunnels north of the Chinatown Station to change the tunnel boring machine (TBM) extraction location from Columbus Avenue between Union and Powell streets to the Pagoda Theater parcel at 1731-1741 Powell St.

(2) The current proposal before the Planning Commission to grant Conditional Use Application No. 2013.0050C to the Pagoda Theater property; and to recommend to the Board of Supervisors that it amend Zoning Map Sheet HT01 to reclassify the Pagoda Theater property from the 40-X Height and Bulk District to the 55-X Height and Bulk District; and to recommend to the Board of Supervisors that it adopt the "Central Subway

Tunnel Boring Machine Extraction Site Special Use District" for the Pagoda Theater property.

(3) The current proposal before the Board of Supervisors to amend Zoning Map Sheet HT01 to reclassify the Pagoda Theater property from the 40-X Height and Bulk District to the 55-X Height and Bulk District; and to adopt the "Central Subway Tunnel Boring Machine Extraction Site Special Use District" for the Pagoda Theater property.

I also write to object to all of the above proposed decisions on the grounds set forth in this letter.

1. A Subsequent or Supplemental EIR is required to assess the environmental impacts of altering the alignment and terminus of the subway tunnels north of the Chinatown Station to change the TBM extraction location from Columbus Avenue to the Pagoda Theater parcel.

My letter dated February 5, 2013 on this topic included, as Exhibit 1, a letter dated February 4, 2013 from geotechnical engineer Lawrence B. Karp. Since then, questions have been raised as to whether the excavation for the TBM removal shaft at the Pagoda Theater property will be 75 feet or only 42 feet deep. It does not matter: the effect is still significant and adverse, requiring the preparation of a Subsequent SEIR. (See letter from Lawrence B. Karp dated February 12, 2013, attached hereto as Exhibit 1.)

2. Approval of the Special Use District Violates the "Uniformity" Requirement of State Law.

The proposal to adopt a so-called "Special Use District" for one parcel of land, the express purpose of which is to grant the owner an exemption from numerous zoning rules, is, in essence, a variance. As such, the City must comply with the procedures and make the substantive findings required by both state and City law for approving a variance, which this proposal fails to do so. (See Government Code § 65906;¹ S.F. Planning Code § 305; *Neighbors in Support of*

¹ "Variances from the terms of the zoning ordinances shall be granted only when, because of special circumstances applicable to the property, including size, shape, topography, location or surroundings, the strict application of the zoning ordinance deprives such property of privileges enjoyed by other property in the vicinity and under identical zoning classification.

Any variance granted shall be subject to such conditions as will assure that the adjustment thereby authorized shall not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which such property is situated.

A variance shall not be granted for a parcel of property which authorizes a use or activity

Appropriate Land Use v. County of Tuolumne (2007) 157 Cal.App.4th 997, 1009-10 [“Local zoning power is broad since it issues directly from the broad police power detailed in the California Constitution and not from the narrower provisions of the planning and zoning law. The foundations of zoning would be undermined, however, if local governments could grant favored treatment to some owners on a purely ad hoc basis. Cities and counties unquestionably have the power to rezone and their decisions to do so are entitled to great deference; but rezoning, even of the smallest parcels, still necessarily respects the principle of uniformity. This is because a rezoning places a parcel within a general category of parcels (those in the new zone), all of which are subject to the same zoning regulations. The county's action in this case, by contrast, placed the Petersons' land in a class by itself.”]; *Orinda Assn v. Board of Supervisors* (1986) 182 Cal.App.3d 1145, 1166 [“The facts set forth in the required findings must address ‘the critical issue whether a variance was necessary to bring the [owner of the subject parcel] into substantial parity with other parties holding property interests in the zone.’ [citation] Thus, data focusing on the qualities of the property and Project for which the variance is sought, the desirability of the proposed development, the attractiveness of its design, the benefits to the community, or the economic difficulties of developing the property in conformance with the zoning regulations, lack legal significance and are simply irrelevant to the controlling issue of whether strict application of zoning rules would prevent the would-be developer from utilizing his or her property to the same extent as other property owners in the same zoning district. [citations]”].)

3. Approval of the Conditional Use Authorization Violates the San Francisco Planning Code and the State Planning and Zoning Law.

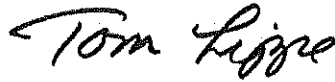
The Planning Commission cannot approve the conditional use authorization for the Pagoda Theater property because the authorization is inconsistent with currently effective zoning rules. The Commission apparently proposes to grant this approval with its effectiveness conditioned on the Board of Supervisors' later adoption of the proposed Special Use District for the property. This violates the Planning and Zoning Law and the City Planning Code because the Commission does not have jurisdiction to approve conditional uses that are not authorized under zoning rules in effect at the time of the decision.

which is not otherwise expressly authorized by the zone regulation governing the parcel of property. The provisions of this section shall not apply to conditional use permits

San Francisco Municipal Transportation Agency
San Francisco Planning Commission
San Francisco Board of Supervisors
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Thank you for your attention to this matter.

Very truly yours,

A handwritten signature in black ink that reads "Tom Lippe". The signature is written in a cursive, slightly slanted style.

Thomas N. Lippe

List of Exhibits

1. Letter dated February 13, 2013 from Lawrence B. Karp to Thomas Lippe.

EXHIBIT 1

LAWRENCE B. KARP
CONSULTING GEOTECHNICAL ENGINEER

FOUNDATIONS, WALLS, PILES
UNDERPINNING, TIEBACKS
DEEP RETAINED EXCAVATIONS
SHORING & BULKHEADS
CEQA, EARTHWORK & SLOPES
CAISSONS, COFFERDAMS
COASTAL & MARINE STRUCTURES

SOIL MECHANICS, GEOLOGY
GROUNDWATER HYDROLOGY
CONCRETE TECHNOLOGY

February 13, 2013

Thomas N. Lippe, Esq.
329 Bryant Street, Suite 3D
San Francisco, CA 94107

Subject: Central Subway Phase 2, North Beach Construction Variant, San Francisco
Proposed Termination & Extraction of TBMs in Block 101 (Pagoda Theater)
Supplement to Report of February 5, 2013

Dear Mr. Lippe:

In the subject report City Planning's Addendum to Supplemental EIS/EIR (SFPD, 2013) was referenced and quoted from, page 17 ¶(3) that the excavation under the former Pagoda Palace was intended to be "70 feet below grade level" for the "retrieval shaft structure". New subgrade is indicated on Figure 12 of the EIS/EIR to be about 55 feet below street level. I have since heard the depth City Planning noted could be a mistake; depth of excavation could be only 42 feet. I have been asked if a 42 foot excavation presents the same negative effects on neighboring properties as would an excavation of 75 feet. The answer is yes: Underpinning of, and tiebacks under, adjacent buildings and dewatering outside the excavation will still be required for a 42 foot depth.

The geotechnical investigation report for La Corneta Taqueria postulated "weathered sandstone of the Franciscan formation may be present within 40 to 50 feet below ground surface" (Treadwell & Rollo 2008, page 7) therefore no part of a 42 foot deep excavation would be in competent bedrock. A 42 foot deep excavation will be about 36 feet below the groundwater table at Elevation +56.5 feet (Treadwell & Rollo 2008, page 8) so the excavation would be entirely in surficial materials (silts and clays intermixed with sand) within which groundwater is flowing from Russian Hill to San Francisco Bay. Dewatering will be required outside the excavation for its full depth, which is consistently below all the adjacent building foundations. No building in the area that will be affected by the excavation has a foundation or basement deeper than 10 feet below the surface grade (noted to be at nominal Elevation +62.5), so at least 30 feet of ground under the buildings surrounding the excavation will have groundwater (and particulate) pumped from beneath them.

Groundwater flowing from the predominately sandy materials above bedrock (at the 42 foot depth where an excavation would occur) is much more significant insofar as support for the surrounding buildings is concerned than groundwater that flows through the bedrock (from 42 feet to 70 feet deep), so the difference between a 42 foot excavation and a 75 foot excavation from a groundwater buoyancy and loss of ground standpoint is relatively insignificant. Another phenomenon not mentioned in the 2/5/13 letter-report is "piping"; water seeping through fine grained soils that erodes the soil grain-by-grain and forms pipes or tunnels that pull soil particles with dewatering. Buildings in fill and sand beyond the estimated influence of dewatering (noted on 2/5/13) are also likely to suffer and/or generate claims for damage.

Yours truly,


Lawrence B. Karp

