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March 11, 2013

Hon. Rodney Fong, President
San Francisco Planning Commission
1650 Mission Street, Suite 400
San Francisco, CA 94103

Dear President Fong and Commissioners,

SPUR strongly supports Supervisor Wiener's legislation to amend San Francisco's California Environmental Quality Act procedures. This legislation is an extremely modest proposal that helps clarify appeal procedures for exemptions and negative declarations, creating a fairer and more transparent process for everyone.

As you know, San Francisco is unique in California in its application of CEQA. San Francisco's Municipal Code and Charter contain unique provisions that make enforcement of CEQA different in San Francisco than in other California jurisdictions. CEQA defines a "project" as any permit, approval, or action that is subject to the discretion of a local administrative body. In most jurisdictions there is a clear distinction between "discretionary" actions that require the use of judgment or subjective criteria on the part of the approving body and "ministerial" actions that simply involve comparing of a project against established standards or checklists. For example, in most jurisdictions rezoning a property is considered discretionary, because it generally involves judgment by officials about the appropriateness of the change, while a building permit is considered ministerial because a builder must simply prove he or she has completed a checklist of standard requirements. **San Francisco's code, however, essentially makes all permits issued by the City for virtually any type of project discretionary and therefore subject to all of the rules and regulations set forth in CEQA, including appeals.**

For this reason, the application of CEQA in San Francisco is enormously complex and more far-reaching in its impacts than anywhere else in the entire state. Taken in this context, the legislation before you outlines a series of modest changes that collectively take a small step towards creating a clearer and more streamlined process for everyone.

The legislation proposes three key changes:

1. It would codify procedures for appeal of negative declarations (neg decs) and exemptions to the Board of Supervisors, including the timing of those appeals.
2. It would expand noticing provisions related to exemptions, none of which are required by CEQA.
3. It would establish that when the Board of Supervisors must approve a project, it is the CEQA decision-making body and therefore there would not be a separate appeal process.

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Each of these three changes helps to clarify and streamline the CEQA appeals process. The Planning Department case report notes that the current Administrative Code does not outline an appeal process for neg decs and exemptions, whereas it does outline a process for EIR appeals. In addition, there is no timeline for appeals of neg decs and exemptions. **Currently, as your case report notes, the Clerk of the Board refers every appeal of a neg dec and exemption to the City Attorney's Office for advice on whether the appeal is timely. This is not an efficient or transparent mechanism to handle appeals.** The proposed legislation addresses this issue by creating clear procedures and timelines that appellants, the Planning Department and project sponsors can rely upon.

Lastly, there has been substantial public discussion about the issue of the timeline of appeals. We feel very strongly that the first approval action should serve as the trigger for the appeal process. It is not efficient or appropriate to wait until the entire entitlements process has been completed before filing an appeal.

We also applaud Supervisor Wiener for making numerous substantive amendments to the legislation in response to community comments. We believe that all legitimate issues have now been addressed in the current third draft of the ordinance, as summarized in your case report.

In summary, we strongly urge you to move this legislation forward.

Thank you for your consideration of our position. Should you have any questions, please do not hesitate to contact me at 415-644-4292 or skarlinsky@spur.org

Sincerely,

A handwritten signature in black ink, appearing to be 'SK' or similar initials, written in a cursive style.

Sarah Karlinsky
Deputy Director

Cc: Supervisor Scott Wiener
AnMarie Rogers, Planning Department
Sarah Jones, Planning Department
SPUR Board of Directors