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Via Email Only

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***Re: 11-15 Marina Blvd., Project No. 2025-011405PRJ – Formal Request for
Compliance with Gov. Code § 65912.124(k) and City's Planning Bulletin No. 9***

Dear Mr. Tsai and Ms. Phillips,

We write on behalf of the Marina Community Association, the Cow Hollow Association, and Neighborhoods United SF (the “Neighborhood Associations”) regarding the Marina Safeway project proposed for 11-15 Marina Boulevard (the “Site”), bearing project number 2025-011405PRJ and including the revisions submitted in July 2026 (the “Project”).

Specifically, we write to request that the Department of Public Health (“DPH”) and Planning Department (“Planning”) comply with their obligations under Gov. Code § 65912.124(k) (wherein relevant portions of AB 2011, as amended, have been codified), as interpreted in the City’s Planning Bulletin No. 9,¹ to pause approval of the Project for streamlined review under AB 2011 until DPH and Planning have, as stated in Planning Bulletin No. 9, “develop[ed] conditions of approval that will successfully mitigate any hazards to insignificant levels as set forth in State Law.”

¹ San Francisco Planning Department, Planning Director Bulletin No. 9: Ministerial Approval Processes for Mixed-Income Housing, updated July 1, 2026, “What is the Planning Department Process for a Mixed Income Project That Is Eligible for Ministerial Approval?” available at <https://sfplanning.org/resource/planning-director-bulletin-no-9-ministerial-approval-processes-mixed-income-housing> (last visited Aug. 5, 2026).

We understand and appreciate that, as discussed below, DPH and Planning are currently prevented from complying with those obligations because the developer of the Project (the “Developer”) has thus far refused (and otherwise failed) to conduct an adequate investigation of the Site. However, your obligations under Gov. Code § 65912.124(k) and the Planning Bulletin No. 9 are mandatory. Thus, should you fail to comply with those obligations, the organizations on whose behalf this letter is sent will be forced to initiate litigation to compel your compliance with them.

That is not our preferred result by any stretch of the imagination. While AB 2011 has, for better or worse, constrained the grounds on which a project can be reviewed and approved by local agencies, the California Legislature specifically provided local agencies the authority to ensure that sites contaminated with hazardous materials will not be developed into large-scale housing developments unless and until there is certainty that doing so will not put the residents of such developments and the public at risk. This Site is highly contaminated with hazardous waste, and we request you fulfill your obligations to ensure that the Developer has an enforceable plan in place to address that contamination before the Project enters the streamlined approval process.

I. Government Code § 65912.124(k) and Planning Department Bulletin No. 9 Require Environmental Conditions Be Fully Assessed and Mitigation Fully Planned Before a Project Is Eligible for Streamlined Review

San Francisco Planning Director Bulletin No. 9 provides that, if a Phase I Environmental Assessment finds hazardous materials are present, Planning staff will determine the application “to be ineligible for ministerial approval until” DPH, in conjunction with the Planning Department, develops conditions of approval that will “successfully mitigate any hazards to insignificant levels.” The Bulletin also states, in a section titled “AB 2011 - Planning Review Process,” that the Planning Department will consult with DPH if hazardous materials are found and will pause the state-mandated timelines during that consultation.

This process aligns with that spelled out in Government Code § 65912.124(k). This section requires the project proponent to first perform a Phase I environmental assessment. If a recognized environmental condition is found in this assessment, a preliminary endangerment assessment meeting the requirements of Health and Safety Code § 78095 must then be prepared by an environmental assessor. The preliminary endangerment assessment must determine both whether a hazardous substance has been released on the site and whether future occupants may be exposed to significant health hazards from a nearby property or activity. Gov. Code, § 65912.124(k)(2). Health and Safety Code § 78095 further requires the preliminary endangerment assessment to include: “(1) sampling and analysis of the site; (2) a preliminary determination of the type and extent of hazardous-material contamination of the site; and (3) a preliminary evaluation of the risks that contamination may pose to public health or the environment.”

II. The Site Is Highly Contaminated with Hazardous Waste, but the Developer Has Refused to Conduct Sampling Sufficient to Allow DPH and Planning to Develop the Required Conditions of Approval

The Developer's Phase I environmental assessment and additional data collected at and around the Site demonstrate that the Site is impacted by residual petroleum-hydrocarbon and polycyclic aromatic hydrocarbon contamination in soil and groundwater in concentrations exceeding applicable screening levels, and the Phase I Environmental Site Assessment identifies a separate tetrachloroethene ("PCE")/chloroform soil-vapor at concentrations exceeding commercial/industrial screening levels. (**Exhibit 1** (Langan, Phase I Environmental Site Assessment, Dec. 8, 2025, Executive Summary & Table 5-1); **Exhibit 2**, Phase I Environmental Assessment, .)

As discussed, the Developer's December 8, 2025 Phase I Environmental Site Assessment identified a recognized environmental condition involving PCE and chloroform in soil vapor at concentrations exceeding applicable *commercial/industrial* screening levels. (**Exhibit 1**, Executive Summary & Table 5-1.) It also identified a controlled recognized environmental condition involving residual petroleum hydrocarbons and polycyclic aromatic hydrocarbons in soil and groundwater. (*Id.*).

Furthermore, as discussed in the letter from Michael Harrison, P.E. (attached hereto as **Exhibit 3**), the Site is almost certain to be highly contaminated with toxic wastes from the operation of a former manufactured gas plant ("MGP") in the Site's immediate vicinity.² And Karina Navarro, the Unit Chief of the Site Mitigation and Restoration Program of the Department of Toxic Substances Control ("DTSC"), has indicated that the results from a number of sampling locations in the vicinity of the Site yielded readings "about twice the commercial screening level, and ten times the residential screening level," leading her to note "I don't expect this property to qualify for streamlined approval," further noting that the Site "might be impacted by MGP contamination in the groundwater." (**Attached hereto as Exhibit 4**).

These results clearly require, under Government Code § 65912.124(k) and Planning Bulletin 9, that: (1) the Developer conduct a preliminary endangerment assessment to determine, *inter alia*, the type and extent of hazardous-material contamination of the Site; and (2) DPH and Planning develop conditions of approval that will successfully mitigate any hazards on the Site to insignificant levels.

DPH, based on its initial review of the results of the Phase I investigation, found that hazardous substances were present in the subsurface and a Phase II investigation was required. (**Exhibit 5**, DPH, Phase II Work Plan Request Letter, EHB-SAM Case No.

² Mr. Harrison has worked with my firm for over 15 years on cases related to MGP contamination in the Marina and Fisherman's Wharf neighborhoods. This work has included a federal court-supervised joint investigation with PG&E, the crafting of two consent decrees with PG&E entered by federal courts (one of which governs the ongoing investigation and remediation of contamination affecting areas offshore of the Marina and Fisherman's Wharf), and the representation of almost thirty Marina homeowners in cases against PG&E regarding the contamination (including many who live in the immediate vicinity of the Site).

2361, Jan. 22, 2026, p. 2). However, the Developer has rejected requests from the DPH that it conduct sampling of a substantial portion of the Site—namely the *entire 40,212-square-foot footprint* of the current Safeway store.

In its review of the Developer's Phase II Investigation Plan—which, while technically prepared as part of the Maher process, appears intended by the Developer to satisfy its obligation under section 65912.124(k) to prepare a preliminary endangerment assessment—DPH asked the Developer why the proposed investigation included no soil samples from within the existing Safeway footprint, stating that the omission could pose a data-gap issue. (**Exhibit 6**, Correspondence between Ryan Casey (DPH) and Developer, February 24, 2026.) Langan, the Developer's environmental consultant, responded: “*We know that there is a data gap,*” seeking to justify it on the ground that Safeway would not permit drilling while the store remained active and that sampling beneath the building would occur later once the store was closed (i.e., after the Project was moving forward). *Id.* (emphasis added). *This means that the City is being asked to advance the Project while a major portion of the site remains uncharacterized at the Developer's election.*

This is extremely problematic, as it conflicts with section 65912.124(k)'s requirement that the Developer conduct a preliminary endangerment assessment and prevents DPH and Planning from fulfilling their related duties under Planning Department Bulletin No. 9 to develop conditions of approval that will result in the hazardous contamination on the Site being mitigated to insignificant levels.

The 40,212-square-foot portion of the Site on which the Developer is refusing to conduct sampling: is near the location of the former MGP (**Exhibit 3**); is where extensive excavation (approximately 20 feet below ground surface) and construction both below ground surface (including subsurface parking) and above ground surface (including residential construction) will occur (**Exhibit 7**, Phase II Workplan); and is where historical data shows the location of former fuel tanks and other features that strongly suggest the likely existence of additional serious hazardous contamination in that part of the Site (**Exhibit 8**, Historical Map Overlay).

Thus, unless and until this acknowledged data gap is closed, there is no way that “a preliminary determination of the type and extent of hazardous-material contamination of the site...[or] a preliminary evaluation of the risks that contamination may pose to public health or the environment” can be made. Health and Safety Code § 78095; *see also* Gov. Code § 65912.124(k)(2). And without such a determination and evaluation, DPH cannot fulfill their obligations to “develop[] conditions of approval that will successfully mitigate any hazards to insignificant levels as set forth in State Law.” Planning Bulletin No. 9. Indeed, it would be impossible for DPH and Planning to develop such conditions without an investigation of such a large portion of the Site.³

³ The lack of investigation of the area within the building envelope is also problematic with regard to determining whether there is a point source of air or water contamination on the Site. The Developer indicated in its application that there was not. (**Exhibit 9**). However, *inter alia*, tanks such as those shown on the map attached as **Exhibit 8** are

In addition to the foregoing egregious (and acknowledged) data gaps, the Developer's Phase II investigation is also materially deficient in other ways that (a) prevent it from being used to satisfy the Developer's obligation under Government Code § 65912.124(k)(2) to prepare a preliminary endangerment assessment that meets the requirements of Safety Code § 78095, and (b) prevent it from being used by Planning and DPH to meet their obligations to develop approval conditions that would successfully mitigate hazards on the site.

Michael Harrison, P.E.'s review of the Revised Phase II Work Plan notes that the work plan does not provide, *inter alia*: (a) a residential human-health risk evaluation, (b) a cumulative-risk analysis, or (c) an evaluation of the potential impact of contamination from adjoining-property recognized environmental conditions or the additional contamination located thereon. (See **Exhibit 1**).

With regard to indoor air, the proposed Phase II investigation proposes to rely on data from existing indoor-air testing, which consisted of seven indoor and two ambient-air samples collected over an eight-hour period under the *current commercial use* and *current building configuration*. It does not evaluate chronic *residential* exposure potential for the Project *as designed*, which would include periods much longer than the eight hours contemplated for commercial exposures. Nevertheless, the Revised Phase II Work Plan proposes no additional soil-vapor or indoor air sampling. That omission bears directly on the preliminary endangerment assessment's required risk evaluation and conceptual site model.

The proposed Phase II investigation is also materially narrower than the Project's contemplated subsurface work. The Revised Phase II Work Plan acknowledges excavation to approximately 20 feet, artificial fill to approximately 10 feet, groundwater at approximately 10 to 15 feet, and the possible need for dewatering and treatment. Yet it proposes no additional groundwater sampling, no additional soil-vapor sampling, and no sampling beneath the current Safeway footprint until after the Safeway has ceased

frequently determined to be point sources of water contamination, and without an investigation of those tanks it is not possible to say that there are no point sources. Indeed, in two separate published decisions from cases litigated by my firm, including one that addressed MGP contamination approximately two blocks from the Site, federal district court Judge William Orrick found that the historical subsurface contamination could qualify as a point source in light of the hydrological connection between groundwater in the area and the San Francisco Bay. *San Francisco Herring Association v. PG&E, et al.*, 81 F. Supp. 3d 847, 861-862 (2015); *Clarke v. PG&E, et al.*, 501 F. Supp. 3d 774, 784-785 (2020). That same hydrological connection caused by the northwest gradient with which groundwater flows in the area (**Exhibit 10**, Investigation Report for Court-Mediated Investigation of Former Manufactured Gas Plant Sites in San Francisco, October 14, 2017; **Exhibit 11**, Conceptual Site Model for Court-Mediated Investigation of Manufactured Gas Plant Sites in San Francisco, December 14, 2016) contributes the strong (*but currently uninvestigated*) likelihood that the Site is impacted, *inter alia*, with groundwater contaminated by hazardous MGP wastes. **Exhibits 3 and 4**.

operating. This is in the face of comments by DTSC’s Karina Navarro, P.E. that the Site “might be impacted by MGP contamination in the groundwater.” (See **Exhibit 4**).

More generally, the Developer’s Revised Phase II Work Plan omits several elements identified in DTSC’s Preliminary Endangerment Assessment Guidance Manual, including, *inter alia*: a conceptual site model addressing contaminant transport and exposure pathways through soil, water, soil vapor, groundwater, and air; data-quality objectives and a reasoned sampling strategy; sampling and analysis; a human-health screening risk evaluation, including cumulative risk and hazard; and conclusions and recommendations.⁴

It should finally be noted that the Water Board’s November 27, 2024 No Further Action letter, attached hereto as **Exhibit 12**, has no bearing on whether the Developer has complied with its obligations under Government Code § 65912.124(k) or whether DPH and Planning have met their related obligations to develop conditions of approval that mitigate hazards on the Site to insignificant levels. The No Further Action letter was expressly based and conditioned on the current *commercial/industrial* land use of the Site, while the Project proposes dramatic changes to both the land use and the site configuration. The letter additionally identified residential use as the most sensitive potential use, but deemed its probability low in this case because the property was commercially zoned. Accordingly, the Water Board’s determination that no remediation was required for the Site is completely inapplicable to the Project now proposed: a major residential development, with excavation across the site and underground parking.⁵

III. Requested Action

Accordingly, the Neighborhood Associations request that DPH and Planning immediately pause the approval of the Project for streamlined review until the Developer has conducted an adequate preliminary endangerment assessment and the DPH and Planning have, based thereon, developed conditions of approval “that will successfully mitigate any hazards to insignificant levels as set forth in State Law.” This is not only legally required by the plain language of Government Code § 65912.124(k) and Planning Bulletin No. 9, it is plainly necessary and reasonable to protect the health, welfare, and safety of the people of San Francisco.

Should you wish to discuss further or if you would like additional information, Michael Harrison, P.E. and I are available.

In the meantime, please place this letter and its supporting materials in the official administrative record for the Project, as there will be litigation if this Project is approved

⁴ Available at https://dtsc.ca.gov/wp-content/uploads/sites/31/2023/06/PEA_Guidance_Manual.pdf

⁵ The letter was also expressly limited to petroleum hydrocarbons associated with historical crude-oil storage and former steam-plant operations; it does not address the Phase I’s separate PCE/chloroform recognized environmental condition or the potential for MGP impacts from contamination onsite or offsite. **Exhibit 12.**

for streamlined review without the Developer, DPH, and Planning meeting their obligations described herein.

Sincerely,



STUART G. GROSS

Enclosures (available at

<https://grosskleinlaw.box.com/s/py1ms8gmivo4n8ukdn9gpeimmvam7dn2>)

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