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Attorneys for Petitioners and Plaintiffs
YES IN MY BACK YARD and
SONJA TRAUSS

SUPERIOR COURT – STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO – UNLIMITED CIVIL JURISDICTION

YES IN MY BACK YARD, a California nonprofit corporation, and SONJA TRAUSS,

Petitioners and Plaintiffs,

vs.

CITY AND COUNTY OF SAN FRANCISCO, SAN FRANCISCO BOARD OF SUPERVISORS, and DOES 1-25,

Respondents and Defendants.

FIFTH CHURCH OF CHRIST, SCIENTIST SAN FRANCISCO, FORGE DEVELOPMENT PARTNERS, LLC, TENDERLOIN HOUSING CLINIC, and PACIFIC BAY INN, INC.,

Real Parties in Interest.

Case Number:

PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR DECLARATORY RELIEF

[CCP §§ 1094.5 & 1085; CCP § 1060; Gov. Code § 65589.5]

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Petitioners and plaintiffs YES IN MY BACK YARD and SONJA TRAUSS (collectively, "Petitioners") by and through their attorneys, Zacks, Freedman & Patterson, PC, file this petition for writ of mandate against respondents and defendants CITY AND COUNTY OF SAN FRANCISCO, SAN FRANCISCO BOARD OF SUPERVISORS, and DOES 1-25 (collectively, "Respondents"), for their unlawful disapproval of a 316-unit housing development project in San Francisco – on blatantly pretextual, prohibited, and unsupported grounds – and to compel Respondents to comply with their duties under the Housing Accountability Act (Gov. Code § 65589.5) and approve the project, as further set forth below. Petitioners allege as follows:

PARTIES TO THE ACTION

1. Petitioner and Plaintiff Yes In My Back Yard ("YIMBY") is a § 501(c)(3) nonprofit corporation; YIMBY is the litigation affiliate of YIMBY Action, a § 501(c)(4) nonprofit corporation, whose membership cuts across socioeconomic lines, including members with very low, low, moderate, middle, and higher incomes ("YIMBY Members"). YIMBY's mission is to increase the accessibility and affordability of housing in California by enforcing state housing laws, including Gov. Code § 66300, and by advocating for increased access to housing for households of all income levels, including for YIMBY Members who reside in, or wish to reside in, the City and County of San Francisco. YIMBY has a direct and substantial interest in ensuring that Respondents' decisions are in conformity with the requirements of law, that those requirements are properly executed, and that Respondents' duties are enforced. YIMBY Members, as well as the general public, will be adversely affected by the acts described herein and are aggrieved by the acts, decisions, and omissions of Respondents as alleged in this Petition and Complaint. YIMBY brings this Petition and Complaint on its own behalf, on behalf of YIMBY Members, and on behalf of others affected by Respondents' failure to comply with state law as alleged herein.

2. Petitioner and Plaintiff Sonja Trauss ("Trauss") is a natural person and a resident of the State of California, and she is the founder and director of YIMBY. Trauss has a substantial interest in ensuring that Respondents' decisions are in conformity with the

requirements of law, that those requirements are properly executed, and that the public duties of Respondents are enforced.

3. Respondent and Defendant City and County of San Francisco (the "City") is an incorporated municipality of the State of California.

4. Respondent and Defendant San Francisco Board of Supervisors (the "Board") is a policy making, legislative, and quasi-judicial municipal body, with the authority to hear appeals of certain housing development projects.

5. Petitioners are not aware of the identities of respondents/defendants DOES 1-25, who are responsible for the acts and omissions alleged herein and that caused damage to Petitioners; therefore Petitioners will amend this Petition and Complaint when the true identities of DOES 1-25 are ascertained.

6. Petitioners are informed and believe that at all times mentioned in this Petition and Complaint, all respondents/defendants were the agents or employees of their co-respondent/defendant, and in doing the things alleged in this Petition and Complaint, were acting within the course and scope of that agency and employment.

7. Real Party in Interest Fifth Church of Christ, Scientist San Francisco is a religious institution that owns the real property located at 450 O'Farrell Street in the Tenderloin neighborhood of San Francisco, which is the subject of this Petition.

8. Real Party in Interest Forge Development Partners, LLC is a California limited liability company with its principal place of business in San Francisco, California. Forge Development, LLC is the applicant for the subject project.

9. Real Parties in Interest Tenderloin Housing Clinic and Pacific Bay Inn, Inc. (collectively, "Appellants") are the appellants in the subject conditional use appeal (Board of Supervisors File No. 210858) who obtained the action challenged herein. Petitioners do not seek any relief against Appellants and name them as Real Parties in Interest herein solely to comply with statutory requirements, *inter alia* the joinder requirements of Civ. Code of Proc. § 389. (*See also Sierra Club, Inc. v. California Coastal Com.* (1979) 95 Cal.App.3d 495, 501.)

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Appellants are free to disclaim any interest in this lawsuit, and are not required to participate. (*See Harris v. Alcoholic Bev. etc. Appeals Bd.* (1966) 245 Cal.App.2d 919, 923.)

JURISDICTION AND VENUE

10. San Francisco County Superior Court has initial jurisdiction of the matters alleged herein pursuant to Code of Civil Procedure § 1094.5, which authorizes the Court to issue a writ of mandate.

11. Venue is proper in this Court because the entire controversy occurred in San Francisco County, and Respondents are situated in San Francisco County. (Code Civ. Proc. §§ 394 & 395.)

12. This action is timely because it has been filed within 90 days from the effective date of a decision of a local agency's disapproval of a housing development project. (Gov. Code § 65589.5(m).)

13. Petitioners performed any and all conditions precedent to filing this action to the extent required by law.

STATEMENT OF FACTS

14. In enacting the Housing Accountability Act (HAA), the Legislature found and declared:

> California has a housing supply and affordability crisis of historic proportions. The consequences of failing to effectively and aggressively confront this crisis are hurting millions of Californians, robbing future generations of the chance to call California home, stifling economic opportunities for workers and businesses, worsening poverty and homelessness, and undermining the state's environmental and climate objectives . . . despite the fact that, for decades, the Legislature has enacted numerous statutes intended to significantly increase the approval, development, and affordability of housing for all income levels.

(Gov't Code § 65589.5(a)(2)(A)(J).)

15. To address this housing crisis, the HAA requires approval of proposed housing development projects that comply with "applicable, objective general plan and zoning standards and criteria, including design review standards." If a local agency proposes to disapprove a project, the local agency must make written findings, supported by a

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preponderance of the evidence in the record, that the housing development project would have a "specific, adverse impact upon the public health and safety," which is defined as a "significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions." (Gov't Code § 65589.5(j).)

16. The housing development project at issue here proposes to construct 316 new group housing dwelling units, 48 of which would be restricted as affordable housing, as well as a new church facility and retail space in a 13-story mixed-use building located at 450 O'Farrell Street in the Tenderloin neighborhood of San Francisco (the "Project").

17. The Project is a mixed-use development with more than two-thirds of the square footage designated for residential use (approximately 85%), and therefore qualifies as a "housing development project" that is protected by the HAA. (Gov't Code § 65589.5(h)(2)(B).)

18. The Project originally proposed 176 dwelling units with a mix of studios, one-, two-, and three-bedroom units in a similarly sized building. The City approved a Planned Unit Development/Conditional Use Authorization for the original project on September 13, 2018. On January 24, 2020, the applicant applied to amend the previous approval to replace the 176 dwelling units with 316 group housing units without significant changes to the proposed building envelope.

19. The City failed to provide the applicant with a written determination as to whether the application as submitted was complete within 30 days after receipt of the January 24, 2020 application as required by Gov't Code § 65943. Therefore, the application was deemed complete on February 25, 2020 pursuant to the Permit Streamlining Act. (*Id*.)

20. The City also failed to provide the applicant with written documentation identifying and explaining any reasons the City considered the Project inconsistent, not in compliance, or not in conformity with an applicable plan, program, policy, ordinance, standard, requirement, or other similar provision within 60 days after the application was deemed complete as required by Gov't Code § 65589.5(J)(2)(A)(ii). Therefore, the housing development Project was deemed code-compliant pursuant to the HAA on April 26, 2020. (*Id*.)

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21. On June 24, 2021, the San Francisco Planning Commission voted to approve the Project, finding the Project consistent with the General Plan and the Planning Code.

22. The Planning Commission specifically found that "Planning Code Section 303 establishes criteria for the Planning Commission to consider when reviewing applications for Conditional Use authorization," and "the Project is consistent and does comply with said criteria."

23. Similarly, the Planning Commission found that "Section 304 establishes criteria and limitations for the authorization of Planned Unit Development (PUD)'s over and above those applicable to Conditional Uses," and the "Project is consistent with the relevant provisions of the Planning Code."

24. On July 21, 2021, the Pacific Bay Inn and the Tenderloin Housing Clinic appealed the Project to the Board of Supervisors, raising issues regarding the compatibility of the Project with the Tenderloin community and the "saturation" of group housing projects in the area.

25. On October 5, 2021, the Board of Supervisors held a hearing on the appeal (Board File No. 210858). During deliberations, Supervisor Haney explained that the original 2018 project "more closely conformed with the housing needs of the community" and that group housing, although allowed by the code, was not "necessary, desirable, and compatible" with the neighborhood. Supervisor Peskin described the Project as "tech dorms" that are "not what the community asked for." Supervisor Walton called the Project "anti-community" and "anti-family."

26. The Board voted to uphold the appeal and disapprove the Project, subject to the adoption of written findings in support of their action.

27. Several weeks after the Board's vote to disapprove a code-compliant housing development Project, the California Department of Housing and Community Development ("HCD") sent the City a "Letter of Inquiry and Technical Assistance" (attached hereto as **Exhibit A**).

28. HCD wrote that it had become aware of the City's disapproval of the Project, as

well as another 495-unit housing project located at 469 Stevenson Street, and that "HCD is concerned that the City/County's actions are indicative of review processes that may be constraining the provision of housing in San Francisco. It is well known that California is experiencing a housing crisis, and the provision of housing remains of the utmost priority."

29. HCD noted that the two projects shared the same fate of "having prior Planning Commission approvals of significant housing projects being overturned by the BOS – without any documented findings." The letter explained that "HCD is concerned that this represents a larger trend in the City/County," and "[a]s a result, the cost of housing has skyrocketed, and San Francisco stands amongst the top two most expensive housing markets in the United States.

30. HCD requested the City adopt written findings within 30 days and advised that "HCD's investigation remains open, and HCD is continuing its review of these particular actions and of the City/County's practices with respect to housing review and approval generally."

31. Three weeks later, the Board of Supervisor adopted written findings to disapprove the Project (attached hereto as **Exhibit B**).

32. According to the Board's findings, the Project would "fail to meet the needs of the neighborhood, including the needs of families, due to the small size and lack of full kitchen facilities in the Project's group housing rooms," even though the Planning Code expressly authorizes group housing at the Project site as a principally permitted use, and the Code *requires* group housing projects to be small and without full kitchens.

33. The Board also found the lack of full kitchens would "present significant obstacles to healthy eating on a limited income," while at the same time finding that future tenants will "likely [have] relatively high incomes."

34. Due to their "likely" high incomes, the Board found that tenants would "likely rely heavily on food delivery services, creating more congestion from food delivery vehicles (e.g., GrubHub, Door Dash deliveries), leading to more pedestrian/vehicle collisions and increased pollution."

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35. The Board also found that group housing projects "tend to have higher turnover of tenants," and that the "Tenderloin neighborhood is best served by long-term permanent residents, who are more likely to volunteer for and contribute to the community, advocate for community improvements, and serve as eyes on the street."

36. Finally, the Board determined the Project "would fail to serve the community, is not necessary and desirable for and is not compatible with the existing neighborhood and community" and moved to disapprove the Project.

37. The Board's action clearly violates state housing law. The findings did not identify any applicable, objective general plan and zoning standards and criteria that the Project failed to meet. Rather, the Board disapproved the Project based on vague, subjective, and prohibited "neighborhood compatibility" grounds.

38. The Board did not identify any applicable objective, identified written public health or safety standards, policies, or conditions at all, nor did the Board find that the Project failed to meet any such health and safety standards.

39. The Board did not identify any significant, quantifiable, direct, and unavoidable health and safety impacts, apart from speculation that future tenants would "likely" order food delivery that could lead to traffic accidents.

40. Petitioners wrote several letters to the Board, and participated at multiple hearings, to explain that the City had an obligation under the HAA to approved the code-compliant housing development Project. The City ignored those obligations and disapproved the Project.

FIRST CAUSE OF ACTION
(Writ of Mandate - CCP § 1094.5 and/or § 1085 – Against All Respondents)

41. Petitioners incorporate here by reference the allegations contained in Paragraphs 1 through 40 of this Petition and Complaint.

42. Petitioners assert that the disapproval of the Project is invalid because Respondents abused their discretion by not proceeding in the manner required by law, issuing a decision unsupported by the findings, and issuing findings that are unsupported by the evidence.

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43. Petitioners, YIMBY Members, and the public each have beneficial interests that have been, and will further be, severely injured and adversely affected if the disapproval of the Project is not set aside and invalidated, and if Respondents' decision is allowed to stand. Petitioners' interests include ensuring that Respondents comply with state laws that require the approval of code-compliant housing development projects in order to address the housing needs of San Francisco and California residents, and ensuring that Respondents' actions are in conformity with the requirements of the HAA.

44. "The Legislature's intent in enacting [the HAA] in 1982 and in expanding its provisions since then was to significantly increase the approval and construction of new housing for all economic segments of California's communities by meaningfully and effectively curbing the capability of local governments to deny, reduce the density for, or render infeasible housing development projects and emergency shelters. That intent has not been fulfilled." (Gov't Code § 65589.5(a)(2)(K).)

45. The HAA must be construed broadly and "consistent with, and in promotion of, the statewide goal of a sufficient supply of decent housing to meet the needs of all Californians." (Gov't Code § 65589(d).)

46. The HAA requires, inter alia:

> When a proposed housing development project complies with applicable, objective general plan, zoning, and subdivision standards and criteria, including design review standards, in effect at the time that the application was deemed complete, but the local agency proposes to disapprove the project or to impose a condition that the project be developed at a lower density, the local agency shall base its decision regarding the proposed housing development project upon written findings supported by a preponderance of the evidence on the record that both of the following conditions exist:
>
> (A) The housing development project would have a specific, adverse impact upon the public health or safety unless the project is disapproved or approved upon the condition that the project be developed at a lower density. As used in this paragraph, a "specific, adverse impact" means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete.
>
> (B) There is no feasible method to satisfactorily mitigate or avoid the adverse impact identified pursuant to paragraph (1), other than

> the disapproval of the housing development project or the approval of the project upon the condition that it be developed at a lower density.
>
> (Gov. Code § 65589.5(j)(1).)

47. The HAA provides that a housing development project shall be:

> deemed consistent, compliant, and in conformity with an applicable plan, program, policy, ordinance, standard, requirement, or other similar provision if there is substantial evidence that would allow a reasonable person to conclude that the housing development project . . . is consistent, compliant, or in conformity.
>
> (Gov't Code § 65889.5(f)(4))

48. The Project "complies with applicable, objective general plan, zoning, and subdivision standards and criteria, including design review standards," required to qualify for the requested land-use entitlements.

49. Even if there were any ambiguity regarding the applicability of the HAA to the Project, the HAA directs that it must be construed broadly and "consistent with, and in promotion of, the statewide goal of a sufficient supply of decent housing to meet the needs of all Californians." (Gov't Code § 65589(d).) A broad interpretation of the HAA inexorably leads to the conclusion that it applies to the Project.

50. Respondents have not proceeded in a manner required by law in denying a 316-unit code-compliant housing development Project without making findings that the Project would have a specific, adverse impact upon the public health or safety as required by section 65589.5(j). In the context of the HAA, "specific, adverse impact" means "a significant, quantifiable, direct, and *unavoidable* impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete."

51. The Board failed to make any such finding, much less one based on "objective, identified written public health or safety standards" or supported by a preponderance of the evidence. Even if such a finding could be made, it would only justify denial of the Project if the Board were to find there is "no feasible method to satisfactorily mitigate or avoid the adverse impact . . . other than the disapproval of the housing development." (Gov. Code §

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65589.5(j)(1)(B).) The Board made no such finding, and nor could it.

52. Respondents' disapproval is not based on the required findings and, to the degree Respondents attempted to make such findings, the findings are unsupported by evidence in the record. Respondents disapproved the Project based solely on their subjective determination regarding what is "necessary, desirable, and compatible" with the neighborhood. This is a prohibited basis for the denial of a housing development project.

53. Respondents bear the burden of proving that their actions complied with the HAA in all respects. (Gov't Code § 65589.6.) Respondents cannot satisfy this burden.

54. Petitioners are informed and believe and thereon allege that the Respondents' arbitrary and disparate treatment of this group housing Project demonstrates unfair and irrationally discriminatory action, including because the City approved a similarly sized housing project at this site, where the principal difference is this Project provides group housing units rather than larger dwelling units.

55. Respondents acted in bad faith by denying a Code-compliant project on a clearly pretextual and prohibited basis.

56. Petitioners have no plain, speedy, and adequate remedy in the ordinary course of law to challenge the disapproval, and a writ of mandate under Code of Civil Procedure § 1094.5 and/or § 1085 is the prescribed remedy for violations of this type. Petitioners have performed all conditions precedent to the issuance of a writ of mandate.

SECOND CAUSE OF ACTION

(Declaratory Relief - Code Civ. Proc. § 1060 – Against All Respondents)

57. Petitioners incorporate here by reference the allegations contained in Paragraphs 1 through 56 of this Petition and Complaint.

58. An actual controversy has arisen and now exists between Petitioners and Respondents concerning their obligations and duties under California statutory law, including but not limited to Respondents' policies and practices which operate to avoid obligations established by state law, such as failing to approve a code-compliant housing development project without making any findings related to "objective, identified written public health or

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safety standards."

59. As set forth herein, Petitioners contend that Respondents' actions to disapprove a code-compliant housing development project are prohibited by the state Housing Accountability Act (Gov. Code § 65589.5) and represent a pattern or practice of the City's review of housing development projects that has caused San Francisco to be amongst the top two most expensive housing markets in the United States. Petitioners further contend that Respondents' actions are intended to evade their legal duties and deny Petitioners, YIMBY Members, and others similarly situated their rights under the Housing Accountability Act.

60. Petitioners are informed and believe, and on that basis allege, that Respondents contend in all respects to the contrary. A judicial determination and declaration as to the applicability of state law to Respondents' actions, and of the resulting legal obligations of Respondents, is therefore necessary and appropriate.

THIRD CAUSE OF ACTION

(Writ of Mandate - CCP § 1094.5 and/or § 1085 – Against All Respondents)

61. Petitioners incorporate here by reference the allegations contained in Paragraphs 1 through 60 of this Petition and Complaint.

62. Petitioners assert that the disapprovals are invalid, regardless of whether the HAA is applicable to the Project, because Respondents abused their discretion by not proceeding in the manner required by law, including by requiring additional entitlements for the Project application subsequent to the 2018 project's approval, issuing a decision unsupported by the findings, and issuing findings that are unsupported by the evidence.

63. Planning Code § 303 establishes five criteria for a conditional use authorization and the Project meets all five criteria, as confirmed by the Planning Commission's findings in support of the Project, as well as by Respondents' approval of a similar project at the Project site in 2018.

64. Contrary to Respondents' disapproval, the Planning Code criteria for a conditional use authorization are met, and the Board abused its discretion in finding otherwise. The Board's disapproval of the Project is based on speculative findings regarding the class of

persons who reside in group housing projects and assumptions regarding the behavior and tendencies of that class of persons. Respondents' speculative findings are unsupported by the evidence.

65. Respondents' arbitrary and disparate treatment of this group-housing Project demonstrates unfair and irrationally discriminatory action, including because the City approved a similarly sized housing project at this site in 2018, where the principal difference is that this Project provides group housing units rather than larger dwelling units. Respondents' arbitrary and disparate treatment is an abuse of discretion.

66. Respondents' disapproval is not based on the required findings or evidence in support of the findings. Respondents disregarded the findings and evidence necessary to support the disapproval and based the disapproval solely on the type of housing provided and the class of persons who reside in such housing, which is not a relevant criterion when considering whether to approve a conditional use authorization.

67. Petitioners have no plain, speedy, and adequate remedy in the ordinary course of law to challenge the disapproval, and a writ of mandate under Code of Civil Procedure § 1094.5 and/or § 1085 is the prescribed remedy for violations of this type.

WHEREFORE, Petitioners pray for relief as follows:

1. For a writ of mandate or other appropriate relief, including an injunction, declaration, and/or order, commanding Respondents to comply with the Housing Accountability Act with respect to the proposed Project at 450 O'Farrell Street, including, but not limited to, an order that the Project is deemed compliant with all "applicable, objective general plan, zoning, and subdivision standards and criteria, including design review standards, in effect at the time that the application was deemed complete" as a matter of law;

2. For an order overturning the Board's granting of the subject conditional use appeal (Board of Supervisors File No. 210858);

3. For an order commanding Respondents to approve the subject Project pursuant to Gov. Code § 65589.5(k)(1)(A)(ii);

4. For costs of suit herein;

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5. For reasonable attorneys' fees under Code of Civil Procedure § 1021.5 and Gov. Code § 65589.5;

6. For fines and penalties to be assessed pursuant to Gov. Code § 65589.5(k) because Respondents acted in bad faith when they disapproved the Project; and

7. For any other relief that the Court deems just and proper.

Dated: December 30, 2021

ZACKS, FREEDMAN & PATTERSON, P.C.

By: Ryan J. Patterson
Attorneys for Petitioners

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VERIFICATION

I, Sonja Trauss, declare as follows:

1. I am a natural person and a resident of the State of California. I am a petitioner in this action and the founder of petitioner Yes in My Back Yard ("YIMBY"). I am authorized to verify this Petition for Writ of Mandate and Complaint for Declaratory Relief on behalf of YIMBY.

2. I have read the foregoing Petition for Writ of Mandate and Complaint for Declaratory Relief and know its contents. The matters stated in the Petition for Writ of Mandate and Complaint for Declaratory Relief are true of my own knowledge from having reviewed the Conditional Use Authorization appeal in San Francisco Board of Supervisors File No. 210858 for the proposed Project at 450 O'Farrell Street, San Francisco, CA.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on December 30, 2021

Sonja Trauss

Exhibit A

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
DIVISION OF HOUSING POLICY DEVELOPMENT
2020 W. El Camino Avenue, Suite 500
Sacramento, CA 95833
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www.hcd.ca.gov

November 22, 2021

Kate Conner, LEED AP
Manager, Priority Projects and Process
Current Planning Division
City and County of San Francisco
49 South Van Ness Avenue, Suite 1400
San Francisco, CA 94103

RE: San Francisco – Letter of Inquiry and Technical Support

Dear Kate Conner:

The purpose of this letter is to seek information on two projects – 469 Stevenson Street and 450-474 O'Farrell Street – and to provide technical assistance to the City and County of San Francisco (City/County). The California Department of Housing and Community Development (HCD) has become aware of the effective denial of these housing projects, and HCD is concerned that the City/County's actions are indicative of review processes that may be constraining the provision of housing in San Francisco. It is well known that California is experiencing a housing crisis, and the provision of housing remains of the utmost priority.

Project Descriptions

469 Stevenson Street
HCD understands the project proposed at 469 Stevenson Street is a mixed-use, 27-story high rise with 495 housing units, including 19 percent (89) affordable units – 11 percent of the units at 50 percent area median income (AMI), 4 percent of the units at 80 percent AMI, and 4 percent of the units at 110 percent AMI. The Planning Commission certified the final environmental impact report (FEIR) for the project on July 29, 2021, finding expressly that the "FEIR was prepared, publicized, and reviewed" in a manner that was consistent with "CEQA, the CEQA Guidelines, and Chapter 31 of the San Francisco Administrative Code" and that the FEIR is "adequate, accurate, and objective." In approving the project, the Planning Commission noted that the project would replace an underutilized site with high quality housing to serve a range of housing needs in the City/County in a manner that is consistent with the City/County's housing element and housing need. Despite prior approval and findings made by the Planning Commission, the Board of Supervisors (BOS) voted (8-3) on October 26, 2021, to overturn the Planning Commission's FEIR certification, and by extension approval of this critically needed

housing project in the City/County. The BOS cited various vague concerns about FEIR deficiencies, including seismic concerns, effects (e.g., shadowing) on historic resources, and gentrification. It appears that the BOS has tasked city planners to prepare a new environmental study and recirculate the EIR or portions of the EIR. ***To date, no written findings have been published or provided to the project applicant nor has any substantial evidence in support of these findings been identified.***

450-474 O'Farrell Street and 532 Jones Street
HCD understands the project proposed at 450-474 O'Farrell Street and 532 Jones Street (O'Farrell Project) is an amendment to a project approval obtained for this site in 2018. The envelope of the proposed building remains the same size and shape as the original approved project; the amendment to the Conditional Use Authorization (CUA) is for a reallocation of interior space. The original project included 176 housing units, and the proposed amendment includes 316 smaller housing units. The developer reports this model will yield more units that are "affordable by design" – in other words, not deed restricted, without need for any public financing, and available at naturally lower rents. HCD understands that 13.5 percent of the units (43 units) will be offered "below market rent" as required by the City/County. Despite prior approval by the Planning Commission, the BOS voted (11-0) on October 5, 2021, to overturn the Planning Commission's approval. ***To date, no written findings have been published nor provided to the project applicant.***

While these projects have sought different types of approval, they share the circumstance of having prior Planning Commission approvals of significant housing projects being overturned by the BOS – without any documented findings. HCD is concerned that this represents a larger trend in the City/County. As you know, California's housing production does not meet housing need. In the past ten years, housing production has averaged fewer than 80,000 new homes each year, far fewer than the 180,000 new homes needed. (Housing Crisis Act, Stats. 2019, ch. 654, § 2.) The Legislature has declared that housing availability is a priority of the highest order and that local and state governments have a responsibility to facilitate the development of housing for all economic segments of the community. (Gov. Code, § 65580.) As a result, the cost of housing has skyrocketed, and San Francisco stands amongst the top two most expensive housing markets in the United States.

For this reason, HCD requests that the City/County provide the written findings to HCD and each project applicant within 30 days, explaining the reasoning for and the evidence behind these decisions. While reasons for denial were discussed in public hearings, it is unclear what actions these project applicants are required to take to advance these projects. In the meantime, 811 potential housing units are in limbo.

Housing Crisis Act of 2019 – "5 Hearing Rule"

HCD is concerned about the significant delays in the approval of housing generally and in the City/County in particular. As you know, the Housing Crisis Act of 2019 recognized this as a concern and imposed a strict five-hearing rule for housing projects. (Gov. Code, § 65905.5.) Under that law, hearings include formal hearings, workshops, meetings, and continuances. (*Id*.at (a), (b)(2).)

Regarding the O'Farrell Project, the Planning Commission's report documents six hearings of the Planning Commission alone that meet this definition. The BOS appeal would be the seventh such meeting. Because the City's record notes that, "like the previous project, the revised project would not be obviously or substantially inconsistent with other local plans and policies or regional plans and policies" (Second Addendum to Environmental Impact Report, p. 11), HCD is concerned that the City/County may have violated the "5 Hearing Rule" in the Housing Crisis Act of 2019. (Gov. Code, § 65905.5.)

Housing Accountability Act

For the same reasons, HCD has significant concerns about the City's compliance with the Housing Accountability Act (HAA). Under Government Code section 65589.5, subdivision (j), a local government cannot disapprove or reduce the density of a housing development project that complies with applicable, objective general plan, zoning, and subdivision standards and criteria, including design review standards, in effect at the time that the application was deemed complete unless it makes written findings supported by a preponderance of the evidence on the record that the project world have a specific, adverse impact upon the public health or safety and there is no feasible way to mitigate that impact. Disapproval means either the City/County votes on a proposed housing development project and the application is disapproved or the City/County fails to comply with the decision-making time period outlined in the Permit Streamlining Act. (Gov. Code, § 65950.) This includes denial of other required land use approvals or entitlements necessary for the issuance of a building permit. Regarding the O'Farrell Project, as noted above, while the BOS voted to disapprove the application, no written findings have yet to be made supporting that disapproval.

5th Cycle Housing Element

In the City/County's 5th Cycle Housing Element, the City/County committed to two key objectives with associated policies and programs. The Stevenson Project and O'Farrell Project each represent an opportunity for the City/County to take consistent action with its housing element commitments.

Below is an excerpt from the City/County's 5th Cycle Housing Element:

Objective 4: Foster a Housing Stock that meets the needs of all residents across lifecycles.

- *Policy 4.4: Encourage sufficient and suitable rental housing opportunities, emphasizing permanently affordable rental units wherever possible.*

The Stevenson Project includes 89 affordable units. Likewise, the O'Farrell Project commits 43 affordable units. The approval of these projects would demonstrate action consistent with Policy 4.4.

Below are additional excerpts from the City/County's 5th Cycle Housing Element:

Objective 10: Ensure a streamlined, yet thorough, and transparent decision-making process.

- *Policy 10.1: Create certainty in the development entitlement process, by providing clear community parameters for development and consistent application of these regulations.*
- *Policy 10.2: Implement planning process improvements to both reduce undue project delays and provide clear information to support community review.*
- *Policy 10.3: Use best practices to reduce excessive time or redundancy in local application of CEQA.*
    - *Implementing Program 84: Planning shall continue to implement tools and processes that streamline CEQA compliance, thereby reducing the time required for production of environmental documents and CEQA processes. In addition to contracting with previously established pools of qualified consultants to produce necessary technical studies (e.g., transportation) and environmental documents (e.g., EIRs), Planning will continue to implement streamlined processes, including but not limited to: Community Plan Exemptions that tier from previously certified Community Plan EIR's; participate in the preparation of Preliminary Project Assessments that outline the anticipated requirements for CEQA compliance, including necessary technical studies; and implement recent and pending updates to the CEQA Guidelines that provide mechanisms for streamlining the environmental assessment of infill development projects.*
- *Strategies for Further Review: Planning should continue to examine how zoning regulations can be clarified, and design guidelines developed through community planning processes. Planning staff should adhere to such controls in reviewing and recommending approval of projects.*

Objective 10 and its associated policies and programs are critical for the development of housing. Developers and members of the public rely on transparent processing of projects. HCD will continue to monitor the Stevenson Project and its CEQA path forward, particularly for timeliness and redundancy of areas of study.

6th Cycle Housing Element

HCD understands that San Francisco is starting the process to update the 6th cycle housing element. Academic research continues to show that San Francisco's processing and entitlement timeframes and procedures exceed the norms for other jurisdictions of similar size and complexity and act as a constraint on the development

of housing[1]. As part of the housing element's analysis of potential and actual governmental constraints on housing pursuant to Government Code section 65583, subdivision (a)(5), it must describe and analyze the permit process from application to approvals, including a discussion on timeframe for each step in the process, impediments, and how it addresses state law application processing requirements such as those found in the Permit Streamlining Act and the HAA. The element must also demonstrate local efforts to remove governmental constraints that hinder the locality from meeting its share of the regional housing need and include program actions with metrics and milestones to remove or mitigate identified constraints.

HCD Inquiry

As stated above, HCD is concerned specifically that the Stevenson Project and O'Farrell Project that have been effectively denied without written findings as well as larger trends in the City/County's review of housing. HCD requests the City/County provide written findings for these BOS actions.

HCD has both the authority and duty to review any action or failure to act by a city, county, or city and county that it determines is inconsistent with an adopted housing element or Government Code section 65583 (Gov. Code, § 65585, subd. (i)) or in violation of the HAA. (Gov. Code, § 65585, subd. (j).) At this time, HCD's investigation remains open, and HCD is continuing its review of these particular actions and of the City/County's practices with respect to housing review and approval generally.

If you have questions or need additional information, please contact Kevin Hefner at Kevin.Hefner@hcd.ca.gov regarding the Stevenson Project and Divya Sen at Divya.Sen@hcd.ca.gov regarding the O'Farrell Project.

Sincerely,

Shannan West
Housing Accountability Unit Chief

CC: Lisa Gibson, Environmental Review Officer, City and County of San Francisco
Carly Grob, Senior Planning, City and County of San Francisco

[1] O'Neill, Moira and Biber, Eric and Gualco-Nelson, Giulia and Marantz, Nicholas, Examining Entitlement in California to Inform Policy and Process: Advancing Social Equity in Housing Development Patterns (September 18, 2021). Available at SSRN: https://ssrn.com/abstract=3956250 [ssrn.com]

Exhibit B

FILE NO. 211274 MOTION NO. M21-172

[Findings Related to Conditional Use Authorization - 450-474 O'Farrell Street and 532 Jones Street]

Motion adopting findings in support of the Board of Supervisors' disapproval of the decision of the Planning Commission by its Motion No. 20935, approving a Planned Unit Development and Conditional Use Authorization, identified as Planning Case No. 2013.1535CUA-02, for a proposed project located at 450-474 O'Farrell Street and 532 Jones Street.

WHEREAS, The proposed project ("Project") includes demolition of three buildings: 450 O'Farrell Street, 474 O'Farrell Street and 532 Jones Street; the merger of Lots 007, 009 and 011 in Assessor's Block 0317; and the construction of up to a 13-story mixed use building with ground floor commercial, a new church, and residential open space, up to 316 group housing rooms, and 136 Class 1 and 15 Class 2 bicycle parking spaces; the Project would construct a total of approximately 207,448 square feet (sf) of development, including 172,323 sf of residential space, 6,023 sf of restaurant/retail space, 9,924 sf for religious institutional use, and approximately 5,056 sf of residential open space; and

WHEREAS, The proposed Project is a Planned Unit Development that requires exceptions to Planning Code requirements, pursuant to Planning Code Section 304; as more fully detailed in Planning Commission Motion No. 20935, the Project sponsor applied for, and the Planning Commission approved, the following exceptions to the Planning Code: a modification of rear yard requirements set forth in Section 134(j), and a modification of off-street loading requirements set forth in Section 152; and

WHEREAS, As more fully detailed in Planning Commission Motion No. 20935, the Planning Code requires that the proposed Project obtain a Conditional Use Authorization pursuant to Planning Code, Section 303, and that the Planning Commission make certain

additional findings pursuant to Planning Code, Sections 249.5(c)(1), 253(b)(1), 263.7, 271(c) and 317, in order to approve the Project; pursuant to Motion No. 20935, the Planning Commission granted the required Conditional Use Authorization and made these required additional findings; and

WHEREAS, On June 24, 2021, the Planning Commission adopted Motion No. 20935, approving Planned Unit Development/Conditional Use Application No. 2013.1535CUA-02 for a revised project scope, subject to the conditions contained in Motion No. 20281, with the exception of Conditions 24, 25, 26 and 32 of Motion No. 20281, and with the following amended conditions: to remove parking and car share requirements; to require 136 Class 1 and 15 Class 2 bicycle parking spaces; to require 48 affordable units/rooms, including 43 group housing rooms and five replacement units/rooms to replace existing affordable units; to impose additional requirements related to the affordable units; to limit permissible kitchen facilities within group housing rooms; to require the Project sponsor to increase the number of larger units wherever feasible; to require provision of balconies to maximum projection on all sides except O'Farrell Street; to continue working with staff to increase the number of bicycle parking spaces; to convert the proposed ground-floor retail space to group housing units; and to work with staff to determine the feasibility of converting basement space to group housing units; and

WHEREAS, On July 21, 2021, Tenderloin Housing Clinic and Pacific Bay Inn, Inc. ("Appellants") filed a timely appeal of the Conditional Use Authorization by the Planning Commission; and

WHEREAS, On September 7, 2021, the Board continued its hearing of this appeal due to Rosh Hashanah, with the consent of both the Project sponsor and Appellants; and

WHEREAS, On September 28, 2021, the Board of Supervisors held a duly noticed public hearing on the appeal from the approval of the Conditional Use Authorization and

received public comment, and at the end of that hearing the President of the Board declared the public hearing closed and filed, and the Board of Supervisors continued until October 5, 2021, the proposed motions relating to the Conditional Use Authorization; and

WHEREAS, On October 5, 2021, the Board voted by a vote of 11-0 to conditionally disapprove the decision of the Planning Commission and deny issuance of the requested Conditional Use Authorization; and

WHEREAS, In deciding the appeal, the Board considered the entire written record before the Board and all the public comments made in support of and in opposition to the appeal; and

WHEREAS, The Tenderloin neighborhood has a high concentration of low-income families and insufficient housing to serve those families, and is a food desert; and

WHEREAS, The Planning Department's 2017 report titled Housing for Families with Children, on file with the Clerk of the Board of Supervisors in File No. 210858 and incorporated herein by reference, states that unit size and affordability are significant housing stock issues impacting families; that families need more affordable options and larger units to accommodate children and multiple generations of family members, as well as amenities such as open space, storage space, and onsite childcare; and that there is a mismatch between available units and residents who occupy them, and overcrowding in many units in San Francisco, a majority of which overcrowded units are occupied by families; and

WHEREAS, Appellant provided testimony that there is significant overcrowding of families in small units in the Tenderloin neighborhood; and

WHEREAS, The Project would fail to meet the needs of the neighborhood, including the needs of families, due to the small size and lack of full kitchen facilities in the Project's group housing rooms, given that families require space for children and multigenerational

family members, and need cooking and food storage facilities to provide healthy and affordable meals for family members; and

WHEREAS, The Department of Public Health's 2018 Assessment of Food Security, on file with the Clerk of the Board of Supervisors in File No. 210858 and incorporated herein by reference, found that a lack of cooking access, including lack of sinks, stoves, refrigerators and food storage, present significant obstacles to healthy eating on a limited income; that residents of District 6, in which the Project would be located, are most at risk for food insecurity and are the most reliant on government aid for food subsidies among San Francisco residents; and that without a complete kitchen, people are more likely to rely on expensive prepared meals and unhealthy snacks; and

WHEREAS, The Department of Public Health's 2013 Assessment of Food Security, incorporated herein by reference, found that almost 6500 housing units (15% of all housing units) in District 6 lack complete kitchens; and

WHEREAS, The Project sponsor's assertion that the microwaves and small refrigerators that would be allowed in the Project's group housing units would adequately serve families is incorrect, as shown by the above-cited reports; and

WHEREAS, Ordinance No. 72-21 was recently approved to prevent the removal of community kitchens in group housing, given the essential nature of kitchen facilities; and

WHEREAS, The Zoning Administrator's Interpretation of the definition of group housing, "Group housing with limited cooking facilities," issued in October 2005, allowed limited cooking facilities in group housing units based on an understanding that group housing units are not intended to be used as permanent housing; the Interpretation states, "Recent Department practice via Zoning Administrator determination letters has been to allow limited kitchen facilities in hotel rooms or suites in tourist hotels with stays of less than 32 consecutive days; these determinations were based on the proviso that the purpose of including kitchens

is not to create dwelling units for permanent residency but to provide hotel guests the option of making their own meals; likewise, the purpose of including limited kitchen facilities in group housing is not to create dwelling units for permanent residency, but to provide group housing residents the option of preparing their own meals."; and

WHEREAS, Given the Project units' lack of kitchens and food storage areas; area residents' limited access to groceries in the neighborhood; safety concerns voiced by members of the public at the September 28, 2021 public hearing; and the likely relatively high incomes of tenants who can afford the rents that the Project sponsor testified it expects to charge for units in the Project, residents of the Project would likely rely heavily on food delivery services, creating more congestion from food delivery vehicles (e.g., GrubHub, Door Dash deliveries), leading to more pedestrian/vehicle collisions and increased pollution from such vehicles; the San Francisco County Transportation Authority's TNC & Congestion report, on file with the Clerk of the Board of Supervisors in File No. 210858 and incorporated herein by reference, supports this conclusion, demonstrating that the Tenderloin neighborhood already has significant congestion caused by Transportation Network Company (TNC) services; and

WHEREAS, The high rents the Project sponsor testified it expects to charge for units in the Project will likely lead to high vacancy rates, and to the units being used as short-term or intermediate-length corporate rentals, which rely on high renter turnover and a transient client base, rather than as permanent housing; and

WHEREAS, The findings associated with the City's short-term rental regulations in Chapter 41A of the Administrative Code address the impacts of short-term rentals; and

WHEREAS, Group housing projects tend to have higher turnover of tenants than projects with family-sized units and full kitchens, which contributes to destabilization of the neighborhoods in which they are located; and

WHEREAS, The Project's concentration of small units would lead to a high volume of TNC use by residents, increasing congestion, pollution, and the risk of pedestrian/vehicle collisions; and

WHEREAS, The Walk San Francisco Annual Report Card analyzing 2016-2020 data, on file with the Clerk of the Board of Supervisors in File No. 210858 and incorporated herein by reference, shows that the Tenderloin neighborhood has high rates of pedestrian/vehicle collisions in San Francisco; and

WHEREAS, The Project would not promote density equity or geographic equity in the distribution of housing typologies; and

WHEREAS, The Department of Building Inspection's Annual Unit Usage Report, on file with the Clerk of the Board of Supervisors in File No. 210858 and incorporated herein by reference, demonstrates a high vacancy rate in group housing projects; and

WHEREAS, Appellants have provided evidence of a glut of similar small units without full kitchens in the Tenderloin/mid-Market area; the Panoramic development at 1321 Mission Street is an example of this glut, the Panoramic, which consists of efficiency units that do not have full kitchens, and that lack stoves, full-size refrigerators and adequate food storage and preparation space, has high vacancy rates and has been unsuccessful, and is being marketed for sale; and

WHEREAS, The Tenderloin neighborhood is best served by long-term permanent residents, who are more likely to volunteer for and contribute to the community, advocate for community improvements, and serve as eyes on the street; and

WHEREAS, For the reasons stated above, the Project would fail to serve the community, is not necessary and desirable for and is not compatible with the existing neighborhood and community; now, therefore, be it

MOVED, That based on the foregoing findings and the entire record in Board File No. 210858, the Board of Supervisors disapproved the decision of the Planning Commission by its Motion No. M21-138 and denied issuance of the Conditional Use Authorization.

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City and County of San Francisco
Tails
Motion: M21-172

City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

File Number: 211274 **Date Passed:** December 14, 2021

Motion adopting findings in support of the Board of Supervisors' disapproval of the decision of the Planning Commission by its Motion No. 20935, approving a Planned Unit Development and Conditional Use Authorization, identified as Planning Case No. 2013.1535CUA-02, for a proposed project located at 450-474 O'Farrell Street and 532 Jones Street.

December 14, 2021 Board of Supervisors - APPROVED

Ayes: 11 - Chan, Haney, Mandelman, Mar, Melgar, Peskin, Preston, Ronen, Safai, Stefani and Walton

File No. 211274

I hereby certify that the foregoing Motion was APPROVED on 12/14/2021 by the Board of Supervisors of the City and County of San Francisco.

Angela Calvillo
Clerk of the Board