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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, NORDSTROM, INC.; 469 STEVENSON INVESTMENT, LLC; YERBA BUENA NEIGHBORHOOD CONSORTIUM, LLC Real Parties in Interest.	Case Number: **PETITION FOR WRIT OF MANDATE, PROHIBITION, OR OTHER EXTRAORDINARY RELIEF AND COMPLAINT FOR DECLARATORY RELIEF** [CCP §§ 1094.5 and 1085; CCP § 1060; Gov. Code § 65589.5; Gov. Code § 65920 et seq., Gov. Code 65905.5.; Pub. Res. Code § 21100 et seq.]

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 and complaint for declaratory relief against respondents

and defendants CITY AND COUNTY OF SAN FRANCISCO; SAN FRANCISCO BOARD OF SUPERVISORS; and DOES 1-25 (collectively, "Respondents"), to compel Respondents to comply with their duties under the Housing Accountability Act (Gov. Code § 65589.5), the Housing Crisis Act (Gov. Code 65905.5), the Permit Streamlining Act (Gov. Code § 65920 et seq.), and the California Environmental Quality Act (Pub. Res. Code § 21100 et seq.), 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 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 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. Trauss is eligible to apply to reside in the subject housing development project.

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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 California Environmental Quality Act decisions regarding 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 Nordstrom, Inc. is a Washington corporation registered to do business in California that owns the real property located at 469 Stevenson Street in San Francisco, which is the subject of this Petition.

8. Real Party in Interest 469 Stevenson Investment, LLC is a California limited liability company with its principal place of business in San Francisco, California. 469 Stevenson Investment, LLC is the authorized applicant for the subject housing development project.

9. Real Party in Interest Yerba Buena Neighborhood Consortium, LLC is a California limited liability company that is the appellant in the subject California Environmental Quality Act appeal (Board of Supervisors File No. 210919) that obtained the action challenged herein. Petitioners do not seek any relief against Yerba Buena Neighborhood Association, LLC and name it as a Real Party 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.) Yerba Buena Neighborhood Association, LLC

is 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 and 1085, 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. This case concerns Respondents' illegal patterns and practices it institutes to avoid compliance with state housing laws adopted by the California legislature to address the ongoing housing crisis. As illustrated in this case, Respondent's conduct includes, but is not limited to, (i) failing to act on housing development project applications within statutory deadlines, (ii) abusing the California Environmental Quality Act review process to effectively deny housing development projects based on unsubstantiated opinions of individual Board members about speculative project impacts, and (iii) ignoring state housing laws that require approval of code-compliant housing development projects unless a finding can be made that a project would have a specific, adverse impact upon public health or safety. The City has applied these illegal policies and practices to avoid their obligations under state law, and have led to San Francisco being amongst the top two most expensive housing markets in the United States

15. In enacting the Housing Accountability Act (HAA), the Legislature found and

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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. Code § 65589.5(a)(2)(A)(J).)

16. 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 preponderance of evidence, 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," and there is no feasible method to avoid satisfactorily mitigate or avoid the identified impact. (Gov. Code § 65589.5(j).)

17. The housing development project at issue here proposes to construct 495 new dwelling units, including 73 units that would be restricted as affordable housing, at 469 Stevenson Street in San Francisco, which is currently used as a surface parking lot for the department store Nordstrom (the Project).

18. An application for the Project was first submitted on November 17, 2017, and was accepted by the City as complete on May 31, 2018.

19. The City 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. Code § 65589.5(J)(2)(A)(ii). Therefore, the housing development Project was

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deemed code-compliant pursuant to the HAA on July 30, 2018. (*Id*.)

20. On October 2, 2019, one year and one month after the application was deemed complete, the City prepared an Initial Study that assessed the list of potential impacts on all environmental factors required under the California Environmental Quality Act (CEQA).

21. The Initial Study determined that the Project could potentially result in impacts related to air quality, wind, and shadow. The Initial Study also found the Project would have a less than significant impact with respect to all other environmental factors, including population and housing, cultural resources, and geology and hazards. As a result, the City required an Environmental Impact Report (EIR) but limited the scope of the EIR to an evaluation of the three potential impacts identified in the Initial Study. The City accepted written comments on the proposed scope of the EIR for 30 days.

22. On March 11, 2020, five months after the Initial Study was completed, a Draft EIR was published. The San Francisco Planning Commission held a public hearing to receive comments on the Draft EIR on April 16, 2020. The public comment period closed on May 11, 2021.

23. The Planning Commission held a second, "informational" public hearing to discuss the Project on November 12, 2020.

24. In May 2021, one year after the public comment period closed, the City published its responses to comments on the Draft EIR.

25. The Commission held a third, fourth, and fifth public hearing to take action on the Project entitlements and certification of the EIR on June 10, 2021, June 24, 2021, and July 22, 2021, but continued the item each time without a vote.

26. The Commission conducted a sixth public hearing on July 29, 2021, wherein the Commission voted to approve the entitlements for the Project and certify the EIR, finding that the Project was consistent with the City's General Plan and Planning Code, and that the EIR for the Project was "adequate, accurate, and objective."

27. An appeal of the EIR certification to the Board of Supervisors was filed by the Yerba Buena Neighborhood Consortium, LLC on August 30, 2021. On October 5, 2021, the

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Board of Supervisors held a hearing – the seventh public hearing for the Project – and voted to continue the item without taking any action on the appeal.

28. On October 26, 2021, the Board of Supervisors held an eighth public hearing to discuss the appeal. Based on speculative and nongermane public opinion that the Project would result in gentrification, as well as unsubstantiated claims that the Project may have impacts on historical resources and geology, the Board voted to conditionally reverse the EIR certification, subject to the adoption of written findings in support of its action.

29. Several weeks after the Board's vote to conditionally reverse the EIR certification, the California Department of Housing and Community Development ("HCD") sent a "Letter of Inquiry and Technical Assistance" to the City (attached hereto as **Exhibit A**).

30. HCD wrote that it had become aware of the City's "effective denial" of the Project, as well as another 316-unit housing project located at 450 O'Farrell Street on October 5, 2021, 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."

31. 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" and "HCD is concerned that this represents a larger trend in the City/County."

32. HCD noted the City had "cited various vague concerns about FEIR deficiencies" during the hearing but failed to publish written findings or provide substantial evidence in support of the findings. 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."

33. On December 12, 2021, three years and six months after the application for the Project was deemed complete, the Board of Supervisor adopted written findings to reverse the EIR certification (attached hereto as **Exhibit B**).

34. According to the adopted findings, individual Board members "[e]xpressed the opinion that the analysis of housing impacts based on displacement was inadequate," and

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"[s]tated there is no question that the Project will cause significant displacement on the 6th Street corridor, Filipino community, and the broader low-income community," without providing any evidence in support of the Board members' opinions and statements.

35. The findings also noted that Board members "[s]tated that surrounding taller buildings do impact historic districts," without identifying those impacts or providing evidence in support of the Board members' statements.

36. The findings stated that the EIR was inadequate because it "relied on future compliance with the California and San Francisco Building Codes as a basis to reach its conclusion," despite the fact that the City routinely and properly relies on future compliance with building codes to reach the same conclusion in other similarly sized projects.

37. As a result of the unsubstantiated statements and opinions of individual Board members, the Board erroneously determined that the EIR did not comply with CEQA, moved to reverse the Commission's EIR certification, and directed the Planning Department to conduct further review.

38. As a result of the Board's reversal of the EIR certification, the Planning Commission's approval of the entitlements for the Project were deemed void pursuant to the City's Administrative Code § 31.16(b)(10), effectively disapproving the Project.

39. The state Permit Streamlining Act (PSA), codified at Gov. Code § 65920 et seq., is intended to expedite decisions on development projects. The PSA sets strict timelines for local agencies to act on proposed development projects, including a requirement for a lead agency to approve or disapprove a project within 120 days from the date of certification of an EIR. (Gov. Code § 65950(a)(2).)

40. CEQA requires a local agency to prepare and certify an Environmental Impact Report within one year from the date a development application is accepted as complete, which may be extended for 90 days by ordinance or resolution if justified by compelling circumstances and if the applicant consents. (Public Resources Code § 21151.5; CEQA Guidelines § 15108.)

41. In total, the one-year CEQA deadline to certify an EIR, plus a 90-day extension,

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and the 120-day PSA deadline from EIR certification to approve a project, provides local governments with an absolute upper limit of one year and seven months after an application is deemed complete to take a final action on a project.

42. More than three years and seven months have passed since the Project application was deemed complete. The City has failed to comply with its legal duty to certify the EIR within one year and failed to pass a resolution to extend the time to certify the EIR. The Board's reversal of the EIR certification voids the Planning Commission's approval of the Project entitlements, and Petitioners are informed and believe that the City does not consider its action to be "final." The Board's action puts the Project back at square one of the environmental review process, voids the Planning Commission's approval of the Project entitlements, and disregards the City's legal duty to expeditiously act on development projects.

43. The Housing Crisis Act of 2019, commonly referred to as SB 330, recognizes that permitting delays exacerbate the cost of residential construction and significantly contribute to the housing crisis. (Housing Crisis Act of 2019, Sec. 2(a)(10).) To expedite the approval of housing, SB 330 imposes a strict five-hearing rule for housing projects. (Gov. Code, § 65905.5.) SB 330 defines a "hearing" to include any public hearing and specifically states that a "continued hearing shall count as one of the five hearings." (Gov. Code, § 65905.5(a), (b)(2).) SB 330 requires a local government to approve or disapprove a housing development application at one of the five hearings. (*Id.*)

44. The City has already held eight public hearings on the Project after January 1, 2020, in violation of SB 330's five-hearing rule. The Board's reversal of the EIR certification at the seventh public hearing also voided the Commission's approval of the Project entitlements, which ensures that the City will violate the five-hearing rule again and will likely result in multiple future violations.

45. The Board's action to reverse the EIR certification and void the Project approval constitutes an "effective denial" of a code-compliant housing development Project, as stated by HCD in their letter to the Board, and is a thinly veiled abuse of the CEQA process.

46. The Board's action clearly violates the HAA. The Board's findings did not

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identify any applicable, objective general plan and zoning standards and criteria that the Project failed to meet. Rather, the Board's action disapproved the Project and voided the Commission's approval based on vague, unsubstantiated concerns regarding the adequacy of the EIR. The action is not supported by substantial evidence in the record.

47. 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.

48. Petitioners wrote letters to the City and the Board to explain that the City had an obligation under the HAA to approved the code-compliant housing development Project, had a legal duty to certify the EIR, and was already in violation of SB 330. The City ignored those obligations and disapproved the Project.

FIRST CAUSE OF ACTION
(Writ of Mandate - CCP §§ 1094.5 and/or § 1085; Gov. Code § 65905.5 – Against All Respondents)

49. Petitioners incorporate here by reference the allegations contained in Paragraphs 1 through 48 of this Petition and Complaint.

50. Petitioners, YIMBY Members, and the public each have beneficial interests that have been, and will further be, severely injured and adversely affected if Respondents ignore their legal duty to either approve or disapprove housing development projects at one of the five public hearings allowed pursuant to SB 330; and if Respondents' action voiding the approval of the Project is not set aside and invalidated; and if Respondents' decision is allowed to stand. Petitioners' interests include ensuring Respondents comply with state laws that require they expedite decisions on housing development projects to address the housing needs of California residents; ensure Respondents' actions are in conformity with state law; and have those requirements properly executed. Petitioners have a clear and present right to Respondents' performance of their legal duties as described herein. Respondents have failed to perform their duties.

51. Respondents have already held seven public hearings on the Project in clear violation of SB 330's five-hearing limitation. If upheld, Respondents' actions to void the

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Planning Commission's approval of the Project ensures that additional public hearings will be required. Respondents have failed to proceed in a manner required by law by holding more than five hearings, voiding the approval of the Project, and requiring additional public hearings for the Project.

52. As set forth herein, Petitioners contend that Respondents' failure to approve or disapprove a housing development project within five hearings violates SB 330 and represents 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 SB 330.

53. Petitioners have no plain, speedy, and adequate remedy in the ordinary course of law to challenge the Respondents' actions, 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. Petitioners seek an immediate stay or other appropriate relief, including an injunction, declaration, and/or order commanding Respondents to perform their legal duties under SB 330, including to reinstate Respondents' approval of the 469 Stevenson Project.

SECOND CAUSE OF ACTION
(Writ of Mandate - CCP §§ 1094.5 and/or § 1085; Gov. Code § Gov. Code § 65920 et seq., Pub. Res. Code § 21100 et seq. – Against All Respondents)

54. Petitioners incorporate here by reference the allegations contained in Paragraphs 1 through 53 of this Petition and Complaint.

55. Petitioners, YIMBY Members, and the public each have beneficial interests that have been, and will further be, severely injured and adversely affected if Respondents ignore their legal duty under CEQA to certify an EIR within one year of an application being deemed complete pursuant to Public Resources Code § 21151.5. Petitioners' interests include ensuring Respondents comply with state laws that require that they complete environmental review of

housing development projects in a timely manner to address the housing needs of California residents; ensure Respondents' actions are in conformity with state law; and have those requirements properly executed. Petitioners have a clear and present right to Respondents' performance of their legal duties as described herein. Respondents have failed to perform their duties.

56. As detailed above, CEQA requires that a lead agency prepare and certify an EIR within one year after an application is deemed complete, which may be extended for 90 days by ordinance or resolution if justified by compelling circumstances and if the applicant consents. Respondents failed to pass an ordinance or resolution extending the deadline to certify an EIR. More than three years and seven months have passed since the Project application was deemed complete. Respondents' action reversed the Planning Commission's certification of the EIR, disregarding the City's legal duty to prepare and certify an EIR within the timeframe allowed by law. 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 CEQA.

57. Pursuant to CEQA, an EIR need not be exhaustive or perfect, but merely sufficient to allow for an intelligent decision. The Planning Commission determined that the EIR for the Project was "adequate, accurate, and objective." Petitioners assert that Respondents' reversal of the EIR certification 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.

58. Contrary to Respondents' actions, the criteria to certify the EIR pursuant to CEQA are met, and the Board abused its discretion in finding otherwise. The Board's findings reversing the EIR certification are based on argument, speculation, unsubstantiated opinion and narrative; evidence which is clearly erroneous and inaccurate; and evidence of social or economic impacts which do not contribute to or are not caused by physical impacts on the environment.

59. Petitioners have no plain, speedy, and adequate remedy in the ordinary course

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of law to challenge the Respondents' actions, 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. Petitioners seek an immediate stay or other appropriate relief, including an injunction, declaration, and/or order, commanding Respondents to perform their legal duties under CEQA and the PSA, including to reinstate Respondents' certification of the EIR for the 469 Stevenson Project.

THIRD CAUSE OF ACTION
(Writ of Mandate - CCP § 1094.5 and/or § 1085; Gov. Code § 65589.5 – Against All Respondents)

60. Petitioners incorporate here by reference the allegations contained in Paragraphs 1 through 59 of this Petition and Complaint.

61. 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.

62. 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.

63. 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. Code § 65589(d).)

64. The HAA requires, inter alia:

> When a proposed housing development project complies with applicable, objective general plan, zoning, and subdivision

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> 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).)

65. 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. Code § 65889.5(f)(4))

66. 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.

67. 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. Code § 65589(d).) A broad interpretation of the HAA inexorably leads to the conclusion that it applies to the Project.

68. Pursuant to the HAA, to "Disapprove the housing development project" includes any instance in which a local agency votes on a proposed housing development

project application and the application is disapproved, including any required land use approvals or entitlements necessary for the issuance of a building permit. (Gov. Code § 65589.5(h)(5).) Respondents have not proceeded in a manner required by law by effectively denying a code-compliant housing development Project by voting to void the Planning Commission's approval of the entitlements for the 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."

69. 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 § 65589.5(j)(1)(B).) The Board made no such finding, and nor could it.

70. 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 vague, unsubstantiated concerns regarding the adequacy of the EIR that are not supported by any evidence in the record. Respondents' actions are an abuse of the CEQA process and an attempt to avoid their legal duty to approve a code-compliant housing development project. This is a prohibited basis for the denial of a housing development project.

71. Pursuant to the HAA, to "Disapprove the housing development project" also includes any instance in which a local agency fails to comply with the time periods specified in subdivision (a) of Section 65950 of the PSA, which requires a local agency to take a final action on a project within 120 days after certification of an EIR. (Gov. Code § 65589.5(h)(5).)

72. As explained above, the one-year CEQA deadline to certify an EIR, plus a 90-

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day extension, and the 120-day PSA deadline from EIR certification to approve a project provides local governments with an absolute upper limit of one year and seven months after an application is deemed complete to take a final action on a project.

73. More than three years and seven months have passed since the Project application was deemed complete. Respondents' action voided the Planning Commission's approval of the Project, and Respondents therefore do not consider their action on the Project to be "final." Respondents' action to void the approval of the Project violated their legal duty to comply with the time periods specified in subdivision (a) of Section 65950 of the PSA, which constitutes a disapproval of the Project under the HAA.

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

75. Respondents acted in bad faith by denying a Code-compliant Project on a clearly pretextual and prohibited basis, and failing to comply with the time periods specified in the PSA.

76. 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.

FOURTH CAUSE OF ACTION
(Declaratory Relief - Code Civ. Proc. § 1060 – Against All Respondents)

77. Petitioners incorporate here by reference the allegations contained in Paragraphs 1 through 76 of this Petition and Complaint.

78. 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 comply with the five-hearing limitation, failing to certify an EIR within one year, and 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."

79. As set forth herein, Petitioners contend that Respondents' actions are prohibited by state law 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 SB 330, CEQA, the PSA, and the HAA.

80. 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.

WHEREFORE, Petitioners demand judgment against Respondents for the following:

1. For writ of mandate or other appropriate relief, including an injunction, declaration, and/or order, commanding Respondents to comply with SB 330, CEQA, the PSA, and the HAA with respect to the proposed Project at 469 Stevenson 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 and an order directing Respondents to approve the Project within 60 days pursuant to Gov. Code § 65589.5(k);

2. For an order vacating the Board's action that reversed the EIR certification and voided the approval of the Project (Board of Supervisors File No. 210919);

3. For costs of suit herein;

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

5. 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

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SAN FRANCISCO, CALIFORNIA 94104

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

Dated: January 20, 2022

ZACKS, FREEDMAN & PATTERSON, P.C.

By: Ryan J. Patterson
Attorneys for Petitioners

ZACKS, FREEDMAN & PATTERSON, PC
601 MONTGOMERY STREET, SUITE 400
SAN FRANCISCO, CALIFORNIA 94104

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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, Prohibition, or Other Extraordinary Relief; Complaint for Declaratory Relief; and Request for Immediate Stay on behalf of YIMBY.

2. I have read the foregoing Petition for Writ of Mandate, Prohibition, or Other Extraordinary Relief; Complaint for Declaratory Relief; and Request for Immediate Stay and know its contents. The matters stated in the Petition for Writ of Mandate, Prohibition, or Other Extraordinary Relief; Complaint for Declaratory Relief; and Request for Immediate Stay are true of my own knowledge from having reviewed San Francisco Board of Supervisors File No. 210919 that voided the approval of the Project at 469 Stevenson Street.

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

Executed on January 19, 2022

Sonja Trauss

FAX SIGNATURE

Exhibit A

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
DIVISION OF HOUSING POLICY DEVELOPMENT
2020 W. El Camino Avenue, Suite 500
Sacramento, CA 95833
(916) 263-2911 / FAX (916) 263-7453
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. 211278 MOTION NO. M21-182

[Findings Reversing the Final Environmental Impact Report Certification - 469 Stevenson Street Project]

Motion adopting findings to reverse the Planning Commission's certification of the Final Environmental Impact Report prepared for the proposed 469 Stevenson Street project.

WHEREAS, The site of the proposed project at 469 Stevenson Street (Assessor's Block 3704, Lot 45) is a through lot located in the South of Market neighborhood, within the boundaries of the C-3-G (Downtown General Commercial) Zoning District and the Downtown Plan Area in a 160-F Height and Bulk District; the average height of buildings in the immediate area ranges from one to seven stories; it is approximately 28,790 square feet (0.66-acre) in size and currently developed as a public surface parking lot with 176 parking spaces with no existing onsite structures; and

WHEREAS, The proposed project at 469 Street would demolish the existing surface parking lot and construct a new 27-story mixed-use building that is approximately 274 feet tall (with an additional 10 feet for rooftop mechanical equipment), totaling approximately 535,000 gross square feet and including 495 rental dwelling units with a dwelling mix of approximately 192 studios, 149 one-bedroom units, 96 two-bedroom units, 50 three-bedroom units, and 8 five-bedroom units; approximately 4,000 square feet of commercial retail use on the ground floor; and approximately 25,000 square feet of private and common open space ("Project"); and

WHEREAS, The Project would provide three below-grade parking levels with 166 vehicular parking spaces; 200 class 1 bicycle spaces; two service delivery loading spaces; one on-site freight loading space located on the ground floor; and twenty-seven class 2 bicycle parking spaces placed along Jessie Street; and

WHEREAS, The Project would require 55,850 cubic yards of excavation and Project construction would span approximately 36 months; and

WHEREAS, The Project would use the State Density Bonus Program and provide 73 affordable housing units onsite; and

WHEREAS, Under the State Density Bonus Law, a housing development that includes on-site affordable housing is entitled to additional density, concessions and incentives, and waivers from development standards that might otherwise preclude the construction of the project. Specifically, the Project sought a density bonus of 42.5% and invoked an incentive/concession from Height (Section 250 of the Planning Code), and waivers of the following development standards of the Code: 1) Maximum Floor Area Ratio (Section 123); 2) Rear Yard (Section 134); 3) Common Useable Open Space (Section 135); 4) Dwelling Unit Exposure (Section 140); 5) Ground-Level Wind Current (Section 148); and 6) Bulk (Section 270); and

WHEREAS, The Planning Department prepared an Initial Study, released on October 2, 2019, that concluded that the Project could result in potentially significant environmental impacts related to air quality, wind, and shadow and that only those three topics would be discussed further in an Environmental Impact Report (hereinafter "EIR") as required by the California Environmental Quality Act ("CEQA"), Public Resources Code, Section 21000 et seq., the CEQA Guidelines, 14 California Code of Regulations, Section 15000 et seq., and San Francisco Administrative Code, Chapter 31; with respect to other topics, such as land use and planning, population and housing, cultural resources, tribal cultural resources, transportation and circulation, noise, greenhouse gas emissions, recreation, utilities and service systems, public services, biological resources, geology and soils, hydrology and water quality, hazards and hazardous materials, mineral resources, energy resources, agriculture and forestry resources, and wildfire, the Initial Study determined the potential individual and

cumulative environmental effects would be less than significant, or reduced to less than significant with mitigation measures, and therefore the EIR did not study these issues beyond the initial review undertaken in the Initial Study; and

WHEREAS, The Draft EIR was published on March 11, 2020, and circulated to governmental agencies and to interested organizations and individuals for a 60-day public review period that began March 12, 2020, and concluded on May 11, 2020; and

WHEREAS, The Planning Commission held a virtual public hearing on the Draft EIR on April 16, 2020; during their deliberations, Commissioners expressed concern about the size of the Project and its potential impacts on historic resources and gentrification and displacement; and

WHEREAS, The Planning Department prepared a Responses to Comments document ("RTC") to respond to environmental issues raised in written comments received during the public comment period and in writing or presented orally at the public hearing for the Draft EIR, and published the RTC on May 26, 2021; and

WHEREAS, On July 29, 2021, the Planning Commission held a virtual public hearing to consider the adequacy of the Final Environmental Impact Report ("Final EIR"); among other issues, commenters noted the project's displacement impacts and significant adverse impacts on adjacent historic resources such as the Mint Conservation District and the Filipino Conservation District, not sufficiently acknowledged by the Final EIR; commissioners noted that the RTC did not adequately address some of their previous questions, particularly about the potentially incompatible scale of the proposed tower in a setting that is comprised of not just simply one, but a number of historic districts; another issue discussed at the Commission hearing was the failure of the Final EIR project description to describe the proposed Project foundation; the Project sponsor testified that he did not know whether piers would be required, that that decision would be made with the design of the foundation, which had not been

completed to date. He added that the Project would either use piers or a mat, depending on what is appropriate for the building; and

WHEREAS, By Motion No. 20963, on July 29, 2021, the Planning Commission certified a Final Environmental Impact Report ("Final EIR") for the proposed Project, by a vote of 4-2; and

WHEREAS, By letter to the Clerk of the Board, dated August 27, 2021, the Brandt-Hawley Law Group, on behalf of the Yerba Buena Neighborhood Consortium ("Appellant"), appealed the Final EIR certification; and

WHEREAS, The Planning Department's Environmental Review Officer, by memorandum to the Clerk of the Board dated September 2, 2021, determined that the appeal had been timely filed; and

WHEREAS, On October 26, 2021, this Board held a duly noticed public hearing to consider the appeal of the Final EIR certification filed by Appellant; and,

WHEREAS, At the hearing, Appellant and members of the public presented evidence and testimony that the Project may have significant impacts that were not adequately studied in the Initial Study, the Draft EIR, or the Final EIR; these included the Project's potential impacts on adjacent historical resources; geotechnical impacts of the Project foundation; and physical impacts resulting from likely gentrification of the Project area and resulting displacement of current residents; and

WHEREAS, At the hearing, during the public comment and this Board's questions to the Appellant, the Project sponsor, and Planning Department staff, a majority of members of this Board found that the EIR had treated these impact areas in a conclusory manner; specifically, the Final EIR had concluded that there will be no significant impacts (therefore failing to analyze the impacts or identify feasible mitigation measures and alternatives to those

impacts) but failed to provide substantial evidence or a reasoned explanation as to why that conclusion was reached; and

WHEREAS, At the hearing, individual members of the Board of Supervisors:

- Explained that despite evidence of potentially significant impacts identified by qualified experts, some areas of potentially significant environmental impact were addressed only in the Initial Study, and were not further analyzed in the EIR, and were not mitigated as required by CEQA, including: (1) impacts relating to adjacent historical resources and districts, despite the recognition of the Planning Department that the Project may have an impact on the setting for those districts; (2) geotechnical impacts that should have received further EIR analysis for the benefit of decisionmakers; and (3) physical impacts resulting from potential gentrification of the Project area and displacement of current residents, and an inadequate range of reasonably feasible mitigation measures and alternatives to avoid or reduce those impacts; and
- Provided detailed comments objecting to the lack of objective analysis in the EIR of gentrification and displacement that would result from the large number of market-rate units proposed in the Project, noting concerns with the credibility of the research provided in a report relied upon by the Planning Department in the absence of further analysis in the EIR, and explained that the EIR's lack of analysis to determine whether the Project would result in gentrification and displacement prevented adequate analysis of the significance of foreseeable physical impacts resulting from those socio-economic impacts; and
- Expressed the opinion that the analysis of housing impacts based on displacement was inadequate; and

- Expressed the opinion that the Planning Department's approach to cumulative impacts of gentrification was fundamentally flawed, and that gentrification and displacement impacts should be considered in a holistic, thorough manner; and
- Stated there is no question that the Project will cause significant displacement on the 6th Street corridor, Filipino community, and the broader low-income community; and
- Stated that surrounding taller buildings do impact historic districts; and

WHEREAS, With regards to historic resources, the Initial Study acknowledged that the Project would include the construction of a building that is directly adjacent to the National Register-eligible Market Street Theatre and Loft Historic District, National and California-Register eligible Sixth Street Lodging House Historic District, and the Mint-Mission article 11 Conservation District, and a property within the Pacific Gas and Electric (PG&E) City Beautiful Substations Discontinuous Thematic Historic District; however, the EIR included no further analysis of the impacts of the 27-story Project on adjacent historic districts as required by CEQA, in light of substantial record evidence of potentially significant impacts; absent that analysis, the Final EIR's conclusions that the Project's setbacks would avoid significant impacts on adjacent districts were premature and were inadequately supported by evidence; and

WHEREAS, In the area of geotechnical impacts, the EIR did not conduct adequate analysis, as the Initial Study concluded that the Project would not result in any impacts to geology and soils and relied on future compliance with the California and San Francisco Building Codes as a basis to reach its conclusion; CEQA requires that the EIR analyze and determine whether the Project would have significant geotechnical impacts, beyond those conclusory statements; and

WHEREAS, The Project's physical effects relating to gentrification of the surrounding area and displacement of current residents were not studied in the EIR; the Final EIR (in the RTC) acknowledged that these socio-economic effects, in themselves, are not considered environmental impacts under CEQA, absent a related physical change in the environment. The Final EIR noted that "some displacement may occur," but without benefit of study or explanation, concluded that "the proposed project is not likely to result in residential displacement and gentrification" and therefore improperly dismissed any potential physical environmental impacts that may result from gentrification or displacement; and

WHEREAS, In reviewing the appeal of the Final EIR certification, this Board reviewed and considered the Final EIR, including the Draft EIR and the RTC, the appeal letter, the responses to the appeal documents that the Planning Department prepared, the other written records before the Board of Supervisors and the Planning Commission and all of the public testimony made in support of and opposed to the Project and the appeal; and

WHEREAS, The purpose of CEQA is to inform the public and decision-makers of the environmental consequences of projects, before those projects are approved; and

WHEREAS, Following the public hearing, in Motion No. M21-146 (File No. 210921), the Board of Supervisors conditionally reversed the Final EIR certification, subject to the adoption of written findings in support of such determination based on the written record before the Board of Supervisors as well as all of the testimony at the public hearing in support of and opposed to the appeal; and

WHEREAS, The written record and oral testimony in support of and opposed to the appeal and deliberation of the oral and written testimony at the public hearing before the Board of Supervisors by all parties and the public in support of and opposed to the appeal is in the Clerk of the Board of Supervisors File No. 210919 and is incorporated in this motion as though set forth in its entirety; now, therefore, be it

MOVED, That this Board of Supervisors finds that the Final EIR contains inadequate analysis and information regarding potential impacts to historic resources; potential geotechnical impacts resulting from construction of the Project; potential physical impacts resulting from gentrification and displacement of local residents; and potentially feasible mitigation measures and alternatives to address significant impacts in those impact areas, all of which were either improperly and prematurely scoped out of the EIR and studied only in the Initial Study, or studied in the EIR with insufficient analysis and evidence; and, be it

FURTHER MOVED, That based on the above findings this Board finds that the Final EIR does not comply with CEQA, because it is not sufficient as an informational document; and be it

FURTHER MOVED, That this Board reverses the EIR Certification by the Planning Commission; and, be it

FURTHER MOVED, That this Board finds that as to all other topics studied in the final EIR, that document complies with CEQA; is adequate, accurate and objective; is sufficient as an informational document; its conclusions are correct; and it reflects the independent judgment of the City; and, be it

FURTHER MOVED, That this Board remands the Final EIR to the Planning Department to undertake further environmental review of the Project consistent with this Motion, before further consideration of EIR Certification and any Project approvals.

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City and County of San Francisco
Tails
Motion: M21-182

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

File Number: 211278 **Date Passed:** December 14, 2021

Motion adopting findings to reverse the Planning Commission's certification of the Final Environmental Impact Report prepared for the proposed 469 Stevenson Street project.

December 14, 2021 Board of Supervisors - APPROVED

Ayes: 8 - Chan, Mandelman, Mar, Melgar, Peskin, Preston, Ronen and Walton

Noes: 3 - Haney, Safai and Stefani

File No. 211278

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