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Subject: 3832 18th Street CUA Appeal - Project Sponsor Brief
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Attachments: [CUA Appeal No. 211187 Project Sponsor Appeal Brief \(3832 18th Street\).pdf](#)

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Dear President Walton and Supervisors:

Please see the attached brief and exhibits on behalf of the Project Sponsor, MJ Mission Dolores, LLC, regarding the Conditional Use Appeal (Board File No. 211187) of the housing development project at 3832 18th Street (2020-001610CUA) that is on the agenda tomorrow.

Thank you,

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Zacks, Freedman & Patterson proudly announces the opening of two additional offices, one in the East Bay and one in Monterey Bay. Please see our [website](#) for further details.

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March 14, 2022

VIA E-MAIL

President Shamann Walton and Supervisors
San Francisco Board of Supervisors
1 Dr. Carlton B. Goodlett Place, City Hall, Room 244,
San Francisco, CA 94102

Re: 3832 18th Street Conditional Use Appeal (2020-001610CUA)
Board File No. 211187
Project Sponsor Appeal Response

Dear President Walton and Supervisors:

Our office represents MJ Mission Dolores, LLC, the owners of 3832 18th Street, as well as the nonprofit Yes In My Back Yard Law (YIMBY Law) and Sonja Trauss in her individual capacity. MJ Mission Dolores applied for a conditional use authorization (CUA) to construct a 19-unit six-story group housing project on the residential-mixed, low density zoned lot at 3832 18th Street. The project provides three Below Market Rate (BMR) units that must be sold at an affordable rate to low-income individuals, which qualifies the Project for a 35% density bonus under state law.

On October 14, 2021, the Planning Commission approved the CUA with a condition to eliminate the sixth floor, which will render the project infeasible and impact the project's ability to provide housing. The condition eliminates the common room and group kitchen facilities, greatly reduces the available bike storage on a site without parking, effectively eliminates at least one unit, removes all private open space, causes multiple Building Code compliance issues, and jeopardizes the financial feasibility of the project. The Planning Commission did not impose the condition to mitigate any identified impacts, but rather described the condition as a "design improvement."

As a threshold matter, we have already informed the City that the project has been deemed approved as a matter of law due to its failure to act on the project within the time limits required by the Permit Streamlining Act (PSA), and no further City approvals are required. Moreover, the Planning Commission's conditions violate the state Housing Accountability Act (HAA) because the condition renders the project infeasible and will impact the ability of the project to provide housing. Additionally, the project is entitled to the height as originally proposed under the state Density Bonus Law (DBL) as either an incentive and concession or as a development standard waiver, and the Commission's denial of the requested height modification violates the DBL.

The appellant raises subjective concerns regarding the necessity and desirability of the Project, but ultimately the appellant is solely concerned with purported impacts to property. The

appellant suggests that project should provide less housing in the middle of a housing crisis, which would clearly violate the HAA and DBL. The appeal lacks any legal merit.

However, although this appeal has been brought by project opponents, the appeal provides the Board with an opportunity to correct the Planning Commission's violations of state law. The Board has plenary authority pursuant to the CUA appeal procedures in Planning Code Section 308.1(d) to "prescribe in its resolution such conditions as are in its opinion necessary." As such, the Board should accept the appeal and correct the Planning Commission's violations of the HAA and DBL by restoring the sixth floor and approving the project as originally proposed by the Project Sponsor.

The Project is Deemed Approved as a Matter of Law

The PSA sets strict timelines for local agencies to act on proposed development projects. Gov. Code § 65950(a)(5) requires a lead agency to approve or disapprove a project within sixty days from a determination that the project is exempt from the California Environmental Quality Act ("CEQA"). Gov. Code § 65956 further states that an agency's failure to act within the PSA's required time limits "shall be deemed approval of the permit application . . . if the public notice required by law has occurred." Thus, if an agency fails to act on a project within sixty days after the project is determined to be exempt from CEQA, the project is deemed approved as a matter of law so long as public notice occurred, even when such notice does not explicitly state that the project will be deemed approved if not acted upon within the required timeframe. (*See Linovitz Capo Shores LLC v. Cal. Coastal Comm'n*, (Jun. 25, 2021, G058331) 65 Cal.App.4th 1106, 1123-24, *cert. denied*; *see also Am. Tower Corp. v. City of San Diego*, (9th Cir. 2014) 763 F.3d 1035, 1048.)

Here, the City determined that the project was exempt from CEQA on May 24, 2021. Thus Gov. Code § 65950(a)(5) required the City to approve or disapprove the project within 60 days (i.e. by July 23, 2021). Although the project was originally scheduled for approval at the July 15, 2021 Planning Commission hearing and public notice occurred prior to that hearing, the Commission failed to approve or disapprove the project, and instead continued the item until October 14, 2021. Thus, because the City did not approve or disapprove the project by July 23, the City has already failed to act within the PSA's required time limits.

Prior to the July 15 hearing, the City provided public notice regarding the project as required by the City's Planning Code. The City held the duly-noticed public hearing, which gave affected parties the opportunity to be heard. However, the City failed to act on the application at the July 15 hearing and before the PSA deadline expired on July 23. Thus, both the "failure to act" and "public notice" prerequisites for the project to be deemed approved pursuant to the PSA have been satisfied, even though the public notice did not explicitly state that the project would be deemed approved due to the City's failure to act. As such, the 3832 18th Street project *has already been deemed approved as a matter of law*.

Although our clients participated in the Planning Commission's October 14 hearing under protest and continue to participate in the appeal process under protest with the hope to resolve this issue administratively and avoid litigation, we do not concede that City approval is still required and

do not waive the right to assert that the project has already been deemed approved as a matter of law.

The Project Qualifies as a Housing Development Project

The HAA limits the ability of local governments to deny housing development projects that comply with applicable, objective general plan, zoning, and subdivision standards and criteria. The HAA defines “housing development project” as a *use consisting of any of the following*: residential units only; mixed-use developments consisting of residential and nonresidential uses with at least two-thirds of the square footage designated for residential use; or transitional housing or supportive housing. Planning Code Section 102 defines “group housing” as a “*Residential Use* that provides lodging or both meals and lodging, without individual cooking facilities.” Thus, group housing projects are subject to the protections of the HAA because the HAA defines a “housing development project” to include any residential use, and “group housing” is a residential use.

This project consists of a new six-story residential building with 19 group housing units and therefore qualifies as a housing development project subject to the HAA. The City already confirmed that this project qualifies as a housing development project in its SB 330 Preliminary Project Assessment Letter issued pursuant to Gov. Code § 65941.1, dated April 9, 2020, while acknowledging that “all public agencies are subject to additional project review constraints and timelines with regard to applications for housing developments.”

The Project is Code-Compliant as a Matter of Law

The HAA also sets strict timelines for local agencies to determine whether a proposed housing development project is inconsistent, not in compliance, or not in conformity with any applicable plan, program, policy, ordinance, standard, or other requirement. Gov. Code § 65589.5(j)(2)(A)(i) states that a local agency must provide written documentation identifying and explaining any code noncompliance “[w]ithin 30 days of the date that the application for the housing development project is determined to be complete, if the housing development project contains 150 or fewer housing units.” Gov. Code § 65589.5(j)(2)(B) further states that if an agency fails to provide the required written code noncompliance documentation within the specified timeframe, “the housing development project shall be deemed consistent, compliant, and in conformity with the applicable plan, program, policy, ordinance, standard, requirement, or other similar provision.”

Here, the application was submitted on July 15, 2020, and the application was determined to be complete by the City on August 9, 2020. The project contains fewer than 150 units, and thus Gov. Code § 65589.5(j)(2) required the City to provide written documentation identifying and explaining any noncompliance with applicable ordinances, policies, or standards within 30 days of the date the application was determined to be complete (i.e. by September 8, 2020). The City failed to provide any written noncompliance documentation within that timeframe, and thus as a matter of law, the project was deemed code-compliant on September 9, 2020.

Because the project has been deemed code-compliant as a matter of law, if City approval were still required, the City would be obligated by Gov. Code § 65589.5(j)(1) to approve the project at

the proposed density unless the City provided substantial evidence to establish that the proposed project will have a specific, adverse impact upon public health or safety. (*See Cal. Renters Legal Advocacy and Educ. Fund v. City of San Mateo* (2021) 68 Cal. App. 5th 820) In this case, the City has not identified any specific, adverse impacts to public health and safety that would be caused by the project, and thus the project must be approved at the density proposed.

Density Bonus Does Not Impact the Project's Code-Compliance

Gov. Code § 65589.5(j)(3) makes clear that receipt of a density bonus “shall not constitute a valid basis on which to find a proposed housing development project is inconsistent, not in compliance, or not in conformity, with an applicable plan, program, policy, ordinance, standard, requirement, or other similar provision.” This is reiterated in Planning Director Bulletin No. 5, explaining that “[a]ny waivers, concessions, or incentives, conferred through the State Density Bonus Law are considered code-complying, and therefore are consistent with the objective standards of the Planning Code.” Thus, even though the project has already been deemed approved and code-compliant as a matter of law, we want to be clear that the density bonus and waivers/concessions have no impact on the proposed project's code-compliance.

The Conditions Imposed Impact the Ability of the Project to Provide Housing and Renders the Project Infeasible

Gov. Code § 65589.5(d) prohibits a local agency from disapproving a housing development project or conditioning the approval of a project in a manner that renders the housing development project infeasible for development for the use of very low, low-, or moderate-income households. The HAA defines feasibility as “capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors.” (Gov. Code § 65589.5(h).) Additionally, Gov. Code § 65589.5(j)(1) also prohibits an agency from imposing a condition that a project be developed at a lower density, including “any condition that would have the same effect or impact on the ability of the project to provide housing.”

The Planning Commission's condition would have the same effect as reducing the density and would impact the ability of the project to provide housing. The condition to eliminate the sixth floor completely removed two of the largest units, both over 400 square feet. These two units were also the only units in the project with private open space in the form of patios that will be completely lost. The Planning Commission's condition “replaced” these units and associated open space with two units on the bottom floor that would be 347 square-feet, which would be the smallest units in the entire project. In total, the condition results in a loss of approximately 125 square feet of unit space and 300 square feet of private open space. The larger sixth-floor units with private open space are large enough to accommodate more than one person, while the bottom floor “replacement” units would be the smallest in the project and could hardly accommodate one person. Although the Commission purports to include the same number of units, the practical effect is that the “replacement” units would adversely impact the ability of the project to provide as much housing as originally proposed by reducing the number of potential residents.

Moreover, the Planning Commission's condition will adversely impact the financial feasibility of the project. According to real estate appraiser and consultant, Lawrence L. Mansbach of Mansbach Associates, Inc., the Planning Commission's condition will result in a loss of approximately \$1.17 million in value, accounting for the relocation and reduction in size of the sixth-floor units and a loss in value to all the units for the elimination of the common space. The loss of \$1.17 million in value makes the project financially infeasible, with total estimated costs for the project as conditioned by the Planning Commission totaling \$9,473,444 with a project valuation of \$8,951,263.¹ The estimated costs of the project as originally proposed total \$9,949,326 with a project valuation of \$10,130,211.² The profit margins of the original project, particularly with the inclusion of three BMR units, were already small and the Project Sponsor is accepting a significant amount of financial risk with the project as proposed. However, the project as conditioned is clearly financially infeasible, and the Planning Commission's condition will impact the ability of the project to provide any housing at all.

Additionally, the condition eliminated the only common room and the only full kitchen facilities that would be available to residents, a critical component of group housing projects. Eliminating the common room has the same effect as slashing the available living space of all residents *in half*. According to the analysis by Mr. Mansbach, there are no other "micro-unit" projects in San Francisco that completely lack kitchen facilities or other common space amenities. (See **Exhibit 1**.) Mr. Mansbach explained that the cohort who drives the demand for micro-units specifically seek amenities and common space to compensate for the lack of space in the individual units, as well as to foster a community environment. Mr. Mansbach concluded that although there is a robust market for micro-units with common amenities, there may not be a market at all for group housing projects that lack any kitchen facilities or common space. With no clear market for the project and, at best, a \$1.17 million dollar reduction in value, the Planning Commission's condition renders the project infeasible.

The Board also recently recognized the critical nature of community kitchens to group housing projects specifically, when it amended Planning Code Section 507 last year to specifically prohibit the removal of community kitchens from group housing project. (See Board File No. 210346, attached as **Exhibit 4**.) Similarly, the Board recently introduced amendments to the Group Housing requirements to explicitly require new Group Housing projects to include common kitchen facilities, again recognizing the critical nature of access to a full kitchen. (See Board File No. 211299, attached as **Exhibit 4**.)

The Planning Commission's condition also reduced the available bike storage from 25 spaces to 5 spaces. For a 19-unit group housing project that has limited in-unit storage space and no automobile parking, the 25 bike storage spaces are another critical component of the project that has been removed under the guise of a "design improvement." As confirmed by Mr. Mansbach, the core market for micro-units such as these are young professionals without cars who rely on

¹ Axis Consulting, Inc. estimated the hard construction costs for the project as conditioned are \$5,112,010 and soft costs are estimated at \$2,453,765, for a total cost of \$7,565,775. (See **Exhibit 2**) Including land costs of \$1,907,670 (see **Exhibit 8**), the total project costs are \$9,473,444.

² Axis Consulting, Inc. estimated the hard construction costs for the project as proposed are \$5,433,552 and soft costs are estimated at \$2,608,104, for a total cost of \$8,041,656. (See **Exhibit 2**) Including land costs of \$1,907,670 (see **Exhibit 8**), the total project costs are \$9,949,326.

alternative means of transportation. Eliminating bike storage, particularly for units that also lack significant in-unit storage capacity, significantly impacts the marketability of the project.

The determination of whether a housing project is feasible must take into account not only economic factors, but social factors as well. The group kitchen, common space, and bike storage components are not mere amenities, but essential features of a livable and functional residential project. As confirmed by Mr. Mansbach, there are no other comparable projects that completely lack any common amenities and there is no clear market for such units, which puts the feasibility of the entire project in jeopardy. Eliminating the common space and bike storage has a substantial adverse impact on the ability of the project to provide housing at all and renders the project infeasible.

The Planning Commission's condition creates numerous Planning and Building Code compliance issues, as shown in **Exhibit 3**. The proposed walkway leading to the rear yard does not meet the minimum width and the door does not meet ADA clearance requirements. The proposed trash room does not meet ADA or building code clearance requirements, nor does the proposed bike storage area. These areas would all need to be enlarged, which would likely require at least one of the bottom floor units to be eliminated. The Planning Commission's ad hoc, hand drawn condition creates numerous code compliance issues that would have the same effect as reducing the project density and would have a substantial adverse impact on the ability of the project to provide housing.

As explained above, the project has been deemed code-compliant as a matter of law and the City is obligated by the HAA to approve the project at the proposed density, unless the City provides substantial evidence to establish that the proposed project will have a specific, adverse impact upon public health or 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. Code § 65589.5(d)(2).) The City has not identified any specific, adverse impacts to public health and safety that would be caused by the project, and thus the project must be approved at the density proposed. The Planning Commission's purported "approval" of the project with a condition to eliminate the sixth story, reduce the residential space, and eliminate essential common areas from the project is the functional equivalent of a denial. The Planning Commission's condition creates code-violation issues, significantly impacts the potential marketability of the units, and seriously jeopardizes the financial feasibility of the project.

Denial of the Requested Height Waiver Physically Precludes the Development at the Density Proposed

Pursuant to the state DBL, a housing development that provides a certain percentage of the project's units as affordable housing is entitled to a waiver of any development standards that preclude the construction of the project at the density proposed. Gov. Code § 65915(e) states that an agency may not refuse to grant a developer's proposal for a waiver from a development standard that will have the effect of physically precluding the construction of the project unless the waiver would have a specific, adverse impact on public health and safety.

As recently confirmed by the California Department of Housing and Community Development (“HCD”), a waiver may not be denied based on the theory that another project with a similar number of units might conceivably be designed and accommodated without waivers. (HCD, *City of Encinitas Notice of Violation*, January 20, 2022 (attached as **Exhibit 5**)). Moreover, courts have recognized that standards that physically preclude construction of a housing development meeting the requirements for a density bonus must be waived, “period,” and the DBL “does not say that what must be precluded is a project with no amenities, or that amenities may not be the reason a waiver is needed.” (*Wollmer v. City of Berkeley* (2011) 193 Cal.App.4th 1329, 1346-1347.); *see also Bankers Hill 150 v. City of San Diego* (Jan. 7, 2022, No. D077963) ___Cal.App.5th___ (confirming that nothing in the Density Bonus Law requires the applicant to strip the project of amenities that would require a waiver of development standards).)

This project reserves 20% of the base units as affordable to lower income households and is therefore entitled to a waiver of development standards pursuant to the DBL. The Applicant requested a waiver from the site’s 40-foot height limit and proposed a height of 60 feet to accommodate the project. The Planning Commission refused to grant the waiver as proposed, conditioning the project to remove the sixth floor, and limited the overall height to less than 50 feet.

As explained above, the condition to remove the sixth floor results in a reduction of residential living space, “replaces” two of the largest units with two small units on the bottom floor, eliminates all private open space, eliminates the group kitchen facilities and bike storage that are critical components to the livability of the project, creates numerous Planning and Building code compliance issues, and jeopardizes the financial feasibility of the project.

The Planning Commission’s refusal to waive the height limit as requested is presumably on the theory that the Planning Department’s alternative project might conceivably accommodate a similar number of units without the proposed height waiver if the project is stripped of amenities. This theory has been explicitly rejected by both HCD and multiple courts as a clear violation of the DBL. We also note that a group kitchen facility in a project without in-unit kitchens, and bike parking in a project without any parking, are not mere project amenities. These features are essential components of a marketable and livable project, and the height limit imposed by the Planning Commission physically precludes the construction of these project components.

In short, the Planning Commission’s refusal to grant the height waiver as proposed by the developer will have the effect of physically precluding the construction of the project as designed and therefore constitutes a violation of the DBL.

The Requested Height Modification Qualifies as a Density Bonus Incentive or Concession

Pursuant to Gov. Code § 65915(d), a housing development is entitled to a certain number of incentives or concessions, defined as a modification of a zoning code requirement that results in identifiable and actual cost reductions, based on the percentage of affordable units provided. A local agency may not refuse to grant an incentive or concession unless the agency makes written findings, based on substantial evidence, that the incentive/concession will not result in an

identifiable and actual cost reduction, or that the proposed incentive/concession would have a specific, adverse impact on public health and safety.

This project reserves 20% of the base units as affordable to lower income households and is therefore eligible for two incentives or concessions. The Applicant did not request any incentives or concessions when the original DBL Application was submitted on June 15, 2021 because the Applicant requested modifications to applicable zoning standards through the DBL's waiver provisions. However, the Applicant explicitly reserved the right to utilize the incentives or concessions to which the project was entitled. On March 10, 2022, the Applicant submitted an addendum to the previously submitted DBL Application to request an incentive/concession to remove the Planning Commission's condition to eliminate the sixth floor, and/or a modification to the Planning Code provision that formed the legal basis for the imposition of the Planning Commission's condition. (Attached as **Exhibit 6**.) Although the height modification qualifies as a waiver and cannot be denied, the proposed height also qualifies as an incentive or concession because the height modification will result in an actual and identifiable cost reduction.

As explained above, the Planning Commission's condition reduced the height and the available residential living space but purported to maintain the same number of units. As a result, the total construction costs for the Project infrastructure (e.g. foundation, roof, plumbing, fixtures, etc.) are spread across smaller units and a smaller overall footprint. According to the analysis of construction consultants Axis Consulting, Inc., the elimination of the sixth floor would raise the per-square-foot construction costs from \$700 to \$705 and increase the per-unit cost by \$2000. (See **Exhibit 2**). The result of the Planning Commission's condition is an identifiable and actual cost increase in the cost of providing for affordable housing. Moreover, Mr. Mansbach concluded that the elimination of the sixth floor would reduce the value of the project by over \$1.4 million, further increasing the cost to provide housing, especially because the market-rate units' profitability is necessary to subsidize the BMR units' cost of construction.

The City has not provided any analysis of the cost implications of the Planning Commission's condition, beyond a speculative statement, made without any corroborating evidence, that removal of the sixth floor would "assumedly" not affect the costs to develop the project. This is simply false. The height as originally proposed will result in an actual and identifiable cost reduction by reducing the per-square-foot and per-unit construction costs. The project is therefore entitled to relief from the Planning Commission's condition, and any Planning Code provision that would require the height as originally proposed to be reduced, as one of the two incentives or concessions for which the project is eligible pursuant to Gov. Code § 65915(d). There is no evidence that the proposed incentive/concession would have a specific, adverse impact on public health and safety, and therefore there is no legal basis for the City to deny the requested incentive/concession.

The Appeal Lacks Any Merit

As noted above, the project has been deemed code-compliant as a matter of law and therefore the City is obligated to approve the project at the density proposed. The appellant has not identified any objective, quantifiable, written development standards or policies that the project fails to meet. Similarly, the appellant does not raise or identify any significant, quantifiable, direct, and

unavoidable impacts to public health or safety. Thus the appeal does not raise any legally valid reasons to deny the project as originally proposed.

Group Housing Provisions

The appellant argues that the project is inconsistent with the “spirit” of the group housing provisions, conceding that the project is in fact consistent with the requirements of group housing projects. The appellants also state that some members of the Board of Supervisors believe the definition of group housing should be amended and have introduced legislation to prevent housing development projects like this one. The pending group housing legislation that the appellant states is designed to prevent projects such as this one only further confirms that the project is consistent with the current group housing definition. We do note that the new legislation *requires* new group housing projects to provide common kitchens, confirming that kitchen facilities are an essential aspect of group housing projects.

We also note that the Project Sponsor has submitted an SB 330 Preliminary Application for this project pursuant to Gov. Code § 65941.1. As such, the project is only subject to the ordinances, policies, and standards that were in effect when the preliminary application was submitted. (Gov. Code § 65589.5(o).) Thus, even if the Board were to enact a new group housing ordinance, the project would only be subject to the group housing provisions in effect at the time the Preliminary Application was submitted.

Conditional Use Authorization

The appellant raises vague, subjective concerns regarding compatibility with the neighborhood, the necessity and desirability of the project, and purported impacts to the neighbors’ private light and air. The appellant has not identified any objective, quantifiable, written development standards or policies that the project fails to meet. The appellant simply dislikes the project, which is not a legally valid basis to deny a code-compliant housing project in the middle of a housing crisis.

Family Housing

The appellant argues that the project should include large 3-4 bedroom apartments because the City has not recently approved large family units in District 6. The appellant’s own statistics from the 2016 San Francisco Socio-Economic Report show that 25% of the units in District 6 are 3-4 bedrooms, which is consistent with the City-wide proportion of 26%. (Attached as **Exhibit 7.**) However, in District 6 only 7% of units are No Bedroom units compared to 14% City-wide. This is despite the fact that District 6 contains significantly less family households (35% in District 6 compared to 47% City-wide) and the average family household size in District 6 is smaller than the rest of the City (2.8 persons in District 6 compared to 3.3 City-wide). If anything, District 6 needs more smaller units, not less.

Moreover, the appellant provides several design “alternatives” that contain units that are *even smaller* than those provided in the project, demonstrating that his concern is completely unrelated to any purported desire for family housing. The appellant’s concern is solely related to

alleged private impacts, which is not a valid basis to deny a code-compliant housing project in the middle of a housing crisis.

Lack of Outreach/Alternative Proposals

The appellant also generally alleges a lack of outreach with neighbors. This is false. The Project Sponsor has engaged in continual dialogue with the neighbors, their consultant, and their attorney throughout the Planning Commission's conditional use process and this appeal. The Project Sponsor has made a good faith effort to negotiate and make modifications to reduce potential impacts, but ultimately the neighbors insist on a dramatically reduced project that would be entirely infeasible.

Several of the proposals include excavation of a basement, which would increase construction costs by approximately \$1 million. Other proposals reduce all the units to under 300 square-feet, while eliminating the rear yard. One proposal reduces the number of units from 19 to 6. Not only would these proposals violate the HAA and DBL for the same reasons explained above, but these are not realistic or feasible options.

The Project Sponsor has not maximized the density and height that the site could accommodate under state law. The project as designed is sensitive to the neighborhood, while also providing a significant number of new housing units, including three BMR units.

Conclusion

In sum, the 3832 18th Street project has already been deemed approved pursuant to the PSA and deemed code-compliant pursuant to the HAA. Although additional City approval is no longer legally required, our clients nevertheless request that the Board of Supervisors remove the condition imposed by the Planning Commission that violates both the HAA and the DBL, and approve the CUA as originally submitted. Otherwise, we are prepared to enforce our clients' rights to the full extent of the law.

Very truly yours,

ZACKS, FREEDMAN & PATTERSON, PC



Brian O'Neill

EXHIBIT 1

Real Estate Consultation
Arbitration
Valuation

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VIA EMAIL: ryan@zfplaw.com

March 14, 2022

Ryan J. Patterson, Esq.
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601 Montgomery Street, Suite 400
San Francisco, CA 94111

RE: Impact on Value – Modification to Proposed Group Housing Project
3832 18th Street, San Francisco, CA
2020-001610 Conditional Use Authorization

Dear Mr. Patterson:

Presented herein are my findings concerning the 19-unit group housing project proposed for construction at 3832 18th Street in San Francisco. It is my understanding that the original project was planned as a six story structure. However, at the behest of the San Francisco Planning Commission, the project was modified. The approved project eliminates the sixth floor, with the two units intended for that floor relocated to the ground floor. Other changes were made as well.

The project has been appealed to the San Francisco Board of Supervisors. As part of the appeal, you have requested that I undertake an investigation of the impact on the project's sales revenue resulting from the modifications.

I. Project Location

The project site is located mid-block on the north side of 18th Street between Sanchez and Church Streets, on the city block due west of Mission High School and Mission Dolores Park. This location is approximately three blocks south of Market Street in the Upper Market Street neighborhood of San Francisco. The 3,868 square foot site is identified by the San Francisco Assessor as Block 3508, Lot 18.

II. Group Housing Description

The Group Housing concept focuses on shared amenities and communal living. Group Housing projects typically provide an individual living space with a private bathroom and

with shared communal space. The latter often includes a full kitchen, lounge, gym or other gathering place. This configuration allows individuals to enjoy their own private space along with access to group amenities. It fosters increased interactions among residents to create a community environment.

An important aspect of Group Housing versus a traditional Dwelling Unit concerns in-unit kitchen facilities. According to the Planning Department, only limited in-unit kitchen facilities (kitchenette) are allowed in a Group Housing unit; a small counter space, a small under-counter refrigerator, a small sink, and a small two-ring burner. A combined microwave/convection oven is allowed, while traditional ovens are prohibited. These limitations on in-unit kitchen facilities highlight the importance having of a communal full kitchen available in a group housing project.

III. Proposed Project and the Approved Modified Project

The proposed project shows 19 group housing units in a six story structure containing a floor area of approximately 11,147 square feet. The average unit size for the 19 units would be approximately 400 square feet. Floors two through five would have 4 units per floor, while Floor 6 would have 2 units. The ground floor would contain one unit, plus community facilities and a rear yard. Community facilities would include a community room with a full kitchen, and 19 Class 1 and two Class 2 bicycle parking spaces. There would be no automobile parking. The project would contain three affordable units.

At the public hearing for the project's Conditional Use Authorization (2020-001610), the Planning Commission directed the Planning Department staff to redesign the project without the Sixth Floor. This Modified Project was subsequently approved by the Planning Commission.

The modifications are summarized as follows:

- Elimination of Sixth Floor

The two Sixth Floor Penthouse units are removed. These units offered City and Skyline views, as well as private decks. Price premiums were anticipated to effectively subsidize the three affordable units. The units are effectively relocated to the rear of the ground where they will lack views and private decks.

- Elimination of Community Room and Community Kitchen

The two sixth floor units are relocated to the ground floor in the space for the community room and full kitchen.

- Loss of Bicycle Parking for 14 Units

The modified ground floor would contain only five Class 1 bicycle parking spaces for the 19 units in the project. Class 1 spaces are spaces in secure, weather-protected facilities intended for use long-term, overnight, and work-day bicycle storage. There would still be two Class 2 spaces which are defined as spaces located in publicly accessible, highly visible areas intended for visitor use.

- Reduction in Project Size

The project size would be reduced from 11,147 square feet to 10,023 square feet owing to the elimination of the sixth floor. The two originally proposed sixth floor units would have floors areas of:

401 square feet for the front unit
418 square feet for the rear unit

These units are relocated in the Modified Project to the ground floor and are reduced in size to the following identical areas:

347 square feet for the east unit
347 square feet for the west unit

The Modified Project is a dramatically different project than that originally proposed. The loss of the community room with the full kitchen leaves the Group Housing residents with no ability to cook family or group meals, and no place to eat the meals. It all but ends the “communal” aspect of the Group Housing experience. The loss of bicycle parking for 14 units in a project with no on-site parking deprives the residents with a popular and necessary means of transportation. The removal of the higher priced penthouse units impairs the project economics relative to providing the three affordable units.

IV. Micro-Units

A growing trend has emerged in multiunit developments that reflect a shift in the tastes and preferences for a critical segment of the population: young professionals living in expensive, high-growth or population-dense, urban markets. This cohort tends towards minimalism and values location, experiences, economy, and high-quality amenities over larger, more costly units. For housing, they seek transit-rich locations and walkability, as many do not possess cars.

The micro-unit is designed to meet this component of housing demand. A micro-unit is typically a small studio or one-bedroom unit using efficient design to appear larger than

it is and ranging in size from as little as 250 square feet up to 450 square feet. Amenities are provided in the common space to compensate for the lack of space in the individual units. Common amenities might include a common “living room” with a, large gourmet kitchen. Some micro-unit developments contain fitness facilities and other features.

An important aspect of micro-units is their affordable price points relative to other forms of ownership housing. This applies particularly in a high cost city such as San Francisco where a micro-unit can be purchased at a fraction of the price of a typical condominium unit or a single family home.

V. Micro-Units in San Francisco

The proposed subject development will be the first new Group Housing project in San Francisco. The subject units will be marketed as micro-units. This housing type first became available in San Francisco in the 1990s. The micro-unit projects listed below all have some form of limited kitchen facilities, such as electric burners, microwave/convection ovens, or full standard ovens. Based on size and marketing as micro-units, these projects are the most comparable to the proposed subject development.

195 Seventh Street

Completed in 1991, this development has the appearance of an apartment building which was mapped as condominiums. It has 32 units with small unit sizes of under 400 square feet and limited amenities. The location and the micro-unit concept were both pioneering at the time of construction.

Cubix – 766 Harrison Street

The first large micro-unit development in San Francisco is Cubix at 766 Harrison Street near Fourth Street. It is an eight-story building with 98 units completed in 2008. Unit sizes are mostly under 300 square feet. Although technically condominiums, the Cubix units are similar to the proposed group housing units at the subject property. Cubix does offer amenities including rooftop decks with grills. There is a ground floor café in the building and a Whole Foods store is nearby.

Book Concern – 83 McAllister Street

A micro-unit development involving a renovation/conversion predates Cubix. Located at 83 McAllister Street in the Civic Center neighborhood is the Book Concern. The building was originally the home of a Methodist book publisher but was being used as Church of

Scientology offices before it as converted into 60 for-sale loft units. Sizes range from 260 square feet to 500 square feet. Marketing commenced in 2006. The five story building features the original brick and limestone exterior with a rooftop garden, fitness center, and lounge.

Serif

Serif is a recently completed development offering micro-units located at 960 Market Street at the corner of Turk Street. Serif is a 12 story building completed in 2021 containing 242 condominium units ranging from studios to two-bedrooms. The studios and the majority of the junior one-bedroom units contain less than 400 square feet, thereby qualifying as micro-units. Common area amenities include rooftop solarium, lounge, fitness center, bicycle parking, and pet spa. The ground floor contains a restaurant and café, with a Magic Theatre space as well. A new Line hotel is part of the development.

Other

Other micro-unit buildings in San Francisco

- 901 Bush Street (older building renovation/conversion)
- 725 Bush Street (older building renovation/conversion)

VI. Sales Data

The table on the following page shows recent sales data concerning micro-units in San Francisco. The sales are taken from the properties previously discussed. The unit sizes range from 320 square feet to 407 square feet. Most of the sales occurred in 2021.

The price range is from \$375,000 for Unit 505 in the Cubix development to an asking price of \$699,000 for Unit 407 located at 83 McAllister Street. Most of the units show prices from \$400,000 to \$600,000.

Of note is the pattern in price per square foot. There is not a significant differential in price per square foot for the properties shown on the table. The reason is that price per square foot is strongly influenced by unit size, and the unit sales shown on the table are similar in size. The somewhat lower per square foot prices for 195 Seventh Street and 766 Harrison Street are likely location related. For 960 Market Street, the relatively high prices per square foot reflect the new construction aspect and abundant amenities.

VII. Subject Unit Pricing

In terms of price estimates, there are several favorable aspects for the proposed subject

Table 1

5.1

SAN FRANCISCO MICRO-UNIT SALES

<u>Address</u>	<u>Square Feet</u>	<u>Sale Date</u>	<u>Sale Price</u>	<u>Price/Sq. Ft.</u>
195 7th St #310	341	1/5/2021	\$ 428,000	\$1,255.13
195 7th St #402	320	10/30/2020	\$ 400,000	\$1,250.00
195 7th St #410	341	4/20/2021	\$ 405,000	\$1,187.68
725 Pine St #203	366	3/8/2021	\$ 500,000	\$1,366.12
725 Pine St #206	353	7/15/2021	\$ 480,000	\$1,359.77
725 Pine St #307	328	7/26/2021	\$ 425,000	\$1,295.73
766 Harrison St #205 (Cubix)	328	7/29/2021	\$ 400,000	\$1,219.51
766 Harrison St #505 (Cubix)	328	1/20/2021	\$ 375,000	\$1,143.29
766 Harrison St #805 (Cubix)	334	6/22/2021	\$ 430,000	\$1,287.43
83 Mcallister St #407	407	For Sale	\$ 699,000	\$1,717.44
901 Bush St #104	337	3/17/2020	\$ 572,000	\$1,697.33
901 Bush St #606	341	2/7/2020	\$ 608,000	\$1,782.99
960 Market St #208 (New Construction)	396	For Sale	\$ 590,000	\$1,489.90
960 Market St #404 (New Construction)	341	11/19/2021	\$ 528,800	\$1,550.73
960 Market St #506 (New Construction)	339	For Sale	\$ 530,000	\$1,563.42

Source: Multiple Listing Service, Mansbach Associates, Inc.

relative to the sales shown on Table 1. At an average size of 400 square feet, the subject units are larger than most of the sale properties shown on the table. Also the subject units will be newly constructed. The subject units have a superior location in the high-demand Upper Market District of San Francisco, with public transportation and numerous retail sales and services nearby.

As-Proposed vs. As-Modified

Table 2 shows the estimated pricing of the subject units by floor for the as-proposed six story project and the as-modified five story project. The pricing is based on the price per square foot estimate for each floor.

For the As-Proposed scenario, the starting point is the low price per square foot of \$1,300 applied to the least preferred ground floor unit. There are incremental increases applied to the upper floor units starting at \$1,400 per square foot for the second-floor units, and reaching \$1,475 per square foot for the fifth floor units.

For the sixth-floor units, views will be available, particularly on for the south facing unit. Also, each unit will have a private deck. Price per square foot premiums are therefore shown for the sixth-floor units. The overall average price per square foot for all of 19 units is \$1,333.

Under the As-Modified scenario, the overall average drops to \$1,259 per square foot resulting from two changes in the project. The first is the elimination of the sixth floor and the relocation of its two units to the ground floor. The second is a ten percent universal reduction in price per square foot to account for the loss of the community amenities including the full kitchen and reduction in bicycle parking. The reduction in value is based on the loss of the shared 1/19th interest in the 885 square feet of common space for each unit, which equates to a loss of approximately 47 square feet per unit or roughly ten percent reduction in square feet per unit.

An example of this ten percent price per square foot differential is evident on the second floor pricing where the price per square foot is dropped from \$1,400 to \$1,260. Similar reductions are made on the remaining upper floors. For the ground floor units, the 400 square foot unit at the front of the building also has a ten percent reduction in price per square foot from \$1,300 to \$1,170. The two relocated units are smaller at 347 square feet each. Each faces onto the rear yard of the property, with each having an estimated price per square for \$1,225.

Of note is that the ten percent differential is based on square footage lost but may not reflect the true value of the lost amenities. All of the micro-unit projects described above include some level of kitchen facilities, on-site amenities, and/or storage. There are no comparable housing ownership projects that do not include any kitchen facilities or other

Table 2

6.1

**UNIT PRICING BY FLOOR
3832 18th STREET
SAN FRANCISCO, CA**

<u>AS PROPOSED</u>				<u>AS MODIFIED</u>			
<u>Floor</u>	<u>Square Feet</u>	<u>Price Per Sq. Ft.</u>	<u>Price</u>	<u>Floor</u>	<u>Square Feet</u>	<u>Price Per Sq. Ft.</u>	<u>Price</u>
1	400	\$1,300	\$520,000	1	400	\$1,170	\$468,000
-				1	347	\$1,225	\$425,000
-				1	347	\$1,225	\$425,000
2	414	\$1,400	\$580,000	2	414	\$1,260	\$522,000
2	418	\$1,400	\$585,000	2	418	\$1,260	\$527,000
2	379	\$1,400	\$531,000	2	379	\$1,260	\$478,000
2	394	\$1,400	\$552,000	2	394	\$1,260	\$496,000
3	414	\$1,425	\$590,000	3	414	\$1,283	\$531,000
3	418	\$1,425	\$596,000	3	418	\$1,283	\$536,000
3	379	\$1,425	\$540,000	3	379	\$1,283	\$486,000
3	394	\$1,425	\$561,000	3	394	\$1,283	\$505,000
4	414	\$1,450	\$600,000	4	414	\$1,305	\$540,000
4	418	\$1,450	\$606,000	4	418	\$1,305	\$545,000
4	379	\$1,450	\$550,000	4	379	\$1,305	\$495,000
4	394	\$1,450	\$571,000	4	394	\$1,305	\$514,000
5	393	\$1,475	\$580,000	5	393	\$1,328	\$522,000
5	397	\$1,475	\$586,000	5	397	\$1,328	\$527,000
5	379	\$1,475	\$559,000	5	379	\$1,328	\$503,000
5	394	\$1,475	\$581,000	5	394	\$1,328	<u>\$523,000</u>
6	401	\$1,550	\$622,000	6	-		
6	418	\$1,575	<u>\$658,000</u>	6	-		
TOTAL	7,597		\$10,968,000		7,597		\$9,568,000
AVERAGE		\$1,444	\$577,263			\$1,259	\$503,579
BMR PRICE			<u>-\$298,190</u>				<u>-\$298,190</u>
DIFFERENCE			\$279,073				\$205,389
VALUE REDUCTION	3 BMR Units		\$837,219				\$616,167
TOTAL-ADJUSTED			<u>\$10,130,781</u>				<u>\$8,951,833</u>

Source: Mansbach Associates, Inc.

on-site amenities. While there is evidence of a robust market for micro-units that include common amenities, there is no existing data to determine whether a market exists for the as-modified project.

Both the as-proposed and as-modified project scenarios include three BMR (below market rate) units which impact the value of the total project. The prices of BMR units are set by the Mayor's Office of Housing and Community Development according to a set formula. However, the Mayor's Office does publish "sample pricing" data. According to the latest pricing data (see Addenda), a studio unit at 80% Average Median Income is priced at \$298,190. Because the locations of the BMR units are not selected by the City until after a Declaration of Restriction is recorded against the property, the reduction in value from the BMR unit pricing is calculated utilizing the average unit price. For the as-proposed project, the average unit price is \$577,263, resulting in a reduction of \$279,073 per BMR unit and a total reduction of \$837,219. For the as-modified project the average unit price is \$503,579, resulting in a reduction of \$205,389 per BMR unit and a total reduction of \$616,167 for the three BMR units.

VIII. Conclusion

The lower portion of Table 2 shows the total gross sales revenue for the 19 units under the two scenarios. The differential is shown as follows:

As-Proposed:	\$10,130,781
As-Modified:	<u>\$ 8,951,833</u>
Loss:	<u>\$ 1,178,948</u>

I trust that my analysis is useful to you. If you have any questions or need any further assistance, please contact me.

Sincerely,
MANSBACH ASSOCIATES, INC.



Lawrence L. Mansbach, MAI

ADDENDA

Sample Pricing – San Francisco Mayor’s Office of Housing and Community Development

Qualifications

SAMPLE PRICING

2021
SAMPLE SALES PRICES FOR THE SAN FRANCISCO INCLUSIONARY HOUSING PROGRAM
 derived from the
Unadjusted Area Median Income (AMI)
for HUD Metro Fair Market Rent Area (HMFA) that Contains San Francisco
 Published by the San Francisco Mayor's Office of Housing and Community Development

The prices below are samples only. The actual price for an Inclusionary Housing Program unit will be determined at the time of pricing according to the method explained in the San Francisco Inclusionary Affordable Housing Program Monitoring and Procedures Manual, including an adjustment for unbundled parking.

Current Median Income (4 pers HH, 100%):		\$133,200				
30 Year fixed interest rate		3.81%				
BEDROOM SIZE		STUDIO	ONE	TWO	THREE	FOUR
Monthly Condo Association Fee	----->	\$440	\$550	\$660	\$770	\$880
ASSUMED HOUSEHOLD SIZE		1 Person	2 Person	3 Person	4 Person	5 Person
MEDIAN INCOME @	60% OF MEDIAN	\$55,950	\$63,950	\$71,950	\$79,900	\$86,300
AVAIL FOR HOUSING @	33%	\$18,464	\$21,104	\$23,744	\$26,367	\$28,479
ANNUAL CONDO FEE		\$5,280	\$6,600	\$7,920	\$9,240	\$10,560
SPECIAL ASSESSMENTS & TAXES @	1.1985%	\$3,131	\$3,385	\$3,638	\$3,889	\$4,041
AVAILABLE FOR P+I		\$10,052	\$11,119	\$12,185	\$13,238	\$13,878
SUPPORTABLE MORT		\$179,561	\$198,609	\$217,657	\$236,466	\$247,895
DOWN PAYMENT	10%	\$19,951	\$22,068	\$24,184	\$26,274	\$27,544
AFFORDABLE PRICE		\$199,512	\$220,677	\$241,841	\$262,740	\$275,439
ASSUMED HOUSEHOLD SIZE		1 Person	2 Person	3 Person	4 Person	5 Person
MEDIAN INCOME @	70% OF MEDIAN	\$65,300	\$74,600	\$83,950	\$93,250	\$100,700
AVAIL FOR HOUSING @	33%	\$21,549	\$24,618	\$27,704	\$30,773	\$33,231
ANNUAL CONDO FEE		\$5,280	\$6,600	\$7,920	\$9,240	\$10,560
SPECIAL ASSESSMENTS & TAXES @	1.1985%	\$3,724	\$4,060	\$4,399	\$4,735	\$4,954
AVAILABLE FOR P+I		\$12,545	\$13,958	\$15,384	\$16,797	\$17,717
SUPPORTABLE MORT		\$224,085	\$249,324	\$274,800	\$300,038	\$316,467
DOWN PAYMENT	10%	\$24,898	\$27,703	\$30,533	\$33,338	\$35,163
AFFORDABLE PRICE		\$248,984	\$277,026	\$305,333	\$333,376	\$351,630
ASSUMED HOUSEHOLD SIZE		1 Person	2 Person	3 Person	4 Person	5 Person
MEDIAN INCOME @	80% OF MEDIAN	\$74,600	\$85,250	\$95,900	\$106,550	\$115,100
AVAIL FOR HOUSING @	33%	\$24,618	\$28,133	\$31,647	\$35,162	\$37,983
ANNUAL CONDO FEE		\$5,280	\$6,600	\$7,920	\$9,240	\$10,560
SPECIAL ASSESSMENTS & TAXES @	1.1985%	\$4,314	\$4,735	\$5,157	\$5,579	\$5,867
AVAILABLE FOR P+I		\$15,024	\$16,797	\$18,570	\$20,343	\$21,556
SUPPORTABLE MORT		\$268,371	\$300,038	\$331,705	\$363,372	\$385,039
DOWN PAYMENT	10%	\$28,819	\$33,338	\$36,856	\$40,375	\$42,782
AFFORDABLE PRICE		\$298,190	\$333,376	\$368,561	\$403,747	\$427,821
ASSUMED HOUSEHOLD SIZE		1 Person	2 Person	3 Person	4 Person	5 Person
MEDIAN INCOME @	90% OF MEDIAN	\$83,950	\$95,900	\$107,900	\$119,900	\$129,450
AVAIL FOR HOUSING @	33%	\$27,704	\$31,647	\$35,607	\$39,567	\$42,719
ANNUAL CONDO FEE		\$5,280	\$6,600	\$7,920	\$9,240	\$10,560
SPECIAL ASSESSMENTS & TAXES @	1.1985%	\$4,309	\$4,813	\$5,320	\$5,827	\$6,179
AVAILABLE FOR P+I		\$18,115	\$20,234	\$22,367	\$24,500	\$25,979
SUPPORTABLE MORT		\$323,574	\$361,431	\$399,527	\$437,622	\$464,051
DOWN PAYMENT	10%	\$35,953	\$40,159	\$44,392	\$48,625	\$51,561
AFFORDABLE PRICE		\$359,527	\$401,590	\$443,919	\$486,247	\$515,612
ASSUMED HOUSEHOLD SIZE		1 Person	2 Person	3 Person	4 Person	5 Person
MEDIAN INCOME @	100% OF MEDIAN	\$93,250	\$106,550	\$119,900	\$133,200	\$143,850
AVAIL FOR HOUSING @	33%	\$30,773	\$35,162	\$39,567	\$43,956	\$47,471
ANNUAL CONDO FEE		\$5,280	\$6,600	\$7,920	\$9,240	\$10,560
SPECIAL ASSESSMENTS & TAXES @	1.1985%	\$4,899	\$5,488	\$6,081	\$6,671	\$7,093
AVAILABLE FOR P+I		\$20,594	\$23,073	\$25,566	\$28,045	\$29,818
SUPPORTABLE MORT		\$367,860	\$412,146	\$456,670	\$500,956	\$532,623
DOWN PAYMENT	10%	\$40,873	\$45,794	\$50,741	\$55,662	\$59,180
AFFORDABLE PRICE		\$408,733	\$457,940	\$507,411	\$556,618	\$591,803
ASSUMED HOUSEHOLD SIZE		1 Person	2 Person	3 Person	4 Person	5 Person
MEDIAN INCOME @	105% OF MEDIAN	\$97,900	\$111,900	\$125,900	\$139,850	\$151,050
AVAIL FOR HOUSING @	33%	\$32,307	\$36,927	\$41,547	\$46,151	\$49,847
ANNUAL CONDO FEE		\$5,280	\$6,600	\$7,920	\$9,240	\$10,560
SPECIAL ASSESSMENTS & TAXES @	1.1985%	\$5,791	\$6,425	\$7,059	\$7,690	\$8,147
AVAILABLE FOR P+I		\$21,236	\$23,902	\$26,568	\$29,220	\$31,140
SUPPORTABLE MORT		\$379,325	\$426,944	\$474,563	\$521,945	\$556,231
DOWN PAYMENT	10%	\$42,147	\$47,438	\$52,729	\$57,994	\$61,803
AFFORDABLE PRICE		\$421,472	\$474,382	\$527,293	\$579,939	\$618,034
ASSUMED HOUSEHOLD SIZE		1 Person	2 Person	3 Person	4 Person	5 Person
MEDIAN INCOME @	110% OF MEDIAN	\$102,600	\$117,200	\$131,900	\$146,500	\$158,250
AVAIL FOR HOUSING @	33%	\$33,858	\$38,676	\$43,527	\$48,345	\$52,223
ANNUAL CONDO FEE		\$5,280	\$6,600	\$7,920	\$9,240	\$10,560
SPECIAL ASSESSMENTS & TAXES @	1.1985%	\$6,089	\$6,761	\$7,440	\$8,112	\$8,603
AVAILABLE FOR P+I		\$22,489	\$25,315	\$28,167	\$30,993	\$33,059
SUPPORTABLE MORT		\$401,706	\$452,182	\$503,135	\$553,612	\$590,517
DOWN PAYMENT	10%	\$44,634	\$50,242	\$55,904	\$61,512	\$65,613
AFFORDABLE PRICE		\$446,340	\$502,425	\$559,039	\$615,124	\$656,130
ASSUMED HOUSEHOLD SIZE		1 Person	2 Person	3 Person	4 Person	5 Person
MEDIAN INCOME @	120% OF MEDIAN	\$111,900	\$127,850	\$143,900	\$159,850	\$172,600
AVAIL FOR HOUSING @	33%	\$36,927	\$42,191	\$47,487	\$52,751	\$56,958
ANNUAL CONDO FEE		\$5,280	\$6,600	\$7,920	\$9,240	\$10,560
SPECIAL ASSESSMENTS & TAXES @	1.1985%	\$6,679	\$7,437	\$8,201	\$8,959	\$9,513
AVAILABLE FOR P+I		\$24,968	\$28,154	\$31,366	\$34,552	\$36,885
SUPPORTABLE MORT		\$446,992	\$502,897	\$560,278	\$617,184	\$658,851
DOWN PAYMENT	10%	\$49,555	\$55,877	\$62,253	\$68,576	\$73,206
AFFORDABLE PRICE		\$495,546	\$558,774	\$622,532	\$685,760	\$732,056
ASSUMED HOUSEHOLD SIZE		1 Person	2 Person	3 Person	4 Person	5 Person
MEDIAN INCOME @	130% OF MEDIAN	\$121,250	\$138,500	\$155,850	\$173,150	\$187,000
AVAIL FOR HOUSING @	33%	\$40,013	\$45,705	\$51,431	\$57,140	\$61,710
ANNUAL CONDO FEE		\$5,280	\$6,600	\$7,920	\$9,240	\$10,560
SPECIAL ASSESSMENTS & TAXES @	1.1985%	\$7,272	\$8,112	\$8,959	\$9,802	\$10,427
AVAILABLE FOR P+I		\$27,461	\$30,993	\$34,552	\$38,098	\$40,723
SUPPORTABLE MORT		\$490,516	\$553,612	\$617,184	\$680,517	\$727,422
DOWN PAYMENT	10%	\$54,502	\$61,512	\$68,576	\$75,613	\$80,825
AFFORDABLE PRICE		\$545,018	\$615,124	\$685,760	\$756,130	\$808,247

Notes:
 1. Median Income on this chart is from 2021 SF MOHCD Inclusionary Income Limits (AMI Chart).
 2. Interest rate is based on FreddieMac 10 yr rolling average of annual average rates for 30 yr Fixed Rate
 See URL: <http://www.freddiemac.com/pmms/pmms30.htm>
 3. FY2021-2022 Annual Tax Rate is 1.1985%, see: <http://sftreasurer.org/property-taxes>

Effective Date: 05/12/2021

QUALIFICATIONS OF LAWRENCE L. MANSBACH, MAI

Lawrence L. Mansbach is an independent real estate appraiser and consultant and president of the firm of Mansbach Associates, Inc. Following is a brief resume of his background and experience:

EXPERIENCE

MANSBACH ASSOCIATES, INC.
President

San Francisco, CA

Mr. Mansbach is president of Mansbach Associates, Inc., a San Francisco-based real estate consultation, market research and valuation firm.

Mr. Mansbach has 40 years of experience in the real estate consulting and appraisal field. His current focus is on arbitration and litigation support including expert witness testimony. He also provides a wide range of valuation services for purchase and sale activities, lending decisions, tax matters, and public sector functions.

Property types appraised include office, retail, apartment, industrial/R&D, hotel, condominium, vacant land and high end single family residences.

EDUCATION

1980-1982	University of California – Haas School of Business Master of Business Administration. Concentration in real estate and finance.	Berkeley, CA
1974-1976	University of Washington Master of Arts	Seattle, WA
1970-1974	University of California Bachelor of Arts – Highest Honors	Berkeley, CA

PROFESSIONAL

Member of the Appraisal Institute (MAI)
State of California- Certified General Real Estate Appraiser
California Real Estate Broker
California State Board of Equalization – Appraiser For Property Tax Purposes

EXPERT TESTIMONY

Qualified as an Expert in Superior Court – San Francisco, Santa Clara, Alameda, Contra Costa, Marin, Napa and Shasta counties
United States Tax Court.
American Arbitration Association, JAMS, ADR Services.

CAREER HIGHLIGHTS

Recent accomplishments include:

- Arbitrated 400,000 square foot office lease transaction
- Arbitrated telecommunications lease in Contra Costa County
- Arbitrated ground lease for highest volume store of national supermarket chain
- Served as a consultant on largest private school tax-exempt Bond issues in San Francisco.
- Served as the consultant to the estate of Dean Martin for estate tax purposes.
- Represented client on property tax appeal of Bank of America World Headquarters.
- Served as appraiser on tax-exempt bond issue for Mission Bay development in San Francisco.
- Served as appraiser and consultant for expansion of the San Francisco State University campus
- Appraised General Dynamics campus in Mountain View
- Appraised Hunters Point Shipyard
- Appraised portions of Golden Gate National Recreation Area

Mr. Mansbach began his career as an analyst with the planning consulting firm of John M. Sanger and Associates in San Francisco. From 1977 to 1980, he was an economic development planner with the San Francisco Department of City Planning. He was the principal author of the Central Waterfront Plan which was an early precursor to the Mission Bay development. During the 1980's, Mr. Mansbach worked at the real estate appraisal and consulting firm of Mills-Carneghi, Inc., eventually becoming a partner.

Mr. Mansbach established his own firm, Mansbach Associates, Inc. in downtown San Francisco in 1990. He has worked with a variety of clients on valuation and consulting matters concerning property types ranging from vacant land to high rise office buildings. Mr. Mansbach also was associated with GMAC Commercial Mortgage Corp. in the late 1990's where he worked on the design of a technology/data base driven commercial appraisal product.

Mr. Mansbach has been a guest lecturer at classes at the University of California, Berkeley and Golden Gate University in San Francisco. He has been quoted on real estate matters in the San Francisco Chronicle and Examiner, and has published in the Northern California Real Estate Journal. He was also interviewed on KCBS radio. Speaking engagements include the Annual Conference of the Northern California Chapter of the Appraisal Institute, the Society of Municipal Analysts, and the Tax Section of the California State Bar. Mr. Mansbach has addressed various municipal government bodies in the Bay Area as well as the Moody's and Standard and Poor's rating agencies. He also served as the chair of the Experience Review Committee for the local chapter of the Appraisal Institute.

Mr. Mansbach is active in local community matters, particularly in school financing mechanisms. He devised a parcel tax strategy which generated a nearly \$3,000,000 windfall for a Bay Area school district.

EXHIBIT 2

Preliminary Evaluation Report

March 9, 2022



3832 18th St
San Francisco, California 94114

Prepared for the exclusive use of:
Ryan J. Patterson Esq. and Brian J. O'Neill Esq.
Zacks, Freedman & Patterson

OVERVIEW

Pursuant to your request, AXIS Construction Consulting (“AXIS”) has completed the initial phase of our investigation of the above-mentioned property, 3832 18th Street, San Francisco, California. Our task was to provide a cost of construction comparison between the proposed six story building and the approved five story building. AXIS was also tasked with providing a cost for the option of to build the same six story proposed structure below grade.

Jay Carey is a licensed General Contractor, Plumbing Contractor, and Tile Contractor has been in the construction industry for over forty years and has worked with AXIS for twenty years. Mr. Carey has performed work directly under his own license for the past 30 years as well as with AXIS throughout the San Francisco Bay area regarding new construction, as well as consulting with owners and developers and conducting cost analysis. Mr. Carey has opined in Superior and Federal Court regarding general contractor and subcontractor standard of care for foundation through finish including underground utilities for subdivision projects, plumbing systems, grading/drainage, framing, window/door installation and testing, masonry veneer and stucco cladding, ceramic tile and stone, sheet membrane/mineral and liquid applied waterproofing, sheet-metal, job site safety, and cost estimating for residential and commercial projects.

Our assignment and analysis included cost estimating for the two potential development proposals to ascertain the cost differentials with the proposed design and City approved scaled back plan proposal potentially including below grade construction to accomplish overall improvements.

BASIS of REPORT

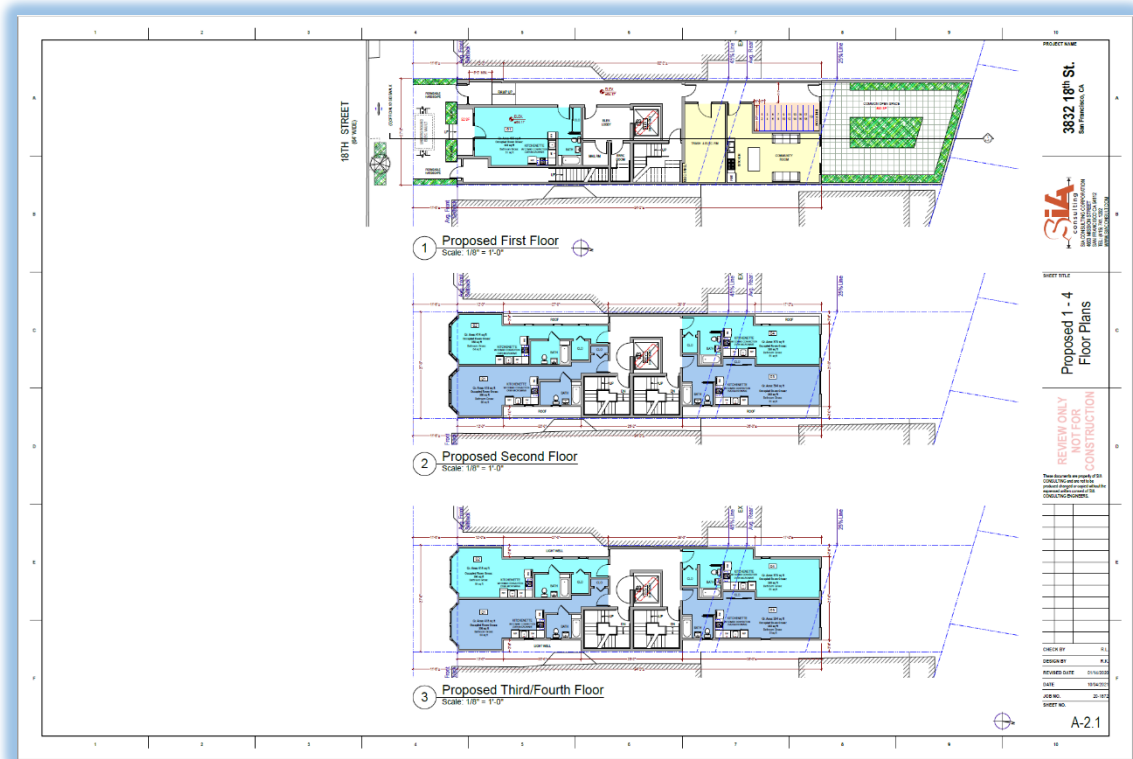
Our investigation included review of the following documents:

- Building and Development standards for the subject property
- Proposed architectural plans by Sia Consulting Corporation dated 10/04/2021
- Approved with conditions, 3-page sketch drawing from the City of San Francisco’s Planning Department
- October 14, 2021, San Francisco Planning Executive Summary Conditional Use Authorization, Shadow Findings & State Density Bonus Project Findings Record No. 2020-00161CUA
- November 15, 2021, Declaration of Ryan J. Patterson, Esq. in support of appeal of conditional use authorization
- November 17, 2021, Conditional Use Authorization appeal letter
- November 21, 2021, Public Works correspondence
- November 22, 2021, Conditional Use Authorization appeal letter

AXIS ANALYSIS

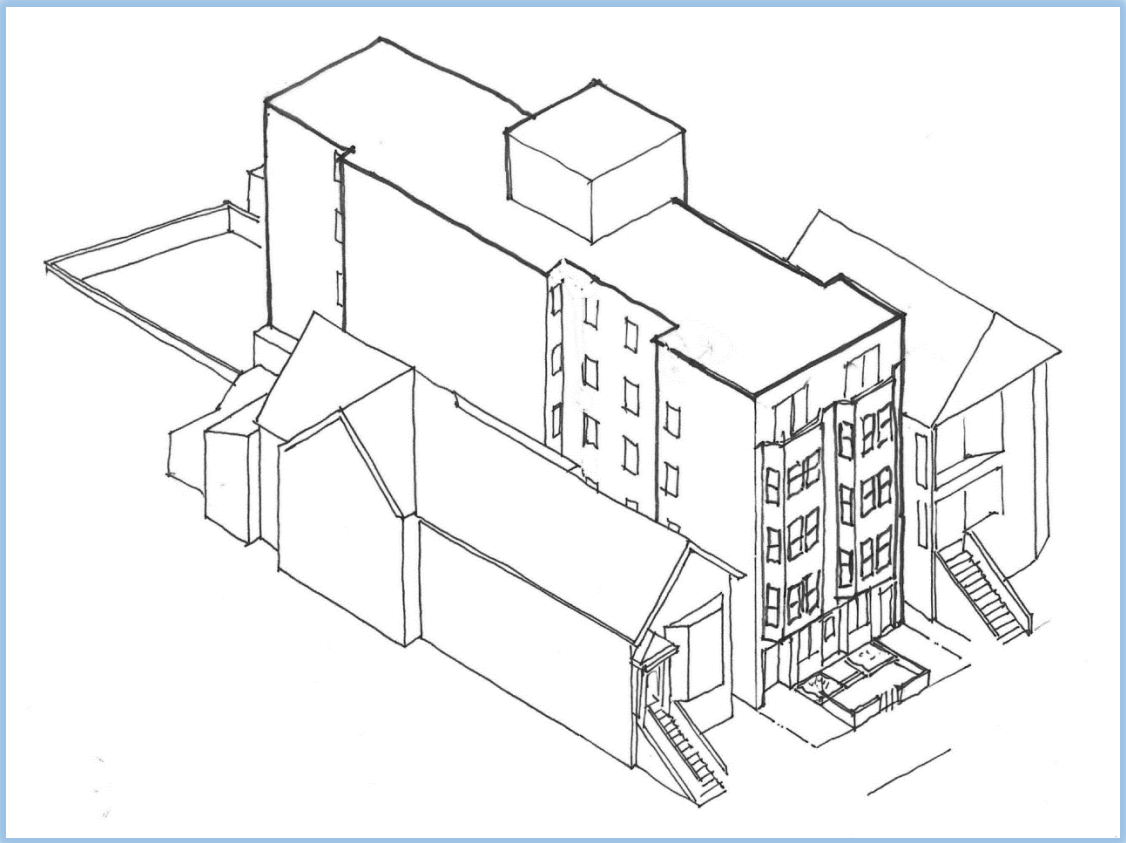
AXIS has reviewed the two submitted and alternative potential architectural plans and has compiled a detailed cost comparison. Our analysis concludes there is an increase in per square foot costs of \$5 per square foot in costs if the structure is reduced in size as conditionally approved. This is because much of the total infrastructure costs (roof, foundation, etc.) and equipment costs (crane, scaffolding, etc.) remain the same between the two projects, but the approved project is significantly smaller than the proposed project. The total construction costs are distributed over a smaller footprint, which raises the costs per square foot.

To retain the same usable space and amenities as proposed would require below grade construction to accomplish the same usable space and common area appurtenances for the intended use and potential development proposal. This would result in excess cost of \$992,920.16.



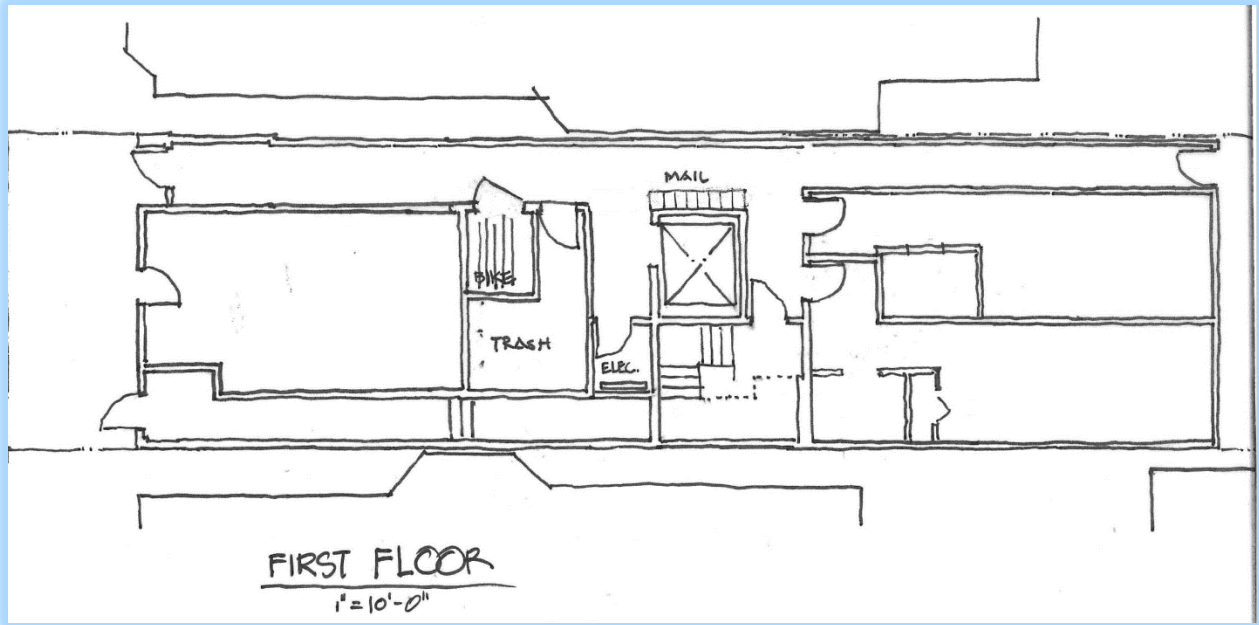
Proposed design

This tentative approved design shown below has significant financial impact for the proposed property development.

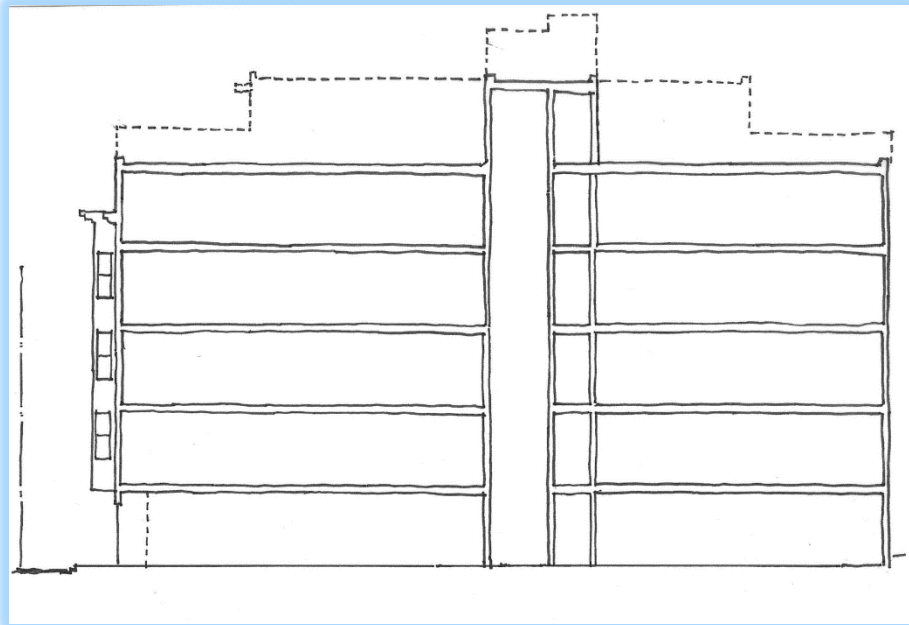


Exterior sketch drawing of tentatively approved design by City of San Francisco Planning

The tentative approval sketch includes a floor plan depicted below as received by San Francisco Planning which provides initial concept for the reduced scale project.



Interior first floor drawing provided by City of San Francisco Planning Department



Interior section drawing with reduced usage provided by City of San Francisco Planning Department

ANALYSIS

Item	Proposed	Approved
Supervision	\$364,800	\$364,800
Demolition - House	\$76,050	\$76,050
PME	\$175,000	\$175,000
Equipment / Crane	\$65,000	\$65,000
Scaffolding	\$93,800	\$93,800
Debris Hauling	\$125,000	\$125,000
Excavation/Grading	\$120,000	\$120,000
Concrete Foundation Stem wall/Footing	\$113,820	\$113,820
Foundation Piers	\$352,000	\$352,000
Concrete/Flat work	\$24,768	\$24,768
Rough Carpentry	\$1,393,375	\$1,342,144
Carpentry - Rough (roof & elevator)	\$215,500	\$210,500
Roofing and water proofing	\$140,918	\$140,918
Decks & waterproofing	\$18,898	\$1,128
Windows	\$77,875	\$63,875
Doors	\$103,750	\$91,250
Door Hardware	\$19,713	\$17,338
Elevator	\$150,000	\$150,000
Stucco	\$129,788	\$125,988
Exterior siding and trim (front elevation)	\$16,027	\$16,027
Electrical	\$133,764	\$123,936
Rough Plumbing	\$166,250	\$148,750
Plumbing Fixtures	\$21,669	\$19,317
HVAC	\$87,500	\$77,000
Fire Sprinklers & alarm system	\$96,550	\$91,700
Insulation	\$141,570	\$124,605
Sheetrock	\$212,355	\$186,907
Finish carpentry	\$25,778	\$22,585
Exterior metal railing	\$4,780	\$4,780
Stair Railing	\$72,000	\$60,000
Tile installation	\$57,000	\$51,000
Flooring	\$120,491	\$107,372
Interior Painting	\$220,043	\$198,510
Exterior siding and trim painting	\$7,275	\$7,275
Countertops	\$29,550	\$25,350
Cabinets	\$146,500	\$91,125
Lighting	\$52,700	\$46,300
Appliances	\$56,000	\$50,400
Landscaping	\$5,696	\$5,696
Subtotal	\$5,433,552	\$5,112,010
General Conditions 12%	\$652,026	\$613,441
Architect and Engineering Fees 10%	\$543,355	\$511,201
Overhead and Profit 22%	\$1,195,381	\$1,124,642
Permit Fees allowance 4%	\$217,342	\$204,480
Total	\$8,041,656	\$7,565,775
SF Area	11490	10737.15
Price per square foot	\$700	\$705

Cost evaluation

Additional Below Grade With Hard Excavation Costs	
Excavation	\$192,465.00
Dirt/concrete hauling	Included
Retaining Walls and Waterproofing	\$364,527.00
Additional Concrete slab	\$17,900.00
Shoring at property line	\$96,000.00
Steel	Included
Sub Total	\$670,892.00
Total with Burden	\$992,920.16

Below grade costs

CONCLUSION

AXIS has reviewed available project documentation and concluded that for the original design the square foot area would total 11,490 at approximately \$700 a square foot, yielding a construction cost of \$8,041,056. The scaled back version as approved would total 10,737, at approximately \$705 a square foot square foot, yielding a construction cost of \$7,565,775. For the average unit with the size of approximately 400 square feet, this results in an excess construction cost of \$2,000 per unit.

AXIS is not responsible for acts or omissions of the client, nor third parties not under direct control. Use of portions of this report out of context, not fully assembled with exhibits, and photographs, and without original signature affixed, shall not be the responsibility of AXIS.

Respectfully Submitted.

Jay Carey
 Senior Construction Consultant
 B, C36, C-54 Lic. #661864
Axis Construction Consulting, Inc.

EXHIBIT 3

1 RYAN J. PATTERSON (SBN 277971)
BRIAN J. O'NEILL (SBN 298108)
ZACKS, FREEDMAN & PATTERSON, PC
2 601 Montgomery Street, Suite 400
San Francisco, CA 94111
3 Tel: (415) 956-8100
Fax: (415) 288-9755
4 ryan@zfplaw.com
brian@zfplaw.com

5 Attorneys for Project Sponsor and Appellant:
6 MJ Mission Dolores, LLC

7 **SAN FRANCISCO BOARD OF SUPERVISORS**

8
9 MJ MISSION DOLORES, LLC
10 Project Sponsor and Appellant

Case No. 2020-001610CUA

11 **DECLARATION OF RYAN J.
12 PATTERSON, ESQ. IN SUPPORT OF
13 APPEAL OF CONDITIONAL USE
14 AUTHORIZATION**

15 I, Ryan J. Patterson, declare as follows:

16 1. I am an attorney and shareholder of Zacks, Freedman & Patterson, PC, the law firm
17 hired to represent the Project Sponsor, MJ Mission Dolores, LLC, in Case No. 2020-001610CUA. I
18 make this declaration based on my own personal knowledge of the following facts, except to those
19 matters stated on information and belief, and as to those matters, I believe them to be true. If called
20 as a witness herein, I can and will competently testify thereto.

21 2. I am informed and believe that SIA Consulting Corp. is the architectural drafter of,
22 and development consultant for, the six-story 19-unit group housing project on the lot at 3832 18th
23 Street that was proposed by the Project Sponsor in Case No. 2020-001610CUA. SIA Consulting
24 Corp. has more than 30 years' experience in San Francisco real estate development, including
25 architectural design, Building and Planning Code consultation, and structural engineering.

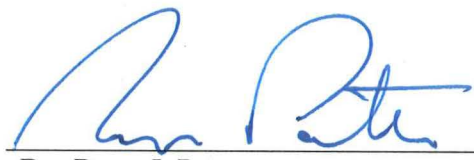
26 3. The Planning Commission held a hearing on October 24, 2021 regarding Case No.
27 2020-001610CUA. At the October 24, 2021 hearing, the Planning Commission conditioned the
28

ZACKS, FREEDMAN & PATTERSON, PC
601 MONTGOMERY STREET, SUITE 400
SAN FRANCISCO, CALIFORNIA 94111

1 project to remove the sixth story and approved a new floor plan for the project that was created by
2 the Planning Department.

3 4. At the hearing, the Project Sponsor presented an annotated floor plan prepared by
4 SIA Consulting Corp., a true and correct copy of which is attached hereto as Exhibit A. This
5 annotated floor plan notes a variety of Building Code-noncompliance problems created by the
6 Planning Commission's conditions of approval, overlaid onto the Planning Department's proposed
7 floor plan (per the Planning Commission's instructions).

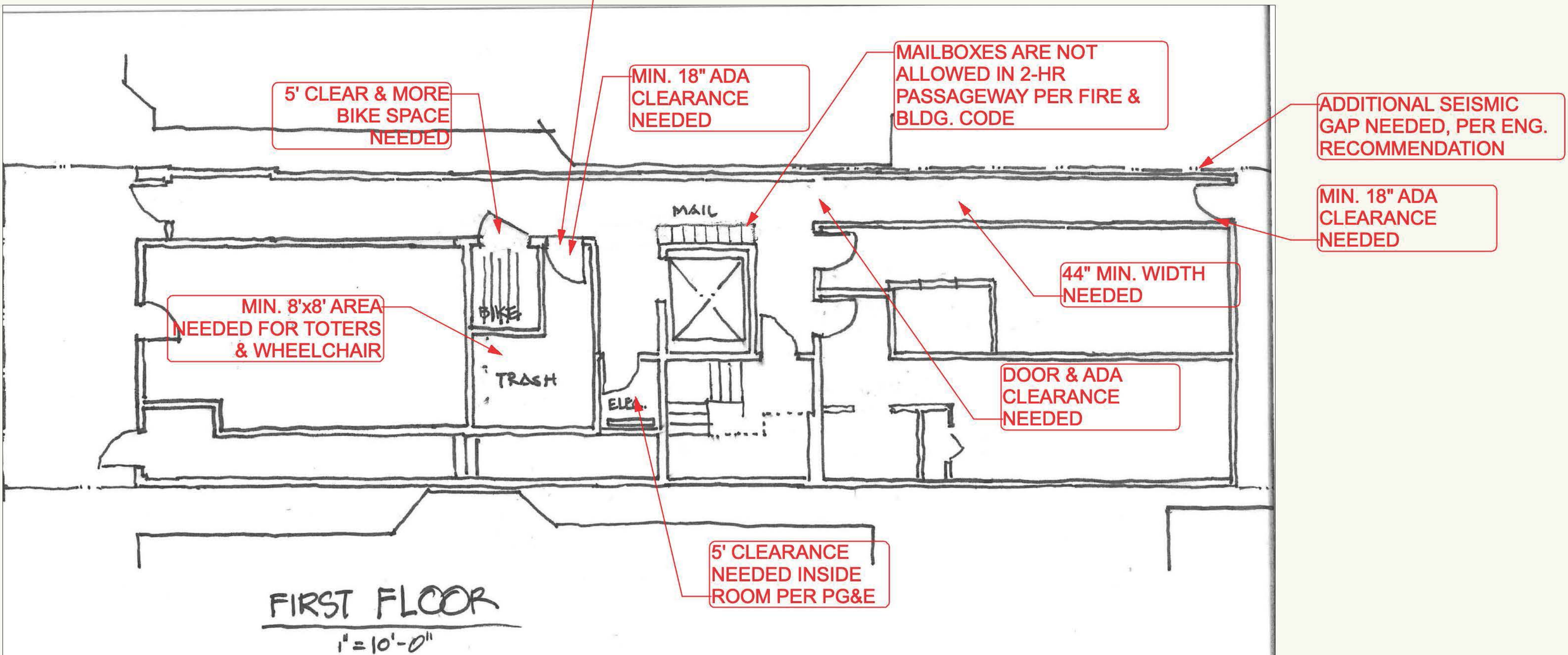
8 I declare under penalty of perjury under the laws of the State of California that the foregoing
9 is true and correct. Executed on November 15, 2021 in San Francisco, CA.

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13 By: Ryan J. Patterson

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EXHIBIT A



- EERC ROOM NEEDED PER FIRE CODE
- FIRE PUMP ROOM MIGHT BE NEEDED PER FIRE FLOW RESULTS
- ELEVATOR CONTROL ROOM
- ACCESSIBLE PARCEL/MAIL ROOM

Exhibit E

EXHIBIT 4

1 [Housing Code - Community Kitchens]

2

3 **Ordinance amending the Housing Code to prohibit removal of existing community**
4 **kitchens in group housing; and affirming the Planning Department's determination**
5 **under the California Environmental Quality Act.**

6 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
7 **Additions to Codes** are in *single-underline italics Times New Roman font*.
8 **Deletions to Codes** are in ~~*strikethrough italics Times New Roman font*~~.
9 **Board amendment additions** are in double-underlined Arial font.
10 **Board amendment deletions** are in ~~strikethrough Arial font~~.
11 **Asterisks (* * * *)** indicate the omission of unchanged Code
12 subsections or parts of tables.

10

11 Be it ordained by the People of the City and County of San Francisco:

12

13 Section 1. Findings.

14 (a) The Planning Department has determined that the actions contemplated in this
15 ordinance comply with the California Environmental Quality Act (California Public Resources
16 Code Sections 21000 et seq.). Said determination is on file with the Clerk of the Board of
17 Supervisors in File No. 210346 and is incorporated herein by reference. The Board affirms
18 this determination.

19 (b) On April 21, 2021, the Building Inspection Commission considered this ordinance
20 at a duly noticed public hearing pursuant to Charter Section D3.750-5.

21

22 Section 2. The Housing Code is hereby amended by revising Section 507, to read as
23 follows:

24 **SEC. 507. COOKING FACILITIES.**

25 (a) **Community kitchens.**

1 (1) **General.** Community kitchens provided for the use of occupants of guest
2 rooms shall comply with this section and shall not be removed but may be replaced.

3 * * * *

4
5 Section 3. Effective Date. This ordinance shall become effective 30 days after
6 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
7 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
8 of Supervisors overrides the Mayor’s veto of the ordinance.

9
10 Section 4. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
11 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
12 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
13 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
14 additions, and Board amendment deletions in accordance with the “Note” that appears under
15 the official title of the ordinance.

16
17
18 APPROVED AS TO FORM:
19 DENNIS J. HERRERA, City Attorney

20 By: /s/ Robb Kapla
21 ROBB KAPLA
22 Deputy City Attorney

23 n:\legana\as2021\2100383\01524085.docx



City and County of San Francisco

Tails Ordinance

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

File Number: 210346

Date Passed: May 04, 2021

Ordinance amending the Housing Code to prohibit removal of existing community kitchens in group housing; and affirming the Planning Department's determination under the California Environmental Quality Act.

April 26, 2021 Land Use and Transportation Committee - RECOMMENDED AS COMMITTEE REPORT

April 27, 2021 Board of Supervisors - PASSED ON FIRST READING

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

May 04, 2021 Board of Supervisors - FINALLY PASSED

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

File No. 210346

I hereby certify that the foregoing Ordinance was **FINALLY PASSED** on 5/4/2021 by the Board of Supervisors of the City and County of San Francisco.

Angela Calvillo
Clerk of the Board

London N. Breed
Mayor

5/14/21

Date Approved

EXHIBIT 5

**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



January 20, 2022

Pamela Antil, City Manager
City of Encinitas
505 S. Vulcan Avenue
Encinitas, CA 92024

Dear Pamela Antil:

**RE: City of Encinitas Notice of Violation Under State Density Bonus Law, the
Housing Accountability Act, Housing Element Law, and Affirmatively
Furthering Fair Housing**

The California Department of Housing and Community Development (HCD) has reviewed the City of Encinitas' (City) processing and denial of the multifamily development application for the Encinitas Boulevard Apartment project located at 2220, 2228, and 2230 Encinitas Boulevard (Case Nos. MULTI-003587-2020 and DR-003589-2020) (referred to as the Project). Under Government Code section 65585, HCD must review any action or failure to act by a city that it determines to be inconsistent with an adopted housing element or section 65583 generally, and it must issue written findings to the city accordingly. (Gov. Code, § 65585, subd. (i).) Additionally, HCD must notify the city and may notify the Office of the Attorney General when a city takes actions that are inconsistent with an adopted housing element or Government Code sections 65583 and 65915, among other laws. (Gov. Code, § 65585, subd. (j).)

This letter details HCD's findings that in improperly denying the Project, the City violated State Density Bonus Law (SDBL) (Gov. Code, § 65915 et seq.), the Housing Accountability Act (HAA) (Gov. Code, § 65589.5), and its duty to Affirmatively Further Fair Housing (AFFH) (Gov. Code, § 8899.50). HCD also finds that in denying the Project, the City has failed to implement the goals, policies, and program actions included in its adopted, 6th cycle housing element. This failure does not comply with State Housing Element Law. (Gov. Code, § 65580 et seq.)

Under Government Code section 65585, subdivision (i), HCD must give the City a reasonable time, no longer than 30 days, to respond to these findings. HCD provides the City until February 19, 2022 to provide a written response to these findings—providing a detailed plan for corrective action—before taking any of the actions authorized by section 65585, including revocation of housing element compliance and referral to the California Office of the Attorney General. The City's response should

include, at a minimum, a commitment to take immediate corrective action, including (1) approval of the Project and (2) allowing the Project to move forward with its plans without further delay.

The Project and the City's Actions

The Project is an application for the construction of a 277-unit apartment development consisting of 236 market-rate units and 41 units affordable to lower-income households.¹ The application utilizes the provisions of SDBL (Gov. Code, § 65915.) The Project is located on a site designated in the City's housing element as suitable for lower-income housing and is included within the R-30 Overlay Zone.² The Project is eligible for "by-right" approval, which means that the Project is only subject to design review approval and is not subject to any discretionary review, including review under the California Environmental Quality Act.³

On August 19, 2021, the Planning Commission voted unanimously (with Chair Ehlers recused and not participating) to deny the Project with the adoption of Planning Commission Resolution No. PC-2021-27.⁴ Timely appeals were filed with the City by the applicant, Randy Goodson, and the Encinitas Residents for Responsible Development.⁵ On November 10, 2021, the City Council voted unanimously to uphold the Planning Commission's denial of the Project and deny both appeals with the adoption of Resolution Nos. 2021-93 and 2021-95.

Denial of the Encinitas Boulevard Apartment Project Violates SDBL

As described in HCD's October 12, 2021 correspondence, denial of the Project was based, in part, upon alleged inconsistencies with Encinitas' Municipal Code section 30.16.010(B)(6) for height and stories as well as section 30.16.010(E)(11) for private storage. The finding of inconsistency followed the denial of the developer's request for waivers of these two provisions pursuant to SDBL. (Gov. Code, § 65915, subd. (e).) Beyond the concessions or incentives that a development project is entitled to under SDBL (Gov. Code, § 65915, subd. (d)), a project is entitled to an unlimited number of waivers from development standards. Specifically, the City is not permitted to apply any development standard that physically precludes the construction of the Project as proposed at its permitted density and with the granted concession and incentives. (Gov. Code, § 65915, subd. (e)(1); *Wollmer v. City of Berkeley* (2011) 193 Cal.App.4th 1329, 1346.)

¹ Sapa'u, R. and Colamussi, A., Encinitas City Council Agenda Report, November 10, 2021, Agenda Item 10A, p. 2.

² *Id.* at p. 3.

³ *Id.*

⁴ *Id.*

⁵ *Id.*

Under SDBL:

- The developer may propose to have such standards waived or reduced. (Gov. Code, § 65915, subds. (b)(1), (e).)
- The City may require the applicant to provide reasonable documentation to establish eligibility for the waiver. (Gov. Code, § 65915, subd. (a)(2).)
- The City may deny waivers only under limited conditions. (Gov. Code, § 65915, subd. (e)(1).)

The showing or “reasonable documentation” required by the applicant is that the project qualifies for a density bonus. Once a project qualifies for a density bonus, “the law provides a developer with broad discretion to design projects with additional amenities even if doing so would conflict with local development standards.” (*Bankers Hill 150 v. City of San Diego* (January 7, 2022, No. D077963) 2022 WL69108, at *9 (*Bankers Hill*).) “The city may refuse the waiver or reduction only ‘if the waiver or reduction would have a specific, adverse impact . . . upon health, safety, or the physical environment,’ would have ‘an adverse impact’ on an historic resource, or ‘would be contrary to state or federal law.’ ([Gov. Code,] § 65915, subd. (e)(1).) Subdivision (e) imposes no financial criteria for granting a waiver.” (*Schreiber v. City of Los Angeles* (2021) 69 Cal.App.5th 549, 556.) In this context, 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.” (Gov. Code, §§ 65915, subd. (e)(1), 65589.5, subd. (d)(2).)

This provision does not authorize the City to deny the proposed project based on the theory that another project, with a similar number of units, might conceivably be designed differently and accommodated without waivers. (*Wollmer, supra*, 193 Cal.App.4th at pp. 1346–1347 [project amenities, such as a pool or other recreational facilities, are a reasonable ground under section 65915 for seeking a waiver]; *Schreiber, supra*, 69 Cal.App.5th at p. 558 [“A local ordinance is preempted if it conflicts with the density bonus law by increasing the requirements to obtain its benefits.”].) A project that meets the requirements of SDBL is entitled to waivers if they are needed, “period.” (*Wollmer, supra*, at pp. 1346–1347.)

Thus, project applicants need not consider various alternatives that might be plausible on the site without concessions, incentives, or waivers. As the applicant provided reasonable documentation to establish eligibility for the waivers requested—in that it qualified for a density bonus and could not build the project as designed without them—the City must waive the development standards requested pursuant to Government Code section 65915, subdivision (e). (*Wollmer, supra*, at p. 1347.) The *only* exception is where a city can make findings about specific adverse impacts, as noted above. Mere inconsistencies with design standards would not support such a finding.

Disregarding these provisions of SDBL, the City hired a consultant to invent a project that would not require a waiver or might be built with fewer waivers. It concluded that with this alternative design—proposed by RRM Design Group (RRM)—waivers were not needed to “accommodate permitted concessions” nor were they needed to accommodate a project designed by RRM with different features (and at seemingly substantially greater cost) than the project proposed by the applicant. Based on this, the City found that waivers could be denied for this project. (City of Encinitas, Resolution 2021-93, § 1, A.5.) The City’s findings were not in accord with the requirements of SDBL.

As noted above, the courts have made it very clear that if a project qualifies under SDBL, and if waivers are needed to physically allow that project to go forward with the incentives and concessions granted, the waivers must be granted. The City may not deny a waiver based on the possibility that someone else might propose a project with other features than the project submitted, no matter how “similar” the two are perceived to be. It could only deny the waiver because granting the waiver “would have a specific, adverse impact ... upon health or safety, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact” or “would have an adverse impact on any real property that is listed in the California Register of Historical Resources, or to grant any waiver or reduction that would be contrary to state or federal law.” (Government Code, § 65915, subd. (e)(1).)

Furthermore, the City may not deny a waiver because it perceives that the developer can afford to build a project of a different design. SDBL was modified in 2008 to eliminate consideration of economic feasibility in the granting of waivers. (*Wollmer, supra*, at p. 1346.) An analysis of the viability of those alternative designs is not relevant and should not be required.

Finally, HCD notes that California is experiencing a housing crisis, and the provision of housing remains of the utmost priority. Recognizing this, SDBL directs that it is to be “interpreted liberally in favor of producing the maximum number of total housing units.” (Gov. Code, § 65915, subd. (r).) Denial of the Project on the grounds asserted by the City is not consistent with this interpretive directive.

Denial of the Encinitas Boulevard Apartment Project Violates the Housing Accountability Act by Failing to Make Appropriate Findings

The City did not make appropriate findings under either subdivision (d) or subdivision (j) of the HAA when it denied the Project. (Gov. Code, § 65589.5, subds. (d), (j).) In failing to make appropriate findings under subdivision (d), the pathway for projects with at least 20 percent affordability, or subdivision (j), the pathway for projects with less than 20 percent affordability, the City violated the HAA.

As the City knows, as an R-30 project, the City could not disapprove the Project during this critical housing crisis unless it made specific written findings, based on a preponderance of the evidence in the record, that the Project:

would have a specific, adverse impact upon the public health or safety, and there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to low- and moderate-income households

(Gov. Code, § 65589.5, subd. (d)(2).) 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. (Gov. Code, § 65589.5, subd. (d)(2).) An inconsistency with any particular zoning code standards or general plan designations, if such an inconsistency were present, would not suffice to support this finding. (Gov. Code, § 65589.5, subd. (d)(2).)

The City takes the position that the Project does not qualify for protection under subdivision (d). (City of Encinitas, Resolution 2021-93, § 1, B.4.) Even assuming for the sake of argument that the City were correct on this limited point, HCD notes that the City failed to make appropriate findings under subdivision (j) anyway.

The City rejected the Project under subdivision (j) because of inconsistencies with certain zoning standards. (City of Encinitas, Resolution 2021-93, § 1, B.5.) But the inconsistencies would have been resolved if the City had granted the waivers requested under SDBL, noted above. (*Bankers Hill, supra*, at *10 [“Thus, even if we assume the Project as designed is inconsistent with some of the City’s design standards, the Density Bonus Law would preclude the City from applying those standards to deny this project.”].) The receipt of a density bonus—including any increase in number of units, incentives, concessions, or waivers to development standards allowed under SDBL—simply may not serve as a valid basis on which to find a proposed housing development project is inconsistent, not in compliance, or not in conformity with an applicable plan, program, policy, ordinance, standard, requirement, or other similar provision. Receipt of a density bonus can include a bonus in number of units, incentives, concessions, or waivers to development standards allowed under SDBL. (Gov. Code, § 65589.5, subd. (j)(3).) Any HAA finding that subdivision (j)(1) does not apply must, therefore, be based on local provisions or standards that are not subject to an incentive, concession, or waiver. This is also clear from the text of subdivision (j)(1), which is triggered whenever a project complies with *applicable* local provisions or standards. Because the standards at issue here were subject to a waiver under the SDBL, they did not apply to the Project at hand, and thus the HAA required the City to make the necessary findings under subdivision (j) in order to deny the Project.

Denial of the Encinitas Boulevard Apartment Project Violates the Housing Accountability Act by Subjectively Applying Design Standards

Multifamily, use-by-right projects are subject to review only against objective, quantifiable, written design standards, conditions, and policies. (Gov. Code, § 65583.2, subd. (i), citing *id.*, § 65589.5, subd. (f).) Objective standards similarly are defined in Government Code sections 65913.4 and 66300 as standards that:

- Involve no personal or subjective judgment by a public official.
- Are uniformly verifiable by reference to an available, external, uniform benchmark or criterion; and
- Are knowable by both the development applicant and the public official before submittal of a project application.

Objectivity requires that a standard can be measured and be verifiable (i.e., no “gray area” for interpretation). Objective design standards should have a predictable input: knowing what the requirements are and how they are measured. Objective standards should also result in a predictable output: a determination of consistency that can be validated. The result should be the same consistency determination no matter who is reviewing the project, and there should be no dispute between applicants and staff as to whether a project is consistent.⁶

The City Council upheld the Planning Commission’s denial of the Project, which was in part, based upon inconsistency with Encinitas Municipal Code Section 30.40.010(H), Olivenhain Outdoor Lighting Regulations (Lighting Regulations). Resolution 2021-27 states the Lighting Regulations apply to “all outdoor recreational areas.” This is an inaccurate reading of the Lighting Regulations. The Lighting Regulations explicitly reference tennis courts, equestrian uses, and parks with outdoor lighting. Swimming pools defined for the exclusive use of residents in a multifamily housing development are not expressly mentioned in the definition of “outdoor recreational facilities” covered by this prohibition.⁷ Elsewhere in the code, pools for residential housing, including multifamily housing developments, are defined as “accessory structures” rather than “outdoor recreation facilities.” (Encinitas Mun. Code, § 30.16.010(F)(6).)

A swimming pool amenity located within a multifamily development project which is provided for the use of residents is not a recreational facility as defined in the City’s municipal code.⁸ If the intention of the Lighting Regulations is to include swimming pools

⁶ HCD’s Housing Open Data Tools - Approaches and Considerations for Objective Design Standards, https://experience.arcgis.com/experience/b52bcd2cd9734f02b1c0502bbbe5028d/page/page_17/

⁷ Encinitas Resolution No. 2021-27, Section 2, item b.4.

⁸ This appears to be supported by Encinitas Municipal Code Section 30.04, which defines “Recreational facilities, public and semi-public” to mean “swimming pools, tennis courts, paddles tennis courts, and other similar uses as determined by the Planning and Building Director, which are available for use by persons *who do not reside in the project* (includes membership clubs).” [Emphasis added.]

in multifamily housing developments, the standard is neither uniformly verifiable by reference to an available benchmark nor is it knowable by both the development applicant and public official. Objective criteria involve no personal or subjective judgment by a public official.

In Olivenhain, single-family residential uses with swimming pools are not denied lighting pursuant to the Lighting Regulations. However, the City seeks to deny lighting to multifamily residential uses with a swimming pool. This inconsistent application of the standard to residential uses demonstrates both the subjectivity of the standard and its discriminatory effect.

Denial of the Encinitas Boulevard Apartment Project Fails to Implement Housing Element Goals, Policies, and Programs

Denial of the Project fails to implement multiple Goals, Policies, and Programs of the City's 6th cycle housing element, adopted on April 7, 2021, including, but not limited to:

- Goal 1: The City will encourage the provision of a wide range of housing by location, type of unit, and price to meet the existing and future housing needs in the region and city.⁹
- Policy 1.1: Strive to maintain a balance of housing types in the City.¹⁰
- Policy 1.2: Strive to provide a wide variety of housing types so that a range of housing needs and types will be made available to existing and future residents.¹¹
- Policy 1.4: Provide opportunities for low- and moderate-income housing in all five communities¹² in the City and ensure that its location will not tend to cause racial segregation and will provide access to areas of high opportunity. Require that such housing should be high quality in terms of design and construction without sacrificing affordability.¹³
- Policy 1.9: Support ongoing efforts of the state and federal agencies and local fair housing agencies to enforce fair housing laws, as well as regional efforts to affirmatively further fair housing.¹⁴

⁹ Encinitas 6th Cycle Housing Element 2021-2029, Section 1, p. 1-10.

¹⁰ *Id.*

¹¹ *Id.*

¹² The City is divided into five communities: Olivenhain, Leucadia, Old Encinitas, New Encinitas, and Cardiff-by-the-Sea. The Project is located on the only site identified in the housing element to accommodate lower-income housing in the Olivenhain community.

¹³ Encinitas 6th Cycle Housing Element 2021-2029, Section 1, p. 1-10.

¹⁴ *Id.*

- Goal 2: Sound Housing will be provided in the City of Encinitas for all persons.¹⁵
- Policy 2.1: Encourage developers to provide a balance of housing types and sizes.¹⁶
- Program 2D: Ensure that the Density Bonus Ordinance Continues to be Consistent with State Law.¹⁷

“The City will...update the ordinance consistent with current requirements of State Density Bonus Law *and technical guidance issued by HCD*”¹⁸ [emphasis added] as consistent with SDBL.”

“The City will continue to annually monitor the effectiveness and appropriateness of existing *adopted policies* [emphasis added] and update the ordinance as needed and will ensure that its local ordinance remains consistent with state law, but *will apply current state law even before local amendments are adopted* [emphasis added].”

“The City commits to continue to review and approve eligible requests under SDBL (including requests for incentives, concessions, *waivers* [emphasis added], and parking reductions) so that projects that qualify are not prevented from developing at the densities to which they are entitled.”

- Program 3B: Modify Regulations that Constrain the Development of Housing.¹⁹

“The Housing Accountability Act and SB 35 require that the City review housing development projects based on objective standards... The City currently reviews all housing development applications for conformance with adopted general plan, zoning, subdivision, and *objective* [emphasis added] design standards.”

- Program 3D: Improve the Efficiency of the Development Review Process for Housing Projects.²⁰

“The City will continue to find opportunities to streamline the permitting process *to remove unnecessary barriers, while implementing objective design standards* [emphasis added]...”

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.* at pp. 1-30 to 1-32.

¹⁸ HCD issued formal guidance to the City regarding implementation of SDBL on December 16, 2020, March 25, 2021, July 13, 2021, and formal guidance specific to this Project on October 12, 2021.

¹⁹ *Id.* at p. 1-37

²⁰ *Id.* at p. 1-40.

- Goal 5: The City will develop strategies and actions to reduce or eliminate governmental and non-governmental constraints to the development of housing.²¹
- Policy 5.1: The City periodically evaluates adopted zoning provisions, entitlement procedures, fees and other city requirements that may create constraints to the development of housing and will implement policies to reduce or eliminate those constraints.²²
- Program 5A: Affirmatively Further Fair Housing.²³

“In accordance with Federal and State fair housing and Housing Element Law, the City will affirmatively further fair housing choice and promote equal housing opportunity.”

In denying a project located on a site identified in the City’s housing element to accommodate Regional Housing Needs Allocation (RHNA) for lower-income households,²⁴ the City has acted contrary to its housing element commitments and failed to implement the housing element Goals, Policies, and Programs noted above.

Denial of the Encinitas Boulevard Apartment Project Violates the City’s Duty to AFFH

In addition to the City’s duty under State Housing Element Law to “make adequate provision for the existing and projected needs of all economic segments of the community” and to “facilitate and encourage the development of a variety of types of housing for all income levels, including multifamily rental housing” (Gov. Code, § 65583, subd.(c)(1)), which would be achieved through implementation of a substantially compliant housing element, the City has an independent duty to AFFH. (Gov. Code, § 8899.50.)

Specifically, the City has a statutory duty to “administer its programs and activities relating to housing and community development in a manner to affirmatively further fair housing and take no action that is materially inconsistent with its obligation to affirmatively further fair housing.” (Gov. Code, § 8899.50, subd. (b).)

“Affirmatively furthering fair housing” means taking meaningful actions, in addition to combating discrimination, that overcome patterns of segregation and

²¹ *Id.* at p. 1-12.

²² *Id.* at p. 1-12.

²³ *Id.* at p. 1-48.

²⁴ Encinitas 6th Cycle Housing Element 2021-2029, Appendix C (Site 08, including sites 08 a and b), pp. C-18 to C-21.

foster inclusive communities free from barriers that restrict access to opportunity based on protected characteristics. Specifically, affirmatively furthering fair housing means taking meaningful actions that, taken together, address significant disparities in housing needs and in access to opportunity, replacing segregated living patterns with truly integrated and balanced living patterns, transforming racially and ethnically concentrated areas of poverty into areas of opportunity, and fostering and maintaining compliance with civil rights and fair housing laws.

(Gov. Code, § 8899.50, subd. (a)(1).) As noted above, the Project is appropriately located for multifamily and affordable housing, and indeed the site was identified by the City as appropriate for multifamily housing, was specifically rezoned by the City to accommodate multifamily housing, and is identified in the City's current housing element as the only site in the entire Olivenhain area suited for multifamily housing. In denying the Project, the City also neglected its duty under section 8899.50 as it is memorialized in the City's adopted housing element Policy 1.4 to "[p]rovide opportunities for low- and moderate-income housing in all five communities in the City and ... provide access to areas of high opportunity."

Conclusion

As mentioned above HCD provides the City until February 19, 2022 to provide a written response to these findings—providing a detailed plan for corrective action—before taking any of the actions authorized by section 65585, including revocation of housing element compliance and referral to the California Office of the Attorney General. The City's response should include, at a minimum, a commitment to take immediate corrective action, including (1) approval of the Project and (2) allowing the Project to move forward with its plans without further delay.

If you have any questions or would like to discuss the content of this letter, please contact Robin Huntley of our staff at Robin.Huntley@hcd.ca.gov.

Sincerely,



David Zisser
Assistant Deputy Director
Local Government Relations and Accountability

EXHIBIT 6



INDIVIDUALLY REQUESTED STATE DENSITY BONUS PROGRAM

INFORMATIONAL AND SUPPLEMENTAL APPLICATION PACKET

ATTENTION: A Project Application must be completed and/or attached prior to submitting this Supplemental Application. See the [Project Application](#) for instructions.

The Individually Requested State Density Bonus Program offers a path for developers requesting a density bonus pursuant to Section 65915 et. seq. of the California Government Code, or who do not qualify for bonuses under the HOME-SF or Analyzed State Density Bonus Programs. Please review Planning Director's Bulletin 6 for additional information on the Implementation of the State Density Bonus in San Francisco.

For questions, you can call the Planning counter at 628.652.7300 or email pic@sfgov.org where planners are able to assist you.

Español: Si desea ayuda sobre cómo llenar esta solicitud en español, por favor llame al 628.652.7550. Tenga en cuenta que el Departamento de Planificación requerirá al menos un día hábil para responder.

中文：如果您希望獲得使用中文填寫這份申請表的幫助，請致電628.652.7550。請注意，規劃部門需要至少一個工作日來回應。

Filipino: Kung gusto mo ng tulong sa pagkumpleto ng application na ito sa Filipino, paki tawagan ang 628.652.7550. Paki tandaan na mangangailangan ang Planning Department ng hindi kukulangin sa isang araw na pantrabaho para makasagot.

WHAT IS THE INDIVIDUALLY REQUESTED STATE DENSITY BONUS?

The Individually Requested Density Bonus program offers a path for developers requesting a density bonus pursuant to Section 65915 et seq. of the California Government Code, or for those that do not qualify for bonuses under the HOME-SF or Analyzed State Density Bonus Programs.

The Individually Requested State Density Bonus Program is available in all zoning districts that allow residential uses, except for RH-1 and RH-2 (unless located on a site or sites in those districts that permits the construction of 5 or more units). Please review [Planning Director Bulletin 6](#) for additional information on the implementation of the State Density Bonus in San Francisco.

WHAT DOES THE INDIVIDUALLY REQUESTED STATE DENSITY BONUS PROGRAM OFFER?

- Up to 50% additional density, and
- Waivers, Concessions and Incentives as identified by the project sponsor.

Waivers are modifications of volumetric requirements that are regulated by the Planning Code. Project sponsors may seek any waivers necessary to physically accommodate increased density in the bonus project. Requested waivers may not exceed that which is necessary to accommodate the bonus.

Concessions and Incentives are reductions of site development standards or architectural design requirements which result in financially sufficient and actual cost reductions. Project sponsors may seek up to four concessions and incentives, depending on amount of affordable housing provided and the level of affordability of those units.

Waivers and concession incentives may not be used to waive applicable building code and life safety standards.

IS MY PROJECT ELIGIBLE FOR THE INDIVIDUALLY REQUESTED STATE DENSITY BONUS PROGRAM?

- The project must consist of five or more dwelling units;
- The project replaces any existing rental unit that is subject to rent or price control, or is subject to a recorded covenant that restricts rent levels to affordable levels for very low or low income persons or families;
- The zoning district must permit at least five units on the site by right. project must not be located in the RH-1 or RH-2 Zoning District, unless the Planning Code permits the construction of five or more units on a site or sites.

HOW DO I DETERMINE MY BASE PROJECT AND BONUS PROJECT?

1. Determine the Base Density.

In order to determine how much of a density bonus State Law will allow, the density allowed by current controls (“base density”) must first be calculated. The “base density” is the maximum allowable gross residential density. Residential density regulations in San Francisco vary by zoning district. In some districts residential density is regulated by a ratio of units to lot area, such as one unit per 600 square feet. In these districts, base density is the maximum number of units allowed by the Zoning District. Other districts use form-based density, where residential density is regulated by the permitted volume—either the maximum floor area ratio (FAR) or a maximum building volume controlled by height, bulk, and setback controls (“form-based zoning”). In areas with form-based zoning, the base density will be represented as the maximum residential gross floor area, and the project sponsor will be required to submit a base density study with their Project Application. A base density study is a set of schematic plans that include a code-compliant building massing, building section, and floor plans for the ground floor and any floors below grade that include residential uses.

Residential Gross Floor Area means any floor area that would be counted as Gross Floor Area, as defined in Planning Code Section 102 that is dedicated to the residential uses on the property. For the purpose of calculating the base density, sub-grade residential floor area will not be counted. Additional information on calculating a base project may be found in Planning Director Bulletin 6.

2. Calculate Bonus Density.

The amount of density bonus that a project may seek is set forth in the State Law. The maximum density bonus is an additional 50% above the base density. The table included at the end of this informational packet summarizes the amount of density bonus allowed based on the level of affordability. In areas where density is controlled as a ratio of units to lot area, the density bonus will be calculated as 150% of the base density represented as number of units allowed on the site. Any resulting remainder is rounded up to the next whole number. In areas with form-based density, the density bonus will be calculated as 150% of the residential gross floor area permitted in the “base” project. Note: density bonuses from more than one income category cannot be combined. The requirements of the Inclusionary Housing Ordinance, specifically the required income tiers, may not be modified or combined, except that a project sponsor may provide units at 50% AMI instead of at 55% AMI for rental projects. Projects may not reduce the affordability levels required in Planning Code Section 415.6, nor may they combine income tiers into one.

HOW MANY CONCESSIONS OR INCENTIVES MAY BE OBTAINED FOR MY PROJECT?

Individually Requested State Density Bonus projects shall receive concessions or incentives in the amounts specified in the table below.

Target Group	Restricted Affordable Units			
	Very Low Income	5%	10%	15%
Low Income	10%	17%	24%	100%*
Moderate Income	10%	20%	30%	N/A
Maximum Number of Incentives/Concessions	1	2	3	4

*Up to 20% of units may be provided at 120% AMI.

As part of the Project Application submittal, an applicant must provide detailed information on the requested waivers, incentives and concessions. The Department may request additional documentation on the requested waivers, incentives and concessions.

DENSITY BONUSES FOR SPECIFIC HOUSING TYPES

The State Law provides various options for projects that are constructing housing for specific populations. Some projects may be eligible to choose between the standard state density bonus described above and the programs below. For example, a 100% affordable project may seek up to 150% density by providing at least 15% of units at a very low income level, or alternatively, may seek the density bonus that is specific to 100% affordable projects.

100% Affordable Projects

100% affordable projects may be exempt from density limits, and eligible for up to three additional stories above the height limit and up to four concessions or incentives. This alternative requires that all units in the development, exclusive of a manager's unit, are affordable to households earning 80% AMI or below, except that 20% of the total units may be provided at a maximum of 120% AMI.

Student Housing

Student Housing projects are eligible for a 35% density bonus if at least 20% of the beds in the development are affordable to lower income students. For the purposes of calculating a density bonus, the term "unit" means one rental bed and its pro rata share of associated common facilities. Units will be subject to a recorded affordability restriction for 55 years. "Lower-income students" means household income and asset level that does not exceed the Cal Grant A or Cal Grant B levels as set forth in subdivision (k) of Section 69432.7 of the Education Code, and the development must provide priority for lower income students experiencing homelessness. Rent for lower-income students shall be calculated at 30% of 65% AMI for a single-room occupancy unit. The student housing development must be used exclusively for undergraduate, graduate or professional students enrolled full time at an institution accredited by WASC or ACCJC. Student housing projects are eligible for one incentive/concession.

Senior Housing

Senior housing projects are eligible for a 20% density bonus. A Senior Citizen Housing Development is further defined in Sections 51.2 and 51.12 of the Civil Code. Mobile home parks that limit residency based on age requirements for housing for older persons pursuant to Section 798.76 or 799.5 of the Civil Code are also eligible for a 20% density bonus.

Housing for Transitional Foster Youth, Disabled Veterans and Homeless Persons

When 10% of the units in a project are devoted to Transitional Foster Youth as defined in Section 66025.9 of the Education Code, Disabled Veterans defined in Section 18541 of the Government Code, or Homeless Persons as defined in the federal McKinney-Vento Homeless Assistance Act (42 U.S.C. Sec. 11301 et seq.), then the project may qualify for a 20% density bonus. The units described shall be subject to a recorded affordability restriction of 55 years and shall be provided at the same affordability level as very low-income units.

FEES

There is no separate application fee for the Individually Requested State Density Bonus Program. Projects approved under the Individually Requested State Density Bonus shall comply with the Fee Schedule for Planning Department review covered under other entitlements. For example, if a project requires Conditional Use Authorization, then the project would pay the fee required for the review of a Conditional Use Authorization. If a project does not require a separate entitlement, then the Individually Requested State Density Bonus Application must be submitted with a Building Permit Application, and any fees accompanying the Building Permit Application would apply. Please refer to the [Planning Department Fee Schedule](#) at www.sfplanning.org. For questions related to the Fee Schedule, you can call the Planning counter at 628.652.7300 or email pic@sfgov.org where planners are able to assist you.

Fees will be determined based on the estimated construction costs. Should the cost of staff time exceed the initial fee paid, an additional fee for time and materials may be billed upon completion of the hearing process or permit approval. Additional fees may also be collected for preparation and recordation of any documents with the San Francisco Assessor-Recorder's office and for monitoring compliance with any conditions of approval.

DENSITY BONUS BASED ON AFFORDABILITY LEVEL

Maximum Bonus for Lower Income Households (80% AMI)

This chart will generally be used for mixed-income ownership projects. Rental projects will use the chart below titled Maximum Bonus for Very Low Income Households.

Percentage Low-Income Units	Percentage Density Bonus
10	20
11	21.5
12	23
13	24.5
14	26
15	27.5
16	29
17	30.5
18	32
19	33.5
20	35
21	38.75
22	42.5
23	46.25
24	50

Maximum Bonus for Very Low Income Households (50% AMI)

This chart will generally be used for rental projects. Ownership projects will use the chart above titled Maximum Bonus for Lower Income Households.

Percentage Very Low Income	Percentage Density Bonus
5	20
6	22.5
7	25
8	27.5
9	30
10	32.5
11	35
12	38.75
13	42.5
14	46.25
15	50

Maximum Bonus for Moderate Income Households (120% AMI)

Percentage of Moderate-Income Units	Percentage Density Bonus
10	5
11	6
12	7
13	8
14	9
15	10
16	11
17	12
18	13
19	14
20	15
21	16
22	17
23	18
24	19
25	20
26	21
27	22
28	23
29	24
30	25
31	26
32	27
33	28
34	29
35	30
36	31
37	32
38	33
39	34
40	35
41	38.75
42	42.5
43	46.25
44	50

Maximum Bonus for Specific Housing Types

- Senior Housing: density bonus shall be 20% of the number of senior housing units.
- Student Housing: When 20% of a proposed student housing development is dedicated for lower income students, a project may receive a 35% bonus of the student housing units.
- Transitional Foster Youth: When 10% of the units in a project are devoted to transitional foster youth, disabled veterans, or homeless persons, a project may receive a 20% bonus.



INDIVIDUALLY REQUESTED STATE DENSITY BONUS PROGRAM

SUPPLEMENTAL APPLICATION

Property Information

Project Address: _____ Block/Lot(s): _____

Project Details

Density Bonus

Zoning District: _____ Project Tenure: _____ Rental _____ Ownership _____

This project is a 100% Affordable Housing Project (if checked, leave Inclusionary rate blank)

This project is a Student Housing Project (if checked, leave Inclusionary rate blank)

On-site Inclusionary Rate: _____ %

Low Income: _____ % at 55% AMI (rental) or 80% AMI (ownership)

Moderate Income: _____ % at 80% AMI (rental) or 105% AMI (ownership)

Middle Income: _____ % at 110% AMI (rental) or 130% AMI (ownership)

Inclusionary Fee Rate: _____ %

Maximum Allowable Residential Density (Base Density) _____ square feet / units (select one)

Bonus Project Total Area _____

Total Units in Bonus Project: _____

The project is seeking the following density bonus:

This project is seeking a _____ % density bonus by providing _____ % of units at Very Low Income (50% AMI)

This project is seeking a _____ % density bonus by providing _____ % of units at Lower Income (80% AMI)

This project is seeking a _____ % density bonus by providing _____ % of units at Moderate Income (120% AMI)

This project is 100% affordable and seeking form-based density with three additional stories of height.

This project is seeking a 35% density bonus by providing 20% of units to Lower Income Students in a qualifying Student Housing Development.

This project is seeking a 20% density bonus by providing senior housing.

This project is seeking a 20% density bonus by providing 10% of units to transitional foster youth, disabled veterans, or homeless persons.

Concessions and Incentives

Please list the concessions and incentives (up to three, see above) the project is seeking, and describe how each requested concession or incentive would result in cost reductions for the project. The Department may request additional documentation to verify that the requested concessions and incentives result in cost reduction for the project.

Waivers

Please list the waivers the project is seeking, and describe how each requested waiver would allow the proposed project to accommodate any additional permitted density.

Removal of rent-controlled units for the Individually Requested State Density Bonus Program

Does the project remove any residential units? Yes No

Have there been any residential uses removed from the property within the last five years? Yes No

Are any of the existing units on the property subject to the San Francisco Rent Stabilization and Arbitration Ordinance (Administrative Code Section 37)? Yes No

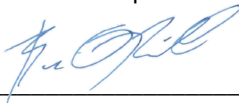
Are any of the existing units on the property occupied by households of low or very low income, consistent with the requirements of the California Government Code Section 65915(c)(3)? Yes No

If you have responded yes to any of the questions above, please provide additional information on the type and size of the existing unit(s), as well as the incomes of persons or families occupying the unit(s).

APPLICANT'S AFFIDAVIT

Under penalty of perjury the following declarations are made:

- a) The undersigned is the owner or authorized agent of the owner of this property.
- b) The information presented is true and correct to the best of my knowledge.
- c) Other information or applications may be required.
- d) I hereby authorize City and County of San Francisco Planning staff to conduct a site visit of this property as part of the City's review of this application, making all portions of the interior and exterior accessible through completion of construction and in response to the monitoring of any condition of approval.
- e) I attest that personally identifiable information (PII) - i.e. social security numbers, driver's license numbers, bank accounts - have not been provided as part of this application. Furthermore, where supplemental information is required by this application, PII has been redacted prior to submittal to the Planning Department. I understand that any information provided to the Planning Department becomes part of the public record and can be made available to the public for review and/or posted to Department websites.



Signature

Name (Printed)

Date

Relationship to Project
(i.e. Owner, Architect, etc.)

Phone

Email

For Department Use Only

Application received by Planning Department:

By: _____

Date: _____

EXHIBIT 7

San Francisco

Demographics

Total Population	841,820
<i>Group Quarter Population</i>	19,560
Percent Female	49%

Households	352,490
Family Households	47%
Non-Family Households	53%
Single Person Households, % of Total	37%
Households with Children, % of Total	19%
Households with 60 years and older	34%
Average Household Size	2.3
Average Family Household Size	3.3

Race/Ethnicity	
Asian	34%
Black/African American	5%
White	48%
Native American Indian	0.3%
Native Hawaiian/Pacific Islander	0.4%
Other/Two or More Races	12%
% Latino (of Any Race)	15%

Age	
0–4 years	5%
5–17 years	9%
18–34 years	30%
35–59 years	36%
60 and older	20%
Median Age	35.0

Educational Attainment	
(Residents 25 years and older)	
High School or Less	25%
Some College/Associate Degree	20%
College Degree	33%
Graduate/Professional Degree	22%

Nativity	
Foreign Born	35%

Language Spoken at Home

(Residents 5 years and older)	
English Only	56%
Spanish Only	11%
Asian/Pacific Islander	26%
Other European Languages	6%
Other Languages	1%

Linguistic Isolation

% of All Households	12%
% of Spanish-Speaking Households	21%
% of Asian Language Speaking Households	36%
% of Other European-Speaking Households	17%
% of Households Speaking Other Languages	13%

Housing Characteristics

Total Number of Units	382,220
Median Year Structure Built*	1958

Occupied Units

Owner occupied	37%
Renter occupied	63%

Vacant Units	8%
For rent	20%
For sale only	4%
Rented or sold, not occupied	17%
For seasonal, recreational, or occ. use	26%
Other vacant	34%

Median Year Moved In to Unit (Own)	1995
Median Year Moved In to Unit (Rent)	2005

Percent in Same House Last Year	87%
Percent Abroad Last Year	2%

Structure Type

Single Family Housing	32%
2–4 Units	21%
5–9 Units	10%
10–19 Units	10%
20 Units or more	26%
Other	0.2%

Unit Size

No Bedroom	14%
1 Bedroom	27%
2 Bedrooms	31%
3–4 Bedrooms	26%
5 or More Bedrooms	2%

Housing Prices

Median Rent	\$1,190
Median Contract Rent	\$1,303
Median Rent as % of Household Income	26%
Median Home Value	\$774,917

Vehicles Available**380,290**

Homeowners	54%
Renters	46%
Vehicles Per Capita	0.46
Households with no vehicle	30%
Percent of Homeowning households	11%
Percent of Renting households	42%

Employment

Unemployment Rate	6%
Percent Unemployment Female	6%
Percent Unemployment Male	6%
Employed Residents	483,060
Managerial Professional	55%
Services	17%
Sales and Office	20%
Natural Resources	4%
Production Transport Materials	5%

Journey to Work

Workers 16 Years and Older	473,730
Car	42%
Drove Alone	35%
Carpooled	7%
Transit	34%
Bike	4%
Walk	10%
Other	3%
Worked at Home	7%

Population Density per Acre	28.1
-----------------------------	------

Notes:
* "1939" represents 1939 or earlier

Note: Numbers from the American Community Survey are estimates and are subject to sampling and non-sampling errors. For more information, see <http://www.census.gov/acs/www/Downloads/handbooks/ACSGeneralHandbook.pdf>

Income, Employment and Journey to Work**Income**

Median Household Income	\$88,643
Median Family Income	\$104,002
Per Capita Income	\$55,567
Percent in Poverty	12%

Supervisor District 6

Demographics

Total Population	69,360
Group Quarter Population	4,770
Percent Female	43%

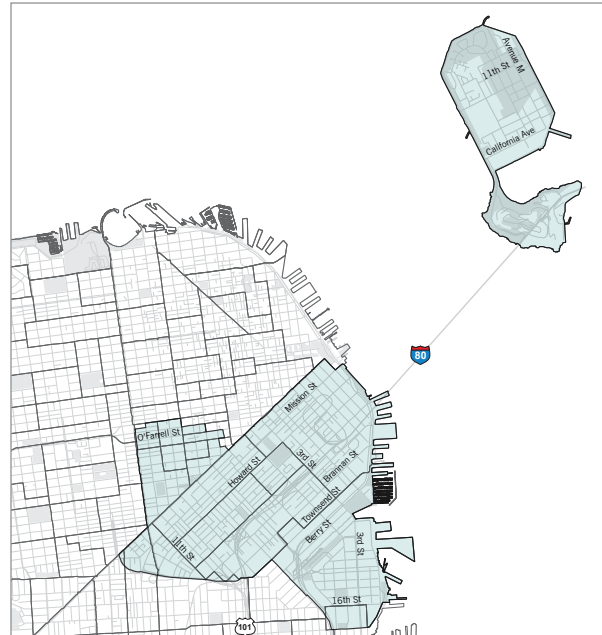
Households	37,280
Family Households	31%
Non-Family Households	69%
Single Person Households, % of Total	55%
Households with Children, % of Total	10%
Households with 60 years and older	27%
Average Household Size	1.7
Average Family Household Size	2.7

Race/Ethnicity	
Asian	35%
Black/African American	9%
White	43%
Native American Indian	0.5%
Native Hawaiian/Pacific Islander	0.3%
Other/Two or More Races	12%
% Latino (of Any Race)	16%

Age	
0–4 years	3%
5–17 years	5%
18–34 years	34%
35–59 years	39%
60 and older	18%
Median Age	38.3

Educational Attainment	
(Residents 25 years and older)	
High School or Less	29%
Some College/Associate Degree	20%
College Degree	29%
Graduate/Professional Degree	21%

Nativity	
Foreign Born	42%



Language Spoken at Home

(Residents 5 years and older)

English Only	53%
Spanish Only	11%
Asian/Pacific Islander	25%
Other European Languages	8%
Other Languages	3%

Linguistic Isolation

% of All Households	18%
% of Spanish-Speaking Households	42%
% of Asian Language Speaking Households	43%
% of Other European-Speaking Households	24%
% of Households Speaking Other Languages	23%

Notes:
* "1939" represents 1939 or earlier

Note: Numbers from the American Community Survey are estimates and are subject to sampling and non-sampling errors. For more information, see <http://www.census.gov/acs/www/Downloads/handbooks/ACSGeneralHandbook.pdf>

2010 Census Tracts for Neighborhood:

Housing Characteristics

Total Number of Units	42,920
Median Year Structure Built*	1990

Occupied Units

Owner occupied	19%
Renter occupied	81%

Vacant Units 13%

For rent	28%
For sale only	1%
Rented or sold, not occupied	16%
For seasonal, recreational, or occ. use	40%
Other vacant	16%

Median Year Moved In to Unit (Own)	1993
Median Year Moved In to Unit (Rent)	1996

Percent in Same House Last Year	80%
Percent Abroad Last Year	3%

Structure Type

Single Family Housing	2%
2–4 Units	22%
5–9 Units	32%
10–19 Units	21%
20 Units or more	23%
Other	0.2%

Unit Size

No Bedroom	39%
1 Bedroom	35%
2 Bedrooms	20%
3–4 Bedrooms	6%
5 or More Bedrooms	1%

Housing Prices

Median Rent	\$945
Median Contract Rent	\$794
Median Rent as % of Household Income	26%
Median Home Value	\$695,276

Vehicles Available 18,410

Homeowners	39%
Renters	61%
Vehicles Per Capita	0.29
Households with no vehicle	58%
Percent of Homeowning households	18%
Percent of Renting households	67%

Income, Employment and Journey to Work

Income

Median Household Income	\$54,819
Median Family Income	\$85,207
Per Capita Income	\$59,183
Percent in Poverty	23%

Employment

Unemployment Rate	6%
Percent Unemployment Female	5%
Percent Unemployment Male	7%
Employed Residents	38,500
Managerial Professional	57%
Services	18%
Sales and Office	17%
Natural Resources	2%
Production Transport Materials	5%

Journey to Work

Workers 16 Years and Older	37,750
Car	21%
Drove Alone	17%
Carpooled	4%
Transit	37%
Bike	5%
Walk	31%
Other	3%
Worked at Home	5%
Population Density per Acre	30.5

EXHIBIT 8

1 RYAN J. PATTERSON (SBN 277971)
2 BRIAN J. O'NEILL (SBN 298108)
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10 Attorneys for Project Sponsor:
11 MJ Mission Dolores, LLC

12 **SAN FRANCISCO BOARD OF SUPERVISORS**

13 MJ MISSION DOLORES, LLC

Appeal No. 211187

14 Project Sponsor,

15 **DECLARATION OF JAMES**
16 **NUNEMACHER IN CONDITIONAL USE**
17 **AUTHORIZATION APPEAL**

18 I, James Nunemacher, declare as follows:

19 1. I am James Nunemacher, Managing Member for the Project Sponsor, MJ Mission
20 Dolores, LLC, in Conditional Use Appeal No. 211187 regarding Conditional Use Authorization
21 2020-001610CUA. I make this declaration based on my own personal knowledge of the following
22 facts, except to those matters stated on information and belief, and as to those matters, I believe
23 them to be true. If called as a witness herein, I can and will competently testify thereto.

24 2. MJ Mission Dolores, LLC purchased the property at 3832 18th Street in San
25 Francisco, CA (Block 3580/Lot 018) on December 3, 2019.

26 3. The purchase price for the property was \$1,900,000 and closing costs for the
27 property were \$7,760, bringing the total purchase costs to \$1,907,670.

28 I declare under penalty of perjury under the laws of the State of California that the foregoing
is true and correct. Executed on March 14, 2022 in San Francisco, CA.


By: James Nunemacher