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**VIA E-MAIL**

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City and County of San Francisco, Board of Supervisors
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**RE: Appeal of Planning Commission's Approvals for 350 Amber Drive Project on September 25, 2025 – Conditional Use Authorization (CUA) and Shadow Findings; California Environmental Quality Act (CEQA) Determination – (2024-004318CUASHD) (Record No. 2024-004318ENV) – Closing Argument**

Dear Chairman Mandelman and Honorable Supervisors, ,

On behalf of Diamond Heights Community Association ("**DHCA**" or "**Appellant**"), our Office is submitting this closing argument for the February 10, 2026 public hearing regarding its appeals of the City and County of San Francisco ("**City**" or "**County**") Planning Commission's ("**Commission**") approvals on September 25, 2025 for the development project proposed to be located at 350 Amber Drive in the City (Record No. 2024-004318ENV) ("**Project**"), including a) Approval of Conditional Use Authorization ("**CUA**") and Shadow Findings (2024-004318CUASHD); and b) the California Environmental Quality Act ("**CEQA**") Exemption Determination (Record No. 2024-004318ENV).

The Diamond Heights Community Association is an organization of City residents and property owners near the Project site with a strong interest in well ordered land use planning and in addressing the environmental impacts of the Project, including potential impacts on the adjacent Glen Canyon Park and its natural and biological resources. Individual members of the Diamond Heights Community Association live, work, and recreate in the Project vicinity and may therefore be directly affected by the Project.

The City describes the proposed Project as "the installation of a new AT&T Wireless Macro Wireless Telecommunications Services (WTS) Facility on an approximately

104-foot-tall monopole located at the rear of the San Francisco Police Academy. The WTS facility will consist of twelve (12) new antennas, nine (9) new remote radio units, three (3) tower mounted DC-9 surge suppressors, one (1) GPS unit mounted on proposed outdoor equipment cabinet, one (1) walk-up cabinet, and one (1) 30kw DC generator with a 150-gallon diesel fuel tank on a concrete pad. The ancillary equipment will be surrounded by an 8' chain link fence." (*See* September 25, 2025 San Francisco Planning Commission, Executive Summary, pp. 1-2).

The Diamond Heights Community Association (DHCA) respectfully urges the Board of Supervisors ("Board") to uphold its appeals and deny the proposed 350 Amber Drive Project. The Planning Commission's prior approvals on September 25, 2025 of the substantial wireless facility were fundamentally flawed and must now be reversed, resting upon improper findings regarding both the Conditional Use Authorization (CUA) and requisite environmental review under the California Environmental Quality Act (CEQA). The Board now has the legal authority and discretion to grant these appeals, and is entitled to conduct its own independent review, rather than relying or being limited to the Planning Commission's earlier findings or prior determinations. The administrative record demonstrates, through substantial evidence from the DHCA and overall community, that the Project is incompatible with City's own land use policies and framework, poses significant public health and safety risks, and has elicited overwhelming public opposition. The Board possesses a clear legal path to denying the Project outright based on its non-compliance with state and local laws, or, alternatively, to remanding it back to the Planning Commission for a full and proper review and public hearing.

The legal and factual record support the Board's authority and discretion concerning the Project and ability to address the community's concerns as represented by the DHCA. First, the Board should grant the Conditional Use Authorization (CUA) appeal because the mandatory Conditional Use Findings required under San Francisco Planning Code Section 303 are inadequate and cannot be legally made. Second, the Board can remand the Project to the Planning Commission for review of material changes and revisions that occurred after the Project's initial approval. Third, the Board can grant the CEQA appeal, deeming the project application incomplete, and requiring the Project to undergo additional environmental review.

The Diamond Heights Community Association's challenge is legally sound and twofold, addressing the City's misapplication of both local planning code and state environmental law. On the one hand, the CUA appeal is justified because the Planning

Commission failed to properly make the required Conditional Use Findings under Planning Code Section 303 and ignored substantial evidence of significant aesthetic impacts, which are far from generalized concerns. Further, the CUA should be denied because the Project is flagrantly inconsistent with the City's own land use framework, including the General Plan, the Siting Guidelines, and local wireless permitting regulations. On the other hand, the CEQA appeal must also be granted because the massive wireless tower is facially ineligible for the Class 3 Categorical Exemption it seeks. Even if it were, multiple statutory exceptions would apply, including based on the Project's location in a sensitive natural area and the risk of significant environmental effects, and mandate that the Project undergo further, thorough environmental review. The Project Sponsor essentially concedes the Project's facial ineligibility for the sought exemption by failing to directly address that argument and by introducing ample expert evidence attempting to understate the Project's environmental impacts. Granting the CEQA appeal gives the public an opportunity to meaningfully participate in the Project's environmental review.

Thus, the Board should exercise its lawful authority in granting the DHCA's appeals and denying the 350 Amber Drive Project or requiring it to undergo further revisions.

## I. PROJECT SPONSOR'S LATE SUBMISSION UNDERMINES FAIRNESS AND REQUIRES THAT APPELLANT BE ALLOWED TO RESPOND

From the outset, the Board must acknowledge the impropriety of the Project Sponsor's late submission on February 2, 2026. The Project Sponsor submitted a supplemental response to the Board on February 2, 2026, which was after the deadline to submit additional correspondence, typically eleven days prior to a public hearing. SF Admin. Code Sec. 31.16(b)(5). In this case, based on the appeal hearing scheduled for February 10, 2026, the deadline for submitting written correspondence to the Board fell on January 30, 2026. The Project Sponsor's late submission is improper and undermines fairness in the appeal proceedings, as it introduces new information without adequate and sufficient time for the Appellant and the public to review and rebut. Fairness now requires that the Appellant, the Diamond Heights Community Association, be allowed to respond to any new arguments or evidence introduced tardily by the Project Sponsor. As the Appellant, the DHCA is entitled to the last word to ensure that all issues presented in the record are properly addressed before the Board's final determination.

## II. THE CONDITIONAL USE AUTHORIZATION (CUA) APPEAL MUST BE GRANTED BECAUSE THE REQUIRED FINDINGS CANNOT BE MADE OR ARE INSUFFICIENT

The Planning Commission's approval of the Conditional Use Authorization (CUA) for the Project must be reversed because the mandatory findings required by the San Francisco Planning Code Section 303 cannot be legally made or are unsupported by sufficient evidence. Planning Code Section 303 establishes five specific factors that must be affirmatively met for a CUA to be authorized. The proposed Project and wireless facility demonstrably fails to satisfy four of these key Conditional Use factors, thereby invalidating the Commission's approval as a matter of law, as further explained below.

### A. The Project Is Not Necessary or Desirable for the Community

First, the Project fundamentally fails to satisfy the critical finding that it "will provide a development that is necessary or desirable for, and compatible with, the neighborhood or the community." The finding of necessity is directly undercut by the overwhelming public opposition and pushback from neighborhood residents and community members, who have provided ample testimony on this point. The necessity for this Project and facility is highly questionable because some wireless coverage already exists in the area, even if that coverage is weak in certain places, specifically indoors. The Project Sponsor's justification cannot be based on the desire to improve a weak signal but must instead demonstrate an absence of coverage. The existing capability of FirstNet is an insufficient justification for this massive facility, as FirstNet is optional and not strictly required by emergency responders.

### B. The Project Poses Significant Risks to Public Health, Safety, and Welfare

Second, the Project cannot be found to be in compliance with the finding that it "will not be detrimental to the health, safety, convenience or general welfare of persons residing or working in the vicinity, or injurious to property, improvements or potential development in the vicinity." The proposed Project introduces significant and undeniable risks regarding seismic safety, fire hazards, and chemical safety due to the operation of a massive tower and its supporting and ancillary structures, including a power generator and its associated diesel fuel tank. The Project site is located in or near a zone with a known history of seismic activity, which, when combined with the installation of a 104-foot power-charged tower, exposes the surrounding residential community and nearby natural resources to heightened and more severe loss in a

potential earthquake or landslide. The introduction of the large structure and diesel fuel tank further creates the potential for fire hazards as well as leaks that could release hazardous substances into this environmentally sensitive area. Lastly, the Project poses direct and significant risks to the area's natural environment and resources, including the Glen Canyon Park, nearby wildlife corridor, and many biological resources, including valuable plant and animal species. Evidence in the record also demonstrates significant community concerns regarding impacts to birds from the massive tower and the need for further analysis regarding potential impacts to birds and possible mitigation measures.

C. The Project Is Inconsistent with the City's Own Land Use Policies, including the General Plan

Third, the Planning Commission erred in finding that the proposed facility will "comply with the applicable provisions of this Code and will not adversely affect the General Plan." The Project is directly and manifestly inconsistent with the City's own land use policies and framework, specifically its General Plan, which emphasizes open space preservation and public health and safety. The Project is also specifically inconsistent with the goals and policies outlined in the Recreation and Open Space Element and the Safety and Resilience Element of the General Plan. California Planning and Zoning Law requires that the Project be compatible with, rather than frustrate, the General Plan's goals and policies overall, a standard which was not properly applied in this case. The failure to fully consider and evaluate the Project's direct inconsistencies with critical General Plan policies invalidates the Commission's prior findings.

D. The Project Is Inconsistent with the Applicable Use District and Siting Guidelines

The Project also fails to provide development that is in conformity with the stated purpose of the applicable Use District. While the precise Project site is designated as "public," it is immediately surrounded by areas zoned as RH-1 (Residential, House-One-Family), which are deemed "disfavored" for the siting of wireless facilities by the City's own Guidelines. The Project's close proximity to a protected natural area, Glen Canyon Park, further violates the City's own Guidelines, which are intended to protect residential and natural areas from the visual and physical intrusion of massive telecommunications infrastructure. The City's own Personal Wireless Service Facility Site Permit Ordinance authorizes the Board to consider these impacts in denying this Project.

E. The CUA Appeal Must Be Approved Based on the Project's Aesthetic Impacts

Even if the other Conditional Use findings could be legally made, the Board must approve the CUA appeal based on the Project's negative aesthetic impacts. There is substantial evidence in the record of the Project's significant aesthetics impacts that are far more than "generalized" complaints. The Board may lawfully consider these non-generalized, substantial aesthetic impacts in denying the Project. Ample testimony and public comments from community members and neighborhood residents can constitute substantial evidence on aesthetic concerns. *See Keep Our Mountains Quiet v. Co. of Santa Clara*, 36 Cal.App.4th 714, 730-31 (May 7, 2015) ("Relevant personal observations of area residents on nontechnical subjects may qualify as substantial evidence.") (internal quotations and citations omitted). The City's own Shadow Findings explicitly determine that the Project will cast shadow on adjacent areas, which is an implicit acknowledgment by the City that the Project will have some aesthetic impact, even if it ultimately concluded that such impacts would not be significant or substantial.

## III. DENYING THE PROJECT WOULD NOT VIOLATE FEDERAL LAW OR CONSTITUTE AN EFFECTIVE PROHIBITION OF WIRELESS SERVICE

Denying the Project would not constitute an "effective prohibition" of wireless service or violate the federal Telecommunications Act (TCA), as the Project Sponsor claims. Most importantly, the Project Sponsor cannot meet the two-prong legal standard it relies upon for claiming a violation of federal law. First, the Project Sponsor cannot establish a significant coverage gap, as their own network maps and consultant assessments show that some coverage already exists in the area, merely showing "areas of relatively weak signal" rather than a complete absence of coverage. Further, providing FirstNet coverage is not a proper justification for the Project because the Project Sponsor acknowledges that the Project would *help improve existing* coverage rather than *introduce nonexisting* coverage. The Project Sponsor's representations and explanations regarding FirstNet have also shifted even after the Project's approval by the Planning Commission. Lastly, FirstNet is generally not required by emergency responders; rather, it is optional. Second, and critically, the Project Sponsor has failed to establish that the Project is the "least intrusive means" of providing service, as the Sponsor has refused to seriously consider alternative designs, including the size and type of antennas used, and viable alternative sites,

based on perfunctory reasons, such as limited property owner interest, rather than technical feasibility. Other wireless providers are presently providing service in the area without the need for massive structures like the proposed Project, further undermining the argument that the Project is the only viable option to address the purported coverage gap.

## IV. THE PROJECT MUST BE REMANDED TO THE PLANNING COMMISSION FOR REVIEW OF PROJECT CHANGES AFTER APPROVAL

The Project must be remanded to the Planning Commission for review and consideration of multiple material changes and revisions to the Project that occurred *after* the Commission approved the Project on September 25, 2025. The Project changes were never subjected to proper review or public comment and thus fall outside the scope of the original approval. The Project's revisions include the introduction of new equipment, such as a transformer, the placement of key equipment that was previously proposed behind the Police Academy but is now proposed at or near street level where it will have significant visual impacts, and the size of the diesel fuel tank has been inconsistent and changed from 190-gallons to 150-gallons, which is a material change requiring new technical and environmental analysis. Lastly, the explanations and representations regarding the necessity of FirstNet have also shifted and remain inconsistent, underscoring the need for a full and transparent reconsideration and review by the Planning Commission.

## V. THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) APPEAL MUST BE GRANTED BECAUSE THE PROJECT FAILS TO COMPLY WITH CEQA

The Planning Commission's determination that this Project is exempt from further environmental review under the CEQA Class 3 Categorical Exemption is legally flawed and requires reversal. The Board should therefore grant the DHCA's CEQA appeal, deeming the Project Application incomplete and requiring the Project to undergo further environmental review, including potentially the preparation of a full Environmental Impact Report (EIR). Granting the CEQA appeal is essential to affording the public the meaningful opportunity to comment and provide input regarding the Project's potential environmental impacts and necessary review.

A. The Project is Facially Ineligible for the Class 3 Categorical Exemption Based on the Clear Statutory Text and Enumerated Examples

The Project is facially ineligible for the Class 3 categorical exemption based on the clear statutory text and definition provided by the CEQA Guidelines as well as the statute's enumerated examples. Specifically, CEQA Guidelines Section 15303 explicitly limits the application of Class 3 exemptions to the "construction and location of limited numbers of **new, small** facilities or structures." (emphasis added). The proposed 104-foot-tall wireless tower, described as a Macro Wireless Telecommunications Services (WTS) Facility, along with its associated large base and equipment, is by no reasonable standard a "small facility" and is fundamentally incompatible with the statute's explicit mandate. Neither does the proposed Project align with any of the examples enumerated in the statute. The City and the developer are attempting to advance the absurdity that a massive tower can be classified as a "small structure" under CEQA, which is an interpretation that cannot withstand legal scrutiny. Recent case law and trial court opinions demonstrate that a court is likely to hold that the proposed wireless facility is not eligible for the CEQA Class 3 categorical exemption. *See Saint Ignatius Neighborhood Association v. City and County of San Francisco*, 301 Cal.Rptr.3d 641, 647 (Nov. 8, 2022) (since depublished); *see also Snowcreek VII Condominium Owner's Association and Mammoth Lakes Coalition for Responsible Planning, LLC v. Town of Mammoth Lakes, Mammoth Lakes Fire Protection District, Town of Mammoth Lakes Town Council, and Town of Mammoth Lakes Planning and Economic Development Commission*, Mono County Superior Court, Case No. 24UCM48.

B. The Project Triggers Multiple Exceptions to the Categorical Exemption Requiring Additional Environmental Review

Even if the Project were somehow eligible for the Class 3 exemption, it nonetheless triggers several exceptions under CEQA Guidelines Section 15300.2 that mandate further environmental review. For instance, the Project's setting and placement directly implicate the *location* exception as the Project is situated near Glen Canyon Park, a significant natural resource area, and is located on a site with a history of earth-disturbing activities and a recorded history of seismic activity, which falls near or on a known landslide zone. The Project also triggers the *significant effect* exception due to the unusual circumstances of its hazardous components and severe potential consequences. The installation of the diesel fuel tank introduces chemical hazards and the potential for leaks that could release benzene and other substances, an unnecessary risk in this environmentally sensitive area. Further, the Project triggers

the *cumulative impact* exception as the approval of a "macro" facility of this substantial size could set a precedent for the proliferation of similar wireless facilities, resulting in a cumulatively significant impact over time, or additions to the existing Project to sustain future coverage.

C. Expert Evidence Confirms a Substantial Dispute Over Environmental Impacts and Demonstrates the Need for Additional Review

The Project Sponsor's introduction of expert evidence and testimony demonstrates that there is a reasonable and substantial dispute over the Project's CEQA compliance and full scope of potential environmental impacts, which only further necessitates additional environmental review. Expert evidence regarding the Project's significant risks concerning seismic safety, fire, chemical safety, and impacts on natural resources would not be necessary if the Project were truly exempt from CEQA. The existence of a reasonable and substantial dispute, particularly concerning the exceptions to the categorical exemption, underscores the need for a full environmental review to resolve these complex, technical issues, including potentially through the EIR process. The Project Sponsor essentially concedes the Project's facial ineligibility for the categorical exemption by failing to directly address and respond to this argument, focusing its response instead on the application of exceptions to the exemption and the Project's potential environmental impacts. The Board cannot and should not rely on the Project Sponsor and its experts' representations regarding the Project's environmental impacts, or apparent lack thereof, in determining whether the Project adequately complies with CEQA.

## VI. CONCLUSION

For all the foregoing reasons, the Diamond Heights Community Association strongly urges the San Francisco Board of Supervisors to uphold its appeals and reverse the Planning Commission's approvals of the 350 Amber Drive Project. The proposed Project is fundamentally incompatible with the City's own land use policies and framework, poses unacceptable risks to public health and the environment, and now requires reversal.

Should the City have any questions or concerns regarding this correspondence, please do not hesitate to contact our office.

Sincerely,

/s/ Mitchell M. Tsai

Mitchell M. Tsai
Attorney for Appellant