

**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
DIVISION OF HOUSING POLICY DEVELOPMENT**

2020 W. El Camino Avenue, Suite 500
Sacramento, CA 95833
(916) 263-2911 / FAX (916) 263-7453
www.hcd.ca.gov



November 22, 2021

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

RE: San Francisco – Letter of Inquiry and Technical Support

Dear Kate Conner:

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

Project Descriptions**469 Stevenson Street**

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

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

450-474 O'Farrell Street and 532 Jones Street

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

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

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

Housing Crisis Act of 2019 – “5 Hearing Rule”

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

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

Housing Accountability Act

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

5th Cycle Housing Element

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

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

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

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

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

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

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

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

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

6th Cycle Housing Element

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

of housing¹. As part of the housing element's analysis of potential and actual governmental constraints on housing pursuant to Government Code section 65583, subdivision (a)(5), it must describe and analyze the permit process from application to approvals, including a discussion on timeframe for each step in the process, impediments, and how it addresses state law application processing requirements such as those found in the Permit Streamlining Act and the HAA. The element must also demonstrate local efforts to remove governmental constraints that hinder the locality from meeting its share of the regional housing need and include program actions with metrics and milestones to remove or mitigate identified constraints.

HCD Inquiry

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

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

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

Sincerely,



Shannan West
Housing Accountability Unit Chief

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

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