



David Chiu, President  
San Francisco Board of Supervisors  
City Hall, #1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102

November 17, 2014

RE: **SUPPLEMENTAL STATEMENT IN SUPPORT OF APPEAL-  
CONDITIONAL USE AUTHORIZATION**

**395 26<sup>th</sup> Avenue (AKA 2500-02-06-08 Clement & 381-83-87 26<sup>th</sup> Avenue)  
2013.0205CEKV & 2013.0205CEKV**

**Appeal of Conditional Use Authorization Permitting the  
Demolition of Sound Affordable Rent-Controlled Housing**

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BOARD OF SUPERVISORS  
SAN FRANCISCO  
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President Chiu and Members of the Board:

This Statement is submitted as a supplement to the prior materials in support of the appeal of the conditional use authorization granted by the Planning Commission (4-3 vote) on September 4, 2014. We have previously submitted to Planning a Petition signed by 171 immediate neighborhood residents opposing the project as incompatible with the neighborhood and an improper use of the conditional use procedure. With this appeal, we submitted the signatures of 73 property owners within 300 feet of the subject lot. NOT A SINGLE RESIDENT OF THE BLOCK SUPPORTS THE PROJECT.

**1. The Dept's (and the Developer's) Response and Analysis Completely Ignores the Priority Policies and the Manner in Which They are to be Enforced--To Preserve Existing Affordable Rent-Controlled Housing Above All Else**

The Dept's response Memo and the letter from the Developer's attorney's (and the granting of the conditional use authorization itself) *completely ignores* (as in, does not address it at all!) the most important issue before the Board. The enforcement of the PRIORITY POLICIES of the General Plan. San Francisco's highest Priority Policies are enumerated in the General Plan and stem directly from a voter mandate.

It has long been established housing policy in San Francisco that the demolition of sound affordable housing is not permitted accept under the most extraordinary circumstances even when it means the creation of additional housing. This policy has been the only stopgap saving our existing neighborhoods from destruction and exploitation by professional developers. That is the issue here in the case before the Board.

By the statements from the Planning Dept and the Commission and the way this case has been handled it seems the Commission and the Dept believes the policies are flexible enough to allow for the demolition of sound affordable rent-controlled housing if it is for more units or larger units. If so, then that is a dramatic sea change in the Dept's view of housing policy and the General Plan /Priority Policies. Three Commissioners, including President Cindy Wu voted against the proposed project based on these important policies.

The General Plan is intended to be an integrated, internally consistent and compatible statement of objectives and policies and its objectives, and policies are to be construed in a manner that achieves that intent. Sec. 101.1(b) of the Planning Code, which was added by Proposition M, November 4, 1986, provides as follows:

*The following Priority Policies are hereby established. They shall be included in the preamble to the General Plan and shall be the basis upon which inconsistencies in the General Plan are resolved (emphasis added)*

1. *That existing neighborhood-serving retail uses be preserved and enhanced and future opportunities for resident employment in and ownership of such businesses enhanced;*
2. **That existing housing and neighborhood character be conserved and protected in order to preserve the cultural and economic diversity of our neighborhoods;**
3. **That the City's supply of affordable housing be preserved and enhanced;**
4. *That commuter traffic not impede Muni transit services or overburden our streets or neighborhood parking;*
5. *That a diverse economic base be maintained by protecting our industrial and service sectors from displacement due to commercial office development, and that future opportunities for resident employment and ownership in these sectors be enhanced;*
6. *That the City achieve the greatest possible preparedness to protect against injury and the loss of life in an earthquake.*
7. *That landmarks and historic buildings be preserved; and*
8. *That our parks and open space and their access to sunlight and vistas be protected from development.*

So, as spelled out in the Priority Policies and the over-arching General Plan mandate, to the extent some policies may clash with others, (for example—the creation of new housing vs. retention of existing housing---such as in the case before the Board) the two policies that are to be given primacy over those sited by the Dept are:

- **That the City's supply of affordable housing be preserved and enhanced.**
- **That existing housing and neighborhood character be conserved and protected in order to preserve the cultural and economic diversity of our neighborhoods.**

This case is governed by controlling priority policy (#2 of 8) which can only be overcome by satisfying a preponderance of the other remaining seven *priority* policies. This is not possible in this case. No other of the priority policies are satisfied by the project —There is no priority policy that says it is a General Plan priority to provide for new and larger units in preference to existing sound affordable rent-controlled housing--- in fact, the policy is exactly the opposite. Random policies pulled from other parts of the General Plan and cited in the Dept’s Memo and the Developers brief are NOT sufficient to overcome the priority policies.

The Housing Element and the General Plan make clear that the top goal, the *priority* goal is the retention of the existing housing, especially with rent-controlled units. As a matter of reality, this “naturally affordable” housing is the only housing within reach of a vast majority of the City residents.

There is no provision as imagined by the Dept that allows the destruction of existing sound affordable rent controlled housing if a greater unit count is achieved or if the new market rate units are larger....That will happen in every case and if allowed, will create an except to swallow the rule.

Under the priority policies, sound affordable rent-controlled housing may not be destroyed for new market rate housing even if the developer claims the new market rate housing is for “families” or that a greater number of the market rate units will result. Such tradeoffs are in fact forbidden and would obviously create an atmosphere where all affordable rent-controlled housing will be at risk for the much more valuable market rate housing. This is the very point and objectives of the policies, to protect this incredibly valuable and endangered commodity.

The Introduction to the Housing Element makes this clear as do the majority of policies in the Housing Element:

1. *Prioritize permanently affordable housing.* Across the City, participants acknowledged that the cost of housing in San Francisco was an issue affecting everyone, from working families to the very poor. Thus the Housing Element focuses on creating the right type of housing, to meet the financial, physical and spatial needs of all of our residents who cannot afford market-rate housing. This requires not only creating new housing, but addressing the numerous housing types needed for San Francisco’s diverse population, and *preserving and maintaining the existing housing stock, which provides some of the City’s most affordable units.*(emphasis added)

**HOUSING ELEMENT--Objectives and Policies**

**OBJECTIVE 2**

**RETAIN EXISTING HOUSING UNITS, AND PROMOTE SAFETY AND MAINTENANCE STANDARDS, WITHOUT JEOPARDIZING AFFORDABILITY.**

*The majority of San Francisco's housing stock is over 60 years old – it is an important cultural and housing asset that the City must protect for future generations. Nearly all of San Francisco households will make their home in existing housing – RHNA goals for new housing represent less than one percent of the existing housing stock. Therefore, conserving and improving the existing stock is critical to San Francisco's long term housing strategy. Retaining existing housing reduces the needs for resources to build new housing. Policies and programs under this objective facilitate conservation and improvement of the variety of unit types physical conditions.*

*Housing maintenance includes routine maintenance, major repair projects, and preventive care – especially seismic work. The health of the existing housing stock requires that all types of maintenance be pursued to the extent possible, while not overburdening low-income groups. The seismic sustainability of the existing stock is of particular local concern.*

**POLICY 2.1**

**Discourage the demolition of sound existing housing, unless the demolition results in a net increase in affordable housing.**

*Demolition of existing housing often results in the loss of lower-cost rental housing units. Even if the existing housing is replaced, the new units are generally more costly. Demolition can result in displacement of residents, causing personal hardship and need to relocate. Older housing stock should only be considered for demolition and replacement when the resulting project results in a significant increase in unit affordability.*

*There are environmental and natural resources considerations when demolishing housing stock that is physically sound. Therefore, a determination of 'sound housing' should be based on physical condition, not economic value. San Francisco's Planning Code and Planning Commission guidelines require public hearing and deliberation for demolition of units, discourage the demolition of sound housing stock, especially historically significant structures, and require that replacement projects be entitled before demolition permits are issued. The City should continue these policies.*

**OBJECTIVE 3**

**PROTECT THE AFFORDABILITY OF THE EXISTING HOUSING STOCK,  
ESPECIALLY RENTAL UNITS.**

*San Francisco is a city of renters – which enables incredible diversity of age, income, and household type. Students, young professionals, artists, new families, low income households, and many others rely on the availability of rental housing to live in San Francisco. The City’s market-rate rental units generally provide moderately priced housing options, while rent controlled units and permanently affordable rental units meet needs at lower income levels. Thus the availability of sound and affordable rental housing is of major importance to meet the City’s housing needs.*

*Regulations protecting the affordability of the existing housing stock have traditionally focused on rental housing, such as rent control and its associated tenants rights laws, and condominium conversion limits. Both rent control and condominium conversion limits evoke an impassioned public discussion around housing rights, private property rights, and quality of life in San Francisco, and property owners continue to emphasize the negative effects of rent control policies on the supply of housing. This discussion warrants continued public engagement in the ongoing effort to provide a balance of housing opportunities to support San Francisco’s diverse population.*

**POLICY 3.1**

***Preserve rental units, especially rent controlled units, to meet the City’s affordable housing needs.***

*Sixty-two percent of San Francisco’s residents are renters. In the interest of the long term health and diversity of the housing stock the City should work to preserve this approximate ratio of rental units. The City should pay particular attention to rent control units which contribute to the long term existence and affordability of the City’s rental housing stock without requiring public subsidy, by continuing their protection and supporting tenant’s rights laws. Efforts to preserve rental units from physical deterioration include programs that support landlord’s efforts to maintain rental housing such as: maintenance assistance programs, programs to support and enhance property management capacity, especially for larger companies, and programs to provide financial advice to landlords.*

**POLICY 3.4**

***Preserve “naturally affordable” housing types, such as smaller and older ownership units.***

*A review of current sales prices reveals that new homes are priced considerably higher than existing, older housing stock. This is particularly true of smaller units, such as the mid-century construction in certain lower density residential neighborhoods. These housing units provide a unique homeownership opportunity for new and smaller households. While higher density housing generally results in more shared costs among each unit, the pre-existing investment in lower density housing generally outweighs the benefits of higher density in terms of housing affordability. To the extent that lower density older housing units respond to this specific housing need, without requiring public subsidy, they should be preserved. Strategies detailed under Objective 2, to retain existing housing units, and promote their life-long stability, should be used to support this housing stock.*

**2. The Department's Analysis is Faulty---The Policies and Objectives Cited by the Dept in the Planning Dept Response FULLY SUPPORT THE APPEAL!**

The Dept's response dated October 31, 2014, is either confused or dishonest. It misstates the policies of the City and cites policies and objectives that actually fully support the Appeal and require this Board to set aside the Planning Commission's decision.

On page 6 of the Department's response to the appeal the Department cites General Plan policies found in the Housing Element which it claims supports the granting of the conditional use authorization to demolish two affordable rent controlled units. A close reading of these objectives reveals that they are not applicable to the project proposed and that the policies actually fully support the appeal and require that this Board enforce the objectives and policies of the General Plan and the Housing Element and grant the appeal.

The Dept cites the following as supportive of its position: (Dept 10/31/14 Memo, p.6)

*“OBJECTIVE 2: RETAIN EXISTING HOUSING UNITS, AND PROMOTE SAFETY AND MAINTENANCE STANDARDS WITHOUT JEOPARDIZING AFFORDABILITY.*

*Policy 2.1 Discourage the demolition of sound existing housing, unless the demolition results in a net increase in affordable housing.(emphasis added)”*

The Dept is either confused or trying to deceive the Board. THE PROPOSED PROJECT HAS NO AFFORDABILITY! The proposed project destroys existing affordable housing contrary to this policy AND does not result in a net increase in affordable housing. The project *destroys* naturally affordable rent controlled units and is directly contrary to the policy cited by the Dept.

**3. The Project “Trades” Three Luxury Condos (NOT six) For Two Affordable Rent-controlled Units in Violation of the Highest Priority Policies and Common Sense---Once this Type of Housing is Destroyed it is Gone Forever**

The two units to be demolished here are “naturally affordable” as described in policy 3.4 of the General Plan’s Housing Element above. These are smaller rent controlled dwelling units. These units are subject to the Rent Stabilization and Arbitration Ordinance, as the building was constructed prior to 1979 and is not a condominium.

The proposed project would eliminate two naturally affordable units that are subject to rent control and replace them with three large single-family market rate units that would not be subject to the Rent Stabilization and Arbitration Ordinance contrary to the policies and directives from the Mayor's Office to address the City's housing crisis.

The Dept falsely states repeatedly that the two units of affordable rent-controlled housing are being replaced by *six* units. But, this is clearly not true. Because the proposal is to sub-divide the lot into two separate lots and build three units on each lot, The affordable rent-controlled units are on proposed “Lot A” and are proposed to be replaced by a three unit building. “Lot B” is separate and will add three additional units.

**4. Allowing Professional Developers to Speculate in Our Residential Neighborhoods Puts ALL Affordable Rent-Controlled Housing At Risk**

Just prior to the sale of the subject property, tenants occupied it. To make the building more attractive for sale, the owner, wanted to deliver the building vacant. The prior tenants were offered a cash buy-out and departed the subject property in late 2012 just prior to the purchase by the developers Philip and Mary Tom in January 2013.

Allowing demolition of sound, affordable rent controlled housing in order to construct market rate condominiums is contrary to all over-riding housing policies at the City and State levels. The Dept’s analysis attempts to rational this violation of policy by stating that additional units of market rate housing will be created and that the new larger market rate units are “family” sized. These arguments are faulty and present false dichotomies.

**5. The Planning Dept’s Refusal to Enforce the Priority Policies is a Root Cause of the Affordability Crisis in San Francisco**

Demolishing sound, affordable, rent-controlled housing will, in nearly every instance, result in greater density and unit size---the faulty rationale used by the Dept to justify its completely incorrect decision. San Francisco is in the midst of an affordability crisis. We are all feeling the impact as the rising cost of housing threatens to drive away the diversity that makes this city so special.

All commentators and policy makers, even those that are pro-development agree that the a number one priority to address the affordability crisis is to **protect the existing rent controlled housing stock**. Even SPUR lists this as NUMBER ONE on its suggested housing agenda to make the City more affordable (SPUR policy proposal "8 Ways to Make San Francisco More Affordable."February 11, 2014). Below is an excerpt for the SPUR Report:

***1.) Protect the existing rent controlled housing stock.***

*San Francisco has roughly 172,000 units of rent controlled housing. Rent control is the city's core tenant protection, allowing many people to stay here. The first thing the city needs to do is to make sure we don't lose those units.*

*As housing prices go up, there is ever more incentive for owners of rental units to find a way to get out of the landlord business and sell the units. One of the most often abused mechanisms is California's Ellis Act, a state law that gives landlords the unconditional right to evict tenants to "go out of business." Tenant groups in San Francisco developed a set of proposals to make it more difficult for landlords to use the Ellis Act as a tool to evict people. One of the proposed reforms that makes sense is to discourage the practice of buying rent-controlled units for the purpose of converting to tenancy-in-common units (TICs) or condos by requiring landlords to actually have been in the landlord business for a period of time before using the Ellis Act to "leave the business." There is a social compact in San Francisco that needs to be upheld: Rent-controlled units should stay under rent control while ownership opportunities should come from new construction.*

The Mayor has made the retention of sound affordable rent-controlled housing one of his top priorities to address the affordability crisis. In his Seven Point Housing Plan, the protection of existing rent-controlled housing is listed as the number two item:

*2. Stabilize and protect at-risk rent-controlled units, through rehabilitation loans and a new program to permanently stabilize rent conditions in at-risk units.*

Supervisor Scott Wiener states on his blog:

**HOUSING**

It's no secret that San Francisco is a wonderful place to live. To address the constant and growing demand for housing, we need to find ways to encourage both market-rate and below-market-rate housing in San Francisco, as well as different kinds and sizes of housing. For years, due to a laborious entitlement process and short-sighted political decisions, our housing production has failed to keep track with our population growth, which has led to sky high rents and exceedingly expensive real estate prices. We also need to stabilize and protect our existing rent-controlled units through eviction protections. Through these two mechanisms - encouraging growth and ensuring housing stability - San Francisco can continue to grow as a city for all.

The Sierra Club and all other public interest groups strongly oppose the demolition of sound affordable housing in San Francisco. Attached hereto as Exhibit 1 is a letter from the Sierra Club directed to the Planning Commission opposing the Project because it is demolition of rent-controlled housing.

Everyone on both sides of the aisle agrees and the City's policies MANDATE the retention of sound affordable rent controlled housing.



**6. The Dept's Analysis is Completely at Odds with the Policy for Loss of Units by Merger and There are No Extraordinary or Exceptional Circumstances to Justify the Demolition of Sound Affordable Rent Controlled Housing**

Along with production of new housing, the Mayor's Executive Directives have made clear that a top priority to address the affordability crisis is to retain the existing rental housing units in the City. Mayor's Executive Directive 13-01 dated December 18, 2013 is attached as Exhibit 2---note that page 2 states that the Dept and the Commission must review cases with a "special attention paid to preserving exiting rental stock."

For all merger applications where at least one of the units is valued under \$1.506 million, the loss of a unit by administrative merger process is not available and the Department automatically recommends that the Commission deny the merger application at the required hearing. In response to the Mayor's directive, the Planning Dept issued *Draft Director's Bulletin No. 5*, which states that the new policy reflects the "exceptional and extraordinary circumstance" created by the current housing affordability crisis.

When the mayor issued his housing directive in 2013, he made it clear that demolishing existing rental housing should only be allowed in unusual circumstances, "with special attention paid to preserving existing rental stock." In response, the Planning Department has in the past year or more, repeatedly refused to approve projects that involve a loss of rental units. At a July 24, 2014 Planning Commission hearing, a proposal to merge two small rental units into one larger apartment was rejected by planning staff at 344 3<sup>rd</sup> Avenue, because "the mayor has directed the Department to adopt policies which encourage the preservation of existing housing stock." (Dept's analysis attached as Exhibit 3)

A similar case at 812 Green Street; was also rejected because the planners said it wasn't okay to merge two units into one because preserving existing rental housing under rent control was the city's highest priority and counter to the Mayor's directive to retain existing rental housing. The Dept's analysis of the 812-814 Green Street Case from August 14, 2014 is attached as Exhibit 4.

If a family had purchased the two units in this case, the Dept would have refused to allow the units to be merged together based on the "exceptional and extraordinary circumstances" created by the housing affordability crisis. Allowing such unit to be demolished but not merged makes no sense whatsoever.

**7. The Existing Units May be Expanded to Create Additional Rent Controlled Housing of Family Sized Units Under Rent Control**

The existing units can be remolded into larger units and have additional units added to the building to save and expand the rent controlled units. If new units are added to the building, it can be done in a manner that assures the rent controlled units will be preserved and that new units also fall under the Rent Ordinance. The Dept should have made it clear to the developers from the beginning that the sound affordable rent

David Chiu, President  
San Francisco Board of Supervisors

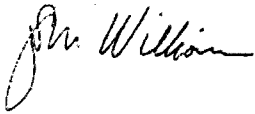
November 17, 2014

controlled units could not be destroyed and that any project at the site would require the retention of this valuable commodity.

**Conclusion**

The Proposed Project violates numerous priority policies which mandate the policy to save affordable, rent controlled housing---especially in the face of the current "affordability crisis." The neighbors request that the Board overturn the Planning Commission decision and deny the demolition permit and direct the developer to explore options to retain the existing housing (with or without a subdivision and new development at the rear).

VERY TRULY YOURS,

A handwritten signature in cursive script that reads "Stephen M. Williams".

STEPHEN M. WILLIAMS

# EXHIBIT 1



SIERRA  
CLUB  
FOUNDED 1892

San Francisco Group  
SF Bay Chapter

2120 Clement Street, Apartment 10  
San Francisco, CA 94121  
(415) 668-3119  
September 2, 2014

Cindy Wu  
San Francisco Planning Department  
1650 Mission Street, Suite 400  
San Francisco, CA 94103-2414

Dear Commission President Wu:

The Sierra Club strongly opposes the demolition of rent-controlled housing in San Francisco. Rent-controlled housing allows residents of all incomes to live in transit-rich, walkable communities with neighborhood serving businesses, frequently near their jobs. The preservation of rent-controlled units in San Francisco helps prevent displacement of low- to moderate- income residents to auto-centric suburbs, often greatly lengthening their commutes.

Affordable housing in San Francisco comes in different forms, including Section 8 and Housing Authority units, but rent-controlled housing is the largest portion of affordable housing. However, annual reports from the San Francisco controller note that the number of rent-controlled units is eroding. According to the *Annual Year-End Performance Measure Report of 2009-2010*, San Francisco had 175,337 rent-controlled units in 2007-2009. By 2012-2013, the controller's *City Services Performance Measure Report* noted that the number of rent-controlled units had dropped by 4,032 to 171,609. State law prohibits the regulation by rent control of any residential buildings constructed after 1978; therefore, lots on which units have been demolished or removed from rent control are removed forever from the ranks of lots regulated by local rent-control law.

We urge you to oppose proposals to demolish rent-controlled units for the reasons described above.

Sincerely,  
Susan Vaughan  
San Francisco, CA

CC: Cindy Wu,  
Rodney Fong, [planning@rodneymfong.com](mailto:planning@rodneymfong.com)  
Michael Antonini, [wordweaver21@aol.com](mailto:wordweaver21@aol.com)  
Rich Hillis, [richhillissf@yahoo.com](mailto:richhillissf@yahoo.com)  
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Supervisor Eric L. Mar, [Eric.L.Mar@sfgov.org](mailto:Eric.L.Mar@sfgov.org)

# EXHIBIT 2



**Executive Directive 13-01**  
**Housing Production & Preservation of Rental Stock**  
*December 18, 2013*

Through this Executive Directive, I hereby direct all municipal departments that have the legal authority over the permitting or mapping of new or existing housing to prioritize in their administrative work plans the construction and development of all net new housing, including permanently affordable housing.

The directive should be understood to prioritize 100% permanently affordable developments and moderate-income residential developments based on the proportion of permanently affordable units produced onsite or offsite through the city's inclusionary housing program as set forth in Section 415 of the San Francisco Planning Code. The Departments shall follow existing requirements in establishing such priorities.

I also request that Department Heads form a Working Group, with three primary tasks:

- (1) making recommendations to the Mayor for City policies and administrative actions that could be implemented to preserve and promote rental housing in San Francisco;
- (2) implementing a process to have the Planning Commission consider Discretionary Review hearings when a loss of housing is proposed; and
- (3) serving as an advisory body to municipal departments with permitting authority and as a clearinghouse for code compliance checks for buildings that are being withdrawn from the rental market under Residential Rent Stabilization and Arbitration Ordinance sections 37.9(a)(8), 37.9(a)(9), 37.9(a)(10) and 37.9(a)(13), or a Notice of Intent to Withdraw units from the residential market under Section 37.9(a).

The membership of the Working Group shall be:

- Director, Department of Building Inspection
- Director, Planning Department
- Chief, Fire Department
- Director, Rent Board
- Director, Mayor's Office of Housing

As needed:

- Representative from the Department of Public Works
- Representative from the Office of Community Investment & Infrastructure
- Representative from the San Francisco Public Utilities Commission
- Representative from City Attorney's Office
- Representative of Property Owner Organization
- Representative of Tenant Organization
- Representative of a Non-Profit Housing Organization
- Representative of Other Housing Organization

Task (1): Recommendations to the Mayor

I task department heads to prioritize any administrative policies that lead to direct building of more affordable housing or that provide the proper market incentives to foster private development of rental units, including infill housing or small-scale residential with affordable units. Equally important is the preservation of the existing stock. As such, I request that the Department Heads listed above convene and gather any feedback, materials, or research they need to make recommendations to me about potential legislative or citywide strategies to preserve rental units in San Francisco. These recommendations can be forwarded on a rolling basis as ideas arise, and do not need to be formally adopted by the working group.

Task (2): Discretionary Review for Loss of Housing Units

Any DBI permit form for a building larger than two units must include a box about whether said permit will result in the removal or loss of a rental housing unit, the removal or loss of a unit that is currently being used for housing, or results in the displacement of any tenant from their home. If this box is checked "yes," the permit would not be approved over the counter but would instead be referred to the Planning Commission for a hearing under existing Discretionary Review regulations. DBI staff would request all relevant information from the applicant, so it can be forwarded to Planning staff. The Planning Commission could then consider the reasons for the reduction in housing units, with special attention paid to preserving existing rental stock. . This section would not apply to any already approved development agreements and/or current or future planned HOPE SF developments.

Task (3): Planning and Building Approvals & Notification

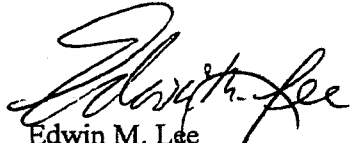
When a building owner files with the Rent Board a Notice of Termination of Tenancy under Rent Ordinance Sections 37.9(a)(8), 37.9(a)(9), 37.9(a)(10) and 37.9(a)(13), or a Notice of Intent to Withdraw units from the residential market under Section 37.9A, the Rent Board shall refer the notice to the Planning Department and to the Department of Building Inspection so that each agency can perform a site visit and research to verify that there are no Code violations, including life-safety and fire code violations. Any violations shall require compliance with all applicable Code requirements and identify any conflicts with Planning Department or DBI policies regarding preservation of affordable housing. Conflicts with city policies shall be forwarded to the Working Group to determine if that the establishment of new discretionary determinations would preserve or enhance the supply of affordable housing.

The Planning Department shall additionally notify the building owner in writing of any future restrictions or prohibitions on demolition, conversion, or mergers of units due to no-fault evictions performed under the above mentioned Rent Ordinance code sections. The building owner filing the notice of intent to withdraw units shall pay time and materials for all inspections, staff work and public hearings as described above as permitted under existing laws.

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Department Heads may designate staff members to serve in their place. All relevant Department Directors should provide a plan to me by February 1st on how their departments plan to operationalize this directive, including recommending any specific administrative changes that are discussed under Task (1) above.

This Executive Directive will take effect immediately and will remain in place until rescinded by future written communication. This Executive Directive cannot override any relevant code sections including those governing no-fault evictions and does not invalidate any legal rights of property owners or tenants, or impair any existing contracts.



Edwin M. Lee

Mayor, City & County of San Francisco



# EXHIBIT 3

## ENVIRONMENTAL REVIEW

The Project is exempt from the California Environmental Quality Act ("CEQA") as a Class 1 categorical exemption.

## BASIS FOR RECOMMENDATION

- The Project will result in a net loss of one dwelling unit.
- The Project will eliminate two existing sound, smaller dwelling-units to create one larger, less affordable home, which is inconsistent with the General Plan.
- The RM-1 Zoning District allows three dwelling-units on this lot. This District is intended to accommodate a greater density than what currently exists, and several of the surrounding properties reflect this ability to accommodate the maximum density.
- The proposed loss of a dwelling unit is counter to the Mayor's Executive Directive, which calls for the protection of existing housing stock. The Mayor has directed the Department to adopt policy practices that encourage the preservation of existing housing stock. The proposed dwelling unit removal and replacement of "naturally affordable" units is contrary to the priority principle of housing unit retention.
- The current housing affordability crisis creates an "exceptional and extraordinary" circumstance such that the Commission should deny the project and preserve the existing dwelling units.

<b>RECOMMENDATION:</b> Take Discretionary Review and Disapprove
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### Attachments:

Parcel Map  
Sanborn/Dwelling Unit Map  
Zoning Map  
Aerial Photographs  
Section 311 Notice  
Reduced Plans  
Sponsor's Brief  
Letters of Support

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# EXHIBIT 4

...from the California Environmental Quality Act ("CEQA") as a Class 1 categorical exemption. A Planning Commission approval will constitute the Approval Action for the Project for the purposes of CEQA, pursuant to San Francisco's Administrative Code Section 31.04(h).

#### BASIS FOR RECOMMENDATION

- The Project will result in a net loss of one dwelling unit.
- The Project will eliminate two existing sound, smaller dwelling-units to create one larger, less affordable unit, which is inconsistent with the General Plan.
- The proposed merger would result in the loss of a dwelling unit in a building that is at the prescribed density as permitted by the Zoning District. The proposed merger would not bring the building closer to conformance with the prescribed zoning.

Discretionary Review Analysis Summary  
August 14, 2014

CASE NO. 2013.1620D  
812 – 814 Green Street

- The Project is contrary to the intent of Executive Directive 13-01 to retain legal housing units. The Mayor has directed the Department to adopt policy practices that encourage the preservation of existing housing stock. The proposed dwelling unit removal and replacement of "naturally affordable" units is contrary to the priority principal of housing unit retention.
- The current housing affordability crisis creates an "exceptional and extraordinary" circumstance such that the Commission should deny the project and preserve the existing dwelling units.

<b>RECOMMENDATION:</b> Take Discretionary Review and Disapprove
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#### Attachments:

Parcel Map  
Sanborn/Dwelling Unit Map  
Zoning Map  
Aerial Photographs  
Site Photographs  
Project Sponsor's Submittal  
    Response to Dwelling Unit Merger Criteria  
    Reduced Plans

## HOUSING ELEMENT

### Objectives and Policies

**OBJECTIVE 3: PROTECT THE AFFORDABILITY OF THE EXISTING HOUSING STOCK, ESPECIALLY RENTAL UNITS.**

#### POLICY 3.1

Preserve rental units, especially rent controlled units, to meet the City's affordable housing needs.

#### POLICY 3.4

Preserve "naturally affordable" housing types, such as smaller and older ownership units.

*The two existing dwelling units do not contain design deficiencies and are sound housing units. The project proposes to eliminate two "naturally affordable" dwelling units that are smaller (one to two bedrooms) and subject to rent control, to be replaced with a less affordable four bedroom dwelling unit. The elimination of two functional "naturally affordable" dwelling units is contrary to the General plan as well as the Department's and the City's priority to preserve existing sound housing and to protect naturally affordable dwelling units.*

**OBJECTIVE 11: SUPPORT AND RESPECT THE DIVERSE AND DISTINCT CHARACTER OF SAN FRANCISCO'S NEIGHBORHOODS.**

#### POLICY 11.4

Continue to utilize zoning districts which conform to a generalized residential land use and density plan and the General Plan.

*The subject block is zoned RM-2 and the surrounding blocks are zoned RM-2, RM-1 and RH-2, representing a diversity of residential densities. The subject zoning is appropriately designed to encourage a mix of residential density and allows the subject lot to be developed with three dwelling units. The proposed dwelling unit merger is inconsistent with the prescribed zoning, General Plan and the City's policies to address the current housing crisis.*

### SECTION 101.1 PRIORITY POLICIES

Planning Code Section 101.1 establishes eight priority policies and requires review of permits for consistency, on balance, with these policies. The Project does not comply with these policies as follows:

1. Existing neighborhood-serving retail uses be preserved and enhanced and future opportunities for resident employment in and ownership of such businesses enhanced.

*The proposal does not affect existing neighborhood-serving retail uses as the site is occupied by a residential use.*

2. That existing housing and neighborhood character be conserved and protected in order to preserve the cultural and economic diversity of our neighborhoods.

*The proposal would eliminate existing housing and therefore, be contrary to this Priority Policy.*

within six months of the application to merger, are not subject to a Mandatory Discretionary Review hearing.

*The subject units appraised at \$1.35M each on September 7, 2013, within six months of their application to merge being filed on November 6, 2013. On March 5, 2014 the threshold for determining if a unit is demonstrably not affordable or financially accessible increased from \$1.342M to \$1.506M. The subject units are not demonstrably unaffordable or financially inaccessible.*

9. The Planning Commission shall not approve an application for merger if any tenant has been evicted pursuant to Administrative Code Sections 37.9(a)(9) through 37.9(a)(14) where the tenant was served with a notice of eviction after December 10, 2013 if the notice was served within ten years prior to filing the application for merger. Additionally, the Planning Commission shall not approve an application for merger if any tenant has been evicted pursuant to Administrative Code Section 37.9(a)(8) where the tenant was served with a notice of eviction after December 10, 2013 if the notice was served within five years prior to filing the application for merger. This Subsection (e)(4) shall not apply if the tenant was evicted under Section 37.9(a)(11) or 37.9(a)(14) and the applicants either (A) have certified that the original tenant reoccupied the unit after the temporary eviction or (B) have submitted to the Planning Commission a declaration from the property owner or the tenant certifying that the property owner or the Rent Board notified the tenant of the tenant's right to reoccupy the unit after the temporary eviction and that the tenant chose not to reoccupy it.

*The units proposed for merger have not been occupied by tenants that have been evicted after December 10, 2013. Per the Project Sponsor, the building was vacant for five years prior to purchase by the current property owners in September 2013. The ground floor unit, which is not proposed for merger, has been tenant occupied since October 2013 and will continue to be tenant occupied.*

#### EXECUTIVE DIRECTIVE 13-01:

##### Task 2: Discretionary Review for Loss of Housing Units.

**Implementation Measure 2. Mandatory Discretionary Review for the loss of Dwelling Units.** For properties with more than two dwelling units, the Planning Department will initiate Discretionary Review for the loss of any dwelling units, legal or otherwise.

*The proposal will result in the loss of a legal dwelling unit and is therefore subject to the Mandatory Discretionary Review. Dwelling unit mergers in the subject three-unit building are subject to Mandatory Discretionary Review. The proposed merger would eliminate one rent controlled unit, which is counter to the policy intent of the Mayor's Directive to address the City's housing crisis.*

#### GENERAL PLAN COMPLIANCE:

The Department's Recommendation is consistent with the following Objectives and Policies of the General Plan: