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July 26, 2022

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

Re: Appeal Pursuant to Administrative Code Section 31.07

Affordable Housing Production Act - BOS File No. 220631

Environmental Review Officer Determination

Dear President Walton and Supervisors,

Please find attached an appeal (the "Appeal") to the Planning Commission under S.F. Administrative Code Section 31.07, appealing the City's failure to act in accordance with Section 31.07 and the California Environmental Quality Act (Pub. Res. Code Secs. 21000 *et seq*.; "CEQA") concerning the Affordable Housing Production Act ("Chan/Peskin Measure"). The Board of Supervisors may not consider the Chan/Peskin Measure until and unless the Planning Commission has held a hearing and issued a decision on the Appeal.

The City's Environmental Review Officer ("ERO") has violated Section 31.07 by failing to provide notice to the Planning Commission and public before adding to the list of nonphysical and ministerial projects excluded from CEQA. In addition, the ERO has incorrectly concluded that the Chan/Peskin Measure is "not a project" subject to review under CEQA. To the contrary, the Measure is a project and requires environmental review.

The ERO also concludes that if the Chan/Peskin Measure were to be considered a project under CEQA, the proposed measure would not result in any new significant environmental impacts, substantially increase the severity of previously identified impacts, or necessitate implementation of additional or considerably different mitigation measures than those identified in prior CEQA documents. This conclusion, too, is incorrect. As shown in the attached table, the Chan/Peskin Measure will result in a number of foreseeable indirect impacts on the environment.

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Finally, the Chan/Peskin Measure violates the State Density Bonus Law (Gov. Code Sections 65915 – 65918) by, among other ways, creating a category of increased affordable housing projects where state law does not allow increased inclusionary requirements on density bonus units.

Thank you for your attention to this matter.

Sincerely,

Corey Smith, *Executive Director*
Housing Action Coalition (HAC)

Enclosures

cc: Angela Calvillo, Clerk of the Board
Supervisor Connie Chan
Supervisor Catherine Stefani
Supervisor Aaron Peskin
Supervisor Gordon Mar
Supervisor Dean Preston
Supervisor Matt Dorsey
Supervisor Myrna Melgar
Supervisor Rafael Mandelman
Supervisor Hillary Ronen
Supervisor Ahsha Safaí
Planning Commission
Jonas P. Ionin, Director of Commission Affairs

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July 26, 2022

Delivered Via Email
President Rachel Tanner
Planning Commission
Rachel.Tanner@sfgov.org

Re: Appeal Pursuant to Administrative Code Section 31.07
Affordable Housing Production Act – BOS File No. 220631

Dear President Tanner & Commissioners:

On behalf of the Housing Action Coalition ("HAC"), a member-supported nonprofit that advocates for building more homes at all levels of affordability, I write to directly appeal the Environmental Review Officer's ("ERO") failure to provide notice to the Planning Commission and public before adding to the list of nonphysical and ministerial projects excluded from the California Environmental Quality Act ("CEQA"). Because the Administrative Code does not specify the appeal procedure or fee, I request that you inform us promptly of any fees or other requirements applicable to this appeal and confirm the hearing date. **The Chan/Peskin Measure cannot be put before voters without adequate environmental review.**

1. **No listed category of nonphysical/ministerial exemption covers the Chan/Peskin Measure.**

At present, there is no category listed that covers a ballot measure like the Affordable Housing Production Act ("Chan/Peskin Measure") put forward by the Board of Supervisors to increase the pace and overall amount of qualified new construction with expedited, ministerial approvals that wipe away many local and state historic and environmental protections, along with the application of any subjective zoning standards. These protections currently apply under the 100% Affordable and Educator Housing Programs. They would not only be eliminated for these two existing programs, but would make eligible a third and potentially larger group of market -rate projects with 8% more affordable housing than otherwise required. By making available to development sites that would be far costlier and time-consuming

2. **Due Process, Notice, and Opportunity to be Heard Is Not Subordinate to Administrative Convenience or Political Expedience.**

The duty to notify the Planning Commission and public before adding to the list is mandatory under San Francisco Administrative Code Section 31.07(a):

> The Environmental Review Officer shall maintain a listing of types of nonphysical and ministerial projects excluded from CEQA. Such listing shall be modified over time as the status of types of projects may change under applicable laws, ordinances, rules and regulations. … Any person who may consider any modification to be incorrect may appeal such modification to the Planning Commission within twenty (20) days of the

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> date of the Planning Commission agenda on which notice of such modification was posted.

This serves to inform the Planning Commission and provides any member of the public the right to appeal erroneous or overbroad listings to the Planning Commission. Instead of properly noticing a new category that would encompass the Chan/Peskin Measure, the environmental clearance for the Chan/Peskin Measure simply states:

> Not defined as a project under CEQA Guidelines Sections 15378 and 15060(c)(2), because it would not result in a direct or indirect physical change in the environment.

(Planning Department Determination dated July 14, 2022, for Board of Supervisors hearing on July 19, 2022.) As we explained in our letter to the Board of Supervisors, these conclusory statements are not supported by evidence and conflict directly with California Supreme Court precedent and the plain language of CEQA. The ERO cannot ignore a mandatory duty to inform the public and eliminate what we understand to be the sole administrative method to challenge overbroad and blatantly erroneous determinations of projects subject to CEQA review.

3. The Chan Peskin Measure Will Have Potentially Significant Impacts Not Previously Described in the Housing Element DEIR or Subsequent Addenda.

The classification of the Chan/Peskin Measure as "not a project subject to CEQA" because "it will not have a direct or reasonably foreseeable indirect impact on the environment" is inconsistent with CEQA, dismisses the Chan/Peskin Measure as essentially procedural.

As a Board-sponsored ballot measure, controlling law requires the City to consider whether the Chan/Peskin Measure should be reviewed for environmental impacts under the California Environmental Quality Act (Pub. Res. Code Secs. 21000 *et seq*.; "CEQA"). On June 14, 2022, the Planning Department determined that the Chan/Peskin Measure was not a "project" under CEQA, and thus not subject to environmental review. By memorandum dated July 21, 2022, the ERO repeated this conclusion and then hedged that bet by concluding that even if the Chan/Peskin Measure were considered a project, the proposed Measure would not require further environmental review. As described in the July 19, 2022, HAC letter to the Board of Supervisors, both conclusions are incorrect under controlling law. Environmental review under CEQA is required, because, among other things, the Chan/Peskin removes barriers to the demolition and adverse alteration of historic resource. The chart attached to this document sets forth some but not necessarily all of the potential new impacts associated with substantive changes in the measure.

The approach to the Chan/Peskin measure is strikingly inconsistent with the Planning Department's determination that other programs, for the creation of and subsequent changes to, various discretionary local affordable housing incentive program and other changes in policies, ordinances, and programs adopted pursuant to the 2004 and 2009 Housing Element Final Environmental Impact Report[1] ("Prior EIR"), including:

[1] Plan. Department Case No. 2007.1275E

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A) Addendum 8: Cars to Casas, Board of Supervisors File No. 211092
B) Addendum 7: Dwelling Unit Density Exception for Corner Lots in Residential Districts
C) Addendum 6: Amendments to the 100% Affordable Housing and Educator Housing & Educator Streamlining Program
D) Addendum 5: Non-Discretionary Review of 100% Affordable Housing and Teacher Housing Projects, Board of Supervisors File No. 190437
E) Addendum 4: Construction of ADUS, Board of Supervisors File Nos. 160252 and 160657
F) Addendum 3: Affordable Housing Bonus Program, Board of Supervisors File No. 150969
G) Addendum 2: Accessory Dwelling Units, Board of Supervisors File No. 150365, 150585

All of the above materials area available on the Planning Department's Environmental Review website and are included by reference as if attached hereto in their entirety, as are the Board of Supervisors files attached to this letter.

In each of these cases, the Planning Department determined the proposed ordinances (some of which were not enacted), were projects subject to CEQA, but determined that they were not subject to further environmental review as their impact were adequately covered by the Prior EIR and, prepared an addendum for each one providing substantial evidence for each of its conclusions. For example, Addendum 3 included 43 pages of analysis to demonstrate consistency with the Prior EIR.

The Planning Department's assertion that they could have done an addendum is beside the point. A throw-away paragraph is not an addendum. When it is determined that subsequent review is not necessary, a brief explanation should be included in an addendum, the project's findings, or elsewhere in record. (14 CCR 15164(e)). To determine whether subsequent review is required, an agency must make a fact-based evaluation of the relevant factors under Public Resources Code Sec. 21166, including:

a. **Substantial changes to project** which will require major revisions to EIR or Neg. Dec. due to the involvement of new significant environmental effects or an increase in severity of a previously identified impact.

b. **Substantial change in circumstances** under which the project is undertaken that will require major revisions to EIR or Neg. Dec. due to the involvement of new significant environmental effects or an increase in severity of a previously identified impact.

c. **New information**, not available with reasonable diligence, showing unidentified significant impact, previously identified impact that is more severed, or previous mitigations would be infeasible.

That has not been done. There is no consideration given to the pending Housing Element Update or the substantive changes identified in our July 19th, some of which would cause potentially significant impacts. Instead, the ERO is treating substantive changes that strip environmental considerations out of decision-making as purely procedural. They are

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substantive, and as set out in the **Attached Chart** have the potential to cause significant impacts.

The statement that the ordinance does not raise height limits, expand buildable area, or otherwise change zoning controls or affect development capacity is not correct. The Chan/Peskin initiative (a) alters and/or eliminate subjective Planning Code standards that protect broad categories of historic resources, including listed historic buildings in the Planning Code, (b) eliminate current subjective standards that exist to prevent environmental impacts, and (c) create a new category of market-rate housing with increased affordability that falls under these reduced standards. (See **Attached Chart**.) If zoning changes such as these are no longer considered "projects" then that is a major change ERO has failed to modify the listing of types of nonphysical and ministerial projects excluded from CEQA, as required by Section 31.07(a), to include the Chan/Peskin Measure and other like measures in this category. As such, the ERO has violated Section 31.07(a).

We are not aware of any other provision of the Administrative Code (or the Municipal Code generally) that provides an opportunity to appeal the ERO's CEQA determinations concerning the Chan/Peskin Measure. Please immediately advise us if any other such appeal provision exists. Otherwise, Section 31.07(a) is the only means by which we may file the subject appeal and exercise our procedural due process rights under the California and U.S. Constitutions. We will supplement this appeal letter with additional materials once an appeal hearing date is set.

Thank you for your attention to this matter.

Sincerely,

Corey Smith, *Executive Director*
Housing Action Coalition (HAC)

Enclosures

cc: Angela Calvillo, Clerk of the Board
Supervisor Connie Chan
Supervisor Catherine Stefani
Supervisor Aaron Peskin
Supervisor Gordon Mar
Supervisor Dean Preston
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Addendum 2 – Accessory Dwelling Units:
BOS File No. 150365 –
https://sfgov.legistar.com/LegislationDetail.aspx?ID=2262375&GUID=E170831A-75A3-434A-A0DA-A4054CFBEF93&Options=ID|Text|&Search=150365

BOS File No. 150585 –
https://sfgov.legistar.com/LegislationDetail.aspx?ID=2329930&GUID=744485A1-9441-4107-ACE5-A572C0B09215&Options=ID|Text|&Search=150585

Addendum 3 – Affordable Housing Bonus Programs:
BOS File No. 150969 –
https://sfgov.legistar.com/LegislationDetail.aspx?ID=2474234&GUID=C3463948-D066-4AA3-B27B-8887AE979436&Options=ID|Text|&Search=150969

Addendum 4 – Construction of Accessory Dwelling Units:
BOS File No. 160252 –
https://sfgov.legistar.com/LegislationDetail.aspx?ID=2609799&GUID=CD0C3FE5-2D56-4E5B-85CB-505932611161&Options=ID|Text|&Search=160252

BOS File No. 160657 –
https://sfgov.legistar.com/LegislationDetail.aspx?ID=2739832&GUID=5B77577A-FDF1-43FA-86DF-ADACCE135D93&Options=ID|Text|&Search=160657

Addendum 5 – Non-Discretionary Review of 100 % Affordable Housing and Teacher Housing Projects:
BOS File No. 190437 –
https://sfgov.legistar.com/LegislationDetail.aspx?ID=3929687&GUID=01381811-ADD9-47B5-B1E8-F1DFD2E60167&Options=ID|Text|&Search=190437

Addendum 6 – 100% Affordable Housing and Educator Housing Streamlining Program:
BOS File No. 200213 –
https://sfgov.legistar.com/LegislationDetail.aspx?ID=4345538&GUID=384D2733-9397-4FBF-B53F-BDE27FB1B7EA&Options=ID|Text|&Search=200213

Addendum 7 – Dwelling Unit Density Exception for Corner Lots in Residential Districts:
BOS File No. 210564 –
https://sfgov.legistar.com/LegislationDetail.aspx?ID=4960277&GUID=150EFEF3-F0F7-41FF-8715-A1B40AD515BB&Options=ID|Text|&Search=210564

Addendum 8 – Cars to Casas:
BOS File No. 211092 –
https://sfgov.legistar.com/LegislationDetail.aspx?ID=5191195&GUID=7728F801-B610-4176-8F90-F310C83B0BEC&Options=ID|Text|&Search=211092

Affordable Housing Production Act (BOS File No. 220631-4) – Environmental Impacts

This table summarizes foreseeable indirect impacts on the environment that may result from the Affordable Housing Production Act (AHPA).

Impact Type	How It Is Now	If AHPA Is Adopted	Housing Element EIR Finding	Foreseeable Impacts on the Environment
Historic Resources	• Per the Housing Element EIR, impacts to potential and designated historic resources are reviewed on a project-level basis under various regulations, such as CEQA, Planning Code[1] Arts. 10 and 11, and Sec. of the Interior Standards. *See EIR, p. V.E-47.*[2]	• The AHPA makes projects touching *designated* national, state, and City historic resources ineligible for streamlining. • However, projects concerning *eligible* historic resources, or Cat. III and IV Buildings under Art. 11 will be allowed. • Projects will not be evaluated or reviewed for direct or indirect impacts to historic resources.	• The EIR recognizes the need to preserve historic resources through **project-level** review. • The EIR finds potential impacts would be offset by compliance with preservation regulations. • The Housing Element impact to historic resources is found less-than-significant *because historic resource is* ***most appropriate at the project level,*** *and* ***future projects would not be exempt from review of impacts to historic resources.*** *Pg. V.E-48-49.*	The EIR assumed that historic impacts would be reviewed at the project level, and that new development would not be exempt from review. The AHPA creates new impacts because it would exempt projects from historic review that could have direct impacts on certain historic resources or result in indirect historic impacts.
Sadow	• Section 295 requires shadow review for projects over 40 feet. • Such projects are prohibited from casting new shadow on Parks and Recreation property unless the Planning Commission finds that the shadow is insignificant or not adverse. Input from Parks and Recreation is required in the review. • Shadows are also reviewed during CEQA review.	• AHPA projects would be ministerial and subject only to objective standards. Planning Commission approval will not be required for the issuance of building permits. • AHPA projects will not be subject to Section 295 or CEQA review, meaning shadow impacts will not be reviewed.	• The EIR states that Shadow impacts will be evaluated on a **project-by-project** basis; the Housing Element is too general to consider shadow impacts. *Pg. V.J-29.* • It found that parks are "shadow-sensitive", and that all open space under Parks and Recreation is protected by Section 295. *Pgs. V.J-3 & V.J-6.* • Impact WS-2 finds that shadow impacts will be less-than-significant *because* new residential development would be required to comply with Section 295 and other regulations. *Pg. V.J-26.*	The EIR found that shadow impacts would be less-than-significant on the basis that development would undergo shadow review at the project level. The AHPA results in new impacts because AHPA projects will not undergo Section 295 or CEQA shadow review, and shadows may be allowed that would have been previously disapproved.
Land Use and Land Use Planning (LULUP)	• Chapter 35 of the SF Administrative Code regulates new Residential Uses in PDR Districts to ensure compatibility with existing PDR Uses. • Chapter 35 is implemented through design review and other approval processes to ensure compatibility and protect residential and industrial uses.	• AHPA projects are ministerially reviewed and will not be subject to the compatibly requirements of Chapter 35. • Design review of AHPA projects can only consider aesthetic aspects, while Chapter 35 is primarily implemented through review of functional design aspects.	• The EIR provides that new development will not impact existing land uses because development will comply with land use regulations, including Chapter 35. *Pg. V.B-50.* • The EIR finds a less-than-significant impacts with respect to LULUP *because* compliance with land use regulations, including Chapter 35, will reduce incompatibility between residential and existing land uses. *Pg. V.B-50, 59-60.* This finding is reiterated in Addendum 1 for the 2014 update. *Addendum 1, pp. 12-14.*	The EIR found that LULUP impacts would be less-than-significant because new development would be subject to land use regulations, including review under Ch. 35 for the compatibility of new residential uses. The AHPA results in new impacts by exempting AHPA project from Ch. 35 review and allowing uses that may not be fully compatible.

[1] All Code citations are to the San Francisco Planning Code unless otherwise indicated.
[2] All page citations are to the 2004 and 2009 San Francisco Housing Element EIR unless otherwise indicated.

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July 19, 2022

President Walton
President of the Board of Supervisors
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102

Re: Affordable Housing Production Act; BOS File Nos. 220631 & 220835

Dear President Walton and Members of the Board of Supervisors:

On behalf of the Housing Action Coalition ("HAC"), a member-supported nonprofit that advocates for building more homes at all levels of affordability, I write to urge the Board of Supervisors ("Board") not to put the sham Affordable Housing Production Act ("Chan/Peskin Measure" at **Exhibit A**) before the voters. There is already a measure - the "Affordable Homes Now Initiative" ("Citizen Measure") - to create a streamlined approval process for projects that provide more affordable housing than required. Roughly 80,000 San Franciscans (16% of registered voters) signed the Citizen Measure. (Citizen Measure at **Exhibit B**.)

The Chan/Peskin Measure is not being put forward to streamline housing production. It is a cynical ploy to confuse and distract voters and divide the pro-housing vote. For the Board to place this on the ballot would be both illegal and unethical; unlike measures put on the ballot by citizen signature, the Chan/Peskin Measure cannot be placed on the ballot before environmental review under the California Environmental Quality Act ("CEQA") is completed. The Chan/Peskin Measure has not done this for one simple reason: time. There isn't enough of it to do an environmental review and qualify in time to sabotage the Citizen Measure, which will be on the November 2022 ballot. Should the Board illegally place the Chan/Peskin measure on the ballot, the HAC is prepared to immediately pursue all legal remedies available.

The Measures

On the surface, both the Chan/Peskin Measure and the Citizen Measure appear similar. Both proposals would streamline city approval for three kinds of qualifying projects — 100 percent affordable housing, teacher housing, and mixed-use projects. Both proposals require that labor is paid a prevailing wage, and both proposals involve an increase in affordable units for qualifying projects. However, there's a key difference: the higher affordability requirements in the Chan/Peskin Measure will be feasible for a more limited subset of projects and will result in fewer developers using it.

Here's how the figures break down and what it means for home builders. Let's say a developer wants to build a 100-unit project. Currently, San Francisco requires that 21.5 percent of homes in larger projects are designated affordable, so the 100-unit project would need to include 22 homes that are below market rate ("BMR").

The Citizen Measure would require a project to meet the 21.5 percent figure, plus 15 percent of the bonus affordable units. For example, to qualify, that 100 unit-project would now have to build 25 BMR homes.

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The Chan/Peskin Measure, however, further increases the overall affordability requirement by 8 percent, so instead of 21.5 percent it would be 29.5 percent BMR homes. That means the 100-unit project would be required to designate 30 BMR homes. It also requires higher percentages of two- and three-bedroom units.

On the surface, the Chan/Peskin Measure appears to be the measure that more effectively addresses San Francisco's shortage of affordable homes. Even in San Francisco, everyone can agree that 30 affordable homes are better than 25.

However, for new homes to be built in the first place, they must be financially feasible for the homebuilders. The additional 8 percent of affordable housing that the Chan/Peskin Measure requires, won't necessarily result in more affordable homes being built because fewer multi-family projects will be feasible. Nonetheless, for some developers, the added cost associated with the higher affordable requirements may outweigh holding costs in a high interest rate environment with the risk of change in economic conditions during a lengthy approval process.

1. The Chan/Peskin Measure's CEQA Review Is Inadequate.

a. The "No Project" Determination Is Specious.

In the race to qualify the Chan/Peskin Measure for the November 2022 ballot, the public has been misled by CEQA findings stating:

> The Planning Department has determined that the actions contemplated in this proposed Charter Amendment and ordinance comply with [CEQA]…Said determination is on file with the Clerk of the Board of Supervisors…and is incorporated herein by reference.

(Chan/Peskin Measure Sec. 1. at **Exhibit A**.) However, there is no environmental analysis in the file beyond a conclusory statement lacking any analysis whatsoever appended to the Clerk of the Board's request for environmental evaluation. It reads:

> Not defined as a project under CEQA Guidelines Section 15378 and 15060(c)(2) because it would not result in a direct or indirect physical change in the environment.

(July 14, 2022 CEQA Determination at **Exhibit C**.) This determination cannot withstand even the most cursory scrutiny under CEQA.

b. CEQA's Definition of a Project.

Under CEQA, a "project" is an activity (1) undertaken or funded by or requiring the approval of a public agency that (2) "may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment." (Pub. Res. Code Sec. 21065.) Zoning changes, even minor ones, are typically considered "projects" for CEQA purposes. The California Supreme Court held that a zoning change to allow medical marijuana dispensaries (4 in each city council district; 36 citywide) was a project under CEQA in *Union of Marijuana Patients, Inc. v. City of San Diego*, 7 Cal. 5th 1171 (2019).

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The question posed in determining whether an ordinance is a project "is not whether the activity will affect the environment, or what those effects might be, but whether the activity's potential for causing environmental change is sufficient to justify the further inquiry into its actual effects that will follow from the application of CEQA." (*Id.* at 1198.) If the proposed activity is the sort that is capable of causing direct or reasonably foreseeable indirect effects on the environment, some type of environmental review is justified, and the activity must be deemed a project." (*Id.*) In *Union of Marijuana Patients*, the Court determined:

> the establishment of new stores could cause a citywide change in patterns of vehicle traffic from the businesses' customers, employees, and suppliers. The necessary causal connection between the Ordinance and these effects is present because adoption of the Ordinance was "an essential step culminating in action [the establishment of new businesses] which may affect the environment."

(*Id.* at 1199.)

c. The Chan/Peskin Measure Is a Project and Must Complete an Environmental Review.

The Chan/Peskin Measure's own findings contradict a determination that it is not a Project under CEQA. Its provisions for "[a]ccelerated review will allow San Francisco to incentivize and accelerate the development of housing projects that specifically expand the city's affordable housing supply by reducing the time and expense associated with obtaining planning approval." (Sec. 2(n).) A program that aims for more and faster housing construction obviously qualifies as a "project" capable of causing direct or reasonably foreseeable indirect effects on the environment.

This is particularly true given the Chan/Peskin Measure's substantive changes to the rules governing qualified projects. Those projects would not be subject to CEQA review by virtue of being ministerial. CEQA requires the imposition of mitigation measures to reduce impacts to less-than-significant levels where feasible and consistent with project objectives. However, by making projects ministerial and subject to objective standards only, there is no mechanism for commonplace impacts to be mitigated.

It is impossible to square the rationale used to classify the Chan/Peskin Measure as not being a project, when the City's Housing Element Update (see **Exhibit D**), which merely sets the stage for future changes, was classified as a project. The Draft EIR for the Housing Element Update (see **Exhibit E**) states:

> The housing element update would modify the policies of the general plan's housing element. It would not implement specific changes to existing land use controls (e.g., zoning) or approve any physical development (e.g., construction of housing or infrastructure). [Citation Omitted] As such, the proposed action would not result in any direct physical changes to the environment. Instead, the housing element update would result in reasonably foreseeable indirect changes. Specifically, the department assumes that adoption of the housing element update would lead to future actions, such as planning code amendments to increase

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> height limits along transit corridors and to modify density controls in low-density areas that are primarily located on the west and north sides of the city, designation of housing sustainability districts, and approval of development projects consistent with the goals, policies, and actions of the housing element update.

(Page S-2.)

> As such, the housing element update would not result in any direct physical changes to the environment. Instead, the housing element update would result in reasonably foreseeable indirect changes. Specifically, the department assumes that adoption of the housing element update would lead to future actions, such as planning code amendments to increase height limits along transit corridors and modify density controls in low- density areas that are primarily located on the north and west sides of the city, designation of housing sustainability districts, and approval of development projects consistent with the goals, policies, and actions of the housing element update. Therefore, this EIR identifies the reasonably foreseeable impacts of future actions that would implement the proposed goals, policies, and actions, including rezoning actions that would enable increased housing density.

(Page 4-4.)

d. The Chan/Peskin measure will result in environmental impacts that should be evaluated at the project-level and cumulatively.

CEQA requires the imposition of mitigation measures to reduce impacts to less-than-significant levels where feasible and consistent with project objectives. However, by making projects ministerial and subject to objective standards only, there is no mechanism to require mitigation of common impacts:

- **Noise and vibration.** Because most San Francisco developments are built lot-line to lot-line, mitigation measures are often needed to reduce construction noise to acceptable levels. Where deep excavations occur near older buildings, particularly historic ones, mitigation measures are often required to avoid damaging adjacent structures. (See 1010V Mission Street, Mitigated Neg. Dec. at **Exhibit F**; see also 1101 Sutter Initial Study at **Exhibit G.**)

- **Transportation impacts/mitigation** are also common in San Francisco, particularly for projects where loading docks and driveways are on busy pedestrian or vehicular streets, are on narrow streets, have poor visibility, or where multiple projects are under construction in close proximity. Mitigation measures are needed to address transportation impacts.

- **Archeological resources.** Archeological resources are commonplace in San Francisco. Mitigation measures to test for the presence of archeological resources, evaluate their significance, and for preservation (either on- or off-site) are often required. (See 1010V

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Mission Street, Mitigated Neg. Dec. at **Exhibit F**; see also Housing Element Update DEIR Maps at **Exhibit E**.)

- **Air Quality.** Construction equipment frequently generates diesel particulate and other emissions. For larger projects near residential buildings, schools, and other sensitive receptors, emissions may cause significant exposures and health risks without mitigation measures. (See 1101 Sutter DEIR at **Exhibit G.**)

- **Historic Resources.** Under CEQA, environmental impacts on a "historic resource" must be analyzed. Historic resources are broadly defined to include any building eligible for listing on the California Register, or actually listed on other state and local registers. Demolition of a historic resource is a significant impact under CEQA. The Peskin/Chan Measure allows for ministerial demolition of non-residential buildings that are considered historic resources under CEQA but do not fall within the Peskin/Chan Measure's narrower class of protected historic buildings, along with more extensive alterations to certain contributory buildings listed in Articles 10 and 11 of the Planning Code. Buildings like the one at 3140 16th Street have been preserved by virtue of their eligible status and would be at heightened risk of demolition, as would numerous small-scale historic resources. These potentially significant impacts must be disclosed in an EIR before the measure is put to the vote on the ballot. (See 1101 Sutter DEIR at **Exhibit G**, 3140 16th St. records at **Exhibit H**; see also Historic Resources at **Exhibit I**.)

- **Cumulative Impacts.** All potential cumulative impacts should be studied, particularly in relation to the policy changes proposed in the Housing Element Update. In particular, due to the concentration of eligible historic buildings on the City's east side and the relatively permissive development controls, the Chan/Peskin Measure could conflict with the Update's goal of shifting more development to the west side and further burden public services on the east side. (See Housing Element Draft 3 Goals, Objectives, Policies, and Actions at **Exhibit D**)

2. Supervisors Cannot Bypass CEQA In Order to Place A Competing Measure on the Ballot.

In a case factually similar to the Chan/Peskin Measure, the California Supreme Court clearly held that the discretionary submission of a ballot measure to the voters by a local legislature is not exempt from CEQA. (*Friends of Sierra Madre v. City of Sierra* (2001) 25 Cal 4th 165.) The measure in *Friends* sought to delist 29 properties from the city's historic register and was placed on the ballot over objections that the delisting required CEQA analysis. The city took the position that delisting was not a project, and the ballot measure ultimately passed. However, the court invalidated the measure for the City's failure to comply with CEQA, agreeing with the Court of Appeals reasoning that the delisting would lead to a change in legal status under CEQA:

> Although the city might still have the power to review the historical significance of the property when a demolition permit was sought, delisting might have the effect of removing the property from CEQA requirements for other types of use, for building permits for alteration, and for relocation of the property. Thus, delisting constituted a project with an effect that might cause a substantial adverse change in the significance of an historical resource.

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(*Id.* at 182.) The Chan/Peskin Measure effectively removes a large number of properties from all CEQA requirements for qualified projects, while ignoring its clear duty to conduct an environmental review. Notably, the City and County of San Francisco argued in an amicus brief that "requiring CEQA compliance for city- council-generated initiatives will handicap a city in responding to a voter-sponsored land use initiative by offering its own alternative because the process of CEQA compliance cannot be completed before the voter-sponsored initiative must be placed on the ballot." (*Id.* at 191.) The Court dismissed the argument and declined to create a legal loophole, noting elsewhere that:

> Voters who are advised that an initiative has been placed on the ballot by the city council will assume that the city council has done so only after itself making a study and thoroughly considering the potential environmental impact of the measure. For that reason a preelection EIR should be prepared and considered by the city council before the council decides to place a council-generated initiative on the ballot. By contrast, voters have no reason to assume that the impact of a voter-sponsored initiative has been subjected to the same scrutiny and, therefore, will consider the potential environmental impacts more carefully in deciding whether to support or oppose the initiative.

(*Id.* at 190.)

The sponsors of the Chan/Peskin Measure are surely aware of the City's obligations under CEQA. Each of the six sponsors voted to overturn the EIR for a large housing development at 469 Stevenson Street on grounds including the scale of the building in relation to nearby historic buildings. (Board of Supervisors Motion No. M21-182 at **Exhibit J**.) This decision, along with other housing disapprovals, prompted the California Department of Housing and Community Development ("HCD") to review the Board's actions as a possible violation of the Housing Accountability Act. The HCD expressed concern that these "actions are indicative of review processes that may be constraining the provision of housing in San Francisco." (See **Exhibit K**.) Now the same supervisors whose actions are being scrutinized by the HCD for disapproving residential projects are ignoring legal obligations under CEQA in a mad dash to manipulate the results of a citizen-sponsored, pro-housing measure. This is bad faith violation of due process and subjects the Chan/Peskin Measure to a preelection legal challenge. (*Yes on Measure A v. City of Lake Forest* (1997) 60 Cal. App. 4th 620, 626 ("preelection challenges are desirable because "the presence of an invalid measure on the ballot steals attention, time and money from the numerous valid propositions on the same ballot. It will confuse some voters and frustrate others, and an ultimate decision that the measure is invalid, coming after the voters have voted in favor of the measure, tends to denigrate the legitimate use of the initiative procedure." [citations omitted]").)

Conclusion

The Chan/Peskin Measure is a transparently fraudulent attempt to confuse and divide voters with the sole purpose of undermining the Citizen Measure. It is being rushed to the ballot for political reasons. Too rushed. So rushed, in fact, that it is has not gone through the normal procedural steps required for a measure placed on the ballot by the Supervisors, including, crucially, environmental review under CEQA. This fatal flaw subjects the Measure to a preelection legal challenge that will prevent the Measure from reaching the ballot. On behalf of the 16% of

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San Francisco voters who signed the Citizen Measure, HAC will vigorously assert its rights to due process, to compel the city to comply with CEQA, and ensure that an invalid measure does not confuse and divide the pro-housing vote.

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