From:	Victoria Yundt
To:	BOS Legislation, (BOS); Gibson, Lisa (CPC); Peskin, Aaron (BOS); ChanStaff (BOS); DorseyStaff (BOS); EngardioStaff (BOS); MandelmanStaff, [BOS]; MelgarStaff (BOS); Preston, Dean (BOS); Ronen, Hillary; Safai, Ahsha (BOS); Stefani, Catherine (BOS); Walton, Shamann (BOS)
Cc:	Richard Drury; Clayton Timbrell; David Noyola; hanmin.liu@icloud.com
Subject:	Re: Supplemental Comment Supporting Appellant Upper Chinatown Neighborhood Association and Clayton Timbrell's Appeal of the Planning Commission's Approval of a Categorical Exemption for the 1151 Washington Street Project (2022-010833ENV; 2022-010833CUA)
Date:	Friday, June 16, 2023 10:55:46 AM
Attachments:	2023.06.16 Appellant Supp comment-FINAL & Exhibits 1-2.pdf

Dear San Francisco Board of Supervisors, Ms. Calvillo, and Ms. Gibson:

Attached please find correspondence written on behalf of Appellants Upper Chinatown Neighborhood Association ("UCNA") and Clayton Timbrell. This letter supplements the May 17, 2023 appeal letter filed by Mr. Timbrell and joined by UCNA on May 19, 2023 appealing the Planning Commission's approval of a Class 32 (in-fill development) categorical exemption from the California Environmental Quality Act for the proposed project at 1151 Washington Street. Please note that the appeal is scheduled to be heard by the San Francisco Board of Supervisors on June 27, 2023.

Thank you for your assistance in this matter. If you could please confirm receipt of this email and the attached letter, that would be greatly appreciated. If you have any questions, please feel free to contact our office. Thank you for considering these comments.

Sincerely,
Victoria

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June 16, 2023

By Email

San Francisco Board of Supervisors
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Re: Supplemental Comment Supporting Appellant Upper Chinatown Neighborhood Association and Clayton Timbrell's Appeal of the Planning Commission's Approval of a Categorical Exemption for the 1151 Washington Street Project (2022-010833ENV; 2022-010833CUA)

Board of Supervisors Hearing Date: June 27, 2023

Dear San Francisco Board of Supervisors, Ms. Calvillo, and Ms. Gibson:

This letter is filed on behalf of the Upper Chinatown Neighborhood Association ("UCNA") and Clayton Timbrell ("Appellants"). This letter supplements the May 17, 2023 appeal letter filed by Mr. Timbrell and joined by UCNA on May 19, 2023 appealing the Planning Commission's approval of a Class 32 (in-fill development) categorical exemption from the California Environmental Quality Act ("CEQA") for the proposed project at 1151 Washington Street ("Project"). The appeal is scheduled to be heard by the San Francisco Board of Supervisors on June 27, 2023. Mr. Timbrell's May 17, 2023 appeal letter and accompanying exhibits are already before the Board and are incorporated by reference.

I. CEQA REVIEW IS REQUIRED FOR THE PROJECT.

As discussed in our May 17, 2023 letter, the Density Bonus Law ("DBL") does not exempt the Project from CEQA review. The court of appeal has held that the City must comply both with CEQA and the DBL. (*Wollmer v City of Berkeley* (2011) 193 Cal.App.4th 1329, 1349.)

A. CEQA Review is Required Because the Site is Heavily Contaminated with Toxic Chemicals and is Adjacent to a Children's Playground.

1. <u>The Site Mitigation Plan was prepared for an entirely different, smaller project, and is patently inadequate since it does not even analyze the entire site.</u>

As discussed in our prior letter, the Project site is contaminated with highly toxic chemicals, including hexavalent Chrome VI and thallium exceeding regulatory screening levels. Soil vapor beneath the site is impacted with volatile organic compounds (specifically, PCE or tetrachloroethylene) at concentrations exceeding regulatory screening levels. This is particularly concerning since the Project will involve extensive soil excavation adjacent to the Betty Ann Ong Recreation Center.

The City seeks to rely on a Soil Mitigation Plan ("SMP") to address the risks of the Project. However, the SMP was prepared for a different, smaller project and did not even test the soil in most of the area that will be disturbed by Project construction. As such the SMP is patently inadequate to reduce risks to less than significant levels.

As shown in the diagram attached as Exhibit E to the May 17, 2023 appeal letter, the SMP only covers a small portion of the site. The proposed Project is going to cover the entire site and no samples were taken from the rear of the site which encompasses over half of the site. The CEQA document therefore fails to adequately describe the Project's environmental setting, which is an essential element for any CEQA document. (14 C.C.R. § 15125(a)).

Moreover, the SMP states:

> ***This SMP is based upon current conditions*** at the Site known by EIS in regard to current laws, policies, and regulations. ***No representation is made to any present or future developer or property owner of the Site or portions of thereof with respect to future conditions***, other than those specifically identified in this SMP.[1]

Given that the SMP was not prepared for the current proposed Project, fails to consider a large portion of the current Project site, and clearly states that the mitigation plan should not be relied upon to determine future conditions, as is the case here, the SMP is inadequate and should not be relied upon to mitigate the Project's significant impacts from contaminated soil on the site.

Rather than preparing an initial study for the public under CEQA to investigate the extent of site contamination and associated potential health risks, the Planning Department's exemption document pointed to the developer's site mitigation plan to provide a "decision framework and specific risk management measures for managing soil and soil vapor beneath the Site." While the

[1] SMP at p. 14 (emphasis added).

SMP contains mitigation measures, they are inadequate to ensure that all contamination will be remediated to less than significant levels. For example, the SMP inadequately mitigates soil-vapor impacts. The Project would include a subgrade bedroom. To address the potential for vapor intrusion of PCE into indoor airspace, the SMP would provide for a vapor intrusion mitigation system (VIMS) to be installed within the subgrade following excavation. A deed restriction would be required to ensure the proper operation and maintenance of the planned VIMS.

Environmental experts, Dr. Paul Rosenfeld and Hydrogeologist Matthew Hagemann concluded that the mitigation measures should be analyzed in a CEQA document for adequacy. A CEQA document should be prepared to ensure that the mitigation measures are adequate and also to ensure that they are enforceable. Mr. Hageman and Dr. Rosenfeld also reviewed the Project materials and concluded that the CEQA exemption underestimated and inadequately addressed the health-risk impacts associated with construction and operation of the proposed Project, and impermissibly relied on a mitigation plan.[2] They also concluded that the SMP's mitigation measures are inadequate to reduce risks to a less than significant level and additional mitigation is necessary. SWAPE recommended that a full CEQA analysis be prepared to adequately assess and mitigate the potential impacts from the hazardous materials at the site.[3]

The presence of hazardous substances is an environmental issue that must be addressed at a Project's outset, and cannot be deferred to a future time to avoid CEQA review. *McQueen v. Bd. of Directors* (1988) 202 Cal. App. 3d 1136, 1148. By including mitigation measures for future remediation of existing soil contamination as a Use Permit condition, the City improperly deferred detection and mitigation of hazardous substances to a future time.

For example, regarding soil vapor contamination, the SMP stated that the "source and full extent of these impacts is currently unknown".[4] Were excavation of the site to occur, visual and olfactory observations indicative of contamination "if a significant issue" would trigger "environmental professional and/or appropriate regulatory agency" notification.[5] In lay terms, this would be far too little, far too late. In scientific terms, SWAPE's expert opinion is that this measure would present a risk that construction workers may not have a sufficiently fine sense of smell to detect these toxic chemicals. Furthermore, since thallium and chrome VI are tasteless and odorless, relying on "olfactory" and "visual" observations will not detect this chemical.[6] In legal terms, this measure constitutes improper deferral of mitigation since it relies on future "visual and olfactory observations" to develop as yet undefined mitigation measures. A CEQA document must be prepared to address and mitigate the significant impacts of the Project.

[2] Exhibit. A at p. 1.
[3] *Id.*
[4] SMP at p. 4.
[5] SMP at p. 10.
[6] https://www.cdc.gov/niosh/ershdb/emergencyresponsecard_29750026.html#:~:text=Thallium%20is%20tasteless%20and%20odorless,amounts%20in%20the%20earth's%20crust; https://www.atsdr.cdc.gov/toxfaqs/tfacts7.pdf.

2. <u>The Maher Ordinance cannot substitute for CEQA review.</u>

The Planning Department has incorrectly relied on the Maher Ordinance as an adequate substitute for CEQA review. This ignores the law. The Maher Ordinance has no mechanism for public review of clean-up plans or public participation in environmental reviews. Decisions are made by unaccountable staff with no appeal available to elected or appointed decision-makers. As discussed above and in Appellant's May 17, 2023 appeal letter, contaminated soil on the Project site poses significant health risks to construction workers, future residents, or users of the adjacent playground. As such, the Maher Ordinance does not provide an adequate substitute for CEQA review.

The record is tragically replete with examples of City staff turning a blind eye, misleading the public, or apparently covering up evidence of contamination at numerous development sites in San Francisco over the years, leading to disastrous and irreversible consequences to public health. There are several examples of the City improperly relying on the Maher Ordinance to exempt residential development projects from CEQA that posed significant health risks to workers and residents from soil contamination in violation of CEQA and Article 22A of the San Francisco Health Code.

City staff has conducted patently inadequate clean-up plans under the Maher Ordinance at Hunters Point, Treasure Island and other sites, leading to disastrous consequences. Most recently, is the case of the residential project located on 2800 block of San Bruno Avenue in San Francisco, it appears that toxic chemicals were not adequately cleaned-up, despite a large residential project being built on the property.[7] This is precisely why public oversight under CEQA is so important.

Under CEQA, the public has a "privileged position" in the environmental review process. As the California Supreme Court has stated:

> The 'privileged position' that members of the public hold in the CEQA process ... is based on a belief that citizens can make important contributions to environmental protection and on notions of democratic decision-making … This process helps demonstrate to the public that the agency has in fact analyzed and considered the environmental implications of its action.[8]

In the case of San Francisco, the Maher Ordinance does not provide for the public participation and involvement that is so central to CEQA, and it therefore does not provide an adequate substitute to CEQA review. The Supreme Court has also determined that other environmental laws may not substitute for CEQA. For example, the Supreme Court held that the State Board of Forestry's Timber Harvest Plan program did not exempt the agency from CEQA

[7] *See* Exhibit 2, https://www.sfchronicle.com/bayarea/article/sf-developers-troubled-housing-fix-problems-17920452.php.
[8] *Concerned Citizens of Costa Mesa v. 32nd Dist. Agric. Assn*., 42 Cal. 3d 929, 936 (1986).

review. *Sierra Club v. State Bd. of Forestry*, 7 Cal. 4th 1215, 1231 (1994). As such, the City's Maher Ordinance does not exempt the City from compliance with CEQA.

B. CEQA Review is Required Because the Project will Cast Significant Shadows on the Betty Ann Ong Recreation Center.

As discussed in our letter of May 17, 2023, CEQA review is required because the Project will cast shadows on the Betty Ann Ong Recreation Center. Prop K was passed by the voters of San Francisco in 1984, and is codified at Planning Code section 295. Under Prop K, a proposed building that casts a shadow on a park operated by the Recreation and Parks Department has a significant adverse environmental impact.

As shown in the shadow fan analysis submitted with our prior comment, the Project will cast very significant shadows on the Betty Ann Ong Recreation Center. We submit herewith, a supplemental shadow analysis that shows that the shadow impacts will actually be much greater than shown in the prior shadow analysis. The earlier study understates the shadow impacts because it assumed that the entire Recreation Center property is open space, which distorted the results. That analysis has now been corrected and the results have been included in an updated shadow analysis attached as Exhibit 1 to this letter. The updated study demonstrates the percentage change in shadow on the play areas only. It is particularly compelling because the updated diagram shows almost the entire play area would be covered in shadow.

The developer claimed that the shadowing is acceptable because the Project, as proposed, would cast the same shadow as a code-compliant proposal. But that is no answer. All projects that cast shadow on a public park have a significant impact under Prop. K, regardless of whether the project is code-compliant. Even a project that is 40-feet may have a significant shadow impacts if it cast significant shadow on a public park. Therefore, the Planning Department must prepare a CEQA document that includes this potentially significant project impact, and considers alternatives to reduce the impact.

II. THE CITY SHOULD NOT APPROVE THE PROJECT BECAUSE IT WILL HAVE SPECIFIC ADVERSE IMPACTS ON HEALTH, SAFETY, AND THE PHYSICAL ENVIRONMENT.

A. The City Should Deny the Project and the Requested Zoning Waivers Because the Project will have Specific Adverse Impact Upon Health, Safety or the Physical Environment, which have not been Adequately Mitigated.

The State Density Bonus Law ("DBL") provides that the City is not required to approve a project or grant waivers from zoning requirements, if the Project or requested waivers will have a "specific adverse impact … upon health, safety, or the physical environment, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact."[9] City

[9] Gov't Code § 65915 (e)(1).

staff erroneously instructed the Planning Commission that they were required to approve the Project under the Density Bonus Law. This is incorrect, the City need not approve the Project if there is evidence that it will have a "specific adverse impact … upon health, safety, or the physical environment, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact."[10] While staff mentioned the exception for health and safety, they conveniently neglected to mention the "physical environment" exception. Therefore, the Planning Department misapplied the Density Bonus Law to the Project.

As discussed below and in Mr. Timbrell's May 17, 2023 appeal letter, there is expert opinion and other evidence showing that the Project will pose significant impacts to health, and safety due to access limitations for firefighters, hazardous soils and vapor contamination, air pollution, and steep slope and seismic concerns. More specifically, and as discussed in further detail below, there is evidence of significant environmental effects due to construction-air quality impacts. The parcel itself is also contaminated with hazardous materials that could pose health risks to construction workers, future residents and children playing at the Betty Ann Ong Recreation Center. The Project would impact fire protection services because of its highly unusual design of a single building containing 10 four-story residential units on a narrow and small parcel, accessible only by a steep, 5-foot-wide, 137-foot-long pathway; this would be atypical even by San Francisco standards. Also, it is subject to slope stability and liquefaction impacts. Finally, shadow impacts on the Betty Ann Ong Recreation Center would pose a significant effect in violation of San Francisco's Prop. K.

Because there are "specific adverse impact[s] upon health and safety… and the physical environment," the Board should not grant any concessions or waivers for the Project and should deny Project approval.

1. The Project will have significant adverse impacts on the physical environment due to emissions of diesel particulate matter.

The Planning Department's draft categorical exemption admitted the Project has the "potential to emit substantial pollutant concentrations from the use of diesel construction equipment, backup diesel generators, heavy industry, diesel trucks."[11] Thus, the City should not approve the Project or its requested waivers because it will have a significant adverse impact on the physical environment. Gov't Code § 65915 (e)(1).

2. The Project will have significant adverse impacts on health as a result of unmitigated soil and vapor contamination at the Project site.

Since the Project will have significant adverse impacts on health and the environment from unmitigated soil and vapor contamination on the Project site, the City should not approve the Project or grant the requested waivers from zoning requirements. Gov't Code § 65915 (e)(1).

[10] Gov't Code § 65915 (e)(1).
[11] Categorical Exemption at p. 2.

3. The Project will have significant adverse impacts on safety because the site is located in San Francisco's slope and seismic hazard zone.

The Project will result in significant adverse impacts to safety because the Project site is located in San Francisco's slope and seismic hazard zone. The City should therefore not approve the Project or grant the requested waivers from zoning requirements. Gov't Code § 65915 (e)(1). San Francisco's Slope and Seismic Hazard Zone Protection Act ("SSPA") applies to all properties that exceed an average slope of 4H:1V (25%) or fall within certain mapped areas of the City. A review of the Planning Department maps makes clear the subject property is within an identified hazardous zone. The Planning Department's draft exemption recognized the Project would be subject to the SSPA. Per the exemption's screening assessment: The average slope of the parcel is equal to or greater than 25%,[12] and the project involves new building construction, and construction would excavate more than 50 cubic yards of fill (approximately 130 cubic-feet in this case). In addition, San Francisco's Seismic Hazard Zones Map indicates that the front portion of the site is located in an area that is potentially susceptible to liquefaction during a major earthquake.[13]

The developer's geotechnical study identified four seismic and/or slope concerns:

- The thickness of the undocumented and variable fill (up to about 30 feet deep below existing site grades) across the site, which may be prone to sloughing or caving;
- The proximity of the existing, neighboring 6 to 20 feet high retaining wall along the eastern property line;
- The presence of the loose to medium dense sands that are potentially subject to dynamic densification following a strong seismic event, i.e., up to 4 inches of settlement estimated;
- The potential for severe ground shaking at the site during a major earthquake.[14]

To address the Project's numerous and complex landslide and seismic concerns, the developer's geotechnical study contains ten pages of recommendations to mitigate potential impacts. The Planning Department may not approve a project if there is evidence that it will have significant effects on safety requiring mitigation. These risks allow the City to deny approval of the Project and its requested zoning waivers. Gov't Code § 65915 (e)(1).

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[12] "Topographic Map of San Francisco," *see* https://s3.amazonaws.com/sfplanninggis/Slopes+Poster_lowRes70DPI.pdf; in addition, the PIM mapping designates the site as having slopes of 25 percent or greater, *see* https://sfplanninggis.org/pim/map.html?search=1151%20WASHINGTON%20ST&layers=Slope%20of%2025%20percent%20or%20greater.

[13] California Division of Mines and Geology, 2001.

[14] Geotechnical Investigation, prepared for Davis Townhome Development at p. 9 (Nov. 2022).

4. <u>The Project will have significant adverse impacts on safety due to inadequate firefighter access and emergency escape options.</u>

The Project's design poses significant adverse impacts to the safety of both residents and firefighters. Therefore, the City may decline to approve the Project and its requested waivers from zoning requirements. Gov't Code § 65915 (e)(1). According to the Project's plans, the proposed townhomes would be built front to back, north to south. The building itself would be 12,312 square-feet on a steep, 3,571 square-foot, exceedingly narrow parcel. Also, egress and ingress would be via a 5-foot-wide, 137-foot-long alleyway with eight flights of stairs. No other means of access are provided. Were a fire to occur in one or more of the front townhomes, residents living behind a burning unit would have no means of escape. Residents would be forced to run towards the fire, down a total of eight flights, and make their way down a 137-foot-long alley before reaching Washington Street.

As discussed in the expert comments of Burtt Engineering and Construction, included as Exhibit F to Appellant's May 17, 2023 appeal letter, California's Building Codes expressly prohibit such dangerous conditions by requiring two exits, or special exit-access doorways from spaces who share a common path of egress over a certain distance.[15] A path of 137-feet exceeds the 125-foot maximum travel distance for fire and life safety.[16] The Project's proposed exit route is unsafe, hazardous, defies common sense and cannot be approved.

Equally concerning and noncompliant is the absence of proper firefighter access and emergency escape options to and from each of the townhomes' upper floors, keeping in mind each unit will have four stories. In California, upper floor bedrooms are required to have emergency escape and rescue windows. This requirement allows residents to escape should a fire occur, and also provides firefighters with access to windows to contain fires as quickly as possible.[17]

Finally, California's Fire Code is specific about access for firefighters' ladders, and properties must provide approved access walkways where required by fire officials. The California Fire Marshal requires that rescue windows be accessible using ground ladders.[18] Firefighters must be able to place their ladders at the access walkway at an angle no greater than 70° from horizontal, approximately 8 feet from a building, which would be impossible on the proposed 5-foot-wide path.

The above-described Project flaws would pose unacceptable safety risks to both residents and firefighters. As such, the City should deny Project approval and deny the requested zoning waivers. Gov't Code § 65915 (e)(1).

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[15] CA Building Code § 1028.1; *see also* Table 1006.3.4.
[16] *Id.*
[17] CA Fire Code § 504.1.
[18] *See* Cal Fire Interpretation 18-005; https://osfm.fire.ca.gov/divisions/code-development-and-analysis/code-interpretations/all-code-interpretations/.

B. The Planning Commission Prejudicially Abused its Discretion by Failing to Exercise the Discretion Conferred on Them by the State Density Bonus Law to Disapprove a Project that Will Have Specific Adverse Impacts on Health, Safety, and the Physical Environment.

The Planning Commission prejudicially abused its discretion by failing to exercise the discretion conferred on it under the State Density Bonus Law. The DBL allows the City to disapprove a project or zoning waivers if the project or waivers will result in specific adverse impacts on health, safety, and the physical environment. Instead, the Planning Commission was misinformed regarding the nature and extent of their authority and discretion to disapprove the proposed Project. As a result, they made their decision to approve the Project and exemption based on a mistaken belief that they did not have the authority to disapprove the Project and exemption under the State Density Bonus Law. *See Bank of Italy v. Johnson* (1926) 200 Cal. 1, 15 [agency "may not . . . curtail the exercise of [its] discretion under [a] statute as to prevent the free and untrammeled exercise thereof" and "may not refuse to exercise the discretion conferred by statute]; *Valley advocates v. City of Fresno* (2008) 160 Cal.App.4th 1039, 1063 [agency "prejudicially abused its discretion by failing to proceed in a manner required by law" because it was "misinformed regarding its discretionary authority"].)

The Planning Commission was wrongly instructed that it was required to approved the Project under the DBL, when in fact, it had discretion to disapprove the Project and its waivers since the Project will have significant impacts to health, safety and the environment. Since the Planning Commission failed to exercise its discretion, it abused its discretion in approving the Project and the requested zoning waivers.

III. CONCLUSION

The Planning Commission improperly exempted the proposed Project from CEQA review. The Project does not meet the requirements for a Class 32 Infill Exemption. Accordingly, we respectfully request that the Board of Supervisors grant this appeal and direct the Planning Department to prepare an initial study followed by a mitigated negative declaration or EIR. The City may and should deny approval of the Project and the requested zoning waivers because the Project will have "specific adverse impact … upon health, safety, or the physical environment," which have not been adequately mitigated.[19] CEQA document must analyze the Project's health, safety, and environmental impacts and propose feasible mitigation measures and alternatives. Thank you for considering these comments.

[19] Gov't Code § 65915 (e)(1).

Sincerely,

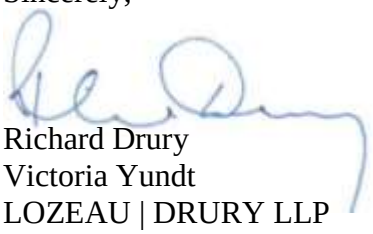

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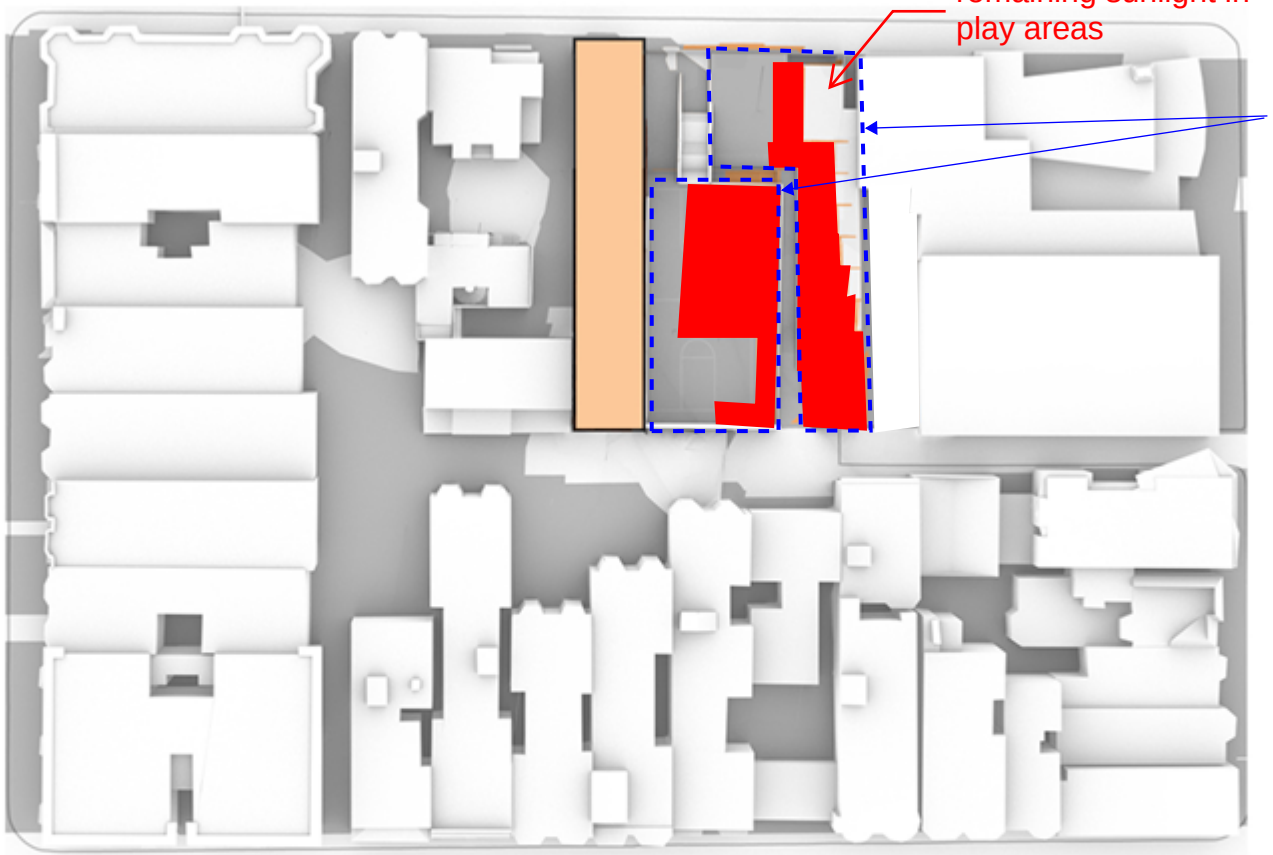
EXHIBIT 1



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LEGEND

Existing Structures

Existing Shadows

Approved Proposal

Approved Proposal's Net New Shadow

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EXHIBIT 2

Most Popular

1. Clear ice cubes make cocktails taste better. Really
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BAY AREA

Violations, fines and a lawsuit: S.F. builder is trying to clean up troubled housing project. Can it be fixed?

St. John Barned-Smith

Updated: May 5, 2023 6:50 p.m.

1 of 4

A city-ordered temporary emergency staircase was built at the rear of an apartment complex on San Bruno Avenue in the Portola District of San Francisco.

Stephen Lam/The Chronicle

When they found the apartment on San Bruno Avenue in San Francisco back in 2017, Kwong Ying Yu, then 79, and his wife, Kam To, 71, were excited.

The complex seemed affordable and took Section 8 vouchers, which subsidize low-income people to live in market-rate buildings. The couple are non-English speakers, and their new landlords were Chinese.

“We didn’t think twice,” Yu said, as his daughter translated.

The former restaurant worker and his wife moved in, happy to find a home in San Francisco he could afford that would allow him to be near his daughter and other relatives.

But Yu soon learned that his new apartment in the Portola neighborhood was too good to be true. His landlords had flouted city building rules, resulting in unsafe living conditions for Yu and his neighbors — many of whom are monolingual and low income.

The owners illegally built 29 apartment units in a series of adjacent buildings on San Bruno Avenue when they’d been permitted to build 10, and failed to build a required second exit for tenants, creating a potential firetrap, authorities said.

After years of negotiating with city officials, building owners Thursday received permission from the city’s planning commission to begin work to legalize the troubled property on the 2800 block of San Bruno Avenue.

The move is the latest in a fiasco now a decade in the making. Owners Tam Yin Kwan, Lee Yun Ling, Cindy Zhou, Tong Yin Kai Ton and Dufin Tsang first obtained permits in 2013 for five four-story buildings, which would have included retail and office space as well as 10 apartments.

The project became mired in scandal after a corrupt senior building inspector improperly signed off on the property’s final inspection in 2017. In 2018, inspectors investigated a complaint and discovered the building’s owners had gone rogue, building a project out of line with what was approved.

For instance, investigators found in 2018 that developers had built 30 apartment units in the buildings, splitting larger residential units into smaller ones; and converting office space into other apartments. Contractors had installed electrical piping and plumbing without proper permits; and it was also unclear if the site, built on a former gas station, was even safe from contamination. Officials said the owners engaged in “extensive unlawful construction” without a permit, and deviated from approved plans on the facade, design features, parking, stairs, restrooms, driveways and landscaping.

Investigators also discovered that a now-disgraced city official had signed off on the final inspection on the building without conducting other necessary building inspections. The official, former senior inspector Bernard Curran, pleaded guilty to corruption charges and is awaiting sentencing in federal court.

Ryan Patterson, an attorney representing owners of the troubled project, declined to say Thursday why his clients had deviated from the plans they initially had shown the city, but said his clients are "committed to complying with all applicable laws and regulations to ensure the safety and long-term success of the property."

He said that after the city raised concerns about the project, his team submitted "at least 22 different building plan sets including a carefully constructed proposal to legalize virtually all housing units built and ensure safety."

"It is unfortunate that proposal was rejected," he said, "but we look forward to completing the work required and appreciate that today's proposal was approved."

At Thursday's hearing, commissioners expressed shock over the project, including new revelations that the developers appeared not to have completed soil mitigation required on the former gas station site.

Commissioners ultimately agreed to approve the developer's request for a conditional use authorization that would allow them to obtain permits necessary to begin renovating the units in a way that would conform to the project's original proposal. While some tenants have left and their units remain vacant, at least 40 people still live in the buildings.

It will likely take years before the work is completed, Commission Vice President Kathrin Moore said.

"We're talking easily another three to four years, if not longer, before anyone can consider moving back into these units," she said, calling the situation "completely untenable."

The scandal comes amid an ongoing public corruption probe in San Francisco government that has resulted in criminal charges against more than a dozen former city officials, local developers, permit expediters and other contractors. It highlights the challenges the city faces in providing adequate housing for its most vulnerable residents, while holding bad actors accountable and deterring future fraudulent behavior.

"These owners completely flouted the process, and now it's causing a lot of people to have to lose their housing," said Mark Hooshmand, an attorney representing dozens of the property's tenants.

Neighborhood residents are furious, said Alex Hobbs of the Portola Neighborhood Association. When developers first unveiled their plans for the project, neighborhood residents hoped it would be a badly needed investment in a community that has long felt overlooked. But it soon became clear that developers were building something dramatically different from what was approved.

“It was clear the concept was to fill as many units as possible with as many people as possible, because the city wouldn’t evict them because we’re in a housing crisis,” Hobbs said. “That’s what is happening. People are living there, fighting for their homes. But if you allow that, the developers have won.”

Hobbs argued that the building, which is potentially unsafe, should be razed and the residents relocated at the owners’ expense.

“It’s highly disturbing that this building has not been condemned and torn down,” he said.

The city has been trying to clean up the mess, balancing holding the owners accountable with protecting tenants living in the property.

“There were far more people living in these buildings than the code allows for how they were designed, approved or built,” Department of Building Inspection spokesman Patrick Hannan said in an email. Inspectors ultimately issued 16 violation notices and assessed $27,000 in code enforcement fees, though more may be coming.

The city attorney sued the developers and ultimately settled the litigation for $1.2 million.

Inspectors also required the owners to install scaffolding to give tenants a second way out of the building. The scaffolding has remained there, marring the streetscape, for years.

“This story is not over,” said Dan Sider, chief of staff of the city’s planning department. “The settlement is one piece of this puzzle — there will be very clearly major costs the developer will have to bear here to make this right. Potentially through legal costs, construction costs, or the tenant relocation process.”

Residents last month sued the owners, citing negligence and breach of contract, and alleging apartments “were built with substandard conditions and many lack heat,” and arguing that the owners’ failure to correct code violations caused undue stress and anxiety.

Supervisors Hillary Ronen and Shamann Walton recently proposed giving tenants displaced from illegal units preference in the city’s affordable housing programs.

“With good legal representation and the increased opportunity to access permanent, affordable housing elsewhere in the City,” she said, “the tenants will get some justice out of a horrible situation.”

Now, the property owners want to revert it to how it should have been built originally. But critics worry allowing them to do the work essentially rewards bad actors.

“These guys should be required to provide housing for all the people they suckered into their illegal, dangerous units,” Supervisor Aaron Peskin said. “They knew what they were doing. They should be made to suffer the consequences.”

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