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

September 15, 2014

RE: **SUPPLEMENTAL STATEMENT IN SUPPORT OF APPEAL-CONDITIONAL USE AUTHORIZATION**
2785 San Bruno Avenue—Special Order September 20, 2016---3:00pm
BOS File No. 160918, Planning Case No. 2014-003173CUA Appeal of Conditional Use Authorization Permitting the
Demolition of Sound Affordable Rent-Controlled Housing

President Breed and Members of the Board:

Introduction

This Supplemental 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. We have previously submitted to Planning a Petition signed most of the immediate neighborhood residents opposing the project as incompatible with the neighborhood and an improper use of the conditional use procedure. With this appeal, the neighbors submitted the signatures from the neighboring property owners representing more than 56% of the area within the 300-foot radius of the subject property. (only 20% needed to qualify the appeal).

In opposition to the neighbors' appeal the Dept. and the Developers take an unusual and completely improper tactic----they want to change the underlying facts of the Appeal as presented to the Planning Commission and as set forth in the application itself. The reason is simple. After receiving the Appeal brief the Dept. and the Developers now realize that the conditional use authorization was improperly granted to demolish two sound affordable (and occupied) rent controlled units. So now they come forward with a brand new theory that the second unit at the site is not really a unit because it does not have a kitchen…. therefore, they reason, both units may be demolished.

This tactic to try and change the underlying facts on an appeal is unprecedented and completely improper. The Dept. cannot simply change the underlying operative facts of a conditional use application at the appeal stage and thereby present to the Board a different set of "facts" than that presented to the Planning Commission for the underlying decision. As noted below, the "new evidence" (that the second unit has no kitchen) is completely false and is obviously a clumsy attempt to circumvent the law and important housing policies protecting affordable, rent controlled housing. The Board must stand up and reject loud and clear such a bizarre and desperate fraud and grant the appeal to save these valuable units of housing.

1. The Dept.'s (and Developer's) Written Responses Falsely and Improperly Attempt to Alter the Underlying Facts and Record on Appeal and Attempts to Present a Completely Different Factual Scenario to the Board Than That Which was Presented and Ruled Upon by the Planning Commission

The application filed by the developers states and the Planning Commission was told that there are two units at the site –one single family home and an "unauthorized unit." As typically happens all over the City, there is an in-law unit in the garage, constructed without permits but which has been continuously occupied (and is still occupied). All of the analysis done by the Dept. was based on these facts and the neighbors are keenly aware that there are two units at the site and have been for years. As pointed out in the Appellants' supporting documents, this fact (two units) has the following legal and policy ramifications:

a. The units are covered by the Rent Control Ordinance—a single family home with a second unit (even an unauthorized unit) falls within the protections of Rent Control;
b. Demolishing such units destroys "naturally affordable" sound rent-controlled housing and violates the overwhelming weigh of the General Plan Policies, Housing Preservation Policies, the Mayor's Executive Directives and every plan and policy in place (or contemplated) to attempt to address the affordability crisis that has been wreaking havoc with our City.
c. The Dept. (and the Commission) failed to follow the new mandatory provisions of the Planning Code at Section 317(g)(6) (amended March 1, 2016) designed to save unauthorized housing units because of the affordability crisis.

Rather than accept that the project was approved in error and the Dept. failed to even follow the straightforward analysis proscribed by the Code, now the Dept. and the developers take the unusual and completely unprecedented step of attempting to falsely change the underlying facts of the appeal---without explanation. The letter submitted to the Board by the Planning Dept. admits that the Dept. and the staff found there was a second unit at the site on July 14, 2016, at the time of the Planning Commission hearing but that since that time, "*additional evidence provided since the hearing*" now convinces the Dept. otherwise. (Planning Dept. Response Letter dated September 12, 2016, page 2, footnote 1).

No explanation is provided as to what the "additional evidence" consists of, where it came from and why it was not produced over the past year while the application was pending. The mysterious "additional evidence" is not provided to the Board of Supervisors or to Appellants in the material filed by the Dept.

The Developers' attorney takes a different approach he filed opposing the Appeal. The Developers starkly claim there is no additional unit and there never was such a unit; the developers' representative then attacks counsel for the Appellants personally (over and over again) claiming that Appellants' "theory" of an unauthorized unit is "fanciful"

and "unsupported by any City law or City Planner." (Reuben, Junius & Rose brief, page 2, paragraph #2). Of course, all of this nonsense and bluster completely ignores the fact that the existence of the unit was part of the analysis by the Dept. and was submitted as a fact at the Planning Commission. The developers' representative, attorney David Silverman also offers no explanation for the sudden change in the facts by the developers and fails to explain the missing unit except to attack the appeal as "based on deception and misrepresentation." (RJR brief Page 13).

2. The In-Law Unit Had a Kitchen Until It Was Removed by the Developers in Order to Obtain Authorization to Demolish Both Naturally Affordable Sound Rent Controlled Units -----Appellants Hereby Submit Irrefutable Photographic Evidence to Confirm the Kitchen was Removed from the Unit

The only explanation offered by the Department and the Developers as to why the second unit at the site is suddenly now, not to be considered a housing unit is an unsupported claim that the unit has no kitchen. (Planning Dept. Letter page 7 second paragraph; RJR brief page 2 paragraph #2 and page 3 & paragraph # 7). Of course it has no kitchen! The Developers removed the kitchen hoping to slip the application by the Dept. and hoping to avoid the policies of the City that forbid the demolition of this housing!

The assertion that the unit has no kitchen is a complete misrepresentation of the actual facts surrounding the second unit at the site. As shown in the attached drawing from the Developers' application, (Exhibit 1) the existing floor plan has a second unit which is attached to the main unit and shares an attached wall with the unit. This in-law unit has a bathroom, a kitchen and a bedroom (labeled "workshop"). It has a separate accessible entrance (Exhibit 2) and is independent of the main residential unit. There is no open visual connection to the main residential unit on the property. There is no question this unit meets ALL the criteria for a viable unauthorized unit set forth in Section 317.

The photographs following the drawing clearly show where the stove/oven was removed (Exhibit 3 &4). The gas line connection for the stove is still in the wall (Exhibit 5) and the oven exhaust fan and Hood is still attached to the wall above where the stove used to be. As evidenced by Exhibit 5, there are obvious stains on the wall from where the stove was located and the stains are further evidence of heavy and long term use. The assertions by the Dept. and the developer that the unit had no kitchen is simply and completely false and the attached photographs prove beyond any and all doubt that the unit was separate independent and fully equipped.

The series of attached photographs was taken this week by one of the neighbors on September 12, 2016, showing the subject second unit. Obviously the kitchen was fully equipped with a stove/oven and the gas connection pipe is still present and protruding from the wall. There is a range hood directly above where the oven was before it was removed by the Developers. Further the developers brief flatly asserts that the second unit is a "workshop" and that no one can sleep or live in the "workshop" as a separate

dwelling unit. (RJR brief page 3 paragraph #7). This is a direct misrepresentation of the true facts. There are tenants currently living in the unit and the neighbors were able to speak with them and take photographs of the separate entrance to the unit from San Bruno Avenue (Exhibit 2) and take photographs of the kitchen (Exhibits 3,4 &5) and the bedroom (Exhibit 6) which Mr. Silverman directly misrepresents as a "workshop". The bed is visible and the tenant's clothing and other personal effects make it crystal clear this was a separate in-law unit used for many years before the developers submitted the application to the Dept. to demolish it.

3. The Dept. and the Developers Must Not Be Permitted to Change the Underlying Facts on the Appeal of the Conditional Use Authorization

Attempting to change the underlying facts on appeal, especially the most important operative fact at the time of an appeal flies in the face of every concept of fundamental fairness and due process. On an appeal, the facts and the decision are to remain static and the parties to the appeal are permitted to dispute and argue the application of the laws and policies---only. It is incomprehensible now that the Department wishes to backtrack and completely change its position on the facts after the application has been pending for more than a year with no challenge to the facts and no changes to the application by the Department or the developer.

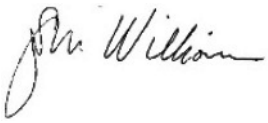
The problem for the opponents of the appeal is that both the Department and the developer know that they are dead wrong on the policies and the applicable law in this instance and they both know for a fact that the retention of these two affordable rent controlled units is mandated by the overwhelming weight of the policies of the Planning Code, the General Plan and all common sense and decency. The Board of Supervisors must not tolerate such absolutely clumsy false representations placed before it in this instance. At a minimum, the project has to be returned to the Planning Department for an analysis under the true facts of the situation. The Department's position makes no sense at all. At the time the application was reviewed by the Dept., the application was submitted as having two units at the site. In that situation before the Planning Commission, the Department failed to apply the new provisions of the Planning Code applicable to unauthorized units at a time when the Dept. was acknowledging the fact that the building has an unauthorized unit in it!

The very fact that the Department would attempt to change the underlying facts and would ignore the presence of the second unit at the site speaks volumes about how the Dept. treats affordable rent controlled housing and how easily the Dept. bends to the will of the developers seeking to destroy such units. We all know there is an occupied unit at the site and that the tenants currently living in the units will be displaced if the project is approved. Obviously the housing that will replace these units will be exponentially more expensive that what is currently there. The Board of Supervisors must in this instance show that it is the stopgap and the last line of defense for this crucial and irreplaceable source of housing and must stand up to the nonsense and obvious false information being provided to the Board by the developers and the Dept.

Conclusion

The Proposed Project violates numerous priority policies which mandate that the City, the Board of Supervisors and the Planning Commission must act to save affordable, rent controlled housing---especially in the face of the current affordability crisis. The facts show that there is a separate housing unit at the site and that it had a full kitchen and functioned a viable and independent housing unit until the stove was removed. The Appellants ask that the appeal be granted and that the naturally affordable rent controlled housing be retained at the site.

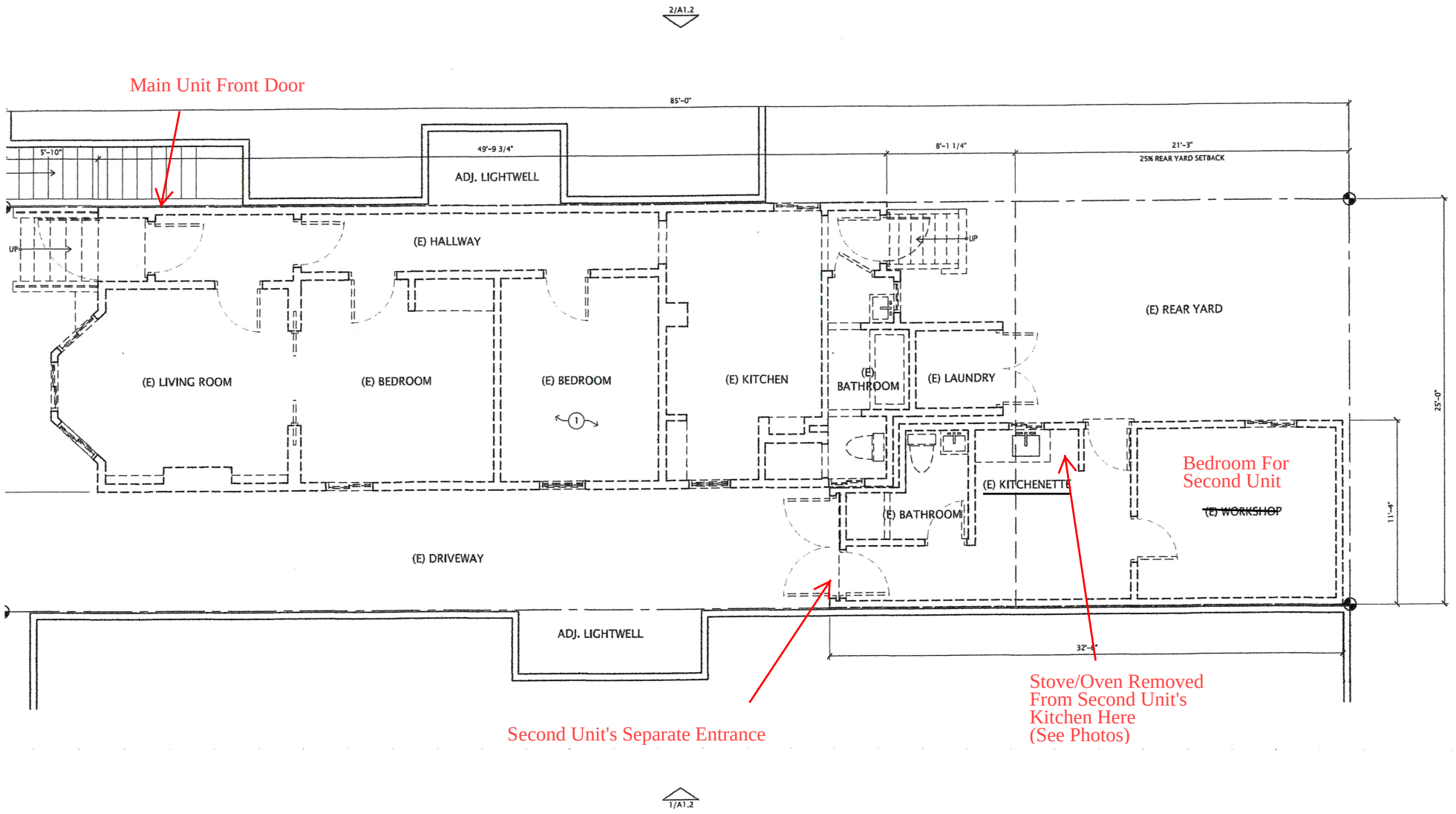
RESPECTFULLY SUBMITTED,



STEPHEN M. WILLIAMS, Attorney for the Appellants

Exhibit 1

2785 San Bruno Avenue Existing Floor Plan from Sponsors' Application



PLAN
1 WALLS TYP.
2 REMOV

Exhibit 2

Separate Independent Entrance To Second Unit at 2785 San Bruno Ave.

Current Tenants Pictured

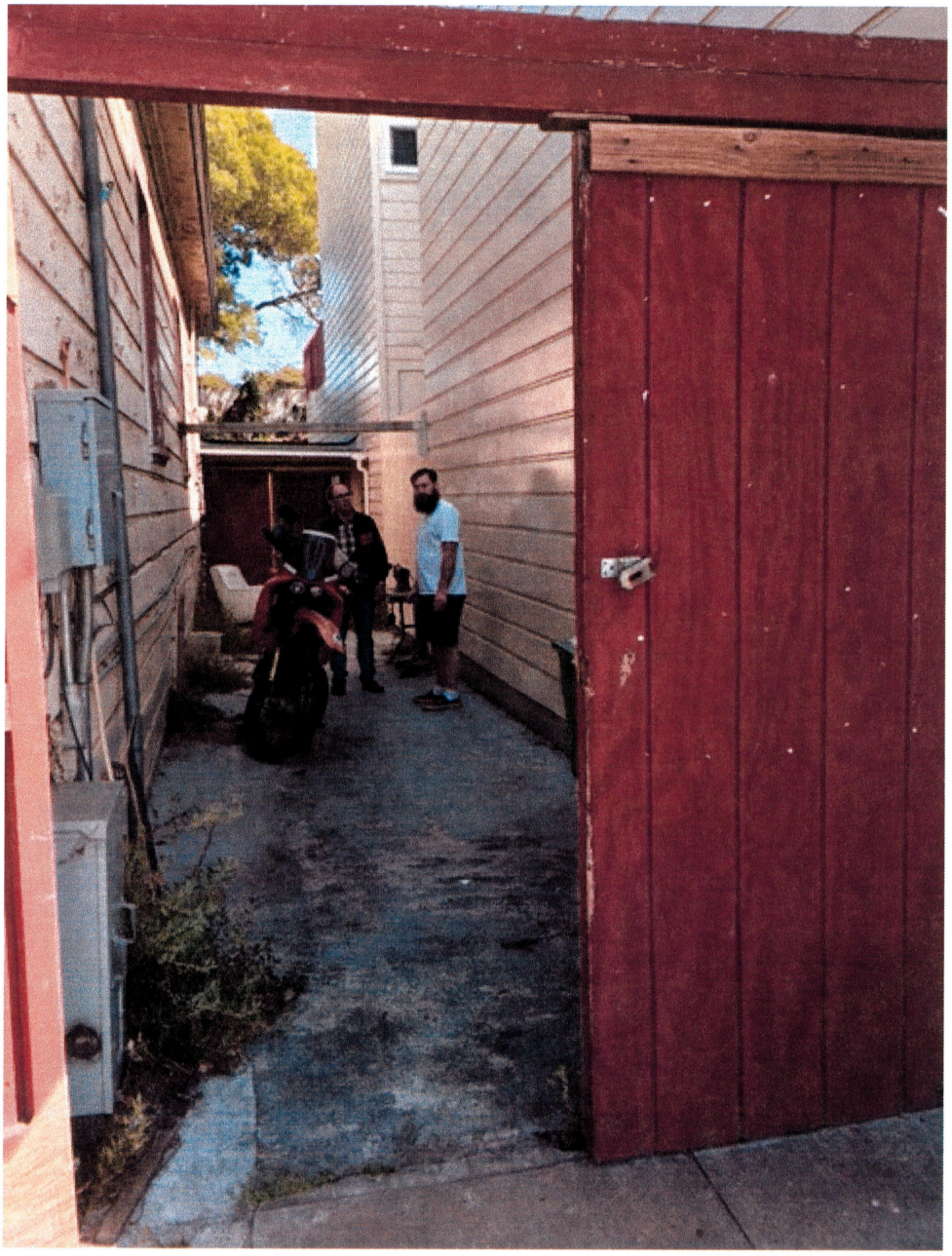


Exhibit 3

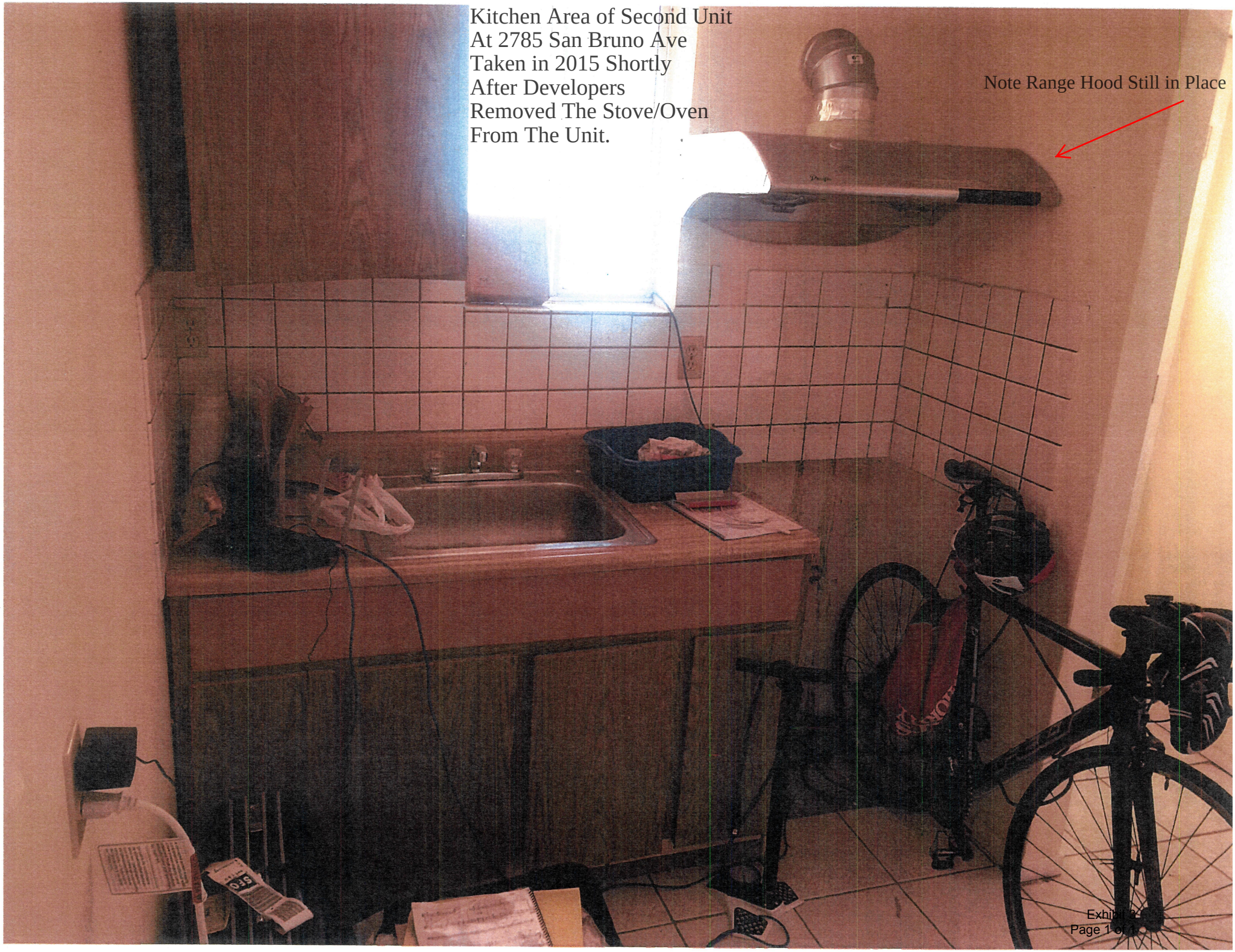

Kitchen Area of Second Unit
At 2785 San Bruno Ave
Taken in 2015 Shortly
After Developers
Removed The Stove/Oven
From The Unit.
Note Range Hood Still in Place

Exhibit 4

Same Kitchen Area In Second Unit
Photo Taken September 12, 2016

Note Range Hood
Still In Place

Exhibit 5

Close Up of Gas Connection Used For Stove/Oven in Second Unit

Note Staining on Wall Showing Heavy, Long-Term Use As A Kitchen

Exhibit 6

Bedroom of Second Unit which Developers Label as "Workshop" on Plans and in Briefs Before the Board