BOARD OF APPEALS, CITY & COUNTY OF SAN FRANCISCO

Appeal of
ABENET TEKIE,)
Appellant(s))
)
vs.)
)
ZONING ADMINISTRATOR,)
Respondent

Appeal No. **22-094**

NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN THAT on December 23, 2022, the above named appellant(s) filed an appeal with the Board of Appeals of the City and County of San Francisco from the decision or order of the above named department(s), commission, or officer.

The substance or effect of the decision or order appealed from is the ISSUANCE on December 22, 2022, of a Letter of Determination (the Zoning Administrator responded to a request for a Letter of Determination regarding the permitted building envelope for RH-1 districts and how these may be impacted by certain State laws; the requestor had questions regarding height, rear yard controls, and local approval discretion, and how these are impacted by certain State laws).

APPLICATION NO. 2022-007996ZAD

FOR HEARING ON February 8, 2023

Address of Appellant(s):	Address of Other Parties:
Abenet Tekie, Appellant(s) c/o Isaac Tolila, Agent for Appellant(s)	N/A

Date Filed: December 23, 2022

CITY & COUNTY OF SAN FRANCISCO
BOARD OF APPEALS

PRELIMINARY STATEMENT FOR APPEAL NO. 22-094

I / We, **Abenet Tekie**, hereby appeal the following departmental action: **ISSUANCE** of **Letter of Determination No. 2022-007996ZAD** by the **Zoning Administrator** which was issued or became effective on: **December 22, 2022**, regarding RH-1 Controls and State Laws.

BRIEFING SCHEDULE:

The Appellant may, but is not required to, submit a one page (double-spaced) supplementary statement with this Preliminary Statement of Appeal. No exhibits or other submissions are allowed at this time.

Appellant's Brief is due on or before: 4:30 p.m. on **January 19, 2023**, **(no later than three Thursdays prior to the hearing date)**. The brief may be up to 12 pages in length with unlimited exhibits. It shall be double-spaced with a minimum 12-point font. An electronic copy shall be emailed to: boardofappeals@sfgov.org, julie.rosenberg@sfgov.org, corey.teague@sfgov.org and tina.tam@sfgov.org.

Respondent's and Other Parties' Briefs are due on or before: 4:30 p.m. on **February 2, 2023**, **(no later than one Thursday prior to hearing date)**. The brief may be up to 12 pages in length with unlimited exhibits. It shall be doubled-spaced with a minimum 12-point font. An electronic copy shall be emailed to: boardofappeals@sfgov.org, julie.rosenberg@sfgov.org and atekie@hotmail.com.

Hard copies of the briefs do NOT need to be submitted to the Board Office or to the other parties.

Hearing Date: **Wednesday, February 8, 2023, 5:00 p.m., Room 416 San Francisco City Hall, 1 Dr. Carlton B. Goodlett Place.** The parties may also attend remotely via Zoom. Information for access to the hearing will be provided before the hearing date.

All parties to this appeal must adhere to the briefing schedule above, however if the hearing date is changed, the briefing schedule MAY also be changed. Written notice will be provided of any changes to the briefing schedule.

In order to have their documents sent to the Board members prior to hearing, **members of the public** should email all documents of support/opposition no later than one Thursday prior to hearing date by 4:30 p.m. to boardofappeals@sfgov.org. Please note that names and contact information included in submittals from members of the public will become part of the public record. Submittals from members of the public may be made anonymously.

Please note that in addition to the parties' briefs, any materials that the Board receives relevant to this appeal, including letters of support/opposition from members of the public, are distributed to Board members prior to hearing. All such materials are available for inspection on the Board's website at www.sfgov.org/boa. You may also request a hard copy of the hearing materials that are provided to Board members at a cost of 10 cents per page, per S.F. Admin. Code Ch. 67.28.

The reasons for this appeal are as follows:

The ZA erred and abused his discretion in certain portions of this Determination.

Appellant or Agent:

Signature: Via Email

Print Name: Abenet Tekie, appellant

San Francisco Planning

49 South Van Ness Avenue, Suite 1400
San Francisco, CA 94103
628.652.7600
www.sfplanning.org

LETTER OF DETERMINATION

December 22, 2022

Abenet Tekie
3739 Balboa Street, Ste 243
San Francisco, CA 94121

Record No.: **2022-007996ZAD**
Site Address: **N/A**
Subject: RH-1 Controls and State Laws

Dear Abenet Tekie:

This letter is in response to your request for a Letter of Determination regarding the permitted building envelope for RH-1 zoning districts and how those may be impacted by certain State laws. More specifically, your request includes a multi-part series of specific questions regarding height, rear yard controls, and local approval discretion, and how these factors are impacted by certain State laws. These questions are summarized below and individually answered.

1. Considering California Government Code Sections 65860, 66300(b)(1)(A), and 65589.5, can the Planning Department deny a building permit that does not comply with either the heigh limits of Planning Code Article 2.5, the 30% rear yard requirement adopted for RH-1 Zoning Districts in 2019 (as compared to the previous 25% requirement), or the Residential Design Guidelines.

   Per Planning Code Section 307(a), the Zoning Administrator has the authority and responsibility to "respond to all written requests for determinations regarding the classification of uses and the interpretation and applicability of the provisions of" the Planning Code. Under the current provisions of the Planning Code, a building permit that did not comply with either the height limits of Planning Code Article 2.5, the 30% rear yard requirement adopted for RH-1 Zoning Districts in 2019 (as compared to the previous 25% requirement), or the Residential Design Guidelines could be denied by the Planning Department.

   Regarding the potential impact of California Government Code Sections 65860, 66300(b)(1)(A), and 65589.5 on the Planning Department's ability to deny a building permit under such scenarios, please note that the Zoning Administrator does not have the authority or responsibility to interpret State law. Please see the various Planning Director Bulletins for more information on how the City currently interprets and implements some or all of the referenced State laws, which may be found at www.sfplanning.org. Any

dispute or final interpretation of State law would be adjudicated through the state court system.

2. Are the additional height controls of Planning Code Section 261(b)(1) inconsistent with the City's adopted General Plan and therefore legally invalid under applicable State law to use to deny a building permit?

   The Zoning Administrator does not have the authority or responsibility to interpret the consistency or compliance of legislative actions with the General Plan. The Planning Commission and Board of Supervisors adopted General Plan consistency findings associated with the referenced legislative actions. Any dispute of such General Plan consistency would be adjudicated through the state court system.

3. Which elements of the General Plan are satisfied, if any, by the more restrictive 35-foot height controls of Planning Code Section 261(b)(1) that aren't already sufficiently served by the 40-foot height limit?

   The Zoning Administrator does not have the authority or responsibility to interpret the consistency or compliance of legislative actions with the General Plan. The Planning Commission and Board of Supervisors adopted General Plan consistency findings associated with the referenced legislative actions. Any dispute of such General Plan consistency would be adjudicated through the state court system.

4. Instead of having the separate, more restrictive 35-foot height controls of Planning Code Section 261(b)(1) for RH-1 Zoning Districts, why doesn't the City instead adopt the height limit as 35 feet instead of 40 feet for RH-1 Zoning Districts?

   While certain height districts are more commonly combined with specific zoning districts, zoning and height controls are separate and do not consistently match across zoning districts. The choice to structure the height and zoning controls in such a manner is under the purview of the Board of Supervisors, with recommendation from the Planning Commission, and is not an interpretation of the Planning Code itself. Therefore, the Zoning Administrator is not the appropriate body to address this question.

5. What height limits are established in the General Plan with respect to RH-1 Zoning Districts?

   While certain height districts are more commonly combined with specific zoning districts, and while the Urban Design element provides guidance on building heights, the General Plan does not formally tie specific height district to specific zoning districts.

6. Why would the City simultaneously enact two inconsistent and conflicting height limits for RH-1 Zoning Districts?

   It is not uncommon for the Planning Code to provide multiple layers of controls, with some being more restrictive than others. This is especially true when one control is more broadly applied (i.e., 40-X Height and Bulk District) and another is more applied in a more limited/targeted manner (i.e., the 35-foot height control for RH-1 Zoning Districts). Regarding the question of "why," the choice to structure the height controls in such a manner is under the purview of the Board of Supervisors, with recommendation from the Planning Commission, and is not an interpretation of the Planning Code itself. Therefore, the Zoning Administrator is not the appropriate body to address this question.

7. Ordinance No. 206-19 took effect on October 14, 2019 and, among other amendments, increased the rear

yard requirement of Section 134 from 25% of the lot depth to 30% of the lot depth for RH-1 Zoning Districts. Would enforcing that increased rear yard requirement violate SB 330 (Housing Crisis Act of 2019 – CA Government Code Sec. 66300(b)(1)(A))?

Per Planning Code Section 307(a), the Zoning Administrator has the authority and responsibility to "respond to all written requests for determinations regarding the classification of uses and the interpretation and applicability of the provisions of" the Planning Code. Under the current provisions of the Planning Code, a building permit that did not comply with either the height limits of Planning Code Article 2.5, the 30% rear yard requirement adopted for RH-1 Zoning Districts in 2019 (as compared to the previous 25% requirement), or the Residential Design Guidelines could be denied by the Planning Department.

Regarding the potential impact of California Government Code Sections 65860, 66300(b)(1)(A), and 65589.5 on the Planning Department's ability to deny a building permit under such scenarios, please note that the Zoning Administrator does not have the authority or responsibility to interpret State law. Please see the various Planning Director Bulletins for more information on how the City currently interprets and implements some or all of the referenced State laws, which may be found at www.sfplanning.org. Any dispute or final interpretation of State law would be adjudicated through the state court system.

8. Is the failure of a building permit to meet the Residential Design Guidelines a valid basis to deny the permit for a lot in the RH-1 Zoning District if that permit is subject to the Housing Accountability Act (Government Code Sec. 65589.5)?

   See the answers to Nos. 1 and 7 above.

Please note that a Letter of Determination is a determination regarding the classification of uses and interpretation and applicability of the provisions of the Planning Code. This Letter of Determination is not a permit to commence any work or change occupancy. Permits from appropriate Departments must be secured before work is started or occupancy is changed.

APPEAL: An appeal may be filed with the Board of Appeals within 15 days of the date of this letter if you believe this determination represents an error in interpretation of the Planning Code or abuse in discretion by the Zoning Administrator. Please contact the Board of Appeals in person at 49 South Van Ness Ave, Suite 1475, call (628) 652-1150, or visit www.sfgov.org/bdappeal.

Sincerely,

Corey A. Teague, AICP
Zoning Administrator

cc: Neighborhood Groups
Kate Conner, Planning Department

BRIEF SUBMITTED BY THE APPELLANT(S)

New Horizons Trust
3739 Balboa St.
STE 243
San Francisco, CA 94121
Tel: (415)
Fax: (415)

SAN FRANCISCO BOARD OF APPEALS

New Horizons Trust, a California Trust Appellant, vs. SAN FRANCISCO ZA, Respondent.	Appeal No.: 22-094 APPELLANT'S BRIEF LOD No.: 2022-007996ZAD Hearing Date: February 8, 2023

Date: 1/19/2023

I. INTRODUCTION

The question in this case is whether San Francisco's RH-1 controls complies with the City Planning Code and the State Law. In particular, questions contested in this case, are as follows:

1. may the Zoning Administrator (**ZA) claim to <u>not</u> have the authority and responsibility to interpret** and make determinations concerning applicability of certain planning codes/provisions guiding what projects City Planning may deny and/or restricted under Planning Director Bulletins (**PDB), State housing laws, and** the planning code?;

2. is it enforceable and/or lawful to **limit RH-1 building heights to 35-feet in 40X height-bulk districts** where 40-foot height is permitted?;

3. is it enforceable and/or lawful to require on RH-1 projects the new, **more restrictive 30% RH-1 rear-yard open space** despite Planning Director Bulletin No. 7 and State law explicitly prohibit this post 2018 amendment?;

4. is it enforceable and/or lawful to require various Residential Design Guide (**RDG) discretionary setbacks** from the maximum buildable area for **HAA** projects?; and,

5. may an **HAA RH-1 project having 40'H, 25% rear-yard, and no RDG setbacks/step-ins properly be denied permit**?

The answer to these questions is each "no." The LOD determinations at issue must be revoked and the board is accordingly compelled to decide these issues under its de novo standard because the ZA erred and/or abused his discretion in determining otherwise, which results to restrict the creation of housing, in violation of City and State law.

II. SUMMARY

1) As set forth below, the ZA **has demonstrated** in prior LODs that he in fact does have the authority and responsibility to interpret and make determinations concerning PDBs and how State laws impact what is allowable under the planning code. **2)** it is **not** lawful to limit HAA RH-1 building heights to 35-feet in 40X height-bulk districts at least because **SEC. 252**. 'CLASSES OF HEIGHT AND BULK DISTRICTS' was **part of city's pre-1996 'master plan'** and **SEC. 340** renamed, and incorporated it into the modern city "General Plan", and all state housing **laws do not permit specific plans** (such as the RH-1 35-foot limit in § 261(b)(1)) **that are inconsistent / more restrictive than that specified in the General Plan** (such as the 40X height-bulk Zoning Map of Section 260 (a)). **3)** the relatively new 30% rear-yard open space requirement of SFCP § 134(c) (1) is **not** a valid standard at least because the SF planning code amendment changing it from 25% to 30% was enacted after January 1, 2018, and without the approval by HCD, **in violation of PDB No. 7 and Gov Code § 66300(b)(1)(A)**. **4)** under the HAA, it is **not** lawful to require various RDG discretionary setbacks/step-ins from the maximum buildable area for projects at least because they clearly are **not** valid objective standard**s.**

5) Hence, the ZA erred and/or abused his discretion to determine an HAA RH-1 project having 40'H, 25% rear-yard, and no RDG setbacks/step-ins may properly be denied permit, and by avoiding to answer each of the above LOD questions under the false pretense of lacking the authority/responsibility to do so.

III. FACTUAL BACKGROUND

Scope of ZA Authority and Responsibility in re PDB and State Law Determinations

The LOD wrongfully claims ZA has no Authority and Responsibility to make any PDB or State Law Determinations, yet provides no analysis or evidence supporting this assertion. See **EXHIBIT A** (especially the highlighted text) for an email exchange Appellant had with the ZA that sets forth many exemplary LODs that clearly establish that the ZA, in conjunction with support from expert SF staff and attorneys, is very comfortable, capable, and competent to issue LOD rulings on city code compliance with any specifically questioned State Laws. **Based on the foregoing, Appellant hereby appeals this LOD**

determination.

Section 261(b)(1) inconsistency with the City's adopted General Plan

In the Subject LOD, ans. #2, the ZA stated "The Zoning Administrator does not have the authority or responsibility to interpret the consistency or compliance of legislative actions with the General Plan". Moreover, see **EXHIBIT C**, where the ZA says that is because "The General Plan is not part of the Planning Code"; however, as introduced above that is substantially not true in re **SEC. 252**. was **part of city's pre-1996 'master plan'** and **SEC. 340** renamed, and incorporated it into the modern city "General Plan" thus the **ZA erred** at least because the **40X height-bulk** Zoning Map of **Section 260 (a)**, per **SEC. 340** is part of the Master & General plans and is thus under the ZA's LOD Authority and Responsibility. **Based on the foregoing, Appellant hereby appeals this LOD determination.**

History of San Francisco's Master Plan- Zoning Districts

EXHIBIT D1 illustrates San Francisco City Planning's Zoning Use Districts as of 1921, which was City's first, thus the original, "Master/General Plan" to govern permitted City development projects. Back then, the City's Master plan's "Second Residential" zoning had no building height limits (see **EXHIBIT D2**). By 1948, the City's Master Plan was amended to outlaw apartment buildings in most, if not all, of the "Second Residential" zoned areas, which accounted for about one third of the residential land at the time. To this day, this 1948 amendment still stands, keeping apartments illegal in about 76% of San Francisco, resulting in about 54% of the households in San Francisco today living in illegal apartment buildings. In 1970, the state passed the California Environmental Quality Act, or CEQA, which began the anti-development era of 70s, and in 1973, the San Francisco Board of Supervisors established its own code to implement the CEQA law. **EXHIBIT D3** illustrates the state of the City's Comprehensive Residential Master Plan Map as of 1971, before the anti-development "neighborhood character" movement at City Planning began. The City's Master Plan as of 1971 identified the modern 40X districts as being Zoned "Low Density", and set a maximum density limit of single-family homes or duplex

housing for the whole region, yet still now height limits. This Master Plan map had renamed the prior "Second Residential" zones as "Low Density", and had a "Lowest Density" zone consisting only of single-family detached homes, yet still had no specific height limits in any of these density zones. On September 18, 1978, the anti-development "neighborhood character" movement at City Planning got in full gear, and overhauled the City's Master plan to, among other things, make apartments completely illegal in all but a few places, and amend the Master plan to, for the first time, specify a specific height limit for the "Low Density" zones in the 1971 Master plan map, and separately specified more refined density use (e.g. RH1) classification map having much higher granularity, on the neighborhood level, to more specifically sculpt household density limits according to perceived Master Plan goals. Thus, in 1978, the City's single, consolidated, Master plan density and building type map, was split into two maps, one being a "Zoning Use Districts" map setting forth the Master Plan's density use limits at the neighborhoods level, and the second being the Master plan's "ZONING HEIGHT AND BULK DISTRICTS" map. It is in this new "ZONING HEIGHT AND BULK DISTRICTS" map **of the Master plan** that the City amended to introduce and regulate height and bulk limits on a block/district level instead of the prior broad "Low Density" regions, covering RH-1 districts of the subject LOD, was, as is now, zoned as "40-X" (see **EXHIBIT D4**). In 1996, the Zoning Map of **Section 260 (a) (specifying the 40X height-bulk districts)**, of the Master Plan was made part of the modern General plan, per **SEC. 340.**

General Plan verses Specific Plan Conflict Issue

City code Section 261(a) specifies a General Plan verses Specific Plan conflict resolution scheme must defer to the more restrictive height limit. Thus, the City's Zoning Ordinance **does not** implement its General Plan 40-X height-bulk zoning requirements. However, as set forth in detail in **EXHIBIT A and the original LOD request EXHIBIT H**, the HAA requires the reverse; i.e., upon any inconsistency, that the City's Specific Plan (e.g., the Section 261, 35' height limit) must defer to City's General plan (e.g., the § 260 (a) zoning map, 40-X, 40-foot height limit). Thus, any permit denial based upon Section 261(b)(1)

of a 40-foot-high RH-1 project that is subject to the HAA is in violation of HAA CA Gov. Code Section 65860 and CGC Sec. 65589.5 (d)(A). **Based on the foregoing, the ZA erred, and Appellant hereby appeals this LOD determination that such a 40-foot-high RH-1 project may be denied permit.**

SFCP § 134(c) (1) is invalid and/or unenforceable

On or about 7/30/2019, the City Supervisors/Planning Department amended an increase into its Planning Code open space requirement for RH-1 **bulk** limits (rear **open space**) (SFCP § 134(c) (1) REAR YARDS IN R…DISTRICTS.), from 25% to 30%. However, PDB No. 7 and SB-330 Housing Crisis Act of 2019 CA Gov Code § 66300(b)(1)(A) explicitly do not permit any such increased open space requirements made after January 1, 2018. See **EXHIBIT E** where PDB No. 7 says under 'Zoning Actions': The city is prohibited from taking any legislative action, including by voter initiative, that would reduce the zoned capacity of housing development below what was allowable as of January 1, 2018, including but not limited to: Imposing new or increased open space, lot size, setback or maximum lot coverage requirements".

RDG setbacks are not Enforceable under the HAA

The RDG, December 2003, republished 2013 indicates various recommended setbacks from the maximum bulk that planning code permits, such as RDG, Page 27, top left re top floor rear/side setbacks in rear yard additions, and Page 21 bottom left re rear/side setbacks in building to the maximum buildable area (see **EXHIBIT F**). Current state housing law (e.g., Gov. Code § 65589.5 (d)) requires that any housing development project application, including any RH-1 zoned project, having unit(s) affordable to very low, low-, or moderate-income households may only be denied/curtailed based upon objective standards, e.g., as defined in Gov. Code § 65589.5 (h)(8), and recent precedent has ruled that guidelines such as the above RDG are not objective standards (see **EXHIBIT G**, HAA § 65589.5 (d) (1) and re CARLA v. City of San Mateo), therefore may not be applied to deny any housing development projects subject to the HAA.

IV. ARGUMENTS

ZA has Authority and Responsibility to Make PDB and State Law Determinations

SFPC §307(a) states in part "The ZA shall respond to all written requests for determinations regarding the classification of uses and the **interpretation and applicability** of the provisions of this Code." **Obviously, the applicability of city codes is subject to interpretation and conflicts resolution with any state laws, as the ZA performed in LOD Nos.: 2021-001320OTH and 2019-019981ZAD**. If the ZA in fact did not have this power, he would have instead responded to dismiss answering those state law LODs the same way the ZA, wrongfully, did in the subject LOD. That is, See **EXHIBIT A** (esp. highlighted text) for an email exchange Appellant had with the ZA that set forth many exemplary LODs that clearly establish that the ZA, in conjunction with support from expert SF staff and city attorneys, has the Authority and Responsibility to issue LOD rulings on city code compliance with any specifically questioned State Laws & PDBs. As such, the ZA is in fact accustomed to making such LODs based on his/staff's understandings of what/how any given clear state law may, or may not, bring in conflict/question/issue any given city code, and make his decision balancing his interpretations of both city planning/zoning code(s)/PDB's versus controlling/competing/conflicting state law(s). For example, see **EXHIBIT B1** (esp. highlighted text for more factual details) where we see confirmation of that in the ZA's relatively recent **LOD No.: 2021-001320OTH**, concerning making a ZA ruling based on the ZA's detailed analysis, **interpretation, and conflict resolution determination** of State Assembly Bill No. 1561 and CA Gov. Code Section 65914.5 **versus conflicting SF City Planning Code** requiring that all Planning Commission and ZA permit approvals include a performance condition w/in a set (typically 3 years) period of time. The ZA cited AB 1561 requiring "notwithstanding any law, including any inconsistent provision of a local agency's general plan, ordinances, or regulations, the otherwise applicable time for the expiration, effectuation, or utilization of a housing entitlement that is within the scope of the timeframes specified in paragraphs (1) and (2) is extended by 18 month".

See: https://sfplanning.org/sites/default/files/za/2021-001320OTH_LOD_ZA_COVID-19_Extension_of_Approvals.pdf

Likewise, see **EXHIBIT B2** (esp. highlighted text) there we also see regarding **LOD Record No.: 2019-019981ZAD**, the ZA made an analysis and determination of whether Planning Director Bulletin No. 6 was legally valid/consistent with CA Government Code § 65915(o)(2) concerning lot coverage base density calculations, where the ZA made an official determination saying that "…Based on the information and analysis above, it is my determination that **Ordinance No. 116-17** was reviewed by the Planning Department **and City Attorney's Office to ensure it met all applicable state laws**, and was adopted by the Board of Supervisors. As such, **the provisions of that ordinance represent the City's lawful implementation of the State Density Bonus Law...As such, as applied to a particular project, it would not represent a reduction of density in violation of the Housing Accountability Act, but is rather a reasonable calculation of the maximum permitted density**." By way of further example, see **EXHIBIT B3** (esp. highlighted text) where we see in **LOD Record Number: 2017-008526ZAD**, **the ZA's predecessor (Sanchez) cited CA Court law legal precedents to support the ZA's determination/ruling** that SF's property rights handling was valid under state laws. There we see that **the ZA's legal citations of CA Court law legal precedents on state property rights law. These all have very similar, if not more complex, clear terminology as the state laws cited/questioned in Appellant's LOD questions, which the ZA wrongfully refused to answer on false pretense**. Moreover, **city planning has informed Appellant that the ZA, with full support from expert SF staff and city attorneys, is in fact authorized and required to answer LOD questions concerning** all issues and bases for project permit denial, to include the **pertinent PDBs and State housing laws.**

Moreover, in LOD 2019-019981ZAD (EXHIBIT B2) the ZA stated that PDB's "authority is derived directly from the Planning Code, and may be applied to any project individually", thus the ZA made an admission that the ZA has Authority and Responsibility to interpret and make determinations concerning if and how **PDB and State housing laws** impact what projects City Planning may deny and/or restrict under the planning code & PDB policies **because PDB's are simply extensions of the**

planning code made by Planning Director executive order, instead of (BOS) legislative amendment. Moreover, See **EXHIBIT C** (esp. highlighted text) for an email exchange Appellant had with the ZA concerning requested clarifications to his subject LOD, esp. where he says **"3. The LOD regarding Director Bulletin No. 6 (2019-019981ZAD) is nuanced, but it does not ultimately make a determination of state law compliance."; however, that is factually not true at least because** the ZA made an official statement/determination saying that " …the Bulletin **is consistent with** both **State** and local **law**,…:" **As such, in view of all the foregoing, the ZA clearly erred and abused his discretion in not answering** LOD questions related to **PDB and/or State housing laws,** under the obviously false pretense of lacking the authority and responsibility to do so, and Appellant believes/requests that the board must accordingly **decide all the pertinent LOD questions/issues, to include** QUESTION 1 (General):**,** QUESTION 2**, and** QUESTION 3 **(See EXHIBIT I), under its de novo standard.**

Section 261(b)(1) is unenforceable to deny RH-1 projects under State Housing Laws

At least because the city's **General Plan does in fact contain the prior master plan's created specific height and bulk districts,** such as 40-X (e.g., via SEC. 252 plus SEC. 340, per the above), and because the post-1978, "ZONING HEIGHT AND BULK DISTRICTS" was simply a refinement, mostly relabeling and defining prior vague (e.g., "low density") terms, of the map of the original, 1921 Master plan and at least based on the above factual background, clearly the modern height/bulk districts zoning map (see SFPC § 260 zoning map) is part of, and graphically codifies, the current General Plan as set forth in SFPC § 260 (a), whereby the 40-X height/bulk limit zoning category is in fact specifying height/bulk limits of the City's current Master/General Plan, and **not**, any Specific plan. As such, the **City planning code would officially incorporate provisions of the General Plan that would in fact create specific height and bulk districts**, such as 40-X. As such, in any case, it is clear that the ZA in fact has **the authority and responsibility** to respond to Appellant's LOD requests for binding determinations regarding the **interpretation** and applicability at least with regard to how the above cited **provisions of** City planning code does or does not officially **incorporate provisions of the 'Master Plan' into the**

"General Plan" which clearly does create specific height and bulk districts per the above.

The board should also consider the fact that the ZA has determined (in the Subject LOD No. 2022-007996ZAD answer #5) that Planning Code Section 261(b)(1) is not part of the city's 'General Plan' and that the General Plan does not formally tie any specific height districts (such as 40X) to any specific zoning districts (such as RH1), and given the fact that the HAA requires that if objective zoning/review or general plan standards are mutually inconsistent then the General Plan (40X height) applies as the objective height standard to judge the a Subject property's permit approval upon (e.g., see Sec. 65589.5 (d)(A)). **Moreover, under the HAA, § 261(b)(1) may not be considered to be an objective standard at least because the foregoing makes for very high uncertainty as to if § 261(b)(1) is valid and/or enforceable on RH-1 HAA projects**, in that it is more likely than not inconsistent with the General Plan via the pre-1996 Master Plan, per the above citated planning codes (see in re § 252 and § 340). Thus, most likely than not, **§ 261 is not** valid and/or enforceable per cited state laws (e.g., SB-1333 Cal. GOV § 65860, HAA, etc.), at least because **any standard with significant uncertainty as to its validity and/or applicability cannot be considered as "objective"** (see CARLA v. City of San Mateo, 68 Cal. App. 5th 820, 283 Cal. Rptr. 3d 877 (Ct. App. 2021)). Thus, for yet another reason, **under the HAA, § 261(b)(1) may not be used to deny a building permit for 40-foot-high RH-1 project**.

Moreover, See **EXHIBIT C** where the ZA says **"**See my answer No. 5 in the issued letter. More specifically, the **General Plan does not create specific height and bulk districts**, such as 40-X. It instead gives guidance on those issues.**"; however, that is factually not true,** the city's **General Plan does in fact contain the prior master plan's created specific height and bulk districts,** such as 40-X (e.g., via SEC. 252 plus SEC. 340), **which are all established in city planning code, as established above. As such, in view of all the foregoing, the ZA clearly erred in not answering QUESTION 1, 1(a) and/or in** determining that the **General Plan does not include specific height and bulk districts**, such as 40-X, and that the ZA does not have Authority and Responsibility to determine consistency and

enforceability of the RH-1 35-foot limit in § 261(b)(1)) on denying any building permit of any 40-foot-high RH-1 project that is subject to the HAA as being in violation of the HAA CGC Sec. 65589.5, or not. Accordingly, Appellant believes/requests that the board must **decide all the pertinent LOD questions/issues in re the 40X in** SFPC § 260 zoning map vs § 261**, to include QUESTIONs 1, 1(a), and 1(b') (See EXHIBIT I), under its de novo standard.**

SFCP § 134(c) (1) is an invalid Standard

Per above, the 2019 amendment § 134(c) (1), changing its minimum RH-1 open space land use zoning requirement to result in a less intensive use, is in clear violation of the cited sections PDB No. 7 and SB-330 Housing Crisis Act of 2019 CA Gov Code § 66300(b)(1)(A), which void any such increases made after January 1, 2018. As such, t**he new 30% rear-yard open space requirement of SFCP § 134(c) (1) a not valid objective standard** (as defined and required by the HAA) at least because this amendment of § 134(c) (1) is most likely invalid because it was enacted after January 1, 2018, and without the approval by HCD, in violation of PDB No. 7 and Gov Code § 66300(b)(1)(A), and .**any standard with significant uncertainty as to its validity and/or applicability cannot be considered as "objective"** (see CARLA v. City of San Mateo, supra). Thus, for yet another reason, **under both** § 66300(b)(1)(A) and **the HAA, the current § 261(b)(1) may not be used to deny a building permit for an RH-1 project, and only the prior 25% requirement may be applied**. Moreover, as established above, ZA has the Authority and Responsibility to make LODs upon PDBs and state housing law such as the HAA. **Hence, the ZA erred and/or abused his discretion for his answer to not consider the above cited PDB 7, SB-330 and HAA city/state requirements in his LOD determining that an RH-1 project subject to the HAA having a 25% rear-yard may be denied a building permit**. Accordingly, Appellant believes/requests that the board must **decide all the pertinent LOD questions/issues in re SFCP § 134(c) (1), to include QUESTIONs 1 and 2 (See EXHIBIT I), under its de novo standard.**

RDG setbacks are not Enforceable Objective Standards for Projects Subject to the HAA

The RDG is much like that of San Mateo's RDG, which are not objective standards, and only offer subjective design recommendations, which are prohibited to be applied against HAA projects (see CARLA **v. City of San Mateo, supra).** The RDG calls for various side, rear, front setbacks, and steps in height, neighborhood "compatibility", etc., all of which vary inconsistently depending on context, heights, property lines, relative distances, etc., and are thus largely, if not completely, discretionary and unpredictable in their interpretation or application, and moreover many are inconsistent with the general plan. Moreover, the RDG's height guideline is not objective, including the "step in height" element, thus HAA projects may not be required to have any limits in height differential between the Project and the neighboring house(s), at least because the "Height" guideline does not specify how, or the extent to which, the upper levels of a project must be set back or stepped down. Further, "transition" of side-setback or step-in height are possible ways to satisfy the guideline, but "Transition" is undefined, with no criteria. The sufficiency of any side-setbacks or step-down or transition can only involve a discretionary and subjective judgment about the visual effect of a change in building heights. Thus, such §311(c)(1)/RDG requirements to seek a discretionary use permit does not apply to HAA Projects, which cannot be required to obtain a discretionary use permit. Under HAA, the only applicable standards are those "that involve no personal or subjective judgment by a public official and are uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official prior to submittal." (CGC § 65589.5, subd. (h)(8). The standards listed in the above cited RDG setbacks/step-in provisions involve personal or subjective judgement and **are not** "uniformly verifiable to any uniform benchmark or criterion". **Given this RDG are simply suggestions of discretionary standard that are inconsistent with the planning code's** objective maximum building limits, they may not be applied to limit/deny any project subject to the HAA. That is, as established above, the CARLA v. City of San Mateo court ruled such RDG recommended reductions are discretionary standards that may **not** be used to

limit/deny any RH-1 HAA building permit? Moreover, as established above, the ZA has the Authority and Responsibility to make LODs upon state housing law such as the HAA. **Hence, the ZA erred and/or abused his discretion for him not answering Appellant's HAA questions in re if an RH-1 project subject to the HAA may be denied a building permit based on RDG setbacks**. Accordingly, Appellant believes/requests that the board must **decide all the pertinent LOD questions/issues in re RDG vs HAA, to include QUESTIONs 1 and 3, under its de novo standard.**

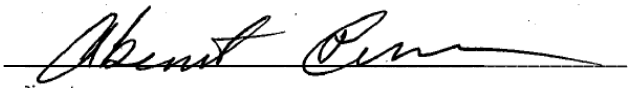
RH-1 project w/ 40'H, 25% rear-yard, and no RDG setbacks may not be denied permit

The foregoing, more likely than not, if not clearly and convincingly, **establishes**: that the ZA must make State Law Determinations, **and** Section **261(b)(1)** is inconsistent with the City's adopted General Plan thus is **unenforceable to deny RH-1** projects under State Housing Laws, **and** SFCP **§ 134(c) (1) is an invalid Objective Standard**, **and RDG setbacks are not Enforceable Objective Standards** for Projects Subject to the HAA. Hence, it is clearly established that the ZA erred and/or abused his discretion to determine an HAA RH-1 project having 40'H, 25% rear-yard, and no RDG setbacks may properly be denied permit, **and by avoiding to answer** each of the above LOD questions under the **false pretense** of lacking the authority and responsibility to do so. Accordingly, Appellant believes and respectfully requests that the board must **decide** QUESTION 1 (General): **(See EXHIBIT I), under its de novo standard.**

V. CONCLUSION

Aspects of the LOD are inconsistent with the Planning Code and state law and must be overturned and/or modified to achieve the above/below. The LOD is improper and based on pure conjecture and flawed reasoning, rather than on the plain reading of the laws. Appellant is entitled to an order overturning the LOD and a favorable judgment in compliance with the cited laws to apply the general plan's (Section 260) 40-X height/bulk Land Use, not Section **261** 35-foot height limit, to apply the prior 25% rear-yard requirement, and to not apply the RDG to the permitting review of HAA RH-1 Projects as a de novo order that the City must permit building of such an RH-1 Project meeting objective standards.

Respectfully submitted,



Abenet Tekie
Trustee, New Horizons Trust

EXHIBIT A

From: A. Teki
Sent: Monday, September 19, 2022 2:57 PM
To: Teague, Corey (CPC) <corey.teague@sfgov.org>
Subject: QUESTION 1 re HAA :Re: LOD rulings on State Law Re: Letter of Determination Request

Just a quick follow-up note- my citations of the provisions of the cited state laws was not intended to be exhaustive of all pertinent provisions that city planning codes/permitting process must be compliant with, so to hopefully save your team some time in answering my QUESTION 1 as it relates to the HAA compliance aspect of city planning's standard permitting/denial process for RH-1 zoned lots, I thought I should point out another pertinent HAA provision in your analysis. You will notice that QUESTION 1 is focused on the scenario that assumes that the "RH-1 housing development is also subject to the housing accountability act", where the HAA's objective standards is just one of the listed denial requirements, yet there are others to be sure not to overlook in your analysis. That is, CGC Sec. 65589.5 (d)(A) also requires that for any valid basis for project permit denial, the project must be inconsistent **with both** SF's zoning ordinance (e.g., the SFPC § 261 35-foot RH-1 height limit) **and SF's general plan** (e.g., SFPC § 260 zoning map to permit 40-foot in the project's 40-X height/bulk zoning). As pointed out in my background section, a 40-foot high RH-1 project would appear to be consistent with **SF's general plan** (SFPC § 260 zoning map), so this HAA provision (copied and highlighted below) would **not** allow any permit denial of such a project on the basis of it being inconsistent with **only** SF's SFPC § 261 35-foot zoning ordinance.

Please confirm you got this input for your LOD work.

Thanks again,
😉

HAA:

https://california.public.law/codes/ca_gov't_code_section_65589.5

> 65589.5 (d) **A local agency shall not disapprove** a housing development project, …, for very low, low-, or moderate-income households, …, including through the **use of design review standards**, unless it makes written findings, based upon a preponderance of the evidence in the record, **as to one of the following**:
>
> > (5) The housing development project or emergency shelter **is inconsistent with both the jurisdiction's zoning ordinance and general plan land use designation** as specified in any element of the general plan as it existed on the date the application was deemed complete, …
> >
> > (A) This paragraph **cannot be utilized to disapprove or conditionally approve** a housing development project if the housing development project is

proposed on a site that is identified as suitable or available for very low, low-, or moderate-income households in the jurisdiction's housing element, **and consistent with the density specified** in the housing element, **even though it is inconsistent with both the jurisdiction's zoning ordinance and general plan land use designation**.

From: A. Teki
Sent: Monday, September 19, 2022 1:27 PM
To: Teague, Corey (CPC) <corey.teague@sfgov.org>
Subject: Re: LOD rulings on State Law Re: Letter of Determination Request

excellent Corey. Would very much appreciate/want your efforts for the sooner <6 wks target. Hopefully, LOD request volumes for you are lower than usual to help enable that.

thx!
😉

From: Teague, Corey (CPC) <corey.teague@sfgov.org>
Sent: Monday, September 19, 2022 7:37 AM
To: A. Teki
Subject: RE: LOD rulings on State Law Re: Letter of Determination Request

Thanks for the follow up. FYI, the typical turnaround for a LoD is approximately 6 to 8 weeks from filing. I'll work to get this out in that timeframe. Thanks.

Corey A. Teague, AICP, LEED AP
ZA

Current Planning Division
San Francisco Planning
PLEASE NOTE MY NEW ADDRESS AND PHONE NUMBER AS OF AUGUST 17, 2020:
49 South Van Ness Avenue, Suite 1400, San Francisco, CA 94103
Direct: 628-652-7328 | sfplanning.org
San Francisco Property Information Map

From: A. Teki
Sent: Sunday, September 18, 2022 9:08 PM
To: Teague, Corey (CPC) <corey.teague@sfgov.org>
Subject: LOD rulings on State Law Re: Letter of Determination Request

Good Morning Corey, it was very nice to meet you on Friday and discuss the scope of your work and comfort zones.

Firstly, I am requesting that you please be sure to **email me your LOD** in addition to mailing it out as you normally do, given that each mode of delivery has delivery problems, including COVID issues.

Regarding our meeting, thanks much for explaining to me that you are comfortable to assess and interpret pertinent state laws concerning their implications as to how they relate to city zoning/planning codes to make your LOD whether something should ultimately be allowable or not.

As promised in our meeting, below I provide you some exemplary LODs that clearly establish that the ZA, in conjunction with support from SF staff and attorneys, is very comfortable, capable, and competent to issue LOD rulings on city code compliance with any specifically questioned State Laws.

As such, I am very appreciative that you do in fact feel comfortable in making such LODs based on your understandings of what/how any given clear state code may, or may not, bring in conflict/question/issue any given city code, and make your decision balancing your interpretations of both city planning/zoning code(s) versus a competing/conflicting state code(s).

For example, I do see confirmation of that in your relatively recent **LOD No.: 2021-001320OTH**, concerning making a ZA ruling based on your analysis and interpretation of State Assembly Bill No. 1561 and CA Gov. Code Section 65914.5 **versus conflicting SF City Planning Code** requiring that all Planning Commission and ZA permit approvals include a performance condition w/in a set (typically 3 years) period of time. You cited AB 1561 requiring
"notwithstanding any law, including any inconsistent provision of a local agency's general plan, ordinances, or regulations, the otherwise applicable time for the expiration, effectuation, or utilization of a housing entitlement that is within the scope of the timeframes specified in paragraphs (1) and (2) is extended by 18 month".

See: https://sfplanning.org/sites/default/files/za/2021-001320OTH_LOD_ZA_COVID-19_Extension_of_Approvals.pdf

Likewise, regarding **LOD Record No.: 2019-019981ZAD**, you made an analysis and determination of whether Planning Director Bulletin No. 6 was legally valid/consistent with CA Government Code § 65915(o)(2) concerning lot coverage base density calculations, where you made an official determination saying that
"Based on the information and analysis above, it is my determination that **Ordinance No. 116-17** was reviewed by the Planning Department and City Attorney's Office to ensure it met all applicable state laws, and was adopted by the Board of Supervisors. As such, **the provisions of that ordinance represent the City's lawful implementation of tthe State Density Bonus Law...As such, as applied to a particular project, it would not represent a reduction of density in violation of the Housing Accountability Act, but is rather a reasonable calculation of the maximum permitted density**."

By way of further example, in **LOD Record Number: 2017-008526ZAD**, **your predecessor (Sanchez) cited CA Court law legal precedents to support the ZA's determination/ruling** that SF's property rights handling was valid under state laws (re 800_Clement_St_aka_289-291_9th_Ave). See that LOD at:
"Like the variance issued permitting construction of the improvement known as 289-291 9t" Avenue, once issued, **the building permit and all its conditions of approval runs with the land and binds successor owners. (See Anza Parking Corp. v. City of Burlingame (1987) 195 Ca1.App.3d 855, 858.)** Moreover, "'[a] landowner cannot challenge a condition imposed upon the granting of a permit after acquiescence in the condition by either specifically agreeing to the condition or failing to challenge its validity, and accepting the benefits afforded by the permit.' **[Citation.]" (City of Berkeley v. 1080 Delaware, LLC (2015) 234 Ca1.App.4th 1144, 1150, as modified (Feb. 26, 2015); see also Lynch v. California Coastal Commission (2017) 3 Ca1.5th 470, 478, reh'g denied (Aug. 9, 2017) [**in general, permit holders are obliged to accept the burdens of a permit along with its benefits].) **The approval of the project and related conditions** of approval were not appealed within the timeframes allowed **by law and are final and in full effect**."

I should point out that **your analysis of State Assembly Bill No. 1561 and CA Gov. Code Section 65914.5, § 65915(o)(2), and citations of CA Court law legal precedents on state property rights law**, all have very similar, if not more complex, clear terminology as the state codes I cite in my questions; e.g., regarding Gov. Code § 65860(a) in my **QUESTION 1(b)**, and my citing Gov Code § 66300(b)(1)(A) in my **QUESTION 2**, and my citing of Gov. Code § 65589.5(8)(d)(1) in my **QUESTION 3**, where they are a relatively simple/similar level of analysis, interpretation, and city planning codes compliance determination that you did for the above cited LODs.

Hence, I am requesting that you perform a similar level of state law legal analysis and determination for the city ordinances/policies that I question to be in conflict/contradiction to the cited corresponding state laws.

For example, regarding height, my **QUESTION 1(b)**, I am simply requesting you to considering a very simple **plain-English requirement of Gov. Code § 65860(a)** saying "County or **city zoning ordinances shall be consistent with the general plan** of the county or city", and determine if my cited 40'H city code is consistent with my cited 35'H city code, in the context of § 65860(a b)'s general plan vs zoning ordinances consistency requirement. Similarly, my citation of SB-330 CA **Gov Code § 66300(b)(1)(A)** (in **QUESTION 2**) is another **very simple plain-English code**, which is straight forward saying " Notwithstanding any other law ...**city shall not enact a** development policy, standard, or condition that would have any of the following effects: (A) **Changing** ...**specific plan land use** designation, or zoning of a parcel ...to a less intensive use ... **below what was allowed** under the land use designation and **zoning ordinances of the affected county or affected city, as applicable, as in effect on January 1, 2018**..., "less intensive use" includes, but is not limited to ...**new or increased open space or lot size requirements**, ", and my **QUESTION 3** is simply asking if the cited RDG guidelines **are "objective" as defined in CA Gov § 65589.5(8)**, and if not, are they enforceable to deny/limit any RH1 projects subject to HAA enforcement, which is very similar ZA work as you performed in your LOD analysis of any HAA violations by Bulletin No. 6 referenced above **where you evidenced and ruled that it was the City's lawful implementation of the HAA State law**.

My other questions (e.g., **QUESTION 1s b-d/b'-d',)** are purely related city planning code interpretations/clarity.

As per your prior LODs you always have SF staff and attorneys, as needed, at your complete disposal to consult and/or advise you on any state law interpretation vs city codes to properly reason and render your LOD on all questions requested. Please let me know if you have any continuing concerns to further discuss as to what extent the ZA's office has, does, and can render LODs on city code/policies properly implementing and/or being in compliance with state laws, or not.

thx!
😉

From: Teague, Corey (CPC) <corey.teague@sfgov.org>
Sent: Friday, September 16, 2022 11:17 AM
To: A. Teki
Subject: RE: Letter of Determination Request

You can call me at my office number below, 628-652-7328. Thanks for being flexible.

Corey A. Teague, AICP, LEED AP
ZA
(he/him/his)

Current Planning Division
San Francisco Planning
49 South Van Ness Avenue, Suite 1400, San Francisco, CA 94103
Direct: 628-652-7328 | sfplanning.org
San Francisco Property Information Map

From: A. Teki
Sent: Friday, September 16, 2022 11:08 AM
To: Teague, Corey (CPC) <corey.teague@sfgov.org>
Subject: Re: Letter of Determination Request

that is what I figured. now worries. 1PM is fine. who calls whom?

From: Teague, Corey (CPC) <corey.teague@sfgov.org>
Sent: Friday, September 16, 2022 11:05 AM
To: A. Teki
Subject: RE: Letter of Determination Request

I really apologize, but I got pulled into an unplanned meeting. Are you available at 1:00pm today? Thanks.

Corey A. Teague, AICP, LEED AP
ZA
(he/him/his)

Current Planning Division
San Francisco Planning
49 South Van Ness Avenue, Suite 1400, San Francisco, CA 94103
Direct: 628-652-7328 | sfplanning.org
San Francisco Property Information Map

From: A. Teki
Sent: Friday, September 16, 2022 10:38 AM
To: Teague, Corey (CPC) <corey.teague@sfgov.org>
Subject: Re: Letter of Determination Request

Good Morning Corey, I just called you (10:30AM) at your direct number, but got your voicemail. Did you want schedule another time? If you want to call me when you are free, my # good for today is: 415-592-9455. Best if you can email me about timing ahead of time.

From: A. Teki
Sent: Thursday, September 15, 2022 7:35 PM
To: Teague, Corey (CPC) <corey.teague@sfgov.org>
Subject: Re: Letter of Determination Request

sure, 10:30 am is fine. who calls whom?

about your general question, it is really pretty simple at the top level, my LOD request is not necessarily tied to any particular project, but geared towards determining up to what maximum RH-1 Single family home (SFH) project envelope/volume can I, or any real-estate developer, build on any RH-1 zoned property lot in San Francisco, under the state laws that I cite, which state laws would seem to require San Francisco Planning to permit an RH-1 Single family home building development proposal that has a total maximum building envelope/volume (i.e., the "buildable volume") consisting of: 40 feet in vertical height, and a horizontal built upon area leaving only 25% of rear-yard open space, and having no RDG or discretionary setbacks in the buildable volume (if an affordable unit is provided in the SFH project, per the cited HAA code). If not, exactly why not on each count, b/c it seems very obvious to me that it should be permissible under the cited state laws, but maybe I'm missing something- however, hopefully, not 😉).

So, it should be as simple as you evaluating the cited SF planning codes against the corresponding cited State laws and make your LOD on the questions with, of course, the needed explainations and code citations/interpetations support.

lmk.

thanks again,
😉

EXHIBIT B1

LOD No.: 2021-001320OTH, concerning making a ZA ruling based on the ZA's analysis and interpretation of State Assembly Bill No. 1561 and CA Gov. Code Section 65914.5

Letter of Determination

March 16, 2021

Record No.:	**2021-001320OTH**
Subject:	**Extensions of Planning Commission and Zoning Administrator Approvals During the COVID-19 Emergency**

To All Interested Parties:

This letter addresses certain approvals by the Planning Commission and Zoning Administrator that include required performance periods that overlap with San Francisco's response to the COVID-19 emergency. It is intended to provide clarity, especially for projects with performance periods that have expired during this emergency period. Additional letters may be warranted and issued in the future should delays continue due to the COVID-19 emergency.

COVID-19 BACKGROUND

On February 25, 2020 Mayor London Breed ("Mayor") declared a state of emergency ("Emergency Order") in San Francisco due to COVID-19.

On March 4, 2020 Governor Gavin Newsom ("Governor") issued a proclamation of a state of emergency throughout California due to COVID-19.

On March 13, 2020 the Mayor issued a supplement to the Emergency Order. In part, this supplement ordered the following:

> *(2) Deadlines set by local law requiring City policy bodies, including the Board of Supervisors and City boards and commissions, to take action within a certain time period are suspended during the emergency and for 14 days following termination of the local emergency, if such policy bodies are unable to meet and comply with such deadlines due to the emergency;*

On March 16, 2020 the Mayor issued the Third Supplement to the Emergency Order. In part, the Third Supplement ordered the following:

> *(5) From March 18, 2020 through April 7, 2020, City policy and advisory bodies shall not hold public meetings, unless the Board of Supervisors, acting by written motion, or the Mayor or the Mayor's designee directs otherwise, based on a determination that a policy body has an urgent need to take action to ensure the public health, safety, or essential government operations. This order applies to all City commissions, boards, and advisory bodies other than the Board of Supervisors and its committees.*

On March 16, 2020 the San Francisco Health Officer issued *Order of the Health Officer No. C-19-07* ("Shelter-In- Place Order"), which took effect on March 17, 2020 and required many businesses and government offices to close or operate at limited capacities. Five other Bay Area counties also issued Shelter-In-Place orders on the same day. This order had numerous impacts on the ability to conduct normal operations towards advancing development approvals, including:

1. The Shelter-In-Place order advised all residents to limit trips outside the home to only those that are essential;

2. All City offices, including the Planning Department and the Department of Building Inspection (DBI) were required to work remotely, if possible, with the exception of certain employees serving essential functions;

3. The City began to place employees in Disaster Service Worker (DSW) assignments to aid the City's response to the emergency;

4. All school systems in the Bay Area were open for remote learning only; and

5. All child care businesses in the Bay Area were open on a limited basis for essential workers only.

On March 19, 2020 the Governor issued an executive order and the State Health Officer issued an order requiring all 40 million individuals in California to stay home except as needed for essential functions.

On March 31, 2020 the San Francisco Health Officer updated the Shelter-in-Place order to close most commercial and residential construction projects. There were limited exceptions for projects immediately necessary to maintain essential infrastructure, healthcare operations, affordable housing projects, and mixed-use projects with 10% on-site affordable housing, shelters and temporary housing, and essential public works projects. These restrictions were largely relaxed on May 3, 2020.

While numerous supplements to the Mayor's Emergency Order and the Health Officer's Shelter-In-Place order were issued since March 16, 2020, those orders and similar state orders are still in effect today. The nature of the emergency over this time period caused many businesses to remain closed or conduct limited or periodic operations. City Departments have remained primarily closed to the public and City employees

continue to primarily work remotely. This has limited the public's ability to submit permit applications for review and receive prompt permit review and issuance services, impeding project sponsors' ability to satisfy applicable performance conditions.

Additionally, Bay Area citizens have been required to limit their activities and movement, accommodate remote schooling and a lack of child care, care for vulnerable and ill family members, and take other actions necessary to respond to the emergency. These limitations and obligations created additional challenges and delays in project sponsors' ability to satisfy applicable performance conditions.

EXTENSIONS TO DEVELOPMENT PROJECT APPROVALS

Most, if not all recent Planning Commission and Zoning Administrator approvals (e.g. Conditional Use Authorizations, Variances, etc.) include a performance condition that a certain action must be taken (e.g. site or building permit issued or tentative map approved) within a period of time (typically 3 years) or the approval will expire or require an extension of time from the authorizing body.

These approvals may also include a condition permitting the Zoning Administrator to grant an extension to the required performance period if the project is delayed by a public agency, appeal, or litigation. Approvals from the Historic Preservation Commission typically have not included this option for the Zoning Administrator extension. While the language for this extension condition may slightly vary, the following represents the typical language:

> *Extension. All time limits in the preceding three paragraphs may be extended at the discretion of the Zoning Administrator where implementation of the project is delayed by a public agency, an appeal or a legal challenge and only by the length of time for which such public agency, appeal or challenge has caused delay.*

On September 28, 2020 Assembly Bill No. 1561 took effect. Among other provisions, this bill granted an 18-month extension for certain housing developments that are subject to a performance period condition. The specific provisions of this law are in Section 65914.5 of the California Government Code, which includes the following:

> *(b) Except as provided in subdivision (c), notwithstanding any law, including any inconsistent provision of a local agency's general plan, ordinances, or regulations, the otherwise applicable time for the expiration, effectuation, or utilization of a housing entitlement that is within the scope of the timeframes specified in paragraphs (1) and (2) is extended by 18 months. For the purposes of this section, housing entitlements that are extended are entitlements where both of the following apply:*
>
> *(1) It was issued prior to and was in effect on March 4, 2020; and*
>
> *(2) It will expire prior to December 31, 2021.*
>
> *The otherwise applicable time for the utilization of a housing entitlement provided by this section includes any requirement to request the issuance of a building permit within a specified period of time.*

(c) If the state or a local agency extends, on or after March 4, 2020, but before the effective date of the act adding this section, the otherwise applicable time for the expiration, effectuation, or utilization of a housing entitlement for not less than 18 months and pursuant to the same conditions provided in subdivision (b), that housing entitlement shall not be extended for an additional 18 months by operation of subdivision (b).

DETERMINATION

Based on the above, it is my determination that the specific actions taken by State and local governments in response to the COVID-19 emergency have created numerous delays to the implementation of development projects in San Francisco. As such, the required performance period of any applicable approval that 1) includes a version of the condition cited above allowing the Zoning Administrator to grant an extension, and 2) falls within the timeframe of March 17, 2020 to March 16, 2021, is hereby extended by the number of days of overlap.

For example, if a project's required performance period is July 17, 2017 to July 17, 2020, this determination extends that performance period for a period of 4 months (the period of overlap), and the remaining 4 months of the performance period will begin on March 17, 2021. If a project was approved on or after March 17, 2020, then this determination extends that performance period for the number of days equal to the number of days from the date of the approval to March 16, 2021. The date of "approval" for purposes of this Determination means the date that a Motion or letter was issued by a Commission or the Zoning Administrator, respectively.

Please note that the typical condition of approval relating to extensions only permits the Zoning Administrator to grant such extension for the length of time for which such public agency has caused delay. As such, the extension granted in this letter only addresses the period of time up to the date of this letter's issuance. However, the Zoning Administrator may issue additional letters in the future to accommodate a further extension of performance periods extensions on the same basis if the delay persists.

Finally, please note that any extension granted by this letter shall not be additive to any extension granted to a qualifying housing development pursuant to California Government Code Section 65914.5. Instead, any overlap between these extensions shall run concurrently. For example, if a qualifying project is eligible for both an extension granted by this letter for a period of 1 year, and an extension granted by California Government Code Section 65914.5 for a period of 18 months, the 18-month extension shall supersede and represent the total time period of extension.

APPEAL: An appeal may be filed with the Board of Appeals within 15 days of the date of this letter if you believe this determination represents an error in interpretation of the Planning Code or abuse in discretion by the Zoning Administrator. Please contact the Board of Appeals in person at 49 South Van Ness Ave, Suite 1475, call (628) 652-1150, or visit www.sfgov.org/bdappeal.

Corey A. Teague, AICP
Zoning Administrator

EXHIBIT B2

LOD Record No.: 2019-019981ZAD, the ZA made an analysis and determination of whether Planning Director Bulletin No. 6 was legally valid/consistent with CA Government Code § 65915(o)(2) concerning lot coverage base density calculations, where the ZA made an official determination.

REISSUED Letter of Determination

September 22, 2020

Sonja Trauss
Yes In My Back Yard
1260 Mission Street

San Francisco, CA 94103

Record No.:	**2019-019981ZAD**
Site Address:	N/A
Subject:	Planning Director Bulletin No. 6
Staff Contact:	Kate Conner, 415-575-6914 or kate.conner@sfgov.org

Dear Sonja Trauss:

This letter is a re-issuance of the letter issued on August 12, 2020. You requested to have that letter sent by email because you were not regularly staffing your office due to COVID-19. However, the letter issued on August 12 was sent only by standard mailed, and not emailed as requested. This re-issuance will ensure that you receive the letter upon issuance. This reissued letter is otherwise unchanged from the originally issued letter.

This letter is in response to your request for a Letter of Determination regarding Planning Director Bulletin No. 6 ("Bulletin"). More specifically, you request "a full explanation of the legal and policy basis for using the lower lot coverage threshold to calculate the base density for state density bonus developments," and "a specific justification for why Government Code § 65915(o)(2) would not mandate that the city assume the 100 percent lot coverage scenario as a base density calculation."

BACKGROUND

Ordinance No. 116-17 ("Ordinance") was adopted by the Board of Supervisors and became effective on July 13, 2017. The Ordinance included various amendments to the Planning Code, including the creation of multiple local programs to implement the State Density Bonus Program. One such local program was the Individually Requested State Density Bonus Program (Planning Code Section 206.6), which provided a review and approval process for any project seeking a density bonus that is consistent with State Law, Government Code Section 65915 et seq., but is not consistent with the pre-vetted menu of concessions, incentives or waivers, or other requirements established in other local programs.

The Bulletin was first issued in December 2018 to provide clear and consistent implementation guidance for projects using the Individually Requested State Density Bonus Program. The development of the Bulletin included significant coordination with the City Attorney's Office to help ensure it was consistent with the Planning Code and State law.

Ordinance No. 296-18 was adopted by the Board of Supervisors and became effective on January 12, 2019. This ordinance amended the Planning Code to implement the Central SoMa Plan, and it included the provisions and controls of Section 249.78 for the Central SoMa Special Use District (SUD). Planning Code Section 249.78(d) establishes "Urban Design and Density Controls" for the SUD. Section 249.78(d)(6) states:

> *Lot Coverage. For residential uses, the rear yard requirements of Section 134 of this Code shall not apply. Lot coverage is limited to 80 percent at all residential levels, except that on levels in which all residential units face onto a public right-of-way, 100 percent lot coverage may occur. The unbuilt portion of the lot shall be open to the sky except for those obstructions permitted in yards pursuant to Section 136(c) of this Code. Where there is a pattern of mid-block open space for adjacent buildings, the unbuilt area of the new project shall be designed to adjoin that mid-block open space.*

Planning Director Bulletin No. 6 was revised in July 2019. One of the updated provisions stated the following:

> *Certain zoning districts do not have a rear yard setback requirement under Section 134. Instead, these districts are controlled by lot coverage provisions. Projects in Central SOMA (Section 249.78(d)(6)) and the Downtown Residential District (DTR – Section 825(b)(2)) must calculate base density assuming 80% coverage on all residential levels. The base density study may not assume full lot coverage.*

PLANNING CODE ANALYSIS

The density bonus provided by the State Density Bonus Program within State law is derived from the "maximum allowable residential density" permitted on a project site. It has long been common practice for zoning districts in the United States to regulate residential density through specific unit limits or lot area ratios. For example, the maximum permitted density in the RM-2 Zoning District

in San Francisco is 3 dwelling units, or one dwelling unit per 600 square feet of lot area. A 10,000 square foot lot zoned RM-2 would have a clear maximum density of 17 dwelling units.

While San Francisco regulates residential density in this traditional way for many zoning districts, it also has many districts where no such discrete density limit or lot area ratio applies. Neither State law nor related case law provide any guidance as to how maximum allowable residential density should be calculated when no discrete limit or lot area ratio is provided. However, the Planning Code does provide guidance on how maximum density should be calculated in density-decontrolled areas. For example, Planning Code Section 207.6(a), which regulates dwelling unit mix in certain zoning districts, states the following:

Purpose. In order to foster flexible and creative infill development while maintaining the character of the district, dwelling unit density is not controlled by lot area in RTO, NCT, and Eastern Neighborhoods Mixed Use Districts but rather by the physical constraints of this Code (such as height, bulk, setbacks, open space, and dwelling unit exposure).

Additionally, the land use tables for Neighborhood Commercial Districts that do not regulate residential density through specific unit limits or lot area ratios (i.e. SoMa NCT [Planning Code Section 753], Mission Street NCT [Planning Code section 754], etc.) provide the following language regarding residential density:

No density limit by lot area. Density restricted by physical envelope controls of height, bulk, setbacks, open space, exposure and other applicable controls of this and other Codes, as well as by applicable design guidelines, applicable elements and area plans of the General Plan, and design review by the Planning Department.

San Francisco voters approved Proposition E in 2019 to amend the Planning Code to create the 100% Affordable Housing and Educator Housing Streamlining Program, which took effect on December 20, 2019. This program also includes a provision for considering density without setting a discrete limit or lot area ratio. Planning Code Section 206.9(d) states:

Density.Notwithstanding any other provisions of this Code, density of an 100% Affordable Housing Project or Educator Housing Project shall not be limited by lot area or zoning district maximums but rather by the applicable requirements and limitations set forth elsewhere in this Code, including consistency with the Affordable Housing Bonus Program Design Guidelines, referenced in Section 315.1, as determined by the Planning Department.

When developing the local programs to implement the State Density Bonus Law, the City was required to develop a methodology for determining the maximum allowable residential density (aka "Base Density") for projects where density was not prescribed or calculated through a lot area ratio. The methodology adopted by the Board of Supervisors for this purpose is consistent with the other Planning Code examples described above, and expressed through the definition of "Maximum Allowable Gross Residential Density" in Planning Code Section 206.2, which states:

Maximum Allowable Gross Residential Density means the maximum number of dwelling units per square foot of lot area in zoning districts that have such a measurement, or, in zoning districts without such a density measurement, the maximum number of dwelling units that could be developed on a property while also meeting all other applicable Planning Code requirements and design guidelines.

While it is possible to calculate the maximum amount of floor area (i.e. building envelope) that may be permitted on a specific property in these density de-controlled areas, it is not possible to easily determine how many dwelling units could be included within a permitted building envelope. This is due to the highly variable nature of interior development design and its relationship with various Planning Code requirements like useable open space, exposure, and dwelling unit mix. Such a determination would also depend on applicable Building Code and Fire Code provisions. Finally, attempting to make such a determination would require developers to provide, and Planning staff to review, a full set of detailed architectural drawings.

PLANNING DIRECTOR BULLETIN NO. 6

While Planning Director Bulletin No. 6 was issued by the Planning Director, and is under their purview to issue and revise, a brief synopsis is provided here for clarity. The Bulletin provides detailed guidance on a number of issues that are key to understanding and implementing the State Density Bonus Programs. In relation to this request, it clarifies that a project site's Gross Floor Area for residential uses, as defined in Planning Code Section 102, is used

as a proxy for the maximum allowable gross residential density. As such, a project site's maximum allowable gross residential density in such a case is expressed as a square footage instead of a discrete number of dwelling units. The Department determined this to be the simplest methodology to understand and implement, and the most accurate proxy for the maximum number of units permitted.

The Bulletin also takes a balanced approach to how certain discretionary provisions of the Planning Code apply to the calculation of a project's maximum allowable gross residential density (i.e. Base Density). For example, wind and shadow requirements are not considered when calculating Base Density. In addition, sub-grade floor levels are not included in a project's Base Density. The Bulletin does not permit projects' Base Density to use the Planning Code provisions stating a project in the Central SoMa SUD and the Downtown Residential District (i.e. Rincon Hill) may have up to 100% lot coverage when all residential units face onto a public right-of-way. Those provisions were intended for more unique lot and development circumstances, and not for large, typical, generally unconstrained development sites. Implementing these provisions clearly and consistently is key to ensure the efficient processing of density bonus projects and that the Individually Requested State Density Bonus Program is consistent with State Law.

In response to your specific request, the 100% lot coverage provision for the Central SoMa SUD was not intended to be used by large, unconstrained development sites like 598 Bryant Street, 300 5th Street, and 650 Harrison Street. Those and similar project sites in the Central SoMa SUD are generally large, flat, and unconstrained by topography or similar irregularities. For a variety of reasons, any realistic residential development scenario for such sites would not include only units fronting a public right-of-way. These reasons range from the inability to do so and meet other Planning Code requirements (i.e. useable

open space), to resulting in highly unrealistic internal layouts consisting of extremely large units and/or an inordinate amount of amenity space. For example, such internal layouts would likely create infeasible on-site affordable housing scenarios due to Planning Code requirements for the equivalency of units (Sec. 415.6(f)(1)). As such, it is highly likely that the Planning Department would require such project sites to meet the 80% lot coverage provision in order for the project to comply with the Planning Code and/or to ensure the design of the project met all applicable design guidelines.

Please note that although the Bulletin is consistent with both State and local law, the Planning Commission initiated an ordinance to amend the Planning Code on July 30, 2020 to address a variety of necessary updates and corrections to the original Ordinance No. 296-18 to implement the Central SoMa Plan. One such proposed amendment would allow 100% lot coverage under Planning Code Section 249.78(d)(6) only if the Planning Commission grants an exception pursuant to Planning Code Section 329. This amendment would clarify and formalize the current intersection between Section 249.78(d)(6) and Section 206.2, as expressed in the Bulletin.

DETERMINATION

Based on the information and analysis above, it is my determination that Ordinance No. 116-17 was reviewed by the Planning Department and City Attorney's Office to ensure it met all applicable state laws, and was adopted by the Board of Supervisors. As such, the provisions of that ordinance represent the City's lawful implementation of the State Density Bonus Law. This includes the definition of Maximum Allowable Gross Residential Density, which includes the consideration of any applicable design guidelines when determining the Base Density for an Individually Request State Density Bonus Project on a density de-controlled property.

While this authority is derived directly from the Planning Code, and may be applied to any project individually, Planning Director Bulletin No. 6 was issued (and periodically amended) to provide clear and consistent implementation guidance to projects seeking to use the Individually Requested State Density Bonus Program. The Department's determination that the requirement that density bonus projects in the Central SoMa SUD must calculate Maximum Allowable Gross Residential Density using 80% lot coverage on all residential levels is an appropriate application of design guidelines pursuant to the definition of Maximum Allowable Gross Residential Density for projects using the Individually Requested State Density Bonus Program.

Because the Planning Code and the Bulletin appropriately calculate a project site's Maximum Allowable Gross Residential Density, the number of units ultimately permitted for a State Density Bonus Program project represents the maximum that could be permitted. As such, as applied to a particular project, it would not represent a reduction of density in violation of the Housing Accountability Act, but is rather a reasonable calculation of the maximum permitted density.

Please note that a Letter of Determination is a determination regarding the classification of uses and interpretation and applicability of the provisions of the Planning Code. This Letter of Determination is not a permit to commence any work or change occupancy. Permits from appropriate Departments must be secured before work is started or occupancy is changed.

Sincerely,

Corey A. Teague, AICP
Zoning Administrator

Enclosure: Planning Director's Bulletin No. 6

cc: Citywide Neighborhood Groups
Kate Conner, Planning Department

EXHIBIT B3

LOD Record Number: 2017-008526ZAD, the ZA's predecessor (Sanchez) cited CA Court law legal precedents to support the ZA's determination/ruling that SF's property rights handling was valid under state

SAN FRANCISCO
PLANNING DEPARTMENT

Letter of Determination

1650 Mission St.
Suite 400
San Francisco,
CA 94103-2479

Reception:
415.558.6378

Fax:
415.558.6409

Planning
Information:
415.558.6377

October 2, 2017

Jenny D. Smith
Law Offices of Dek Ketchum
900 Veterans Boulevard, Suite 600
Redwood City, CA 94063

Site Address:	800 Clement Street (aka 289-291 9th Avenue)
Assessor's Block/Lot:	1424/017
Zoning District:	Inner Clement Neighborhood Commercial District (NCD)
Staff Contact:	Matt Dito, (415) 575-9164, or matthew.dito@sfgov.org
Record Number:	2017-008526ZAD

Dear Ms. Smith:

This letter is in response to your request for a Letter of Determination regarding the property at 800 Clement Street (also known as 289-291 9th Avenue). This parcel is located in the Inner Clement Neighborhood Commercial District (NCD) Zoning District. The request is to clarify the status of conditions and limitations placed on the property as a result of Case No. 85.317EV and Building Permit Application No. 8311396. Specifically, the request has five inquiries regarding Notice of Special Restrictions (NSR) No. D936971 (Exhibit F of your request), which was recorded to document conditions of approval related to the aforementioned applications.

BACKGROUND
On November 8, 1983, Building Permit Application No. 8311936 (Exhibit D of your request) was filed to construct a horizontal addition to the rear of the existing building at 800 Clement Street. The subject addition would contain 14 units of senior housing and would become known as 289-291 9th Avenue. Under then-applicable Planning Code requirements, the proposed units could only be approved as senior housing given the density limitations of the underlying zoning district. The proposal required a Variance from the rear yard and usable open space requirements of the Planning Code. On August 16, 1985, the Planning Department issued an environmental determination (Negative Declaration) under the California Environmental Quality Act (CEQA) for the subject project. On October 21, 1986, the Zoning Administrator granted the required variances (Case No. 85.317V) as outlined in the associated Variance Decision Letter (Exhibit E of your request). On January 29, 1987, NSR No. D936971 was recorded on the subject property

outlining six conditions attached to the Planning Department's approval of the subject building permit application in order to allow the permit to be approved under the Planning Code. On January 30, 1987, the Planning Department approved the building permit subject to the conditions of approval, noting the environmental review determination, the variance decision and NSR No. D936971. On July 29, 1987, the subject building permit was issued, with work completed on February 22, 1989 (as noted on the Certificate of Final Completion for the project).

Of the six conditions outlined in NSR No. D936971, it is noted that Condition No. 5 states:

"That the 14 unit senior citizen housing addition fronting on 9th Avenue shall be specifically designed for and occupied by senior citizens or physically handicapped persons, and shall be limited to such occupancy for the actual lifetime of the building by the requirements of State or Federal programs for housing for senior citizens or physically handicapped persons or otherwise by design features and by legal arrangements approved as to form by the City Attorney and satisfactory to the Department of City Planning, as required by Section 209.1(m) of the City Planning Code"

In your request, you state that the NSR was not recorded by the property owner, but by the leaseholder (Bank of Canton) which holds a 50 year lease on the subject property. Also noted in your request is that East West Bank has assumed the lease established by Bank of Canton.

DETERMINATION
The five inquiries, as well as my determinations for each inquiry, are as follows:

1. *Do the conditions and limitations set forth in the Notice of Special Restrictions apply to the ground, to both the original building at 800-810 Clement Street and the newly constructed improvement known as 289291 9th Avenue, or only to the newly constructed improvement known as 289-291 9th Avenue?*

   As the original building at 800 Clement and the addition at 289-291 9th Avenue are situated on the same lot, with a single parcel number, the NSR applies to both. It should be noted that the NSR contains specific conditions for each individual building and limiting the senior housing restriction to the building at 289-291 9th Avenue.

2. *Are the conditions and limitations set forth in the Notice of Special Restrictions binding on the owner of the real property who neither requested nor consented to the Notice of Special Restrictions?*

   Yes. The conditions stipulated in the NSR reflect those which were contained in the Variance Decision Letter and those which were required for the Planning Department as conditions of approval for approval of Building Permit Application No. 8311396. Like the variance issued permitting construction of the improvement known as *289-291 9th Avenue,* once issued, the building permit and all its conditions of approval runs with the land and binds successor owners. (See *Anza Parking Corp. v. City of Burlingame* (1987) 195 Cal.App.3d 855, 858.) Moreover, m[a] landowner cannot challenge a condition imposed upon the granting of a permit after acquiescence in the condition by either specifically agreeing to the condition or failing to challenge its validity, and accepting the benefits afforded by the permit.' [Citation.]" *(City of Berkeley v. 1080 Delaware, LLC* (2015) 234 Cal.App.4th 1144, 1150, as modified (Feb. 26, 2015); see also *Lynch v. California Coastal Commission* (2017) 3 Ca1.5th 470, 478, reh'g denied (Aug. 9, 2017) [in general, permit holders are obliged to accept the burdens of a permit along with its benefits].) The approval of the project and related conditions of approval were not appealed within the timeframes allowed by law and are final and in full effect.

3. *Will the conditions and limitations set forth in the Notice of Special Restrictions survive termination of the Lease and continue to restrict use of the real property after the Lease expires on February 29, 2032?*

Yes. See Response No. 3, above. The conditions outlined in the NSR are associated with the project approved and constructed under Building Permit Application No. 8311936. The

conditions are not related to the terms of any specific lease. As noted in the Condition No. 5, the condition related to senior housing applies for the actual lifetime of the building.

4. *Will the conditions and limitations set forth in the Notice of Special Restrictions, or any other applicable local law, prevent the owner of the real property from seeking to demolish the new constructed improvement at 289-291 9th Avenue following expiration or termination of the Lease?*

   The conditions and limitations referenced in the NSR do not prevent the demolition of the building at 289-291 9th Avenue. If the property owner wishes to seek authorization for the demolition of the building, Conditional Use Authorization is required pursuant to Planning Code Section 317(c)(1), which states: "Any application for a permit that would result in the Removal of one or more Residential Units or Unauthorized Units is required to obtain Conditional Use authorization. The application for a replacement building or alteration permit shall also be subject to Conditional Use requirements."

5. *Will the Zoning Administrator exercise its authority to release the real property from the conditions and restrictions contained in the Notice of Special Restrictions when the Lease expires and the ground and improvements revert to Mrs. Mohr on March 1, 2032?*

   No. As indicated previously, the conditions and limitations referenced in the NSR are not tied to the terms of any specific lease, or to any particular party to that lease. Rather, they run with the land. The conditions shall be valid for the actual lifetime of the building, as approval of the subject building permit application to develop the parcel was dependent upon the use being restricted to senior housing to comply with the density limits of the Planning Code.

Please note that a Letter of Determination is a determination regarding the classification of uses and interpretation and applicability of the provisions of the Planning Code. This Letter of Determination is not a permit to commence any work or change occupancy. Permits from appropriate Departments must be secured before work is started or occupancy is changed.

APPEAL: If you believe this determination represents an error in interpretation of the Planning Code or abuse in discretion by the Zoning Administrator, an appeal may be filed with the Board of Appeals within 15 days of the date of this letter. For information regarding the appeals process, please contact the Board of Appeals located at 1650 Mission Street, Room 304, San Francisco, or call (415) 575-6880.

Sincerely,

cc: Property Owner
Neighborhood Groups

Scott F. Sanchez
Zoning Administrator

Amy Chan, San Francisco Mayor's Office of Housing and Community Development Matt Dito, Planner

EXHIBIT C

From: A. Teki
Sent: Thursday, January 5, 2023 9:53 PM
To: Teague, Corey (CPC) <corey.teague@sfgov.org>
Subject: Re: URGENT Clarification Requests re LOD answer(s) Application: 2022-007996ZAD Re: Letter of Determination Request

Thank you very much for your very reasonable and helpful clarifications and advice, and promptness.

I am very enlightened by your answers here, yet would kindly ask for follow up clarifications and reconsiderations to some important things you said:

1. re " The General Plan is not part of the Planning Code and is a separate and distinct document ", if that is the case, then I'm confused about this point, and my item #4 further below:
    a. If not the ZA then **who in the city has the authority and responsibility** to respond to written requests for determinations regarding the **interpretation and applicability** of the **provisions of the General Plan**?
2. I'm still confused, re " as the answer is the same for all the controls", just to be crystal clear, **please confirm that your answer means** the project scenario in my question (i.e., does comply with § 260 (a)/Zoning Map , but not § 261) **would be denied**.
3. re **LoD Director Bulletin No. 6** (2019-019981ZAD):
    a. re " It relied on the City's determination that the adopted legislation was compliant with the relevant State law. As such, **that request** and determination were different than this request and determination ", it appears their request asked you to **set forth the legal basis and interpretation of Government Code §** 65915(o)(2) as it applies to the city's reduction of their state-law permitted building rights vs the planning code regulations, as implemented via planning director's bulletin. **where you personally made the HAA determination** (not present in PDB No. 6) that "As such, as applied to a particular project, it would not represent a reduction of density in violation of the Housing Accountability Act, but is rather a reasonable calculation of ...." That is very similar to me asking you to **set forth the legal basis and law interpretation that would empower the city to deny a project that complies with all review standards/regulations permitted by SB-330 and the HAA. Nowhere in that LOD did you dodge answering city permit state-law implementation questions with blocking answers like "**please note that the Zoning Administrator does not have the authority or responsibility to interpret State law.**", as you did for my LOD. All I asked for was at least the same level of "**full explanation of the legal and policy basis for" the city's interpretation of the state housing law in question, which I was not at all provided in your LOD. See where you summarized their LOD request and hence sets forth the minimum scope of your authority or responsibility does include such interpreting of State housing laws and City Planning Director Bulletins, which includes questions such as in my LOD:

    "you request "a full explanation of the legal and policy basis for using the lower lot coverage threshold to calculate the base density for state density bonus developments," and "a specific

justification for why Government Code § 65915(o)(2) would not mandate that the city assume the 100 percent lot
coverage scenario as a base density calculation.”"

b. re "Whereas Planning Director Bulletins address policies, procedures, and other items that are not covered by ZA Bulletins.", if not the ZA, then **who in the city has the authority and responsibility** to respond to written requests for binding determinations regarding the **interpretation** and applicability of the **provisions of Planning Director Bulletins**?

4. regarding "More specifically, the **General Plan does not create specific height and bulk districts,** such as 40-X. I instead gives guidance on those issues. ", this is an even more helpful answer to the original question, thank you! However, **I must respectfully disagree** with that statement. That is, based on my interpretation of the planning code it would seem that the prior historic 'master plan' did create specific height and bulk districts, such as 40-X, at latest by 1972. I say this based on **SEC. 252**. 'CLASSES OF HEIGHT AND BULK DISTRICTS.' where it says "The City is hereby divided into classes of height and bulk districts as indicated on the Zoning Map and in this Article 2.5. ", which is a clear city 'master plan' statement made no later than in Amendment by Ord. 234-72 on 8/18/72. and, furthermore, my above cited clause of SEC. 340 states that this Master Plan prior to 1996 was renamed, and incorporated into the modern city "General Plan". As such, the **City planning code does officially incorporate provisions of the General Plan that does in fact create specific height and bulk districts**, such as 40-X. As such, is seems clear that you in fact had and **do have the authority and responsibility** to respond to my written requests for binding determinations regarding the **interpretation** and applicability at least with regard to how my cited **provisions of** City planning code does officially **incorporate provisions of the 'Master Plan' into the "General Plan"** which presumably does create specific height and bulk districts per my below. Can you please accordingly **reissue your LOD with a full and proper reconsideration of my General Plan vs height and bulk districts LOD request question?** Related issues to more properly answer my LOD request would include addressing these:

a. **Does the city have a specific plan** as defined in Gov. Code §65450-65451?

https://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=GOV&division=1.&title=7.&part=&chapter=3.&article=8.

b. **what constituted the city's Master Plan prior to 1996**, given that distinction is made in planning code SEC. 340 . How/where can I get a copy of that Master Plan that the planning code is referring to? see at "(a) On July 1, 1996, the effective date of the revised Charter, the Master Plan of the City ...prior to July 1, 1996, shall be known as the General Plan... "

Again, I greatly appreciate your deep insights and helpfulness towards reaching a full and proper understanding of city planning codes/process as the apply to city permit review/processing.
I look forward to your continued very thoughtful and prompt feedback/clarifications.

thanks!

From: Teague, Corey (CPC) <corey.teague@sfgov.org>
Sent: Wednesday, January 4, 2023 2:52 PM
To: A. Teki
Subject: RE: URGENT Clarification Requests re LOD answer(s) Application: 2022-007996ZAD Re: Letter of Determination Request

Yes, I received your email. If you believe that I erred or abused my discretion in the issued determination, you may make those arguments to the Board of Appeals (through a brief and in person at the hearing). I will respond to any specific arguments through the appeal process. However, I will provide some general answers to some of your questions now.

1. "Which General Plan elements are satisfied" is synonymous with "General Plan consistency." The General Plan is not part of the Planning Code and is a separate and distinct document.

2. I broadened the response to cover all the height controls of Article 2.5 to avoid any confusion regarding specific controls, as the answer is the same for all the controls.

3. The LoD regarding Director Bulletin No. 6 (2019-019981ZAD) is nuanced, but it does not ultimately make a determination of state law compliance. In that case, the Planning Code had been amended to specifically comply with a specific state law, and my determination was ultimately based on the language of the Planning Code (which had been informed by State law). It relied on the City's determination that the adopted legislation was compliant with the relevant State law. As such, that request and determination were different than this request and determination. Also, Zoning Administrator Bulletins are distinct in that they interpret the Planning Code and/or adopt rules pursuant to Section 307. Whereas Planning Director Bulletins address policies, procedures, and other items that are not covered by ZA Bulletins.

4. See my answer No. 5 in the issued letter. More specifically, the General Plan does not create specific height and bulk districts, such as 40-X. I instead gives guidance on those issues. Finally, identifying General Plan provisions that "favor SFPC § 261(b)(1) over the § 260 (a)/height-bulk Zoning Map" is not a Planning Code interpretation, and the adopting legislation that created Sec. 261(b)(1) included the necessary General Plan findings to support its adoption.

I hope that helps. Thanks.

Corey A. Teague, AICP, LEED AP
Zoning Administrator

Current Planning Division
San Francisco Planning
PLEASE NOTE MY NEW ADDRESS AND PHONE NUMBER AS OF AUGUST 17, 2020:
49 South Van Ness Avenue, Suite 1400, San Francisco, CA 94103
Direct: 628-652-7328 | sfplanning.org
San Francisco Property Information Map

From: A. Teki
Sent: Wednesday, January 4, 2023 12:21 PM
To: Teague, Corey (CPC) <corey.teague@sfgov.org>

Subject: Re: URGENT Clarification Requests re LOD answer(s) Application: 2022-007996ZAD Re: Letter of Determination Request

Hi Corey, can you please confirm receipt and your estimated response timing. thx, and Happy New Year.

From: A. Teki
Sent: Sunday, January 1, 2023 8:10 PM
To: Teague, Corey (CPC) <corey.teague@sfgov.org>
Subject: URGENT Clarification Requests re LOD answer(s) Application: 2022-007996ZAD Re: Letter of Determination Request

Greetings Cory,

Thanks for issuing the LOD. I have read it, and have Questions re your LOD answers. I follow most of it, however, there are at least 5 aspects which appear to be very problematic, and might be by mistake/oversight or poorly considered, requiring your corrections and/or clarifications. So, I'm reaching out to you to hopefully help clarify/resolve these requests for clarifications, and reissue a proper LOD as needed:

1. My first request for clarification concerns your LOD answer #3 (copied below). **Your answer is not related to my question there, so I suspect you had an oversight and/or misunderstood the question, and may need to revise with an appropriate answer**. That is, my question there did not ask you to opine about "General Plan consistency". That is, **my question asks "Which elements of the General Plan are satisfied by…", which is not asking anything about "consistency or compliance of legislative actions with the General Plan"** that your answer "The Zoning Administrator does not have the authority or responsibility to interpret the..." relates to. As you stipulate in your LOD answer #1: "Per Planning Code Section 307(a), the Zoning Administrator has the authority and responsibility to "respond to all written requests for determinations regarding the classification of uses and the interpretation and applicability of the provisions of" the Planning Code.", and given that the City's **General Plan is part of or related to the City's planning code then I would expect you in fact have** the authority and responsibility to respond to that written requests for determination concerning "Which elements of the General Plan are satisfied by...". **Please explain how your answer is consistent with my question, or revise/update/reissue your answer to properly address the question asked**.

3. Which elements of the General Plan are satisfied, if any, by the more restrictive 35-foot height controls of Planning Code Section 261(b)(1) that aren't already sufficiently served by the 40-foot height limit?

The Zoning Administrator does not have the authority or responsibility to interpret the consistency or compliance of legislative actions with the General Plan. The Planning Commission and Board of Supervisors adopted General Plan consistency findings associated with the referenced legislative actions. Any dispute of such General Plan consistency would be adjudicated through the state court system.

2. My 2nd request for clarification concerns: your LOD answer #1, where you restatement of my question confusingly says "can the Planning Department deny a building permit that **does not comply with either the *heigh* limits of Planning Code Article 2.5**,", whereas my question scenario asked "...cited city codes (e.g., the SFPC § 261 35-foot RH-1 height limit...1) **exceeds 35 feet but is less than 40 feet in height**;". While the presumption is that your question interpretation and summarized restatement in the LOD properly reflects and answers my exact question scenario, please confirm that your answer, in fact answers my stated question where the project **scenario in question does comply with the height limits of Planning Code Article 2.5 § 260 (a)**/Zoning Map , but not the conflicting height limits of Planning Code Article 2.5 § 261 35-foot. That is, when you restated that as "does not comply with either the height limits of Planning Code Article 2.5", your answer does in fact correspond with the above specific scenario of my question (i.e., project complies with Article 2.5 § 260 (a) 40-foot, but not Article 2.5 § 261 35-foot), or did you make an error there? If you made a question interpretation/restatement error then please reissue the LOD with the question and your answer being accurately restated to match my exact question scenario.

3. My 3rd request for clarification concerns: Throughout your LOD you say things like "please note that the Zoning Administrator does not have the authority or responsibility to interpret State law. Please see the various Planning Director Bulletins for more information on how the City currently interprets and implements some or all of the referenced State laws," as a way to not answer the various state law related questions, which does not make any sense to me at least because I am not questioning state law itself, but if/how the City currently interprets and implements the Planning Director Bulleting (PDB) executive orders as applied to my questioned scenarios, which**, especially concerning your LOD answer #7 (copied below), as I evidence in some detail below, does not appear to be a true or responsive answer given that by your own admission/precedent, the ZA is in fact required by city codes to answer LOD questions concerning those various Planning Director Bulletins.** For example, as I reminded you before, **in your LOD Record No.: 2019-019981ZAD, you made an analysis and determination of whether Planning Director Bulletin No. 6 was legally valid/consistent with CA Government Code § 65915(o)(2)** concerning lot coverage base density calculations, where you made an official determination saying that "Based on the information and analysis above, it is my determination that Ordinance No. 116-17 was reviewed by the Planning Department and City Attorney's Office to ensure it met all applicable state laws, and was adopted by the Board of Supervisors. As such, the provisions of that ordinance represent the City's lawful implementation of the State Density Bonus Law...As such, as applied to a particular project, it would not represent a reduction of density in violation of the Housing Accountability Act, but is rather a reasonable calculation of the maximum permitted density."

   As such, p**lease explain how is it that you, as the Zoning Administrator, had the authority and responsibility to interpret State law as it related to Planning Director Bulletin No. 6 and made in that LOD determination** of that Planning Director Bulletin being legally valid/consistent with CA Government Code § 65915(o)(2), yet now in my LOD you claim to not have that authority or responsibility to interpret State law as it relates to Planning Director Bulletin No. 7 (Housing Crisis Act of 2019). I should also point out that PDB No. 7 seems to clearly answer my question and confirm that Ordinance No. 206-19 violates SB 330 (Housing Crisis Act of 2019 – CA Government

Code Sec. 66300(b)(1)(A)); however, my LOD requested you, as ZA, confirm my interpretation of PDB No. 7.

see where PDB No. 7 says:

Zoning Actions
The city is prohibited from taking any legislative action, including by voter initiative, that would reduce the zoned capacity of
housing development below what was allowable as of January 1, 2018, including but not limited to:
• Reducing the maximum allowable height, density, or floor area ration (FAR)
• Imposing new or increased open space, lot size, setback or maximum lot coverage requirements
• Adopting or enforcing any moratorium or cap on housing approvals

a. It is obvious that Planning Director Bulletins (PDB) are simply extensions, and under authority, of the Planning code instructing staff how the City currently interprets and implements corresponding State laws that city planning administration has adopted by way of Planning Director PDB executive orders instead of legislative code amendments. So, the must have the Zoning Administrator's authority or responsibility to interpret, with support from the city's subject matter expert staff/attorneys, when asked in an LOD request concerning how the City currently interprets and implements corresponding State laws that city planning administration has adopted by way of Planning Director PDB executive orders instead of legislative code amendments.
b. Regarding your answer:
7. Ordinance No. 206-19 took effect on October 14, 2019 and, among other amendments, increased the rear yard requirement of Section 134 from 25% of the lot depth to 30% of the lot depth for RH-1 Zoning Districts. Would enforcing that increased rear yard requirement violate SB 330 (Housing Crisis Act of 2019 – CA Government Code Sec. 66300(b)(1)(A))?
...
Regarding the potential impact of California Government Code Sections 65860, 66300(b)(1)(A), and 65589.5 on the Planning Department's ability to deny a building permit under such scenarios, please note that the Zoning Administrator does not have the authority or responsibility to interpret State law. Please see the various Planning Director Bulletins for more information on how the City currently interprets and implements some or all of the referenced State laws, which may be found at https://url.avanan.click/v2/___www.sfplanning.org___.YXAzOnNmZHQyOmE6bzowZjlkZjNkMjUwYjM1YjRkMWYyNmI5MmMxODBlY2Y2Zjo2OmI4MWQ6YWQ3Yzc5MzA5YWNjN2NkZTg0MjQ3YTVlMTE4OWM4NTQ2MGU3YzAyN2UyZDM1NDhlNDk3NGJmOWFkNTFhMWQwOTp0OlQ. Any dispute or final interpretation of State law would be adjudicated through the state court system.

5. My 4th request for clarification: **Concerning your answers to my QUESTIONs 1 and 3, regarding city planning compliance with the HAA as applied to my questioned scenarios, you presumably repeat your position that** "please note that the Zoning Administrator does not have the authority or responsibility to interpret State law". **However, that is not in fact true**, given, similar to that cited above, in your **in**

your LOD Record No.: 2019-019981ZAD, you in fact made an analysis and determination that that city planning was compliant with the Housing Accountability Act, see where you said: "...As such, as applied to a particular project, it would not represent a reduction of density in violation of the Housing Accountability Act, but is rather a reasonable calculation of the maximum permitted density. So, it appears that you at least erred in not answering these questions of HAA compliance. That is, for my QUESTION 3 the HAA requires only objective standards, which the RDG is not, and for my QUESTION 1 re 40X 40' height, the HAA (65589.5 (d)(5)) does not permit denial if the project complies with the general plan, irrespective of any conflicting city ordinance. As such, please reissue the LOD with **QUESTIONs 1 and 3** properly answered wrt the HAA**.**

See:

65589.5 (d) **A local agency shall not disapprove a housing development project**, including farmworker housing as defined in subdivision (h) of Section 50199.7 of the Health and Safety Code, for very low, low-, or moderate-income households, or an emergency shelter, or condition approval in a manner that renders the housing development project infeasible for development for the use of very low, low-, or moderate-income households, or an emergency shelter, including through the use of design review standards, **unless it makes written findings, based upon a preponderance of the evidence in the record, as to one of the following**:

…

(5) The housing development project or emergency shelter **is inconsistent with both the** jurisdiction's zoning ordinance **and general plan** land use designation as specified in any element of the general plan as it existed on the date the application was deemed complete, and the jurisdiction has adopted a revised housing element in accordance with Section 65588 that is

in substantial compliance with this article. For purposes of this section, a change to the zoning ordinance or general plan land use designation subsequent to the date the application was deemed complete shall not constitute a valid basis to disapprove or condition approval of the housing development project or emergency shelter.

6. It seems to me that your LOD Ans #2 corresponds to my Question # 1(b), LOD Ans #3 -> Question # 1(c), LOD Ans #4 -> QUESTION 1 (d), LOD Ans #5 -> QUESTION (1 b'), and LOD Ans #6 -> QUESTION (1 c'). As such, my questions **1(a) and 1 (d')** appear to be unanswered.
7. So, my 5th request for clarification concerns: Based on my above assessment, it appears that you did not answer the below two questions **1(a) and 1 (d')** . Please point out/explain where/how they were properly answered or reissue the LOD with **QUESTIONs 1(a) and 1 (d')** properly answered, as follows:
    a. **QUESTION 1(a)** asking if the 40-X height zoning limits is part of the City's General Plan. To be clear, this question is not asking about consistency between the 40X and 35' ordinances (as asked in another question), but simply if the 40-X height-bulk zoning limit is part of the City's General Plan, or not. Please clarify where you answered that. See:

    QUESTION 1(a) (Top level, regarding RH-1 height limits):
    So, given that 40-X height-bulk (40-foot) zoning map districts overlap/conflict with nearly all, if not all, of the § 261(b)(1) 35-foot RH-1 zoning use map areas/districts, the question is:

    Are the height limits established in Article 2.5, Section 260 (a) and its referenced height-bulk Zoning Map, in particular the 40-X height zoning limits (which includes a 40-foot height limit that covers all of RH-1 zoned blocks/districts), in fact all part of, and fully consistent with, the City's General Plan? How so, or why not?
    Please provide the full factual basis and logical reasoning for all determinations.

b. **QUESTION (1 d')**: what are the applicable General Plan elements/requirements favoring SFPC § 261(b)(1) over the § 260 (a)/height-bulk Zoning Map?

I look forward to your feedback on these requests for clarifications, and/or ASAP reissue a proper LOD as needed.

As I'm sure you can appreciate, time is of the essence here.

thanks again!

EXHIBIT D1

1921 SF Zoning Use Districts Master Plan

EXHIBIT D2

1921 SF Zoning Use Districts Master Plan, Zoomed in on the Example block that is now zoned 40X height/bulk and RH1

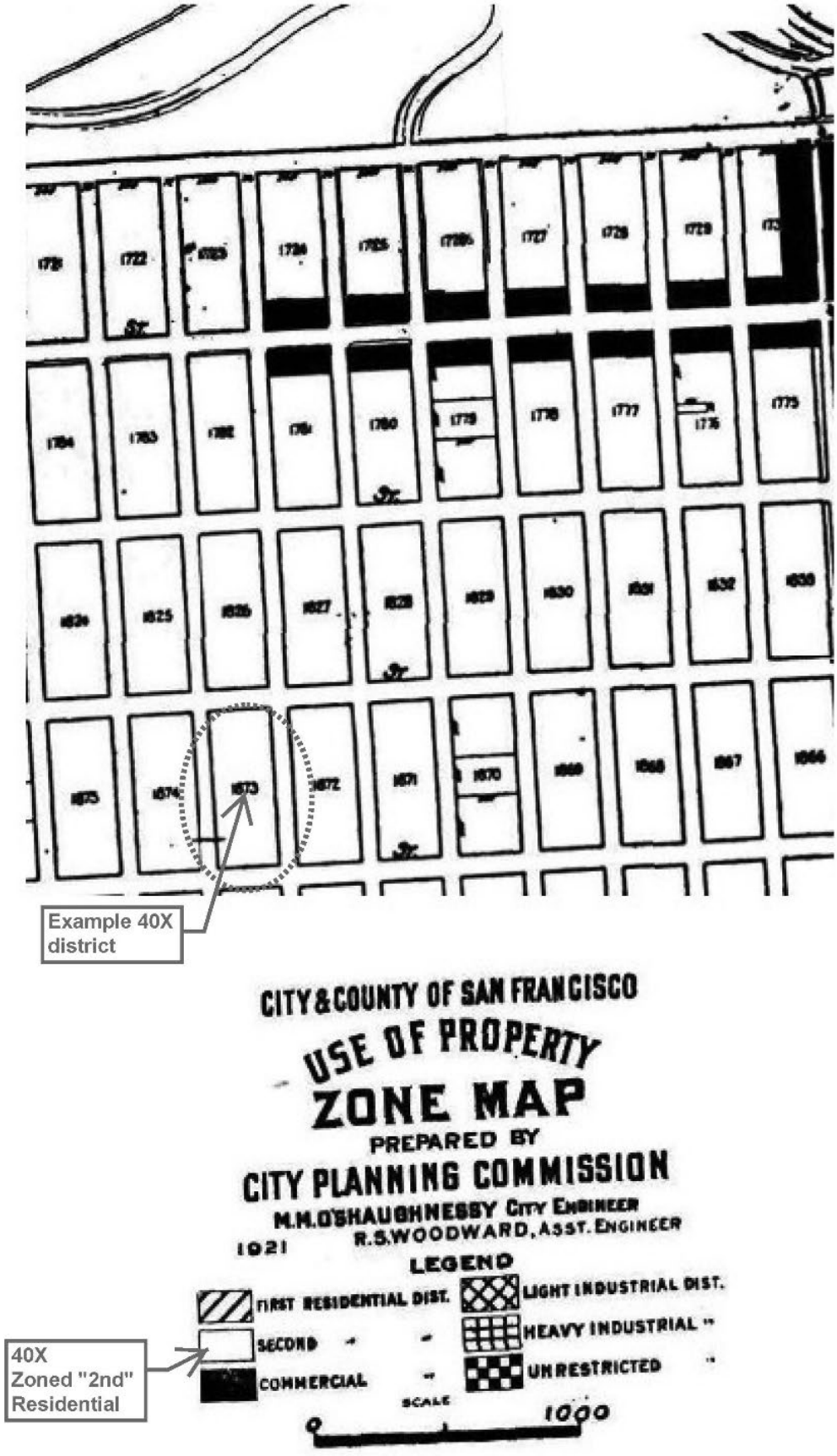


EXHIBIT D3

1971 SF Comprehensive Residential General Plan Map, modern 40X Districts are Zoned "Low Density"

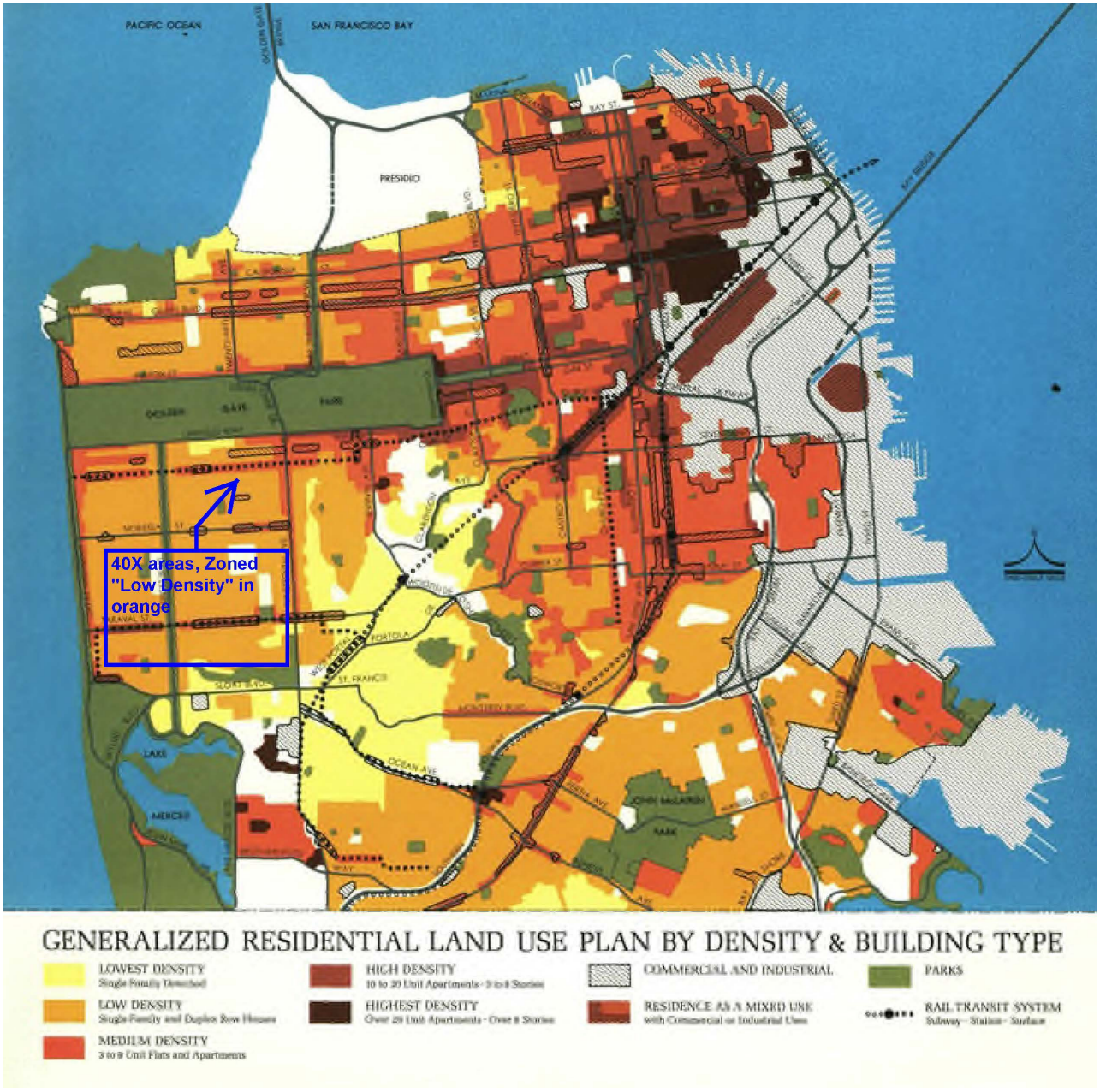


EXHIBIT D4

Post 1978 SF Comprehensive Residential General Plan Map having modern 40X Districts, now part of the General Plan

Zoomed in at the same blocks area boxed in the above 1971 and 1928 maps, all were "low density" with no height limits.

EXHIBIT E

PLANNING DIRECTOR

BULLETIN NO. 7

Housi !019

San Francisco Planning

This Bulletin outlines how the Planning Department administers the provisions of the Housing Crisis Act of 2019 during the statewide housing emergency period through January 1, 2030. Please consult the references for additional information.

Project Review and Zoning Actions

First Issued:
DECEMBER 2019

Updated:
OCTOBER 2022

References:
Government Code Sections 65905.5, 65913.10, 66300 (Housing Crisis Act)
Government Code Sec. 65589.5 (Housing Accountability Act)
Government Code Sec. 65940-50 (Permit Streamlining Act)

INTRODUCTION

Effective January 1, 2020, and further amended in 2021, "The Housing Crisis Act of 2019," (HCA) establishes a statewide "housing emergency" until January 1, 2030. During the housing emergency, the Housing Crisis Act suspends certain restrictions on the development of new housing and expedites the permitting of housing. This bulletin provides guidance on the application of the HCA to the review and approval processes for residential development projects and zoning actions in San Francisco during the housing emergency.

OVERVIEW

During the housing emergency, cities and localities in urban areas, such as San Francisco, are generally prohibited from rezoning or imposing new development standards that would reduce the capacity for housing or adopting new design standards that are not objective. In these jurisdictions, the demolition of existing housing units is only permitted if the same number of units are created, and the demolition of existing below-market rate, rent-controlled units, units rented by low-income households or units withdrawn from the rental market within the last ten years is only permitted if replaced by units that meet certain conditions related to affordability and tenant protections.

Additionally, all localities must comply with additional project review requirements and timelines for housing developments applications. These include a prohibition on applying new zoning regulations and development standards or listing the project as a local historic landmark after a project's application is submitted, except in certain circumstances. Housing developments that meet all applicable objective zoning standards may only be subject to five public hearings, including continuances and most appeal hearings.

The HCA does not establish any new ministerial approval programs, mandate any rezoning actions, prevent additional restrictions on short-term rentals or demolition of existing units, or supersede the requirements in the California Coastal Act or California Environmental Quality Act (CEQA).

HOUSING DEVELOPMENT PROJECTS

As used throughout this bulletin, a "housing development project" refers to 1) a development project consisting of one or more residential units, 2) a mixed-use development project where at least two-thirds of the square footage comprises residential uses, or 3) transitional or supportive housing development projects. The HCA applies to projects that involve both ministerial and discretionary approvals.

ZONING ACTIONS AND DESIGN STANDARDS

Zoning Actions

The HCA **prohibits** jurisdictions from taking any legislative action, including by voter initiative, **that would reduce the zoned capacity** of housing development **below what was allowable as of January 1, 2018**, including but not limited to actions that would:

Reduce the maximum allowable height, density, or floor area ratio (FAR)

Impose new or **increased open space**, lot size, setback or maximum lot coverage **requirements**

Adopt or enforce a moratorium or cap on housing approvals

However, a city may reduce housing capacity if the city concurrently increases the housing capacity of other parcels elsewhere in the jurisdiction such that there would be no net loss in residential capacity. In most instances, "concurrently" means that the Board of Supervisors must approve both zoning changes at the same meeting.

Design Standards

For housing development projects, the city may not apply new design standards that were adopted on or after January 1, 2020 unless these design standards meet the state law definition of "objective standards." Specifically, an objective standard involves no personal or subjective judgement on the part of the city and is uniformly verifiable by reference to criteria that are available to the applicant at the time of application.

San Francisco will continue to apply all Design Guidelines that were adopted and in effect prior to January 1, 2020 to residential projects, including the Urban Design Guidelines, Residential Design Guidelines, and any special area or topic-based design guidelines. Non-residential projects may be subject to future non-objective design guidelines or standards.

PROJECT REVIEW PROCESS

Permit Streamlining Act

The Permit Streamlining Act (Government Code Sec. 65920-64) applies

to housing development projects. During the housing emergency, the required timeframe to approve or disapprove a housing development project for which an environmental impact report (EIR) is prepared is decreased by 30 days. The new timelines are as follows: 1) 90 days after certification of an EIR for a housing development project; or 2) 60 days after certification of an EIR for a housing development project in which at least 50 percent of the units are affordable to low-income households and that receive public financing. All other required review timeframes in the Permit Streamlining Act continue to apply unchanged during the housing emergency.

Housing Accountability Act

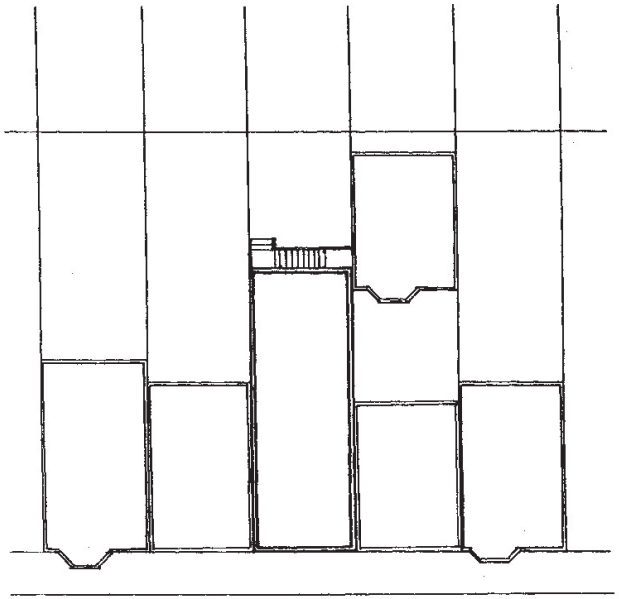
The Housing Accountability Act ("HAA") (Government Code Sec. 65589.5) applies to certain housing development projects (at least two units, at least 2/3 residential, or transitional or supportive housing). Generally, the HAA limits the City's ability to deny or reduce the density of projects that comply with applicable objective zoning and development standards in effect at the time a development application is determined to be complete. During the housing emergency, however, these limitations apply to housing development projects that comply with the objective zoning and development standards in effect at the time a "preliminary application" is submitted, as described below…..

EXHIBIT F

RESIDENTIAL DESIGN GUIDELINES (RDG), December 2003, republished 2013 (official downloaded as of Jan 5, 2022)		
Provision	**Provision**	**RDG *LEGAL BASIS***

RDG, Page 27, top left.
***Although the Planning Code allows a three story addition extending into the rear yard**, the addition is substantially out of scale with surrounding buildings and impacts the rear yard open space.*

RDG, Page 21, bottom left.
*This illustration shows a new **building permitted under the Planning Code.** The building's design has not been modified to minimize light impacts to the adjacent cottage, and further restricts the mid-block open space*



RDG, Page 3, Introduction:
LEGAL BASIS
*Section 311(c)(1) of the Planning Code provides that Residential Design Guidelines shall be used to review plans for all new construction and alterations. Specifically, it states: "The construction of new residential buildings and alteration of existing residential buildings in R districts shall be consistent with the design polices and guidelines of the General Plan and with the "Residential Design Guidelines" as adopted and periodically amended for specific areas or conditions by the City Planning Commission. **The Director of Planning may require modifications to the exterior of a proposed new residential building or proposed alteration of an existing residential building in order to bring it in to conformity with the "Residential Design Guidelines"** and with the General Plan. These modifications may include, but are not limited to, changes in siting, building envelope, scale, texture and detailing, and landscaping.*
In developing these Residential Design Guidelines, the Department referred to the General Plan, and to the Planning Code.

*The **Planning Code establishes standards for the maximum** and minimum dimensional requirements for a building. The standards include height, the size of rear and side yards, and front setbacks, as well restrictions on the size and location of certain building components."*

EXHIBIT G

Law citations:

SEC. 260. HEIGHT LIMITS: MEASUREMENT.

(a) **Method of Measurement.** The limits upon the height of buildings and structures shall be as specified on the Zoning Map, except as permitted by Section 206.

SEC. 261. ADDITIONAL HEIGHT LIMITS APPLICABLE TO CERTAIN RH DISTRICTS.

(a) **General.** Notwithstanding any other height limit established by this Article 2.5 to the contrary, the height of dwellings in certain use districts established by Article 2 of this Code shall be further limited by this Section 261. The measurement of such height shall be as prescribed by Section 260.

(b) **Height Limits Applicable to the Entire Property.**

(1) No portion of a dwelling in any RH-1(D), RH-1 or RH-1(S) District shall exceed a height of 35 feet,

California Code, Government Code - GOV § 65860

Current as of January 01, 2019

(a) County or city zoning ordinances shall be consistent with the general plan of the county or city by January 1, 1974. A zoning ordinance shall be consistent with a city or county general plan only if both of the following conditions are met:

…

(c) In the event that **a zoning ordinance becomes inconsistent with a general plan** by reason of amendment to the plan, or to any element of the plan, **the zoning ordinance shall be amended within a reasonable time so that it is consistent with the general plan as amended**.

(d) Notwithstanding Section 65803 , this section shall also apply to a charter city.

HAA § 65589.5 (d)
https://california.public.law/codes/ca_gov't_code_section_65589.5

65589.5 (d) **A local agency shall not disapprove** a housing development project, …, for very low, low-, or moderate-income households, …, including through the **use of design review standards**, unless it makes written findings, based upon a preponderance of the evidence in the record, **as to one of the following**:

(5) The housing development project or emergency shelter **is inconsistent with both the jurisdiction's zoning ordinance and general plan land use designation** as specified in any element of the general plan as it existed on the date the application was deemed complete, ...

(A) This paragraph **cannot be utilized to disapprove or conditionally approve** a housing development project if the housing development project is proposed on a site that is identified as suitable or available for very low, low-, or moderate-income households in the jurisdiction's housing element, **and consistent with the density specified** in the housing element, **even though it is inconsistent with both the jurisdiction's zoning ordinance and general plan land use designation**.

HAA- Cal. Gov. Code § 65589.5 (c)(8)

(8) Until January 1, 2030, **"objective" means involving no personal or subjective judgment by a public official and being uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official**.

(d) **A local agency shall not disapprove a housing development project**, including farmworker housing as defined in subdivision (h) of Section 50199.7 of the Health and Safety Code, for very low, low-, or moderate-income households, or an emergency shelter, or condition approval in a manner that renders the housing development project infeasible for development for the use of very low, low-, or moderate-income households, or an emergency shelter, including through the use of design review standards, unless it makes written findings, based upon a preponderance of the evidence in the record, as to one of the following:

…

(1) Except as provided in subdivision (o), nothing in this section shall be construed to prohibit **a local agency from requiring the housing development project to comply with objective, quantifiable, written development standards, conditions**, and policies appropriate to, and consistent with, meeting the jurisdiction's share of the regional housing need pursuant to Section 65584. However, the development standards, conditions, and policies shall be applied to facilitate and accommodate development at the density permitted on the site and proposed by the development.

CARLA

California Renters Legal Advocacy & Education Fund (CARLA) v. City of San Mateo, 68 Cal. App. 5th 820, 283 Cal. Rptr. 3d 877 (Ct. App. 2021).

The Legislature insists on objective criteria so as to ensure "reasonable certainty . . . to all stakeholders" about the constraints a municipality will impose. …Yet reasonable certainty in application—that is, objectivity—is precisely the test that the height provisions of the Guidelines fail.

…

Our conclusion that the applicable portion of the Guidelines does not provide an objective standard is confirmed by considering subdivision (f)(4) of the HAA, which complements and reinforces subdivision (j)'s objectivity requirement. Added in 2017 as the Legislature sought to strengthen the HAA, subdivision (f)(4) deems a project consistent with applicable objective standards "if there is substantial evidence that would allow a reasonable person to conclude that the [project] is consistent, compliant, or in conformity" with such standards. (§ 65589.5, subd. (f)(4).) The City sees all manner of mischief in this standard—as we will see shortly in the next section—but where a standard is truly objective, in that it is "uniformly verifiable by reference to an external and uniform benchmark" (§ 65589.5, subd. (h)(8), italics added), there is little to no room for reasonable persons to differ on whether a project complies with such a benchmark. Subdivision (f)(4) is intentionally deferential to housing development. It is also an excellent backstop to ensure that the standards a municipality are applying are indeed objective.

…

CARLA fares better with its second argument, that the Guidelines do not provide objective standards for purposes of the HAA. At the time of the events at issue here, the HAA did not define the term "objective," so we look to the ordinary meaning of that term. One dictionary defines "objective" as "expressing or dealing with facts or conditions as perceived without distortion by personal feelings, prejudices, or interpretations." (Merriam-Webster's Collegiate Dict. (10th ed. 2001) p. 799.) The definition added to the HAA effective January 1, 2020 is a longer version of the same idea. The HAA now defines "objective" as "involving no personal or subjective judgment by a public official and being uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official." (§ 65589.5, subd. (h)(8), added Stats. 2019, ch. 665, § 3.1.) Using either of these definitions, **a standard that cannot be applied without personal interpretation or subjective judgment is not "objective" under the HAA**.

CGC § 66300 (b) (1) Notwithstanding any other law except as provided in subdivision (i), with respect to land where housing is an allowable use, an affected county or an affected city **shall not enact a development policy**, standard, or condition that would have any of the following effects:

(A) **Changing the general plan land use designation, specific plan land use designation, or zoning of a parcel or parcels of property to a less intensive use** or reducing the intensity of land use within an existing general plan land use designation, specific plan land use designation, or zoning district below what was allowed under the land use designation and zoning ordinances of the affected county or affected city, **as applicable, as in effect on January 1, 2018, except as otherwise provided in clause (ii) of subparagraph (B)**. For purposes of this subparagraph, “less intensive use” includes, but is not limited to, reductions to height, density, or floor area ratio, new or increased open space or lot size requirements, or new or increased setback requirements, minimum frontage requirements, or maximum lot coverage limitations, or anything that would lessen the intensity of housing.

(B) (i) Imposing a moratorium or similar restriction or limitation on housing development, including mixed-use development, within all or a portion of the jurisdiction of the affected county or city, **other than to specifically protect against an imminent threat to the health and safety** of persons residing in, or within the immediate vicinity of, the area subject to the

moratorium or for projects specifically identified as existing restricted affordable housing.

(ii) The affected county or affected city, as applicable, **shall not enforce a zoning ordinance imposing a moratorium or other similar restriction on or limitation of housing development until it has submitted the ordinance to, and received approval from, the department. The department shall approve a zoning ordinance submitted to it pursuant to this subparagraph only if it determines that the zoning ordinance satisfies the requirements of this subparagraph.** If the department denies approval of a zoning ordinance imposing a moratorium or similar restriction or limitation on housing development as inconsistent with this subparagraph, **that ordinance shall be deemed void**.

(i) (1) This section **does not prohibit** an affected county or an affected city from changing a land use designation or zoning ordinance **to a less intensive use if the city or county concurrently changes the development standards, policies, and conditions applicable to other parcels within the jurisdiction to ensure that there is no net loss in residential capacity**.

San Francisco Planning Code § 134. REAR YARDS IN R…DISTRICTS.

(c) Basic Requirements. The basic rear yard requirements shall be as follows for the districts indicated:

(1) RH-1(D), RH-1, and RH-1(S) Districts. For buildings that submit a development application **on or after January 15, 2019, the minimum rear yard depth shall be equal to 30% of the total depth of the lot** on which the building is situated, but in no case less than 15 feet. Exceptions are permitted on Corner Lots and through lots abutting properties with buildings fronting both streets, as described in subsection (f) below. For buildings that submitted a

development application **prior to January 15, 2019, the minimum rear yard depth shall be determined based on the applicable law on the date of submission**.

EXHIBIT H

Request for Zoning Conformance Letter of Determination (As filed):

Zoning Administrator
Office of the Zoning Administrator
49 South Van Ness Avenue, Suite 1400
San Francisco, CA 94103

Name: Abenet Tekie
Subject Address: any and all single-family home, RH-1 zoned districts, blocks, and lots
Subject: Enforceability of RH-1 Building Envelope (e.g., Height/Bulk) Regulations.

General Background Facts:

San Francisco (SF) regulates the allowable maximum Building Envelope of RH-1 housing development projects by setting constraints on the maximum Height and Bulk permitted. Regulating this maximum allowable Building Envelope is primarily accomplished in the following 3 ways:

1. (in re **Questions 1a**, and **b-d** or **b'-d'**): A maximum **Height**, thereby reducing the maximum buildable vertical envelope,
2. (in re **Question 2**): A minimum required **rear yard open space**, thereby reducing the maximum buildable horizontal volume; and,
3. (in re **Question 3**): requiring (according to planning department discretion) **various discretionary setbacks**, at various sides and building levels, from the maximum buildable area, thereby further reducing the maximum buildable envelope/volume;

One of the most strictly constraining buildable envelope housing regulations that SF has is imposed upon RH-1 housing development projects. However, relatively recent state housing laws that generally and specifically affect and constrain how cities are allowed to reduce the maximum buildable envelope/volume of housing development projects, including RH-1 building projects. As such, the validity/enforceability of various RH-1 maximum buildable envelope/volume ordinances is brought under question. In this regard, the below 3 questioning areas correspond to each the above 3 ways that SF primarily Regulates RH-1 allowable Building Envelopes, and the various state laws that appear to render them invalid/unenforceable, namely CA Gov. Code Section 65860 concerning RH-1 height limits, CA Gov Code § 66300(b)(1)(A) concerning increasing rear yard open space requirements after January 1, 2018, and the Housing Accountability Act, Cal. Gov. Code § 65589.5 concerning SF RESIDENTIAL DESIGN GUIDELINES (as ruled by CARLA v. City of San Mateo, 68 Cal. App. 5th 820, 283 Cal. Rptr. 3d 877 (Ct. App. 2021)). Please see Appendix A for all code citations.

.

EXHIBIT I

RH-1Building Envelope QUESTIONS:
QUESTION 1 (General):

In the context of the backgrounds and Questions of the separate follow-on Questions 1a, b-d/b'-d', 2, and 3 below, under existing state law (including those cited above/below), are the above/below cited city codes (e.g., the SFPC § 261 35-foot RH-1 height limit, the amended SFPC § 134(c) (1) 30% requirement, and the various RDG recommended setbacks) valid and/or enforceable bases for city planning to deny a building permit for any proposed RH-1 housing development that has the following design/project/building envelope characteristics: 1) exceeds 35 feet but is less than 40 feet in height; and 2) which RH-1 housing development satisfies the buildable area afforded by the prior 25% minimum rear yard depth requirement, but not the post 2018 amended 30% one; and, 3) which RH-1 housing development is also subject to the housing accountability act and is built to the maximum buildable bulk area and volume envelope (i.e., it does not implement the various RDG recommended/required setbacks)? How so, or why not?

If the answer to Question 1 is 'yes' (i.e. ZA's opinion is that city planning may deny such a proposed RH-1 housing development building permit) then please answer the following more Specific, follow-on Building Envelope Questions 1a, b-d/b'-d', 2, and 3:

1. Regarding **RH-1 height limits**-

Background Facts:

On September 18, 1978, the City amended the General plan to include a "ZONING HEIGHT AND BULK DISTRICTS" map, and created a "Zoning Use Districts" map setting forth density use limits at the lot, block and small neighborhoods level. It is in this new "ZONING HEIGHT AND BULK DISTRICTS" map of the General plan where the City introduced and regulated height and bulk limits on a block/district level, which for all RH-1 use density zoned areas was, as is now, zoned as "40-X".

The SFPC § 260 "ZONING HEIGHT AND BULK DISTRICTS" zoning map appears to graphically codify the current General Plan as set forth in SFPC § 260 (a), whereby the 40-X height/bulk limit zoning category appears to specify the zoning of the City's General Plan, and not, any Specific plan. That is, it is presumed that § 260

(a)/Zoning Map is the City's General Plan concerning building height zoning regulations, esp. given that upon visual inspection the § 260 (a)/Zoning Map is clearly a very general height limits layout plan, set forth on a broad, city districts level, where almost everywhere outside of the downtown area is designated 40-X height/bulk zoning, on the per block level, with almost no variation from block to block, except for some very rare, surgically limited exceptions, in certain neighborhood commercial zones. Whereas the San Francisco zoning use/housing density map was sculpted very specifically on a sub-block, level with a high degree of localized variation from block to block. Therefore, upon visual inspection, one would conclude that the § 260 (a)/Zoning Map sets forth the City's General Plan concerning building height zoning regulations, and the zoning use/housing density (e.g., RH1, RH2, NC1, etc.) map seems to be a more specific plan of how areas within each block of the general 40-X height/bulk zoning should be used.

Moreover, SFPC Article 2.5, Section 260 (a), and its referenced Zoning Map, specify a **40-X** height/bulk zoning limits category that designates a 40-foot height limit, which covers nearly all, if not all, RH-1 zoned blocks/districts specified in the San Francisco's zoning use/housing density map. However, a more restrictive SFPC § 261(b)(1) also applies to all RH-1 lots, yet specifies a lower, 35-foot height limit, which is not consistent with, and in fact contradicts, the Section 260 (a)/Zoning Map's 40-foot height **40-X** height/bulk zoning limits on RH-1 lots.

Instead of amending the General Plan with lower RH-1 height limits, which it could have easily done by simply making a General Plan height map that paralleled the designations and granularity of the "Zoning Use Districts" map, the City's 1978 amendment enacted a stand-alone, specific ordinance that presumably did not amend or affect the General Plan's 40-X height limit, yet just added SFPC ordinance § 261 "ADDITIONAL HEIGHT LIMITS APPLICABLE TO CERTAIN RH DISTRICTS" further limiting RH-1 building heights from the 40-X zoning 40-foot height limit down to 35 feet. Thus, § 261 appears to clearly be the City's Specific Plan approach to further limit RH-1 building heights down to 35 feet instead of the General Plan's 40-X height limit.

To further evidence and make this clear, the City recognized that their new Specific Plan SFPC ordinance § 261(b)(1) (35-foot limit) was in direct contradiction to and inconsistent with the General Plan's 40-X (40-foot) height limit, so they included a Specific Plan conflict resolution subsection in ordinance § 261 (a), which, in light of the foregoing, effectively says that any inconsistencies or contradictions between General Plan's 40-X (40-foot) height

limit and the Specific Plan § 261(b)(1) (35-foot limit), only the (more restrictive) Specific Plan would apply. That is, if § 261(b)(1) was part of the City's General Plan, the City would not have needed to introduce such a conflict resolution clause, as they would have simply amended the General Plan's SFPC § 260 zoning map to further include a 35-foot height/bulk zoning category (e.g., a 35-X height limit label) that marked such lower limits only in RH-1 zones, and there would have been no inconsistencies or conflicts to resolve.

However, by amending the General Plan SFPC § 260 zoning map to have 40-foot (40-X height/bulk) limits that overlap with the simultaneously enacted the "ADDITIONAL HEIGHT LIMITS" SFPC § 261 zoning ordinance (setting forth conflicting RH-1 building height 35 feet limits), the City explicitly enacted inconsistent specific plan versus general plan zoning in violation of CA Gov. Code Section 65860.

QUESTION 1(a) (Top level, regarding RH-1 height limits):

So, given that 40-X height-bulk (40-foot) zoning map districts overlap/conflict with nearly all, if not all, of the § 261(b)(1) 35-foot RH-1 zoning use map areas/districts, **the question is**:

Are the height limits established in Article 2.5, **Section 260 (a) and its referenced** height-bulk Zoning Map, in particular the **40-X** height zoning limits (which includes a 40-foot height limit that covers all of RH-1 zoned blocks/districts), in fact all **part of**, and **fully** consistent with, the City's General Plan? How so, or why not?

Please provide the full factual basis and logical reasoning for all determinations.

If so (i.e., § 260 (a) and its Zoning Map **are part of the General Plan**), then please explain the following **more specific issues, as a consequence**:

a. **QUESTION 1 (b)**: under existing state law (including the below), is the SFPC § 261 35-foot RH-1 height limit a valid and/or enforceable basis to deny any RH-1 housing development project exceeding 35 feet but less than 40 feet in height?

That is, given that SFPC **§ 261**(b)(1) RH-1 35-foot height limit is clearly **not** part of, and is obviously **in**consistent with the City's § 260 (a)/Zoning Map General Plan, it would seem to be **legally invalid under applicable state law(s) for City planning to use § 261(b)(1) to deny an RH-1 zoned property**

building permit for a proposed building height that exceeds 35-feet, yet complies with the general plan's **40-X** height zoning limits (i.e., less than 40 feet), at least because, as an example, SB-1333 (Gov. Code § 65860 (a)) requires that a City's specific plan (i.e., Section 261) be consistent with the General plan zoning map of Section 260, which would in turn seem to invalidate, or at least render SFPC **§ 261** (a) un-enforceable, regarding its attempt to resolve the height limit inconsistencies cited above in favor of the Specific Plan **§ 261**(b)(1).

b. **QUESTION 1 (c)**: what elements/requirement(s) of the General Plan, if any, have any import on favoring the more restrictive SFPC § 261(b)(1) RH-1 35-foot height limit?

That is, exactly which element(s)/requirement(s) of the City's General Plan, if any, is/are satisfied by the more restrictive SFPC § 261(b)(1) RH-1 35-foot height limit that is/are not already sufficiently served or satisfied by the less restrictive § 260 (a) 40-X height-bulk zoning (40-foot height limits), which 40-X height-bulk zoning also applies to all RH-1 lots/districts as shown in the Zoning Map; and,

c. **QUESTION 1 (d)**: why does the § 260 (a)/Zoning Map not directly implement the 35-foot height limit in lots/blocks corresponding to RH-1 zones in the Zoning Use Districts map?:

That is, given that 40-X height-bulk zones overlap with the RH-1 zoning use map districts, this follow-up question is asking: instead of enacting a separate, more specific, plan for various RH districts (i.e., SFPC § 261 (b)), at least for RH-1 districts, why did/does not City Planning instead simply replace all 40-X height-bulk zoning areas that overlap any RH-1 lots/districts in the § 260 zoning map with a unique (e.g., 35-X, 35-foot) height-bulk designation specific to RH-1 height limits?

If not (i.e., § 260 (a)/Zoning Map is **not** part of the General Plan, and is instead a specific plan of the City), then please explain:

a. **QUESTION (1 b')**: what zoning height limits are in fact established by the General plan, with respect to areas also currently zoned as RH-1?

b. **QUESTION (1 c')**: if the Zoning Administrator contends that the § 260 (a)/Zoning Map is a Specific Plan of the City then please explain how does it make any sense that the City would simultaneously enact two inconsistent and conflicting (purported) specific plans concerning height limits for RH-1 properties?:

That is, apart from the scheme of SFPC **§ 261** (a), how is it logical or valid to have two inconsistent and conflicting (purported) specific plans where (a purported) one, § 260 (a)/Zoning Map, is clearly a general, **non**-specific, city district level, 40-X height-bulk zoning that overlaps with the other one which is an extremely specific and sub-block-level sculpted RH-1 zoning use map districts? Logically, if both were specific plans, the city would have created/amended the §260 (a)/Zoning Map to be consistent with the Zoning Use District Maps, including adding a 35-foot height limit category (e.g., a 35-X height-bulk zoning) in all locations corresponding to the ADDITIONAL HEIGHT LIMITS of SFPC § 261 (b). Moreover, the use of the word "Additional" would also logically mean something more specific (such as a specific plan) limiting something more general (such a city general plan). As such, logically, if both were specific plans, the city would have not had to employ the word "Additional" to introduce conflicting height limits.

c. **QUESTION (1 d')**: what are the applicable General Plan elements/requirements favoring SFPC § 261(b)(1) over the § 260 (a)/height-bulk Zoning Map?:
That is, exactly which element(s)/requirement(s) of the City's General Plan, if any, set forth, permit, or motivate any preference and/or differentiation between or for the more restrictive, SFPC § 261(b)(1) RH-1 35-foot height limit, versus the overlapping height limit controls specified in the § 260 (a)/Zoning Map regarding the 40-X height-bulk zoning (which includes a 40-foot height limit on RH-1 zoned blocks/districts)?

2. Regarding RH-1 **bulk** limits (rear **open space**),

Background Facts:

on or about 7/30/2019, the City Supervisors/Planning Department amended an increase into its Planning Code open space requirement (SFPC § 134(c) (1) REAR YARDS IN R…DISTRICTS.), from 25% to 30%.

However, SB-330 Housing Crisis Act of 2019 CA Gov Code § 66300(b)(1)(A) explicitly does not permit any such increased open space requirements made after January 1, 2018.

QUESTION 2

So, the question is: may City Planning deny an RH-1 housing development project which satisfies the buildable area afforded by the prior 25% minimum rear yard depth requirement, but not the post 2018 amended 30% one? How so, or why not?

In other words: is the amended SFPC § 134(c) (1) 30% requirement valid and/or enforceable to deny an RH-1 housing development project permit, given that the City increased this rear yard open space requirement after January 1, 2018, in apparent violation of SB-330 Housing Crisis Act of 2019 CA Gov Code § 66300(b)(1)(A), which in particular, specifically invalidates any such increased open space requirements?

If so, then please explain exactly on what legal basis the above post January 1, 2018 amendment of SFPC § 134(c) is deemed valid and/or enforceable under planning codes in view of the above cited state law SB-330 code?

3. Regarding RH-1 **bulk** limits (**setbacks**),

Background Facts:

The SF RESIDENTIAL DESIGN GUIDELINES (RDG), December 2003, republished 2013 indicates various recommended setbacks from the maximum bulk that planning code permits, such as RDG, Page 27, top left re top floor rear/side setbacks in rear yard additions, and Page 21 bottom left re rear/side setbacks in building to the maximum buildable area. Current state housing law (e.g., Gov. Code § 65589.5 (d)) requires that any housing development project application, including any RH-1 zoned project, having unit(s) affordable to very low, low-, or moderate-income households may only be denied/curtailed based upon objective standards, e.g., as defined in Gov. Code § 65589.5 (h)(8), and recent precedent has ruled that guidelines such as the above RDG are not objective standards (see Appendix A, CARLA v. City of San Mateo, 68 Cal. App. 5th 820, 283 Cal. Rptr. 3d 877 (Ct. App. 2021)), therefore may not be applied against any housing development projects subject to the HAA.

QUESTION 3

So, the question is: are the various RDG recommended, such as the above, setbacks from the maximum buildable bulk area and volume envelope that planning code permits in fact objective standards that are a valid basis to deny any RH-1 project building permit that is subject to the

housing accountability act (HAA Gov. Code § 65589.5)? If so, on what basis?

BRIEF(S) SUBMITTED BY RESPONDENT DEPARTMENT(S)

San Francisco Planning

49 South Van Ness Avenue, Suite 1400
San Francisco, CA 94103
628.652.7600
www.sfplanning.org

BOARD OF APPEALS BRIEF

HEARING DATE: February 8, 2023

February 2, 2023

Appeal Nos.:	22-094
Project Address:	N/A
Subject:	LoD Re: RH-1 Zoning District and State Laws
Staff Contact:	Corey Teague, Zoning Administrator – (628) 652-7328 corey.teague@sfgov.org

Introduction

This brief is intended to provide a concise response to the appeal filed against the Letter of Determination issued to the Appellant on December 21, 2022. The letter itself goes into greater detail to explain the technical issues and considerations.

Key Points

The Appellant's request to the Zoning Administrator primarily consisted of determinations that are not within the Zoning Administrator's purview, including 1) the consistency of certain portions of the Planning Code with various State laws, and 2) the consistency of certain Board of Supervisors actions and certain sections of the Planning Code with the General Plan. While the Letter of Determination answers several technical questions regarding the Planning Code, it refrained from providing determinations of consistency with State law or the General Plan.

Per Planning Code Section 307(a), the Zoning Administrator has the authority and responsibility to "respond to all written requests for determinations regarding the classification of uses and the interpretation and

applicability of the provisions of this Code" (i.e., the Planning Code). As noted in the letter, the Zoning Administrator does not have the authority or responsibility to interpret State law. Instead, the Planning Director issues bulletins that provide guidance on the City's interpretation of relevant State laws. Additionally, the Zoning Administrator does not have the authority or responsibility to interpret the consistency or compliance of legislative actions with the General Plan. The Planning Commission and Board of Supervisors adopted General Plan consistency findings associated with legislative actions. Any dispute of State law or General Plan consistency would be adjudicated through the state court system, and not through the Zoning Administrator and Board of Appeals.

Conclusion

To conclude, the determination in question met the requirement of Planning Code Section 307(a) to respond to the request, while also staying within the authority and responsibility of the Zoning Administrator. Therefore, there was no error or abuse of discretion. Considering the information provided in the Letter of Determination and this brief, the Department respectfully requests that the Board of Appeals uphold the Zoning Administrator's determination and deny the appeal.

cc: Abenet Tekie (Appellant)
Kate Conner (Planning Department)

Enclosures: Exhibit A – Letter of Determination
Exhibit B – Request for Determination

EXHIBIT A

San Francisco Planning

49 South Van Ness Avenue, Suite 1400
San Francisco, CA 94103
628.652.7600
www.sfplanning.org

LETTER OF DETERMINATION

December 22, 2022

Abenet Tekie
3739 Balboa Street, Ste 243
San Francisco, CA 94121

Record No.: **2022-007996ZAD**
Site Address: **N/A**
Subject: RH-1 Controls and State Laws

Dear Abenet Tekie:

This letter is in response to your request for a Letter of Determination regarding the permitted building envelope for RH-1 zoning districts and how those may be impacted by certain State laws. More specifically, your request includes a multi-part series of specific questions regarding height, rear yard controls, and local approval discretion, and how these factors are impacted by certain State laws. These questions are summarized below and individually answered.

1. Considering California Government Code Sections 65860, 66300(b)(1)(A), and 65589.5, can the Planning Department deny a building permit that does not comply with either the heigh limits of Planning Code Article 2.5, the 30% rear yard requirement adopted for RH-1 Zoning Districts in 2019 (as compared to the previous 25% requirement), or the Residential Design Guidelines.

   Per Planning Code Section 307(a), the Zoning Administrator has the authority and responsibility to "respond to all written requests for determinations regarding the classification of uses and the interpretation and applicability of the provisions of" the Planning Code. Under the current provisions of the Planning Code, a building permit that did not comply with either the height limits of Planning Code Article 2.5, the 30% rear yard requirement adopted for RH-1 Zoning Districts in 2019 (as compared to the previous 25% requirement), or the Residential Design Guidelines could be denied by the Planning Department.

   Regarding the potential impact of California Government Code Sections 65860, 66300(b)(1)(A), and 65589.5 on the Planning Department's ability to deny a building permit under such scenarios, please note that the Zoning Administrator does not have the authority or responsibility to interpret State law. Please see the various Planning Director Bulletins for more information on how the City currently interprets and implements some or all of the referenced State laws, which may be found at www.sfplanning.org. Any

dispute or final interpretation of State law would be adjudicated through the state court system.

2. Are the additional height controls of Planning Code Section 261(b)(1) inconsistent with the City's adopted General Plan and therefore legally invalid under applicable State law to use to deny a building permit?

   The Zoning Administrator does not have the authority or responsibility to interpret the consistency or compliance of legislative actions with the General Plan. The Planning Commission and Board of Supervisors adopted General Plan consistency findings associated with the referenced legislative actions. Any dispute of such General Plan consistency would be adjudicated through the state court system.

3. Which elements of the General Plan are satisfied, if any, by the more restrictive 35-foot height controls of Planning Code Section 261(b)(1) that aren't already sufficiently served by the 40-foot height limit?

   The Zoning Administrator does not have the authority or responsibility to interpret the consistency or compliance of legislative actions with the General Plan. The Planning Commission and Board of Supervisors adopted General Plan consistency findings associated with the referenced legislative actions. Any dispute of such General Plan consistency would be adjudicated through the state court system.

4. Instead of having the separate, more restrictive 35-foot height controls of Planning Code Section 261(b)(1) for RH-1 Zoning Districts, why doesn't the City instead adopt the height limit as 35 feet instead of 40 feet for RH-1 Zoning Districts?

   While certain height districts are more commonly combined with specific zoning districts, zoning and height controls are separate and do not consistently match across zoning districts. The choice to structure the height and zoning controls in such a manner is under the purview of the Board of Supervisors, with recommendation from the Planning Commission, and is not an interpretation of the Planning Code itself. Therefore, the Zoning Administrator is not the appropriate body to address this question.

5. What height limits are established in the General Plan with respect to RH-1 Zoning Districts?

   While certain height districts are more commonly combined with specific zoning districts, and while the Urban Design element provides guidance on building heights, the General Plan does not formally tie specific height district to specific zoning districts.

6. Why would the City simultaneously enact two inconsistent and conflicting height limits for RH-1 Zoning Districts?

   It is not uncommon for the Planning Code to provide multiple layers of controls, with some being more restrictive than others. This is especially true when one control is more broadly applied (i.e., 40-X Height and Bulk District) and another is more applied in a more limited/targeted manner (i.e., the 35-foot height control for RH-1 Zoning Districts). Regarding the question of "why," the choice to structure the height controls in such a manner is under the purview of the Board of Supervisors, with recommendation from the Planning Commission, and is not an interpretation of the Planning Code itself. Therefore, the Zoning Administrator is not the appropriate body to address this question.

7. Ordinance No. 206-19 took effect on October 14, 2019 and, among other amendments, increased the rear

yard requirement of Section 134 from 25% of the lot depth to 30% of the lot depth for RH-1 Zoning Districts. Would enforcing that increased rear yard requirement violate SB 330 (Housing Crisis Act of 2019 – CA Government Code Sec. 66300(b)(1)(A))?

Per Planning Code Section 307(a), the Zoning Administrator has the authority and responsibility to "respond to all written requests for determinations regarding the classification of uses and the interpretation and applicability of the provisions of" the Planning Code. Under the current provisions of the Planning Code, a building permit that did not comply with either the height limits of Planning Code Article 2.5, the 30% rear yard requirement adopted for RH-1 Zoning Districts in 2019 (as compared to the previous 25% requirement), or the Residential Design Guidelines could be denied by the Planning Department.

Regarding the potential impact of California Government Code Sections 65860, 66300(b)(1)(A), and 65589.5 on the Planning Department's ability to deny a building permit under such scenarios, please note that the Zoning Administrator does not have the authority or responsibility to interpret State law. Please see the various Planning Director Bulletins for more information on how the City currently interprets and implements some or all of the referenced State laws, which may be found at www.sfplanning.org. Any dispute or final interpretation of State law would be adjudicated through the state court system.

8. Is the failure of a building permit to meet the Residential Design Guidelines a valid basis to deny the permit for a lot in the RH-1 Zoning District if that permit is subject to the Housing Accountability Act (Government Code Sec. 65589.5)?

   See the answers to Nos. 1 and 7 above.

Please note that a Letter of Determination is a determination regarding the classification of uses and interpretation and applicability of the provisions of the Planning Code. This Letter of Determination is not a permit to commence any work or change occupancy. Permits from appropriate Departments must be secured before work is started or occupancy is changed.

APPEAL: An appeal may be filed with the Board of Appeals within 15 days of the date of this letter if you believe this determination represents an error in interpretation of the Planning Code or abuse in discretion by the Zoning Administrator. Please contact the Board of Appeals in person at 49 South Van Ness Ave, Suite 1475, call (628) 652-1150, or visit www.sfgov.org/bdappeal.

Sincerely,

Corey A. Teague, AICP
Zoning Administrator

cc: Neighborhood Groups
Kate Conner, Planning Department

EXHIBIT B

Request for Zoning Conformance Letter of Determination

Zoning Administrator
Office of the Zoning Administrator
49 South Van Ness Avenue, Suite 1400
San Francisco, CA 94103

Name: Abenet Tekie
Mailing Address: 3739 Balboa St., STE 243, San Francisco, CA 94121 415-350-3396
Subject Address: any and all single-family home, RH-1 zoned districts, blocks, and lots
Subject: Enforceability of RH-1 Building Envelope (e.g., Height/Bulk) Regulations.

General Background Facts:

San Francisco (SF) regulates the allowable maximum Building Envelope of RH-1 housing development projects by setting constraints on the maximum Height and Bulk permitted. Regulating this maximum allowable Building Envelope is primarily accomplished in the following 3 ways:

1. (in re **Questions 1a**, and **b-d** or **b'-d'**): A maximum **Height**, thereby reducing the maximum buildable vertical envelope,
2. (in re **Question 2**): A minimum required **rear yard open space**, thereby reducing the maximum buildable horizontal volume; and,
3. (in re **Question 3**): requiring (according to planning department discretion) **various discretionary setbacks**, at various sides and building levels, from the maximum buildable area, thereby further reducing the maximum buildable envelope/volume;

One of the most strictly constraining buildable envelope housing regulations that SF has is imposed upon RH-1 housing development projects. However, relatively recent state housing laws that generally and specifically affect and constrain how cities are allowed to reduce the maximum buildable envelope/volume of housing development projects, including RH-1 building projects. As such, the validity/enforceability of various RH-1 maximum buildable envelope/volume ordinances is brought under question. In this regard, the below 3 questioning areas correspond to each the above 3 ways that SF primarily Regulates RH-1 allowable Building Envelopes, and the various state laws that appear to render them invalid/unenforceable, namely CA Gov. Code Section 65860 concerning RH-1 height limits, CA Gov Code § 66300(b)(1)(A) concerning increasing rear yard open space requirements after January 1, 2018, and the Housing Accountability Act, Cal. Gov. Code § 65589.5 concerning SF RESIDENTIAL DESIGN GUIDELINES (as ruled by CARLA v. City of San Mateo, 68 Cal. App. 5th 820, 283 Cal. Rptr. 3d 877 (Ct. App. 2021)). Please see Appendix A for all code citations.

EXHIBIT B

Building Envelope QUESTIONS:

1. **QUESTION 1 (General):**

In the context of the backgrounds and Questions of the separate follow-on Questions 1a, b-d/b'-d', 2, and 3 below, under existing state law (including those cited above/below), are the above/below cited city codes (e.g., the SFPC § 261 35-foot RH-1 height limit, the amended SFPC § 134(c) (1) 30% requirement, and the various RDG recommended setbacks) valid and/or enforceable bases for city planning to deny a building permit for any proposed RH-1 housing development that has the following design/project/building envelope characteristics: 1) exceeds 35 feet but is less than 40 feet in height; and 2) which RH-1 housing development satisfies the buildable area afforded by the prior 25% minimum rear yard depth requirement, but not the post 2018 amended 30% one; and, 3) which RH-1 housing development is also subject to the housing accountability act and is built to the maximum buildable bulk area and volume envelope (i.e., it does not implement the various RDG recommended/required setbacks)? How so, or why not?

If the answer to Question 1 is 'yes' (i.e. ZA's opinion is that city planning may deny such a proposed RH-1 housing development building permit) then please answer the following more Specific, follow-on Building Envelope Questions 1a, b-d/b'-d', 2, and 3:

2. Regarding **RH-1 height limits-**

Background Facts:

On September 18, 1978, the City amended the General plan to include a "ZONING HEIGHT AND BULK DISTRICTS" map, and created a "Zoning Use Districts" map setting forth density use limits at the lot, block and small neighborhoods level. It is in this new "ZONING HEIGHT AND BULK DISTRICTS" map of the General plan where the City introduced and regulated height and bulk limits on a block/district level, which for all RH-1 use density zoned areas was, as is now, zoned as "40-X".

The SFPC § 260 "ZONING HEIGHT AND BULK DISTRICTS" zoning map appears to graphically codify the current General Plan as set forth in SFPC § 260 (a), whereby the 40-X height/bulk limit zoning category appears to specify the zoning of the City's General Plan, and not, any Specific plan. That is, it is presumed that § 260 (a)/Zoning Map is the City's General Plan concerning building height zoning regulations, esp. given that upon visual inspection the § 260 (a)/Zoning Map is clearly a very general height limits layout plan, set forth on a broad, city districts level, where almost everywhere outside of the downtown area is designated 40-X height/bulk zoning, on the per block level, with almost no variation from block to block, except

for some very rare, surgically limited exceptions, in certain neighborhood commercial zones. Whereas the San Francisco zoning use/housing density map was sculpted very specifically on a sub-block, level with a high degree of localized variation from block to block. Therefore, upon visual inspection, one would conclude that the § 260 (a)/Zoning Map sets forth the City's General Plan concerning building height zoning regulations, and the zoning use/housing density (e.g., RH1, RH2, NC1, etc.) map seems to be a more specific plan of how areas within each block of the general 40-X height/bulk zoning should be used.

Moreover, SFPC Article 2.5, Section 260 (a), and its referenced Zoning Map, specify a **40-X** height/bulk zoning limits category that designates a 40-foot height limit, which covers nearly all, if not all, RH-1 zoned blocks/districts specified in the San Francisco's zoning use/housing density map. However, a more restrictive SFPC § 261(b)(1) also applies to all RH-1 lots, yet specifies a lower, 35-foot height limit, which is not consistent with, and in fact contradicts, the Section 260 (a)/Zoning Map's 40-foot height **40-X** height/bulk zoning limits on RH-1 lots.

Instead of amending the General Plan with lower RH-1 height limits, which it could have easily done by simply making a General Plan height map that paralleled the designations and granularity of the "Zoning Use Districts" map, the City's 1978 amendment enacted a stand-alone, specific ordinance that presumably did not amend or affect the General Plan's 40-X height limit, yet just added SFPC ordinance § 261 "ADDITIONAL HEIGHT LIMITS APPLICABLE TO CERTAIN RH DISTRICTS" further limiting RH-1 building heights from the 40-X zoning 40-foot height limit down to 35 feet. Thus, § 261 appears to clearly be the City's Specific Plan approach to further limit RH-1 building heights down to 35 feet instead of the General Plan's 40-X height limit.

To further evidence and make this clear, the City recognized that their new Specific Plan SFPC ordinance § 261(b)(1) (35-foot limit) was in direct contradiction to and inconsistent with the General Plan's 40-X (40-foot) height limit, so they included a Specific Plan conflict resolution subsection in ordinance § 261 (a), which, in light of the foregoing, effectively says that any inconsistencies or contradictions between General Plan's 40-X (40-foot) height limit and the Specific Plan § 261(b)(1) (35-foot limit), only the (more restrictive) Specific Plan would apply. That is, if § 261(b)(1) was part of the City's General Plan, the City would not have needed to introduce such a conflict resolution clause, as they would have simply amended the General Plan's SFPC § 260 zoning map to further include a 35-foot height/bulk zoning category (e.g., a 35-X height limit label) that marked such lower limits only in RH-1 zones, and there would have been no inconsistencies or conflicts to resolve.

However, by amending the General Plan SFPC § 260 zoning map to have 40-foot (40-X height/bulk) limits that overlap with the simultaneously enacted the "ADDITIONAL HEIGHT LIMITS" SFPC § 261 zoning ordinance (setting forth conflicting RH-1 building height 35 feet limits), the City explicitly enacted inconsistent specific plan versus general plan zoning in violation of CA Gov. Code Section 65860.

QUESTION 1(a) (Top level, regarding RH-1 height limits):

So, given that 40-X height-bulk (40-foot) zoning map districts overlap/conflict with nearly all, if not all, of the § 261(b)(1) 35-foot RH-1 zoning use map areas/districts, **the question is**:

Are the height limits established in Article 2.5, **Section 260 (a) and its referenced** height-bulk Zoning Map, in particular the **40-X** height zoning limits (which includes a 40-foot height limit that covers all of RH-1 zoned blocks/districts), in fact all **part of**, and **fully** consistent with, the City's General Plan? How so, or why not?

Please provide the full factual basis and logical reasoning for all determinations.

If so (i.e., § 260 (a) and its Zoning Map **are part of the General Plan**), then please explain the following **more specific issues, as a consequence**:

a. **QUESTION 1 (b)**: under existing state law (including the below), is the SFPC § 261 35-foot RH-1 height limit a valid and/or enforceable basis to deny any RH-1 housing development project exceeding 35 feet but less than 40 feet in height?

That is, given that SFPC **§ 261**(b)(1) RH-1 35-foot height limit is clearly **not** part of, and is obviously **in**consistent with the City's § 260 (a)/Zoning Map General Plan, it would seem to be **legally invalid under applicable state law(s) for City planning to use § 261(b)(1) to deny an RH-1 zoned property building permit** for a proposed building height that exceeds 35-feet, yet complies with the general plan's **40-X** height zoning limits (i.e., less than 40 feet), at least because, as an example, SB-1333 (Gov. Code § 65860 (a)) requires that a City's specific plan (i.e., Section 261) be consistent with the General plan zoning map of Section 260, which would in turn seem to invalidate, or at least render SFPC **§ 261** (a) un-enforceable, regarding its attempt to resolve the height limit inconsistencies cited above in favor of the Specific Plan **§ 261**(b)(1).

b. **QUESTION 1 (c)**: what elements/requirement(s) of the General Plan, if any, have any import on favoring the more restrictive SFPC § 261(b)(1) RH-1 35-foot height limit?

That is, exactly which element(s)/requirement(s) of the City's General Plan, if any, is/are satisfied by the more restrictive SFPC § 261(b)(1) RH-1 35-foot height limit that is/are not already sufficiently served or satisfied by the less restrictive § 260 (a) 40-X height-bulk zoning (40-foot height limits), which 40-X height-bulk zoning also applies to all RH-1 lots/districts as shown in the Zoning Map; and,

c. **QUESTION 1 (d)**: why does the § 260 (a)/Zoning Map not directly implement the 35-foot height limit in lots/blocks corresponding to RH-1 zones in the Zoning Use Districts map?:

That is, given that 40-X height-bulk zones overlap with the RH-1 zoning use map districts, this follow-up question is asking: instead of enacting a separate, more specific, plan for various RH districts (i.e., SFPC § 261 (b)), at least for RH-1 districts, why did/does not City Planning instead simply replace all 40-X height-bulk zoning areas that overlap any RH-1 lots/districts in the § 260 zoning map with a unique (e.g., 35-X, 35-foot) height-bulk designation specific to RH-1 height limits?

If not (i.e., § 260 (a)/Zoning Map is **not** part of the General Plan, and is instead a specific plan of the City), then please explain:

a. **QUESTION (1 b')**: what zoning height limits are in fact established by the General plan, with respect to areas also currently zoned as RH-1?

b. **QUESTION (1 c')**: if the Zoning Administrator contends that the § 260 (a)/Zoning Map is a Specific Plan of the City then please explain how does it make any sense that the City would simultaneously enact two inconsistent and conflicting (purported) specific plans concerning height limits for RH-1 properties?:

That is, apart from the scheme of SFPC **§ 261** (a), how is it logical or valid to have two inconsistent and conflicting (purported) specific plans where (a purported) one, § 260 (a)/Zoning Map, is clearly a general, **non**-specific, city district level, 40-X height-bulk zoning that overlaps with the other one which is an extremely specific and sub-block-level sculpted RH-1 zoning use map districts? Logically, if both were specific plans, the city would have created/amended the §260 (a)/Zoning Map to be consistent with the Zoning Use District Maps, including adding a 35-foot height limit category (e.g., a 35-X height-bulk zoning) in all locations corresponding to the ADDITIONAL HEIGHT LIMITS of SFPC § 261 (b). Moreover, the use of the word "Additional" would also logically mean

something more specific (such as a specific plan) limiting something more general (such a city general plan). As such, logically, if both were specific plans, the city would have not had to employ the word "Additional" to introduce conflicting height limits.

c. **QUESTION (1 d')**: what are the applicable General Plan elements/requirements favoring SFPC § 261(b)(1) over the § 260 (a)/height-bulk Zoning Map?:

That is, exactly which element(s)/requirement(s) of the City's General Plan, if any, set forth, permit, or motivate any preference and/or differentiation between or for the more restrictive, SFPC § 261(b)(1) RH-1 35-foot height limit, versus the overlapping height limit controls specified in the § 260 (a)/Zoning Map regarding the 40-X height-bulk zoning (which includes a 40-foot height limit on RH-1 zoned blocks/districts)?

3. Regarding RH-1 **bulk** limits (rear **open space**),

Background Facts:

on or about 7/30/2019, the City Supervisors/Planning Department amended an increase into its Planning Code open space requirement (SFPC § 134(c) (1) REAR YARDS IN R…DISTRICTS.), from 25% to 30%.

However, SB-330 Housing Crisis Act of 2019 CA Gov Code § 66300(b)(1)(A) explicitly does not permit any such increased open space requirements made after January 1, 2018.

QUESTION 2- So, the question is: may City Planning deny an RH-1 housing development project which satisfies the buildable area afforded by the prior 25% minimum rear yard depth requirement, but not the post 2018 amended 30% one? How so, or why not?

In other words: is the amended SFPC § 134(c) (1) 30% requirement valid and/or enforceable to deny an RH-1 housing development project permit, given that the City increased this rear yard open space requirement after January 1, 2018, in apparent violation of SB-330 Housing Crisis Act of 2019 CA Gov Code § 66300(b)(1)(A), which in particular, specifically invalidates any such increased open space requirements?

If so, then please explain exactly on what legal basis the above post January 1, 2018 amendment of SFPC § 134(c) is deemed valid and/or enforceable under planning codes in view of the above cited state law SB-330 code?

4. Regarding RH-1 **bulk** limits (**setbacks**),

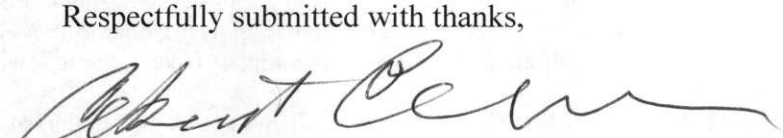
Background Facts:

The SF RESIDENTIAL DESIGN GUIDELINES (RDG), December 2003, republished 2013 indicates various recommended setbacks from the maximum bulk that planning code permits, such as RDG, Page 27, top left re top floor rear/side setbacks in rear yard additions, and Page 21 bottom left re rear/side setbacks in building to the maximum buildable area. Current state housing law (e.g., Gov. Code § 65589.5 (d)) requires that any housing development project application, including any RH-1 zoned project, having unit(s) affordable to very low, low-, or moderate-income households may only be denied/curtailed based upon objective standards, e.g., as defined in Gov. Code § 65589.5 (h)(8), and recent precedent has ruled that guidelines such as the above RDG are not objective standards (see Appendix A, CARLA v. City of San Mateo, 68 Cal. App. 5th 820, 283 Cal. Rptr. 3d 877 (Ct. App. 2021)), therefore may not be applied against any housing development projects subject to the HAA.

QUESTION 3: **So, the question is:** are the various RDG recommended, such as the above, setbacks from the maximum buildable bulk area and volume envelope that planning code permits in fact objective standards that are a valid basis to deny any RH-1 project building permit that is subject to the housing accountability act (HAA Gov. Code § 65589.5)? If so, on what basis?

GENERAL NOTE: For the purposes of a valid basis for appeal and/or a default determination of planning code compliance, any yes/no questions above that are not answered are presumed, by default, to be officially answered to positively affirm that the questioned basis is valid to deny the RH-1 project, and any questions asking to identify elements or reasons supporting the questioned issue, are presumed, by default, to be officially answered to indicate that none exists.

Respectfully submitted with thanks,



Abenet Tekie
Date: 8/10/2022

EXHIBIT B

Appendix A

SEC. 260. HEIGHT LIMITS: MEASUREMENT.

(a) **Method of Measurement.** The limits upon the height of buildings and structures shall be as specified on the Zoning Map, except as permitted by Section 206.

SEC. 261. ADDITIONAL HEIGHT LIMITS APPLICABLE TO CERTAIN RH DISTRICTS.

(a) **General.** Notwithstanding any other height limit established by this Article 2.5 to the contrary, the height of dwellings in certain use districts established by Article 2 of this Code shall be further limited by this Section 261. The measurement of such height shall be as prescribed by Section 260.

(b) **Height Limits Applicable to the Entire Property.**

(1) No portion of a dwelling in any RH-1(D), RH-1 or RH-1(S) District shall exceed a height of 35 feet,

California Code, Government Code - GOV § 65860

Current as of January 01, 2019

(a) County or city zoning ordinances shall be consistent with the general plan of the county or city by January 1, 1974. A zoning ordinance shall be consistent with a city or county general plan only if both of the following conditions are met:

...

(c) In the event that **a zoning ordinance becomes inconsistent with a general plan** by reason of amendment to the plan, or to any element of the plan, **the zoning ordinance shall be amended within a reasonable time so that it is consistent with the general plan as amended.**

(d) Notwithstanding Section 65803 , this section shall also apply to a charter city.

HAA- Cal. Gov. Code § 65589.5

(8) Until January 1, 2030, "objective" means involving no personal or subjective judgment by a public official and being uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official.

(d) **A local agency shall not disapprove a housing development project**, including farmworker housing as defined in subdivision (h) of Section 50199.7 of the Health and Safety Code, for very low, low-, or moderate-income households, or an emergency shelter, or condition approval in a manner that renders the housing development project infeasible for development for the use of very low, low-, or moderate-income households, or an emergency shelter, including through the use of design review standards, unless it makes written findings, based upon a preponderance of the evidence in the record, as to one of the following:

...

(1) Except as provided in subdivision (o), nothing in this section shall be construed to prohibit **a local agency from requiring the housing development project to comply with objective, quantifiable, written development standards, conditions**, and policies appropriate to, and consistent with, meeting the jurisdiction's share of the regional housing need pursuant to Section 65584. However, the development standards, conditions, and policies shall be applied to facilitate and accommodate development at the density permitted on the site and proposed by the development.

> The Legislature insists on objective criteria so as to ensure "reasonable certainty . . . to all stakeholders" about the constraints a municipality will impose. ...Yet reasonable certainty in application—that is, objectivity—is precisely the test that the height provisions of the Guidelines fail.
>
> ...
>
> Our conclusion that the applicable portion of the Guidelines does not provide an objective standard is confirmed by considering subdivision (f)(4) of the HAA, which complements and reinforces subdivision (j)'s objectivity requirement. Added in 2017 as the Legislature sought to strengthen the HAA, subdivision (f)(4) deems a project consistent with applicable objective standards "if there is substantial evidence that would allow a reasonable person to conclude that the [project] is consistent, compliant, or in conformity" with such standards. (§ 65589.5, subd. (f)(4).) The City sees all manner of mischief in this standard—as we will see shortly in the next section—but where a standard is truly objective, in that it is "uniformly verifiable by reference to an external and uniform benchmark" (§ 65589.5, subd. (h)(8), italics added), there is little to no room for reasonable persons to differ on whether a project complies with such a benchmark. Subdivision (f)(4) is intentionally deferential to housing development. It is also an excellent backstop to ensure that the standards a municipality are applying are indeed objective.