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May 1, 2019

Via Email & U.S. Mail

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BOARD OF SUPERVISORS
SAN FRANCISCO
2019 MAY -3 PM 3:25
BY AK

RE: 457-471 Minna Street Project & 833 Bryant Street Project – SB 35 Streamlining Is Not Available to Modular Housing Projects

Dear President Melgar, Mr. Rahaim, Mr. Herrera and Ms. Calvillo:

We are writing on behalf of the **San Francisco Building and Construction Trades Council** public policy committee to oppose the application of Senate Bill 35 (“SB 35”) permit streamlining provisions and the Assembly Bill 73 (“AB 73”) California Environmental Quality Act (“CEQA”) exemption to projects proposing to use factory-built modular housing units in their construction on the grounds that such projects cannot meet all the prerequisites for streamlining.

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It is our understanding that the following projects have applied for SB 35 streamlining and are proposing to utilize factory-built modular housing construction:

- 457-475 Minna St.
- 833 Bryant St.

We have also become aware that the City has created a Housing Sustainability District, a first step for projects to receive an AB 73 CEQA exemption, as part of the Central SoMa Plan and is proposing another Housing Sustainability District as part of The Hub Plan.

The SB 35 and AB 73 permit streamlining and CEQA exemption provisions are only available to projects that ensure, among other requirements, that construction is performed by a skilled and trained workforce as defined by Public Contract Code § 2601. Our research indicates that currently no factory-built housing manufacturers employ a workforce that meets the Public Contract Code § 2601 skilled and trained workforce definition. Accordingly, projects, such as those identified above, are not eligible for the SB 35 and AB 73 permit streamlining and CEQA exemption benefits if they are proposing to install factory-built modular housing units.

SB 35 and AB 73 are voluntary processes for developers. SB 35 provides a tradeoff, whereby developers receive an expedited, ministerial approval for their projects (effectively exempting them from CEQA review), provided those projects create community benefits including affordable housing and workforce benefits. AB 73 creates a CEQA exemption for projects within a Housing Sustainability District, provided they create similar community and workforce benefits to SB 35. Developers have the choice of voluntarily providing these community and workforce benefits or utilizing the normal permit procedure. SB 35 and AB 73 are part of a series of CEQA streamlining bills that the Legislature has enacted under the theory that important projects that can demonstrate sufficient environmental and community benefits deserve expedited permitting and other benefits. Community benefits include supporting the local skilled workforce by requiring the use of skilled workers, paying prevailing wages, and bolstering apprenticeship programs.

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This concept recognizes that waiving environmental protections for developers provides them with economic gain. When waiving these protections, the government needs to capture some of the economic value awarded to developers and invest it locally.

This is the design for the successful Jobs and Economic Improvement Through Environmental Leadership Act of 2011 (“AB 900”)¹ which provides “unique and unprecedented streamlining benefits under the California Environmental Quality Act for projects that provide the [environmental and workforce] benefits ... for a limited period of time to put people to work as soon as possible.”² Originally designed to provide jobs in the face of the severe recession, AB 900 has been extended twice by the Legislature due to its successful model. AB 900 has allowed for eight projects to be certified by the Governor, and its model of trading CEQA streamlining for community benefits being replicated numerous times in the Legislature.

SB 35 adopted a similar concept by removing discretionary permitting, and thus CEQA review, from local governments who were not meeting their Regional Housing Needs Assessment (“RHNA”) housing production targets. Like AB 900, SB 35 sought to provide needed housing at a time of crisis in California. Also, like AB 900, SB 35 contained numerous environmental protections to prevent long-term degradation and sought to capture some of the created economic value to developers through requirements that they provide housing affordable to all Californians and provide good-paying jobs that support a skilled and trained workforce and apprenticeships. SB 35 thus sought to allow developers to build housing more quickly in areas where supplies were insufficient, while addressing housing affordability and supporting the growth of the construction industry, which provides a steady supply of workers to help build California out of its housing hole.

The Planning Commission cannot apply SB 35 to factory-built modular housing without first determining that SB 35’s requirement for the applicant to use a skilled and trained workforce will be met. SB 35 specifically requires every contractor and subcontractor engaged by the developer to complete the development to use a skilled and trained workforce as defined under Public Contract Code section 2601.

¹ Cal. Pub. Res. Code § 21178 et seq.

² Cal. Pub. Res. Code § 21178(i).

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Skilled and trained workforce provisions require the home builder to ensure that building and construction work is performed by journeypersons or apprentices in the building and construction trades and requires a certain percentage of journeymen to be graduates of a state-approved apprenticeship programs in the relevant craft.³ This ensures higher quality work, supports good paying jobs in the community, and increases apprenticeship opportunities for disadvantaged workers. Support of apprenticeship programs is also critical to ensure that the Bay Area will have enough qualified workers to build all the homes needed to ease the housing affordability crisis.

SB 35 does not provide any exception for modular construction. Public Contract Code section 2601 states that a skilled and trained workforce is a workforce “performing work in an apprenticeable occupation in the building and construction trades.” Modular construction is building and construction work subject to the California Building Standards Code and requires the same skills and training regardless if performed on-site or at a factory-built housing facility.⁴ The Factory-Built housing Act specifically notes that the manufacture of these units involves construction.⁵ Unlike modular classrooms each unit is designed and constructed specifically for a particular project, must be integrated into the whole, and cannot be severed from it. Accordingly, any contract or subcontract with a modular construction facility to construct a modular unit for an SB 35 project would need to ensure that construction of the modular unit is performed by a skilled and trained workforce.

Unless these and other projects can demonstrate that its proposed factory-built housing units will be constructed by a skilled and trained workforce, these factory-built housing projects cannot demonstrate they are eligible for SB 35 streamlining procedures. Project proponents thus have the choice to either demonstrate project construction will provide the full community benefits required under SB 35 or can seek approval under the City’s normal permitting procedures.

AB 73 allows local governments to create Housing Sustainability Districts in certain areas. Projects consistent with these districts are eligible to receive a CEQA exemption if they require every contractor and subcontractor engaged by the

³ Cal. Govt. Code § 65913.4(a)(8)(B); Cal. Pub. Contract Code § 2601.

⁴ Cal. Health and Safety Code § 19971.

⁵ See Cal. Health and Safety Code §§ 19971, 19976.
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developer to complete the development to use a skilled and trained workforce as defining under Public Contract Code section 2601, exactly as in SB 35. AB 73 also does not create an exemption for modular construction.

Applying SB 35's streamlining and AB 73's CEQA exemption for projects that consist of factory-built modular housing, without meeting SB 35 or AB 73's standards, robs the public of its promised benefits. Moreover, the use of factory-built modular housing means that almost all construction will occur outside of San Francisco, providing no job benefits or opportunities to local residents. Factory-built housing thus fails to support the development of the skilled construction workforce San Francisco will need for other projects, contrary to the intent of SB 35 and AB 73.

Applying SB 35 and AB 73 to factory-built modular housing construction that fails to engage a local skilled and trained workforce at prevailing wage rates not only would violate the plain language of these statutory exemptions, but would also provide windfall profits to developers at the expense of local workers and the local economy, increasing inequality in a city that has already suffered enough. The Planning Commission must require strict compliance with SB 35 and AB 73's requirements and require these projects to be processed through San Francisco's normal permitting and CEQA review procedures unless all construction is performed by a skilled and trained workforce.

Sincerely,



Kyle C. Jones
Thomas A. Enslow

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