

# ALL THE RIGHT MOVES:

Leveraging State Laws to Get through the  
Approval Process

**Housing California 2018 Conference**

3:30 p.m. – 5 p.m.

March 7, 2018

**Goldfarb & Lipman LLP**

1300 Clay Street, 11<sup>th</sup> Floor  
Oakland, California 94612  
(510) 836-6336

goldfarb lipman attorneys

# PANELISTS

2

## Speakers

### Eric Phillips

Attorney, Goldfarb & Lipman LLP  
ephillips@goldfarblipman.com

### Laura Simpson

Planning and Housing Manager,  
City of Concord  
laura.simpson@cityofconcord.org

### Rebecca Foster

Executive Director,  
San Francisco Housing Accelerator Fund  
rebecca@sfhaf.org

## Moderator

### Barbara Kautz

Partner, Goldfarb & Lipman LLP  
bkautz@goldfarblipman.com



goldfarb lipman attorneys

# PANEL OVERVIEW

3

- Unpacking the 2017 Housing Bill Package:
  - ▣ Housing Accountability Act and SB 35 Overview
  - ▣ What Developers Can Expect
  - ▣ Qualifying a Project for Streamlined Review
- SB 35 Opportunities and Challenges
  - ▣ City of Concord: Public Agency Perspective
  - ▣ SFHAF: Developer and Lender Perspective
- Questions and Answers

# HAA AND SB 35

4

## Housing Accountability Act

- Government Code Sec. 65589.5
- Affects all residential projects

## SB 35

- Government Code Sec. 65913.4
- “Streamlining” for some residential projects

Both laws focus on “objective standards” and favor predictability over flexibility.

# What Is An “Objective” Standard?

5

SB 35 definition:

- “Standards 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 and the public official **prior to submittal.**”
- Examples:
  - ▣ Height, setbacks, lot coverage, % open space, density, FAR, etc.

# What Is Not “Objective”?

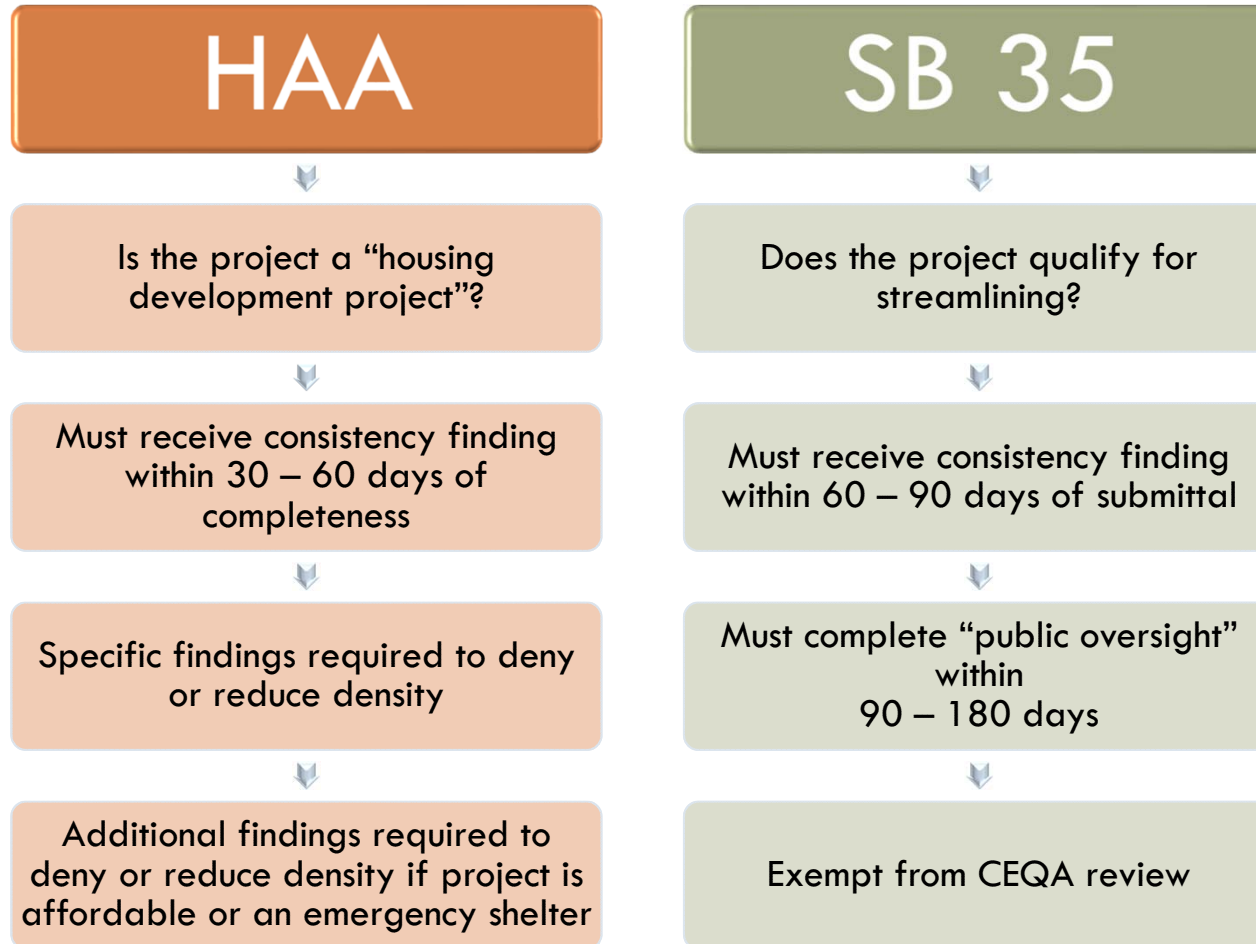
6

Standards found not to be “objective:”

- “Address unmet need for senior housing.”
- “Special care shall be taken to avoid obstructing views to the surrounding hills.”
- “Produce high quality authentic design.”
- “Reflect look and feel of the community.”
- *Honchariw*: Map Act finding that “the site is not physically suitable for the proposed development.”

# HAA and SB 35 At A Glance

7



# HAA Eligible Projects

8

- Applies to ALL “**housing development projects**” and emergency shelters:
  - ▣ Residences only;
  - ▣ Transitional & supportive housing;
  - ▣ Mixed use projects with at least 2/3 the square footage designated for residential use.
  
- Affordable AND market-rate



# HAA General Protections

9

- If project complies with “**objective**” standards, the City can only reduce density or deny if it finds:
  - ▣ A specific adverse impact to public health & safety;  
AND
  - ▣ The impact can't be mitigated in any other way.
- Standards include general plan, zoning, and subdivision requirements

# HAA Affordable Housing Protections

10

- Additional protections for affordable projects under Section 65589.5(d)
  - ▣ Emergency shelters;
  - ▣ 20% low income; or
  - ▣ 100% moderate (120% of median) or middle income (150% of median).
- Must make specific findings to deny, reduce density, or add condition making project infeasible

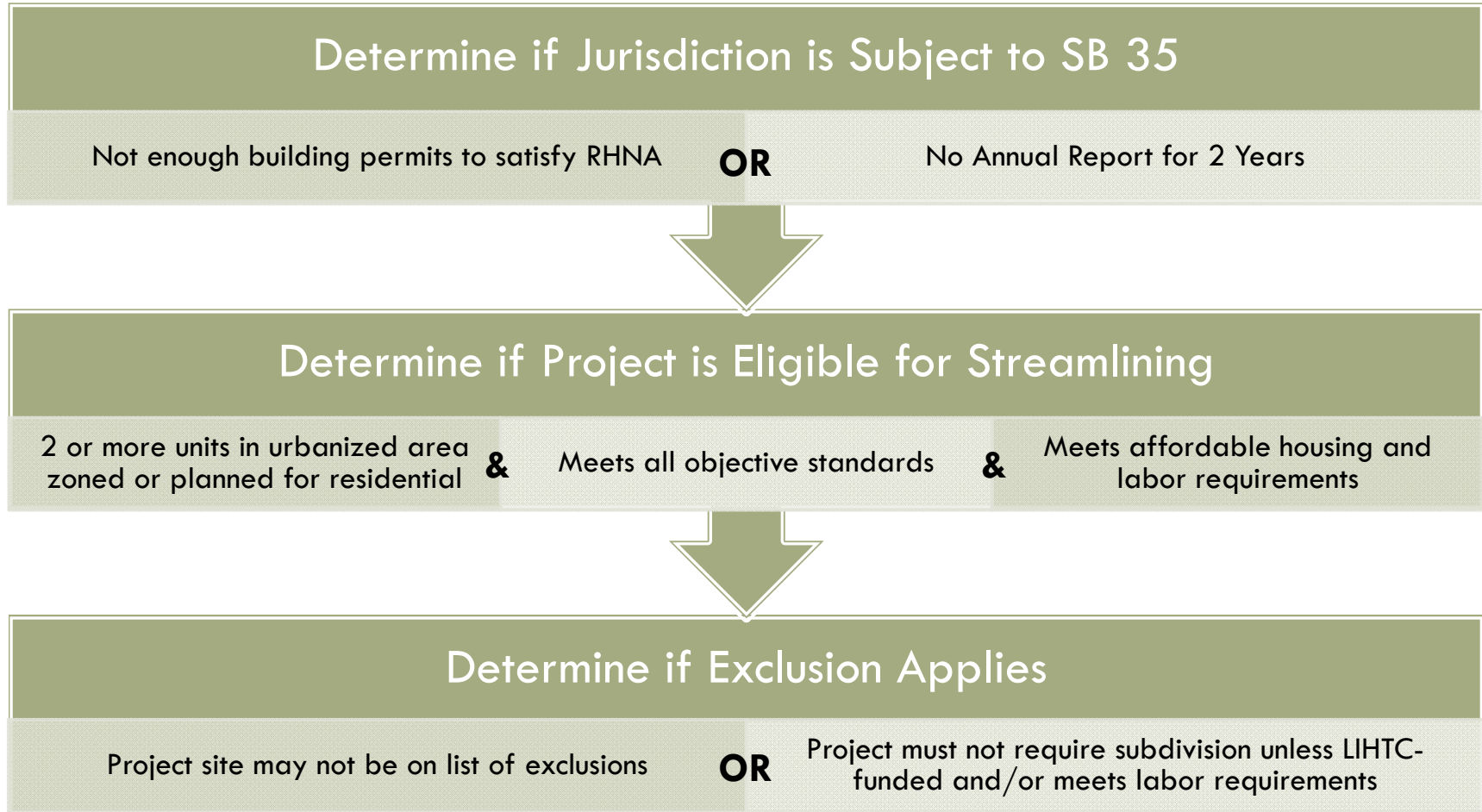
# HAA Processing Requirements

11

- Within 30-60 days of completeness the City must:
  - ▣ Provide list of any inconsistencies with any “plan, program, policy, ordinance, standard, requirement or similar provision”;
  - ▣ Explain why the project inconsistent; or
  - ▣ “Deemed consistent.”
- Also “deemed consistent” if: “substantial evidence that would allow a reasonable person to conclude” is consistent
  - ▣ Developer may submit own evidence re: consistency
- City findings must be based on ‘preponderance of the evidence,’ not merely ‘substantial evidence’

# SB 35: 'Streamlining'

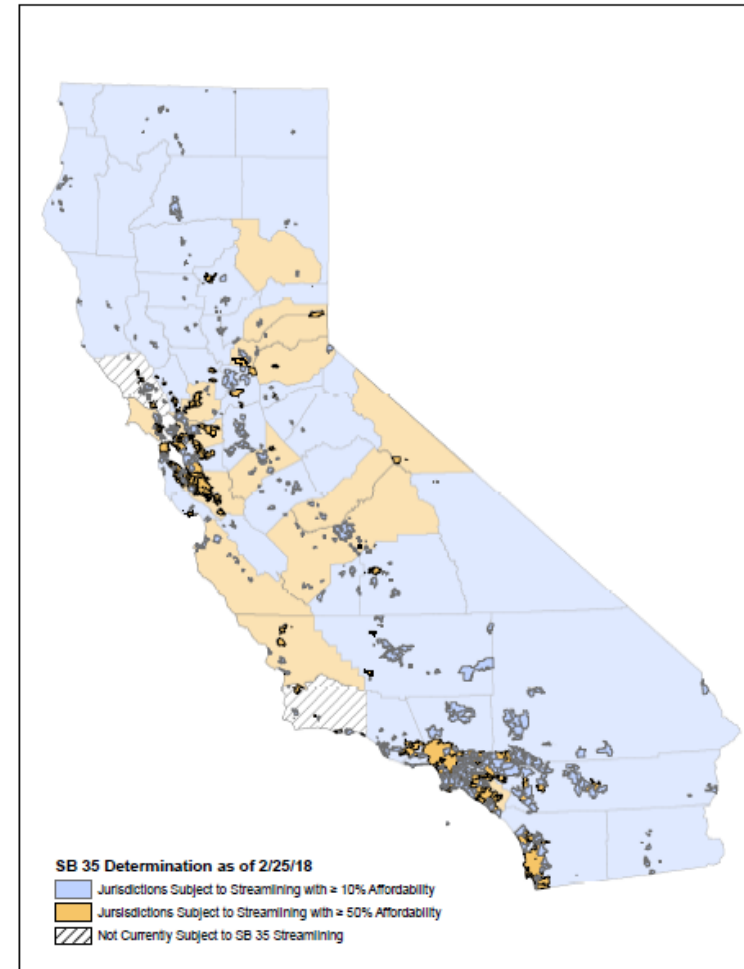
12



# SB 35 Eligible Projects

13

- Must meet affordable housing requirements
- Projects with 10 or more units must pay prevailing wages
- Must use “skilled and trained workforce” for larger projects
  - ▣ Threshold varies by location
  - ▣ 100% affordable projects exempt



# SB 35 Exclusions

14

- ❑ Site must not have contained housing occupied by tenants within last 10 years
- ❑ Site must not be in the coastal zone, agricultural land, wetlands, fire hazard areas, hazardous waste sites, former mobilehome park, floodplain, floodway, fault zone, or other specified areas
- ❑ Project may not involve a subdivision unless: (1) financed with low income housing tax credits and pays prevailing wage; OR (2) satisfies all labor requirements

# SB 35 Key Benefits

15

- Ministerial review if consistent with “objective” standards – no CEQA review!
  - ▣ A project that receives a density bonus and other regulatory incentives under density bonus law is considered consistent
  - ▣ Any 'maximum unit allocation' (presumably under a growth control measure) must be ignored.
  - ▣ Maximum density is the maximum shown in the general plan. Under SB 35, general plan standards trump other standards if documents are inconsistent.
- No more than 1 parking space/unit; many projects exempt from any parking requirements
- Extended life for project approvals; some may never expire

# SB 35 Processing Requirements

16

- Within 60 to 90 days of **submittal**:
  - ▣ Provide list of all inconsistencies with ‘objective’ zoning and design review standards in effect at submittal or project “deemed consistent”
- Within 90 to 180 days of **submittal**:
  - ▣ Complete any design review or “public oversight” of a housing development
  - ▣ Prohibited from in any way “inhibiting, chilling or precluding” the ministerial approval of a project



# HAA and SB 35 Strategies

17

- Be prepared to demonstrate consistency with all objective standards
  - ▣ Review applicable “plans, programs, policies, ordinances, standards, requirements”
- Expect consistency letters from reviewing agency
- Beware of CEQA and the Coastal Act for HAA projects
- Understand SB 35 costs and benefits
  - ▣ Almost every jurisdiction subject to streamlining for 100% affordable projects
  - ▣ Lengthy exclusion list may make site identification challenging
  - ▣ Do labor requirements offset CEQA exemption?

# SB 35 Alternatives

18

- Local streamlining efforts may have broader applicability
- Helpful CEQA exemptions:
  - ▣ Predevelopment Loans (Guidelines Sec. 15262)
  - ▣ Existing Facilities (Guidelines Sec. 15301)
  - ▣ Rehabilitation (Guidelines Sec. 15302)
  - ▣ Infill Projects (Guidelines Sec. 15332)
  - ▣ Residential Projects Consistent with a Specific Plan (Gov. Code Sec. 65457)
- Don't forget about tiering and relying on past CEQA documents
  - ▣ Program EIRs can be used to narrow review (Guidelines Sec. 15168)
  - ▣ Streamlining available for projects consistent with zoning or community plan (Guidelines Sec. 15183)
  - ▣ If EIR already done, no subsequent review required unless new significant impacts would result (Guidelines Sec. 15162)

# CITY OF CONCORD

19



goldfarb lipman attorneys

# Concord: Preparing for SB 35

20

## □ Checklist

- Requirement for 10% affordability
- Eligibility criteria- objective standards
- Additional compliance with documents such as
  - Downtown Specific Plan
  - Design Guidelines
  - Corridor Plan
  - Bicycle and Pedestrian Plan

## □ Pipeline projects or potential sites

- Several multifamily apartments near BART station in pipeline

# Concord: SB 35 Challenges

21

- Prevailing wage
  - ▣ Projects not penciling with affordable and prevailing wage in Concord
  
- Design Guidelines
  - ▣ How do we set objective criteria?
  
- Parking
  - ▣ If no parking is allowed, concerns from public and city officials

# Concord: SB 35 Opportunities

22

- Affordable housing projects that may come in under NOFA process
  - ▣ May meet SB35 checklist due to affordability and prevailing wage, infill sites
  - ▣ Streamline development review, reducing cost



An innovative **public private partnership** between local government, and private/philanthropic investors.

Bringing **new players** to the table to develop and demonstrate **creative approaches** for housing preservation & development.

**Transaction efficiencies** enable SFHAF to deploy capital **quickly & efficiently** to support priority affordable housing goals.

**A new funding tool to battle San Francisco's affordability crisis.**

## Impact | Our current portfolio

**\$32.9**  
MILLION  
Total Loan Volume



**6**  
Loans  
Total Portfolio

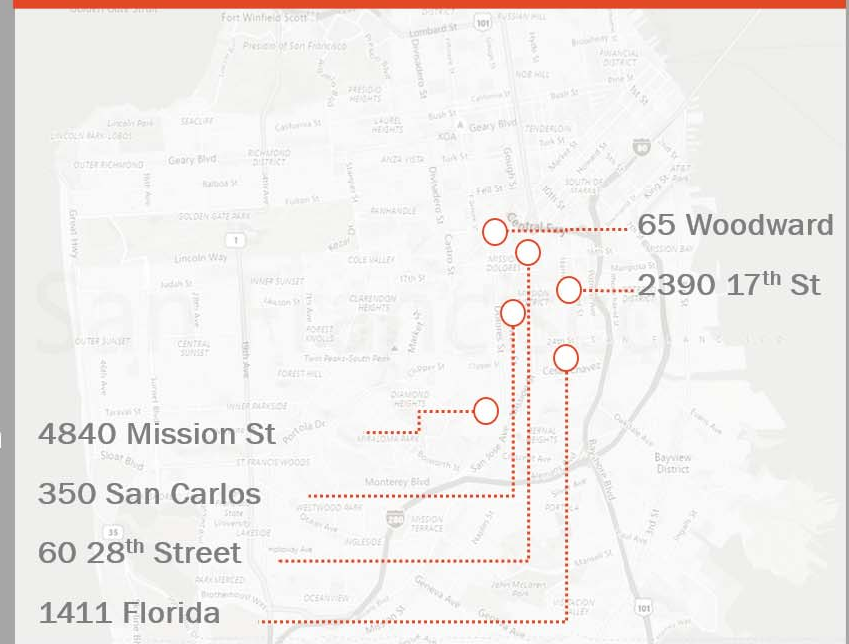
**39**  
UNITS  
Acquired,  
Rehabbed &  
Permanently  
Preserved

**2**  
ADUs  
Accessory Dwelling  
Units Added to  
Preserved  
Properties

**175**  
UNITS  
Planned New  
Construction on  
Vacant Site(s)

*As of February 2018, SFHAF closed six loans with two borrowers, BRIDGE Housing and the Mission Economic Development Agency.*

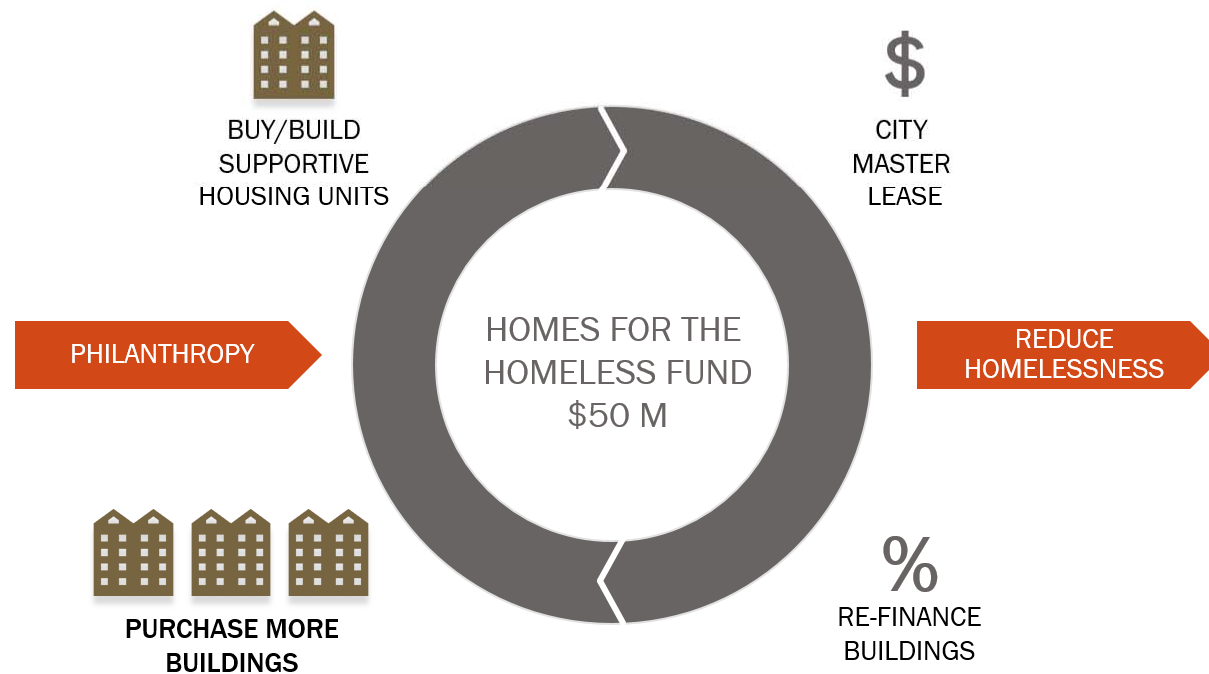
### SFHAF Portfolio (as of February 2018)





# Partnership with Tipping Point Communities

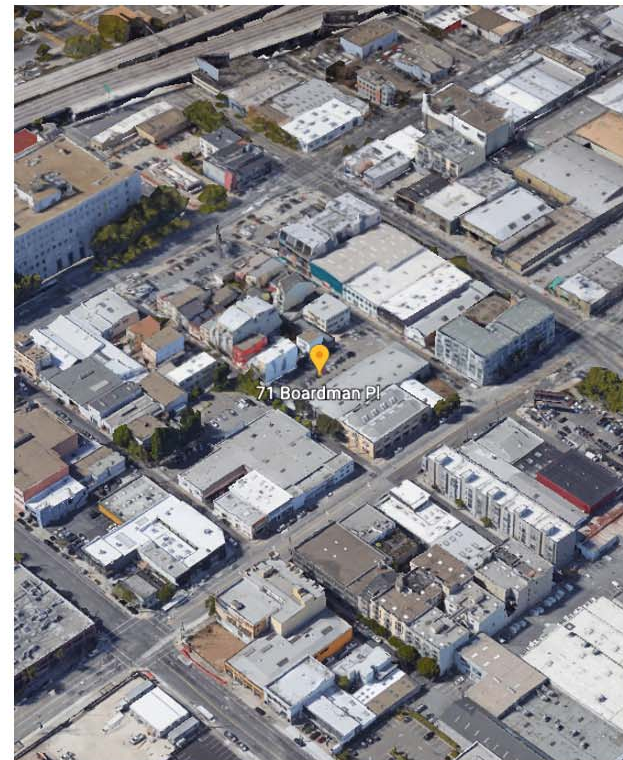
MORE COST EFFECTIVE AND FAST DELIVERY OF SUPPORTIVE HOUSING



## SITE OVERVIEW

Site is a parking lot in the South of Market neighborhood.

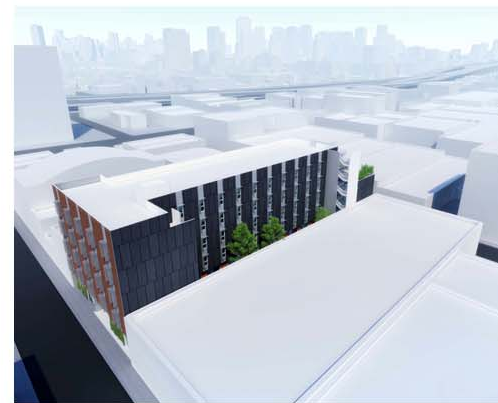
DESCRIPTION	
District	Zoned SALI/Western SOMA <i>(Residential not permitted; amendment proposed)</i>
Zoning	District 6
Size	14,800 SF



## PROJECT OVERVIEW

Project will create 100% supportive housing for homeless individuals.

Units (pending final design)	100 - 130
Unit Size (Gross SF)	245 - 265
Gross Floor Area (Total SF)	~50,000
Community Space (Total SF)	~9,000
Unit Type	Studios
Building Type	4-stories wood over a podium (modular or site built)
% Affordable	100%
Amenities	<ul style="list-style-type: none"> <li>• Comprehensive on-site services</li> <li>• Open space (5,750sf)</li> <li>• Bike parking</li> </ul>



# SB 35 | SFHAF Approach

- Site not currently zoned for housing, but strong indications that City is willing to consider a zoning amendment to allow affordable housing on this family of sites -- all currently surface parking lots.
- Momentum around rezoning this group of surface parking lots, and hope to take advantage of that amended definition of SALI to use SB35
- After zoning amendment legislation is passed, assuming we meet all objective standards, we will qualify for ministerial approval under SB-35:
  - exempt from CEQA
  - Planning staff must determine if eligible for SB-35 within 60 days of application, and complete permit review in 90 days. (<150 units)
  - commission hearings and approvals are not required, though planning can calendar a planning hearing
  - Only the building permit can be appealed (to the Board of Permit Appeals), but there are no CEQA determinations to appeal.

# SB 35 | SFHAF Approach

- While we are hopeful to qualify for SB 35, we are pursuing a parallel, more traditional approach:
  - ▣ an SUD for the single site, to include rezoning and entitlements. Because the site isn't zoned for housing, it wouldn't be eligible for SB 35.
- We are planning to use the state density bonus (rather than the newer local bonus)
- We believe either bonus program is compatible with SB35.

**Likely first project in SF planning to use SB 35**

# SB 35 | SFHAF Opportunities

30

- Greater confidence in our entitlements timeframe once rezoning is completed -- allows for more efficient financing, design, and construction execution
- SB 35 will allow for a timeframe is considerably shorter than standard, and the approvals process (once we have confirmation of the zoning amendment and SB 35 eligibility) much less risky due to the elimination of CEQA appeals

# SB 35 | SFHAF Challenges

31

- In high cost cities like SF, how many properties and projects can actually benefit from added streamlining given exclusions - e.g., must be zoned residential, no tenants in last 10 years?
- The reality is that even most 100% affordable housing projects don't qualify for SB 35, because the project doesn't comply with the underlying zoning designation.
- There is one known 100% affordable project that could in theory qualify, but it's already so far down the path of CEQA review and entitlements that the developer has opted not to pursue expediting at this point in order to preserve the neighborhood relationships they've cultivated through the process.
- Many potential affordable housing projects on public sites will not qualify if sites are zoned "P."

# QUESTIONS AND ANSWERS

32