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April 15, 2017

Peter Cohen & Fernando Martí
Council of Community Housing Organizations
325 Clementina Street
San Francisco, CA 94103

RE: Your April 10, 2017, letter stating "Oppose Unless Amended" position on SB35

Dear Peter and Fernando:

I am writing in response to your April 10th "Oppose Unless Amended" letter regarding Senate Bill 35. I am going to be very direct in this letter, in order to set the record straight and correct the significant misinformation you and your organization have been disseminating about the bill in your April 10 letter and otherwise. I have absolutely no problem with anyone opposing or questioning any bill I author. I do, however, have a major problem with any person or organization that disseminates misinformation and continues to do so even after being repeatedly corrected. Further down in this letter, I address and correct your misrepresentations about the bill.

Please note that my letter is specifically addressed to the leadership of the Council of Community Housing Organizations - i.e., the two of you - as my criticisms are directed only to CCHO and not its members, nor the leaders of the other undersigned organizations – organizations that provide critical services and do terrific community organizing with tenants and vulnerable, low-income communities.

Indeed, several *of your own* CCHO members and allied affordable housing partner organizations came out early to endorse SB 35, including Mercy Housing (CCHO member), Mission Housing (CCHO member), Bridge Housing, Non-Profit Housing Association of Northern California, and the California Council for Affordable Housing. Because these organization are forced to deal, day in and day out, with the difficult political and financial realities of entitling and building homes in California, they understand why SB 35 will provide a powerful tool for affordable housing developers to build more affordable housing for low-income people. These affordable housing organizations know, for example, that projects with more than four community hearings are on average 5% more expensive, which can cause an affordable housing developer to have to make the painful decision to build *fewer* affordable housing units than they otherwise would have, in order to comply with well-intentioned, but obstructive and expensive, approval processes.

I am proud to have the support of these excellent affordable housing nonprofits - which provide so much of California's low-income housing - and it is also notable that numerous organizations, for example, various environmental organizations, that opposed Governor Brown's by-right proposal have ***not*** come out in opposition to SB 35.

Your letter also ignores the needs of middle-income people who are at risk of displacement and often barely holding on because of skyrocketing housing costs, people like the educators who are members of signatory organizations AFT Local 2121 and United Educators of San Francisco. These teachers will rarely, if ever, qualify for a subsidized affordable unit based on their income. Your position fails to provide even a hint of a solution for our middle class housing crisis - a middle class crisis that will never be solved with subsidized below market rate affordable housing. Indeed, trying to rely on BMRs to solve the middle class housing problem will inevitably lead to a competition between low-income and middle-class residents for housing subsidies, something I think we all can agree should be avoided.

This housing crisis will never be solved without a solution that includes a significantly increased supply of all types of housing, at all income levels, in every community throughout California, both subsidized and non-subsidized. The devastating eviction crisis and rapid displacement of low- and middle-income people from cities results, in large part, from failing to build enough housing for the past half century. SB 35 empowers the state to take action and ensure that every single community is approving its fair share of housing – especially those communities currently punting their housing needs to neighboring jurisdictions.

In the end, SB 35 will lift *all* housing boats. It will make it *much* easier for low-income affordable housing developers to obtain permit approvals, thus accelerating production of low-income housing. It will also lead to more housing overall, thus benefiting the middle class over time. That's why so many housing advocates, including various affordable housing nonprofits, have endorsed the bill.

I also would be remiss if I failed to note positions that you and CCHO have taken in recent years that can only be categorized as anti-housing, anti-growth, and antithetical to creating more affordable housing. CCHO portrays itself as the affordable housing voice of San Francisco, yet CCHO repeatedly has taken destructive anti-affordable-housing positions as part of its low- or no-growth agenda. For example:

- **State Density Bonus Law:** While the Western Center on Law & Poverty, Housing California, and California Rural Legal Assistance worked tirelessly in 2016 to strengthen California's density bonus law - a powerful tool to increase both the percentage *and number* of affordable housing units in otherwise market-rate developments - you declared war on the tenant advocates sponsoring it and fought to deny its passage in the Legislature.

- **Housing Moratorium:** When San Francisco faced the threat of an (eventually unsuccessful) housing moratorium in 2015, which would have frozen the construction of housing projects containing badly needed affordable housing in the Mission District, you were two of its loudest supporters. The Mission Moratorium was an even more draconian

version of Los Angeles's recent Measure S, which several of the Los Angeles organizations that signed your letter fought to ***oppose*** in their own community (Alliance for Community Transit, ACCE Action, LA Forward, LA Voice, Little Tokyo Service Center, and T.R.U.S.T. South LA).

- **100% Affordable Housing Streamlining:** When I was a San Francisco Supervisor, I authored legislation in 2015 to streamline the approval of 100% affordable housing projects by removing the lengthy and expensive conditional use permit process. You lobbied to kill the legislation. The legislation was strongly supported by affordable housing nonprofit developers and only applied to 100% affordable housing. I'll repeat that: *it only streamlined approvals for 100% affordable housing*. Yet, you worked to sabotage it, and Fernando even testified *against it* in its early Planning Commission hearing on December 3, 2015. Only after I and several colleagues, due to your obstruction, took the extraordinary step of placing the measure on the ballot - a ballot measure that would have won in a landslide - did you back down and stop pushing to kill the measure at City Hall.

- **Your Absence on Important Affordable Housing and Pro-Tenant Bills:** While the two of you have been fixating with laser-focus on obstructing the passage of SB 35, despite its endorsement by numerous affordable housing nonprofit developers, other pro-tenant and affordable housing bills in the State Legislature have received little, if any, attention or support from CCHO leadership. These bills – the bulk of which I am co-authoring – include Ellis Act reform, strengthening inclusionary housing policy for rental housing, strengthening rent-control, strengthening the Housing Accountability Act, strengthening Housing Element law to protect against exclusionary zoning, preserving deed-restricted affordable housing, protecting undocumented tenants against threatening landlords, a $3 billion affordable housing bond, and several other funding bills that together would provide upwards of $1 billion annually in steady, permanent funding for affordable housing.

I struggle to understand your priorities as advocates for tenants and low-income people when you ignore the incredible strides being made in increasing the availability and protection of affordable, stable housing, and instead spend your resources fighting my legislation - legislation that will expedite affordable housing construction and that several of your own dues-paying members support.

Regarding what this bill *actually* does versus what you inaccurately claim it does:

1. I Have Extensively Amended SB 35 in Response to Feedback:

Your letter describes the extensive amendments I've made to the bill - largely in response to feedback from advocates, including you - as "minor." That is false. Just by way of example, I amended the bill to use building approvals, instead of building construction, as the metric to measure RHNA compliance, based in part on *your* feedback. I amended the bill to set 50% (increased from 15%) affordable housing as the threshold for a project to qualify as a BMR project, based in part on *your* feedback that 15% was too low. I amended the bill, based on *your* feedback, to place an expiration timeline on streamlined project approvals. I amended the bill to

judge RHNA compliance every four years, instead of every year, based in part on *your* feedback that development cycles don't happen in a year.

We made many other amendments, but these amendments, alone, show that the amendments were anything but minor. Yet, you dismiss them, despite the reality that they, and other amendments, respond directly to your own criticisms of previous versions of the bill. Good-faith legislative advocacy doesn't ask for dramatic amendments, receive them, and then dismiss them as "minor."

2. Your Letter Contains Various Misrepresentations of the Bill

Your letter doesn't stop at dismissing the amendments as "minor." It then asserts - falsely - that one of those "minor" amendments was actually not taken at all, causing you serious concern. (Query why a "minor" amendment would cause you so much concern, if it's actually "minor.") Specifically, at the bottom of page one, you state: "[T]he bill does not reflect two fundamental factors in the reality of housing production: 1) only 'approvals' are in the purview of city policies and decision making, not actual production/construction..." As you are aware - because deep in the letter you acknowledge it at the end of a paragraph - I amended the bill, based on feedback from you and others, to judge RHNA compliance to approvals, not construction.

Why on earth would you state early in your letter - on page 1, the page people are most likely to read - that the bill keys off of units constructed, when (a) that is false and (b) you acknowledge as much deep in the letter for anyone who happens to read that deep? Moreover, if this issue - units constructed (not within a city's control) vs. units approved (within a city's control) - is as "fundamental" (your word) as you claim, then, in light of my amendment adopting it, why do you claim my amendments to the bill to date have been "minor"?

Your letter also falsely states that SB 35 is “functionally little different” than Governor Brown’s 2016 by-right trailer bill. Many organizations had legitimate concerns about aspects of the Governor’s by-right bill – including several concerns that I shared – but blithely asserting that the two bills are basically the same is a misrepresentation.

This past December, as we worked to come up with a strong proposal worthy of broad-based support, my staff and I meticulously sifted through nearly one hundred responses submitted last year to the Governor’s by-right bill and worked diligently to convene with advocates (including you), listen to their concerns, and adapt our streamlining bill to be responsive to numerous critiques of the Governor’s 2016 effort. Indeed, early on, I personally met with you and walked you through some of the major changes in SB 35 compared to the Governor's bill. You even indicated during the meeting that you were pleasantly surprised that I'd addressed various of the serious concerns about the Governor's proposal. Yet, you now claim the two bills are basically the same.

Among the many differences between the two bills:

- **Not All Communities Will Be Subject to Streamlining Under SB 35:** SB 35 does not subject all projects to streamlining and is more narrow than the Governor's proposal.

Unlike the Governor's proposal, jurisdictions that are approving their fair share of housing units, classified by income category, are not subject to streamlining and maintain discretionary control over housing approvals.

- **SB 35 Limits Project Eligibility and Doesn't Streamline All Market Rate Housing:** Counter to your exaggerated claims, market-rate housing is only streamlined in jurisdictions where there is an identified shortage of above-moderate income housing under Housing Element law. Communities that are approving above their fair share of market-rate housing are only required to streamline affordable housing projects.

- **SB 35 Honors Local Inclusionary Housing Requirements:** Jurisdictions with inclusionary zoning will continue to have that full authority to establish and raise their percentages, and projects seeking streamlining will also be required to meet them, without exception. Indeed, SB 35 creates a *new* inclusionary requirement of 10% for communities that have no inclusionary requirement or one below 10%. This new statewide standard is a major step forward.

- **SB 35 Contains Enforceable Labor Prevailing Wage Standards:** Unlike the Governor's proposal, prevailing wages must be paid to all construction labor in streamlined projects, ensuring that monetary gains conferred to developers by streamlining are redistributed into the local community by supporting good paying jobs, local hire, and job training.

- **SB 35 Strongly Protects Existing Tenants and Naturally Affordable Housing, with Strict Demolition Controls:** Unlike the Governor's proposal - which I and others criticized for allowing for the demolition of rent-controlled housing - SB 35 contains a blanket ban on using streamlining to demolish rent-controlled units. And, SB 35 provides that, for non-rent-controlled rental housing, in order to utilize streamlining to demolish the building, all units need to have been vacant for at least 10 years. This important change from the Governor's proposal was made to ensure the preservation of naturally affordable housing and to reduce the immediate and tragic displacement effects that can stem from occupied buildings being demolished.

- **SB 35 Includes A Public Oversight Period:** The public may engage and have an opportunity to point out noncompliance with objective standards, including zoning, design, and site eligibility, during a public oversight period of 90-180 days that is based on the size and complexity of the project.

- **SB 35 Strengthens Site Eligibility Requirements for Environmental Protection:** Only urban infill projects will be eligible for streamlining, and the scope of excluded environmentally-sensitive land has been broadened from the Governor's proposal to include the California Coastal Zone, sensitive habitats, prime farmland, and more. We have worked on these environmental provisions diligently with environmental organizations such as the National Resource Defense Council, California League of Conservation Voters, and Defenders of Wildlife.

Below is my response to your proposed amendments:

1. **Your "Fair Share" Amendment Lets Communities Off the Hook**: This requested amendment is really a cloaked version of your "exempt San Francisco" argument. I do not agree that San Francisco should be exempt. SB 35 is fair share by design. Every community in an identified housing shortage will have some kind of housing streamlining until they are out of that shortage. In communities not approving their fair share of any kind of housing, mixed-income and subsidized affordable housing projects will be streamlined. In communities that are approving their fair share of above-moderate income housing according to RHNA, like San Francisco and Santa Monica, *only projects where over 50% of the units are affordable will be streamlined.* I am happy to include findings that it is a matter of statewide importance that every community in California zone for, approve, and build their fair share of housing to keep California affordable. I will not, however, include this as a trigger that can be used as leverage for cities to stall their housing production until a neighboring community "catches up."

2. **75% of RHNA Isn't Enough:** I do not support the alternative performance metrics proposed in your letter. A 75% RHNA performance trigger is arbitrary, and does not "account for market cycle swings," as you claim. All that the 75% amendment would do is hold fewer communities accountable for achieving their housing goals and regional fair share, undermine California's Housing Element law, and increase segregation and housing costs in California communities.

3. **SB 35 Does Allow Rollovers:** Your claim is incorrect. The current language does, indeed, allow for rollovers from the first 4-year period to the second 4-year period (the two comprising the 8-year RHNA housing cycle). Under SB 35, being "on track" with RHNA means halfway to RHNA goals between year 0 and year 4, or in compliance with RHNA goals with the total approvals made between year 0 and year 8. Because SB 35 is meant to complement and strengthen Housing Element, and because enabling "rollovers" from one eight-year cycle and round of housing goals to the next would undermine the Housing Element, I will not make the amendment for rollovers from one 8-year cycle to another. I am happy to include a provision that clarifies if (and when) the RHNA process is reformed, the process laid out in this bill must be adjusted to match.

4. **SB 35 Has Strong Inclusionary Provisions:** Inclusionary housing policy should be determined and supervised by the local jurisdiction. As I explained above, the "monetary gains" conferred by developers through the streamlining process are largely redistributed to the community by mandating prevailing wages on all streamlined projects, which benefits the community through local hire, good paying jobs, and job training. This is not a windfall for developers or a "freebie."

   Requiring prevailing wage, which we are, *while also* increasing inclusionary on top of what local governments have established as their feasibility threshold, will make housing development infeasible. That is the reality, and we are very sensitive to it. We are trying to

create policy that will operate statewide in terms of financing projects - not just what looks good on paper.

Communities seeking to increase or establish inclusionary housing percentages are not precluded from doing so by my legislation, and I am even co-authoring a bill in Sacramento that further strengthens and affirms local governments' authority to adopt inclusionary housing policy for rental units.

5. **SB 35 Has a Very Reasonable "Use It or Lose It" Provision:** I agree with your concern, as shown by my March 9, 2017, amendment to include a "use it or lose it" provision. Your suggested amendment to require approvals expire after 24 months appears to be an arbitrary number and one that we will not adopt without evidence to justify it. SB 35's 36-month requirement, with a conditional one-year extension in extraordinary circumstances and an exemption for affordable housing projects, is the minimum we will consider in lieu of compelling evidence that is applicable in all California housing markets. I have yet to see anything of the sort. There are reasons beyond a developer's control in terms of some project delays, even in the cases when they are motivated to pull a building permit as soon as possible. Additionally, SB 35's current expiration provision is *very different* from existing rules, as jurisdictions now will generously renew entitlements many times over, even if there has been no significant progress toward getting a project construction ready.

6. **SB 35 Doesn't Touch Zoning:** Your letter incorrectly states that SB 35 undermines local zoning. That is an incorrect reading of my bill, and my office has repeatedly corrected your inaccurate statements alleging that it does impact local zoning. To the contrary, SB35 *does* require that development projects be consistent with the objective zoning of the site without requesting variances, exceptions, modifications or bonuses, as those are not considered "objective" criteria because they require personal, subjective, case-by-case discretion from the supervising agency.

   The one "bonus" that may be granted by-right in the current language is the increased height and density offered in state density bonus law in exchange for more affordable housing. I clarified that ambiguity in a set of amendments dated March 21, 2017. While I understand that you are not fans of the state density bonus law, I am a fan, and I will not utilize SB 35 to undermine the density bonus program.

7. **Deed Restrictions:** You indicate that the standard state requirement that BMR units be deed-restricted for 45 or 55 years is insufficient. I don't have an issue with extending that time period under state law generally, and that is a reasonable discussion to have. However, I am hesitant to create a new, longer period just for SB 35 projects. I am open to including a provision stating that if the general state law provision changes the deed-restriction period, SB 35 will track that change.

8. **Local Public Benefits Are Retained by SB 35:** SB 35 does not eliminate local public benefits, including, for example, inclusionary housing requirements and transit impact fees.

However, I am open to including a clarifying provision stating that clear, objective, ministerial policies adopted locally well before the date of a permit application are to be honored.

My door remains open to any and all organizations that signed on to your letter who wish to further discuss SB 35. However, I will not allow for misinformation and confusion to be spread about SB 35. California's housing needs are too great for game-playing. I look forward to continue to working with all stakeholders to craft good housing policy that will address our need for more housing at all income levels in California.

Sincerely,

Scott Wiener

Scott Wiener
Senator

CC:
Affordable Housing Alliance
AIDS Housing AllianceSF
Alliance of Californians for Community Empowerment (ACCE) Action
American Federation of Teachers Local 2121
Anti-Eviction Mapping Project
Asian Pacific Environmental Network
Courage Campaign
Causa Justa::Just Cause
Chinatown Community Development Center
Coalition for San Francisco Neighborhoods
Council of Community Housing Organizations
Dolores Street Community Services
Eastern Neighborhoods United Front
Faith in Action Bay Area
Faithful Fools Street Ministry
Homeownership San Francisco
Hospitality House
Housing Rights Committee
Jobs with Justice
Koreatown Immigrant Workers Alliance (KIWA)
LA Forward
LA Voice
Little Tokyo Service Center
Long Beach Residents Empowered (LiBRE)
Manilatown Heritage Foundation
Mission Economic Development Agency

People Organizing to Demand Environmental and Economic Rights (PODER)
Sacred Heart Community Service
San Francisco Day Labor Program and Women's Collective
San Francisco Information Clearinghouse
Santa Monicans for Renters' Rights (SMRR)
Senior & Disability Action
SF Tenants Union
South of Market Community Action Network
Swords to Plowshares
Tenants Together
T.R.U.S.T. South LA
United Educators of San Francisco
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Jena Price, California League of Conservation Voters
Ann Notthoff, National Resource Defense Council
Amanda Eaken, National Resource Defense Council
Sande George, American Planning Association, California Chapter
Chris Lee, California State Association of Counties
Meea Kang, Council of Infill Builders
Cesar Diaz, State Building & Construction Trades Council

Doug Shoemaker, President Mercy Housing
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