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Maria Cremer, Acting Director

Office of Community Planning and Development

United States Department of Housing and Urban Development

United States Department of Housing and Urban Development

600 Harrison Street 3rd floor

San Francisco Ca 94107-1300

With Copies to:

Eugene Flannery

1 South Van Ness Avenue 5th Floor

San Francisco CA 94103

Douglas Shoemaker

Director and Certifying Officer

Mayor's Office of Public Housing

1 South Van Ness Avenue 5th Floor

San Francisco CA 94103 and

HUD OIG Hotline (GFI)

451 7th Street SW

Washington DC 20204

Re: Objections to Request for Release of HUD Funds

HUD \$4,416,508

TOTAL PUBLIC INVESTMENT

Projected Public Funds

\$9,146,808

(Edward II Public Housing Project 3155 Scott Street San Francisco)

Dear Maria Cremer Acting San Francisco HUD Director,

Eugene Flannery and Douglas Shoemaker Mayor's Office of Housing and

Inspector General of HUD:

Re: 3155 Scott Street San Francisco Edward II Hotel Public Housing Project

The Edward II Hotel public housing project should not be funded by HUD at this time. HUD regulations require that no public funds be provided to a private developer prior to HUD's funding approval for the public project. Additionally, HUD funds cannot be used on a Public Project that does not comply with the Americans with Disabilities Act. Moreover, HUD funds cannot be used on a Public Project that is not zoned for the proposed Single Room Occupancy Hotel. Further, the present structure located upon the real property at 3155 Scott Street has historically significant attributes that have not been resolved in a public process. The building is historically significant as it is one of the very few buildings that presently exists that were constructed for the Panama Pacific Exposition of 1915. Because the environmental considerations, the density considerations, the program plan for the proposed occupants and its historical provenance have been inadequately developed to date it is premature to fund the project in light of CEQA and NEPA requirements.

By notice published in the San Francisco Examiner on or about September 26, 2010 the Mayor's Office of Housing advised that objections to HUD's San Francisco office are due sometime before or after October 19, 2010. Zack Carter of HUD reported Supervisor Alioto Pier that the Request for Release of Funds and its related certification were received by HUD on October 6, 2010. Accordingly, my objections are timely made within 15 calendar days of HUD'S receipt of the Request for Funding, that is on or before October 21, 2010. (24 CFR 58.74). The City of San Francisco emailed RROF notices to some interested parties including myself on October 13, 2010 but did not publish the notice as required and

further failed to provide to the community groups any updated documents regarding the environmental impacts of the proposed project.

The notices of the Mayor's Office of Housing provided in this matter to the public and to interested parties are deficient and accordingly again fail to comply with 24 CFR 58.43. In the first notice, no notice was disseminated to the persons known to have an interest in the proposed project by mail, email or posting of the property or posting at a nearby location. The second notice was not posted publicly on the property or in the neighborhood in a conspicuous place. Further, the second notice was not published in a newspaper of general circulation so far as presently known.

Because the Mayor's Office of Housing is unable to provide proper public notice of the proposed project to the public, it is no surprise that the Mayor's Office of Housing is unable to properly document its request for HUD funds.

This procedural issue is not waived and will be asserted in all subsequent proceedings administrative and judicial. It is raised for its preservation in future administrative proceedings and in future litigation if needed. Suffice it to say that the lead agency has failed to comply with notice and this defect is a valid ground to deny the application so that the merits need not be addressed.

The Mayor's Office of Housing did not consider the comments and make modifications to its FONSI as required by 24 CFR 58.43 (c). This is because it did not provide notice as required.

Turning to substantive issues 24 CFR 58.75 allows objections to be made on grounds that it document was not in fact executed by the City's Certifying Officer (a). In this case the Mayor did not certify the documents; written determinations were not made as 58.40, 58.43, 58.47 and 58.53 require (b) and steps have been omitted with regard to the preparation, publication and completion of an EA (c) or and EIS (d).

The first ground to deny the application is the recipient's failure to comply with CFR 58.22 (a) and (c) The Mayor of San Francisco approved a loan transaction enabling the private developer to purchase the property. This is the reason the Mayor not his subordinate is the Certifying Officer. Public money was injected into the proposed project according to the City's Ethics form SFEC-126: "Notification of Contract Approval (a true and correct duplicate original being attached as exhibit 1 to this letter) " Mayor Gavin Newsom approved a contract with the developer of 3155 Scott Street in the amount of \$1,716,508.00. The public funding was made to CHP Scott Street LLC relation to the acquisition and predevelopment loan agreement for 3155 Scott Street. According to the City Ethics for the property at 3155 Scott Street will be acquired, rehabilitated and operated as 24 units of housing for homeless and at-risk transition age youth." The Ethics reporting form was filed by Lydia Ely on or about July 22 with the San Francisco Political Ethics Commission. This funding transaction was made close in time, almost contemporaneously with the close of escrow for the 3155 Scott Street parcel. Because significant public money was invested in the 3155 Scott Street project before alternative sites could be evaluated under NEPA this project is disqualified from receiving further funds from HUD under CFR 58.22 (a) and (c).

Code of Federal Regulations section 58.22 applies to the instant fact pattern because Cranston-Gonzales funds are being tapped for the proposed project. CFR section 58.22 provides in part as follows: (a) Neither a recipient nor any participant in the development process, including public or private nonprofit or for-profit entities, or any of their contractors, may commit HUD assistance under a program listed in section 58.1(b) on an activity or project until HUD or the state has approved the recipient RROF and the related certification from the responsible entity. In addition, until the RROF and the related certification have been approved, neither a recipient nor any participant in the development process may commit non-HUD funds or undertake an activity or project under a program listed in section 58.1(b) if the activity or project would have an adverse environmental impact or limit the choice of reasonable alternatives.

Here the developer that owns the property in question is CHP Scott Street LLP. The Notification of Contract Approval filed by the Mayor's Office of Housing Representative Lydia Ely reveals that significant monies were earmarked for the Edward II project. \$1,716,508.00 was committed and approved and reported to the San Francisco Ethics Commission for investment into the proposed public housing project. This advance funding runs afoul of CFR 58.22 for the simple reason that the choice of reasonable alternatives was limited by enabling the funding of the acquisition and rehabilitation of 3155 Scott Street.

The adverse environmental effects have yet to be resolved in the public hearing process under State and City laws. The matter has not been put on the calendar of the San Francisco Planning Commission for the rezoning and the environmental reviews that would be needed for the public housing project to proceed with appropriate permits leading to a valid certificate of occupancy.

There is evidence that the building is an historic building and entitled to protections associated with historic buildings. The building was constructed for the Panama Pacific Exposition held in 1915 across the street from the property. The Palace of Fine Arts and perhaps one other building in the Marina exist today from this period. Contrary to what is claimed by contractors working for the Mayor's Office of Housing, the façade of the property has remained the same since it first opened for business in 1914 or so. The City of San Francisco took no steps whatsoever to comply with CFR 58.22 (c) because the City took no appropriate action to ensure that the objectives and procedures of NEPA were achieved. The advance payments by the City to the developer disqualify the project for HUD funding. If CFR 58.22 is to have any substance, the remedy for its violation in such large amounts of money is to disqualify the project from all funding by HUD.

On additional substantive grounds I note that the Mayor's application is inadequate because it is facially incomplete. The application admits that the proposed project is not lawful under the present planning and zoning laws. HUD resources, being scarce, in especially times of deficit and deep recession must be carefully husbanded. Public money cannot be committed, that is invested, to a Project that has no reasonable prospect of being ever being entitled with a certificate of occupancy. HUD's money, taxpayer funds, will be wasted on this project because there is every reason to believe that the project will fail for

want of lawful zoning. HUD should not be in the business of wasting public funds. Here \$4.4 million are at risk of being dissipated on the purchase of a property that will not be used for at risk young adult housing because of zoning issues, historic property issues, pollution issues, density issues and the ADA issues block the economic conversion of the property to the proposed new uses. Simply put, it is much too early for HUD to sink \$4.4 million into the proposed project because the public entitlement process has not even started. On this ground alone the application should be denied. There is no evidence that the proposed use of the property as a high density single room occupancy hotel is presently lawful or will ever be lawful. There is no showing that any entitlement has been or will be granted or even that the entitlement process has commenced.

I provide my objections so that the Request for Release of Funds may properly be deferred (or more properly denied) until such later date as the City of San Francisco by and through the Mayor's Office of Housing provides to the Department of Housing and Urban Development proof that the proposed project will conform to planning and zoning law and proof that it did not approve a loan and advance money to fund the proposed project.

Presently the proposed project does not conform to the San Francisco Planning and Zoning Code, the ADA, CEQA and NEPA. No funds should be disbursed unless and until the Mayor's Office of Housing provides duly certified copies of documents showing that:

1. Legislative Changes in the Zoning Laws have been had and obtained and judicial review of the change is concluded and a final judgment exists approving all the planning and zoning changes needed to obtain rights of lawful occupancy for the proposed occupants of the development.
2. Environmental litigation under CEQA and NEPA have been concluded allowing the project to go forward.
3. Provisions of Americans with Disabilities Act is complied with in a form showing that elevators and fire escapes have been provided for wheel chair bound tenants in both upstairs floors.

Until such basic certifications are obtained, the contemplated Public Housing Projects cannot lawfully proceed. In fact, there are issues whether or not the City has attempted to cover up the \$1,716,508 support to the private developer or its approval of the loan documents for the project as the attached document purports to be redacted. At any rate, in this case the request for \$4.4 million is premature because the request is made at a time when the proposed use is illegal under prevailing law.

Many important and substantive steps remain to be accomplished in the entitlement process. Many steps have been skipped (or somewhat disingenuously over looked.) The building is an historic building. It is one of a very few surviving buildings built for the Panama Pacific Exposition of 1915. The claim that its façade was modified when Lombard Street was widened to accommodate traffic for the Golden Gate Bridge is not supported by the public record. Under NEPA and CEQA the building exterior must be preserved. With the contemplated new uses, this historic preservation may be impossible because of

the high density proposed uses will need to be supplied with adequate fire escapes, with structural and seismic upgrades, with ADA improvements elevators wide corridors, fire walls, sound insulation and highway exhaust fume mitigation hardware.

The funding for the Public Housing Project cannot commence at Scott and Lombard because the new use is a change in use and a change in density that is not permitted under present zoning law. Presently there is no assurance that the permits for the Public Housing Project will ever issue because the public hearing process starting with the Planning Commission on the changes in law needed for the project has not even commenced.

No public hearing has been set before the Planning Commission for the new uses and the mitigation measures so that State Law CEQA and Federal Law ADA as well as many health and safety issues required by the Laws of the City and County of San Francisco can be complied with. A public hearing was set for August 12, 2010 but was removed from the agenda because the Mayor's Office withdrew it because most likely there were not enough votes in favor of the project at that time. At the time of this writing no new hearing date before the Planning Commission has been set. Perhaps there will be a new mayor and new commissioners. Can a special use district permitting a Single Room Occupancy Hotel at 3155 Scott Street for potential "at risk" young adults be formed? If not, the HUD funding will be wasted.

I also provide a copy of this letter to the Inspector General's Office because the project is a proper candidate for heightened administrative scrutiny. The City of San Francisco and private developers associated with this Public Project are spending taxpayer's monies in a manner that does not further HUD's mission and goals and HUD funded local officials actions exceed the authority granted to them by HUD policies and regulations. Here more than \$9 million in public money is being used in an attempt to supply bedrooms for only 24 at risk young adults in a building that is not zoned for this use and the high density proposed. Reasonable alternatives have not been considered. There are apartment buildings for sale in San Francisco that can furnish the need for considerably less cost per person than what is proposed by this project. Reasonable alternatives exist with proper living spaces, adequate sized common rooms, adequate kitchen facilities, adequate dining and parking facilities. The proposed project at 3155 Scott Street will not contain these basic features even if were nine, ten, twelve (or more) million public dollars are lavished on the private developer of this ill-considered project. This project if funded by HUD would show serious mismanagement of public funds. Short sited zeal has lead to excessive project costs and improper "short cuts" diluting the impact of measures protecting the health and safety of the proposed residents and their immediate neighbors.

1. This notice of objections to the Request for Release of Funds (RROF) is timely being made 15 days from date published (24 CFR 58.45 (c).

2. The Mayor's Office of Housing FONSI notice is defective under 24 CFR 58.43 (c) because the Mayor's Office of Housing did not provide it to interested members of the public on or after September 22, 2010.

3. The FONSI notice was not published in a newspaper of general circulation and was not displayed in public buildings in accordance with procedures established as part of the citizen participation process. 24 CFR 58.43 (a) Accordingly the FONSI has not been properly promulgated to the public.

4. The activities sought to be funded are not exempt activities within the meaning of 24 CFR 58.34.

5. The activities sought to be funded are not categorical exemptions within the meaning of 24 CFR 58.35

Because the Notice of Intent to Request Release of Funds discloses that 22-24 dwelling units of permanent housing for transition age youth and to provide a manager's unit are involved, the exemptions listed in 24 CFR 58.35 do not apply because they deal with much smaller projects. Here a large public housing project is disclosed both in the Notice and the underlying documents. The large public housing project is not categorically exempt.

The environmental review of multifamily housing with five or more dwelling units (including leasing) or non-residential property, must include the evaluation of previous uses of the site or other evidence of contamination on or near the site, to ensure that the occupants of proposed sites are not adversely affected by any of the hazards listed in paragraph (i) (2) (i) of this section. (24 CFR 58.5 (i) 2 (ii).)

Properties proposed for use in HUD programs are to be free of hazardous materials, contamination, toxic chemicals and gasses and radioactive substances where a hazard could affect the health and safety of occupants or conflict with the intended utilization of the property. 24 CFR 58.5(i)(2)i). The proposed building for the project is almost 100 years old. It contains lead, asbestos, and other contaminants no doubt. The building is located on Highway 101 at Lombard and Scott in San Francisco. The building is on the main six lane highway that provides access and egress to and from the Golden Gate Bridge. Tens of thousands of cars and trucks pass directly in front of the building on a daily basis. As a result the proposed long term occupants will be exposed to traffic exhaust fumes and carbon monoxide and carbon dioxide along with benzene and other volatile hydrocarbons above a threshold found by the San Francisco Department of Health to trigger cancer. Additionally because so many of the cars and trucks that constitute the traffic flow emit significant amounts of particulate carbon an addition risks of lung and heart disease is raised.

The responsible entity must comply with NEPA and CEQ regulations contained in 40CFR parts 1500 through 1508 including requirements set forth in this part. (24 CFR 58.10.) There is a reasonable doubt that this can ever be established by a factual showing.

Until the RROF (Request Release of Funds) and the related certification have been approved, neither a recipient on or any participant in the development process may commit non-HUD funds on or undertake an activity or project under a program listed in section 58.1(b) if the activity or project would have an adverse environmental impact or limit the choice of reasonable alternatives. (24 CFR 58.22 (a).) This section prohibits the use of public funds before the entitlement and environmental issues are resolved. This regulation has not been followed.

I suggest that the source of funds for the close of the transaction be investigated by the Inspector General of HUD. The property has been acquired. More than \$3 million changed hands at the close of escrow. What public money has already gone into this project? Has public soft money been used to pay for public relations, lobbyists, architects, engineers, legal counsel, land use planners, zoning specialists and others? An audit of the books and records of the developer is needed to verify that public funds have not already been improperly expended on this project.

Granting of the RROF at this time is premature because there are numerous environmental issues that are open and unresolved. The RROF can be postponed or denied because public funds have been used before the RROF was granted as is shown by the Ethics Commission Filing attached to this letter. If City money or other public funds have been applied to the project in violation of 24 CFR 58.22(a), these are adequate grounds alone to postpone and to deny the request for release of funds because reasonable alternatives have been overlooked.

The purchase transaction was a major one, the purchase price of the property was in excess of 3 million dollars and it closed several months ago. Without contribution in small or large part, direct or indirect, from the City, the not-for-profit developer's option to purchase would in all likelihood not been exercised. This premature use of funds limited the choice of reasonable alternative development sites. There are shortcomings in locating the Public Housing Project next to the six lane highway (Lombard Street Highway 101) that serves a large portion of northbound and southbound traffic that cross the Golden Gate Bridge on a regular basis in a building that is almost 100 years old which lacks seismic upgrades, ADA improvements, and significant fire code upgrades.

The environmental issues under CEQA will need to be resolved before construction commences. More importantly the property is not zoned for the high density contemplated use. Under the current zoning rules approximately only six dwelling units are permitted not twenty five. The lot may not be approved for use as a public housing projects for a variety of reasons: cost, failure to comply with Americans With Disabilities Act, failure to comply with building code especially inadequate seismic safety, and fire safety requirements (fire escapes, fire doors, fire walls) failure to provide sufficient common areas and failure to supply group home amenities large enough common dining and kitchen spaces and common rooms for the proposed 24 "at risk" residents.

The City has not had public meetings before the Planning Commission that will hear the City's application for a "Special Use District" for the proposed public housing project designed to nullify existing density, parking, and common area requirements of the existing zoning. The use of the property is proposed to include alcohol and drug counseling and permanent residency of at risk young adults. The past use of the property was a tourist hotel for transitory residency. The mid August 2010 hearings before the Planning Commission were taken off calendar. No public hearings have been rescheduled as of the date of this letter. It can be assumed that the Mayor's Department of Housing lacks the votes to approve the modifications to and nullification of the existing zoning laws. It also can be assumed that the Board of Supervisors not in favor of allowing the proposed Special Use District to go

forward even if the Planning Commission were to improvidently vote in favor of a "Special Use District" before requiring the developer to prepare complete environmental impact reports required by CEQA. Even if the Board of Supervisors were to enact the enabling legislation for the SUD, it is not likely the trial court would find the legislation consistent with many City ordinances especially those associated with requirements for institutional master planning. Moreover the trial court and the appellate courts will likely hold that CEQA requires the preparation of complete Environmental Impact Reports to support any building permit.

The project as contemplated makes no allowance for proper habitation density in a wood frame structure almost a century old. The City and the developer desire to increase the permanent occupancy density from six to twenty five without supplying one off-street parking place. The young adults will have opportunity to have one or more guests. When an average of two guests per resident is visiting, there will be in excess of 70 persons on the premises. Absolutely no allowance for parking has been made. No common areas will support this number or even one half of this number. In fact the common kitchen will not serve the intended number of residents. The wooden building does not have fire escapes to serve the intended occupants at these higher densities. There is just one exterior fire escape. The building lacks an upgraded reinforced foundation that is up to present day seismic standards. The building lacks seismic ties and shear wall supports that would make the building safer in an earth quake.

The public hearing process will cast light upon the historic aspects of the property that under both NEPA and CEQA will preclude the use of the property for the purposes intended by the Mayor's Office of Housing. Furthermore the public process will demonstrate the need for a comprehensive environmental impact report under CEQA. Mitigation of many environmental issues will need to be made during the public process. It may be that the trial court or the appellate court will require adherence to CEQA under the controlling California authorities.

The Environmental Assessment is defective under 24 CFR 58.40 because all of the potential environmental impacts were not discussed. Alternatives to the projects were not examined. The impact of the project on the residents in the neighborhood was not considered. Increased density and lack of parking were not addressed and no mitigation was proposed. Health issues including exposure to exhaust, fumes, gasses and toxics from Highway 101 were not detailed as is required. Every gasoline pump in the State of California bears a warning that hydrocarbons cause cancer. So do hydrocarbon fumes, and particulate carbon as well as all of the other components of exhaust from trucks, busses and cars using highway 101.

There are many objections that can be made regarding the Mayor's Office's noncompliance with the administrative prerequisites to the issuance of an approval to a Request for Release of Funds. (28 CFR 58.75.) As discussed above this Project is not categorically exempt 28 CFR 58.75 see, 24 CFR 58.35. As discussed above the Environmental Assessment is defective and incomplete under subpart E which are proper objections to a request for funding. (28 CFR 58.75.) The EA is defective and incomplete because the document failed to identify all potential environmental impacts, whether beneficial or adverse and

the conditions that would change as a result of the project. 28 CFR 58.40 (b); because there was an incomplete and inadequate effort to document and properly identify, analyze and evaluate all impacts to determine the significance of their effects on the human environment and whether the project will require further compliance under related laws and authorities cited in sections 58.5 and 58.6 28 CFR 58.40 (c).

There is insufficient mitigation of environmental hazards and risks. The Assessment document fails to address health and safety issues relating to placement of the housing project along Highway 101; failure to address high-habitation density issues as they relate to fire and seismic and Americans With Disabilities Act issues. The omitted steps include improper treatment of the rezoning issues and the risks that the rezoning will not be approved. There is no reason to anticipate that the Special Use District will be approved by a majority of a quorum of the Planning Commission, by a majority of a quorum of the Board of Supervisors, that the Superior Court will permit the project to proceed without an environmental impact report and that the Appellate Court will not require full compliance with CEQA No Planning Commission or Board of Supervisors Member will give rubber stamp approval to the Mayor's political tactic of employing the Special Use District to circumvent the existing requirements of the applicable zoning laws with respect to lawful number of units, lawful number of parking spaces per unit, lawful amount of common areas in kitchen, dining room and open spaces for the occupants. Further, there is no showing that the placement of the Project along Highway 101 is required. There are alternative buildings available that are properly zoned and have proper parking. The fact that no alternatives were considered is a significant failure or missed step and this factor along with the probable premature public funding of the project by direct or indirect means are additional grounds to defer or deny the application for funds.

Obviously, HUD funding cannot be approved at this time because the public process surrounding rezoning and environmental issues has not even commenced. In conclusion, the undersigned respectfully requests that the request be denied because there is no showing that the Developer and the City have complied with the above mentioned HUD regulations.

Dated this _____ day of October 2010

Respectfully Yours,

Charles S. Holden
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