



# SAN FRANCISCO PLANNING DEPARTMENT

**MEMO**

## Notice of Electronic Transmittal

### Planning Department Response to the Appeal of the Categorical Exemption for 53 States Street

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**DATE:** March 19, 2015  
**TO:** Angela Calvillo, Clerk of the Board of Supervisors  
**FROM:** Sarah Jones, Environmental Review Officer – (415) 575-9034  
Jeanie Poling, Environmental Planner – (415) 575-9072  
**RE:** BOS File No. 150167 [Planning Case No. 2014.0177E]  
Supplemental Appeal of Categorical Exemption for 53 States Street  
**HEARING DATE:** March 24, 2015

In compliance with San Francisco's Administrative Code Section 8.12.5 "Electronic Distribution of Multi-Page Documents," the Planning Department has submitted a multi-page response to the Supplemental Appeal of Categorical Exemption for 53 States Street [BF 15067] in digital format. A hard copy of this response has been provided to the Clerk of the Board. Additional hard copies may be requested by contacting Jeanie Poling of the Planning Department at (415) 575-9072.

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**SAN FRANCISCO  
PLANNING DEPARTMENT**

**MEMO**

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**Categorical Exemption Appeal** *ll*

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**DATE:** March 19, 2015  
**TO:** Angela Calvillo, Clerk of the Board of Supervisors  
**FROM:** Sarah B. Jones, Environmental Review Officer – (415) 558-9048  
Jeanie Poling – (415) 575-9072  
**RE:** Planning Case No. 2014.0177E  
Appeal of Categorical Exemption for 53 States Street  
**HEARING DATE:** March 24, 2015  
**ATTACHMENT:** March 13, 2015 Supplemental Appeal Letter from Hector Martinez

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**PROJECT SPONSOR:** Jill Allen, John Lum Architecture Inc., (415) 558-9550  
**APPELLANT:** Hector Martinez, 51 States Street, Unit A, San Francisco [hectormarz@hotmail.com](mailto:hectormarz@hotmail.com)

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**INTRODUCTION**

This memorandum and the attached document are a response to a second appeal letter (“Supplemental Appeal Letter”) received by the Board of Supervisors (the “Board”) on March 13, 2015, regarding the Planning Department’s (the “Department”) issuance of a Categorical Exemption under the California Environmental Quality Act (“CEQA Determination”) for the proposed 53 States Street project (the “Project”).

The Department, pursuant to Title 14 of the CEQA Guidelines (California Code of Regulations, Title 14, Division 6, Chapter 3, Sections 15300–15387), issued a Categorical Exemption for the Project on May 28, 2014, finding that the Project is exempt from the California Environmental Quality Act (CEQA) as a Class 3 categorical exemption. The Class 3 exemption applies to new construction of small structures, including multi-family residential structures in urban areas designed for not more than six dwelling units.

The decision before the Board is whether to uphold the Department’s decision to issue a categorical exemption and deny the appeal, or to overturn the Department’s decision to issue a categorical exemption and return the Project to the Department staff for additional environmental review.

**PROJECT DESCRIPTION**

Please refer to the Department’s Original Appeal Response for a description of existing conditions and the Project.

## **APPELLANT ISSUES AND PLANNING DEPARTMENT RESPONSES**

The new concerns raised in the March 13, 2015 Supplemental Appeal Letter are cited below and are followed by the Department's responses. The new concerns are identified as Appeal Issues 3 to 7 to continue the numbering of the issues addressed in the Department's Original Appeal Response, which ended with Appeal Issue 2.

**Issue 3:** The Appellant states that the exemption subsection that the Project relies upon is not specified. "The Commission is relying on the Class 1 CEQA Exemption without specifying which subpart is relied upon."

**Response 3:** Under CEQA State Guidelines Section 15301(l)(1), or Class 1(l)(1), demolition of a single-family home that is not a historic resource, as defined for purposes of CEQA, is exempt from environmental review. The Project involves the demolition of an existing 1,554-square-foot single-family home that was determined by the Department not to be a historic resource. Under CEQA State Guidelines Section 15303(b), or Class 3(b), construction of a multi-family residential structure with up to four dwelling units in a residential zone is exempt from environmental review. In urbanized areas, this exemption applies to apartments, duplexes, and similar structures designed for not more than six dwelling units. The Project involves the construction of a residential structure with two dwelling units in a residential zoning district. Therefore, the Project is exempt from environmental review under Class 1(d) and Class 3(b).

The Department developed the CEQA Categorical Exemption Determination Form to facilitate and streamline compliance with Chapter 31 of the San Francisco Administrative Code, which requires the public posting of all exemptions. The form includes checkboxes for Class 1 (existing facilities under 10,000 square feet) and Class 3 (new construction up to three single-family dwellings or six dwelling units in one building). The CEQA Categorical Exemption Determination issued for the Project has Class 3 checked; however, the Discretionary Review Action states that the Project is exempt under Class 1. This inconsistency was an administrative oversight – as discussed above, the appropriate exemption classification for the Project is both Class 1 and Class 3. The administrative oversight of not checking both boxes does not affect the validity of the exemption determination. If a project meets the criteria for an exemption, it is exempt from further environmental review, regardless of when that determination is made in the process.

**Issue 4:** The Appellant states that proposed interim zoning controls are evidence that speculative development in Corona Heights is an unusual circumstance.<sup>1</sup> "This very recently adopted resolution is compelling evidence that the Project [and other nearby projects] will have significant cumulative environmental impacts on the Corona Heights neighborhood."

**Response 4:** The Planning Code guides residential land use to ensure that densities in established residential areas promote compatibility with prevailing neighborhood character. The interim zoning controls would change the Planning Code and require Conditional Use authorization for certain projects on Corona Heights (but not for the Project, which is located approximately 800 feet east of the eastern

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<sup>1</sup> San Francisco Board of Supervisors File No. 150192, "Interim Zoning Controls – Large Residential Projects in RH-1, RH-2, and RH-3 Zoning Districts." Passed at first reading, March 10, 2015.

boundary of the area subject to the interim zoning controls). While the Project is of greater mass than other buildings along States Street, it is consistent with the Planning Code. The Planning Commission considered the Project in the context of Discretionary Review and approved the Project.<sup>2</sup> The trend toward larger and denser housing is widespread throughout San Francisco. While legislative controls may focus development away from the interim zoning control area, the Appellant has not described unusual circumstances or provided any evidence to support the claim that the Project and in combination with other projects would result in a significant cumulative impact under CEQA. Please also see Responses 2 and 5.

**Issue 5:** The Appellant states that the Project's inconsistencies with local plans and policies constitute significant impacts under CEQA and that the elimination of affordable housing is an unusual circumstance. "The demolition proposed by the Project is inconsistent with the stated purposes of the San Francisco Planning Code....and with Planning Code Priority Polic[y] Number...3, [which] establishes that the city's supply of affordable housing be preserved and enhanced. The existing sound house fits the profile of housing that should be conserved in the city...The Project would add zero units of affordable housing...Speculative development projects such as the Project contribute to the displacement of affordable housing and persons of low to moderate income...[T]he project will eliminate critical affordable housing for residents who currently live and work in San Francisco in favor of extremely wealthy investors, renters or homeowners and force those with relatively low or modest incomes out of San Francisco...The Project in combination with the other projects in the Corona Heights area will have a significant impact in that it will displace substantial numbers of people when more affordable housing is replaced with ultra expensive housing...[T]he rush of speculative developers to Corona Heights creates an unusual circumstance and cumulative environmental impacts."

**Response 5:** Under CEQA, land use impacts are considered to be significant if the proposed project would conflict with any plan, policy, or regulation adopted for the purpose of avoiding or mitigating an environmental effect. Environmental plans and policies are those, like the Bay Area Air Quality Management District (BAAQMD) 2010 Clean Air Plan, which directly address environmental issues and/or contain targets or standards that must be met in order to preserve or improve characteristics of the City's physical environment. The proposed project would not obviously or substantially conflict with applicable plans, policies, and regulations such that an adverse physical change would result. No evidence has been presented that any unusual circumstances would cause the project to have anything but a less-than-significant impact with regard to conflicts with existing plans and zoning.

Issues related to the cost of housing are socioeconomic rather than physical and are relevant to CEQA only inasmuch as they are connected to physical environmental impacts. Under CEQA, a project may have a significant impact if it will displace substantial numbers of people, necessitating the construction of replacement housing elsewhere. The replacement of a single-family residence with two residences would not displace substantial numbers of people.

The Appellant does not include what physical impacts would result from the proposed project. Additionally, Class 1 Categorical Exemption allows for demolition and removal of individual small

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<sup>2</sup> San Francisco Planning Commission, 53 States Street Discretionary Review Action DRA-0399, January 12, 2015. Approved 5-0.

structures including up to three single-family residences. In urbanized areas, this exemption applies to duplexes and similar structures where no more than six dwelling units will be demolished. Effects analyzed under CEQA must be related to a physical change in the environment. The Appellant does not state how this would result in an adverse physical change in the environment, and therefore no further response is required.

**Issue 6:** The Appellant states that the Project would result in elimination of open space. "The Project eliminates open space such as a large front yard and side yard."

**Response 6:** The Project does not involve the removal of publically accessible open space. The Planning Commission considered the Project's open space in the context of Discretionary Review and approved the Project. The proposed plan was found to be consistent with the pattern of adjacent lots on the same side of States Street. While the Project would reduce the amount of open space in the front portion of the project site, and provide the open space in the rear of the project site, this does not constitute an unusual circumstance that would result in a significant effect on the environment.

**Issue 7:** The Appellant states that the project would have significant environmental impacts related to trees and wildlife. "The project requires that large trees be removed...The project will remove habitat for wildlife in the area."

**Response 7:** The Project involves the removal of one street tree in the public right-of-way along the front property line; in compliance with the Urban Forestry Ordinance (Article 16 of the Public Works Code), it would replace the tree with a new street tree. Bird nesting is protected under the federal Migratory Bird Treaty Act (MBTA), which forbids harming or removing the nests of migratory bird species. The project site is a 2,642-square-foot lot in an urban area where there are no known rare, threatened, or endangered wildlife species. The project site is not in an identified habitat plan area, sensitive natural community, or wetlands area. Thus, the Project would not involve any unusual circumstances regarding biological resources.

## **CONCLUSION**

The Appellant has not presented substantial evidence to the Department that would support the conclusion that (1) there are unusual circumstances that justify removing the project from the exempt class, and (2) there is a reasonable possibility of significant environmental impacts due to those unusual circumstances.

For the reasons stated above and in the Department's Original Appeal Response, the CEQA Determination complies with the requirements of CEQA and the Project is appropriately exempt from environmental review. The Department therefore recommends that the Board uphold the CEQA Categorical Exemption Determination and deny the appeal.

**Attachment**

**March 13, 2015 Supplemental Appeal Letter from Hector Martinez**

Hector Martinez  
51 States Street, Unit A  
San Francisco, CA 94114

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Via Electronic Mail and Personal Delivery

March 13, 2015

President London Breed  
c/o Ms. Angela Calvillo, Clerk of the Board  
Board of Supervisors of the City and County of San Francisco  
1 Dr. Carlton B. Goodlett Place  
City Hall, Room 244  
San Francisco, CA 94102-4689  
Email: Board.of.Supervisors@sfgov.org

Re: Appeal of Approval and Categorical Exemption Determination of  
53 States Street Demolition and Construction Project, San Francisco, CEQA Categorical  
Exemption Case No. 2014.0177E  
Planning Discretionary Review Case No. 2014.0177D/2014.0178D  
Building Permit Applications 2014.0130.7476 and 2014.0130.7472 as modified.

Dear President Breed and Honorable Members of the Board of Supervisors:

I, the Appellant, submit the following letter in support of my appeal of the categorical exemption determination for the project at 53 States Street ("Project"), as an affected neighborhood resident. James Barker initiated the Project on behalf of Marvin and Elizabeth Tien (hereafter "Project Sponsor"), and filed building permit applications 2014.0130.7476 and 2014.0130.7472 on January 30, 2014. These comments supplement my previous comments and comments of the general public.



Hector Martinez  
51 States Street, Unit A  
San Francisco, CA 94114

Via Electronic Mail and Personal Delivery

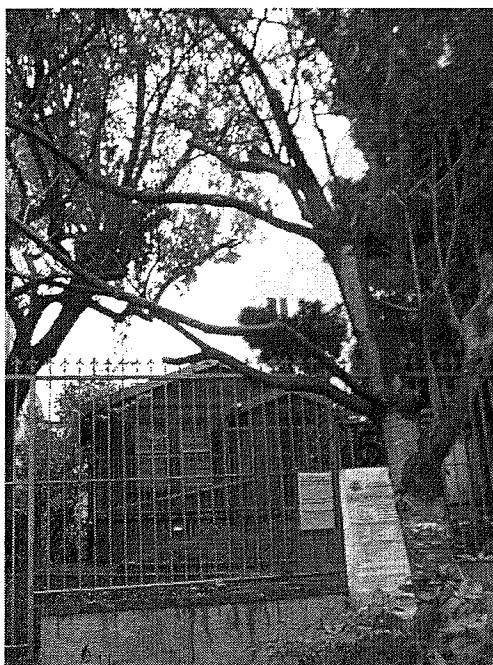
March 13, 2015

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c/o Ms. Angela Calvillo, Clerk of the Board  
Board of Supervisors of the City and County of San Francisco  
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I, the Appellant, submit the following letter in support of my appeal of the categorical exemption determination for the project at 53 States Street ("Project"), as an affected neighborhood resident. James Barker initiated the Project on behalf of Marvin and Elizabeth Tien (hereafter "Project Sponsor"), and filed building permit applications 2014.0130.7476 and 2014.0130.7472 on January 30, 2014. These comments supplement my previous comments and comments of the general public.





## Procedural History

On November 20, 2014, the San Francisco Planning Commission (“Commission”) held a public hearing regarding Mandatory Discretionary Review Applications 2014.0177D and 2014.0178D and Building Permit Applications 2014.0130.7476 and 2014.0130.7472. At the hearing, all members of the public present opposed the Project expressing multiple environmental concerns, including (i) the Project’s significant impact on the nature and character of States Street; (ii) the proposed demolition of a home which was deemed affordable according to the Project Sponsor’s appraisal of 53 States Street; (iii) the proposed elimination of open space, including a front and side yard, as well as trees and foliage; (iv) the proposed construction of two enormous, unaffordable units out of character for the neighborhood; (v) the accumulated impacts of the Project combined with other ongoing and proposed projects in the area; and (vi) the speculative nature of the project.

Several Commissioners also voiced concerns about the Project. Commissioner Moore stated that she wanted the Project downsized. She suggested that one unit could be larger than the other and the building should be 3 stories rather than 4 stories. She urged the architect to be more creative in designing something “more compatible with a small-scale, special neighborhood.” Commissioner Johnson said she wanted to see “a more responsive design,” a Project that would be “more responsive to the neighborhood.” She explained that a more responsive design would necessarily have “smaller units” and suggested that the Project Sponsor eliminate the parking spots. Commissioner Wu also stated that she wanted to see design refinements. Commissioner Hillis expressed concern that the Project Sponsor should do more to work with neighbors. Commissioner Antonini suggested a more traditional façade that was more compatible with the “rustic” feel of States street. Commissioner Richards was most emphatic in stating that the Project had square footages “like tract homes in Tracy.” He said that these square footages “don’t belong in our neighborhood, ... They are so monstrous. They are on steroids..., it’s code compliant but it’s not compatible.” As a result of these concerns, the Commission voted to continue the item to January 8, 2015 to allow the Project Sponsor to make substantial changes with the aim of increasing the Project’s compatibility with the neighborhood.

On January 8, 2015, the Commission conducted the continued public hearing regarding the Project. Changes were made to reduce the square footage of the Project by reducing the size of parking garage from a four space parking garage with a car elevator to a two space parking garage without a car lift. The façade was modified somewhat but the changes did not invoke a “rustic” feel in keeping with the character of the neighborhood. The Project Sponsor also submitted a revised appraisal of 53 States, which was obtained on the same day as the continued public hearing. According to the revised appraisal without any explanation, the value of 53 States Street had increased substantially.<sup>1</sup> A true and correct copy of the last minute appraisal is attached hereto as Exhibit 1.

The Commission approved Building Permit Applications 2014.0130.7476 and 2014.0130.7472 as modified after taking Discretionary Review requested in Application No. 2014.0177D/2014.0178D. In approving the Project, the Commission determined “that the proposed units were consistent and compatible with the neighborhood character” . . . and that “[t]he demolition of the existing single family structure was not found to be affordable.” The Commission also found that the Project at 53 States Street “is exempt from the California Environmental Quality Act (“CEQA”) as a Class 1 categorical exemption.”

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<sup>1</sup> The January 8, 2015 appraisal was obtained on the same day that the Project came before the Commission for reconsideration. That revised appraiser is clearly suspect in light of the timing and given that is likely based on the speculative development value of the Project and other surround projects.

Pursuant to San Francisco Administrative Code (“Admin. Code”) Section 31.16, I (“Appellant”) timely appealed the January 8, 2015 decision of the San Francisco Planning Commission regarding the approval of Building Permit Applications 2014.0130.7476 and 2014.0130.7472 as modified after taking Discretionary Review requested in Application No. 2014.0177/D2014.0178D, including but not limited to (1) the Commission’s approval of the 53 States Street Project; and (2) the determination by the Commission that “[t]he Project is exempt from the California Environmental Quality Act (“CEQA”) as a Class 1 categorical exemption. I hereby incorporate by reference all documents contained within: 1) the administrative file concerning/relating to the Project and other administrative files concerning/relating to other projects in Corona Heights; 2) minutes of the Commission concerning/regarding the Project and minutes of the Commission concerning/regarding other projects in Corona Heights; and 3) public comments made before the Commission concerning/regarding the Project and public comments made concerning/regarding other projects in Corona Heights.

A. CEQA Review is Required to Analyze the Environmental Impacts of the Project and to Propose Mitigation Measures and Alternatives.

1. Legal Standard

CEQA mandates that “the long-term protection of the environment...shall be the guiding criterion in public decisions” throughout California. PRC § 21001(d). A “project” is “the whole of an action” directly undertaken, supported, or authorized by a public agency “which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.” PRC § 21065; CEQA Guidelines [14 CCR] § 15378(a). For this reason, CEQA is concerned with an action’s ultimate “impact on the environment.” *Bozung v. LAFCO* (1975) 13 Cal.3d 263, 283. CEQA requires environmental factors to be considered at the “earliest possible stage . . . before [the project] gains irreversible momentum,” *Id.* 13 Cal.3d at 277, “at a point in the planning process where genuine flexibility remains.” *Sundstrom v. Mendocino County* (1988) 202 Cal.App.3d 296, 307.

To achieve its objectives of environmental protection, CEQA has a three-tiered structure. Guidelines, § 15002(k); *Committee to Save the Hollywoodland Specific Plan v. City of Los Angeles* (2008) 161 Cal.App.4th 1168, 1185-86. First, if a project falls into an exempt category, or it can be seen with certainty that the activity in question will not have a significant effect on the environment, no further agency evaluation is required. *Id.* Second, if there is a possibility the project will have a significant effect on the environment, the agency must perform an initial threshold study. *Id.*; Guidelines, § 15063(a). If the study indicates that there is no substantial evidence that the project or any of its aspects may cause a significant effect on the environment the agency may issue a negative declaration. *Id.*, Guidelines, §§ 15063(b)(2), 15070. Finally, if the project will have a significant effect on the environment, an environmental impact report (“EIR”) is required. *Id.* Here, since the City exempted the Project from CEQA entirely, we are at the first step of the CEQA process.

2. CEQA Exemptions

CEQA identifies certain classes of projects which are exempt from the provisions of CEQA. These are called categorical exemptions. Guidelines, §§ 15300, 15354. “Exemptions to CEQA are narrowly construed and ‘[e]xemption categories are not to be expanded beyond the reasonable scope of their statutory language.’” *Mountain Lion Foundation v. Fish & Game Com.* (1997) 16 Cal.4th 105, 125. In this case, the Commission is relying on the Class 1 CEQA Exemption without specifying which subpart is relied upon or any other justification for the exemption in its final January 8, 2015 determination. Guidelines, §15301.

The determination as to the appropriate scope of a categorical exemption is a question of law subject to independent, or de novo, review. *San Lorenzo Valley Community Advocates for Responsible Education v. San Lorenzo Valley Unified School Dist.*, (2006) 139 Cal. App. 4th 1356, 1375 (“[Q]uestions of interpretation or application of the requirements of CEQA are matters of law. (Citations omitted) Thus, for example, interpreting the scope of a CEQA exemption presents ‘a question of law, subject to de novo review by this court.’ (Citations omitted).”)

There are several exceptions to the categorical exemptions. 14 CCR § 15300.2. At least three exceptions are relevant here:

- (1) Significant Effects. A project may never be exempted from CEQA if there is a reasonable possibility that the project may have significant environmental impacts due to “unusual circumstances.” Guidelines, §15300.2(c).
- (2) Serious or Major Disturbance to an Environmental Resource: Class 1 itself is qualified in that the exemption states that it “[t]he key consideration is whether the project involves negligible or no expansion of an existing use.”
- (3) Cumulative Impacts. A project may not be exempted from CEQA review “when the cumulative impact of successive projects of the same type in the same place, over time is significant.”

### 3. The Class 1 Exemption Does Not Apply as a Matter of Law

The Commission found that the Project is exempt entirely from all CEQA review pursuant to the “Class 1 categorical exemption” Guidelines, §15301, without specifying which subpart of the Class 1 categorical exemption or any other justification for the exemption it was relying on when making its determination. The Class 1 categorical exemption states that no CEQA review is required for:

“the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency’s determination. The types of ‘existing facilities’ itemized below are not intended to be all-inclusive of the types of projects that might fall within Class 1. The key consideration is whether the project involves negligible or no expansion of an existing use.”

An example set forth in Guidelines §15301(l) provides:

Demolition and removal of small structures listed in this subdivision:

- (1) One single-family residence. In urbanized areas, up to the three single-family residences may be demolished under this exemption.
- (2) A duplex or similar multifamily residential structure. In urbanized areas, this exemption applies to duplexes and similar structures where no more than six dwelling units will be demolished.
- (3) A store, motel, office, restaurant, and similar small commercial structure if designed for an occupant load of 30 persons or less. In urbanized areas, the exemption also applies to the demolition of up to three such commercial building on sites zoned for such use.

- (4) Accessory (appurtenant) structures including garages, carports, patios, swimming pools, and fences.

Class 1 is plainly intended to exempt projects involving “negligible or no expansion of an existing use.” Common examples would be the demolition of a single family home and the rebuilding of a single family home on a similar or slightly larger footprint.

The Commission expanded the exemption far beyond any reasonable interpretation of “negligible or no expansion of an existing use.” The current structure at 53 States Street is certainly not a “duplex or similar multifamily residential structure.” It is a single-family residence that may be demolished under the exemption only if the new structure that takes its place involves negligible or no expansion of an existing use. The Commission has ignored CEQA’s mandate that “[e]xemptions to CEQA are narrowly construed and “[e]xemption categories are not to be expanded beyond the reasonable scope of their statutory language.” *Mountain Lion Foundation v. Fish & Game Com.* (1997) 16 Cal.4th 105, 125.

#### 4. The Current Onslaught of Speculative Development in Corona Heights Creates an Unusual Circumstance and Potential Environmental Cumulative Impacts That Trigger Environmental Review.

A lead agency must find that a project may have a significant effect on the environment and must therefore require an EIR if the project’s potential environmental impacts, although individually limited, are cumulatively considerable. Pub. Res. C §21083(b); Guidelines, §§15064(h)(1), 15065(a)(3). “Cumulatively considerable” means that the incremental effects of a project are significant when viewed in connection with the effect of past projects, other current projects, and probably future projects. Pub Res C §21083(b)(2); Guidelines, §§15064(h)(1), 15065(a)(3). See *San Bernardino Valley Audubon Soc’y v. Metropolitan Water Dist.* (1999) 71 Cal.App.4<sup>th</sup> 382, 398 (EIR required for habitat conservation plan in part because initial study did not adequately explain why cumulative adverse effects to endangered species would not occur).

To assess whether a cumulative effect triggers the need for an EIR, the lead agency must answer two questions: whether the cumulative impact itself may be significant and whether the project’s incremental contribution to that effect would be “cumulatively considerable.” Guidelines, §15064(h)(1), 15065(a)(3). *San Joaquin Raptor/Wildlife Rescue Ctr. v. County of Stanislaus* (1996) 42 Cal.App.4<sup>th</sup> 608, 622 (citing Practice Under the California Environmental Quality Act, §6.34).

On March 9, 2015, during a public hearing before the Board of Supervisors Land Use and Transportation Committee, Supervisor Scott Wiener stated that:

*I just want to really dispel what we’ve been hearing from some, that this neighborhood is somehow a NIMBY, ‘not in my backyard, don’t you dare do anything in my backyard do it all in the Mission or do it somewhere else.’ That is absolutely false. This neighborhood has absorbed more density and is continuing to absorb more density but also wants to retain what is amazing about this neighborhood, which is the absolute, the beauty, the green space, and you can have both. You can create housing, which I have advocated for, while also respecting the fabric of neighborhoods and that is an important balance for us to always keep in mind.”*

The balance referred to by Supervisor Wiener is threatened when the current planning process looks at proposed projects on States Street on a case by case basis, and disregards the cumulative environmental impacts of past, current, and probably future projects. The Commission should have considered the cumulative impacts of the Project proposed for 53 States Street, the 176/178 States Street Project, the 190/192 Museum Way Project, 214 States Street Project, the 22/24 Ord Court Project, and more recently, the 76 Museum Way Project. It did not.

These cumulative projects on States Street and Ord Court were the catalyst for a San Francisco Chronicle January 6, 2015 front page news article. A true and correct copy of that January 6, 2015 news article is attached hereto as Exhibit 2. The cumulative projects were also the catalyst for emergency legislations recently proposed by Supervisor Wiener to address the proliferation and impact of overly large homes in a neighborhood of modest-sized homes. A true and correct news article concerning Supervisor Wiener's legislative efforts is attached hereto as Exhibit 3.

On March 10, 2015, the San Francisco Board of Supervisors unanimously adopted Resolution, File Number 150192 [Interim Zoning Controls – Large Residential Projects in RH-1, RH-2, and RH-3 Zoning Districts]. As part of the Board Packet, the City Attorney Dennis J. Herrera and Deputy City Attorney Robb Kapla approved as to form the following language in said resolution presented to the Board of Supervisors prior to their vote:

...

*WHEREAS, Existing zoning controls generally allow residential development much larger in scale than the existing residential fabric within the boundaries established by this Resolution; and*

*WHEREAS, the Planning Code encourages development that preserves existing neighborhood character yet recent residential development proposals within the boundaries established by this Resolution have been significantly larger and bulkier than existing residential buildings; ...*

This very recently adopted resolution is compelling evidence that the Project, the 176/178 States Street Project, the 190/192 Museum Way Project, 214 States Street Project, the 22/24 Ord Court Project, and more recently, the 76 Museum Way Project will have significant cumulative environmental impacts on the Corona Heights neighborhood. The intensity of development plans on States Street creates an unusual circumstance and potential environmental cumulative impacts and requires an EIR of the Project.

5. The Project will have significant Environmental Impacts.

The Project, in conjunction with other ongoing and proposed projects in the area, will have significant adverse impacts in the following areas:

1. Open Space. The Project eliminates open space such as a large front yard and side yard.
2. Trees: The Project requires that large trees be removed.
3. Wildlife: The Project will remove habitat for wildlife in the area.

The impacts must be analyzed and mitigated in a CEQA document. The CEQA exemption in this case is improper.

#### 6. The Project's Inconsistencies with Local Plans and Policies Constitute Significant Impacts Under CEQA

Where a local or regional policy of general applicability, such as an ordinance, is adopted in order to avoid or mitigate environmental effects, a conflict with that policy in itself indicates a potentially significant impact on the environment. *Pocket Protectors v. City of Sacramento* (2005) 124 Cal.App.4th 903. A Project's inconsistencies with local plans and policies constitute significant impacts under CEQA. (*Endangered Habitats League, Inc. v. County of Orange* (2005) 131 Cal.App.4th 777, 783-4, 32 Cal.Rptr.3d 177; see also, *County of El Dorado v. Dept. of Transp.* (2005) 133 Cal.App.4th 1376 (fact that a project may be consistent with a plan, such as an air plan, does not necessarily mean that it does not have significant impacts).

The demolition proposed by the Project is inconsistent with the stated purposes of the San Francisco Planning Code (b) and with Planning Code Priority Policies, Numbers 2 and 3. Planning Code (b) aims to protect the character and stability of residential . . . areas within the city. Planning Code Priority Policy (2) establishes that existing housing and neighborhood character be conserved and protected in order to preserve the cultural and economic diversity of our neighborhoods; and Planning Code Priority Policy (3) establishes that the city's supply of affordable housing be preserved and enhanced. The existing sound house fits the profile of housing that should be conserved in the city. It is valuable in terms of conservation of resources and affordability, as well as preservation of neighborhood character, economic diversity and stability. The Project would add zero units of affordable housing and would, incidentally, encourage the use of automobiles in a transit-rich district.

#### 7. Speculative Development Projects Such As the Project Contributes to the Displacement of Affordable Housing and Persons of Low to Moderate Income

CEQA requires the lead agency to determine whether the "environmental effects of a project will cause substantial adverse effects on human beings, either directly or indirectly," (PRC § 21083(b)(3), (d)), and to "take immediate steps to identify any critical thresholds for the health and safety of the people of the state and take all coordinated actions necessary to prevent such thresholds being reached." See PRC §21000 et seq.

CEQA Guidelines Appendix G, Section XII provides that a project will have significant impacts where it will:

- Induce substantial population growth or concentration of population in an area, either directly (for example, by proposing new housing or businesses), or indirectly (for example, through extension of roads or other infrastructure);
- Displace substantial numbers of existing housing necessitating the construction of replacement housing elsewhere; or
- Displace substantial numbers of people, necessitating the construction of replacement housing elsewhere. See Appendix G, Section XII.

Here, the Project will eliminate critical affordable housing for residents who currently live and work in San Francisco in favor of extremely wealthy investors, renters or homeowners and force those with relatively low or modest incomes out of San Francisco. See Kalama D. Harris, Attorney General,

“Environmental Justice at the Local and Regional Level,” Updated July 10, 2012, available at: [http://oag.ca.gov/sites/all/files/agweb/pdfs/environment/ej\\_fact\\_sheet.pdf](http://oag.ca.gov/sites/all/files/agweb/pdfs/environment/ej_fact_sheet.pdf)

It constitutes an “unusual circumstance” that the Project and the other projects in the area result in the loss of affordable housing. The Project in combination with the other projects in the Corona Heights area will have a significant impact in that it will displace substantial numbers of people when more affordable housing is replaced with ultra expensive housing.

The current structure at 53 States Street is a modest home that was previously classified as affordable up until the Project Sponsor submitted a last minute revised appraisal at the January 8, 2015 public hearing before the Commission. Similar modest, affordable homes are slated to be longer be affordable in the Corona Heights neighborhood as proposed by 214 States Street Project, the 22/24 Ord Court Project, and more recently, the 76 Museum Way Project.

## B. CONCLUSION

Based on the arguments detailed above, I, as the Appellant, request the Board find the categorical exemption was inappropriately applied to the Project because the new structure involves significant expansion of existing use and will have significant environmental impacts. The Project falls does not fall within an exception to the categorical exemption. Moreover, the rush of speculative developers to Corona Heights creates an unusual circumstance and cumulative environmental cumulative impacts that require an EIR for the Project.

Thank you for your consideration.

Sincerely,



Hector Martinez

cc: Environmental Review Officer  
John.Avalos@sfgov.org  
Julie.Christensen@sfgov.org  
London.Breed@sfgov.org  
David.Campos@sfgov.org  
Malia.Cohen@sfgov.org  
Mark.Farrell@sfgov.org  
Jane.Kim@sfgov.org  
Eric.L.Mar@sfgov.org  
Katy.Tang@sfgov.org  
Scott.Wiener@sfgov.org  
Norman.Yee@sfgov.org

# EXHIBIT 1





Received at OFC Hearing 7/7/15  
F. Chang

# Bridge to Bridge

REAL ESTATE  
APPRAISERS

454 Las Gallinas Ave., Suite 111, San Rafael, CA 94903 415-640-0916 voice 800-499-1489 fax

January 8, 2015

Marvin Tien  
3796 16th Street  
San Francisco, CA 94114

RE: Appraisal – Residential Property  
53 States Street  
San Francisco, CA 94114  
APN: Block 2623 Lot 074

Dear Mr. Tien:

In accordance with your recent request and authorization I have inspected and appraised the residential property located at 53 States in the city and county of San Francisco, California. The appraisal was made to provide you with an independent opinion of the market value of the fee simple interest on an as-is basis in the property. My recent exterior inspection was on January 6, 2015 and prior interior/exterior inspection was September 9, 2014. The purpose of the appraisal is to determine current market value only. This appraisal is not for loan purposes.

The report which will follow on January 9, 2015, has been prepared to the standards addressed in the Uniform Standards of Professional Appraisal Practice (USPAP). It describes in summary fashion the area, neighborhood, site, improvements, highest and best use, and my appraisal. It contains pertinent data considered in reaching the valuation conclusions. Please note in particular, the Statement of Limiting Conditions and Assumptions found in the report.

The interior and exterior of the property was inspected and appraised by Paula Saling without significant professional assistance from any other persons. I performed a complete appraisal process and a report as described in USPAP.

Based on my inspection, investigation, and analyses undertaken, I have formed the opinion that as of January 6, 2015, and subject to the definition of value, assumptions, and limiting conditions, and certification herein, the subject property has a fee simple market value in its as-is condition as follows:

**ONE MILLION FIVE HUNDRED FIFTY THOUSAND DOLLARS**

**\$1,550,000**

Marvin Tien  
January 8, 2015  
Page 2 of 2

The property is appraised free and clear of any or all liens or encumbrances unless otherwise stated. The above value estimate does not include any personal property, fixtures, or intangibles.

This letter is not intended to provide the data or conclusions. The report, which follows on January 9, 2015, must be read in its entirety to allow the user to fully comprehend the market data I relied on, my value conclusions, assumptions, and limiting conditions.

Respectfully submitted,



Paula Nowicki Saling  
State of California  
Certified General Real Estate Appraiser #AG016454

# EXHIBIT 2

member of the grand jury in the Ferguson, Mo., case seeks to have a gag order lifted. A5

» Same-sex marriage: Florida becomes the 36th state where gay couples can marry. A12

JO MILLER  
1927-2011

» The 1 Giants reliever was best known for an All-Star Game incident he swore was greatly exaggerated. B1

gram pays owners of electric cars not to drive. D1

### Datebook

» Remembering dancer: Chitresh Das gave Bay Area audiences insight into Indian traditions. E1



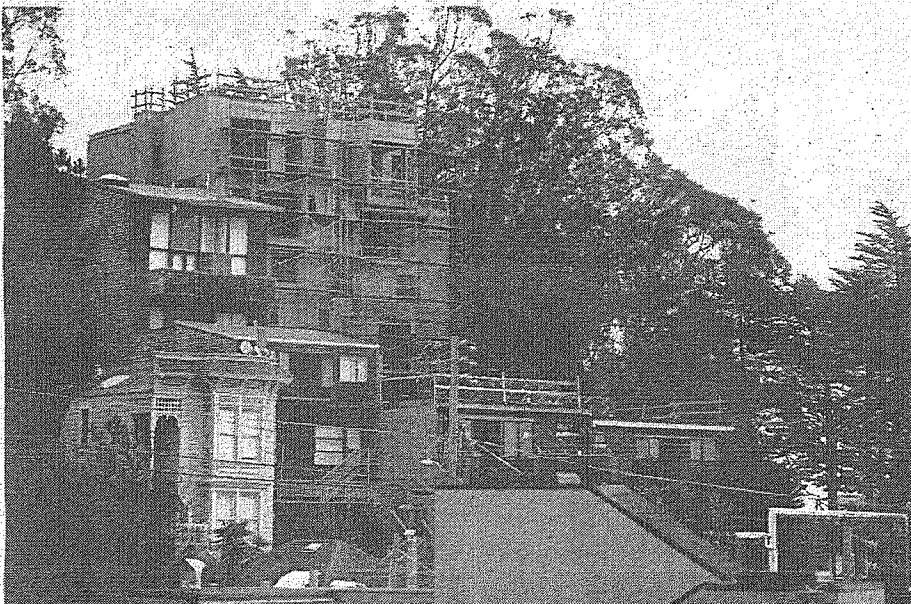
Scott Strazzante / The Chronicle

# San Francisco Chronicle

SFCHRONICLE.COM AND SFGATE.COM | Tuesday, January 6, 2015 | PRINTED ON RECYCLED PAPER | \$1.00 \*\*\*\*\*

...sioner, helping out the night ... and bridge maintenance.

Brown continues on A8 50 percent of power from renewable sources.



Lea Suzuk / The Chronicle

A six-story building is under construction on States Street amid Corona Heights' cottages, staircases and winding lanes.

## Growing controversy

Developers with big plans descend on fanciful, quirky Corona Heights

By J.K. Dineen

The residential enclave below the Randall Museum is a magical corner in the hilly center of San Francisco, a lush world of secret staircases and crooked lanes, Monterey pines and funky cottages.

"Most people don't know it exists, and when you walk through it for the first time your first reaction is, 'I can't believe this is in the middle of the city,'" said Supervisor Scott Wiener, who represents the area.

**"None of these developers live in the neighborhood. There is not one instance where it's the homeowner."**

Longtime resident Rick Walsh

But while many San Franciscans have not ventured to Corona Heights to explore Ord Court or walked the beautifully landscaped Vulcan Stairs, there is one group that has the neighborhood in its crosshairs: speculative developers.

Over the last two years, builders have bought up parcels in the neighborhood, taking advantage of large hillside "through lots" that run between States Street and Ord Court. Others have purchased cottages along Ord Street and sought to double or triple the size of the home. From his

Developers continues on A9

## \$20 TV service may alter industry

By Benny Evangelista

Televised sports are the biggest reason cable and satellite customers don't cancel their subscriptions for online alternatives, surveys show. That gives cable and satellite companies little incentive to stream games online.

But Dish Network is betting its future on a stand-alone streaming service that includes the most popular TV sports network, ESPN, and a dozen other top channels for just \$20 a month, with no cable or satellite subscription required.

It's a move that could change the pay TV industry.

Sling TV, which Dish Network unveiled Monday, is the satellite TV provider's answer to the growing trend of cord-cutting, in which viewers drop their traditional plans for online-only alternatives like YouTube or Netflix.

Sling TV says it will launch in the first quarter with a basic "Best of Live TV" package that includes the Disney Channel, Food Network, CNN, ABC Family, HGTV, Travel Channel, TNT, CNN, TBS, Cartoon Network and Adult Swim. The service will also include a best-of-Internet video channel from Maker Studios and some video-on-demand programs.

But its key offerings are

Television continues on A8

» In Business: A day ahead of the International CES' official opening, pre-event events set the stage in Las Vegas. D1

FROM THE COVER

# Corona Heights developers think big

Developers from page A1

home on the Vulcan Stairs, resident Rick Walsh can count 10 development projects that have either been proposed or are already under way.

"It's small homes, big lots and the geographic center of the city," Walsh said. "Put all three together, and the greed quotient goes through the roof. With the amount of money that is sitting on the table, people are willing to do some pretty crazy stuff. None of these developers live in the neighborhood. There is not one instance where it's the homeowner."

What is happening in the neighborhood shows how the real estate boom is changing the city's fabric and feel in ways that go beyond the escalating cost of housing and the high-rises popping up on Rincon Hill and in Mission Bay. It's a house-by-house transformation that, in some neighborhoods, is making the city's modest Victorian cottages a thing of the past.

**Cottages changing**

"We have seen many of our cherished cottages transformed into massive concrete hulks," said Gary Weiss, president of Corbett Heights Neighbors.

At 22-24 Ord Court, SIA Consulting has filed an application to build three homes, a project that would result in two new large single-family homes while doubling the size of the structure currently on the property. At 53 States St., a developer is hoping to tear down a 1,500-square-foot house and replace it with two homes totaling more than 5,000 square feet. Nearby, at 24-26 Ord St., an investor who bought out the longtime tenants is proposing to convert the 2,000-square-foot building to a 4,000-square-foot home. There are at least four other similar proposals.

Developers argue that the proposals will generate much-needed housing, particularly larger homes that can accommodate families with children. Attorney John Kevlin, who is representing the developer at 22-24 Ord Court, said objections to the projects "seem to be less about the size and massing and more about a general concern about development in the overall neighborhood." He said the desire to see the neighborhood's character preserved is "a valid concern," but that the city needs the housing.

**Creating housing**

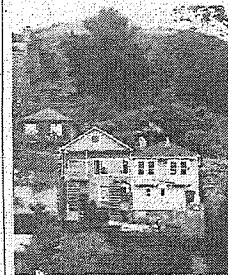
"What this analysis needs to be balanced against is the city's growing housing crisis. If you had to pick a policy that is most highly valued at the moment, it's the creation of new housing," Kevlin said. "Neighborhoods in San Francisco have the right not to have new development that changes the character of their neighborhood, but they don't have the right to not take on their fair share of solving the housing crisis."

While none of the housing that exists there today could be considered "affordable" — even



Corona Heights resident Duke Dahlin has lived on Ord Court for 29 years. His lush backyard displays the neighborhood's character, which he fears will be lost as more and more megahomes replace the venerable cottages.

Photos by Lea Suzuki / The Chronicle

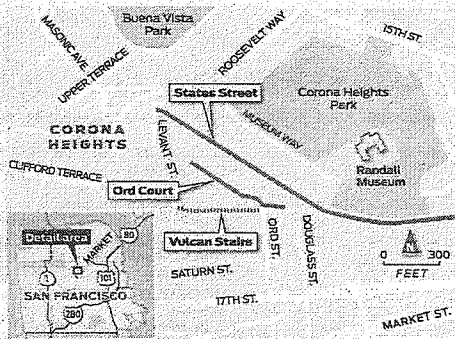


Two modest older homes on States Street in Corona Heights are surrounded by verdant open space.

small cottages in the area would sell for north of \$900,000 — neighbors are quick to point out that the housing that has been proposed, over \$3 million per home in the current market, is far less affordable than what is there now. In addition, all of the projects in the Ord Court, Ord Street and States Street area are being proposed by developers rather than families planning to live there.

"I don't think any of us begrudges people the ability to add to their homes," Wiener said. "We all want to make sure if a family needs to add bedroom or a deck, many times it's totally appropriate. When you talk about developers turning standard-size homes into monster homes, it's a different situation."

When Rick Walsh and Pat Dowd moved to Ord Street 20 years ago, they were drawn to the eclectic population. A poet lived next door and every week would post her latest verses on a telephone pole. There were musicians and teachers and electricians and waiters on the street. Dowd and Walsh built



Todd Trumbull / The Chronicle

the terraced gardens on the Vulcan Stairs by salvaging cobblestones that were unearthed when AT&T Park was being built. They then replanted the entire public stairway from the base of Ord Street up to about 150 steps. They continue to water and tend the verdant steps.

**'A little beauty'**

"This staircase brings a lot of happiness to a lot of people, and we have done this because we like providing a little beauty and tranquility," Walsh said.

If the projects at 22-24 Ord Court and 53 States St. go forward, the result will be homes that are out of reach of any middle-class or even upper-middle-class family, he said.

"The result will be another home that only the wealthiest can afford. And the guest suite will sit empty," Walsh said.

"What used to be home to three small households of modest means will become a single home occupied by someone who is very wealthy."

But Michael Antonini, a member of the San Francisco Planning Commission who

supports the projects, argues, "We have to build homes that are large enough for families with multiple children." Antonini said that he wished prices were lower, but the city can't control the market.

"This isn't rural Kansas," he said. "It's San Francisco. It's expensive. If you want a big home in San Francisco you're going to have to pay for it. But people with families are going to demand larger homes. If they can't get them here, they will get them somewhere else."

Jeff Josim, director of current planning for the City Planning Department, said booms like the one San Francisco is going through are a "mixed blessing."

"Derelict properties get improved; unbuilt or underbuilt lots get filled. Property values increase; increased property values create new comps, which allow neighboring properties to benefit. These are generally thought of as good things," he said. "However, with such changes come broader shifts: Increases in property values encourage others to follow suit. These types of gentrifying forces are fairly univer-

sal." Most expansions are "intended to accommodate growing families for whom it makes more sense to expand or tear down and build than move," he said. "On a lot-by-lot basis in single-family neighborhoods, we're also focusing on ensuring these houses and expansions are no larger than necessary to address growing families and family-scaled housing, while still being neighborhood-compatible."

Eureka Valley activist Judith Hoyem said, "There is a disconnect between what residents consider to be the character of their neighborhood and the guidelines the Planning Department has at its disposal to apply to protect neighborhood character in the face of development pressures."

**Speculators' impact**

"Individual homeowners want to expand their houses and sometimes forget that their expansion might have negative impacts on neighboring properties or neighborhood character," she said. "But (speculators) simply don't care about impacts."

Supervisor Wiener, who is generally pro-development, said he will continue to help neighbors fight homes that are out of scale. "Turning regular-sized homes into monster homes isn't adding new housing," Wiener said.

Walsh, who recently retired, said all the development is making him seriously consider leaving the neighborhood. "We will leave the maintenance of the Vulcan Stairs to the developers," Walsh said.

J.K. Dineen is a San Francisco Chronicle staff writer. E-mail: [jkdineen@sfgate.com](mailto:jkdineen@sfgate.com) Twitter: @sfdineen

# EXHIBIT 3



# Quest to scrutinize plans for big homes

Housing from page C1

have purchased cottages along Ord Street and sought to double or triple the size of the home. Corona Heights is a rus-

tic-feeling enclave nestled in the hillside between the Castro and Corona Heights Park. Wiener said the bill is meant to counter the "trend toward turning

regular-sized homes that really fit into the fabric of the neighborhood into exceptionally large homes that are really out of whack with the surrounding neighborhood."

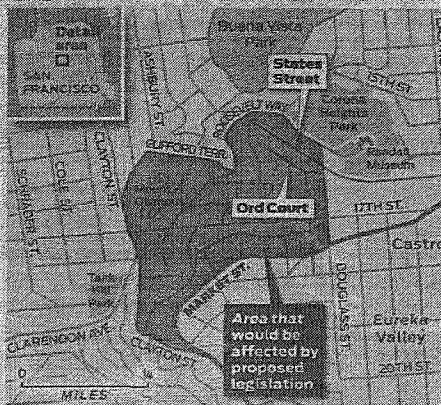
"Nobody begrudges people the ability to expand to accommodate a growing family; that is not what we are trying to do here," Wiener said.

Rick Walsh, who from his home on Ord Street can see 10 properties targeted for development — some proposed and some already under construction — said the Wiener legislation would save the neighbors fighting projects from filing "discretionary review" requests, which are time consuming and can be expensive.

"What Scott is trying to do is not going to hurt the average homeowner and will only target the developers who are trying to make a huge amount of money by flipping real estate," he

## Targeting 'monster homes'

A proposed law would require that large homes or large additions to homes in the area shown below be given additional environmental evaluation before approval.



Todd Trumbull / The Chronicle

that the desire to see the neighborhood's character preserved is "a valid concern" but that the city needs the housing.

"What this analysis needs to be balanced against is the city's growing housing crisis. If you had to pick a policy that is most highly valued at the moment, it's the creation of new housing," Kevlin said at the time.

Wiener said the intent is "not to ban anything" but to "put a check in place" that requires the developer to "demonstrate that what is being proposed is necessary and desirable and the community will be able to weigh in on it." He said the proposals that increase the total units of housing could increase total square footage by 100 percent before triggering the conditional use process.

The proposed zoning controls would last 18 months. During that time, the Planning Department would develop permanent controls.

*J.K. Dineen is a San Francisco Chronicle staff writer. E-mail: jdineen@sfchronicle.com Twitter: @jfkineen*

# Bid to slow building of 'monster homes'

By J.K. Dineen

In an effort to slow down the proliferation of "monster homes" in Corona Heights, Supervisor Scott Wiener will introduce legislation Tuesday that would require additional scrutiny of proposed large homes and additions in the neighborhood.

The legislation would require a conditional use hearing, a more in-depth environmental evaluation than is typ-

ical, for any new structure that exceeds 3,000 square feet or for any addition that would increase the size of an existing home by more than 75 percent. It would also limit extensions to 55 percent of lot coverage.

The legislation comes at a time when builders have bought multiple parcels in the neighborhood, taking advantage of large hillside "through lots" that run between States Street and Ord Court. Others

*Housing continues on C4*

said.

The legislation would slow down, and possibly eventually downsize, multiple projects that are already well into the approval process, including large homes proposed for 22-24 Ord Court, 53 States St. and 24-26 Ord St.

Attorney John Kevlin, who represents several of the developers active in the neighborhood, did not return calls or e-

mails seeking comment. Representatives from developer SIA Consulting also didn't return calls.

At a Planning Commission hearing in December on 22-24 Ord Court, Kevlin said objections to the projects "seem to be less about the size and massing and more about a general concern about development in the overall neighborhood." He said

## Life tributes

To public:

Online: [ezeds.sfchron.com/obits](http://ezeds.sfchron.com/obits) and receive special discount for using call service.

By mail:

Life Tributes Desk  
San Francisco Chronicle  
301 Mission St.  
San Francisco, CA 94103

All notices must be typed. We regret we cannot process hand-written notices or photos or information.

# Pregnancy clinics' ad limits upheld

Clinics from page C1

charge for its medical

the attention of women searching for help on-line.

Armstrong said.

The ruling helps to assure that "indigent women facing an unexpected pregnancy are not harmed by false or misleading advertising," said City Attorney Dennis Herrera, whose office

"a discriminatory and unnecessary infringement on constitutional rights" that holds the clinic to tougher standards than abortion providers. By classifying its advertisements as commercial speech, the