

File No. 110041

Committee Item No. _____
Board Item No. 23

COMMITTEE/BOARD OF SUPERVISORS
AGENDA PACKET CONTENTS LIST

Committee _____

Date _____

Board of Supervisors Meeting

Date February 15, 2011

Cmte Board

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OTHER (Use back side if additional space is needed)

Appeal of Determination of Exemption from Environmental Review for 795 Foerster Street, 203 Los Palmos Drive, 207 Los Palmos Drive, and 213 Los Palmos Drive

Completed by: Joy Lamug
Completed by: _____

Date February 10, 2011
Date _____

An asterisked item represents the cover sheet to a document that exceeds 20 pages. The complete document is in the file.



LAW OFFICES OF
STEPHEN M. WILLIAMS

1934 Divisadero Street | San Francisco, CA 94115 | TEL: 415.292.3656 | FAX: 415.776.8047 | smw@stevewilliamsllaw.com

January 6, 2011

Honorable David Chiu, President
San Francisco Board of Supervisors
City Hall, 1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94103


RE: Appeal of Exemption/Exclusion from Environmental Review
795 Foerster Street; 203, 207 & 213 Los Palomos Drive --Block 3027A, Lot 116 & 117
Permit No: 2008.0558E

President Chiu and Members of the Board:

This Office represents the Miraloma Park Improvement Club ("MPIC"). The MPIC has existed since 1935 and is dedicated to bringing community information and services to the Miraloma Park neighborhood. Miraloma Park is a community of 2200 homes located on Mount Davidson in the heart of San Francisco.

At the request of MPIC I am writing to appeal the above-referenced Determination of Exemption/Exclusion from Environmental Review a copy of which is attached as Exhibit A. In granting this four lot subdivision project an exemption from the protections of the California Environmental Quality Act (CEQA) the environmental officer has erred procedurally and substantively. A categorical exemption cannot be allowed for this project because there is a specific exclusion applicable to the site due to a historic (and fatal) landslide which occurred over the project area and this fact also constitutes an "unusual circumstance"—which also excludes the use of a categorical exemption. Further, the Certificate of Exemption is five pages in length and is replete with descriptions of mitigations which "the project sponsor has agreed to," in order to mitigate the landslide hazard at the site. This is completely improper. It is well established in California law that mitigation measures may support a negative declaration but not a categorical exemption. If a project may have a significant effect on the environment, CEQA review must occur and only then are mitigation measures relevant.

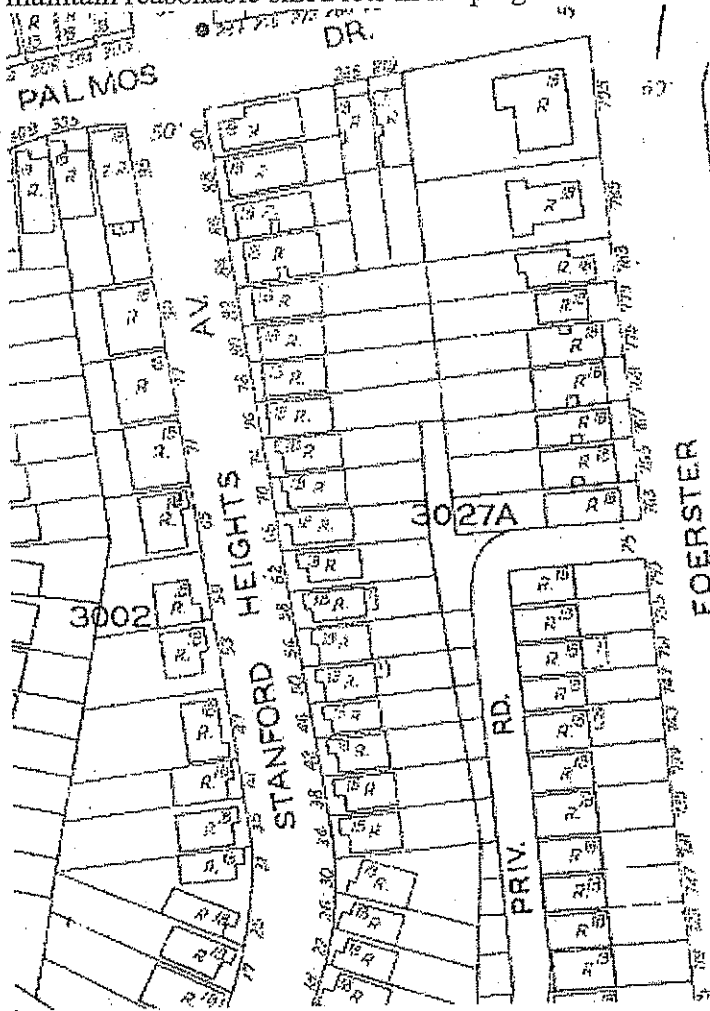
Among other things, the Environmental Review Officer misapplied CEQA's categorical exemption to an area which the Certificate of Determination of Categorical Exemption itself states is "*located in an area subject to potential landslide hazard*" and is in an area mapped by the State of California as a "Seismic Hazards Study Zone." Ironically, the Exemption actually states the conclusion, without any evidence or support that, "*the proposed project may reduce the potential for ground displacements*" because of the mitigations and improvements brought to the site by the Project Sponsor in the construction of the project itself. This is an astoundingly incorrect use of the exemption process and the City may not rely on mitigation measures to determine that this large construction project located in a known hazardous zone is categorically exempt from the California Environmental Quality Act (CEQA).

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BY 

David Chiu, President
San Francisco Board of Supervisors

January 6, 2011

Background. The subject site is in the Miraloma Park neighborhood west of Twin Peaks. The subject lot was a single development lot (Lot 1) until 2006 when it was divided into two lots (Lots 116 & 117) In 2006 the proposal was to add another single family home at the site and to maintain reasonable sized lots in keeping with the existing neighborhood.



The site has a single family home at 795 Foerster Street. The rear extension shown on the building was removed as part of the project and the proposed four lot subdivision.

Both the Sanborn Map (above) and the Block Book Map (below) used by the Planning Department still show the lot as a single development lot with a single family home on it. The proposed project is not correctly described by the Department. The proposal is to merge the two lots at the site and then to subdivide that lot into four separate development lots. Three new single family homes are to be constructed and, the existing building on the site has already been altered. The rear portion of the building was removed by the developer in order to squeeze it into the new lot configuration. The work on the existing building was done illegally by the developer but, in March 2010, the developer obtained a "retroactive" permit (Permit 2010.02176700) to legalize the work already done in order to prepare the site for the proposed four lot subdivision.

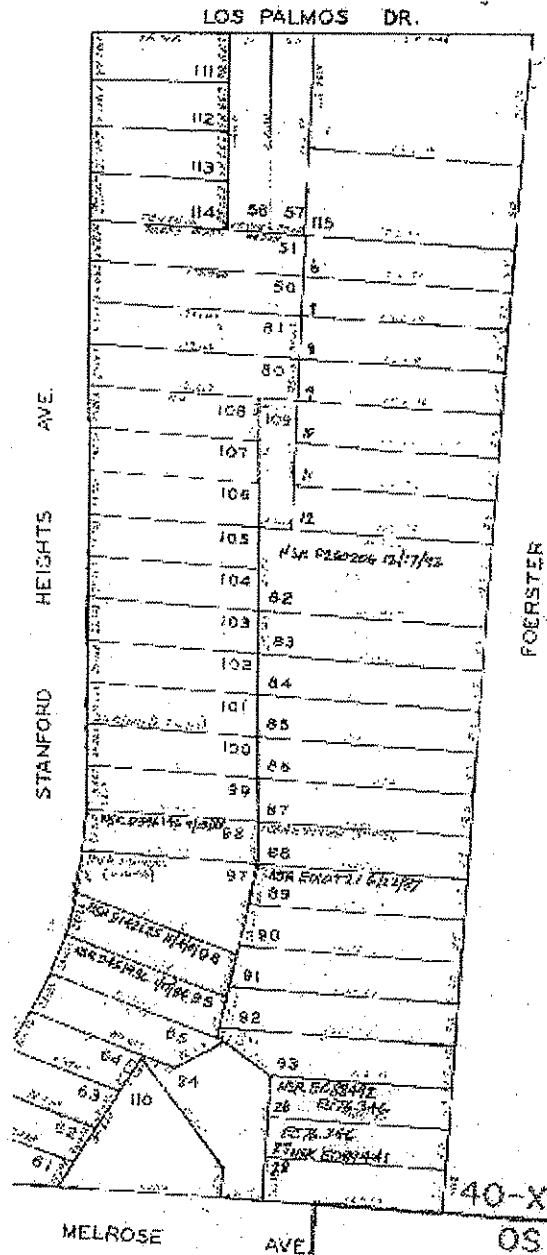
The Environmental Document states that "the existing single-family dwelling at 795 Foerster Street is not proposed for alteration." (Page 2-Paragraph 1) However, the existing building has already been altered and clearly must be considered as part of the "project" under a CEQA

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San Francisco Board of Supervisors

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analysis, just as the demolition and replacement of the retaining wall at the site is part of the "project" under CEQA. All work at the site is part of the "project."



The original lot was Lot #1 which was subdivided into two lots in 2006. The proposed project will now merge the two lots and then re-subdivide the site into four new lots.

Project Description.

The Project includes the subdivision of lots 116 and 117 into a total of four lots, and the construction of three new single-family dwellings and the alteration of the existing building at 795 Foerster Street. Appellant does not believe that the three new vacant lots will be Code compliant with regard to lot size. In order to satisfy the absolute minimum square footage requirement of 1750 square feet, each lot must fall entirely within 125 feet of the intersection of Los Paltos and Foerster. The proposed three new single-family dwellings fronting Los Paltos Drive do not meet this requirement.

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The Department has incorrectly stated in each analysis that the existing single family dwelling that is located on the corner of Lot 117 fronting Foerster Street "will not be demolished or altered," so as to bring the "project" within the meaning of Section 15303(a) for, "up to three single-family residences may be constructed or converted under this exemption." However, City records show that the fourth building involved in the project has already been altered as part of the overall project. In and of itself, that action by the developer to alter the fourth building as part of the "project" moves the project outside the strict language of the proposed exclusion from environmental review. Categorical exemptions from CEQA are narrowly construed. Mountain Lion Foundation v. Fish & Game Com. (1997) 16 Cal. 4th 105, 125. That case held that, "exemption categories are not to be expanded beyond the reasonable scope of their statutory language." In other words, the Department could award an exemption to a project of three new single family homes, but not to a project of three new single family homes *and* the alteration of the fourth building.

One of the basic principles to govern the application of CEQA is that the statute and the guidelines are to be interpreted as broadly as possible in order to provide the maximum protection to the environment and to the people of California. In the first case to interpret CEQA, the California Supreme Court made it clear that ambiguous language found in the statute was to be applied broadly rather than narrowly. In, Friends of Mammoth v Board of Supervisors 8 Cal. 3rd 247 (1972), Justice Stanley Mosk wrote that the Act (CEQA) is to be interpreted and construed so as to give the environment the fullest protection possible. This analysis, now known as the "*Mammoth* interpretive principle" was based on the legislative statements of intent and is still applicable today.

CEQA Issues. As noted above, the project is incorrectly described by the Department in order to try and bring it within the exception from environmental review created for "three single family residences in an urbanized area." However, beyond this issue, the project cannot qualify for a categorical exemption and exclusion from all environmental review because of the history of the site, because it is located in a known hazard zone. The categorical exemption is being awarded to the project improperly based on agreed mitigations in order to address the hazardous conditions at the site. This is an entirely inappropriate and incorrect use of CEQA.

Under CEQA Section 15300.2, Class 3-- the Subject Project Must be Excluded from a Categorical Exemption Since it is located in a Mapped and Recognized Historic Slide Zone.

As detailed in the Cat Ex. itself, the project site is in a historic and documented landslide zone. In fact, this is the exact site of what is believed to be the only fatal landslide to occur in the City and County of San Francisco. Under such circumstances, there is a specific statutory "exception" from the use of the categorical exemption because of the location of this project in a known and mapped hazardous slide zone. Section 15300.2 reads in relevant part:

"15300.2. Exceptions

(a) Location. Classes 3, 4, 5, 6, and 11 are qualified by consideration of where the project is to be located -- a project that is ordinarily insignificant in its impact on the environment may in a particularly sensitive environment be significant. Therefore, these classes are considered to apply

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all instances, except where the project may impact on an environmental resource of hazardous or critical concern where designated, precisely mapped, and officially adopted pursuant to law by federal, state, or local agencies.”

The project site is an environmentally sensitive area and is a “designated, precisely mapped, and officially adopted” hazard zone. It is inappropriate to use a categorical exemption from all environmental review for a project located in a known landslide hazard zone. Not only does it violate the statutory scheme, it violates the “common sense” exception to CEQA, which holds that Categorical Exemptions from environmental review shall not be used when there is a possibility of an environmental impact due to “unusual circumstances.” Section 15300.2 (c) states:

“(c) Significant Effect. A categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances.”

Given the history of this site a categorical exemption may not be used. Attached is a photo of the slide at the site in 1942 which killed one person and destroyed four homes. Attached below is a geologic map of the slide site and the mapped hazard zone.

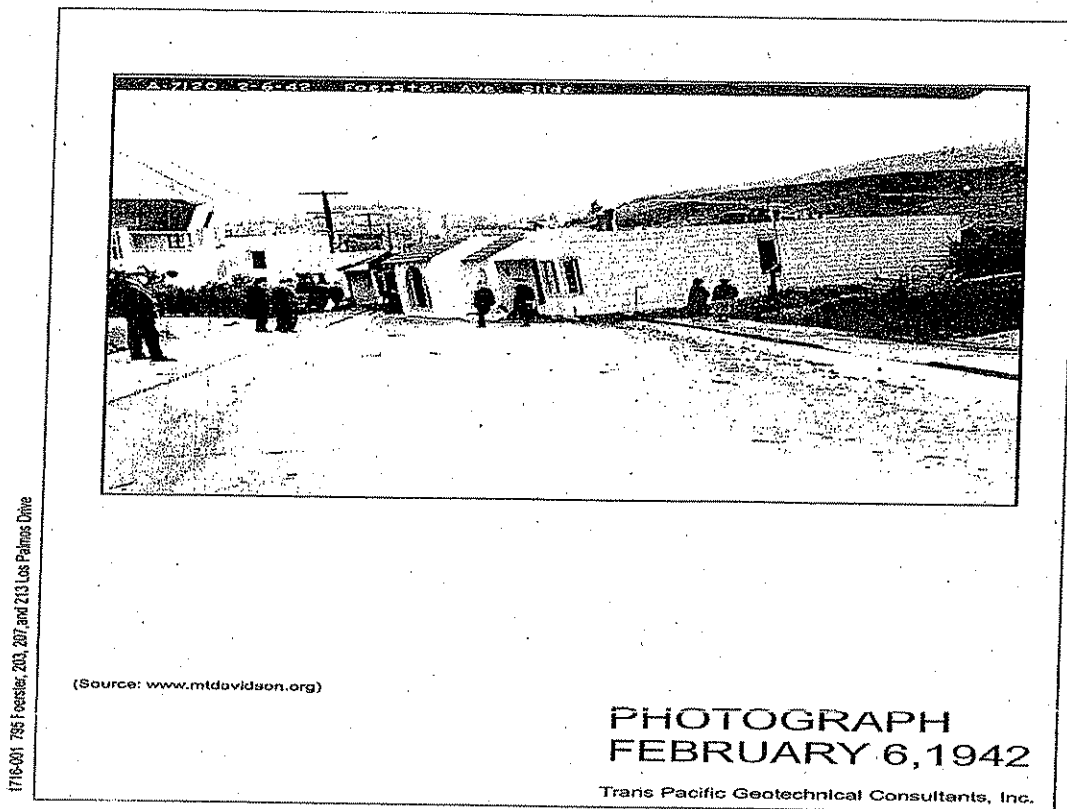
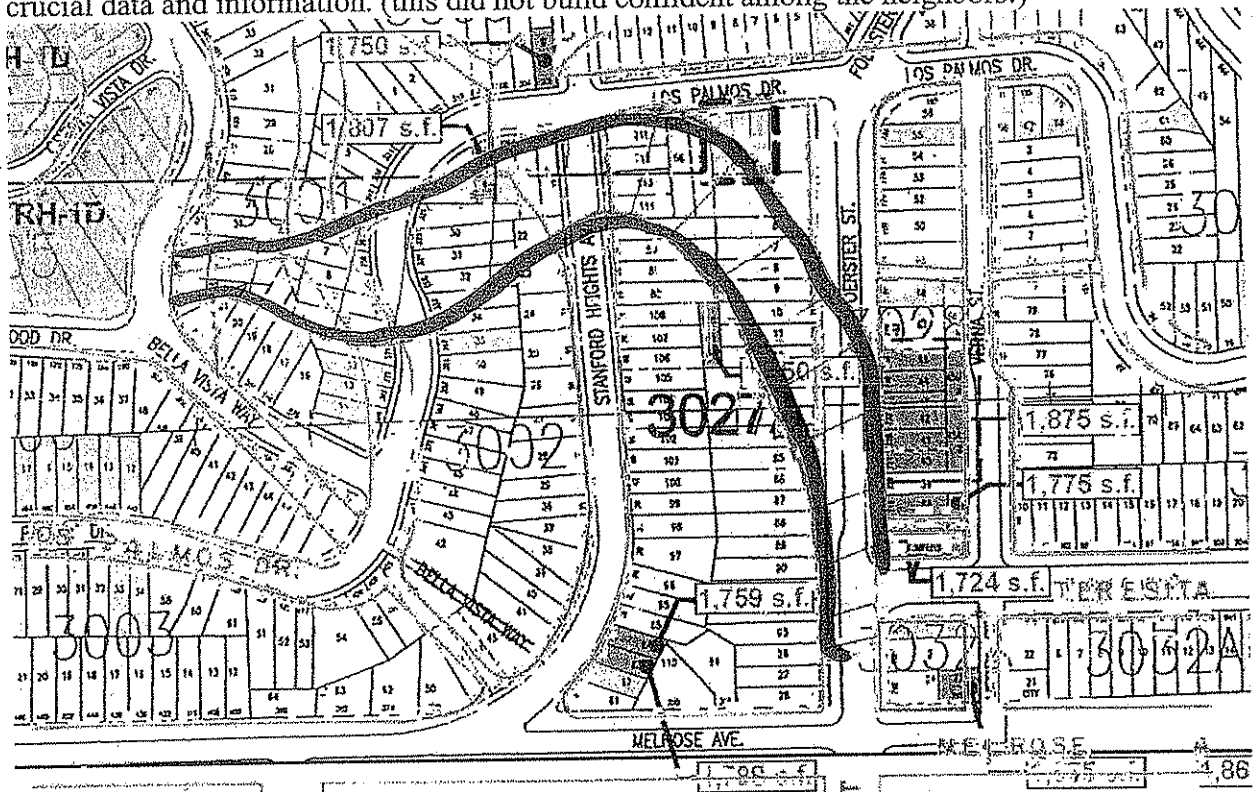


Figure 1: Show above is the aftermath of the previous landslide at the site.

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The CEQA Guidelines (14 Cal. Code Regs. Section 15000 et seq.), provide that a categorical exemption, which is a rebuttable presumption, "shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances." Section 15300.2(c). Based on this exception, the subject permit cannot be exempt from the requirements of CEQA. This is a hazardous zone, the project acknowledges it is in the zone, the project provides specific mitigations to address the hazard and, those mitigations are cited and discussed in the categorical exemption itself. This is a completely improper use of the exemption process and California case law makes clear that the exemption process may not be used in this manner.

As the attached map demonstrates, the historic mud slide at the site traveled over a large portion of the project area, directly impacting all three of the proposed new building sites. Project Sponsor was made aware of these historical occurrences at the site by the neighbors and a local historian. The initial geotechnical report submitted by the developer completed omitted this crucial data and information. (this did not build confident among the neighbors!)



Three of the four new lots are in the slide zone.

The City May not Rely on Mitigation Measures to Determine that a Project is Categorically Exempt from the California Environmental Quality Act (CEQA)

As set forth above, it is well established in California law that a project "can't mitigate its way" to a Categorical Exemption. Salmon Protection and Watershed Network v. County of Marin (2004) 125 Cal. App. 4th 1098. The determination of whether a project may impact a designated

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environmental resource must be made without reference or reliance upon any proposed mitigation measures. Reliance upon mitigation measures (whether included in the application or later adopted—as the Department suggests DBI will do) involves an evaluative process of assessing those mitigation measures and weighing them against potential environmental impacts, and that process must be conducted under established CEQA standards and procedures for EIRs or negative declarations.

In this instance the Categorical Exemption itself sets forth the source and details of numerous mitigations the project must undertake in order to limit the environmental impacts and to avoid future mud slides or other seismic activity at the site. This is completely improper and violates CEQA. Further the references to future actions, review and mitigations which may be undertaken by DBI are also an improper use of the Categorical Exemption procedure.

The *Salmon Protection* case is directly on point. The very discussion in the Categorical Exemption in this case of mitigation measures and possible “improvement” to the stability of the hazardous slide zone completely precludes the use of the exemption process. As the court stated:

“The determination of whether a project may impact a designated environmental resource must be made without reference to or reliance upon any proposed mitigation measures. (*Azusa, supra*, 52 Cal.App.4th at pp. 1199-1200, 61 Cal.Rptr.2d 447.) Reliance upon mitigation measures (whether included in the application or later adopted) involves an evaluative process of assessing those mitigation measures and weighing them against potential environmental impacts, and that process must be conducted under established CEQA standards and procedures for EIRs or negative declarations.” (*Id.* at p. 1201)

The findings by the City in the Categorical Exemption that the project site is suitable for development *provided* that the recommended mitigations from the two separate geotechnical investigations are incorporated into the project design and construction are specific mitigations to avoid possible environmental impacts. A categorical exemption may not be used in this case.

Conclusion. Thus, we request that the Board of Supervisors order that a proper CEQA review be done. Planning did not properly apply CEQA to this project and the project sponsor will have to prepare at least a negative declaration for the project in question. The City cannot rely on a categorical exemption because of the scope of the project, the location of the project and because the categorical exemption relies of specific and future mitigations to avoid environmental impacts.

Appellant respectfully request that the Board set aside the categorical exemption and mandate environmental review of this proposed project.

Sincerely,


Stephen M. Williams,
On behalf of the Miraloma Park Improvement Club

Exhibit A



SAN FRANCISCO PLANNING DEPARTMENT

Certificate of Determination EXEMPTION FROM ENVIRONMENTAL REVIEW

Case No.: 2008.0558E
 Project Title: 795 Foerster Street, 203 Los Palmos Drive,
 207 Los Palmos Drive and 213 Los Palmos Drive
 Zoning: RH-1 (Residential, House Districts, One-Family) Use District
 40-X Height and Bulk District
 Block/Lot: 3027A/116 & 117
 Lot Size: Approximately 3,930 and 5,360 square feet (sq. ft.), respectively
 Project Sponsor: Tony Kim
 (415) 246-8855
 Staff Contact: Andrea Contreras - (415) 575-9044
 andrea.contreras@sfgov.org

1650 Mission St.
 Suite 400
 San Francisco,
 CA 94103-2479

Reception:
 415.558.6378

Fax:
 415.558.6409

Planning
 Information:
 415.558.6377

PROJECT DESCRIPTION:

The project site includes two lots on a block bounded by Los Palmos Drive, Foerster Street, Melrose Avenue and Stanford Heights in the West of Twin Peaks neighborhood. The project site is located on the southwestern corner of Los Palmos Drive and Foerster Street in a primarily residential area. Lot 117 is approximately 5,360 square feet (sf), and currently contains a two-story, 23-foot tall, single-family dwelling with 2 off-street parking spaces. Lot 116 is approximately 3,930 sf and is currently vacant.

(Continued on reverse side)

EXEMPT STATUS:

Categorical Exemption Classes 1 and 3 (State Guidelines, Sections 15301(l)(4) and 15303(a))

REMARKS:

Please see next page.

DETERMINATION:

I do hereby certify that the above determination has been made pursuant to State and Local requirements.

June 9, 2009
 Date

[Signature]
 BILL WYCKO
 Environmental Review Officer

cc: Tony Kim, Project Sponsor
 M. Smith, E. Watty & A. Contreras, Planning Dept.
 D. Washington, SW Quadrant
 Supervisor Sean Elsbernd, District 7

V. Byrd, Bulletin Board and Master Decision File
 Exemption/Exclusion File
 Historic Preservation Distribution List
 Sue Hestor

PROJECT DESCRIPTION (CONTINUED):

The proposed project includes the subdivision of Lots 116 and 117 into four lots and construction of three single-family dwellings fronting on Los Palmos Drive. The first part of the proposal is to subdivide the two existing lots into four lots. The resulting four lots would meet the *Planning Code* requirements for minimum lot size for the RH-1 zoning use district.¹ The proposed subdivision would require a permit from the Department of Public Works. The existing single-family dwelling at 795 Foerster Street is not proposed for alteration and would be subject to a rear yard variance, as the subdivision of Lot 117 would result in a lot with a rear yard smaller than the 25 percent required by the *San Francisco Planning Code*. The proposed construction on the resulting three lots fronting Los Palmos Drive would be single-family dwellings. Each new single-family dwelling would be approximately 2,400 sf and 21 feet in height with 2 off-street parking spaces. In addition, the existing retaining wall along the southern property line of Lots 116 and 117 would be demolished and replaced with a concrete retaining wall that would provide back drainage. The proposed project would be consistent with the *General Plan* and with the zoning designation.

REMARKS (continued):

Archeological Resources: The proposed development includes construction of three single-family dwellings and replacement of the existing retaining wall along the southern edge of Lots 116 and 117. The construction of the new dwellings would require excavation to a depth of four to six feet to construct one two-car garage per unit. The proposed dwellings would be supported on a drilled pier and grade beam foundation. The piers would extend at least 10 feet below grade. The Department reviewed the project for impacts to archeological resources and determined that no CEQA significant archeological resources would be affected, specifically prehistoric and known archeological resources.² Therefore, the proposed project may be found to be exempt from environmental review if other criteria are satisfied.

Geotechnical: The project site has an average slope of approximately 19 percent.³ The San Francisco *General Plan* Community Safety Element contains maps that show areas of the City subject to geologic hazards. This map indicates areas in which one or more geologic hazards exist. The project site is located in an area subject to slight ground shaking from earthquakes along the San Andreas (Map 2) and Northern Hayward (Map 3) Faults and other faults in the San Francisco Bay Area. The project site is not located in an area of liquefaction potential (Map 4). However, the project site is located in an area subject to potential landslide hazard (Map 5), a Seismic Hazards Study Zone (SHSZ) designated by the California Division of Mines and Geology. Specifically, the southwest portion of the subject site lies

¹ *Planning Code* Section 121(e)(2) states that in RH-1 zoning use districts the minimum lot area shall be 2,500 square feet, except that the minimum lot area for any lot having its street frontage entirely within 125 feet of the intersection of two streets that intersect at an angle of not more than 135 degrees shall be 1,750 square feet.

² MEA Preliminary Archeological Review Checklist for 795 Foerster Street (aka 795 Foerster Street, 203 Los Palmos Drive, 207 Los Palmos Drive and 213 Los Palmos Drive), September 9, 2008. This document is on file and available for public review by appointment at the Planning Department, 1650 Mission Street, 4th Floor, as part of Case File No. 2008.0558E.

³ Pursuant to *Planning Code* Section 102.12(b) and (c), the average slope of a site is determined by measuring the rise of elevation divided by the distance or length of the lot, between the center of the front property line and the center of the rear property line of a legal lot of record or a proposed new lot.

within an area of potential earthquake-induced landsliding. The southwest portion of the project site and adjacent areas are included in the Seismic Hazard Zones map most likely because of the mapped landslide deposit and future potential for permanent ground displacements resulting from topographic features. However, the proposed project may reduce the potential for ground displacements by improving site drainage and adding rigidity within the slope with the proposed structural improvements, such as the retaining wall replacement.

The project sponsor has provided two geotechnical investigation reports prepared by California-licensed geotechnical engineers that are on file with the Department of City Planning and available for public review as part of the project file. The initial geotechnical investigation report⁴ found the project site suitable for development provided the recommendations included in the report are incorporated into the design and construction of the proposed development. In general, the recommendations contained in the report include but are not limited to: site preparation and grading; seismic design; appropriate foundation; retaining walls; slab-on-grade floors and exterior flatwork; site drainage; and maintenance. The sponsor has agreed to follow the recommendations of the report, specifically: drilled, cast-in-place, reinforced concrete piers of at least 14 inches in diameter extending 10 feet below grade to support proposed structures; removal of any groundwater encountered during pier shaft drilling; the use of fully backdrained retaining walls; drainage directed toward downspouts that discharge into closed conduits that drain into the site storm drain system; regular maintenance of drains and debris clearance; repair of sloughing or erosion before it can enlarge into landsliding; and planting of a dense growth of deep-rooted ground cover to minimize erosion.

A supplemental report⁵ was prepared in response to neighborhood concern regarding a mud flow that occurred in the project area in 1942. The mud flow is mapped on the Preliminary Geologic Map of the San Francisco South 7.5' Quadrangle and Hunters Point 7.5' Quadrangle. The supplemental report also cites a plan prepared by the San Francisco Department of Public Works (DPW) that documents the destruction of three houses on the project block caused by the mud flow. A drawing in the DPW plan indicates the path of the mud flow encompassed the southeast portion of the rear yard at 795 Foerster Street. Trans Pacific Geotechnical Consultants, Inc. has concluded that based on a literature review of the 1942 mud flow, field exploration, laboratory testing, and engineering analyses, the project site shows no evidence of slope instability and is suitable for the proposed lot subdivision and residential construction.

The final building plans would be reviewed by the Department of Building Inspection (DBI). In reviewing building plans, the DBI refers to a variety of information sources to determine existing hazards and assess requirements for mitigation. Sources reviewed include maps of Special Geologic Study Areas and known landslide areas in San Francisco as well as the building inspectors' working knowledge of areas of special geologic concern. The above-referenced geotechnical investigation would be available for use by the DBI during its review of building permits for the site. Also, DBI could require

⁴ Geotechnical Investigation Report for Planned Residential Development at 795 Foerster Street, San Francisco California, prepared by Earth Mechanics Consulting Engineers, May 26, 2008. A copy of this report is available for review at the San Francisco Planning Department as part of Case File No. 2008.0558E.

⁵ Supplementary Geotechnical Investigation Report for Proposed Housing Development at 795 Foerster Street, 203, 207, 213 Los Pamos Drive, San Francisco, California, prepared by Trans Pacific Geotechnical Consultants, Inc., April 7, 2009. A copy of this report is available for review at the San Francisco Planning Department as part of Case File No. 2008.0558E.

that additional site-specific soils report(s) be prepared in conjunction with permit applications, as needed. In light of the above, the project could not result in a significant environmental effect with respect to geotechnical matters. As such, the proposed project may be found to be exempt from environmental review if other criteria are satisfied.

Biological Resources: Although the site is vegetated, it is in an urban area covered with structures and other impermeable surfaces. A review of the California Natural Diversity Database indicates that no rare, threatened or endangered species are known to exist in the project vicinity, and the project site does not support or provide habitat for any rare or endangered plant or animal species. No riparian habitat, sensitive natural communities, or wetlands exist on or near the site. No other important biological resources exist on or near the site. Therefore, there would be no project-related impacts to sensitive habitat.

Article 16 of the *San Francisco Public Works Code*, the Urban Forestry Ordinance, provides for the protection of "landmark" trees, "significant" trees, and street trees. Landmark trees are formally designated by the Board of Supervisors upon recommendation of the Urban Forestry Council, which determines whether a nominated tree meets the qualifications for landmark designation by using established criteria (*San Francisco Public Works Code*, Section 810). Special permits are required to remove a landmark tree on private property or on City-owned property. A "significant tree" is a tree: (1) on property under the jurisdiction of DPW, or (2) on privately-owned property within 10 feet of the public right-of-way that meet certain size criteria. To be considered significant, a tree must have a diameter at breast height in excess of 12 inches, a height in excess of 20 feet, or a canopy in excess of 15 feet (Section 810A(a)). Street trees are trees within the public right-of-way or on DPW's property. Removal of protected trees requires a permit, and measures to prevent damage to those trees.

There are no landmark or significant trees on the property.⁶ The removal of four existing trees at the northwest corner of Lot 116 would not require a permit or preventative measures. The proposed project would remove vegetation on Lot 116 and the western half of Lot 117, including cacti. The project sponsor proposes to preserve and transplant large cacti from the project site to an off-site location.⁷ The project sponsor also proposes to plant three new street trees in front of 203, 207, and 213 Los Palomos Drive. The proposed project would not be subject to any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance.

Given that no rare, threatened or endangered species are known to exist in the project vicinity, and the project site does not support or provide habitat for any rare or endangered plant or animal species, the project would not result in a significant environmental effect with respect to biological resources. As such, the proposed project may be found to be exempt from environmental review.

⁶ Ted Kipping, Certified Arborist, Tree Disclosure Statement for 795 Foerster Street. A copy of this statement is available for review at the San Francisco Planning Department as part of Case File No. 2008.0558E.

⁷ Personal communication between Andrea Contreras, Major Environmental Analysis, and Tony Kim, project sponsor, March 24, 2009.

Exempt Status:

CEQA State Guidelines Section 15301(1)(4), or Class 1, provides an exemption from environmental review for the demolition and removal individual small structures, including appurtenant structures. The proposed project would result in the demolition, removal and replacement of a retaining wall, resulting in no significant environmental effects. This demolition would therefore be exempt from environmental review under Class 1.

The proposed project includes construction of three new, single-family residences. CEQA State Guidelines Section 15303(a), or Class 3, provides an exemption from environmental review for the construction of up to three single-family residences in an urbanized area. Therefore, the proposed construction of three new single-family residences is exempt from environmental review under Class 3.

Conclusion:

CEQA State Guidelines Section 15300.2 states that a categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances. There are no unusual circumstances surrounding the current proposal that would suggest a reasonable possibility of a significant effect. The proposed project would have no significant environmental effects. Under the above-cited classifications, the proposed project is appropriately exempt from environmental review.



SAN FRANCISCO PLANNING DEPARTMENT

NEIGHBORHOOD ORGANIZATION FEE WAIVER REQUEST FORM

Appeals to the Board of Supervisors

1650 Mission St.
Suite 400
San Francisco,
CA 94103-2479

This form is to be used by neighborhood organizations to request a fee waiver for CEQA and conditional use appeals to the Board of Supervisors.

Should a fee waiver be sought, an appellant must present this form to the Clerk of the Board of Supervisors or to Planning Information Counter (PIC) at the ground level of 1660 Mission Street along with relevant supporting materials identified below. Planning staff will review the form and may sign it 'over-the-counter' or may accept the form for further review.

Should a fee waiver be granted, the Planning Department would not deposit the check, which was required to file the appeal with the Clerk of the Board of Supervisors. The Planning Department will return the check to the appellant.

Reception:
415.558.6378

Fax:
415.558.6409

Planning
Information:
415.558.6377

TYPE OF APPEAL FOR WHICH FEE WAIVER IS SOUGHT

[Check only one and attach decision document to this form]

- Conditional Use Authorization Appeals to the Board of Supervisors
- Environmental Determination Appeals to the Board of Supervisors (including EIR's, NegDec's, and CatEx's, GREs)

REQUIRED CRITERIA FOR GRANTING OF WAIVER

[All criteria must be satisfied. Please check all that apply and attach supporting materials to this form]

- The appellant is a member of the stated neighborhood organization and is authorized to file the appeal on behalf of that organization. Authorization may take the form of a letter signed by the president or other officer of an organization.
- The appellant is appealing on behalf of a neighborhood organization which is registered with the Planning Department and which appears on the Department's current list of neighborhood organizations.
- The appellant is appealing on behalf of a neighborhood organization, which was in existence at least 24 months prior to the submittal of the fee waiver request. Existence may be established by evidence including that relating to the organization's activities at that time such as meeting minutes, resolutions, publications, and rosters.
- The appellant is appealing on behalf of a neighborhood organization, which is affected by the project, which is the subject of the appeal.

APPELLANT & PROJECT INFORMATION [to be completed by applicant]	
Name of Applicant: Stephen Williams	Address of Project: 795 Foerster Street; 203-213 Los Palms
Neighborhood Organization: Miraloma Park Imp. C	Planning Case No: 2008.0558E
Applicant's Address: 1934 Divisadero	Building Permit No:
Applicant's Daytime Phone No: 415-292-3656	Date of Decision: June 8, 2009
Applicant's Email Address: snw@stevewilliamsllaw.com	

DCP STAFF USE ONLY

- Appellant authorization
- Current organization registration
- Minimum organization age
- Project impact on organization

Planner's Name: _____

Date: _____

Planner's Signature: _____

WAIVER APPROVED

WAIVER DENIED

BOARD of SUPERVISORS



City Hall
Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 544-5227

January 10, 2011

To: Cheryl Adams
Deputy City Attorney

From: Rick Caldeira 
Deputy Director

**Subject: Appeal of Determination of Exemption from Environmental Review -
795 Foerster Street and 203, 207, and 213 Los Pamos Drive**

An appeal of determination of exemption from environmental review issued for properties located at 795 Foerster Street and 203, 207, and 213 Los Pamos Drive was filed with the Office of the Clerk of the Board on January 7, 2011, by Stephen M. Williams.

Pursuant to the Interim Procedures of Appeals for Negative Declaration and Categorical Exemptions No. 5, I am forwarding this appeal, with attached documents, to the City Attorney's office to determine if the appeal has been filed in a timely manner. The City Attorney's determination should be made within 3 working days of receipt of this request.

If you have any questions, you can contact me at (415) 554-7711.

c: Angela Calvillo, Clerk of the Board
Kate Stacy, Deputy City Attorney
Marlena Byrne, Deputy City Attorney
Scott Sanchez, Zoning Administrator, Planning Department
Bill Wycko, Environmental Review Officer, Planning Department
AnMarie Rodgers, Planning Department
Tina Tam, Planning Department
Nannie Turrell, Planning Department
Linda Avery, Planning Department
Georgia Powell, Planning Department
Cynthia Goldstein, Board of Appeals
Victor Pacheco, Board of Appeals



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PLANNING DEPARTMENT**

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MEMO

APPEAL OF CATEGORICAL EXEMPTION
795 Foerster Street, 203 Los Palmos Drive,
207 Los Palmos Drive and 213 Los Palmos Drive

BY

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DATE: February 8, 2011
TO: Angela Calvillo, Clerk of the Board of Supervisors
FROM: Bill Wycko, Environmental Review Officer - (415) 575-9048
Andrea Contreras, Case Planner - (415) 575-9044
RE: File No. 110041, Planning Case No. 2008.0558E
Appeal of Categorical Exemption for 795 Foerster Street, 203 Los Palmos
Drive, 207 Los Palmos Drive and 213 Los Palmos Drive
HEARING DATE: February 15, 2011
ATTACHMENTS: A - Letter of Appeal (January 6, 2011; Exhibit A of Letter of Appeal is the
June 8, 2009, Certificate of Exemption from Environmental Review)

PROJECT SPONSOR: Brett Gladstone, Gladstone & Associates, on behalf of project architect
Gabriel Y. Ng & Associates

APPELLANT: Stephen M. Williams, on behalf of the Miraloma Park Improvement Club

INTRODUCTION:

This memorandum and the attached documents are a response to the letter of appeal to the Board of Supervisors (the "Board") regarding the Planning Department's (the "Department") issuance of a Categorical Exemption Certificate under the California Environmental Quality Act ("CEQA Determination") for a project at 795 Foerster Street, 203 Los Palmos Drive, 207 Los Palmos Drive and 213 Los Palmos Drive (the "Project").

The Department, pursuant to Title 14 of the CEQA Guidelines, issued a Categorical Exemption Certificate for 795 Foerster Street, 203 Los Palmos Drive, 207 Los Palmos Drive and 213 Los

Palomos Drive on June 8, 2009, finding that the proposed Project would not have a significant effect on the environment.¹

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.

SITE DESCRIPTION & PRESENT USE:

The Project site includes two lots on a block bounded by Los Palomos Drive, Foerster Street, Melrose Avenue and Stanford Heights in the West of Twin Peaks neighborhood. The Project site is located on the southwestern corner of Los Palomos Drive and Foerster Street in a primarily residential area. The site consists of two lots, 116 and 117, on Assessor's Block 3027A. Lot 117 is approximately 5,360 square feet (sf), and currently contains a two-story, 23-foot tall, single-family dwelling with 2 off-street parking spaces. Lot 116 is approximately 3,930 sf and is currently vacant. The Project site has an average slope of approximately 19 percent.

The property is within an RH-1 (Residential, House, One-Family) District and a 40-X Height and Bulk District. City records indicate that the existing single-family dwelling on Lot 117 was constructed in 1950.

PROJECT DESCRIPTION:

The proposed Project described in the CEQA Determination includes the reconfiguration and subdivision of Lots 116 and 117 into four lots and construction of three single-family dwellings fronting on Los Palomos Drive. The two existing lots would be subdivided into four lots that would meet the *Planning Code* requirements for minimum lot size for the RH-1 District. The proposed subdivision would require a permit from the Department of Public Works. The existing single-family dwelling at 795 Foerster Street is not proposed for alteration and would be subject to a rear yard variance, as the subdivision of Lot 117 would result in a lot with a rear yard smaller than the 25 percent required by the *San Francisco Planning Code*. The proposed construction on the resulting three lots fronting Los Palomos Drive would be single-family dwellings. Each new single-family dwelling would be approximately 2,400 sf and 21 feet in height with 2 off-street parking spaces. In addition, the existing retaining wall along the southern property line of Lots 116 and 117 would be demolished and replaced with a concrete retaining wall that would provide back drainage. The proposed Project would be consistent with the *General Plan* and with the zoning designations.

Subsequent to issuance of the CEQA Determination, the Project sponsor made some minor changes to the Project. The project description for the project evaluated in the CEQA

¹ California Code of Regulations, Title 14, Section 15301(l)(4) and 15303(a): Class 1 and 3 Exemptions.

Determination included demolition of the existing retaining wall along the southern property line and replacement with a concrete retaining wall. The retaining wall is no longer proposed for demolition. Maintaining the retaining wall would not require any additional CEQA review since it is a minor change to the foundation design and its soundness has been evaluated by the Department of Building Inspection. The CEQA Determination also described the Project as requiring a rear yard variance. However based on a revised Tentative/Parcel Map dated November 19, 2009, the Zoning Administrator concurred with Department Staff that a rear yard variance was not needed in order to subdivide the subject property into four Code-complying lots. This appeal response addresses the Project as originally proposed unless otherwise stated.

BACKGROUND:

1942 – Landslide Occurred in the Project Area

According to a Geologic Map of San Francisco, there is a mapped mud flow, or landslide, which occurred in 1942 and likely encroached into the southwest corner of the Project site. The Mt. Davidson Organization has reported that a resident was killed during the incident.

Date Unknown – Rear Room of 795 Foerster Removed Without a Building Permit

A rear portion of the existing dwelling on Lot 117 at 795 Foerster Street was removed without a building permit at an unknown date.

February 2007 – Current Owner Purchased 795 Foerster and Adjacent Lot 116

According to the Project sponsor, the current owners purchased the subject properties with the rear section of the existing home on Lot 117 already removed.

August 2007 – Property Survey Conducted

A property survey performed by Frederick T. Seher & Associates, Inc. August 2007 shows the rear of the building is parallel to Foerster Street. The only structure at the rear of the building is a wood deck. This survey verifies the removal of the rear portion of the home at 795 Foerster prior to the owner's filing of an Environmental Exemption Application.

May 2008 – Sponsor Filed Tentative/Parcel Map Application

The Project sponsor applied for a subdivision of Lots 116 and 117 in May 2008.

July 2008 – Sponsor Filed Environmental Exemption Application with the Planning Department

The Project sponsor filed an Environmental Exemption Application for CEQA review in July 2008.

June 2009 – CEQA Determination Issued

The Department issued the CEQA Determination for the Project on June 8, 2009.

Appeal of Categorical Exemption
Hearing Date: February 15, 2011

File No. 110041, Planning Case No. 2008.0558E
795 Foerster Street, 203 Los Palmos Drive,
207 Los Palmos Drive and 213 Los Palmos Drive

January 2010 – Department of Building Inspection Approved the Tentative/Parcel Map Referral

In their approval, the Department of Building Inspection (“DBI”) states that the “Final Map will not be able to be issued until all conditions required by DBI have been complied with.”

March 2010 – Sponsor Obtained Rear Room Removal Permit Retroactively

The current owner obtained a building permit to legalize the removal of the rear portion of the existing dwelling.

August 2010 – Planning Commission Approved Project

The Planning Commission was asked to take Discretionary Review of the Project. The Commission did not take Discretionary Review and approved the Project as proposed.

September 2010 – Department of Public Works Approved Tentative/Parcel Map for Project

The Department of Public Works (“DPW”) approved the Tentative/Parcel Map for the creation of a four-lot subdivision at the Project site in September 2010.

October 2010 – Board of Supervisors Approved Tentative/Parcel Map for Project

The Board of Supervisors passed Motion 10-145 in October 2010 approving the decision of DPW to approve the Tentative/Parcel Map for a four-lot subdivision at the Project site.

October 2010 – Department of Building Inspection Approved Construction of Three New Single-Family Dwellings at 203, 207 and 213 Los Palmos Drive

DBI issued building permits in October 2010 for the construction of three new single-family dwellings. All three approvals have been appealed to the Board of Appeals. The appeal hearing has yet to be scheduled.

CEQA GUIDELINES:

Categorical Exemptions

Section 21084 of the California Public Resources Code² requires that the CEQA Guidelines identify a list of classes of projects that have been determined not to have a significant effect on the environment and are exempt from further environmental review.

In response to that mandate, the State Secretary of Resources found that certain classes of projects, which are listed in CEQA Guidelines Sections 15301 through 15333,³ do not have a significant impact on the environment, and therefore are categorically exempt from the requirement for the preparation of further environmental review.

CEQA State Guidelines Section 15301(1)(4), or Class 1, provides an exemption from environmental review for the demolition and removal individual small structures, including

² 21084: Guidelines shall list classes of projects exempt from this Act.

³ California Code of Regulations, Title 14, Chapter 3.

appurtenant structures. The proposed Project would result in the demolition, removal and replacement of a retaining wall, resulting in no significant environmental effects. This demolition would therefore be exempt from environmental review under Class 1.

CEQA State Guidelines Section 15303(a), or Class 3, provides for the construction of up to three single-family residences in a residential zone in urbanized areas. The proposed Project would involve construction of three new single-family residences in an area zoned for residential use within the City of San Francisco. The proposed Project, therefore, also would be exempt under Class 3.

CEQA Guidelines Section 15300.2 does not allow a Categorical Exemption to be used for a project where there is a reasonable possibility that the activity would have a significant effect on the environment due to unusual circumstances. More specifically, Section 15300.2(a) states that a Class 3 exemption may not apply where the project "may impact on an environmental resource of hazardous or critical concern where designated, precisely mapped, and officially adopted pursuant to law by federal, state, or local agencies." Accordingly, the Department evaluated whether there were any unusual circumstances, including whether the project may impact on an environmental resource of hazardous or critical concern. Department staff identified no unusual circumstances surrounding the current proposal that would suggest a reasonable possibility of a significant effect. Although the Project site is located in an area subject to potential landslide hazard (Map 5), a Seismic Hazards Study Zone (SHSZ) designated by the California Division of Mines and Geology, it would not have any significant impact related to geology, and in fact may have a beneficial effect by reducing the potential for ground displacements, as discussed in more detail in Response #9, below. The proposed Project would have no significant environmental effects. Under the above-cited classifications, the proposed Project is appropriately exempt from environmental review.

CEQA and Geotechnical Resources

Based on Appendix G of the CEQA Guidelines and the Planning Department's Initial Study Checklist, the proposed Project would result in a significant impact with respect to geology, soils, and seismicity if it would:

- Expose people or structures to potential substantial adverse effects, including the risk of loss, injury, or death involving:
 - Rupture of a known earthquake fault, as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map issued by the State Geologist for the area or based on other substantial evidence of a known fault;
 - Strong seismic ground shaking;
 - Seismic-related ground failure, including liquefaction; or
 - Landslides;
- Result in substantial soil erosion or the loss of topsoil;
- Be located on geologic unit or soil that is unstable, or that would become unstable as a result of the project, and potentially result in on- or off-site landslide, lateral spreading, subsidence, liquefaction, or collapse;

- Be located on expansive soil, as defined in the California Building Code, creating substantial risks to life or property;
- Have soils incapable of adequately supporting the use of septic tanks or alternative wastewater disposal systems where sewers are not available for the disposal of wastewater; or
- Substantially change the topography or any unique geologic or physical features of the site.

Department Analysis of 795 Foerster Street and 203, 207, and 213 Los Palmos Drive

The San Francisco General Plan Community Safety Element contains maps that show areas of the City subject to geologic hazards. These maps indicate areas in which one or more geologic hazards exist. The Project site is located in an area subject to slight ground shaking from earthquakes along the San Andreas Fault (Map 2) and Northern Hayward Fault (Map 3) and other faults in the San Francisco Bay Area. The Project site is not located in an area of liquefaction potential (Map 4). However, the Project site is located in an area subject to potential landslide hazard (Map 5), a Seismic Hazards Study Zone (SHSZ) designated by the California Division of Mines and Geology. The southwest portion of the subject site lies within an area of potential earthquake-induced landsliding. The southwest portion of the Project site is included in the Seismic Hazard Zones map most likely because of the mapped landslide deposit and future potential for permanent ground displacements resulting from topographic features.

In evaluating whether the proposed Project would be exempt from environmental review under CEQA, the Planning Department considered two geotechnical investigation reports discussed below, prepared by California-licensed geotechnical engineers that are on file with the Planning Department and available for public review as part of the Project file.

The initial geotechnical investigation report found the Project site suitable for development provided the recommendations included in the report were incorporated into the design and construction of the proposed development. In general, the recommendations contained in the report included: site preparation and grading; seismic design; appropriate foundation; retaining walls; slab-on-grade floors and exterior flatwork; site drainage; and maintenance. The sponsor incorporated the recommendations of the report into the Project design, specifically: drilled, cast-in-place, reinforced concrete piers of at least 14 inches in diameter extending 10 feet below grade to support proposed structures; removal of any groundwater encountered during pier shaft drilling; the use of fully backdrained retaining walls; drainage directed toward downspouts that discharge into closed conduits that drain into the site storm drain system; regular maintenance of drains and debris clearance; repair of sloughing or erosion before it can enlarge into landsliding; and planting of a dense growth of deep-rooted ground cover to minimize erosion.⁴

⁴ Geotechnical Investigation Report for Planned Residential Development at 795 Foerster Street, San Francisco California, prepared by Earth Mechanics Consulting Engineers, May 26, 2008. A copy of this report is available for review at the San Francisco Planning Department as part of Case File No. 2008.0558E.

A supplemental geotechnical report was prepared in response to neighborhood concern regarding a mud flow that occurred in the Project area in 1942. The mud flow is mapped on the Preliminary Geologic Map of the San Francisco South 7.5' Quadrangle and Hunters Point 7.5' Quadrangle. The supplemental report also cites a plan prepared by DPW that documents the destruction of three houses on the Project block caused by the mud flow. A drawing in the DPW plan indicates the path of the mud flow encompassed the southeast portion of the rear yard at 795 Foerster Street. The supplemental report concluded that, based on a literature review of the 1942 mud flow, field exploration, laboratory testing, and engineering analyses, the Project site shows no evidence of slope instability and is suitable for the proposed lot subdivision and residential construction.⁵

For any development proposal in an area of landslide potential, DBI, in its review of the Building Permit Application, requires a project sponsor to prepare a geotechnical report pursuant to the State Seismic Hazards Mapping Act. Accordingly, the Project Sponsor commissioned the two geotechnical reports described above as part of the Project's design and development phase. Both reports found the site suitable for development.

As described in the original CEQA Determination, the final building plans would be reviewed by DBI as part of the City's standard regulatory and permitting process. In reviewing building plans, DBI refers to a variety of information sources to determine existing hazards and assess requirements to address any hazards. Sources reviewed include maps of Special Geologic Study Areas and known landslide areas in San Francisco as well as the building inspectors' working knowledge of areas of special geologic concern. The above-referenced geotechnical investigations were available for use by the DBI during its review of building permits for the site.

The proposed Project was required to conform to the San Francisco Building Code, which ensures the safety of all new construction in the City. Decisions about appropriate foundation design and whether additional background studies are required were determined as part of the DBI review process. Background information provided to DBI provides for the security and stability of adjoining properties as well as the subject property during construction. Therefore, potential damage to structures from geologic hazards on the Project site were reduced through the DBI regulatory requirement for a geotechnical report and review of the Building Permit Applications pursuant to its implementation of the Building Code. Any changes incorporated into the foundation design required to meet the San Francisco Building Code standards were identified as a result of the DBI review process constitute minor modifications of the Project and do not require additional environmental analysis. In light of the above, the Project could not result in a significant environmental effect with respect to geotechnical matters. Therefore, the proposed Project would not result in a significant impact related to geology and soils.

⁵ Supplementary Geotechnical Investigation Report for Proposed Housing Development at 795 Foerster Street, 203, 207, 213 Los Paltos Drive, San Francisco, California, prepared by Trans Pacific Geotechnical Consultants, Inc., April 7, 2009. A copy of this report is available for review at the San Francisco Planning Department as part of Case File No. 2008.0558E.

DBI's review of the Project was conducted subsequent to issuance of the CEQA Determination and prior to their approval of the Project.

APPELLANT ISSUES AND PLANNING DEPARTMENT RESPONSES:

The concerns raised in the January 6, 2011 Appeal Letter are cited in the summary below and are followed by the Department's responses.

Issue #1: The Appellant states that the "the project cannot qualify for a categorical exemption and exclusion from all environmental review because of the history of the site, because it is located in a known hazard zone...The project site is an environmentally sensitive area and is 'designated, precisely' mapped, and officially adopted' hazard zone. Under CEQA Section 15300.2, Class 3—the Subject Project Must be Excluded form a Categorical Exemption Since it is located in a Mapped and Recognized Historic Slide Zone. It is inappropriate to use a categorical exemption from all environmental review for a project located in a known landslide hazard zone."

Response #1: The Appellant is correct in stating the Project site is within a Seismic Hazards Study Zone, specifically an area subject to potential landslide hazards. Several areas of the City are characterized by potential landslide hazard, such as parts of Twin Peaks, Mount Davidson, Mount Sutro and Glen Canyon Park. While the potential for landslide is not singularly considered an "unusual circumstance," this condition does warrant further investigation from Department staff during the environmental review process. The Project sponsor commissioned the preparation of two geotechnical reports for the proposed Project, one of which was prepared directly in response to neighborhood concern for potential landslide occurrence at the Project site.

Under CEQA, Planning staff evaluates the physical conditions of the Project site and suitability of the site and surrounding areas and whether the Project has the potential to expose people or structures to potential substantial adverse effects, including the risk of loss, injury, or death involving landslides; result in substantial soil erosion or the loss of topsoil; be located on geologic unit or soil that is unstable, or that would become unstable as a result of the Project and potentially result in on- or off-site landslide, lateral spreading, subsidence, liquefaction, or collapse; or be located on expansive soil thereby creating substantial risks to life or property. As described on page three of the CEQA Determination, both geotechnical reports commissioned as part of Project design and development found that the Project site shows no sign of slope instability and is suitable for the proposed lot subdivision and residential construction. Moreover, the Project Sponsor incorporated all of the recommendations of the geotechnical reports into the Project design.

Further, the final building plans of the proposed Project were reviewed by DBI. In reviewing building plans, DBI referred to site-specific information to determine the presence of any existing hazards and assess requirements to address any hazards. The proposed Project was required to conform to the San Francisco Building Code, which ensures the safety of all new construction. Decisions about appropriate foundation design and whether additional background studies are

required have been determined as part of the DBI review process. Background information provided to DBI has provided for the security and stability of adjoining properties as well as the subject property during construction. Therefore, potential damage to structures from geologic hazards on the Project site has been avoided through the DBI requirement for a geotechnical report and review of the Building Permit Applications pursuant to its implementation of the Building Code. In light of the above, the Project could not result in a significant environmental effect with respect to geotechnical matters.

Issue #2: The Appellant states, "The categorical exemption is being awarded to the project improperly based on agreed mitigations in order to address the hazardous conditions at the site...the project provides specific mitigations to address the hazards and, those mitigations are cited and discussed in the categorical exemption...the City may not rely on mitigation measures to determine that a project is categorically exemption from CEQA."

Response #2: Under CEQA, mitigation measures are applied when precautions above and beyond the existing regulatory requirements are necessary. CEQA imposes these measures because otherwise they would not be implemented. In this particular case, the "mitigation measures" the Appellant is referring to are recommendations made in two geotechnical reports that were commissioned by the Project sponsor as part of the Project design and development phase. These reports were reviewed as part of the DBI building permit review process, which exists within the City's existing regulatory framework. The Project Sponsor incorporated these recommendations into the Project design. Therefore, the design features mentioned in the CEQA Determination are not mitigation measures. They are part of the Project design and were developed through the City's existing regulatory process, and the exemption was correctly issued.

Issue #3: "Both the Sanborn Map and the Block Book Map used by the Planning Department still show the lot as a single development lot with a single family home on it."

Response #3: The Department updated the City's Block Book Maps in 2010, and Block Book Map 3027A shows Lots 116 and 117. While the Appellant is correct that the Sanborn Map does show a single lot, Planning staff are aware that the map dates from 1998 and does not reflect the most up-to-date development pattern. Most importantly, the CEQA Determination issued for the proposed Project correctly describes the Project site as consisting of Lots 116 and 117.

Issue #4: "The proposed project is not correctly described by the Department. The proposal is to merge the two lots at the site and then to subdivide that lot into four separate development lots."

Response #4: The Project analyzed in the CEQA Determination is based on the project description provided by the Project sponsor in the Environmental Evaluation Application, which states that the Project would require a lot split/subdivision and a rear yard variance. These are the approvals noted in the CEQA Determination. In the Environmental Exemption Application, the Project sponsor used the term "subdivision" in the general term of subdivision law and did not include the specific and technical nature in which the lots would be subdivided.

The Department of Public Works approved a Tentative/Parcel Map for a four-lot subdivision at the Project site on September 7, 2010. The Tentative/Parcel Map approval does not specifically reference a lot merger. Regardless of the approvals required for the Project, Department staff evaluated the physical environmental effects of the Project and found that no significant adverse physical changes would result from the Project as a whole. Even were the CEQA Determination to have noted that the Project requires a lot merger, it would not have changed the analysis or conclusion of the Department that the Project is exempt from CEQA.

Issue #5: "Three new single family homes are to be constructed and, the existing building on the site has already been altered. The rear portion of the building was removed by the developer in order to squeeze it into the new lot configuration."

Response #5: Under CEQA, a proposed project is analyzed in its context as it exists when its application is submitted to the Department. This is considered its "baseline" condition against which the proposed project is analyzed for its potential physical impacts to the environment. As discussed in "Background" of this memo, the rear portion of the existing single-family dwelling on Lot 117 was removed prior to the submittal of the Environmental Exemption Application and, according to the Project sponsor, prior to the purchase of the property. Therefore, the dwelling without the rear portion was appropriately considered the baseline condition when Department staff analyzed the proposed Project.

Issue #6: "The work on the existing building was done illegally by the developer (who) obtained a "retroactive" permit to legalize the work already done in order to prepare the site for the proposed four lot subdivision. The Environmental Document states that 'the existing single-family dwelling at 795 Foerster Street is not proposed for alteration. (Page 2-Paragraph 1) However, the existing building has already been altered and clearly must be considered as part of the 'project' under CEQA analysis..."

Response #6: The Appellant has provided no substantive evidence that the removal of the rear portion of the dwelling at 795 Foerster Street was done for the purpose of preparing the Project site for a four-lot subdivision. Issuance of a permit to legalize work done prior to the Project sponsor's filing an Environmental Evaluation Application is an approval action that does not change physical baseline conditions at the time of the application submittal. According to the Project sponsor, the rear portion was removed by the previous owner. The removal is not part of the Project that is the subject of the CEQA Determination and appropriately was not analyzed as such.

Issue #7: "Appellant does not believe that the three new vacant lots will be Code compliant with regard to size."

Response #7: The Zoning Administrator, Planning Commission, and Board of Supervisors determined that the three new vacant lots created from the subdivision would be fully code-

complying. On August 19, 2009 and November 3, 2009, in meetings with Department staff, the Department's Zoning Administrator confirmed that the lots would be code complying. On August 5, 2010, the Planning Commission confirmed the Code compliance of the lots at a Discretionary Review hearing. The Board of Supervisors confirmed that the lots are code complying at a Tentative/Parcel Map appeal hearing on October 5, 2010.

Issue #8: "The Department has incorrectly stated... the existing single family dwelling that is located on the corner of Lot 117... "will not be demolished or altered," ... However, City records show that the fourth building involved in the project has already been altered as part of the overall project... that action by the developer to alter the fourth building as part of the "project" moves the project outside the strict language of the proposed exclusion from environmental review."

Response #8: For CEQA analysis purposes, the Department assesses what physical effects would occur from the project as compared to the baseline conditions, which for this Project was set at the time of filing of the Environmental Exemption Application. At the time of the Environmental Exemption Application submittal, the rear portion of the structure on Lot 117 (795 Foerster Street) did not exist. The baseline for CEQA analysis was the structure without the rear portion. For further information, see Responses #5 and #6.

Issue #9: The Appellant states that "the Exemption actually states the conclusions, without any evidence or support that, 'the proposed project may reduce the potential for ground displacements' because of the mitigations and improvements brought to the site by the Project Sponsor in the construction of the project itself."

Response #9: The source of this statement in the CEQA Determination is Trans Pacific Geotechnical Consultants, Inc., the geotechnical consultant that prepared the supplemental geotechnical report. Although not clearly attributed in the CEQA Determination, during preparation of the CEQA Determination the consultant informed Department staff in a phone conversation that the Project site could be improved by the proposed Project. This was verified by Mr. Eddy Lau of Trans Pacific Geotechnical Consultants, Inc. on February 7, 2011 during Department staff's preparation of this appeal response memo.⁶ Mr. Lau affirmed that the Project could improve site stability. This improvement would occur by diminishing the exposure of the Project site to storm run-off. The Project would capture run-off in the gutter and channel it to the storm drain/sewer system. This would reduce the amount of storm run-off seeping into the ground, reducing soil instability. While replacement of the retaining wall could improve site stability, maintaining the existing wall would not have any negative effects. Therefore, the Project could improve site stability and reduce the potential for ground displacements, as stated in the CEQA Determination.

⁶ Personal communication with Eddy Lau, Registered Civil and Geotechnical Engineer, Trans Pacific Geotechnical Consultants, and Andrea Contreras, San Francisco Planning Department, February 7, 2011.

CONCLUSION

The Department conducted an in-depth and thorough analysis of the proposed Project at 795 Foerster Street, 203 Los Pamos Drive, 207 Los Pamos Drive and 213 Los Pamos Drive under the CEQA Guidelines. The Project description was accurately described and analyzed for CEQA purposes, and the potential for significant physical impacts resulting from the Project does not exist. The location of the Project site in a hazard zone does not preclude the use of a categorical exemption because the presence of a potential landslide hazard area does not constitute an unusual circumstance. Two geotechnical reports were prepared and found that the Project site was suitable for development. The improvements described in the report do not constitute mitigation measures as they are routinely incorporated into the project design features that are the result of the standard DBI permit review process and do not reach above and beyond the City's regulatory framework.

For the reasons stated above and in the June 8, 2009 Certificate of Determination, the CEQA Determination complies with the requirements of CEQA and the Project is appropriately exempt from environmental review pursuant to the cited exemptions. The Department therefore recommends that the Board uphold the Determination of Exemption from Environmental Review and deny the appeal of the CEQA Determination.

Attachment A




LAW OFFICES OF
STEPHEN M. WILLIAMS

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January 6, 2011

Honorable David Chiu, President
San Francisco Board of Supervisors
City Hall, 1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94103

RE: Appeal of Exemption/Exclusion from Environmental Review
795 Foerster Street; 203, 207 & 213 Los Palms Drive -Block 3027A, Lot 116 & 117
Permit No: 2008.0558E

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President Chiu and Members of the Board:

This Office represents the Miraloma Park Improvement Club ("MPIC"). The MPIC has existed since 1935 and is dedicated to bringing community information and services to the Miraloma Park neighborhood. Miraloma Park is a community of 2200 homes located on Mount Davidson in the heart of San Francisco.

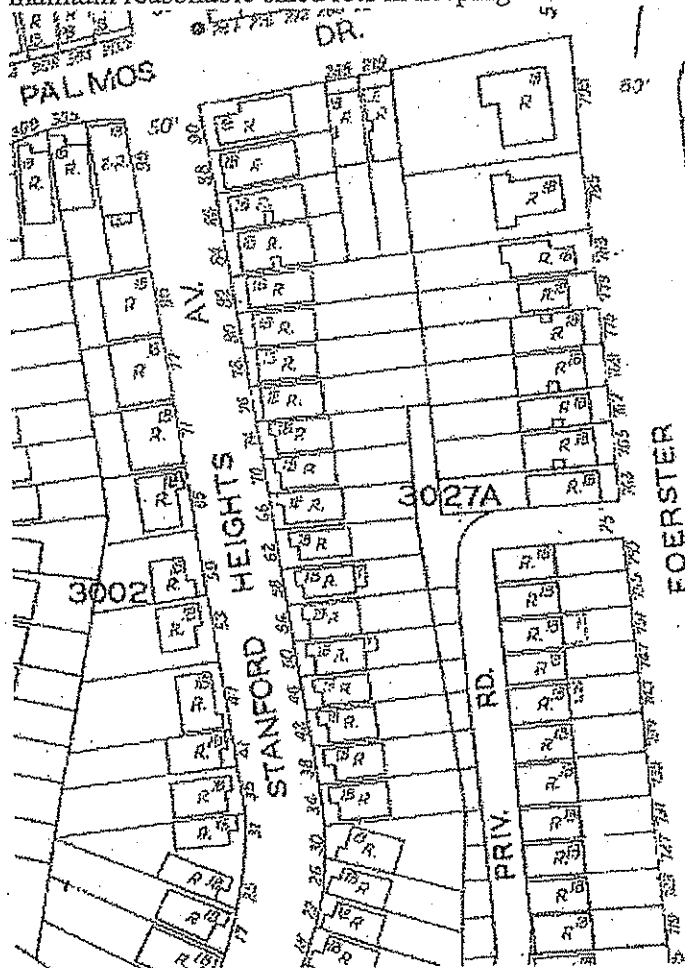
At the request of MPIC I am writing to appeal the above-referenced Determination of Exemption/Exclusion from Environmental Review a copy of which is attached as Exhibit A. In granting this four lot subdivision project an exemption from the protections of the California Environmental Quality Act (CEQA) the environmental officer has erred procedurally and substantively. A categorical exemption cannot be allowed for this project because there is a specific exclusion applicable to the site due to a historic (and fatal) landslide which occurred over the project area and this fact also constitutes an "unusual circumstance"—which also excludes the use of a categorical exemption. Further, the Certificate of Exemption is five pages in length and is replete with descriptions of mitigations which "the project sponsor has agreed to," in order to mitigate the landslide hazard at the site. This is completely improper. It is well established in California law that mitigation measures may support a negative declaration but not a categorical exemption. If a project may have a significant effect on the environment, CEQA review must occur and only then are mitigation measures relevant.

Among other things, the Environmental Review Officer misapplied CEQA's categorical exemption to an area which the Certificate of Determination of Categorical Exemption itself states is "*located in an area subject to potential landslide hazard*" and is in an area mapped by the State of California as a "Seismic Hazards Study Zone." Ironically, the Exemption actually states the conclusion, without any evidence or support that, "*the proposed project may reduce the potential for ground displacements*" because of the mitigations and improvements brought to the site by the Project Sponsor in the construction of the project itself. This is an astoundingly incorrect use of the exemption process and the City may not rely on mitigation measures to determine that this large construction project located in a known hazardous zone is categorically exempt from the California Environmental Quality Act (CEQA).

David Chiu, President
San Francisco Board of Supervisors

January 6, 2011

Background. The subject site is in the Miraloma Park neighborhood west of Twin Peaks. The subject lot was a single development lot (Lot 1) until 2006 when it was divided into two lots (Lots 116 & 117) In 2006 the proposal was to add another single family home at the site and to maintain reasonable sized lots in keeping with the existing neighborhood.



The site has a single family home at 795 Foerster Street. The rear extension shown on the building was removed as part of the project and the proposed four lot subdivision.

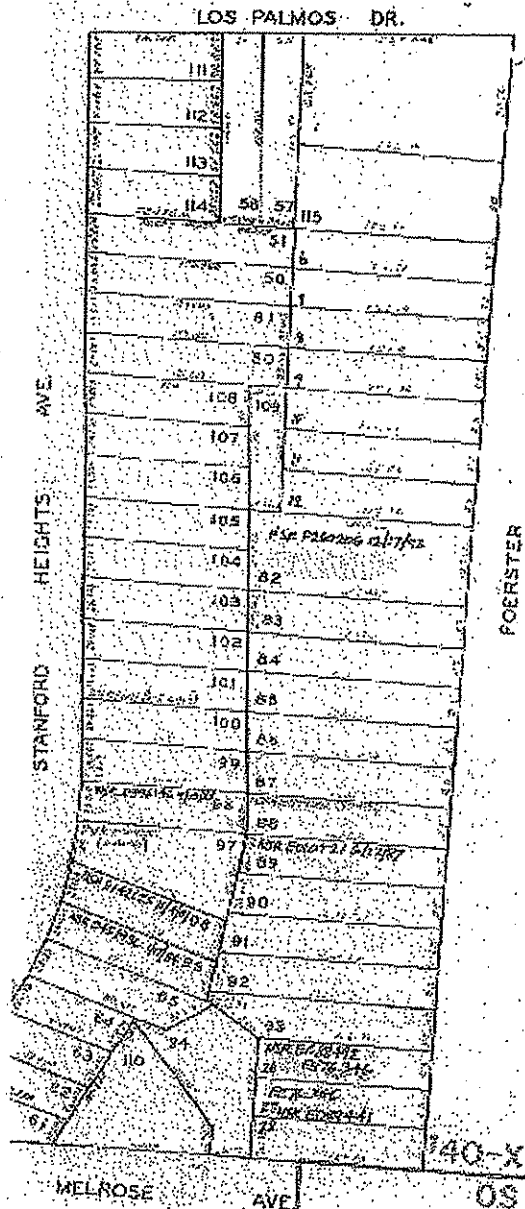
Both the Sanborn Map (above) and the Block Book Map (below) used by the Planning Department still show the lot as a single development lot with a single family home on it. The proposed project is not correctly described by the Department. The proposal is to merge the two lots at the site and then to subdivide that lot into four separate development lots. Three new single family homes are to be constructed and, the existing building on the site has already been altered. The rear portion of the building was removed by the developer in order to squeeze it into the new lot configuration. The work on the existing building was done illegally by the developer but, in March 2010, the developer obtained a "retroactive" permit (Permit 2010.02176700) to legalize the work already done in order to prepare the site for the proposed four lot subdivision.

The Environmental Document states that "the existing single-family dwelling at 795 Foerster Street is not proposed for alteration." (Page 2-Paragraph 1) However, the existing building has already been altered and clearly must be considered as part of the "project" under a CEQA

David Chiu, President
San Francisco Board of Supervisors

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analysis, just as the demolition and replacement of the retaining wall at the site is part of the "project" under CEQA. All work at the site is part of the "project."



The original lot was Lot #1 which was subdivided into two lots in 2006. The proposed project will now merge the two lots and then re-subdivide the site into four new lots.

Project Description.

The Project includes the subdivision of lots 116 and 117 into a total of four lots, and the construction of three new single-family dwellings and the alteration of the existing building at 795 Foerster Street. Appellant does not believe that the three new vacant lots will be Code compliant with regard to lot size. In order to satisfy the absolute minimum square footage requirement of 1750 square feet, each lot must fall entirely within 125 feet of the intersection of Los Palms and Foerster. The proposed three new single-family dwellings fronting Los Palms Drive do not meet this requirement.

David Chiu, President
San Francisco Board of Supervisors

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The Department has incorrectly stated in each analysis that the existing single family dwelling that is located on the corner of Lot 117 fronting Foerster Street "will not be demolished or altered," so as to bring the "project" within the meaning of Section 15303(a) for, "up to three single-family residences may be constructed or converted under this exemption." However, City records show that the fourth building involved in the project has already been altered as part of the overall project. In and of itself, that action by the developer to alter the fourth building as part of the "project" moves the project outside the strict language of the proposed exclusion from environmental review. Categorical exemptions from CEQA are narrowly construed. Mountain Lion Foundation v. Fish & Game Com. (1997) 16 Cal. 4th 105, 125. That case held that, "exemption categories are not to be expanded beyond the reasonable scope of their statutory language." In other words, the Department could award an exemption to a project of three new single family homes, but not to a project of three new single family homes *and* the alteration of the fourth building.

One of the basic principles to govern the application of CEQA is that the statute and the guidelines are to be interpreted as broadly as possible in order to provide the maximum protection to the environment and to the people of California. In the first case to interpret CEQA, the California Supreme Court made it clear that ambiguous language found in the statute was to be applied broadly rather than narrowly. In, Friends of Mammoth v Board of Supervisors 8 Cal. 3rd 247 (1972), Justice Stanley Mosk wrote that the Act (CEQA) is to be interpreted and construed so as to give the environment the fullest protection possible. This analysis, now known as the "*Mammoth* interpretive principle" was based on the legislative statements of intent and is still applicable today.

CEQA Issues. As noted above, the project is incorrectly described by the Department in order to try and bring it within the exception from environmental review created for "three single family residences in an urbanized area." However, beyond this issue, the project cannot qualify for a categorical exemption and exclusion from all environmental review because of the history of the site, because it is located in a known hazard zone. The categorical exemption is being awarded to the project improperly based on agreed mitigations in order to address the hazardous conditions at the site. This is an entirely inappropriate and incorrect use of CEQA.

Under CEQA Section 15300.2, Class 3-- the Subject Project Must be Excluded from a Categorical Exemption Since it is located in a Mapped and Recognized Historic Slide Zone.

As detailed in the Cat Ex. itself, the project site is in a historic and documented landslide zone. In fact, this is the exact site of what is believed to be the only fatal landslide to occur in the City and County of San Francisco. Under such circumstances, there is a specific statutory "exception" from the use of the categorical exemption because of the location of this project in a known and mapped hazardous slide zone. Section 15300.2 reads in relevant part:

"15300.2. Exceptions

(a) Location. Classes 3, 4, 5, 6, and 11 are qualified by consideration of where the project is to be located -- a project that is ordinarily insignificant in its impact on the environment may in a particularly sensitive environment be significant. Therefore, these classes are considered to apply

David Chiu, President
San Francisco Board of Supervisors

January 6, 2011

all instances, except where the project may impact on an environmental resource of hazardous or critical concern where designated, precisely mapped, and officially adopted pursuant to law by federal, state, or local agencies.”

The project site is an environmentally sensitive area and is a “designated, precisely mapped, and officially adopted” hazard zone. It is inappropriate to use a categorical exemption from all environmental review for a project located in a known landslide hazard zone. Not only does it violate the statutory scheme, it violates the “common sense” exception to CEQA, which holds that Categorical Exemptions from environmental review shall not be used when there is a possibility of an environmental impact due to “unusual circumstances.” Section 15300.2 (c) states:

“(c) Significant Effect. A categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances.”

Given the history of this site a categorical exemption may not be used. Attached is a photo of the slide at the site in 1942 which killed one person and destroyed four homes. Attached below is a geologic map of the slide site and the mapped hazard zone.

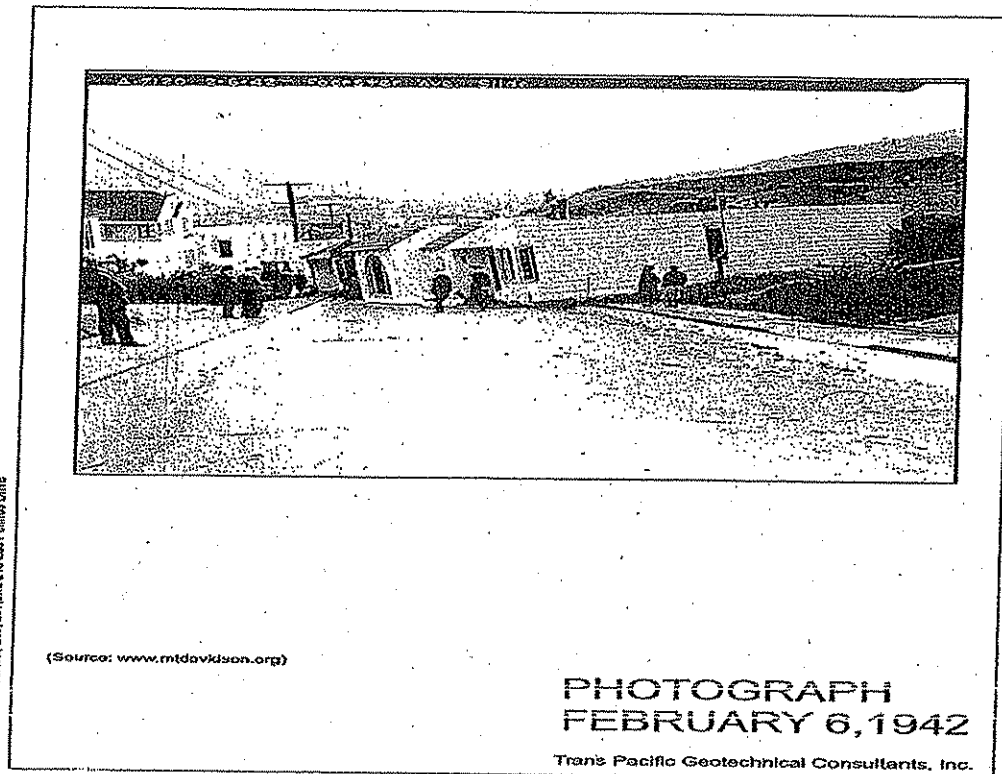
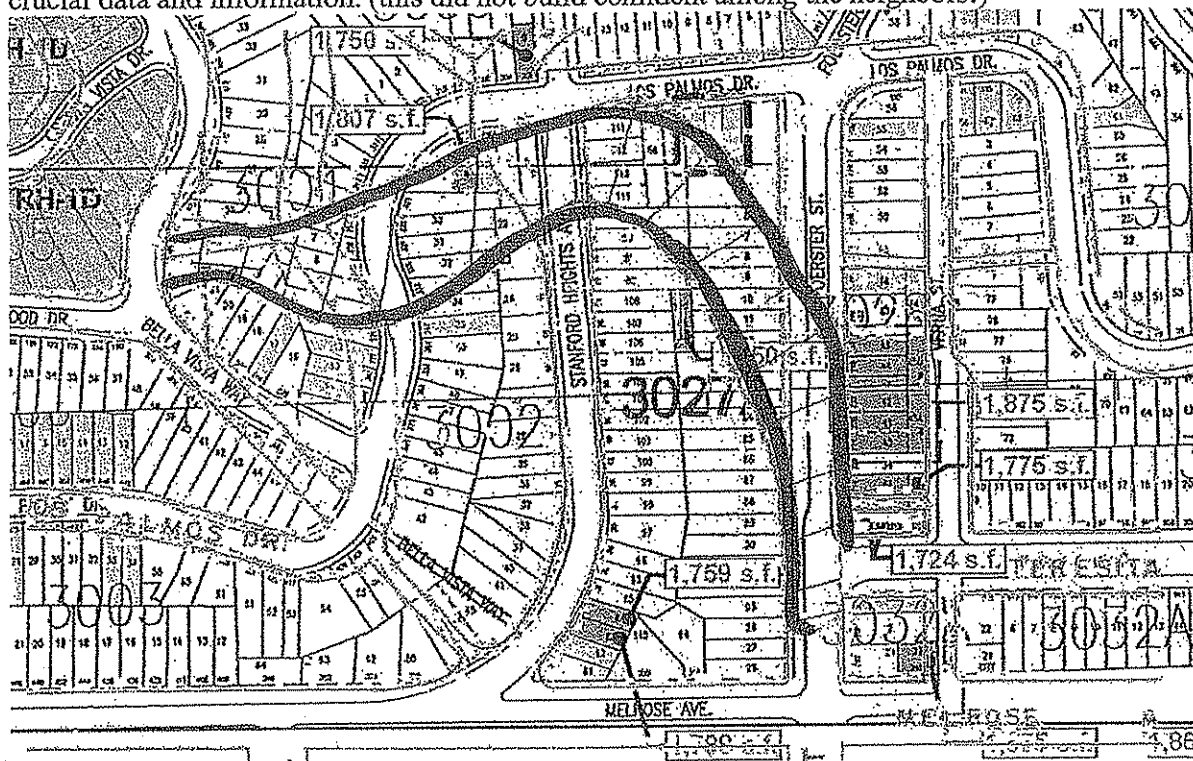


Figure 1: Show above is the aftermath of the previous landslide at the site.

January 6, 2011

The CEQA Guidelines (14 Cal. Code Regs. Section 15000 et seq.), provide that a categorical exemption, which is a rebuttable presumption, "shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances." Section 15300.2(c). Based on this exception, the subject permit cannot be exempt from the requirements of CEQA. This is a hazardous zone, the project acknowledges it is in the zone, the project provides specific mitigations to address the hazard and, those mitigations are cited and discussed in the categorical exemption itself. This is a completely improper use of the exemption process and California case law makes clear that the exemption process may not be used in this manner.

As the attached map demonstrates, the historic mud slide at the site traveled over a large portion of the project area, directly impacting all three of the proposed new building sites. Project Sponsor was made aware of these historical occurrences at the site by the neighbors and a local historian. The initial geotechnical report submitted by the developer completed omitted this crucial data and information. (this did not build confident among the neighbors!)



Three of the four new lots are in the slide zone

The City May not Rely on Mitigation Measures to Determine that a Project is Categorically Exempt from the California Environmental Quality Act (CEQA)

As set forth above, it is well established in California law that a project "can't mitigate its way" to a Categorical Exemption. Salmon Protection and Watershed Network v. County of Marin (2004) 125 Cal. App. 4th 1098. The determination of whether a project may impact a designated

David Chiu, President
San Francisco Board of Supervisors

January 6, 2011

environmental resource must be made without reference or reliance upon any proposed mitigation measures. Reliance upon mitigation measures (whether included in the application or later adopted—as the Department suggests DBI will do) involves an evaluative process of assessing those mitigation measures and weighing them against potential environmental impacts, and that process must be conducted under established CEQA standards and procedures for EIRs or negative declarations.

In this instance the Categorical Exemption itself sets forth the source and details of numerous mitigations the project must undertake in order to limit the environmental impacts and to avoid future mud slides or other seismic activity at the site. This is completely improper and violates CEQA. Further the references to future actions, review and mitigations which may be undertaken by DBI are also an improper use of the Categorical Exemption procedure.

The *Salmon Protection* case is directly on point. The very discussion in the Categorical Exemption in this case of mitigation measures and possible “improvement” to the stability of the hazardous slide zone completely precludes the use of the exemption process. As the court stated:

“The determination of whether a project may impact a designated environmental resource must be made without reference to or reliance upon any proposed mitigation measures. (*Azusa, supra*, 52 Cal.App.4th at pp. 1199-1200, 61 Cal.Rptr.2d 447.) Reliance upon mitigation measures (whether included in the application or later adopted) involves an evaluative process of assessing those mitigation measures and weighing them against potential environmental impacts, and that process must be conducted under established CEQA standards and procedures for EIRs or negative declarations.” (*Id.* at p. 1201)

The findings by the City in the Categorical Exemption that the project site is suitable for development *provided* that the recommended mitigations from the two separate geotechnical investigations are incorporated into the project design and construction are specific mitigations to avoid possible environmental impacts. A categorical exemption may not be used in this case.

Conclusion. Thus, we request that the Board of Supervisors order that a proper CEQA review be done. Planning did not properly apply CEQA to this project and the project sponsor will have to prepare at least a negative declaration for the project in question. The City cannot rely on a categorical exemption because of the scope of the project, the location of the project and because the categorical exemption relies of specific and future mitigations to avoid environmental impacts.

Appellant respectfully request that the Board set aside the categorical exemption and mandate environmental review of this proposed project.

Sincerely,

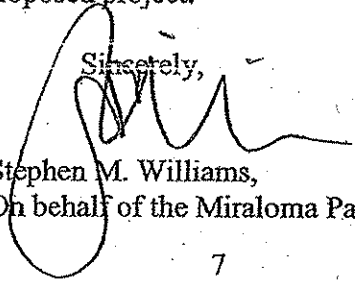

Stephen M. Williams,
On behalf of the Miraloma Park Improvement Club

Exhibit A



SAN FRANCISCO PLANNING DEPARTMENT

Certificate of Determination EXEMPTION FROM ENVIRONMENTAL REVIEW

Case No.: 2008.0558E
 Project Title: 795 Foerster Street, 203 Los Pamos Drive,
 207 Los Pamos Drive and 213 Los Pamos Drive
 Zoning: RH-1 (Residential, House Districts, One-Family) Use District
 40-X Height and Bulk District
 Block/Lot: 3027A/116 & 117
 Lot Size: Approximately 3,930 and 5,360 square feet (sq. ft.), respectively
 Project Sponsor: Tony Kim
 (415) 246-8855
 Staff Contact: Andrea Contreras - (415) 575-9044
 andrea.contreras@sfgov.org

1650 Mission St.
 Suite 400
 San Francisco,
 CA 94103-2479

Reception:
 415.558.6378

Fax:
 415.558.6409

Planning
 Information:
 415.558.6377

PROJECT DESCRIPTION:

The project site includes two lots on a block bounded by Los Pamos Drive, Foerster Street, Melrose Avenue and Stanford Heights in the West of Twin Peaks neighborhood. The project site is located on the southwestern corner of Los Pamos Drive and Foerster Street in a primarily residential area. Lot 117 is approximately 5,360 square feet (sf), and currently contains a two-story, 23-foot tall, single-family dwelling with 2 off-street parking spaces. Lot 116 is approximately 3,930 sf and is currently vacant.

(Continued on reverse side)

EXEMPT STATUS:

Categorical Exemption Classes 1 and 3. (State Guidelines, Sections 15301(l)(4) and 15303(a))

REMARKS:

Please see next page.

DETERMINATION:

I do hereby certify that the above determination has been made pursuant to State and Local requirements.

June 9, 2009
 Date

[Signature]
 BILL WYCKO
 Environmental Review Officer

cc: Tony Kim, Project Sponsor
 M. Smith, E. Watty & A. Contreras, Planning Dept.
 D. Washington, SW Quadrant
 Supervisor Sean Elsbernd, District 7

V. Byrd, Bulletin Board and Master Decision File
 Exemption/Exclusion File
 Historic Preservation Distribution List
 Sue Hestor

PROJECT DESCRIPTION (CONTINUED):

The proposed project includes the subdivision of Lots 116 and 117 into four lots and construction of three single-family dwellings fronting on Los Palmos Drive. The first part of the proposal is to subdivide the two existing lots into four lots. The resulting four lots would meet the *Planning Code* requirements for minimum lot size for the RH-1 zoning use district.¹ The proposed subdivision would require a permit from the Department of Public Works. The existing single-family dwelling at 795 Foerster Street is not proposed for alteration and would be subject to a rear yard variance, as the subdivision of Lot 117 would result in a lot with a rear yard smaller than the 25 percent required by the *San Francisco Planning Code*. The proposed construction on the resulting three lots fronting Los Palmos Drive would be single-family dwellings. Each new single-family dwelling would be approximately 2,400 sf and 21 feet in height with 2 off-street parking spaces. In addition, the existing retaining wall along the southern property line of Lots 116 and 117 would be demolished and replaced with a concrete retaining wall that would provide back drainage. The proposed project would be consistent with the *General Plan* and with the zoning designation.

REMARKS (continued):

Archeological Resources: The proposed development includes construction of three single-family dwellings and replacement of the existing retaining wall along the southern edge of Lots 116 and 117. The construction of the new dwellings would require excavation to a depth of four to six feet to construct one two-car garage per unit. The proposed dwellings would be supported on a drilled pier and grade beam foundation. The piers would extend at least 10 feet below grade. The Department reviewed the project for impacts to archeological resources and determined that no CEQA significant archeological resources would be affected, specifically prehistoric and known archeological resources.² Therefore, the proposed project may be found to be exempt from environmental review if other criteria are satisfied.

Geotechnical: The project site has an average slope of approximately 19 percent.³ The San Francisco *General Plan* Community Safety Element contains maps that show areas of the City subject to geologic hazards. This map indicates areas in which one or more geologic hazards exist. The project site is located in an area subject to slight ground shaking from earthquakes along the San Andreas (Map 2) and Northern Hayward (Map 3) Faults and other faults in the San Francisco Bay Area. The project site is not located in an area of liquefaction potential (Map 4). However, the project site is located in an area subject to potential landslide hazard (Map 5), a Seismic Hazards Study Zone (SHSZ) designated by the California Division of Mines and Geology. Specifically, the southwest portion of the subject site lies

¹ *Planning Code* Section 121(e)(2) states that in RH-1 zoning use districts the minimum lot area shall be 2,500 square feet, except that the minimum lot area for any lot having its street frontage entirely within 125 feet of the intersection of two streets that intersect at an angle of not more than 135 degrees shall be 1,750 square feet.

² MEA Preliminary Archeological Review Checklist for 795 Foerster Street (aka 795 Foerster Street, 203 Los Palmos Drive, 207 Los Palmos Drive and 213 Los Palmos Drive), September 9, 2008. This document is on file and available for public review by appointment at the Planning Department, 1650 Mission Street, 4th Floor, as part of Case File No. 2008.0558E.

³ Pursuant to *Planning Code* Section 102.12(b) and (c), the average slope of a site is determined by measuring the rise of elevation divided by the distance or length of the lot, between the center of the front property line and the center of the rear property line of a legal lot of record or a proposed new lot.

within an area of potential earthquake-induced landsliding. The southwest portion of the project site and adjacent areas are included in the Seismic Hazard Zones map most likely because of the mapped landslide deposit and future potential for permanent ground displacements resulting from topographic features. However, the proposed project may reduce the potential for ground displacements by improving site drainage and adding rigidity within the slope with the proposed structural improvements, such as the retaining wall replacement.

The project sponsor has provided two geotechnical investigation reports prepared by California-licensed geotechnical engineers that are on file with the Department of City Planning and available for public review as part of the project file. The initial geotechnical investigation report⁴ found the project site suitable for development provided the recommendations included in the report are incorporated into the design and construction of the proposed development. In general, the recommendations contained in the report include but are not limited to: site preparation and grading; seismic design; appropriate foundation; retaining walls; slab-on-grade floors and exterior flatwork; site drainage; and maintenance. The sponsor has agreed to follow the recommendations of the report, specifically: drilled, cast-in-place, reinforced concrete piers of at least 14 inches in diameter extending 10 feet below grade to support proposed structures; removal of any groundwater encountered during pier shaft drilling; the use of fully backdrained retaining walls; drainage directed toward downspouts that discharge into closed conduits that drain into the site storm drain system; regular maintenance of drains and debris clearance; repair of sloughing or erosion before it can enlarge into landsliding; and planting of a dense growth of deep-rooted ground cover to minimize erosion.

A supplemental report⁵ was prepared in response to neighborhood concern regarding a mud flow that occurred in the project area in 1942. The mud flow is mapped on the Preliminary Geologic Map of the San Francisco South 7.5' Quadrangle and Hunters Point 7.5' Quadrangle. The supplemental report also cites a plan prepared by the San Francisco Department of Public Works (DPW) that documents the destruction of three houses on the project block caused by the mud flow. A drawing in the DPW plan indicates the path of the mud flow encompassed the southeast portion of the rear yard at 795 Foerster Street. Trans Pacific Geotechnical Consultants, Inc. has concluded that based on a literature review of the 1942 mud flow, field exploration, laboratory testing, and engineering analyses, the project site shows no evidence of slope instability and is suitable for the proposed lot subdivision and residential construction.

The final building plans would be reviewed by the Department of Building Inspection (DBI). In reviewing building plans, the DBI refers to a variety of information sources to determine existing hazards and assess requirements for mitigation. Sources reviewed include maps of Special Geologic Study Areas and known landslide areas in San Francisco as well as the building inspectors' working knowledge of areas of special geologic concern. The above-referenced geotechnical investigation would be available for use by the DBI during its review of building permits for the site. Also, DBI could require

⁴ Geotechnical Investigation Report for Planned Residential Development at 795 Foerster Street, San Francisco California, prepared by Earth Mechanics Consulting Engineers, May 26, 2008. A copy of this report is available for review at the San Francisco Planning Department as part of Case File No. 2008.0558E.

⁵ Supplementary Geotechnical Investigation Report for Proposed Housing Development at 795 Foerster Street, 203, 207, 213 Los Pinos Drive, San Francisco, California, prepared by Trans Pacific Geotechnical Consultants, Inc., April 7, 2009. A copy of this report is available for review at the San Francisco Planning Department as part of Case File No. 2008.0558E.

that additional site-specific soils report(s) be prepared in conjunction with permit applications, as needed. In light of the above, the project could not result in a significant environmental effect with respect to geotechnical matters. As such, the proposed project may be found to be exempt from environmental review if other criteria are satisfied.

Biological Resources: Although the site is vegetated, it is in an urban area covered with structures and other impermeable surfaces. A review of the California Natural Diversity Database indicates that no rare, threatened or endangered species are known to exist in the project vicinity, and the project site does not support or provide habitat for any rare or endangered plant or animal species. No riparian habitat, sensitive natural communities, or wetlands exist on or near the site. No other important biological resources exist on or near the site. Therefore, there would be no project-related impacts to sensitive habitat.

Article 16 of the *San Francisco Public Works Code*, the Urban Forestry Ordinance, provides for the protection of "landmark" trees, "significant" trees, and street trees. Landmark trees are formally designated by the Board of Supervisors upon recommendation of the Urban Forestry Council, which determines whether a nominated tree meets the qualifications for landmark designation by using established criteria (*San Francisco Public Works Code*, Section 810). Special permits are required to remove a landmark tree on private property or on City-owned property. A "significant tree" is a tree: (1) on property under the jurisdiction of DPW, or (2) on privately-owned property within 10 feet of the public right-of-way that meet certain size criteria. To be considered significant, a tree must have a diameter at breast height in excess of 12 inches, a height in excess of 20 feet, or a canopy in excess of 15 feet (Section 810A(a)). Street trees are trees within the public right-of-way or on DPW's property. Removal of protected trees requires a permit, and measures to prevent damage to those trees.

There are no landmark or significant trees on the property.⁶ The removal of four existing trees at the northwest corner of Lot 116 would not require a permit or preventative measures. The proposed project would remove vegetation on Lot 116 and the western half of Lot 117, including cacti. The project sponsor proposes to preserve and transplant large cacti from the project site to an off-site location.⁷ The project sponsor also proposes to plant three new street trees in front of 203, 207, and 213 Los Pinos Drive. The proposed project would not be subject to any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance.

Given that no rare, threatened or endangered species are known to exist in the project vicinity, and the project site does not support or provide habitat for any rare or endangered plant or animal species, the project would not result in a significant environmental effect with respect to biological resources. As such, the proposed project may be found to be exempt from environmental review.

⁶ Ted Kipping, Certified Arborist, Tree Disclosure Statement for 795 Foerster Street. A copy of this statement is available for review at the San Francisco Planning Department as part of Case File No. 2008.0558E.

⁷ Personal communication between Andrea Contreras, Major Environmental Analysis, and Tony Kim, project sponsor, March 24, 2009.

Exempt Status:

CEQA State Guidelines Section 15301(1)(4), or Class 1, provides an exemption from environmental review for the demolition and removal individual small structures, including appurtenant structures. The proposed project would result in the demolition, removal and replacement of a retaining wall, resulting in no significant environmental effects. This demolition would therefore be exempt from environmental review under Class 1.

The proposed project includes construction of three new, single-family residences. CEQA State Guidelines Section 15303(a), or Class 3, provides an exemption from environmental review for the construction of up to three single-family residences in an urbanized area. Therefore, the proposed construction of three new single-family residences is exempt from environmental review under Class 3.

Conclusion:

CEQA State Guidelines Section 15300.2 states that a categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances. There are no unusual circumstances surrounding the current proposal that would suggest a reasonable possibility of a significant effect. The proposed project would have no significant environmental effects. Under the above-cited classifications, the proposed project is appropriately exempt from environmental review.

Request for a New hearing Date --203 Los Palms
Stephen M. Williams
to:
board.of.supervisors, Andrea.Contreras, brett
01/28/2011 11:28 AM
Show Details

BOS-11
City Atty
File # 110041

History: This message has been forwarded.

Clerk of the Board of Supervisors:

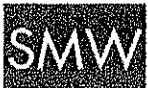
Attached please find the Appellant's stipulation to a new hearing date as requested by the developer.

Thank you.

Steve Williams

Stephen M. Williams
Law Offices of Stephen M. Williams
1934 Divisadero Street
San Francisco, CA 94115
Phone: (415) 292-3656
Fax: (415) 776-8047

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LAW OFFICES OF
STEPHEN M. WILLIAMS

1934 Divisadero Street | San Francisco, CA 94115 | TEL: 415.292.3656 | FAX: 415.776.8047 | smw@stevewilliamsllaw.com

January 28, 2011

Honorable David Chiu, President
C/O Angela Calvillo, Clerk of the Board
San Francisco Board of Supervisors
City Hall, 1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94103

RE: Appeal of Exemption/Exclusion from Environmental Review
795 Foerster Street; 203, 207 & 213 Los Palms Drive --Block 3027A, Lot 116 & 117
Hearing Date February 15, 2011

President Chiu and Members of the Board:

This Office represents the Miraloma Park Improvement Club ("MPIC"), appellant in the above noted matter. We have been contacted by the representative for the developer, Brett Gladstone, who has requested that a new date be selected for the hearing.

At his request, MPIC is willing to stipulate to a new date for the hearing of March 22, 2011. We request that the hearing be moved to that new date. Thank you for your consideration of this request.

Sincerely,

Stephen M. Williams,
On behalf of the Miraloma Park Improvement Club

CC: MPIC
M. Brett Gladstone
Andrea Contreras, MEA

M. BRETT GLADSTONE

GLADSTONE & ASSOCIATES
ATTORNEYS AT LAW
PENTHOUSE, 177 POST STREET
SAN FRANCISCO, CALIFORNIA 94108

File # 110041
TELEPHONE (415) 434-9500
FACSIMILE (415) 394-5188
admin@gladstoneassociates.com

BOS-11, Joy
City Atty

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2010 JAN 26 PM 3:17

RE

January 24, 2011

President Chiu and Members of the Board Supervisors
Board of Supervisors
City and County of San Francisco
City Hall
1 Dr. Carlton B. Goodlett Pl. Room #244
San Francisco, CA 94102-4689

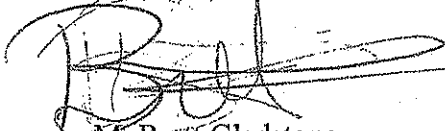
Re: Hearing Date: February 15, 2011
Appeal of Categorical Exemption
795 Foerster Street and 203, 207 and 213 Los Paltos Drive

Dear President Chiu and Members of the Board Supervisors:

We represent the owner of the properties in the above-referenced Appeal. The hearing date currently is scheduled for February 15. I am unavailable on this date and thus request a continuance of the hearing date. We have discussed this request with the Appellant's attorney, Stephen Williams. We understand the Appellant is agreeable to continue the hearing to March 22, and will be confirming this by mail. This date is acceptable to the property owner as well. Therefore, we respectfully request that the Board of Supervisors continue the hearing date from February 15 to March 22.

We appreciate your attention to this matter.

Very truly yours,


M. Brett Gladstone

cc: Clerk of the Board of Supervisors
Gabriel Ng
Stephen Williams

BOARD of SUPERVISORS



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 544-5227

January 13, 2011

Stephen M. Williams
Law Offices of Stephen M. Williams
1934 Divisadero Street
San Francisco, CA 94115

Subject: Appeal of Determination of Exemption from Environmental Review for a Project Located at 795 Foerster Street, 203 Los Pamos Drive, 207 Los Pamos Drive, and 213 Los Pamos Drive

Dear Mr. Williams:

The Office of the Clerk of the Board is in receipt of a memorandum dated January 12, 2011, (copy attached) from the City Attorney's office regarding the timely filing of an appeal of the Determination of Exemption from Environmental Review for a project located at 795 Foerster Street, 203 Los Pamos Drive, 207 Los Pamos Drive, and 213 Los Pamos Drive.

The City Attorney has determined that the appeal was filed in a timely manner.

A hearing date has been scheduled on **Tuesday, February 15, 2011, at 4:00 p.m.**, at the Board of Supervisors meeting to be held in City Hall, Legislative Chamber, Room 250, 1 Dr. Carlton B. Goodlett Place, San Francisco.

Pursuant to the Interim Procedures 7 and 9, please provide to the Clerk's Office by:

8 days prior to the hearing: any documentation which you may want available to the Board members prior to the hearing;

11 days prior to the hearing: names of interested parties to be notified of the hearing.

Please provide 18 copies of the documentation for distribution, and, if possible, names of interested parties to be notified in label format.

If you have any questions, please feel free to contact Deputy Director, Rick Caldeira at (415) 554-7711 or Legislative Clerk, Joy Lamug at (415) 554-7712.

Very truly yours,

A handwritten signature in black ink, appearing to read "Angela Calvillo".

Angela Calvillo
Clerk of the Board

c:
Cheryl Adams, Deputy City Attorney
Kate Stacy, Deputy City Attorney
Mariena Byrne, Deputy City Attorney
Scott Sanchez, Zoning Administrator, Planning Department
Bill Wycko, Environmental Review Officer, Planning Department
AnMarie Rodgers, Planning Department

Tina Tam, Planning Department
Nannie Turrell, Planning Department
Linda Avery, Planning Department
Georgia Powell, Planning Department
Cynthia Goldstein, Board of Appeals
Victor Pacheco, Board of Appeals

CITY AND COUNTY OF SAN FRANCISCO

OFFICE OF THE CITY ATTORNEY



DENNIS J. HERRERA
City Attorney

MARLENA G. BYRNE
Deputy City Attorney

DIRECT DIAL: (415) 554-4620
E-MAIL: marlena.byrne@sfgov.org

MEMORANDUM

TO: Angela Calvillo
Clerk of the Board of Supervisors

FROM: Marlena G. Byrne *MGB*
Deputy City Attorney

DATE: January 12, 2011

RE: Appeal of Determination of Exemption from Environmental Review for Project
Located at 795 Foerster Street, 203 Los Palmos Drive, 207 Los Palmos Drive, and
213 Los Palmos Drive

You have asked for our advice on the timeliness of an appeal to the Board of Supervisors by Stephen Williams, on behalf of the Miraloma Park Improvement Club, received by the Clerk's Office on January 7, 2011, of the Planning Department's determination that a project located at 795 Foerster Street, 203 Los Palmos Drive, 207 Los Palmos Drive, and 213 Los Palmos Drive is exempt from environmental review under the California Environmental Quality Act ("CEQA"). The proposed work involves the subdivision of two existing lots into four and the construction of three new single-family homes fronting on Los Palmos Drive. The Appellant provided a copy a Certificate of Determination, Exemption From Environmental Review, issued by the Planning Department on June 8, 2010. ~~2009~~ *(MGB)*

We are informed that on August 5, 2010, the Planning Commission heard a request for discretionary review of the proposed new construction at 203 Los Palmos Drive and declined to take discretionary review and instead approved the new construction. We are also informed that the Planning Department approved the other site permits for the proposed project, and discretionary review was either not requested or was requested and withdrawn for those addresses. Accordingly, the appeal is ripe for review.

Additionally, we are informed that no building permits have yet been finally approved for the proposed project. The site permits for the proposed project are currently on appeal to the Board of Appeals, calendared for hearing today. Accordingly, it is our view that the appeal is timely. Therefore, the appeal should be calendared before the Board of Supervisors. We recommend that you so advise the Appellant.

Please let us know if we may be of further assistance.

MGB

cc: Rick Caldeira, Deputy Director, Clerk of the Board
Joy Lamug, Board Clerk's Office
Cheryl Adams, Deputy City Attorney
Kate Stacy, Deputy City Attorney
John Rahaim, Director, Planning Department
Scott Sanchez, Zoning Administrator, Planning Department

Memorandum

TO: Angela Calvillo
Clerk of the Board of Supervisors
DATE: December 29, 2010
PAGE: 2
RE: Appeal of Determination of Exemption from Environmental Review for Project
Located at 795 Foerster Street, 203 Los Pamos Drive, 207 Los Pamos Drive, and
213 Los Pamos Drive

Bill Wycko, Environmental Review Officer, Planning Department
AnMarie Rodgers, Planning Department
Tara Sullivan, Planning Department
Nannie Turrell, Planning Department
Andrea Contreras, Planning Department

BOARD of SUPERVISORS



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

NOTICE OF PUBLIC HEARING

BOARD OF SUPERVISORS OF THE CITY AND COUNTY OF SAN FRANCISCO

NOTICE IS HEREBY GIVEN THAT the Board of Supervisors of the City and County of San Francisco will hold a public hearing to consider the following proposal and said public hearing will be held as follows, at which time all interested parties may attend and be heard:

Date: Tuesday, February 15, 2011

Time: 4:00 p.m.

Location: Legislative Chamber, Room 250 located at City Hall, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102

Subject: File No. 110041. Hearing of persons interested in or objecting to the decision of the Planning Department dated June 8, 2009, Case No. 2008.0558E, that a project located at 795 Foerster Street, 203 Los Paltos Drive, 207 Los Paltos Drive, and 213 Los Paltos Drive is exempt from environmental review under Categorical Exemption, Classes 1 and 3 (State Guidelines Sections 15301(I)(4) and 15303(a)). The proposed project involves the subdivision of two existing lots into four and the construction of three new single-family homes fronting on Los Paltos Drive, Lot Nos. 116 and 117 in Assessor's Block No. 3027A (District 7) (Appellant: Stephen M. Williams, on behalf of the Miraloma Park Improvement Club)

Pursuant to Government Code Section 65009, notice is hereby given, if you challenge, in court, the matter described above, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the Board of Supervisors at, or prior to, the public hearing.

In accordance with Section 67.7-1 of the San Francisco Administrative Code, persons who are unable to attend the hearing on these matters may submit written comments to the City prior to the time the hearing begins. These comments will be made a part of the official public records in these matters, and shall be brought to the attention of the Board of Supervisors. Written comments should be addressed to

Angela Calvillo, Clerk of the Board, Room 244, City Hall, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102. Information relating to this matter is available in the Office of the Clerk of the Board and agenda information will be available for public review on Thursday, February 10, 2011.

A handwritten signature in black ink, appearing to read 'A. Calvillo' with a stylized flourish at the end.

Angela Calvillo
Clerk of the Board

DATED: February 4, 2011