

File No. 110041

Committee Item No. \_\_\_\_\_

Board Item No. 14

## COMMITTEE/BOARD OF SUPERVISORS

### AGENDA PACKET CONTENTS LIST

Committee \_\_\_\_\_

Date \_\_\_\_\_

Board of Supervisors Meeting

Date March 22, 2011

#### Cmte Board

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| <input type="checkbox"/> | <input type="checkbox"/>            | Legislative Digest                           |
| <input type="checkbox"/> | <input type="checkbox"/>            | Budget Analyst Report                        |
| <input type="checkbox"/> | <input type="checkbox"/>            | Legislative Analyst Report                   |
| <input type="checkbox"/> | <input type="checkbox"/>            | Introduction Form (for hearings)             |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Department/Agency Cover Letter and/or Report |
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| <input type="checkbox"/> | <input type="checkbox"/>            | Grant Budget                                 |
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#### OTHER (Use back side if additional space is needed)

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|--------------------------|--------------------------|------------------------------------------------------------------------|
| <input type="checkbox"/> | <input type="checkbox"/> | <u>Appeal of Determination of Exemption from Environmental Review</u>  |
|                          |                          | <u>795 Foerster Street, 203 Los Palmos Drive, 207 Los Palmos Drive</u> |
| <input type="checkbox"/> | <input type="checkbox"/> | _____                                                                  |
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Completed by: Joy Lamug

Date March 17, 2011

Completed by: \_\_\_\_\_

Date \_\_\_\_\_

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



RECEIVED  
BOARD OF SUPERVISORS  
SAN FRANCISCO

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

March 16, 2011

2011 MAR 16 PM 3:18

ABC

RE: Supporting Letter Brief for Appeal of Exemption/Exclusion from Environmental Review  
795 Foerster Street; 203, 207 & 213 Los Paltos Drive—Block 3027A, Lot 116 & 117  
Hearing Date: March 22, 2011—Special Order 4:00pm

President Chiu and Members of the Board:

**Introduction and Summary of Appeal**

This Office represents the Appellant Miraloma Park Improvement Club (“MPIC”) and the surrounding neighbors. This letter brief is meant to be supplemental to the appeal filed January 6, 2011, which outlines the objections to the environmental review given to this project under CEQA. The purpose of this letter is to clarify and amplify important legal points we raised in the Appeal, and to provide additional supporting information.

We have appealed the above-referenced Determination of Exemption/Exclusion from Environmental Review because CEQA Guidelines Section 15300.2 (Exceptions) disallows the project to be categorically exempted from CEQA review due to the project’s location and the potential for significant effects due to geologic conditions. There is a specific physical and environmental constraint because the site is in a specifically mapped and documented seismic hazard areas, which, *by definition* is an environmentally sensitive areas requiring mitigations. It is an error of law and a violation of CEQA to grant a categorical exemption for this site and for this project.

A categorically exempt project, such as the construction of three single-family residences in an urbanized area such as San Francisco, loses its exempt status “where the project may impact on an environmental resource of critical concern where designated, precisely mapped, and officially adopted pursuant to law by federal, state, or local agencies.” Cal. Code Regs., tit. 14, § 15300. A CEQA exemption is also inapplicable “when the cumulative impact of successive projects of the same type in the same place, over time is significant.” Cal. Code Regs., tit. 14, § 15300.2, subd. (b). Nor may a categorical exemption “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.” Cal. Code Regs., tit. 14, § 15300.2, subd. (c).

In this instance a categorical exemption may not be used because: (1) the mitigations placed on the project to drill ten foot deep concrete pillars for the foundations of these small single family homes make clear that the project *may* have a significant impact on the environment; (2) the project has expanded beyond the three single family homes and involves a fourth building; (3) it is located in a precisely mapped critical environmental area, and; (4) the cumulative impacts of successive projects are so likely and obvious that the District Supervisor asked to be recused

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from any determination on the project based solely on this fact. These foreseeable and certain cumulative impacts must be considered as part of the review.

**CEQA: General Principles—There is an Obligation to Protect the Environment**

“It is state policy in California that the long-term protection of the environment shall be the guiding criterion in public decisions. *Davidon Homes v. City of San Jose* (1997) 54 Cal.App.4th 106, 112 (hereafter *Davidon Homes*). [T]he overriding purpose of CEQA is to ensure that agencies regulating activities that may affect the quality of the environment give primary consideration to preventing environmental damage. *Save Our Peninsula Committee v. Monterey County Bd. of Supervisors* (2001) 87 Cal.App.4th 99 117. To implement this policy, CEQA and the Guidelines establish a three-tiered process determining the level of environmental review required. *Davidon Homes, supra*, 54 Cal.App.4th at p. 112.) At issue here is the first step of this process, which requires public agencies to conduct a preliminary review to determine whether CEQA applies to a proposed activity. *Davidon Homes, supra*, 54 Cal.App.4th at p. 112; see Guidelines, §§ 15060, 15061. If the activity constitutes a “project” as defined by statute, CEQA applies unless the activity falls within one of the exemptions established by the Legislature or the CEQA Guidelines. (§ 21080, subd. (a); *Davidon Homes, supra*, 54 Cal.App.4th at p. 112; see § 21065 [defining “project”]. Where a project is categorically exempt, it is not subject to CEQA requirements and may be implemented without any CEQA compliance whatsoever.” Accordingly, if the agency determines that an exemption applies, no further environmental review is necessary. *Davidon Homes, supra*, 54 Cal.App.4th at p. 113.

If the proposed subdivision is not exempt, the agency must proceed to “[t]he second tier of the process” and conduct an initial study to determine whether there is “substantial evidence that the project may have a significant effect on the environment.” See Guidelines, §§ 15063, 15070; *Davidon Homes, supra*, 54 Cal.App.4th at p. 113. If so, the agency must prepare a full environmental impact report. *Davidon Homes, Supra* at p. 113.

The categorical exemptions identified in the Guidelines and used by the City in this instance represents a determination by the Secretary that particular classes of projects generally do not have a significant effect on the environment. Guidelines, § 15300; *Sunset Sky Ranch Pilots Assn. v. County of Sacramento* (2009) 47 Cal.4th 902, 907. However, the evidence before the Board shows that this exemption may not be used for the project because of its location, the application of mitigations and because of the likely cumulative impacts from successive projects of the same kind in this neighborhood.

**1. The Categorical Exemptions Should be Disallowed Because the Project is Mitigated**

The Dept’s reliance on the categorical exemptions should be disallowed because the Dept adopted mitigation measures attempting to address potential environmental effects and these measures in and of themselves provide an acknowledgement of potential adverse impacts. This argument is based on the case *Salmon Protection & Watershed Network v. County of Marin* (2004) 125 15 Cal.App.4th 1098, 1102, which held that a public agency may not rely on

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mitigation measures in order to conclude that a project is categorically exempt or that one of the exceptions to the exemption does not apply. The reliance on mitigations necessarily implies that the project *may* have a significant environmental impact.

In this case the Dept is relying on the imposition of specific mitigation measures to minimize potential adverse physical impacts of the project on a mapped seismic hazard zone designated as an environmental area of critical concern. The project does not merely rely on standard conditions of the Building Code applicable to all developments as required to be eligible for categorical exemption. The use of "drilled, cast-in-place reinforced concrete piers of at least 14" in diameter extending ten feet below grade" to support the proposed structures is highly unusual given that these are wooden buildings only two stories in height. This mitigation was designed to attempt to create seismic stability in a potential landslide hazard zone. These concrete foundation piers, together with other mitigation measures are specific to the project at issue and directly related to the mapped seismic hazard zone. Accordingly, this is an inappropriate project for a categorical exemption.

The Dept has imposed standards and mitigations far beyond any requirements from the Uniform Building Code on the project, to address soil stability and water run-off issues. These "designs" are not "common and typical concerns" for construction of small single-family homes. Here, the conditions of approval for the Project are not standard conditions imposed on residential development, but rather are intended to address specific environmental impacts resulting from construction of the project in the mapped seismic hazard zone. The special conditions imposed by the City are offered by the applicant to address specific potential environmental impacts unique to this site and its dangers. This is not permitted for a project receiving a categorical exemption from CEQA. (See, Appeal Pages 6-7)

Approving this project subject to the conditions recommended by the geotechnical investigation reports which are far above and beyond what would be required for other non-hazardous locations are specific project mitigations which are absolutely forbidden for projects receiving a categorical exemption. The Dept concludes in the Response that the "recommendations" (the mitigation measures) eliminate any potential impacts, thus making the project eligible for categorical exemption. The court in *Salmon Protection & Watershed Network* case said this is impermissible:

*"The determination of whether a project may impact a designated environmental resource must be made without reference or reliance upon any proposed mitigation measures,"* the court further wrote. *"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."*

The Department terms the special mitigations for the foundations and soil stability "*design features*" (Response Page 9) which is nearly identical to the argument rejected in the *Salmon Protection & Watershed Network* case. There, the developer's attorney deemed the mitigations

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added to the project to protect the nearby salmon watershed environment, “*project features*” that were intended to ensure the project would not have a significant environmental impact. It should be noted that the case involved one single family home, and the court found a categorical exemption could not be used. Whether or not these mitigation measures are sufficient to eliminate potential environmental impacts and future landslides or other hazards at the site is completely immaterial---these specific mitigations may not be imposed on a project under a categorical exemption.

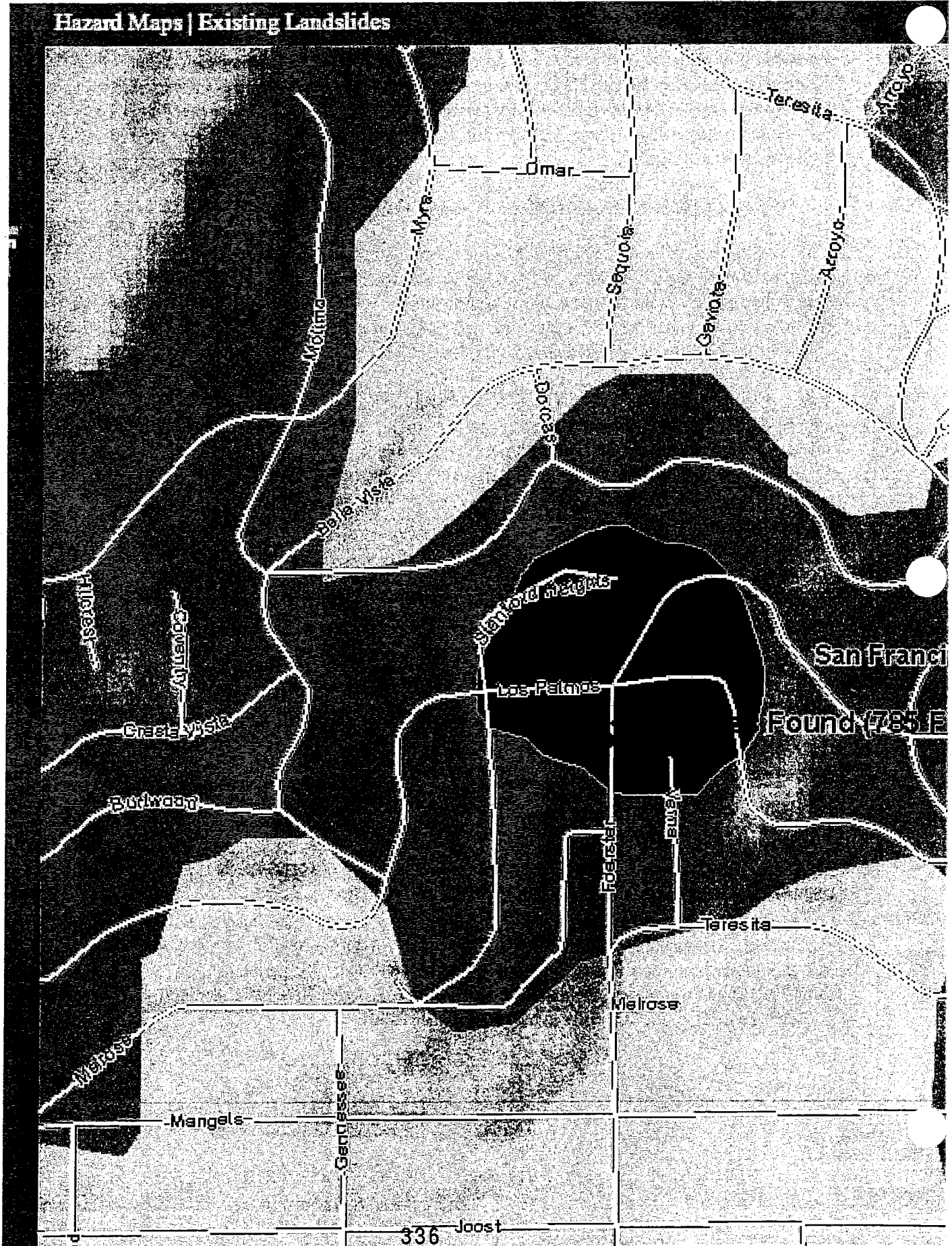
## **2. The Project is in an Officially Mapped Area of Critical Concern**

This site is in an officially mapped seismic hazard zone. By definition under CEQA, it is subject to specific mitigations because of its location. As noted above, the Dept applied mitigations to the project which would never been required or applied elsewhere outside of the site. As noted in the Appeal, 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).

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.”*

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.



Appellants are not saying that this area cannot be developed. What the appeal stands for is that it is not permissible to issue a categorical exemption for developments located in an officially mapped hazard zone such as in this case.

The historic mud slide at the site traveled over a 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. After being informed of the historic slide, a new report issued and mitigations were designed for the site.

### **3. The Total Project Exceeds the Maximum Allowed of Three Buildings**

The developer's position is that just prior to the sale, the former owner, for completely unexplained reasons, suddenly removed the addition at the rear of the property. This is incredibly fortuitous for the developers because otherwise this project could not go forward, at all. Obviously, this version of events is not credible. The Project includes the merger of two lots, Lots 116 and 117, and then the subdivision of the single lot into a total of *four* new development lots, and the construction of three new single-family dwellings and the alteration of the existing building at 795 Foerster Street. The project exceeds the exemption allowed under CEQA. In highly urbanized areas, CEQA provides that the new construction of three single family homes may be exempted from environmental review as follows:

#### **“CEQA Guidelines, Section 15303**

Class 3 consists of construction and location of limited numbers of new, small facilities or structures; installation of small new equipment and facilities in small structures; and the conversion of existing small structures from one use to another where only minor modifications are made in the exterior of the structure. The numbers of structures described in this section are the maximum allowable on any legal parcel or to be associated with a project within a two-year period. Examples of this exemption include but are not limited to:

- A. One single-family residence or a second dwelling unit in a zone which permits residential uses. In urbanized areas, up to three single-family residences may be constructed or converted under this exemption;
- B. A duplex or similar multi-family residential structure totaling no more than four dwelling units if not in conjunction with the building or conversion of two or more such structures. In urbanized areas, exemption applies to single apartments, duplexes, and similar structures designed for not more than six dwelling units;
- C. A store, motel, office, restaurant or similar commercial or institutional structure not involving the use of significant amounts of hazardous substances, and not exceeding 2500 square feet in floor area. In urbanized areas, the exemption also applies to up to four such commercial buildings not exceeding 10,000 square feet in floor area on sites zoned for such use, if not involving the use of significant amounts of hazardous substances where all necessary public services and facilities are available and the surrounding area is not environmentally sensitive.

- D. Water mains, sewage, electrical, gas, and other utility extensions including street improvements, to serve individual customers;
- E. Accessory (appurtenant) structures including garages, carports, patios, swimming pools, and fences. (Ord. 5119-B (part), 2001)"

CEQA is intended to provide the maximum protection for the environment and favors review of projects and therefore all exemptions from review are to be narrowly defined. The Department has incorrectly stated in the analysis that the existing single family dwelling that is located at 795 Foerster Street "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. In *McQueen v. Mid-peninsula Regional Open Space District* (1988) 202 Cal. App. 3d 1136, the court stated that the terms 'sale' and 'acquisition' are not interchangeable and reaffirmed that exemptions must comply with the "specific terms" of the exemption which are to be narrowly construed.

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.

Both the Sanborn Map (attached to appeal) and the Block Book Map (attached to appeal) 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 fact that this developer wrote on the permits that the work was done by the "prior owner" is evidence of nothing. The residents and neighbors saw the alteration and will testify that it occurred after the sale of the property in 2008.

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 must be considered part of the "project" under a CEQA analysis. Further, the existing single family home will obviously be renovated and further altered when the new homes are built. The Dept cannot ignore this fact to fall within the categorical exemption.



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**4. The proposed Project is Not Eligible for a Categorical Exemption because it Falls Within the Exception to Exemptions Due to Potential Cumulative Impacts**

The Dept claims that this proposal is exempt from CEQA review because it qualifies for Class 1 and Class 3 exemptions. However, “[a]ll exemptions for these classes are inapplicable when the cumulative impact of successive projects of the same type in the same place, over time is significant.” 14 CCR, § 15300.2(b) [referring to the classes of exemptions claimed by the Determination].

Miraloma Park is filled with large unusually shaped lots. (See attached block maps of the surrounding area). Many of these lots are being sold as “eligible” for multi-building development. This fact is well known to most people who live in the area and in fact, is so well known that the District Supervisor, Sean Elsbernd, has requested that he be recused on this case and on this issue because such future developments are “foreseeable” and will have a “potential material impact” on property he owns. When this development was before the Board on an appeal of the subdivision map, Supervisor Elsbernd made the following statement:

**Supervisor Elsbernd:** Thank you Mr. President; based on advice I have received from our city attorney, I need to ask to that I be recused from this item.

While I don't live and I do not own property within that 500 foot radius, **the same situation is directly behind my house. There is a potential project that will be impacted, I believe, by the precedential nature of this case. It is the issue of the lot size being wrapped around the corner in the same neighborhood, is I think without question it is an issue of neighborhood character that is going to specifically impact that project because of the foreseeability of it because of the potential material impact on my property, I would ask that I be recused.**”

This is dramatic evidence of future cumulative impacts from the District Supervisor. These impacts are not speculative and a policy for development of these lots should be devised.

**Conclusion**

Thus, Appellants request that the Board of Supervisors order that a proper environmental review be done. Planning did not properly apply the principals of 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 mitigations to avoid environmental impacts.

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

Respectfully Submitted,

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

8

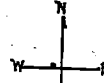
Exhibit  
A

**LOTS MERGED**

Lots 2/3 merged into lot 1 - '51  
 " 52 " " " 53/54 - '52  
 lot1 into lots116&117 for 2006 roll

© COPYRIGHT SAN FRANCISCO  
 CITY & COUNTY ASSESSOR 1995

Subject Site 3930 s.f.



5360 s.f. (4 units)

**LOS PALMOS DR.**

**3027A**  
 (Formerly Block 3034)  
 1927-28

**SUNNYSIDE ADDN. N.  
 BLOCK 123**

**MIRALOMA PARK SUB. 10**

REVISED '59

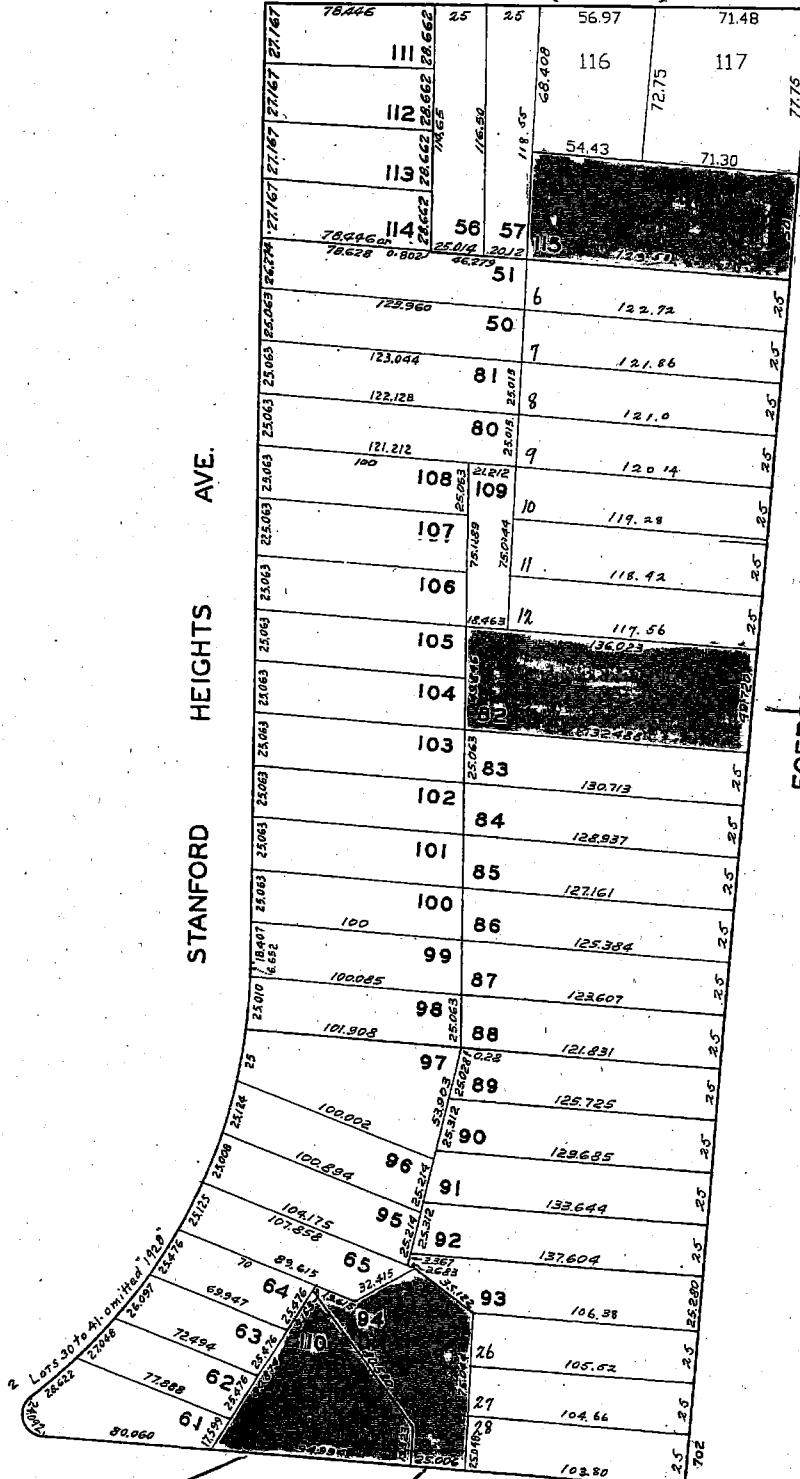
" '61

" '63

" '70

Revised 2006

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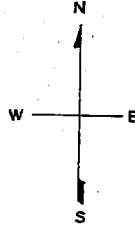


6500 s.f. (2-4 units)

6673 s.f. (2-4 units)

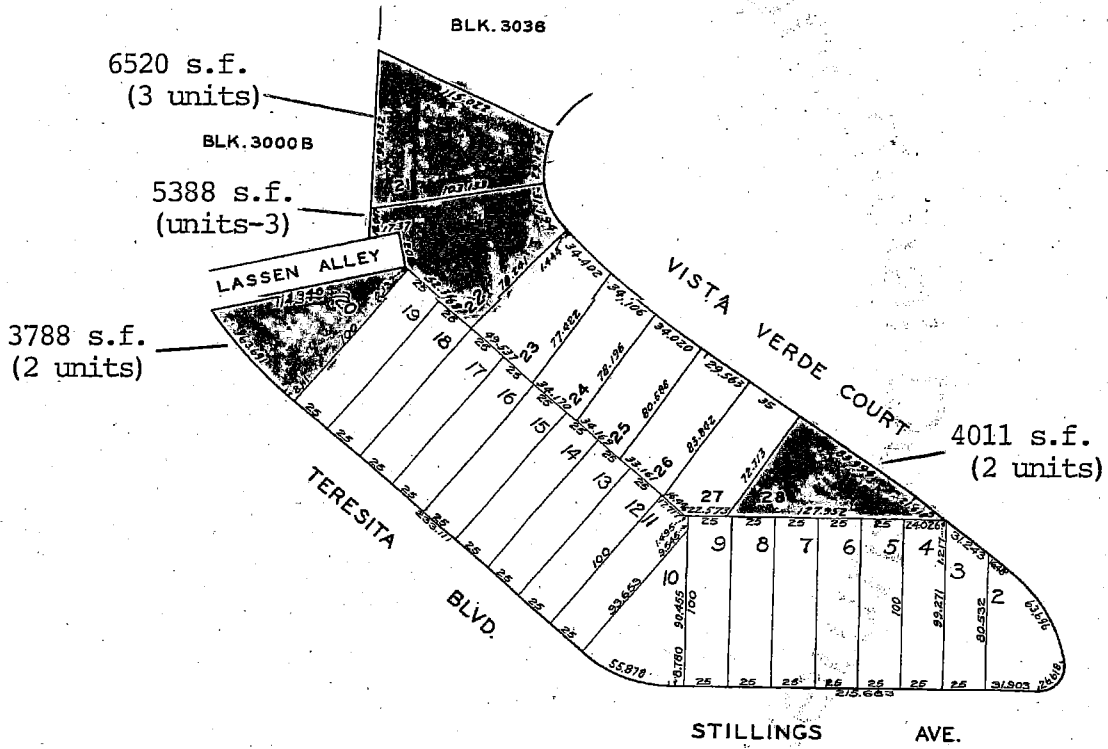
4312 s.f.  
 (2 units)

**MELROSE AVE.**  
 4120 s.f.  
 (2 units)



30000  
MIRALOMA PARK  
MIRA GLEN SUB.  
REVISED '66

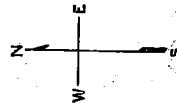
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3000

MIRALOMA PARK SUB.10

REVISED '61  
" '81



STANFORD

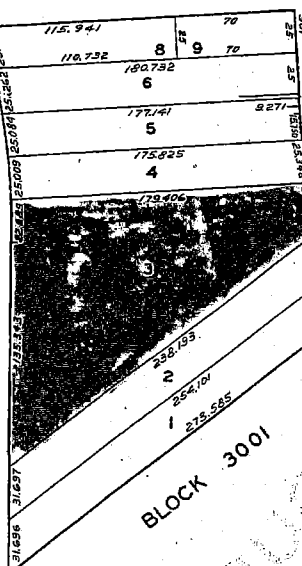
HEIGHTS AVE.

LOS PALMOS DRIVE

BLOCK 2999

16,835 s.f.  
(4-8 units)

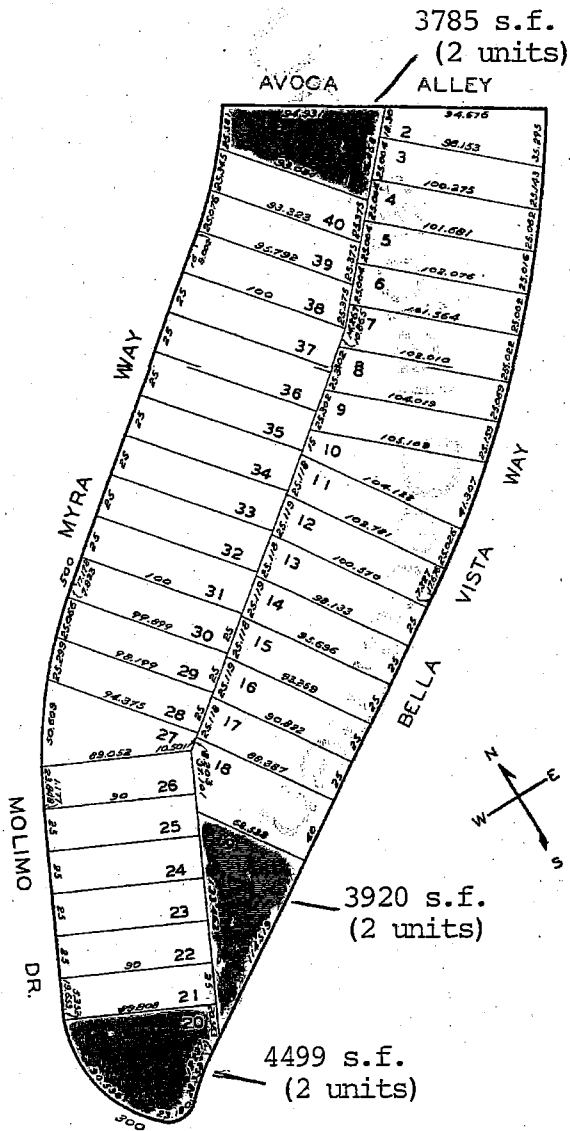
BLOCK 3001



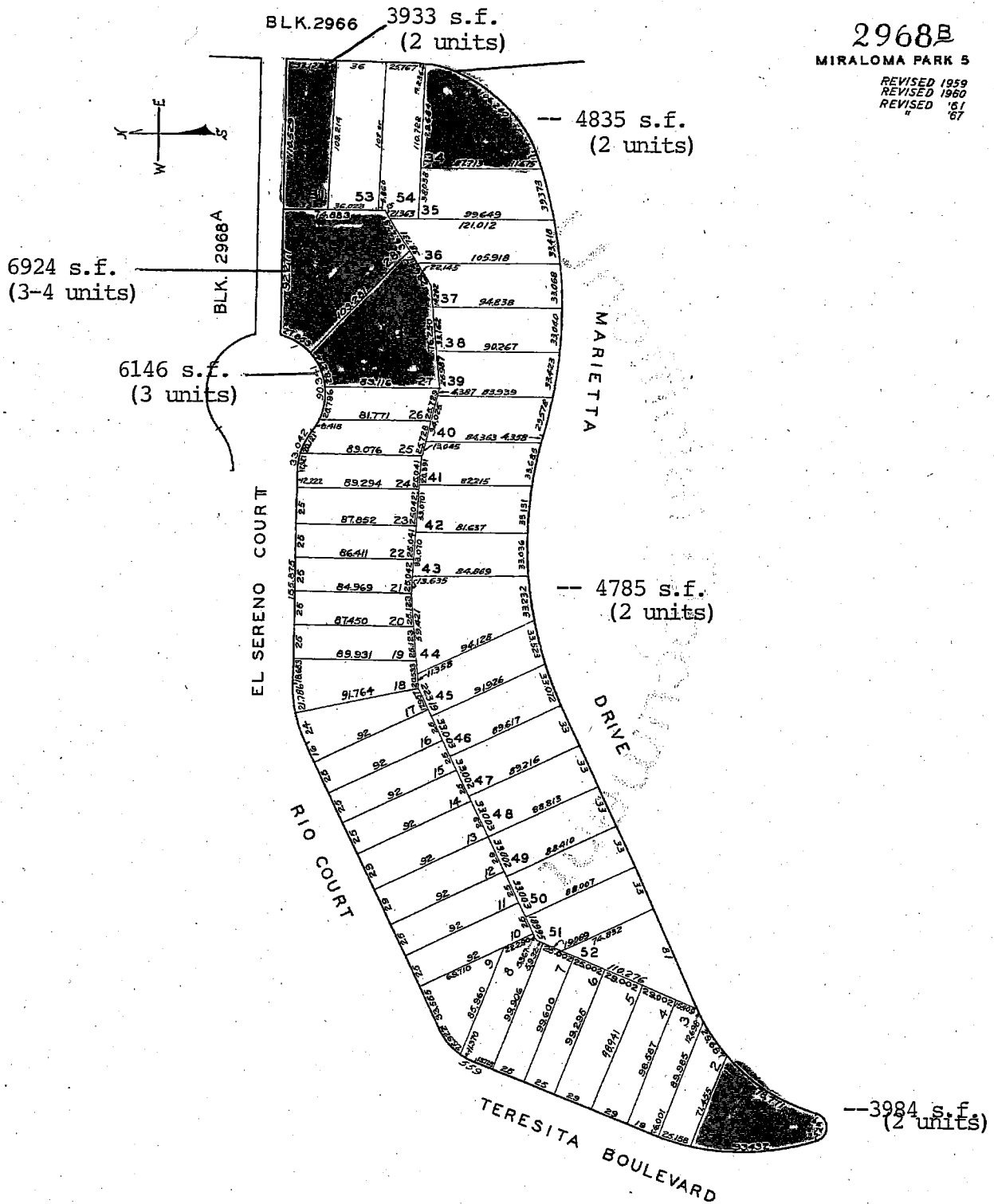
Lots 8/16 Assessed in 2997

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Unofficial Document - Not for Submittal to City Agencies



**2968B**  
MIRALOMA PARK 5  
REVISED 1959  
REVISED 1960  
REVISED '61  
" '67



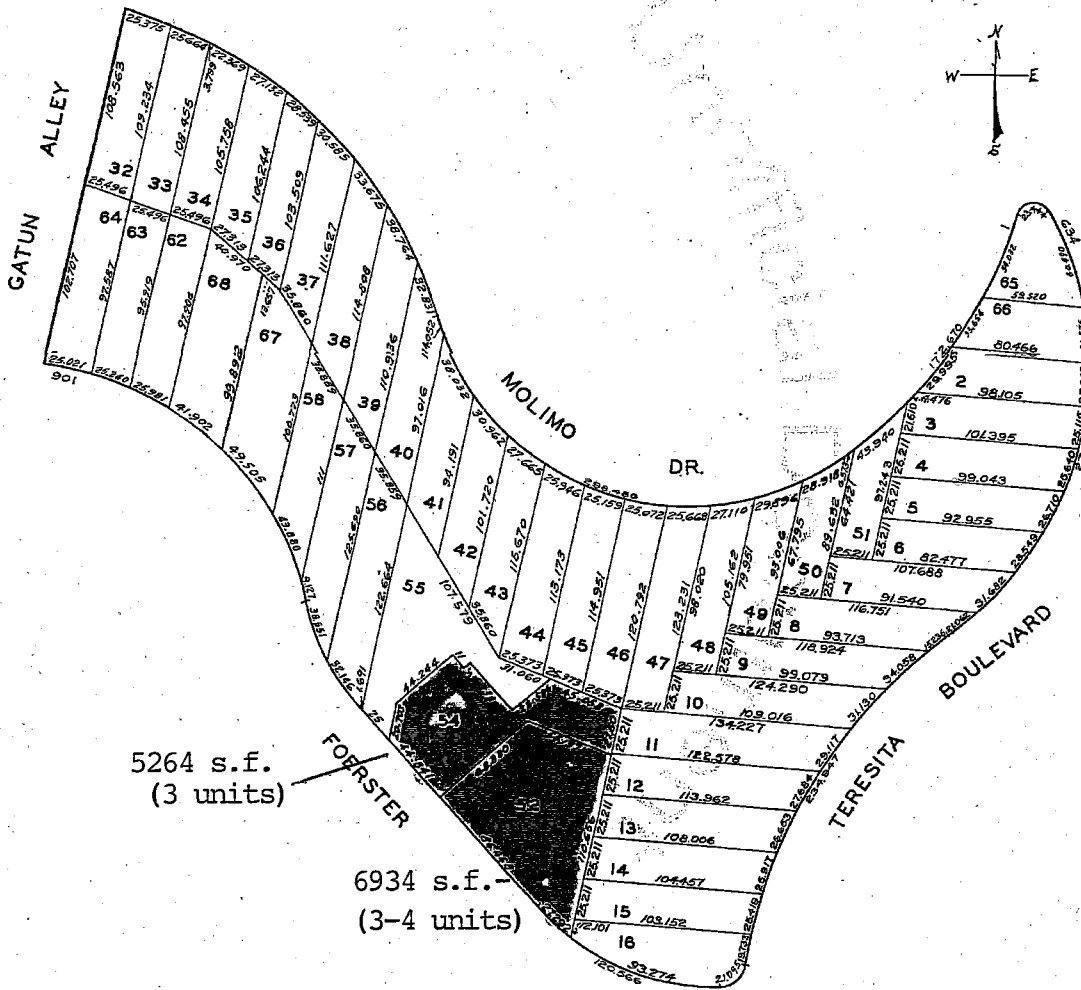
Unofficial Document - Not for Submittal to City Agencies

Lot 18-31 omitted -'52

3001A

MIRALOMA PARK

REVISED '61  
REVISED '62  
" '63  
" '73  
" '76



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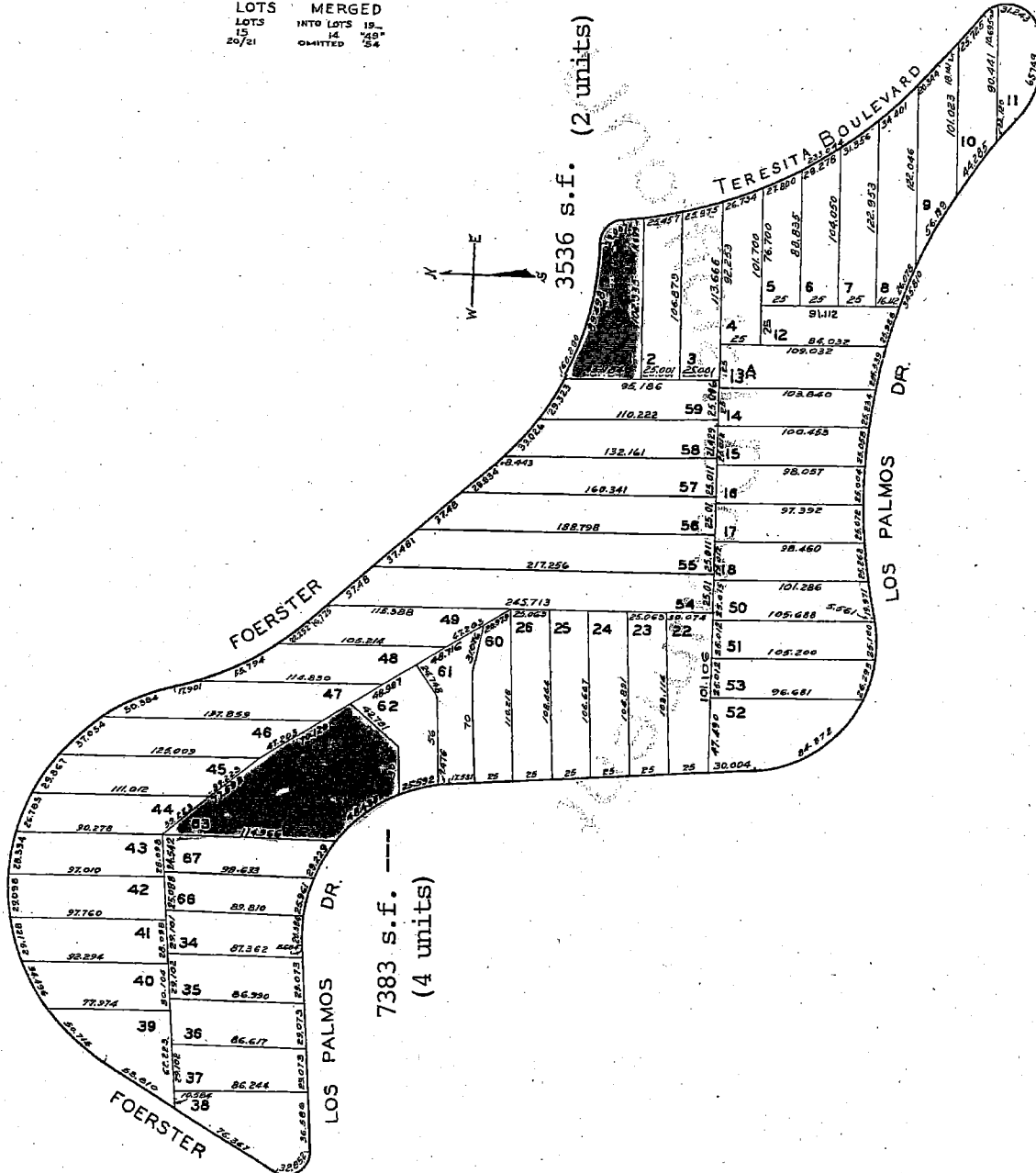
**3026**  
MIRALOMA PARK

REVISED '57  
REVISED '58  
" '61  
" '62

LOTS MERGED  
15 INTO LOTS 19  
20/21 OMITTED '54

3536 s.f. (2 units)

7383 s.f. (4 units)

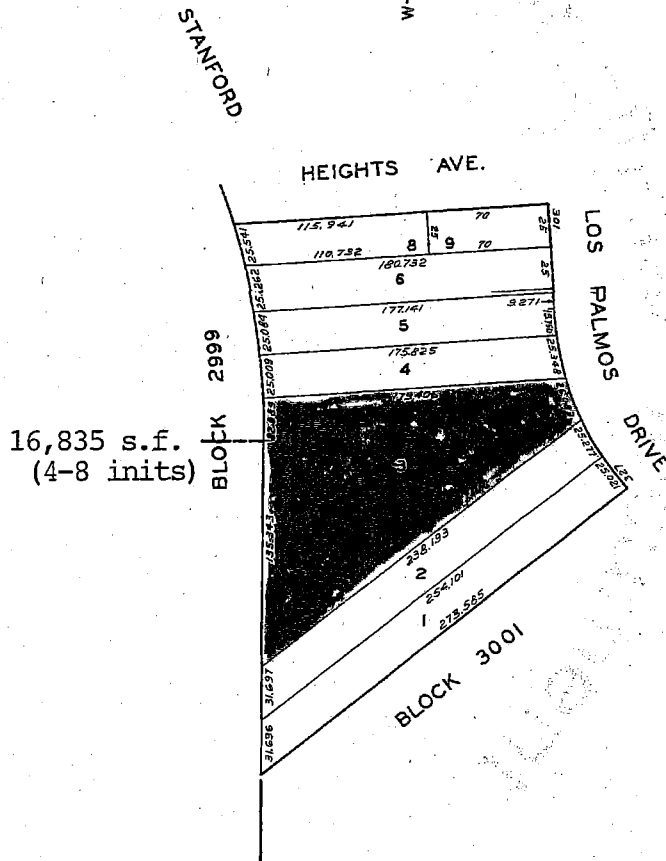


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3000

MIRALOMA PARK SUB.10

REVISED '61  
" '81



Lots 8/16 Assessed in 2997

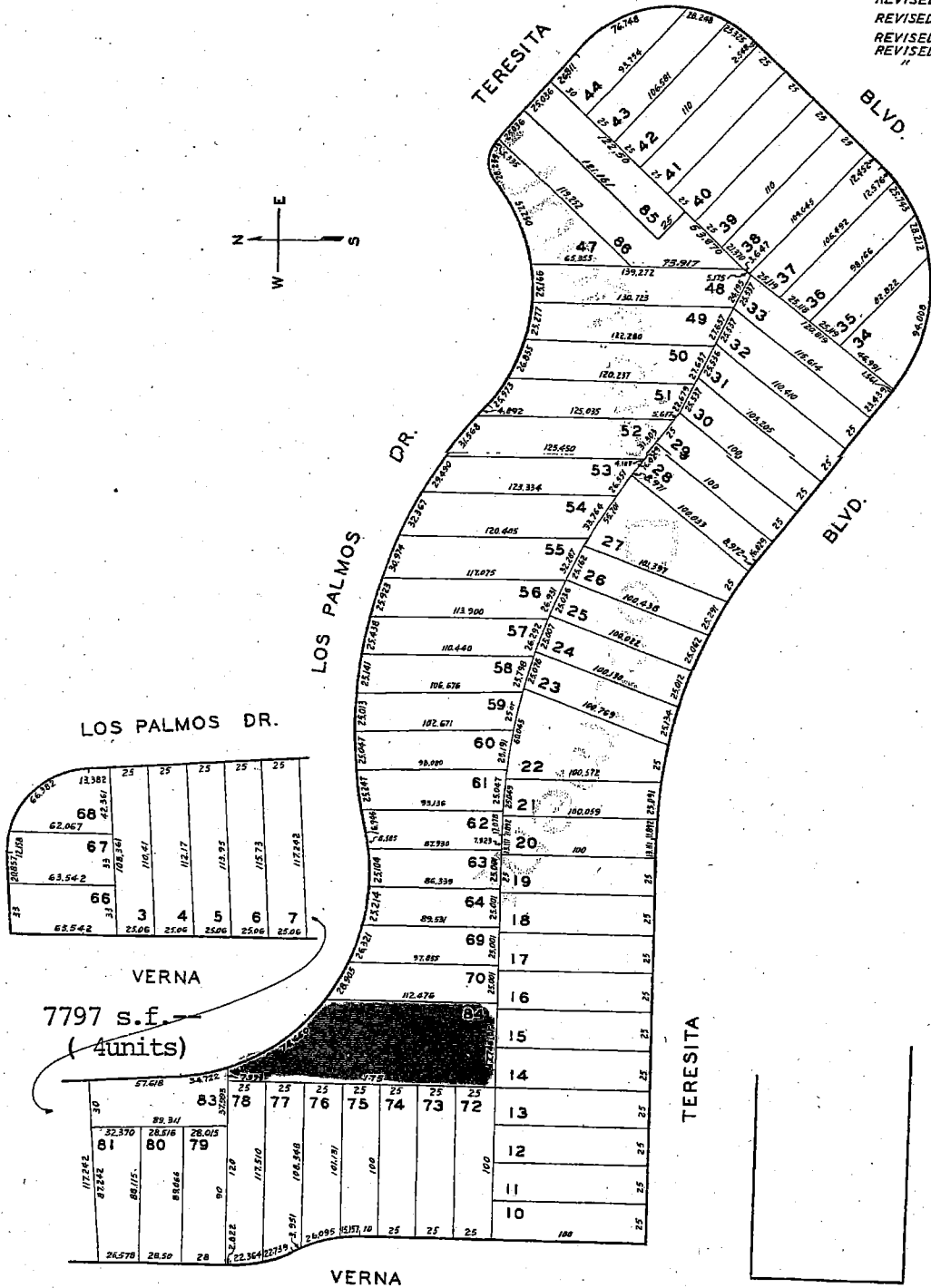
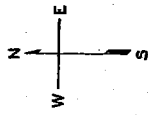
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**3028B**

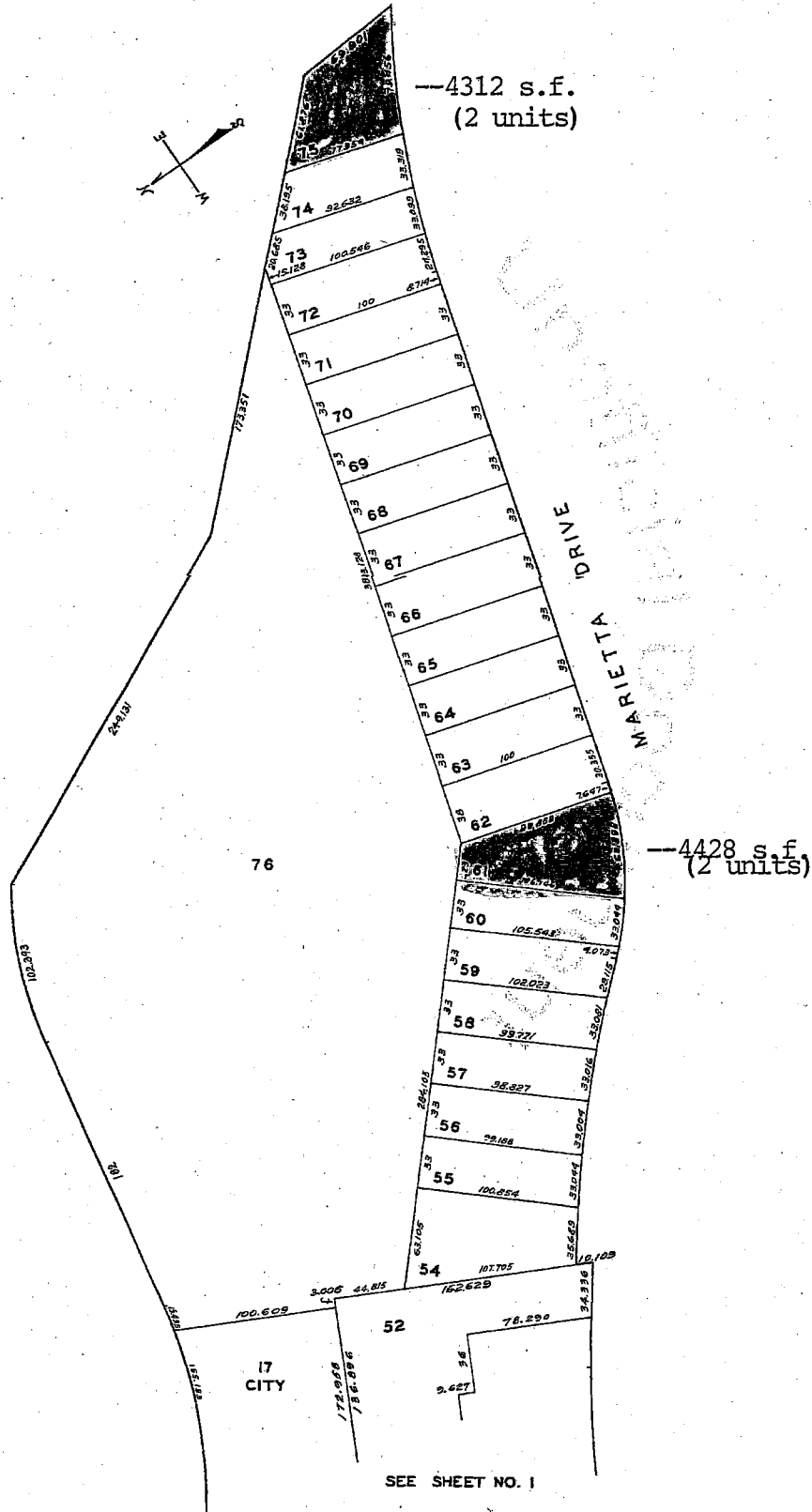
FORMERLY PORTION OF  
BLOCK 3033 "1927-28"

REVISED '57  
REVISED '58  
REVISED '59  
REVISED '60  
" '82



Unofficial Document - Not for Submittal to City Agencies

2949A  
(Sheet #2)  
REVISED 1959  
REVISED '60  
" '61



2:35:12 PM

M. BRETT GLADSTONE

GLADSTONE & ASSOCIATES  
ATTORNEYS AT LAW  
PENTHOUSE, 177 POST STREET  
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FACSIMILE (415) 394-5188  
admin@gladstoneassociates.com

BOS-11  
CA-2

File #110041

RECEIVED  
BOARD OF SUPERVISORS  
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2011 MAR 15 PM 4:53  
BY AL

795 FOERSTER STREET AND  
203, 207, AND 213 LOS PALMOS DRIVE

**RESPONSE TO APPEAL OF CATEGORICAL EXEMPTION**

- The project will not result in cumulative impacts on the environment because there is no evidence of reasonably foreseeable and nearby subdivisions in the area in the approval process.
- The project will improve water drainage on the project site and thus improve the water run off conditions for all lower properties.
- The project has incorporated (and will continue to incorporate) the recommendations of the engineering reports as well as the Building Department; therefore, the project will not cause slope instability.
- The Appellant provides no evidence that the existing Foerster Street building was altered by the current owner in order to avoid an EIR or Negative Declaration. In fact, it was altered by the former owner. Thus, the Class 3 exemption for new construction of up to three units is appropriate because the current project does not involve the alteration of the Foerster Street building.
- The recommendations in the engineer's report are not "mitigation measures" under CEQA. Rather, the recommendations were made in order to address Building Department issues during the Building Department's review of the permits.
- The Zoning Administrator, Planning Commission and Board of Supervisors all have already determined the proposed lots are compliant with the Code for lot size.

M. BRETT GLADSTONE

GLADSTONE & ASSOCIATES  
ATTORNEYS AT LAW  
PENTHOUSE, 177 POST STREET  
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March 15, 2011

David Chiu, President  
San Francisco Board of Supervisors  
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1 Dr. Carlton B. Goodlett Pl. Room #244  
San Francisco, CA 94102-4689

Re: For Hearing of March 22, 2011; Appeal of Categorical Exemption  
Assessor's Block 3027A, Lots 116 and 117; 795 Foerster Street  
Miraloma Park

Dear President Chiu and Supervisors:

We represent the owners of the referenced properties in this appeal. The owners wish to subdivide the two properties into four lots. The proposed lots will each contain a single family home. The subdivision already has been the subject of a request for Discretionary Review by the Planning Commission on August 5, 2010, and the Planning Commission voted 7-0 to approve the project. A lot split approval was appealed to your Board last year, and your Board voted 11-0 to deny the appeal. Neighbors then appealed the building permits to the Board of Appeals. Before the hearing took place, the neighbors appealed the Categorical Exemption to your Board.

The initial appeals (such as the Discretionary Review Request) were made by the adjacent neighbors, physician Maida Taylor and Ed Kelley, and then by neighbor Sina Tarasoly. A third appeal was made by all three, and the appeal before you has been made by Miraloma Park Improvement Club ("MPIC"). When one party has appealed and not the others, the others have nonetheless written and/or spoken in support of the appeal. Because of that, for the purpose of this letter to you, we will refer to these individuals and MPIC (the neighborhood association collectively as "Appellant").

## I. BACKGROUND.

The new homes will be an average of 2,440 square feet excluding the garage, and will range from 2,320 to 2,517 square feet in size, excluding garages. (See Exhibit A.) They will be small and will rise only 20 feet 5 inches tall (per the Planning Code definition of height), even though the height limit allows 40 feet (See Exhibit B.) The three new uphill lots will be code-

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complying in size and will range from 1,787 to 1894 square feet and each will contain a new home. (See Exhibit C.) The shapes of the lots follow the non-perpendicular angle where Los Palmos Drive meets Foerster Street.

What is the most interesting aspect of this appeal by the The MPIC is that it has stated in writing that this project meets all the technical aspects of the Miraloma Park Residential Design Guidelines (MPRDG) that this group wrote.<sup>1</sup> The Planning Commission suggested to MPIC that if MPIC feels that its own Guidelines are out of date, they should amend them, and apply the amendments to future project only. Your Board agreed, and your Board refused to apply non-existent rules to our client's project when it denied the lot split appeal that came before you. It is only fair that when someone buys property based on certain rules, the rules should not be changed in the middle of an expensive process.

However, not satisfied with your vote, Appellant has appealed the building permits to the Board of Appeals, and has now appealed the environmental exemption to you to try to undo your unanimous decision and the unanimous decision of the Planning Commission.

**II. APPELLANT HAS REQUESTED 10 CHANGES IN THE PROJECT, AND ALL REQUESTS WERE ACCOMMODATED EXCEPT FOR SEVERAL BRAND NEW ONES.**

Attached as Exhibit D is a list of 10 project changes requested by the DR Requestor in a meeting on November 30, 2009. All of these changes have been made. One important change is shown at Exhibit E, which shows how our clients reduced the heights of each building after the neighbors complained about heights at the Pre-Application Meeting.<sup>2</sup> After all these changes were made, DR Requestor Maida Taylor changed her mind and asked for additional items. At that point, my clients decided that good faith negotiations had broken down and decided to allow the discretionary review hearing to go forward

**III. MR. WILLIAMS MISREPRESENTS A MUDSLIDE INCIDENT AS ONE THAT OCCURRED ON THE PROPOSED BUILDING SITE.**

Appellant's claim that this site slid twice in 1942 is completely false, and it is being raised for the second or third time. According to Trans Pacific Geotechnical Consultants Inc. (Trans Pacific), and according to the Planning Department and the non-profit website "mountdavidson.org", there was a mud flow caused by the City's negligent construction of new

<sup>1</sup> It asked the Commissioners to approve fewer houses, despite the Code allowance of three new homes.

<sup>2</sup> A neighbor across the street at 256 Los Palmos decided not to file a DR Request as a result of these height changes.

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roads at a site many lots away at the top of a steep hill during a rainy season in 1942. A portion (only) of the site being discussed in this appeal received a small amount of mud from uphill slide since our clients' site is at a lower portion of the hill

Attached as Exhibit F you will find a report on this, known as the "Supplemental Report," from Trans Pacific. It concludes that based on literature review of the 1942 mudslide, field exploration, laboratory testing, and engineering analyses, and the project site shows **no evidence of slip instability** and is suitable for the proposed construction. That is not surprising, as starting in 1942, the hill has been developed with dozens of buildings and foundations replacing the muddy hill that existed in 1942, all of which stabilize the hill.

The independent engineers at the Department of Building Inspection will continue to review all engineering issues. They will assess the engineering reports that have been prepared and if changes to the structural system are needed, such changes will be made. The Building Department cannot issue the remaining permits they need to issue, without approving those reports and final engineering plans. As the Planning Department noted in its staff report to the Board, any changes to the structural system, which includes the retaining walls, is considered minor and would not require additional environmental review.

The Site Permit now is under appeal at the Board of Appeals. If Appellant believes the Building Department has made an error, Appellant has a chance to argue its case at an upcoming hearing at the Board of Appeals. The Appeal before your Board is to discuss whether there is a significant environmental impact and not whether building construction techniques and designs are appropriate. This hill has only a 19% slope and hills of a great deal more slope have been the subject of very successful construction over the last 40 years.

**IV. IT IS NOT TRUE THAT THE PROJECT WILL EXACERBATE A WATER DRAINAGE SITUATION BUT RATHER THE SITUATION WILL IMPROVE GIVEN THE DESIGN OF THE PROJECT.**

The project's engineers are designing new drainage pipes that will divert the water from the rear surface of the lots more directly into City sewers than currently, as currently surface water runs onto other properties. This will occur along the property line shared with DR Requestor Ms. Taylor and Mr. Kelley on Foerster Street, where a retaining wall retains soil from falling onto Ms. Taylor and Mr. Kelley's lot. Ms. Taylor has advised our client that she would prefer there be no demolition of this retaining wall, just the placement of additional drainage on the side of the wall facing the new lots. As a result, downhill neighbors including the DR Requestor can anticipate less water drainage onto their property than at any time in the past.



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**V. THE PROJECT DOES NOT CAUSE THE CUMULATIVE IMPACTS ON THE AREA SUCH THAT IT SHOULD TRIGGER AN EIR OR FURTHER ENVIRONMENTAL REVIEW.**

Appellant claims that a categorical exemption cannot be used if a "significant cumulative impact would occur", and states that a cumulative impact would occur here because the City's approval of this project will make it more likely that every subdivision created in the future in Miraloma Park would be more likely approved; and thus this project will create a cumulative and detrimental effect on the environment.

A cumulative impact results from "successive projects of the same type in the same place." (14 Cal. Code Regs. Section 15300.2(b)) "Cumulative impacts' refer to two or more individual effects which, when considered together, are considerable or which compound or increase other environmental impacts. Subsection (b) states:

"The cumulative impact from several projects is the change in the environment which results from the incremental impact of the project when added to other closely related past, present, and reasonably foreseeable probable future projects. Cumulative impacts can result from individually minor but collectively significant projects taking place over a period of time." (Emphasis Added)

(14 Cal. Code Regs. Section 15355)

Each and every lot and structure is treated differently by the Planning Department and its Commission. To say that allowing a subdivision at a particular location makes all future subdivisions more likely to occur (no matter what the context is, and no matter what the sizes of the new proposed lots), is the equivalent of saying that because the City has allowed one three story building on particular lots on the western side of the City, it will allow a three story (and not two story) building on every lot in the western portion of the City.

Please note the quotation from the statute, above, which makes it clear that future projects and a current project need not be looked at together to determine "cumulative impact" unless the City finds "closely related past, present and reasonably foreseeable probably future projects". This is one of the reasons that environmental laws do not call for environmental decisions on what may or may not happen (only for projects that are known to the Planning Department because applications have been made or have been discussed with them).

Mr. Williams fails to cite any other proposed projects that are closely related and reasonably foreseeable present and future projects that, taken together with the subject project, would have a significant environmental impact

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**VI. OUR CLIENT HAS NOT ALTERED THE STRUCTURE THAT WILL REMAIN ON THE SITE WITH THE ADDRESS OF 795 FOERSTER STREET.**

The Class 3 Categorical Exemption used by the Planning Department for the new construction is available to projects where three or fewer new units are being built. Mr. Williams claims the project does not qualify for a Class 3 Categorical Exemption because our client already altered an existing fourth building which is to remain. Thus, Mr. Williams claims, a fourth home is the subject of our client's work, making the particular exemption unavailable. In order to make this claim, Mr. Williams falsely states the current owner altered the building but provides no evidence. The facts show that our client (the current owner) purchased the property after the alteration. See page three of Exhibit G where the Building Department refers to "prior owners" work (without permits). When the Planning Department called this illegal work to the current owner's attention, the current owner immediately obtained a building permit to legalize the work done without permit. (See Exhibit G.)

Moreover, CEQA considers the physical conditions of the property at the time of the environmental application and not past actions described in the building permit history. At the time of the environmental application, the rear of the existing structure on the property had already been removed. Therefore, this issue is irrelevant.

**VII. THE RECOMMENDATIONS IN THE ENGINEERING REPORT ARE NOT MITIGATION MEASURES WITHIN THE MEANING OF CEQA.**

Mr. Williams alleges that the Categorical Exemption was improperly issued because it does something that *only* an EIR or a Negative Declaration can do, which is to require that a project sponsor incorporate changes recommended by a Planning Department that are so important that without them, the project would cause a significant effect on the environment. The examples he gives are recommendations for ensuring stability of soils contained in a report by the project's soils engineers.

The reality is that the engineer's report (and its recommendations) was submitted in order to obtain approval of plans for permits from the Building Department. The project sponsor accepted these recommendations and incorporated them into the detailed construction design documents. The Planning Department did not require that these engineering recommendations be adopted by the project sponsor as part of the environmental review. The Planning Department reviewed the project with these engineering recommendations (directed toward Building Code compliance) already incorporated in it.

Mr. Williams would have you believe that the Planning Department insisted that our clients accept these recommendations to get the Planning Department to issue the Categorical

GLADSTONE & ASSOCIATES  
ATTORNEYS AT LAW

Board of Supervisors  
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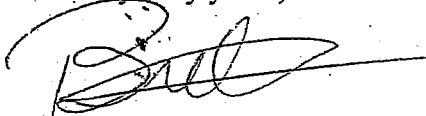
Exemption and that *but for* such insistence, the Planning Department would not have found this project to cause no significant environmental effect.

**VIII. THE LOTS COMPLY WITH THE MINIMUM LOT SIZE REQUIREMENTS OF CEQA.**

The Zoning Administrator, Planning Commission and Board of Supervisors all have reviewed and determined the proposed lots are compliant with the Code for lot size. (This very issue was appealed to you by neighbor Sina Tarasoly and at a hearing on October 5, 2010, you voted 11-0 that there was no merit to this argument. (See Exhibit H, motion of the Board of Supervisors.)

Thank you for your attention to this matter.

Very truly yours,



M. Brett Gladstone

Enclosures

cc: Gabriel Ng, architect  
Miraloma Park Improvement Club, c/o Steve Williams, Esq.  
Xiang Si Lei  
Tina Tam  
Andrea Contreras

Exhibit A

**203 Los Palmos**

Per plans dated 3/10/10

**Area Calculation (In Square Foot):**

	Living	Garage	Total
2nd Floor	966		966
1st Floor	848.5	425	1273.5
Basement	702.5		702.5
Total	2517	425	2942

Total Living Area = 2517 S.F.

Total Garage Area= 425 S.F.

**207 Los Palmos**

**Area Calculation (In Square Foot):**

	Living	Garage	Total
3rd Floor	909		909
2nd Floor	777	444	1221
Grd Floor	633.5		633.5
Total	2319.5	444	2763.5

Total Living Area = 2319.5 S.F.

Total Garage Area= 444 S.F.

**213 Los Palmos**

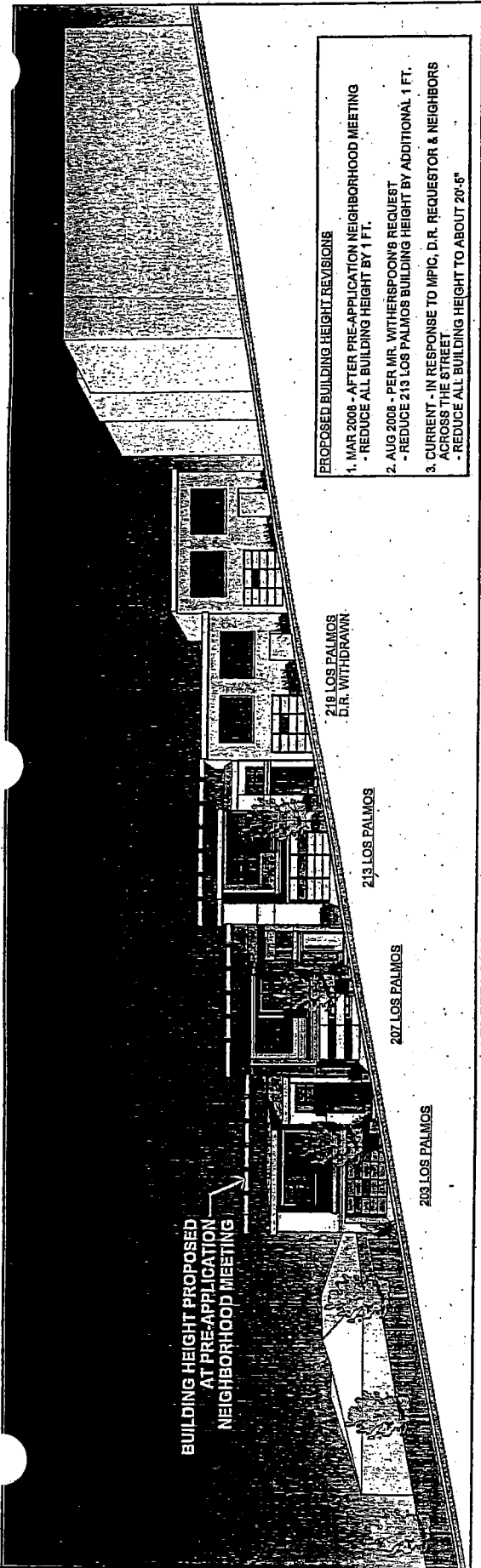
**Area Calculation (In Square Foot):**

	Living	Garage	Total
3rd Floor	987		987
2nd Floor	815.5	495	1310.5
Grd Floor	680		680
Total	2482.5	495	2977.5

Total Living Area = 2482.5 S.F.

Total Garage Area= 495 S.F.

Exhibit B



BUILDING HEIGHT PROPOSED  
AT PRE-APPLICATION  
NEIGHBORHOOD MEETING

- PROPOSED BUILDING HEIGHT REVISIONS**
1. MAR 2008 - AFTER PRE-APPLICATION NEIGHBORHOOD MEETING  
- REDUCE ALL BUILDING HEIGHT BY 1 FT.
  2. AUG 2008 - PER MR. WITHERSPOON'S REQUEST  
- REDUCE 213 LOS PALMOS BUILDING HEIGHT BY ADDITIONAL 1 FT.
  3. CURRENT - IN RESPONSE TO MPC, D.R. REQUESTOR & NEIGHBORS  
ACROSS THE STREET  
- REDUCE ALL BUILDING HEIGHT TO ABOUT 20'-6"

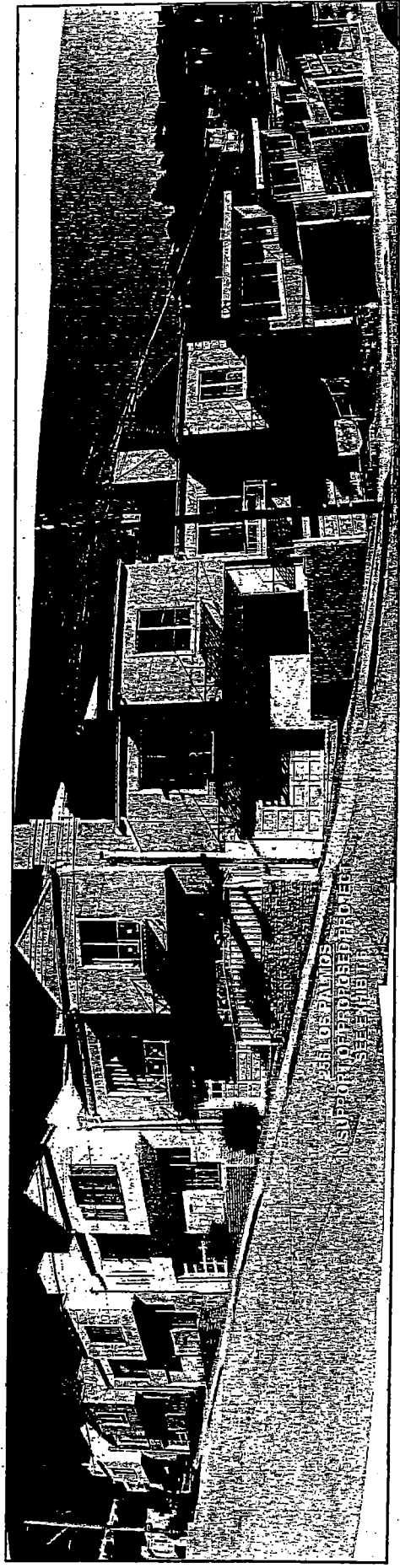
218 LOS PALMOS  
D.R. WITHDRAWN

213 LOS PALMOS

207 LOS PALMOS

203 LOS PALMOS

STREETSCAPE SHOWING THE CURRENT PROPOSAL FOLLOWING THE  
TOPOGRAPHY AND STEP DOWN IN HARMONY WITH THE SLOPE



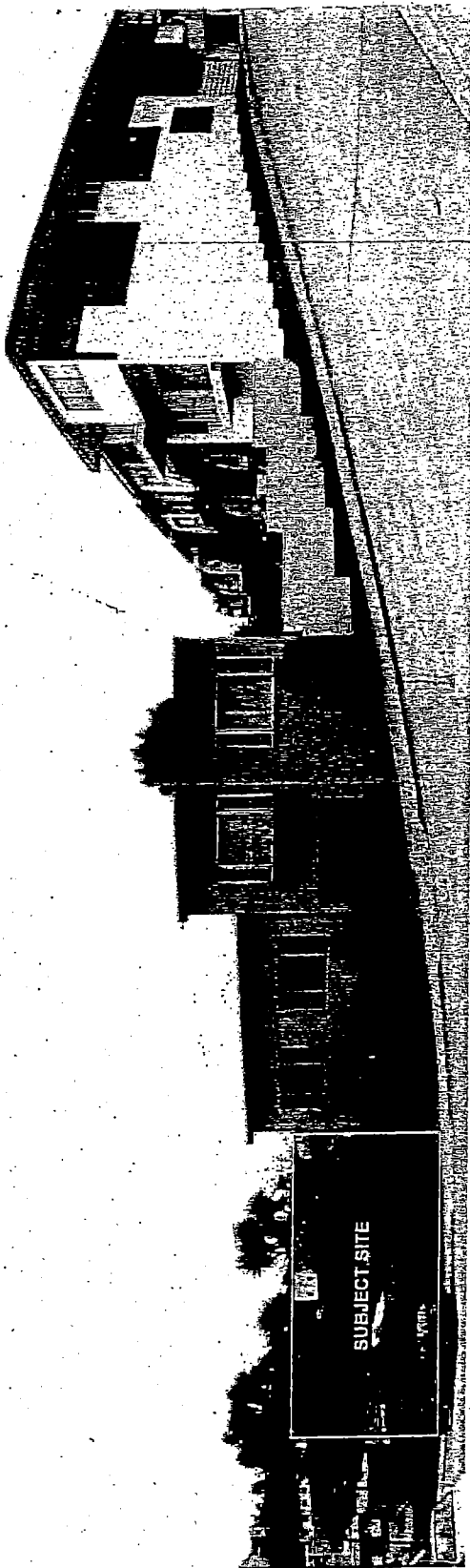
STREETSCAPE ACROSS PROPOSED PROJECT

**STREETSCAPE ALONG LOS PALMOS DRIVE**

**203 LOS PALMOS DRIVE, SAN FRANCISCO, CA 94127**

**GABRIEL Y. NG & ASSOCIATES**  
ARCHITECTURE + PLANNING + INTERIORS  
1340 9TH AVENUE SUITE 210  
SAN FRANCISCO, CA 94122  
WWW.GNGBLA.COM  
415 465 9500  
415 688 9726

7/20/10



EXISTING SITE CONDITION - LOOKING FROM ACROSS LOS PALMOS



PROPOSED THREE SINGLE-FAMILY DWELLINGS ON LOS PALMOS

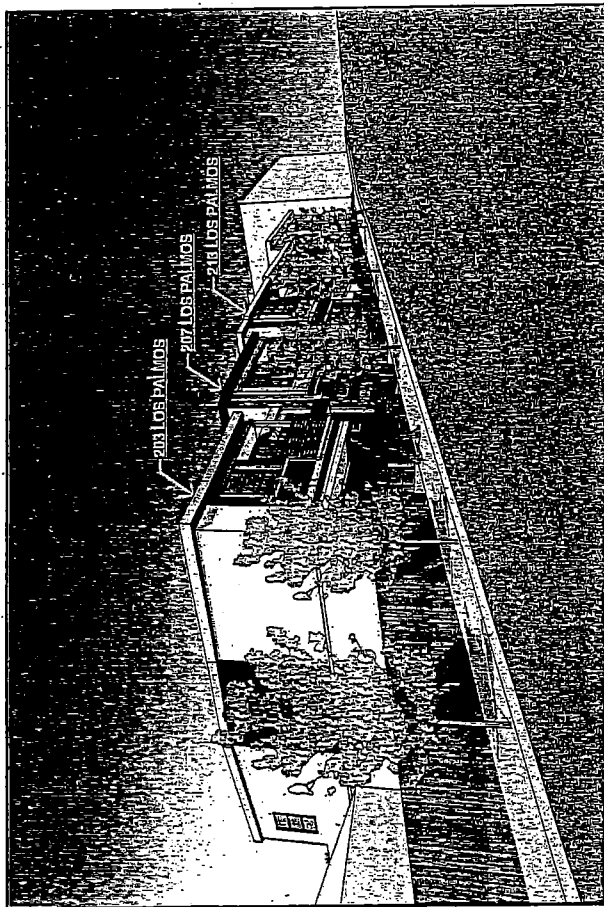
**PROPOSED PROJECT IN RELATION TO ADJACENT EXISTING BUILDINGS**  
**203 LOS PALMOS DRIVE, SAN FRANCISCO, CA 94127**

7/22/10

**GABRIEL Y. NG & ASSOCIATES**  
 ARCHITECTURE + PLANNING + INTERIORS  
 1340 9TH AVENUE, SUITE 210  
 SAN FRANCISCO, CA 94122  
 www.gyng.com  
 TEL: 415.462.8050  
 FAX: 415.462.8720







SOUTH SIDE OF LOS PALMS DRIVE WITH PROPOSED PROJECT



NORTH SIDE OF LOS PALMS DRIVE



**GABRIEL Y. NG & ASSOCIATES**  
 ARCHITECTURE + PLANNING + INTERIORS  
 1340 9TH AVENUE, SUITE 210  
 SAN FRANCISCO CA 94122  
 www.gyni.com

415-662-8060  
 FAX 415-662-8720

**WEST VIEW OF LOS PALMS DRIVE FROM CORNER OF FOERSTER STREET**  
**203 LOS PALMS DRIVE, SAN FRANCISCO, CA 94127**

7/20/10

Exhibit C



# SAN FRANCISCO PLANNING DEPARTMENT

**MEMO**

**DATE:** December 14, 2009  
**TO:** File for Case No.'s 2008.0871V & 2008.0558S  
**FROM:** Elizabeth Watty, 558-6620  
**RE:** Subdivision Application for 795 Foerster Street

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

Reception:  
415.558.6378

Fax:  
415.558.6409

Planning  
Information:  
415.558.6377

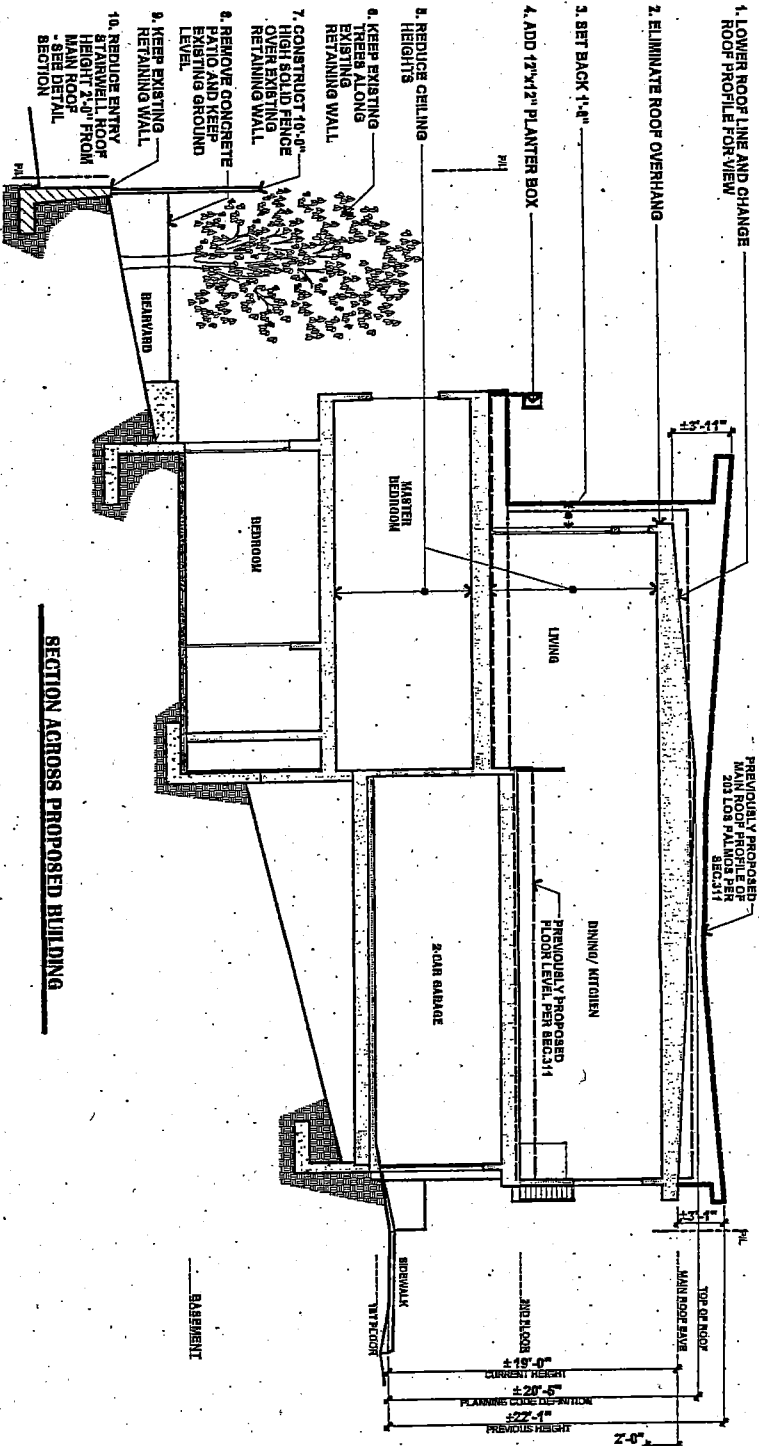
Based on the revised Tentative Parcel Map, dated November 19, 2009, the proposal to subdivide the existing property (Lot 001 in Assessor's Block 3027A) into four lots (noted as Parcels A, B, C, and D on the Tentative Parcel Map) no longer necessitates a rear yard variance for the corner parcel.

All four lots are located within 125-feet of the intersection of Los Pinos Drive and Foerster Street and each measure at least 1,750 square feet. Each lot is at least 25-foot wide for the portion of the lot measuring 1,750 square feet. An Interpretation of Planning Code Section 121(d)(2) from January 1989 states that if a lot is deficient by up to a ¼ inch (1 percent) of the required 25 foot lot width, it will still be considered 25-foot wide. Parcels B and C, shown on the Tentative Map for 795 Foerster Street, measure 24.948-foot wide each, which is less than a 1% deficiency of the required 25-foot wide lot measurement. Therefore, Parcels B and C are both considered "25-foot" wide lots.

This analysis and Tentative Parcel Map were presented to the Zoning Administrator on November 3, 2009, at which time he concurred with the application of this Interpretation to Case No.'s 2008.0871V and 2008.0558S, therefore eliminating the need for a rear yard variance in order to subdivide the subject property into four Code-compliant parcels (shown as Parcel's A, B, C, and D).

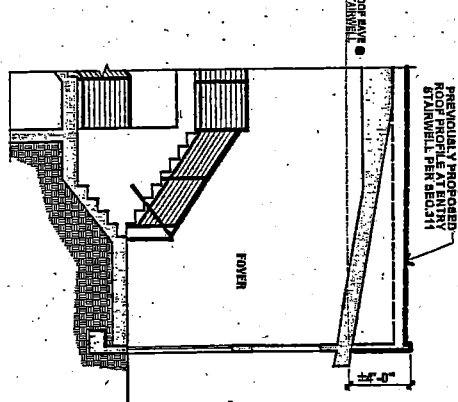
Exhibit D

**11/30/09 REQUEST FROM D.R. REQUESTOR**



- 1/4/10 ADDITIONAL REQUEST FROM D.R. REQUESTOR:**
- 11. REIMBURSEMENT FOR HIRING ENGINEER TO REVIEW FOUNDATION PLAN.
  - 12. COMPENSATION OF \$8,100 FOR OTHER CONSULTANT COSTS AND PURCHASE OF NEW TREES IN HER PROPERTY.

- 3/31/10 2ND ADDITIONAL REQUEST FROM D.R. REQUESTOR:**
- 13. ELIMINATE BAY AT REAR
  - 14. INCREASE COMPENSATION TO \$10,000



**DETAIL SECTION ACROSS ENTRY STAIRWELL ITEM # 10**

**GABRIEL Y. NG & ASSOCIATES**  
 ARCHITECTURE + PLANNING + INTERIORS  
 1460 OLYMPIAN BLVD. SUITE 210  
 SAN FRANCISCO, CA 94122  
 WWW.GYNA.COM  
 415-483-8000  
 FAX 415-483-8720

**MULTIPLE REQUESTS FROM D.R. REQUESTOR**  
**203 LOS PALMOS DRIVE, SAN FRANCISCO, CA 94127**

7/20/10

Exhibit E



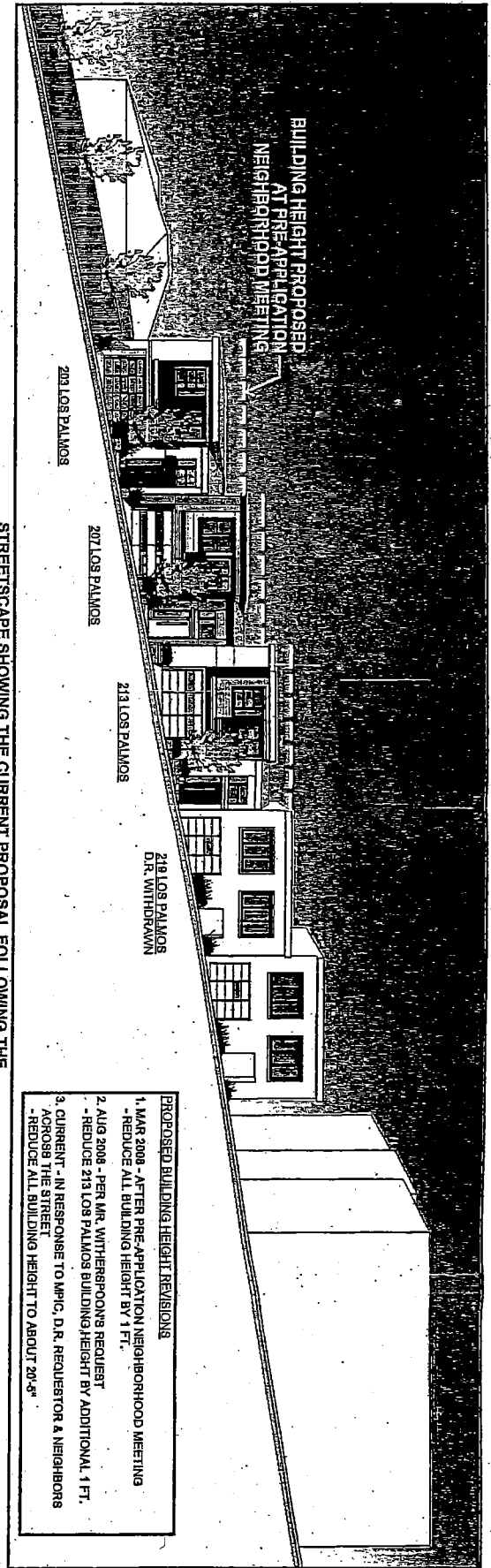
**GABRIEL Y. NG & ASSOCIATES**  
 ARCHITECTURE + PLANNING + INTERIORS  
 1807TH AVENUE, SUITE 210  
 SAN FRANCISCO, CA 94127  
 TEL: 415-463-8024  
 FAX: 415-463-8026

**STREETSCAPE ALONG LOS PALMOS DRIVE**  
**203 LOS PALMOS DRIVE, SAN FRANCISCO, CA 94127**

7/20/10



STREETSCAPE ACROSS PROPOSED PROJECT



**BUILDING HEIGHT PROPOSED  
 AT PRE-APPLICATION  
 NEIGHBORHOOD MEETING**

203 LOS PALMOS

207 LOS PALMOS

213 LOS PALMOS

219 LOS PALMOS  
 D.R. WITHERSWAN

STREETSCAPE SHOWING THE CURRENT PROPOSAL FOLLOWING THE  
 TOPOGRAPHY AND STEP DOWN IN HARMONY WITH THE SLOPE

**PROPOSED BUILDING HEIGHT REVISIONS**

1. MAR 2008 - AFTER PRE-APPLICATION NEIGHBORHOOD MEETING  
 - REDUCE ALL BUILDING HEIGHT BY 1 FT.
2. AUG 2008 - PER MR. WITHERSWAN'S REQUEST  
 - REDUCE 213 LOS PALMOS BUILDING HEIGHT BY ADDITIONAL 1 FT.
3. CURRENT - IN RESPONSE TO MR. WITHERSWAN'S REQUEST  
 - REDUCE ALL BUILDING HEIGHT TO ABOUT 20'-6"

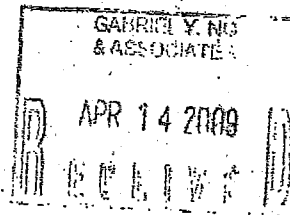
Exhibit F



**TRANS PACIFIC GEOTECHNICAL CONSULTANTS, INC.**

639 CLAY STREET, SECOND FLOOR, SAN FRANCISCO, CALIFORNIA 94111-6504  
TELEPHONE: (415) 788-8627 FAX: (415) 788-3121

REPORT  
GEOTECHNICAL CONSULTATION  
PROPOSED HOUSING DEVELOPMENT  
795 FOERSTER STREET,  
203, 207 AND 213 LOS PALMOS DRIVE  
SAN FRANCISCO, CALIFORNIA



OUR JOB NO. 1716-001

APRIL 8, 2009

# TRANS PACIFIC GEOTECHNICAL CONSULTANTS, INC.

639 CLAY STREET, SECOND FLOOR, SAN FRANCISCO, CALIFORNIA 94111-6504  
TELEPHONE: (415) 788-8627 FAX: (415) 788-3121

April 8, 2009

Our Job No. 1716-001

Mr. Xiang Si Lei  
616 Rolph Street  
San Francisco, California 94112

Déar Mr. Lei,

Report  
Geotechnical Consultation  
Proposed Housing Development  
795 Foerster Street,  
203, 207 and 213 Los Palmos Drive  
San Francisco, California

This report summarizes our consultation in connection with the proposed housing development at 795 Foerster Street, 203, 207 and 213 Los Palmos Drive in San Francisco, California. The site is located on the southwest corner of the intersection of Foerster Street and Los Palmos Drive, as shown on the Vicinity Map, Plate 1.

Previously, we performed a geotechnical investigation at the site with the results presented in the report<sup>1</sup> dated July 22, 2003. The report described the site conditions and provided recommendations for foundation support of the proposed structures. A supplementary geotechnical investigation report was performed at the site with the results presented in our report<sup>2</sup> dated April 7, 2009. The report describes the site conditions, provides an update to the July 22, 2003 report along with recommendations for foundation support of the proposed buildings and retaining walls.

We were provided with a geotechnical investigation report<sup>3</sup> for the site, prepared by Earth Mechanics Consulting Engineers.

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<sup>1</sup>"Report, Geotechnical Investigation, Proposed Lot Subdivision, 795 Foerster Street, San Francisco, California," dated July 22, 2003, (Our Job No. 1595-001).

<sup>2</sup>"Report, Supplementary Geotechnical Investigation, Proposed Housing Development, 795 Foerster Street, 203, 207, and 213 Los Palmos Drive, San Francisco, California," dated April 7, 2009, (Our Job No. 1716-002).

<sup>3</sup>"Report, Geotechnical Investigation, Planned Residential Development at 795 Foerster Street, San Francisco, California, prepared for Mr. Xiang Se Lei," prepared by Earth Mechanics Consulting Engineers, and dated May 26, 2008. (EMCE Project Number: 08-3049).

PROPOSED CONSTRUCTION

Present plans call for subdividing the site into four separate lots; Parcel D, a lot fronting Foerster Street with the existing house and patio at the 795 Foerster Street, and three other lots in the backyard of the existing house, fronting Los Palmos Drive, Parcel C known as 203 Los Palmos Drive, Parcel B known as 207 Los Palmos Drive and Parcel A known as 213 Los Palmos Drive.

It is planned to construct one house on each of the three subdivided lots fronting Los Palmos Drive. For each house, the proposed construction would include two levels above the adjacent street grade along Los Palmos Drive and one level below Los Palmos Drive. The existing retaining wall along the south property line would be demolished and replaced with a concrete retaining wall with proper back drainage.

Details of the loading information are not available at this time. We do not anticipate that any fill will be placed to raise the site grade.

PURPOSE AND SCOPE OF SERVICES

The purpose of our geotechnical consultation was to provide support to you, your architect and engineers in gaining approval of the proposed subdivision.

The scope of our services included the following activities:

1. Review of published literature - these include geologic maps, the web site of Mt. Davidson organization, archives of the San Francisco Department of Public Works, aerial photographs on file at the Pacific Aerial Surveys, past geotechnical investigation reports on file with the San Francisco Department of Building Inspection.
2. Attendance of meetings and consultation with the members of the design team.
3. Various site visits.
4. Attendance of two neighborhood meetings.

FINDINGS AND HISTORICAL BACKGROUND

GEOLOGY

As shown on the Geologic Map<sup>4</sup> of San Francisco, there is a mapped mud flow, which may have encroached into the southwest corner of the site, but no evidence suggestive of slope instability was observed at the site. An excerpt of the geologic map in the general vicinity of the site is presented on Plate 2, Geologic Map.

MT. DAVIDSON ORGANIZATION

A mud flow occurred in the block bound by Foerster Street and Los Palmos Drive in 1942, as reported in the website of the Mt. Davidson organization. The mud flow was reported to have originated uphill at Bella Vista Way during construction grading for new roads on the southeastern slope of Mount Davidson. The mud flow was estimated to be one-half mile long and 10 feet to 20 feet deep.

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<sup>4</sup>"Preliminary Geologic Map of the San Francisco South 7.5' Quadrangle and Part of the Hunters Point 7.5' Quadrangle, San Francisco Bay Area, California," by M. G. Bonilla, 1998, USGS.

Mr. Xiang Si Lei

April 8, 2009

A resident was killed during this incident, and the 700 block of Foerster Street was reportedly buried in mud.

In a photograph, depicted as Plate 3, apparently taken shortly after the mud flow in 1942, the house located at 785 Foerster Street, which is immediately adjacent and south of 795 Foerster Street, was not damaged by the mud flow and remained standing. There was no structure on the site now known as 795 Foerster Street. In a photograph taken on February 6, 1942, depicted as Plate 4, two houses on Foerster Street slid off the foundation into Foerster Street, and were destroyed by the mud flow. It appears that these were the houses located in Lot Nos. 7 and 8 of Assessor's Block 3027, which are located south of 785 Foerster Street.

#### SAN FRANCISCO DEPARTMENT OF PUBLIC WORKS

In a plan entitled, "Foerster St. Slide Area Nr Teresita Blvd, Inspection Schedule," prepared by City and County of San Francisco, Department of Public Works - Bureau of Engineering, and dated February, 1942, File No. LL-15946, depicted as Plate 5, a house located at the southeast corner of the intersection of Los Palms Drive and Stanford Heights, along with the two houses on Foerster Street, in Lot Nos. 7 and 8 of Assessor's Block 3027 were destroyed by the mud flow. The drawing also indicates the path of the mud flow, which appears to have encroached into the southwest portion of the backyard of 795 Foerster Street.

#### AERIAL PHOTOGRAPHS

Aerial photos were reviewed for the years 1935, 1948, 1955, 1958, and 2001, on file at the Pacific Aerial Surveys, as listed in the following tabulation.

<u>FILM ID</u>	<u>DATE</u>
AV 7091-7-14	August 17, 2001
AV 279-6-14	April 23, 1958
AV 170-5-11	May 10, 1955
AV 17-7-13	July 28, 1948
AV 248-6-07	1935

The path of the mud flow could not be clearly determined from the 1948 aerial photos, and aerial photos between 1942 and 1948 were not available.

#### REPORTS PREPARED BY OTHERS

The following geotechnical investigation reports prepared by others on file with the San Francisco Department of Building Inspection in the immediate vicinity of the site were reviewed.

1. 101 Stanford Heights Avenue, Lot 8, Assessor Block 3000, prepared by Harold Lewis Associates, dated November 18, 1985.
2. Lot 26 and 27, Assessor Block 3027A, prepared by Associate Geotechnical Engineers, dated October 22, 1987.
3. 747 & 751 Foerster Street, prepared by Engineered Soil Repairs, Inc. dated October 15, 2008.

DISCUSSIONS

GENERAL

Based on our review of the photograph taken on February 6, 1942, it is our opinion that the destruction of the two houses on Foerster Street were caused by the mud flow, along with their shallow foundation footings that these houses were probably supported on. This type of shallow foundation footings were widely utilized at that time.

As shown on the plan prepared by San Francisco Department of Public Works, Plate 5, the path of the mud flow was mapped to be heading in an easterly direction from the intersection of Bella Vista Way and Cresta Vista Drive. The path of the mud flow made a turn to a southeasterly direction at the intersection of Stanford Heights Avenue and Los Palms Drive, and encroached into the southwest portion of the backyard of 795 Foerster Street.

NEIGHBORHOOD MEETING

Two neighborhood meetings were held at the site, on the sidewalk in front of the driveway of 795 Foerster Street.

The first one was held on January 17, 2009 and attended by Mr. Carl Lee of 765 Foerster Street and Mr. Ted Joe and Ms. Linda (Yee) Joe of 767 Foerster Street. Mr. Lee and the Joes were advised that our office has been performing a supplementary geotechnical investigation for the proposed development; this included a field exploration program of drilling of two additional borings to supplement our report prepared for the then home owners of 795 Foerster Street, Mr. Paul Juul and Ms. Louise Juul, some five years ago.

We further discussed our findings in the review of the pertinent section of the geologic map, our search of the web site of the Mt. Davidson organization, review of the plan prepared by the San Francisco Department of Public Works, review of the aerial photos and geotechnical investigation reports prepared by others in the immediate vicinity, as discussed previously.

The Joes indicated their concern on the potential impact that the proposed housing development would have on the groundwater flow. They indicated their familiarity with the drainage issues arising in their property. In their 30 years of living at their home, they have an understanding of both the surface water and groundwater flow and have installed provision to minimize damage arising from excess drainage of the surface water and groundwater flow.

We also discussed the proposed construction of three houses, one on each of the subdivided lot Parcels A, B and C. The building foot print will cover most of the lot area and most of the backyard or patio will be paved with concrete slab or stone pavers. It is planned that each of the buildings would have roof gutters and downspouts and all water from downspouts will be collected in closed pipes and discharged away from the house into the storm sewer system. Surface runoff from the concrete slab and patio would also be collected and discharged into the storm sewer system.

Mr. Xiang Si Lei

April 8, 2009

In addition, it is planned to replace the existing retaining wall along the south property line of Parcels A, B, and C. Backdrain would be placed behind the wall on the uphill side of the wall. It is the intent of the backdrain to collect the groundwater that accumulates behind the wall. Groundwater collected in this manner would also be discharged into the storm sewer system; a sump pump would be required to lift the collected water to the invert level of the storm sewer system.

Based on the above, it is our opinion that the amount of infiltrated surface water and the groundwater flow in a southerly direction would be decreased. However, we are not prepared to provide an opinion as to whether the direction of the groundwater flow would be altered.

The second one was held on February 21, 2009. The meeting was attended by Mr. Ted Joe and Ms. Linda (Yes) Joe of 767 Foerster Street, and Mr. John Mickelson of 750 Foerster Street. The Joes raised the same questions as in the January 17, 2009 meeting while Mr. Mickelson pronounced that the design team does not have any knowledge of what happened in 1942, etc. and departed. The meeting continued with a site visit of the backyard of the Joes residence at 767 Foerster Street. As the backyard immediately west of the house is covered with either concrete slab or wood decking, and the remainder is professionally landscaped, there was not much to learn from the site visit. The meeting was subsequently adjourned.

#### CONCLUSION

In conclusion, it is our opinion that the proposed housing development may be constructed as planned, based on review of the documents discussed above. We do not anticipate that the type of mud flow as experienced in 1942 that led to the destruction of three houses and loss of one resident would happen again as the area and the immediate vicinity have been developed. Our recommendations as outlined in the report dated April 7, 2009 with respect to foundation support and site drainage of the proposed development should be implemented to provide satisfactory performance of the proposed buildings and to minimize excess surface water runoff to the neighbors.

#### CLOSURE

Our services have been performed with the usual thoroughness and competence of the engineering profession. No other warranty or representation, either expressed or implied, is included or intended.

Mr. Xiang Si Lei

April 8, 2009

If you have any questions regarding this report, please contact us. The following plates are attached and complete this report.

Plate 1	Vicinity Plan
Plate 2	Geologic Map
Plate 3	Photograph - Circa 1942
Plate 4	Photograph - February 6, 1942
Plate 5	Foerster St. Slide Area Nr Teresita Blvd



Yours Very Truly,  
Trans Pacific Geotechnical Consultants, Inc.

*Eddy T. Lau*

Eddy T. Lau, P.E.  
Reg. Civil Engineer 019897  
Reg. Geotechnical Engineer 506  
Expiration 9/30/2009

*Marlene Wong*

Marlene Wong, P.E.  
Reg. Civil Engineer 060992  
Reg. Geotechnical Engineer 2664  
Expiration 12/31/2010

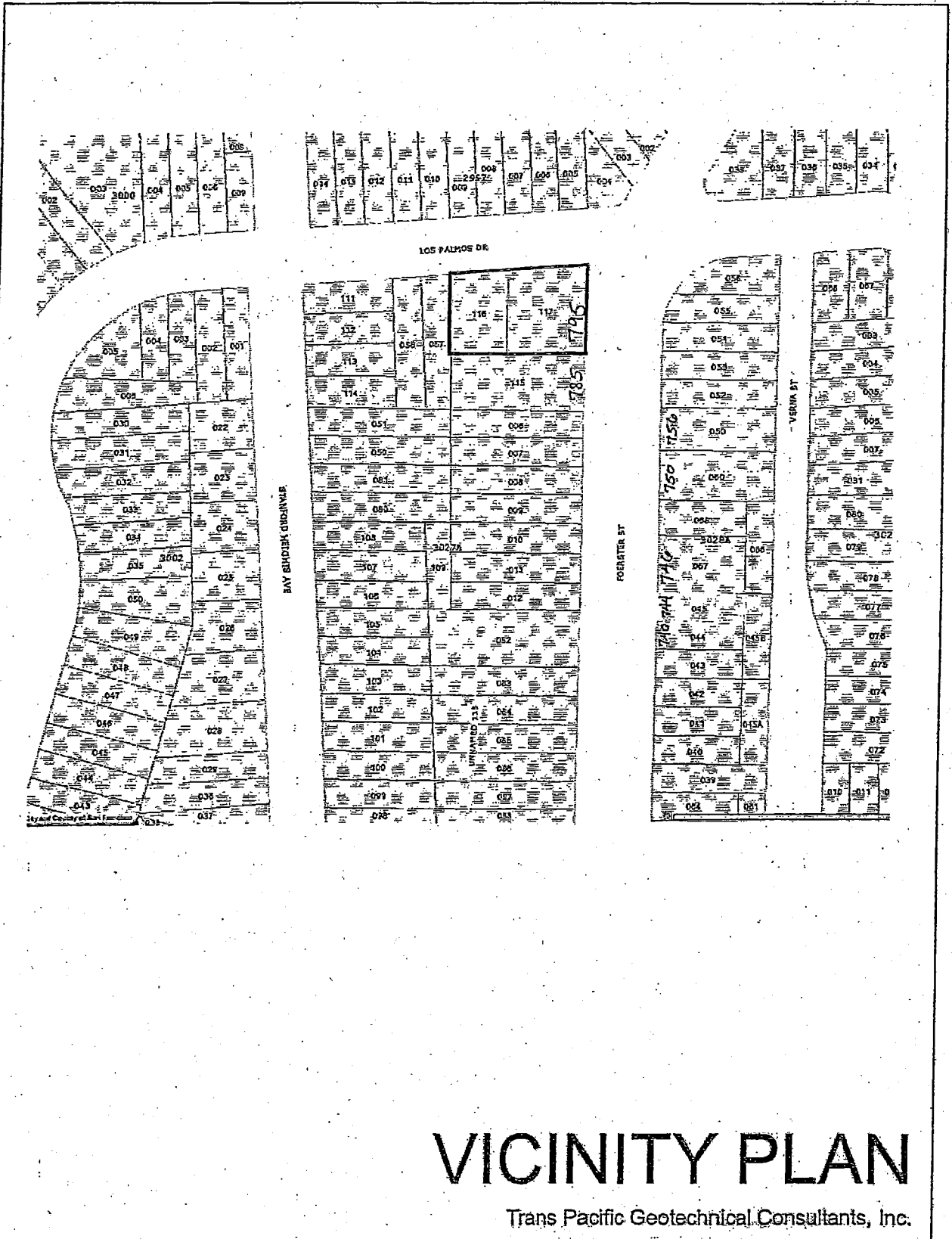
(Three copies submitted)

cc: Gabriel Y. Ng & Associates (8)  
1360 9<sup>th</sup> Avenue, Suite 210  
San Francisco, CA 94122  
Attention: Mr. Gabriel Y. Ng

Town Consulting (3)  
100 Clement Street, Third Floor  
San Francisco, CA 94118  
Attention: Mr. Tony Kim

Patrick Buscovich & Associates Structural Engineers, Inc. (2)  
235 Montgomery Street, Suite 823  
San Francisco, CA 94104  
Attention: Mr. Patrick Buscovich

1716-001 795 Foerster, 203, 207, and 213 Los Palms Drive



# VICINITY PLAN

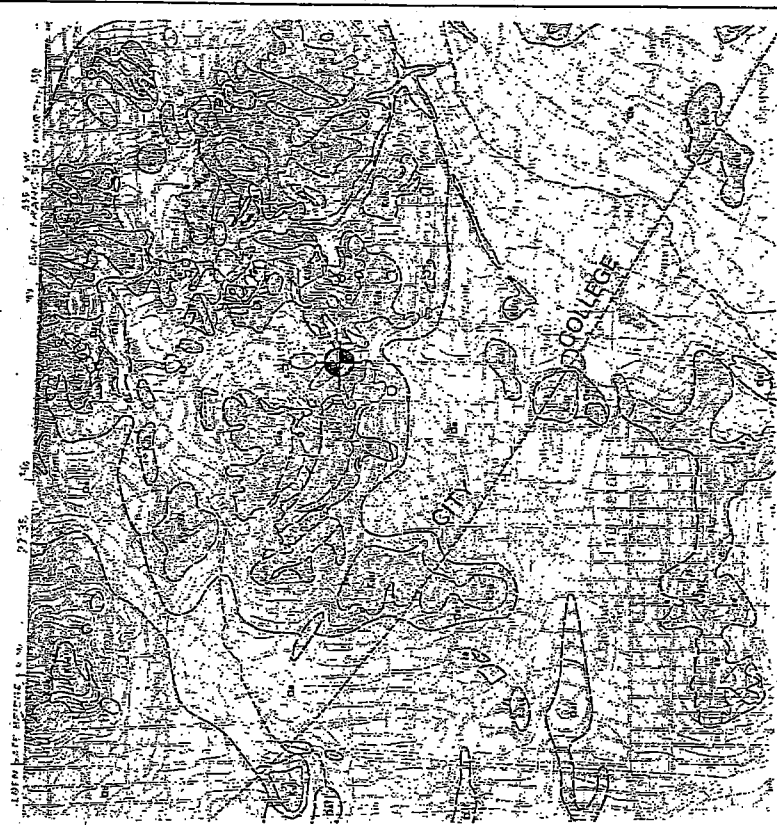
Trans Pacific Geotechnical Consultants, Inc.

PLATE 1



**EXPLANATION**  
THROUGHOUT THIS MAP SHEET

- 01. **WATER**
- 02. **UNSATURATED**
- 03. **04. 05. 06. 07. 08. 09. 10. 11. 12. 13. 14. 15. 16. 17. 18. 19. 20. 21. 22. 23. 24. 25. 26. 27. 28. 29. 30. 31. 32. 33. 34. 35. 36. 37. 38. 39. 40. 41. 42. 43. 44. 45. 46. 47. 48. 49. 50. 51. 52. 53. 54. 55. 56. 57. 58. 59. 60. 61. 62. 63. 64. 65. 66. 67. 68. 69. 70. 71. 72. 73. 74. 75. 76. 77. 78. 79. 80. 81. 82. 83. 84. 85. 86. 87. 88. 89. 90. 91. 92. 93. 94. 95. 96. 97. 98. 99. 100.**



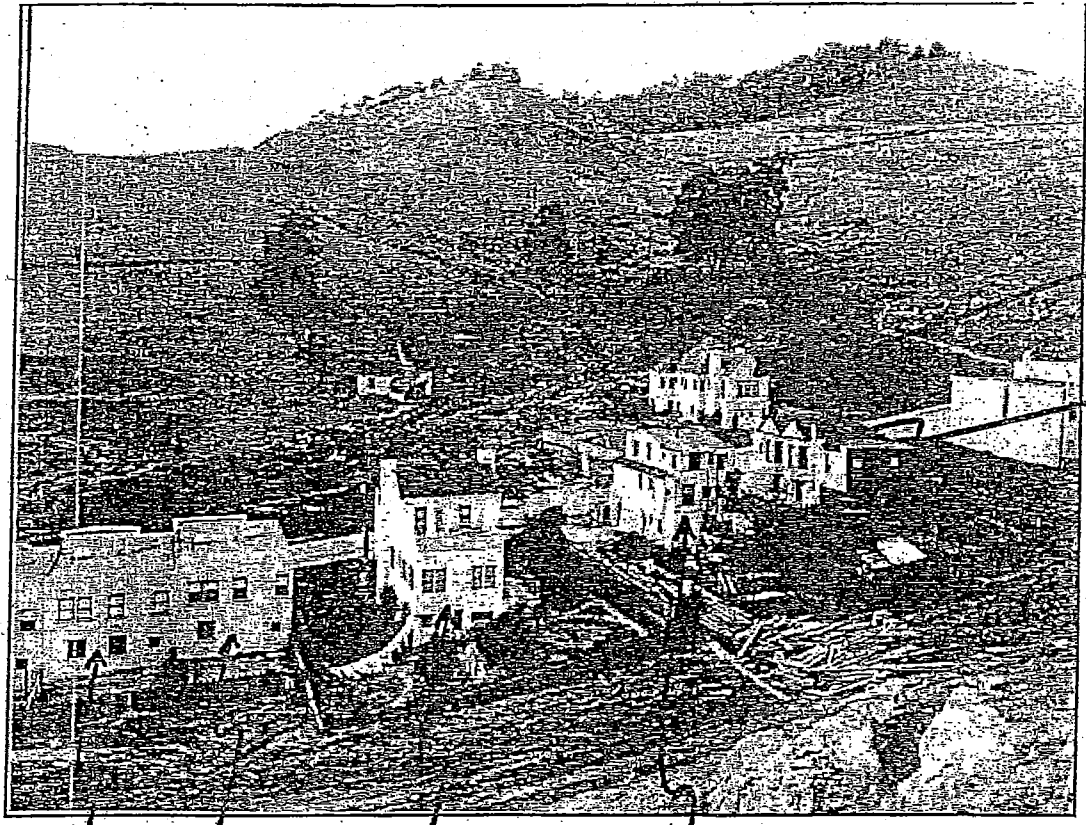
[Source: Preliminary Geologic Map of the San Francisco South 7.5' Quadrangle and Part of Hunters Point 7.5' Geologic Quadrangle, San Francisco Bay Area, California, USGS Open File Report 88-354, M.G. Bonilla]

# GEOLOGIC MAP

Trans Pacific Geotechnical Consultants, Inc.

PLATE 2

1716-001 795 Foerster, 203, 207, and 213 Los Palms Drive



740  
Foerster

744  
Foerster

746  
Foerster

750  
Foerster

785  
Foerster

756  
Foerster

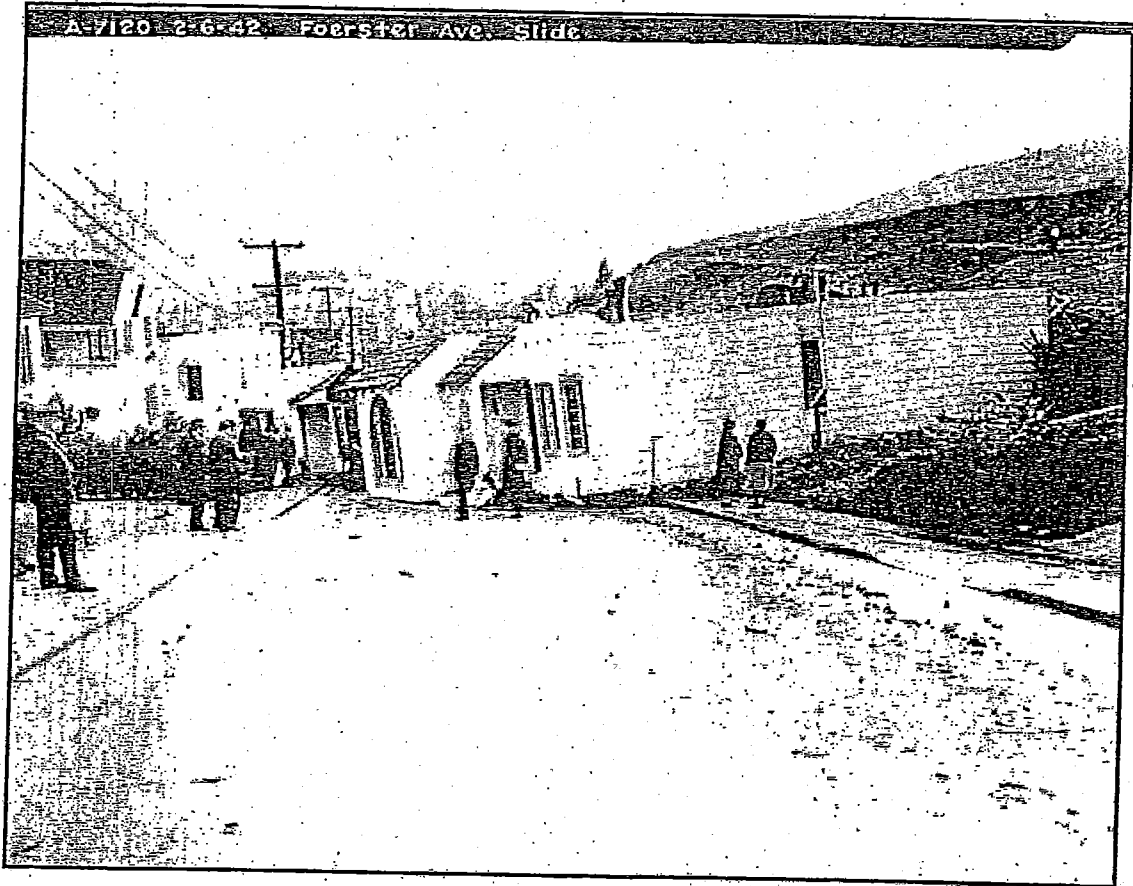
(Source: [www.mtdavidson.org](http://www.mtdavidson.org))

# PHOTOGRAPH CIRCA 1942

Trans Pacific Geotechnical Consultants, Inc.

PLATE 3

1716-001 795 Feerster, 203, 207, and 213 Los Palms Drive



(Source: [www.mtdavidson.org](http://www.mtdavidson.org))

# PHOTOGRAPH FEBRUARY 6, 1942

Trans Pacific Geotechnical Consultants, Inc.

PLATE 4



Exhibit G

**APPROVED**  
Dept. of Building Insp.

MAR 17 2010

*Vivian L. Day*  
VIVIAN L. DAY  
DIRECTOR/CHIEF BUILDING OFFICIAL  
DEPT. OF BUILDING INSPECTION

APPROVED FOR ISSUANCE

L.D.G.  
ORM  
3/8

APPLICATION NUMBER  
010 02176700

OSHA APPROVAL REQ'D  
APPROVAL NUMBER

**APPLICATION FOR BUILDING PERMIT  
ADDITIONS, ALTERATIONS OR REPAIRS**

CITY AND COUNTY OF SAN FRANCISCO  
DEPARTMENT OF BUILDING INSPECTION

FORM 3  OTHER AGENCIES REVIEW REQUIRED

FORM 8  OVER-THE-COUNTER ISSUANCE

NUMBER OF PLAN SETS **3**

APPLICATION IS HEREBY MADE TO THE DEPARTMENT OF BUILDING INSPECTION OF SAN FRANCISCO FOR PERMISSION TO BUILD ACCORDING TO THE PLANS AND SPECIFICATIONS SUBMITTED HERewith AND ACCORDING TO THE DESCRIPTION AND FOR THE PURPOSE HEREINAFTER SET FORTH.

DO NOT WRITE ABOVE THIS LINE

DATE FILED	FILED FEE RECEIPT NO.	(1) STREET ADDRESS OF JOB	BLOCK & LOT
		795 FOERSTER STREET	3027A/117
PERMIT NO. 1207235	ISSUED 3/17/10	(2A) ESTIMATED COST OF JOB \$5000	(2B) REVISED COST \$5000 DATE 2/17/10

**INFORMATION TO BE FURNISHED BY ALL APPLICANTS**

LEGAL DESCRIPTION OF EXISTING BUILDING							
(4A) TYPE OF CONSTR. V-B	(5A) NO. OF STORIES OF OCCUPANCY 2	(6A) NO. OF BASEMENTS AND CELLARS 0	(7A) PRESENT USE SINGLE FAMILY DWELLING	(8A) OCCUP. CLASS R-3	(9A) NO. OF DWELLING UNITS 1		
DESCRIPTION OF BUILDING AFTER PROPOSED ALTERATION							
(4) TYPE OF CONSTR. V-B	(5) NO. OF STORIES OF OCCUPANCY 2	(6) NO. OF BASEMENTS AND CELLARS 0	(7) PROPOSED USE (LEGAL USE) SINGLE FAMILY DWELLING	(8) OCCUP. CLASS R-3	(9) NO. OF DWELLING UNITS 1		
(10) IS AUTO RUNWAY TO BE CONSTRUCTED OR ALTERED?		(11) WILL STREET SPACE BE USED DURING CONSTRUCTION?		(12) ELECTRICAL WORK TO BE PERFORMED?		(13) PLUMBING WORK TO BE PERFORMED?	
YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>		YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>		YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>		YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	
(14) GENERAL CONTRACTOR NOT SELECTED		ADDRESS		PHONE		CALIF. LIC. NO. EXPIRATION DATE	
(15) OWNER - LESSEE (CROSS OUT ONE)		ADDRESS		ETRC#		PHONE (FOR CONTACT BY DEPT.)	
XIANG SI LEI		616 ROLPH ST.		94112		682-1060	
(16) WRITE IN DESCRIPTION OF ALL WORK TO BE PERFORMED UNDER THIS APPLICATION (REFERENCE TO PLANS IS NOT SUFFICIENT)							
LEGALIZE REMOVAL OF EXISTING REAR PORTION OF THE BUILDING ON 1ST FLOOR DONE BY PREVIOUS OWNER:							
1. REMOVAL OF PORTION OF EXISTING ROOF, WALLS AND FLOORING AT REAR							
2. NEW WALL WITH NEW WINDOW FOR THE REMOVED PORTION.							
ADDITIONAL INFORMATION							
(17) DOES THIS ALTERATION CREATE ADDITIONAL HEIGHT OR STORY TO BUILDING?		(18) IF (17) IS YES, STATE NEW HEIGHT AT CENTER LINE OF FRONT		(19) DOES THIS ALTERATION CREATE DECK OR HORIZ. EXTENSION TO BUILDING?		(20) IF (19) IS YES, STATE NEW EXTERIOR FLOOR AREA	
YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>		FL.		YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>		SQ. FT.	
(21) WILL SIDEWALK OVER SUB-SIDEWALK SPACE BE REPAIRED OR ALTERED?		(22) WILL BUILDING EXTEND BEYOND PROPERTY LINE?		(23) ANY OTHER EXISTING BLDG. ON LOT? (IF YES, SHOW ON PLOT PLAN).		(24) DOES THIS ALTERATION CONSTITUTE A CHANGE OF OCCUPANCY?	
YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>		YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>		YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>		YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	
(25) ARCHITECT OR ENGINEER DESIGN		CONSTRUCTION LIC. NO.		ADDRESS		CALIF. CERTIFICATE NO.	
GABRIEL Y. NG		1360 9TH AVE. SUITE 210, S.F. 94122		C-19910			
(26) CONSTRUCTION LENDER (ENTER NAME AND BRANCH DESIGNATION IF ANY, IF THERE IS NO KNOWN CONSTRUCTION LENDER, ENTER "UNKNOWN")		ADDRESS					

**IMPORTANT NOTICES**

No change shall be made in the character of the occupancy or use without first obtaining a Building Permit authorizing such change. See San Francisco Building Code and San Francisco Housing Code.

No portion of building or structure or scaffolding used during construction, to be closer than 6' to any wire containing more than 750 volts See Sec 385, California Penal Code.

Pursuant to San Francisco Building Code, this building permit shall be posted on the job. The owner is responsible for approved plans and application being kept at building site.

Grade lines as shown on drawings accompanying this application are assumed to be correct. If actual grade lines are not the same as shown revised drawings showing correct grade lines, cuts and fills together with complete details of retaining walls and wall footings required must be submitted to this department for approval.

ANY STIPULATION REQUIRED HEREIN OR BY CODE MAY BE APPEALED.

BUILDING NOT TO BE OCCUPIED UNTIL CERTIFICATE OF FINAL COMPLETION IS POSTED ON THE BUILDING OR PERMIT OF OCCUPANCY GRANTED, WHEN REQUIRED.

APPROVAL OF THIS APPLICATION DOES NOT CONSTITUTE AN APPROVAL FOR THE ELECTRICAL WIRING OR PLUMBING INSTALLATIONS. A SEPARATE PERMIT FOR THE WIRING AND PLUMBING MUST BE OBTAINED. SEPARATE PERMITS ARE REQUIRED IF ANSWER IS YES TO ANY OF ABOVE QUESTIONS (10) (11) (12) (13) (22) OR (24).

THIS IS NOT A BUILDING PERMIT. NO WORK SHALL BE STARTED UNTIL A BUILDING PERMIT IS ISSUED.

In dwellings all insulating materials must have a clearance of not less than two inches from all electrical wires or equipment.

CHECK APPROPRIATE BOX  
 OWNER  ARCHITECT  
 LESSEE  AGENT  
 CONTRACTOR  ENGINEER

**APPLICANT'S CERTIFICATION**

I HEREBY CERTIFY AND AGREE THAT IF A PERMIT IS ISSUED FOR THE CONSTRUCTION DESCRIBED IN THIS APPLICATION, ALL THE PROVISIONS OF THE PERMIT AND ALL LAWS AND ORDINANCES THERE TO WILL BE COMPLIED WITH.

8003-03 (REV. 1/02)

**NOTICE TO APPLICANT**

**HOLD HARMLESS CLAUSE.** The permittee(s) by acceptance of the permit, agree(s) to indemnify and hold harmless the City and County of San Francisco from and against any and all claim, demands and actions for damages resulting from operations under this permit, regardless of negligence of the City and County of San Francisco, and to assume the defense of the City and County of San Francisco against all such claims, demands or actions.

In conformity with the provisions of Section 3800 of the Labor Code of the State of California, the applicant shall have coverage under (I), or (II) designated below or shall indicate item (III), or (IV), or (V), whichever is applicable. If however item (V) is checked item (IV) must be checked as well. Mark the appropriate method of compliance below.

I hereby affirm under penalty of perjury one of the following declarations:

- ( ) I. I have and will maintain a certificate of consent to self-insure for worker's compensation, as provided by Section 5700 of the Labor Code, for the performance of the work for which this permit is issued.
- ( ) II. I have and will maintain workers' compensation insurance, as required by Section 5700 of the Labor Code, for the performance of the work for which this permit is issued. My workers' compensation insurance carrier and policy number are:




Carrier \_\_\_\_\_  
Policy Number \_\_\_\_\_

- ( ) III. The cost of the work to be done is \$100 or less.
- ( ) IV. I certify that in the performance of the work for which this permit is issued, I shall not employ any person in any manner so as to become subject to the workers' compensation laws of California. I further acknowledge that I understand that in the event that I should become subject to the workers' compensation provisions of the Labor Code of California and fail to comply therewith with the provisions of Section 3800 of the Labor Code, that the permit herein applied for shall be deemed revoked.

- X V. I certify as the owner (or agent for the owner) that in the performance of the work for which this permit is issued, I will employ a contractor who complies with the workers' compensation laws of California and who, prior to the commencement of any work, will file a completed copy of this form with the Central Permit Bureau.

Signature of Applicant or Agent \_\_\_\_\_ Date \_\_\_\_\_

CONDITIONS AND STIPULATIONS

REFER TO:	APPROVED:  FEB 17 2010  BUILDINGS INSPECTOR, DEPT. OF BLDG. INSP.	DATE: _____ REASON: _____ NOTIFIED MR. _____
<input type="checkbox"/>	APPROVED: <i>Single removal of illegally installed &amp; already removed fire alarm</i> DEPARTMENT OF CITY PLANNING CATEGORICALLY EXEMPT FROM ENVIRONMENTAL REVIEW CLASS <i>2</i> DEPARTMENT OF CITY PLANNING	DATE: _____ REASON: _____ NOTIFIED MR. _____
<input type="checkbox"/>	APPROVED: M/A I BUREAU OF FIRE PREVENTION & PUBLIC SAFETY	DATE: _____ REASON: _____ NOTIFIED MR. _____
<input type="checkbox"/>	APPROVED: By  JAMES ZHAN, DEI FEB 17 2010 MECHANICAL ENGINEER, DEPT OF BLDG. INSPECTION	DATE: _____ REASON: _____ NOTIFIED MR. _____
<input type="checkbox"/>	APPROVED: ROBERT L. FINE, DEI FEB 17 2010 CIVIL ENGINEER, DEPT. OF BLDG INSPECTION	DATE: _____ REASON: _____ NOTIFIED MR. _____
<input type="checkbox"/>	APPROVED: M/A BUREAU OF ENGINEERING	DATE: _____ REASON: _____ NOTIFIED MR. _____
<input type="checkbox"/>	APPROVED: DEPARTMENT OF PUBLIC HEALTH	DATE: _____ REASON: _____ NOTIFIED MR. _____
<input type="checkbox"/>	APPROVED: REDEVELOPMENT AGENCY	DATE: _____ REASON: _____ NOTIFIED MR. _____
<input type="checkbox"/>	APPROVED: HOUSING INSPECTION DIVISION	DATE: _____ REASON: _____ NOTIFIED MR. _____

HOLD SECTION - NOTE DATES AND NAMES OF ALL PERSONS NOTIFIED DURING PROCESSING

I agree to comply with all conditions or stipulations of the various bureaus or department noted on this application, and attached statements of conditions or stipulations, which are hereby made a part of this application.

Number of attachments  OWNER'S AUTHORIZED AGENT \_\_\_\_\_



City and County of San Francisco  
 Department of Building Inspection

**CERTIFICATE OF FINAL COMPLETION AND OCCUPANCY**

LOCATION: 795 Faasske St (number) 3027A/117 (block and lot)

Permit Application No: 201002176700 Type of Construction: V-B Stories: 2 Dwelling Units: 1

Basements: 0 Occupancy Classification: R-3 No. of Guestrooms: 0 with cooking facilities: 0

Description of Construction: (Resalize) Removal of (E) rear portion of 1st building on 1st floor done by previous owner. Removal of portion of (E) roof, walls & floor joists & Rafters. (All) wall w/ window & scoured portion.

To the best of our knowledge, the construction described above has been completed and, effective as of the date the building permit application was filed, conforms both to the Ordinances of the City and County of San Francisco and to the Laws of the State of California. The above referenced occupancy classification is approved pursuant to Section 109A of the San Francisco Building Code.

Any change in the use or occupancy of these premises--or any change to the building or premises--could cause the property to be in violation of the Municipal Codes of the City and County of San Francisco and, thereby, would invalidate this Certificate of Final Completion and Occupancy. A copy of this Certificate shall be maintained on the premises and shall be available at all times. Another copy of this Certificate should be kept with your important property documents.

Before making any changes to the structure in the future, please contact the Department of Building Inspection, which will provide advice regarding any change that you wish to make and will assist you in making the change in accordance with the Municipal Codes of the City and County of San Francisco.

This certificate issued on: 3/24/2010

Vivian L. Day

by: [Signature] Building Inspector  
Brian Curran Printed Name

**VIVIAN L. DAY, C.B.O., Director of Building Inspection**  
 Copies: White (original to microfilm); Blue (to property owner); Yellow (to Building Inspector); Pink (to Housing Inspector)



Exhibit H

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[Approving Decision of the Department of Public Works and Approving the Tentative Parcel Map for 0 Los Paltos Drive (Vacant) and 795 Foerster Street]

**Motion approving the decision of the Department of Public Works, finding the Tentative Parcel Map consistent with the City's General Plan and eight priority policies of Planning Code Section 101.1, and approving the Tentative Parcel Map for a 4-lot subdivision located at 0 Los Paltos Drive (vacant), Assessor's Block No. 3027A, Lot No. 116; and 795 Foerster Street, Assessor's Block No. 3027A, Lot No. 117.**

WHEREAS, The Planning Department found the subject Tentative Map in compliance with the California Environmental Quality Act (California Public Resources Code sections 21000 et seq.) and found it consistent with the City's General Plan and priority policy findings of Planning Code Section 101.1. Said determination is on file with the Clerk of the Board of Supervisors in File No. 101185 and is incorporated herein by reference; and,

WHEREAS, The Department of Public Works, in a decision dated September 7, 2010, approved a Tentative Parcel Map for a 4-lot subdivision at 0 Los Paltos Drive (vacant), Assessor's Block No. 3027A, Lot No. 116; and 795 Foerster Street, Assessor's Block No. 3027A, Lot No. 117. Said determination is on file with the Clerk of the Board of Supervisors in File No. 101185 and is incorporated herein by reference; and,

WHEREAS, On September 12, 2010, Sina Tarassoly filed a timely appeal to the decision of the Department of Public Works; and,

WHEREAS, On October 5, 2010, this Board held a duly noticed public hearing to consider the appeal of the Tentative Parcel Map filed by Appellant; and,

WHEREAS, This Board has reviewed and considered the subject Map, the appeal letter, the other written records before the Board of Supervisors, and heard testimony and received public comment regarding the subject Map; now, therefore, be it

1           MOVED, That the Board hereby adopts as its own the Planning Department's findings  
2 of consistency with the General Plan and Planning Code Section 101.1 concerning a  
3 Tentative Parcel Map at 0 Los Palmos Drive (vacant), Assessor's Block No. 3027A, Lot No.  
4 116; and 795 Foerster Street, Assessor's Block No. 3027A, Lot No. 117; and, be it

5           FURTHER MOVED, That the Board approves the decision of the Department of Public  
6 Works concerning the Tentative Parcel Map and hereby approves said Map.



**City and County of San Francisco**

**Tails**

**Motion: M10-145**

City Hall  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102-4689

**File Number: 101186**

**Date Passed: October 05, 2010**

Motion approving the decision of the Department of Public Works, finding the Tentative Parcel Map consistent with the City's General Plan and eight priority policies of Planning Code Section 101.1, and approving the Tentative Parcel Map for a 4-lot subdivision located at 0 Los Palmos Drive (vacant), Assessor's Block No. 3027A, Lot No. 116; and 795 Foerster Street, Assessor's Block No. 3027A, Lot No. 117.


October 05, 2010 Board of Supervisors - APPROVED

Ayes: 10 - Alioto-Pier, Avalos, Campos, Chiu, Chu, Daly, Dufty, Mar, Maxwell and Mirkarimi

Excused: 1 - Elsbernd

File No. 101186

I hereby certify that the foregoing Motion was APPROVED on 10/5/2010 by the Board of Supervisors of the City and County of San Francisco.

  
\_\_\_\_\_  
Angela Calvillo  
Clerk of the Board



# SAN FRANCISCO PLANNING DEPARTMENT

RECEIVED  
BOARD OF SUPERVISORS  
SAN FRANCISCO  
11 MAR 14 AM 11:36

BOS-11  
C.A. 2

**MEMO**

**DATE:** March 14, 2011

**TO:** Angela Calvillo, Clerk of the Board

**FROM:** Bill Wycko, Environmental Review Officer, Planning Department

**RE:** Supplemental Letter of Appeal of the Categorical Exemption for 795 Foerster Street, 203 Los Palmos Drive, 207 Los Palmos Drive and 213 Los Palmos Drive, Assessor's Block 3027A, Lots 116 and 117  
Planning Department Case No. 2008.0558E

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

Reception:  
415.558.6378

Fax:  
415.558.6409

Planning  
Information:  
415.558.6377

**HEARING DATE:** March 22, 2011; Continued from February 15, 2011

Attached is one hard copy of the Planning Department's supplemental memorandum to the Board of Supervisors regarding the March 9, 2001, supplemental letter of appeal of the categorical exemption for 795 Foerster Street, 203 Los Palmos Drive, 207 Los Palmos Drive and 213 Los Palmos Drive. We have also e-mailed an electronic/pdf version of the memorandum to Joy Lamug and Andrea Ausberry at the Clerk of the Board.

If you have any questions regarding this matter, please contact Andrea Contreras at 575-9044 or [andrea.contreras@sfgov.org](mailto:andrea.contreras@sfgov.org). Please note that Andrea will be out of the office on March 14 and 15. In her absence, please contact Lisa Gibson at 575-9032 or [lisa.gibson@sfgov.org](mailto:lisa.gibson@sfgov.org).

Thank you.



# SAN FRANCISCO PLANNING DEPARTMENT

**MEMO**

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

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

Reception:  
415.558.6378

Fax:  
415.558.6409

Planning  
Information:  
415.558.6377

**DATE:** March 14, 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. 119041, Planning Case No. 2008.0558E  
Supplemental Letter Response - Appeal of Categorical Exemption for 795  
Foerster Street, 203 Los Palmos Drive, 207 Los Palmos Drive and 213 Los  
Palmos Drive

**HEARING DATE:** March 22, 2011; Continued from February 15, 2011

**ATTACHMENTS:** A – Supplemental Letter of Appeal (March 9, 2011)

**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 is a response (“Supplemental Appeal Response”) to the attached second appeal letter (“Supplemental Appeal Letter”) submitted on March 9, 2011 by the Appellant 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”). Department staff submitted an appeal response memorandum on February 8, 2011 (“Original Appeal Response”) addressing concerns raised in the original, January 6, 2011 Letter of Appeal (“Original Appeal Letter”).

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

Palmos Drive on June 8, 2009 finding that the proposed Project would not have a significant effect on the environment.<sup>1</sup>

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:**

Please refer to the Department's Original Appeal Response for a description of the Project site and present use.

#### **PROJECT DESCRIPTION:**

Please refer to the Department's Original Appeal Response for a description of the Project.

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

The Supplemental Appeal Letter repeats the Appellant's assertion, as stated in the Original Appeal Response, that the Project should not be exempt from environmental review because the Department inappropriately relied upon mitigation measures to reduce seismic hazards. Please refer to the Original Appeal Response for the Department's responses to Issue #1 and Issue #2 regarding seismic hazards.

The new concerns raised in the Supplemental Appeal Letter are cited in the issue summary below, followed by the Department's response. The new concerns are identified as "Issue #10" to reflect the numbering of the issues addressed in the Department's Original Appeal Response, which ended with Issue #9.

**Issue #10:** The Appellant objects "to the granting of the categorical exemption because of the known future cumulative impacts this project (and numerous others to follow) will have in the Miraloma Park Neighborhood." The Appellant continues that "The Miraloma Park Neighborhood is filled with large lots such as the one currently proposed for development. The approval of this subdivision and subsequent development should be subject to a cumulative impact analysis by the Department."

**Response #10:** CEQA Guidelines Section 15300.2(b) states that a categorical exemption is inapplicable when the cumulative impact of successive projects of the same type in the same place, over time is significant. Accordingly, as part of the Department's environmental review of

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<sup>1</sup> California Code of Regulations, Title 14, Section 15301.1(1)(4) and 15303(a): Class 1 and 3 Exemptions.

the Project, staff considered whether any cumulative impacts would occur as a result of Project implementation. Finding none, the Department issued the CEQA Determination.

CEQA Guidelines Section 15355 defines cumulative impacts as two or more individual effects which, which considered together, are considerable or which compound or increase other environmental impacts. The individual effects may be changes resulting from a single project or a number of separate projects. The cumulative impact from several projects is the change in the environment which results from the incremental impact of the project when added to other closely related past, present, and reasonably foreseeable probable future projects. Cumulative impacts can result from individually minor but collectively significant projects taking place over a period of time.

According to the Planning Department's Parcel Information Database and the Department of Building Inspection's Online Permit and Complaint Tracking website, most of the building permits recently issued or under review within a two-block distance of the Project site involve alterations, repairs, and additions and do not include subdivision or new construction. Since the mid 1990s, three single-family dwellings have been constructed on three separate lots within an approximately two-block radius of the Project site, specifically at 705 and 709 Foerster Street and 615 Genessee Street. Further, Department staff are not aware of any area plans or other types of planned activities that would result in physical changes that could reasonably combine with the physical environmental impacts of the Project.

The Appellant states that the area around the Project site contains "large lots" such as the Project site, but does not indicate how the size of surrounding lots would result in cumulative impacts. In addition, the Appellant does not specify the nature of the "known future cumulative impacts" or the "numerous others [projects] to follow" that are pertinent to the cumulative impact analysis.

The CEQA Statutes Section 21082.2 requires the lead agency to determine whether a project may have a significant effect on the environment based on substantial evidence in light of the whole record. The statute provides that substantial evidence shall include "facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts." The statute further provides that "[a]rgument, speculation, unsubstantiated opinion or narrative, evidence which is clearly inaccurate or erroneous, or evidence of social or economic impacts which do not contribute to, or are not caused by, physical impacts on the environment, is not substantial evidence."

The Appellant has failed to provide substantial evidence of any cumulative impacts resulting from the proposed Project. Specifically, the Appellant has not identified any existing cumulative impact to which this project may contribute, has not identified any other projects (either past, present, or reasonably foreseeable future projects) in the surrounding area that would have impacts that could combine with the impacts of the Project, and has not explained how this proposed Project may contribute in a cumulatively considerable way to any existing cumulative impact. The mere presence of lots that could potentially be subdivided and/or developed in the future does not constitute substantial evidence of a potential cumulative impact under CEQA.



Any future development projects in the area would be subject to environmental review, which would include an assessment of whether such projects would result in cumulative impacts when considered in combination with other past, present, or reasonably foreseeable projects. Whether the proposed Project would be appropriately considered in the cumulative impact analysis of other potential future projects would depend upon a variety of factors, including the timing and location of those projects and the nature of their impacts.

## CONCLUSION

The Department conducted an in-depth and thorough analysis of the Project at 795 Foerster Street, 203 Los Palmos Drive, 207 Los Palmos Drive and 213 Los Palmos Drive pursuant to the CEQA Guidelines. The Appellant has not submitted any evidence that the Project would result in cumulative impacts under CEQA. Department staff have reviewed permit history and planning efforts in the project vicinity and found no past, present or reasonably foreseeable future projects that would combine with the effects of the proposed Project to result in significant environmental impacts.

For the reasons stated in the Original Appeal Response, this Supplemental Appeal Response, and the CEQA Determination, the Department finds that 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 CEQA Determination and deny the appeal.

# Attachment A

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March 9, 2011

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

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

President Chiu and Members of the Board:

As you may recall, this Office represents the Miraloma Park Improvement Club (“MPIC”) in an appeal the above-referenced Determination of Exemption/Exclusion from Environmental Review which was submitted to this Board on January 6, 2011, and is currently set for hearing on March 22, 2011. I am writing today to supplement the appeal on behalf of the MPIC and add an additional ground and basis for the appeal.

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As set forth in the earlier filing, we believe that the project must undergo environmental review and may not be exempted from all environmental review as determined by the Planning Department because the site is in a specifically mapped seismic hazard zone and the Department is relying on promised mitigations from the developer to reduce the potential danger. Additionally, we also want to object to the granting of the categorical exemption because of the known future cumulative impacts this project (and numerous others to follow) will have in the Miraloma Park Neighborhood.

As defined by CEQA, a cumulative impact consists of an impact that is created as a result of the combination of the project evaluated in the environmental document together with other projects causing related impacts: These impacts occur when the incremental impact of the project, when combined with the effects of other past, present and reasonably foreseeable future projects, are cumulatively considerable. The Miraloma Park Neighborhood is filled with large lots such as the one currently proposed for development. The approval of this subdivision and subsequent development should be subject to a cumulative impact analysis by the Department.

Sincerely,


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



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:

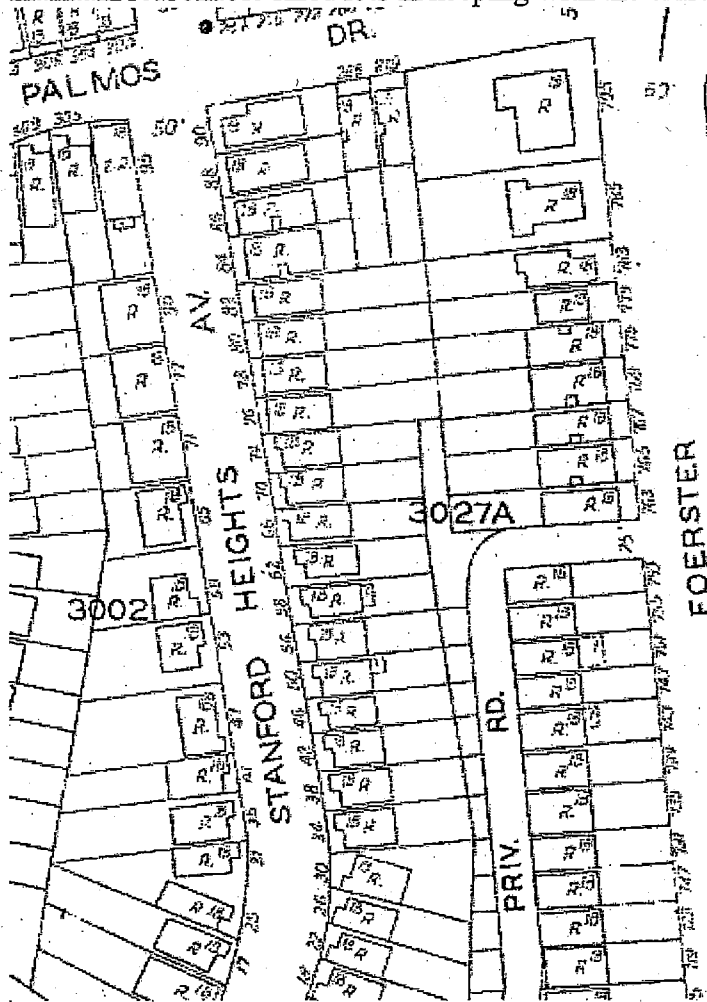
This Office represents the Miraloma Park Improvement Club ("MPIC"). The MPIC has existed since 1935 and is dedicated to bringing community information and services to the Miraloma Park neighborhood. Miraloma Park is a community of 2200 homes located on Mount Davidson in the heart of San Francisco.

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).

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.

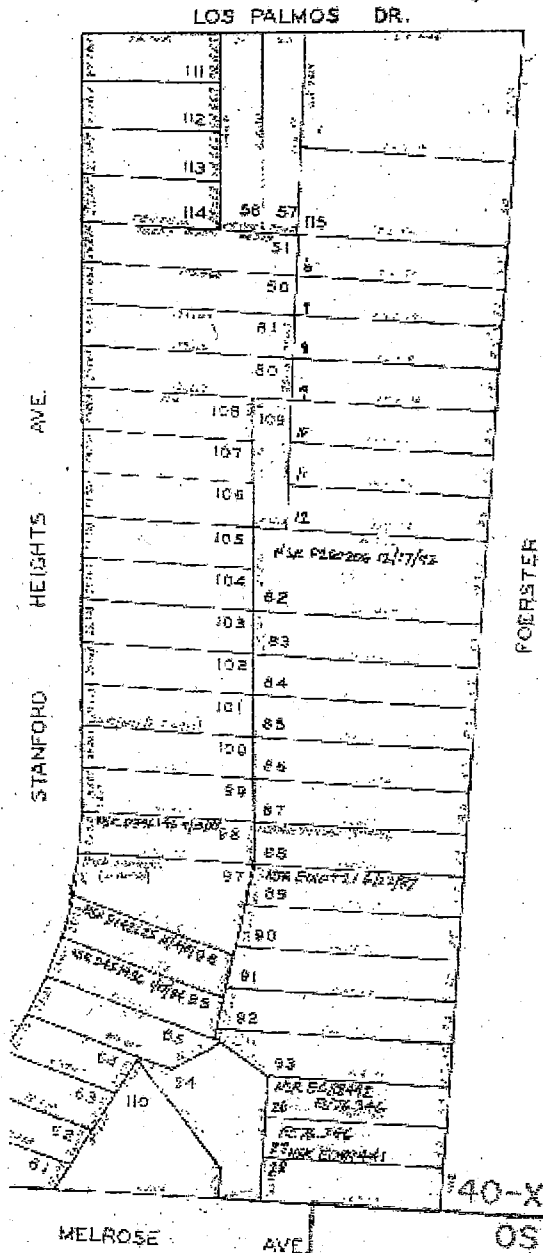
The Environmental Document states that "the existing single-family dwelling at 795 Foerster Street is not proposed for alteration." (Page 2-Paragraph 1) However, the existing building has already been altered and clearly must be considered as part of the "project" under a CEQA

David Chiu, President

San Francisco Board of Supervisors

January 6, 2011

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.

David Chiu, President  
San Francisco Board of Supervisors

January 6, 2011

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.

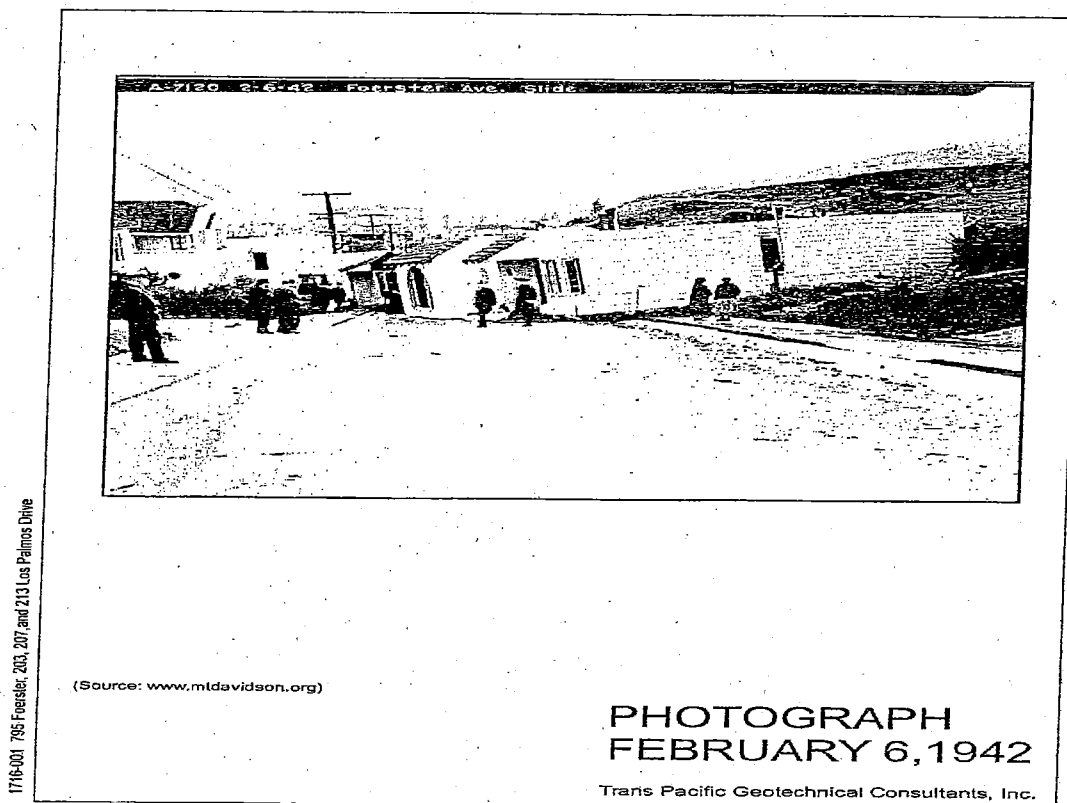


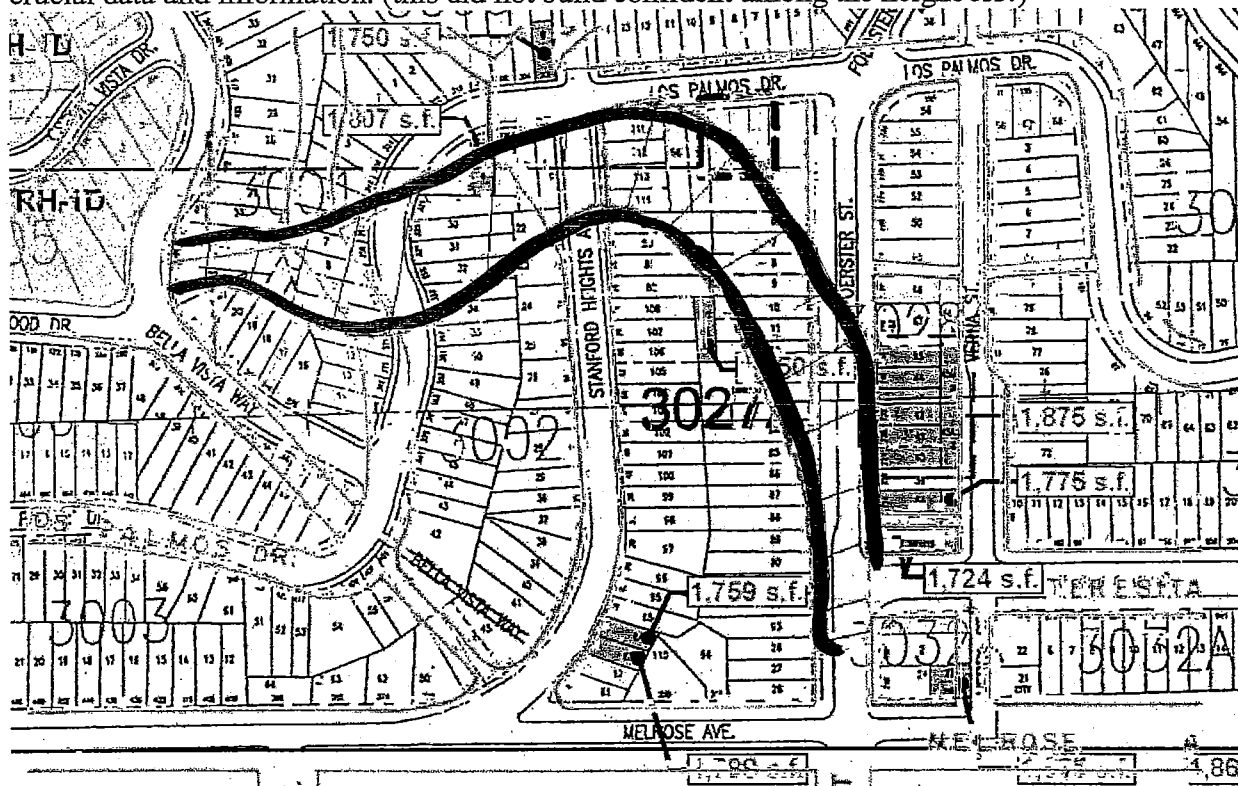
Figure 1: Show above is the aftermath of the previous landslide at the site.



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

7

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

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.<sup>1</sup> 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.<sup>2</sup> 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.<sup>3</sup> 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

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<sup>1</sup> *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.

<sup>2</sup> 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.

<sup>3</sup> 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 report<sup>4</sup> 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 report<sup>5</sup> 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

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<sup>4</sup> 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.

<sup>5</sup> 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.<sup>6</sup> 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.<sup>7</sup> 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.

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<sup>6</sup> 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.

<sup>7</sup> 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

Reception:  
415.558.6378

Fax:  
415.558.6409

Planning  
Information:  
415.558.6377

*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.

### 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: <u>Stephen Williams</u>	Address of Project: <u>795 Foerster Street; 203-213 Los</u>
Neighborhood Organization: <u>Miraloma Park Imp. C.P.</u>	Planning Case No: <u>2008.0558E</u>
Applicant's Address: <u>1934 Divisadero</u>	Building Permit No:
Applicant's Daytime Phone No: <u>415-292-3656</u>	Date of Decision: <u>June 8, 2009</u>
Applicant's Email Address: <u>snw@stevewilliamsllaw.com</u>	

DCP STAFF USE ONLY	
<input type="checkbox"/> Appellant authorization	Planner's Name: _____
<input type="checkbox"/> Current organization registration	Date: _____
<input type="checkbox"/> Minimum organization age	Planner's Signature: _____
<input type="checkbox"/> Project impact on organization	
<input type="checkbox"/> <b>WAIVER APPROVED</b> <span style="margin-left: 100px;"><input type="checkbox"/> <b>WAIVER DENIED</b></span>	


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 Palms Drive**

An appeal of determination of exemption from environmental review issued for properties located at 795 Foerster Street and 203, 207, and 213 Los Palms 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



**SAN FRANCISCO  
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 *[Signature]*

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

Reception:  
415.558.6378

Fax:  
415.558.6409

Planning  
information:  
415.558.6377

**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

Los Palmos Drive on June 8, 2009, finding that the proposed Project would not have a significant effect on the environment.<sup>1</sup>

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 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. 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 Palmos 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 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 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

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<sup>1</sup> 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.

*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 Code<sup>2</sup> 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,<sup>3</sup> 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

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<sup>2</sup> 21084: Guidelines shall list classes of projects exempt from this Act.

<sup>3</sup> 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.<sup>4</sup>

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<sup>4</sup> 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.<sup>5</sup>

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.

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<sup>5</sup> 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.

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 from 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.<sup>6</sup> 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.

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<sup>6</sup> 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



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

RECEIVED  
BOARD OF SUPERVISORS  
SAN FRANCISCO  
2010 JAN - 7 PM 2:39  
BY [Signature]

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.

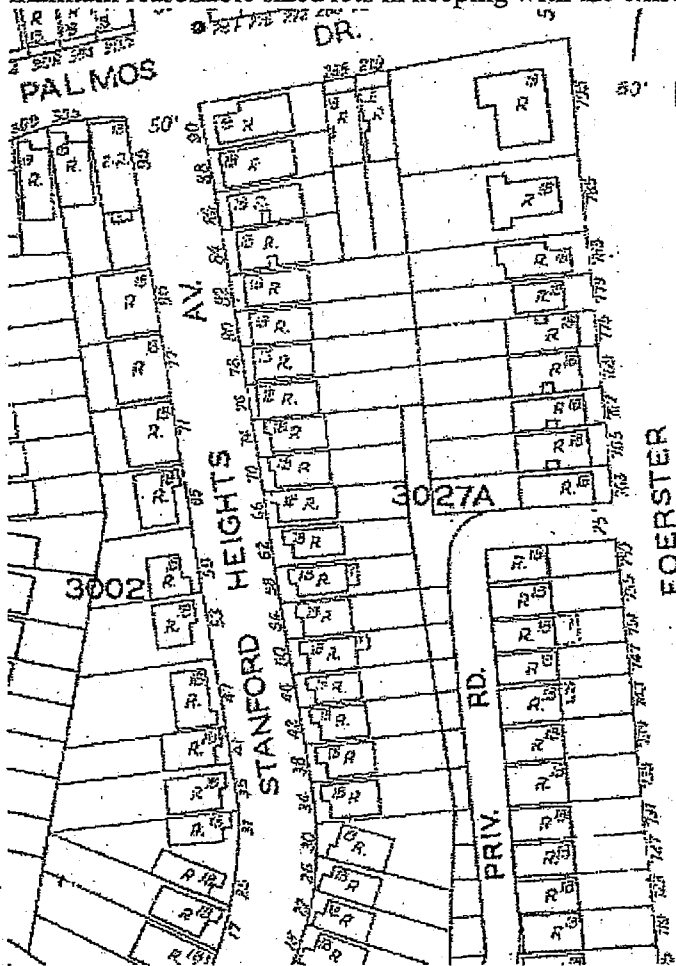
Among other things, the Environmental Review Officer misapplied CEQA's categorical exemption to an area which the Certificate of Determination of Categorical Exemption itself states is "*located in an area subject to potential landslide hazard*" and is in an area mapped by the State of California as 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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San Francisco Board of Supervisors

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**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.

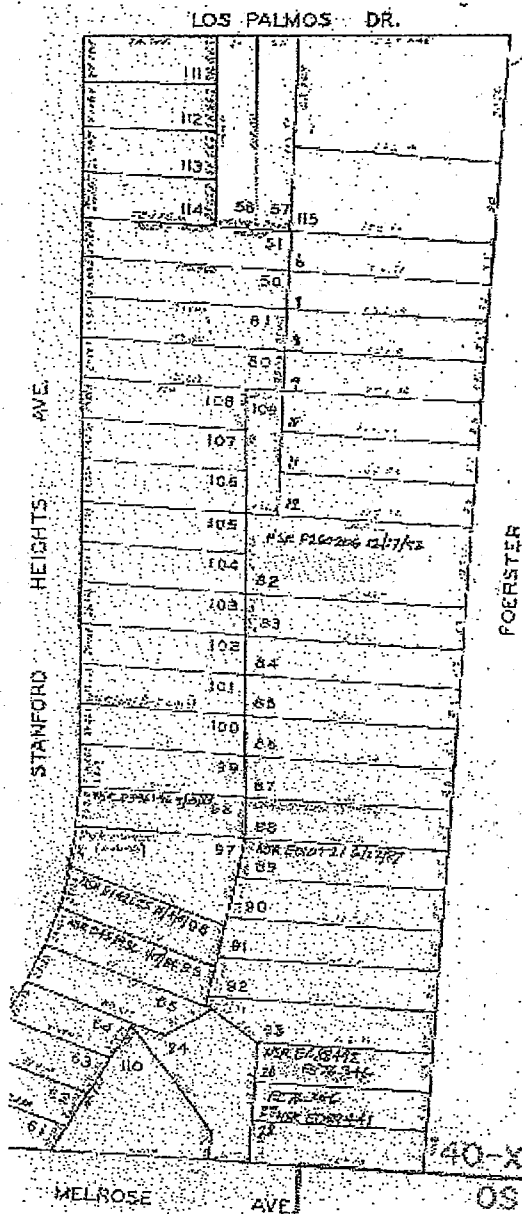
Both the Sanborn Map (above) and the Block Book Map (below) used by the Planning Department still show the lot as a single development lot with a single family home on it. The proposed project is not correctly described by the Department. The proposal is to merge the two lots at the site and then to 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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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.

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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.

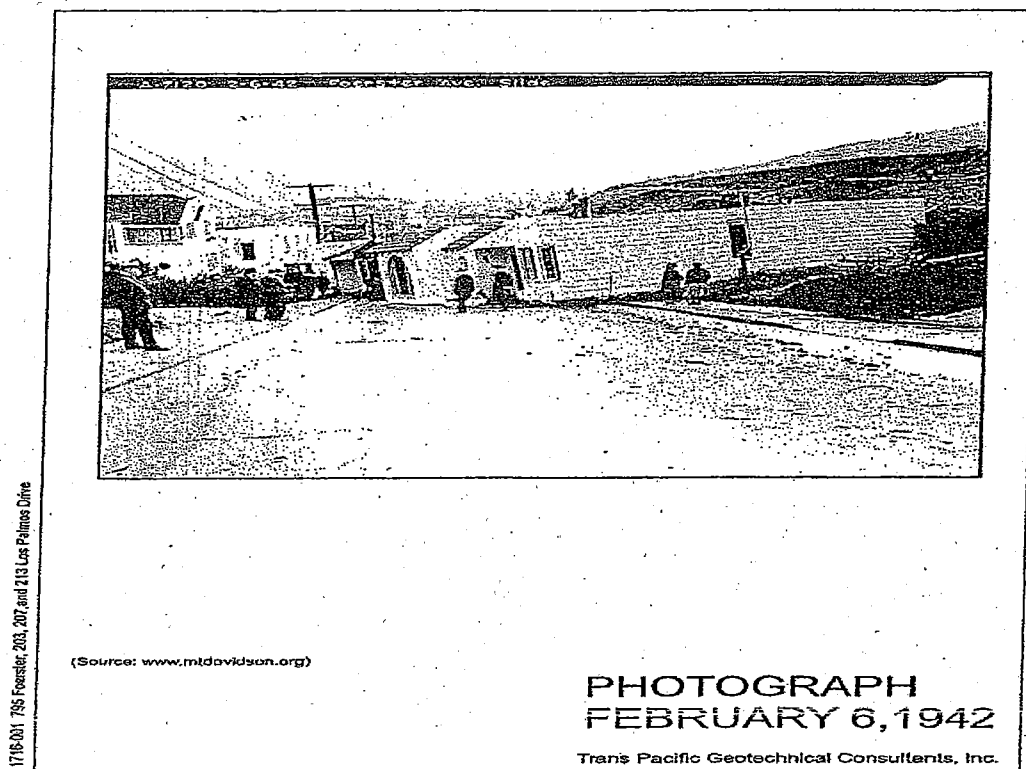


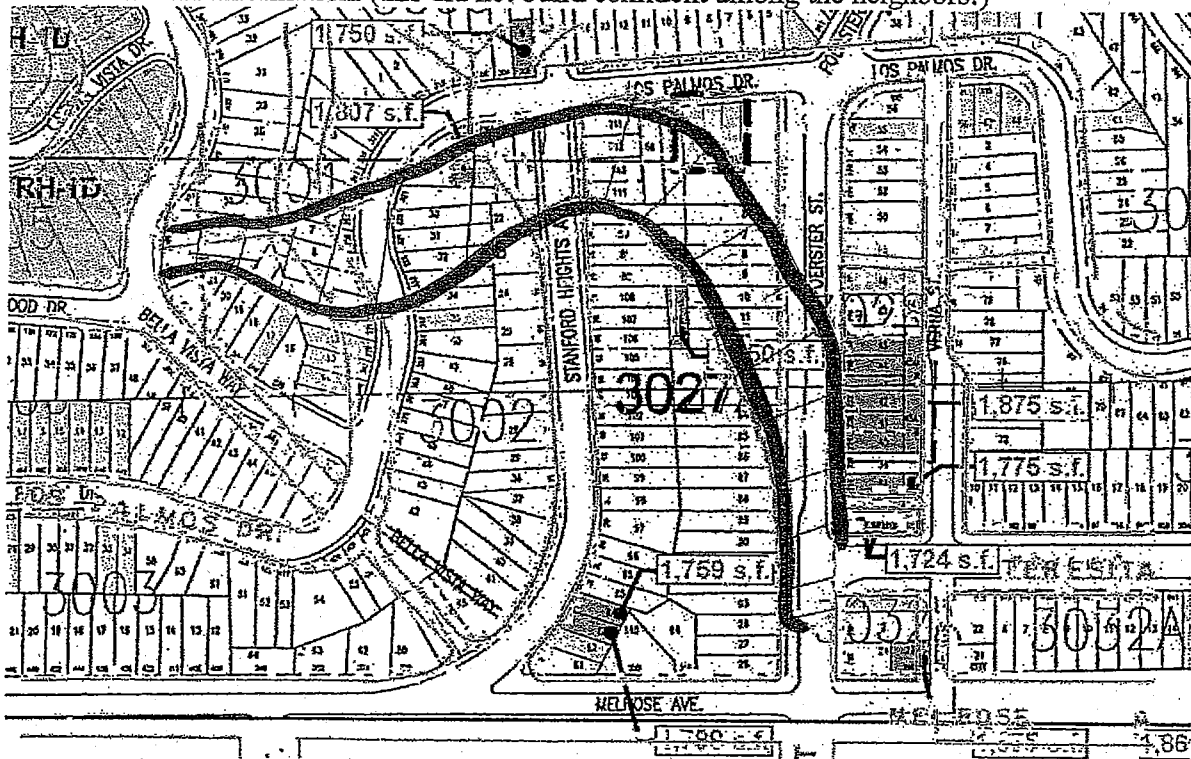
PLATE 4

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 confidence 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

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.<sup>1</sup> 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.<sup>2</sup> 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.<sup>3</sup> 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

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<sup>1</sup> *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.

<sup>2</sup> 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.

<sup>3</sup> 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 report<sup>4</sup> 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 report<sup>5</sup> 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

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<sup>4</sup> 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.

<sup>5</sup> Supplementary Geotechnical Investigation Report for Proposed Housing Development at 795 Foerster Street, 203, 207, 213 Los Palmos 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.<sup>6</sup> 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.<sup>7</sup> 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.

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<sup>6</sup> 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.

<sup>7</sup> 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 Palmos  
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

The information transmitted is intended only for the person or entity to which it is addressed and may contain confidential and/or privileged material. Any review, retransmission, dissemination or other use of, or taking of any action in reliance upon, this information by persons or entities other than the intended recipient is prohibited. If you received this in error, please contact the sender and delete the material from any computer.



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 Paltos 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

RECEIVED  
BOARD OF SUPERVISORS  
SAN FRANCISCO

2011 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 Palmos 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.

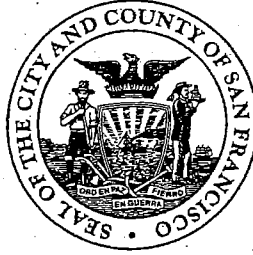
Very truly yours,



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  
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





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

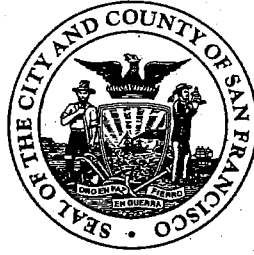
**Memorandum**

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 Paltos Drive, 207 Los Paltos Drive, and  
213 Los Paltos 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:

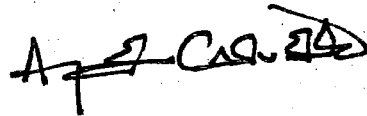
- Date:** Tuesday, February 15, 2011
- Time:** 4:00 p.m.
- Location:** Legislative Chamber, Room 250 located at City Hall, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102
- Subject:** File No. 110041. Hearing of persons interested in or objecting to the decision of the Planning Department dated 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(l)(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

*mailed - 2/4/2011*

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 'Angela Calvillo', with a stylized flourish at the end.

Angela Calvillo  
Clerk of the Board

DATED: February 4, 2011