From:	Toyer Grear
To:	Calvillo, Angela (BOS); BOS Legislation, (BOS); Yee, Norman (BOS); Stefani, Catherine (BOS); Haney, Matt (BOS); MandelmanStaff, [BOS]; Mar, Gordon (BOS); Peskin, Aaron (BOS); Preston, Dean (BOS); Fewer, Sandra (BOS); Ronen, Hillary; Safai, Ahsha (BOS); shaman.walton@sfgov.org
Cc:	Drury, Richard
Subject:	Appeal of San Francisco Planning Department's Final Mitigated Negative Declaration for 2417 Green Street, Case No. 2017-002545ENV. BOS File No. 200137
Date:	Thursday, November 5, 2020 11:36:28 AM
Attachments:	2020.11.05.Response to ERO 2417 Green-FINAL (1).pdf

President Yee and Honorable Members of the Board of Supervisors,

Attached please find a letter written on behalf of Philip Kaufman ("Appellant") concerning the appeal of the Planning Department's Final Mitigated Negative Declaration for 2417 Green Street. Please note, hard copy will follow by overnight mail. If you have any questions, please feel free to contact our office.

Thanks,

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BY EMAIL and US MAIL

November 5, 2020

President Norman Yee and
Honorable Members of the Board of Supervisors
c/o Angela Calvillo, Clerk of the Board of Supervisors
San Francisco City Hall, Room 244
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102
angela.calvillo@sfgov.org; bos.legislation@sfgov.org; norman.yee@sfgov.org; Catherine.stefani@sfgov.org; matt.haney@sfgov.org; mandelmanstaff@sfgov.org; Gordon.mar@sfgov.org; aaron.peskin@sfgov.org; dean.preston@sfgov.org; Sandra.fewer@sfgov.org; Hillary.ronen@sfgov.org; ahsha.safai@sfgov.org; shaman.walton@sfgov.org

RE: Appeal of San Francisco Planning Department's Final Mitigated Negative Declaration for 2417 Green Street, Case No. 2017-002545ENV. BOS File No. 200137

President Yee and Honorable Members of the Board of Supervisors:

I am writing on behalf of Philip Kaufman ("Appellant") concerning the appeal of the Planning Department's Final Mitigated Negative Declaration for 2417 Green Street. In particular, we write to respond to the Environmental Review Officer's memorandum dated October 13, 2020 ("ERO Report"). We also submit the expert opinion of architectural historian Bridget Maley, (Exhibit A) who concludes that the proposed project at 2417 Green Street ("Project") may have a significant adverse impact on the historical resource located at 2417 Green Street known as the Coxhead House, which is immediately adjacent to and uphill from the proposed Project. This letter supplements our earlier comments that have already been provided to the Board.

This appeal seeks to save the historic residence of famed architect Ernest Coxhead, the father of the First Bay Tradition of architecture. The house is built on a steep hill in San Francisco, and dangerous excavation proposed by the Project developer ("Developer") jeopardizes the safety of the historic Coxhead House and its original 1893 brick foundations. Coxhead designed the home as his personal residence and it has been deemed clearly eligible for listing on the National Register of Historic Places.

1. Fair Argument Standard.

The overarching problem with the ERO Report is that the ERO essentially either ignores or misunderstands CEQA's "fair argument" standard. Since the City has

prepared a mitigated negative declaration for the Project, the matter is governed by CEQA's unique "fair argument" standard. Under CEQA, an environmental impact report ("EIR") is required rather than a mitigated negative declaration ("MND") if there is even a "fair argument" that a proposed project "may have" any adverse environmental impacts -- even if contrary evidence exists to support the agency's decision.[1] Put simply, **"if there is a disagreement among experts over the significance of an effect, the agency is to treat the effect as significant and prepare an EIR."**[2] The purpose of the EIR is to analyze significant environmental impacts and to propose feasible, enforceable mitigation measures and alternatives to reduce the proposed project's impacts. This omission infects the ERO's entire analysis.

2. The Final MND Admits that the Proposed Project Poses a Risk to the "Structural Integrity" of the Coxhead House and Poses a Risk of "Injury or Death."

The ERO Report makes a stunning ad hominem accusation that the Appellant "perpetuates falsehoods that the project would result in mitigatable significant impacts and pose serious risks to the public." (ERO Rpt. 4). The ERO Report utterly ignores the fact that Appellant quotes directly from the City's own Final Mitigated Negative Declaration ("FMND"). The City's own Final Mitigated Negative Declaration ("FMND") states:

> **"The proposed project could directly or indirectly cause potential substantial adverse effects, including the risk of loss, injury, or *death* involving rupture of a known earthquake fault, seismic ground shaking, ground failure, or landslides**." (FMND, p. 60 (emphasis added)).

The City's FMND states, **"the project construction could compromise the structural integrity of the historic adjacent foundation at 2421 Green Street. This would be a significant impact."** (FMND pp. 63-64).

In other words, the City's own analysis concludes that the Project may result in structural damage to the Coxhead House, and even possible **death**. It is unconscionable for the ERO to accuse Appellant of "perpetuating falsehoods" when Appellant is quoting directly from the City's own FMND.

In addition to the City's own admissions in the FMND, structural engineer Dr. Lawrence Karp has submitted extensive comments concluding that the Project would undermine the foundations of the Coxhead House. (Exhibit B).

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[1] 14 CCR § 15064(f)(1); *Stanislaus Audubon Society v. County of Stanislaus* (1995) 33 Cal.App.4th 144, 150-15.
[2] *Sierra Club v. County of Sonoma*, 6 Cal.App.4th at pp. 1316–1317; *Moss v. Co. of Humboldt* (2008) 162 Cal. App. 4th 1041, 1049.

The ERO argues that the sole mitigation measure in the FMND, M-GE-1, fully mitigates the Project's significant impacts. However, Appellant explained in the appeal letter that Mitigation Measure M-GE-1 is wholly inadequate mitigation in violation of CEQA's clear mandates. Measure M-GE-1 merely requires "ongoing monitoring and coordination with the Planning Department and the Department of Building Inspection prior to and during construction." (FMND 19). The FMND states: "if unacceptable earth movement or evidence of structural settlement is encountered during construction, as determined by the geotechnical engineer, project excavation shall be halted and the geotechnical engineer shall evaluate if additional measures are required to prevent further movement." (FMND p. 63).

M-GE-1 is not a mitigation measure at all, but merely a process by which a mitigation measures may or may not be developed at some time in the future. This mitigation measure is plainly inadequate to reduce this impact to less than significant. The measure allows earth movement to occur first, and then the developer would possibly develop a plan after the fact to mitigate the harm. The problem with this is that by the time "unacceptable earth movement" occurs, the narrow brick Wythe foundation of the historic Coxhead House may already have suffered possibly latent catastrophic irreparable harm. CEQA prohibits such "deferred" mitigation. An EIR is required to analyze this admittedly significant impact and to develop enforceable mitigation measures prior to construction -- not after irreparable harm occurs. The courts have explained, "Formulation of mitigation measures should not be deferred until some future time... reliance on tentative plans for future mitigation after completion of the CEQA process significantly undermines CEQA's goals of full disclosure and informed decisionmaking; and consequently, these mitigation plans have been overturned on judicial review as constituting improper deferral of environmental assessment."[3]

Since the sole mitigation measure is legally inadequate under CEQA, the impacts remain significant and unmitigated. Although we clearly explained this in our appeal letter, the ERO chose simply to ignore it.

3. Slope Protection Act.

The ERO takes the bizarre position that the City did not reverse its opinion on the applicability of the Slope Protection Act ("SPA"). However, it is simply a fact that the Preliminary MND determined that the SPA applies to the Project but the Final MND concluded that the SPA does not apply to the Project. If that is not a reversal of position, then the term has no meaning.

The important point is that the SPA does in fact apply to the Project, and the fact that the City has removed the protections of the SPA makes the risks to the Coxhead House even greater than analyzed in the PMND, which assumed that the SPA would apply to the Project.

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[3] *Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, 92.

Amazingly, the ERO and City Staff conclude that the SPA does not apply to the Project despite the fact that even the Developer's own expert concluded that the SPA applies to the Project. Contrary to the ERO's statements, the Project is on an extremely steep slope on a block that includes sidewalk sections so steep that they require stairs. The ERO states that the SPA does not apply because the Project parcel is allegedly not on the Blume Map. (ERO Ltr. 11). However, the ERO ignores the fact that the SPA refers to three different maps. If the project is on any of the three maps, then the SPA applies. As discussed in our August 7, 2020 letter, the proposed Project is on all three maps referenced in the SPA.

Registered civil and geotechnical engineer Dr. Lawrence Karp demonstrated that 2417 Green Street is clearly subject to the SPA (Exhibit B), which is a crucial life-safety protection Ordinance. The Project site is clearly shown on the July 24, 2018 4H:1V topographical map referenced in the SSPA, and found on the Department of Building Inspection's website (https://s3.amazonaws.com/sfplanninggis/Slopes+Poster_lowRes70DPI.pdf) (Exhibit C). The Project site is also on the City's 1987 map of "areas of potential landslide hazard." (Exhibit D) posted at SFDBI's Permit Approval Department. Finally, the Project site is on the 1974 "Blume map" of landslide locations (Exhibit E)[4], which was a previous version of the basic protective Act. The SSPA (Ord. 121-18) incorporates all of San Francisco's maps showing areas of instability, stating twice "….or falls within certain mapped areas of the City". Even Mr. Durkin's own geotechnical engineer, Divis Consulting, concluded that the Project is subject to the SPA and City maps. (Divis Rpt. Jan. 12, 2017) (Exhibit F). Of these maps, the ERO only mentions the Blume Map.

Even if the ERO were correct in her interpretation of the Blume Map (which she is not), the Project's presence on the other maps is sufficient to trigger the SPA. The ERO chose simply to ignore these other maps, and therefore proposes to violate the SPA. The ERO's decision to ignore the SPA creates an even greater risk of catastrophic failure than analyzed in the MND. Failure to comply with the SPA creates a significant environmental impact under CEQA requiring preparation of an EIR.

4. Historic Resource Impacts.

The ERO contends that the Proposed Project will not have significant impacts on the historic resource of the Coxhead House. (ERO Ltr 12). The ERO essentially ignores the expert opinion of architectural historian Carol Karp, AIA. (Exhibit M to Aug. 7, 2020 Letter). In addition, Appellant submits herewith the expert opinion of noted architectural historian Bridget Maley. (Exhibit A). Ms. Maley concludes that the Ernest Coxhead House located at 2421 Green Street is a highly significant historical resource. She states, "the importance of architect Ernest Coxhead within the development of a distinct San Francisco Bay Area architectural "tradition" at the turn of the twentieth century is undisputed. The pair of houses at 2421 Green Street (the Coxhead House) and 2423

[4] Despite the fact that the older Blume map was not specifically referenced in the SSPA in 2018, the site's presence on the other maps is sufficient to confirm applicability of the SSPA.

Green Street (the McGauley House), built in 1891 and 1893 respectively, as well as their counterpart around the corner at 2710 Scott Street (the Murdock House), also completed in 1893, form an important grouping of early San Francisco dwellings designed by Coxhead." (Ex. A, p. 1). She concludes, "As you know, the project site in question, 2417 Green Street, is situated on the lot immediately adjacent, downhill and east of the Coxhead House. **The proposed project would present a significant threat to the historic Coxhead House, possibly undermining the structural stability and altering significant, character-defining features.** This includes the dramatic foundation and stairway podium on which the upper portion of the building is perched." (Id.)

The opinions of architectural historians Carol Karp and Bridget Maley are clearly sufficient to create a "fair argument" that the Project may have significant adverse impacts on the historic significance of the Coxhead House. As such, an EIR is required to analyze this impact, and proposed feasible alternatives and mitigation measures to reduce this impact.

5. **Hazardous Material Impacts**.

The ERO continues to argue that any impacts from hazardous materials will be mitigated through compliance with the City's Maher Ordinance. (ERO Ltr. 14). As we explained in our August 7, 2020 letter, the Maher Ordinance cannot substitute for CEQA compliance. As explained by certified hydrogeologist, Matthew Hagemann, C.Hg., the Project site is on the City's Maher Map of contaminated sites. (Exhibit G). Yet, the Developer has failed to conduct adequate testing to demonstrate the extent and nature of any contamination. Without adequate testing and assessment, there remains a fair argument that the Project may have significant adverse environmental impacts related to hazardous materials.

6. San Francisco and Cow Hollow Design Guidelines Inconsistencies are Significant Impacts Under CEQA.

As we explained in our August 7, 2020 letter, the Project violates numerous provisions of the San Francisco Residential Design Guidelines and the Cow Hollow Design Guidelines, including blocking light and air to the Coxhead House, failure to protect architecturally significant buildings such as the Coxhead House, encroachment on rear-yard open space, invasion of privacy due to the new third-floor balcony carved into a sloping roof that peers into and provides easy access to the master bedroom of the Coxhead House, failure to erect story poles for the revised Project.

The ERO rejects all of these issues, contending that they are "aesthetic" impacts or an infill project in a transit priority area, which are allegedly no longer considered significant under the newly adopted SB 743, CEQA section 21099(d)(1). The ERO apparently failed to read the entirety of SB 743, because the section goes on to state that for the purposes of this section, "aesthetic impacts **do not include impacts on historical or cultural resources.**" Pub. Res. Code § 21099(d)(2)(B). Therefore, the aesthetic impacts on historical and cultural resources must be considered separately from aesthetic impacts. In relying on SB 743, the City incorrectly assumes that since aesthetic impacts in

a transit priority area are not considered significant as a matter of law, there will be no impacts on historical or cultural resources. However, the City cannot use SB 743 as an excuse to not mitigate aesthetic impacts to historical resources that are significant.

CEQA gives historic resources special recognition. *See Friends of Sierra Madre v. City of Sierra Madre* (2001) 25 C4th 165, 186; *Citizens for a Sustainable Treasure Island v. City & County of San Francisco* (2014) 227 Cal. App. 4th 1036, 1065. Objects of historical significance fall within CEQA's definition of "environment." Pub. Res. Code § 21060.5. Therefore, if a project has significant impacts on a historical resource, it has significant environmental impacts.

Here, the Project's inconsistency with the Design Guidelines adversely affect the historic significance of the Coxhead House. Therefore, they remain significant under SB 743. Again, the ERO ignores the relevant provisions of the CEQA statute.

7. Unstable Project Description.

As discussed in our appeal letter of August 7, 2020, the Project was significantly revised after the issuance of the FMND. Therefore the Project has never been analyzed in any CEQA document. The ERO Letter argues that the Project revisions reduced the size of the Project and therefore reduced its environmental impacts. As such, the ERO contends that the Project revisions do not require preparation of a new CEQA document.

The ERO misunderstands CEQA's requirements for a "stable, accurate and finite" project description. We explained in our appeal letter that "An accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient [CEQA document]."[5] The ERO fails even to mention this legal standard.

Furthermore, the Project revisions in fact increase some Project impacts. For example, the revised Project includes a new roof deck that looks directly into the master bedroom window of the Coxhead House. This violates the San Francisco Residential Design Guidelines ("SFRDG"), which are binding on the City.[6] The SFRDG states that the City must consider the impact of a Project on privacy of neighbors.[7] As discussed in our prior letter, a violation of the SFRDG is a significant impact under CEQA.[8] Since the Project revisions will cause new significant impacts, a recirculated CEQA document is required under CEQA Guidelines section 15088.5 and CEQA section 21092.1.

Again, despite the fact that this issue was raised in our appeal letter, the ERO simply ignores it.

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[5] *County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 193; *Stopthemillenniumhollywood v. City of Los Angeles* (2019) 39 Cal. App. 5th 1, 16.
[6] Exhibit H (*Williams v. Bd. of Appeals*).
[7] RDG p. 17.
[8] *Kutzke v. City of San Diego* (2017) 11 Cal.5th 1034 (City determined a proposed project was incompatible with conserving the character of the existing neighborhood and therefore inconsistent with local community plan in violation of CEQA).

8. Board of Supervisors' Prior Rulings.

The ERO contend that the Board of Supervisors' past rulings only held that a CEQA categorical exemption was not allowed for the proposed Project, not that an environmental impact report ("EIR") is required. (ERO Ltr. 6-7). But the ERO ignores the language of the Board's rulings.The Board of Supervisors has twice[9] unanimously rejected the CEQA exemptions, holding:

> The proposed project at 2417 Green Street "presents unusual circumstances relating to historic resources and hazardous materials and it appears as a result of those circumstances **the project may have a significant effect on the environment**."[10]

Although the Board of Supervisors did not specify the form of CEQA review required (holding only that a Categorical Exemption was not allowed), the legal standard is that an environmental impact report ("EIR") is required if there is a "fair argument" that a project "may have" any adverse environmental impact.[11] This, of course, was the exact finding made by the Board of Supervisors. Despite the Board of Supervisors' ruling, the Planning Staff first attempted to issue a third CEQA exemption, and then issued a mitigated negative declaration ("MND") rather than an EIR. As a matter of law, an EIR is required. City staff is precluded from making factual findings that contradict the Board of Supervisors' findings.[12]

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[9] January 9, 2019, February 6, 2018.

[10] Motion M18-012, pp. 3-4 (amended February 6, 2018) (Exhibit A to Aug. 7, 2020 Letter).

[11] *Communities for a Better Environment v. South Coast Air Quality Management Dist. (ConocoPhillips)* (2010) 48 Cal. 4th 310, 319-320.

[12] Even if staff were to reach a contrary conclusion, it cannot "unring the bell" of the Board of Supervisor's findings. At best, this would create a "fair argument" which must be resolved in an EIR. In *Stanislaus Audubon Society, Inc. v. County of Stanislaus* (1995) 33 Cal.App.4th 144, the court rejected a county's argument that a revised initial study prepared by the county which contradicted the findings of the first initial study had not "relegated the first initial study to oblivion." *Id*. at 154. The court stated, "We analogize such an untenable position to the unringing of a bell. The first initial study is part of the record. The fact that a revised initial study was later prepared does not make the first initial study any less a record entry nor does it diminish its significance, particularly when the revised study does not conclude that the project would not be growth inducing but instead simply proceeds on the assumption that evaluation of future housing can be deferred until such housing is proposed." *Id*. at 154.

CONCLUSION

For the above reasons, we respectfully request that the Board of Supervisors reverse the approval the Mitigated Negative Declaration. An Environmental Impact Report should be required for the proposed Project. We also ask the Board to reverse the staff finding that the Slope Protection Act ("SPA") does not apply to the Project, and direct staff to determine that the SPA does apply to the Project and require implementation of all the safeguards of the SPA. Thank you.

Sincerely,

Richard Drury
Lozeau Drury LLP

EXHIBIT A

September 21, 2020

Angela Calvillo
Clerk of the Board
San Francisco Board of Supervisors
City Hall, Room 244
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

Re: Appeal of San Francisco Planning Department CEQA Mitigated Negative Declaration for 2417 Green Street, Case No. 2017-002545ENV

Dear Ms. Calvillo and Supervisors:

At the request of the appellant, I have reviewed the extensive record related to the proposed project at 2417 Green Street. I believe that the proposed project at 2417 Green Street may have a significant adverse impact on the structural stability and the character-defining features of the historic Ernest Coxhead house at 2421 Green Street.

The importance of architect Ernest Coxhead within the development of a distinct San Francisco Bay Area architectural "tradition" at the turn of the twentieth century is undisputed. The pair of houses at 2421 Green Street (the Coxhead House) and 2423 Green Street (the McGauley House), built in 1891 and 1893 respectively, as well as their counterpart around the corner at 2710 Scott Street (the Murdock House), also completed in 1893, form an important grouping of early San Francisco dwellings designed by Coxhead. Furthering their significance, is the fact that 2423 Green Street appears to be Coxhead's earliest San Francisco residential commission, and that the neighboring 2421 Green Street was built for Coxhead's own use and that his brother, Almeric, also an architect, resided with him for a period of time.

As you know, the project site in question, 2417 Green Street, is situated on the lot immediately adjacent, downhill and east of the Coxhead house. The proposed project would present a significant threat to the historic Coxhead house, possibly undermining the structural stability and altering significant, character-defining features. This includes the dramatic foundation and stairway podium on which the upper portion of the building is perched.

Architectural historian Richard Longstreth in his definitive work *On the Edge of the World: Four Architects in San Francisco at the Turn of the Century* noted of Coxhead's own house:

> . . . it exploits a difficult site to achieve a dramatic effect. The design is also a more sophisticated interpretation of English precedents that was McGauley's (2423 Green). The narrow street frontage is accentuated by a towerlike façade that has a taut, abstract quality. . . In his own residence there is an ever-changing path up to and through the premises. . . The entrance is reached by a series of winding steps and landings that become progressively constricted, with the final run wedged between a retaining wall and basement, as if it were an alley in an Italian hill town.[1]

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www.architecture-history.com

Historian Leland Roth, in *Shingle Styles*, described Coxhead's own house stating: "Coxhead designed an extremely long and narrow house for himself and his brother. The narrow street façade, rising four stories, becomes almost a tower, while the entry side (reached by steps and a tunnel-like passage through the base retaining wall). . .[2]

John Beach, in his essay "The Bay Tradition 1890-1918," in *Bay Areas Houses*, edited by Sally Woodbridge, uncovered Coxhead's interest in the English Manor House, particularly its characteristic "Long Gallery." Laying out his argument, Beach identifies Coxhead's interest in the English manor house, frequently integrating "into his California houses variations of the Great Hall or Long Gallery."[3] Beach further opines: "In his own house, built in 1893 on a narrow lot in urban San Francisco, the entrance hall is a miniature Long Gallery." The entrance hall accesses both the front rooms facing Green Street as well as the room at the far southeast corner of the house, which overlooks the garden of the interior greenbelt and the neighboring Casebolt House (2727 Pierce Street, a City Landmark) and its associated extensive garden. The windows that face east and south are as important to the character of the Coxhead house as those in the Long Gallery that face west.

The information presented in the Final Mitigated Negative Declaration (FMND), amended on January 9, 2020, provides no analysis as to possible impacts to these key character-defining features of the Coxhead House -- its raised foundation, incorporating the front stairway access to the house and its unique Long Gallery configuration, which gives the house a strong association with Coxhead's English design roots. Further, the FMND dismisses the impacts of the expansion of 2417 Green Street on what is arguably one of Coxhead's most significant houses and which emanates his penchant for the "Long Hall," a feature that is undeniably character-defining and which contributes to the overall integrity of the historic resource. The proposed project would block a number of windows along the east elevation of the Coxhead House and change the perception of the house as viewed from the east from Pierce Street uphill through the shared greenbelt and garden areas of the block. These views and the expansion of the 2417 house footprint would impact the overall character of the Coxhead House.

Further, the FMND states:

> The project also would not have the potential to affect any adjacent historic district. The nearest historic district is the Pacific Heights Historic District, which captures buildings to the south and west of the subject building. The historic district is significant under Criterion 3 (Architecture) for its strong collection of late-Victorian (typically Queen Anne), Shingle (First Bay Region), Arts & Crafts, Classical Revival, Colonial Revival, Tudor Revival, French Provincial, and Mediterranean Revival architecture. The boundaries of the historic district are roughly Pacific, Lyon, Steiner and Green Streets and the period of significance is 1895 to 1930. Specifically, the boundaries include buildings immediately to the south of the subject property that front on Vallejo Street and buildings to the west

> that front on Scott Street. The subject property and the four adjacent properties to the west are not included within the boundaries of the historic district. The 2417 Green Street structure would not contribute to this district since the subject building and its immediate neighbors to the east are not associated with the architectural significance of the district. While the properties to the west of 2417 Green Street may be eligible for inclusion in the district, the subject building does not contribute to the Pacific Heights Historic District. Therefore, the proposed project would have no adverse impact to the historic district.[4]

The Pacific Heights Historic District is not a fully documented, inventoried or designated district at the local, state or federal level. I would argue that the two houses at 2421 and 2423 Green Street should be included in this potential historic district as they clearly represent the work of a well-known master architect within one of the styles prevalently represented in the district: Shingle (First Bay Tradition). The Murdock House at 2710 Scott Street, built the same year as the Coxhead house, and just around the corner was included in the potential Pacific Heights Historic District. It seems logical that the other two contemporary Coxhead projects, within half a block of this district, and built within the same time frame, should have been included as well.

Given that the above observations are not included or analyzed in the Mitigated Negative Declaration, it seems that further evaluation of the potential impacts of the project at 2417 Green Street warrant further study in a full Environmental Impact Report.

Sincerely,

Bridget Maley
Principal

Attachments

1. Endnotes
2. Historic View of 2421 Green Street as shown in Bay Area Houses (page 25) illustrating the importance of the foundation and stair configuration as a character-defining feature of the house.
3. Map of Pacific Heights Historic District as shown on the Planning Department's Property Information Map from a screen shot taken September 14, 2020 (Blue Outline is 2710 Scott Street clearly within the boundary of the district).

Attachment 1:
Endnotes Maley Letter September 21, 2020

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[1] Richard Longstreth, *On the Edge of the World: Four Architects in San Francisco at the Turn of the Century.* (University of California Press) 1998 ed.: 128-129.
[2] Leland M. Roth, *Shingle Styles: Innovation and Tradition in American Architecture 1874 to 1982.* (Harry N. Abrams), 1999: 127.
[3] John Beach, "The Bay Area Tradition 1890-1918," in Sally Woodbridge *Bay Area Houses* (Peregrine Smith) 1988: 24.
[4] San Francisco Planning Department Mitigated Negative Declaration June 26, 2019, amended January 9, 2020, page 22.

Attachment 2:
An early view of Coxhead House illustrating the dramatic base and stairway

COXHEAD, *Coxhead house (early photo), San Francisco, 1893*

Attachment 3:
Pacific Heights Historic District with the Murdock House outlined and a red arrow pointing to the close proximity of the other two Coxhead-designed houses.

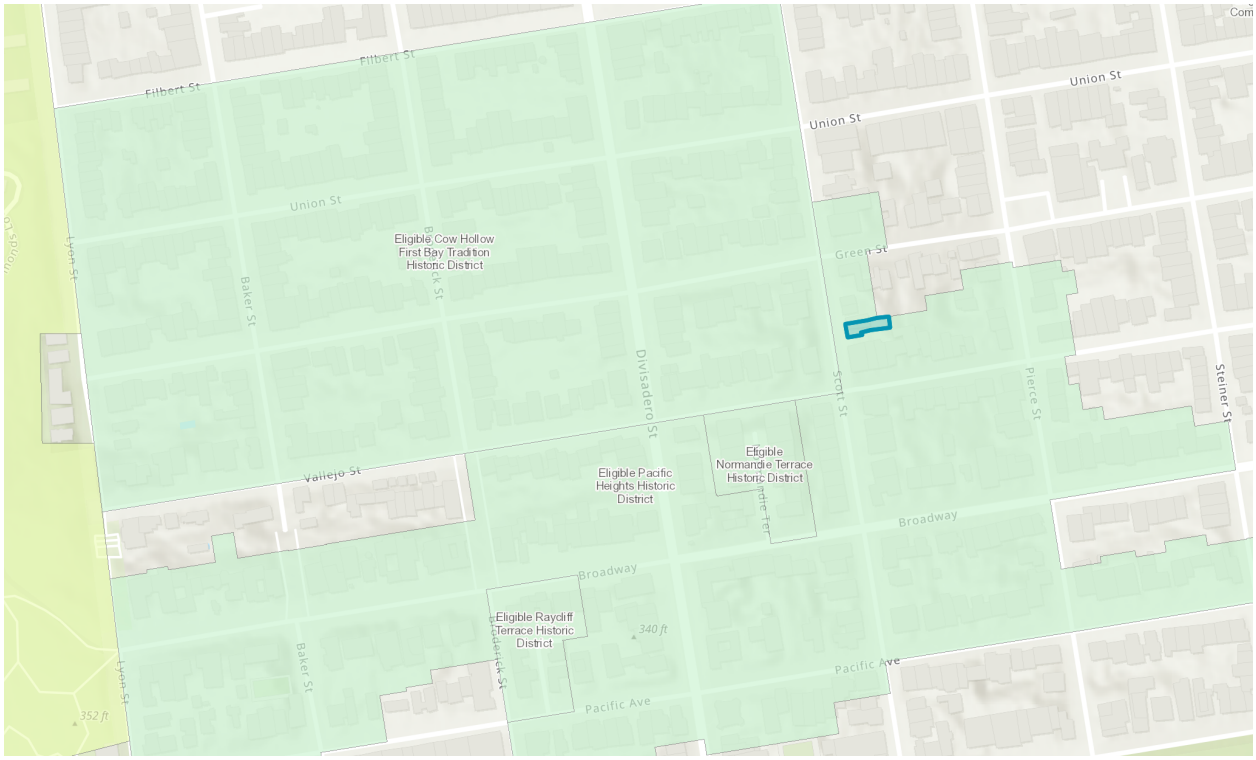


EXHIBIT B

LAWRENCE B. KARP
CONSULTING GEOTECHNICAL ENGINEER

FOUNDATIONS, WALLS, PILES
UNDERPINNING, TIEBACKS
DEEP RETAINED EXCAVATIONS
SHORING & BULKHEADS
CEQA, EARTHWORK & SLOPES
CAISSONS, COFFERDAMS
COASTAL & MARINE STRUCTURES

SOIL MECHANICS, GEOLOGY
GROUNDWATER HYDROLOGY
CONCRETE TECHNOLOGY

July 7, 2020

C&CSF Planning Department
Rich Hillis, Director
1650 Mission Street, 4th Floor
San Francisco, CA 94103

Subject: 2417 Green Street Project [Block 560 - Lot 028]
Lateral and Subjacent Support Loss for 2421 Green Street
Excavation Without Valid Permits, Missing Documents
Architect Specifies Full Foundation Replacement

Dear Mr. Hillis:

Submitted herewith is a brief letter-report concerning the subject Project's certain effect on the upslope building, the historic Coxhead House & Residence at 2421 Green, constructed in 1892-93. The Project residence, at 2417 Green, built in 1906, unoccupied for years, is situated below the tall common brick foundations of its upslope zero setback neighbor at 2421 Green. The undersigned has reviewed public documents on file with the City, and has conducted on-site inspections of 2421 Green as well as the 2417 Green Project site (Civil Code §846.5). The undersigned has written six reports to SF City Planning and the SF Board of Supervisors; list appears on page 5.

Background to Proposed Project

The design and construction of the 2417 Green Project, owned by Christopher Durkin, had its effective start with preparation of 7 drawings by Durkin dated 4/15/17. Without any consideration of the neighboring well known historical resource First Bay Tradition hillside residence of master architect Ernest Coxhead, 2421 Green, including its common brick foundations and its CEQA status (Karp 2019, Exhibit 7), Slope Protection Act mapping by the City showing the Lots are in a landslide area (Karp 2018, Exhibit J), the San Francisco Existing Building Code (SFEBC) and the San Francisco Building Code (SFBC) prohibiting excavations near the foundations of adjacent buildings, SFBC [§1804.1] and §1803.5.7, (Karp 2019, Exhibit 5), and Code foundation stability requirements, SFBC §3307 (Karp 2019, Exhibit 6) requiring lateral and subjacent support and protection of adjoining buildings, Durkin or his lawyers had City Planning (Christopher May) approve the Durkin drawings to circumvent building department scrutiny (Karp 2019, Exhibits 2 & 4).

The drawings, following City Planning (May) full signatures of approval on 10/10/17, were initialed on 10/13/17 by Cyril Yu of SFDBI who also rubber stamped them with the Director's pass on 11/3/17 for Permit Application 2017.10.02.0114 (Karp 2018, Exhibit H), suspended on 12/20/17 and now cancelled (SFEBC §105.5), After observing the excavations at 2417 below 2421 Green (Karp 2018, Exhibit G), the undersigned visited Yu and asked him why he approved permit application 0114; he said each drawing had been approved by City Planning so SFDBI could not obstruct their approval and had to approve because City Planning are the zoning investigators not DBI and they had before approved the Project and the prior Permit Application 2017.05.11.6316 (which was also suspended on 12/20/17) thereby becoming invalid 6 months later.

100 TRES MESAS, ORINDA CA 94563 (415) 860-0791 fax: (925) 253-0101 e-mail: lbk@berkeley.edu

Missing Project Information

The following information does not exist although all of it is required to prepare and evaluate any architectural design, environmental impact, and determination of the extent of expected damage to the historic resource, the Coxhead House & Residence at 2421 Green.

1. "Topographical & Boundary Survey, 2417 Green Street SF", map prepared/stamped by LLS (per Ord. 121-18; SSPA Information Sheet No. S-15 10/2/18, SFEBC §106.25, SFBC §§107.2.5, 1804.1, 3307.1).
2. "Elevation Survey - East Wall, 2421 Green Street, SF", detailed map prepared/stamped by LLS.
3. "Structural Design - Foundation & Superstructure - Seismic Upgrade, 2417 Green Street, SF"
4. "Protection Details, Foundations at 2417 Green SF Property Line" (Excavations were approved by City Planning, no valid permit or compliance w/Code, in 2017); SFBC §§1804.1, 1803,5.7, 3307.1.
5. Slope & Seismic Protection Act 2018" geotechnical engineering questionaire certified under oath.

All the above information is missing but they are vital requirements for evaluation of the current drawings.

Architect Specifies Full Foundation Replacement

Recent drawings submitted to City Planning by the developer indicate nothing significant has improved since the 1/9/20 Planning Commission hearing where the undersigned submitted a report (Karp 2020) concerning a grossly inadequate mitigated negative declaration. The developer is still arguing for [more] excavations below 2421 Green for further underground expansion, refuses to admit that windows at 2421 Green will be obliterated by the enlarged 2417 western wall heightened by a new fourth story requiring rebuilding of the wall, and that there must be an Accessory Dwelling Unit (ADU); all the things the Planning Commission said "NO" to when they ordered a severe scaling back of the 2417 Project.

Recent, during the last month, drawings for 2417 Green show expansion of the building envelope which indicates [additional] underground excavation, addition of a fourth story that will block more windows at 2421 Green and add loads to the west wall of 2417 and its foundations which will require excavations and enlarged foundations. The architect's specification for a full foundation replacement is part of the Project.

Basically, at this point the neighbor to the Project, at 2421 Green Street, the Coxhead House & Residence, a well known historical resource, will be severely, irreparably, damaged if the developer's plans are allowed to proceed. Cover Sheet 1 of 42 states that Holmes is the part of the team that will provide structural engineering, but that is impossible without a topographical land survey and a Site Plan derived from the survey and a proper geotechnical report. More than two years ago the owner and his engineer were promised drawings by Holmes, but there is nothing and probably never will be because of the withholding of site information.

Proper Site Plan Required By Law

SFEBC §106.25 states: "Site plan. .... documents .... shall be accompanied by a site plan showing to scale the size and location of new construction and existing structures on the site, distances from lot lines .....proposed finish grades, and it shall be drawn in accordance with an accurate boundary line survey." In June 2020 land surveyor Westover did what he called a "Partial" survey of the back yard, leaving out everything to do with the building. A proper, essential, survey will show existing excavations and existing foundation elevations as well as bonding of the buildings with respect to the common property line.

SFCPD Pretends the Slope Protection Ordinances Do Not Exist

The Slope & Seismic Protection Act, SSPA, (Karp 2020, Exhibit E) is a San Francisco ordinance that updates previous iterations of the Slope Protection Act, SPA, an ordinance assembled and updated by the Board of Supervisors as the need arises so they understand the Acts even though City Planning does not. First, an overview of how the City Planning Department (CPD) and developers operate is necessary, taken from my experience in design/construction in San Francisco since the 1950s, particularly foundation underpinning and shoring in San Francisco, where some Project's interface with both SFCPD and SFDBI.

CPD is staffed by full time employees who are not California licensed design professionals (architects and engineers) as would occur with those who prepare EIRs (Environmental Impact Reports). CPD avoids EIRs like the plague because it takes approval of Projects out of their hands with no side benefits. To that end, with these conditions, CPD employees have made statements for the 2417 Project that distort written Code requirements and facts which mimic what developers and their attorneys tell them.

To begin with, basically, the Project area has long been designated as being within one of the sections of the City that has been illustrated by maps contained for many years in the Slope Protection Act (SPA). When the State of California began, in 2000, mapping seismic hazard (landslide and liquefaction) areas in San Francisco as part of a statewide program they did not void local mapping by (1) pretending the areas were mistakenly identified; (2) pretending the areas have been stabilized; (3) voiding the 5/20/15 "Geotechnical Report Requirements"; Bulletin No. S-05 (Karp 2020, Exhibit E) is currently in full force and effect; and (4) waiving calculations and detailing necessary for permits under SFBC §§1804.1 & 1803.5.7 (excavations near property line foundations) and compliance with SFBC §3307.1 (protection of neighboring property and maintenance of lateral and subjacent support to neighboring foundations).

For the above reasons, and per civil/geotechnical engineering standards, stability mapping does not become obsolete unless so publically declared. The operative wording (in order of the attached portions to the report (Karp 2020) of the 2018 SSPA is "...or falls within certain mapped areas of the City...." ("Slope Protection" cover sheet, Exhibit E); "...Map is posted near 1660 Mission St. 2nd Floor Counter (C&CSF 1987): "Landslide Hazard Areas are colored 'Red'" (Information Sheet No. S-05, page 1, report (Karp 2020, Exhibit E [and maps illustrated in report (Karp 2020, Exhibit C)]); and "...or falls within certain mapped areas of the City...." (Ordinance No. 121-18 Amended by Board 5/8/18, SFBC §106A.4.1.4.1 "Creation", page 2 in report, Karp 2020, Exhibit E).

The next issue that affects use of the SSPA is topography. References to property that slopes at an inclination of 4 units horizontal to 1 unit vertical (4h:1v) uses the word "average" which can be argued forever as the Project's advocates will do as distraction. But the SSPA Ordinance refers to a topographical "map dated 7/25/18". It is important to understand this map; it shows 2417 Green is within an average area equal to or steeper than 4h:1v. It was published as a wall poster for the CPD offices. In the reproduction of the attached SSPA Ordinance (Karp 2020, Exhibit E) the map is unintelligible, however enlarged it shows, with brown shading, average 4h:1v areas. It can be accessed on the City's website. The CPD slope map shows about the same oblong area for Green Street shaded brown as the maps reproduced in the 1987 mapping by SFDBI (Karp 2020, Exhibit C).

The final issue concerns applicability of the SSPA to projects that include excavation of more than 50 cubic yards of material, shoring, underpinning, and SFBC Chapter 18. The most critical aspect of the 2017 Green Project is that there has never been a topographic survey ("orthocontour map") of the Project and its affected contiguous neighbors.

Such surveying would give relative elevations of all improvements on the ground including depths of the neighboring foundations especially those uphill (at 2421 Green) which could be compared with information supposed to be in the geotechnical report (deliberately omitted). More than 50 CY have already been excavated (Karp 2018, Exhibit G) in order to conceal the Project's extent which clearly explains why the developer continues to refuse to obtain an instrumented land survey.

Applicable to 2417 Green is the following paragraph: The project site is located within an area of potential landslide hazard zone as identified by the well known 1987 map posted on the 2nd Floor of the Building Department which is a "successor" to the original 1974 Blume map and listed as a reference in DBI's 5/20/15 Bulletin S-05 "Geotechnical Report Requirements" which is in full force and effect. In 2018, the San Francisco Building Code was amended by the Slope and Seismic Hazard Zone Protection Act (Ordinance No. 121-18) to include sloped areas to be protected that average 4h:1v (25%) shown on the Planning Department's topographical poster map of 7/25/18 "....or fall within certain mapped areas of the City...." which also appears in SFBC §106A.4.1.4.1 (described on page 2 of the Ordinance), and landslides shown on the 2000 State of California earthquake induced landslides and liquefaction hazard map.

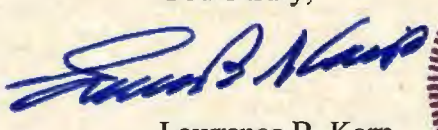
Note that Ordinance No. 121-18, on page 1 (Karp 2020, Exhibit E) is also tied to CEQA so the SSPA should have been fully covered in a proper Initial Study for 2417 Greej but it was ignored. Non-compliance with the SSPA will eventually be corrected in an EIR because of the following case law:

> (Quote:) "[i]f there is disagreement among expert opinion supported by facts .... the Lead Agency shall treat the effect as significant and shall prepare an EIR" (citing 14 Cal. Code Regs., §15064(b), (g)). Reviewed and cited was the applicable "fair argument" standard: "An EIR is required whenever '"substantial evidence in the record supports a "fair argument" significant impacts or effects may occur."'" (emphasis added) [quoting City of Arcadia v. State Water Resources Control Bd. (2006) 135 Cal.App.4th 1392, 1421.]" (End quote.)

> (Quote:) "An MND is permitted only "if 'the initial study identified potential significant effects on the environment but revisions in the project plans "would avoid or mitigate the effects to a point where clearly no significant effect on the environment would occur" and [if] there is no substantial evidence that the project as revised may have a significant effect on the environment ...."'" (emphasis added) [quoting Architectural Heritage Assn. v. County of Monterey (2004) 122 Cal.App.4th 1095, 1101.]" (End quote.)

CPD has glossed over the results of the 1/9/20 hearing before the PC. Writings produced by CPD that are not signed and stamped by licensed engineers as required by Business & Professions Code §6735. There is no survey and no structural drawings because those would reveal circumvented information. With an EIR qualified design professionals will review the Project and ask for, to begin with, a topographical survey (orthocontour map). The neighbors will have input to the EIR which, although the PC indicated they would with an MND, it will never happen. With no EIR all neighbors will ever see is what the developer gives them until the Board of Supervisors returns the Project to CPD for an EIR or directly orders. Ultimately, if that fails, and the developer is allowed to proceed with his existing plans or similar, a restraining order due to irreparable harm to a historic resource and its hillside foundations will be necessary. In sum, the SSPA strengthens the SSA, not weakens it as the developer and CPD allege in not allowing it to be included in the already very weak geotechnical reporting for the Project (Karp 2019*b*). Especially important now, in the SSPA (Karp 2020, Exhibit E), the civil/geotechnical Engineer of Record must complete under oath, penalty of perjury, a questionaire about excavation, shoring, and underpinning. This of course has not been provided by the developer of 2417 Green.

Yours truly,



Lawrence B. Karp

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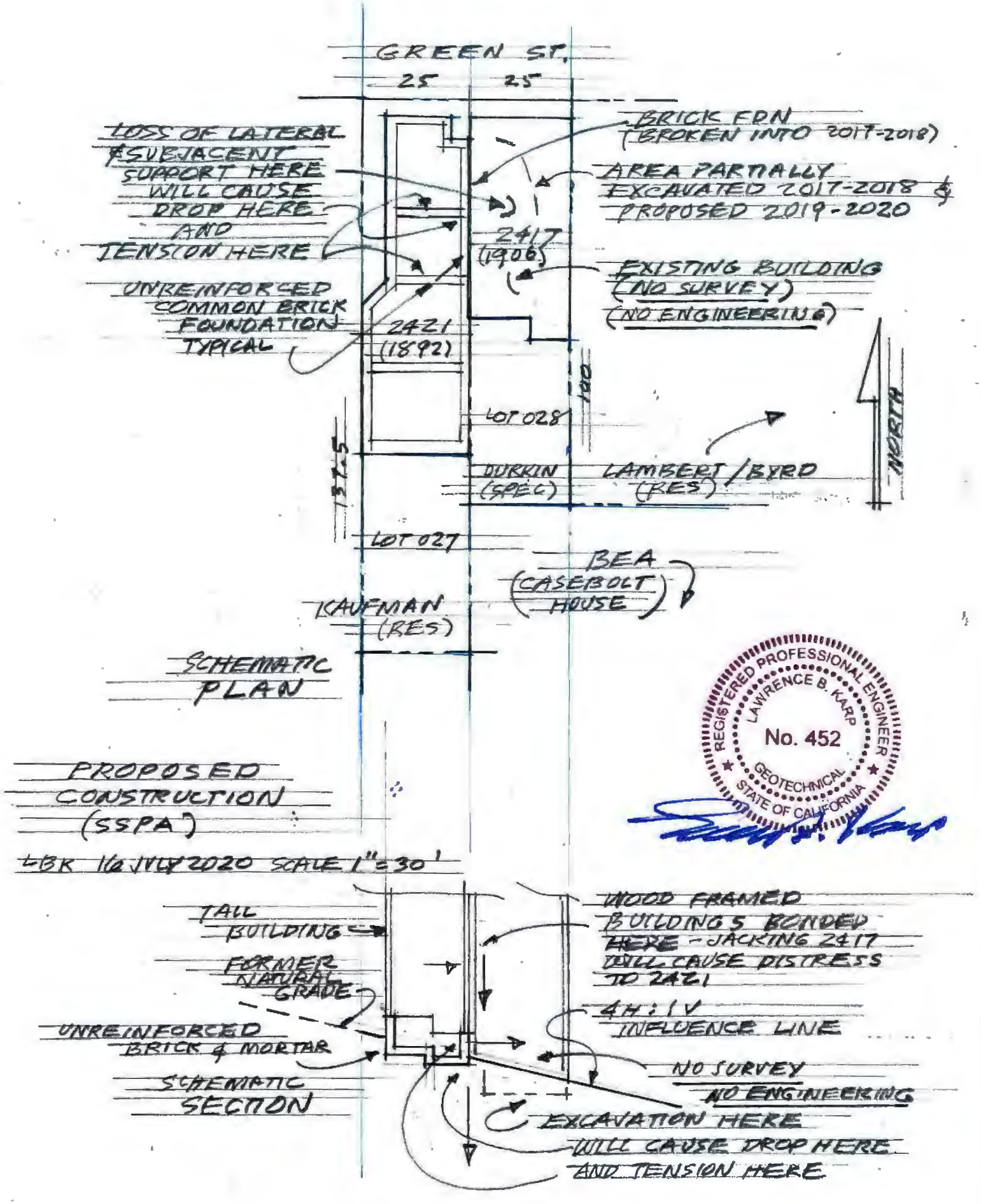

GREEN ST.
25
25
LOSS OF LATERAL & SUBJACENT SUPPORT HERE WILL CAUSE DROP HERE AND TENSION HERE
UNREINFORCED COMMON BRICK FOUNDATION TYPICAL
BRICK FDN (BROKEN INTO 2017-2018)
AREA PARTIALLY EXCAVATED 2017-2018 & PROPOSED 2019-2020
2417 (1906)
EXISTING BUILDING (NO SURVEY) (NO ENGINEERING)
2421 (1892)
100
LOT 028
137.5
DURKIN (SPEC)
LAMBERT / BYRD (RES)
NORTH
LOT 027
BEA (CASEBOLT HOUSE)
KAUFMAN (RES)
SCHEMATIC PLAN
PROPOSED CONSTRUCTION (SSPA)
BK 16 JULY 2020 SCALE 1"=30'
REGISTERED PROFESSIONAL ENGINEER
LAWRENCE B. KARP
No. 452
GEOTECHNICAL
STATE OF CALIFORNIA
TALL BUILDING
FORMER NATURAL GRADE
UNREINFORCED BRICK & MORTAR
SCHEMATIC SECTION
WOOD FRAMED BUILDING S BONDED HERE - JACKING 2417 WILL CAUSE DISTRESS TO 2421
4H:1V INFLUENCE LINE
NO SURVEY NO ENGINEERING
EXCAVATION HERE WILL CAUSE DROP HERE AND TENSION HERE

EXHIBIT C

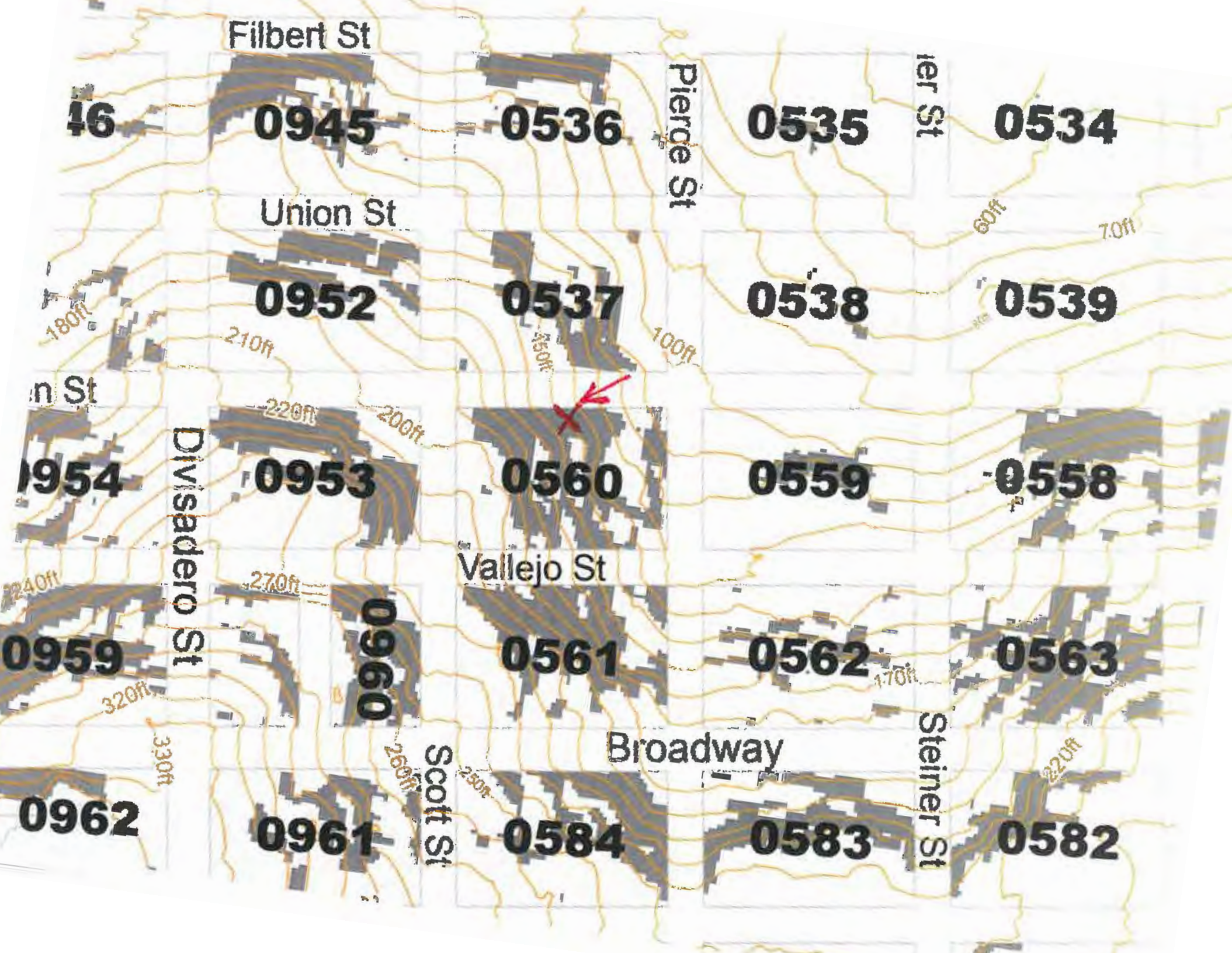
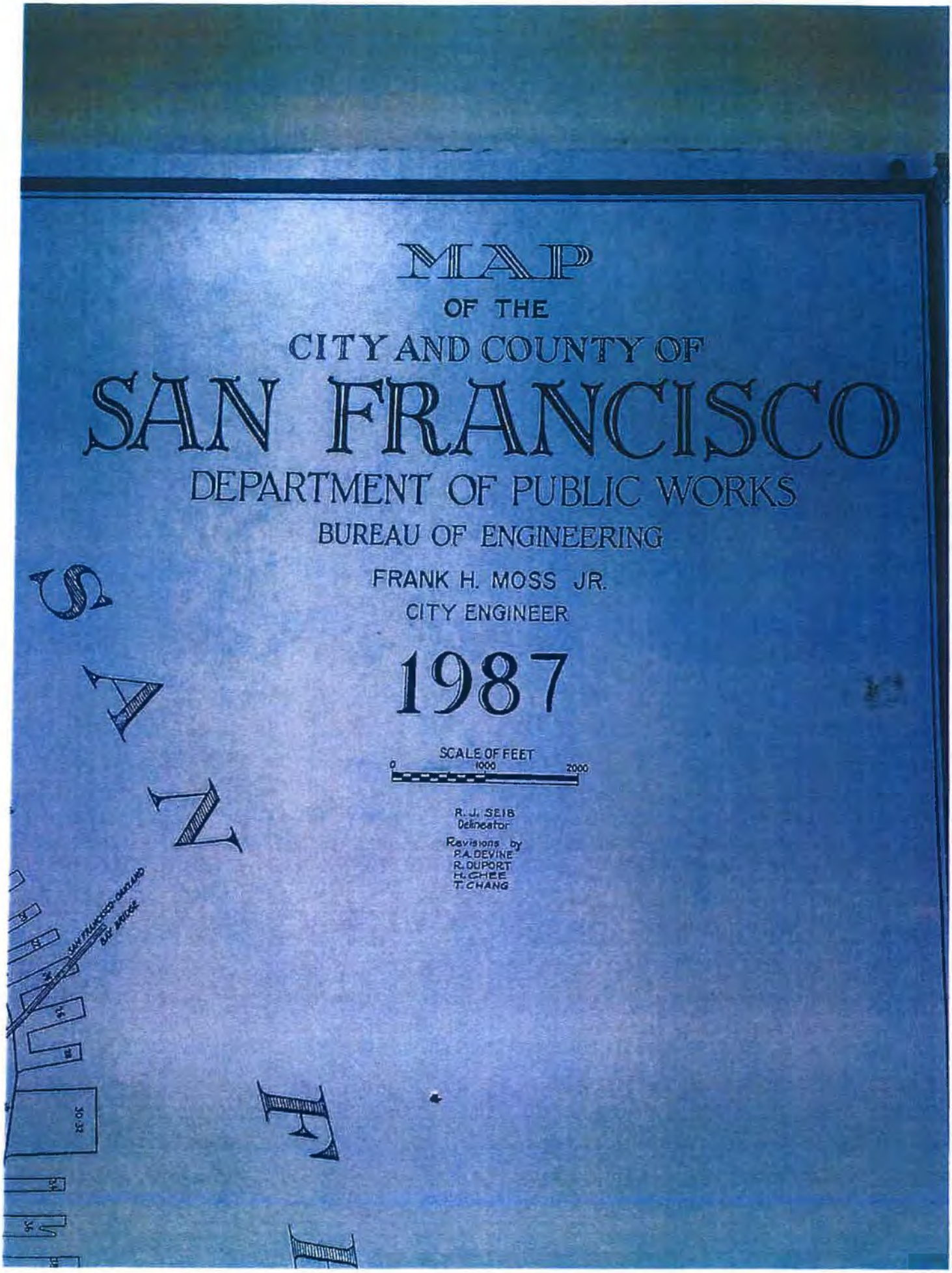

Filbert St
Union St
Vallejo St
Broadway
Pierce St
Divisadero St
Scott St
Steiner St
0945
0536
0535
0534
0952
0537
0538
0539
0954
0953
0560
0559
0558
0959
0960
0561
0562
0563
0962
0961
0584
0583
0582
180ft
210ft
220ft
200ft
100ft
60ft
70ft
240ft
270ft
320ft
330ft
260ft
230ft
170ft
220ft

EXHIBIT D



(From Attachment J of report to Board of Supervisors 1/9/18)

PAC

7282

BLVD.

SKYLINE

LANDSLIDE LOCATIONS

OUTLINE OF SLIDE AREA

AREAS OF POTENTIAL LANDSLIDE HAZARD

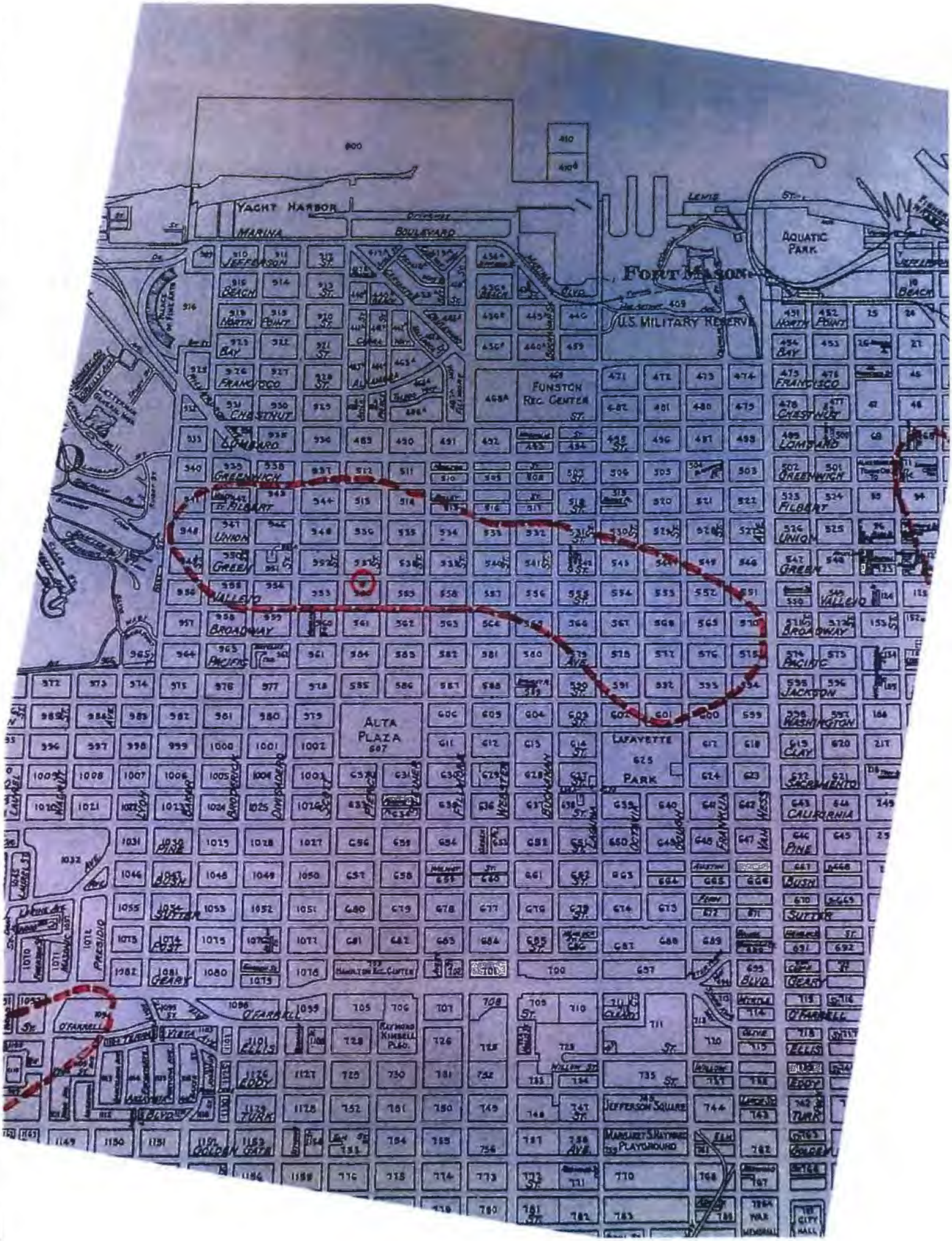
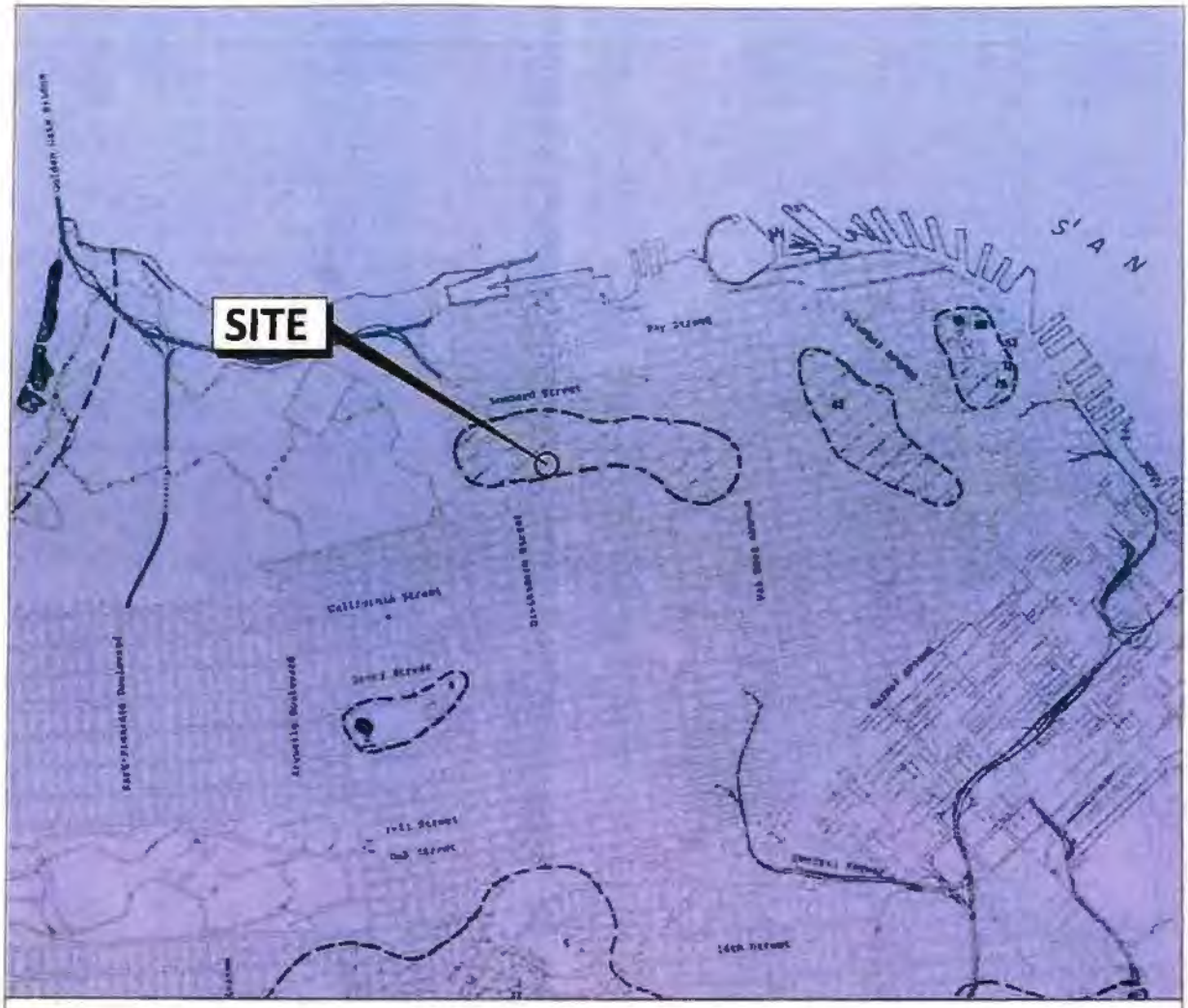

YACHT HARBOR
MARINA
BOULEVARD
LEWIS ST.
AQUATIC PARK
FORT MASON
U.S. MILITARY RESERVE
FUNSTON REC. CENTER
ALTA PLAZA
LAFAYETTE PARK
JEFFERSON SQUARE
MARGARET S. HAYWARD PLAYGROUND
RAYMOND KIMBELL PLAYG.
HAMILTON REC. CENTER
JEFFERSON
BEACH
NORTH POINT
BAY
FRANCISCO
CHESTNUT
LOMBARD
GREENWICH
FILBERT
UNION
GREEN
VALLEJO
BROADWAY
PACIFIC
JACKSON
WASHINGTON
CLAY
SACRAMENTO
CALIFORNIA
PINE
BUSH
SUTTER
POST
GEARY
O'FARRELL
ELLIS
EDDY
TURK
GOLDEN GATE
PRESIDIO
VAN NESS
FRANKLIN
GOUGH
FILLMORE
WEBSTER
STEINER
PIERCE
BAKER
LYON
DIVISADERO
SCOTT
CASTRO
MASONIC
CITY HALL
WAR MEMORIAL

EXHIBIT E



EXPLANATION

outline of slide area

areas of potential landslide hazard

7 location of slide, SFDBI
those underlined are active slides

0 2000 4000 Feet

Approximate scale

Base map: John A. Blume & Associates, Engineers, (1974). Figure 4, Landslide Locations, San Francisco Seismic Safety Investigation, June 1974.

divis CONSULTING, INC.	**2417 GREEN STREET** San Francisco, California	**SAN FRANCISCO SLOPE PROTECTION ACT MAP**
		Date 01/12/17 | 17-120101-01 | Figure 2

EXHIBIT F

divis
CONSULTING, INC.
GEOTECHNICAL ENGINEERING

PRELIMINARY GEOTECHNICAL REPORT
2417 GREEN STREET
SAN FRANCISCO, CALIFORNIA
SAN FRANCISCO ASSESSORS BLOCK 0560 LOT 028

Client:
2417 Green Street, LLC
c/o Chris Durkin
474 Euclid Ave
San Francisco, CA 94118
cfdurkin@gmail.com

12 January 2017
Project: 17-120101-01

Prepared by:

divis
CONSULTING, INC.
GEOTECHNICAL ENGINEERING

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APPENDICIES

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GEOTECHNICAL ENGINEERING

INTRODUCTION

This letter report presents our preliminary geotechnical conclusions and recommendations for the subject project. Additional geotechnical studies, including a site specific field investigation, are required prior to final design.

The subject project is located at 2417 Green Street in San Francisco. The site is located on Block 0560 Lot 028 as mapped by the San Francisco Planning Department as shown on the Site Plan, Figure 1.

PROPOSED IMPROVEMENTS

We understand that plans include: remodeling of the existing residence and expanding the existing basement.

DATA REVIEW

To develop a preliminary understanding of the geologic conditions at the site, we reviewed the following documents:

- Blake M.C. et. al. (2000). Geologic Map and Map Database of Parts of Marin, San Francisco, Alameda, Contra Costa and Sonoma Counties, California.
- California Geological Survey (2001). State of California Seismic Hazard Zones, City and County of San Francisco, Official Map.
- John A. Blume & Associates, Engineers, (1974). San Francisco Seismic Safety Investigation, June 1974.

SPECIAL STUDIES ZONES

San Francisco Slope Protection Act

The site is located within an area defined by Section 106A.4.1.4 of the 2013 San Francisco Building code and consequently is located within a special study zone under the Slope Protection Act; Figure 2.

This report provides preliminary conclusions and recommendations regarding geologic hazards at the site. If a geologic hazard report is required by the San Francisco Department of Building Inspection, we can provide one upon your request.

State of California Seismic Hazard Zones

The site is not located within a seismic hazard zone as defined by the State of California; Figure 3.

Alquist Priolo Fault Mapping Act

The site is not within an Earthquake Fault Zone, as defined by the Alquist-Priolo Earthquake Fault Zoning Act and no known active or potentially active faults exist on the site.

GEOLOGIC SETTING

The site lies along a northeast-facing slope along the northern side of Russian Hill within the Pacific Heights District in San Francisco.

The site is located within the Coast Ranges geomorphic province of California that is characterized by rugged northwest-trending mountain chains, valleys and ridges. The predominant geologic structure and these topographic features are controlled by folds and faults that resulted from the collision of the Farallon plate and North American plate and subsequent strike-slip faulting along the San Andreas Fault system. The San Andreas Fault is more than 600 miles long from Point Arena in the north to the Gulf of California in the south. The Coast Ranges province is bounded on the east by the Great Valley and on the west by the Pacific Ocean.

The bedrock in the area is mapped as Jurassic- to late Cretaceous-age [~200 – 65 million years ago (Ma)] Franciscan Complex consisting of sandstone, shale, chert, greenstone and serpentinite. Locally, the surficial deposits at the site are mapped as Dune Sand.

A geologic map of the site vicinity is presented as Figure 4.

ANTICIPATED SUBSURFACE CONDITIONS

Based on the documents reviewed, we preliminarily conclude the site is underlain by: Dune Sand, undifferentiated surficial deposits and bedrock.

Undocumented fill may have been placed at the site during prior developments and/or grading activities.

SEISMICITY

The major active faults in the area are the San Andreas, San Gregorio, Hayward, Rodgers Creek and Calaveras Faults as shown on Figure 5. The closest major active fault is the San Andreas, which is approximately 10 kilometers to the west. The most recent major earthquake to affect the Bay Area was the Loma Prieta Earthquake of 17 October 1989, in the Santa Cruz Mountains with a M_w of 6.9, approximately 98 km from the site.

The U.S. Geological Survey's Working Group on California Earthquake Probabilities (2013) has compiled the earthquake fault research for the San Francisco Bay area in order to estimate the probability of fault segment rupture. They have determined that the overall probability of moment magnitude 6.7 or greater earthquake occurring before 2037 is 72 percent.

The seismicity of the site is governed by the activity of the San Andreas Fault, although ground shaking from future earthquakes on other faults would also be felt at the site. The intensity of earthquake ground motion at the site will depend upon the characteristics of the generating fault, distance to the earthquake epicenter, and magnitude and duration of the earthquake. We judge that strong to violent ground shaking could occur at the site during a large earthquake on one of the nearby faults.

GEOLOGIC HAZARDS

The project site is in a seismically active region. A preliminary discussion regarding geologic hazards and their impact on the site follows.

Ground Shaking
The seismicity of the site is governed by the activity of the San Andreas Fault, although ground shaking from future earthquakes on other faults would also be felt at the site. The intensity of earthquake ground motion at the site will depend upon the characteristics of the generating fault, distance to the earthquake epicenter, and magnitude and duration of the earthquake. We judge that strong to violent ground shaking could occur at the site during a large earthquake on one of the nearby faults.

Fault Rupture
No active faults are known to exist within the City and County of San Francisco (Blume, 1974). Historically, ground surface displacements closely follow the trace of geologically young faults.

Slope Stability
No documented landslides were found to be present at the site; (Blume, 1974). Most of the regional slide deposits are mapped in ravines and swales and/or generally occur on steeper bedrock slope gradients.

Liquefaction and Associated Hazards
When a saturated, cohesionless soil liquefies, it experiences a temporary loss of shear strength created by a transient rise in excess pore pressure generated by strong ground motion. Soil susceptible to liquefaction includes loose to medium dense sand and gravel, low-plasticity silt, and some low-plasticity clay deposits. Flow failure, lateral spreading, differential settlement, loss of bearing strength, ground fissures and sand boils are evidence of excess pore pressure generation and liquefaction.

The site is not mapped within a liquefaction seismic hazard zone.

Cyclic Densification
Cyclic densification is the densification of non-saturated sand above the groundwater table due to shaking and can occur during an earthquake, resulting in settlement of the ground surface and overlying improvements.

The near surface soils are mapped as Dune Sand. Consequently, loose clean sand may be present at the site. Cyclic densification may occur at the site where loose clean sands are present and not removed/improved by the proposed construction.

PRELIMINARY CONCLUSIONS AND RECOMMENDATIONS

Our preliminary geotechnical conclusions and recommendations regarding design and construction are presented in the remainder of this letter. The conclusions and recommendations presented herein should be re-evaluated based on either a site-specific field investigation or relevant subsurface information or both. A final geotechnical report should be prepared by us prior to finalizing the design of the proposed improvements.

Undocumented Fill
Undocumented fill may be encountered at the site. Undocumented fill should not be relied upon for foundation support. Where new concrete flatwork or pavements are proposed, any undocumented fill should be reworked.

Groundwater
Groundwater is typically encountered at the interface between geologic contacts, (fill/native, sand/clay and soil/bedrock). Any excavation on a hillside may encounter groundwater and seasonal springs may be present even though no evidence of these springs are encountered during construction. Where groundwater or evidence of groundwater is encountered during construction, we should be notified to evaluate if additional measures are required to control the flow of groundwater at the site.

The final design should include measures to intercept groundwater where it may impact the proposed construction. This may include but is not limited to: drainage behind retaining walls, under-slab-drainage, French drains and area drains to intercept groundwater and surface run-off, and waterproofing. The need for under-slab-drainage should be evaluated based on the waterproofing design. Where collected, groundwater should be discharged to a suitable collection point. In San Francisco, intercepted groundwater is typically re-directed to the combined sewer-storm water system.

Waterproofing is typically installed where the construction of habitable space is below the ground surface and waterproofing for basements is generally required by the building code. While we may provide guidance regarding waterproofing, the design and implementation of any waterproofing system is beyond the scope of our services. The waterproofing system should be designed and inspected by others.

Site Preparation, Grading and Engineered Fill
The contractor should be familiar with the use of standard compaction equipment and moisture conditioning of soil. We can provide additional recommendations regarding the placement of engineered fill and moisture conditioning upon request.

In areas to receive fill or other improvements; flatwork, existing pavements, foundations, abandoned utilities, vegetation, organic topsoil and other deleterious materials should be removed and disposed of prior to any grading activities.

Where new fill is required behind retaining walls, adjacent to foundations and below new improvements, it should be engineered in place.

Engineered fill consists of fill material which has been approved for use by the geotechnical engineer and placed in a manner as recommended by the geotechnical engineer. Engineered fill may consist of either on-site soil, select fill (imported to the site) or in some cases lean concrete. Lean concrete and native (on-site) soils should only be used if specifically approved by the geotechnical engineer.

Engineered fill (soil) should be placed in horizontal layers not exceeding eight inches in loose thickness, moisture-conditioned to above the optimum moisture content, and compacted to at least 90 percent relative compaction. The upper six inches of the soil subgrade for flatwork areas should be compacted to at least 95 percent relative compaction. Fill deeper than five feet should be compacted to at least 95 percent relative compaction.

Select fill should consist of soil that is non-corrosive, free of organic matter, smaller than three inches in greatest dimension, has a liquid limit less than 40 and a plasticity index less than 12. It is the contractor's

responsibility to check that any fill meet the project requirements. Samples may be submitted to the geotechnical engineer for testing at least three business days prior to use at the site.

Excavation

Excavations that will be deeper than five feet and will be entered by workers should be shored or sloped in accordance with the Occupational Safety and Health Administration (OSHA) standards (29 CFR Part 1926). The shoring designer should be responsible for the shoring design. The contractor should be responsible for the construction and safety of temporary slopes and shoring.

Temporary Slopes

Where space permits, temporary excavation slopes should be no steeper than 2:1 (horizontal:vertical) in native soils and no steeper that 3:1 in clean sand and undocumented fill. Vertical cuts of less than five feet may be performed in very stiff to hard native clays and bedrock provided: any adjacent improvement (i.e. adjacent foundations) are a minimum distance away from the toe of the cut equal to the height of the cut and these vertical cuts are approved by us. Vertical cuts should not be performed in the Dune Sand mapped at the site.

Shoring

We anticipate that shoring will be required for the proposed improvements. Shoring will likely consist of soldier pile and lagging cantilever shoring with a maximum retained height of about 10 feet. Permeation grouting may also be required in conjunction with or used in lieu of lagging to mitigate the potential for flowing sands through the lagging boards and facilitate excavation. The actual shoring type should be determined based on future geotechnical studies and the final project plans.

Underpinning

Where adjacent foundations may be impacted by the excavation and the proposed shoring system is not adequate to reduce potential movements, the adjacent foundations should be underpinned. Hand-dug underpinning pits extending approximately three feet below the bottom of the proposed excavation are likely the most economical underpinning for a project of this scope.

Construction Considerations and Monitoring

If the contractor encounters any adjacent foundation not identified on the structural plans, weak soil/rock or flowing sands during excavation, the excavation should be halted immediately and measures should be taken to mitigate any potential movement. We should be contacted immediately to provide additional consultation. We recommend the contractor investigate the location and depth of adjacent foundations prior finalizing excavation plans.

During excavation, the shoring system may deform laterally, which could cause the ground surface adjacent to the shoring walls to settle. The magnitudes of shoring movements and the resulting settlements are difficult to estimate because they depend on many factors, including the method of installation and the contractor's skill in the shoring installation. We believe that the movements of a properly designed and constructed shoring system should be within ordinary accepted limits of less than one inch. A monitoring program should be established to evaluate the effects of the construction on the adjacent buildings and surrounding ground.

The contractor should be responsible for all temporary cuts, slopes and shoring systems used at the site and should have a competent person on-site who is able to evaluate proposed excavations and soil/bedrock conditions.

Permanent Slopes

Where the existing slopes are re-graded for the proposed improvements, permanent slopes in soil should be graded to a maximum inclination of 2:1 (horizontal:vertical). Steeper slopes may be allowed and should be evaluated on a case-by case basis. Erosion may occur on any slope and maintenance will likely by required. A landscaping plan can be used to minimize erosion and minor sloughing on slopes with inclinations of 2:1 or less. To protect against slope erosion, surface runoff should be redirected away from slopes.

Surface Drainage

Positive surface drainage should be provided at the site to direct surface water away from new and existing foundations as well as the top of retaining walls and slopes. To reduce the potential for water ponding adjacent to the improvements, we recommend the ground surface within a horizontal distance of five feet from the improvement slope down and away with a surface gradient of at least two percent in unpaved areas and one percent in paved areas.

Positive surface drainage should also be provided in crawl spaces, if any, beneath the new improvements. The crawl space should be covered with at least two inches of concrete ("ratproofing") sloped to drain at an inclination of at least one percent to a suitable discharge point. As required, the discharge can be through one-inch-diameter weepholes through retaining walls and redirected to a suitable collection point.

Foundations

Foundations should either bear on similar geologic units or should be designed for differential settlements. We anticipate that foundations will be designed to bear on the Dune Sand (bearing layer) mapped at the site.

We preliminarily recommend that new foundations consist of either continuous shallow foundations of individual spread footings interconnected by stiffened grade beams. Localized areas of soft/medium stiff soil or disturbed bedrock maybe encountered during construction. Weak soil should be over-excavated and replaced with lean concrete. The extent of the over-excavation required should be evaluated in the field by us. We should check the bearing layer once foundation subgrade has been achieved and prior to the placement of re-bar or any other material.

Footings should be a minimum of 18 inches deep or extend at least 12 inches into the bearing layer; whichever is deeper. Footings should be at least 18 inches wide for continuous footings and 24 inches wide for isolated spread footings.

Where proposed foundations are within seven feet of the top of a slope, they should be deepened such that there is a minimum of seven feet between the top of the footing and face of slope. Footings adjacent

to utility trenches (or other footings) should bear below an imaginary 1.5:1 (horizontal:vertical) plane projected upward from the bottom edge of the utility trench (or adjacent footings).

Shallow foundations designed in accordance with the recommendations presented herein should not settle more than 1 inch; differential settlements should not exceed more than ½ inch in 30 feet. Larger, relatively abrupt differential settlements may occur at the transition between different geologic units.

For the recommended minimum embedment, footings constructed on the bearing layer and observed by us may be designed for an allowable bearing pressure of 2,000 pounds per square foot (psf) for dead plus live loads, with a one-third increase for total loads, including wind and/or seismic loads.

Lateral loads on footings can be resisted by a combination of passive resistance acting against the vertical faces of the footings and friction along the bases of the footings. Passive resistance may be calculated using lateral pressures corresponding to an equivalent fluid weight of 250 pounds per cubic foot (pcf); the upper foot should be ignored unless confined by a concrete slab or pavement. Frictional resistance of concrete poured directly on soil should be computed using a base friction coefficient of 0.35; where waterproofing or a vapor barrier is used the coefficient should be reduced to 0.20. The passive resistance and base friction values include a factor of safety of about 1.5 and may be used in combination without reduction.

Uplift loads may be resisted by the weight of the footing and any overlying soil. If footings are inadequate to provide the necessary uplift resistance, drilled piers may be used.

Footing excavations should be free of standing water, debris, and disturbed materials prior to placing concrete.

Permanent Retaining Walls

Retaining walls may be supported by the foundation system described in the previous section.

Retaining walls that are free to rotate at the top may be designed using an active earth pressure. Restrained basement walls (no movement allowed at the top of wall) should be designed for at-rest pressures.

Because the site is in a seismically active area, retaining walls are typically designed to resist pressures associated with earthquake forces. The structural engineer should determine if a seismic increment should be included in the design. If a seismic increment is included in the design, we recommend retaining walls be designed to resist the greater of either the at-rest pressure or active earth pressure plus a seismic increment. At a minimum, any retaining wall should be designed for a Factor of Safety of at least 1.5.

Where new or existing foundations are located behind retaining walls and an imaginary plane taken from the bottom of the footing projected at 1.5:1 (horizontal to vertical) downward intersects the retaining wall, additional surcharge pressures should be included to account for vertical and lateral foundation loading on the retaining wall.

Water can accumulate behind the walls from perched groundwater and other sources, such as rainfall, irrigation, and broken water lines. One acceptable method for back draining the wall is to place a prefabricated drainage panel against the backside of the wall. The drainage panel would typically extend down to either: a prefabricated drainage trench, a perforated PVC collector pipe at the base of the wall or weep holes. Water which drains through the weep holes should not be allowed to pond and should be diverted to a suitable collection system.

Where walls are not back drained, an additional hydrostatic load of 62.4 pcf should be added to the lateral pressures indicated above.

Concrete Slab-on-Grade Floors

Subgrade for concrete slab-on-grade floors should consist of undisturbed native soil and/or bedrock or engineered fill. In general, water vapor transmission through the floor slab should be reduced where there is potential for finished floor coverings to be adversely affected by moisture. This may be achieved using waterproofing, a vapor barrier or both.

If a vapor barrier is installed, it should be underlain by a capillary moisture break. A capillary moisture break consists of at least four inches of clean, free-draining gravel or crushed rock. The vapor barrier should meet the requirements for Class C vapor retarders stated in ASTM E1745-97. The vapor retarder should be placed in accordance with the requirements of ASTM E1643-98. These requirements include overlapping seams by six inches, taping seams, and sealing penetrations in the vapor retarder. The vapor retarder should be covered with two inches of sand to aid in curing the concrete and to protect the vapor retarder during slab construction. The particle size of the gravel/crushed rock and sand should meet the gradation requirements presented in Table 1.

The sand overlying the membrane should be moist, but not saturated, at the time concrete is placed. Excess water trapped in the sand could eventually be transmitted as vapor through the slab. If rain is forecast prior to pouring the slab, the sand should be covered with plastic sheeting to avoid wetting. If the sand becomes wet, concrete should not be placed until the sand has been dried or replaced.

The presence of a capillary break and vapor barrier may not eliminate all moisture transmission through the concrete floor slab. As required and before the final floor covering is placed, the contractor should the moisture emission levels.

TABLE 1
GRADATION REQUIREMENTS FOR CAPILLARY MOISTURE BREAK

Sieve Size	Percentage Passing Sieve
Gravel or Crushed Rock	
1 inch	90 – 100
3/4 inch	30 – 100
1/2 inch	5 – 25
3/8 inch	0 – 6
Sand	
No. 4	100
No. 200	0 – 5

Concrete Flatwork and Pavers
Concrete flatwork may be underlain by Class II aggregate base to reduce the potential for differential settlement; if desirable we recommend a minimum of 4 or 6 inches of Class II aggregate base compacted to 95 percent relative compaction for pedestrian and vehicular traffic, respectively. Area drains may be used to collect surface run-off.

Where concrete flatwork is constructed on a slope, concrete keys may be required to reduce the potential for downhill movement of the constructed flatwork.

The velocity of surface runoff may be reduced using permeable pavers, which allow surface water to infiltrate the pavers; however since the project is located at the top of a slope, we recommend that infiltration into the underlying soil/rock not be allowed and a subdrain system should be installed below the pavers to divert the surface water to a suitable collection system.

We should evaluate the soil subgrade prior to placement of the pavers or flatwork. Where weak fill and/or soil is encountered, it should be replaced with engineered fill. Where wet or dry soil is encountered, it should be ripped a minimum of six inches and moisture conditioned to near optimum moisture content.

The required thicknesses of the permeable aggregate base and subbase courses and geotextile required will depend on the infiltration and water storage design requirements, as well as the pedestrian/traffic loading demand. We can provide additional geotechnical recommendations and/or a review of the final pavement plans upon your request.

SEISMIC DESIGN

For design in accordance with the 2013 San Francisco Building Code (SFBC), we preliminarily recommend Site Class D (stiff soil) be used. Site seismic design factors are presented on Figure 6. The factors presented should be considered preliminary until checked by your structural engineer.

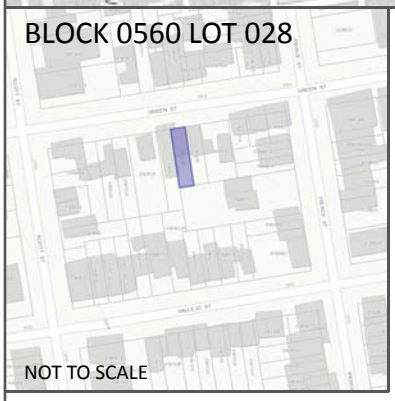
LIMITATIONS

This preliminary geotechnical study has been conducted in accordance with the standard of care commonly used as state-of-practice in the profession. No other warranties are either expressed or implied. A final geotechnical report based on a site specific field study and/or appropriate available on-site subsurface information should be prepared prior to finalizing any design. Corrosivity of the soil and/or bedrock is beyond the scope of this report. The recommendations made in this report are intended to protect the life and safety of occupants within the structure during a major seismic event on a nearby fault; damage to the structure and other improvements may still occur due to seismic forces on the proposed improvements. Our recommendations are only valid where the actual field conditions are observed by us.

divis
CONSULTING, INC.
GEOTECHNICAL ENGINEERING

FIGURES

BLOCK 0560 LOT 028



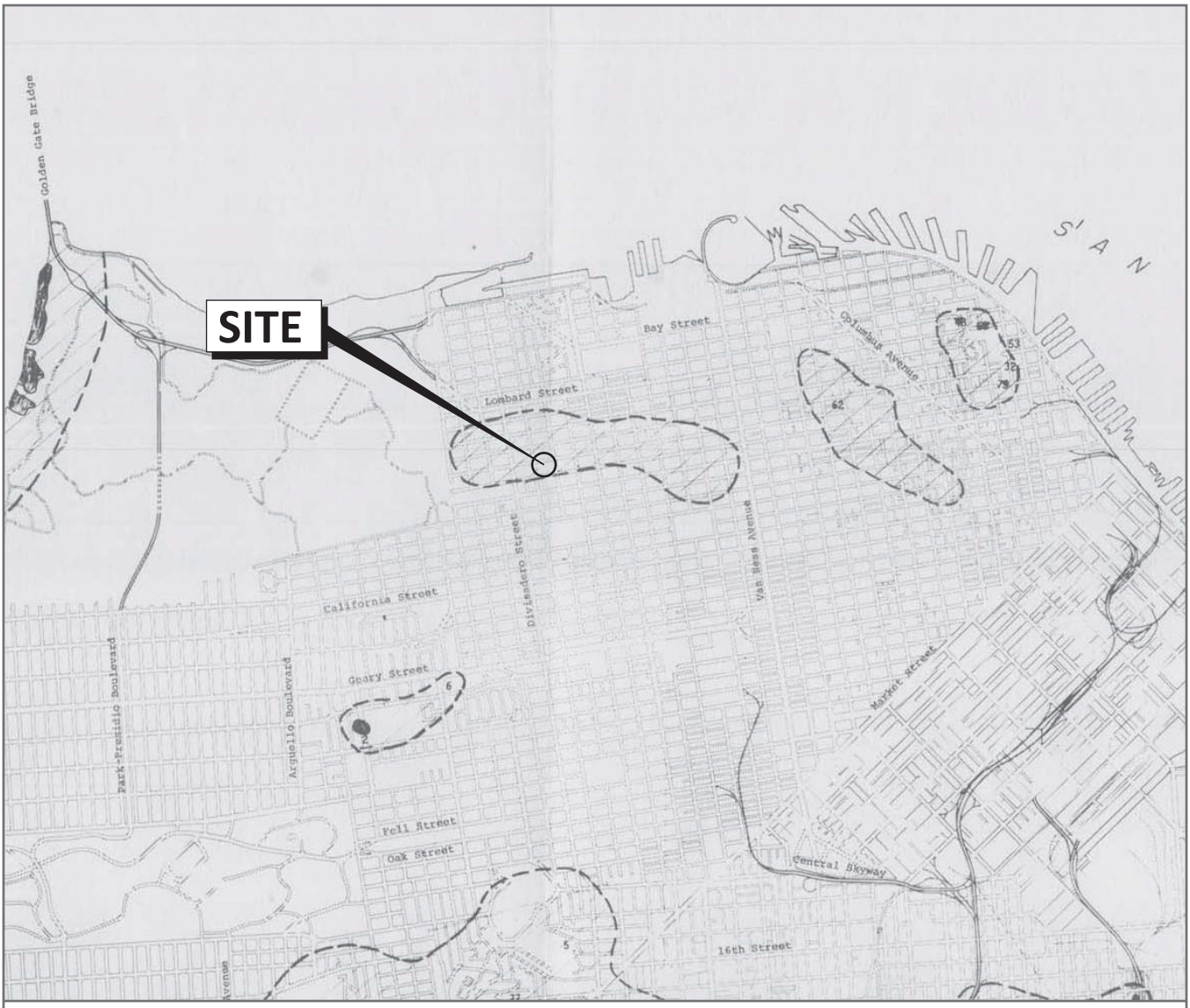
NOT TO SCALE

0 0.2 Miles

Approximate scale

Base map: (c) 2017 san francisco planning department

divis CONSULTING, INC. GEOTECHNICAL ENGINEERING	**2417 GREEN STREET** San Francisco, California	**SITE LOCATION MAP**		
		Date 01/12/17	17-120101-01	Figure 1



EXPLANATION

outline of slide area

areas of potential landslide hazard

7 location of slide, SFDBI
those underlined are active slides

0 2000 4000 Feet

Approximate scale

Base map: John A. Blume & Associates, Engineers, (1974). Figure 4, Landslide Locations, San Francisco Seismic Safety Investigation, June 1974.

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2417 GREEN STREET
San Francisco, California

SAN FRANCISCO SLOPE PROTECTION ACT MAP

Date 01/12/17	17-120101-01	Figure 2

EXPLANATION

Liquefaction: Areas where historic occurence of liquefaction, or local topographic, geological, geotechnical, and subsurface water conditions indicate a potential for permanent ground displacements.

Earthquake-Induced Landslides: Areas where previous occurence of landslide movement, or local topographic, geological, geotechnical, and subsurface water conditions indicate a potential for permanent ground displacements.

N

0 1000 2000 Feet

Approximate scale

Base map: State of California, Seismic Hazard Zones City and County of San Francisco, Official Map, Released November 17, 2001.

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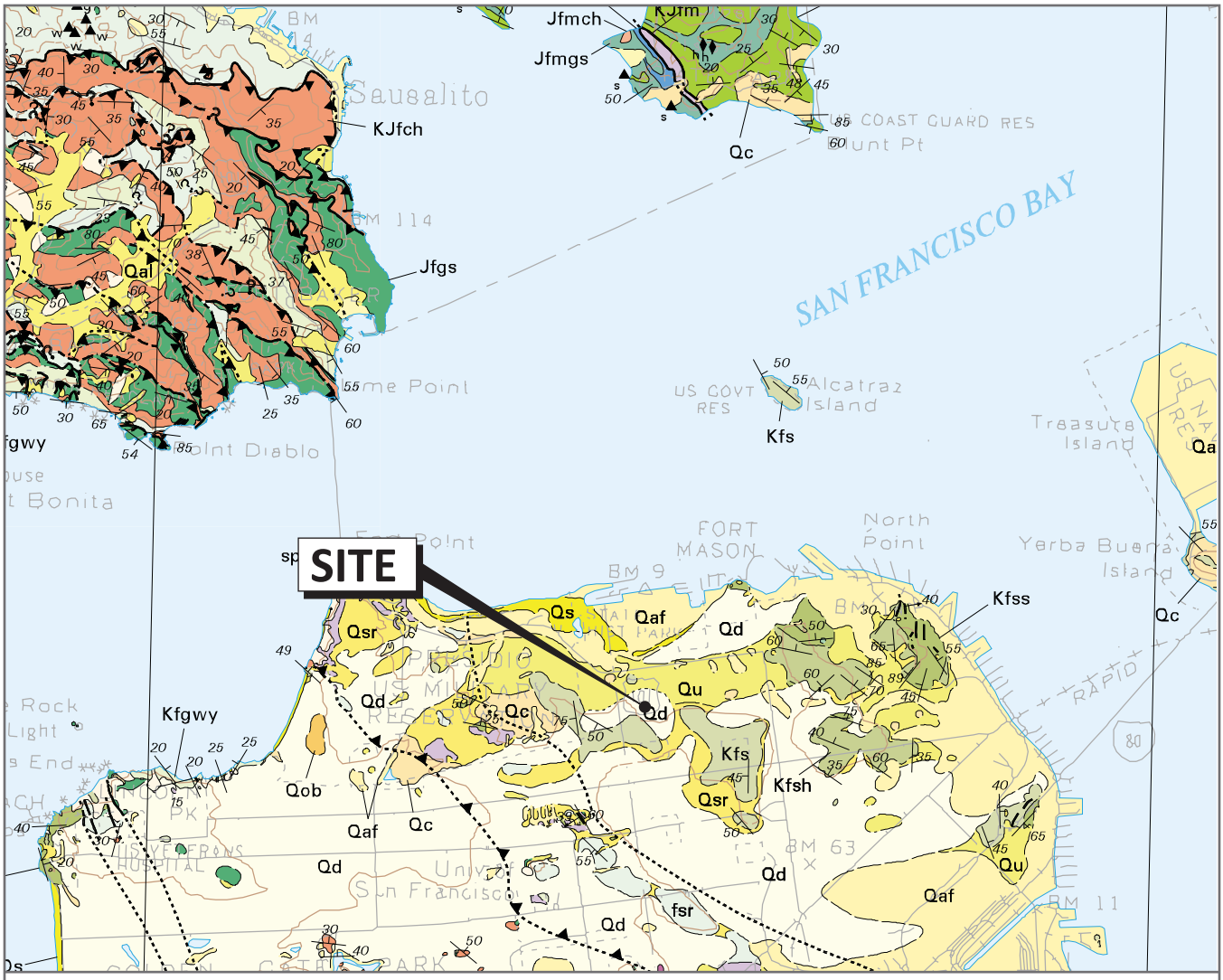
2417 GREEN STREET
San Francisco, California

SEISMIC HAZARD ZONE MAP

Date 01/12/17	17-120101-01	Figure 3



		water
	Qaf	Artificial fill
	Qd	Dune Sand (Quaternary)
	Qu	Undifferentiated surficial deposits (Quaternary)
	fsr	Mélange
	Jfgs	Greenstone (Jurassic)
	KJfch	Chert (Cretaceous and Jurassic)
	sp	Serpentine
———		Contact, approximately located

0 2000 4000 feet

Approximate scale

Reference: Geologic Map and Map Database of Parts of Marin, San Francisco, Alameda, Contra Costa and Sonoma Counties, California, prepared by M.C. Blake Jr., R.W. Graymer, and D.L. Jones, dated 2000

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2417 GREEN STREET
San Francisco, California

REGIONAL GEOLOGIC MAP

Date 01/12/17 | 17-120101-01 | Figure 4

FAULT TYPE

Strike slip

Thrust (Reverse)

Normal

N

0 5 10 Miles

Approximate scale

Base Map: U.S. Geological Survey, National Seismic Hazards Maps - Fault Sources, 2008.

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2417 GREEN STREET
San Francisco, California

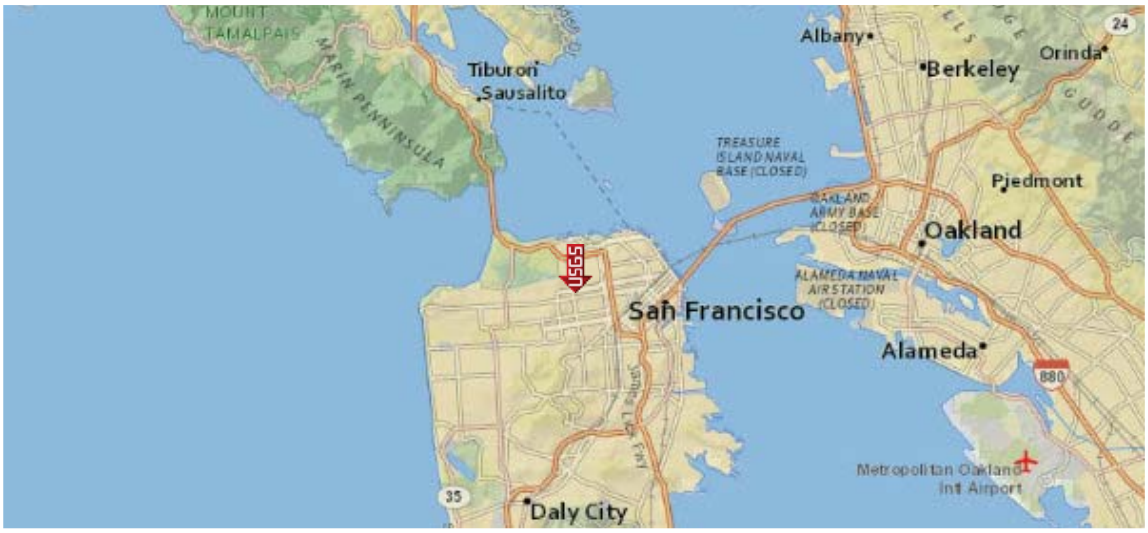
REGIONAL FAULT MAP

Date 01/12/17	17-120101-01	Figure 5

USGS Design Maps Summary Report

User–Specified Input

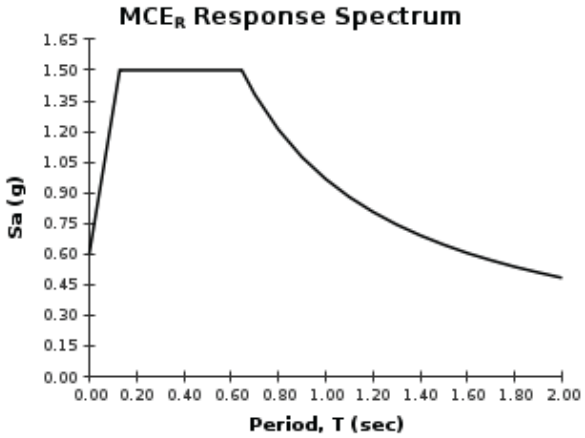
Building Code Reference Document	2012/2015 International Building Code (which utilizes USGS hazard data available in 2008)
Site Coordinates	37.79547°N, 122.43933°W
Site Soil Classification	Site Class D – "Stiff Soil"
Risk Category	I/II/III



USGS–Provided Output

S_S =	1.500 g	S_{MS} =	1.500 g	S_{DS} =	1.000 g
S_1 =	0.645 g	S_{M1} =	0.967 g	S_{D1} =	0.645 g

For information on how the SS and S1 values above have been calculated from probabilistic (risk-targeted) and deterministic ground motions in the direction of maximum horizontal response, please return to the application and select the "2009 NEHRP" building code reference document.



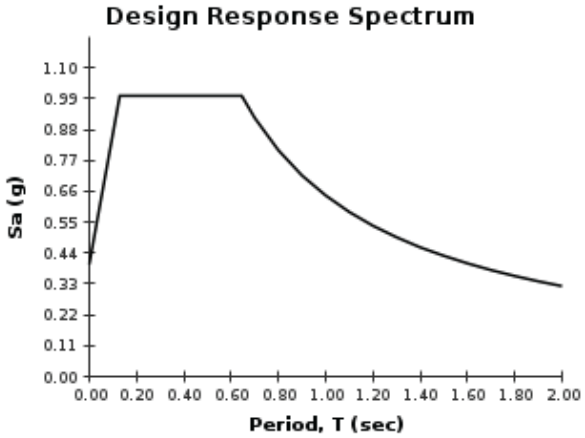


EXHIBIT G

SWAPE Technical Consultation, Data Analysis and Litigation Support for the Environment

2656 29th Street, Suite 201
Santa Monica, CA 90405

Matt Hagemann, P.G, C.Hg.
(949) 887-9013
mhagemann@swape.com

September 9, 2019

Richard Drury
Lozeau Drury LLP
410 12th Street, Suite 250
Oakland, CA 94607

Subject: 2417 Green Street Project, San Francisco, California

Dear Mr. Drury:

I have reviewed the June 26, 2019 Preliminary Mitigated Negative Declaration for 2417 Green Street, Case No. 2017-002545ENV. After a brief discussion of soil sampling conducted at the Project site (p. 73), the MND finds "the project would not result in a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials."

I previously commented that the soil sampling was not adequate to provide the basis for the San Francisco Department of Public Health to have concluded "there is no possibility of a significant effect on the environment related to exposure to hazardous materials."[1] Since I made that comment, no additional sampling has been conducted.

I maintain that a program of sampling should be undertaken across the property consisting of at least eight locations and at two depth intervals. Only a property-wide investigation would allow for the conclusion, as made in the MND, that there was no possibility of a significant effect from exposure to hazardous materials.

An environmental impact report should be prepared to include results of a property-wide sampling program to allow for disclosure of any contamination that may be present, and to identify any mitigation that would be necessary for the protection of the public, including construction workers and adjacent residents.

[1] See letter to Mr. Richard Drury, September 27, 2018, p. 2

Sincerely,

Matt Hagemann, P.G., C.Hg.

SWAPE Technical Consultation, Data Analysis and Litigation Support for the Environment

2656 29th Street, Suite 201
Santa Monica, CA 90405

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(949) 887-9013
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November 27, 2018

Richard Drury
Lozeau Drury LLP
410 12th Street, Suite 250
Oakland, CA 94607

Subject: 2417 Green Street Project

Dear Mr. Drury:

I have reviewed the February 27, 2018 report[1] that documents soil sampling results obtained from the 2417 Green Street property in San Francisco. The two samples, collected from a single surficial depth interval two locations, were analyzed for parameters that are required under San Francisco Health Code article 22A (Maher Ordinance). The report summarized the results and concluded that hazardous materials were not present at the 2417 Green St. property. The San Francisco Department of Public Health (DPH) determined in a June 22, 2018 letter[2]:

> Based on review of the documents, DPH found the project in compliance with San Francisco Health Code article 22A, and requires no further investigation. Thus, there is no possibility of a significant effect on the environment related to exposure to hazardous materials. (p. 11.)

I have reviewed the soil sampling requirements of Health Code article 22A and have concluded that the sampling was not adequate to provide the basis for DPH to conclude that "there is no possibility of a significant effect on the environment related to exposure to hazardous materials." The soil sampling that was conducted was limited to two co-located samples. Instead, a program of sampling should have been undertaken across the property consisting of at least eight locations and at two depth intervals (0-0.5 ft. and 3.0-3.5 ft). This is especially important because a source of potential contamination that led

[1] Site Characterization, 2417 Green St., San Francisco, California, Innovative and Creative Environmental Solutions, February 27, 2018
[2] Certificate of Determination Exemption from Environmental Review, San Francisco Planning Department, June 22, 2018

to the Maher listing is not known. Only a property-wide investigation would allow for the conclusion that there was no possibility of contamination, as made by DPH.

An amended workplan should be submitted by the applicant to DPH that would set forth a comprehensive soil and groundwater (if present) sampling program to determine if the property has been impacted by contamination. A thorough evaluation, made available to the public for review in report format, is necessary to allow for disclosure of any contamination that may be present, and to identify any mitigation that would be necessary for the protection of the public, including construction workers and adjacent residents.

Sincerely,

Matt Hagemann, P.G., C.Hg.

SWAPE Technical Consultation, Data Analysis and Litigation Support for the Environment

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Santa Monica, CA 90405

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September 27, 2018

Richard Drury
Lozeau Drury LLP
410 12th Street, Suite 250
Oakland, CA 94607

Subject: 2417 Green Street Project

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> Based on review of the documents, DPH found the project in compliance with San Francisco Health Code article 22A, and requires no further investigation. Thus, there is no possibility of a significant effect on the environment related to exposure to hazardous materials. (p. 11.)

I have reviewed the soil sampling requirements of Health Code article 22A and have concluded that the sampling was not adequate to provide the basis for DPH to conclude that "there is no possibility of a significant effect on the environment related to exposure to hazardous materials." The soil sampling that was conducted was limited to two co-located samples. Instead, a program of sampling should have been undertaken across the property consisting of at least eight locations and at two depth intervals (0-0.5 ft. and 3.0-3.5 ft). This is especially important because a source of potential contamination that led

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Sincerely,

Matt Hagemann, P.G., C.Hg.

SWAPE Technical Consultation, Data Analysis and Litigation Support for the Environment

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December 27, 2017

Richard Drury
Lozeau Drury LLP
410 12th Street, Suite 250
Oakland, CA 94607

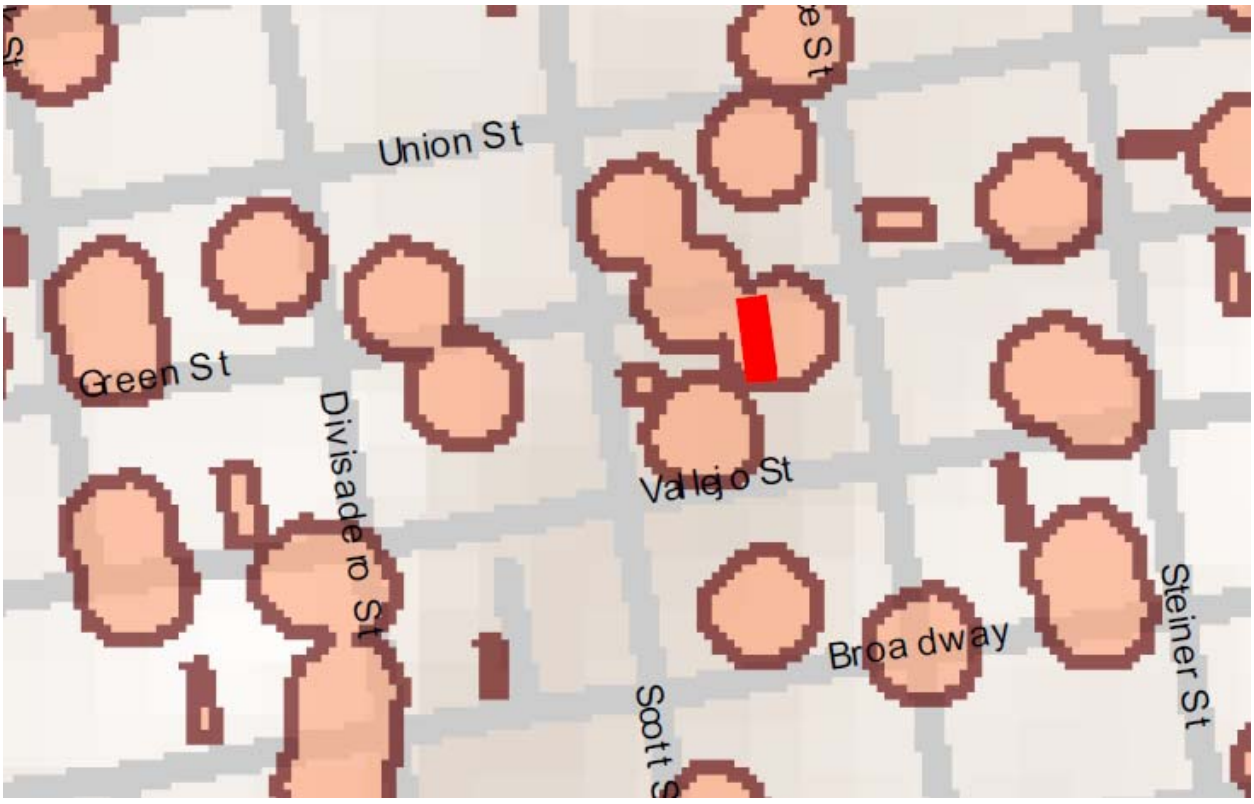
Subject: Comments on the 2417 Green Street Project

Dear Mr. Drury:

I have reviewed the City of San Francisco's documentation for the May 16, 2017 Categorical Exemption for proposed excavation and construction work at a residence at 2417 Green Street in San Francisco. The City's determination that the project is exempt from CEQA review is erroneous because the subject property occurs on the 2015 Maher Map,[1] which identifies areas within 100 feet of current or historical underground storage tanks. Properties with potential subsurface chemical contamination that require grading of 50 cubic yards of material are regulated under the San Francisco Maher Ordinance (Article 22A of the San Francisco Health Code and Article 106A.3.4.2 of the San Francisco Building Code)[2].

The applicability of the Maher Ordinance to the project at 2417 Green Street is clear. As shown in the map below, excerpted from Maher Map, the project is atop a mapped site.

[1] http://www.sf-planning.org/ftp/files/publications_reports/library_of_cartography/Maher%20Map.pdf
[2] http://library.amlegal.com/nxt/gateway.dll/California/health/article22aanalyzingsoilsforhazardouswast?f=templates$fn=default.htm$3.0$vid=amlegal:sanfrancisco_ca



Because the project area occurs on the Maher map, requirements under the ordinance include:

- Preparation of a Maher Ordinance application
- Submittal of a Subsurface Investigation Work Plan prepared by your Environmental Consultant
- Receipt of Work Plan approval and performance of the work described in the Work Plan
- Submittal of a Subsurface Investigation Report prepared by a qualified Environmental Consultant
- Preparation and submittal of a Site Mitigation Plan including description and design for any required mitigating measures (approval is required before earthwork).

No documentation was provided for the Categorical Exemption to show that the City has conducted the required Maher Ordinance work.

The application materials indicate that the proposed project on the subject property would require 408 cubic yard of soil excavation and removal (Environmental Evaluation, p. 7). Given the listing of the property on the Maher Map, this excavation may disturb potentially contaminated soil, which may expose nearby residents and/or construction workers to hazardous chemicals. Given this, there is a fair argument that the proposed project at 2417 Green Street may have adverse environmental impacts that must be analyzed under the Maher Ordinance and CEQA.

A full CEQA analysis should be invoked to allow for the Maher process to be completed, to allow for public disclosure of any contamination that may be present, and to identify any mitigation that would be necessary for the protection of the public, including construction workers and adjacent residents.

Sincerely,

Matt Hagemann, P.G., C.Hg.

EXHIBIT H

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE CITY AND COUNTY OF SAN FRANCISCO

HONORABLE RAYMOND D. WILLIAMSON, JUDGE PRESIDING

DEPARTMENT EIGHT

STEPHEN M. WILLIAMS, Petitioner, v. BOARD OF PERMIT APPEALS, SAN FRANCISCO CITY PLANNING DEPARTMENT, DEPARTMENT OF BUILDING INSPECTIONS, Respondents, ASHBOURNE CONSTRUCTION, Real Party In Interest.	NO. 987418 STATEMENT OF DECISION AND ORDER GRANTING IN PART AND DENYING IN PART THE PETITION FOR WRIT OF MANDATE

This matter came on regularly before this Court on July 31, 1997, the Honorable Raymond D. Williamson, presiding. Stephen M. Williams, as petitioner in propria persona ("petitioner") appeared on behalf of himself. William M. Fleishhacker, Deputy City Attorney for the City and County of San Francisco appeared as attorney for respondent Board of Permit Appeals and the San Francisco Planning and Building Departments. Alice Suet Yee Barkley and Nancy Greenan Hamill of Reuben & Alter appeared as attorneys for real party in interest Ashbourne Construction. The record of the administrative proceedings having been received into evidence and examined by the Court, and additional evidence having been received by the Court,

arguments having been presented and the matter having been submitted for decision, the Court rendered its Statement of Intended ("Tentative") Decision on August 22, 1997. Subsequent thereto objections to the Tentative Decision were filed by both the City and the Real Party in Interest and response was filed by Petitioner. The Ex-Parte requests for hearing on the objections are denied.

The Court, being fully advised makes the following Statement of Decision:

At issue in this action are the demolition and building permits issued for the property located at 2617 Sutter Street, San Francisco, California.

In November, 1995, the San Francisco Planning Department approved the demolition and building permits for the above mentioned building. Petitioner then appealed the permit for new construction, but not the demolition permit, and the Board of Appeals ("Board") upheld the Planning Commission's approval of the permits. In this action, petitioner seeks a Peremptory Writ of Mandamus overturning the City's decision on both permits.

As to the demolition permit, this Court finds that petitioner has failed to exhaust his administrative remedies by failing to appeal the demolition permit to the Board. Therefore, review of the demolition permit is not properly before this Court. Accordingly, no Peremptory Writ shall issue regarding the demolition permit. In any event, there appears to be little concern over the demolition permit realizing the fate that brings to the structure currently located on the property. The controversy arises over the building that is to rise after the work occasioned by the demolition permit is completed.

The primary issue in this case is whether the Board properly used the Residential Design Guidelines when it approved the construction permit for the subject property.

Effective February 2, 1996, the Planning Code was amended with new Section 311, Article III replacing Article V, Section 505. These sections govern the way the Planning Department and the Board, conducting a de novo review on appeal, are to use the Residential Design Guidelines when considering applications for construction permits of new residential buildings in R Districts such as we have here.

The Residential Design Guidelines of the Planning Department are the result of a voter initiative ballot proposition ("Proposition M") from 1986 and were codified by the Planning Commission on November 2, 1989. Among other things Proposition M established as Master Plan Priority Policy, that existing neighborhood character be conserved and protected. In this regard, the Residential Design Guidelines set forth numerous provisions to ensure that new construction or alterations to existing buildings in older neighborhoods will be compatible with existing and adjacent buildings.

Former Planning Code Section 505(b)(3) set forth a non-mandatory standard of review for a permit application and required only that the Residential Design Guidelines, "shall be used as guidelines to review neighborhood compatibility of new construction and alterations." New Sections 311(c) and 311(c)(1) which replaced former Section 505(b)(3), substantially altered the statutory language requiring compliance with, and review of, the Residential Design Guidelines.

Unlike Section 505(b)(3), which only required use of the Residential Design Guidelines, "to review neighborhood compatibility," Section 311 now fully incorporates the Residential Design Guidelines into the Planning Code as part of the residential permit review procedure. Under new Section 311, the Planning Department shall determine that the project complies with the Residential Design Guidelines or the permit may not issue. Section 311 states in relevant part as follows:

> (c) BUILDING PERMIT APPLICATION AND REVIEW FOR COMPLIANCE AND NOTIFICATION. Upon acceptance of any application subject to this Section, the Department of City Planning shall review the proposed project for compliance with City Planning Code and any applicable design guidelines approved by the City Planning Commission. Applications determined not to be in compliance with the standards of Articles 1.2, 1.5, 2, 2.5 of the City Planning Code, Residential Design Guidelines, including design guidelines for specific areas adopted by the Planning Commission, . . . shall be held until either the application is determined to be in compliance, is disapproved, or a recommendation for cancellation is sent to the Department of Building Inspection.
>
> (1) Residential Design Guidelines. The construction of new residential building in R districts shall be consistent with the design policies and guidelines of the Master Plan and with the "Residential Design Guidelines" as adopted and periodically amended for specific areas or conditions by the City Planning Commission. The Zoning Administrator may require modifications to the exterior of a proposed new residential building or proposed alteration of an existing residential building in order to bring it into conformity with the 'Residential Design Guidelines' and with the Master Plan. These modifications may include, but are not limited to, changes in siting, building envelope, scale, texture and detailing, openings and landscaping.

The new wording of Section 311 paints a different picture of the duties of the Planning Department and the Board when a permit is sought. With the insertion of the word "shall" into this section of the Planning Code the Board is now required, not only to "consider"

the "Guidelines," but also to find that the new building is "consistent with . . . the 'Residential Design Guidelines.'" Section 311 is clear on its face that its terms apply to all R districts and the Residential Design Guidelines themselves state that they are meant to apply in all residential districts with a height limit of 40 feet or less. Therefore, these provisions apply with equal force to RH-1, RH-2 and RH-3 districts.

The Board has an obligation to enforce the law which is in effect at the time in which a permit is issued. Avco Community Developers, Inc. v. South Coast Regional, (1976) 17 Cal.3d 785, 793. In this instance, the permits were issued on March 12, 1997 and the provisions of Section 311 apply. Further, it is also well established the Board's power must be exercised within the bounds of the statutes, code sections and ordinances that are applicable to the circumstances and facts of any matter which comes before it. City and County of San Francisco v. Board of Permit Appeals, (1989) 207 C.A. 3d 1099, 1105.

The Court has reviewed the transcript of the hearing before the Board. While several references are made therein to the "Guidelines," nothing in the record shows that the Board considered the Residential Design Guidelines and, exercising its discretion, found the proposed construction "consistent with" the Guidelines.

The Court finds that as a matter of law the Board may not refuse to implement specific, mandatory established standards set forth in the Planning Code and specifically, the Residential Design Guidelines in order to promote general and nonspecific policies

which do not, on their face, conflict with such specific standards. Although the application of the Residential Design Guidelines necessarily requires some flexibility, the respondent Board may not, in the exercise of its discretion, gloss over the Residential Design Guidelines.

The Court concludes that the Board has failed to establish, in its record, that it has adequately "considered" and "followed" the Residential Design Guidelines in evaluating the building permit application for 2617 Sutter Street.

In view of the foregoing, it is hereby ordered that a Peremptory Writ of Mandamus issue from this Court remanding this matter back to respondent and commanding respondent Board to set aside its decision on Appeal No. 97-044 and reconsider the construction permit application in a manner consistent with this order.

DATED: September 29, 1997.

JUDGE RAYMOND D. WILLIAMSON
SAN FRANCISCO SUPERIOR COURT

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SUPERIOR COURT OF CALIFORNIA
CITY AND COUNTY OF SAN FRANCISCO

STEPHEN M. WILLIAMS, Petitioner, v. BOARD OF PERMIT APPEALS, SAN FRANCISCO CITY PLANNING DEPARTMENT, DEPARTMENT OF BUILDING INSPECTIONS, Respondents, ASHBOURNE CONSTRUCTION, Real Party In Interest.	NO. 987418 CERTIFICATE OF SERVICE BY MAIL (CCP 1013a(4))

I, Carmen Li, Deputy Clerk of the Superior Court of the City and County of San Francisco, certify that:

1) I am not a party to the above action;

2) On September 29, 1997, I served the attached:

STATEMENT OF DECISION AND ORDER GRANTING IN PART AND DENYING IN PART THE PETITION FOR WRIT OF MANDATE

William M. Fleishhacker, Deputy City Attorney, Fox Plaza, 1300 Market St., 6th Floor, San Francisco, CA 94102-5408

Stephen M. Williams, Esq., 1221 Broadway, 21st Floor, Oakland, CA 94612-1837

Nancy Greenan Hamill, Reuben & Alter, 655 Montgomery St., 16th Floor, San Francisco, CA 94111

Alice Suet Yee Barkley, Esq. 30 Blackstone Court, San Francisco, CA 94123

and,

3) I then placed the sealed envelope in the outgoing mail at 633 Folsom Street, San Francisco, CA. 94107 on the date indicated above for collection, attachment of required prepaid postage, and mailing on that date following standard court practices.

Dated: SEP 29 1997

ALAN CARLSON, CLERK

By: Carmen Li
Deputy Clerk