

# REUBEN, JUNIUS & ROSE, LLP

September 27, 2013

**By U.S. Mail and Messenger**

Board of Supervisors, City and County of San Francisco  
Attn: Clerk of the Board  
1 Dr. Carlton B. Goodlett Place  
City Hall, Room 244  
San Francisco, CA 94102

**Re: 480 Potrero Avenue (Block 3973, Lot 002C)  
Project Sponsor's Brief in Opposition to Appeal of Negative Declaration  
Planning Department Case No. 2011.0430E  
Planning Commission Motion No. 18944  
Our File No. 7837.01**

Dear Board of Supervisors,

We represent project sponsor Sia Consulting ("Project Sponsor") regarding the proposed mixed-use development project (the "Project") at 480 Potrero Avenue (the "Property"), and submit this letter in opposition to the appeal of the Project's Mitigated Negative Declaration, which was certified by the Planning Commission on August 8, 2013, after a public hearing.

## **I. Background**

The Project proposes construction of a six-story, 58-foot tall mixed-use building approximately 80,000 square feet in size, containing 75 residential units, 974 square feet of ground-floor retail use, and 47 parking spaces in a single-level basement garage. The Property is located at the northwest corner of Potrero Avenue and Mariposa Street.

The Project's environmental evaluation application was filed on August 5, 2011. On September 26, 2012, the Planning Department published a Preliminary Mitigated Negative Declaration ("PMND"). The Planning Department concluded after project-level environmental review that the Project would not result in new environmental effects not addressed in the Eastern Neighborhoods Final EIR, with the exception of hazardous materials, which would be mitigated through compliance with a program of soils testing and proper hazardous materials removal. This program requires testing of the Property's soil and development of a plan to properly remove and dispose of any hazardous materials, overseen by the Department of Public Health.

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The PMND was appealed to the Planning Commission on October 17, 2012. In response to community and Planning Department feedback, the Project was revised to its present proposal, and on April 15, 2013 the PMND was amended to reflect that the present Project would not change the findings or conclusions of the PMND.

After notice and a public hearing, the Planning Commission held an initial hearing on the Project on July 18, 2013, and certified a Final Mitigated Negative Declaration at a hearing on August 8, 2013. The Mariposa-Utah Street Neighborhood Association ("MUSNA") appealed the Planning Commission's decision on August 27, 2013, and an appeal from individual Mica I. Ringel was submitted the following day.

## **II. Responses to Issues Raised by Appellants**

### **a. The Transportation Study Accurately Characterized the Property, per CEQA**

Appellants point out that the PMND, and specifically the transportation study, characterized the Property as a vacant lot, rather than a parking lot, and therefore the impact of the loss of the parking spaces was not properly analyzed. This criticism is misplaced for several reasons.

First, the parking lot ceased operations in June of 2013. As a result, there is no longer any parking at the Property. This fact is completely independent of the Project. There will be no parking lot at the Property regardless of whether the Project is built. No additional analysis can even be conducted at this point. Since the parking operation is no longer in existence, the existing condition for the transportation study, and the PMND, would be a vacant lot – which is exactly how it is characterized in the PMND.

Further, the PMND was prepared pursuant to clear CEQA case law. The basis for this rule is CEQA Guidelines Section 15125(a), which states:

An EIR must include a description of the physical environmental conditions in the vicinity of the project, as they exist at the time the notice of preparation is published, *or if no notice of preparation is published, at the time environmental analysis is commenced.* (Italics added.)

Courts have applied this rule in the case of EIRs, negative declarations and exemptions. (*Napa Valley Wine Train, Inc. v. Public Utilities Commission* (1990) 50 Cal.3d 370 (exemption); *Riverwatch v. County of San Diego* (1999) 76 Cal.App.4<sup>th</sup> 1428 (EIR); *Fat v. County of Sacramento* (2002) 97 Cal.App.4<sup>th</sup> 1270 (negative declaration).

Environmental analysis of the Project began on August 5, 2011, when the Project Sponsor filed an environmental evaluation application. The lease of the vacant lot to the

adjacent autobody shop did not commence until October 1, 2011. Per the CEQA Guidelines, environmental review properly examined the Property's conditions as they existed at the time environmental review commenced. By the time the PMND was certified by the Planning Commission, the parking operation was no longer in existence.

The length of time the Property was used as an illegal parking lot was minimal, and therefore would have minimal impact on parking availability in the vicinity. The Property was used as a parking lot from October 1, 2011 until June 10, 2013 – just over a year and a half. The Property had previously been a vacant lot since 2005, and was a live/work development prior to that. The transportation study and PMND studied the existing parking conditions at the Property as they had existed for many years prior to the short period of time the Property was used for parking.

**Finally, even if the Property had been characterized as a parking lot, the Planning Department has specifically determined that it still would not have a significant negative effect on parking in the area.**

The transportation study and PMND correctly did not recognize the parking operation at the Property and even if they had, no significant impacts on available parking in the area would have resulted. The Appellant's claim about how the Property was characterized does not justify their appeal.

**b. The Project Adequately Mitigates Possible Hazardous Material Environmental Effects**

The Project Sponsor has complied with – and will continue to follow – the PMND's hazardous materials mitigation measure, which ensures the proper identification and disposal of any hazardous materials at the Property.

The PMND concluded that compliance with existing city hazardous materials programs – now incorporated within the Maher Ordinance – would ensure the Project would not create a significant hazard to the public or the environment involving the release of hazardous materials into the environment. In the absence of proper controls, exposure of the serpentinite bedrock underneath the Project site could cause naturally-occurring chrysotile asbestos to become airborne. Additionally, the Project site may be underlain with three feet of fill containing elevated concentrations of petroleum hydrocarbons and heavy metals. The PMND required soil contamination testing, as well as dust control and contaminated soil handling measures during the excavation, grading, loading, transporting, and disposal of the bedrock and fill.

The Project Sponsor has already begun this process. Two Phase I Environmental Site Assessments have been provided to DPH, the most recent one dated January 8, 2013. Preliminary soils testing has been conducted, and a report summarizing the results of the soils testing dated August 5, 2013 has been filed with DPH. On August 29, 2013, DPH issued a letter

to Project Sponsor directing further soil testing on the Property. Once this round of soils testing is complete, DPH will require the Project Sponsor to develop a Site Mitigation Plan, which will regulate excavation and soil removal from the Property. A copy of this letter is attached as **Exhibit A**.

The Project Sponsor is already proceeding under the PMND hazardous materials mitigation measure and the city's Maher Ordinance to ensure all excavation and soils removal from the Property is completed in a safe manner. These are the city's recognized processes for properly conducting excavation and soils removal in the city, and DPH is the expert agency in overseeing this work. **The specific purpose of this city process is to protect construction workers and nearby residents from harmful exposure to potential hazardous soil.** As a result, the Project will have no negative impacts on the environment due to hazardous materials.

**c. Concerns Regarding Construction Impacts on the Verdi Club are Adequately Addressed**

Appellants argue that the geotechnical report prepared for the Project was inadequate due to its preparation in 2004. What Appellants don't mention is that a second geotechnical report was prepared for the Project on July 30, 2013. The report recommends an appropriate foundation system, and also states that underpinning should be used on the north and west property lines in order to protect the existing buildings there. This is a common and accepted method of protecting adjacent buildings to a new construction project in San Francisco. Infill development is the norm in this city, and underpinning is necessary for most new projects.

Further, the Planning Commission has adopted specific conditions of approval for the Project to protect the Verdi Club building, including (1) providing barriers between the Property and the Verdi Club, (2) instituting a special training program for construction contractors to educate them on how to specifically protect the Verdi Club during construction, and (3) conducting a historic analysis of the Verdi Club by a historic preservationist, in order to ensure no damage is caused by the Project. **The Project is already required to conduct a historic analysis of the Verdi Club building, which is exactly what the Appellant's request in their appeal letter.**

**d. Noise Concerns Will be Mitigated by the City's Noise Ordinance**

Appellants also state concerns with construction-related noise of the Project. San Francisco regulates and protects nearby residents of construction projects through its Noise Ordinance. The Noise Ordinance sets the limits of acceptable noise levels caused by construction, and any construction activities that exceed that acceptable limit must take place during certain hours of the day so as not to disturb nearby residents. The Noise Ordinance specifically states "[i]n order to protect public health, it is hereby declared to be the policy of San Francisco to prohibit unwanted, excessive, and avoidable noise. It shall be the policy of San Francisco to maintain noise levels in areas with existing healthful and acceptable levels of noise

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and to reduce noise levels, through all practicable means, in those areas of San Francisco where noise levels are above acceptable levels as defined by the World Health Organization's Guidelines on Community Noise.” (Police Code §2900(c).)

San Francisco has already taken the lead on protecting its residents from harmful noise levels caused by a project's construction or its operation post-construction, and the Project is required to comply with the city's Noise Ordinance.

**e. A Shadow Study was Properly Prepared for the Project**

Appellants claim that the Project does not comply with Planning Code sections 147 and 295, and that the Planning Department ignored a shadow study showing violations. In fact, a proper shadow study was prepared, and it concluded that a 68-foot tall building at the Property would not create an impact on any nearby park. Note that the current Project proposes a height of 58 feet. The shadow study and Planning Department shadow clearance letter are attached as **Exhibit B**.

**f. Appellants Were Afforded Sufficient Opportunity to Raise their Concerns at the Planning Commission Hearing**

Appellants were not denied due process at either the July 18, 2013 or August 8, 2013 Planning Commission hearings. The San Francisco Administrative Code (“Admin. Code”) requires that the Planning Commission must hold a public hearing on all appeals of preliminary negative declarations. (Admin. Code, § 31.11(f).) The public hearing on the PMND appeal was initially held on July 18, 2013 and a second hearing was held on August 8, 2013. The Planning Commission is permitted to establish procedures governing appeals of negative declarations. (CEQA Guidelines, § 15074(f).) The Planning Commission's Rules and Regulations require the Commission to allow each opponent of a proposal to speak for three (3) minutes, and permit opponents who request in writing prior to the hearing up to fifteen (15) minutes of public testimony. (San Francisco Planning Commission, Rules and Regulations, Appendix A, Section B, Paragraph III.)

No requests for a 15-minute block of testimony were received by the Planning Commission Secretary prior to the July 18 or August 8 hearings. Pursuant to the Planning Commission's rules, all individual project opponents at both hearings were entitled to three minutes of public testimony. A number of members of MUSNA elected to speak against the Project at both hearings, for a total of approximately 40 minutes of testimony at each.

**g. Adoption of the PMND was Properly Noticed**

The PMND adoption hearing before the Planning Commission was properly noticed.



Notice of intent to adopt a negative declaration or mitigated negative declaration must be provided to the owners of all real property within 300 feet of the project area. (Admin. Code § 31.11(d); CEQA Guidelines, § 15072(b)-(c).) Project Sponsor caused notice to be provided to all property owners within 300 feet of the Property and the Planning Department has confirmed this.

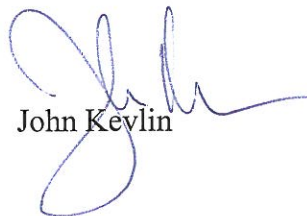
Appellants also contend the PMND certification should be overturned because Down Town High School did not receive notice of the Project. The CEQA Guidelines require notice to schools within ¼ of a mile of a project site when a project proposes “construction or alteration of a facility...anticipated to emit hazardous air emissions” or a facility that “would handle an extremely hazardous substance.” (CEQA Guidelines, § 15186(b).) Here, the Project will construct a mixed-use residential over neighborhood-serving retail; no facilities which emit hazardous air emissions or which handle extremely hazardous substances will be constructed. Therefore, notice to Downtown Continuation High School was not required pursuant to CEQA Guideline § 15186.

### **III. Conclusion**

The Project is consistent with the recent Eastern Neighborhoods Plan rezoning, and will fulfill the Plan’s goals for the Property. The Project’s environmental review is adequate. In fact, there are no specific actions that the Appellants request that can be taken. The Eastern Neighborhoods EIR, and the environmental processes that stem from it, are the most advanced and expressly-defined environmental review procedures in the city. The Project is and has properly followed these procedures and the PMND is consistent with all existing San Francisco laws, guidelines, and processes. Many of Appellants arguments relate to the approved Project, not environmental review. These claims would be properly made at the Board of Appeals, where Appellants have already filed at least one appeal of the Project approval. We respectfully urge that you deny this appeal, and uphold the PMND certified by the Planning Commission.

Very truly yours,

REUBEN, JUNIUS & ROSE, LLP



John Keylin

cc: Reza Khoshnevisan, Sia Consulting  
Don Lewis, San Francisco Planning Department



City and County of San Francisco  
**DEPARTMENT OF PUBLIC HEALTH**  
**ENVIRONMENTAL HEALTH SECTION**

Edwin M. Lee, Mayor  
Barbara Garcia, MPA, Director of Health  
Rajiv Bhatia, MD, MPH, Director of EH

August 29, 2013

SST Investments, LLC  
c/o  
Mr. Aidin Massoudi  
SIA Consulting  
1256 Howard Street,  
San Francisco CA 94103

Subject: Subsurface Investigation Review  
480 Potrero, San Francisco  
SMED 949

Dear Mr. Massoudi:

In accordance with the San Francisco Maher Ordinance, San Francisco Health Code Article 22A, the San Francisco Department of Public Health, Site Assessment and Mitigation (DPH SAM) has reviewed the following documents:

- Phase I Environmental Site Assessment 460-480 Potrero Avenue San Francisco CA, Treadwell & Rollo, August 17, 2000
- Phase I Environmental Site Assessment 480 Potrero, AEI Consultants, January 28, 2013
- Subsurface Investigation Report, Potrero Avenue San Francisco CA, Sequoia Environmental & Engineering Corporation, August 5, 2013

Site Description

The subject property is a 0.34 acre rectangular lot, San Francisco Block 3973 Lot 002C, located on the northwest corner of Potrero and Mariposa streets. The property is currently vacant, contains foundations of a previous building and is used as a parking lot per photographs in the AEI Phase I Environmental Site Assessment (Phase I).

Planned Use

DPH SAM understands that the current development plans include construction of a new 77 unit residential building with basement parking. The information provided to DPH SAM shows a maximum basement depth of 12 to 14 feet. Please provide figures showing the maximum planned depth of excavation for elevator pits and foundation elements.

Site History

Per the T&R Phase I, the property may have been used as a lumber stage yard in the early 1900s. Maps from 1900 and 1914 showed no structures on the site. Site use was mainly manufacturing from 1945 to 2000. Machinery manufacturers and a company, Plexiframe, were among the building occupants. Manufacturing occurred in the basement where floor

drains were observed. The 2000 Phase I indicates that the site was occupied by a 3 and 4 story live/work building

A 500 gallon gasoline underground storage tank (UST) was removed from the property in 2000 with SF DPH oversight. Soil samples from the base of the tank pit did not reveal petroleum contaminants or lead at concentrations of regulatory concern and the UST case was closed. An auto body shop occupied the property adjacent to the north and a retail gasoline station previously occupied the property adjacent to the south.

#### Phase II Subsurface Investigation

A Phase II report describing analysis of samples collected from two borings advanced near a former underground gasoline storage tank was reviewed. The four soil samples, two at 5 ft bgs and two at 9 ft bgs, were analyzed for Total Petroleum Hydrocarbons as gasoline (TPHg), gasoline components benzene, toluene, ethyl benzene and xylenes (BTEX), methyl tert butyl ether (MTBE) and total lead. The analytical results showed no TPHg or BTEX detected at concentrations above the laboratory reporting limits (ND). Lead was detected in the two 5 ft bgs samples only, at 6.1 and 5.1 milligrams per kilogram (mg/kg).

Site lithology was described as silty and sandy fill to 5 feet below the ground surface (ft bgs). Greenish sand was encountered at 9 ft bgs. Auger refusal was encountered at 9.5 ft bgs. The material at 9.5 ft bgs had the appearance of weathered rock. Groundwater was not encountered in the two borings advanced or the August 2013 Phase II investigation.

The investigation performed is sufficient to indicate a lack of subsurface gasoline contamination in the sidewalk area near a former gasoline underground storage tank. A copy of the laboratory results report was not included in the Phase II report. Submit this documentation to DPH SAM. **The site should be further characterized as described below.** Please submit a site characterization work plan as described below.

#### Maier Action Program Activities

**DPH SAM requests a subsurface investigation work plan to assess potential contaminants beneath the proposed residential building.**

Proposed borings should extend at least to the proposed depth of the elevator pits or other excavations associated with the proposed construction. Grab groundwater samples should be collected. Analyses should include total petroleum hydrocarbons, VOC, SVOC, asbestos, the CAM 17 list of metals and any other analyses required by Article 22A. Any rock encountered should be sampled and analyzed for at least materials and asbestos. If elevated concentrations of contaminants are detected in soil or groundwater, soil vapor samples may be requested. Site sample results may be used to design a contaminant mitigation system for the proposed residential building.

Based on the results of the subsurface investigation, DPH SAM may request preparation of a Site Mitigation Plan (SMP). The SMP describes environmental soil and site management procedures, identifies the proposed soil transporter and disposal locations, and describes collection of post excavation confirmation samples. The SMP should also include a



August 29, 2013

description of, and design drawings for any mitigating measures, environmental contingency procedures, and a commitment to prepare a final project report. The SMP should also include or reference construction related documents such as an environmental health and safety plan, dust, stormwater, odor and noise controls.

It is not uncommon for previously unknown tanks to be discovered at sites with a long history of development. Should an underground storage tank (UST), other item of environmental concern or contamination be encountered, work will be suspended and the owner notified. The site owner will notify the San Francisco Department of Public Health of the situation and of the proposed response actions. A UST shall be removed under permit with the San Francisco Department of Public Health- Hazardous Materials and Waste Program (HMWP) and the San Francisco Fire Department. DPH SAM should be sent a copy of any documents received from or prepared for HMWP.

Should you have any questions or wish to discuss details of the work plan, please contact Elyse Heilshorn at (415) 252-3885 or [elyse.heilshorn@sfdph.org](mailto:elyse.heilshorn@sfdph.org), or Scott Nakamura at (415) 252-3994.

Sincerely,



Scott J. Nakamura, REHS]  
Program Manager

cc: Kei Zushi, SF Envir Planning  
Edward Sweeney, DBI



# SAN FRANCISCO PLANNING DEPARTMENT

**MEMO**

September 11, 2012

Siavash Tahbazof  
1256 Howard Street  
San Francisco, CA 94103

**CASE NO:** 2012.0430K  
**ADDRESS:** 480 Potrero Avenue  
**BLOCK/ LOT:** 3973 / 002C

Dear Mr. Tahbazof:

The Planning Department has reviewed the proposed project at the revised site location for compliance with Section 295 of the San Francisco Planning Code. Section 295 restricts new shadow, cast by structures exceeding a height of forty feet, upon property under the jurisdiction of the Recreation and Park Commission.

A shadow fan was developed based on the drawings submitted with the application at a building height of 68 feet to determine the shadow impact of the project on properties protected by the Sunlight Ordinance. The fan indicates that there is no shadow impact from the subject property on any property protected by the Ordinance at a building height of 68 feet. Therefore, the Planning Department concludes that the proposed project is in compliance with Section 295 of the Planning Code.

Should you have any questions, please contact me at 415.575.9082 or [diego.sanchez@sfgov.org](mailto:diego.sanchez@sfgov.org).

Sincerely,

Diego R Sánchez, Planner

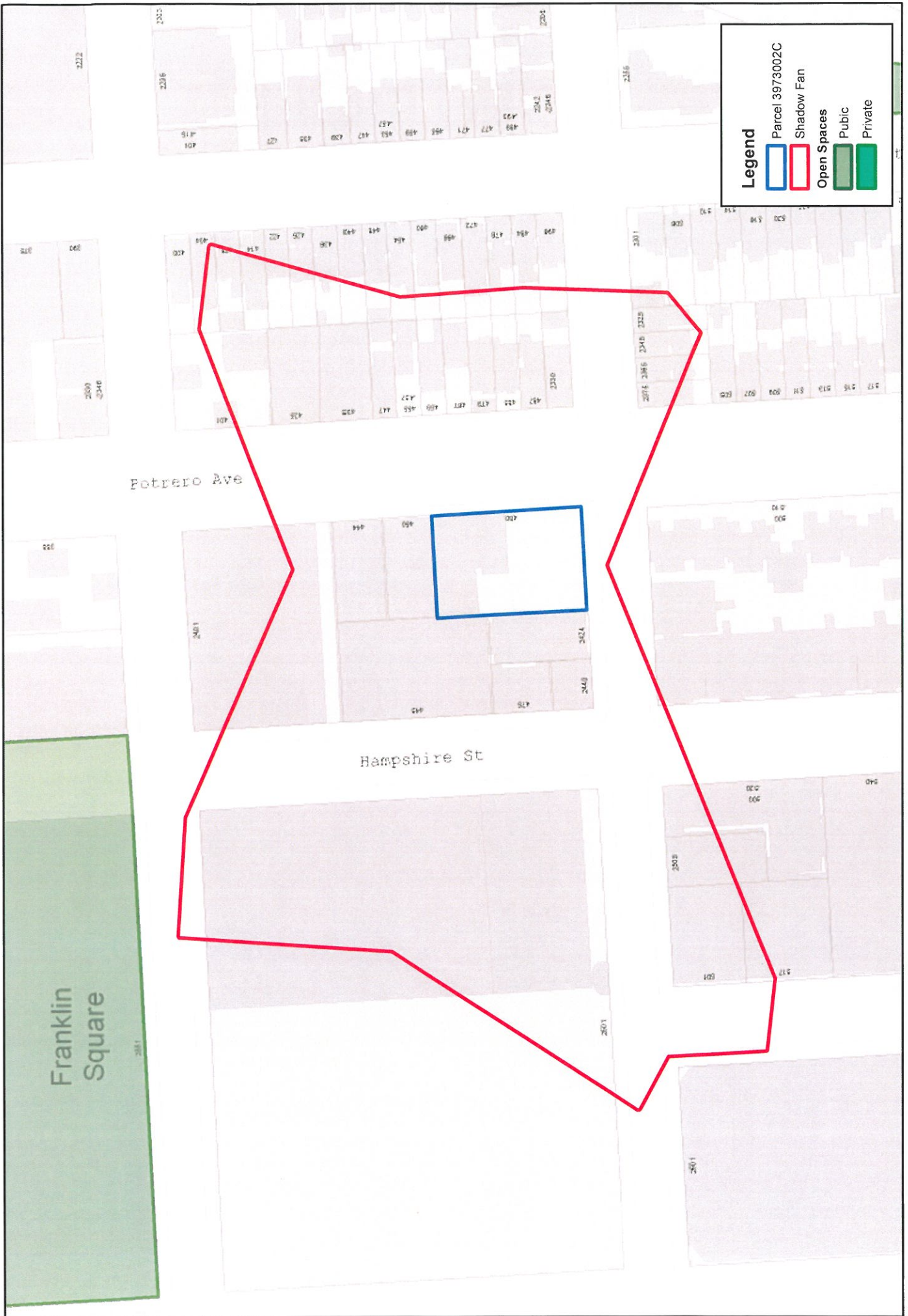
cc: Ben Fu

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Title: 480 Potrero

Comments: Height Modeled at 68 Feet  
Slopes Taken into Account

Printed: 6 September, 2012



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