



SAN FRANCISCO PLANNING DEPARTMENT

Discretionary Review Analysis

Dwelling Unit Merger

HEARING DATE: APRIL 10, 2014

Date: April 3, 2014
Case No.: **2013.1481D**
Project Address: **765 MARKET STREET**
Permit Application: **2014.03.11.0437 and 2014.03.11.0443**
Zoning: C-3-R (Downtown - Retail)
400-I and 400-X Height and Bulk District
Block/Lot: 3706/127 and 128
Project Sponsor: Paul Haydu
1 Arkansas Street #D2
San Francisco, CA 94107
Property Owner: Grigori Dzekon
765 Market Street #22A
San Francisco, CA 94103
Staff Contact: Kanishka Burns – (415)575-9112
kanishka.burns@sfgov.org
Recommendation: **Take Discretionary Review and Disapprove**

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

Reception:
415.558.6378

Fax:
415.558.6409

Planning
Information:
415.558.6377

PROJECT DESCRIPTION

The proposal is to merge a one bedroom, one bathroom condominium unit (unit 22B/lot 128) with the adjoining three bedroom, three and a half bathroom condominium unit (unit 22A/lot 127) in a 139 unit building (known as the Four Seasons Residences) that was constructed in 2001. The resulting unit would consist of four bedrooms and four bathrooms. No exterior alterations are proposed. The proposed merger will accommodate the household that currently owns and resides in the units. Unit 22A was purchased in August 2006 and Unit 22B was purchased in October 2008. Unit 22A was appraised at \$4.85M on July 10, 2013 and unit 22B was appraised at \$1.35M on February 13, 2014. Units that appraise above \$1.5062M are considered to be financially inaccessible or demonstrably unaffordable housing. Unit 22A is not financially accessible or demonstrably affordable while Unit 22B is considered financially accessible by the Planning Code, as the value of the unit falls below the established threshold. The Project proposes a merger that would result in the loss of a dwelling unit that is not financially inaccessible or demonstrably unaffordable and is therefore subject to Mandatory Discretionary Review.

BACKGROUND

The subject Dwelling Unit Merger application was filed on October 16, 2013 and reviewed against the Dwelling Unit Merger criteria of Planning Code Section 317(e) that was in effect at the time. The Project did not qualify for Administrative Approval at that time because it did not meet a supermajority (at least four out of five) of the merger criteria and one of the units proposed for merger was not demonstrably

unaffordable or financially inaccessible housing. Merger applications for which the least expensive unit proposed for merger has a value greater than at least 80% of the combined land and structure values of single-family homes in San Francisco, as determined by a credible appraisal, made within six months of the application to merger, may be exempt from a Mandatory Discretionary Review hearing. The unit appraised for \$1.25M on July 10, 2013, at which time the threshold for qualifying for administrative approval was \$1.342M. The Project Sponsor chose to wait six months to obtain new appraisals. In the interim, the Planning Department adjusted the threshold to \$1.506M. The Project continues to be ineligible for Administrative Approval.

SITE DESCRIPTION AND PRESENT USE

The subject property is located on the south side of Market Street, between Third and Fourth Streets, lots 127 and 128 in Assessor's Block 3706 and is located within the C-3-R (Commercial - Retail) District and the 400-I and 400-X Height and Bulk District. The building is located on a through lot with the rear façade on Mission Street as well as partial frontage on Fourth Street. The property is developed with a 42-story, 2,166,000 square foot building that was constructed in 2001 with 12 floors of 277 tourist hotel rooms and suites and 142 residential units located in the upper floors. Three dwelling unit mergers have been administratively approved in the building since occupancy, resulting in the existing 139-unit building. All three previous dwelling unit mergers were approved administratively because the units proposed for merger were demonstrably unaffordable based on their appraisal value.

SURROUNDING PROPERTIES AND NEIGHBORHOOD

The subject property is located in the heart of the Downtown Commercial Retail District in a high density mixed-use area. The Project is located across the street from the San Francisco Shopping Center, near the Yerba Buena Center for the Arts and three blocks south of Union Square. The surrounding area consists of mid-rise buildings and high rise towers. The C-3-R Downtown Retail District is described in the Planning Code as follows:

This district is a regional center for comparison shopper retailing and direct consumer services. It covers a compact area with a distinctive urban character, consists of uses with cumulative customer attraction and compatibility, and is easily traversed by foot. Like the adjacent Downtown Office District, this district is well-served by City and regional transit, with automobile parking best located at its periphery. Within the district, continuity of retail and consumer service uses is emphasized, with encouragement of pedestrian interest and amenities and minimization of conflicts between shoppers and motor vehicles. A further merging of this district with adjacent, related districts is anticipated, partially through development of buildings which combine retailing with other functions.

HEARING NOTIFICATION

TYPE	REQUIRED PERIOD	REQUIRED NOTICE DATE	ACTUAL NOTICE DATE	ACTUAL PERIOD
Posted Notice	10 days	March 31, 2014	March 31, 2014	10 days
Mailed Notice	10 days	March 31, 2014	March 31, 2014	10 days

PUBLIC COMMENT

	SUPPORT	OPPOSED	NO POSITION
Adjacent neighbor(s)	0	0	0
Other neighbors on the block or directly across the street	0	0	0
Neighborhood groups	0	0	0

To date, the Planning Department has received no public comment regarding the proposal.

PROJECT ANALYSIS

DWELLING UNIT MERGER CRITERIA

Below are the seven criteria to be considered by the Planning Commission in evaluating dwelling unit mergers, per Planning Code Section 317:

1. Removal of the unit(s) would only eliminate owner occupied housing.

Project Meets Criterion

According to the Project Sponsor's application, both of the units to be merged have been owner occupied since purchase in 2006 and in 2008.

2. Removal of the unit(s) and the merger with another is intended for owner occupancy.

Project Meets Criterion

The unit created by the proposed merger would continue to be owner occupied. The proposed merger would create an approximately 3,743 square foot four-bedroom unit intended for owner occupancy. The four-bedroom unit will be a family sized unit for future occupants.

3. Removal of the unit(s) will remove an affordable housing unit as defined in Section 415 of the Planning Code or housing subject to the Rent Stabilization and Arbitration Ordinance.

Project Meets Criterion

The units proposed for merger were constructed after 1979 and are therefore exempt from the Rent Stabilization and Arbitration Ordinance. They are not affordable housing units as defined in Section 415 of the Planning Code.

4. Removal of the unit(s) will bring the building closer into conformance with the prescribed zoning.

Project Does Not Meet Criterion

The subject property is within a C-3-R Zoning District which permits one dwelling unit per 125 square feet of lot area. The subject approximately 50,027 square foot lot permits up to 400 dwelling units. The 142 units were entitled by the Planning Commission in 1999. Three dwelling unit mergers have already occurred resulting in a 139 unit building. An additional dwelling unit merger would not bring the property closer into conformance with the prescribed zoning and would in fact be contrary to the intended use and entitlement of the subject building. It should be noted that the building is mixed use with 12 floors of tourist hotel rooms in addition to the residential units.

5. If removal of the unit(s) removes an affordable housing unit as defined in Section 401 of the Planning Code or units subject to the Rent Stabilization and Arbitration Ordinance, replacement housing will be provided which is equal to or greater in size, number of bedrooms, affordability and suitability to households with children to the units being removed.

Criterion is Not Applicable

This criterion is not applicable to the Project. The units proposed for merger are not affordable housing as defined in Section 401 of the Planning Code nor are they subject to the Rent Stabilization and Arbitration Ordinance.

6. The number of bedrooms provided in the merged unit will be equal to or greater than the number of bedrooms in the separate units.

Project Meets Criterion

The units proposed for merger consist of a 2,907 square foot three bedroom unit and an 836 square foot one bedroom unit. The unit resulting from the proposed merger will be four bedrooms, equivalent to the existing four bedrooms in the separate units.

7. Removal of the unit(s) is necessary to correct design or functional deficiencies that cannot be corrected through interior alterations.

Project Does Not Meet Criteria

No functional deficiencies exist. The existing two flats function as separate units.

EXECUTIVE DIRECTIVE 13-01:

Task 2: Discretionary Review for Loss of Housing Units.

Implementation Measure 2. Mandatory Discretionary Review for the loss of Dwelling Units.

For properties with more than two dwelling units, the Planning Department will initiate Discretionary Review for the loss of any dwelling units, legal or otherwise.

The proposal will result in the loss of a legal dwelling unit and is therefore subject to the Mandatory Discretionary Review. Dwelling unit mergers in the subject 139-unit building are subject to the Mandatory Discretionary Review.

GENERAL PLAN COMPLIANCE:

The Department's Recommendation is consistent with the following relevant objective of the **Housing Element** of the General Plan:

HOUSING ELEMENT

Objectives and Policies

OBJECTIVE 2: RETAIN EXISTING HOUSING UNITS, AND PROMOTE SAFETY AND MAINTENANCE STANDARDS, WITHOUT JEOPARDIZING AFFORDABILITY.

The proposal is to merge two units into a single unit. Disapproval of the proposed merger is consistent with this Objective as it ensures the retention of two existing housing units that have no functional deficiencies and function as two separate units. Units proposed for merger that appraise above \$1.506M are considered demonstrably not affordable or financially accessible. The smaller unit, 22B appraised at \$1.35M on February 13, 2014 and is below what is considered demonstrably unaffordable housing. The Department strives to retain a dwelling unit that is financially accessible in building that is comprised of dwelling units that are primarily financially un-accessible or demonstrably unaffordable.

SECTION 101.1 PRIORITY POLICIES

Planning Code Section 101.1 establishes eight priority policies and requires review of permits for consistency, on balance, with these policies. The Project does not comply with these policies as follows:

1. Existing neighborhood-serving retail uses be preserved and enhanced and future opportunities for resident employment in and ownership of such businesses enhanced.

The proposal does not affect existing neighborhood-serving retail uses.

2. That existing housing and neighborhood character be conserved and protected in order to preserve the cultural and economic diversity of our neighborhoods.

The proposal would eliminate existing housing and therefore, be contrary to this Priority Policy.

3. That the City's supply of affordable housing be preserved and enhanced.

The units proposed for merger are not affordable housing; however one of the units proposed for merger may be financially accessible housing, given the current housing market.

4. That commuter traffic not impede MUNI transit service or overburden our streets or neighborhood parking.

The proposal will not impede MUNI transit service; overburden our streets or neighborhood parking.

5. Diverse economic base be maintained by protecting our industrial and service sectors from displacement due to commercial office development, and that future opportunities for resident employment and ownership in these sectors be enhanced.

The proposal will not affect industrial or service sectors.

6. The City achieves the greatest possible preparedness to protect against injury and loss of life in an earthquake.

The proposal will comply with applicable code standards.

7. Landmarks and historic buildings be preserved.

The subject building is not a landmark. It was constructed in 2001 and no exterior alterations are proposed.

8. Parks and open space and their access to sunlight and vistas be protected from development.

The proposal will not negatively affect parks or open spaces.

ENVIRONMENTAL REVIEW

The Project is exempt from the California Environmental Quality Act ("CEQA") as a Class 1 categorical exemption. A Planning Commission approval will constitute the Approval Action for the Project for the purposes of CEQA, pursuant to San Francisco's Administrative Code Section 31.04(h).

BASIS FOR RECOMMENDATION

- The proposed merger would result in the loss of a dwelling unit in a building that is already underdeveloped according to the prescribed zoning and Planning Commission entitlement. The subject lot is zoned C-3-R and the prescribed density can accommodate up to 400 dwelling units. The Planning Commission approved 142 units in 2001. Since construction of the 142 dwelling units, three dwelling unit mergers have been administratively approved due to appraisal value resulting in the existing 139 dwelling unit mixed-use building. The proposed merger would not bring the building closer to conformance with the prescribed zoning.
- The Project would result in the net loss of a dwelling unit that is financially accessible.
- The Project is contrary to the intent of Executive Directive 13-01 to retain legal housing units.

RECOMMENDATION: Take DR and disapprove merger.
--

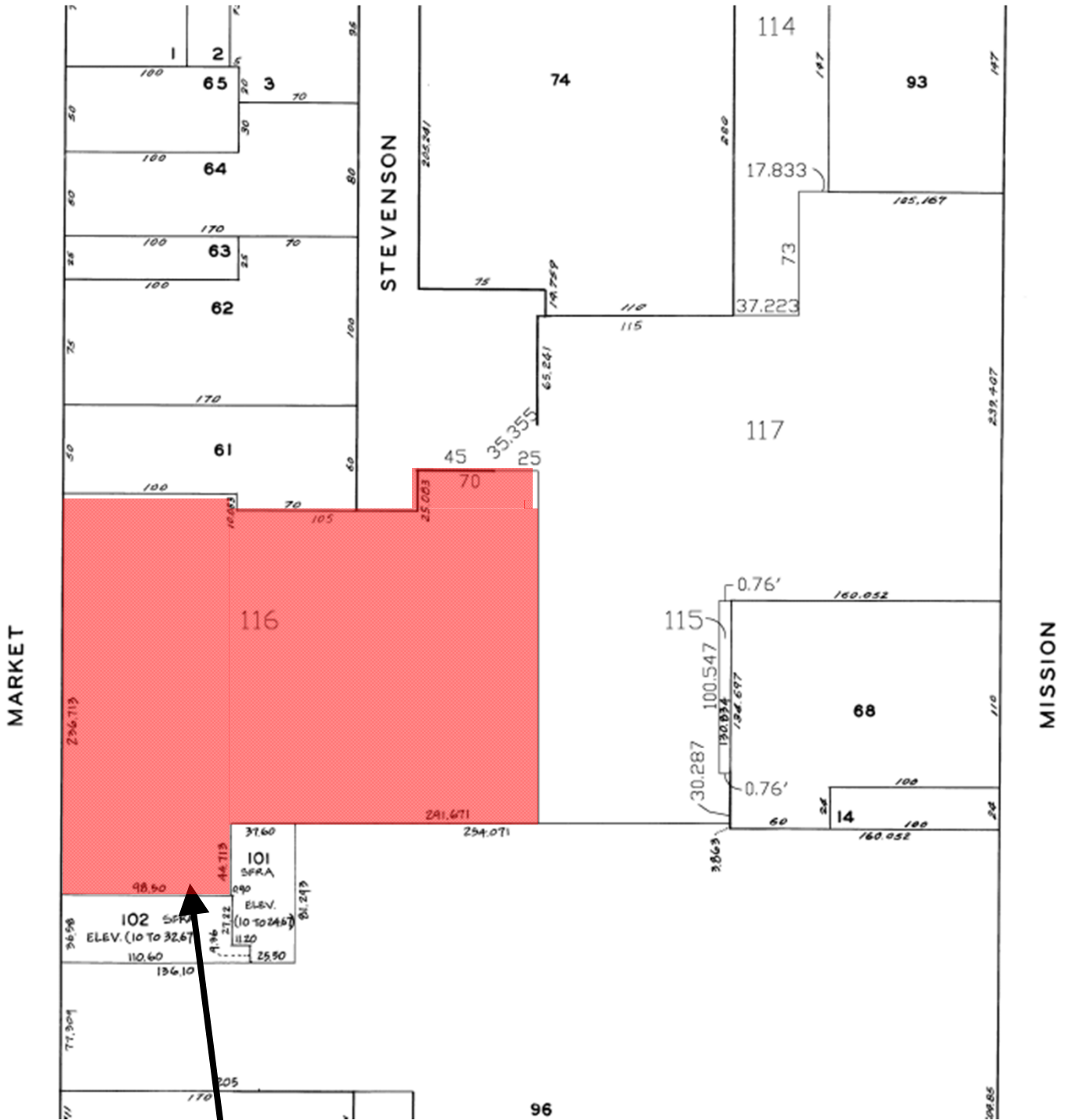
Attachments:

Parcel Map
Sanborn/Dwelling Unit Map
Zoning Map
Aerial Photographs

Site Photographs
Project Sponsor's Submittal
 Response to Dwelling Unit Merger Criteria
 Photo Rendering
 Reduced Plans

KB: G\2013.1481D - 765 Market St\Official Documents\2013.1481D - 765 Market - DR Analysis.docx

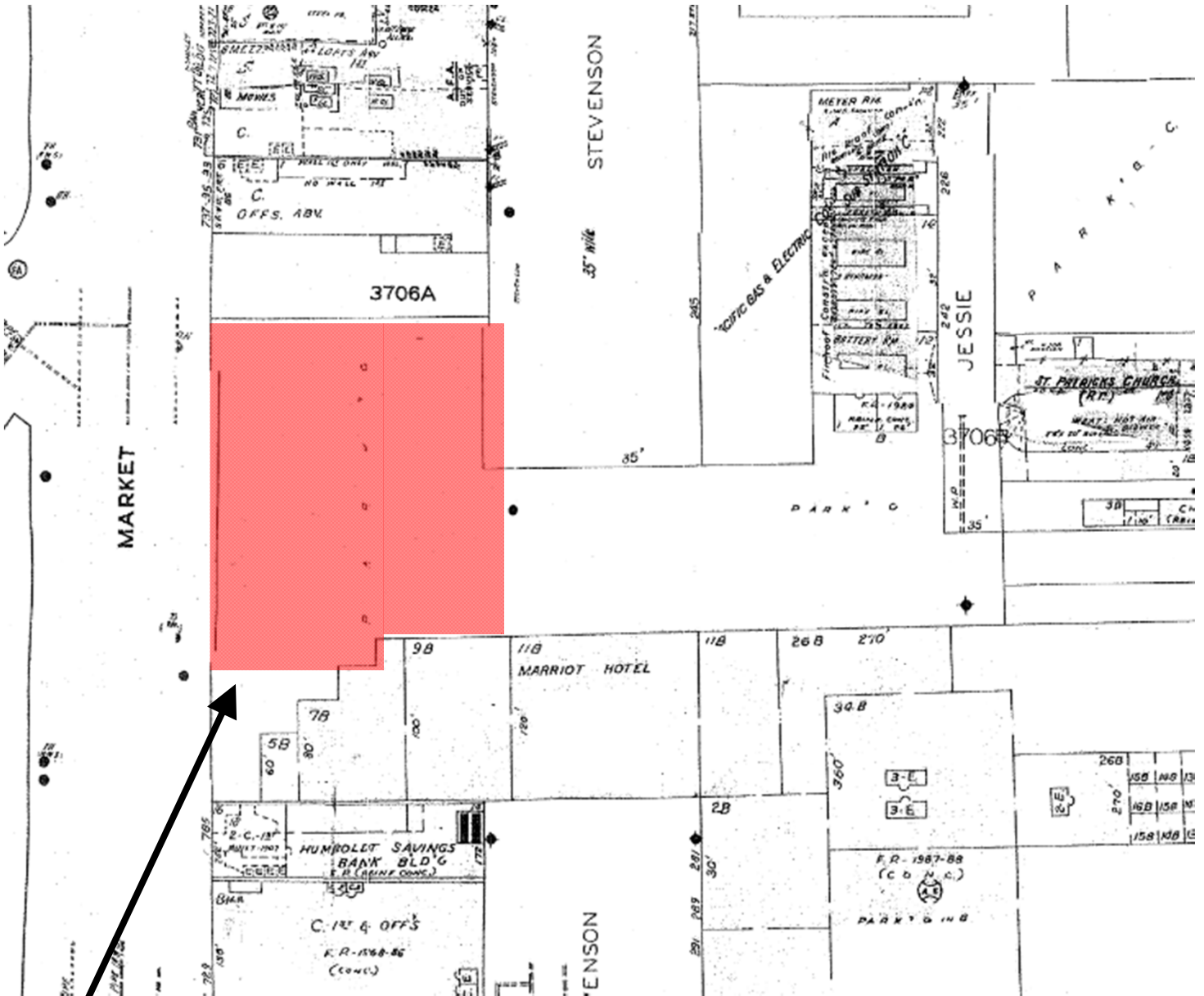
Parcel Map



SUBJECT PROPERTY

Discretionary Review Hearing
Case Number 2013.14811D
 Dwelling Unit Merger
 765 Market Street, Units 22A and 22B

Sanborn Map*

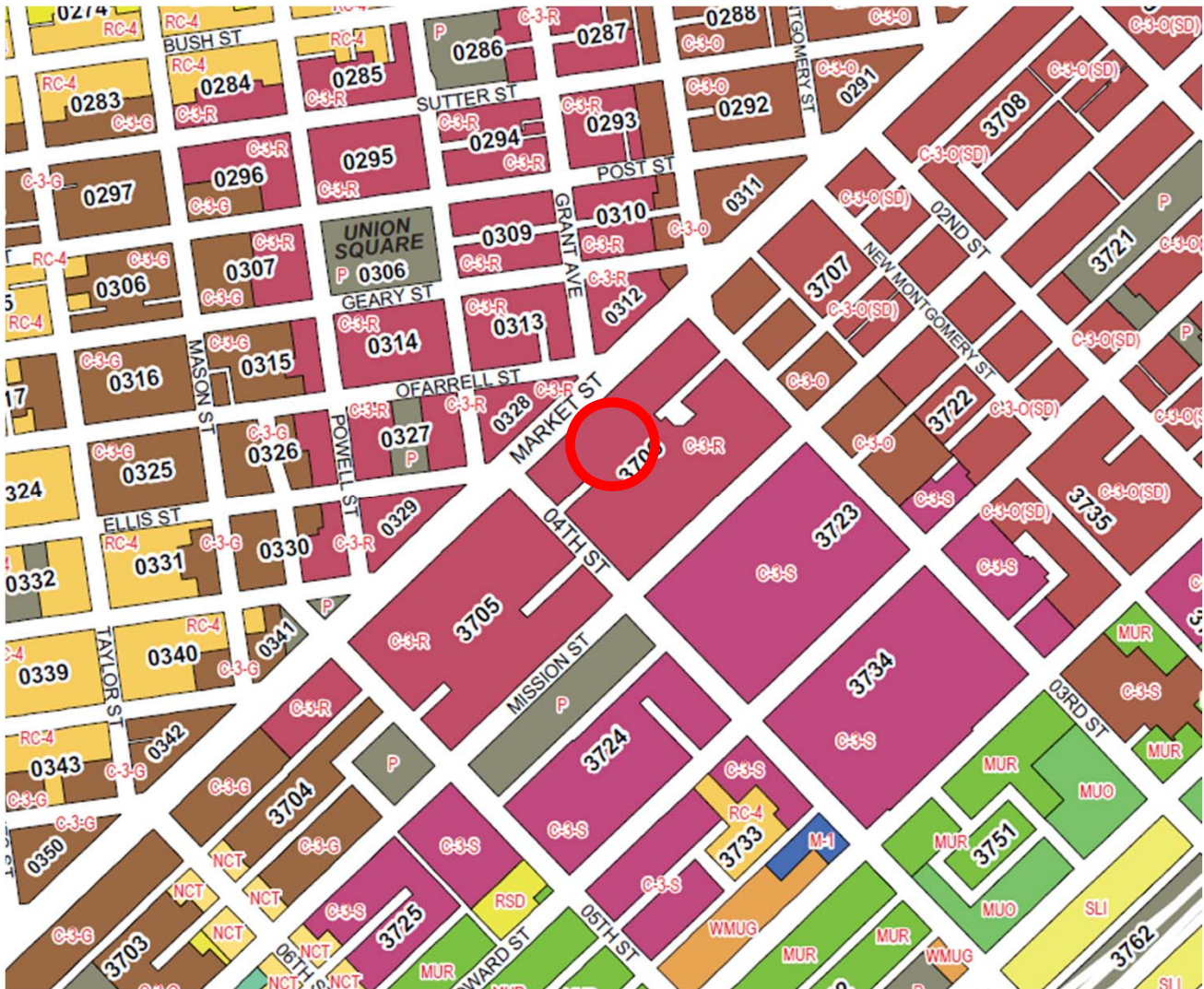


*The Sanborn Maps in San Francisco have not been updated since 1998, and this map may not accurately reflect existing conditions.

SUBJECT PROPERTY



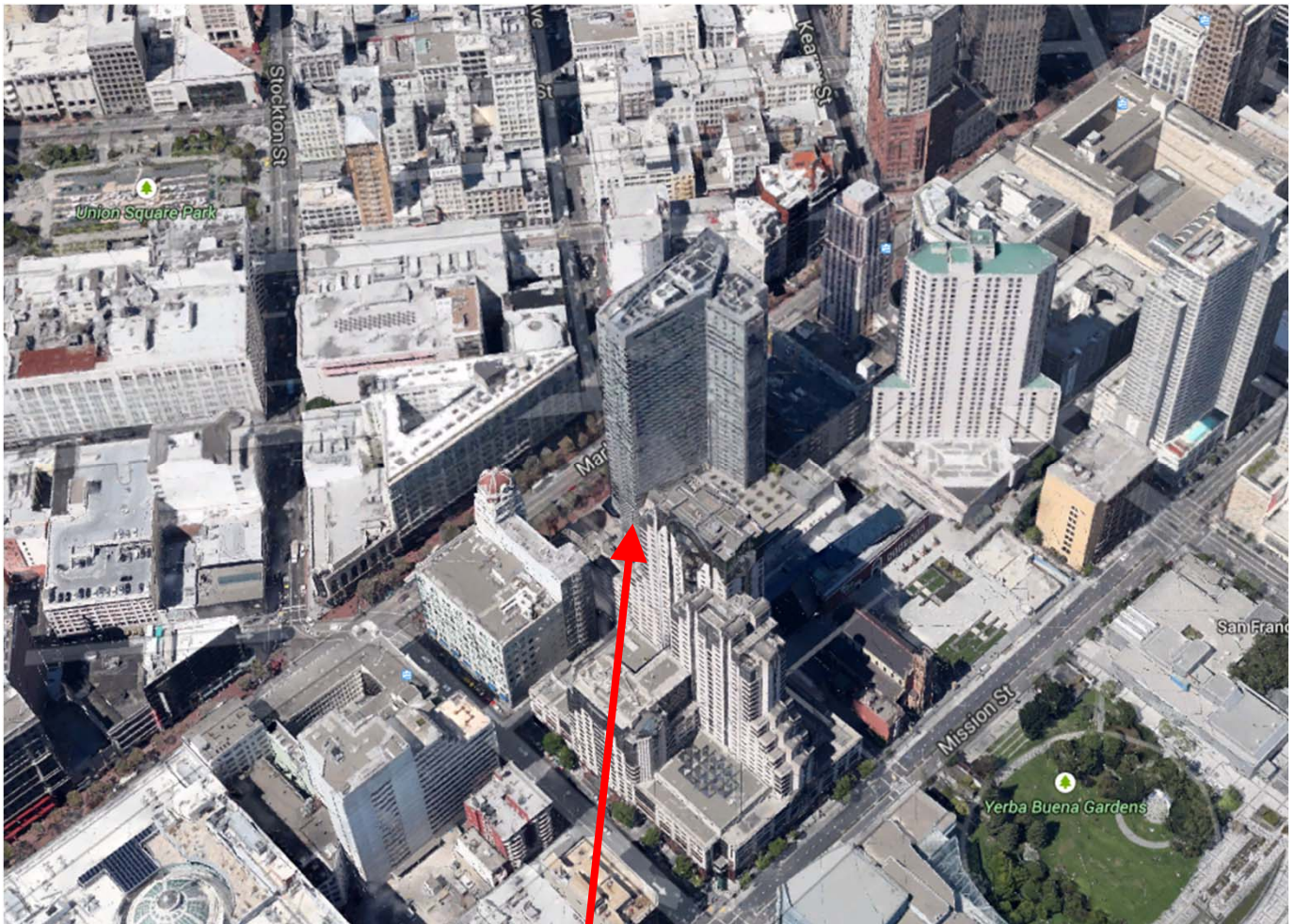
Zoning Map



Discretionary Review Hearing
Case Number 2013.14811D
Dwelling Unit Merger
765 Market Street, Units 22A and 22B



Aerial Photo (looking north)



SUBJECT PROPERTY



Discretionary Review Hearing
Case Number 2013.14811D
Dwelling Unit Merger
765 Market Street, Units 22A and 22B

Site Photo



Discretionary Review Hearing
Case Number 2013.14811D
Dwelling Unit Merger
765 Market Street, Units 22A and 22B

jones | haydu

20 March 2014

Kanishka Burns
San Francisco Planning Department
1650 Mission Street, Suite 400
San Francisco, CA 94103

Subject: Responses to Residential Merger Criteria per Section 317(e) of the San Francisco Planning Code.

ITEM

- A. **Whether removal of the unit(s) would eliminate only owner occupied housing, and if so, for how long the unit(s) proposed to be removed have been owner occupied.**

Units 22A and 22B are owned by the same person. Removal of one of the units eliminates owner occupied housing only. 22A has been occupied since 2006. 22B has been occupied since 2008.

- B. **Whether removal of the unit(s) and the merger with another is intended for owner occupancy.**

The proposed merger unites 22A and 22B into a single unit that will be occupied by the owner.

- C. **Whether the removal of the unit(s) will remove an affordable housing unit as defined in Section 415 of this Code or housing subject to the Rent Stabilization and Arbitration Ordinance.**

The removal of the unit does not remove an affordable housing unit per section 415 of the San Francisco Planning Code.

- D. **Whether removal of the unit(s) will bring the building closer into conformance with prescribed zoning.**

The removal of the unit does not bring the building closer to prescribed zoning.

- E. **If removal of the unit(s) removes an affordable housing unit as defined in Section 401 of this Code or units subject to the Rent Stabilization and Arbitration Ordinance, whether replacement housing will be provided which is equal or greater in size, number of bedrooms, affordability, and suitability to households with children to the units being removed.**

Not applicable.

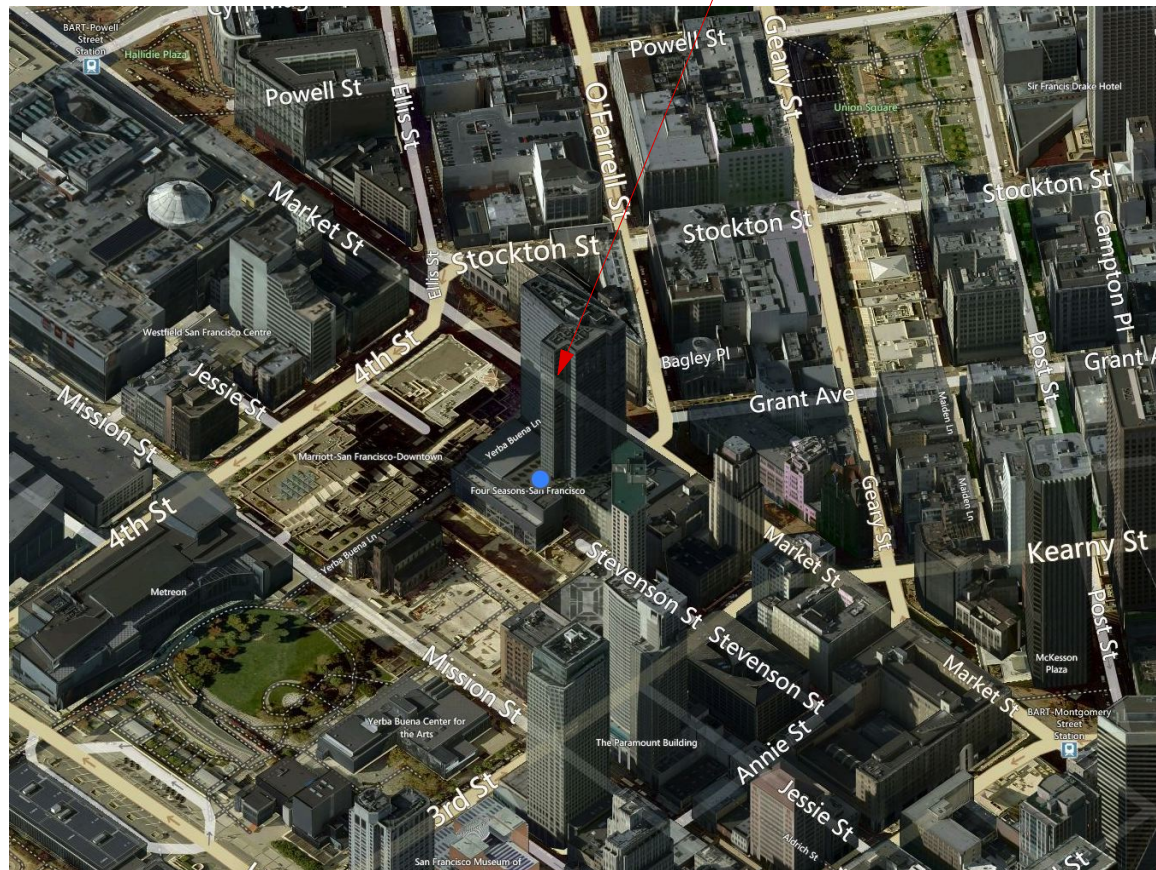
- F. **Whether the number of bedrooms provided in the merged unit will be equal to or greater than the number of bedrooms in the separate units.**

Unit 22A comprises 3 bedrooms and Unit 22B comprises 1 bedroom. The proposed merge unit will have 4 bedrooms which is equal in number to the bedrooms currently provided by 22A and 22B.

- G. **Whether removal of the unit(s) is necessary to correct design or functional deficiencies that cannot be corrected through interior alterations.**

Removal of the unit is not necessary to correct design or functional deficiencies.

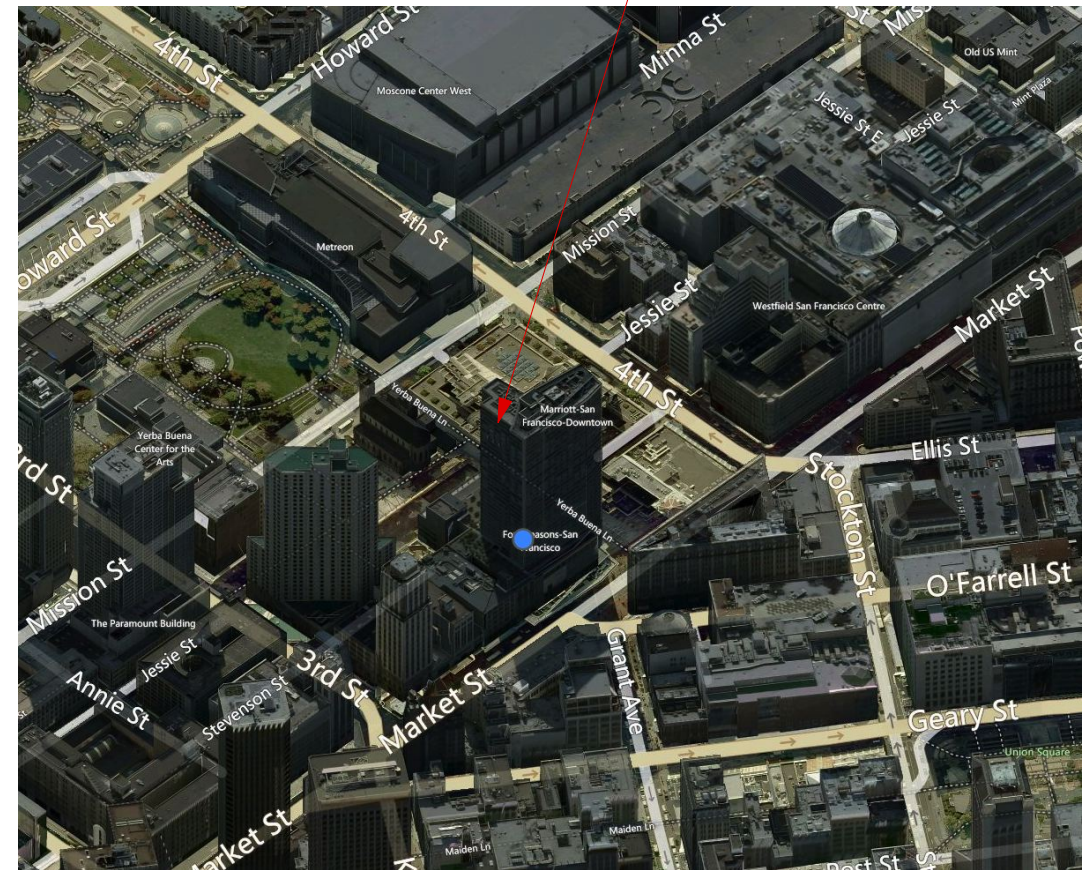
765 MARKET ST



4

AERIAL SITE PHOTO- LOOKING WEST

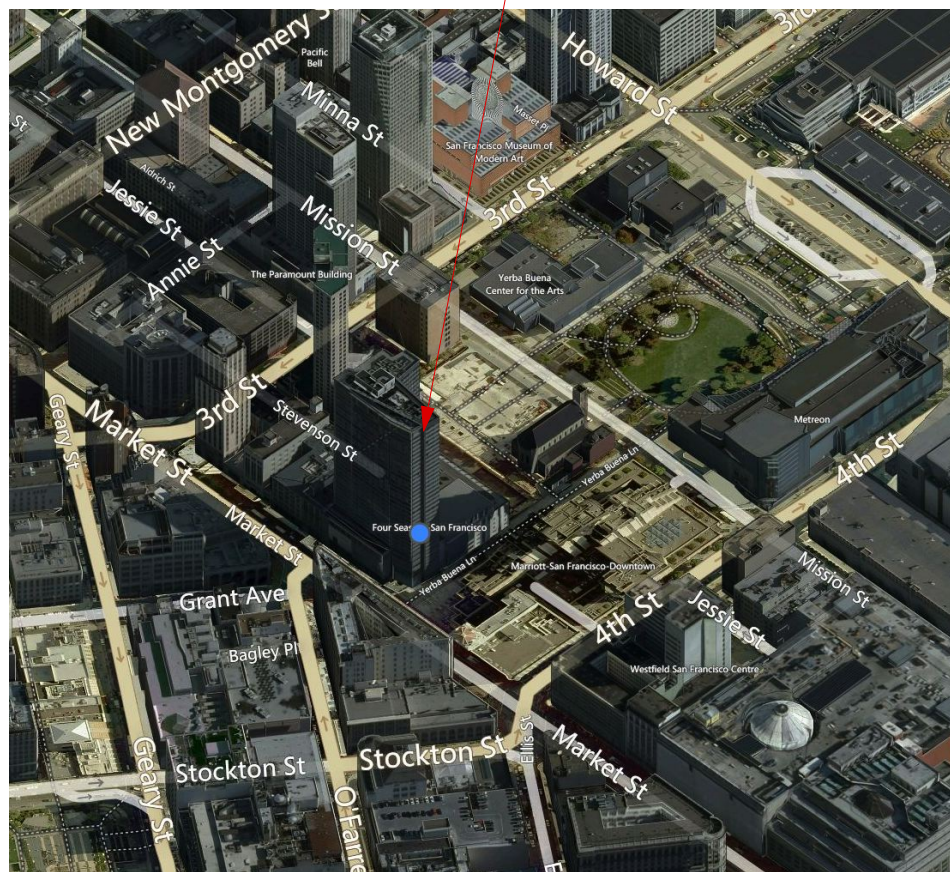
765 MARKET ST



2

AERIAL SITE PHOTO- LOOKING SOUTH

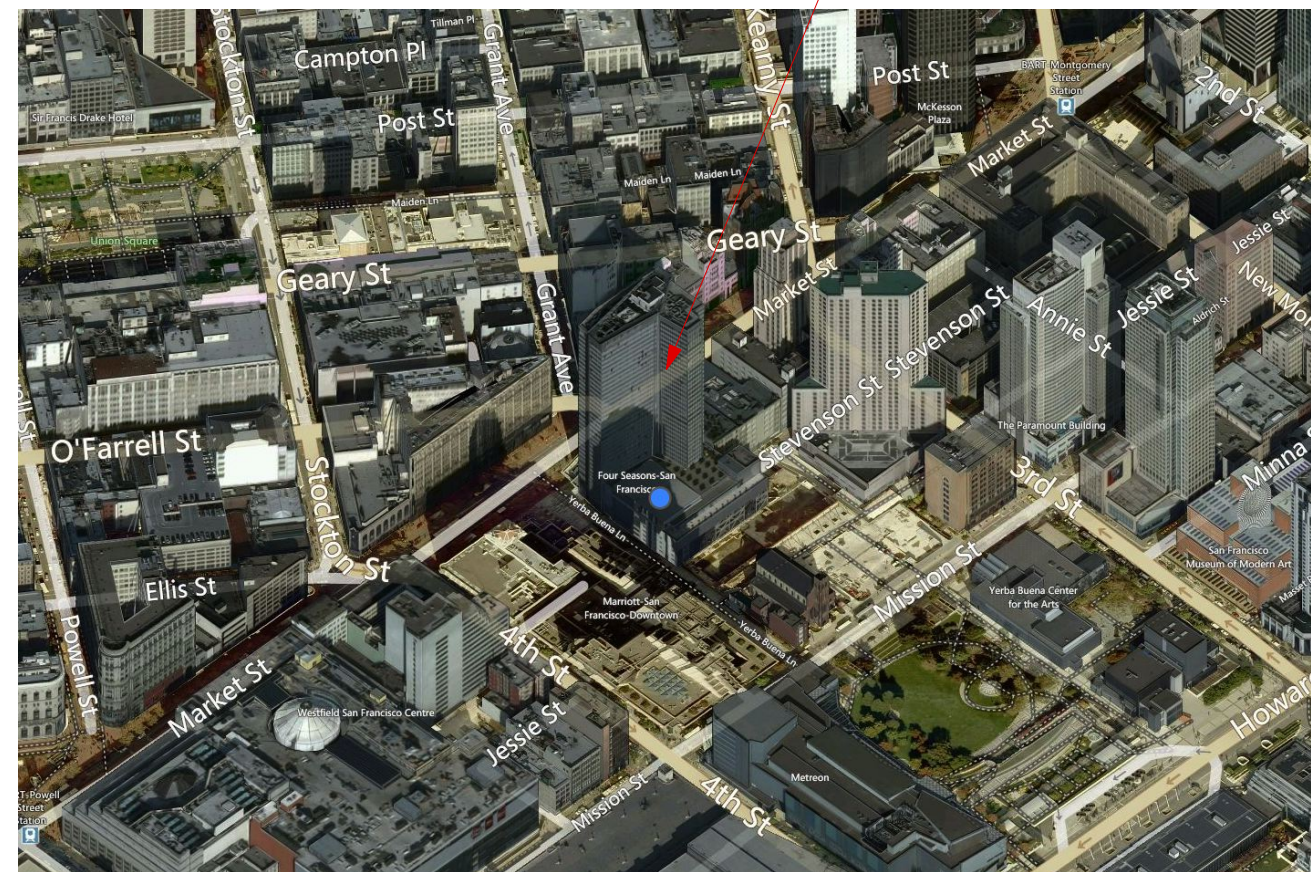
765 MARKET ST



3

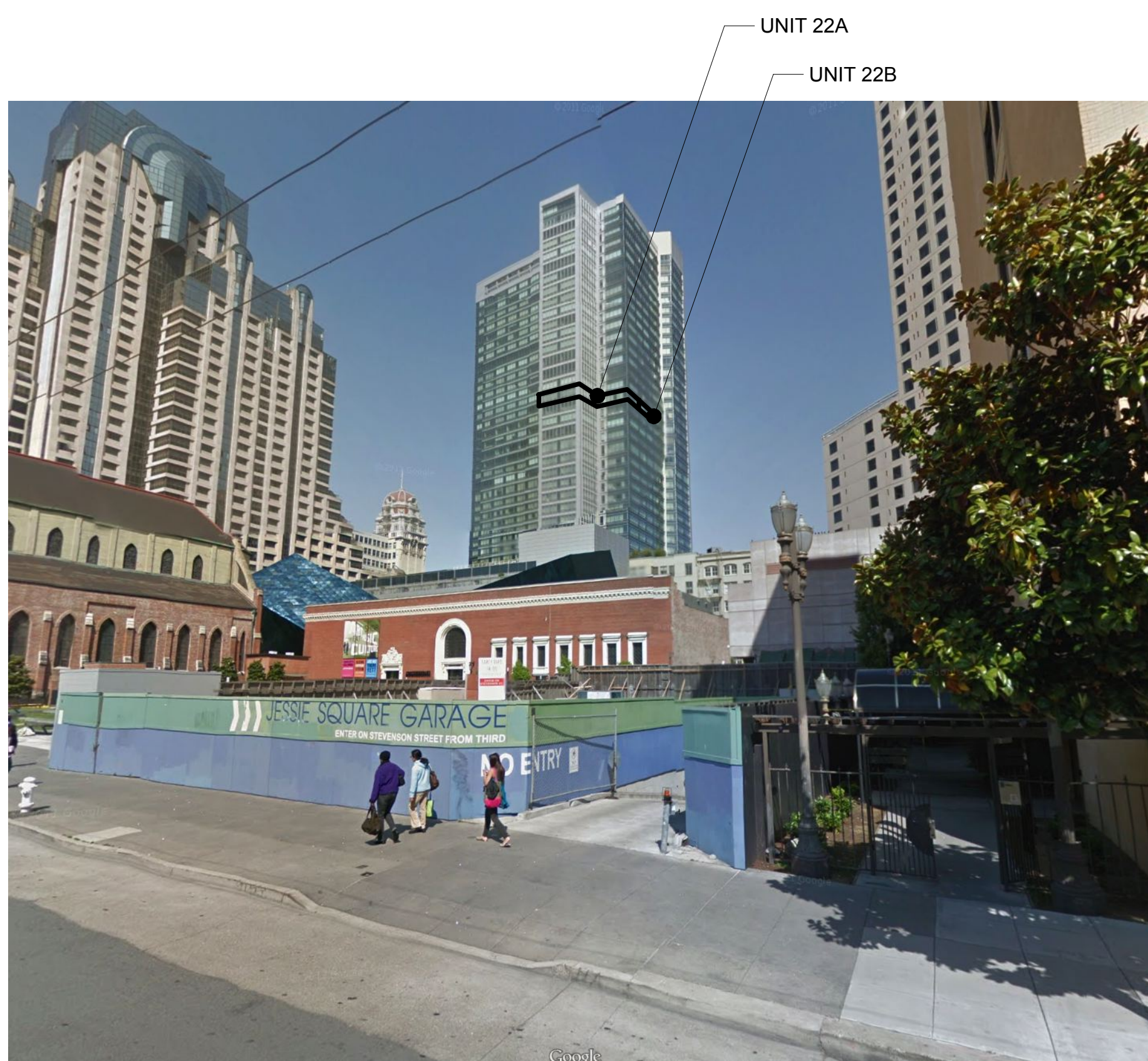
AERIAL SITE PHOTO- LOOKING EAST

765 MARKET ST



1

AERIAL SITE PHOTO- LOOKING NORTH



3 EXTERIOR ELEVATION-LOOKING NORTHWEST



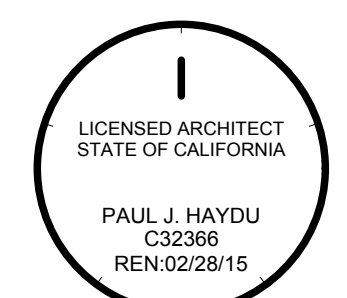
2 EXTERIOR ELEVATION-LOOKING NORTHEAST



1 SUBJECT PROPERTY MAP
 Scale: 1:1000

**PROPOSED MERGER
 UNITS 22A AND 22B**
 765 Market St
 San Francisco, CA 94103

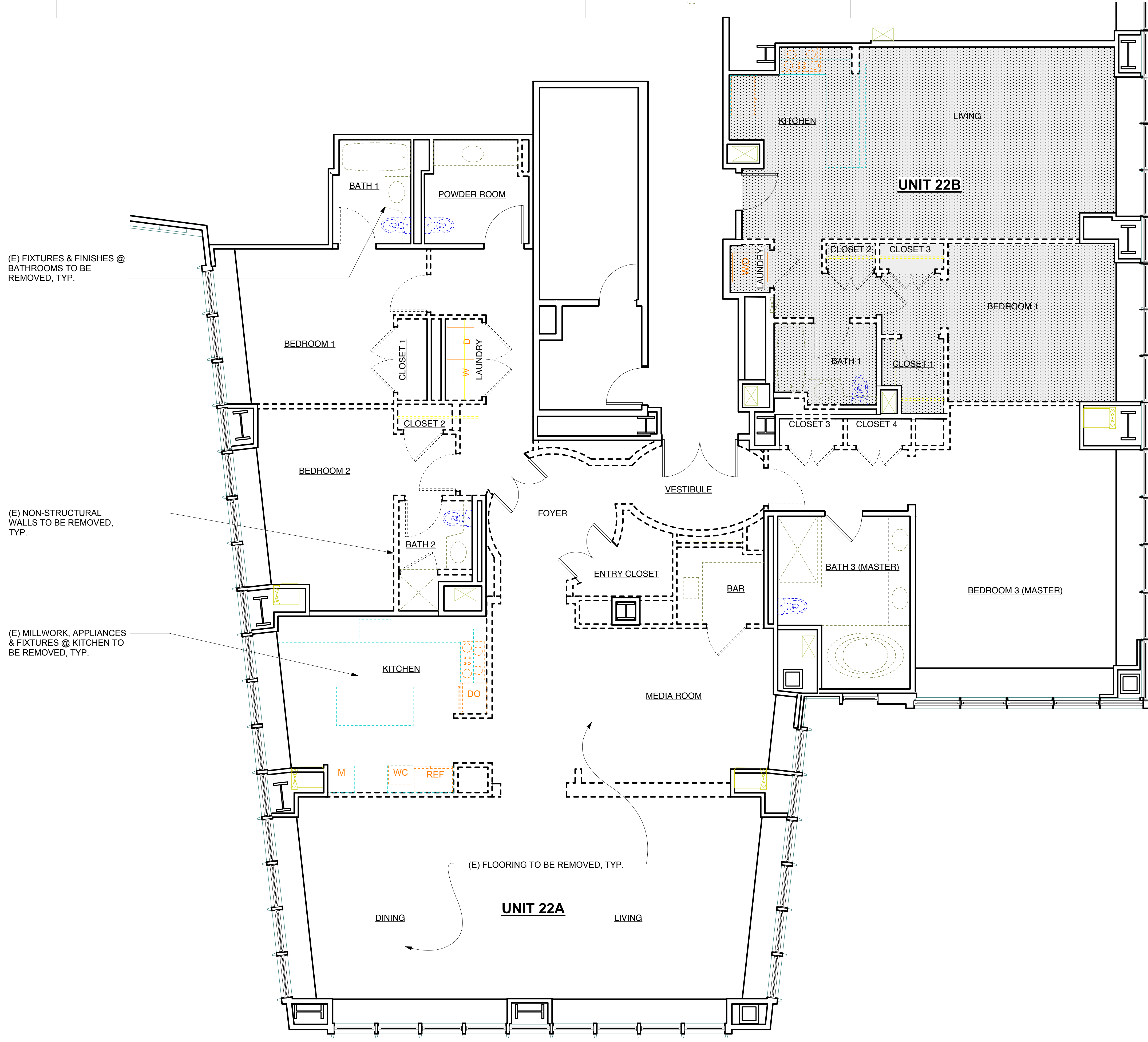
DATE	ISSUE DESCRIPTION	DRAWN	CHECKED
03.04.14	ISSUE TO PERMIT	JB/PH	PJH



SITE PLAN

SHEET NUMBER

A00.10



(E) FIXTURES & FINISHES @ BATHROOMS TO BE REMOVED, TYP.

(E) NON-STRUCTURAL WALLS TO BE REMOVED, TYP.

(E) MILLWORK, APPLIANCES & FIXTURES @ KITCHEN TO BE REMOVED, TYP.

(E) FLOORING TO BE REMOVED, TYP.

DIMENSIONS NOTES
 1. ALL DIMENSIONS TO BE VERIFIED IN FIELD. CONTRACTOR TO NOTIFY ARCHITECT OF POTENTIAL DIMENSIONAL CONFLICT AND INCONSISTENCIES.

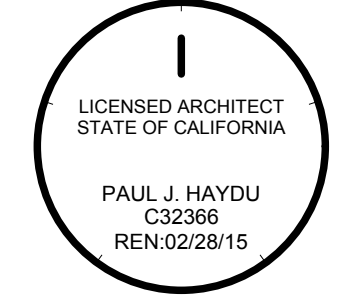
TYPICAL DEMOLITION NOTES
 1. GC SHALL PROVIDE ADEQUATE SHORING AT ALL FOUNDATIONS, WALLS, AND ROOFS THAT WILL BE AFFECTED BY NEW CONSTRUCTION.
 2. GC SHALL VERIFY LOCATION OF EXISTING MECHANICAL, ELECTRICAL, AND PLUMBING COMPONENTS RUNNING WITHIN FLOORS AND WALLS AFFECTED BY NEW CONSTRUCTION.

- (E) WALL TO BE DEMOLISHED
- (E) WALL TO REMAIN
- (N) WALL
- (N) PARTIAL HEIGHT WALL

1 DEMOLITION PLAN
 Scale: 1/4" = 1'-0"

**PROPOSED MERGER
 UNITS 22A AND 22B**
 765 Market St
 San Francisco, CA 94103

DATE	ISSUE DESCRIPTION	DRAWN	CHECKED
03.04.14	ISSUE TO PERMIT	JBP/PH	PJH
03.19.14	1 TO PLANNER	JBP/PH	PJH



DEMOLITION PLAN
 SHEET NUMBER
A01.00



(N) MILLWORK, FIXTURES & FINISHES @ BATHROOMS, TYP. GLASS ENCLOSURE DOOR TO BE 22" CLR. MIN.

(N) MILLWORK, APPLIANCES & FIXTURES @ KITCHEN.

(N) WD. FLOORING, TYP.

(N) MILLWORK @ HALL, TYP.

(N) MILLWORK @ BEDROOMS, TYP.

(N) MILLWORK @ HALL, TYP.

DIMENSIONS NOTES

1. ALL DIMENSIONS TO BE VERIFIED IN FIELD. CONTRACTOR TO NOTIFY ARCHITECT OF POTENTIAL DIMENSIONAL CONFLICT AND INCONSISTENCIES.

TYPICAL DEMOLITION NOTES

1. GC SHALL PROVIDE ADEQUATE SHORING AT ALL FOUNDATIONS, WALLS, AND ROOFS THAT WILL BE AFFECTED BY NEW CONSTRUCTION.
 2. GC SHALL VERIFY LOCATION OF EXISTING MECHANICAL, ELECTRICAL, AND PLUMBING COMPONENTS RUNNING WITHIN FLOORS AND WALLS AFFECTED BY NEW CONSTRUCTION.

TYPICAL FLOOR PLAN NOTES

1. PROVIDE AND INSTALL ACOUSTIC INSULATION @ ALL BEDROOM AND BATH INTERIOR WALLS OR PARTITIONS OPEN FOR CONSTRUCTION.
 2. PROVIDE RECESSED BLOCKING FOR BATH ACCESSORIES. VERIFY LOCATION W/ ARCHITECT AND OWNER.
 3. SEE FINISH, PLUMBING, LIGHTING, AND DOOR SCHEDULES FOR RESPECTIVE SPECIFICATIONS.

TYPICAL PLUMBING MECHANICAL NOTES

1. NEW SHOWER VALVE SHALL BE 2.5 GPM MAX. AND PRESSURE BALANCED.
 2. NEW LAVATORY FAUCETS SHALL BE 2.2 GPM MAX.
 3. NEW TOILET SHALL BE 1.28 GPM MAX.

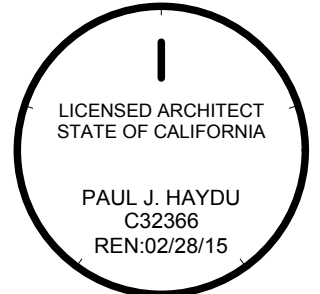
TYPICAL ELECTRICAL NOTES

1. ALL LIGHTING SHALL COMPLY W/ 2010 CALIFORNIA BUILDING ENERGY EFFICIENCY STANDARDS (T-24, PART 6) SECTION 150 (k).
 2. TWO (MIN.) 20 AMP. SMALL APPLIANCE CIRCUITS TO BE PROVIDED TO KITCHEN AREA.
 3. APPLIANCES / EQUIPMENT FIXED IN PLACE TO BE SUPPLIED BY SEPARATE CIRCUIT RATED FOR APPLIANCE, TYP.
 4. CONTRACTOR / ELECT. SUBCONTRACTOR TO REVIEW LAYOUT AND QUANTITY OF OUTLETS /SWITCHES PER APPLICABLE CODES AND NOTIFY ARCHITECT OF ANY UNADDRESSED LAYOUT / QUANTITY REQUIREMENTS.
 5. MOUNTING HEIGHT OF ELECTRICAL OUTLETS AND SWITCHES TO BE CONFIRMED/COORDINATED W/ ARCHITECT PRIOR TO INSTALLATION.

- (---) (E) WALL TO BE DEMOLISHED
- (---) (E) WALL TO REMAIN
- (---) (N) WALL
- (---) (N) PARTIAL HEIGHT WALL

1 (N) PROPOSED FLOOR PLAN
 Scale: 1/4" = 1'-0"

DATE	ISSUE DESCRIPTION	DRAWN	CHECKED
03.04.14	ISSUE TO PERMIT	JB/PH	PJH
03.19.14	TO PLANNER	JB/PH	PJH



FLOOR PLAN- PROPOSED

SHEET NUMBER

A02.01