

RESOLUTION NO. 65-2007

Adopted June 19, 2007

DETERMINING THAT A FORMULA RETAIL USE PROPOSED BY 99 CENTS ONLY STORES FOR 1336 POST STREET IS INCONSISTENT WITH THE WESTERN ADDITION A-2 REDEVELOPMENT PLAN AND THE FORMULA RETAIL POLICY; WESTERN ADDITION REDEVELOPMENT PROJECT AREA A-2

BASIS FOR RESOLUTION

1. On November 22, 2006, staff of the Redevelopment Agency of the City and County of San Francisco ("Agency") received a proposal from representatives of 99¢ Only Stores, a deep-discount retailer of primarily name-brand consumable general merchandise with more than 250 stores across the United States ("99¢ Only Store"). The proposal sought to construct tenant improvements and open a store at 1336 Post Street between Franklin and Gough Streets, in a vacant space formerly occupied by a grocery store ("Project Site"). The Project Site is in the Western Addition Redevelopment Project Area A-2 ("Project Area").
2. The 99¢ Only Store proposed to modify and build-out the interior of the existing 31,833-square-foot, ground-floor retail space, which was vacated by a Cala Foods Market several months ago. The proposed plans for the exterior include replacement of front glazing, replacement of awning fabric, and the addition of a sign over the vehicular access entry. Among other things, in order to carry out the proposal, the Department of Building Inspection must approve a building permit for tenant improvements and the Agency must determine that the proposed use was consistent with the Redevelopment Plan for the Western Addition A-2 Redevelopment Project ("Redevelopment Plan").
3. On October 15, 1964, the Board of Supervisors of the City and County of San Francisco ("Board of Supervisors") approved and adopted the Redevelopment Plan by Ordinance No. 273-64. Since then, the Board of Supervisors has amended the Redevelopment Plan seven times, most recently by Ordinance No. 74-05 on April 19, 2005. The Redevelopment Plan will expire in January 2009. The purpose of the Redevelopment Plan is, among other things, to "[g]uide development toward the production of a satisfying and urbane living and working environment preserving and enhancing the unique social, cultural and esthetic qualities of the City." Redevelopment Plan, Section II. A. 3 at page 5. Property owners in the Project Area may participate in the redevelopment of the area "to the extent compatible with the purposes of the Plan and appropriate redevelopment of the Project [Area]." Redevelopment Plan, Section III. A at page 22.

4. The Project Site is located in the Commercial, General, Intermediate Density ("CI") use district of the Project Area. See Exhibit A, Redevelopment Plan, Land Use, Map 1. The intent of the CI use district is to "[p]rovide for intermediate-density business, commercial, and other uses to serve primarily a city-wide or regional market." Redevelopment Plan, Section II. C. In addition, the Zoning Map of the City and County of San Francisco ("City") places the Project Site in a Moderate-Scale Neighborhood Commercial District (NC-3 District), which provides for a "diversified commercial environment . . . and a wide variety of uses . . . with special emphasis on neighborhood-serving businesses." San Francisco Planning Code, Section 712.1. See Exhibit B, San Francisco Planning Department, Zoning Map of the City and County of San Francisco, Map ZN02 (zoom enlargement of neighborhood commercial district in which 1336 Post Street is located). <http://www.municode.com/Resources/gateway.asp?pid=141458sid=5> As shown on Exhibit B, the Neighborhood Commercial District (NC-3) that is within the Redevelopment Plan and that includes the Project Site consists of Blocks 0672 and 0689 and portions of Blocks 0671 and 0690.
5. Since 2004, Section 703.3 et seq. of the San Francisco Planning Code ("Planning Code") has defined and regulated "formula retail uses" in areas that are zoned as Neighborhood Commercial Districts ("Formula Retail Use Ordinance"). These uses are defined as a type of retail sales activity or retail sales establishment, which, along with eleven or more other retail sales establishments located in the United States, maintains two or more of the following features: a standardized array of merchandise, a standardized façade, a standardized décor and color scheme, a uniform apparel, standardized signage, and either a trademark or a servicemark.
6. On July 19, 2005, the Board of Supervisors adopted Resolution No. 562-05 urging, among other things, the Agency to "control formula retail uses in the Western Addition Redevelopment Project Area A-2."
7. On October 3, 2006, the Commission adopted a Formula Retail Policy for specific commercial zones that are in the Project Area. Agency Resolution No. 138-2006. This policy is based on the Formula Retail Use Ordinance and establishes a process for notice and Commission review of any new formula retail use that is proposed within the applicable neighborhood commercial areas of the Project Area.
8. In adopting the Formula Retail Policy, the Agency relied on the findings made by the Board of Supervisors in adopting the City's Formula Retail Use Ordinance, namely: "the need for protecting San Francisco's small business sector and creating a supportive environment for new small business innovations; the increase in formula retail businesses, which tend to have a competitive advantage over independent operators; and the adverse effect of unregulated and unmonitored additional formula retail uses, which 'will hamper the City's goal of a diverse retail base with distinct neighborhood retailing personalities comprised of a mix of businesses.' Smaller, independent businesses tend to be non-traditional or unique and thus promote the diversity of vendors and of the merchandise available to residents and visitors." Section 5 of Agency Resolution No. 138-2006 quoting San Francisco Planning Code Section 703.3 (a)(9).

9. In November 7, 2006, the voters of the City and County of San Francisco approved Proposition G (the Small Business Protection Act) with 58.19 percent of the votes in favor. Proposition G amended the Planning Code to require that all proposed formula retail uses in Neighborhood Commercial Districts must have a public hearing and establish that they meet the standards for a conditional use authorization.
10. On February 16, 2007, the 99¢ Only Store submitted an application for a building permit to the Department of Building Inspection. (Application #2007-16-4381). On February 20, 2007, the 99¢ Only Store completed the Agency's Formula Retail Policy Checklist. After review of the Checklist and its retail operation, Agency staff concluded that the 99¢ Only Store's proposal met the definition of a "formula retail use" and determined that the process for notice and public review would apply.
11. In accordance with the Formula Retail Policy, the Agency provided, on March 9, 2007, a Notice of Proposed Formula Retail Use to the neighborhood surrounding the Project Site, the Western Addition Citizens Advisory Committee's ("WACAC") mailing list, and other interested parties. This notice initiated a 30-day period for members of the public to request a public hearing. The 99¢ Only Store also presented the proposed formula retail use to the Japantown Task Force ("JTF") and the WACAC. No action was required or taken by these groups.
12. In the notification period from March 9, 2007 to April 9, 2007 the Agency received 54 requests for a public hearing on the proposed formula retail use. A majority of the requests were received from residents of the Sutterfield Apartments, a 164-unit apartment complex located above the vacant retail space, and from residents of an apartment building at 1480 Sutter Street located across the street. Numerous reasons were cited for requesting a public hearing and for objecting to the proposed use. The objections included: the need for an affordable, full-service supermarket; the incompatibility of a discount retailer in a high-end, residential urban setting; concern about the quality of the discount product mix and signage; increased traffic and insufficient parking; the failure of the 99¢ Only Store to receive approval from the condominium association governing the space; and increased homelessness, crime, graffiti, trash, loitering and security concerns for residents. Based upon the receipt of these requests for a public hearing, staff proceeded to the next step in the process and scheduled a hearing before the Commission for public review.
13. In preparation for the public hearing, Agency staff reviewed the retail uses of the neighborhood and analyzed the proposal. Based on information from the company's website, the 99¢ Only Store core strategy is to "offer only excellent values on a wide selection of quality food and basic household items with a focus on name brands and an exciting assortment of surprises, all for 99¢ or less." <http://www.99only.com/about/index.htm> Further, the website states: "Our stores are attractively merchandised, clean, full service 'destination' locations that offer customers significant value on their everyday household needs in an exciting

shopping environment. Merchandise encompasses a wide array of name-brand closeout and regularly available consumable products including food and beverages such as: produce, deli, and other basic grocery items, health and beauty care, and household supplies.” The 99¢ Only Store’s product mix is similar to that offered by other retail establishments in the neighborhood.

14. At the public hearing of the Agency Commission on June 5, 2007, eleven speakers including a representative of the 99¢ Only Store addressed the Commission about the 99¢ Only Store proposal. Most of the speakers opposed the proposal. The speakers’ comments included: concerns about the type of retail use that the 99¢ Only Store proposed; its inconsistency with the character of the neighborhood; its failure to address community interests in an affordable grocery store; its effect on local area small businesses that would be unable to compete with its discounted prices; and concerns over increased traffic to the area and public safety issues associated with an increased number of visitors to the area.
15. The Formula Retail Policy establishes a process and standard of review whereby the Agency may determine the consistency of formula retail uses with the purposes of the Redevelopment Plan. In particular, the Formula Retail Policy requires that “the Agency Commission determine whether the proposed Formula Retail Use promotes the Redevelopment Plan’s purpose of promoting a satisfying and urbane living and working environment that preserves and enhances the unique social, cultural, and esthetic qualities of the City. The Agency Commission may also consider the following factors:
 - a. *Existing concentrations of formula retail uses within the neighborhood commercial district.*
 - b. *Availability of other similar retail uses within the neighborhood commercial district.*
 - c. *Compatibility of the proposed formula retail use with the existing architectural and aesthetic character of the neighborhood commercial district.*
 - d. *Existing retail vacancy rates within the neighborhood commercial district.*
 - e. *Existing mix of Citywide-serving retail uses and neighborhood-serving retail uses within the neighborhood commercial district.*
16. Based on the application of the criteria of the Formula Retail Policy to the information considered at the public hearing, the Agency makes the following findings:
 - a. *The existing concentrations of formula retail uses within the neighborhood commercial district.*

Several formula retail uses already exist within the area on or near Van Ness Avenue, where pedestrian and automobile traffic is heaviest. These uses include Beverages and More! and a Starbucks Coffee, but Van Ness Avenue is in a different zoning district. In the neighborhood commercial

district in which the Project Site is located, there is a Walgreens Drug Store on Franklin Street near the Project Site, but local, independent retail operations predominate. The addition of the 99¢ Only Store at the proposed location on Post Street is not consistent with the prevailing character of the neighborhood commercial district.

b. The availability of other similar retail uses within the neighborhood commercial district.

Although the 99¢ Only Store provides a large concentration of discounted food and household items, existing retail uses surrounding the Project Site provide the types of products that the 99¢ Only Store would provide. Walgreens Drug Store, located next door to the Project Site, sells food and basic household items; a small market at the corner of Sutter and Franklin Streets sells food and some household items; Beverages and More! offers discounted beverages, food, and party supplies from its location on Van Ness Avenue. The addition of a large retail store devoted to selling discounted food and household items that are sold for less than one dollar does not promote a diverse retail base and thus does not enhance the unique social, cultural and esthetic qualities of the City.

c. The compatibility of the proposed formula retail use with the existing architectural and aesthetic character of the neighborhood commercial district.

The 99¢ Only Store proposes to renovate and use an existing space. No new square footage will be added to the existing building. Impacts on the existing architectural and aesthetic character could be mitigated through additional review of the proposed design and signage for the space. However, the addition of a large formula retail store devoted to selling discounted food and household items does not enhance the unique aesthetic character of the neighborhood.

d. The existing retail vacancy rates within the neighborhood commercial district.

There are a few vacancies on key intersections in this neighborhood commercial district. For example, there are large vacant retail spaces in buildings on the corner of Gough and Post Streets and on the corner of Franklin and Sutter Streets. However, this level of commercial vacancy is not unusual for a neighborhood commercial district in the City.

e. The existing mix of citywide-serving retail uses and neighborhood-serving retail uses within the neighborhood commercial district.

Several citywide-serving retail uses already exist within the area but not in the immediate neighborhood commercial district. These uses are concentrated in the areas on or near Van Ness Avenue (a different zoning

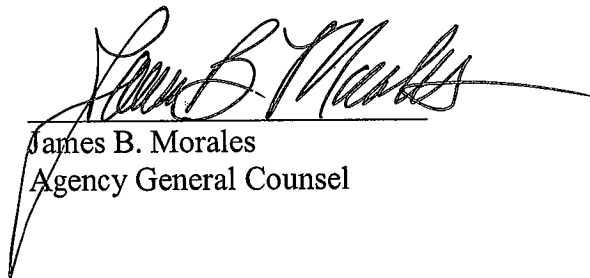
district), where the pedestrian and automobile traffic is heaviest. For example, there are a Beverages and More! and a 24 Hour Fitness on Van Ness Avenue. However, the immediate area surrounding the Project Site, primarily contains neighborhood-serving retail uses (i.e., drycleaners, flower store, drug store, mailing services, and small restaurants/cafes).

17. The Formula Retail Policy interprets the Redevelopment Plan's objective as protecting San Francisco's small business sector, limiting formula retail businesses that have a competitive advantage over independent operators, and preserving a "diverse retail base with distinct neighborhood retailing personalities comprised of a mix of businesses." Agency Resolution No. 138-2006, Section 5 at pp-1-2. The Formula Retail Policy also provides additional guidance and interpretation of the Redevelopment Plan. Redevelopment Plan, Section II. A. 3 at page 5. Based on the application of these policies to the previously mentioned findings, the addition of a large retail store devoted to selling discounted food and household items does not promote a diverse retail base and thus does not enhance the unique social, cultural and esthetic qualities of the City.
18. For the reasons previously stated, the Agency determines that the proposed 99¢ Only Store is not consistent with the Redevelopment Plan and the Formula Retail Policy because the 99¢ Only Store would not promote "a satisfying and urbane living and working environment preserving and enhancing the unique social, cultural and esthetic qualities of the City."

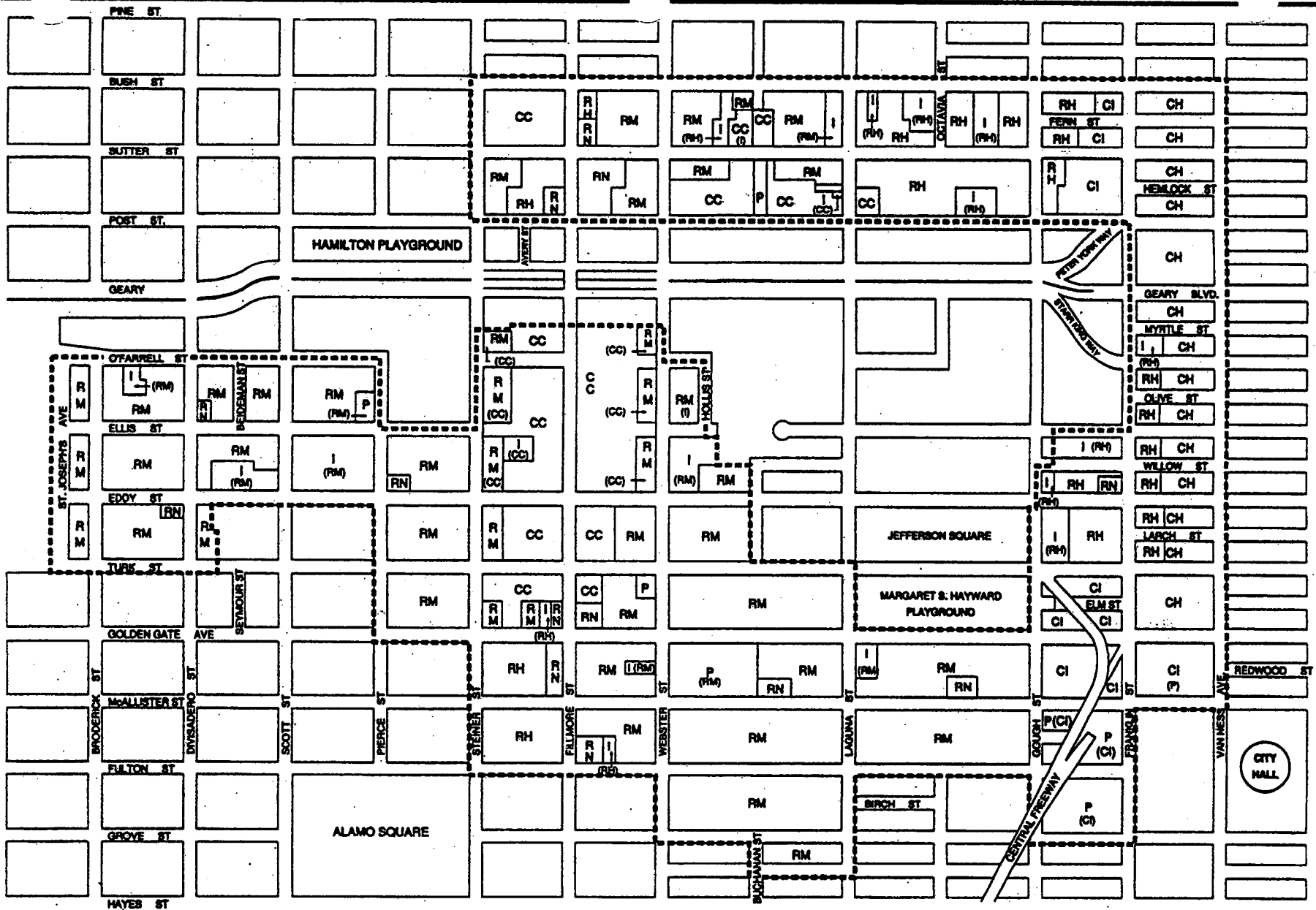
RESOLUTION

ACCORDINGLY, IT IS RESOLVED by the Redevelopment Agency of the City and County of San Francisco that the formula retail use proposed by 99¢ Only Stores for 1336 Post Street is inconsistent with the Western Addition A-2 Redevelopment Plan, as implemented by the Agency's Formula Retail Policy, and further instructs staff to take all necessary action to provide notice of the disapproval of this proposed use.

APPROVED AS TO FORM:



James B. Morales
Agency General Counsel



LEGEND

RM	Residential, medium density	CC	Commercial, community shopping
RH	Residential, high density	CI	Commercial, general intermediate density
RN	Residential and neighborhood commercial	CH	Commercial, general high density
()	Alternate uses shown in parentheses	I	Institutional
----	Project boundary	P	Public

WESTERN ADDITION AREA A-2

LAND USE

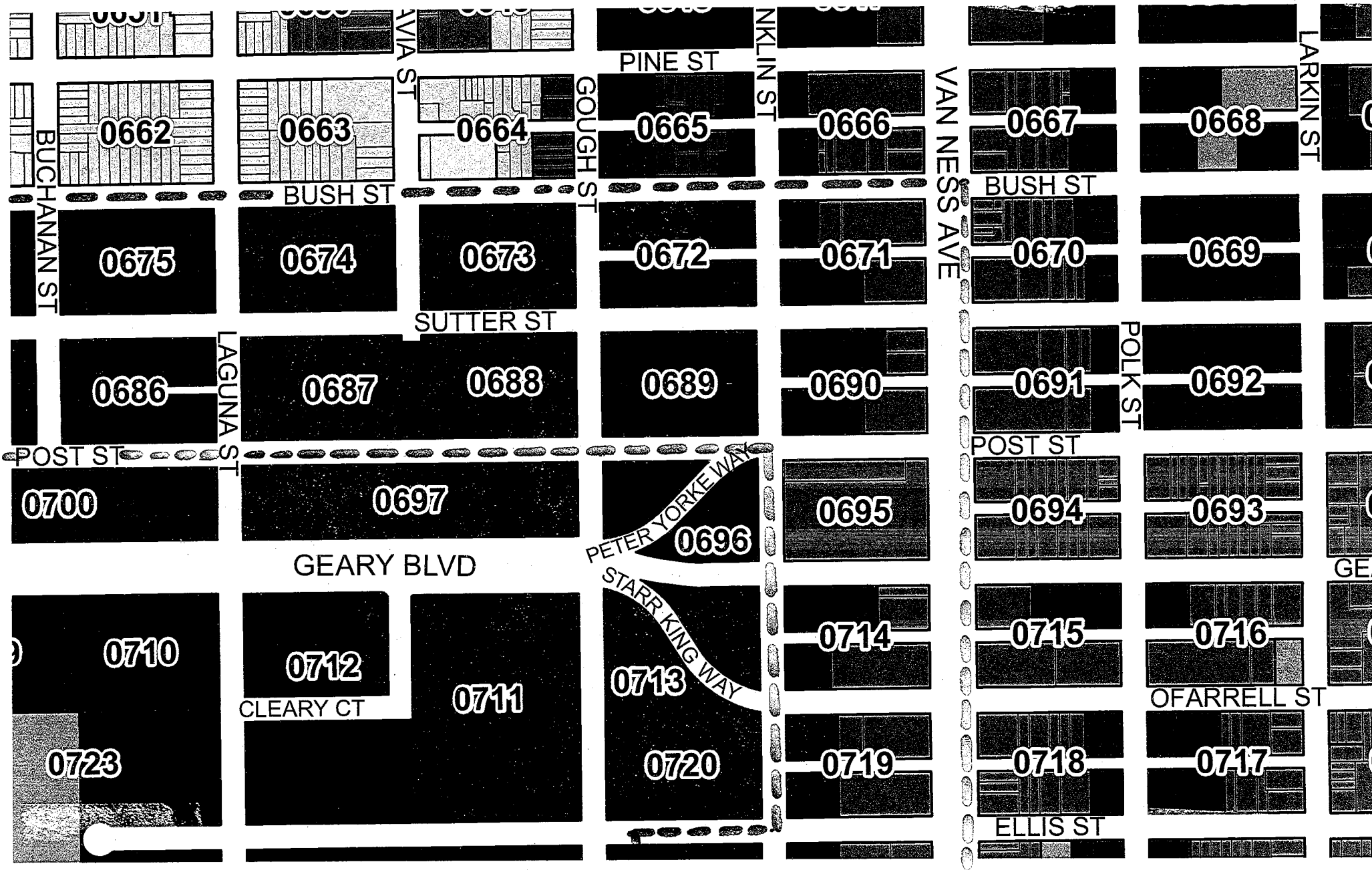
Note: Land use areas and rights-of-way are schematic and are subject to adjustments to accommodate final surveys and engineering details

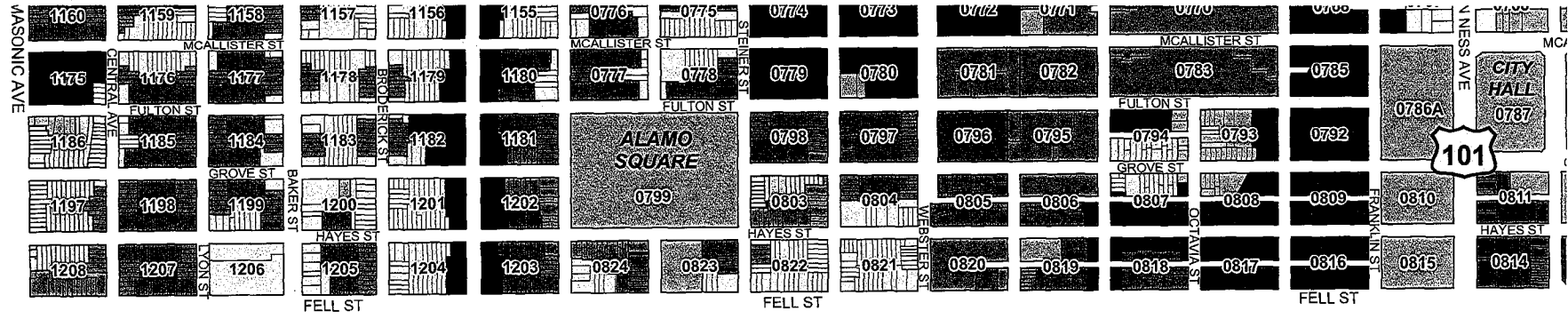
San Francisco Redevelopment Agency



MAP I

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ZONING USE DISTRICTS

RESIDENTIAL, HOUSE DISTRICTS

RH-1(D) RH-1 RH-1(S) RH-2 RH-3

RESIDENTIAL, MIXED (APARTMENTS & HOUSES) DISTRICTS

RM-1 RM-2 RM-3 RM-4

NEIGHBORHOOD COMMERCIAL DISTRICTS

NC-1 NC-2 NC-3 NCD NC-S

SOUTH OF MARKET MIXED USE DISTRICTS

SPD RED RSD SLR SLI SSO

COMMERCIAL DISTRICTS

C-2 C-3-S C-3-G C-3-R C-3-O C-3-O(SD)

INDUSTRIAL DISTRICTS

C-M M-1 M-2

CHINATOWN MIXED USE DISTRICTS

CRNC CVR CCB

RESIDENTIAL-COMMERCIAL DISTRICTS

RC-3 RC-4

REDEVELOPMENT AGENCY DISTRICTS

MB-RA HP-RA

DOWNTOWN RESIDENTIAL DISTRICTS

RH DTR TB DTR

MISSION BAY DISTRICTS

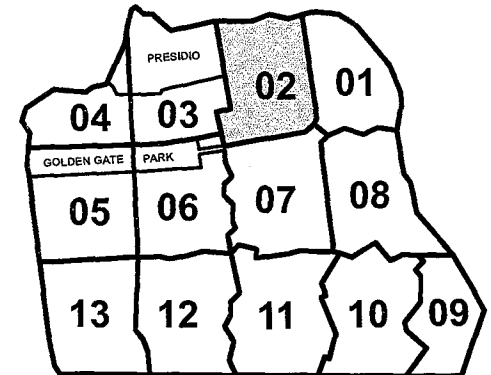
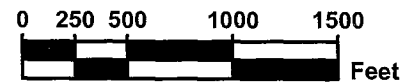
MB-OS MB-O

PUBLIC DISTRICT

P



SCALE: 1:14,000



MAP SHEET KEY

ZONING MAP OF THE CITY AND COUNTY OF SAN FRANCISCO • PLANN