

TOWN OF FAIRFAX

STAFF REPORT

July 12, 2017

TO: Mayor and Council

FROM: Linda Neal, Principal Planner *LN*

SUBJECT: Appeal of 118 Tamalpais Road regarding Planning Commission approval of Variances and an Encroachment Permit for a Retaining Wall and Entry Stairway Providing Access to the Property at 118 Tamalpais Road

RECOMMENDATION

1. Conduct the public hearing.
2. Adopt a resolution denying the appeal and upholding the Planning Commission action approving variances and an encroachment permit for a retaining wall and entry stairway providing access to the property at 118 Tamalpais Road.

BACKGROUND

In 1982, the house at 120 Tamalpais Road, next to the project site at 118 Tamalpais Road, was rendered uninhabitable by a landslide that filled the structure with mud. Since the construction of 118 Tamalpais in 1958, both residences have used the same access stairway, located mostly on 120 Tamalpais Road. The shared access stairway was destroyed by another landslide in 2011. While the Town repaired hillside that damaged the house at 120 Tamalpais Road and the hillside below to maintain access along Tamalpais Road, the property owners did not repair the shared access stairway.

In 1989 the property owner of 120 Tamalpais Road was informed in a Residential Resale Inspection Report prepared by the Town's Planning and Building Department that the structure on the property was uninhabitable and needed to be demolished. The persons residing at 118 Tamalpais Road purchased the damaged residence at 120 Tamalpais Road in 1991.

Since the 2011 slide the persons residing at 118 Tamalpais Road have been using access stairs at 124 Tamalpais Road to access the property by following a path across the uninhabitable property they own at 120 Tamalpais Road to the house they reside in at 118 Tamalpais Road (the project site), This access route is 190 feet long, traverses a retaining wall for 124 Tamalpais Road, with various steep and treacherous stairways and paths that do not meet code requirements for access, and terminates at stairs leading up to the front door of 118 Tamalpais Road (a video of the access path will be shown at the meeting).

On May 19, 2016, the Planning Commission (PC) approved a Side Setback Variance, a Retaining Wall Height Variance and an Encroachment Permit for a new access stairway and an associated retaining wall for 118 Tamalpais Road. At that meeting, the submitted information for review included engineering reports, arborist's reports and survey information provided by both the applicant and the tenant who also owns the condemned house at 120 Tamalpais Road. The PC approval was conditioned upon the Town Engineer reviewing and approving the project building plans.

The approved design had the entire lower flight of the stairway located ½-foot to 1-foot from the southern side property line and retained the shared use of the sewer and water lines with the condemned house at 120 Tamalpais Road. The retaining wall in the proposal was 10 ½-feet to 11-feet in height. The approved proposal also required the removal of 2 Maple trees that were alleged to straddle the southern property line between the houses at 118 and 120 Tamalpais Road (Attachment B).

The Town Engineer subsequently reviewed the proposed plans and other materials as part of a building permit submittal. As part of his project review the Town Engineer also met in the field with staff and the project surveyor to verify that the location of the side property is accurately shown on the site plan and is accurately marked in the field.

After completing his review, the Town Engineer prepared a memorandum indicating he was concerned that easterly wing wall of the proposed stairway retaining wall might negatively impact the Town's slide repair at the frontage of 120 Tamalpais Road (Attachment C – Town Engineer's memorandum dated 8/1/16).

Responding to the Town Engineer's comments, the applicant revised the plans for the wall and the stairway, relocating the improvements so they no longer had the potential to impact the Town's slide repair area and so that the stairway no longer required the removal of any trees and so that only a 16-square-foot section of the stair landing will be within the required 5-foot, side yard.

The project included providing separate sewer and water service to 118 Tamalpais Road (Attachment D).

The second plan was approved by the Planning Commission on March 30, 2017 when they granted a second Side Setback Variance, Retaining Wall Height Variance and Encroachment permit for the revised plan. For a further discussion of the project see the attached Planning Commission staff report dated March 30, 2017.

DISCUSSION

The appeal filed by the tenant of 118 Tamalpais Road expresses his concern that the Town is not doing enough to ensure he has the right to also access his condemned property at 120 Tamalpais via the proposed stairway once it is built. He is also concerned that the shared sewer and water line, once abandoned by the owner of 118 Tamalpais, will not be restored to the condemned house at 120 Tamalpais Road and that the Commission's approval of the project will impact the tenant's pending civil case

against the owner (Attachment B – Appeal). Also see Exhibit C – letter from the owner of 118 Tamalpais Road’s Attorney dated April 28, 2017)

Stairway Access

Shared use of the new access stairway by both 118 and 120 Tamalpais Road is a civil matter and the Town has no authority to require the owner of 118 Tamalpais to grant the owner of 120 Tamalpais an easement to use a stairway now entirely on and in front of the 118 Tamalpais Road residence.

Water and Sewer Lines

The issue of restoring the water and sewer lines to 120 Tamalpais Road is under the jurisdiction of the Marin Municipal Water District (MMWD) and the Ross Valley Sanitary District (RVSD). These improvements are not inspected or regulated by the Town. If and when the owner of 120 Tamalpais Road restores 120 Tamalpais Road for residency, the Town’s involvement will only include verifying with MMWD and RVSD that the parcel is being served and granting a temporary encroachment permit if restoring the lines requires digging in the street right-of-way.

ATTACHMENTS

- Attachment A – Resolution denying the appeal 17-
- Attachment B – Appeal
- Attachment C – Letter from property owner’s attorney dated April 28, 2017
- Attachment D – Previously approved project plans
- Attachment E – Revised project plans
- Attachment F – 3/30/17 Planning Commission staff report
- Attachment G – Letter from appellant’s attorney dated May 30, 2017

RESOLUTION 17-__

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FAIRFAX
DENYING THE APPEAL AND UPHOLDING THE PLANNING COMMISSION MARCH 30, 2017
ACTION APPROVING VARIANCES AND AN ENCROACHMENT PERMIT FOR A RETAINING
WALL AND ENTRY STAIRWAY PROVIDING ACCESS TO THE PROPERTY AT 118
TAMALPAIS ROAD (APN 001-121-61)**

WHEREAS, on March 7, 2016 the Federal National Mortgage Association (“FNMA” or “Applicant”) submitted to the Town Application No.17-05 seeking approval for the necessary variances and an encroachment permit to construct a retaining wall and entry stairway to provide access to a residence located within the RS-6 zoning district at 118 Tamalpais Road, Fairfax (the “Project”); and

WHEREAS, after reviewing the Project for purposes of the California Environmental Quality Act (‘CEQA,’ codified at Public Resources Code §§ 15000, and as further governed by the CEQA Guidelines, found at 14 C.C.R. §§ 21000), staff determined that it was categorically exempt from further environmental review by virtue of 14 C.C.R. §§ 15301, 15302, and 15305(a); and

WHEREAS, on March 30, 2017, after holding the required public hearing on the Project, and based on the plans and other documentary evidence in the record, the Planning Commission determined that the Applicant had met the burden of proof required to support the findings necessary to approve the Project with certain conditions of approval; and

WHEREAS, at its March 30, 2017 meeting, the Planning Commission therefore approved Resolution No. 17-06, thereby approving the necessary discretionary permits to allow construction of a retaining wall and front stairway to a house at 118 Tamalpais Road that has been without an access stairway since the original access stairway was destroyed in a 2011 landslide event; and

WHEREAS, on April 6, 2017, and within the time allotted for appeal by Fairfax Town Code § 17.036.020, counsel for Walter B. Bess, resident of the Property (“Appellant”), submitted a notice of appeal of the Planning Commission’s approval to the Town Clerk; and

WHEREAS, a notice of an appeal hearing was duly provided in compliance with Fairfax Town Code § 17.036.040; and

WHEREAS, the Town Council has been provided with a copy of Planning Commission Resolution No. 17-06 thereby providing the Town Council with a full record of the reasons for which Application No. 17-05 was approved; and

WHEREAS, in accordance with Town Code § 17.036.060, on July 12, 2017, the Town Council conducted a de novo public hearing of Application No. 17-05; and

WHEREAS, at its July 12, 2017, hearing on the matter, the Appellant, Applicant, and members of the public were given the opportunity to be heard; and

WHEREAS, the Town Council has considered the Application, the appeal submitted by Appellant, and all oral and written testimony presented at the public hearing in making its decision.

NOW, THEREFORE, BE IT RESOLVED by the Town Council of the Town of Fairfax as follows:

1. **CEQA.** The Town Council finds that the Project is categorically exempt from further review under the California Environmental Quality Act pursuant to:
 - a. 14 C.C.R. § 15301, inasmuch as the Project consists of the repair or minor alteration of existing private structures, facilities, and/or topographical features, involving negligible or no expansion of use beyond that existing at the time this determination is made, because the proposed stairwell construction will only allow the ongoing residential use of the dwelling at the Project site; and
 - b. 14 C.C.R. § 15302, inasmuch as the Project consists of the replacement or reconstruction of existing structures and facilities where the new structure will be located on the same site as the structure replaced and will have substantially the same purpose and capacity as the structure replaced, through the replacement of a stairwell previously destroyed.

2. **Side Yard Setback Variance.** The Project site is located within the RS-6 zoning district and has an average slope greater than 10%. In this district (unless a variance is procured, per § 17.080.110), building sites with slopes in excess of 10% must have two side yards having a combined width of not less than 20 feet, but neither yard having a width of less than five feet. Town Code § 17.080.070(B)(2). Applicant has requested approval to construct a new access stairway whose design will encroach into the five yard setback at two points on the southeast side of the lot. At one of these locations, a small four square foot portion of the lowest flight of stairs will encroach into the setback; at the second location, a small 16 square foot portion of the stair landing will fall within the setback. Based on the evidence in the public record with regard to Application No. 17-05, the Town Council finds that the requested side yard setback variance is justified as follows:
 - a. Per Fairfax Town Code § 17.028.070(A)(1) and Government Code § 65906, due to special circumstances applicable to the Project site, including the site's size, shape, topography, and location of surroundings, the strict application of the side yard setback requirements would deprive the Applicant of privileges enjoyed by other property owners in the vicinity and under an identical zone classification, given that the site has a very steep slope along its frontage and stairs are necessary to allow safe egress and ingress from the residence to the street such as is enjoyed by other property owners in the vicinity; and
 - b. Per Fairfax Town Code § 17.028.070(A)(2) and Government Code § 65906, the requested side yard variance will not constitute a grant of special privilege, is consistent with the limitations upon other properties in the vicinity and under identical zone classification, and is consistent with the objectives of Title 17, given that the

proposed stairway is similar to other stairways found throughout the neighborhood and it will maintain a similar setback from the property lines. Moreover, it will not expand the use or enjoyment of the property beyond that experienced by other properties in the vicinity, and is consistent with the objectives of Title 17;

- c. Per Fairfax Town Code § 17.028.070(A)(3), the strict application of Title 17 of the Fairfax Town Code would result in excessive or unreasonable hardship, given that locating the stairwell anywhere else along the steep property frontage would require additional excavation, a taller retaining wall, and further site disturbance; and
 - d. Per Fairfax Town Code § 17.028.070(A)(4), the granting of the variance or adjustment will not be detrimental to the public welfare or injurious to other property in the vicinity in which the property is situated, given that granting the variance will allow for the construction and use of a stairwell that will allow safe passage for residents and visitors of 118 Tamalpais, including, potentially, first responders and emergency personnel. The plans show that the stairway and wall improvements will be located within a portion of the Tamalpais Road right-of-way not being used by the general public in accordance with Town Code § 12.32.020. The limited encroachment into the setback will not adversely affect the public welfare or injure other nearby properties.
3. **Retaining Wall Height Variance.** Town Code § 17.044.080(B)(1) provides that retaining walls and fences along property frontages shall not exceed four feet in height. The Applicant has requested approval to construct a retaining wall ranging in height from 11 feet to 12 feet along the property frontage. This request is made in light of the fact that surveys of the site indicate that the property line begins seven to eight feet up the hillside from the edge of the paved roadbed of Tamalpais Road. This, combined with the steep slope of the property, necessitates a taller retaining wall. Based on the evidence in the public record with regard to Application No. 17-06, the Town Council finds that the requested retaining wall height variance is justified as follows:
- a. Per Fairfax Town Code § 17.028.070(A)(1) and Government Code § 65906, special circumstances applicable to the property, including the depth of the property line into the hillside, coupled with the steep topography of the site, mean that the strict application of the four foot retaining wall height limit would deprive the Applicant of privileges enjoyed by other property owners in the vicinity and under identical zone classification. The Project site slopes up at over a 90° angle from Tamalpais Road along most of the property frontage. It is the steep slope of the site that constitutes the special circumstance applicable to the property where the strict application of the 5 foot, minimum side-yard setback – if enforced – would deprive the Applicant of the ability to construct an access stairway while also minimizing the disturbance to the site. This is a privilege enjoyed by other property owners of hillside lots in the Residential Single-family RS-6 zoning district. Therefore, the location chosen for the stairway, at the southeastern corner of the property where the slope is slightly more gradual will protect the existing trees while minimizing of excavation necessary to restore access to the structure;

- b. Per Fairfax Town Code § 17.028.070(A)(2) and Government Code § 65906, the variance will not constitute a grant of special privilege, is consistent with the limitations upon other properties in the vicinity and under identical zone classification, and is consistent with the objectives of Title 17 of the Town Code, given that it many residences in the hillside areas have access stairs and/or entry landings/decks within either the minimum 5 foot side-yard setback or the combined 20-foot side yard setback. Originally the stairway destroyed by a 2011 slide was a shared stairway for both 118 Tamalpais Road and 120 Tamalpais Road and was located within the minimum side setback for 120 Tamalpais Road. The strict application of the minimum, 5-foot, side-yard setback regulations could negatively impact a mature maple tree on the Project site that could otherwise be saved which will result in excessive or unreasonable hardship for the owner;
 - c. Per Fairfax Town Code § 17.028.070(A)(3), the strict application of Title 17 of the Fairfax Town Code would result in excessive or unreasonable hardship; given that it would prohibit the safe construction of a stairwell necessary to secure continued access to and from the residence at the Project site; and
 - d. Per Fairfax Town Code § 17.028.070(A)(4), the granting of the variance or adjustment will not be detrimental to the public welfare or injurious to other property in the vicinity in which the property is situated, given that granting the variance will allow for the construction and use of a retaining wall to support a stairwell that will allow safe passage for residents and visitors of 118 Tamalpais, including, potentially, first responders and emergency personnel. The engineered stairway and retaining wall drawings are based on the findings contained in the arborist report by Urban Forestry, Inc., and the site geotechnical evaluation by Geoengineering, Inc. The design of the Project, based on these reports by technical experts in their fields, ensure development of the property shall not cause excessive or unreasonable detriment to adjoining properties or premises, or cause adverse physical or economic effects thereto, or create undue or excessive burdens in the use and enjoyment thereof, or any or all of which effects are substantially beyond that which might occur without approval or issuance of the use permit. The increased height of the retaining wall will not adversely affect the public welfare or injure other nearby properties.
4. **Encroachment Permit.** Under Fairfax Town Code § 12.32.010, portions of public streets and public rights-of-way may be used for temporary carports and other structures if such areas are not being used for vehicular or pedestrian travel. Approval of such use must be sought through application for an encroachment permit, per § 12.32.020. Based on the evidence in the public record with regard to Application No. 17-06, the Town Council finds that the requested use of the public right-of-way is justified as follows:
- a. Per Fairfax Town Code § 12.32.010, the area between the roadbed of Tamalpais Road and the property line of the Project site is not being used by the general public for public improvements or for vehicular or pedestrian travel. Further, there is no suitable location on the Project site for the necessary improvements. An

encroachment permit is therefore authorized, subject to the terms and conditions set forth in this Resolution.

5. **Appeal.** The Town Council of the Town of Fairfax has considered the notice of appeal submitted by Appellant, as well as the information submitted by Appellant. Upon reviewing all of the materials and information presented, the Town Council hereby denies the appeal and upholds the May 30, 2017, decision of the Planning Commission approving the Project, subject to the conditions of approval contained in Exhibit A, attached hereto and incorporated herein.

The foregoing resolution was adopted at a regular meeting of the Town Council of the Town of Fairfax held in said Town, on the 7th day of June, 2017 by the following vote, to wit:

AYES:

NOES:

ABSENT:

John Reed, Mayor

Attest: _____
Michele Gardner, Town Clerk

Exhibit A: Conditions of Approval

Conditions of Approval

1. The surveyor shall mark the side property line in the presence of the Building Official prior to the start of construction.
2. The owner shall complete the Revocable Encroachment Permit and submit it to the Town for review and approval. Once approved, the owners shall sign and notarize the document and return it to the Town for recording.
3. The applicant shall comply with any conditions of the Fairfax Building Official, Public Works Director/Manager, Town Engineer, Ross Valley Fire Department, Marin Municipal Water District and Ross Valley Sanitary District.
4. This approval is limited to the development illustrated on the following plan pages: Sheets 1 through 6, dated 9/15/16, prepared by American Land Surveying, Inc. and signed and wet stamped by Robert Setttgast, project geotechnical engineer,
5. Prior to issuance of a building permit, the applicant or his assigns shall submit a bond, cash deposit or letter of credit to the Town in an amount that will cover the cost of grading, weatherization and repair of possible roadway damage. The applicant shall submit contractor's estimates for any grading, site weatherization and improvement plans for approval by the Public Works Director. Upon approval of the contract costs, the applicant shall submit a cash deposit, letter of credit or bond equaling 100% of the estimated construction costs.
6. Prior to issuance of the building permit, the applicant shall provide the Town with a video of the access streets to be used during construction. The Public Works Director shall make a decision prior to the project final inspection, regarding street resurfacing and repair that may be required as a result of damage and wear and tear from project vehicles.
7. Prior to issuance of the building permit, the applicant shall submit a Construction Management Plan subject to review and approval by the Building Official/Public Works Manager. The plan shall include:
 - Construction delivery routes approved by the Department of Public Works;
 - Construction schedule (deliveries, worker hours, etc.);
 - Notification to area residents;
 - Emergency access routes; and
 - Parking plan to minimize the impacts of contractor/employee vehicles and construction equipment on neighborhood parking
8. During the construction process, the following shall be required:
 - a. The project engineer shall be on-site during the grading/drilling process and shall submit written certification to the Town staff that the grading has been

completed as designed and recommended prior to installation of retaining forms.

b. All construction related vehicles including equipment delivery, cement trucks and construction materials shall be situated off the travel lane of the adjacent public right(s)-of-way at all times. This condition may be waived by the building official on a case by case basis with prior notification from the contractor.

c. Additionally, any proposed temporary closure of a public right-of-way shall require prior approval by the Fairfax Police Department and any necessary traffic control, signage or public notification shall be the responsibility of the applicant or his/her assigns. Any violation of this provision will result in a stop work order being placed on the property and issuance of a citation.

9. Prior to the project final inspection the following shall be completed:

a. The project engineer shall field check the completed project and submit written certification to Town Staff stating that the retaining, grading and drainage elements have been installed in conformance with the approved building plans.

b. The Building Official shall field check the completed project to verify that the work has been installed as per the approved plan.

c. The Planning Department shall field check the completed project to verify that all conditions of the Planning Commission have been complied with.

10. Excavation shall not occur between October 1st and April 1st of any year. The Town Engineer has the authority to waive this condition depending upon the weather.

11. The applicant shall comply with the Town Noise Ordinance Chapter 8.16 of the Fairfax Town Code.

12. Any changes, modifications, additions or alterations made to the approved set of plans will require approval by the Town Engineer and the Director of Planning and Building Services. Any construction based on project plans that have been altered without the benefit of an approved modification will result in the job being immediately stopped and red tagged.

13. Any modification of these Conditions of Approval must be approved by the Fairfax Planning Commission.

14. The applicant and its heirs, successors, and assigns shall, at its sole cost and expense, defend with counsel selected by the Town, indemnify, protect, release, and hold harmless the Town of Fairfax and any agency or instrumentality thereof, including its agents, officers, commissions, and employees (the "Indemnitees") from any and all claims, actions, or proceedings arising out of or in any way relating to the processing and/or approval of the project as described herein, the purpose of which is to attack, set aside, void, or annul the approval of the project, and/or any environmental determination

that accompanies it, by the Planning Commission, Town Council, Planning Director, Design Review Board or any other department or agency of the Town. This indemnification shall include, but not be limited to, suits, damages, judgments, costs, expenses, liens, levies, attorney fees or expert witness fees that may be asserted or incurred by any person or entity, including the applicant, third parties and the Indemnitees, arising out of or in connection with the approval of this project, whether or not there is concurrent, passive, or active negligence on the part of the Indemnitees. Nothing herein shall prohibit the Town from participating in the defense of any claim, action, or proceeding. The parties shall use best efforts, acting in good faith, to select mutually agreeable defense counsel.

15. A minimum three (3) foot setback shall be maintained between the edge of the paved roadway and the first step of the access stairway as called out on the plans.

OTHER AGENCY CONDITIONS

Marin Municipal Water District

A reduced pressure backflow device shall be installed at the new water meter for 118 Tamalpais Road.



TOWN OF FAIRFAX

APR 06 2017

RECEIVED

TOWN OF FAIRFAX

142 BOLINAS ROAD, FAIRFAX, CALIFORNIA 94930
(415) 453-1584 / FAX (415) 453-1618

NOTICE OF APPEAL

FOR STAFF USE

Date: 4-06-17 Fee: _____
Appl.# _____
Receipt# N/A - previously paid receipt # 1-48204
Recvd. By: M. Gardner
Action: _____

The purpose of the appeal procedure is to provide recourse in case it is alleged that there is an error in any order, requirement, permit, decision or determination by any administrative official, advisory body or commission in the administration or enforcement of the City Ordinances. Any person aggrieved by the action of any administrative official, advisory board or commission in the administration or enforcement of any ordinance in the Town Code may make verified application to the Town Clerk in the manner prescribed by the Town Council within ten (10) days of action that is appealed.

FEE: Fees are set by resolution of the Town Council. See fee schedule for current application fees.

PLEASE PRINT

Appellant's name Walter B. Bess, Jr.

Mailing address 912 Lootens Pl Fl 2, San Rafael Zip: 94901 Day phone c/o 415-459-6060

Property Address: 118 Tamalpais Rd, Fairfax, CA 94930

I appeal the decision of: (list board, commission, or department and decision; for example: Planning Commission denial of variance) application # 17-06

The following are my reasons for appeal:

1. The grant of entitlement for encroachment & sideyard set-back prevents access to 120 Tamalpais

CONTINUED ON ATTACHMENT

hereby declare that I have read the foregoing Notice of Appeal and know the contents thereof. I further declare under penalty of perjury that the information supplied by me is true and correct.

Executed this 5th day of APRIL, 10 2017

SIGNATURE OF APPELLANT: _____

BY: LAWRENCE BRAGMAN (4/94)
ATTORNEY FOR WALTER B. BESS, JR.

Printed on Recycled Paper

ATTACHMENT B

CONTINUATION OF NOTICE OF APPEAL
BY WALTER B. BESS, JR.,
RE: APPLICATION 17-06
118 TAMALPAIS, FAIRFAX, CA 94930
April 6, 2017

1. Appellant Walter B. Bess, Jr. is the owner of 120 Tamalpais and the former owner of 118 Tamalpais which he purchased in 1990. 118 Tamalpais was foreclosed in 2011 but Appellant has remained in possession pursuant to an Order of the Marin Superior Court. 120 Tamalpais was constructed prior to the incorporation of the Town of Fairfax in 1931. 118 Tamalpais was constructed in 1958 as a guest cottage for 120 Tamalpais. For many decades, the two parcels shared a common front stairway that was located on 120 Tamalpais. In 1982, 120 Tamalpais was rendered uninhabitable by a landslide. Appellant purchased 120 Tamalpais in 1992 from his neighbor. Damage and instability from a landslide in 2011, and the subsequent repair thereof, has rendered the path of the common stairway across 120 Tamalpais impracticable for reconstruction. Accordingly, appellant requested that the Planning Commission condition any approval of Federal National Mortgage Association's application for a stairway construction permit and side yard set-back variance and encroachment permit to include a reservation of an equitable easement for the benefit of 120 Tamalpais which is burdened by the grant of those entitlements. The Planning Commission's denial of that request was in derogation of Appellant's equitable and prescriptive easement/property rights.
2. The approval of the application unfairly prejudices appellant's rights relating to Bess v. Federal National Mortgage, Marin Superior Court Case No.: CIV 1403284;
3. Any and all other issues and relief as appropriate.

Law Offices of
GLENN H. WECHSLER
1111 Civic Drive, Suite 210
Walnut Creek, California 94596
Telephone: (925) 274-0200 ◊ Facsimile: (925) 274-0202
Email: glenn@glennwechsler.com

April 28, 2017

VIA OVERNIGHT MAIL and E-MAIL: lneal@townoffairfax.org

Ms. Linda Neal
Town of Fairfax - Principal Planner
142 Bolinas Road
Fairfax, CA 94930

RE: Walter J. Bess' Notice of Appeal
Property: 118 Tamalpais Road, Fairfax

Dear Ms. Neal:

This letter shall serve as Federal National Mortgage Association's (hereafter "Fannie Mae") response to Walter J. Bess, Jr.'s Notice of Appeal, filed with you on or about April 5, 2017.

Mr. Bess' multiple appeals have challenged the Planning Commission's issuance of variances and encroachment permit, the Town Engineer's findings and report, and have generally morphed over the years from feigned concerns over the removal of trees, concerns for the safety and stability of the hillside, to access to sewer and water lines. The most recent Appeal, however, has no legal or factual basis and reflects Mr. Bess' absolute disregard for the process.

The most recent Appeal essentially requests that the Planning Commission authorize the Town of Fairfax to intervene in a private civil dispute between the parties by requiring the granting of an easement between two contiguous property owners, which easement has absolutely no benefit to the Town. In effect, it is asking the Planning Commission to convey an interest in Fannie Mae's property to Mr. Bess, for no consideration, which easement has absolutely no relation to the construction of the stairs.

As the Commission members are all aware, Mr. Bess has raised obstacles for years in an effort to block Fannie Mae's efforts to improve its own Property, by construction of stairway access from Tamalpais Road. Now, in view of the Planning Commission's most recent approvals, Mr. Bess has done an *about face* and requests that the Town of Fairfax require Fannie Mae to grant him an easement to use Fannie Mae's stairway access to cross onto an adjoining property that Bess owns at 120 Tamalpais.¹

¹ For the last six (6) years, the Besses have been accessing both 118 and 120 Tamalpais from their neighbors' property, the Pikkaraneans, located at 124 Tamalpais. There is no reason to think that they cannot continue to access 120 Tamalpais in that same manner.

ATTACHMENT C

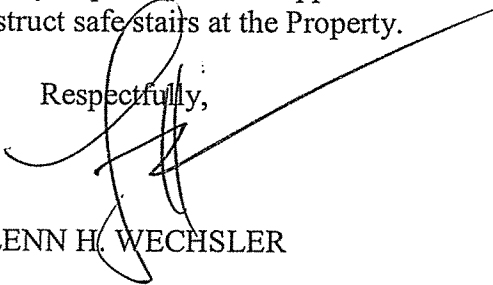
Finally, "equitable easements" are interests in land. While a Court of law is empowered to grant such easements in appropriate circumstances, there are numerous requirements that must be found to exist in order for a Court to exercise its equitable powers in that regard. "In appropriate cases in which the requirements for traditional easements are not present, California courts have exercised their equity powers to fashion protective interests in land belonging to another, sometimes referring to such an interest as an "equitable easement." *Tashakori v. Lakis* (2011) 196 Cal.App.4th 1003, 1008.

Not only are the requirements not present here, but the Planning Commission may not assume to act like a Court of equity and make such rulings, which require the presentation of evidence, the testimony of witnesses (expert and lay) and often involve payment of damages.

The Besses already have a pending action against Fannie Mae, and any such equitable requests would have to be made in the context of that lawsuit, and not in this proceeding. The Besses should not be permitted to continue to delay and frustrate the process for their own self-serving reasons.

Therefore, Fannie Mae respectfully requests that the Appeal be denied so that Fannie Mae can immediately begin working to construct safe stairs at the Property.

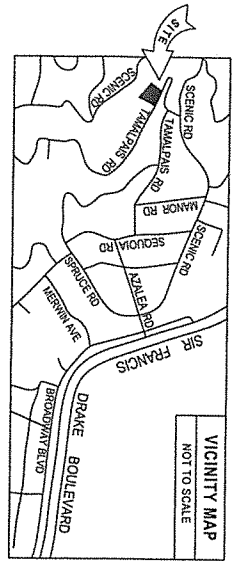
Respectfully,



GLENN H. WECHSLER

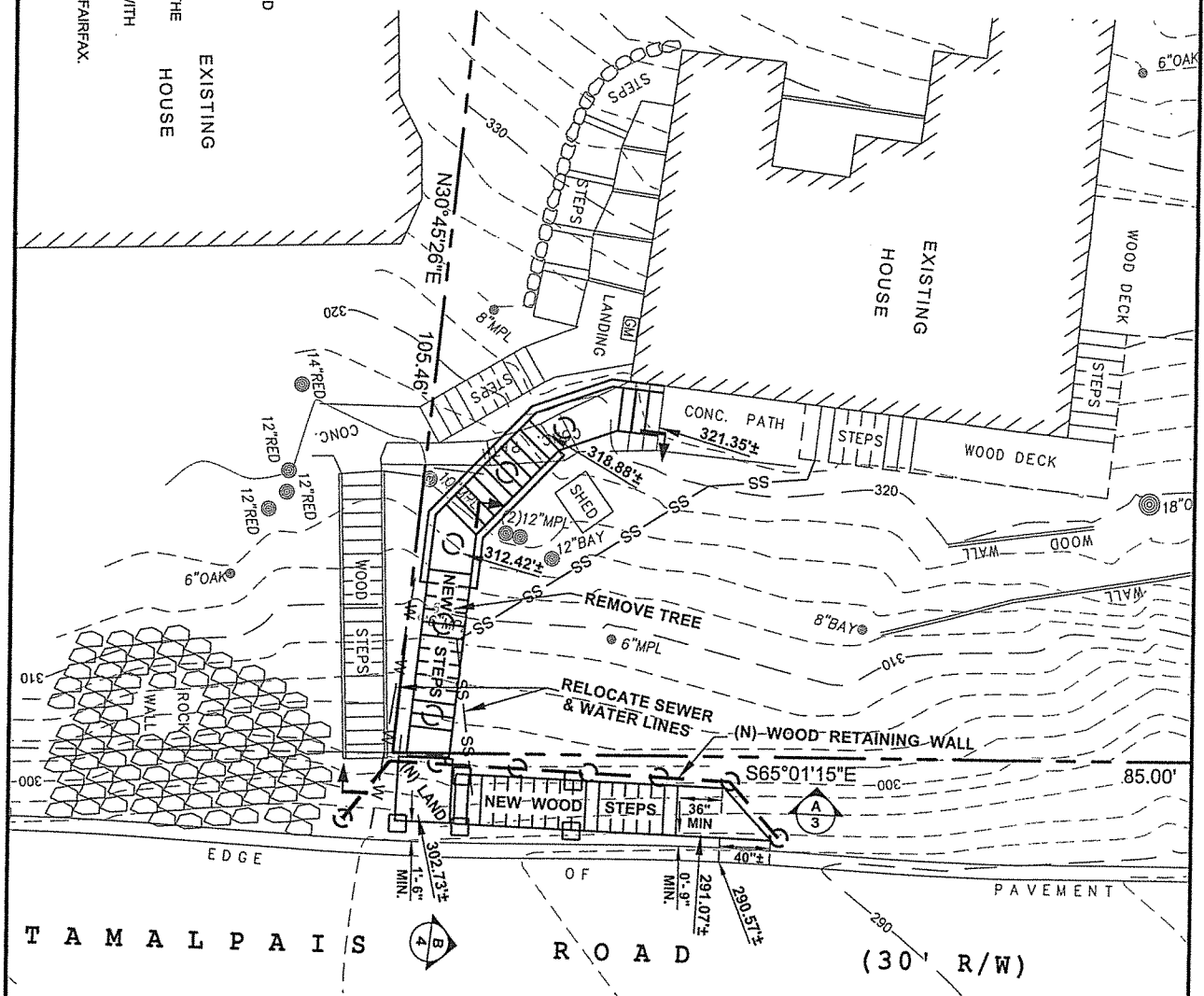
GHW/mtf

cc: Lawrence Bragman, Esq. (via facsimile (415) 459-6067 and US Mail)



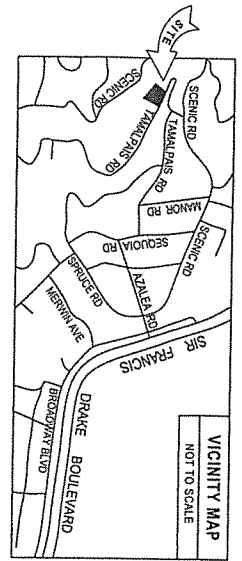
GENERAL NOTES:

1. ALL CONSTRUCTION SHALL CONFORM TO 2014 CALIFORNIA BUILDING CODE AND 2014 FAIRFAX BUILDING CODE REQUIREMENTS.
2. DESIGN AND PLACEMENT OF CONCRETE SHALL BE IN ACCORDANCE WITH THE AMERICAN CONCRETE INSTITUTE CODE AC 318.
3. ALL CONDITIONS AND DIMENSIONS TO BE VERIFIED IN THE FIELD BY THE CONTRACTOR PRIOR TO COMMENCEMENT OF WORK.
4. CONTRACTOR SHALL PROVIDE ALL NECESSARY SHORING AND PROTECTION DURING CONSTRUCTION.
5. REINFORCING STEEL TO BE ASTM 615, GRADE 60
6. CONCRETE Fc = 2500 PSI
7. LUMBER D.F. #1 Fb = 1000 PSI, Fv = 95 PSI
8. ALL HARDWARE, NAILS AND SCREWS IN CONTACT WITH PRESSURE TREATED MATERIAL SHALL BE HOT DIPPED GALVANIZED OR STAINLESS STEEL.
9. ALL FASTENERS SHALL MEET THE MINIMUM SIMPSON SPECIFICATIONS.
10. CONSTRUCTION INSPECTION SHALL BE CARRIED OUT BY A REGISTERED ENGINEER AND FAIRFAX BUILDING OFFICIAL.
11. CATCH BASIN SEDIMENT CONTROL SHALL BE INSTALLED AT THE NEAREST MAJOR STORM DRAIN DROP INLETS (SEE PLAN DETAIL 1, SHEET 3).
12. THE CONTRACTOR SHALL CONSIDER THE POTENTIAL FOR EROSION AND SEDIMENTATION AT THE SITE AND COMPLY WITH MARIN COUNTY CODE (MCC) 24.04.625 & 24.04.627.
13. THE CONTRACTOR PERFORMING WORK IN THE COUNTY OF MARIN SHALL IMPLEMENT THE APPROPRIATE BMP PUSUANT TO MCC 23.18.093 TO PREVENT THE DISCHARGE OF CONSTRUCTION WASTES OR CONTAMINANTS FROM CONSTRUCTION MATERIALS, TOOLS AND EQUIPMENT FROM ENTERING A COUNTY STORM DRAIN SYSTEM.
14. THE CONTRACTOR SHALL DISPOSE OF ANY HAZARDOUS EARTHWORK FROM THE SITE TO THE APPROPRIATE FACILITY IN A LEGAL MANNER.
15. CONTRACTOR SHALL PROVIDE EROSION CONTROL MATS AND/OR BLANKETS IN AREAS IN THE VICINITY OF DISTURBED EARTH PRIOR TO EXCAVATION.
16. ALL CUT PTFE TIMBER AND TIMBER IN CONTACT WITH CONNECTORS SHALL BE TREATED WITH COPPER-GREEN WOOD PRESERVATIVE OR EQUIVALENT.
17. CONTRACTOR SHALL RELOCATE SEWER AND WATER LINES AS REQUIRED BY THE CITY OF FAIRFAX.



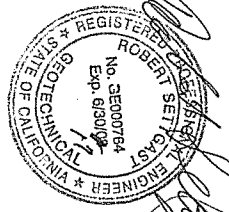
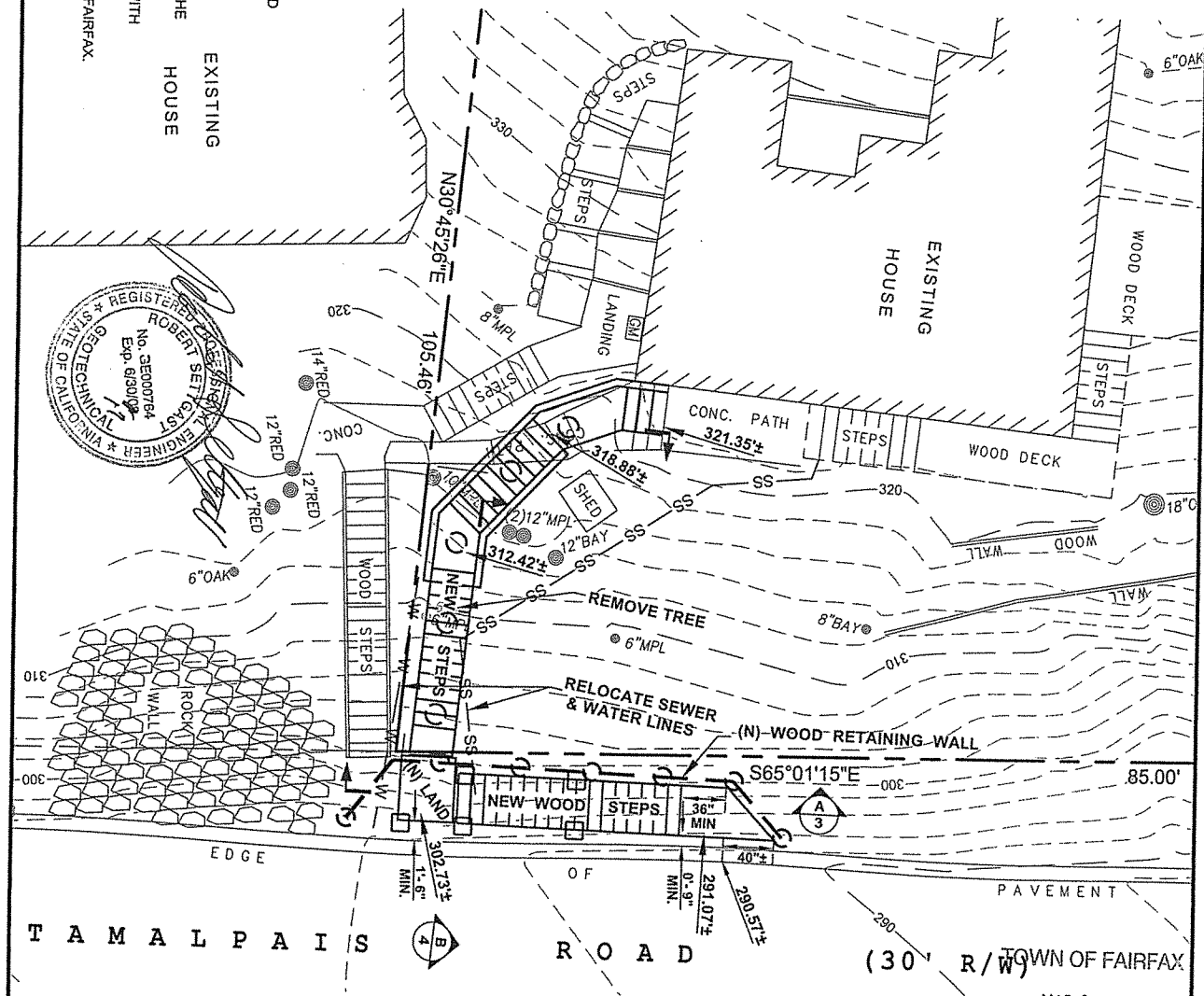
SCALE BAR		SCALE: 1/8" = 1'-0"		STAIRWAY IMPROVEMENT PLAN	ALS14025
AMERICAN LAND SURVEYING, INC. 1390 MARKET ST, #112, SAN FRANCISCO, CA 94102 PH: (415) 889-8880 sf@alspls.com FX: (866) 260-5454		DATE: 2/27/2016 DRAFTED: JE CHECKED: KP APPROVED: RS FILE#: ALS14025			
1	JE	8/20/2014	STAIRS MOVED AWAY FROM STREET ADDED TOPOGRAPHIC MAP	118 TAMALPAIS ROAD LANDS OF FEDERAL NATIONAL MORTGAGE ASSOC. FAIRFAX, CA	
No.	BY	DATE	REV.	APN: 001-121-61	

Attachment D



GENERAL NOTES:

1. ALL CONSTRUCTION SHALL CONFORM TO 2014 CALIFORNIA BUILDING CODE AND 2014 FAIRFAX BUILDING CODE REQUIREMENTS.
2. DESIGN AND PLACEMENT OF CONCRETE SHALL BE IN ACCORDANCE WITH THE AMERICAN CONCRETE INSTITUTE CODE AC 318.
3. ALL CONDITIONS AND DIMENSIONS TO BE VERIFIED IN THE FIELD BY THE CONTRACTOR PRIOR TO COMMENCEMENT OF WORK.
4. CONTRACTOR SHALL PROVIDE ALL NECESSARY SHORING AND PROTECTION DURING CONSTRUCTION.
5. REINFORCING STEEL TO BE ASTM 615, GRADE 60
6. CONCRETE Fc = 2500 PSI
7. LUMBER D.F. #1 Fb = 1000 PSI, Fv = 95 PSI
8. ALL HARDWARE, NAILS AND SCREWS IN CONTACT WITH PRESSURE TREATED MATERIAL SHALL BE HOT DIPPED GALVANIZED OR STAINLESS STEEL.
9. ALL FASTENERS SHALL MEET THE MINIMUM SIMPSON SPECIFICATIONS.
10. CONSTRUCTION INSPECTION SHALL BE CARRIED OUT BY A REGISTERED ENGINEER AND FAIRFAX BUILDING OFFICIAL.
11. CATCH BASIN SEDIMENT CONTROL SHALL BE INSTALLED AT THE NEAREST MAJOR STORM DRAIN INLETS (SEE PLAN DETAIL 1, SHEET 3).
12. THE CONTRACTOR SHALL CONSIDER THE POTENTIAL FOR EROSION AND SEDIMENTATION AT THE SITE AND COMPLY WITH MARIN COUNTY CODE (MCC) 24.04.623 & 24.04.627.
13. THE CONTRACTOR PERFORMING WORK IN THE COUNTY OF MARIN SHALL IMPLEMENT THE APPROPRIATE BMP PUSUANT TO MCC 23.18.093 TO PREVENT THE DISCHARGE OF CONSTRUCTION WASTES OR CONTAMINANTS FROM CONSTRUCTION MATERIALS, TOOLS AND EQUIPMENT FROM ENTERING A COUNTY STORM DRAIN SYSTEM.
14. THE CONTRACTOR SHALL DISPOSE OF ANY HAZARDOUS EARTHWORK FROM THE SITE TO THE APPROPRIATE FACILITY IN A LEGAL MANNER.
15. CONTRACTOR SHALL PROVIDE EROSION CONTROL MATS AND/OR BLANKETS IN AREAS IN THE VICINITY OF DISTURBED EARTH PRIOR TO EXCAVATION.
16. ALL CUT PTFE TIMBER AND TIMBER IN CONTACT WITH CONNECTORS SHALL BE TREATED WITH COPPER-GREEN WOOD PRESERVATIVE OR EQUIVALENT.
17. CONTRACTOR SHALL RELOCATE SEWER AND WATER LINES AS REQUIRED BY THE CITY OF FAIRFAX.



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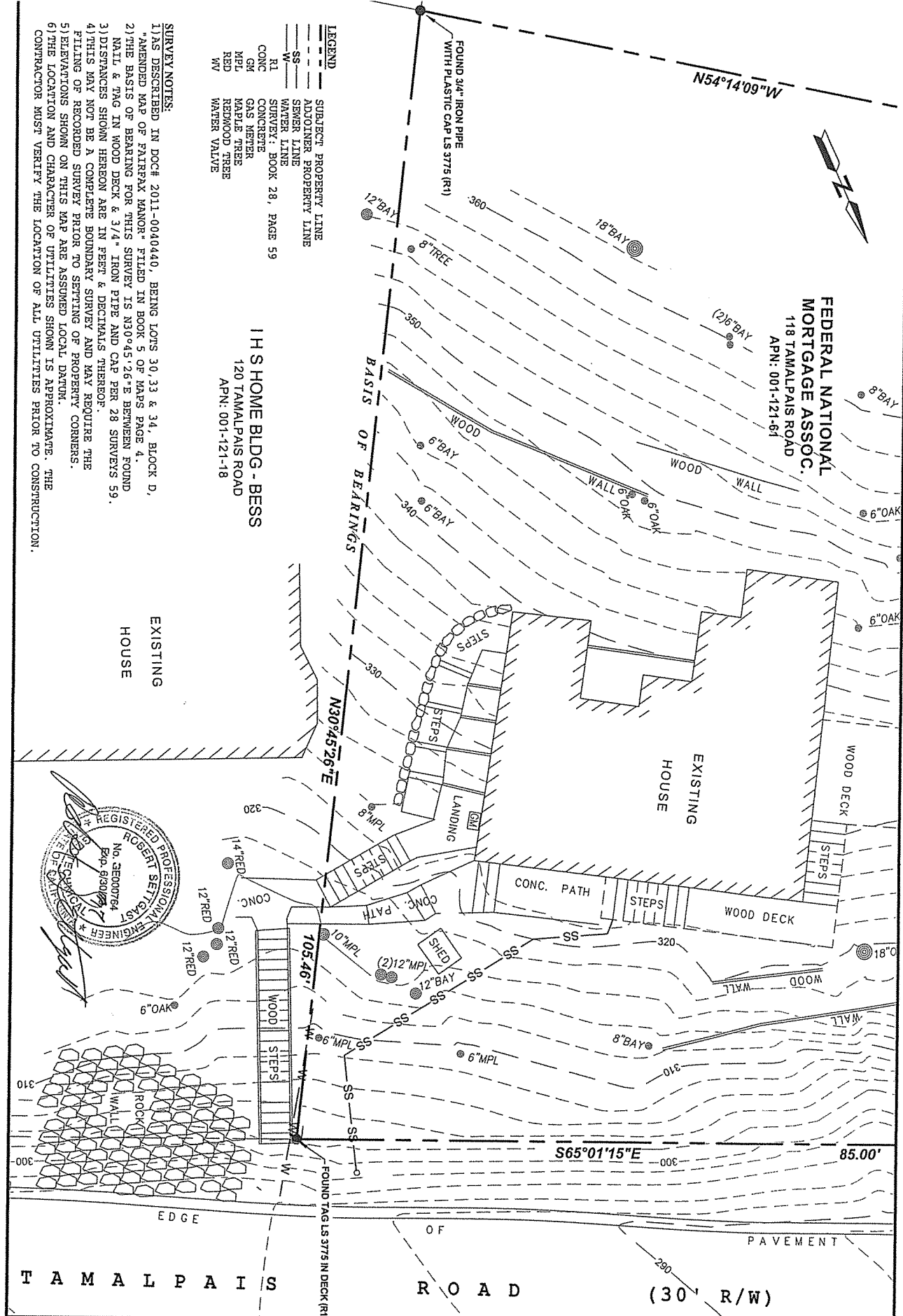
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<p>AMERICAN LAND SURVEYING, INC.</p> <p>1390 MARKET ST, #112, SAN FRANCISCO, CA 94102</p> <p>PH: (415) 888-8580 sf@alspls.com FX: (866) 260-5454</p>				<p>No. BY DATE REV.</p> <p>1 JE 8/20/2014 STAIRS MOVED AWAY FROM STREET</p> <p>ADDED TOPOGRAPHIC MAP</p>		<p>SHEET</p> <p>1 of 5</p> <p>APN: 001-121-61</p>		

- LEGEND**
- SUBJECT PROPERTY LINE
 - ADJOINER PROPERTY LINE
 - SS--- SEWER LINE
 - W--- WATER LINE
 - R1 SURVEY: BOOK 28, PAGE 59
 - CONC CONCRETE
 - GM GAS METER
 - MPL MAPLE TREE
 - RED REDWOOD TREE
 - WV WATER VALVE

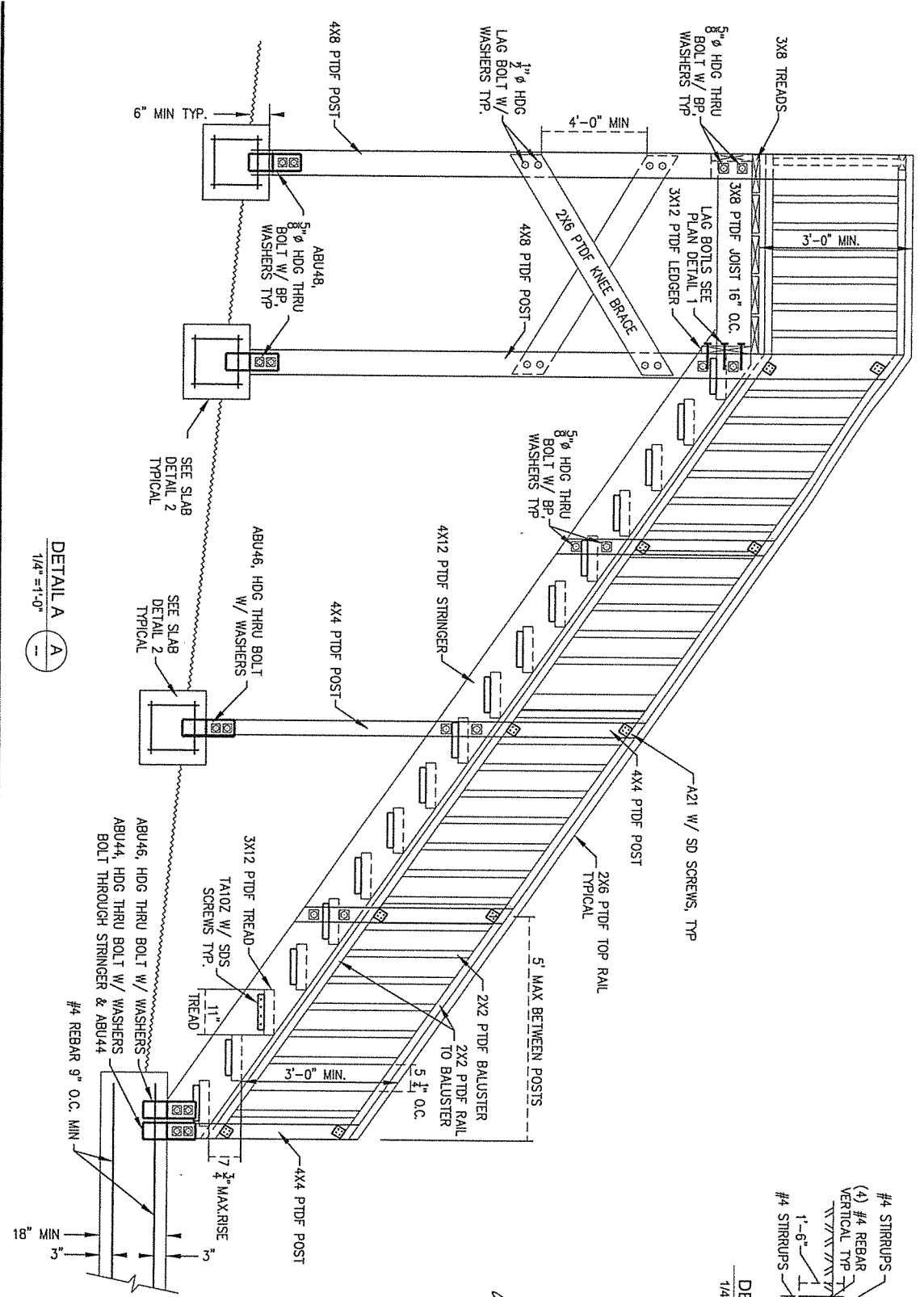
SURVEY NOTES:
 1) AS DESCRIBED IN DOC# 2011-0040440, BEING LOTS 30, 33 & 34, BLOCK D,
 "AMENDED MAP OF FAIRFAX MANOR" FILED IN BOOK 5 OF MAPS PAGE 4.
 2) THE BASIS OF BEARING FOR THIS SURVEY IS N30°45'26"E BETWEEN FOUND
 NAIL & TAG IN WOOD DECK & 3/4" IRON PIPE AND CAP PER 28 SURVEYS 59.
 3) DISTANCES SHOWN HEREON ARE IN FEET & DECIMALS THEREOF.
 4) THIS MAY NOT BE A COMPLETE BOUNDARY SURVEY AND MAY REQUIRE THE
 FILING OF RECORDED SURVEY PRIOR TO SETTING OF PROPERTY CORNERS.
 5) ELEVATIONS SHOWN ON THIS MAP ARE ASSUMED LOCAL DATUM.
 6) THE LOCATION AND CHARACTER OF UTILITIES SHOWN IS APPROXIMATE. THE
 CONTRACTOR MUST VERIFY THE LOCATION OF ALL UTILITIES PRIOR TO CONSTRUCTION.

I H S HOME BLDG - BESS
 120 TAMALPAIS ROAD
 APN: 001-121-18

**FEDERAL NATIONAL
 MORTGAGE ASSOC.**
 118 TAMALPAIS ROAD
 APN: 001-121-61

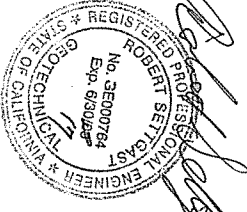


ORIGINAL SCALE: 1" = 8' 			SCALE: AS NOTED DATE: 2/27/2016 DRAFTED: JE CHECKED: KP APPROVED: SG FILE#: ALS14025			STAIRWAY IMPROVEMENT PLAN ALS14025
AMERICAN LAND SURVEYING, INC. 1390 MARKET ST, #112, SAN FRANCISCO, CA 94102 PH: (415) 888-8580 sl@spls.com FX: (666) 260-5454	1 JE 8/20/2014 STAIRS MOVED AWAY FROM STREET ADDED TOPOGRAPHIC MAP	No. BY DATE REV.	TOPOGRAPHIC MAP 118 TAMALPAIS ROAD LANDS OF FEDERAL NATIONAL MORTGAGE ASSOC. FAIRFAX, CA APN: 001-121-61			SHEET 2 of 5

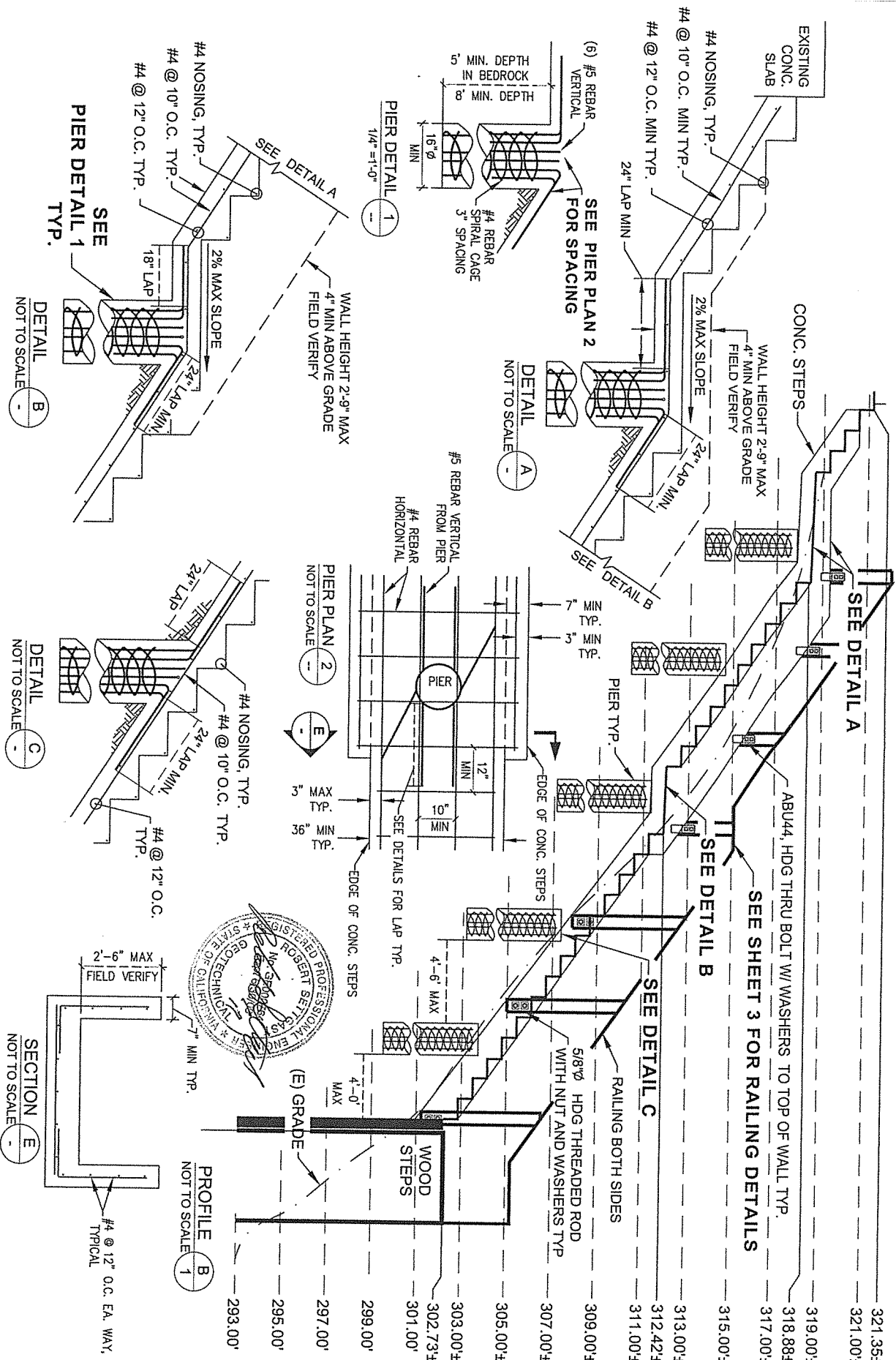


DETAIL A
1/4" = 1'-0"

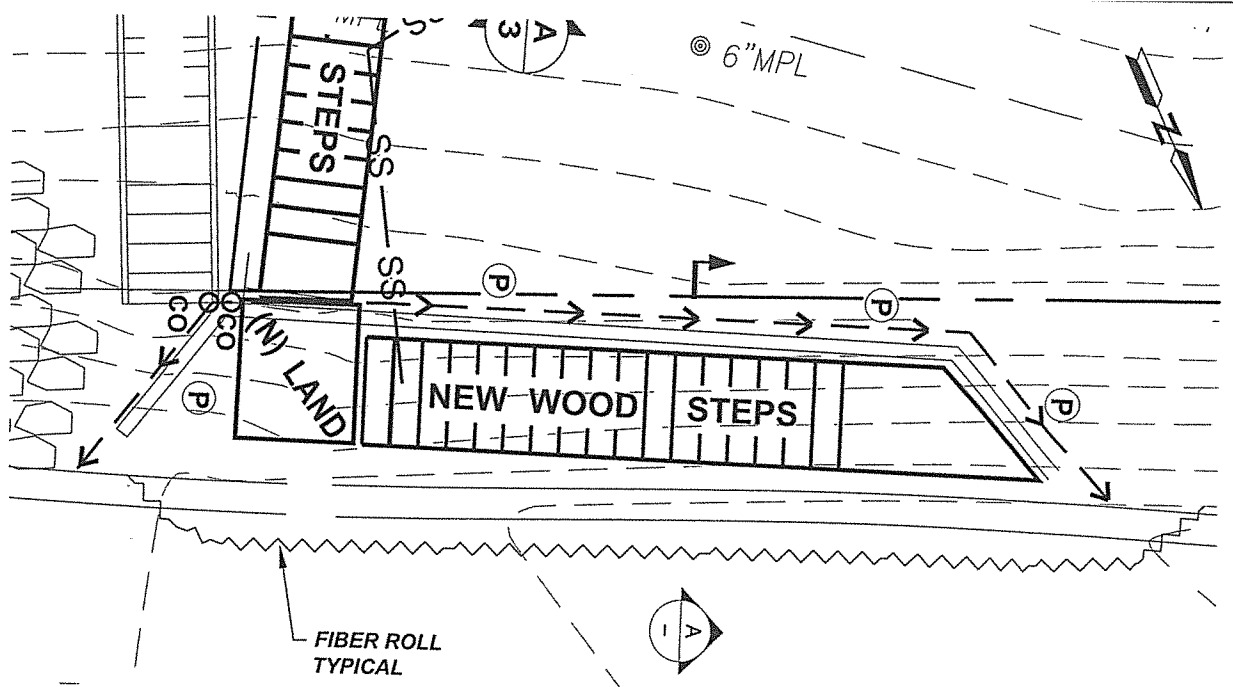
DETAIL 2
1/4" = 1'-0"



<p>SCALE BAR</p>		<p>SCALE: AS NOTED</p> <p>DATE: 2/27/2016</p> <p>DRAFTED: JE</p> <p>CHECKED: KP</p> <p>APPROVED: RS</p> <p>FILE#: ALS14025</p>		<p>STAIRWAY IMPROVEMENT PLAN</p> <p>WOOD STAIR PROFILE AND DETAILS</p> <p>118 TAMALPAIS ROAD</p> <p>LANDS OF FEDERAL NATIONAL MORTGAGE ASSOC.</p> <p>FAIRFAX, CA</p> <p>APN: 001-121-61</p>		<p>ALS14025</p> <p>SHEET</p> <p>3 of 5</p>
<p>AMERICAN LAND SURVEYING, INC.</p> <p>1390 MARKET ST., #112, SAN FRANCISCO, CA 94102</p> <p>PH: (415) 888-8580 sl@alspls.com FX: (866) 260-5454</p>	<p>1</p> <p>JE</p> <p>8/20/2014</p>	<p>STAIRS MOVED AWAY FROM STREET</p> <p>ADDED TOPOGRAPHIC MAP</p>	<p>No.</p> <p>BY</p> <p>DATE</p> <p>REV.</p>	<p>FILE#: ALS14025</p>	<p>APN: 001-121-61</p>	<p>APN: 001-121-61</p>

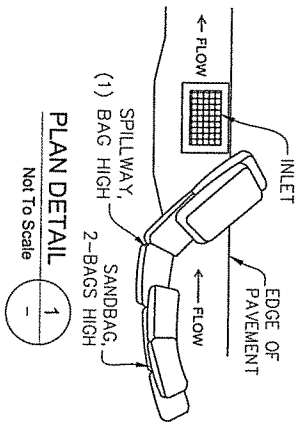
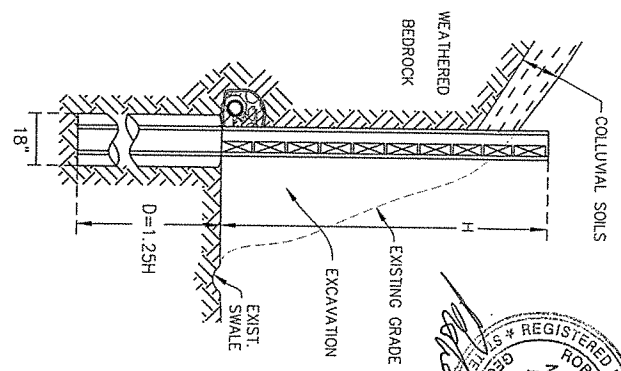


SCALE BAR 		SCALE: AS NOTED DATE: 2/27/2016 DRAFTED: JE CHECKED: KP APPROVED: RS FILE#: ALS14025		STAIRWAY IMPROVEMENT PLAN CONCRETE STAIR PROFILE 118 TAMALPAIS ROAD LANDS OF FEDERAL NATIONAL MORTGAGE ASSOC. FAIRFAX, CA APN: 001-121-61	ALS14025
AMERICAN LAND SURVEYING, INC. 1390 MARKET ST, #112, SAN FRANCISCO, CA 94102 PH:(415) 888-8580 sf@alstps.com FX:(866) 260-5454		1 JE 8/20/2014 STAIRS MOVED AWAY FROM STREET ADDED TOPOGRAPHIC MAP			SHEET 4 of 5



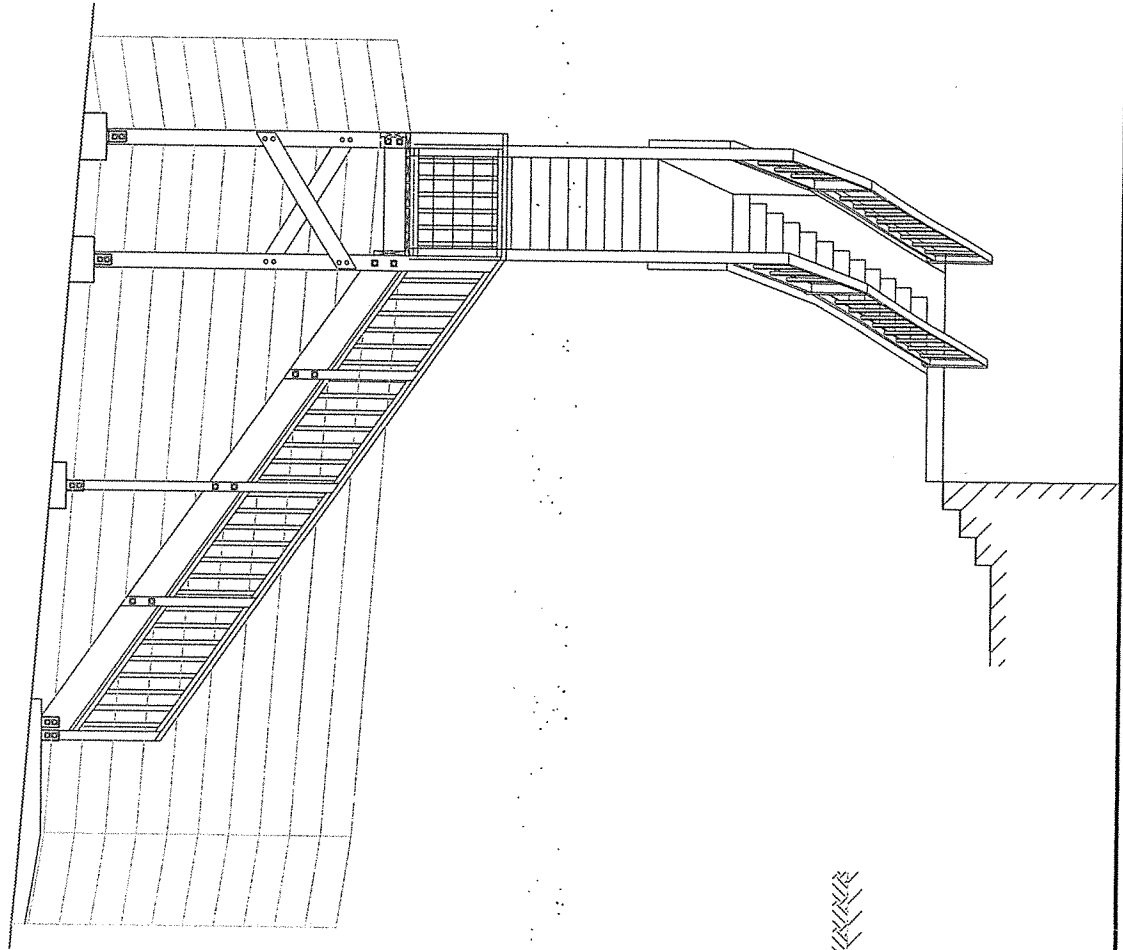
1. WORK TO BE MONITORED AND APPROVED BY ENGINEER WHO WOULD IMPLEMENT APPROPRIATE MODIFICATIONS TO SUITE EXPOSED CONDITIONS.
2. SOCKETS DRILLED ON 5 FOOT CENTERS. POSITIONS MAY BE ADJUSTED TO FACILITATE DRILLING.
3. 1-BEAMS TO BE 50 KSI STEEL:
 -WBX28 OR EQUAL FOR HEIGHT H<11 FT
 -WBX24 OR EQUAL FOR HEIGHT H<10 FT
 -WBX21 OR EQUAL FOR HEIGHT H<9 FT
 -WBX15 OR EQUAL FOR HEIGHT H<8 FT
4. CONCRETE TO BE AT LEAST 2500 PSI
5. LAGGING TO BE 4X12 GRADE 2 DF OR EQUAL; & APPROVED FOR EARTH CONTACT. CUTS TO BE TREATED WITH PRESERVATIVE. LAGGING MAY BE REDUCED TO 3X12 IF APPROVED BY THE ENGINEER.
6. 3/8" INCH GAPS BETWEEN LAGGING.
7. SPACING BELOW BOTTOM LAGGING MEMBER MAY BE ADJUSTED BY ENGINEER.
8. CLASS 2 PERMEABLE DRAINROCK OR MIRRODRAN FOR BACKDRAIN.
9. BOTTOM-PERF PIPE MAY BE DELETED IF SEEPAGE AT BASE IS ACCEPTABLE.
10. FINAL GRADING FOR DRAINAGE TO BE DEVELOPED DURING CONSTRUCTION.

- LEGEND**
- (P) 4" Ø PERFORATED SDR 35 PIPE
- MASS EXCAVATION QUANTITIES:**
 CUT = 17 ± C.Y.
 FILL = 0 ± C.Y.

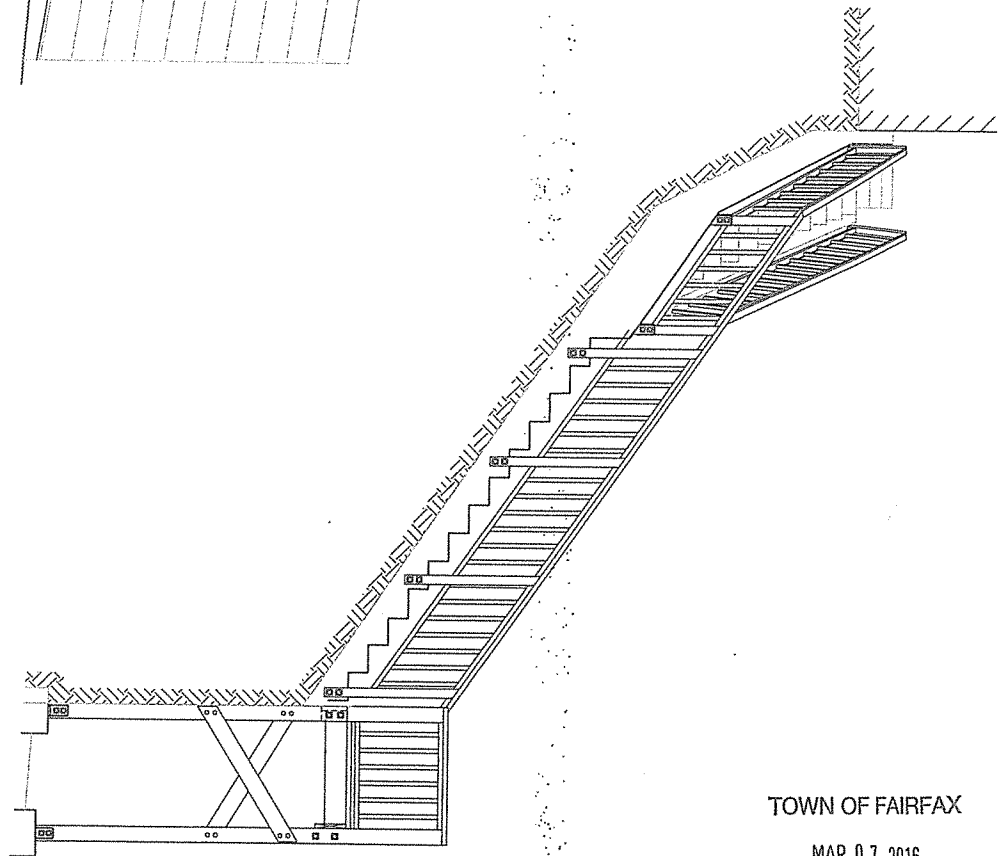


SCALE BAR 		SCALE: AS NOTED DATE: 2/27/2016 DRAFTED: JE CHECKED: KP APPROVED: RS FILE#: ALS14025		STAIRWAY IMPROVEMENT PLAN GRADING, DRAINAGE & RETAINING WALL PLAN 118 TAMALPAIS ROAD LANDS OF FEDERAL NATIONAL MORTGAGE ASSOC. FAIRFAX, CA APN: 001-121-61		ALS14025 SHEET 5 of 5	
AMERICAN LAND SURVEYING, INC. 1399 MARKET ST., #112, SAN FRANCISCO, CA 94102 PH: (415) 888-8580 sf@alspts.com FX: (866) 260-5454		No. BY DATE REV. 1 JE 8/20/2014 STAIRS MOVED AWAY FROM STREET ADDED TOPOGRAPHIC MAP					

FRONT / SOUTHWESTERLY ELEVATION



SIDE / NORTHWESTERLY ELEVATION

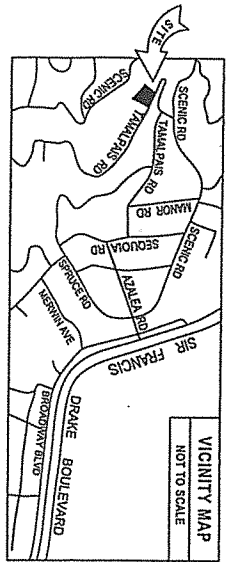


TOWN OF FAIRFAX

MAR 07 2016

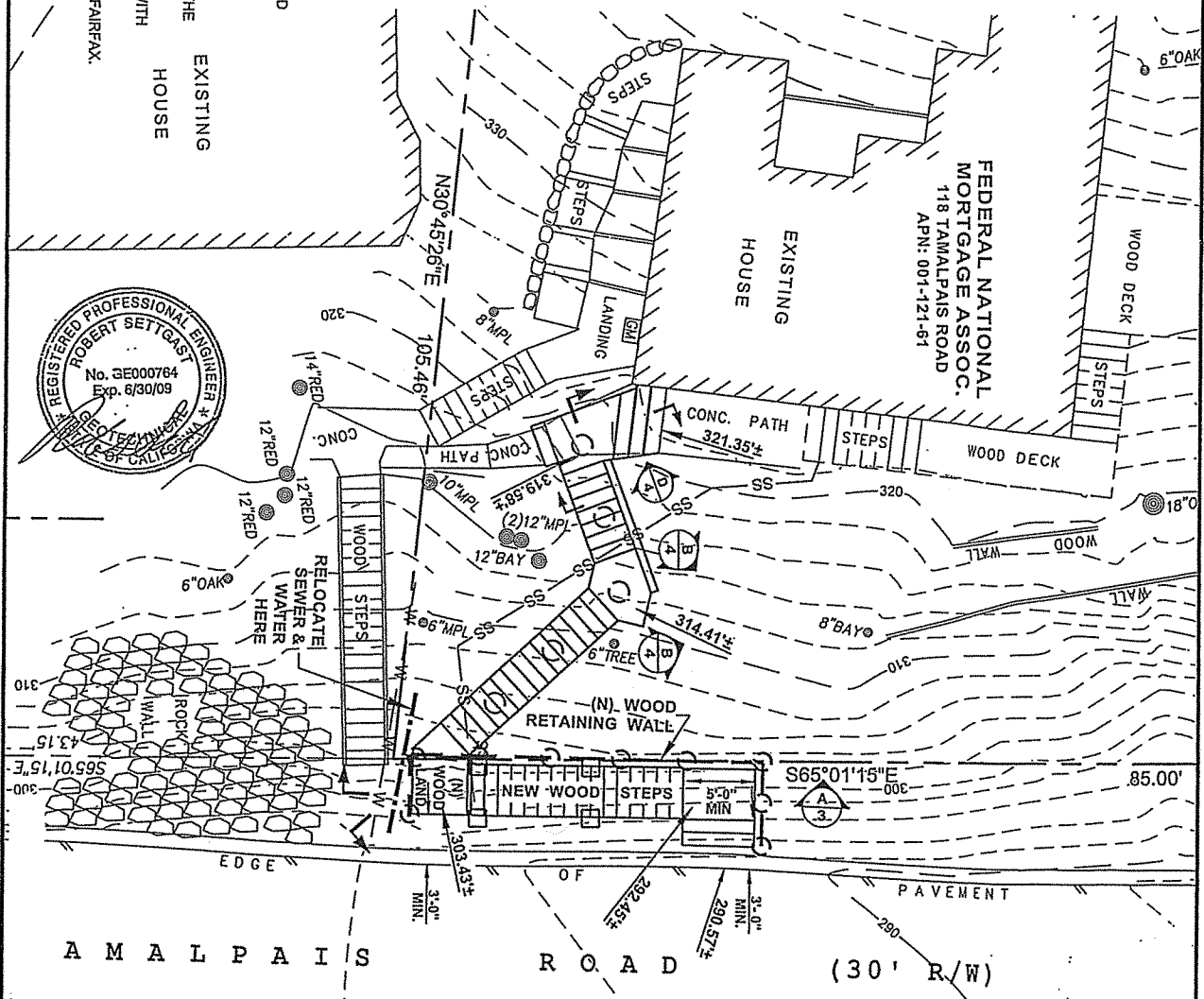
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<p>SCALE: 1/4" = 1'-0"</p>	<p>SCALE: AS NOTED</p> <p>DATE: 3/2/2016</p> <p>DRAFTED: JE</p> <p>CHECKED: KP</p> <p>APPROVED: RS</p> <p>FILE#: ALS14025</p>	<p>FRONT & SIDE ELEVATIONS</p>	<p>ALS14025</p>								
<p>AMERICAN LAND SURVEYING, INC. 1390 MARKET ST., #303, SAN FRANCISCO, CA 94102 PH: (415) 888-8580 sf@alspls.com FX: (866) 260-5454</p>	<table border="1"> <thead> <tr> <th>No.</th> <th>BY</th> <th>DATE</th> <th>REV.</th> </tr> </thead> <tbody> <tr> <td> </td> <td> </td> <td> </td> <td> </td> </tr> </tbody> </table>	No.	BY	DATE	REV.					<p>118 TAMALPAIS ROAD LANDS OF FEDERAL NATIONAL MORTGAGE ASSOC. FAIRFAX, CA</p>	<p>SHEET 1 of 1</p>
No.	BY	DATE	REV.								



GENERAL NOTES:

1. ALL CONSTRUCTION SHALL CONFORM TO 2014 CALIFORNIA BUILDING CODE AND 2014 FAIRFAX BUILDING CODE REQUIREMENTS.
2. DESIGN AND PLACEMENT OF CONCRETE SHALL BE IN ACCORDANCE WITH THE AMERICAN CONCRETE INSTITUTE CODE AC 318.
3. ALL CONDITIONS AND DIMENSIONS TO BE VERIFIED IN THE FIELD BY THE CONTRACTOR PRIOR TO COMMENCEMENT OF WORK.
4. CONTRACTOR SHALL PROVIDE ALL NECESSARY SHORING AND PROTECTION DURING CONSTRUCTION.
5. REINFORCING STEEL TO BE ASTM 615, GRADE 60
6. CONCRETE Fc = 2500 PSI
7. LUMBER D.F. #1 Fb = 1000 PSI, Fv = 95 PSI
8. ALL HARDWARE, NAILS AND SCREWS IN CONTACT WITH PRESSURE TREATED MATERIAL SHALL BE HOT DIPPED GALVANIZED OR STAINLESS STEEL.
9. ALL FASTENERS SHALL MEET THE MINIMUM SIMPSON SPECIFICATIONS.
10. CONSTRUCTION INSPECTION SHALL BE CARRIED OUT BY A REGISTERED ENGINEER AND FAIRFAX BUILDING OFFICIAL.
11. CATCH BASIN SEDIMENT CONTROL SHALL BE INSTALLED AT THE NEAREST MAJOR STORM DRAIN INLETS (SEE PLAN DETAIL 1, SHEET 3).
12. THE CONTRACTOR SHALL CONSIDER THE POTENTIAL FOR EROSION AND SEDIMENTATION AT THE SITE AND COMPLY WITH MARIN COUNTY CODE (MCC) 24.04.625 & 24.04.627.
13. THE CONTRACTOR PERFORMING WORK IN THE COUNTY OF MARIN SHALL IMPLEMENT THE APPROPRIATE BMP PUSUANT TO MCC 23.18.093 TO PREVENT THE DISCHARGE OF CONSTRUCTION WASTES OR CONTAMINANTS FROM CONSTRUCTION MATERIALS, TOOLS AND EQUIPMENT FROM ENTERING A COUNTY STORM DRAIN SYSTEM.
14. THE CONTRACTOR SHALL DISPOSE OF ANY HAZARDOUS EARTHWORK FROM THE SITE TO THE APPROPRIATE FACILITY IN A LEGAL MANNER.
15. CONTRACTOR SHALL PROVIDE EROSION CONTROL MATS AND/OR BLANKETS IN AREAS IN THE VICINITY OF DISTURBED EARTH PRIOR TO EXCAVATION.
16. ALL CUT PTD OF TIMBER AND TIMBER IN CONTACT WITH CONNECTORS SHALL BE TREATED WITH COPPER-GREEN WOOD PRESERVATIVE OR EQUIVALENT.
17. CONTRACTOR SHALL RELOCATE SEWER AND WATER LINES AS REQUIRED BY THE CITY OF FAIRFAX.



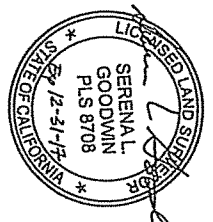
SCALE BAR		2		JE	9/15/2016	ADDRESS TOWN OF FAIRFAX COMMENTS	SCALE: 1/8" = 1'-0"	STAIRWAY IMPROVEMENT PLAN		ALS14025
		1		JE	8/20/2014	STAIRS MOVED AWAY FROM STREET	DATE: 9/15/2016	SITE PLAN - GENERAL NOTES		SHEET
						ADDED TOPOGRAPHIC MAP	DRAFTED: JE	118 TAMALPAIS ROAD		1 of 6
							CHECKED: KP	LANDS OF FEDERAL NATIONAL MORTGAGE ASSOC.		
							APPROVED: RS	FAIRFAX, CA		
							FILE#: ALS14025	APN: 001-121-61		

ATTACHMENT E

LEGEND

---	SUBJECT PROPERTY LINE
---	ADJOINER PROPERTY LINE
---	SEWER LINE
---	WATER LINE
---	CONCRETE
---	GAS METER
---	MANHOLE
---	MAPLE TREE
---	REMOVED TREE
---	WATER VALVE

MILLER
APN: 001-121-50



URVEY NOTES:

(1) DISTANCES SHOWN HEREON ARE IN FEET & DECIMALS THEREOF.

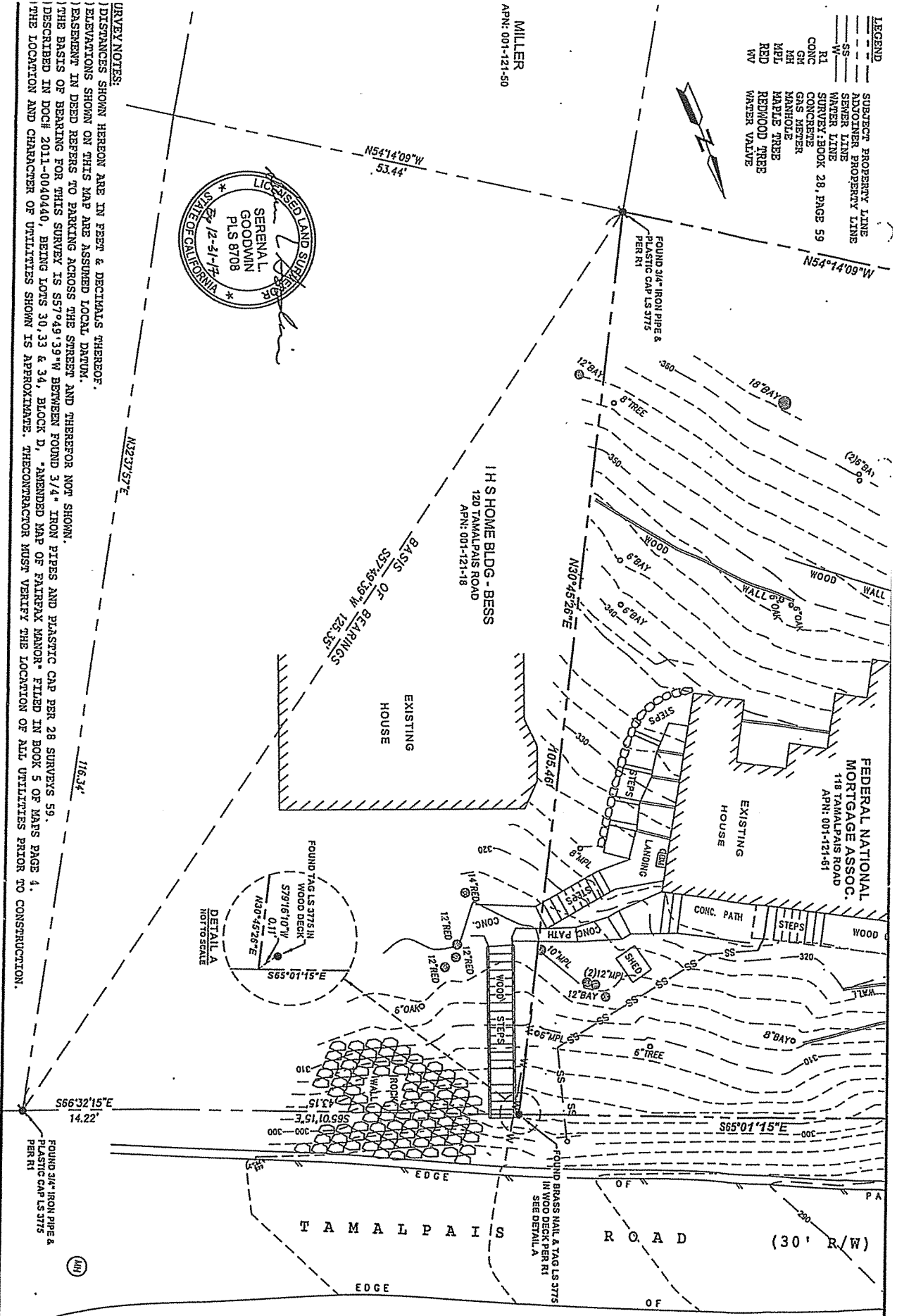
(2) ELEVATIONS SHOWN ON THIS MAP ARE ASSUMED LOCAL DATUM.

(3) EASEMENT IN DEED REFERS TO PARKING ACROSS THE STREET AND THEREFOR NOT SHOWN.

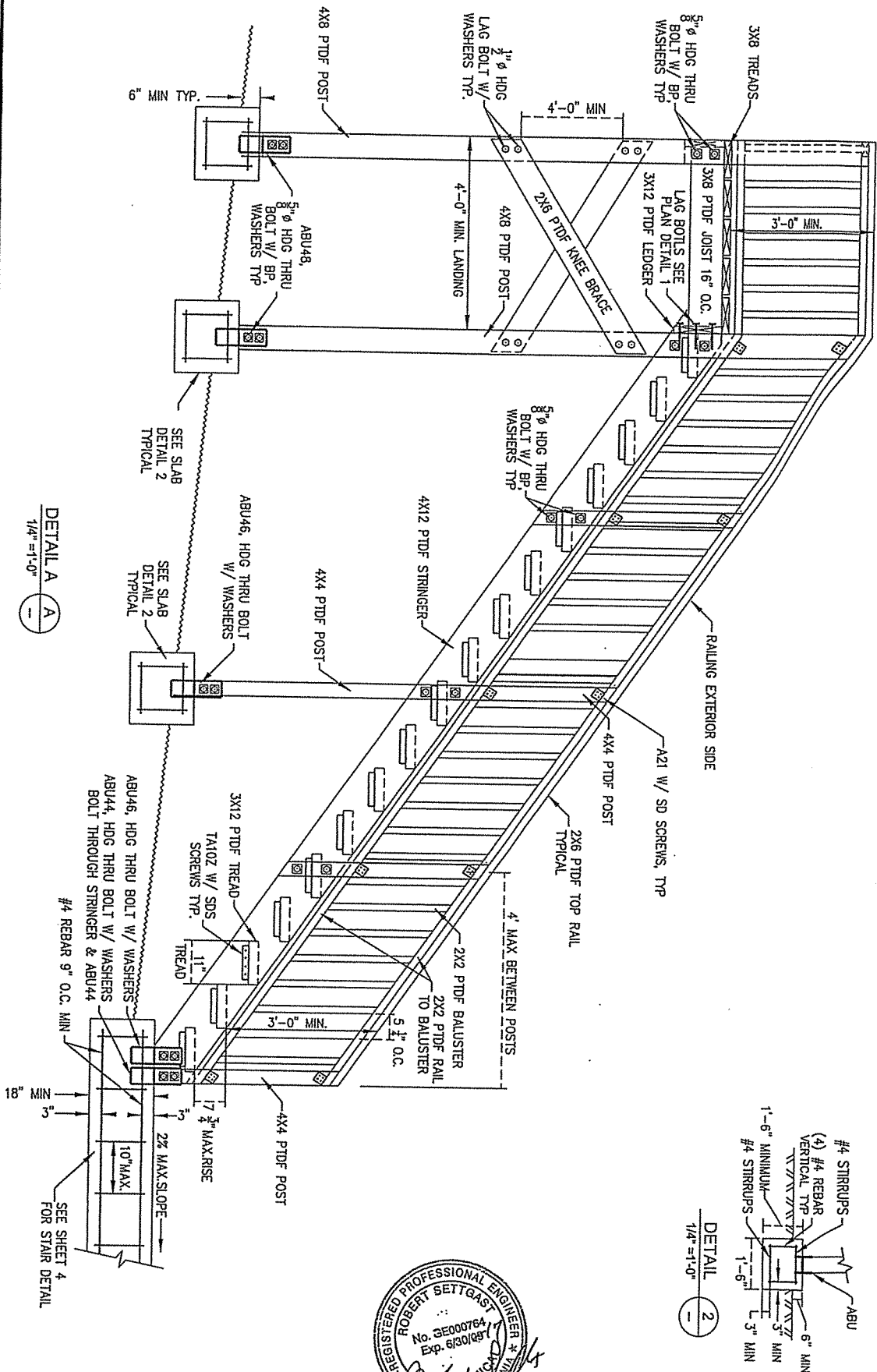
(4) THE BASIS OF BEARING FOR THIS SURVEY IS S57°49'39"W BETWEEN FOUND 3/4" IRON PIPES AND PLASTIC CAP PER 28 SURVEYS 59.

(5) DESCRIBED IN DOC# 2011-0040440, BEING LOTS 30, 33 & 34, BLOCK D, "AMENDED MAP OF FAIRFAX MANOR" FILED IN BOOK 5 OF MAPS PAGE 4.

(6) THE LOCATION AND CHARACTER OF UTILITIES SHOWN IS APPROXIMATE. THE CONTRACTOR MUST VERIFY THE LOCATION OF ALL UTILITIES PRIOR TO CONSTRUCTION.

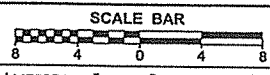


ORIGINAL SCALE: 1" = 10'		SCALE: AS NOTED		STAIRWAY IMPROVEMENT PLAN		ALS14025
10 5 0 5 10		DATE: 9/15/2016		TOPOGRAPHIC MAP		SHEET 2 of 6
AMERICAN LAND SURVEYING, INC. 1390 MARKET ST, #112, SAN FRANCISCO, CA 94102 PH: (415) 888-8580 sl@slpltr.com FX: (666) 269-8454		DRAFTED: JE		LANDS OF FEDERAL NATIONAL MORTGAGE ASSOC. FAIRFAX, CA		
No.	BY	DATE	REV.	DATE: 9/15/2016	APN: 001-121-61	
2	JE	9/15/2016	ADDRESS TOWN OF FAIRFAX COMMENTS	DATED 8/1/2016		
1	JE	8/20/2014	STAIRS MOVED AWAY FROM STREET	CHECKED: KP		
			ADDED TOPOGRAPHIC MAP	APPROVED: SG		
				FILED: ALS14025		



DETAIL A
1/4" = 1'-0"

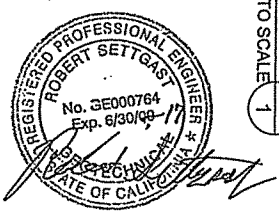
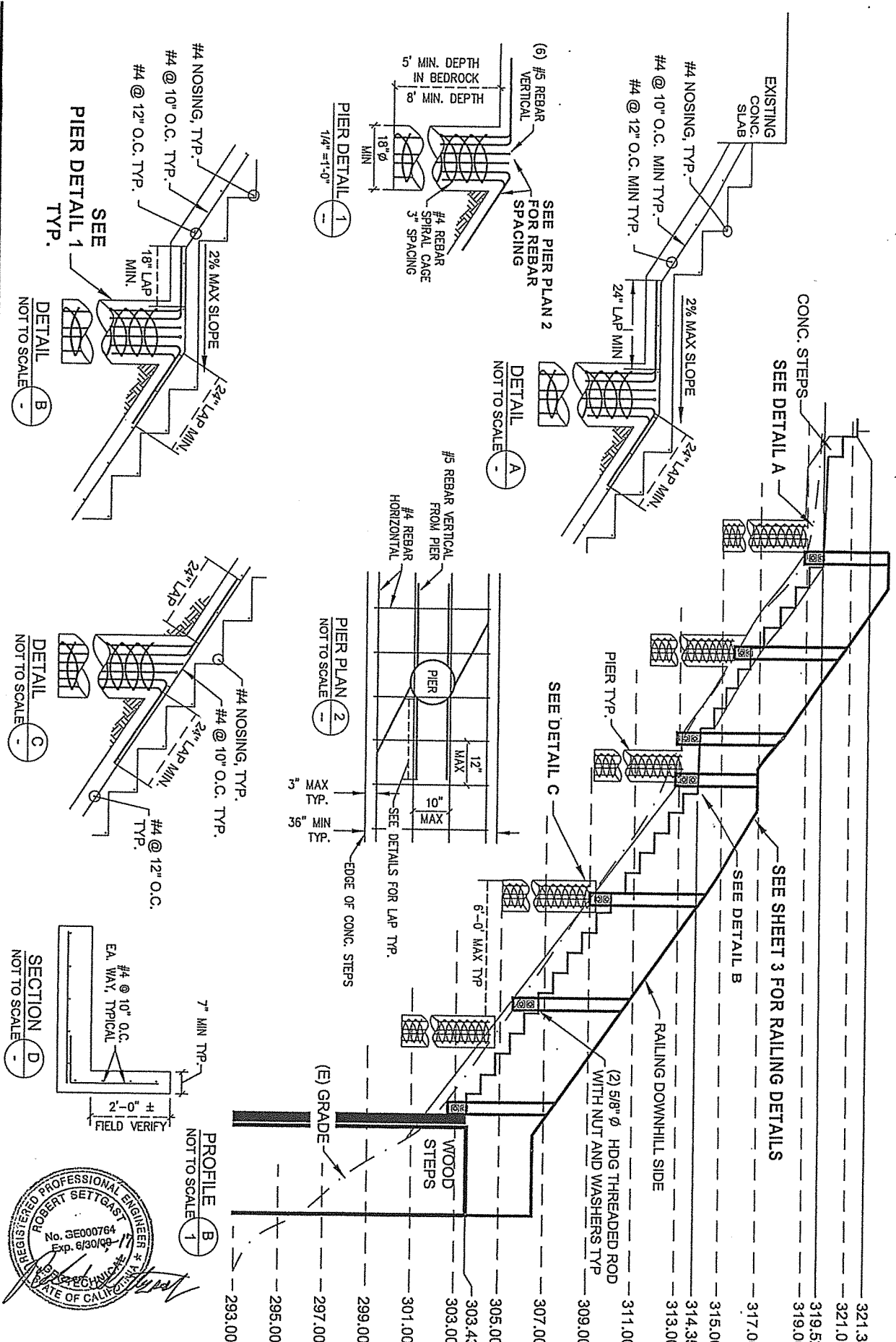
DETAIL 2
1/4" = 1'-0"



No.	BY	DATE	REV.
2	JE	9/15/2016	ADDRESS TOWN OF FAIRFAX COMMENTS
1	JE	8/20/2014	STAIRS MOVED AWAY FROM STREET
			ADDED TOPOGRAPHIC MAP

SCALE: AS NOTED	DATE: 9/15/2016	STAIRWAY IMPROVEMENT PLAN	ALS14025
DRAFTED: JE	CHECKED: KP		
APPROVED: RS	FILE#: ALS14025	WOOD STAIR PROFILE AND DETAILS	SHEET
		118 TAMALPAIS ROAD	3 of 6
		LANDS OF FEDERAL NATIONAL MORTGAGE ASSOC.	
		FAIRFAX, CA	APN: 001-121-61

AMERICAN LAND SURVEYING, INC.
1390 MARKET ST., #112, SAN FRANCISCO, CA 94103
PH: (415) 888-8580 alslps.com FX: (866) 260-5454

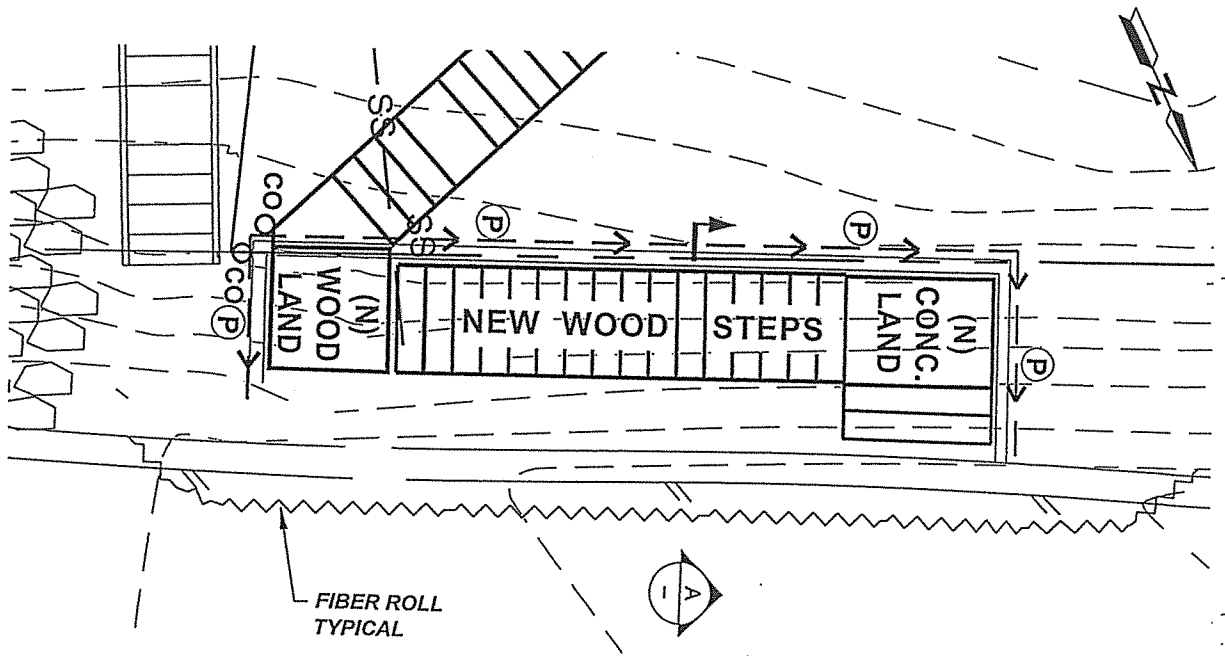


SCALE BAR			
2	JE	9/15/2016	ADDRESS TOWN OF FAIRFAX COMMENTS
1	JE	8/20/2014	STAIRS MOVED AWAY FROM STREET
			ADDED TOPOGRAPHIC MAP
No.	BY	DATE	REV.

SCALE: AS NOTED	
DATE: 9/15/2016	DRAFTED: JE
CHECKED: KP	APPROVED: RS
FILE#: ALS14025	

STAIRWAY IMPROVEMENT PLAN		ALS14025
CONCRETE STAIR PROFILE		SHEET
118 TAMALPAIS ROAD		4 of 6
LANDS OF FEDERAL NATIONAL MORTGAGE ASSOC.		
FAIRFAX, CA		APN: 001-121-61

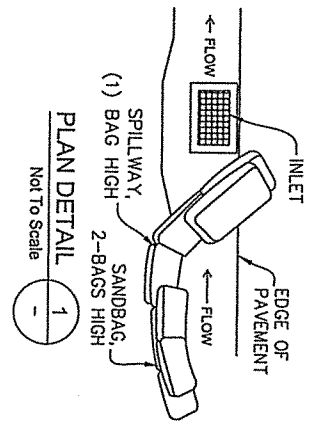
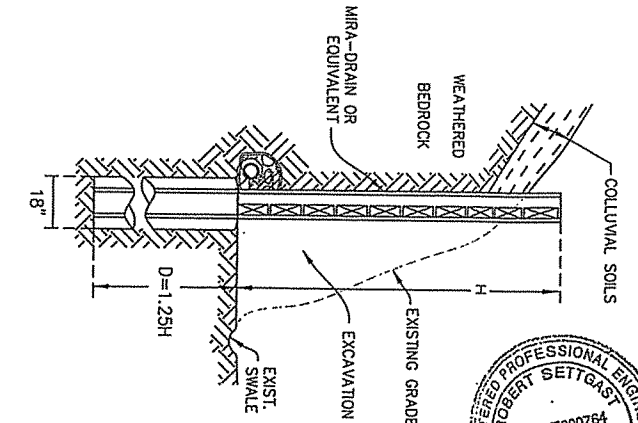
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1. WORK TO BE MONITORED AND APPROVED BY ENGINEER WHO WOULD IMPLEMENT APPROPRIATE MODIFICATIONS TO SUITE EXPOSED CONDITIONS.
2. SOCKETS DRILLED ON 5 FOOT CENTERS. POSITIONS MAY BE ADJUSTED TO FACILITATE DRILLING.
3. I-BEAMS TO BE 50 KSI STEEL:
 -W8X28 OR EQUAL FOR HEIGHT H<11 FT
 -W8X24 OR EQUAL FOR HEIGHT H<10 FT
 -W8X21 OR EQUAL FOR HEIGHT H<9 FT
 -W8X15 OR EQUAL FOR HEIGHT H<8 FT
4. CONCRETE TO BE AT LEAST 2500 PSI
5. LAGGING TO BE 4X12 GRADE 2 DF OR EQUAL; & APPROVED FOR EARTH CONTACT. ALL SIDES AND CUTS TO BE TREATED WITH PRESERVATIVE. LAGGING MAY BE REDUCED TO 3X12 IF APPROVED BY THE ENGINEER.
6. 3/8" INCH GAPS BETWEEN LAGGING.
7. SPACING BELOW BOTTOM LAGGING MEMBER MAY BE ADJUSTED BY ENGINEER.
8. CLASS 2 PERMEABLE DRAINROCK OR MIRRODRAIN FOR BACKDRAIN.
9. BOTTOM-PERF PIPE MAY BE DELETED IF SEEPAGE AT BASE IS ACCEPTABLE.
10. FINAL GRADING FOR DRAINAGE TO BE DEVELOPED DURING CONSTRUCTION.

LEGEND
 (P) 4" Ø PERFORATED SDR 35 PIPE
 CO CLEANOUT

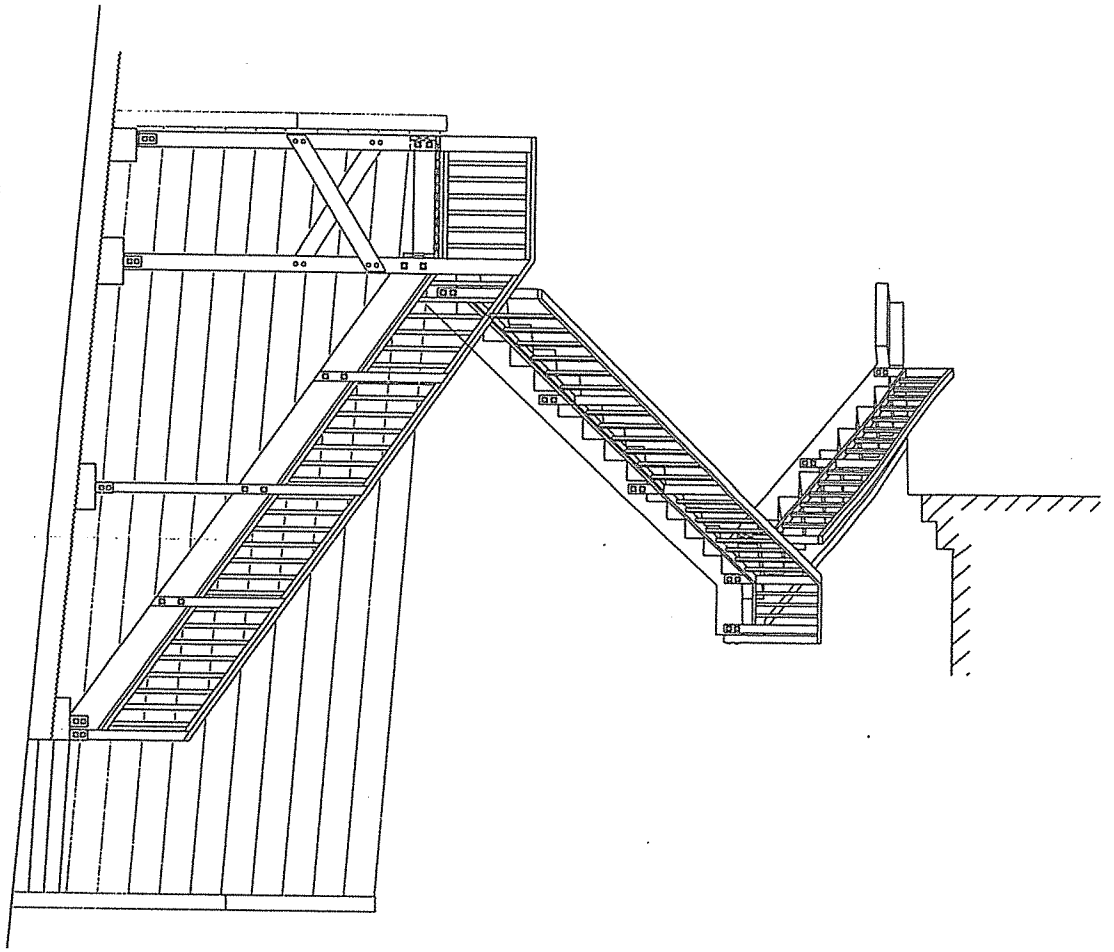
MASS EXCAVATION QUANTITIES:
 CUT = 21 ± C.Y.
 FILL = 0 ± C.Y.



SCALE BAR 		SCALE: AS NOTED DATE: 9/15/2016 DRAFTED: JE CHECKED: KP APPROVED: RS FILE#: ALS14025		STAIRWAY IMPROVEMENT PLAN GRADING, DRAINAGE & RETAINING WALL PLAN 118 TAMALPAIS ROAD LANDS OF FEDERAL NATIONAL MORTGAGE ASSOC. FAIRFAX, CA APN: 001-121-61		ALS14025 SHEET 5 of 6
2	JE	9/15/2016	ADDRESS TOWN OF FAIRFAX COMMENTS DATED 8/11/2016			
1	JE	8/20/2014	STAIRS MOVED AWAY FROM STREET ADDED TOPOGRAPHIC MAP			
No.	BY	DATE	REV.			

AMERICAN LAND SURVEYING, INC.
 1390 MARKET ST, #112, SAN FRANCISCO, CA 94102
 PH:(415) 888-8580 sf@alsplts.com FX:(666) 260-5454

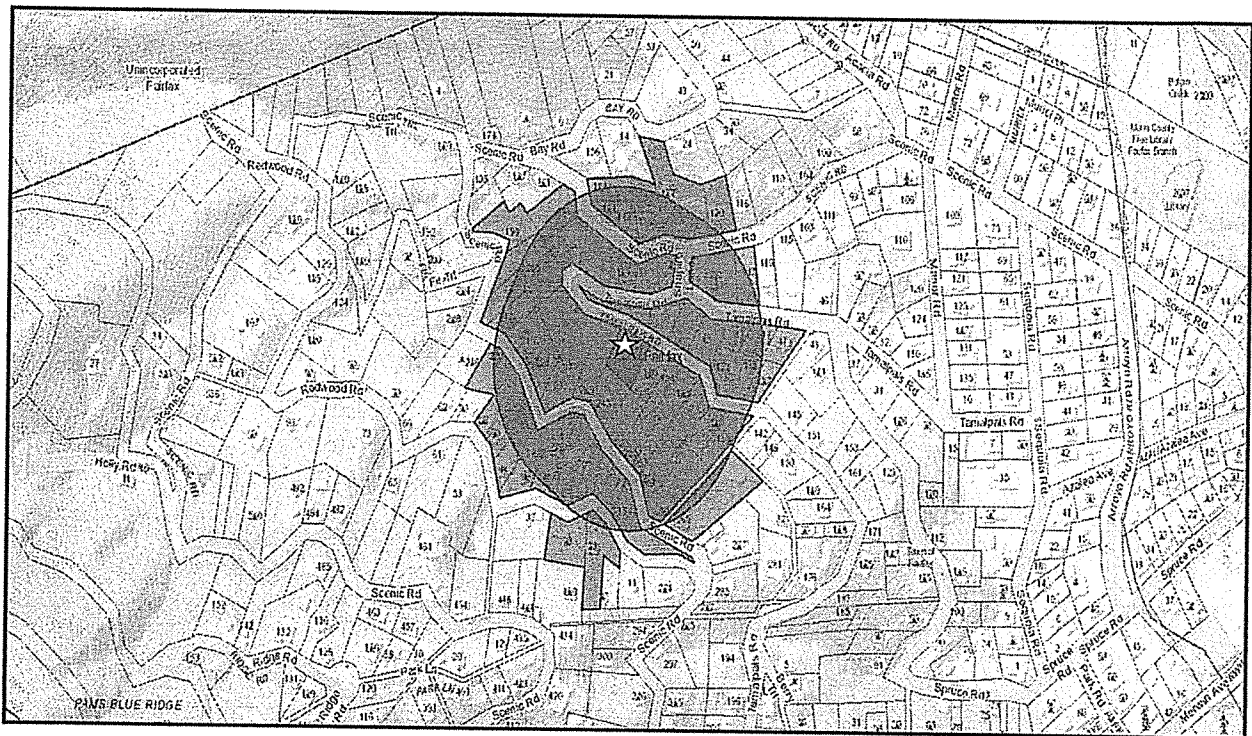
FRONT / SOUTHWESTERLY ELEVATION



NOT TO SCALE		SCALE: AS NOTED		FRONT ELEVATION		ALS14025	
		2	JE	9/15/2016	ADDRESS TOWN OF FAIRFAX COMMENTS	DATE: 9/15/2016	
AMERICAN LAND SURVEYING, INC.		1	JE	8/20/2014	STAIRS MOVED AWAY FROM STREET	DRAFTED: JE	
1330 MARKET ST, #303, SAN FRANCISCO, CA 94102					ADDED TOPOGRAPHIC MAP	CHECKED: KP	
PH: (415) 888-8580 sf@alpls.com FX: (866) 260-5454		No.	BY	DATE	REV.	APPROVED: RS	
						FILE#: ALS14025	
		118 TAMALPAIS ROAD				LANDS OF FEDERAL NATIONAL MORTGAGE ASSOC.	
		FAIRFAX, CA				APN: 001-121-51	
						SHEET 6 of 6	

**TOWN OF FAIRFAX
STAFF REPORT**
Department of Planning and Building Services

TO: Fairfax Planning Commission
DATE: March 30, 2017
FROM: Linda Neal, Principal Planner
LOCATION: 118 Tamalpais Road; Assessor's Parcel No. 001-121-61
ZONING: Residential RS-6 Zone
PROJECT: Construction of front access stairway to residence
ACTION: Side-yard Setback Variance, Retaining Wall Height Variance and Encroachment Permit
Application # 17-06
APPLICANT: Nick Rasic
OWNER: Federal National Mortgage Association
CEQA STATUS: Categorically Exempt, § 15302 and 15305(a)



118 TAMALPAIS ROAD

BACKGROUND

The site is steeply sloped up from Tamalpais Road at an average rate of 63% and is developed with a single-family residence that was constructed in 1958.

A search of the Town's original tax records indicates that the house at 120 Tamalpais Road was constructed prior to the Town's incorporation in 1931 and the house at 118 Tamalpais Road was constructed in 1958 as a guest cottage for 120 Tamalpais Road. In 1982, the house at 120 Tamalpais Road was rendered uninhabitable by a landslide that filled the structure with mud. Since the construction of 118 Tamalpais in 1958, both residences have used the same access stairway which was destroyed by another landslide in 2011. While the Town repaired the landslide to maintain access along Tamalpais Road, the property owners did not repair the shared access stairway.

In 1989 the property owner of 120 Tamalpais Road was informed in a Residential Resale Inspection Report prepared by the Town's Planning and Building Department that the structure on the property was uninhabitable and needed to be demolished. The persons residing at 118 Tamalpais Road purchased the damaged residence at 120 Tamalpais Road in 1991.

Since the 2011 slide the persons residing at 118 Tamalpais Road have been using access stairs to the house at 124 Tamalpais Road and following a path across the uninhabitable property they own at 120 Tamalpais Road to the house they reside in at 118 Tamalpais Road (the project site). This access route is 190 feet long, traverses a retaining wall for 124 Tamalpais Road, with various steep and treacherous stairways and paths that do not meet code requirements for access, and terminates at stairs leading up to the front door of 118 Tamalpais Road (a video of the access path will be shown at the meeting).

On May 19, 2016 the Planning Commission approved a Side Setback Variance, a Retaining Wall Height Variance and an Encroachment Permit for a new access stairway and an associated retaining wall for 118 Tamalpais Road. The approval was conditioned upon the Town Engineer reviewing and approving the project building plans after reviewing the entire body of evidence pertaining to the construction of the project that had been presented to the Planning Commission. The body of evidence included engineering reports, arborist's reports and survey information provided by both the applicant and the tenant who also owns the condemned house at 120 Tamalpais Road.

The approved design had the entire lower flight of the stairway located ½-foot to 1-foot from the southern side property line and retained the shared use of the sewer and water lines with the condemned house at 120 Tamalpais Road. The retaining wall in the proposal was 10 ½-feet to 11-feet in height. The approved proposal also required the removal of 2 Maple trees that were alleged to straddle the southern property line between the houses at 118 and 120 Tamalpais Road (Attachment B).

DISCUSSION

The Town Engineer reviewed the body of information and the proposed plans as part of a building permit submittal filed with the Town after the Planning Commission approval.

As part of his project review the Town Engineer also met in the field with staff and the project surveyor to verify that the location of the side property is accurately shown on the site plan and is accurately marked in the field.

After completing his review the Town Engineer prepared a memorandum indicating he was concerned that easterly wing wall of the proposed stairway retaining wall might negatively impact the Town's slide repair at the frontage of 120 Tamalpais Road (Attachment C – Town Engineer's memorandum dated 8/1/16).

Responding to the Town Engineer's comments, the applicants have revised the plans for the wall and the stairway, relocating the improvements so they no longer have the potential to impact the Town's slide repair area and so that the stairway no longer requires the removal of any trees. The project includes providing separate sewer and water service to 118 Tamalpais Road (Attachment D).

Required Discretionary Permits

The relocated stairway still requires the approval of a Side-Yard Setback Variance, a Retaining Wall Height Variance and an Encroachment Permit for the following reasons:

A Side-yard Setback Variance

Town Code § 17.080.070(B)(2) requires that properties with over a 10% slope have a minimum side-yard setback of 5 feet and a combined side yard setback of 20 feet. The stairs have been redesigned from the plans approved in May of 2016 so that only a small 4-square-foot portion of the lowest flight of the stairs and a small 16-square-foot stair landing will be within the required 5-foot, side yard.

Locating the stairway anywhere else along the very steep property frontage would require additional excavation, a taller retaining wall, and further site disturbance. Therefore, Staff believes that the requested side-yard setback variance for 20-square feet of the stairway/landing to project to within 1-foot of the western side property line is warranted.

Retaining Wall Height Variance and an Encroachment Permit

The public roads in Fairfax are rarely built to the entire width of the right-of-way easements due to the steep and varied topography of the hillsides. As a result, front property lines are typically located varied distances away from the edge of the paved roadbeds. At 118 Tamalpais Road, the project surveyor has determined that the front property line starts 7 to 8 feet up the hillside from the edge of the paved roadbed.

The Town Code allows private property owners to obtain an Encroachment Permit from the Planning Commission to use the area between the roadbed and private property lines if the area is not being used by the general public for public improvements and as long as there is no suitable location on their own property for the improvement [Town Code § 12.32.010(A) and (B)].

The Town Code limits the heights of retaining walls and fences along the property frontage to 4 feet. In order to support the excavated hillside and an access stairway to the house at 118 Tamalpais Road, a retaining wall ranging from 11-feet to 12-feet in height is required, with the first flight of stairs and landing located within the Tamalpais Road right-of-way. The structures would encroach 6-feet into the right-of-way and maintain a 3-foot-setback from the edge of the paved street.

The applicant has submitted a geotechnical report prepared by Geoengineering, Inc., that indicates that a retaining wall engineered and designed to support the cut hillside and accommodate the new stairway requires piers drilled to a depth of 9 feet. (Attachment E). The retaining wall has been designed with piers that would be 12 ½ feet deep exceeding the depth recommended by the geotechnical engineer (Page 5 of the Plans, Section A).

There is no other way to access this site without building a wall and access stairway with the first flight and support wall within the public right-of-way. Moving the improvements out of the required 5-foot side setback would increase the amount of excavation and the retaining wall height.

Letter from the Tenant's Attorney

Lawrence Bragman, Attorney for the tenant of 118 Tamalpais Road, has addressed his client's project concerns in the attached letter dated 1/20/17 (Attachment E). These concerns include; 1) continued shared stair access to 120 Tamalpais Road; 2) the continued integrity of the water and sewer lines to 120 Tamalpais Road; and, 3) additional engineering design features they would like included in the project design as well as the implications of a restored stairway on the tenant's civil case against the property owner.

The Town Engineer has reviewed the recommendations for the project made by Craig Herzog, the tenant's engineer, and contained in the letter from the tenant's attorney dated 1/20/17. The Town Engineer has responded to the letter in the attached memorandum dated 1/26/17 (Attachment F). The Town Engineer has indicated that he has reviewed and approved the project engineer's stairway/wall design as proposed and does not feel that any additional conditions or design changes are warranted.

The property owner's attorney, Claudia Williams, has also addressed the 1/20/17 letter from the tenant's Attorney in her letter dated 2/7/17 which can be found as Attachment G to this report.

Civil Matter

Through his attorney the tenant of 118 Tamalpais Road has expressed concern that the Town is not doing enough to ensure he has the right to also access his condemned property at 120 Tamalpais via the proposed stairway once it is built. He is also concerned that the shared sewer and water line, once abandoned by the owner of 118 Tamalpais, will not be restored to the condemned house at 120 Tamalpais Road and that the Commission's approval of the project will impact the tenant's pending civil case against the owner (Attachment E – letter dated 1/20/17 from Attorney Larry Bragman).

Stairway Access

Shared use of the new access stairway by both 118 and 120 Tamalpais Road is a civil matter and the Town has no authority to require the owner of 118 Tamalpais to guarantee the owner of 120 Tamalpais an easement to use a stairway now entirely on and in front of the 118 Tamalpais Road residence.

Water and Sewer Lines

The issue of restoring the water and sewer lines to 120 Tamalpais Road is under the jurisdiction of the Marin Municipal Water District and the Ross Valley Sanitary District. These improvements are not inspected or regulated by the Town. If and when the owner of 120 Tamalpais Road restores 120 Tamalpais Road for residency the Town's involvement will only include verifying with the water district and sanitary district that the parcel is being served and granting an encroachment (street opening) permit if restoring the lines requires digging in the street right-of-way.

Other Agency/Department Comments/Conditions

The Marin Municipal Water District has required that a reduced pressure backflow device be installed at the new water meter for 118 Tamalpais Road (Attachment G – Marin Municipal Water District e-mail of 12/8/16).

The Ross Valley Sanitary District and the Fairfax Police, Public Works and Building Departments had no comments on or conditions for the proposed project.

RECOMMENDATION

1. Conduct the public hearing.
2. Move to approve Application # 17-05 by adopting Resolution No. 17-06 setting forth the findings and conditions for approval of the project.

ATTACHMENTS

Attachment A – Resolution No. 17-06

Attachment B – Previously approved project plans

Attachment C – Revised project plans

Attachment D- Town Engineer's memorandum dated 8/1/16, approving the building permit plans

Attachment E - Geoengineering Inc., report dated 4/21/16

Attachment F - Arborist report dated 9/3/16 by Urban Forestry Associates, Inc.

Attachment G – letter from neighbor/tenant's attorney, Larry Bragman, dated 1/20/17 (includes comments from Craig Herzog, the tenant's engineer on page 2)

Attachment H – Town Engineer's 1/26/17 response to Attorney Bragman's letter

Attachment I - Claudia Williams, Law Offices of Glenn H. Wechsler, attorney for the owner's response to Attorney Bragman's letter

Attachment J - MMWD e-mail dated 12/8/16 regarding reduced pressure backflow preventer

RESOLUTION NO. 17-06

A Resolution of the Fairfax Planning Commission Approving Variances and an Encroachment Permit for a Retaining Wall and Entry Stairway Providing Access to the Property at 118 Tamalpais Road

WHEREAS, the Town of Fairfax has received an application to construct a retaining wall and front stairway to a house at 118 Tamalpais Road that has been without an access stairway since the original access stairway was destroyed in a 2011 landslide event; and

WHEREAS, based on the plans and other documentary evidence in the record, the Planning Commission has determined that the applicant has met the burden of proof required to support the findings necessary to approve the project with certain conditions of approval as listed below; and

WHEREAS, the Commission has made the following findings:

1. The site slopes up at over a 90° angle from Tamalpais Road along most of the property frontage. It is the steep slope of the site that is the special circumstance applicable to the property where the strict application of the 5 foot, minimum side-yard setback – if enforced – would deprive the applicants of the ability to construct an access stairway while also minimizing the disturbance to the site: a privilege enjoyed by other property owners of hillside lots in the Residential Single-family RS-6 Zone District. Therefore, the location chosen for the stairway, at the southeastern corner of the property where the slope is slightly more gradual will protect the existing trees while minimizing of excavation necessary to restore access to the structure.
2. Many residences in the hillside areas have access stairs and/or entry landings/decks within either the minimum 5 foot side-yard setback or the combined 20-foot side yard setback. Originally the stairway destroyed by a 2011 slide was a shared stairway for both 118 Tamalpais Road and 120 Tamalpais Road and it was located within the minimum side setback for 120 Tamalpais Road. The strict application of the minimum, 5-foot, side-yard setback regulations could negatively impact a mature maple tree on the site that could otherwise be saved which will result in excessive or unreasonable hardship for the owner.
3. The granting of the variance will be beneficial to the public welfare by providing a safe means of direct access to the house at 118 Tamalpais Road for emergency response personnel and anyone else having to access the structure including the residents.
4. The variance will not constitute a grant of special privilege, is consistent with the limitations upon other properties in the vicinity and under identical zone classification, and is consistent with the objectives of this title.
5. The plans show that the stairway and wall improvements will be located within a portion of the Tamalpais Road right-of-way not being used by the general public in accordance with Town Code § 12.32.020.

6. Upon compliance with the conditions listed below the improvements can be constructed without having negative impacts on the neighboring properties, general public or on vehicles or pedestrians using Tamalpais Road.

7. The proposed retaining wall and stairway will not change the single-family residential character of the neighborhood.

8. The stairway is similar to other stairways found throughout the neighborhood and it will maintain a similar setback from the property lines. Therefore, the approval of the use permit shall not constitute a grant of special privilege and shall not contravene the doctrines of equity and equal treatment.

9. The engineered stairway and retaining wall drawings are based on the findings contained in the arborist report by Urban Forestry, Inc. and the site geotechnical evaluation by Geoengineering, Inc. The design of the project, based on these reports by technical experts in their fields, ensure development of the property shall not cause excessive or unreasonable detriment to adjoining properties or premises, or cause adverse physical or economic effects thereto, or create undue or excessive burdens in the use and enjoyment thereof, or any or all of which effects are substantially beyond that which might occur without approval or issuance of the use permit.

WHEREAS, the Commission has approved the project subject to the applicant's compliance with the following conditions:

Conditions of Approval

1. The surveyor shall mark the side property line in the presence of the Building Official prior to the start of construction.
2. The owner shall complete the Revocable Encroachment Permit and submit it to the Town for review and approval. Once approved, the owners shall sign and notarize the document and return it to the Town for recording.
3. The applicant shall comply with any conditions of the Fairfax Building Official, Public Works Director/Manager, Town Engineer, Ross Valley Fire Department, Marin Municipal Water District and Ross Valley Sanitary District.
4. This approval is limited to the development illustrated on the following plan pages: Sheets 1 through 6, dated 9/15/16, prepared by American Land Surveying, Inc. and signed and wet stamped by Robert Setttgast, project geotechnical engineer,
5. Prior to issuance of a building permit, the applicant or his assigns shall submit a bond, cash deposit or letter of credit to the Town in an amount that will cover the cost of grading, weatherization and repair of possible roadway damage. The applicant shall submit contractor's estimates for any grading, site weatherization and improvement plans for approval by the Public Works Director. Upon approval of the contract costs, the applicant shall submit a cash deposit,

letter of credit or bond equaling 100% of the estimated construction costs.

6. Prior to issuance of the building permit, the applicant shall provide the Town with a video of the access streets to be used during construction. The Public Works Director shall make a decision prior to the project final inspection, regarding street resurfacing and repair that may be required as a result of damage and wear and tear from project vehicles.

7. Prior to issuance of the building permit, the applicant shall submit a Construction Management Plan subject to review and approval by the Building Official/Public Works Manager. The plan shall include:

- Construction delivery routes approved by the Department of Public Works;
- Construction schedule (deliveries, worker hours, etc.);
- Notification to area residents;
- Emergency access routes; and
- Parking plan to minimize the impacts of contractor/employee vehicles and construction equipment on neighborhood parking

8. During the construction process, the following shall be required:

a. The project engineer shall be on-site during the grading/drilling process and shall submit written certification to the Town staff that the grading has been completed as designed and recommended prior to installation of retaining forms.

b. All construction related vehicles including equipment delivery, cement trucks and construction materials shall be situated off the travel lane of the adjacent public right(s)-of-way at all times. This condition may be waived by the building official on a case by case basis with prior notification from the contractor.

c. Additionally, any proposed temporary closure of a public right-of-way shall require prior approval by the Fairfax Police Department and any necessary traffic control, signage or public notification shall be the responsibility of the applicant or his/her assigns. Any violation of this provision will result in a stop work order being placed on the property and issuance of a citation.

9. Prior to the project final inspection the following shall be completed:

a. The project engineer shall field check the completed project and submit written certification to Town Staff stating that the retaining, grading and drainage elements have been installed in conformance with the approved building plans.

b. The Building Official shall field check the completed project to verify that the work has been installed as per the approved plan.

c. The Planning Department shall field check the completed project to verify that all conditions of the Planning Commission have been complied with.

10. Excavation shall not occur between October 1st and April 1st of any year. The Town Engineer has the authority to waive this condition depending upon the weather.

11. The applicant shall comply with the Town Noise Ordinance Chapter 8.16 of the Fairfax Town Code.

12. Any changes, modifications, additions or alterations made to the approved set of plans will require approval by the Town Engineer and the Director of Planning and Building Services. Any construction based on project plans that have been altered without the benefit of an approved modification will result in the job being immediately stopped and red tagged.

13. Any modification of these Conditions of Approval must be approved by the Fairfax Planning Commission.

14. The applicant and its heirs, successors, and assigns shall, at its sole cost and expense, defend with counsel selected by the Town, indemnify, protect, release, and hold harmless the Town of Fairfax and any agency or instrumentality thereof, including its agents, officers, commissions, and employees (the "Indemnitees") from any and all claims, actions, or proceedings arising out of or in any way relating to the processing and/or approval of the project as described herein, the purpose of which is to attack, set aside, void, or annul the approval of the project, and/or any environmental determination that accompanies it, by the Planning Commission, Town Council, Planning Director, Design Review Board or any other department or agency of the Town. This indemnification shall include, but not be limited to, suits, damages, judgments, costs, expenses, liens, levies, attorney fees or expert witness fees that may be asserted or incurred by any person or entity, including the applicant, third parties and the Indemnitees, arising out of or in connection with the approval of this project, whether or not there is concurrent, passive, or active negligence on the part of the Indemnitees. Nothing herein shall prohibit the Town from participating in the defense of any claim, action, or proceeding. The parties shall use best efforts, acting in good faith, to select mutually agreeable defense counsel.

15. A minimum three (3) foot setback shall be maintained between the edge of the paved roadway and the first step of the access stairway as called out on the plans. Prior to the installation of the lowest step, the Building Official shall verify that a minimum of a three (3) foot setback from the edge of the paved roadway is maintained.

OTHER AGENCY CONDITIONS

Marin Municipal Water District

A reduced pressure backflow device shall be installed at the new water meter for 118 Tamalpais Road.

NOW, THEREFORE BE IT RESOLVED, the Planning Commission of the Town of Fairfax hereby finds and determines as follows:

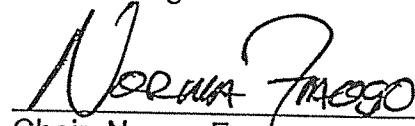
The approval of the Side-Setback Variance, Retaining Wall Height Variance and Encroachment Permit for construction of the entry stairway and associated retaining wall at 118 Tamalpais Road can be made without causing significant impacts on neighboring residences and the environment and is in compliance with the 2010 to 2013 Fairfax General Plan and Fairfax Zoning Ordinance.

The foregoing resolution was adopted at a regular meeting of the Planning Commission held in said Town, on March 30, 2017 by the following vote:

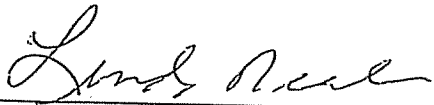
AYES: Ackerman, Gonzalez-Parber, Green, Kehrlein, Chair Fragoso

NOES: Newton, Swift

ABSTAIN: None

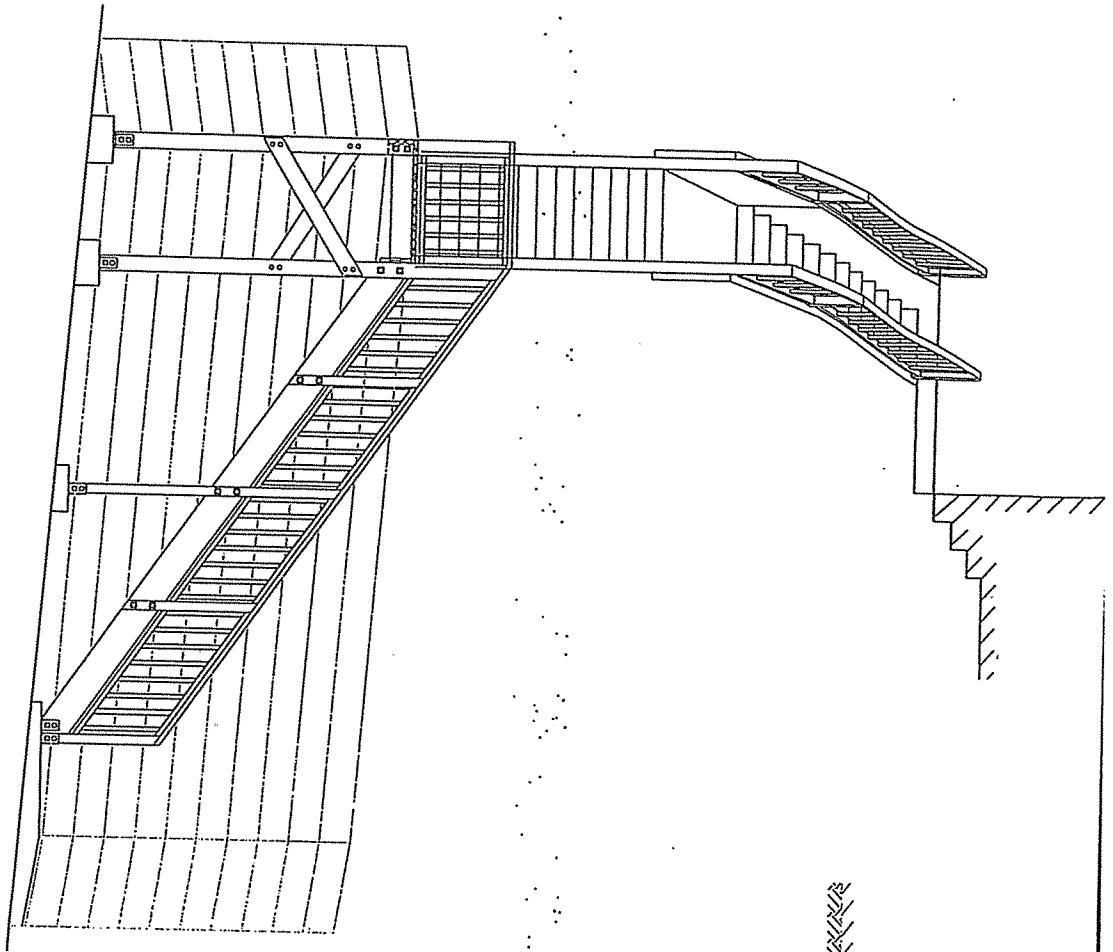


Chair, Norma Fragoso

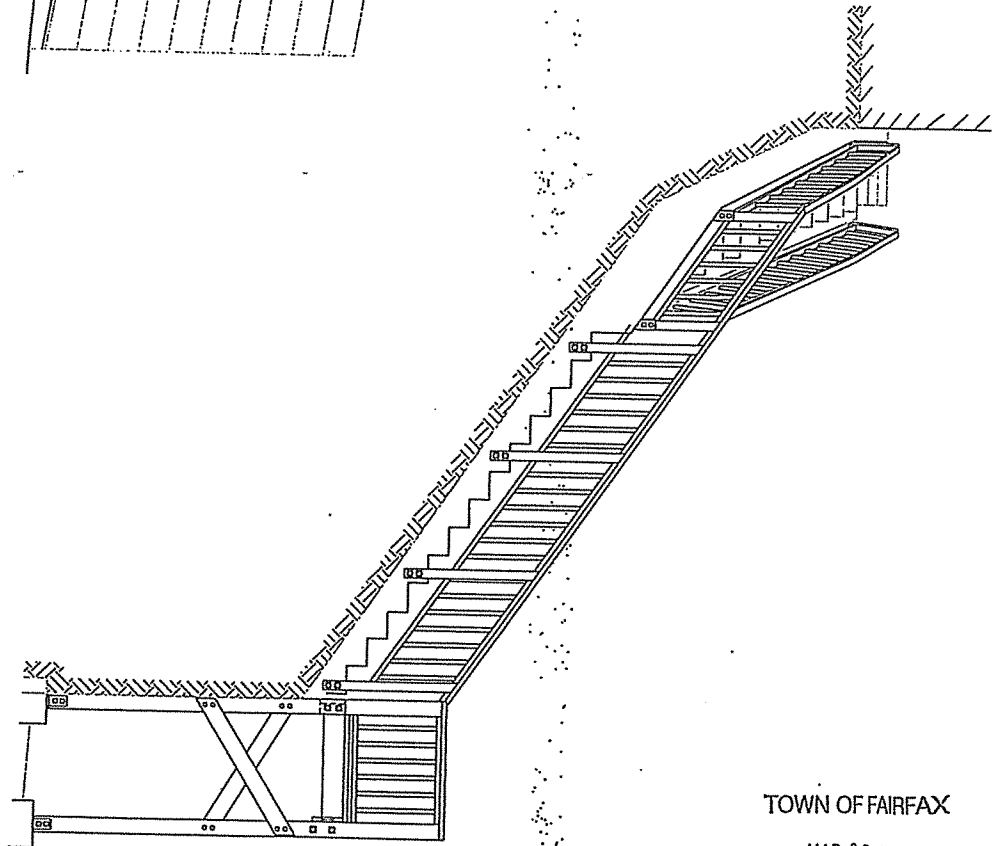
Attest: 

Linda Neal, Principal Planner

FRONT / SOUTHWESTERLY ELEVATION



SIDE / NORTHWESTERLY ELEVATION

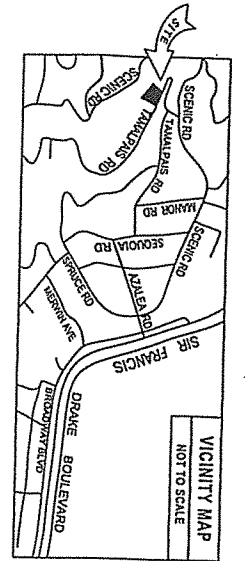


TOWN OF FAIRFAX

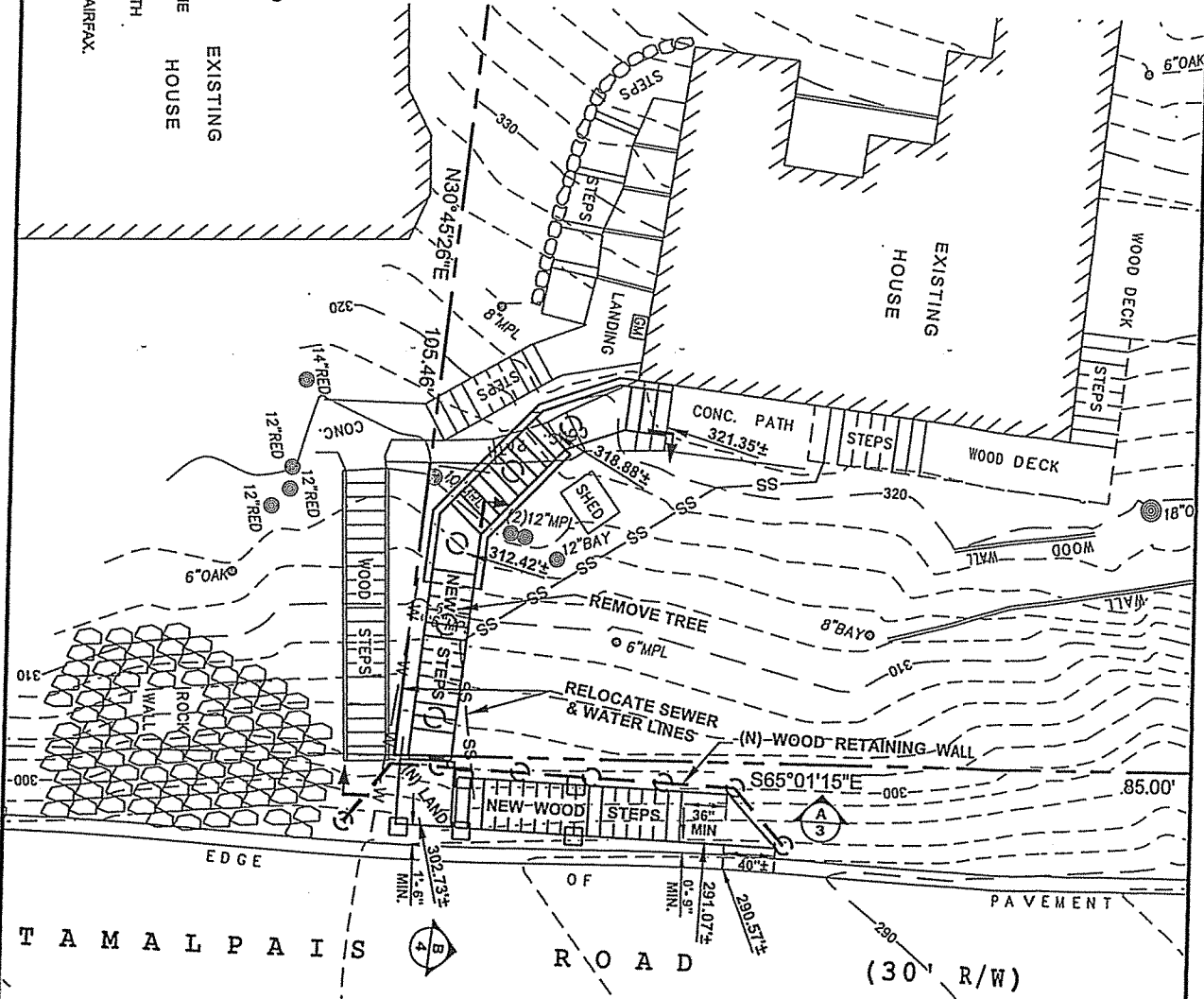
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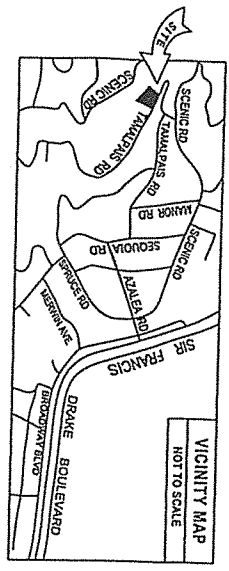
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<p>AMERICAN LAND SURVEYING, INC.</p> <p>1390 MARKET ST, #303, SAN FRANCISCO, CA 94102</p> <p>PH: (415) 888-8580 sf@alsplc.com FX: (650) 260-5454</p>		<table border="1"> <thead> <tr> <th>No.</th> <th>BY</th> <th>DATE</th> <th>REV.</th> </tr> </thead> <tbody> <tr> <td> </td> <td> </td> <td> </td> <td> </td> </tr> </tbody> </table>	No.	BY	DATE	REV.					<p>ATTACHMENT B</p>	
No.	BY	DATE	REV.									



- GENERAL NOTES:**
1. ALL CONSTRUCTION SHALL CONFORM TO 2014 CALIFORNIA BUILDING CODE AND 2014 FAIRFAX BUILDING CODE REQUIREMENTS. DESIGN AND PLACEMENT OF CONCRETE SHALL BE IN ACCORDANCE WITH THE AMERICAN CONCRETE INSTITUTE CODE ACI 318.
 2. ALL CONDITIONS AND DIMENSIONS TO BE VERIFIED IN THE FIELD BY THE CONTRACTOR PRIOR TO COMMENCEMENT OF WORK.
 3. CONTRACTOR SHALL PROVIDE ALL NECESSARY SHORING AND PROTECTION DURING CONSTRUCTION.
 4. REINFORCING STEEL TO BE ASTM 615, GRADE 60
 5. CONCRETE Fc = 2500 PSI
 6. LUMBER D.F. #1 Fb = 1000 PSI, Fv = 95 PSI
 7. ALL HARDWARE, NAILS AND SCREWS IN CONTACT WITH PRESSURE TREATED MATERIAL SHALL BE HOT DIPPED GALVANIZED OR STAINLESS STEEL.
 8. ALL FASTENERS SHALL MEET THE MINIMUM SIMPSON SPECIFICATIONS.
 9. CONSTRUCTION INSPECTION SHALL BE CARRIED OUT BY A REGISTERED ENGINEER AND FAIRFAX BUILDING OFFICIAL.
 10. CATCH BASIN SEDIMENT CONTROL SHALL BE INSTALLED AT THE NEAREST MAJOR STORM DRAIN INLETS (SEE PLAN DETAIL 1, SHEET 3).
 11. THE CONTRACTOR SHALL CONSIDER THE POTENTIAL FOR EROSION AND SEDIMENTATION AT THE SITE AND COMPLY WITH MARIN COUNTY CODE (MCC) 24.04.625 & 24.04.627.
 12. THE CONTRACTOR PERFORMING WORK IN THE COUNTY OF MARIN SHALL IMPLEMENT THE APPROPRIATE BMP PUSUANT TO MCC 23.18.093 TO PREVENT THE DISCHARGE OF CONSTRUCTION WASTES OR CONTAMINANTS FROM CONSTRUCTION MATERIALS, TOOLS AND EQUIPMENT FROM ENTERING A COUNTY STORM DRAIN SYSTEM.
 13. THE CONTRACTOR SHALL DISPOSE OF ANY HAZARDOUS EARTHWORK FROM THE SITE TO THE APPROPRIATE FACILITY IN A LEGAL MANNER.
 14. CONTRACTOR SHALL PROVIDE EROSION CONTROL MATS AND/OR BLANKETS IN AREAS IN THE VICINITY OF DISTURBED EARTH PRIOR TO EXCAVATION.
 15. ALL CUT PTD/TIMBER AND TIMBER IN CONTACT WITH CONNECTORS SHALL BE TREATED WITH COPPER-GREEN WOOD PRESERVATIVE OR EQUIVALENT.
 16. CONTRACTOR SHALL RELOCATE SEWER AND WATER LINES AS REQUIRED BY THE CITY OF FAIRFAX.

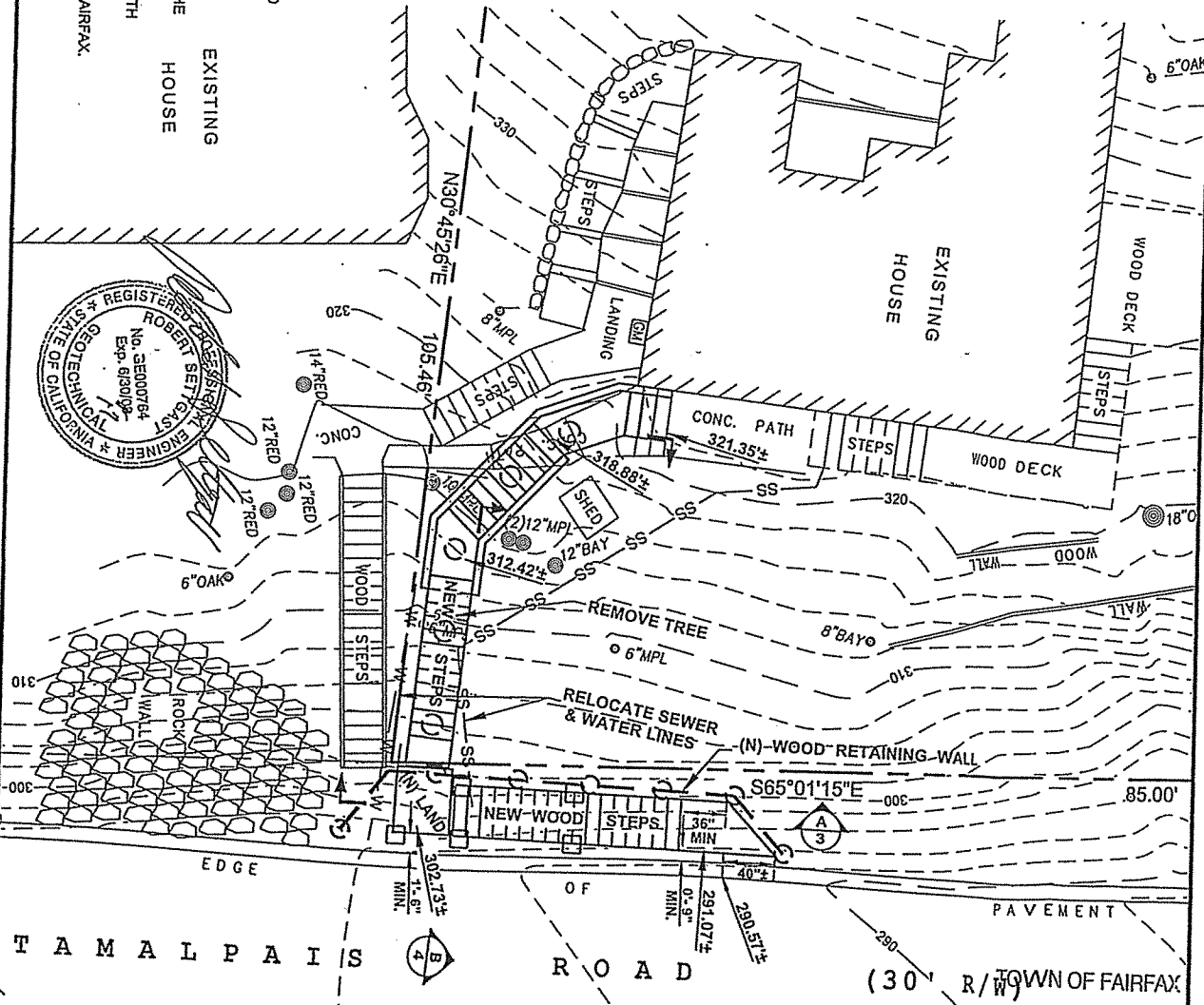


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AMERICAN LAND SURVEYING, INC. 1390 MARKET ST, #112, SAN FRANCISCO, CA 94103 PH: (415) 888-8580 sf@apl.com FX: (866) 260-5454		1 JE 8/20/2014 STAIRS MOVED AWAY FROM STREET ADDED TOPOGRAPHIC MAP		CHECKED: KP APPROVED: RS FILE#: ALS14025		18 TAMALPAIS ROAD LANDS OF FEDERAL NATIONAL MORTGAGE ASSOC. FAIRFAX, CA	
No.		BY		DATE		REV.	
1		JE		8/20/2014		STAIRS MOVED AWAY FROM STREET ADDED TOPOGRAPHIC MAP	
1		5		1		1	



GENERAL NOTES:

1. ALL CONSTRUCTION SHALL CONFORM TO 2014 CALIFORNIA BUILDING CODE AND 2014 FAIRFAX BUILDING CODE REQUIREMENTS. DESIGN AND PLACEMENT OF CONCRETE SHALL BE IN ACCORDANCE WITH THE AMERICAN CONCRETE INSTITUTE CODE ACI 318.
2. ALL CONDITIONS AND DIMENSIONS TO BE VERIFIED IN THE FIELD BY THE CONTRACTOR PRIOR TO COMMENCEMENT OF WORK.
3. CONTRACTOR SHALL PROVIDE ALL NECESSARY SHORING AND PROTECTION DURING CONSTRUCTION.
4. REINFORCING STEEL TO BE ASTM 615, GRADE 60
5. CONCRETE Fc = 2500 PSI
6. LUMBER D.F. #1 Fb = 1000 PSI, Fv = 95 PSI
7. ALL HARDWARE, NAILS AND SCREWS IN CONTACT WITH PRESSURE TREATED MATERIAL SHALL BE HOT DIPPED GALVANIZED OR STAINLESS STEEL.
8. ALL FASTENERS SHALL MEET THE MINIMUM SIMPSON SPECIFICATIONS.
9. CONSTRUCTION INSPECTION SHALL BE CARRIED OUT BY A REGISTERED ENGINEER AND FAIRFAX BUILDING OFFICIAL.
10. CATCH BASIN SEDIMENT CONTROL SHALL BE INSTALLED AT THE NEAREST MAJOR STORM DRAIN INLETS (SEE PLAN DETAIL 1, SHEET 3).
11. THE CONTRACTOR SHALL CONSIDER THE POTENTIAL FOR EROSION AND SEDIMENTATION AT THE SITE AND COMPLY WITH MARIN COUNTY CODE (MCC) 24.04.625 & 24.04.627.
12. THE CONTRACTOR PERFORMING WORK IN THE COUNTY OF MARIN SHALL IMPLEMENT THE APPROPRIATE BMP PUSUANT TO MCC 23.18.093 TO PREVENT THE DISCHARGE OF CONSTRUCTION WASTES OR CONTAMINANTS FROM CONSTRUCTION MATERIALS, TOOLS AND EQUIPMENT FROM ENTERING A COUNTY STORM DRAIN SYSTEM.
13. THE CONTRACTOR SHALL DISPOSE OF ANY HAZARDOUS EARTHWORK FROM THE SITE TO THE APPROPRIATE FACILITY IN A LEGAL MANNER.
14. CONTRACTOR SHALL PROVIDE EROSION CONTROL MATS AND/OR BLANKETS IN AREAS IN THE VICINITY OF DISTURBED EARTH PRIOR TO EXCAVATION.
15. ALL CUT PTD/F TIMBER AND TIMBER IN CONTACT WITH CONNECTORS SHALL BE TREATED WITH COPPER-GREEN WOOD PRESERVATIVE OR EQUIVALENT.
16. CONTRACTOR SHALL RELOCATE SEWER AND WATER LINES AS REQUIRED BY THE CITY OF FAIRFAX.



SCALE BAR		SCALE: 1/8" = 1'-0"		RECEIVED
AMERICAN LAND SURVEYING, INC. 1390 MARKET ST, #112, SAN FRANCISCO, CA 94102 PH: (415) 858-8580 sl@alstpl.com FX: (666) 269-5454		DATE: 2/27/2016		
1	JE	8/20/2014	STAIRS MOVED AWAY FROM STREET ADDED TOPOGRAPHIC MAP	SHEET 1 of 5
No.	BY	DATE	REV.	
			DRAFTED: JE	STAIRWAY IMPROVEMENT PLAN SITE PLAN - GENERAL NOTES 118 TAMALPAIS ROAD LANDS OF FEDERAL NATIONAL MORTGAGE ASSOC. FAIRFAX, CA
			CHECKED: KP APPROVED: RS FILE#: ALS14025	
				APN: 001-121-61

N54°14'09"W

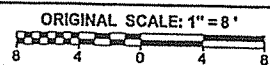
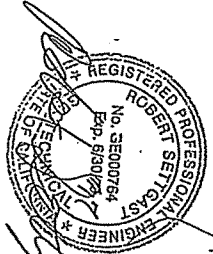
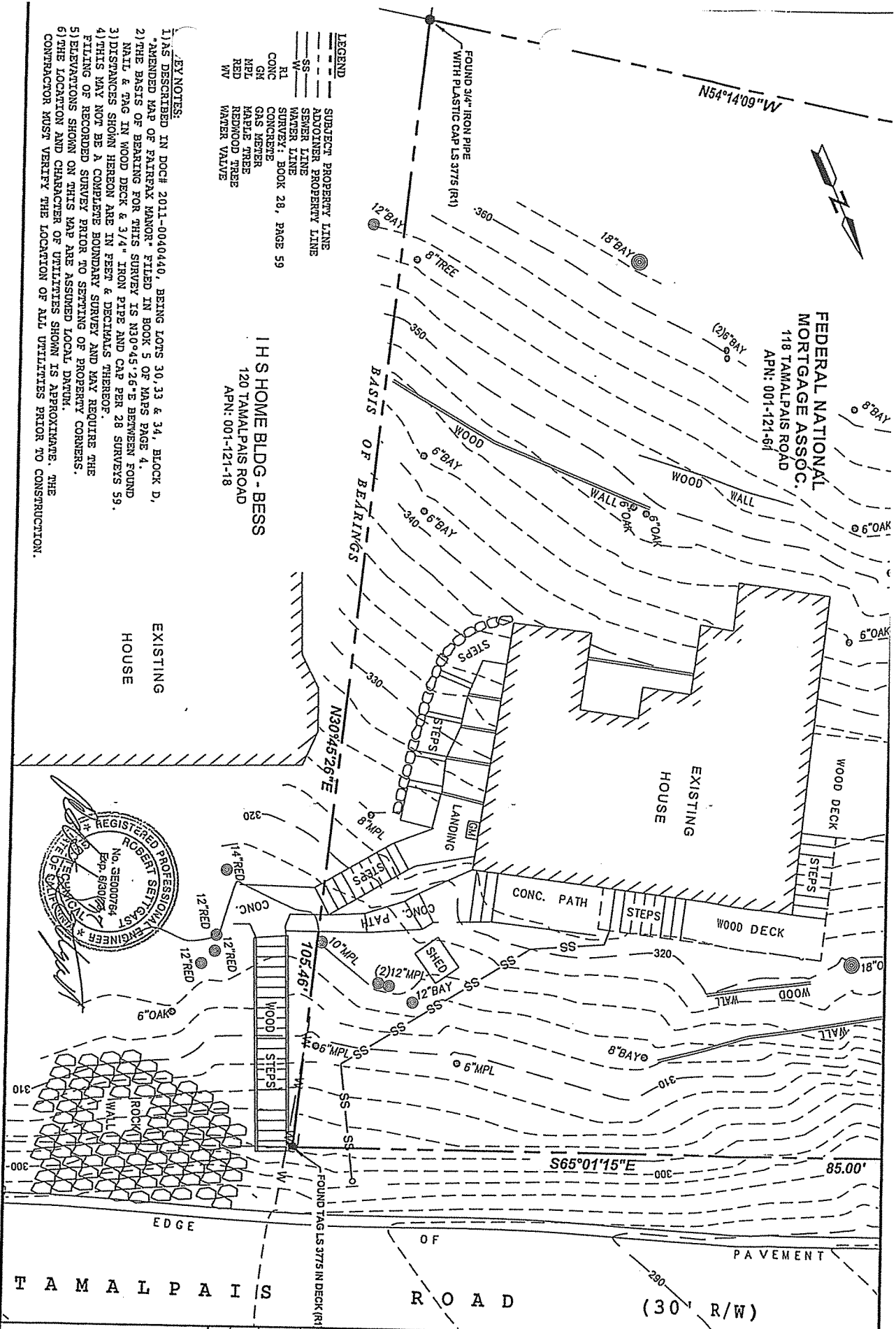


FEDERAL NATIONAL MORTGAGE ASSOC.
118 TAMALPAIS ROAD
APN: 001-121-01

- LEGEND
- SUBJECT PROPERTY LINE
 - ADJOINER PROPERTY LINE
 - SS SEWER LINE
 - W WATER LINE
 - R1 SURVEY; BOOK 28, PAGE 59
 - CONC CONCRETE
 - GM GAS METER
 - MPL MAPLE TREE
 - RED REDWOOD TREE
 - WV WATER VALVE

- REVISIONS:
- 1) AS DESCRIBED IN DOC# 2011-0040440, BEING LOTS 30, 33 & 34, BLOCK D, "AMENDED MAP OF FAIRFAX MANOR" FILED IN BOOK 5 OF MAPS PAGE 4.
 - 2) THE BASIS OF BEARING FOR THIS SURVEY IS N30°45'26"E BETWEEN FOUND NAIL & TAG IN WOOD DECK & 3/4" IRON PIPE AND CAP PER 28 SURVEY 59.
 - 3) DISTANCES SHOWN HEREON ARE IN FEET & DECIMALS THEREOF.
 - 4) THIS MAY NOT BE A COMPLETE BOUNDARY SURVEY AND MAY REQUIRE THE FITTING OF RECORDED SURVEY PRIOR TO SETTING OF PROPERTY CORNERS.
 - 5) ELEVATIONS SHOWN ON THIS MAP ARE ASSUMED LOCAL DATUM.
 - 6) THE LOCATION AND CHARACTER OF UTILITIES SHOWN IS APPROXIMATE. THE CONTRACTOR MUST VERIFY THE LOCATION OF ALL UTILITIES PRIOR TO CONSTRUCTION.

I H S HOME BLDG - BESS
120 TAMALPAIS ROAD
APN: 001-121-18

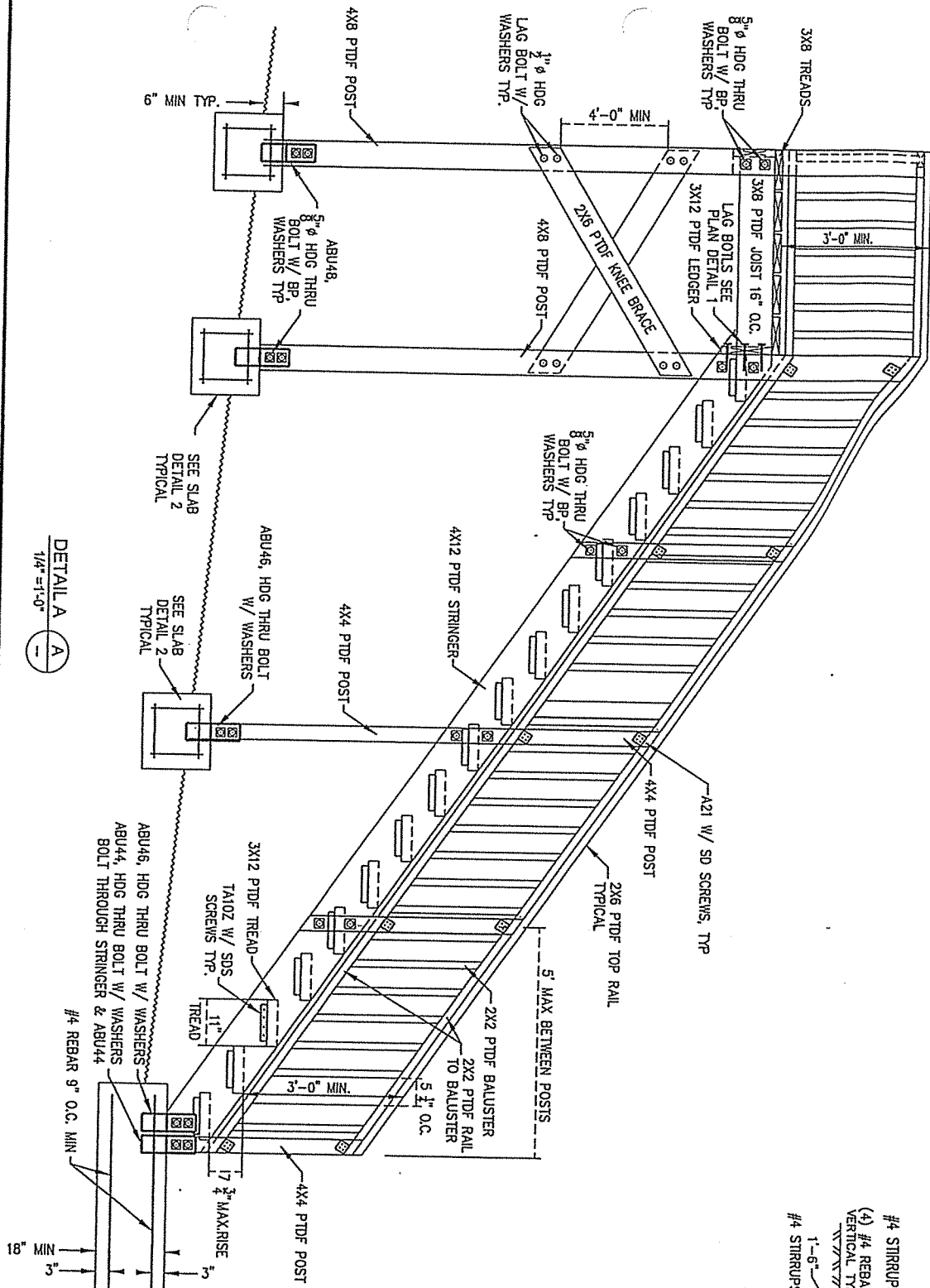


AMERICAN LAND SURVEYING, INC.
1390 MARKET ST, #112, SAN FRANCISCO, CA 94102
PH: (415) 888-8580 sf@alstps.com FX: (866) 260-5454

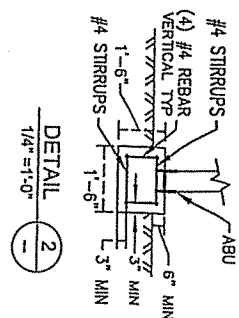
No.	BY	DATE	REV.
1	JE	8/20/2014	STAIRS MOVED AWAY FROM STREET ADDED TOPOGRAPHIC MAP

SCALE: AS NOTED
DATE: 2/27/2016
DRAFTED: JE
CHECKED: KP
APPROVED: SG
FILE#: ALS14025

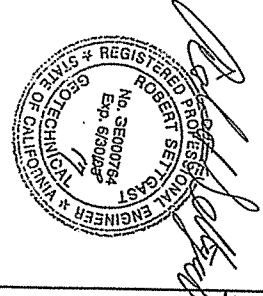
STAIRWAY IMPROVEMENT PLAN		ALS14025
TOPOGRAPHIC MAP		SHEET
118 TAMALPAIS ROAD		2 of 5
LANDS OF FEDERAL NATIONAL MORTGAGE ASSOC. FAIRFAX, CA		APN: 001-121-01



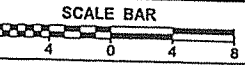
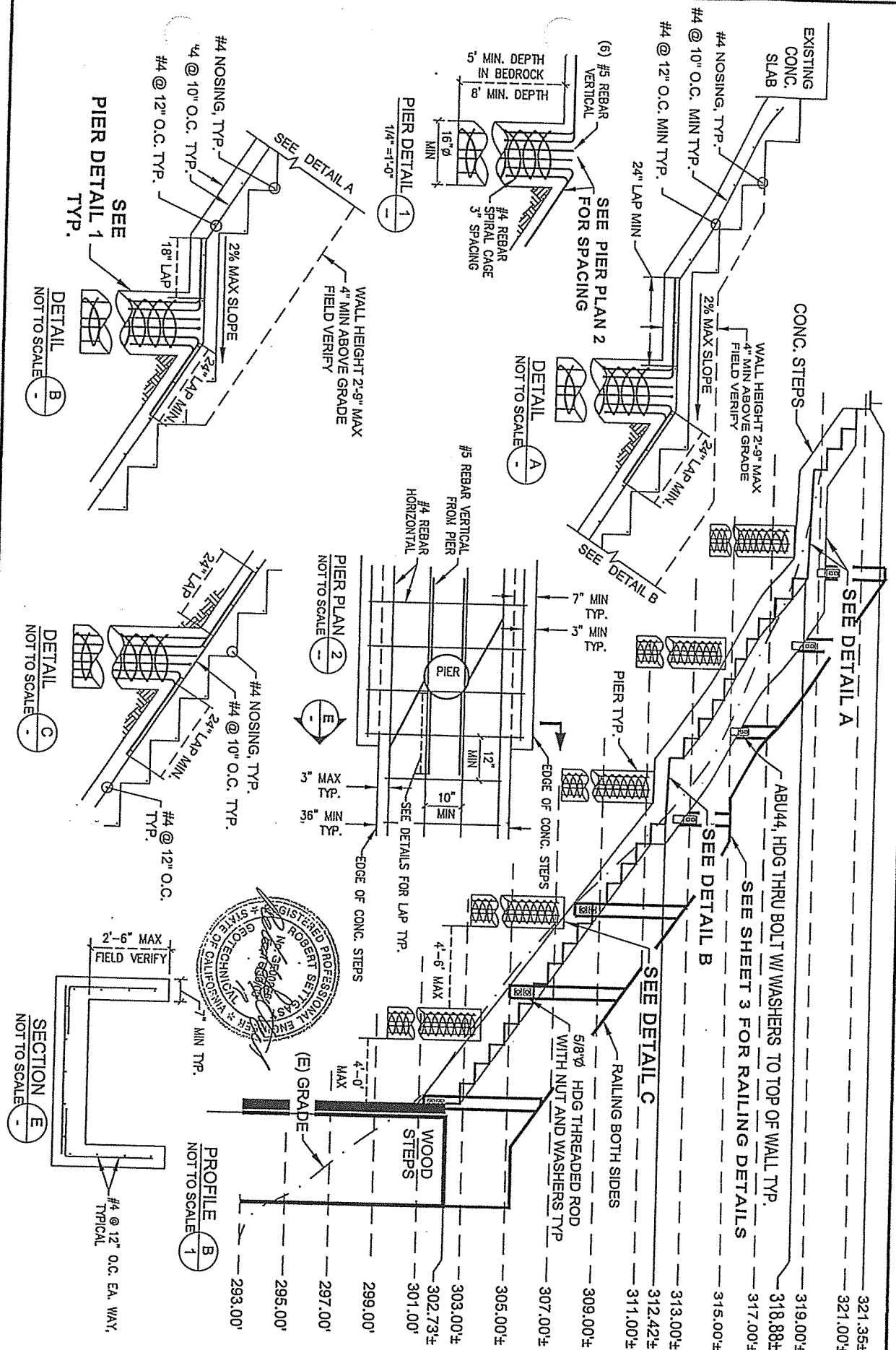
DETAIL A
1/4" = 1'-0"



DETAIL 2
1/4" = 1'-0"



SCALE BAR		SCALE: AS NOTED		STAIRWAY IMPROVEMENT PLAN		ALS14025
		DATE: 2/27/2016		WOOD STAIR PROFILE AND DETAILS		
AMERICAN LAND SURVEYING, INC. 1390 MARKET ST, #112, SAN FRANCISCO, CA 94102 PH: (415) 888-8580 sf@alst.com FX: (866) 260-5454		1 JE 8/20/2014 STAIRS MOVED AWAY FROM STREET ADDED TOPOGRAPHIC MAP		DRAFTED: JE		SHEET 3 of 5
No. BY DATE REV.		CHECKED: KP		APPROVED: RS		
		FILE: ALS14025		118 TAMALPAIS ROAD LANDS OF FEDERAL NATIONAL MORTGAGE ASSOC. FAIRFAX, CA		APN: 001-121-61



AMERICAN LAND SURVEYING, INC.
 1390 MARKET ST., #111, SAN FRANCISCO, CA 94102
 PH: (415) 885-8580 sf@slps.com FX: (866) 260-5454

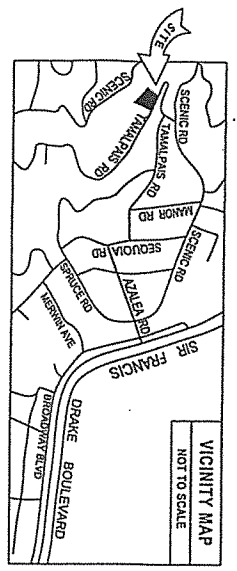
No.	BY	DATE	REV.
1	JE	8/20/2014	STAIRS MOVED AWAY FROM STREET ADDED TOPOGRAPHIC MAP

SCALE: AS NOTED
 DATE: 2/27/2016
 DRAFTED: JE
 CHECKED: KP
 APPROVED: RS
 FILE#: ALS14025

STAIRWAY IMPROVEMENT PLAN
 CONCRETE STAIR PROFILE
 118 TAMALPAIS ROAD
 LANDS OF FEDERAL NATIONAL MORTGAGE ASSOC.
 FAIRFAX, CA APN: 001-121-61

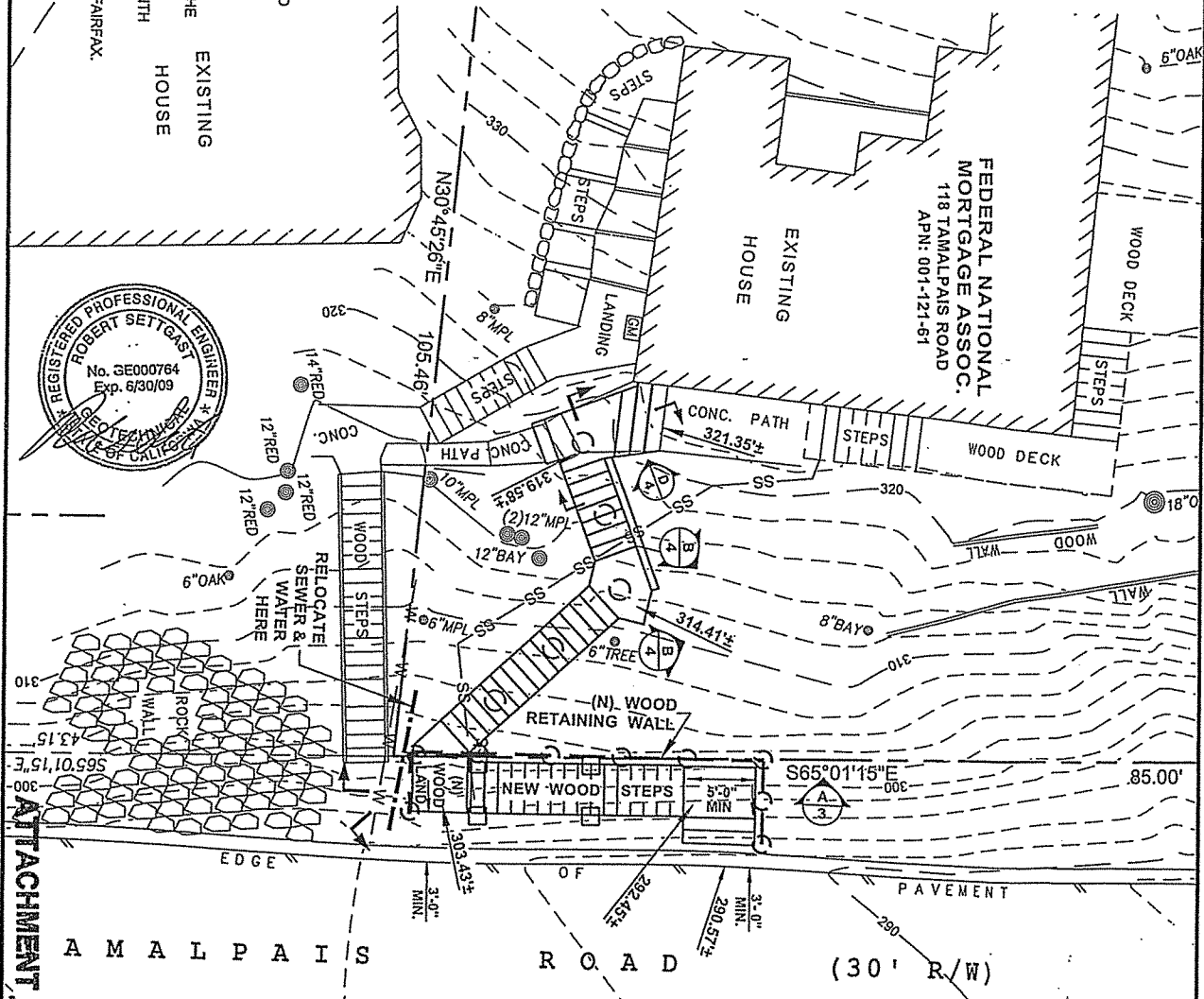
ALS14025
 SHEET
 4 of 5

321.35±
 321.00±
 319.00±
 318.88±
 317.00±
 315.00±
 313.00±
 312.42±
 311.00±
 309.00±
 307.00±
 305.00±
 303.00±
 302.73±
 301.00±
 299.00±
 297.00±
 295.00±
 293.00±



GENERAL NOTES:

1. ALL CONSTRUCTION SHALL CONFORM TO 2014 CALIFORNIA BUILDING CODE AND 2014 FAIRFAX BUILDING CODE REQUIREMENTS.
2. SIGN AND PLACEMENT OF CONCRETE SHALL BE IN ACCORDANCE WITH THE AMERICAN CONCRETE INSTITUTE CODE ACI 318.
3. ALL CONDITIONS AND DIMENSIONS TO BE VERIFIED IN THE FIELD BY THE CONTRACTOR PRIOR TO COMMENCEMENT OF WORK.
4. CONTRACTOR SHALL PROVIDE ALL NECESSARY SHORING AND PROTECTION DURING CONSTRUCTION.
5. REINFORCING STEEL TO BE ASTM 615, GRADE 60
6. CONCRETE Fc = 2500 PSI
7. LUMBER D.F. #1 Fb = 1000 PSI, Fv = 95 PSI
8. ALL HARDWARE, NAILS AND SCREWS IN CONTACT WITH PRESSURE TREATED MATERIAL SHALL BE HOT DIPPED GALVANIZED OR STAINLESS STEEL.
9. ALL FASTENERS SHALL MEET THE MINIMUM SIMPSON SPECIFICATIONS.
10. CONSTRUCTION INSPECTION SHALL BE CARRIED OUT BY A REGISTERED ENGINEER AND FAIRFAX BUILDING OFFICIAL.
11. CATCH BASIN SEDIMENT CONTROL SHALL BE INSTALLED AT THE NEAREST MAJOR STORM DRAIN DROP INLETS (SEE PLAN DETAIL, 1, SHEET 3).
12. THE CONTRACTOR SHALL CONSIDER THE POTENTIAL FOR EROSION AND SEDIMENTATION AT THE SITE AND COMPLY WITH MARIN COUNTY CODE (MCC) 24.04.625 & 24.04.627.
13. THE CONTRACTOR PERFORMING WORK IN THE COUNTY OF MARIN SHALL IMPLEMENT THE APPROPRIATE BMP PUSUANT TO MCC 23.18.093 TO PREVENT THE DISCHARGE OF CONSTRUCTION WASTES OR CONTAMINANTS FROM CONSTRUCTION MATERIALS, TOOLS AND EQUIPMENT FROM ENTERING A COUNTY STORM DRAIN SYSTEM.
14. THE CONTRACTOR SHALL DISPOSE OF ANY HAZARDOUS EARTHWORK FROM THE SITE TO THE APPROPRIATE FACILITY IN A LEGAL MANNER.
15. CONTRACTOR SHALL PROVIDE EROSION CONTROL MATS AND/OR BLANKETS IN AREAS IN THE VICINITY OF DISTURBED EARTH PRIOR TO EXCAVATION.
16. ALL CUT PINE TIMBER AND TIMBER IN CONTACT WITH CONNECTORS SHALL BE TREATED WITH COPPER-GREEN WOOD PRESERVATIVE OR EQUIVALENT.
17. CONTRACTOR SHALL RELOCATE SEWER AND WATER LINES AS REQUIRED BY THE CITY OF FAIRFAX.

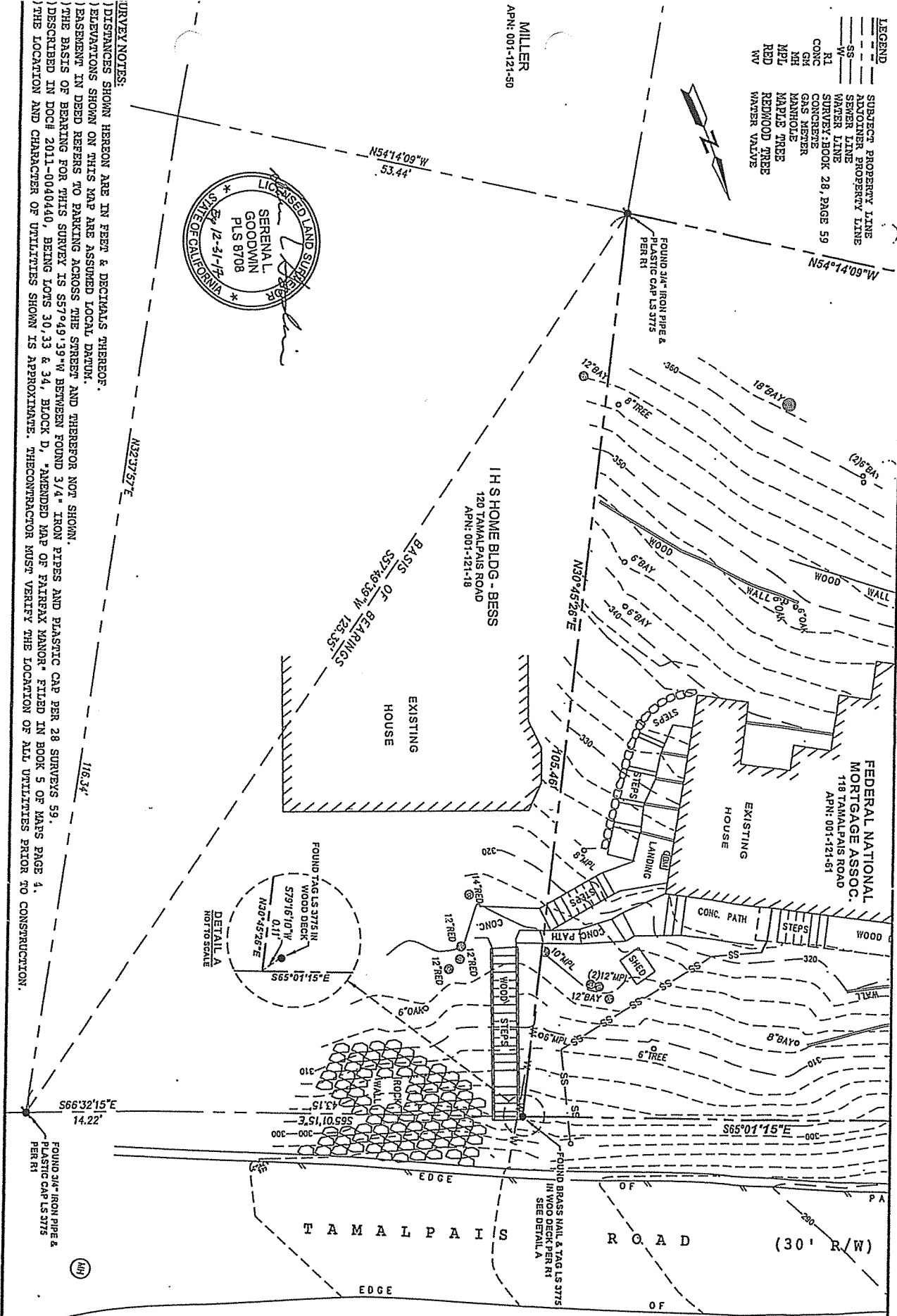
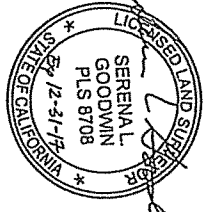


ATTACHMENT C

SCALE BAR		2 JE 9/15/2016 ADDRESS TOWN OF FAIRFAX COMMENTS		SCALE: 1/8" = 1'-0"	STAIRWAY IMPROVEMENT PLAN	ALS14025
8 4 0 4 8		DATED 8/12/2016		DATE: 9/15/2016		
AMERICAN LAND SURVEYING, INC. 1390 MARKET ST, #114, SAN FRANCISCO, CA 94102 PH: (415) 859-8580 sl@alstps.com FX: (866) 266-5454		1 JE 8/20/2014 STAIRS MOVED AWAY FROM STREET		DRAFTED: JE	SITE PLAN - GENERAL NOTES	SHEET
		ADDED TOPOGRAPHIC MAP		CHECKED: KP		
		No. BY DATE REV.		APPROVED: RS	118 TAMALPAIS ROAD	1 of 6
				FILE#: ALS14025		
				FAIRFAX, CA	LANDS OF FEDERAL NATIONAL MORTGAGE ASSOC. APN: 001-121-61	

- LEGEND**
- SUBJECT PROPERTY LINE
 - ADJOINER PROPERTY LINE
 - SS SEWER LINE
 - W WATER LINE
 - R1 SURVEY BOOK 28, PAGE 59
 - CONC CONCRETE
 - GA GAS METER
 - NH NAPHOLE
 - MPL MAPLE TREE
 - RED REDWOOD TREE
 - WV WATER VALVE

MILLER
APN: 001-121-50

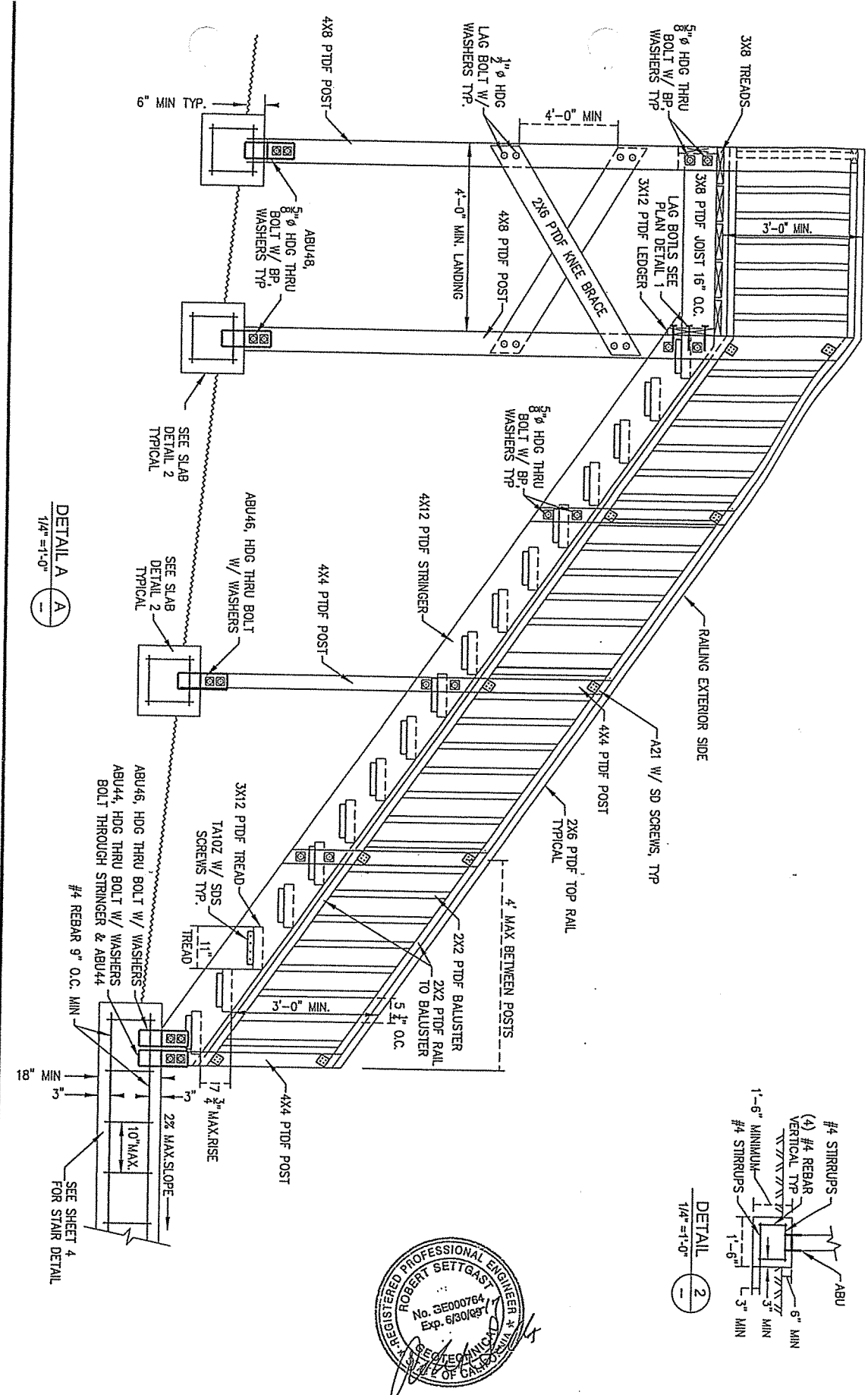


URVEY NOTES:

- (1) DISTANCES SHOWN HEREON ARE IN FEET & DECIMALS THEREOF.
- (2) ELEVATIONS SHOWN ON THIS MAP ARE ASSUMED LOCAL DATUM.
- (3) EASEMENT IN DEED REFERS TO PARKING ACROSS THE STREET AND THEREFOR NOT SHOWN.
- (4) THE BASIS OF BEARING FOR THIS SURVEY IS S57°49'.39"W BETWEEN FOUND 3/4" IRON PIPES AND PLASTIC CAP PER 28 SURVEYS 59.
- (5) DESCRIBED IN DOC# 2011-0040440, BEING LOTS 30, 33 & 34, BLOCK D, "AMENDED MAP OF FAIRFAX MANOR" FILED IN BOOK 5 OF MAPS PAGE 4.
- (6) THE LOCATION AND CHARACTER OF UTILITIES SHOWN IS APPROXIMATE. THE CONTRACTOR MUST VERIFY THE LOCATION OF ALL UTILITIES PRIOR TO CONSTRUCTION.

ORIGINAL SCALE: 1" = 10' 		SCALE: AS NOTED DATE: 9/15/2016		STAIRWAY IMPROVEMENT PLAN ALS14025	
2	JE	9/15/2016	ADDRESS TOWN OF FAIRFAX COMMENTS	DRAFTED: JE	TOPOGRAPHIC MAP 118 TAMALPAIS ROAD LANDS OF FEDERAL NATIONAL MORTGAGE ASSOC. FAIRFAX, CA APN: 001-121-51
1	JE	8/20/2014	STAIRS MOVED AWAY FROM STREET ADDED TOPOGRAPHIC MAP	CHECKED: KP APPROVED: SG	
No.	BY	DATE	REV.	FILE: ALS14025	SHEET 2 of 6

AMERICAN LAND SURVEYING, INC.
1390 MARKET ST, #112, SAN FRANCISCO, CA 94102
PH: (415) 888-8880 sf@alstps.com FX: (855) 260-5454



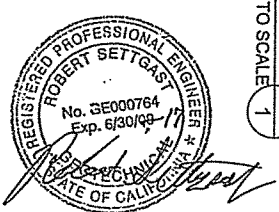
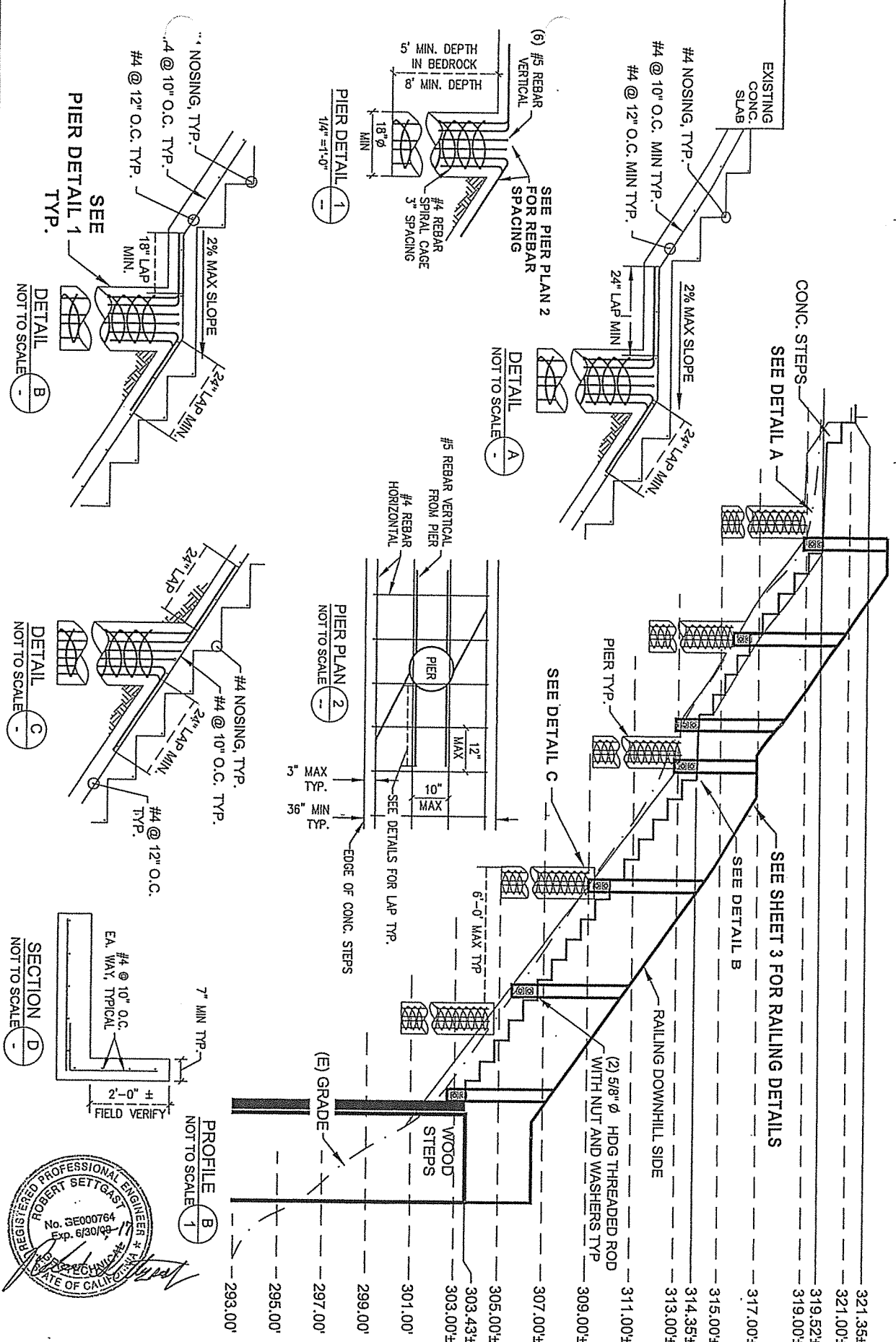
DETAIL A
1/4" = 1'-0"

DETAIL 2
1/4" = 1'-0"



		SCALE: AS NOTED DATE: 9/15/2016		STAIRWAY IMPROVEMENT PLAN		ALS14025
2	JE	9/15/2016	ADDRESS TOWN OF FAIRFAX COMMENTS	DATED 8/1/2016	DRAFTED: JE	WOOD STAIR PROFILE AND DETAILS
1	JE	8/20/2014	STAIRS MOVED AWAY FROM STREET ADDED TOPOGRAPHIC MAP	CHECKED: KP APPROVED: RS	FILED: ALS14025	SHEET 118 TAMALPAIS ROAD LANDS OF FEDERAL NATIONAL MORTGAGE ASSOC. FAIRFAX, CA
No.	BY	DATE	REV.			3 of 6 APN: 001-121-61

AMERICAN LAND SURVEYING, INC.
 1390 MARKET ST, #112, SAN FRANCISCO, CA 94102
 PH: (415) 858-8580 sl@alspls.com FX: (650) 260-5454

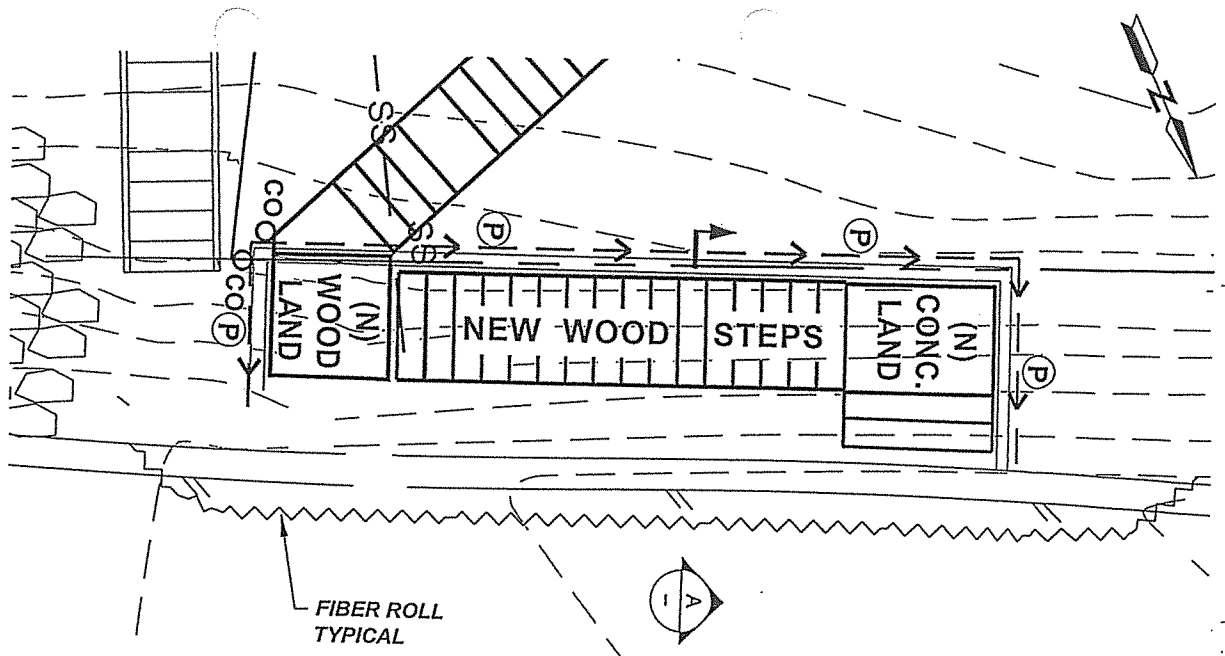


SCALE BAR
 8 4 0 4 8
 AMERICAN LAND SURVEYING, INC.
 1390 MARKET ST. #112, SAN FRANCISCO, CA 94102
 PH: (415) 888-8580 af@alst.com FX: (660) 240-5454

No.	BY	DATE	REV.
2	JE	9/15/2016	ADDRESS TOWN OF FAIRFAX COMMENTS DATED 8/12/2016
1	JE	8/26/2014	STAIRS MOVED AWAY FROM STREET ADDED TOPOGRAPHIC MAP

SCALE: AS NOTED	DATE: 9/15/2016	STAIRWAY IMPROVEMENT PLAN CONCRETE STAIR PROFILE 118 TAMALPAIS ROAD LANDS OF FEDERAL NATIONAL MORTGAGE ASSOC. FAIRFAX, CA APN: 001-121-61	ALS14025
DRAFTED: JE	CHECKED: KP		SHEET
APPROVED: RS	FILE#: ALS14025		4 of 6

321.35±	EXISTING CONC. SLAB
321.00±	CONC. STEPS SEE DETAIL A
319.52±	SEE SHEET 3 FOR RAILING DETAILS
319.00±	SEE DETAIL B
317.00±	SEE DETAIL C
315.00±	RAILING DOWNHILL SIDE
314.35±	(2) 5/8" HDG THREADED ROD WITH NUT AND WASHERS TYP
313.00±	WOOD STEPS
309.00±	EDGE OF CONC. STEPS
307.00±	PIER PLAN 2
305.00±	PIER PLAN 1
303.43±	
303.00±	
301.00±	
299.00±	
297.00±	
295.00±	
293.00±	

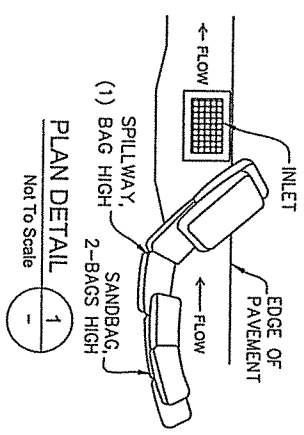
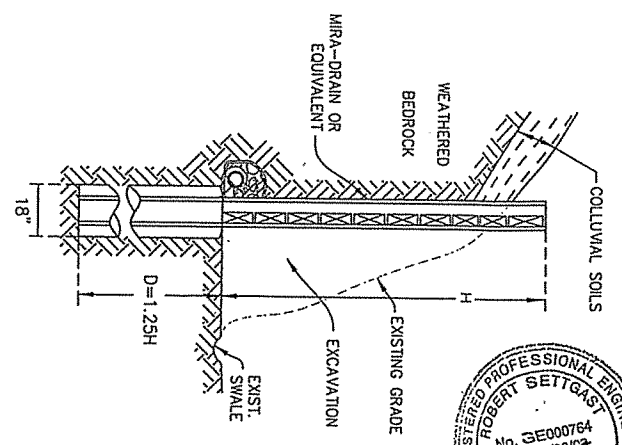


FIBER ROLL
TYPICAL

1. WORK TO BE MONITORED AND APPROVED BY ENGINEER WHO WOULD IMPLEMENT APPROPRIATE MODIFICATIONS TO SITE EXPOSED CONDITIONS.
2. SOCKETS DRILLED ON 5 FOOT CENTERS. POSITIONS MAY BE ADJUSTED TO FACILITATE DRILLING.
3. 1-BEAMS TO BE 50 KSI STEEL:
-W8X28 OR EQUAL FOR HEIGHT H<11 FT
-W8X24 OR EQUAL FOR HEIGHT H<10 FT
-W8X21 OR EQUAL FOR HEIGHT H<9 FT
-W8X15 OR EQUAL FOR HEIGHT H<8 FT
4. CONCRETE TO BE AT LEAST 2500 PSI
5. LAGGING TO BE 4X12 GRADE 2 DF OR EQUAL; & APPROVED FOR EARTH CONTACT. ALL SIDES AND CUTS TO BE TREATED WITH PRESERVATIVE. LAGGING MAY BE REDUCED TO 3X12 IF APPROVED BY THE ENGINEER.
6. 3/8" INCH GAPS BETWEEN LAGGING.
7. SPACING BELOW BOTTOM LAGGING MEMBER MAY BE ADJUSTED BY ENGINEER.
8. CLASS 2 PERMEABLE DRAINROCK OR MIRRODRRAIN FOR BACKDRAIN.
9. BOTTOM-PERF PIPE MAY BE DELETED IF SEEPAGE AT BASE IS ACCEPTABLE.
10. FINAL GRADING FOR DRAINAGE TO BE DEVELOPED DURING CONSTRUCTION.

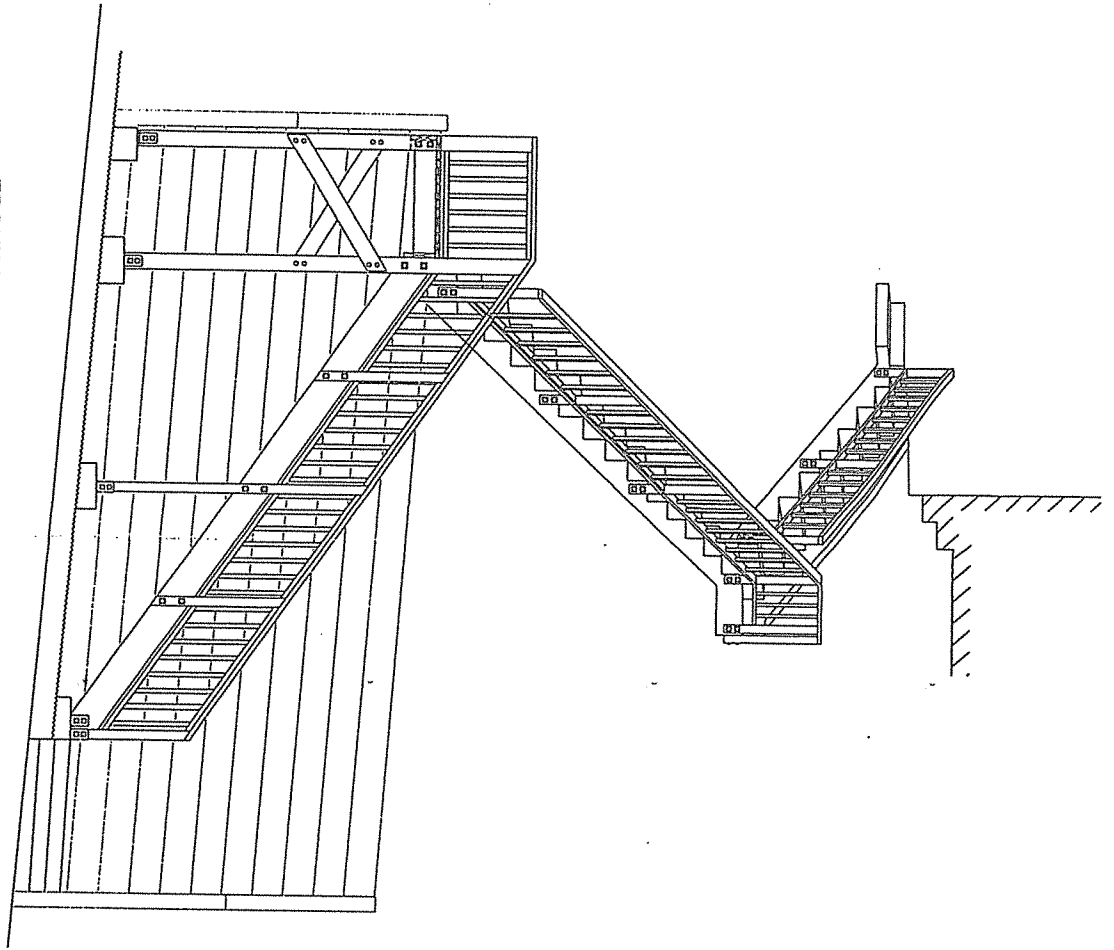
LEGEND
 (P) 4" Ø PERFORATED SDR 35 PIPE
 COO CLEANOUT

MASS EXCAVATION QUANTITIES:
 CUT = 21 ± C.Y.
 FILL = 0 ± C.Y.



		STAIRWAY IMPROVEMENT PLAN		ALS14025
2	JE	9/15/2016	ADDRESS TOWN OF FAIRFAX COMMENTS DATED 8/11/2016	DATE: 9/15/2016 DRAFTED: JE
1	JE	8/20/2014	STAIRS MOVED AWAY FROM STREET ADDED TOPOGRAPHIC MAP	CHECKED: KP APPROVED: RS
No.	BY	DATE	REV.	FILE#: ALS14025
AMERICAN LAND SURVEYING, INC. 1390 MARKET ST, #112, SAN FRANCISCO, CA 94102 PH: (415) 888-8580 sf@alstpls.com FX: (866) 260-5454				118 TAMALPAIS ROAD LANDS OF FEDERAL NATIONAL MORTGAGE ASSOC. FAIRFAX, CA APN: 001-121-61
				SHEET 5 of 6

FRONT / SOUTHWESTERLY ELEVATION



<p>NOT TO SCALE</p>				SCALE: AS NOTED	<p>FRONT ELEVATION</p> <p>118 TAMALPAIS ROAD</p> <p>LANDS OF FEDERAL NATIONAL MORTGAGE ASSOC.</p> <p>FAIRFAX, CA</p>	ALS14025
2	JE	9/15/2016	ADDRESS TOWN OF FAIRFAX COMMENTS	DATE: 9/15/2016		<p>SHEET</p> <p>6 of 6</p> <p>APN: 001-121-61</p>
			DATED 8/1/2016	DRAFTED: JE		
1	JE	8/20/2014	STAIRS MOVED AWAY FROM STREET	CHECKED: KP		
			ADDED TOPOGRAPHIC MAP	APPROVED: RS		
No.	BY	DATE	REV.	FILE#: ALS14025		

AMERICAN LAND SURVEYING, INC.
 1390 MARKET ST, #303, SAN FRANCISCO, CA 94102
 PH: (415) 888-8580 sf@alps.com FX: (666) 260-5454



TOWN OF FAIRFAX

142 BOLINAS ROAD, FAIRFAX, CALIFORNIA 94930
PHONE (415) 453-1584 / FAX (415) 453-1618

MEMORANDUM

To: Linda Neal – Principal Planner

Date: August 1, 2016

From: Ray Wrynski
Town Engineer

Page 1 of 3

Subject: Proposed Access Stairs
118 Tamalpais Road
Fairfax, CA

A.P. 001-121-61

This memorandum provides the comments and requirements you requested for this project.

Two site reviews were done and during one site review, the owner of 120 Tamalpais Road, saw me at the site and discussed, with me, the project of the proposed stairs.

Documents, for this project, that were reviewed included plans from American Land Surveying, dated 2/27/16 (7 pages), the 4/21/16 letter from Geoengineering, Inc., The 9/3/15 report by Urban Forestry Associates, Inc., The 6/13/13 preliminary title report from Old republic Title Co., the 5/10/16 letter from attorney Lawrence Bragman, the 3/24/15 repair proposal from Engineered Soil Repair, Inc. and the 12/19/14 report from Herzog Geotechnical Consulting Engineers.

A question you noted that needed an answer was my judgment of the probability that the proposed construction of the stairs, with the retaining wall, may cause stability problems at the rock rip-rap hillside stabilization that was placed in March of 2011.

The 4/21/16 letter by Geoengineering notes minor sloughage but does not state any concern for stability. The 12/19/14 Herzog report concludes that the cut bank in this area is subject to continuing sloughing and possible larger failures. A 3/23/11 photo (from the rip-rap work) shows that there was soil sliding or sloughing under and just easterly of the existing wood stairs. This is in an area where there appears to be some bedrock exposed so that apparent bedrock structure, in this location, is not a reliable indicator of stability.

Based on the above information, I find that the easterly end wing-wall, for the proposed new stairs retaining wall, will create an unneeded potential for damage, from instability, to the grouted rock slope repair. Excavation and work like drilling for piers, in steep banks that have low strength will often dislodge chunks of soil and there is no justification for risking that kind of damage at this location.

The retaining wall and stair structure must be moved about five lineal feet northwesterly to get it away from the rip-rap structure and away from the subdrain outlet for the rip-rap structure. This movement of the planned construction will also solve the problem of disrupting the water service to 120 Tamalpais Road. That water service location is shown a little incorrectly on the topographic base map in the plans.

ATTACHMENT



The water line goes uphill under the existing stairs onto the property of 120 Tamalpais Drive. There is no easement shown on the plan for a waterline to cross 120 Tamalpais Road and serve 118 Tamalpais Road. This water line location seems to indicate an access problem for the water service to 118 Tamalpais Drive.

The owner of 120 Tamalpais drive, Mr. Bess, told me he thought that the water line went up the hill and then split to serve the two properties. This might be true and it might be workable when 118 and 120 Tamalpais Road were owned by the same person. This is a very odd water service condition and probably is not workable with these properties in separate ownership. The correct existing water service location must be shown on the plans and the water meter or meters that serve 118 and 120 Tamalpais Road must be shown so that it is clear if there is an access and service problem for water supply to 118 Tamalpais Road. If there is no legal water service to 118 Tamalpais Road, that will have to be corrected.

There are a number of easements shown on the title report that affect the 118 Tamalpais Road. A note must be added to the topographic survey stating that all easements, affecting the proposed construction area, from the title report, are shown. If there are no easements, affecting the construction area, then a note stating this must be added to the topographic survey.

The question of ownership of two Maple trees is raised in the 5/10/16 Bragman letter. The proposed stairs appear to require removal of these two trees, the ones called 6" MPL and 10" MPL on the survey. These trees are somewhat larger than 6" and 10" and are called 9.9" and 14.9" in the Urban Forestry Associates report. The Town should not permit work that requires the removal of trees that cannot be removed because of an ownership conflict. The property line is shown to be very close to these trees and since the lower portion of the trees is irregular that part of each tree may be crossing the property line even though the topographic survey does not seem to indicate that. To resolve this question the property line must be staked in the field so that a string line, on the property line, can be set through the area of the tree locations and visually checked by Town staff and by the respective property owners to determine if there is a question of tree ownership. After that field check, the disposition of the trees can be resolved. The topography also shows two 12" MPL trees near the northerly side of the new stairs and these trees are more correctly called 23.7" and 12.2" bay laurel in the Arborist report. All these trees may be affected by the construction so their identification is important.

The Bragman letter raises the question of the accuracy of the property line location, primarily, because the property corner near the street was found to be set in the wood deck of the existing damaged stairs. This deck could have moved when the landslide below 120 Tamalpais road occurred or it could have moved due to aging of the wood stairs and weathering of the steep slope. Confirming information must be provided either on the survey or in a letter from the surveyor as to how it was determined that the property line location, shown on the topographic survey, is correct. I will assume that the line length shown was field measured and found to be the length for that line shown on the referenced recorded record of survey.

If the property corner at the street had been shifted by movement of the deck it would not satisfy an angular check of the property line, that is shown, based on a field measurement of the angle of this property line relative to one of the other property lines shown on the record of survey. This check or another suitable check will resolve this question. This angular check should be possible by turning an angle from the southerly (uphill) end of the property line shown where the back line (northeast – southwest) intersects the property line shown on the topography along the southeasterly side of the 118 Tamalpais Road site. After the property line location is confirmed several, fairly permanent points on the property line, near the construction area must be set to be used to check tree locations and to check the

construction work along the property line as the work progresses. The relationship of these points to the front property corner must be provided. If these points are lost during the construction they will have to be reset. The survey work information, described above must be provided on the plan or in a letter to the Town with the signature and seal of the surveyor responsible for it. Since the survey work already provided to the Town is given as the responsibility of Robert Settgast, he appears to be the professional providing the signature and seal covering this additional boundary surveying work. This also includes the easement work described above. I know that Mr. Settgast is showing his geotechnical license on the plan but that is carried by his civil engineer's license which includes surveying authority. Mr. Settgast has never, to my knowledge, provided land surveying work so he probably will not be signing for the surveying work and probably did not intend to be the only licensed person signing the topographic survey with boundary information. Whoever did the surveying work that has been provided and will be provided must place their signature and seal on the copies of this information provided to the Town.

The plans state that the work on the water line and sewer line is to be as required by the City of Fairfax. This must be changed to be done as required by the Marin Municipal Water District and the Ross Valley Sanitary District. Also, a note must be added to the plans stating that all parts of the new stair structure and retaining wall construction shall be a minimum of three feet clear of the westerly edge of the vehicular travel lane of Tamalpais Road.

Regarding statements in the Urban Forestry (Arborist) report about the trees, there is the suggestion that Tree 1 is near some Redwood Trees and the bay tree and that those trees will contribute to the slope stability. That may be true but since I have seen so many healthy trees go downhill with landslides, I do not look at trees as a significant factor in stabilizing a low stability hillside. The arborist report stated Tree 2 has a severe lean and for that and other reasons it has a negative effect on soil stability. I agree completely with the report on this tree. Mr. Bess told me he would like that tree to stay so that is his feeling. I believe the tree can be expected to rotate and uproot at some time in the near future and that will result in quite a bit of damage to the slope. If that tree is removed or cut off at ground level that will be positive factor in reducing probable damage to this steep slope area.

Something worth considering at this location would be building the proposed stairs with an extended landing at the top of the retaining wall that would serve both 118 and 120 Tamalpais Road. This would eliminate the need to build more stairs at this location in the future for 120 Tamalpais Road. I realize this would put the structure back close to the rock rip-rap repair where I do not want the soil disturbance to be. I believe this could be done successfully with careful soils engineering inspection and construction near the rip rap. The stairs up to this first landing would be in the street right of way and could be designated for the use of the two properties and designated to be maintained by the two properties. If this could be done it would resolve the access issue for both properties fairly well. The stairs in the right of way that are proposed must be covered by an encroachment permit as required by Code Section 12.32.

I recommend that the processing of this project be delayed until the above required information is received.



Ray Wrynski, P. E.
Town Engineer

GEOENGINEERING, INC.

Geotechnical Engineering Consultants

124 Paul Drive, Suite #105
San Rafael, CA 94903

Phone & Fax (415) 492-1747
Robert H. Settgast P.E. G.E.
rhsettgast@hotmail.com

Nick Rasic
Palladium Reality
400 Civic Center Dr., Ste 200
San Rafael, CA 94903
nr@rasic.us

April 21, 2016
File 3-147-als

*GEOTECHNICAL RE-EVALUATION
AND
PLAN REVIEW & ACCEPTANCE
DRILLED I-BEAM &
TIMBER LAGGING BULKHEAD
AND WOOD STAIRWAY
CUT INTO RISING SLOPES
118 TAMALPAIS AVENUE
FAIRFAX, CALIFORNIA*

Our firm had performed a geotechnical evaluation and developed a design for the entitled drilled bulkhead. This submittal (which is attached) includes: A General Plan, on Sheet 1; A typical Design Section on Sheet 2; Photos on Sheet 3; and our Calculations & Design Criteria on Sheet 4.

Weathered bedrock is exposed at grades of or within a half foot of grade, which simplifies design. The project was then designed by American Land Surveying of Mill Valley (ALS) who used our criteria with consultation from us.

We have reviewed the final version of the project design by ALS (Sheets 1 through 5—dated 2/27/16—their file ALS14025)) and have discussed it with them.

We had also re-visited the site on April 14. Aside from some minor sloughage that is normal, there were no changes since our previous 2/27/16 evaluation.

As indicated on the plans and on sheet 2 of our criteria and on sheet 5 of the current ALS plan, foundation drilling and earthwork must be monitored and approved by the geotechnical engineer—and our acceptance is subject to this

- o o o -

In view of the above points we find these plans to meet the intent of our criteria as well as other normal standards for similar projects in comparable settings.

Given the favorable geological conditions, there are no reasons why this project cannot proceed in an expedited manner.

CLOSURE AND LIMITATIONS

By accepting this report the client and other recipients acknowledge their understanding and acceptance of the following terms and conditions. They also acknowledge that no verbal or written guarantees were made by the undersigned.

ATTACHMENT **E**

Even though we see no reason to suspect that the soil or foundation behavior will differ from our predictions, one must recognize that factors contributing to hillside and foundation instability, surface and groundwater seepage, and other geotechnical related problems cannot always be detected.

Earth slippage and subfloor water are sometimes unavoidable especially during rainfall and/or irrigation. Sub-drain performance can never be predicted and blockages in such system are common. Cracks in wallboard & tile, and some distortions in hardwood floors will develop in most structures from normal wood shrinkage and relaxation--especially for additions. Concrete curing and stress cracks are unavoidable. Since we are not contracted for full time observations, we are not be liable for construction errors.

It is also understood that certain risks must be assumed for all types of foundation, earth, and drainage systems. These risks can always be lessened by upgrading these systems even though the margin of additional safety may be small compared to the additional costs involved. Although the engineer may assist in selection of the optimum balance between safety and economy, the client and all recipients understand that the risk is their own.

This report represents our best judgment based on the available information and complies with current standards of practice for projects of comparable scope and budgets. No forms of warranty or insurance coverage are expressed or implied in our reports or other communications.

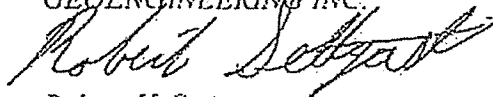
If a claim is made against GeoEngineering, Inc. for any act relating to our professional services without just cause, the initiator(s) of the claim shall pay for all costs and lost time associated with our defense. In any case, our liability cannot exceed our fee for this project.

We carry no errors and omission insurance.

- o o o -

We trust that this report provides the information required. You may contact us for clarification.

Respectfully submitted,
GEOENGINEERING INC.



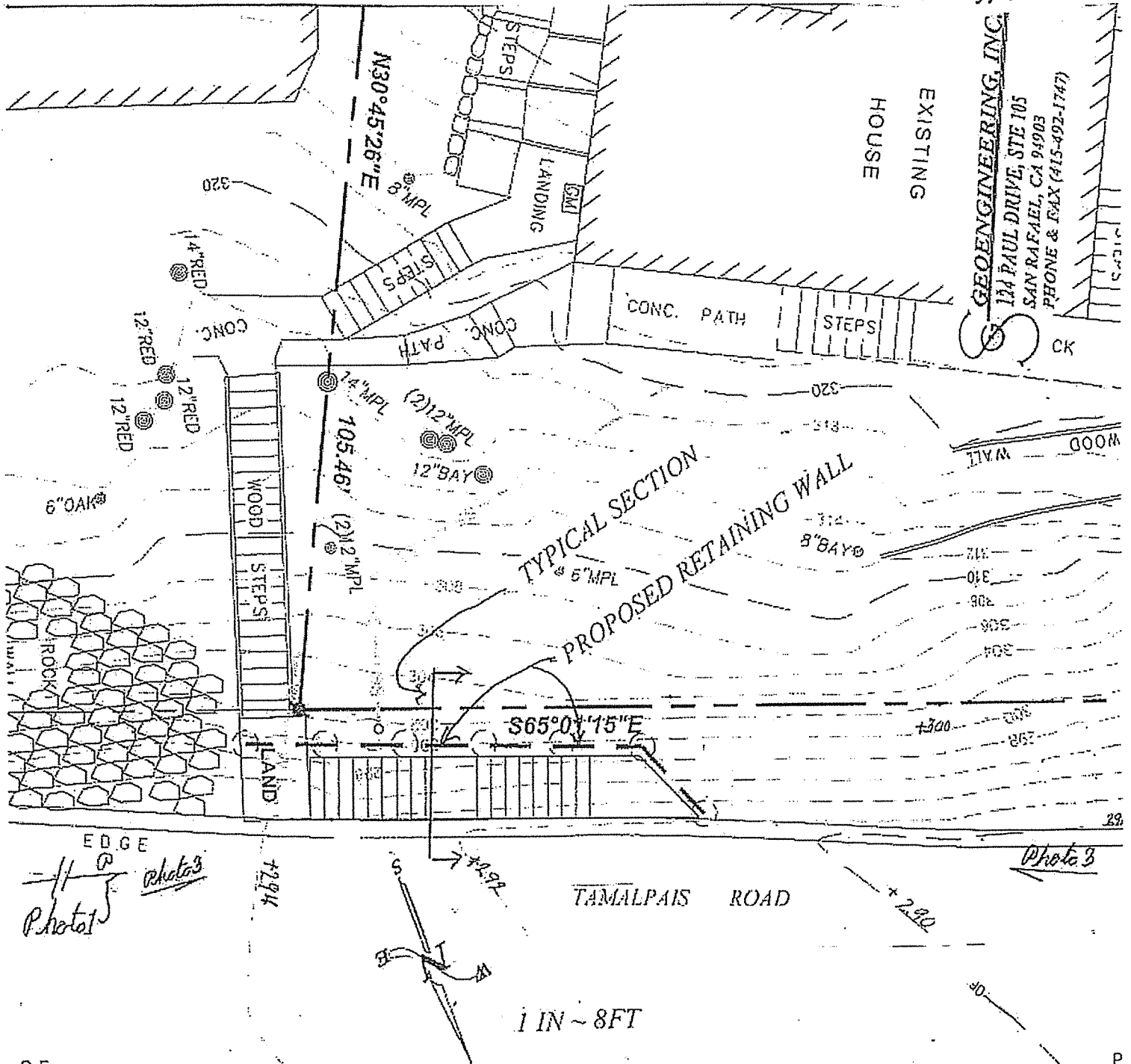
Robert H. Settgast
Professional Geotechnical Engineer

RHS:rhs

Attachment: Design & Criteria 1. General Plan; 2. Typical Design Section;
3. Photos; & 4. Calculations & Design Criteria.

CC: American Land Surveying ; joeelemen@sbcglobal.net
Town of Fairfax 142 Bolinas Road, Fairfax, CA . Attn Linda Neal:linda@townoffairfax.org
Glenn Wechsler: glenn@glenmwechsler.com

13 July, 14



GEOENGINEERING, INC.
 124 PAUL DRIVE, STE 105
 SAN RAFAEL, CA 94903
 PHONE & FAX (415-492-1747)

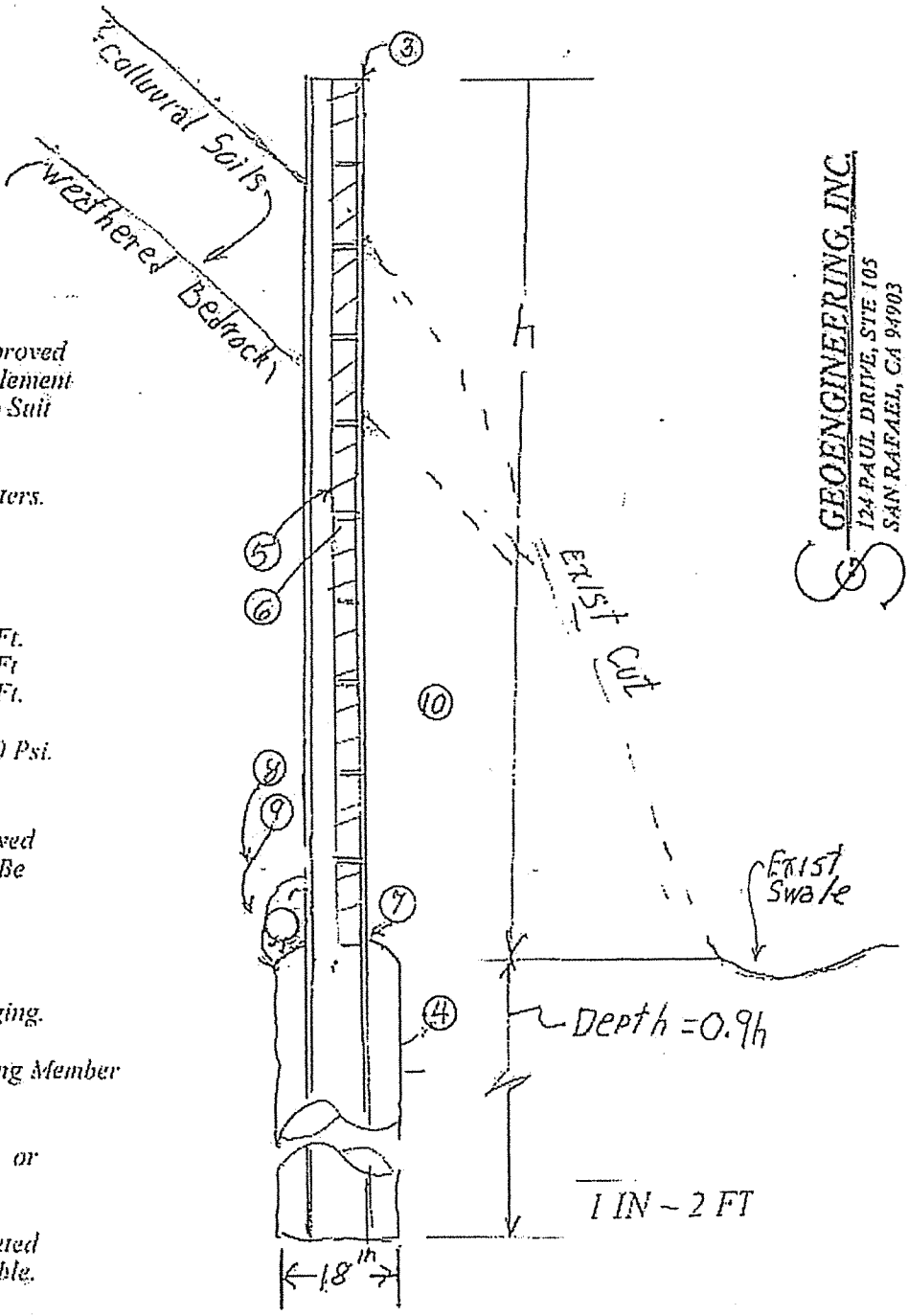
GENERAL PLAN
 PROPOSED DRILLED I-BEAM
 RETAINING WALL
 STAIRWAY ACCESS CUT
 118 TAMALPAIS RD
 FAIRFAX, CA
 FOR AMERICAN LAND SURVEYING



GE

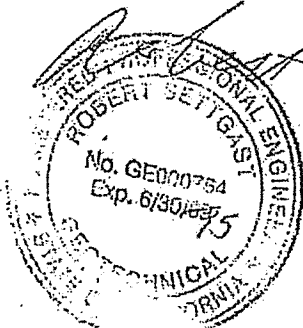
P

- ① Work to Be Monitored & Approved By Engineer Who Would Implement Appropriate Modifications to Suit Exposed Conditions.
- ② Sockets Drilled on ~5 Ft Centers. Positions May Be Adjusted To Facilitate Drilling.
- ③ I-beams to Be 50 Ksi Steel; WS X 24 or Equal for H < 10 Ft. WS X 21 or Equal for H < 9 Ft. WS X 15 or Equal for H < 8 Ft.
- ④ Concrete to Be at Least 2,500 Psi.
- ⑤ Lagging to Be 4X12 Grade 2 Doug Fir or Equal; & Approved For Earth Contact. Cuts Tot Be Treated with Preservative 3X12 Lagging May Suffice If Approved by Engr.
- ⑥ ~3/8 Inch Gaps Between Lagging.
- ⑦ Spacing below Bottom Lagging Member May Be Adjusted by Engineer
- ⑧ Class 2 Permeable Drainrock or Mridrain for Backdrainage
- ⑨ Bottom-perf Pipe May Be Deleted If Seepage at Base Is Acceptable.
- ⑩ Final Grading for Drainage to Be Developed During Construction.



GEOENGINEERING, INC.
 124 PAUL DRIVE, STE 105
 SAN RAFAEL, CA 94903
 PHONE & FAX (415-492-1747)

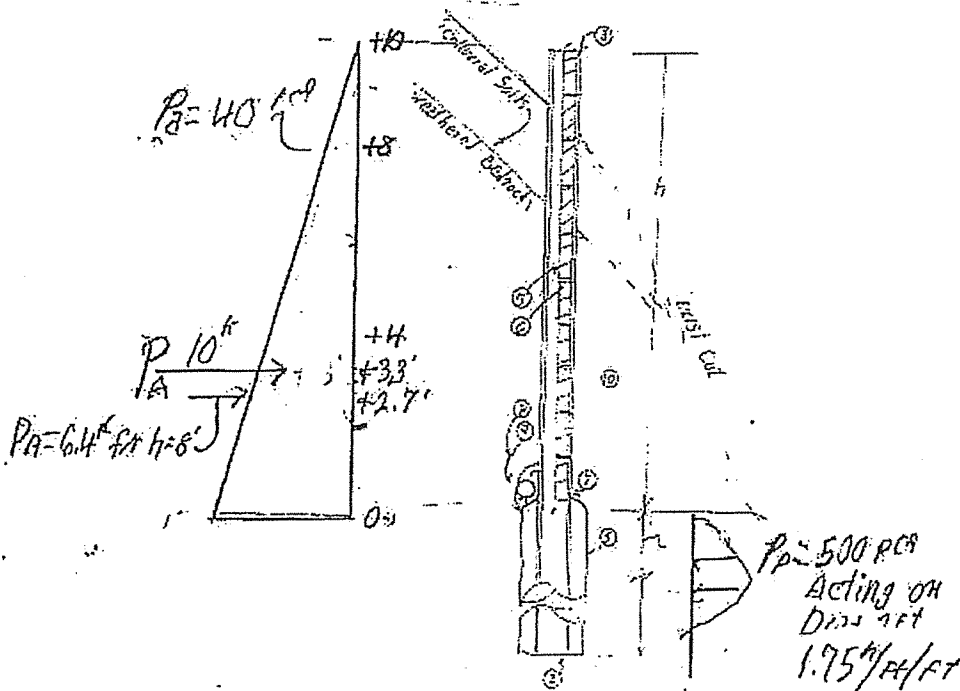
TYPICAL SECTION
 PROPOSED DRILLED I-BEAM
 RETAINING WALL
 STAIRWAY ACCESS CUT
 118 TAMALPAIS RD
 FAIRFAX, CA
 FOR AMERICAN LAND SURVEYING


 Robert Bettigast



Joe Elemen
118 Tamalpais Rd.
Fairfax, CA

13 July, 14



GEOENGINEERING, INC.
 124 PAUL DRIVE, STE 105
 SAN RAFAEL, CA 94903
 PHONE & FAX (415) 492-1747

$h=10'$ $P_A = 5' (40 pcf) (10')^2 / 2 = 10k$ For $h=10'$
 $Z_F = \frac{2}{3} \sqrt{\frac{P}{\gamma}}$ $= \frac{2}{3} \sqrt{\frac{2.5 \times 10k}{1.75 k/ft}}$ $= 2.4'$
 $M = 10k (3.3' + 2.4') = 57k'$ $\rightarrow W 8 \times 24 (57k')$
 $h=8'$ $P_A = 5' (40 pcf) (8')^2 / 2 = 6.4k$
 $Z_F = \frac{2}{3} \sqrt{\frac{2 \times 6.4k}{1.75 k/ft}}$ $= 1.8'$
 $M = 6.4k (2.7' + 1.8') = 29k'$ $\rightarrow W 8 \times 15 (32k')$
 $h=10'$ $A = \frac{2.34 (10k)}{\frac{8}{3} (1.75 k/ft)}$ $= 5.0'$
 $d = \frac{5.0}{2} (1 + \gamma + \frac{4.36 (3.3')}{5.0}) = 7'$
 $d = 8' 15" OK$

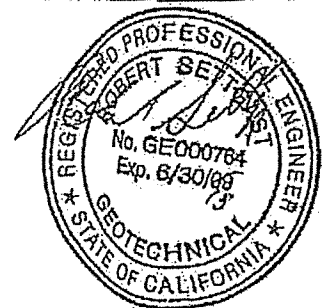
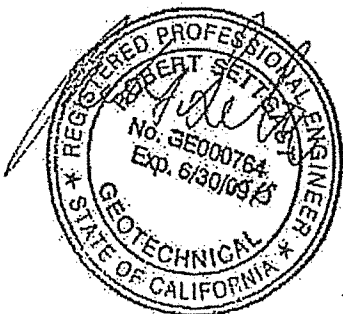
$W 8 \times 24$
 $W 10 \times 27$

Use $d = 0.79h$ For All Cases

Timber Stress $\rightarrow M = 0.04 \times 8' \times (5')^2 / 2 = 1.0 k'/ft = 12 \%$
 $S = 115'' (2.6) = 130 \text{ in}^2$

$f_b = \frac{12.5}{1.9} \rightarrow OK \text{ For } 3 \times 12$
 (Marginal)

CALCULATIONS
 DRILLED I-BEAM
 RETAINING WALL
 STAIRWAY ACCESS CUT
 118 TAMALPAIS RD
 FAIRFAX, CA
 FOR AMERICAN LAND SURVEYING



Fannie Mae
Attn: Nick Rasic
Via email:
reinvest@rasic.us



URBAN FORESTRY ASSOCIATES, INC.

8 Willow Street San Rafael, CA 94901
(415) 454-4212 info@urbanforestryassociates.com

ARBORIST REPORT

118 Tamalpais Rd. Fairfax, 94930

PURPOSE

Urban Forestry Associates (UFA) was hired to assess two big leaf maple trees with the planned demolition of an existing stairway and installation of a new stairway located at 120 Tamalpais Road in Fairfax. Conclusions in regard to planned construction are based on the development plans dated 7/28/15.

SCOPE OF WORK AND LIMITATIONS

This report is not a geotechnical assessment. Urban Forestry Associates has no personal or monetary interest in the outcome of this investigation. All observations regarding trees in this report were made by UFA, independently, based on our education and experience. All determinations of health condition, structural condition, or hazard potential of a tree or trees at issue are based on our best professional judgment.

This report is strictly an urban forestry and arboricultural land use report. All opinions and conclusions are based on an urban forestry and arboricultural perspective of the effect of geology and soils on trees and other vegetation and the role of roots in erosion control, soil cohesion, anchoring of the soil mantle and soil dewatering. The identification of soil and geologic conditions at the subject property are based on our experience and inspection of the site and are essential to the understanding of the environmental role of trees at the site. This report shall not be assumed to be a structural, civil or geotechnical engineering report. If you have engineering, soil science or geotechnical concerns we recommend that you consult the appropriate licensed geotechnical engineering specialist.

GENERAL OBSERVATIONS

The subject trees are located on a heavily vegetated steep slope (approx. 62 degree). There is a mix of native tree species; big leaf maple (*Acer macrophyllum*), coast redwood (*Sequoia sempervirens*), California bay laurel (*Umbellularia californica*), and California buckeye (*Aesculus californica*). The two subject maple trees are reportedly located on the property of 118 Tamalpais although property lines were not clearly defined. The existing stairway is degraded and not in use at this time.

OBSERVATIONS

- Tree 1
 - Species big leaf maple (*Acer macrophyllum*)
 - Size 14.9" DBH
 - Location -Within the footprint of the planned stairway improvements.
 - 12.5 feet upslope from T-1.
 - 8' horizontal distance from the nearest coast redwood (*Sequoia sempervirens*) tree.
 - 6' from the base of the main stem of the T-3, a California bay laurel. 5.5' from its' root crown.
 - Condition Fair health and structure. It is beginning to enter early dormancy. Adjacent bay and redwood canopies limit its canopy, though it has fairly good balance upslope. There is a rope improperly connected to T-1, T-2, and T-3. It was presumably installed to provide some degree of structural support for T-2 though the rope is relatively slack and not providing much support. Soil probing found no significant voids in the soil, though adjacent hardscape limited exploration. There is a group of second growth redwood stems across and upslope from the subject tree, which appear to have originated from a sizeable mother stump.

Conclusions The planned stairway improvement plan necessitates the removal of this tree. Due to its close proximity to adjacent trees, the species of adjacent trees, and the nature of tree root systems, the removal of this tree is unlikely to have a significant impact on slope stability. T-1 is located within the structural root zone¹ of T-3 (to be retained) indicating that many large roots from T-3 are intermingled on the slope and will continue to contribute to the slope stability if T-1 is removed. As a species, coast redwood is well known for its' extensive, fibrous root system, dewatering soils, contributing to erosion control, soil stability and soil cohesion. The subject redwood roots are likely occupying much of the same slope immediately as the subject maple trees.

General Conclusion This tree could be removed for stairway installation without concern that its removal would result in slope instability.

Tree 2

Species big leaf maple (*Acer macrophyllum*)

Size 9.9" DBH

Location -Within the footprint of the planned stairway improvements.
-Above the cut bank at 120 Tamalpais Rd. Its canopy extends over the road.

Condition Fair health, poor structure. It is heavily suppressed under canopies of adjacent trees, and as a result has a relatively stunted canopy and severe lean over the road. It is currently beginning to go in to dormancy, evident from leaf drop and change in leaf color. It has poor structure, with a severe phototropic lean (in response to sunlight limitations) over Tamalpais Road. Soil probing (with a 4' metal probe) on the upslope side of the tree base found one void, where it inserted easily through the soil. The poorly attached rope is not contributing to structural support.

Conclusions This is a relatively small, and stunted tree with poor structure. The observed soil void likely indicates lifting of the root plate as result of the severe lean, significantly increasing the probability of failure. At this point there is a serious concern that this tree has a negative effect on soil stability. The current plans place it within the footprint of stairway improvement, necessitating its removal.

Recom'ds My recommendation is to remove this tree whether or not the new stairway is built. Whole tree removal for poor structure and stairway installation.

Tree 3

Species California bay laurel (*Umbellularia californica*)

Size Three trunks: 23.7, 12.2" DBH There is also a 16.7" CA bay connected to the down slope portion of the root crown.

Location -30' slope distance above the cut bank for the road.
-6' across slope from T-1

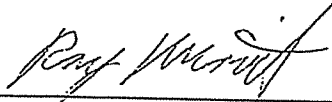
Condition Fair to good health and structure. The 12.2" stem was almost completely removed in the past with a large heading cut. The down slope trunk has a significant lean down slope.

Conclusions Though significant negative impacts to this tree from the proposed project are unlikely measures should be taken to protect it during demolition and construction. The plans call for a 12" pier less than 4 feet from its base (within the structural root zone). The project arborist should work with the engineer and contractor to assure the integrity. Any roots encountered over 1" diameter should be cut cleanly to reduce the chances of disease/decay entering the

¹ Radius at which roots responsible for providing structural stability are typically found, calculated by multiplying 3- 5 times the diameter at breast height-This radius helps to develop an acceptable distance at which roots can be cut without causing irreversible harm to the health and/or structural stability of a tree.

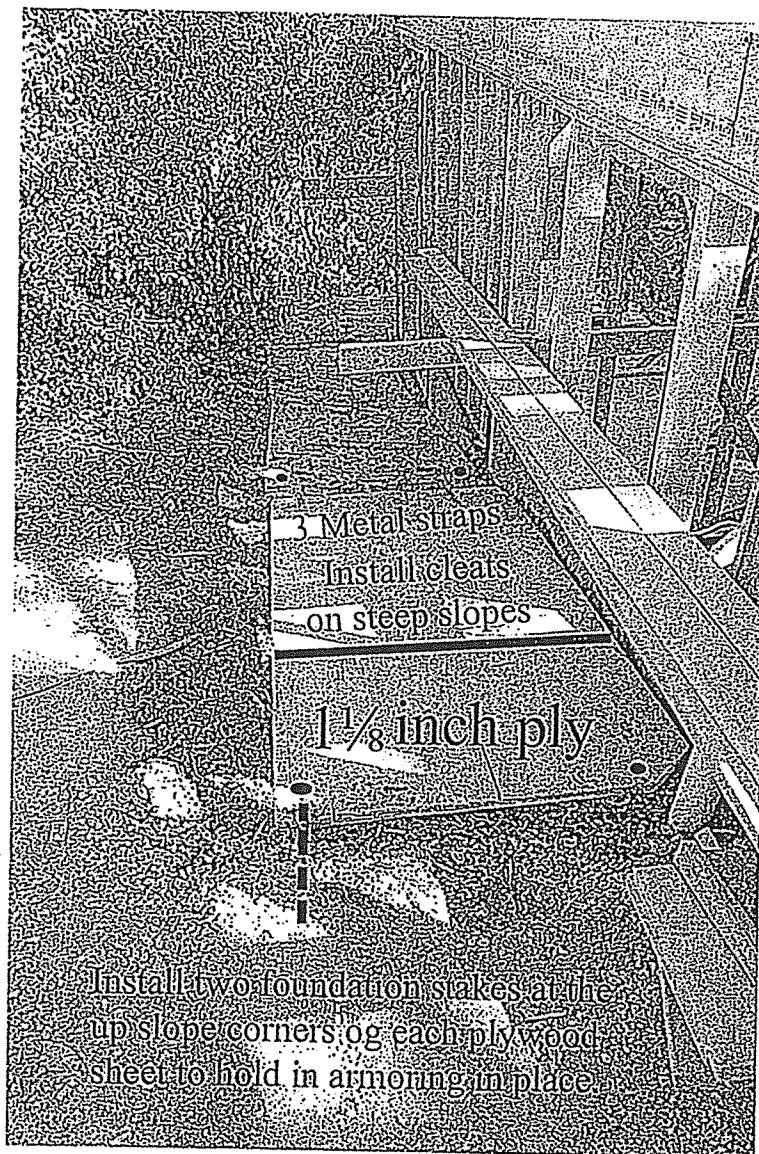
root. Hand excavation to locate and cut roots should be performed prior to drilling the pier closest to this tree.

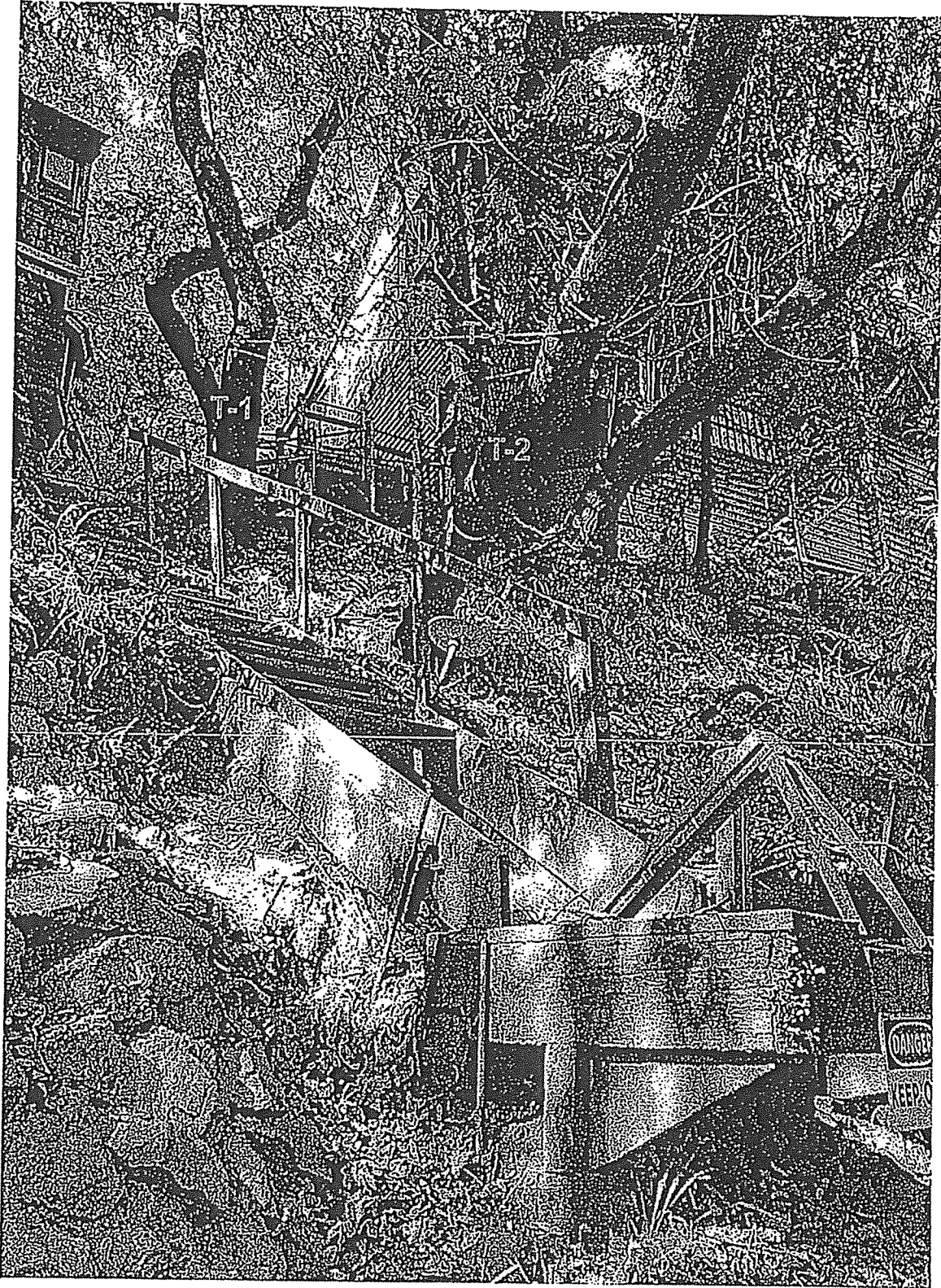
All other structural members of the proposed stair should be at or above grade. Soils and roots must be armored during construction.

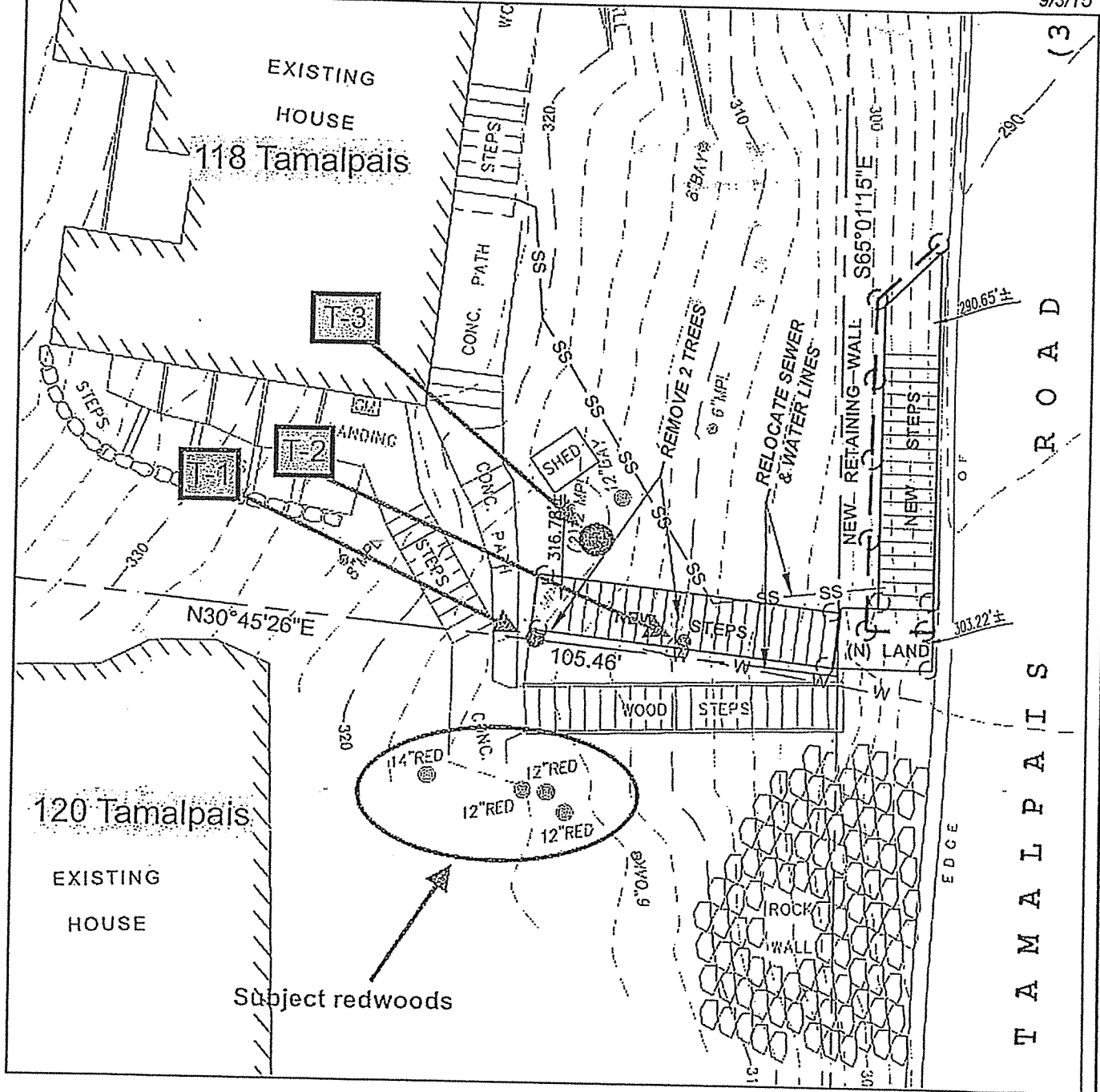


Ray Moritz, Urban Forester SAF Cert #241
ISA Certified Tree Risk Assessor

Soil Armoring







(3)

TAMALPAIS ROAD

LAWRENCE BRAGMAN
ATTORNEY AT LAW
912 LOOTENS PLACE • SECOND FLOOR
SAN RAFAEL, CALIFORNIA 94901-3110
(415) 459-6060 FAX: (415) 459-6067

January 20, 2017

Linda Neal
Town of Fairfax- Principal Planner
142 Bolinas Road
Fairfax, CA 94930

Re: Appeal of Building Permit and Variance Application for 118 Tamalpais Road

Dear Linda:

I am writing on behalf of Walter Bess, Jr. in regard to the status of his appeal of the Fairfax Planning Commission's conditional approval of the front stairway building permit application of Federal National Mortgage Association ("Fannie Mae").

My clients objected to Fannie Mae's original application for a building permit on several grounds including:

1. Removal of two maple trees that appear to straddle the boundary between 120 Tamalpais, which Mr. Bess owns, and 118 Tamalpais;
2. The proposed stairway at 118 Tamalpais would be well within the mandatory five foot side yard set-back with 120 Tamalpais that is required under Fairfax Town Code section 17.040.020 (C). Accordingly, the first stairway construction plan required a side-yard set-back variance approved by the Fairfax Planning Commission.
3. The previous stairway, located on 120 Tamalpais, served both 118 and 120 Tamalpais which were subdivided many years ago. There was no indication that the applicant would share the new stairway with 120 Tamalpais or record an easement to that effect.
4. Compliance with the safety and construction specifications outlined by Mr. Bess's consulting engineer, Craig Herzog.

As you recall, a condition of the Planning Commission's approval of the application was that Town Engineer, Ray Wrynski, would need to review and approve the proposed plans. Mr. Wrynski subsequently did a report which called for substantial revision of the plans. I have attached a copy of his report for your immediate reference. As a starting point for purposes of the status of the appeal, can you please let us know whether Mr. Wrynski has reviewed FNMA's plans to determine whether they are in compliance with his revisions?

In addition to needing to know whether the plans have been reviewed and approved as required, the following issues remain:

1. There is still no indication whether Fannie Mae is willing to give 120 Tamalpais

Letter to Linda Neal
Re: 119 Tamalpais Road Appeal
Page: Two

an easement to use the proposed new stairway. As set forth above, 120 and 118 Tamalpais were originally a single lot which was split into the two existing parcels. Mr. Bess purchased 120 Tamalpais from his neighbor for a nominal sum many years ago and still owns the lot. The previous stairway served both 118 Tamalpais and 120 Tamalpais for decades and cessation of rights of passage for 120 is unfair and will further devalue 120 Tamalpais;

2. Fannie Mae's plans call for installing new and separate sewer and water line services for 118 Tamalpais. There is no indication on the plans that the existing water and sewage lines that serve 120 Tamalpais will be left intact;

3. Additionally, our consulting engineer, Craig Herzog has indicated that the following engineering problems remain in the revised plans:

- a. The Miradrain (misspelled) panels on Section A of Sheet 5 should be terminated a foot below finished grade to preclude surface water from entering the backdrain system;
- b. Provisions should be made to intercept runoff at the top of the wall and convey it to an approved outlet at the street.
- c. There should be a provision that applicant's GeoEngineering consultant will specifically inspect site grading, temporary slopes, shoring installation, pier drilling and dewatering, footing excavation, backdrain installation, wall backfill placement and compaction. Upon project completion, a report should be provided certifying that these items are in conformance with their recommendations.

4. It is unfair for the Town of Fairfax to issue a building permit for major renovations to the property until the litigation concerning ownership is resolved. If FNMA is allowed to build stairs and a retaining wall on 118 Tamalpais, they will thereafter seek to evict Walter and Rebecca Bess from their home. Moving at this stage of the litigation will irreparably prejudice their rights and cause extreme financial and physical hardship for them. Walter Bess has been classified as TTD (Temporary Total Disability) by workers compensation doctors from Sept 2015 to the present day. He is also recovering from cancer radiation treatment which was completed Nov 2016. Rebecca Bess has physical limitations regarding lifting, carrying and walking. She, also, has a nurse that comes to the home once per week for IV infusions due to a primary immune deficiency.

Can you please let us know about the Town Engineer's review of the plans and if any of these items can be resolved informally at your earliest convenience? In the meantime, thank you for your time and consideration.

Sincerely yours,



LAWRENCE BRAGMAN



TOWN OF FAIRFAX

142 BOLINAS ROAD, FAIRFAX, CALIFORNIA 94930
PHONE (415) 453-1584 / FAX (415) 453-1618

MEMORANDUM

To: Linda Neal – Principal Planner

Date: August 1, 2016

From: Ray Wrynski
Town Engineer

Page 1 of 3

Subject: Proposed Access Stairs
118 Tamalpais Road
Fairfax, CA

A.P. 001-121-61

This memorandum provides the comments and requirements you requested for this project.

Two site reviews were done and during one site review, the owner of 120 Tamalpais Road, saw me at the site and discussed, with me, the project of the proposed stairs.

Documents, for this project, that were reviewed included plans from American Land Surveying, dated 2/27/16 (7 pages), the 4/21/16 letter from Geoengineering, Inc., The 9/3/15 report by Urban Forestry Associates, Inc., The 6/13/13 preliminary title report from Old republic Title Co., the 5/10/16 letter from attorney Lawrence Bragman, the 3/24/15 repair proposal from Engineered Soil Repair, Inc. and the 12/19/14 report from Herzog Geotechnical Consulting Engineers.

A question you noted that needed an answer was my judgment of the probability that the proposed construction of the stairs, with the retaining wall, may cause stability problems at the rock rip-rap hillside stabilization that was placed in March of 2011.

The 4/21/16 letter by Geoengineering notes minor sloughage but does not state any concern for stability. The 12/19/14 Herzog report concludes that the cut bank in this area is subject to continuing sloughing and possible larger failures. A 3/23/11 photo (from the rip-rap work) shows that there was soil sliding or sloughing under and just easterly of the existing wood stairs. This is in an area where there appears to be some bedrock exposed so that apparent bedrock structure, in this location, is not a reliable indicator of stability.

Based on the above information, I find that the easterly end wing-wall, for the proposed new stairs retaining wall, will create an unneeded potential for damage, from instability, to the grouted rock slope repair. Excavation and work like drilling for piers, in steep banks that have low strength will often dislodge chunks of soil and there is no justification for risking that kind of damage at this location.

The retaining wall and stair structure must be moved about five lineal feet northwesterly to get it away from the rip-rap structure and away from the subdrain outlet for the rip-rap structure. This movement of the planned construction will also solve the problem of disrupting the water service to 120 Tamalpais Road. That water service location is shown a little incorrectly on the topographic base map in the plans.

The water line goes uphill under the existing stairs onto the property of 120 Tamalpais Drive. There is no easement shown on the plan for a waterline to cross 120 Tamalpais Road and serve 118 Tamalpais Road. This water line location seems to indicate an access problem for the water service to 118 Tamalpais Drive. The owner of 120 Tamalpais drive, Mr. Bess, told me he thought that the water line went up the hill and then split to serve the two properties. This might be true and it might be workable when 118 and 120 Tamalpais Road were owned by the same person. This is a very odd water service condition and probably is not workable with these properties in separate ownership. The correct existing water service location must be shown on the plans and the water meter or meters that serve 118 and 120 Tamalpais Road must be shown so that it is clear if there is an access and service problem for water supply to 118 Tamalpais Road. If there is no legal water service to 118 Tamalpais Road, that will have to be corrected.

There are a number of easements shown on the title report that affect the 118 Tamalpais Road. A note must be added to the topographic survey stating that all easements, affecting the proposed construction area, from the title report, are shown. If there are no easements, affecting the construction area, then a note stating this must be added to the topographic survey.

The question of ownership of two Maple trees is raised in the 5/10/16 Bragman letter. The proposed stairs appear to require removal of these two trees, the ones called 6" MPL and 10" MPL on the survey. These trees are somewhat larger than 6" and 10" and are called 9.9" and 14.9" in the Urban Forestry Associates report. The Town should not permit work that requires the removal of trees that cannot be removed because of an ownership conflict. The property line is shown to be very close to these trees and since the lower portion of the trees is irregular that part of each tree may be crossing the property line even though the topographic survey does not seem to indicate that. To resolve this question the property line must be staked in the field so that a string line, on the property line, can be set through the area of the tree locations and visually checked by Town staff and by the respective property owners to determine if there is a question of tree ownership. After that field check, the disposition of the trees can be resolved. The topography also shows two 12" MPL trees near the northerly side of the new stairs and these trees are more correctly called 23.7" and 12.2" bay laurel in the Arborist report. All these trees may be affected by the construction so their identification is important.

The Bragman letter raises the question of the accuracy of the property line location, primarily, because the property corner near the street was found to be set in the wood deck of the existing damaged stairs. This deck could have moved when the landslide below 120 Tamalpais road occurred or it could have moved due to aging of the wood stairs and weathering of the steep slope. Confirming information must be provided either on the survey or in a letter from the surveyor as to how it was determined that the property line location, shown on the topographic survey, is correct. I will assume that the line length shown was field measured and found to be the length for that line shown on the referenced recorded record of survey. If the property corner at the street had been shifted by movement of the deck it would not satisfy an angular check of the property line, that is shown, based on a field measurement of the angle of this property line relative to one of the other property lines shown on the record of survey. This check or another suitable check will resolve this question. This angular check should be possible by turning an angle from the southerly (uphill) end of the property line shown where the back line (northeast – southwest) intersects the property line shown on the topography along the southeasterly side of the 118 Tamalpais Road site. After the property line location is confirmed several, fairly permanent points on the property line, near the construction area must be set to be used to check tree locations and to check the

construction work along the property line as the work progresses. The relationship of these points to the front property corner must be provided. If these points are lost during the construction they will have to be reset. The survey work information, described above must be provided on the plan or in a letter to the Town with the signature and seal of the surveyor responsible for it. Since the survey work already provided to the Town is given as the responsibility of Robert Settgast, he appears to be the professional providing the signature and seal covering this additional boundary surveying work. This also includes the easement work described above. I know that Mr. Settgast is showing his geotechnical license on the plan but that is carried by his civil engineer's license which includes surveying authority. Mr. Settgast has never, to my knowledge, provided land surveying work so he probably will not be signing for the surveying work and probably did not intend to be the only licensed person signing the topographic survey with boundary information. Whoever did the surveying work that has been provided and will be provided must place their signature and seal on the copies of this information provided to the Town.

The plans state that the work on the water line and sewer line is to be as required by the City of Fairfax. This must be changed to be done as required by the Marin Municipal Water District and the Ross Valley Sanitary District. Also, a note must be added to the plans stating that all parts of the new stair structure and retaining wall construction shall be a minimum of three feet clear of the westerly edge of the vehicular travel lane of Tamalpais Road.

Regarding statements in the Urban Forestry (Arborist) report about the trees, there is the suggestion that Tree 1 is near some Redwood Trees and the bay tree and that those trees will contribute to the slope stability. That may be true but since I have seen so many healthy trees go downhill with landslides, I do not look at trees as a significant factor in stabilizing a low stability hillside. The arborist report stated Tree 2 has a severe lean and for that and other reasons it has a negative effect on soil stability. I agree completely with the report on this tree. Mr. Bess told me he would like that tree to stay so that is his feeling. I believe the tree can be expected to rotate and uproot at some time in the near future and that will result in quite a bit of damage to the slope. If that tree is removed or cut off at ground level that will be positive factor in reducing probable damage to this steep slope area.

Something worth considering at this location would be building the proposed stairs with an extended landing at the top of the retaining wall that would serve both 118 and 120 Tamalpais Road. This would eliminate the need to build more stairs at this location in the future for 120 Tamalpais Road. I realize this would put the structure back close to the rock rip-rap repair where I do not want the soil disturbance to be. I believe this could be done successfully with careful soils engineering inspection and construction near the rip rap. The stairs up to this first landing would be in the street right of way and could be designated for the use of the two properties and designated to be maintained by the two properties. If this could be done it would resolve the access issue for both properties fairly well. The stairs in the right of way that are proposed must be covered by an encroachment permit as required by Code Section 12.32.

I recommend that the processing of this project be delayed until the above required information is received.



Ray Wrynski, P. E.
Town Engineer



TOWN OF FAIRFAX

142 BOLINAS ROAD, FAIRFAX, CALIFORNIA 94930
PHONE (415) 453-1584 / FAX (415) 453-1618

MEMORANDUM

To: Linda Neal – Principal Planner

Date: January 26, 2017

From: Ray Wrysinski
Town Engineer

Page 1 of 2

Subject: Proposed Access Stairs
118 Tamalpais Road
Fairfax, CA

A.P. 001-121-61

This memorandum provides my comments on the January 20, 2017 letter, by Attorney Lawrence Bragman, related to the stairs at this site that you sent to me with your 1/25/17 e-mail. You asked that I review the recommendations from Mr. Best's engineer and comment on their acceptability.

To try and be sure I have answered all the questions that may be posed by the attorney's letter, I will provide information on all the items I see in it. It is not entirely clear what may be only a concern of the attorney and what may be a concern of the engineer. I want to avoid trying to include the requirements of the Geotechnical Engineer, Craig Herzog, in this project permit since we have sufficient information for the project in the plan approval and report provided by the applicant's Geotechnical Engineer, Mr. Settgast. By project, I mean the stairs. Mixing the requirements of one engineer who is retained by the applicant with the requirements of another engineer who is retained by a party in dispute with the applicant would create an unclear construction situation. If there is to be a mixing of the requirements of the two engineers, I am inclined to think that would have to be done based on requirements we do not have as might exist in a settlement agreement or a judge's order.

Mr. Bragman's letter includes the 8/1/16 Town Engineer review memorandum. It should have included the 10/25/16 Town Engineer review memorandum and the 12/6/16 e-mail that I provided with what I thought would be final comments on the stair project. Mr. Bragman may not have known about those documents. I have reviewed the 4/21/16 Re-Evaluation of the stairs by Mr. Settgast and the 11/16/16 plans signed by Mr. Settgast.

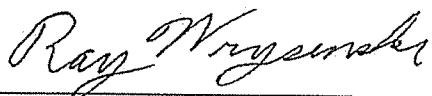
In the 1/20/17 letter with the first set of four items, item 1., the maple trees are shown to remain in place. Item 2., of the letter, is the stairway location and that was moved northwesterly away from the property line. I assume that any setback requirement has been resolved by that movement or by some approval process. Item 3., of the letter, involved joint use of the proposed stairway. That issue was raised in the 8/1/16 review memorandum and the Town did not get a response indicating that the applicant wanted to get involved in joint use of the stairs. I do not know of a basis that the Town would want to force a joint use of the proposed stairs. Item 4., of the letter, involves the requirements of Craig Herzog. Mr. Herzog's 12/19/14 report is complex and deals with many issues at this site. Determining how the findings, in Mr. Herzog's report, could or should be applied to the stair project could only be practically done if he was acting as a project engineer, perhaps alongside Mr. Settgast. I don't think that is going to be done. I do

believe Mr. Settgast is qualified to provide geotechnical engineering services for construction of this project.

The letter has a second set of four items. Item 1. deals with the joint use of the stairs but mentions obtaining an easement for 120 Tamalpais Road. As noted above, I do not know of a basis that the Town would want to force a joint use of the stairs or require that an easement be provided for 120 Tamalpais. Item 2. discusses new and separate sanitary sewer and water line services. It is not known to me that there is a joint use sanitary sewer lateral pipe line serving both properties. If there is that would be new information. Regardless, the plans show relocating part of the existing sewer lateral that serves 118 Tamalpais. It was noted in the 10/25/16 review that the sewer lateral relocation must satisfy the Sanitary District Requirements and as noted in the 12/6/16 e-mail, a portion of the sewer lateral work must satisfy the Town Building Code requirements. Mr. Bragman can check with the Sanitary District to determine if there is any intention to cut off sewer service to 120 Tamalpais Road and, if so, why that might be done. Regarding the water service, the 12/6/16 e-mail provided a condition for the work that the water service to 120 Tamalpais be maintained. Item 3. has three items attributed to Craig Herzog. Item a., Miradrain (misspelled ?) should terminate a foot below finished grade. The plan shows that but not to the detail that Mr. Herzog would prefer. I would leave getting the Miradrain (MiraDRAIN ?) correct placement to the field review as required in the Settgast report. The one foot below grade placement is standard practice. Item b. notes a need for a drainage intercept at the top of the wall. That is a desirable detail and on the assumption that Mr. Settgast would not have resolved that in the field, it should be a condition of the permit. Item c. asks for GeoEngineering to provide inspection (as called for in the report) and for a final approval letter. I think if such a letter is not always required in the permit for this type of work, that letter should be made a permit condition. Item 4. discusses the fairness of issuing a permit while ownership litigation is continuing. Health problems of Mr. and Mrs. Bess are noted as additional circumstances. I do not know how the Town can be an interested party in the litigation. Perhaps the Town Attorney can advise you on that.

I believe the Town has looked at this stair project carefully. You may want to provide a copy of this memorandum, the 10/25/16 memorandum and the 12/6/16 e-mail to Mr. Bragman. That may indicate to him that many details have been reviewed.

I hope this provides the information you need. Please let me know of any questions you have for me on this issue.



Ray Wrynski, P. E.
Town Engineer

Law Offices of
GLENN H. WECHSLER
1111 Civic Drive, Suite 210
Walnut Creek, California 94596
Telephone: (925) 274-0200 ◊ Facsimile: (925) 274-0202
Email: claudia@glennwechsler.com

February 7, 2017

VIA U.S. MAIL and E-MAIL: ineal@townoffairfax.org

Ms. Linda Neal
Town of Fairfax - Principal Planner
142 Bolinas Road
Fairfax, CA 94930

RE: **Planning Commission Meeting: February 16, 2017**
Property: 118 Tamalpais Road, Fairfax

Dear Ms. Neal:

This letter shall serve to correct the multiple misstatements set forth in attorney Lawrence Bragman's January 20, 2017 letter to you. Mr. Bragman failed to serve us with a copy despite knowing that our office represents Federal National Mortgage Association ("Fannie Mae"), the property owner of 118 Tamalpais Road in Fairfax (the "Property").

Procedural History

Fannie Mae acquired title to the Property in July 2011 after a foreclosure sale. A true and correct copy the Trustee's Deed Upon Sale is enclosed herewith as **Exhibit A**. The Besses made their last mortgage payment in October of 2010, yet they have managed to stay in the property for over 2,017 days or 6 years and 3 months since then. The Besses refused to vacate the Property so Fannie Mae filed an eviction action. The eviction court issued a Judgment for Possession in favor of Fannie Mae in October 2011. A true and correct copy of the Judgment is enclosed herewith as **Exhibit B**. **The Court determined – over 5 years ago – that Fannie Mae is entitled to possession of the Property.**

Nevertheless, the Besses continue to holdover at the Property, avoiding enforcement of a writ for lock out by claiming the lack of stairs make it unsafe for them to move out. However, the video you showed at the May 19, 2016 Planning Commission Meeting demonstrates how the Besses **unsafely** access the Property **daily**, and have so for over five years. This means that for five years they have managed to carry groceries and other household goods in, and managed to move trash out. Fannie Mae took the position the lack of safe stairs makes it difficult for emergency personnel to access the Property, which impacts the safety of the Besses and others. However, the local fire department did not agree with Fannie Mae.

Despite their numerous complaints over the years about the lack of safe access, the Besses have done everything possible at every juncture to frustrate and prevent Fannie Mae from building new, safe access to the Property!

ATTACHMENT I

On May 19, 2016, the Planning Commission issued the requested side-yard setback variance and retaining wall height variance, conditioned on the Town Engineer, Ray Wrysinski, approving Fannie Mae's plans. Mr. Wrysinski reviewed Fannie Mae's plans and requested that Fannie Mae make minor revisions thereto. Fannie Mae made the requested revisions. Ultimately, Mr. Wrysinski approved Fannie Mae's revised stair plans. Fannie Mae now requests the Planning Commission re-issue the side-yard set-back variance and retaining wall height variance (and encroachment permit) so that Fannie Mae can begin construction of the stairs.

Fannie Mae's Response to Mr. Bragman's January 20, 2017 Letter

The four objections set forth on the first page of Mr. Bragman's letter are irrelevant because the Town Engineer, Mr. Wrysinski, has approved Fannie Mae's revised stair plans. However, we briefly address each of the objections. First, Fannie Mae's revised plans do not call for the removal of any trees, let alone trees that "appear to straddle" the Property and the neighboring property at 120 Tamalpais Road, which Mr. Bess owns. Second, the Planning Commission previously issued the required variances to construct the stairs, conditioned on Mr. Wrysinski approving Fannie Mae's stair plans. Mr. Wrysinski has since approved Fannie Mae's revised stair plans. Third, Fannie Mae is not required to share the stairs with 120 Tamalpais Road. Fourth, Fannie Mae is not required to construct the stairs pursuant to the specifications outlined by Mr. Bess' engineer. Instead, approval by Mr. Wrysinski is all that is required.

The first three "remaining issues" starting at the bottom of page 1 of Mr. Bragman's letter are also irrelevant to the determination of whether Fannie Mae should be issued a side-yard setback variance and a retaining wall height variance to implement the revised stair plans approved by Mr. Wrysinski. First, whether Fannie Mae will share the stairs with 120 Tamalpais Road – which has been vacant and condemned for over 30 years - has no impact on whether the stairs are safe and Code-compliant. Second, Fannie Mae's installation of new sewer and water lines does not affect the old lines. Inquiry into this topic implies the Besses are considering occupying 120 Tamalpais Road, which is of no concern to Fannie Mae and should have no impact on issuance of the variances. Third, Mr. Wrysinski has approved Fannie Mae's revised stair plans, which indicates the 3 issues set forth in paragraph 3, on page 2, of Mr. Bragman's letter are not required by the Code. Further, Fannie Mae is not required, as requested in paragraph 3(c), to provide a report certifying that it complied with all requests of Mr. Bess' engineer. Instead, Fannie Mae will comply with its obligation to certify to the Town that all requirements of the building permit have been satisfied.

The fourth "remaining issue" in Mr. Bragman's letter is the crux of the Besses' argument against construction of safe stairs to the Property. Contrary to Mr. Bragman's argument, it is not "unfair" to issue the variances while the litigation between the Besses and Fannie Mae is ongoing. As discussed above, the Court determined – over five years ago – that Fannie Mae is entitled to possession of the Property. That is true regardless of the outcome of the civil litigation that remains pending. Yet the Besses have delayed enforcement of the court's 2011 order granting Fannie Mae possession by alleging unsafe access/egress. When Fannie Mae took steps to provide safe access/egress, the Besses have and continue to unfairly interfere with the planning and approval

Ms. Linda Neal
Bess v. Federal National Mortgage Association, et al.
February 7, 2017
Page 3 of 3

process. The actions of the Besses and their counsel are self-serving and are resulting in improper leveraging in their litigation against Fannie Mae. The Besses have an interest in continuing to delay, since they have avoided paying a mortgage or fair market rent for over 6 years and 3 months. Thus, the Besses' claim of "financial hardship" is fabricated. Moreover, the Besses' claim of "physical hardship" is likely greatly exaggerated if not a plain misstatement of fact. As seen in the video you showed at the May 19, 2016 Planning Commission Meeting, the Besses currently access the Property *daily* via stairs at 124 Tamalpais Road, and then manage to walk through the terrain for ingress or egress. They cannot have it both ways by saying, on the one hand, they have no safe way to move out, and then on the other hand deny the property owner a chance to provide safe access.

In sum, Mr. Bragman and his clients have not provided any legitimate or compelling reason why Fannie Mae should be denied the side-yard setback variance and retaining wall height variance necessary to construct the stairs pursuant to the revised stair plans approved by the Town Engineer, Ray Wrynski. At the end of the day, Fannie Mae is improving the safety of its property to ensure safe access for everyone. The Besses should not be permitted to continue to frustrate the process for their own self-serving reasons. The court ruled in 2011 that the Besses have no right to possession of the property. Therefore, Fannie Mae respectfully requests that the variances be issued so that Fannie Mae can immediately begin working to construct safe stairs at the Property.

Very truly yours,



CLAUDIA WILLIAMS

GHW/CLW/db

Enclosures: as stated

cc: Lawrence Bragman, Esq. (via facsimile (415) 459-6067)

G:\Glenn\DOCS\FANNIE MAE\BESS\Correspondence\Final Letter to L. Neal re 02-16-17 Planning Commission Meeting.docx

EXHIBIT A

to
DTT
we

RECORDING REQUESTED BY
RECONTRUST COMPANY
AND WHEN RECORDED MAIL TO:
RECONTRUST COMPANY
1800 Tapo Canyon Rd., CA6-914-01-94
SIMI VALLEY, CA 93063

2011-0040440
Recorded
Official Records
County of
Marin
RICHARD H. BENSON
Assessor-Recorder
County Clerk
REC FEE 29.00
ES
09:42AM 16-Aug-2011 Page 1 of 4

Forward Tax Statements to Address listed above

SPACE ABOVE THIS LINE FOR RECORDER'S USE

TS No. 11-0028466
Title Order No. 110181322

This instrument is being recorded as an
ACCOMMODATION ONLY, with no
Representation as to its effect upon title.

TRUSTEE'S DEED UPON SALE

APN# 001-121-61

TRANSFER TAX: \$ 0

The Grantee herein was the beneficiary
The amount of the unpaid debt was \$ 354,751.21
The amount paid by the Grantee was \$ 353,220.56
The property is in the city of FAIRFAX, County of MARIN

RECONTRUST COMPANY, N.A., as the duly appointed Trustee (or successor Trustee or substituted Trustee), under a Deed of Trust referred to below, and herein called "Trustee", does hereby grant without covenant or warranty to:

FEDERAL NATIONAL MORTGAGE ASSOCIATION

herein called Grantee, the following described real property situated in MARIN County, California:

SEE ATTACHED LEGAL DESCRIPTION

This conveyance is made pursuant to the powers conferred upon Trustee by the Deed of Trust executed by WALTER B BESS JR, as Trustor, recorded on 04/23/2008, Instrument Number 2008-0018692 (or Book , Page) Official Records in the Office of the County Recorder of MARIN County.

All requirements of law regarding the recording and mailing of copies of the Notice of Default and Election to Sell, and the recording, mailing, posting, and publication of the Notice of Trustee's Sale have been complied with.

(F)

Form trustee deed (01/09)

EXHIBIT 1

TS No. 11-0028466

Title Order No. 110181322

Trustee, in compliance with said Notice of Trustee's Sale and in exercise of its power under said Deed of Trust sold said real property at public auction on 07/29/2011. Grantee, being highest bidder at said sale became the purchaser of said property for the amount bid, which amount was \$ 353,220.56.

DATE: ~~July 29, 2011~~ *[Signature]*
AUG 09 2011

RECONTRUST COMPANY, N.A.

BY: *[Signature]* AUG 09 2011
Flor Valerio, Authorized Signer
Assistant Vice President

State of California }
County of Ventura }

On AUG 11 2011 before me, EL HOWARD, notary public, personally appeared Flor Valerio, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.
WITNESS my hand and official seal.

Signature *[Signature]* (Seal)
EL HOWARD



ORDER NO: 110181822

EXHIBIT A

REF. NO. 11-0028466

PARCEL ONE:

LOTS 30, 33 AND 34, BLOCK D, AMENDED MAP OF FAIRFAX MANOR, MARIN COUNTY, CALIFORNIA, FILED APRIL 8, 1919 IN THE OFFICE OF THE RECORDER OF MARIN CO., CALIFORNIA IN BOOK 5 OF MAPS AT PAGE 4.

PARCEL TWO:

AN EASEMENT FOR VEHICLE PARKING (2 PARKING STALLS) OVER A PORTION OF LOT NO. 2, IN BLOCK "C" MAP OF FAIRFAX MANOR SUBDIVISION NO. 2 FILED FOR RECORD ON SEPTEMBER 17, 1913 IN BOOK 4 OF MAPS, AT PAGE 53, MARIN COUNTY RECORDS, DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWESTERLY CORNER OF SAID LOT 2, IN BLOCK 3, AND RUNNING THENCE ALONG THE NORTHWESTERLY LINE THEREOF NORTH 27° 44' EAST 22 FEET, THENCE LEAVING SAID NORTHWESTERLY LINE OF SAID LOT 2, AND RUNNING SOUTH 68° 32' 15" EAST 28.0 FEET TO A POINT RUNNING THENCE SOUTH 27° 48' WEST 22 FEET TO THE NORTHEASTERLY LINE OF TAMALPAIS ROAD, RUNNING THENCE, ALONG SAID ROAD LINE NORTH 68° 32' 15" WEST 13.9 FEET AND NORTH 63° 01' 15" WEST 14.1 MORE OR LESS TO THE POINT OF BEGINNING.

Certificate of Acceptance, Government Code Section 27281

This is to certify that the interest in Real Property conveyed by the attached Trustee Deed

Dated Aug 9, 2011 from ReconTrust Company N.A., to the Federal National Mortgage Association, is hereby accepted by the undersigned officer or agent on behalf of Housing the Federal National Mortgage Association and the Grantee consents to the recordation thereof by its Duty Authorized Officer.

FEDERAL NATIONAL MORTGAGE ASSOCIATION AND/OR HIS SUCCESSORS AND/OR ASSIGNS

Pursuant to a delegation of authority Contained in 38 C.F.R. 36.4342 (F)

State of California

BY:

AUG 09 2011

County of: Ventura

Fior Valero, Assistant Secretary Assistant Vice President

AUG 11 2011

On _____ before me, EL HOWARD, notary public, personally appeared who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: E. L. Howard (Seal)

EL HOWARD

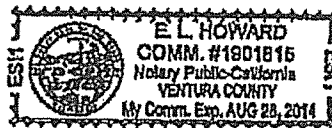


EXHIBIT 1

EXHIBIT B

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address):

NANCY E. POWELL #275754
MALCOLM & CISNEROS, a Law Corporation
2112 BUSINESS CENTER DRIVE
SECOND FLOOR
IRVINE, CA 92612

TELEPHONE NO: (949) 252-9400 FAX NO. (Optional): (949) 252-1032
E-MAIL ADDRESS (Optional):

ATTORNEY FOR (Name): FEDERAL NATIONAL MORTGAGE ASSOCIATION

SUPERIOR COURT OF CALIFORNIA, COUNTY OF MARIN
STREET ADDRESS: 3501 Civic Center Drive
MAILING ADDRESS: 3501 Civic Center Drive
CITY AND ZIP CODE: San Rafael, CA 94903

BRANCH NAME: Marin

PLAINTIFF: FEDERAL NATIONAL MORTGAGE ASSOCIATION

DEFENDANT: WALTER B. BESS JR, an individual

JUDGMENT—UNLAWFUL DETAINER

- By Clerk
- By Court
- By Default
- Possession Only
- After Court Trial
- Defendant Did Not Appear at Trial

CASE NUMBER:
CIV1104413

FOR COURT USE ONLY

FILED

OCT 31 2011

KIM TURNER
Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: T. Fraguera, Deputy

JUDGMENT

1. BY DEFAULT

- a. Defendant was properly served with a copy of the summons and complaint.
- b. Defendant failed to answer the complaint or appear and defend the action within the time allowed by law.
- c. Defendant's default was entered by the clerk upon plaintiff's application.
- d. Clerk's Judgment (Code Civ. Proc., § 1168). For possession only of the premises described on page 2 (Item 4).
- e. Court Judgment (Code Civ. Proc., § 585(b)). The court considered
 - (1) plaintiff's testimony and other evidence.
 - (2) plaintiff's or others' written declaration and evidence (Code Civ. Proc., § 585(d)).

2. AFTER COURT TRIAL. The jury was waived. The court considered the evidence.

a. The case was tried on (date and time): OCTOBER 20, 2011, at 8:30 AM
before (name of judicial officer): LYNN DURYEE

b. Appearances by:

Plaintiff (name each): FEDERAL NATIONAL MORTGAGE ASSOCIATION

Plaintiff's attorney (name each):

(1) SYDNEY FAIRBAIRN
SPECIAL APPEARANCE
(2)

Continued on Attachment 2b (form MC-025).

Defendant (name each): WALTER B. BESS, JR.

Defendant's attorney (name each):

(1)
(2)

Continued on Attachment 2b (form MC-025).

c. Defendant did not appear at trial. Defendant was properly served with notice of trial.

d. A statement of decision (Code Civ. Proc., § 832) was not was requested.

COPY

PLAINTIFF: FEDERAL NATIONAL MORTGAGE ASSOCIATION
 DEFENDANT: WALTER B. BESS JR, an individual

SE NUMBER:
 CIV1104413

JUDGMENT IS ENTERED AS FOLLOWS BY: THE COURT THE CLERK

3. Parties. Judgment is

a. for plaintiff (name each): FEDERAL NATIONAL MORTGAGE ASSOCIATION

and against defendant (name each): WALTER B. BESS JR, an individual

Continued on Attachment 3a (form MC-025).

b. for defendant (name each):

4. Plaintiff Defendant is entitled to possession of the premises located at (street address, apartment, city, and county):
 118 Tamalpais Road, Fairfax, CA 94930

5. Judgment applies to all occupants of the premises including tenants, subtenants, if any, and named claimants if any (Code Civ. Proc., §§ 715.010, 1169, and 1174.3).

6. Amount and terms of judgment.

a. Defendant named in Item 3a above must pay plaintiff on the complaint:

(1) <input type="checkbox"/> Past-due rent	\$
(2) <input type="checkbox"/> Holdover damages	\$
(3) <input type="checkbox"/> Attorney fees	\$
(4) <input type="checkbox"/> Costs	\$
(5) <input type="checkbox"/> Other (specify):	\$
(6) TOTAL JUDGMENT	\$

b. Plaintiff is to receive nothing from defendant named in item 3b.

Defendant named in Item 3b is to recover costs: \$
 and attorney fees: \$

c. The rental agreement is canceled. The lease is forfeited.

7. Conditional judgment. Plaintiff has breached the agreement to provide habitable premises to defendant as stated in Judgment—Unlawful Detainer Attachment (form UD-110S), which is attached.

8. Other (specify):

Continued on Attachment 8 (form MC-025).

Date:

 JUDICIAL OFFICER

Date: OCT 31 2011

Clerk, by T. FRAGUERO, Deputy

CLERK'S CERTIFICATE (Optional)

I certify that this is a true copy of the original judgment on file in the court.

Date:

Clerk, by _____, Deputy

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State last number and address):
NANCY E. POWELL #275754
MALCOLM & CISNEROS, a Law Corporation
2112 BUSINESS CENTER DRIVE
SECOND FLOOR
IRVINE, CA 92612
 TELEPHONE NO: (949) 252-9400 FAX NO. (Optional): (949) 252-1032
 E-MAIL ADDRESS (Optional):
 ATTORNEY FOR (Name): **FEDERAL NATIONAL MORTGAGE ASSOCIATION**
 ATTORNEY FOR JUDGMENT CREDITOR ASSIGNEE OF RECORD

SUPERIOR COURT OF CALIFORNIA, COUNTY OF MARIN
 STREET ADDRESS: 3501 Civic Center Drive
 MAILING ADDRESS: 3501 Civic Center Drive
 CITY AND ZIP CODE: San Rafael, CA 94903
 BRANCH NAME: Marin

PLAINTIFF: **FEDERAL NATIONAL MORTGAGE ASSOCIATION**
 DEFENDANT: **WALTER B. BESS JR, an individual**

WRIT OF EXECUTION (Money Judgment) POSSESSION OF Personal Property Real Property
 SALE

CASE NUMBER:
CIV1104413 LIMITED

- To the Sheriff or Marshal of the County of: **MARIN**
 You are directed to enforce the judgment described below with daily interest and your costs as provided by law.
- To any registered process server: You are authorized to serve this writ only in accord with CCP 689.080 or CCP 715.040.
- (Name): **FEDERAL NATIONAL MORTGAGE ASSOCIATION**
 is the judgment creditor assignee of record whose address is shown on this form above the court's name.

4. Judgment debtor (name and last known address):
WALTER B. BESS JR, an individual
118 Tamalpais Road, Fairfax,
CA 94930

ALL OTHER OCCUPANTS
118 Tamalpais Road, Fairfax,
CA 94930

- See next page for information on real or personal property to be delivered under a writ of possession or sold under a writ of sale.
- This writ is issued on a sister-state judgment.
- Total judgment \$
- Costs after judgment (per filed order or memo CCP 685.090) \$
- Subtotal (add 11 and 12) \$
- Credits \$
- Subtotal (subtract 14 from 13) \$
- Interest after judgment (per filed affidavit CCP 685.050) (not on GC 6103.5 fees) ... \$
- Fee for issuance of writ \$
- Total (add 15, 16, and 17) \$ **25**
- Levying officer:
 - Add daily interest from date of writ (at the legal rate on 15) (not on GC 6103.5 fees) of \$
 - Pay directly to court costs included in 11 and 17 (GC 6103.5, 68511.3; CCP 698.520(i)) \$

- Additional judgment debtors on next page
- Judgment entered on (date): **OCT 3 1 2011**
- Judgment renewed on (dates):
- Notice of sale under this writ
 - has not been requested.
 - has been requested (see next page).
- Joint debtor information on next page.



Issued on (date): **OCT 3 1 2011** Clerk, by **WALTER TURNER** Deputy
Y. FRAGUERO

NOTICE TO PERSON SERVED: SEE NEXT PAGE FOR IMPORTANT INFORMATION.

PLAINTIFF: FEDERAL NATIONAL MORTGAGE ASSOCIATION DEFENDANT: WALTER B. BESS JR, an individual	EJ-130 CASE NUMBER: CIV1104413 LIMITED
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21. Additional judgment debtor (name and last known address): — Items continued from page 1 —

22. Notice of sale has been requested by (name and address):

23. Joint debtor was declared bound by the judgment (CCP 989-994)

a. on (date):

b. name and address of joint debtor:

a. on (date):

b. name and address of joint debtor:

c. additional costs against certain joint debtors (itemize):

24. (Writ of Possession or Writ of Sale) Judgment was entered for the following:
- a. Possession of real property: The complaint was filed on (date): **SEPTEMBER 6, 2011** (Check (1) or (2)):
- (1) The Prejudgment Claim of Right to Possession was served in compliance with CCP 415.46. The judgment includes all tenants, subtenants, named claimants, and other occupants of the premises.
- (2) The Prejudgment Claim of Right to Possession was NOT served in compliance with CCP 415.46.
- (a) \$ _____ was the daily rental value on the date the complaint was filed.
- (b) The court will hear objections to enforcement of the judgment under CCP 1174.3 on the following dates (specify):
- b. Possession of personal property.
- If delivery cannot be had, then for the value (itemize in 9e) specified in the judgment or supplemental order.
- c. Sale of personal property.
- d. Sale of real property.
- e. Description of property: **118 Tamalpais Road, Fairfax, CA 94930**

NOTICE TO PERSON SERVED

WRIT OF EXECUTION OR SALE. Your rights and duties are indicated on the accompanying *Notice of Levy* (Form EJ-150).

WRIT OF POSSESSION OF PERSONAL PROPERTY. If the levying officer is not able to take custody of the property, the levying officer will make a demand upon you for the property. If custody is not obtained following demand, the judgment may be enforced as a money judgment for the value of the property specified in the judgment or in a supplemental order.

WRIT OF POSSESSION OF REAL PROPERTY. If the premises are not vacated within five days after the date of service on the occupant or, if service is by posting, within five days after service on you, the levying officer will remove the occupants from the real property and place the judgment creditor in possession of the property. Except for a mobile home, personal property remaining on the premises will be sold or otherwise disposed of in accordance with CCP 1174 unless you or the owner of the property pays the judgment creditor the reasonable cost of storage and takes possession of the personal property not later than 15 days after the time the judgment creditor takes possession of the premises.

▶ A Claim of Right to Possession form accompanies this writ (unless the Summons was served in compliance with CCP 415.46).

CASE NO. CIV1104413 (limited)

TO: THE SHERIFF OF MARIN COUNTY
CIVIL DIVISION

FEDERAL NATIONAL MORTGAGE ASSOCIATION vs WALTER B. BESS, JR., an individual

TYPE OF PROCESS: Eviction

INSTRUCTIONS:

BY VIRTUE OF THE ACCOMPANYING WRIT PLEASE REMOVE WALTER B. BESS, JR., AND ANY PERSON IN CONTROL OR POSSESSION OF THE PREMISES AND PLACE CREDITOR IN PEACEFUL POSSESSION OF THE PROPERTY LOCATED AT 118 Tamalpais Road, Fairfax, CA 94930.

NAME OF ATTORNEY

OR LITIGANT: Nancy E. Powell

ADDRESS: MALCOLM, CISNEROS
2112 Business Center Drive, 2nd Floor

Irvine, CA 92612

CONTACT PERSON:

Takahiro Suzuki

PHONE: (949) 252-9400

I AUTHORIZE THE SHERIFF TO SERVE THIS PROCESS IN THE MANNER PRESCRIBED BY LAW, INCLUDING SUBSTITUTE SERVICE, IF APPLICABLE.

MALCOLM + CISNEROS

BY: Nancy Powell
NANCY E. POWELL #275754

DATE: November 2, 2011

Linda Neal

From: Paul Morrison <pmorrison@marinwater.org>
Sent: Thursday, December 08, 2016 10:42 AM
To: 'Jozef (Joe) Elemen'
Cc: Joseph Eischens; Ana Arena; Christopher Borjian; Dewey Sorensen; Linda Neal
Subject: RE: 118 Tamalpais Rd, Fairfax - Stairway Improvement Plan

Hi Joe, per our conversation and per my investigation into these properties we will need the following in order to allow for water service for both 120 and 118 Tamalpais:

- The water service SV-04682 has been serving both properties for over 90 years.
- Currently, these 2 properties are under separate ownership.
- In order to serve these 2 properties separately, you will need a new water service for 118 Tamalpais.
- MMWD will need a check for \$6,560 for a 1-inch water service to be installed and MMWD will not charge connection fees for this since both structures have been served since the 1920's.
- Also, since the extenuating circumstances that no inspection of the premissis will be allowed due to a non-cooperative tenant, we will require a RP Backflow device to be installed at the meter.

Please let me, or Joseph know if you have any further questions.

Regards,

Paul Morrison
Engineering Support Services Manager



MARIN MUNICIPAL
WATER DISTRICT

Serving Marin since 1912

220 Nellen Avenue
Corte Madera, CA 94925
415-945-1535 Fax 415-945-1599
pmorrison@marinwater.org

From: Jozef (Joe) Elemen [mailto:elemen@alspls.com]
Sent: Wednesday, December 07, 2016 4:00 PM
To: Paul Morrison
Subject: 118 Tamalpais Rd, Fairfax - Stairway Improvement Plan

Hi Paul,

I appreciate your time and assistance on this project and have attached a copy of the plan for your reference.

Let me know how we can be of any assistance.

Thanks,

Joe

ATTACHMENT J

Jozef (Joe) Elemen
Chief Technical Officer
American Land Surveying Inc.
316 Tennessee Avenue
Mill Valley, CA 94941
Ph: (415) 888-8580
E: elemen@alspls.com

Note: This message is intended only for the use of the individual or entity to which it is addressed. It may contain information that is confidential and prohibited from disclosure. If you are not the intended recipient, any dissemination or copying of this message or any attachment is strictly prohibited. If you have received this message in error, please notify the original sender immediately by telephone or return e-mail and delete this message, along with any attachments, from your computer.

LAWRENCE BRAGMAN
ATTORNEY AT LAW
912 LOOTENS PLACE • SECOND FLOOR
SAN RAFAEL, CALIFORNIA 94901-3110
(415) 459-6060 FAX: (415) 459-6067

RECEIVED
MAY 31 2017
TOWN OF FAIRFAX

May 30, 2017

Fairfax Town Council
142 Bolinas Road
Fairfax, CA 94930

Re: 118 Tamalpais, Fairfax, CA 94930

Dear Town Council:

I represent Appellant Walter Bess who resides at 118 Tamalpais Road.

Walter and Rebecca Bess purchased 118 Tamalpais in 1990 and have lived there ever since. During the financial crisis, the property went through a disputed foreclosure with Bank of America after the bank wrongfully denied a loan modification. After the foreclosure, Applicant Federal National Mortgage obtained title to the property and filed an unlawful detainer action to evict the Besses. The Marin Superior Court eventually stayed enforcement of the eviction and the Besses have been paying rent to Fannie Mae since then.

After the foreclosure, Mr. Bess filed a civil action against Bank of America in the Marin Superior Court to pursue a claim for damages. The Marin Superior Court eventually ordered the case into mediation. Prior to the mediation, Mr. Bess contacted Fannie Mae in order to repurchase 118 Tamalpais with the proceeds of a potential settlement with Bank of America. Fannie Mae sent a "Make Whole" amount to repurchase the property. That arrangement fell through and is now the subject of a second Marin Superior Court case, Bess v. Federal National Mortgage Association.

It is significant to note that Walter Bess also owns the adjacent property at 120 Tamalpais which he purchased for a nominal sum from his longtime neighbors, the Pikkarainnens. The home on 120 Tamalpais was destroyed in a major landslide in the epic storms of 1982 and was red tagged by the town before Mr. Bess acquired it. The structure remains unoccupied and is used for storage. Mr. Bess would like to rebuild the property when circumstances permit. In the meantime, he has installed drainage and taken steps to minimize water intrusion from the roof.

Property records demonstrate that 120 and 118 Tamalpais Road were a single parcel for many years. 120 was built before the Town's incorporation in 1931 and 118 was built as an ancillary cottage for 120 in 1958. The two properties are located on a steeply sloped frontage on Tamalpais Road. For over fifty years, the two properties shared a single sewer and water service and a single front stairway. The properties apparently obtained separate assessor's parcel numbers after the modest house at 118 was constructed in the late 1950's. Until 2011, however, the stairway that served *both* properties was located *entirely* on 120 Tamalpais.

ATTACHMENT 9

Letter to Town Council
Re: 118 Tamalpais Appeal
Page: Two

The instant appeal arises from Fannie Mae's application for a side yard setback variance and encroachment permit in order to build a costly engineered stairway to replace the shared stairway. By way of this appeal, Walter Bess is asking that the council require that any such approval: 1) continue the joint use of the stairway; 2) protect a redwood tree that is threatened by the construction; and, 3), provide insurance protection for the Besses.

On May, 24, 2016, Fannie Mae's initial application for the sideyard set-back variance and encroachment permit was approved by the Fairfax Planning commission over the objection of Mr. Bess. Mr. Bess's primary objection was that the planned stairway involved cutting down two shared boundary trees and that it created a hazard to the landslide repair on 120 Tamalpais. That repair was done by the Town to re-open Tamalpais Road. The Planning Commission included a condition that the Fairfax Town Engineer review the plans for final approval.

In his attached report of August 4, 2016, Fairfax Town Engineer, Ray Wrynski, reviewed the Fannie Mae proposal and concluded that the proposed plans could in fact destabilize the slide repair and directed the applicant to relocate the stairway. Fannie Mae eventually submitted revised plans which moved the construction away from the slide repair and avoided cutting down the boundary trees. The application then returned to the Fairfax Planning Commission for further review at its March 30, 2017 meeting. That approval is the subject of the instant appeal.

The revised plans remain problematic for the Besses. The plans continue to skirt the boundary of 120 Tamalpais and require side yard set-back variance. The application also requires an encroachment permit from the town because the bottom landing is located within the Tamalpais Road right of way. While avoiding the boundary trees, the planned stairway will likely disturb or adversely impact a redwood tree which is mysteriously not depicted on the plans. Although it is not a large specimen, the redwood tree qualifies as a heritage tree under the Fairfax Town Code and needs to be protected if the council approves the Fannie Mae application.

It is significant to note that Fannie Mae's variance before the council does not include an encroachment permit application for the upper front step landing which is clearly located on 120 Tamalpais. The proposed stairway ends near that landing. Unless Mr. Bess objects and/or the joint use request for the new stairs is not granted, Fannie Mae will effectively appropriate that sliver of 120's real estate.

Under Fairfax Town Code section 17.028 030, in authorizing or approving a variance, the Planning Commission (or Town Council) may "impose such requirements and conditions with respect to location, construction, appearance, maintenance or operation, in addition to those aspects expressly stipulated in the ordinance for the particular use, as the Planning Commission (or Town Council) may deem necessary *for the protection of adjacent property and the public interest...*" (Emphasis added)

Letter to Town Council
Re: 118 Tamalpais Appeal
Page: Three

Granting Walter Bess's appeal will equitably protect the adjacent property by assuring that shared use of the stairs will continue as was the case for decades. In an analogous case, the Court of Appeals held that, where as here, an adjacent property owner made substantial improvements to a joint easement, access to those improvements cannot summarily be denied. *Richardson v. Franc* (2015) 233 Cal.App.4th 744.

The Bess appeal will also effectuate several important public purposes that benefit the town. First, joint use of the proposed stairway will eliminate the need to build a redundant stairway to access 120 Tamalpais. This will be more resource efficient by avoiding the significant time and materials required to build a second stairway. Secondly, shared use will avoid further disturbance of this historically unstable hillside which has seen no less than three significant landslides in the past. Finally, joint use of the stairs will encourage rehabilitation of 120 Tamalpais which will expand Fairfax housing opportunities and increase property tax revenues for the Town.

The proximity of the planned construction to the boundary lines also requires several other conditions for the protection of the Besses. First, the boundary must be clearly marked during construction as recommended in the Town Engineer's report. Secondly, Mr. Bess must be added as a co-insured on the applicant's policy as 120 Tamalpais is not covered under a homeowner's policy. Third that the sewer lateral from 120 Tamalpais needs to be protected from disturbance or damage from construction activity or excavation.

Fannie Mae's attorney has suggested that the requested stairway access is beyond the authority of the Council and that Mr. Bess can resolve this matter in the pending civil action in Marin Superior Court. Both assertions are incorrect in several respects.

First of all, as set forth above, the Council has authority to grant the requested relief under the Fairfax Town Code. Further, a variance sanctions a deviation from the standard set by the general zoning ordinance, and the granting of a variance rests largely in the discretion of the body designated by the ordinance for that purpose. *Beverly Oil Co. v. City of Los Angeles*, 40 Cal.2d 552, 560 [254 P.2d 865]; *County of San Diego v. McClurken*, 37 Cal.2d 683, 691 [234 P.2d 972]; *Rubin v. Board of Directors*, 16 Cal.2d 119, 124 [104 P.2d 1041]; *Flagstad v. City of San Mateo*, 156 Cal.App.2d 138, 140 [318 P.2d 825].

Conditions may be attached to the granting of a variance in order to preserve the general purposes and intent of the zoning ordinance. (See *Rubin v. Board of Directors*, 16 Cal.2d 119, 124 [104 P.2d 1041]; cf. *Edmonds v. County of Los Angeles*, 40 Cal.2d 642 [255 P.2d 772]; *Metcalf v. County of Los Angeles*, 24 Cal.2d 267, 271 [148 P.2d 645].

Further, the Besses are required to exhaust their administrative remedies through the Town before they would even be permitted to even pursue such an action. More importantly, the

Letter to Town Council
Re: 118 Tamalpais Appeal
Page: Four

pending civil action has been fiercely resisted by Fannie Mae and the appellants cannot expand the scope of their court case at this late date. Hence, the only way to resolve the matter is for these issues to be addressed in the instant appeal.

Fannie Mae's application will adversely impact 120 Tamalpais by impinging on its sideyard set back, exposing it to uninsured liability and effectively appropriating the upper landing area for the front entry steps.

Further, while the requested joint stairway access will have virtually no impact on Applicant, Fannie Mae, it will provide significant public benefits by preventing unnecessary hardship, preserving the historic shared use of the front stairs, saving resources, protecting the geo-technical stability of the hillside and facilitating rehabilitation of the adjacent home site.

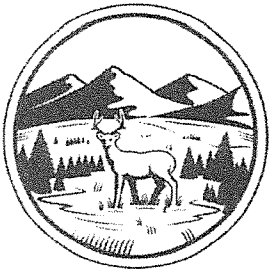
Equity, local ordinance and common sense dictate that the Council grant the modest relief requested by Appellant to protect his rights as an adjacent property owner and to promote the public interest.

Respectfully yours,



LAWRENCE BRAGMAN

cc: Glenn Wechsler, Esq.



TOWN OF FAIRFAX

142 BOLINAS ROAD, FAIRFAX, CALIFORNIA 94930
PHONE (415) 453-1584 / FAX (415) 453-1618

MEMORANDUM

To: Linda Neal – Principal Planner

Date: August 1, 2016

From: Ray Wrynski
Town Engineer

Page 1 of 3

Subject: Proposed Access Stairs
118 Tamalpais Road
Fairfax, CA

A.P. 001-121-61

This memorandum provides the comments and requirements you requested for this project.

Two site reviews were done and during one site review, the owner of 120 Tamalpais Road, saw me at the site and discussed, with me, the project of the proposed stairs.

Documents, for this project, that were reviewed included plans from American Land Surveying, dated 2/27/16 (7 pages), the 4/21/16 letter from Geoengineering, Inc., The 9/3/15 report by Urban Forestry Associates, Inc., The 6/13/13 preliminary title report from Old republic Title Co., the 5/10/16 letter from attorney Lawrence Bragman, the 3/24/15 repair proposal from Engineered Soil Repair, Inc. and the 12/19/14 report from Herzog Geotechnical Consulting Engineers.

A question you noted that needed an answer was my judgment of the probability that the proposed construction of the stairs, with the retaining wall, may cause stability problems at the rock rip-rap hillside stabilization that was placed in March of 2011.

The 4/21/16 letter by Geoengineering notes minor sloughage but does not state any concern for stability. The 12/19/14 Herzog report concludes that the cut bank in this area is subject to continuing sloughing and possible larger failures. A 3/23/11 photo (from the rip-rap work) shows that there was soil sliding or sloughing under and just easterly of the existing wood stairs. This is in an area where there appears to be some bedrock exposed so that apparent bedrock structure, in this location, is not a reliable indicator of stability.

Based on the above information, I find that the easterly end wing-wall, for the proposed new stairs retaining wall, will create an unneeded potential for damage, from instability, to the grouted rock slope repair. Excavation and work like drilling for piers, in steep banks that have low strength will often dislodge chunks of soil and there is no justification for risking that kind of damage at this location.

The retaining wall and stair structure must be moved about five lineal feet northwesterly to get it away from the rip-rap structure and away from the subdrain outlet for the rip-rap structure. This movement of the planned construction will also solve the problem of disrupting the water service to 120 Tamalpais Road. That water service location is shown a little incorrectly on the topographic base map in the plans.

The water line goes uphill under the existing stairs onto the property of 120 Tamalpais Drive. There is no easement shown on the plan for a waterline to cross 120 Tamalpais Road and serve 118 Tamalpais Road. This water line location seems to indicate an access problem for the water service to 118 Tamalpais Drive. The owner of 120 Tamalpais drive, Mr. Bess, told me he thought that the water line went up the hill and then split to serve the two properties. This might be true and it might be workable when 118 and 120 Tamalpais Road were owned by the same person. This is a very odd water service condition and probably is not workable with these properties in separate ownership. The correct existing water service location must be shown on the plans and the water meter or meters that serve 118 and 120 Tamalpais Road must be shown so that it is clear if there is an access and service problem for water supply to 118 Tamalpais Road. If there is no legal water service to 118 Tamalpais Road, that will have to be corrected.

There are a number of easements shown on the title report that affect the 118 Tamalpais Road. A note must be added to the topographic survey stating that all easements, affecting the proposed construction area, from the title report, are shown. If there are no easements, affecting the construction area, then a note stating this must be added to the topographic survey.

The question of ownership of two Maple trees is raised in the 5/10/16 Bragman letter. The proposed stairs appear to require removal of these two trees, the ones called 6" MPL and 10" MPL on the survey. These trees are somewhat larger than 6" and 10" and are called 9.9" and 14.9" in the Urban Forestry Associates report. The Town should not permit work that requires the removal of trees that cannot be removed because of an ownership conflict. The property line is shown to be very close to these trees and since the lower portion of the trees is irregular that part of each tree may be crossing the property line even though the topographic survey does not seem to indicate that. To resolve this question the property line must be staked in the field so that a string line, on the property line, can be set through the area of the tree locations and visually checked by Town staff and by the respective property owners to determine if there is a question of tree ownership. After that field check, the disposition of the trees can be resolved. The topography also shows two 12" MPL trees near the northerly side of the new stairs and these trees are more correctly called 23.7" and 12.2" bay laurel in the Arborist report. All these trees may be affected by the construction so their identification is important.

The Bragman letter raises the question of the accuracy of the property line location, primarily, because the property corner near the street was found to be set in the wood deck of the existing damaged stairs. This deck could have moved when the landslide below 120 Tamalpais road occurred or it could have moved due to aging of the wood stairs and weathering of the steep slope. Confirming information must be provided either on the survey or in a letter from the surveyor as to how it was determined that the property line location, shown on the topographic survey, is correct. I will assume that the line length shown was field measured and found to be the length for that line shown on the referenced recorded record of survey. If the property corner at the street had been shifted by movement of the deck it would not satisfy an angular check of the property line, that is shown, based on a field measurement of the angle of this property line relative to one of the other property lines shown on the record of survey. This check or another suitable check will resolve this question. This angular check should be possible by turning an angle from the southerly (uphill) end of the property line shown where the back line (northeast – southwest) intersects the property line shown on the topography along the southeasterly side of the 118 Tamalpais Road site. After the property line location is confirmed several, fairly permanent points on the property line, near the construction area must be set to be used to check tree locations and to check the

construction work along the property line as the work progresses. The relationship of these points to the front property corner must be provided. If these points are lost during the construction they will have to be reset. The survey work information, described above must be provided on the plan or in a letter to the Town with the signature and seal of the surveyor responsible for it. Since the survey work already provided to the Town is given as the responsibility of Robert Settgast, he appears to be the professional providing the signature and seal covering this additional boundary surveying work. This also includes the easement work described above. I know that Mr. Settgast is showing his geotechnical license on the plan but that is carried by his civil engineer's license which includes surveying authority. Mr. Settgast has never, to my knowledge, provided land surveying work so he probably will not be signing for the surveying work and probably did not intend to be the only licensed person signing the topographic survey with boundary information. Whoever did the surveying work that has been provided and will be provided must place their signature and seal on the copies of this information provided to the Town.

The plans state that the work on the water line and sewer line is to be as required by the City of Fairfax. This must be changed to be done as required by the Marin Municipal Water District and the Ross Valley Sanitary District. Also, a note must be added to the plans stating that all parts of the new stair structure and retaining wall construction shall be a minimum of three feet clear of the westerly edge of the vehicular travel lane of Tamalpais Road.

Regarding statements in the Urban Forestry (Arborist) report about the trees, there is the suggestion that Tree 1 is near some Redwood Trees and the bay tree and that those trees will contribute to the slope stability. That may be true but since I have seen so many healthy trees go downhill with landslides, I do not look at trees as a significant factor in stabilizing a low stability hillside. The arborist report stated Tree 2 has a severe lean and for that and other reasons it has a negative effect on soil stability. I agree completely with the report on this tree. Mr. Bess told me he would like that tree to stay so that is his feeling. I believe the tree can be expected to rotate and uproot at some time in the near future and that will result in quite a bit of damage to the slope. If that tree is removed or cut off at ground level that will be positive factor in reducing probable damage to this steep slope area.

Something worth considering at this location would be building the proposed stairs with an extended landing at the top of the retaining wall that would serve both 118 and 120 Tamalpais Road. This would eliminate the need to build more stairs at this location in the future for 120 Tamalpais Road. I realize this would put the structure back close to the rock rip-rap repair where I do not want the soil disturbance to be. I believe this could be done successfully with careful soils engineering inspection and construction near the rip rap. The stairs up to this first landing would be in the street right of way and could be designated for the use of the two properties and designated to be maintained by the two properties. If this could be done it would resolve the access issue for both properties fairly well. The stairs in the right of way that are proposed must be covered by an encroachment permit as required by Code Section 12.32.

I recommend that the processing of this project be delayed until the above required information is received.



Ray Wrynski, P. E.
Town Engineer