



AGENDA

REGULAR CITY COUNCIL MEETING
Tuesday, July 19, 2016 – 7:00 p.m.
City Council Chambers

Meeting Location
El Cerrito City Hall
10890 San Pablo Avenue, El Cerrito

Greg Lyman – Mayor

Mayor Pro Tem Janet Abelson
Councilmember Jan Bridges

Councilmember Mark Friedman
Councilmember Gabriel Quinto

ROLL CALL

7:00 p.m.

CONVENE REGULAR CITY COUNCIL MEETING

1. PLEDGE OF ALLEGIANCE TO THE FLAG OR OBSERVATION OF MOMENT OF SILENCE – Councilmember Jan Bridges.

2. COUNCIL / STAFF COMMUNICATIONS (*Reports of Closed Session, commission appointments and informational reports on matters of general interest which are announced by the City Council & City Staff.*)

City Manager Hanin has withdrawn the public hearing scheduled for this evening regarding amendment of the Master Fee Schedule and rescheduled it to August 16, 2016.

3. ORAL COMMUNICATIONS FROM THE PUBLIC

All persons wishing to speak should sign up with the City Clerk. Remarks are typically limited to 3 minutes per person. The Mayor may reduce the time limit per speaker depending upon the number of speakers. Kindly state your name and city of residence for the record. Comments regarding non-agenda, presentation and consent calendar items will be heard first. Comments related to items appearing on the Public Hearing or Policy Matter portions of the Agenda are taken up at the time the City Council deliberates each action item. Individuals wishing to comment on any closed session scheduled after the regular meeting may do so during this public comment period or after formal announcement of the closed session.

4. PRESENTATION - None

5. ADOPTION OF THE CONSENT CALENDAR – Item Nos. 5(A) through 5(J)

A. National Night Out Proclamation

Approve a proclamation calling upon all residents of the City of El Cerrito to participate in “National Night Out” on Tuesday, August 2, 2016 in the City of El Cerrito.

B. I-80/Central Avenue Interchange Improvement Project

Adopt a resolution authorizing the City Manager to execute Amendment No. 2 to Cooperative Agreement No. 07W.02 between the Contra Costa Transportation Authority (CCTA), the City of El Cerrito, and the City of Richmond for final design services and construction of I-80/Central Avenue Interchange Improvement Project, Phase 1. *Exempt from CEQA.*

C. Payment of El Cerrito’s share of the West Contra Costa Integrated Waste Management Authority Operating Expenses for Fiscal year 2015-16 and First Half of Fiscal Year 2016-17

Adopt a resolution authorizing payments for the City of El Cerrito's share of the West Contra Costa Integrated Waste Management Authority's operating expenses in the amounts of \$60,140 for Fiscal Year 2015-16 and \$30,460 for the first half of Fiscal Year 2016-17.

D. Ohlone Greenway BART Station Area Access, Safety and Placemaking Improvements Project

Adopt a resolution authorizing the City Manager to execute a Subregional Transportation Mitigation Program (STMP) Cooperative Funding Agreement between West Contra Costa County Transportation Advisory Committee (WCCTAC) and the City of El Cerrito for the Ohlone Greenway BART Station Area Access, Safety and Placemaking Improvements (Ohlone ASP) Project. *Exempt from CEQA.*

E. Exclusive Negotiating Rights Agreement with Holliday Development, LLC and BRIDGE Housing Corporation for the Development of the Mayfair Block

Adopt a resolution designating Holliday Development, LLC and BRIDGE Housing Corporation jointly as the proposed developer for the Mayfair Block, and authorizing execution of an Exclusive Negotiating Rights Agreements (ENRA) with Holliday Development, LLC and BRIDGE Housing Corporation.

F. Urge the Bay Area Air Quality Management District to Adopt the Community Worker Alternative in Rule 12-16

At the request of Councilmember Abelson adopt a resolution urging the Bay Area Air Quality Management District to present the Community – Worker Alternative for proposed Rule 12-16 and adopt the Community – Worker Alternative in Rule 12-16 to ensure community and refinery work health and safety.

G. Support for the “Safety for All” Initiative

At the request of Councilmember Quinto, adopt a resolution supporting the “Safety for All” Initiative on the upcoming November 2016 ballot.

H. Committee on Aging Membership Recommendation

At the request of the Committee on Aging, approve a recommendation to appoint Katherine Cesa to the Committee on Aging, effective July 19, 2016.

I. Urging Support for the Restoration of Adult Education Funding to the California State Budget

At the request of the Committee on Aging, authorize Mayor Lyman to sign and send letters to Governor Brown, Senator Hancock, Assemblymember Thurmond and Assemblymember Lopez urging the restoration of funding for Adult Education's Older Adults programs in the California State budget.

J. Amendment to Summer 2016 City Council Meeting Schedule

Amend the Summer 2016 City Council meeting schedule approved on June 21, 2016 to reinstate and convene the previously cancelled regularly scheduled August 2, 2016 meeting at 7:00 p.m.

6. PUBLIC HEARINGS

A. Fire Hazard Abatement

1) Adopt a resolution declaring that weeds, rubbish, litter or other flammable material on certain real property identified in the resolution constitutes a public nuisance. *Exempt from CEQA.*

2) Conduct a public hearing and upon conclusion, adopt a resolution overriding objections by property owners and ordering the City Manager or his designee to abate certain public nuisances pursuant to El Cerrito Municipal Code Chapter 16.26

B. Appeal of the Planning Commission's Approval of Amendments to a Conditional Use Permit for the Summit K2 Charter School Located at 1800 Elm Street

Conduct a Public Hearing and upon conclusion adopt resolutions: 1) Certifying the Subsequent Environmental Impact Report; and 2) Denying an appeal and upholding the Planning Commission's approval of amendments to a Conditional Use Permit for the Summit K2 Charter School located at 1800 Elm Street.

C. PL 14-0171 El Dorado Townhomes Tentative Subdivision Map

Conduct a public hearing and upon conclusion adopt a resolution approving the Tentative Subdivision Map for Planning Application PL 14-0171.

7. POLICY MATTERS

Placement of a General Obligation Bond Measure for a Safe Modern El Cerrito Library

1) Adopt a resolution finding that a Safe Modern El Cerrito Library is in the public interest and necessity. *(Adoption of the resolution requires four affirmative votes.);* 2) Introduce by title and waive any further reading of an ordinance to submit to the voters of El Cerrito at the November 8, 2016 election a measure authorizing the issuance of general obligation bonds ("GO bonds") for a Safe Modern El Cerrito Library Project. *(Introduction and subsequent approval of the ordinance also requires four affirmative votes. The measure authorizing the issuance of GO bonds must be approved by two-thirds of the voters voting on the measure.);* and 3) Approve a budget amendment to appropriate \$12,000 from the unrestricted General Fund balance for election costs associated with the measure.

8. COUNCIL ASSIGNMENTS/LIAISON REPORTS

Mayor and City Council communications regarding local and regional liaison assignments and committee reports.

9. ADJOURN REGULAR CITY COUNCIL MEETING

The next regularly scheduled City Council meeting is Tuesday, August 2, 2016 at

7:00 p.m. in the City Council Chambers, 10890 San Pablo Avenue, El Cerrito.

SUPPLEMENTAL REPORTS AND COMMUNICATIONS

Item No. 5(F) Urge the Bay Area Air Quality Management District to Adopt the Community Worker Alternative in Rule 12-16

1. Notification that the Environmental Quality Committee voted to support the Community-Worker proposal – *Submitted by Maria Sanders, Liaison to the Environmental Quality Committee.*

Item No. 6(B) Appeal of the Planning Commission's Approval of Amendments to a Conditional Use Permit for the Summit K2 Charter School Located at 1800 Elm Street

2. Summit K2 Charter School Letter to Planning Commission (cc: City Council) – *Submitted by Franklin Leong and Daisy Leong.*

3. Request for scheduling of appeal – Submitted by Doug Giffin, Education Matters.

4. 1800 Elm Street Conditional Use Permit Addendum – Submitted by Doug Giffin, Education Matters.

5. Ex-Parte Communication Disclosure – *Submitted by Mayor Lyman.*

6. Materials Regarding Summit K2's Conditional Use Permit Amendment – *Submitted by Mayor Lyman and Council.*

7. Elaboration on Appeal of the Planning Commission's actions on June 15, 2016 – *Submitted by Joanna Pace on behalf of appellants.*

8. Survey of traffic on 1800 Elm Street – *Submitted by Joanna Pace on behalf of Franklin Leong, Appellant, El Cerrito.*

9. Summit K2 Public School Traffic Congestion - *Submitted by Joanna Pace on behalf of Franklin Leong, Appellant, El Cerrito.*

10. Summit expansion/traffic concern – *Submitted by Colleen West, El Cerrito.*

Item No. 6(C) PL 14-0171 El Dorado Townhomes Tentative Subdivision Map

11. Comments on proposed subdivision map – Submitted by Howdy Goudey, El Cerrito.

12. Audiss "Fair Treatment for Audiss Residents" Petition Signatures - Submitted by Sharon Maldonado, Berkeley.

Item No. 7 Placement of a General Obligation Bond Measure for a Safe Modern El Cerrito Library

13. Financial Advisory Board recommendations regarding funding for a potential new library – *Submitted by Rich Bartke, Chair.*

The City of El Cerrito serves, leads and supports our diverse community by providing exemplary and innovative services, public places and infrastructure, ensuring public safety and creating an economically and environmentally sustainable future.

- Council Meetings can be heard live on FM Radio, KECG – 88.1 and 97.7 FM and viewed live on Cable TV - KCRT- Channel 28 and AT&T Uverse Channel 99. The meetings are rebroadcast on Channel 28 the following Thursday and Monday at 12 noon, except on holidays. Live and On-Demand Webcast of the

Council Meetings can be accessed from the City's website <http://www.el-cerrito.org/ind-ex.aspx?NID=114>. Copies of the agenda bills and other written documentation relating to items of business referred to on the agenda are on file and available for public inspection in the Office of the City Clerk, at the El Cerrito Library and posted on the City's website at www.el-cerrito.org prior to the meeting.

- In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the City Clerk, (510) 215-4305. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting. (28 CFR 35.102-35.104 ADA Title I).
- ***The Deadline for agenda items and communications*** is eight days prior to the next meeting by 12 noon, City Clerk's Office, 10890 San Pablo Avenue, El Cerrito, CA. Tel: 215-4305 Fax: 215-4379, email cmorse@ci.el-cerrito.ca.us
- IF YOU CHALLENGE A DECISION OF THE CITY COUNCIL IN COURT, YOU MAY BE LIMITED TO RAISING ONLY THOSE ISSUES YOU OR SOMEONE ELSE RAISED AT THE COUNCIL MEETING. ACTIONS CHALLENGING CITY COUNCIL DECISIONS SHALL BE SUBJECT TO THE TIME LIMITATIONS CONTAINED IN CODE OF CIVIL PROCEDURE SECTION 1094.6.
- The City Council believes that late night meetings deter public participation, can affect the Council's decision-making ability, and can be a burden to staff. City Council Meetings shall be adjourned by 10:30 p.m., unless extended to a specific time determined by a majority of the Council.

***EL CERRITO CITY COUNCIL PROCLAMATION
National Night Out 2016***

WHEREAS, the National Association of Town Watch (NATW) is sponsoring a unique, nationwide crime, drug and violence prevention program on August 2, 2016 entitled "National Night Out;" and

WHEREAS, "National Night Out" has been an annual event in El Cerrito for the past fifteen years. The event provides a unique opportunity for the City of El Cerrito to join forces with thousands of other communities across the country in promoting cooperative police-community crime prevention efforts; and

WHEREAS, it is essential that all residents of the City of El Cerrito are aware of the importance of crime prevention programs and recognize the impact that their participation can have on reducing crime, drugs and violence in El Cerrito; and

WHEREAS, the City of El Cerrito and the El Cerrito Police Department is committed to enhancing the public trust through partnerships with the residents they serve through programs like National Night Out; and

WHEREAS, police-community partnerships, neighborhood safety, awareness and cooperation are important themes of the "National Night Out" program.

NOW THEREFORE, the City Council of the City of El Cerrito, does hereby call upon all residents of the City of El Cerrito to participate in "National Night Out" on Tuesday, August 2, 2016 in the City of El Cerrito.

Dated: July 19, 2016

Gregory B. Lyman, Mayor



AGENDA BILL

Agenda Item No. 5(B)

Date: July 19, 2016
To: El Cerrito City Council
From: Yvetteh Ortiz, Public Works Director/City Engineer
Subject: I-80/Central Avenue Interchange Improvement Project

ACTION REQUESTED

Adopt a resolution authorizing the City Manager to execute Amendment No. 2 to Cooperative Agreement No. 07W.02 between the Contra Costa Transportation Authority (CCTA), the City of El Cerrito, and the City of Richmond for final design services and construction of I-80/Central Avenue Interchange Improvement Project, Phase 1.

BACKGROUND

The City of El Cerrito has continually supported the evaluation and implementation of transportation improvements that would reduce congestion along Central Avenue – a major route of access from I-80 and I-580 to key commercial areas and residential neighborhoods in both the cities of El Cerrito and Richmond. Central Avenue also serves as a primary commuter connection between these freeways and the El Cerrito Plaza BART Station and is therefore an important regional route. Central Avenue, between San Pablo Avenue and Rydin Road, experiences heavy congestion and poor traffic operations, especially during weekend peak hours. Closely spaced signalized intersections in the vicinity of the I-80/Central Avenue interchange, as well as, heavy left-turn volumes and insufficient turn lanes are key contributors to the problem.

As authorized by the El Cerrito City Council under Resolution No. 2006-48 in June 2006, the City of El Cerrito entered into Cooperative Agreement 07W.02 with the Contra Costa Transportation Authority (CCTA) and the City of Richmond to identify improvements that could be implemented at the I-80/Central Avenue interchange. The agreement identified the CCTA as the agency responsible for developing the Project Study Report (PSR) and the Environmental Document (ED). At that time, the CCTA initiated work to analyze improvements. Sixteen alternatives were examined as part of the PSR effort; however, these were removed from consideration due to public input, limited benefits, significant community impacts, and high cost. As such, it became apparent that developing a Feasibility Study was more appropriate than a PSR, which is a Caltrans-required document for larger projects.

The Feasibility Study found that less capital demanding alternatives would provide better traffic flow and congestion relief, and identified a set of phased improvements. Phase 1 (Operational Modifications) will improve operations during weekend peak traffic hours, which was found to be the most congested period throughout the week. Using multiple electronic message signs, westbound traffic on Central Avenue heading to I-80 westbound will be redirected to use the I-580 eastbound on-ramp at Rydin Road. In

addition, the all-way STOP signs at the I-580 ramps will be replaced with traffic signals. Phase 2 (Local Roads Realignment) of the project will improve signalized intersection spacing on Central Avenue by connecting Pierce Street and San Mateo Street, converting Pierce Street access at Central Avenue to “right-in, right-out”, and by relocating the traffic signal at Pierce Street/Central Avenue to the San Mateo Street/Central Avenue intersection.

As authorized by the El Cerrito City Council under Resolution No. 2014-69 in November 2014, the City Manager executed Amendment No. 1 to the Cooperative Agreement to identify the CCTA as the agency responsible for completing the Plans, Specifications and Estimate (final design), a “before and after” traffic study to determine the project effectiveness, and provide design services during construction (DSDC) for the Operational Modifications project.

ANALYSIS

CCTA is requesting Amendment No. 2 to Cooperative Agreement No. 07W.02 assigning the CCTA the responsibility to advertise, award and administer the construction contract for Phase 1 of the project. CCTA is estimating a cost of \$1,100,000 for the final design services and has adequate funds programmed for design and construction of Phase 1 in the *2016 Measure J Strategic Plan*. The CCTA is not requesting the Cities provide additional funding. If additional funding is required at a future date, the CCTA will notify and seek approval of the Cities to expend additional funds.

El Cerrito staff will continue to work with CCTA, Caltrans, and Richmond staff on implementation of Phase 1 improvements as well as initiation of the environmental document for Phase 2 improvements.

STRATEGIC PLAN CONSIDERATIONS

Approval of the proposed amendment is consistent with El Cerrito Strategic Plan Goal A – *Deliver exemplary government services*, and Goal F – *Foster environmental sustainability citywide*. Specifically, approval of the proposed amendment will support the “develop and strengthen relationships with public partners” strategy listed in Goal A, and the “be a leader in setting policies and providing innovative programs that promote environmental sustainability” in Goal F. The multi-agency project to develop and implement the I-80/Central Avenue Interchange Improvement Project, Phase 1 demonstrates the City’s aim to work collaboratively with neighboring and regional agencies to reduce congestion along a key transportation route. In addition, the I-80/Central Avenue Interchange Improvement Project, Phase 1 is an important regional transportation project that will improve air quality by reducing congestion.

ENVIRONMENTAL CONSIDERATIONS

After comprehensive environmental studies, Caltrans has determined that the Phase 1 Operational Modifications Project is Categorically Exempt (Class I) as outlined in the California Environmental Quality Act (CEQA) and Categorically Excluded in the National Environmental Protection Act (NEPA), and has filed a Categorical Exemption/Categorical Exclusion Environmental Clearance (CE/CE) for the project.

FINANCIAL CONSIDERATIONS

Execution of the proposed amendment will result in no fiscal impact to the City.

LEGAL CONSIDERATIONS

The City Attorney has reviewed the proposed action and agreement amendment, and found that legal considerations have been addressed.

Reviewed by:



Scott Hanin
City Manager

Attachments:

1. Resolution
2. Amendment No. 2 to Cooperative Agreement No. 07W.02

RESOLUTION NO. 2016-XX

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EL CERRITO AUTHORIZING THE CITY MANAGER TO EXECUTE AMENDMENT NO. 2 TO COOPERATIVE AGREEMENT NO. 07W.02 BETWEEN THE CONTRA COSTA TRANSPORTATION AUTHORITY, THE CITY OF EL CERRITO, AND THE CITY OF RICHMOND FOR FINAL DESIGN SERVICES AND CONSTRUCTION OF I-80/CENTRAL AVENUE INTERCHANGE IMPROVEMENT PROJECT, PHASE 1

WHEREAS, the City of El Cerrito has continually supported the evaluation and implementation of transportation improvements that would reduce congestion along Central Avenue – a major route of access from I-80 and I-580 to key commercial areas, residential neighborhoods, and the El Cerrito Plaza BART Station and connecting the cities of El Cerrito and Richmond; and

WHEREAS, Central Avenue between San Pablo Avenue and Rydin Road experiences heavy congestion and poor traffic operations, especially during weekend peak hours and closely spaced signalized intersections in the vicinity of the I-80/Central Avenue interchange, as well as, heavy left-turn volumes and insufficient turn lanes have been found to be key contributors to the problem; and

WHEREAS, the I-80/Central Avenue Interchange Improvements Project is meant to address these problems and is eligible to receive funding from Measure J, the Contra Costa County sales tax; and

WHEREAS, as authorized by the City of El Cerrito City Council under Resolution No. 2006-48 in June 2006, the City of El Cerrito entered into Cooperative Agreement 07W.02 with the Contra Costa Transportation Authority (CCTA) and the City of Richmond that identified the CCTA as the lead agency responsible for developing the Project Study Report (PSR) and the Environmental Document (ED) to evaluate what could be implemented at the I-80/Central Avenue interchange; and

WHEREAS, sixteen alternatives were examined as part of the PSR effort; however, these were removed from consideration due to public input, limited benefits, significant community impacts and high cost and instead a Feasibility Study was prepared that found less capital demanding alternatives that would provide better traffic flow and congestion relief; and

WHEREAS, operational improvements will be made through the use of electronic variable message signs directing I-80 westbound on-ramp traffic during peak hours to I-580 (Phase 1), and by connecting Pierce Street and San Mateo Street, converting Pierce Street access at Central Avenue to “right-in, right-out” and relocating the traffic signal at Pierce Street/Central Avenue to the San Mateo Street/Central Avenue intersection (Phase 2); and

WHEREAS, Caltrans determined that the proposed improvements part of the I-80/Central Avenue project are not eligible for reimbursement by a previously secured federal earmark because the improvements do not match the earmark description; and

WHEREAS, funding for Phase 1 is programmed in CCTA’s 2016 Measure J Strategic Plan; and

Agenda Item No. 5(B)
Attachment 1

WHEREAS, after comprehensive environmental studies, Caltrans has determined that the Phase 1 Operational Modifications Project is Categorically Exempt (Class I) as outlined in the California Environmental Quality Act (CEQA) and Categorically Excluded in the National Environmental Protection Act (NEPA), and has filed a Categorical Exemption/Categorical Exclusion Environmental Clearance (CE/CE) for the project.

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of El Cerrito that it hereby authorizes the City Manager to execute Amendment No. 2 to Cooperative Agreement No. 07W.02 between the Contra Costa Transportation Authority (CCTA), the City of El Cerrito, and the City of Richmond for final design services and construction of the I-80/Central Avenue Interchange Improvement Project, Phase 1.

BE IT FURTHER RESOLVED that this Resolution shall become effective immediately upon passage and adoption.

I CERTIFY that at a regular meeting on July 19, 2016 the City Council of the City of El Cerrito passed this Resolution by the following vote:

AYES:	COUNCILMEMBERS:
NOES:	COUNCILMEMBERS:
ABSTAIN:	COUNCILMEMBERS:
ABSENT:	COUNCILMEMBERS:

IN WITNESS of this action, I sign this document and affix the corporate seal of the City of El Cerrito on July XX, 2016.

Cheryl Morse, City Clerk

APPROVED:

Gregory B. Lyman, Mayor



COOPERATIVE AGREEMENT No. 07W.02
With
CITY OF RICHMOND AND the CITY OF EL CERRITO
For
I-80/Central Avenue Interchange Improvement Project

AMENDMENT No. 2

This Amendment No. 2 to Cooperative Agreement No. 07W.02 is entered into this ____ day of _____, 2016, by and among the Contra Costa Transportation Authority ("AUTHORITY") and the City of Richmond and the City of El Cerrito (collectively the "CITIES"). AUTHORITY and CITIES may be collectively referred to as the "Parties."

WHEREAS, the AUTHORITY and CITIES entered into Cooperative Agreement No. 07W.02 on July 25, 2006 ("Agreement"); and

WHEREAS, the Project Study Report found that major modifications to the I-80 Central Avenue are cost-prohibitive and geometrically unattainable without significant impacts to the residences and businesses in the area; and

WHEREAS, the Project Study Report found that better traffic flow can be achieved by making operational improvements and local street realignments; and

WHEREAS, operational improvements will be made through the use of electronic variable message signs directing I-80 westbound on-ramp traffic during peak hours to I-580 ("Phase 1"), and by connecting Pierce Street and San Mateo Street, converting Pierce Street access at Central Avenue to "right-in, right-out" and relocating the traffic signal at Pierce Street/Central Avenue to the San Mateo/Central Avenue intersection ("Phase 2"); and

WHEREAS, Caltrans has recently determined that the proposed improvements part of the I-80/Central Avenue project (7003) are not eligible for reimbursement by the federal earmark since the improvements don't match the earmark description; and

WHEREAS, the Parties wish to amend the scope of services to include Final Plans, Estimate and Specifications ("Final Design Services") for Phase 1, a Before and After Traffic Study to determine Phase 1 effectiveness ("Traffic Study"), provide Phase 1 Design Services During Construction ("DSDC"), and Advertise, Award and Administer the construction contract; and

WHEREAS, the Phase 1 Budget is detailed in Exhibit B; and

NOW, THEREFORE, the Parties, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, agree as follows:

(1) **Article 1 of Section II** of the Agreement is amended to read in full as follows:

To retain a consultant to develop/perform the Project Study Report, Environmental Document for the **PROJECT**, and to develop/perform Final Design Services, Traffic Study and DSDC for Phase 1, and to advertise, award and administer the Phase 1 construction project. Funding for Final Design Services, Traffic Study, DSDC, and construction shall be from Measure J funds available to the project.

(2) **Article 5 of Section II** of the Agreement is amended to read in full as follows:

To notify the **CITIES** of final costs incurred to complete the Project Study Report, the Environmental Document for the **PROJECT**, and the Final Design Services, Traffic Study, DSDC, and construction for Phase 1.

(3) **Article 1(b) of Section III** of the Agreement is amended to read in full as follows:

That the cost to complete the Environmental Documentation for the **PROJECT** shall not exceed \$1,500,000 and that the cost to complete Final Design Services, Traffic Study and DSDC for Phase 1 shall not exceed \$1,100,000. If **AUTHORITY** determines that these amounts will be exceeded, it will notify and seek approval of the **CITIES** to expend additional funds.

(4) **Paragraph 3 of Exhibit A** of the Agreement is amended to read in full as follows:

This Agreement covers the preparation of the PSR and the Environmental Documentation for the **PROJECT** and performance of the Final Design Services and construction for Phase 1 consistent with Caltrans guidelines.

(5) Except as amended by this Amendment No. 2, all provisions of the Agreement shall remain in full force and effect and shall govern the actions of the Parties as if fully set forth herein.

IN WITNESS WHEREOF, the Parties hereto have executed this Amendment No. 2 to Cooperative Agreement No. 07W.02 effective as of the 15th day of June, 2016.

CITY OF RICHMOND

William Lindsay, City Manager

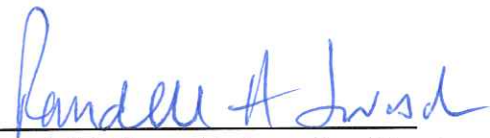
CITY OF EL CERRITO

Scott Hanin, City Manager

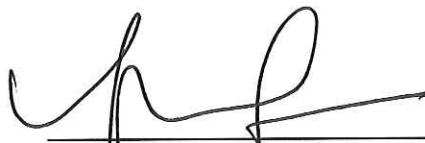
**CONTRA COSTA TRANSPORTATION
AUTHORITY**



David E Hudson, Chair



Randell H. Iwasaki, Executive Director



Malathy Subramanian, Authority Council

COOPERATIVE AGREEMENT NO. 07W.02

**between
the Contra Costa Transportation Authority
and
Cities of Richmond and El Cerrito**

EXHIBIT B

I-80 Central Avenue Budget (Phase 1)

Description	Baseline Estimate
Project Management	\$230,235
Studies Prior to Environmental	\$0
Environmental Clearance	\$1,224,250
Design and DSDC	\$1,015,746
Right of Way (Capital)	\$0
Right of Way (Services)	\$0
Utilities	\$0
Construction (advertise - CCA)	\$2,500,000
Construction Services	\$450,000
Total - All Phases	\$5,420,231

* Funded by Measure J.

\$11.7 M currently programmed in 2016 Strategic Plan



AGENDA BILL

Agenda Item No. 5(C)

Date: July 19, 2016
To: El Cerrito City Council
From: Maria Sanders, Operations + Environmental Services Division Manager
Yvetteh Ortiz, Public Works Director/City Engineer
Subject: Payment of El Cerrito's share of the West Contra Costa Integrated Waste Management Authority operating expenses for Fiscal Year 2015-16 and the first half of Fiscal Year 2016-17

ACTION REQUESTED

Adopt a resolution authorizing payments for the City of El Cerrito's share of the West Contra Costa Integrated Waste Management Authority's operating expenses in the amounts of \$60,140 for Fiscal Year 2015-16 and \$30,460 for the first half of Fiscal Year 2016-17.

BACKGROUND

The City of El Cerrito is a member of the West Contra Costa Integrated Waste Management Authority (Authority) and a party to the Joint Powers Agreement that created the Authority in 1991. The Authority, commonly known as RecycleMore, provides a variety of services to its member agencies (El Cerrito, Richmond, San Pablo, Pinole, Hercules, and the unincorporated areas of West County). The services provided by the Authority include management and administration of State mandated AB939 recycling diversion reporting and programs, regional household hazardous waste (HHW) collection programs, and other outreach and education to residents, businesses, schools, and community groups.

Historically, the City and all other parties to the Joint Powers Agreement have funded Authority Operating Expenses via a portion of the Integrated Resource Recovery Facility (IRRF) Fees that were set by the Authority and charged on garbage bills paid by residents and businesses. However, with the December 31, 2013 expiration of the Integrated Resource Recovery Agreement, the Authority ceased setting IRRF Fees as of January 1, 2014. While other Authority members included a mechanism to fund Authority operating expenses in their newly negotiated post-collection agreements with solid waste processor Republic Services, the City's adopted Post-Collection Agreement with Republic Services (Resolution No. 2013-54) is silent on such a mechanism, thereby providing the City with more options to pay its share of Authority expenses.

On August 19 2014, the City Council approved Resolution No. 2014-42, which authorized payment of El Cerrito's share of Authority operating expenses for the second half of Fiscal Year (FY) 2013-14 and all of FY 2014-15 from the City's Integrated Waste Management (IWM) Fund, rather than from fees collected by Republic Services and remitted by them directly to the Authority.

Staff recommended a direct payment to the Authority from the IWM Fund because, at that time, the Authority was experiencing a period of contraction and uncertainty. By drawing its share of the Authority's operating expenses from the IWM Fund instead of including it as an element of the City's Post-Collection Agreement, the City reserved the flexibility to respond to changes in Authority expenses without collecting more revenues than necessary from El Cerrito ratepayers. Indeed, using this payment method saved El Cerrito rate payers approximately \$11,000 in 2014.

ANALYSIS

The Authority has recently invoiced El Cerrito for the City's share of Authority expenses for FY 2015-16 (see Attachment 2, Authority Invoice). Because El Cerrito Resolution No. 2014-42 authorized payment of funds through FY 2014-15, and because the payment amounts exceed the City Manager's spending approval limits, staff is requesting Council authorization for Authority payments for FY 2015-16 and for the first half of FY 2016-17 at this time. The City's contribution to the Authority's FY 2015-16 budget is calculated to be \$60,140, based on a price per ton of El Cerrito waste processed through the Golden Bear Transfer Station. Using this calculation, it is estimated that payments for the first half of FY 2016-17 will amount to \$30,460, for total costs of \$90,600. This cost is identical to the price per ton paid by other Authority member agencies through their post-collection agreements, as established each calendar year by the Authority Board during its rate setting process. As part of the City's next Solid Waste and Recycling rate setting process for calendar year 2017, staff will work with Authority staff to review payment methodologies and options for remitting El Cerrito's annual contributions to the Authority. In any case, El Cerrito's share of Authority expenses are ultimately paid for by rate payers through their garbage bills, either as part of the post-collection rate or as part of the City's IWM rate (which is used to cover the costs of El Cerrito's recycling and waste diversion programs).

STRATEGIC PLAN CONSIDERATIONS

Approval of proposed payments to the Authority fits in with Goal F - *Foster environmental sustainability citywide* of the City's Strategic Plan. Specifically, approval of the proposed payments will result in the continuation of waste diversion and reduction programs provided to the City by the Authority, which is consistent with the "Reducing the amount of waste generated in El Cerrito" strategy under Goal F.

ENVIRONMENTAL CONSIDERATIONS

Approval of the proposed payments will allow the continuation of waste diversion and reduction programs currently provided to El Cerrito by the Authority.

FINANCIAL CONSIDERATIONS

Funding of \$60,140 and of \$30,460 for El Cerrito's contribution to the Authority's annual operating budgets were approved as part of the Adopted Update to FY 2014-15 & FY 2015-16 Biennial Budget and the Adopted FY 2016-17 & FY 2017-18 Biennial Budget, both as allocations from the Integrated Waste Management Fund.

LEGAL CONSIDERATIONS

The City Attorney has reviewed the proposed action and found that legal considerations have been addressed.

Reviewed by:

A handwritten signature in blue ink, appearing to read 'S. Hanin', is written over a horizontal line.

Scott Hanin
City Manager

Attachments:

1. Resolution
2. Authority Invoice for FY2015-16

RESOLUTION NO. 2016-XX

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EL CERRITO AUTHORIZING PAYMENTS FOR THE CITY OF EL CERRITO'S SHARE OF THE WEST CONTRA COSTA INTEGRATED WASTE MANAGEMENT AUTHORITY'S OPERATING EXPENSES IN THE AMOUNTS OF \$60,140 FOR FISCAL YEAR 2015-16 AND \$30,460 FOR THE FIRST HALF OF FISCAL YEAR 2016-17

WHEREAS, the City of El Cerrito (City) is a member of the West Contra Costa Integrated Waste Management Authority (Authority) and a party to the Joint Powers Agreement that created the Authority in 1991; and

WHEREAS, the City and all other parties to the Joint Powers Agreement have historically funded Authority operating expenses via a portion of the Integrated Resource Recovery Facility (IRRF) Fees that were set by the Authority and charged on garbage bills paid by residents and businesses; and

WHEREAS, with the expiration of the Integrated Resource Recovery Agreement on December 31, 2013, the Authority ceased setting IRRF Fees, effective January 1, 2014; and

WHEREAS, the City did not include a mechanism to pay its share of Authority operating expenses as a part of its Post-Collection Agreement with Republic Services approved via Resolution No. 2013-54 as other Authority member agencies have done; and

WHEREAS, the City's share of the Authority's Fiscal Year (FY) 2015-2016 budgeted operating expenses are calculated to be \$60,140; and

WHEREAS, funding was approved in the Adopted Update to the FY 2014-15 & FY 2015-16 Biennial Budget from the Integrated Waste Management Fund; and

WHEREAS, the City's share of the Authority's Fiscal Year 2016-2017 budgeted operating expenses from July 1, 2016 through December 31, 2016 are estimated to be \$30,460; and

WHEREAS, funding is available in the Adopted FY 2016-17 & FY 2017-18 Biennial Budget in an allocation from the Integrated Waste Management Fund.

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of El Cerrito that it hereby authorizes payments for the City of El Cerrito's share of the West Contra Costa Integrated Waste Management Authority's operating expenses in the amounts of \$60,140 for Fiscal Year 2015-16 and \$30,460 for the first half of Fiscal Year 2016-17.

BE IT FURTHER RESOLVED that this Resolution shall become effective immediately upon passage and adoption.

I CERTIFY that at a regular meeting on July 19, 2016 the City Council of the City of El Cerrito passed this Resolution by the following vote:

AYES:	COUNCILMEMBERS:
NOES:	COUNCILMEMBERS:
ABSTAIN:	COUNCILMEMBERS:
ABSENT:	COUNCILMEMBERS:

IN WITNESS of this action, I sign this document and affix the corporate seal of the City of El Cerrito on July XX, 2016.

Cheryl Morse, City Clerk

APPROVED:

Gregory B. Lyman, Mayor

RecycleMore

INVOICE #2

West Contra Costa Integrated Waste Management Authority

One Alvarado Square
San Pablo, CA 94806
Phone 510.215.3125 Fax 510.236.1636

DATE: July 6, 2016
INVOICE # El Cerrito Rev 15- 16
FOR: JPA Revenue Allocation

Bill To:

Ms. Maria Sanders
City of El Cerrito
10890 San Pablo Avenue
El Cerrito, CA 94530

DESCRIPTION	AMOUNT
JPA Post-Collection Agreement Revenue Allocation semi-annual amount 7/1/15-12/31/15	29,903
11,137 tons/2 times \$5.37/ton = \$29,903 <2>	
JPA Post-Collection Agreement Revenue Allocation semi-annual amount 1/1/16-6/30/16	30,237
11,137 tons/2 times \$5.43/ton = \$30,237. <2>	
INVOICE DESCRIPTION: Effective January 1, 2014 El Cerrito Ratepayers no longer pay individual Integrated Resource Recovery Fees (IRRF fees) as part of the post collection rates, a portion of which funds the West Contra Costa Integrated Waste Management Authority's operating expenses. Since El Cerrito's new post-collection agreement with Republic Services does not include an element funding El Cerrito's share of the Authority operating expenses, El Cerrito owes the Authority its share of budgeted expenses and should be billed semi-annually. A previous billing of \$59,777 for FY 14- 15 was sent on June 21, 2016	
<2> El Cerrito actual overall tonnage(2015) or estimated (2016) times cost per ton paid by other RM members.	
TOTAL	\$ 60,140

Make all checks payable to WCCIWMA

If you have any questions concerning this invoice, contact Stan Hakes, 510.215-3127 or stanh@recyclemore.com



AGENDA BILL

Agenda Item No. 5(D)

Date: July 19, 2016
To: El Cerrito City Council
From: Yvetteh Ortiz, Public Works Director/City Engineer
Subject: Ohlone Greenway BART Station Area Access, Safety and Placemaking Improvements Project

ACTION REQUESTED

Adopt a resolution authorizing the City Manager to execute a Subregional Transportation Mitigation Program (STMP) Cooperative Funding Agreement between West Contra Costa County Transportation Advisory Committee (WCCTAC) and the City of El Cerrito for the Ohlone Greenway BART Station Area Access, Safety and Placemaking Improvements (Ohlone ASP) Project.

DISCUSSION

Project Description

The Ohlone ASP Project will improve the Ohlone Greenway at the El Cerrito del Norte and El Cerrito Plaza BART Stations. Following the Ohlone Greenway Master Plan, adopted by the City Council in 2009, the City has been implementing projects along the Greenway to enhance its usability and contribute to reduced vehicle-miles travelled and a healthier, more connected community. However, there remains a strong need for improvements at the two BART Stations. Currently, in the two BART Station areas, the Ohlone Greenway becomes narrower than other segments of the Greenway and has an irregular alignment at street crossings, and at the same time, it has higher pedestrian, bicycle, automobile and bus traffic that contribute to increased conflicts between all modes of travel. The Ohlone ASP Project will improve and widen the mixed-use path; upgrade and expand existing crosswalks on adjacent streets to create high visibility pedestrian zones with new striping, special pavement, improved signage, curb bulb-outs, upgraded curb ramps and flashing lights; enhance landscaping, lighting, seating, gateway features and other amenities; and upgrade and expand the existing camera surveillance system to three key nodes next to the Greenway. The goals of the project are to improve bicycle and pedestrian routes leading to transit, commercial nodes and housing; bring new vibrancy to the areas around the BART Stations to encourage housing development specifically within a regionally-designated Priority Development Area; increase safety and accessibility for BART riders and Greenway users; and improve the integration of the BART Stations with the surrounding community.

The project design is being coordinated with a pedestrian side path that is to be constructed on the west side of the Greenway path between Hill Street and the Safeway Store front entrance, as well as, improvements being designed by BART as part of their del Norte BART Station Modernization Project. City and BART staff and consultants have been working closely together in developing both project designs.

Project Funding

In June 2013, the City Council adopted Resolution No. 2013-29 applying for approximately \$3.47 million in federal grant funds through the Contra Costa County Portion of the Metropolitan Transportation Commission's (MTC) One Bay Area Grant (OBAG) Program for design and construction of the project, committing the necessary non-federal match, and assuring the project would be completed per federal requirements. The Metropolitan Transportation Commission (MTC) formally approved the award in September 2013. The OBAG Program requires a minimum 11.47% percent local match in non-federal funding for each phase of the project. The local matching funds include \$300,000 from the BART Measure J Project No. 10002-01, "Transit Oriented Development (TOD) and Access Improvements at El Cerrito Plaza & del Norte BART Stations" Project and \$149,387 in Park In-Lieu funds contributed by Safeway as part of development of their del Norte Store.

In March 2016, City staff submitted a request to the WCCTAC for \$300,000 in Subregional Transportation Mitigation Program (STMP) funding to cover additional estimated costs for the construction phase of the project. The WCCTAC Board approved the request at its March 25, 2016 meeting and approved the allocation of STMP funds to the City of El Cerrito. To receive the STMP funding, the City must enter into a Cooperative Funding Agreement with WCCTAC.

STRATEGIC PLAN CONSIDERATIONS

Approval of the proposed agreement will provide needed funding for construction of the Ohlone ASP Project. The Ohlone ASP Project is consistent with El Cerrito Strategic Plan Goal D – *Develop and rehabilitate public facilities as community focal points*; Goal C – *Deepen a sense of place and community identity by promoting strong neighborhoods*; and Goal F – *Foster environmental sustainability citywide by encouraging alternative modes of transportation to the single occupancy vehicle*. Consistent with the federal grant goals, the project will improve connectivity, enhance sense of place, bring new vibrancy and support the higher-density transit-oriented neighborhoods adjacent to BART as a place where developers want to build and people want to live, work and visit.

ENVIRONMENTAL CONSIDERATIONS

In 2009, the City completed an Initial Study and Negative Declaration per California Environmental Quality Act (CEQA) Guidelines, Section 15063, to evaluate the cumulative impacts of the improvements identified for the Greenway in the Ohlone Greenway Master Plan. The project is consistent with the Master Plan and will not have a significant effect on the environment.

In addition, because the project is federally-funded, BKF and City staff completed preliminary environmental studies and various technical studies in compliance with the National Environmental Policy Act (NEPA). Caltrans reviewed the studies and determined that the project has no significant impacts on the environment as defined by NEPA and therefore the project is categorically excluded from the requirements of preparing an environment assessment or environmental impact statement.

FINANCIAL CONSIDERATIONS

The estimated cost for implementation of the Ohlone ASP Project is \$4.2 million. The Project is funded by the federal OBAG grant of \$3,468,000 and, as described above, two other sources for the local match including \$300,000 in BART Measure J funds and \$149,387 Park In-Lieu funds that were transferred and appropriated to the CIP Fund. The current funding total is \$3,917,387 with an additional \$300,000 of STMP funding for construction pending approval of this agreement WCCTAC.

LEGAL CONSIDERATIONS

The City Attorney has reviewed the proposed action and agreement, and found that legal considerations have been addressed.

Reviewed by:



Scott Hanin
City Manager

Attachments:

1. Resolution
2. Cooperative Funding Agreement

RESOLUTION NO. 2016-XX

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EL CERRITO AUTHORIZING THE CITY MANAGER TO EXECUTE SUBREGIONAL TRANSPORTATION MITIGATION PROGRAM (STMP) COOPERATIVE FUNDING AGREEMENT BETWEEN WEST CONTRA COSTA COUNTY TRANSPORTATION ADVISORY COMMITTEE (WCCTAC) AND THE CITY OF EL CERRITO FOR THE OHLONE GREENWAY BART STATION AREA ACCESS, SAFETY AND PLACEMAKING IMPROVEMENTS (OHLONE ASP) PROJECT

WHEREAS, the Ohlone Greenway BART Station Area Access, Safety and Placemaking Improvements Project is intended to improve bicycle and pedestrian routes leading to transit, commercial nodes and housing; bring new vibrancy to the areas around the BART Stations to encourage housing development specifically within a regionally-designated Priority Development Area; increase safety and accessibility for BART riders and Greenway users; and improve the integration of the BART Stations with the surrounding community; and

WHEREAS, in June 2013, the City Council adopted Resolution No. 2013-29 applying for approximately \$3.47 million in federal grant funds through the Contra Costa County Portion of the Metropolitan Transportation Commission's (MTC) One Bay Area Grant (OBAG) Program for design and construction of the project, committing the necessary non-federal match, and assuring the project would be completed per federal requirements; and

WHEREAS, MTC subsequently awarded the City \$3,468,000 in federal funds; and

WHEREAS, the non-federal local matching funds include \$300,000 from the BART Measure J Project No. 10002-01, "Transit Oriented Development (TOD) and Access Improvements at El Cerrito Plaza & del Norte BART Stations" Project and \$149,387 in Park In-Lieu funds that were transferred and appropriated to the CIP Fund; and

WHEREAS, in March 2016, City staff submitted a request to the West Contra Costa County Transportation Advisory Committee (WCCTAC) for \$300,000 in Subregional Transportation Mitigation Program (STMP) funding to cover additional estimated costs for the construction phase of the project and the WCCTAC Board approved the allocation of these STMP funds to the City of El Cerrito at its March 25, 2016 meeting; and

WHEREAS, the City completed an Initial Study and Negative Declaration in 2009 per California Environmental Quality Act (CEQA) Guidelines, Section 15063, to evaluate the cumulative impacts of the improvements identified for the Greenway in the Ohlone Greenway Master Plan, and the project is consistent with the Master Plan and will not have a significant effect on the environment.

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of El Cerrito that it hereby authorizes the City Manager to execute a Subregional Transportation Mitigation Program (STMP) Cooperative Funding Agreement between West Contra Costa County Transportation Advisory Committee and the City of El Cerrito for the Ohlone Greenway BART Station Area Access, Safety and Placemaking Improvements (Ohlone ASP) Project.

Agenda Item No. 5(D)

Attachment 1

BE IT FURTHER RESOLVED that this Resolution shall become effective immediately upon passage and adoption.

I CERTIFY that at a regular meeting on July 19, 2016 the City Council of the City of El Cerrito passed this Resolution by the following vote:

AYES:	COUNCILMEMBERS:
NOES:	COUNCILMEMBERS:
ABSTAIN:	COUNCILMEMBERS:
ABSENT:	COUNCILMEMBERS:

IN WITNESS of this action, I sign this document and affix the corporate seal of the City of El Cerrito on July XX, 2016.

Cheryl Morse, City Clerk

APPROVED:

Gregory B. Lyman, Mayor

**COOPERATIVE FUNDING AGREEMENT BETWEEN
WEST CONTRA COSTA TRANSPORTATION ADVISORY COMMITTEE
AND
City of El Cerrito**

**Ohlone Greenway BART Station Area Access, Safety and Placemaking Improvement
Project**

This AGREEMENT is made and entered into as of _____, (the “Effective Date”) by and between the West Contra Costa Transportation Advisory Committee (“WCCTAC”), a Joint Exercise of Powers Agency organized pursuant to California Government Code Section 6500, *et. seq.*, among the cities of El Cerrito, Hercules, Pinole, Richmond, and San Pablo, the County of Contra Costa, and the transit agencies AC Transit, Bay Area Rapid Transit District, and Western Contra Costa Transit Authority, with offices located at 6333 Potrero Avenue, Suite 100, El Cerrito, CA 94530, and **City of El Cerrito**, a municipal corporation/special district/etc.

WCCTAC and **City of El Cerrito** (“Agency”) shall sometimes be referred to collectively herein as the “Parties” and individually as a “Party.”

RECITALS

WHEREAS, the members of WCCTAC signed a Master Cooperative Agreement pertaining to the 2006 Subregional Transportation Mitigation Fee Program (“2006 STMP”) in West Contra Costa County, including a list of eleven specific projects and the STMP funding commitments to those projects; and

WHEREAS, Agency’s Project, as further described in the Scope of Work, attached as Exhibit A, which is incorporated herein (“Project”), is one of the eleven projects identified in the 2006 STMP; and

WHEREAS, plans, studies, and cost estimates for Agency’s Project are eligible uses for the STMP funds; and

WHEREAS, at its **March 25, 2016** meeting, the WCCTAC Board of Directors approved an appropriation of **three hundred thousand dollars (\$300,000)** in STMP funds to Agency towards the Project.

Now, therefore, the Parties hereby agree as follows:

**SECTION 1
SCOPE OF WORK**

- 1.1 Scope of Work.** Subject to the terms and conditions set forth in this Agreement, Agency shall perform or cause to perform the work described in the Scope of Work attached as Exhibit A, and incorporated herein, at the time and place and in the manner specified therein. In the event of a conflict in or inconsistency between the terms of this Agreement and Exhibit A, the Agreement shall prevail.

- 1.2 **Term of Services.** The term of this Agreement shall begin on the Effective Date and shall end on **three year anniversary of the Effective Date**, and Agency shall complete the work described in Exhibit A on or before that date, unless the term of the Agreement is otherwise terminated or extended. The time provided to Agency to complete the services required by this Agreement shall not affect WCCTAC's right to terminate the Agreement.
- 1.3 **Standard of Performance.** Agency shall perform or cause to be performed all services required in Exhibit A according to the standards observed by a competent practitioner of the profession in which Agency's consultants or contractors are engaged.
- 1.4 **Assignment of Personnel.** Agency shall retain only competent personnel to perform the Project to this Agreement. In the event that WCCTAC, in its sole discretion, desires the reassignment of any such persons, Agency shall, upon receiving notice from WCCTAC, of such desire of WCCTAC, reassign such person or persons.
- 1.5 **Time is of the Essence.** Time is of the essence. Agency shall devote such time to the performance of the Project pursuant to this Agreement as may be reasonably necessary to timely finish the Scope of Work, Exhibit A.
- 1.6 **Public Works and Department of Industrial Relations Requirements.** Because the Project and Scope of Services described in Exhibit A may include "work performed during the design and preconstruction phases of construction including, but not limited to, inspection and land surveying work," the Project may constitute a public works within the definition of Section 1720(a)(1) of the California Labor Code. In accordance with California Labor Code Section 1773.2, WCCTAC notifies Agency that this Project is subject to the general prevailing wages in the locality in which the services described in Exhibit A are to be performed. Agency shall cause to be paid prevailing wages for each craft or type of work needed to be as published by the State of California Department of Industrial Relations, Division of Labor Statistics and Research, a copy of which Agency shall make available on request by contractors and consultants. The Agency, its consultant and contractors engaged in the performance of the Scope of Services described in Exhibit A shall pay no less than these rates to all persons engaged in performance of the services described in Exhibit A. Agency is also required to comply all relevant provisions of the Labor Code applicable to public works, including enforcement of the contractor registration requirements of the California State Department of Industrial Relations.

SECTION 2 FUNDING OBLIGATIONS

- 2.1 **Funding.** In accordance with the WCCTAC Master Cooperative Agreement pertaining to the 2006 STMP, and subject to available funding, WCCTAC hereby agrees to fund Agency's Project in a sum not to exceed **three hundred thousand dollars**, (\$300,000) notwithstanding any contrary indications that may be contained in Agency or any third-party proposal for services to be performed and reimbursable costs incurred under this Agreement. In the event of a conflict between this Agreement and Agency's Scope of

Service, attached as Exhibit A, regarding the amount of compensation, the Agreement shall prevail.

The payments specified herein shall be the only payments from WCCTAC to Agency pursuant to this Agreement. Agency shall submit all invoices to WCCTAC in the manner specified herein. Agency shall not bill WCCTAC for duplicate services performed by more than one person.

WCCTAC and Agency acknowledge and agree that funding paid by WCCTAC to Agency under this Agreement is based upon Agency's estimated costs of funding Agency's Project, including salaries and benefits of employees, consultants and contractors of Agency. WCCTAC has no responsibility for such contributions beyond the amount set forth under this Agreement.

- 2.2 Invoices.** Agency shall submit invoices, not more often than once a month during the term of this Agreement, based on the cost it incurs for services performed and reimbursable costs incurred prior to the invoice date. Invoices shall contain the following information:
- a. Serial identifications of progress bills; i.e., Progress Bill No. 1 for the first invoice, etc.;
 - b. The beginning and ending dates of the billing period;
 - c. A task summary containing the original contract amount, the amount of prior billings, the total due this period, the balance available under the Agreement, and the percentage of completion.
- 2.3 Monthly Payment.** WCCTAC shall make monthly payments, based on invoices received, for services satisfactorily performed, and for authorized reimbursable costs incurred. WCCTAC shall have 60 days from the receipt of an invoice that complies with all of the requirements above to pay Agency.
- 2.4 Total Payment.** In no event shall Agency submit any invoice for an amount in excess of the maximum amount of compensation provided in Section 2.1, above, either for a task or for the entire Agreement, unless the Agreement is modified in writing prior to the submission of such an invoice by a properly executed change order or amendment.
- 2.5 Reimbursable Expenses.** Reimbursable expenses shall not include a mark-up and are billed as a direct costs. In no event shall expenses be advanced by WCCTAC to the Agency. Reimbursable expenses are included in the total amount of compensation provided under this Agreement that shall not be exceeded.
- 2.6 Payment of Taxes.** Agency and its contractors and consultants are solely responsible for the payment of employment taxes incurred under this Agreement and any similar federal or state taxes.

- 2.7 Payment upon Termination.** In the event that WCCTAC or Agency terminates this Agreement pursuant to Section 3.4, WCCTAC shall compensate the Agency for all outstanding costs and reimbursable expenses incurred for work satisfactorily completed as of the date of written notice of termination. Agency shall maintain adequate logs and timesheets to verify costs incurred to that date.
- 2.8 Authorization to Perform Services.** The Agency is not authorized to perform any services or incur any costs whatsoever under the terms of this Agreement until receipt of authorization from WCCTAC's Executive Director or his designee.
- 2.9 Funding Request.** Agency shall submit the request for funds for specific components of the Project, detailing project scope, schedule and proposed funding plan, at least four (4) months in advance of the initial anticipated cash flow need or reimbursement; to submit subsequent requests at least two (2) months in advance of anticipated need; and to apply any funds received under this Agreement to the Project consistent with the terms and conditions of an approved funding appropriation.
- 2.10 Progress Reports.** Progress reports shall be submitted along with the funding request in Section 2.9. Agency shall submit progress reports in a form satisfactory to WCCTAC based on the cost for services performed.
- 2.11 Records Keeping.** All reports, studies, plans, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that Agency prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be made available to WCCTAC at WCCTAC's request. .
- 2.12 Agency Financial Records.** Agency shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to WCCTAC under this Agreement for a minimum of 3 years, or for any longer period required by law, from the date of final payment to the Agency to this Agreement.
- 2.13 Inspection and Audit of Records.** Any records or documents that Sections 2.11 and 2.12 of this Agreement requires Agency to maintain shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request by WCCTAC. Under California Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds \$10,000.00, the Agreement shall be subject to the examination and audit of the State Auditor, at the request of WCCTAC or as part of any audit of WCCTAC, for a period of 3 years after final payment under the Agreement.

SECTION 3 GENERAL PROVISIONS

- 3.1 Funding Limitations and Contingencies.** If, in response to the Request for Proposal(s), it appears that Project costs including contingency, will exceed the funding

set forth in Section 2.1, the Parties agree that they shall meet to revise Project Scope to meet available funding. Funding of Agency's Project is strictly contingent upon WCCTAC having received, appropriated and allocated sufficient STMP funds for the Agency's Project. Funding is also contingent upon WCCTAC receiving a fully executed Agreement from Agency. If the Project Scope cannot be revised to meet available funding, then WCCTAC reserves the right to terminate this Agreement, or suspend funding, until such time that additional STMP funds are available and allocated to Agency's Project.

- 3.2 Acceptance.** Upon completion of the Project, Agency shall submit a report documenting that the Project is substantially complete. Agency shall be responsible for filing the appropriate notice of completion for the Project and shall provide a copy to WCCTAC for its records.
- 3.3 Alternative Dispute Resolution.** All disputes that arise in connection with interpretation or performance of the Agreement shall first attempted to be resolved informally by the Parties. If not resolved, prior to instituting legal action, the Parties agree to participate in mediation with a mediator jointly selected by the Parties. If the dispute is not resolved by mediation, then the Parties will retain any and all remedies that they otherwise would have at law or equity.
- 3.4 Termination.** This Agreement shall be subject to termination as follows:
- a. Either Party may terminate this Agreement at any time for cause pursuant to a power created by the Agreement or by law, other than for breach, by giving written notice of termination to either Party, which notice shall specify both the cause and the effective date of termination. Notice of termination under this provision shall be given at least ninety (90) days before the effective date of such termination. All obligations that are still executory will be discharged but any right based upon prior breach or performance shall survive.
 - b. This Agreement may be terminated by a Party for breach of any obligation, covenant, or condition by the other Party, upon notice to the breaching Party. With respect to any breach that is reasonably capable of being cured, the breaching Party shall have thirty (30) days from the date of the notice to initiate steps to cure. If the breaching Party diligently pursues cure, such Party shall be allowed a reasonable time to cure, not to exceed sixty (60) days from the date of the initial notice, unless a further extension is granted by the non-breaching Party. On termination, the non-breaching Party retains the same rights as a Party exercising its right to terminate under the provisions of Section 3.4, except that the non-breaching Party also retains any remedy for breach of the whole contract or any unperformed balance.
 - c. By mutual consent of both Parties, this Agreement may be terminated at any time.
 - d. This Agreement may be terminated by WCCTAC if funding for Agency's Project is no longer available by operation of law, or by action taken by the WCCTAC Board of Directors to reallocate funds.

- e. In no event shall the Parties terminate this Agreement if such termination would conflict with, cause a default under, or otherwise violate the terms or conditions of any revenue bonds.

3.5 Waiver of Claims Against WCCTAC. Agency waives all claims by Agency, its directors, supervisors, officers, employees, or agents against WCCTAC, its commissioners, officers, and/or employees for damages, loss, injury and/or liability, direct or indirect, resulting from Agency's participation in the Project. Agency's waiver shall not apply to liability arising from and caused by the sole negligence or willful misconduct of WCCTAC, its commissioners, officers, and/or employees.

3.6 Indemnity. Agency shall defend, indemnify and hold harmless WCCTAC, its governing board, member agencies, officers, and employees from and against any and all liability, loss, damage, claims, expenses, and costs (including without limitation, attorney's fees and costs and fees of litigation) (collectively, "Liability") of every nature arising out of or in connection with Agency's performance of any work under this Agreement, except such Liability caused by the sole negligence or willful misconduct of WCCTAC. With respect to third party claims against Agency, waives any and all rights of any type to express or implied indemnity against WCCTAC.

3.7 Notices. All notices (including requests, demands, approvals or other communications) under this Agreement shall be in writing. Notice shall be sufficiently given for all purposes as follows:

- a. When delivered by first class mail, postage prepaid, notice shall be deemed delivered three (3) business days after deposit in the United States Mail.
- b. When mailed by certified mail with return receipt requested, notice is effective upon receipt if delivery is confirmed by a return receipt.
- c. When delivered by overnight delivery by a nationally recognized overnight courier, notice shall be deemed delivered one (1) business day after deposit with that courier.
- d. When personally delivered to the recipient, notice shall be deemed delivered on the date personally delivered.
- e. The place for delivery of all notices under this Agreement shall be as follows:

If to WCCTAC:

John Nemeth, Executive Director
West Contra Costa Transportation Advisory Committee
6333 Potrero Avenue, Suite 100
El Cerrito, CA 94530

with a Copy to:

Kristopher J. Kokotaylo, Legal Counsel

Meyers Nave Riback Silver & Wilson
555 12th Street, Suite 1500
Oakland, CA 94607

If to Agency:

Scott Hanin, City Manager
City of El Cerrito
10890 San Pablo Avenue
El Cerrito, CA 94530

- 3.8 Additional Acts and Documents.** Each Party agrees to do all such things and take all such actions, and to make, execute, and deliver such other documents and instruments, as shall be reasonably requested to carry out the provisions, intent, and purpose of this Agreement.
- 3.9 Integration.** This Agreement represents the entire agreement of the Parties with respect to the subject matter. No representations, warranties, inducement, or oral agreements have been made by any of the Parties except as expressly set forth in this Agreement.
- 3.10 Governing Law.** The laws of the State of California shall govern this Agreement. Agency and any consultants and contractors shall comply with all laws, including, but not limited, all statutes, regulations, local ordinances, and decisional authority, applicable to the Scope of Work hereunder. To the extent that this Agreement may be funded by fiscal assistance from another governmental entity, Agency and any subcontractors shall comply with all applicable rules and regulations to which WCCTAC is bound by the terms of such fiscal assistance program.
- 3.11 Amendment.** This Agreement may not be changed, modified, or rescinded except by the written approval of the legislative bodies of each Party, and any attempt of oral modification of this Agreement shall be void and of no effect.
- 3.12 Independent Contractor.** Agency and WCCTAC render their services under this Agreement as independent contractors. None of the agents or employees of either shall be agents or employees of the other.
- 3.13 Assignment.** This Agreement may not be assigned, transferred, hypothecated, or pledged by any Party without the express written consent of the other Party.
- 3.14 Successors and Assigns.** This Agreement shall be binding upon the successors, assignees, or transferees of WCCTAC or Agency as the case may be. This provision shall not be constructed as an authorization to assign, transfer, hypothecate, or pledge this Agreement other than as provided above.
- 3.15 Severability.** Should any part of this Agreement be determined to be unenforceable, invalid, or beyond the authority of either Party to enter into or carry out, such determination shall not affect the validity of the remainder of this Agreement, which

shall continue in full force and effect, so long as the remainder, absent the excised portion, can be reasonably interpreted to give effect to the intentions of the parties.

3.16 Jurisdiction and Venue. In the event that either party brings any action against the other under this Agreement, the parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Contra Costa or in the United States District Court for the Northern District of California.

3.17 Attorney's Fees. If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.

3.18 No Implied Waiver of Breach. The waiver of any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.

3.19 Counterparts. This Agreement may be executed in counterparts.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed and attested by their respective officers, duly authorized so to act, as of the date set forth in the first paragraph of this Agreement.

City of El Cerrito

**West Contra Costa Transportation
Advisory Committee**

Scott Hanin, City Manager

John Nemeth, Executive Director

Approved as to Form:

Approved as to Form:

Sky Woodruff, City Attorney

Kristopher Kokotaylo, Legal Counsel

EXHIBIT A

SCOPE OF SERVICES

The Agency agrees to:

1. To act as the lead agency and take responsibility for evaluating prospective consultants and contractors retained by Agency and subsequent award of work consistent with this Agreement.
2. To act as the lead agency and retain, as appropriate, consulting services consistent with this Agreement.
3. To be responsible for providing management of consultant and contractor activities, including responsibility for scheduling, budgeting, and oversight of the services, consistent with the scope of the project.
4. To advance or complete all or a portion of following STMP project identified as funding categories: *Category 11: Del Norte Area Transit Oriented Development Public Improvements*
5. To use the STMP funds *for construction of the City of El Cerrito Ohlone Greenway BART Station Area Access, Safety and Placemaking Improvement (Ohlone ASP) Project*
6. To produce or complete *improvements to mixed-use path, landscape, streetscape and public access along the well-utilized Ohlone Greenway (on BART and City property) and on adjacent streets. The project will widen and enhance the existing mixed-use path and adjacent shoulders, install and enhance crosswalks, formalize clear pedestrian desire lines, and establish "high use pedestrian zones" on the adjacent streets with new striping, special pavement, curb bulb-outs, improved signage and rapid rectangular flashing beacons. On eastbound Hill Street, the project will also convert a through lane to a right-only lane and add a pedestrian bulb-out at the entrance to the Safeway Store to increase pedestrian safety, reduce conflicts between all modes of travel, and improve intersection operations. Placemaking elements such as native landscaping, seating and lighting will also be included to establish a strong sense of place at these transportation gateways to the community. Finally, as a part of this project, the existing Ohlone Greenway surveillance system will be upgraded and expanded near and between the two BART Stations to improve security along the Greenway.*
7. To complete the over-all project based on the following initial schedule for the project:

<i>Advertise Construction</i>	<i>Summer 2016</i>
<i>Award Contract</i>	<i>Fall 2016</i>
<i>Construction Begin</i>	<i>Winter 2016</i>
<i>Construction Complete</i>	<i>Summer 2017</i>
<i>Project Close-Out</i>	<i>Spring 2018</i>
8. To complete the STMP-funded portion of the project based on the estimated completion date of *March 31, 2018.*



AGENDA BILL

Agenda Item No. 5(E)

Date: July 19, 2016
To: El Cerrito City Council and Successor Agency Board
From: Melanie Mintz, Community Development Director
Subject: Authorization to Enter into an Exclusive Negotiating Rights Agreement with Holliday Development, LLC and BRIDGE Housing Corporation for the Development of the Mayfair Block

ACTION REQUESTED

Adopt a resolution designating Holliday Development, LLC and BRIDGE Housing Corporation jointly as the proposed developer for the Mayfair Block, and authorizing execution of an Exclusive Negotiating Rights Agreement (ENRA) with Holliday Development, LLC and BRIDGE Housing Corporation.

BACKGROUND

The “Mayfair Block” is an approximately 1.75 acre site bordered by San Pablo and Knott Avenues, Kearney Street, and Cutting Boulevard. The block is immediately adjacent to the Del Norte BART station, and consists of three parcels of land (APNs 502-062-003, 502-062-029, 502-062-028) that were purchased by the former El Cerrito Redevelopment Agency (RDA) over a period of time and were transferred to the Municipal Services Corporation (MSC Resolution No. 2011-03 and Redevelopment Resolution 612) and approved to be transferred to the El Cerrito Successor Agency (Resolution No. 2016-39). The property was acquired for the purpose of development and was approved to be transferred to the City for future development in the Successor Agency’s Long Range Property Management Plan (Oversight Board Resolution No. 2015-06, approved by the Department of Finance.)

Development of the site has long been viewed as a key to catalyzing transit-oriented residential and commercial development near the Del Norte BART station. The former RDA and MSC have initiated prior projects at the site. In 2005, the Redevelopment Agency entered into an ENRA with the Olson Company (Resolution No. 552), which proposed a mixed-use residential apartment project on the site. However, with the downturn in the residential market and the economy, Olson Company terminated the project in 2007. In 2011, the Redevelopment Agency conveyed the property to the MSC. In April 2013 the MSC entered into an ENRA with Build Inc. (MSC Resolution No. 2013-04) for a mixed-use apartment/commercial project. The agreement was extended in May 2014 (MSC Resolution No. 2014-01), but the project did not move forward due to the inability for the MSC to obtain State approval for the conveyance of the site. Since the expiration of the Build, Inc., ENRA, the Successor Agency to the former redevelopment agency has taken action to adopt a Long Range Property Management Plan (LRPMP) to allow the transfer of the property to the City for future development.

Agenda Item No. 5(E)

In December 2015 the Successor Agency obtained State approval of its LRPMP and in May 2016 the MSC approved transferring the property to the City in accordance with the LRPMP.

In April 2016, Community Development staff initiated a Request for Qualifications/Request for Proposal (RFQ/RFP) process and released a Request for Qualifications (RFQ) (*Attachment 3*) to seek new qualified developers for the site. Eleven statements of qualifications were received. A Selection/Advisory Committee was convened by staff and was comprised of City staff, and members from the Design Review Board and Planning Commission as well as a former City Council member. The Committee narrowed the list to three development firms determined to be the most qualified for this project to proceed to the next step of developing proposals.

The decision to narrow the qualified list to three was made in discussions and with the recommendation of the Committee and following recommended best practice standards to obtain the highest quality proposals from a more limited field of applicants. Qualification was based upon a number of criteria including experience of each of the team members with similar developments; completeness of response; financial capacity to obtain funding commitments and fund predevelopment costs; consistency with City objectives as set out in the San Pablo Avenue Specific Plan and Redevelopment Plan; commitment to provide open space and sustainability features; experience with community engagement; design quality of similar projects. Goldfarb & Lipman and Management Partners provided technical support for the evaluation of the proposals. Staff offered to discuss the process and the final list with each of the teams not selected and spoke with the majority of those that submitted qualifications.

A Request for Proposals (*RFP/Attachment 4*) was issued in May 2016 to the three selected development firms, and one proposal was received from the development partnership of Holliday Development, LLC and BRIDGE Housing Corporation (Holliday-BRIDGE) on June 2, 2016. The other two potential proposers elected not to submit a full proposal after analyzing the financial feasibility of their proposed projects and determining that the project, as conceived by each of the developers, would not provide sufficient returns to attract financing. Staff and/or Management Partners communicated with each of these teams about their decision not to submit. The Selection/Advisory Committee analyzed the development proposal received from Holliday/BRIDGE and interviewed the development team. (Due to scheduling conflicts and the submittal of one proposal, the Selection/Advisory Committee was smaller at this point, consisting of a member from each the Design Review Board, Planning Commission and Economic Development Committee, as well as City staff and Management Partners.) The Committee concluded that the team has very strong experience in developing mixed use and mixed income communities, a strong track record and a development concept that meets the City's Transit Oriented Development land use, open space and housing objectives at the site and in accordance with the San Pablo Avenue Specific Plan.

ANALYSIS

Development Concept: The proposal includes a development concept, as summarized below. The full proposal is available online at www.el-cerrito.org/Mayfair and at City Hall. Key pieces of the development concept are included as attachments to this Agenda Bill and associated Resolution. The final site plan and design, however, will need to be reviewed and approved through the City's San Pablo Avenue Specific Plan entitlement process. Holliday-BRIDGE proposes to utilize the Tier IV process offered by the Specific Plan, which will require both a Planning Commission and Design Review Board public hearing.

Mixed-Use: Holliday/BRIDGE proposes to develop a mixed-use project of apartments and ground floor retail/commercial consistent with the objectives of the San Pablo Avenue Specific Plan. One reason this team's development concept during the qualification phase rated highly, and was chosen for further consideration, was the inclusion of an affordable housing component which makes the project mixed-income as well as mixed-use. Pursuant to the attached Development Concept (*Attachment 5*) a total of 234 units are proposed consisting of a mix of unit types including studios, 1BR, 2BR, and 3BR units. Approximately 10,000 feet of commercial space (retail and office) are also provided.

Affordable Housing: The proposed affordable housing component consists of 68 units, or 30% of the project. The affordable units are in a separate building enabling a more competitive application for affordable housing resources, however much of the common open space areas are shared, as is parking. Depending upon final funding, the project will provide for a mix of income levels. The proposed mix, described in the Development Concept (*Attachment 5*) aims to serve a wide spectrum of families and is tailored to meet the competitive requirements of likely funding sources.

Public Art/Public Open Space: The open space mews which will provide a public open space connecting San Pablo Avenue with Kearney Street and potentially to the Ohlone Greenway are envisioned as places for inclusion of public art in conformance with the City's 1% for art ordinance and in support of the Urban Greening Plan, the Ohlone Greenway Master Plan and the Arts and Culture Master Plan. As called for in the aforementioned plans and the Specific Plan, the open space is proposed to be active space with play areas, pedestrian areas, courtyards and other amenities as well as to enhance the bicycle and pedestrian connectivity in the area for both the development and surrounding neighborhoods .

Commercial Space: A total of approximately 10,000 square feet of ground floor commercial (retail and office) space is proposed to be provided by the project, primarily on San Pablo Avenue but also along Cutting and at the corner of Knott, with the goal of creating active street fronts, connection to BART and providing neighborhood serving retail. Holliday Development has demonstrated success in creating partnerships with local businesses and entrepreneurs to foster local economic development.

Parking, Transportation Demand Management and Multimodal Transportation:

The proposed development utilizes the Specific Plans reduced parking requirements and maximizes the site's location advantage next to BART. Unbundled ground floor parking is anticipated to be provided at a ratio of 0.75:1 for affordable housing and 0.5:1 for market rate and all parking would be enclosed under the market rate building behind the retail. The project also proposes to exceed the City's bicycle parking requirements, with a minimum of one secure bicycle parking space for each unit and additional public spaces and to incorporate car share spaces, electric-vehicle charging stations and will likely include other *Transportation Demand Management Measures*, such as transit passes.

Green Features: Both Holliday Development and BRIDGE Housing have extensive green building experience and have built numerous Green Point Rated and LEED projects. The green features that will be incorporated into the project will be finalized as the project design is finalized, but a description of the development's team's proposed approach to sustainability is detailed in *Attachment 6*.

Expanded Site: The RFQ and RFP stated that it might be possible to expand the site area by including adjacent Kearney Street public right of way and a small BART parking lot parcel to the east of the site, pending City Council and BART Board approval. The proposed development concept proposes to retain Kearney as public right of way and to reconfigure it to be one-way and to accommodate angled parking, to maximize retail access and achieve traffic calming. The proposed development concept also includes possible use of the BART parcel to provide additional live-work, flex/commercial space and integrate the Mayfair block to the Greenway. Staff is in contact with BART staff about bringing the proposal to the BART Board, however, the Mayfair block development concept is not reliant on the use of the parcel or Kearney Street.

Zoning Compliance: The proposal was well crafted to be consistent with the many design elements and requirements of the San Pablo Avenue Specific Plan. Final entitlement per the zoning ordinance will be conveyed through the entitlement process. Major conforming design elements include:

- Ground floor parking is anticipated to be at a ratio of 0.75:1 for affordable housing, and 0.5:1 for the market rate. The reduced parking ratios for the units reflect the proximity to transit (BART and AC Transit) consistent with the San Pablo Avenue Specific Plan
- Conformance with the Form Based Code to create a high-intensity, development with parking integrated into the design and at parking ratios below the maximum allowed
- Encourage alternative modes of transit – among these features are a minimum of one-to-one secure bike parking, bike workstations and lounges, multiple car-share spaces, electric car charging stations, and unbundled parking
- Creating through-street connections (mews) to break-up the existing “super block” and continue neighborhood block scale
- Provision of public open space and ground floor, street activating commercial

Development Team and Experience: The development team has significant experience in prior developments individually and working together on prior projects (see *Attachment 7* for Holliday Development experience and *Attachment 8* for BRIDGE Housing experience). BRIDGE Housing is considered to be a premier developer of northern California affordable housing, and has been in the affordable housing development business for approximately 30 years. Holliday Development is considered a pioneer in housing that involves adaptive re-use as well as new buildings. Holliday Development's Bay Area and East Bay experience in particular will be important for the success of this project. More information about the team's precedent projects can be found at their websites in *Attachments 7 and 8*.

The development team includes the following members:

- Co-developer - Holliday Development
- Co-developer - BRIDGE Housing Corporation
- Architect - Lowney Architecture
- Landscape Architect - Miller Company
- Construction Contractor - Cannon Constructors
- Legal Representation - Coblenz Patch Duffy & Bass LLP
- Proposed Property Management - BRIDGE Property Management Company for the BRIDGE development & potential Holliday managers to be determined
- Urban Planning and Land Use Consultant - Rhoades Planning Group

Proposed Project Schedule: The next steps for the development include a period of exclusive negotiations concluding with a Disposition and Development Agreement (DDA), obtaining land use approvals from the Planning Commission and Design Review Board and building permits from the Building Division, obtaining private financing for the Holliday market rate units, obtaining public financing for the BRIDGE affordable units, and conveyance of the property. The detailed steps and their timing will be negotiated during the DDA negotiations, but a preliminary sense of the timing can be derived from the Holliday BRIDGE schedule set forth in their development concept (*Attachment 5*) and below:

July 2016 - Development Team Selected

November 2016 - DDA Approved, Entitlements Completed, and Design Development drawings underway

December 2016 - Approach and Apply to Contra Costa County for HOME/CDBG funding, Rebound Funds, and to the Housing Authority for Project Based vouchers

May/June 2017 - City Submits DDA to Oversight Board for approval of land sale. Completion of construction drawings, submit for building permits for Market-rate building

July 2017 - Apply to TCAC for an allocation of 9% tax credits

August/Sep 2017 - Close of Escrow, Market Rate parcel and start of construction

December 2017 - Close of Escrow, Affordable parcel and start of construction

Oct/Nov 2018 - Market Rate apartments completed, occupancy granted

February 2019 - Affordable apartments completed, occupancy granted

As the financing for the two portions of the project are different, the start and completion of construction have different time frames. In discussions with the development team, the two different financing strategies could result in either the market rate or affordable component breaking ground first.

Sanitary Capacity: One item that has come to the City's attention, during the predevelopment phase at Tradeway/Hana Gardens and through completion of the infrastructure analysis completed as a part of the San Pablo Avenue Specific Plan, is the limited sewer capacity along San Pablo Avenue, and especially in the Uptown area of the Specific Plan. Although the capacity issue is due to infiltration into the system from the City's existing hillside residential areas, it limits the capacity in many locations within the City's Priority Development Area (PDA) for new development. The City is currently in communication with Stege Sanitary District staff and their Board of Directors about this issue, and met with the Board on May 14 to discuss possible solutions. In addition to working with the development team directly to resolve this issue for the Mayfair block, the City currently has Priority Development Area (PDA) Implementation Planning grant funding from the Metropolitan Transportation Commission (MTC) and Contra Costa Transportation Authority (CCTA) to accomplish a number of PDA implementation steps, including developing a strategy for resolving this capacity issue. Resolving this issue has currently unknown schedule and cost implications. Resolution may necessitate schedule modifications through either an ENRA amendment or through the DDA negotiations.

Exclusive Negotiating Rights Agreement Terms: The following is a summary of the key terms of the recommended ENRA (Attachment 2):

1. The ENRA establishes a period of exclusive good faith negotiations for the preparation of a DDA. The City agrees not to seek or entertain other development proposals for the site during the term of the ENRA.
2. Issues to be addressed in the negotiations include: property purchase price, a development schedule, land title conditions, financing commitments, and the final project details including those approved through the entitlement process, including affordable housing, open space, and public art. The DDA negotiations may also include details about the schedule and strategy for provision of sanitary service.
3. The negotiating period will be for 150 days following Council approval of the ENRA. The City Manager can extend the negotiating period for an additional 90 days if the Developer is meeting all of the obligations of the agreement. Further extensions would require the approval of the City Council.
4. The developer will make a good faith deposit of \$60,000 upon Council approval of the ENRA, which will consist of a non-refundable \$15,000 ENRA fee, and a refundable \$45,000 good faith deposit. The \$15,000 fee will compensate the City for staff costs to implement the ENRA. Costs that will be covered by the good faith deposit including appraisal fees, pro forma review consulting fees, and attorney's fees.

Agenda Item No. 5(E)

5. Approval of the ENRA includes approval of the concept plans by the City Council as consistent with the City's goals and objectives for the development, but does not confer entitlement. The entitlement process and detailed design may result in some changes to the concept.
6. As part of the DDA negotiations the City and developer will negotiate the acquisition price for the property. The price will be confirmed by an appraisal. The appraisal may be a conventional appraisal or a residual land value appraisal that takes into account the constraints on the development that affect land value. The City is obligated to sell the property for not less than the fair market price or the residual land value under State Law. The minimum purchase price will be the existing amount of the debt incurred by the former Redevelopment Agency to acquire the property which is secured by a deed of trust on the property.
7. A schedule of performance will be negotiated based on the schedule provided by the developer.
8. The developer will conduct due diligence review of the site to ensure it is suitable for the development contemplated.
9. The developer will obtain entitlements pursuant to the San Pablo Avenue Specific Plan for the project including environmental review pursuant to the California Environmental Quality Act (CEQA) and the City's San Pablo Avenue Specific Plan Programmatic Environmental Impact Report.

STRATEGIC PLAN CONSIDERATIONS

The proposed development fulfills the City's Strategic Plan Goal C: Deepen a sense of place and community identity and specifically the strategy to reimagine underdeveloped and underutilized properties and Goal B: Achieve long-term financial sustainability.

ENVIRONMENTAL CONSIDERATIONS

The action requested is not a project pursuant to the California Environmental Quality Act. The approval of the ENRA does not commit the City to a specific project or to the sale of the property.

FINANCIAL CONSIDERATIONS

The development proposal includes a proposed \$3.5 million payment for the land, as described in *Attachment 9*, Debt and Equity Sources, which exceeds the \$1.567 million due on the existing purchase note held by the Successor Agency for the property. The final price will be negotiated during the DDA negotiations, based upon the fair market or reuse appraisal. The first \$1.567 million of proceeds will be utilized to retire the note and remove the obligation from the Successor Agency's Recognized Obligation Payment Schedule (ROPS); the remainder will be divided amongst the 17 affected taxing entities, with the City receiving approximately 22% of those proceeds as one of the taxing entities.

The proposals were evaluated at the RFQ stage for financial strength of the development teams. BRIDGE Housing has one of the strongest balance sheets of all proposals received, and will provide the resources required for the project to move through the ENRA stage (entitlements and investigations). Pursuant to *Attachment 9*,

the development team has prior financing interest from Citi Bank (now Citi), which provided a letter of interest for financing this particular development. *Attachment 10*, Debt and Equity Sources, discusses details of how the tax credits would be structured to finance the affordable units. It also discusses BRIDGE's A+ credit rating from Standard and Poor.

Development of this site will also achieve long-term revenue for the City through increased property tax and sales tax.

LEGAL CONSIDERATIONS

This action is consistent with the Long Range Property Management Plan and has been reviewed by the Successor Agency Legal Counsel.

Reviewed by:



Scott Hanin
City Manager

Attachments:

1. Draft Resolution
2. Exclusive Negotiating Rights Agreement
3. Request for Qualifications for Acquisition and Development of the Mayfair Parcels
4. Request for Proposals for Acquisition and Development of the Mayfair Parcels
5. Development Concept
6. Green and Environmental Benefits
7. Holliday Development Experience
8. Bridge Development Experience
9. Citi Financing Letter of Interest
10. Debt and Equity Sources

RESOLUTION NO. 2016-XX

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EL CERRITO DESIGNATING HOLLIDAY DEVELOPMENT, LLC AND BRIDGE HOUSING CORPORATION JOINTLY AS THE PROPOSED DEVELOPER FOR DEVELOPMENT OF THE MAYFAIR BLOCK, AND AUTHORIZING EXECUTION OF AN EXCLUSIVE NEGOTIATING RIGHTS AGREEMENT WITH HOLLIDAY DEVELOPMENT, LLC AND BRIDGE HOUSING CORPORATION

WHEREAS, the former El Cerrito Redevelopment Agency ("Agency") acquired that certain property bordered by San Pablo and Knott Avenues, Kearney Street, and Cutting Boulevard and designated as APNs 502-062-003, 502-062-029, 502-062-028 (the "Property") for the purposes of facilitating development of the Property consistent with the El Cerrito Redevelopment Plan; and

WHEREAS, the former Agency was dissolved in accordance with State law effective February 1, 2012; and

WHEREAS, the Successor Agency to the El Cerrito Redevelopment Agency ("Successor Agency"), in accordance with Health and Safety Code Section 34191.5 approved a long range property management plan ("LRPMP") dealing with the disposition of all of the former Agency owned property; and

WHEREAS, the LRPMP was approved by the Oversight Board to the Successor Agency and subsequently approved by the California Department of Finance; and

WHEREAS, the LRPMP calls for the Property to be transferred to the City for future development; and

WHEREAS, the City issued a Request for Qualifications/Request for Proposal to potential developers of the Property; and

WHEREAS, the City received eleven responses to the Request for Qualifications and after reviewing the qualifications, the Selection/Advisory Team recommended three developers to submit responses to the Request for Proposals; and

WHEREAS, the City received one response to the Request for Proposals from Holliday Development LLC and BRIDGE Housing Corporation ("Developer"); and

WHEREAS, the Selection/Advisory Team reviewed the proposal submitted by the Developer and concluded that the Developer has very strong experience in developing mixed use and mixed income communities, a strong track record and a development concept that meets the City's Transit Oriented Development land use, open space and housing objectives at the site and in accordance with the San Pablo Avenue Specific Plan and the Redevelopment Plan; and

WHEREAS, the Selection/Advisory Team recommended that the City Council select the Developer to enter into an Exclusive Negotiating Rights Agreement with the City to negotiate a Disposition and Development Agreement ("DDA") for the development of the Property to achieve the following;

1. Pursuant to the DDA, the City would convey the Property on terms to be determined by the parties but not less than the reuse value of the property; and

2. Pursuant to the DDA, the Developer and the City would agree upon a process and schedule for the development of the Property; and

WHEREAS, the City desires to enter into an Exclusive Negotiating Rights Agreement with the Developer, substantially in the form on file with the City Clerk, to seek to negotiate the terms of the DDA.

NOW THEREFORE, BE IT RESOLVED, that the City hereby designates the Developer as the potential developer of the Property for purposes of negotiating the terms of the proposed DDA.

BE IT FURTHER RESOLVED, that the City authorizes and directs the City Manager to execute the Exclusive Negotiating Rights Agreement on behalf of the City, substantially in the form on file with the City Clerk, with such modifications as the City Manager determines appropriate to effectuate the purposes of this Resolution, such determination to be conclusively evidenced by the City Manager's execution of the Exclusive Negotiating Rights Agreement.

BE IT FURTHER RESOLVED that this Resolution shall become effective immediately upon its passage and adoption.

I CERTIFY that at a regular meeting on July 19, 2016, the City Council of the City of El Cerrito passed this Resolution by the following vote:

AYES:	COUNCIL MEMBERS:
NOES:	COUNCIL MEMBERS:
ABSENT:	COUNCIL MEMBERS:

IN WITNESS of this action, I sign this document on July 19, 2016.

Cheryl Morse, City Clerk

APPROVED:

Gregory B. Lyman, Mayor



AGENDA BILL

Agenda Item No. 5(E)

**July 19, 2016
Regular City Council Meeting**

Agenda Item No. 5(E)

**Exclusive Negotiating Rights Agreement with Holliday Development, LLC and
BRIDGE Housing Corporation for the Development of the Mayfair Block**

Attachments 2-10 available on-line at:

2. [Exclusive Negotiating Rights Agreement](#)
3. [Request for Qualifications for Acquisition and Development of the Mayfair
Parcels](#)
4. [Request for Proposals for Acquisition and Development of the Mayfair
Parcels](#)
5. [Development Concept](#)
6. [Green and Environmental Benefits](#)
7. [Holliday Development Experience](#)
8. [Bridge Development Experience](#)
9. [Citi Financing Letter of Interest](#)
10. [Debt and Equity Sources](#)

Hardcopies are available for review during regular business hours at:

City Clerk's Office, 10890 San Pablo Avenue, El Cerrito; and

El Cerrito Library, 6510 Stockton Avenue, El Cerrito.

RESOLUTION NO. 2016–XX

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EL CERRITO URGING THE BAY AREA AIR QUALITY MANAGEMENT DISTRICT TO FULLY PRESENT AND ADOPT THE COMMUNITY-WORKER ALTERNATIVE IN RULE 12-16 TO ENSURE COMMUNITY AND REFINERY WORKER HEALTH AND SAFETY

WHEREAS, the Bay Area Air Quality Management District (BAAQMD) is charged by the Federal and State governments to enforce Federal and State air quality laws governing industrial sources; and

WHEREAS, the mission statement of BAAQMD is, “The Air District aims to create a healthy breathing environment for every Bay Area resident while protecting and improving public health, air quality and the global climate;” and

WHEREAS, the Air District's Board of Directors is made up of twenty–four locally elected representatives from nine Bay Area counties; and

WHEREAS, the American Lung Association, in its 2016 “State of the Air” report, just gave the Bay Area a grade “D” for air quality; and

WHEREAS, residents in the Bay Area Refinery corridor and other Bay Area communities already suffer disproportionately from emissions-related diseases, including cancer, asthma, stroke and autoimmune diseases; and

WHEREAS, the shift to dirtier crude slates by Bay Area refineries has the potential to greatly increase dangerous emissions; and

WHEREAS, Proposed Rule 12-16 as submitted in the Community – Worker Proposal, is intended to not allow any further increase of emissions from the five Bay Area oil refineries; and

WHEREAS, the five Bay Area oil refineries are seeking to adapt their facilities in order to process dirtier, higher sulfur crude, including Canadian tar sands, which is one of the dirtiest crudes on the planet; and

WHEREAS, adoption of the Community-Worker Proposal for Rule 12-16 will ensure that future emissions limits will prohibit Bay Area refineries from processing these extreme dirty crudes, thereby reducing the harm to Bay Area residents from dangerous emissions and reducing the amount of harmful greenhouse gases that damage the global climate.

NOW THEREFORE, BE IT RESOLVED that the City Council of the City of El Cerrito hereby urges the Bay Area Air Quality Management District to full present the Community-Worker Alternative for proposed Rule 12-16 and adopt the Community-Worker Alternative in Rule 12-16 to ensure community and refinery worker health and safety.

Agenda Item No. 5(F)

I CERTIFY that at a regular meeting on July 19, 2016, the City Council passed this resolution by the following vote:

AYES: COUNCILMEMBERS:
NOES: COUNCILMEMBERS
ABSTAIN: COUNCILMEMBERS:
ABSENT: COUNCILMEMBERS:

IN WITNESS of this action, I sign this document and affix the corporate seal of the City of El Cerrito on July XX, 2016.

Cheryl Morse, City Clerk

APPROVED:

Gregory B. Lyman, Mayor

18 September 2015
[Revised 21 Sep 2015]

Jack Broadbent
Air Pollution Control Officer
Bay Area Air Quality Management District
939 Ellis Street
San Francisco, CA 94109



Attention: Eric Stevenson (Estevenson@baaqmd.gov)

Re: Proposal for enforceable numeric limits on refinery-wide emissions to stop increasing greenhouse gas and particulate matter air pollution [Rule 12-16]

Mr. Broadbent,

The undersigned community, environment, labor and academic groups continue to seek enforceable numeric limits on refinery-wide emissions of greenhouse gas (GHG) and particulate matter air pollution that would prevent further increases in these emissions. These emission limits are needed now, in proposed Rule 12-16.

GHG and particulate matter (PM) are among the most harmful air pollutants known. GHG threatens climate catastrophe and PM kills thousands in the Bay Area each year. Oil refining is the largest industrial emitter of GHG and PM in the Bay Area, and yet refineries here have *no* facility-wide limits on these emissions, though other industries do. In the absence of such limits—and despite actions to cut emissions from some *parts* of refineries—Bay Area refinery emissions of GHG and PM have continued to increase. Worse, planned projects for low-quality oil could increase these emissions *even more*.

Keeping emissions from increasing would not require any change in current operations of any refinery. This is, therefore, clearly feasible. And it is urgent, as we outline above. We agree with the observation made by Board Member Gioia, at the 3 June 2015 Air District Board Meeting, that the Board's decision making process is frustrated by the absence of a specific proposal for such refinery-wide emission limits. We have identified specific examples of these limits in previous comments since at least 27 March 2015, however, District Staff has not yet proposed specific limits based on existing data.

Accordingly, we propose that the Air District consider, for adoption in Rule 12-16, enforceable numeric limits on refinery-wide emissions of GHG (as CO₂e), particulate matter (PM), and PM precursors (NO_x and SO₂) based on existing data, plus the additional allowance identified by the Air District in March 2015 (*see* § 12-16-301.1). Specifically, we propose enforceable numeric limits on mass emissions of each of these pollutants from each facility, set to require that emissions shall not exceed the facility's greatest annual emissions of each pollutant, as reported during 2011–2013, by an amount greater than +10,000 metric tons of GHG or +7% of PM, NO_x, or SO₂ emissions.

We urge the Air District to consider our proposal for Rule 12-16 favorably.

Jack Broadbent
18 September 2015 [Revised 21 Sep 2015]
Page two

Greg Karras and Roger Lin
Communities for a Better Environment (CBE)

Tom Griffith
Martinez Environmental Group

Nancy Rieser
Crockett-Rodeo United to Defend that Environment

Kali Graham
Pittsburg Defense Council

Steve Nadel
Sunflower Alliance

Miya Yoshitani
Asian Pacific Environmental Network

Janet S. Johnson
Richmond Progressive Alliance

Jessica Hendricks
Global Community Monitor

Katherine Black
Benicians for a Safe and Healthy Community

Jed Holtzman
350 Bay Area

Luis Amezcua
Sierra Club San Francisco Bay Chapter

Bradley Angel
Greenaction for Health and Environment

Nazima El-Askari
Labor Occupational Health Center at UC Berkeley

Copy: John Gioia, Chair, Stationary Source Committee of the Board
Directors, Air District Board
Ken Alex, Senior Advisory, Office of Governor Brown
Interested individuals and groups

**Proposal for Enforceable Numeric Limits on Refinery-wide Emissions
to Stop Increasing Greenhouse Gas & Particulate Matter Air Pollution,
Including Revision to Proposed Rule 12-16:**

Technical Report; CBE September 2015 Comments Part 1

By

Greg Karras, Senior Scientist,
and Roger Lin, Staff Attorney,
Communities for a Better Environment (CBE)
[Revised 21 September 2015](#)

Contents

Purpose of the Proposed Facility Emission Limits	Page 2
Description of the Proposed Limits	Page 2
Development of the Proposed Limits	Page 3
Selection of air pollutants	Page 3
Selection of facilities	Page 5
Selection of current actual emissions ‘baseline’ period	Page 5
Current actual emissions ‘baseline’ data	Page 6
Maximum-year emissions and additional ‘threshold’ factors	Page 8
Calculation of proposed limits	Page 8
Change of monitoring method allowance and demonstrations	Page 8
Revision to Proposed Rule 12-16: Proposed Emission Limits	Page 10
Conclusion	Page 11
End Notes	Page 12
Attachment List	Page 15
Exhibit 1. Public Records Act Request to BAAQMD dated 16 March 2015	
Exhibit 2. Counts of Emitting Sources by Facility, Year and Pollutant	

CBE's September 2015 Comments on Rule 12-16 Part 1

PURPOSE OF THE PROPOSED FACILITY EMISSION LIMITS

The purpose of the limits is to better protect air quality, health, and climate by prohibiting any substantial increase in facility-wide particulate matter (PM), PM precursor, or greenhouse gas (GHG) mass emission rate from petroleum refining facilities in the Air District's jurisdiction that are major emitters of these air pollutants.

Stopping increasing refinery-wide emissions is consistent with, complementary to, and necessary to achieve fully the benefits of, other separately proposed policies that seek source-specific reductions in emissions from selected parts of these facilities.

DESCRIPTION OF THE PROPOSED LIMITS

The proposed limits are shown in Table 1. A numeric limit on the annual mass emission rate of each air pollutant specified is applied to each facility specified in the table. The limit is equal to the maximum-year actual emissions reported in 2011–2013 *plus* the additional numeric allowance calculated previously by Air District Staff. (These additional allowances, or 'threshold factors,' are +10,000 metric tons for GHG, +7% for PM, and +7% for each of the PM precursors, NO_x and SO₂.)

Table 1. The enforceable numeric limits on refinery-wide emissions proposed^a

Facility	GHG (metric tons/yr)	PM (tons/yr)	NO _x (tons/yr)	SO ₂ (tons/yr)
Chevron Refinery, Plt. A-0010	4,473,000	529	974	400
Shell Refinery, Plt. A-0011	4,272,000	569	1,040	1,340
Phillips 66 Refinery, Plt. A-0016	1,512,000	56.0	275	433
Tesoro Refinery, Plt. B-2758/2759	2,456,000	180	1,080	707
Valero Refinery, Plt. B-2626	2,950,000	134	1,410	138
Martinez Cogen LP, ^b Plt. A-1820	431,000	18.8	119	2.30
Air Liquide H ₂ Plant, ^b Plt. B-7419	855,000	17.3	12.9	2.48
Air Products H ₂ Plant, ^b Plt. B-0295	281,000	10.4	3.40	2.31

^a Annual facility-wide emission limits. **GHG**: greenhouse gas emissions (CO₂e) as reported under Air Resources Board Mandatory Reporting; **PM**: filterable and condensable particulate matter; **NO_x**: oxides of nitrogen; **SO₂**: sulfur dioxide. PM, NO_x and SO₂ as reported in the Facility's annual emission inventory.

^b The Martinez Cogen and Air Products facilities support Tesoro; Air Liquide supports Phillips 66.

These limits are thus specific, numeric, transparent, and enforceable upon adoption.

Anticipated future improvements in monitoring are facilitated and addressed by providing for re-calibration of compliance demonstrations to account for potential differences in the emission quantities reported that are due solely to changes in monitoring methods.

CBE's September 2015 Comments on Rule 12-16 Part 1

DEVELOPMENT OF THE PROPOSED LIMITS

Selection of air pollutants: Air pollutants to be limited were screened based on severity of harm, emission source strength, emission trends and forecasts, and available facility emission data. PM is associated with the vast majority of the thousands of deaths caused by air pollution that are estimated to occur in the Bay Area each year,¹ and GHG is linked to increasingly severe climate disruption that poses an existential threat to human societies as we know them unless deep cuts in emissions are made quickly.² As to source strength, Air District^{3, 4} and State Air Board⁵ data indicate that oil refining is the largest industrial emitter of both PM and GHG in the region. *See* Chart 1.

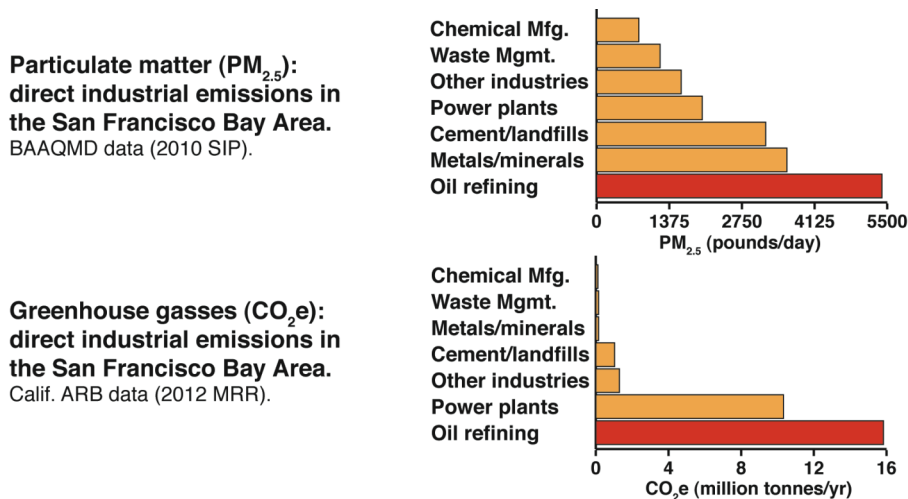


Chart 1. Direct industrial emissions of PM_{2.5} and GHG in the Bay Area.

As to emission trends, Air District^{4, 6} and Air Board⁵ emission data indicate that over many years—and unlike some other monitored emissions—Bay Area refinery emissions of both PM and GHG increased steadily and substantially. *See* Chart 2.

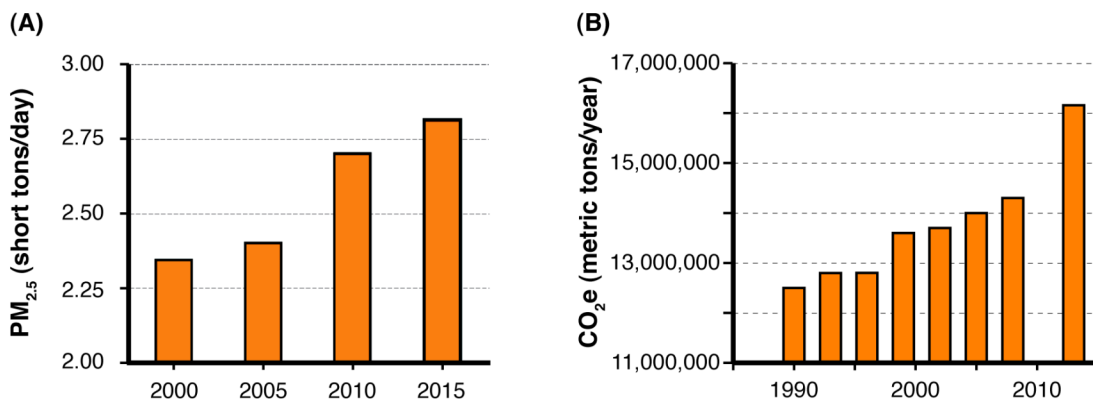


Chart 2. Bay Area oil refining (A) PM_{2.5} and (B) GHG emission trends.
PM_{2.5} emitted from 2000–2015⁶ and GHG emitted from 1990–2008⁴ and 2013.⁵

CBE's September 2015 Comments on Rule 12-16 Part 1

Forecasts strongly suggest that, in the absence of new policy intervention, this trend will continue and accelerate. Plans to replace dwindling current oil sources for Bay Area refineries with low-quality imports such as tar sands oils have been documented by community and worker experts and confirmed by industry statements to investors.⁷⁻¹⁵ Meanwhile, the increasing use of imported crude to produce exported refinery products renders market-based policies, such as cap-and-trade and gasoline demand reduction in California, increasingly ineffective for curbing the resultant refinery emissions.^{16, 17}

Low-quality oil can greatly increase refinery cracking process, fuel combustion, and hydrogen production emissions.¹⁸⁻²⁴ These are the major PM and GHG emission sources in refineries.^{18, 24, 25} A substantial increase in refinery energy intensity for the increase in processing intensity required to maintain gasoline, diesel and jet fuel production from denser, more contaminated crude increases these emissions. This causal mechanism is well documented by peer reviewed work.¹⁸⁻²³ It is illustrated in the excerpt shown below.

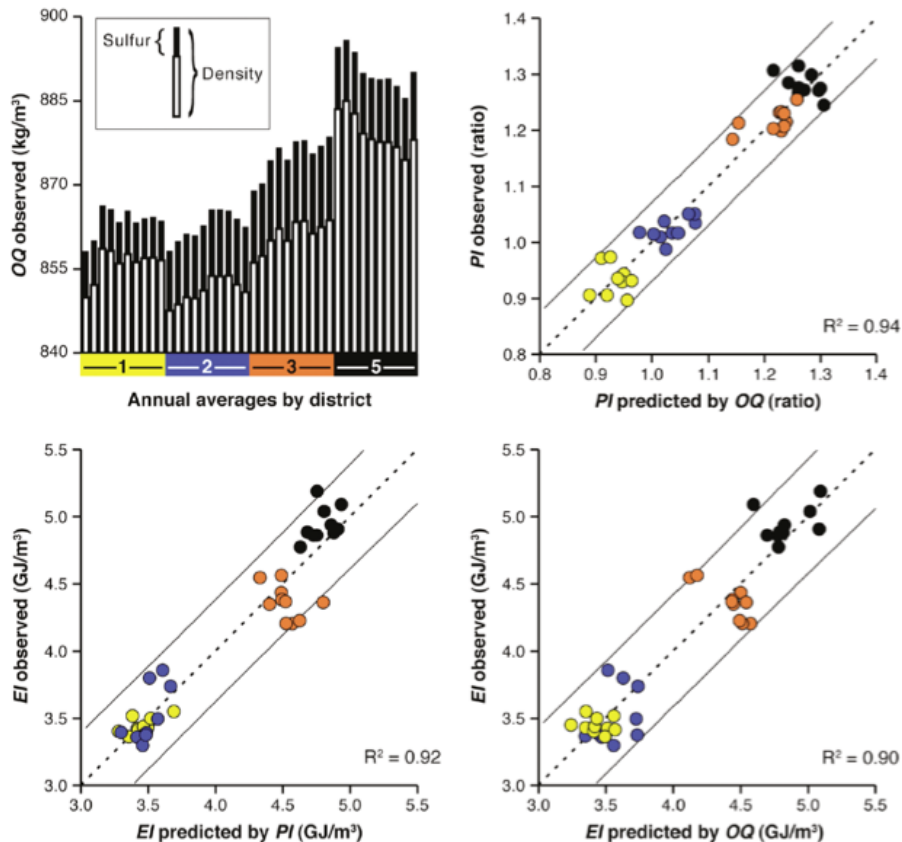


Figure 1 in Karras, 2010 (*Env Sci Technol.*; American Chemical Society):¹⁸ Increasing crude processing intensity and energy intensity with worsening oil quality. **OQ:** Crude feed oil quality. **PI:** Crude processing intensity. **EI:** Refinery energy intensity. Observations are annual weighted averages for districts 1 (yellow), 2 (blue), 3 (orange), and 5 (black) in 1999–2008. Diagonal lines bound the 95% confidence of prediction for observations.

CBE's September 2015 Comments on Rule 12-16 Part 1

Thus, PM and GHG are the most harmful air pollutants known to our local health and our climate, respectively; more PM and GHG emit from oil refining than from any other industry in the Air District's jurisdiction; and, absent new action, a trend of substantially increasing refinery PM and GHG emissions is likely to continue and to accelerate. For these reasons, the proposed limits seek to stop increasing PM and GHG air pollution.

PM air pollution is caused by 'condensable' PM and the PM 'precursors' nitrogen oxides (NO_x) and sulfur dioxide (SO₂) as well as by 'filterable' PM emissions, and refineries are strong sources for each of these emissions.³ Therefore, limits on PM (condensable and filterable PM), NO_x, SO₂, and GHG (measured as CO₂e, the 'carbon dioxide equivalents' of CO₂, methane, and nitrous oxide) are proposed.

With respect to air pollutants that are not limited directly in this proposal, this does not suggest any lack of harm from refinery emissions of those pollutants. Instead, for example, options for preventing or controlling carcinogenic refinery emissions are limited by the relatively poor—and for many pollutants nonexistent—reporting of monitored refinery-wide toxic air contaminant emissions.^{25, 26}

Selection of facilities: Although it reports different ownership, emits under a different air permit and does not process crude oil directly, the Air Liquide Rodeo hydrogen plant, Plant B-7419, is used in functions that are necessary to the operation of the Phillips 66 refinery at Rodeo.²⁷ Similarly, though reporting different owners, emitting under different air permits and not refining crude directly, the Air Products hydrogen plant (Plant B-0295)²⁸ and Martinez Cogen LP (Plant A-1820)²⁹ are integral 'support facilities' for the Tesoro refinery.

Each of these three refinery support facilities is a major emitter of PM, NO_x, SO₂, GHG, or more than one of these pollutants.^{25, 27-29} Further, the main sources of those emissions—hydrogen steam reforming, cogeneration, and the heaters and turbines associated with those operations—are *not* sources targeted specifically by the Air District for additional emission control at this time.³⁰ For these reasons the proposed facility emission limits would apply to each of the five major refineries in the region that are identified in Table 1 *and* to each of these three refinery support facilities.

Selection of current actual emissions 'baseline' period: The baseline period was chosen to most accurately and consistently represent current actual emissions, including variability due to normal short-term changes in business factors and random factors while excluding effects of past conditions that already have changed permanently.

Emissions before reporting year (RY) 2011 represent past conditions that have now changed.⁴⁻⁶ PM and GHG emissions have increased (Chart 2), and the hypothesis that this was caused by normal short-term business cycles must be rejected given the more fundamental long-term changes in oil import volume refined, oil feed quality, and refined product export volume associated with these long-term emission trends.¹⁶ Similarly, the idea that incident emissions solely reflect random variability must be rejected in light of recurrent major Bay Area refinery fires linked to those long-term crude feed changes³¹⁻³³

CBE's September 2015 Comments on Rule 12-16 Part 1

(nevertheless, *annual* facility emissions reported²⁵ reflect little or no difference attributable to those *episodic* incident emissions). Permanent changes in emissions also include the pre-RY2011 regionwide reductions in refinery NO_x and SO₂ that Air District Staff has attributed to many control measures implemented before RY2011.⁶

Indeed, even post-RY2011, some permanent reductions in emissions occurred. The permanent shutdown of Heater B-401^{10, 26} reduced Rodeo refinery NO_x emissions significantly after RY2012²⁵ and a scrubbing measure installed to control catalytic cracking and coking emissions^{26, 30} reduced Valero refinery PM, NO_x and SO₂ emissions significantly after RY2011.²⁵ These permanent changes in the baseline are addressed further in the 'baseline data' discussion below.

Annual PM, NO_x, SO₂, and GHG mass emissions from each targeted facility are reported through RY2013.^{5, 25} After accounting for the two permanent post-RY2011 changes identified above, year-to-year differences among the RY2011–2013 facility emissions^{5, 25} were compared with quantitative allowances derived by statistical analysis of refinery emissions variability that were reported by Air District Staff in early 2015.^{26, 34} This comparison showed that facility emissions variability during RY2011–2013 is similar to or greater than that estimated by Air District Staff, further supporting the RY2011–2013 data as reasonably representative of current emissions, for the targeted pollutants.

For these reasons the period RY2011–2013 was chosen as the baseline period.

Current actual emissions 'baseline' data: Emissions baseline data that are reported and analyzed herein for GHG (non-biogenic CO₂e) are from the State Air Resources Board and are freely available to the public for download from its website.⁵ However, with the exception of limited summary data for RY2013 facility emissions³⁰ access to public data for recent refining facility emissions held by the Air District was more difficult.

CBE accessed the actual reported PM, NO_x, and SO₂ emissions baseline data reported and analyzed herein through a request to review Air District documents pursuant to the California Public Records Act that was filed in March 2015 (*see* Exhibit 1), to which the Air District completed its response in August 2015.

Exhibit 2 summarizes the scope of these Air District emissions data in some detail. When each set of equipment permitted to emit and the material fed to it is considered a unique source—different feed material causes different emissions—the eight facilities addressed in this comment combined reported emitting PM from 305–309 sources during RY2011–2013. For NO_x and SO₂, the eight facilities emitted from 380–382 sources and 291–299 sources, respectively. Total source counts were stable, changing by < 3% for PM, NO_x and SO₂ from RY2011–2013. Including any pollutant among the criteria pollutants and GHG, the eight facilities collectively reported emissions from more than a thousand (1,198–1,239) unique sources. The vast majority (99%) of emitting sources were in refineries; support facilities reported very few sources. However, some of these sources emit hundreds of times more than others, and some high GHG-emitting sources are in the support facilities.²⁵ The full data set provided by the Air District to CBE for each of these facilities is incorporated herein as Attachment 1.

CBE's September 2015 Comments on Rule 12-16 Part 1

Initial validation analysis discovered that some condensable PM emissions measured by FCC source testing³⁰ were inadvertently omitted from the Air District data provided to CBE,²⁵ and had to be added to the Shell facility emissions.²⁶ This inquiry also found that the Air District PM emission estimate for Tesoro³⁰ is based in part on that Shell FCC source testing instead of on Tesoro data.²⁶ Setting the Air District's uncertain Tesoro PM estimate aside, CBE's separately-developed estimates of refinery and hydrogen plant PM, NO_x and SO₂ emissions in RY2013 are essentially identical to the Air District estimates in 19 of 20 comparisons—95% of the comparisons. *See* Table 2.

Table 2. RY2013 emissions (tons/y) from Bay Area refineries & 2 support facilities: Comparison of CBE estimate from public records^a to Air District Staff estimate.^b

	Chevron	Shell	Phillips	Tesoro	Valero	Air Liq. ^c	Air Prod ^c
PM							
CBE value	428	500 ^d	52	159	123	16	10
District val.	428	507	53	171 ^d	123	16	10
Difference	—	< 1%	< 2%	?? ^d	—	—	—
NO_x							
CBE value	910	840	256	752	1,190	2	3
District val.	910	971	266	763	1,205	2	3
Difference	—	< 14%	< 4%	< 2%	< 2%	—	—
SO₂							
CBE value	339	1,080	405	572	111	2	2
District val.	339	1,084	409	572	111	2	2
Difference	—	< 1%	< 1%	—	—	—	—

(a) Baseline estimated from Public Records Act data²⁵ by this analysis. (b) Air District Staff estimate in its Sept. 2015 Workshop Draft.³⁰ (c) The Air Liquide and Air Products hydrogen plants support Phillips 66 and Tesoro, respectively; the Air District did not report estimated emissions from the Martinez Cogen LP support facility for Tesoro. (d) CBE estimate for Shell includes FCC source test emissions of condensable particulate inadvertently omitted from PRA response; Air District Tesoro estimate is based in part on the Shell FCC test instead of data from Tesoro.^{26, 30}

Validation analysis also confirmed that reported data²⁵ reflect important source-specific changes in the baseline. Two separately-reported source-specific changes were addressed. First, Phillips 66 permanently shut down Heater B-401, eliminating a significant NO_x source at its refinery, by RY2012.^{10, 26} The data show that NO_x emissions from this specific source were cut by roughly 42 tons in RY2013 versus RY2011–2012, confirming that the equal reduction in refinery-wide emissions²⁵ is a permanent change and not transient variability. Second, Valero installed a catalytic cracking and coking emissions scrubber before RY2012.^{26, 30} The data show this cut annual PM, NO_x and SO₂ emissions, from the reconfigured set of specific sources, by approximately 127 tons, 555 tons, and 3,933 tons respectively after RY2011,²⁵ allowing these permanent changes in emissions to be reflected more accurately in the baseline.

CBE's September 2015 Comments on Rule 12-16 Part 1

GHG emissions, as reported by the Air Resources Board, were validated and certified by independent third-party auditors for these facilities and years,⁵ and are included in the baseline as reported. Baseline emissions by year are shown in Table 3 along with the results of emission limit calculation analysis that is discussed directly below.

Maximum-year emissions and additional 'threshold' factors: One approach to account for residual short-term variability in these emissions proposes to set thresholds for compliance action higher than observed emissions by a pre-set, statistically derived factor "designed to take into account fluctuations that occur in refineries on a year to year basis."³⁴ Another proposes to allow the maximum observed emissions in the baseline, regardless of what other data in the baseline say. This proposal uses both approaches. That may seem generous to big polluters, but it addresses uncertainty transparently and further bolsters the enforceability of limits it is obviously feasible to meet now, consistent with the purpose to prohibit a substantial refinery-wide emission increase.

Calculation of proposed limits: Table 3 shows the calculation of the proposed limits. Each limit is calculated by adding the appropriate threshold factor designed by Air District Staff (+10,000 metric tons for GHG and +7% for PM, NO_x, and SO₂)³⁴ to the maximum-year emissions in the baseline for that particular facility and air pollutant.

For example:

- (1) Chevron's PM baseline is 455 tons, 494 tons, and 428 tons of PM emitted in reporting years 2011, 2012, and 2013 respectively. *See* Table 3 at the upper left of the table.
- (2) Thus, Chevron's maximum-year PM emission in the baseline is 494 tons.
- (3) The applicable threshold factor is +7% of 494; 7% of 494 tons is 34.6 tons.
- (4) The threshold factor is added to its maximum-year emission; $34.6 + 494 = 528.6$.
- (5) So the table shows Chevron's PM emission limit (rounded to 3 digits) is 529 tons.

Change of monitoring method allowance and demonstrations: This provision would better improve monitoring and air quality protection in concert by setting up the protocol for calibrating the emission limits to changes in compliance demonstration methods due to potential changes in emissions monitoring. Future improvement in emissions monitoring is likely, and such changes in the method of demonstrating compliance with a requirement would inevitably change the actual requirement itself. Thus, the need for such re-calibration is foreseeable. This provision would facilitate and encourage anticipated future improvements in monitoring that maintain and improve upon air quality and environmental health protection.

CBE's September 2015 Comments on Rule 12-16 Part 1

Table 3. Derivation of numeric facility emission limits to prevent increased emission.

	RY	PM (tons) ^a	NO _x (tons) ^a	SO ₂ (tons) ^a	GHG (metric tons) ^b
A-0010	2011	455	835	367	4,463,000
Chevron	2012	494	877	374	3,946,000
Refinery	2013	428	910	339	3,915,000
Find maximum year		494	910	374	4,463,000
Add threshold factor ^c		+ 7.0 %	+ 7.0 %	+ 7.0 %	+ 10,000
Chevron refinery annual limits		529	974	400	4,473,000
A-0011	2011	532	974	1,160	4,262,000
Shell	2012	518	922	1,250	4,057,000
Refinery	2013	500	840	1,080	4,192,000
Find maximum year		532	974	1,250	4,262,000
Add threshold factor ^c		+ 7.0 %	+ 7.0 %	+ 7.0 %	+ 10,000
Shell refinery annual limits		569	1,040	1,340	4,272,000
A-0016	2011	50.6	256	360	1,502,000
Phillips 66	2012	51.2	257	342	1,321,000
Refinery	2013	52.3	256	405	1,364,000
Find maximum year		52.3	257	405	1,502,000
Add threshold factor ^c		+ 7.0 %	+ 7.0 %	+ 7.0 %	+ 10,000
Phillips refinery annual limits		56.0	275	433	1,512,000
B-2758/2759	2011	158	1,010	470	2,401,000
Tesoro	2012	168	820	661	2,090,000
Refinery	2013	159	752	572	2,446,000
Find maximum year		168	1,010	661	2,446,000
Add threshold factor ^c		+ 7.0 %	+ 7.0 %	+ 7.0 %	+ 10,000
Tesoro refinery annual limits		180	1,080	707	2,456,000
B-2626	2011	125	1,320	129	2,268,000
Valero	2012	120	1,030	115	2,940,000
Refinery	2013	123	1,190	111	2,738,000
Find maximum year		125	1,320	129	2,940,000
Add threshold factor ^c		+ 7.0 %	+ 7.0 %	+ 7.0 %	+ 10,000
Valero refinery annual limits		134	1,410	138	2,950,000
A-1820	2011	17.1	107	2.08	421,000
Martinez Cogen LP	2012	17.6	111	2.15	413,000
Cogen Plant	2013	17.3	109	2.12	386,000
Find maximum year		17.6	111	2.15	421,000
Add threshold factor ^c		+ 7.0 %	+ 7.0 %	+ 7.0 %	+ 10,000
Martinez Cogen annual limits		18.8	119	2.30	431,000
B-7419	2011	14.9	12.0	1.97	645,000
Air Liquide	2012	13.8	1.39	1.75	771,000
Hydrogen Plant	2013	16.2	1.59	2.32	845,000
Find maximum year		16.2	12.0	2.32	845,000
Add threshold factor ^c		+ 7.0 %	+ 7.0 %	+ 7.0 %	+ 10,000
Air Liquide annual limits		17.3	12.9	2.48	855,000
B-0295	2011	9.62	3.15	2.15	258,000
Air Products	2012	8.04	2.65	1.79	217,000
Hydrogen Plant	2013	9.69	3.18	2.16	271,000
Find maximum year		9.69	3.18	2.16	271,000
Add threshold factor ^c		+ 7.0 %	+ 7.0 %	+ 7.0 %	+ 10,000
Air Products annual limits		10.4	3.40	2.31	281,000

(a) AQMD data validated by CBE.²⁵ (b) ARB data for non-biogenic CO₂e.⁵ (c) From AQMD Staff.³⁴

CBE's September 2015 Comments on Rule 12-16 Part 1

REVISION TO PROPOSED RULE 12-16: PROPOSED EMISSION LIMITS

Add the provisions as follows.

Under Part 12-16-200 DEFINITIONS, add:

§ 12-16-225 **Support Facility:** A facility that is not directly involved in the processing of petroleum but is used in functions that are necessary to the operation of a petroleum refinery and is permitted by the Air District separately from the petroleum refinery. For the purposes of §§ 304 and 305, support facilities include, but are not limited to, Plant No. B-7419, a hydrogen plant in Rodeo; Plant No. B-0295, a hydrogen plant in Martinez, and Plant No. A-1820, a cogeneration plant in Martinez.

Under Part 12-16-300 STANDARDS, add:¹

§ 12-16-304 **Facility Emission Limits:** Annual emissions of air pollutants from a petroleum refinery or support facility shall not exceed the following emission limits:

Facility number	GHG ^a (metric tons)	PM ^b (short tons)	NO _x ^b (short tons)	SO ₂ ^b (short tons)
A-0010 [Chevron] ^c	4,473,000	529	974	400
A-0011 [Shell]	4,272,000	569	1,040	1,340
A-0016 [Phillips 66]	1,512,000	56.0	275	433
B-2758/2759 [Tesoro]	2,456,000	180	1,080	707
B-2626 [Valero]	2,950,000	134	1,410	138
A-1820 [Martinez Cogen LP]	431,000	18.8	119	2.30
B-7419 [Air Liquide]	855,000	17.3	12.9	2.48
B-0295 [Air Products]	281,000	10.4	3.40	2.31

^a Greenhouse gas (CO₂e) as reported under Air Resources Board Mandatory Reporting, or under § 12-16-305.

^b PM (the sum of filterable and condensable particulate matter), NO_x (oxides of nitrogen), and SO₂ (sulfur dioxide) as reported in the Facility's annual emission inventory, except as provided in § 12-16-305.

^c Facility owners or operators, as of September 2015, shown for information and context only.

§ 12-16-305 **Change in Monitoring:** An emission monitoring or estimation method that is used to demonstrate compliance with the limits in § 12-16-304 may be changed, provided that all of the following has been demonstrated:

- The new method will improve the accuracy and reliability of emission monitoring;
- Any difference in reported emissions caused by the change in method has been quantified accurately, reliably, and separately from any actual change in emissions; and
- The facility owner or operator has ensured that increased emissions will not be allowed as a result of the change by demonstrating that it has adjusted each affected limit in § 12-16-304 by the difference quantified in § 12-16-305 (b), that the adjusted emission limit will be in enforceable effect concurrently with the change in monitoring, and that it has applied for a permit revision to include the adjusted limit in its Title V permit along with the other applicable emission limits in § 12-16-304.

¹ Replaces Staff-proposed language in §§ 304, 305, 405 and 406.

CBE's September 2015 Comments on Rule 12-16 Part 1

CONCLUSION

As discussed more fully in our 27 March 2015 letter to the District,³⁵ it is well within the broad powers of the Board to adopt these proposed facility emission limits. It is further wholly appropriate to base those emission limits on the District's own emission inventories. The District already uses that data in two particular ways: first, it is required to do so by law³⁶ for emission control policy; and second, it uses this data quantitatively to yield substantial income through permitting fees based on the level of emissions.³⁷

We ask the Air District to adopt these urgently needed limits in proposed Rule 12-16.

In Health,

A handwritten signature in black ink, appearing to read 'G. Karras', written in a cursive style.

Greg Karras
Senior Scientist

A handwritten signature in black ink, appearing to read 'Roger Lin', written in a cursive style.

Roger Lin
Staff Attorney

CBE's September 2015 Comments on Rule 12-16 Part 1

End Notes

- 1 AQMD, 2012. *Understanding Particulate Matter*; Bay Area Air Quality Management District: San Francisco, CA. *See* esp. pp. 26–27 (“vast majority of premature deaths associated with air pollution—more than 90%—are related to exposure to fine particulate matter” and chart showing mortalities “now” approaching 3,000/year).
- 2 Fifth Assessment Report of the Intergovernmental Panel on Climate Change (AR-5).
- 3 AQMD, 2010. Emissions Inventory submitted to U.S. EPA for State Implementation Plan (SIP) requirements. *See* Table 1 therein (PM_{2.5}, NO_x and SO₂). Bay Area Air Quality Management District: San Francisco, CA.
- 4 AQMD, 2010. *Source Inventory of Bay Area Greenhouse Gas Emissions, Updated: February 2010*; Bay Area Air Quality Management District: San Francisco, CA.
- 5 ARB, various years. *Annual Summaries of Greenhouse Gas Emissions Data Reported to the California Air Resources Board*; data reported through 2013 pursuant to ARB’s Mandatory GHG Reporting Rule. California Air Resources Board: Sacramento, CA.
<http://www.arb.ca.gov/cc/reporting/ghg-rep/reported-data/ghg-reports.htm>
- 6 AQMD, 2015. *Regulations to Track and Mitigate Emissions from Petroleum Refineries, Regulation 12, Rules 15 and 16: Public Workshop March 2015*; Staff Report (Powerpoint). Bay Area Air Quality Management District: San Francisco, CA.
- 7 Fox, 2013. *Comments on Initial Study/Mitigated Negative Declaration (IS/MND) for the Valero Crude by Rail Project*. 1 July 2013. Use Permit Application 12PL-00063; City of Benicia: Benicia, CA.
- 8 Goodman and Rowan, 2013. *Comments on Initial Study/Mitigated Negative Declaration (IS/MND), Valero Crude by Rail Project, Benicia, California*. 1 July 2013. Use Permit Application 12PL-00063; City of Benicia: Benicia, CA.
- 9 Fox, 2013. *Comments on Environmental Impact Report for the Phillips 66 Propane Recovery Project, Rodeo, California*; Prepared on behalf of Rodeo Citizens Association. 15 November 2013. SCH #2012072046; County File #LP12-2073. Contra Costa County: CA.
- 10 Fox and Pless, 2015. *Comments on Recirculated Final Draft Environmental Impact Report for the Phillips 66 Propane Recovery Project, Rodeo, California*; 2 February 2015. SCH #2012072046; County File #LP12-2073. Contra Costa County: CA.
- 11 Karras, 2013. *Expert Report of Greg Karras, Communities for a Better Environment (CBE), Regarding the Phillips 66 Company Propane Recovery Project Draft Environmental Impact Report*; 4 September 2013. SCH #2012072046; County File #LP12-2073. Contra Costa County: CA.
- 12 Karras and Lin, 2013. *Comment on behalf of Communities for a Better Environment Regarding WesPac Pittsburg Energy Infrastructure Project, Recirculated Draft Environmental Impact Report (RDEIR), SCH #2011072053*. 12 September 2013. Planning Department; City of Pittsburg: CA.
- 13 Karras, 2014. *CBE RDEIR Comment–2, Refinery FCC Emissions Increase*; 2 May 2014. Submitted on behalf of Communities for a Better Environment, Regarding the Chevron Richmond Refinery–Proposed Revised Project. City of Richmond Planning File PLN11-089; Revised Draft Environmental Impact Report SCH #201106042. Richmond: CA.
- 14 Karras, 2014. *Expert Report of Greg Karras, Communities for a Better Environment (CBE), Regarding the Phillips 66 Company Propane Recovery Project Recirculated Draft*

CBE's September 2015 Comments on Rule 12-16 Part 1

- Environmental Impact Report*; 5 December 2014. SCH #2012072046; County File #LP12-2073. Contra Costa County: CA.; County File #LP12-2073. Contra Costa County: CA.
- 15 Karras, 2015. *Expert Report of Greg Karras, Communities for a Better Environment (CBE), Regarding the Phillips 66 Company Propane Recovery Project Recirculated Final Environmental Impact Report*; 2 February 2015. SCH #2012072046; County File #LP12-2073. Contra Costa County: CA.
 - 16 Karras, 2015. *Emergency need for a moratorium on new infrastructure for extreme oil; followup information requested in our discussion on 13 April 2015*; 1 May 2015. Letter responding to a technical request by the Governor's Office on behalf of Communities for a Better Environment to Cliff Rechtschaffen and Ken Alex, Senior advisors, Office of the Governor, State of California.
 - 17 Lin and Karras, 2015. *Emissions from the end-use of California refinery products that are exported are exempt from State Cap-and-Trade requirements: additional documentation*; 10 June 2015. Correspondence to Jack Broadbent, Air Pollution Control Officer, Bay Area Air Quality Management District: San Francisco, CA.
 - 18 Karras, 2010. Combustion emissions from refining lower quality oil: What is the global warming potential? *Environmental Science & Technology* **44**(24):9584–9589. DOI:10.1021/es1019965.
 - 19 Bredeson et al., 2010. Factors driving refinery CO₂ intensity, with allocation into products. *International Journal of Life Cycle Assessment* **15**: 817–826. DOI: 10.1007/s11367-010-0204-3.
 - 20 Brandt, 2012. Variability and Uncertainty in Life Cycle Assessment Models for Greenhouse Gas Emissions from Canadian Oil Sands Production. *Environmental Science & Technology* **46**: 1253–1261. DOI: 10.1021/es202312p.
 - 21 Karras, 2001. Oil Refinery CO₂ Performance Measurement. Peer-reviewed and published by the Union of Concerned Scientists (UCS): Berkeley, CA. Technical analysis prepared by Communities for a Better Environment for UCS. File No. COMMBETTERENVFY11103.
 - 22 Abella and Bergerson, 2012. Model to investigate energy and greenhouse gas emissions implications of refining petroleum: Impacts of crude quality and refinery configuration. *Environmental Science & Technology*. DOI: 10.1021/es3018682.
 - 23 Gordon et al., 2015. *Know Your Oil; Creating a Global Oil–Climate Index*; Carnegie Endowment for International Peace: Washington, DC.
 - 24 Karras, 2015. *Toxic and fine particulate emissions from U.S. refinery cracking and coking of 'tar sands' oil*. Technical report on work conducted as part of a technical assistance contract with the Natural Resources Defense Council (NRDC). Author contact: G. Karras, Senior Scientist, Communities for a Better Environment: Oakland, CA.
 - 25 AQMD, 2015. Facility- and source-specific oil refinery and refinery support facility emissions data for reporting years 2011–2013 provided in response to CBE's request to review Bay Area Air Quality Management District documents pursuant to the California Public Records Act that was filed in March 2015. See Exhibit 1 for CBE's request to review public records; and Attachment 1 for the complete data response.
 - 26 Nudd and Stevenson, 2015. Personal Communication: G. Nudd, AQMD and E. Stevenson, AQMD with G. Karras at the Bay Area Air Quality Management District in San Francisco, CA on 25 August 2015.

CBE's September 2015 Comments on Rule 12-16 Part 1

- 27 Title V Permit and Statement of Basis, Air Liquide, Facility #B-7419, Contra Costa County, CA; www.baaqmd.gov/permits/major-facility-review-title-v/title-v-permits.
- 28 Title V Permit and Statement of Basis, Air Products, Facility #B-0295, Contra Costa County, CA; www.baaqmd.gov/permits/major-facility-review-title-v/title-v-permits.
- 29 Title V Permit and Statement of Basis, Martinez Cogen LP, #A-1820, Contra Costa County, CA; www.baaqmd.gov/permits/major-facility-review-title-v/title-v-permits.
- 30 BAAQMD, 2015. *Petroleum Refinery Emission Reduction Workshop Report*; September 2015. *See esp.*: Table 3 (emissions estimates and condensable particulate emission estimate based on source testing of Shell FCC); Table 4 (Phase I rule changes exclude any emission controls targeting hydrogen or cogeneration plants); and Appendix A at A:1 (“Valero refinery recently has retrofitted its FCCU with a wet scrubber and its FCCUs have lower PM_{2.5} and SO₂ emissions than those at other refineries as a result”).
- 31 U.S. Chemical Safety and Hazard Investigation Board, 2013. *Investigation Report, Refinery Fire Incident (4 Dead, 1 Critically Injured), Tosco Avon Refinery, Martinez, California, February 23, 1999*; (Switch to denser crude overwhelms desalter, downstream salt corrosion plugging in crude unit piping contributes to fatalities during unsafe hot work.) Chemical Safety Board: Washington, DC. www.CSB.gov.
- 32 Chevron, 2007. *Final Investigation Report of Fire That Occurred Monday January 15, 2007 in the Crude Unit at the Chevron Richmond Refinery*; Submitted to Contra Costa County Hazardous Materials Program Director by T. Lizarraga, Chevron. *See esp.* “Causes,” page 1 (“the failed section of the [pipe] was thinned by high temperature sulfidation corrosion”).
- 33 U.S. Chemical Safety and Hazard Investigation Board, 2013. *Interim Investigation Report, Chevron Richmond Refinery Fire, Chevron Richmond Refinery, Richmond, California, August 6, 2012*; Chemical Safety Board: Washington, DC. www.CSB.gov. *See esp.* “Operational Changes” (higher sulfur oil feed accelerated corrosion of pipe that failed catastrophically in this fire).
- 34 AQMD, 2015. *Workshop Report, Proposed Air District Regulation 12, Rule 15: Petroleum Refining Emissions Tracking and Regulation 12, Rule 16: Petroleum Refining Emissions Analysis, Thresholds and Mitigation*; Bay Area Air Quality Management District: San Francisco, CA. February 2015. *See esp.* page 22 (“The trigger levels for criteria pollutant levels described in Section 12-16-301.1 were designed to take into account fluctuations that occur in refineries on a year to year basis, such as the reduced efficiency of heat exchanges, which may be the result of process changes and degradation of processes Emissions variations like these are considered to be in the ‘noise’ of emissions inventories and the ability of the inventory calculations to provide accurate, repeatable results. By allowing these thresholds, staff believes ERPs will be able to better identify and address equipment that can produce effective and lasting emission reductions.”) District Staff’s ‘threshold trigger levels’ that it proposed in February 2015 (then-proposed § 12-16-301.1) are +7% of baseline emissions and +10,000 metric tons as CO_{2e}, for criteria pollutants and GHGs, respectively.
- 35 *Comment on the Authority of the Bay Area Air Quality Management District to Adopt Regulations to Decrease Air Emissions from Petroleum Refineries*; 27 March 2015 letter from CBE to Jack Broadbent, Air Pollution Control Officer.
- 36 *See e.g.*, Cal. Health and Safety Code § 40913.
- 37 *See* BAAQMD Budget, Fiscal Year Ending 2016, Appendix D: *Sources of Revenue Trends*; and BAAQMD Regulation 3, Fees, Schedules M and T.



**Agenda Item No. 5(F)
Attachment**

www.sunflower-alliance.org

Resisting fossil fuels. Working for climate Justice.

June 21, 2016

Dear Members of the El Cerrito City Council,

We come to you today concerning a critical threat to the health and safety of our Bay Area communities. We are home to five major oil refineries, which together constitute our largest industrial source of air pollution. Not only has the American Lung Association recently given the Bay Area an overall grade of “D,” we now know that air pollution kills 2,000 Bay Area residents each year.

Oil refineries already contribute to high levels of asthma, stroke, heart disease, and cancer in our communities. Worse, we are headed down a path toward even more serious health and safety risks. These refineries have already invested in, or are planning infrastructure additions that will enable them to process dirtier, more toxic and higher greenhouse gas (GHG)–emitting crude sources, such as Canadian tar sands, the dirtiest of them all.

The Bay Area Air Quality Management District (BAAQMD)—whose mission is to insure healthy air, improve public health, and protect the climate—has yet to address refinery-wide limits on the emission of toxics, particulate matter, and GHGs. BAAQMD has been weighing options to limit or reduce refinery emissions for nearly four years. Now it is in the final stages of a major rule revision, so-called Rule 12-16. However, as it stands today, this rule will still not stop the inexorable decline in our air quality.

At BAAQMD’s June 15th Board of Directors meeting, their staff was directed to prepare an EIR containing four options for Rule 12-16. Three options offer the potential for future emission reductions, but each will take a year or more to be implemented and will allow the tar sands transition to proceed unchecked during that time.

The fourth option, the Community-Worker proposal, advocates a fixed and enforceable limit, or “cap,” on refinery emissions, which will halt the transition to tar sands and protect community health and our climate. This emission cap is based on historical emissions by the refineries and will **not** force refineries to reduce production, but it **will** stop them from refining dirtier crude.

We are asking you today to support the Community–Worker proposal, which includes refinery-wide emission limits on toxics, fine particles and greenhouse gases into Rule 12-16. We need the BAAQMD Board of Directors to direct staff to prioritize this option in Rule 12-16. We support all the options for future emissions reductions proposed by the BAAQMD staff, but even they admit that the Community–Worker proposal provides the only alternative that can be implemented immediately to prevent future increased emissions.

This proposal has been attacked by the fossil fuel industry as a threat to workers and their jobs, but nothing is further from the truth. This proposal will not result in any job loss. In fact, United Steelworkers Local 5, which represents many refinery workers in the Bay Area, has come out in support of this proposal. (See their attached support letter.)

The many environmental and climate justice organizations and nonprofits supporting this proposal include Communities for a Better Environment, Asian-Pacific Environmental Network, the California Nurses Association, 350 Bay Area, Sunflower Alliance, Food & Water Watch, Richmond Progressive Alliance, Global Community Monitor, Green Action, Idle No More, STAND (formerly Forest Ethics), Contra Costa Interfair Power and Light, and the Sierra Club SF Bay Chapter.

To win this essential regulation in support of our health and safety we need your endorsement today. Please adopt the attached resolution and help put the Bay Area on a path to cleaner air, worker and community safety, and a protected climate. Thank you for your support!

Sincerely,



AFL-CIO, CLC

1333 Pine Street, Suite A ♦ PO Box 349 ♦ Martinez, CA 94553-0034
(925) 313-0707 ♦ Fax: (925) 313-0708 ♦ e-mail: jpayne@usw5.org

April 8, 2016

Dear Mr. Stevenson,

The United Steelworkers Local 5 represents workers at the Tesoro Martinez Refinery, Shell Martinez Refinery, and the Chevron Richmond Refinery. We have participated in this rulemaking process since 2012 as a member of the Refinery Action Collaborative.

As the workers in 3 of the 5 bay area refineries, we want our workplaces to be the cleanest, safest and most viable refineries in the world. We would like to resubmit our support of the Refinery Action Collaborative recommendation letter from March 27, 2015 addressing Rule 12-16 that spoke to an enforceable numeric cap on emissions.

We want to encourage our refinery owners to continue to invest in and improve their processes and at the same time do so without increasing the emissions of the plant that would negatively impact our workplaces and the environment.

If you have any questions, please contact USW Local 5 and we will be happy to discuss further.

Sincerely,

Jim Payne
Secretary-Treasurer

cc: Jack Broadbent
Eric Mar
John Gioia

RESOLUTION NO. 2016-XX

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EL CERRITO IN SUPPORT
OF THE "SAFETY FOR ALL" INITIATIVE**

WHEREAS, California Lieutenant Governor Gavin Newsom announced a ballot measure known as the "Safety for All" initiative, which is a package of commonsense gun reforms that has qualified for the November 2016 ballot; and

WHEREAS, the "Safety for All" initiative outlaws possession of large-capacity magazines of 11 rounds or more and provides for their legal disposal; and

WHEREAS, the initiative requires licensing of ammunition vendors and point-of-sale background checks for ammunition purchases; and

WHEREAS, the initiative defines a clear firearms relinquishment process for those convicted of a felony or a violent misdemeanor; and

WHEREAS, the initiative requires firearm owners to notify law enforcement if their firearm has been lost or stolen; and

WHEREAS, the initiative mandates that California share data with the FBI/NICS (National Instant Criminal Background Check System); and

WHEREAS, more than 32,000 deaths occur each year in the United States due to gun violence, there have been 150 school shootings since the shooting at Sandy Hook Elementary in December 2012, and the nation suffered its largest mass shooting in Orlando in June; and,

WHEREAS, California has been a leader in the nation in adopting gun laws that are intended to save lives and increase public safety.

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of El Cerrito that it hereby supports the "Safety for All" Initiative on the upcoming November 2016 ballot.

I CERTIFY that at a regular meeting on July, 2016 the City Council of the City of El Cerrito passed this Resolution by the following vote:

AYES:	COUNCILMEMBERS:
NOES:	COUNCILMEMBERS:
ABSTAIN:	COUNCILMEMBERS:

IN WITNESS of this action, I sign this document and affix the corporate seal of the City of El Cerrito on July XX, 2016.

Cheryl Morse, City Clerk

APPROVED:

Gregory B. Lyman, Mayor

SAFETY FOR ALL

What does Safety For All do?

- Prohibits the possession of large-capacity military-style magazines.
- Treats ammunition sales like gun sales.
- Ensures people prohibited from owning guns do not possess them.
- Requires reporting lost or stolen guns.
- Shares data with federal system on prohibited people.

Why is this important?

- **In the U.S., gun violence claims over 32,000 lives annually.** For every person who dies from a gunshot wound, two others are wounded.
- **Since the Sandy Hook shooting, there have been 150 school shootings.**
- The NRA has obstructed even the most basic efforts to curb gun violence. **SFA allows us to defeat the NRA in 2016 by going straight to the voters through an historic ballot initiative.**
- California has been leading for decades through the passage of smart gun laws that save lives. This initiative continues that leadership by keeping guns and ammunition out of the wrong hands.

We Can Win in 2016:

- Independent polling from January 2016 showed that an initial 65% polled supported stronger gun laws.
- **When told more about the Safety For All initiative, the number of support jumped to 73% - an 8% increase of support after just hearing a few key facts about the ballot initiative.**

Endorsements:

- Elected officials, cities, and organizations all across California are coming together to support the Safety for All campaign. Endorsements include:
 - California Democratic Party
 - US Senator Dianne Feinstein
 - Speaker of The Assembly Toni Atkins
 - California Secretary of State Alex Padilla
 - Speaker Emeritus of the California State Assembly John Pérez
 - San Jose Mayor Sam Liccardo
 - San Francisco Mayor Ed Lee
 - Oakland Mayor Libby Schaaf
 - West Hollywood Mayor Lindsey Horvath
 - The City of Oakland
 - The City Of West Hollywood
 - The City of Berkeley
 - The Law Center to Prevent Gun Violence



AGENDA BILL

Agenda Item No. 5(H)

Date: July 19, 2016
To: El Cerrito City Council
From: Janet Bilbas, Senior Services Supervisor
Subject: Committee on Aging Membership Recommendation

ACTION REQUESTED

Approve the Committee on Aging recommendation to appoint Katherine Cesa to the Committee on Aging, effective July 19, 2016.

BACKGROUND

At its June 15, 2016 regular meeting, the Committee on Aging voted unanimously to recommend to the City Council that it appointment Ms. Katherine Cesa.

For the past 25 years Ms. Cesa has been living in El Cerrito and is currently retired. She worked with Alta Bates Medical Center as a massage practitioner and registered nurse for 19 years.

She is interested in issues related to older members of El Cerrito, including health, transportation, and staying active. Ms. Cesa is also interested in City programs for older adults.

STRATEGIC PLAN CONSIDERATIONS

Appointing Katherine Cesa to the Committee on Aging will fulfill the following City of El Cerrito Strategic Plan Goal and strategy: Goal C Deepen a sense of place and community identity – Celebrate the City's diversity by welcoming residents of all ages and cultures and encouraging their civic involvement.

Reviewed by:

Scott Hanin
City Manager



July 19, 2016
Regular City Council Meeting

Agenda Item No. 5(H)
Committee on Aging Appointment
Attachment 1 Application

Hardcopy is available for review at:

Office of the City Clerk
10890 San Pablo Avenue
El Cerrito, CA
(510) 215-4305

and

The El Cerrito Library
6510 Stockton Avenue
El Cerrito, CA



AGENDA BILL

Agenda Item No. 5(I)

Date: July 19, 2016
To: El Cerrito City Council
From: Janet Bilbas, Senior Services Supervisor/ Staff Liaison to Committee on Aging
Subject: Urging Support for the Restoration of Adult Education Funding to the California State Budget

ACTION REQUESTED

At the recommendation of the Committee on Aging, authorize Mayor Lyman to sign and send letters to Governor Brown, Senator Hancock, Assembly member Thurmond, and Assembly member Lopez urging the restoration of funding for Adult Education's Older Adults programs in the California state budget.

BACKGROUND

At its May 20, 2016 regular meeting, the Committee on Aging, voted to recommend to the City Council that it authorize the Mayor to sign and send letters to Assembly member Thurmond, Assembly member Lopez, Senator Hancock and Governor Brown regarding restoration of funding for Adult Education's Older Adults programs in the California state budget.

Assembly Bill 1846 would permanently restore adult education funding by appropriating an additional \$250 million dollars annually from the State's general fund. For decades California had the strongest commitment to adult education in the Nation ensuring that adults have the ability to obtain the skills to enter the work force and/or pursue higher education. During the start of the recent recession in 2008 adult education had begun to see significant cuts in funding, forcing thousands of students to discontinue their education. Five years later in 2013, after the first budget cuts, the legislature approved AB 86 which condensed the amount of programs offered and created 70 regional adult education consortiums which are made up of local community college and school districts. According to the 2015 Adult Education Regional Planning report authored by the State Superintendent's Office and California Community College Chancellor's Office, roughly 65 adult schools were permanently forced to shut their doors due to the fiscal constraints between the years of 2008 and 2013. The report goes on to argue that one challenge adult learners currently face is being able to attend classes that do not conflict with their work schedule. Over the years adult schools have been forced to reduce their hours of operation limiting essential resources for students such as computer labs and tutoring. This challenge has created a barrier and overcrowded class rooms creating a greater demand for available courses. Assembly Bill 1846 will restore adult education to its previous funding of \$750 million annually. This bill will appropriate

funding to the adult education consortiums to build upon and restore services that they offer.

STRATEGIC PLAN CONSIDERATIONS

Approval of a letter urging the restoration of adult education funding to the California state budget will support the following City of El Cerrito Strategic Plan Goal and identified strategy: Deepen a sense of place and community identity – Identify, promote, and/or develop entertainment, recreational, and leisure activities for people of all ages and demographics.

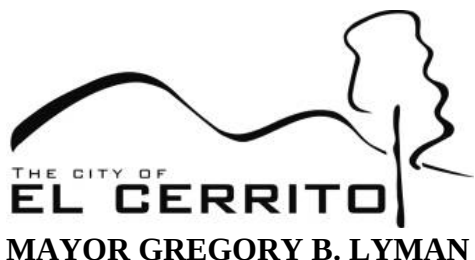
Reviewed by:



Scott Hanin
City Manager

Attachments:

1. Letter to Governor Jerry Brown, Senator Loni Hancock, Assembly Member Tony Thurmond and Assembly Member Patty Lopez
2. Letter from Committee on Aging
3. AB 1846 Status and Text



July 19, 2016

The Honorable Jerry Brown
Governor, State of California
State Capitol, Suite 1173
Sacramento, CA 95814

The Honorable Loni Hancock
California State Senate
Elihu Harris State Building
1515 Clay Street, Suite 2202
Oakland, CA 94612

The Honorable Tony Thurmond
California State Assembly
Elihu Harris State Building
1515 Clay Street, Suite 2201
Oakland, CA 94612

The Honorable Patty Lopez
California State Assembly
State Capitol
P.O. Box 942849
Sacramento, CA 94249

RE: Permanently Restore Adult Education Funding to the California State Budget

Dear Governor Brown, Senator Hancock, Assemblymember Thurmond, and Assemblymember Lopez:

On behalf of the El Cerrito City Council I am transmitting the enclosed letter from El Cerrito's Committee on Aging. The City Council and the Committee on Aging support Assembly Bill 1846 to permanently restore adult education funding by appropriating an additional \$250 million dollars annual from the general fund. And we would specifically like to ask that you ensure that the bill includes designated funding for Older Adult Education.

El Cerrito Seniors and Community will be negatively impacted if these funds are not increased. Currently there are three places where older adult programs are being held. Christ Lutheran Senior Center has 75 members, St. John's Senior Center has 50 members, and Sakura Kai Senior Center has 105 members, 15 associate members, and 30 on the waiting list. There are also two adult school campuses offering hundreds of classes for adults.

For decades California has had the strongest commitment for adult education in the nation ensuring that adults have the ability to obtain the skills to enter the work force and/or pursue higher education. During the start of the recent recession in 2008 adult education had begun to see significant cuts in funding, forcing thousands of students to discontinue their education. Five years later in 2013, after the first budget cuts, the legislature approved AB 86 which condensed the amount of programs offered and created 70 regional adult education consortiums which are made up of local community college and school districts. According to the 2015 Adult Education Regional Planning report authored by the State Superintendent's Office and California Community College Chancellor's Office roughly 65 adult

Agenda Item No. 5(I)

Attachment 1

schools were permanently forced to shut their doors due to the fiscal constraints between the years of 2008 and 2013. The report goes on to argue that one challenge adult learners currently face is being able to attend classes that do not conflict with their work schedule. Over the years adult schools have been forced to reduce their hours of operation limiting essential resources for students such as computer labs and tutoring. This challenge has created a barrier and overcrowded class rooms creating a greater demand for available courses.

This information alone shows by the demand more funding, not less, is needed to keep pace with this growing population. Let us ensure that some of our most vulnerable and valuable citizens remain connected to society and enjoying as high of a quality of life as possible.

Sincerely,

Gregory B. Lyman
Mayor, City of El Cerrito

April 20, 2016

Re: AB 1846 Establishing Funding for Adult Education's Older Adult Programs

Dear Honorable Mayor Greg Lyman and Council Members:

The El Cerrito Committee on Aging recommends to City Council to support AB 1846 and send letters of support to Governor Brown, Assembly member Thurmond, Senator Hancock and Assembly member Lopez urging them to pass AB 1846 restoring adult education funding to pre-recession levels. Its passage and enactment will appropriate an additional \$250 million from the state's general fund for adult schools. Specifically we would like to ask that you ensure that the bill includes designated funding for Older Adult Education. Our seniors in El Cerrito cherish the stimulating classes that are offered through our older adult education program. Currently, about 250 seniors regularly attend our three senior centers. These three places provide classes for our older adults 55-95 years of age. Among the many subjects included are: English as a second language, conversational Spanish, Japanese language and culture, exercise classes, as well as educational speakers and courses designed to improve memory and coordination along with many more.

These classes keep our older adults connected and build community to prevent depression. Depression is estimated to affect 15-20% of adults over 65. The level of depression is lower among community-dwelling adults. Depressed older adults have higher health care expenses because they are more likely to visit the Emergency Department, have more frequent hospitalizations and doctor visits, and take more medications than adults without depression, according to the U.S. Surgeon General's report (1999). Avoiding depression in older adults by keeping them connected with their community will increase their quality of life and decrease the cost of health care.

It has also been shown that seniors who participate in such classes contract dementia at an 18% rate lower than seniors who do not participate in such programs. As we all know the cost of caring for victims of dementia is staggering and increasing. Therefore these older adult education programs should be supported with designated funding since decreasing the dementia rate will produce substantial savings as the number of Californians over the age of 65 increases.

On January 1, 2011, the oldest Baby Boomers turned 65. Every day for the next 19 years about 10,000 more will cross the threshold. By 2030, when all Baby Boomers will have turned 65, fully 18% of the nation's population will be at least that age, according to the Pew Research Center population projections. There is a critical need for additional state funding to help continue and expand our local services for this rapidly expanding segment of our community. Our Baby Boomers are defining old age in America. By example, the City of El Cerrito could see over 25% of the population fall into the category of seniors seeking services offered by AB 1846.

Agenda Item No. 5(I)
Attachment 2

Our seniors provide valuable experience, knowledge and energy to our city. Several of our seniors have gone to school classes to discuss history and to volunteer as well as assisting their children and grandchildren and friends in the community. It is imperative that we provide them with ongoing education and stimuli so that they can continue to provide what they do best for us.

Please support AB 1846 and specify that Older Adult Education will be specifically included so that our most vulnerable and valuable citizens will remain connected to society and enjoy as high a quality of life as possible.

Sincerely,

Pansy Kwong, MD

On Behalf of the Committee on Aging for El Cerrito, CA



California

LEGISLATIVE INFORMATION

AB-1846 Adult Education Block Grant Program: report. (2015-2016)

Senate: 1st Cmt 2nd Cmt

Assembly: 1st Cmt 2nd Cmt 2nd 3rd Pass

Bill Status	
Measure:	AB-1846
Lead Authors:	Lopez (A)
Principal Coauthors:	-
Coauthors:	Chávez (A) , Eduardo Garcia (A)
Topic:	Adult Education Block Grant Program: report.
31st Day in Print:	03/11/16
Title:	An act to amend Section 84917 of the Education Code, relating to adult education.
House Location:	Senate
Last Amended Date:	06/22/16
Committee Location:	Sen Appropriations
Committee Hearing Date:	08/01/16

Type of Measure	
Active Bill - In Committee Process	
Majority Vote Required	
Non-Appropriation	
Fiscal Committee	
Non-State-Mandated Local Program	
Non-Urgency	
Non-Tax levy	

Last 5 History Actions	
Date	Action
06/22/16	Read second time and amended. Re-referred to Com. on APPR.
06/21/16	From committee: Amend, and do pass as amended and re-refer to Com. on APPR. (Ayes 8. Noes 1.) (June 15).
06/09/16	Referred to Com. on ED.
06/02/16	In Senate. Read first time. To Com. on RLS. for assignment.
06/01/16	Read third time. Passed. Ordered to the Senate. (Ayes 78. Noes 1. Page 5091.)



California

LEGISLATIVE INFORMATION

AB-1846 Adult Education Block Grant Program: report. (2015-2016)

AMENDED IN SENATE JUNE 22, 2016

AMENDED IN ASSEMBLY MAY 27, 2016

AMENDED IN ASSEMBLY APRIL 26, 2016

AMENDED IN ASSEMBLY MARCH 28, 2016

CALIFORNIA LEGISLATURE— 2015–2016 REGULAR SESSION

ASSEMBLY BILL

No. 1846

Introduced by Assembly Member Lopez
(Coauthors: Assembly Members Chávez and Eduardo Garcia)

February 09, 2016

An act to amend Section 84917 of the Education Code, relating to adult education.

LEGISLATIVE COUNSEL'S DIGEST

AB 1846, as amended, Lopez. Adult Education Block Grant Program: report.

Existing law creates the Adult Education Block Grant Program under the administration of the Chancellor of the California Community Colleges and the Superintendent of Public Instruction. Under this program, the chancellor and Superintendent, with the advice of the executive director of the State Board of Education, are required to divide the state into adult education regions and approve one adult education consortium in each adult education region. *Existing law also requires, as a condition of receipt of an apportionment of funds from this program for a fiscal year, that members of a consortium approve an adult education plan, as specified.* Existing law requires the chancellor and the Superintendent to submit to the Director of Finance, the State Board of Education, and the Legislature, by September 30 following any year for which funds are appropriated for the program, a report about the use of specified funds and outcomes for adults statewide and in each adult education region.

This bill would require that report to also include a ~~summary~~ *summary, based upon a review of the annual adult education plan for each consortium*, of the extent to which funds *from the program* provided to each ~~consortium~~ *consortium, in combination with other funds available to the consortium and other entities that provide education and workforce services for adults in the region*, were insufficient to address the adult education demands within the service area of the consortium.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 84917 of the Education Code is amended to read:

84917. (a) To inform actions taken by the Governor and the Legislature related to adult education, the chancellor and the Superintendent shall submit to the Director of Finance, the State Board of Education, and, in conformity with Section 9795 of the Government Code, the Legislature, by September 30 following any fiscal year for which funds are appropriated for the program, a report about the use of these funds and outcomes for adults statewide and in each adult education region. The report shall include at least all of the following:

- (1) A summary of the adult education plan operative for each consortium.
- (2) The distribution schedule for each consortium.
- (3) The types and levels of services provided by each consortium.
- (4) The effectiveness of each consortium in meeting the educational needs of adults in its respective region.
- (5) Any recommendations related to delivery of education and workforce services for adults, including recommendations related to improved alignment of state programs.

~~(6) A summary, based on an assessment by each consortium, regarding the extent to which funds provided to the consortium pursuant to this article were insufficient to address the demands for adult education within the service area of the consortium.~~

(6) A summary, based upon a review of the annual adult education plan for each consortium required pursuant to Section 84906, of the extent to which funds provided pursuant to this article, in combination with other funds available to the consortium and other entities that provide education and workforce services for adults in the region, were insufficient to address the demands for adult education within the service area of the consortium.

- (b) (1) The chancellor and the Superintendent may require a consortium, as a condition of receipt of an apportionment, to submit any reports or data necessary to produce the report described in subdivision (a).
- (2) The chancellor and the Superintendent shall align the data used to produce the report described in subdivision (a) with data reported by local educational agencies for other purposes, such as data used for purposes of the federal Workforce Opportunity and Innovation Act (Public Law 113-128).
- (3) The Employment Development Department and the California Workforce Investment Board shall provide any assistance needed to align delivery of services across state and regional workforce, education, and job service programs.



AGENDA BILL

Agenda Item No. 6(A)

Date: July 19, 2016
To: El Cerrito City Council
From: Michael J. Bond, Fire Marshal
Lance J. Maples, Fire Chief
Subject: Public Hearing for Fire Hazard Abatement

ACTION REQUESTED

- 1) Adopt a resolution declaring weeds, rubbish, litter, or other flammable material on certain real property identified in the resolution constitutes a public nuisance.
- 2) Conduct a public hearing and upon conclusion, adopt a resolution overriding objections by property owners and ordering the City Manager or his designee to abate certain public nuisances pursuant to El Cerrito Municipal Code Chapter 16.26.

BACKGROUND

One of the lessons learned from the nearby Oakland/Berkeley Hills Fire in October 1991 was that El Cerrito needed a comprehensive citywide program to reduce hill area fire hazards. The "fire storm" in the Oakland/Berkeley Hills was in fact an urban conflagration, fueled by vegetation among homes and large acreage properties that was driven by seasonally strong dry winds from the east. The fire destroyed over 3,000 dwellings. At the time of the Oakland/Berkeley Hills Fire, El Cerrito faced similar fire hazard conditions in its hill area. The City Council was determined to reduce those fire hazards by all reasonable means.

El Cerrito's comprehensive fire hazard reduction program focused upon reducing fire hazards in four areas: (1) On City property; (2) On property owned by other agencies; (3) Large landowners; and (4) On residential property. The City began a comprehensive planning process to reduce fire hazards on City property, other agencies' properties and large landholders. These property owners were approached about reducing fire hazards on their properties. Prior efforts at fire hazard reduction on private residential property relied on voluntary compliance by the owners. The City Council concluded that stronger measures were necessary to enforce the laws regarding abatement of fire hazards on residential private property.

The fire hazard abatement program is designed to reduce fire hazards on a large number of private properties during the spring and early summer months.

Agenda Item No. 6(A)

A process of advance notice and hearings for property owners is coupled with a public education program involving the promulgation of standards for vegetation management in residents' yards and vacant lots.

This program seeks to remove weeds, rubbish, litter or other flammable material from private properties where such flammable material endangers the public safety by creating a public nuisance and a fire hazard. Most property owners voluntarily abate these hazards without Fire Department involvement. Ideally, 100% of the property owners would do so. We anticipate that a small number of owners are content to have the City do the work and place the costs on their tax bill.

Over the past 20 years, the City's annual fire hazard abatement program has been very successful in reducing fire hazards throughout the hill neighborhoods of El Cerrito. What started in 1992 as a program with over \$40,000 worth of abatement actions has been transformed into a program that required seven abatement actions in 2015. All but seven of the property owners voluntarily complied and cleared their own fire hazards. Indeed, this program has become a model program which other fire jurisdictions have borrowed from.

ANALYSIS

In May of this year, the Fire Department conducted citywide fire hazard inspections of all properties. The inspections began May 9th and were conducted through May 23rd. As a result of the primary inspections, a list of properties containing public nuisances was generated, which continues to be amended as additional properties are identified. On June 3rd, 2016, the properties determined to be in violation of El Cerrito Municipal Code Chapter 16.26 were notified in writing of the hazards on their property and to abate hazardous conditions and the El Cerrito vegetation management standards were included (Attachment 1, 2, & 3). In addition, these property owners were sent a letter informing them of the time, date and location of the upcoming Council meeting where their properties would be declared a public nuisance and abatement would be ordered (Attachment 4). A second round of inspections was conducted July 6 through July 18, 2016 and only those properties that were not voluntarily abated with the first notice are contained within the Master Abatement List, Exhibit A to the proposed Resolution.

This public hearing is the next step in the process to eliminate hazards on the private properties that were identified as a public nuisance and have not voluntarily abated said violations. In order to achieve full compliance, the City Council should declare the properties to be a public nuisance and direct the City Manager or his designee to abate such public nuisance conditions. Actual City-ordered abatement of fire hazards occurs only after all efforts at providing notice, information, and a public hearing have failed to induce voluntary compliance by the property owner.

Agenda Item No. 6(A)

The Fire Hazard Abatement process, under the direction of the Fire Department, should proceed according to El Cerrito Municipal Code Chapter 16.26, which specifies the following:

1. The Fire Department determines that hazards must be abated. Pursuant to these code sections, "hazards" are defined as weeds, rubbish, litter, or other flammable materials which create a fire hazard or are otherwise noxious or dangerous and which exist on specific parcels of property within the City.
2. The Fire Department shall post notice on each property or send notice by mail that the El Cerrito Fire Department has determined the existence of a public nuisance which must be abated and that a hearing will be held to consider any objections prior to the Council declaring the properties to be a public nuisance and ordering the City Manager or his designee to perform abatement.
3. At the July 19, 2016 City Council meeting, the City Council shall first adopt a resolution Declaring that Weeds, Rubbish, Litter, or Other Flammable Material on Certain Real Property Constitutes a Public Nuisance (Attachment 5 hereto).
4. At the same hearing, but after adoption of the first resolution, the City Council shall hear and consider all objections to declaration of public nuisances or the procedures proposed for abatement of the same. After the hearing, the Council shall adopt a resolution Overriding Objections by Property Owners and Ordering the City Manager or His Designee to Abate Certain Public Nuisances Pursuant to Chapter 16.26 (Attachment 6 hereto).
5. At the conclusion of the July 19, 2016 hearing, a second and final notice shall be sent to each property owner prior to abatement (Attachment 7). This notice will order the immediate abatement of nuisance conditions. This notice will clearly state that if nuisance conditions are ignored, the City shall cause abatement and costs for removal will be assessed against the property as a lien and special assessment. It will also indicate that if the conditions are voluntarily abated, the property shall be removed from the process.
6. If the nuisance is not abated between July 20, 2016 and August 15, 2016, prior to the arrival of the hazard abatement crew, the City of El Cerrito shall cause the weeds, rubbish, refuse, and other flammable material to be removed and shall keep an account of the cost of abatement for each parcel of land where such work is performed.
7. At the September 20, 2016 City Council Meeting the City Manager or his designee shall submit to the City Council for confirmation an itemized written report showing the cost of abatement work performed. A copy of

this report shall be posted for at least ten days prior to its submission to the City Council. Each property owner upon whose property abatement work was performed shall be sent written notice by mail of a hearing by the City Council to consider the cost of abatement work performed on their property.

8. At the City Council Meeting on September 20, 2016, the City Council shall receive and consider the written staff report on abatement actions taken by the City and shall hear any objections from the property owners liable to be assessed for the abatement. The City Council may modify the staff report if deemed appropriate and then confirm the report by motion or resolution.
9. After City Council confirmation of the report, a certified copy of the report shall be filed with the county auditor who shall add the amount of the assessment to the next regular tax bill levied against the parcel.

FINANCIAL CONSIDERATIONS

The abatement program will be administered by Fire Department staff with minimum costs expended for printing and mailing. Abatement work will be completed by City maintenance staff or private contract labor as appropriate. Program costs will be recovered through the special assessment and lien process.

LEGAL CONSIDERATIONS

The City Attorney has reviewed and approved the process. The Fire Hazard Abatement Program is exempt from California Environmental Quality Act (CEQA) pursuant to Sections 15304 and 15308 of the CEQA Guidelines. Therefore, no further CEQA review is required.

Reviewed by:



Scott Hanin, City Manager

Attachments:

1. June 3, 2016 Letter from Fire Marshal
2. Notice of Non-Compliant (Inspection Form)
3. Vegetation Management Standards
4. June 3, 2016 Notice to Destroy Weeds and Remove Rubbish, Refuse, and Other Flammable Material

Agenda Item No. 6(A)

5. Resolution Declaring that Weeds, Rubbish, Litter, or Other Flammable Material on Certain Real Property Constitutes a Public Nuisance
6. Resolution Overriding Objections by Property Owners and Ordering the City Manager or his Designee to Abate Certain Public Nuisances Pursuant to Chapter 16.26
7. July 20, 2016 Notice to Destroy Weeds and Remove Rubbish, Refuse, and Other Flammable Material

EL CERRITO FIRE DEPARTMENT
10900 San Pablo Avenue
El Cerrito, CA 94530
(510) 215-4450
FAX (510) 232-4917

June 3, 2016

Dear El Cerrito Property Owner:

We are approaching the season of our highest fire danger when the grass, weeds, refuse, brush and other vegetation dry out and become highly flammable. After a wet winter, the grass and brush is abundant and will create a severe fire hazard. To reduce the fire danger on private property, the Fire Department is beginning its annual Fire Hazard Abatement Program. We have inspected your property and found that it does not comply with the Vegetation Management Standards set forth in the El Cerrito Municipal Code 8.020. You are being contacted now so that you may remove those fire hazard conditions found on your property.

Beginning **July 6, 2016**, the Fire Department will be conducting a re-inspection of your property to evaluate if it meets our vegetation management standards. If your property meets the standards you will be removed from our list of non-compliant properties and will not be subject to further abatement actions.

Please find the enclosed legal notice explaining the City's fire hazard abatement program and advising you of the upcoming public hearing. **Please read this notice carefully.** In general, the Fire Department is concerned with removing refuse, dry and/or dead vegetation that is easily ignitable and capable of burning structures and endangering lives.

The enclosed guidelines provide a general explanation of the vegetation clearing and maintenance standards to be followed. For most private lots and yards these guidelines provide straightforward instructions on what actions you, the property owner, should take to remove the fire hazards. On the other hand, certain lots and yards are more difficult to assess. If you would like your property inspected by our Fire Prevention Officer, Captain Chris Renshaw, at no cost, he can identify your specific fire hazards and provide you with the information needed to meet our standards. We urge you to call the Fire Prevention office at (510) 215-4457 with any questions about clearing or maintaining your property or to schedule an inspection.

Thank you for your cooperation in making El Cerrito a fire safe community.

Sincerely,

Michael J Bond
Michael J. Bond
Fire Marshal



EL CERRITO FIRE DEPARTMENT
KENSINGTON FIRE PROTECTION DISTRICT



10900 San Pablo Avenue, El Cerrito, Ca. 94530 (510)215-4450

Fire Hazard Abatement Inspection

Owner/Tenant _____ Site Address _____ City _____ State _____ Zip Code _____

Legal Propety Owner _____ Mailing Address _____ City _____ State _____ Zip Code _____

YOUR PROPERTY IS NOT IN COMPLIANCE WITH THE FIRE CODE.
YOU MUST COMPLETE THE FOLLOWING REQUIREMENTS:

FIRE BREAK (ELIMINATE)

Within 30' of a structure

- _____ 1. Eliminate hazardous vegetation
- _____ 2. Maintain ornamental landscaping
- _____ 3. Remove dead wood overhanging structures
- _____ 4. Mature Trees: Remove limbs 10' from ground
- _____ 5. Small Trees: Remove limbs 1/3 distance from ground
- _____ 6. Provide 10' clearance from chimney
- _____ 7. Clear Roof of combustibile debris

COMMENTS:

FUEL BREAK (REDUCE)

30' - 100' from structure

- _____ 8. Cut and maintain dry grass/weeds - 6"
- _____ 9. Clean and maintain haz. vegetation - 18"
- _____ 10. Clear 10' from roadside

Both Fire Break & Fuel Break Requirements:

- _____ 11. Dispose of cut vegetation and debris
- _____ 12. Remove vines, loose papery bark, and dead branches
- _____ 13. Install 1/2" screen covering on chimney and stovepipes

FIELD			
OFFICE			
OFFICE			
TOTAL			

Inspector Date

City of El Cerrito Fire Hazard Reduction Program

I. INTRODUCTION

A. Purpose of Vegetation Management Standards

Along with California's growth of population and expanding development, urban housing has intermixed with wildland areas. California communities have experienced devastating fire loss because of the severity of fires which occur in this intermix area. In these areas the risk of conflagration is increased further by homeowners who create uncontrolled landscaping of native and non-native plants on their properties. Thousands of homes are threatened by fire every year in California largely because of this heavy vegetation fuel load very near structures.

The City of El Cerrito contains wildland intermix areas which increase the community's risk of loss from devastating fire. These areas have been identified by the California Department of Forestry (CDF) and the El Cerrito Fire Department as Very High Fire Hazard Severity (VHFHS) Zones. As specified by State Law AB 337, property owners within these zones must take special precautions with their property, including vegetation management, to reduce the risk of fire.

The buildup of unmanaged vegetation, whether native or non-native, steep hillsides with canyons, draws, and periods of extremely hot, dry weather all combine to create in El Cerrito the potential for catastrophic fire behavior such as occurred in the Oakland/Berkeley Hills Fire of October 1991. Catastrophic fires can destroy large numbers of homes, threaten public safety and severely damage the natural areas which contribute to our high quality of living.

A key goal of local community fire protection planning is to reduce the level of fire hazards in El Cerrito's wildland intermix areas, designated as VHFHS Zones. While it is not possible to eliminate all threats of catastrophic wildfire, fire hazards can be reduced to acceptable levels and still allow a "green" El Cerrito.

Vegetation management planning in the VHFHS Zone focuses on areas where fire poses the greatest risk to life and property. There are three specific goals of the program:

1. Keep all fires small. Small fires generally are cooler than large fires and are more easily extinguished.
2. Limit the speed with which any fire will grow. Fires need fuel to burn; if fuel is available, fires will continue to grow rapidly. Fuel must be limited or made unavailable to spreading fire.
3. Make it more difficult for fires to ignite and spread. Small fires can ignite progressively larger fuels. Small fuels are like kindling and are easily ignited. Reducing and separating kindling fuels from larger fuels reduces sources for ignition and the potential for fire spread.

Fires will continue to be a part of California urban living. By implementing vegetation management standards, El Cerrito residents can significantly reduce the potential a small fire will grow into a catastrophic event involving one or more structures. The primary method of stopping fire spread is by increasing separation distances between combustible fuels. An important component of reducing the community's fire risk requires vegetation management to be practiced by property owners.

B. Fire Safe Vegetation Management Concepts

There are three basic methods employed to manage vegetation fuels: firebreaks, fuel breaks and ornamental landscaping. A firebreak eliminates all flammable vegetation and combustible growth. Appropriate ornamental landscaping is acceptable in this area. A fuel break reduces the fuel mass of

flammable vegetation and combustible growth, thereby limiting the intensity of fire and slowing its rate of spread. Ornamental landscaping provides a yard or garden with decorative fire resistive plants that are irrigated, maintained and arranged to be aesthetically pleasing, functionally useful and enhance fire safety. Refer to the definitions listed for these terms.

Within VHFHS Zones, structures are to be protected from wildfire by creating firebreaks immediately surrounding structures and fuel breaks further out from structures. Within 30 feet of a structure a firebreak should be created which contains well-irrigated, maintained and appropriately spaced ornamental landscaping with fire resistant plants. All flammable vegetation and combustible growth in this area immediately surrounding a structure should be eliminated. This creates a safety margin of defensible space so that wildfire can be stopped before it reaches a structure.

A fuel break should be created from 30 feet to 100 feet from structures located within the VHFHS Zones. The heightened risk of wildfire within the VHFHS Zones makes it necessary to provide an added safety margin of defensible space for all structures and a fuel break will provide this extra protection. Fuel breaks are meant to reduce fire hazardous vegetation and maintain it to specified heights and arrangements, limiting fire intensity and impeding fire spread. The purpose of the fuel break is to deny any fire entering it sufficient fuel to sustain fire intensity and speed. By the time it reaches the firebreak area containing ornamental landscaping nearer the structure, the now low-intensity fire should be stopped easily by the firebreak surrounding the structure.

Ornamental landscaping with fire resistant plants is encouraged as a long term approach to maintain yard and garden vegetation in a fire safe manner. Landscaping with healthy, appropriately irrigated plants and ground cover provides a permanent reduction of the fire hazard adjacent to structures when such landscaping is maintained at regular intervals. Ornamental landscaping can enhance a firebreak by inhibiting the growth of weeds, grass, brush and similar fire hazardous vegetation. A list of fire resistant and highly flammable plants is available from the Fire Department.

C. Process

No person shall be prosecuted criminally under the provisions of Section 8.30.040 of the El Cerrito Municipal Code until that person has received written notice of how that property violates these standards and until that person has had the reasonable opportunity to meet with City staff concerning the procedures set forth in Chapter 8.34 or Chapter 16.26 of the El Cerrito Municipal Code. Civil procedures for fire hazard abatement include providing the property owner with (1) written notice on how the property violates these guidelines, (2) reasonable opportunity to meet with City staff to discuss this matter and (3) opportunity to be heard before the City Council.

II. FIRE HAZARD REDUCTION GUIDELINES

Many factors combine to create a fire hazard on any specific property. It is difficult to single out a specific vegetation species or configuration to declare it either fire hazardous or completely fire safe in all situations. The Fire Department has developed guidelines conforming to State Law and National Fire Protection Standards which address most situations found on private property within El Cerrito. Please read these guidelines along with the accompanying glossary. If you are still unsure of how to proceed please call the Fire Department and we will work with you to develop a fire hazard reduction plan for your property.

A. Hazard Zones

Portions of the City of El Cerrito lie adjacent or near to large wildland areas containing steep slopes and naturally growing trees, brush and grasses. Every year under certain critical weather conditions, the neighborhoods near these wildland areas are at heightened risk of seasonal wildfire sweeping into the City and burning homes. These areas at heightened risk of wildfire have been designated as Very High Fire Hazard Severity (VHFHS) Zones. The rest of the City faces a lesser risk of wildfire.

Fire hazard reduction measures common to the entire City are required on both vacant and developed lots:

1. Property owners must ensure that all vegetation, native or non-native, shall be maintained so as not to constitute a fire hazard.
2. Property owners must maintain their property either by ornamental landscaping or by establishing a fuel break along the property line and adjacent to structures. For properties within the VHFHS Zones, there are additional requirements for firebreaks within 30 feet of structures and fuel breaks from 30 to 100 feet.
3. Property owners are responsible for clearance and maintenance of their own property only. Property owners will be required, however, to create fuel breaks on their property to protect neighboring structures. Dimensions of fuel breaks will depend on the proximity of neighboring structures and on whether the properties are within VHFHS Zones.
4. All brush, weeds, grass and fire hazardous vegetation within 10 feet of any usable road surface, public way or combustible fence shall be maintained in a non-hazardous condition with a fuel break.
5. Property owners must maintain their property free from all nuisances, including debris, garbage, rubbish and trash, hazardous materials, junk and noxious growth.

B. Ornamental Landscaping

Ornamental landscaping is encouraged throughout the City of El Cerrito to enhance fire safety. Ornamental landscaping consists of decorative plants growing within a tended garden or yard which are well watered, maintained and located to provide aesthetic decoration and functional utility, such as privacy screening, shade, weed suppression and erosion control.

With the VHFHS Zones, ornamental landscaping in the 30 foot firebreak adjacent to structures must meet the following requirements:

1. Ornamental landscaping shall be maintained free of dead wood and litter, and trimmed of small twigs and branches at least two (2) feet or 1/3 of their height from the ground, whichever is less.
2. Ornamental landscaping must be healthy, pruned, adequately irrigated and regularly maintained so that plants and the area beneath them are free from dead or dying material.
3. Single specimen trees must be trimmed and maintained.
4. Ground cover may be used as part of ornamental landscaping provided it is kept green, free of dead wood and litter, and at a height so that they do not form a means of rapidly transmitting fire from native growth (located outside the firebreak) to any building or structure.

C. Vegetation Management Standards

Vegetation management standards exist for the entire City, including areas designated as VHFHS Zones. Refer to the glossary (Section III) for a definition of terms used in these standards.

1. **Properties within VHFHS Zones:**

Agenda Item No. 6(A)

Attachment 3

- a. Firebreaks must be created and maintained in areas within 30 feet of any occupied dwelling.
 - b. Fuel Breaks must be created and maintained in areas extending from 30 to 100 feet surrounding any structure.
 - c. Fuel Breaks must be created and maintained on vacant lots 30 feet wide along the property line and 100 feet from neighboring structures.
2. **Properties outside VHFHS Zones:**
- a. Fuel Breaks must be created and maintained in areas within 30 feet of any structure.
 - b. Fuel Breaks must be created and maintained on vacant lots to be 10 feet wide along the property line.
3. **Vegetation Management Standards for Firebreaks:**
- a. All flammable vegetation or combustible growth must be removed and cleared away, thereby eliminating fire hazardous vegetation fuels which can rapidly transmit fire.
 - b. Adequately irrigated and maintained ornamental landscaping is not flammable vegetation or combustible growth, and is encouraged within a firebreak.
 - c. Trees, shrubs, bushes or other vegetation adjacent to or overhanging any structure shall be maintained free of dead limbs and other combustible matter such as vines and loose papery bark. On mature trees, limbs should be removed up to 10' above the ground. Smaller trees should be limbed to 1/3rd of their height up to 6' above the ground, but in no case less than 18 inches from the ground.
 - d. Trees shall be maintained so that no portion is closer than 10 feet from any chimney opening.
 - e. All roof surfaces shall be maintained free of substantial accumulations of needles, twigs and any other combustible matter.
 - f. All cut vegetation and debris must be disposed of either by hauling and dumping in a lawful manner, or by chipping and dispersing over the property in a manner and to a height which will not constitute a fire hazard.
 - g. Chipped materials which are spread on the ground shall be of a size no greater than 1 inch by 1 inch by 3 inches.
4. **Vegetation Management Standards for Fuel Breaks:**
- a. Maintain ornamental landscaping in yards.
 - b. All fire hazardous vegetation with the exception of weeds and grass shall be cleared and maintained to a height no greater than 18 inches above the ground.
 - c. All weeds and grass shall be cleared and maintained at a height no greater than 6 inches above the ground.
 - d. Remove from trees all vines, loose papery bark and dead branches.

- e. All cut vegetation and debris must be disposed of either by hauling and dumping in a lawful manner, or by chipping and dispersing over the property in a manner and to a height which will not constitute a fire hazard.
- f. Chipped materials which are spread on the ground shall be of a size no greater than 1 inch by 1 inch by 3 inches.

5. Additional Considerations for Vegetation Management:

- a. The Fire Hazard Abatement Program is intended to promote community fire safety by reducing the combustible vegetation fuel mass on private properties. Clearing vegetation by heavy construction methods, such as grading, discing, trenching or dozing shall require special permits from the City. **Disposal by burning is not permitted.**
- b. Any parcel where slope stability will be threatened by removal of plants may be exempt from treatment requirements or subject to alternate treatments. The property owner must submit a report documenting the probability of slope failure due to vegetation removal, prepared by a licensed civil, geotechnical or soils engineer. The report shall propose alternative treatment methods to address fire hazards. The report will be reviewed by city staff. Review and acceptance by the City of alternative treatment will supersede other requirements.
- c. Any parcel or lot which includes plant or animal species that are rare, endangered or of special concern may qualify for alternative plant treatment and spacing requirements. The property owner must submit a report from a qualified resource biologist or landscape architect describing the species, actions required to preserve its environmental value, and proposed alternative measures to address fire hazards. The report will be reviewed by the City. Review and acceptance by the City of alternative treatment will supersede other requirements.

D. Planting Considerations

Any plant will burn if the conditions are right. Some plants are considered to be extremely flammable while other plants are considered to have some resistance to fire. Verifiable tests of fire exposure characteristics for all specific ornamental landscaping plants are not available.

The best available plant information is contained in a publication available from EBMUD entitled "Firescape: Landscaping to Reduce Fire Hazard". A list of plants with some fire-resistance and plants considered highly flammable is available from the Fire Department.

At the base of trees and shrubs, replace flammable vegetation with bark, mulch, rock, gravel or low-growing or more fire-resistant ground covers. This cover reduces the fire danger and minimizes weeds.

Avoid placing medium-sized shrubs beneath trees or taller shrubs. By breaking up the available fuel mass in ornamental landscaping, a fire will be kept at lower intensity, flame lengths will be shorter and fire will be less likely to form a continuous line or front.

E. Structural Fire Safety

The City's roofing and vegetation management standards are designed to reduce the amount of airborne burning material, limiting fire spread. Once a fire starts, it is often accelerated by wind-borne burning material. Burning embers or brands are the main source of fire spread in mixed urban-wildland areas. The roof of a house is most vulnerable to this type of ignition. Spark arresters with a maximum of ½" openings in the mesh are required over the outlet of every chimney. Class A is the top rating for fire

resistive roofing, followed by Classes B and C. The City of El Cerrito requires that all roofing be Class B or better, and wood shake shingle roofing materials are prohibited in new construction or replacement of more than 50% of the roof.

III. GLOSSARY OF TERMS

The following terms are used to describe the vegetation management standards in California State Law and in the City of El Cerrito's Fire Hazard Reduction Program.

Very High Fire Hazard Severity (VHFHS) Zones: Any geographic area designated per Government Code Section 51178 to contain the type and condition of vegetation, topography, weather and structure density to potentially increase the possibility of wildland conflagration fires. As a community adjacent to extensive wildland areas, the City of El Cerrito contains several VHFHS zones. A map of these zones is available from the Fire Department. Fire hazard reduction standards are more extensive for properties located within VHFHS zones.

Defensible space: A concept in landscape design for homes which provides a band of managed vegetation around a home that slows movement of fire by reducing or denying fuel and provides a space for firefighters to take a stand to protect the house.

Fire resistant plants: A relative term used to describe plants that are "more resistant: or "less resistant" than other plants to fire. Given enough heat, all vegetation will burn. Yet plants in fact differ in how fast they burn, how high a flame they produce and their ability to survive fire. Fire resistance is enhanced by higher amounts of moisture within twigs and foliage. Fire-resistant plants can lose this quality altogether if not properly maintained and irrigated. A partial list of fire resistant and highly flammable plants is available from EBMUD and the El Cerrito Fire Department.

Fire hazardous vegetation: Plants which can burn easily because they generate dry undergrowth, contain flammable oils or produce significant quantities of dead or dying material. Hazardous vegetation is fuel which must be removed or strictly maintained so as not to constitute a fire hazard by igniting easily and then contributing to rapid fire spread. Seasonally dry grass, weeds, brush, and unmaintained and unirrigated trees and ornamental vegetation are examples of fire hazardous vegetation. Properly chipped, mulched and disbursed material does not constitute fire hazardous vegetation. Fire hazardous vegetation is also known as **flammable vegetation and combustible growth**.

Ornamental landscaping: Decorative plants growing within a tended garden or yard which are appropriately irrigated, maintained and located to provide aesthetic decoration and functional utility, such as privacy screening, shade, weed suppression and erosion control. The use of fire-resistant plants and the removal of fire hazardous vegetation will enhance fire safety.

Firebreak: An area in which all flammable vegetation or combustible growth is removed and cleared away, thereby eliminating fire hazardous vegetation fuels which can rapidly transmit fire. Ornamental landscaping is permissible within a firebreak as long as it is adequately irrigated, maintained and spaced so as not to provide a means of rapidly transmitting fire. Compare to **fuel break**.

Fuel break: An area in which all flammable vegetation or combustible growth is reduced and cleared away according to established standards, thereby limiting the mass and arrangement of fire hazardous vegetation fuels which can rapidly transmit fire. Appropriate ornamental landscaping is permissible within a fuel break. Fuel reduction standards for fuel breaks limit the height of certain vegetation (brush, native shrubs, weeds and grasses). Remove from trees any fuels which can ladder fire into the canopies, and provide adequate spacing between remaining plants. Compare to **firebreak**.

EL CERRITO FIRE DEPARTMENT
10900 San Pablo Avenue
El Cerrito, CA 94530
(510) 215-4450
FAX (510) 232-4917

June 3, 2016

To: «OWNER_NAME_1»
«OWNER_ADDRESS» «OWNER_CITY», «OWNER_STATE». «OWNER_ZIP»
Re: «SITE_ADDR» «SITE_CITY», «SITE_STATE». «SITE_ZIP»
Parcel Number: «APN»

**NOTICE TO DESTROY WEEDS AND REMOVE
RUBBISH, REFUSE AND OTHER FLAMMABLE MATERIAL**

Notice is hereby given that on the **3rd day of June, 2016** the El Cerrito Fire Department has determined your property in the City of El Cerrito, designated above by address and parcel number, is in violation of Chapter 8.020 of the El Cerrito Municipal Code because of the presence of weeds, rubbish, litter or other flammable material which creates a fire hazard, a menace to the public health, or is otherwise noxious or dangerous.

You are hereby ordered to abate these public nuisance conditions by removing the weeds, rubbish, refuse and other flammable material. Otherwise, the City will abate these nuisance conditions and the costs for removal of the weeds, rubbish, refuse and other flammable material will be assessed against your property as a lien and special assessment. These removal costs shall then be collected at the time and in the manner of ordinary municipal taxes. Reference is hereby made to the resolution for further particulars.

If you have any objections to a declaration of your property as a public nuisance or to the proposed removal of the weeds, rubbish, refuse and other flammable material from your property by the City, you are hereby notified of and may attend this meeting of the City Council of the City of El Cerrito to be held on **July 19, 2016 at 7:00 p.m. in the Council Chambers located in the El Cerrito City Hall, 10890 San Pablo Avenue**. At this meeting, your objections will be heard and given due consideration.

At the conclusion of this meeting, the City Council may declare the conditions on your property to be a public nuisance and may order the City Manager or designee to abate the public nuisance condition on your property. The City shall perform this removal either through its own staff or through private contract sometime between **August 15, 2016 and August 26, 2016**. It is impossible to predict what it will cost the City to remove these nuisance conditions from your property. The costs depend on the severity of those conditions. In past years these abatement costs have sometimes exceeded \$5,000 per parcel for those parcels with severe nuisance conditions.

If you have any questions, contact the El Cerrito Fire Prevention Office at 10900 San Pablo Avenue. The phone number is (510) 215-4457.

Michael J Bond
Michael J. Bond, Fire Marshall

RESOLUTION NO. 2016 - XX

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EL CERRITO DECLARING
THAT WEEDS, RUBBISH, LITTER OR OTHER FLAMMABLE MATERIAL ON CERTAIN
REAL PROPERTY CONSTITUTES A PUBLIC NUISANCE

WHEREAS, El Cerrito Municipal Code Chapter 16.26 provides a method by which a local legislative body may abate on private property public nuisance conditions relating to weeds, rubbish, litter or other flammable material that creates a fire hazard, a menace to the public health or which is otherwise noxious or dangerous; and

WHEREAS, the City of El Cerrito Fire Marshal has identified certain real property, by street name, lot and block number, on which the presence of weeds, rubbish, litter or other flammable material creates a fire hazard, a menace to the public health or which is otherwise noxious or dangerous as defined in Chapter 16.26 of the El Cerrito Municipal Code and therefore constitutes a public nuisance; and

WHEREAS, pursuant to El Cerrito Municipal Code Section 16.26.160 and Government Code Section 39560-39588, the City Council shall adopt this resolution declaring that certain real property within the City constitutes a public nuisance.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of El Cerrito that the following properties identified on Exhibit A, attached hereto, are declared to be public nuisances pursuant to El Cerrito Municipal Code Section 16.26.160.

BE IT FURTHER RESOLVED that on this same date of July 19, 2016 at 7:00 p.m. in the City of El Cerrito, the City Council shall hold a hearing at which owners of the real property identified in Exhibit A hereto may object to the designation of their properties as public nuisances and object to the abatement actions proposed by the City.

I CERTIFY that at a regular meeting on July 19, 2016 the El Cerrito City Council passed this resolution by the following vote:

AYES:	COUNCILMEMBERS:
NOES:	COUNCILMEMBERS:
ABSENT:	COUNCILMEMBERS:
ABSTAIN:	COUNCILMEMBERS:

IN WITNESS of this action, I sign this document and affix the corporate seal of the City of El Cerrito on July 19, 2016.

Cheryl Morse, City Clerk

APPROVED:

Gregory B. Lyman, Mayor

EXHIBIT A

El Cerrito
List of Real Property Constituting Public Nuisances

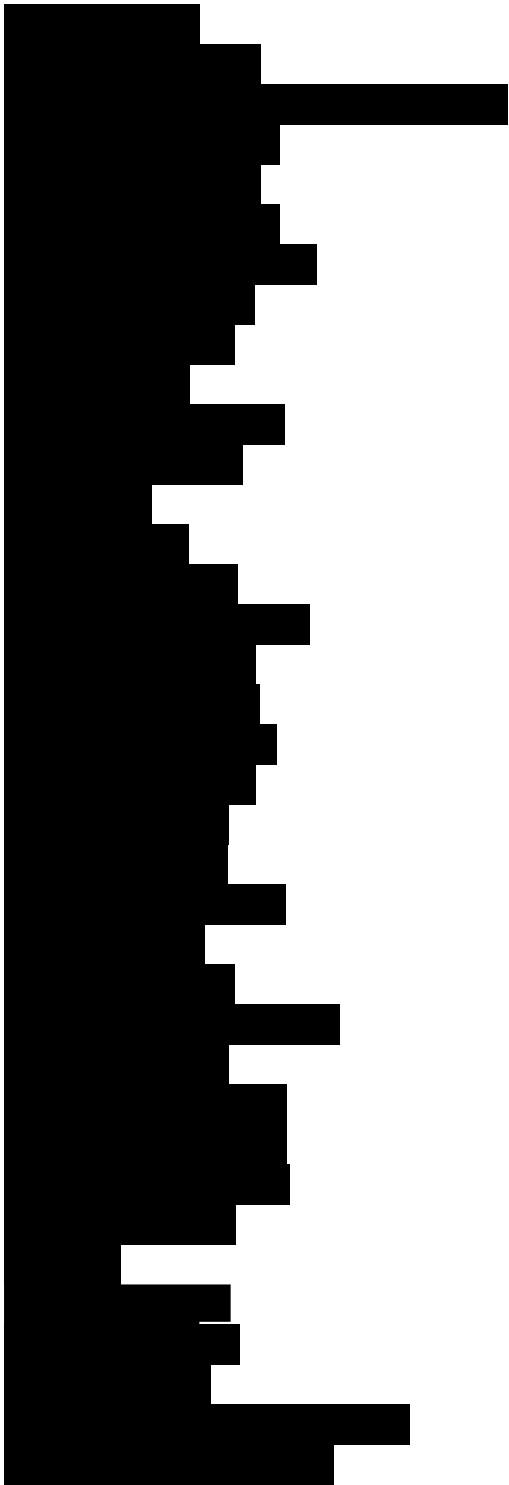
APN	Street Address	Property Owner
505-351-018	1101 ARLINGTON BLVD	
505-201-009	1224 CONTRA COSTA DR	
505-103-023	7755 EARL CT	
505-103-026	7770 EARL CT	
505-102-004	1109 KING DR	
505-103-027	7780 EARL CT	
505-303-006	840 ARLINGTON BLVD	
503-291-010	7473 STOCKTON AVE	
505-230-062	875 SHEVLIN DR	
505-262-049	8184 TERRACE DR	
503-470-010	787 COLUSA AVE	
503-311-023	7573 TERRACE DR	
503-321-002	7742 TERRACE DR	
504-403-010	7820 EUREKA AVE	
503-364-017	7119 EUREKA AVE	
503-374-011	650 EVERETT ST	
504-414-004	520 VILLAGE DR	
504-372-020	421 COLUSA AVE	
504-292-017	118 CARMEL AVE	
500-120-017	2630 MONTE VISTA AVE	
500-210-007	2556 TASSAJARA AVE	
500-360-010	5621 LUDWIG AVE	
501-050-003	5908 JORDAN AVE	
501-330-013	6473 HAGEN BLVD	
501-110-017	7140 CUTTING BLVD	
505-040-006	FAIRVIEW DR	
505-422-008	1518 MADERA CT	
573-132-023	8407 WILDCAT DR	
573-132-024	8411 WILDCAT DR	
573-132-025	8415 WILDCAT DR	
573-132-026	8421 WILDCAT DR	
505-372-036	1365 RIFLE RANGE RD	
502-100-009	1723 LEXINGTON AVE	
509-012-018	5318 POTRERO AVE	
502-310-009	1518 NORVELL ST	
502-310-013	7019 GLADYS AVE	
503-040-004	1239 ELM ST	

EXHIBIT A (page 2)

El Cerrito
List of Real Property Constituting Public Nuisances

APN	Street Address	Property Owner
503-141-004	6702 SCHMIDT LN	
503-202-014	1001 EVERETT ST	
503-384-006	635 ELM ST	
503-411-006	602 LIBERTY ST	
505-390-008	1434 CLUB VIEW CT	
502-270-033	1525 ELM ST	

RESOLUTION NO. 2016 - XX

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EL CERRITO OVERRIDING OBJECTIONS BY PROPERTY OWNERS AND ORDERING THE CITY MANAGER OR HIS DESIGNEE TO ABATE CERTAIN PUBLIC NUISANCES PURSUANT TO CHAPTER 16.26

WHEREAS, El Cerrito Municipal Code Chapter 16.26 provides a method by which a local legislative body may abate on private property public nuisance conditions relating to weeds, rubbish, litter or other flammable material that creates a fire hazard, a menace to the public health or which is otherwise noxious or dangerous; and

WHEREAS, the City of El Cerrito Fire Marshal has identified certain real property, by street name, lot and block number, on which the presence of weeds, rubbish, litter or other flammable material creates a fire hazard, a menace to the public health or which is otherwise noxious or dangerous as defined in Chapter 16.26 of the El Cerrito Municipal Code and therefore constitutes a public nuisance; and

WHEREAS, on July 19, 2016, pursuant to El Cerrito Municipal Code Section 16.26.160 and Government Code Sections 39560-39588, the City Council adopted Resolution 2016- XX declaring that certain real property within the City constitutes a public nuisance; and

WHEREAS, El Cerrito Municipal Code Chapter 16.26 provides that notice shall be sent to owners of the real property declared a nuisance pursuant to Resolution 2016-XX providing those owners with the following: description of the nuisance; explanation of how the nuisance must be abated; explanation that if the nuisance is not abated; the City shall abate the public nuisance and the cost of abatement shall be assessed against the property as a special assessment; and informing the owners that the City Council shall hold a hearing at a certain date, time, and place at which the owners may present objections to the designation of their properties as public nuisances or to the proposed abatement of the nuisance; and

WHEREAS, on June 3, 2016, the City Fire Department sent written notice to those property owners describing the weeds, rubbish, refuse, or other flammable material that presented a fire hazard and public nuisance; explaining that the Fire Department had determined a public nuisance that must be removed; informing the owners that if they did not abate between July 6 and July 18, 2016, the City Council would hold a hearing on July 19, 2016 at which the owners could present objections to the declaration of the nuisance or the proposed abatement measures and further explained the City could abate the nuisance and collect the costs as an assessment on the property; and

WHEREAS, on July 19, 2016, the City Council adopted Resolution 2016-XX confirming the nuisance declarations of the City Fire Department and declaring a public nuisances on certain real property pursuant to Chapter 16.26; and

WHEREAS, El Cerrito Municipal Code Section 16.26.160 and Government Code Sections 39560-39588 provide that after adoption of a resolution declaring a public nuisance and notice to affected property owners of the Council's hearing of objections, the Council may overrule any objections and order the City Manager or his designee to abate the public nuisances.

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of El Cerrito that it overrides any objections by owners of that certain real property on which public nuisances were declared in Exhibit A to Resolution 2016 - XX (adopted on the same date herewith).

BE IT FURTHER RESOLVED that the City Manager and his or her designee is hereby ordered to abate the public nuisances by having the weeds, rubbish, refuse, dirt, or other fire hazard or noxious or dangerous materials removed.

BE IT FURTHER RESOLVED that pursuant to El Cerrito Municipal Code Section 16.26.160 and Government Code Section 39574, the City Manager or his designee shall keep an account of the cost of abatement for each parcel of land on which work is performed. The City Manager or designee shall then prepare an itemized written report to be presented to the City Council so that, after the notice and hearing during the City Council meeting of September 20, 2016 these abatement costs can be confirmed as a special assessment against those parcels.

I CERTIFY that at a regular meeting on July 19, 2016 the El Cerrito City Council passed this resolution by the following vote:

AYES: COUNCILMEMBERS:
NOES: COUNCILMEMBERS:
ABSENT: COUNCILMEMBERS:
ABSTAIN: COUNCILMEMBERS:

IN WITNESS of this action, I sign this document and affix the corporate seal of the City of El Cerrito on July 19, 2016.

Cheryl Morse, City Clerk

APPROVED:

Gregory B. Lyman, Mayor

EXHIBIT A

El Cerrito
List of Real Property Constituting Public Nuisances

APN	Street Address	Property Owner
505-351-018	1101 ARLINGTON BLVD	
505-201-009	1224 CONTRA COSTA DR	
505-103-023	7755 EARL CT	
505-103-026	7770 EARL CT	
505-102-004	1109 KING DR	
505-103-027	7780 EARL CT	
505-303-006	840 ARLINGTON BLVD	
503-291-010	7473 STOCKTON AVE	
505-230-062	875 SHEVLIN DR	
505-262-049	8184 TERRACE DR	
503-470-010	787 COLUSA AVE	
503-311-023	7573 TERRACE DR	
503-321-002	7742 TERRACE DR	
504-403-010	7820 EUREKA AVE	
503-364-017	7119 EUREKA AVE	
503-374-011	650 EVERETT ST	
504-414-004	520 VILLAGE DR	
504-372-020	421 COLUSA AVE	
504-292-017	118 CARMEL AVE	
500-120-017	2630 MONTE VISTA AVE	
500-210-007	2556 TASSAJARA AVE	
500-360-010	5621 LUDWIG AVE	
501-050-003	5908 JORDAN AVE	
501-330-013	6473 HAGEN BLVD	
501-110-017	7140 CUTTING BLVD	
505-040-006	FAIRVIEW DR	
505-422-008	1518 MADERA CT	
573-132-023	8407 WILDCAT DR	
573-132-024	8411 WILDCAT DR	
573-132-025	8415 WILDCAT DR	
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505-372-036	1365 RIFLE RANGE RD	
502-100-009	1723 LEXINGTON AVE	
509-012-018	5318 POTRERO AVE	
502-310-009	1518 NORVELL ST	
502-310-013	7019 GLADYS AVE	
503-040-004	1239 ELM ST	

EXHIBIT A (Page 2)

El Cerrito
List of Real Property Constituting Public Nuisances

<u>APN</u>	<u>Street Address</u>	<u>Property Owner</u>
503-141-004	6702 SCHMIDT LN	
503-202-014	1001 EVERETT ST	
503-384-006	635 ELM ST	
503-411-006	602 LIBERTY ST	
505-390-008	1434 CLUB VIEW CT	
502-270-033	1525 ELM ST	

CITY OF EL CERRITO
10900 San Pablo Avenue
El Cerrito, CA 94530
(510) 215-4450
FAX (510) 232-4917

July 20, 2016

To: «OWNER_NAME_1»
«OWNER_ADDRESS» «OWNER_CITY», «OWNER_STATE». «OWNER_ZIP»
Re: «SITE_ADDR» «SITE_CITY», «SITE_STATE». «SITE_ZIP»
Parcel Number: «APN»

**NOTICE TO DESTROY WEEDS AND REMOVE
RUBBISH, REFUSE AND OTHER FLAMMABLE MATERIAL**

On **July 20th, 2016** the El Cerrito City Council declared that your property in the City of El Cerrito, designated above by address and parcel number, constitutes a public nuisance because of the presence of weeds, rubbish, litter or other flammable material which creates a fire hazard, a menace to the public health, or is otherwise noxious or dangerous.

A previous notice was sent to you informing you of the July 19th, 2016 hearing and further informing you of your obligation to remove the weeds, rubbish, refuse and other flammable material from your property. **If you do not immediately abate these nuisance conditions, the City will do so and the costs for removal of the weeds, rubbish, refuse and other flammable material will be assessed against your property as a lien and special assessment.** These removal costs shall then be collected in the time and in the manner of ordinary municipal taxes.

You will not receive any further notices from the City prior to this removal. The City shall perform this removal either through its own staff or through private contract sometime between **August 15th, 2016 and August 26th, 2016.** It is impossible to predict what it will cost the City to remove these nuisance conditions from your property. The costs depend on the severity of those conditions. In past years these abatement costs have sometimes exceeded \$5,000 per parcel for those parcels with severe nuisance conditions

The City Council will conduct a public hearing on **September 20, 2016** to confirm the cost of the abatement work performed on your property. The meeting will be held in the **El Cerrito City Council Chambers at 10890 San Pablo Avenue in El Cerrito at 7:00 p.m.** During this public hearing you will be given the opportunity to voice objections regarding the report and the assessment of the abatement costs for your property. At this hearing you will also be given the opportunity to object, protest and/or present evidence to support your arguments.

If you have any questions, contact the El Cerrito Fire Department at 10900 San Pablo Avenue. The phone number is (510) 215-4450.

Michael J Bond

Michael J. Bond
Fire Marshal



AGENDA BILL

Agenda Item No. 6(B)

Date: July 19, 2016
To: El Cerrito City Council
From: Sean Moss, Senior Planner
Margaret Kavanaugh-Lynch, Development Services Manager
Subject: Appeal of the Planning Commission's approval of amendments to a Conditional Use Permit for the Summit K2 Charter School located at 1800 Elm Street

ACTION REQUESTED

Conduct a public hearing and upon conclusion adopt resolutions:

1. Certifying the Subsequent Environmental Impact Report, and
2. Denying an appeal and upholding the Planning Commission's approval of amendments to a Conditional Use Permit for the Summit K2 Charter School located at 1800 Elm Street.

BACKGROUND

The site at 1800 Elm Street has been operated as various institutional uses since 1935. Please see *Attachment 2* for the complete land use history of the site. Summit K2 Charter School began operation at the site in 2014 with grades 7&8 in conformance with the use permit that was adopted for Windrush School.

Existing Campus - Master Plan

The Windrush School Master Plan was approved in 2007 along with adoption of an Initial Study/Mitigated Negative Declaration (IS/MND) for the project. The Master Plan included the construction of an additional 23,000 square feet of building space in four phases. Phase 1 included the construction of a new class room addition adjacent to the existing gymnasium. Phase 2 included the addition of a library and performing arts center adjacent to Phase 1 and the gymnasium. Phase 3 involved interior renovations to the existing Chung Mei building, and Phase 4 involved the construction of a replacement classroom building near the northern property line. Figure 4 from the 2007 IS/MND shows the phases of the approved Master Plan is included as Attachment 6.

Phase 1 of the Master Plan was completed in 2010. After Windrush School ceased operation, and the current owner purchased the site, the current property owner, *Education Matters*, completed interior renovations of the Chung Mei building in 2015, consistent with the approved Master Plan.

At the present time, Phases 2 and 4 of the approved Master Plan have not been constructed. Condition #3 of *Resolution PC07-08* establishes a 20-year timeline for the

Master Plan. If building permit plans for construction of all facilities have not been submitted within 20 years of the approval of the Master Plan (2027), the Planning Commission may review and re-evaluate the Master Plan.

Construction of additional facilities permitted under the Master Plan would not require additional land use review. However, the proposed architectural designs of the facilities and any site-specific landscape plans would require approval of the Design Review Board. In addition, the State Historic Preservation Officer (SHPO) has recognized the campus as a State Historic Landmark. For the sake of this discussion, this means that the campus is considered a historical resource under CEQA and any exterior changes to the campus or its historic buildings would need to be considered through this criterion. Interior changes to buildings would not be impacted by this status.

ANALYSIS

Conditional Use Permit Application

In January 2015, the applicant submitted an application requesting the following modifications to the existing use permit:

	Existing, Approved Use Permit	Proposed Modifications
Primary hours of operation (school hours)	8:00 AM to 3:00 PM	8:00 AM to 3:30 PM
Maximum enrollment permitted during regular school year	347 students	630 students
Maximum enrollment permitted during summer session	175 students	315 students
Grade levels permitted	K-8	7-12

The proposed project does not include construction of any new facilities or any physical modifications to the existing campus. As discussed, the master plan for the site which was adopted in 2007, allows for the construction of certain facilities on the site, however, no new facilities are proposed at this time.

The applicant currently operates 7-8 grades at the site, within the current use permit, and plans to add grades 9-12 with one grade level being added each year until the school contains grades 7-12. After a period of four years, enrollment would reach approximately 600 students.

California Environmental Quality Act Review

Upon review of the submitted application, staff determined that the proposed project was subject to review under the California Environmental Quality Act (CEQA) because it satisfied the definition of a 'project' pursuant to the Act and was not otherwise exempt from review. On September 15, 2015, the City Council authorized staff to enter into a contract with Lamphier-Gregory for the preparation of the required environmental review documents. Pursuant to CEQA, an Initial Study (IS) was prepared for the project. The IS relied on the analysis completed as part of the Mitigated Negative Declaration (MND) that was adopted for the Windrush School Master Plan in May 2007. Subsequent CEQA documents may rely on the analysis from previously adopted CEQA documents when the conditions have not changed and the analysis remains valid. In the case of this project, since no new construction is proposed, much of the baseline analysis in the prior MND remains valid. For each required topic area included in the IS, a determination was made whether the proposed project was consistent with the analysis in the MND or whether additional study was required. The IS concluded that the project was consistent with the prior MND in all topic areas with the exception of Noise, and Transportation and Circulation. The IS concluded that pursuant to Section 15162 of the CEQA Guidelines, a Subsequent Environmental Impact Report (SEIR) would be prepared to further study these topic areas.

A Notice of Preparation (NOP) of a SEIR was issued on November 23, 2015. The NOP initiated the required 30-day comment period for the scope of the SEIR. A meeting was held on December 2, 2015 at City Hall to receive public input regarding the scope of the SEIR. The meeting was attended by approximately five members of the public. Comments received at the meeting were generally concerns regarding traffic that might be generated by the project as well as existing traffic concerns. One comment letter was received pursuant to the comment period in the NOP. This letter is included in Attachment A to the Draft SEIR.

The Draft Subsequent Environmental Impact Report (DSEIR) was released on March 16, 2016. A Notice of Availability of the DSEIR was posted at the Contra Costa County Clerk's office as required by the CEQA Guidelines and the notice was mailed to all property owners within 300 feet of the project site, exceeding the noticing requirement in the CEQA Guidelines which require only one of the following: publication of a notice in a local newspaper, posting a notice on the site and in the area around the site, or mailing a notice to the owners of contiguous properties. The SEIR was also sent to the State Clearinghouse for routing to State agencies. The 45-day comment period ended on April 29th. During the comment period on April 20, 2016, the Planning Commission held a public meeting and received public comment on the project and the DSEIR.

To facilitate discussion, staff has outlined the topics below that were identified in the Initial Study and Draft SEIR as potential impacts.

Noise

The El Cerrito General Plan establishes noise and land use compatibility standards for various land uses. Residential uses are considered “normally acceptable” (i.e. allowed without a Conditional Use Permit) when exterior noise levels are 60dBA L_{dn} or less. The El Cerrito Zoning Ordinance also implements the noise-related noise standards through Section 19.21.050.

As part of the SEIR analysis, noise monitoring was conducted at the school site between September 30 and October 2, 2015 while school was in session. Noise measurements were taken at key property lines and throughout the site. Due to proximity to the site’s outdoor playfield, the homes on Manor Circle adjacent to the site have the greatest potential to experience noise impacts. The noise analysis concluded that existing noise levels as well as noise levels expected if the project is implemented would be within the standards established in the General Plan in the rear yards of adjacent homes and therefore the project’s noise impact would be less-than-significant and no mitigation is required by the project. The complete discussion of noise issues can be found in Chapter 4 of the Draft SEIR.

Transportation and Circulation

As part of the SEIR process, the applicant submitted a traffic study and several addenda to the study. The City’s consultant peer reviewed the traffic study and issued a review memorandum. The traffic study, addenda, and review memo are included as Attachment B to the DSEIR. El Cerrito Public Work’s staff worked with the applicant to include bicycle and pedestrian improvements along Hill Street and at the Hill Street/Elm Street/Key Boulevard intersection the staff felt should be included in the project to address the increased number of pedestrians and bicyclists that would access the site with the increased student population proposed by the project. These improvements are shown in *Figure 3.3* in *Chapter 3* of the Draft SEIR and Final SEIR. The improvements include a bike lane on Hill Street and a dedicated left turn lane for bicyclists from northbound Elm Street onto northbound Key Boulevard. The improvements would also include a new crosswalk across Elm Street at the northern side of Key Boulevard and a dedicated pedestrian signal phase when this crossing is activated. The improvements would require removal of approximately 4 spaces of on-street parking on the west side of Elm Street, south of Hill Street. No homes face Elm Street in this location. The intersection mitigation improvements also include improvements to signal timing and phasing. The physical improvements proposed are also included in the City’s Active Transportation Plan (ATP), which was adopted by the City Council earlier this year. The Hill/Elm/Key intersection lies on a major north-south bike route identified in the ATP that includes new bike facilities as well as pedestrian safety improvements in this area.

The traffic data collection was conducted during AM and PM peak hours when school was in session. The traffic analysis studied five intersections in the proximity of the project and documented the existing traffic conditions at these intersections. The analysis then modeled two scenarios which account for the traffic projected as part of the project. Traffic was analyzed using accepted traffic modeling methods. The first scenario includes existing traffic plus traffic projected for the project. The second scenario includes existing traffic, traffic projected for the project, and the cumulative traffic projected for other future development. Pursuant to CEQA, the SEIR must take into account the cumulative impact of reasonably foreseeable future projects (e.g. pending development applications, approved projects, adopted plans, etc.) The traffic analysis identified three potentially significant traffic impacts of the project.

The traffic analysis found that with the exception of one intersection, the project would not degrade intersection operation at the study intersections under the 'existing+project' scenario. The one exception is at Key Boulevard and Cutting Boulevard where the study found that the intersection would degrade from Level of Service (LOS) C to LOS E. Therefore, the SEIR identified measures that would mitigate this impact. In short, the required mitigation involves adding a left turn lane from northbound Key onto westbound Cutting. The intersection improvements are included as *Mitigation Measure Traffic-2*.

The study also found that under the 'existing+project+cumulative' scenario, all study intersections would remain at an acceptable LOS with the exception of San Pablo Avenue/Hill Street/Eastshore Boulevard. At this intersection, the analysis determined that the project would contribute an additional 8 seconds of delay, creating a significant traffic impact at this intersection. As a mitigation of this impact, the SEIR requires that the applicant contribute a fair-share percentage of funds toward the intersection improvements identified in the San Pablo Avenue Specific Plan (*Mitigation Measure Traffic-4*). The intersection improvements are included in the portion of the San Pablo Avenue Capital Improvement Program included as Attachment 13.

The traffic analysis also identified one additional potentially significant impact. The analysis found that vehicle queuing could exceed available capacity after school during the PM peak period. This could cause a traffic impact if vehicles obstruct travel lanes. As a mitigation of this impact, the SEIR requires the school operator to monitor vehicle queues and implement measures to abate vehicle queues which interfere with roadway traffic (*Mitigation Measure Traffic-5*). Abatement measures could include encouraging students to utilize transportation other than automobiles or offering after-school activities which distribute the times that students leave campus.

Alternatives

CEQA requires that alternatives to the project be evaluated in addition to the proposed project. In evaluating alternatives, staff first evaluated the 'no project' alternative as required by CEQA (labelled "Alternative A" in the DSEIR). For this project, the 'no project' alternative involves the operation of a school up to the enrollment permitted under the existing Use Permit approval (347 students). Under this alternative, queueing

impacts are avoided, but traffic impacts to San Pablo/Hill/Eastshore would still exist. The project would also contribute to the cumulative impact at Key/Cutting under Alternative A. Because this alternative would not require any additional approval from the City, there would be no mechanism to require mitigation toward these impacts and the impacts would remain unmitigated. It was determined that an enrollment scenario that avoided all traffic impacts would be a lower enrollment than what is allowed under the existing use permit. Since the school currently has the right to operate at a maximum of 347 students under the approved use permit, this alternative was not considered for further analysis.

Secondly, staff evaluated an alternative that would avoid impacts to the intersection of Key and Cutting (labelled "Alternative B" in the DSEIR). It was determined that a reduced enrollment would eliminate these traffic impacts. Alternative B in the SEIR evaluates a scenario with 85% of the enrollment of the proposed project. At 85% of the proposed enrollment, the project would avoid impacts to the Key/Cutting intersection under the 'existing+project' scenario. However, the intersection would still experience impacts under the 'existing+project+cumulative' scenario. Therefore, under Alternative B, pursuant to CEQA, the City could require that the project make a fair share contribution toward these improvements, but could not require that the project fund all improvements at the intersection. In addition, under Alternative B, an impact would still exist at the San Pablo/Hill/Eastshore intersection under the 'cumulative+project' scenario, but reduced trips from Alternative B would reduce the fair-share contribution required toward improvements at this intersection. Additionally, Alternative B would eliminate potential queueing impacts and therefore eliminate the need for *Mitigation Measure Traffic-5*. However, due to the decreased enrollment, Alternative B would not satisfy the project objectives identified by the applicant. They have stated that the lower student population is not feasible for them and their established education process, (e.g. student/teacher ratios and the system they implement at their other campuses). Staff relied on the applicant's statement that this alternative is unreasonable and moved forward with the project as proposed.

Public Comments on Draft SEIR

As stated, the Draft SEIR was released on March 16, 2016 and pursuant to CEQA, the 45-day public comment period ended on April 29, 2016. During the comment period, 11 written comments were received. In addition to these written comments, many oral comments were received at the April 20, 2016 Planning Commission meeting. All written comments that were received were included in the Final SEIR. Some written comments were related to aspects of the project that are not environmental concerns pursuant to CEQA. However, the comments were nonetheless included in the Final SEIR for the Planning Commission's and City Council's consideration as part of review of the project. The oral comments received at the April 20, 2016 meeting were summarized in the Final SEIR and all oral comments that related directly to the environmental analysis in the EIR were transcribed.

As required by CEQA, all public comments were responded to in the Final SEIR. The comments and responses can be found in Chapter 10 of the Final SEIR. It is worth noting that parking was a common topic among the comments received. Parking is not considered an environmental impact that is subject to review under CEQA. Therefore, the responses in the Final EIR do not respond directly to parking concerns. However, staff has provided additional discussion of parking concerns below.

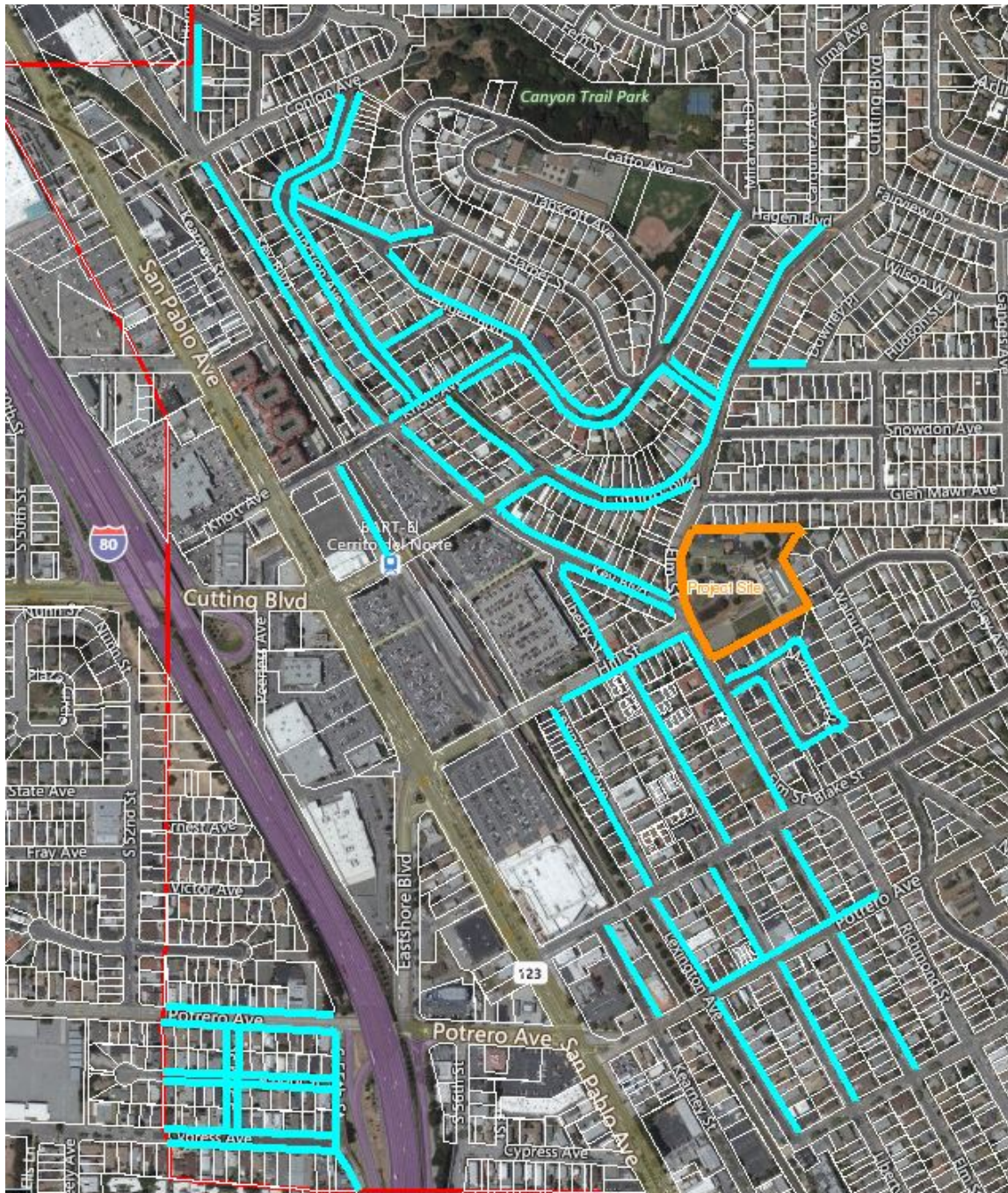
Final SEIR Modifications

In response to comments received on the Draft SEIR, *Mitigation Measure Traffic-5* was revised. The purpose of the revision was to formalize the monitoring of queueing on the site to clearly identify operational changes that can be implemented to mitigate documented interference with travel lanes on adjacent streets, and to clearly include Manor Circle as an area that will receive ongoing monitoring. All revisions to the Draft SEIR can be found in Chapter 9 of the Final SEIR.

Parking

Summit K2 will be a closed campus and students will not be allowed to leave the campus without permission during the normal school day. Therefore, students and staff parking in restricted 4-hour areas on public streets would be subject to citation, and 4-hour zones would therefore not be utilized by the campus population. Additionally, the applicant claims that due to the lower number of staff for Summit K2, (as compared to the previous school operator, Windrush) that parking for all students who drive to the campus can be accommodated on the site. The Planning Commission adopted a Condition of Approval that requires the applicant to implement parking stickers for staff and students. This would allow vehicles that were parked off-site to be easily identified.

El Cerrito has two residential parking permit zones surrounding the City's two BART stations. In general, these permit zones restrict parking on one side of the street to a maximum of four hours. Cars with residential permits are exempt from the restrictions. Generally, the opposite side of the street has unrestricted parking. The map below shows the restricted parking areas near the project site. Because parking concerns on Manor Circle were voiced repeatedly during public testimony received by the Planning Commission, staff asked the applicant to survey parking utilization on Manor Circle on days when school was in session. The applicant's transportation consultant developed a methodology for surveying existing parking utilization and school staff surveyed parking during the morning and afternoon on school days. The parking survey is included as Attachment 7 to this report.



4-Hour Parking Zones

Parking was surveyed at 7:30 a.m. and 9:00 a.m. for a 5-day period and at 3:30 p.m. for a 3-day period. Due to the location of curb-cuts, 31 parking spaces were identified on the unrestricted (inner) side of Manor Circle, while 27 parking spaces were identified on the restricted (outer) side. In general, parking utilization on the unrestricted side of Manor Circle was under 50% at most morning survey times, with slightly higher utilization at 9:00 a.m. Although the sample size for the afternoon survey was much smaller, the study found a maximum parking utilization of 65% on the unrestricted side

and an average utilization of 58%. On the restricted (inner) side of the street, the study found an average morning parking utilization of approximately 20%, with slightly higher utilization at 9:00 a.m. Average parking utilization at 3:30 p.m. on the restricted side of the street was approximately 15%.

In 2001, the City Council adopted a petition process through which residents can have parking restrictions implemented on streets near the BART stations where restrictions do not currently exist. The City has standard forms for the petition process and if 60% of the households on a block support additional restrictions, the Public Works Department will implement new restrictions without further City Council approval needed.

In response to concerns from Manor Circle residents, the Planning Commission adopted a Condition of Approval that will require the applicant to initiate the petition process on any streets where City staff receives repeated verified complaints of school parking. The process will still require 60% approval of households on any one block and will not create a special process or grant any special privileges to residents on that block. The condition would require that the applicant contact households on the block. Residents would still be free to express support or opposition for the petition and restrictions would only be implemented with 60% support.

Other Traffic Concerns

At their April 20, 2016 meeting, the Planning Commission requested additional information regarding the existing queues at the Hill/Elm/Key intersection. The applicant's transportation consultant provided additional information regarding queueing at the Elm Street intersection. The consultant stated in an email to staff, "the project would modify the traffic signal timing at the Elm/Key/Hill intersection, and the northbound Elm Street approach would receive more green time per signal cycle during peak hours than it receives today. More green time for northbound drivers would result in shorter northbound vehicle queues as compared to queueing with the current signal timing because more people would be able to drive through this intersection during one signal cycle than are able with the current timing."

Although the City cannot require the proposed project to mitigate existing conditions under CEQA, the project would improve queueing conditions on Elm Street, consistent with CEQA.

Also in response to a Planning Commission request, the applicant provided survey data of mode share for trips to the Summit K2 campus as well as other Bay Area Summit campuses in an email to staff on June 1, 2016. This email is included as Attachment 8.

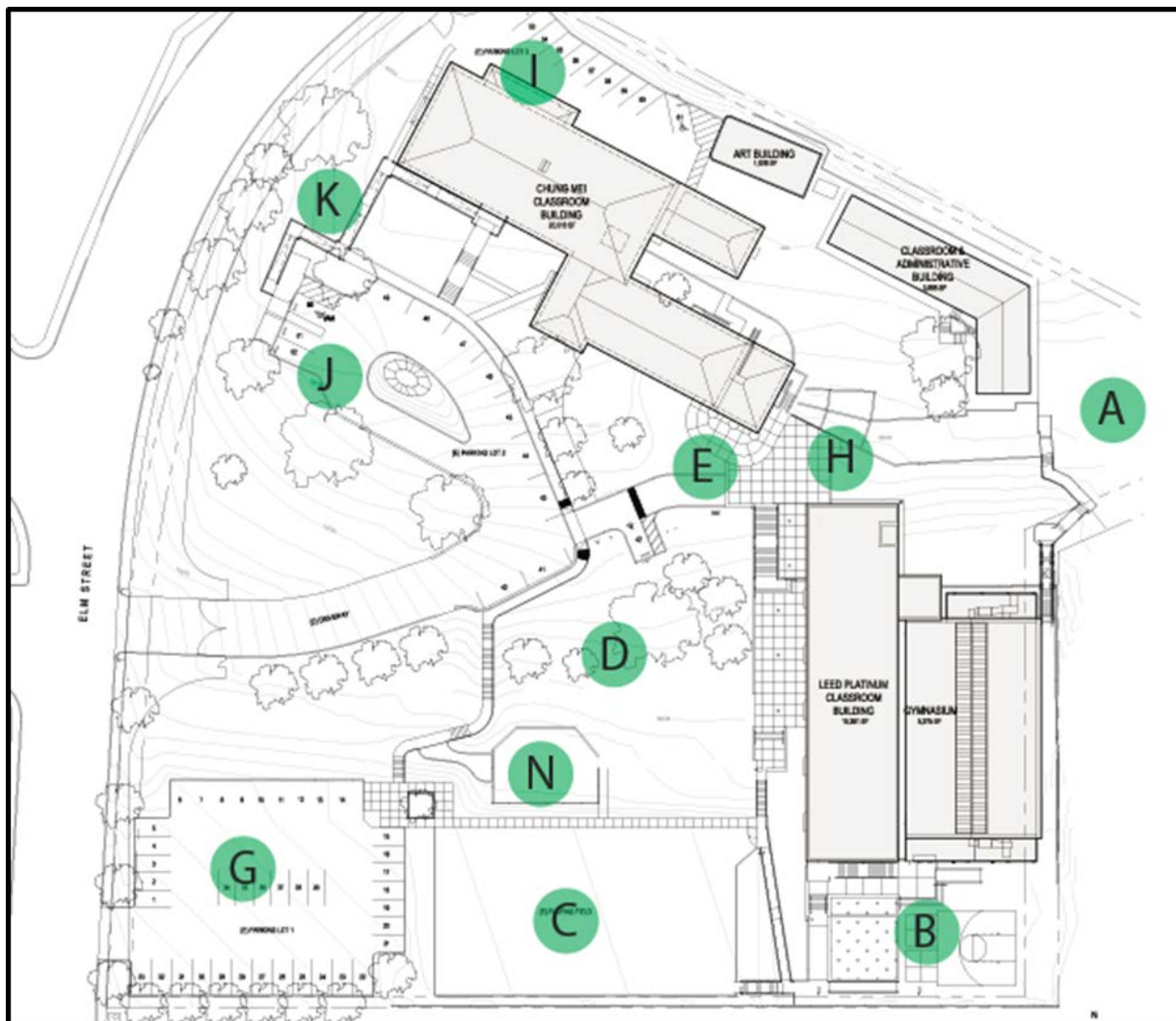
Campus Security and Policing Needs

Planning staff worked extensively with the Police Department throughout the processing of this Use Permit application. In response to site security needs, the Police Department requested that the school's site specific security plan be reviewed by the

Police Department on an annual basis, and that the school administration meet with the Police Department on a quarterly basis to review the security and policing needs of the school. These requirements are included in the Conditions of Approval the draft resolution.

Active Existing Conditions of Approval

The following is a list of conditions of approval from past entitlements for the site that are currently active. This list does not include conditions of approval which have been fulfilled and do not require ongoing monitoring. This list is incorporated into the conditions of approval in the draft resolution. The figure below illustrates the various areas of the campus that are referenced in the conditions.



Resolution CC89-28:

13. All school-related activities in Area A, B and C, except for work parties, and as limited by other conditions of this approval, shall begin no earlier than 9:30

Agenda Item No. 6(B)

A.M. and end no later than 4:30 P.M., Monday through Friday, and shall be supervised by adults at all times.

16. In Area B, a maximum of 2 hours and 30 minutes of scheduled, active, nondirected play shall be permitted each day, prior to 4:30 P.M., Monday through Friday.

16. In Areas A and C, a maximum of 2 hours and 30 minutes of scheduled, active, nondirected play shall be permitted each day, prior to 3:30 P.M., Monday through Friday.

9. Work parties in Areas A, B and C on weekends shall not exceed twelve (12) days per year shall not commence before 8:30 A.M., and shall generally be limited to daylight hours. Children shall be supervised in interior areas.

25. It shall be the responsibility of the primary user to maintain nighttime lighting of Area A during all hours of darkness.

26. In Areas A, B and C, on weekends throughout the regular school year, there shall be no more than three (3) special, outdoor activities, such as fairs, of no more than one day in duration. No less than 30 days prior to any such event, residents adjoining the site shall be so notified by the primary user.

21. Areas D, E, & N shall be used for general directed or nondirected play, with no limitation on the play structures permitted, beginning no earlier than 8:00 A.M. and ending no later than 6:00 P.M.

Resolution CC89-28 as amended by Resolution PC98-16:

5. All school-related activities in Areas B and C, and as limited by other conditions of this approval, shall begin no earlier than 8:30 A.M. and end no later than 4:30 P.M. in area B and no later than 5:30 in Area C, Monday through Friday, and shall be supervised by adults at all times. Use of Area B may continue to 4:45 to allow for cleanup and exiting the area.

18. All Inter- or intramural competition or community use shall occur between the hours of 8:30 A.M. and 9:00 P.M., and be confined to the interior of the gymnasium building, with the exception of reasonable pedestrian traffic, related to the activities, quietly going to and between buildings and parking areas.

17. Area C may be used for organized sports practice by the school for no more than one hour per day between 3:30 P.M. and 5:30 P.M., Monday through Friday.

Resolution PC98-16:

17. (*Mitigation Measure T-2*) Prior to removal of the existing inner parking lot, the Applicant shall file with the Planning Division a plan for management of overflow parking for all events where attendance would exceed the combined capacity of planned on-site parking 57 to 60 spaces) and the Elm Street frontage abutting school property (approximately 10 spaces). Such plan shall demonstrate how the school will use shuttle services, remote parking such as the street perimeter of the BART station, valet parking, or other techniques to avoid overflow on to neighborhood residential streets. School shall notify the Planning Division at least 2 weeks in advance of such events.

Method of implementation and compliance schedule: The City Planner shall be responsible for reviewing the submitted plan and determining its compliance with the condition of the use permit. Approval of the overflow parking plan shall be required before the City Planner will approve the project for grading and other permits required for removal of the existing parking lot. The permittee shall be responsible for notifying the Planning Division in advance of events which are subject to the overflow plan. The City Planner shall be responsible for requiring compliance, and for receiving any reports of violations of the relevant use permit conditions.

Enforcement: Compliance with the requirement to submit the plan will be monitored through the plan review process and approvals will be withheld if necessary. On-going compliance with the approved plan will be determined through review of the permittee's performance in events covered by the plan. Failure to notify the Planning Division in advance of events involving parking overflow may be grounds for review and possible revocation of the use permit.

Resolution PC07-08:

Planning Division:

4. Prior to the submittal of building permits, the applicant shall obtain Design Review Board approval for each phase of the project.

Planning Commission:

1. Enrollment during the regular school year shall not exceed 347 students with combined enrollment between elementary and middle school programs.

2. Enrollment during the summer session shall be limited to no more than 175 students total, and summer operation shall conform to all of the conditions for the regular school year, except enrollment.

3. Construction of a maximum of 23,000 square feet of additional floor space is authorized for purposes including classrooms, library, performance space and offices. If, within 20 years of the date of this resolution, plans for such

Agenda Item No. 6(B)

construction have not been filed for building permit approval, the use permit shall be subject to review and re-evaluation by the Planning Commission.

4. At the time of the final submittal of plans for the Master Plan update, including driveways, parking area, and landscaped areas, the applicant shall submit a plan for the entire site which shows compliance for handicap accessibility from all points of arrival to the existing and proposed buildings. Accessibility is required to be available without driving from one parking lot entrance to another by the end of phase four.

5. A total of 61 parking spaces shall be provided on the entire campus to accommodate staff members and the school's other parking needs.

6. No element of new construction shall exceed the height limitations of 30 feet plus 5 as set forth in the El Cerrito Municipal Code. The massing of additions or new buildings will be designed in relation to the height and scale of adjacent buildings.

7. The applicant shall evaluate the second-story additions of all phases of the project to determine how privacy on the neighboring homes would be impacted and utilize privacy glass or other materials that preserve neighbors' privacy but also preserve interior light in the design as often as possible.

10. If three formal complaints from three separate parties are submitted to the school over a 120-day period in regard to noise impacts, a new noise evaluation shall be conducted and new mitigation measures shall be investigated.

Resolution PC15-04:

2. The use of this site, subject to these conditions, shall be throughout the year, which shall be divided into a regular school year, generally mid-August through June, and a summer session, generally from June to mid-August.

3. No middle school class shall start earlier than 8:00 a.m. All middle school classes may begin at the same time.

4. If the City of El Cerrito Community Development Department receives three verified complaints in a year that vehicles associated with the campus located at 1800 Elm Street are dropping-off persons along Hill Street or Elm Street during morning peak traffic hours (7:15-8:15am), staff will review the complaints with the administration and address the violations by making appropriate changes such as designated parking areas to stop the behavior.

2007 IS/MND:

The following text is from the project description in the *2007 IS/MND*. Staff considers these items integral to the *2007 Master Plan* for the site and as the basis for the

analysis in the IS/MND. These items are formalized in the conditions of approval in the draft resolution.

Employment would increase from 33 full-time and 17 part-time employees to 38 full-time and 17 part-time employees (an increase from 41 FTE employees to 49 FTE employees).

After implementation of the Master Plan, bicycle parking would be increased from 11 spaces to 19 spaces.

In addition, Windrush School occasionally holds evening or weekend events. These events occur several times a year.

Public Process

As discussed, the project required preparation of a Subsequent Environmental Impact Report. The public process for the SEIR is discussed above. When the Planning Commission received public comment on the Draft SEIR at their April 20, 2016 meeting, the Commission requested an additional study session on the project to review the draft Conditions of Approval prior to the Commission's consideration of the project. The Commission also gave staff and the applicant a series of comments to address prior to the study session. The study session was held on June 8, 2016. At this meeting, staff presented responses to the Commission's comments. The Commission received public comment and discussed the project. The Commission requested a series of minor amendments to the Conditions of Approval. The project returned to the Commission on June 15, 2016 for consideration of the amendments to the Conditional Use Permit. The Commission certified the Final SEIR and approved the project. The resolutions of the Planning Commission's actions are included as Attachments 14 and 15.

Appeal

On June 24, 2016, Steve Haines, Joanna Klaseen Pace and Franklin Leong submitted an appeal of the Planning Commission's approval of the amendments to the conditional use permit for the school. (Attachment 16)

In the letter of appeal, the appellants state their reason for appealing the action as "lack of information regarding the need for the increase in enrollment and many other legitimate concerns which have not been adequately addressed."

Scope of Appeal

Pursuant to Section 19.39.040.D, appeals of the Planning Commission are considered by the City Council. Pursuant to Section 19.39.040.F, the City Council may: 1) Conduct a public hearing; or 2) Remand the matter back to the Planning Commission to cure a deficiency in the record or the proceedings. In conducting a public hearing on the appeal, the City Council must use the same standards of review required for the original decision (Section 19.39.050).

In addition, appeals are “de novo” which means the City Council may consider new evidence not presented during the original public hearing and may make findings different from those made by the Planning Commission. The standard for review of these appeals is whether the City Council can make the findings required for in Chapter 19.39.050 of the El Cerrito Municipal Code governs appeals of Planning Commission decisions. It states:

When reviewing any decision on appeal, the hearing body shall use the same standards for decision-making required for the original decision. The hearing body may adopt the same decision and findings as were originally approved or different ones.

If the Council finds that it agrees with the Planning Commission’s findings or that it can make alternate findings of approval, then the Council should deny the appeal and uphold the Planning Commission’s decision to approve the project. If however, the Council determines it cannot make the findings, then it should grant the appeal and overturn the decision of the Planning Commission on this project. It is the opinion of staff that the Planning Commission’s findings are supported by the facts, evidence and testimony in the project record. As discussed below, the limited justification submitted for the appeal does not support different findings.

Increase in Enrollment

The proposal submitted by the applicant proposed a maximum enrollment of 630 students. In the project description submitted by the applicant, the applicant states:

Summit originally planned to operate a larger middle and high school program in West Contra Costa County. They have now reduced the overall size of the program as originally presented to the community for 667 students in order to create the best learning environment and results for the population they serve...The proposed small school will help to create a tight-knit student community committed to personal responsibility. This will allow Summit to operate a small manageable school that will fit well in and be respectful of the neighborhood.

This enrollment number was analyzed in the SEIR. Preparation of the SEIR under CEQA is the state-mandated means for analyzing potential environmental effects of a project and for providing the public with information regarding potential impacts and any proposed mitigation measures to reduce potentially significant effects to a less than significant level. To the extent that environmental effects of the project are included in the appellant’s concerns about “other legitimate concerns which have not been adequately addressed,” staff believes that the SEIR adequately analyzes the potential impacts and has disclosed that information to the public in legally sufficient detail. Therefore, the record supports the Planning Commission’s decision, and staff recommends that the Council uphold that decision.

The SEIR identified potential impacts only with regard to transportation and circulation (traffic). Through the mitigations included in the SEIR and required by the Conditions of Approval, all potential traffic impacts will be mitigated to a less-than-significant level. With the included mitigations in place, the project will not pose significant environmental impacts at the maximum enrollment of 630 students.

As discussed previously, alternatives to the project that included different enrollment levels were analyzed in the SEIR. The applicant has stated that the lower enrollment level analyzed does not meet the applicant's objectives for the project.

The City Council may consider the maximum enrollment of the school as it related to the land use and the potential impacts of the land use. The demand for additional educational resources in El Cerrito is not related to the operational aspects of the proposed land use and is not within the City Council's purview in reviewing the application.

Other Concerns

The appellants have not provided specific information regarding the "other legitimate concerns which have not been adequately addressed." This report has discussed, in detail, the analysis which has been completed for the project. At their April 20, 2016 meeting, the Planning Commission requested additional information in several areas. Staff was able to respond to all of these requests to the Commission's satisfaction at the Commission's June 8 special meeting. The facts, evidence and testimony in the project record support's the findings of approval discussed below. Given the lack of new information submitted as part of the appeal, staff finds no justification to alter the findings made by the Planning Commission, and therefore, no justification for granting the appeal.

Findings

Pursuant to Section 19.36.030 of the El Cerrito Municipal Code, the following findings must be made in order to deny the appeal and approve the Conditional Use Permit application:

- 1. The location, size, design, and operating characteristics of the proposed development will be harmonious and compatible with and will not adversely affect the livability or appropriate development of abutting properties and the surrounding neighborhood.*

The project site has been operated as various institutional uses, including--most recently--schools, since 1935. With the existing and propose conditions of approval, including the SEIR's mitigation measures, this project location is appropriate for the continuation of a school use. A Subsequent Environmental Impact Report has been prepared for the project and all environmental impacts will be mitigated to a less-than-significant level with inclusion of the identified mitigation measures. These measures are included as conditions of approval for the project.

The conditions of approval for the project prohibit student and staff parking and pick-up and drop-off on adjacent streets. The conditions establish compliant procedures and subsequent actions related to parking, noise and general concerns. These procedures will limit impacts to surrounding properties so that the project does not negatively impact their livability.

- 2. The location and design of the proposal will provide a convenient and functional living, working, shopping, or civic environment that will be an attractive amenity for the City.*

The project will provide an additional educational opportunity for the El Cerrito community. The location of the project is in close proximity to a major transit hub. In addition, the project will provide bicycle and pedestrian improvements to adjacent streets, improving the bicycle and pedestrian linkages between the school and the El Cerrito del Norte BART station, enhancing the convenience of the civic environment. The proposed conditions of approval, including the SEIR's mitigation measures, will ensure compatibility between the project and surroundings and that the project is an attractive amenity for the City.

- 3. The proposal is consistent with the purposes of the district where it is located and conforms in all significant respects with the El Cerrito General Plan and with any other applicable plan adopted by the City Council.*

With the proposed conditions of approval, including the SEIR's mitigation measures, the project is consistent with the intent of the PS (Public/Semi-Public) zoning district. The project will implement the following General Plan policies: LU4.1 Mixture of Uses, LU4.4 Amenities, LU4.6 Crime Prevention, LU5.5 Pedestrians, Bicycles, and Access, LU6.2 Circulation Alternatives, CD2.4 Multi-Modal Transportation Network, CD2.4 Multi-Modal Transportation Network, T1.1 Balanced Transportation System, T1.3 Bicycle Circulation, T1.4 Pedestrian Circulation, and PS3.2 Fair-Share Cost Allocations. The project will also implement bicycle and pedestrian improvements identified in the Active Transportation Plan.

STRATEGIC PLAN CONSIDERATIONS

The project would further Goal C: Deepen a Sense of Place and Community Identity of the El Cerrito Strategic Plan. The Strategic Plan identified the following strategies for implementing Goal C: • Be a strong partner with the schools, and • Celebrate the City's diversity by welcoming residents of all ages and cultures and encouraging their civic involvement.

ENVIRONMENTAL CONSIDERATIONS

As discussed at length above, a Subsequent Environmental Impact Report was prepared for the project and was adopted by the Planning Commission. The SEIR was not appealed and therefore is remains certified.

FINANCIAL CONSIDERATIONS

As required by the conditions of approval, the project applicant will be responsible for financing the improvements that are included as part of the project and required by the Subsequent Environmental Impact Report. The project will not require the use of General Fund expenditures.

LEGAL CONSIDERATIONS

The City Attorney has reviewed and commented on the application and on this report.

Reviewed by:



Scott Hanin
City Manager

Attachments:

1. Draft Resolution
2. Land Use History of 1800 Elm Street
3. Draft Subsequent Environmental Impact Report
4. Final Subsequent Environmental Impact Report
5. Mitigation Monitoring and Reporting Program
6. Figure 4 of 2007 IS/MND, showing phasing of Master Plan
7. Manor Circle Parking Assessment, dated June 2, 2016
8. Email from Doug Giffin, dated June 1, 2016, regarding mode share of Summit K2 students and students at other Summit campuses
9. Excerpt of the San Pablo Avenue Capital Improvement Program, showing planned improvements for San Pablo Ave/Hill St/Eastshore Blvd intersection
10. Planning Commission Resolution PC16-07
11. Planning Commission Resolution PC16-08
12. Letter of appeal, dated June 24, 2016

RESOLUTION NO. 2016-XX

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EL CERRITO DENYING AN APPEAL OF THE PLANNING COMMISSION'S APPROVAL OF APPLICATION PL15-0006 AND APPROVING A CONDITIONAL USE PERMIT TO ALLOW OPERATION OF A SCHOOL WITH GRADES 7 THROUGH 12 FOR A MAXIMUM OF 630 STUDENTS DURING THE REGULAR SCHOOL YEAR AND A MAXIMUM OF 315 STUDENTS DURING THE SUMMER SESSION AT 1800 ELM STREET

WHEREAS, on January 20, 1988, the Planning Commission approved use permit resolution PC88-05 for Windrush School to operate a K-8 school with a maximum enrollment of 250 students; and

WHEREAS, on April 3, 1989, after a series of approvals and appeals, the City Council approved City Council Resolution 89-28 that upheld use permit resolution PC88-05; and

WHEREAS, on November 18, 1998, the Planning Commission adopted Resolution PC98-16, approving an amendment to the original use permit and adopting the related Negative Declaration; and

WHEREAS, on May 16, 2007, the Planning Commission adopted Resolution PC07-08 approving changes to the existing Master Plan allowing four phases of improvements over a 20-year period and adopting the related Mitigated Negative Declaration; and

WHEREAS, on May 16, 2007, the Planning Commission adopted Resolution PC07-08 approving changes to the existing Master Plan allowing four phases of improvements over a 20-year period and adopting the related Mitigated Negative Declaration; and

WHEREAS, on January 28, 2014, the Planning Commission passed a motion finding that the applicant had submitted sufficient information to determine that the operation of Summit K2 Charter School on the site would be consistent with the use permit for Windrush School; and

WHEREAS, on April 15, 2015, the Planning Commission adopted Resolution PC15-04, approving amendments to the existing use permit to align the regular school year to start concurrently with the public school year and to allow the middle school campus to have one start time; and

WHEREAS, on January 26, 2015, the applicant submitted an application requesting modifications of the existing conditional use permit; and

WHEREAS, on June 15, 2016, the Planning Commission adopted resolution PC16-07, certifying the Final Subsequent Environmental Impact Report and adopting the Mitigation Monitoring and Reporting Program for the project and adopted Resolution PC16-08 approving the amendments to the Conditional Use Permit; and

WHEREAS, on June 24, 2016, Steve Haines, Joanna Klaseen Pace and Franklin Leong submitted an appeal of the Planning Commission's approval of the project; and

WHEREAS, the subject property is located at 1800 Elm Street; and

WHEREAS, the Assessor's Parcel Number of the subject property is 502-122-041; and

WHEREAS, the zoning district of the site is PS (Public/Semi Public); and

WHEREAS, the general plan land use designation of the site is Institutional/Utility; and

WHEREAS, the application number of the project is PL15-0006; and

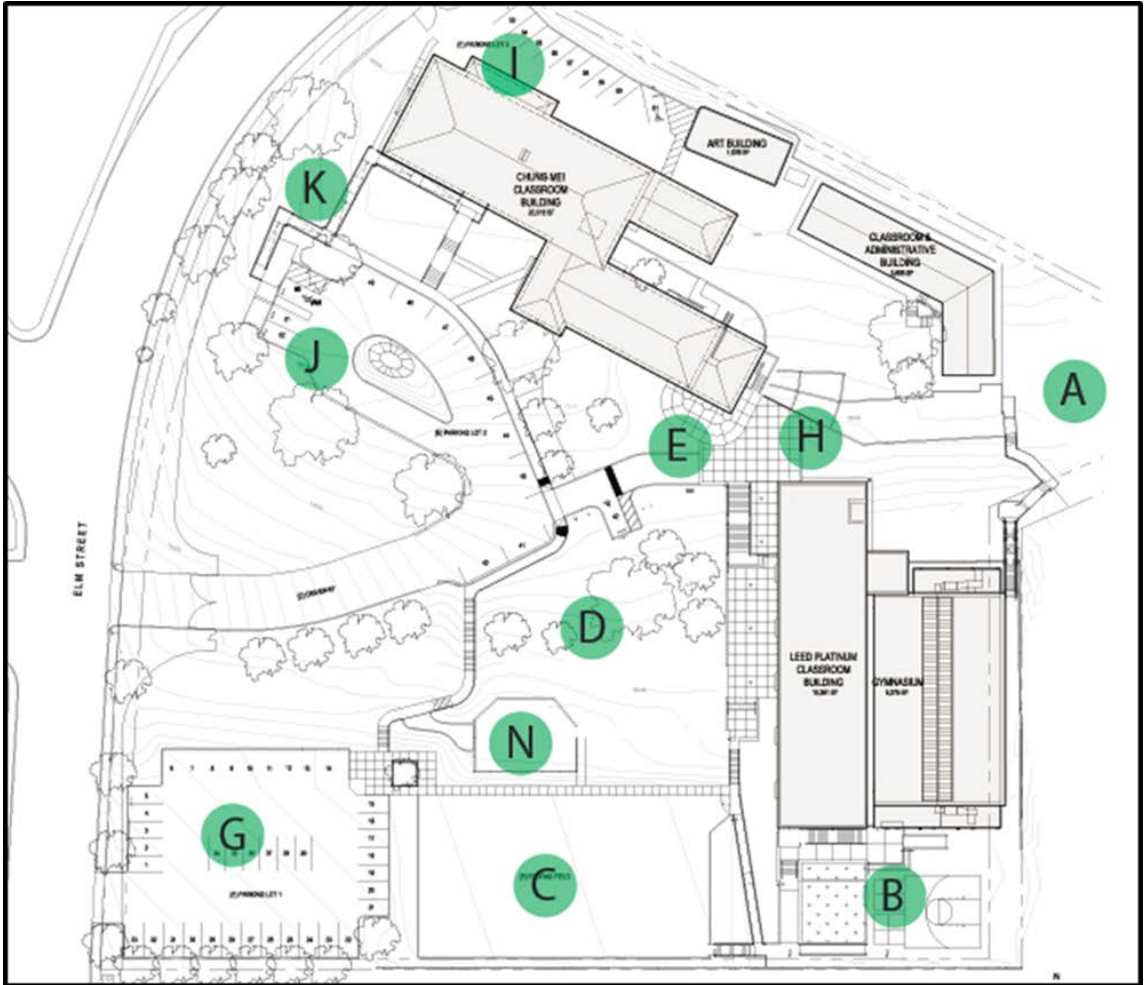
WHEREAS, a Subsequent Environmental Impact Report for the project has been prepared, circulated, noticed and certified in conformance with the California Environmental Quality Act; and

WHEREAS, on July 19, 2016, the City Council, after due consideration of all evidence and reports offered for review does find and determine the following:

1. The project site has been operated as various institutional uses, including—most recently—schools, since 1935. With the existing and proposed conditions of approval, including the SEIR's mitigation measures, this project location is appropriate for the continuation of a school use. A Subsequent Environmental Impact Report has been prepared for the project and all environmental impacts will be mitigated to a less-than-significant level with inclusion of the identified mitigation measures. These measures are included as conditions of approval for the project. The conditions of approval for the project prohibit student and staff parking and pick-up and drop-off on adjacent streets. The conditions establish complaint procedures and subsequent actions related to parking, noise and general concerns. These procedures will limit impacts to surrounding properties so that the project does not negatively impact their livability.
2. The project will provide an additional educational opportunity for the El Cerrito community. The location of the project is in close proximity to a major transit hub. In addition, the project will provide bicycle and pedestrian improvements to adjacent streets, improving the bicycle and pedestrian linkages between the school and the El Cerrito del Norte BART station, enhancing the convenience of the civic environment. The proposed conditions of approval, including the SEIR's mitigation measures, will ensure compatibility between the project and surroundings and that the project is an attractive amenity for the City.
3. With the proposed conditions of approval, including the SEIR's mitigation measures, the project is consistent with the intent of the PS (Public/Semi-Public) zoning district. The project will implement the following General Plan policies: LU4.1 Mixture of Uses, LU4.4 Amenities, LU4.6 Crime Prevention, LU5.5 Pedestrians, Bicycles, and Access, LU6.2 Circulation Alternatives, CD2.4 Multi-Modal Transportation Network, CD2.4 Multi-Modal Transportation Network, T1.1 Balanced Transportation System, T1.3 Bicycle Circulation, T1.4 Pedestrian Circulation, and PS3.2 Fair-Share Cost Allocations. The project will also implement bicycle and pedestrian improvements identified in the Active Transportation Plan.

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of El Cerrito that after careful consideration of maps, facts, exhibits, correspondence, and testimony, and other evidence submitted in this matter, and, in consideration of the findings, it hereby denies the appeal of the Planning Commission's approval of application PL15-0006 and approves the

Conditional Use Permit subject to the following conditions:



General Conditions

1. The campus shall be constructed substantially in conformance with the project description and site plan included in the Master Plan for the campus dated October 26, 2006, and contained in the project description of the Initial Study/Mitigated Negative Declaration, dated April 2007. Minor changes may be approved by the Zoning Administrator.
2. The campus shall be operated as described in the project description included in application PL15-0006 dated January 26, 2015, and project description of the associated SEIR, dated March 2016. Minor changes may be approved by the Zoning Administrator.
3. These Conditions of Approval shall apply to any successor in interest in the property and Applicant shall be responsible for assuring that the successor in interest is informed of the terms and conditions of this approval.

Agenda Item No. 6(B)

Attachment 1

4. This Conditional Use Permit and these Conditions of Approval supplant all prior Conditional Use Permits for this site (City Council Resolution 89-28, Planning Commission Resolution 98-16, Planning Commission Resolution 07-08, and Planning Commission Resolution 15-04.)
5. If not used, this Conditional Use Permit approval shall expire 2 years from the date of this action, unless extended by subsequent action of the City.
6. The Mitigation, Monitoring and Reporting Program approved as part of the 2007 Master Plan dated May 16, 2007 and the Mitigation, Monitoring and Reporting Program approved as part of the 2016 SEIR are incorporated by reference as Conditions of Approval.
7. Any future building construction shall meet current Building and California Fire Codes, and the El Cerrito Fire Code effective at the time of building permit submittal.
8. All music on the site shall only be projected indoors with windows and doors closed.
9. All site landscaping shall be maintained in good condition and in accordance with the 2007 Master Plan and any other approved landscape plans for the site.
10. To address neighborhood concerns, up to 5 additional trees may be added to screen the windows of adjacent residences. Further, the existing sound fence located along the southern property line of the site may be extended up to an additional 65 feet. The materials used in the fence extension should be harmonious and compatible with existing materials already on site.
11. Each year until school contains all grades from 7 through 12, the School Administrator shall provide the Zoning Administrator with the school's projected fall enrollment number by January 1 of each year and shall provide the Zoning Administrator with the final enrollment number each year as soon as it is available.

School Operation- Duration and Time Limits

12. The use of this site, subject to these conditions, shall be throughout the year, which shall be divided into a regular school year, generally mid-August through June, and a summer session, generally from June to mid-August.
13. Grade seven through grade twelve shall be permitted to operate on the school campus.
14. No school classes shall start earlier than 8:00 a.m.
15. Enrollment during the regular school year shall not exceed 630 students.
16. Enrollment during the summer session shall be limited to no more than 315 students total, and summer operation shall conform to all of the conditions for the regular school year, except enrollment.
17. The school shall implement a handbook which is distributed to all students, student guardians and school staff a minimum of once per academic year. The handbook shall state the following policies:

Agenda Item No. 6(B)

Attachment 1

- No student or staff parking is allowed on adjacent streets at any time. Public parking by those other than staff and students is permitted on the east side of Elm Street, adjacent to the school in compliance with posted parking restrictions.
- Pick-up and drop-off is not permitted on adjacent streets.
- Traffic rules must be obeyed.
- Parking, traffic, and behavior monitoring shall occur as needed in the neighborhood surrounding the school.
- Littering, trespassing and excessive noise are prohibited.
- Litter, trespassing, noise or any other rule violation monitoring shall occur as needed to prevent these issues.

The school shall implement consequences for non-compliance with the handbook

Outdoor Field Operation- Duration and Time Limits

18. All school-related activities in Area A, except for work parties, and as limited by other conditions of this approval, shall begin no earlier than 9:30 A.M. and end no later than 4:30 P.M., Monday through Friday, and shall be supervised by adults at all times.
19. In Areas B & C, a maximum of 2 hours and 30 minutes of scheduled, active, non-directed play shall be permitted each day, prior to 3:30 P.M., Monday through Friday.
20. Work parties in Areas A, B and C on weekends shall not exceed twelve (12) days per year shall not commence before 8:30 A.M., and shall generally be limited to daylight hours. Children shall be supervised in interior areas.
21. It shall be the responsibility of the School Administrator to maintain nighttime lighting of Area A.
22. Areas D, E, & N shall be used for general directed or non-directed play, with no limitation on the play structures permitted, beginning no earlier than 8:00 A.M. and ending no later than 6:00 P.M.
23. All school-related activities in Areas B and C, and as limited by other conditions of this approval, shall begin no earlier than 8:30 A.M. and end no later than 4:30 P.M. in area B and no later than 5:30 in Area C, Monday through Friday, and shall be supervised by adults at all times. Use of Area B may continue to 4:45 to allow for cleanup and exiting the area.

Gymnasium Operation- Duration and Time Limits

24. All inter- or intramural competition or community use shall occur between the hours of 8:30 A.M. and 9:00 P.M., and be confined to the interior of buildings, with the exception of reasonable pedestrian traffic, related to the activities, quietly going to and between buildings and parking areas.
25. Area C may be used for organized sports practice by the school for no more than two hour per day, ending at 5:30 P.M., Monday through Friday.

Special Events

26. In Areas A, B and C, on weekends throughout the regular school year, there shall be no more than three (3) special, outdoor activities, such as fairs, of no more than one day in duration. No less than 30 days prior to any such event, the Zoning Administrator and the Chief of Police and residents adjoining the site shall be so notified by the primary user of the school site by either email or U. S. Mail.
27. The Applicant shall file with the Zoning Administrator a plan for management of overflow parking for all events where attendance would exceed the combined capacity of planned on-site parking (61 spaces). Such plan shall demonstrate how the school will use shuttle services, remote parking such as the street perimeter of the BART station, valet parking, or other techniques to avoid overflow on to neighborhood residential streets. School shall notify the Zoning Administrator at least 2 weeks in advance of such events. The Zoning Administrator will distribute this information to the Police and Public Works Department in a timely manner.
- a) Method of implementation and compliance schedule: The Zoning Administrator shall be responsible for reviewing the submitted plan and determining its compliance with this condition of the use permit. The permittee shall be responsible for notifying the Zoning Administrator in advance of events which are subject to the overflow plan. The Zoning Administrator shall be responsible for requiring compliance, and for receiving any reports of violations of the relevant use permit conditions.
 - b) Enforcement: Compliance with the requirement to submit the plan will be monitored through the plan review process and approvals may be withheld, if necessary. On-going compliance with the approved plan will be determined through review of the permittee's performance in events covered by the plan.

2007 Master Plan

28. Prior to the submittal of building permits for any construction permitted by the 2007 Windrush School Master Plan, the applicant shall obtain Design Review Board approval for each phase of the project.
29. The Master Plan allows the construction of a maximum of 23,000 square feet of floor space for purposes including classrooms, library, performance space and offices. If, by May 16, 2027, plans for all phases of construction have not been filed for building permit approval, the use permit shall be subject to review and re-evaluation by the Planning Commission.
30. At the time of the final submittal of plans for the Master Plan update, including driveways, parking area, and landscaped areas, the applicant shall submit a plan for the entire site which shows compliance for handicap accessibility from all points of arrival to the existing and proposed buildings. Accessibility is required to be available without driving from one parking lot entrance to another by the end of phase four.
31. No element of new construction shall exceed the height limitations of 35 feet. The massing of additions or new buildings will be designed in relation to the height and scale of adjacent buildings.

32. The applicant shall evaluate the second-story additions of all phases of the project to determine how privacy on the neighboring homes would be impacted and utilize privacy glass or other materials that preserve neighbors' privacy but also preserve interior light in the design as often as possible.

Communication and Complaint Procedures

33. The school shall maintain an email distribution list (or other means of communication as deemed appropriate by the Zoning Administrator) of all neighbors who wish to receive communication from the school. The Zoning Administrator and Chief of Police shall be included on the distribution list.
34. If three formal complaints from three separate parties are submitted to the Zoning Administrator over a 120-day period in regard to noise impacts, a new noise evaluation shall be conducted and additional measures shall be investigated.
35. If the Zoning Administrator receives three verified complaints in a year that vehicles associated with the campus located at 1800 Elm Street are dropping-off or picking-up persons on public rights-of-way, staff will review the complaints with the administration and address the violations by making appropriate changes such as designated parking areas to stop the behavior.
36. Prior to the start of the 2016-2017 academic year, the applicant shall submit a traffic management plan for review and approval by the Zoning Administrator. The traffic management plan shall include a traffic circulation plan for pick-up and drop-off for the school and a plan for how school staff and/or volunteers will be assigned to direct on-site traffic and act as crossing guards. Staff and/or volunteers are not permitted to direct off-site traffic. The Zoning Administrator shall approve the traffic management plan and the applicant shall implement the traffic management plan throughout all school operations. Any changes to the traffic management plan shall be subject to review and approval by the Zoning Administrator. If the Zoning Administrator receives three verified traffic complaints from three separate parties within one year, the Zoning Administrator shall review the traffic management plan and approve changes sufficient to address the complaints.
37. The school shall send to the neighbor distribution list a schedule of upcoming after-school and on-campus weekend activities, including the date, time, and sponsoring agent of each activity. This schedule shall be sent to the neighbor distribution list a minimum of once per semester.
38. The school shall provide a monitored phone number to the neighbor distribution list that can be used to notify the school of complaints during and after school hours.
39. The school shall respond directly to neighborhood complaints the end of the next school day.

Project description brought forward from the 2007 Initial Study/Mitigated Negative Declaration:

40. The following elements are from the project description in the 2007 IS/MND are hereby included as conditions of approval.

- a) The school shall be permitted a maximum of 49 FTE employees.
- b) The school shall maintain a minimum of 19 bicycle parking spaces or the number of spaces required by the El Cerrito Municipal Code, whichever is greater.
- c) The school shall be permitted to hold occasional evening and weekend events of the type typically associated with a school. These events shall be confined to the interiors of buildings. These events shall be in addition to the events allowed pursuant to Condition of Approval #20.

Traffic, Circulation and Parking

- 41. A total of 61 parking spaces shall be provided on the entire campus to accommodate staff, students and the school's other parking needs.
- 42. Prior to the beginning of the 2017-18 school year, the applicant shall complete installation of the intersection and pedestrian and bicycle improvements identified in the Project Description of the Subsequent Environmental Impact Report for the Summit K2 Operational Expansion Project to the satisfaction of the Public Works Director.
- 43. If three verified complaints of school parking occurring on any one block of an adjacent street are received by the Zoning Administrator within a one-year period, the applicant shall initiate a petition to the City of El Cerrito for 4-hour parking restrictions on that block. The applicant shall contact all households on the block pursuant to the Public Works Department's petition process and submit the petition to the Public Works Department within 180 days of initiation.
- 44. The school shall require and enforce vehicle parking stickers for all on-site parking. School parking shall be permitted on the school site only, except overflow parking permitted pursuant to Condition of Approval #27.
- 45. Pick-up and drop-off for the school shall be permitted only in areas G (lower parking lot) and J (main driveway). Pick-up and drop-off shall be prohibited off-site.

Campus Safety and Security

- 46. After hours and on school holidays, the school gates shall be closed and locked unless a scheduled activity is occurring on school grounds.
- 47. Prior to the commencement of each regular school year; the School Administrator shall submit a site specific safety plan for review and approval by the Chief of Police or his or her designee. This plan will include at a minimum the topics of emergency evacuation and mandatory reporting procedures. In addition, the School Administrator and the Chief of Police shall meet at least every 90 days to discuss security and policing needs of the site.

Agenda Item No. 6(B)
Attachment 1

I CERTIFY that at a regular meeting on July 19, 2016 the City Council of the City of El Cerrito passed this Resolution by the following vote:

AYES:	COUNCILMEMBERS:
NOES:	COUNCILMEMBERS:
ABSTAIN:	COUNCILMEMBERS:
ABSENT:	COUNCILMEMBERS:

IN WITNESS of this action, I sign this document and affix the corporate seal of the City of El Cerrito on July XX, 2016.

Cheryl Morse, City Clerk

APPROVED:

Gregory B. Lyman, Mayor



AGENDA BILL

Agenda Item No. ____

**July 19, 2016
Regular City Council Meeting**

Agenda Item No. 6(B)

Appeal of the Planning Commission's Approval of Amendments to a Conditional Use Permit for the Summit K2 Charter School Located at 1800 Elm Street

Attachments available on-line at:

2. [Land Use History of 1800 Elm Street](#)
3. [Draft Subsequent Environmental Impact Report](#)
4. [Final Subsequent Environmental Impact Report](#)
5. [Mitigation Monitoring and Reporting Program](#)
6. [Figure 4 of 2007 IS/MND, showing phasing of Master Plan](#)
7. [Manor Circle Parking Assessment, dated June 2, 2016](#)
8. [Email from Doug Giffin, dated June 1, 2016, regarding mode share of Summit K2 students and students at other Summit campuses](#)
9. [Excerpt of the San Pablo Avenue Capital Improvement Program, showing planned improvements for San Pablo Ave/Hill St/Eastshore Blvd intersection](#)
10. [Planning Commission Resolution PC16-07](#)
11. [Planning Commission Resolution PC16-08](#)
12. [Letter of appeal, dated June 24, 2016](#)

Hardcopies are available for review during regular business hours at:

City Clerk's Office, 10890 San Pablo Avenue, El Cerrito; and

El Cerrito Library, 6510 Stockton Avenue, El Cerrito.



AGENDA BILL

Agenda Item No. 6(C)

Date: July 19, 2016
To: El Cerrito City Council
From: Sean Moss, Senior Planner
Margaret Kavanaugh-Lynch, Development Services Manager
Subject: PL14-0171 El Dorado Townhomes Tentative Subdivision Map

ACTION REQUESTED

Conduct a public hearing and upon conclusion adopt a resolution approving the Tentative Subdivision Map for Planning Application PL14-0171.

BACKGROUND

The project site consists of four parcels (APNs 510-037-001, -002, -027 and -028). Two parcels (APNs 510-037-027 and -028) share the address of 5828 El Dorado Street. City records show that the recent use of these two parcels has been as a Recreational Vehicle Park (RV Park). State records confirm this use.

The California Department of Housing and Community Development (HCD) has licensing jurisdiction over mobile home parks and RV parks. Audiss RV Park is licensed by HCD under Permit 07-0005-MP and is listed in the Department's database as having 28 "RV spaces with drains," zero mobile home spaces and zero RV spaces without drains. City staff has contacted staff at the Department of Housing and Community Development who verified that the park is permitted as an RV park.

The remaining two parcels are located at 5800/5802 and 5808 El Dorado Street. 5800/5802 El Dorado Street is located on the corner of El Dorado Street and Santa Clara Street. The property contains two residential units. One of the units appears as if it may have been created without benefit of permit. The other unit is a single family home that City records indicate was built in 1949.

Project Description

On December 17, 2014, the applicant, Urban Community Partners, submitted an application for a Tentative Subdivision Map and Design Review to allow 27 townhome condominiums to be developed on the site. The townhomes are proposed to be clustered into 3 buildings. One building will face El Dorado Street, one building will face Avila Street and one building will be internal to the project. The buildings will be served by two private driveways. One driveway will be accessed from Avila Street and the other from Santa Clara Street.

Each townhome unit will contain a two-car garage on the ground floor, with one bedroom and living space on the second floor and two additional bedrooms on the third floor. Most of the garages will be in a tandem configuration as allowed by the Zoning Ordinance. Three of the end units will have side by side two-car garages with a den/4th bedroom on the ground floor.

The site will also feature a small landscaped common area adjacent to Central Park. This area will also serve as required stormwater treatment during rainy periods. In addition to this common open space, each unit will include private open space in the form of upper level balconies and/or ground level fenced yards. The private open space areas will be maintained by the unit owners, while the common open space, private drives and the exteriors of the townhome buildings will be maintained by a Homeowners Association.

Central Park is directly adjacent to the site and the park is accessible from the ends of Santa Clara Street and Avila Street as well as from Central Avenue. The park would provide residents of the project additional outdoor and recreation opportunities in close proximity.

Entitlement Process

The Design Review Board conducted Preliminary Conceptual Design Review of the project on October 7, 2015. The Board gave many comments to the applicant as part of this review and the applicant has responded to the Board's comments by substantially revising the exterior architecture of the project. If the Tentative Subdivision Map is approved, the project will return to the Design Review Board for consideration of the Final Design Review.

The Planning Commission considered the project on May 18, 2016. The Commission conducted a public hearing and received public testimony. After closing the public hearing, the Commission voted to adopt a resolution recommending that the City Council approve the Tentative Subdivision Map. The resolution containing the Planning Commission's recommendation is included as Attachment 14 to this report.

Site Layout

The combined site is a total of 0.84 acres and extends through the block with street frontage along both El Dorado and Avila Street. In addition, the site contains a small portion of frontage along Santa Clara Street. Santa Clara Street terminates at the edge of the site at the boundary of Central Park. Avila Street on the south side of the site also ends at the boundary of Central Park.



The surrounding neighborhood consists of a mixture of single family and multifamily residential land uses.

Zoning Standards

The site lies within the RM (Multifamily Residential) zoning district, just outside the San Pablo Avenue Specific Plan Area. A summary of the zoning standards is provided in the table below.

	Required	Proposed	Comment
Maximum Density	35 du/ac	32 du/ac	The project proposes 27 units on 0.84 acres
Maximum Lot Coverage	60% for lots less than 30% slope	47.6%	
Maximum Height	35 ft.	35 ft.	

Agenda Item No. 6(C)

Setbacks			
Front	10 ft.	10 ft.	
Sides	5 ft.; 10 ft. for portions of buildings taller than 25 ft.	10 ft.	All buildings would be 35 ft. in height therefore 10 ft. is required in all locations.
Rear	15 ft.	Over 45 ft.	Only a small portion of the project adjacent to Central Park and an adjacent parcel would be classified as a rear property line.
Parking Setback	20 ft.		All parking will be located on internal private streets.
Parking			
Number of Curb Cuts	1 per lot for sites less than 1 acre	2 total	3 residential lots are proposed as well as two parcels for private drives and one for open space/bio retention, for a total of 6 lots.
Vehicle Parking	2 spaces/unit (54 spaces total)	2 spaces/unit (54 spaces total)	

Agenda Item No. 6(C)

Bicycle Parking	Long Term: 1 space per 4 units (7 total) Short Term: 2 spaces minimum	27 long term spaces, 1 in each garage space and 2 short term spaces	Each unit contains space in the garage that is not required for automobile parking that can accommodate long-term bike parking.
Landscape/Open Space			
Maximum paving on street facing yard	50%	<50%	
Minimum site area that must be devoted to landscaping	15% of the site	18%	
Minimum requirements for common open space	150 sq. ft./unit minus private open space provided in excess of requirement	1,191 sq.ft.	Required common open space = (27 units x 150 sq.ft.) - 2,948 sq.ft. of excess private open space = 1,102 sq.ft.
Minimum requirements for private open space	80% of units must be provided with private open space. Min 100 sq. ft. for ground level spaces and 50 sq. ft. for above ground level spaces	100% of units have private open space. 2,948 sq. ft. of private open space provided in excess of requirement.	

ANALYSIS

Title 18: Divisions of Land of the El Cerrito Municipal Code establishes the procedures for review of subdivision maps. Section 18.04.020 of the El Cerrito Municipal Code establishes the Planning Commission as the “advisory agency with respect to the subdivisions as provided in the Subdivision Map Act, of the state of California.” Section 18.12.100 outlines the purview of the Planning Commission within the Commission’s advisory role. Title 18 does not specify separate review criteria for the City Council upon consideration of subdivision maps. Therefore, the review criteria in Section 18.12.100 are discussed below for the City Council’s benefit:

Agenda Item No. 6(C)

- A. *The Commission must find that the tentative map is in conformity with the provisions of law and of this title, and upon that basis within thirty days after the filing of the tentative map approve, conditionally approve, or disapprove the same and shall report such action direct to the subdivider and shall also transmit to the city engineer a copy of the tentative map, and a memorandum setting forth the action of the commission thereon.*

This application was deemed complete by staff on March 23, 2016, contingent upon the applicant providing a report on the impacts of closure of the RV park on the existing residents, discussed further below. Based on the analysis in this agenda bill, and with the proposed conditions of approval, staff recommends that the project has been designed in accordance of the Zoning Ordinance and is consistent with the General Plan of the City of El Cerrito.

- B. *The Commission may require the subdivider to dedicate suitable areas for the parks and playgrounds and set aside areas for schools and other public building sites that will be required for the use of the population which is intended to occupy the subdivision under the plan of proposed property uses therein. In all cases the planning commission shall suggest to the subdivider such measures as will make for excellence of residential, commercial, or industrial development.*

The applicant has exceeded the requirements for open space for the project. In addition, the applicant shall pay fees to the West Contra Cost Unified School District in accordance with District's Master Fee Schedule.

- C. *The Commission may refuse to approve a tentative map when the only practical use which can be made of the property proposed to be subdivided, is a use prohibited by ordinance or law or if the property is deemed unhealthful or unfit for human habitation or occupancy by the health officer of the city.*

The proposed use of the site is 27 residential dwelling units that shall be constructed in compliance with the building code in place at the time of the submittal of the building plans. The use and condition of the property when the project is complete shall comply with the municipal code.

Issue of Concern

Public Concern: Some members of the public have commented that this project is not consistent with the General Plan because it displaces residents.

Staff response: Staff has been sensitive to the issue of displacement of long-term park residents and General Plan consistency from the moment that the application was filed. City staff recognized that although Audiss RV Park is licensed and operated as an RV park, some park residents have resided at the park for many years, and staff worked with the applicant to address the issue of displacement as it related to the project. As a result of those efforts, many residents being displaced were provided with substantial economic benefits and the ability to continue to live at the RV park for an extended period, allowing them more opportunity to find replacement housing.

Section 66427.4 of the Government Code (Subdivision Map Act) requires that when a map is submitted for a subdivision that would convert a mobile home park to another use, that the applicant prepare a report on the impact of the conversion upon the displaced residents of the park. This requirement applies specifically to mobile home parks and floating home marinas; the section does not mention RV parks, although other provisions of California law include RV parks within the definition of mobilehome parks. There is no appellate case law ruling whether the requirements of 66427.4 apply to the closure of an RV park that has been used for long-term housing, in the same manner as a mobilehome park.

Another provision of California law applicable to this project is Government Code section 66473.5, which requires the City Council to find that the map is consistent with the City's General Plan, including its Housing Element. Housing Element Policies H1.1 and H1.2 state:

H1.1 Encourage neighborhood preservation and housing rehabilitation of viable older housing to preserve neighborhood character and , where possible, retain supply of very low, low, and moderate-income units.

H1.2 Discourage the conversion of residential uses to non-residential uses, unless there is a finding of clear public benefit and equivalent housing can be provided for those who would be displaced by the proposed conversion.

Whether and how to apply those policies to the project is complicated. On one hand, recreational vehicles are not a housing type which is compatible with rehabilitation for ongoing long-term use. By nature, the vehicles are mobile and the recreational vehicles at the park have transitioned as tenants have transitioned through the park. One could argue that these units are not “viable older housing” as anticipated by Goal H1.1. In addition, the project does not propose to convert a residential land use to a non-residential land use as stated in Goal H1.2. On the other hand, taken in total, these Housing Element Policies appear to discourage, where possible, the elimination of existing housing and the displacement of existing El Cerrito residents, especially those for very low, low and moderate income residents.

In light of that legal background, City staff in consultation with the City Attorney requested that the applicant provide a report—similar to the kind required for closure of a mobilehome park—as part of the application as a way to provide additional information to decision-makers as they consider the project and to address concerns about the project's consistency with the General Plan, including the Housing Element. The applicant agreed to produce such a report and the City and the applicant agreed upon the contents of the report. (Attachment 3)

The report documents the existing conditions at the park at the time that the application was submitted in December 2014. Detailed information on the residents, vehicles, and rents is described in the ‘Existing Conditions and Tenant Information’ section of the report and in Attachment A. The report found that, in December 2014, approximately 33 people lived at the park in the 27 available RV spaces. The report documented that

these residents had resided at the park anywhere from 1 to 25 years. The rents at the park ranged from \$575 to \$795 per month.

By the time the report was prepared, many residents had already left the RV park, in response to the notice of closure from the owner. To the extent that the information was disclosed, the report provides information about the housing status of those residents. In addition, the report documents the housing plans of the remaining park tenants and assistance that was provided to the tenants by the property owner and operator of Audiss RV Park. That assistance included financial support and extended time to remain at the park while locating replacement housing. The conclusion of the report is that the assistance provided to the tenants was comparable to the assistance that the City could require as mitigation if the project were converting a mobile home park to another use.

Although the report presents a list of affordable housing resources nearby, wait times for this housing can often be long due to the shortage of available affordable housing. The City of El Cerrito does not have an ordinance requiring the inclusion of affordable housing in the project. However, Program H2.8 of the Housing Element commits the City to examine the feasibility of such a requirement. Although a requirement to provide affordable housing does not exist, staff discussed with the applicant that provision of affordable housing is one criterion that could qualify the project for exceptions to zoning standards under the City's incentives program. However, the project has been designed to be consistent with the zoning requirements and the applicant declined to utilize the incentives program and redesign the project to incorporate affordable housing.

Nevertheless, for the following reasons, staff believes that the record supports a finding that the project is consistent with the General Plan, including the Housing Element's intent to not displace low or very low income residents, where possible. First, although residents of the park were displaced as a result of the project, the report documents that the owner/RV park operator provided financial and other assistance to residents who remained at the park at the time that the report was prepared, increasing their ability to find replacement housing. Further, the authors of the report, who are professionals that regularly prepare such reports for mobilehome park closings, found that the level of assistance provided to those residents was comparable to what would have been provided if the park had been a mobilehome park. Finally, subsequent to the completion of the report, in May of 2016, a local newspaper noted that, "of the handful of tenants left in April at the Audiss RV Park at 5828 El Dorado St., all have accepted buyouts from the owner and all but one have left or are preparing to leave..." and as of the time that the agenda bill was prepared, staff observed that there were three remaining RVs on the project site, but could not independently verify that any were occupied. Therefore, to the extent possible, the project minimized the impact of displacement of the tenants at a level that could have been achieved if this had been a mobile home park.

California Environmental Quality Act Consistency

Pursuant to the California Environmental Quality Act (CEQA) Guidelines, Section 15332: Class 32, Infill Development Projects, the project is exempt from review under CEQA.

Section 15332 of the CEQA Guidelines establishes following conditions for in-fill projects which are exempt from CEQA review:

- (a) The project is consistent with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations.*

As discussed, above, the project is consistent with the General Plan and the RM zoning district.

- (b) The proposed development occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses.*

The project is within the City of El Cerrito and the site is 0.84 acres.

- (c) The project site has no value as habitat for endangered, rare or threatened species.*

The San Pablo Avenue Specific Plan EIR did not identify any “candidate, sensitive, or special- status species” with habitat in the San Pablo Avenue Specific Plan Area. While the site is not within the San Pablo Avenue Specific Plan Area, the site sits about 150 feet from the plan area. The site has been extensively disturbed by past development and no longer provides suitable habitat for any special-status animal or plant species.

- (d) Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality.*

The applicant commissioned Traffic Analysis, a Noise Impact Assessment, an Air Quality Impact Assessment, a Water Quality Impact Assessment, and prepared a Stormwater Control Plan. These studies are included as Attachments 4-9. The studies concluded that the project would not have any significant effects in these areas.

- (e) The site can be adequately served by all required utilities and public services.*

The site is currently served by all utilities. Pursuant to the requirements of the Stege Sanitary District, the applicant has prepared a sewer capacity study which shows that existing sewers have capacity to serve the project.

General Plan Consistency

The project, with the proposed conditions of approval, is consistent with the El Cerrito General Plan and will implement the following General Plan policies:

LU1.2 Multifamily Neighborhoods. Ensure that new development in multifamily neighborhoods supports, rather than detracts from the existing residential character of the area.

The proposed project is consistent with the multifamily character of the surrounding neighborhood. The project will feature townhomes that will face the adjacent streets, add to surveillance of the street and integrate well into the surrounding community.

LU1.3 Quality of Development. Ensure that all multifamily or mixed-use development in residential areas addresses compatibility and quality of life issues.

The proposed project is consistent and compatible with the surrounding multifamily neighborhood. The project has been reviewed thoroughly to ensure that it will not negatively impact the surrounding neighborhood.

LU1.5 Suitable Housing. Promote suitably located housing and services for all age groups within the city. Variety of Housing Types. Encourage diverse housing types, such as live-work units, studio spaces, townhouses, co-housing, congregated care, and garden apartments.

The project proposed 27 new townhome units. This housing type will provide new multifamily ownership housing opportunities to an area with few condominium units.

LU1.7 Maximum Density. Maintain the maximum multifamily density at 35 dwelling units per acre, except as otherwise provided in this Plan.

The density of the proposed project is 32 units per acre.

LU1.8 Neighborhood Maintenance. Maintain the appearance of existing residential areas by discouraging paving of front yards and parkway strips, excessively wide curb cuts and driveways, and inappropriate fence materials in front yards.

Each unit will contain a private residential front yard which is fenced and landscaped except for short pathway that accesses the unit entry. There are two curb cuts.

CD1.3 High-Quality Design. Encourage higher- quality design through the use of well-crafted and maintained buildings and landscaping, use of higher-quality building materials, and attention to the design and execution of building details and amenities in both public and private projects.

The proposal was revised to respond to the Design Review Board's preliminary comments. The project will be considered by the Design Review Board as required to ensure high-quality materials and design.

CD2.1 Street Frontages. Encourage street frontages that are safe, by allowing for surveillance of the street by people inside buildings and elsewhere, and are interesting for pedestrians. Require buildings in development centers and neighborhood commercial centers along San Pablo Avenue to be directly abutting sidewalks, with window openings and entries along the pedestrian frontage.

The townhome units will face Avila Street and El Dorado Street and will contain front yards along those street frontages as well as upper level balconies and street-facing windows which will allow for surveillance of the street.

CD3.2 Usable Open Spaces. Require the provision of usable open space in the form of ground-floor patios, upper- floor decks, and balconies, as well as common recreational facilities.

The townhome units will feature ground level yards and upper level balconies. The project also features landscaped common open space.

CD3.3 Site Landscaping. Improve the appearance of the community by requiring aesthetically designed screening and landscaping on public and private sites. Ensure that public landscaping includes entry areas, street medians, parks, and schools. Require landscaping for all private sites, yard spaces, parking lots, plazas, courtyards, and recreational areas.

The project incorporated landscaping as required by the Zoning Ordinance. The landscaping will be considered by the Design Review Board, as required, to ensure that it is of high-quality design and appropriate for the site.

CD3.4 Fencing. Require that residential streets maintain open front yards and not be enclosed with fences that exceed three feet in height. Allow fences up to six feet in height to enclose front yards along major arterials, heavily used pedestrian ways or to protect yards from deer and other animals.

All front yard fencing will be a maximum of 3 feet in height.

CD4.2 Building Articulation. Ensure that buildings are well articulated. Avoid large unarticulated shapes in building design. Ensure that building designs include varied building facades, rooflines, and building heights to create more interesting

and differentiated building forms and shapes. Encourage human scale detail in architectural design. Do not allow unarticulated blank walls or unbroken series of garage doors on the facades of buildings facing the street or the Ohlone Greenway.

The proposed building facades are well-articulated and will be considered by the Design Review Board, as required, to ensure a well-designed building form.

CD4.3 Front Yards. Provide front yards in residential areas with structures and parking lots stepped back along public streets in keeping with the character and setbacks of surrounding buildings. Ensure that yard spaces are landscaped appropriately to fit the surrounding context.

Each townhome along a public street will feature a landscaped front yard. All parking is accessed from internal private streets. Parking will not be visible from public streets.

CD5.1 Design Review Process. Continue design review and approval process for all new development, changes, additions, and modifications of existing buildings (except for single- family homes on existing lots).

The Design Review Board conducted Preliminary Conceptual Review of the project on October 7, 2015. The design elements of the project will be considered by the Design Review Board as required.

H1.6 Retain existing residential zoning and discourage non-residential uses in these zones. The City will strictly enforce the Zoning Code which states that non-residential uses in residential areas are limited to churches, daycares, and schools.

The project is within the RM (Multifamily Residential) zoning district. The project proposes a residential use in the district.

H2.1 Provide adequate residential sites for the production of new for-sale and rental residential units for existing and future residents.

The project will produce 27 new for-sale housing units.

H2.8 Encourage diversity of unit size and number of bedrooms within multifamily housing developments and strive to provide family housing of 3 to 4 bedroom units within projects.

All units within the project will contain 3 or 4 bedrooms.

H5.5 Continue to enforce the State Energy Conservation Standards for new residential construction and additions to existing structures.

The project will conform with the energy standards of Title 24 of the California Building Code.

Findings

Pursuant to Section 66473.5 of the California Government Code (Subdivision Map Act), the following findings must be made in order to approve the proposed Tentative Subdivision Map for the project:

The proposed subdivision, together with the provisions for its design and improvement, is consistent with the general plan required by Article 5 (commencing with Section 65300) of Chapter 3 of Division 1, or any specific plan adopted pursuant to Article 8 (commencing with Section 65450) of Chapter 3 of Division 1.

The project will implement the following standards of the General Plan: LU1.2 Multifamily Neighborhoods, LU1.3 Quality of Development, LU1.5: Suitable Housing, LU1.7 Maximum Density, LU1.8 Neighborhood Maintenance, CD1.3 High-Quality Design, CD2.1: Street Frontages, CD3.2 Usable Open Spaces, CD3.3: Site Landscaping, CD3.4 Fencing, CD4.2: Building Articulation, CD4.3 Front Yards, CD4.5 Energy and Resources, CD5.1: Design Review Process, and H1.6, H2.1, H2.8, H5.2, and H5.5. As a result of assistance by the property owner to some residents, the project is consistent with H1.1 and H1.2. The project is not within the area of any adopted specific plan.

STRATEGIC PLAN CONSIDERATIONS

By implementing the General Plan policies discussed above, the project will further Goal C: *Deepen a sense of place and community identity* of the El Cerrito Strategic Plan by “promot[ing] strong neighborhoods.” The project also incorporates a “vision for underdeveloped and underutilized properties...that [includes] investment and/or new development.”

ENVIRONMENTAL CONSIDERATIONS

As discussed above, the project is exempt from review under the California Environmental Quality Act pursuant to Section 15332: Class 32, Infill Development Projects.

FINANCIAL CONSIDERATIONS

The development of infrastructure for the project will be financed through a combination of development impact fee programs and developer funding. The General Fund will not be used to pay for any of the infrastructure costs of this project.

LEGAL CONSIDERATIONS

The contents and preparation of the park closure report were the result of discussions between the City Attorney and the applicant’s attorney. The City Attorney has reviewed the project and this report.

Reviewed by:



Scott Hanin, City Manager

Attachments:

1. Draft Resolution
2. Plans dated February 23, 2016
3. Closure Analysis Report, dated April 13, 2016
4. Traffic Impact Assessment, dated February 2015
5. Noise Impact Assessment, dated February 2015
6. Memorandum containing noise measurements, dated September 17, 2015
7. Air Quality Impact Assessment, dated February 2015
8. Water Quality Impact Assessment, dated February 2015
9. Stormwater Control Plan, dated January 30, 2015
10. Arborist Report, dated March 25, 2015
11. Geotechnical Feasibility Assessment, dated July 18, 2014
12. Email from Nick Galloro, Ronnie Polonsky, and Terra and Alfred Laggner, dated April 28, 2016
13. Letter from Keith McCoy, Urban Community Partners, dated May 9, 2016
14. Planning Commission Resolution PC16-05

RESOLUTION NO. 2016-XX

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EL CERRITO APPROVING A TENTATIVE SUBDIVISION MAP CONSISTING OF 6 LOTS (3 RESIDENTIAL LOTS, 2 PRIVATE STREETS, AND ONE LOT FOR BIO-RETENTION/OPEN SPACE) FOR A PROJECT THAT INCLUDES 27 TOWNHOME CONDOMINIUM UNITS.

WHEREAS, the current addresses of the site are 5802, 5808 and 5828 El Dorado Street; and

WHEREAS, the current Assessor's Parcel Numbers of the site are 510-037-001, 510-037-002, 510-037-027, and 510-037-028; and

WHEREAS, the application number of the of the project is PL14-0171; and

WHEREAS, the title of the Tentative Subdivision Map is "El Dorado Townhomes"; and

WHEREAS, the General Plan land use classification of the site is High Density Residential; and

WHEREAS, the zoning district of the site is RM (Multi-Family Residential); and

WHEREAS, the project is Categorically Exempt from review under the California Environmental Quality Act pursuant to Section 15332: Class 32, Infill Development Projects; and

WHEREAS, on December 17, 2014, the applicant submitted an application for a Tentative Subdivision Map and Design Review; and

WHEREAS, on October 7, 2015, the Design Review Board conducted Preliminary Conceptual Design Review for the project; and

WHEREAS, on May 18, 2016, the Planning Commission passed a resolution recommending that the City Council approve the Tentative Subdivision Map for the project; and

WHEREAS, on July 19, 2016, the City Council, after due consideration of all evidence and reports offered for review does find and determine the following:

1. The project will implement the following standards of the General Plan: LU1.2 Multifamily Neighborhoods, LU1.3 Quality of Development, LU1.5: Suitable Housing, LU1.7 Maximum Density, LU1.8 Neighborhood Maintenance, CD1.3 High-Quality Design, CD2.1: Street Frontages, CD3.2 Usable Open Spaces, CD3.3: Site Landscaping, CD3.4 Fencing, CD4.2: Building Articulation, CD4.3 Front Yards, CD4.5 Energy and Resources, CD5.1: Design Review Process, and H1.6, H2.1, H2.8, H5.2, and H5.5. The project is not within the area of any adopted specific plan.

Agenda Item No. 6(C)

Attachment 1

2. This application was deemed complete on March 23, 2016, contingent upon the applicant providing a report on the impacts of closure of the RV park on the existing residents, discussed further below. Based on the analysis in the staff report, staff recommends that the project has been designed in accordance of the Zoning Ordinance and General Plan of the City of El Cerrito.
3. The applicant has exceeded the requirements for open space for the project. In addition, the applicant shall pay fees to the West Contra Cost Unified School District in accordance with District's Master Fee Schedule.
4. The proposed use of the site is 27 residential dwelling units that shall be constructed in compliance with the building code in place at the time of the submittal of the building plans. The use and condition of the property when the project is complete shall comply with the municipal code.

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of El Cerrito that it hereby approves the Tentative Subdivision Map of Planning Application PL14-0171 subject to the following conditions:

Planning Division:

1. The project will be constructed substantially in conformance with the plans dated February 23, 2016. Minor changes may be approved by the Zoning Administrator. All improvements shall be installed in accordance with these approvals. Once constructed or installed, all improvements shall be maintained as approved.
2. If applicant constructs buildings or makes improvements in accordance with these approvals, but fails to comply with any of the Conditions of Approval or limitations set forth in these Conditions of Approval and does not cure any such failure within a reasonable time after notice from the City of El Cerrito, then such failure shall be cause for nonissuance of a certificate of occupancy, revocation or modification of these approvals or any other remedies available to the City.
3. These Conditions of Approval shall apply to any successor in interest in the property and Applicant shall be responsible for assuring that the successor in interest is informed of the terms and conditions of this approval.
4. If not vested, this Tentative Subdivision Map approval shall expire 24 months from the date of this action, unless extended by subsequent action of the City.
5. The applicant shall share the following conditions of approval with their general contractor for the project. The general contractor shall sign at the bottom of this list to acknowledge that he/she is aware of all these conditions of approval and will comply as directed.

Prior to the issuance of a building permit, this signed list shall be returned to the planning and building division and kept as part of the project file:

- a. Water all active construction areas at least twice daily and more often during windy periods. Active areas adjacent to residences should be kept damp at all times.

- b. Cover all hauling trucks or maintain at least two feet of freeboard.
- c. Sweep daily (with water sweepers) all paved access roads, parking areas, and staging areas and sweep streets daily (with water sweepers) if visible soil material is deposited onto the adjacent roads.
- d. Enclose, cover, water twice daily, or apply (non-toxic) soil binders to exposed stockpiles.
- e. Replant vegetation in disturbed areas as quickly as possible.
- f. Suspend construction activities that cause visible dust plumes to extend beyond the construction site.
- g. Clear signage at all construction sites shall be posted indicating that diesel equipment standing idle for more than five minutes shall be turned off. This would include trucks waiting to deliver or receive soil, aggregate, or other bulk materials. Rotating drum concrete trucks could keep their engines running continuously as long as they were on-site or adjacent to the construction site.
- h. The contractor shall install temporary electrical service whenever possible to avoid the need for independently powered equipment (e.g., compressors).
- i. All construction equipment shall be maintained and properly tuned in accordance with the manufacturer's specifications. All equipment shall be checked by a certified visible emissions evaluator.
- j. Post a publically visible sign(s) with the telephone number and person to contact at the Lead Agency regarding dust complaints. This person shall respond and take corrective action within 48 hours. The Air District's phone number shall also be visible to ensure compliance with applicable regulations.
- k. All project construction activities shall be limited to the following hours: 7:00 a.m. to 6:00 p.m., Monday through Friday; and 8:00 a.m. to 5:00 p.m. on Saturdays. Construction activities shall be prohibited on Sundays and holidays.
- l. The applicant or contractor shall designate a Construction Noise Coordinator who is responsible for posting required signs, explaining the construction timeline, responding to noise complaints and managing noise through appropriate work practices and other appropriate measures. If complaints are received, the Coordinator shall determine the cause of the noise complaints (e.g., starting too early, bad muffler, etc.) and institute reasonable measures to correct the problem.

Agenda Item No. 6(C)

Attachment 1

- m. Signs shall be posted at the construction site, which provide the permitted construction hours, a day and evening contact number for Construction Noise Coordinator and a contact number for the City of El Cerrito.
- n. Notification shall be sent to the City and businesses, residences, or noise-sensitive land uses in proximity to the subject site, containing the construction schedule prior to the start of construction. Notice shall also be sent in advance of each expected loud activity or impulsive noise activity.
- o. Noisy stationary equipment (e.g. generators and compressors) and materials unloading and staging areas shall be located away from adjacent sensitive uses including adjacent residences.
- p. All construction equipment shall be in good working order with properly installed mufflers. Diesel engines shall not be idled unnecessarily.
- q. The removal of trees, shrubs, or weedy vegetation shall be avoided during the February 1 through August 31 bird nesting period and roosting bats to the extent possible. If no vegetation or tree removal is proposed during the nesting period, no further action is required. If it is not feasible to avoid the nesting period, the project applicant shall retain a qualified wildlife biologist to conduct a survey for nesting birds no sooner than 14 days prior to the start of removal of trees, shrubs, grassland vegetation, buildings, grading, or other construction activity. Survey results shall be valid for 21 days following the survey; therefore, if vegetation or building removal is not started within 21 days of the survey, another survey shall be required. The area surveyed shall include access roads, and staging areas, as well as areas within 150 feet outside the boundaries of the areas to be cleared or as otherwise determined by the biologist.
- r. In the event that an active nest is discovered in the areas to be cleared, or in other habitats within 150 feet of construction boundaries, clearing and construction shall be postponed for at least two weeks or until a wildlife biologist has determined that the young have fledged (left the nest), the nest is vacated, and there is no evidence of second nesting attempts.
- s. A qualified biologist shall conduct pre-construction surveys for bats and suitable bat roosting habitat at work sites where culverts, structures and/or trees would be removed or otherwise disturbed prior to initiation of construction. If bats or suitable bat roosting habitat is detected, CDFW shall be notified immediately for consultation and possible on-site monitoring.
- t. In the event that subsurface cultural or paleontological resources are encountered during grading, digging or trenching construction activity, work in the immediate vicinity shall be stopped and a qualified archaeologist and/or paleontologist shall be retained to evaluate the finds following the procedures described in the San Pablo Avenue Programmatic Environmental Impact Report for this resource.

Agenda Item No. 6(C)
Attachment 1

- u. Project personnel shall not collect cultural resources.
 - v. If human remains are found, special rules set forth in State Health and Safety Code section 7050.5 and CEQA Guidelines section 15126.4(b) shall apply.
6. Prior to issuance of building permit, the applicant shall demonstrate compliance with Chapter 13.50: Art in Public Places of the El Cerrito Municipal Code to the satisfaction of the Zoning Administrator. The project shall be fully compliant with Chapter 13.50 prior to issuance of Certificate of Occupancy.
 7. The applicant shall submit a Stormwater Control Plan to the City for review and approval prior to issuance of building permit. The Stormwater Control Plan shall include a site plan, showing runoff reduction measures included in the project, along with project data form and completed checklists for each of the runoff measures.
 8. All required fees of the West Contra Costa Unified School District and the Stege Sanitary District shall be paid prior to issuance of building permit. The applicant shall submit proof of payment to the satisfaction of the Building Official.
 9. The applicant shall pay all outstanding City costs associated with the project, including but not limited to legal fees, to the satisfaction of the Community Development Director, prior to the issuance of a building permit,.

Public Works Department:

10. The applicant shall re-pave the section of Santa Clara Street between El Dorado Street and the Central Park entrance prior to issuance of Certificate of Occupancy.
11. The applicant shall construct an ADA compliant sidewalk and driveway (a path of travel including truncated domes) on El Dorado Street at Santa Clara Street prior to issuance of Certificate of Occupancy.
12. The applicant shall construct an ADA path of travel, including truncated domes, with a striped crosswalk, from the newly constructed sidewalk on Santa Clara Street to the park entrance prior to issuance of Certificate of Occupancy.
13. The applicant shall provide pedestrian safety measures for pedestrians crossing from the sidewalk to the park to the satisfaction of the Public Works Director. This may include but is not limited to a convex mirror, sensors, or similar device to alert drivers or pedestrians if there is a conflict.
14. The applicant shall construct ADA compliant curb ramps at the entrance on Avila Street prior to issuance of Certificate of Occupancy.
15. The applicant shall replace sidewalk flags along the property frontage to meet City and ADA standards prior to issuance of Certificate of Occupancy. Sidewalk replacement locations will be at the discretion of the Public Works Director.
16. Any new street trees to be installed shall be from the City Master Tree List and be approved by the City Arborist before installation.

17. For any street tree, sidewalk and driveway work, applicant shall obtain a Public Works Encroachment Permit and pay all associated fees.
18. The applicant shall submit a detailed grading plan, obtain a Grading & Transportation Permit and pay all associated fees for all earthwork and grading operations in excess of 50 cubic yards.
19. The applicant shall provide drainage plan for new roof and any rain leaders. All drainage is encouraged to stay on-site, draining away from the foundations, 10 feet from property lines, and shall not cause a nuisance to neighboring properties.

Fire Department:

20. Building construction shall meet current Building, California Fire Codes, and the El Cerrito Fire Code.
21. Prior to the issuance of the building permit, the applicant is responsible to meet the following requirements to the satisfaction of the Fire Marshall:
 - a) Provide code analysis of required total firefighting water.
 - b) If required, plans for fire service underground shall be submitted for review, approval and permit under separate cover.
 - c) Fire Department Connections (FDCs) shall be in locations acceptable to the fire department for emergency operations.
 - d) Fire Department Connections (FDCs) shall be interconnected between all three buildings and shall be located on El Dorado and Avila.
 - e) All pathways required for Fire Department access shall remain open, clear and ungated.
 - f) "KNOX BOX" shall be installed with keys for all common areas.
 - g) Smoke detection shall be installed in each bedroom, in hallways adjacent to bedrooms, and one detector per floor level (top and bottom of stairs).
 - h) Smoke detectors shall be 120v powered with battery backup.
 - i) Smoke detectors shall be interconnected.
 - j) Carbon monoxide alarm shall be installed outside of and adjacent to sleeping areas where fuel-burning appliances are installed; and in dwelling units that have attached garages.
 - k) Carbon Monoxide detectors shall be installed in accordance with NFPA 720.
 - l) Carbon Monoxide alarms shall be 120 v Powered with battery backup and be interconnected with the smoke detectors.

- m) All electrical breakers shall be labeled.
- n) Approved numbers or address shall be provided in such a position to be plainly visible and legible from the street fronting the property. Address shall be either internally or externally illuminated.
- o) Automatic Fire Sprinklers shall be installed throughout the Complex.
- p) Fire sprinkler plans shall be submitted for review, approval and permit under separate cover.
- q) Every sleeping room shall have at least one operable window or door approved for emergency escape or rescue in accordance with CBC 310.4.
- r) Escape or rescue windows shall be installed in accordance with CBC 310.4.

Stege Sanitary District:

- 22. The applicant shall submit a sewer capacity study to Stege Sanitary District for review and approval prior to issuance of building permit.

I CERTIFY that at a regular meeting on July 19, 2016 the City Council of the City of El Cerrito passed this Resolution by the following vote:

AYES:	COUNCILMEMBERS:
NOES:	COUNCILMEMBERS:
ABSTAIN:	COUNCILMEMBERS:
ABSENT:	COUNCILMEMBERS:

IN WITNESS of this action, I sign this document and affix the corporate seal of the City of El Cerrito on July XX, 2016.

Cheryl Morse, City Clerk

APPROVED:

Gregory B. Lyman, Mayor



AGENDA BILL

Agenda Item No. 6(C)

**July 19, 2016
Regular City Council Meeting**

Agenda Item No. 6(C)

PL 14-0171 El Dorado Townhomes Tentative Subdivision Map

Attachments 2-14 available on-line at:

2. [Plans dated February 23, 2016](#)
3. [Closure Analysis Report, dated April 13, 2016](#)
4. [Traffic Impact Assessment, dated February 2015](#)
5. [Noise Impact Assessment, dated February 2015](#)
6. [Memorandum containing noise measurements, dated September 17, 2015](#)
7. [Air Quality Impact Assessment, dated February 2015](#)
8. [Water Quality Impact Assessment, dated February 2015](#)
9. [Stormwater Control Plan, dated January 30, 2015](#)
10. [Arborist Report, dated March 25, 2015](#)
11. [Geotechnical Feasibility Assessment, dated July 18, 2014](#)
12. [Email from Nick Galloro, Ronnie Polonsky, and Terra and Alfred Laggner, dated April 28, 2016](#)
13. [Letter from Keith McCoy, Urban Community Partners, dated May 9, 2016](#)
14. [Planning Commission Resolution PC16-05](#)

Hardcopies are available for review during regular business hours at:

City Clerk's Office, 10890 San Pablo Avenue, El Cerrito; and

El Cerrito Library, 6510 Stockton Avenue, El Cerrito.



AGENDA BILL

Agenda Item No. 7

Date: July 19, 2016
To: El Cerrito City Council
From: Scott Hanin, City Manager
Subject: Placement of a General Obligation Bond Measure for a Safe Modern El Cerrito Library

ACTIONS REQUESTED

1. Adopt a resolution finding that a Safe Modern El Cerrito Library Project is in the public interest and necessity. (Adoption of the resolution requires four affirmative votes);
2. Waive first reading and introduce by title an ordinance to submit to the voters of El Cerrito at the November 8, 2016 election a measure to authorize the issuance of general obligation bonds ("GO bonds") for a Safe Modern El Cerrito Library Project. (Introduction and subsequent approval of the ordinance also requires four affirmative votes. The measure authorizing the issuance of GO bonds must be approved by two-thirds of the voters voting on the measure);
3. Approve a MOTION authorizing an appropriation of \$12,000 from the unrestricted General Fund balance for estimated election costs associated with the measure.

BACKGROUND

The City's Strategic Plan identifies "Develop and Rehabilitate Public Facilities as Community Focal Points" as a primary goal. The strategies outlined for this goal include continuing to assess facilities to prioritize and strategize investment (i.e., library, public safety building, senior center, community center).

The El Cerrito Library was built in 1948 and was expanded in 1960 to 6,500 square feet. The Library is too small to serve the needs of our community, lacks modern technologies and is frequently overcrowded. The Library does not meet current earthquake safety or energy-efficiency standards. The Library has major structural and building system deficiencies that impact the safety, comfort and functionality of the building. The Library is also not fully compliant with the Americans with Disabilities Act (ADA). Further, the library is substandard when compared to those in neighboring communities.

For more than the past 15 years, the community has expressed interest in a safe, modern library facility to meet the needs of our community. The Library is overcrowded and too small for the community's public safety, educational, and informational needs. In 2006, the City completed a Needs Assessment and a Building Program for a new library facility in anticipation of applying for a State construction bond grant.

Unfortunately, California voters did not pass the bond measure that would have funded the grant. In the decade since 2006, the City has sought funds to expand the Library from outside sources, but due to economic conditions, the loss of the Redevelopment Agency, and limited availability of grant funding, the Library remains an inadequate facility.

The 2006 Needs Assessment recognized the deficiencies in the current library facility and recommended a larger facility with upgraded technology, larger collection, and increased seating capacity including flexible meeting space for groups and studying. The recommendation called for expanding the size of the building to approximately 21,000 square feet.

The current library lacks room for special services such as literacy tutoring, group study space. Acoustics are poor due to lack of separation between children and adult areas and the library collection has been stunted due to lack of space. Additionally, there is not enough seating in the currently library and no defined teen area. Despite these conditions, library staff has expanded services over the years offering programs for toddlers, school-aged students, teens and adults, and the number of library visits have increased by 26% since 2006 and circulation is up by about 28%.

With no funding available from outside sources, staff and the City Council concluded that the best method for funding a safe, modern library that meets the community's needs must ultimately rely on new, locally-controlled revenue generated by a measure approved by the voters of El Cerrito.

On July 16, 2015, the City Council received an independent public opinion research presentation from Bryan Godbe of Godbe Research that indicated community interest for a seismically safe library that meets the space, technological, educational, and safety needs of the community. The results indicated approximately 70% support for a bond measure in 2016 to fund the replacement of the 67-year-old Library as well as support for several elements of recreational/community center facilities that could be harmonious with a library. Staff received consensus from the Council to pursue planning for a library that meets the community's needs, and since that time, staff have been working on the various steps necessary in order for the Council to consider a ballot measure to fund the facility in November 2016.

ANALYSIS

Community Feedback

From July 2015 through July 2016 the City further engaged the community, implementing a public information and outreach program to gather more feedback. During that time, staff has solicited input from thousands of community members, asking about their library needs and priorities.

With the help of the El Cerrito Library Foundation, the City received over 2,000 responses to the community survey on library priorities. The survey was also available at City facilities, the library, a few El Cerrito businesses, as well as at events such as the

Fourth of July Festival, and online. Overall, the community survey found that top community priorities for the El Cerrito Library include:

- A safe, energy-efficient library that meets earthquake and fire codes
- Updated wiring to accommodate computers and technology
- A children's area with space for children's story times
- Space for public access computers, a computer learning center, and free Wi-Fi
- Improved access for seniors and disabled residents

City staff, Librarian Liz Ruhland, as well as El Cerrito Library Foundation member Tom Panas also each spoke with community groups and made informational presentations about the library and the current needs.

Library Space Needs and Associated Facilities

As part of the first phase of the planning process, the City hired Kathryn Page Associates to update the 2006 Needs Assessment for the El Cerrito Library. The 2014 Updated Library Needs Assessment prepared by Kathryn Page Associates was presented to the City Council on March 2014 (and is available online at <http://www.el-cerrito.org/DocumentCenter/View/4498>). The updated space needs analysis revealed that a significant increase in space and a well-designed, efficient, technologically-current building are necessary to provide El Cerrito residents with a library that meets El Cerrito residents' library service needs.

The report found that an approximately 20,845 square foot facility is recommended for El Cerrito to meet both current and projected library service needs through the year 2030 and beyond. A one-story library was recommended to keep staffing and operational costs to a minimum and to provide optimal building efficiency. A facility of the recommended size would allow among other things, the library to:

- Increase the physical collection 68% to 60,320 books and DVDs/CDs available onsite (in addition to access to e-content through the Contra Costa County Library website.)
- Shelve the physical collection on mid-height shelving to encourage browsing and display instead of traditional full-height book stacks
- Increase seating to 134 open plus six group study/tutoring/collaboration rooms with a total of 56 additional seats
- Expand computer access, from the current 8 workstations to 66 computers, including a mix of standard desktop units and laptops for in-library checkout

- Add a learning space to facilitate computer-based workshops, informal group collaborations and projects
- Add a tutoring and homework study area
- Include an acoustically separate community meeting room that seats 125 with a separate entrance that could be accessed outside of library hours

If the site selected and financing permit, the Safe Modern El Cerrito Library Project could also include associated public facilities to provide additional space for educational and recreational programming.

Site Selection

The City engaged Swinerton Management and Consulting to perform cost estimations and construction advice and Group 4 Architecture, Research + Planning, Inc, an architectural firm, to assist with site selection and massing studies. Understanding there is not enough space to accommodate a larger library facility on the current and adjacent sites owned by the West Contra Costa School District (WCCUSD), staff and the consultants worked on identifying a new site for the library.

On March 1, 2016, the Council was presented with the findings of the site feasibility studies that focused on five scenarios:

- Library only on the former Portola Middle School Site “Lower Playfield” area
- Library and additional community center space on the former Portola Middle School site “Lower Playfield” area
- Mixed-use Library and Theater (City-owned) on the Contra Costa Civic Theatre site
- Mixed-use Library with Housing and Retail on a generic San Pablo Avenue site
- Mixed-use Library and Retail on a generic San Pablo Avenue site

Based on the site evaluation criteria, cost estimates, and the synergy with the current Community Center, the City Council unanimously found the most desirable option was the former Portola Middle School Lower Playfield with additional community center space. This was also the preferred option of staff and the consultants. The Council directed City Manager Scott Hanin and Mayor Lyman to pursue discussions with the WCCUSD Board of Education to develop an agreement for a 50-year lease for the “Lower Playfield” area for the City to build a minimum 21,000 square foot library and a 7,500 square foot community center space. The Council’s direction also included urging the WCCUSD to rebuild Fairmont Elementary School as soon as possible, including that the City would ensure there would be adequate room on the Lower Portola Playfield for a temporary campus while Fairmont Elementary School was under

construction/renovation and also a commitment to develop a plan for the ultimate disposition of the current Senior Center and Library sites from the City to the District upon successful passage of a ballot measure to fund the new El Cerrito library. Unfortunately, the WCCUSD was not open to the City's request for the School Board to consider use of the Lower Portola Playfield for a new El Cerrito Library. The staff may recommend that the WCCUSD Board reconsider this position in the future.

Since the site feasibility study indicated a joint library and theater development on the City-owned Contra Costa Civic Theatre Site would not be cost-effective, staff and the consultants then focused on possible sites on San Pablo Avenue site, particularly in the midtown area near City Hall and at the south end of town near El Cerrito Plaza and the El Cerrito Plaza BART station. Staff is confident that at least one other potential location is currently feasible and under City control. However, at this time, a recommended site has not been identified, but a number of both publically owned and private sites are under consideration. No specifics are yet available due to ongoing planning and negotiations as the goal is to obtain the most advantageous site as possible but staff anticipates returning to Council in the near future with further details and a potential recommendation.

Measure Overview

Staff recommends the Council consider placing the Safe Modern El Cerrito Library Measure on the ballot to ask voters the following question:

To replace the 67 year old El Cerrito Library with a safe, energy efficient, 21st century library that meets earthquake and fire codes with space for:

- *a children's area for story times and books;*
- *public access computers and computer learning center;*
- *up-to-date book and resource collections; and*
- *improved senior and disabled access;*

shall El Cerrito issue \$30 million dollars in bonds at legal rates for 33 years, as the Voter Guide describes, requiring independent citizen oversight, and all funds for El Cerrito Library?

In order to provide the City with statistically valid information related to community priorities and preferences for financing a library facility, in March 2016, the City Council authorized Godbe Research to conduct a tracking poll focused on library needs and possible ballot measure language about funding a new library to follow-up to the survey conducted in June 2015. The outreach was just completed this week. The preliminary results from this current survey appear very positive with an approximately 3% increase in voter support for the library measure from the previous survey. Of respondents, 73.6% showed their willingness to support a \$30 million bond for the Safe Modern El Cerrito Library (as stated above) which is a clear indication of community support for the measure. Although suggestions to amend the language normally occur, because this

specific question has been tested twice and there is strong public support, the staff and consultants strongly recommend not changing this language in the final question given the wording tested in each survey and the 75 word limit.

The upcoming general municipal election and statewide election will be held on November 8 2016. If the Measure for a Safe Modern El Cerrito Library Project as presented is passed by the voters, the City will be authorized to issue up to \$30,000,000 in general obligation bonds. Bond proceeds may be used to acquire land and pay for design, construction, furnishing, and similar costs of a Safe Modern El Cerrito Library Project. The GO bonds would be financed by an ad valorem tax on property in the City, discussed in more detail below. To be approved, the measure must receive “yes” votes from two-thirds of the voters voting on it.

The City prides itself on transparent and fiscally prudent financial practices. Consistent with those values and practices and the City’s legal obligations with regard to GO bonds, the measure includes accountability provisions and the question now specifically directs people to the Voter Guide for more specific information. The proceeds of the tax levied to finance the GO bonds will be placed into a dedicated fund. Funds in the account can be used only for the purposes of the measure.

The Finance Director will annually prepare a report regarding the amount of funds collected and expended and the status of the Safe Modern El Cerrito Library project. In preparing the report, the Finance Director will rely upon the City’s independent auditor. The Financial Advisory Board (FAB) will review the annual report to ensure that bond proceeds are being expended in compliance with the purposes of the measure.

As previously stated, because of the restrictive 75-word limit for ballot questions, Staff and the consultants on the project believe that the ballot question should not be altered in spite of likely suggestions to do so and that the language as proposed is consistent with similar measures for other public agencies. Based on the community feedback that the City has received about the measure, including the survey, staff believes that El Cerrito voters consider the information included in the ballot question to be the most important. Some of that information would have to be removed to discuss the type of tax in the question. How the bonds are to be repaid is best explained in the Voter Guide (now specifically referenced in the question) which includes the Ordinance and Tax Rate Statement.

Financing Plan

Although the City’s primary operating fund, the General Fund, is in balance, additional revenue is required in order to build a safe, modern library that meets the needs of our community. General Obligation bonds are the most common debt instrument used by cities, school districts and other public agencies for large infrastructure projects such as new facilities.

The City engaged NHA Advisors to provide advice about General Obligation bonds and to develop the Tax Rate Statement. The Tax Rate Statement is included as attachment 3 and will be included in the Voter Guide.

California cities—as well as counties, school districts and special districts—can issue GO bonds to finance the acquisition of real property and construction of public facilities. GO bonds have historically provided local agencies with the lowest borrowing costs among the types of long-term bonds they may issue because of their broad security pledge, which yield the highest possible bond rating and widest investor acceptance. GO bonds issued by local agencies are backed by a promise to levy ad valorem property taxes in an unlimited amount as necessary to pay debt service. Because of this pledge of ad valorem property tax revenues, GO bonds issued by cities must be approved by the voters with a two-thirds majority. Once passed by the voters, the City is then authorized to levy property tax rate surcharge on property owners in proportion to the assessed value of their property at the rate necessary to repay the principal and interest of the GO bonds.

Based on the Updated Library Needs Assessment and cost estimating to purchase (or enter into a long-term lease of) land and construct, furnish, equip, and supply an approximately 21,000 square foot library facility, staff recommends the City Council consider asking the voters to approve a \$30 million General Obligation bond to finance a new library facility which may include for educational and recreational programming, if feasible. As described in the tax rate statement within the Voter Guide, the best estimate of the average annual tax rate at this time which would be required to be levied to fund the bond issue over the thirty-three year “life” of the bond debt service is \$0.0312 per \$100 (\$31.07 per \$100,000) *assessed property value*. (Note: the assessed value of taxable property on the County’s official tax rolls is *not* on the property’s market value.) More specific information will be available at the actual time the bonds are issued.

Next Steps

Staff recommends that the City Council take two actions to submit the Safe Modern El Cerrito Library Project measure to the City’s voters. The first action is adoption of a resolution finding that the public convenience and necessity demand a Safe Modern El Cerrito Library Project. Four affirmative votes of the City Council are required to approve the resolution. The second action is to waive the first reading and introduce by title an ordinance to submit to the voters of El Cerrito a measure authorizing the issuance of bonds for the Safe Modern El Cerrito Library Project. Introduction and subsequent adoption of the ordinance also require four affirmative votes of the City Council. The ordinance would need to have a second reading on Tuesday, August 2, 2016, prior to the County’s August 12 deadline to place the measure on the ballot for the upcoming election.

The Safe Modern El Cerrito Library Project measure must be approved by two-thirds of the City’s voters voting on the measure. The proposed ordinance also directs the City

Attorney to prepare the impartial analysis and authorizes a member of the City Council to file an argument in favor of the measure on behalf of the City Council.

STRATEGIC PLAN CONSIDERATIONS

Building a safe, modern library for El Cerrito would help fulfill *Goal D: Develop and Rehabilitate Public Facilities as Community Focal Points* as detailed in the City of El Cerrito Strategic Plan; as well as *Goal B: Achieve Long-term Financial Sustainability* and *Goal C: Deepen a Sense of Place and Community Identity*. Specifically, it would contribute to achieving the following strategies:

- Continue the facilities assessment to prioritize and strategize investment (i.e., library, public safety building, senior center, community center).
- Develop a financial plan to address ongoing and deferred maintenance of facilities and infrastructure.
- Identify, promote, and/or develop entertainment, recreational, and leisure activities for people of all ages and demographics.

FINANCIAL CONSIDERATIONS

Election Costs: Staff is recommending the Council appropriate \$12,000 from the unrestricted General Fund balance to cover the expenses charged by Contra Costa County for conducting the election. The County has already given consent to consolidate the election of three El Cerrito Council members with the statewide general election to be held on November 8, 2016, so the additional expense to include a measure on the ballot relate to additional printing, translation and noticing costs.

Bond Financing: The Measure asks voters whether or not to authorize the sale of up to \$30 million in general obligation bonds to build a safe, modern El Cerrito library and associated facilities for educational and recreational programming, if feasible. If the bonds are approved by the voters, the City expects to sell the bonds in two series beginning in 2017 which is why the payback period is 33 years. The GO bonds will be repaid from dedicated taxes levied on taxable property in the City as described in the Tax Rate Statement that will be included in the official Voter Guide prepared and distributed by Contra Costa County. Based on a review by NHA advisors, the City is currently well within the debt guidelines as described in the City's financial policy and this debt will not impact these levels as it is backed by a dedicated revenue source.

LEGAL CONSIDERATIONS

The City Attorney has approved this report and the attached resolutions and ordinance. The recommended actions comply with applicable law for submission of the Safe Modern El Cerrito Library Project measure to the City's voters.

Reviewed by:



Karen Pinkos,
Assistant City Manager

Attachments:

1. Resolution
2. Ordinance (Exhibit A to Resolution)
3. Tax Rate Statement

RESOLUTION NO. 2016-XX

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EL CERRITO DETERMINING THAT THE PUBLIC INTEREST AND NECESSITY DEMAND THE LAND ACQUISITION (OR LEASE) AND CONSTRUCTION DESIGN, FURNISHING, EQUIPPING, AND SUPPLYING OF A SAFE, MODERN LIBRARY PROJECT WITH FINANCING THROUGH THE ISSUANCE OF GENERAL OBLIGATION BONDS

WHEREAS, the El Cerrito Library currently does not meet the space, technological, educational, or safety needs of El Cerrito residents; and

WHEREAS, the El Cerrito Library was built in 1948 and does not currently meet the earthquake safety standards for libraries built today; and

WHEREAS, when school gets out, the El Cerrito Library is packed with the school children and simply overcrowded and too small for what our community needs; and

WHEREAS, library programs for children and teens, including homework help and reading resources, are critical to providing our students with the resources they need; and

WHEREAS, library community priorities include a safe, energy-efficient library that meets earthquake and fire codes, updated wiring to accommodate computers and technology, a children's area with space for children's story times, space for public access computers, a computer learning center, and free wi-fi, and improved access for seniors and disabled residents; and

WHEREAS, the current library is dilapidated, cramped, and substandard relative to its high usage and does not meet national standards for meeting space and seating for a community the size of El Cerrito; and

WHEREAS, library visits increased 26% since 2006 and circulation increased over 27% from 2006 to 2015; and

WHEREAS, the 2014 Updated Library Needs Assessment commissioned by the City found that a significant increase in space and a well-designed, efficient, technologically-current building are necessary to provide El Cerrito residents with a library that meets El Cerrito residents' library service needs and recommended an approximately 21,000 square foot library in order to meet both current and projected library service needs; and

WHEREAS, the ordinance placing a measure on the November 8, 2016, ballot to seek voter approval of general obligation bonds for the Safe Modern El Cerrito Library Project includes comprehensive fiscal accountability and transparency provisions, including independent citizens oversight; and

WHEREAS, the fiscal accountability safeguards will ensure funds are used efficiently, effectively and as promised to voters; and

WHEREAS, the City of El Cerrito (the "City") is authorized to issue general obligation bonds to finance municipal improvements pursuant to certain provisions of the California Government Code, including Article 1, commencing with Section 43600, of Chapter 4 of Division 4 of Title 4 and Article 4.5, commencing with Section 53506, of Chapter 3 of Part 1 of Division 2 of Title 5 (collectively, the "Bond Law"); and

WHEREAS, the City intends to issue its general obligation bonds (the "Bonds") pursuant to the Bond Law to finance the acquisition (or lease) of land and construction, furnishing, equipping, and similar costs of a safe, modern library that is energy efficient and meets current seismic, fire and accessibility codes and other related public improvements, as described in the ordinance placing a measure on the November 8, 2016, ballot seeking voter approval of the Bonds (the "Safe Modern El Cerrito Library Project"); and

WHEREAS, in order to initiate proceedings under the Bond Law to provide for the financing of the Safe Modern El Cerrito Library Project, the City Council must make certain findings and determinations.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF EL CERRITO DOES HEREBY RESOLVE as follows:

1. Declaration of Necessity to Issue Bonds. The public interest and necessity demand, and it is the intention of the City Council to require, the acquisition (or lease) and construction of the Safe Modern El Cerrito Library Project and to issue the Bonds to finance the cost thereof, subject to completion of the proceedings required by the Bond Law.

2. Maximum Amount. The estimated cost of the Safe Modern El Cerrito Library Project is not to exceed \$30,000,000. The estimated costs include provision for legal or other fees, and other costs and expenses, which are incidental to or connected with the authorization, issuance and sale of the Bonds.

3. Findings. The City Council hereby finds and determines that the costs of the Safe Modern El Cerrito Library Project requires an expenditure by the City greater than the amount allowed for it by the annual tax levy of the City. The principal amount of the Bonds will not exceed the estimated cost set forth above for the Safe Modern El Cerrito Library Project.

4. Issuance of the Bonds. This Resolution is adopted, and the Bonds, if approved by two-thirds of all qualified voters voting on the issuance of the Bonds, are to be issued pursuant to the Bond Law.

5. Effective Date. This Resolution shall take effect upon its adoption by two-thirds of all members of the City Council of the City.

I CERTIFY that the foregoing resolution was adopted upon motion of Councilmember _____ and seconded by Councilmember _____ at a regular meeting on July 19, 2016 by the City Council of the City of El Cerrito who passed this resolution by the following vote:

AYES:	Councilmembers
NOES:	Councilmembers
ABSENT:	Councilmembers
ABSTAIN:	Councilmembers

Cheryl Morse, City Clerk

Gregory B. Lyman, Mayor

ORDINANCE NO. 2016-XX

ORDINANCE OF THE CITY COUNCIL OF THE CITY OF EL CERRITO ORDERING THE SUBMISSION OF A GENERAL OBLIGATION BOND PROPOSITION TO THE QUALIFIED VOTERS OF THE CITY OF EL CERRITO AT THE GENERAL MUNICIPAL ELECTION TO BE HELD ON NOVEMBER 8, 2016, FOR THE PURPOSE OF THE LAND ACQUISITION (OR LEASE), DESIGN, CONSTRUCTION, FURNISHING, EQUIPPING, AND SUPPLYING OF A SAFE, MODERN LIBRARY PROJECT

WHEREAS, the El Cerrito Library currently does not meet the space, technological, educational, or safety needs of El Cerrito residents; and

WHEREAS, the El Cerrito Library was built in 1948 and does not currently meet the earthquake safety standards for libraries built today; and

WHEREAS, library community priorities include a safe, energy-efficient library that meets earthquake and fire codes, updated wiring to accommodate computers and technology, a children's area with space for children's story times, space for public access computers, a computer learning center, and free wi-fi, and improved access for seniors and disabled residents; and

WHEREAS, the current library is dilapidated, cramped, and substandard relative to its high usage and does not meet national standards for meeting space and seating for a community the size of El Cerrito ; and

WHEREAS, the 2014 Updated Library Needs Assessment commissioned by the City found that a significant increase in space and a well-designed, efficient, technologically-current building are necessary to provide El Cerrito residents with a library that meets El Cerrito residents' library service needs and recommended a minimum 21,000 square foot library in order to meet both current and projected library service needs; and

WHEREAS, the proceeds of the tax levied to finance the General Obligation Bonds will be placed into a special account and those funds can be used only for the purposes of the measure and the City's Finance Director must annually prepare a report regarding the amount of funds collected and expended and the status of the Safe Modern El Cerrito Library project; and

WHEREAS, each year, the City's Financial Advisory Board will review the annual report to ensure that bond proceeds are being expended in compliance with the purposes of the measure and the Safe Modern El Cerrito Library Project; and

WHEREAS, the fiscal accountability safeguards will ensure funds are used efficiently, effectively and as promised to voters; and

WHEREAS, on July 19, 2016, the City Council adopted, by a two-thirds vote of all its members, a resolution entitled “Resolution of the City Council of the City of El Cerrito Determining that the Public Interest and Necessity Demand the Land Acquisition (or Lease), Design, Construction, Equipping, and Furnishing of a Safe, Modern Library Project with Financing through the Issuance of General Obligation Bonds” (the “Resolution of Necessity”); and

WHEREAS, in order to provide for the issuance by the City of its general obligation bonds to finance the City Library Project (as described in the Resolution of Necessity), it is necessary for the City Council to pass an ordinance ordering the submission of the proposition of incurring bonded indebtedness for such purpose to the qualified voters of the City at a regular municipal election; and

WHEREAS, the City Council desires to submit said ballot measure to the qualified voters of the City at an election to be held in the City on November 8, 2016, and to consolidate the bond election with the general statewide election held within the City on that date; and

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF EL CERRITO DOES HEREBY ORDAIN as follows:

1. Call for Election. The City Council hereby orders that there be submitted to the qualified voters of the City a proposition on incurring a bonded debt (the “Bonds”) for the purpose set forth in this Ordinance, at the general municipal election to be held on November 8, 2016. . The proposition shall be approved if at least two-thirds of the voters voting on the question vote in favor of it.

2. Ballot Proposition. The City Council hereby submits to the qualified voters of the City, at the regular election to be held on November 8, 2016, a proposition on issuing the Bonds in substantially the following form:

To replace the 67 year old El Cerrito Library with a safe, energy efficient, 21st century library that meets earthquake and fire codes with space for a children's area for story times/books; public access computers/computer learning center; up-to-date book/resource collections; and improved senior/disabled access, shall El Cerrito issue \$30,000,000 in bonds at legal rates for 33 years, as the Voter Guide describes, requiring independent citizen oversight, and all funds for El Cerrito Library?

3. Object and Purpose of Bonds. The object and specific single purpose of issuing the Bonds is the acquisition and construction of the Safe Modern El Cerrito Library Project (the “Project”). The proceeds of the Bonds may only be expended for the specific purposes set forth in the ballot proposition and for the Project described by this Ordinance. The Project consists of the elements listed below as well as similar

substitute elements that further the creation of a safe, modern El Cerrito Library, as described in the 2014 Updated Library Needs Assessment, and the goal of creating a facility that provides adequate space to meet all of the programming needs of a high-usage community the size of El Cerrito :

(a) Acquisition (including lease) of land for a safe, modern El Cerrito Library and associated public facilities that can be used for educational and recreational programming.

(b) Constructing a safe, modern El Cerrito Library and associated public facilities that can be used for educational and recreational programming that are energy-efficient; meet earthquake and fire codes; and include without limitation updated wiring to accommodate computers and technology, a children's area with space for children's story times, space for public access computers, a computer learning center, free wi-fi, and improved access for seniors and disabled residents.

(c) Furnishing, equipping, and supplying a safe, modern El Cerrito Library and associated public facilities that can be used for educational and recreational programming.

4. Estimated Cost of the City Library Project. The estimated cost of the Safe Modern El Cerrito Library Project is \$30,000,000. The estimated costs include provision for legal or other fees, and other costs and expenses, which are incidental to or connected with the authorization, issuance and sale of the Bonds.

5. Principal Amount of Bonds. The amount of the principal of the Bonds shall not exceed \$30,000,000.

6. Maximum Interest Rate. The maximum rate of interest to be paid on the Bonds shall be 8% per annum. Said interest shall be payable semiannually except that interest for the first year after the date of the Bonds may be made payable at the end of said year.

7. Issuance and Sale of Bonds. The City proposes to acquire and construct the Safe Modern El Cerrito Library Project and to issue and sell the Bonds pursuant to Article 1, commencing with Section 43600, of Chapter 4 of Division 4 of Title 4 of the California Government Code, or Article 4.5, commencing with Section 53506, of Chapter 3 of Part 1 of Division 2 of Title 5 of the California Government Code, in one or more series, in the maximum amount and for the objects and purposes set forth above if two-thirds of all qualified voters voting on the proposition set forth above vote in favor thereof. The Bonds will be general obligations of the City payable from and secured by taxes levied and collected in the manner prescribed by laws of the State of California. All of the Bonds are to be equally and ratably secured, without priority, by the taxing power of the City.

8. Consolidation; Manner of Conducting Election. The bond election hereby called for November 8, 2016, is hereby ordered consolidated with any other election to be held within the City on said date. The election shall be held and conducted, election officers appointed, voting precincts designated, ballots printed, polls opened and closed, ballots counted, and returned, returns canvassed, results declared, and all other proceedings incidental to and connected with the election shall be regulated and done in accordance with the provisions of law regulating the election as specified herein. The Board of Supervisors of Contra Costa County and the Contra Costa County Clerk, Elections Division, are hereby requested to order the consolidation of the municipal election hereby called with any other election to be held within the City on said date. The City Council recognizes that the County will incur additional costs in conducting the election called by this resolution, agrees to reimburse the County for those costs, and authorizes and directs the City Manager or his designee to expend the funds necessary to pay for the costs of conducting the election. The City Council acknowledges that the consolidated election will be held and conducted in the manner prescribed in Elections Code Section 10418. The City's boundaries have not changed since its previous election.

9. Procedure for Voting on Proposition. Ballots for the election shall be provided in the form and in the number provided by law. Voters shall be provided an opportunity to vote for or against the proposition on the ballot, in accordance with procedures to be adopted by the authorized officers of the County charged with conducting the election.

10. Accountability Requirements. In accordance with Sections 53410 and 53411 of the California Government Code, the City Council hereby adopts the following accountability requirements relating to the Bonds:

(a) A separate account shall be created and held by the City, into which the proceeds of the Bonds are deposited.

(b) The Finance Director of the City shall file a report with the City Council no later than January 1, 2018, and at least once a year thereafter, showing the amount of Bond proceeds collected and expended, and the status of the project to be financed from the proceeds of the Bonds.

(c) The Finance Director of the City shall also file the annual report described in the preceding paragraph to the City's Financial Advisory Board, which will review the annual report to ensure that Bond proceeds are being expended in compliance with the purposes of the measure and the Safe Modern El Cerrito Library Project.

11. Ballot Arguments; Tax Rate Statement; Text of Measure.

(a) The Mayor is hereby authorized to file an argument in support of the ballot measure which is prepared in connection with the election. At the

Mayor's discretion, the argument may also be signed by members of the City Council or bona fide associations or by individual voters who are eligible to vote on the measure. In the event that an argument is filed against the measure, the Mayor is also authorized to prepare a rebuttal argument on behalf of the City Council, which may also be signed by members of the City Council or bona fide associations or by individual voters who are eligible to vote on the measure. Ballot arguments shall not exceed 300 words. Rebuttal arguments shall not exceed 250 words. The deadline for filing ballot arguments is August 24, 2016. The deadline for filing rebuttal arguments is August 29, 2016. Direct and rebuttal arguments shall be filed with the City Clerk's Office.

(b) The Finance Director is hereby authorized to execute any Tax Rate Statement to be included as part of the official ballot measure.

(c) The full text of this Ordinance shall be published in the Voter Information Guide.

12. Impartial Analysis. Pursuant to Section 9280 of the California Elections Code, the City Clerk is hereby directed to submit a copy of this Ordinance to the City Attorney and the City Attorney or his designee is hereby authorized and directed to prepare an impartial analysis of the ballot proposition showing the effect of the ballot proposition on the existing law and the operation of the ballot proposition. Such analysis shall not exceed 500 words in length and shall comply in all respects with applicable provisions of the California Elections Code. The City Attorney's impartial analysis shall be filed with the City Clerk's Office no later than August 19, 2016.

13. Compliance with the California Environmental Quality Act. The City Council finds that this Ordinance is exempt from the California Environmental Quality Act (Public Resources Code §§ 21000 et seq., "CEQA," and 14 Cal. Code Reg. §§ 15000 et seq., "CEQA Guidelines"). This Ordinance only submits to the voters of El Cerrito the question whether the tax and bonds described by this Ordinance should be approved to fund the Safe Modern El Cerrito Library Project but does not approve the Project. As such, under CEQA Guidelines section 15378(b)(4), this Ordinance and the tax and bonds described herein are not a project within the meaning of CEQA because they create a government funding mechanism that does not involve any commitment to any specific project or service that may result in a potentially significant physical impact on the environment. If revenue from the tax and bonds were used for a purpose that would have such effect, the City would undertake the required CEQA review for that particular project. Therefore, pursuant to CEQA Guidelines Section 15060, review of the Ordinance under CEQA is not required. Prior to commencement of any component of the Safe Modern El Cerrito Library Project, any necessary environmental review required by CEQA shall be completed. The City shall perform CEQA analysis for the Safe Modern El Cerrito Library Project prior to approving the Project, if the Project requires analysis under CEQA.

14. Official Actions. The Mayor, the City Manager, the Finance Director and the City Clerk, or any of their designees, are hereby authorized to execute any documents and to perform all acts necessary to place the bond measure on the ballot.

15. Publication of Ordinance. This Ordinance shall be published once a day for at least seven (7) days in a newspaper published at least six (6) days a week in the City, or once a week for two (2) weeks in a newspaper published less than six (6) days a week in the City. The first of said publications shall, in either event, be within fifteen (15) days after the adoption of this Ordinance.

16. Effective Date. This Ordinance shall become effective immediately upon its adoption by two-thirds vote of all the members of this Council (at least four affirmative votes).

I CERTIFY that the foregoing ordinance was introduced upon motion of Councilmember _____ and seconded by Councilmember _____ at a regular meeting on July 19, 2016, and was adopted upon motion of Councilmember _____ and seconded by Councilmember _____ at a regular meeting on _____, 2016 by the City Council of the City of El Cerrito who passed this ordinance by the following vote:

AYES: Councilmembers

NOES: Councilmembers

ABSENT: Councilmembers

ABSTAIN: Councilmembers

Cheryl Morse, City Clerk

Gregory B. Lyman, Mayor

**Tax Rate Statement In Connection With
City of El Cerrito Safe, Modern El Cerrito Library Project
Bond Measure ____**

An election will be held in the City of El Cerrito (the "City") on November 8, 2016, on the question of issuing bonds in the principal amount of \$30,000,000 to finance the Safe Modern El Cerrito Library Project as described in the bond measure and Ordinance No. 2016-XX, which submitted the bond measure to the City's voters for approval at the November 8, 2016, election. If the bonds are approved, the City expects to sell the bonds in two series beginning in 2017. Principal and interest on the bonds will be paid from taxes levied on taxable property in the City. The following tax rate information is given to comply with Sections 9400-9404 of the Elections Code of the State of California.

Based on estimated assessed valuations available at the time of filing of this statement:

1. The best estimate of the tax rate that would be required to be levied to fund the bond issue during the first fiscal year after the sale of the first series of bonds, based on estimated assessed valuations available at the time of filing of this statement, is \$0.0188 per \$100 (\$18.78 per \$100,000) of assessed valuation in fiscal year 2017/18.

2. The best estimate of the tax rate that would be required to be levied to fund the bond issue during the first fiscal year after the last sale of the bonds, based on estimated assessed valuations available at the time of filing of this statement, is \$0.0428 per \$100 (\$42.80 per \$100,000) of assessed valuation in fiscal year 2020/21.

3. The best estimate of the highest tax rate that would be required to be levied to fund the bond issue, based on estimated assessed valuations available at the time of filing this statement, is \$0.0431 per \$100 (\$43.09 per \$100,000) of assessed valuation in fiscal year 2021/22.

4. The best estimate of the average annual tax rate which would be required to be levied to fund the bond issue over the entire life of the bond debt service, based on estimated assessed valuations available at the time of filing of this statement, is \$0.0312 per \$100 (\$31.07 per \$100,000) of assessed valuation. The final fiscal year in which a tax is anticipated to be collected is 2049/50.

Voters should note that such estimated tax rates are specific to the repayment of bonds issued under this authorization and exclusive of any other bond authorizations approved or to be approved by the City or any other overlapping public agency.

Voters should note that the estimated tax rates are based on the *assessed value* of taxable property on the Contra Costa County's official tax rolls, not on the property's market value. In addition, taxpayers eligible for a property tax exemption, such as the

homeowner's exemption, will be taxed at a lower effective tax rate than described above. Certain taxpayers may also be eligible to postpone payment of taxes. Property owners should consult their own property tax bills and the County Assessor to determine their property's assessed value and any applicable tax exemptions.

The actual tax rates and the years in which they will apply may vary from those presently estimated, due to variations from these estimates in the timing of bond sales, the amount of bonds sold and market interest rates at the time of each sale, and actual assessed valuations over the term of repayment of the bonds. The estimates are based upon the City's projections and are not binding upon the City. The dates of sale and the amount of bonds sold at any given time will be determined by the City based on the need for construction funds and other factors. The actual interest rates at which the bonds will be sold will depend on the bond market at the time of each sale. Actual future assessed valuation will depend upon the amount and value of taxable property within the City as determined by the County Assessor in the annual assessment and the equalization process.

Dated: August ___, 2016

Gregory B. Lyman
Mayor, City of El Cerrito

El Cerrito City Council Meeting
July 19, 2016

SUPPLEMENTAL REPORTS AND COMMUNICATIONS

Item No. 5(F) Urge the Bay Area Air Quality Management District to Adopt the Community Worker Alternative in Rule 12-16

1. Notification that the Environmental Quality Committee voted to support the Community-Worker proposal – *Submitted by Maria Sanders, Liaison to the Environmental Quality Committee.*

Item No. 6(B) Appeal of the Planning Commission's Approval of Amendments to a Conditional Use Permit for the Summit K2 Charter School Located at 1800 Elm Street

2. Summit K2 Charter School Letter to Planning Commission (cc: City Council) – *Submitted by Franklin Leong and Daisy Leong*
3. Request for scheduling of appeal – *Submitted by Doug Giffin, Education Matters.*
4. 1800 Elm Street Conditional Use Permit Addendum – *Submitted by Doug Giffin, Education Matters.*
5. Ex-Parte Communication Disclosure – *Submitted by Mayor Lyman.*
6. Materials Regarding Summit K2's Conditional Use Permit Amendment – *Submitted by Mayor Lyman and Council.*
7. Elaboration on Appeal of the Planning Commission's actions on June 15, 2016 – *Submitted by Joanna Pace on behalf of appellants.*
8. Survey of traffic on 1800 Elm Street – *Submitted by Joanna Pace on behalf of Franklin Leong, Appellant, El Cerrito.*
9. Summit K2 Public School Traffic Congestion - *Submitted by Joanna Pace on behalf of Franklin Leong, Appellant, El Cerrito.*
10. Summit Expansion/Traffic concern – *Submitted by Colleen West, El Cerrito.*

Item No. 6(C) PL 14-0171 El Dorado Townhomes Tentative Subdivision Map

11. Comments on proposed subdivision map – Submitted by Howdy Goudey, El Cerrito.

12. Audiss “Fair Treatment for Audiss Residents” Petition Signatures - Submitted by Sharon Maldonado, Berkeley.

Item No. 7 Placement of a General Obligation Bond Measure for a Safe Modern El Cerrito Library

13. Financial Advisory Board recommendations regarding funding for a potential new library – Submitted by Rich Bartke, Chair.