



AGENDA

CITY COUNCIL MEETING
Tuesday, August 19, 2014 – 7:00 p.m.
City Council Chambers

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

Janet Abelson – Mayor

Mayor Pro Tem Rebecca Benassini
Councilmember Jan Bridges

Councilmember Mark Friedman
Councilmember Greg Lyman

ROLL CALL

7:00 p.m. CONVENE CITY COUNCIL MEETING

1. PLEDGE OF ALLEGIANCE TO THE FLAG OR OBSERVATION OF MOMENT OF SILENCE – Councilmember 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.*)

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

El Cerrito Stars Internship Program – *Presentation by Suzanne Iarla, Public Outreach Specialist.*

Summary of the joint City of El Cerrito and the West Contra Costa Unified School District (WCCUSD) high school internship program.

5. ADOPTION OF THE CONSENT CALENDAR – Item No. 5A through 5K

A. Minutes for Approval

Approve the July 15, 2014 Special City Council and July 15, 2014 Special Concurrent City Council/Public Financing Authority/Employee Pension Board meeting minutes.

B. Proclamation in Commemorating the 50th Anniversary of the Wilderness Act

Approve a proclamation celebrating and commemorating the 50th Anniversary of the Wilderness Act in the City of El Cerrito and calling upon all residents to embrace our Nation's legacy of protecting and preserving the Country's vast wilderness areas for future generations to come.

C. Consultant Services Agreement with Goldfarb & Lipman LLP for Legal Services

Adopt a resolution authorizing the City Manager to execute a consultant services agreement with Goldfarb & Lipman LLP for Fiscal Year 2014-15 legal services related to the implementation of Assembly Bill 1x26 and the City's affordable housing programs in an amount not to exceed \$34,500.

D. Appointment to the Successor Agency Oversight Board

Staff requests the following actions: 1) The Mayor appoint Lisa Malek-Zadeh to the Oversight Board of the Successor Agency to represent employees of the former El Cerrito Redevelopment Agency; and 2) The City Council adopt a resolution ratifying the Mayor's appointment of Lisa Malek-Zadeh to the Oversight Board of the Successor Agency to the former El Cerrito Redevelopment Agency.

E. Agreement with West Coast Arborists, Inc. for Tree Pruning and Removal

Adopt a resolution authorizing the City Manager to execute an agreement with West Coast Arborists, Inc. in an amount not to exceed \$100,000 for tree pruning and removal services, effective July 1, 2014 through June 30, 2015. *Exempt from CEQA.*

F. Agreement with Rubicon Enterprises, Inc. for Parks and Landscape Maintenance Services

Adopt a resolution authorizing the City Manager to execute an agreement with Rubicon Enterprises, Inc. in an amount not to exceed \$180,000 for park and landscape maintenance services, effective July 1, 2014 through June 30, 2015. *Exempt from CEQA.*

G. Agreement with Liberty Fleet Care, Inc. for Fleet Management and Maintenance Services

Adopt a resolution authorizing the City Manager to execute an agreement with Liberty Fleet Care, Inc. in an amount not to exceed \$127,900 per fiscal year for fleet maintenance and parts, effective January 1, 2014 through June 30, 2016. *Exempt from CEQA.*

H. Payment of El Cerrito's Share of the West Contra Costa Integrated Waste Management Authority Budgeted Operating Expenses

Adopt a resolution authorizing payment of \$99,762 for the City of El Cerrito's share of the Contra Costa Integrated Waste Management Authority budgeted operating expenses for Fiscal Years 2013-14 and 2014-15.

I. Contra Costa Civic Theatre Lease Agreement

Adopt a resolution authorizing the City Manager to execute an amendment to the property lease agreement for the Contra Costa Civic Theatre extending the term of the agreement to May 5, 2035.

J. Economic Development Committee Appointment

Approve an Economic Development Committee recommendation to appoint Scott Kagawa to the Economic Development Committee, effective August 20, 2014.

K. Cancel the November 4, 2014 Regular City Council Meeting

Approve a recommendation to cancel the November 4, 2014 regular City Council meeting. November 4, 2014 is the date of the General Election. Holding the City Council meeting on November 4 may pose a conflict with the public's ability to participate in the meeting and also vote in the election as polls remain open until 8:00 p.m. The Contra Costa County Elections Department has also requested that City Hall be used as a polling place on this date.

6. PUBLIC HEARING

Appeal of the Planning Commission's Approval of a Conditional Use Permit, and a General Plan Amendment, Development Agreement, the Creation of a Planned Development District including a Zoning Map Amendment for a Development Project that consists of the construction of 14 New Dwelling Units, the Relocation and Conversion of an Existing Dwelling Unit into a Community Center Type Use that will Remain on Site with 15 Parking Spaces, 1,548 square feet of Private Open Space, and 2,874 square feet of Common Open Space

Staff recommends that the City Council hold a single, consolidated public hearing to consider the actions necessary to consider both the proposed development at 1715 Elm Street (the "Project") and the related appeal of the Planning Commission's approval of the Planned Development Use Permit for the Project. The analysis of the appeal was discussed in a separate staff report for the Project and distributed to the City Council for the June 2, 2014 Council meeting. Please refer to all previous staff reports, California Environmental Quality Act (CEQA) documentation and correspondence as part of the record for this project. These documents may be found on the City's website at www.el-cerrito.org/1715Elm or by request at the public counter at El Cerrito City Hall.

Staff additionally recommends that, at the conclusion of the consolidated public hearing, the City Council act to approve *Option 2*, 14 new dwelling units, the relocation and conversion of an existing dwelling unit into a community center type use, and preservation and enhancement of the existing creek channel, as described in the staff report by taking the following actions:

1. Adopt a resolution approving the Initial Study/Mitigated Negative Declaration for the Project;
2. Introduce by title, waive any further reading and approve an ordinance approving Planned Development Zoning for the Project property and amend the Zoning Map accordingly;
3. Adopt a resolution denying an appeal of the Planning Commission's approval of a Planned Development Use Permit for the Project; and
4. Introduce by title, waive any further reading and approve an ordinance approving a Development Agreement.

7. POLICY MATTERS

A. Smoking Pollution Protection Ordinance

Introduce by title, waive any further reading, and approve an ordinance amending the El Cerrito Municipal Code by adding Chapter 8.06, Smoking Pollution Protection Ordinance.

B. Short Term Cash Flow Financing through Tax and Revenue Anticipation Notes

Adopt a resolution authorizing the City Manager to execute an agreement to sell tax and revenue anticipation notes ("TRAN") in an amount not to exceed \$5,250,000 to a financial institution or underwriter and authorize staff to work with city consultants to prepare and execute appropriate legal documents related to said financing.

8. COUNCIL LOCAL AND REGIONAL LIAISON ASSIGNMENT REPORTS

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

9. ADJOURN CITY COUNCIL MEETING.

The next City Council meeting is Monday, September 22, 2014 at 7:00 p.m. at City Hall, 10890 San Pablo Avenue, El Cerrito, California.

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.



AGENDA BILL

Agenda Item No. 4

Date: August 19, 2014
To: El Cerrito City Council
From: Suzanne Iarla, Community Outreach Specialist
Subject: EC STARS Internship Program

ACTION REQUESTED

Receive a presentation regarding the 2014 El Cerrito Students Training and Ready for Success ("EC STARS") Internship Program.

Suzanne Iarla, Community Outreach Specialist will provide a brief overview of the program, and each intern will speak about their experience.

BACKGROUND

This is the second year of the El Cerrito Students Training And Ready for Success Program, also known as EC STARS. The program is a summer internship program in partnership with the Information Technology and the Media Academies at El Cerrito High School.

In addition to working approximately 10-20 hours per week in a city office, the interns also attend a weekly class with Mr. Corey Mason for academic credit. Mr. Mason led the EC STARS class in both 2013 and 2014.

This year, there were eight interns in seven City Departments:

2014 EC STARS		
Department / Division	Mentor	Intern
Recreation	Vivian Brandt, Recreation Supervisor	Leonardo Mendoza
Community Development/Planning	Sean Moss, Senior Planner	Monet Boyd
Public Works	Garth Schultz, Environmental Services Manager	Evan Martinez
City Management	Suzanne Iarla, Community Outreach Specialist	Saleh Alkaheli & Joseph Baba
City Management Human Resources	Cheryl Mosby, Human Resources Technician	Daniel Malle
Finance	Geoff Thomas, Finance Manager	Richard Mazon
Fire	Mike Pigoni, Battalion Chief	Travis Wan

Former Human Resources Manager Sukari Beshears developed the program in 2013 and coordinated the recruitment this year. After Ms. Beshears' departure in June, Community Outreach Specialist Suzanne Iarla coordinated the program and worked closely with Mr. Mason.

ANALYSIS

The EC STARS program offers students learning opportunities in a variety of fields, while enriching public service for the City. The primary goal of the EC STARS Intern Program is to have a positive impact on youth by connecting them to local government employment through skill building. City staff strives to ensure that the students have a clear understanding of basic employment rules and requirements, employer goals and expectations, and obtain the necessary information to perform well in a structured educational setting as well as on the job.

The program will achieve this goal by accomplishing the following objectives:

1. Enhance the basic educational skills of the students
2. Encourage school completion
3. Expose youth to career options and opportunities
4. Direction to enter into career paths
5. Offer part-time work
6. Divert youth from anti-social behavior
7. Assist youth with inter-personal relations
8. Provide guidance and assistance
9. Introduce youth to the world of work
10. Enhance other 21st Century skills

Based on feedback from the mentors and interns, we feel the program was a success again this year.

FINANCIAL CONSIDERATIONS

The cost for each employee intern was allocated by department based on actual hours worked.

Reviewed by:



Scott Hanin, City Manager

**EL CERRITO CITY COUNCIL
EL CERRITO PUBLIC FINANCING AUTHORITY
EL CERRITO EMPLOYEE PENSION BOARD**

MINUTES

SPECIAL CITY COUNCIL MEETING – CLOSED SESSION

Tuesday, July 15, 2014 – 6:30 p.m.

Hillside Conference Room

**SPECIAL CONCURRENT CITY COUNCIL MEETING /
PUBLIC FINANCING AUTHORITY AND EMPLOYEE PENSION BOARD MEETING**

Tuesday, July 15, 2014 – 7:00 p.m.

City Council Chambers

Meeting Location

El Cerrito City Hall

10890 San Pablo Avenue, El Cerrito

Janet Abelson – Mayor

Mayor Pro Tem Rebecca Benassini
Councilmember Jan Bridges

Councilmember Mark Friedman
Councilmember Greg Lyman

6:30 p.m. ROLL CALL

Councilmembers Benassini, Bridges, Friedman, Lyman and Mayor Abelson

CONVENE SPECIAL CITY COUNCIL MEETING – CLOSED SESSION

Mayor Abelson convened the special City Council Meeting – Closed Session at 6:30 p.m.

ANNOUNCEMENT OF CLOSED SESSION

CONFERENCE WITH LABOR NEGOTIATORS (*Pursuant to Government Code Section 54957.6*)

Agency Designated Representatives: Scott Hanin, City Manager, Karen Pinkos, Assistant City Manager, Glenn Berkheimer, Labor Negotiator, and Sky Woodruff, City Attorney.

Employee Organizations: Service Employees International Union Local 1021

International Association of Fire Fighters Local 1230

El Cerrito Police Employees Association

El Cerrito Public Safety Management

Unrepresented Employees

ORAL COMMUNICATIONS FROM THE PUBLIC

Mariya Limone stated that she is a part-time employee at the Senior Center where she works as a Café Manager. Ms. Limone stated that she has heard that it is not looking good in terms of a raise for Service Employees International Union 1021 (SEIU) but understands that the Council is considering giving a raise to Fire and Police. SEIU workers are just as important. They communicate with public every day. Ms. Limone said it is great serving the senior residents of El Cerrito. Approximately 37-50 meals are served per day. The public is very supportive of the senior center and the City.

RECESSED INTO CLOSED SESSION at 6:35 p.m.

ADJOURNED SPECIAL CITY COUNCIL MEETING – CLOSED SESSION at 7:11 p.m.

ROLL CALL

Councilmembers Benassini, Bridges, Friedman, Lyman and Mayor Abelson

7:00 p.m.

CONVENE SPECIAL CONCURRENT CITY COUNCIL MEETING / PUBLIC FINANCING AUTHORITY AND EMPLOYEE PENSION BOARD MEETING

Mayor Abelson convened the City Council Meeting at 7:14 p.m.

1. PLEDGE OF ALLEGIANCE TO THE FLAG OR OBSERVATION OF MOMENT OF SILENCE was led by Mayor Abelson.

2. COUNCIL / STAFF COMMUNICATIONS

Mayor Abelson announced that the City Council had just met in closed session regarding labor negotiations, that no decisions were reached and that the City Council provided direction to staff.

3. ORAL COMMUNICATIONS FROM THE PUBLIC

Justin Torres, Pinole, El Cerrito curbside pick-up employee, spoke in support of Service Employees International Union (SEIU) 1021 members. Mr. Torres described the duties of many SEIU members at the City and said that they deserve a fair wage and a fair contract with the city and a fair offset for retirement.

Mark Miner, Chair of the Environmental Quality Committee (EQC), spoke in support of Consent Calendar Item No. 5(C) – membership analysis with Marin Clean Energy (MCE). Mr. Miner stated that MCE is a lean organization with bright people working for them and said the purpose of the study is to protect existing rate payers. Mr. Miner also stated that the EQC supports the proposal.

Robin Mitchell, El Cerrito, stated, in reference to the proposed development at 1715 Elm Street, said creek protection is admirable but it is not enough. Ms. Mitchell said it is not recognized by the City Council that the 1715 Elm Street property is a greenfield that is equivalent to any other greenfield development. The property is located along a creek-bed in a location found to have good agricultural soil that has never been built upon other than the existing historic structure. The City will regret giving it over to development rather than preserving green space. Ms. Mitchell stated that it is easy to envision the site as a park and urged the City Council to deny the project.

Tom Panas, El Cerrito, expressed concerns regarding the Draft San Pablo Avenue Specific Area Plan. Mr. Panas stated that although the Plan acknowledges the existence of historic and potential historic resources in town it does not treat them as assets and should leverage them. Mr. Panas also noted that there is no discussion of adaptive reuse of structures and

asked why statements about creeks, habitats and green features in the Plan are prescriptive rather than advisory.

Anthony Billups, After-school Program Supervisor at Fairmount School, stated that SEIU 1021 members give it their best each and every day and asked that the City Council give SEIU a fair labor contract.

Liz Espadilla, Richmond, stated that she has worked for the Senior Services Division for the past 14 years. Ms. Espadilla said her bargaining unit is having a difficult time negotiating with the City and that all SEIU wants is a fair contract. Many members have been with the City for over 10 years and are not asking for a lot. A 5 percent concession is a lot for SEIU 1021 as many members do not make more than \$30,000 per year.

Laurenteen Brazil, Pinole, stated that she has been with the Public Works Department for approximately 12 years. She came in with big dreams and does not feel like she has been allowed to shine. Ms. Brazil said she is at top step and can only depend on a cost of living increase (COLA). She wants only what is best for her family and cannot achieve anything with a pay-cut. Ms. Brazil asked why the City is top heavy with management and overlooks front-line staff.

Melanie West, San Pablo, stated that she has worked for Youth Services for 14-15 years. Ms. West stated that she cannot afford to live in El Cerrito due to cuts in pay and no COLA. The faces of SEIU are the faces of El Cerrito. Ms. West stated that the City is top heavy and asked the Council to ensure that the contract the city brings to SEIU is equitable and fair.

Lila Banuelos, Pinole, stated that she has worked with the City for over thirty years and reached her salary cap more than 15 years ago. She has worked on many programs in the City. Ms. Banuelos asked the Council to look at the contract without making concessions. It has been hard for members to go without increases.

Howdy Goudey, El Cerrito, EQC Member, stated that he echoed Mr. Miner's remarks about Consent Calendar Item No. 5(C), the Community Choice Aggregation study. Mr. Goudey also thanked the Council for its thoughtful consideration of full creek restoration at 1715 Elm. He urged the Council to vote the project down for reasons that are well articulated by those who support the potential for creek restoration, stated that the project negates the City's standards and noted that the Planning Commission voted against the planned development.

Angela Osayande, SEIU 1021, stated that SEIU members have come to the meeting not to beg but to ask the Council to do the right thing. They are the lowest paid workers in the City who do work that generates revenue. SEIU members do not have the same options to make up for concessions. A five percent concession for SEIU members is different from a five percent concession for management, confidential, police and fire. Members took a 3.25% cut in Fiscal Year 2013-14 and are being asked for another concession. Members want to do the right thing but cannot.

Nina Johnson, SEIU 1021, stated that she works in the Finance Department and has been with the City for 10 years. SEIU members cannot absorb a 5 percent concession. Ms. Johnson said she recently became a single parent and it is difficult. A cut will not allow her to provide for her family in the way others do. As people leave, workload in the City has become heavier. Ms. Johnson said that all SEIU members are asking for is a fair contract.

Francis West, Past Master of Bay Cities Lodge - Masons, stated that people come to El Cerrito because of the relationships and reputation that the City has because of its workers. SEIU members need to be taken care of. A 5 percent cut is a lot to SEIU, particularly those who work paycheck to paycheck. If SEIU members leave it will affect the reputation of the

City and will affect a desire to live in El Cerrito.

Sheryl Shute, Community Services Coordinator, stated that she has worked for the City for the past twenty years, has enjoyed working for the City and with the Community and has provided many programs in the City. SEIU members enjoy what they do and are asking for what they deserve.

4. PRESENTATION

A. Proclamation in Memory of John Umemoto

Approve a proclamation recognizing the many contributions Mr. Umemoto made to the El Cerrito Community and offering condolences to Mr. Umemoto's wife Saliann, his family and many friends on behalf of the grateful residents of the City of El Cerrito.

Action: Proclamation presented to Saliann Umemoto and her family.

B. El Cerrito Wall of Fame Ceremony

Adopt a resolution recognizing the leadership, contributions and achievements of Tom Panas and inducting Mr. Panas into the El Cerrito Wall of Fame.

Mayor Abelson noted Mr. Panas involvement in the community and also noted his history as past president and treasurer of the El Cerrito Historical Society. Mr. Panas has worked diligently toward preserving and recognizing historic structures. Mr. Panas has interviewed people across the country and has collected many images and documents relating to the history of El Cerrito. Mr. Panas has also done a lot of work with the Friends of the El Cerrito Library and serves as the City's alternate representative on the Contra Costa County Library Commission.

Councilmember Friedman stated that Mr. Panas is a remarkable individual who lives to serve and help others in addition to having a wonderful family and a full-time job. Mr. Panas is always looking for ways to make not just El Cerrito, but the world around him a better place. Councilmember Friedman concluded by stating that Mr. Panas' recognition is well deserved, that the City is lucky to have him as such an integral member of the community and that it is both an honor and a privilege to know Mr. Panas.

Councilmember Lyman stated that Mr. Panas has been a voice in his ear on many topics for the past six years and thanked Mr. Panas for making El Cerrito a better place and for his service to the community.

Mayor Pro Tem Benassini stated that she appreciated Mr. Pana's comments when she first began service on the City Council and thanked Mr. Panas for the advocacy he has done on behalf of many issues in El Cerrito and his respectful manner in discussing issues, even when there is disagreement. Mayor Pro Tem Benassini expressed appreciation for all the hours that Mr. Panas has devoted to the community and noted that the dialogue that is generated is indicative of how everyone is trying to do what is best for the community.

Councilmember Bridges said that a special quality of Mr. Panas is that he always writes a thank you note no matter which way the Council votes. The note usually has an historical photograph on it that is kept by Councilmember Bridges.

Speakers: Gabe Quinto, El Cerrito, expressed appreciation for Mr. Panas, particularly his discussions with Mr. Panas regarding the City's history. Mr. Quinto thanked Mr. Panas for being so passionate about the City and its neighborhoods and also noted that the award is well deserved.

Howdy Goudey, El Cerrito, stated that Mr. Panas is an invaluable asset to the community and thanked Mr. Panas for all of his work.

Joanne Rubio, Historical Society Board Member, said she was happy to see Mr. Panas receive this award and that it is an honor to work with Mr. Panas and see how he conducts matters in front of the City Council.

Tom Panas, El Cerrito, introduced his sons Michael and Alan, his wife Ann and his friend, Ms. Theresa Parella. Mr. Panas said it was extraordinary to be the recipient of the El Cerrito Wall of Fame award and said he was gratified to know that the Council found his efforts worthwhile. Mr. Panas thanked the City Council for the award, Frank Storno for nominating him, his wife Ann who supports his efforts in every conceivable way, his sons for riding along to look at old houses and visit with senior residents, and the community of seniors, past and present, for the legacy that they have left and for all the information that has been provided about the City's history. So much of the work Mr. Panas does in town is to thank the seniors for what they have given him and for the legacy that they have given to the city. Mr. Panas spoke about how the City's history has been documented in books and articles, that the local Japanese Nursery industry has been documented, old dairies and farms have been documented, a treasure trove of images have been recovered and El Cerrito's own Little Italy has been put on the map. The industrial heritage of the town has also been documented.

5. ADOPTION OF THE CONSENT CALENDAR – Item No. 5A through 5D

Moved, seconded (Friedman/Bridges) and carried unanimously to approve Consent Calendar Item Nos. 5(A) and 5(D) in one motion as indicated below. Consent Calendar Item No. 5(B) was removed from the Consent Calendar at the request of Mayor Abelson for the purposes of presenting the National Night Out Proclamation to members of the Crime Prevention Committee members who were at the meeting to receive the proclamation. Item No. 5(C) was removed from the Consent Calendar at the request of Mayor Pro Tem Benassini for the purpose of receiving comments from staff.

A. Minutes for Approval

Approve the following meeting minutes: 1) June 17, 2014 Special City Council – Closed Session and Special Concurrent City Council/Public Financing Authority and Employee Pension Board meeting minutes; and 2) June 23, 2014 Special City Council meeting minutes.

Action: Approved minutes.

B. National Night Out Proclamation

Approve a proclamation calling upon all residents in the City of El Cerrito to participate in "National Night Out" on Tuesday, August 5, 2014 in the City of El Cerrito.

Speakers: Marty Takimoto, El Cerrito Crime Prevention Committee Member, encouraged all residents in the City to participate in the "National Night Out" (NNO) event on Tuesday, August 5, 2014. Mr. Takimoto stated that he hosted a NNO event in his neighborhood last year. Ninety percent of the neighborhood turned out and everyone had a great time. The event offers an easy way to increase crime prevention awareness in neighborhoods. Applications for hosting a neighborhood NNO event are available on the City's website.

Action: Removed from the Consent Calendar at the request of Mayor Abelson. Moved, seconded (Lyman/Friedman) and carried to approve the proclamation. Presented to Lieutenant Robert De La Campa and Crime Prevention Committee members present.

C. Authorize Marin Clean Energy to Conduct Membership Analysis for the City to Participate in their Community Choice Aggregation Programs

Adopt a resolution which takes the following actions: 1) Authorizes the Mayor to submit a letter to Marin Clean Energy (MCE) requesting that they conduct an analysis of the feasibility of El Cerrito becoming a member of its Community Choice Aggregation (CCA) programs; 2) Authorizes the City Manager to execute a contract with MCE in an amount not to exceed \$18,000 as well as other necessary documents required by PG&E, to conduct a Membership Analysis for El Cerrito; and 3) Authorizes the City Manager to execute a grant agreement for \$15,000 with the World Wildlife Fund to fund the analysis. *Exempt from CEQA.*

Maria Sanders, Environmental Analyst, provided a summary of the work to be performed. The World Wildlife Fund Grant goes through October 2015 but the load analysis is usually a two month process.

Action: Removed from the Consent Calendar at the request of Mayor Pro Tem Benassini. Moved, seconded (Benassini/Bridges) and carried unanimously to adopt Resolution No. 2014–28.

D. “Pick Up” of Employee Contributions to CalPERS under Internal Revenue Code Section 414(H)(2)

Adopt a resolution providing for the “Pick Up” of employee contributions to CalPERS under the Internal Revenue Code Section 414(H)(2), allowing those contributions to be pre-tax.

Action: Adopted Resolution No. 2014–29.

6. PUBLIC HEARINGS

Fire Hazard Abatement Public Hearing

Staff requests that the City Council: 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; and 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. *Exempt from CEQA.*

Presenter: David Ciappara, Fire Captain.

Action: Moved, seconded (Friedman/Benassini) and carried unanimously to adopt Resolution No. 2014–30 with a revised Exhibit A, declaring that weeds, rubbish, litter or other flammable material on certain real property identified in the resolution, as revised by staff, constitutes a public nuisance.

Mayor Abelson opened the public hearing. One speaker.

Speaker: Howdy Goudey, El Cerrito, thanked Councilmember Friedman for mentioning the 1715 Elm Street property and stated that he hoped that the developer would take care of the property without having to be notified or reminded by the City to do so. Mr. Goudey thanked the City for being proactive in fire hazard abatement and native plant restoration in the newly acquired Hillside property. Mr. Goudey stated that he was surprised to hear that there is a proposal to ask the private Madera fundraising campaign to pay for this work and noted that Trust for Public Land has the resources to do the maintenance. Mr. Goudey stated that it is inappropriate to ask the private fundraising campaign effort that was designed for acquisition of the property for maintenance funds for the property.

Moved, seconded (Friedman/Lyman) and carried unanimously to close the public hearing.

Action: Moved, seconded (Lyman/Friedman) and carried unanimously to adopt Resolution No. 2014–31 with a revised Exhibit A, 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. *Public Hearing regarding confirmation of abatement costs is scheduled for September 22, 2014.*

7. POLICY MATTERS

A. Memorandum of Understandings between the City and the United Professional Firefighters Association, Local 1230 and the El Cerrito Police Employees' Association

Staff requests that the City Council approve the following actions: 1) Adopt a resolution approving a side letter agreement to the Memorandum of Understanding between the City of El Cerrito and the United Professional Firefighters Association, Local 1230 to modify language on salaries and retirement; 2) Adopt a resolution approving a side letter agreement to the Memorandum of Understanding between the City of El Cerrito and the El Cerrito Police Employees' Association to modify language on salaries and retirement; 3) Adopt a resolution modifying reporting and payment of employer paid member contributions for the United Professional Firefighters Association, Local 1230; and 4) Adopt a resolution modifying reporting and payment of employer paid member contributions for the El Cerrito Police Employees Association.

Presenter: Karen Pinkos, Assistant City Manager.

Actions: Moved, seconded (Lyman/Friedman) and carried unanimously to adopt Resolution No. 2014-32 approving a side letter agreement, as revised, to the Memorandum of Understanding between the City of El Cerrito and the United Professional Firefighters Association, Local 1230. The date of the side letter agreement was also changed to July 15, 2014.

Moved, seconded (Lyman/Friedman) and carried unanimously to adopt Resolution No. 2014-33 approving a side letter agreement, as revised, to the Memorandum of Understanding between the City of El Cerrito and the El Cerrito Police Employees' Association. The date of the side letter agreement was also changed to July 15, 2014.

Moved, seconded (Benassini/Bridges) and carried unanimously to adopt Resolution No. 2014-34 modifying reporting and payment of employer paid member contributions for the United Professional Firefighters Association, Local 1230.

Moved, seconded (Benassini/Bridges) and carried unanimously to adopt Resolution No. 2014-35 modifying reporting and payment of employer paid member contributions for the El Cerrito Police Employees Association.

B. Direction on November 2014 Sales Tax Ballot Measure for the Maintenance of City Services

Adopt a resolution: 1) Approving an ordinance (Exhibit A to the resolution) extending existing local funding at the one-cent (1.0%) sales tax rate in order to maintain and/or increase the current level of services provided by the City, which would become effective only if adopted by 50 percent plus one vote of the El Cerrito electorate; 2) Submitting to the El Cerrito electorate a measure to extend existing local funding at the one-cent (1.0%) sales tax rate in order to maintain and/or increase the current level of services provided by the City; and 3) Requesting that the Contra Costa Board of Supervisors consent to the consolidation of this election with the statewide general election to be held on November 4, 2014 and direct the Registrar of Voters to provide all services necessary to conduct the election and print a measure on the ballot as described in Section 3 of the resolution. *Exempt from CEQA.*

Presenter: Scott Hanin, City Manager.

Speakers: Alex Aliferis, Contra Costa Taxpayers Association, expressed concerns regarding spiraling pension costs and the effects of these costs on cities, how other cities sacrifice services for pension payments and asked whether the tax will be used for pensions and hiring more police officers. Mr. Aliferis cited pension issues in the City of Stockton as an example.

Tom Panas, El Cerrito, stated that although he is not a fan of taxes he does not see a way for the city to further reduce costs without endangering the public's safety, degradation of environmental services and delivering the same level of services. Mr. Panas urged the City Council to approve the sales tax extension measure.

Al Miller, El Cerrito, stated that like most people, he would rather not have taxes raised but it is not the only thing that needs to be considered. Mr. Miller queried whether he was comfortable living with a city budget that continues to carry a reserve that is 5% less than the target level and where 15% of authorized staff positions have either been eliminated or carried as vacant to balance the budget, including positions in police, fire and other services. Mr. Miller stated that a half-cent sales tax increase is a small burden to bear to live in a safer or economically sound community. There are other advantages, if the economic situation improves reserves can be increased. Another benefit is that people from outside El Cerrito who shop here will help the City re-staff its positions and improve the City. Mr. Miller urged the City Council to support the resolution.

Hale Kronenberg, El Cerrito, stated that he is a Financial Advisory Board member speaking as private citizen. Mr. Kronenberg said he supports the proposed ordinance extending Measure R. The City has done an admirable job of cost cutting including leaving positions vacant and unfilled but the City has reached its limit. This is a cost benefit analysis. The cost of extending the sales tax and maintaining it is very small. The benefit is enormous. It will allow the City to maintain its extraordinary level of services. Mr. Kronenberg urged the City Council to approve the ordinance and submit it to a vote of the citizens.

Gabriel Quinto, El Cerrito, strongly urged the City Council to support the resolution to place the measure on the ballot in order to maintain the services that the residents expect.

Pamela Stewart-Wagner, El Cerrito, expressed concerns regarding the extension of Measure R and other taxes including phone, cable and water. Ms. Stewart-Wagner stated that there is a large contingent of retired residents in El Cerrito who live on fixed incomes. Many cannot afford additional taxes. It is less expensive to shop in other cities. Ms. Stewart-Wagner suggested that the City attract large businesses to come to the City to generate revenue.

Denise Sangster, El Cerrito, stated that she led the opposition to Measure R, and still believes in the fundamentals of what was fought for, but also believes it may be a mistake not to extend it. Ms. Sangster said she is in favor of the sales tax with the following three caveats: 1) Freeze the salaries of the top two management positions in the City for as long as the tax is in effect; 2) Funds would only be used to hire headcount and not to pay for pensions; and 3) the City become serious about economic development. Ms. Sangster said she would have given the City Manager a 100% bonus opportunity to get the economic development of the city going. Ms. Sangster said she would like to support the measure but without the three caveats she will lead a campaign to fight the measure again and also noted that one can buy anything cheaper across the city border.

Action: Moved, seconded (Lyman/Bridges) and carried unanimously to adopt Resolution No. 2014-36 as revised to include the following changes: Section 6 - change the deadline for the Impartial Analysis from July 28 to August 4, 2014; Section 7 – Ballot Argument – change the deadline for the Ballot Argument from July 28 to August 4, 2014; and Section 9 – change the deadline for the Rebuttal Arguments from August 7 to August 14, 2014.

8. COUNCIL LOCAL AND REGIONAL LIAISON ASSIGNMENT REPORTS

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

Councilmember Bridges reported that the Human Relations Commission discussed and update of its brochure and received a presentation by West Contra Costa Unified School District Board of Education Director Ramsey regarding a proposal to change the name of Portola Middle School to the Fred T. Korematsu Middle School at its last meeting. The EQC received a presentation from the Pesticide Action Network regarding bee colony collapse and

the effects of pesticides on bees and what can be done personally and locally to help bees. The EQC also looked at the foam container and plastic bag ban implementations and also talked about the Hillside Natural Area.

Councilmember Lyman reported that the West County Integrated Waste Management Authority Board is back to unanimous votes with regard to the future of the Joint Powers Authority (JPA). In September there will be a meeting with alternates about how different ways that rates can be set and other ways for the Authority to generate revenue. The current practice is based on weight of waste. In October 2014 the Authority Board will have a workshop regarding the recycling revenue reserve fund and how the fund will be used to benefit the ratepayers of the Authority or directing that revenue back to cities. The \$3.8 million reserve fund is based on sales of recyclables at the facility. There have also been sales of recyclables at the facility from other jurisdictions who are not members of the JPA. The facility does not sell El Cerrito's recyclables but city ratepayers helped build the facility. The Board postponed initiating a waste characterization study. The scope of the study will be discussed at the October or November meeting. The Authority is moving forward in resolving some of its differences.

9. ADJOURNED SPECIAL CONCURRENT CITY COUNCIL / PUBLIC FINANCING AUTHORITY AND EMPLOYEE PENSION BOARD MEETING at 9:38 p.m.

SUPPLEMENTAL REPORTS AND COMMUNICATIONS

Item No. 6 Fire Hazard Abatement Public Hearing

1. Revised Exhibit A to the Resolutions referenced as Attachment 5 and 6 – *Submitted by David Ciappara, Fire Captain.*

Item No. 7(A) Memorandums of Understanding between the City and the United Professional Firefighters Association, Local 1230 and the El Cerrito Police Employees' Association

2. Revised Exhibit A to the Resolution approving a side letter agreement to the Memorandum of Understanding between the City of El Cerrito and the United Professional Firefighters Association, Local 1230 – *Submitted by Karen Pinkos, Assistant City Manager.*

3. Revised Exhibit A to the Resolution approving a side letter agreement to the Memorandum of Understanding between the City of El Cerrito and the El Cerrito Police Employees' Association – *Submitted by Karen Pinkos, Assistant City Manager.*

Item No. 7(B) Direction on November 2014 Sales Tax Ballot Measure for the Maintenance of City Services

4. Revised Resolution which sets new deadlines for arguments and rebuttals – *Submitted by Cheryl Morse, City Clerk.*

5. Comments in support of a sales tax extension – *Submitted by Tom Panas, El Cerrito.*

Other:

6. Comments on the Draft San Pablo Avenue – *Submitted by Tom Panas, El Cerrito.*

7. Comments on 1715 Elm Street – *Submitted by Robin Mitchell, El Cerrito.*

8. Comments on 1715 Elm Street – *Submitted by Howdy Goudey, El Cerrito.*

CITY COUNCIL OF THE CITY OF EL CERRITO
Celebrating the 50th Anniversary of the Wilderness Act

WHEREAS, on September 3, 1964, President Lyndon B. Johnson signed into law the Wilderness Act, passed by the United States Congress, establishing the National Wilderness Preservation System (NWPS) and set aside an initial 9.1 million acres of wildlands for use and benefit of the American peoples; and

WHEREAS, the 1964 Wilderness Act defines “Wilderness” as areas where the earth and its communities of life are left unchanged by people, where the primary forces of nature are in control, and where people themselves are visitors who do not remain; and

WHEREAS, the NWPS was established for the use and enjoyment of the American people and provides many direct and in-direct benefits, such as those relating to ecological, geological, scientific, educational, scenic, spiritual, economic, recreational, historical and cultural uses and activities; and

WHEREAS, over the past 50 years, Congress has added over 100 million acres to this unique land preservation system with America’s support for wilderness and the 757 wilderness areas within the NWPS are managed by all four federal land managing agencies, the Bureau of Land Management, Fish and Wildlife Service, Forest Service, and National Park Service; and

WHEREAS, a myriad of these protected wilderness areas are located throughout California such as the Yosemite Wilderness area, Sequoia-Kings Canyon, Pinnacles Wilderness and Phillip Burton Wilderness located at the Point Reyes Peninsula, places Bay Area residents often frequent and enjoy; and

WHEREAS, this year, our Nation celebrates “50 Years of Wilderness,” and the 50th Anniversary of the Wilderness Act upholding the Act to preserve America’s natural habitats for future generations to enjoy.

NOW THEREFORE, the City Council of the City of El Cerrito hereby celebrates and commemorates the 50th Anniversary of the Wilderness Act in the City of El Cerrito and calls upon all residents to embrace our Nation’s legacy of protecting and preserving the Country’s vast wilderness areas for future generations to come.

Dated: August 19, 2014

Janet Abelson, Mayor



AGENDA BILL

Agenda Item No. 5(C)

Date: August 19, 2014

To: El Cerrito City Council

From: Hilde Myall, Housing Program Manager
Melanie Mintz, Interim Community Development Director
Lisa Malek-Zadeh, Finance Director

Subject: Consultant Services Agreement with Goldfarb & Lipman LLP for Legal Services

ACTION REQUESTED

Adopt a resolution authorizing the City Manager to execute a consultant services agreement with Goldfarb & Lipman LLP for Fiscal Year 2014-15 legal services related to the implementation of Assembly Bill 1x26 and the City's affordable housing programs in an amount not to exceed \$34,500.

BACKGROUND

The law firm of Goldfarb & Lipman provided legal services to the former El Cerrito Redevelopment Agency (the "RDA") for redevelopment, economic development and affordable housing activities since its inception, having served as legal counsel for a number of successful projects and programs.

The RDA was dissolved effective February 1, 2012 pursuant to the FY 2011-12 State budget bill, AB 1x26 (the "Dissolution Act"). As the RDA was dissolved, Goldfarb & Lipman continued to provide legal services to the City related to redevelopment dissolution and affordable housing programs for the remainder of the FY 2011-12, and then under a new contract with the City for FY 2012-13 and FY 2013-14.

ANALYSIS

Continuity in legal advice and representation is important both for housing projects and programs of the former RDA that have been transferred to the City and for matters related to the dissolution of the former RDA, administration of the El Cerrito Redevelopment Agency Successor Agency, and ongoing implementation of AB 1x26. Staff recommends that the City continue to retain the law firm of Goldfarb & Lipman LLP to provide such legal services for FY 2014-15.

FINANCIAL CONSIDERATIONS

The total proposed not-to-exceed amount of this contract is \$34,500, of which \$14,500 is to be allocated for legal services related to the Successor Agency and \$20,000 for City affordable housing-related services.

The \$14,500 Successor Agency portion of the contract will be funded out of the Finance Department budget within the General Fund appropriations and is included in the

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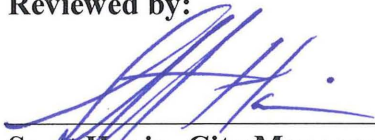
approved FY 2014-15 City Budget. The City will receive an allowance of up to \$250,000 from the Redevelopment Property Tax Trust Fund for FY 2014-15 to administer the Successor Agency, which will reimburse the City for the cost of legal services under this contract.

The \$20,000 housing portion of the requested contract will be funded from two funds. The City Housing Trust Fund holds a \$25,000 deposit from Eden Housing for professional services related to the Eden Senior Housing Development, Disposition and Loan Agreement (Eden DDLA). The Eden Housing developer deposit will fund \$10,000 of the housing portion of the contract for legal services related to the Eden DDLA. The remaining \$10,000 of the housing portion will be funded out of the Low & Moderate Income Housing Asset Fund budget appropriations and is included in the approved FY 2014-15 City budget. All services performed under this contract will be performed at the direction and request of the City.

LEGAL CONSIDERATIONS

The City Attorney has has this staff report and associated resolution.

Reviewed by:



Scott Hanin, City Manager

Attachments:

1. City Council Resolution
2. Proposed Consulting Services Agreement with Goldfarb & Lipman LLP

RESOLUTION NO. 2014-XX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EL CERRITO AUTHORIZING THE CITY MANAGER TO EXECUTE A CONSULTANT SERVICES AGREEMENT FOR UP TO \$34,500 WITH GOLDFARB & LIPMAN LLP FOR LEGAL SERVICES RELATED TO THE SUCCESSOR AGENCY OF THE FORMER EL CERRITO REDEVELOPMENT AGENCY AND FOR AFFORDABLE HOUSING PROGRAMS

WHEREAS, as part of the 2011-12 State budget bill, AB1x26 (the “Dissolution Act”) was enacted significantly modifying the Redevelopment Law to require the dissolution of redevelopment agencies throughout California and the establishment of successor agencies to wind down the former redevelopment agencies’ affairs; and

WHEREAS, on August 15, 2011, pursuant to the Dissolution Act, the City elected to serve as the Successor Agency to the El Cerrito Redevelopment Agency (the “Successor Agency”); and

WHEREAS, the City Council adopted Resolution No. 2012-04 on January 17, 2012 electing to retain the housing assets and functions previously performed by the El Cerrito Redevelopment Agency (“RDA”) in accordance with Section 34176 of the Redevelopment Law and becoming the housing successor to the El Cerrito Redevelopment Agency (“Housing Successor”); and

WHEREAS, the RDA was dissolved effective February 1, 2012 pursuant to the State Budget bill ABX1 26 (the “Dissolution Act”) and all housing assets, less the unencumbered housing balance, and obligations of the former RDA were transferred to the City as housing successor by operation of law; and all liabilities were transferred to the Successor Agency; and

WHEREAS, the City Council adopted Resolution No. 2012-43 on June 19, 2012 and Resolution No. 2013-43 on August 20, 2013 retaining Goldfarb & Lipman LLP to provide legal services related to the Successor Agency and the City’s affordable housing programs for FY 2012-13 and FY 2013-14; and

WHEREAS, the City Council desires to retain the law firm of Goldfarb & Lipman LLP to provide legal services related to the dissolution of the RDA, the administration of the Successor Agency, the wind down of the former redevelopment agency’s affairs, and the City’s housing functions as Housing Successor; and

WHEREAS, the City’s adopted FY 2014-15 budget appropriated funding for legal services related to both the Successor Agency’s activities and the affordable housing program.

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of El Cerrito as follows:

1. The City Council finds that the above recitals are accurate.
2. The City Council hereby authorizes and directs the City Manager to prepare and execute a contract with Goldfarb & Lipman LLP in an amount not to exceed \$34,500 for legal services related to the implementation of Assembly Bill 1x26 and the City's affordable housing programs.
3. This Resolution shall become effective immediately upon its adoption.

I CERTIFY that at the regular meeting on August 19, 2014, the City Council of the City of El Cerrito passed this resolution by the following vote:

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

IN WITNESS of this action, I have hereunto set my hand and affixed the official Seal of said City, this ____ day of August, 2014.

Cheryl Morse, City Clerk

Approved:

Janet Abelson, Mayor



AGENDA BILL

Agenda Item No. 5(D)

Date: August 19, 2014
To: City Council of the City of El Cerrito
From: Scott Hanin, City Manager
Subject: Appointment of Member to the Successor Agency Oversight Board

ACTION REQUESTED

Request that the Mayor appoint Lisa Malek-Zadeh to the Oversight Board of the Successor Agency to represent employees of the former El Cerrito Redevelopment Agency; and

Adopt a resolution ratifying the Mayor's appointment of Ms. Malek-Zadeh to the Oversight Board of the Successor Agency to the former El Cerrito Redevelopment Agency.

BACKGROUND

The legislation authorized as ABx1 26 (Dissolution Act) requires that there shall be an oversight board (Oversight Board) established for each former California redevelopment agency's successor agency (Successor Agency). The Oversight Board supervises the activities of the Successor Agency and the wind down of the dissolved redevelopment agency's affairs. It has a fiduciary responsibility to holders of enforceable obligations and taxing entities that benefit from the distributions of property tax and other revenues of the Successor Agency. The Dissolution Act requires the Oversight Board to direct the Successor Agency to determine whether contracts, agreements or other arrangements between the former redevelopment agency and private parties should be terminated or renegotiated to reduce the Successor Agency's liabilities and to increase net revenues to the taxing entities. The Oversight Board also approves the Successor Agency administrative budget.

The Oversight Board consists of seven members appointed by:

- County Board of Supervisors (two members);
- County Board of Education (one member);
- Chancellor of California Community Colleges (one member);
- Largest special district taxing entity, which in this case is the East Bay Regional Park District (one member);
- Mayor of the city that established the dissolved RDA (one member); and
- A former redevelopment agency employee appointed by the Mayor (one member).

On February 21, 2012, the Mayor appointed William C. Jones III and Hilde Myall, as the former redevelopment agency employee member, to the Oversight Board of the Successor Agency and the City Council adopted Resolution No. 2012-15 ratifying the Mayor's appointments to the Oversight Board.

ANALYSIS

Hilde Myall is stepping down from the Oversight Board in order to serve as City staff to the Oversight Board, a role that was formerly filled by Lori Treviño, Economic Development Manager. Ms. Myall, as the City's Housing Program Manager, has been involved with the dissolution of the former El Cerrito Redevelopment Agency and is taking over the administration of the Successor Agency.

Staff is requesting that the Mayor appoint Lisa Malek-Zadeh, City Finance Director, to the Oversight Board at this evening's meeting to replace Ms. Myall and that the City Council approve a resolution ratifying the mayoral appointment to the Oversight Board. Staff believes it is important to appoint individuals with knowledge and experience of the former El Cerrito Redevelopment Agency's programs and activities and to make the appointment as soon as is reasonably possible.

It is anticipated that the City's appointees to the Oversight Board will serve until June 30, 2016 unless a member resigns and/or the City makes a new appointment. Any vacancies on the Oversight Board must be filled within 60 days. If any Oversight Board member position remains vacant for more than 60 days, the Governor may appoint to fill that vacancy. Commencing on July 1, 2016, all of the Oversight Boards for the various former redevelopment agencies in a particular county will be consolidated into a single county-wide Oversight Board of a composition specified by the Dissolution Act.

FINANCIAL CONSIDERATIONS

The fiscal impact to the City of the Oversight Board appointment is minimal. The appointee is expected to perform Oversight Board member roles as part of their existing duties as public officials and/or city employees.

The Dissolution Act states that the Oversight Board members shall serve without compensation or reimbursement for expenses from the Successor Agency. However, the Successor Agency shall pay for all of the costs of meetings of the Oversight Board and may include such costs in its administrative budget.

The Oversight Board meets twice a year to review and approve the Successor Agency Recognized Obligation Payment Schedule and approve the Successor Agency administrative budget. The next meeting of the Oversight Board is anticipated to be called in late September in order to review and approve ROPS 14-15B.

LEGAL CONSIDERATIONS

The Oversight Board is deemed to be a local entity for purposes of the Ralph M. Brown Act, the California Public Records Act, and the Political Reform Act of 1974. The Successor Agency will be responsible for posting the agendas and minutes of Oversight Board meetings and maintaining a Successor Agency website.

Oversight board members shall have personal immunity from suit for their actions taken within the scope of their responsibilities as Oversight Board members.

Attachments:

1. Resolution

RESOLUTION NO. 2014-XX

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EL CERRITO RATIFYING THE THE MAYOR OF THE CITY OF EL CERRITO'S APPOINTMENT OF LISA MALEK-ZADEH TO THE OVERSIGHT BOARD OF THE SUCCESSOR AGENCY FOR THE FORMER EL CERRITO REDEVELOPMENT AGENCY PURSUANT TO HEALTH AND SAFETY CODE SECTION 34179

WHEREAS, pursuant to the California Community Redevelopment Law (Health and Safety Code Section 33000 et seq.; the "Redevelopment Law"), the City Council (the "City Council") of the City of El Cerrito (the "City") adopted the Redevelopment Plan for the City of El Cerrito Redevelopment Project Area by Ordinance No. 77-17, adopted on November 28, 1977, as amended by Ordinance No. 80-13, adopted on December 15, 1980; as amended by Ordinance No. 89-5, adopted on July 10, 1989; as amended by Ordinance No. 94-4, adopted on July 25, 1994; as amended by Ordinance No. 2004-3, adopted March 1, 2004; as amended by Ordinance No. 2005-01, adopted March 21, 2005; and as further amended by Ordinance No. 2006-10, adopted November 6, 2006 (collectively, the "Redevelopment Plan"); and

WHEREAS, as part of the 2011-12 State budget bill AB1x26 (the "Dissolution Act") was enacted significantly modifying the Redevelopment Law to require the dissolution of redevelopment agencies throughout California and the establishment of successor agencies to wind down the former redevelopment agencies' affairs; and

WHEREAS, California redevelopment agencies were dissolved on February 1, 2012 pursuant to the Dissolution Act; and

WHEREAS, Section 342179(a) of the Redevelopment Law provides that the Mayor of the city that authorized the creation of a redevelopment agency may elect to appoint one member to the Oversight Board of the Successor Agency who represent employees of the former redevelopment agency; and

WHEREAS, the Mayor of the City of El Cerrito appointed Hilde Myall as the former redevelopment agency employee member to the Oversight Board and the City Council of the City of El Cerrito ratified that appointment pursuant to Resolution No. 2012-15 on February 21, 2012; and

WHEREAS, Hilde Myall has resigned from the Oversight Board in consideration of her increased duties as City staff in the administration of the Successor Agency; and

WHEREAS, after careful consideration, the Mayor of the City of El Cerrito has appointed Lisa Malek-Zadeh as the former redevelopment agency employee member to the Oversight Board of the Successor Agency to the former El Cerrito Redevelopment Agency; and

WHEREAS, the Mayor may appoint alternate members if the need arises.

NOW, THEREFORE, BE IT RESOLVED, after careful consideration, the City Council hereby ratifies the appointment by the Mayor of Lisa Malek-Zadeh to the Oversight Board of the Successor Agency, effective immediately.

The above and foregoing resolution was duly and regularly passed and adopted at a meeting by the City Council of the City of El Cerrito on the 19th day of August, 2014 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

I CERTIFY that the foregoing is a true and correct copy of the original Resolution on file in the office of the City Clerk of the City of El Cerrito.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official Seal of said City, this ____ day of August, 2014.

City Clerk

Approved:

Janet Abelson, Mayor



AGENDA BILL

Agenda Item No. 5(E)

Date: August 19, 2014

To: El Cerrito City Council

From: Stephen Prée, Environmental Programs Manager/City Arborist
Garth Schultz, Operations + Environmental Services Manager
Yvetteh Ortiz, Public Works Director/City Engineer

Subject: Agreement with West Coast Arborists, Inc. for Tree Pruning and Removal Services

ACTION REQUESTED

Adopt a resolution authorizing the City Manager to execute an Agreement (Attachment 2) with West Coast Arborists, Inc in an amount not to exceed \$100,000 for tree pruning and removal services, effective July 1, 2014 through June 30, 2015.

BACKGROUND AND ANALYSIS

The City of El Cerrito (the City) is responsible for maintaining approximately 10,000 trees on streets, in parks and on City properties. In the spring of 2013, each tree was inspected and assessed for maintenance needs by Davey Resources Group as a component of the Cal Fire/US Forest Service grant funded tree inventory. The assessment classified 684 of the trees as requiring priority pruning or removal work and 9,269 additional trees in need of routine pruning.

On November 19, 2013, the Council approved a tree pruning and removal agreement with West Coast Arborists, Inc. (WCA) in an amount not to exceed \$100,000 (Resolution No. 2013-62). El Cerrito's agreement with WCA was derived from a competitive bid process conducted by the City of Union City in 2013; WCA extended this same pricing to the City of El Cerrito as a "piggy back" to Union City's agreement. WCA is a California-based company that has been in business since 1972. WCA maintains trees in the Bay Area cities of Alameda, Atherton, Berkeley, Concord, Dublin, Palo Alto, Pleasanton, Menlo Park, Milpitas, Sunnyvale Union City and others. WCA has successfully provided the City with tree pruning and removal services since 2011 when they acquired the previous City tree service provider and assumed their existing time and materials contract.

In Fiscal Year (FY) 2013-2014, WCA pruned and maintained 1,140 City trees including about 50% of the trees in pruning Zone One, much of the San Pablo Avenue commercial corridor, and nearly all of the highest priority trees identified in 2013 by Davey Resources Group, at about half the per tree cost previously incurred by the City (\$87 per tree in FY 2013-2014 vs. \$162 - \$201 per tree in prior years). This reduction in per tree cost was made possible by utilizing a grid pruning approach to street tree maintenance.

Agenda Item No. 5(E)

Grid pruning is the most cost effective near and long-term pruning management strategy for City tree maintenance because every tree in a given maintenance area is pruned in each pruning cycle. When each tree, small or large, is inspected and structurally pruned on a regular cycle, maintenance costs are reduced due to efficiencies in mobilization and scheduling and service tracking; both preventative and reactive maintenance are performed in one operation and the need for future priority pruning is minimized.

The need for regular City tree maintenance is ongoing as evidenced by the high number of City tree-related service requests the City receives each year. The City received over 200 requests for tree pruning and maintenance in calendar year 2013. These requests represent a fraction of the trees that have not historically received the regular periodic pruning that a full-grid pruning program cycle would provide. Certain tree species require more frequent pruning than others and sometimes exhibit dangerous limb failure when maintenance is delayed, other trees that have not received adequate structural pruning when young are now failing.

Historically, the City has planned to maintain its 10,000 trees on a four-year pruning rotation cycle (Attachment 3), which requires approximately 2,500 trees to be pruned annually. At the competitive pricing secured with WCA, it would cost approximately \$220,000 per year to stay on track with a four-year pruning rotation (or \$175,000 per year if a five year pruning cycle were implemented). However, given the FY 2015-16 deficit projected in the City's Landscaping and Lighting Assessment District Fund, which has historically funded the entirety of tree pruning and maintenance expenses, and given that there are no other financial resources presently identified to fund additional tree pruning and maintenance expenses, \$100,000 is the maximum amount of tree maintenance expenses that the City can afford in FY 2014-15.

Funding tree pruning and maintenance services at this level will allow the City to continue to address hazardous tree conditions, respond to new priority tree pruning needs as identified by staff or requested by the community, and complete grid pruning efforts in tree maintenance Zone One. Although the most urgent tree needs will be met, the current level of funding is not sufficient to promote and maintain the health and benefits derived from all of the City's trees. Additional funding will need to be identified if the City is to maintain all City trees on a four to five year cycle which is the industry standard. Given the current uncertainty about what level of financial resources will be available for tree pruning and maintenance services after the present fiscal year, staff plans to continue tree pruning and maintenance work in order of the established tree maintenance zones currently in place. However, it should be noted that there is currently a one year delay such that the City will complete Zone One in Fall 2014 and will plan to start Zone Two in the subsequent year. Staff plans to make necessary adjustments to the rotation cycle (i.e. from a four year cycle to five years or more) once more is known about what resources will be available for these activities in future years.

STRATEGIC PLAN CONSIDERATIONS

Approval of the proposed Amendment to the Tree Pruning Contract with WCA would help fulfill the following City of El Cerrito Strategic Plan goals:

- Goal A: Deliver exemplary government services with the strategy of increased productivity and efficiency by utilizing data driven analysis to ensure appropriate resources allocation. Grid pruning is an excellent example of this.
- Goal E: Ensure the public's health and safety by minimizing tree hazards.

ENVIRONMENTAL CONSIDERATIONS

Healthy city trees contribute aesthetically, add to property values and contribute to the environment by sequestering carbon, retaining stormwater and improving air quality. Fossil fuels are used during tree service, however, vehicle miles are significantly reduced because each tree in a given block is pruned in the same rotation. The City utilizes the chipped trees as landscape mulch which is also available to the public; wood chip mulch builds healthier soils and suppresses weeds. WCA provides supervisors with hybrid cars and the company repurposes some of the lumber from tree removal (see benches at City Hall 2nd floor elevator and Recycling + Environmental Resource Center lobby).

FINANCIAL CONSIDERATIONS

WCA's bid was the most cost competitive compared to the other bids received and reviewed by the City of Union City, as discussed above. Funding of \$100,000 is available in the City's Adopted FY 2014-15 Budget in allocations from the Landscape and Lighting Assessment District Fund in the amount of \$25,000 and the General Fund in the amount of \$75,000 for Landscape Maintenance Services.

LEGAL CONSIDERATIONS

The City Attorney has reviewed proposed actions and found that legal considerations have been addressed. The final Agreement will be substantially in the form attached and approved by the City Attorney.

Reviewed by:



Scott Hanin, City Manager

Attachments:

1. Accompanying Resolution
2. Draft FY 2014-2015 Tree Pruning and Removal Agreement with WCA
3. El Cerrito's Tree Trimming Rotational Map

RESOLUTION 2014-XX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EL CERRITO AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT WITH WEST COAST ARBORISTS, INC. FOR TREE PRUNING AND REMOVAL SERVICES FOR FISCAL YEAR 2014-2015

WHEREAS, the City of El Cerrito is responsible for maintaining approximately 10,000 trees on streets, in parks, and at City facilities; and

WHEREAS, all of these trees require regular pruning and maintenance in order to prevent and mitigate hazards and promote the healthy lives of the trees; and

WHEREAS, in Fiscal Year (FY) 2014-15, the City entered into tree pruning and removal agreement with West Coast Arborists, Inc. (WCA) based on the results of Union City's public bidding process, and Union City's subsequent agreement with WCA; and

WHEREAS, WCA pruned 1,140 El Cerrito trees in FY 2013-14, at an average cost of approximately \$87 per tree, nearly half the average cost per tree in the preceding year; and

WHEREAS, this reduction in per tree expenses is attributable to the competitiveness of WCA's Union City "piggy back" pricing secured in FY 2013-14 by the City, and a cost effective grid pruning approach, wherein every tree in a given maintenance area is pruned, thereby reducing per tree mobilization and administration costs; and

WHEREAS, approximately 8,860 public El Cerrito trees remain to be pruned in order to maintain the health and safety of all of El Cerrito's trees; and

WHEREAS, the City's current tree trimming rotation is set to occur every four years, based on established best management practices for tree pruning and maintenance; and

WHEREAS, pruning all 10,000 public El Cerrito trees every four years (2,500 trees per year) would cost approximately \$220,000 annually; and

WHEREAS, per the City's FY 2014-15 Adopted Budget, the Landscape and Lighting Assessment District (LLAD) Fund – which has historically funded the entirety of tree pruning and maintenance expenses is projected to have a deficit starting in FY 2015-2016, assuming that LLAD provided services remain as they are today; and

WHEREAS, currently there is significant uncertainty about what level of financial resources will be available for tree pruning and maintenance services after the present fiscal year; and

WHEREAS, City maintenance budgets can only bear up to \$100,000 in tree pruning and maintenance costs in the current Fiscal Year; and

WHEREAS, extending the Agreement with WCA will allow the City to continue to address priority tree pruning and removal needs in the current Fiscal Year; and

WHEREAS, funding of \$100,000 is available in the City's Adopted FY 2014-15 Budget in allocations from the Landscape and Lighting Assessment District Fund in the amount of \$25,000 and the General Fund in the amount of \$75,000 for Landscape Maintenance Services.

NOW THEREFORE, BE IT RESOLVED, by the City Council of the City of El Cerrito, that it hereby authorizes the City Manager to execute an agreement with West Coast Arborists Inc. for tree pruning and removal services from July 1, 2014 through June 30, 2015, in an amount not to exceed \$100,000.

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

I CERTIFY that at a regular meeting on August 19, 2014 the City Council of the City of El Cerrito passed this Resolution by the following vote:

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

IN WITNESS of this action, I sign this document and affix the corporate seal of the City of El Cerrito on August XX, 2014.

Cheryl Morse, City Clerk

APPROVED:

Janet Abelson, Mayor

City of El Cerrito
10890 San Pablo Avenue
El Cerrito, California 94530

TREE PRUNING & REMOVAL AGREEMENT



The City of El Cerrito, ("City") enters into this agreement, dated for reference purposes only, with West Coast Arborists, Inc. ("Contractor").

AGREEMENT TERMS

The City and the Contractor agree as follows:

1. THE WORK. The Contractor shall furnish all equipment, tools, apparatus, facilities, material labor, and skill necessary to perform and complete in a good and workmanlike manner Pruning and Removal of hazardous or priority trees City trees as directed by City Arborist.
2. LOCATION OF WORK.
The Work will be performed in El Cerrito as directed by the City Arborist.
3. TIME FOR COMPLETION. The Contractor must complete the Work in accordance with the Contract Documents and as agreed upon with the City's Arborist, by June 30, 2015.
4. REMEDIES FOR FAILURE TO TIMELY COMPLETE THE WORK. If the Contractor fails to fully perform the Work in accordance with the Contract Documents by the Time for Completion, as such time may be amended by change order or other modification to this agreement in accordance with its terms, and/or if the Contractor fails, by the Time for Completion, to fully perform all of the Contractor's obligations under this agreement that have accrued by the Time for Completion, the Contractor will become liable to the City for all resulting loss and damage in accordance with the Contract Documents and applicable law. The City's remedies for the Contractor's failure to perform include, but are not limited to, assessment of liquidated damages of \$300 per day in accordance with California Government Code Section 53069.85 and the Contract Documents, and/or obtaining or providing for substitute performance in accordance with the Contract Documents.
5. CONTRACT PRICE AND PAYMENT. As full compensation in consideration of completion of the Work in accordance with the Contract Documents and in

City of El Cerrito
2014-15 Tree Pruning & Removal Agreement

consideration of the fulfillment of all of the Contractor's obligations under the Contract Documents, the City will pay the Contractor an amount not to exceed one hundred thousand dollars (\$100,000). Payment to the Contractor under this agreement will be for Work actually performed in accordance with the Contract Documents and will be made in accordance with the requirements of the Contract Documents and applicable law.

Payment to the Contractor under this agreement will furthermore be for Work actually performed at the unit costs specified below:

Grid Pruning

All trees in grid section Structural Pruning	\$64 each
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Single Tree Pruning

14.1" – 25" DBH (Diameter at Breast Height) Medium Tree Structural Pruning	\$80 each
25" – 36" DBH Large Tree Structural Pruning	\$175 each

Tree Removals

14.1" – 25" DBH Medium Tree Removal	\$150 each
25" and larger DBH Large Tree Removal	\$750 each

Stump Removals

14.1" – 25" DBH Medium Stump Removal	\$50 each
25" – 36" DBH Large Stump Removal	\$190 each
36" and larger DBH Very Large Stump Removal	\$225 each

Tree Planted

15 gallon size (tree furnished by City)	\$125 each
15 gallon size (tree furnished by contractor)	\$ 50 each
24" box size (tree furnished by City)	\$190 each
24" box size (tree furnished by contractor)	\$ 285 each

Additional Services – Work Time and Materials

Emergency Call out – Two Persons per hour	\$160/hour
Crew Rental – One Person per hour	\$60/hour

The City will have no obligation to pay the Contractor any amount in excess of the Contract Price unless this agreement is first modified in accordance with its terms. The City's obligation to pay the Contractor under this agreement is subject to and may be offset by charges that may apply to the Contractor under this agreement. Such charges include but are not limited to, charges for liquidated damages and/or substitute performance in accordance with the Contract Documents.

6. PREVAILING WAGES. In accordance with California Labor Code Section 1771, not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the Work is to be performed, and not less than the general prevailing rate of per diem wages for holiday and overtime work fixed

as provided in the California Labor Code must be paid to all workers engaged in performing the Work. In accordance with California Labor Code Section 1770 and following, the Director of Industrial Relations has determined the general prevailing wage per diem rates for the locality in which the Work is to be performed. In accordance with California Labor Code Section 1773, the City has obtained the general prevailing rate of per diem wages and the general rate for holiday and overtime work in the locality in which the Work is to be performed for each craft, classification or type of worker needed to perform the project. In accordance with California Labor Code Section 1773.2, copies of the prevailing rate of per diem wages are on file at the City Public Works Department and will be made available on request. Throughout the performance of the Work the Contractor must comply with all provisions of the Contract Documents and all applicable laws and regulations that apply to wages earned in performance of the Work.

7. INSURANCE. Contractor shall acquire and maintain Workers' Compensation, employer's liability, commercial general liability, public liability, property damage, owned and non-owned and hired automobile and liability, insurance coverage relating to services of Contractor, its agents, representatives, employees or subcontractors to be performed hereunder covering City's risks in form subject to the approval of the City Attorney. The cost of such insurance shall be included in Contractor's bid.

The minimum amounts of coverage corresponding to the aforesaid category of insurance per insurable event, shall be as follows:

<u>Insurance Category</u>	<u>Minimum Limits</u>
Workers' Compensation	Statutory minimum, as required of under the Labor Code of the State of California
Public Liability	\$1,000,000 per occurrence
Property Damage	\$1,000,000 per occurrence
Commercial General Liability	\$1,000,000 per occurrence and \$2,000,000 aggregate for bodily injury, personal injury and property damage.
Automobile Liability	\$1,000,000 per accident, \$2,000,000 aggregate for bodily injury and property damage (coverage required to the extent applicable to Contractor's vehicle usage in performing services hereunder).

The following coverages or endorsements must be indicated on the certificate provided to the City:

- A. The City, its directors, officers and employees are additional insureds in the policy as to the work being performed; regards to Company's negligence;
- B. The coverage is primary to any other insurance carried by the City;
- C. Thirty (30) days prior written notice shall be given to the City in the event of cancellation or non-renewal of the policy.

8. THE CONTRACT DOCUMENTS. This agreement consists of the following documents ("Contract Documents"), all of which are incorporated into and made a part of this agreement as if set forth in full. These documents may be originals, or copies where applicable.

- A. This agreement and change orders and other amendments to this agreement signed by authorized representatives of the City and the Contractor.
- B. The Contractor's completed Contractor License Information.
- C. The Contractor's completed List of Proposed Subcontractors.
- D. The Contractor's Workers Compensation Insurance Certification.
- E. The Contractor's completed Certificates of Insurance and Endorsement.
- F. The Contractor's completed City of El Cerrito Business License.
- G. The Contractor's letter offering the City the same competitively bid pricing offered to the City of Union City in that City's Agreement for City Project No. 12-15.
- H. Standards. All trees shall be pruned according to the most current editions of the following benchmark standards for tree pruning:
 - a. American National Standards Institute (ANSI) A3000 Pruning Standards.
 - b. ANSI Z133.1 Safety Standards.
 - c. ISA Best Management Practices: Tree Pruning
- I. Pruning Objectives, Goals & Terms
 - a. Improve structural strength and reduce failure potential
 - b. Improve safety and security for residents and visitors
 - c. Provide clearance for vehicles, pedestrians and structures
 - d. Repair structural damage
 - e. See Exhibit to this Agreement – Pruning Goals and Terms.

9. ASSIGNMENT PROHIBITED. The Contractor may not assign part or all of this agreement, or any moneys due or to become under this agreement, or any other right or interest of the Contractor under this agreement, or delegate any obligation or duty of the Contractor under this agreement without the prior written approval of an official authorized to bind the City and an authorized representative of Contractor's surety or sureties. Any such purported assignment

City of El Cerrito
2014-15 Tree Pruning & Removal Agreement

or delegation without such written approval on behalf of the City and the Contractor's sureties will be void and a material breach of this agreement subject to all available remedies under this agreement and at law and equity.

10. CERTIFICATION RE CONTRACTOR'S LICENSE. By signing this Agreement the Contractor certifies that the Contractor holds a valid Type A license issued by the California State Contractors Licensing Board, and that the Contractor understands that failure to maintain its license in good standing throughout the performance of the Work may result in discipline and/or other penalties pursuant to the California Business and Professions Code, and may constitute a material breach of this agreement subject to all available remedies under this agreement and at law and equity.
11. NOTICE OF THIRD PARTY CLAIMS. Pursuant to Public Contracts Code section 9201, the City shall provide the Contractor with notice of claims relating to this Contract filed by third parties no later than ten (10) business days from the date of receipt of the claim. The Contractor shall be responsible for reimbursing the City for its reasonable costs in providing the notification.
12. SEVERABILITY. If any term or provision or portion of a term or provision of this Agreement is declared invalid or unenforceable by any court of lawful jurisdiction, then the remaining terms and provisions or portions of terms or provisions will not be affected thereby and will remain in full force and effect.
13. TERMINATION. In the event that either Party fails to perform its obligations under this Agreement, the other Party may, after thirty (30) days written notice and opportunity to correct, terminate this Agreement.

Executed on _____, _____, by

CONTRACTOR

West Coast Arborists, Inc.

By: _____

Title: _____

APPROVED AS TO FORM:

City Attorney

CITY OF EL CERRITO,
a Municipal Corporation

By: Scott Hanin

Title: City Manager

ATTEST:

By: _____

Cheryl Morse, City Clerk

Date: _____



August 4, 2014

City of El Cerrito
ATTN: Stephen Prée
10890 San Pablo Avenue
El Cerrito, CA 94530

RE: TREE MAINTENANCE AGREEMENT

Dear Mr. Prée,

West Coast Arborists, Inc. (WCA) appreciates the work that you and your staff have provided during the past to help make the tree maintenance program a success for the residents of El Cerrito. We are proud to have created a successful partnership in the care of your urban forest.

In an effort to promote stability, and to guarantee citizens with quality tree care & customer service for years to come, we would like to express our interest in entering into a new contract under the "piggyback" approach. In 2013, the City of Union City conducted a formal request for bid for tree maintenance & management services and WCA was ultimately awarded a contract.

WCA agrees to provide such services to El Cerrito for FY 2014-2015 consistent with Union City's price schedule with the following clarifications:

- 1) At no cost to the City, WCA will provide access to our tree inventory program called ArborAccess with unlimited software support & training while under contract (valued at \$3,600 annually.)
- 2) Both parties agree that the new Agreement will contain a provision that allows either party to terminate the contract upon 30-day written notification.

We appreciate your ongoing efforts to make this Agreement a success for both the City and WCA and look forward to continuing our successful business relationship. Should you have any questions, or require additional information please do not hesitate to contact me at (800) 521-3714.

Sincerely,

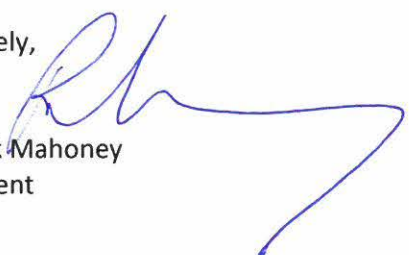

Patrick Mahoney
President

EXHIBIT TO WEST COAST ARBORISTS TREE PRUNING AND REMOVAL AGREEMENT

PRUNING GOALS

- A. Pruning Standards - All pruning cuts and operations are to be in accordance with ANSI A300 Pruning Standards.
- B. Pruning Wound Size - Average pruning cut size is 1 ½ inch and no larger than 3 inches without City Arborist approval.
- C. Pruning Locations - Pruning will be confined to lateral stems unless otherwise noted. The goal of this pruning is to reduce branch end-weight through a number of small pruning cuts.
- D. Water sprout Removal - Pruning will remove all small growth up to a height of 12 feet.
- E. Provide Clearances - Pruning will provide 15 ft clearance over the street, 8 ft over sidewalk, 10 ft from residences and street light clearance. Visual corridors to street signs are to be clear of obstruction.
- F. Report Unsafe Conditions - Personnel performing the pruning are expected to report any additional needs and provide any necessary pruning deemed necessary to assure tree safe. This includes pruning of decayed stems, included bark attachments or any additional stems that require safety pruning.

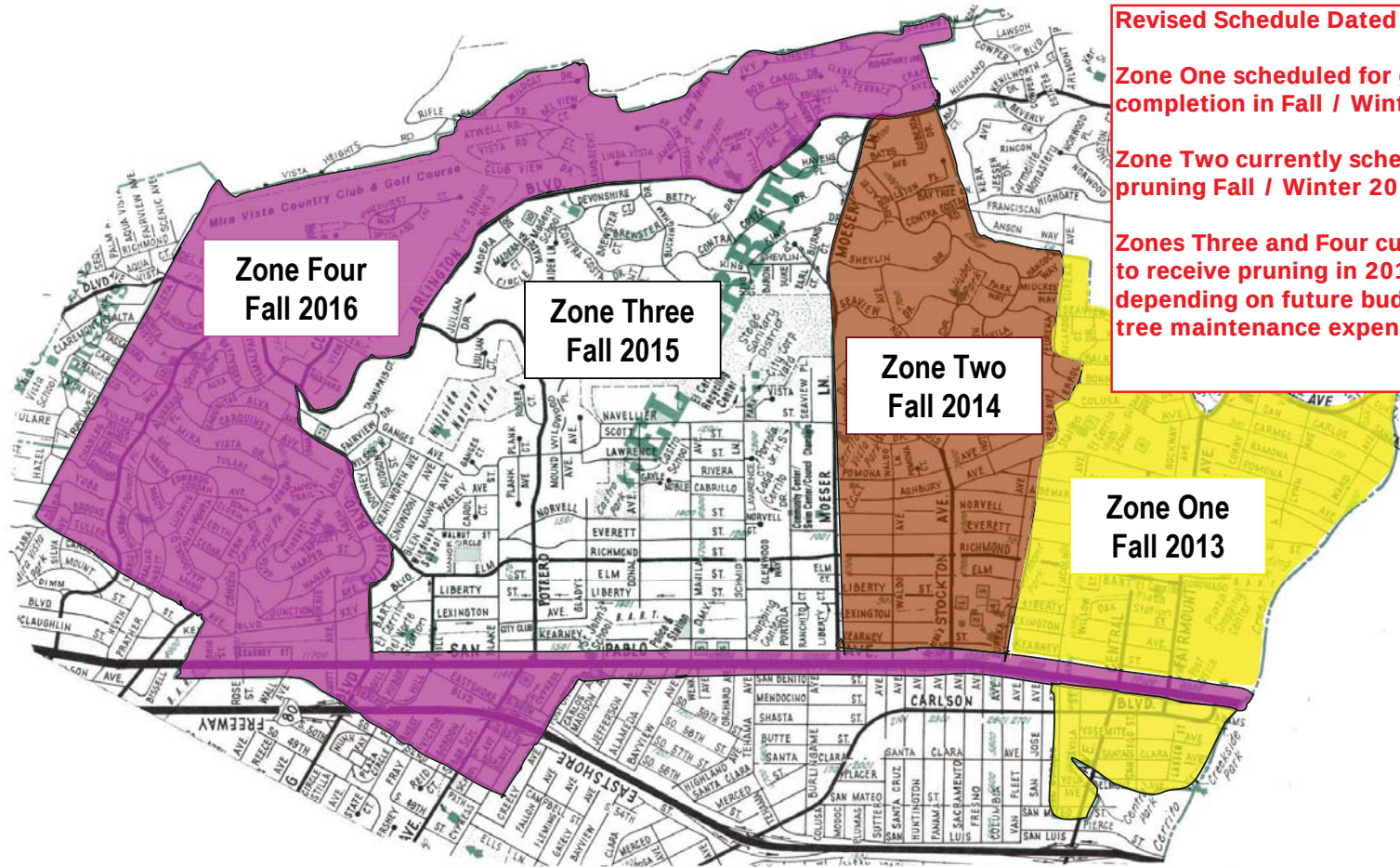
PRUNING TERMS

- G. Branch End-Weight Reduction: Most trees require end weight reduction on heavy lateral stems. This treatment entails the reduction in lateral weight by the use of numerous pruning cuts averaging 1 ½ inches and up to 3 inches in diameter.
- H. Crown Reduction Pruning: Crown reduction pruning, as defined in ANSI A300 guidelines, is designated for trees deemed to have excessive decay or weak attachments. The size of a crown reduction pruning cut can be larger than the 3 inch maximum due to the given location of a suitable stem to cut back to. Three trees were noted for crown reduction pruning and a qualified arborist must be available to consult during this pruning procedure.
- I. Structural Pruning: Structural pruning is designated for young and structurally defective trees and must address codominance, included bark attachments, unbalanced lateral stems and limbs weakened by decay. Codominance and included bark attachments require that one of the two stems be reduced

significantly by thinning and/or stem reduction pruning. Structural pruning is also used for crown restoration after a significant stem failure has occurred.

- J. Clearance Pruning: This refers to pruning needed to provide street clearance, sidewalk clearance, stop sign visibility, street light, and clearance from structures.
- K. Deadwood Removal: All dead stems greater than ½ inch in diameter are to be removed.

Tree Trimming Rotational Map



Four Year Pruning Cycle to Occur Each Fall of Each Listed Year



AGENDA BILL

Agenda Item No. 5(F)

Date: August 19, 2014

To: El Cerrito City Council

From: Garth Schultz, Operations + Environmental Services Division Manager
Yvetteh Ortiz, Public Works Director/City Engineer

Subject: Agreement with Rubicon Enterprises, Inc for Parks and Landscape Maintenance Services

ACTION REQUESTED

Adopt a resolution authorizing the City Manager to execute an Agreement with Rubicon Enterprises, Inc. in an amount not to exceed \$180,000 for park and landscape maintenance services, effective July 1, 2014 through June 30, 2015.

BACKGROUND AND ANALYSIS

In July 2004, after a formal public bidding process, the City of El Cerrito (the City) awarded an agreement for Maintenance Services (MSC No. PLS-04/05) to Rubicon Enterprises, Inc. (Rubicon), for an annual sum not to exceed \$180,000. Of the three bids for service received at that time, Rubicon was awarded the agreement based on its competitive unit pricing, response time, resources allocated to the City, familiarity with municipal maintenance work, and performance of similar work in other communities. Currently, Rubicon continues to perform these parks and landscape maintenance services on a month-to-month basis using the terms of the original agreement.

Given that it has been ten years since parks and landscape maintenance services have been bid publicly, the City should soon conduct a public bidding process for a new parks and landscape maintenance services agreement. However, there is currently significant uncertainty about what level of financial resources will be available for parks and landscaping services after the present fiscal year. As such, staff is not proposing to solicit bids for landscaping service at this time; without a clear picture about what level of future parks and landscape maintenance services can be funded, the City cannot effectively seek bids for the most appropriate scope of work, nor can it hope receive the benefits of a multi-year agreement for the correct scope.

At this time, staff is proposing a one-year agreement with Rubicon to formalize and update the City's existing arrangement with Rubicon through FY 2014-2015 – such that current levels of parks and landscape maintenance services may continue uninterrupted – with the intention of conducting a public bidding process for a new landscape maintenance agreement for implementation in FY 2015-2016. Staff will conduct a bidding process and bring a new agreement to the Council for consideration once more information is available regarding future funding for landscape maintenance services, which staff anticipates will be possible between March and June 2015.

The proposed one-year agreement with Rubicon is generally the same scope of services that have been provided to the City in past years with some revisions to reflect current landscape maintenance needs, such as water management and environmental best practices, and to exclude some specialized landscape maintenance services which are now being provided by other contractors. The Public Works Department has engaged other contractors to provide specialized landscape services (including maintenance of the Fairmount Avenue medians, City Hall and the Public Safety Building) in order to evaluate the potential for increased efficiencies and effectiveness of using a variety of contract services. This is intended to help us structure our contract services in future years.

STRATEGIC PLAN CONSIDERATIONS

Approval of the proposed agreement is consistent with Goal B (Achieve long-term financial stability) of the City's Strategic Plan, adopted March 2013. Specifically, approval of the proposed agreement through FY 2014-2015 will allow the City to develop plans to ensure that costs associated with parks and landscape maintenance services can be covered by revenues available for those services, which is consistent with several of the strategies outlined in Goal B.

ENVIRONMENTAL CONSIDERATIONS

Approval of the proposed agreement will formalize environmental best practices currently being implemented by Rubicon. First, the agreement includes provisions for Rubicon to comply with the City's Integrated Pest Management (IPM) Policy, which is a requirement under the City's National Pollutant Discharge Elimination System (NPDES) permit. The agreement also stipulated that Rubicon will perform its work consistent with Bay Friendly Landscape Maintenance Practices, which requires some of Rubicon's employees to be Bay Friendly Certified. Finally, Rubicon will also be providing water management services at four of El Cerrito's largest athletic fields, with the intention of reducing water use and improving drought resilience for those fields.

FINANCIAL CONSIDERATIONS

The not to exceed amount of \$180,000 for this agreement is available in the City's Adopted FY 2014-2015 Budget in an allocation from the Landscape and Lighting Assessment District Fund for Landscape Maintenance Services.

LEGAL CONSIDERATIONS

The City Attorney has reviewed and commented on the draft Agreement. The final Agreement will be substantially in the form attached and approved by the City Attorney.

Reviewed by:



Scott Hanin, City Manager

Attachments:

1. Accompanying Resolution
2. Draft Park and Landscape Maintenance Agreement

RESOLUTION 2014-XX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EL CERRITO AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT WITH RUBICON ENTERPRISES, INC. FOR PARK AND LANDSCAPE MAINTENANCE SERVICES FOR FISCAL YEAR 2014-2015

WHEREAS, the City of El Cerrito (City) is responsible for maintaining parks, landscapes, medians, pathways, creeks, and other natural areas owned by the City; and

WHEREAS, in 2004, the City solicited public bids for landscape maintenance services, and received three qualified responses; and

WHEREAS, in July 2004, upon consideration of its competitive unit pricing, response time, resources allocated to the City, familiarity with municipal maintenance work, and performance of similar work in other communities, Rubicon Enterprises, Inc. (Rubicon) was awarded the maintenance agreement for an annual sum not to exceed \$180,000 ; and

WHEREAS, Rubicon's services are currently being provided to the City on a month-to-month basis; and

WHEREAS, the City should soon conduct a public bidding process for a new landscape maintenance services agreement; and

WHEREAS, currently there is significant uncertainty about what level of financial resources will be available for parks and landscaping services after the present fiscal year; and

WHEREAS, City staff has proposed continuing the City's arrangement with Rubicon through FY 2014-15 – such that current levels of parks and landscape maintenance services may continue uninterrupted – with the intention of conducting a public bidding process for a new landscape maintenance agreement for implementation in FY 2015-16; and

WHEREAS, in April 2014 Rubicon was listed as the lowest cost bidder for landscape maintenance services in the City of Rohnert Park, demonstrating Rubicon's cost competitiveness vis-à-vis other landscape maintenance companies; and

WHEREAS, funding of \$180,000 is available in the City's Adopted FY 2014-2015 Budget in an allocation from the Landscape and Lighting Assessment District Fund for Landscape Maintenance Services; and

WHEREAS, City staff will conduct a bidding process and bring a new agreement to the Council for consideration once more information is available regarding future funding for landscape maintenance services, which staff anticipates will be possible between March and June 2015;

NOW THEREFORE BE IT RESOLVED, by the City Council of the City of El Cerrito, that it hereby authorizes the City Manager to execute an agreement with Rubicon Enterprises, Inc. for parks and landscape maintenance services from July 1, 2014 through June 30, 2015, in an amount not to exceed \$180,000.

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

I CERTIFY that at a regular meeting on August 19, 2014 the City Council of the City of El Cerrito passed this Resolution by the following vote:

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

IN WITNESS of this action, I sign this document and affix the corporate seal of the City of El Cerrito on August X, 2014.

Cheryl Morse, City Clerk

APPROVED:

Janet Abelson, Mayor

City of El Cerrito
10890 San Pablo Avenue
El Cerrito, California 94530

PARK & LANDSCAPE MAINTENANCE AGREEMENT



The City of El Cerrito, ("City") enters into this agreement, dated for reference purposes only, with Rubicon Enterprises, Inc. ("Contractor").

AGREEMENT TERMS

The City and the Contractor agree as follows:

1. THE WORK. The Contractor shall furnish all equipment, tools, apparatus, facilities, material labor, and skill necessary to perform and complete in a good and workmanlike manner Landscape Maintenance in accordance with Bay Friendly Landscape Maintenance Practices and the El Cerrito Integrated Pest Management Policy ("Work").
2. TERM. The term of this Agreement is from July 1, 2014 through June 30, 2015. The Contractor agrees to complete all work in accordance with the Contract Documents for the duration of the Agreement.
3. LOCATION OF WORK. The Work will be performed citywide as per the Technical Specifications (Exhibit A) as directed by El Cerrito Public Works staff.
4. FREQUENCY OF WORK. The Contractor must complete the Work as per the Technical Specifications throughout the Agreement Term.
5. REMEDIES FOR FAILURE TO TIMELY COMPLETE THE WORK. If the Contractor fails to fully perform the Work in accordance with the Contract Documents by the Time for Completion, as such time may be amended by change order or other modification to this agreement in accordance with its terms, and/or if the Contractor fails, by the Time for Completion, to fully perform all of the Contractor's obligations under this agreement that have accrued by the Time for Completion, the Contractor will become liable to the City for all resulting loss and damage in accordance with the Contract Documents and applicable law. The City's remedies for the Contractor's failure to perform include, but are not limited to, assessment of liquidated damages of \$300 per day in accordance with California Government Code Section 53069.85 and the Contract

City of El Cerrito – Rubicon Enterprises, Inc.
Parks & Landscape Maintenance Agreement
Fiscal Year 2014-2015

Documents, and/or obtaining or providing for substitute performance in accordance with the Contract Documents.

6. COMPENSATION. Payment to the Contractor under this agreement will be for Work actually performed in accordance with the Contract Documents and will be made in accordance with the requirements of the Contract Documents and applicable law. As compensation in consideration of completion of the Work in accordance with the Contract Documents and in consideration of the fulfillment of all of the Contractor's obligations under the Contract Documents, the City will pay the Contractor an amount not to exceed one hundred eighty thousand dollars (\$180,000).

The City will have no obligation to pay the Contractor any amount in excess of the Contract Price unless this agreement is first modified in accordance with its terms. The City's obligation to pay the Contractor under this agreement is subject to and may be offset by charges that may apply to the Contractor under this agreement. Such charges include but are not limited to, charges for liquidated damages and/or substitute performance in accordance with the Contract Documents.

7. PREVAILING WAGES. In accordance with California Labor Code Section 1771, not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the Work is to be performed, and not less than the general prevailing rate of per diem wages for holiday and overtime work fixed as provided in the California Labor Code must be paid to all workers engaged in performing the Work. In accordance with California Labor Code Section 1770 and following, the Director of Industrial Relations has determined the general prevailing wage per diem rates for the locality in which the Work is to be performed. Pursuant to the provisions of Section 1773 of the Labor Code of the State of California, the City Council has obtained the general prevailing rate of per diem wages and the general rate for holiday and overtime work in this locality for each craft, classification, or type of workman needed to execute this Agreement, from the Director of the Department of Industrial Relations. Copies of such prevailing rate of per diem wages can be found at the following website: <http://www.dir.ca.gov/DLSR/PWD/index.htm>.

CONTRACTOR shall post a copy of such wage rates at the job site and shall pay the adopted prevailing wage rates as a minimum. CONTRACTOR shall comply with the provisions of Sections 1773.8, 1775, 1776, 1777.5, 1777.6, and 1813 of the Labor Code. CONTRACTOR agrees to comply with the provisions of California Labor Code Section 1776 which require Contractor and each subcontractor to (1) keep accurate payroll records, (2) certify and make such payroll records available for inspection as provided by Section 1776, and (3) inform the Agency of the location of the records. The Contractor is responsible

City of El Cerrito – Rubicon Enterprises, Inc.
Parks & Landscape Maintenance Agreement
Fiscal Year 2014-2015

for compliance with Section 1776. Throughout the performance of the Work the Contractor must comply with all provisions of the Contract Documents and all applicable laws and regulations that apply to wages earned in performance of the Work.

8. INDEMNIFICATION. To the extent permitted by law, Contractor shall indemnify, defend, and hold the City, its officers, employees, agents, and volunteers harmless from and against any and all liability, loss, damage, causes of action arising out of any personal injury, bodily injury, loss of life, or damage to property, or any violation of any federal, state, or municipal law or ordinance, expense, costs (including without limitation the costs and fees of litigation) of every nature arising out of or connected with the performance of work by Contractor, its officers, employees, agents, volunteers, and subcontractors, under this Agreement, except for any such claims that is the result of the sole negligence or willful misconduct of the City, its officers, employees, agents, or volunteers. It is understood that the duty of Contractor to indemnify and hold harmless includes the duty to defend as set forth in California Civil Code §2778. Acceptance of insurance certificates and endorsements required under this Agreement does not relieve Contractor from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply whether or not insurance policies have been determined to be applicable to any of such damages or claims for damages.
9. INSURANCE. Contractor shall acquire and maintain Workers' Compensation, employer's liability, commercial general liability, public liability, property damage, owned and non-owned and hired automobile and liability, insurance coverage relating to services of Contractor, its agents, representatives, employees or subcontractors to be performed hereunder covering City's risks in form subject to the approval of the City Attorney. The cost of such insurance shall be included in Contractor's bid. The minimum amounts of coverage corresponding to the aforesaid categories of insurance per insurable event, shall be as follows:

<u>Insurance Category</u>	<u>Minimum Limits</u>
Workers' Compensation	Statutory minimum, as required of under the Labor Code of the State of California.
Public Liability	\$1,000,000 per occurrence.
Property Damage	\$1,000,000 per occurrence.
Commercial General Liability	\$1,000,000 per occurrence and \$2,000,000 aggregate for bodily injury, personal injury and property damage.

City of El Cerrito – Rubicon Enterprises, Inc.
Parks & Landscape Maintenance Agreement
Fiscal Year 2014-2015

Automobile Liability	\$1,000,000 per accident, \$2,000,000 aggregate for bodily injury and property damage (coverage required to the extent applicable to Contractor's vehicle usage in performing services hereunder).
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The following coverages or endorsements must be indicated on the certificate provided to the City:

- A. The City, its directors, officers and employees are additional insureds in the policy as to the work being performed; regards to Company's negligence;
- B. The coverage is primary to any other insurance carried by the City;
- C. Thirty (30) days prior written notice shall be given to the City in the event of cancellation or non-renewal of the policy.

10. THE CONTRACT DOCUMENTS. This agreement consists of the following documents ("Contract Documents"), all of which are incorporated into and made a part of this agreement as if set forth in full. These documents may be originals, or copies where applicable.

- A. This agreement and change orders and other amendments to this agreement signed by authorized representatives of the City and the Contractor.
- B. The Technical Specifications for Annual Parks and Landscape Maintenance (Exhibit A).
- C. Fiscal Year 2014-2015 Unit Pricing (Exhibit B).
- D. The City of El Cerrito Integrated Pest Management Policy (Exhibit C).
- E. The Contractor's completed Contractor License Information.
- F. The Contractor's Workers Compensation Insurance Certification.
- G. The Contractor's completed Certificates of Insurance and Endorsement.
- H. The Contractor's completed City of El Cerrito Business License.

9. ASSIGNMENT PROHIBITED. The Contractor may not assign part or all of this agreement, or any moneys due or to become under this agreement, or any other right or interest of the Contractor under this agreement, or delegate any obligation or duty of the Contractor under this agreement without the prior written approval of an official authorized to bind the City and an authorized representative of Contractor's surety or sureties. Any such purported assignment or delegation without such written approval on behalf of the City and the Contractor's sureties will be void and a material breach of this agreement subject to all available remedies under this agreement and at law and equity.

City of El Cerrito – Rubicon Enterprises, Inc.
Parks & Landscape Maintenance Agreement
Fiscal Year 2014-2015

10. CERTIFICATION RE CONTRACTOR'S LICENSE. By signing this Agreement the Contractor certifies that the Contractor holds a valid Type A license issued by the California State Contractors Licensing Board, and that the Contractor understands that failure to maintain its license in good standing throughout the performance of the Work may result in discipline and/or other penalties pursuant to the California Business and Professions Code, and may constitute a material breach of this agreement subject to all available remedies under this agreement and at law and equity.
11. NOTICE OF THIRD PARTY CLAIMS. Pursuant to Public Contracts Code section 9201, the City shall provide the Contractor with notice of claims relating to this Agreement filed by third parties no later than ten (10) business days from the date of receipt of the claim. The Contractor shall be responsible for reimbursing the City for its reasonable costs in providing the notification.
12. SEVERABILITY. If any term or provision or portion of a term or provision of this Agreement is declared invalid or unenforceable by any court of lawful jurisdiction, then the remaining terms and provisions or portions of terms or provisions will not be affected thereby and will remain in full force and effect.

IN WITNESS WHEREOF, the Parties hereby have executed this Agreement on the day first above written:

City of El Cerrito

By: _____

Scott Hanin, City Manager

Date: August ____, 2014

APPROVED AS TO FORM:

By _____

Sky Woodruff, City Attorney

Date: August ____, 2014

Rubicon Enterprises, Inc.

By: _____

Printed: _____

Title: _____

Date: August ____, 2014

ATTEST:

By _____

Cheryl Morse, City Clerk

Date: August ____, 2014

City of El Cerrito – Rubicon Enterprises, Inc.
Parks & Landscape Maintenance Agreement
Fiscal Year 2014-2015

EXHIBIT A

CITY OF EL CERRITO PUBLIC WORKS DEPARTMENT ANNUAL PARKS AND LANDSCAPE MAINTENANCE

TECHNICAL SPECIFICATIONS

A. Description of Work

In the City of El Cerrito, at various parks and other landscaped areas on City property throughout the limits of the City of El Cerrito and at locations to be determined and as directed by the City; maintain by means of turf mowing, weed eradication, herbicide application, fertilization, turf and ground cover edging, trimming, pruning, mulching, sweeping, asphalt concrete walkway repair, routine replacement of irrigation components, debris collection and trash removal. Legal disposal of trash and debris shall be the responsibility of the Contractor.

i. Turfgrass Mowing

Large machine mowing, hand mowing and small machine mowing, weed management, herbicide application, turf edging, trimming, and sweeping shall be performed on existing turf within all areas except "non-turf areas" described below under "Limits of Work." A

"circuit" is defined as a single performance of the work at every one of the locations listed in "Limits of Work". The circuits shall be evenly dispersed over the season. The frequency for said work will be as follows:

<u>Season</u>	<u>Circuits</u>
March 1 through April 30	10 total
June 1 through October 31	12 total
November 1 through February 29	10 total

Note: The City does not require removal of grass clippings from turf areas after mowing if the contractor utilizes "mulching" or grass-cycling type mowing equipment, and the grass clippings do not present an unsightly appearance on the turf. If the interval between mowings or the mowing equipment deposits large amounts of grass clippings on the turf, the Contractor shall be responsible for the removal and disposal of such clippings immediately after mowing.

ii. Garbage Pickup

All existing garbage cans in the areas listed as 1) Large Field Areas, 2) Small Lawn Areas, 3) Non-Turf Areas in "Limits of Work" shall be emptied of refuse by the Contractor and disposed of legally. The City does not intend to provide a disposal site or pay separately for dumping charges. The Contractor may utilize a local refuse collection firm to provide debris boxes and provide for disposal services on a regular basis, at the Contractor's expense. The frequency for garbage pickup will be as follows:

<u>Season</u>	<u>Schedule</u>
May 1 through October 31	Twice per week= Monday morning and Friday afternoon
November 1 through April 30	Once per week = Monday morning

In addition to the work described above, the Contractor will be responsible to pick up all loose litter and trash, on a minimum once per week basis, from all of the areas listed in the "Limits of Work".

iii. Turf Fertilization and Aeration

For existing turf, at all of the facilities listed in the limits of work, the Contractor shall be responsible to fertilize and aerate turf as described herein.

a. Fertilization of Large fields, small lawn areas and picnic areas: during the months of March or April , and October or November, the Contractor will be required make one application each period of "Turf Royale" fertilizer of 21-2-14 (S) makeup, or City-approved equivalent at a rate of fifty (50) pounds per ten thousand (10,000) square feet of lawn area.

b. Fertilization of Median Island Turf: during the months of March or April, and October or November, the Contractor will be required make two applications each period of "Turf Supreme" fertilizer of 16-6-8 makeup, or City-approved equivalent at a rate of fifty (50) pounds per ten thousand (10,000) square feet of lawn area.

c. Aeration of Large Fields: the City will provide the Contractor with a tow-behind Ryan "Renovaire" six foot unit. The Contractor will be required to aerate the turf three times per year, once each in the spring, summer, and fall seasons.

d. Aeration of Picnic, Median and small lawn areas: the Contractor will be required to provide a walk-behind mechanical, core-tined aerator (Ryan "Greensaire" or Lawnaire" or City-approved equivalent.) The Contractor will be required to aerate the turf two times per year, once each in the spring and fall seasons.

iv. Repair of Median Irrigation Systems

The Contractor shall have either on inventory or available for immediate supply, the materials (pipeline, heads, valves, etc.) appropriate for the routine performance of removing and replacing components of the existing median landscape irrigation systems. For special order items, the Contractor shall immediately place the order for said materials and inform the Manager, in writing, of the cost and the schedule for delivery and incorporation of such materials. The Manager must approve of the proposed material costs prior to incorporation into the work. Special order items will be paid at the actual invoiced price plus the "markup on materials for work not included in the bid schedule" as provided by the Contractor in these documents.

Maintenance of irrigation systems other than those in street median islands shall be the responsibility of the City, except in the case of irrigation systems damaged by the Contractor's operations. The Contractor shall be responsible to immediately repair systems damaged by his own operations. The Contractor shall be responsible to notify the City in the case of repairs needed on irrigation systems outside the median areas.

v. Pathway, Stairway, City owned Easements and Access Road Maintenance

At all of the facilities listed in the limits of work, the Contractor shall be responsible to cut back vegetation as necessary to keep pathways, stairways, easements and access roads clear and passable. Contractor shall edge back groundcover on an as-needed basis. The Contractor will be required to blow or sweep loose materials from these areas on a weekly basis, at the minimum.

vi. Tennis Court Maintenance

At Arlington, Tassajara, Canyon Trail, Castro, Cerrito Vista, Harding and El Cerrito High School, the Contractor shall be responsible to blow or sweep away loose materials from the court surfaces on a minimum weekly basis. The Contractor will also be required to cut back vegetation growing into court areas and on court fences on an as-needed basis.

vii. Tree Maintenance

Throughout the year, on an as-needed basis; maintain existing tree staking until tree is able to support weight of canopy head. Check for tree ties/straps either broken, missing or too tight. Remove climbing ground cover from tree trunks. Maintain a vegetation-free (e.g. turf, weeds, groundcover) area a minimum two foot diameter area around crown of trees.

Note: Street trees along San Pablo Avenue, regardless of height, shall have the street tree planting area or wells kept free of weeds, litter and debris. Adequate decomposed granite or wood mulch will be applied as necessary in the tree wells to insure a level surface with the surrounding concrete sidewalk.

viii. Shrub and Groundcover Maintenance

Throughout the year, at all of the locations as given in the "Limits of Work", on an as-needed basis, the Contractor will be required to maintain a neat and attractive appearance of all planting areas. Contractor shall remove any dead plant material, garbage and weeds, and maintain the edges of existing groundcover adjacent to turf areas, play areas, buildings and structures. The Contractor shall maintain the height of shrubs to ensure adequate visibility throughout parks, and control excessive growth, ensure adequate growth and uniformity. All pruning and trimming done by the Contractor shall be done to preserve the natural growth and character of the plant species.

ix. Picnic Area and Play Area Maintenance

The Contractor will be required to maintain all areas in a clean, safe and attractive condition. Sand areas under and around play structures shall be maintained in a weed free condition and sand shall be kept off walkways and adjacent areas. The Contractor shall remove loose litter from play areas on a minimum of once per week. The Contractor will be responsible to report any vandalism, or broken or unsafe play equipment to the Manager immediately.

B. Limits of Work

i. Large Field Areas

Arlington Park
Ashbury Avenue Medians (from South City Limit to Fairmount Avenue)
Canyon Trail Play Field (includes horseshoe area on Gatto and smaller turf area on Jordan)
Castro Field
Castro Tennis/ Picnic Area
Central Field
Cerrito Vista Field
Cerrito Vista Picnic Area
Creskide Park
Upper Canyon Trail
Fairmont Field
Fairmont Park
Harding Field
Harding Park
Poinsett Park
Tassajara Field

Tassajara Picnic Area

ii. Small Lawn Areas

Ohlone Greenway (BART Right-of-Way, from Blake Street to Albany City limit)
Blake Street at Navellier (east side of Navellier)
Richmond/Elm/Blake Islands
Richard Itaya Plaza/Mini Park (on BART Path, North side of Manila Avenue)
Community Center
Fairmount Day Care Center
Harding Day Care Center

iii. Non-Turf Facilities (Groundcover, Shrubs and Hardscape)

Huber Park
Senior Center
Library
Madera Child Care Center
Casa Cerrito Child Care Center
Ohlone Greenway Bicycle Path (from Albany City limit to Key/Conlon terminus)
Shevlin Pl. to Arlington Blvd. Pathway/Stairway
Julian Dr. to Madera Cir. Stairway
Contra Costa Dr. to Bay Tree Ln. Stairway
Barrett Ave. to Tassajara Ave. Stairway
Blake St. to Manor Cir. Pathway
Tapscott Ave. to Harper Ave. Stairway
Mira Vista Dr. to Tulare Ave. Pathway

iv. Median Landscaping Maintenance (Turf, Groundcover and Irrigation)

San Pablo Avenue (North City Limit to South City Limit)
Central Avenue (San Pablo Ave to Carlson Blvd)
(Liberty St to Richmond St)
Fairmount Avenue (San Pablo Ave to Carlson Blvd)
Potrero Avenue (San Pablo Ave to Eastshore Bl)
Hagen Boulevard & Tapscott Avenue
Elm Street & Cutting Boulevard
Behrens Street @ Albany City limit
Moeser Lane medians and right-of-way (San Pablo Avenue to Arlington Boulevard)

C. Equipment and Labor

It will be the responsibility of the Contractor to provide equipment and labor as necessary to perform the work described in these documents in a safe, efficient and legal manner. The Contractor shall arrive at the project site with the proper equipment, labor and materials required to perform the work described in these documents.

The Contractor will provide the City with appropriate schedules for turf fertilization, aeration, mowing and any other specifically planned maintenance activity. The Contractor shall provide the City with copies of all required permits, written recommendations, application records and employee training documentation with respect to any application of herbicide, insecticide, rodenticide or any other restricted or regulated pest control material as required by the State of California and/or Contra Costa County Agricultural Commissioner's office.

To comply with the goals and objectives of the Contra Costa Clean Water Program (CCCWP), the guidelines of the National Pollution Discharge Elimination System (NPDES), and the City's Stormwater Management Plan, the Contractor shall utilize chemical herbicides only where other vegetation control measures (mechanical eradication, mulching, etc.) cannot achieve an acceptable level of weed and noxious growth control. The use of herbicides for "chemical edging" of turf and ground cover areas, clearing rights-of-way or along roadways, and near any creek, drainage course, pond or other water feature will not be permitted

D. Traffic

Maintaining Traffic

If traffic is to be detoured over a centerline, detour plans must be submitted and approved by the City prior to starting work. Police, Fire, and Community Development Departments shall be notified at least 24 hours in advance of any work which will interfere with the normal flow of vehicular or pedestrian traffic.

On San Pablo Avenue, a minimum of two (paved) traffic lanes, not less than 12 ft. wide per lane, in each direction shall remain open for use by public traffic at all times during the course of the work. When construction operations are not actively in progress, no lane or shoulder closure is permitted.

It shall be the Contractor's responsibility to post no parking areas as required to perform the work. Temporary "No Parking" signs and barricades can be provided by the City for pickup at the City Corporation Yard. Arrangements for signs and barricades can be made by verbal or written request to the Manager five working days in advance of the need for signs and barricades.

Minor deviations from the requirements of this section concerning hours of work which do not significantly change the cost of the work may be permitted upon the written request of the Contractor if in the opinion of the Manager public traffic will be better served and the work expedited. Such deviation shall not be adopted until the Manager has indicated his written approval.

Full compensation for conforming to the requirements of this Section shall be considered as included in the contract prices paid for the various items of work and no separate payment may be made therefor.

Traffic Control System for Lane Closure

A traffic control system shall consist of closing traffic lanes in accordance with the State of California Standard Specifications Section 12, "Construction Area Traffic Control Devices" and the provisions specified herein.

The provisions in this Section will not relieve the Contractor from his responsibility to provide such measures as may be necessary to ensure public safety.

If any component in the traffic control system is damaged, displaced or ceases to operate or function as specified, from any cause during the progress of the work, the contractor shall immediately repair said component to its original condition or replace said component and shall restore the component to its original location.

Lane closures may be made for work periods only. At the end of each work period, all components of the traffic control system shall be removed from the traveled way, shoulder, sidewalk, and pathway and parking lanes. If the Contractor so elects, said components may be stored at selected central locations approved by the Engineer within the limits of the City right-of-way.

Full compensation for conforming to the requirements of this Section shall be considered as included in the contract prices paid for the various items of work and no separate payment may be made therefor.

E. Adjacent Properties

Adjacent property and improvements shall be protected from damage and intrusion at all times during the execution of the work embraced herein. Any damage to adjacent improvements shall be repaired or replaced by the Contractor at his expense and no payment will be allowed therefor. Work shall be carried out in a manner to avoid all conflicts with operations on adjacent properties and access to adjacent properties.

Full compensation for Conforming to the provisions of this section shall be considered as included in the contract prices paid for work done and no additional compensation will be allowed therefor.

F. Differing Site Conditions

During the progress of the work, if latent physical conditions are encountered at the site differing materially from those indicated in the contract or if unknown physical conditions of an unusual nature differing materially from those ordinarily encountered and generally recognized as inherent in the work provided for in the contract, are encountered at the site, the party discovering such conditions shall promptly notify the City in writing of such specific differing conditions before they are disturbed and before the affected work is performed.

Upon notification, the Manager will investigate the conditions, and if the Manager determines that the conditions materially differ and cause an increase or decrease in the cost or time required for the performance of the work under the contract, an adjustment, excluding loss of anticipated profits, will be made and the contract modified in writing accordingly. The Manager will notify the Contractor of his determination whether or not an adjustment of the contract is warranted.

No contract adjustment which results in a benefit to the Contractor will be allowed unless the Contractor has requested such in writing. No contract adjustment will be allowed under provisions specified in this section for any effects on unchanged work.

G. Measurement and Payment

Full compensation for conforming to the work of these specifications shall be considered as included in the contract unit prices, or the proposed hourly rates and material markup and no further payment may be made therefor.

The contract unit prices and payments shall include full compensation for furnishing all labor,

materials, tools, equipment, and incidentals, and for doing all the work involved in completing the work as specified herein, and as directed by the City.

i. Turf Mowing

For the work as described in these specifications, the Contractor will be paid for mowing and related work on a per circuit basis regardless of the time of year. One circuit is a complete trip through all of the turf facilities described in the limits of work.

ii. Garbage pickup

For the work as described in these specifications, the Contractor will be paid for garbage pickup on a monthly basis, with the bid unit prices divided into months from May through October and from November through April.

iii. Turf Fertilization and Aeration

For the work as described in these specifications, the Contractor will be paid for fertilization of large fields, small lawn areas and picnic areas (non-median areas) and for median island turf fertilization, and for aeration of large fields, and for picnic and small lawn areas separately per item, respectively on a per circuit basis. One circuit is a complete trip through each various type all of turf facilities as described by the bid item of work and as described in the limits of work.

iv. Repair of Median Irrigation Systems

For the work as described in these specifications, the Contractor will be paid for repair of existing median island irrigation systems on a monthly basis per the bid unit price per month.

v. Pathway, Stairway and Access Road Maintenance

For the work as described in these specifications, the Contractor will be paid for the maintenance of existing pathway, stairway and access roads on a monthly basis per the bid unit price per month.

vi. Tennis Court Maintenance

For the work as described in these specifications, the Contractor will be paid for the maintenance of existing tennis courts on a monthly basis per the bid unit price per month.

vii. Tree Maintenance

For the work as described in these specifications, full compensation for tree maintenance shall be considered as included in the contract prices paid for the various items of work and no separate payment may be made therefor.

viii. Shrub and Groundcover Maintenance

For the work as described in these specifications, the Contractor will be paid for the maintenance of existing shrubs and groundcover on a monthly basis per the bid unit price per month.

ix. Picnic Area and Play Area Maintenance

For the work as described in these specifications, the Contractor will be paid for the maintenance of existing picnic and play areas on a monthly basis per the bid unit price per month.

x. Future Work

For the work as described in these specifications, at the City's option, the Contractor will be paid either at the hourly rates for labor and equipment plus markup for materials for work not included in the bid or at a negotiated unit price to be mutually determined by the City and the Contractor after said facilities are constructed.

Exhibit B

City of El Cerrito - Parks and Landscape Agreement - Unit Pricing Fiscal Year 2014-15

Item #	Item Description	Service Frequency ¹	Billing Frequency	Billing Frequency Cost	Annual Cost
1	Mowing	Weekly (peak use ²) Bi-weekly (non-peak ³)	12	\$ 5,617.00	\$ 67,404.00
2	Shrub and Ground Cover Maintenance	Quarterly (complete circuit)	12	\$ 2,870.00	\$ 34,440.00
3	Empty Solid Waste and Recycling Cans	Weekly (peak use) Bi-weekly (non-peak)	12	\$ 2,263.00	\$ 27,156.00
4	Pathway, Stairway, Access Road Maintenance	Quarterly (complete circuit)	12	\$ 1,045.00	\$ 12,540.00
5	Picnic and Play Area Maintenance	Weekly (peak use) Monthly (non-peak)	12	\$ 742.00	\$ 8,904.00
6	Median Maintenance	Weekly	12	\$ 608.00	\$ 7,296.00
7	Large Field Aeration	Bi-annually	2	\$ 3,266.00	\$ 6,532.00
8	Tennis Court Maintenance	Weekly (peak use) Monthly (non-peak)	12	\$ 367.00	\$ 4,404.00
9	Water Management at Castro, Central, Tassajara and Canyon Trail	Ongoing	12	\$ 315.00	\$ 3,780.00
11	Field Fertilization	Bi-annually	2	\$ 1,849.00	\$ 3,698.00
12	Picnic and Small Lawn Aeration	Annually	1	\$ 256.00	\$ 256.00
13	Credit for omitted Greenway spraying	Ongoing	12	\$ (550.00)	\$ (6,600.00)
Total Annual					\$ 169,810.00
Total Monthly					\$ 14,150.83

¹ Service Frequencies listed in this Unit Pricing sheet may differ from those listed in the Technical Specifications. In the event that they do, the Service Frequencies listed here shall be the actual Service Frequencies performed under the Agreement. The Technical Specifications are primarily intended to establish performance standards for services provided. Service Frequencies listed in the Technical Specifications for certain services have changed over time as per the City's specific operational needs.

² "Peak Use" terms and duration vary by service provided, but generally means Spring / Summer / Fall months when recreation use of parks and landscapes is at its highest. Specific duration and terms subject to negotiation based on the City's operational needs as long as the total cost of the Agreement remains within approved limits.

³ "Non-peak" terms and duration vary by service provided, but generally means Winter months when recreation use of parks and landscapes is at its lowest. Specific duration and terms subject to negotiation based on the City's operational needs as long as the total cost of the Agreement remains within approved limits.

EXHIBIT C

CITY OF EL CERRITO PUBLIC WORKS DEPARTMENT ANNUAL PARKS AND LANDSCAPE MAINTENANCE

INTEGRATED PEST MANAGEMENT POLICY

WHEREAS The Contra Costa County Clean Water Program's Municipal Regional Stormwater Permit (MRP) requires each Permittee to implement a pesticide toxicity control program that addresses their own and others' use of pesticides within their jurisdictions that pose a threat to water quality and that have the potential to enter the municipal conveyance system; and

WHEREAS This provision implements requirements of the TMDL for Diazinon and Pesticide related Toxicity for Urban Creeks in the region; and

WHEREAS The City's requirements for addressing the allocations are set forth in the TMDL implementation plan and are included in the MRP Provision C.9; and

WHEREAS As of June 17, 2010, the City of El Cerrito has adopted an Integrated Pest Management Policy to prevent impairment of urban streams by pesticide-related toxicity in runoff of water that poses a threat to water quality and that has the potential to enter the storm drain system.

All areas including turf areas, landscaped areas, sidewalks, walkways, curbs, berms, gutters, and any other areas maintained by the City and included in this agreement shall receive reasonable care and be maintained in a manner that is tolerable of diseases, insects, snails, slugs, rodents, algae growth, and any other pests detrimental to the health of the public or plant's growth or safety of the public.

REQUIREMENTS:

1. Contractor shall supply all necessary pesticides, materials, equipment, and labor at no additional cost to the City to perform routine or reasonable care in order to control infestations which may occur from time to time.
2. The Contractor shall obtain and provide copies of all appropriate permits and licenses to the City not less than ten (10) days prior to any pesticide application.
3. The Contractor shall possess a valid Qualified Applicator's License in the necessary categories, be registered with Contra Costa County, and shall comply with all local government regulations pertaining to pesticide use and shall be trained in integrated pest management practices.
4. The Contractor must obtain and submit copies of written recommendations for all pesticide applications, signed by a licensed and registered Pest Control Advisor, ten (10) days prior to any applications of a pesticide. For frequent or recurring applications, the Pest Control Advisor may issue a standing recommendation on an annual basis.
5. The Contractor must notify the City a minimum of ten (10) days prior to any application of pesticides for the control of disease, insects, snails, slugs, rodents, and any other pests determined to be detrimental to plant growth. For frequent or recurring applications, the Pest Control Advisor may issue a standing recommendation on an annual basis.
6. Pesticides brought to the work site in service containers (sized 32 oz to 64 oz) that are not the original manufacturer's container, must be properly labeled with guaranteed

analysis, date, and handled according to the California Department of Pesticide Regulation requirements. Material Safety Data sheets must be in possession of contractor during any application of pesticides. All spraying shall be done with extreme care to avoid any hazard to any person or pet in the area or adjacent areas, or any property damage. Spraying shall only be done at times when the wind speed falls within the State of California Department of Food and Agriculture guidelines, and with prior approval of the City. Pesticides will be provided by the Contractor at no additional cost to the City.

7. The Contractor shall submit a duplicate copy of the State of California, Department of Food and Agriculture, Monthly Summary Pesticide Use Report to the City no later than the 15th day of each month, monthly for the duration of the agreement.

Yvetteh Ortiz Public Works Director

Contractor's Signature Date

John Tammen, General Manager

Printed Name

Title



AGENDA BILL

Agenda Item No. 5(G)

Date: August 19, 2014

To: El Cerrito City Council

From: Garth Schultz, Operations + Environmental Services Division Manager
Yvetteh Ortiz, Public Works Director/City Engineer

Subject: Agreement with Liberty Fleet Care, Inc. For Fleet Management and Maintenance Services

ACTION REQUESTED

Adopt a resolution authorizing the City Manager to execute an agreement with Liberty Fleet Care, Inc. in an amount not to exceed \$127,900 per fiscal year for fleet maintenance and parts, effective January 1, 2014 through June 30, 2016.

BACKGROUND AND ANALYSIS

On October 15, 2013, the City Council approved a Sixth Amendment to the City's Franchise Agreement with East Bay Sanitary Company (EBS) that expanded EBS's fleet management and maintenance operations for the City (Resolution No. 2013-57). Prior to adoption of the Sixth Amendment, EBS had performed more limited fleet maintenance operations on behalf of the City, as per the terms of the Fifth Amendment, which was negotiated after a thorough review of the EBS's operations, including its fleet maintenance functions. Prior to having EBS provide fleet maintenance services, the City utilized a combination of in-house labor and independent contractors to perform maintenance services to collection vehicles. While this approach had served the City adequately in the past, it had not adequately provided for optimal operation of the City's newer recycling collection vehicles, which prompted the City to seek full-fleet management and maintenance services.

Per the Sixth Amendment, the City and EBS agreed that EBS would form a separate corporation that would function as the City's independent fleet manager and maintenance operator for the vehicles covered by the Sixth Amendment, including all of the services defined in the Sixth Amendment. It was stipulated that, upon formation of the separate corporation, the City would enter into a separate maintenance agreement with the newly formed company, the terms of which would supersede and terminate the Sixth Amendment.

EBS formed Liberty Fleet Care, Inc. (LFC) on October 19, 2013 to function as the City's independent fleet manager and maintenance operator for the City's vehicles covered by the Sixth Amendment including management, scheduling, provision for all preventative maintenance services and all other required vehicle maintenance and repair

services, and all associated record keeping and reporting requirements. LFC has been performing these functions for the City since January 1, 2014, and is owed \$67,648 for parts and services rendered from January 1 through June 30, 2014. Staff is recommending that the proposed agreement with LFC be retroactive to January 1, 2014 in recognition of the fact that LFC has been providing all fleet maintenance services promised to the City by the EBS in the Sixth Amendment.

City staff has been pleased with EBS's performance and (starting January 1, 2014) LFC's fleet management and maintenance services. El Cerrito's recycling collection vehicles have experienced many fewer breakdowns since EBS/LFC began providing full maintenance services in July 2013. Any breakdowns that do occur are fixed more quickly than had been the case with other maintenance providers in past years. LFC has, as promised in the Sixth Amendment, also been providing fleet management and maintenance services to other City maintenance vehicles. LFC has been responsive to on-road emergency calls, in-yard urgent calls, and management inquires regarding the status of vehicles receiving service.

STRATEGIC PLAN CONSIDERATIONS

Approval of the proposed agreement is consistent with Goal A (Deliver exemplary government services) of the City's Strategic Plan, adopted March 2013. Specifically, approval of the proposed agreement will maintain a cost-effective relationship between the City and EBS/LFC with respect to fleet maintenance matters, which is consistent with the *"Develop and strengthen relationships with public and private partners"* strategy listed in Goal A.

ENVIRONMENTAL CONSIDERATIONS

Approval of the proposed agreement will maintain the level of environmental benefits realized from the Sixth Amendment, including decreased vehicle miles travelled for maintenance needs, more efficient operations, and longer useful vehicle lifetimes.

FINANCIAL CONSIDERATIONS

Approval of the proposed agreement will continue the payment terms stipulated in the Sixth Amendment, which increased maintenance expenditures by about \$75,000 per year. The current IWM Fees, which were adopted by the Council on November 19, 2013 and became effective January 1, 2014, did not include a corresponding increase in revenues to offset the additional maintenance expenses incurred by the Sixth Amendment because these increased expenses were offset by a combination of one-time increases in donation revenues (not subject to Council appropriations) and one-time expense decreases that were anticipated – and realized – in Fiscal Year (FY) 2013-2014. However, staff had anticipated that IWM Fees would need to be increased to cover these expenses in the long-term. Currently, staff estimates the fees will need to be increased by approximately \$0.77 per month (for 95% of residential customers) effective January 1, 2015, in order to cover IWM operating expenses as adopted in the FY 2014-15 Budget, which include the ongoing maintenance costs associated with this agreement. Projected revenue increases as described above were also included in the adopted FY 2014-15 Budget; this is standard practice, wherein staff proposes IWM Fee revenues during the budget adoption process, and then proposes any necessary IWM Fee

Agenda Item No. 5(G)

adjustments to be effective mid-fiscal year. In keeping with this standard IWM Fee adjustment process, staff will be preparing annual adjustments to the IWM Fees and EBS collection and processing rates for Council consideration prior to January, 2015.

Funding of \$67,648 for services and parts provided in FY 2013-14 is available in the City's adopted FY 2013-14 budget in an allocation from the Integrated Waste Management Fund and \$107,900 for Vehicle Maintenance Services is appropriated in FY 2014-15 in allocations from the Integrated Waste Management Fund (\$102,505) and General Fund (\$5,395). Funding of \$10,000 for parts provided in FY2014-15 is appropriated in allocations from the Integrated Waste Management Fund (\$8,000) and General Fund (\$2,000). Staff will seek Council approval of a mid-year adjustment for services if LFC's seeks a cost increase per the Agreement, and/or if the cost of parts exceeds the \$10,000 allocation noted here.

LEGAL CONSIDERATIONS

The City Attorney has reviewed and commented on draft Agreement. The final Agreement will be substantially in the form attached and approved by the City Attorney

Reviewed by:



Scott Hanin, City Manager

Attachments:

1. Accompanying Resolution
2. Draft Agreement with Liberty Fleet Care, Inc.

RESOLUTION 2014-XX

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EL CERRITO
AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT WITH
LIBERTY FLEET CARE, INC. FOR FLEET MAINTENANCE SERVICES**

WHEREAS, the City of El Cerrito (City) and East Bay Sanitary Company, Inc. (Company) have entered into that certain Franchise Agreement originally dated September 2, 1997 and most recently amended on October 16, 2013 (Franchise Agreement); and

WHEREAS, the City Council approved the October 16, 2013 Sixth Amendment to the Franchise Agreement by Resolution No. 2013-57, which established a requirement for the Company to provide fleet maintenance services for the City; and

WHEREAS, per the terms of the Sixth Amendment, the City and Company agreed that the Company would form a separate corporation that would function as the City's independent fleet manager and maintenance operator to provide services for the vehicles covered by the Sixth Amendment; and

WHEREAS, per the terms of the Sixth Amendment, the City agreed that upon formation of a separate corporation, the City would enter into a separate maintenance agreement with the newly formed company; and

WHEREAS, on October 19, 2013, the Company formed a separate corporation named "Liberty Fleet Care, Inc.," to function as the City's independent fleet manager and maintenance operator for the City's vehicles described in the Sixth Amendment, including management, scheduling, and provision for all preventative maintenance services, and all other required vehicle maintenance and repair services, and all associated record keeping and reporting requirements; and

WHEREAS, the newly formed Liberty Fleet Care, Inc. has been providing all fleet maintenance services promised to the City by the Company per the terms of the Sixth Amendment to Franchise Agreement since January 1, 2014; and

WHEREAS, Liberty Fleet Care, Inc. shall maintain the City's vehicles to the highest professional standards in accordance with all manufacturers' servicing recommendations necessary to maintain the full benefit of all associated manufacturers' warranties and in compliance with all applicable laws and regulations; and

WHEREAS, funding of \$67,648 for services and parts provided in FY 2013-14 is available in the City's adopted FY 2013-14 budget in an allocation from the Integrated Waste Management Fund, and \$107,900 for Vehicle Maintenance Services is appropriated in FY 2014-15 in allocations from the Integrated Waste Management Fund (\$102,505) and General Fund (\$5,395). Funding of \$10,000 for parts provided in FY 2014-15 is appropriated in allocations from the Integrated Waste Management Fund (\$8,000) and General Fund (\$2,000);

NOW THEREFORE BE IT RESOLVED, by the City Council of the City of El Cerrito, that it hereby authorizes the City Manager to execute the Maintenance Agreement between the City of El Cerrito and Liberty Fleet Care, Inc., effective January 1, 2014 in an amount not to exceed \$127,900 per fiscal year for fleet maintenance and parts, effective January 1, 2014 through June 30, 2016, in substantially in the form presented.

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

I CERTIFY that at a regular meeting on August 19, 2014 the City Council of the City of El Cerrito passed this Resolution by the following vote:

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

IN WITNESS of this action, I sign this document and affix the corporate seal of the City of El Cerrito on August X, 2014.

Cheryl Morse, City Clerk

APPROVED:

Janet Abelson, Mayor
2314455.1

**MAINTENANCE AGREEMENT
BETWEEN
CITY OF EL CERRITO AND
LIBERTY FLEET CARE, INC.**

This Maintenance Agreement by and between the CITY OF EL CERRITO, a municipal corporation and LIBERTY FLEET CARE, INC., a California corporation, who agree to be legally bound as set forth herein:

RECITALS

This Agreement is entered into on the basis of the followings facts, understandings, and intentions of the Parties:

- A. The City of El Cerrito and East Bay Sanitary Company entered into a Sixth Amendment to Franchise Agreement on October 16, 2013 for fleet maintenance services.
- B. In the Sixth Amendment to Franchise Agreement, the City of El Cerrito and East Bay Sanitary Company agreed that East Bay Sanitary Company would form a separate corporation that would function as the City's independent fleet manager and maintenance operator for the vehicles covered by the Sixth Amendment, including all services defined in the Sixth Amendment.
- C. The City agreed that upon formation of a separate corporation, the City will enter into a separate maintenance agreement with the newly formed company, the terms of which would supersede and terminate the Sixth Amendment to Franchise Agreement.
- D. The newly formed company, Liberty Fleet Care, Inc., which was incorporated on October 19, 2013, shall maintain the City's vehicles covered by this Agreement to the highest professional standards in accordance with all manufacturers' servicing recommendations necessary to maintain the full benefit of all associated manufacturers' warranties and in compliance with all applicable laws and regulations.
- E. Liberty Fleet Care, Inc. has been providing all fleet maintenance services promised by East Bay Sanitary Company, Inc. via the Sixth Amendment to Franchise Agreement since January 1, 2014. As such, this Agreement shall be effective January 1, 2014.

SECTION ONE - DEFINITIONS

- 1.1 "Annual Compensation" means the annual compensation due Company as calculated pursuant to paragraph 2.1.
- 1.2 "2014 Annual Compensation" is defined in Paragraph 2.2.
- 1.3 "City" means the City of El Cerrito, a municipal corporation.
- 1.4 "City Vehicles" means all vehicles owned or leased by the City which vehicles are to be maintained by Company and which are identified by Exhibit A attached and which are identified in an

amended Exhibit A each year hereafter until this Agreement expires or is terminated. "City Vehicle" refers to any single vehicle included within the City Vehicles. City Vehicles include Other Vehicles and Recycling Vehicles as defined herein.

1.5 "Company" means Liberty Fleet Care, Inc., a California corporation.

1.6 "Company Operating Margin" means the sum due the Company in addition to the Company's actual cost of providing the Services, which actual costs shall include wages, benefits and insurance.

1.7 "Maintenance Agreement" means this Maintenance Agreement.

1.8 "Other Vehicles" means any vehicle owned by the City other than Recycling Vehicles.

1.9 "Parties" means collectively the City and the Company. "Party" means individually the City or the Company.

1.10 "Recycling Vehicles" means all recycling collection vehicles operated by the City.

1.11 "Services" means all means all fleet maintenance and management services described herein, including the following services to Recycling Vehicles and Other Vehicles: managing, tracking, scheduling coordinating, performing and following up on all regular preventative maintenance work, repairs, and other concerns involving recycling collection vehicles (including the recommendations issued in the Company's Fleet Evaluation), and; managing, tracking, scheduling coordinating, performing and following up on all regular preventative maintenance work, repairs, and other concerns as requested for other City Vehicles, and all services to City Vehicle maintenance and management services as described in Section Three.

SECTION TWO – COMPENSATION AND TERM

2.1 **Annual Compensation.** City shall compensate Company for the services received by the City from the Company. The Annual Compensation includes all labor costs, the Company Operating Margin, the direct cost of all parts utilized during maintenance activities, and additional insurance premiums paid by Company as a result of performing Services.

2.2 **Adjustment of Annual Compensation.** The Company shall be entitled to maintain the Operating Margin and the City agrees to adjust the Annual Compensation annually or sooner as the cost of wages, benefits and insurance increase. The City shall receive thirty (30) days' notice of any adjustment of the Annual Compensation.

2.3 **2014 Annual Compensation for Fleet Services.** Subject to the terms, conditions, limitations and adjustments allowed herein, the City agrees that the 2014 Annual Compensation shall be \$107,900 for Services rendered by the Company per the following calculation. In calendar years after 2014, if the cost of Wages, Benefits and/or Liability & Damage Insurance increases the Annual Compensation shall be adjusted on the Quarterly Billing after such increase. The agreed upon nine and one-half percent (9.5) Operating Margin shall also be adjusted based on the increase of Wages and/or Benefits.

Wages	\$68,064
Benefits	\$22,345

Sub-Total	\$98,409
Operating Margin	\$9,491
Liability & Damage Insurance	\$8,000
Total Annual Compensation (before parts)	\$107,900
Estimated Annual Parts Expenses	\$20,000

2.4 **Limited Number of Vehicles.** The 2014 Annual Compensation is based on, and limited to the City Vehicles listed **on Exhibit A** attached and incorporated herein by this reference. The City shall provide Company with an amended and updated list of City vehicles prior to any renewal date and at any time a vehicle is added or deleted during the term of any renewed or extended Agreement.

2.5 **Quarterly Billing.** The Company shall bill the City quarterly for all Services – including parts, tires and supplies at the Company’s cost – performed by the Company per the terms of this Maintenance Agreement. The City shall pay the Company within 30 days after receipt of the Quarterly Billing.

2.6 **Term and Termination.** The Services provided under this Maintenance Agreement commenced on January 1, 2014, and shall terminate on June 30, 2016, unless the City gives ninety (90) day written notice of its intent to terminate the terms of service in this Section. This Agreement may be renewed in writing with consent of both the City and the Company.

SECTION THREE – SERVICE REQUIREMENTS AND LIMITATIONS

3.1 **General Requirement.** The Company shall maintain the City Vehicles included in this Maintenance Agreement to the highest professional standards in accordance with all manufacturers’ servicing recommendations necessary to maintain the full benefit of all associated manufacturers’ warranties and in compliance with all applicable laws and regulations.

3.2 **Recycling Vehicle Priority.** The City requests that services to Recycling Vehicles are a priority and Services to Other Vehicles are of secondary priority, and will be performed only upon completion of required Services to Recycling Vehicles. The City acknowledges that based on this preference for Recycling Vehicles required by City, Services on Other Vehicles may be delayed until all Services on Recycling Vehicles have been completed. Even if Services on Recycling Vehicles becomes necessary after Service becomes required on an Other Vehicle, the Recycling Vehicles will be advanced and will be moved ahead of any Other Vehicle Services.

3.3 **Other Vehicles Maintenance.** To the extent those Services can be provided without the Company incurring any additional labor expense, Services shall be provided on Other Vehicles at no additional labor cost to the City.

3.4 **Staffing Requirement.** The Company shall devote the equivalent of one (1) full time mechanic to the performance of Services provided to the City. Minimum 40 hours/week, with holidays, sick days, vacation time and other days off as required by any union agreement.

3.5 **Parts.** The Company is required to provide labor only. Any and all parts required in the course of the Company’s providing the Services shall be the responsibility of the City and shall be billed to the City in the Company’s quarterly billing to the City and shall be paid by the City within 30

days of receipt by the City. The quarterly billing will include copies of the parts invoices paid by Company. If the documentation for the parts is, for any reason, not acceptable to the City, the City must notify the Company in writing regarding the documentation required by the City. Absent such notice from the City, the report prepared by the Company shall satisfy this requirement.

3.6 Pre-Existing Conditions. The City is responsible for any and all pre-existing conditions of any and all City Vehicles. The Company will not be liable for any pre-existing violations, citations, claims, liabilities, lawsuits, causes of action, damages, litigation, judgments, settlements, losses, costs, liens, inspections, re-inspections, or expenses whether known or unknown to the City, that occurred before December 1, 2012..

3.7 Third Party Vendor. If any City Vehicle requires a repair beyond the Services the Company is required to provide pursuant to this Maintenance Agreement, such repairs shall be the sole responsibility of the City. The Company will, without any liability for doing so, assist the City in identifying an entity able to perform such repairs. The other entity shall be retained by City to perform and complete such repairs and the City shall be solely responsible for any and all costs of such other repairs.

3.8 Approval Required. The Company shall seek City approval for all discretionary repairs totaling \$5,000 per vehicle or more in parts and supplies, and for any work the Company requested be performed by a third party vendor.

3.9 On-Road Mechanical Emergencies. If it is safe to do so, the Company shall provide emergency repairs of Recycling Vehicles which become non-operational on the road. However, the Company shall not be required to do so if the location of the Recycling Vehicle creates a health or safety hazard to any employee of the Company. Additionally, the City acknowledges that the ability of the Company to make repairs on the road is limited and may require that a Recycling Vehicle may require towing to the location of the Company's repair facility. Any and all towing and/or other charges and costs required transporting a Recycling Vehicle to the Company's maintenance and repair location is entirely a responsibility of the City.

3.10 Monthly Reporting Requirement. The Company shall provide the City with a monthly report containing repair requirements and recommendations applicable to any City Vehicle which the Company believes are necessary to prevent mechanical breakdowns, including but not limited to:

- (a) Damaged components in engine compartment;
- (b) Damaged components, missing parts in chassis;
- (c) Damaged components in hydraulic system, including hoses, pumps, switches, leaks and oil changes, packer blades, operating handles, wear-and-tear; and
- (d) Damage related to electrical issues and codes from on-board computers.

The Company will prepare a report that the Company believes satisfies this requirement. If the format and contents of the report prepared by the Company is, for any reason, not acceptable to the City, the City must notify the Company in writing regarding the form and contents of the report required by the City. Absent such notice from the City, the report prepared by the Company shall satisfy this requirement.

3.11 Quarterly Reporting Requirement. The Company shall provide the City with a quarterly

report 30 days after the final day of March, June, September and December for the annual quarter ending on each of these. The quarterly report shall inform the City of all Services provided to the City during the previous quarter. Upon request from the City, the Company shall provide the City with a complete report of all repairs performed on any specific City Vehicle. The Company will prepare a report that the Company believes satisfies this requirement. If the format and contents of the report prepared by the Company is, for any reason, not acceptable to the City, the City must notify the Company in writing regarding the format and contents of the report required by the City. Absent such notice from the City, the report prepared by the Company shall satisfy this requirement.

3.12 Maintenance Logs. The Company shall maintain a log of all brake checks, adjustments, and BIT inspections. The Company shall provide the log to the City upon request by the City.

3.13 Repair Time. With the understanding by the City that other priorities or circumstances may take precedence and that the Company does not absolutely guarantee, the Company will attempt to, schedule services such that:

- (a) Recycling Vehicles requiring Service will be returned to the City within 48 hours of receiving vehicles;
- (b) All Services will be completed on Recycling Vehicles within 48 hours of receiving vehicles for servicing;
- (c) Other Vehicles requiring Service will be returned to the City within 72 hours of receiving vehicles; and
- (d) All Services will be completed on Other Vehicles within 72 hours of receiving vehicles for servicing.

3.14 General Service Requirements. Services by the Company shall:

- (a) Comply with all safety, environmental and other applicable regulations, including all required recordkeeping and reporting related to such compliance;
- (b) Occur at the Company's maintenance facility, or at other designated locations such as the Recycling + Environmental Resource Center, Corporation Yard, other City facility, or in the field as needed;
- (c) Be in compliance with all applicable laws and regulations;
- (d) Satisfy all maintenance requirements to preserve the full benefit of all vehicle and equipment warranties;
- (e) Be as required to ensure the maximum useful life of all vehicles, when taking into account vehicle replacement schedules and available maintenance budgets; and
- (f) Be consistent with best management practices for the specific City Vehicle.
- (g) Shall include:
 - i. All Services required to maintain compliance with all applicable laws and regulations.
 - ii. All those required to maintain the full benefit of all vehicle and equipment warranties.
 - iii. All Services required to ensure the maximum useful life of all vehicles, when taking into account vehicle replacement schedules and available maintenance budgets.

- iv. All Services generally considered best management practices for vehicle maintenance, including but not necessarily limited to those listed in this Agreement.

3.15 **Monthly Service Requirements.** The Company shall perform brake checks and BIT inspections including the following monthly or as needed:

- (a) Inspection and adjustment of all brake slack adjusters on front and rear axles for all collection vehicles;
- (b) Check air compressor system, brake pads, and all other components of braking system and repair as needed; and
- (c) Full BIT inspection of all collection vehicles.

3.16 **Quarterly Service Requirements.** The Company shall perform preventative maintenance services including the following quarterly or as needed:

- (a) Complete vehicle inspection;
- (b) Oil change and oil crankcase filter replacement;
- (c) Fuel filter replacement;
- (d) Coolant filter replacement;
- (e) Hydraulic filter replacement; and
- (f) Air filter replacement;

3.17 **City Vehicle Maintenance Services.** The Company shall provide Services on all Other Vehicles as follows:

- (a) Lubrication and greasing of all zerk points on body and chassis;
- (b) Check PTO pump mechanism and repair/recommend as needed;
- (c) Check coolant system/radiator and repair/recommend as needed;
- (d) Check welds and repair/recommend as needed;
- (e) Check and change oil and filters of automatic transmission when required or need and recommend interval for this service;
- (f) Check and repair exhaust system, DPF filter and related components;
- (g) Monthly consultation, recommendation, and repair of mechanical breakdowns, including but not limited to the following:
 - i. Damaged components in engine compartment.
 - ii. Damaged components, missing parts in chassis.
 - iii. Damaged components in hydraulic system, including hoses, pumps, switches, leaks and oil changes, packer blades, operating handles, wear-and-tear.
 - iv. Troubleshoot electrical issues and codes from on-board computers, and repair/recommend as needed.
 - v. On-road emergencies as requested.
 - vi. Provide complete report of all repairs to the City.
- (h) Company reserves the right to utilize third party vendors as Company determines necessary, subject to written City approval. The City will pay approved costs for work provided by third party vendors directly; and
- (i) The City agrees to follow and implement all Company recommendations regarding

Recycling Vehicle operation and ongoing maintenance requirements for recycling collection vehicles; such recommendations will be followed and implemented in a manner that is in keeping with available budgets.

3.18 **Exclusion of Some Services.** Due to the variety of City Vehicles, some of the Services listed in this Section, may not apply to or be required by some of the City Vehicles. Thus, the Company will not provide each and every listed Service to each and every City Vehicle. The City acknowledges this fact and confirms that it was considered in negotiating the Annual Compensation. The City shall not be entitled to any reduction in the Annual Compensation due to the Company's inability to provide the inapplicable Services to some City Vehicles.

SECTION FOUR – INSURANCE AND LIABILITY

4.1 **Violation Assessment.** The Company shall pay to the City \$250 for each failure to conduct and accurately document Services required in this Maintenance Agreement.

4.2 **Citation Liability.** The Company shall pay to the City the actual cost of any citation, fine or other monetary penalty to the City up to \$10,000 per incident for failure to maintain the City's Vehicles and/or any associated reporting requirements in accordance with the terms and conditions of this Agreement. Company will not be liable for any preexisting violation that existed prior to January 1, 2014.

4.3 **Warranty Assessment.** The Company shall pay to the City the actual cost incurred for required parts for any instances of failure to maintain the City's Vehicles in accordance with the requirements necessary to provide the full benefits of the manufacturers' warranties.

4.4 **Insurance.** Company shall secure and maintain, in full force and effect during the Term, adequate insurance that shall be the types and amounts of insurance coverage listed below. Insurers must provide Company and the City with thirty (30) calendar days' notice of any cancellation or reduction in coverage and name the City as an additional insured. Company shall supply a certificate of insurance and additional insured endorsement. The terms and obligations of this section shall survive termination of this Agreement.

4.5 **Workers' Compensation Insurance.** Company shall take out and maintain during the life of this Agreement, Workers' Compensation and Employer's Liability insurance for all of its employees working on this project. In lieu of evidence of Workers' Compensation insurance, the City will accept a Self-Insuring Certificate from the State of California.

4.6 **Comprehensive Automobile and General Liability Insurance.** Company shall take out and maintain during the life of this Agreement General Liability insurance in the amount of one million dollars (\$1,000,000) for combined single limit coverage for bodily injury, personal injury and property damage and umbrella coverage of up to ten million dollars (\$10,000,000). The following coverages or endorsements must be indicated on the certificate:

- (1) The City, its directors, officers and employees are additional insureds in the policy as to the work being performed; regards to Company's negligence,
- (2) The coverage is primary to any other insurance carried by the City;
- (3) Thirty (30) days prior written notice shall be given to the City in the event of cancellation or

non-renewal of the policy.

4.7 **Amounts of Insurance.** The amounts of insurance shall be the following:

General Liability – one million dollars (\$1,000,000) per occurrence

Auto Liability – one million dollars (\$1,000,000) per occurrence

Worker's Compensation – State statutory limit

4.8 **Delivery of Proof of Coverage.** Simultaneously with the execution of this Agreement, Company shall furnish City certificates of insurance required hereunder, in form and substance satisfactory to the City. Such certificates shall show the type and amount of coverage, effective dates and dates of expiration of policies and shall have all required endorsements. Renewal certificates will be furnished periodically to the City to demonstrate maintenance of the required coverages throughout the term.

4.9 **Other Insurance Requirements.** In the event any services are delegated to a subcontractor, Company shall require such subcontractor to provide statutory workers' compensation insurance and employer's liability insurance for all of the subcontractor's employees engaged in the work in accordance with this section. The liability insurance required by this section shall cover all subcontractors or the subcontractor must furnish evidence of insurance provided by it meeting all of the requirements of this section.

4.10 Company shall comply with all requirements of the insurers issuing policies. The carrying of insurance shall not relieve Company from any obligation under this Agreement. If any claim exceeding the amount of any deductibles or self-insured reserves is made by any third Person against Company or any subcontractor on account of any occurrence related to this Agreement, Company shall promptly report the facts in writing to the insurance carrier.

4.11 If Company fails to procure and maintain any insurance required by this Agreement, the City may take out and maintain, at Company's reasonable expense, such insurance as it may deem proper and deduct the cost thereof from any monies due Company.

SECTION FIVE – INDEMNIFICATION

5.1 **Indemnification by Company.** To the fullest extent allowable by law, Company shall indemnify, defend (with counsel reasonably acceptable to the City) and hold harmless the City and its council members, officers, directors, employees, administrators, and agents for its share of any and all loss, liability, penalty, forfeiture, fine, claim, demand, damages, expense costs (including attorney's fees), action, proceeding or suit of any and every kind and description, whether judicial, quasi-judicial or administrative in nature, including, but not limited to, personal injury, bodily injury, interference with third party contract, or for damage to property or resources arising out of, or resulting from any act, error or omission of Company and/or any employee of the Company in connection with Company's performance of this Agreement, including but not limited to, compliance with applicable laws or legal requirements, or breach of representations and obligations set forth in this Agreement, and excepting the active negligence or willful misconduct of the City, its council members, officers, directors, employees, administrators, and agents. This indemnification and defense shall survive the expiration or earlier termination of this Agreement.

5.3 City Indemnification for Operator Error. The City agrees to defend and indemnify the Company (and their respective officers, directors, shareholders consultants, predecessors, successors, assigns, agents, representatives, employees, parent and subsidiary companies, affiliates, and each of them) from and against any and all claims, demands, causes of action, liabilities, judgments, settlements, losses, costs, damages, and/or expenses in law or equity, contract or tort, of every kind and nature whatsoever to the extent they arise out of or relate to operator error, as defined below, or to the extent they arise out of or relate to the negligence or willful misconduct by any operator of any City vehicle that is the subject this Agreement when the operator of the City vehicle is not an employee of the Company. Operator error includes driving errors, failure to follow written recommendations by the Company or East Bay Truck Maintenance, Inc., and failure to report vehicle deficiencies to the Company or East Bay Truck Maintenance, Inc., when required by state law.

SECTION SIX – GENERAL PROVISIONS

6.1 Entire Agreement. This Agreement constitutes the whole and entire agreement of the City of El Cerrito and Liberty Fleet Care, Inc., with respect to the subject matter of this Agreement. This Agreement replaces and supersedes all prior written and oral agreements between the City of El Cerrito and Liberty Fleet Care, Inc., related to the Maintenance Agreement, and supersedes the Sixth Amendment to Franchise Agreement with East Bay Sanitary, Company, dated October 16, 2013.

6.2 Ambiguities. The City of El Cerrito and Liberty Fleet Care, Inc., agree that any rule of construction to the effect that ambiguities in a document are to be resolved against the drafting party shall not apply in the interpretation of this Agreement or any amendments or Exhibits hereto.

6.3 Law and Venue. This Agreement shall be construed and enforced in accordance with the internal laws of the State of California. Venue shall be Contra Costa, California.

6.4 Severability. If any provision of this Agreement is determined by any court of competent jurisdiction or arbitrator to be invalid, illegal, or unenforceable to any extent, that provision shall, if possible, be construed as though more narrowly drawn, if a narrower construction would avoid such invalidity, illegality, or unenforceability or, if this is not possible, such provision shall, to the extent of such invalidity, illegality, or unenforceability, be severed, and the remaining provisions of this Agreement shall remain in full force and effect.

6.5 Context. Whenever used in this Agreement, the singular shall include the plural, the plural shall include the singular, and the neuter gender shall include the male and female as well as a trust, firm, company, or corporation, all as the context and meaning of this Agreement may require.

6.6 Additional Documents. The Parties to this Agreement shall promptly execute and deliver any and all additional documents, instruments, notices, and other assurances, and shall do any and all other acts and things, reasonably necessary in connection with the performance of their respective obligations under this Agreement and to carry out the intent of the Parties.

6.7 Headings. The headings, section, and paragraph titles and headings contained in this Agreement are inserted as a matter of convenience and for ease of reference only and shall be disregarded for all other purposes, including the construction or enforcement of this Agreement or any

of its provisions.

6.8 **Amendments.** This Agreement may be altered, amended, or repealed only by a writing signed by all of the Parties.

6.9 **Notices.** All Quarterly Billings, notices, approvals, disapprovals or elections required or permitted to be given under this Agreement shall be in writing and shall be delivered by any of the following methods chosen by the notifying party:

- (a) Personally which shall be deemed consummated upon actual personal delivery to the intended recipient; or
- (b) By mail, which shall be deemed consummated upon the date of actual receipt or refusal of delivery as evidenced by the return receipt; or
- (c) Sent Federal Express or other reputable overnight delivery service to the Parties at the addresses listed below which shall be deemed given upon the next business day as evidenced by the courier's delivery confirmation or receipt; or
- (d) By Fax by faxing to the Fax Number provided by the City and/or Company, respectively for this purposes which shall be deemed consummated on the date sent if before 5:00 p.m. on a business day and if not on a business day or if after 5:00 p.m. then on the next business day; or
- (e) Via e-mail and/or e-mail attachment by e-mailing to the e-mail address provided by the City and/or Company, respectively for this purposes which shall be deemed consummated on the date sent if before 5:00 p.m. on a business day and if not on a business day or if after 5:00 p.m. then on the next business day.

6.10 **Mediation and Arbitration.** Client and Firm agree to submit any and all disputes, claims, controversies, and other adverse actions, including claims of legal malpractice, to mediation and if mediation is not successful, to arbitration. However, either Party is entitled to file a judicial action to protect a statute of limitations or for equitable protection such as, but not limited to, an order of attachment, receivership, injunction, or other provisional remedies but in such case, the matter shall proceed via mediation and, if unsuccessful via arbitration, without further action in the Court regarding the underlying dispute. A judicial action may be filed if necessary to depose or subpoena any person, or person most knowledgeable.

6.11 **Mediation.** Mediation must occur prior to arbitration unless waived by all Parties. If Client or Firm does not participate in mediation, in good faith, the Party not participating in good faith shall pay the entire cost of mediation including attorney's fees and all costs of the Party that does participate in good faith. Before the mediation begins, the Parties agree to sign a document consistent with Evidence Code Section 1152.5 thereby preventing the admissibility in arbitration or any civil action of anything said, any admission made, and any documents submitted related to the mediation. Each Party shall bear their own cost of mediation if the matter is resolved in mediation. However, if the matter is not resolved in mediation, the cost of mediation may be added as a cost by the arbitrator.

6.12 **Waiver of Jury Trial.** By agreeing to arbitrate, you are waiving any right to a jury trial and to have the matter decided by an arbitrator instead of a judge and/or a jury. You are also waiving any right to an appeal, excepted in very limited situations, none of which may apply to this matter. This includes waiver of a trial and/or an appeal based on claims against your attorney related to the services he provided, including but not limited to, legal malpractice, and/or professional negligence.

6.13 **Arbitration.** If mediation is not successful or is waived, the Parties shall proceed to arbitration

as follows:

(a) Selection of Arbitrator and Payment. The dispute shall be submitted to a recognized arbitration service such as JAMS, ADR or a similar arbitration service. Such service shall provide each Party with the resume of three possible arbitrators. The three possible arbitrators must be either attorneys or retired judges with not less than 15 years of legal experience in the area to be arbitrated. Each Party may reject one of the three arbitrators. If only one un-rejected arbitrator remains, he/she shall be the arbitrator. If more than one arbitrator remains un-rejected, the administrator of the arbitration service shall select the arbitrator from the remaining un-rejected arbitrators. Each Party shall pay to the arbitration service one-half of the fee required by the arbitration service for the arbitration. However, the fee shall be an awardable cost to the prevailing Party of the arbitration.

6.14 Attorney's Fees and Costs. In the event a lawsuit, arbitration or mediation is initiated by either party, the party against whom a judgment or award is entered shall also be liable for costs of suit and reasonable attorneys' fees as set by the court or arbitrator.

6.15 Counterparts and Electronic Signatures. This Agreement shall be effective when signed below or in counterpart. Escrow Holder and all Parties agree that a signed and faxed or signed, scanned and e-mailed copy of this Agreement shall bind the parties as if an original and may be relied upon by Escrow Holder in confirming satisfaction of any and all terms, conditions and requirements contained in this Agreement.

IN WITNESS WHEREOF, the Parties hereby have executed this Maintenance Agreement on the day first above written:

City

Company

By _____
Printed _____
Title _____
Date: August ___, 2014

By _____
Mark Figone, CEO
Date: August ___, 2014

APPROVED AS TO FORM:

ATTEST

By _____
Printed _____
City Attorney
Date: August ___, 2014

By _____
Printed _____
City Clerk
Date: August ___, 2014

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Exhibit A to Maintenance Agreement - Vehicle Listing

Year	Vehicle ID	Plate #	Make	Model	Department
		1081721	Ford Ranger	Pickup Truck	Custodial
		1281908	Chevy Silverado 2500HD	Pickup Truck	Custodial
		1325662	Chevy Silverado 2500HD	Pickup Truck	Custodial
		903229	Ford Ranger	Pickup Truck	Custodial
1973		E642142	John Deere	Tractor	Maintenance
1987		E098453	Ford	Bucket Truck	Maintenance
1989		E326097	Woodchuck	Chipper	Maintenance
1989	32	E266472	Chevy 3500	Dump Truck	Maintenance
1991	35	E338706	Ford F350	Pickup Truck	Maintenance
1991	30	E207909	Ford F700	Box Truck, with Chipper	Maintenance
1996		NA	Caterpillar 416B	Backhoe	Maintenance
1998		NA	John Deere	Gator	Maintenance
2000		1071549	Ford	Expedition	Maintenance
2001		E333956	Bigte	Trailer	Maintenance
2003	23	1168354	Chevy 3500	Van	Maintenance
2003		1168401	Chevy Silverado 2500HD	Pickup Truck	Maintenance
2010		1191449	Ford F250	Pickup Truck	Maintenance
2010		1314250	Ford F650	Pickup Truck	Maintenance
		1047880	Ram 1500	Van	Maintenance
		1314258	Ford F650	Dump Truck	Maintenance
1997	SB	1081725	Ford F450	Stake Struck	Recycling
2002		E1159998	GEM	Cart	Recycling
2004	CNG	1113364	Ford F150	Pickup Truck	Recycling
2007	Linde	NA	Linde	Forklift	Recycling
2008	R1	1314370	Crane Carrier / Labrie	Recycling Truck	Recycling
2008	R2	1314371	Crane Carrier / Labrie	Recycling Truck	Recycling
2008	C1	1309697	Crane Carrier / Heil	Recycling Truck	Recycling
2010	C2	1343823	Crane Carrier / Heil	Recycling Truck	Recycling
1998	F1	NA	Toyota	Forklift	Recycling
2005	F2	NA	Toyota	Forklift	Recycling
1989		NA	Clubcar	Electric Golfcart	
1991		E334072	Ford	Pickup Truck	
2010		E1194250	Ford F250	Pickup Truck	
2000		E1066318	Ford E-350	Mini Bus	Senior Center Meas. J
2007		E1274133	Ford E-450	Mini Bus	Senior Center Meas. J
2008		1223933	Chevy Up lander	Van	Senior Center
1999	B1	1022987	Ford Ranger XLT	Pickup Truck	Building
2000	54	1047861	Ford	Crown Victoria	Code Enforcement



AGENDA BILL

Agenda Item No. 5(H)

Date: August 19, 2014

To: El Cerrito City Council

From: Garth Schultz, 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 Budgeted Operating Expenses

ACTION REQUESTED

Adopt a resolution authorizing payment of \$99,762 for the City of El Cerrito's share of the Contra Costa Integrated Waste Management Authority budgeted operating expenses for Fiscal Years 2013-14 and 2014-15.

BACKGROUND AND ANALYSIS

The City of El Cerrito (the 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. The Authority provides a variety of services to its member agencies (which includes El Cerrito, Richmond, San Pablo, Pinole, Hercules, and the unincorporated areas of West County). The Authority sets an annual Operating Budget that projects program expenses and revenues (Attachment 3). The services provided by the Authority as a part of its Operating Budget currently 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, and per the terms of the Authority JPA Agreement, 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 new negotiated post-collection agreements with solid waste processor Republic Services, the City's adopted Post-Collection Agreement with Republic Services (Resolution No. 2013-54) did not include such a mechanism, opting instead to pay its share of Authority expenses via other means.

Unlike the other Authority member agencies, the City already has an established Integrated Waste Management (IWM) Fund that receives revenues from Council-

Agenda Item No. 5(H)

adopted IWM Fees that are charged on solid waste collection bills in the City, from which the City's share of Authority operating expenses can be paid. The City's expenses, as previously paid directly by ratepayers to the Authority via the IRRF Rates, is calculated based on the City's proportionate tonnage of the Authority's municipal solid waste (e.g. MSW or garbage) tonnage, approximately 8% annually. 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 will be able to more effectively respond to changes to its share of Authority expenses without collecting more revenues than necessary from El Cerrito ratepayers.

Requesting Council action to authorize the City Manager's issuance of the required payments to the Authority has not been necessary in the past, the City's share of Authority expenses had been paid by rate payers via their garbage bills, and then remitted by the post-collection services provider to the Authority. By paying the Authority directly from the City's IWM Fund, as outlined above, the City will use funds collected from ratepayers to pay Authority expenses directly. This does not change the nature of the City's relationship to the Authority, nor the terms of the JPA Agreement; rather, this new arrangement is simply a change in how the City's share of Authority expenses are remitted to the Authority. Because direct payment by the City to the Authority has not previously been required, and because the payment amounts exceed the City Manager's spending approval limits, Council authorization for the payments is being requested. Staff anticipates that this methodology could be applied in future years, however it will be prudent to review and update this methodology, and codify it via formal agreement with the Authority, for any payments to the Authority due in subsequent fiscal years.

The City's share of the Authority's Fiscal Year (FY) 2013-14 budgeted operating expenses from January 1 through June 30, 2014 (after the Authority ceased setting IRRF Fees) is calculated to be \$39,985¹. An invoice from the Authority is included as Attachment 2. The City's proportionate share of the Authority's FY 2014-15 budget is currently estimated to be 8% of the Authority's total projected operating expenses of \$747,209, or \$59,777.

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, adopted March 2013. 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 listed in Goal F.

¹ Via the Authority's previously established calculation method of proportionately allocating costs to member agencies based on each member agency MSW percentage/

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.

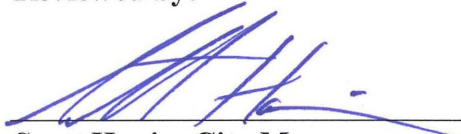
FINANCIAL CONSIDERATIONS

Funding of \$39,985 for FY 2013-14 expenses was approved in the FY 2013-14 adopted budget allocation from the Integrated Waste Management Fund. Funding for FY 2014-15 projected expenses of \$59,777 is available the current year's adopted budget in the Miscellaneous Professional Services allocation 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:



Scott Hanin, City Manager

Attachments:

1. Resolution
2. Invoice for El Cerrito's Share of Remaining FY
2013-2014 Operating Budget Expenses
3. FY 2014-2015 Authority Operating Budget

RESOLUTION 2014-XX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EL CERRITO TO APPROVE PAYMENT TO THE WEST CONTRA COSTA INTEGRATED WASTE MANAGEMENT AUTHORITY (AUTHORITY) OF EL CERRITO'S SHARE OF THE AUTHORITY'S BUDGETED OPERATING EXPENSES FOR FISCAL YEARS 2013-2014 AND 2014-2015

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 Authority continued operations as guided by its adopted Fiscal Year 2013-2014 Operating Budget from January 1, 2014 through June 30, 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 2013-2014 budgeted operating expenses from January 1, 2014 through June 30, 2014 are calculated to be \$39,985; and

WHEREAS, funding was approved in the adopted FY 2013-14 budget from the Integrated Waste Management Fund; and

WHEREAS, the City's share of the Authority's Fiscal Year 2014-2015 budgeted operating expenses from July 1, 2014 through June 30, 2015 are estimated to be \$59,777; and

WHEREAS, funding is available in the adopted FY 2014-15 budget in an allocation from the Integrated Waste Management Fund for Miscellaneous Professional Services.

NOW THEREFORE BE IT RESOLVED, by the City Council of the City of El Cerrito, that it hereby approves payment of El Cerrito's share of Fiscal Years 2013-2014 and Fiscal Year 2014-2015 Authority operating expenses in the amount of \$99,762.

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

I CERTIFY that at a regular meeting on August 19, 2014 the City Council of the City of El Cerrito passed this Resolution by the following vote:

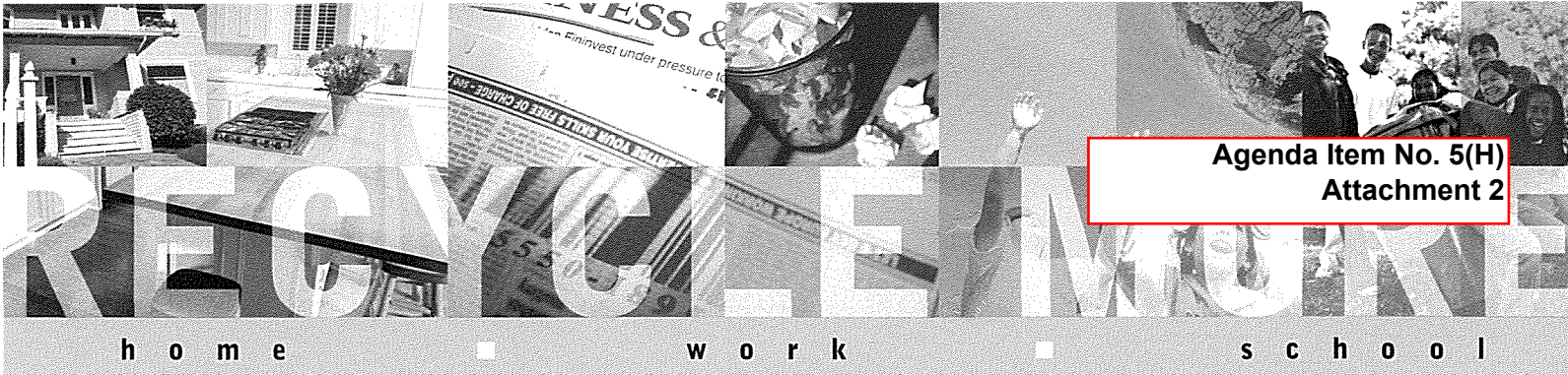
AYES:	COUNCILMEMBERS:
NOES:	COUNCILMEMBERS:
ABSENT:	COUNCILMEMBERS:

IN WITNESS of this action, I sign this document and affix the corporate seal of the City of El Cerrito on August X, 2014.

Cheryl Morse, City Clerk

APPROVED:

Janet Abelson, Mayor



Agenda Item No. 5(H)
Attachment 2

June 18, 2014

Mr. Garth Schultz
City of El Cerrito
10890 San Pablo Avenue
El Cerrito, CA 94530

Dear Garth,

Enclosed is the first invoice for the 2014 JPA Operating Account revenue allocation for the City of El Cerrito. As we discussed, your intention was to incorporate the JPA portion of the post-collection rate administered by the City of El Cerrito and have the City pay it directly to the Authority.

The revenue allocation (based on tons) for calendar year 2014 is \$79,970 and the first semi-annual payment is \$39,985. Please make the check payable to the West Contra Costa Integrated Waste Management Authority and remit payment to:

RecycleMore
Attn: Accounts Receivable
1 Alvarado Square, Bldg 5
San Pablo, CA 94806

If you have any questions or need additional information feel free to call me at (510) 215-3127.
Thank you.

Sincerely,

Chris Lehon
Executive Director



recyclemore
WEST CONTRA COSTA INTEGRATED
WASTE MANAGEMENT AUTHORITY

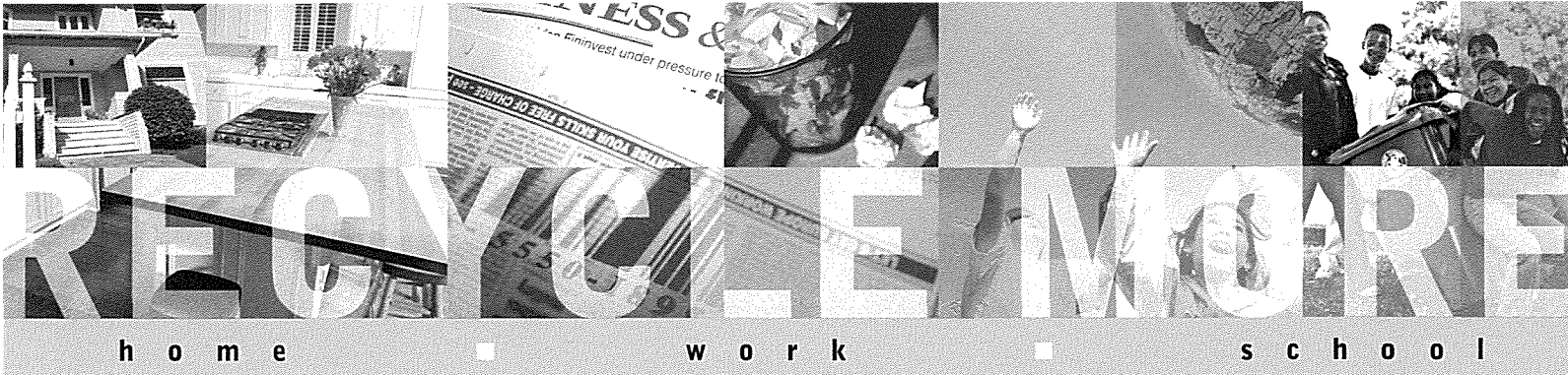


One Alvarado Square
San Pablo, CA 94806

t 510.215.3125
f 510.236.1636

info@recyclemore.com
www.recyclemore.com

Serving: The cities of El Cerrito, Hercules, Pinole, Richmond, San Pablo and Unincorporated West Contra Costa County



INVOICE

BILL TO:

City of El Cerrito
10890 San Pablo Avenue
El Cerrito, CA 94530

DATE	PROJECT	INVOICE #	TERMS
6/20/14	JPA Post-Collection Fee	06202014	Net 30

DESCRIPTION	QTY	RATE	AMOUNT
WCCIWMA Revenue Allocation semi-annual payment			\$39,985
		Total	\$39,985

REMIT PAYMENT TO:

RecycleMore
Attn: Accounts Receivable
1 Alvarado Square, Bldg 5
San Pablo, CA 94806



recyclemore
WEST CONTRA COSTA INTEGRATED
WASTE MANAGEMENT AUTHORITY



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Serving: The cities of El Cerrito, Hercules, Pinole, Richmond, San Pablo and Unincorporated West Contra Costa County



Agenda Report

Date: June 12, 2014
To: West Contra Costa Integrated Waste Management Authority Board
From: Chris Lehon, Executive Director
Subject: Proposed Fiscal Year 2014-2015 Authority Operating Budget

ACTIONS REQUESTED

Consideration of ADOPTION OF PROPOSED RESOLUTIONS NO. 14-01 and 14-02 adopting the Fiscal Year (FY) 2014-15 Authority Operating Budget.

BACKGROUND

Attached is the proposed FY 2014/2015 budget. This proposed operating budget is for direct expenses such as: personnel salary and benefits, contractor services, community support grants, direct program expenditures, etc. Every year, the Board reviews its public agency operating budget during April and May and approves the final budget for the upcoming fiscal year at its June meeting.

In preparation for the Budget workshop, The Internal Operations Committee (Directors: Bates, Lyman and Romero) met with the Executive Director to discuss budget planning in December 2013. In January, staff presented a draft Operating Fund Budget to Board of Directors (Board) based on comments and input from the Internal Operation Committee. The next step involved (April and May 2014) revising JPA programs and services by staff and members (Murray, Myrick, and Valdez) of the Waste Reduction and Recycling Committee (WRRC) and their comments and recommendations were incorporated into this report.

The funds for the Operating Fund Budget are primarily generated from fees that are included in customer solid waste rates set by the Board each year and collected by Republic Services and the City of El Cerrito.

The Fiscal Year 2014/15 Operating Fund Budget expenses (Attachment 2 - 2) are estimated to total \$747,209 or 36 percent less than 2013/14 fiscal year budget (\$1,168,119). These expenses would result in an end-of-year operating fund account balance of \$821,359 as of June 30, 2015. It is projected that the 2013/14 budget will come in at \$915,426 expended, which is 21 percent less than anticipated, leaving a \$756,581 account balance as of June 30, 2014

As stated above, the revenue for the Operating Fund is primarily derived from fees contained in the customer solid waste rates. The fees approved by the Board in October 2013 for Rate Year 2014 totaled \$1 million. Actual operating expenses are projected to be lower than budgeted amount included in the rate setting for 2014 and therefore, post collection fee revenue will be adjusted when rates are set for calendar year 2015.

Fiscal Year 2014 – 15 Highlights

Personnel Services

Expenses include staff salaries and benefits of \$491,512, which is 28 percent decrease from the FY 2013/14 budget. The proposed budget includes staff reductions from six Full Time Equivalents (FTE) to four FTEs. The decreases in Personnel Services are primarily due to staff reductions. Employee CalPERS contributions increased from three to five percent (Resolution 12-2).

Management and Administration (Rent and Utility, Materials and Supplies)

Include memberships and subscriptions, office supplies, postage, reprographics, travel, training and equipment purchases. Expenses for this category total \$82,297, which is 8 percent decrease from the amount budgeted for fiscal year 2013/2014. This includes financial services provided by the City of Hercules: \$19,217 and office and storage rent of \$35,857.

Professional Services

Include legal services, auditing services, and other consulting expenses. Expenses for this category total \$86,000, which is a 49 percent decrease from last year's budget. This decrease is largely due to fewer contracted educational vendor services for schools and eliminating \$50,000 for post collection procurement services that were completed by December 2013.

Program Direct Expenses and Grants

Expenses include residential and commercial programs, the home composting and organics, mandatory commercial recycling and HHW. Expenses for this category total \$87,400 which is a 50 percent decrease from Fiscal Year 2013/2014 budget. This decrease is largely due to onetime startup cost for the residential food scraps program in three additional jurisdictions and production of fewer outreach brochures and flyers.

2014-15 Proposed Budget

<u>Program Descriptions</u>	<u>Percentage</u>	<u>Amount</u>
Management & Administration	31.0%	\$ 231,789
Post-Collection	9.3%	\$ 69,846
Household Hazardous Waste	9.3%	\$ 69,532
General AB 939 Program Activities	16.9%	\$ 63,515
Regional Programs	4.2%	\$ 15,706
Business Programs	11.1%	\$ 41,578
Commercial Organics	5.9%	\$ 22,109
Residential Organics	6.4%	\$ 24,109
School Programs	23.4%	\$ 88,048
Grants Programs	9.3%	\$ 34,849
Special Events	11.7%	\$ 44,061
Education & Public Information	11.2%	\$ 42,067
Grand Total	100.0%	\$ 747,209

FISCAL IMPACT

The proposed budget is \$747,209. The Authority's revenue requirement is approximately 8.9 percent of the monthly post collection rate.

RECOMMENDED ACTION

ADOPTION OF PROPOSED RESOLUTION NO. 14-01 and 14-02 adopting the FY 2014-15 RecycleMore Operating Budget.

Submitted by:



Chris Lehon
Executive Director

Attachments: Proposed Resolution 14-01, Exhibits and Resolution 14-02

RESOLUTION NO. 14 - 01

RESOLUTION OF THE BOARD OF DIRECTORS OF THE
WEST CONTRA COSTA INTEGRATED WASTE MANAGEMENT AUTHORITY
APPROVING THE REVISED FISCAL YEAR 2014/2015 AUTHORITY BUDGET

WHEREAS, the West Contra Costa Integrated Waste Management Authority ("Authority") is required to adopt annual Operating Budgets;

WHEREAS, the Authority Board of Directors reviewed the Fiscal Year 2013/2014 Estimate-to-Close, the Revised Fiscal Year 2014/2015 Budget at a public workshop held on May 8, 2014;

NOW, THEREFORE, the Board of Directors of the West Contra Costa Integrated Waste Management Authority resolve as follows:

Section 1. The Revised Fiscal Year 2014/2015 Budget set forth in Exhibit A attached hereto is approved.

ATTEST:

CHAIR OF THE BOARD

Bobby Peregrino, Authority Secretary

Cecilia Valdez

Date

I hereby certify that the foregoing Resolution was adopted by the Board of Directors of the West Contra Costa Integrated Waste Management Authority at its meeting on June 12, 2014 by the following vote:

AYES: Directors: _____

NOES: Directors: _____

ABSENT: Directors: _____

Bobby Peregrino, Authority Secretary

EXHIBIT A
TO RESOLUTION NO. 14-01

WCCIWMA PROPOSED FISCAL YEAR 2014/2015 BUDGET

		Operating Fund	Recycling Special Revenue Fund	TOTAL
OPENING FUND BALANCE - July 1, 2014		\$ 756,581	\$ 3,989,505	\$ 4,746,086
REVENUES				
	Revenue from Post-Collection Rates	810,406	-	810,406
	Interest Income	1,580	8,000	9,580
	Total Revenues	811,986	8,000	819,986
EXPENDITURES				
	Personnel Services	491,512	-	491,512
	Professional Services Contracts	86,000	-	86,000
	General Expense	82,297	-	82,297
	Program Direct Expense	67,400	-	67,400
	Grant Awards	20,000	-	20,000
	Capital Outlay	-	-	-
	Total Expenditures	747,209	-	747,209
PROJECTED YEAR-END FUND BALANCE - June 30, 2015		\$ 821,359	\$ 3,997,505	\$ 4,818,863

WCCIWMA PROPOSED REVISED FY 2014/2015 OPERATING FUND EXPENDITURES BUDGET
(INCLUDING USED OIL AND HOUSEHOLD HAZARDOUS WASTE GRANT)

	Management & Admin.	AB939	Post- Collection	General Fund	HHW Fund	TOTAL OPERATING FUND (F = D + E)	Used Oil / HHW Grant (G)	FY2014/15 Budget (H = F+G)
	(A)	(B)	(C)	(D = A+B+C)	(E)	(F = D + E)	(G)	(H = F+G)
Personnel Services:								
Salaries and Benefits	\$ 137,492	\$ 245,243	\$ 57,746	\$ 440,480	\$ 51,032	\$ 491,512	\$ 4,000	\$ 495,512
Sub-total	\$ 137,492	\$ 245,243	\$ 57,746	\$ 440,480	\$ 51,032	\$ 491,512	\$ 4,000	\$ 495,512
Professional Services:								
General Legal Counsel Services	\$ 4,500	\$ 11,400	\$ 9,600	\$ 25,500	\$ 4,500	\$ 30,000	\$ -	\$ 30,000
Professional Technical Assistance	-	10,000	2,500	12,500	6,000	18,500	-	18,500
Graphics Design	-	2,000	-	2,000	-	2,000	-	2,000
Workshops	-	25,000	-	25,000	-	25,000	-	25,000
Web Site	-	2,000	-	2,000	-	2,000	-	2,000
Other Professional Services	7,500	1,000	-	8,500	-	8,500	-	8,500
Sub-total	\$ 12,000	\$ 51,400	\$ 12,100	\$ 75,500	\$ 10,500	\$ 86,000	\$ -	\$ 86,000
General Expenses:								
Mileage/Travel/Board Stipends	\$ 4,500	\$ -	\$ -	\$ 4,500	\$ -	\$ 4,500	\$ -	\$ 4,500
Membership Dues & Subscriptions	2,500	-	-	2,500	-	2,500	-	2,500
Printing and Copying Charges	3,240	-	-	3,240	-	3,240	-	3,240
Office Supplies and Expenses	2,500	-	-	2,500	-	2,500	-	2,500
Employee Training/Seminars	500	-	-	500	-	500	-	500
Postage/Overnight Delivery	500	-	-	500	-	500	-	500
Office Equip./Computer Maint.	1,500	-	-	1,500	-	1,500	-	1,500
Insurance	6,139	-	-	6,139	-	6,139	-	6,139
Telephone	3,144	-	-	3,144	-	3,144	-	3,144
Payroll/H.R. Services	2,700	-	-	2,700	-	2,700	-	2,700
Controller/Treasurer Services	19,217	-	-	19,217	-	19,217	-	19,217
Office/Other Rent	35,857	-	-	35,857	-	35,857	-	35,857
Sub-total	\$ 82,297	\$ -	\$ -	\$ 82,297	\$ -	\$ 82,297	\$ -	\$ 82,297
Program Direct Expenses:								
Employee Expenses/Travel	\$ -	\$ 1,150	\$ -	\$ 1,150	\$ 750	\$ 1,900	\$ -	\$ 1,900
Supplies and Equipment	-	-	-	-	6,000	6,000	-	6,000
Copying, Printing and Advertising	-	13,250	-	13,250	1,250	14,500	48,000	62,500
Outside Services	-	15,500	-	15,500	-	15,500	22,500	38,000
Miscellaneous	-	1,500	-	1,500	-	1,500	-	1,500
Promotional Items	-	28,000	-	28,000	-	28,000	28,000	56,000
Sub-total	\$ -	\$ 59,400	\$ -	\$ 59,400	\$ 8,000	\$ 67,400	\$ 98,500	\$ 165,900
Grant Awards	\$ -	\$ 20,000	\$ -	\$ 20,000	\$ -	\$ 20,000	\$ -	\$ 20,000
Capital Outlay:								
Office Furniture & Equipment	-	-	-	-	-	\$ -	-	-
Sub-total	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Total Operating Fund Expenditures	\$ 231,789	\$ 376,043	\$ 69,846	\$ 677,677	\$ 69,532	\$ 747,209	\$ 102,500	\$ 849,709
Percent of Total	31.0%	50.3%	9.3%	90.7%	9.3%	100.0%		

WCCIWMA FISCAL YEAR 2014/2015 BUDGET
AB939 PLANNING AND IMPLEMENTATION

	General Program Activities	Regional Programs	Business Programs	Commercial Organics	Residential Organics	School Programs	Grants Program	Special Events	Education & Public Info.	Total
Personnel Services:										
Salaries and Benefits	\$ 42,415	\$ 9,706	\$ 35,478	\$ 16,109	\$ 16,109	\$ 55,298	\$ 14,749	\$ 29,811	\$ 25,567	\$ 245,243
Sub-total	\$ 42,415	\$ 9,706	\$ 35,478	\$ 16,109	\$ 16,109	\$ 55,298	\$ 14,749	\$ 29,811	\$ 25,567	\$ 245,243
Professional Services:										
General Legal Counsel Services	\$ 10,500	\$ -	\$ 600	\$ -	\$ 300	\$ -	\$ -	\$ -	\$ -	\$ 11,400
Professional Technical Assistance	10,000	-	-	-	-	-	-	-	-	10,000
Graphics Design	-	-	1,000	-	-	-	-	-	1,000	2,000
Workshops	-	-	-	-	5,000	20,000	-	-	-	25,000
Web Site	-	-	-	-	-	-	-	-	2,000	2,000
Other Prof. Svs/Special Events	-	-	-	-	-	-	-	-	1,000	1,000
Sub-total	\$ 20,500	\$ -	\$ 1,600	\$ -	\$ 5,300	\$ 20,000	\$ -	\$ -	\$ 4,000	\$ 51,400
Program Direct Expenses:										
Employee Expenses/Travel	\$ 100	\$ 250	\$ -	\$ -	\$ 200	\$ 250	\$ 100	\$ 250	\$ -	\$ 1,150
Copying, Printing and Advertising	-	250	500	-	-	2,500	-	-	10,000	13,250
Outside Services	-	-	-	-	-	10,000	-	3,000	2,500	15,500
Program Operations	500	-	-	-	-	-	-	1,000	-	1,500
Promotional Items/Campaigns	-	5,500	4,000	6,000	2,500	-	-	10,000	-	28,000
Sub-total	\$ 600	\$ 6,000	\$ 4,500	\$ 6,000	\$ 2,700	\$ 12,750	\$ 100	\$ 14,250	\$ 12,500	\$ 59,400
Grant Awards	-	-	-	-	-	-	\$ 20,000	-	-	\$ 20,000
Total AB939 Expenditures	\$ 63,515	\$ 15,706	\$ 41,578	\$ 22,109	\$ 24,109	\$ 88,048	\$ 34,849	\$ 44,061	\$ 42,067	\$ 376,043
Percent of Total	16.9%	4.2%	11.1%	5.9%	6.4%	23.4%	9.3%	11.7%	11.2%	100.0%



AGENDA BILL

Agenda Item No. 5(I)

Date: August 19, 2014
To: El Cerrito City Council
From: Karen Pinkos, Assistant City Manager
Subject: Contra Costa Civic Theatre Lease Amendment

ACTION REQUESTED

Adopt a resolution authorizing the City Manager to execute an amendment to the property lease agreement for the Contra Costa Civic Theatre extending the term of the current agreement to May 5, 2035.

BACKGROUND/ANALYSIS

The Contra Costa Civic Theatre (CCCT) has leased the site at 951 Pomona from the City of El Cerrito since 1971. CCCT is a volunteer, nonprofit, public benefit corporation that has served El Cerrito and the Bay Area theater community since 1959. This upcoming season, CCCT will celebrate 55 years of entertaining audiences by providing quality community theatre productions and training opportunities in the theater arts for El Cerrito residents of all ages.

The Lease Agreement currently in place was executed on November 17, 1980, was extended for a fifteen-year period at the Theatre's option in 2005, and expires on May 5, 2020. CCCT, in partnership with the City, has improved the facility through various renovation programs in past years and intends to embark upon a capital campaign to further improve the theater facility, including accessibility upgrades, equipment replacement and repairs, and other improvements to enhance operations and the theater experience for users. An immediate need for the Theatre includes an investment in replacing the HVAC system, which is no longer repairable, by upgrading to a system that has a 30+ year lifespan.

City staff and the CCCT have been discussing renewing and extending the current lease agreement to reflect this investment, as well as other future capital improvements, and demonstrate the City's commitment to CCCT for the long-term. Staff is recommending extending the lease fifteen years to May 5, 2035. This will give the CCCT's Board of Directors assurance of the Theatre's ability to remain in the facility, and allows the City to continue its partnership with CCCT for many years to come.

STRATEGIC PLAN CONSIDERATIONS

Adoption of the resolution approving the proposed amendment would help fulfill Goal C – Develop a Sense of Place and Community Identity as detailed in the City of El Cerrito Strategic Plan, adopted April 2013. Specifically, adoption of the proposed resolution would contribute to achieving the following strategies:

Agenda Item No. 5(I)

- *Identify, promote, and/or develop entertainment, recreational, and leisure activities for people of all ages and demographics*
- *Promote arts and culture and community celebrations.*

FINANCIAL CONSIDERATIONS

No additional fiscal impacts are expected by extending the Lease. The City receives \$1.00 per year as rent payment from the Theatre.

LEGAL CONSIDERATIONS

The City Attorney has reviewed and approved the proposed amendment.

Reviewed by:



Scott Hanin, City Manager

Attachment:

1. Resolution
2. First Amendment to Lease Agreement between the City and Contra Costa Civic Theatre

RESOLUTION 2014-XX

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EL CERRITO
AUTHORIZING THE CITY MANAGER TO EXECUTE AN AMENDMENT TO THE
PROPERTY LEASE AGREEMENT WITH THE CONTRA COSTA CIVIC THEATRE**

WHEREAS, the Contra Costa Civic Theatre (CCCT) is a volunteer, nonprofit, public benefit corporation which provides community theatre programs and training opportunities in the theater arts for El Cerrito residents of all ages; and

WHEREAS, the CCCT provides these services at a theater facility located at 951 Pomona which is leased from the City of El Cerrito, authorized by a lease agreement dated November 17, 1980 and extended to May 5, 2020; and

WHEREAS, CCCT has invested in renovation programs for the facility in past years and intends to embark upon a capital campaign to further improve the theater facility, including accessibility upgrades, HVAC and equipment replacement and repairs, and other improvements to enhance operations and the theater experience for users; and

WHEREAS, to recognize the efforts of CCCT to improve the facility as well as demonstrate the City's commitment to CCCT, the City Council wishes to execute an amendment to the above-referenced lease.

NOW THEREFORE, BE IT RESOLVED that the City Manager is hereby authorized to execute the first amendment to the property lease agreement with the Contra Costa Civic Theatre, hereto attached as Exhibit A to this resolution and incorporated by reference, extending the term of the current lease, on behalf of the City of El Cerrito to May 5, 2035.

I CERTIFY that at a regular meeting on August 19, 2014, the El Cerrito City Council passed this resolution by the following vote:

AYES: COUNCILMEMBER:
NOES: COUNCILMEMBER:
ABSENT: COUNCILMEMBER:
ABSTAIN: COUNCILMEMBER:

IN WITNESS of this action, I sign this document and affix the corporate seal of the City of El Cerrito on August, 2014.

Cheryl Morse, City Clerk

APPROVED

Janet Abelson, Mayor

FIRST AMENDMENT TO
LEASE AGREEMENT
August 19, 2014

This First Amendment to Lease Agreement ("First Amendment") is entered into as of this 19th day of August, 2014 by and between the City of El Cerrito, a municipal corporation ("City") and Contra Costa Civic Theatre, a nonprofit corporation ("Lessee").

RECITALS

A. The City and the Lessee entered into that certain Lease Agreement dated November 17, 1980 (the "Lease") whereby the City leased to Lessee and Lessee leased from City that certain property located at 951 Pomona Avenue, El Cerrito, California (the "Property").

B. The City and the Lessee now desire to enter into this First Amendment to the Lease Agreement in accordance with the terms set forth herein.

NOW, THEREFORE, for good and valuable consideration, receipt of which is hereby acknowledged, City and Lessee agree as follows.

1. Term. The term of this lease shall be extended fifteen (15) years and expire on May 5, 2035.
2. Effect of Amendment. Unless otherwise amended by this First Amendment, all provisions of the Lease shall remain in full force and effect. In the event of conflict between this First Amendment and the Lease, the First Amendment shall control.

IN WITNESS WHEREOF, the City and the Lessee have caused this Lease to be executed as of date first written above.

LESSEE:
CONTRA COSTA CIVIC THEATRE,
a nonprofit corporation

CITY:
CITY OF EL CERRITO
a municipal corporation

By: _____

By: _____

Name: _____

Name: _____

Its: _____

Its: _____



AGENDA BILL

Agenda Item No. 5(J)

Date: August 19, 2014
To: El Cerrito City Council
From: Melanie Mintz, Community Development Director
Subject: Economic Development Committee Appointment

ACTION REQUESTED

Approve an Economic Development Committee recommendation to appoint Scott Kagawa to the Economic Development Committee, effective August 20, 2014.

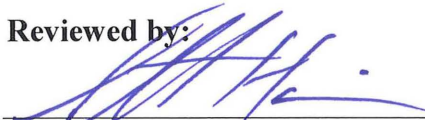
BACKGROUND

An application to the Economic Development Committee (EDC) was received from Scott Kagawa, who has attended three meetings of the EDC. During the regular EDC meeting on July 17 the Committee voted unanimously to recommend to the City Council that Mr. Kagawa be appointed to the EDC.

Mr. Kagawa is a business professional and entrepreneur. He has demonstrated through his application and participation in EDC meetings that he is committed to economic prosperity and community in keeping with the mission of the EDC. He has the skills necessary to support the activities of the EDC.

If the Council approves this recommendation, the number of Committee members will be 7 out of a possible membership total of 15, as established by Resolution 2013-66.

Reviewed by:



Scott Hanin, City Manager

Attachment:

1. Application



**August 19, 2014
City Council Meeting**

**Agenda Item 5(J)
Attachment - Application**

Hardcopies are 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. 6

Date: August 19, 2014

To: El Cerrito City Council

From: Margaret Kavanaugh-Lynch, Development Services Manager
Melanie Mintz, Interim Community Development Director

Subject: Appeal of the Planning Commission's approval of Conditional Use Permit; and a General Plan Amendment, Development Agreement, the creation of a Planned Development District including a Zoning Map Amendment for a development project that consists of the construction of 14 new dwelling units, the relocation and conversion of an existing dwelling unit into a community center type use that will remain on site with 15 parking spaces, 1,548 square feet of private open space, and 2,874 square feet of common open space.

ACTION REQUESTED

Staff recommends that the City Council hold a single, consolidated public hearing to consider the actions necessary to consider both the proposed development at 1715 Elm Street (the "Project") and the related appeal of the Planning Commission's approval of the Planned Development Use Permit for the Project. The analysis of the appeal was discussed in a separate staff report for the Project and distributed to Council for the June 2, 2014 Council meeting. Please refer to all previous staff reports, California Environmental Quality Act (CEQA) documentation and correspondence as part of the record for this project. These documents may be found on the city website at: www.el-cerrito.org/1715Elm or by request at the public counter at El Cerrito City Hall.

Staff additionally recommends that, at the conclusion of the consolidated public hearing, the City Council act to approve *Option 2*, 14 new dwelling units, the relocation and conversion of an existing dwelling unit into a community center type use, and preservation and enhancement of existing creek channel, as described in this staff report by taking the following actions:

1. Adopt a resolution approving the Initial Study/Mitigated Negative Declaration for the Project;
2. Waive first reading and introduce an ordinance approving Planned Development Zoning for the Project property and amend the Zoning Map accordingly;
3. Adopt a resolution denying an appeal of the Planning Commission's approval of a Planned Development Use Permit for the Project; and
4. Waive first reading and introduce an ordinance approving a Development Agreement.

BACKGROUND

The Planning Commission approved a Mitigated Negative Declaration and Mitigation Monitoring and Reporting Plan (“MND/MMRP”) and a Planned Development Use Permit for the Project on April 16, 2014. The Commission’s decision was subsequently appealed. On May 21, 2014, the Planning Commission recommended that the City Council not approve a General Plan Amendment, an ordinance rezoning the Project property to PD (Planned Development), and an ordinance approving a Development Agreement with the applicant. (The General Plan Amendment would not be necessary with the recommended *Option 2*, as discussed below.) The City Council’s consideration of the MND/MMRP, General Plan Amendment, rezoning ordinance, and Development Agreement, as well as the appeal of the Planned Development Use Permit, were scheduled to be heard on June 2, 2014.

At the beginning of the June 2nd appeal hearing, the proposed project at 1715 Elm Street consisted of the construction of 14 new dwelling units, the relocation and restoration of one existing historic dwelling unit to be retained on site; 15 parking spaces; 1,548 square feet of private open space, and 2,874 square feet of common open space. For the sake of clarity, this version of the project is known as *Option 1*.

Staff noted that the applicant modified the Project at the June 2nd hearing (and noted those changes in a letter to the City Council dated June 10, 2014, included in the June 23, 2014 staff report.) Specifically, Mr. Biggs (“Applicant”) offered to decrease the number of dwelling units by converting the historic dwelling into a use that would be of benefit to the community and offered it in a long-term lease to the City or to a third party for that purpose. He also agreed to allow the open space in the front of the historic dwelling to be made available for public use during daylight hours. Finally, he offered to decrease the term of the Development Agreement from ten years to five years. This version of the project is known as *Option 2*.

At the June 2, 2014 hearing, the City Council opened the public hearing and received testimony from the appellants, the applicant and other interested parties. They closed the public hearing and agreed to continue the item to June 23, 2014 to hold their deliberations.

On June 23, 2014 the City Council met and deliberated on the Project. During the deliberations, Council member Lyman asked if a full hydrological report had been prepared for the Project to determine if the creek channel could be restored as a meandering stream. The Council re-opened the public hearing for the limited purpose of receiving comments on retaining the stone-lined channel versus restoration of a riparian channel. Additional public testimony was received from the public as well as the applicant and appellants. After additional deliberation, the City Council determined to keep the public hearing open for the purpose of obtaining more information regarding the feasibility of creek restoration at the site, in the form of a hydrology and sinuosity report. The meeting was continued off calendar and rescheduled and re-noticed for tonight. This conceptual version of the project is known as *Option 3*.

DISCUSSION

Since the June 23rd hearing, the applicant retained Restoration Design Group (“RDG”), a well regarded firm with significant experience restoring creeks in urbanized environments, to prepare the additional information that the City Council requested. RDG has completed a *Channel Restoration Feasibility Analysis Memorandum* with a project alternative comparison chart, a revised project description and site plan and a preliminary cost estimate for the implementation of the riparian enhanced plan. These documents are all included as attachments to this report as Attachments 12, 13 and 14.

At the meeting this evening, the City Council has four options:

1. Approve the project as first presented to the City Council at the June 2nd hearing and deny the appeal (*Option 1*);
2. Approve the Project as revised at the June 2nd hearing and deny the appeal (*Option 2*);
3. Deny the Project without prejudice and direct staff to expedite the review of a new application for a revised project that retains the aspects of the current Project favored by the City Council but that focuses on riparian creek restoration (known as *Option 3*); or
4. Deny the project and uphold the appeal.

This Project requires legislative actions; therefore the Permit Streamlining Act is not applicable. However, the El Cerrito Municipal Code does require that the City Council take action on appeals in a timely manner. Section 19.39.040. G. states that the hearing body shall render its decision within 30 days of the date the hearing is closed. If the City Council chooses to close the hearing at tonight’s meeting, a decision regarding the appeal would be required by September 18th. The next regularly scheduled meeting is September 22, so if the members of the Council do not take action on the appeal this evening, a special meeting would be needed.

To assist the members of the City Council in their deliberation, below is a description and analysis of the first three options.

Option 1

The project as proposed at the start of the June 2nd meeting consisted of:

1. The construction of 14 new dwelling units in a three story building;
2. The preservation and restoration of the existing historic single family dwelling on site, relocating it to the southeast corner of the property.
3. 15 parking spaces tucked under the proposed main building;
4. 1,548 square feet of private open space; and
5. 2,874 square feet of common open space

This is the project for which all of the Planning Commission staff reports were written, as well as what was analyzed in the reports the City Council received for the June 2,

2014 hearing. Please refer to prior Council reports or see website www.elcerrito.org/1715Elm for the details of the analysis. The revised Project documents needed to approve *Option 1* are included as Attachments 1, 2, 3, 4, 5 and 6 to this staff report.

Option 2

As noted above, a revised Project was introduced at the June 2, 2014 meeting. While causing no change to the site plan included in the original Project, it changed the use of the historic structure, revised the use of the open space and changed the term of the Development Agreement. Staff has worked with the applicant to modify the necessary entitlements to define these changes to the Project. The revised Project documents needed to approve *Option 2* are included as Attachments 7, 8, 9, 10 and 11 to this staff report. The details of these changes are listed below.

Historic Structure

If approved, the City would become the lessee of the historic structure and staff would develop a process to identify the best user for the site, such as a Request for Proposals. The City Council would approve the user which would allow the City to act as arbiter between possible new uses and the surrounding community.

The conditions of approval added to the resolution approving the Planned Development Use Permit and the Development Agreement restrict the use of the former dwelling to a community center type use that would be compatible with adjacent residential development. Those nonresidential uses of the structure would thereby become part of the PD zoning for the site. Community Center uses are a conditionally permitted use in the underlying RM zoning district.

The Development Agreement further refines the allowable use of the structure to ensure compatibility with the adjacent residential development. It also establishes the hours of operation to avoid any unnecessary traffic or noise impacts on the neighborhood. Special events that extended beyond these hours would require the approval of a Temporary Use Permit and approval of the future homeowners association (HOA) of 1715 Elm Street.

The applicant/developer shall be required to complete the following before the City enters into the lease agreement:

1. Restore the exterior of the building façade, including windows, the historic wood trim around the doors and windows, and the door in the main entrance to the Department of Interior Standards*.
2. The historic structure shall be placed on a new foundation in the location shown on the site plan.
3. The plumbing and electrical will be updated in compliance with the current building code.
4. An Americans Disabilities Act compliant bathroom and exterior lift will be added the structure.

*The Mitigation Monitoring and Reporting Plan notes that only the primary elevation of the structure was to be restored to the Department of Interior Standards. The applicant voluntarily agreed to restore the other three sides of the historic structure to this standard.

The details of all the construction and the new floor plan will be completed to the satisfaction of the Development Services Manager. The structure will then be offered to the City for 99 years at the cost of one dollar (\$1) total rent. The City would be responsible for maintenance of the house, whereas the surrounding grounds would be the responsibility of the HOA. The City would be able to sublease the structure to a nonprofit entity. The sub-lessee would be responsible for any on-going maintenance cost of the structure, such as utilities and taxes.

Common/Public Open Space

The Development Agreement has been amended to acknowledge that the use of the open space in front of the historic structure will be available for public use during daylight hours and that the land will be owned and maintained by the HOA created by the applicant for the 1715 Elm Street project.

A revised site plan has been submitted showing additional gates on the bridge and along Elm Street to facilitate this change in use of the open space area. (Attachment 11)

Length of the Development Agreement

The applicant has offered to shorten the length of the Development Agreement. The members of the City Council stated that they favored a length of five years over the proposed length of ten. The shorter term has also been added to the Development Agreement.

The City Attorney and legal counsel representing the applicant met and developed the proposed Development Agreement for this project. The resulting legal document would take effect only after the passage of the ordinance creating the Planned Development District by the City Council. This Development Agreement serves as the legal framework that encompasses the entitlement details of the Planned Development District. Although the Development Agreement will end in five years, the lease of the house will continue for 99 years.

Option 3

As noted in the background section of this staff report, at its June 23rd, 2014 meeting, the City Council directed the applicant to prepare a hydrology and sinuosity report to explore the possibility of integrating an enhanced riparian creek restoration into the proposed Project. Attached to this report is a *Channel Restoration Feasibility Analysis Memorandum* with a project alternative comparison chart, site plan and finally, a preliminary cost estimate for the implementation of the riparian enhanced plan, including hard and soft costs.

The applicant has informed staff that due to the additional anticipated costs, the conversion of the historic building for the uses described above as *Option 2* would have to be reconsidered. As part of *Option 3*, the historic structure would be converted into a

private home, as initially proposed by the applicant. To accommodate the meandering path of the enhanced riparian restoration of the creek, the applicant stated that the historic house would have to be relocated to the front of the site, on the Elm Street frontage. With the common open space proposed to be located behind the historic structure, the applicant noted it would be problematic to offer it for public use and they could no longer offer it as publically accessible open space.

The *Channel Restoration Feasibility Analysis Memorandum* prepared by the Restoration Design Group (RDG), evaluated the feasibility of converting the current stone-lined channel into a meandering creek. (Attachment 12) The analysis demonstrated that it would be “feasible to place a restored channel on-site; however the space for the channel is confined between the buildings.” Further, the *Memorandum* noted that “Restoring this section of channel can provide ecological benefits to the site; however these benefits are significantly muted when compared to a naturally functioning creek.”

The *Project Alternative Comparison Chart* included in the analysis was also prepared by RDG. It provides additional context for the City Council members to consider in their decision by listing nine different criteria for use in the comparison of the existing condition of the creek, the proposed condition created by Option 1 and 2 versus the proposed condition created by *Option 3*.

If the City Council directs staff to move forward with *Option 3*, several components of previous analysis would need to be revised. Staff contacted the planning consultant, PMC, which prepared the existing Initial Study and Mitigated Negative Declaration, and asked them what possible changes to the document could be needed for *Option 3*. It is noted that without an actual complete project description in front of them, it was impossible for the consultant to state with certainty, but in their professional opinion they believed that both a new *Historic Resource Evaluation* and new *Biological Report* would be required to accurately reflect the removal of the stones in the existing creek bed and the creation of the new streambed; as the removal of any part of the existing stone-lined channel and the reconfiguration of the creek bed were not contemplated in the existing document. They were also not able to say without completing the analysis whether or not this change would be something that could be mitigated to a less than significant impact or if an Environmental Impact Report would be required, but indicated it was likely that an EIR would be required.

Pursuant to Section 15064 of the CEQA Guidelines, if an impact on a historic resource cannot be mitigated to less than significant, the Lead Agency may no longer use an Initial Study to analyze a project under the California Environmental Quality act (CEQA). Staff estimates that if mitigations could be identified to reduce the adverse impacts of the revised project to less than significant, then the revised Initial Study could take approximately six months, after the new project description was deemed complete. If the impacts cannot be mitigated, an Environmental Impact Report (EIR) is required to complete the analysis. Staff estimates that the additional work would require approximately one year to prepare the EIR and return the revised project and all necessary documentation back before the Planning Commission or City Council for their consideration.

Staff informed the applicant of the potential need for an EIR for *Option 3*. The applicant prepared their preliminary financial cost estimate based on that information, along with their professional opinion of the additional costs and time that would be required to complete the redesign of the Project, (Attachment 14). They also noted the time needed to prepare all necessary documents and complete regional permits, including the Joint Aquatic Resource Permit Application, (JARPA). Staff was not involved in the preparation of the document, but has reviewed it and considers the time and costs shown to be a reasonable estimate of the tasks shown.

Conclusion

Options 1, 2 and 3 all offer a high density, multifamily project with good urban design. *Option 3* offers some additional benefits in terms of creek restoration; however the overall benefit appears minor compared to Option 1 and 2, which both preserve the historic channel walls and open creek as well as promote riparian plant species diversity and provide groundwater infiltration. *Option 2* preserves the stone-lined channel, makes the rehabilitated historic structure available to the City for a use that benefits the public; and provides publicly accessible open space, which collectively staff considers to be a compelling public benefit. Staff also notes that there is an amount of uncertainty created by the additional required time, resources and approvals needed to bring *Option 3* forward. While Council could direct staff to expedite a new application, it is uncertain given the added time and resources that would be required of the applicant, when or whether this would occur. It is estimated, that at a minimum the project construction date would be delayed 12-18 months, largely dependent upon the level of CEQA analysis required.

After evaluating all of the variables, staff recommends *Option 2*.

LEGAL CONSIDERATIONS

The City Attorney has reviewed the resolutions, ordinances, and Development Agreement for the Project. The resolution approving the Mitigated Negative Declaration and Mitigation Monitoring and Reporting Plan and the resolution denying the appeal and approving the Planned Development Use Permit would go into effect immediately. The ordinance rezoning the Project property to Planned Development and the ordinance approving the Development Agreement both require second readings. The rezoning ordinance would not go into effect until the Development Agreement goes into effect and is recorded. The Development Agreement Ordinance would go into effect 30 days after Council adoption.

Reviewed by:



Scott Hanin, City Manager

For Option 1:

1. Draft Resolution approving the Initial Study and Mitigated Negative Declaration for Option 1.
2. Draft General Plan Amendment for Option 1.
3. Draft Planned Development Ordinance for Option 1.
4. Draft Resolution denying the appeal of April 28, 2014
5. Draft Development Agreement Ordinance (with Development Agreement as Attachment) for Option 1.
6. Plan set dated January 20, 2014.

For Option 2:

7. Draft Resolution approving the Initial Study and Mitigated Negative Declaration for Option 2.
8. Draft Planned Development Ordinance for Option 2.
9. Draft Resolution denying the appeal of April 28, 2014
10. Draft Development Agreement Ordinance (with Development Agreement as Exhibit) for Option 2.
11. Revised Site Plan Dated August 8, 2014

For Option 3:

12. Channel Restoration Feasibility Analysis Memorandum
13. Comparison Chart
14. Preliminary Cost Estimate for Option 2

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EL CERRITO ADOPTING AN INITIAL STUDY WITH A MITIGATED NEGATIVE DECLARATION AND ADOPTING A MITIGATION MONITORING AND REPORTING PROGRAM FOR THE CONSTRUCTION OF 14 NEW DWELLING UNITS AND THE PRESERVATION OF AN EXISTING DWELLING UNIT AT 1715 ELM STREET, APPLICATION NO. 6133

WHEREAS, the Edward and Loretta Biggs Revocable Trust proposes a development project that includes the preservation of an existing historical single-family detached house, the construction of 14 new one- and two-bedroom dwelling units, and the preservation of an existing creek on 0.42 acre site. The project proposes rezoning the property to PD (Planned Development); a Planned Development Use Permit; Design Review; a subdivision map and condominium plan; and a Development Agreement (the “Project”); and

WHEREAS, the subject site is located at 1715 Elm Street; and

WHEREAS, the zoning district of the site is RM (Multifamily Residential); and

WHEREAS, the general plan land use designation of the site is High Density; and

WHEREAS, on January 13, 2014 the City circulated an Initial Study/Mitigated Negative Declaration for the Project pursuant to the CEQA Guidelines; and

WHEREAS, at its March 19, 2014 meeting, the Planning Commission held a duly noticed public hearing, received public testimony and directed staff to bring the project back for formal action; and

WHEREAS, at their April 16, 2014 meeting, the Planning Commission held a duly noticed public hearing, received public testimony and adopted Resolution PC14-06, adopting an Initial Study and Mitigated Negative Declaration; and

WHEREAS, on June 2, 2014, the City Council held a duly noticed public hearing to consider the Project, including the negative declaration and mitigation monitoring and reporting program. The City Council closed the hearing and continued consideration of the Project to June 23. At the June 23 meeting, the City Council requested additional information and continued deliberations. On August 19, the City Council reopened the hearing and received the additional information. The City Council held a properly noticed public hearing on the Project, and all interested parties had the opportunity to be heard. After due consideration of all evidence and reports offered for review, the City Council does find and determine the following:

The City Council has considered the proposed negative declaration together with any comments received during the public review process, and finds, on the basis of the whole record before it, that:

- (1) There is no substantial evidence the project will have a significant effect on the environment, and
- (2) The negative declaration reflects the lead agency’s independent judgment and analysis.

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, the El Cerrito City Council hereby adopts the Initial Study/Mitigated Negative Declaration and adopts the Mitigation Monitoring and Reporting Program, hereto attached as Exhibit A, for the construction of 14 new dwelling units and the preservation of one existing dwelling unit at 1715 Elm Street.

I CERTIFY that at a special meeting on August 19, 2014 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 August X, 2014.

Cheryl Morse, City Clerk

APPROVED:

Janet Abelson, Mayor

Exhibit A: Initial Study and Mitigated Negative Declaration also located on the City's

Website at: Initial Study <http://www.el-cerrito.org/DocumentCenter/View/3445>
Traffic Analysis 2009 <http://www.el-cerrito.org/DocumentCenter/View/3443>
Review Letter 2013 <http://www.el-cerrito.org/DocumentCenter/View/3444>
Historic Resource Evaluation <http://www.el-cerrito.org/DocumentCenter/View/3439>
Biological Resources Assessment <http://www.el-cerrito.org/DocumentCenter/View/3438>

RESOLUTION 2014-XX

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EL CERRITO APPROVING
A GENERAL PLAN AMENDMENT AT 1715 ELM STREET**

WHEREAS, the subject site is located at 1715 Elm Street; and

WHEREAS, the zoning district of the site is RM (Multifamily Residential); and

WHEREAS, the general plan land use designation of the site is High Density; and

WHEREAS, on January 13, 2014 the City circulated an Initial Study/Mitigated Negative Declarations pursuant to the CEQA Guidelines; and

WHEREAS, at their March 19, 2014 meeting, the Planning Commission held a duly noticed public hearing, received public testimony and directed staff to bring the project back for formal action; and

WHEREAS, at their April 16, 2014 meeting, the Planning Commission held a duly noticed public hearing, received public testimony and adopted Resolution PC14-06, adopting an Initial Study and Mitigated Negative Declaration; and

WHEREAS, at their April 16, 2014 meeting, the Planning Commission held a duly noticed public hearing, received public testimony and adopted Resolution PC14-07, approving a Planned Development Use Permit; and

WHEREAS, at their May 21, 2014 meeting, the Planning Commission held a duly noticed public hearing, received public testimony and adopted Resolution PC14-10, recommending denial of a Planned Development District, General Plan Amendment and Development Agreement; and

WHEREAS, on June 2, 2014, the City Council held a duly noticed public hearing to consider a General Plan Amendment. The City Council closed the hearing and continued consideration of the Project to June 23. At the June 23 meeting, the City Council requested additional information and continued deliberations. On August 19, the City Council reopened the hearing and received the additional information. The City Council held a properly noticed public hearing on the Project, and all interested parties had the opportunity to be heard; and

WHEREAS, based upon the evidence presented in the record on this matter, including the staff report and oral and written testimony and the proceedings before the Planning Commission, the Council has considered a General Plan Amendment.

NOW, THEREFORE, BE IT RESOLVED:

The City Council of the City of El Cerrito finds that:

1. The proposed residential project will be a transit oriented development (TOD) located within 800 feet of a BART station (1,400 feet by foot). It will add 14 new

Agenda Item No. 6
Attachment 2

dwelling units while preserving a historic dwelling and retain an existing creek. The balance of all these core values on the site is considered to be in the public interest.

2. The project is consistent with the purposes of the district and conforms in all significant respects with the General Plan as conditioned; in that it consists of high density multifamily development that utilizes good urban design principles including reduced parking requirements, parking concealed under the new building, and a mix of unit types. It also preserves an important historic resource and protects an existing creek by including it within its landscaped area. The project will implement the following General Plan goals and policies: Land Use 1.2: Multifamily Neighborhoods, Land Use, 1.3: Quality of Development, Land Use 1.5: Suitable Housing, Land Use 1.6: Variety of Housing Types, Land Use 5.1 BART Station Areas, Community Design 1.3: High-Quality Design, Community Design 1.9: Building Design, Community Design 4.2: Building Articulation, Community Design 5.1: Design Review Process, Community Design 5.2 Planned Development, Community Design 3.5 Creek Preservation, Resources 1.9 Developments near Creeks, Resources 2.1: Historic Preservation, Resources 2.5: Public Awareness
3. The proposed residential project will be a transit oriented development with good urban design. It will add 14 new dwelling units to the neighborhood while preserving a historic structure and retaining the existing creek. It will not unduly shade surrounding dwellings or create unacceptable traffic or parking impacts; and as conditioned it will not be detrimental to the abutting properties or neighborhood.
4. An Initial Study and Mitigated Negative Declaration (MND) pursuant to the California Environmental Quality Act (CEQA) have been approved for this project. All factors are reduced to a less than significant level pursuant to the California Environmental Quality Act with the implementation of mitigation measures. The Mitigation Monitoring Plan has been incorporated in the conditions of approval.

BE IT FURTHER RESOLVED that after careful consideration of facts, correspondence, and testimony, and other evidence submitted in this matter, the El Cerrito City Council hereby approves the General Plan Amendment at 1715 Elm Street.

I CERTIFY that at a regular meeting on August 19, 2014, the El Cerrito City Council passed this Resolution by the following vote:

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

Agenda Item No. 6
Attachment 2

IN WITNESS of this action, I sign this document and affix the corporate seal of the City of El Cerrito on August X, 2014.

Cheryl Morse, City Clerk

APPROVED:

Janet Abelson, Mayor

ORDINANCE 2014–XX

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF EL CERRITO REZONING
1715 ELM STREET TO A PLANNED DEVELOPMENT ZONING DISTRICT –
APPLICATION 6133

THE CITY COUNCIL OF THE CITY OF EL CERRITO DOES HEREBY ORDAIN AS
FOLLOWS:

SECTION 1. RECITALS

A. The Applicant, the Edward and Loretta Biggs Revocable Trust, proposes a development project that includes the preservation and renovation of an existing historical single-family detached house on the Property, the construction of 14 new one- and two-bedroom dwelling units, and the preservation of an existing creek on 0.42 acre site. The project proposes a Planned Development District; a Planned Development Use Permit; Design Review; a subdivision map and condominium plan; and this Development Agreement. The proposed development and applications are collectively known as the “Project”; related approvals of the applications are collectively known as the “Project Approvals.”

B. The Project site is located at 1715 Elm Street in El Cerrito, California (the “Property”).

C. The Applicant has applied to change the zoning of the Property to a Planned Development District subject to certain terms, attached to this ordinance, and to amend the City’s Zoning Map accordingly.

D. The California Environmental Quality Act (CEQA), together with the state guidelines and City environmental regulations, require that certain projects be reviewed for environmental impacts and that environmental documents be prepared.

E. An Initial Study and Mitigated Negative Declaration (MND) pursuant to the California Environmental Quality Act (CEQA) have been prepared for this Project. All potential impacts identified are reduced to a less than significant level pursuant to the California Environmental Quality Act with the implementation of mitigation measures.

F. On April 16, 2014, the Planning Commission held a properly noticed public hearing on the Project, and adopted Resolution PC 14-07 recommending that the City Council adopt the Planned Development Use Permit, which Resolution is incorporated herein by reference and available for review at City Hall during normal business hours.

G. On May 21, 2014, the Planning Commission held a properly noticed public hearing on the Project, including the proposed General Plan Amendment, Planned Development District and Development Agreement, and adopted Resolution PC 14-10 recommending that the City Council deny the General Plan Amendment, Planned Development District and Development Agreement, which Resolution is incorporated herein by reference and available for review at City

Hall during normal business hours.

H. On June 2, 2014, the City Council held a duly noticed public hearing to consider the Project Approval, including the Development Agreement. The City Council closed the hearing and continued consideration of the Project Approvals to June 23. At the June 23 meeting, the City Council requested additional information and continued deliberations.

I. A Staff Report, dated August 19, 2014 and incorporated herein by reference, described and analyzed the Project, including the Planned Development rezoning for the City Council.

J. On August 19, 2014, the City Council received the additional information requested at the June 23 meeting and held a properly noticed public hearing on the Project, including the proposed Planned Development rezoning at which time all interested parties had the opportunity to be heard.

K. On August 19, 2014, the City Council adopted Resolution 2014-XX adopting an Initial Study and Mitigated Negative Declaration and a Mitigation Monitoring and Reporting Program for the Project.

L. The City Council considered the adopted Initial Study and Mitigated Negative Declaration and all above-referenced reports, recommendations, and testimony prior to taking action on the Project.

SECTION 2. FINDINGS

A. Pursuant to Sections 19.14.040.A and 19.40.040.D of the El Cerrito Municipal Code, the City Council finds as follows.

1. The proposed residential Project will be a transit oriented development located within 800 feet of a BART station (1,400 feet by foot). It will add fourteen new dwelling units while preserving a historic dwelling and retaining an existing creek. The balance of all these core values on the site is considered to be in the public interest.
2. The project is consistent with the purposes of the district and conforms in all significant respects with the amended General Plan, as conditioned in that it consists of high density multifamily development that utilizes good urban design principles including reduced parking requirements, parking concealed under the new building, and a mix of unit types. It also preserves an important historic resource and protects an existing creek by including it within its landscaped area. The project will implement the following General Plan goals and policies: Land Use 1.2: Multifamily Neighborhoods, Land Use, 1.3: Quality of Development, Land Use 1.5: Suitable Housing, Land Use 1.6: Variety of Housing Types, Land Use 5.1 BART Station Areas, Community Design 1.3: High-Quality Design, Community Design 1.9: Building Design, Community Design 4.2: Building Articulation, Community Design, 5.1: Design Review Process, Community Design 5.2 Planned Development. Community Design 3.5 Creek Preservation Resources 1.9 Developments near Creeks, Resources 2.1: Historic Preservation, Resources 2.5: Public Awareness.

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3. The proposed residential project will be a transit oriented development with good urban design. It will add fourteen new dwelling units to the neighborhood while preserving a historic dwelling and retaining the existing creek. It will not unduly shade surrounding dwellings or create unacceptable traffic or parking impacts; and as conditioned it will not be detrimental to the abutting properties or neighborhood.
4. An Initial Study and Mitigated Negative Declaration (MND) pursuant to the California Environmental Quality Act (CEQA) have been approved for this project. All factors are reduced to a less than significant level pursuant to the California Environmental Quality Act with the implementation of mitigation measures. The Mitigation Monitoring Plan has been incorporated in the conditions of approval.
5. The proposed residential project will be a transit oriented development with good urban design. It will add fourteen new dwelling units to the neighborhood while preserving a historic dwelling and retaining the existing creek. It will not unduly shade surrounding dwellings or create unacceptable traffic or parking impacts; and as conditioned it will not be detrimental to the public interest, health, safety, convenience or welfare of the City.
6. The proposed amendment is a planned development district. It is consistent with applicable provisions of the zoning code including the purpose and intent of the Residential Mixed Use zone.
7. The Project will add fourteen new dwelling units to the neighborhood while preserving a historic building and retaining the existing creek. The site is 0.42 acres in size with a relatively level grade. It has direct access onto Elm Street and will be served by existing utilities in the area. It will not unduly shade surrounding dwellings or create unacceptable traffic or parking impacts; and as conditioned it will not adversely affect the livability of the abutting properties or neighborhood.
8. This project is demonstratively superior to the development that could occur under the standards applicable to the underlying base district in that it represents a balance of many of El Cerrito's core values. It is a transit oriented development; thereby reducing Vehicle Miles Traveled with good urban design; successful historic preservation and preservation of an existing creek. Had the project been governed by the base district standards and strict interpretation of the creek protection ordinance, much of the open space would have been lost to surface parking spaces, the number of units would have to have been decreased due to the reduced building footprint, the building would two stories with a mansard roof, which would have greatly reduce the number of dwelling units.
9. The project is consistent with the purposes of the district and conforms in all significant respects with the General Plan, as conditioned, in that it consists of high density multifamily development that utilizes good urban design principles including reduced parking requirements, parking concealed under the new building, and a mix of unit types.

10. The Project is a transit oriented development, thereby reducing Vehicle Miles Traveled with good urban design, successful historic preservation and preservation of an existing creek. All of these goals are public benefits to the City of El Cerrito.

SECTION 3. ZONING MAP AMENDMENT

Pursuant to Chapter 19.14 of the City of El Cerrito Municipal Code the City of El Cerrito Zoning Map is amended to rezone the property described below to a Planned Development Zoning District:

0.42 acres at 1715 Elm Street ("Project site").

A map of the rezoning area is shown in Exhibit A. The allowable use of the Property is described in the Planned Development Use Permit for the Project.

Compliance with adopted Mitigation Measures. The Applicant/Developer shall comply with all adopted mitigation measures of the Initial Study and Mitigate Negative Declaration prepared for 1715 Elm Street.

Confirmation of ownership. The Applicant/Developer shall provide the City with a recorded copy of the deed vesting title to the Property in its name.

SECTION 4. NOTICING, POSTING AND PUBLICATION

This ordinance is adopted pursuant to the procedures established by state law, and all required notices have been given, and the public hearing has been properly held and conducted.

SECTION 5. EFFECTIVE DATE

This ordinance shall not take effect until the Development Agreement for the Project takes effect and is recorded on the Property.

THE FOREGOING ORDINANCE was introduced at a regular meeting of the City Council on August 19, 2014 and passed by the following vote:

AYES:	Councilmembers
NOES:	Councilmembers
ABSTAIN:	Councilmembers
ABSENT:	Councilmembers

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ADOPTED AND ORDERED published at a regular meeting of the City Council held on September 22, 2014 and passed by the following vote:

AYES: Councilmembers
NOES: Councilmembers
ABSENT: Councilmembers

APPROVED:

Janet Abelson, Mayor

ATTEST:

Cheryl Morse, City Clerk

IN WITNESS of this action, I sign this document and affix the corporate seal of the City of El Cerrito on September XX, 2014.

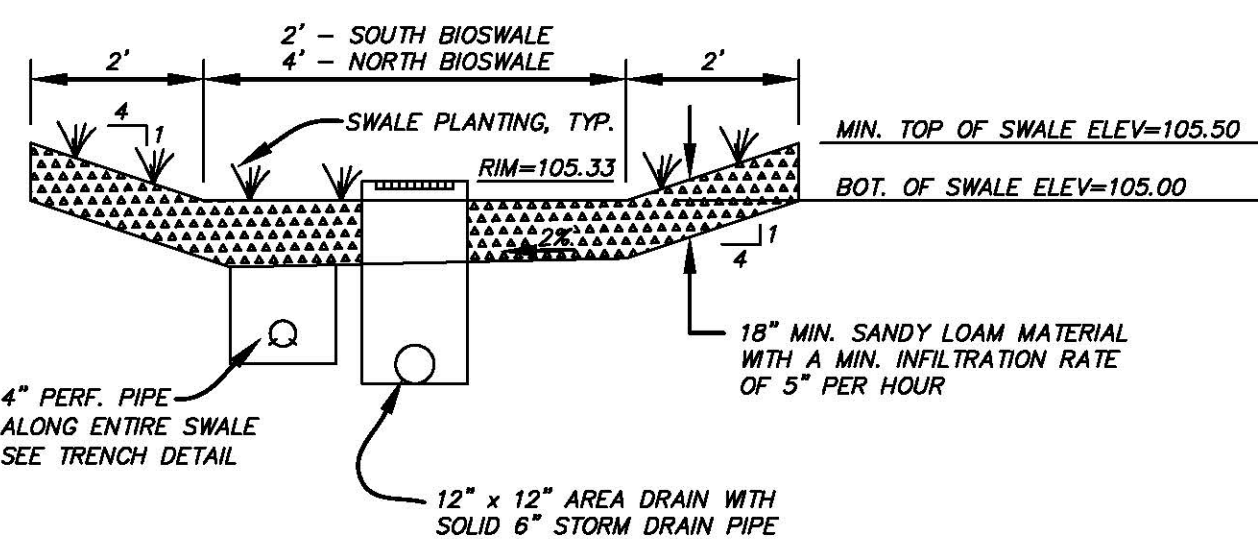
Cheryl Morse, City Clerk

ORDINANCE CERTIFICATION

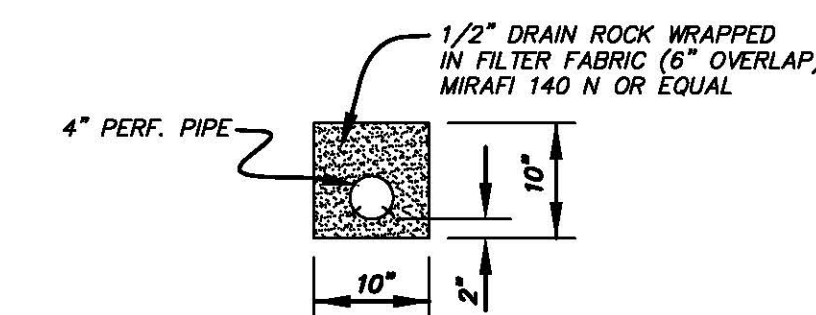
I, Cheryl More, City Clerk of the City of El Cerrito, do hereby certify that this Ordinance is the true and correct original Ordinance No. 2014-XX of the City of El Cerrito, that said Ordinance was duly enacted and adopted by the City Council of the City of El Cerrito at a meeting of the City Council held on the ___ day of September 2014; and that said ordinance has been published and/or posted in the manner required by law.

WITNESS my hand and the Official Seal of the City of El Cerrito, California, this ___ day of September, 2014.

Cheryl Morse, City Clerk



VEGETATED BIOSWALE CROSS SECTION
NTS



TRENCH DETAIL
NTS

NORTH SIDE VEGETATED BIOSWALE

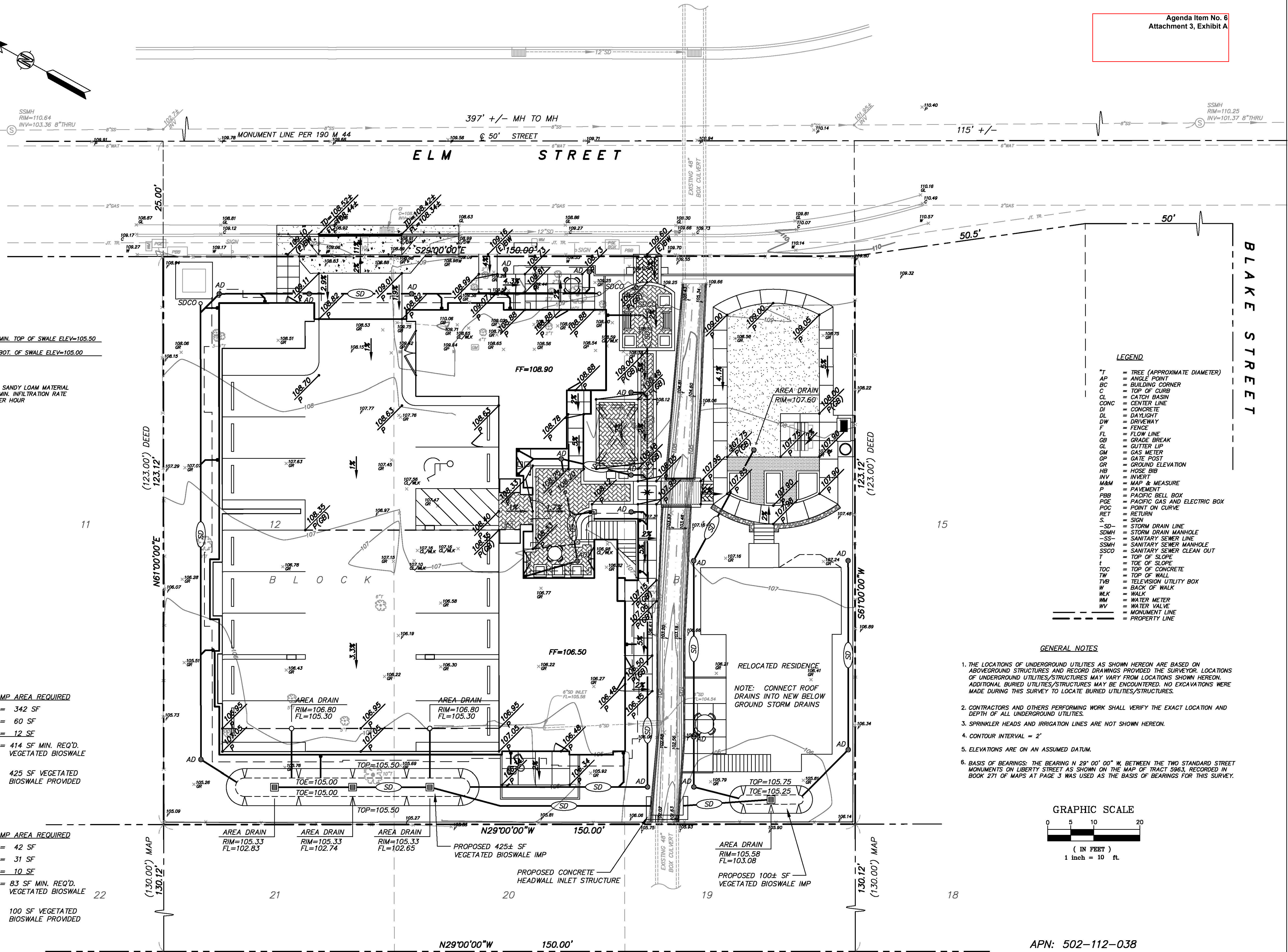
DMA NAME	AREA	DMA & IMP SIZING FACTOR	BMP AREA REQUIRED
CONDOMINIUM ROOF	8,538 SF	(1.00 x .04)	= 342 SF
PAVED WALKWAY	1,508 SF	(1.00 x .04)	= 60 SF
LANDSCAPING	2,920 SF	(0.10 x .04)	= 12 SF
= 414 SF MIN. REQ'D. VEGETATED BIOSWALE			

425 SF VEGETATED
BIOSWALE PROVIDED

SOUTH SIDE VEGETATED SWALE

DMA NAME	AREA	DMA & IMP SIZING FACTOR	BMP AREA REQUIRED
RESIDENTIAL ROOF	1,065 SF	(1.00 x .04)	= 42 SF
PAVED WALKWAY	768 SF	(1.00 x .04)	= 31 SF
LANDSCAPING	2,442 SF	(0.10 x .04)	= 10 SF
= 83 SF MIN. REQ'D. VEGETATED BIOSWALE			

100 SF VEGETATED
BIOSWALE PROVIDED

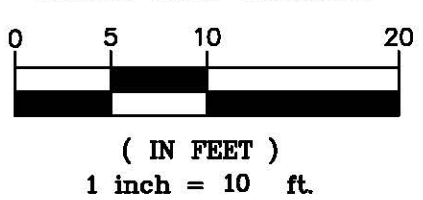


- LEGEND
- T = TREE (APPROXIMATE DIAMETER)
 - AP = ANGLE POINT
 - BC = BUILDING CORNER
 - C = TOP OF CURB
 - CL = CATCH BASIN
 - CONC = CENTER LINE
 - DI = CONCRETE
 - DL = DAYLIGHT
 - DW = DRIVEWAY
 - F = FENCE
 - FL = FLOW LINE
 - GB = GRADE BREAK
 - GL = GUTTER LIP
 - GM = GAS METER
 - GP = GATE POST
 - GR = GROUND ELEVATION
 - HB = HOSE BIB
 - INV = INVERT
 - M&M = MAP & MEASURE
 - P = PAVEMENT
 - PBB = PACIFIC BELL BOX
 - POE = PACIFIC GAS AND ELECTRIC BOX
 - POC = POINT ON CURVE
 - RET = RETURN
 - SIGN = SIGN
 - SD = STORM DRAIN LINE
 - SDMH = STORM DRAIN MANHOLE
 - SS = SANITARY SEWER LINE
 - SSMH = SANITARY SEWER MANHOLE
 - SSCO = SANITARY SEWER CLEAN OUT
 - T = TOP OF SLOPE
 - TOC = TOP OF CONCRETE
 - TW = TOP OF WALL
 - TWB = TELEVISION UTILITY BOX
 - W = BACK OF WALK
 - WLK = WALK
 - WM = WATER METER
 - WV = WATER VALVE
 - = MONUMENT LINE
 - - - = PROPERTY LINE

GENERAL NOTES

1. THE LOCATIONS OF UNDERGROUND UTILITIES AS SHOWN HEREON ARE BASED ON ABOVEGROUND STRUCTURES AND RECORD DRAWINGS PROVIDED THE SURVEYOR. LOCATIONS OF UNDERGROUND UTILITIES/STRUCTURES MAY VARY FROM LOCATIONS SHOWN HEREON. ADDITIONAL BURIED UTILITIES/STRUCTURES MAY BE ENCOUNTERED. NO EXCAVATIONS WERE MADE DURING THIS SURVEY TO LOCATE BURIED UTILITIES/STRUCTURES.
2. CONTRACTORS AND OTHERS PERFORMING WORK SHALL VERIFY THE EXACT LOCATION AND DEPTH OF ALL UNDERGROUND UTILITIES.
3. SPRINKLER HEADS AND IRRIGATION LINES ARE NOT SHOWN HEREON.
4. CONTOUR INTERVAL = 2'
5. ELEVATIONS ARE ON AN ASSUMED DATUM.
6. BASIS OF BEARINGS: THE BEARING N 29° 00' 00" W, BETWEEN THE TWO STANDARD STREET MONUMENTS ON LIBERTY STREET AS SHOWN ON THE MAP OF TRACT 596.3, RECORDED IN BOOK 271 OF MAPS AT PAGE 3 WAS USED AS THE BASIS OF BEARINGS FOR THIS SURVEY.

GRAPHIC SCALE



APN: 502-112-038

LEGEND

NOTE: CONTOURS BY INTERPOLATION,
APPROXIMATE ONLY.

REFERENCES

FIELD BOOK No.
FILE MAP: G-2
TITLE CO:
POLICY No:
DATUM: ASSUMED
MISC. REF.: B-8846
R-803, R-1124

REVISIONS

KISTER, SAVIO & REI, INC.
LAND SURVEYORS - CIVIL ENGINEERS
3095 RICHMOND PARKWAY, SUITE 214
RICHMOND, CALIFORNIA 94806
PHONE: (510) 222-4020 FAX: (510) 222-3718
E-MAIL: info@ksrinc.net

FOR: ED BIGGS

SCALE: 1"=10'

DATE: DECEMBER 20, 2013

JOB No. 18233

DWG No. X-3509-1

DESCRIPTION

PRELIMINARY CIVIL SITE PLAN
STORMWATER CONTROL PLAN
ELM STREET CONDOMINIUMS

EL CERRITO

CALIFORNIA

RESOLUTION 2014-XX

A RESOLUTION OF THE EL CERRITO CITY COUNCIL DENYING AN APPEAL AND UPHOLDING THE PLANNING COMMISSION'S APPROVAL OF A PLANNED DEVELOPMENT USE PERMIT AT 1715 ELM STREET.

WHEREAS, the subject site is located at 1715 Elm Street; and

WHEREAS, the zoning district of the site is RM (Multifamily Residential); and

WHEREAS, the general plan land use designation of the site is High Density; and

WHEREAS, on January 13, 2014 the City circulated an Initial Study/Mitigated Negative Declarations pursuant to the CEQA Guidelines; and

WHEREAS, at their March 19, 2014 meeting, the Planning Commission held a duly noticed public hearing, received public testimony and directed staff to bring the project back for formal action; and

WHEREAS, at their April 16, 2014 meeting, the Planning Commission held a duly noticed public hearing, received public testimony and adopted Resolution PC14-06, adopting an Initial Study and Mitigated Negative Declaration; and

WHEREAS, at their April 16, 2014 meeting, the Planning Commission held a duly noticed public hearing, received public testimony and adopted Resolution PC14-07, approving a Planned Development Use Permit; and

WHEREAS on April 28, 2014, Howdy Goudey Robin Mitchell Jason Hasley, Keystone Montessori School Linda Shehabi, Dan & Henia Pines and Julia Lucia filed an appeal of the Planning Commission's Planned Development Use Permit approval at 1715 Elm Street; and

WHEREAS, on June 2, 2014, the City Council held a duly noticed public hearing to consider the appeal. The City Council closed the public hearing and continued consideration of the appeal to June 23. At the June 23 meeting, the City Council requested additional information and continued deliberations. On August 19, the City Council reopened the hearing, received the additional information; and

WHEREAS, based upon the evidence presented in the record on this matter, including the staff report and oral and written testimony and the proceedings before the Planning Commission, the Council has considered the appeal.

NOW THEREFORE, BE IT RESOLVED:

The City Council of the City of El Cerrito finds that:

1. The proposed residential project will be a transit oriented development (TOD) with good urban design. It will add 14 new dwelling units to the neighborhood while

preserving a historic structure and retaining the existing creek. It will not unduly shade surrounding dwellings or create unacceptable traffic or parking impacts; and as conditioned it will not adversely affect the livability of the abutting properties or neighborhood.

2. The location and design of the project will provide a functional living environment that has good urban design. With the required vehicle parking tucked under the building, day-lighted creek and landscaped area and clear sightlines to the restored historic building, it will be an attractive amenity for the City.
3. The project is consistent with the purposes of the district and conforms in all significant respects with the General Plan as conditioned; in that it consists of high density multifamily development that utilizes good urban design principles including reduced parking requirements, parking concealed under the new building, and a mix of unit types. It also preserves an important historic resource and protects an existing creek by including it within its landscaped area. The project will implement the following General Plan policies: LU1.3: Quality of Development, LU1.5: Suitable Housing, LU1.6: Various Housing Types, LU1.7: Maximum Density, LU5.5: Pedestrians, Bicycles, and Access, LU6.4: Water Conservation, CD1.2: Design Concept, CD1.3: High-Quality Design, CD1.5: Landmarks Preservation, CD, 1.9: Building Design, CD3.3: Site Landscaping, CD4.2: Building Articulation, CD5.1: Design Review Process and R2.2: Historic Preservation.
4. The proposed residential project will be a transit oriented development (TOD) located within 800 feet of a BART station (1,400 feet by foot). It will add 14 new dwelling units while preserving a historic dwelling and retain an existing creek.
5. The proposed project offers a range of attached and detached dwellings on site. In the new construction it includes both one bedroom and two bedroom housing unit styles. All units' prices will be set by the market. It is expected that the prices will reflect the different unit sizes.
6. While this is an important consideration, there was no feasible way to include a mandate to offer these units at an affordable price to persons and families of low and moderate income or lower income homes as defined by the State of California.
7. The existing infrastructure is sufficient to serve the proposed development as proposed.
8. While requiring relief from some development standards of the RM zone, it exceeds the zone requirements for both common area and private open space and allows for ten percent less lot coverage than could have been allowed in this district.
9. The use of the development area is exclusively residential.
10. The design of the new construction has been designed to allow acceptable levels of light and air into the interior spaces of the building. As conditioned, it shall meet or exceed all requirements of the California Building Code. In addition, the distance

between the re-located historic building and the adjacent pre-school is approximately 13 feet.

11. This project will contribute to the enhancement of the neighborhood character and the environment of El Cerrito in the long term in that it represents a balance of many of El Cerrito's core values. It incorporates transit oriented development and good urban design with successful historic preservation and stewardship of an existing creek.
12. The project is proposing to provide 14 new one and two bedroom dwelling units on a 0.42 acre site that is designated in the General Plan for high density. It also proposes to restore and relocate the existing historic single-family detached house on site to provide a fifteenth living unit and preserving an important historic resource. Finally, the project is proposing to keep the creek in place, thereby protecting the 115 foot long water course which is a tributary of the Baxter Creek and utilizing it as an amenity to the overall site.

After careful consideration of facts, correspondence, and testimony, and other evidence submitted in this matter, the El Cerrito City Council hereby denies the subject appeal and upholds the Planning Commission's approval of Planned Development Use Permit at 1715 Elm Street. Application No. 6133, subject to the following conditions:

1. The project will be constructed substantially in conformance with the plans dated January 20, 2014. 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. Minor changes may be approved by the Zoning Administrator.
2. If the 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 non-issuance 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 the Applicant shall be responsible for assuring that the successor in interest is informed of the terms and conditions of this approval.
4. All new residential developments of five or more units are required to comply with the Art in Public Places ordinance pursuant to El Cerrito Municipal Code Section 13.50. This is a requirement of any project with development costs of two hundred fifty thousand dollars or more. The applicant shall devote an amount not less than one percent of such costs for acquisition and installation of public art on the development site, subject to a maximum of one hundred fifty thousand dollars. Compliance with the provisions of this chapter shall be demonstrated by the applicant at the time of filing a building permit application in one of the following ways:

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- a) Payment of the full amount of the public art in-lieu contribution; or
- b) Written proof to the community development department of a contractual agreement to commission or purchase and install the required public art on the subject development site and a written acknowledgement by the visual art professional and the owner or developer, in a form approved by the city, that the proposed public art complies with the following criteria:
 - 1) The public art shall be designed and constructed by any person experienced in the production of such art and recognized by critics and by his or her peers as one who produces works of art,
 - 2) The public art shall require a low level of maintenance and that the proposed maintenance provisions are adequate for the long-term integrity and enjoyment of the work,
 - 3) The public art shall be related in terms of scale, material, form and content to immediate and adjacent buildings and architecture, landscaping or other setting so as to complement the site and its surroundings and shall be consistent with any corresponding action of the planning commission, design review board or city council as it may relate to any development entitlements,
 - 4) Permanent public art shall be a fixed asset to the property,
 - 5) The public art shall be maintained by the property owner in a manner acceptable to the city,
 - 6) The public art meets all applicable building code requirements.

The applicant shall provide the city with proof of installation of the required public art project on the development site prior to the issuance of a certificate of occupancy. If installation prior to the date of occupancy is impracticable, as determined by the city manager or his or her designee, a certificate of occupancy may be approved for the building or portion thereof if the application submitted pursuant to this section has been approved, the applicant has executed a written agreement with the city to install the public art, and the applicant has filed security in an amount and form acceptable to the city attorney to guarantee installation of the public art.

Community Development Department
Building and Planning Division:

- 5. The mitigation measures identified in the mitigation monitoring plan (MMRP) shall be considered conditions of approval of the project. They are included as Exhibit A to the resolution.
- 6. Prior to the issuance of a building permit, the Building Official shall confirm that the building permit plans, specifications and other related information conform to the California Codes in effect at the time, and all other applicable local ordinances. Compliance with the California Codes and local ordinances shall include, but not be

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limited to, seismic and geotechnical requirements for Seismic Zone 4, and Title 24 energy conservation and disabled access requirements.

7. Prior to the issuance of a building permit, Applicant shall submit to the Building Official proof of compliance with all other permits necessary from the applicable regulatory agencies, including but not limited to the Stege Sanitary District, West Contra Costa Unified School District, Pacific Gas and Electric and East Bay Municipal Utility District.
8. A demolition permit for all proposed demolition shall be submitted to and approved by the City of El Cerrito prior to issuance of a building permit.
9. Prior to the issuance of a demolition or building permit, the Building Official shall confirm that a survey of lead-based paint (LBP) and asbestos-containing materials (ACMs) shall be completed and all identified ACMs and any loose or peeling LBP must be abated. If intact LBP is present on the site and not abated, demolition and construction activities must comply with the State's construction lead standard (Title 8, California Code of Regulations, Section 1532.1).
10. Prior to the issuance of a building permit the applicant and/or construction company shall submit the location of construction staging areas for materials, equipment, and vehicles to the Zoning Administrator for review and approval.
11. Prior to the issuance of a building permit the applicant and/or construction company shall submit a parking management plan for all construction workers and their equipment to ensure that construction workers or construction equipment and vehicles do not occupy on-street spaces.
12. In the City of El Cerrito, the hours of construction work are limited to:
 - a) 7:00 a.m. to 6:00 p.m. Monday through Friday
 - b) 8:00 a.m. to 5:00 p.m. on Saturdays
 - c) Work is prohibited on Sundays and holidays.
 - d) Work may be prohibited during inclement weather by order of the City Building Official.
13. No construction shall take place on June 27, 2014 at the request of the preschool.
14. To ensure that the construction of the project is completed with minimal impact to the existing neighborhood, the following requirements shall be met before the issuance of a building permit:
 - a) Applicant shall submit a construction sign for approval by the Development Services Manager. The sign shall be made of a permanent material with professional lettering. The sign shall be at least 2 feet by 3 feet with a minimum letter size of 2 inches. The sign shall include the following information: the project name; name of the owner/developer; the name and phone number of a contact person, available at all times to address complaints and with the authority to control construction activity on the site; name and phone number of the contractor; and the approved hours of construction. The sign shall be posted at the time of placing temporary fencing and

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- start of construction activity. The sign shall be placed on the Elm Street frontage of the site in a location facing the street where the information can be easily read.
- b) Prior to issuance of a building permit, the applicant shall submit a site security and safety plan to assure that grading and construction activities are adequately secured during off-work hours. This will include the temporary construction fence required in the Public Works Department condition listed below. The height of the construction fence on the south side of the property shall be twelve feet in height.
15. The applicant shall stipulate in the construction bid information for the project that construction company shall be required to do the following:
- a) A notification procedure stating their plan to notify adjacent property owners as to when major deliveries, detours and lane closures may occur. At a minimum, this notification plan will include a written notice sent electronically as soon as possible to all neighbors that request such notification. The list of interested parties will be kept by the Community Development Department.
 - b) A monthly meeting in person with the operators of the preschool to go over any issues or concerns.
 - c) Every possible effort shall be made to have the construction site turn off all unnecessary heavy equipment, generators and power tools from noon until 1:00 pm.
16. Prior to issuance of a certificate of occupancy, the Zoning Administrator shall confirm that:
- a) All mechanical equipment, including electrical and gas meters, heating/air conditioning or ventilation units, radio/TV antennas or satellite dishes shall be appropriately screened from off-site view, and electrical transformers shall be either placed underground or appropriately screened.
 - b) All visible vents, gutters, down spouts, flashings, and the like shall match the color of adjacent surfaces, or shall be incorporated into the overall exterior color and materials scheme for the building.
17. All landscaping improvements shall be maintained in a healthy, growing condition at all times. The landscaped areas shall be irrigated by an automatic sprinkler system designed to reduce water usage. Applicant shall replace all landscaping that dies with the exact living species, or substitutes approved by the Zoning Administrator.
18. The applicant has volunteered to donate four thousand dollars to the City of El Cerrito towards the creation and installation of up to two historical plaques. (This money will be held in a draw down account and any unused funds will be refunded.) The purpose of commemorative plaques would be to explain the history of the Rodini house as well as the history of the surrounding Little Italy neighborhood. The Zoning Administrator shall work with the El Cerrito Historical Society to create these plaques. The plaques will be installed on the front fence of the new project.
19. If for some reason, the City Council denies the Development Agreement, the General Plan Amendment or the Planned Development District, this entitlement is null and void.

Public Works Department:

20. A complete Stormwater Control Plan (Narrative Report and Exhibit) prepared in accordance with the latest version of Contra Costa Stormwater C.3 Guidebook, must be submitted as soon as possible to ensure the stormwater design, site plan, and landscaping plan are congruent.
21. Any changes to existing storm drain channel will require a Public Works Encroachment Permit and may require that storm drain easement be recorded. The applicant must furnish plans, specifications and hydrology/hydraulics studies, as appropriate, prior to consideration of the permit application. The City may impose conditions as are appropriate to eliminate any diminution in the capacity of the existing drain to carry off the volume of water reasonably anticipated. If conflict exists between the Encroachment Permit and the JARPA permit, the JARPA permit shall prevail.
22. Remove and replace all sidewalk and driveway approaches to comply with Americans with Disability Act and all other applicable City standards. Sidewalk and driveway improvements shall require a Public Works Encroachment Permit.
23. All site grading shall be done per Chapters 8 and 13 of the El Cerrito Municipal Code and all other relevant laws, rules and regulations. Prior to commencing any grading in excess of 50 cubic yards, the applicant shall obtain a Grading & Transportation Permit and approval from the Public Works Department.
24. New street tree types and locations shall be approved by the City Arborist prior to issuance of building permit.
25. Prior to issuance of a building, demolition or grading permit for any portion of the project, applicant shall submit a Traffic and Parking Management Plan for review and approval by the Public Works Director and the Zoning Administrator. The plan shall include any City restrictions and limitations on using certain local streets for construction traffic, proposed truck delivery and haul routes, parking arrangements for construction personnel, ingress and egress, noise, efforts to address street debris and dust control and proposed on-site staging and equipment/material storage areas.
26. Prior to the issuance of a building permit, applicant shall install a temporary construction fence around the perimeter of the site that provides for continued pedestrian traffic meeting the standards of the Americans with Disabilities Act as approved by the Public Works Director and the Zoning Administrator. On the southern property line, the fence shall be 12 feet high to provide an additional visual and safety screen for the adjacent school. The applicant shall submit the materials for the fence to the Zoning Administrator for review and approval before the fence is installed.
27. Applicant, through its contractor, shall implement comprehensive traffic control measures as set forth in the approved Traffic and Parking Management Plan, including scheduling of major truck trips and deliveries to avoid peak hours (normally 7 a.m. to 9 a.m. and 4 p.m. to 6 p.m.).

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28. All mud, dirt and construction debris carried off the construction site onto adjacent streets shall be removed and cleaned daily. Failure to adequately sweep the streets may result in the City undertaking the effort at Applicant's cost.
29. Dust control measures to minimize air quality impacts shall be implemented including:
 - a) Cover stockpiles of debris, soil, sand or other materials that can be blown by the wind.
 - b) Cover all trucks hauling soil, sand, and other loose materials.
 - c) Pave, apply non-potable water three times daily, or apply (non-toxic) soil stabilizers on all unpaved access roads, parking areas and staging areas at site.
 - d) Limit traffic speeds on unpaved roads to 5 mph.
 - e) Install, maintain and replace sandbags or other erosion control measures to prevent silt runoff to public roadways.
 - f) Minimize removal and replant vegetation in disturbed areas as quickly as possible.
 - g) No grading between October 1st and April 15th unless the City Engineer has approved an erosion and sedimentation control plan.
30. Applicant shall be deemed responsible for any damage to public improvements that occurs during construction and shall repair such damage at its expense and to the satisfaction of the City Engineer, including but not limited to sidewalk repair, street slurry seal or street reconstruction.
31. Prior to issuance of a certificate of occupancy, the Public Works Director shall confirm that all off-site and on-site public improvements (including sidewalk and driveway approaches) are completed in accordance with the final building permit and improvement plans or that other arrangements acceptable to the Public Works Director have been made for ensuring that the work is completed, such as an irrevocable standby letter of credit.

Operations and Environmental Services Division

32. Prior to issuance of a building permit, the applicant shall provide provision for pickup and hauling of solid waste and recycling to the satisfaction of the City of El Cerrito Operations & Environmental Services Division. This includes a written description of the plan for the removal of solid waste and recycling items; the plans clearly showing the location of the solid waste and recycling area and the proposed access for both users and waste haulers. The solid waste and recycling area must include:
 - a) Access doors that are at least 8 feet wide.
 - b) The solid waste and recycling storage areas/room shall be lined with metal bands 2 feet wide at a height starting 3 feet from the ground.
 - c) There shall be sloping curbs in front of the access door to the solid waste and recycling storage areas/rooms.
33. Prior to the issuance of a building permit, the applicant shall submit a Construction/Demolition Waste Management Plan to the satisfaction of the City of El Cerrito Operations and Environmental Services Division. This plan must comply with the California Building Code requirement that at least 50% by weight of jobsite debris generated by new construction be recycled, reused or otherwise diverted from landfill disposal.

34. Upon completion of construction and demolition activities, but before the Certificate of Occupancy, the applicant shall submit the CWM Report to demonstrate achievement of the diversion requirement to the satisfaction of the City of El Cerrito Operations and Environmental Services Division.

Fire Department:

35. Approved numbers or address shall be provided in such a position to be plainly visible and legible from the street fronting the property.
- a) The address numbers shall be of contrasting color of the back ground
 - b) Shall be internally or externally illuminated.
 - c) If address cannot be placed as stated above a monument shall be placed where the address is plainly visible from the street.
36. An Automatic Fire Sprinkler System is required for this project.
37. A fire hydrant is required within 50' of the Fire Department Connection (FDC) and shall be on the same side of the street as the FDC unless approved by the Fire Marshal.
38. Building shall have a "Wet Fire Standpipe in rear stairwell.
39. Standpipes shall be interconnected with the fire sprinkler system.
40. The fire alarm system shall be installed in accordance with NFPA 72.
41. Fire alarm System shall have the FACP located in an approved location and shall be easily accessible and access doors clearly labeled.
42. If the FACP cannot be located for easy access a remote enunciator shall be placed in an approved location.
43. Knox box shall be placed adjacent to entry doors, doors inclosing the fire sprinkler riser and or fire alarms control panel and any remote annunciating locations, and locking gates.
44. Electronic gate shall have a Knox Key Entry System installed for emergency operations.
45. All Knox Box Entry Systems used in this building shall be approved by the Fire Marshall before installation.
46. Fire Extinguishers shall be placed on each level and throughout the building.
- a) Spacing shall have a maximum travel distance of 75'.
 - b) Travel distance to an extinguisher shall not exceed 75' of travel distance.
 - c) The location of each extinguisher shall be conspicuously posted with an approved sign.
 - d) Mount Fire extinguishers on wall with the top no higher than 5 feet from the ground.
47. All electrical breakers shall be labeled. Major equipment shall have corresponding labels.

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48. The Fire Department shall review building plans for compliance of these before a building permit is issued. The applicant shall provide Fire Prevention Division with 24-hour notice prior to any inspections. Implementation of these conditions shall be verified prior to the issuance of the Certificate of Occupancy.

Police Department:

49. The building plans shall note that exterior lighting shall provide adequate illumination for on-site security and display purposes for the building, parking lot and pedestrian accessways while limiting off-site spillover of light through shielding. This condition shall be reviewed for compliance prior to the Certificate of Occupancy.

I CERTIFY that at a regular meeting on August 19, 2014, the El Cerrito City Council passed this Resolution by the following vote:

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

IN WITNESS of this action, I sign this document and affix the corporate seal of the City of El Cerrito on August X, 2014.

Cheryl Morse, City Clerk

APPROVED:

Janet Abelson, Mayor

CEQA Mitigation Monitoring Plan

1715 Elm Street

INTRODUCTION

The California Environmental Quality Act (CEQA) requires review of any project that could have significant adverse effects on the environment. In 1988, CEQA was amended to require reporting on and monitoring of mitigation measures adopted as part of the environmental review process. This Mitigation Monitoring and Reporting Program (MMRP) is designed to aid the City of El Cerrito in its implementation and monitoring of measures included in the Initial Study prepared for the proposed project located at 1715 Elm Street.

MITIGATION MEASURES

The MMRP describes the actions that must take place to implement each mitigation measure, the timing of those actions, and the entities responsible for monitoring the actions.

MMRP COMPONENTS

The components of each monitoring form are addressed briefly, below.

Mitigation Measure: All mitigation measures that were identified in the 1715 Elm Street Initial Study are presented and numbered accordingly.

Timing/Implementation: Each action must take place prior to the time at which a threshold could be exceeded. Implementation of the action must occur prior to or during some part of approval, project design or construction or on an ongoing basis. The timing for each measure is identified. Within the City of El Cerrito, the responsibility for implementation of the measures would lie with the Planning and Building Division.

Enforcement/Monitoring Party: The City of El Cerrito is responsible for ensuring that mitigation measures are successfully implemented.

Air Quality Mitigations

AQ-1 To adequately control dust, the project applicant shall ensure construction contracts contain requirements for implementing the BAAQMD's basic construction mitigation measures from Table 8-1 of the BAAQMD's CEQA Guidelines. Construction contracts shall also contain the following measures in order to reduce the emissions of toxic pollutants generated by heavy-duty diesel powered equipment during construction.

1. Keep all construction equipment in proper tune in accordance with manufacturers' specifications.
2. Use late-model heavy-duty diesel-powered equipment during construction to the extent that it is readily available in the San Francisco Bay Area.
3. Use diesel-powered equipment that has been retrofitted with after-treatment products (e.g., engine catalysts) to the extent that it is readily available in the

San Francisco Bay Area.

4. Use low-emission diesel fuel for all heavy-duty diesel-powered equipment operating and refueling at construction sites to the extent that it is readily available and cost effective in the San Francisco Bay Area. (This requirement does not apply to diesel-powered trucks traveling to and from the site.)
5. Utilize alternative-fuel construction equipment (i.e., compressed natural gas, liquid petroleum gas, and unleaded gasoline) to the extent that the equipment is readily available and cost effective in the San Francisco Bay Area.
6. Limit truck and equipment idling time to 5 minutes or less.
7. Rely on the electricity infrastructure surrounding the construction site rather than electrical generators powered by internal combustion engines to the extent feasible.

Timing/Implementation: Prior to construction

Enforcement/Monitoring: City of El Cerrito Planning Division

Biological Mitigations

BIO-1 Survey for Migratory Birds.

If clearing and/or construction activities will occur during the migratory bird nesting season (April 15–August 15), preconstruction surveys for nesting migratory birds shall be conducted by a qualified biologist, up to 14 days before initiation of construction activities. The qualified biologist shall survey the construction zone and a 250-foot radius surrounding the construction zone to determine whether the activities taking place have the potential to disturb or otherwise harm nesting birds.

If active nest(s) are identified during the preconstruction survey, a qualified biologist shall monitor the nest to determine when the young have fledged. Monthly monitoring reports, documenting nest status, shall be submitted to the City Planning Division until the nest(s) is deemed inactive. The biological monitor shall have the authority to cease construction if there is any sign of distress to a raptor or migratory bird. Reference to this requirement and to the Migratory Bird Treaty Act shall be included in the construction specifications.

Timing/Implementation: Prior to construction

Enforcement/Monitoring: City of El Cerrito Planning Division

BIO-2 Survey for Active Raptor Nests.

If construction activities will occur during the nesting season for raptors (January 15–August 15), all suitable raptor nesting habitat within 0.5 mile of the impacted area shall be surveyed for active raptor nests before construction activity commences. If an active raptor nest is located within 0.5 mile of the construction site, a no-activity buffer shall be erected around the nest while the nest is active to protect the nesting raptors. This buffer distance may be amended to account for nests that are not within the line of sight of the construction activity.

Timing/Implementation: Prior to construction

Enforcement/Monitoring: City of El Cerrito Planning Division

BIO-3 Conduct Surveys for Bird Nests in Structures.

If demolition of on-site structures is proposed to take place during the migratory bird nesting season (April 15–August 15), a survey for nesting migratory birds (e.g., swallows, phoebes) shall be conducted by a qualified biologist prior to demolition. If bird nests are discovered in the structure, the structure shall not be removed until the nest(s) become inactive.

Timing/Implementation: Prior to demolition

Enforcement/Monitoring: City of El Cerrito Planning Division

BIO-4 Conduct Surveys for Potential Bat Roosts.

Demolition of on-site structures shall be preceded by a survey for bat presence. Structures being used by bats will not be removed until it has been determined that bats are no longer using the site or until demolition can be carried out without harming any bats.

Timing/Implementation: Prior to demolition

Enforcement/Monitoring: City of El Cerrito Planning Division

BIO-5 Mitigate for Loss of Waters of the United States. If the US Army Corps of Engineers identifies that the feature is jurisdictional, the project applicant shall ensure that the project will result in no net loss of waters of the United States by providing mitigation through impact avoidance, impact minimization, and/or compensatory mitigation for the impact, as determined in the CWA Section 404/401 permits and/or 1602 Streambed Alteration Agreement.

Timing/Implementation: Prior to construction

Enforcement/Monitoring: City of El Cerrito Planning Division

Cultural Resource Mitigations

CULT-1 Prior to any alterations of structures on the project site, the project applicant shall complete Historic American Building Survey (HABS) level documentation. Prior to occupancy of any structure on the project site, the applicant shall complete façade restoration, and salvage and reuse building materials and landscape features, as discussed below.

a) The project applicant shall document the affected historical resource and its setting, in accordance with HABS. The intent is to preserve an accurate record of historic property that can be used in research and other preservation activities. To serve these purposes, the documentation must include information that permits assessment of its reliability.

Generally, this includes:

- Drawings: Select existing drawings, where available, should be photographed with large-format negatives or photographically reproduced on Mylar.
- Photographs: Photographs with large-format negatives of exterior and interior views, or historic views, where available.
- Written data: History and description in narrative or outline format.

HABS material standards regarding reproducibility, durability, and size shall be met. Copies of the photographs and report shall be presented to repositories that are invested in archiving the history of El Cerrito.

b) Restore the building façade, including windows, the historic wood trim around the doors and windows on the primary façade, and the door in the main entrance, as determined by documentation by either physical and/or documentary evidence to the extent documentation is available. If physical evidence is inconclusive or historic photographs are not available, comparable, intact properties built during the same period as the Rodoni house may be used to inform the appearance of the façade.

Timing/Implementation: Prior to construction or demolition activities

Enforcement/Monitoring: City of El Cerrito Planning Division

CULT-2 In the event any archeological resources are encountered during construction, work within 100 feet of the find shall cease and a qualified paleontologist shall be contacted by the project applicant to determine whether the resource is significant. If the find is determined to be of significance, an excavation plan shall be created and resources shall be donated to an appropriate cultural center. All work products and plans shall be reviewed and approved by the City prior to execution.

Timing/Implementation: During construction

Enforcement/Monitoring: City of El Cerrito Planning Division

CULT-3 In the event paleontological resources are encountered during construction, the construction manager shall cease operation at the site of the discovery and immediately notify the City of El Cerrito Environmental & Development Services Department. The project applicant shall retain a qualified paleontologist to provide an evaluation of the find and to prescribe mitigation measures to reduce impacts to a less than significant level. In considering any suggested mitigation proposed by the consulting paleontologist, the City of El Cerrito Environmental & Development Services Department shall determine whether avoidance is necessary and feasible in light of factors such as the nature of the find, project design, costs, and other considerations. If avoidance is unnecessary or infeasible, other appropriate measures (e.g., data recovery) shall be instituted. Work may proceed on other parts of the project site while mitigation for paleontological resources is carried out.

Timing/Implementation: During construction

Enforcement/Monitoring: City of El Cerrito Planning Division

CULT-4 If human remains are encountered during project construction, work within 100 feet of the remains shall be suspended immediately, and the City of El Cerrito Environmental & Development Services Department and the Contra Costa County Coroner shall be immediately notified. If the remains are determined by the County Coroner to be Native American, the Native American Heritage Commission (NAHC) shall be notified within 24 hours. A professional archaeologist with Native American burial experience shall conduct a field investigation of the specific site and consult with the Most Likely Descendant, if any, identified by the NAHC. As necessary, the archaeologist may provide professional assistance to the Most Likely Descendant, including the excavation and removal of the human remains. The City of El Cerrito Environmental & Development Services Department will be responsible for the approval of recommended mitigation, taking account of the provisions of state law, as set forth in CEQA Guidelines Section 15064.5(e) and Public Resources Code Section 5097.98. The project applicant shall implement the approved mitigation, to be verified by the City of El Cerrito Environmental & Development Services Department, before the resumption of activities at the site where the remains were discovered.

Timing/Implementation: During construction

Enforcement/Monitoring: City of El Cerrito Planning Division

GHG-1 Prior to issuance of grading or building permits, the project applicant shall specify on the final project plans implementation of BAAQMD-recommended construction-related measures to reduce GHG emissions during construction activities. These measures include, as feasible:

1. Use alternative-fueled (i.e., biodiesel, electric) construction vehicles and equipment to the maximum extent possible.
2. Use local construction materials (within 100 miles) to the maximum extent possible.
3. Recycle construction waste and demolition materials to the maximum extent possible.

Timing/Implementation: Prior to grading permits

Enforcement/Monitoring: City of El Cerrito Planning Division

ORDINANCE 2014–XX

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF EL CERRITO APPROVING
A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF EL CERRITO AND THE
EDWARD AND LORETTA BIGGS REVOCABLE TRUST FOR 1715 ELM STREET –
APPLICATION 6133**

THE CITY COUNCIL OF THE CITY OF EL CERRITO DOES HEREBY ORDAIN AS
FOLLOWS:

SECTION 1. RECITALS

A. The Applicant, the Edward and Loretta Biggs Revocable Trust, proposes a development project that includes the preservation and relocation of an existing historical single-family detached house on the Property, the construction of 14 new one- and two-bedroom dwelling units, and the preservation of an existing creek on 0.42 acre site. The project proposes a Planned Development Use Permit; Design Review; a subdivision map and condominium plan; and this Development Agreement. The proposed development and applications are collectively known as the “Project”; related approvals of the applications are collectively known as the “Project Approvals”.

B. The Project site is located at 1715 Elm Street in El Cerrito, California (the “Property”).

C. The Applicant and City desire to enter into a Development Agreement subject to certain terms, attached to this ordinance, and the vesting of the Project Approvals for ten years.

D. The California Environmental Quality Act (CEQA), together with the state guidelines and City environmental regulations, require that certain projects be reviewed for environmental impacts and that environmental documents be prepared.

E. An Initial Study and Mitigated Negative Declaration (MND) pursuant to the California Environmental Quality Act (CEQA) have been prepared for this Project. All potential impacts identified are reduced to a less than significant level pursuant to the California Environmental Quality Act with the implementation of mitigation measures.

F. On April 16, 2014, the Planning Commission held a properly noticed public hearing on the Project, and adopted Resolution PC14-07 recommending that the City Council adopt the Planned Development Use Permit, which Resolution is incorporated herein by reference and available for review at City Hall during normal business hours.

G. On May 21, 2014, the Planning Commission held a properly noticed public hearing on the Project, including the proposed General Plan Amendment, Planned Development District and Development Agreement, and adopted Resolution 14-10 recommending that the City Council not adopt the General Plan Amendment, Planned Development District and

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Development Agreement, which Resolution is incorporated herein by reference and available for review at City Hall during normal business hours.

H. On June 2, 2014, the City Council held a duly noticed public hearing to consider the Project Approval, including the Development Agreement. The City Council closed the hearing and continued consideration of the Project Approvals to June 23. At the June 23 meeting, the City Council requested additional information and continued deliberations. On August 19, the City Council reopened the hearing and received the additional information, and all interested parties had the opportunity to be heard.

I. A staff report dated August 19, 2014 and incorporated herein by reference, described and analyzed the Project, including the Development Agreement, for the City Council.

J. The City Council used their independent judgment and considered the staff report, the Initial Study and Mitigated Negative Declaration, and all reports, recommendations and testimony referenced above and adopted Resolution No. 2014-XX adopting the Initial Study and Mitigated Negative Declaration prior to approving the Development Agreement.

K. The City Council has considered the recommendation of the Planning Commission on the Development Agreement, including the Planning Commission's reasons for its recommendation, the staff report, all comments received in writing, and all testimony received at the public hearing.

SECTION 2. FINDINGS AND DETERMINATIONS

On the basis of: (a) the foregoing Recitals which are incorporated herein, (b) the City of El Cerrito General Plan; (c) Initial Study and Mitigated Negative Declaration, (d) the staff report; (e) information in the entire record of proceedings for the Project, and on the basis of the specific conclusions set forth below, the City Council finds and determines that:

1. The Development Agreement is consistent with the objectives, policies, general land uses and programs specified and contained in the City's General Plan in that: (a) the General Plan land use designations, policies, programs and objectives are incorporated into the Development Agreement and not altered by the Development Agreement; and (b) the Project is consistent with the fiscal policies of the General Plan with respect to the provision of infrastructure and public services.

2. The Development Agreement is compatible with the uses authorized in, and the regulations prescribed for, the land use districts in which the real property is located.

3. The Development Agreement is in conformity with public convenience, general welfare, and good land use policies in that the Project will implement land use guidelines set forth in the General Plan.

4. The Development Agreement will not be detrimental to the health, safety, and

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general welfare in that the Developer's proposed Project will proceed in accordance with all the programs and policies of the General Plan and Project Approvals.

5. The Development Agreement will not adversely affect the orderly development of property or the preservation of property values in that the Project will be consistent with the General Plan and Project Approvals.

6. The Development Agreement complies with the requirements of §§ 65864 et seq. of the California Government Code and El Cerrito Municipal Code Chapter 19.14 and specifies the duration of the agreement, the permitted uses of the property, the density or intensity of use, the maximum height and size of proposed buildings, and provisions for reservation of open space. The Development Agreement contains an indemnity and insurance clause requiring the developer to indemnify and hold the City harmless against claims arising out of the development process, including all legal fees and costs.

SECTION 3. APPROVAL

The City Council hereby approves the Development Agreement (Attachment A to the Ordinance) and authorizes the City Manager to execute it.

SECTION 4. NOTICING, POSTING, PUBLICATION AND RECORDATION

This ordinance is adopted pursuant to the procedures established by state law, and all required notices have been given, and the public hearing has been properly held and conducted. Within ten days after the Development Agreement is fully executed by all parties, the Development Services Manager shall submit the Agreement to the County Recorder for recordation.

SECTION 5. EFFECTIVE DATE

This ordinance shall take effect thirty days after the date of its adoption, and prior to the expiration of fifteen days from the passage thereof, the ordinance or a summary thereof shall be posted or published as may be required by law, and thereafter the same shall be in full force and effect.

THE FOREGOING ORDINANCE was introduced at a regular meeting of the City Council on August 19, 2014 and passed by the following vote:

AYES:	Councilmembers
NOES:	Councilmembers
ABSTAIN:	Councilmembers
ABSENT:	Councilmembers

ADOPTED AND ORDERED published at a regular meeting of the City Council held on the September ____, 2014 and passed by the following vote:

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AYES: Councilmembers
NOES: Councilmembers
ABSTAIN: Councilmembers
ABSENT: Councilmembers

APPROVED:

Janet Abelson, Mayor

ATTEST:

Cheryl Morse, City Clerk

IN WITNESS of this action, I sign this document and affix the corporate seal of the City of El Cerrito on September XX, 2014.

Cheryl Morse, City Clerk

ORDINANCE CERTIFICATION

I, Cheryl More, City Clerk of the City of El Cerrito, do hereby certify that this Ordinance is the true and correct original Ordinance No. 2014-XX of the City of El Cerrito, that said Ordinance was duly enacted and adopted by the City Council of the City of El Cerrito at a meeting of the City Council held on the ___ day of September 2014; and that said ordinance has been published and/or posted in the manner required by law.

WITNESS my hand and the Official Seal of the City of El Cerrito, California, this ___ day of September, 2014.

Cheryl Morse, City Clerk

Exhibit A

Legal Description of the Property

The land referred to is situated in the State of California, County of Contra Costa, City of El Cerrito, and is described as follows:

Lots 12, 13 and 14, in Block "B" as designated on the map entitled "Map of Schmidt Village, Contra Costa County, California", filed June 27, 1896, in Book C of Maps, Page 70, Contra Costa County Records.

EXCEPTING THEREFROM: The Northeast 7.00 feet thereof, as described in the Deed to City of El Cerrito, recorded February 9, 1965, in Book 4801 Official Records of Contra Costa County, Page 144.

(APN 502-112-038)

RECORDING REQUESTED BY:

CITY OF EL CERRITO

When Recorded Mail To:

City Clerk
City of El Cerrito
10890 San Pablo Ave.
El Cerrito, CA 94530

*Exempt from Recorder's Fees
Pursuant to Government Code §§ 27383, 6103*

Space above this line for Recorder's use

DRAFT DEVELOPMENT AGREEMENT

BETWEEN THE

CITY OF EL CERRITO

AND

**THE EDWARD AND LORETTA BIGGS REVOCABLE TRUST
DATED MARCH 22, 2011**

FOR 1715 ELM STREET

THIS DEVELOPMENT AGREEMENT ("**Agreement**" or "**Development Agreement**") is made and entered into in the City of El Cerrito on _____ 2014, by and between the City of El Cerrito, a municipal corporation ("**City**") and The Edward and Loretta Biggs Revocable Trust dated March 22, 2011 ("**Developer**") pursuant to the authority of §§ 65864 *et seq.* of the California Government Code and El Cerrito Municipal Code, Chapters 19.14 and 19.41. City and Developer are, from time-to-time, individually referred to in this Agreement as a "party," and collectively as "parties."

RECITALS

A. California Government Code §§ 65864 *et seq.* ("Development Agreement Law") and Chapter 19.41 of the El Cerrito Municipal Code ("**Chapter 19.41**") authorize the City to enter into a development agreement for the development of real property with any person having a legal or equitable interest in such property in order to establish certain development rights in such property. Chapter 19.14 of the El Cerrito Municipal Code ("**Chapter 19.14**") requires a development agreement for all projects for which Planned Development District zoning is approved.

B. Developer owns the real property located at 1715 El Street in the City (APN 502-112-038) and that is more particularly described in Exhibit A attached hereto and is incorporated herein by reference (the "**Property**").

C. The proposed development of the Property includes the relocation and renovation of an existing historical single-family detached house on the Property, the construction of 14 new one- and two-bedroom dwelling units, and the preservation of an existing creek on 0.42 acre site (the "**Project**").

D. Developer has applied for and City has approved or is processing, various land use approvals in connection with the Project, including, without limitation, a General Plan Amendment; Planned Development District zoning; a Planned Development Use Permit; Design Review; a subdivision map and condominium plan; and this Development Agreement. All such approvals, collectively, together with any approvals or permits now or hereafter issued with respect to the Project, are referred to as the "**Project Approvals**." None of the Project Approvals take effect until the Development Agreement takes effect.

E. City desires the timely, efficient, orderly and proper development of the Project.

F. The City Council has found that, among other things, this Development Agreement is consistent with its General Plan, as amended, and has been reviewed and evaluated in accordance with the Development Agreement Law and Chapters 19.14 and 19.41.

G. City and Developer have reached agreement and desire to express herein a Development Agreement that will facilitate development of the Project, subject to conditions set forth herein.

H. The El Cerrito Planning Commission approved a Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program for the Project on April 16, 2014 by the adoption of Planning Commission Resolution No. PC14-06. The Mitigated Negative Declaration analyzed the environmental impacts of this Agreement. No significant unavoidable impacts were identified in the Mitigated Negative Declaration.

I. On _____, 2014, the City Council adopted Ordinance No. _____ approving this Development Agreement (the “**Approving Ordinance**”). The Approving Ordinance states that it will take effect on _____ (the “**Ordinance Effective Date**”).

NOW, THEREFORE, with reference to the foregoing recitals and in consideration of the mutual promises, obligations and covenants herein contained, City and Developer agree as follows:

AGREEMENT

1. Description of Property.

The Property that is the subject of this Agreement is described in Exhibit A attached hereto.

2. Interest of Developer.

The Developer owns the Property.

3. Relationship of City and Developer.

It is understood that this Agreement is a contract that has been negotiated and voluntarily entered into by the City and Developer and that the Developer is not an agent of the City. The City and Developer hereby renounce the existence of any form of joint venture or partnership between them, and agree that nothing contained herein or in any document executed in connection herewith shall be construed as making the City and Developer joint ventures or partners.

4. Effective Date, Term, and Termination.

4.1. Effective Date. The effective date of this Agreement shall be the Ordinance Effective Date (“**Effective Date**”).

4.2. Term. The term of this Agreement shall commence on the Effective Date and extend 10 years thereafter, unless said term is otherwise terminated or

modified pursuant to the provisions of this Agreement. As authorized by California Government Code Sections 65863.9 and 66452.6(a)(1), the terms of the Project Approvals shall be the longer of: (a) the term of this Agreement; or (b) the term normally given each approval under controlling law.

4.3. Termination.

4.3.1. Termination on Sale of Individual Lots. Notwithstanding the foregoing Section 4.2, the provisions of this Agreement shall terminate with respect to any individual lot and such lot shall be released from and shall no longer be subject to this Agreement (without the execution or recordation of any further document or the taking of any further action) upon the lot being finally subdivided and sold or leased to a member of the public or any other ultimate user. City shall cooperate with Developer, at no cost to City, in executing in recordable form any document that Developer (including any successor to the title of the Developer in and to any of the aforescribed lots) may submit to confirm the termination of this Agreement as to any such lot. For purposes of this Section 4.3.1, each reference to a "lot" shall be deemed to include an individual dwelling unit that is a standalone structure or constructed within a multi-unit building, whether leased as an apartment or single-family home or sold as a condominium or similar interest in the Property.

4.3.2. Termination Upon Completion of Project. Notwithstanding the foregoing Sections 4.2 and 4.3.1, upon completing construction of the Project and satisfying all terms and conditions of this Agreement and the Project Approvals, Developer may send City written notice terminating this Agreement. City shall cooperate with Developer, at no cost to City, in executing in recordable form any document that Developer (including any successor to the title of Developer in and to any portion of the Property) may submit to confirm the termination of this Agreement.

5. Use of the Property.

5.1. Right to Develop. Developer shall have the vested right to develop the Project on the Property in accordance with the terms and conditions of this Agreement, the Project Approvals (as and when issued), and any amendments to any of them as shall, from time to time, be approved pursuant to this Agreement. (Such amendments, once effective, shall become part of the law Developer is vested into without an additional amendment of this Agreement.) Notwithstanding the foregoing or anything to the contrary herein, any amendment to the General Plan not in effect on the Effective Date shall not become part of the law Developer is vested into under this Agreement unless an additional amendment of this Agreement is entered into between Developer and City in accordance with state and City laws.

5.2. Permitted Uses. The permitted uses of the Property, the density and intensity of use, the maximum height, bulk, and size of proposed buildings, the provisions for reservation or dedication of land for public purposes, the location and maintenance of on-site and off-site improvements, the location of public utilities, and other terms and conditions of development applicable to the Property, shall be those set forth in this Agreement, the Project Approvals and any amendments to this Agreement or the Project Approvals, subject to the provisions of Section 5.1.

5.3. Rules Regarding Permitted Uses. For the term of this Agreement, the City's ordinances, resolutions, rules, regulations and official policies governing the permitted uses of the Property and governing density and intensity of use of the Property and the maximum height, bulk and size of proposed buildings shall be those in force and effect on the Effective Date of this Agreement.

5.4. Rules Regarding Design and Construction. Unless otherwise expressly provided in Section 5 of this Agreement, the ordinances, resolutions, rules, regulations and official policies governing design, improvement and construction standards and specifications applicable to the Project shall be those in force and effect at the time of the applicable discretionary approval, whether the date of that approval is prior to or after the date of this Agreement. Ordinances, resolutions, rules, regulations and official policies governing design, improvement and construction standards, and specifications applicable to public improvements to be constructed by Developer shall be those in force and effect at the time of the applicable discretionary approval, whether the date of that approval is prior to or after the date of this Agreement.

5.5. Building and Other Codes Applicable. The Project shall be constructed in accordance with the provisions of the Building, Mechanical, Plumbing, Electrical, and Fire Codes and Title 24 of the California Code of Regulations, relating to Building Standards, in effect at the time of approval of the appropriate building, grading, encroachment or other construction permits for the Project.

6. Subsequently Enacted Rules and Regulations.

6.1. New Rules and Regulations. Consistent with Government Code section 65866, during the term of this Agreement, the City may apply new or modified ordinances, resolutions, rules, regulations and official policies of the City, whether adopted by the City or through the referendum or initiative process ("**New City Laws**") to the Property, which were not in force and effect on the Effective Date of this Agreement and which are not in conflict with those applicable to the Property as set forth in this Agreement and are not in conflict with the Project Approvals. Without limiting the generality of the foregoing, or any other provision of this Agreement, a New City Law shall be deemed to conflict

with this Agreement to the extent it limits or controls the timing of construction or occupancy of the Project.

6.2. Approval of Application. Nothing in this Agreement shall prevent the City from denying or conditionally approving any subsequent land use permit or authorization for the Project on the basis of such New City Laws except that such subsequent actions shall be subject to any conditions, terms, restrictions, and requirements expressly set forth herein.

7. Subsequently Enacted or Revised Fees, Assessments and Taxes.

Notwithstanding anything to the contrary contained herein, the Project shall be subject to subsequently enacted or revised fees, assessments and taxes adopted by the City after the Effective Date of this Agreement. Nothing in this Agreement creates a vested right for the Project in the amount or type of fees, assessments and taxes in effect on the Effective Date of this Agreement.

8. Amendment or Cancellation.

8.1. Modification Because of Conflict with State or Federal Laws. The Project and Property shall be subject to state and federal laws and regulations and this Agreement does not create any vested right in state and federal laws and regulations in effect on the Effective Date. In the event that state or federal laws or regulations enacted after the Effective Date of this Agreement prevent or preclude compliance with one or more provisions of this Agreement or require changes in plans, maps, or permits approved by the City, the parties shall meet and confer in good faith in a reasonable attempt to modify this Agreement to comply with such federal or state law or regulation. Any such amendment or suspension of the Agreement shall be subject to approval by the City Council in accordance with Chapter 8.56 of the Municipal Code.

8.2. Amendment by Mutual Consent. This Agreement may be amended in writing from time to time by mutual consent of the parties hereto and in accordance with the procedures of state law and Chapter 19.41.

8.3. Insubstantial Amendments. Notwithstanding the provisions of the preceding Paragraph 8.2, any amendments to this Agreement that do not relate to (a) the term of the Agreement as provided in Paragraph 4.2; (b) the permitted uses of the Property as provided in Paragraph 5.2; (c) the density or intensity of use of the Project; (d) the maximum height or size of proposed buildings; or (e) monetary contributions by Developer as provided in this Agreement, shall not, except to the extent otherwise required by law, require notice or public hearing before either the Planning Commission or the City Council before the parties may execute an amendment hereto.

8.4. Cancellation By Mutual Consent. Except as otherwise permitted herein, this Agreement may be canceled in whole or in part only by the mutual consent of the parties or their successors in interest, in accordance with the provisions of Chapter 19.41.

9. Annual Review.

9.1. Review Date. The annual review date for this Agreement shall be between June 1 and July 1, 2015 and thereafter between each June 1 and July 1 during the Term.

9.2. Initiation of Review. Developer shall initiate annual review of this Agreement by submitting an annual application. Developer shall submit with such application a report to the City's Community Development Director describing the Developer's good faith substantial compliance with the terms of this Agreement during the preceding year and include supporting evidence. Such report shall include a statement that the report is submitted to the City pursuant to the requirements of Government Code Section 65865.1 and of this Agreement. The report shall comply with Section 19.41.050 of Chapter 19.41. The burden of proof by substantial evidence of compliance is upon the Developer.

9.3. Finding of Compliance. Within thirty (30) days after Developer submits its report hereunder, the City's Community Development Director shall review Developer's submission to ascertain whether Developer has demonstrated good faith substantial compliance with the material terms of this Agreement. If the Community Development Director finds and determines, in consultation with the City Manager and the City's Public Works Director, that Developer has in good faith substantially complied with the material terms of this Agreement, or does not determine otherwise within 30 days after delivery of Developer's report, then the annual review shall be concluded. If the Community Development Director initially determines that such report is inadequate in any respect, then he or she shall provide written notice to that effect to Developer, and Developer may supply such additional information or evidence as may be necessary to demonstrate good faith substantial compliance with the material terms of this Agreement. Following consultation with the City Manager and the City's Public Works Director, if the Community Development Director concludes that Developer has not demonstrated good faith substantial compliance with the material terms of this Agreement, then he or she shall so notify Developer within 30 days after delivery of the additional information and prepare a report to the City Council with respect to the conclusions of the Community Development Director and the contentions of Developer with respect thereto.

9.4. City Council Hearing Regarding Non-Compliance. After submission of the staff report of the City's Community Development Director, the City Council shall conduct a noticed public hearing to consider the determination that Developer has not demonstrated good faith substantial compliance with the

material terms of this Agreement. At least ten (10) days prior to hearing, the Community Development Director shall provide to the City Council, Developer and to all interested persons requesting the same, copies of all staff reports and other information concerning Developer's good faith substantial compliance with the material terms of this Agreement and the conclusions and recommendations of the Community Development Director. At such hearing, Developer and any other interested person shall be entitled to submit evidence, orally or in writing, and address all the issues raised in the staff report on, or with respect or germane to, the issue of Developer's good faith substantial compliance with the material terms of this Agreement. If, after receipt of any written or oral response of Developer, and after considering all of the evidence at such public hearing, the City Council finds and determines, on the basis of substantial evidence, that Developer has not substantially complied in good faith with the material terms of this Agreement, then the City Council shall specify to Developer the respects in which Developer has failed to comply, and shall also specify a reasonable time for Developer to meet the terms of compliance, which time shall be not less than thirty (30) days after the date of the City Council's determination, and shall be reasonably related to the time necessary to adequately bring Developer's performance into good faith substantial compliance with the material terms of this Agreement.

If the areas of noncompliance specified by the City Council are not corrected within the time limits prescribed by the City Council hereunder, then the City Council may by subsequent noticed hearing extend the time for compliance for such period as the City Council may determine (with conditions, if the City Council deems appropriate), terminate, or modify this Agreement, or take such other actions as permitted under applicable law. Any notice to Developer of a determination of noncompliance by Developer hereunder, or of a failure by Developer to remedy the areas of noncompliance hereunder, shall specify in reasonable detail the grounds therefore and all facts demonstrating such noncompliance or failure, so that Developer may address the issues raised in the notice of noncompliance or failure on point-by-point basis in any hearing held by the City Council hereunder.

9.5. Meet and Confer Process. If either the City's Community Services Director or the City Council makes a determination that Developer has not demonstrated good faith substantial compliance with the material terms of this Agreement, then the City Manager and/or designated City Council representatives may initiate a meet and confer process with Developer pursuant to which the Parties shall meet and confer to determine a resolution acceptable to both Parties of the bases upon which the Community Services Director or City Council has determined that Developer has not demonstrated good faith substantial compliance with the material terms of this Agreement. The results and recommendations of the meet and confer process shall be presented to the City Council for review and consideration at its next regularly scheduled public meeting, including consideration of such amendments to this Agreement as may

be necessary or appropriate to effectuate the resolution through such meet and confer process, Developer shall be deemed to be in good faith substantial compliance with the material terms of this Agreement, only upon the City Council's acceptance of the results and recommendation of the meet and confer process.

9.6. Staff Reports. To the extent practical, the City shall deposit in the mail and fax or email to Developer a copy of all staff reports, and related exhibits concerning contract performance at least five (5) days prior to any annual review.

9.7. Costs. Costs reasonably incurred by the City in connection with the annual review shall be paid by Developer in accordance with the City's schedule of fees in effect at the time of review.

10. Default.

10.1. Other Remedies Available. Upon the occurrence of an event of default, the parties may pursue all other remedies at law or in equity that are not otherwise provided for in this Agreement or in the City's regulations governing development agreements, expressly including the remedy of specific performance of this Agreement.

10.2. Notice and Cure. Upon the occurrence of an event of default by either party, the nondefaulting party shall serve written notice of such default upon the defaulting party. If the default is not cured by the defaulting party within thirty (30) days after service of such notice of default, the nondefaulting party may then commence any legal or equitable action to enforce its rights under this Agreement; provided, however, that, if the default cannot be cured within such thirty (30) day period, the nondefaulting party shall refrain from any such legal or equitable action so long as the defaulting party begins to cure such default within such thirty (30) day period and diligently pursues such cure to completion. Failure to give notice shall not constitute a waiver of any default.

10.3. No Damages Against City. Notwithstanding anything to the contrary contained herein, in no event shall damages be awarded against the City upon an event of default or upon termination of this Agreement.

11. Estoppel Certificate.

Either party may, at any time, and from time to time, send written notice to the other party requesting such party to certify in writing that (a) this Agreement is in full force and effect and a binding obligation of the parties, (b) this Agreement has not been amended or modified either orally or in writing, or, if so amended, identifying the amendments, and (c) to the knowledge of the certifying party, the requesting party is not in default in the performance of its obligations under this Agreement, or, if in default, to describe therein the nature and amount

of any such defaults. A party receiving a request hereunder shall execute and return such certificate within thirty (30) days following the receipt thereof, or such longer period as may reasonably be agreed to by the parties. City Manager of the City shall be authorized to execute any certificate requested by Developer. Should the party receiving the request not execute and return such certificate within the applicable period, this shall not be deemed to be a default, provided that such party shall be deemed to have certified that the statements in clauses (a) through (c) of this Section are true, and any party may rely on such deemed certification.

12. Mortgagee Protection; Certain Rights of Cure.

12.1. Mortgagee Protection. This Agreement shall be superior and senior to any lien placed upon the Property, or any portion thereof after the date of recording this Agreement, including the lien for any deed of trust or mortgage ("**Mortgage**"). Notwithstanding the foregoing, no breach hereof shall defeat, render invalid, diminish, or impair the lien of any Mortgage made in good faith and for value, but all the terms and conditions contained in this Agreement shall be binding upon and effective against any person or entity, including any deed of trust beneficiary or mortgagee ("**Mortgagee**") who acquires title to the Property, or any portion thereof, by foreclosure, trustee's sale, deed in lieu of foreclosure, or otherwise.

12.2. Mortgagee Not Obligated. Notwithstanding the provisions of Section 12.1 above, no Mortgagee shall have any obligation or duty under this Agreement, before or after foreclosure or a deed in lieu of foreclosure, to construct or complete the construction of improvements, or to guarantee such construction of improvements, or to guarantee such construction or completion, or to pay, perform or provide any fee, dedication, improvements or other exaction or imposition; provided, however, that the Mortgagee shall not be entitled to devote the Property to any uses or to construct any improvements thereon other than those uses or improvements provided for or authorized by the Project Approvals or by this Agreement without new approvals by the City as may be required for such other uses or improvements.

12.3. Notice of Default to Mortgagee and Extension of Right to Cure. If the City receives notice from a Mortgagee requesting a copy of any notice of default given Developer hereunder and specifying the address for service thereof, then the City shall deliver to such Mortgagee, concurrently with service thereon to Developer, any notice given to Developer with respect to any claim by the City that Developer has committed an event of default. Each Mortgagee shall have the right during the same period available to Developer to cure or remedy, or to commence to cure or remedy, the event of default claimed set forth in the City's notice. The City, through its City Manager, may extend the thirty-day cure period provided in Paragraph 10.2 for not more than an additional sixty (60) days upon request of Developer or a Mortgagee.

13. Severability.

The unenforceability, invalidity, or illegality of any provision, covenant, condition, or term of this Agreement shall not render the other provisions unenforceable, invalid, or illegal.

14. Attorneys' Fees and Costs.

If the City or Developer initiates any action at law or in equity to enforce or interpret the terms and conditions of this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs in addition to any other relief to which it may otherwise be entitled. If any person or entity not a party to this Agreement initiates an action at law or in equity to challenge the validity of any provision of this Agreement or the Project Approvals, the parties shall cooperate in defending such action. Developer shall bear its own costs of defense as a real party in interest in any such action, and shall reimburse the City for all reasonable court costs and attorneys' fees expended by the City in defense of any such action or other proceeding.

15. Transfers and Assignments.

15.1. Right to Assign. Developer may wish to sell, transfer, or assign all or portions of its Property to another entity (each such other entity is referred to as a "Transferee"). In connection with any such sale, transfer, or assignment to a Transferee, Developer may sell, transfer, or assign to such Transferee any or all rights, interests, and obligations of Developer arising hereunder and that pertain to the portion of the Property being sold or transferred to such Transferee, provided, however, that no such transfer, sale, or assignment of Developer's rights, interests, and obligations hereunder shall occur without prior written notice to City and approval by the City Manager, which approval shall not be unreasonably withheld, conditioned or delayed.

15.2. Approval and Notice of Sale, Transfer or Assignment. The City Manager shall consider and decide on any transfer, sale, or assignment within ten (10) days after Developer's notice, provided all necessary documents, certifications, and other information are provided to the City Manager to enable the City Manager to determine whether the proposed Transferee can perform the Developer's obligations hereunder. Notice of any such approved sale, transfer, or assignment (which includes a description of all rights, interests and obligations that have been transferred and those which have been retained by Developer) shall be recorded in the official records of Contra Costa County, in a form acceptable to the City Manager, concurrently with such sale, transfer, or assignment.

15.3. Release Upon Transfer. Upon the transfer, sale, or assignment of all of Developer's rights, interests, and obligations hereunder pursuant to Paragraph 15.1 of this Agreement, Developer shall be released from the obligations under this Agreement, with respect to the Property transferred, sold, or assigned, arising subsequent to the date of City Manager approval of such transfer, sale, or assignment; provided, however, that if any Transferee approved by the City Manager expressly assumes all of the rights, interests, and obligations of Developer under this Agreement, Developer shall be released with respect to all such rights, interests, and assumed obligations. In any event, the transferee, purchaser, or assignee shall be subject to all the provisions hereof and shall provide all necessary documents, certifications, and other necessary information prior to City Manager approval.

15.4. Developer's Right to Retain Specified Rights or Obligations. Notwithstanding Paragraphs 15.1 and 15.2 and Paragraph 16, Developer may withhold from a sale, transfer, or assignment of this Agreement certain rights, interests, and/or obligations, which Developer shall retain, provided that Developer specifies such rights, interests, and/or obligations in a written document to be appended to this Agreement and recorded with the Contra Costa County Recorder prior to the sale, transfer, or assignment of the Property. Developer's Transferee shall then have no interest or obligations for such rights, interests and obligations, and this Agreement shall remain applicable to Developer with respect to such retained rights, interests, and/or obligations.

16. Agreements Run With the Land

All of the provisions, rights, terms, covenants, and obligations contained in this Agreement shall be binding upon the parties and their respective heirs, successors and assigns, representatives, lessees, and all other persons acquiring the Property, or any portion thereof, or any interest therein, whether by operation of law or in any manner whatsoever. All of the provisions of this Agreement shall be enforceable as equitable servitudes and shall constitute covenants running with the land pursuant to applicable laws, including, but not limited to, Section 1468 of the Civil Code of the State of California. Each covenant to do, or refrain from doing, some act on the Property hereunder, or with respect to any owned property (a) is for the benefit of such properties and is a burden upon such properties, (b) runs with such properties, and (c) is binding upon each party and each successive owner during its ownership of such properties or any portion thereof, and shall be a benefit to and a burden upon each party and its property hereunder and each other person succeeding to an interest in such properties.

17. Bankruptcy.

The obligations of this Agreement shall not be dischargeable in bankruptcy.

18. Indemnification.

Developer agrees to indemnify, defend and hold harmless the City, and its elected and appointed councils, boards, commissions, officers, agents, employees, and representatives from any and all claims, costs (including legal fees and costs) and liability for any personal injury or property damage which may arise directly or indirectly as a result of any actions or inactions by the Developer, or any actions or inactions of Developer's contractors, subcontractors, agents, or employees in connection with the construction, improvement, operation, or maintenance of the Project, provided that Developer shall have no indemnification obligation with respect to negligence or wrongful conduct of the City, its contractors, subcontractors, agents or employees or with respect to the maintenance, use or condition of any improvement after the time it has been dedicated to and accepted by the City or another public entity (except as provided in an improvement agreement or maintenance bond). If City is named as a party to any legal action, City shall cooperate with Developer, shall appear in such action and shall not unreasonably withhold approval of a settlement otherwise acceptable to Developer.

19. Insurance.

19.1. Public Liability and Property Damage Insurance. During the term of this Agreement, whenever Developer is conducting work on the Property pursuant to the Project Approvals, Developer shall maintain in effect a policy of comprehensive general liability insurance with a per-occurrence combined single limit of not less than One Million Dollars (\$1,000,000.00) with a One Hundred Thousand Dollar (\$100,000) self-insurance retention per claim. The policy so maintained by Developer shall name the City as an additional insured and shall include either a severability of interest clause or cross-liability endorsement.

19.2. Workers Compensation Insurance. During the term of this Agreement, whenever Developer is conducting work on the Property pursuant to the Project Approvals, Developer shall maintain Worker's Compensation insurance for all persons employed by Developer for work at the Project site. Developer shall require each contractor and subcontractor similarly to provide Worker's Compensation insurance for its respective employees. Developer agrees to indemnify the City for any damage resulting from Developer's failure to maintain any such insurance.

19.3. Evidence of Insurance. Prior to issuance of any permits for the Project, including grading permits, Developer shall furnish the City satisfactory

evidence of the insurance required in Sections 19.1 and 19.2 and evidence that the carrier is required to give the City at least fifteen (15) days prior written notice of the cancellation or reduction in coverage of a policy. The insurance shall extend to the City, its elective and appointive boards, commissions, officers, agents, employees, and representatives and to Developer performing work on the Project.

20. Notices.

All notices required or provided for under this Agreement shall be in writing. Notices required to be given to the City shall be addressed as follows:

City Manager
City of El Cerrito
10890 San Pablo Ave.
El Cerrito, CA 94530
Fax: (510) 864-7025
Email: sch@ci.el-cerrito.ca.us

Notices required to be given to Developer shall be addressed as follows:

The Edward and Loretta Biggs Revocable Trust dated March 22, 2011
4271 Valley Lane
Fairfield, CA 94534
Fax: (707) 864-8150

A party may change its address by giving notice in writing to the other party. Thereafter, all notices shall be addressed and transmitted to the new address. Notices shall be deemed given and received upon personal delivery, or, if mailed, upon the expiration of 48 hours after being deposited in the United States Mail. Notices may also be given by overnight courier which shall be deemed given the following day, or by facsimile, which shall be deemed given upon verification of receipt if received before 5:00 p.m. on a regular business day or else on the next business day. The City will accept notice by email transmission, which shall be deemed given upon verification of receipt if received before 5:00 p.m. on a regular business day or else on the next business day. Developer may accept notice by email by providing notice to the City consistent with this section.

21. Agreement is Entire Understanding.

This Agreement constitutes the entire understanding and agreement of the parties.

22. Exhibits.

The following documents are referred to in this Agreement and are attached hereto and incorporated herein as though set forth in full:

Exhibit A Legal Description of Property

23. Counterparts.

This Agreement is executed in three (3) duplicate originals, each of which is deemed to be an original.

24. Recordation.

The City shall record a copy of this Agreement within ten (10) days following the Effective Date.

[Execution Page Follows]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date and year first above written.

CITY OF EL CERRITO

DEVELOPER

The Edward and Loretta Biggs Revocable
Trust dated March 22, 2011

Scott Hanin, City Manager

By: _____

Its: Trustee

Attest:

Cheryl Morse, City Clerk

Approved as to Form:

Sky Woodruff, City Attorney

(NOTARIZATION ATTACHED)

Exhibit A

Legal Description of the Property

The land referred to is situated in the State of California, County of Contra Costa, City of El Cerrito, and is described as follows:

Lots 12, 13 and 14, in Block "B" as designated on the map entitled "Map of Schmidt Village, Contra Costa County, California", filed June 27, 1896, in Book C of Maps, Page 70, Contra Costa County Records.

EXCEPTING THEREFROM: The Northeast 7.00 feet thereof, as described in the Deed to City of El Cerrito, recorded February 9, 1965, in Book 4801 Official Records of Contra Costa County, Page 144.

(Being APN 502-112-038)

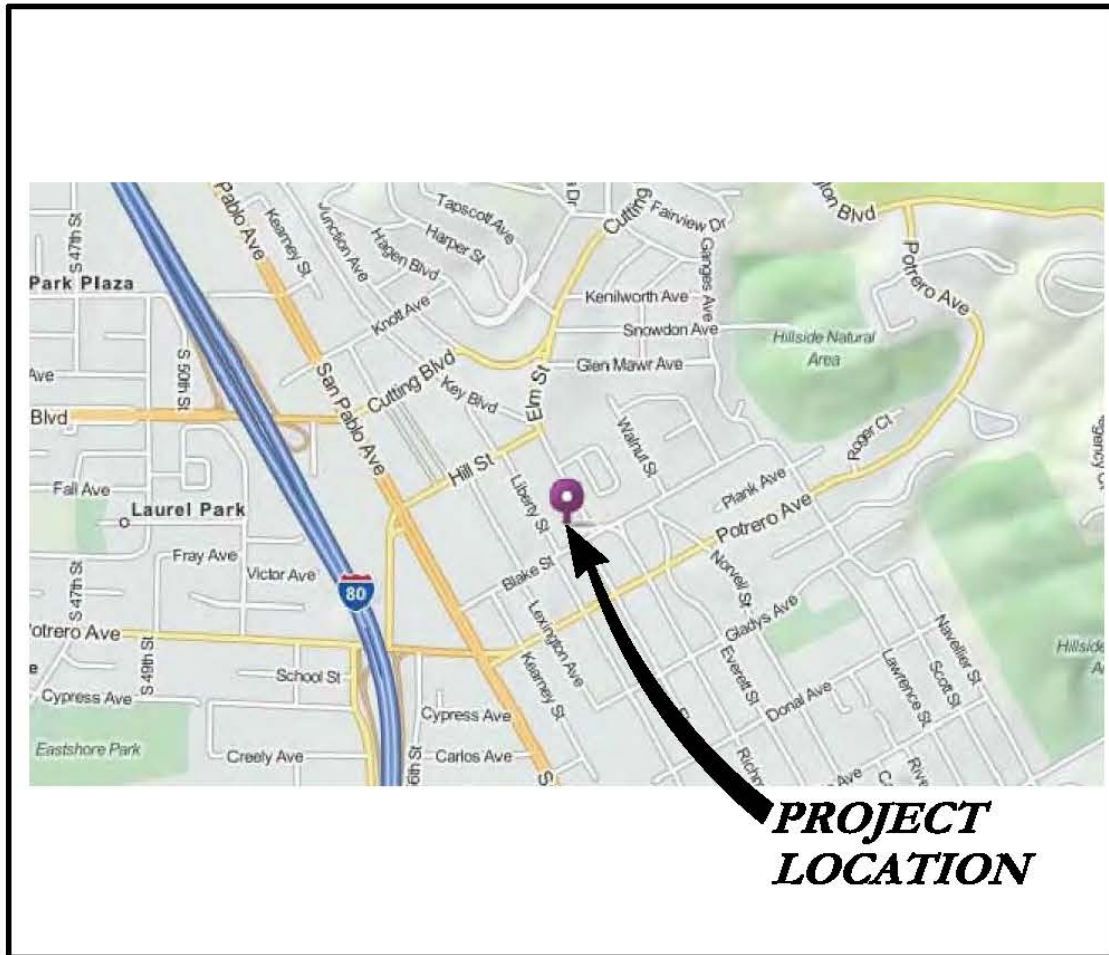


1715 Elm Street

EL CERRITO, CALIFORNIA

VICINITY MAP

NOT TO SCALE



PROJECT TEAM

APPLICANT:	ED BIGGS 4271 VALLEY LANE FAIRFIELD, CA 94534 PH. 707.718.6798
ARCHITECT:	LCA ARCHITECTS, INC. 245 YGNACIO VALLEY ROAD, STE. 200 WALNUT CREEK, CA 94596-4025 PH. 925.944.1626 CONTACT: PETER STACKPOLE
CIVIL:	KISTER, SAVIO & REI, INC. 825 SAN PABLO AVENUE PINOLE, CA 94564 PH. 510.222.4020 CONTACT: MATT REI
LANDSCAPE:	CAMP & CAMP ASSOCIATES 35 QUAIL COURT, SUITE 200 WALNUT CREEK, CA 94597 PH. 925.941.6490 CONTACT: TERRY CAMP

SHEET INDEX

A1	COVER SHEET
A2	CONCEPTUAL SITE PLAN
A3	CONCEPTUAL FIRST FLOOR PLAN
A4	CONCEPTUAL SECOND FLOOR PLAN
A5	CONCEPTUAL THIRD FLOOR PLAN
A6	CONCEPTUAL UNIT PLANS
A7	CONCEPTUAL ROOF PLAN
A8	CONCEPTUAL ELEVATIONS
A9	CONCEPTUAL ELEVATIONS
A10	EXISTING HOUSE ELEVATIONS
A11	CONCEPTUAL SECTIONS
A12	EXISTING SITE PHOTOS
--	BOUNDARY AND TOPOGRAPHIC SURVEY
--	PRELIMINARY CIVIL SITE PLAN
L1	CONCEPTUAL LANDSCAPE PLAN (REVISED 10/15/13)
L2	PROJECT IMAGES

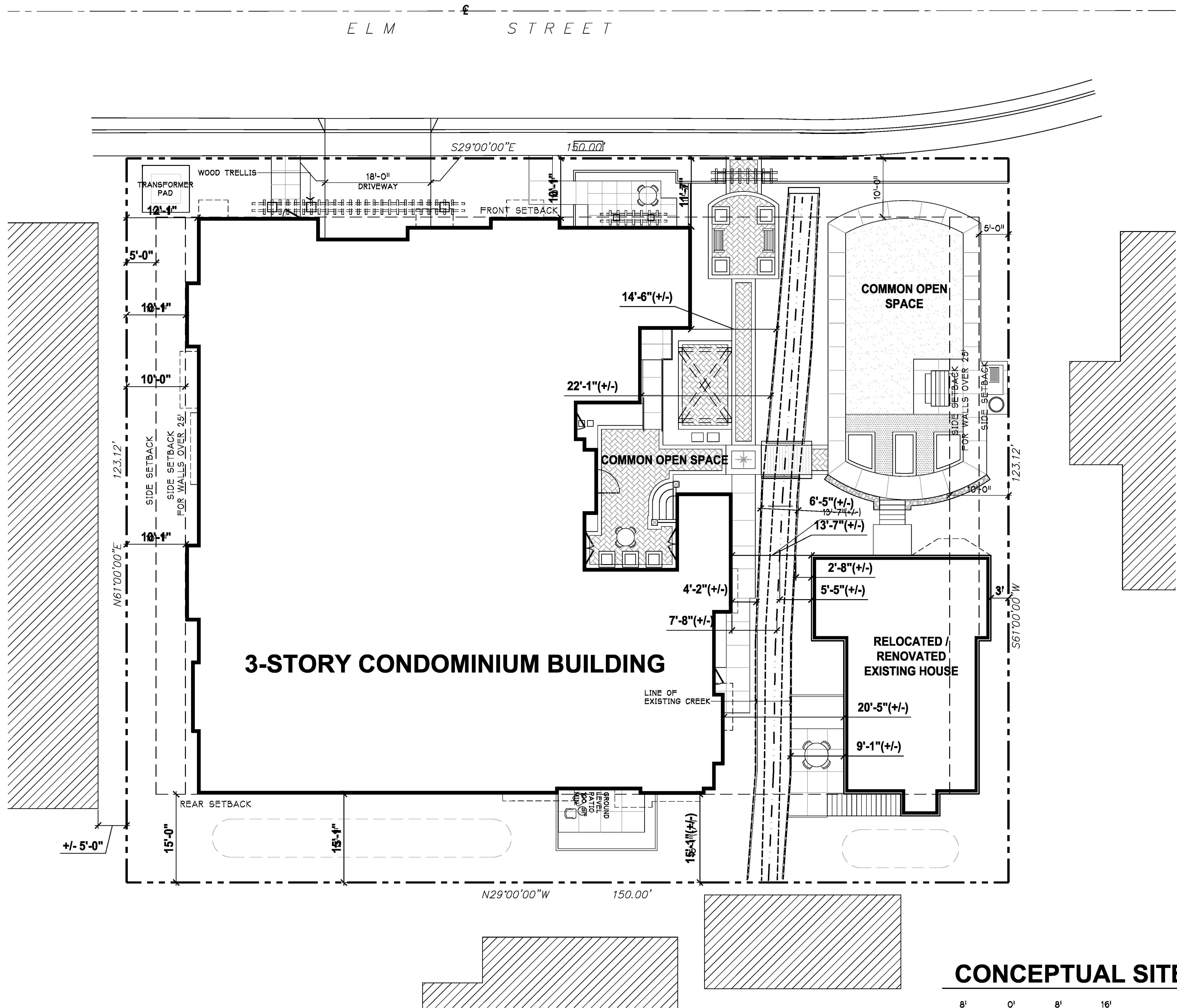
PROJECT DATA

ADDRESS:		1715 ELM STREET	SUMMARY - RESIDENTIAL UNITS	
APN:	502-112-038		TOTAL UNIT COUNT:	15 UNITS
ZONING DESIGNATION:	RM (MULTI-FAMILY RESIDENTIAL)		DENSITY (UNITS PER ACRE):	35.7 PER ACRE±
GENERAL PLAN DESIGNATION:		HIGH DENSITY RESIDENTIAL	UNIT COUNT BY TYPE:	
TOTAL LOT AREA:	.42 ACRES± (18,465 SF±)		EXISTING HOUSE TO BE RELOCATED:	1 UNIT
LOT COVERAGE:	48.5%±		1 BEDROOM UNIT COUNT:	3 UNITS
LANDSCAPE AREA:	9,279 SF/18,465 SF	50.2%±	2 BEDROOM UNIT COUNT:	11 UNITS
PRIVATE OPEN SPACE				
PRIVATE OPEN SPACE REQUIRED (100 SF/GROUND LEVEL UNIT, 50 SF/UPPER LEVEL UNITS)		900 SF	AVERAGE GROSS UNIT AREA BY TYPE:	
PRIVATE OPEN SPACE PROVIDED		1,548 SF±	EXISTING HOUSE TO BE RELOCATED:	ESTIMATE: 1,065 SF±
			1 BEDROOM UNIT:	869 SF±
			2 BEDROOM UNIT:	1,064 SF±
COMMON OPEN SPACE				
COMMON SPACE REQUIRED (150 SF/UNIT MINUS 648 SF PRIVATE OPEN SPACE ABOVE REQUIRED)		1,602 SF±	PARKING REQUIRED (BART PROXIMATE UNITS)	
COMMON OPEN SPACE PROVIDED		2,892 SF±	EXISTING HOUSE (1.5 PER UNIT):	2 SPACES
			1 BEDROOM UNITS (.75 PER UNIT):	2 SPACES
			2 BEDROOM UNITS (1.5 PER UNIT):	17 SPACES
			TOTAL PARKING REQUIRED - BART PROXIMATE: 21 SPACES	
			TOTAL PARKING PROVIDED:	15 SPACES
			ACCESSIBLE PARKING REQUIRED (2% MINIMUM):	1 SPACE
			TOTAL ACCESSIBLE PARKING PROVIDED:	1 SPACE

LCA ARCHITECTS
RESTRICTED ARCHITECTURAL DRAWINGS
THE INFORMATION, PLANS, DESIGNS, NOTES AND ARRANGEMENTS SHOWN ON THIS DRAWING ARE CONFIDENTIAL AND MAY NOT BE REPRODUCED IN WHOLE OR IN PART WITHOUT THE EXPRESSED WRITTEN PERMISSION OF LCA ARCHITECTS. DRAWINGS NOTED AS PRELIMINARY, SCHEMATIC AND/OR CONCEPT CONTAIN INFORMATION THAT IS CONCEPTUAL AND SUBJECT TO VERIFICATION AND/OR CHANGE. THE ARCHITECT MAKES NO CLAIM FOR ACCURACY OF CONCEPTUAL INFORMATION OR OF INFORMATION SUPPLIED BY OTHERS.

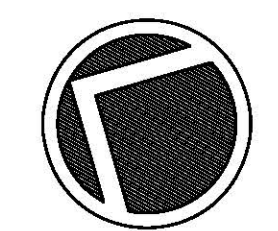
COVER PAGE

SCALE:	
DATE:	2-15-13
REVISIONS:	
	3/22/13
	8/23/13
	9/12/13
	1/20/14
PROJECT NO.	12048
A-1	
SHEET	OF



CONCEPTUAL SITE PLAN

8' 0' 8' 16'
SCALE: 1/8" = 1'-0"



PROJECT
NORTH



ELM STREET CONDOMINIUMS
EDDIE BIGGS DEVELOPMENT
EL CERRITO, CALIFORNIA

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CONCEPTUAL SITE PLAN

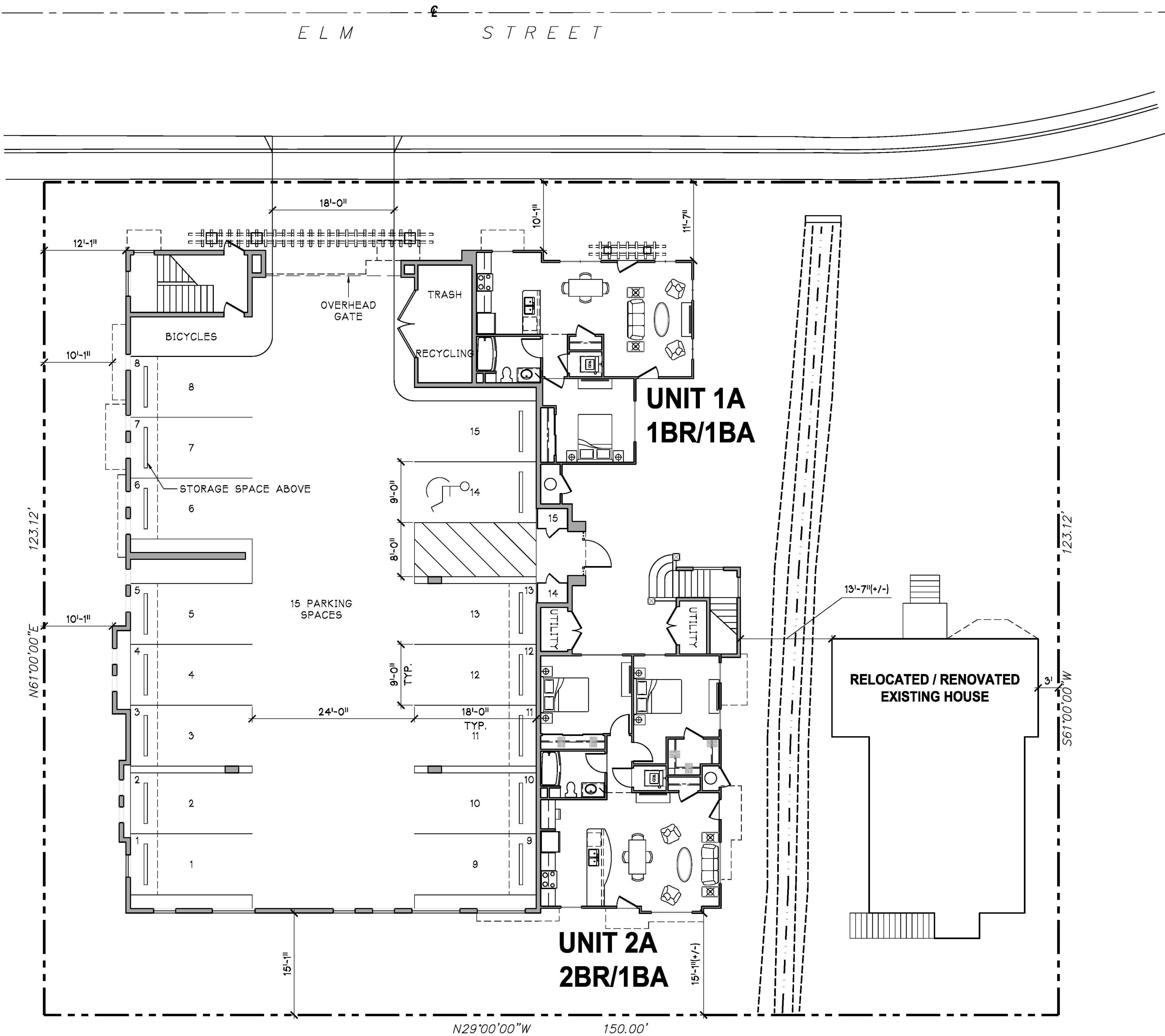
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DATE: 2-15-13

REVISIONS:
3/22/13
8/23/13
9/12/13
1/20/14

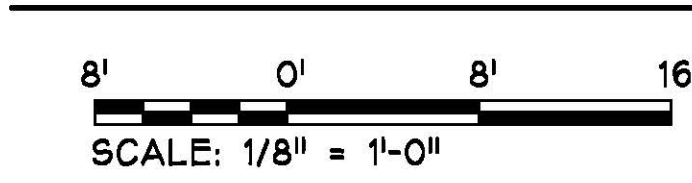
PROJECT NO. 12048

A-2
SHEET OF

CARLE CAMPOS | DAVID BOGSTAD | PETER STACKPOLE
245 YGNACIO VALLEY ROAD, WALNUT CREEK, CALIFORNIA 94596
(925) 944-1626 | (925) 944-1686 FAX | WWW.LCA-ARCHITECTS.COM



CONCEPTUAL FLOOR 1 - GROUND LEVEL PLAN





ELM STREET CONDOMINIUMS
EDDIE BIGGS DEVELOPMENT
EL CERRITO, CALIFORNIA

LCA ARCHITECTS

RESTRICTED ARCHITECTURAL DRAWINGS

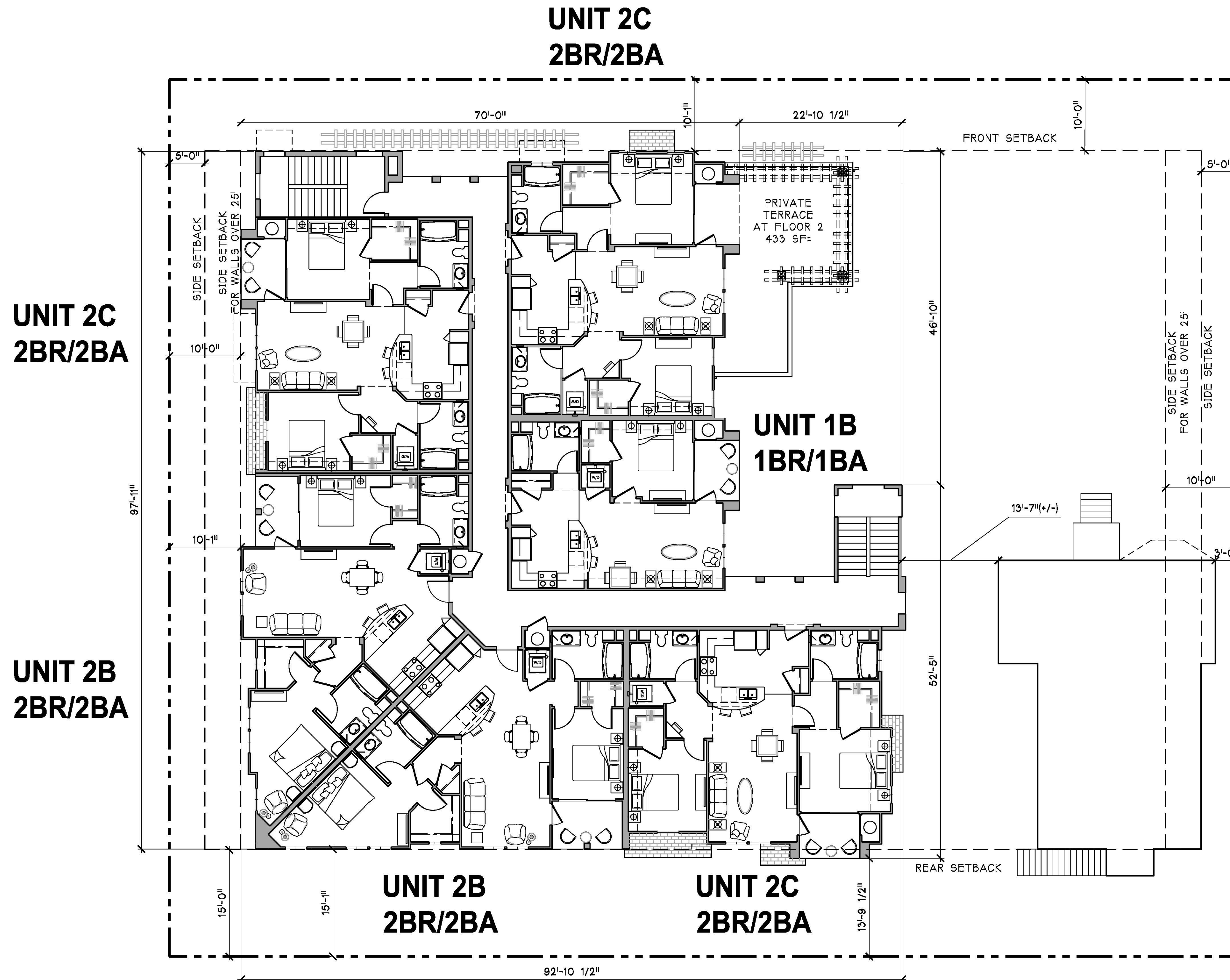
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CONCEPTUAL FLOOR 1 PLAN
 SCALE: AS SHOWN
 DATE: 2-15-13

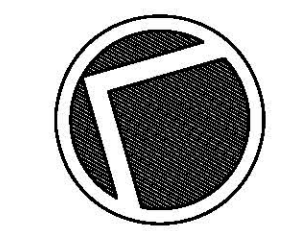
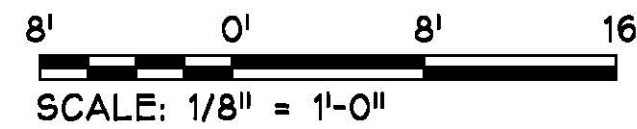
REVISIONS:	
3/22/13	
8/23/13	
9/12/13	
1/20/14	

PROJECT NO. 12048
A-3
 SHEET OF

CARLE CAMPOS | DAVID EGGSTAD | PETER STACKPOLE
 245 YGNACIO VALLEY ROAD, WALNUT CREEK, CALIFORNIA 94596
 (925) 944-1826 | (925) 944-1886 FAX | WWW.LCA-ARCHITECTS.COM



CONCEPTUAL FLOOR 2



PROJECT
NORTH

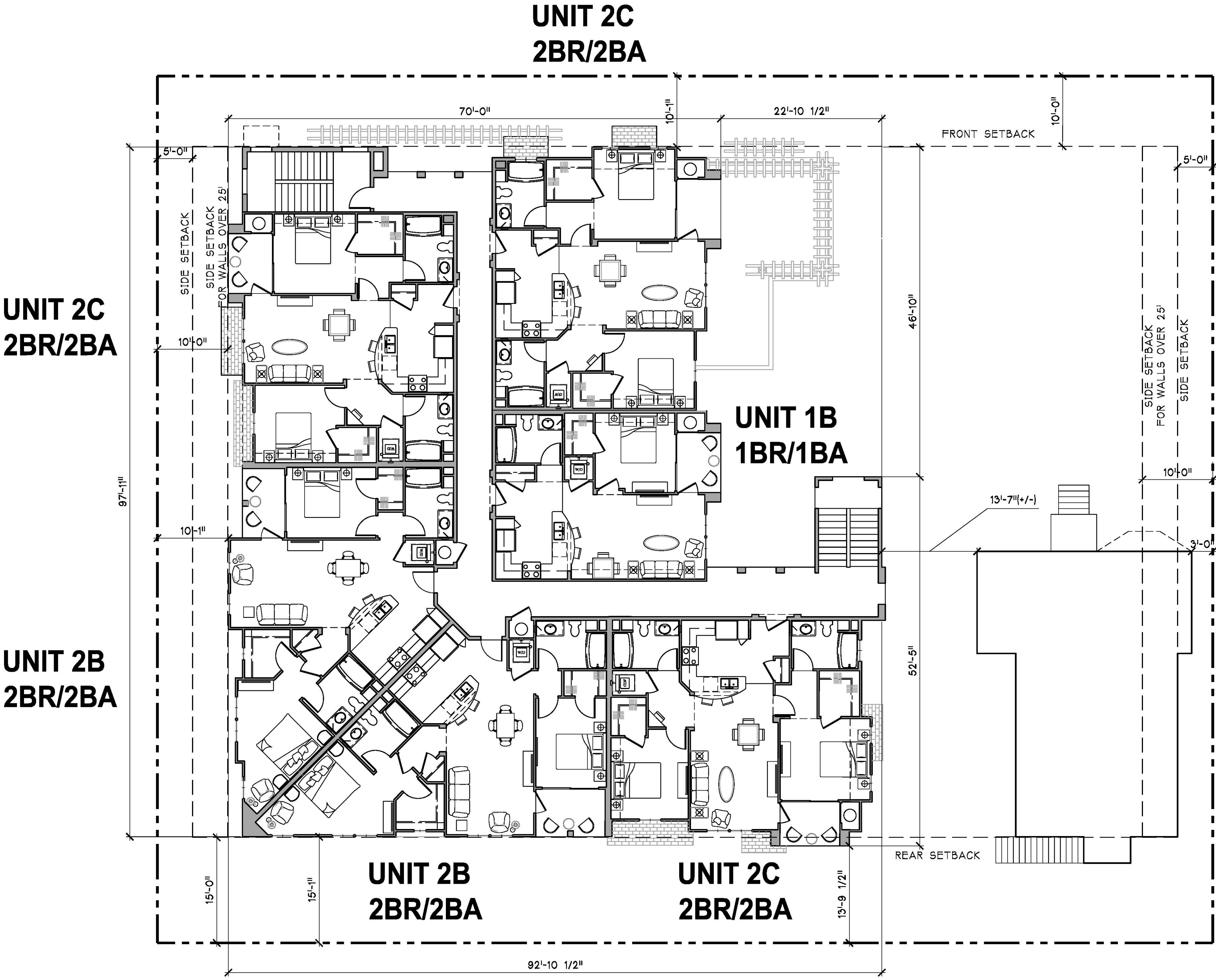
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OR OF INFORMATION SUPPLIED BY OTHERS.

CONCEPTUAL
FLOOR 2
PLAN

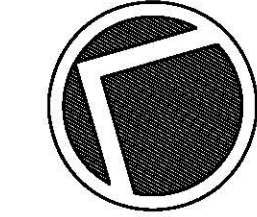
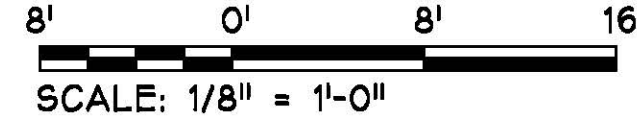
SCALE: AS SHOWN
DATE: 2-15-13

REVISIONS:	
3/22/13	
8/23/13	
9/12/13	
1/20/14	

PROJECT NO. 12048



CONCEPTUAL FLOOR 3



PROJECT
NORTH

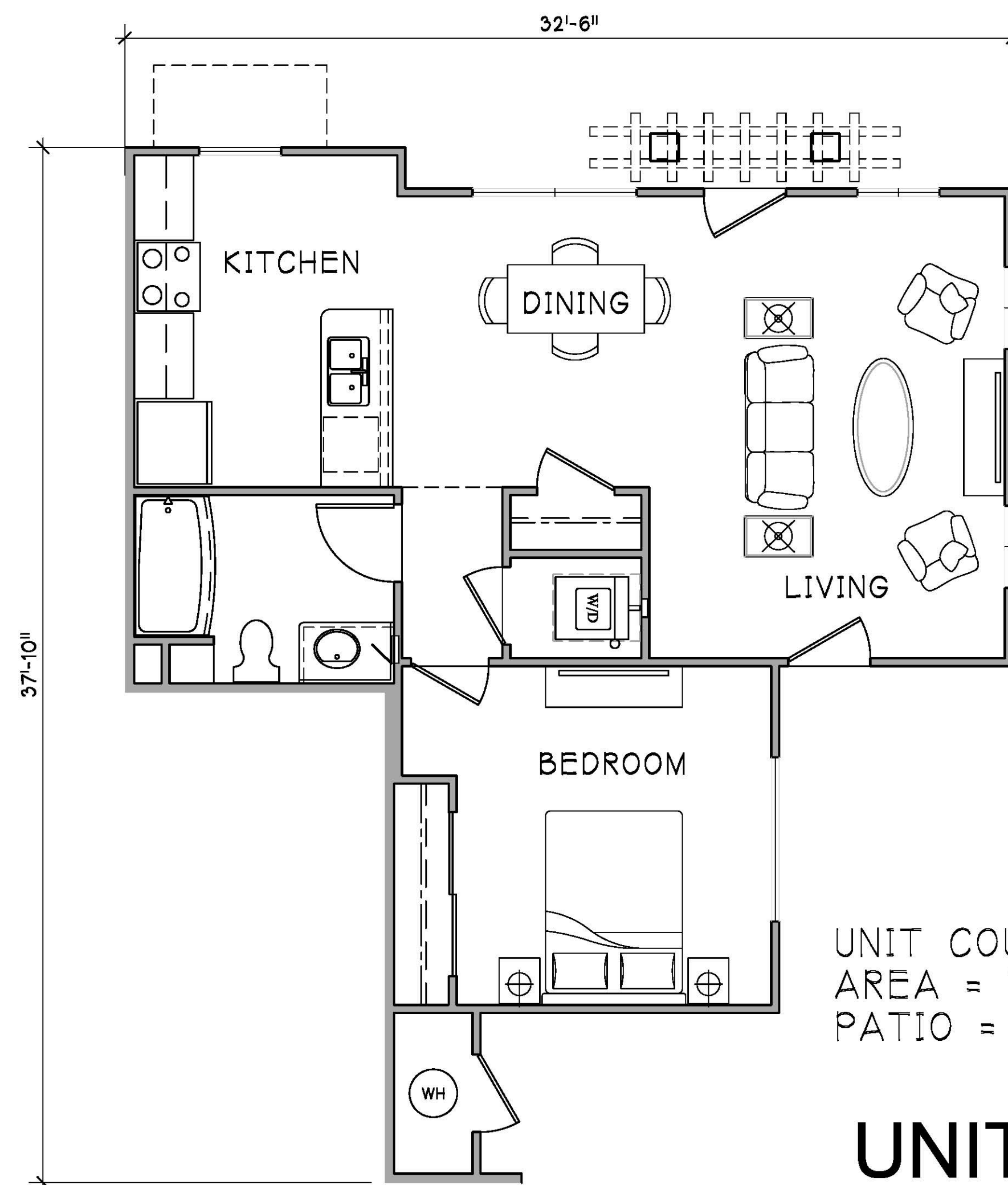
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AND/OR CHANGE. THE ARCHITECT MAKES NO CLAIM
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OR OF INFORMATION SUPPLIED BY OTHERS.

CONCEPTUAL
FLOOR 3
PLAN

SCALE: AS SHOWN
DATE: 2-15-13

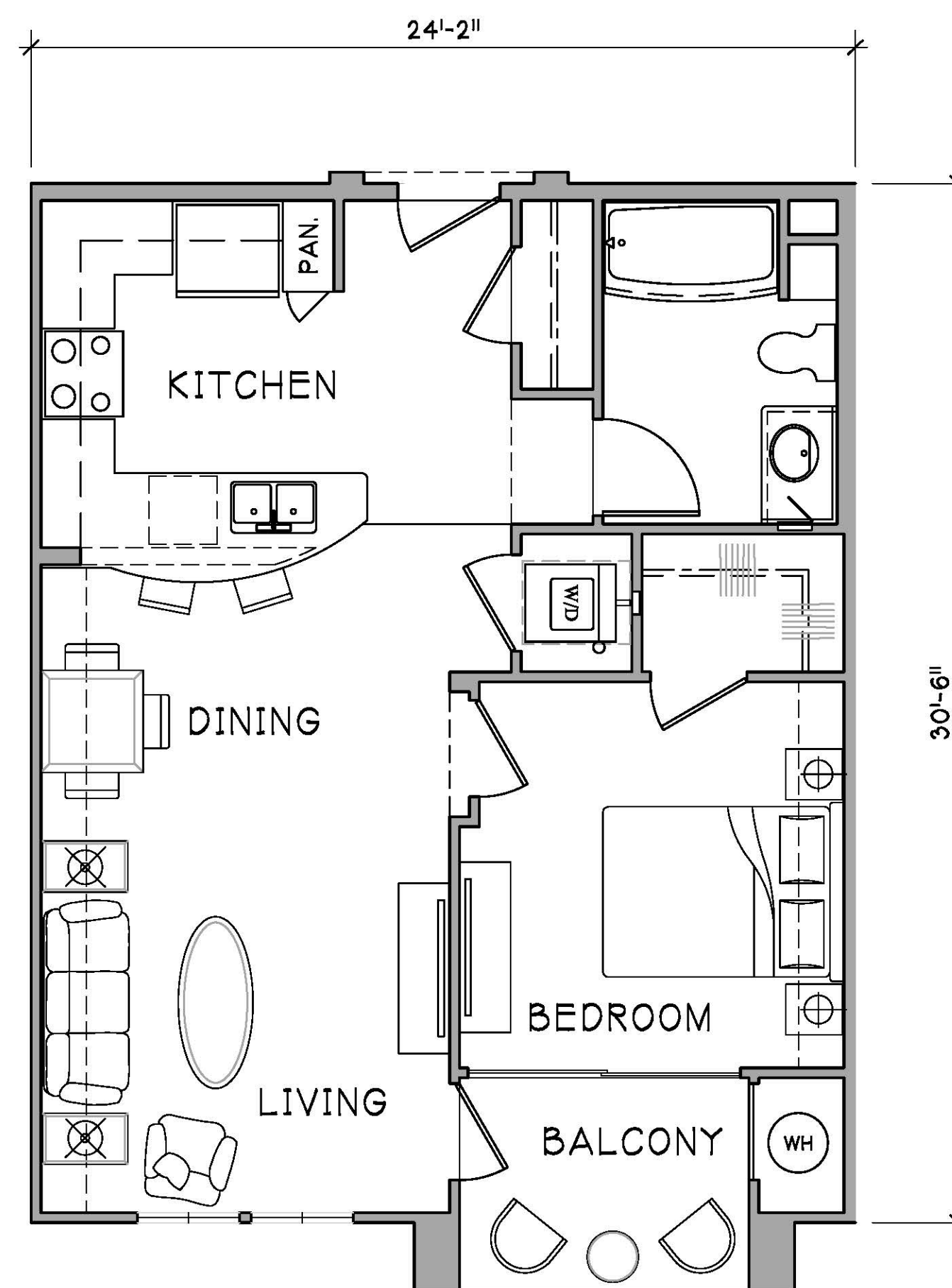
REVISIONS:	
3/22/13	
8/23/13	
9/12/13	
1/20/14	

PROJECT NO. 12048



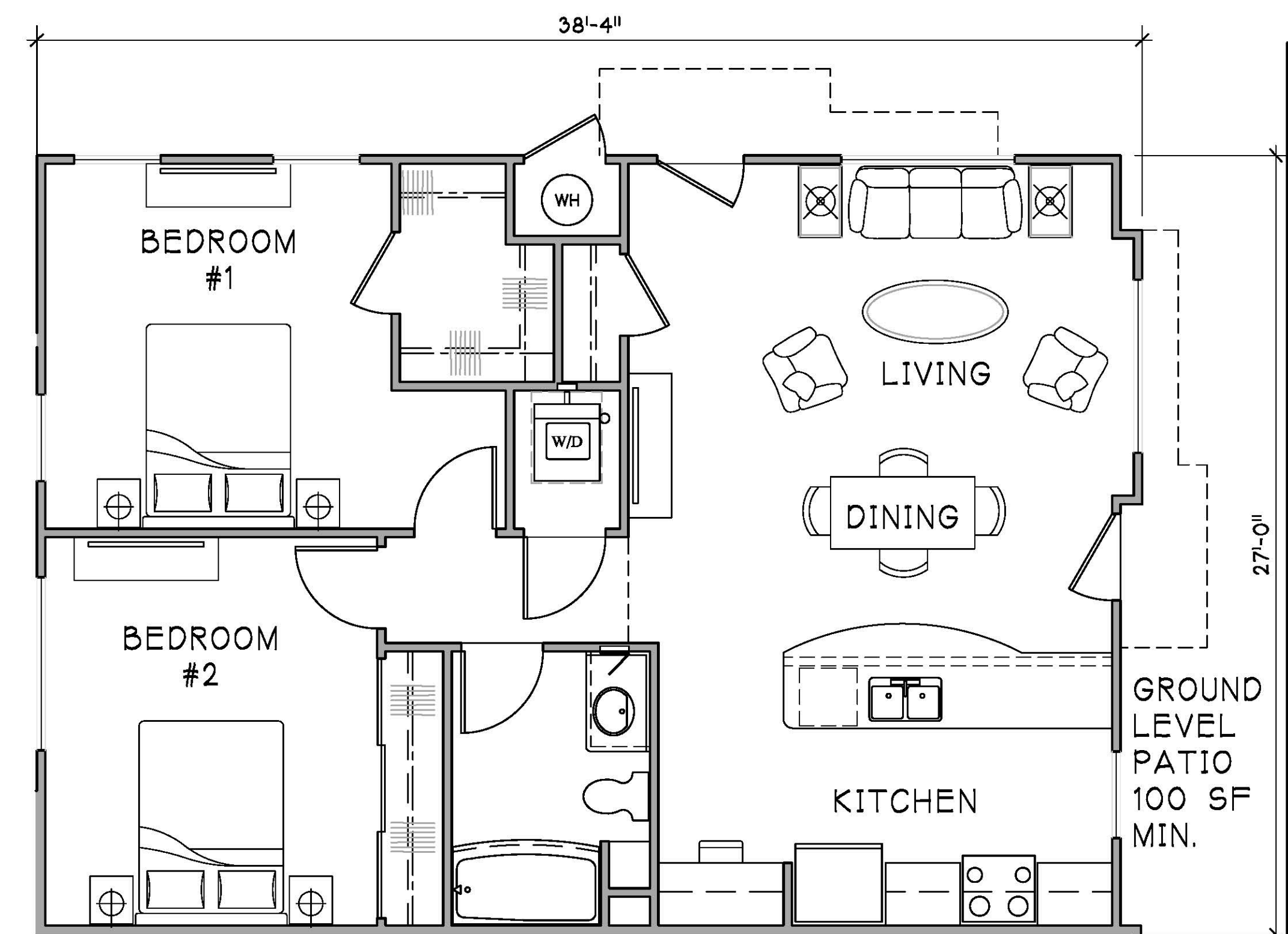
UNIT COUNT = 1 UNIT
AREA = 795 SQ.FT.
PATIO = 172 SQ.FT.

UNIT 1A
1 BR / 1 BATH



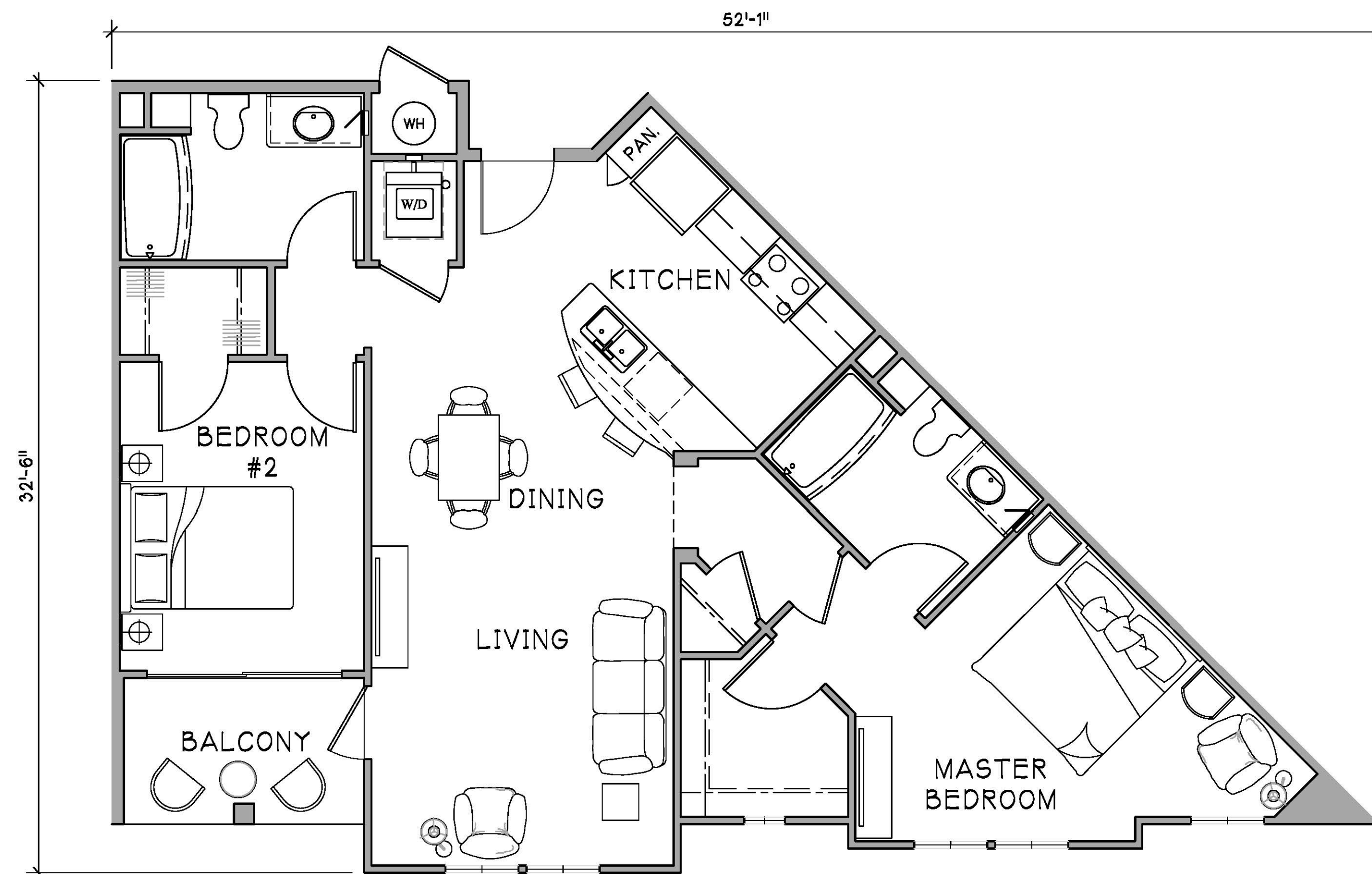
UNIT COUNT = 2 UNITS
AREA = 708 SQ.FT.
DECK = 53 SQ.FT.

UNIT 1B
1 BR / 1 BATH



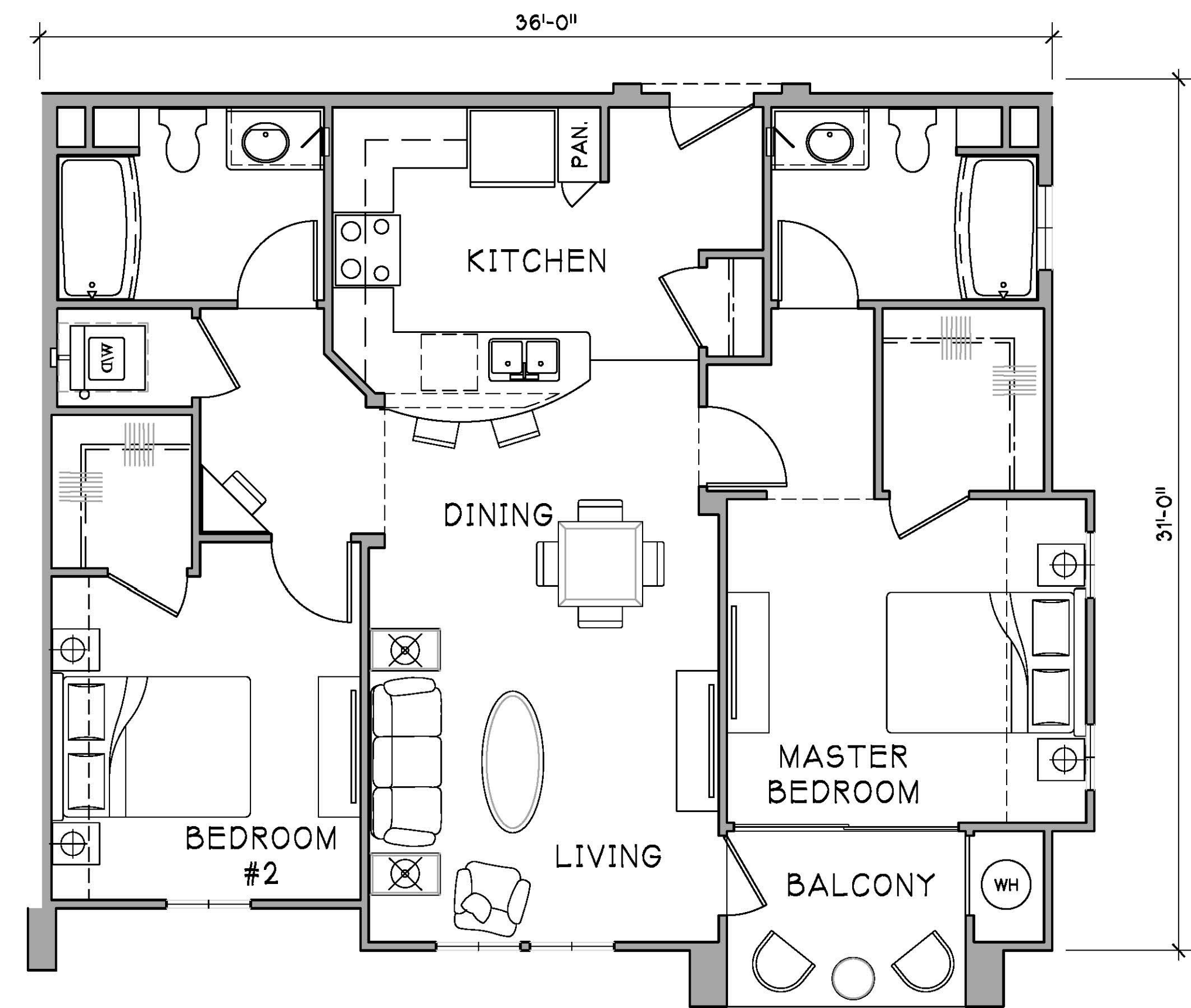
UNIT COUNT = 1 UNIT
AREA = 1,014 SQ.FT.
PATIO = 164 SQ.FT.

UNIT 2A
2 BR / 1 BATH



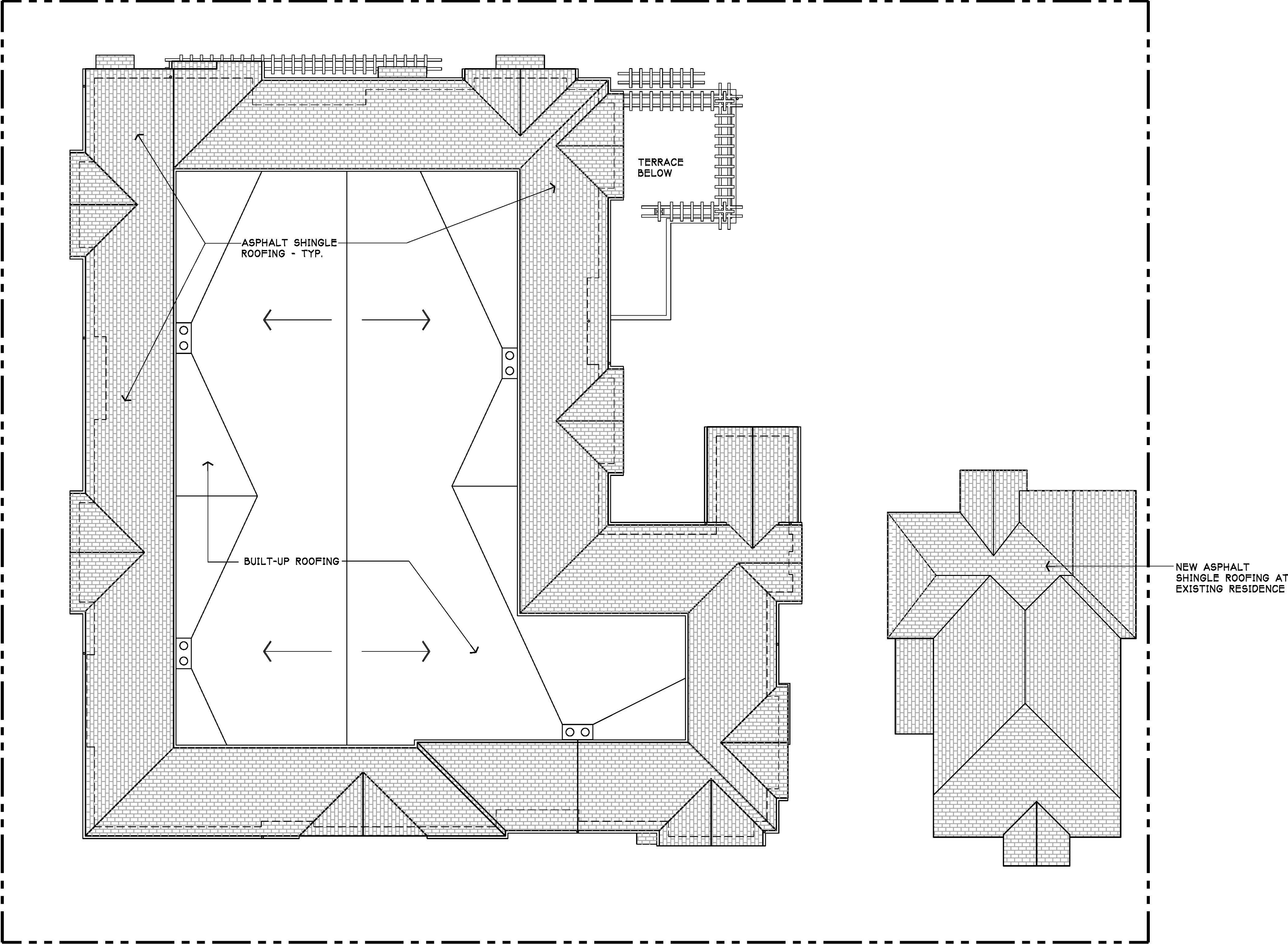
UNIT COUNT = 4 UNITS
AREA = 1,085 SQ.FT.
DECK = 59 SQ.FT.

UNIT 2B
2 BR / 2 BATH

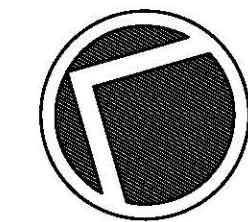
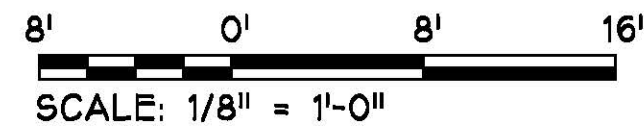


UNIT COUNT = 6 UNITS
AREA = 1,070 SQ.FT.
DECK = 53 SQ.FT.

UNIT 2C
2 BR / 2 BATH



CONCEPTUAL ROOF PLAN



PROJECT
NORTH

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SCALE:
DATE: 2-15-13

REVISIONS:
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8/23/13
9/12/13
1/20/14

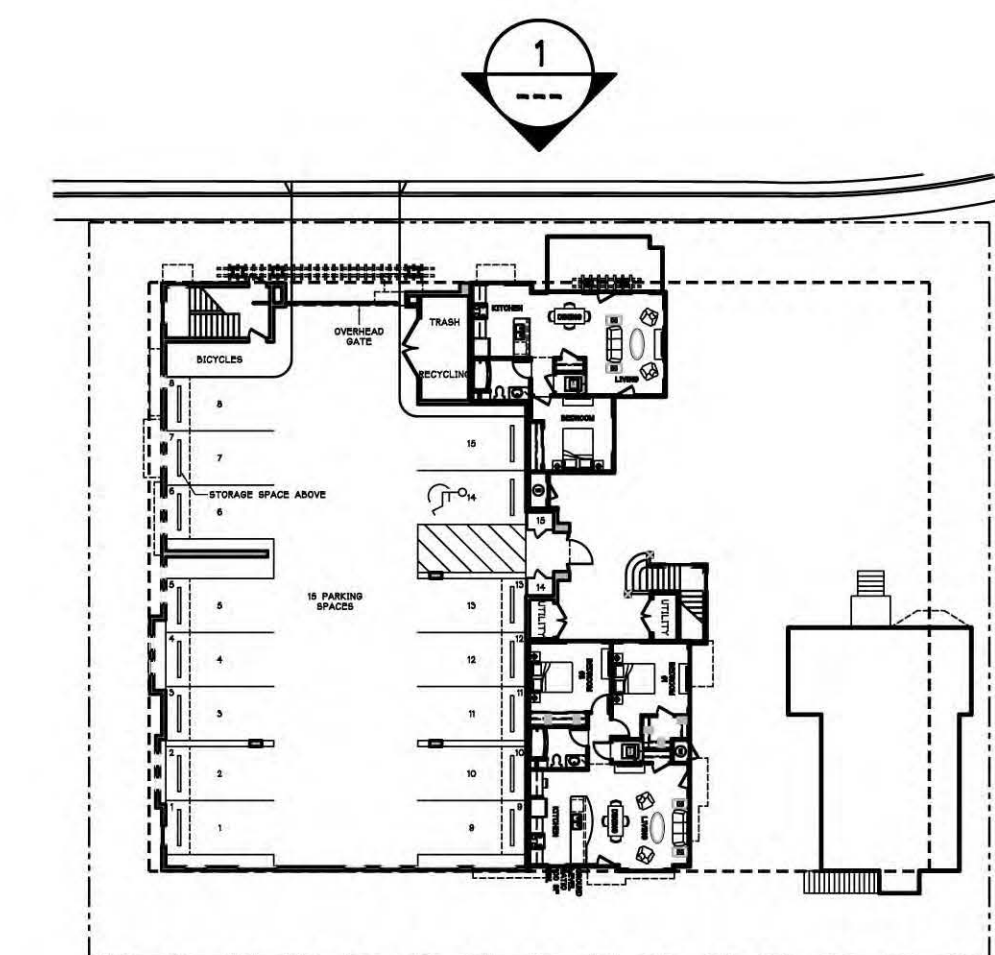
PROJECT NO. 12048



CONCEPTUAL ELEVATIONS

8' 0' 8' 16'

SCALE: 1/8" = 1'-0"



KEY PLAN



PROJECT
NORTH

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CONCEPTUAL ELEVATIONS

SCALE: AS SHOWN
DATE: 2-15-13

REVISIONS:

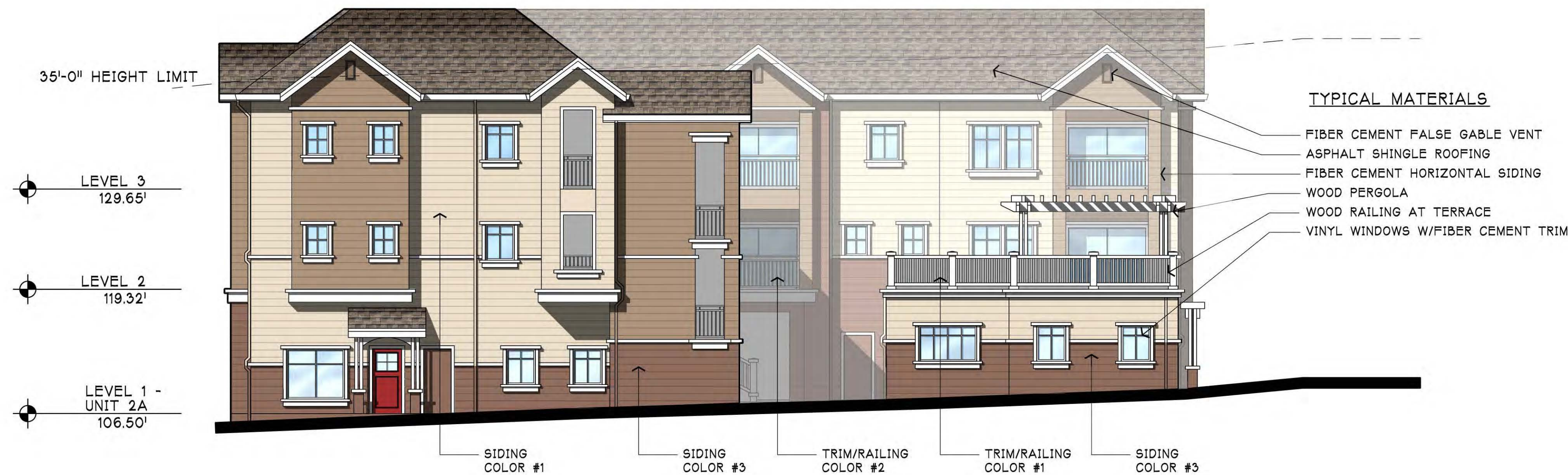
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9/12/13
10/15/13

PROJECT NO. 12048

A-8
SHEET OF

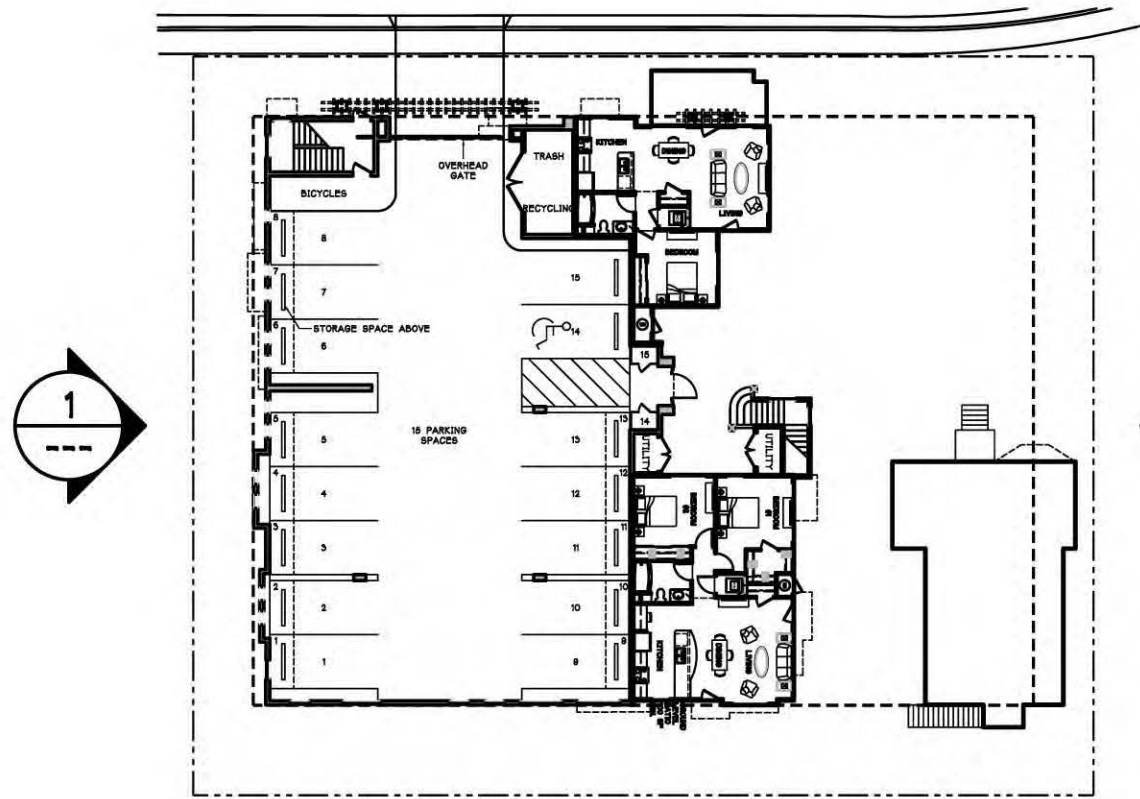
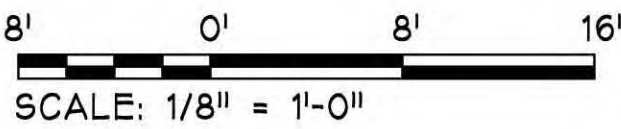


1. SOUTH ELEVATION



2. NORTH ELEVATION

CONCEPTUAL ELEVATIONS



KEY PLAN



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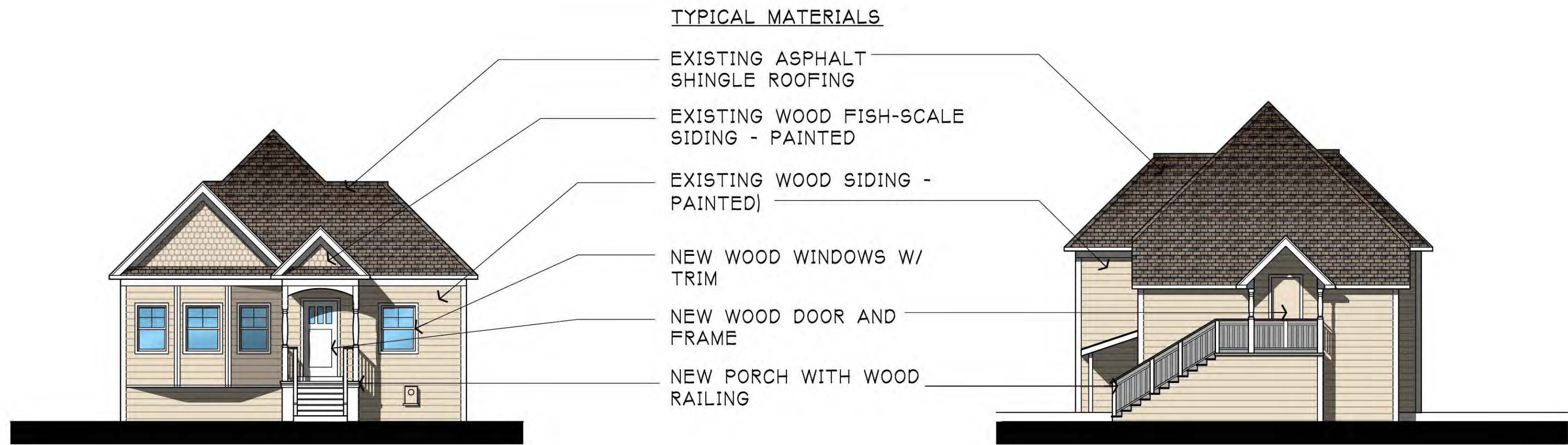
CONCEPTUAL ELEVATIONS

SCALE: AS SHOWN
DATE: 2-15-13

REVISIONS:

3/22/13
8/23/13
9/12/13
10/15/13

PROJECT NO. 12048



1. EAST ELEVATION

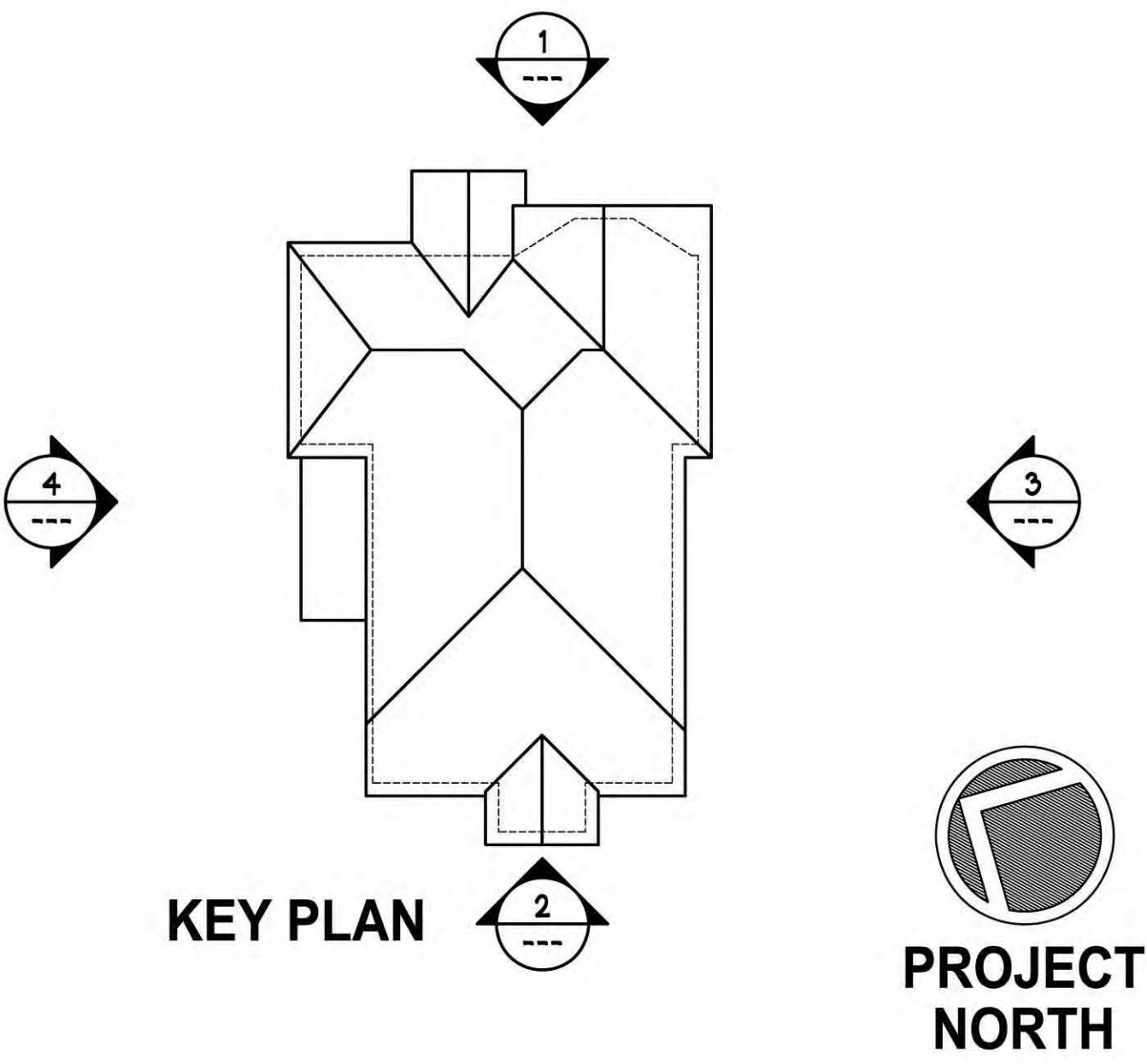
2. WEST ELEVATION



3. SOUTH ELEVATION



4. NORTH ELEVATION

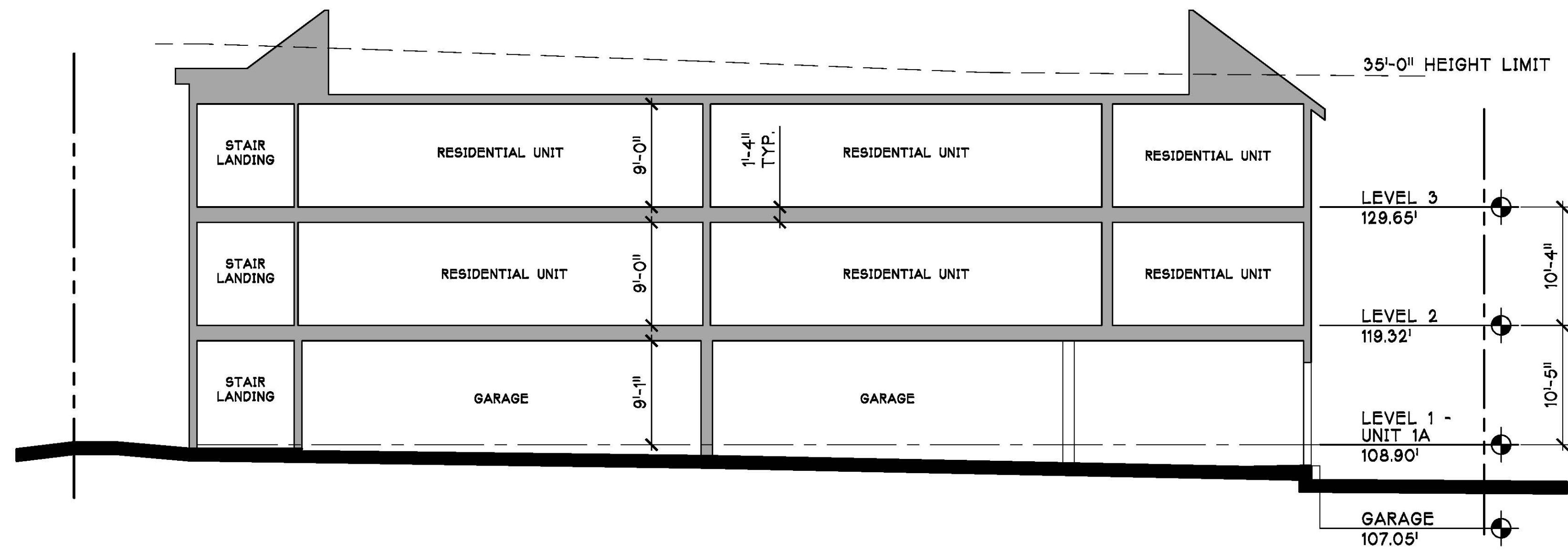


EXISTING HOUSE ELEVATIONS

8' 0' 8' 16'
SCALE: 1/8" = 1'-0"

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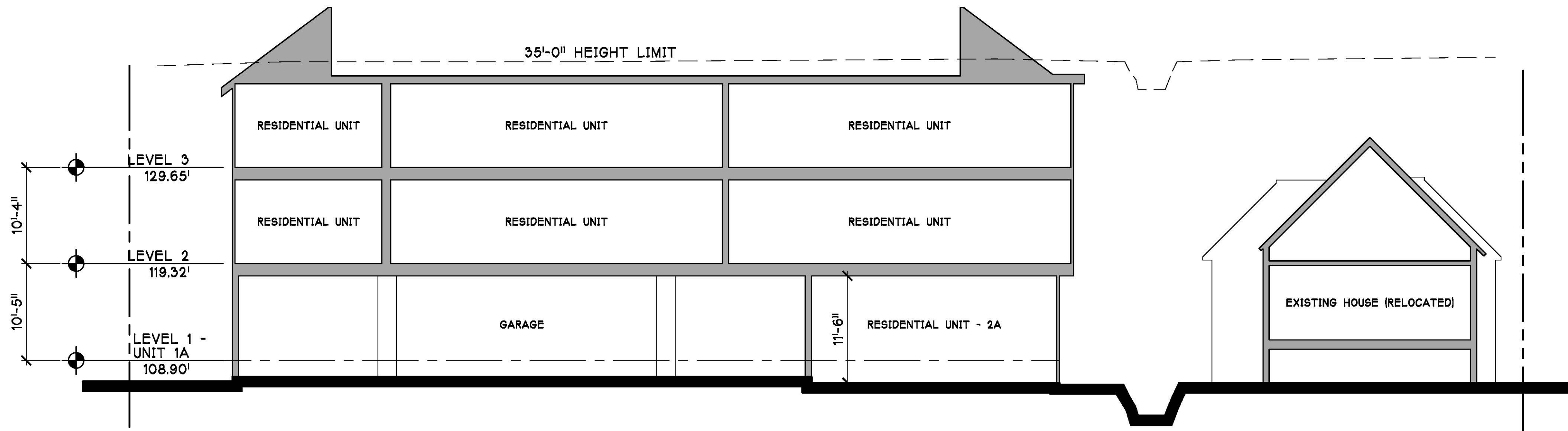
SCALE:	
DATE:	2-15-13
REVISIONS:	
	3/22/13
	8/23/13
PROJECT NO.	12048
A-10	
SHEET	OF



A CONCEPTUAL SECTION

8' 0' 8' 16'

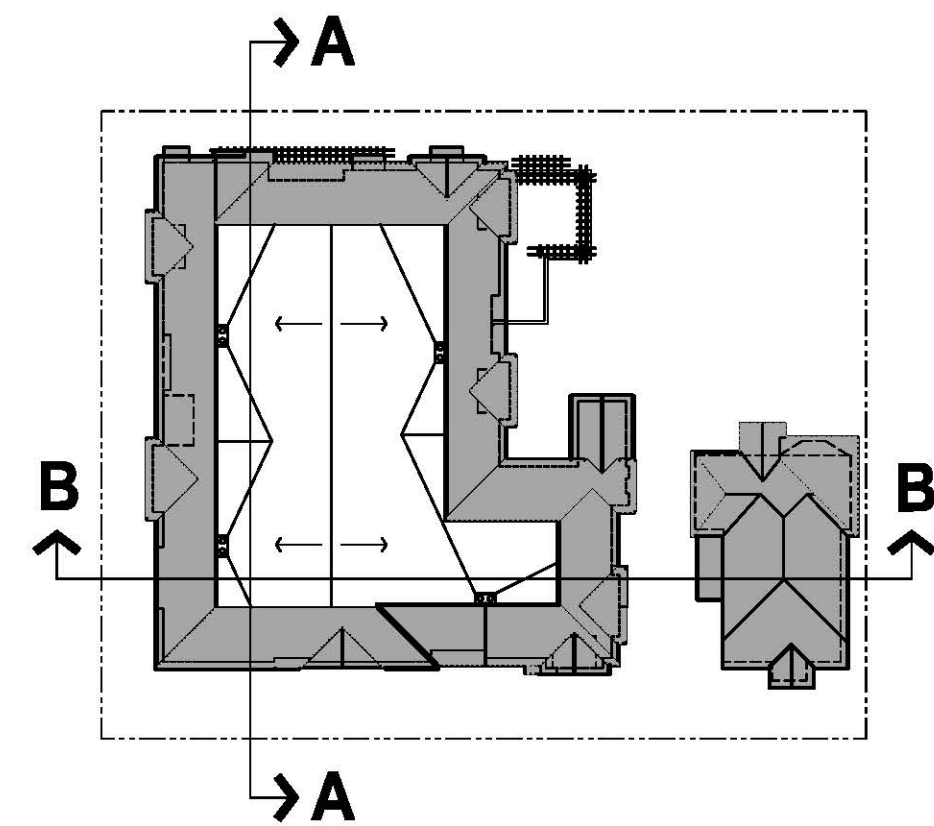
SCALE: 1/8" = 1'-0"



B CONCEPTUAL SECTION

8' 0' 8' 16'

SCALE: 1/8" = 1'-0"



KEY PLAN





AERIAL VIEW



VIEWS OF EXISTING HOUSE FROM ELM ST.

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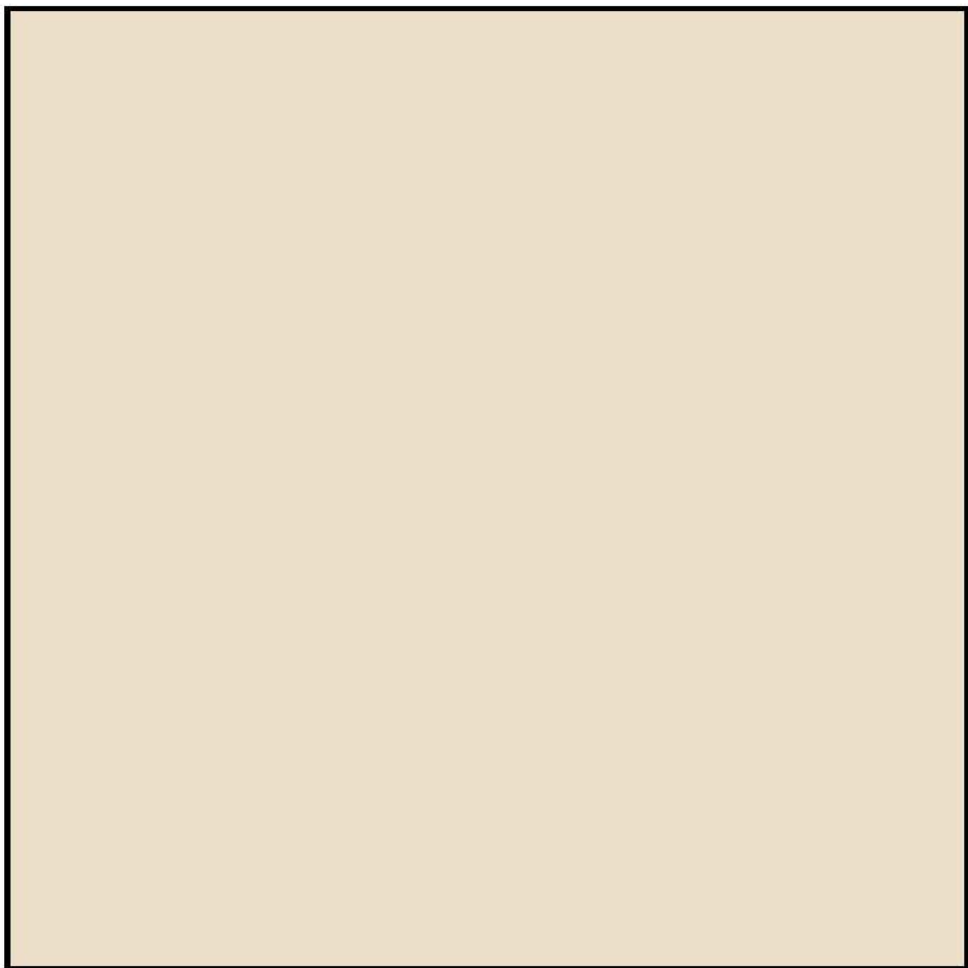
**EXISTING
SITE PHOTOS**

SCALE:	
DATE:	2-15-13
REVISIONS:	
	3/22/13
	8/23/13
	9/12/13
	1/20/14

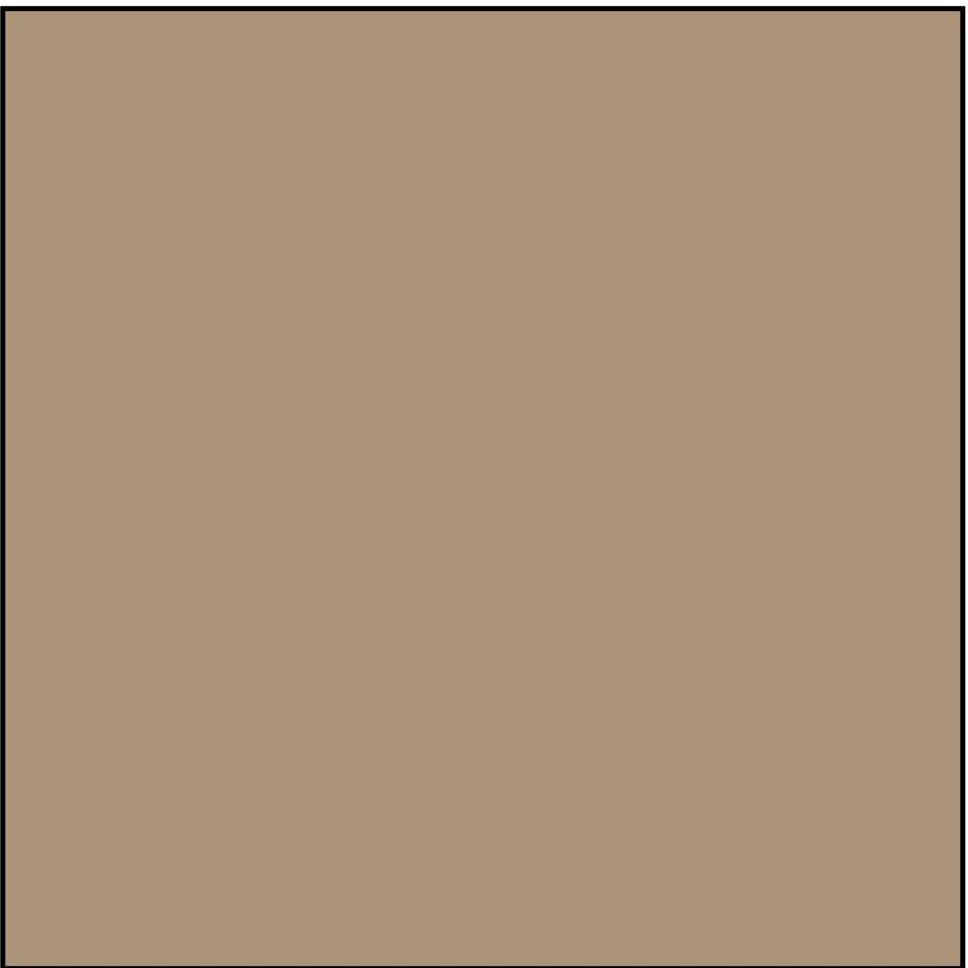
CONCEPTUAL BUILDING COLORS AND MATERIALS



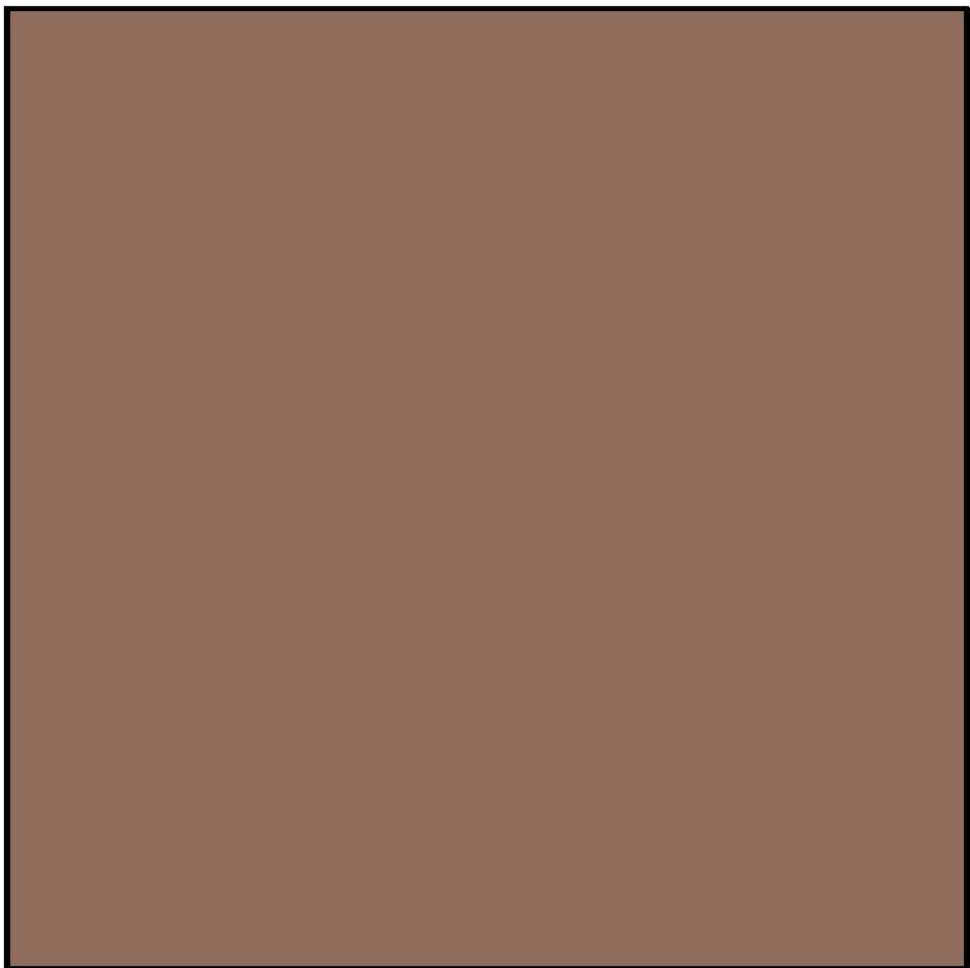
ASPHALT SHINGLE ROOFING
MANUF : TIMBERLINE HD
COLOR: BARKWOOD



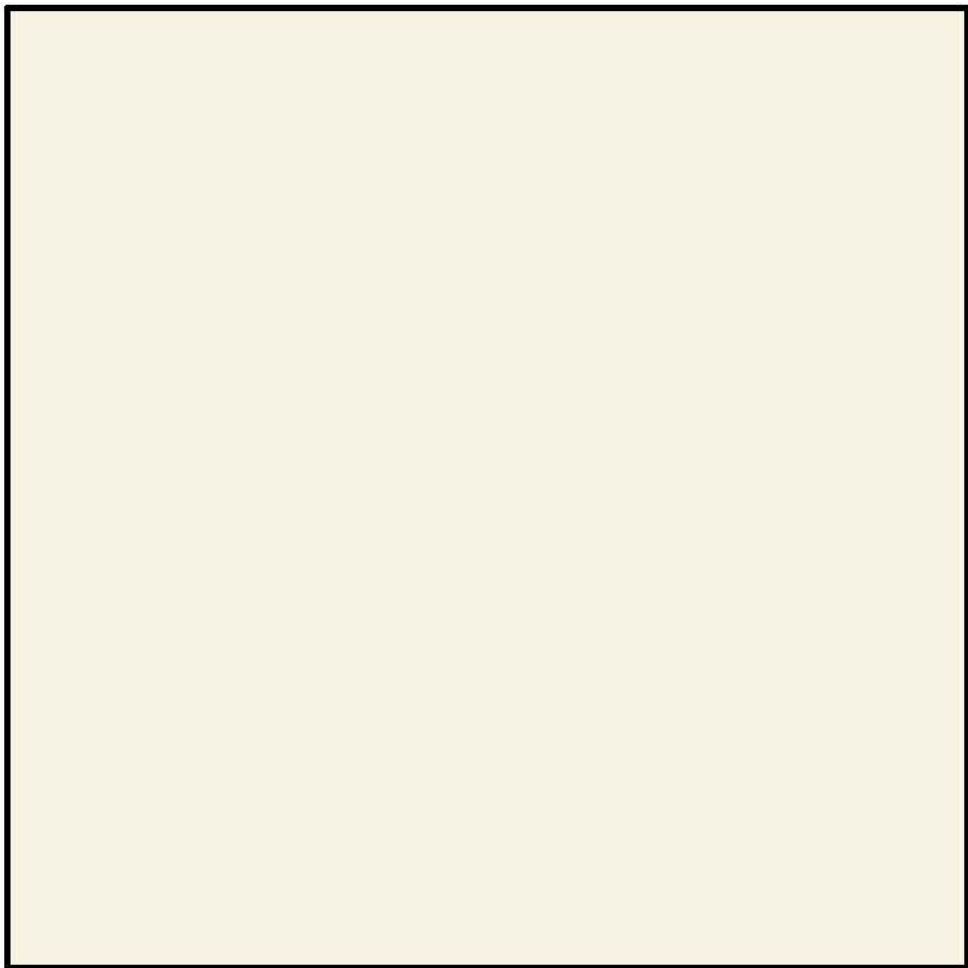
SIDING COLOR #1
MANUF: KELLY MOORE
COLOR: MAYBECK MUSLIN HLS4254-1



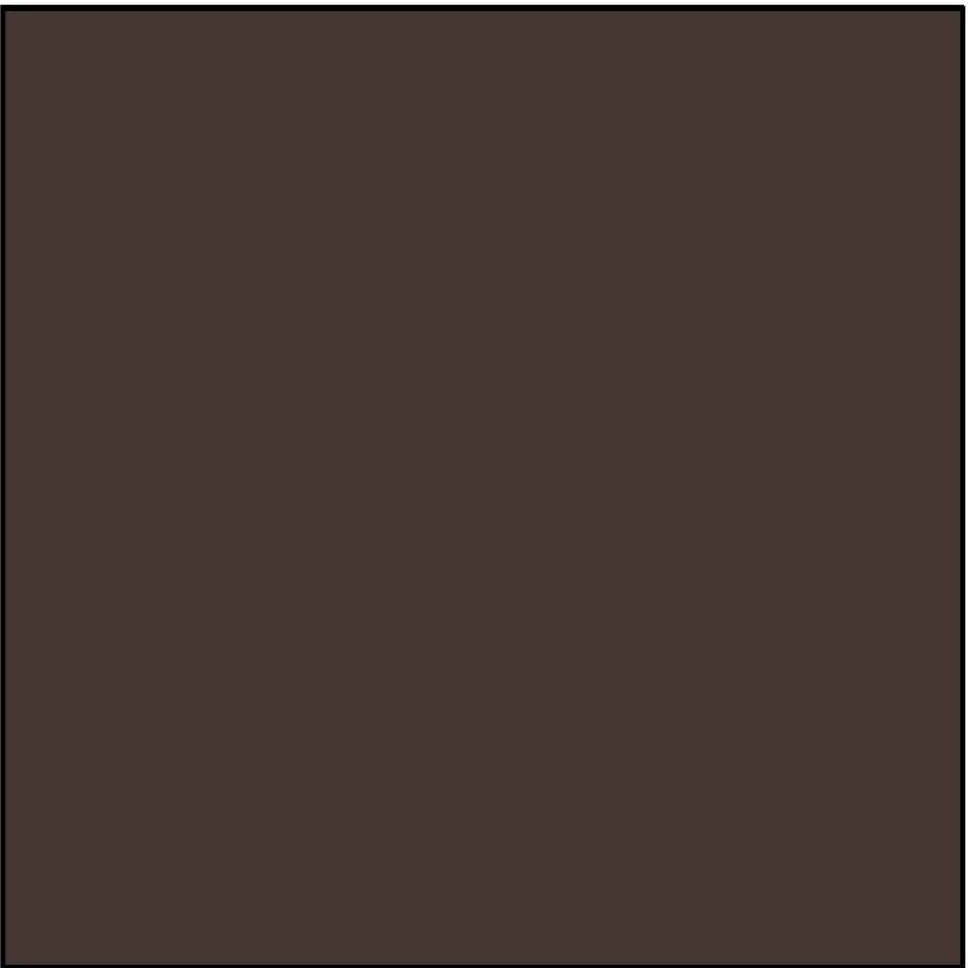
SIDING COLOR #2
MANUF: KELLY MOORE
COLOR: BUNGALOW BROWN HLS4213-3



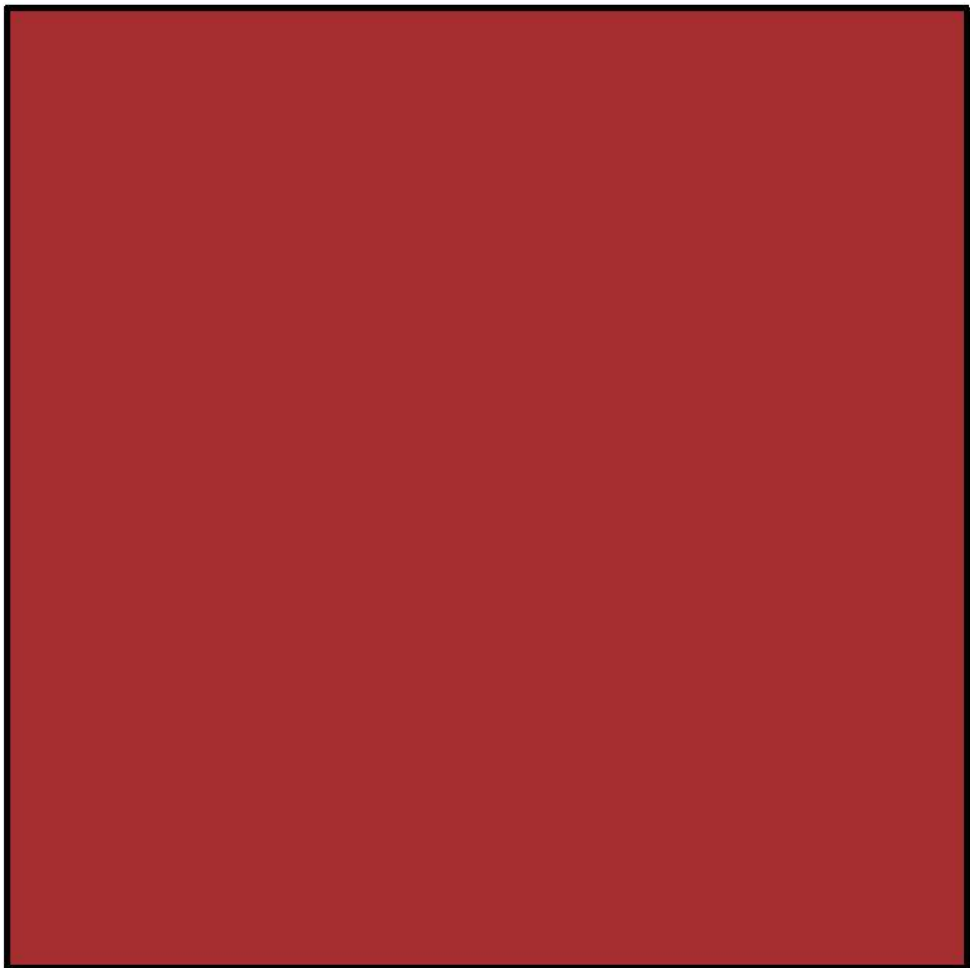
SIDING COLOR #3
MANUF: KELLY MOORE
COLOR: WILD CATTAIL KM4518-3



TRIM/RAILING COLOR #1
MANUF: KELLY MOORE
COLOR: DAISY WHITE HLS4295-1

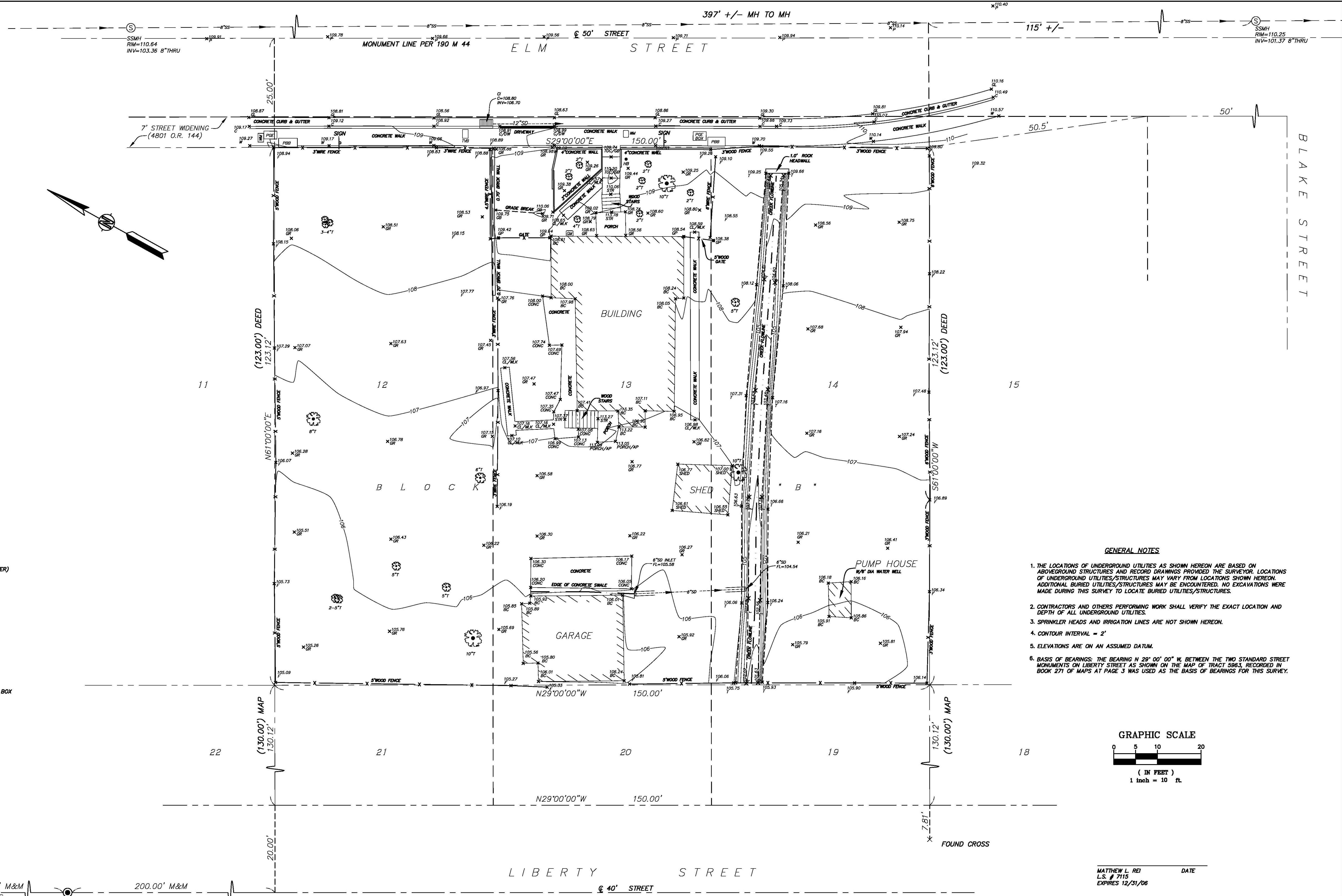


TRIM/RAILING COLOR #2
MANUF: KELLY MOORE
COLOR: AMERICANO KM4512-5



ACCENT COLOR #1
MANUF: KELLY MOORE
COLOR: DRIVE-IN CHERRY HLS4231

NOTE: Paint chip colors/numbers, material and manufacturers shown on this board are representative only. Final approval will be based on sample portion of building. Call the architect or owner for field review. The owner reserves the right to change any listed manufacturer. The changes in manufacturer shall match paint chip color/material as noted.



LEGEND

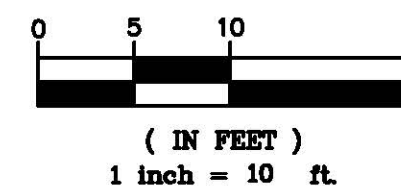
- = TREE (APPROXIMATE DIAMETER)
- = ANGLE POINT
- = BUILDING CORNER
- = TOP OF CURB
- = CATCH BASIN
- = CENTER LINE
- = CONCRETE
- = DAYLIGHT
- = DRIVEWAY
- = FENCE
- = FLOW LINE
- = GRADE BREAK
- = GUTTER LIP
- = GAS METER
- = GATE POST
- = GROUND ELEVATION
- = HOSE BIB
- = INVERT
- = MAP & MEASURE
- = PAVEMENT
- = PACIFIC BELL BOX
- = PACIFIC GAS AND ELECTRIC BOX
- = POINT ON CURVE
- = RETURN
- = SIGN
- = STORM DRAIN LINE
- = STORM DRAIN MANHOLE
- = S

SC0
T
TOC
TW
TVB
W
WLK
WM
WV

GENERAL NOTES

1. THE LOCATIONS OF UNDERGROUND UTILITIES AS SHOWN HEREON ARE BASED ON ABOVEGROUND STRUCTURES AND RECORD DRAWINGS PROVIDED THE SURVEYOR. LOCATIONS OF UNDERGROUND UTILITIES/STRUCTURES MAY VARY FROM LOCATIONS SHOWN HEREON. ADDITIONAL BURIED UTILITIES/STRUCTURES MAY BE ENCOUNTERED. NO EXCAVATIONS WERE MADE DURING THIS SURVEY TO LOCATE BURIED UTILITIES/STRUCTURES.
2. CONTRACTORS AND OTHERS PERFORMING WORK SHALL VERIFY THE EXACT LOCATION AND DEPTH OF ALL UNDERGROUND UTILITIES.
3. SPRINKLER HEADS AND IRRIGATION LINES ARE NOT SHOWN HEREON.
4. CONTOUR INTERVAL = 2'
5. ELEVATIONS ARE ON AN ASSUMED DATUM.
6. BASIS OF BEARINGS: THE BEARING N 29° 00' 00" W, BETWEEN THE TWO STANDARD STREET MONUMENTS ON LIBERTY STREET AS SHOWN ON THE MAP OF TRACT 5963, RECORDED IN BOOK 271 OF MAPS AT PAGE 3 WAS USED AS THE BASIS OF BEARINGS FOR THIS SURVEY.

GRAPHIC SCALE

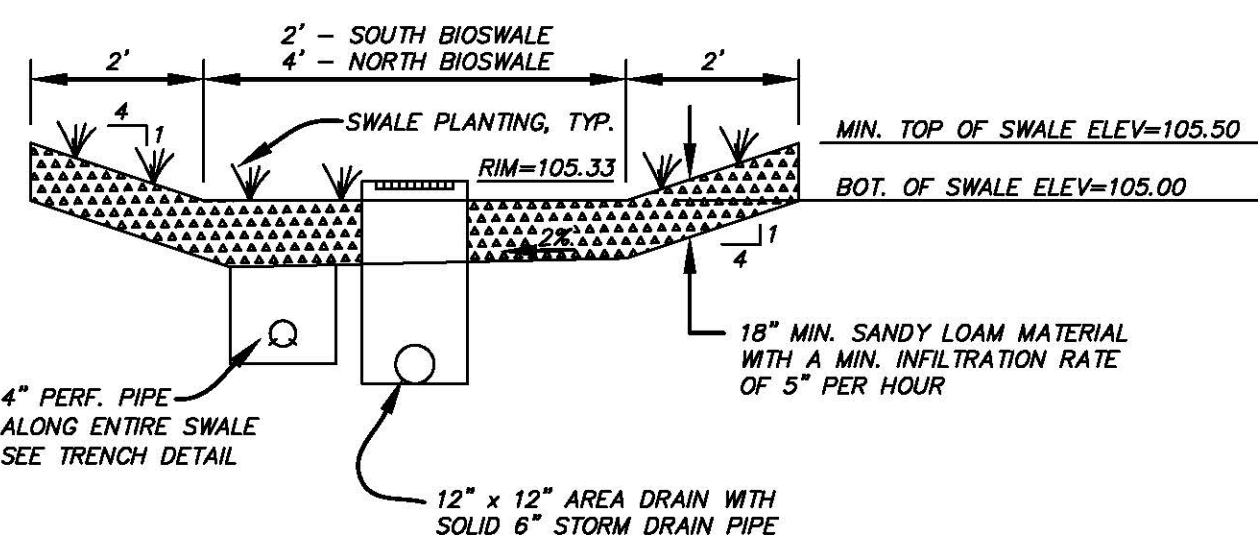
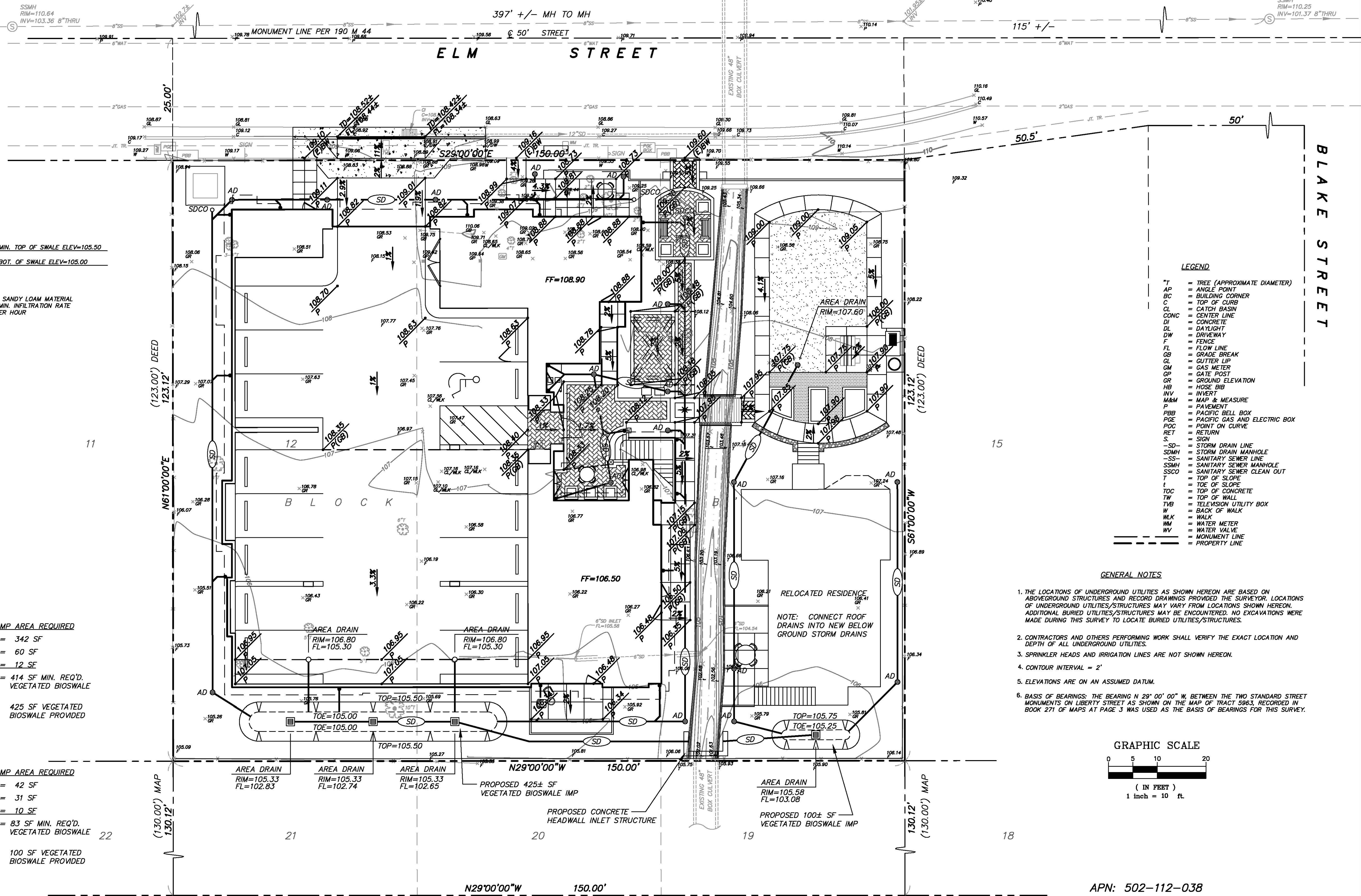
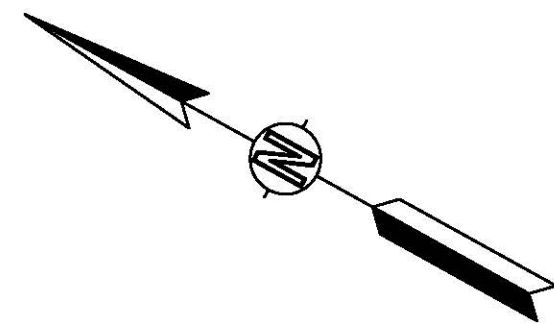


MATTHEW L. REI
L.S. # 7115
EXPIRES 12/31/06

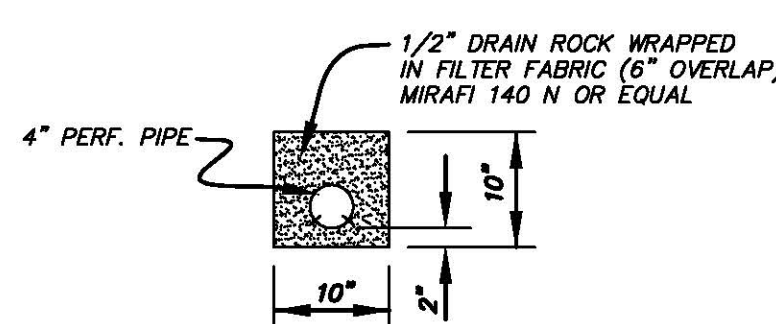
APN: 502-112-038

N29°00'00"W 200.00' M&M FOUND MONUMENT PER 271 M 4
BASIS OF BEARINGS
200.00' M&M FOUND MONUMENT PER 271 M 4

LEGEND	REFERENCES	REVISIONS	KISTER, SAVIO & REI, INC. LAND SURVEYORS - CIVIL ENGINEERS 3095 RICHMOND PARKWAY, SUITE 214 RICHMOND, CALIFORNIA 94806 PHONE: (510) 222-4020 FAX: (510) 222-3718 E-MAIL: info@ksrinc.net		DESCRIPTION BOUNDARY & TOPOGRAPHIC SURVEY PORTION OF LOTS 12, 13 AND 14, BLOCK B MAP OF SCHMIDT VILLAGE (C M 70)
NOTE: CONTOURS BY INTERPOLATION, APPROXIMATE ONLY.	FIELD BOOK No. FILE MAP: G-2 TITLE CO: POLICY No: DATUM: ASSUMED MISC. REF: B-8846 R-803, R-1124	REV. 1-21-04 ADD TOE OF CREEK SHOTS	FOR: ED BIGGS SCALE: 1"=10' DATE: 06-30-03	JOB No. 18233 DWG No. X-3509	
			EL CERRITO		CALIFORNIA



VEGETATED BIOSWALE CROSS SECTION
NTS



TRENCH DETAIL
NTS

NORTH SIDE VEGETATED BIOSWALE

DMA NAME	AREA	DMA & IMP SIZING FACTOR	BMP AREA REQUIRED
CONDOMINIUM ROOF	8,538 SF	(1.00 x .04)	= 342 SF
PAVED WALKWAY	1,508 SF	(1.00 x .04)	= 60 SF
LANDSCAPING	2,920 SF	(0.10 x .04)	= 12 SF
= 414 SF MIN. REQ'D. VEGETATED BIOSWALE			
425 SF VEGETATED BIOSWALE PROVIDED			

SOUTH SIDE VEGETATED SWALE

DMA NAME	AREA	DMA & IMP SIZING FACTOR	BMP AREA REQUIRED
RESIDENTIAL ROOF	1,065 SF	(1.00 x .04)	= 42 SF
PAVED WALKWAY	768 SF	(1.00 x .04)	= 31 SF
LANDSCAPING	2,442 SF	(0.10 x .04)	= 10 SF
= 83 SF MIN. REQ'D. VEGETATED BIOSWALE			
100 SF VEGETATED BIOSWALE PROVIDED			

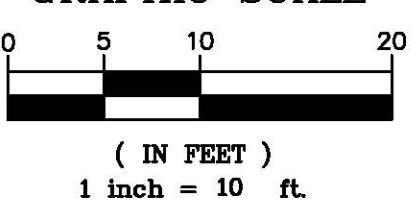
LEGEND

- T = TREE (APPROXIMATE DIAMETER)
- AP = ANGLE POINT
- BC = BUILDING CORNER
- C = TOP OF CURB
- CL = CATCH BASIN
- CONC = CENTER LINE
- DI = CONCRETE
- DL = DAILY LIGHT
- DW = DRIVEWAY
- F = FENCE
- FL = FLOW LINE
- GB = GRADE BREAK
- GL = GUTTER LIP
- GM = GAS METER
- GP = GATE POST
- GR = GROUND ELEVATION
- HB = HOSE BIB
- INV = INVERT
- M&M = MAP & MEASURE
- P = PAVEMENT
- PBB = PACIFIC BELL BOX
- POE = PACIFIC GAS AND ELECTRIC BOX
- POC = POINT ON CURVE
- RET = RETURN
- SIGN = SIGN
- SD = STORM DRAIN LINE
- SDMH = STORM DRAIN MANHOLE
- SS = SANITARY SEWER LINE
- SSMH = SANITARY SEWER MANHOLE
- SSCO = SANITARY SEWER CLEAN OUT
- T = TOP OF SLOPE
- TOC = TOP OF CONCRETE
- TW = TOP OF WALL
- TWB = TELEVISION UTILITY BOX
- W = BACK OF WALK
- WLK = WALK
- WM = WATER METER
- WV = WATER VALVE
- = MONUMENT LINE
- - - = PROPERTY LINE

GENERAL NOTES

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- CONTOUR INTERVAL = 2'
- ELEVATIONS ARE ON AN ASSUMED DATUM.
- BASIS OF BEARINGS: THE BEARING N 29° 00' 00" W, BETWEEN THE TWO STANDARD STREET MONUMENTS ON LIBERTY STREET AS SHOWN ON THE MAP OF TRACT 596.3, RECORDED IN BOOK 271 OF MAPS AT PAGE 3 WAS USED AS THE BASIS OF BEARINGS FOR THIS SURVEY.

GRAPHIC SCALE



APN: 502-112-038

LEGEND

REFERENCES

REVISIONS

KISTER, SAVIO & REI, INC.
LAND SURVEYORS - CIVIL ENGINEERS

3095 RICHMOND PARKWAY, SUITE 214
RICHMOND, CALIFORNIA 94806
PHONE: (510) 222-4020 FAX: (510) 222-3718
E-MAIL: info@ksrinc.net

FOR: ED BIGGS

SCALE: 1"=10'

DATE: DECEMBER 20, 2013

JOB No. 18233

DWG No. X-3509-1

DESCRIPTION

PRELIMINARY CIVIL SITE PLAN

STORMWATER CONTROL PLAN
ELM STREET CONDOMINIUMS

EL CERRITO

CALIFORNIA



PROJECT NORTH

¹To be seeded evenly over all disturbed areas of bare ground in and around the two bioretention swales.

²Inoculated weight exclusive of inoculant

LANDSCAPE BUFFER REQUIREMENT

Street Trees: Ratio of 10 tree minimum per 30' street frontage
 Buffer Yard Condition Required Planting Minimum 10 15 gal tree per 20' length

Property Line	(3) shrubs per 20' length		
	Length	Required	Provided
<u>NORTH</u>			
	123.12'	Trees 1	1
		Shrubs 19	19
<u>SOUTH</u>			
	123.12'	Trees 1	30'
		Shrubs 19	25
<u>EAST</u>			
	150'	Street Trees 5	5
<u>WEST</u>			
	150'	Trees 8	8
		Shrubs 23	23

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LANDSCAPE
CONCEPTUAL
PLAN

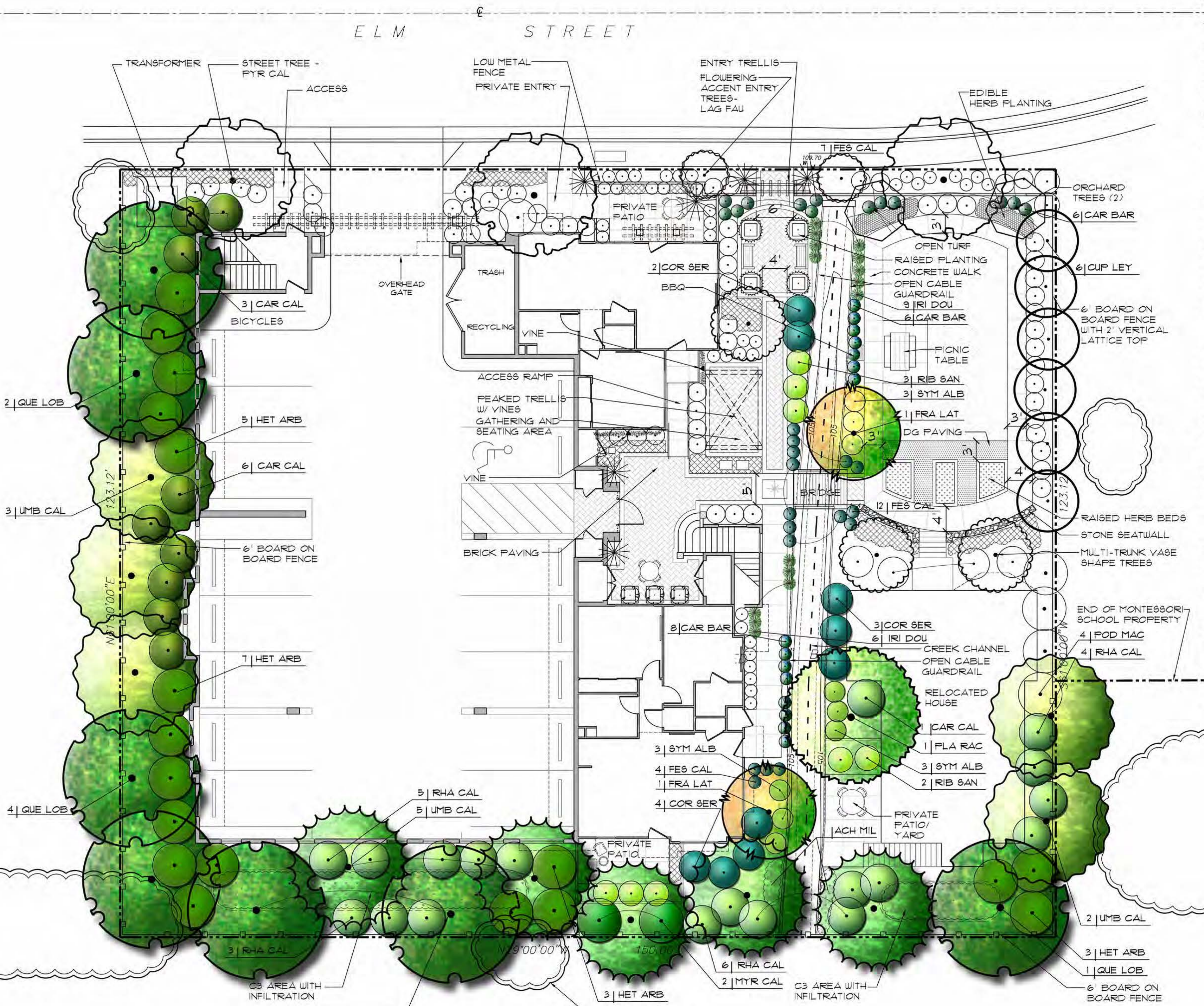
SCALE: AS SHOWN
DATE: 2-25-13

REVISIONS:
3/22/13
8/23/13
10/15/13
11/19/13
04/15/14

PROJ. NO. 12048

L-1

SHEET OF



Plant Palette

Symbol	Botanical Name	Common Name	Size
TREES			
CUP LEY	Cupressus 'Leylandii'	LEYLAND CYPRRESS	24' Box
FRA LAT	Fraxinus latifolia	OREGON ASH	24' Box
LAG FAU	Lagerstroemia fauriei X hybrid	GRAPE MYRTLE	24' Box
FLA RAC	Platanus racemosa	CALIFORNIA SYCAMORE	24' Box
FOD MAK	Podocarpus macrophyllus	YEW PINE	24' Box
FYR CAL	Fyrus calleryana 'Chanticleer'	CHANTICLEER PEAR	24' Box
QUE LOB	Quercus lobata	VALLEY OAK	24' Box
UMB CAL	Umbellularia californica	CALIFORNIA BAY LAUREL	15 gallon

ORCHARD TREES

Citrus	LEMON	24' Box
Citrus	KUMQUAT	24' Box
Diospyros kaki	PERSIMMON	24' Box

SHRUBS

ARC HOW	Arctostaphylos 'Howard McMill'	MANZANITA	5 gallon
AZA SFP	Azalea spp.	AZALEA	5 gallon
BRU PAU	Brunfelsia pauciflora	YESTERDAY, TODAY AND TOMORROW	5 gallon
CAM SAS	Camellia sasanqua	CAMELLIA	5 gallon
CAR CAL	Carpenteria californica	BUSH ANEMONE	5 gallon
CEA CON	Ceanothus 'Concha'	CALIFORNIA LILAC	5 gallon
CIS LAD	Cistus ladanifer	CRIMSON SPOT ROCKROSE	5 gallon
COR SER	Cornus sericea	CREEK DOGWOOD	5 gallon
DIE BIC	Diets bicolor	FORTNIGHT LILY	5 gallon
HEL SEM	Helletrichon sempervirens	BLUE OAT GRASS	1 gallon
HET ARB	Heteromeles arbutifolia	TOYON	5 gallon
HEU SAN	Heuchera 'Sanguinea'	CORAL BELLS	1 gallon
HOS SFP	Hosta spp.	PLAINSTAIN LILY	1 gallon
LAV BAR	Lavatera t. 'Barnsley'	TREE MALLOW	5 gallon
MYR CAL	Myrica californica	PACIFIC WAX MYRTLE	5 gallon
PHO TEN	Phoridium tenax 'Tom Thumb'	NEW ZEALAND FLAX	5 gallon
RHA CAL	Rhamnus californica 'Eve Case'	COFFEEBERRY	5 gallon
RIB SAN	Ribes sanguineum	PINK-FLOWERING CURRANT	5 gallon
SAL OSO	Salvia 'Osceola Falls'	NCL	5 gallon
SYM ALB	Symphoricarpos albus	SNOUBERRY	5 gallon
TIB URY	Tibouchina urvilleana	PRINCESS FLOWER	5 gallon
VER LIL	Verbena lilacina 'De La Mina'	CEDROS ISLAND VERBENA	1 gallon
VIB SUM	Viburnum pt. 'Summer Snowflakes'	SUMMER SNOUFLAKE VIBURNUM	5 gallon

GROUNDCOVERS

ARC EME	Arctostaphylos 'Emerald Carpet'	MANZANITA	1 gal # 30' o.c.
CEA YAN	Ceanothus 'Yankee Point'	CALIFORNIA LILAC	1 gal # 36' o.c.
COT LOW	Cotoneaster 'Lowfast'	COTONEASTER	1 gal # 36' o.c.
IRI DOU	Iris douglasiana	PACIFIC COAST IRIS	1 gal # 30' o.c.
MYO PAR	Myoporum parvifolium 'Putah Creek'	MYOFORUM	1 gal cans/36' o.c.
ROS OFF	Rosmarinus officinalis	ROSEMARY	1 gal cans/36' o.c.
ROS SEA	Rosa 'Sea Foam'	WHITE CARPET ROSE	1 gal cans/36' o.c.

INFILTRATION PLANTS

ACH MIL	Achillea millefolium	YARROW	1 gallon
CAR BAR	Carex barbarae	SANTA BARBARA SEDGE	1 gallon
DES CAE	Deschampsia caespitosa	TUFTED HAIRGRASS	1 gallon
FES CAL	Festuca californica	CALIFORNIA FESCUE	1 gallon
FES RUB	Festuca rubra	RED FESCUE	1 gallon
JUN PAT	Juncus patens	CALIFORNIA GREY RUSH	1 gallon
MIM AUR	Mimulus aurantiacus	STICKY MONKEYFLOWER	1 gallon
MUH RIG	Muhlenbergia rigens	DEER GRASS	5 gallon
SIS BEL	Sisyrinchium bellum	BLUE-EYED GRASS	1 gallon

TURF

Dwarf Bonsai Fescue	TURF	Lawn from sod
---------------------	------	---------------

VINE

Clytostoma callistegioides	VIOLET TRUMPET VINE	5 gallon
----------------------------	---------------------	----------

BIO-RETENTION SWALE SEED MIX¹

Artemisia douglasiana	DOUGLAS MUGWORT	3.0
Bromus carinatus	CALIFORNIA BROME	8.0
Deschampsia caespitosa 'holciformis'	TUFTED HAIRGRASS	5.0
Elymus triticoides yolo	CREEPING WILD RYE	4.0
Hordeum brachyantherum	MEADOW BARLEY	10.0
Lupinus bicolor	ANNUAL LUPINE	2.0*
Symphoricarpos chilensis	COMMON CALIFORNIA ASTER	4.0*
Trifolium obtusiflorum*	CREEK CLOVER	3.0
Trifolium wildenowii	TOMCAT CLOVER	4.0*
Vulpia microstachys	THREE-WEEKS FESCUE	4.0

¹To be seeded evenly over all disturbed areas of bare ground in and around the two bio-retention swales.

*Inoculated weight exclusive of inoculant

LANDSCAPE BUFFER REQUIREMENT

Street Trees: Ratio of (1) tree minimum per 30' street frontage
Buffer Yard Condition Required Planting Minimum: 10 to 15 gal tree per 20' length

Property Line	Length	Required	Provided
NORTH	123.12'	Trees 1 Shrubs 19	1 19
SOUTH	123.12'	Trees 1 Shrubs 19	1 29
EAST	150'	Street Trees 5	5
WEST	150'	Trees 8 Shrubs 23	8 23

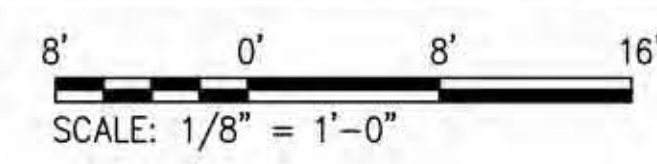


camp & camp
associates
planning & landscape architecture
2550 CAMINO DIABLO
WALNUT CREEK, CALIFORNIA 94597
100% IN-HOUSE FAX (925) 931-4455
email: info@campandcamp.com



PROJECT
NORTH

CONCEPTUAL STREETScape & 'BUFFER YARD' PLANTING



ELM STREET CONDOMINIUMS
EDDIE BIGGS DEVELOPMENT
EL CERRITO, CALIFORNIA

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OR OF INFORMATION SUPPLIED BY OTHERS.

LANDSCAPE
CONCEPTUAL
PLAN

SCALE: AS SHOWN
DATE: 2-25-13

REVISIONS:	
	3/22/13
	8/23/13
	10/15/13
	11/19/13
	04/15/14

PROJ. NO. 12048

L-1

SHEET OF



Open Greenhouse Trellis



Drought tolerant Mediterranean

Planting



Border Herbs

Edible Landscape Features



Dwarf Fruit Orchard



Grass Oval

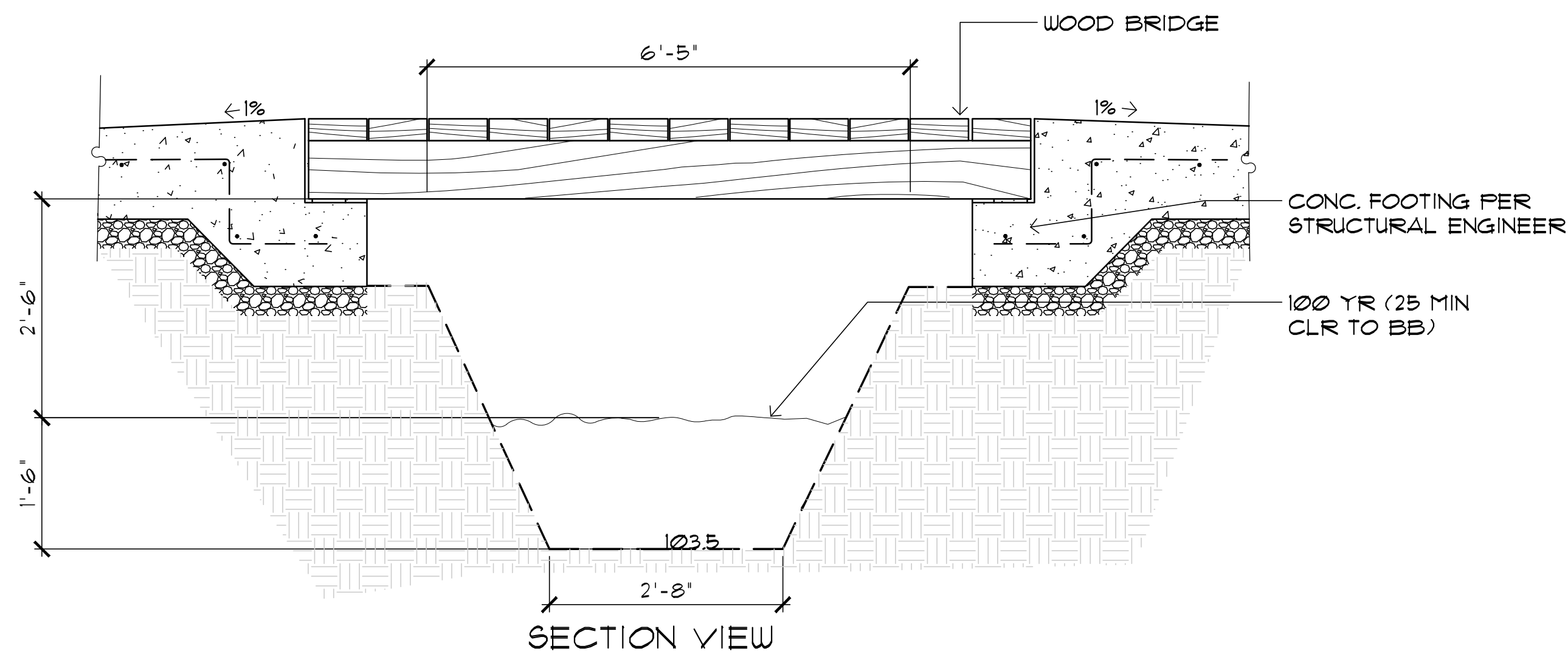


Decomposed Granite

Paving



Permeable Brick Pavers



CHANNEL PROFILE WITH BRIDGE
scale: 3/4"=1'-0"



Picket Fence



Stone seatwall



ELM STREET CONDOMINIUMS
EDDIE BIGGS DEVELOPMENT
EL CERRITO, CALIFORNIA

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PROJECT
IMAGES

SCALE:
DATE: 2-25-13

REVISIONS:
3/22/13
8/23/13
10/15/13
11/19/13

PROJECT NO. 12048

SHEET OF

A RESOLUTION OF THE CITY OF EL CERRITO CITY COUNCIL ADOPTING AN INITIAL STUDY WITH A MITIGATED NEGATIVE DECLARATION AND ADOPTING A MITIGATION MONITORING AND REPORTING PROGRAM FOR THE CONSTRUCTION OF 14 NEW DWELLING UNITS AND THE CONVERSION OF AN EXISTING DWELLING UNIT INTO A COMMUNITY CENTER AT 1715 ELM STREET, APPLICATION NO. 6133

WHEREAS, the Edward and Loretta Biggs Revocable Trust proposes a development project that includes the conversion and renovation of an existing historical single-family detached house into a museum, art studio or offices or other community center type uses, the construction of 14 new one- and two-bedroom dwelling units, and the preservation of an existing creek on 0.42 acre site. The project proposes rezoning the property to PD (Planned Development); a Planned Development Use Permit; Design Review; a subdivision map and condominium plan; and a Development Agreement (the "Project"); and

WHEREAS, the subject site is located at 1715 Elm Street; and

WHEREAS, the zoning district of the site is RM (Multifamily Residential); and

WHEREAS, the general plan land use designation of the site is High Density; and

WHEREAS, on January 13, 2014 the City circulated an Initial Study/Mitigated Negative Declaration for the Project pursuant to the CEQA Guidelines; and

WHEREAS, at its March 19, 2014 meeting, the Planning Commission held a duly noticed public hearing, received public testimony and directed staff to bring the project back for formal action; and

WHEREAS, at their April 16, 2014 meeting, the Planning Commission held a duly noticed public hearing, received public testimony and adopted Resolution PC14-06, adopting an Initial Study and Mitigated Negative Declaration; and

WHEREAS, at their April 16, 2014 meeting, the Planning Commission held a duly noticed public hearing, received public testimony and adopted Resolution PC14-07, approving a Planned Development Use Permit; and

WHEREAS, on June 2, 2014, the City Council held a duly noticed public hearing to consider the Project, including the negative declaration and mitigation monitoring and reporting program. The City Council closed the hearing and continued consideration of the Project to June 23. At the June 23 meeting, the City Council requested additional information and continued deliberations. On August 19, the City Council reopened the hearing and received the additional information. The City Council held a properly noticed public hearing on the Project, and all interested parties had the opportunity to be heard. After due consideration of all evidence and reports offered for review, the City Council does find and determine the following:

The City Council has considered the proposed negative declaration together with any comments received during the public review process, and finds, on the basis of the whole record before it, that:

(1) There is no substantial evidence the project will have a significant effect on the environment, and

(2) The negative declaration reflects the lead agency's independent judgment and analysis.

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, the El Cerrito City Council hereby adopts the Initial Study/Mitigated Negative Declaration and adopts the Mitigation Monitoring and Reporting Program for the construction of 14 new dwelling units and the conversion of one existing dwelling unit into a community center located at 1715 Elm Street.

I CERTIFY that at a special meeting on August 19, 2014 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
August_, 2014.

Cheryl Morse, City Clerk

APPROVED:

Janet Abelson, Mayor

Exhibit A: Initial Study and Mitigated Negative Declaration attached hereto and located on the City's Website at:
Initial Study <http://www.el-cerrito.org/DocumentCenter/View/3445>
Traffic Analysis 2009 <http://www.el-cerrito.org/DocumentCenter/View/3443>
Review Letter 2013 <http://www.el-cerrito.org/DocumentCenter/View/3444>
Historic Resource Evaluation <http://www.el-cerrito.org/DocumentCenter/View/3439>
Biological Resources Assessment <http://www.el-cerrito.org/DocumentCenter/View/3438>

ORDINANCE 2014–XX

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF EL CERRITO REZONING
1715 ELM STREET TO A PLANNED DEVELOPMENT ZONING DISTRICT –
APPLICATION 6133**

**THE CITY COUNCIL OF THE CITY OF EL CERRITO DOES HEREBY ORDAIN AS
FOLLOWS:**

SECTION 1. RECITALS

A. The Applicant, the Edward and Loretta Biggs Revocable Trust, proposes a development project that includes the conversion and renovation of an existing historical single-family detached house on the Property into a community center, the construction of 14 new one- and two-bedroom dwelling units, and the preservation of an existing creek on 0.42 acre site. The project proposes a Planned Development District; a Planned Development Use Permit; Design Review; a subdivision map and condominium plan; and this Development Agreement. The proposed development and applications are collectively known as the “Project”; related approvals of the applications are collectively known as the “Project Approvals.”

B. The Project site is located at 1715 Elm Street in El Cerrito, California (the “Property”).

C. The Applicant has applied to change the zoning of the Property to a Planned Development District subject to certain terms, attached to this ordinance, and to amend the City’s Zoning Map accordingly.

D. The California Environmental Quality Act (CEQA), together with the state guidelines and City environmental regulations, require that certain projects be reviewed for environmental impacts and that environmental documents be prepared.

E. An Initial Study and Mitigated Negative Declaration (MND) pursuant to the California Environmental Quality Act (CEQA) have been prepared for this Project. All potential impacts identified are reduced to a less than significant level pursuant to the California Environmental Quality Act with the implementation of mitigation measures.

F. On April 16, 2014, the Planning Commission held a properly noticed public hearing on the Project, and adopted Resolution PC14-07 recommending that the City Council adopt the Planned Development Use Permit, which Resolution is incorporated herein by reference and available for review at City Hall during normal business hours.

G. On May 21, 2014, the Planning Commission held a properly noticed public hearing on the Project, including the proposed General Plan Amendment, Planned Development District and Development Agreement, and adopted Resolution 14-10 recommending that the City Council

Agenda Item No. 6
Attachment 8

deny the General Plan Amendment, Planned Development District and Development Agreement, which Resolution is incorporated herein by reference and available for review at City Hall during normal business hours.

H. On June 2, 2014, the City Council held a duly noticed public hearing to consider the Project Approval, including the Development Agreement. The City Council closed the hearing and continued consideration of the Project Approvals to June 23. At the June 23 meeting, the City Council requested additional information and continued deliberations.

I. A Staff Report, dated August 19, 2014 and incorporated herein by reference, described and analyzed the Project, including the Planned Development rezoning for the City Council.

J. On August 19, 2014, the City Council received the additional information requested at the June 23 meeting and held a properly noticed public hearing on the Project, including the proposed Planned Development rezoning at which time all interested parties had the opportunity to be heard.

K. On August 19, 2014, the City Council adopted Resolution 2014-XX adopting an Initial Study and Mitigated Negative Declaration and a Mitigation Monitoring and Reporting Program for the Project.

L. The City Council considered the adopted Initial Study and Mitigated Negative Declaration and all above-referenced reports, recommendations, and testimony prior to taking action on the Project.

SECTION 2. FINDINGS

A. Pursuant to Sections 19.14.040.A and 19.40.040.D of the El Cerrito Municipal Code, the City Council finds as follows.

1. The proposed residential Project will be a transit oriented development located within 800 feet of a BART station (1,400 feet by foot). It will add fourteen new dwelling units while preserving a historic building and retaining an existing creek. The balance of all these core values on the site is considered to be in the public interest.
2. The project is consistent with the purposes of the district and conforms in all significant respects with the amended General Plan, as conditioned in that it consists of high density multifamily development that utilizes good urban design principles including reduced parking requirements, parking concealed under the new building, and a mix of unit types. It also preserves an important historic resource and protects an existing creek by including it within its landscaped area. The project will implement the following General Plan goals and policies: Land Use 1.2: Multifamily Neighborhoods, Land Use, 1.3: Quality of Development, Land Use 1.5: Suitable Housing, Land Use 1.6: Variety of Housing Types, Land Use 5.1 BART Station Areas, Community Design 1.3: High-Quality Design, Community Design 1.9: Building Design, Community Design 4.2: Building Articulation, Community Design

Agenda Item No. 6

Attachment 8

- 5.1: Design Review Process, Community Design 5.2 Planned Development. Community Design 3.5 Creek Preservation. Resources 1.9 Developments near Creeks, Resources 2.1: Historic Preservation, Resources 2.5: Public Awareness.
3. The proposed residential project will be a transit oriented development with good urban design. It will add fourteen new dwelling units to the neighborhood while preserving a historic structure and retaining the existing creek. It will not unduly shade surrounding dwellings or create unacceptable traffic or parking impacts; and as conditioned it will not be detrimental to the abutting properties or neighborhood.
 4. An Initial Study and Mitigated Negative Declaration (MND) pursuant to the California Environmental Quality Act (CEQA) have been approved for this project. All factors are reduced to a less than significant level pursuant to the California Environmental Quality Act with the implementation of mitigation measures. The Mitigation Monitoring Plan has been incorporated in the conditions of approval.
 5. The proposed residential project will be a transit oriented development with good urban design. It will add fourteen new dwelling units to the neighborhood while preserving a historic structure and retaining the existing creek. It will not unduly shade surrounding dwellings or create unacceptable traffic or parking impacts; and as conditioned it will not be detrimental to the public interest, health, safety, convenience or welfare of the City.
 6. The proposed amendment is a planned development district. It is consistent with applicable provisions of the zoning code including the purpose and intent of the Residential Mixed Use zone.
 7. The Project will add fourteen new dwelling units to the neighborhood while preserving a historic structure and retaining the existing creek. The site is 0.42 acres in size with a relatively level grade. It has direct access onto Elm Street and will be served by existing utilities in the area. It will not unduly shade surrounding dwellings or create unacceptable traffic or parking impacts; and as conditioned it will not adversely affect the livability of the abutting properties or neighborhood.
 8. This project is demonstratively superior to the development that could occur under the standards applicable to the underlying base district in that it represents a balance of many of El Cerrito's core values. It is a transit oriented development; thereby reducing Vehicle Miles Traveled with good urban design; successful historic preservation and preservation of an existing creek. Had the project been governed by the base district standards and strict interpretation of the creek protection ordinance, much of the open space would have been lost to surface parking spaces, the number of units would have to have been decreased due to the reduced building footprint, the building would two stories with a mansard roof, which would have greatly reduce the number of dwelling units.
 9. The project is consistent with the purposes of the district and conforms in all significant respects with the General Plan, as conditioned, in that it consists of high

Agenda Item No. 6
Attachment 8

density multifamily development that utilizes good urban design principles including reduced parking requirements, parking concealed under the new building, and a mix of unit types.

10. The Project is a transit oriented development, thereby reducing Vehicle Miles Traveled with good urban design, successful historic preservation and preservation of an existing creek. All of these goals are public benefits to the City of El Cerrito.

SECTION 3. ZONING MAP AMENDMENT

Pursuant to Chapter 19.14 of the City of El Cerrito Municipal Code the City of El Cerrito Zoning Map is amended to rezone the property described below to a Planned Development Zoning District:

0.42 acres at 1715 Elm Street ("Project site").

A map of the rezoning area is shown in Exhibit A. The allowable use of the Property is described in the Planned Development Use Permit for the Project.

11. Compliance with adopted Mitigation Measures. The Applicant/Developer shall comply with all adopted mitigation measures of the Initial Study and Mitigate Negative Declaration prepared for 1715 Elm Street.

12. Confirmation of ownership. The Applicant/Developer shall provide the City with a recorded copy of the deed vesting title to the Property in its name.

SECTION 4. NOTICING, POSTING AND PUBLICATION

This ordinance is adopted pursuant to the procedures established by state law, and all required notices have been given, and the public hearing has been properly held and conducted.

SECTION 5. EFFECTIVE DATE

This ordinance shall not take effect until the Development Agreement for the Project takes effect and is recorded on the Property.

THE FOREGOING ORDINANCE was introduced at a regular meeting of the City Council on August 19, 2014 and passed by the following vote:

AYES:	Councilmembers
NOES:	Councilmembers
ABSTAIN:	Councilmembers
ABSENT:	Councilmembers

ADOPTED AND ORDERED published₄ at a regular meeting of the City Council held on

September 22, 2014 and passed by the following vote:

AYES: Councilmembers
NOES: Councilmembers
ABSENT: Councilmembers

APPROVED:

Janet Abelson, Mayor

ATTEST:

Cheryl Morse, City Clerk

IN WITNESS of this action, I sign this document and affix the corporate seal of the City of El Cerrito on September XX, 2014.

Cheryl Morse, City Clerk

ORDINANCE CERTIFICATION

I, Cheryl More, City Clerk of the City of El Cerrito, do hereby certify that this Ordinance is the true and correct original Ordinance No. 2014-XX of the City of El Cerrito, that said Ordinance was duly enacted and adopted by the City Council of the City of El Cerrito at a meeting of the City Council held on the ___ day of September 2014; and that said ordinance has been published and/or posted in the manner required by law.

WITNESS my hand and the Official Seal of the City of El Cerrito, California, this ___ day of September, 2014.

Cheryl Morse, City Clerk

ELM STREET

Agenda Item No. 6
Attachment 8, Exhibit A



CARLE CAMPOS | DAVID BOGSTAD | PETER STACKPOLE
245 YGNACIO VALLEY ROAD, WALNUT CREEK, CALIFORNIA 94596
(925) 944-1826 | (925) 944-1886 FAX | WWW.LCA-ARCHITECTS.COM

ELM STREET CONDOMINIUMS
EDDIE BIGGS DEVELOPMENT
EL CERRITO, CALIFORNIA

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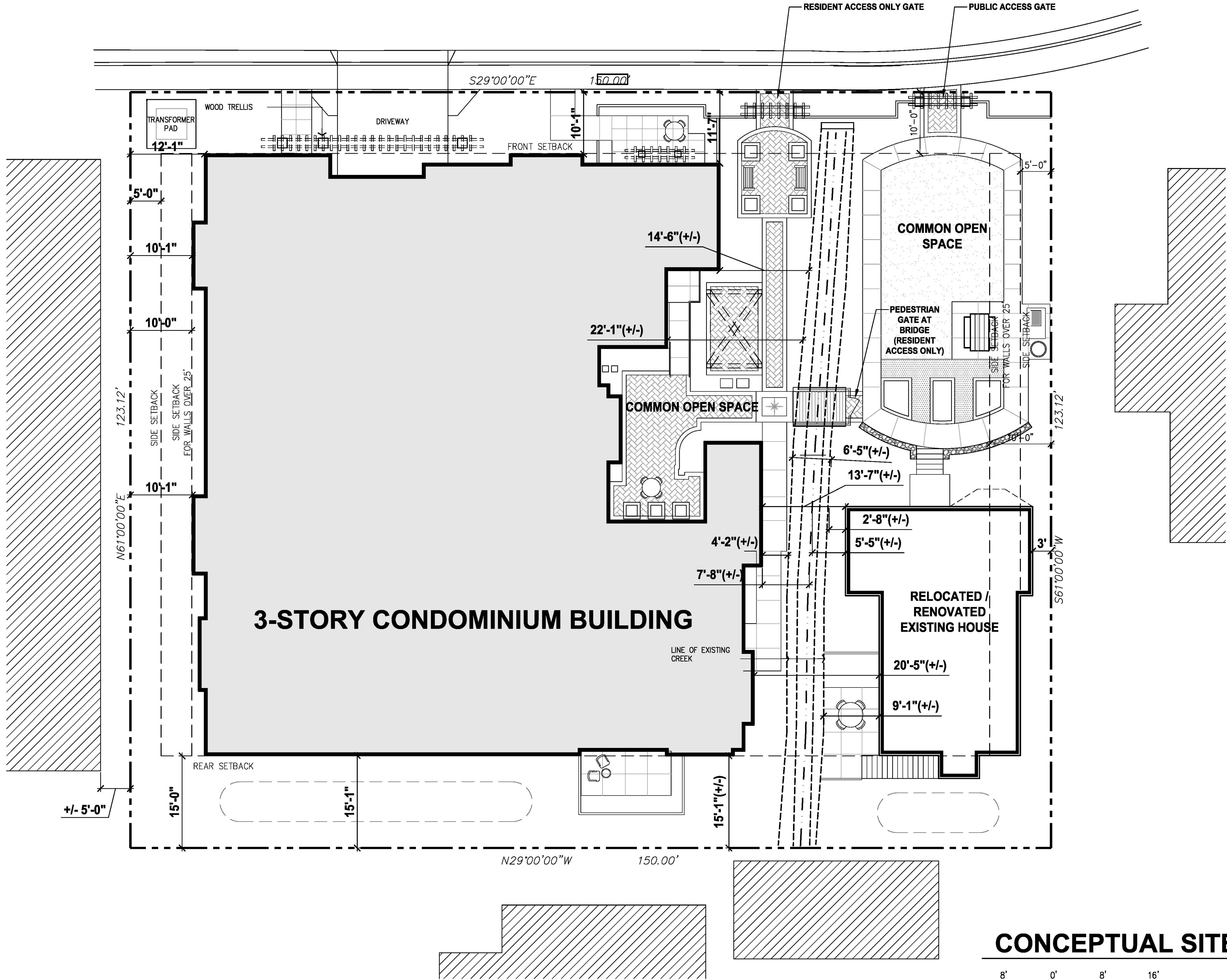
CONCEPTUAL
SITE PLAN

SCALE: AS SHOWN
DATE: 2-15-13

REVISIONS:	
3/22/13	
8/23/13	
9/12/13	
1/20/14	
5/1/14	
8/8/14	

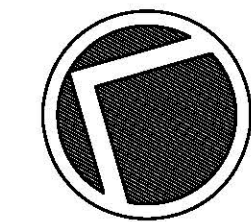
PROJECT NO. 12048

A-2
SHEET OF



CONCEPTUAL SITE PLAN

8' 0' 8' 16'
SCALE: 1/8" = 1'-0"



PROJECT
NORTH

REVISED DRAFT
BOLD IS NEW TEXT
~~STRIKETHROUGH IS ELIMINATED TEXT~~

RESOLUTION 2014-XX

A RESOLUTION OF THE EL CERRITO CITY COUNCIL DENYING AN APPEAL AND
UPHOLDING THE PLANNING COMMISSION'S APPROVAL OF A PLANNED
DEVELOPMENT USE PERMIT AT 1715 ELM STREET

WHEREAS, the Edward and Loretta Biggs Revocable Trust proposes a development project that includes the conversion and renovation of an existing historical single-family detached house into a community center type use, the construction of 14 new one- and two-bedroom dwelling units, and the preservation of an existing creek on 0.42 acre site. The project proposes rezoning the property to PD (Planned Development); a Planned Development Use Permit; Design Review; a subdivision map and condominium plan; and a Development Agreement (the "Project"); and

WHEREAS, the subject site is located at 1715 Elm Street; and

WHEREAS, the zoning district of the site is RM (Multifamily Residential); and

WHEREAS, the general plan land use designation of the site is High Density; and

WHEREAS, on January 13, 2014 the City circulated an Initial Study/Mitigated Negative Declarations pursuant to the CEQA Guidelines; and

WHEREAS, at their March 19, 2014 meeting, the Planning Commission held a duly noticed public hearing, received public testimony and directed staff to bring the project back for formal action; and

WHEREAS, at their April 16, 2014 meeting, the Planning Commission held a duly noticed public hearing, received public testimony and adopted Resolution PC14-06, adopting an Initial Study and Mitigated Negative Declaration for the Project; and

WHEREAS, at their April 16, 2014 meeting, the Planning Commission held a duly noticed public hearing, received public testimony and adopted Resolution PC14-07, approving a Planned Development Use Permit for the Project; and

WHEREAS on April 28, 2014, Howdy Goudey, Robin Mitchell, Jason Hasley, Keystone Montessori School, Linda Shehabi, Dan & Henia Pines and Julia Lucia filed an appeal of the Planning Commission's Planned Development Use Permit approval for the Project; and

WHEREAS, on June 2, 2014, the City Council held a duly noticed public hearing to consider the appeal. The City Council closed the public hearing and continued consideration of the appeal to June 23. At the June 23 meeting, the City Council requested additional information and continued deliberations. On August 19, the City Council reopened the hearing, received the additional information; and

REVISED DRAFT
BOLD IS NEW TEXT
~~STRIKETHROUGH IS ELIMINATED TEXT~~

WHEREAS, based upon the evidence presented in the record on this matter, including the staff report and oral and written testimony and the proceedings before the City Council and the Planning Commission, the Council has considered the appeal.

NOW THEREFORE, BE IT RESOLVED:

The City Council of the City of El Cerrito finds that:

1. The proposed project will be a transit oriented development (TOD) with good urban design. It will add 14 new dwelling units to the neighborhood while preserving a historic structure and retaining the existing creek. It will not unduly shade surrounding dwellings or create unacceptable traffic or parking impacts; and as conditioned it will not adversely affect the livability of the abutting properties or neighborhood.
2. The location and design of the project will provide a functional living environment that has good urban design. With the required vehicle parking tucked under the building, day-lighted creek and landscaped area and clear sightlines to the restored historic building, it will be an attractive amenity for the City.
3. The project is consistent with the purposes of the district and conforms in all significant respects with the General Plan as conditioned; in that it consists of high density multifamily development that utilizes good urban design principles including reduced parking requirements, parking concealed under the new building, and a mix of unit types. It also preserves an important historic resource and protects an existing creek by including it within its landscaped area. The project will implement the following General Plan policies: LU1.3: Quality of Development, LU1.5: Suitable Housing, LU1.6: Various Housing Types, LU1.7: Maximum Density, LU5.5: Pedestrians, Bicycles, and Access, LU6.4: Water Conservation, CD1.2: Design Concept, CD1.3: High-Quality Design, CD1.5: Landmarks Preservation, CD 1.9: Building Design, CD3.3: Site Landscaping, CD4.2: Building Articulation, CD5.1: Design Review Process and R2.2: Historic Preservation.
4. The proposed project will be a transit oriented development (TOD) located within 800 feet of a BART station (1,400 feet by foot). It will add 14 new dwelling units while preserving a historic dwelling and retain an existing creek.
5. The new construction is includes both one bedroom and two bedroom housing unit styles. All units' prices will be set by the market. It is expected that the prices will reflect the different unit sizes.
6. While this is an important consideration, there was no feasible way to include a mandate to offer these units at an affordable price to persons and families of low and moderate income or lower income homes as defined by the State of California.
7. The existing infrastructure is sufficient to serve the proposed development as proposed.

REVISED DRAFT
BOLD IS NEW TEXT
~~STRIKETHROUGH IS ELIMINATED TEXT~~

8. While requiring relief from some development standards of the RM zone, it exceeds the zone requirements for both common area and private open space and allows for ten percent less lot coverage than could have been allowed in this district.
9. The use of the development area is primarily residential with community center type uses allowed in the historical structure. Other uses may be permitted consistent with the regulations for the RM zone.
10. The design of the new construction has been designed to allow acceptable levels of light and air into the interior spaces of the building. As conditioned, it shall meet or exceed all requirements of the California Building Code. In addition, the distance between the re-located historic structure and the adjacent pre-school is approximately 13 feet.
11. This project will contribute to the enhancement of the neighborhood character and the environment of El Cerrito in the long term in that it represents a balance of many of El Cerrito's core values. It incorporates transit oriented development and good urban design with successful historic preservation and stewardship of an existing creek.
12. The project is proposing to provide 14 new one and two bedroom dwelling units on a 0.42 acre site that is designated in the General Plan for high density. It also proposes to restore and relocate the existing historic structure on site preserving an important historic resource. Finally, the project is proposing to keep the creek in place, thereby protecting the 115 foot long water course which is a tributary of the Baxter Creek and utilizing it as an amenity to the overall site.

BE IT FURTHER RESOLVED that after careful consideration of facts, correspondence, and testimony, and other evidence submitted in this matter, the El Cerrito City Council hereby denies the subject appeal and upholds the Planning Commission's approval of Planned Development Use Permit at 1715 Elm Street. Application No. 6133, subject to the following conditions:

Building and Planning Division:

1. The project will be constructed substantially in conformance with the plans dated January 20, 2014, as amended in the revised site/landscape plan of April 15, 2014. 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. Minor changes may be approved by the Zoning Administrator.
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

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for non-issuance 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. All new residential developments of five or more units are required to comply with the Art in Public Places ordinance pursuant to El Cerrito Municipal Code Section 13.50. This is a requirement of any project with development costs of two hundred fifty thousand dollars or more. The applicant shall devote an amount not less than one percent of such costs for acquisition and installation of public art on the development site, subject to a maximum of one hundred fifty thousand dollars. Compliance with the provisions of this chapter shall be demonstrated by the applicant at the time of filing a building permit application in one of the following ways:
 - a. Payment of the full amount of the public art in-lieu contribution; or
 - b. Written proof to the community development department of a contractual agreement to commission or purchase and install the required public art on the subject development site and a written acknowledgement by the visual art professional and the owner or developer, in a form approved by the city, that the proposed public art complies with the following criteria:
 1. The public art shall be designed and constructed by any person experienced in the production of such art and recognized by critics and by his or her peers as one who produces works of art;
 2. The public art shall require a low level of maintenance and that the proposed maintenance provisions are adequate for the long-term integrity and enjoyment of the work;
 3. The public art shall be related in terms of scale, material, form and content to immediate and adjacent buildings and architecture, landscaping or other setting so as to complement the site and its surroundings and shall be consistent with any corresponding action of the planning commission, design review board or city council as it may relate to any development entitlements;
 4. Permanent public art shall be a fixed asset to the property;
 5. The public art shall be maintained by the property owner in a manner acceptable to the city;
 6. The public art meets all applicable building code requirements.

The applicant shall provide the city with proof of installation of the required public

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art project on the development site prior to the issuance of a certificate of occupancy. If installation prior to the date of occupancy is impracticable, as determined by the city manager or his or her designee, a certificate of occupancy may be approved for the building or portion thereof if the application submitted pursuant to this section has been approved, the applicant has executed a written agreement with the city to install the public art, and the applicant has filed security in an amount and form acceptable to the city attorney to guarantee installation of the public art.

5. The mitigation measures identified in the mitigation monitoring plan (MMRP) shall be considered conditions of approval of the project. They are included as Exhibit A to the resolution.
6. Prior to the issuance of a building permit, the Building Official shall confirm that the building permit plans, specifications and other related information conform to the California Codes in effect at the time, and all other applicable local ordinances. Compliance with the California Codes and local ordinances shall include, but not be limited to, seismic and geotechnical requirements for Seismic Zone 4, and Title 24 energy conservation and disabled access requirements.
7. Prior to the issuance of a building permit, Applicant shall submit to the Building Official proof of compliance with all other permits necessary from the applicable regulatory agencies, including but not limited to the Stege Sanitary District, West Contra Costa Unified School District, Pacific Gas and Electric and East Bay Municipal Utility District.
8. A demolition permit for all proposed demolition shall be submitted to and approved by the City of El Cerrito prior to issuance of a building permit.
9. Prior to the issuance of a demolition or building permit, the Building Official shall confirm that a survey of lead-based paint (LBP) and asbestos-containing materials (ACMs) shall be completed and all identified ACMs and any loose or peeling LBP must be abated. If intact LBP is present on the site and not abated, demolition and construction activities must comply with the State's construction lead standard (Title 8, California Code of Regulations, Section 1532.1).
10. Prior to the issuance of a building permit the applicant and/or construction company shall submit the location of construction staging areas for materials, equipment, and vehicles to the Zoning Administrator for review and approval.
11. Prior to the issuance of a building permit the applicant and/or construction company shall submit a parking management plan for all construction workers and their equipment to ensure that construction workers or construction equipment and vehicles do not occupy on-street spaces.
12. In the City of El Cerrito, the hours of construction work are limited to:

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- a. 7:00 a.m. to 6:00 p.m. Monday through Friday
8:00 a.m. to 5:00 p.m. on Saturdays
 - b. Work is prohibited on Sundays and holidays.
 - c. Work may be prohibited during inclement weather by order of the City Building Official.
13. No construction shall take place on ~~June 27, 2014~~ **graduation day** at the request of the preschool.
14. To ensure that the construction of the project is completed with minimal impact to the existing neighborhood, the following requirements shall be met before the issuance of a building permit:
- a. Applicant shall submit a construction sign for approval by the Development Services Manager. The sign shall be made of a permanent material with professional lettering. The sign shall be at least 2 feet by 3 feet with a minimum letter size of 2 inches. The sign shall include the following information: the project name; name of the owner/developer; the name and phone number of a contact person, available at all times to address complaints and with the authority to control construction activity on the site; name and phone number of the contractor; and the approved hours of construction.
 - b. The sign shall be posted at the time of placing temporary fencing and start of construction activity. The sign shall be placed on the Elm Street frontage of the site in a location facing the street where the information can be easily read by people in the right-of-way.**
15. Prior to issuance of a building permit, the applicant shall submit a site security and safety plan to assure that grading and construction activities are adequately secured during off-work hours. This will include the temporary construction fence required in the Public Works Department condition listed below. The height of the construction fence on the south side of the property shall be twelve feet in height.
16. The applicant shall stipulate in the construction bid information for the project that construction company shall be required to do the following:
- a. A notification procedure stating their plan to notify adjacent property owners as to when major deliveries, detours and lane closures may occur. At a minimum, this notification plan will include a written notice sent electronically as soon as possible to all neighbors that request such notification. The list of interested parties will be kept by the Community Development Department.
 - b. A monthly meeting in person with the operators of the preschool to go over any issues or concerns.
 - c. Make every possible effort shall be made to have the construction site turn off all unnecessary heavy equipment, generators and power tools from noon until 1:00 p.m.

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17. Prior to issuance of a certificate of occupancy, the Zoning Administrator shall confirm that:
 - a. All mechanical equipment, including electrical and gas meters, heating/air conditioning or ventilation units, radio/TV antennas or satellite dishes shall be appropriately screened from off-site view, and electrical transformers shall be either placed underground or appropriately screened.
 - b. All visible vents, gutters, down spouts, flashings, and the like shall match the color of adjacent surfaces, or shall be incorporated into the overall exterior color and materials scheme for the building.
18. All landscaping improvements shall be maintained in a healthy, growing condition at all times. The landscaped areas shall be irrigated by an automatic sprinkler system designed to reduce water usage. Applicant shall replace all landscaping that dies with the exact living species, or substitutes approved by the Zoning Administrator.
19. The applicant has volunteered to donate four thousand dollars to the City of El Cerrito towards the creation and installation of up to two historical plaques. (This money will be held in a draw down account and any unused funds will be refunded.) The purpose of commemorative plaques would be to explain the history of the Rodini house as well as the history of the surrounding Little Italy neighborhood. The Zoning Administrator shall work with the El Cerrito Historical Society to create these plaques. The plaques will be installed on the front fence of the new project.
20. If for some reason, the City Council denies the Development Agreement, or the Planned Development District, this entitlement is null and void.
21. **Any future use of the historic building located on site shall be as a museum, art studio or offices, which are all uses seen in community centers. The hours of operation shall not exceed 10:00 am to 5:00 pm, Monday through Saturday. Any event held at subject property beyond the stipulated hours of operation shall be required to receive a Temporary Use Permit and requires the approval of the Home Owners Association of 1715 Elm Street.**
22. **The private open space in front of the historic building shall be available for public use for the same hours as stipulated for the historic structure. Any trash or damage to the open space generated by the users of the house shall be remediated by the users, not the future Home Owners Association.**
23. **As stated in the Development Agreement, the historic structure located on site shall be leased to the City of El Cerrito for a term of 99 years for \$1.00. The City shall utilize this building as a museum, art studio or offices, which are all uses seen in community centers.**

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24. Prior to the issuance of the building/relocation permit for the historic structure, the applicant/developer shall submit a set of plans that illustrate the floor plan of the structure, the addition of new foundation, the restoration of the east or main elevation of the structure to the Department of Interior standards for rehabilitation, as well as the restoration plans for the remaining three exterior elevations to match the east elevation in terms of colors and materials. A new roof to match the existing roof is required as well. Further, the plans shall note the location and construction of a restroom and an exterior lift on the eastern elevation, both of which shall be designed to be compliant with Title 24 of the California Building Code and the Americans with Disabilities Act requirements. Finally, the all plumbing and electrical components of the historical building shall be revised to comply with current California Building Code requirements. These plans must be created to the satisfaction of the Development Services Manager and the Building Official.
25. The renovation of the historic structure shall be complete prior to the issuance of the Certificate of Occupancy of the new 14 unit building.
26. All landscaping shown on the site/landscape plan dated April 15, 2014 must also be complete prior to the Certificate of Occupancy of the 14 unit building.

Public Works Department:

27. A complete Stormwater Control Plan (Narrative Report and Exhibit) prepared in accordance with the latest version of Contra Costa Stormwater C.3 Guidebook, must be submitted as soon as possible to ensure the stormwater design, site plan, and landscaping plan are congruent.
28. Any changes to the existing storm drain channel will require a Public Works Encroachment Permit and may require that a storm drain easement be recorded. The applicant must furnish plans, specifications and hydrology/hydraulics studies, as appropriate, prior to consideration of the permit application. The City may impose conditions as are appropriate to eliminate any diminution in the capacity of the existing drain to carry off the volume of water reasonably anticipated. If conflict exists between the Encroachment Permit and the JARPA permit, the JARPA permit shall prevail.
29. Remove and replace all sidewalk and driveway approaches to comply with Americans with Disability Act and all other applicable City standards. Sidewalk and driveway improvements shall require a Public Works Encroachment Permit.
30. All site grading shall be done per Chapters 8 and 13 of the El Cerrito Municipal Code and all other relevant laws, rules and regulations. Prior to commencing any grading in excess of 50 cubic yards, the applicant shall obtain a Grading & Transportation Permit and approval from the Public Works Department.

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31. New street tree types and locations shall be approved by the City Arborist prior to issuance of a building permit.
32. Prior to issuance of a building, demolition or grading permit for any portion of the project, applicant shall submit a Traffic and Parking Management Plan for review and approval by the Public Works Director and the Zoning Administrator. The plan shall include any City restrictions and limitations on using certain local streets for construction traffic, proposed truck delivery and haul routes, parking arrangements for construction personnel, ingress and egress, noise, efforts to address street debris and dust control and proposed on-site staging and equipment/material storage areas.
33. Prior to the issuance of a building permit, applicant shall install temporary construction fence around the perimeter of the site that provides for continued pedestrian traffic meeting the standards of the Americans with Disabilities Act as approved by the Public Works Director and the Zoning Administrator. On the southern property line, the fence shall be 12 feet high to provide an additional visual and safety screen for the adjacent school. The applicant shall submit the materials for the fence to the Zoning Administrator for review and approval before the fence is installed.
34. Applicant, through its contractor, shall implement comprehensive traffic control measures as set forth in the approved Traffic and Parking Management Plan, including scheduling of major truck trips and deliveries to avoid peak hours (normally 7 a.m. to 9 a.m. and 4 p.m. to 6 p.m.).
35. All mud, dirt and construction debris carried off the construction site onto adjacent streets shall be removed and cleaned daily. Failure to adequately sweep the streets may result in the City undertaking the effort at Applicant's cost.
36. Dust control measures to minimize air quality impacts shall be implemented including:
 - a. Cover stockpiles of debris, soil, sand or other materials that can be blown by the wind. b) Cover all trucks hauling soil, sand, and other loose materials.
 - b. Pave, apply non-potable water three times daily, or apply (non-toxic) soil stabilizers on all unpaved access roads, parking areas and staging areas at site.
 - c. Limit traffic speeds on unpaved roads to 5 mph.
 - d. Install, maintain and replace sandbags or other erosion control measures to prevent silt runoff to public roadways.
 - e. Minimize removal and replant vegetation in disturbed areas as quickly as possible.
 - f. No grading between October 1st and April 15th unless the City Engineer has approved an erosion and sedimentation control plan.
37. Applicant shall be deemed responsible for any damage to public improvements that

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occur during construction and shall repair such damage at its expense and to the satisfaction of the City Engineer, including but not limited to sidewalk repair, street slurry seal or street reconstruction.

38. Prior to issuance of a certificate of occupancy, the Public Works Director shall confirm that all off-site and on-site public improvements (including sidewalk and driveway approaches) are completed in accordance with the final building permit and improvement plans or that other arrangements acceptable to the Public Works Director have been made for ensuring that the work is completed, such as an irrevocable standby letter of credit.

Operations and Environmental Services Division

39. Prior to issuance of a building permit, the applicant shall provide provision for pickup and hauling of solid waste and recycling to the satisfaction of the City of El Cerrito Operations & Environmental Services Division. This includes a written description of the plan for the removal of solid waste and recycling items; the plans clearly showing the location of the solid waste and recycling area and the proposed access for both users and waste haulers. The solid waste and recycling area must include:

- a. Access doors that are at least 8 feet wide.
- b. The solid waste and recycling storage areas/room shall be lined with metal bands 2 feet wide at a height starting 3 feet from the ground.
- c. There shall be sloping curbs in front of the access door to the solid waste and recycling storage areas/rooms.

40. Prior to the issuance of a building permit, the applicant shall submit a Construction/Demolition Waste Management Plan to the satisfaction of the City of El Cerrito Operations and Environmental Services Division. This plan must comply with the California Building Code requirement that at least 50% by weight of jobsite debris generated by new construction be recycled, reused or otherwise diverted from landfill disposal.

41. Upon completion of construction and demolition activities, but before the Certificate of Occupancy, the applicant shall submit the CWM Report to demonstrate achievement of the diversion requirement to the satisfaction of the City of El Cerrito Operations and Environmental Services Division.

Fire Department:

42. Approved numbers or address shall be provided in such a position to be plainly visible and legible from the street fronting the property.
- a. The address numbers shall be of contrasting color of the background shall be internally or externally illuminated.

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- b. If address cannot be placed as stated above a monument shall be placed where the address is plainly visible from the street.
- 43. An Automatic Fire Sprinkler System is required for this project.
- 44. A fire hydrant is required within 50' of the Fire Department Connection (FDC) and shall be on the same side of the street as the FDC unless approved by the Fire Marshal.
- 45. Building shall have a "Wet Fire Standpipe in rear stairwell.
- 46. Standpipes shall be interconnected with the fire sprinkler system.
- 47. The fire alarm system shall be installed in accordance with NFPA 72.
- 48. Fire alarm System shall have the FACP located in an approved location and shall be easily accessible and access doors clearly labeled.
- 49. If the FACP cannot be located for easy access a remote enunciator shall be placed in an approved location.
- 50. Knox box shall be placed adjacent to entry doors, doors inclosing the fire sprinkler riser and or fire alarms control panel and any remote annunciating locations, and locking gates.
- 51. Electronic gate shall have a Knox Key Entry System installed for emergency operations.
- 52. All Knox Box Entry Systems used in this building shall be approved by the Fire Marshall before installation.
- 53. Fire Extinguishers shall be placed on each level and throughout the building.
 - a. Spacing shall have a maximum travel distance of 75'.
 - b. Travel distance to an extinguisher shall not exceed 75' of travel distance.
 - c. The location of each extinguisher shall be conspicuously posted with an approved sign. Mount Fire extinguishers on wall with the top no higher than 5 feet from the ground.
- 54. All electrical breakers shall be labeled. Major equipment shall have corresponding labels.
- 55. The Fire Department shall review building plans for compliance of these before a building permit is issued. The applicant shall provide Fire Prevention Division with 24-hour notice prior to any inspections. Implementation of these conditions shall be verified prior to the issuance of the Certificate of Occupancy.

Police Department:

- 56. The building plans shall note that exterior lighting shall provide adequate illumination for

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on-site security and display purposes for the building, parking lot and pedestrian access ways while limiting off-site spillover of light through shielding. This condition shall be reviewed for compliance prior to the Certificate of Occupancy.

I CERTIFY that at a regular meeting on August 19, 2014, the El Cerrito 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 August X, 2014.

Cheryl Morse, City Clerk

APPROVED:

Janet Abelson, Mayor

CEQA Mitigation Monitoring Plan

1715 Elm Street

INTRODUCTION

The California Environmental Quality Act (CEQA) requires review of any project that could have significant adverse effects on the environment. In 1988, CEQA was amended to require reporting on and monitoring of mitigation measures adopted as part of the environmental review process. This Mitigation Monitoring and Reporting Program (MMRP) is designed to aid the City of El Cerrito in its implementation and monitoring of measures included in the Initial Study prepared for the proposed project located at 1715 Elm Street.

MITIGATION MEASURES

The MMRP describes the actions that must take place to implement each mitigation measure, the timing of those actions, and the entities responsible for monitoring the actions.

MMRP COMPONENTS

The components of each monitoring form are addressed briefly, below.

Mitigation Measure: All mitigation measures that were identified in the 1715 Elm Street Initial Study are presented and numbered accordingly.

Timing/Implementation: Each action must take place prior to the time at which a threshold could be exceeded. Implementation of the action must occur prior to or during some part of approval, project design or construction or on an ongoing basis. The timing for each measure is identified. Within the City of El Cerrito, the responsibility for implementation of the measures would lie with the Planning and Building Division.

Enforcement/Monitoring Party: The City of El Cerrito is responsible for ensuring that mitigation measures are successfully implemented.

Air Quality Mitigations

AQ-1 To adequately control dust, the project applicant shall ensure construction contracts contain requirements for implementing the BAAQMD's basic construction mitigation measures from Table 8-1 of the BAAQMD's CEQA Guidelines. Construction contracts shall also contain the following measures in order to reduce the emissions of toxic pollutants generated by heavy-duty diesel powered equipment during construction.

1. Keep all construction equipment in proper tune in accordance with manufacturers' specifications.
2. Use late-model heavy-duty diesel-powered equipment during construction to the extent that it is readily available in the San Francisco Bay Area.
3. Use diesel-powered equipment that has been retrofitted with after-treatment products (e.g., engine catalysts) to the extent that it is readily available in the

San Francisco Bay Area.

4. Use low-emission diesel fuel for all heavy-duty diesel-powered equipment operating and refueling at construction sites to the extent that it is readily available and cost effective in the San Francisco Bay Area. (This requirement does not apply to diesel-powered trucks traveling to and from the site.)
5. Utilize alternative-fuel construction equipment (i.e., compressed natural gas, liquid petroleum gas, and unleaded gasoline) to the extent that the equipment is readily available and cost effective in the San Francisco Bay Area.
6. Limit truck and equipment idling time to 5 minutes or less.
7. Rely on the electricity infrastructure surrounding the construction site rather than electrical generators powered by internal combustion engines to the extent feasible.

Timing/Implementation: Prior to construction

Enforcement/Monitoring: City of El Cerrito Planning Division

Biological Mitigations

BIO-1 Survey for Migratory Birds.

If clearing and/or construction activities will occur during the migratory bird nesting season (April 15–August 15), preconstruction surveys for nesting migratory birds shall be conducted by a qualified biologist, up to 14 days before initiation of construction activities. The qualified biologist shall survey the construction zone and a 250-foot radius surrounding the construction zone to determine whether the activities taking place have the potential to disturb or otherwise harm nesting birds.

If active nest(s) are identified during the preconstruction survey, a qualified biologist shall monitor the nest to determine when the young have fledged. Monthly monitoring reports, documenting nest status, shall be submitted to the City Planning Division until the nest(s) is deemed inactive. The biological monitor shall have the authority to cease construction if there is any sign of distress to a raptor or migratory bird. Reference to this requirement and to the Migratory Bird Treaty Act shall be included in the construction specifications.

Timing/Implementation: Prior to construction

Enforcement/Monitoring: City of El Cerrito Planning Division

BIO-2 Survey for Active Raptor Nests.

If construction activities will occur during the nesting season for raptors (January 15–August 15), all suitable raptor nesting habitat within 0.5 mile of the impacted area shall be surveyed for active raptor nests before construction activity commences. If an active raptor nest is located within 0.5 mile of the construction site, a no-activity buffer shall be erected around the nest while the nest is active to protect the nesting raptors. This buffer distance may be amended to account for nests that are not within the line of sight of the construction activity.

Timing/Implementation: Prior to construction

Enforcement/Monitoring: City of El Cerrito Planning Division

BIO-3 Conduct Surveys for Bird Nests in Structures.

If demolition of on-site structures is proposed to take place during the migratory bird nesting season (April 15–August 15), a survey for nesting migratory birds (e.g., swallows, phoebes) shall be conducted by a qualified biologist prior to demolition. If bird nests are discovered in the structure, the structure shall not be removed until the nest(s) become inactive.

Timing/Implementation: Prior to demolition

Enforcement/Monitoring: City of El Cerrito Planning Division

BIO-4 Conduct Surveys for Potential Bat Roosts.

Demolition of on-site structures shall be preceded by a survey for bat presence. Structures being used by bats will not be removed until it has been determined that bats are no longer using the site or until demolition can be carried out without harming any bats.

Timing/Implementation: Prior to demolition

Enforcement/Monitoring: City of El Cerrito Planning Division

BIO-5 Mitigate for Loss of Waters of the United States. If the US Army Corps of Engineers identifies that the feature is jurisdictional, the project applicant shall ensure that the project will result in no net loss of waters of the United States by providing mitigation through impact avoidance, impact minimization, and/or compensatory mitigation for the impact, as determined in the CWA Section 404/401 permits and/or 1602 Streambed Alteration Agreement.

Timing/Implementation: Prior to construction

Enforcement/Monitoring: City of El Cerrito Planning Division

Cultural Resource Mitigations

CULT-1 Prior to any alterations of structures on the project site, the project applicant shall complete Historic American Building Survey (HABS) level documentation. Prior to occupancy of any structure on the project site, the applicant shall complete façade restoration, and salvage and reuse building materials and landscape features, as discussed below.

a) The project applicant shall document the affected historical resource and its setting, in accordance with HABS. The intent is to preserve an accurate record of historic property that can be used in research and other preservation activities. To serve these purposes, the documentation must include information that permits assessment of its reliability.

Generally, this includes:

- Drawings: Select existing drawings, where available, should be photographed with large-format negatives or photographically reproduced on Mylar.
- Photographs: Photographs with large-format negatives of exterior and interior views, or historic views, where available.
- Written data: History and description in narrative or outline format.

HABS material standards regarding reproducibility, durability, and size shall be met. Copies of the photographs and report shall be presented to repositories that are invested in archiving the history of El Cerrito.

b) Restore the building façade, including windows, the historic wood trim around the doors and windows on the primary façade, and the door in the main entrance, as determined by documentation by either physical and/or documentary evidence to the extent documentation is available. If physical evidence is inconclusive or historic photographs are not available, comparable, intact properties built during the same period as the Rodoni house may be used to inform the appearance of the façade.

Timing/Implementation: Prior to construction or demolition activities

Enforcement/Monitoring: City of El Cerrito Planning Division

CULT-2 In the event any archeological resources are encountered during construction, work within 100 feet of the find shall cease and a qualified paleontologist shall be contacted by the project applicant to determine whether the resource is significant. If the find is determined to be of significance, an excavation plan shall be created and resources shall be donated to an appropriate cultural center. All work products and plans shall be reviewed and approved by the City prior to execution.

Timing/Implementation: During construction

Enforcement/Monitoring: City of El Cerrito Planning Division

CULT-3 In the event paleontological resources are encountered during construction, the construction manager shall cease operation at the site of the discovery and immediately notify the City of El Cerrito Environmental & Development Services Department. The project applicant shall retain a qualified paleontologist to provide an evaluation of the find and to prescribe mitigation measures to reduce impacts to a less than significant level. In considering any suggested mitigation proposed by the consulting paleontologist, the City of El Cerrito Environmental & Development Services Department shall determine whether avoidance is necessary and feasible in light of factors such as the nature of the find, project design, costs, and other considerations. If avoidance is unnecessary or infeasible, other appropriate measures (e.g., data recovery) shall be instituted. Work may proceed on other parts of the project site while mitigation for paleontological resources is carried out.

Timing/Implementation: During construction

Enforcement/Monitoring: City of El Cerrito Planning Division

CULT-4 If human remains are encountered during project construction, work within 100 feet of the remains shall be suspended immediately, and the City of El Cerrito Environmental & Development Services Department and the Contra Costa County Coroner shall be immediately notified. If the remains are determined by the County Coroner to be Native American, the Native American Heritage Commission (NAHC) shall be notified within 24 hours. A professional archaeologist with Native American burial experience shall conduct a field investigation of the specific site and consult with the Most Likely Descendant, if any, identified by the NAHC. As necessary, the archaeologist may provide professional assistance to the Most Likely Descendant, including the excavation and removal of the human remains. The City of El Cerrito Environmental & Development Services Department will be responsible for the approval of recommended mitigation, taking account of the provisions of state law, as set forth in CEQA Guidelines Section 15064.5(e) and Public Resources Code Section 5097.98. The project applicant shall implement the approved mitigation, to be verified by the City of El Cerrito Environmental & Development Services Department, before the resumption of activities at the site where the remains were discovered.

Timing/Implementation: During construction

Enforcement/Monitoring: City of El Cerrito Planning Division

GHG-1 Prior to issuance of grading or building permits, the project applicant shall specify on the final project plans implementation of BAAQMD-recommended construction-related measures to reduce GHG emissions during construction activities. These measures include, as feasible:

1. Use alternative-fueled (i.e., biodiesel, electric) construction vehicles and equipment to the maximum extent possible.
2. Use local construction materials (within 100 miles) to the maximum extent possible.
3. Recycle construction waste and demolition materials to the maximum extent possible.

Timing/Implementation: Prior to grading permits

Enforcement/Monitoring: City of El Cerrito Planning Division

ORDINANCE 2014–XX

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF EL CERRITO APPROVING
A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF EL CERRITO AND THE
EDWARD AND LORETTA BIGGS REVOCABLE TRUST FOR 1715 ELM STREET –
APPLICATION 6133**

THE CITY COUNCIL OF THE CITY OF EL CERRITO DOES HEREBY ORDAIN AS
FOLLOWS:

SECTION 1. RECITALS

A. The Applicant, the Edward and Loretta Biggs Revocable Trust, proposes a development project that includes the conversion and renovation of an existing historical single-family detached house on the Property into a community center type uses, the construction of 14 new one- and two-bedroom dwelling units, and the preservation of an existing creek on 0.42 acre site. The project proposes a Planned Development Use Permit; Design Review; a subdivision map and condominium plan; and this Development Agreement. The proposed development and applications are collectively known as the “Project”; related approvals of the applications are collectively known as the “Project Approvals”.

B. The Project site is located at 1715 Elm Street in El Cerrito, California (the “Property”).

C. The Applicant and City desire to enter into a Development Agreement subject to certain terms, attached to this ordinance, and the vesting of the Project Approvals for ten years.

D. The California Environmental Quality Act (CEQA), together with the state guidelines and City environmental regulations, require that certain projects be reviewed for environmental impacts and that environmental documents be prepared.

E. An Initial Study and Mitigated Negative Declaration (MND) pursuant to the California Environmental Quality Act (CEQA) have been prepared for this Project. All potential impacts identified are reduced to a less than significant level pursuant to the California Environmental Quality Act with the implementation of mitigation measures.

F. On April 16, 2014, the Planning Commission held a properly noticed public hearing on the Project, and adopted Resolution 14-07 recommending that the City Council adopt the Planned Development Use Permit, which Resolution is incorporated herein by reference and available for review at City Hall during normal business hours.

G. On May 21, 2014, the Planning Commission held a properly noticed public hearing on the Project, including the proposed General Plan Amendment, Planned Development District and Development Agreement, and adopted Resolution 14-10 recommending that the City Council not adopt the General Plan Amendment, Planned Development District and Development Agreement, which Resolution is incorporated herein by reference and available for review at City Hall during normal business hours.

H. On June 2, 2014, the City Council held a duly noticed public hearing to consider the Project Approval, including the Development Agreement. The City Council closed the hearing and continued consideration of the Project Approvals to June 23. At the June 23 meeting, the City Council requested additional information and continued deliberations. On August 19, the City Council reopened the hearing and received the additional information, and all interested parties had the opportunity to be heard.

I. A staff report dated August 19, 2014 and incorporated herein by reference, described and analyzed the Project, including the Development Agreement, for the City Council.

J. The City Council used their independent judgment and considered the staff report, the Initial Study and Mitigated Negative Declaration, and all reports, recommendations and testimony referenced above and adopted Resolution No. 14-XX adopting the Initial Study and Mitigated Negative Declaration prior to approving the Development Agreement.

K. The City Council has considered the recommendation of the Planning Commission on the Development Agreement, including the Planning Commission's reasons for its recommendation, the staff report, all comments received in writing, and all testimony received at the public hearing.

SECTION 2. FINDINGS AND DETERMINATIONS

On the basis of: (a) the foregoing Recitals which are incorporated herein, (b) the City of El Cerrito General Plan; (c) Initial Study and Mitigated Negative Declaration, (d) the staff report; (e) information in the entire record of proceedings for the Project, and on the basis of the specific conclusions set forth below, the City Council finds and determines that:

1. The Development Agreement is consistent with the objectives, policies, general land uses and programs specified and contained in the City's General Plan in that: (a) the General Plan land use designations, policies, programs and objectives are incorporated into the Development Agreement and not altered by the Development Agreement; and (b) the Project is consistent with the fiscal policies of the General Plan with respect to the provision of infrastructure and public services.

2. The Development Agreement is compatible with the uses authorized in, and the regulations prescribed for, the land use districts in which the real property is located.

3. The Development Agreement is in conformity with public convenience, general welfare, and good land use policies in that the Project will implement land use guidelines set forth in the General Plan.

4. The Development Agreement will not be detrimental to the health, safety, and general welfare in that the Developer's proposed Project will proceed in accordance with all the programs and policies of the General Plan and Project Approvals.

Agenda Item No. 6
Attachment 10

5. The Development Agreement will not adversely affect the orderly development of property or the preservation of property values in that the Project will be consistent with the General Plan and Project Approvals.

6. The Development Agreement complies with the requirements of §§ 65864 et seq. of the California Government Code and El Cerrito Municipal Code Chapter 19.14 and specifies the duration of the agreement, the permitted uses of the property, the density or intensity of use, the maximum height and size of proposed buildings, and provisions for reservation of open space. The Development Agreement contains an indemnity and insurance clause requiring the developer to indemnify and hold the City harmless against claims arising out of the development process, including all legal fees and costs.

SECTION 3. APPROVAL

The City Council hereby approves the Development Agreement (Exhibit A to the Ordinance) and authorizes the City Manager to execute it.

SECTION 4. NOTICING, POSTING, PUBLICATION AND RECORDATION

This ordinance is adopted pursuant to the procedures established by state law, and all required notices have been given, and the public hearing has been properly held and conducted. Within ten days after the Development Agreement is fully executed by all parties, the Development Services Manager shall submit the Agreement to the County Recorder for recordation.

SECTION 5. EFFECTIVE DATE

This ordinance shall take effect thirty days after the date of its adoption, and prior to the expiration of fifteen days from the passage thereof, the ordinance or a summary thereof shall be posted or published as may be required by law, and thereafter the same shall be in full force and effect.

THE FOREGOING ORDINANCE was introduced at a regular meeting of the City Council on August 19, 2014 and passed by the following vote:

AYES:	Councilmembers
NOES:	Councilmembers
ABSTAIN:	Councilmembers
ABSENT:	Councilmembers

ADOPTED AND ORDERED published at a regular meeting of the City Council held on the September ____, 2014 and passed by the following vote:

AYES: Councilmembers
NOES: Councilmembers
ABSTAIN: Councilmembers
ABSENT: Councilmembers

APPROVED:

Janet Abelson, Mayor

ATTEST:

Cheryl Morse, City Clerk

IN WITNESS of this action, I sign this document and affix the corporate seal of the City of El Cerrito on September XX, 2014.

Cheryl Morse, City Clerk

ORDINANCE CERTIFICATION

I, Cheryl More, City Clerk of the City of El Cerrito, do hereby certify that this Ordinance is the true and correct original Ordinance No. 2014-XX of the City of El Cerrito, that said Ordinance was duly enacted and adopted by the City Council of the City of El Cerrito at a meeting of the City Council held on the __ day of September 2014; and that said ordinance has been published and/or posted in the manner required by law.

WITNESS my hand and the Official Seal of the City of El Cerrito, California, this __ day of September, 2014.

Cheryl Morse, City Clerk

Exhibit A

Legal Description of the Property

The land referred to is situated in the State of California, County of Contra Costa, City of El Cerrito, and is described as follows:

Lots 12, 13 and 14, in Block "B" as designated on the map entitled "Map of Schmidt Village, Contra Costa County, California", filed June 27, 1896, in Book C of Maps, Page 70, Contra Costa County Records.

EXCEPTING THEREFROM: The Northeast 7.00 feet thereof, as described in the Deed to City of El Cerrito, recorded February 9, 1965, in Book 4801 Official Records of Contra Costa County, Page 144.

(APN 502-112-038)

RECORDING REQUESTED BY:

CITY OF EL CERRITO

When Recorded Mail To:

City Clerk
City of El Cerrito
10890 San Pablo Ave.
El Cerrito, CA 94530

*Exempt from Recorder's Fees
Pursuant to Government Code §§ 27383, 6103*

Space above this line for Recorder's use

DEVELOPMENT AGREEMENT

BETWEEN THE

CITY OF EL CERRITO

AND

**THE EDWARD AND LORETTA BIGGS REVOCABLE TRUST
DATED MARCH 22, 2011**

FOR 1715 ELM STREET

THIS DEVELOPMENT AGREEMENT ("**Agreement**" or "**Development Agreement**") is made and entered into in the City of El Cerrito on _____ 2014, by and between the City of El Cerrito, a municipal corporation ("**City**") and The Edward and Loretta Biggs Revocable Trust dated March 22, 2011 ("**Developer**") pursuant to the authority of §§ 65864 *et seq.* of the California Government Code and El Cerrito Municipal Code, Chapters 19.14 and 19.41. City and Developer are, from time-to-time, individually referred to in this Agreement as a "party," and collectively as "parties."

RECITALS

A. California Government Code §§ 65864 *et seq.* ("Development Agreement Law") and Chapter 19.41 of the El Cerrito Municipal Code ("**Chapter 19.41**") authorize the City to enter into a development agreement for the development of real property with any person having a legal or equitable interest in such property in order to establish certain development rights in such property. Chapter 19.14 of the El Cerrito Municipal Code ("**Chapter 19.14**") requires a development agreement for all projects for which Planned Development District zoning is approved.

B. Developer owns the real property located at 1715 El Street in the City (APN 502-112-038) and that is more particularly described in Exhibit A attached hereto and is incorporated herein by reference (the "**Property**").

C. The proposed development of the Property includes the relocation and conversion of an existing historical single-family detached house on the Property into a museum, art studio, office, or other community center type use, the construction of 14 new one- and two-bedroom dwelling units, and the preservation of an existing open space channel on the 0.42 acre site (the "**Project**").

D. Developer has applied for and City has approved or is processing, various land use approvals in connection with the Project, including, without limitation, a General Plan Amendment; Planned Development District zoning; a Planned Development Use Permit; Design Review; a subdivision map and condominium plan; and this Development Agreement. All such approvals, collectively, together with any approvals or permits now or hereafter issued with respect to the Project, are referred to as the "**Project Approvals**." None of the Project Approvals take effect until the Development Agreement takes effect.

E. City desires the timely, efficient, orderly and proper development of the Project.

F. The City Council has found that, among other things, this Development Agreement is consistent with its General Plan, as amended, and has been reviewed and evaluated in accordance with the Development Agreement Law and Chapters 19.14 and 19.41.

G. City and Developer have reached agreement and desire to express herein a Development Agreement that will facilitate development of the Project, subject to conditions set forth herein.

H. The El Cerrito Planning Commission approved a Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program for the Project on April 16, 2014 by the adoption of Planning Commission Resolution No. PC14-XX. The Mitigated Negative Declaration analyzed the environmental impacts of this Agreement. No significant unavoidable impacts were identified in the Mitigated Negative Declaration.

I. On _____, 2014, the City Council adopted Ordinance No. _____ approving this Development Agreement (the “**Approving Ordinance**”). The Approving Ordinance states that it will take effect on _____ (the “**Ordinance Effective Date**”).

NOW, THEREFORE, with reference to the foregoing recitals and in consideration of the mutual promises, obligations and covenants herein contained, City and Developer agree as follows:

AGREEMENT

1. Description of Property.

The Property that is the subject of this Agreement is described in Exhibit A attached hereto.

2. Interest of Developer.

The Developer owns the Property.

3. Relationship of City and Developer.

It is understood that this Agreement is a contract that has been negotiated and voluntarily entered into by the City and Developer and that the Developer is not an agent of the City. The City and Developer hereby renounce the existence of any form of joint venture or partnership between them, and agree that nothing contained herein or in any document executed in connection herewith shall be construed as making the City and Developer joint venturers or partners.

4. Effective Date, Term, and Termination.

4.1. Effective Date. The effective date of this Agreement shall be the Ordinance Effective Date (“**Effective Date**”).

4.2. Term. The term of this Agreement shall commence on the Effective Date and extend five (5) years thereafter, unless said term is otherwise

terminated or modified pursuant to the provisions of this Agreement. As authorized by California Government Code Sections 65863.9 and 66452.6(a)(1), the terms of the Project Approvals shall be the longer of: (a) the term of this Agreement; or (b) the term normally given each approval under controlling law.

4.3. Termination.

4.3.1. Termination on Sale of Individual Lots. Notwithstanding the foregoing Section 4.2, the provisions of this Agreement shall terminate with respect to any individual lot and such lot shall be released from and shall no longer be subject to this Agreement (without the execution or recordation of any further document or the taking of any further action) upon the lot being finally subdivided and sold or leased to a member of the public or any other ultimate user. City shall cooperate with Developer, at no cost to City, in executing in recordable form any document that Developer (including any successor to the title of the Developer in and to any of the aforescribed lots) may submit to confirm the termination of this Agreement as to any such lot. For purposes of this Section 4.3.1, each reference to a "lot" shall be deemed to include an individual dwelling unit that is a standalone structure or constructed within a multi-unit building, whether leased as an apartment or single-family home or sold as a condominium or similar interest in the Property.

4.3.2. Termination Upon Completion of Project. Notwithstanding the foregoing Sections 4.2 and 4.3.1, upon completing construction of the Project and satisfying all terms and conditions of this Agreement and the Project Approvals, Developer may send City written notice terminating this Agreement. City shall cooperate with Developer, at no cost to City, in executing in recordable form any document that Developer (including any successor to the title of Developer in and to any portion of the Property) may submit to confirm the termination of this Agreement.

5. Use of the Property.

5.1. Right to Develop. Developer shall have the vested right to develop the Project on the Property in accordance with the terms and conditions of this Agreement, the Project Approvals (as and when issued), and any amendments to any of them as shall, from time to time, be approved pursuant to this Agreement. (Such amendments, once effective, shall become part of the law Developer is vested into without an additional amendment of this Agreement.) Notwithstanding the foregoing or anything to the contrary herein, any amendment to the General Plan not in effect on the Effective Date shall not become part of the law Developer is vested into under this Agreement unless an additional amendment of this Agreement is entered into between Developer and City in accordance with state and City laws.

5.2. Permitted Uses. The permitted uses of the Property, the density and intensity of use, the maximum height, bulk, and size of proposed buildings, the provisions for reservation or dedication of land for public purposes, the location and maintenance of on-site and off-site improvements, the location of public utilities, and other terms and conditions of development applicable to the Property, shall be those set forth in this Agreement, the Project Approvals and any amendments to this Agreement or the Project Approvals, subject to the provisions of Section 5.1.

5.3. Rules Regarding Permitted Uses. For the term of this Agreement, the City's ordinances, resolutions, rules, regulations and official policies governing the permitted uses of the Property and governing density and intensity of use of the Property and the maximum height, bulk and size of proposed buildings shall be those in force and effect on the Effective Date of this Agreement.

5.4. Rules Regarding Design and Construction. Unless otherwise expressly provided in Section 5 of this Agreement, the ordinances, resolutions, rules, regulations and official policies governing design, improvement and construction standards and specifications applicable to the Project shall be those in force and effect at the time of the applicable discretionary approval, whether the date of that approval is prior to or after the date of this Agreement. Ordinances, resolutions, rules, regulations and official policies governing design, improvement and construction standards, and specifications applicable to public improvements to be constructed by Developer shall be those in force and effect at the time of the applicable discretionary approval, whether the date of that approval is prior to or after the date of this Agreement.

5.5. Building and Other Codes Applicable. The Project shall be constructed in accordance with the provisions of the Building, Mechanical, Plumbing, Electrical, and Fire Codes and Title 24 of the California Code of Regulations, relating to Building Standards, in effect at the time of approval of the appropriate building, grading, encroachment or other construction permits for the Project.

5.6. Treatment of Existing House. The existing house that Developer plans to move and renovate within the Property as part of the Project (the "**House**"), shall be subject to the following terms and conditions.

5.6.1. Relocation and Restoration of House. Developer shall relocate the House to the location shown in the Project Approvals, which shall be part of the common area owned by the Homeowners Association for the Project ("**HOA**"). The House shall be placed on a new foundation. Plumbing and electrical systems shall be updated in compliance with applicable codes. A bathroom and exterior lift will be installed compliant with the Americans with Disabilities Act ("**ADA**"). Recognizing its historic

status, the exterior of the House shall be restored to applicable Department of Interior standards for restoration of historic structures; the ADA-compliant lift is allowed under the California Historic Building Code, which also applies to restoration of the House. Construction details and floor plan revisions shall be subject to the reasonable satisfaction of City's Development Services Manager.

5.6.2. Lease to City. Developer agrees to lease the House to City after the structure has been moved and renovated, and City agrees to accept and enter into a lease for the House, subject to the terms and conditions in Section 5.6. The lease shall be for a term of ninety-nine (99) years, at a total rent of One Dollar (\$1.00) payable in advance. Following expiration or earlier termination of the lease, the HOA shall be free to sell, lease or use the House as it sees fit, including residential use, subject to applicable regulations, including but not limited to obtaining an amendment to the City's General Plan to allow for the resulting density.

5.6.3. Use of House. The lease shall specify that City may only use the House for (a) a museum, (b) an art studio, or (c) offices or similar community center type use, as are conditionally permitted in the underlying RM Zoning District. "Community center type use" shall be consistent with the foregoing specific uses and shall comply with applicable provisions of the El Cerrito Municipal Code, including limits on outdoor noise levels for residential areas (Section 19.21.050.B.2.a). No use of the House by City or a subtenant shall draw crowds or produce noise disruptive to the residents of the residential component of the Project, except for approved special events. Any special events would require an Administrative Use Permit. The House may be used by the City or a subtenant only Monday through Saturday between 8:00 a.m. and 6:00 p.m., unless the HOA agrees to different hours for special events. The House may only be opened to the general public during the same hours as the Publicly Available Open Space, set forth in Section 5.8 below. City acknowledges that the allowed uses of the House are intended to be compatible with the neighborhood and avoid traffic, parking and noise concerns. For the avoidance of doubt, the parties agree that while the lease is in effect the House may not be used as a residence.

5.6.4. Maintenance of House. While the lease is in effect, City shall be solely responsible for maintenance of the House (but not surrounding grounds which shall be the responsibility of the HOA), and neither Developer nor the HOA shall have any obligation or liability for maintenance of the House.

5.6.5. Parking. Developer shall reserve one (1) parking space in the Project for the exclusive use of the House.

5.6.6. Sublease of House. City may sublease the House to a non-profit organization (“**NPO**”), which subtenant shall be subject to the terms and restrictions described in this Section 5.6 which City covenants to include in any such sublease and enforce on any such subtenant. The HOA shall be informed of each change in tenancy in order to monitor use of the reserved parking space and the party responsible for maintenance of the House.

5.7. HOA Maintenance Responsibilities. In addition to its other responsibilities, the HOA shall be responsible for maintaining (a) the open space channel traversing the Project and the abutting landscaping, walkway and related improvements, (b) the oval open space area south of the channel and in front of the House (the “**Publicly Accessible Open Space**”), and (c) the grounds surrounding the House; provided, City or its subtenant shall be responsible for cleaning up after their use of the grounds surrounding the House related to their use of the House, and for repairing any damage to the grounds caused by such use. The HOA responsibilities shall be specified in Covenants, Conditions and Restrictions (“**CC&Rs**”) for the Project, and City responsibilities shall be specified in the lease and any sublease for the House.

5.8. Public Use of Open Space. The Publicly Accessible Open Space, including the pathway within and partially abutting the south side of the open space channel from Elm Street to the front of the House as shown in the Project Approvals, shall be open to the public Monday through Saturday between 10:00 a.m. and 5:00 p.m., except as needed for maintenance purposes. The fence across the Elm Street frontage of the Project shall include an opening to provide access to the Publicly Accessible Open Space and the House, with a gate which the HOA may lock to enforce the hours of public use described in Section 5.6 and this Section. City’s lease of the House and the grant of public access to the Publicly Accessible Open Space shall not entitle City or any subtenant to use the Publicly Accessible Open Space for an organized event or use the Publicly Accessible Open Space as part of its use of the House, without the consent of the HOA in its sole discretion, and City shall be responsible for cleaning and repairing the Publicly Accessible Open Space after any such use whether or not approved by the HOA. Notwithstanding the foregoing, neither City nor a subtenant shall require HOA approval for use of the Public Accessible Open Space as part of either’s use of the House if the use is consistent with the intended passive recreational purposes of the Publicly Accessible Open Space.

6. Subsequently Enacted Rules and Regulations.

6.1. New Rules and Regulations. Consistent with Government Code section 65866, during the term of this Agreement, the City may apply new or modified ordinances, resolutions, rules, regulations and official policies of the City, whether adopted by the City or through the referendum or initiative process (“**New City Laws**”) to the Property, which were not in force and effect on the

Effective Date of this Agreement and which are not in conflict with those applicable to the Property as set forth in this Agreement and are not in conflict with the Project Approvals. Without limiting the generality of the foregoing, or any other provision of this Agreement, a New City Law shall be deemed to conflict with this Agreement to the extent it limits or controls the timing of construction or occupancy of the Project.

6.2. Approval of Application. Nothing in this Agreement shall prevent the City from denying or conditionally approving any subsequent land use permit or authorization for the Project on the basis of such New City Laws except that such subsequent actions shall be subject to any conditions, terms, restrictions, and requirements expressly set forth herein.

7. Subsequently Enacted or Revised Fees, Assessments and Taxes.

Notwithstanding anything to the contrary contained herein, the Project shall be subject to subsequently enacted or revised fees, assessments and taxes adopted by the City after the Effective Date of this Agreement. Nothing in this Agreement creates a vested right for the Project in the amount or type of fees, assessments and taxes in effect on the Effective Date of this Agreement.

8. Amendment or Cancellation.

8.1. Modification Because of Conflict with State or Federal Laws. The Project and Property shall be subject to state and federal laws and regulations and this Agreement does not create any vested right in state and federal laws and regulations in effect on the Effective Date. In the event that state or federal laws or regulations enacted after the Effective Date of this Agreement prevent or preclude compliance with one or more provisions of this Agreement or require changes in plans, maps, or permits approved by the City, the parties shall meet and confer in good faith in a reasonable attempt to modify this Agreement to comply with such federal or state law or regulation. Any such amendment or suspension of the Agreement shall be subject to approval by the City Council in accordance with Chapter 8.56 of the Municipal Code.

8.2. Amendment by Mutual Consent. This Agreement may be amended in writing from time to time by mutual consent of the parties hereto and in accordance with the procedures of state law and Chapter 19.41.

8.3. Insubstantial Amendments. Notwithstanding the provisions of the preceding Paragraph 8.2, any amendments to this Agreement that do not relate to (a) the term of the Agreement as provided in Paragraph 4.2; (b) the permitted uses of the Property as provided in Paragraph 5.2; (c) the density or intensity of use of the Project; (d) the maximum height or size of proposed buildings; or (e) monetary contributions by Developer as provided in this Agreement, shall not, except to the extent otherwise required by law, require notice or public hearing

before either the Planning Commission or the City Council before the parties may execute an amendment hereto.

8.4. Cancellation By Mutual Consent. Except as otherwise permitted herein, this Agreement may be canceled in whole or in part only by the mutual consent of the parties or their successors in interest, in accordance with the provisions of Chapter 19.41.

9. Annual Review.

9.1. Review Date. The annual review date for this Agreement shall be between June 1 and July 1, 2015 and thereafter between each June 1 and July 1 during the Term.

9.2. Initiation of Review. Developer shall initiate annual review of this Agreement by submitting an annual application. Developer shall submit with such application a report to the City's Community Development Director describing the Developer's good faith substantial compliance with the terms of this Agreement during the preceding year and include supporting evidence. Such report shall include a statement that the report is submitted to the City pursuant to the requirements of Government Code Section 65865.1 and of this Agreement. The report shall comply with Section 19.41.050 of Chapter 19.41. The burden of proof by substantial evidence of compliance is upon the Developer.

9.3. Finding of Compliance. Within thirty (30) days after Developer submits its report hereunder, the City's Community Development Director shall review Developer's submission to ascertain whether Developer has demonstrated good faith substantial compliance with the material terms of this Agreement. If the Community Development Director finds and determines, in consultation with the City Manager and the City's Public Works Director, that Developer has in good faith substantially complied with the material terms of this Agreement, or does not determine otherwise within 30 days after delivery of Developer's report, then the annual review shall be concluded. If the Community Development Director initially determines that such report is inadequate in any respect, then he or she shall provide written notice to that effect to Developer, and Developer may supply such additional information or evidence as may be necessary to demonstrate good faith substantial compliance with the material terms of this Agreement. Following consultation with the City Manager and the City's Public Works Director, if the Community Development Director concludes that Developer has not demonstrated good faith substantial compliance with the material terms of this Agreement, then he or she shall so notify Developer within 30 days after delivery of the additional information and prepare a report to the City Council with respect to the conclusions of the Community Development Director and the contentions of Developer with respect thereto.

9.4. City Council Hearing Regarding Non-Compliance. After submission of the staff report of the City's Community Development Director, the City Council shall conduct a noticed public hearing to consider the determination that Developer has not demonstrated good faith substantial compliance with the material terms of this Agreement. At least ten (10) days prior to hearing, the Community Development Director shall provide to the City Council, Developer and to all interested persons requesting the same, copies of all staff reports and other information concerning Developer's good faith substantial compliance with the material terms of this Agreement and the conclusions and recommendations of the Community Development Director. At such hearing, Developer and any other interested person shall be entitled to submit evidence, orally or in writing, and address all the issues raised in the staff report on, or with respect or germane to, the issue of Developer's good faith substantial compliance with the material terms of this Agreement. If, after receipt of any written or oral response of Developer, and after considering all of the evidence at such public hearing, the City Council finds and determines, on the basis of substantial evidence, that Developer has not substantially complied in good faith with the material terms of this Agreement, then the City Council shall specify to Developer the respects in which Developer has failed to comply, and shall also specify a reasonable time for Developer to meet the terms of compliance, which time shall be not less than thirty (30) days after the date of the City Council's determination, and shall be reasonably related to the time necessary to adequately bring Developer's performance into good faith substantial compliance with the material terms of this Agreement.

If the areas of noncompliance specified by the City Council are not corrected within the time limits prescribed by the City Council hereunder, then the City Council may by subsequent noticed hearing extend the time for compliance for such period as the City Council may determine (with conditions, if the City Council deems appropriate), terminate, or modify this Agreement, or take such other actions as permitted under applicable law. Any notice to Developer of a determination of noncompliance by Developer hereunder, or of a failure by Developer to remedy the areas of noncompliance hereunder, shall specify in reasonable detail the grounds therefore and all facts demonstrating such noncompliance or failure, so that Developer may address the issues raised in the notice of noncompliance or failure on point-by-point basis in any hearing held by the City Council hereunder.

9.5. Meet and Confer Process. If either the City's Community Services Director or the City Council makes a determination that Developer has not demonstrated good faith substantial compliance with the material terms of this Agreement, then the City Manager and/or designated City Council representatives may initiate a meet and confer process with Developer pursuant to which the Parties shall meet and confer to determine a resolution acceptable to both Parties of the bases upon which the Community Services Director or City

Council has determined that Developer has not demonstrated good faith substantial compliance with the material terms of this Agreement. The results and recommendations of the meet and confer process shall be presented to the City Council for review and consideration at its next regularly scheduled public meeting, including consideration of such amendments to this Agreement as may be necessary or appropriate to effectuate the resolution through such meet and confer process, Developer shall be deemed to be in good faith substantial compliance with the material terms of this Agreement, only upon the City Council's acceptance of the results and recommendation of the meet and confer process.

9.6. Staff Reports. To the extent practical, the City shall deposit in the mail and fax or email to Developer a copy of all staff reports, and related exhibits concerning contract performance at least five (5) days prior to any annual review.

9.7. Costs. Costs reasonably incurred by the City in connection with the annual review shall be paid by Developer in accordance with the City's schedule of fees in effect at the time of review.

10. Default.

10.1. Other Remedies Available. Upon the occurrence of an event of default, the parties may pursue all other remedies at law or in equity that are not otherwise provided for in this Agreement or in the City's regulations governing development agreements, expressly including the remedy of specific performance of this Agreement.

10.2. Notice and Cure. Upon the occurrence of an event of default by either party, the nondefaulting party shall serve written notice of such default upon the defaulting party. If the default is not cured by the defaulting party within thirty (30) days after service of such notice of default, the nondefaulting party may then commence any legal or equitable action to enforce its rights under this Agreement; provided, however, that, if the default cannot be cured within such thirty (30) day period, the nondefaulting party shall refrain from any such legal or equitable action so long as the defaulting party begins to cure such default within such thirty (30) day period and diligently pursues such cure to completion. Failure to give notice shall not constitute a waiver of any default.

10.3. No Damages Against City. Notwithstanding anything to the contrary contained herein, in no event shall damages be awarded against the City upon an event of default or upon termination of this Agreement.

11. Estoppel Certificate.

Either party may, at any time, and from time to time, send written notice to the other party requesting such party to certify in writing that (a) this Agreement

is in full force and effect and a binding obligation of the parties, (b) this Agreement has not been amended or modified either orally or in writing, or, if so amended, identifying the amendments, and (c) to the knowledge of the certifying party, the requesting party is not in default in the performance of its obligations under this Agreement, or, if in default, to describe therein the nature and amount of any such defaults. A party receiving a request hereunder shall execute and return such certificate within thirty (30) days following the receipt thereof, or such longer period as may reasonably be agreed to by the parties. City Manager of the City shall be authorized to execute any certificate requested by Developer. Should the party receiving the request not execute and return such certificate within the applicable period, this shall not be deemed to be a default, provided that such party shall be deemed to have certified that the statements in clauses (a) through (c) of this Section are true, and any party may rely on such deemed certification.

12. Mortgagee Protection; Certain Rights of Cure.

12.1. Mortgagee Protection. This Agreement shall be superior and senior to any lien placed upon the Property, or any portion thereof after the date of recording this Agreement, including the lien for any deed of trust or mortgage ("**Mortgage**"). Notwithstanding the foregoing, no breach hereof shall defeat, render invalid, diminish, or impair the lien of any Mortgage made in good faith and for value, but all the terms and conditions contained in this Agreement shall be binding upon and effective against any person or entity, including any deed of trust beneficiary or mortgagee ("**Mortgagee**") who acquires title to the Property, or any portion thereof, by foreclosure, trustee's sale, deed in lieu of foreclosure, or otherwise.

12.2. Mortgagee Not Obligated. Notwithstanding the provisions of Section 12.1 above, no Mortgagee shall have any obligation or duty under this Agreement, before or after foreclosure or a deed in lieu of foreclosure, to construct or complete the construction of improvements, or to guarantee such construction of improvements, or to guarantee such construction or completion, or to pay, perform or provide any fee, dedication, improvements or other exaction or imposition; provided, however, that the Mortgagee shall not be entitled to devote the Property to any uses or to construct any improvements thereon other than those uses or improvements provided for or authorized by the Project Approvals or by this Agreement without new approvals by the City as may be required for such other uses or improvements.

12.3. Notice of Default to Mortgagee and Extension of Right to Cure. If the City receives notice from a Mortgagee requesting a copy of any notice of default given Developer hereunder and specifying the address for service thereof, then the City shall deliver to such Mortgagee, concurrently with service thereon to Developer, any notice given to Developer with respect to any claim by the City that Developer has committed an event of default. Each Mortgagee shall

have the right during the same period available to Developer to cure or remedy, or to commence to cure or remedy, the event of default claimed set forth in the City's notice. The City, through its City Manager, may extend the thirty-day cure period provided in Paragraph 10.2 for not more than an additional sixty (60) days upon request of Developer or a Mortgagee.

13. Severability.

The unenforceability, invalidity, or illegality of any provision, covenant, condition, or term of this Agreement shall not render the other provisions unenforceable, invalid, or illegal.

14. Attorneys' Fees and Costs.

If the City or Developer initiates any action at law or in equity to enforce or interpret the terms and conditions of this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs in addition to any other relief to which it may otherwise be entitled. If any person or entity not a party to this Agreement initiates an action at law or in equity to challenge the validity of any provision of this Agreement or the Project Approvals, the parties shall cooperate in defending such action. Developer shall bear its own costs of defense as a real party in interest in any such action, and shall reimburse the City for all reasonable court costs and attorneys' fees expended by the City in defense of any such action or other proceeding.

15. Transfers and Assignments.

15.1. Right to Assign. Developer may wish to sell, transfer, or assign all or portions of its Property to another entity (each such other entity is referred to as a "Transferee"). In connection with any such sale, transfer, or assignment to a Transferee, Developer may sell, transfer, or assign to such Transferee any or all rights, interests, and obligations of Developer arising hereunder and that pertain to the portion of the Property being sold or transferred to such Transferee, provided, however, that no such transfer, sale, or assignment of Developer's rights, interests, and obligations hereunder shall occur without prior written notice to City and approval by the City Manager, which approval shall not be unreasonably withheld, conditioned or delayed.

15.2. Approval and Notice of Sale, Transfer or Assignment. The City Manager shall consider and decide on any transfer, sale, or assignment within ten (10) days after Developer's notice, provided all necessary documents, certifications, and other information are provided to the City Manager to enable

the City Manager to determine whether the proposed Transferee can perform the Developer's obligations hereunder. Notice of any such approved sale, transfer, or assignment (which includes a description of all rights, interests and obligations that have been transferred and those which have been retained by Developer) shall be recorded in the official records of Contra Costa County, in a form acceptable to the City Manager, concurrently with such sale, transfer, or assignment.

15.3. Release Upon Transfer. Upon the transfer, sale, or assignment of all of Developer's rights, interests, and obligations hereunder pursuant to Paragraph 15.1 of this Agreement, Developer shall be released from the obligations under this Agreement, with respect to the Property transferred, sold, or assigned, arising subsequent to the date of City Manager approval of such transfer, sale, or assignment; provided, however, that if any Transferee approved by the City Manager expressly assumes all of the rights, interests, and obligations of Developer under this Agreement, Developer shall be released with respect to all such rights, interests, and assumed obligations. In any event, the transferee, purchaser, or assignee shall be subject to all the provisions hereof and shall provide all necessary documents, certifications, and other necessary information prior to City Manager approval.

15.4. Developer's Right to Retain Specified Rights or Obligations. Notwithstanding Paragraphs 15.1 and 15.2 and Paragraph 16, Developer may withhold from a sale, transfer, or assignment of this Agreement certain rights, interests, and/or obligations, which Developer shall retain, provided that Developer specifies such rights, interests, and/or obligations in a written document to be appended to this Agreement and recorded with the Contra Costa County Recorder prior to the sale, transfer, or assignment of the Property. Developer's Transferee shall then have no interest or obligations for such rights, interests and obligations, and this Agreement shall remain applicable to Developer with respect to such retained rights, interests, and/or obligations.

16. Agreements Run With the Land.

All of the provisions, rights, terms, covenants, and obligations contained in this Agreement shall be binding upon the parties and their respective heirs, successors and assigns, representatives, lessees, and all other persons acquiring the Property, or any portion thereof, or any interest therein, whether by operation of law or in any manner whatsoever. All of the provisions of this Agreement shall be enforceable as equitable servitudes and shall constitute covenants running with the land pursuant to applicable laws, including, but not limited to, Section 1468 of the Civil Code of the State of California. Each covenant to do, or refrain from doing, some act on the Property hereunder, or with respect to any owned property (a) is for the benefit of such properties and is a burden upon such properties, (b) runs with such properties, and (c) is binding upon each party and each successive owner during its ownership of such

properties or any portion thereof, and shall be a benefit to and a burden upon each party and its property hereunder and each other person succeeding to an interest in such properties.

17. Bankruptcy.

The obligations of this Agreement shall not be dischargeable in bankruptcy.

18. Indemnification.

Developer agrees to indemnify, defend and hold harmless the City, and its elected and appointed councils, boards, commissions, officers, agents, employees, and representatives from any and all claims, costs (including legal fees and costs) and liability for any personal injury or property damage which may arise directly or indirectly as a result of any actions or inactions by the Developer, or any actions or inactions of Developer's contractors, subcontractors, agents, or employees in connection with the construction, improvement, operation, or maintenance of the Project, provided that Developer shall have no indemnification obligation with respect to negligence or wrongful conduct of the City, its contractors, subcontractors, agents or employees or with respect to the maintenance, use or condition of any improvement after the time it has been dedicated to and accepted by the City or another public entity (except as provided in an improvement agreement or maintenance bond). If City is named as a party to any legal action, City shall cooperate with Developer, shall appear in such action and shall not unreasonably withhold approval of a settlement otherwise acceptable to Developer.

19. Insurance.

19.1. Public Liability and Property Damage Insurance. During the term of this Agreement, whenever Developer is conducting work on the Property pursuant to the Project Approvals, Developer shall maintain in effect a policy of comprehensive general liability insurance with a per-occurrence combined single limit of not less than One Million Dollars (\$1,000,000.00) with a One Hundred Thousand Dollar (\$100,000) self-insurance retention per claim. The policy so maintained by Developer shall name the City as an additional insured and shall include either a severability of interest clause or cross-liability endorsement.

19.2. Workers Compensation Insurance. During the term of this Agreement, whenever Developer is conducting work on the Property pursuant to the Project Approvals, Developer shall maintain Worker's Compensation insurance for all persons employed by Developer for work at the Project site. Developer shall require each contractor and subcontractor similarly to provide Worker's Compensation insurance for its respective employees. Developer

agrees to indemnify the City for any damage resulting from Developer's failure to maintain any such insurance.

19.3. Evidence of Insurance. Prior to issuance of any permits for the Project, including grading permits, Developer shall furnish the City satisfactory evidence of the insurance required in Sections 19.1 and 19.2 and evidence that the carrier is required to give the City at least fifteen (15) days prior written notice of the cancellation or reduction in coverage of a policy. The insurance shall extend to the City, its elective and appointive boards, commissions, officers, agents, employees, and representatives and to Developer performing work on the Project.

20. Notices.

All notices required or provided for under this Agreement shall be in writing. Notices required to be given to the City shall be addressed as follows:

City Manager
City of El Cerrito
10890 San Pablo Ave.
El Cerrito, CA 94530
Fax: (510) 864-7025
Email: sch@ci.el-cerrito.ca.us

Notices required to be given to Developer shall be addressed as follows:

The Edward and Loretta Biggs Revocable Trust dated March 22, 2011
4271 Valley Lane
Fairfield, CA 94534
Fax: (707) 864-8150

A party may change its address by giving notice in writing to the other party. Thereafter, all notices shall be addressed and transmitted to the new address. Notices shall be deemed given and received upon personal delivery, or, if mailed, upon the expiration of 48 hours after being deposited in the United States Mail. Notices may also be given by overnight courier which shall be deemed given the following day, or by facsimile, which shall be deemed given upon verification of receipt if received before 5:00 p.m. on a regular business day or else on the next business day. The City will accept notice by email transmission, which shall be deemed given upon verification of receipt if received before 5:00 p.m. on a regular business day or else on the next business day. Developer may accept notice by email by providing notice and an email address to the City consistent with this section.

21. Agreement is Entire Understanding.

This Agreement constitutes the entire understanding and agreement of the parties concerning the subject matter of this Agreement.

22. Exhibits.

The following documents are referred to in this Agreement and are attached hereto and incorporated herein as though set forth in full:

Exhibit A Legal Description of Property

23. Counterparts.

This Agreement is executed in three (3) duplicate originals, each of which is deemed to be an original.

24. Recordation.

The City shall record a copy of this Agreement within ten (10) days following the Effective Date.

[Execution Page Follows]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date and year first above written.

CITY OF EL CERRITO

DEVELOPER

The Edward and Loretta Biggs Revocable
Trust dated March 22, 2011

Scott Hanin, City Manager

By: _____

Its: Trustee

Attest:

Cheryl Morse, City Clerk

Approved as to Form:

Sky Woodruff, City Attorney

(NOTARIZATION ATTACHED)

Exhibit A

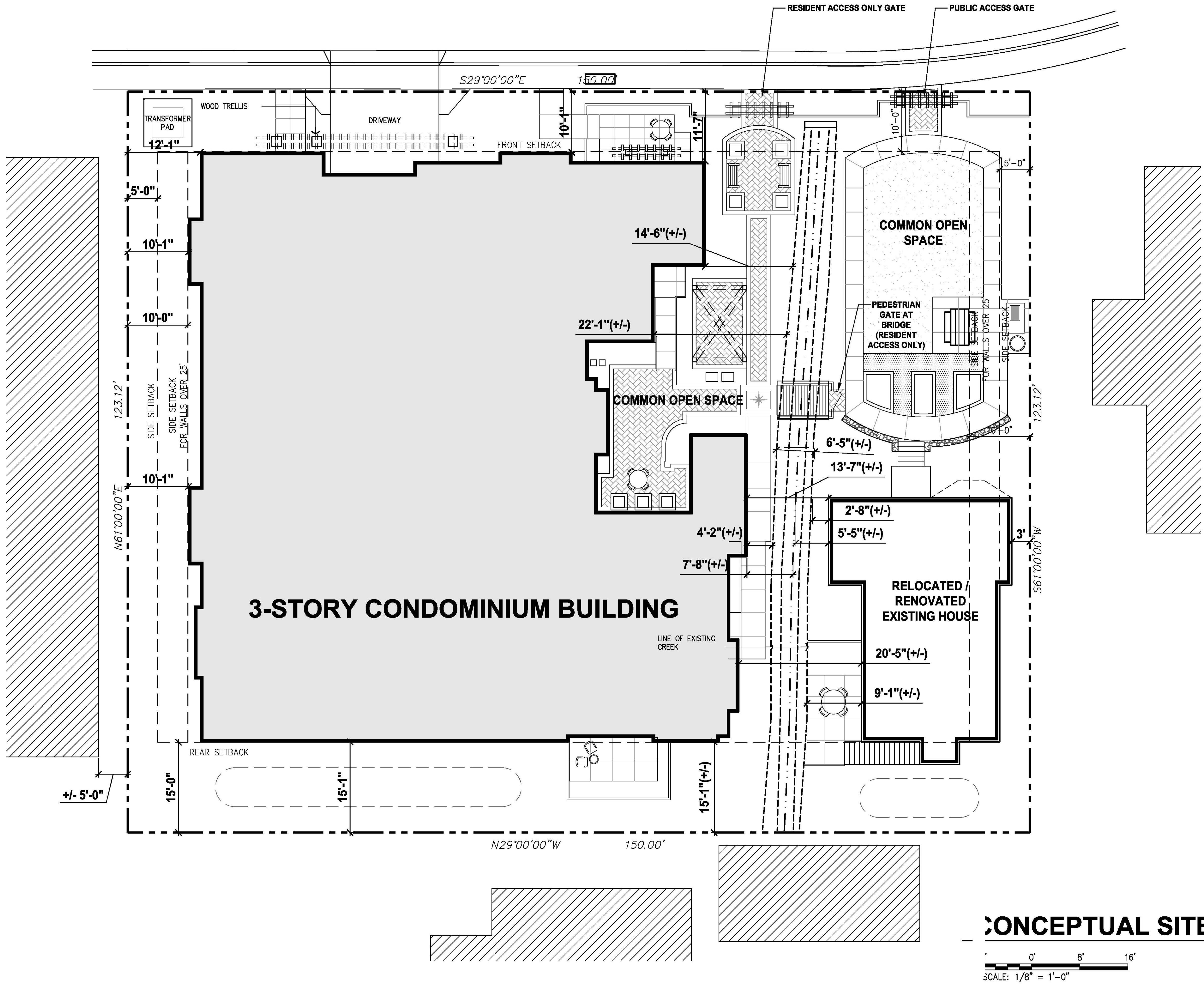
Legal Description of the Property

The land referred to is situated in the State of California, County of Contra Costa, City of El Cerrito, and is described as follows:

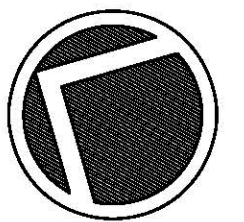
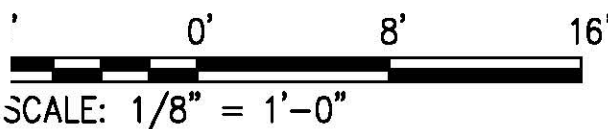
Lots 12, 13 and 14, in Block "B" as designated on the map entitled "Map of Schmidt Village, Contra Costa County, California", filed June 27, 1896, in Book C of Maps, Page 70, Contra Costa County Records.

EXCEPTING THEREFROM: The Northeast 7.00 feet thereof, as described in the Deed to City of El Cerrito, recorded February 9, 1965, in Book 4801 Official Records of Contra Costa County, Page 144.

(Being APN 502-112-038)



CONCEPTUAL SITE PLAN



PROJECT
NORTH

1715 Elm Street

El Cerrito, California

Channel Restoration Feasibility Analysis Memorandum

July 25, 2014



Restoration Design Group, LLC
2612b Eighth Street
Berkeley, CA 94710
T 510.644.2798 F 510.644.2799
www.restorationdesigngroup.com

Contents

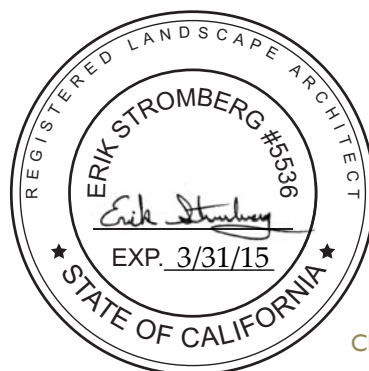
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Channel Restoration Analysis Memorandum

1. Introduction

This memorandum summarizes the results of our analysis of the channel characteristics for the above ground unnamed channel running through the subject parcel at 1715 Elm Street. The intent of this analysis is to provide the necessary background information to develop restoration concept designs for restoring the creek on the site to evaluate the potential for restoring the creek at the site. The analysis included site visits to the project site and watershed to assess existing conditions; review of topographic and storm drainage maps to determine watershed size; and a regression analysis to develop appropriate hydraulic geometry of the channel.

2. Existing Conditions

2.1. Existing Channel Conditions through the Project Site

The existing channel enters the site upstream through a 48-inch concrete box culvert under Elm Street. The channel runs straight through a 5-foot wide “U” shaped channel for approximately 115 feet at a 3.2% slope before re-entering the existing storm drain system through a 48-inch concrete box culvert with a wooden lid. The channel through this short stretch is confined and as a result is entirely lined with stacked rock walls. The channel bed is composed of 3 to 9-inch imported angular rock.

The channel is part of a greater storm drain network and does not appear to be in the location of a historical creek channel. From looking at historical data, it appears there were two creek channels about a block to the north and south of the project site, although the discrepancy between the mapped historical channels and the current channel location on-site may be within the margin of error of the data used to produce the historical maps. Additionally the project site is located at the base of the steeper hills, which is where the creek channels would historically become undifferentiated as they formed distributary channels across the flatter alluvium at the base of the hills.

Today this unnamed channel drains about 0.2 square miles of the East Bay Hills at the project site. The watershed originates above Arlington Blvd in the Mira Vista Golf and Country Club. Below the project site the creek travels towards San Francisco Bay through storm drains until joining Baxter Creek adjacent to Interstate 580.



Figure 1: Existing Channel with Imported Cobble Bed



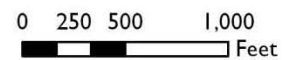
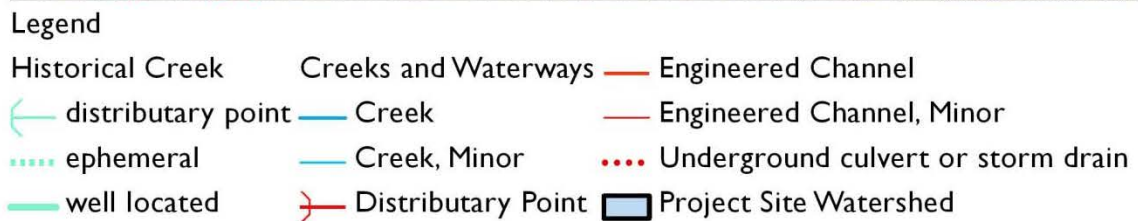
Figure 2: Existing "U" Shaped Channel



Figure 3: View Looking into Downstream Culvert



Figure 4: Wooden Lid Culvert on Downstream Parcel



Credits: Historical and Contemporary Creek Data (Oakland Museum 2006)

Figure 5: Watershed and Stream Network

2.2. Hydrology

This creek is ungaged and therefore design flows must be estimated rather than developed more directly from a flood frequency curve of measured flow values. We often use several approaches in ungaged watersheds and then select one set or multiple flow values depending on the intended use of the flow values. The results of the following approaches are shown in Table 1.

Method 1 – Regional Regression (Rantz)

S.E. Rantz of the USGS analyzed raingage and streamflow data for the San Francisco Bay Area and developed regression equations for streamflow rates under natural and urbanized conditions (Rantz, 1971). The values of peak flow rates at various recurrence intervals from the regression based estimate are shown in column 1 of Table 1: Project Flow Rates and for this project assume 80% impervious area and 65% culverted.

Method 2 – Regional Regression (USGS Updated 2012)

Peak flow rates as determined by the updated USGS regression equations (Gotvald, Veilleux, & Parrett, 2012) are also shown in Table 1 for a mean annual precipitation of 24.4 inches and a drainage area of 0.2 mi² for the California North Coast Hydrologic Region. These regression equations represent updated statistical analysis at a large number of stream gage sites but do not include any specific local adjustment factors for percent urbanization. To account for urbanization RDG used the same factors recommended by Rantz.

Table 1: Project Flow Rates

Return Period	Peak Flow Rate (cfs) Rantz 1971	Peak Flow Rate (cfs) USGS 2012
Q _{1.5}	22	
Q ₂	26	27
Q ₁₀	66	66
Q ₅₀	180	103
Q ₁₀₀	254	124

The USGS 2012 flows were used for this analysis because the Rantz regression equations often overestimate the magnitude of the larger, less frequent storm events. Both methods resulted in very similar flows for storms equal to or more frequent than the 10 year recurrence interval event.

3. Restoration Concept for Evaluation

This analysis evaluates the concept of restoring the 115 foot above ground section of creek that runs through the subject parcel in an effort to improve overall creek function and to increase benefits to water quality and wildlife habitat. The channel will be set within a reworked site

development plan to provide room for the creek to naturally meander through the site between to the two existing culverts on either end of the project.

3.1. Hydraulic Geometry

Hydraulic geometry is based on the theory that for alluvial channels (i.e. channels free to adjust their boundaries to the imposed sediment and water loading conditions) there is an equilibrium set of channel dimensions (i.e. width, depth, cross-sectional area and planform) that are the most efficient in transporting sediment and water without excessive erosion or aggradation of sediment. We derived the hydraulic geometry for the project site primarily from regional curves that compile metrics such as width, depth and cross sectional area plotted as a function of drainage area.

RDG developed the restoration geometry based on the results from the regional curve analysis; taking into account both physical and process-based differences between the project site and the survey sites used to develop the regional curve. The width, depth and area dimensions equate to the channel at bankfull flow or a flow approximating the 1.2-1.6 year recurrence interval peak annual event which is typical for streams in the SF Bay Area.

Table 2: Hydraulic Geometry

Parameter	WRI	Design
Cross Sectional Area (sf)	6.36	6.4
Channel Width (ft)	7.48	7.5
Average Depth (ft)	0.85	0.85
Max Depth (ft)	--	1.5
W/D Ratio	8.80	8.8

Table 3: Planform Geometry

Parameter	Regime Equations		
	<i>Min</i>	<i>Ave</i>	<i>Max</i>
Meander Wavelength	38	62	102
Belt Width	20	35	61
Radius of Curvature	8	12	19

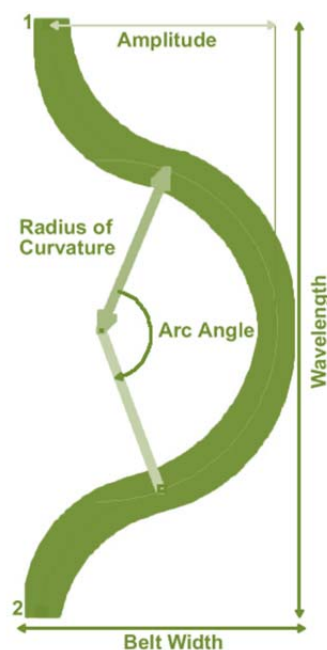


Figure 6: Planform Diagram

3.2. Restoration Design

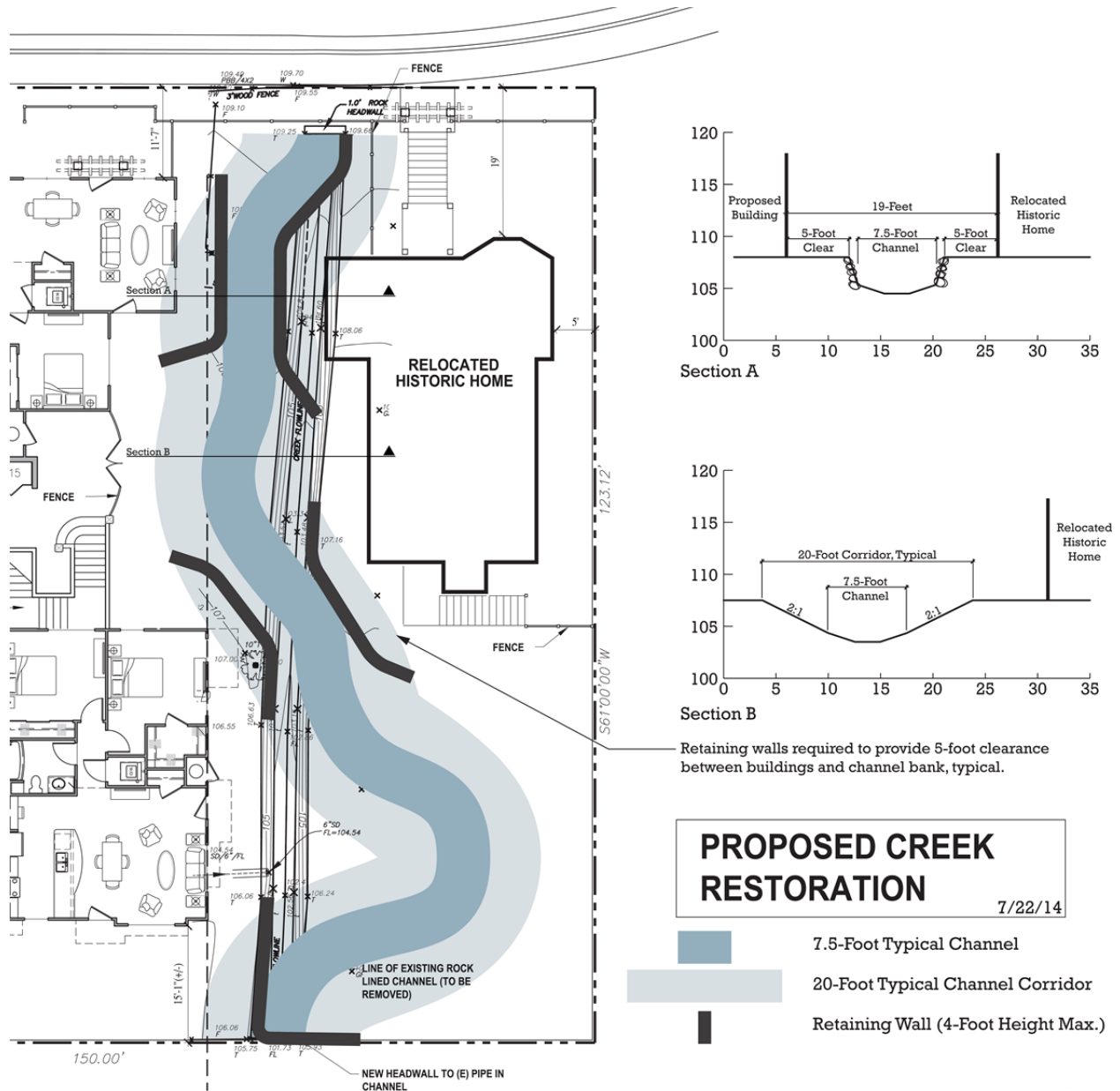


Figure 7: Concept Plan

The 7.5-foot channel width noted in Table 2 is for the bankfull channel, which is the channel that will contain the 1.2 to 1.6 year recurrence interval peak flow before overtopping. This bankfull channel must fit within a larger channel corridor, which contains the upper slopes between the top of the bankfull channel and the surrounding grade. For this creek there is approximately 3.1-feet of elevation between the top of the bankfull channel and the adjacent grade on the parcel. Assuming a maximum allowable natural slope of 2 horizontal to 1 vertical (2:1), the channel corridor needs an additional 6.2-feet on either side of the creek to rise to the adjacent

grade; this results in a minimum channel corridor width of 20-ft. Any narrower and walls would be required to make up the grade at a slope steeper than 2:1. See Section A and B in Figure 7 for illustrations of this in cross section.

The concept places this channel corridor through the site connecting the up and downstream culverts. The corridor is placed between the buildings in the site plan while maintaining setback requirements. The channel design also provided a minimum clearance of 5-ft around all buildings to allow for access at the top of bank. This is the minimum clearance recommended.

Walls are placed where the space between the buildings is narrower than 20-ft. Going through this process of adding walls where required to achieve the minimum 5-ft setback between buildings and the top of bank resulted in 165-ft of walls being preserved or created to allow the creek to flow through the site. There are currently about 220-feet of walls along the channel today, which means the channel improvements reduce the length of walls by 55-feet. Guardrails will be required where the fall is greater than 30 inches.

As shown the added sinuosity of the channel adds 10-ft of channel length and, along with the wider channel in the design, doubles the channel surface area through the property.

3.3. Evaluation of Restoration Feasibility

The analysis shows that it is feasible to place a restored channel on-site; however the space for the channel is confined between the buildings. Even with utilizing walls to maximize the space for the channel, the buildings can only be set back five feet from the top of bank. This limits the width of the riparian corridor, but does provide an improved condition when compared to the existing conditions.

Restoring this section of channel can provide ecological benefits to the site; however these benefits are significantly muted when compared to a naturally functioning creek. The benefits are derived from providing a more naturalistic plan form and hydraulic geometry that will improve sediment deposition and delivery through the reach. This will lead to a more diverse channel, which will in turn support a greater diversity and number of plant and animal species. For example, the channel may develop shallow pools on the outside bends of the meanders that provide additional habitat for plants and invertebrate species. These pools are nonexistent today. In addition, the wider channel will allow for more streamside vegetation on-site which has been shown to have water quality benefits in much the same way that bioretention facilities improve water quality. However, the degree of ecological benefit that could be attained will be stunted due to the lack of contiguous riparian corridor and naturally flowing creek adjacent to the project site. The small size of the site will also mean that the site will experience heavy

impacts from the surrounding neighborhood, including from light and sound pollution, house cats, and invasive plant and animal species.

To put the benefit of this type of restoration into context of published work on levels of restoration; we reference the three levels of restoration defined by Van Diggelen in 2001. He suggests restoration work falls within one of these categories; reclamation, rehabilitation or full restoration. Using these categories, this project falls into the lower end of the “rehabilitation” category. Rehabilitation is defined as work which attempts to reintroduce some ecological function back into the landscape but will not necessarily result in significant increase in biodiversity or work to restore the complete structure of a natural community. At its best this project will improve some ecological function but due to the limited project area and suburban context, it is not possible to provide significant improvement to ecological function typical of many urban stream restoration projects.

4. References

- Arcement, G. J., & Schneider, V. R. (1989). Guide for selecting Manning's n roughness coefficients for natural channels with flood plains. *USGS Water Supply Paper #2339*.
- Fischenich, C. (2001). *Stability Thresholds for Stream Restoration Materials*. ERDC TN-EMRRP-SR-29.
- Gotvald, A. J., Veilleux, A. G., & Parrett, C. (2012). Methods for determining magnitude and frequency of floods in California, based on data through water year 2006. *U.S. Geological Survey Scientific Investigations Report 2012–5113*, 38.
- Mecklenburg, D. (2006). The Reference Reach Spreadsheet For Channel Survey Data Management, Verion 4.3. *A Stream Module: Spreadsheet Tools for River Evaluation, Assessment and Monitoring*. Ohio Department of Natural Resources.
- Mecklenburg, D. (2008). Regime Equations, Version 4.0. *A Stream Module: Spreasheet Tools for River Evaluation, Assesment and Monitoring*. Ohio Department of Natural Resources.
- NRCS. (2007, August). National Engineering Handbook, Part 654: Stream Restoration Design. Washington DC: USDA.
- Rantz, A. (1971). Suggested criteria for hydrologic design of stormwater drainage facilities in the San Francisco Bay region, California. Menlo Park, California, USA: USDI, USGS.
- Van Diggelen, R. G. (2001). Ecological Restoration: State of the Art or State of the Science? . *Restoration Ecology*, 115–118.

1715 Elm Street,
Project Alternative Comparison Chart

**Agenda Item No. 6
Attachment 13**

		Existing Condition	Proposed Project	"Restoration" Approach
1	Temporary Environmental Impacts	NA	Yes	Yes
2	Environmental Regulatory Compliance	NA	Completed	Requires New Permits & EIR
3	Total Length of Retaining Walls	220 lf	220 lf	165 lf
4	Channel Surface Area	575 sf	575 sf	1,150 sf
5	Long-term Channel Stability	Unknown (no signs of instability identified)	Unknown (no signs of instability identified)	Good
6	Provides Groundwater Infiltration	Yes	Yes	Yes, Minor Improvement
7	Promotes Riparian Plant Species Diversity	No	Yes	Yes
8	Retains Historic Channel Walls	Yes	Yes	Unlikely
9	Improves Stormwater Capacity *	NA	No	Minor

* A comparative hydraulic model has not been conducted.

245 YGNACIO VALLEY ROAD
1970 BROADWAY, SUITE 800

WALNUT CREEK, CA 94596
OAKLAND, CA 94612

TEL: 925.944.1626
TEL: 510.272.1060

FAX: 925.944.1666
FAX: 510.272.1066

The following is our preliminary assessment of the financial impact of introducing a Meandering Creek into the project to replace the existing rock lined channel:

-Construction of new creek, including backfilling existing channel. (budget provided by Restoration Design Group)	130,0000
-Construction Contingency	26,000
-Feasibility study	7,000
-Design Fees and permits	25,000
-Construction Admin and project management	12,000
-5 year monitoring	10,000
-legal costs	4,000
-property tax and insurance	6,000
-EIR Consultants	100,000
-City review	30,000
-Owners admin of the EIR	40,000
-Redesign Fees	25,000
	\$ 415,000

In addition to the direct costs we anticipate the project will be delayed by 12 to 18 months. While it is not possible to allocate cost to such a delay, it will inevitably have implications.



AGENDA BILL

Agenda Item No. 7(A)

Date: August 19, 2014
To: El Cerrito City Council
From: Karen Pinkos, Assistant City Manager
Suzanne Iarla, Community Outreach Specialist
Subject: Consideration of Smoking Pollution Protection Ordinance

ACTION REQUESTED

Introduce by title, waive any further reading, and approve an ordinance amending the El Cerrito Municipal Code (ECMC) by adding Chapter 8.06, Smoking Pollution Protection Ordinance.

BACKGROUND

In early 2013, during the discussion on strategies for fulfilling the Strategic Plan Goal D, Ensuring the Public's Health and Safety, both the City Council and members of the public identified "Explore innovative and best practices for promoting public health", specifically referencing the regulation of secondhand smoke, as an objective for the City. Since that time, City staff, assisted by EC STARS 2013 Intern Amel Alkaheli, have been researching and gathering information for a proposed Smoking Pollution Protection ordinance for the City Council's consideration.

Staff obtained data from other California cities, Contra Costa County, and non-profit organizations including the American Cancer Society and American Lung Association, and conducted an extensive community outreach program to develop provisions to be considered by the City Council as part of a draft ordinance. This outreach included:

- Community input on desired levels of restrictions
 - o Presentation at Parks and Recreation Commission Meeting, July 2013
 - o Presentation at Environmental Quality Committee Meeting, August 2013
 - o Online survey, conducted Fall 2013 to Spring 2014
 - o Community Meeting at City Hall, February 2014
- Targeted outreach to landlords, tenants, Contra Costa Health Services, Chamber of Commerce, Save the Bay, and California Apartment Association
- City Council study session, May 20, 2014
- Community Workshop at City Hall, June 5, 2014

At the City Council meeting of May 20, 2014, staff presented the results of the research, surveys, and feedback from meetings and correspondence to the Council and outlined various options for regulating smoking within City limits. The City Council provided direction on the several categories to be included within a draft ordinance, to include prohibiting smoking in all parks, recreation areas, and open space, within all commercial areas, and within multi-family housing of two (2) units or more. The Council

Agenda Item No. 7(A)

specifically directed staff to include prohibition of smoking medical marijuana and the use of electronic smoking devices, or “e-cigarettes”. Additionally, the City Council also directed staff to conduct research regarding smoking on all sidewalks and public through-ways, including non-commercial areas, while also considering options for defining a non-smoking perimeter around schools. All multi-family dwelling units should be 100% smoke free with a phased in transition period of twelve months or when a lease expires, whichever is less. The Council also directed staff to bring back an ordinance to address regulating the sales of tobacco and e-cigarettes and raise the age for the purchase of tobacco products and e-cigarettes to 21, and to investigate funding an enforcement officer, signage and education.

Staff has developed a draft Smoking Pollution Protection ordinance based on the City Council’s direction for 100% smoke free public places, commercial areas, and multi-unit residences. A separate ordinance that will address regulating tobacco sales and licensing tobacco retailers will be presented to the Planning Commission within the next few months in order to address specific regulations through the Zoning Ordinance as well as provide recommendations to the City Council for their consideration.

ANALYSIS

The City Council expressed support for regulating smoking because of the risks to the public health through smoking and secondhand smoke, the environmental risks of cigarette butt litter to our waterways, the need for trash reduction, the financial effects of smoking both economically and as demonstrated in increased healthcare costs, and the threat to public safety by posing a fire danger. Feedback from the El Cerrito community has shown that the vast majority of respondents and participants in the various public meetings support these findings and agree that regulation of smoking is necessary.

Per the City Council’s direction, the proposed Smoking Pollution Protection ordinance includes provisions for prohibiting smoking in public places, commercial areas, and multi-unit residences by categorizing regulations in City-owned facilities, enclosed spaces, and unenclosed spaces. It should be noted that “smoke” and “smoking” includes all forms of tobacco, marijuana, and any other weed or plant, including vaporizing via electronic smoking devices.

100% Smoke Free Parks, Open Space, and Public Places

- Parks, playgrounds, and sports fields
- Recreation Areas
- Open Space
- Trails
- All City-owned facilities, property, grounds, and parking lots
- Public sidewalks, both commercial and residential
- City and other public events, including farmers’ markets, festivals, food events, recreation events, or any event attended by the general public

The draft ordinance completely prohibits smoking in all public places, recreational areas, and property owned by the City of El Cerrito. The ordinance includes a provision for

Agenda Item No. 7(A)

prohibiting smoking within a “reasonable distance”, defined as 25 feet, as a buffer zone around any areas that prohibit smoking either through this ordinance or through state or federal law. This reasonable distance requirement would be in place for both enclosed and unenclosed areas.

100% Smoke Free Commercial Areas

- Places of employment: public, private, and nonprofit of more than one employee
- Shopping Centers
- Outdoor dining areas
- Sidewalks
- Service areas, including bus stops and other outdoor locations where people congregate (ATM lines, taxi stands, etc.)

Commercial areas are defined as those districts zoned as “commercial and transit-oriented mixed-use districts” in the Zoning Ordinance, and the ordinance is intended to prohibit smoking in these entire areas where commercial activity occurs. The provision for prohibiting smoking in “places of employment” is meant to enhance current state law, which has several exemptions and loopholes that permit smoking in a wide variety of workplaces and does not expressly prohibit the use of electronic smoking devices in enclosed workplaces. “Places of employment” also includes outdoor work areas and construction sites. Commercial areas will also include the reasonable distance buffer zone.

100% Smoke Free Multi-unit Housing and Common Areas

- All existing units
- All new units to be built
- All indoor and outdoor spaces on the property including common areas, patios, balconies, garages, carports, and shared spaces such as laundry and eating areas
- Includes Hotels/Motels

“Multi-unit” is defined as two (2) or more units. Any provision that refers to multi-unit residences will take on October 1, 2015, or upon entering a new lease or lease renewal of a unit, whichever comes first. Landlords would be required to provide disclosure to residents and signage for all of the common areas. This ordinance does not create additional liability for landlords provided they are in compliance with the provisions outlined for multi-unit residences and common areas.

The ordinance also prohibits ash receptacles within a place where smoking is prohibited so as not to imply that smoking is allowed. The only exception included in this ordinance for the use of smoking is within in a theatrical production, if the theater manager/director certifies that smoking is an essential part of the story and the use of a fake, prop, or special effect cannot reasonably convey the idea of smoking in an effective way to a reasonable member of the anticipated audience.

Enforcement and Next Steps

The provisions related to prohibiting smoking in public places, commercial areas, places of employment, and other enclosed and unenclosed areas are proposed to become

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effective January 1, 2015, in order to allow the City and all impacted businesses and employers sufficient time to comply with the regulations, including developing a signage program. Those provisions related to smoking in multi-unit residences would be phased-in more gradually, with landlords afforded an additional nine (9) months from the effective date to implement the no-smoking provisions for existing rental units or upon lease renewal, whichever comes first, and must be in compliance beginning October 1, 2015. This allows landlords 12 months from the passage of this ordinance to comply, per City Council direction. Landlords will be required to include smoking prohibitions in new and renewed leases and rental agreements. Staff will verify signage required by multi-unit residences during regularly scheduled bi-annual rental inspections.

Violations will be punishable as infractions and subject to fines, may also be enforced through civil and private enforcement, and will be conducted via administrative citation as per ECMC Sections 1.08 and 1.14. Per the ECMC, the City Manager may designate enforcement officers to issue administrative citations, and the El Cerrito Police Department and code enforcement personnel will be primarily responsible for enforcing the ordinance. Penalties for non-compliance start at \$100 for the first violation and can be up to \$500 per violation. Remedies are also available through the civil court system, which may be brought by the City Attorney or by private parties. Since secondhand smoke laws in other communities are typically complaint-driven and self-enforcing, violations will be enforced on a complaint basis, as staff resources allow, and allegations of violations of smoking in individual rental units in a multi-unit residence can be handled through the civil enforcement process by aggrieved parties (neighboring tenants, owners, or landlords).

As other communities have learned, outreach and education is a key component to obtaining compliance. Staff will initiate the following actions to support educating the public regarding the provisions of the ordinance:

- In addition to standard public noticing, a press release will be issued advising of the provisions of the ordinance
- Landlords, tenants, business and housing associations, and property management firms will be contacted and provided a copy of the ordinance and staff report
- City staff will develop signage for City-owned facilities, parks, open space, and
- A page on the City's website will be created to provide information regarding the new laws, including links of the ordinance, staff report, presentations, and minutes and video of City Council meetings; FAQ; downloadable "no-smoking" signs; links to smoking cessation resources, and other information and resources that will be helpful to the public
- Notice of the ordinance requirements will be included with information distributed with business license renewal forms and on the City's website

STRATEGIC PLAN CONSIDERATIONS

Adoption of the proposed Smoking Pollution Protection Ordinance would help fulfill Goal E, Preserve the Public's Health and Safety, and Goal F, Foster Environmental Sustainability Citywide, as detailed in the City of El Cerrito Strategic Plan, adopted

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April 2013. Specifically, adoption of the proposed Ordinance would contribute to achieving the following strategies:

- *Explore innovative and best practices for promoting public health (e.g., smoking ordinances, nutrition, and obesity prevention).* Adoption of the proposed Ordinance would complete one example stated in this strategy.
- *Implement the City's Climate Action Plan.* Adoption of the proposed Ordinance would contribute to meeting Objective W-1 of the Climate Action Plan (reducing waste in El Cerrito).

FINANCIAL CONSIDERATIONS

Costs associated with implementing the ordinance include the purchase and installation of signs, the development of necessary forms, and increased staff time for education and outreach, inspections, and dealing with complaints.

Proper signage is considered a critical component for obtaining compliance with the ordinance, and staff will evaluate the most effective use of signage to support compliance efforts. Other cities implementing similar regulations have estimated signage costs at \$15,000. This money is currently unbudgeted but could come from undesignated General Fund balance or from potential grants. The costs for forms and staff time will be absorbed by existing departments involved with implementing and enforcing the ordinance.

LEGAL CONSIDERATIONS

The City Attorney has reviewed the draft Ordinance and found that legal considerations have been addressed.

Reviewed by:



Scott Hanin, City Manager

Attachment:

1. Proposed Smoking Pollution Protection Ordinance

ORDINANCE NO. 2014–XX

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF EL CERRITO TO
REGULATE SMOKING WITHIN THE CITY OF EL CERRITO

SECTION 1. Findings.

WHEREAS, tobacco use causes death and disease and continues to be an urgent public health challenge, and

WHEREAS, secondhand smoke has been repeatedly identified as a health hazard, as evidenced by the following:

- The U.S. Surgeon General concluded that there is no risk-free level of exposure to secondhand smoke and separating smokers from nonsmokers, cleaning the air, and ventilating buildings cannot eliminate exposures of nonsmokers to secondhand smoke; and
- The California Air Resources Board placed secondhand smoke in the same category as the most toxic automotive and industrial air pollutants by categorizing it as a toxic air contaminant for which there is no safe level of exposure; and
- The California Environmental Protection Agency included secondhand smoke on the Proposition 65 list of chemicals known to the state of California to cause cancer, birth defects, and other reproductive harm; and

WHEREAS, exposure to secondhand smoke causes death and disease, as evidenced by the following:

- Secondhand smoke is responsible for an estimated 50,000 deaths among nonsmokers each year in the United States; and
- Exposure to secondhand smoke increases the risk of coronary heart disease and stroke by about 20% to 30%, causes lower respiratory tract infections such as pneumonia and bronchitis in as many as 300,000 children in the United States under the age of 18 months each year, and exacerbates childhood asthma; and

WHEREAS, tobacco use and exposure to secondhand smoke impose great social and economic costs, including increased healthcare expenditures, medical costs, and lost productivity; and

WHEREAS, exposure to secondhand smoke anywhere has negative health impacts, increases air pollution levels, and does occur at significant levels outdoors, and

WHEREAS, cigarette butts are a major and persistent source of litter, pose a health threat to young children, frequently end up in storm drains that flow into streams, rivers, creeks, San Francisco Bay, and ultimately the ocean; adversely impacts the health of both pets and wildlife, and can take up to several years to degrade; and

WHEREAS, cigarettes present a dangerous fire hazard in that every year, men, women and children are killed in home fires caused by cigarettes and other smoking materials; and improperly disposed of cigarettes can easily start fires in outdoor open spaces where there is a risk of wildfire; and

WHEREAS, electronic smoking devices often mimic conventional tobacco products in shape, size, and color, with the user exhaling a smoke-like vapor similar in appearance to the exhaled smoke from cigarettes and other conventional tobacco products; and

WHEREAS, existing studies on electronic smoking devices' vapor emissions and cartridge contents have found a number of dangerous substances, and conclude that exposure to vapor from electronic smoking devices may cause passive or secondhand vaping; and

WHEREAS, society is becoming less tolerant and less accepting of smoking, particularly in El Cerrito, where a majority of participants in surveys and community meetings indicated a need to regulate smoking within the City limits; and

WHEREAS, though widely perceived as a comprehensive smokefree air law, the state smokefree workplace law (California Labor Code section 6404.5) still has several exemptions and loopholes that permit smoking in a wide variety of workplaces, disproportionately impacts low-income and minority populations, and does not expressly prohibit the use of electronic smoking devices in enclosed workplaces; and

WHEREAS, California cities and counties have the legal authority to adopt local laws that make all indoor places of employment nonsmoking; and

WHEREAS, laws restricting smoking and the use of tobacco products have recognizable benefits to public health and medical costs, and

WHEREAS, state law prohibits smoking within 25 feet of playgrounds and tot lots and expressly authorizes local communities to enact additional restrictions; and

WHEREAS, there is no Constitutional right to smoke; and

WHEREAS, this proposed Ordinance will preserve and enhance the environment within the City of El Cerrito and is exempt from the requirements of the California Environmental Quality Act ("CEQA"), as amended, pursuant to Section 15061(b)(3) or Section 15308 of the CEQA Guidelines.

NOW THEREFORE, the City Council of the City of El Cerrito does hereby ordain as follows:

SECTION 2. Amendment of Municipal Code. Title 8 of the El Cerrito Municipal Code is hereby amended to add a new Chapter 8.06 and shall read as follows:

8.06.010 - Title.

This Ordinance shall be known as the El Cerrito Smoking Pollution Protection Ordinance. The City of El Cerrito hereinafter shall be called "City." This Ordinance shall be applicable in the incorporated territory of the City.

8.06.020 - Definitions.

The following definitions apply to this Ordinance:

- A. "Business" shall mean any sole proprietorship, partnership, joint venture, corporation, association, or other entity formed for profit-making purposes or that has an employee, as defined in this section.
- B. "Commercial area" means those commercial districts described in chapter 19.07 of the El Cerrito Municipal Code or any property zoned as commercial.
- C. "Dining area" means any indoor or outdoor area, including streets and sidewalks, which is available to or customarily used by the general public or an employee, and which is designed, established, or regularly used for consuming food or drink.
- D. "Electronic smoking device" means an electronic and/or battery-operated device, the use of which may resemble smoking, which can be used to deliver an inhaled dose of nicotine or other substances. "Electronic smoking device" includes any such device, whether manufactured, distributed, marketed, or sold as an electronic cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, an electronic hookah, or any other product name or descriptor. "Electronic smoking device" does not include any product specifically

approved by the United States Food and Drug Administration for use in the mitigation, treatment, or prevention of disease.

- E. "Employee" means any person who is employed or retained as an independent contractor by any employer or nonprofit entity in consideration for direct or indirect monetary wages or profit, or any person who volunteers his or her services for an employer or nonprofit entity.
- F. "Employer" shall mean any person, partnership, corporation, municipal corporation, association, nonprofit or other entity who employs or retains the service of one or more employees, or supervises volunteers.
- G. "Enclosed area" means all space between a floor and ceiling where the space is closed in on all sides by solid walls or windows that extend from the floor to the ceiling. An enclosed area may have openings for ingress and egress, such as doorways or passageways. An enclosed area includes all spaces within that area, such as hallways and areas screened by partitions that do not extend to the ceiling or are not solid.
- H. "Landlord" means any person who owns property let for residential use, who lets residential property, or any person who manages such property, except that "landlord" does not include sublessors.
- I. "Multi-unit residence" means property containing two (2) or more units, including but not limited to apartments, condominiums, duplexes, senior citizen housing, nursing homes, hotels and motels; except the following specifically excluded types of housing:
 - 1. a single-family dwelling as defined in chapter 19.06;
 - 2. a single-family dwelling with a detached or attached in-law or second unit.
- J. "Multi-unit residence common area" shall mean any indoor or outdoor common area of a multi-unit residence accessible to and usable by residents of different units, including but not limited to halls and paths, lobbies, laundry rooms, common cooking areas, outdoor eating areas, play areas, shared patios, shared balconies, shared restrooms, elevators and stairwells, swimming pools, carports, garages, and parking areas.
- K. "Nonprofit entity" shall mean any entity that meets the requirements of California Corporations Code section 5003 as well as any corporation, unincorporated association or other entity created for charitable, religious, philanthropic, educational, political, social or similar purposes, the net proceeds of which are committed to the promotion of the objectives or purposes of the entity and not to private gain. A public agency is not a nonprofit entity within the meaning of this section.

- L. "Person" means any natural person, partnership, cooperative association, corporation, personal representative, receiver, trustee, assignee, or any other legal entity and including government agencies.
- M. "Place of employment" shall mean any area under the legal or de facto control of an employer, business or nonprofit entity that an employee or the general public may have cause to enter in the normal course of operations, but regardless of the hours of operation, including, for example, indoor and outdoor work areas, residential and commercial construction sites, vehicles used in employment or for business purposes, taxis, buses, employee lounges, conference and banquet rooms, bars, restaurants, bingo and gaming facilities, long-term health facilities, warehouses, and private residences that are used as childcare or healthcare facilities subject to licensing requirements.
- N. "Playground" shall mean any park or recreational area designed in part to be used by children that has play or sports equipment installed or has been designated or landscaped for play or sports activities, or any similar facility located on public or private school grounds, or on City grounds.
- O. "Premises" means a piece of land and any improvements upon it such as is usually described in a deed, deed of trust or mortgage.
- P. "Public place" means any area or place, publicly or privately owned, which the public is invited or in which the public is permitted, that is open to the general public regardless of any fee or age requirement.
- Q. "Public sidewalk" means a paved pathway for pedestrians that is publicly owned or in the public right-of-way, including but not limited to within a commercial or residential area.
- R. "Reasonable distance" shall mean a distance that ensures that occupants of an area in which smoking is prohibited are not exposed to secondhand smoke created by smokers outside the area. This distance shall be a minimum of twenty-five (25') feet.
- S. "Recreational Area" means any area, including streets and sidewalks, that is publicly owned, controlled or used by the City and open to the general public for recreational purposes, regardless of any fee or age requirement. The term "recreational area" includes but is not limited to parks, parklets, picnic areas, playgrounds, sports fields, open space, walking paths, gardens, hiking trails, bike paths, riding trails, swimming pools, and tennis courts.
- T. "Service area" means any publicly or privately owned area, including streets and sidewalks, that is designed to be used or is regularly used by one (1) or more persons to receive a service, wait to receive a service or to make a transaction, whether or not such service or transaction includes the exchange of money. The term "service area" includes but is not limited to areas including or adjacent to information kiosks, automatic teller machines

(ATMs), ticket lines, bus stops or shelters, transit stops, mobile vendor lines or taxicab stands.

- U. "Smoke" means the gases, particles, or vapors released into the air as a result of the combustion, electrical ignition, or vaporization of a tobacco product, when the apparent or usual purpose of the combustion, electrical ignition, or vaporization is human inhalation of the tobacco product. "Smoke" includes but is not limited to tobacco smoke, electronic cigarette or electronic smoking device vapors, and marijuana smoke. "Smoke" excludes incense or similar products inhaled solely for olfactory purposes as long as those products do not contain tobacco or nicotine.
- V. "Smoking" means engaging in an act that generates smoke or vapor from a tobacco product, marijuana, or any other weed or plant. "Smoking" includes inhaling, exhaling, burning, possessing, holding, or carrying any lighted cigar, lighted cigarette, lighted pipe, lighted hookah pipe, operating electronic cigarette or electronic smoking device, or any other smoke inhalation device of any kind; "Smoking" includes smoking marijuana for medical purposes.
- W. "Tobacco product" means any of the following:
 - 1. Any substance containing tobacco leaf, including but not limited to cigarettes, cigars, pipe tobacco, hookah tobacco, snuff, chewing tobacco, dipping tobacco, bidis, blunts, clove cigarettes, or any other preparation of tobacco.
 - 2. Any product or formulation of matter containing biologically active amounts of nicotine that is manufactured, sold, offered for sale, or otherwise distributed with the expectation that the product or matter will be introduced into the human body, including but not limited to electronic cigarettes or electronic smoking devices.

"Tobacco product" does not include any cessation product specifically approved by the United States Food and Drug Administration for use in treating nicotine or tobacco dependence.
- X. "Unenclosed area" means any area that is not an Enclosed Area.
- Y. "Unit" means a personal dwelling space consisting of essentially complete independent living facilities for one or more individuals, even where lacking cooking facilities or private plumbing facilities, and includes any associated exclusive-use enclosed area or unenclosed area, such as, for example, a private balcony, porch, deck, or patio. "Unit" includes but is not limited to an apartment; a condominium; a townhouse; a room in a long-term health care facility, assisted living facility, or hospital; a hotel or motel room; a room in a single room occupancy ("SRO") facility; a room in a homeless shelter; a mobile home; a camper vehicle or tent; a single-family dwelling; and an in-law or second unit. "Unit" does not include a rented room in a single-family dwelling.

8.06.030 – City facilities.

- A. Smoking is prohibited in all buildings, vehicles, and other enclosed areas occupied by City employees, owned or leased by the City, or otherwise operated by the City.
- B. Smoking is prohibited in all outdoor areas owned or leased by the City, including parking lots, sidewalks, and the grounds of all buildings, facilities, or areas owned or leased by the City.

8.06.040 – Prohibition of Smoking in Enclosed Areas.

- A. In addition to prohibitions under State or Federal law, smoking is prohibited in the enclosed areas of the following places within the City of El Cerrito:
 - 1. Places of employment
 - 2. Public places
 - 3. Multi-unit residence common areas
 - 4. Units within all multi-unit residences
- B. Any places exempted by the California smokefree workplace law (Labor Code Section 6404.5(d)) are not exempt under this chapter. Smoking is prohibited by this chapter in all places exempted by that State law, except as provided below.
 - 1. Smoking at theatrical production sites is not prohibited by this subsection if the theater manager/director certifies that smoking is an essential part of the story and the use of a fake, prop, or special effect cannot reasonably convey the idea of smoking in an effective way to a reasonable member of the anticipated audience.
- C. The prohibitions set out in subsection A.3 and A.4 shall not be operative until October 1, 2015 or at the time of expiration of an existing lease of a unit within the multi-unit residence, whichever is sooner.

8.06.050 – Prohibition of Smoking in Unenclosed Areas.

- A. In addition to prohibitions under State or Federal law, smoking is prohibited in the unenclosed areas of the following places within the City of El Cerrito:
 - 1. Throughout all commercial areas
 - 2. Recreational areas
 - 3. Service areas
 - 4. Dining areas
 - 5. Places of employment
 - 6. Multi-unit residence common areas
 - 7. All public sidewalks throughout the City

- 8. Public events, including but not limited to arts and crafts shows, auctions, civic and community events, fairs, farmers' markets, festivals, flea markets, food events, recreation events, rummage sales, second hand sales, street fairs, and swap meets, or any other event which may be attended by the general public
- B. Nothing in this chapter prohibits any person, employer, or nonprofit entity with legal control over any property from prohibiting smoking on any part of such property, even if smoking is not otherwise prohibited in that area.
- C. The prohibition set out in subsection A.6 of this section shall not be operative until October 1, 2015.
- D. Smoking is prohibited within a reasonable distance of any enclosed or unenclosed area where smoking is prohibited by this chapter.

8.06.060 – Other Requirements and Prohibitions.

- A. Notwithstanding any other provision of this chapter, it shall be a violation of this chapter to use an electronic smoking device in any place within the City subject to the prohibition on smoking contained in this chapter and in California Labor Code section 6404.5, as that section may be amended from time to time.
- B. No person, employer, or nonprofit entity shall knowingly permit smoking or use of tobacco product in an area which is under the legal or de facto control of that person, employer, or nonprofit entity and in which smoking is prohibited by law, unless otherwise required by state or federal law.
- C. No person, employer, or nonprofit entity shall knowingly or intentionally permit the presence or placement of ash receptacles, such as, for example, ash trays or ash cans, within an area under the legal or de facto control of that person, employer, or nonprofit entity and in which smoking or use of tobacco product is prohibited by law. Notwithstanding the foregoing, the presence of ash receptacles in violation of this subsection shall not be a defense to a charge of smoking or use of tobacco product in violation of any provision of this chapter.
- D. A person, employer, or nonprofit entity that has legal or de facto control of an area in which smoking is prohibited by this chapter shall post a clear, conspicuous and unambiguous “No Smoking” or “Smokefree” sign at each point of ingress to the area, and in at least one other conspicuous point within the area. The signs shall have letters of no less than one inch in height and shall include the international “No Smoking” symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it. Notwithstanding the above, for purposes of this section, the City Manager or his/her designee shall be responsible for the posting of a reasonable number of signs in recreational areas owned, leased in whole or in part by the City. Notwithstanding this provision, the absence of signs shall not be a defense to a

- charge of smoking or the use of tobacco products in violation of any other provision of this chapter.
- E. With respect to each multi-unit residence, the owner, in cases where the units may not be sold individually, or the person responsible for maintenance of the common area, in cases where the units may be sold individually, shall:
1. Within thirty (30) days of the effective date of this section, notify the occupants and owners of units in writing by mail or delivery to the unit of the prohibitions imposed by this chapter
 2. Post "No Smoking" or "Smokefree" signs, with letters of no less than one inch in height or the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle crossed by a red bar) indicate that smoking is prohibited within units in the multi-unit residence and within the common area shall be clearly and conspicuously posted in multi-unit residence common areas and at entrances and exits. Such signs shall be maintained by the person or persons with legal control over the multi-unit residence common areas and entrances and exits. Signs must be posted in sufficient numbers and locations in the multi-unit residence common areas and at entrances and exits to make areas where smoking is prohibited obvious to a reasonable person. Signs are not required at the individual entrance and exits of each multi-unit residence. The absence of signs shall not be a defense to a charge of violation of any provision of this chapter.
- F. Every lease or other agreement for the occupancy of a unit in a multi-unit residence entered into, amended, or renewed shall include:
1. A clause stating that smoking is prohibited in the unit
 2. A clause stating that it is a material breach of the lease or agreement to violate any law regulating smoking while on the premises, smoke in the unit, or smoke in any multi-unit residence common area in which smoking is prohibited
 3. A clause stating that all occupants of the multi-unit residence are express third-party beneficiaries of the above required clauses.
 4. A form prepared by an entity such as the California Apartment Association Form 34 meets the requirements for lease terms as outlined and is an option for use to comply with this section.
- G. A tenant who breaches the smoking regulations of a lease or knowingly allows another person to do so shall be liable to: the landlord, and any occupant of the multi-unit residence who is exposed to secondhand smoke as a result of that breach.

- H. This chapter shall not create additional liability for a landlord for a person's violation of this chapter provided that the landlord has fully complied with the required disclosure, sign posting, and other provisions of this chapter.
- I. No person, employer, or nonprofit entity shall intimidate, threaten any reprisal, or effect any reprisal, for the purpose of retaliating against another person who seeks to attain compliance with this chapter.
- J. Each instance of smoking in violation of this chapter shall constitute a separate violation. For violations other than for smoking, each day of a continuing violation of this chapter shall constitute a separate violation.

8.06.070 – Enforcement and Violation – Penalty.

- A. Any violation of this ordinance is punishable as specified in Chapters 1.08 or 1.14 of the El Cerrito Municipal Code or by any other applicable law.
- B. The City Manager or his or her designee has primary responsibility for enforcement of this Ordinance. Any peace officer or Code Enforcement Official also may enforce this chapter.
- C. The remedies provided by this chapter are cumulative and in addition to any other remedies available at law or in equity.
- D. Causing, permitting, aiding, abetting, or concealing a violation of any provision of this chapter shall also constitute a violation of this chapter.
- E. Any Person may act as a Private Enforcer, acting for the interests of itself, its members, or the general public may bring a civil action in any court of competent jurisdiction, including small claims court, to enforce this chapter against any Person who has violated this chapter two or more times. Upon proof of the violations, a court shall grant all appropriate relief, including: (1) awarding damages; and (2) issuing an injunction or a conditional judgment.

SECTION 3. Compliance with the California Environmental Quality Act.

Pursuant to Title 14 of the California Administrative Code, the City Council finds that this Ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA) for the following reasons: (1) under Section 15061 (b)(3), it is not a project which has the potential for causing a significant effect on the environment; (2) under Section 15308, it is an authorized action by an agency with regulatory authority for the purpose of assuring the maintenance, restoration, enhancement, or protection of the environment.

SECTION 4. Severability.

If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid by a decision of any court of competent jurisdiction, that decision will not affect the validity of the remaining portions of the Ordinance. The City Council of the City of El Cerrito hereby declares that it would have passed this Ordinance and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional without regard to whether any portion of this Ordinance would be subsequently declared invalid.

SECTION 5. No Conflict with Federal or State Law.

Nothing in this Ordinance is intended to create any requirement, power or duty that is in conflict with any federal or state law.

SECTION 6. Effective Date.

This ordinance shall take effect and be enforced January 1, 2015, and prior to the expiration of fifteen days from the passage thereof, the ordinance or a summary thereof shall be posted or published as may be required by law, and thereafter the same shall be in full force and effect.

THE FOREGOING Ordinance was introduced at a regular meeting of the City Council on August 19, 2014, and passed by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

ADOPTED AND ORDERED published at a regular meeting of the City Council held on the September , 2014 and passed by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

APPROVED:

Janet Abelson, Mayor

ATTEST:

Cheryl Morse, City Clerk

IN WITNESS of this action, I sign this document and affix the corporate seal of the City of El Cerrito on September XX, 2014.

Cheryl Morse, City Clerk

ORDINANCE CERTIFICATION

I, Cheryl More, City Clerk of the City of El Cerrito, do hereby certify that this Ordinance is the true and correct original Ordinance No. 2014-XX of the City of El Cerrito, that said Ordinance was duly enacted and adopted by the City Council of the City of El Cerrito at a meeting of the City Council held on the __ day of September 2014; and that said ordinance has been published and/or posted in the manner required by law.

WITNESS my hand and the Official Seal of the City of El Cerrito, California, this day of September, 2014.



AGENDA BILL

Agenda Item No. 7(B)

Date: August 19, 2014
To: El Cerrito City Council
From: Lisa Malek-Zadeh, Finance Director/City Treasurer
Subject: Short Term Cash Flow Financing through Tax and Revenue Anticipation Notes

ACTION REQUESTED

Adopt a resolution authorizing the City Manager to execute an agreement to sell tax and revenue anticipation notes (“TRAN”) in an amount not-to-exceed \$5,250,000 to a financial institution or underwriter and authorize staff to work with city consultants to prepare and execute appropriate legal documents related to said financing.

BACKGROUND

Each year, many cities and school districts similar to El Cerrito, have a period in the fall where available cash for operations is at its lowest. This is largely due the timing of property tax distributions by the County. The first disbursement occurs in late December, close to six months after the start of the fiscal year, with remaining payments made in April and June. During the same period, large debt service payments, combined with current year and remaining prior year expenditures, draw down the City’s available cash creating a shortfall until the first installment of property tax is received in December.

During the last few years, the availability of cash from bond proceeds, special funds and the general fund reserve have decreased and as a result the City has needed the assistance of a short term cash loan to fund operations while waiting for tax revenues. The issuance of tax anticipation notes (TAN) or tax and revenue anticipation notes (TRAN) is relatively common for cities, school districts, counties and even the State of California. The City has historically issued a TAN that uses tax revenues to guarantee repayment of the loan. This year, the City will sell a TRAN which includes the use of other revenues, not just taxes, to secure the loan. A TRAN provides better credit to the lender and more favorable terms for the City.

Last fiscal year, the City Council approved two short term loans totaling close to \$5.6 million. A \$575,000 no interest loan from the Municipal Services Corporation (MSC) in addition to a \$5,017,000 TANS with Westamerica Bank allowed the City to address the temporary cash shortage.

ANALYSIS

The need to borrow cash on a short term basis was projected during development of the Fiscal Year (FY) 2014-15 budget. Last year, the City began working with NHA Advisors, LLC (NHA) to counsel the City on a wide variety of financial issues including an evaluation of the

City's cash flow needs for FY 2014-15. Working with staff, NHA developed a cash flow projection based on the City's anticipated revenues and expenses and determined that a loan of approximately \$5,100,000 - \$5,250,000 (including transactions costs) would be needed to address the expected cash deficit in October.

Staff is working with NHA to determine whether private placement with a community bank, as done in previous years, or public offering through the capital markets will generate the lowest overall cost to the City. The anticipated total all-in interest rate for this note financing is projected to be 1.00% - 2.00% (including all financing costs) and will be paid back no later than June 30, 2015.

With a shortfall projected sometime between October - November, it would be ideal to have TRAN proceeds in place by mid to late September. Because Council is not scheduled to meet again until the end of September, staff is recommending that the City Council approve a resolution that provides the most flexibility to develop and execute the best financing solution. However, if a public sale is determined to be a better option for the City, an official statement approved by Council would need to be distributed to investors. Recommendation of the official statement would be presented to City Council at the September 22, 2014 meeting with TRAN receipts in early October.

FINANCIAL CONSIDERATIONS

Informal interest rate quotes indicate that the City could expect an interest rate of 1.25%-1.50% through a private placement with a community bank. Transaction costs for a private placement would be approximately \$25,000. The effective interest rate (including all transaction costs) is conservatively estimated at 2.08%.

Alternatively, informal interest rate quotes from underwriters indicate that the City could expect an interest rate of 0.25%- 0.50% through the public markets. Transaction costs would be approximately \$63,000 for a public offering, significantly higher than a private placement, but due to the lower interest rate, the effective interest rate (including all transaction costs) is conservatively estimated at 1.95%.

In order to minimize the interest expense associated with the TRAN, the repayment of the principal will be paid in two installments after the significant receipt of revenues in December and June to provide some cash flow coverage until the end of the fiscal year.

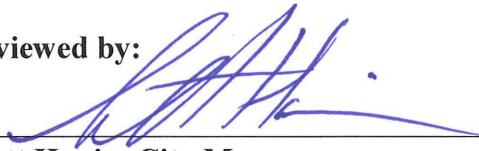
The City will need to approve a resolution authorizing the issuance of a tax and revenue anticipation note to be sold directly to a local bank or through a public offering and underwriting. The City is working with NHA (as financial advisor) and Jones Hall (as bond counsel) to draft the necessary documents and credit information necessary to solicit quotes from financial institutions as well as traditional public finance investment firms.

The City's plan to issue a TRAN and investigate other financing options was discussed with the Financial Advisory Board (FAB) during the development of the FY 2014-15 budget. The FAB was also provided a more recent update at its August 12 meeting.

LEGAL CONSIDERATIONS

The City Attorney will review the proposed terms and approve the final documents including the issuance of an attorney's letter in regards to the form as required documentation for the TRAN.

Reviewed by:



Scott Hanin, City Manager

Attachments:

1. Resolution
2. Memo from Financial Advisor

RESOLUTION NO. 2014-X

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EL CERRITO APPROVING
THE BORROWING OF FUNDS FOR FISCAL YEAR 2014-15 AND THE ISSUANCE AND
SALE OF 2014-15 TAX AND REVENUE ANTICIPATION NOTES

WHEREAS, pursuant to Article 7.6 (commencing with section 53850) of Chapter 4 of Part 1 of Division 2 of Title 5 of the California Government Code (the "Law"), this City Council (the "Council") has found and determined that moneys are needed for the requirements of the City, a municipal corporation and general law city duly organized and existing under the laws of the State of California, to satisfy obligations payable from the General Fund of the City (the "General Fund"), and that it is necessary that said sum be borrowed for such purpose at this time by the issuance of temporary notes therefor in anticipation of the receipt of taxes, income, revenue, cash receipts and other moneys to be received by the City for the General Fund during or allocable to the fiscal year of the City beginning July 1, 2014 and ending June 30, 2015 ("Fiscal Year 2014-15"); and

NOW THEREFORE, BE IT RESOLVED that the Council of the City of El Cerrito approves the following:

Section 1. Limitation on Maximum Amount. The principal amount of notes issued pursuant hereto, when added to the interest payable thereon, shall not exceed eighty-five percent (85%) of the estimated amount of the uncollected taxes, income, revenue, cash receipts and other moneys of the City for the General Fund attributable to Fiscal Year 2014-15, and available for the payment of said notes and the interest thereon (as hereinafter provided).

Section 2. Authorization and Terms of Notes. Solely for the purpose of anticipating taxes, income, revenue, cash receipts and other moneys to be received by the City for the General Fund during or allocable to Fiscal Year 2014-15, and not pursuant to any common plan of financing, the City hereby determines to and shall borrow the principal amount of not-to-exceed Five Million Two Hundred Fifty Thousand Dollars (\$5,250,000) by the issuance of temporary notes under the Law, designated "City of El Cerrito, California 2014-15 Tax and Revenue Anticipation Notes" (the "Notes"). The Notes shall be dated the date of initial delivery, shall mature (without option of prior redemption) no later than thirteen months after their date of issuance, and shall bear interest, payable at maturity and computed on a 30-day month/360-day year basis, at a rate not in excess of five percent per annum. Both the principal of and interest on the Notes shall be payable in lawful money of the United States of America, as described below.

Section 3. Form of Notes; Book Entry Only System. The Notes shall be issued in fully registered form, without coupons, and shall be substantially in the form and substance set forth in Exhibit A attached hereto and by reference incorporated herein, the blanks in said form to be filled in with appropriate words and figures. The Notes shall be numbered from 1 consecutively

upward in order of issuance, shall be in the denomination of \$5,000 each or any integral multiple thereof.

Except in the case of a private placement, “CUSIP” identification numbers shall be imprinted on the Notes, but such numbers shall not constitute a part of the contract evidenced by the Notes and any error or omission with respect thereto shall not constitute cause for refusal of any purchaser to accept delivery of and pay for the Notes. In addition, failure on the part of the City to use such CUSIP numbers in any notice to the registered owners of the Notes shall not constitute an event of default or any violation of the City’s contract with such owners and shall not impair the effectiveness of any such notice.

Except as provided below and in the case of a private placement, the owner of all of the Notes shall be The Depository Trust Company, New York, New York (“DTC”), and the Notes shall be registered in the name of Cede & Co., as nominee for DTC. The Notes shall be initially executed and delivered in the form of a single fully registered Note in the full aggregate principal amount of the Notes. The City may treat DTC (or its nominee) as the sole and exclusive owner of the Notes registered in its name for all purposes of this Resolution, and the City shall not be affected by any notice to the contrary. The City shall not have any responsibility or obligation to any participant of DTC (a “Participant”), any person claiming a beneficial ownership interest in the Notes under or through DTC or a Participant (a “Beneficial Owner”), or any other person not shown on the register of the City as being an owner, with respect to the accuracy of any records maintained by DTC or any Participant or the payment by DTC or any Participant by DTC or any Participant of any amount in respect of the principal or interest with respect to the Notes. The City shall pay all principal and interest with respect to the Notes only to DTC or its nominee, and all such payments shall be valid and effective to fully satisfy and discharge the City’s obligations with respect to the principal and interest with respect to the Notes to the extent of the sum or sums so paid. Except under the conditions noted below, no person other than DTC shall receive a Note. Upon delivery by DTC to the City of written notice to the effect that DTC has determined to substitute a new nominee in place of Cede & Co., the term “Cede & Co.” in this Resolution shall refer to such new nominee of DTC.

If the City determines that it is in the best interest of the Beneficial Owners that they be able to obtain Notes and delivers a written certificate to DTC to that effect, DTC shall notify the Participants of the availability through DTC of Notes. In such event, the City shall issue, transfer and exchange Notes as requested by DTC and any other owners in appropriate amounts. DTC may determine to discontinue providing its services with respect to the Notes at any time by giving notice to the City and discharging its responsibilities with respect thereto under applicable law. Under such circumstances (if there is no successor securities depository), the City shall be obligated to deliver Notes to the Beneficial Owners as described in this Resolution. Whenever DTC requests the City to do so, the City will cooperate with DTC in taking appropriate action after reasonable notice to (a) make available one or more separate Notes evidencing the Notes to any DTC Participant having Notes credited to its DTC account or (b) arrange for another securities depository to maintain custody of Certificates evidencing the Notes.

Notwithstanding any other provision of this Resolution to the contrary, so long as any Note is registered in the name of Cede & Co., as nominee of DTC, all payments with respect to

the principal and interest with respect to such Note and all notices with respect to such Note shall be made and given, respectively, to DTC as provided as in the representation letter delivered on the date of issuance of the Notes.

Section 4. Use of Proceeds. The proceeds of the sale of the Notes shall be deposited in a segregated account in the General Fund and used and expended by the City for any purpose for which it is authorized to expend funds from the General Fund.

Section 5. Security. The principal amount of the Notes, together with the interest thereon, shall be payable from taxes, income, revenue, cash receipts and other moneys which are received by the City for the General Fund for Fiscal Year 2014-15. As security for the payment of the principal of and interest on the Notes the City hereby pledges the first “unrestricted moneys” (as hereinafter defined) to be received by the City as follows: (a) an amount equal to fifty percent (50%) of the principal amount of the Notes in the month of January, 2015; (b) an amount equal to fifty percent (50%) of the principal amount of the Notes in the month of May, 2015; and (c) an amount sufficient to pay interest as due on the Notes at their maturity, in the month of June, 2015 (such pledged amounts being hereinafter called the “Pledged Revenues”). The principal of the Notes and the interest thereon shall constitute a first lien and charge thereon and shall be payable from the Pledged Revenues. To the extent not so paid from the Pledged Revenues, the Notes shall be paid from any other moneys of the City lawfully available therefor. In the event that there are insufficient “unrestricted moneys” received by the City to permit the deposit into the Special Account (as hereinafter defined) of the full amount of the Pledged Revenues to be deposited in any month by the last business day of such month, then the amount of any deficiency shall be satisfied and made up from any other moneys of the City lawfully available for the repayment of the Notes and interest thereon. The term “unrestricted moneys” shall mean taxes, income, revenue, cash receipts, and other moneys intended as receipts for the General Fund for Fiscal Year 2014-15 and which are generally available for the payment of current expenses and other obligations of the City.

Section 6. Special Account. There is hereby created, within the General Fund, a special account to be designated the “2014-15 Tax and Revenue Anticipation Note Special Account” (the “Special Account”) and applied as directed in this Resolution. Any money placed in the Special Account shall be for the benefit of the owners of the Notes and, until the Notes and all interest thereon are paid or until provision has been made for the payment of the Notes at maturity with interest to maturity, the moneys in the Special Account shall be applied solely for the purposes for which the Special Account is created.

During the months of January, May, and June, 2015, the City shall deposit all Pledged Revenues in the Special Account. On the maturity date of the Notes, the City shall transfer to DTC the moneys in the Special Account necessary to pay the principal of and interest on the Notes at maturity and to the extent said moneys are insufficient therefor an amount of moneys from the General Fund which will enable payment of the full principal of and interest on the Notes at maturity. DTC will thereupon make payments of principal of and interest on the Notes to the DTC Participants who will thereupon make payments to the Beneficial Owners of the Notes. Any moneys remaining in the Special Account after the Notes and the interest thereon

have been paid, or provision for such payment has been made, shall be transferred to the General Fund.

Section 7. Deposit and Investment of Special Account. All moneys held by the City in the Special Account, if not invested, shall be held in time or demand deposits as public funds and shall be secured at all times by bonds or other obligations which are authorized by law as security for public deposits, of a market value at least equal to the amount required by law.

Moneys in the Special Account shall, to the greatest extent possible, be invested by the City directly, or through an investment agreement, in investments as permitted by the laws of the State of California as now in effect and as hereafter amended, and the proceeds of any such investments shall be deposited in the Special Account.

Section 8. Execution of Notes. The Mayor of the City, the City Manager, or the Finance Director (each an "Authorized Officer") is hereby authorized to execute the Notes by manual or facsimile signature, and the City Clerk of the City is hereby authorized to countersign the same by manual or facsimile signature (although at least one of such signatures shall be manual) and to affix the seal of the City thereto by facsimile impression thereof, and said officers are hereby authorized to cause the blank spaces thereof to be filled in as may be appropriate.

Section 9. Transfer of Notes. Any Note may, in accordance with its terms, but only if the City determines to private place the Notes, the City determines to no longer maintain the book entry only status of the Notes, DTC determines to discontinue providing such services and no successor securities depository is named or DTC requests the City to deliver Note certificates to particular DTC Participants, be transferred, upon the books required to be kept pursuant to the provisions of Section 11 hereof, by the person in whose name it is registered, in person or by his duly authorized attorney, upon surrender of such Note for cancellation at the office of the City Clerk, accompanied by delivery of a written instrument of transfer in a form approved by the City, duly executed.

Whenever any Note or Notes shall be surrendered for transfer, the City shall execute and the Paying Agent shall authenticate and deliver a new Note or Notes, for like aggregate principal amount.

Section 10. Exchange of Notes. Any Note may, in accordance with its terms, but only if the City determines to privately place the Notes, the City determines to no longer maintain the book entry only status of the Notes, DTC determines to discontinue providing such services and no successor securities depository is named or DTC requests the City to deliver Note certificates to particular DTC Participants, be exchanged at the office of the City Clerk for a like aggregate principal amount of Notes of authorized denominations and of the same maturity.

Section 11. Note Register. The City shall keep or cause to be kept sufficient books for the registration and transfer of the Notes if the book entry only system is no longer in effect and, in such case, the City Clerk shall register or transfer or cause to be registered or transferred, on said books, Notes as herein before provided. While the book entry only system is in effect, such

books need not be kept as the Notes will be represented by one Note registered in the name of Cede & Co., as nominee for DTC.

Section 12. Temporary Notes. The Notes may be initially issued in temporary form exchangeable for definitive Notes when ready for delivery. The temporary Notes may be printed, lithographed or typewritten, shall be of such denominations as may be determined by the City, and may contain such reference to any of the provisions of this Resolution as may be appropriate. Every temporary Note shall be executed by the City upon the same conditions and in substantially the same manner as the definitive Notes. If the City issues temporary Notes it will execute and furnish definitive Notes without delay, and thereupon the temporary Notes may be surrendered, for cancellation, in exchange therefor at the office of the City Clerk and the City Clerk shall deliver in exchange for such temporary Notes an equal aggregate principal amount of definitive Notes of authorized denominations. Until so exchanged, the temporary Notes shall be entitled to the same benefits pursuant to this Resolution as definitive Notes executed and delivered hereunder.

Section 13. Notes Mutilated, Lost, Destroyed or Stolen. If any Note shall become mutilated the City, at the expense of the owner of said Note, shall execute and deliver a new Note of like maturity and principal amount in exchange and substitution for the Note so mutilated, but only upon surrender to the City Clerk of the Note so mutilated. Every mutilated Note so surrendered to the City Clerk shall be canceled and delivered to, or upon the order of, the City. If any Note shall be lost, destroyed or stolen, evidence of such loss, destruction or theft may be submitted to the City and, if such evidence be satisfactory to the City and indemnity satisfactory to it shall be given, the City, at the expense of the owner, shall execute and deliver a new Note of like maturity and principal amount in lieu of and in substitution for the Note so lost, destroyed or stolen. The City may require payment of a sum not exceeding the actual cost of preparing each new Note issued under this Section 13 and of the expenses which may be incurred by the City in the premises. Any Note issued under the provisions of this Section 13 in lieu of any Note alleged to be lost, destroyed or stolen shall constitute an original additional contractual obligation on the part of the City whether or not the Note so alleged to be lost, destroyed or stolen be at any time enforceable by anyone, and shall be equally and proportionately entitled to the benefits of this Resolution with all other Notes issued pursuant to this Resolution.

Section 14. Covenants and Warranties. It is hereby covenanted and warranted by the City that all representations and recitals contained in this Resolution are true and correct, and that the City and its appropriate officials have duly taken all proceedings necessary to be taken by them, and will take any additional proceedings necessary to be taken by them, for the prompt collection and enforcement of the taxes, income, revenue, cash receipts and other moneys pledged hereunder in accordance with law and for carrying out the provisions of this Resolution.

Section 15. Tax Covenants.

(a) *No Arbitrage.* The City shall not take, nor permit nor suffer to be taken any action with respect to the proceeds of the Notes which, if such action had been reasonably expected to have been taken, or had been deliberately and intentionally taken, on the date

of issuance of the Notes (the “Closing Date”) would have caused the Notes to be “arbitrage bonds” within the meaning of section 148 of the Internal Revenue Code of 1986 (the “Code”).

(b) *Rebate Requirement.* The City shall take any and all actions necessary to assure compliance with section 148(f) of the Code, relating to the rebate of excess investment earnings, if any, to the federal government.

(c) *Private Activity Note Limitation.* The City shall assure that proceeds of the Notes are not so used as to cause the Notes to satisfy the private business tests of section 141(b) of the Code.

(d) *Private Loan Financing Limitation.* The City shall assure that proceeds of the Notes are not so used as to cause the Notes to satisfy the private loan financing test of section 141(c) of the Code.

(e) *Federal Guarantee Prohibition.* The City shall not take any action or permit or suffer any action to be taken if the result of the same would be to cause any of the Notes to be “federally guaranteed” within the meaning of section 149(b) of the Code.

(f) *Maintenance of Tax-Exemption.* The City shall take all actions necessary to assure the exclusion of interest on the Notes from the gross income of the owners of the Notes to the same extent as such interest is permitted to be excluded from gross income under the Code as in effect on the Closing Date.

Section 16. Official Statement. The City Council hereby directs the Finance Director to work with NHA Advisors, LLC (the “Financial Advisor”) and Jones Hall, A Professional Law Corporation (the “Bond Counsel”) to prepare an official statement for the Notes (the “Official Statement”) if the Notes will be sold as described in Section 17(a) and (b) below. The Finance Director shall return to this Council for approval of the Official Statement before authorizing distribution of the Official Statement to potential purchasers of the Notes.

Section 17. Sale of Notes. The Finance Director is hereby authorized to designate the manner of sale of the Notes, in consultation with the Financial Advisor and Bond Counsel, in one of the following ways, after concluding that the designated manner of sale is likely to produce the lowest net borrowing cost for the City:

(a) *Limited Negotiated.* The Finance Director may direct the Financial Advisor to contact a limited number of bond underwriters and negotiate the sale of the Notes. The Finance Director is hereby authorized to cause Bond Counsel to prepare and an Authorized Officer is authorized to execute and deliver a Note Purchase Agreement in connection with a negotiated sale of the notes in such form (including designation of the underwriter(s)) as an Authorized Officer shall approve, such approval to be conclusively evidenced by his or her execution and delivery thereof.

(b) *Public Sale.* The Finance Director, in consultation with the Financial Advisor, may determine to sell the Notes by competitive bid and award the sale of the Notes as set forth in an Official Notice of Sale (the "Official Notice of Sale"), which Bond Counsel is hereby directed to prepare consistent with this Resolution. If the Finance Director determines to proceed with a competitive bid, (a) Bond Counsel is hereby directed to arrange for the publication of a notice of intention of the sale of the Notes in accordance with Section 53692 of the Government Code and (b) an Authorized Officer is hereby directed to execute the Official Notice of Sale; to open the bids at the time and place specified in the Official Notice of Sale; to receive and record the receipt of all bids made pursuant to the Official Notice of Sale; to cause said bids to be examined for compliance with the Official Notice of Sale; to cause computations to be made as to which bidder has bid the lowest true interest cost, as provided in the Official Notice of Sale; to announce the bidder of the lowest true interest cost; and to award the sale to said bidder.

(c) *Private Placement.* The Finance Director may direct the Financial Advisor to contact a limited number of financial institutions and negotiate a private placement of the Notes. An Authorized Officer is hereby authorized to cause Bond Counsel to prepare and to execute and deliver a Note Purchase Agreement in connection with a private placement of the Notes in such form (including designation of the purchaser(s)) as an Authorized Officer shall approve, such approval to be conclusively evidenced by his or her execution and delivery thereof.

An Authorized Officer is further authorized to determine the maximum principal amount of Notes not to exceed \$5,250,000 and the maximum interest rate on the Notes not to exceed six percent per annum.

Section 18. Engagement of Professional Services. The City hereby approves the engagement of Jones Hall, A Professional Law Corporation as Bond Counsel (in which capacity Bond Counsel shall also provide disclosure counsel services) and NHA Advisors as Financial Advisor to the City in connection with the issuance and sale of the Notes.

Section 19. Preparation of Notes; Official Action. Bond Counsel is directed to cause suitable Notes to be prepared showing the interest rate determined in accordance with the manner of sale of the Notes, to procure their execution by the proper officers, and to cause the Notes to be delivered when so executed to the purchaser or DTC (as applicable) upon the receipt of the purchase price by the City Treasurer.

An Authorized Officer is further authorized and directed to make, execute and deliver such certificates, agreements and other closing documents as are necessary to consummate the transactions contemplated by this Resolution.

Section 20. Effective Date. This Resolution shall take effect upon its adoption.

I CERTIFY that at the regular meeting on August 19, 2014 the El Cerrito City Council passed this resolution by the following vote:

AYES: Councilmembers:
NOES: Councilmembers:
ABSENT: Councilmembers:
ABSTAINED: Councilmembers:

IN WITNESS of this action, I sign this document and affix the corporate seal of the City of El Cerrito on August X, 2014.

Cheryl Morse, City Clerk

APPROVED:

Janet Abelson, Mayor

EXHIBIT A
FORM OF NOTE

No. 1

*****\$_____*****

CITY OF EL CERRITO, CALIFORNIA
2014-15 TAX AND REVENUE ANTICIPATION NOTE

INTEREST RATE:	MATURITY DATE:	ISSUE DATE:	CUSIP:
____%	____, 2015	____, 2014	

REGISTERED OWNER: [CEDE & CO.]

PRINCIPAL SUM: ***** _____ DOLLARS*****

The CITY OF EL CERRITO, a municipal corporation, duly organized and existing under and by virtue of the Constitution and laws of the State of California (the "City"), for value received hereby promises to pay to the Registered Owner stated above, or registered assigns (the "Owner"), on the Maturity Date stated above, the Principal Sum stated above, in lawful money of the United States of America, and to pay interest thereon in like lawful money at the rate per annum stated above, payable on the Maturity Date stated above, calculated on the basis of 360-day year composed of twelve 30-day months. Both the principal of and interest on this Note shall be payable at maturity to the Owner.

It is hereby certified, recited and declared that this Note is one of an authorized issue of Notes in the aggregate principal amount of _____ Dollars (\$_____), all of like tenor, issued pursuant to the provisions of Resolution No. _____ of the City Council of the City duly passed and adopted on _____, 2014 (the "Resolution"), and pursuant to Article 7.6 (commencing with section 53850) of Chapter 4, Part 1, Division 2, Title 5, of the California Government Code, and that all things, conditions and acts required to exist, happen and be performed precedent to and in the issuance of the Notes exist, have happened and have been performed in regular and due time, form and manner as required by law, and that this Note, together with all other indebtedness and obligations of the City, does not exceed any limit prescribed by the Constitution or statutes of the State of California.

The principal amount of the Notes, together with the interest thereon, shall be payable from taxes, income, revenue, cash receipts and other moneys which are received by the City for the General Fund of the City for Fiscal Year 2014-15. As security for the payment of the

principal of and interest on the Notes the City has pledged the first “unrestricted moneys” (as hereinafter defined) to be received by the City as follows: (a) an amount equal to fifty percent (50%) of the principal amount of the Notes in the month of January, 2015; (b) an amount equal to fifty percent (50%) of the principal amount of the Notes in the month of May, 2015; and (c) an amount sufficient to pay interest as due on the Notes at their maturity, in the month of June, 2015 (such pledged amounts being hereinafter called the “Pledged Revenues”). The principal of the Notes and the interest thereon shall constitute a first lien and charge thereon and shall be payable from the Pledged Revenues. To the extent not so paid from the Pledged Revenues, the Notes shall be paid from any other moneys of the City lawfully available therefor. In the event that there are insufficient “unrestricted moneys” received by the City to permit the deposit into the Special Account (as hereinafter defined) of the full amount of the Pledged Revenues to be deposited in any month by the last business day of such month, then the amount of any deficiency shall be satisfied and made up from any other moneys of the City lawfully available for the repayment of the Notes and interest thereon. The term “unrestricted moneys” shall mean taxes, income, revenue, cash receipts, and other moneys intended as receipts for the General Fund of the City for Fiscal Year 2014-15 and which are generally available for the payment of current expenses and other obligations of the City.

The Notes are issuable as fully registered Notes, without coupons, in denominations of \$5,000 and any integral multiple thereof. Subject to the limitations and conditions as provided in the Resolution, Notes may be exchanged for a like aggregate principal amount of Notes of other authorized denominations and of the same maturity.

The Notes are not subject to redemption prior to maturity.

This Note is transferable by the Owner hereof, but only under the circumstances, in the manner and subject to the limitations provided in the Resolution. Upon registration of such transfer a new Note or Notes, of authorized denomination or denominations, for the same aggregate principal amount and of the same maturity will be issued to the transferee in exchange herefor.

The City may treat the Owner hereof as the absolute owner hereof for all purposes, and the City shall not be affected by any notice to the contrary.

[Unless this Note is presented by an authorized representative of The Depository Trust Company to the issuer or its agent for registration of transfer, exchange or payment, and any certificate issued is registered in the name of Cede & Co. or such other name as requested by an authorized representative of The Depository Trust Company and any payment is made to Cede & Co., ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL since the registered owner hereof, Cede & Co., has an interest herein.]

IN WITNESS WHEREOF, the City of El Cerrito has caused this Note to be executed by the City Manager and countersigned by the City Clerk of the City, all as of the Issue Date stated above.

CITY OF EL CERRITO

By: _____

[S E A L]

Countersigned:

City Clerk

ABBREVIATIONS

The following abbreviations, when used in the inscription on the face of this Note, shall be construed as though they were written out in full according to applicable laws or regulations:

TEN COM --	as tenants in common	UNIF GIFT MIN ACT
TEN ENT --	as tenants by the entireties	____ Custodian
JT TEN --	as joint tenants with	____ Minor
	right of survivorship and	Under Uniform Gifts to Minc
	not as tenants in	Act
	common	____
		(State)

ADDITIONAL ABBREVIATIONS MAY ALSO BE USED
THOUGH NOT IN THE LIST ABOVE

ASSIGNMENT

For value received, the undersigned do(es) hereby sell, assign and transfer unto

(Name, Address and Tax Identification or Social Security Number of Assignee)

the within Note and do(es) hereby irrevocably constitute and appoint

_____,
attorney, to transfer the same on the registration books of the City with full power of substitution
in the premises.

Dated: _____

Signature Guaranteed:

NOTICE: Signature(s) must be guaranteed by an eligible guarantor

NOTICE: The signature on this Assignment must correspond with the name(s) as written on the face of the within Note in every particular without alteration or enlargement or any change whatsoever.

MEMORANDUM

To: Lisa Malek-Zadeh, Finance Director/City Treasurer

From: Craig Hill and Rob Schmidt

Cc: Chris Lynch, Jones Hall

Date: August 8, 2014

RE: City of El Cerrito – 2014/15 General Fund Cash Flow Borrowing Alternatives

Background

The City of El Cerrito (“City”) operates with a general fund that has significant fluctuations in its fund balances based on the timing of revenue receipts and the relatively consistent outflows for expenses. For the prior two fiscal years, the City has managed its cash flow deficits through loans from banks with repayments occurring during the fiscal year.

NHA Advisors, LLC was engaged by the City in 2013 to assist in the fiscal review and assistance in evaluating financing alternatives for future cash flow deficits. The City has continued to approve balanced budgets and projects an improving fund balance by June 30, 2015 that will increase the number of options for financing the cash flow shortfall. It is anticipated that the City will have the ability to either engage a local bank for a cash flow loan, as it has done in the past, or issue traditional tax and revenue anticipation notes through the capital markets. The determination will be made based on the lowest overall cost of funds to the City.

Financial Analysis & Funding Options

As shown in the attached cash flow analysis for the projected 2014/15 fiscal year, it is anticipated that the City may need to fund approximately \$5,250,000 to meet the maximum cash flow deficit in November or December 2014. The projections indicate that the City will have sufficient revenues to repay the note and end with a higher cash balance than July 1, 2014.

Private Placement – Informal interest rate quotes from community banks indicate that the City could expect an interest rate of 1.25%-1.50% through a private placement with a community bank. Transaction costs for a private placement would be approximately \$25,000. The effective interest rate (including all transaction costs) is conservatively estimated at 2.08%.

Public Offering – Alternative, informal interest rate quotes from underwriters indicate that the City could expect an interest rate of 0.25%-0.50% through the public markets. However, transaction costs would be approximately \$63,000 for a public offering, significantly higher than a private placement. But due to the lower interest rate, the effective interest rate (including all transaction costs) is conservatively estimated at 1.95%.

Approval Process

The City will need to approve a resolution authorizing the issuance of a tax and revenue anticipation note to be sold directly to a local bank or through a public offering and underwriting. At this time, it is not known which process will generate the lowest overall cost of funds. The recommendation is to have the City Council approve a resolution that provides the most flexibility to staff and its consultants (financial advisor and bond counsel) to investigate and develop the best financing solution.

Timing

It is anticipated that the City Council will approve the necessary resolution in late August and the financing process will occur in late August and early September with the targeted funding in late September.

City of El Cerrito
FY 2014-15 Projected General Fund Cash Flows
(Excluding FY 2014-15 TRAN)

	July	August	September	October	November	December 1-10	December 11-31	January	February	March	April	May	June	TOTAL
Beginning Balance	\$231,336	\$202,434	(\$350,627)	(\$1,659,545)	(\$2,046,046)	(\$3,609,395)	(\$5,009,702)	(\$2,620,299)	(\$2,838,460)	(\$1,896,695)	(\$2,221,628)	\$85,400	(\$1,154,984)	\$231,336
Cash Receipts														
Property Tax	\$0	\$0	\$0	\$250,064	\$0	\$0	\$3,046,412	\$89,646	\$0	\$0	\$2,270,429	\$0	\$785,706	\$6,442,256
Sales Tax	577,893	354,319	409,765	329,034	436,376	7,336	14,672	413,498	592,283	18,330	568,396	345,135	537,964	4,605,000
Franchises	0	203,711	0	130,537	97,940	38,273	76,547	0	220,427	0	340,457	225,968	59,316	1,393,175
Business Licenses	415,065	239,936	19,333	26,891	13,269	2,060	4,120	8,646	10,059	10,043	7,015	6,070	7,987	770,495
Utility Users Tax	335,795	267,995	297,491	347,815	296,029	85,769	171,538	339,055	186,765	527,031	299,944	238,247	283,625	3,677,100
Other Taxes	32,037	11,717	13,298	55,978	0	5,738	11,477	71,825	2,422	7,981	42,909	13,742	0	269,124
Fines and Penalties	29,048	32,206	22,936	14,293	52,565	4,931	9,861	42,826	23,842	26,367	25,088	26,775	30,762	341,500
License and Permits	62,677	42,274	43,600	60,932	30,040	7,706	15,412	42,881	24,143	46,407	31,894	75,796	47,238	531,000
Rentals	20,590	36,517	30,088	17,562	23,283	6,451	12,902	17,658	40,327	29,945	39,562	34,716	35,299	344,900
In-Lieu Fees	0	0	0	0	0	0	0	0	974,909	0	0	0	974,909	1,949,818
State/Other Agency Reimbursements	192,567	22,653	488,623	226,269	191,836	35,697	71,394	676,471	265,196	361,423	224,174	225,646	252,194	3,234,144
Recreation Fees	563,469	265,805	246,663	268,825	227,687	75,902	151,805	301,545	267,946	323,637	384,585	405,276	472,296	3,955,442
Fees for Service	142,287	66,591	23,945	43,615	40,826	17,339	34,678	45,399	88,275	63,041	34,369	34,422	70,213	705,000
Donations	0	0	0	368	2	0	0	8,820	1,470	2,940	41,529	5,542	1,529	62,200
Miscellaneous	27,238	75,111	813	534	3,834	38	76	11,620	1,754	26,709	8,538	730	2,452	159,447
Interest Income	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Transfers In	0	0	219,442	0	31,949	73,147	146,295	0	0	219,442	0	0	210,581	900,857
Debt Proceeds	0	0	0	0	0	0	0	0	0	0	0	0	0	0
TRAN Proceeds	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Total Cash Receipts	\$2,398,666	\$1,618,835	\$1,815,997	\$1,772,716	\$1,445,637	\$360,388	\$3,767,188	\$2,069,890	\$2,699,818	\$1,663,296	\$4,318,888	\$1,638,065	\$3,772,071	\$29,341,458
Cash Disbursements														
General Government	\$225,348	\$299,457	\$704,267	\$204,462	\$387,679	\$177,314	\$177,314	\$176,859	\$160,018	\$219,939	\$355,397	\$244,691	\$188,410	\$3,521,155
Public Safety	1,531,935	1,323,696	1,854,693	1,463,454	1,855,366	953,689	953,689	1,547,710	1,272,030	1,351,206	1,255,474	1,885,412	1,460,568	18,708,922
Public Works	45,105	35,178	36,973	69,898	67,797	30,124	30,124	88,026	27,318	57,309	28,792	83,480	45,062	645,185
Community Development	153,479	164,552	126,186	119,633	259,946	62,762	62,762	168,934	81,604	96,489	110,152	223,911	95,853	1,726,262
Recreation	471,701	349,013	402,798	301,771	376,983	153,896	153,896	289,015	217,083	263,287	262,044	369,739	331,571	3,942,797
Economic Development	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Debt Service	0	0	0	0	61,215	382,910	0	17,508	0	0	0	71,216	174,896	707,744
Transfers Out	0	0	0	0	0	0	0	0	0	0	0	0	0	0
TRAN Principal Payment	0	0	0	0	0	0	0	0	0	0	0	0	0	0
TRAN Interest Payment	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Corporation Loan from/(to) GF	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Net Cash from Fiscal Agent	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Change in Deposit & Prepaid Accounts	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Advance from/(Reimbursement to) GF	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Total Cash Disbursements	\$2,427,569	\$2,171,896	\$3,124,916	\$2,159,217	\$3,008,986	\$1,760,695	\$1,377,785	\$2,288,051	\$1,758,054	\$1,988,229	\$2,011,860	\$2,878,450	\$2,296,358	\$29,252,065
Interfund Borrowings	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Net Cash Flow	(\$28,902)	(\$553,061)	(\$1,308,919)	(\$386,501)	(\$1,563,349)	(\$1,400,307)	\$2,389,403	(\$218,161)	\$941,764	(\$324,933)	\$2,307,029	(\$1,240,384)	\$1,475,713	\$89,393
Ending Balance	\$202,434	(\$350,627)	(\$1,659,545)	(\$2,046,046)	(\$3,609,395)	(\$5,009,702)	(\$2,620,299)	(\$2,838,460)	(\$1,896,695)	(\$2,221,628)	\$85,400	(\$1,154,984)	\$320,729	\$320,729

Source: City of El Cerrito