

INDEX TO ADMINISTRATIVE RECORD

2421 FIFTH STREET

Use Permit #ZP2020-0051

Prepared: June 29, 2021

	DOCUMENT	DATE	PAGE	# of pages
A	STAFF REPORTS			
	1 ZAB Hearing Materials: staff report, attachments and supplemental communications	5/27/2021	1	275
B	CAPTIONER'S RECORD and minutes of all hearings			
	2 ZAB Captioner's record	5/27/2021	276	19
C	REMAINDER OF ADMIN RECORD			
	3 Application materials	5/29/2020	295	13
	4 Application materials: Photos	5/29/2020	308	5
	5 Application materials: Project Plans	5/29/2020	313	13
	6 Application materials: Geotechnical report	5/29/2020	326	72
	7 Application materials: Phase I Environmental Site Assessment report	5/29/2020	398	59
	8 Receipt	6/8/2020	457	1
	9 Incomplete letter	7/8/2020	458	3
	10 Incomplete letter	11/6/2020	461	2
	11 Geotechnical Peer Review	11/13/2020	463	4
	12 Resubmittal: DPR form	12/22/2020	467	2
	13 Resubmittal: Historical Resource Evaluation	12/22/2020	469	2
	14 Resubmittal: DPR form	2/2/2021	471	2
	17 Resubmittal: Applicant response to Incomplete letter	2/19/2021	473	1
	15 Resubmittal: Bay Friendly Basics Landscape Checklist	2/19/2021	474	4
	16 Resubmittal: Project plans	2/19/2021	478	10
	18 Resubmittal: Tabulation form	2/19/2021	488	1
	19 Resubmittal: Use Permit Declarations	2/19/2021	489	1
	20 Resubmittal: Tabulation form - House 1	3/2/2021	490	1
	21 Resubmittal: Tabulation form - House 2	3/2/2021	491	1
	22 Resubmittal: Tabulation form - House 3	3/2/2021	492	1
	23 Resubmittal: Tabulation form - House 4	3/2/2021	493	1
	24 Project Poster	3/12/2021	494	1
	25 Traffic Engineer Approved Parking Easement Plan	3/18/2021	495	1
	26 Incomplete letter	3/19/2021	496	2
	27 Resubmittal: Response to Planning comments	3/23/2021	498	1
	28 Resubmittal: Landscape Plan	3/23/2021	499	1
	29 Resubmittal: Open Space Diagram	3/23/2021	500	1
	30 Resubmittal: Site plan	3/23/2021	501	1
	31 Resubmittal: Tabulation form - House 4	3/23/2021	502	1
	32 Resubmittal: Site plan	3/30/2021	503	1
	33 ZAB Notice of Public Hearing postcard with mailing list	5/13/2021	504	6
	34 Letter of support from Joe Cordes	5/23/2021	510	1
	35 ZAB Notice of Decision	6/1/2021	511	29
	36 Letter from Jessica Taylor appealing ZAB decision	6/7/2021	540	235

37	Letter of receipt of appeal from City Clerk to Appellant	6/28/2021	775	3
----	--	-----------	-----	---



Z O N I N G
A D J U S T M E N T S
B O A R D
S T A F F R E P O R T
FOR BOARD ACTION
MAY 27, 2021

770 Page Street

Use Permit #ZP2020-0051 to demolish an existing single-family dwelling unit and construct four detached, three-story approximately 1,500-square-foot dwelling units on a 5,532-square-foot lot.

I. Background

A. Land Use Designations:

- General Plan: MU – Manufacturing Mixed Use
- West Berkeley Plan Area
- Zoning: MU-R – Mixed Use Residential District

B. Zoning Permits Required:

- Use Permit, under BMC 23C.08.010 to demolish of a dwelling unit
- Administrative Use Permit, under BMC Section 23E.84.030, to construct four new dwelling units

C. CEQA Recommendation: It is staff’s recommendation that the project is **categorically** exempt pursuant to Sections 15301, 15303, and 15332 of the CEQA Guidelines (“Existing Facilities,” “New Construction or Conversion of Small Structures,” and “In-Fill Development”). The determination is made by ZAB.

D. Parties Involved:

- Applicant/Owner: 1444 5th Street, LLC, 805 Jones Street, Berkeley

Figure 2: Proposed Site Plan

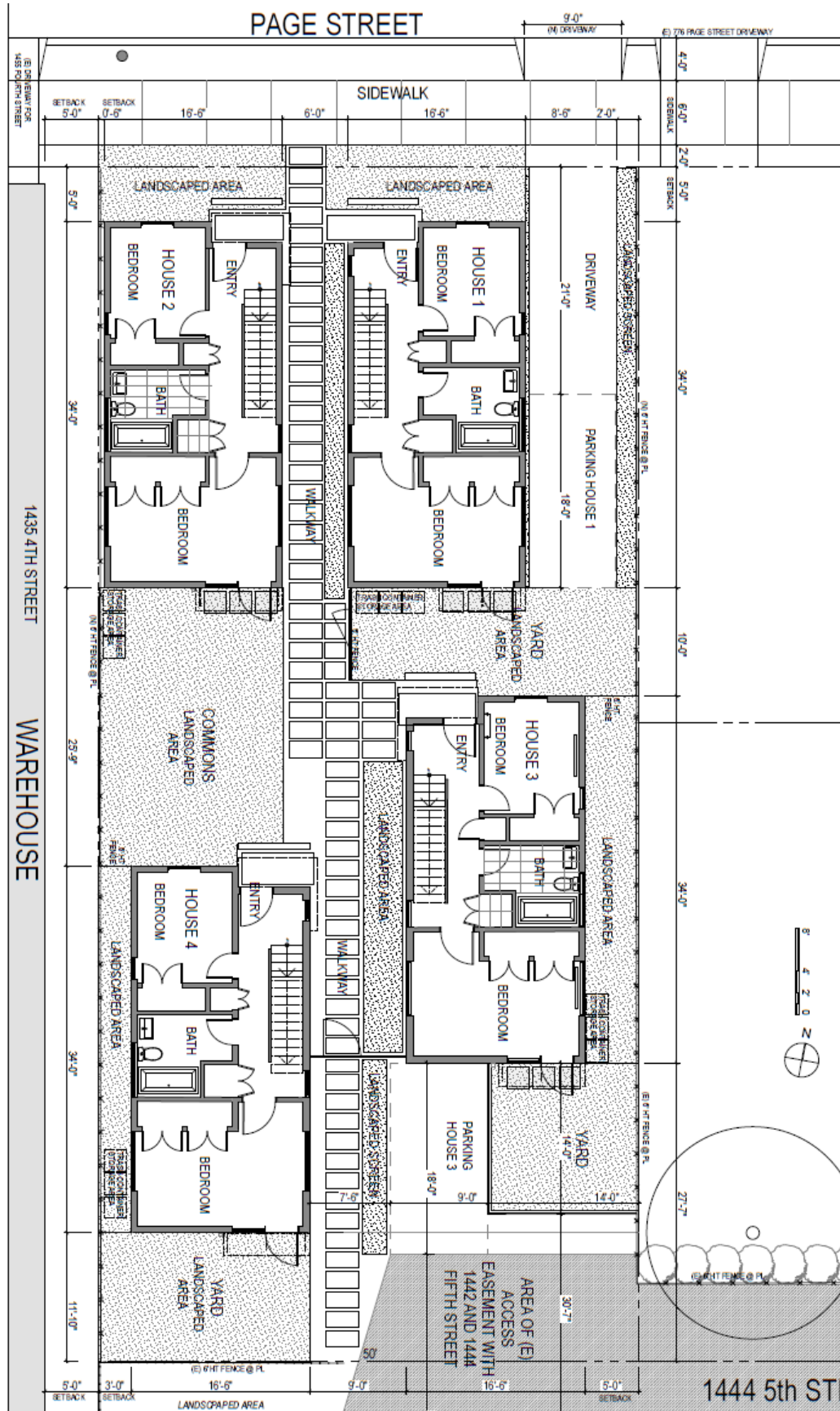


Table 1: Land Use Information

Location		Existing Use	Zoning District	General Plan Designation
Subject Property		Single-Family Residential	MUR	Manufacturing Mixed Use
Surrounding Properties	North	Residential, Commercial	MUR	Manufacturing Mixed Use
	South	Four new detached dwelling units (developed by same applicant) currently under construction	MUR	Manufacturing Mixed Use
	East	Residential, Commercial	MUR	Manufacturing Mixed Use
	West	Warehouse	MULI	Manufacturing

Table 2: Special Characteristics

Characteristic	Applies to Project?	Explanation
Affordable Child Care Fee for qualifying non-residential projects (Resolution 66,618-N.S.)	No	This fee applies to projects with net new 7,500 sq. ft. of non-residential floor area. The project involves only new residential floor area, and thus this requirement does not apply.
Affordable Housing Fee for qualifying non-residential projects (Resolution 66,617-N.S.)	No	This fee applies to projects with net new 7,500 sq. ft. of non-residential floor area. The project involves only new residential floor area, and thus this requirement does not apply.
Affordable Housing Mitigations for rental housing projects (BMC 22.20.065)	No	This fee applies to projects that propose 5 or more rental dwelling units. This project does not propose rental units.
Coast Live Oak Trees (BMC 6.52.010)	No	There are no coast live oak trees on or abutting the project site.
Creeks	No	The project site is not within a creek buffer zone.
Density Bonus	No	The applicant has not applied for a State Density Bonus.
Inclusionary Housing Ordinance (BMC 23C.12)	No	This fee applies to project that propose 5 or more ownership dwelling units or to projects on parcels that can accommodate 5 or more dwelling units. The project is proposing the maximum number of dwelling units supportable on a lot of this size: 4.
Natural Gas Prohibition (BMC 12.80.020)	Yes	The project is subject to the natural gas prohibition.
Historic Resources	No	The applicant submitted an HRE (Preservation Architecture, December 17, 2020) that concluded the property and building on-site do not have potential historical significance under the criteria of Berkeley's LPO.
Housing Accountability Act (Gov't Code Section 65589.5(j))	Yes	The project complies with applicable, objective general plan and zoning standards, and thus section (j) of the Housing Accountability Act applies. See Section V.B of this report for additional discussion on compliance with the Housing Accountability Act.
Housing Crisis Act of 2019 (SB330)	Yes	The project is a project that is: all residential; a mixed-use project with at least two-thirds of the square-footage residential; or for transitional or supportive housing. See Section V.A of this report

		for additional discussion on the sections of SB330 that apply to the project.
Rent Controlled Units	No	There are no rent controlled units on the subject site.
Residential Preferred Parking (RPP)	No	The neighborhood surrounding the subject site is not located in an RPP Zone.
Seismic Hazards (SHMA)	Yes	The project site is located within an area susceptible to liquefaction as shown on the State Seismic Hazard Zones map. The applicant submitted a geotechnical investigation for the project (Peters & Ross, March 2020), which concluded that the project is feasible from a geotechnical engineering standpoint provided the recommendations in the report are incorporated into project plans and specifications. The geotechnical report was peer reviewed by the City's peer reviewer who concluded the report satisfactorily addresses the site's geotechnical issues.
Soil/Groundwater Contamination	no	The project site is not listed on the Cortese List (an annually updated list of hazardous materials sites), however it is located within the City's Environmental Management Area. Standard Toxics Conditions of Approval apply.

Table 3: Project Chronology

Date	Action
May 29, 2020	Application submitted
March 30, 2021	Application deemed complete
May 13, 2021	DRC Staff Level Design Review NOD Posted
May 11, 2021	Public hearing notices mailed/posted
May 27, 2021	ZAB hearing

Table 4: Development Standards

Standard		Existing	Proposed Total	Permitted/ Required
BMC Sections 23E.84.070-080				
Lot Area (sq. ft.)		5,532	No change	n/a
Gross Floor Area (sq. ft.)		900	6,000 (1,500 per unit)	8,298 max
Floor Area Ratio		0.2	1.1	1.5 max
Dwelling Units		1	4	4 max (1 per 1,250 sq. ft. lot area, + 1 if 750+ sq. ft. remainder)
Building Height	Average (ft.)	14	32.5	35 max
	Stories	1	3	3 max
Building Setbacks (ft.)	Front	14	5	5 min
	Rear	62	11.8	10 min

	Left Side	9.7	5	5 min
	Right Side	3	0.5	0 min
Lot Coverage (%)		16	41	n/a
Usable Open Space (sq. ft.)		140	1,082	600 min (150 per unit)
Automobile Parking		1	2	0 min

II. Project Setting

A. Neighborhood/Area Description: The project is in West Berkeley on the south side of Page Street between Fourth Street to the west and Fifth Street to the east. The neighborhood consists predominantly of one- and two-story residential buildings, warehouse, and other commercial buildings, with some three-story residential and mixed residential buildings as well. Similar developments of four detached three-story dwelling units by the same developer are in the area including those newly constructed at 1446 Fifth Street and those currently under construction at 1444 Fifth Street.

This portion of the MU-R District provides a transition between the more exclusively residential areas to the east and the industrial areas to the west. The west side and northwest sides of the subject block, along Fourth Street, where the MU-LI District begins, includes industrial and warehouse uses. The east side of the block, along Fifth Street, includes residential buildings. The neighborhood further eastward features a mix of uses, including one- to three-story residential and commercial buildings. The concentration of residential uses increases further eastward.

B. Site Conditions: The project site is generally level, rectangular in shape and currently developed with a single-story dwelling unit constructed in 1944. A curb cut and driveway are located on the east (left) side of the lot. Currently, the rear yard area is undeveloped and completely paved.

III. Project Description

The project proposes to demolish the existing single-family dwelling and construct four detached dwelling units. Each building would be three stories, with an average height of 32 feet 6 inches, and would each provide approximately 1,500 square feet of gross floor area. The layout of each unit is essentially identical, with the first floor containing two bedrooms and one bathroom, the second floor containing an open living/dining room with kitchen and bathroom, and the third floor comprised of one bedroom that opens up to a 135-square-foot western facing roof deck. Two of the units would have a dedicated uncovered parking space. Unit 1 would have an uncovered parking to the east (left) of the dwelling, accessed from a curb cut and driveway off of Page Street. Unit 3 would have an uncovered parking space located at the rear (south) of the dwelling, accessed from the shared access easement that also provide access to the eastern parcels at 1442 and 1444 Fifth Street. The existing easement would be re-recorded to meet the design standards required by the Traffic Engineer.

IV. Community Discussion

- A. Neighbor/Community Concerns:** The applicant installed a yellow project notification on the project site on March 12, 2021. On April 20, 2021, staff sent an email to interested parties who had provided emails in correspondence regarding other project by the applicant in the immediate vicinity. On May 13, 2021, the City mailed public hearing notices to property owners and occupants, and to interested neighborhood organizations. The City also posted notices within the neighborhood in three locations. At the time of this writing, staff has received no correspondence regarding this project.
- B. Committee Review:** As the construction of the dwelling units in the MU-R requires an AUP and not a UP, Committee Review of the project is not required; it is subject to Staff Level Design Review (SLDR). The applicant submitted a SLDR application on June 5, 2020. Design Review Staff concluded that the project is compatible with City-wide Design Guidelines and posted notices of approval on-site on May 13, 2021. The SLDR approval included standard design review conditions for further review of building details and the landscape plan during the building permit process. The appeal and comment period for this approval is currently underway and will end on May 27, 2021, at 4:00 PM.

V. Issues and Analysis

- A. SB 330 – Housing Crisis Act of 2019:** The Housing Crisis Act, also known as Senate Bill 330, seeks to boost homebuilding throughout the State with a focus on urbanized zones by expediting the approval process for and suspending or eliminating restrictions on housing development. Housing development is defined as a project that is: all residential; a mixed-use project with at least two-thirds of the square-footage residential; or for transitional or supportive housing. Sections of SB 330 that apply to the proposed project include the following:

1. Government Code §65905.5(a) states that if a proposed housing development project complies with the applicable, objective general plan and zoning standards in affect at the time an application is deemed complete, then the city shall not conduct more than five (5) hearings in connection with the approval of that housing development project. This includes all public hearings in connection with the approval of the housing development project and any continuances of such public hearings. The city must consider and either approve or disapprove the project at any of the five hearings consistent with applicable timelines under the Permit Streamlining Act (Chapter 4.5 (commencing with §65920)).

The May 27, 2021 ZAB hearing represents the first public hearing for the proposed project since the project was deemed complete. The City can hold up to four additional public hearings on this project, if needed. One of those hearings must be reserved for any possible appeal to the City Council.

2. Government Code §65913.10(a) requires that the City determine whether the proposed development project site is a historic site at the time the application for the housing development project is deemed complete. The determination as to

whether the parcel is a historic site must remain valid during the pendency of the housing development project, unless any archaeological, paleontological, or tribal cultural resources are encountered during any grading, site disturbance, or building alteration activities.

As noted in Table 2: Special Characteristics, The applicant submitted a Historic Resource Evaluation (Preservation Architecture, December 17, 2020) that concluded the property and building on-site do not have potential historical significance under the criteria of Berkeley's LPO. The Landmarks Preservation Commission Secretary reviewed the report and concurred with the conclusion. Therefore, it was determined the site is not a historic resource. Further, standard conditions of approval have been included to halt work in case of any unanticipated discovery of archeological, paleontological, or tribal cultural resources.

3. Government Code §65950(a)(5) requires a public agency to approve or disapprove a project within 60 days from the determination that the project is exempt from the California Environmental Quality Act. The project was deemed complete on March 30, 2021. Should ZAB determine the application is categorically exempt from CEQA at the May 27, 2021 public hearing, the application must be approved or disapproved by July 26, 2021.

B. Housing Accountability Act Analysis: The Housing Accountability Act (HAA), California Government Code Section 65589.5(j), requires that when a proposed housing development complies with the applicable, objective general plan and zoning standards, but a local agency proposes to deny the project or approve it only if the density is reduced, the agency must base its decision on written findings supported by substantial evidence that:

1. The development would have a specific adverse impact on public health or safety unless disapproved, or approved at a lower density; and
2. There is no feasible method to satisfactorily mitigate or avoid the specific adverse impact, other than the disapproval, or approval at a lower density.

The proposed project complies with applicable, objective general plan and zoning standards, including maximum height, density, and FAR, and minimum setbacks, useable open space, and number of parking spaces. Thus, section (j) of the Housing Accountability Act applies. Staff is not aware of any basis to make the findings listed above.

C. Demolition of a Dwelling Unit: Pursuant to Government Code §66300(d)(1), a City "shall not approve a housing development application that will require the demolition of residential dwelling units unless the project will create at least as many residential units as will be demolished." This project proposes replacing the one dwelling proposed for demolition with four new dwellings; therefore, the application complies. Section 66300(d)(2) does not apply because the existing unit is not considered a "protected" unit under SB 330. The findings to approve the demolition of the dwelling unit under BMC Section 23C.08.010.B are therefore satisfied due to compliance with Government Code §66300(d)(3).

D. New Dwelling Units in the MU-R District and Neighborhood Compatibility:

Pursuant to BMC Section 23E.84.090.B, the proposed project is consistent with the purposes of the MU-R District and the West Berkeley Plan because it would strengthen the residential concentration in this neighborhood (see Section IV.B below). The project would protect neighboring residents from unreasonably detrimental effects of nonresidential uses, such as noise, vibration, odors, smoke, fumes, gases, dust, heat and glare because the proposal would add residences (not industrial uses) to the existing cluster of residential buildings at this block. Given the existing residential concentration on the eastern half of this block and as the residential use would be maintained on the subject property, the project would not contribute to a cumulative change of use in buildings away from the mix of uses that surround this area of West Berkeley. Moreover, the proposed use and its proposed design elements including gable roof, selectively placed windows and metal siding, responds to local residential and commercial buildings and would thereby contribute to a neighborhood that acts as a transition between the residential districts to the east and the industrial districts to the west.

The proposed project complies with all applicable MU-R District development standards (see Table 4). The applicant proposes to construct four units on a lot that can accommodate four units; a floor area ratio of 1.1 where the maximum allowed is 1.5; average height of 32 feet 6 inches at all four buildings where the maximum average height allowed is 35 feet; and 1,082 square feet of useable open space where the minimum required is 600 square feet (150 per unit). The project would provide two parking spaces, where none are required and the City's Traffic Engineer has confirmed that the proposed parking, driveway, and easement would operate acceptably. (To ensure compliance with Traffic Engineering standards, Condition of Approval #12 requires that the applicant provide the recorded easements with the revised design prior to issuance of a building permit.) The project would meet the required front yard setback and would exceed all side and rear yard setbacks.

Staff believes the proposal is consistent with the overall scale and development pattern of the one-, two-, and three-story residences and commercial and manufacturing spaces in the neighborhood, including the nearby developments by the same applicant. In addition, Design Review Staff found that the application is consistent with applicable design review guidelines and with the surrounding aesthetic context.

E. General Non-Detriment: Pursuant to BMC Section 23E.84.090.A, the Board may approve an application for a Use Permit if the proposed project meets the findings of non-detriment. A discussion of the project's potential impact to sunlight, air or views follows:

Sunlight: Staff believes the project would not result in significant loss of direct sunlight on abutting residences for several reasons. No residences occur to the west. New shadows cast towards the east would affect the rear façades of the dwelling units located at 776 Page Street and 1442 Fifth Street during the hours before sunset throughout the year. However, because impacts to neighboring residences would be limited to certain hours a day, staff believes these shading impacts would not be detrimental. (Shadow studies are provided on pages 11 and 12 of the plan set.)

Air: Staff believes the proposal would be consistent with the existing development and building-to-building separation pattern – or air – in this MU-R neighborhood because the buildings would exceed minimum setback and useable open space requirements..

Views: Staff expects that the proposed project would not result in additional obstruction of significant views in the neighborhood because there are limited significant views as defined in BMC Section 23F.04 (Definitions) available to residences in the area. The area is generally flat, developed with one- to three-story buildings, and includes mature vegetation which provides visual screening.

VI. Other Considerations

The following list of 2002 General Plan goals and polices and Specific Plan policies are provided for information purposes only, to provide context; they do not require findings of conformance because the proposed project is HAA-compliant.

A. General Plan Consistency: The 2002 General Plan contains several policies applicable to the project, including the following:

1. Policy LU-3–Infill Development: Encourage infill development that is architecturally and environmentally sensitive, embodies principles of sustainable planning and construction, and is compatible with neighboring land uses and architectural design and scale.
2. Policy LU-7–Neighborhood Quality of Life, Action A: Require that new development be consistent with zoning standards and compatible with the scale, historic character, and surrounding uses in the area.
3. Policy UD-16–Context: The design and scale of new or remodeled buildings should respect the built environment in the area, particularly where the character of the built environment is largely defined by an aggregation of historically and architecturally significant buildings.
4. Policy UD-24–Area Character: Regulate new construction and alterations to ensure that they are truly compatible with and, where feasible, reinforce the desirable design characteristics of the particular area they are in.

Staff Analysis: The proposed project is an infill development that would add a net gain of three new dwellings units in a primarily residential neighborhood. The massing, proportions, design, and use of the buildings would be compatible with the surrounding neighborhood. As noted above, the project meets or exceeds all development standards in the MU-R district.

5. Policy H-33–Regional Housing Needs: Encourage adequate housing production to meet City needs and the City’s share of regional housing needs.

Staff Analysis: The project would add three additional dwelling units to the City’s housing stock.

6. Policy EM-5–“Green” Buildings: Promote and encourage compliance with “green” building standards. (Also see Policies EM-8, EM-26, EM-35, EM-36, and UD-6.)

7. Policy UD-33–Sustainable Design: Promote environmentally sensitive and sustainable design in new buildings.

Staff Analysis: The project would be constructed to comply with current green building standards that are required by the Building Code.

F. West Berkeley Plan Consistency: The 1993 West Berkeley Area Plan contains several policies applicable to the project, including the following:

1. Land Use Goal 1, Policy A: Retaining, through planning, zoning and land use policies which shield manufactures from economic and physical incompatibilities with other uses, sufficient land and buildings to maintain the current level of manufacturing employment at a minimum.
2. Land Use Goal 2, Policy D: Create a Mixed Residential district as a special mixed use district which will recognize and support the continued evolution of a unique mix of residential, light industrial, and arts and crafts uses, with a particular effort to strengthen residential concentrations existing there.

Staff Analysis: Since the proposed residential units would be located on a block that already contains a concentration of residential uses, the project would shield manufacturers elsewhere in the MU-R district from incompatibilities with residences that are too proximate. Given this compatibility of the proposed use, the project would support the mixed nature of the existing neighborhood.

3. Land Use Goal 4: Assure that new development in any sector is of a scale and design that is appropriate to its surroundings, while respecting the genuine economic and physical needs of the development.

Staff Analysis: As discussed above in Sections V.D-F the proposed massing and scale would be compatible with the surrounding neighborhood context and would reflect the industrial nature of West Berkeley. The project would also provide four new dwelling units that meet all applicable zoning requirements for new residential uses.

VI. Recommendation

Because of the project's consistency with the Zoning Ordinance and General Plan, and minimal impact on surrounding properties, staff recommends that the Zoning Adjustments Board **APPROVE** Use Permit #ZP2020-0051 pursuant to Section 23B.32.030 and subject to the attached Findings and Conditions (see Attachment 1).

Attachments:

1. Findings and Conditions
2. Project Plans, dated April 19, 2021
3. Notice of Public Hearing
4. Correspondence Received

Staff Planner: Leslie Mendez, LMendez@cityofberkeley.info, (510) 981-7426

ATTACHMENT 1**FINDINGS AND CONDITIONS**

MAY 27, 2021

770 Page Street

Use Permit #ZP2020-0051 to demolish an existing single-family dwelling unit and construct four detached, three-story approximately 1,500-square-foot dwelling units on a 5,532-square-foot lot.

PERMITS REQUIRED

- Use Permit, under BMC 23C.08.010, to demolish of a dwelling unit
- Administrative Use Permit, under BMC Section 23E.84.030, to construct four new dwelling units

I. CEQA FINDINGS

1. The project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA, Public Resources Code §21000, et seq. and California Code of Regulations, §15000, et seq.) pursuant to Sections 15301, 15303, and 15332 of the CEQA Guidelines (“Existing Facilities,” “New Construction or Conversion of Small Structures,” and “In-Fill Development”).

The project meets all of the requirements of this exemption, as follows:

- A. The project is consistent with the applicable General Plan designation and policies, and with the applicable zoning designation and regulations.
 - B. The project occurs within the Berkeley City limits on a project site of no more than five acres, and is surrounded by urban uses.
 - C. The parcels within the project site have previously been developed and have no value as habitat for endangered, rare or threatened species.
 - D. The project would not result in any significant effects relating to traffic, noise, air quality or water quality. The Traffic Impact Analysis prepared for the project was reviewed by the City Transportation Division which concurred with the findings of less than significant impacts. City Standard Conditions would address potential impacts related to traffic, noise, air quality, and water quality.
 - E. The site can be adequately served by all required utilities and public services.
2. Furthermore, none of the exceptions in CEQA Guidelines Section 15300.2 apply, as follows:
 - (a) the site is not located in an environmentally sensitive area, (b) there are no cumulative impacts, (c) there are no significant effects, (d) the project is not located near a scenic highway, (e) the project site is not located on a hazardous waste site pursuant to Government Code Section 65962.5, and (f) the project would not affect any historical resource.

II. FINDINGS FOR APPROVAL

1. The Housing Accountability Act §65589.5(j) requires that when a proposed housing development complies with applicable, objective general plan and zoning standards, a local

agency may not deny the project or approve it with reduced density unless the agency makes written findings supported by substantial evidence that:

- a. The development would have a specific adverse impact on public health or safety unless disapproved or approved at a lower density¹; and
- b. There is no feasible method to satisfactorily mitigate or avoid the specific adverse impact, other than the disapproval or approval at a lower density.

Because the project would comply with applicable, objective general plan and zoning standards, §65589.5(j) does apply to this project. No significant, quantifiable, direct and unavoidable impacts, based on objective, identified written public health or safety standards, polices, or conditions, have been identified by staff. The project includes construction of one dwelling unit on a lot that allows one dwelling.

2. Pursuant to Government Code §66300(d)(1), a City “shall not approve a housing development application that will require the demolition of residential dwelling units unless the project will create at least as many residential units as will be demolished.” This project proposes replacing the one dwelling proposed for demolition with four new dwellings; therefore, the application complies. Section 66300(d)(2) does not apply because the existing unit is not considered a “protected” unit under SB 330. The findings to approve the demolition of the dwelling unit under BMC Section 23C.08.010.B are therefore satisfied due to compliance with Government Code §66300(d)(3).
3. As required by Section 23B.32.040.A of the Zoning Ordinance, the project, under the circumstances of this particular case existing at the time at which the application is granted, would not be detrimental to the health, safety, peace, morals, comfort, and general welfare of the persons residing or working in the neighborhood of such proposed use or be detrimental or injurious to property and improvements of the adjacent properties, the surrounding area or neighborhood, or to the general welfare of the City because:
 - The proposed development on this parcel is equal to or below the Mixed-Use Residential (MU-R) standards set by BMC 23E.84.070 for maximum residential density, floor area, and height (four dwelling units on the 5,532 square-foot lot, where four dwelling units is the maximum allowed based on the size of this lot; floor area ratio of 1.1, where the maximum allowed is for residential development 1.5; average height of 32.5’, where the maximum allowed is 35’). The proposed project also meets or exceeds the requirements for setbacks and useable open space (1,082 square feet of useable open space, where 600 square feet is required (150 square feet per unit));
 - The proposed project retains the mixed but primarily residential character of the surrounding street and is consistent with the overall scale of the one-, two-, and three-story residences and commercial and manufacturing spaces in the neighborhood. The proposed design references the industrial context of West Berkeley and its mix of uses and aesthetics;
 - No substantial land use conflicts are expected from the project due to the site’s location in a mixed area of commercial and residential development, because the project’s density will be within the range of the surrounding development, and because no substantial privacy or shadow impacts will occur;
 - Sunlight: the project will not result in significant loss of direct sunlight on abutting residences for several reasons. No residences occur to the west and new shadows cast towards the

¹ As used in the Act, a “specific, adverse impact” means a “significant, quantifiable, direct and unavoidable impact, based on objective, identified written public health or safety standards, polices, or conditions as they existed on the date the application was complete.

east will primarily affect the rear façades of the dwelling units located at 776 Page Street and 1442 Fifth Street during the hours before sunset throughout the year. However, because impacts to neighboring residences would be limited to certain hours a day, these shading impacts are not deemed detrimental;

- Air: The Council finds that the proposal is consistent with the existing development and building-to-building separation pattern – or air – in this MU-R neighborhood because the buildings will exceed minimum setback and useable open space requirements; and
- Views: The proposed project will not result in additional obstruction of significant views in the neighborhood because there are limited significant views as defined in BMC Section 23F.04 (Definitions) available to residences in the area. The area is generally flat, developed with one- to three-story buildings, and includes mature vegetation which provides visual screening.

4. Pursuant to Berkeley Municipal Code Section 23E.84.090, the proposed project is consistent with the purposes of the MU-R District for the following reasons:

- The project will strengthen the residential concentration in this neighborhood. The residential use of the project will protect neighboring residents from the unreasonably detrimental effects of nonresidential uses, such as noise, vibration, odors, smoke, fumes, gases, dust, heat and glare;
 - The project is consistent with the West Berkeley Plan because the proposed massing and design is appropriate for the neighborhood and reflects the nature of the MU-R District;
 - The project is not likely, under reasonably foreseeable circumstances, to either induce or contribute to a cumulative change of use in buildings away from residential, live/work, light industrial, or arts and crafts uses because the site location is in an area of West Berkeley known for a diverse mix of land uses and because the project will continue the residential pattern from the west side of Fifth Street to the Page frontage of this city block; and
 - The proposed project is able to meet the applicable performance standards as described in BMC 23E.84.070.H because no additional performance standards are applicable to this project.
-

III. STANDARD CONDITIONS OF APPROVAL FOR ALL PROJECTS

The following conditions, as well as all other applicable provisions of the Zoning Ordinance, apply to this Permit:

1. Conditions Shall be Printed on Plans

The conditions of this Permit shall be printed on the *second* sheet of each plan set submitted for a building permit pursuant to this Use Permit, under the title 'Use Permit Conditions.' *Additional sheets* may also be used if the *second* sheet is not of sufficient size to list all of the conditions. The sheet(s) containing the conditions shall be of the same size as those sheets containing the construction drawings; 8-1/2" by 11" sheets are not acceptable.

2. Applicant Responsible for Compliance with Conditions

The applicant shall ensure compliance with all of the following conditions, including submittal to the project planner of required approval signatures at the times specified. Failure to comply with any condition may result in construction being stopped, issuance of a citation, and/or modification or revocation of the Use Permit.

3. Uses Approved Deemed to Exclude Other Uses (Section 23B.56.010)

- A. This Permit authorizes only those uses and activities actually proposed in the application, and excludes other uses and activities.
- B. Except as expressly specified herein, this Permit terminates all other uses at the location subject to it.

4. Modification of Permits (Section 23B.56.020)

No change in the use or structure for which this Permit is issued is permitted unless the Permit is modified by the Board, except that the Zoning Officer may approve changes that do not expand, intensify, or substantially change the use or building.

Changes in the plans for the construction of a building or structure, may be modified prior to the completion of construction, in accordance with Section 23B.56.030.D. The Zoning Officer may approve changes to plans approved by the Board, consistent with the Board's policy adopted on May 24, 1978, which reduce the size of the project.

5. Plans and Representations Become Conditions (Section 23B.56.030)

Except as specified herein, the site plan, floor plans, building elevations and/or any additional information or representations, whether oral or written, indicating the proposed structure or manner of operation submitted with an application or during the approval process are deemed conditions of approval.

6. Subject to All Applicable Laws and Regulations (Section 23B.56.040)

The approved use and/or construction is subject to, and shall comply with, all applicable City Ordinances and laws and regulations of other governmental agencies. Prior to construction, the applicant shall identify and secure all applicable permits from the Building and Safety Division, Public Works Department and other affected City divisions and departments.

7. Exercised Permit for Use Survives Vacancy of Property (Section 23B.56.080)

Once a Permit for a use is exercised and the use is established, that use is legally recognized, even if the property becomes vacant, except as set forth in Standard Condition #8, below.

8. Exercise and Lapse of Permits (Section 23B.56.100)

- A. A permit for the use of a building or a property is exercised when, if required, a valid City business license has been issued, and the permitted use has commenced on the property.
- B. A permit for the construction of a building or structure is deemed exercised when a valid City building permit, if required, is issued, and construction has lawfully commenced.
- C. A permit may be declared lapsed and of no further force and effect if it is not exercised within one year of its issuance, except that permits for construction or alteration of structures or buildings may not be declared lapsed if the permittee has: (1) applied for a building permit; or, (2) made substantial good faith efforts to obtain a building permit and begin construction, even if a building permit has not been issued and/or construction has not begun.

9. Indemnification Agreement

The applicant shall hold harmless, defend, and indemnify the City of Berkeley and its officers, agents, and employees against any and all liability, damages, claims, demands, judgments or other losses (including without limitation, attorney's fees, expert witness and consultant fees and other litigation expenses), referendum or initiative relating to, resulting from or caused by, or alleged to have resulted from, or caused by, any action or approval associated with the project. The indemnity includes without limitation, any legal or administrative challenge, referendum or initiative filed or prosecuted to overturn, set aside, stay or otherwise rescind any or all approvals granted in connection with the Project, any environmental determination made for the project and granting any permit issued in accordance with the project. This indemnity includes, without limitation, payment of all direct and indirect costs associated with any action specified herein. Direct and indirect costs shall include, without limitation, any attorney's fees, expert witness and consultant fees, court costs, and other litigation fees. City shall have the right to select counsel to represent the City at Applicant's expense in the defense of any action specified in this condition of approval. City shall take reasonable steps to promptly notify the Applicant of any claim, demand, or legal actions that may create a claim for indemnification under these conditions of approval.

IV. ADDITIONAL CONDITIONS IMPOSED BY THE ZONING ADJUSTMENTS BOARD

Pursuant to BMC 23B.32.040.D, the Zoning Adjustments Board attaches the following additional conditions to this Permit:

Prior to Submittal of Any Building Permit:

- 10. Project Liaison.** The applicant shall include in all building permit plans and post onsite the name and telephone number of an individual empowered to manage construction-related complaints generated from the project. The individual's name, telephone number, and responsibility for the project shall be posted at the project site for the duration of the project in a location easily visible to the public. The individual shall record all complaints received and actions taken in response, and submit written reports of such complaints and actions to the project planner on a weekly basis. **Please designate the name of this individual below:**

Project Liaison _____

Name

Phone #

- 11. Address Assignment.** The applicant shall file an "Address Assignment Request Application" with the Permit Service Center (1947 Center Street) for any address change or new address associated with this Use Permit. The new address(es) shall be assigned and entered into the City's database prior to the applicant's submittal of a building permit application.

12. Revised Driveway Easement. The applicant shall provide the recorded revised driveway easement, as depicted on the Site Plan, to the Zoning Officer.
13. Geotechnical Plan Review. The applicant shall follow all conditions and recommendations outlined in the geotechnical report and response letters prepared by Peters and Ross (March 2020) and the peer reviews prepared by Cotton, Shires and Associates, Inc. (November 12, 2020). In addition, the applicant's geotechnical consultant shall review and approve all geotechnical aspects of the project building and grading plans (i.e., site preparation and grading, site drainage improvements and design parameters for foundations, retaining walls, and driveway) to ensure that their recommendations have been properly incorporated. In addition the consultant shall review project drainage and grading plans and verify that proposed site drainage discharge is acceptable from a geotechnical perspective. The results of the plan review shall be summarized by the geotechnical consultant in a letter and submitted to the City Engineer for review and approval prior to issuance of building permits.

Prior to Issuance of Any Building & Safety Permit (Demolition or Construction)

14. Demolition. Demolition of the existing building cannot commence until a complete application is submitted for the replacement building. In addition, all plans presented to the City to obtain a permit to allow the demolition are subject to these conditions.
15. Construction and Demolition Diversion. Applicant shall submit a [Construction Waste Management Plan](#) that meets the requirements of BMC Chapter 19.37 including 100% diversion of asphalt, concrete, excavated soil and land-clearing debris and a minimum of 65% diversion of other nonhazardous construction and demolition waste.
16. Toxics. The applicant shall contact the Toxics Management Division (TMD) at 1947 Center Street or (510) 981-7470 to determine which of the following documents are required and timing for their submittal:
- A. Environmental Site Assessments:
- 1) Phase I & Phase II Environmental Site Assessments (latest ASTM 1527-13). A recent Phase I ESA (less than 6 months old*) shall be submitted to TMD for developments for:
 - All new commercial, industrial and mixed use developments and all large improvement projects.
 - All new residential buildings with 5 or more dwelling units located in the Environmental Management Area (or EMA).
 - EMA is available online at: http://www.cityofberkeley.info/uploadedFiles/IT/Level_3_-_General/ema.pdf
 - 2) Phase II ESA is required to evaluate Recognized Environmental Conditions (REC) identified in the Phase I or other RECs identified by TMD staff. The TMD may require a third party toxicologist to review human or ecological health risks that may be identified. The applicant may apply to the appropriate state, regional or county cleanup agency to evaluate the risks.
 - 3) If the Phase I is over 6 months old, it will require a new site reconnaissance and interviews. If the facility was subject to regulation under Title 15 of the Berkeley Municipal Code since the last Phase I was conducted, a new records review must be performed.
- B. Soil and Groundwater Management Plan:
- 1) A Soil and Groundwater Management Plan (SGMP) shall be submitted to TMD for all non-residential projects, and residential or mixed-use projects with five or more dwelling units, that: (1) are in the Environmental Management Area (EMA) and (2) propose any

excavations deeper than 5 feet below grade. The SGMP shall be site specific and identify procedures for soil and groundwater management including identification of pollutants and disposal methods. The SGMP will identify permits required and comply with all applicable local, state and regional requirements.

- 2) The SGMP shall require notification to TMD of any hazardous materials found in soils and groundwater during development. The SGMP will provide guidance on managing odors during excavation. The SGMP will provide the name and phone number of the individual responsible for implementing the SGMP and post the name and phone number for the person responding to community questions and complaints.
- 3) TMD may impose additional conditions as deemed necessary. All requirements of the approved SGMP shall be deemed conditions of approval of this Use Permit.

C. Building Materials Survey:

- 1) Prior to approving any permit for partial or complete demolition and renovation activities involving the removal of 20 square or lineal feet of interior or exterior walls, a building materials survey shall be conducted by a qualified professional. The survey shall include, but not be limited to, identification of any lead-based paint, asbestos, polychlorinated biphenyl (PBC) containing equipment, hydraulic fluids in elevators or lifts, refrigeration systems, treated wood and mercury containing devices (including fluorescent light bulbs and mercury switches). The Survey shall include plans on hazardous waste or hazardous materials removal, reuse or disposal procedures to be implemented that fully comply state hazardous waste generator requirements (22 California Code of Regulations 66260 et seq). The Survey becomes a condition of any building or demolition permit for the project. Documentation evidencing disposal of hazardous waste in compliance with the survey shall be submitted to TMD within 30 days of the completion of the demolition. If asbestos is identified, Bay Area Air Quality Management District Regulation 11-2-401.3 a notification must be made and the J number must be made available to the City of Berkeley Permit Service Center.

D. Hazardous Materials Business Plan:

- 1) A Hazardous Materials Business Plan (HMBP) in compliance with BMC Section 15.12.040 shall be submitted electronically at <http://cers.calepa.ca.gov/> within 30 days if on-site hazardous materials exceed BMC 15.20.040. HMBP requirement can be found at <http://ci.berkeley.ca.us/hmr/>

Prior to Issuance of Any Building (Construction) Permit

17. **HVAC Noise Reduction.** Prior to the issuance of building permits, the project applicant shall submit plans that show the location, type, and design of proposed heating, ventilation, and cooling (HVAC) equipment. In addition, the applicant shall provide product specification sheets or a report from a qualified acoustical consultant showing that operation of the proposed HVAC equipment will meet the City's exterior noise requirements in BMC Section 13.40.050. The City's Planning and Development Department shall review the submitted plans, including the selected HVAC equipment, to verify compliance with exterior noise standards.
18. **Natural Gas Prohibition.** The project shall comply with the Natural Gas Prohibition pursuant to BMC Chapter 12.80.
19. **Electric Vehicle (EV) Charging.** Each dwelling unit shall install a listed raceway, wiring, and power to allow for future Level 2 (240 Volt/40 amp) plug-in electric vehicle (EV) charging system installation as specified by the Berkeley Green Code (BMC Section 19.37.040). Readiness for EV charging and EV charging station installations shall be noted on the construction plans.

20. Water Efficient Landscaping. Landscaping, totaling 500 square feet of more of new landscaping or 2,500 square feet or more of renovated irrigated area, shall comply with the State's Model Water Efficient Landscape Ordinance (MWELo). MWELo-compliant landscape documentation including a planting, grading, and irrigation plan shall be included in site plans. Water budget calculations are also required for landscapes of 2,500 square feet or more and shall be included in site plans. The reference evapotranspiration rate (ET_o) for Berkeley is 41.8.
21. Recycling and Organics Collection. Applicant shall provide recycling and organics collection areas for occupants, clearly marked on site plans, which comply with the Alameda County Mandatory Recycling Ordinance (ACWMA Ordinance 2012-01).
22. Public Works ADA. Plans submitted for building permit shall include replacement of sidewalk, curb, gutter, and other streetscape improvements, as necessary to comply with current City of Berkeley standards for accessibility.

During Construction:

23. Construction Hours. Construction activity shall be limited to between the hours of 8:00 AM and 6:00 PM on Monday through Friday, and between 9:00 AM and Noon on Saturday. No construction-related activity shall occur on Sunday or any Federal Holiday.
24. Public Works - Implement BAAQMD-Recommended Measures during Construction. For all proposed projects, BAAQMD recommends implementing all the Basic Construction Mitigation Measures, listed below to meet the best management practices threshold for fugitive dust:
 - A. All exposed surfaces (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) shall be watered two times per day.
 - B. All haul trucks transporting soil, sand, or other loose material off-site shall be covered.
 - C. All visible mud or dirt track-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.
 - D. All vehicle speeds on unpaved roads shall be limited to 15 mph.
 - E. All roadways, driveways, and sidewalks to be paved shall be completed as soon as possible. Building pads shall be laid as soon as possible after grading unless seeding or soil binders are used.
 - F. Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to 5 minutes (as required by the California airborne toxics control measure Title 13, Section 2485 of California Code of Regulations [CCR]). Clear signage shall be provided for construction workers at all access points.
 - G. All construction equipment shall be maintained and properly tuned in accordance with manufacturer's specifications. All equipment shall be checked by a certified visible emissions evaluator.
 - H. Post a publicly visible sign with the telephone number and person to contact at the lead agency regarding dust complaints. This person shall respond and take corrective action within 48 hours. The Air District's phone number shall also be visible to ensure compliance with applicable regulations.
25. Construction and Demolition Diversion. Divert debris according to your plan and collect required documentation. Get construction debris receipts from sorting facilities in order to verify diversion requirements. Upload recycling and disposal receipts if using [Green Halo](#) and submit online for City review and approval prior to final inspection. Alternatively, complete the second page of the

original [Construction Waste Management Plan](#) and present it, along with your construction debris receipts, to the Building Inspector by the final inspection to demonstrate diversion rate compliance. The Zoning Officer may request summary reports at more frequent intervals, as necessary to ensure compliance with this requirement.

- 26. Low-Carbon Concrete.** The project shall maintain compliance with the Berkeley Green Code (BMC Chapter 19.37) including use of concrete mix design with a cement reduction of at least 25%. Documentation on concrete mix design shall be available at all times at the construction site for review by City Staff.
- 27. Transportation Construction Plan.** The applicant and all persons associated with the project are hereby notified that a Transportation Construction Plan (TCP) is required for all phases of construction, particularly for the following activities:
- Alterations, closures, or blockages to sidewalks, pedestrian paths or vehicle travel lanes (including bicycle lanes);
 - Storage of building materials, dumpsters, debris anywhere in the public ROW;
 - Provision of exclusive contractor parking on-street; or
 - Significant truck activity.

The applicant shall secure the City Traffic Engineer's approval of a TCP. Please contact the Office of Transportation at 981-7010, or 1947 Center Street, and ask to speak to a traffic engineer. In addition to other requirements of the Traffic Engineer, this plan shall include the locations of material and equipment storage, trailers, worker parking, a schedule of site operations that may block traffic, and provisions for traffic control. The TCP shall be consistent with any other requirements of the construction phase.

Contact the Permit Service Center (PSC) at 1947 Center Street or 981-7500 for details on obtaining Construction/No Parking Permits (and associated signs and accompanying dashboard permits). Please note that the Zoning Officer and/or Traffic Engineer may limit off-site parking of construction-related vehicles if necessary to protect the health, safety or convenience of the surrounding neighborhood. A current copy of this Plan shall be available at all times at the construction site for review by City Staff.

- 28. Avoid Disturbance of Nesting Birds.** Initial site disturbance activities, including vegetation and concrete removal, shall be prohibited during the general avian nesting season (February 1 to August 30), if feasible. If nesting season avoidance is not feasible, the applicant shall retain a qualified biologist to conduct a preconstruction nesting bird survey to determine the presence/absence, location, and activity status of any active nests on or adjacent to the project site. The extent of the survey buffer area surrounding the site shall be established by the qualified biologist to ensure that direct and indirect effects to nesting birds are avoided. To avoid the destruction of active nests and to protect the reproductive success of birds protected by the MBTA and CFGC, nesting bird surveys shall be performed not more than 14 days prior to scheduled vegetation and concrete removal. In the event that active nests are discovered, a suitable buffer (typically a minimum buffer of 50 feet for passerines and a minimum buffer of 250 feet for raptors) shall be established around such active nests and no construction shall be allowed inside the buffer areas until a qualified biologist has determined that the nest is no longer active (e.g., the nestlings have fledged and are no longer reliant on the nest). No ground-disturbing activities shall occur within this buffer until the qualified biologist has confirmed that

breeding/nesting is completed and the young have fledged the nest. Nesting bird surveys are not required for construction activities occurring between August 31 and January 31.

29. Archaeological Resources (Ongoing throughout demolition, grading, and/or construction). Pursuant to CEQA Guidelines section 15064.5(f), "provisions for historical or unique archaeological resources accidentally discovered during construction" should be instituted. Therefore:

- A. In the event that any prehistoric or historic subsurface cultural resources are discovered during ground disturbing activities, all work within 50 feet of the resources shall be halted and the project applicant and/or lead agency shall consult with a qualified archaeologist, historian or paleontologist to assess the significance of the find.
- B. If any find is determined to be significant, representatives of the project proponent and/or lead agency and the qualified professional would meet to determine the appropriate avoidance measures or other appropriate measure, with the ultimate determination to be made by the City of Berkeley. All significant cultural materials recovered shall be subject to scientific analysis, professional museum curation, and/or a report prepared by the qualified professional according to current professional standards.
- C. In considering any suggested measure proposed by the qualified professional, the project applicant shall determine whether avoidance is necessary or feasible in light of factors such as the uniqueness of the find, project design, costs, and other considerations.
- D. 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 measures for cultural resources is carried out.
- E. If significant materials are recovered, the qualified professional shall prepare a report on the findings for submittal to the Northwest Information Center.

30. Human Remains (Ongoing throughout demolition, grading, and/or construction). In the event that human skeletal remains are uncovered at the project site during ground-disturbing activities, all work shall immediately halt and the Alameda County Coroner shall be contacted to evaluate the remains, and following the procedures and protocols pursuant to Section 15064.5 (e)(1) of the CEQA Guidelines. If the County Coroner determines that the remains are Native American, the City shall contact the California Native American Heritage Commission (NAHC), pursuant to subdivision (c) of Section 7050.5 of the Health and Safety Code, and all excavation and site preparation activities shall cease within a 50-foot radius of the find until appropriate arrangements are made. If the agencies determine that avoidance is not feasible, then an alternative plan shall be prepared with specific steps and timeframe required to resume construction activities. Monitoring, data recovery, determination of significance and avoidance measures (if applicable) shall be completed expeditiously.

31. Paleontological Resources (Ongoing throughout demolition, grading, and/or construction). In the event of an unanticipated discovery of a paleontological resource during construction, excavations within 50 feet of the find shall be temporarily halted or diverted until the discovery is examined by a qualified paleontologist (per Society of Vertebrate Paleontology standards [SVP 1995,1996]). The qualified paleontologist shall document the discovery as needed, evaluate the potential resource, and assess the significance of the find. The paleontologist shall notify the appropriate agencies to determine procedures that would be followed before construction is allowed to resume at the location of the find. If the City determines that avoidance is not feasible, the paleontologist shall prepare an excavation plan for mitigating the effect of the

project on the qualities that make the resource important, and such plan shall be implemented. The plan shall be submitted to the City for review and approval.

- 32. Halt Work/Unanticipated Discovery of Tribal Cultural Resources.** In the event that cultural resources of Native American origin are identified during construction, all work within 50 feet of the discovery shall be redirected. The project applicant and project construction contractor shall notify the City Planning Department within 24 hours. The City will again contact any tribes who have requested consultation under AB 52, as well as contact a qualified archaeologist, to evaluate the resources and situation and provide recommendations. If it is determined that the resource is a tribal cultural resource and thus significant under CEQA, a mitigation plan shall be prepared and implemented in accordance with State guidelines and in consultation with Native American groups. If the resource cannot be avoided, additional measures to avoid or reduce impacts to the resource and to address tribal concerns may be required.
- 33. Stormwater Requirements.** The applicant shall demonstrate compliance with the requirements of the City's National Pollution Discharge Elimination System (NPDES) permit as described in BMC Section 17.20. The following conditions apply:
- A. The project plans shall identify and show site-specific Best Management Practices (BMPs) appropriate to activities conducted on-site to limit to the maximum extent practicable the discharge of pollutants to the City's storm drainage system, regardless of season or weather conditions.
 - B. Trash enclosures and/or recycling area(s) shall be covered; no other area shall drain onto this area. Drains in any wash or process area shall not discharge to the storm drain system; these drains should connect to the sanitary sewer. Applicant shall contact the City of Berkeley and EBMUD for specific connection and discharge requirements. Discharges to the sanitary sewer are subject to the review, approval and conditions of the City of Berkeley and EBMUD.
 - C. Landscaping shall be designed with efficient irrigation to reduce runoff, promote surface infiltration and minimize the use of fertilizers and pesticides that contribute to stormwater pollution. Where feasible, landscaping should be designed and operated to treat runoff. When and where possible, xeriscape and drought tolerant plants shall be incorporated into new development plans.
 - D. Design, location and maintenance requirements and schedules for any stormwater quality treatment structural controls shall be submitted to the Department of Public Works for review with respect to reasonable adequacy of the controls. The review does not relieve the property owner of the responsibility for complying with BMC Chapter 17.20 and future revisions to the City's overall stormwater quality ordinances. This review shall be shall be conducted prior to the issuance of a Building Permit.
 - E. All paved outdoor storage areas must be designed to reduce/limit the potential for runoff to contact pollutants.
 - F. All on-site storm drain inlets/catch basins must be cleaned at least once a year immediately prior to the rainy season. The property owner shall be responsible for all costs associated with proper operation and maintenance of all storm drainage facilities (pipelines, inlets, catch basins, outlets, etc.) associated with the project, unless the City accepts such facilities by Council action. Additional cleaning may be required by City of Berkeley Public Works Engineering Dept.
 - G. All on-site storm drain inlets must be labeled "No Dumping – Drains to Bay" or equivalent using methods approved by the City.

- H. Most washing and/or steam cleaning must be done at an appropriately equipped facility that drains to the sanitary sewer. Any outdoor washing or pressure washing must be managed in such a way that there is no discharge or soaps or other pollutants to the storm drain. Sanitary connections are subject to the review, approval and conditions of the sanitary district with jurisdiction for receiving the discharge.
- I. Sidewalks and parking lots shall be swept regularly to prevent the accumulation of litter and debris. If pressure washed, debris must be trapped and collected to prevent entry to the storm drain system. If any cleaning agent or degreaser is used, wash water shall not discharge to the storm drains; wash waters should be collected and discharged to the sanitary sewer. Discharges to the sanitary sewer are subject to the review, approval and conditions of the sanitary district with jurisdiction for receiving the discharge.
- J. The applicant is responsible for ensuring that all contractors and sub-contractors are aware of and implement all stormwater quality control measures. Failure to comply with the approved construction BMPs shall result in the issuance of correction notices, citations, or a project stop work order.
34. Public Works. All piles of debris, soil, sand, or other loose materials shall be covered at night and during rainy weather with plastic at least one-eighth millimeter thick and secured to the ground.
35. Public Works. The applicant shall ensure that all excavation takes into account surface and subsurface waters and underground streams so as not to adversely affect adjacent properties and rights-of-way.
36. Public Works. The project sponsor shall maintain sandbags or other devices around the site perimeter during the rainy season to prevent on-site soils from being washed off-site and into the storm drain system. The project sponsor shall comply with all City ordinances regarding construction and grading.
37. Public Works. Prior to any excavation, grading, clearing, or other activities involving soil disturbance during the rainy season the applicant shall obtain approval of an erosion prevention plan by the Building and Safety Division and the Public Works Department. The applicant shall be responsible for following these and any other measures required by the Building and Safety Division and the Public Works Department.
38. Public Works. The removal or obstruction of any fire hydrant shall require the submission of a plan to the City's Public Works Department for the relocation of the fire hydrant during construction.
39. Public Works. If underground utilities leading to adjacent properties are uncovered and/or broken, the contractor involved shall immediately notify the Public Works Department and the Building & Safety Division, and carry out any necessary corrective action to their satisfaction.

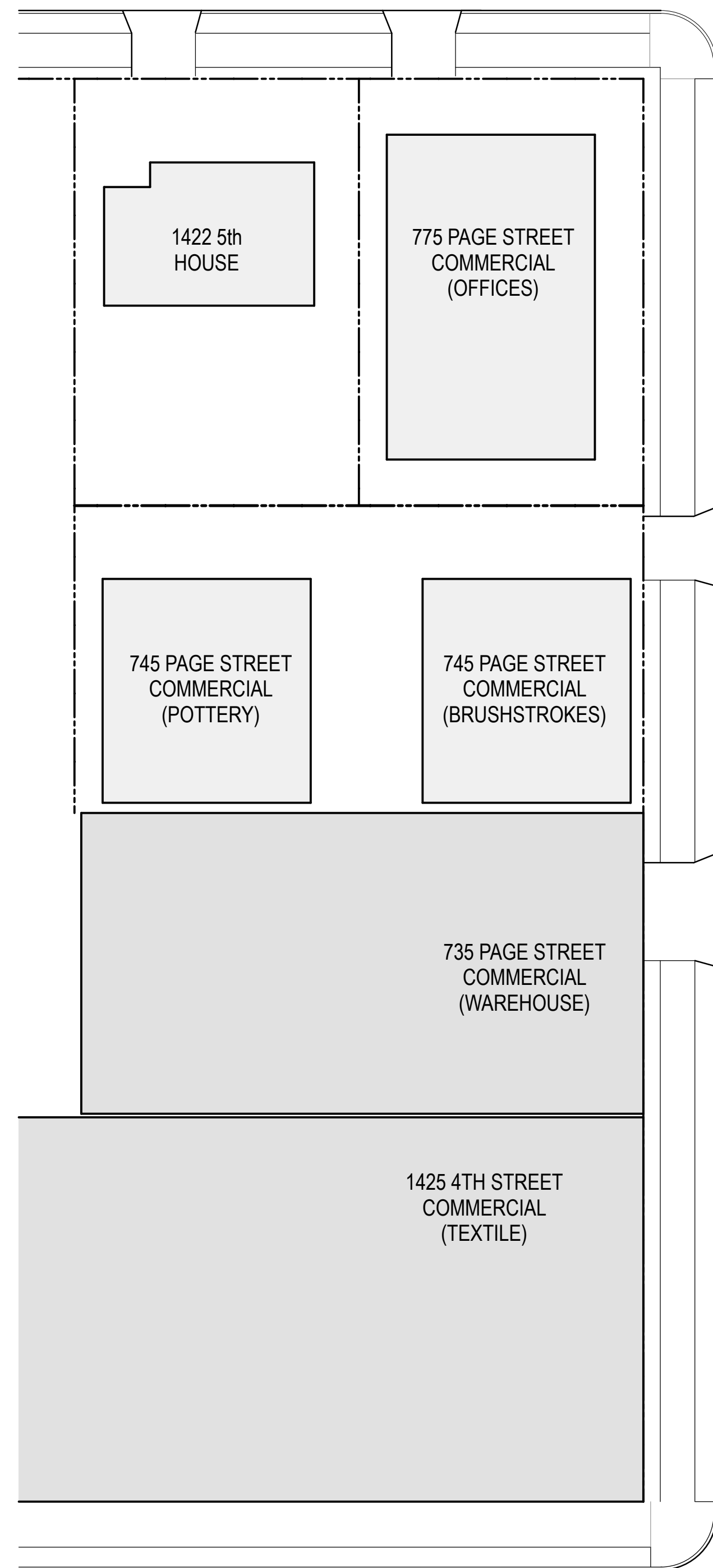
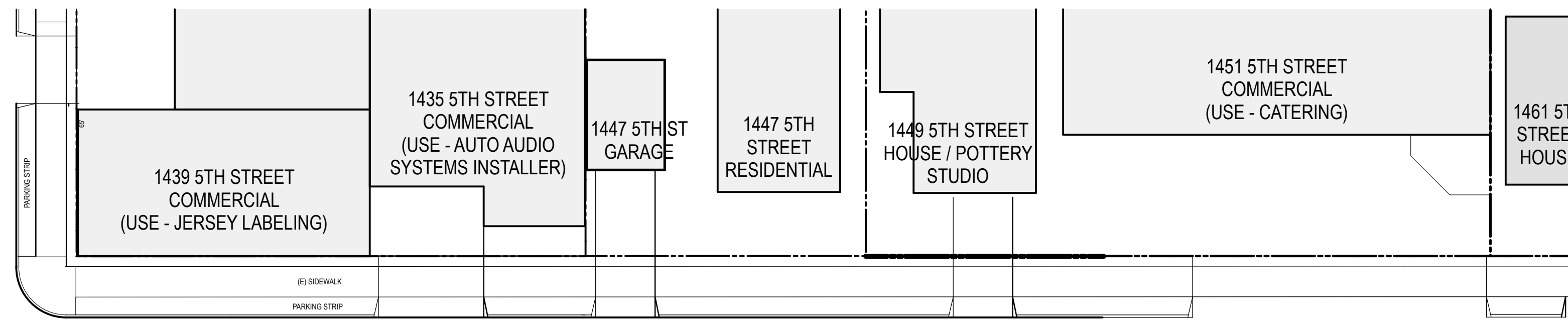
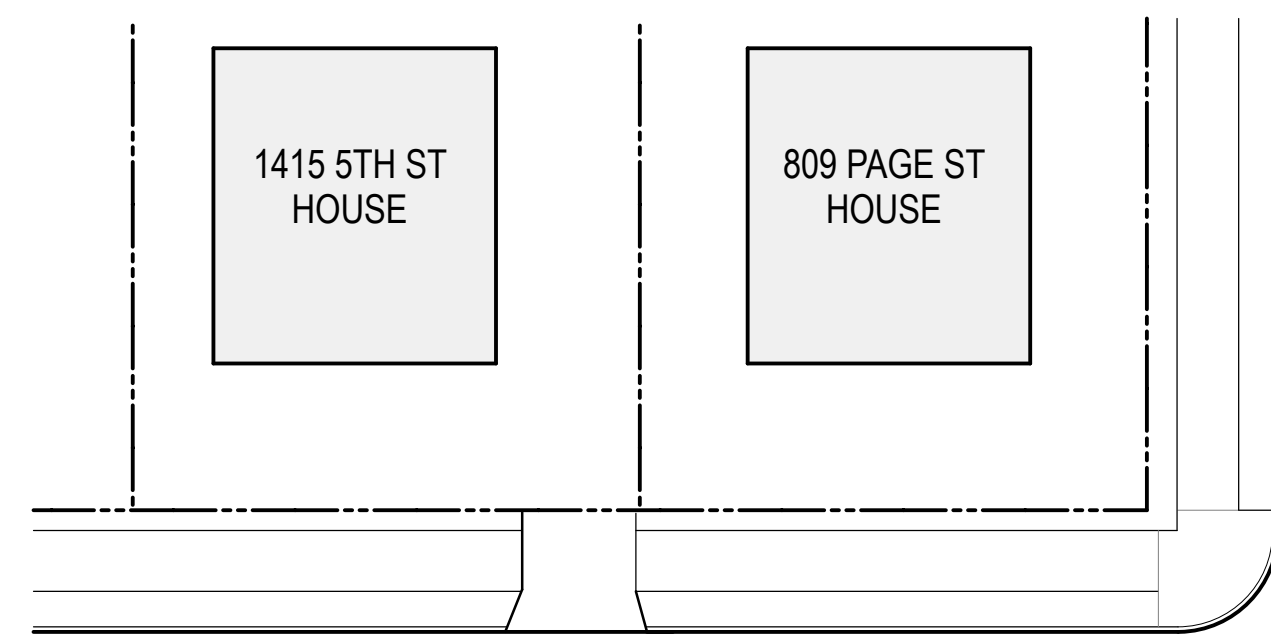
Prior to Final Inspection or Issuance of Occupancy Permit:

40. Compliance with Conditions. The project shall conform to the plans and statements in the Use Permit. The developer is responsible for providing sufficient evidence to demonstrate compliance with the requirements throughout the implementation of this Use Permit.

41. Compliance with Approved Plan. The project shall conform to the plans and statements in the Use Permit. All landscape, site and architectural improvements shall be completed per the attached approved drawings dated April 19, 2021, except as modified by conditions of approval.
42. Housing Trust Fund Contributions. Pursuant to the Settlement Agreement between the City of Berkeley and 1444 Fifth Street, LLC and 1445 Fifth Street, LLC, the applicant shall make a payment of \$15,000 into the City of Berkeley Housing Trust Fund for each of the four dwelling units.

At All Times:

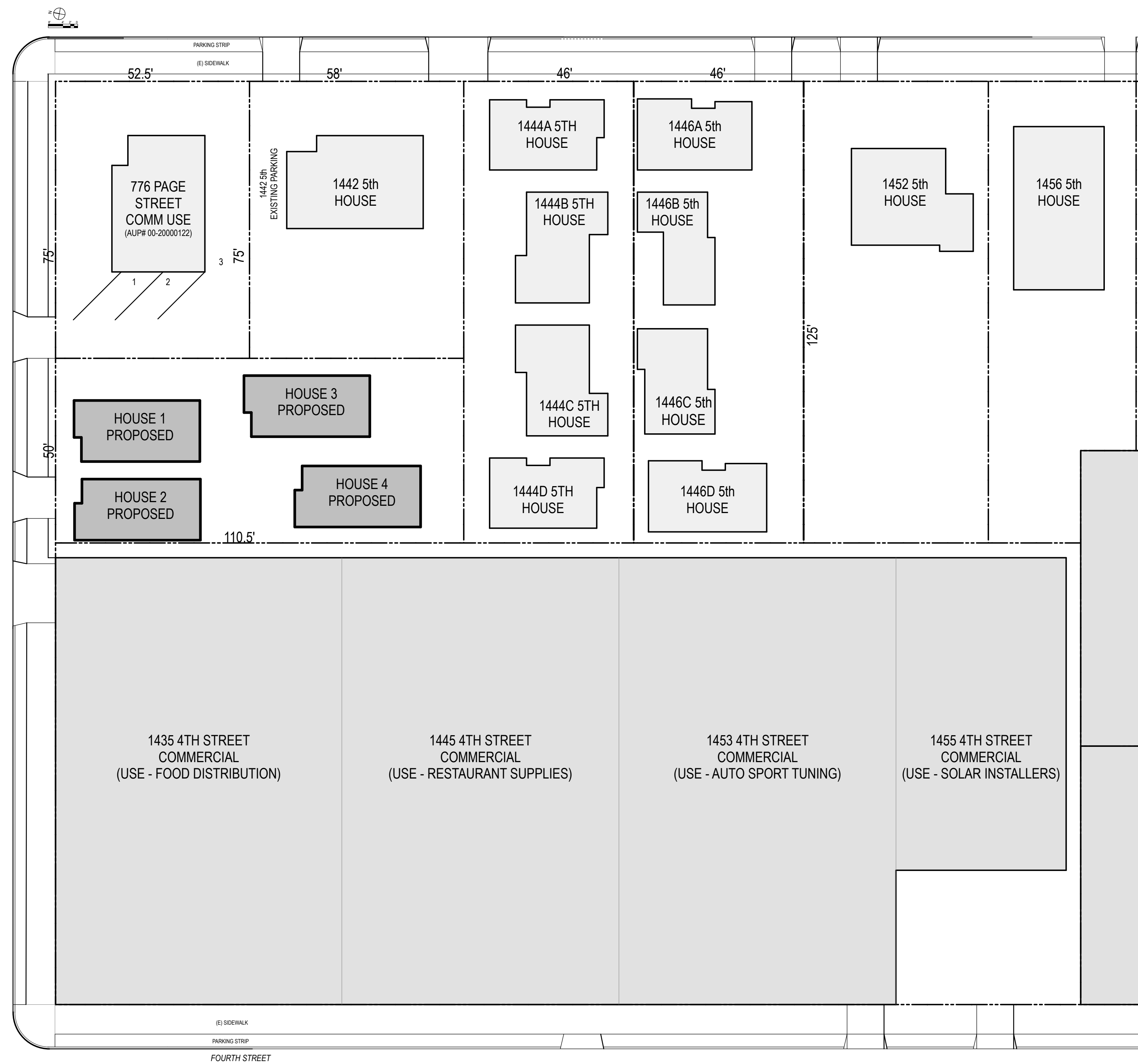
43. Exterior Lighting. All exterior lighting shall be energy efficient where feasible; and shielded and directed downward and away from property lines to prevent excessive glare beyond the subject property.
 44. Rooftop Projections. No additional rooftop or elevator equipment shall be added to exceed the approved maximum roof height without submission of an application for a Use Permit Modification, subject to Board review and approval.
 45. Design Review. Signage and any other exterior modifications, including but not limited to landscaping and lighting, shall be subject to Staff Level Design Review approval.
 46. Drainage Patterns. The applicant shall establish and maintain drainage patterns that do not adversely affect adjacent properties and rights-of-way. Drainage plans shall be submitted for approval of the Building & Safety Division and Public Works Department, if required.
 47. Electrical Meter. Only one electrical meter fixture may be installed per dwelling unit.
-



PAGE STREET

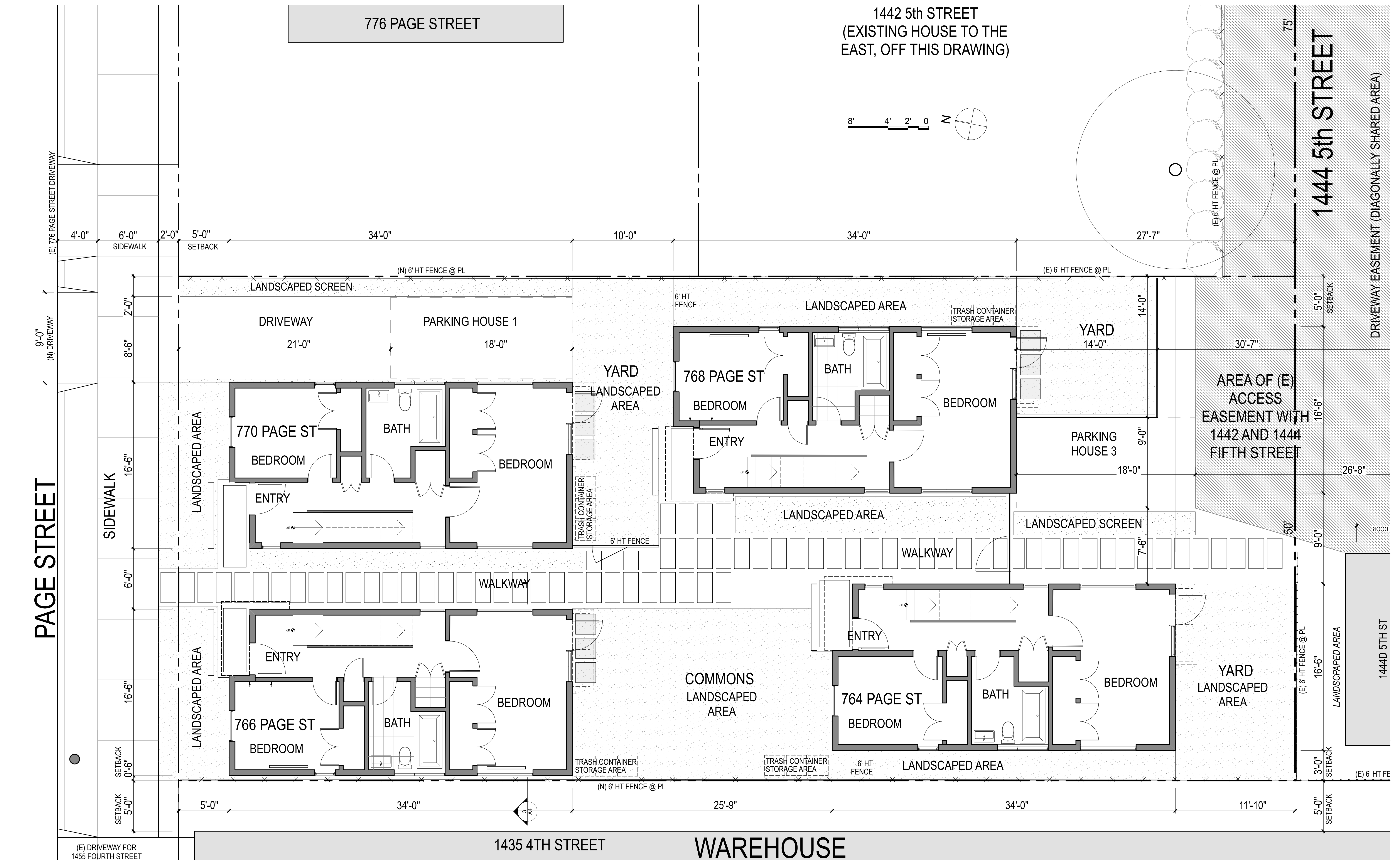
FIFTH STREET

770 PAGE



VICINITY MAP

770 PAGE STREET USE PERMIT APPLICATION



SITE PLAN WITH 1444 5TH STREET

770 PAGE STREET
USE PERMIT APPLICATION



SECOND FLOOR PLAN

770 PAGE STREET
USE PERMIT APPLICATION



THIRD FLOOR PLAN

770 PAGE STREET
USE PERMIT APPLICATION



ROOF PLAN

770 PAGE STREET
USE PERMIT APPLICATION

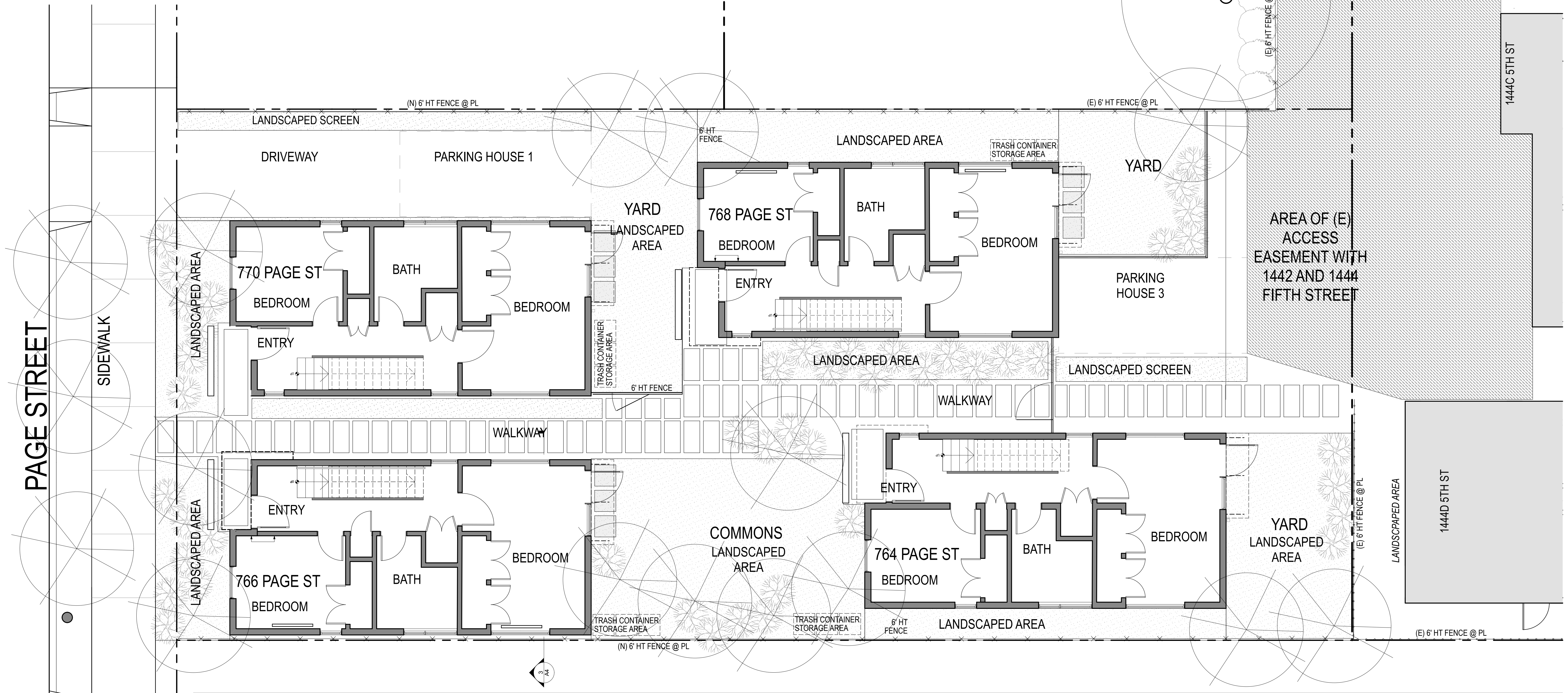
LANDSCAPE LEGEND

	(N) TREE		PATIO: PERMIABLE PAVER SURFACE
	NEW TREE: JAPANESE MAPLE OR SIMILAR, 24" BOX		STONE PAVER
	SHRUB: MEXICAN SAGE, NATIVE GRASS OR SIM, 5 GAL		LANDSCAPED AREA WITH GROUND COVER, MULCH OR SIM
	FLOWERING SHRUB: KANGAROO PAW OR SIM, 5 GAL		
	VERTICAL SHRUB: PITTOSORUM OR SIM, 5 GAL		

LANDSCAPE NOTE
ALL LANDSCAPE TO BE CONSISTENT WITH STATE OF CA WATER EFFICIENCY LANDSCAPE ORDINANCE (WELO)

776 PAGE STREET

1442 5th STREET
(EXISTING HOUSE TO THE EAST, OFF THIS DRAWING)



AREA OF (E) ACCESS EASEMENT WITH 1442 AND 1444 FIFTH STREET

PAGE STREET
SIDEWALK

(E) DRIVEWAY FOR 1455 FOURTH STREET

1435 4TH STREET

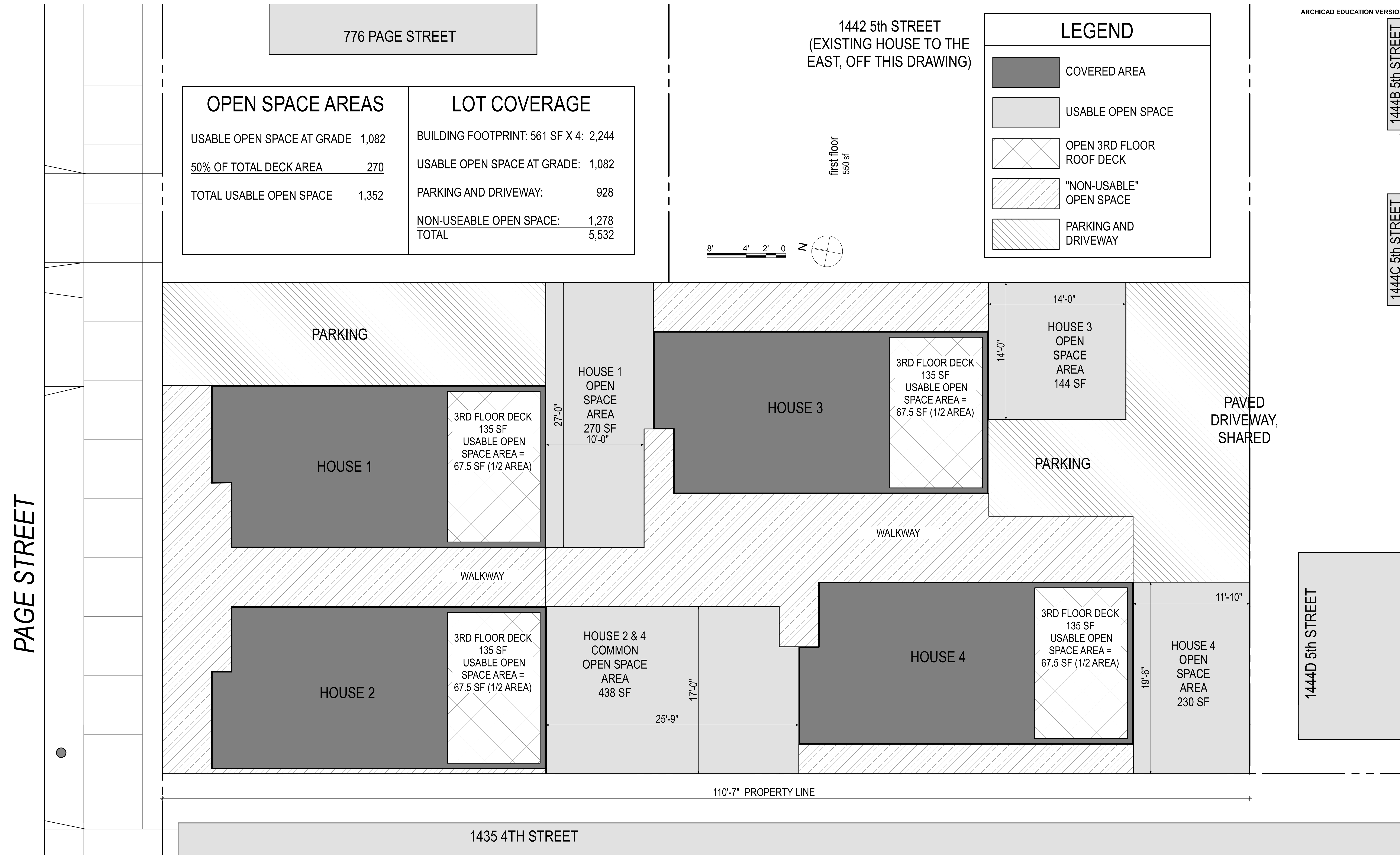
LANDSCAPE PLAN

770 PAGE STREET

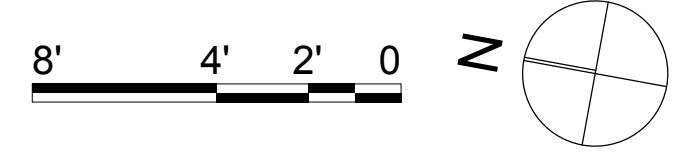
USE PERMIT APPLICATION

WADLUND+
Design Studio

MAY 18, 2020
RESUBMITTED MARCH 23, 2021



OPEN SPACE AREAS		LOT COVERAGE	
USABLE OPEN SPACE AT GRADE	1,082	BUILDING FOOTPRINT: 561 SF X 4:	2,244
50% OF TOTAL DECK AREA	270	USABLE OPEN SPACE AT GRADE:	1,082
TOTAL USABLE OPEN SPACE	1,352	PARKING AND DRIVEWAY:	928
		NON-USEABLE OPEN SPACE:	1,278
		TOTAL	5,532



LEGEND	
	COVERED AREA
	USABLE OPEN SPACE
	OPEN 3RD FLOOR ROOF DECK
	"NON-USABLE" OPEN SPACE
	PARKING AND DRIVEWAY

OPEN SPACE DIAGRAM

770 PAGE STREET

USE PERMIT APPLICATION



WEST ELEVATION - LOT INTERIOR



EAST ELEVATION - LOT INTERIOR

8' 4' 2' 0



1435 4TH STREET
BUILDING

SOUTH ELEVATION LOT INTERIOR



1435 4TH STREET
BUILDING

NORTH ELEVATION PAGE STREET

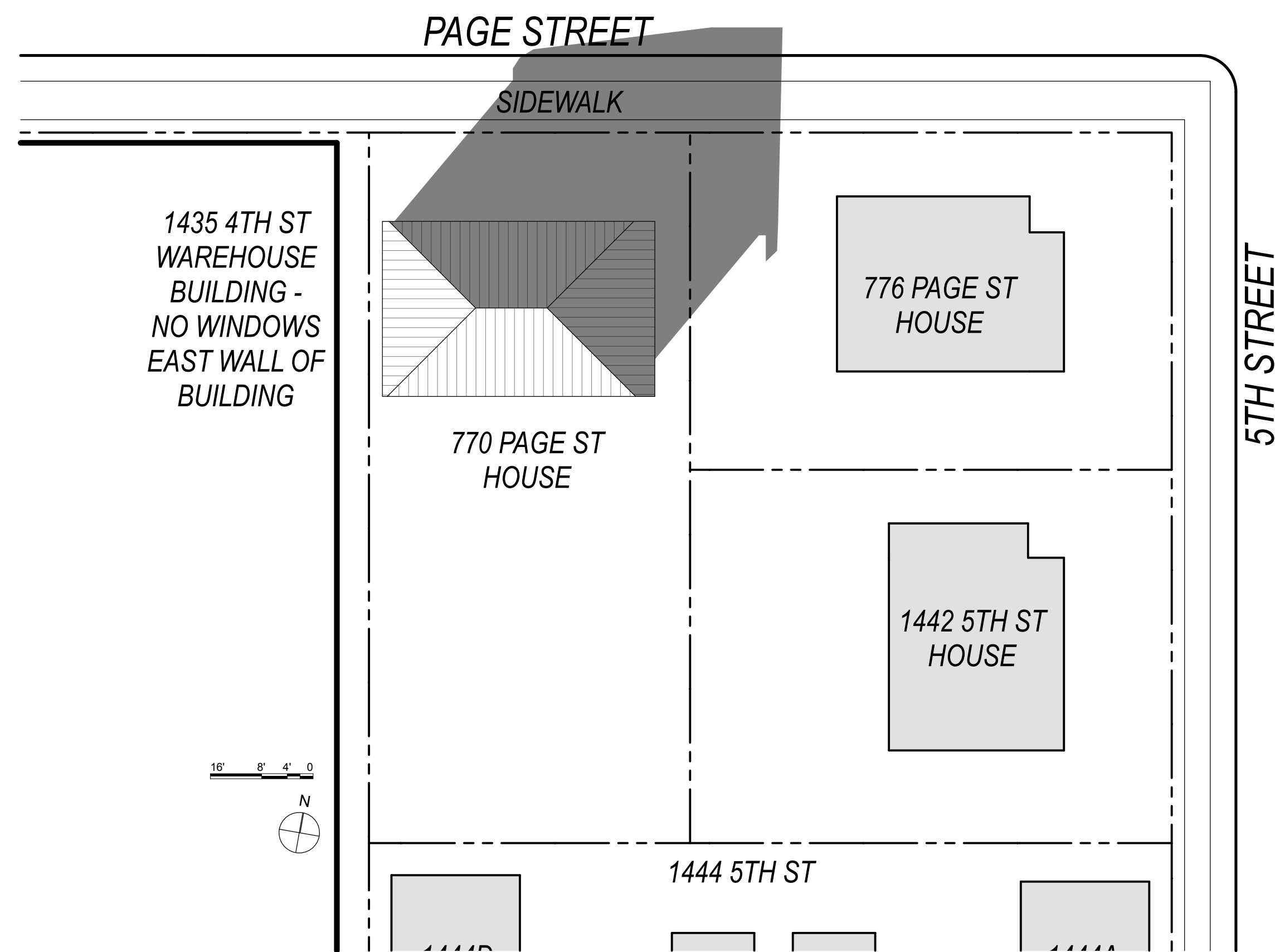
BUILDING ELEVATIONS

770 PAGE STREET
USE PERMIT APPLICATION

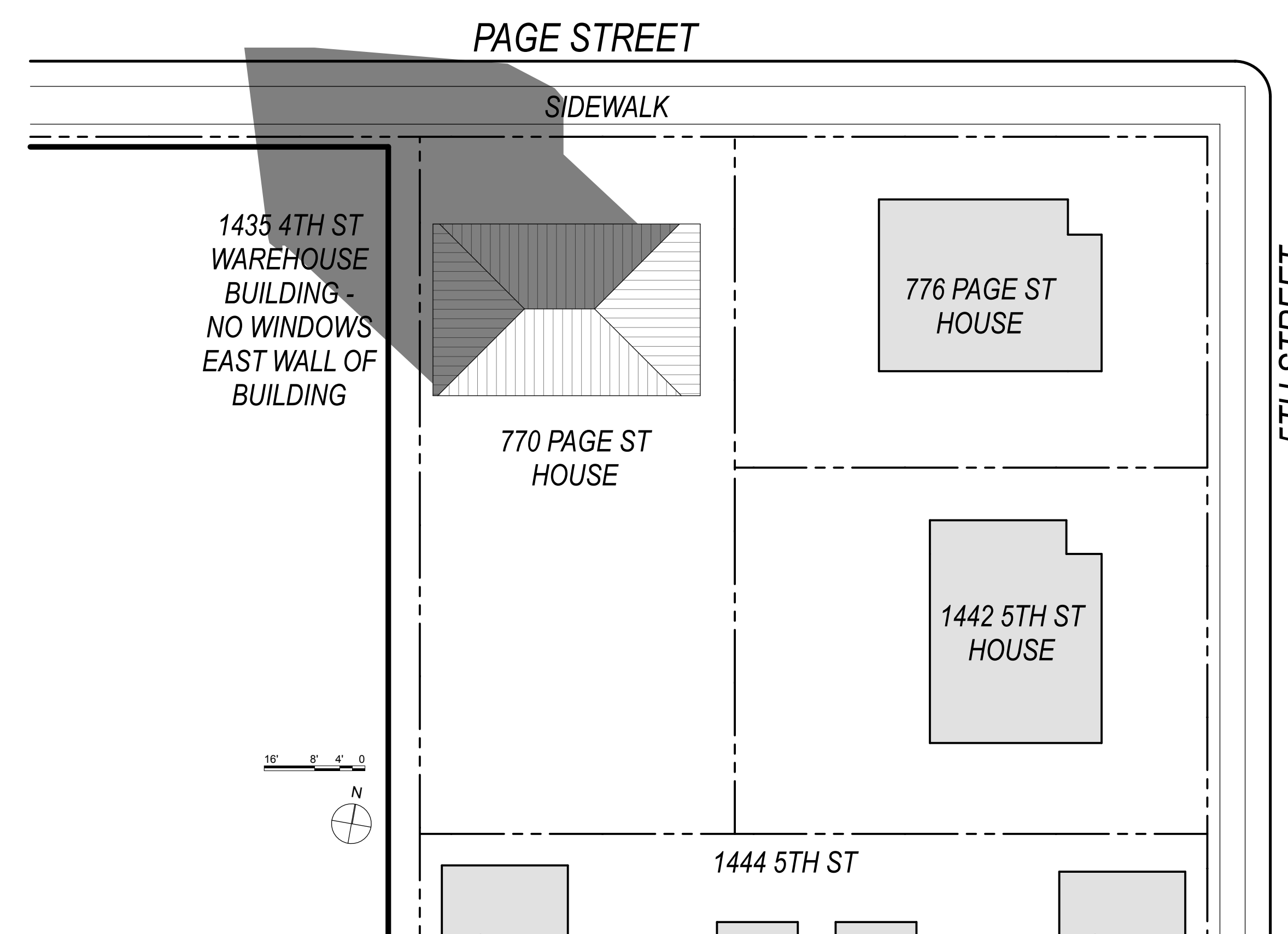


PAGE STREET ELEVATION

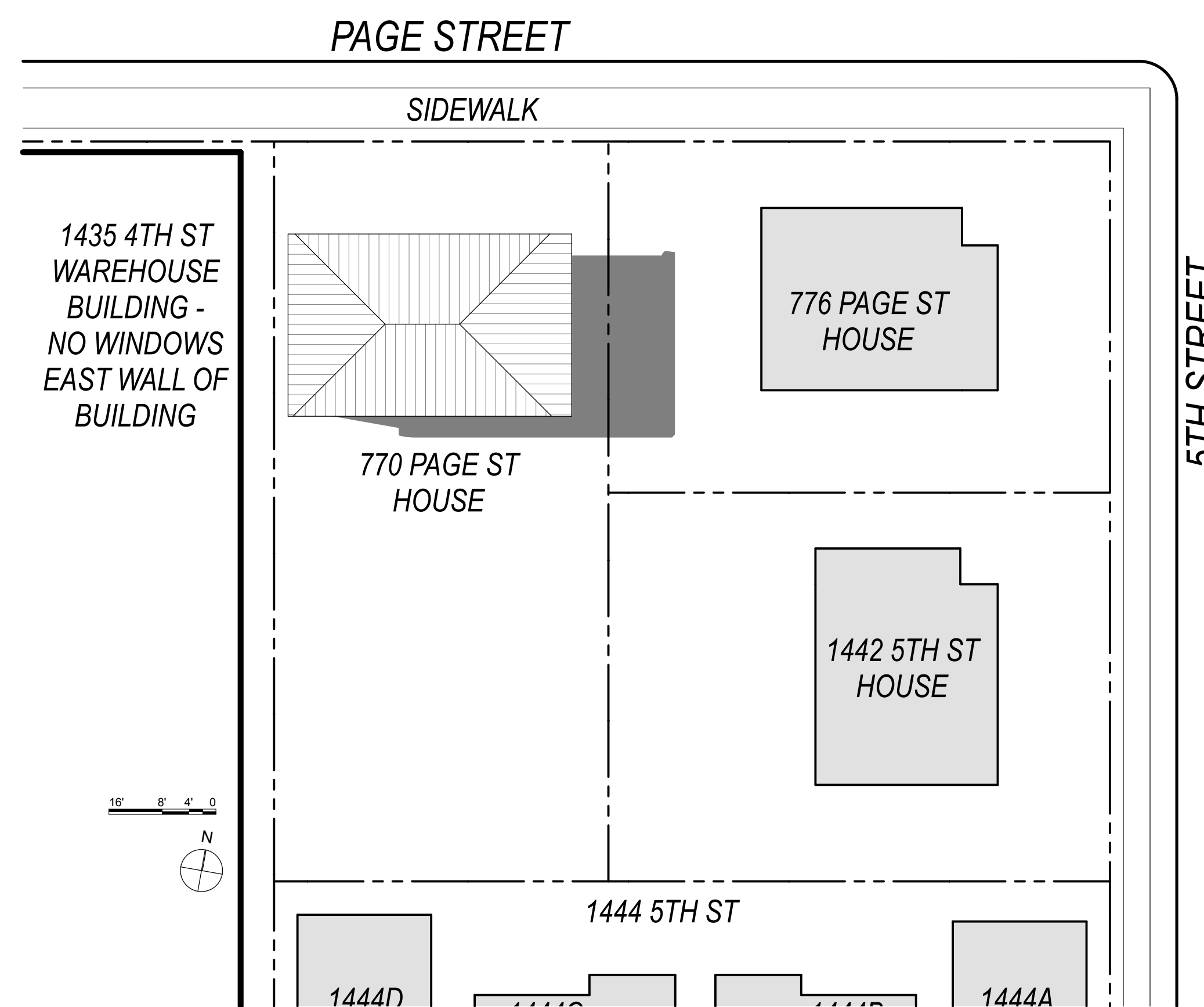
770 PAGE STREET
USE PERMIT APPLICATION



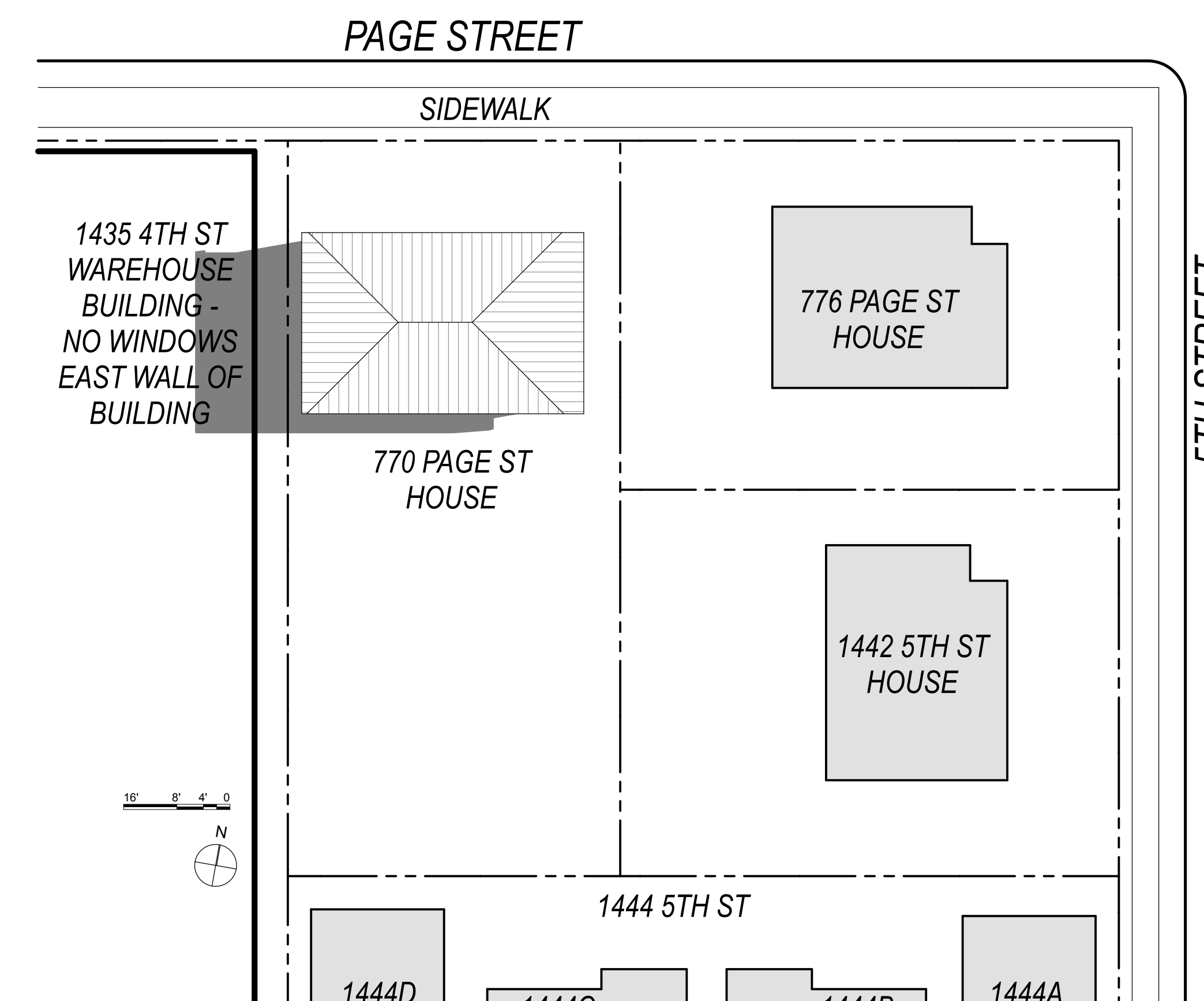
2 EXISTING - DECEMBER 21 - 2 HOURS BEFORE SUNSET
SCALE: 1/16" = 1'-0"



1 EXISTING - DECEMBER 21 - 2 HOURS AFTER SUNRISE
SCALE: 1/16" = 1'-0"



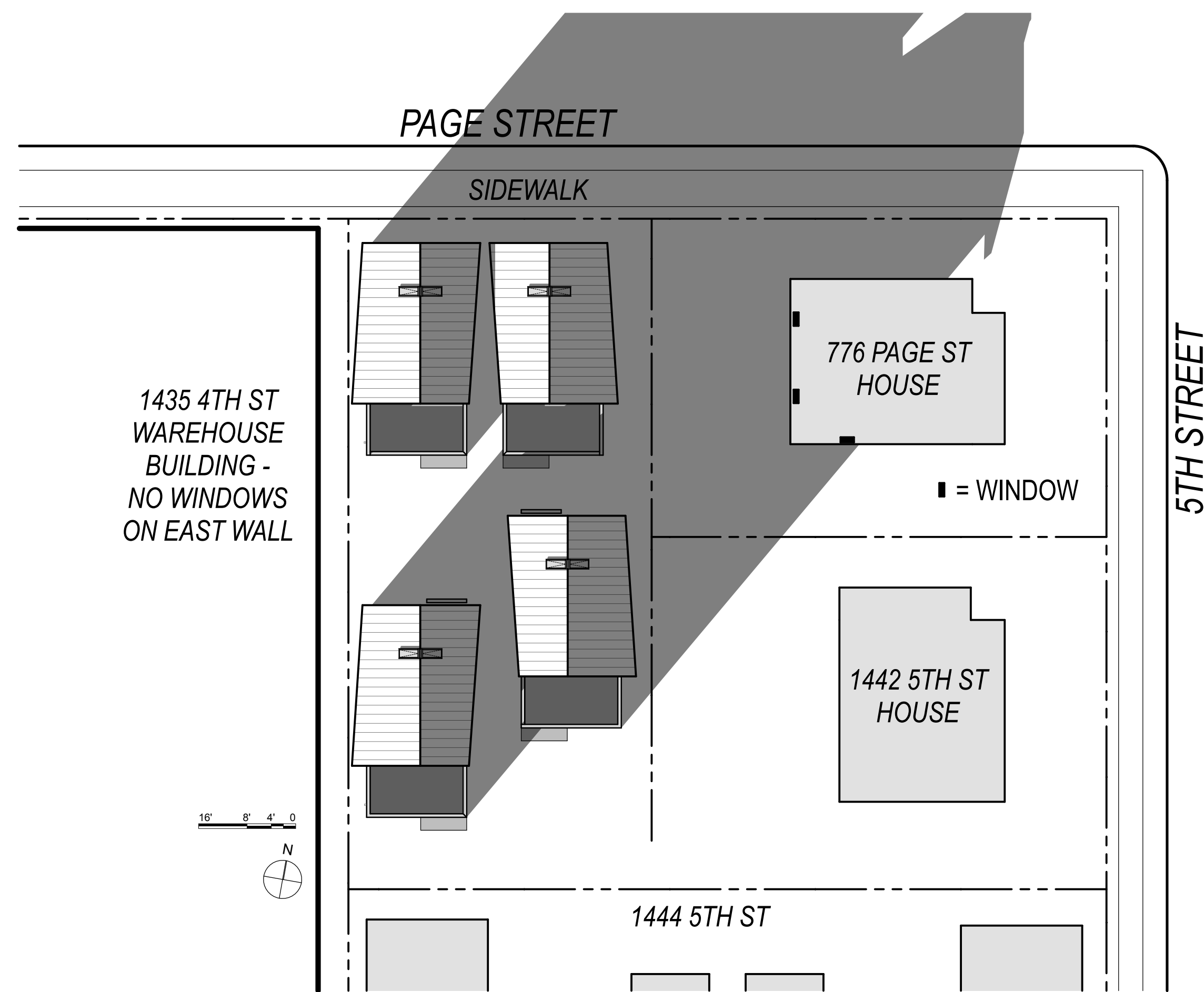
4 EXISTING - JUNE 21 - 2 HOURS BEFORE SUNSET
SCALE: 1/16" = 1'-0"



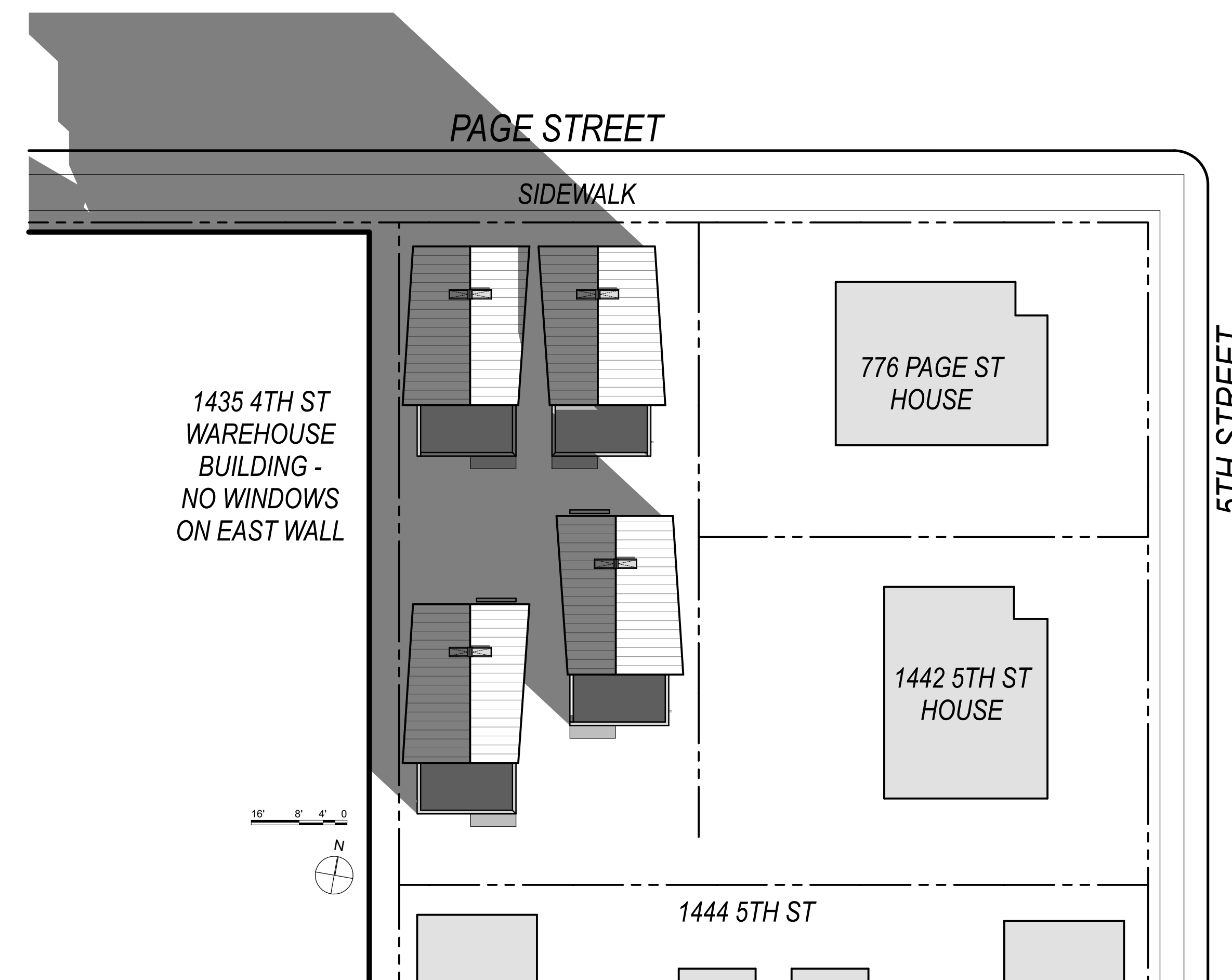
3 EXISTING - JUNE 21 - 2 HOURS AFTER SUNRISE
SCALE: 1/16" = 1'-0"

SHADOW STUDIES - EXISTING

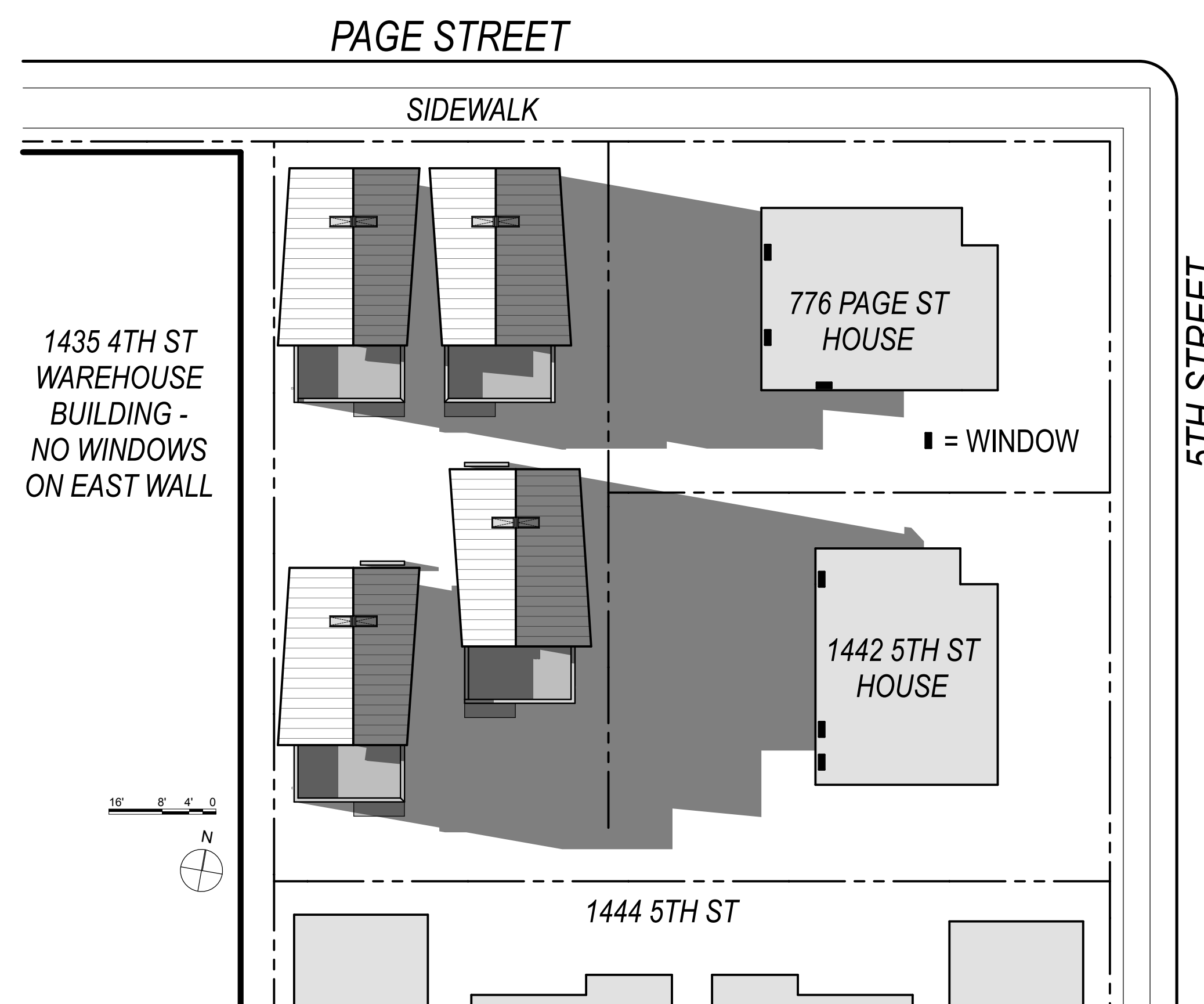
770 PAGE STREET
USE PERMIT APPLICATION



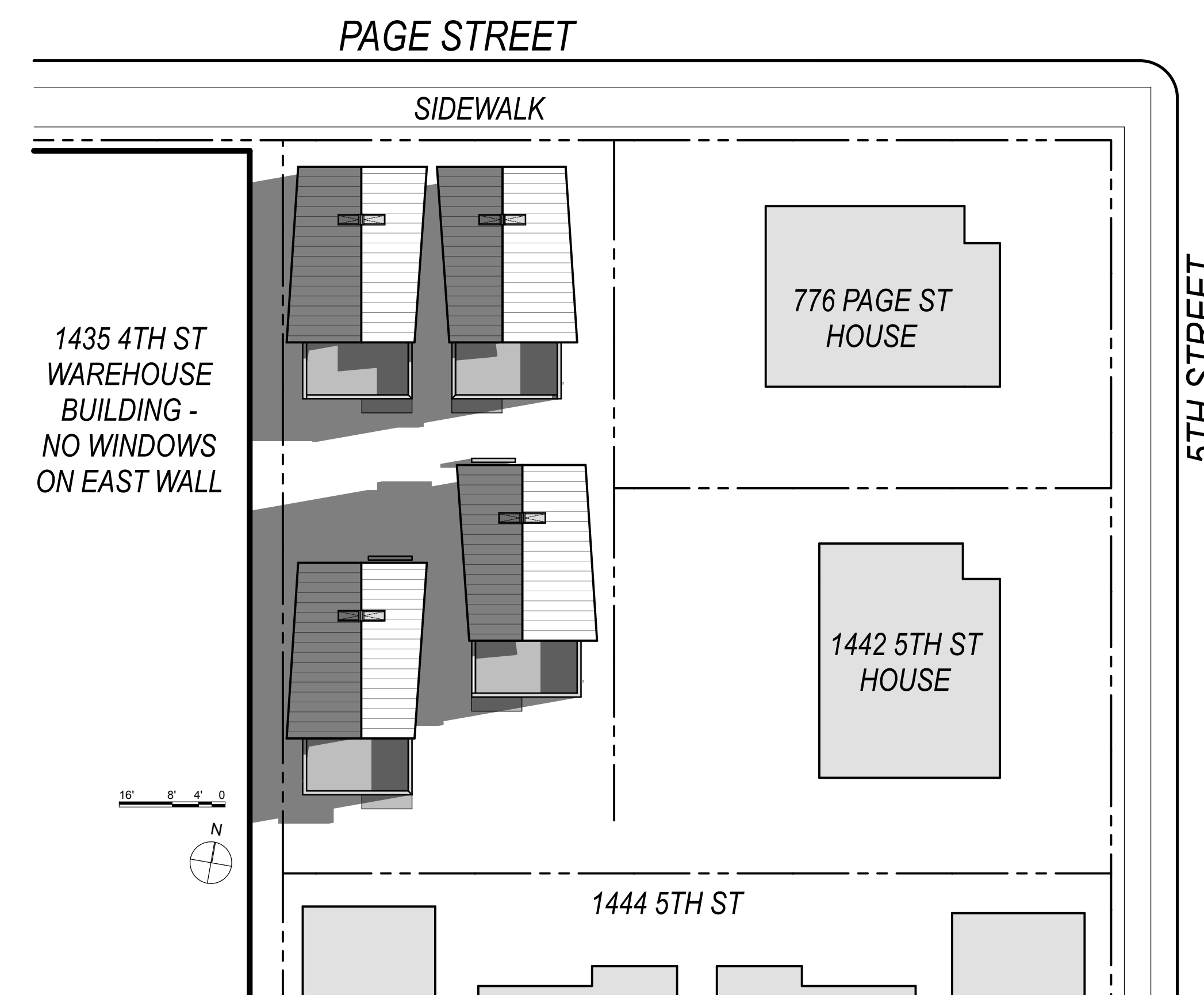
2 PROPOSED - DECEMBER 21 - 2 HOURS BEFORE SUNSET
SCALE: 1/16" = 1'-0"



1 PROPOSED - DECEMBER 21 - 2 HOURS AFTER SUNRISE
SCALE: 1/16" = 1'-0"



4 PROPOSED - JUNE 21 - 2 HOURS BEFORE SUNSET
SCALE: 1/16" = 1'-0"



3 PROPOSED - JUNE 21 - 2 HOURS AFTER SUNRISE
SCALE: 1/16" = 1'-0"

SHADOW STUDIES - PROPOSED

770 PAGE STREET
USE PERMIT APPLICATION



Z O N I N G
A D J U S T M E N T S
B O A R D

NOTICE OF PUBLIC HEARING

770 Page Street

Use Permit #ZP2020-0051 to demolish an existing single-family dwelling unit and construct four detached, three-story approximately 1,500-square-foot dwelling units on a 5,532-square-foot lot.

The Zoning Adjustments Board of the City of Berkeley will hold a public hearing on the above matter, pursuant to Zoning Ordinance Section 23B.32.020, on May 27, 2021, **conducted via Zoom, see the Agenda for details at:**

https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_ZAB/2021-05-27_ZAB_Agenda.pdf. The meeting starts at 7:00 p.m.

PUBLIC ADVISORY: This meeting will be conducted exclusively through videoconference and teleconference. Pursuant to Section 3 of Executive Order N-29-20, issued by Governor Newsom on March 17, 2020, and the Shelter-in-Place Order, and to ensure the health and safety of the public by limiting human contact that could spread the COVID-19 virus, there will not be a physical meeting location available.

A. Land Use Designations:

- General Plan: MU – Manufacturing Mixed Use
- West Berkeley Plan Area
- Zoning: MU-R – Mixed Use Residential District

B. Zoning Permits Required:

- Use Permit C.08.010 for demolition of a dwelling unit
- Administrative Use Permit, under BMC Section 23E.84.030, to construct four new dwelling units

C. CEQA Recommendation: Categorically exempt pursuant to Sections 15301, 15303, and 15332 of the CEQA Guidelines (“Existing Facilities,” “New Construction or Conversion of Small Structures,” and “In-Fill Development”).

D. Parties Involved:

- Applicant/Owner: 1444 5th Street, LLC, 805 Jones Street, Berkeley

Further Information:

All application materials are available online at: <http://www.cityofberkeley.info/zoningapplications>. The Zoning Adjustments Board final agenda and staff reports will be available online 6 days prior to this meeting at: <http://www.cityofberkeley.info/zoningadjustmentsboard>.

Questions about the project should be directed to the project planner, Leslie Mendez, at (510) 981-7426 or LMendez@cityofberkeley.info.

Written comments or a request for a Notice of Decision should be directed to the Zoning Adjustments Board Secretary at zab@cityofberkeley.info.

Communication Disclaimer:

Communications to Berkeley boards, commissions or committees are public record and will become part of the City's electronic records, which are accessible through the City's website. **Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to a City board, commission or committee, will become part of the public record.** If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service or in person to the secretary of the relevant board, commission or committee. If you do not want your contact information included in the public record, please do not include that information in your communication. Please contact the secretary to the relevant board, commission or committee for further information.

Communications and Reports:

Written comments must be directed to the ZAB Secretary at the Land Use Planning Division (Attn: ZAB Secretary), or via e-mail to: zab@cityofberkeley.info. All materials will be made available via the Zoning Adjustments Board Agenda page online at this address: <https://www.cityofberkeley.info/zoningadjustmentboard/>.

All persons are welcome to attend the virtual hearing and will be given an opportunity to address the Board. Comments may be made verbally at the public hearing and/or in writing before the hearing. The Board may limit the time granted to each speaker.

Correspondence received by 5:00 PM, eight days before this public hearing, will be provided with the agenda materials provided to the Board. Note that if you submit a hard copy document of more than 10 pages, or in color, or with photos, you must provide 15 copies. Correspondence received after this deadline will be conveyed to the Board in the following manner:

- **Correspondence received by 5:00 PM two days before** this public hearing, will be conveyed to the Board in a Supplemental Communications and Reports, which is released around noon one day before the public hearing; or
- **Correspondence received after 5:00 PM two days before** this public hearing will be saved in the project administrative record.

It will not be possible to submit written comments at the meeting.



Accessibility Information / ADA Disclaimer:

To request a disability-related accommodation(s) to participate in the meeting, including auxiliary aids or services, please contact the Disability Services specialist at 981-6342 (V) or 981-6345 (TDD) at least three business days before the meeting date.

SB 343 Disclaimer:

Any writings or documents provided to a majority of the Commission regarding any item on this agenda will be made available to the public. Please contact the Land Use Planning Division (zab@cityofberkeley.info) to request hard-copies or electronic copies.

Notice Concerning Your Legal Rights:

If you object to a decision by the Zoning Adjustments Board regarding a land use permit project, the following requirements and restrictions apply:

1. If you challenge the decision of the City in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice.
2. You must appeal to the City Council within fourteen (14) days after the Notice of Decision of the action of the Zoning Adjustments Board is mailed. It is your obligation to notify the Land Use Planning Division in writing of your desire to receive a Notice of Decision when it is completed.
3. Pursuant to Code of Civil Procedure Section 1094.6(b) and Government Code Section 65009(c)(1), no lawsuit challenging a City Council decision, as defined by Code of Civil Procedure Section 1094.6(e), regarding a use permit, variance or other permit may be filed more than ninety (90) days after the date the decision becomes final, as defined in Code of Civil Procedure Section 1094.6(b). Any lawsuit not filed within that ninety (90) day period will be barred.
4. Pursuant to Government Code Section 66020(d)(1), notice is hereby given to the applicant that the 90-day protest period for any fees, dedications, reservations, or other exactions included in any permit approval begins upon final action by the City, and that any challenge must be filed within this 90-day period.
5. If you believe that this decision or any condition attached to it denies you any reasonable economic use of the subject property, was not sufficiently related to a legitimate public purpose, was not sufficiently proportional to any impact of the project, or for any other reason constitutes a "taking" of property for public use without just compensation under the California or United States Constitutions, the following requirements apply:
 - A. That this belief is a basis of your appeal.
 - B. Why you believe that the decision or condition constitutes a "taking" of property as set forth above.
 - C. All evidence and argument in support of your belief that the decision or condition constitutes a "taking" as set forth above.

If you do not do so, you will waive any legal right to claim that your property has been taken, both before the City Council and in court.

Jacob, Melinda

From: Zoning Adjustments Board (ZAB)
Subject: FW: 5/27/2021 ZAB Meeting: 770 Page Street Administrative Use Permit #ZP2020-0051 Public Comment

From: Rachel Doughty <rdoughty@greenfirelaw.com>
Sent: Tuesday, May 25, 2021 9:49 AM
To: Jessica Taylor <jtaylor@greenfirelaw.com>
Cc: Zoning Adjustments Board (ZAB) <Planningzab@cityofberkeley.info>; Jessica Blome <jblome@greenfirelaw.com>
Subject: Re: 5/27/2021 ZAB Meeting: 770 Page Street Administrative Use Permit #ZP2020-0051 Public Comment

WARNING: This is not a City of Berkeley email. Do not click links or attachments unless you trust the sender and know the content is safe.

Great! Please be sure to save it to the drive and then also to forward it to the client.



Rachel S. Doughty, Esq.
2001 Addison Street, Suite 300
Berkeley, CA 94704
T: 510.900.9502 x 2
F: 510.900.9502
rdoughty@greenfirelaw.com

PRIVILEGE AND CONFIDENTIALITY NOTICE

This communication constitutes an electronic communication within the meaning of the Electronic Communications Privacy Act, 18 U.S.C. Section 2510, and its disclosure is strictly limited to the recipient intended by the sender of this message. This transmission, and any attachments, may contain confidential attorney-client privileged information and attorney work product. If you are not the intended recipient, any disclosure, copying, distribution or use of any of the information contained in or attached to this transmission is **STRICTLY PROHIBITED**. Please contact me immediately by return e-mail or at 510-900-9502 x 2, and destroy the original transmission and its attachments without reading or saving in any manner.

On Tue, May 25, 2021 at 9:39 AM Jessica Taylor <jtaylor@greenfirelaw.com> wrote:

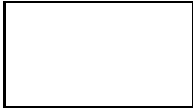
To Whom it May Concern:

Attached, please find the public comment and related attachments submitted by Greenfire Law on behalf of the Oceanview Neighborhood Council to be taken under consideration at the May 27, 2021 ZAB Meeting regarding the 770 Page Street Administrative Use Permit #ZP2020-0051. Please feel free to contact me should you have any questions.

Sincerely,

Jessica Taylor

--



Jessica A. Taylor, Esq.
2001 Addison Street, Suite 300
Berkeley, CA 94704
T: 510.900.9502 x 705
F: 510.900.9502
jtaylor@greenfirelaw.com

PRIVILEGE AND CONFIDENTIALITY NOTICE

This communication constitutes an electronic communication within the meaning of the Electronic Communications Privacy Act, 18 U.S.C. Section 2510, and its disclosure is strictly limited to the recipient intended by the sender of this message. This transmission, and any attachments, may contain confidential attorney-client privileged information and attorney work product. If you are not the intended recipient, any disclosure, copying, distribution or use of any of the information contained in or attached to this transmission is **STRICTLY PROHIBITED**. Please contact me immediately by return e-mail or at 510-900-9502 x 705, and destroy the original transmission and its attachments without reading or saving in any manner.

Jacob, Melinda

From: Jessica Taylor <jtaylor@greenfirelaw.com>
Sent: Tuesday, May 25, 2021 9:39 AM
To: Zoning Adjustments Board (ZAB)
Cc: Jessica Blome; Rachel Doughty
Subject: 5/27/2021 ZAB Meeting: 770 Page Street Administrative Use Permit #ZP2020-0051 Public Comment
Attachments: 2021-05-25 Comment Cover Letter to ZAB re 770 Page St AUP, FINAL.pdf; 2019-04-26 ONC on Inclusionary Housing FINAL .pdf; 2019-04-29 Supp Memo ISO 1444 Appeal.pdf; 2019-04-29 Traynor Decl. ISO 1444 Appeal.pdf; 2019-04-29 Younger Decl. ISO 1444 Appeal.pdf; 2021-03-11 Petition and Complaint, Taxpayer Waste, FINAL.pdf; 2019-04-29 Strauss Decl. ISO 1444 Appeal, Combined.pdf

WARNING: This is not a City of Berkeley email. Do not click links or attachments unless you trust the sender and know the content is safe.

To Whom it May Concern:

Attached, please find the public comment and related attachments submitted by Greenfire Law on behalf of the Oceanview Neighborhood Council to be taken under consideration at the May 27, 2021 ZAB Meeting regarding the 770 Page Street Administrative Use Permit #ZP2020-0051. Please feel free to contact me should you have any questions.

Sincerely,

Jessica Taylor

--



Jessica A. Taylor, Esq.
2001 Addison Street, Suite 300
Berkeley, CA 94704
T: 510.900.9502 x 705
F: 510.900.9502
jtaylor@greenfirelaw.com

PRIVILEGE AND CONFIDENTIALITY NOTICE

This communication constitutes an electronic communication within the meaning of the Electronic Communications Privacy Act, 18 U.S.C. Section 2510, and its disclosure is strictly limited to the recipient intended by the sender of this message. This transmission, and any attachments, may contain confidential attorney-client privileged information and attorney work product. If you are not the intended recipient, any disclosure, copying, distribution or use of any of the information contained in or attached to this transmission is STRICTLY PROHIBITED. Please contact me immediately by return e-mail or at 510-900-9502 x 705, and destroy the original transmission and its attachments without reading or saving in any manner.



Jessica Taylor
2001 Addison Street, Suite 300
Berkeley, CA 94704
Phone: (510) 900-9502 x 705
Email: jtaylor@greenfirelaw.com
www.greenfirelaw.com

May 25, 2021

By Electronic Mail

Zoning Adjustments Board
Attn: ZAB Secretary
1947 Center Street, Second Floor
Berkeley, CA 94704
Email: zab@cityofberkeley.info

RE: 770 Page Street Administrative Use Permit #ZP2020-0051 Public Comment

To Whom It May Concern:

Greenfire Law submits this comment on behalf of the Oceanview Neighborhood Council, a group of residents from the West Berkeley neighborhood of Oceanview in Berkeley's Arts District, to be considered at the May 27, 2021 Zoning Adjustments Board meeting. This letter and the attachments hereto are submitted in opposition to the recommended approval of Administrative Use Permit #ZP2020-0051 for the next phase of the Fifth and Page Street residential housing project, which is situated on the real property located at 770 Page Street. The continuation of the common development plan at this location is simply another phase of the same residential housing project that began at the adjacent and contiguous 1444 and 1446 Fifth Street locations. This project represents a multi-unit common development scheme that must comply with the inclusionary housing requirements set forth in Berkeley Municipal Code Sections 23C.12.010, *et seq.* These requirements should be disclosed to the developer immediately, and the developer should be required to either provide inclusionary housing in his project or pay the in-lieu fee as calculated by the formula put forth in Berkeley Municipal Code Section 23C.12.035.

Further, it appears that the existing dwelling located at 770 Page Street is currently being rented at a rate significantly below market rate. Practically speaking, the next phase of the Fifth and Page Street residential housing project will eliminate what would otherwise constitute affordable housing available to the people of Berkeley and replace it with housing that lacks any inclusionary units and is not subject to the full in-lieu fee under Berkeley Municipal Code Section 23C.12.035. Preventing the erosion of affordable housing and its replacement with largely unaffordable units fits squarely within the purpose of Berkeley's Inclusionary Housing Requirements. This practical matter further supports our request that the developer in charge of

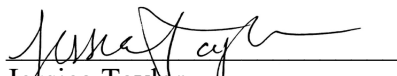
Page 2 of 3

this residential housing project be subject to the full in-lieu fee contemplated by the Berkeley Municipal Code.

Additionally, pursuant to Berkeley Municipal Code Section 23C.08.020, when the Board approves a Use Permit to demolish a building on a property containing two or more dwelling units, the applicant must pay a fee for each unit demolished to mitigate the impact of the loss of affordable housing in the City of Berkeley. Alternatively, the applicant may provide a designated unit in the new project at a below market rate to a qualifying household in perpetuity. The demolition at 770 Page Street may only involve a single dwelling unit, however, it is the first of multiple dwellings that will ultimately be demolished as a part of the Fifth and Page Street residential housing project. The developer's strategy of seeking permits including demolition of only one dwelling at a time does not change the fact that practically, he is demolishing two or more dwellings, and thus has triggered the requirements set forth by Berkeley Municipal Code Section 23C.08.020A. This is yet another iteration of the developer's attempt to evade his responsibilities under the Municipal Code and usurp the financial obligations required to mitigate for a loss of affordable housing. As such, we request that you require the developer to pay either the housing demolition mitigation fee or to provide the requisite below market units in his common development scheme pursuant to Berkeley Municipal Code Section 23C.08.020A.

Attached, you will find documents previously submitted in appeal of the 1444 Fifth Street property along with the pending lawsuit and underlying Settlement Agreement and Resolution related to the development of 1444 Fifth Street, 1446 Fifth Street, 1442 Fifth Street, 770 Page Street, and 776 Page Street. The improper assignment of a \$15,000 Housing Trust Fund contribution for 770 Page Street pursuant to the above-mentioned Settlement Agreement and Resolution and as stated in item #42 in the City's Findings & Conditions is expressly at issue in the attached lawsuit and serves as an improper deviation from the in-lieu fee calculation under the Berkeley Municipal Code. Each of these documents and the arguments contained therein apply to the 770 Page Street project and make clear that this residential housing project is part of a common development scheme subject to inclusionary housing requirements. We request that you consider all of this information in your evaluation of Administrative Use Permit #ZP2020-0051 for 770 Page Street and direct the developer to either provide for inclusionary housing or remit the payment of a full in-lieu fee and housing demolition mitigation fee pursuant to Berkeley Municipal Code Sections 23C.12.010, *et seq.* and 23.08.020A, respectively.

Sincerely,



Jessica Taylor

Greenfire Law, P.C.

Attorney for Oceanview Neighborhood Council

Enclosures:

2019-04-26 ONC on Inclusionary Housing;
2019-04-29 Strauss Decl. ISO 1444 Appeal, Combined;

Page 3 of 3

2019-04-29 Supp Memo ISO 1444 Appeal;
2019-04-29 Traynor Decl. ISO 1444 Appeal;
2019-04-29 Younger Decl. ISO 1444 Appeal;
2021-09-11 Petition and Complaint, Taxpayer Waste



RACHEL S. DOUGHTY
2550 Ninth Street, Suite 204B
BERKELEY, CA 94710
PHONE: 510-900-0502 x2
EMAIL: rdoughty@greenfirelaw.com
WWW.GREENFIRELAW.COM

April 26, 2019

By Personal Delivery and Electronic Mail

To: Members of the Berkeley City Council
City Clerk
2180 Milvia Street
Berkeley, CA 94704
clerk@cityofberkeley.info

From: Greenfire Law, PC, on behalf of Oceanview Neighborhood Council

Subject: Protecting Berkeley's Affordable Housing Trust Fund

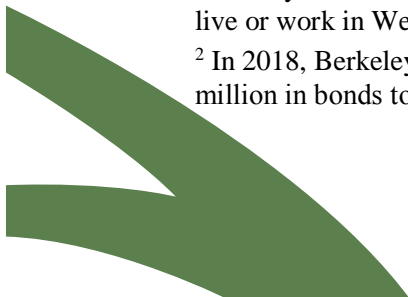
Honorable Members of the Berkeley City Council:

These comments are submitted on behalf of the Oceanview Neighborhood Council (ONC). ONC is comprised of residents of the West Berkeley neighborhood of Oceanview in Berkeley's Arts District, many of whom are artists of modest to moderate means.¹ ONC members have an interest in stemming the erosion of affordability in Berkeley for artists and other current and future residents of similar means, particularly in their neighborhood Arts District neighborhood.

Berkeley taxpayers, including members of ONC, are paying to fund low to middle income housing development.² Yet, ONC's research indicates that hundreds of thousands, if not

¹ First established in 2004, and updated in 2017, the City Arts and Culture Plan reiterates the City's policy goal to increase affordable housing for artists and incentivize development of affordable housing for artists. (City of Berkeley Arts and Culture Plan Update, 2017-2027, Goal 1, available at [https://www.cityofberkeley.info/uploadedFiles/City_Manager/Level_3_-_Civic_Arts/Art%20and%20Cultural%20Plan%202004-09-18%20Draft%20\(2\).pdf](https://www.cityofberkeley.info/uploadedFiles/City_Manager/Level_3_-_Civic_Arts/Art%20and%20Cultural%20Plan%202004-09-18%20Draft%20(2).pdf).) According to the West Berkeley Arts Field Survey, commissioned by the Berkeley Civic Arts Commission in 2008, 827 artists live or work in West Berkeley.

² In 2018, Berkeley voters overwhelmingly approved Measure O, authorizing the City to issue up to \$135 million in bonds to "acquire and improve affordable housing" for "low-, very low-, low-, median-, and



millions, of dollars and/or inclusionary housing development have been forfeited since the 1986 adoption of the Inclusionary Housing Ordinance because Berkeley has failed to collect fees developers are required to pay or require the inclusion of affordable housing in ownership projects. Therefore, ONC supports the Planning Commission's recommended language to provide more specific direction to City staff to ensure that the intention of the original policy defining the scope of the projects triggering application of the Inclusionary Housing Ordinance, is realized.

The Planning Commission's proposed amendments do not close a loophole or change the existing law. What they do is expressly state what information staff must be provided by applicants and consider in determining whether a proposed project triggers the Inclusionary Housing Ordinance. Berkeley planning staff have repeatedly said that they defer to applicants' definitions of "project." This is problematic because applicants have multiple incentives to downplay the scope of their project—including avoiding paying into the Housing Trust Fund what could instead be retained as profit. Taking developer representations at face value results depleted City resources (where a developer would have opted for payment of the fee), decreased stock of affordable housing in the City (where a developer would have opted to include affordable housing in the project), and increased risk to the City of legal challenge. The Planning Commission-recommended language rectifies this situation by ensuring that staff have the direction and information needed to implement the Inclusionary Housing Ordinance.

ONC provides a number of attachments pertinent to the consideration of the amendments:

1. **ATTACHMENT A:** FAQ Sheet which addresses a number of alleged practical and legal issues with the proposed language have been floated in recent days by a particular developer who has so far circumvented the Inclusionary Housing Ordinance.
2. **ATTACHMENT B:** Examples of recent evasion of the Inclusionary Housing Ordinance.
3. **ATTACHMENT C:** Quick Language Reference.

Sincerely,



Rachel S. Doughty
Greenfire Law, PC
Attorney for Oceanview Neighborhood Council

cc: apearson@cityofberkeley.info

middle-income individuals and working families, including teachers, seniors, veterans, the homeless, students, people with disabilities, and other vulnerable populations.”

Attachment A

FAQ Sheet

Q. What is the history of the Inclusionary Housing Ordinance?

The **Inclusionary Housing Ordinance** was enacted on July 15, **1986** (Ord. No. 5748) and, despite undergoing stylistic and formatting changes when the Zoning Code was re-organized in 1999 (Ord. No. 6478), the provision that is now 23C.12.022 is substantively unchanged since 1986. The objectives of the original Ordinance are furthered by the current proposal.

The initial draft of the ordinance proposed by a subcommittee of the Planning Commission in 1986 only applied to properties on which four or more residential units had been constructed. However, the Planning Commission advised the City Council that the ordinance should apply to lots on which it is feasible to build 5 or more residential units, to “close possible loopholes of building less units or building units incrementally as a means to avoid the requirements of the ordinance.” (Planning Commission Report, *Adoption of Inclusionary Zoning Ordinance* p.4, § IV(A) (June 10, 1986)). The City Council accepted the change suggested by the Planning Commission as what is now 23C.12.020(A)(3).

Among the formal findings of the original Ordinance are that “continued new development which does not include lower cost housing will serve to further aggravate the current housing shortage by reducing the supply of land” and the desirability of “encouragement of usage of density bonus”, which would occur if projects include affordable units. (Ord. No. 5748, § 15.B)

In **1999**, the City Council incorporated “Inclusionary Housing Requirements” into the Zoning Ordinance, to “promote achievement of the City Housing Element goals for developing affordable housing for Households with incomes below the median . . . by requiring the inclusion of affordable Dwelling Units in specified proposed developments, hereinafter referred to as *projects*.”³

Q. What currently triggers application of the Inclusionary Housing Ordinance?

The Inclusionary Housing Requirements apply to Dwelling Units that are constructed for sale, rather than rental by the developer, in the following project categories:

1. Residential housing projects for the construction of five or more Dwelling Units;
2. Residential housing projects for the construction of one to four new Dwelling Units, when such Units are added to an existing one to four-unit property, which has been developed after August 14, 1986, and the resulting number of units totals five or

³ BMC, § 23C.12.010 (emphasis added.)

more. All Units in such a property are subject to the requirements of this chapter;

3. Residential housing projects proposed on lots whose size and zoning designation is such to allow construction of five or more Dwelling Units.⁴

A Dwelling Unit is “a building or portion of a building designed for, or occupied exclusively by, persons living as one (1) household.”⁵ In a Mixed Use- Residential Zone—like West Berkeley—there “shall be no more than one Dwelling Unit or one live/work space per each 1,250 feet of lot area; provided, however, there may be one additional unit for any remaining lot area which may be less than 1,250 square feet but greater than 750 square feet.”⁶ Accordingly, if a West Berkeley lot consists of more than 5,750 square feet, it can accommodate five Dwelling Units, rendering the development subject to Inclusionary Housing Requirements.

Q. Does the revised language substantively change the trigger for application of the Inclusionary Housing Requirement?

No. The obligation to include units or pay into the Housing Trust Fund is still triggered by any of the same three conditions: (1) project of five or more units, (2) project commenced after 1986 on property to which additional units are added for a total of five or more units, and (3) project, regardless of number of units, on lots zoned to allow for construction of five or more units.

Q. What is the obligation of a developer whose project triggers the Inclusionary Housing Requirements?

Developers of residential projects subject to Inclusionary Housing Requirements must either:

(1) sell 20 percent of the total number of Dwelling Units to the City or to Low, Lower or Very Low-Income Households or set aside such units as affordable housing available for rent at below-market rates,⁷ or

(2) pay a fee into the City’s Housing Trust Fund in-lieu of providing such units.⁸

This Inclusionary “in-lieu” fee is calculated after the units are sold using the actual sales price, or the appraised price if it appears that the sale price is below market.⁹ The amount owed is

⁴ BMC, § 23C.12.020, subd. (A)(3).

⁵ BMC, § 23F.04.010.

⁶ BMC, § 23E.84.070, subd. (B).

⁷ BMC, § 23C.12.040, subd. (A).

⁸ BMC, §§ 23C.12.030; 23C.12.035.

⁹BMC at § 23C.12.035.

calculated by a formula found in BMC, section 23C.12.035, subd. (C)(1). Payment is due “no later than the closing date of the sale of a unit as a condition of said closing.”¹⁰

Q. Under current law, can a developer avoid triggering the Inclusionary Housing Ordinance by reducing its lot below the trigger size through a lot line adjustment?

No. Under the Zoning Ordinance, “No lot shall hereafter be subdivided or reduced in size, nor shall any lot line be adjusted or redrawn, so that any resultant lot conflicts with the provisions of this Ordinance.”¹¹ The “Ordinance” refers to the Zoning Ordinance of the City of Berkeley, which includes the Ordinance, reflected in Sub-Titles 23A through 23F, Appendices A and B, and the “Official Zoning Map,” reflected in Plates 1-9.¹² As discussed above, the Zoning Ordinance expressly denotes promotion of affordable housing as one of its goals.¹³ Municipalities may review individual applications for LLAs to prevent “gamesmanship.”¹⁴

Further, if the adjacent lot is part of the same project and that project includes construction of five or more Dwelling Units, the lot line adjustment will not accomplish the goal of evading the Inclusionary Housing Ordinance’s obligations. Nothing requires that the five Dwelling Units be on the same lot. If it did, the lot size and project size triggers for the Inclusionary Housing Ordinance would be redundant.¹⁵

Q. Is the Inclusionary Housing Ordinance’s Consideration of Ownership of Lots Illegal?

No. The staff report alludes to comments made by a developer’s expediter at the Planning Commission hearing that “proposed amendments treat certain property owners differently than the vast majority of other property owners in the City, potentially limiting their property rights in ways that could create a legal risk for the City.” There is no such risk under the existing or proposed language because there is no such principle in California law, and in fact, California law regularly takes into consideration the ownership patten of nearby lots.¹⁶

¹⁰ Id. at E.

¹¹ BMC, § 23A.12.020, subd. (A).

¹² BMC, § 23A.04.020, subd. (A).

¹³ Id. at (I) and (J).

¹⁴ *Sierra Club v. Napa Cnty. Bd. of Supervisors* (2012) 205 Cal.App.4th 162, 168.

¹⁵ Laws are interpreted to avoid surplusage where at all possible. (Code Civ. Proc., § 1858.)

¹⁶ See *Bright v. Cnty. Bd. of Supervisors* (1977) 66 Cal.App.3d 191, 195-96 (applying Subdivision Map Act to developer of two adjacent parcels where development of either alone would not trigger application of the Act). See also *Pratt v. Adams* (1964) 229 Cal.App. 2d 602 (Court declined to assist landowners in circumventing subdivision law where a group of individuals conspired to separately subdivide multiple lots in order to stay under the Subdivision Map Act’s threshold. This case showcases both the City’s existing authority to address specific instances of subterfuge and to anticipate and proactively prevent such schemes); *Blackmore v. Powell* (2007) 150 Cal.App.4th 1593, 1605 (“courts must be vigilant regarding schemes designed to avoid the regulatory controls”)

Additionally, as discussed above, the existing language already requires consideration of the entire project regardless of lot line.

Q. Does the proposed language cause the Inclusionary Housing Ordinance to violate the Housing Accountability Act?

No. A primary purpose of the Housing Accountability Act is to “enhance the approval and supply of housing affordable to Californians of all income levels” by limiting municipalities’ authority to deny proposed housing projects. Gov. Code, sec. 65589.5(a)(2)(B). The Act specifically permits a City to obligate a project “to comply with objective, quantifiable, written development standards, conditions, and policies appropriate to, and consistent with, meeting the jurisdiction’s share of the regional housing need pursuant to” its Housing Element. Gov. Code sec. 65589.5(f)(1). The Inclusionary Housing Ordinance (BMC Chap. 23C.12) is precisely such an objective, written standard.

The findings supporting the original Inclusionary Housing Ordinance, which are still applicable, specifically state that it is intended “to make available an adequate supply of housing for persons of all economic segments of the community” “as mandated by the Housing Element of the Master Plan”. Ord. 5748-N.S., sec. 15B.1(g) (July 15, 1986).

The 1999 amendments to the Ordinance reconfirmed that the “purpose of this chapter is to promote achievement of the City Housing Element goals for developing affordable housing for Households with incomes below the median”. BMC, sec. 23C.12.010. The proposed clarification, and the application of the current Ordinance, do not violate the Housing Accountability Act.

Q. Has the Inclusionary Housing Ordinance halted construction of ownership projects in Berkeley?

No. At several public hearings, it has been stated that only one condominium project has been built in Berkeley in recent years. This is simply not true. A quick and by no means comprehensive search of the Multiple Listing Service identified the following:

Condominiums Completed in Berkeley 2007-2018					
Address	Year Built	Dwelling Units	Lot Size	Affordable Units	In-Lieu Fees
2102-2018 6 th St	2007	4	4,760	Undetermined	
2012-2018 6 th St	2007	4	8,900		
1414-1418 Harmon	2007	7	11,200		
1406 San Pablo	2007	8	9,030		
2628 Telegraph	2007	15	6,910		
1912 7 th St	2008	7	10,000		
1532 MLK	2008	3	5,400		
2543 MLK	2008	12	9,000		
1912-1916 7 th St	2008	7	10,000		
1352-1354 Neilson	2009	3	7,500		

1520-1522 Fairview	2010	4	6,750		
2831-2843 7 th St	2010	4	9,450		
2813 MLK	2011	3	5,350		
1419 Ashby	2012	4	5,618		
1629.5 Harmon St	2015	3	6,750		
2747 San Pablo	2017	39	10,000+	6 Units	\$0
812 Page	2018	5	6,500	0	\$0
3046 Telegraph Ave	2018	3	7,684	Undetermined	
1032 Grayson St	2018	4	5,000	0	\$0
2817 8 th St	2018	4	7,786	0	\$189,570
<i>Total Projects: 20</i>		<i>Total Units: 143</i>		<i>Identified Affordable Units: 6 (4%)</i>	<i>Identified In-Lieu Fees: \$189,570</i>

Q. Has the City’s past reluctance or failure to apply the Inclusionary Housing Ordinance compromised its ability to do so now, whether under existing or amended language?

No. Commencement of a project, even pursuant to a permit, does not create a vested right to proceed in violation of the law.¹⁷ Further, a city does not “contract away the right to exercise its police power in the future” merely because an applicant begins to seek an entitlement, and can in fact be forced to comply with the law.¹⁸

Q. Do the proposed amendments impermissibly reduce project density in violation of the Housing Accountability Act?

No. The Housing Accountability Act restricts the circumstances in which a city may “impose a condition that the project be developed at lower density.”¹⁹ Contending that the Ordinance reduces density is backwards because the amendment is intended precisely to ensure that developers do not evade the application of the Inclusionary Housing Ordinance by making projects or lots smaller. It also does not reflect the reality.

One explicit purpose of the existing Inclusionary Housing Ordinance, in fact, is “encouragement [of] usage of density bonus” as an incentive to include affordable units as part of projects.²⁰ Nothing in the proposed amendments changes this. In fact, one developer’s agent has repeatedly

¹⁷ *Avco Community Developers v. South Coast Regional Commission* (1976) 17 Cal.3d 785, 794 (holding developer that subdivided land and began construction prior to change in permitting law still subject to new law). To the extent the argument is that the Inclusionary Housing Ordinance has not been reliably invoked previously, see, e.g., *Schafer v. City of Los Angeles* (2015) 237 Cal. App. 4th 1250 (court forced city to require parking lot owner to apply for a permit after 50 years of unpermitted use due to city misapplication of zoning ordinance, because city error cannot create a right against the public interest).

¹⁸ *Id.* at 800.

¹⁹ Gov. Code, § 65589.5(j)(1).

²⁰ Ord. 5748-N.S., sec. 15B.1(d) (July 15, 1986).

argued that one problem with the Inclusionary Housing Ordinance is that it encourages utilizing the density bonus to build more units but higher density “is not this developer’s product type.”²¹

Q. Will amending the Inclusionary Housing Ordinance cause violation of the Permit Streamlining Act?

No. The Permit Streamlining Act requires municipalities to approve or deny permits within given timeframes. The proposed amendments do not change processing timeline or prevent the City from complying with the Act. Only one condominium “project” is currently in the City's permitting pipeline: 1444 Fifth Street. This project has been administratively appealed. The Permit Streamlining Act does not apply to the duration of appeal proceedings.²²

²¹ See 1444 Fifth Street ZAB Appeal, 3hr:47min:23sec (Jan. 24, 2019), *video recording available at* http://berkeley.granicus.com/MediaPlayer.php?publish_id=80c43cb8-20f0-11e9-b021-0050569183fa.

²² Gov. Code, § 65922(b).

Attachment B

Examples of Inclusionary Housing Evasion

Example 1 (Page Street Project): Call One Unit Commercial Regardless of Intended Residential Use to Avoid Triggering Inclusionary Housing Requirements

On September 30, 2015, Developer Matthew Wadlund requested a Use Permit/Variance to demolish a commercial building, construct a new commercial building, and develop four Dwelling Units at 812 Page Street (the “Page Street Project”). In total, 812 Page Street was 6,500 square feet in size, rendering the project subject to Inclusionary Housing Requirements because the lot was zoned to accommodate five or more Dwelling Units.²³ The City approved Wadlund’s Variance Request in June 2016, and on November 6, 2017, the City approved Wadlund’s subdivision map, which divided the lot into five condominiums—four residential and one allegedly commercial—all market rate.²⁴ Thus, the Page Street Project should have triggered the Inclusionary Housing Requirements for two independent reasons: (1) the Page Street Project is “residential” and the lot upon which it was constructed was of sufficient size to allow for construction of five Dwelling Units, and (2) the Page Street Project included construction of five Dwelling Units.²⁵ Nevertheless, the Page Street Project contained no affordable units, and neither Wadlund nor any of the owners of any of the market rate condominiums has ever paid an in-lieu inclusionary housing fee for the Page Street Project.

Example 2 (1446 Fifth Project): Adjust Lot Lines to Shrink Ownership Project Lot Size to Avoid Triggering Inclusionary Housing Requirements

Next, Wadlund purchased five contiguous lots on the very next block at 1442, 1444, and 1446 Fifth Street, and 770 and 776 Page Street. Alone, because of their size, lots 1444 and 1446 each could have been developed with five or more Dwelling Units, so Wadlund applied for a Lot Line Adjustment (LLA) to reduce the total size of each of those lots below 5,750 square feet to 5,744 square feet, reducing the building capacity of 1444 and 1446 each to four units. Wadlund transparently told the Zoning Adjustment Board that he requested the LLA to avoid building inclusionary housing or paying an in-lieu fee for his proposed development of 1446 Fifth Street (1446 Fifth Project). The City responded to Wadlund’s admission by treating the approval of Wadlund’s application for the LLA needed to effect his scheme as a ministerial act which the City had no discretion to deny and then treated 1446 Fifth Project as too small (in size and number of Dwelling Units) to trigger the Inclusionary Housing Requirements. This despite the

²³ Wadlund, Matthew, Zoning Project Application Form, p. 2, Box 10, dated Sept. 30, 2015.

²⁴ Resolution No. 68, 192-N.S. (Oct. 17, 2017.); see also Dee Williams-Ridley, City Manager City of Berkeley Staff Report, *Final Map of Tract 8355- 812 Page Street* (Oct. 17, 2017). Wadlund conveyed the rebuilt commercial building back to its original owner on May 1, 2018. ONC members living nearby report that the commercial building is being used in whole or in part as Dwelling Unit by that original owner, who is believed to have continuously occupied the property

²⁵ BMC, § 23C.12.020, subd. (A).

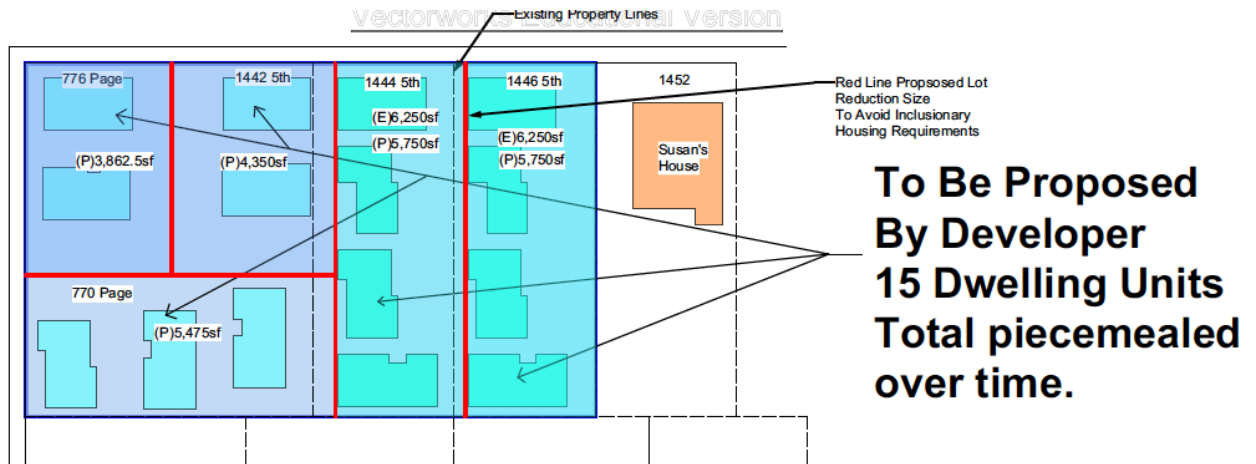
fact that the law expressly requires the City to ensure LLAs do not conflict with other provisions of the Zoning Ordinance.²⁶

The Fifth Street Project has been approved and is under construction.

Example 3 (1444 Fifth Project): Adjust Lot Size and Convey Back Easement to Avoid Payment without Giving Up Access to Land

As was always the intention, Wadlund now seeks to develop 1444 Fifth Street on the very same block. But, as a result of having lost land to his own lots at 1442 Fifth Street and 770 Page Street through his own LLA for the express purpose of avoiding the Inclusionary Housing Requirements, Wadlund now needs an easement to access the very same land he gave up (to himself) in order to effect his plans for development of market-rate housing on 1444. So Wadlund has advised the Planning Department that he will record an easement from 1442 Fifth Street that benefits 1444 Fifth Street in order to meet square footage requirements (the “Easement Swapback”) for the project he has applied to complete at 1444 Fifth Street (1444 Fifth Project). The easement will provide access to multiple lots in the block, all of which Wadlund has stated he plans to develop.

The ZAB approved the 1444 Fifth Project on January 24, 2019. It is now stayed pending resolution of ONC’s administrative appeal.



²⁶ BMC, § 23A.12.020, subd. (A).

Attachment C

Quick Reference Guide: Proposed Update to 23C.12.020 (Action Item #28 August 30, 2019, City Council Meeting)

Application: Section 23C.12.020 applies only to ownership projects. The mitigation fees for rental units is addressed separately in Chapter 22.20.

History of 23C.12.020

The Inclusionary Housing Ordinance was enacted on July 15, 1986 (Ord. No. 5748) and, despite undergoing stylistic and formatting changes when the Zoning Code was re-organized in 1999 (Ord. No. 6478), the provision that is now 23C.12.022 is substantively unchanged since 1986. The objectives of the original Ordinance are furthered by the current proposal.

The initial draft of the ordinance proposed by a subcommittee of the Planning Commission in 1986 only applied to properties on which four or more residential units had been constructed. However, the Planning Commission advised the City Council that the ordinance should apply to lots on which it is feasible to build 5 or more residential units, to “close possible loopholes of building less units or building units incrementally as a means to avoid the requirements of the ordinance.” (Planning Commission Report, *Adoption of Inclusionary Zoning Ordinance* p.4, § IV(A) (June 10, 1986)). The City Council accepted the change suggested by the Planning Commission as what is now 23C.12.020(A)(3).

Among the formal findings of the original Ordinance are that “continued new development which does not include lower cost housing will serve to further aggravate the current housing shortage by reducing the supply of land” and the desirability of “encouragement of usage of density bonus”, which would occur if projects include affordable units. (Ord. No. 5748, § 15.B)

Current Ordinance Language

23C.12.020, Applicability of Regulations

A. The following types of projects must comply with the inclusionary housing requirements of this chapter:

1. Residential housing projects for the construction of five or more Dwelling Units;
2. Residential housing projects for the construction of one to four new Dwelling Units, when such Units are added to an existing one to four unit property, which has been developed after August 14, 1986, and the resulting number of units totals five or more. All Units in such a property are subject to the requirements of this chapter;
3. Residential housing projects proposed on lots whose size and zoning designation is such to allow construction of five or more Dwelling Units.

B. This chapter does not apply to Dormitories, Fraternity and Sorority Houses, Boarding Houses, Residential Hotels or Live/Work Units, which are not considered Dwelling Units. Live/Work Units are subject to low income inclusionary provisions set forth in Section [23E.20.080](#).

C. This chapter sets forth specific inclusionary housing requirements for the Avenues Plan Area, which prevails over any inconsistent requirements set forth elsewhere in this chapter. (Ord. 6478-NS § 4 (part), 1999)

Language Proposed by Planning Commission

23C.12.020 Applicability of Regulations

A. The following types of projects must comply with the inclusionary housing requirements of this chapter:

1. Residential ~~h~~Housing ~~p~~Projects for the construction of five or more Dwelling Units;
2. Residential ~~h~~Housing ~~p~~Projects for the construction of one to four new Dwelling Units, when such Units are added to an existing one to four unit property, which has been developed after August 14, 1986, and the resulting number of units totals five or more. All Units in such a property are subject to the requirements of this chapter;
3. Residential ~~h~~Housing ~~p~~Projects proposed on lots any part of a single lot or on a grouping of contiguous lots under common ownership and/or control, design, marketing, or financing, whose collective size, including the area of any surface easements, and zoning designation is such to allow construction of five or more Dwelling Units, regardless of whether those units are all built simultaneously. For the purposes of this Section, “common ownership and/or control” shall be interpreted broadly.

B. For purposes of this Section, “Residential Housing Project” means a project involving the construction of at least one Dwelling Unit. This chapter does not apply to Dormitories, Fraternity and Sorority Houses, Boarding Houses, Residential Hotels or Live/Work Units, which are not considered Dwelling Units provided however that Live/Work Units are subject to low income inclusionary provisions set forth in Section 23E.20.080.

C. This chapter sets forth specific inclusionary housing requirements for the Avenues Plan Area, which prevails over any inconsistent requirements set forth elsewhere in this chapter. (Ord. 6478-NS § 4 (part), 1999).

1 GREENFIRE LAW, PC
2 2550 Ninth Street, Suite 204B
3 Berkeley, CA 94710
4 Phone: (510) 900-9502
5 Fax: (510) 900-9502
6 rdoughty@greenfirelaw.com
7 jblome@greenfirelaw.com

8 *Attorneys for Petitioner Oceanview Neighborhood Council*

9 **Declaration of Ariel Strauss**

10 *in support of the Oceanview Neighborhood Council's Appeal*
11 *of the Zoning Adjustment Board's approval of the 1444 Fifth Street Project*
12 *ZAB No. ZP-2018-0172*

13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DECLARATION OF ARIEL STRAUSS

I, Ariel Strauss, declare as follows:

1. I am an attorney licensed to practice in California. I have personal knowledge of the facts declared herein, and will competently testify to them if called upon to do so.

2. In April 2019, I conducted research through the websites for the Clerk-Recorder of Alameda County, California Secretary of State's Office, and City of Berkeley Planning and Zoning Department. The results of my research are reflected herein.

Matthew Wadlund Formed, Manages, and Controls the LLCs

3. On August 31, 2016, Matthew Wadlund registered the following limited liability companies with the California Secretary of State's Office:

770 Page Street, LLC
776 Page Street, LLC
1442 Fifth Street, LLC
1444 Fifth Street, LLC
1446 Fifth Street, LLC

These limited liability companies will be referred to collectively as the "LLCs" throughout this declaration.

4. True and correct copies of the formal "Articles of Organization," "Statements of Information," and "Statements of No Change" filed for the LLCs are attached hereto as **Exhibit A** and will be identified collectively as the "LLC Filings" throughout this Declaration.

5. According to the LLC Filings, Matthew Wadlund is the sole organizer, manager, agent for service of process, chief executive officer, and Managing Member for each LLC, and each LLC is located at 805 Jones Street, Berkeley, California 94701.

6. Aside from Matthew Wadlund, the only individual identified in the LLC Filings is Sean Kenmore, who filed "Statements of No Change" for each LLC in May 2018.

///

///

Matthew Wadlund's LLCs Simultaneously Acquired Five Lots

7. On October 31, 2016, just two months after Mathew Wadlund registered the LLCs, Denise Arriaza, Raul Ariaza, the Linda Lee Olson Trust, the Carl Edward Olson Trust, the Olson Family Trust, and the Linda Olson Trust transferred title of the following parcels to the identified LLC. A true and correct copy of the search results from the Clerk-Recorder of Alameda County's Grantor-Index is attached hereto as **Exhibit B**.

Accessor Parcel Number (APN)	New Property Owner/Grantee
APN 59-2325-3, 770 Page Street, Berkeley	770 Page Street, LLC
APN 59-2325-4, 776 Page Street, Berkeley	776 Page Street, LLC
APN 59-2325-5, 1442 Fifth Street, Berkeley	1442 Fifth Street, LLC
APN 59-2325-6, 1444 Fifth Street, Berkeley	1444 Fifth Street, LLC
APN 59-2325-7, 1446 Fifth Street Berkeley	1446 Fifth Street, LLC

Matthew Wadlund Investigated 1444 and 1446 Fifth Street as a Single Unit

8. A true and correct copy of the Parcel Map from the Alameda County Assessor's Office "Parcel Viewer" webpage depicting the intersection of Page and Fifth Streets in Berkeley, California is attached hereto as **Exhibit C**. The Parcel Map reflects that all five properties are adjacent to one another.

9. In December 2016, just two months after the LLCs' acquisitions identified in Table 1, Matthew Wadlund applied for approval from the City to develop 1446 Fifth Street into four Dwelling Units.

10. The application to develop 1446 Fifth Street submitted to the City by Matthew Wadlund included a "Geotechnical Investigation for 1444 & 1446 5th Street Development" dated December 16, 2016, authored by Peters & Ross, Geotechnical & GeoEnvironmental Consultants. A true and correct copy of the investigation is attached hereto as **Exhibit D**.

11. Matthew Wadlund's consultants, Peters & Ross treated 1444 and 1446 Fifth Street as a single "project site" with the two approximately 6,250 square foot lots described as one "relatively level rectangular lot with total maximum plan dimensions of about 100 feet by 125 feet [12,500 square feet]." (Exh. D, p. 1.)

12. At the time of the initial application for 1446 Fifth Street, Mathew Wadlund had planned to construct a total of eight Dwelling Units on 1444 and 1446 Fifth Street as reflected in a letter from Peters & Ross to Matthew Wadlund, dated October 11, 2018, in which Peters & Ross states "Our December 16, 2016, report was issued for both 1444 and 1446. We drilled on both lots and were aware that four units would be placed on each of them." A true and correct copy of the letter is Attached as **Exhibit E**.

Matthew Wadlund Considered All Lots as One Combined, Sequential Development

13. During a February 6, 2018, City Council meeting at which the Council considered whether to approve Matthew Wadlund's proposal to develop 1446 Fifth Street, Matthew Wadlund's agent repeatedly told the Council that all lots identified in Table 1 were owned by the same owner, this owner intends to develop the lots sequentially and this owner could consolidate all lots at will. An approximate transcript of applicable portions of the recording from the February 6, 2018, Council meeting is attached hereto as **Exhibit F**.

14. During the January 24, 2019, ZAB hearing to consider whether to approve Matthew Wadlund's plan to develop four Dwelling Units on 1444 Fifth Street, his representative confirmed that "the same owner owns that property [1444 Fifth Street] as well as 770 Page." An approximate transcript of applicable portions of the audio recording of the January 24, 2019, ZAB hearing for 1444 Fifth Street is attached hereto as **Exhibit G**.

Dimensions of the Four Lots Were Adjusted to Avoid Affordable Housing In-Lieu Fees

15. At the request of Matthew Wadlund, the City of Berkeley Approved a Lot Line Adjustment (LLA), which was recorded by Chicago Title Company in the Official Records of Alameda County on July 23, 2018 and identified as Instrument 2019144173. A true and correct copy of the LLA is attached hereto as **Exhibit H**.

16. The LLA altered the dimensions of the lots located at 770 Page Street, 1442 Fifth Street, 1444 Fifth Street and 1446 Fifth Street, as follows:

<i>Owner Entity Name</i>	<i>Address</i>	<i>Original Lot Size</i>	<i>Adjusted Lot Size</i>
770 Page Street, LLC	770 Page Street	5,126	5,532
1442 Fifth Street, LLC	1442 Fifth Street	3,750	4,358
1444 Fifth Street, LLC	1444 Fifth Street	6,251	5,744
1446 Fifth Street, LLC	1446 Fifth Street	6,251	5,744

17. Matthew Wadlund signed the authorization for the requested LLA as the “Managing Member” of the LLCs for each of the affected lots. As a result of the LLA, the dimensions of the 1444 Fifth Street and 1446 Fifth Street lots were each seven square feet smaller than 5,751 square feet. (See Exh. H.)

18. On January 24, 2019, Matthew Wadlund’s representative admitted that the purpose of the lot line adjustment is to reduce the size of the 1444 and 1446 Fifth Street lots specifically so that they would no longer be large enough to accommodate five units under the Zoning Code and thereby avoiding incurring the City’s Inclusionary Housing in-lieu fee. (See Exh. G.)

**Matthew Wadlund Proposed that Parking Amenities Cross Lot Lines
and be Shared Among the Lots**

19. On August 31, 2018, approximately one month after recording the LLA, Matthew Wadlund applied to the City for a permit to develop 1444 Fifth Street into four Dwelling Units. In his application, he proposed that the driveway for 1444 Fifth Street lot would straddle the north property line with the 1442 lot and also serve as a “shared access easement that would also provide access to the northern abutting parcels at 1442 Fifth Street and 770 Page Street”. A true and correct copy of the Staff Report to the Zoning Adjustments Board dated January 24, 2019, discussing the proposed easement is attached hereto as **Exhibit I** (see p.7). A true and correct copy of a drawing depicting the proposed easement provided by Matthew Wadlund in his October 16, 2018 supplemental application to the City for development of 1444 Fifth Street is attached as **Exhibit M**.

20. The LLA moved the north lot line of 1444 Fifth Street south by 8.11 feet (see Exh. A) and the shared access easement is proposed to be located almost entirely within land seceded by 1444 Fifth Street to 1442 Fifth Street. (see Ex. I, Fig. 2, p.3)

The Design and Layout of 1444 and 1446 Fifth Street Are Substantially Similar and Appear as a Combined Project

21. During the January 24, 2019, ZAB hearing, City staff declared that “this project [1444 Fifth Street] is very similar to an adjoining project to the south [1446 Fifth Street] . . . it's similar in pretty much every way.” (See Exh. G.)

22. The Staff Report of January 24, 2019, describes the 1444 and 1446 projects as being “similar” and “proposed by the same applicant”. (see Exh. I, p.6.)

23. I compared Matthew Wadlund’s proposed architectural and design plans for the four Dwelling Units he intends to construct at 1446 Fifth Street to the architectural and design plans for four Dwelling Units proposed at 1444 Fifth Street. The four structures proposed on each of the two adjacent lots are substantially similar in layout and exterior design. Excerpts from Matthew Wadlund’s application for Administrative Use Permit ZP2016-0247 (1446 Fifth Street) and Administrative Use Permit ZP2018-0172 (1444 Fifth Street) are attached as **Exhibit J**.
Additional Materials Reviewed

24. A true and correct copy of the Planning Commission’s Report regarding its recommendations for “Adoption of Inclusionary Zoning Ordinance,” dated June 10, 1986, is attached hereto as **Exhibit K**.

25. A true and correct copy of the Neighborhood Preservation Ordinance No. 4641-N.S., adopted on April 17, 1973, is attached hereto as **Exhibit L**.

Executed on this 29th day of April, 2019 at Berkeley, California.

By: 

Ariel Strauss
Attorney for Oceanview
Neighborhood Council

Exhibit A

LLC-1 **Articles of Organization
of a Limited Liability Company (LLC)**

201625210081

To form a limited liability company in California, you can fill out this form, and submit for filing along with:

- A \$70 filing fee.
- A separate, non-refundable \$15 service fee also must be included, if you drop off the completed form.

Important! LLCs in California may have to pay a minimum \$800 yearly tax to the California Franchise Tax Board. For more information, go to <https://www.ftb.ca.gov>.

LLCs may not provide "professional services," as defined by California Corporations Code sections 13401(a) and 13401.3.

Note: *Before submitting the completed form*, you should consult with a private attorney for advice about your specific business needs.

FILED
Secretary of State
State of California

AUG 31 2016

lcc

This Space For Office Use Only

For questions about this form, go to www.sos.ca.gov/business/be/filing-tips.htm.

LLC Name (List the proposed LLC name exactly as it is to appear on the records of the California Secretary of State.)

① 770 Page Street, LLC

Proposed LLC Name

The name must include: LLC, L.L.C., Limited Liability Company, Limited Liability Co., Ltd. Liability Co. or Ltd. Liability Company; and may not include: bank, trust, trustee, incorporated, inc., corporation, or corp., insurer, or insurance company. For general entity name requirements and restrictions, go to www.sos.ca.gov/business/be/name-availability.htm.

Purpose

② The purpose of the limited liability company is to engage in any lawful act or activity for which a limited liability company may be organized under the California Revised Uniform Limited Liability Company Act.

LLC Addresses

③ a. 805 Jones Street, Berkeley CA 94710

Initial Street Address of Designated Office in CA - Do not list a P.O. Box *City (no abbreviations)* *State* *Zip*

b. _____
Initial Mailing Address of LLC, if different from 3a *City (no abbreviations)* *State* *Zip*

Service of Process (List a California resident or a California registered corporate agent that agrees to be your initial agent to accept service of process in case your LLC is sued. You may list any adult who lives in California. You may not list an LLC as the agent. Do not list an address if the agent is a California registered corporate agent as the address for service of process is already on file.)

④ a. Matthew Wadlund

Agent's Name

b. 805 Jones Street, Berkeley CA 94710

Agent's Street Address (if agent is not a corporation) - Do not list a P.O. Box *City (no abbreviations)* *State* *Zip*

Management (Check only one.)

⑤ The LLC will be managed by:

- One Manager More Than One Manager All Limited Liability Company Member(s)

This form must be signed by each organizer. If you need more space, attach extra pages that are 1-sided and on standard letter-sized paper (8 1/2" x 11"). All attachments are made part of these articles of organization.


Organizer - Sign here

Matthew Wadlund
Printer your name here


Make check/money order payable to: **Secretary of State**
Upon filing, we will return one (1) uncertified copy of your filed document for free, and will certify the copy upon request and payment of a \$5 certification fee.

By Mail
Secretary of State
Business Entities, P.O. Box 944228
Sacramento, CA 94244-2280

Drop-Off
Secretary of State
1500 11th Street., 3rd Floor
Sacramento, CA 95814

16-793349

	Secretary of State Statement of Information (Limited Liability Company)	20	LLC-12
FILED Secretary of State State of California DEC 12 2016			
IMPORTANT — Read instructions before completing this form. Filing Fee - \$20.00 Copy Fees – Face Page \$1.00 & .50 for each attachment page; Certification Fee - \$5.00			
			See Secretary of State's records for exact entity name. This Space For Office Use Only
1. Limited Liability Company Name 770 PAGE STREET			
2. 12-Digit Secretary of State File Number 201625210061		3. State or Place of Organization (only if formed outside of California)	
4. Business Addresses			
a. Street Address of Principal Office - Do not list a P.O. Box 805 JONES STREET	City (no abbreviations) BERKELEY	State CA	Zip Code 94710
b. Mailing Address of LLC, if different than item 4a	City (no abbreviations)	State	Zip Code
c. Street Address of California Office, if Item 4a is not in California - Do not list a P.O. Box	City (no abbreviations)	State CA	Zip Code
5. Manager(s) or Member(s) <small>If no <i>managers</i> have been appointed or elected, provide the name and address of each <i>member</i>. At least one name <u>and</u> address must be listed. If the manager/member is an individual, complete Items 5a and 5c (leave Item 5b blank). If the manager/member is an entity, complete Items 5b and 5c (leave Item 5a blank). Note: The LLC cannot serve as its own manager or member. If the LLC has additional managers/members, enter the name(s) and addresses on Form LLC-12A (see instructions).</small>			
a. First Name, if an individual - Do not complete Item 5b MATTHEW	Middle Name	Last Name WADLUND	Suffix
b. Entity Name - Do not complete Item 5a			
c. Address 805 JONES STREET	City (no abbreviations) BERKELEY	State CA	Zip Code 94710
6. Agent for Service of Process <small>Item 6a and 6b: If the agent is an individual, the agent must reside in California and Item 6a and 6b must be completed with the agent's name and California address. Item 6c: If the agent is a California Registered Corporate Agent, a current agent registration certificate must be on file with the California Secretary of State and Item 6c must be completed (leave Item 6a-6b blank).</small>			
a. California Agent's First Name (if agent is not a corporation) MATTHEW	Middle Name	Last Name WADLUND	Suffix
b. Street Address (if agent is not a corporation) - Do not list a P.O. Box 805 JONES STREET	City (no abbreviations) BERKELEY	State CA	Zip Code 94710
c. California Registered Corporate Agent's Name (if agent is a corporation) – Do not complete item 6a or 6b			
7. Type of Business			
a. Describe the type of business or services of the Limited Liability Company REAL ESTATE			
8. Chief Executive Officer, if elected or appointed			
a. First Name MATTHEW	Middle Name	Last Name WADLUND	Suffix
b. Address 805 JONES STREET	City (no abbreviations) BERKELEY	State CA	Zip Code 94710
9. The Information contained herein, including any attachments, is true and correct.			
12/5/16 <small>Date</small>	MATTHEW WADLUND <small>Type or Print Name of Person Completing the Form</small>	MANAGING MEMBER <small>Title</small>	 <small>Signature</small>
Return Address (Optional) (For communication from the Secretary of State related to this document, or if purchasing a copy of the filed document enter the name of a person or company and the mailing address. This information will become public when filed. SEE INSTRUCTIONS BEFORE COMPLETING.)			
Name: []			
Company: []			
Address: []			
City/State/Zip: []			

 Secretary of State Statement of No Change (Limited Liability Company)	LLC-12NC
	<p>IMPORTANT — Read instructions before completing this form. This form may be used only if a complete Statement of Information has been filed previously and there has been no change.</p> <p>Filing Fee – \$20.00</p> <p>Copy Fee – \$1.00; Certification Fee - \$5.00 plus copy fee</p>

18-B91351

FILED

In the office of the Secretary of State
of the State of California

MAY 31, 2018

This Space For Office Use Only

1. Limited Liability Company Name (Enter the **exact** name of the LLC as it is recorded with the California Secretary of State. Note: If you registered in California using an alternate name, [see instructions](#).)

770 PAGE STREET, LLC

2. 12-Digit Secretary of State File Number

201625210081

3. State, Foreign Country or Place of Organization (only if formed outside of California)

CALIFORNIA

4. No Change Statement (Do not alter the No Change Statement. If there has been any change, please complete a Statement of Information (Form LLC-12).)

There has been no change in any of the information contained in the previous complete Statement of Information filed with the California Secretary of State.

5. The information contained herein is true and correct.

05/31/2018

Sean Kenmore

Member

Date

Type or Print Name of Person Completing the Form

Title

Signature

Return Address (Optional) (For communication from the Secretary of State related to this document, or if purchasing a copy of the filed document, enter the name of a person or company and the mailing address. This information will become public when filed. (SEE INSTRUCTIONS BEFORE COMPLETING.)

Name: []

Company:

Address:

City/State/Zip: []

LLC-1 **Articles of Organization of a Limited Liability Company (LLC)**

201625210087

To form a limited liability company in California, you can fill out this form, and submit for filing along with:

- A \$70 filing fee.
- A separate, non-refundable \$15 service fee also must be included, if you drop off the completed form.

Important! LLCs in California may have to pay a minimum \$800 yearly tax to the California Franchise Tax Board. For more information, go to <https://www.ftb.ca.gov>.

LLCs may not provide "professional services," as defined by California Corporations Code sections 13401(a) and 13401.3.

Note: Before submitting the completed form, you should consult with a private attorney for advice about your specific business needs.

FILED
Secretary of State
State of California
AUG 31 2016

lcc

This Space For Office Use Only

For questions about this form, go to www.sos.ca.gov/business/be/filing-tips.htm.

LLC Name (List the proposed LLC name exactly as it is to appear on the records of the California Secretary of State.)

① 776 Page Street, LLC

Proposed LLC Name

The name must include: LLC, L.L.C., Limited Liability Company, Limited Liability Co., Ltd. Liability Co. or Ltd. Liability Company; and may not include: bank, trust, trustee, incorporated, inc., corporation, or corp., insurer, or insurance company. For general entity name requirements and restrictions, go to www.sos.ca.gov/business/be/name-availability.htm.

Purpose

② The purpose of the limited liability company is to engage in any lawful act or activity for which a limited liability company may be organized under the California Revised Uniform Limited Liability Company Act.

LLC Addresses

③ a. 805 Jones Street, Berkeley CA 94710
Initial Street Address of Designated Office in CA - Do not list a P.O. Box *City (no abbreviations)* *State* *Zip*

b. _____
Initial Mailing Address of LLC, if different from 3a *City (no abbreviations)* *State* *Zip*

Service of Process (List a California resident or a California registered corporate agent that agrees to be your initial agent to accept service of process in case your LLC is sued. You may list any adult who lives in California. You may not list an LLC as the agent. Do not list an address if the agent is a California registered corporate agent as the address for service of process is already on file.)

④ a. Matthew Wadlund

Agent's Name

b. 805 Jones Street, Berkeley CA 94710
Agent's Street Address (if agent is not a corporation) - Do not list a P.O. Box *City (no abbreviations)* *State* *Zip*

Management (Check only one.)

⑤ The LLC will be managed by:

- One Manager More Than One Manager All Limited Liability Company Member(s)

This form must be signed by each organizer. If you need more space, attach extra pages that are 1-sided and on standard letter-sized paper (8 1/2" x 11"). All attachments are made part of these articles of organization.


Organizer - Sign here


Matthew Wadlund
Print your name here

Make check/money order payable to: **Secretary of State**
Upon filing, we will return one (1) uncertified copy of your filed document for free, and will certify the copy upon request and payment of a \$5 certification fee.

By Mail
Secretary of State
Business Entities, P.O. Box 944228
Sacramento, CA 94244-2280

Drop-Off
Secretary of State
1500 11th Street., 3rd Floor
Sacramento, CA 95814

16-793342

	Secretary of State Statement of Information (Limited Liability Company)	20	LLC-12
---	--	----	--------

FILED
Secretary of State
State of California
DEC 12 2016

IMPORTANT — Read instructions before completing this form.

Filing Fee - \$20.00

Copy Fees – Face Page \$1.00 & .50 for each attachment page;
Certification Fee - \$5.00

**See Secretary of State's
records for exact entity name.**
This Space For Office Use Only

1. Limited Liability Company Name 776 PAGE STREET	
2. 12-Digit Secretary of State File Number 201625210087	3. State or Place of Organization (only if formed outside of California)

4. Business Addresses

a. Street Address of Principal Office - Do not list a P.O. Box 805 JONES STREET	City (no abbreviations) BERKELEY	State CA	Zip Code 94710
b. Mailing Address of LLC, if different than item 4a	City (no abbreviations)	State	Zip Code
c. Street Address of California Office, if Item 4a is not in California - Do not list a P.O. Box	City (no abbreviations)	State CA	Zip Code

5. Manager(s) or Member(s) If no *managers* have been appointed or elected, provide the name and address of each *member*. At least one name and address must be listed. If the manager/member is an individual, complete Items 5a and 5c (leave Item 5b blank). If the manager/member is an entity, complete Items 5b and 5c (leave Item 5a blank). Note: The LLC cannot serve as its own manager or member. If the LLC has additional managers/members, enter the name(s) and addresses on Form LLC-12A (see instructions).

a. First Name, if an individual - Do not complete Item 5b MATTHEW	Middle Name	Last Name WADLUND	Suffix
b. Entity Name - Do not complete Item 5a			
c. Address 805 JONES STREET	City (no abbreviations) BERKELEY	State CA	Zip Code 94710

6. Agent for Service of Process Item 6a and 6b: If the agent is an individual, the agent must reside in California and Item 6a and 6b must be completed with the agent's name and California address. Item 6c: If the agent is a California Registered Corporate Agent, a current agent registration certificate must be on file with the California Secretary of State and Item 6c must be completed (leave Item 6a-6b blank).

a. California Agent's First Name (if agent is not a corporation) MATTHEW	Middle Name	Last Name WADLUND	Suffix
b. Street Address (if agent is not a corporation) - Do not list a P.O. Box 805 JONES STREET	City (no abbreviations) BERKELEY	State CA	Zip Code 94710
c. California Registered Corporate Agent's Name (if agent is a corporation) – Do not complete item 6a or 6b			

7. Type of Business

a. Describe the type of business or services of the Limited Liability Company REAL ESTATE

8. Chief Executive Officer, if elected or appointed

a. First Name MATTHEW	Middle Name	Last Name WADLUND	Suffix
b. Address 805 JONES STREET	City (no abbreviations) BERKELEY	State CA	Zip Code 94710

9. The information contained herein, including any attachments, is true and correct.

12/5/16
Date


MATTHEW WADLUND
Type or Print Name of Person Completing the Form

MANAGING MEMBER
Title

[Signature]
Signature

Return Address (Optional) (For communication from the Secretary of State related to this document, or if purchasing a copy of the filed document enter the name of a person or company and the mailing address. This information will become public when filed. SEE INSTRUCTIONS BEFORE COMPLETING.)

Name:	[]
Company:	[]
Address:	[]
City/State/Zip:	[]

 Secretary of State Statement of No Change (Limited Liability Company)	LLC-12NC
	<p>IMPORTANT — Read instructions before completing this form. This form may be used only if a complete Statement of Information has been filed previously and there has been no change.</p> <p>Filing Fee – \$20.00</p> <p>Copy Fee – \$1.00; Certification Fee - \$5.00 plus copy fee</p>

18-B91413

FILED

In the office of the Secretary of State
of the State of California

MAY 31, 2018

This Space For Office Use Only

1. Limited Liability Company Name (Enter the **exact** name of the LLC as it is recorded with the California Secretary of State. Note: If you registered in California using an alternate name, [see instructions](#).)

776 PAGE STREET, LLC

2. 12-Digit Secretary of State File Number

201625210087

3. State, Foreign Country or Place of Organization (only if formed outside of California)

CALIFORNIA

4. No Change Statement (Do not alter the No Change Statement. If there has been any change, please complete a Statement of Information (Form LLC-12).)

There has been no change in any of the information contained in the previous complete Statement of Information filed with the California Secretary of State.

5. The information contained herein is true and correct.

05/31/2018

Sean Kenmore

Member

Date

Type or Print Name of Person Completing the Form

Title

Signature

Return Address (Optional) (For communication from the Secretary of State related to this document, or if purchasing a copy of the filed document, enter the name of a person or company and the mailing address. This information will become public when filed. ([SEE INSTRUCTIONS](#) BEFORE COMPLETING.)

Name: []

Company:

Address:

City/State/Zip: []

LLC-1	Articles of Organization of a Limited Liability Company (LLC)
--------------	--

201625210057

To form a limited liability company in California, you can fill out this form, and submit for filing along with:

- A \$70 filing fee.
- A separate, non-refundable \$15 service fee also must be included, if you drop off the completed form.

Important! LLCs in California may have to pay a minimum \$800 yearly tax to the California Franchise Tax Board. For more information, go to <https://www.ftb.ca.gov>.

LLCs may not provide "professional services," as defined by California Corporations Code sections 13401(a) and 13401.3.

Note: Before submitting the completed form, you should consult with a private attorney for advice about your specific business needs.

FILED
Secretary of State
State of California

AUG 31 2016

llc

This Space For Office Use Only

For questions about this form, go to www.sos.ca.gov/business/be/filing-tips.htm.

LLC Name (List the proposed LLC name exactly as it is to appear on the records of the California Secretary of State.)

① 1442 Fifth Street, LLC

Proposed LLC Name

The name must include: LLC, L.L.C., Limited Liability Company, Limited Liability Co., Ltd. Liability Co. or Ltd. Liability Company; and may not include: bank, trust, trustee, incorporated, inc., corporation, or corp., insurer, or insurance company. For general entity name requirements and restrictions, go to www.sos.ca.gov/business/be/name-availability.htm.

Purpose

② The purpose of the limited liability company is to engage in any lawful act or activity for which a limited liability company may be organized under the California Revised Uniform Limited Liability Company Act.

LLC Addresses

③ a. 805 Jones Street, Berkeley CA 94710
Initial Street Address of Designated Office in CA - Do not list a P.O. Box *City (no abbreviations)* *State* *Zip*

b. _____
Initial Mailing Address of LLC, if different from 3a *City (no abbreviations)* *State* *Zip*

Service of Process (List a California resident or a California registered corporate agent that agrees to be your initial agent to accept service of process in case your LLC is sued. You may list any adult who lives in California. You may not list an LLC as the agent. Do not list an address if the agent is a California registered corporate agent as the address for service of process is already on file.)

④ a. Matthew Wadlund

Agent's Name

b. 805 Jones Street, Berkeley CA 94710
Agent's Street Address (if agent is not a corporation) - Do not list a P.O. Box *City (no abbreviations)* *State* *Zip*

Management (Check only one.)

⑤ The LLC will be managed by:

- One Manager More Than One Manager All Limited Liability Company Member(s)

This form must be signed by each organizer. If you need more space, attach extra pages that are 1-sided and on standard letter-sized paper (8 1/2" x 11"). All attachments are made part of these articles of organization.


Organizer - Sign here

Matthew Wadlund
Print your name here


Make check/money order payable to: **Secretary of State**
Upon filing, we will return one (1) uncertified copy of your filed document for free, and will certify the copy upon request and payment of a \$5 certification fee.

By Mail
Secretary of State
Business Entities, P.O. Box 944228
Sacramento, CA 94244-2280

Drop-Off
Secretary of State
1500 11th Street., 3rd Floor
Sacramento, CA 95814

16-793344

FILED
Secretary of State
State of California
DEC 12 2016

	Secretary of State Statement of Information (Limited Liability Company)	20	LLC-12
	IMPORTANT — Read instructions before completing this form. Filing Fee - \$20.00 Copy Fees – Face Page \$1.00 & .50 for each attachment page; Certification Fee - \$5.00		

See Secretary of State's records for exact entity name.

This Space For Office Use Only

1. Limited Liability Company Name 1442 FIFTH STREET	
2. 12-Digit Secretary of State File Number 2016 2521005A	3. State or Place of Organization (only if formed outside of California)

4. Business Addresses			
a. Street Address of Principal Office - Do not list a P.O. Box 805 JONES STREET	City (no abbreviations) BERKELEY	State CA	Zip Code 94710
b. Mailing Address of LLC, if different than item 4a	City (no abbreviations)	State	Zip Code
c. Street Address of California Office, if Item 4a is not in California - Do not list a P.O. Box	City (no abbreviations)	State CA	Zip Code

5. Manager(s) or Member(s) If no *managers* have been appointed or elected, provide the name and address of each *member*. At least one name and address must be listed. If the manager/member is an individual, complete items 5a and 5c (leave item 5b blank). If the manager/member is an entity, complete items 5b and 5c (leave item 5a blank). Note: The LLC cannot serve as its own manager or member. If the LLC has additional managers/members, enter the name(s) and addresses on Form LLC-12A (see instructions).

a. First Name, if an individual - Do not complete Item 5b MATTHEW	Middle Name	Last Name WADLUND	Suffix
b. Entity Name - Do not complete Item 5a			
c. Address 805 JONES STREET	City (no abbreviations) BERKELEY	State CA	Zip Code 94710

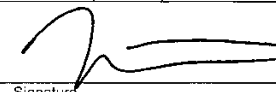
6. Agent for Service of Process **Item 6a and 6b:** If the agent is an individual, the agent must reside in California and Item 6a and 6b must be completed with the agent's name and California address. **Item 6c:** If the agent is a California Registered Corporate Agent, a current agent registration certificate must be on file with the California Secretary of State and Item 6c must be completed (leave Item 6a-6b blank).

a. California Agent's First Name (if agent is not a corporation) MATTHEW	Middle Name	Last Name WADLUND	Suffix
b. Street Address (if agent is not a corporation) - Do not list a P.O. Box 805 JONES STREET	City (no abbreviations) BERKELEY	State CA	Zip Code 94710
c. California Registered Corporate Agent's Name (if agent is a corporation) - Do not complete item 6a or 6b			

7. Type of Business
Describe the type of business or services of the Limited Liability Company REAL ESTATE


8. Chief Executive Officer, if elected or appointed			
a. First Name MATTHEW	Middle Name	Last Name WADLUND	Suffix
b. Address 805 JONES STREET	City (no abbreviations) BERKELEY	State CA	Zip Code 94710

9. The information contained herein, including any attachments, is true and correct.

12/5/16	MATTHEW WADLUND	MANAGING MEMBER	
Date	Type or Print Name of Person Completing the Form	Title	Signature

Return Address (Optional) (For communication from the Secretary of State related to this document, or if purchasing a copy of the filed document enter the name of a person or company and the mailing address. This information will become public when filed. SEE INSTRUCTIONS BEFORE COMPLETING.)

Name: []
 Company: []
 Address: []
 City/State/Zip: []

	Secretary of State Statement of No Change (Limited Liability Company)	LLC-12NC
<p>IMPORTANT — Read instructions before completing this form. This form may be used only if a complete Statement of Information has been filed previously and there has been no change.</p> <p>Filing Fee – \$20.00</p> <p>Copy Fee – \$1.00; Certification Fee - \$5.00 plus copy fee</p>		

18-B91406

FILED

In the office of the Secretary of State
of the State of California

MAY 31, 2018

This Space For Office Use Only

1. Limited Liability Company Name (Enter the **exact** name of the LLC as it is recorded with the California Secretary of State. Note: If you registered in California using an alternate name, [see instructions](#).)

1442 FIFTH STREET, LLC

2. 12-Digit Secretary of State File Number

201625210057

3. State, Foreign Country or Place of Organization (only if formed outside of California)

CALIFORNIA

4. No Change Statement (Do not alter the No Change Statement. If there has been any change, please complete a Statement of Information (Form LLC-12).)

There has been no change in any of the information contained in the previous complete Statement of Information filed with the California Secretary of State.

5. The information contained herein is true and correct.

05/31/2018

Date

Sean Kenmore

Type or Print Name of Person Completing the Form

Member

Title

Signature

Return Address (Optional) (For communication from the Secretary of State related to this document, or if purchasing a copy of the filed document, enter the name of a person or company and the mailing address. This information will become public when filed. ([SEE INSTRUCTIONS BEFORE COMPLETING](#).)

Name: []

Company:

Address:

City/State/Zip: []

LLC-1 **Articles of Organization of a Limited Liability Company (LLC)**

201625210418

To form a limited liability company in California, you can fill out this form, and submit for filing along with:

- A \$70 filing fee.
- A separate, non-refundable \$15 service fee also must be included, if you **drop off** the completed form.

Important! LLCs in California may have to pay a minimum \$800 yearly tax to the California Franchise Tax Board. For more information, go to <https://www.ftb.ca.gov>.

LLCs may not provide "professional services," as defined by California Corporations Code sections 13401(a) and 13401.3.

Note: Before submitting the completed form, you should consult with a private attorney for advice about your specific business needs.

FILED
Secretary of State
State of California
AUG 31 2016



1 cc

This Space For Office Use Only

For questions about this form, go to www.sos.ca.gov/business/be/filing-tips.htm.

LLC Name (List the proposed LLC name exactly as it is to appear on the records of the California Secretary of State.)

① 1444 Fifth Street, LLC

Proposed LLC Name

The name **must** include: LLC, L.L.C., Limited Liability Company, Limited Liability Co., Ltd. Liability Co. or Ltd. Liability Company; and **may not** include: bank, trust, trustee, incorporated, Inc., corporation, or corp., insurer, or insurance company. For general entity name requirements and restrictions, go to www.sos.ca.gov/business/be/name-availability.htm.

Purpose

② The purpose of the limited liability company is to engage in any lawful act or activity for which a limited liability company may be organized under the California Revised Uniform Limited Liability Company Act.

LLC Addresses

③ a. 805 Jones Street, Berkeley CA 94710
Initial Street Address of Designated Office in CA - Do not list a P.O. Box *City (no abbreviations)* *State* *Zip*

b. _____
Initial Mailing Address of LLC, if different from 3a *City (no abbreviations)* *State* *Zip*

Service of Process (List a California resident or a California registered corporate agent that agrees to be your initial agent to accept service of process in case your LLC is sued. You may list any adult who lives in California. You may not list an LLC as the agent. Do not list an address if the agent is a California registered corporate agent as the address for service of process is already on file.)


④ a. Matthew Wadlund
Agent's Name

b. 805 Jones Street, Berkeley CA 94710
Agent's Street Address (if agent is not a corporation) - Do not list a P.O. Box *City (no abbreviations)* *State* *Zip*

Management (Check only one.)

- ⑤ The LLC will be managed by:
- One Manager More Than One Manager All Limited Liability Company Member(s)

This form must be signed by each organizer. If you need more space, attach extra pages that are 1-sided and on standard letter-sized paper (8 1/2" x 11"). All attachments are made part of these articles of organization.


Organizer - Sign here

Matthew Wadlund
Print your name here


Make check/money order payable to: **Secretary of State**
Upon filing, we will return one (1) uncertified copy of your filed document for free, and will certify the copy upon request and payment of a \$5 certification fee.

By Mail
Secretary of State
Business Entities, P.O. Box 944228
Sacramento, CA 94244-2280

Drop-Off
Secretary of State
1500 11th Street., 3rd Floor
Sacramento, CA 95814

16-793345

FILED
Secretary of State
State of California
DEC 12 2016

	Secretary of State Statement of Information (Limited Liability Company)	20	LLC-12
	IMPORTANT — Read instructions before completing this form.		

IMPORTANT — Read instructions before completing this form.

Filing Fee - \$20.00

Copy Fees – Face Page \$1.00 & .50 for each attachment page;
Certification Fee - \$5.00

See Secretary of State's
records for exact entity name.
This Space For Office Use Only

1. Limited Liability Company Name 1444 FIFTH STREET	
2. 12-Digit Secretary of State File Number 201625210418	3. State or Place of Organization (only if formed outside of California)

4. Business Addresses			
a. Street Address of Principal Office - Do not list a P.O. Box 805 JONES STREET	City (no abbreviations) BERKELEY	State CA	Zip Code 94710
b. Mailing Address of LLC, if different than item 4a	City (no abbreviations)	State	Zip Code
c. Street Address of California Office, if Item 4a is not in California - Do not list a P.O. Box	City (no abbreviations)	State CA	Zip Code

If no **managers** have been appointed or elected, provide the name and address of each **member**. At least one name **and** address must be listed. If the manager/member is an individual, complete Items 5a and 5c (leave Item 5b blank). If the manager/member is an entity, complete Items 5b and 5c (leave Item 5a blank). Note: The LLC cannot serve as its own manager or member. If the LLC has additional managers/members, enter the name(s) and addresses on Form LLC-12A (see instructions).

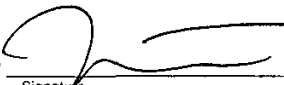
5. Manager(s) or Member(s)			
a. First Name, if an individual - Do not complete Item 5b MATTHEW	Middle Name	Last Name WADLUND	Suffix
b. Entity Name - Do not complete Item 5a			
c. Address 805 JONES STREET	City (no abbreviations) BERKELEY	State CA	Zip Code 94710

6. Agent for Service of Process			
Item 6a and 6b: If the agent is an individual, the agent must reside in California and Item 6a and 6b must be completed with the agent's name and California address. Item 6c: If the agent is a California Registered Corporate Agent, a current agent registration certificate must be on file with the California Secretary of State and Item 6c must be completed (leave Item 6a-6b blank).			
a. California Agent's First Name (if agent is not a corporation) MATTHEW	Middle Name	Last Name WADLUND	Suffix
b. Street Address (if agent is not a corporation) - Do not list a P.O. Box 805 JONES STREET	City (no abbreviations) BERKELEY	State CA	Zip Code 94710
c. California Registered Corporate Agent's Name (if agent is a corporation) – Do not complete item 6a or 6b			


7. Type of Business	
a. Describe the type of business or services of the Limited Liability Company REAL ESTATE	

8. Chief Executive Officer, if elected or appointed			
a. First Name MATTHEW	Middle Name	Last Name WADLUND	Suffix
b. Address 805 JONES STREET	City (no abbreviations) BERKELEY	State CA	Zip Code 94710

9. The information contained herein, including any attachments, is true and correct.

12/5/16 Date	MATTHEW WADLUND Type or Print Name of Person Completing the Form	MANAGING MEMBER Title	 Signature
-----------------	---	--------------------------	--

Return Address (Optional) (For communication from the Secretary of State related to this document, or if purchasing a copy of the filed document enter the name of a person or company and the mailing address. This information will become public when filed. SEE INSTRUCTIONS BEFORE COMPLETING.)	
Name:	[]
Company:	
Address:	
City/State/Zip:	[]

 Secretary of State Statement of No Change (Limited Liability Company)	LLC-12NC
	<p>IMPORTANT — Read instructions before completing this form. This form may be used only if a complete Statement of Information has been filed previously and there has been no change.</p> <p>Filing Fee – \$20.00</p> <p>Copy Fee – \$1.00; Certification Fee - \$5.00 plus copy fee</p>

18-B91396

FILED

In the office of the Secretary of State
of the State of California

MAY 31, 2018

This Space For Office Use Only

1. Limited Liability Company Name (Enter the **exact** name of the LLC as it is recorded with the California Secretary of State. Note: If you registered in California using an alternate name, [see instructions](#).)

1444 FIFTH STREET, LLC

2. 12-Digit Secretary of State File Number

201625210418

3. State, Foreign Country or Place of Organization (only if formed outside of California)

CALIFORNIA

4. No Change Statement (Do not alter the No Change Statement. If there has been any change, please complete a Statement of Information (Form LLC-12).)

There has been no change in any of the information contained in the previous complete Statement of Information filed with the California Secretary of State.

5. The information contained herein is true and correct.

05/31/2018

Sean Kenmore

Member

Date

Type or Print Name of Person Completing the Form

Title

Signature

Return Address (Optional) (For communication from the Secretary of State related to this document, or if purchasing a copy of the filed document, enter the name of a person or company and the mailing address. This information will become public when filed. ([SEE INSTRUCTIONS BEFORE COMPLETING](#).)

Name: []

Company:

Address:

City/State/Zip: []

LLC-1 **Articles of Organization of a Limited Liability Company (LLC)**

201625210414

To form a limited liability company in California, you can fill out this form, and submit for filing along with:

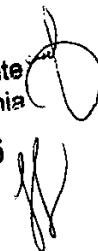
- A **\$70** filing fee.
- A separate, non-refundable **\$15** service fee also must be included, if you **drop off** the completed form.

Important! LLCs in California may have to pay a minimum \$800 yearly tax to the California Franchise Tax Board. For more information, go to <https://www.ftb.ca.gov>.

LLCs may not provide "professional services," as defined by California Corporations Code sections 13401(a) and 13401.3.

Note: *Before submitting the completed form, you should consult with a private attorney for advice about your specific business needs.*

FILED
Secretary of State
State of California
AUG 31 2016



l c c

This Space For Office Use Only

For questions about this form, go to www.sos.ca.gov/business/be/filing-tips.htm.

LLC Name (List the proposed LLC name exactly as it is to appear on the records of the California Secretary of State.)

① 1446 Fifth Street, LLC

Proposed LLC Name

The name **must** include: LLC, L.L.C., Limited Liability Company, Limited Liability Co., Ltd. Liability Co. or Ltd. Liability Company; and **may not** include: bank, trust, trustee, incorporated, inc., corporation, or corp., insurer, or insurance company. For general entity name requirements and restrictions, go to www.sos.ca.gov/business/be/name-availability.htm.

Purpose

② The purpose of the limited liability company is to engage in any lawful act or activity for which a limited liability company may be organized under the California Revised Uniform Limited Liability Company Act.

LLC Addresses

③ a. 805 Jones Street, Berkeley CA 94710
Initial Street Address of Designated Office in CA - Do not list a P.O. Box *City (no abbreviations)* *State* *Zip*

b. _____
Initial Mailing Address of LLC, if different from 3a *City (no abbreviations)* *State* *Zip*

Service of Process (List a California resident or a California registered corporate agent that agrees to be your initial agent to accept service of process in case your LLC is sued. You may list any adult who lives in California. You may **not** list an LLC as the agent. **Do not** list an address if the agent is a California registered corporate agent as the address for service of process is already on file.)

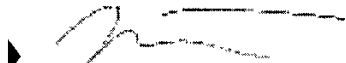
④ a. Matthew Wadlund
Agent's Name

b. 805 Jones Street, Berkeley CA 94710
Agent's Street Address (if agent is not a corporation) - Do not list a P.O. Box *City (no abbreviations)* *State* *Zip*

Management (Check only one.)

- ⑤ The LLC will be managed by:
- One Manager More Than One Manager All Limited Liability Company Member(s)

This form must be signed by each organizer. If you need more space, attach extra pages that are 1-sided and on standard letter-sized paper (8 1/2" x 11"). All attachments are made part of these articles of organization.


Organizer - Sign here

Matthew Wadlund
Print your name here


Make check/money order payable to: **Secretary of State**
Upon filing, we will return one (1) uncertified copy of your filed document for free, and will certify the copy upon request and payment of a \$5 certification fee.

By Mail
Secretary of State
Business Entities, P.O. Box 944228
Sacramento, CA 94244-2280

Drop-Off
Secretary of State
1500 11th Street., 3rd Floor
Sacramento, CA 95814

16-793346

FILED
Secretary of State
State of California
DEC 12 2016

	Secretary of State Statement of Information (Limited Liability Company)	20	LLC-12
	IMPORTANT — Read instructions before completing this form. Filing Fee - \$20.00 Copy Fees – Face Page \$1.00 & .50 for each attachment page; Certification Fee - \$5.00		

See Secretary of State's records for exact entity name.

This Space For Office Use Only

1. Limited Liability Company Name		1446 FIFTH STREET	
2. 12-Digit Secretary of State File Number	3. State or Place of Organization (only if formed outside of California)		
201625210414			

4. Business Addresses			
a. Street Address of Principal Office - Do not list a P.O. Box	City (no abbreviations)	State	Zip Code
805 JONES STREET	BERKELEY	CA	94710
b. Mailing Address of LLC, if different than item 4a	City (no abbreviations)	State	Zip Code
c. Street Address of California Office, if Item 4a is not in California - Do not list a P.O. Box	City (no abbreviations)	State	Zip Code
		CA	

5. Manager(s) or Member(s) If no managers have been appointed or elected, provide the name and address of each member. At least one name and address must be listed. If the manager/member is an individual, complete Items 5a and 5c (leave Item 5b blank). If the manager/member is an entity, complete Items 5b and 5c (leave Item 5a blank). Note: The LLC cannot serve as its own manager or member. If the LLC has additional managers/members, enter the name(s) and addresses on Form LLC-12A (see instructions).

a. First Name, if an individual - Do not complete Item 5b	Middle Name	Last Name	Suffix
MATTHEW		WADLUND	
b. Entity Name - Do not complete Item 5a			
c. Address	City (no abbreviations)	State	Zip Code
805 JONES STREET	BERKELEY	CA	94710

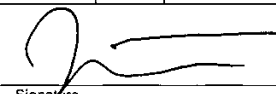
6. Agent for Service of Process Item 6a and 6b: If the agent is an individual, the agent must reside in California and Item 6a and 6b must be completed with the agent's name and California address. Item 6c: If the agent is a California Registered Corporate Agent, a current agent registration certificate must be on file with the California Secretary of State and Item 6c must be completed (leave Item 6a-6b blank).

a. California Agent's First Name (if agent is not a corporation)	Middle Name	Last Name	Suffix
MATTHEW		WADLUND	
b. Street Address (if agent is not a corporation) - Do not list a P.O. Box	City (no abbreviations)	State	Zip Code
805 JONES STREET	BERKELEY	CA	94710
c. California Registered Corporate Agent's Name (if agent is a corporation) - Do not complete item 6a or 6b			


7. Type of Business
a. Describe the type of business or services of the Limited Liability Company
REAL ESTATE

8. Chief Executive Officer, if elected or appointed			
a. First Name	Middle Name	Last Name	Suffix
MATTHEW		WADLUND	
b. Address	City (no abbreviations)	State	Zip Code
805 JONES STREET	BERKELEY	CA	94710

9. The information contained herein, including any attachments, is true and correct.

12/5/16	MATTHEW WADLUND	MANAGING MEMBER	
Date	Type or Print Name of Person Completing the Form	Title	Signature

Return Address (Optional) (For communication from the Secretary of State related to this document, or if purchasing a copy of the filed document enter the name of a person or company and the mailing address. This information will become public when filed. SEE INSTRUCTIONS BEFORE COMPLETING.)
Name: []
Company: []
Address: []
City/State/Zip: []

 Secretary of State Statement of No Change (Limited Liability Company)	LLC-12NC
	<p>IMPORTANT — Read instructions before completing this form. This form may be used only if a complete Statement of Information has been filed previously and there has been no change.</p> <p>Filing Fee – \$20.00</p> <p>Copy Fee – \$1.00; Certification Fee - \$5.00 plus copy fee</p>

18-B91353

FILED

In the office of the Secretary of State
of the State of California

MAY 31, 2018

This Space For Office Use Only

1. Limited Liability Company Name (Enter the **exact** name of the LLC as it is recorded with the California Secretary of State. Note: If you registered in California using an alternate name, [see instructions](#).)

1446 FIFTH STREET, LLC

2. 12-Digit Secretary of State File Number

201625210414

3. State, Foreign Country or Place of Organization (only if formed outside of California)

CALIFORNIA

4. No Change Statement (Do not alter the No Change Statement. If there has been any change, please complete a Statement of Information (Form LLC-12).)

There has been no change in any of the information contained in the previous complete Statement of Information filed with the California Secretary of State.

5. The information contained herein is true and correct.

05/31/2018

Sean Kenmore

Member

Date

Type or Print Name of Person Completing the Form

Title

Signature

Return Address (Optional) (For communication from the Secretary of State related to this document, or if purchasing a copy of the filed document, enter the name of a person or company and the mailing address. This information will become public when filed. ([SEE INSTRUCTIONS BEFORE COMPLETING](#).)

Name: []

Company:

Address:

City/State/Zip: []

Exhibit B



Alameda County, California

Clerk-Recorder Web Access

Welcome Visitor.

[View Basket](#)

Welcome	FBN	Marriage	Official Public Records	FAQ
---------	-----	----------	-------------------------	-----

Document Access

Criteria: Party Name Begins With ARRIAZA Name Type is Grantor Document Type is DEED
Showing Records 1 through 25 (34 records found as of 04/15/2019 07:48:43 AM [count again](#))

[Click here for Search Instructions](#)

Other Options
[New Search](#)
[Refine Search](#)

Page 1

Sort By:

#	<input type="checkbox"/>	Instrument # Book-Page	Date Filed	Document Type	Name Associated Name	Index Status
1	<input type="checkbox"/>	2005117863	03/25/2005	DEED	[R] ARRIAZA DENISE (+) [E] HEINZ STREET LOFTS LLC	Perm
2	<input type="checkbox"/>	2005394246	09/14/2005	DEED	[R] ARRIAZA DENISE (+) [E] SAN PABLO AVENUE 2747 LLC	Perm
3	<input type="checkbox"/>	2008092236	03/14/2008	DEED	[R] ARRIAZA DENISE (+) [E] OLSON CAROL EDWARD TR (+)	Perm
4	<input type="checkbox"/>	2008092237	03/14/2008	DEED	[R] ARRIAZA DENISE (+) [E] OLSON CARL E (+)	Perm
5	<input type="checkbox"/>	2016068331	03/22/2016	DEED	[R] ARRIAZA DENISE (+) [E] 1309 MADISON LLC	Perm
6	<input type="checkbox"/>	2016177172	07/14/2016	DEED	[R] ARRIAZA DENISE (+) [E] BERNSTEIN EVE TR (+)	Perm
7	<input checked="" type="checkbox"/>	2016284282	10/31/2016	DEED	[R] ARRIAZA DENISE (+) [E] 770 PAGE STREET LLC	Perm
8	<input checked="" type="checkbox"/>	2016284283	10/31/2016	DEED	[R] ARRIAZA DENISE (+) [E] 776 PAGE STREET LLC	Perm
9	<input checked="" type="checkbox"/>	2016284284	10/31/2016	DEED	[R] ARRIAZA DENISE (+)	Perm

					[E] 1442 FIFTH STREET LLC	
10	<input checked="" type="checkbox"/>	2016284285	10/31/2016	DEED	[R] ARRIAZA DENISE (+) [E] 1444 FIFTH STREET LLC	Perm
11	<input checked="" type="checkbox"/>	2016284286	10/31/2016	DEED	[R] ARRIAZA DENISE (+) [E] 1446 FIFTH STREET LLC	Perm
12	<input checked="" type="checkbox"/>	2016284287	10/31/2016	DEED	[R] ARRIAZA DENISE (+) [E] 1435 FIFTH STREET LLC	Perm
13	<input type="checkbox"/>	2017111912	05/22/2017	DEED	[R] ARRIAZA DENISE (+) [E] BEAM DEVELOPMENT LLC	Perm
14	<input type="checkbox"/>	93201542 0-0	06/09/1993	DEED	[R] ARRIAZA DENISE MARIE [E] ARRIAZA RAUL	Perm
15	<input type="checkbox"/>	99177881 0-0	05/06/1999	DEED	[R] ARRIAZA DILCIA [E] ARRIAZA GUSTAVO	Perm
16	<input type="checkbox"/>	2002008020 0-0	01/08/2002	DEED	[R] ARRIAZA DILCIA [E] ARRIAZA GUSTAVO	Perm
17	<input type="checkbox"/>	2008086058	03/10/2008	DEED	[R] ARRIAZA GILBERTO (+) [E] ARRIAZA GILBERTO TR (+)	Perm
18	<input type="checkbox"/>	2008086059	03/10/2008	DEED	[R] ARRIAZA GILBERTO (+) [E] ARRIAZA GILBERTO TR (+)	Perm
19	<input type="checkbox"/>	2007165802	04/27/2007	DEED	[R] ARRIAZA GUSTAVO JR [E] ARRIAZA GUSTAVO JR (+)	Perm
20	<input type="checkbox"/>	2006269995	07/12/2006	DEED	[R] ARRIAZA JULIO C [E] ATANACIO ANNIE HOPE	Perm
21	<input type="checkbox"/>	93201543 0-0	06/09/1993	DEED	[R] ARRIAZA RAUL (+) [E] CITY HAYWARD	Perm
22	<input type="checkbox"/>	2005117863	03/25/2005	DEED	[R] ARRIAZA RAUL (+) [E] HEINZ STREET LOFTS LLC	Perm
23	<input type="checkbox"/>	2005394246	09/14/2005	DEED	[R] ARRIAZA RAUL (+) [E] SAN PABLO AVENUE 2747 LLC	Perm

24	<input type="checkbox"/>	2008092236	03/14/2008	DEED	[R] ARRIAZA RAUL (+) [E] OLSON CAROL EDWARD TR (+)	Perm
25	<input type="checkbox"/>	2008092237	03/14/2008	DEED	[R] ARRIAZA RAUL (+) [E] OLSON CARL E (+)	Perm

Other Options
[New Search](#)
[Refine Search](#)

⏪ ⏩ Page 1 ⏴ ⏵

Sort By:

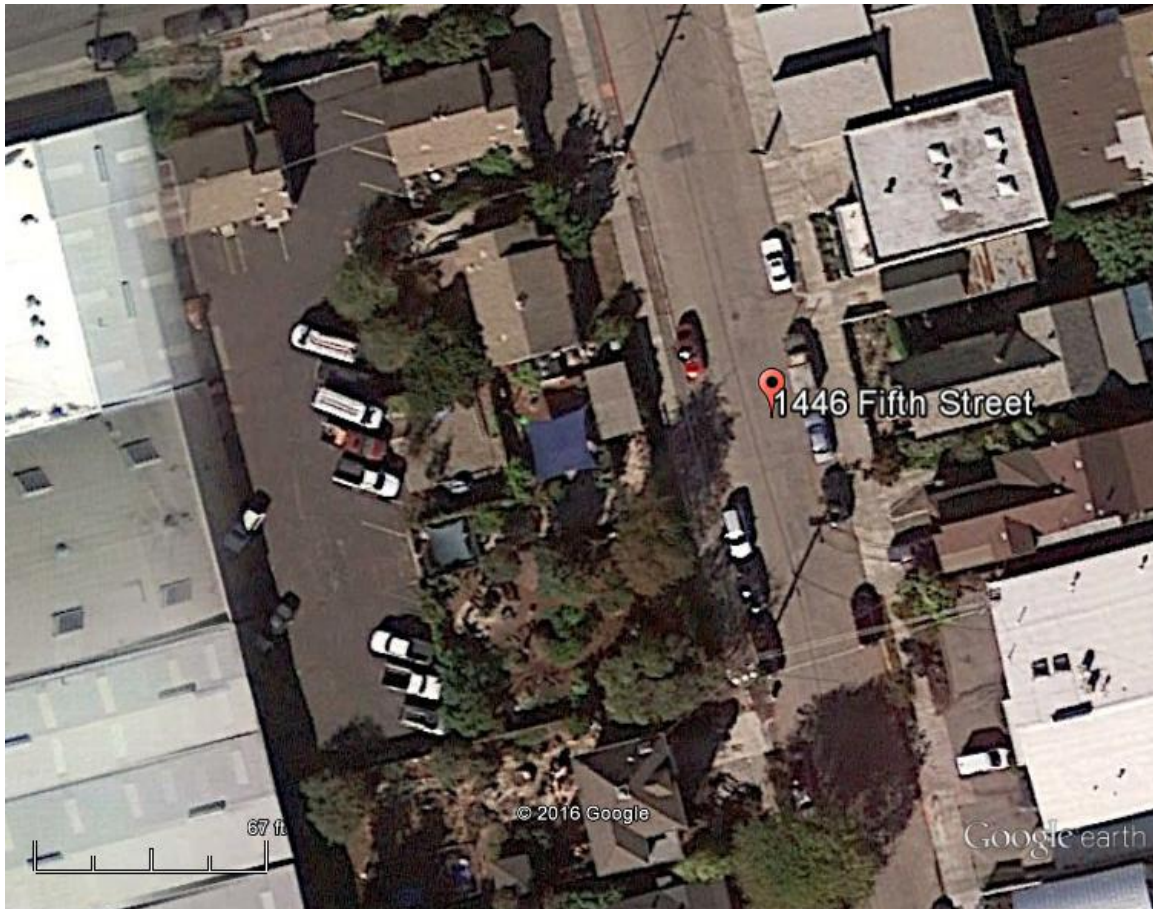
Exhibit C

The screenshot displays the Alameda County Parcel Viewer interface. At the top left is the Alameda County Assessor's Office logo and the text "Parcel Viewer Alameda County Assessor's Office". A search bar with the placeholder text "I want to..." is positioned below the header. The main map area shows a grid of parcels with various APNs (Assessor's Parcel Numbers) such as 59-2338-16-3, 59-2324-33, 59-2325-18-3, and 59-2326-15-1. The map is overlaid with a grid and includes street names like PAGE ST and 5TH ST. A sidebar on the left contains navigation icons for home, zoom in, zoom out, and layers. At the bottom left, there is a location pin icon and the text "Alameda C...". A scale bar at the bottom center shows distances of 0, 30, and 60 feet. The bottom right corner features a small icon.

Exhibit D

Peters & Ross
Geotechnical & Geoenvironmental Consultants

**Geotechnical Investigation for
1444 & 1446 5th Street Development**



1444 & 1446 5th Street, Berkeley, California

Peters & Ross
***Geotechnical & Geoenvironmental
Consultants***

December 16, 2016
Project No. 16183.001

Mr. Matthew Wadlund
Wadlund + Design Studio
805 Jones Street
Berkeley, CA 94710

**Geotechnical Investigation
1444 and 1446 5th Street, Berkeley, California**

Dear Mr. Wadlund:

In accordance with your authorization, Peters & Ross has completed a geotechnical investigation for the above referenced project. The accompanying report presents the results of our field investigation, laboratory testing, and engineering analyses. Based on this information, it is Peters & Ross' opinion that the site is suitable for the proposed improvements.

Peters & Ross should also be retained:

- to review geotechnical aspects of project plans and specifications,
- to provide supplemental recommendations should significant changes in the planned improvements be made, and
- to provide geotechnical engineering observation and testing services during construction, in order to check that the recommendations presented in this report are properly implemented into the completed project.

We appreciate the opportunity to provide geotechnical engineering services to you. If you have any questions, please call.

Sincerely,



Peter K. Mundy, P.E., G.E.
Geotechnical Engineer 2217



1444 and 1446 5th Street
Project No. 16183.001

December 16, 2016
Page 1 of 10

INTRODUCTION

This report presents the results of a geotechnical investigation performed by Peters & Ross for the planned mixed use development to be constructed at 1444 and 1446 5th Street in Berkeley, California. The location of the project is shown on the Site Vicinity Map, Figure 1. The ground surface topography near the site is shown on Figure 2.

Project Description

The project site is a relatively level rectangular lot with total maximum plan dimensions of about 100 feet by 125 feet, located on the west side of 5th Street. The site is currently occupied by a parking lot and a garden area. Plans are to demolish the existing parking lot and garden and to develop new single-family homes and a mixed use facility.

Scope of Services

Peters & Ross services on the project were limited to the following:

- Drilling three exploratory test borings, extending one boring to 50 feet
- Logging the test borings and obtaining samples of the materials encountered
- Performing laboratory tests on selected samples
- Performing engineering analyses sufficient to develop conclusions and recommendations regarding:
 1. Site geology and seismicity including liquefaction susceptibility;
 2. Soil and groundwater conditions;
 3. The most appropriate foundation type for the new buildings;
 4. Geotechnical design parameters for the recommended foundation type;
 5. Geotechnical aspects of site drainage; and
 6. Construction considerations.
- Preparing this report.

FIELD EXPLORATION AND LABORATORY TESTING

Subsurface conditions were explored by drilling three test borings to a maximum depth of 50 feet using a truck mounted CME-75 drill rig. The location of the borings are shown on the Site Plan, Figure 3. Samples of the materials encountered in the borings were obtained at frequent depth intervals, for field classification and laboratory testing. A description of the drilling and sampling equipment used and other details of the subsurface exploration, as well as the logs of the test borings, are presented in Appendix A. The laboratory tests performed are discussed in Appendix B.

1444 and 1446 5th Street
Project No. 16183.001

December 16, 2016
Page 2 of 10

SITE CONDITIONS

Geology and Seismicity

The site is located in the Coast Ranges geomorphic province of California. The Coast Ranges show strong northwest-southeast geologic trends induced by folds and faults. The site geology has been mapped by Radbruch (1957) and updated by Seismic Hazard Zone for the Richmond Quadrangle (California Geological Survey, 2003). The geologic unit mapped at the site by Radbruch is described as the Quaternary Temescal formation, which is comprised of alluvial-fan deposits with interfingering lenses of clayey gravel, sandy silty clay, and sand-clay-silt mixtures. The CGS (2003) maps the site as having surficial soils of the Quaternary Holocene alluvial fan deposits and deeper soils of the older Quaternary Pleistocene alluvial fan deposits.

The site is located in a seismically active area of California. Several major fault systems capable of generating strong earthquake ground shaking have been identified near the site. The site is about 3.5 kilometers southwest of the active trace of the Hayward Fault. This and other regional faults are capable of generating large magnitude earthquakes that could cause strong groundshaking at the site. The site is located within an area susceptible to liquefaction as shown on the State Seismic Hazard Zones map.

Subsurface Conditions

Generally, 4.5 to 8.0 feet of sandy fat clays blanket the site. Atterberg limits tests of the fat clay materials taken at a depth of 4.5 feet in Boring 1 indicate a liquid limit of 58 percent and a plasticity index of 40 percent with 60 percent passing the No. 200 sieve. These results indicate that the sandy fat clay materials have a very high expansion potential (expansive soils shrink and swell in response to changes in moisture). The fat clay materials were underlain by layers of sandy lean clays and sandy lean clays with gravel materials which extended to the depths explored.

Groundwater

Groundwater was encountered at a depth of 25 feet in Boring 1, and 15 feet in Borings 2 and 3, during drilling, and rose to 4.5 feet. Upon completion of the drilling the boreholes were backfilled with grout in accordance with the City of Berkeley permit. It should be noted that groundwater levels typically fluctuate a few feet seasonally.

CONCLUSIONS AND RECOMMENDATIONS

From a soil and foundation engineering standpoint, it is our opinion that the site is suitable for the proposed development. The primary geotechnical concern is the presence of highly expansive clay soils. However, all of the conclusions and recommendations

1444 and 1446 5th Street
Project No. 16183.001

December 16, 2016
Page 3 of 10

presented in this report should be incorporated in the design and construction of the project to avoid possible soil and foundation problems.

1.0 Expansive Soils

The clayey soils that blanket the site have a very high expansion potential. When expansive soils are subjected to increases in moisture content, such as during the rainy season, they swell if unconfined. If concrete slabs or shallow foundations confine the expansive soils, they can exert significant pressures when subjected to moisture increases. These pressures can cause slabs and shallow foundations to heave and crack. When the soils dry, they shrink, causing slabs and shallow foundations to settle.

Expansive clays are common in the San Francisco Bay Area. Over the past several decades, expansive soil movements have caused extensive damage to residential and commercial structures, slabs, and pavements throughout the Bay Area. The local climate, with its pronounced wet and dry seasons, is a main cause of significant seasonal moisture changes that cause the expansive soils to shrink and swell.

There are a number of methods available for reducing the adverse effects of expansive soils. These include removing the expansive soils, replacing expansive soils with non-expansive engineered fill, deepening foundations to develop support below the zone of significant seasonal moisture change (about 32 to 48 inches), designing foundation/slab systems to resist uplift pressures generated by swelling soils, and/or providing drainage and landscaping to minimize seasonal moisture fluctuations in the near-surface soils. Drainage and landscaping improvements adjacent to slabs and foundations should be designed to promote efficient runoff during the rainy season, and provide occasional sprinkling during the summer.

In order to minimize the adverse effects of expansive soils, the proposed improvements should be supported on a deepened footing or a stiffened reinforced thin mat foundation system.

2.0 Seismic Hazards

Potential seismic hazards resulting from a nearby moderate to major earthquake can generally be classified as primary and secondary. The primary effect is ground rupture, also called surface faulting. The common secondary seismic hazards include ground shaking, and liquefaction. The following sections present a discussion of these hazards as they apply to the site. Based on topographic and lithologic data, the risk of soil liquefaction, lateral spreading, landslides, tsunamis, flooding or seiches is considered low to negligible at this site.

1444 and 1446 5th Street
Project No. 16183.001

December 16, 2016
Page 4 of 10

2.1 Ground Rupture

There are no known active faults crossing the site and the property is not located within an Earthquake Fault Special Study Zone. Therefore the risk of fault rupture is considered low at the site.

2.2 Ground Shaking

An earthquake of moderate to high magnitude could cause considerable ground shaking at the site. To mitigate the shaking effects, all structures should be designed using sound engineering judgment and the 2013 California Building Code (CBC) requirements. According to USGS 2013 Design Maps website, the MCE peak ground acceleration for a CBC Site Class D (Stiff Soils) is 0.770g with a long period transition-period of 8 seconds.

2.3 Liquefaction

Soil liquefaction results from loss of strength during cyclic loading, such as imposed by earthquakes. Soils most susceptible to liquefaction are clean, loose, saturated, uniformly graded, fine-grained sands. The materials encountered in the three exploratory test borings consisted of stiff sandy lean clays. We judge that the potential for liquefaction during seismic shaking at the site is low.

2.4 Lateral Spreading

Lateral spread is the finite, lateral displacement of sloping ground (0.1 to <6 percent) as a result of pore pressure buildup or liquefaction in a shallow, underlying soil deposit during an earthquake. Lateral spreading, as a result of liquefaction, occurs when a soil mass slides laterally on a liquefied layer, and gravitational and inertial forces cause the layer, and the overlying non-liquefied material, to move in a downslope direction. The magnitude of lateral spreading movements depends on earthquake magnitude, distance between the site and the seismic event, thickness of the liquefied layer, ground slope or ratio of free-face height to distance between the free face and structure, fines content, average particle size of the materials comprising the liquefied layer, and the standard penetration rates of the materials. As stated in the previous section the liquefaction potential was deemed to be low, therefore lateral spread potential at the building site is also considered low.

2.5 California Building Code (CBC) Seismic Design Parameters

In accordance with Section 1613 of the 2013 CBC, Peters & Ross classifies the site as Site Class D with a latitude of 37.8763 degrees and a longitude of -122.3010 degrees. The CBC parameters presented in the following table should be used for seismic design.

1444 and 1446 5th Street
Project No. 16183.001

December 16, 2016
Page 5 of 10

PERIOD (sec)	0.2	1.0
SPECTRAL RESPONSE S_s, S_l	2.002	0.815
SITE COEFFICIENT F_a, F_v (SITE CLASS D)	1.0	1.5
MAXIMUM SPECTRAL RESPONSE S_{ms}, S_{ml}	2.002	1.223
DESIGN SPECTRAL RESPONSE S_Ds, S_{DI}	1.335	0.815

3.0 Corrosive Soils

Based on sulfate testing done at nearby sites, the native soils are classified within the negligible sulfate exposure levels. The materials placed at the finished pad grade may be different from the on-site soils. Therefore, additional samples should be collected after site grading for future corrosivity testing.

4.0 Earthwork

4.1 Clearing and Site Preparation

The site should be cleared of any foundations, flatwork, retaining walls, trees, abandoned utilities, and buried structures identified for demolition on the construction plans and removed from the site. Holes resulting from the removal of any obstructions that extend below the proposed finished grade should be cleared and backfilled with suitable material compacted to the requirements given below under Compaction. We recommend that the backfilling operations for any excavations to remove deleterious material be carried out under the observation of the soil engineer, so that these excavations will be properly backfilled.

After clearing, the portions of the site containing surface vegetation or organic laden topsoil should be stripped to an appropriate depth to remove these materials. The amount of actual stripping should be determined in the field by the soil engineer at the time of construction. The cleared and stripped layer should be removed from the site or stockpiled for later use in landscaping, if desired.

4.2 Subgrade Preparation

After the site has been properly cleared and stripped and any necessary excavations made, the exposed soils to receive structural fill, slabs-on-grade or pavements should be scarified to a depth of 6 inches, moisture conditioned to slightly above optimum water content and compacted to the requirements for structural fill.

4.3 Material for Fill

All on-site soils below the stripped layer and having an organic content of less than 3% by volume can be used as fill except where non-expansive import is required beneath the slabs. However, all fill placed at the site, including on-site soils, should not contain rocks or lumps larger than 6 inches in greatest dimension with not more than 15% larger than

1444 and 1446 5th Street
Project No. 16183.001

December 16, 2016
Page 6 of 10

2.5 inches. In addition, the required import fill should be predominantly granular with a plasticity index of 12 or less.

4.4 Compaction

All structural fill less than 5 feet thick should be compacted to at least 90% relative compaction as determined by ASTM Test Designation D 1557, except for the upper 6 inches of subgrade soils under pavements which should be compacted to at least 95% relative compaction. Structural fill or wall backfill greater than 5 feet high should be compacted to at least 95% relative compaction. Fill material should be spread and compacted in lifts not exceeding 8 inches in uncompacted thickness. We should note that if construction proceeds during or immediately after the wet winter months, it may require time to dry the on-site soils to be used as fill since their moisture content will probably be appreciably above optimum.

4.5 Trench Backfill

Pipeline trenches should be backfilled with fill placed in lifts not exceeding 8 inches in uncompacted thickness. The following table presents our recommendations for compaction requirements.

Condition	Trench Depth	Compaction Requirements*	
		Native Soils	Granular Import
Non-Improved Area	Any Depth	85%	90%
Improved Area	Less than 5 feet	Upper 3 feet 90% Lower 2 feet 85%	Entire backfill 90%
	5 feet or greater but less than 8 feet	Entire backfill 90%	Entire backfill 95%
	8 feet or greater	Entire backfill 95%	Entire backfill 95%

* Assumes a reasonable "cushion" layer around the pipe.

If imported granular soil is used, sufficient water should be added during the trench backfilling operations to prevent the soil from "bulking" during compaction. In all of the cases outlined above, we recommend that the upper 6 inches of subgrade under pavement and baserock be compacted to at least 95% relative compaction. All compaction operations should be performed by mechanical means only. We recommend against jetting unless the backfill material is granular (sand or gravel) and the water used in jetting is able to rapidly flow out of the trench.

1444 and 1446 5th Street
Project No. 16183.001

December 16, 2016
Page 7 of 10

If granular backfill is used for utility trenches, we recommend that an impermeable plug or mastic sealant be used where utilities enter the building to minimize the potential for free water or moisture to enter below the building. Finally, because of the potential for catastrophic collapse of trench walls we recommend that the contractor carefully evaluate the stability of all trenches and use temporary shoring where appropriate. The design and installation of the temporary shoring should be wholly the responsibility of the contractor. In addition, all state and local regulations governing safety around such excavations should be carefully followed.

4.6 Drainage

Positive surface gradients of at least 3% for a minimum distance of 5 feet should be provided adjacent to the building so as to direct surface water away from foundations and slabs toward suitable discharge facilities. Ponding of surface water should not be allowed adjacent to the structure or on pavements. We also recommend that rainwater collected on the roof of the building be transported through gutters, downspouts and closed pipes to a suitable discharge facility. The best discharge location for the collected water is probably the storm drain line. We recommend that the landscape architect, general contractor, and landscaping contractor on this project be advised of this recommendation to minimize the potential for its omission during construction. Some nominal maintenance should be expected after the construction has been completed. Should ownership of this property change hands, the new owner should be informed of the existence of this report, the importance of maintaining proper surface drainage, and not adversely change the grading or drainage facilities.

5.0 Foundations

5.1 Footing Foundations

Peters & Ross recommends that the buildings be supported on conventional continuous and isolated spread footings bearing on undisturbed native soils. Any soft zones encountered in the footing trenches should be overexcavated and recompacted under the observation of the geotechnical engineer. All footings should be founded at least 24 inches below the lowest adjacent finished grade. Footings located adjacent to other footings or utility trenches should have their bearing surfaces situated below an imaginary 1.5 horizontal to 1 vertical plane projected upward from the bottom of the adjacent footing or utility trench.

At the above depth, the footings should be designed to impose net allowable bearing pressures not exceeding 2000 pounds per square foot (psf) due to dead loads, 3000 psf due to dead plus live loads, and 4000 psf for all loads including wind or seismic. Resistance to lateral loads will be provided by a combination of friction along the bottoms of the footings, and passive pressures developed along the sides of the footings. Frictional resistance should be calculated by multiplying the vertical dead load times a

1444 and 1446 5th Street
Project No. 16183.001

December 16, 2016
Page 8 of 10

friction coefficient of 0.35. Passive resistance should be calculated using an equivalent fluid weight of 350 pounds per cubic foot (pcf).

All continuous footings should be designed with adequate top and bottom reinforcement to provide structural continuity and to permit spanning of local irregularities. Any visible cracks in the bottoms of the footing excavations should be closed by wetting prior to construction of the foundations. To assure that footings are founded on appropriate material, we recommend that we observe the footing excavations prior to placing steel or concrete.

5.2 Stiffened Reinforced Thin Mat Foundation

Alternatively the planned structures can be supported on a stiffened reinforced thin mat foundation system. The mat foundation should have a minimum thickness of 5 inches and should be designed in accordance with the 2013 California Building Code Section 1808.6.2. The mat should be reinforced with steel reinforcing bars rather than welded wire mesh. At a minimum, slab reinforcement should consist of No. 4 bars on 12-inch centers in both directions, placed at the center of the slab thickness. Spacers should be placed beneath the mesh of reinforcing bars, to maintain their positioning near the center of the slab during the concrete pour.

The mat should be provided with exterior and interior stiffening beams with maximum spacing of 15 feet. The beams should have a minimum width of 12-inches and should extend a minimum of 30-inches below top of slab. In addition, the stiffening beams should be designed to cantilever 5 feet.

The subgrade material under the mat foundation should be uniform. The upper 12 inches of the pad subgrade should be scarified and moisture conditioned to a moisture content at least 5 percentage points above optimum (ASTM D-1557). The subgrade should be kept moist until the slab is poured. At least 6 inches of clean, crushed rock should be placed over the prepared subgrade, to provide a capillary moisture break. If the migration of moisture vapor through the slab is undesirable, a vapor barrier blanketed with 2 inches of clean sand should be placed over the gravel. We also recommend that the specifications for the mat require that moisture emission tests be performed on the mat prior to the installation of the flooring. No flooring should be installed until safe moisture emission levels are recorded for the type of flooring to be used.

7.0 Exterior Slabs –on-Grade

We recommend that any slabs-on-grade be supported on a minimum of 9 inches of imported, compacted, non-expansive fill. The subgrade should be recompact to at least 90 percent relative compaction at a moisture content of 5 percent above optimum. The subgrade should be kept moist until the slab is poured. In any slab area where minor floor wetness would be undesirable, at least 4 inches of ¾ inch gravel should be placed

1444 and 1446 5th Street
Project No. 16183.001

December 16, 2016
Page 9 of 10

over the prepared subgrade, to provide a capillary moisture break. A 10-mil thick vapor barrier blanketed with 2 inches of clean sand should be placed over the gravel. This can be used in lieu of the upper 6 inches of the non-expansive fill.

The slab should have a minimum thickness of 4-inches and should be reinforced with steel reinforcing bars rather than welded wire mesh. At a minimum, slab reinforcement should consist of No. 4 bars on 18-inch centers in both directions, placed at the center of the slab thickness. Spacers should be placed beneath the mesh of reinforcing bars, to maintain their positioning near the center of the slab during the concrete pour. Exterior slabs should be structurally independent from the perimeter grade beams and be free floating. Score joints should be provided at a maximum spacing of 10 feet in both directions. The slabs should be appropriately reinforced according to structural requirements; concentrated loads may require additional reinforcing.

The use of free floating slabs for interior floors may result in damage to the proposed architectural finishes. Peters & Ross should be contacted if interior slabs are proposed. Interior floors should be designed to resist an uplift pressure of 1000 pounds per square foot.

8.0 Plan Review and Geotechnical Engineering Services during Construction

Peters & Ross should review project plans, to check that the geotechnical engineering recommendations contained in this report are properly incorporated.

Peters & Ross should provide geotechnical observation and testing services on an as-needed basis during construction, to check that geotechnical aspects of the work are completed in accordance with the plans. These services should include observing site grading, observing foundation excavations, testing the compaction of fill, and checking surface drains. In addition, Peters & Ross should provide consultation regarding geotechnical concerns that arise during construction. Peters & Ross cannot accept responsibility for geotechnical aspects of construction that are not observed by its staff.

We will make every reasonable effort to accommodate the contractor's work schedule during construction, so that necessary observations and tests can be performed in a timely manner to avoid construction delays. However, since our field services are often required on several projects concurrently, we request that 48 hours advance notice be given for site visits, in order to minimize scheduling conflicts.

1444 and 1446 5th Street
Project No. 16183.001

December 16, 2016
Page 10 of 10

LIMITATIONS

Peters & Ross services consist of professional opinions and recommendations that are made in accordance with generally accepted geotechnical engineering principles and practices. The opinions and recommendations presented in this report are based on a site reconnaissance, three exploratory test borings, laboratory testing, and engineering analyses. This warranty is in lieu of all other warranties either expressed or implied.

Subsurface conditions commonly vary significantly from those encountered at the test boring location. Unanticipated, adverse soil conditions encountered during construction often require additional expenditures to achieve a properly constructed project. It is advised that a contingency fund be established to accommodate possible consulting and construction cost increases due to unanticipated conditions.

LIST OF FIGURES

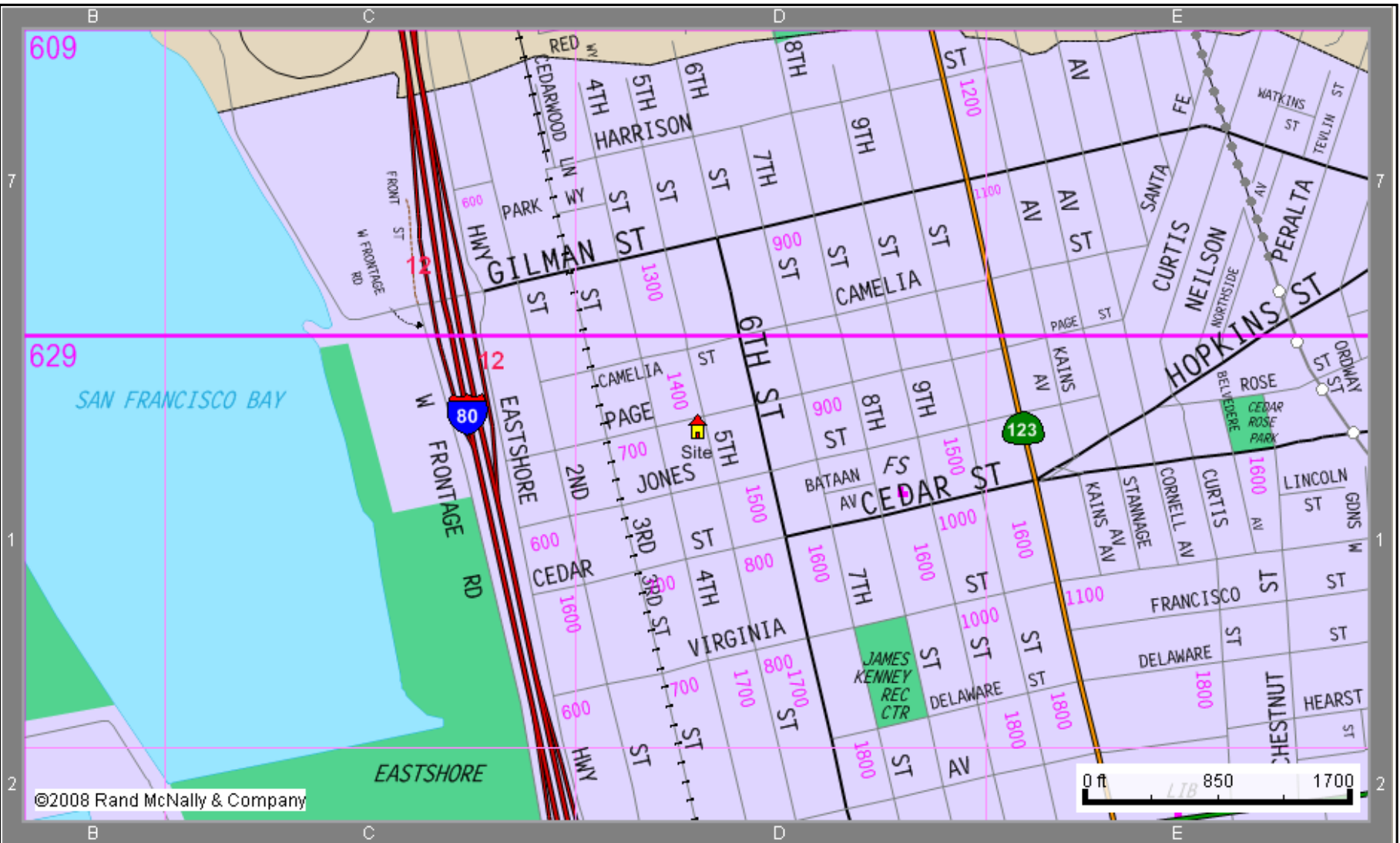
Figure 1	Site Vicinity Map
Figure 2	Site Topography
Figure 3	Site Plan

APPENDICES

Appendix A	Field Investigation
Appendix B	Laboratory Testing

DISTRIBUTION

5 copies: Mr. Matthew Wadlund
Wadlund Design Studio
805 Jones Street
Berkeley, CA 94710



Peters & Ross

Geotechnical and
 Geoenvironmental Consultants

114 Hopeco Road
 Pleasant Hill, CA 94523
 tel. (925) 942-3629
 fax. (925) 665-1700
 PetersRoss@aol.com

Figure 1 - Site Vicinity Map

PROJECT No.	16183.001
DATE	December 2016

1444 & 1446 5th Street
 1444 & 1446 5th Street
 Berkeley, California

TOPO! map printed on 12/16/16 from "California.tpo" and "Untitled.tpg"
NAD27 122.30000° W



Figure 2 - Site Topography

Peters & Ross
Geotechnical and
Geoenvironmental Consultants

114 Hopeco Road
Pleasant Hill, CA 94523
tel. (925) 942-3629
fax. (925) 665-1700
PetersRoss@aol.com

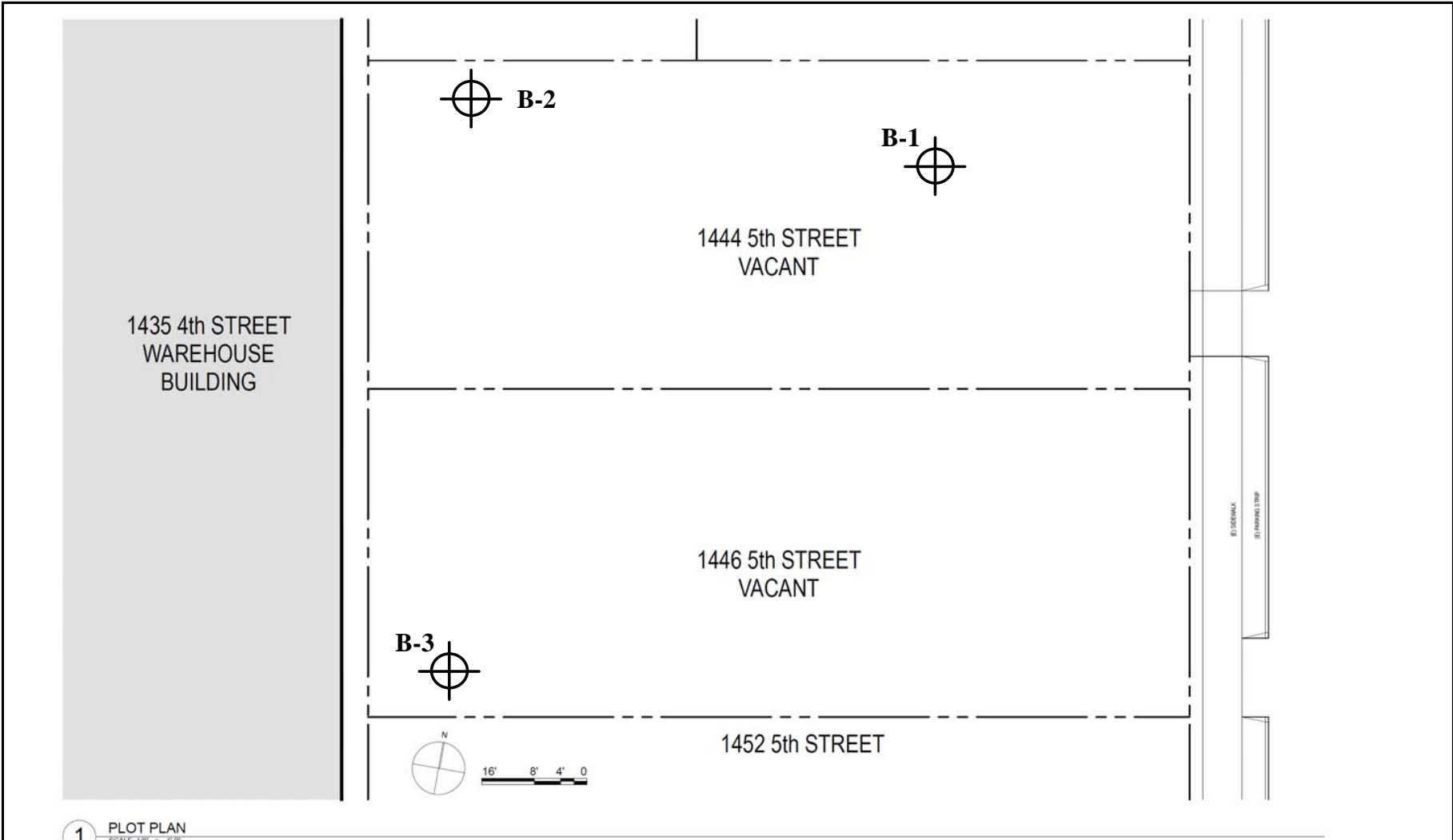
PROJECT No.

16183.001

DATE

Dec. 2016

1444 & 1446 5th Street
1444 & 1446 5th Street
Berkeley, California



1 PLOT PLAN
 SCALE 1/8" = 1'-0"

EXPLANATION: B-1 Approximate Location of Exploratory Test Borings

Peters & Ross
 Geotechnical and
 Geoenvironmental Consultants

114 Hopeco Road
 Pleasant Hill, CA 94523
 tel. (925) 942-3629
 fax. (925) 665-1700
 PetersRoss@aol.com

Figure 3 - Site Plan

PROJECT No.	1444 & 1446 5th Street 1444 & 1446 5th Street Berkeley, California
16183.001	
DATE	
Dec. 2016	

1444 and 1446 5th Street

Project No. 16183.001

APPENDIX A – FIELD INVESTIGATION

Peters & Ross explored subsurface conditions at the site by drilling three exploratory test borings to a maximum depth of 50 feet. The location of the test borings are shown on the Site Plan.

The borings were drilled using a truck mounted CME 75 drill rig with 8.0 inch diameter hollow stem auger and 6.0 inch diameter solid flight auger. The drill rig is operated by HEW Drilling of Palo Alto, California. Our field engineer continuously logged the materials encountered. The boring logs that show the materials encountered are included in this Appendix. Soils are classified in accordance with the Unified Soil Classification System.

The boring logs indicate Peters & Ross interpretations of subsurface conditions encountered at the locations and times the borings were drilled, and may not be representative of subsurface conditions at other locations and times. Stratification lines represent the approximate boundaries between soil and rock types. The transitions between soil and rock layers are often gradual.

Samples of the materials encountered were obtained at frequent depth intervals, for visual classification and laboratory testing. Samples were obtained using a Modified California sampler (outer diameter of 3.0 inches, inner diameter of 2.5 inches) with thin-wall brass sampler liners, and a Standard Penetration Test sampler (outer diameter of 2.0 inches, inner diameter of 1.375 inches). The samplers were driven with an automatic 140 pound safety hammer lifted and dropped 30 inches.

Peters & Ross Geotechnical Services
114 Hopeco Road
Pleasant Hill, CA 94523
925-942-3629




BOREHOLE B-1

Page: 1 of 3

Project Name: 1444 and 1446 5th Street
Location: 1444 & 1446 5th St., Berkeley, CA
Drilling Method: Truck Mounted CMe 75 w/ 8" HSA
Elevation: N/A

Project No.: 16183.001
Client: Wadlund + Design Studio
Date Drilled: 11/17/16
Water Level: See Note 3

Remarks: Samplers driven with 140 lb. automatic hammer using a 30 inch drop

DESCRIPTION	SYMBOL	DEPTH FT.	SAMPLE TYPE	BLOWS/FT.	MOISTURE %	DRY DENSITY PCF	UNCONFINED STRENGTH KSF	REMARKS
Ground Surface		0						
Sandy Fat CLAY (CH) black, wet, stiff, roots			SS	24	20			LL=58%, PI=40% -200 = 60 percent
			SS	19	20			
Sandy Lean CLAY (CL) olive brown, wet, stiff, roots, some black specks with depth			SS	22	22			
			SS	34	20			
			SS	31	19			
Sandy Lean CLAY with Gravel (CL) yellow brown, wet, stiff, rock fragments and black specks			SS	29	23			

Peters & Ross Geotechnical Services
114 Hopeco Road
Pleasant Hill, CA 94523
925-942-3629

BOREHOLE B-1

Page: 2 of 3

Project Name: 1444 and 1446 5th Street

Project No.: 16183.001

Location: 1444 & 1446 5th St., Berkeley, CA

Client: Wadlund + Design Studio


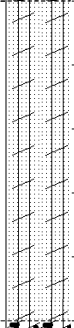

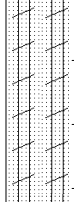
Drilling Method: Truck Mounted CMe 75 w/ 8" HSA

Date Drilled: 11/17/16

Elevation: N/A

Water Level: See Note 3

Remarks: Samplers driven with 140 lb. automatic hammer using a 30 inch drop

DESCRIPTION	SYMBOL	DEPTH FT.	SAMPLE TYPE	BLOWS/FT.	MOISTURE %	DRY DENSITY PCF	UNCONFINED STRENGTH KSF	REMARKS
Sandy Lean CLAY with Gravel (CL) yellow brown, wet, stiff, rock fragments and black specks								
		25	SS	42	17			
Sandy Lean CLAY (CL) yellow brown, wet, stiff, black specks								
		30	SS	22	23			-200 = 67 percent
Sandy Lean CLAY with Gravel (CL) olive brown, wet, stiff, rock fragments								
		35	SS	45	18			
Sandy Lean CLAY (CL) olive brown, wet, stiff								
		40	SS	23	26			

Peters & Ross Geotechnical Services
114 Hopeco Road
Pleasant Hill, CA 94523
925-942-3629

BOREHOLE B-1

Page: 3 of 3

Project Name: 1444 and 1446 5th Street

Project No.: 16183.001

Location: 1444 & 1446 5th St., Berkeley, CA

Client: Wadlund + Design Studio

Drilling Method: Truck Mounted CMe 75 w/ 8" HSA

Date Drilled: 11/17/16

Elevation: N/A

Water Level: See Note 3

Remarks: Samplers driven with 140 lb. automatic hammer using a 30 inch drop

DESCRIPTION	SYMBOL	DEPTH FT.	SAMPLE TYPE	BLOWS/FT.	MOISTURE %	DRY DENSITY PCF	UNCONFINED STRENGTH KSF	REMARKS
Sandy Lean CLAY (CL) olive brown, wet, stiff		-						
		-45	SS	19	24			-200 = 60 percent
Bottom of Borehole = 50 feet		-50	SS	23	25			
		-55						
<p>NOTES:</p> <ol style="list-style-type: none"> 1. Penetration resistance values are not standard N values, they are the values measured in the field. 2. Stratification lines represent the approximate boundaries between material types, and the transitions may be gradual. 3. Groundwater was encountered at 25 feet during drilling. It rose to 4.5 feet prior to backfilling the hole with grout. 								
		-60						

Peters & Ross Geotechnical Services
114 Hopeco Road
Pleasant Hill, CA 94523
925-942-3629

BOREHOLE B-2

Page: 1 of 1

Project Name: 1444 and 1446 5th Street
Location: 1444 & 1446 5th St., Berkeley, CA
Drilling Method: Truck Mounted CMe 75 w/ 6" SFA
Elevation: N/A

Project No.: 16183.001
Client: Wadlund + Design Studio
Date Drilled: 11/17/16
Water Level: See Note 3

Remarks: Samplers driven with 140 lb. automatic hammer using a 30 inch drop

DESCRIPTION	SYMBOL	DEPTH FT.	SAMPLE TYPE	BLOWS/FT.	MOISTURE %	DRY DENSITY PCF	UNCONFINED STRENGTH KSF	REMARKS
Ground Surface		0						
Sandy Fat CLAY (CH) black to dark olive brown, wet, stiff, roots			MC	25	22	103	(2.5)	
			MC	18	25	104	(1.5)	
			MC	42	20	111	(>4.5)	
Sandy Lean CLAY with Gravel (CL) yellow brown, wet, stiff, rock fragments and black specks			MC	50	20	111	(2.5)	
			MC	33	26	98	(3.5)	
Sandy Lean CLAY (CL) olive brown, wet, stiff		-15						
Bottom of Borehole = 18.5 feet		-20						
<p>NOTES:</p> <ol style="list-style-type: none"> 1. Penetration resistance values are not standard N values, they are the values measured in the field. 2. Stratification lines represent the approximate boundaries between material types, and the transitions may be gradual. 3. Groundwater was encountered at 15 feet during drilling. It rose to 4.5 feet prior to backfilling the hole with grout. 4. Shear strength values in Parentheses are in tons per square foot and were obtained using a pocket penetrometer. 								
		-25						

Peters & Ross Geotechnical Services
114 Hopeco Road
Pleasant Hill, CA 94523
925-942-3629

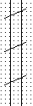


BOREHOLE B-3

Page: 1 of 1

Project Name: 1444 and 1446 5th Street
Location: 1444 & 1446 5th St., Berkeley, CA
Drilling Method: Truck Mounted CMe 75 w/ 6" SFA
Elevation: N/A

Project No.: 16183.001
Client: Wadlund + Design Studio
Date Drilled: 11/17/16
Water Level: See Note 3

Remarks: Samplers driven with 140 lb. automatic hammer using a 30 inch drop

DESCRIPTION	SYMBOL	DEPTH FT.	SAMPLE TYPE	BLOWS/FT.	MOISTURE %	DRY DENSITY PCF	UNCONFINED STRENGTH KSF	REMARKS
Ground Surface		0						
Sandy Fat CLAY (CH) black to dark olive brown, wet, stiff, roots		-	MC	18	23	99	(1.25)	
		-	MC	40	18	110	(4.0)	
Sandy Lean CLAY with Gravel (CL) yellow brown, wet, stiff, rock fragments and black specks		-5						
		-	MC	35	22	105	(4.0)	-200 = 80 percent
		-10	MC	53	18	114	(>4.5)	
Sandy Lean CLAY (CL) olive brown, wet, stiff		-						
		-	MC	22	25	102	(1.5)	-200 = 57 percent
		-15						
		-	MC	47	22	109	(1.5)	
Bottom of Borehole = 20 feet		20						
<p>NOTES:</p> <ol style="list-style-type: none"> Penetration resistance values are not standard N values, they are the values measured in the field. Stratification lines represent the approximate boundaries between material types, and the transitions may be gradual. Groundwater was encountered at 15 feet during drilling. It rose to 4.5 feet prior to backfilling the hole with grout. Shear strength values in Parentheses are in tons per square foot and were obtained using a pocket penetrometer. 								
		-25						

1444 and 1446 5th Street

Project No. 16183.001

APPENDIX B - LABORATORY TESTING

Laboratory tests were performed on representative samples of the materials encountered in the test borings, to achieve a quantitative and qualitative evaluation of the physical and mechanical properties of the materials that underlie the site. The tests included moisture content/dry density determinations, #200 washed sieve tests, and Atterberg limits tests. The test results are presented on the boring logs in Appendix A. Test reports provided by the testing laboratory are included in this Appendix. Brief descriptions of the tests performed follow.

Moisture Content/Dry Density (ASTM 2937): Performed on undisturbed samples to determine the moisture content (the ratio of the weight of water to the weight of solids in the field sample, expressed as a percentage) and dry density (the ratio of the weight of solids in the field sample to its volume, expressed in pounds per cubic foot).

#200 Washed Sieve Test (ASTM D-1140): Performed on undisturbed or disturbed samples to determine the fine-grained (silt and clay) fraction of the materials. The fine-grained fraction is used to classify the soils according to the Unified Soils Classification System.

Atterberg Limits Test (ASTM D-4318): Performed on undisturbed or disturbed samples to determine the liquid limit (LL) and plastic limit (PL) of the samples. These limits are used to classify fine-grained soils and to evaluate the plasticity index (PI), the moisture content range over which the material exhibits plasticity. Atterberg limits correlations also provide an indication of the compressibility and expansion potential of the sample.

B. HILLEBRANDT SOILS TESTING, INC.

29 Sugarloaf Terrace, Alamo, CA 94507 - Tel: (510) 409-2916 - Fax: (925) 891-9267 - Email: soiltesting@aol.com

MOISTURE CONTENT/DRY DENSITY

Job #: 16183.001
Job Name: Fifth Street Development
Date: 11/29/16
Tested by: Brad Hillebrandt

Additional Tests:						
Boring #:	B-2	B-2	B-2	B-2	B-2	B-3
Depth:	2.5	5.0	7.5	10.0	15.0	2.5
Sample Description:	Dark gray CLAY	Olive brown CLAY with some gravel	Dark yellowish brown CLAY with sand	Dark yellowish brown sandy, gravelly CLAY	Olive brown sandy CLAY	Dark gray CLAY
Can #:	420	338	305	312	318	327
Wet Sample + can	278.2	346.9	307.8	314.3	296.5	297.0
Dry Sample + can	234.7	285.6	263.7	268.8	243.1	247.1
Weight can	32.9	37.5	38.0	38.0	38.5	38.3
Weight water	43.5	61.3	44.1	45.5	53.4	49.9
Weight Dry Sample	201.8	248.1	225.7	230.8	204.6	208.8
<u>WATER CONTENT (%)</u>	21.6%	24.7%	19.5%	19.7%	26.1%	23.9%
Weight Sample + Liner	1147.6	1175.2	1190.1	1134.0	1118.4	1047.4
Weight Liner	261.7	262.6	246.1	275.1	270.5	257.9
Sample Length	6.0	6.0	6.0	5.5	5.8	5.4
Sample Diameter	2.39	2.39	2.40	2.39	2.39	2.40
<u>DRY DENSITY (pcf)</u>	103.1	103.6	110.8	110.8	98.4	99.4

B. HILLEBRANDT SOILS TESTING, INC.

29 Sugarloaf Terrace, Alamo, CA 94507 - Tel: (510) 409-2916 - Fax: (925) 891-9267 - Email: soiltesting@aol.com

MOISTURE CONTENT/DRY DENSITY

Job #: 16183.001
Job Name: Fifth Street Development
Date: 11/29/16
Tested by: Brad Hillebrandt

Additional Tests:		-200		-200		
Boring #:	B-3	B-3	B-3	B-3	B-3	
Depth:	5.0	7.5	10.0	15.0	20.0	
Sample Description:	Olivebrown clayey, gravelly SAND	Dark yellowish brown CLAY with sand	Dark yellowish brown sandy CLAY	Olive brown sandy CLAY	Olive brown CLAY with sand	
Can #:	501	370	349	339	362	
Wet Sample + can	356.1	264.1	266.9	348.7	321.6	
Dry Sample + can	306.4	223.6	230.5	286.7	270.7	
Weight can	34.0	37.8	32.5	37.7	33.8	
Weight water	49.7	40.5	36.4	62	50.9	
Weight Dry Sample	272.4	185.8	198	249	236.9	
<u>WATER CONTENT (%)</u>	18.2%	21.8%	18.4%	24.9%	21.5%	
Weight Sample + Liner	1184.1	1067.8	1208.0	1050.3	1115.3	
Weight Liner	269.0	256.4	256.3	249.3	256.4	
Sample Length	6.0	5.3	6.0	5.3	5.5	
Sample Diameter	2.39	2.41	2.39	2.40	2.39	
<u>DRY DENSITY (pcf)</u>	109.5	105.0	113.8	101.9	109.2	

B. HILLEBRANDT SOILS TESTING, INC.

29 Sugarloaf Terrace, Alamo, CA 94507 - Tel: (510) 409-2916 - Fax: (925) 891-9267 - Email: soiltesting@aol.com

MOISTURE CONTENT WORKSHEET

Job #: 16183.001
 Job Name: Fifth Street Development
 Date: 11/29/16
 Tested by: B. Hillebrandt

Additional Tests:		PI, -200			-200			-200	
Boring #:	B-1	B-1	B-1	B-1	B-1	B-1	B-1	B-1	B-1
Depth:	2.5	5.0	7.5	10.5	15.0	20.0	25.0	30.0	35.0
Sample Description:	Dark brown CLAY	Dark brown sandy fat CLAY	Olive brown CLAY with sand	Brown CLAY with some sand and gravel	Olive brown sandy CLAY	Brown CLAY with some sand and gravel	Yellowish brown sandy CLAY with gravel	Yellowish brown sandy CLAY	Olive brown sandy CLAY with gravel
Can #:	307	341	342	331	345	306	346	414	353
Wet Sample + can	250.8	240.4	283.9	301.5	245.6	269.8	282.3	262.5	274.5
Dry Sample + can	215.6	206.5	240.3	257.9	212.1	234.0	247.8	220.4	238.5
Weight can	38.2	37.8	40.1	37.4	37.8	38.0	38.1	34.1	32.5
Weight water	35.2	33.9	43.6	43.6	33.5	35.8	34.5	42.1	36
Weight Dry Sample	177.4	168.7	200.2	220.5	174.3	196	209.7	186.3	206
<u>WATER CONTENT (%)</u>	19.8%	20.1%	21.8%	19.8%	19.2%	18.3%	16.5%	22.6%	17.5%

B. HILLEBRANDT SOILS TESTING, INC.

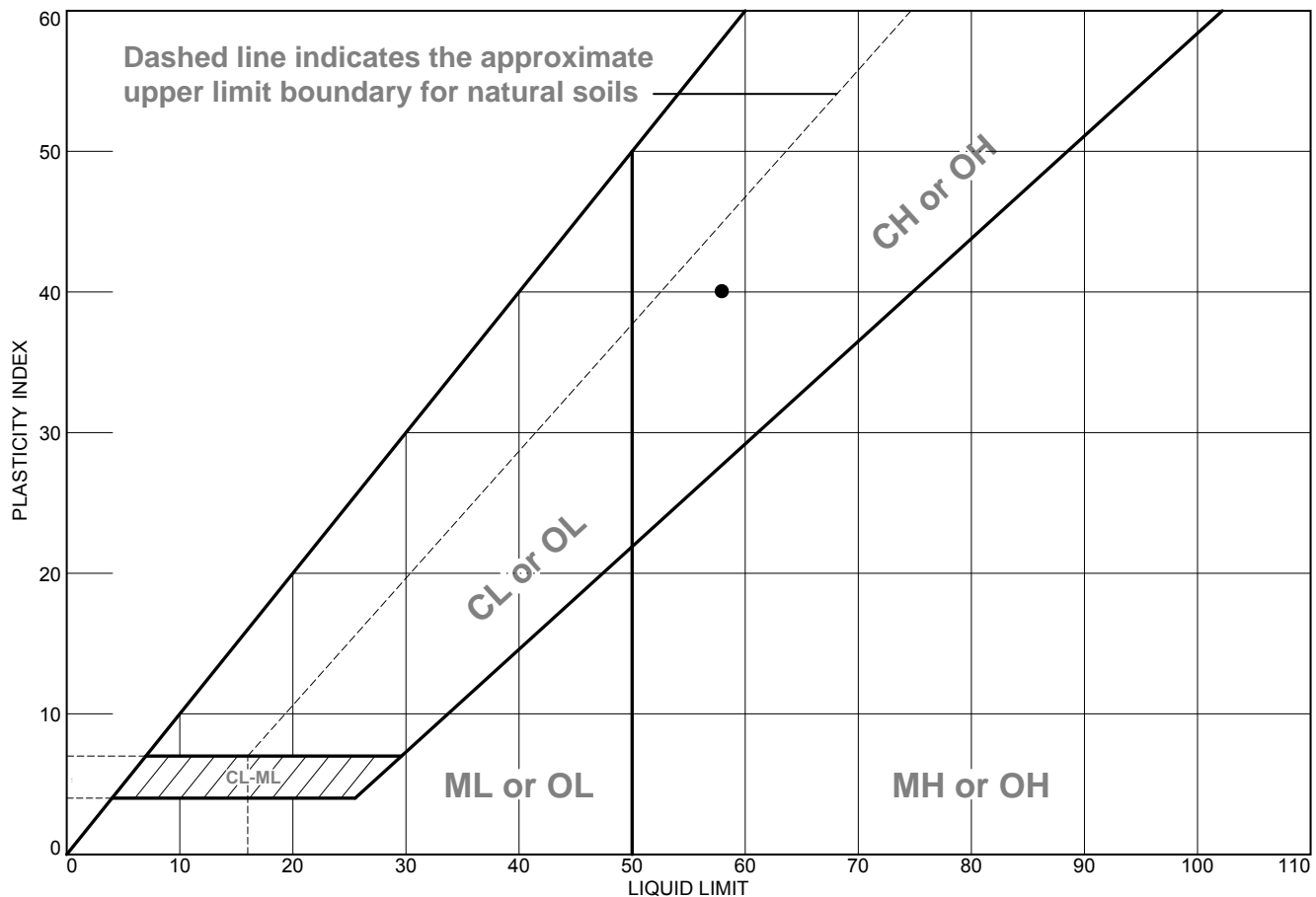
29 Sugarloaf Terrace, Alamo, CA 94507 - Tel: (510) 409-2916 - Fax: (925) 891-9267 - Email: soiltesting@aol.com

MOISTURE CONTENT WORKSHEET

Job #: 16183.001
 Job Name: Fifth Street Development
 Date: 11/29/16
 Tested by: B. Hillebrandt

Additional Tests:		-200							
Boring #:	B-1	B-1	B-1						
Depth:	40.0	45.0	50.0						
Sample Description:	Olive brown sandy CLAY	Olive brown sandy CLAY	Olive brown sandy CLAY						
Can #:	393	347	314						
Wet Sample + can	226.1	269.1	252.6						
Dry Sample + can	186.6	225.0	210.1						
Weight can	32.7	38.1	38.1						
Weight water	39.5	44.1	42.5						
Weight Dry Sample	153.9	186.9	172						
<u>WATER CONTENT (%)</u>	25.7%	23.6%	24.7%						

LIQUID AND PLASTIC LIMITS TEST REPORT



	MATERIAL DESCRIPTION	LL	PL	PI	%<#40	%<#200	USCS
●	Dark brown sandy fat CLAY	58	18	40	84.6	60.4	CH

<p>Project No. 16183.001 Client: Peters & Ross</p> <p>Project: Fifth Street Development</p> <p>● Source of Sample: B-1 Depth: 5.0'</p>	<p>Remarks:</p>
<p>B. HILLEBRANDT SOILS TESTING, INC. +1 510-409-2816 SoilTesting@aol.com</p>	

Figure

Tested By: BH _____

LIQUID AND PLASTIC LIMIT TEST DATA

12/9/2016

Client: Peters & Ross

Project: Fifth Street Development

Project Number: 16183.001

Location: B-1

Depth: 5.0'

Material Description: Dark brown sandy fat CLAY

%<#40: 84.6

%<#200: 60.4

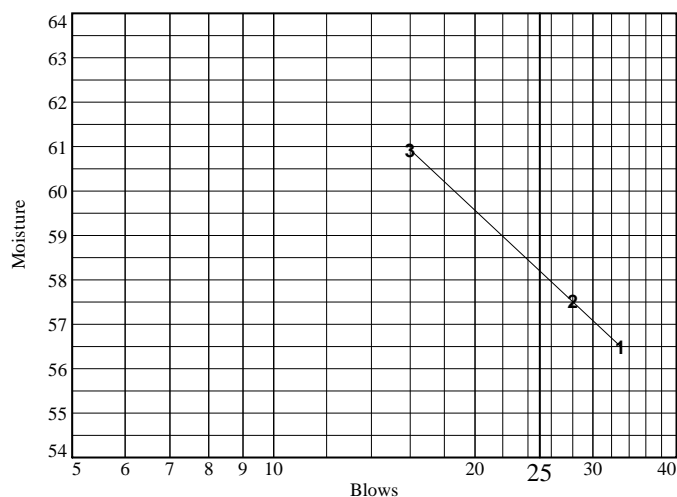
USCS: CH

AASHTO: A-7-6(21)

Tested by: BH

Liquid Limit Data

Run No.	1	2	3	4	5	6
Wet+Tare	23.01	25.51	24.63			
Dry+Tare	18.79	20.27	19.50			
Tare	11.32	11.16	11.08			
# Blows	33	28	16			
Moisture	56.5	57.5	60.9			



Liquid Limit= 58
Plastic Limit= 18
Plasticity Index= 40
Natural Moisture= 20.1
Liquidity Index= 0.1

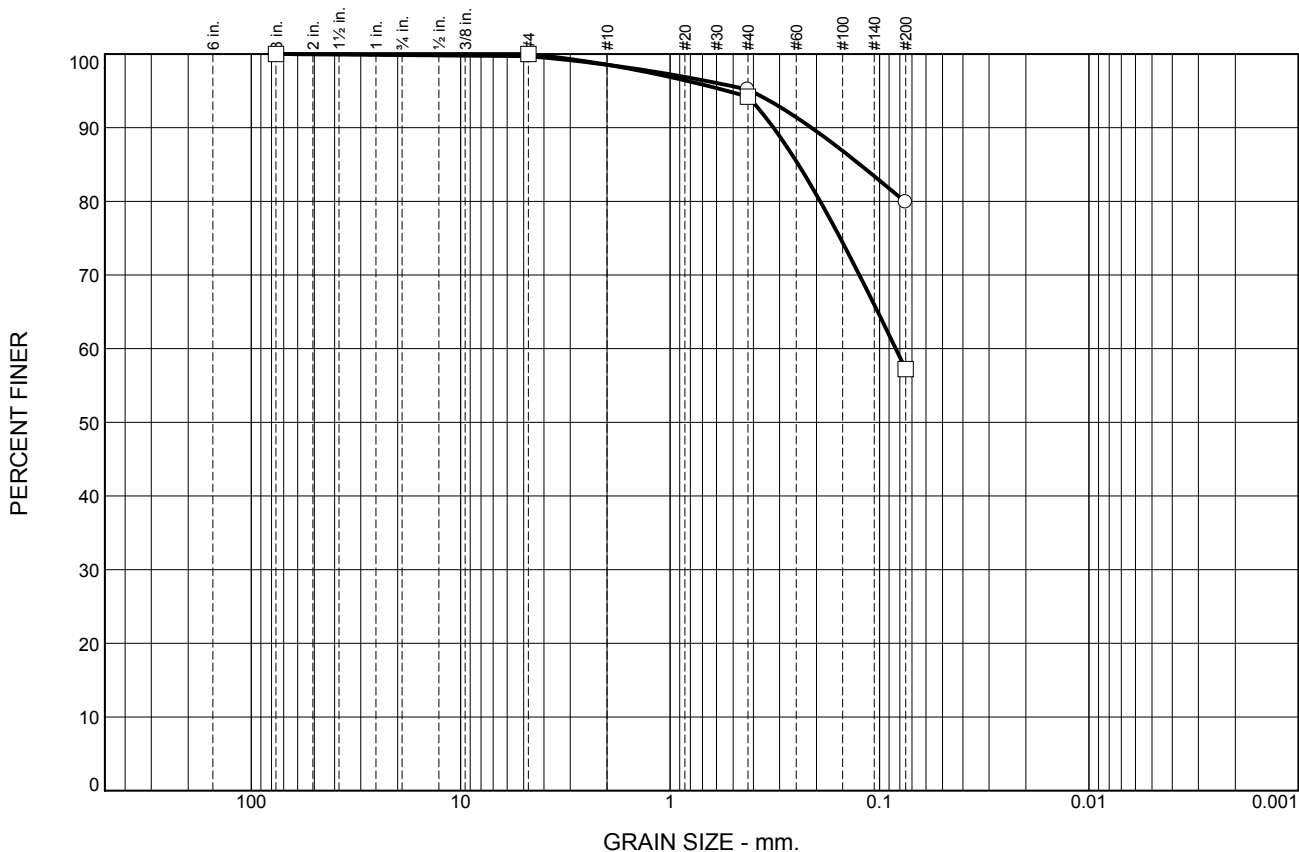
Plastic Limit Data

Run No.	1	2	3	4
Wet+Tare	17.27	17.05		
Dry+Tare	16.34	16.16		
Tare	11.13	11.33		
Moisture	17.9	18.4		

Natural Moisture Data

Wet+Tare	Dry+Tare	Tare	Moisture
240.4	206.5	37.8	20.1

Particle Size Distribution Report



% +3"	% Gravel		% Sand			% Fines	
	Coarse	Fine	Coarse	Medium	Fine	Silt	Clay

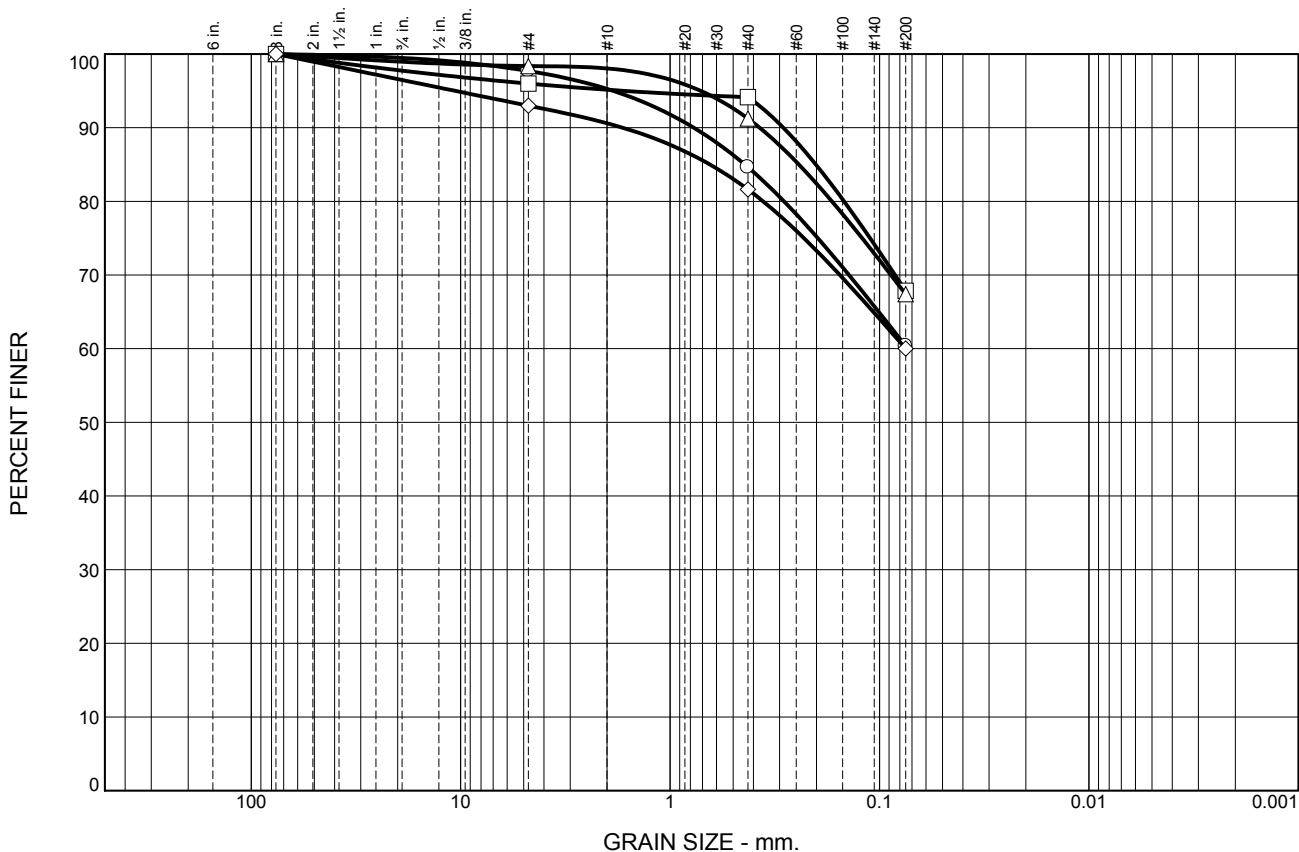
MATERIAL DATA					
SYMBOL	SOURCE	SAMPLE NO.	DEPTH (ft.)	Material Description	USCS
○	B-3		7.5'	Dark yellowish brown CLAY with sand	
□	B-3		15.0'	Olive brown sandy CLAY	

B. HILLEBRANDT SOILS TESTING, INC. +1 510-409-2816 SoilTesting@aol.com	Client: Peters & Ross
	Project: Fifth Street Development
	Project No.: 16183.001

Figure

Tested By: BH _____

Particle Size Distribution Report



% +3"	% Gravel		% Sand			% Fines	
	Coarse	Fine	Coarse	Medium	Fine	Silt	Clay

MATERIAL DATA					
SYMBOL	SOURCE	SAMPLE NO.	DEPTH (ft.)	Material Description	USCS
○	B-1		5.0'	Dark brown sandy fat CLAY	CH
□	B-1		15.0'	Olive brown sandy CLAY	
△	B-1		30.0'	Yellowish brown sandy CLAY	
◇	B-1		45.0'	Olive brown sandy CLAY	

B. HILLEBRANDT SOILS TESTING, INC. +1 510-409-2816 SoilTesting@aol.com	Client: Peters & Ross
	Project: Fifth Street Development
	Project No.: 16183.001
Figure	

Tested By: BH _____

GRAIN SIZE DISTRIBUTION TEST DATA

12/9/2016

Client: Peters & Ross
Project: Fifth Street Development
Project Number: 16183.001
Location: B-1
Depth: 5.0'
Material Description: Dark brown sandy fat CLAY
USCS: CH
Tested by: BH

Sieve Test Data

Dry Sample and Tare (grams)	Tare (grams)	Sieve Opening Size	Weight Retained (grams)	Sieve Weight (grams)	Percent Finer
206.50	37.80	3"	0.00	0.00	100.0
		#4	3.88	0.00	97.7
		#40	22.03	0.00	84.6
		#200	40.97	0.00	60.4

Fractional Components

Cobbles	Gravel			Sand				Fines		
	Coarse	Fine	Total	Coarse	Medium	Fine	Total	Silt	Clay	Total
0.0	0.5	1.8	2.3	2.4	10.7	24.2	37.3			60.4

D ₅	D ₁₀	D ₁₅	D ₂₀	D ₃₀	D ₄₀	D ₅₀	D ₆₀	D ₈₀	D ₈₅	D ₉₀	D ₉₅
								0.2858	0.4397	0.7709	1.8705

Fineness Modulus
0.76

GRAIN SIZE DISTRIBUTION TEST DATA

12/9/2016

Client: Peters & Ross
Project: Fifth Street Development
Project Number: 16183.001
Location: B-1
Depth: 15.0'
Material Description: Olive brown sandy CLAY
Tested by: BH

Sieve Test Data

Dry Sample and Tare (grams)	Tare (grams)	Sieve Opening Size	Weight Retained (grams)	Sieve Weight (grams)	Percent Finer
212.10	37.80	3"	0.00	0.00	100.0
		#4	6.99	0.00	96.0
		#40	3.21	0.00	94.1
		#200	45.83	0.00	67.9

Fractional Components

Cobbles	Gravel			Sand				Fines		
	Coarse	Fine	Total	Coarse	Medium	Fine	Total	Silt	Clay	Total
0.0	2.3	1.7	4.0	0.8	1.1	26.2	28.1			67.9

D ₅	D ₁₀	D ₁₅	D ₂₀	D ₃₀	D ₄₀	D ₅₀	D ₆₀	D ₈₀	D ₈₅	D ₉₀	D ₉₅
								0.1477	0.2013	0.2880	1.6615

Fineness Modulus
0.56

GRAIN SIZE DISTRIBUTION TEST DATA

12/9/2016

Client: Peters & Ross
Project: Fifth Street Development
Project Number: 16183.001
Location: B-1
Depth: 30.0'
Material Description: Yellowish brown sandy CLAY
Tested by: BH

Sieve Test Data

Dry Sample and Tare (grams)	Tare (grams)	Sieve Opening Size	Weight Retained (grams)	Sieve Weight (grams)	Percent Finer
220.40	34.10	3"	0.00	0.00	100.0
		#4	3.05	0.00	98.4
		#40	13.27	0.00	91.2
		#200	44.41	0.00	67.4

Fractional Components

Cobbles	Gravel			Sand				Fines		
	Coarse	Fine	Total	Coarse	Medium	Fine	Total	Silt	Clay	Total
0.0	1.1	0.5	1.6	0.4	6.8	23.8	31.0			67.4

D ₅	D ₁₀	D ₁₅	D ₂₀	D ₃₀	D ₄₀	D ₅₀	D ₆₀	D ₈₀	D ₈₅	D ₉₀	D ₉₅
								0.1687	0.2427	0.3737	0.7142

Fineness Modulus
0.50

GRAIN SIZE DISTRIBUTION TEST DATA

12/9/2016

Client: Peters & Ross
Project: Fifth Street Development
Project Number: 16183.001
Location: B-1
Depth: 45.0'
Material Description: Olive brown sandy CLAY
Tested by: BH

Sieve Test Data

Dry Sample and Tare (grams)	Tare (grams)	Sieve Opening Size	Weight Retained (grams)	Sieve Weight (grams)	Percent Finer
225.00	38.10	3"	0.00	0.00	100.0
		#4	13.11	0.00	93.0
		#40	21.25	0.00	81.6
		#200	40.37	0.00	60.0

Fractional Components

Cobbles	Gravel			Sand				Fines		
	Coarse	Fine	Total	Coarse	Medium	Fine	Total	Silt	Clay	Total
0.0	3.5	3.5	7.0	2.4	9.0	21.6	33.0			60.0

D ₅	D ₁₀	D ₁₅	D ₂₀	D ₃₀	D ₄₀	D ₅₀	D ₆₀	D ₈₀	D ₈₅	D ₉₀	D ₉₅
								0.3595	0.6453	1.6868	10.6214

Fineness Modulus
1.06

GRAIN SIZE DISTRIBUTION TEST DATA

12/9/2016

Client: Peters & Ross
Project: Fifth Street Development
Project Number: 16183.001
Location: B-3
Depth: 7.5'
Material Description: Dark yellowish brown CLAY with sand
Tested by: BH

Sieve Test Data

Dry Sample and Tare (grams)	Tare (grams)	Sieve Opening Size	Weight Retained (grams)	Sieve Weight (grams)	Percent Finer
223.60	37.80	3"	0.00	0.00	100.0
		#4	0.54	0.00	99.7
		#40	8.42	0.00	95.2
		#200	28.41	0.00	79.9

Fractional Components

Cobbles	Gravel			Sand				Fines		
	Coarse	Fine	Total	Coarse	Medium	Fine	Total	Silt	Clay	Total
0.0	0.1	0.2	0.3	1.2	3.3	15.3	19.8			79.9

D ₅	D ₁₀	D ₁₅	D ₂₀	D ₃₀	D ₄₀	D ₅₀	D ₆₀	D ₈₀	D ₈₅	D ₉₀	D ₉₅
								0.0758	0.1241	0.2115	0.4125

Fineness Modulus
0.29

GRAIN SIZE DISTRIBUTION TEST DATA

12/9/2016

Client: Peters & Ross
Project: Fifth Street Development
Project Number: 16183.001
Location: B-3
Depth: 15.0'
Material Description: Olive brown sandy CLAY
Tested by: BH

Sieve Test Data

Dry Sample and Tare (grams)	Tare (grams)	Sieve Opening Size	Weight Retained (grams)	Sieve Weight (grams)	Percent Finer
286.70	37.70	3"	0.00	0.00	100.0
		#4	0.00	0.00	100.0
		#40	14.41	0.00	94.2
		#200	92.09	0.00	57.2

Fractional Components

Cobbles	Gravel			Sand				Fines		
	Coarse	Fine	Total	Coarse	Medium	Fine	Total	Silt	Clay	Total
0.0	0.0	0.0	0.0	1.5	4.3	37.0	42.8			57.2

D ₅	D ₁₀	D ₁₅	D ₂₀	D ₃₀	D ₄₀	D ₅₀	D ₆₀	D ₈₀	D ₈₅	D ₉₀	D ₉₅
							0.0836	0.1920	0.2441	0.3208	0.5355

Fineness Modulus
0.45

Exhibit E

Peters & Ross
Geotechnical & Geoenvironmental
Consultants

October 11, 2018
Project No. 16183.001

Mr. Matthew Wadlund
Wadlund Design Studio
805 Jones Street
Berkeley, CA 94710

Response to Geotechnical Peer Review Email dated September 17, 2018
1444 5th Street, Berkeley, California
Permit Application ZP2018-0172

Dear Mr. Wadlund:

In accordance with your authorization, Peters & Ross has reviewed the September 17, 2018, email from Mr. Ted Sayre of Cotton, Shires and Associates, Inc. (CSA), the City of Berkeley's peer reviewer. The primary issues raised by CSA are 1) The seismic design values presented in our December 16, 2016 report. 2) Will these new seismic design values have any impact on our conclusions and recommendations regarding liquefaction, and 3) Is Peters & Ross aware of the new 4-unit development proposed for 1444 Fifth Street.

1) Seismic Design Values

In accordance with Section 1613 of the 2016 CBC, Peters & Ross classifies the site as Site Class D with a latitude of 37.876 degrees and a longitude of -122.301 degrees. The CBC parameters presented in the following table should be used for seismic design.

PERIOD (sec)	0.2	1.0
SPECTRAL RESPONSE S_s, S_l	2.002	0.815
SITE COEFFICIENT F_a, F_v (SITE CLASS D)	1.0	1.5
MAXIMUM SPECTRAL RESPONSE S_{ms}, S_{ml}	2.002	1.223
DESIGN SPECTRAL RESPONSE S_{Ds}, S_{Dl}	1.335	0.815

2) Liquefaction

The above values and the the MCE peak ground acceleration of 0.770g are the same values we computed for the 2013 CBC. Therefore our conclusions and recommendations regarding liquefaction are unchanged.

1444 5th Street
Project No. 16183.001

October 11, 2018
Page 2 of 2

3) Development of 1444 Fifth Street

Our December 16, 2016 report was issued for both 1444 and 1446. We drilled borings on both lots and were aware that four units would be placed on each of them.

Peters & Ross services consist of professional opinions and recommendations that are made in accordance with generally accepted geotechnical engineering principles and practices.

We appreciate the opportunity to provide geotechnical engineering services to you. If you have any questions, please call.

Sincerely,



Peter K. Mundy, P.E., G.E.
Geotechnical Engineer 2217

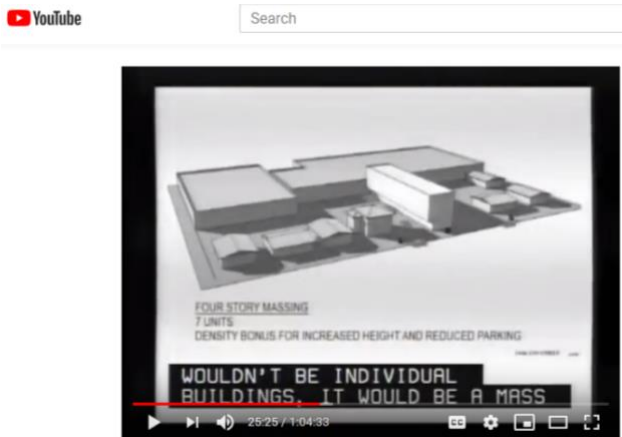


Exhibit F

City Council Hearing for 1446 Fifth Street Zoning Appeal

February 6, 2018¹

In response to being informed that the project would be subject to the Inclusionary Housing in-lieu fee due the site being capable of accommodating five units, Elisa Mikiten, project representative for the developer Matthew Wadlund, declared that the fee forces the developer to transform the project into one in which they will have “consolidated all their lots” (namely, 770 Page Street and 1442, 1444 and 1446 Fifth Street) to build a 27-unit apartment building (25:28-25:43). Ms. Mikiten then displayed the following slides depicting the building envelope of a 7-unit complex as compared with a 27-unit building straddling multiple lots:



Zoning appeal - 1446 5th Street (February 2018 Berkeley City Council)

13 views

👍 0 🗨️ 0 ➦ SHARE 📌 SAVE ...



Zoning appeal - 1446 5th Street (February 2018 Berkeley City Council)

13 views

👍 0 🗨️ 0 ➦ SHARE 📌 SAVE ...

¹ Available at https://www.youtube.com/watch?v=Fkvw_Do4KQ

Later in the proceeding, Vice Mayor Sophie Hahn and Ms. Mikiten engaged in the following exchange (30:30-31:57).

Vice Mayor Sophie Hahn: You're showing a bunch of parcels merged. Does your applicant own those parcels?

Elisa Mikiten: They do . . . Yes. They do.

SH: Is it the intent to develop them in the future with this kind of [indistinct] condos similar to what is proposed?

EM: That is their product. This is a test case. They just applied for one. . . .

SH: . . . I just didn't know that they own those other parcels.

EM: They do. Yes, yes.

SH: That's new information and I wanted to confirm that and it sounds like these parcels are easy to merge, and you're asserting that they can do that by right.

EM: I think so.

SH: And it seems like they have the intent to potentially develop them and that's all the information that I was looking for. Is that all correct?

EM: Yes. Especially with the vacant lot next door.

SH: Thank you very much. That is very helpful.

Exhibit G

Zoning Adjustment Board Appeal for 1444 Fifth Street

January 24, 2019¹

Planning Staff: This project [1444 Fifth Street] is very similar to an adjoining project to the south [1446 Fifth Street] . . . it's similar in pretty much every way . . . (3:19:20)

. . .

Board Member Teresa Clarke: The same owner owns that property as well as 770 Page?

Elisa Mikiten, project representative (EM): Correct. As well as 776. (3:33:26)

. . .

TC: Could someone please explain the City's rules as it relates to unit production versus fees and why a four-unit project would not be obligated to pay any fees even if it is not obligated to provide on-site affordable?

EM: So it goes by lot size. If a lot is large enough to accommodate five units then you have to pay the fee regardless of the number of proposed units. So typically what a development team does is adjust the lot line before making an application. We didn't see it coming. It came up as an appeal point. (3:45:50- 3:46:40)

¹ Available at http://berkeley.granicus.com/MediaPlayer.php?publish_id=80c43cb8-20f0-11e9-b021-0050569183fa.

Exhibit H

RECORDING REQUESTED BY:

Chicago Title Co.



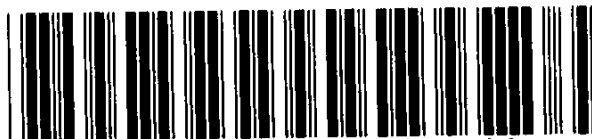
2018144173 07/23/2018 01:22 PM

OFFICIAL RECORDS OF ALAMEDA COUNTY
STEVE MANNING
RECORDING FEE: 120.00

WHEN RECORDED MAIL TO:

Matthew Wadlund
First Gen, LLC
805 Jones Street
Berkeley, Ca 94710

AZS RF
8 PG



8 PGS

Space above this line for Recorder's use

LOLA 329: LOT LINE ADJUSTMENT

Whereas, the undersigned are the owner(s) of record of all that certain real property described in Exhibit B, which is attached hereto and made a part hereof.

Whereas, it is necessary to adjust the property lines between parcels with Assessor's Parcel Numbers 059-2325-003, 059-2325-005, 059-2325-006 and 059-2325-007 in order to establish the resultant parcels, Parcel A, B, C and D, as shown in Exhibit A.

Now, therefore, said lot lines are hereby approved, pursuant to Section 66412(d) of the Government Code. Said approval authorizes the relocation or deletion of the lot lines as shown on Exhibit A and as described in Exhibit B, which are attached hereto and made a part hereof.

The undersigned do hereby agree to the lot merger.

Owners' acknowledgement:

State of California)
) SS.
County of Alameda)

770 Page Street, LLC, Owner

By: MATTHEW WADLUND (print name)
MANAGING MEMBER

1444 Fifth Street, LLC, Owner

By: MATTHEW WADLUND (print name)
MANAGING MEMBER

1442 Fifth Street, LLC, Owner

By: MATTHEW WADLUND (print name)
MANAGING MEMBER

1446 Fifth Street, LLC, Owner

By: MATTHEW WADLUND (print name)
MANAGING MEMBER

This map conforms to the requirements of the Subdivision Map Act and local ordinances. I, Patrick Rei, hereby state that it has been examined by me, or under my direction by City of Berkeley staff, and am satisfied that it is technically correct.

By: *Patrick Rei*

DATE: 6-29-18

Patrick Rei
City Consultant Surveyor
P.L.S. 8178



APPROVED:
City of Berkeley

By: *Nisha Patel*

DATE: 7-3-18

Nisha Patel
City Engineer
R.C.E. 72491

California All-Purpose Acknowledgement

A notary or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached and not the truthfulness, accuracy, or validity of that document.

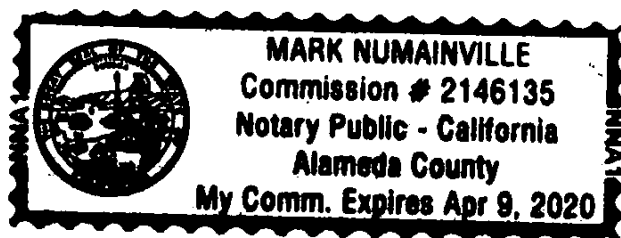
State of California}
County of Alameda}

On July 3, 2018, before me Mark Numainville, Notary Public
(Date) (Name of Notary Public)

Personally appeared Nisha Patel, who proved on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

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

WITNESS my hand and official seal.



Mark Numainville
Signature of Notary Public

Place Notary Seal Above

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of ALAMEDA)

On JUNE 27 2018 before me, HEATHER NICHOLLS, NOTARY PUBLIC
(insert name and title of the officer)

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

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

WITNESS my hand and official seal.

Signature 



(Seal)

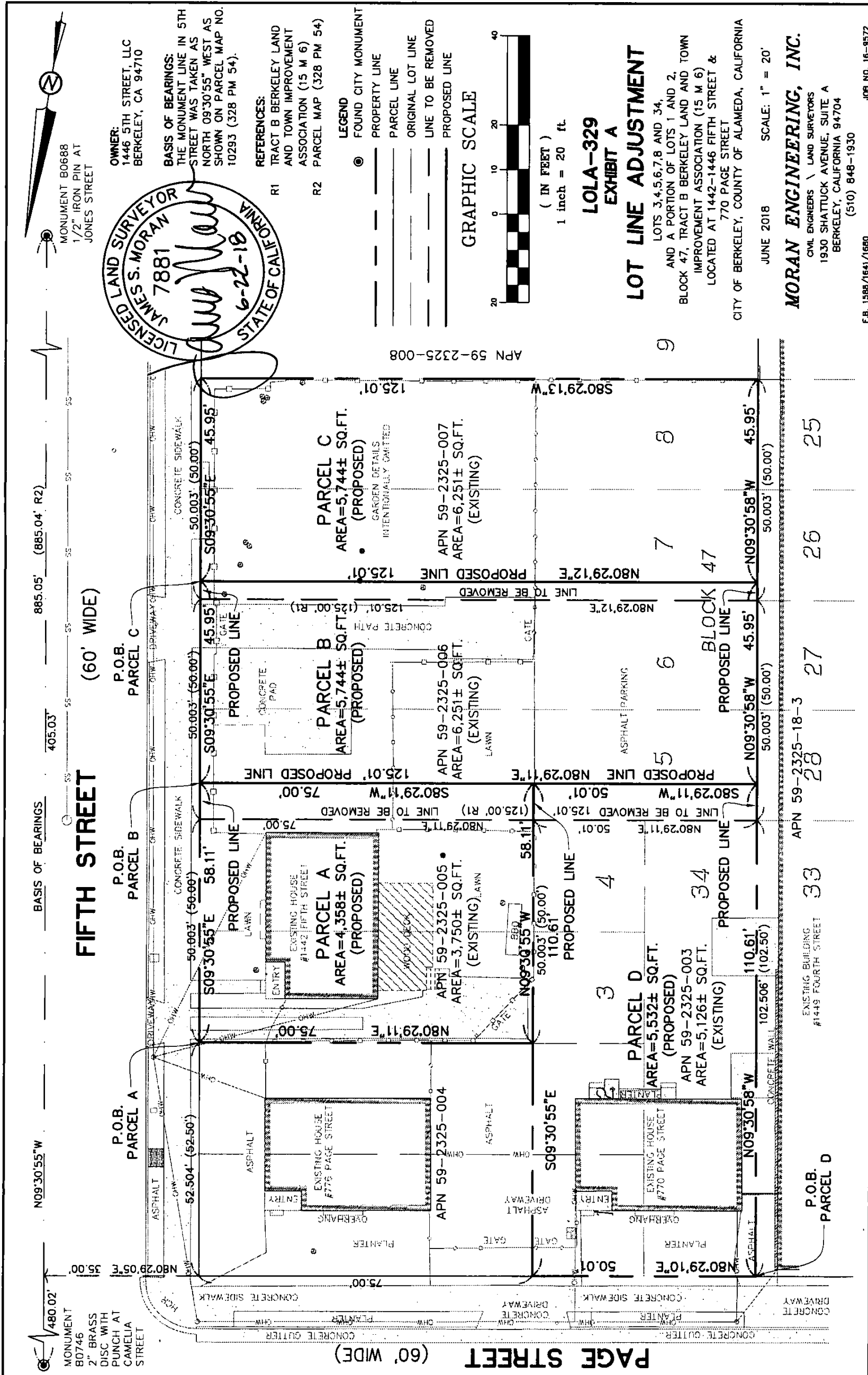


EXHIBIT B

LOLA - 329

Adjusted Parcel A

REAL PROPERTY in the City of Berkeley, County of Alameda, State of California, described as follows:

Being a portion of Lots 3, 4 and 5, Block 47, Tract 'B', Berkeley Land and Town Improvement Association, filed November 8, 1894, in Book 15 at Page 6, in the office of the County Recorder of Alameda County, more precisely described as follows:

Beginning at the point of intersection of the western line of Fifth Street and the northern line of Lot 3, as said street and lot line are shown on said map; thence, along said line of Fifth Street South 09°30'55" East 58.11 feet to a point distant South 09°30'55" East 110.61 feet from the southern line of Page Street as shown on said map; thence, leaving said western line, South 80°29'11" West 75.00 feet; thence, northerly, parallel with the line of Fifth Street North 09°30'55" West 58.11 feet to the northern line of Lot 3; thence, easterly along said northern line, North 80°29'11" East 75.00 feet to the Point of Beginning.

Containing 4,358 square feet, more or less.

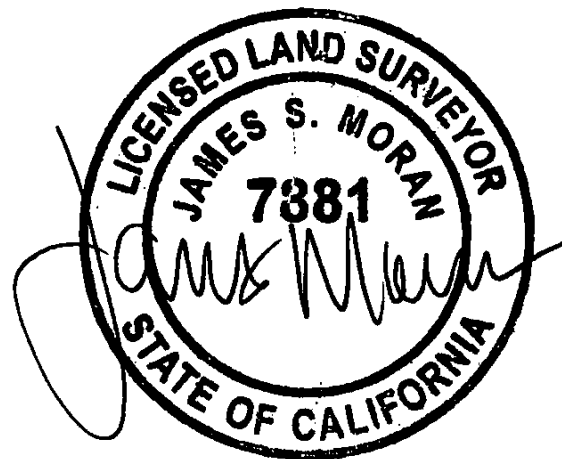


EXHIBIT B

LOLA - 329

Adjusted Parcel B

REAL PROPERTY in the City of Berkeley, County of Alameda, State of California, described as follows:

Being a portion of Lots 5, 6 and 7, Block 47, Tract 'B', Berkeley Land and Town Improvement Association, filed November 8, 1894, in Book 15 at Page 6, in the office of the County Recorder of Alameda County, more precisely described as follows:

Beginning at the point on the western line of Fifth Street, distant South 09°30'55" East 110.61 feet from the southern line of Page Street, as said streets are shown on said map; thence, along said line of Fifth Street South 09°30'55" East 45.95 feet; thence, leaving said western line, South 80°29'12" West 125.01 feet to the western line of said Lot 7; thence, northerly, along said western line of Lot 7 and the western lines of Lot 6 and Lot 5, North 09°30'58" East 45.95 feet; thence, North 80°29'11" East 125.01 feet to the Point of Beginning.

Containing 5,744 square feet, more or less.

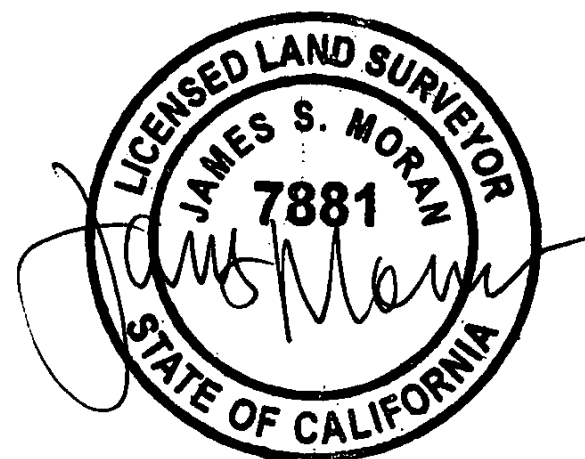


EXHIBIT B

LOLA - 329

Adjusted Parcel C

REAL PROPERTY in the City of Berkeley, County of Alameda, State of California, described as follows:

Being Lot 8 and a portion of Lot 7, Block 47, Tract 'B', Berkeley Land and Town Improvement Association, filed November 8, 1894, in Book 15 at Page 6, in the office of the County Recorder of Alameda County, more precisely described as follows:

Beginning at the point on the western line of Fifth Street, distant South 09°30'55" East 156.56 feet from the southern line of Page Street, as said streets are shown on said map; thence, along said line of Fifth Street South 09°30'55" East 45.95 feet to the southern line of said Lot 8; thence, along said line South 80°29'13" West 125.01 feet to the western line of said Lot 8; thence, northerly, along said western line of Lot 8 and the western line of Lot 7, North 09°30'58" West 45.95 feet; thence, North 80°29'12" East 125.01 feet to the Point of Beginning.

Containing 5,744 square feet, more or less.



EXHIBIT B

LOLA - 329

Adjusted Parcel D

REAL PROPERTY in the City of Berkeley, County of Alameda, State of California, described as follows:

Being Lot 34 and a portion of Lots 1, 2, 3, 4 and 5, Block 47, Tract 'B', Berkeley Land and Town Improvement Association, filed November 8, 1894, in Book 15 at Page 6, in the office of the County Recorder of Alameda County, more precisely described as follows:

Beginning at the point of intersection of the southern line of Page Street and the western line of Lot 34, as said street and lot are shown on said map; thence, along said line of Page Street North $80^{\circ}29'11''$ East 50.01 feet to a point distant South $80^{\circ}29'11''$ West 75.00 feet from the western line of Fifth Street as shown on said map; thence, leaving said southerly line, South $09^{\circ}30'55''$ East 110.61 feet; thence, South $80^{\circ}29'11''$ West 50.01 feet to the western line of Lot 5; thence, along said western line of Lot 5 and the western line of Lot 34, North $09^{\circ}30'58''$ West 110.61 feet to the Point of Beginning.

Containing 5,532 square feet, more or less.

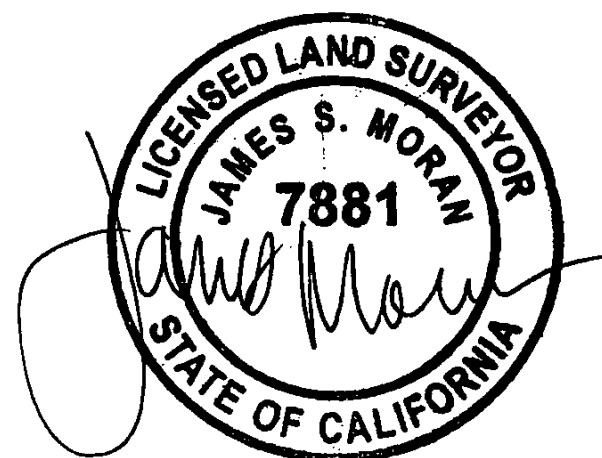


Exhibit I

FOR BOARD ACTION
JANUARY 24, 2019

1444 Fifth Street

Administrative Use Permit #ZP2018-0172 to construct four detached, three-story, approximately 1,900 square-foot single-family dwellings, each with an average height of 33 feet, on a 5,744 square-foot vacant lot.

I. Background

A. Land Use Designations:

- General Plan: MU – Manufacturing Mixed Use
- West Berkeley Plan Area
- Zoning: MU-R – Mixed Use Residential District

B. Zoning Permits Required:

- Administrative Use Permit, under BMC Section 23E.84.030, to construct four new dwelling units.

C. CEQA Determination: Categorically exempt pursuant to Section 15332 of the CEQA Guidelines (“In-Fill Development”).

D. Parties Involved:

- Applicant/Owner: 1444 5th Street, LLC, 805 Jones Street, Berkeley

Figure 1: Vicinity Map

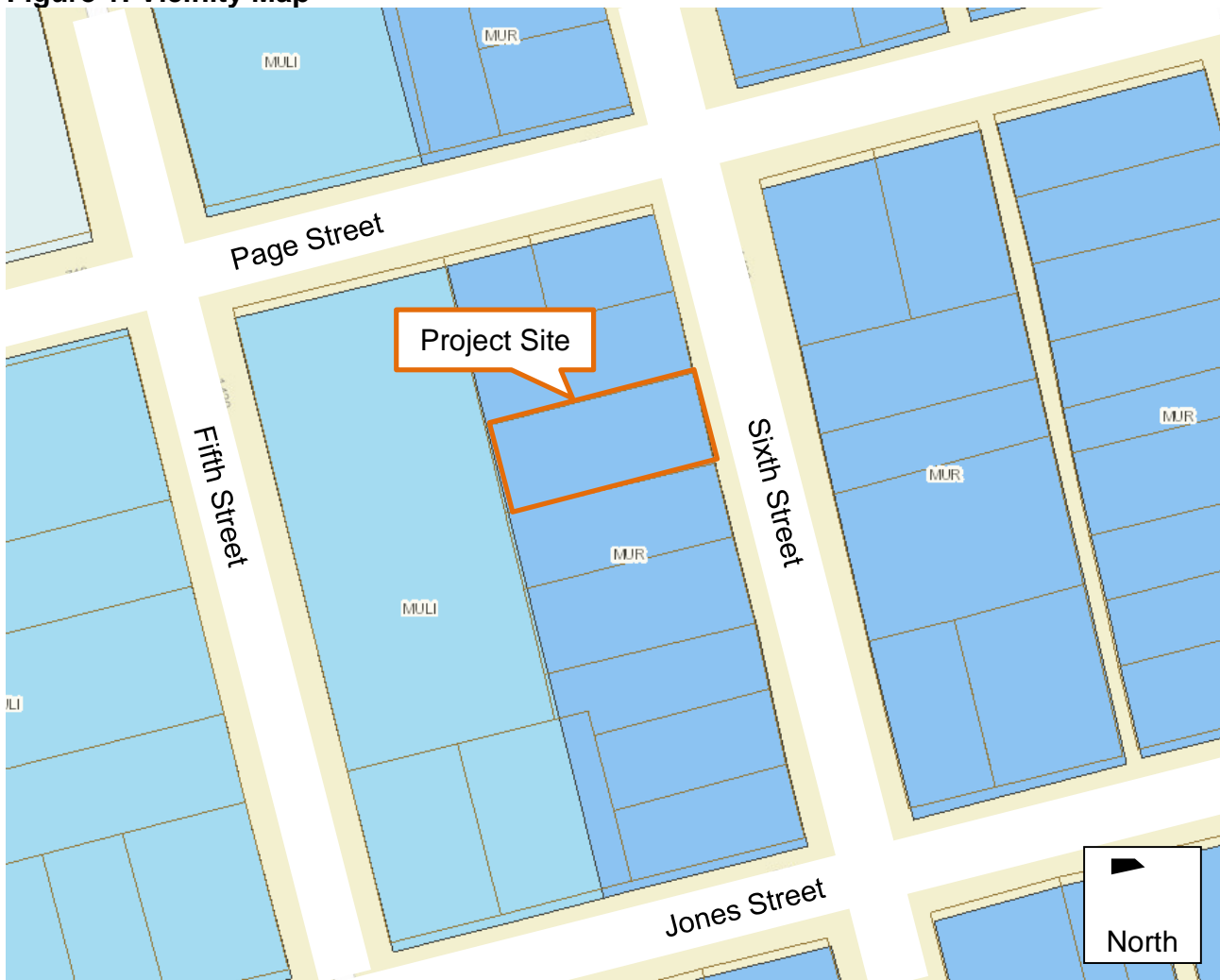


Figure 2: Site Plan

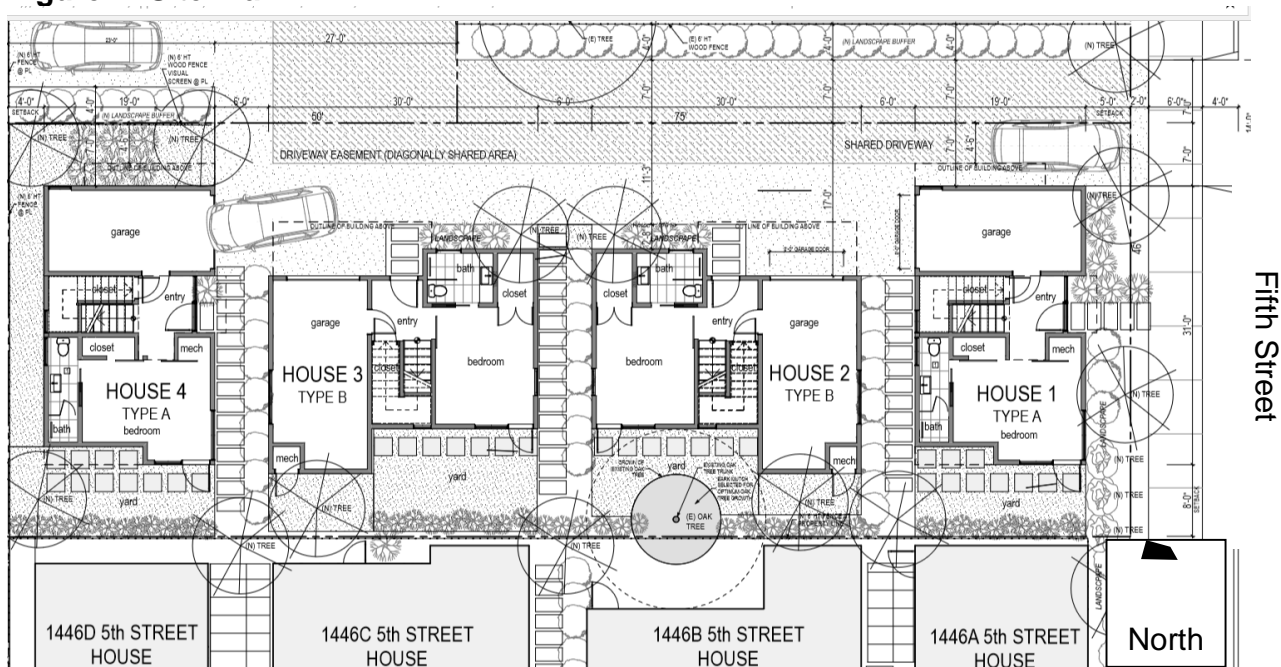


Table 1: Land Use Information

Location	Existing Use	Zoning District	General Plan Designation
Subject Property	Vacant		
Surrounding Properties	North	Single-family residential	MU – Mixed Use
	South	Four new detached dwelling units (developed by same applicant) currently under construction	
	East	Residential, commercial	
	West	Industrial, Warehouse	
		MU-R – Mixed Use Residential	
		MU-LI – Mixed Use-Light Industrial	

Table 2: Special Characteristics

Characteristic	Applies to Project?	Explanation
Affordable Child Care Fee for qualifying non-residential projects (Per Resolution 66,618-N.S.)	No	This fee applies to projects with net new 7,500 sq. ft. of non-residential floor area. The project involves only new residential floor area, and thus this requirement does not apply.
Affordable Housing Fee for qualifying non-residential projects (Per Resolution 66,617-N.S.)	No	This fee applies to projects with net new 7,500 sq. ft. of non-residential floor area. The project involves only new residential floor area, and thus this requirement does not apply.
Affordable Housing Mitigations for rental housing projects (Per BMC 22.20.065)	No	This fee applies to projects that propose 5 or more rental dwelling units. This project involves 4 new units, and thus this requirement does not apply.
Inclusionary Housing Requirements (Per BMC Chapter 23C.12)	No	This requirement applies to dwellings that are offered for sale as condominiums; at the time of this writing, the applicant has not applied for a condominium map at the project site. Moreover, the requirement applies to construction of less than 5 condominium units only on lots whose zoning designation allows for the construction of 5 or more units. Given the density standards in the MUR District, the existing lot can accommodate only 4 units. Thus, if the applicant did apply for a condominium parcel map, this fee would not apply.
Coast Live Oak Trees (BMC Section 6.52.010)	Yes	One Coast Live Oak tree that is subject to the moratorium on the removal of such trees is located near the south property line of the subject property. Two Conditions of Approval were added by the ZAB to an entitlement on the adjacent parcel at 1446 Fifth Street to ensure appropriate protection measures are taken during and after construction. Those Conditions of Approval are also included in the conditions for this project.
Creeks	No	The project site is not within a creek buffer zone.
Density Bonus	No	The applicant has not applied for a State Density Bonus.
Green Building Score		This project exceeds the minimum requirements of the GreenPoint Rated Checklist and must comply with the City's Building Code regarding project planning and design; energy, water, resources and material efficiency and conservation; and environmental quality. These requirements represent the minimum standards for green building in Berkeley, and the applicant may pursue further measures upon actual construction of this project is approved.
Historic Resources	No	The project does not involve the demolition of any building, nor is there any evidence to suggest that the site qualifies as a historic resource.
Rent Controlled Units	No	No rent-controlled units are at this site.
Residential Preferred Parking (RPP)	No	The neighborhood surrounding the subject site does not participate in the City's Residential Preferred Parking program.

Characteristic	Applies to Project?	Explanation
Seismic Hazards (SHMA)	Yes	The project site is located within an area susceptible to liquefaction as shown on the State Seismic Hazard Zones map. The applicant submitted a geotechnical investigation for the project (Peters & Ross, December 2016, May 2017, and October 2018), which concluded that the project is feasible from a geotechnical engineering standpoint provided the recommendations in the reports are followed. The City's geotechnical consultant peer reviewed the geotechnical investigations in memoranda of February 2017, May 2017, and October 2018 and concluded that the Peters & Ross report satisfactorily addresses the site geotechnical issues.
Soil/Groundwater Contamination	No	The project site is not listed on the Cortese List (an annually updated list of hazardous materials sites), however it is located within the City's Environmental Management Area. Standard Toxics Conditions of Approval apply.

Table 3: Project Chronology

Date	Action
August 31, 2018	Application submitted
November 19, 2018	Application deemed complete
January 10, 2019	Public hearing notices mailed/posted Staff Level Design Review approval posted on site
January 24, 2019	ZAB hearing

Table 4: Development Standards

Standard BMC Sections 23E.84.070-080		Existing	Proposed Total	Permitted/ Required
Lot Area (sq. ft.)		5,744	No Change	N/A
Gross Floor Area (sq. ft.)		0	Approximately 7,672 (1,900 per unit) ¹	N/A
Floor Area Ratio		0	1.3	1.5 max
Dwelling Units	Total	0	4	4 max (1 per 1,250 sq. ft. lot area, + 1 if remainder is 750 + sq. ft.)
Building Height	Average	N/A	33'	35' max
	Stories	N/A	3	3 max
Building Setbacks	Front	N/A	5'	5' min
	Rear	N/A	4'	0' min
	Left Side	N/A	4'6"	4'7" min ²
	Right Side	N/A	8'	4'7" min ²
Lot Coverage (%)		0	42%	N/A
Usable Open Space (sq. ft.)		N/A	816	600 min (150 per unit)
Parking	Automobile	N/A	4	4 min (1 per unit)
	Bicycle	0	0	None Required
¹ The originally submitted application included a proposal for 7,672 square feet of gross floor area. However, the applicant provided revised plans on December 24, 2018 to accommodate the required open space for each unit. The revised plans propose a reduction of approximately 30 square feet. ² Per BMC Section 23E.84.070.E, if a side of a lot abuts a property with one or more dwelling units, the side yard shall be either 10', or 10% of the lot width, whichever is less.				

II. Project Setting

A. Neighborhood/Area Description: The project is in West Berkeley on the west side of Fifth Street between Page Street to the north and Jones Street to the south. A similar development project, which was proposed by the same applicant and also includes four detached, three-story dwelling units, is currently under construction at the southern abutting lot. One- and two-story residential buildings are located further south of the property for the length of the block to Jones Street and directly across Fifth Street.

This portion of the MU-R District provides a transition between the more exclusively residential areas to the east and the industrial areas to the west. The west side of the subject block, along Fourth Street, where the MU-LI District begins, includes industrial and warehouse uses. The east side of the block, along Fifth Street, where the project site is located, includes a residential concentration of one- and two-story buildings. The neighborhood further eastward features a mix of uses, including one- to three-story residential and commercial buildings. The concentration of residential uses increases further eastward.

B. Site Conditions: The project site is generally level, rectangular in shape and currently vacant, with no buildings or structures onsite. The western portion of the site is used

as part of a private parking area for the industrial and warehouse buildings on the west side of the block, including 1435, 1445, and 1453 Fifth Street.¹ The site contains one small Coast Live Oak tree located roughly 45 feet from the street near the southern property line. Several small trees are located along Fifth Street, in the public right-of-way in front of the project site.²

III. Project Description

The applicant proposes to construct four detached dwelling units. Each building would be three stories, with an average height of 33 feet, and would each provide approximately 1,900 square feet of gross floor area. The buildings would be located towards the south side of the property. A driveway serving each of the four proposed attached one-car garages would be aligned along the north side of the property and would be part of a proposed shared access easement that would also provide access to the northern abutting parcels at 1442 Fifth Street and 770 Page Street (see above, Figure 2).

The applicant has designed all four buildings according to the same general floor plan scheme. The ground floors would each include a garage, one bedroom, and one bathroom. The second floors would each include two bedrooms and a bathroom. The third floors would feature open floor plans, with connected living areas, dining areas, and kitchens. The front and rear buildings would have third floor decks with views of the street and rear yard, respectively. The two middle buildings would have rooftop decks with views in all directions. The proposed design of the buildings is similar to that of the recently approved development at the southern abutting lot, 1446 Fifth Street, which is currently under construction. Their design is intended to reference modern architecture and the industrial context of West Berkeley and would include wood and metal siding.

IV. Community Discussion

A. Neighbor/Community Concerns: As noted above, the same developer received an entitlement last year to develop the adjacent parcel at 1446 Fifth Street. That project also involved the construction of four new, detached, three-story dwellings on a vacant lot. Approvals by staff and the ZAB were appealed four times (once to the DRC, once to ZAB, and twice to City Council), and the application was ultimately approved at the City Council in July 2018. The appeal issues included concerns that the applicant was not meeting several City requirements, including the in-lieu fee required by the Inclusionary Housing Requirements, adequate review by Design Review staff, code-compliant parking spaces, protection of the Oak tree onsite, and notification of neighborhood residents.

¹ According to zoning records for these buildings, the off-street parking spaces for the existing businesses were provided on the same property as the businesses. While the parking does not occur entirely on the same property as these buildings (it occurs at portions of the eastern abutting properties), it appears that the City did not confirm the location of the parking spaces when zoning certificates were approved. However, per BMC Section 23B.20.020, because the approved zoning certificates do not contain evidence that required parking would be provided on different property, they do not validate approval of parking at the subject parcel.

² The attached Findings and Conditions include Conditions of Approval that apply to protection of the Coast Live Oak tree (#15) and proposed removal of any of the existing street trees (#16).

During the appeal process, in June 2018, the applicant obtained a Lot Line Adjustment of the property line between the subject parcel to 1446 Fifth Street, which shifted south by approximately 4 feet. The size of 1446 Fifth Street decreased to 5,744 square feet, and the size of the subject parcel increased to 5,744 square feet. Given the density standards in the MU-R District, each newly created lot can accommodate a maximum of four units. As noted in Table 2, the result of this change is that the Inclusionary Housing Requirements in BMC 23C.12 would not apply if the applicant chooses to submit a condominium parcel map for either parcel.

As allowed by BMC Section 23B.28.030 (Referral of Applications for AUPs to Board), because of the similarity between the proposed project and the neighboring approved project, and given the level of recent neighborhood interest, the Zoning Officer has scheduled the AUP application for a public hearing before the ZAB, instead of issuing a notice of decision administratively. In this case, the Board must review and act upon the application in the same manner as it acts upon other Use Permit Applications.

Prior to submitting this application to the city, a pre-application poster was erected by the applicant, and the applicant held a community meeting on August 23, 2018, which was attended by six people (meeting minutes are included as Attachment 4). On January 9, 2019, the City mailed public hearing notices to property owners and occupants within 300 feet of the subject site, and to interested neighborhood organizations, and the City posted notices within the neighborhood in three locations. At the time of this writing, staff has not received any communications regarding the project.

- B. Committee Review:** Since the project site is in a nonresidential zoning district, Staff Level Design Review is required. The applicant submitted a Staff Level Design Review application in conjunction with the Administrative Use Permit application on August 31, 2018. Design Review Staff concluded that the project is compatible with City-wide Design Guidelines and posted notices on-site on January 9, 2019. The Staff Level Design Review Approval included standard design review conditions for further review of building details and the landscape plan during the building permit process. The appeal and comment period for this approval is currently underway and will end on January 23, 2019, at 4:00 PM.

V. Issues and Analysis

- A. Housing Accountability Act:** The Housing Accountability Act §65589.5(j) requires that when a proposed housing development complies with the applicable, objective general plan and zoning standards, but a local agency proposes to deny the project or approve it only if the density is reduced, the agency must base its decision on written findings supported by substantial evidence that:
1. The development would have a specific adverse impact on public health or safety unless disapproved, or approved at a lower density;³ and

³ As used in the Act, a “specific, adverse impact” means a “significant, quantifiable, direct and unavoidable impact, based on objective, identified written public health or safety standards, polices, or conditions as they existed on the date the application was complete.

2. There is no feasible method to satisfactorily mitigate or avoid the specific adverse impact, other than the disapproval, or approval at a lower density.

Staff Analysis: The proposed project complies with applicable, objective general plan and zoning standards, including maximum height, density, and FAR, and minimum setbacks, useable open space, and number of parking spaces. Thus, the Housing Accountability Act applies. Staff is not aware of any basis to make the findings listed above.

B. New Dwelling Units in the MU-R District and Neighborhood Compatibility:

Pursuant to BMC Section 23E.84.090, the proposed project is consistent with the purposes of the MU-R District and the West Berkeley Plan because it would strengthen the residential concentration in this neighborhood. The project would protect neighboring residents from unreasonably detrimental effects of nonresidential uses, such as noise, vibration, odors, smoke, fumes, gases, dust, heat and glare because the proposal would add residences (not industrial uses) to the existing cluster of residential buildings at this block. Given the existing residential concentration on this block face, the project is also not likely to contribute to a cumulative change of use in buildings away from the mix of uses that surround this area of West Berkeley. Moreover, the proposed use and its industrial aesthetic would help contribute to a neighborhood that acts as a transition between the residential districts to the east and the industrial districts to the west.

The proposed project complies with all applicable MU-R District development standards (see Table 4). The applicant proposes to construct four units on a lot that can accommodate four units; a floor area ratio of 1.3 where the maximum allowed is 1.5; average height of 33 feet at all four buildings where the maximum average height allowed is 35 feet; and 816 square feet of useable open space where the minimum required is 600 square feet (150 per unit). The project would provide the required number of parking spaces, one per unit, and the City's Traffic Engineer has confirmed that the proposed parking and driveways would operate acceptably. (To ensure compliance with Traffic Engineering standards, Condition of Approval #12 requires that the applicant provide the recorded easements prior to issuance of a building permit.) The project would meet the required front yard setback and would exceed all side and rear yard setbacks.

Staff believes the proposal is consistent with the overall scale and development pattern of the one-, two-, and three-story residences and commercial and manufacturing spaces in the neighborhood, including the approved development on the southern abutting parcel. In addition, Design Review Staff found that the application is consistent with applicable design review guidelines and with the surrounding aesthetic context.

Sunlight: Staff believes the project would not result in significant loss of direct sunlight on abutting residences for several reasons. No residences occur to the west and new shadows cast towards the east would occur primarily along Fifth Street, and not any dwellings. The project would cast shadows on the northern abutting dwelling at 1442 Fifth Street during the winter solstice and on the southern abutting dwellings (currently

under construction) at 1446 Fifth Street during the summer solstice. However, in both cases, shadows would only affect some windows and occur during some morning hours. Because impacts to neighboring residences would be limited to certain hours a day and certain months of the year, staff believes these shading impacts would not be detrimental.

Air: Staff believes the proposal would be consistent with the existing development and building-to-building separation pattern – or air – in this MU-R neighborhood because the buildings would exceed minimum setback and useable open space requirements and would be three stories where the maximum allowed is three.

Views: Staff expects that the proposed project would not result in additional obstruction of significant views in the neighborhood because there are no significant views as defined in BMC Section 23F.04 (Definitions) available to residences in the area. The area is generally flat, developed with one- to three-story buildings, and includes mature vegetation which provides visual screening.

C. General Plan Consistency: The 2002 General Plan contains several policies applicable to the project, including the following:

1. Policy LU-3–Infill Development: Encourage infill development that is architecturally and environmentally sensitive, embodies principles of sustainable planning and construction, and is compatible with neighboring land uses and architectural design and scale.
2. Policy LU-7–Neighborhood Quality of Life, Action A: Require that new development be consistent with zoning standards and compatible with the scale, historic character, and surrounding uses in the area.
3. Policy UD-16–Context: The design and scale of new or remodeled buildings should respect the built environment in the area, particularly where the character of the built environment is largely defined by an aggregation of historically and architecturally significant buildings.
4. Policy UD-24–Area Character: Regulate new construction and alterations to ensure that they are truly compatible with and, where feasible, reinforce the desirable design characteristics of the particular area they are in.

Staff Analysis: The proposed project is an infill development that would add four new dwellings on a vacant lot in a primarily residential neighborhood. The massing, proportions, design, and use of the buildings would be compatible with the surrounding neighborhood. As noted above, the project meets or exceeds all development standards in the MU-R district.

5. Policy H-33–Regional Housing Needs: Encourage adequate housing production to meet City needs and the City’s share of regional housing needs.

Staff Analysis: The applicant proposes to add four new dwelling units to the City of Berkeley housing stock.

6. Policy EM-5—"Green" Buildings: Promote and encourage compliance with "green" building standards. (Also see Policies EM-8, EM-26, EM-35, EM-36, and UD-6.)
7. Policy UD-33—Sustainable Design: Promote environmentally sensitive and sustainable design in new buildings.

Staff Analysis: The project would be constructed to comply with current green building standards that are required by the Building Code.

D. West Berkeley Plan Consistency: The 1993 West Berkeley Area Plan contains several policies applicable to the project, including the following:

1. Land Use Goal 1, Policy A: Retaining, through planning, zoning and land use policies which shield manufactures from economic and physical incompatibilities with other uses, sufficient land and buildings to maintain the current level of manufacturing employment at a minimum.
2. Land Use Goal 2, Policy D: Create a Mixed Residential district as a special mixed use district which will recognize and support the continued evolution of a unique mix of residential, light industrial, and arts and crafts uses, with a particular effort to strengthen residential concentrations existing there.

Staff Analysis: Since the proposed residential units would be located on a block that already contains a concentration of residential uses, the project would shield manufacturers elsewhere in the MU-R district from incompatibilities with residences that are too proximate. Given this compatibility of the proposed use, the project would support the mixed nature of the existing neighborhood.

3. Land Use Goal 4: Assure that new development in any sector is of a scale and design that is appropriate to its surroundings, while respecting the genuine economic and physical needs of the development.

Staff Analysis: As discussed above in Sections V.B and V.C, the proposed massing and scale would be compatible with the surrounding neighborhood context and would reflect the industrial nature of West Berkeley. The project would also provide four new dwelling units that meet all applicable zoning requirements for new residential uses.

VI. Recommendation

Because of the project's consistency with the Zoning Ordinance and General Plan, and minimal impact on surrounding properties, staff recommends that the Zoning Adjustments Board **APPROVE** #ZP2018-0172 pursuant to Section 23B.28.060.C.1 and subject to the attached Findings and Conditions (see Attachment 1).

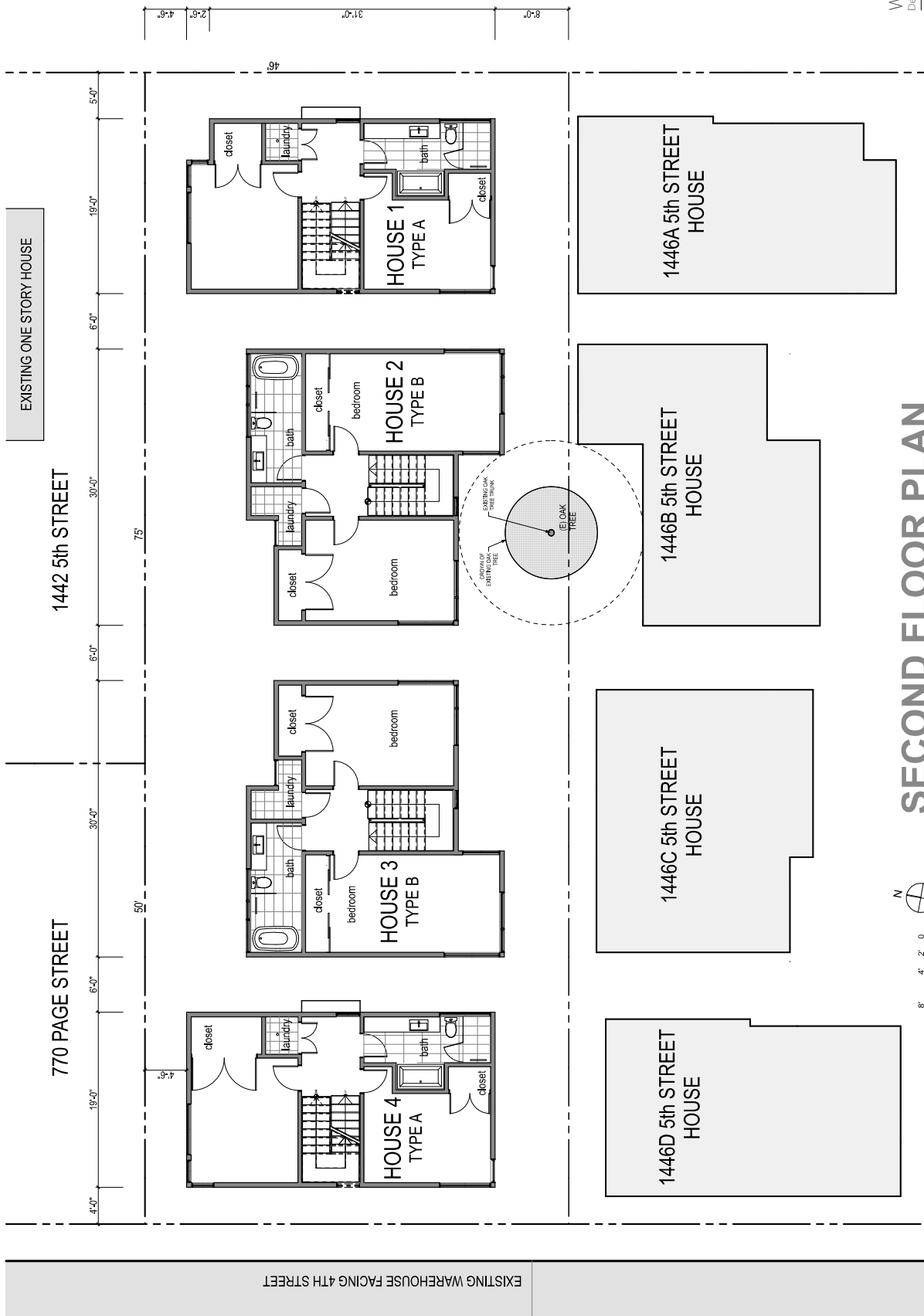
Attachments:

1. Findings and Conditions
2. Project Plans, received January 8, 2019
3. Notice of Public Hearing
4. Neighborhood Meeting Notes and Attendance

5. Correspondence Received

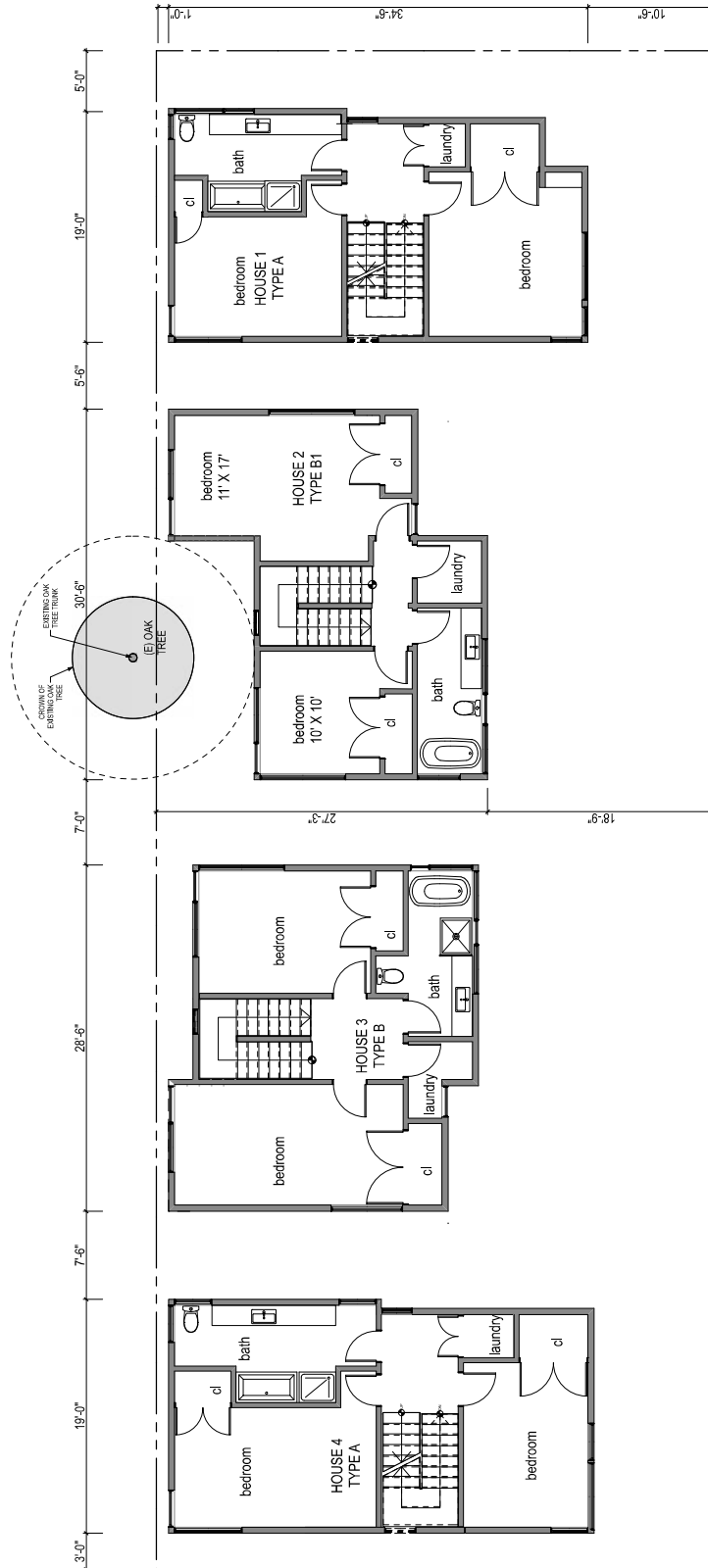
Staff Planner: Abe Leider, Contract Planner, aleider@rinconconsultants.com, (510) 671-0175 and Leslie Mendez, LMendez@cityofberkeley.info, (510) 981-7426

Exhibit J



EXISTING WAREHOUSE FACING 4TH STREET

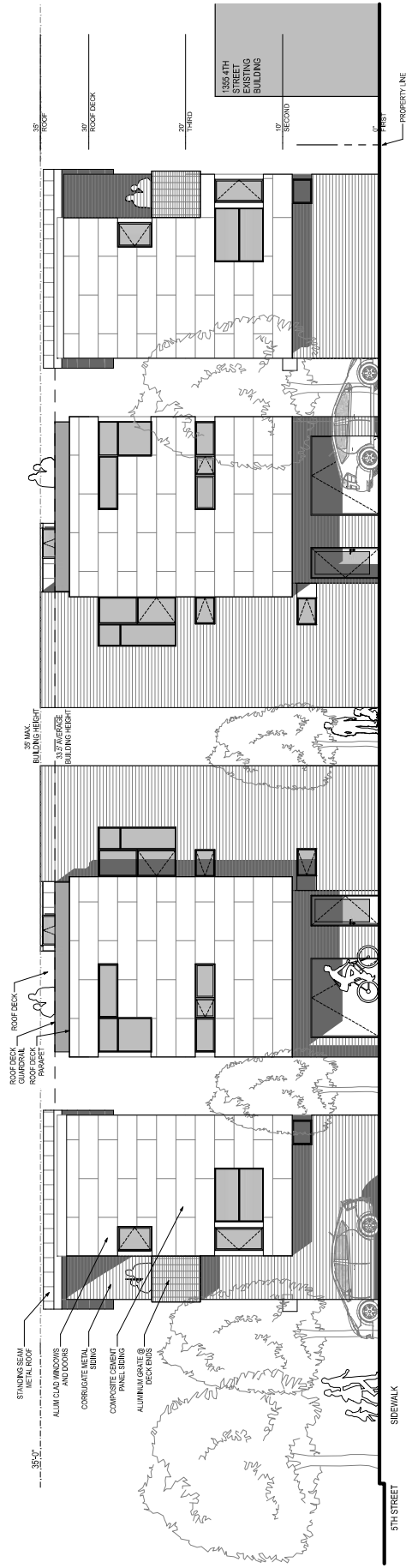
ARCHICAD EDUCATION VERSION



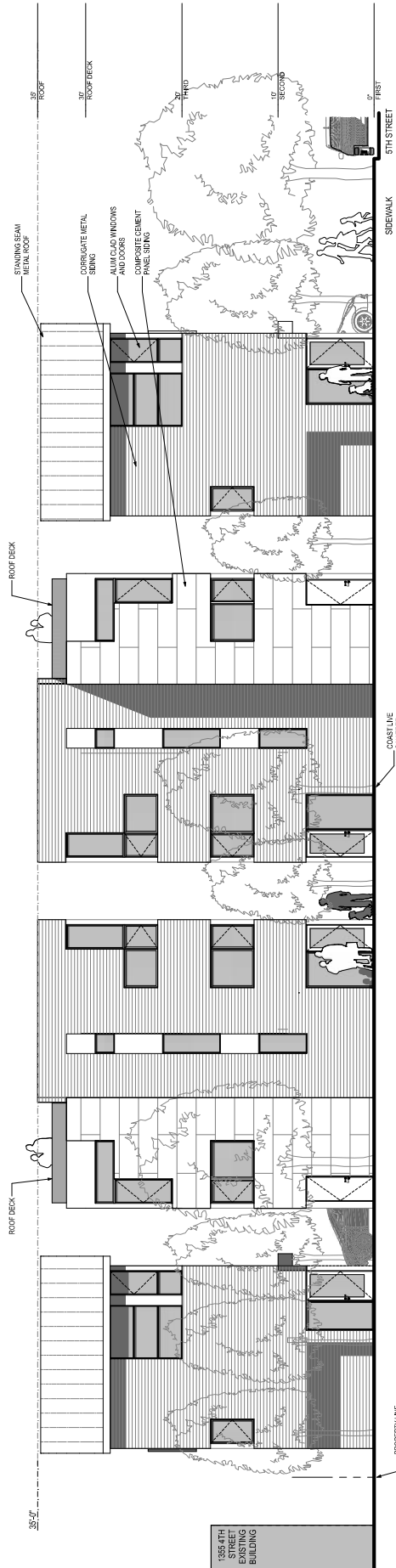
WADLUND+
Design Studio
14657 STREET AVE, #100
REDWOOD CITY, CA 94061
ARCHITECTS

SECOND FLOOR PLAN

ATTACHMENT 2
ZAS 0129419
ARCHICAD EDUCATION VERSION



NORTH ELEVATION - LOT INTERIOR



SOUTH ELEVATION - LOT INTERIOR

WADLUND+
Design Studio
1444 5TH STREET - AWP
REVISED DECEMBER 2018

ARCHICAD EDUCATION VERSION



NORTH ELEVATION - LOT INTERIOR



SOUTH ELEVATION - LOT INTERIOR

WADLUND+
Design Studio
1500 15TH STREET, #101
RENO, NV 89502
ARCHITECTS

Exhibit K



B.4.b.
9:00 P.M. PUBLIC HEARING

City of Berkeley



City Manager's Office
Martin Luther King, Jr.
Civic Center Building
2180 Milvia Street
Berkeley, California 94704

(415) 644-6580
TTY (415) 644-6915

FOR COUNCIL ACTION
June 10, 1986

Deadline For Council
Action: August 18, 1986

To: Honorable Mayor and
Members of the City Council

From: Hal Cronkite, Acting City Manager

Subject: ADOPTION OF INCLUSIONARY ZONING ORDINANCE

PRESENTED TO COUNCIL
CITY OF BERKELEY
JUN 10 1986
OFFICE OF
CITY CLERK

Introduction

The purpose of this report is to present for Council consideration a draft Ordinance which revises the Inclusionary Zoning Ordinance initiated by the Planning Commission.

RECOMMENDATION

1. That Council adopt a Negative Declaration and adopt the attached Ordinance which adds Chapter 15B to the City's Zoning Ordinance No. 2,018-N.S. to require inclusion of low income housing in certain residential housing projects.
2. That Council direct the City Manager to examine the Planning and Community Development Work Program to identify which activities must be deleted so that implementation of the Inclusionary Zoning Ordinance can be added.

Background

The attached draft Inclusionary Zoning Ordinance prepared by staff and recommended for adoption by Council is very similar in principle and content as that approved by the Planning Commission. This draft was developed as a result of Legal review of the Planning Commission's Ordinance and staff discussion of certain issues which arose subsequent to approval of the Commission's Ordinance. Many of the changes are minor and technical in nature, some involve clarifications and elucidations, a few are substantive. A summary of the more salient changes and the rationale for those changes is provided below. Attachment B is the proposed Ordinance, while Attachment C is the proposed Ordinance with differences between it and the Planning Commission's version.

ADOPTION OF INCLUSIONARY ZONING ORDINANCE

FOR COUNCIL ACTION
June 10, 1986

I SUMMARY OF CHANGES

Applicability

The draft clarifies the Planning Commission's intention that the Ordinance applies to both proposed projects of five units or more and residential projects proposed on parcels suitable for development of five units or more.

Eliminated from this section is the requirement that no building or occupancy permit be issued unless the requirements of the Ordinance are met. That language was superfluous since in the section on General Inclusionary Requirements the Ordinance specifies that no Use Permit shall be issued without appropriate inclusionary provisions.

The text exempting live/work projects has also been removed from this section since the exclusion of that category in the staff's draft is contained in the definition of "residential unit."

Purpose

This section better defines the purpose of the Ordinance.

Definitions

The location of the section has been changed and some of the definitions deemed not necessary eliminated. The major change in this section is in the definition of "residential unit." The definition clarifies that fraternities, sororities, residential hotels, and other group living quarters for purposes of this Ordinance are not considered "residential units" and, therefore, exempt from the Ordinance. Those exclusions were not discussed during the drafting of the Ordinance by the Planning Commission Committee. Nonetheless, they appear logical given the structure of the Ordinance. It would be extremely difficult to apply the Ordinance without substantive additions to accommodate those categories. Staff did not think it appropriate to recommend such changes. Furthermore, it did not appear likely that there would be any significant number of new projects in those categories.

Designated Implementing Authority

Unlike the Planning Commission's Ordinance which requires prior approval by that body of regulations and procedures, the proposed Ordinance allows the City Manager to develop and implement regulations. This change is necessary to avoid delay between passage of the Ordinance and processing of Use Permits. The Planning Commission would still have input but rather than being at the beginning of the process, review and input will occur within one year of passage of the Ordinance.

ADOPTION OF INCLUSIONARY ZONING ORDINANCE

FOR COUNCIL ACTION
June 10, 1986

General Inclusionary Requirements

Regulations pertaining to density bonuses have been eliminated as a separate section and incorporated into this section and other parts of the Ordinance for low income inclusionary units where a density bonus/incentives are provided is the same as that required when no density bonus/incentives are granted.

Use Permit Conditions

A section on Use Permit conditions present in the Planning Commission's Ordinance has been eliminated because it is too restrictive (for example, it requires information that may not be available at the time of the Use Permit application). The section is also superfluous since the previous section already states that applicable residential developments shall have conditions attached which will assure compliance with the provision of the Ordinance and require a written agreement between the City and developer as to specific requirements.

Inclusionary Requirements for Rental Projects

An addition has been made to this section to specify that when a density bonus/incentives are given to allow development of "lower income" units, those units shall be affordable to households with income that is 60% of median for this area. This addition is necessary to clarify what the actual price of the inclusionary units will be.

Inclusionary Unit Requirements for Ownership Projects

Language has been added to this section to exclude limited equity housing cooperatives from giving the City the right-of-first refusal to purchase units. Given the goals of limited equity cooperatives, it would be unlikely that the City would be interested in purchasing inclusionary units in such projects.

This section also has an addition that specifies that when a density bonus is granted in exchange for development of "low income" units those units shall be affordable to households at 70% of median income.

Another change in this section pertains to the time limit by which the City must either act on its right-of-first refusal or provide a purchaser list. This draft allows the City 60 days from completion of the project to take either of the above actions. The Planning Commission's Ordinance requires the City to take those actions within 60 days from completion of the development's foundation. Staff felt that the timeline contained in the Planning Commission's Ordinance was insufficient to give any indication as to the appearance of the inclusionary unit. Therefore, it would be difficult to find a buyer for the inclusionary unit. The time limit in the proposed draft would

ADOPTION OF INCLUSIONARY ZONING ORDINANCE

FOR COUNCIL ACTION
June 10, 1986

reduce that difficulty. It will give the developer sufficient time to sell the inclusionary unit at approximately the same time as other units in the project.

Control of Resale

This section has also been revised to exclude limited equity housing cooperatives (LEHC) from the resale controls contained in the Ordinance. Such exclusion appeared justified since LHEC's contain restrictions similar to those found in the Ordinance. The City still maintains the right to monitor the inclusionary units to ensure that affordability requirements are being met.

The staff's draft also proposes that only half of the cost of improvements may be recovered by the owner once the inclusionary unit is sold as opposed to the whole amount allowed in the Planning Commission's Ordinance. This change provides a balance between retaining an incentive for owners to improve their home but yet maintaining affordability for future households who are at the same income level as the original buyer.

In Lieu Fees

This section has been changed by adding language to cover in-lieu fees for residential rental projects. Since those units are not offered for sale, it is recommended that the in-lieu fee be the same as for the ownership units. However, rather than "actual sales price" the City would use "comparable sales price" to determine the amount to be paid by the developer.

Density Bonus/Other Incentives

This section has been incorporated into the section on General Inclusionary Requirements.

II ADOPTION OF A NEGATIVE DECLARATION

Since the proposed draft is very similar to that initiated by the Planning Commission, the Initial Environmental Study which justifies the issuance of a Negative Declaration for that Ordinance is equally valid for this draft. The Initial Environmental Study is contained in Attachment C of the Planning Commission's report being presented for Council action on this matter.

III IMPLEMENTATION

It is difficult to say precisely how much staff time will be involved in implementing the Ordinance since much depends on the level of applicable new residential projects developed. However, at least for the first year, approximately 0.5 FTE staffing will be required to: develop regulations, schedules, and procedures, prepare a referral list and certify eligibility, provide information to potential developers and other interested parties and prepare agreements. The level of staffing could be reduced by simplifying the

ADOPTION OF INCLUSIONARY ZONING ORDINANCE

FOR COUNCIL ACTION
June 10, 1986

Ordinance to decrease staff involvement. But if the City wishes to retain control on occupancy and future affordability of the inclusionary units, staff involvement is crucial. In any case, initial implementation of the Ordinance will require intensive and considerable staff time. It is extremely important to identify funding and staff not only to achieve the goals of the Ordinance but also to avoid major bottlenecks in the operation of the Zoning Division.

Financial Implications and Contact Person

Negligible
Vicki Elmer, 644-6073

Approved by:



Vicki Elmer, Assistant City Manager
Planning and Community Development

Attachments: A. Negative Declaration
B. Proposed Ordinance
C. Annotated Staff-Proposed Ordinance

08-03

ATTACHMENT A



Planning and Community
Development Department
Zoning Division
Martin Luther King, Jr.
Civic Center Building
2180 Milvia Street
Berkeley, California 94704



(415) 644-6570
TTY (415) 644-6915

City of Berkeley

P R O P O S E D N E G A T I V E D E C L A R A T I O N

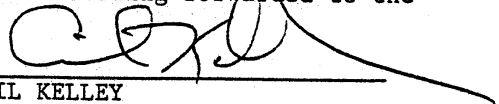
It is hereby declared that the project described below will not have a significant effect on the environment based on the Initial Study prepared according to CEQA guidelines:

INCLUSIONARY ZONING ORDINANCE

The purpose of an inclusionary zoning ordinance is to ensure that some units in multi-family housing projects be made affordable to low income households. The Ordinance will require that 20% of all new residential development projects be affordable. The Ordinance will be applicable to projects containing five or more residential units. Potential beneficiaries are households with income below the median income for this area. Other elements of the Ordinance include a City's right-of-first refusal to acquire inclusionary units, resale restrictions on inclusionary units to maintain long-term affordability, payment of an "in-lieu" fee instead of provision of fractional unit, provision of a density bonus or other incentives when State requirements are applicable. The Planning and Community Development Department is the designated implementing agency.

Anyone concerned with this project may review the application and other material composing the Initial Study on file in the Zoning Division, Martin Luther King, Jr. Civic Center Building, 2180 Milvia Street, Berkeley, CA 94704 (Phone 644-6570.)

The Planning Commission reviewed and recommended adoption of this Negative Declaration on May 21, 1986. The recommendation is being forwarded to the City Council for adoption.


GIL KELLEY
ENVIRONMENTAL REVIEW, ZONING DIVISION

ATTACHMENT B

ORDINANCE NO. -N.S.

Amending Zoning Ordinance No. 3018-N.S. by adding Chapter 15B to require the inclusion of low income housing in certain residential housing projects.

BE IT ORDAINED by the Council of the City of Berkeley that the Zoning Ordinance be amended as follows:

CHAPTER 15B

INCLUSIONARY UNITS

Section 15B.0 APPLICABILITY OF REGULATIONS

(a) The following regulations shall apply to Use Permit and variance applications for development of:

(1) projects containing five or more residential units.

(2) residential housing projects proposed on parcels whose size and zoning designation is such to allow construction of five or more dwelling units.

(3) projects of one to four residential units when such units are added to an existing one to four unit property which has been developed after passage of this Section and the resulting number of units totals five or more. All units in said property are subject to the requirements of this Chapter.

(b) no building permit shall be issued for a project subject to this Chapter unless the developer has agreed to meet the requirements of this Chapter except projects for which building permits were granted prior to February 19, 1986, shall not be required to comply with this Chapter's requirements.

Section 15B.1 FINDINGS

The City of Berkeley finds that:

(a) There is a shortage of housing affordable to low income residents.

(b) Persons with low incomes who live and/or work in the City have serious difficulties locating housing at prices they

can afford.

(c) The high cost of newly constructed housing does not, to any appreciable extent, provide housing affordable by low income households, and that continued new development which does not include lower cost housing will serve to further aggravate the current housing shortage by reducing the supply of land.

(d) The encouragement of usage of density bonus rather than other incentives in applicable cases will help increase the housing supply.

(e) Federal and State housing subsidy programs are not sufficient by themselves to satisfy the housing needs of low income households.

(f) The housing shortage for persons of low income is detrimental to the public health, safety and welfare of the City.

(g) The public purpose of the City and the public policy of the State of California as mandated by the Housing Element of the Master Plan is to make available an adequate supply of housing for persons of all economic segments of the community.

Section 15B.2 PURPOSE

The purpose of this Chapter is to promote achievement of goals number one, two, three, four, and six of the Housing Element by requiring development of affordable housing for households with income below this area's median.

Section 15B.3 DEFINITIONS

(a) Developer means any person, firm, partnership, joint venture, corporation, or any entity or combination of entities which City permits and approvals and/or develop a project pursuant to this Chapter.

(b) Household for purposes of inclusionary requirements shall be the same as the definition used for "family" in the federal Section 8 Existing Housing Program or its future equivalent.

(c) Residential unit or unit means a dwelling containing its own bathroom and kitchen facilities and used primarily for residential accommodations. For purposes of this Chapter dormitories, fraternity and sorority houses, boarding houses, residential hotels, and joint living and work quarters shall not be considered residential units and shall not be subject to this Chapter.

(d) Low income household means a household whose gross income is greater than 80% and less than 100% of the PMSA median income for this area.

(e) Lower income household means a household whose income is no greater than 80% and above 50% of the PMSA median income for this area.

(f) Very low income household means a household whose gross income is 50% or below of the PMSA median income for this area.

(g) Gross household income means the household income of all adult members of the household as determined according to the guidelines used by the Berkeley Housing Authority for its Section 8 rental subsidy program.

(h) Inclusionary unit means a residential unit which as required by this Chapter is to be affordable by households with income below the PMSA median income for this area.

(i) In-lieu fee means a fee paid to the City by a developer in place of construction of a required fraction of an inclusionary unit.

(j) Density bonus means an increase in the number of units authorized for a particular parcel of land beyond the maximum allowed by the Master Plan as provided for by the California Government Code Section 65915.

(k) Incentive means a benefit offered by the City instead of a density bonus to facilitate the construction of housing projects which include low income inclusionary units. Among others, benefits may include fee deferments and waivers, granting of variances, relaxation of otherwise applicable permit conditions, and provision of government benefits.

(l) Resale controls means a resale restriction placed on inclusionary units by which the price of such units and income of purchaser will be restricted in order to insure the affordability and occupancy by low, lower, or very low income households.

(m) Project means a project subject to any of the requirements of this Chapter as set forth in Section 15B.0.

Section 15B.4 DESIGNATED IMPLEMENTING AUTHORITY

(a) The City Manager or his or her designee shall be the designated authority to develop and implement rules and regulations pertaining to this Chapter, to require guarantees, to enter into recorded agreements with developers, and to take other appropriate steps necessary to assure that the required low income

and very low income dwelling units are provided and are occupied by low income households.

(b) Within one year from passage of this Chapter, administrative rules and regulations pertaining to this Chapter shall be brought before the Planning Commission for assessment and revisions as deemed necessary.

Section 15B.5 GENERAL INCLUSIONARY REQUIREMENTS

(a) Any new residential construction involving five or more dwelling units shall be required to include at least 20% of the total number of dwelling units within the project as inclusionary units. The 20% requirement shall also be applicable to residential projects proposed on parcels suited for the development of five residential units or more. In applying these percentages, any decimal fraction shall be paid as an in-lieu fee in conformity with Section 15B.12.

(b) If a developer agrees to construct at least 25% of low income units or 10% of lower income units as set forth in this Chapter, the City shall provide a 25% density bonus or incentives of equivalent financial value.

(1) The use of density bonus is to be preferred over other types of incentives.

(2) If the density bonus or equivalent incentive granted is above 25%, the developer shall agree to a cost certification process.

(c) Any use permit for new residential construction project of five or more units, or for residential construction on parcels that allow for the development of five or more units shall have conditions attached which will assure compliance with the provisions of this Chapter.

(c) All inclusionary units shall be sold to the City or its designee or to households whose gross income is below the Oakland Primary Metropolitan Standard Area (PMSA) median income figures, or rented to households of similar incomes.

Section 15B.6 PROVISION OF WRITTEN AGREEMENT

A written agreement shall be made between the developer and the City which indicates the number, type, location, approximate size and construction scheduling of all dwelling units and such information as shall be required by the City for the purpose of determining the developer's compliance with this Chapter.

Section 15B.7 GENERAL CONSTRUCTION REQUIREMENTS

10.

(a) All inclusionary units in a project and phases of a project shall be constructed concurrently with or prior to the construction of non-inclusionary units.

(b) All inclusionary units shall be reasonably dispersed throughout the project, shall contain on an average the same number of bedrooms and be of the same size as the non-inclusionary units in the project, and shall be comparable with the design or use of remaining units in terms of appearance, materials, and finished quality.

(c) In situations where the developer substantiates and staff concurs that the direct construction and financing costs of the inclusionary units, excluding marketing cost and profit (and also excluding land costs if a density bonus or equivalent incentives are provided), exceed the selling prices allowed for inclusionary units by this Chapter, the Board of Adjustment may approve one or more of the following measures to reduce costs or increase profitability:

(1) reduction of interior amenities of the inclusionary units provided that such units conform to the requirements of the City building and housing codes;

(2) reduction of the square footage of the inclusionary units provided all units conform to the requirements of the City's building and housing codes.

(3) allowance of an increase in the number of bedrooms in the inclusionary unit.

(d) In a homeownership project, the Board of Adjustment shall have the option of allowing the developer to construct rental units in a number sufficient to meet the inclusionary requirements of this Chapter. These rental units shall be subject to the "Inclusionary Unit Requirements for Rental Housing Projects" contained in Section 15B.8.

Section 15B.8 INCLUSIONARY UNIT REQUIREMENTS FOR RENTAL HOUSING PROJECTS

(a) All inclusionary units shall be occupied by low, lower, or very low income households. The Oakland PMSA income figures shall be used in determining income eligibility.

(b) The maximum rental price for inclusionary units shall be rent affordable to an appropriate-sized household whose income is 81% of the PMSA median for this area.

(c) In projects requiring more than one inclusionary unit,

//.

at least 50% of those units shall be rented at a price that is affordable to an appropriate-sized household whose income is at 50% of the PMSA median income provided that the City can make available rental subsidies through the Section 8 Existing Housing Program or an equivalent program. When there is an uneven number of inclusionary units, the uneven number shall be also be priced to be affordable to a household at 50% of median income if subsidies are available. If no rental subsidies are available, all inclusionary unit prices shall be affordable to households at 81% of the PMSA median income.

(d) If a developer agrees to provide 10% lower income inclusionary units, rental price for such units shall be affordable to a household with income that is 60% of the PMSA area median.

(e) A unit shall be considered affordable if the rent (including utilities) does not exceed 30% of a household's gross income. Gross household income and utility allowance shall be calculated according to the guidelines used by the Housing Authority for the Section 8 Existing Housing Program. For purposes of calculating rent, appropriate household size shall be determined by using the schedule contained in the administrative regulations for this Chapter.

(f) At least 20% of the units shall be inclusionary for a period of 59 years. In applying that percentage, any decimal fraction shall be paid as an in-lieu fee in conformity with Section 15B.12.

(g) The City or its designee shall screen applicants for the inclusionary units and refer eligible households of the appropriate household size for the unit. For purposes of occupancy, the appropriate household size standards used by the Housing Authority for the Section 8 Program or any future equivalent program shall be used. The developer or owner shall retain final discretion in the selection of the eligible households referred by the City.

(h) The owner shall provide the City with data on vacancies and other information required to insure the long-term affordability of the inclusionary unit by eligible households.

Section 15B.9 INCLUSIONARY UNIT REQUIREMENTS FOR
OWNERSHIP PROJECTS

(a) The first inclusionary unit shall be sold at a price that is affordable to an appropriate sized household whose income

is no more than 90% of the FMSA median. Thereafter, inclusionary units shall be sold at prices affordable to low income households of the appropriate size for the unit at a price that will result in the average cost being no more than 2.5 times the annual gross income of an appropriate-sized household whose income is no more than 81% of the FMSA for this area. "Lower income" inclusionary units shall be sold at a price that is affordable to an appropriate sized household whose income is 70% of median income. For determining sales price, appropriate size of household shall be calculated by using the schedule contained in the administrative regulations .

(b) The developer of a project other than a limited equity housing cooperative shall be required to give right-of-first refusal to purchase any or all inclusionary units to the City or a City designated agency or organization for a period of not less than 60 days from completion of construction.

(c) Should the City choose not to exercise its right-of-first refusal, it shall provide the developer or owner with a purchaser or with a list of eligible purchasers within that same time period. If the list is not provided, the developer may select a low income purchaser of his/her choice as long as the City verifies income eligibility and the unit is sold at an affordable price as described in this Ordinance.

(d) The City shall maintain a list of eligible low income households and review the assets and income of prospective purchasers of the inclusionary units on a project by project basis and refer potential purchasers to the developer or owner.

Section 15B.10 PURCHASER RESTRICTIONS

(a) All purchasers of inclusionary units shall be first time home buyers with Low, Lower, or Very Low Income. Purchasers shall also be required to occupy the unit except that such requirement may be waived with the approval of the City. In such cases, the unit shall be rented to a Low, Lower, or Very Low Income household at a rent affordable by such households..

(b) Eligible Berkeley residents will have first preference for inclusionary units; second preference will be given to eligible persons employed in the City of Berkeley. Other preferences and priorities may also be established administratively, with Planning Commission review, to help meet the City's Housing Element goals.

(c) The City shall advise all prospective purchasers on the City's eligibility list of the resale restrictions applicable to ownership of inclusionary units as specified in this Chapter and shall provide purchasers with a declaration of restrictions

applicable to ownership of inclusionary units as specified in this Chapter.

Section 15B.11 CONTROL OF RESALE

(a) Except for inclusionary units in limited equity cooperatives, in order to maintain the availability of affordable housing units, the City shall impose the following resale conditions :

(1) Homeownership inclusionary units offered for sale, or sold under the requirements of this Chapter shall be offered to the City or its designee for a period of at least 60 days by the first purchaser or subsequent purchaser(s) from the date of the owner's notification to the City of intent to sell. The resale price of the unit shall not exceed the original price and customary closing costs except to allow for any increase of the Consumer Price Index (CPI) for all urban consumers applicable to the Oakland PMSA for the downpayment amount. Fifty percent (50%) of the cost of improvements, except for debt financing costs, may also be added to the original price as long as the unit remains affordable to a household at the same income level as the original purchaser at the time of acquisition of the inclusionary unit.

(2) If the City does not act on its right-of-first refusal, the same procedure as contained in Section 15B.9(c) shall be used for selection of a purchaser.

(3) The seller shall not levy or change any additional fees nor shall any "finders fee" or other monetary consideration be allowed other than customary real estate commissions if the use of an agent becomes necessary.

(b) The City or its designee may monitor resale of inclusionary units by limited equity cooperatives. The City or its designee shall monitor the resale of ownership inclusionary units. The owners of any inclusionary units shall attach and legally reference in the Grant Deed conveying title of any such inclusionary ownership unit and record with the county recorder a Declaration of Restrictions provided by the City, stating the restrictions imposed pursuant to this Chapter. Violation of any of the terms thereof may be prosecuted by the City.

Section 15B.12 IN LIEU PARTICIPATION FEES

(a) In projects where the inclusionary requirement will result in a fraction of a unit, such a fraction shall be paid to the City as an in-lieu participation fee. The in-lieu fee shall be used by the City, or its designee such as a non-profit housing

development corporation, to provide, construct, or promote the creation or retention of low income housing in the City. The use of in-lieu fees for specific housing programs shall be brought before the Housing Advisory and Appeals Board for approval.

(b) The in-lieu fee shall be as follows:

(1) the difference between development cost (excluding marketing costs and profit) and actual sales price for the fraction of the unit in projects where Government Code 69515 does not apply.

(2) the difference between affordable cost for an appropriately-sized household and actual sales price for the fraction of the unit in projects where Government Code 69515 requiring a density bonus or equivalent incentives is applicable.

ATTACHMENT C

1

ANNOTATED STAFF-PROPOSED INCLUSIONARY ORDINANCE WITH CHANGES FROM
THE PLANNING COMMISSION'S INITIATED ORDINANCE UNDERLINED AND MAJOR
CHANGES EXPLAINED

ORDINANCE NO. -N.S.

Amending Zoning Ordinance No. 3018-N.S. by adding Chapter 15B
to require the inclusion of low income housing in certain
residential housing projects.

BE IT ORDAINED by the Council of the City of Berkeley that
the Zoning Ordinance be amended as follows:

CHAPTER 15B

INCLUSIONARY UNITS

Section 15B.0 APPLICABILITY OF REGULATIONS

(a) The following regulations shall apply to Use Permit and
variance applications for development of:

(1) projects containing five or more residential
units.

(2) residential housing projects proposed on parcels
whose size and zoning designation is such to allow
construction of five or more dwelling units.

CHANGED LANGUAGE TO SIMPLIFY

(3) projects of one to four residential units when such
units are added to an existing one to four unit property
which has been developed after passage of this Section and
the resulting number of units totals five or more. All units
in said property are subject to the requirements of this
Chapter.

(b) no building permit shall be issued for a project
subject to this Chapter unless the developer has agreed to meet
the requirement of this Chapter except for which building permits
were granted prior to February 19, 1986, shall not be required to
comply with this Chapter's requirements.

Section 15B.1 FINDINGS

16.

The City of Berkeley finds that:

(a) There is a shortage of housing affordable to low income residents.

(b) Persons with low incomes who live and/or work in the City have serious difficulties locating housing at prices they can afford.

(c) The high cost of newly constructed housing does not, to any appreciable extent, provide housing affordable by low income households, and that continued new development which does not include lower cost housing will serve to further aggravate the current housing shortage by reducing the supply of land.

(d) The encouragement of usage of density bonus rather than other incentives in applicable cases will help increase the housing supply.

(e) Federal and State housing subsidy programs are not sufficient by themselves to satisfy the housing needs of low income households.

(f) The housing shortage for persons of low income is detrimental to the public health, safety and welfare of the City.

(g) The public purpose of the City and the public policy of the State of California as mandated by the Housing Element of the Master Plan is to make available an adequate supply of housing for persons of all economic segments of the community.

Section 15B.2 PURPOSE

The purpose of this Chapter is to promote achievement of goals number one, two, three, four, and six of the Housing Element by requiring development of affordable housing for households with income below this area's median.

CONCEPT THE SAME, CHANGED LANGUAGE TO MAKE CLEARER

Section 15B.3 DEFINITIONS

THIS SECTION MOVED FROM END OF ORDINANCE TO THIS SECTION FOR STRUCTURAL PURPOSES, CERTAIN DEFINITIONS LEFT OUT FROM THE DEFINITION SECTION BUT ARE INCLUDED IN THE BODY OF THE ORDINANCE

(a) Developer means any person, firm, partnership, joint venture, corporation, or any entity or combination of entities which City permits and approvals and/or develop a project pursuant to this Chapter.

3

(b) Household for purposes of inclusionary requirements shall be the same as the definition used for "family" in the federal Section 8 Existing Housing Program or its future equivalent.

(c) Residential unit or unit means a dwelling containing its own bathroom and kitchen facilities and used primarily for residential accommodations. For purposes of this Chapter dormitories, fraternity and sorority houses, boarding houses, residential hotels, and joint living and work quarters shall not be considered residential units and shall not be subject to this Chapter.

THIS DEFINITION CHANGED TO EXCLUDE CERTAIN CATEGORIES.
CHANGES SUBSTANTIAL BUT NOT EXPECTED TO BE OPPOSED BY PLANNING
COMMISSION - JUST NOT DISCUSSED

(d) Low income household means a household whose gross income is greater than 80% and less than 100% of the PMSA median income for this area.

(e) Lower income household means a household whose income is no greater than 80% and above 50% of the PMSA median income for this area.

(f) Very low income household means a household whose gross income is 50% or below of the PMSA median income for this area.

(g) Gross household income means the household income of all adult members of the household as determined according to the guidelines used by the Berkeley Housing Authority for its Section 8 rental subsidy program.

(h) Inclusionary unit means a residential dwelling which as required by Chapter 15B of the Zoning Ordinance is affordable by households with income below the PMSA median income for this area.

(i) In-lieu fee means a fee paid to the City by a developer in place of construction of a required fraction of an inclusionary unit.

(j) Density bonus means an increase in the number of units authorized for a particular parcel of land beyond the maximum allowed by the Master Plan as provided for by the California Government Code Section 65915.

(k) Incentive means a benefit offered by the City instead of a density bonus to facilitate the construction of housing projects which include low income inclusionary units. Among others, benefits may include fee deferments and waivers, granting of

18.

4

variances, relaxation of otherwise applicable permit conditions, and provision of government benefits.

(l) Resale controls means a resale restriction placed on inclusionary units by which the price of such units and income of purchaser will be restricted in order to insure the affordability and occupancy by low, lower, or very low income households.

(m) Project means a project subject any of the requirements of this Chapter as set forth in Section 15B.0.

Section 15B.4 DESIGNATED IMPLEMENTING AUTHORITY

(a) The City Manager or his or her designee shall be the designated authority to develop and implement rules and regulations pertaining to this Chapter, to require guarantees, to enter into recorded agreements with developers, and to take other appropriate steps necessary to assure that the required low income and very low income dwelling units are provided and are occupied by low income households.

(b) Within one year from passage of this Chapter, administrative rules and regulations pertaining to this Chapter shall be brought before the Planning Commission for assessment and revisions as deemed necessary.

SUBSTANTIVE CHANGE HERE BECAUSE NO PRIOR PLANNING COMMISSION APPROVAL BUT NECESSARY IF THE ORDINANCE IS TO BE IMPLEMENTED IN A TIMELY MANNER.

Section 15B.5 GENERAL INCLUSIONARY REQUIREMENTS

(a) Any new residential construction involving five or more dwelling units shall be required to include at least 20% of the total number of dwelling units within the project as inclusionary units. The 20% requirement shall also be applicable to residential projects proposed on parcels suited for the development of five residential units or more. In applying these percentages, any decimal fraction shall be paid as an in-lieu fee in conformity with Section 15B.12.

(b) If a developer agrees to construct at least 25% of low income units or 10% of lower income units as set forth in this Chapter, the City shall provide a 25% density bonus or incentives of equivalent financial value.

(1) The use of density bonus is to be preferred over other types of incentives.

(2) If the density bonus or equivalent incentive granted is above 25%, the developer shall agree to a cost

19.

5

certification process.

THIS PORTION ON DENSITY BONUSES MOVED FOR STRUCTURAL REASONS, CONCEPT THE SAME EXCEPT THAT ONE PART LEFT OUT SPECIFYING THAT CITY MANAGER WOULD DETERMINE INCENTIVE AND BOARD OF ADJUSTMENT APPROVE. THIS IS USUALLY THE PROCESS AND CAN BE MORE CLEARLY DETAILED IN THE IMPLEMENTING REG'S

(c) Any use permit for new residential construction project of five or more units, or for residential construction on parcels that allow for the development of five or more units shall have conditions attached which will assure compliance with the provisions of this Chapter.

(c) All inclusionary units shall be sold to the City or its designee or to households whose gross income is below the Oakland Primary Metropolitan Standard Area (PMSA) median income figures, or rented to households of similar incomes.

SECTION 15B.6 USE PERMIT CONDITIONS

THIS PART ELIMINATED - SUPERFLUOUS, OTHER SECTION IN THE ORDINANCE SPECIFIES THAT USE PERMITS SHALL HAVE CONDITIONS ATTACHED

Section 15B.6 PROVISION OF WRITTEN AGREEMENT

A written agreement shall be made between the developer and the City which indicates the number, type, location, approximate size and construction scheduling of all dwelling units and such information as shall be required by the City for the purpose of determining the developer's compliance with this Chapter.

Section 15B.7 GENERAL CONSTRUCTION REQUIREMENTS

(a) All inclusionary units in a project and phases of a project shall be constructed concurrently with or prior to the construction of non-inclusionary units.

(b) All inclusionary units shall be reasonably dispersed throughout the project, shall contain on an average the same number of bedrooms and be of the same size as the non-inclusionary units in the project, and shall be comparable with the design or use of remaining units in terms of appearance, materials, and finished quality.

(c) In situations where the developer substantiates and staff concurs that the direct construction and financing costs of the inclusionary units, excluding marketing cost and profit (and also excluding land costs if a density bonus or equivalent incentives are provided), exceed the selling prices allowed for inclusionary units by this Chapter, the Board of Adjustment may

6

approve one or more of the following measures to reduce costs or increase profitability:

(1) reduction of interior amenities of the inclusionary units provided that such units conform to the requirements of the City building and housing codes;

(2) reduction of the square footage of the inclusionary units provided all units conform to the requirements of the City's building and housing codes.

(3) allowance of an increase in the number of bedrooms in the inclusionary unit.

(d) In a homeownership project, the Board of Adjustment shall have the option of allowing the developer to construct rental units in a number sufficient to meet the inclusionary requirements of this Chapter. These rental units shall be subject to the "Inclusionary Unit Requirements for Rental Housing Projects" contained in Section 15B.8.

THIS SECTION, FOR ALL INTENT AND PURPOSE, IS THE SAME

Section 15B.8 INCLUSIONARY UNIT REQUIREMENTS FOR RENTAL HOUSING PROJECTS

(a) All inclusionary units shall be occupied by low, lower, or very low income households. The Oakland PMSA income figures shall be used in determining income eligibility.

(b) The maximum rental price for inclusionary units shall be rent affordable to an appropriate-sized household whose income is 81% of the PMSA median for this area.

(c) In projects requiring more than one inclusionary unit, at least 50% of those units shall be rented at a price that is affordable to an appropriate-sized household whose income is at 50% of the PMSA median income provided that the City can make available rental subsidies through the Section 8 Existing Housing Program or an equivalent program. When there is an uneven number of inclusionary units, the uneven number shall be also be priced to be affordable to a household at 50% of median income if subsidies are available. If no rental subsidies are available, all inclusionary unit prices shall be affordable to households at 81% of the PMSA median income.

(d) If a developer agrees to provide 10% lower income inclusionary units, rental price for such units shall be affordable to a household with income that is 65% of the PMSA area median.

7

PART (d) ADDED TO GIVEN GREATER CLARIFICATION AS TO LEVEL OF LOWER INCOME INCLUSIONARY UNITS TO BE PROVIDED - NOT SPECIFIED IN THE PLANNING COMMISSION'S ORDINANCE

(e) A unit shall be considered affordable if the rent (including utilities) does not exceed 30% of a household's gross income. Gross household income and utility allowance shall be calculated according to the guidelines used by the Housing Authority for the Section 8 Existing Housing Program. For purposes of calculating rent, appropriate household size shall be determined by using the schedule contained in the administrative regulations for this Chapter.

(f) At least 20% of the units shall be inclusionary for a period of 59 years. In applying that percentage, any decimal fraction shall be paid as an in-lieu fee in conformity with Section 15B.12.

59 YEARS HAS BEEN SELECTED INSTEAD OF "LIFE OF THE INCLUSIONARY UNIT" BECAUSE OF CERTAIN IMPLICATIONS FOR THE KINDS OF REQUIREMENTS THAT CAN BE MADE

(g) The City or its designee shall screen applicants for the inclusionary units and refer eligible households of the appropriate household size for the unit. For purposes of occupancy, the appropriate household size standards used by the Housing Authority for the Section 8 Program or any future equivalent program shall be used. The developer or owner shall retain final discretion in the selection of the eligible households referred by the City.

(h) The owner shall provide the City with data on vacancies and other information required to insure the long-term affordability of the inclusionary unit by eligible households.

Section 15B.9 INCLUSIONARY UNIT REQUIREMENTS FOR OWNERSHIP PROJECTS

(a) The first inclusionary unit shall be sold at a price that is affordable to an appropriate sized household whose income is no more than 90% of the PMSA median. Thereafter, inclusionary units shall be sold at prices affordable to low income households of the appropriate size for the unit at a price that will result in the average cost being no more than 2.5 times the annual gross income of an appropriate-sized household whose income is no more than 81% of the PMSA for this area. "Lower income" inclusionary units shall be sold at a price that is affordable to an appropriate sized household whose income is 70% of median income. For determining sales price, appropriate size of household shall be calculated by using the schedule contained in the

8

administrative regulations .

THIS SECTION SPECIFIES THE PRICE LEVEL WHEN LOWER INCOME INCLUSIONARY UNITS ARE PROVIDED AND A DENSITY BONUS IS GIVEN.

(b) The developer of a project other than a limited equity housing cooperative, shall be required to give right-of-first refusal to purchase any or all inclusionary units to the City or a City designated agency or organization for a period of not less than 60 days from completion of construction.

SUBSTANTIVE CHANGE IN TIME PERIOD TO ALLOW PURCHASER KNOW WHAT HE/SHE IS BUYING; IT WILL BE VERY DIFFICULT FOR CITY TO FIND PURCHASERS IF NOTIFICATION OR REFERRAL LIST MUST BE GIVEN SOONER BY CITY. SHOULD NOT CAUSE MAJOR DIFFICULTY WITH DEVELOPER, ALTHOUGH THIS TOPIC WAS DISCUSSED AND PLANNING COMMISSION SPECIFIED A DIFFERENT TIME PERIOD.

THIS PART ADDED, NOT DISCUSSED WITH PLANNING COMMISSION, AFFECT LIKELY TO BE MINISCULE - NO CITY W/ INCLUSIONARY ZONING HAS ACTED ON ITS RIGHT OF FIRST REFUSAL. THERE REALLY WOULD BE NO NEED FOR THE CITY TO HAVE SUCH RIGHTS IN LEHC PROJECTS.

(c) Should the City choose not to exercise its right-of-first refusal, it shall provide the developer or owner with a purchaser or with a list of eligible purchasers within that same time period. If the list is not provided, the developer may select a low income purchaser of his/her choice as long as the City verifies income eligibility and the unit is sold at an affordable price as described in this Ordinance.

(d) The City shall maintain a list of eligible low income households and review the assets and income of prospective purchasers of the inclusionary units on a project by project basis and refer potential purchasers to the developer or owner.

Section 15B.10 PURCHASER RESTRICTIONS

(a) All purchasers of inclusionary units shall be first time home buyers with Low, Lower, or Very Low Income. Purchasers shall also be required to occupy the unit except that such requirement may be waived with the approval of the City. In such cases, the unit shall be rented to a Low, Lower, or Very Low Income household at a rent affordable by such households..

(b) Eligible Berkeley residents will have first preference for inclusionary units; second preference will be given to eligible persons employed in the City of Berkeley. Other preferences and priorities may also be established administratively, with Planning Commission review, to help meet the City's Housing Element goals.

23.

9

(c) The City shall advise all prospective purchasers on the City's eligibility list of the resale restrictions applicable to ownership of inclusionary units as specified in this Chapter and shall provide purchasers with a declaration of restrictions applicable to ownership of inclusionary units as specified in this Chapter.

Section 15B.11 CONTROL OF RESALE

(a) Except for inclusionary units in limited equity cooperatives, in order to maintain the availability of affordable housing units, the City shall impose the following resale conditions :

LIMITED EQUITY COOPS HAVE LONG-TERM AFFORDABILITY REQUIREMENTS, LESS ADMINISTRATIVE COSTS IF THEY ARE EXCLUDED FROM MANY OF THE REQUIREMENTS OF THIS SECTION - MONITORING TO ASSURE COMPLIANCE WITH ORDINANCE STILL LEFT IN

(1) Homeownership inclusionary units offered for sale, or sold under the requirements of this Chapter shall be offered to the City or its designee for a period of at least 60 days by the first purchaser or subsequent purchaser(s) from the date of the owner's notification to the City of intent to sell. The resale price of the unit shall not exceed the original price and customary closing costs except to allow for any increase of the Consumer Price Index (CPI) for all urban consumers applicable to the Oakland PMSA for the downpayment amount. Fifty percent (50%) of the cost of improvements, except for debt financing costs, may also be added to the original price as long as the unit remains affordable to a household at the same income level as the original purchaser at the time of acquisition of the inclusionary unit.

THE QUESTION OF COST OF IMPROVEMENTS WAS DISCUSSED BY THE PLANNING COMMISSION -THIS DRAFT DOES NOT ALLOW FULL COST BECAUSE AFTER MORE THOUGHT AND DISCUSSION ON THE MATTER, IT DID NOT SEEM APPROPRIATE THAT THE OWNER SHOULD BE RETURNED FULL COST OF IMPROVEMENTS SINCE SHE/HE HAD BENEFITTED FROM THEM AS WELL AND WHAT ARE IMPROVEMENTS TO SOME MAY NOT REALLY APPEAR AS SUCH TO THE NEXT BUYER.

(2) If the City does not act on its right-of-first refusal, the same procedure as contained in Section 15B.9(c) shall be used for selection of a purchaser.

(3) The seller shall not levy or change any additional fees nor shall any "finders fee" or other monetary

10

consideration be allowed other than customary real estate commissions if the use of an agent becomes necessary.

(b) The City or its designee may monitor resale of inclusionary units by limited equity cooperatives. The City or its designee shall monitor the resale of ownership inclusionary units. The owners of any inclusionary units shall attach and legally reference in the Grant Deed conveying title of any such inclusionary ownership unit and record with the county recorder a Declaration of Restrictions provided by the City, stating the restrictions imposed pursuant to this Chapter. Violation of any of the terms thereof may be prosecuted by the City.

Section 15B.12 IN LIEU PARTICIPATION FEES

(a) In projects where the inclusionary requirement will result in a fraction of a unit, such a fraction shall be paid to the City as an in-lieu participation fee. The in-lieu fee shall be used by the City, or its designee such as a non-profit housing development corporation, to provide, construct, or promote the creation or retention of low income housing in the City. The use of in-lieu fees for specific housing programs shall be brought before the Housing Advisory and Appeals Board for approval.

(b) The in-lieu fee shall be as follows:

(1) the difference between development cost (excluding marketing costs and profit) and actual sales price for the fraction of the unit in projects where Government Code 69515 does not apply.

(2) the difference between affordable cost for an appropriately-sized household and actual sales price for the fraction of the unit in projects where Government Code 69515 requiring a density bonus or equivalent incentives is applicable.

SECTION ON DENSITY BONUS/OTHER INCENTIVES INCORPORATED INTO GENERAL INCLUSIONARY REQUIREMENTS SECTION

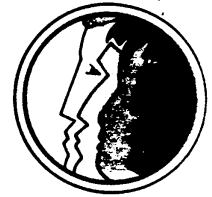
DEFINITION SECTION ALSO MOVED CHANGES IN THAT SECTION INCLUDED: MORE THOROUGH DEFINITION OF RESIDENTIAL UNIT, CLARIFICATION OF HOUSEHOLD AND LOW, LOWER, AND VERY LOW INCOME CATEGORIES, ELIMINATION OF CERTAIN DEFINITIONS BECAUSE INCORPORATED INTO THE BODY OF THE ORDINANCE (E.G., HOUSING COSTS, AFFORDABLE RENT).



Planning Commission
Martin Luther King, Jr.
Civic Center Building
2180 Milvia Street
Berkeley, California 94704

City of Berkeley

B.4a



(415) 644-6534
TTY (415) 644-6915

PRESENTED TO COUNCIL
CITY OF BERKELEY

FOR COUNCIL ACTION
June 10, 1986

JUN 10 1986

OFFICE OF
CITY CLERK

Deadline for Council
Action August 18, 1986

TO: Honorable Mayor and
Members of the Council

FROM: Planning Commission

SUBJECT: ADOPTION OF INCLUSIONARY ZONING ORDINANCE

Introduction

The purpose of this report is to provide background information and to present for Council consideration an inclusionary zoning ordinance initiated by the Planning Commission on February 19, 1986 which adds a new Chapter to the present Zoning Ordinance requiring low income units in certain new residential development projects. The ordinance is in effect on an interim basis until August 18 or until Council deliberation.

RECOMMENDATION

That Council approve the attached Inclusionary Zoning Ordinance adding Chapter 15B to the Zoning Ordinance No. 3018-N.S. and that Council adopt the attached Proposed Negative Declaration for that Ordinance.

Background

I. Process

The Planning Commission considered the use of inclusionary zoning as a mechanism to help deal with the housing crisis that exists in Berkeley for low income households some time ago. In June 1985 it established a subcommittee to work with staff and Housing Advisory and Appeals Board (HAAB) members to review a draft inclusionary ordinance prepared by Planning Commission members and revise that draft as appropriate. Many meetings and discussions regarding that ordinance and later versions of it were held with developers and staff.

A draft ordinance similar to that adopted by the Planning Commission was presented to the Board of Adjustments and to the HAAB for comment. On January 9, 1986, the HAAB unanimously approved (present: Tiedemann, Rios, Collins, Lambert) the ordinance presented with the following changes: Firstly, that the

INCLUSIONARY ZONING ORDINANCE

FOR COUNCIL ACTION
June 10, 1986

ordinance apply to all projects of four or more units; secondly, that the price of all inclusionary units be set at a price affordable to households with income at 81% of the median for this area.

An Initial Environmental Study (Attachment C) was prepared by staff on a draft ordinance which considered both a 20% and a 25% inclusionary requirement. That study indicated that no substantial negative environmental impact would result from the ordinance. The Planning Commission held a public hearing on the ordinance on February 5, 1986. Some changes to the ordinance were made as a result of that hearing before its approval by the Planning Commission on February 19 (in favor: Barragan, Gleason, Goldfarb, Gordon, Illgen, Peterson, Pinkston; against: Chong, abstaining: none). A minor change to the ordinance was made by the Commission on May 21 to clarify that exempted from the ordinance were projects involving new development of live/work quarters as well as projects receiving their building permit prior to its adoption.

II. Summary of the Problem and Assumptions

It is increasingly difficult for low income households to find affordable housing in Berkeley. There is little developable land and construction and financing costs are high. The challenge for the creation of an inclusionary zoning ordinance was to find a way to assure that a portion of new housing developments benefited low income households without placing an unbearable burden on the developer. Example of inclusionary zoning ordinances in effect or proposed elsewhere were of some utility but no one by itself could be used to deal effectively with Berkeley's situation. A summary of other inclusionary zoning regulations are contained in Attachment D.

The following assumptions were used in developing the ordinance:

- Given the dire need for affordable housing and given that most projects were likely to be small, the ordinance should be as inclusive as possible.
- The ordinance was not to serve as a mechanism to deter development, but development "at any cost" and under "all conditions" was not an overriding goal.
- The number of inclusionary units obtained through the inclusionary ordinance was not expected to be high because of the built-up nature of the City. However, some units would be obtained making the creation of an inclusionary ordinance a worthwhile endeavor.
- The principal objective of inclusionary zoning should be to assure that a portion of new residential developments be

INCLUSIONARY ZONING ORDINANCE

FOR COUNCIL ACTION
June 10, 1986

made available to low income households, therefore, inclusionary units should be on-site; and in-lieu fee would be allowed only where the inclusionary requirement resulted in a fraction of a unit.

● Given high development costs, the program could only benefit those whose income is within 81% to 99% of the median for this area unless further subsidies could be made available. Moderate income households should not be included in the targeted group because although they too have difficulty in finding affordable housing, their situation is not as dire as the low income.

● The costs of developing inclusionary units could be borne and/or shared by various entities:

The City - When the developer agreed to build 25% of "low" income units or 10% of "lower" income units the City would provide a 25% density bonus above the normal density allowed in an area, or provide other incentives of equivalent financial value.

The landowner - Developers might not be willing to pay the price being asked for land and owners really willing to sell their land might lower their land sale price.

Other purchasers or renters - Some increase to other purchasers or renters of the non-inclusionary units might result, but only if the private market was such that others would be willing to pay a higher price.

The developer - The developer's profit might be lowered.

● In order to ensure that targeted groups are the beneficiaries both initially and with subsequent purchasers and renters of inclusionary units, the City must maintain a high level of control even if it will involve additional administrative staff.

III. Ordinance Summary

The ordinance applies to new residential development projects of five units or more as well as residential units created on parcels which allow the development of five units or more. The ordinance applies to both ownership and rental projects with the inclusionary requirement set at 20%. The City will provide a 25% density bonus if the developer agrees to develop at least 25% of a project as low income housing, or

INCLUSIONARY ZONING ORDINANCE

FOR COUNCIL ACTION
June 10, 1986

10% as lower income units.

In ownership projects, the price of the first inclusionary unit is set at a level that is affordable to an appropriate-sized household with income that is at 90% of the median for the Berkeley area, other inclusionary units are to be affordable to households at 81% of median. A developer can also construct 10% of a project as inclusionary units if they are made affordable to a household with income 80% or below of the area median. An inclusionary unit is considered affordable if it is sold at two and one half times the households gross annual income. Attachment B contains a chart of income and affordable sales and rental prices for the inclusionary units. As an example, a sales price of \$72,000 would be affordable to a household with income at 90% of median.

In rental projects, all units are to be affordable to those at 81% of median income. However, if the City can make available Section 8 or other rental subsidies, 50% of the inclusionary units must be rented to households with income no higher than 50% of median. Affordability is calculated at 30% of the household's grossly monthly income.

Other major elements of the ordinance are: the right-of-first refusal to the City or its designee to purchase inclusionary units, selection controls for purchasers and renters of inclusionary units, resale restrictions to maintain long-term affordability, and in-lieu fees when the requirement results in a fraction of an inclusionary units.

IV. Content, Issues, and Explanations

A. Applicability of Regulations

Most residential projects likely to be built in Berkeley are expected to be comparatively small and this was the basis for making the ordinance applicable primarily to projects involving five or more units. The applicability section also contains language to close possible loopholes of building less units or building units incrementally as a means to avoid the requirements of the ordinance.

The HAAB's suggestion that the ordinance be applicable to projects containing four units or more was rejected. The Commission felt that because of the economies of scale, five unit projects were the lowest threshold to which an inclusionary requirement could apply without increasing the possibility of making a development prohibitive. Other proposals that the ordinance be applicable to projects containing 8-10 units or above were also rejected. Those

INCLUSIONARY ZONING ORDINANCE

FOR COUNCIL ACTION
June 10, 1986

proponents argued that it would be very difficult for small projects (i.e., five units), especially those involving creation of modest units, to absorb the inclusionary costs. They made the argument that a low threshold was combined with a high inclusionary requirement making it extremely difficult, if not impossible, to develop such projects. Even if projects were developed, occupants were likely to be a mix of either low income (occupants of inclusionary units) or very high income (occupants of luxury units).

In response to the above arguments and recognizing that smaller projects are likely to have higher costs (and recognizing the high cost of development in general) the ordinance allows the first inclusionary unit to be made affordable to households at 90% of the median income. Additionally, when development costs are higher than the sales price of the inclusionary unit, the Board of Adjustment has flexibility (such as allowing a smaller size for inclusionary units) to reduce development costs. The City can also offer density bonuses or provide other incentives to help make the project feasible.

B. General Inclusionary and Construction Requirements

A 20% requirement was selected by the Planning Commission because, given the little developable land, were the requirement to be lower, few inclusionary units would result from the ordinance. This requirement (except in the case of development of rental projects when rental subsidies are available) does not trigger a density bonus. The Commission recognized that it was advantageous for most developers to accept a 25% requirement and receive a density bonus and allowed for that. However, there may be a situation where a density bonus or other incentives would not be needed and in those cases a 20% requirement would reduce administrative involvement.

There was much discussion on the question of density bonus and what other incentives could be offered. It was clear that the City, to be in compliance with state law, had to provide either one or the other. If incentives were given, they had to be of an equivalent financial value to the developer as the density bonus. Incentives can include fee waivers or deferments, granting of variances, provision of government grants or loans, land donations, use of bonds monies for financing. The Commission was of the opinion that density bonuses should be preferred over other incentives. The issue of what type of incentives should be provided if density bonuses were not offered was also discussed. For consistency sake, it would be best to specify what incentives the City was willing to allow. In reality, it would be difficult to do so because each individual project would have different needs. Additionally, the City should not tie itself to specific incentives since the type of resources it has available at any one

INCLUSIONARY ZONING ORDINANCE

FOR COUNCIL ACTION
June 10, 1986

time also varies.

In terms of construction requirements, the ordinance requires that inclusionary units be built at the same time as the other units, that they be comparable to other units, and reasonably dispersed throughout the project. The issue in this area concerns situations where development costs for the inclusionary units would be higher than the inclusionary sales price, therefore, developers could be asked to build the inclusionary unit at below cost. In those cases, to bring sales costs for inclusionary costs more in line with actual development costs, the ordinance gives the Board of Adjustment the possibility of reducing the unit size and amenity level of the unit or other measures to facilitate construction of the inclusionary unit without undue hardship on the developer.

The issue of cost of developing inclusionary units was a major one discussed with developers. Staff research indicated that prototypical development costs were approximately \$73.40 a square foot without land cost, with the caveat that there is considerable variation in cost depending on quality and size of the development, financing rates available, and experience of the developer. In some cases, it would appear that development costs could be higher than inclusionary sales prices. However, given the measures contained in the ordinance to facilitate development in those cases, in general, the inclusionary requirement should not be prohibitive. Attachment B contains a Chart of inclusionary sales prices and prototype development costs for various size units.

C. Inclusionary Units: Prices and Occupancy

The inclusionary requirement varies depending on whether inclusionary units are in "for ownership" or rental projects. The difference in requirement is based on the economic feasibility for the different types of projects. For rental projects there are factors that permit providing housing to households at a somewhat lower income level. For example, there are certain tax advantages for rental properties; inclusionary units may also receive government rent subsidies.

For ownership units the ordinance requires that the first inclusionary unit be affordable to a purchaser with income that is 90% of the median for this area. Any other inclusionary unit has to be affordable to households at 81% of median income. For example, if a project contained three inclusionary units of a size appropriate for a family of four, the first unit would have to be sold for \$72,000, the others for \$64,800. Inclusionary units in rental projects must have rents that are affordable to households at 81% of the median for this area. However, if the City can make

INCLUSIONARY ZONING ORDINANCE

FOR COUNCIL ACTION
June 10, 1986

available Section 8 subsidies, 50% of the inclusionary units must be affordable to households with income that is 50% of median. This requirement would encourage placing inclusionary units on Section 8 without causing financial duress for the owner.

Some developers argued that the requirement was too prohibitive and that the inclusionary units should be priced to be affordable for households with incomes ranging from 80% to 120% of median. A group of developers of limited equity housing projects also suggested that if 75% of a limited equity housing project (or project with similar resale controls) were made available to households with income at 110% of the median, there should be no requirement to develop low income housing. This exception would encourage the development of limited equity cooperatives. While those proposals had merit, the overriding concern of the Commission was to use the Inclusionary Zoning Ordinance to provide housing for low income households.

The ordinance requires that the inclusionary units be made affordable to low income households. The definition of affordable is two and one-half times the gross household income for ownership units and 30% of a household's monthly income for rental units. The affordable definition for ownership units have been used in other locations with inclusionary zoning requirement; the definition of affordability of rental units is the standard used for the federal Section 8 program.

The definition of "low", "lower", and "very low" income is based on family size. Therefore, family size is used in the ordinance for calculating the sales/rental prices of inclusionary units. The appropriate family size for a unit is to be determined by the City and contained in a schedule in the administrative regulations. That schedule will take into consideration the number of bedrooms, the size of the unit, and occupancy standards to avoid overcrowding.

Since, the sales or rental price of inclusionary units is tied to household size, it is important for a developer to know what is an appropriate household size. A schedule is to be prepared that sets those sizes. That schedule will take into consideration number of bedrooms, size of the unit, and typical household size. For example, a project with two inclusionary units containing two bedrooms would make one unit affordable to a household of four and one unit affordable to a household of three.

In terms of actual occupancy, a unit may be occupied by a household that is either low or lower income. The ordinance allows for flexibility in selecting tenants who may be above the 81% or 90% of median if qualifying tenants at that level are not found (as long as they are still low income). Conversely, the inclusionary units may be made available to households with lower

INCLUSIONARY ZONING ORDINANCE

FOR COUNCIL ACTION
June 10, 1986

income if the City can find ways to subsidize the difference.

D. Selection of Purchasers and Renters

The ordinance specifies that the City or its designee shall have the right-of-first refusal to purchase inclusionary units. Although, at the present it is highly unlikely that the City would act on this right (as to date, no other city with inclusionary ordinances has), nonetheless, in the future the City may want, and have the possibility, to do so. Discussion on the topic of selection centered around who should have that right. After consideration of this issue, the Planning Commission committee recommended that the City should have the responsibility to prepare the eligibility list in order to better ensure that the targeted households were the actual beneficiaries. In regard to rental projects, if an owner is willing to place inclusionary units under the Section 8 or equivalent rental subsidy program, the owner will have the right of tenant selection as long as the tenant is participating in that program and the unit is of the correct size for the household.

Another issue regarding the topic of selection concerned the question of when in the process the developer would be provided with a list of eligible purchasers. Developers argued that a list should be provided as soon as possible (e.g., after subdivision tract approval, or issuance of a building permit). Others thought that the list should be given at the completion of the project. As a compromise solution, the ordinance requires the City to provide a list 60 days from completion of the project's foundation.

E. In-Lieu Participation Fees

The ordinance allows for an in-lieu fee only when the inclusionary requirement results in a fraction of a unit. The fee is set at the difference between development cost (or affordable cost, if a density bonus is given) and market sales price of the unit.

There was much discussion on the advisability of allowing in-lieu fees for other than fraction of units. One argument in favor of more general in-lieu fees was that if the fee was equivalent to actual construction of an inclusionary unit, the fee monies obtained could be better leveraged to provide housing for more low income households, either in existing housing or in new projects in a different location. Some argued that the inclusionary fee should be allowed but should be less than the cost of providing an actual unit since such a fee would make the development unfeasible. However, the Planning Commission was decidedly in favor of the creation of actual units on site, not only for achieving the overall goal of having a portion of new developments benefitting the low income, but also to avoid segregation on the

INCLUSIONARY ZONING ORDINANCE

FOR COUNCIL ACTION
June 10, 1986

basis of income. Another argument made by developers was that all new residential developments (including single family homes) should have an inclusionary requirement which would be paid as a fee in order that the cost of providing low income housing could be shared more equitably. This possibility was considered but rejected because more thought was necessary as to the structure and legal implications of such a general requirement.

F. Purchasers' Restrictions and Resale Controls

The ordinance restricts purchase of inclusionary units to first time homeowners and households that live or work in Berkeley. It allows the establishment of other preference and priorities to help meet the Housing Element goals. Owner-occupancy is also required unless City approval is obtained to rent the unit to a low income household.

A major element of any inclusionary ordinance is a mechanism for maintaining long-term affordability. One issue discussed in this area was how to allow some build up in the purchaser's equity and still maintain the unit affordable. The criterion adopted was similar to that used by limited equity housing cooperatives. Another concern was what policy should be followed when the household was no longer low income. Although, it was acknowledged that allowing the purchaser to occupy the unit even when no longer low income would result in a deviation from the targeting inclusionary units for low income households, in reality it would be difficult to devise and administer a workable mechanism. The implications of this deviation, however, were not expected to be serious, since not all low income households (unfortunately) are upwardly mobile. Moreover, the patterns of physical moves are high so that in many cases, households who were no longer low income would be selling or renting their unit to a low income household.

G. Designated Implementing Authority

The City Manager or his/her designee has been designated as the implementing authority. This gives the City flexibility as to which City Department or Division, at any one time, is best equipped to implement the ordinance. The ordinance places many functions and responsibilities on the City Administration. Apart from developing regulations and implementing procedures, staff assignments include: providing information to both developers and tenants, negotiating with developers and preparing agreements on the inclusionary requirements, preparing and maintaining a referral list, verifying eligibility, and monitoring resale controls. Arguments were made that the ordinance should be more self-enforcing to avoid bureaucratic "red-tape". For example, the developer could select an eligible purchaser. However, the

INCLUSIONARY ZONING ORDINANCE

FOR COUNCIL ACTION
June 10, 1986


agreed.

V. Conclusion

While recognizing that to administer an inclusionary zoning program is complex and time-consuming and places a burden on certain segments of the community, this recognition has to be counter-balanced with the effects on the community in absence of such a program. In balancing the two, the Planning Commission has seen the need for an inclusionary zoning ordinance. However, the many discussions on this topic have pointed out that although such a program is necessary, the impact on increasing the number of affordable units will be relatively small. The inclusionary zoning ordinance can only be one in a number of measures that should be instituted or enlarged to help maintain affordable housing for low income households residing in Berkeley.

Financial Implication and Contact Person

Approximately 0.5 to 1.0 FTE to administer the program depending on number of actual number of applicable residential projects constructed.
Rich Illgen, 525-0996


Rich Illgen
Chairperson

THE CITY MANAGER CONCURS IN PRINCIPLE WITH THE RECOMMENDATIONS FROM THE PLANNING COMMISSION. HOWEVER, HE IS RECOMMENDING ADOPTION OF A SLIGHTLY DIFFERENT ORDINANCE THAT CLARIFIES CERTAIN SECTIONS AND MAKES SOME TECHNICAL CHANGES.

Attachments

- A. Inclusionary Zoning Ordinance
- B. Eligible Income Guidelines, Affordability Prices, and Development Costs of Inclusionary Units
- C. Initial Environmental Study
- D. Summary of Other Inclusionary Zoning Regulations

08-02

ATTACHMENT A

ORDINANCE NO. -N.S.

AMENDING ZONING ORDINANCE NO. 3,018-N.S. BY ADDING CHAPTER 15B AND ADDING SECTIONS 22.55 THROUGH SECTIONS 22.55.11 TO REQUIRE THE INCLUSION OF LOW INCOME HOUSING IN RESIDENTIAL HOUSING PROJECTS.

BE IT ORDAINED by the Council of the City of Berkeley that the Zoning Ordinance be amended as follows:

CHAPTER 15B

INCLUSIONARY UNITS

Section 15B.0 APPLICABILITY OF REGULATIONS

(a) The following regulations shall apply to all developers, agents, successors, and assignees of a developer who apply for development of:

(1) Residential housing projects proposed on parcels that are zoned for five units or more.

(2) Projects of one to four residential units when such units are added to an existing one to four unit property developed consequent to passage of this Section and the resulting number of units total five or more. All units in said property are subject to the requirements of this Chapter.

(b) No building permit or occupancy permit shall be issued, nor any subdivision or development approval granted, which do not meet the requirements of this Chapter.

(c) The regulations of this Chapter shall not apply in the following cases:

(1) Development of joint live/work quarters as defined in Section 22.28-1 of Zoning Ordinance.

(2) Residential Development Projects which had building permits issued prior to February 19, 1986.

Section 15B.1 FINDINGS

The City of Berkeley finds that:

(a) There is a shortage of housing affordable to low income residents.

(b) Persons with low incomes who live and/or work in the City have serious difficulties locating housing at prices they can afford.

(c) The high cost of newly constructed housing does not, to any appreciable extent, provide housing affordable by low income household, and that continued new development which does not

include lower cost housing will serve to further aggravate the current housing shortage by reducing the supply of land.

(d) The encouragement of usage of density bonus rather than other incentives in applicable cases will help increase the housing supply.

(e) Federal and State housing subsidy programs are not sufficient by themselves to satisfy the housing needs of low income households.

(f) The housing shortage for persons of low income is detrimental to the public health, safety and welfare of the City.

(g) The public purpose of the City and the public policy of the State of California as mandated by the Housing Element of the Master Plan is to make available an adequate supply of housing for persons of all economic segments of the community.

Section 15B.2 PURPOSE

The purpose of this ordinance is to enhance the public welfare by providing affordable housing for certain portion of the population and to assure compatability between future housing development and the Housing Element of the Master Plan as it pertains to the use of the City's land for residential use.

Section 15B.3 DESIGNATED IMPLEMENTING AUTHORITY

(a) The City Manager or his or her assignee shall be the designated authority to develop rules and regulations pertaining to this Chapter, to require guarantees, to enter into recorded agreements with developers, and to take other appropriate steps necessary to assure that the required low income and very low income dwelling units are provided and are occupied by low income households.

(b) Administrative rules and regulations pertaining to this Chapter shall be brought before the Planning Commission for approval.

Section 15B.4 GENERAL INCLUSIONARY REQUIREMENTS

(a) Any new residential construction project involving five or more dwelling units shall be required to include at least 20% of the total number of dwelling units within the project as inclusionary units. In applying these percentages, any decimal fraction shall be paid as an in-lieu fee in conformity with Section 15B.12.

(b) Any use permit for new residential construction projects

on parcels that allow for the development of five or more units shall have conditions attached which will assure compliance with the provisions of this Chapter.

(c) All inclusionary units shall be sold to the City or its designee or to a low income household or rented to low income or very low income households as certified by the City or its designee.

Section 15B.5 USE PERMIT CONDITIONS

Use Permit conditions shall specify: the number of inclusionary units at appropriate price levels, provision for income certification and screening of potential purchasers and/or renters of inclusionary units, a resale control mechanism, and, density bonus or other incentives offered by the City.

Section 15B.6 PROVISION OF WRITTEN AGREEMENT

A written agreement shall be made between the developer and the City which indicates the number, type, location, approximate size and construction scheduling of all dwelling units and such information as shall be required by the City for the purpose of determining the developer's compliance with this Chapter.

Section 15B.7 GENERAL CONSTRUCTION REQUIREMENTS

(a) All inclusionary units in a project and phases of a project shall be constructed concurrently with or prior to the construction of non-inclusionary units.

(b) All inclusionary units shall be reasonably dispersed throughout the project, shall contain on an average the same number of bedrooms as the non-inclusionary units in the project, and shall be comparable with the design or use of remaining units in terms of appearance, materials, and finished quality.

(c) In situations where the developer substantiates and staff concurs that the direct construction and financing costs of the inclusionary units (excluding land cost, marketing cost, off-site improvements and profit) exceed the selling prices allowed for inclusionary units by this Chapter, staff shall have the option of recommending for Board of Adjustment approval one or more of the following measures to reduce costs or increase profitability:

(1) reduction of the interior amenity level of the inclusionary units provided that such units conform to the requirements of the City building and housing codes;

13.

(2) reduction of the square footage of the inclusionary units provided all units conform to the requirements of the City's building and housing codes.

(3) allowance of an increase in the number of bedrooms in the unit.

(d) In a homeownership project, the Board of Adjustment shall have the option of allowing the developer to construct rental units in a number sufficient to meet the inclusionary requirements of this Chapter. These rental units shall be subject to the "Inclusionary Unit Requirements for Rental Housing Projects" contained in Section 15B.8.

Section 15B.8 INCLUSIONARY UNIT REQUIREMENTS FOR RENTAL HOUSING PROJECTS

(a) The Oakland Primary Metropolitan Standard Area (PMSA) income standards shall be used in determining income eligibility.

(1) Inclusionary units shall only be occupied by low income households at a price which will allow their housing costs to be no more than 30 percent of the gross income of an appropriate-sized household whose income is at 81% of the PMSA median income.

(2) Gross household income shall be calculated according to the guidelines used by the Housing Authority for rental subsidies programs. For purposes of calculating rent, the schedule contained in the administrative regulations for this Chapter shall be used.

(2) In projects requiring more than one inclusionary unit, at least 50% of the inclusionary units shall be made available to Very Low Income households at affordable rent provided that the owner is given the opportunity to place the unit on the Section 8 Existing Housing Program or similar rental subsidy programs. When there is an uneven number of inclusionary units, the uneven inclusionary unit shall be made available to very low income households if rental subsidies are available. When the City cannot make available rental subsidies, all rental prices of inclusionary units shall be the same as set forth in Section 15B.7(1) above.

(3) For the life of the project, at least 20% of the units shall be inclusionary. In applying that percentage, any decimal fraction shall be paid as an in-lieu fee in conformity with Section 15B.12.

(4) The City or its designee shall screen applicants for the inclusionary units and refer eligible households of the appropriate household size for the unit. For purposes of occupancy, the appropriate household size standards used by the Housing Authority for the Section 8 Program or any future equivalent program shall be used. The developer or owner shall retain final discretion in the selection of the eligible households referred by the City.

(5) The owner shall provide the City with data on vacancies and other information required to insure the long-term affordability to eligible households.

Section 15B.9 INCLUSIONARY UNIT REQUIREMENTS FOR OWNERSHIP PROJECTS

(1) The first inclusionary unit shall be sold at a price that is affordable to an appropriate sized household whose income is no more than 90% of the PMSA median. Thereafter, inclusionary units shall be sold at prices affordable to low income households of the appropriate size for the unit at a price that will result in the average cost being no more than 2.5 times the annual gross income of an appropriate-sized household at 81% of the PMSA for this area. In determining appropriate size for sale price calculation purposes, the schedule contained in the administrative regulations shall be used.

(2) The developer shall be required to give right-of-first refusal to the City or a City designated agency or organization for a period of not less than 60 days from completion of foundation construction for the project and City approval of the same.

(3) Should the City choose not to exercise its right-of-first refusal, it shall provide the developer or owner with a purchaser or with a list of eligible purchasers within that same time period. If the list is not provided, the developer may select a low income purchaser of his/her choice as long as the City verifies income eligibility and the unit is sold at an affordable price as described in this Ordinance.

(3) The City shall maintain a list of eligible low income households and review the assets and income of prospective purchasers of the inclusionary units on a project by project basis and refer potential purchasers to the developer or owner.

Section 15B.10 PURCHASER RESTRICTIONS

(1). All purchasers of inclusionary units shall be first time home buyers with Low or Very Low Income.. Purchasers shall also be required to occupy the unit except with the approval of the City. In such cases, the unit shall be rented to a low or Very Low Income household.

(2). Berkeley residents will have first preference for inclusionary units which shall be made available to eligible purchasers; second preference will be given to persons employed in the City of Berkeley. Other preferences and priorities may also be established administratively, with Planning Commission, approval to help meet the City's Housing Element goals.

(3). The City shall advise all prospective purchasers on the City's eligibility list of the resale restrictions applicable to ownership of inclusionary units as specified in this Chapter and shall provide purchasers with a declaration of restrictions applicable to ownership of inclusionary units as specified in this Chapter.

Section 15B.11 CONTROL OF RESALE

(1) In order to maintain the availability of affordable housing units, the City shall impose the following resale conditions:

(a) Homeownership inclusionary units offered for sale, or sold under the requirements of this Chapter shall be offered to the City or its assignee for a period of at least 60 days by the first purchaser or subsequent purchaser(s) from the date of the owner's notification to the City of intent to sell. The sales price of the unit shall not exceed the original price and customary closing costs except to allow for any increase of the cost of living price (CPI) for the downpayment amount. The cost of improvements to the property may also be added to the original price as long as the unit remains affordable to low income households.

(b) If the City does not act on its right-of-first refusal, the same procedure as contained in Section 15B.9(3) shall be used for selection of a purchaser.

(c) The seller shall not levy or change any additional fees nor shall any "finders fee" or other monetary consideration be allowed other than customary real estate commissions if the use of an agent becomes necessary.

(2) The City or its designee shall monitor the resale of ownership inclusionary units. The owners of any inclusionary units shall attach and legally reference in the Grant Deed conveying title of any such inclusionary ownership unit a Declaration of Restrictions provided by the City, stating the restrictions imposed pursuant to this Chapter. Violation of any of the terms thereof may be prosecuted by the City.

Section 15B.12 IN LIEU PARTICIPATION FEES

(1) In projects where the inclusionary requirement will result in a fraction of a unit, such a fraction shall be paid to the City as an in-lieu participation fee. The in-lieu fee shall be used by the City, or its designee such as a non-profit housing development corporation, to provide, construct, or promote the creation or retention of low income housing in the City. The use of in-lieu fees for specific housing programs shall be brought before the Housing Advisory and Appeals Board for approval.

(2) The in-lieu fee shall be as follows:

(a) the difference between development cost (excluding marketing costs, off-site improvements, and profit) and actual sales price for the fraction of the unit in projects where Government Code 69515 does not apply.

(b) the difference between affordable cost for an appropriately-sized household and actual sales price for the fraction of the unit in projects where Government Code 69515 requiring a density bonus or equivalent incentives is applicable.

Section 15B.13 DENSITY BONUS/OTHER INCENTIVES

(a) If the owner agrees that the proposed project shall contain 25% or more of low income units or 10% of lower income units, the Board of Adjustments shall grant density bonuses or provide other incentives of equivalent financial value to all projects which are affected by this Chapter as provided by Government Code Section 69515. Density bonuses or incentives shall apply to fractional units as well.

(1) If incentives are over and above those required by Government code Section 69515, the developer shall agree to a cost certification process.

(2) The determination of what incentive to be provided in lieu of or in combination with a density bonus shall be determined by the City staff and referred to the Board of

Adjustments for approval, modification or denial. Use of density bonuses rather than other incentives shall be preferred.

Section 15B.14 DEFINITIONS

Definitions pertaining to this Chapter are contained in Section 22.55 through 22.55-11 of the Zoning Ordinance.

Section 22.55 DEVELOPER

Any person, firm, partnership, joint venture, corporation, or any entity or combination of entities which seek City permits and approvals and/or develop a project pursuant to Chapter 15B.

Section 22.55-1 AFFORDABLE HOUSING

Rental housing in which the yearly housing costs do not exceed 30 percent of a household's gross yearly income as defined by the Oakland Primary Metropolitan Standard Area (PMSA) for a household of the same size; or ownership housing where the total sales cost does not exceed 2.5 times annual gross income of a household of an appropriate size for the inclusionary unit.

Section 22.55-2 HOUSEHOLD

For purposes of inclusionary requirements, the definition of household shall be the same as that used for the federal Section 8 Existing Housing Program or its equivalent.

Section 22.55-3 LOW INCOME HOUSEHOLD

A household whose gross income is 81%-99% of the PMSA median income for this area.

Section 22.55-4 LOWER INCOME HOUSEHOLD

A household whose gross income is 51%-80% of the PMSA median income for this area.

Section 22.55-5 VERY LOW INCOME HOUSEHOLD

A household whose gross income is 50% or below of the PMSA median income for this area.

Section 22.55-6 ELIGIBLE INCOME

For purposes of Chapter 15B, the gross annual household income determined according to the guidelines used by the Berkeley

18.

Section 22.55-7 HOUSING COSTS

The monthly mortgage (principal and interest), property taxes, homeowners insurance, and condominium fees, where applicable, or the monthly rent plus utilities (utilities as defined in the Section 8 Existing Housing Program, Utility Schedule) for rental units.

Section 22.55-8 ACQUISITION COST

For purposes of acquisition of inclusionary units as provided in Chapter 15B, acquisition cost includes sales price plus closing costs.

Section 22.55-9 UNIT

All units referred to in Chapter 15B refer to residential and not commercial units.

Section 22.55-10 INCLUSIONARY UNIT

An ownership or rental housing unit as required by Chapter 15B which is affordable by households of low or very low income.

Section 2.55-11 IN-LIEU FEE

A fee paid to the City by a developer subject to the provisions of Chapter 15B in place of construction of a required fraction of an inclusionary unit.

Section 2.55-12 DENSITY BONUS

An increase in the number of units authorized for a particular parcel beyond that which would have otherwise been authorized under the applicable zoning ordinance and land use element of the Master Plan as provided for by the California Government Code Section 65915.

Section 2.55-13 INCENTIVES

Benefits offered by the City in-lieu of a density bonus to facilitate the construction of housing projects which include low income inclusionary units. Among others, benefits may include fee deferments and waivers, granting of variances, relaxation of otherwise applicable permit conditions, and provision of government benefits.

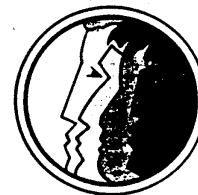
Section 2.55-14 RESALE CONTROLS

Legal restriction placed on inclusionary units by which the price of such units will be restricted in order to insure the affordability and occupancy by low or very low income households.



Planning and Community
Development Department
Zoning Division
Martin Luther King, Jr.
Civic Center Building
2180 Milvia Street
Berkeley, California 94704

City of Berkeley



(415) 644-6570
TTY (415) 644-6915

P R O P O S E D
N E G A T I V E D E C L A R A T I O N

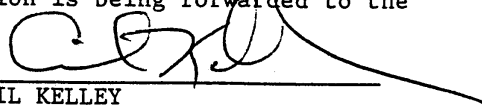
It is hereby declared that the project described below will not have a significant effect on the environment based on the Initial Study prepared according to CEQA guidelines:

INCLUSIONARY ZONING ORDINANCE

The purpose of an inclusionary zoning ordinance is to ensure that some units in multi-family housing projects be made affordable to low income households. The Ordinance will require that 20% of all new residential development projects be affordable. The Ordinance will be applicable to projects containing five or more residential units. Potential beneficiaries are households with income below the median income for this area. Other elements of the Ordinance include a City's right-of-first refusal to acquire inclusionary units, resale restrictions on inclusionary units to maintain long-term affordability, payment of an "in-lieu" fee instead of provision of fractional unit, provision of a density bonus or other incentives when State requirements are applicable. The Planning and Community Development Department is the designated implementing agency.

Anyone concerned with this project may review the application and other material composing the Initial Study on file in the Zoning Division, Martin Luther King, Jr. Civic Center Building, 2180 Milvia Street, Berkeley, CA 94704 (Phone 644-6570.)

The Planning Commission reviewed and recommended adoption of this Negative Declaration on May 21, 1986. The recommendation is being forwarded to the City Council for adoption.


GIL KELLEY
ENVIRONMENTAL REVIEW, ZONING DIVISION

20

ATTACHMENT B

INCOME AND AFFORDABILITY GUIDELINES

<u>PMSA INCOME</u>						
Household Size	1	2	3	4	5	6
100% of Median Income	\$22,375	\$25,625.	\$28,812	\$32,000	\$34,000	\$36,000
70% of Median Income	\$15,662.5	\$17,937.5	\$20,168.4	\$22,400.	\$23,800.	\$25,200
81% of Median Income	\$18,123.75	\$20,756.25	\$23,337.72	\$25,920.	\$27,540.	\$29,160
90% of Median Income	\$20,137.5	\$23,062.5	\$25,930.8	\$28,800.	\$30,600.	\$32,400.
<u>AFFORDABLE SALES PRICES*</u>						
Very Low 70%	\$39,156.25	\$44,843.75	\$56,000	\$56,000	\$59,500	\$63,000
Low Income 81%	\$45,309.38	\$51,890.63	\$58,344.30	\$64,800	\$68.850	\$72,900
Median Income 90%	\$50,343.75	\$75,656.25	\$64,827	\$72,000	\$76,500	\$81,000
<u>AFFORDABLE RENTS</u>						
Affordable Rents for Households at 81% of Median**	\$ 453	\$ 519	\$ 583	\$ 648	\$ 688	\$ 729

* CALCULATED AT 2.5 TIMES ANNUAL HOUSEHOLD INCOME

** CALCULATED AS 30% OF MONTHLY HOUSEHOLD INCOME

ELIGIBLE INCOME, PROTOTYPE DEVELOPMENT COSTS* AND SUBSIDIES**
NEEDED TO MAKE INCLUSIONARY UNIT AFFORDABLE

Income Category	STUDIO (600 Sq. Ft. - Development Costs \$44,040)			
	1 Person	Subsidy	2 Persons	Subsidy
81% Median	\$45,309	---	\$51,891	---
90% Median	50,344	---	57,656	---
	ONE BEDROOM (750 Sq. Ft. - Development Costs \$55,050)			
	2 Persons	Subsidy	3 Persons	Subsidy
81% Median	\$51,891	\$ 3,159	\$58,344	---
90% Median	57,656	---	64,827	---
	TWO BEDROOMS (850 Sq. Ft. - Development Costs \$62,390)			
	3 Persons	Subsidy	4 Persons	Subsidy
81% Median	\$58,344	\$ 4,046	\$64,800	---
90% Median	64,827	---	72,000	---
	TWO BEDROOMS (1000 Sq. Ft. - Development Costs \$73,400)			
	3 Persons	Subsidy	4 Persons	Subsidy
81% Median	\$58,344	\$15,056	\$64,800	\$ 8,600
90% Median	64,827	8,573	72,000	1,400
	THREE BEDROOMS (1000 Sq. Ft. - Development Costs \$73,400)			
	5 Persons	Subsidy	6 Persons	Subsidy
81% Median	\$68,850	\$ 4,550	\$72,900	\$ 500
90% Median	76,500	---	81,000	---
	THREE BEDROOMS (1200 Sq. Ft. - Development Costs \$88,080)			
	5 Persons	Subsidy	6 Persons	Subsidy
81% Median	\$68,850	\$19,230	\$72,900	\$15,180
90% Median	76,500	11,580	81,000	7,080

AVERAGE MULTI-FAMILY DEVELOPMENT COSTS

Construction Costs	\$60.0 Sq. Ft.
Soft Costs	6.0 Sq. Ft.
Financing	7.4 Sq. Ft.
TOTAL	\$73.4 Sq. Ft.

- * Development costs do not include land. If density bonus given would be equivalent to land costs.
- ** Subsidy equal to the difference between development costs and affordability. Subsidy would be greater if no density bonus provided.

City of Berkeley

ATTACHMENT C



Planning and Community Development Department
Zoning Division
Martin Luther King, Jr.
Civic Center Building
2180 Milvia Street
Berkeley, California 94704

(415) 644-6570
TTY (415) 644-6915

ENVIRONMENTAL INITIAL STUDY*

I. General Information

Project title (if any) and address or Assessor's block and parcel number(s):

INCLUSIONARY ZONING ORDINANCE

Use permit application number and date submitted (if any):

Date environmental information form submitted: 1.24 /86

Applicant's name, address and telephone number:

Planning and Community Development Department
Teri Piccolo
2180 Milvia Street, Berkeley, CA 94704
(415) 644-6001

II. Description of Attachments

~~xxx~~ Environmental checklist and discussion (Lead Agency)

Environmental information form (Applicant)

Use permit or other application (Applicant)

Correspondence or memoranda: _____

Mitigation measures

Other: _____

III. Determination

On the basis of the attached initial evaluation, I find:

xxx That the proposed project COULD NOT have a significant effect on the environment, and a NEGATIVE DECLARATION will be prepared.

That although the proposed project could have a significant effect on the environment, there will not be a significant effect in this case because the mitigation measures described on the attached sheet have been added to the project. A NEGATIVE DECLARATION will be prepared.

That the proposed project MAY have a significant effect on the environment, and an ENVIRONMENTAL IMPACT REPORT is required.

Jan. 27, 1986
Date



Gil Kelley, Environmental Review

23

*(To be completed by Lead Agency.)

CITY OF BERKELEY

ENVIRONMENTAL INITIAL STUDY

(To be completed by Lead Agency)

Impact Rating

- 1 - No significant impact
- *2 - Potential impact, but not substantial

- *3 - Potential significant impact
- *4 - Significant impact

*Impact described on the attached sheet

Earth - Will the proposal result in:

- a. Unstable earth conditions or in changes in geologic substructures? 1
- b. Disruptions, displacements, compaction or overcovering of the soil? 1
- c. Change in topography or ground surface relief features? 1
- d. The destruction, covering or modification of any unique geologic or physical features? 1
- e. Any increase in wind or water erosion of soils, either on or off the site? 1
- f. Changes in deposition or erosion of beach sands, or changes in siltation, deposition or erosion which may modify the channel of a river or stream or the bed of the ocean or any bay, inlet or lake? 1
- g. Exposure of people or property to geologic hazards such as earthquakes, landslides, mudslides, ground failure or similar hazards? 1

Air - Will the proposal result in:

- a. Substantial air emissions or deterioration of ambient air quality? 1
- b. The creation of objectionable odors? 1
- c. Alteration of air movement, moisture or temperature, or any change in climate, either locally or regionally? 1

Water - Will the proposal result in:

- a. Changes in currents, or the course or direction of water movements, in either marine or fresh waters? 1
- b. Changes in absorption rates, drainage patterns, or the rate and amount of surface water runoff? 1
- c. Alterations to the course or flow of flood waters? 1
- d. Change in the amount of surface water in any water body? 1
- e. Discharge into surface waters, or in any alteration of surface water quality, including but not limited to temperature, dissolved oxygen or turbidity? 1
- f. Alteration of the direction or rate of flow of ground waters? 1
- g. Change in the quantity of ground waters, either through direct additions or withdrawals, or through interception of an aquifer by cuts or excavations? 1
- h. Substantial reduction in the amount of water otherwise available for public water supplies? 1
- i. Exposure of people or property to water related hazards such as flooding or tidal waves? 1

Plant Life - Will the proposal result in:

- a. Change in the diversity of species, or number of any species of plant? 1

- b. Reduction of the numbers of any unique, rare or endangered species of plants? 1
- c. Introduction of new species of plants into an area, or in a barrier to the normal replenishment of existing species? 1
- d. Reduction in acreage of any agricultural crop? 1

Animal Life - Will the proposal result in:

- a. Change in the diversity of species, or numbers of any species of animals? 1
- b. Reduction of the numbers of any unique, rare or endangered species of animals? 1
- c. Introduction of new species of animals into an area, or result in a barrier to the migration or movement of animals? 1
- d. Deterioration to existing fish or wildlife habitat? 1

Noise - Will the proposal result in:

- a. Increases in existing noise levels? 1
- b. Exposure of people to severe noise levels? 1

Light and Glare - Will the proposal produce new light or glare? 1

Land Use - Will the proposal result in a substantial alteration of the present or planned land use of an area? 2

Natural Resources - Will the proposal result in:

- a. Increase in the rate of use of any natural resources? 1
- b. Substantial depletion of any non-renewable natural resource? 1

Risk of Upset - Does the proposal involve a risk of an explosion or the release of hazardous substances (including oil, pesticides, chemicals or radiation) in the event of an accident or upset conditions? 1

Population - Will the proposal alter the location, distribution, density, or growth rate of the human population of an area? 2

Housing - Will the proposal affect existing housing or housing demand? 2

Transportation/Circulation - Will the proposal result in:

- a. Generation of substantial additional vehicular movement? 2
- b. Effects on existing parking facilities, or demand for new parking? 2
- c. Substantial impact upon existing transportation systems? 1
- d. Alterations to present patterns of circulation or movement of people and/or goods? 1
- e. Alterations to waterborne, rail or air traffic? 1

- f. Increase in traffic hazards to motor vehicles, bicyclists or pedestrians? 1
- 14. Public Services. Will the proposal have an effect upon, or result in a need for new or altered governmental services in any of the following areas:
 - a. Fire protection? 2
 - b. Police protection? 2
 - c. Schools? 1
 - d. Parks or other recreational facilities? 1
 - e. Maintenance of public facilities, including roads? 1
 - f. Other governmental services? 1
- 15. Energy. Will the proposal result in:
 - a. Use of substantial amounts of fuel or energy? 1
 - b. Substantial increase in demand upon existing sources of energy, or require the development of new sources of energy? 1
- 16. Utilities. Will the proposal result in a need for new systems, or substantial alterations to the following utilities:
 - a. Power or natural gas? 1
 - b. Communications systems? 1
 - c. Water? 1
 - d. Sewer or septic tanks? 2
 - e. Storm water drainage? 1
 - f. Solid waste and disposal? 2
- 17. Human Health. Will the proposal result in:
 - a. Creation of any health hazard or potential health hazard (excluding mental health)? 1
 - b. Exposure of people to potential health hazards? 1

18. Aesthetics. Will the proposal result in the obstruction of any scenic vista or view open to the public, or will the proposal result in the creation of an aesthetically offensive site open to public view? 1
19. Recreation. Will the proposal result in an impact upon the quality or quantity of existing recreational opportunities? 1
20. Archeological/Historical. Will the proposal result in an alteration of a significant archeological or historical site, structure, object or building? 1
21. Mandatory Findings of Significance.
- (a) Does the project have the potential to degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a rare or endangered plant or animal or eliminate important examples of the major periods of California history or prehistory? 1
- b. Does the project have the potential to achieve short-term, to the disadvantage of long-term, environmental goals? (A short-term impact on the environment is one which occurs in a relatively brief, definitive period of time while long-term impacts will endure well into the future.) 1
- c. Does the project have impacts which are individually limited, but cumulatively considerable? (A project may impact on two or more separate resources where the impact on each resource is relatively small, but where the effect of the total of those impacts on the environment is significant.) 1
- d. Does the project have environmental effects which will cause substantial adverse effects on human beings, either directly or indirectly? 1

III. DISCUSSION OF ENVIRONMENTAL EVALUATION

See Attached

ENVIRONMENTAL INITIAL STUDY page 1

ENVIRONMENTAL INITIAL STUDY: INCLUSIONARY ZONING PROGRAM

INTRODUCTION

In June 1985 the Planning Commission proposed that an inclusionary zoning ordinance be developed to ensure that a portion of new housing projects be made available for low income housing. This Environmental Initial Study has been undertaken by the Planning and Community Development Department to analyze potential environmental impacts of an inclusionary zoning requirement. Identified areas are land use, housing, transportation/circulation, public services, and utilities.

The Environmental Initial Study considers two possible inclusionary alternatives: the first containing a 25% inclusionary requirement for all new residential construction projects resulting in four units or more; the second requiring that in projects containing five or more units, 20% of the units be inclusionary. This study concludes that both alternatives would have negligible environmental impacts and that of the two, the second alternative would have least impact. At present, it appears that the second alternative is the one most likely to be considered for adoption.

PROJECT DESCRIPTION

Alternative One

The proposed inclusionary zoning program would become part of the City's Zoning Ordinance and would require that 25% of the dwelling units in new residential projects of four or more units be reserved for low income households. That requirement would apply to both rental and ownership projects.

The Oakland Primary Metropolitan Standard Area's (which includes Berkeley) income figures are used as a basis for calculating eligibility and sales or rental prices for inclusionary units. For purposes of this program income definitions are as follows:

- o Low income - household income that is 81% to 99% of median for this area,
- o lower income - household income that is 51% to 80% of median for this area,
- o very low income - household income that is 50% or below of median for this area.

28.

27

Other salient features of the ordinance are:

- o All units are to be sold to households in the low income category except in rental units for which the City can provide rental subsidies through the Section 8 Program or some equivalent. Where the City can provide rental subsidies, 50% of the inclusionary units in rental projects shall be made available to the very low income.
- o The City or its designee has the right-of-first refusal to buy inclusionary units. This would allow control in assuring that the targeted group is benefitted as well as allow the City to make inclusionary units available to lower income or very low income households if further subsidies are available.
- o Resale restrictions on inclusionary units to ensure long-term affordability.
- o Allowance of an in-lieu fee for fractional units. (e.g., when the inclusionary requirement is 2.5 units, a fee could be paid for the 0.5 unit). The in-lieu fee would be equal to the difference between sales price and the price that would make the unit affordable to low income households.
- o Allow the City, in certain situations, to reduce amenities, unit size, or change configuration to keep the inclusionary requirement from being prohibitive while still providing housing that meets housing and building standards.
- o Provide a density bonus or other incentives of equivalent financial value. State law requires that a density bonus of 25% or equivalent incentives be given to the developer when 25% or more of a project is reserved for low/moderate income households at affordable costs, or when 10% a project is made available to lower income households. Whether a bonus or incentives would actually be given would be decided on a case-by-case basis. Incentives could include (but are not limited to) fee deferments or waivers, variances, land donations, or other assistance such as loans or grants to facilitate construction of the project.

Alternative Two

All features of this alternative are virtually the same as Alternative One except that there would be a 20% inclusionary requirement and only new residential construction projects resulting in five (instead of four) units would be covered. Under Alternative Two, less density bonuses/incentives would be required since the only case where the State law would be triggered would

ENVIRONMENTAL INITIAL STUDY page 3

be in rental projects for which the City could provide rental subsidies. In those cases, 10% of the inclusionary units would be made available to lower income households and a density bonus/incentives would be given by the City. Lastly, if no density bonus/incentives would be given, the in-lieu fee would be calculated as the difference between development cost of the fractional unit and sales price (rather than the difference between between low income affordability and sales price).

METHODOLOGY

In order to assess the potential of the proposed inclusionary zoning program to increase density substantially, staff examined the following:

- o data of actual residential construction involving four or more units for a ten year period (1975-1985),
- o use permit applications and approvals for the period 1984-85,
- o existing vacant land in Berkeley, and city-wide zoning patterns.

Information about other localities with inclusionary zoning in effect was also gathered but was not be used since it appeared to be of little comparative value for assessing the proposed ordinance. This is because few of the localities face the same developable land constraints as Berkeley, and also because there is no one locality with the same requirements as those being proposed in Berkeley.

HOUSING TRENDS

Past Construction

Data on residential construction of projects of four units or more during the period 1975-85 shows a total of 321 units completed in 35 structures containing four units or more. The data further shows that:

- o of the 35 structures, 32 contained less than 10 units;
- o structures containing more than 10 units were all publicly-assisted;
- o the 35 structures contained a total of 321 units; of these 248 were publicly-assisted, low income housing, leaving only 73 units built in the private, for-profit field;
- o the 32 structures were scattered throughout nine different census tracts.

For purposes of the inclusionary zoning program, only private for-profit projects can be validly used for projection purposes.

30.

ENVIRONMENTAL INITIAL STUDY page 4

Future Construction

Use Permit data for the period January 1984 through December 1985 (includes both applications and use permits granted) indicate that a total of 12 projects were proposed during that period. Two of the proposed projects are to be publicly-assisted (The Dwight-Derby Site Project and the Low Income Public Housing Project) and were excluded from this study. The ten proposed privately-developed, for profit projects, if constructed, would contain a total of 103 units and be located in nine different census tracts.

Vacant and Developable Land

A study done by the Planning and Community Development Department on existing vacant land indicates that there is very little vacant land in Berkeley. As of October 1984 there were 216 conforming residential vacant lots and 19 vacant lots in non-residential areas. Of the vacant residentially zoned lots, the overwhelming majority were in areas zoned as R-1. Census tracts 11, 12, 15, 16 which are virtually zoned as R-1 accounted for 209 of the vacant lots, possibly leaving 17 lots subject to the inclusionary requirement if used for development of residential projects of four or more units. The one major vacant land area in the City is the Waterfront, however, plans for that area do not envision housing of any kind.

One factor to consider in terms of future development of multi-unit residential projects is that of re-use of existing underutilized areas. However, although initial consideration is being given to facilitate such reutilization through rezoning and expansion of the redevelopment area, no studies or plans are actually in place. It is, therefore, not possible to predict how reutilization of existing developed areas may affect the number of new residential projects that is likely to be constructed in the future. However, local controls on demolition contained in the Neighborhood Preservation Ordinance (NPO) and the Neighborhood Commercial Preservation Ordinance (NCPO) should have a deterring effect on reutilization of land as indicated by the low level of demolitions since passage of those ordinances. At any rate, reutilization of existing developed areas will not be ministerial and will require environmental review at the time that proposals are made.

ANALYSIS OF IMPACT

Alternative One

Assuming that past construction trends continue and that a density bonus would be given in every situation, it can be projected that approximately two additional units would result from the inclusionary zoning ordinance (73 units were built in a ten year period, averaging 7.3 units per year. A 25% density bonus requirement would result in less than two units above the allowed maximums). This increase in itself would have negligible environmental impact, but would be further reduced for several reasons. Firstly, projects, would be likely to be under 10 units and scattered in various census tracts. Secondly, it is very unlikely that density bonuses would be given in every situation since the City has the option of providing different types of incentives. The recent trend in the City has been toward down-zoning and there has been a high concern among Berkeley residents with density. It can be expected, therefore, that other types of incentives which would not be likely to affect density would be given preference.

If one were to project from the use permit data, approximately twelve units per year could be expected if all units applied for would actually be constructed and if a density bonus would be given in every case (103 total units proposed for a two year period = 51.5 units per yr., divided by .25% = 12.67). While that number would not have a negative impact in any one year, cumulatively, some negative impact might result. However, it is highly unlikely that twelve additional units would result for the following reasons:

- o not all applications receive approval, nor all proposed units actually get constructed,
- o incentives with little environmental impact are likely to be used rather than density bonuses,
- o as projects are constructed on vacant land, vacant land becomes scarcer and project sites harder to find,
- o historically, new housing market demands are cyclical. The current housing market in the Bay Area is at the high end of the upswing with a downswing likely to follow and thus the average yearly figure can be expected to be lower.

Impacted Areas

Due to variation in zoning throughout the City some areas will be affected more than others by the inclusionary zoning program. The program will have little if any direct effect on areas zoned R-1, R-2, or R2-A because construction of projects with four or more units is not allowed in those areas (The map in Appendix A outlines the affected areas). However, even in affected areas past examples indicate that any impact should be mitigated because projects are likely to be small (i.e., under ten units) and scattered throughout census tracts.

ENVIRONMENTAL INITIAL STUDY page 6

Impact on Housing

The proposed inclusionary zoning program is expected to have a positive effect on housing by helping the City meet its housing goals as expressed in the Housing Element of the City's Master Plan. Among specific Housing Element policies that the program would address are:

- o Policy 3.10 - Encourage the development of housing for low and moderate income households.
- o Policy 3.11 - Whenever feasible, employ state/federal programs and pursue innovative ways to stimulate the development of new housing for rent or sale to low and moderate income households.

The beneficial effect on housing will result from the creation of new additional low income units as well as from any in-lieu fees received by the City which are specifically to be used for housing programs benefitting low income households.

However, a potentially negative impact on housing must also be considered. Were an inclusionary zoning program to make residential projects of four or more units prohibitive, then the overall housing goals for Berkeley of adding 1,611 housing units by 1990 would be more difficult to meet. The proposed program offers several ways to avoid such an occurrence. Firstly, inclusionary units are to be made available to those at the upper end of the low income spectrum (i.e., those above 80% of median income) unless the government can make rental subsidies available. Secondly, density bonuses or incentives of equivalent financial value must be provided to the developer. Finally, to reduce developer subsidy costs for inclusionary units, the City may allow the lessening of amenities and square footage of the inclusionary units. Increasing the number of bedrooms while maintaining the same square footage may also be allowed, resulting in a higher price for the unit (by having more bedrooms the unit could be made available to a larger sized household. Since income is based on household size, a household with greater income but more household members would still be eligible for the inclusionary unit). The developer may also be given the option of maintaining the inclusionary units as rental units in a "for sale" project which may be financially advantageous to the developer.

Alternative Two

The environmental impact of the second alternative should be considerably less than Alternative One because in most cases there would be no density bonus requirement and fewer projects would be subject to the program (e.g., four-unit projects would not be

33

ENVIRONMENTAL INITIAL STUDY page 7

covered). Rental projects of 10 units or more would require a density bonus/incentives but few rental projects can be expected (there has been no private, for profit, multi-unit rental project constructed in the last ten years). Moreover, whenever density bonuses would be applicable, the same mitigating factors cited for Alternative one would also be operative.

CONCLUSION

It can be expected that any negative environmental impact in the areas cited should be negligible. As has been discussed, for Alternative One the probable increase in residential units above the allowed maximums range from a low of less than two per year to a high of 12 per year. All factors considered, a realistic estimate of actual increase is approximately five units or 11 additional persons (2.2 per unit). In terms of impact on density, it is difficult to state clearly what that impact is other than to say that it is negligible. Normally "unit per lot/parcel" or "people per acre" are used as density measures. In this case, because additional units are expected to be few and projects are likely to be small and scattered any increased density is virtually unquantifiable. In any case, any density increase will still be subject to discretionary decision and to appropriate environmental review on a case-by-case basis.

Alternative Two is expected to have even less negative environmental impact since in the majority of cases no density bonus or other incentives are required. Both alternatives contain mechanisms to keep the program from being prohibitive to developers.

5748

NOTICE OF DETERMINATION

TO: Secretary for Resources
1416 Ninth Street, Room 1311
Sacramento, California 95814

FROM: (Public Agency) City of Berkeley
2180 Milvia Street
Berkeley, CA 94704

or
~~xxx~~ County Clerk
County of Alameda

SUBJECT: Filing of Notice of Determination in compliance with Section 21108 or 21152 of the Public Resources Code.

INCLUSIONARY ZONING PROGRAM
Project Title _____

State Clearinghouse Number _____ Contact Person _____ Telephone Number _____
(If submitted to Clearinghouse)

CITY OF BERKELEY
Project Location _____

Section 15B has been added to the Zoning Ordinance to require the inclusion
Project Description _____

of low income housing (20% of the project) in certain residential developments.

This is to advise that the Planning and Community Development Dept.
(Lead Agency or Responsible Agency)
has approved the above described project and has made the following
determinations regarding the above described project:

1. The project will, ~~xxx~~ will not, have a significant effect on the environment.
2. An Environmental Impact Report was prepared for this project pursuant to the provisions of CEQA.
- ~~xxx~~ A Negative Declaration was prepared for this project pursuant to the provisions of CEQA.

The EIR or Negative Declaration and record of project approval may be examined at: _____

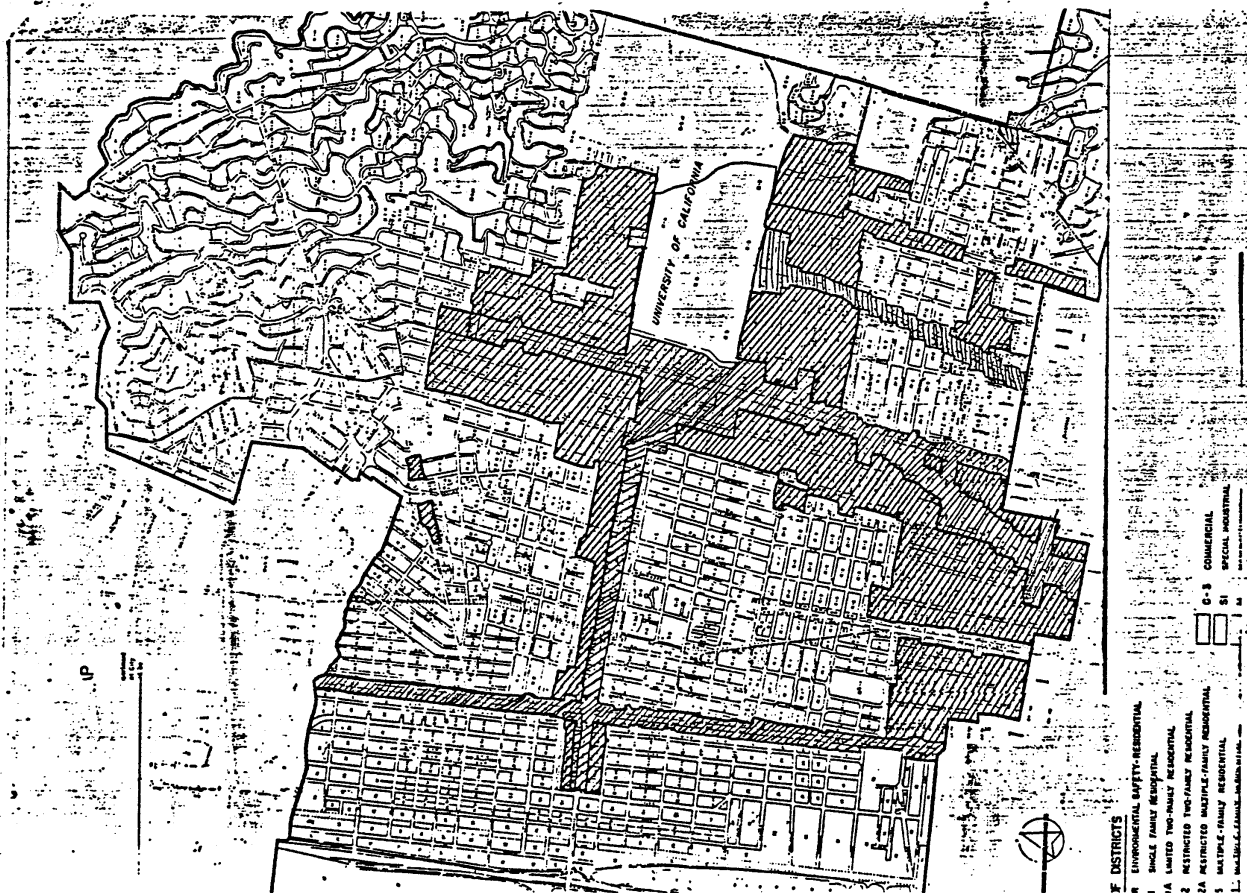
3. Mitigation measures were, ~~xxx~~ were not, made a condition of the approval of the project.
4. A statement of Overriding Considerations was, ~~xxx~~ was not, adopted for this project.


Date Received for Filing
FILED AND POSTED BY
Governor's Office of
Planning and Research

SEP 17 1986

Margaret S. ...
Signature
Planning Administrator
Title

APPENDIX A



 AREA AFFECTED BY PROPOSED INCLUSIONARY ZONING ORDINANCE

ATTACHMENT D

SUMMARY OF EXAMPLES OF OTHER INCLUSIONARY ZONING REGULATIONS

1. PALO ALTO - Contained in housing element of the general Plan. Inclusionary requirement for 10 units or more, 10% requirement. Affordability to persons ranging from 80% to 100% of median income. Price of inclusionary units=actual cost of construction (except land, marketing costs and profit). Scaling down of inclusionary unit possible. In-lieu payment allowed = 3% of sales price of total project (no density bonus given). Deed restriction, City has right of first refusal, handled through non-profit (Palo Alto Hsg. Corp.). Fraction of required below market percentage handled by in-lieu payments.
2. MARIN COUNTY - Projects of 15 units or more, rental or ownership units, made affordable to those within 80%-120% of area median income (actual average between 100 -110% of median); 15% inclusionary requirement; amenities can be reduced, off-site development allowed, rental units allowed in "for sale" developments, 90 day resale controls, fractional percentages adjusted downward. In-lieu fee average construction cost for a unit less the affordable cost for the unit.
3. COASTAL COMMISSION - 16 units or more, for sale units only. 25% of units made available to low and moderate income households. Offsite units O.K. but twice the number for on-site. projects of 5 to 15 units must make payment of fee equal to 6% of total sales price of the project. Density bonuses and reduced other requirements must be consistent with environmental policy of the Commission.
4. SANTA MONICA - (soon to change) Projects with 3 units or more, 25% inclusionary requirement. First unit affordable to moderate income (120% of median), others within 80 -100% of median income. No in-lieu fee. Developer finds buyer.
5. STATE MODEL - sales and rentals, 75% of inclusionary units at moderate income, 25% lower income. Applicable to 5 units or more, 25% inclusionary requirement. Off-site o.k. Rental units rents same as Section 8 Fair Market Rents. In-lieu fees allowed for 20 units or less based on estimated sales price for 1200 square feet minus what is affordable to a moderate income household. Density bonus equal to one additional unit for every two inclusionary ones.
6. ORANGE COUNTY - 25% of all new developments and condo conversions (10% lower income -80%; 10% at 100% of median income; 5% moderate income 100-120% of median). Density bonus or relaxation of parking requirements, CDBG assistance and other incentives used. Alternatives, off-site development or land dedication. No resale restrictions unless government subsidy has been received.

36.

7. CUPERTINO - 10 units or more in areas with density of 6 units to an acre. 10% of units, affordability range 80 -120% of median income. Density bonus of up to 20% ; can scale down and reduce size but exterior of unit must be the same. City eliminates inspection fees, park dedication fees and other fees, uses CDBG to offset land, site improvement costs. City has right of first refusal.

8. LOS ANGELES - 5 units or more new developments or condos, 15% inclusionary requirement (6% low income, 9% moderate income). City has right of first refusal to buy at market price.

9. NAPA - "bonus points" given for low/moderate units. Exemption from rating system used to reduce development.

10. SAN DIEGO - (yet to be implemented), 15% low income units, 20% density bonus given.

11. CONCORD (proposed) 25% of units affordable at 120% of median; or 10% of units affordable at 80% of median, or sell 50% of units to elderly. Inclusionary units for rental housing as well, 25% at 120% of median; 10% of units at 20% of 80% of median. Negotiations often on a case-by-case basis. Additional incentives given for going above the 25% requirement.

Exhibit L

ORDINANCE NO. 4641 -N.S.

PROVIDING FOR THE ESTABLISHMENT OF A NEW PLANNING PROCESS TO ACHIEVE THE PRESERVATION AND ENHANCEMENT OF THE NEIGHBORHOODS OF THE CITY OF BERKELEY INCLUDING INTERIM REGULATIONS ON RESIDENTIAL CONSTRUCTION AND DEMOLITION.

The people of the City of Berkeley do ordain as follows:

Section 1. TITLE.

This ordinance shall be called the Neighborhood Preservation Ordinance.

Section 2. PURPOSE.

The purpose of this ordinance is to deal with an emergency situation arising from current development trends in the City of Berkeley.

(a) IMPACT OF CURRENT DEVELOPMENT TRENDS. An increasing number of neighborhoods in Berkeley are threatened by over-construction of dwellings which do not meet the needs of the community. It is essential that the residents of the city determine the processes which regulate the uses of available land. Housing which has not met the needs of underserved people in the community must become a prime priority in any consideration of such land use and must also rectify the problems presented by the concentration of dwellings in certain areas of the city. At all times the environmental impact of housing construction must be a major concern.

New construction in a city as built-up as Berkeley requires demolition, often of attractive low rent older homes, thus actually reducing the stock of decent housing available to those most in need of it -- families, low income and underserved, racial minorities and students. Although charging high rents, most new dwellings have

been of uniformly low quality. In addition, the design of new buildings often has disregarded the special needs of the aged and the handicapped.

Residents of Berkeley suffer from the effects of high-density construction which increases traffic, competes for limited recreational space, and experience drastically reduced views, light and air. The city as a whole also suffers. The tax rate has soared as the need for costly public services, such as recreation space, transportation services, police and fire protection, child care, health care, and waste disposal, increase in the affected neighborhoods. Higher taxes are necessitated because such developments fail to pay for the additional services; these increased taxes, therefore, represent an indirect subsidy to developers from the pockets of taxpayers.

(b) DEFICIENCIES IN MASTER PLAN AND ZONING ORDINANCE. These current development trends in Berkeley constitute a serious public emergency which deficiencies in the City's Master Plan and Zoning Ordinance have not been able to control. There has been no substantial reconsideration and revision of the Master Plan since its adoption in 1955, and this plan fails to reflect the current priorities and needs of Berkeley residents.

The Master Plan does not contain a housing element, as required for the City's continuing eligibility to participate in various Federal programs, such as rent and housing subsidy and loan programs. Neither the City's Master Plan or the Zoning Ordinance contain provisions insuring the development of low-income housing to meet the needs of low-income groups residing in the City of Berkeley, or establish procedures to insure the preservation of land space on which low-income housing may be constructed at such time as public or private funds for such housing are made available. The Master Plan also lacks protective provisions for Charter Cities, as required by a recent act of the State Legislature, including conservation, open space, noise abatement, and geological elements.

Major policies included in the Master Plan have not been followed. The Zoning Ordinance does not conform with the population guidelines of the Master Plan. The Zoning Ordinance allows vastly higher densities than recommended as a maximum by the Master Plan. The Ordinance also fails to provide for a public report concerning the environmental impact of proposed developments, as required by a recent decision of the California Supreme Court. Although a new development has its greatest impact on the surrounding neighborhood, the Zoning Ordinance makes little provision for neighborhood consideration of this impact.

Until the above-mentioned deficiencies are corrected, the critical conflict between current development trends and the public welfare will continue.

Section 3. PROCEDURES FOR THE CORRECTION OF DEFICIENCIES ENUMERATED IN SECTION 2.

(a) COMPREHENSIVE REVISION OF BERKELEY MASTER PLAN AND ZONING ORDINANCE. The City Planning Commission shall prepare and submit to the City Council for its consideration a comprehensive revision of the Master Plan and Zoning Ordinance. The Planning Commission shall submit the revised Master Plan and Zoning Ordinance no later than March 31, 1975 or by such later date as the City Council may direct for good cause shown.

(b) RESIDENT PARTICIPATION. A Committee of interested residents shall be formed by the City Council to assist the Planning Commission during the revision of the Master Plan and Zoning Ordinance. Each councilmember shall appoint an equal number of committee members. The City Council shall allocate sufficient funds to meet minor expenses incurred by low-income, handicapped or aged persons who may be serving on this advisory committee (ie: child care, transportation).

(c) CORRECTION OF DEFICIENCIES AND RESIDENT REVIEW. The Planning Commission shall include in the revised Master Plan and Zoning Ordinance correction of the deficiencies specified in Section 2 and provision for resident review at the neighborhood level of all proposed developments and changes in land use.

(d) PUBLIC HEARINGS. In order to insure that the City Planning Commission is adequately informed regarding the priorities and concerns of Berkeley residents and to insure that those residents are appraised from time to time of the status of the Commission's revisory work, the Planning Commission shall hold no fewer than five (5) public hearings throughout the City.

Section 4. INTERIM BUILDING REGULATIONS.

In order to regulate the issuance of building permits during the period between the enactment of the "Neighborhood Preservation Ordinance" and the final acceptance by the Berkeley City Council of the revised Master Plan and Zoning Ordinance, no residential building permits shall be issued except in conformity with the following requirements:

(a) USE PERMITS. Use Permits issued by the Board of Adjustments shall be required for the construction of all new residential construction of one or more units, excepting legal conversions and/or the addition of a single legal unit to an existing structure. The use permit shall be obtained before the issuance of a building permit. Decisions of the Board of Adjustments may be appealed to the City Council by any interested party.

(b) GRANTING OF USE PERMITS. A use permit may be granted if from the facts presented at a duly called public hearing at the Board of Adjustments, or the City Council on appeal finds the following:

(1) That the requirements of the Zoning Ordinance have been met, including those for use permits and variances as

specified therein.

(2) That the establishment, maintenance, or operation of the building applied for will not, under the circumstances of the particular case, be detrimental to the health, safety, peace, comfort and general welfare of persons residing or working in the neighborhood of such proposed use or to the general welfare of the city.

(3) That in the case of construction of new buildings with one or more units, the affected neighborhood has received notification as required by Section 7.

(4) That the developer and/or contractor has submitted and will comply with an affirmative action program conforming with Berkeley's affirmative action guidelines.

(5) That the proposed construction of four or more units shall have at least twenty-five percent (25%) low-income housing units as defined in Section 4(c) of this ordinance.

(6) That the environmental impact requirements have been met according to Section 6 of this ordinance.

In addition, for any proposed construction with less than 50% low income units, the Board of Adjustments shall make a finding of whether the proposed construction meets with the general approval of residents of the neighborhood where it is to be located. Neighborhood disapproval may not be based upon discrimination against the characteristics of potential residents. The Board shall consider this finding in determining whether requirements of Section 4(b)(2) has been met. "Neighborhood" shall be defined as provided for in Section 7(a) below.

(c) LOW-INCOME HOUSING. Low income housing is housing whose dwelling unit rents and income standards are defined in HUD guidelines for Section 236 housing. For buildings of eight units or larger, at least half of the minimum specified in Section 4(b)(5) must meet rent and income guidelines for Section 23 (Leased Housing).

Section 5. INTERIM BUILDING DEMOLITION REGULATIONS.

In order to protect the stock of older housing during the period between the enactment of the "Neighborhood Preservation Ordinance" and the final acceptance by the Berkeley City Council of the revised Master Plan and Zoning Ordinance, no residential demolition permits shall be issued except in conformity with the following requirements:

(a) DEMOLITION PERMITS. Demolition permits shall be required for the demolition of structures containing one or more residential units. These permits shall be issued by the Board of Adjustments. Decisions of the Board of Adjustments may be appealed to the City Council by any interested party.

(b) GRANTING OF DEMOLITION PERMITS. A demolition permit may be granted if, from all facts presented at a duly called public hearing at the Board of Adjustments, or the City Council upon appeal, finds:

(1) That the demolition would not be materially detrimental to the housing needs and public interest of the affected neighborhood and the City of Berkeley; and

(2) That the developer and/or owner of the proposed construction has provided alternative housing for the residents of the structure to be demolished, and further that this relocation housing is consistent with HUD relocation guidelines, including standards for a choice of housing of comparable quality and costs within the same community if the relocatee(s) so desire, and either

(3) That the demolition will remove a hazardous, unusable or unrepairable structure, or

(4) That the demolition is necessary to permit construction approved pursuant to Section 6(c)(5), and with the additional requirement that such construction contain at least the same number of housing units as the demolished structure, and, further, that provisions have been made for persons displaced by the proposed construction to have first choice in the new housing.

Section 6. ENVIRONMENTAL IMPACT REPORT AND FINDING.

(a) ESTABLISHMENT OF INTERIM ENVIRONMENTAL IMPACT GUIDELINES. The Planning Commission, as soon as possible after public hearings in which all interested parties are asked to participate, shall prepare for adoption by the City Council a set of interim guidelines to determine which construction and demolition projects may have a significant effect on the environment, and when permits should be issued for such projects.

(b) PREPARATION AND CONSIDERATION OF ENVIRONMENTAL IMPACT REPORT. No permit for construction or demolition which may have a significant effect on the environment shall be granted until:

(1) An Environmental Impact Report has been prepared by the Planning Department at the expense of the applicant. This cost to the applicant may be waived if the Board of Adjustments finds it to be a financial hardship.

(2) The Board of Adjustments has considered such Environmental Impact Report at the duly called public hearing on the granting of a use or demolition permit, and

(3) The Board of Adjustments has made a finding that the project will not have a significantly adverse environmental effect. (Decisions of the Board of Adjustments may be appealed to the City Council by any interested party.)

(b) PRESUMPTION OF ENVIRONMENTAL EFFECT. Until interim guidelines have been prepared by the Planning Commission after public hearings and have been adopted by the City Council, all projects involving construction or demolition of buildings which require approval by the Board of Adjustments shall be deemed to have a significant effect on the environment.

Section 7. REQUIRED PUBLIC NOTICE.

(a) NOTICE TO THE NEIGHBORHOOD. Notice of public hearings provided for in this Ordinance shall be sent at least 21 days before the public hearing date, to all addresses and owners of property within a radius of five hundred (500) feet from the boundaries of the site of the proposed construction or demolition. The Board of Adjustments may decrease this radius to not less than three hundred (300) feet in appropriate cases of small-scale development. The following information shall be included in the notice of public hearing:

- (1) The number of housing units proposed.
- (2) The percentage of low-income units included in the structure.
- (3) A small reproduction of the site plan and perspective rendering of the proposed structure.
- (4) Time and place of public hearing.
- (5) City departments to contact for further information.

(b) NOTICE TO THE REGISTRY. The Board of Adjustments shall maintain a registry of all persons and groups requesting notice, to whom notice of all public hearings shall be sent as specified in Section 7(a)(1) through (5) above, and shall be sent at least 21 days before the public hearing date.

(c) NOTICE BY POSTING. A notice of public hearing shall be posted on the site of the proposed construction at least 21 days before the public hearing date. This posted notice shall be in lettering sufficiently large to be seen clearly and read easily by passersby, and the posted notice shall contain information as specified in Section 7(a)(1) through (5).

(d) COSTS OF NOTICE. All costs of giving notice shall be

paid by the applicant. This cost to the applicant may be waived if the Board of Adjustments finds it to be a financial hardship.

Section 8. DETERMINATION OF RULES AND PROCEDURES.

The Planning Commission shall determine rules and procedures necessary to make operative the Interim Building and Demolition regulations established by this ordinance.

Section 9. RELATIONSHIP TO OTHER ORDINANCES.

It is not the purpose of this Ordinance to repeal the existing Zoning Ordinance, except insofar as its provisions are in conflict with this Ordinance. Where there is no conflict, the Zoning Ordinance shall continue to apply. Wherever the existing Zoning Ordinance or other ordinances are in conflict with this Ordinance, this Ordinance shall apply.

Section 10. SEVERABILITY.

If any provision of this Ordinance or application thereof to any person or circumstance is held invalid, this invalidity shall not affect other provisions of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared to be severable.

In effect: April 17, 1973

ORDINANCE NO. 4641 **—N.S.**

Passed to Print:.....

Finally Adopted:.....

In Effect:..... April 17, 1973.....

Passed by the electors April 17, 1973 at the General Municipal Election.

At a regular meeting of the Council of the City of Berkeley, held on the..... day of
....., this Bill was passed to print and ordered published by posting by the
following vote:

Ayes:

Noes:

Absent:

Attest:
.....
City Clerk and ex-officio Clerk of the Council

At a regular meeting of the Council of the City of Berkeley, held on the..... day of
....., this Ordinance was finally adopted by the following vote:

Ayes:

Noes:

Absent:

Attest:
.....
City Clerk and ex-officio Clerk of the Council
of the City of Berkeley, California

Approved this..... day of.....

.....
Mayor and President of the Council
of the City of Berkeley, California

Exhibit M

770 PAGE STREET (E) ASPHALT PARKING AREA.
770 PAGE STREET

1442 5th STREET

EXISTING ONE STORY HOUSE

DRIVEWAY EASEMENT ONTO 770 PAGE STREET

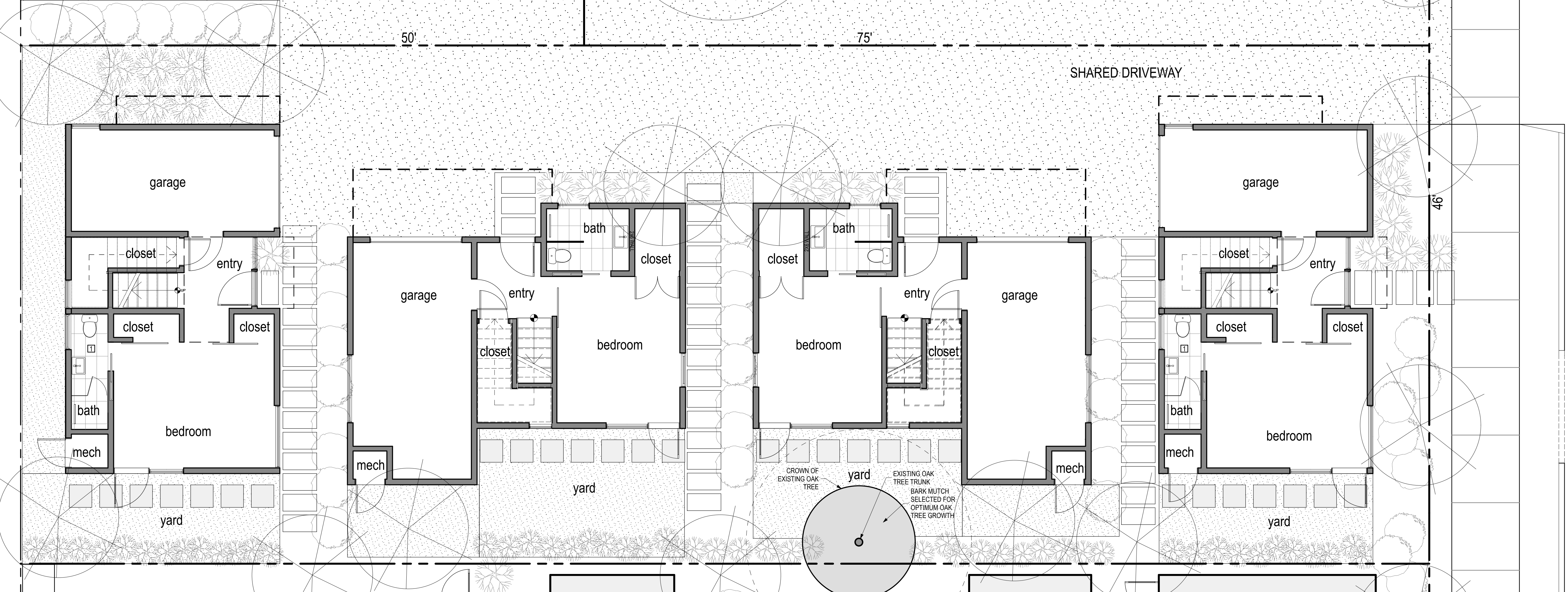
DRIVEWAY EASEMENT ONTO 1442 5TH STREET

SHARED DRIVEWAY

50'

75'

46'

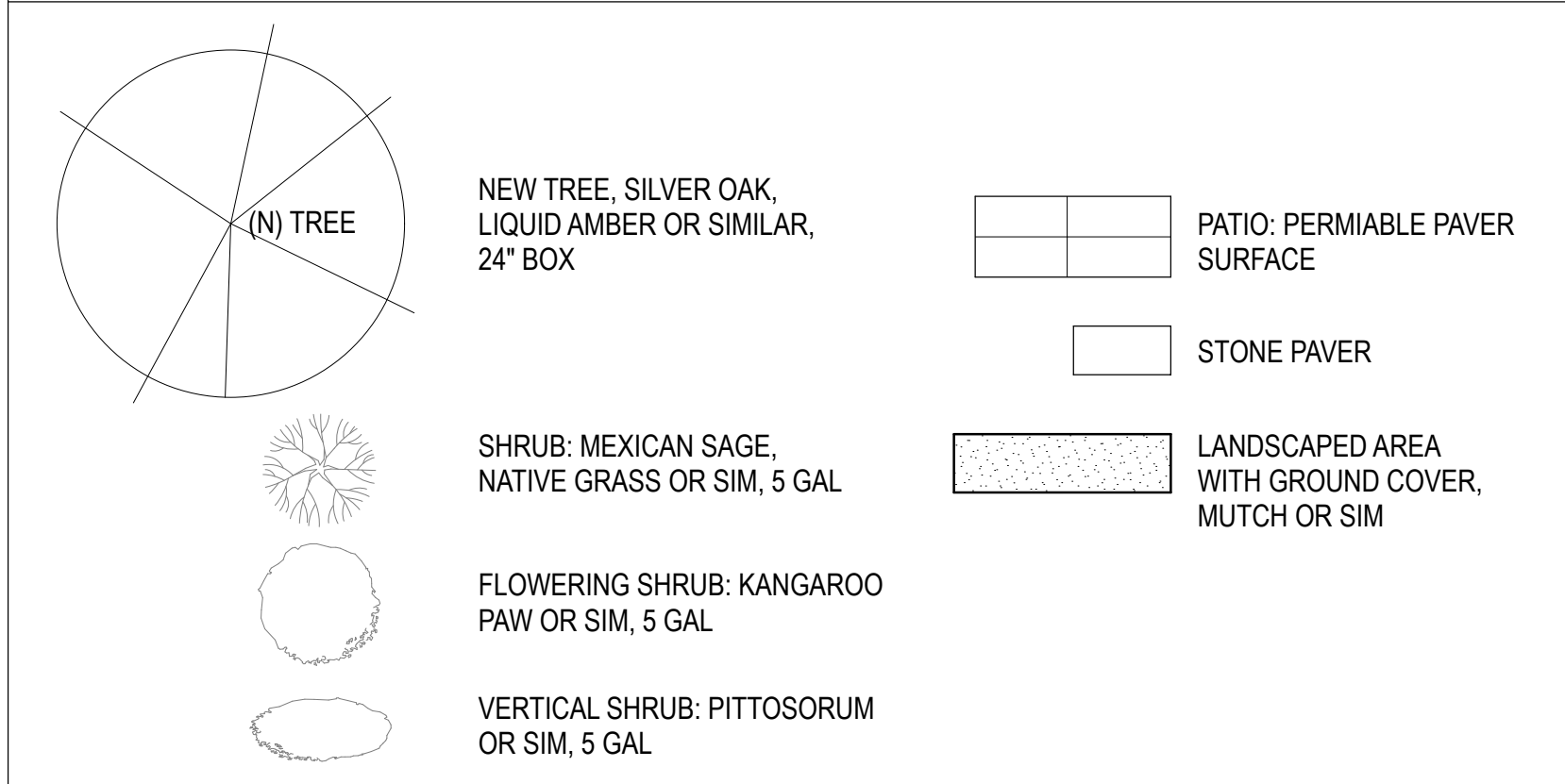


1446D 5th STREET HOUSE

1446C 5th STREET HOUSE

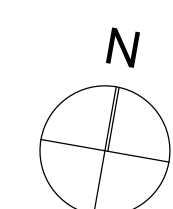
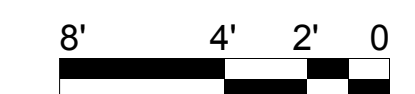
1446B 5th STREET HOUSE

LANDSCAPE LEGEND



FIFTH STREET

LANDSCAPE PLAN





JESSICA L. BLOME
2550 Ninth Street, Suite 204B
Berkeley, CA 94710
Phone: 510.900-9502
Email: jblome@greenfirelaw.com
greenfirelaw.com

April 29, 2019

By Electronic Mail

Hon. Mayor Jesse Arreguin
Members of the Berkeley City Council
2180 Milvia Street
Berkeley, CA. 94704
council@cityofberkeley.info
clerk@cityofberkeley.info

RE: Supplemental Memorandum in support of the Oceanview Neighborhood Council's appeal of the Zoning Adjustment Board's approval of the 1444 Fifth Street Project, ZAB No. ZP-2018-0172

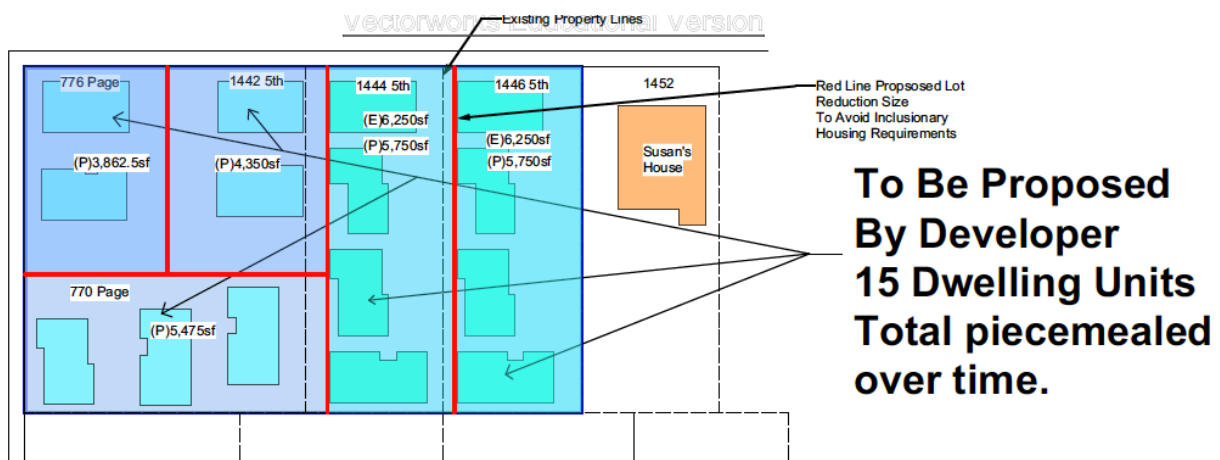
Dear Mayor Arreguin and Councilmembers,

This law firm represents the interests of the Oceanview Neighborhood Council (ONC). ONC is comprised of residents of the West Berkeley neighborhood of Oceanview in the City's Arts & Artisans District, many of whom are artists with moderate incomes. ONC's members are working to stem the erosion of affordability in their neighborhood. ONC firmly believes the City's Zoning Ordinance and Inclusionary Housing Requirements are two of the City's primary tools to develop affordable housing in this area and Berkeley as a whole. According to the West Berkeley Arts Field Survey, commissioned by the Berkeley Civic Arts Commission in 2008, 827 artists live or work in West Berkeley.

Recently, a developer named Matthew Wadlund began constructing four residential Dwelling Units at 1446 Fifth Street, one of five lots he owns in a Mixed-Use Residential District located on the intersection of Fifth and Page Streets in the West Berkeley Arts and Artisans District. This memorandum will refer to these lots collectively as the "Oceanview Neighborhood Block" or "Block." The Zoning Adjustments Board (ZAB) approved Wadlund's proposal to develop a second lot, 1444 Fifth Street, on January 24, 2019, which approval ONC timely appealed on February 6, 2019.



Figure 1: Oceanview Neighborhood Block (the "Block")



With this appeal, the City Council has an opportunity to stop Wadlund from continuing his sequential development of the Oceanview Neighborhood Block, thereby escaping his obligations under the Zoning Ordinance, Inclusionary Housing Requirements, and Subdivision Map Act. Council’s review of ZAB’s approval is *de novo*, and so all materials presently before this Council may be considered, even if they were not considered by ZAB.¹ At the hearing regarding Wadlund’s plans for 1444 Fifth Street, ZAB refused to consider evidence related to Wadlund’s comprehensive development activities in the Oceanview Neighborhood Block. ONC submits this supplemental memorandum, so Council can review that evidence.

I. ZAB failed to consider evidence of Wadlund’s master development plan for the Oceanview Neighborhood Block.

On January 24, 2019, Wadlund appeared before ZAB to win approval of his plan to develop 1444 Fifth Street into four Dwelling Units. During his presentation, Wadlund admitted that he intends to develop all five lots in the Oceanview Neighborhood Block serially. The following publicly available information corroborates his admission that he views the Block as a common development:

- (1) On August 31, 2016, Wadlund registered five separate limited liability companies with the California Secretary of State’s Office, naming himself the sole organizer, member, and office holder. (Declaration of Ariel Strauss, Exh. A (hereinafter “Strauss Decl.”).)
- (2) Just two months after registering his limited liability companies, Wadlund used the companies to purchase the lots that make up the Oceanview Neighborhood Block on the same date. (See Strauss Decl. Exhs. B, C.)
- (3) Wadlund’s consultant evaluated the suitability and environmental health of the soil for 1444 and 1446 Fifth Street in the same report because, as early as October 2016, the consultant understood that these lots would be developed into eight Dwelling Units. (See Strauss Decl.

¹ BMC, §§ 23B.28.060, 23B.32.050, 23B.32.060.

Exh. D; see also Exh. E (“Our December 16, 2016, report was issued for both 1444 and 1446. We drilled on both lots and were aware that four units would be placed on each of them.”).)

- (4) After the July 20, 2017, Design Review Committee meeting, at which the Committee evaluated the suitability of Wadlund’s design plans for 1446 Fifth Street, Wadlund told ONC members they should be “happy” he is only building four houses because the City would allow him to build five on such a large lot. (See Declaration of Susan Younger, ¶ 2 (hereinafter “Younger Decl.”).)
- (5) During a February 6, 2018, City Council meeting to consider whether to approve Matthew Wadlund’s proposal to develop 1446 Fifth Street, Wadlund’s permit expediter told Council that Matthew Wadlund intended to develop the lots that make up the Oceanview Neighborhood Block sequentially and could consolidate them at will anytime thereafter. (See Strauss Decl. Exh. F.)
- (6) Wadlund requested lot line adjustments (LLA(s)) to reduce the size of 1444 and 1446 Fifth Street after the February 6, 2018, City Council meeting in order to avoid triggering Inclusionary Housing Requirements. (See Strauss Decl. Exhs. F, I; see also Figure 1, *above*.)
- (7) The City Engineer did not consult with the Planning Department regarding the consistency of the 1444 or 1446 Fifth Street with the Zoning Ordinance, including Inclusionary Housing Requirements prior to approving the LLAs.
- (8) Wadlund’s architectural and design plans for 1444 and 1446 Fifth Street are substantially similar to each other, a fact Staff has repeatedly acknowledged and used as justification to expedite review of Wadlund’s plans for 1444 Fifth Street. (See Strauss Decl. Exhs. I, J.)
- (9) Wadlund’s team physically levelled 1444 and 1446 Fifth Street at the same time and with the same equipment. (Younger Decl. ¶ 3.)
- (10) Wadlund is using 1444 to stage construction of 1446, storing construction materials and equipment as well as waste on 1444, and placing the portable toilet and vehicles on 1444. (See Declaration of Niels Traynor ¶ 2, Exh. A (hereinafter “Traynor Decl.”).)
- (11) Wadlund intends for 1444 Fifth Street, 1442 Fifth Street, and 770 Page Street to share an access easement. (Strauss Decl. Exh. I, p. 7, Exh. M.)

During its presentation on January 24, 2019, ZAB Staff omitted any reference to the aforementioned evidence. Instead, according to Staff, because Wadlund has yet to submit a “master development plan” to the City, ZAB must take Wadlund at his word and refrain from considering whether Wadlund’s piecemeal development is part of a common development scheme.² Staff has accepted this strategy, stating publicly at a Planning Commission hearing that Staff accepts a developer’s description of project scope without question. (Traynor Decl. ¶ 3.) Thus—according to Staff—Wadlund is free to develop the Oceanview Neighborhood Block pursuant to his *personal* master plan as long as his applications to the City do not disclose his real intentions. Upon this advice—and without conducting a review of available

² See [ZAB Meeting Video Recording](#), Jan. 24, 2019, Time Stamp 3:33, Staff Comments.

evidence—ZAB approved Wadlund’s proposal to develop 1444 Fifth Street into four Dwelling Units. The City Council must reverse ZAB’s approval of Wadlund’s 1444 Fifth Street application and order the ZAB to treat Wadlund’s request for development of the remaining four lots as a common development scheme together with 1446 Fifth Street, subject to applicable City and state law, including the City’s Inclusionary Housing Requirements.

II. In approving Wadlund’s piecemeal development of the Oceanview Neighborhood Block, the City has failed to comply with Berkeley’s Inclusionary Housing Requirements.

The City Council adopted Berkeley’s Inclusionary Housing Requirements on July 15, 1986.³ Despite undergoing stylistic and formatting changes when Council reorganized the Zoning Ordinance in 1999⁴, Inclusionary Housing Requirements currently codified at 23C.12.022 are substantively similar to the original 1986 enactment. Among the formal findings in the original ordinance are: (1) “continued new development which does not include lower cost housing will serve to further aggravate the current housing shortage by reducing the supply of land” and (2) “encouragement of usage of density bonus.” (See Declaration of Ariel Strauss, ¶ 25, Exh. K, Berkeley Ordinance No. 5748, § 15.B (hereinafter “Strauss Decl.”))

As initially drafted in 1986, Inclusionary Housing Requirements applied to properties on which four or more residential units had been constructed. However, the Planning Commission advised Council that the Requirements should apply to projects on which it is feasible to build five or more residential units, to “close possible loopholes of building less units or building units incrementally as a means to avoid the requirements of the ordinance.” (See Strauss Decl. Exh. K, p.4, § IV(A).) Council accepted the Planning Commission’s recommendation and adopted the language that is now codified in Berkeley’s Zoning Ordinance at Chapter 23C.12.020(A)(3).

Today, the Inclusionary Housing Requirements compel an applicant for development of a residential housing project to either:

- (1) set aside 20 percent of the total number of Dwelling Units as affordable housing available for sale or rent at below-market rates, or
- (2) pay a fee into the City’s Housing Trust Fund in-lieu of providing units at below-market rates.⁵

This obligation applies to multiple types of projects including:

- (1) Residential housing project for the construction of five or more Dwelling Units;
- (2) [omitted because not relevant to appeal];

³ Berkeley Ordinance No. 5748.

⁴ Berkeley Ordinance No. 6478.

⁵ BMC, §§ 23C.12.030; 23C.12.035.

- (3) Residential housing projects proposed on lots whose size and zoning designation is such to allow construction of five or more Dwelling Units.⁶

Wadlund has been open about his plan to develop 1444 and 1446 Fifth Street into eight Dwelling Units, which is more than the five required to render this project subject to Inclusionary Housing Requirements. (See Strauss Decl. ¶ 13, Exh. F.) He has also advised Council that he will develop 1442 Fifth Street, 770 Page Street, and 776 Page Street into residential homes in the near future. (Id.) In permitting Wadlund to develop the Block sequentially in piecemeal fashion, the City is violating its obligations under the West Berkeley Plan, Inclusionary Housing Requirements, Housing Accountability Act, California Environmental Quality Act, and Subdivision Map Act. To put it bluntly, nothing in existing state or local law permits the City to ignore Wadlund's piecemeal development plan, as it has to date, and doing so leaves the City vulnerable to legal challenge.

III. ZAB unlawfully relied on Wadlund's self-serving LLAs to reject ONC's call for application of Inclusionary Housing Requirements.

Due to minimum lot square-footage-per-dwelling-unit requirements in Mixed Use-Residential Districts, such as much of the area covered by the West Berkeley Plan, five units can be built on lots **5,750 square feet** or larger in the Oceanview Neighborhood.⁷ Under the Berkeley Municipal Code, the City Engineer must review applications for LLAs⁸ to ensure compliance with the Government Code and for conformity with applicable zoning and building ordinances.⁹ This is not a ministerial task, as the Zoning Ordinance clearly states, "No lot shall hereafter be subdivided or reduced in size, nor shall any lot line be adjusted or redrawn, so that any resultant lot conflicts with the provisions of this Ordinance."¹⁰ The Inclusionary Housing Requirements are part of the Zoning Ordinance. The City Engineer retains ultimate discretion to approve, conditionally approve, or disapprove requested changes, and such review must include consultation with the "departments concerned."¹¹ Upon information and belief, no such consultation occurred prior to approval of Wadlund's requested LLAs.

Berkeley's requirement that Staff scrutinize the consistency of LLAs with the purpose of the Zoning Ordinance is consistent with Government Code section 66412, subdivision (d), which expressly authorizes municipalities to consider the consistency of proposed LLAs with the "local general plan, any applicable specific plan, any applicable coastal plan, and zoning and building ordinances." Under this authority, municipalities may review individual applications for LLAs to prevent "gamesmanship."¹²

In its presentation to ZAB, Staff argued that Wadlund's prior recording of LLAs in connection with his development plan for 1446 Fifth Street obviated Wadlund's obligation to comply with Inclusionary

⁶ BMC, § 23C.12.020(A)(3).

⁷ BMC, § 23E.84.00(B).

⁸ "Lot line adjustments are changes in the boundary between two or more existing adjacent parcels, where the land taken from one parcel is added to an adjacent parcel, and where a greater number of parcels than originally existed is not thereby created." (BMC § 21.32.020.)

⁸ BMC, § 21.040.050

⁹ BMC, § 21.32.030.

¹⁰ BMC, § 23A.12.020(A).

¹¹ Id.

¹² *Sierra Club v. Napa Cnty. Bd. of Supervisors* (2012) 205 Cal.App.4th 162, 168.

Housing Requirements for future projects. But Prior to Wadlund's request for LLAs, recorded square footage indicates that:

- 1446 Fifth Street included 6,254sf;
- 1444 Fifth Street included 6,251sf;
- 1442 Fifth Street included 3,750sf;
- 770 Page Street included 5,126sf; and
- 776 Page Street included 3,900sf.

Combined, Wadlund's contiguous holdings in the Oceanview Neighborhood Block total 25,2789sf, all of which Wadlund intends to develop. (Strauss Decl. ¶ 13, Exh. F; Exh. H.) Staff's advice to ZAB contradicts the Berkeley Municipal Code's requirement to scrutinize LLAs for compliance with the Zoning Ordinance. Council must reverse ZAB's approval of Wadlund's piecemeal project because they plainly constitute "gamesmanship" intended to circumvent the Inclusionary Housing Requirements and order Staff to comply with City law.

IV. The City failed to comply with the Subdivision Map Act.

The Subdivision Map Act vests in cities and counties the authority and responsibility for the review and approval of all proposed subdivision maps; the local agency's review is comprehensive.¹³ Specifically, the local agency must do the following:

- (1) Ensure consistency with local general plans, specific plans, and public health and safety requirements¹⁴;
- (2) Consider the site's suitability for development and the adequacy of local roads, sewer, drainage, and public services¹⁵;
- (3) Provide for the protection of natural resources and mitigation of environmental impacts¹⁶; and
- (4) Take steps to ensure the accuracy and validity of the recorded map¹⁷.

Among the Subdivision Map Act's purposes are "to encourage and facilitate orderly community development [and] coordinate planning with the community pattern established by local authorities."¹⁸

¹³ Gov. Code, § 66411.

¹⁴ See, e.g., Gov. Code, §§ 66473, 66473.5, 66474.

¹⁵ See, e.g., Gov. Code, §§ 66411, 66473.7, 66474, 66474.6.

¹⁶ See, e.g., Gov. Code, § 66474(e).

¹⁷ See, e.g., Gov. Code, §§ 66433–66443.

¹⁸ *Gomes v County of Mendocino* (1995) 37 Cal.4th 977, 985; see also *John Taft Corp. v Advisory Agency* (1984) 161 CA3d 749, 755; *Pratt v Adams* (1964) 229 Ca2d 602, 606.

“By generally requiring local review and approval of all proposed subdivisions, the Act aims to ‘control the design of subdivisions for the benefit of adjacent landowners, prospective purchasers and the public in general.’”¹⁹ Accordingly, the definition of “subdivision” is broadly drawn:

“Subdivision” means the division, by any subdivider, of any unit **or units** of improved or unimproved land, or any portion thereof, shown on the latest equalized county assessment roll as a unit **or as contiguous units**, for the purpose of sale, lease, or financing, **whether immediate or future**. Property shall be considered as contiguous units, even if it is separated by roads, streets, utility easement, or railroad rights-of-way. “Subdivision” includes a condominium project, as defined in Section 4125 or 6542 of the Civil Code, a community apartment project, as defined in Section 4105 of the Civil Code, or the conversion of five or more existing dwelling units to a stock cooperative, as defined in of Section 4190 or 6566 of the Civil Code.²⁰

To ensure compliance with these goals, the Map Act permits local governments to impose conditions or exactions on subdivisions to conform to the local general plan, any applicable specific plan, and zoning and building ordinances.²¹ A subdivision must be consistent with the City’s General Plan as well as the West Berkeley Plan to win approval in Berkeley.²² Perfect conformity between a proposed subdivision map and the general plan is not required; rather, a proposed map must be in agreement or harmony with the plan and must further the objectives and policies of the plan.²³ Since the power to deny generally includes the power to approve with conditions,²⁴ the local agency may, impose such conditions as may be necessary to ensure consistency with the General Plan and West Berkeley Plan. The Map Act extends a local agency’s authority beyond the physical characteristics of the subdivision, to allow the local agency to address *use* of the property as well, so as to ensure compliance with all general plan elements.²⁵

Wadlund has stated he intends to develop the whole Oceanview Neighborhood Block into single family residences that will be sold as condominiums. In order to assign the parcels to new owners, Wadlund will need to subdivide the lots prior to the sale. Because City staff thus far refused to acknowledge and scrutinize Wadlund’s common development scheme, Wadlund will not only evade Inclusionary Housing Requirements but also potential conditions placed on the development of this subdivision.

¹⁹ *Gardner v County of Sonoma* (2003) 29 Cal.4th 990, 997 (quoting *Hays v Vanek* (1989) 217 Ca3d 271, 289).

²⁰ Gov. Code, § 66424 (emphasis added).

²¹ Gov. Code, § 66412(d).

²² See BMC, § 21.16.047.

²³ *Friends of Lagoon Valley v City of Vacaville* (2007) 154 Ca4th 807, 817.

²⁴ *Nollan v California Coastal Comm'n* (1987) 483 US 825, 836.

²⁵ Gov. Code, § 66473.5; See also *DeVita v County of Napa* (1995) 9 Ca4th 763, 772 (subdivision must be consistent with development policies of general plan); *City of Del Mar v City of San Diego* (1982) 133 Ca3d 401, 414 (subdivision must be consistent with affordable housing policies of the general plan).

V. Wadlund's request for a driveway easement encumbrance on 1442 5th Street and 770 Page Street is only needed because he reduced the lot size of 1444 Fifth Street to escape Inclusionary Housing Requirements.

Remarkably, Wadlund's proposed construction of four Dwelling Units at 1444 Fifth Street requires an easement encumbering 1442 Fifth Street and 770 Page Street—for the very same square footage that Wadlund relinquished by LLA from 1444 Fifth Street to avoid paying into the City's Housing Trust Fund. (See Strauss Decl. Exh. I, p. 7; see also ¶ 15, Exh. H; see also Exh. M.) Without the easement, 1444 Fifth Street is not large enough to include the necessary driveway to develop the four units planned on that lot. Wadlund advised the Planning Department that he will record the easement once the City Council approves his permit for 1444 Fifth Street. The City must not approve Wadlund's request for the project or the easement unless it rejects Wadlund's invitation to piecemeal develop the Oceanview Neighborhood Block and instead treat it as the common development scheme it is, subject to applicable City law, including Inclusionary Housing Requirements.

VI. Neighborhood Preservation Ordinance

On April 17, 1973, Berkeley voters adopted the Neighborhood Preservation Ordinance (NPO) through the initiative process. A true and correct copy of the NPO is attached to the Strauss Declaration as Exhibit L. Though not codified in the Berkeley Municipal Code, the Ordinance has never been amended or repealed. To amend or repeal the NPO, a majority of voters must approve the repeal or proposed amendment at a general municipal election.²⁶ According to the NPO, notice of public hearings related to a development project subject to the NPO—like Wadlund's—must be sent to all addresses and owners of property within a five hundred feet radius of the boundaries of the site of proposed construction and must include:

- (1) The number of housing units proposed;
- (2) The percentage of low-income units included in the structure;
- (3) A small reproduction of the site plan and perspective rendering of the proposed structure;
- (4) Time and place of public hearing; and
- (5) City departments to contact for further information.

(Strauss Decl. Exh. L § 7(a)(1)—(5).) This provision has not been repealed or amended, so the NPO controls. (Strauss Decl. Exh. L, § 9.) ZAB's published notice for hearings related to 1446 and 1444 Fifth Street violated the NPO because neither notice identified the total number of Dwelling Units proposed for the Oceanview Neighborhood Block. Without such critical information, ONC was forced to argue against Wadlund's *personal* development plan in a vacuum, and ZAB failed to consider critically relevant information. Council now has an opportunity to consider that evidence and comply with the NPO, Inclusionary Housing Requirements, Zoning Ordinance, and Subdivision Map Act.

²⁶ Berkeley City Charter, Art. XIII, Section 92, subd. (9).

VII. The Design Review Committee failed to comply with public participation requirements in approving the Administrative Use Permit for 1444 Fifth Street after a “desk review.”

Compounding the effects of serially, piecemeal development of the Block, ZAB’s Design Review Committee approved Wadlund’s architectural and design plans for 1444 Fifth Street on a “desk review.” According to Staff, a desk review was appropriate because, “the proposed design of the buildings is similar to that of the recently approved development at the southern abutting lot, 1446 Fifth Street, which is currently under construction.” (Strauss Decl. Exh. I, p. 7, § III.) Indeed, implicit in Staff’s acknowledgement is the fact that these two lots are part of a common development.

Staff’s decision to conduct a desk review, apparently under the guise of the public having already had an opportunity to comment on this project, undermined the public participation process for residential housing developments in Berkeley and eliminated ONC’s opportunity to express its concerns with Wadlund’s design proposal for the 1444 Fifth Street Project. This treatment is also inconsistent with Staff’s accepting Wadlund’s applications for permission to develop 1444 and 1446 Fifth Street as separate projects completely at face value.

We look forward to the opportunity to present public comment at the Council hearing on May 14, 2019. I can be reached at jblome@greenfirelaw.com or (641) 431-0478 if you have any questions in the interim.

Sincerely,



Jessica L. Blome
Senior Associate Attorney

Attachments: Declaration of Ariel Strauss with Exhibits A through M, Declaration of Susan Younger, Declaration of Niels Traynor with Exhibit A

GREENFIRE LAW, PC
2550 Ninth Street, Suite 204B
Berkeley, CA 94710
Phone: (510) 900-9502
Fax: (510) 900-9502
rdoughty@greenfirelaw.com
jblome@greenfirelaw.com

Attorneys for Petitioner Oceanview Neighborhood Council

Declaration of Niels Traynor

*in support of the Oceanview Neighborhood Council's Appeal
of the Zoning Adjustment Board's approval of the 1444 Fifth Street Project
ZAB No. ZP-2018-0172*

I, Niels Traynor, declare as follows:

1. I am a resident of Berkeley and a member of the Oceanview Neighborhood Council. I have personal knowledge of the facts declared herein, and will competently testify to them if called upon to do so.

2. I live at 1419 Fifth Street, which is one block away from 1442, 1444, and 1446 Fifth Street. On Friday, April 26, 2019, I walked past the construction staging area for Matthew Wadlund's development of 1446 Fifth Street. Wadlund is using 1444 Fifth Street to stage construction of 1446 Fifth Street, storing construction materials and equipment as well as waste on 1444 Fifth Street, and placing the portable toilet and vehicles on 1444 Fifth Street. A true and accurate copy of a photograph depicting the activities happening on 1444 Fifth Street and 1446 Fifth Street as I personally observed on April 26, 2019, is attached hereto as Exhibit A. 1446 Fifth Street is on the left, and the empty lot on the right is 1444 Fifth Street.

3. At a Planning Commission hearing during which the Commission considered the merits of the Oceanview Neighborhood Council's appeal of the Zoning Adjustment Board's approval of Matthew Wadlund's development of 1446 Fifth Street, I heard Staff tell the Commission that it accepts a developer's description of project scope without question or further analysis.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on this 29th day of April, 2019 at Berkeley, California.

/S/ Niels Traynor

By: _____
NIELS TRAYNOR

I hereby attest that the law offices of Greenfire Law, PC have on file all holographic signatures corresponding to any signatures indicated by a conformed signature (/S/) within this e-filed document. Executed on this 29th day of April 2019 at Berkeley, California.

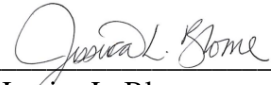
By:  _____
Jessica L. Blome
Senior Associate Attorney
Greenfire Law, PC

EXHIBIT A



GREENFIRE LAW, PC
2550 Ninth Street, Suite 204B
Berkeley, CA 94710
Phone: (510) 900-9502
Fax: (510) 900-9502
rdoughty@greenfirelaw.com
jblome@greenfirelaw.com

Attorneys for Petitioner Oceanview Neighborhood Council

Declaration of Susan Younger

*in support of the Oceanview Neighborhood Council's Appeal
of the Zoning Adjustment Board's approval of the 1444 Fifth Street Project
ZAB No. ZP-2018-0172*

I, Susan Younger, declare as follows:

1. I am a resident of Berkeley and a member of the Oceanview Neighborhood Council. I have personal knowledge of the facts declared herein, and will competently testify to them if called upon to do so.

2. I talked to Matthew Wadlund shortly after the Design Review Committee hearing on July 20, 2017, meeting where the Committee considered whether to approve Wadlund's design plans for 1446 Fifth Street. Several of the neighbors, including myself, had made statements against the design of this project. Matthew Wadlund told me that he could build five units on 1446 Fifth Street because it was large enough. Wadlund said we should be happy he's only building four houses. We did not know about the Inclusionary Housing Requirements at that point, but it bothered me that Wadlund acted as though he was doing me a favor for only putting in four houses when the law allowed five.

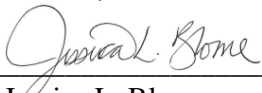
3. I live at 1452 Fifth Street which is adjacent to Fifth Street. Sometime in late summer or early fall of 2018, from the upstairs level of my home, I personally observed that construction workers had demolished a garden and play structure previously located on those lots and levelled the ground. The construction crew worked on the two lots at the same time.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on this 24th day of April 2019 at Berkeley, California.

/S/ Susan Younger
By: _____
SUSAN YOUNGER

I hereby attest that the law offices of Greenfire Law, PC have on file all holographic signatures corresponding to any signatures indicated by a conformed signature (/S/) within this e-filed document. Executed on this 29th day of April 2019 at Berkeley, California.

By:  _____
Jessica L. Blome
Senior Associate Attorney
Greenfire Law, PC

FILED BY FAX

ALAMEDA COUNTY

March 12, 2021

CLERK OF
THE SUPERIOR COURT
By Joanne Downie, Deputy

CASE NUMBER:
RG21091748

1 RACHEL S. DOUGHTY (Cal. Bar No. 255904)
2 JESSICA L. BLOME (Cal. Bar No. 314898)
3 GREENFIRE LAW, PC
4 2001 Addison Street, Suite 300
5 Berkeley, CA 94704
6 Telephone: 510-900-9502
7 Email: rdoughty@greenfirelaw.com
8 jblome@greenfirelaw.com

9 *Attorneys for Plaintiff Oceanview Neighborhood Council*

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **COUNTY OF ALAMEDA**

12 OCEANVIEW NEIGHBORHOOD COUNCIL,
13 an unincorporated citizen group,

14 Plaintiff,

15 vs.

16 CITY OF BERKELEY CITY COUNCIL and
17 CITY OF BERKELEY MANAGER DEE
18 WILLIAMS-RIDLEY,

19 Defendants.

20 MATTHEW WADLUND, an individual; 1442
21 FIFTH STREET, I.L.C, a California Limited
22 Liability Company; 1444 FIFTH STREET,
23 LLC, a California Limited Liability Company;
24 1446 FIFTH STREET, LLC, a California
25 Limited Liability Company; 770 PAGE
26 STREET LLC, a California Limited Liability
27 Company; and 776 PAGE STREET, LLC, a
28 California Limited Liability Company,

Real Parties in Interest.

Case No.

**VERIFIED PETITION FOR WRIT OF
MANDAMUS AND COMPLAINT
FOR DECLARATORY AND
INJUNCTIVE RELIEF**

Code Civ. Proc. §§ 1060, 526, 526a, 1085

(UNLIMITED JURISDICTION)

On December 15, 2020, Respondent CITY OF BERKELEY CITY COUNCIL adopted a resolution approving the settlement of an action titled *1444 Fifth Street, LLC v. City of Berkeley*, Case No. RG 1903243. The settlement required the City to pay \$250,000 in attorneys' fees to Real Party in Interest 1444 FIFTH STREET, LLC and is anticipated to result in payments into the City Housing Trust Fund in the amount of \$150,000. This lawsuit seeks declaratory relief that the settlement agreement constitutes an unlawful amendment by contract of the City of Berkeley's Zoning Ordinance because it requires the City to assess something other than the mandatory inclusionary housing fee set by ordinance for a future residential housing project. This lawsuit also seeks injunctive relief prohibiting the CITY OF BERKELEY from complying with that illegal settlement agreement as well as a writ of mandate compelling the City to rescind the resolution adopting the settlement agreement. In support of their Complaint for Declaratory and Injunctive Relief, Plaintiff OCEANVIEW NEIGHBORHOOD COUNCIL, an unincorporated citizen group, alleges as follows:

PARTIES

1. Plaintiff OCEANVIEW NEIGHBORHOOD COUNCIL (ONC) is a neighborhood association comprised of residents of the West Berkeley neighborhood of Oceanview in the City's Arts & Artisans District, many of whom are artists with moderate incomes. ONC's members work to stem the erosion of affordability in their neighborhood. ONC firmly believes the City of Berkeley's Zoning Ordinance and specifically its Inclusionary Housing Requirements are two of the City's primary tools to develop affordable housing in their neighborhood and Berkeley as a whole. All of the members of ONC pay some form of tax to the City of Berkeley, whether through property taxes, sales taxes, business taxes, or others.

2. Plaintiff OCEANVIEW NEIGHBORHOOD COUNCIL has relied upon the City's representations, expressed through the Inclusionary Housing Requirements and West Berkeley Plan, that the Oceanview Neighborhood where the projects are located would remain affordable and welcoming to artists. REAL PARTIES IN INTEREST have neither provided inclusionary housing, nor paid the full in-lieu fee to the City's Housing Trust Fund for any of the developments

they have undertaken in the Oceanview Neighborhood, to the detriment of Plaintiff's interest in housing that is affordable and welcoming to artists.

Respondents

3. Respondent CITY OF BERKELEY CITY COUNCIL is the legislative body of the City of Berkeley, the jurisdiction where the proposed Project would be located. The City Council has principal responsibility for determining whether projects within the City of Berkeley are consistent with the City's General Plan, zoning and land use ordinances, and other applicable laws. The City Council also has the power to enforce Berkeley's Inclusionary Housing Requirements.

4. Respondent CITY MANAGER DEE WILLIAMS-RIDLEY is the City Manager of the City of Berkeley with authority to direct City staff in implementing and administering the City of Berkeley Municipal Code, including the Zoning Ordinance and Inclusionary Housing Requirements.

Real Parties in Interest

5. Real Party in Interest MATTHEW WADLUND was or is the sole member, manager, officer, and organizer of 1442 FIFTH STREET, LLC; 1444 FIFTH STREET, LLC; 1446 FIFTH STREET, LLC; 770 PAGE STREET, LLC; and 776 PAGE STREET, LLC during the life of each company. As the sole member, manager, officer, and organizer of each company, Wadlund is the responsible corporate officer for any decisions made on behalf of each company, including in deciding when and whether to apply for an administrative use permit to develop the property ostensibly owned by each company.

6. Real Party in Interest 1442 FIFTH STREET, LLC is a limited liability company, with its principal place of business at 805 Jones Street in Berkeley, Alameda County, California. At all times relevant herein, 1442 FIFTH STREET, LLC owned the real property located at 1442 Fifth Street in Berkeley, Alameda County, California. Through Mr. Wadlund, 1442 FIFTH STREET, LLC, plans to apply to the City of Berkeley for the administrative use permit necessary to develop 1442 Fifth Street into four condominiums. 1442 FIFTH STREET, LLC is a beneficiary of the settlement agreement and release entered into between Respondent CITY OF BERKELEY and REAL PARTIES IN INTEREST 1444 FIFTH STREET, LLC and 1446 FIFTH STREET,

LLC, on December 15, 2020.

7. Real Party in Interest 1444 STREET, LLC is a limited liability company, with its principal place of business at 805 Jones Street in Berkeley, Alameda County, California. At all times relevant herein, 1444 FIFTH STREET, LLC owned the real property located at 1444 Fifth Street in Berkeley, Alameda County, California. Through Mr. Wadlund, 1444 FIFTH STREET, LLC, applied to the City of Berkeley for the administrative use permit necessary to develop 1444 Fifth Street into four condominiums. 1444 FIFTH STREET, LLC is a beneficiary of the settlement agreement and release entered into between Respondent CITY OF BERKELEY and REAL PARTIES IN INTEREST 1444 FIFTH STREET, LLC and 1446 FIFTH STREET, LLC, on December 15, 2020.

8. Real Party in Interest 1446 STREET, LLC is a limited liability company, with its principal place of business at 805 Jones Street in Berkeley, Alameda County, California. At all times relevant herein, 1446 FIFTH STREET, LLC owned the real property located at 1446 Fifth Street in Berkeley, Alameda County, California. Through Mr. Wadlund, 1446 Fifth Street, LLC, applied to the City of Berkeley for the administrative use permit necessary to develop 1446 Fifth Street into four condominiums. 1446 FIFTH STREET, LLC is a beneficiary of the settlement agreement and release entered into between Respondent CITY OF BERKELEY and REAL PARTIES IN INTEREST 1444 FIFTH STREET, LLC and 1446 FIFTH STREET, LLC, on December 15, 2020.

9. Real Party in Interest 770 PAGE STREET, LLC is a limited liability company, with its principal place of business at 805 Jones Street in Berkeley, Alameda County, California. At all times relevant herein, 770 PAGE STREET, LLC owned the real property located at 770 Page Street in Berkeley, Alameda County, California. Through Mr. Wadlund, 770 PAGE STREET, LLC, applied to the City of Berkeley for the administrative use permit necessary to develop 770 Page Street into four condominiums. 770 PAGE STREET, LLC is a beneficiary of the settlement agreement and release entered into between Respondent CITY OF BERKELEY and REAL PARTIES IN INTEREST 1444 FIFTH STREET, LLC and 1446 FIFTH STREET, LLC, on

December 15, 2020.

10. Real Party in Interest 776 PAGE STREET, LLC is a limited liability company, with its principal place of business at 805 Jones Street in Berkeley, Alameda County, California. At all times relevant herein, 776 PAGE STREET, LLC owned the real property located at 776 Page Street in Berkeley, Alameda County, California. Through Mr. Wadlund, 776 PAGE STREET, LLC, plans to apply to the City of Berkeley for the administrative use permit necessary to develop 776 PAGE Street into four condominiums. 776 PAGE STREET, LLC is a beneficiary of the settlement agreement and release entered into between Respondent CITY OF BERKELEY and REAL PARTIES IN INTEREST 1444 FIFTH STREET, LLC and 1446 FIFTH STREET, LLC, on December 15, 2020.

JURISDICTION AND VENUE

11. This Court has jurisdiction over this action pursuant to Code of Civil Procedure sections 1085 (traditional writ of mandate).

12. Code Civil Procedure section 1060 gives this Court jurisdiction to grant declaratory relief; Code of Civil Procedure section 526 gives this Court jurisdiction to issue injunctive relief; and Code Civil Procedure section 526a gives this Court jurisdiction to issue injunctive relief against local agencies for the illegal expenditure of resources in violation of municipal law, including Berkeley's Inclusionary Housing Ordinance, Berkeley Municipal Code section 23C.12.010, et seq.

13. Venue is proper in Alameda County pursuant to Code Civil Procedure section 395, subdivision (a) because the City of Berkeley is located there. In addition, the action arose in Alameda County, pursuant to Code Civil Procedure section 393, because Plaintiff's members reside in Berkeley, Alameda County and paid taxes within the last year while living there.

GENERAL ALLEGATIONS

Relevant Legal Background

14. The Government Code empowers the City of Berkeley to adopt and administer a zoning ordinance that "regulates the use of buildings" by zones "of the number, shape, and area" it

deems best suited to carry out the purpose of the Government Code. (See Gov't Code, §§ 65800, 65850, 65851, 65852; see also Id. at § 37100.)

15. Government Code section 36931, et seq. sets forth the specific provisions a municipality must follow to duly enact an ordinance. (Id. at § 36931, et seq.) For example, each ordinance must be published at least once in a newspaper of general circulation in the City and does not go into effect for thirty days after its second reading and final passage. (Id. at §§ 36933, 36937.)

16. The City Charter for the City of Berkeley mandates that “no ordinance shall be revised, re-enacted, or amended . . . except in the method provided in this section or the adoption of ordinances.” (City of Berkeley City Charter, Art. VIII, Sec. 44(10).)

17. Government Code section 65852 specifically requires uniformity in planning and zoning by local governments.

18. No City can amend a duly enacted zoning ordinance by settlement agreement in order to fit the needs of an individual developer. (See *Trancas Property Owners Assn. v. City of Malibu* (2006) 138 Cal.App.4th 172, 181–182 (agreement between city and developer providing exemption from zoning restrictions was invalid because it attempted to abrogate city’s zoning authority for future projects.)

19. Resolutions adopting settlement agreements without the “formality” required of an ordinance do not morph into an ordinance, as a duly enacted ordinance is a “law of this State” within the meaning of a penal statute proscribing the violation of such law. (*City of Sausalito v. County of Marin* (1970) 12 Cal.App.3d 550, 566.) “A resolution is not” a law of this State. (Id.)

Inclusionary Housing Requirements

20. The City of Berkeley’s Zoning Ordinance include a set of Inclusionary Housing Requirements (IHR), which apply when a developer proposes a residential housing project “for the construction of five or more Dwelling Units.” (BMC, § 23C.12.020(A)(1).) The number of lots involved in the development is irrelevant, as the IHR applies when the developer plans to construct five or more units in the “residential housing project.”

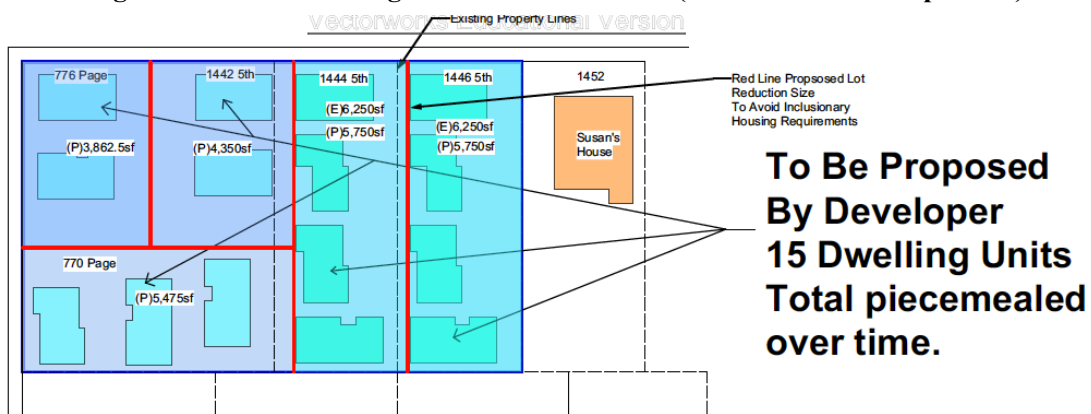
21. In Berkeley, developers subject to the IHR must set aside 20 percent of the total number of homes as affordable housing available for sale at below-market rates or pay a fee into the City's Housing Trust Fund in-lieu of providing units at below-market rates. (BMC, § 23C.12.030.) This fee is often referred to as the "in-lieu fee."

22. The IHR is mandatory: "The developer *shall be required* to pay the applicable in-lieu fee no later than the closing date of the sale of a unit as a condition of said closing." (Id. at § 23C.12.035(E) (emphasis added).) The City does not have discretion to alter the formula set by the IHR for calculation of the in-lieu fee, which is based upon the sales price for the unit.

West Berkeley's Oceanview Neighborhood & the Corner Development

23. Real Parties in Interest have been working to develop the five lots located at the corner of Fifth and Page Streets in the Oceanview Neighborhood of West Berkeley's Arts and Artisans District for several years. This Complaint will refer to this corner as the "Corner Development" throughout for ease of reference. Real Party in Interest Mathew Wadlund submitted the following figure in connection with his first application for an Administrative Use Permit to serially develop each of the five lots into two, three, or four Dwelling Units.

Figure 1: Oceanview Neighborhood Corner Site (the "Corner Development")



24. West Berkeley's Oceanview Neighborhood is characterized by a diverse mix of uses, including sing-family and multi-family residential homes, art galleries and showrooms, offices, warehouses, and light manufacturing.

25. City policy in West Berkeley is guided by the West Berkeley Plan, which seeks, in part, to protect and preserve unconventional housing, such as live-work units for artists and craftspeople. To that end, a guiding principle of the West Berkeley Plan is to maintain housing affordability in West Berkeley by taking all reasonable steps in housing policy “to maintain and foster the social and economic diversity of West Berkeley's residents.” The West Berkeley Plan further notes: “[o]ne of the key strategies for maintaining this diversity is to maintain West Berkeley's stock of affordable rental housing.”

26. As early as 1993, when Council adopted the West Berkeley Plan, Berkeley has recognized that “West Berkeley’s reservoir of lower cost housing is likely to become increasingly important over the West Berkeley Plan period, if inflationary forces continue to quickly drive up house prices and rents elsewhere in the city.”

27. The City’s Arts and Culture Plan also expresses City policy to increase affordable housing for artists and indicates the City will incentivize development of affordable housing for artists in West Berkeley.

Application of the Inclusionary Housing Requirements to the Corner Development

28. The IHR allows a developer to pay a fee in-lieu or designate 20% of residences constructed as inclusionary or affordable.

29. The IHR set forth the methodology for calculating the in-lieu fee as follows:

This fee shall be calculated and collected based on the sales prices of all of the units in a project to which the inclusionary requirement applies, such that the fee as charged shall be a percentage of the difference between the actual sales price for each unit, and the sales price that would have been permitted had that unit been an inclusionary unit. The percentage shall be determined using the following formula: the number of units for which an in-lieu fee is substituted for an inclusionary unit divided by the total number of units to which the inclusionary ordinance applies, multiplied by 62.5%.

(BMC, § 23C.12.035.C.1.)

30. The allowable inclusionary sales price for the purpose of calculating the in-lieu fee is three-times 80% of the Area Median Income (AMI) last reported as of the closing date of the sale of the unit. (BMC, § 23C.12.035(D).) The affordable sales price for units of 1,200 square feet

or greater is to be calculated based on 80% of the AMI for a six-person household in the Oakland-Fremont metropolitan area.

31. On August 31, 2016, Real Party in Interest Matthew Wadlund registered 1442 Fifth Street, LLC; 1444 Fifth Street, LLC; 1446 Fifth Street, LLC; 770 Page Street, LLC; and 776 Page Street, LLC with the California Secretary of State's Office, naming himself the sole organizer, member, and office holder. Wadlund controls each LLC and is the true alter ego of each entity.

32. On paper, each LLC owns the lot associated with its name, all of which are located in the Mixed-Use Residential Zone of the Oceanview Neighborhood in West Berkeley.

33. On December 14, 2016, Wadlund, on behalf of 1446 Fifth Street, LLC, submitted applications for an Administrative Use Permit (AUP) and Staff Level Design Review to construct four new single-family Dwelling Units at 1446 Fifth Street. Staff deemed the application complete in May 2017.

34. The City specifically declined to require compliance with the IHR for the development of the homes at 1446 Fifth Street because Wadlund adjusted the lot lines for the five contiguous and adjacent parcels that make up the Corner Development expressly to avoid application of the IHR for the first phase of his residential housing project.

35. Wadlund has consistently publicly expressed his plan to avoid the IHR by building Dwelling Units on each of the five lots sequentially because he personally believes the IHR to be too expensive. In total, Wadlund has stated he will develop the Corner Development into somewhere between 15 and 18 Dwelling Units.

36. According to the Alameda County Assessor/Recorder, Wadlund, through 1446 Fifth Street, LLC, sold four single-family units for more than \$1,000,000 each.

37. When applying the IHR's formula to a project where the developer has elected to construct no affordable units, the in-lieu fee is best represented as the difference between the actual sales price and the inclusionary sales price for each unit, multiplied by 12.5%:

$$\text{In-lieu fee percentage per unit} = (\text{Units required})/(\text{Units built}) \times 62.5\% = 12.5\%^1$$

38. Wadlund and 1446 Fifth Street, LLC should have paid a total in-lieu fee of more than \$300,000 to the City's Housing Trust Fund.

39. ONC filed a lawsuit to reverse the City's decision to ignore Wadlund's obligation to comply with the IHR at 1446 Fifth Street.

40. The Superior Court of Alameda County dismissed ONC's lawsuit over Wadlund's first phase of development at 1446 Fifth Street as untimely.

41. Wadlund, on behalf of 1444 Fifth Street, LLC, almost immediately submitted his applications for an AUP and Staff Level Design Review to construct the next phase of his residential housing project at 1444 Fifth Street. This phase of the project also consists of four single-family Dwelling Units.

42. In the staff memo recommending approval of this phase of Wadlund's development, Staff advised City officials to streamline its review because the proposal was nearly identical to that of Wadlund's development plan for 1446 Fifth Street.

43. The City's Zoning Adjustments Board approved Wadlund's AUP for 1444 Fifth Street on January 24, 2019, again declining to apply the IHR to phase two of Wadlund's residential housing project.

44. ONC timely appealed the Zoning Adjustments Board's decision to the Berkeley City Council on February 6, 2019.

45. After a hearing on the merits on May 28, 2019, the City Council concluded that Wadlund's development plan for the five lots constituted a single residential housing project subject to the IHR. The City Council would require Wadlund's compliance with the IHR upon the sale of each Dwelling Unit. Per Berkeley Municipal Code section 23C.12.030, Wadlund could, of course, designate the requisite number of Dwelling Units as inclusionary to avoid paying the in-lieu fee.

¹ Since the IHR requires that 20% of units be affordable or the fee to be paid, this number is always 12.5% where the developer elects to construct no affordable units: $0.2 * 0.625$.

46. Wadlund, 1446 Fifth Street, LLC and 1444 Fifth Street, LLC filed a lawsuit in the Superior Court of Alameda County against the City challenging the City Council's decision to impose the IHR on Wadlund's phased development of a residential housing project.

47. ONC attempted to intervene in Wadlund's lawsuit but was denied permissive intervention.

48. On September 23, 2020, following a hearing on Wadlund's petition for writ of mandate, the Superior Court of Alameda County entered judgment in favor of Wadlund and his limited liability companies. The Court ruled that the City impermissibly applied the IHR to phases one and two of Wadlund's development project because it imposed the condition more than 30 days after the City deemed the respective applications complete in violation of Government Code section 65589.5, subdivision (j)(2).

49. On December 15, 2020, the City Council adopted Resolution No. 69,649-N.S. authorizing the City Attorney to enter into a Settlement Agreement and Release with 1444 Fifth Street, LLC and 1446 Fifth Street, LLC. A true and correct copy of the Settlement Agreement and Release is attached hereto as **Exhibit A**.

50. The Settlement Agreement collectively refers to 770 Page Street, 776 Page Street, and 1442 Fifth Street as "Undeveloped Parcels," for which neither Wadlund nor his limited liability companies had submitted application for development at the time of execution of the Settlement Agreement, but for which Wadlund and his limited liability companies "contemplate submitting application for the construction" of development projects in the future. (Id. at ¶ H.)

51. The Settlement Agreement provides, "The City shall not require compliance with the Inclusionary Housing Ordinance for construction of dwelling units on any legal parcel that can accommodate no more than four dwelling units under the development standards of the Berkeley Zoning Ordinance," . . . which includes "on the construction of new Dwelling Units on any of the Undeveloped Parcels." (Exh. A, ¶ 3.)

52. The Settlement Agreement also requires the City to comply with a number of contractual deadlines when Wadlund applies to develop 1442 Fifth Street, 770 Page Street, and 776

Page Street at some point in the future.

53. The Settlement Agreement requires Wadlund and his limited liability companies to pay a total in-lieu fee of \$15,000 per Dwelling Unit to the City of Berkeley Housing Trust Fund at the time of sale for each of the Dwelling Units constructed on the Undeveloped Parcels in the future. (Id. at ¶ 5.)

54. The agreed-upon in-lieu fee of \$15,000 per Dwelling Unit is a significantly and substantially lower in-lieu fee than the expected mandatory fee imposed by the IHR and constitutes an amendment to the IHR as applied to this individual developer.

Taxpayer Waste

55. The City Council is a local agency that authorizes budgets and expends money every year to fund staff, resources, and supplies for the Berkeley Planning and Development Department to administer the City's AUP program and processes, which includes implementation of Inclusionary Housing Requirements.

56. The City created its Housing Trust Fund in 1990. A housing trust fund is a program that pools funds for affordable housing construction from a variety of sources with different requirements and makes them available through one single application process to local developers. Listed among the many sources of revenue for the Housing Trust Fund is "Inclusionary Zoning fees to be paid in-lieu of construction of housing units as allowed by the Inclusionary Housing Ordinance, Berkeley Municipal Code Chapter 23C.12"²

57. The City Council has failed to conduct oversight of City staff's implementation of the Inclusionary Housing Requirements.

58. Since its adoption in 2006, the City has failed to compel developers—including Real Parties in Interest—to comply with IHR and therefore has failed to fund the City's Housing Trust Fund.

² See City of Berkeley's Housing Trust Fund Guidelines, Section I(B)(6), available at https://www.cityofberkeley.info/uploadedFiles/Housing/Level_3_-_General/Revised%202016%20HTF%20GUIDELINES.pdf (last visited May 17, 2019).

59. According to the Settlement Agreement, in consideration for the City's commitment to abdicate its legal duty to collect the in-lieu fee, Wadlund promises to pay up to \$150,000 in in-lieu fees connected with the development of 10 Dwelling Units on 1442 Fifth Street, 770 Page Street, and 776 Page Street at some unknown point in the future.

60. The City has failed to collect hundreds of thousands of dollars in in-lieu fees from Real Parties In Interest pursuant to the plain language of the IHR.

61. Despite this abject failure to ensure funding of the City's Housing Trust Fund, on November 6, 2018, the City Council asked voters to authorize the City to issue up to \$135 million in bonds at an estimated tax rate of \$23 per \$100,000 in assessed property value for 36 years to fund housing for "very low-, low-, median-, and middle-income individuals and working families, including teachers, seniors, veterans, the homeless, students, people with disabilities, and other vulnerable populations." (See Voter Guide, Measure O, Nov. 6, 2018.)

62. Berkeley residents overwhelmingly passed Measure O.

63. Members of ONC pay the property taxes assessed under authority of Measure O.

64. The City plans to use Measure O bond proceeds to leverage state and county funds allocated for affordable housing against monies available in the City's Housing Trust Fund.

65. The City's failure to fully fund the City's Housing Trust Fund through the collection of in-lieu fees under the IHR has resulted and will continue to result in wasted taxpayer dollars because the City Housing Trust Fund has never been fully realized.

66. Without full funding of the City Housing Trust Fund, the City will never meet affordable housing goals set forth in the West Berkeley Plan because it has failed and continues to refuse to collect in-lieu fees owed to the Fund.

67. Plaintiff has no adequate remedy at law.

68. The City must be restrained from complying with the Settlement Agreement and Release because it impermissibly amends the IHR as applied to Real Parties in Interest and because it abdicates the police powers of future City Council bodies to correctly apply the IHR to Wadlund's phased residential development project.

CLAIMS FOR RELIEF

FIRST CAUSE OF ACTION

(Impermissible Promise to Abdicate Legislative Zoning Action, CCP § 526)

69. Plaintiff hereby realleges and incorporates all of the above paragraphs as if fully set forth herein.

70. A municipality may not contract away its legislative and governmental functions. (See *Morrison Homes Corp. v. City of Pleasanton* (1976) 58 Cal. App. 3d 724, 734.) Indeed, a long line of California cases establishes that a government may not bargain away its right to exercise its police power in the future. (See e.g., *Avco Community Developers, Inc. v. South Coast Regional Com.* (1976) 17 Cal.3d 785, 800; *Delucchi v. County of Santa Cruz* (1986) 179 Cal. App. 3d 814, 823.) A contract that purports to do so is invalid as contrary to public policy if the contract amounts to a municipality's "surrender" or "abnegation" of its control of a municipal function. (*County Mobilehome Positive Action Com., Inc. v. County of San Diego* (1998) 62 Cal.App.4th 727.) This is especially true when the government attempts to amend its zoning ordinance, which requires uniformity for each class or kind of building throughout each zone, by settlement agreement. (See *Trancas Property Owners Assn. v. City of Malibu* (2006) 138 Cal.App.4th 172, 181–182 (agreement between city and developer providing exemption from zoning restrictions was invalid because it attempted to abrogate city's zoning authority); see also Gov't Code, § 65852 (requiring uniformity in planning and zoning by local governments).)

71. Respondent impermissibly abdicated its zoning authority by binding future legislative bodies to the terms of the Settlement Agreement and Release, which amends the Zoning Ordinance's Inclusionary Housing Requirements as applied to Real Parties in Interest only and binds the City to certain contractual deadlines and processing times not clearly required by the Berkeley Municipal Code.

72. Respondent did not have discretion to set the in-lieu fee the City will assess against future developments by contract. Respondent may only assess the fee applicable at the time of that future development.

73. In addition to amending the Inclusionary Housing Requirements as applied to future

development, the Settlement Agreement and Release constitutes an impermissible “promise by the government that zoning laws thereafter enacted would not be applicable to” the “Undeveloped Parcels” at 1442 Fifth Street, 770 Page Street, and 776 Page Street. (*Avco Community Developers, Inc. v. South Coast Regional Com.* (1976) 17 Cal.3d 785; see also *Trancas v. City of Malibu* (Cal. Ct. App. 2006) 138 Cal.App.4th 172, 181.)

74. Plaintiff’s members will be irreparably injured if Respondent is allowed to proceed with the amendments to the Inclusionary Housing Requirements contained in the Settlement Agreement and Release.

75. This Court has authority to enjoin the City from complying with the Settlement Agreement and Release pursuant to Code of Civil Procedure, section 526.

SECOND CAUSE OF ACTION
(Enjoining Taxpayer Waste, CCP § 526a)

76. Plaintiff hereby realleges and incorporates all of the above paragraphs as if fully set forth herein.

77. The Settlement Agreement and Release, which obligates Respondent to collect substantially less than the mandatory in lieu fee imposed by the Inclusionary Housing Requirements, is an illegal expenditure of, waste of, and injury to the property of the City of Berkeley under Code of Civil Procedure section 526a.

78. Plaintiff has no plain, speedy, or adequate remedy in the ordinary course of law within the meaning of Code of Civil Procedure section 526a because the City Council’s failure to enforce the Inclusionary Housing Requirements is not otherwise reviewable in a manner that provides an adequate remedy.

79. The City Council is able to perform the duties required by the City’s Inclusionary Housing Requirements. Notwithstanding such ability, the City Council has failed to perform its duties. Unless compelled by this Court to perform its duties, Respondent City Council will continue to fail and refuse to do so.

THIRD CAUSE OF ACTION
(Writ of Mandate, CCP §1085)

80. Plaintiff hereby realleges and incorporates all of the above paragraphs as if fully set forth herein.

81. Respondent City of Berkeley City Council violated Government Gov. Code secs. 65800, 65850, 65851, 65852; and § 37100, et seq. as well as the City of Berkeley City Charter when it adopted Resolution No. 69,649-N.S. authorizing the City Attorney to enter into the Settlement Agreement and Release because the Settlement Agreement amends an ordinance by resolution and contract, rather than by legislative action.

82. Respondent has a nondiscretionary obligation to comply with the City Charter and the Government Code.

83. Plaintiff has no plain, speedy, or adequate remedy in the ordinary course of law within the meaning of Code of Civil Procedure section 1086, because the Respondent's adoption of Resolution No. 69,649-N.S. is not reviewable in a manner that provides an adequate remedy other than through this lawsuit.

84. Respondents are able to perform the duties required by the City Charter and Government Code. Notwithstanding such ability, Respondent has failed to perform their duties. Unless compelled by this Court to perform their duties, Respondent will continue to fail and refuse to do so.

85. Section 1085 of the Code of Civil Procedure authorizes this Court to issue a writ of mandate when it is required to compel Respondent to comply with the Inclusionary Housing Requirements when approving the design and construction of small cell wireless facilities in the future.

FOURTH CAUSE OF ACTION
(Declaratory Relief, CCP § 1060)

86. Plaintiff hereby realleges and incorporates all of the above paragraphs as if fully set forth herein.

87. Plaintiff seeks declaratory relief the City of Berkeley's Inclusionary Housing

Requirements, located at Berkeley Municipal Code Chapter 23C.12, apply to the development of 1446 Fifth Street, 1444 Fifth Street, 1442 Fifth Street, 770 Page Street, and 776 Page Street because the development plan it is a residential housing project “for the construction of five or more Dwelling Units.”

88. Plaintiff has no plain, speedy, or adequate remedy in the ordinary course of law within the meaning of Code of Civil Procedure section 1060, because the City’s failure to enforce the Inclusionary Housing Requirements against Real Parties in Interest is not reviewable in a manner that provides an adequate remedy other than through this lawsuit.

89. Respondent City of Berkeley is able to perform the duties required by the Inclusionary Housing Requirements. Notwithstanding such ability, Respondent has failed to perform their duties. Unless compelled by this Court to perform their duties, Respondent will continue to fail and refuse to do so.

90. Declaratory relief under Code of Civil Procedure section 1060 is required to direct the City to comply with the Inclusionary Housing Requirements as enacted.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff pray for the following relief:

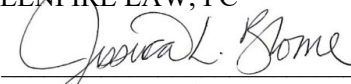
- A. An ORDER DECLARING that the City of Berkeley’s Inclusionary Housing Requirements apply to residential housing projects of five or more residential housing units regardless of whether the units are located on the same parcel under Berkeley Municipal Code section 23C.12.020(A)(1);
- B. An ORDER ENJOINING the City of Berkeley from complying with the terms of the Settlement Agreement and Release;
- C. An ORDER ENJOINING the City of Berkeley to collect the in-lieu fee mandated by the Inclusionary Housing Requirements in effect at the time of applicability.

- D. An ORDER MANDATING that the City of Berkeley rescind Resolution No. 69,649-N.S. as an impermissible amendment of a zoning ordinance by resolution and contract;
- E. For the costs of suit.
- F. For an award of attorneys' fees pursuant to Code of Civil Procedure section 1021.5 and any other applicable provisions of law.
- G. For any other legal and equitable relief as this Court deems just and proper.

DATED: March 12, 2021

GREENFIRE LAW, PC

By: _____



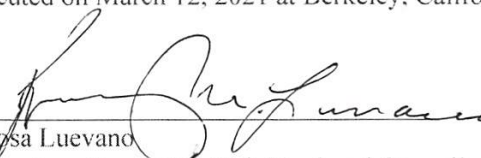
Rachel S. Doughty
Jessica L. Blome
Attorneys for Plaintiff
Oceanview Neighborhood Council

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

VERIFICATION

I, Rosa Luevano, am a member of the Oceanview Neighborhood Council, which is the plaintiff in this action. I have read the foregoing Verified Petition for Writ of Mandamus and Complaint of Declaratory and Injunctive Relief and know its contents. The facts alleged in the above Petition are within my own knowledge and I know these facts to be true, except as to matters alleged therein on information and belief.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct and that this declaration is executed on March 12, 2021 at Berkeley, California.



Rosa Luevano
Member, Oceanview Neighborhood Council

I, Niels Traynor, am a member of the Oceanview Neighborhood Council, which is the plaintiff in this action. I have read the foregoing Verified Petition for Writ of Mandamus and Complaint of Declaratory and Injunctive Relief and know its contents. The facts alleged in the above Petition are within my own knowledge and I know these facts to be true, except as to matters alleged therein on information and belief.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct and that this declaration is executed on March 12, 2021 at Berkeley, California.



Niels Traynor
Member, Oceanview Neighborhood Council

Exhibit A

RESOLUTION NO. 69,649-N.S.

AUTHORIZING THE CITY ATTORNEY TO SETTLE 1444 FIFTH STREET, LLC V.
CITY OF BERKELEY (ALAMEDA COUNTY CASE NO. RG19032434)

WHEREAS, on August 23, 2019, Petitioners 1444 Fifth Street, LLC and 1446 Fifth Street, LLC ("Petitioners") filed an action in Alameda County Superior Court entitled 1444 Fifth Street, LLC et al. v. City of Berkeley et al., Civil Case No. RG19032434 ("Action"), alleging causes of action for writ of mandate, declaratory judgment, and injunctive relief, and seeking an order or judgment that the City must rescind the inclusionary housing fee applied to petitioners' housing development project; and

WHEREAS, on September 23, 2020, the court granted a petition for writ of mandate and found that the City violated the Housing Accountability Act by imposing an additional condition on the housing development project requiring compliance with the City's Inclusionary Housing Ordinance, Berkeley Municipal Code Chapter 23C.12; and

WHEREAS, Petitioners and the City wish to resolve the dispute giving rise to the action.


NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Council of the City of Berkeley authorizes the City Attorney to enter into the settlement agreement with the 1444 Fifth Street, LLC and 1446 Fifth Street, LLC enclosed herewith as Exhibit A.

The foregoing Resolution was adopted by the Berkeley City Council on December 15, 2020 by the following vote:

Ayes: Bartlett, Droste, Hahn, Harrison, Kesarwani, Robinson, Taplin, Wengraf, and Arreguin.

Noes: None.

Absent: None.



Jesse Arreguin, Mayor

Attest: 

Mark Numainville, City Clerk

SETTLEMENT AGREEMENT AND RELEASE

This SETTLEMENT AGREEMENT AND RELEASE (“Settlement Agreement”) is made this 24th day of November, 2020, by and between Respondents and Defendants CITY OF BERKELEY and CITY OF BERKELEY CITY COUNCIL (collectively, “City”) and Petitioners and Plaintiffs 1444 FIFTH STREET, LLC and 1446 FIFTH STREET, LCC (“Petitioners”). The City and Petitioners are collectively referred to herein as the “Parties,” and are each individually referred to as a “Party.”

RECITALS

A. On January 10, 2019, the City of Berkeley Zoning Adjustments Board approved Administrative Use Permit #ZP2018-0172, which authorized the construction of a four-unit residential housing development at 1444 Fifth Street, Berkeley, California (the “Project”). The Zoning Adjustments Board’s decision was appealed to the Berkeley City Council.

B. On May 28, 2019, the Berkeley City Council held a public hearing, and following the hearing, affirmed the Zoning Adjustments Board’s approval of Administrative Use Permit #ZP2018-0172. In addition, the City Council imposed a new condition of approval requiring the Project to pay an inclusionary housing fee under Berkeley Municipal Code Chapter 23C.12 (the “Inclusionary Housing Ordinance”). The City Council imposed the condition of approval after determining that the Project and a previously approved, separately owned project on the adjacent property at 1446 Fifth Street constituted a single “residential housing project” under the Inclusionary Housing Ordinance. The condition required the Project to comply with the Inclusionary Housing Ordinance on behalf of both the Project and the previously approved project on the adjacent 1446 Fifth Street parcel.

C. On August 23, 2019, Petitioners filed an action in Alameda County Superior Court entitled *1444 Fifth Street et al. v. City of Berkeley et al.*, Civil Case No. RG19032434 (“Action”) alleging causes of action for writ of mandate, declaratory judgment, and injunctive relief, and seeking an order or judgment that the City must rescind the inclusionary housing fee applied to the construction of the Project.

D. On September 23, 2020, following a hearing on the petition for writ of mandate, the Court entered judgment in favor of Petitioners (“Judgment”), attached hereto as Exhibit 1. The Court ruled that (1) the Inclusionary Housing Ordinance applies to residential housing projects proposed on the same legal parcel, but cannot be lawfully applied to separate legal parcels where each individual parcel can accommodate no more than four dwelling units; and (2) the application of the Inclusionary Housing Ordinance to the Project violated Government Code section 65589.5(j)(2), which obligated the City to inform Petitioners within 30 days of the completeness of their respective applications of any “applicable plan, program, policy, ordinance, standard, requirement, or other similar provision” with which the Project was “inconsistent, not in compliance, or not in conformity.”

E. Further, the Court enjoined the City from applying the Inclusionary Housing Ordinance in a manner contrary to the Court's order, from taking any action inconsistent with the Order to preclude the issuance of revised conditions of approval for Administrative Use Permit #ZP2018-0172, and from taking any further unlawful actions to preclude the development of the Project.

F. Petitioners and/or their principals, agents, and/or affiliates, have submitted or contemplate submitting applications for the construction of separate housing development projects on three separate legal parcels located adjacent to the Project site, located at 770 Page Street, 776 Page Street, and 1442 Fifth Street (collectively, "Undeveloped Parcels").

G. The Parties wish to resolve their dispute regarding the subject matter of the Action, and regarding the application of the Inclusionary Housing Ordinance to development of the Undeveloped Parcels.

NOW, THEREFORE, in consideration of the mutual covenants, conditions and terms contained in this Agreement, and good and valuable consideration, and in full and final settlement of the Action and to compromise on the disputed claims contained therein, the Parties agree as follows:

AGREEMENT

1. Incorporation of Recitals. The above recitals are incorporated herein by reference.

2. Payment by the City. Within 15 days of the date of execution of this Settlement Agreement, the City shall pay to Petitioners attorneys' fees and costs of suit incurred in the amount of \$250,000. Payment shall be made to 1444 Fifth Street, LLC.

3. Compliance with Judgment. The City shall not require compliance with the Inclusionary Housing Ordinance for construction of dwelling units on any legal parcel that can accommodate no more than four dwelling units under development standards in the Berkeley Zoning Ordinance. The City agrees that under the Judgment, the condition of approval applying the Inclusionary Housing Ordinance in Administrative Use Permit #ZP2018-0172 has been held to be unlawful and unenforceable, but that otherwise Administrative Use Permit #ZP2018-0172 remains valid and in full force and effect for the approved housing project now under construction on 1444 Fifth Street. The City further agrees that as currently configured and under the City's Zoning Ordinance and current development standards, the City may not apply the Inclusionary Housing Ordinance or impose an inclusionary housing fee under that Ordinance on the construction of new dwelling units on any of the Undeveloped Parcels.

4. Review of Applications for Development of Undeveloped Parcels. The City will comply with applicable provisions of the Berkeley Zoning Ordinance and state law in reviewing any application to construct a housing development project on the Undeveloped Parcels. The City shall consider and process a housing development application on each separate legal lot independently of a housing development application on any other legal

lot under currently applicable provisions of the Berkeley Zoning Ordinance and state law. The City shall not apply the Berkeley Zoning Ordinance to consolidate an application for a housing development on an Undeveloped Legal Parcel with one or more applications on another Undeveloped Parcel, including but not limited to compliance with the Inclusionary Housing Ordinance or California Environmental Quality Act. The City will accordingly process each application for a housing development project on an Undeveloped Parcel as follows:

a. The City shall schedule a public hearing before the Zoning Adjustments Board and shall approve or disapprove each application to construct a housing development project on in a separate legal lot within 60 days of the date the application is determined to be complete, or within 60 days of the completion of any environmental review process required under the California Environmental Quality Act, whichever is later.

b. The City Council shall schedule a public hearing on any appeal of a determination made by the Zoning Adjustments Board under Paragraph 4.a within 60 days of the date of mailing of the Notice of Decision, and shall decide any appeal within 30 days of the date of the public hearing.

c. If a proposed housing development project on one or more of the Undeveloped Parcels complies with the applicable, objective general plan and zoning standards in effect at the time an application is deemed complete, the City shall not conduct more than five public hearings in connection with the approval of the project.

d. Any deadline set forth in this Paragraph 4 may be extended by mutual agreement of the project applicant and the City.

5. Housing Trust Fund Contributions by Petitioners. Notwithstanding the Judgment or any other provision of this Agreement, Petitioners agree to make a payment into the City of Berkeley Housing Trust Fund for each unit of housing constructed on any of the Undeveloped Parcels. Petitioners agree to pay \$15,000 per unit of housing, payable within thirty (30) days of the issuance of Certificate of Occupancy.

6. Waiver of Right to Appeal. Each Party hereby waives its right to appeal any order or judgment entered in the Action.

7. Mutual Release. Except as otherwise expressly set forth in this Settlement Agreement, Petitioners and the City hereby release and forever discharge each other, together with their agents, representatives, trustees, employees, officers, directors, partners, stockholders, attorneys, successors, assigns, heirs, personal representatives and executors, and all persons, firms, associations, co-partners, co-venturers, insurers, contractors, engineers, subcontractors, subsidiaries, parents, affiliates, or corporations connected therewith, and each of them from any and all claims, debts, liabilities, demands, obligations, costs, expenses, and attorneys' fees relating to the Action or the claims or causes of action set forth therein.

It is understood and agreed that this is a full and final mutual release of the Action. The Parties agree, as further consideration and inducement for this Agreement, to waive the provisions of California Civil Code §1542 which provides as follows:

“A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.”

This Release and Waiver only releases and waives claims arising from actions, failures to act, events and occurrences taking place on or before August 23, 2019, and does not release or waive any claims arising out of actions, failures to act, events or occurrences taking place after that date.

Notwithstanding any potentially inconsistent provisions in this Section, if the City does not comply fully with Sections 2 through 4 of this Agreement, Petitioners reserve the right to take any and all appropriate legal action to enforce the requirements of the Housing Accountability Act, Gov. Code § 65589.5, including but not limited to proceeding to litigate the claims brought in the Action and seeking an award of any and all attorney’s fees, costs of suits, and fines authorized under the Housing Accountability Act.

8. Cooperation on Additional Documents. Each of the Parties agrees to execute and deliver to each of the other Parties all additional documents, instruments, and agreements required to take such additional actions as are required to implement the terms and conditions of this Agreement.

9. Authorization to Execute. Each Party represents that the individual signing this Settlement Agreement is authorized to bind the Party on whose behalf he or she signs.

10. Entire Agreement. As to the matters set forth herein, this Settlement Agreement is the entire, integrated agreement and understanding of the Parties.

11. Waiver, Modification, and Amendment. No breach of this Settlement Agreement or of any provision herein can be waived except by an express written waiver executed by the Party waiving such breach. Waiver of any one breach shall not be deemed a waiver of any other breach of the same or other provisions of this Agreement. This Agreement may be amended, altered, modified, or otherwise changed in any respect or particular only by a writing duly executed by the Parties or their authorized representatives.

12. Notice. Any notice, demand, request, or other communication required or permitted to be given under this Agreement, (a) shall be made in writing; (b) shall be delivered by one of the following methods: (i) by personal delivery (with notice deemed given when delivered personally); (ii) by overnight courier (with notice deemed given upon written verification of receipt); or (iii) by certified or registered mail, return receipt requested (with notice deemed given upon verification of receipt); and (c) shall be addressed as provided in this Section or such other address as such Party may request by notice in accordance with the terms of this Section.

Notice to Petitioners shall be provided as follows:

1444 5th Street, LLC and 1446 5th Street, LLC
c/o WADLUND+ Design Studio
805 Jones Street
Berkeley, CA 94710

With copy to: Jennifer Hernandez
Holland & Knight LLP
50 California Street, Suite 2800
San Francisco, CA 94111
jennifer.hernandez@hkllaw.com

Notice to the City shall be provided as follows:

City Attorney
City of Berkeley
2180 Milvia Street
Berkeley, CA 94704
attorney@cityofberkeley.info

13. Attorneys' Fees. In any proceeding at law or in equity to enforce any of the provisions or rights under this Settlement Agreement, the prevailing Party shall be entitled to recover from the unsuccessful Party all costs, expenses and reasonable attorneys' fees incurred in the enforcement proceeding by the prevailing Party (including, without limitation, such costs, expenses, and fees on any appeals) and if such prevailing Party shall recover judgment in any such action or proceeding, such costs, expenses, including those of expert witnesses, and attorneys' fees shall be included in and as part of the judgment.

14. Severability. If any part of this Settlement Agreement is found to be void, invalid or unenforceable, the remainder shall remain in full force and effect and shall be interpreted to carry out the Parties' intent with respect to their obligations and rights.

15. Drafting of Agreement. The Parties and/or their respective counsel have participated in the drafting and negotiation of this Settlement Agreement and, for all purposes, this Settlement Agreement shall be deemed to have been drafted jointly by all Parties.

16. Successors and Representatives. This Settlement Agreement shall be binding on and shall inure to the benefit of the successors and assigns of each Party.

17. Informed Consent. Each Party declares that prior to the execution of this Settlement Agreement, it and/or its duly authorized representatives have apprised themselves of sufficient relevant data, either through attorneys, experts or other sources of their own selection, in order to intelligently exercise their judgment in deciding whether to execute, and in deciding the contents of, this Settlement Agreement. Each Party states that

this Settlement Agreement is entered into freely and voluntarily, upon the advice and with the approval of its counsel.

18. Applicable Law. This Settlement Agreement shall be interpreted in accordance with California law, without reference to its choice of law provisions.

19. Execution in Counterparts. This Agreement may be executed in any number of counterparts, each of which may be deemed an original, and all of which together shall constitute a single instrument, notwithstanding that all the Parties are not signatories to the original or same counterpart. Photocopies or facsimiles shall constitute good evidence of such execution.

Dated: _____, 2020

1444 FIFTH STREET,LLC

By: _____
Name: Matthew Wadlund
Title: _____

Dated: _____, 2020

1446 FIFTH STREET, LLC

By: _____
Name: Sean Kenmore
Title: _____

Dated: _____, 2020

CITY OF BERKELEY

By: _____
Name: Farimah Brown
Title: City Attorney

APPROVED AS TO FORM:

Christopher D. Jensen
Assistant City Attorney

Mendez, Leslie

From: Joe Cordes <jcordes@autom8.com>
Sent: Sunday, May 23, 2021 1:25 PM
To: Mendez, Leslie
Subject: Letter supporting Zoning Permit ZP2020-0051

WARNING: This is not a City of Berkeley email. Do not click links or attachments unless you trust the sender and know the content is safe.

Re: 770 Page Street Zoning Permit

Dear Ms. Mendez,

I am a business owner manufacturing neuroscience research equipment at 812 Page Street. My building was constructed by Matthew Wadlund in 2018. I have befriended investor/developer Sean Kenmore. I am writing in support of their latest project at 770 Page Street. As a long-time neighbor and Berkeley resident, I believe we are desperate for in-fill housing. Converting one house into four seems like a no-brainer. I believe their recent projects are attractive and fit nicely into the fabric of our neighborhood. I know my immediate neighbors agree.

I hope you will support 770 Page Street's permit.

Sincerely,

Joe Kewekordes
President, AutoMate Scientific

AutoMate Scientific
812 Page Street
Berkeley, CA 94710

ph. (510) 845-6283
jcordes@autom8.com
fax (510) 280-3795 <https://www.autom8.com>



WELCOME TO MEMBERS OF THE COMMUNITY WHO ARE PARTICIPATING.

PARTICULARLY THE NEW MEMBERS THAT I AM SERVING WITH.

MICHAEL AND I HAD A CHAT AND I'M DELIGHTED TO BE ABLE TO SERVE TOGETHER, MICHAEL.

I'LL READ THE PUBLIC ADVISORY.

AS SHOSHANA CALLS IT "THE THING."

THIS MEETING WILL BE CONDUCTED EXCLUSIVELY THROUGH TELECONFERENCE AND ZOOM.

THE ORDER WAS ISSUED BY GOVERNOR NEWSOM, THIS MEETING OF ZAB WILL BE CONDUCTED EXCLUSIVELY THROUGH TELECONFERENCE AND ZOOM VIDEOCONFERENCE.

PLEASE BE ADVISED THIS IS TO ENSURE THE HEALTH AND SAFETY OF THE PUBLIC TO ELIMINATE THE SPREAD OF THE COVID-19 VIRUS THERE WILL NOT BE A PHYSICAL MEETING AVAILABLE.

IF YOU DO NOT WISH TO HAVE YOUR NAME APPEAR ON THE SCREEN, YOU MAY HAVE TO SIGN OFF AND SIGN BACK IN.

YOU'LL HAVE AN OPPORTUNITY TO MODIFY YOUR [INDISCERNIBLE]

CLICK ON YOUR NAME AND YOU MAY RENAME YOURSELF TO BE ANONYMOUS.

THERE WILL BE SEVERAL OCCASIONS DURING THE EVENING WHEN YOU WILL BE INVITED TO SPEAK ON A GENERAL COMMENT AND ON ANY ACTION ITEMS OR CONSENT ITEMS AS WELL.

IF YOU WISH TO SPEAK, USE THE RAISE HAND ICON AT THE BOTTOM OF YOUR SCREEN.

IF YOU'RE A PARTICIPANT, IF YOU'RE HERE AS A PARTICIPATE IN THE

HEARING WHICH IS ANYBODY THAT IS NOT A MEMBER OF THE COMMISSION,
LOOK AT THE BOTTOM OF YOUR SCREEN AND SEE IF YOU CAN SEE THE
RAISED HAND ICON.

THAT'S HOW YOU'RE RECOGNIZED BY THE CHAIR.

IF YOU'RE ON THE PHONE, IF YOU WISH TO COMMENT DURING ANY PUBLIC
COMMENT PORTION OF THE AGENDA, PRESS STAR 9 AND WE WILL BE SEE
YOUR HAND GO UP AND SHOSHANA AND I WILL RECOGNIZE YOU DEPENDING
ON WHO IS ACTING AS CHAIR.

AS IN ANY ZAB MEETING, ALL RULES OF PROCEDURE OF DECORUM APPLY
AS IN ALL MEETINGS WHETHER IN PERSON OR REGULAR CONFERENCE.

THOSE ARE ALL OF THE ANNOUNCEMENTS.

WE'LL LET YOU KNOW WHEN YOU HAVE A CHANCE TO SPEAK.

AND THAT'S PRETTY MUCH IT.

I THINK WE'RE READY FOR ROLL CALL.

SHANNON.

>> ROLL CALL BOARD MEMBER TREGUB.

>> I. TREGUB: PRESENT.

AND I SPOKE WITH THE APPLICANT OF THE 600 ADDISON STREET PROJECT
BERKELEY COMMONS.

AND I ALSO HAD A CONVERSATION WITH THE MAYOR REGARDING THE SAME.

>> BOARD SECRETARY: BOARD MEMBER DUFFY.

>> PRESENT.

I SPOKE WITH THE APPLICANT ON 600 ADDISON PROJECT AS WELL ONE
TIME.

PRESENT.

>> BOARD SECRETARY: BOARD

MEMBER GAFFNEY.

>> I'M HERE AND I HAD A SHORT MEETING WITH JASON OVERMAN AND
MARK RHODES ON WEDNESDAY TO DISCUSS THE [INDISCERNIBLE]

>> BOARD SECRETARY: THAT IS THE APPLICANT.

BOARD MEMBER THOMPSON.

>> PRESENT.

I ALSO HAD AN EX PARTE CONVERSATION ON THE 600 ADDISON PROJECT
WITH THE APPLICANT TO BRING ME UP TO SPEED. >>

BOARD SECRETARY: BOARD MEMBER OLSON.

>> I RECEIVED AN E-MAIL FROM 600 ADDISON AND PRESENT.

I HAVE BEEN ON LAND USE COMMISSIONS FOR 23 YEARS AND WHEN I
STARTED, YOU COULD NOT HAVE A CONVERSATION WITH AN APPLICANT.
AND I HOLD TO THAT TO THIS DAY.

I FEEL IT IS -- AND I FOLLOW THAT TO THIS DAY.

IT'S NOT AGAINST THE RULES IN BERKELEY, BUT I DON'T THINK IT'S
WHAT WE INTENDED.

BY THE WAY, STAFF, I KNOW WE HAVE NEW STAFF COMING ON BOARD, I
DON'T WANT MY E-MAIL ADDRESS BEING GIVEN OUT TO THE APPLICANT.
IF THERE ARE MEETINGS, I WANT CITY STAFF TO ARRANGE IT.

THANKS.

>> BOARD MEMBER

OLSON MENTIONED WE HAVE MANY NEW ZAB MEMBERS AND THE BOARD'S
INFORMATION ROSTERS ARE MAINTAINED BY THE CITY CLERK'S OFFICE
AND THEY UTILIZE THE INFORMATION PROVIDED ON THE APPLICATION

FORM.

IF YOU DON'T WANT YOUR E-MAIL ADDRESS OR PHONE NUMBER AVAILABLE TO THE PUBLIC, YOU'LL NEED TO HAVE IT -- NEED TO REMOVE IT FROM THOSE PUBLIC DOCUMENTED WE SUBMITTED.

BOARD MEMBER KIM HE.

>> D. KIM: I ALSO HAD A COMMUNICATION WITH THE APPLICANT FOR 600 ADDISON STREET.

>> RSB SECRETARY: BOARD MEMBER SANDERSON.

>> PRESENT AND DITTO ON THE MEETING WITH THE APPLICANT AT 600 ADDISON.

>> CHAIR O'KEEFE -- VICE CHAIR O'KEEFE.

>> PRESENT AND I RECEIVED AN E-MAIL FROM JASON OVERMAN AND I DID NOT RESPOND.

I DOO I DON'T RESPOND THOSE.

I'LL FORWARD IT TO THE ZAB SECRETARY.

>> CHAIRPERSON KAHN.

>> C. KAHN: I ALSO RECEIVED A COMMUNICATION ON THE APPLICANT FOR THE 600 PROJECT.

I DID AGREE TO SPEAK WITH THEM.

IT'S NOT MY POLICY TO SPEAK WITH APPLICANTS OR NEIGHBORS WHO WISH TO COMMUNICATE WITH THE BOARD MEMBERS PRIOR TO THE MEETING. RESPECTFULLY I APPRECIATE CAREY'S POSITION AND SHOSHANA.

I WANT EVERYONE TO KNOW IT'S YOUR PERSONAL DECISION WHETHER YOU CHOOSE THE COMMUNICATION OR NOT.

I THINK IT BETTER PREPARES ME FOR THE MEETING.

BUT CAREY, I TOTALLY RESPECT YOUR POSITION AND YOURS AS WELL,
SHOSHANA.

ANYONE THAT DOES NOT WANT TO PARTICIPATE IN PRE MEETING
DISCUSSIONS IS WELCOME TO NOT PARTICIPATE.

SO THAT'S FOR EX PARTE.

AND I AM PRESENT.

SO, THAT'S ROLL CALL EX PARTE.

THIS BRINGS US TO THE PORTION OF THE MEETING WHERE THE PUBLIC IS
INVITED TO COMMENT ON NON-AGENDA ITEMS.

AND THIS IS A DIFFERENT ITEM IS LISTED HERE FOR THE CONSENT
CALENDAR.

IF YOU WISH TO SPEAK ON ANY OTHER ISSUE THERE IS YOUR
OPPORTUNITY.

I WILL TRY TO RECOGNIZE KELLY.

YOU SEEM TO BE THE ONLY PERSON AT THIS TIME.

>> HI, EVERYONE.

I'M SURE YOU KNOW ALREADY WHAT I'M GOING TO TALK ABOUT OR YOU
CAN GUESS.

BUT I'M ALMOST DONE WITH AN EXCELLENT [INDISCERNIBLE] ON NATIVE
PLANTING AND IT'S CALLED BRINGING NATURE HOME.

HOW YOU CAN SUSTAIN WILDLIFE WITH NATIVE PLANTS AND IT'S BEEN
DOUGLAS W. TALLAMY AND I WILL SEND AN E-MAIL TO ZAB SO YOU'LL
HAVE THE RESOURCE.

THE BOOK -- TALLAMY IS AN EXCELLENT WRITER STRESSING THE
IMPORTANCE OF NATIVE PLANTS AND THE SURVIVAL OF SPECIES.

WHEN WE DON'T HAVE NATIVE PLANTS AND DON'T HAVE FOOD FOR BIRDS
AND BEES, WE CREATE FOOD DESERTS FOR OUR WILDLIFE AND BIRDS.
WE'VE ALREADY LOST LIKE 3 BILLION BIRDS IN NORTH AMERICA WHICH
IS JUST SUCH A SCARY STARTLING NUMBER.

AND IF WE DON'T HAVE NATIVE PLANTS, THEY DON'T HAVE THE LITTLE
BUGS THEY NEED TO EAT TO FEED THEIR BABY BIRDS AND THE BABY
BIRDS DON'T GAIN WEIGHT AND SURVIVE AND THEY DON'T MAKE IT.
THIS IS REALLY -- THIS IS REALLY IMPORTANT.

WE ARE IN SUCH A CLIMATE ENVIRONMENTAL CRISIS.

IT'S SUCH A LITTLE THING FOR ALL OF YOU TO ENCOURAGE THE
DEVELOPERS THAT ARE BRINGING FORWARD PROJECTS TO HAVE CALIFORNIA
NATIVE PLANTS.

I MEAN, A MINIMUM SHOULD BE 70%.

THERE IS NO REASON WHY WE SHOULDN'T HAVE 100 PERCENT NATIVE
PLANTS.

THE PLANT -- NATIVE PLANTS HAVE EVOLVED TO GROW IN OUR CLIMATE
AND THEY SUPPORT THE SPECIES IN OUR CLIMATE.

LET'S DO IT.

I'LL SEND YOU THIS BEAUTIFUL BOOK.

YOU COULD SUPPORT PEGASUS.

THIS IS ONE THAT I LIKE.

I THINK I'M GOING TO SEND IT TO ALL MY FAMILY ALL OVER THE

COUNTRY TO GET THEM TO THINK DIFFERENTLY ABOUT THEIR YARD.

I CERTAINLY THINK DIFFERENTLY ABOUT MY YARD AND I'M SORRY ABOUT ALL THE MISTAKES I'VE MADE.

THANK YOU VERY MUCH.

AND I LOOK FORWARD TO SEEING THE PRESENTATION OF THE PROJECTS TONIGHT.

THANK YOU.

>> C. KAHN: THANK YOU, KELLY.

THAT BRINGS TO CLOSE THE PUBLIC COMMENT NON-AGENDA ITEMS.

THIS BRINGS US TO THE CONSENT CALENDAR.

AS I AM -- MY FIRM HAS A PROJECT ON THE CONSENT CALENDAR, I WILL BE RECUSING MYSELF AND THE REASON FOR RECUSAL IS BECAUSE WE ARE THE ARCHITECTS.

I WILL PASS THE TORCH TO OUR VICE CHAIR SHOSHANA O'KEEFE AND

I'LL RECUSE MYSELF AT THIS POINT.

I'LL TURN OFF MY MIC AND VIDEO SO YOU DON'T GET TO SEE MY FACE.

[INDISCERNIBLE]

SHOSHANA, I PASS IT ON TO YOU.

>> S. O'KEEFE: WE DON'T HAVE CHAT AVAILABLE SO I WANT PEOPLE TO KNOW WE DISCUSSED IT AHEAD OF TIME.

IF CHARLES TURNS OFF HIS CAMERA AND MICROPHONE, HE WILL NOT BE ABLE TO COMMUNICATE WITH US.

I WANTED TO ASSURE THE PUBLIC THAT HE IS OFFICIALLY RECUSED HIMSELF.

I'LL CANDLE THE CONSENT CALENDAR.

SO, CONSENT CALENDAR WE HAVE CURRENTLY AND WE'LL DISCUSS WHETHER THIS IS GOING TO STAY, WE HAVE THE MINUTES FROM MAY 13TH, WE HAVE 770 PAGE STREET AND WE HAVE 2737 DURANT.

I BELIEVE THAT'S IT FOR THE CONSENT CALENDAR.

NOW IT'S TIME TO DISCUSS AGENDA CHANGES, BUT I THINK FIRST WHAT I WOULD LIKE TO DO AND IF SOMEONE WOULD KINDLY GIVE ME HOST POWERS, I CAN DO THIS.

I WOULD LIKE TO FIND OUT -- HAVE PUBLIC COMMENT ON THE CONSENT CALENDAR.

THAT IS A LITTLE TRICKY.

MEMBERS OF THE PUBLIC, LISTEN CAREFULLY.

IF YOU ARE HERE TO SPEAK ON EITHER OF OUR CONSENT CALENDAR ITEMS, AND YOU WISH TO SAY SOMETHING POSITIVE OR NEUTRAL ABOUT THEM, THEY'RE BOTH SLATED FOR APPROVAL.

IF THE CONSENT CALENDAR REMAINS UNCHANGED AND PASSES, THESE TWO WILL GET THEIR APPROVALS.

IF YOU'RE OKAY WITH THAT AND YOU WANT TO ADD SOMETHING OR HAVE A QUESTION FOR CLARIFICATION, NOW IS THE TIME TO RAISE YOUR HAND TO MAKE THAT STATEMENT.

ALSO, IF YOU ARE HERE AND WOULD LIKE TO OBJECT TO THEM IN A WAY WHERE YOU WOULD LIKE THEM TAKEN OFF THE CONSENT CALENDAR AND GIVEN A FULL HEARING, NOW IS THE TIME TO GET US KNOW ABOUT THAT. HOWEVER, YOU CAN TELL US THAT AND IF WE DECIDE TO TAKE IT OFF

THE CONSENT CALENDAR YOU'LL HAVE A CHANCE TO GIVE PUBLIC COMMENT AT THE HEARING.

IF YOU WANT TO STATE IN SUPPORT OF EITHER PAGE STREET OR DURANT AVENUE OR NEUTRAL OR ASKING QUESTIONS, NOW IS IT THE TIME OR IF YOU WANT TO LETS KNOW YOU'RE HERE TO ASK TO PULL IT FROM THE CONSENT CALENDAR, YOU CAN STAY THAT.

I WOULD LIKE TO HEAR FROM THE PUBLIC IF ANY SITUATIONS APPLY TO YOU, RAISE YOUR HAND OR PRESS STAR 9 NOW AND BOARD MEMBERS, IF YOU HAVE SIMILAR COMMENTS, WE'LL HEAR FROM YOU AFTER THE PUBLIC COMMENTS.

I SEE TWO HANDS UP.

IF ANY MORE COME, WE'LL CALL ON THEM.

WE'LL DO TWO MINUTES EACH FOR CONSENT CALENDAR COMMENTS AND START WITH KELLY.

>> THANK YOU.

ON 770 PAGE THERE WAS NOTHING ON WHAT KIND OF PLANTINGS WILL GO WITH THAT PROJECT.

I WAS HOPING IN FOLLOW-UP TO MY COMMENT AT THE BEGINNING THAT THEY WOULD BE PLANTING NATIVE CALIFORNIA PLANTS TO THIS LOCAL AREA.

BUT THERE IS NOTHING THAT I CAN FIND WHEN I LOOKED THROUGH THAT. ALSO, THEY HAVE DRIVEWAYS AND I WAS GOING TO ASK THAT PERMEABLE PAVING THAT WE ASK FOR HIGHWAY RECOMMEND THAT THEY USE PERMEABLE PAVING.

THERE ARE PERMEABLE PAVERS ON WARD STREET NEXT TO SAND PEBBLE PARK.

THOSE WERE INSTALLED BY THE PUBLIC WORKS DEPARTMENT.

THEY'RE NEXT TO THE CURB AND THEY'RE PRETTY COOL.

I WAS GOING TO SAY IF I WERE AN ARCHITECT, I WOULD PUT A BATHROOM ON THE THIRD FLOOR WITH THE THIRD FLOOR BEDROOM.

AS FOR 2737, I'M DISAPPOINTED THIS IS KDA.

THE PLANS ARE LISTED WITH THIS PROJECT AND THERE IS NOT ONE NATIVE -- NOT EVEN ONE.

THESE ARE ALL FROM ASIA, AUSTRALIA, NEW ZEALAND AND AFRICAN.

AFTER ALL THE TIME I'VE TALKED ABOUT NATIVE PLANT, I CAN'T TELL YOU HOW DISAPPOINTING IT IS THAT THERE IS NOT EVEN ONE LISTED.

AS FAR AS THE PROJECT ITSELF, THE BUILDINGS ON EITHER ONE OF THESE OTHER THAN THE SUGGESTION ON BATHROOM AND THE THIRD FLOOR, I DON'T HAVE A LOT OF CRITICISM FOR THE BUILDING, BUT NATIVE PLANTING, I JUST DON'T SEE HOW THIS GETS BY OUR STAFF ANY MORE. IT OUGHT TO BE ON THE LIST.

STAFF ASKING WHAT PLANTS ARE LISTED WHAT LOCAL NATIVE CALIFORNIA PLANTS WILL YOU PUT WITH THIS PROJECT AND WE WOULDN'T HAVE TO GO ON AND ON ABOUT IT.

>> S. O'KEEFE: COULD WE GET A TIMER UP FOR THE NEXT SPEAKER?

KELLY IS A PRO ON THAT.

BUT, YES, IF YOU COULD -- NEXT UP WE HAVE KAREN.

>> GOOD EVENING.

CAN YOU HEAR ME?

>> S. O'KEEFE: YES.

>> BOARD MEMBER O'KEEFE, THANK YOU SO MUCH.

I'LL TRY TO BE QUICK.

I WANT TO ECHO WHAT THE PREVIOUS SPEAKER SAID.

THIS IS JUST ON 2737 DURANT AVENUE AND HOPING THAT THERE ARE SEVEN PLANTS IN THE PALLET AND NONE OF THEM, I DON'T THINK ANY OF THEM ARE FROM OUR COMPLEMENT.

THE INSECT CANNOT EAT THEM.

IT'S LIKE TRYING TO GIVE YOUR BABY GASOLINE.

YOU CAN'T GIVE YOUR BABY GASOLINE AND YOU CAN'T GIVE INSECTS NON-NATIVE PLANTS.

THEY CANNOT INGEST THESE LEAVES.

EQUAL TO CHANGE THE PALLET AND THE SECOND THING IS THERE

BIRD-SAFE GLASS PLANNED FOR THIS BUILDING?

ALWAYS GOOD TO HAVE THEM IN THEIR AND EVEN LOWER STOREYS, THE FIRST THREE STOREYS ARE THE MOST DANGEROUS FOR BIRDS BECAUSE THEY CAN SEE THE REFLEX OF A TREE IN THE WINDOW AND THEY THINK IT'S A REAL TREE AND FLY INTO THE WINDOW AND GET A HARMED OR DIE.

THANK YOU FOR YOUR TIME.

>> S. O'KEEFE: THANK YOU SO MUCH KAREN, APPRECIATE YOUR COMMENTS AND KELLY'S AS WELL.

I ALSO APPRECIATE THAT THOUGH COMMENTS WERE NEUTRAL AND

CONSTRUCTIVE AND I WANT TO REMIND OUR SPEAKERS THAT THE APPLICANTS ARE HERE AS IS THE STAFF PLANNER SO THEY HEARD YOUR COMMENTS.

SO ARE THERE ANY OTHER COMMENTS FROM THE PUBLIC ON ANY OF THE CONSENT CALENDAR ITEMS?

I'M NOT SEEING ANYONE.

SEEING NONE, I'M GOING TO BRING IT TO THE BOARD.

ARE THERE ANY COMMENTS ABOUT -- LET'S DO AGENDA CHANGES FIRST. CAREY.

>> C. OLSON: I DON'T KNOW IF I'M MAKING AN AGENDA CHANGE OR NOT. I'M CURIOUS ABOUT STAFF.

WE HAVE A SUPPLEMENTAL COMMUNICATION IN OUR PACKET ABOUT 770 PAGE.

NO ONE IS HERE TO TALK ABOUT IT.

THERE IS AFFORDABLE HOUSING IN THIS.

I WANT TO KNOW IF THAT ADDRESS IS SOMEWHERE ELSE?

IF STAFF HAS A REPLY TO THAT COMMUNICATION WE RECEIVED FROM AN ATTORNEY.

JUST CURIOUS.

>> S. O'KEEFE: CAN WE GET THAT QUESTION ANSWERED FOR CLARITY?

>> BOARD SECRETARY: WE'LL [INDISCERNIBLE]

>> S. O'KEEFE: THANK YOU.

LESLIE, DID YOU HEAR THE QUESTION?

>> YES, THANK YOU AND THANK YOU FOR ASKING BOARD MEMBER OLSON

BECAUSE THAT WAS BROUGHT BY A FEW PEOPLE SO THANKS FOR MAKING IT PUBLIC.

THIS PROJECT IS FOR [INDISCERNIBLE] DWELLING UNITS ON A LOT THAT CAN ACCOMMODATE DWELLING UNIT.

SO THAT IF IT WERE TO APPLY WITH INCLUSIONARY HOUSING ORDINANCE, THE ORDINANCE DOES NOT APPLY TO THIS BECAUSE IT'S ONLY FOR DWELLING UNITS.

IT'S NOT ACCUMULATIVE DEVELOPMENT ON THIS LOT, MEANING THERE IS NO OTHER UNITS ON THE LOT THAT ARE BEING RETAINED THAT WERE BUILT AFTER 1986.

ADDITIONALLY, IT DOES NOT MEET THE REQUIREMENTS OF THE INCLUSIONARY HOUSING REQUIREMENTS.

THIS APPLICANT OWNS SEVERAL UNITS IN THIS NEIGHBORHOOD.

AT A PREVIOUS -- AT THE LAST ONE THAT WENT THROUGH WHICH WAS ON 1444 FIFTH STREET WHEN IT WENT TO COUNCIL, COUNCIL DID APPLY THE A INCLUSIONARY ORDINANCE SINCE THE PARCEL IS CONTIGUOUS.

THAT WAS LITIGATED AND WENT TO COURT AND THE CITY LOST.

THERE WAS AN AGREEMENT THAT CONFIRMS THAT THESE PROPERTIES ARE NOT SUBJECT TO INCLUSIONARY HOUSING ORDINANCE.

HOWEVER, THERE IS A CONDITION THAT REFLECTS ONE OF THE POINTS OF THE SETTLEMENT.

THE APPLICANT HAS AGREED AS PART OF THE SETTLEMENT TO PAY \$15,000 TO THE AFFORDABLE TRUST FUND.

WHEN THE CORRESPONDENCE CAME INTO THE LAW FIRM, I REVIEWED IT

AND I HAD OUR CITY ATTORNEY'S OFFICE REVIEW IT AND THE CITY
ATTORNEY'S OFFICE CONFIRMED THE EXACT ISSUES HAD BEEN LITIGATED
AND THE SETTLEMENT IS REMAIN IN TRUST.

I HOPE THAT ANSWERS YOUR QUESTION.

>> C. OLSON: THANK YOU, LESLIE, THAT WAS PERFECT.

>> S. O'KEEFE: I WAS WONDERING ABOUT THAT AS WELL.

SO THANK YOU.

IGOR.

>> I. TREGUB: THANK YOU SO MUCH COMMISSIONER OLSON.

I WANT TO GET ON THE RECORD THAT CLARIFICATION AND THANK YOU,
STAFF.

THE CLAIM WAS MARRIED THAT THERE IS EXISTING AFFORDABLE HOUSING.
STAFF, COULD YOU PLEASE CONFIRM WHETHER THE BUILDING SET TO BE
DEMOLISHED IS CURRENTLY OCCUPIED?

AND TO YOUR KNOWLEDGE IF THIS IS NOT OCCUPIED.

>> THAT WOULD BE A BOATER QUESTION ANSWERED BY THE APPLICANT.

IT'S MY UNDERSTANDING THE APPLICANT DID LEASE IT TO SOMEONE AS
AN ART STUDIO DURING THIS DEVELOPMENT PHASE.

IT'S NOT CONSIDERED A PROTECTED UNIT UNDER THE HOUSING
ACCOUNTABILITY ACT.

IT'S NOT BELOW MARKET-RATE UNIT NOR IS IT SUBJECT TO ANY TYPE OF
PRESS CONTROL MEANING RENT CONTROL THROUGH THE CITY.

>> I. TREGUB: GREAT.

THAT ANSWERS MY QUESTION.

HE I WANTED TO GET THAT ON THE RECORD.

AND ON THE RECORD, I PROVIDED NON-SUBSTANTIVE CHANGES TO A
COUPLE OF TYPOS IN ONE OF THE FINDINGS I DON'T WE NEED TO SPEND
A LOT OF TIME ON THAT BUT I WANT IT ON THE RECORD.

I BELIEVE THEY'RE NON-SUBSTANTIVE.

DOES STAFF AGREE?

>> YES, AND IF ZAB WERE TO A PROFIT PROJECT TONIGHT, THE CHANGES
WOULD BE MADE.

THANK YOU AGAIN BOARD MEMBER TREGUB FOR CATCHING THAT.

>> S. O'KEEFE: ARE YOU THESE LIKE TYPOS?

IF WE'RE GOING TO AMEND SOMETHING I WANT TO KNOW.

I DON'T THINK IGOR IS TRYING TO FOOL US --

>> I DON'T, YOU LIKE TO READ IT?

>> I. TREGUB: I WOULD PREFER STAFF TO READ IT.

>> THIS IS REGARDING FINDING NUMBER THREE ERROR.

THE FINDING SAYS THE COUNCIL FIND THAT THE PROPOSAL IS
CONSISTENT AND THAT SHOULD BE CHANGED TO "THE BOARD FINDS."

AND IS CONSISTENT WITH EXISTING DEVELOPMENT IN BUILDING
SEPARATION PATTERN BUT IT SHOULD BE "PATTERN."

IT'S MISSING AN "N" THOSE WERE THE TWO MODIFICATIONS -- TYPOS.

>> I. TREGUB: I WANTED TO LOOK UP THE COMMENTS BY KELLY AND
ERIN.

THE APPLICANTS ON BOTH PROJECTS WHO CONSIDER, BECAUSE THAT'S ALL
WE CAN ASK FOR ON THE ZAB, TO CONSIDER PUTTING IN NATIVE PLANTS

WHATEVER APPLICABLE.

>> S. O'KEEFE: GREAT.

THANKS.

ARE THERE FURTHER COMMENTS?

CAREY.

>> C. OLSON: I WOULD LIKE TO SECOND WHAT IGOR BROUGHT UP ABOUT THE PLANTS AND THE BIRD-SAFE GLASS.

I THINK SINCE THIS IS THE SECOND PROJECT IS BY KDA, IT WOULD BE A PERFECT OPPORTUNITY TO SHOW A BIT OF COMMUNITY FEELING AND CHANGE LANDSCAPING AND BIRD-SAFE GLASS.

AND YOU'RE READY FOR A MOTION, I COULD MAKE IT.

>> S. O'KEEFE: IT DOESN'T CLOSE THE DOOR FOR FURTHER COMMENTS, BUT YOU'RE WELCOME TO MAKE A MOTION.

>> I MOVE TO APPROVE THE -- AND MINUTES AND DURANT.

>> S. O'KEEFE: THERE HAS BEEN NOTHING STATED THAT MAKES ME THINK WE SHOULD REMOVE ANYTHING OR ADD ANYTHING TO THE CONSENT CALENDAR SO -- UNLESS SOMEBODY WANTS TO BRING THAT UP, WE CAN GO FORWARD AS WRITTEN ON THE AGENDA.

DOHEE.

>> D. KIM: I WOULD LIKE TO SECOND CAREY'S MOTION.

>> S. O'KEEFE: WE HAVE A MOTION AND A SECOND.

ANY FURTHER DISCUSSION BEFORE WE VOTE?

SHANNON.

>> BOARD SECRETARY: I HAVE A QUESTION.

ALL ITEMS THAT ARE PROPOSED FOR CONSENT ARE APPROVED ON CONSENT.
IS THE POINT ABOUT 2737 DURANT THAT A CONDITION IS ADDED THAT
THE APPLICANT CONSIDER NATIVE PLANTS?

>> S. O'KEEFE: I DON'T THINK I HEARD THAT.

I THINK IT WAS STATED.

IS THAT RIGHT?

I DON'T WANT TO MISSTATE THE MOTION.

I'LL CALL ON CAREY FIRST.

CAREY, CAN YOU CLARIFY THAT?

>> I'M MAKING A SUGGESTION.

>> S. O'KEEFE: UNDERSTOOD.

IGOR.

>> I. TREGUB: I WAS CURIOUS, CAN WE ADD A CONDITION THAT SAYS
"CONSIDER"?

>> BOARD SECRETARY: YOU HAVE IN THE PAST.

I MEAN, THERE HAVE BEEN -- YES.

WOULD I THINK THAT -- I THINK WHAT CAREY -- BOARD MEMBER OLSON
HAS DONE IS PUBLICLY STATING THIS IS IMPORTANT AND WE HOPE
YOU'LL CONSIDER THIS AND BE MINDFUL OF IT IN THE FUTURE IS JUST
AS POWERFUL AS ADDING A CONDITION OF APPROVAL THAT SAYS PLEASE
CONSIDER.

>> I. TREGUB: I'LL DEFER TO THE MAKER OF THE MOTION IF SHE
WISHES TO MODIFY.

>> C. OLSON: I DON'T FEEL THE NEED TO MODIFY IT BECAUSE THIS IS

KDA AND I FIGURE CHARLES IS OUT THERE LISTENING.

IT'S A CHANCE TO BE A LEADER.

SO I THINK HE MIGHT TAKE IT UP WITHOUT ME MAKING A CONDITION OUT OF IT.

>> I. TREGUB: YES, WE WILL PUT THE PROJECT ON THE CONSENT CALENDAR.

>> C. OLSON: I'M NOT SPEAKING TO PAGE AND I WOULD LOVE TO HAVE A CONVERSATION ABOUT PAGE, THIS KIND OF SMALLER PROJECT.

WITH THIS PARTICULAR DEVELOPER WHO HAS DONE A LOT OF PROJECTS IN THE FLATS, I JUST DON'T KNOW THAT THAT'S THE PLACE WHERE A SUGGESTION WOULD MAKE A DIFFERENCE.

I DON'T KNOW.

>> S. O'KEEFE: AS SHANNON SAID, IT HAS EQUAL ENFORCEABILITY WHETHER WE SAY IT OR WRITE IT DOWN AS A SUGGESTION.

THAT'S MY TWO CENT.

CAREY, DO YOU WANT TO APPROVE IT WITH IGOR'S SMALL CHANGES?

>> C. OLSON: YES HE.

>> S. O'KEEFE: OKAY.

ANY OTHER FURTHER DISCUSSION BEFORE WE VOTE ON THE CONSENT AGENDA OKAY, LET'S DO A ROLL CALL VOTE, PLEASE.

>> BOARD SECRETARY: BOARD MEMBER TREGUB.

>> YES.

>> BOARD MEMBER DUFFY.

>> YES.

>> BOARD MEMBER SANDERSON.

>> YES.

>> BOARD MEMBER THOMPSON.

>> YES.

>> BOARD MEMBER KIM.

>> YES.

BOARD MEMBER OLSON.

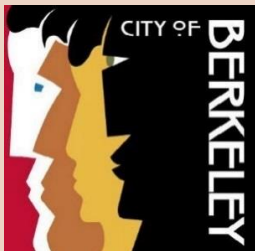
>> YES.

>> BOARD MEMBER GAFFNEY.

>> YES.

>> AND ACTING CHAIR O'KEEFE.

>> YES, AND THAT PASSES AND THE MINUTES ARE APPROVED PAGE AND
DURANT, YOU HAVE YOUR USE PERMITS WHICH ARE APPEALABLE TO THE
CITY COUNCIL.



Land Use / Zoning

Planning and
Development

All new uses, structures, and modifications to structures in the City of Berkeley are required to be in conformance with the Zoning Ordinance.

Information on different types of permits can be found at the links below.

Overview of the Permitting Process

https://www.cityofberkeley.info/Planning_and_Development/Permit_Service_Center/Permitting_Process.aspx

Types of Permits

https://www.cityofberkeley.info/Planning_and_Development/Home/Types_of_Land_Use_Permits.aspx

Zoning Project Submittal Requirements

<https://tinyurl.com/rahe81d>

Land Use / Zoning

1947 Center Street
2nd Floor
Berkeley, CA 94704
Phone: 510-981-7410
TDD: 510-981-7450
planning@cityofberkeley.info

Zoning Project Application

<i>(This box for staff use only.)</i>	DATE STAMP HERE
ZP20__ - _____	
<input type="checkbox"/> Administrative Use Permit	<input type="checkbox"/> Variance
<input type="checkbox"/> Use Permit	<input type="checkbox"/> Modification of any of the Above
Zoning District(s): _____	
Intake Planner: _____	

Project Information:

Project Address: _____ Unit/Suite #: _____

Assessor Parcel Number: _____

Project Description: _____

Expedited Services Requested? Yes / No

Property Owner's Name: _____

Owner's Mailing Address: _____

Phone #: _____

Email: _____

Applicant's Name (or enter "same"): _____

Applicant's Mailing Address: _____

Phone #: _____

Email: _____


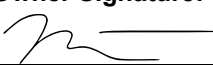
Under penalty of perjury, I certify that:

(1) the application materials are true and complete to the best of my knowledge;

(2) the attached paper and electronic copies of this application are the same; and

(3) I agree to pay all expenses associated with this application.

(*Owner's signature, or signed letter authorizing applicant to apply on owner's behalf, is required for all applications)

Applicant Signature:  _____ Printed Name: _____ Date: _____	Owner Signature:  _____ Printed Name: _____ Date: _____
--	--

(This page is for staff use only)

Zoning District(s):	
Zoning Section	Description
1. 23____.____.____	UP/AUP to
2. 23____.____.____	UP/AUP to
3. 23____.____.____	UP/AUP to
4. 23____.____.____	UP/AUP to
5. 23____.____.____	UP/AUP to
6. 23____.____.____	UP/AUP to
7. 23____.____.____	UP/AUP to
8. 23____.____.____	UP/AUP to
9. 23____.____.____	UP/AUP to
10. 23____.____.____	UP/AUP to



Zoning Project Application Submittal Requirements

(This box for staff use only.)

DATE STAMP HERE

ZP202_____-_____

- Administrative Use Permit
- Variance
- Use Permit
- Modification to any of the Above

Intake Planner: _____

SUBMITTAL REQUIREMENTS DURING COVID-19 SHELTER-AT-HOME ORDER

Please note: While the City is following the County Health Official’s orders to shelter-at-home, this document has been modified to allow applicants to submit new Planning applications, while avoiding person-to-person contact. During this order, only the submittal requirements shown in RED will be required upon initial submittal of materials. Your project planner will review the submitted materials and contact you regarding any additional requirements for completion.

The Zoning Project Submittal Requirements packet describes all of the materials required to submit a complete Zoning Project Application to the Planning and Development Department, Land Use Division. Section 1 is a checklist of materials required for all projects; Sections 2-7 comprise a list of materials that may be required based on the project type or location. Other information not included on this checklist may be requested to address unique situations. All documents, reports and plans must be provided in hard copy and digital format.

Each submittal requirement on the checklist is described further in this packet, starting on page 3. Each description: 1) identifies whether an item is required, and 2) indicates how to prepare each document, drawing, material, and/or report.

Pages 1 and 2 of this packet must be completed and submitted with the Application. Staff will verify that the minimum submittal requirements have been included with your package during the application submittal appointment. Applications that are missing the materials in this checklist will not be accepted for review.

Section 1 – Required for all Projects

- A. Completed Zoning Project Application Packet comprised of the following individual sections:
 - 1. Zoning Project Application Form
 - 2. Completed copy of this Zoning Project Submittal Requirements Checklist (Pages 1-2)
- B. Applicant Statement / Waiver Request
- C. Payment of Application Fees (Please Refer to Current Fee Schedule)
- D. Hazardous Waste and Substances Statement
- E. Tabulation Form
- F. Zoning Use Questionnaire
- G. Pre-Application Yellow Poster
- H. Pre-Application Neighborhood Contact



Zoning Project Application Submittal Requirements

Section 2 – Required for All Development Projects

(Involving New Structures, Additions, Demolitions, or Exterior Alterations)

- | | |
|--|---|
| A. <input checked="" type="checkbox"/> Site Plan | E. <input checked="" type="checkbox"/> Street Strip Elevation |
| B. <input checked="" type="checkbox"/> Lot Coverage/Usable Open Space Plan | F. <input type="checkbox"/> Section Drawings |
| C. <input checked="" type="checkbox"/> Floor Plans | G. <input checked="" type="checkbox"/> Boundary and/or Topographic Survey |
| D. <input checked="" type="checkbox"/> Building Elevations | H. <input type="checkbox"/> Grading Plan |

Section 3 – Supporting Documents, Studies, Graphics, and Depictions for All Development Projects

- | | |
|---|--|
| A. <input checked="" type="checkbox"/> Site Photographs | F. <input type="checkbox"/> Parking Survey |
| B. <input checked="" type="checkbox"/> Shadow Study | G. <input type="checkbox"/> Traffic Impact Analysis Memorandum |
| C. <input type="checkbox"/> Story Pole Plan | H. <input type="checkbox"/> Photo Simulations |
| D. <input type="checkbox"/> Arborist Report | I. <input type="checkbox"/> Public Art Declaration |
| E. <input type="checkbox"/> Structural Evaluation | |

Section 4 – Environmental Review

- | | |
|--|---|
| A. <input type="checkbox"/> Creek Protection Documentation | D. <input checked="" type="checkbox"/> Seismic Hazard Investigation |
| B. <input type="checkbox"/> Historic Resource Evaluation | E. <input type="checkbox"/> State General Construction Permit |
| C. <input checked="" type="checkbox"/> Phase I or Phase II Site Assessment | F. <input type="checkbox"/> Stormwater Requirements Checklist |

Section 5 – Required for Projects Subject to Affordable Housing Requirements

- | | |
|--|---|
| A. <input type="checkbox"/> Housing Affordability Statement | C. <input type="checkbox"/> Density Bonus Eligibility Statement |
| B. <input type="checkbox"/> Anti-Discrimination Housing Policies | D. <input type="checkbox"/> Area of Potential Effects (APE) Statement |

Section 6 – Landscape and Green Building Requirements

- | | |
|---|---|
| A. <input type="checkbox"/> Landscape Requirements | C. <input type="checkbox"/> Green Building Requirements |
| B. <input type="checkbox"/> Natural Gas Prohibition, Berkeley Energy Code and Berkeley Green Code | |

Section 7 – Related Land Use Planning Division Applications

- | | |
|--|--|
| A. <input checked="" type="checkbox"/> Design Review | B. <input type="checkbox"/> Structural Alteration Permit |
|--|--|

PLANNING & DEVELOPMENT

Land Use Planning Division, 1947 Center Street, 2nd Floor, Berkeley, CA 94704

Tel: 510.981.7410 TDD: 510.981.6903

Fax: 510.981.7420 Email: Planning@CityofBerkeley.info



May 16, 2020

ZP2016-XXXX
770 Page Street
Use Permit Application

Documents:

- 1) Zoning Application Form
- 2) Project Description
- 3) Hazardous Waste and Substances Statement
- 4) Tabulation Form
- 5) Tabulation Companion

- 6) Vicinity Map
- 7) Site Plan, Second Floor, Third Floor, and Roof Plan
- 8) Building Elevations
- 9) Shadow Study Winter & Summer
- 10) Green Building Checklist

- 12) Photos of existing site looking west
- 13) Boundary / Topographic Survey
- 14) Phase 1 Environmental Site Assessment

CD containing all Re-Submitted and Previously Submitted Documents



May 18, 2020

Re: 770 Page Street

APN: 59-2325-003

APPLICATION STATEMENT:

The site is currently residential use and the proposed project retains residential use. The project proposes to demolish the existing, diminutive 900 SF single family, detached house and construct four (4) single family, detached houses in the MU-R zone.

Four (4) new houses will be built to a high standard of construction quality and finishes. Each house will be three stories, three bedrooms, two bathrooms, roughly 1,500 SF gross area, and include a third floor 135 SF roof deck. Construction is of wood framing with metal siding. Four uncovered, onsite parking spaces are provided. The houses will be built with photovoltaic (PV) electric generation systems resulting in net zero energy use.

Design elements including gable roof, selectively placed windows, and metal siding responds to local residential and commercial buildings.

The project would not be detrimental to the health, safety, peace, morals, comfort, and general welfare of the persons residing or working in the neighborhood of such proposed use or be detrimental or injurious to property and improvements of the adjacent properties, the surrounding area or neighborhood, or to the general welfare of the City because:

- The proposed development on this parcel is equal to or below the Mixed-Use Residential (MU-R) standards for maximum residential density, floor area, height, and lot coverage (4 dwelling units with a floor area ratio of 1.1, where the maximum allowed for residential development 1.5).
- The proposed project meets or exceeds the requirements for setbacks, parking, and useable open space.
- The proposed project retains the mixed character of the surrounding street and is consistent with the overall scale of the one-, two-, and three- story residences and commercial and manufacturing spaces in the neighborhood. The proposed design references the industrial context of West Berkeley and its mix of uses and aesthetics
- No substantial land use conflicts are expected from the project due to the site's location in a mixed area of commercial and residential development, because the project's density would be within the range of the surrounding development, and because no substantial privacy or shadow impacts would occur.

The proposed project is consistent with the purposes of the MU-R District for the following reasons:

- The project would strengthen the residential concentration in this neighborhood. The residential use of the project would protect neighboring residents from the unreasonably detrimental effects of nonresidential uses, such as noise, vibration, odors, smoke, fumes, gases, dust, heat and glare;
- The project is consistent with the West Berkeley Plan because the proposed massing and design is appropriate for the neighborhood and reflects the nature of the MU-R District;
- The project is not likely, under reasonably foreseeable circumstances, to either induce or contribute to a cumulative change of use in buildings away from residential, live/work, light industrial, or arts and crafts uses because the site location is in an area of West Berkeley known for a diverse mix of land uses.
- The proposed project is able to meet any applicable performance standards as described in BMC 23E.84.070.H because no additional performance standards are applicable to this project.



May 18, 2020

Re: 770 Page Street
APN: 59-2325-003

Project Description:

Demolition of existing, diminutive 900 SF single family, detached house. New construction of four single family, detached houses in the MU-R zone.

Four (4) new houses will be built to a high standard of construction quality and finishes. Each house will be three stories, three bedrooms, two bathrooms, roughly 1,500 SF gross area, and include a third floor 145 SF roof deck. Construction is of wood framing with wood and metal siding. Four uncovered, onsite parking spaces are provided. The houses will be built with photovoltaic (PV) electric generation systems resulting in net zero energy use.

Design elements including gable roof, selectively placed windows, and metal siding responds to local residential and commercial buildings.

The site will be designed and constructed using Low Impact Development (LID) principles of ecologically based stormwater management.



May 18, 2020

770 Page Street
Use Permit Application ZP 2016-XXXX

Tabulation Companion

Unit	Use	Stories	Height	Size	Bedrooms
1	Residential	3	35'	1,500 SF	3
2	Residential	3	35'	1,500 SF	3
3	Residential	3	35'	1,500 SF	3
4	Residential	3	35'	<u>1,500 SF</u>	3
				6,000 SF	

GROSS AREA Square Foot

FLOOR	UNIT				TOTAL
	1	2	3	4	
First	545	545	545	545	2,180
Second	560	560	560	560	2,240
Third	395	395	395	395	1,580
Total	1,500	1,500	1,500	1,500	6,000

Building Footprint all structures = 2,180
Total Gross = 6,000



PLANNING & DEVELOPMENT

Land Use Planning, 1947 Center Street, Berkeley, CA 94704
Tel: 510.981.7410 TDD: 510.981.6903 Email: Planning@CityofBerkeley.info

TABULATION FORM

Project Address: _____ Date: _____

Applicant's Name: _____

Zoning District: _____

Please print in ink the following numerical information for your Administrative Use Permit, Use Permit, or Variance application:

	<i>Existing</i>	<i>Proposed</i>	<i>Permitted/ Required¹</i>
Units, Parking Spaces & Bedrooms			
Number of Dwelling Units (#)			
Number of Parking Spaces (#)			
Number of Bedrooms (#) (R-1, R-1A, R-2, R-2A, and R-3 only)			
Yards and Height			
Front Yard Setback (Feet)			
Side Yard Setbacks: (facing property)			
Left: (Feet)			
Right: (Feet)			
Rear Yard Setback (Feet)			
Building Height* (# Stories)			
Average* (Feet)			
Maximum* (Feet)			
Areas			
Lot Area (Square-Feet)			
Gross Floor Area* (Square-Feet) Total Area Covered by All Floors			
Building Footprint* (Square-Feet) Total of All Structures			
Lot Coverage* (%) Residential only (Building Footprint/Lot Area)			
Useable Open Space* (Square-Feet)			
Floor Area Ratio* Non-Residential only (Except ES-R)			

*See Definitions – Zoning Ordinance Title 23F.

Revised: 11/19

¹ See development standards for your Zoning District, per the Berkeley Municipal Code, Sub-Titles 23D and 23E
g:\landuse\forms & instructions\land use planning forms\word files\forms_zoning project application\zoning project application_tabulation form.docx



PLANNING & DEVELOPMENT

Land Use Planning, 1947 Center Street, Berkeley, CA 94704
Tel: 510.981.7410 TDD: 510.981.7474 Email: Planning@cityofberkeley.info

HAZARDOUS WASTE AND SUBSTANCES STATEMENT

Pursuant to the Permit Streamlining Act (PSA), a development permit application may not be accepted as complete unless and until the applicant has submitted a signed statement indicating whether the proposed project site or any alternative site(s) is on the lists of hazardous waste sites compiled pursuant to Government Code Section [65962.5](#) by the California Secretary for Environmental Protection.

Data lists / maps are available at the following websites (check multiple lists and categories):

<http://www.calepa.ca.gov/SiteCleanup/CorteseList/>

<https://www.envirostor.dtsc.ca.gov/public/>

Applicant's Information:

Name: 770 Page Street, LLC

Street Address: 805 Jones

City, State, Zip Code: Berkeley CA

Phone Number: 510-332-646 Email: mwadlund@wdsplus.co

Project Information:

Address: 770 Page Street

City, State, Zip Code: Berkeley CA

Assessor's book, page, and parcel number: 059-2325-00

Specify any list that the site appears on: none

Regulatory identification number: _____

Date of list: _____

Site Use (if known):

Past: residenti Present: residenti

Proposed: residenti

Submittals (check all that are available):

Phase I Report Phase II Report Closure Letter Other: _____

Applicant's verification:

Signature:  Date: 5/28/202



PLANNING & DEVELOPMENT

Land Use Planning, 1947 Center Street, Berkeley, CA 94704
Tel: 510.981.7410 TDD: 510.981.6903 Fax: 510.981.7420 Email:
Planning@CityofBerkeley.info

DATE STAMP HERE

ZONING USE QUESTIONNAIRE

Property Address 770 Page Street Permit # _____

Applicant Name 770 Page Street, LLC Phone # 510-332-6468

Name of Property Owner (if different from applicant) _____ Phone # _____

Proposed Use Resident Previous Use Resident

Describe your business: n/a

Does your business include the sale of: Drug Paraphernalia? Tobacco? Alcohol Medical Marijuana?

What are adjacent uses (sides and rear?) Residential, warehouse,

Is this an existing building? Yes _____ No _____

If yes, has a Change of Occupancy Inspection been made by the Building and Safety Division?

Yes _____ No _____

What changes will be made to the building? Removing existing house, construct four single

List days and hours of operation: Monday - Thursday: n/a Friday: n/a

Saturday: n/a Sunday: n/a

Is the transaction contingent on obtaining a Use Permit? Yes _____ No X Explain _____

How many employees will you have (including yourself)? Total n/a Per Shift _____

How many customers do you expect at one time? n/a When will be your busiest hours? _____

Is there an existing parking lot? Yes _____ No _____ Do you share it with any other use? _____

Will you provide parking for customers? Yes _____ No _____ How many spaces? _____

Will you provide parking for employees? Yes _____ No _____ How many spaces? _____

Will parking be on the same property? Yes X No _____ If not, explain: _____

From what area do you expect the majority of your customers:

Immediate neighborhood _____ Several neighborhoods _____ Passing Traffic _____ City-wide _____ Larger area _____

Will you be selling any alcoholic beverages for off-site consumption? Yes _____ No _____

If yes, have you applied for an off-sale license from the State Department of Alcoholic Beverage Control? Yes _____ No _____

Will you be selling beverages in containers subject to California Redemption Value (CRV)? Yes _____ No _____

ADDRESS: _____ DATE: _____

ESTABLISHMENTS SERVING FOOD OR DRINK

Proposed seating (#) _____ Maximum allowable capacity under Building Code (#) _____

What type of cooking will you feature? _____

How will cooking odors be controlled? _____

What arrangement will be made for recycling? _____

Alcoholic Beverages

Will you serve beer? _____ Wine? _____ Liquor? _____

With meals only? _____ Separately? _____ At a bar? _____

Have you applied for a license from Department of Alcoholic Beverage Control? Yes _____ No _____

Music

Will you provide live entertainment? Yes _____ No _____ Of what type? _____

Will there be live music? _____ Recorded? _____ Amplified at what level? _____

Will sound control be provided? Yes _____ No _____

What are the assurances that sound control will be adequate? _____

When will sound controls be installed? _____

Who is responsible for assuring that the business operates as described above?

[PRINT NAME] _____

Signature _____ Date _____

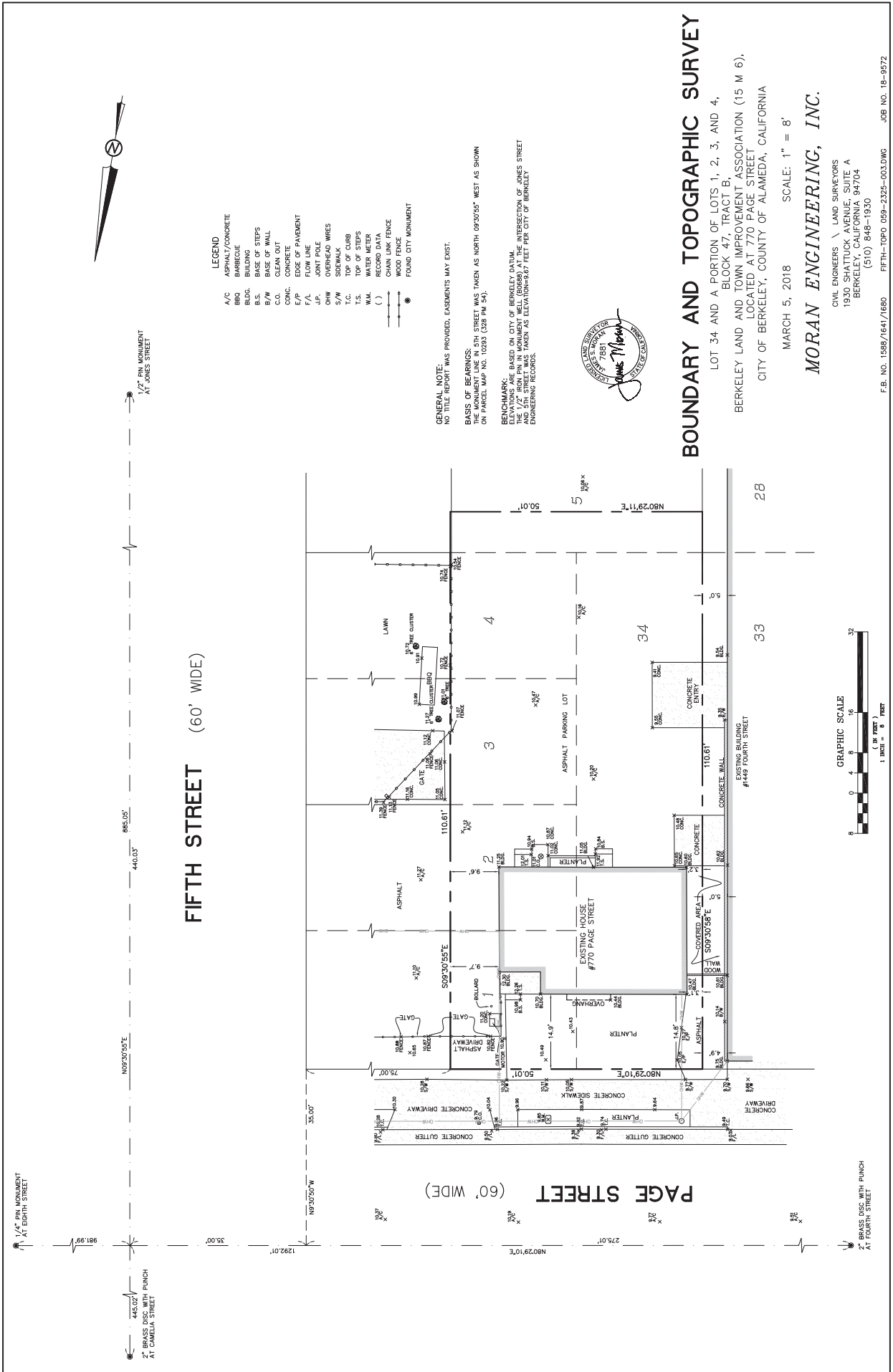












- LEGEND**
- A/C ASPHALT/CONCRETE
 - BBO BARBEQUE
 - BLDG. BUILDING
 - B.S. BASE OF STEPS
 - B/W. BASE OF WALL
 - C.O. CLEAN OUT
 - CONC. CONCRETE
 - F/P. FOUNDATION
 - F/L. FLOW LINE
 - J.P. JOINT POLE
 - OHV. OVERHEAD WIRES
 - S/W. SIDEWALK
 - T.C. TOP OF CURB
 - T.S. TOP OF STEPS
 - W.M. WATER METER
 - () UNKNOWN
 - CHAIN LINK FENCE
 - WOOD FENCE
 - FOUND CITY MONUMENT

GENERAL NOTE:
NO TITLE REPORT WAS PROVIDED. EASEMENTS MAY EXIST.

BASIS OF BEARINGS:
THE MONUMENT LINE IN 5TH STREET WAS TAKEN AS NORTH 09°30'55" WEST AS SHOWN ON PARCEL MAP NO. 10293 (206 PM 54).

BENCHMARKS:
ELEVATIONS ARE BASED ON CITY OF BERKELEY DATUM.
THE 1/2" IRON PIN IN MONUMENT WELL (86889) AT THE INTERSECTION OF JONES STREET AND 4TH STREET HAS AN ELEVATION OF 93.67 FEET PER CITY OF BERKELEY ENGINEERING RECORDS.

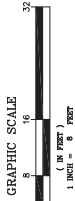


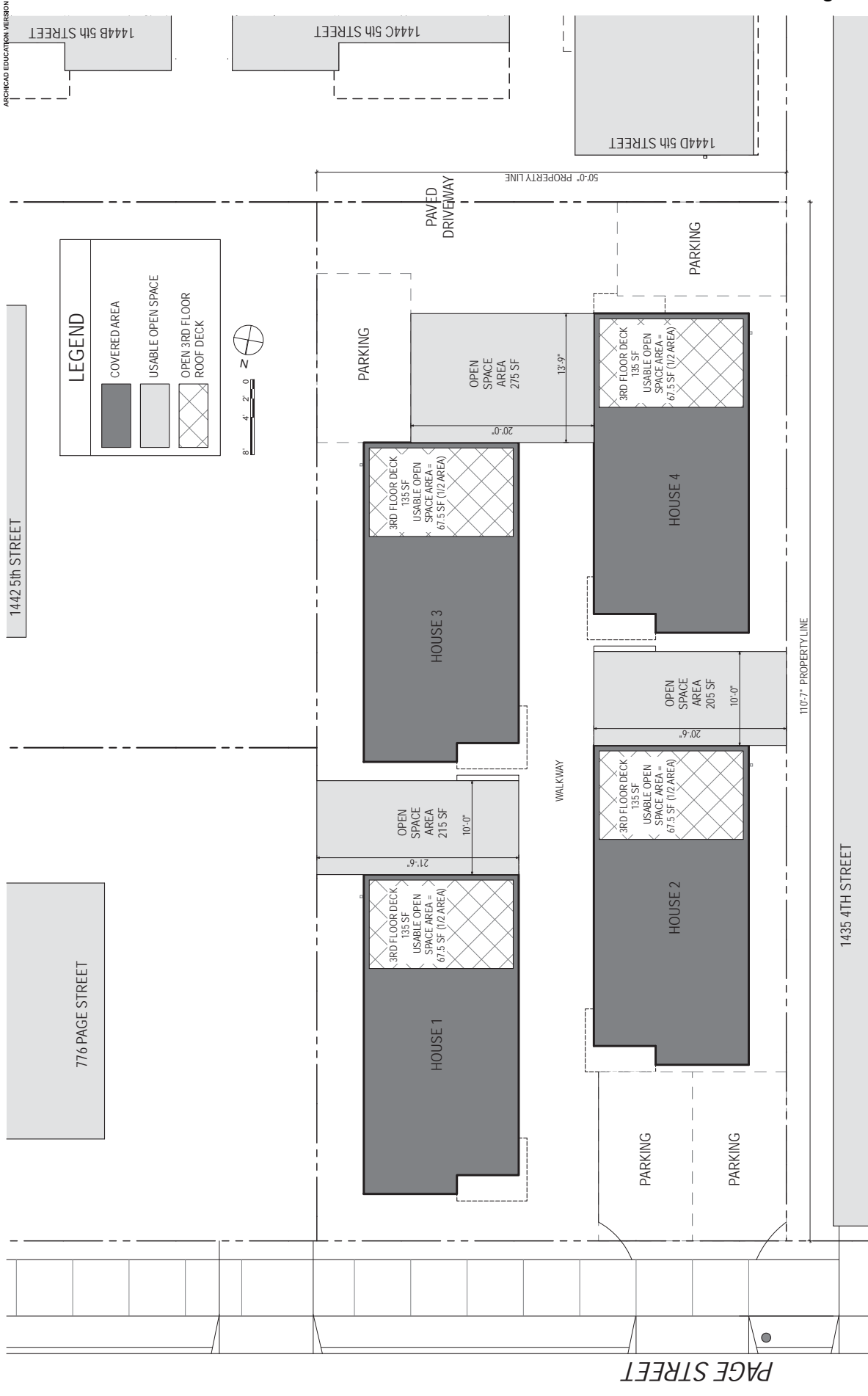
BOUNDARY AND TOPOGRAPHIC SURVEY

LOT 34 AND A PORTION OF LOTS 1, 2, 3, AND 4,
BLOCK 47, TRACT B,
BERKELEY LAND AND TOWN IMPROVEMENT ASSOCIATION (15 M 6),
LOCATED AT 770 PAGE STREET
CITY OF BERKELEY, COUNTY OF ALAMEDA, CALIFORNIA

MARCH 5, 2018 SCALE: 1" = 8'

MORAN ENGINEERING, INC.
CIVIL ENGINEERS \ LAND SURVEYORS
1930 SHATTUCK AVENUE SUITE A
BERKELEY, CALIFORNIA 94704
(510) 848-1930





ARCHICAD EDUCATION VERSION

LEGEND

- COVERED AREA
- USABLE OPEN SPACE
- OPEN 3RD FLOOR ROOF DECK



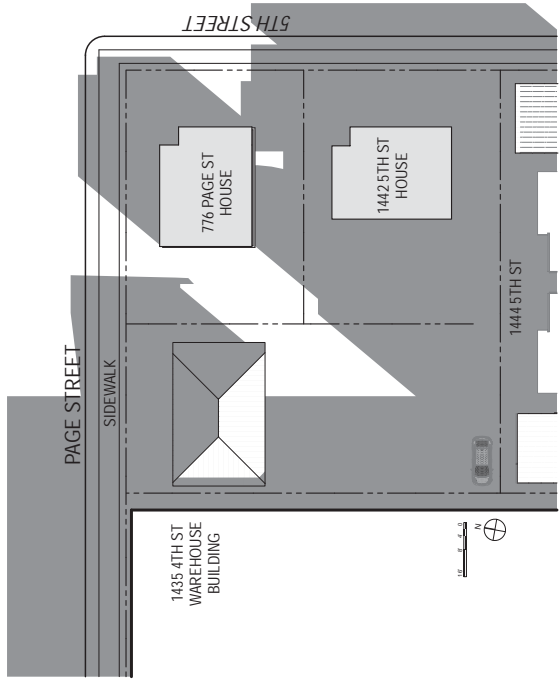
OPEN SPACE DIAGRAM

770 PAGE STREET
USE PERMIT APPLICATION

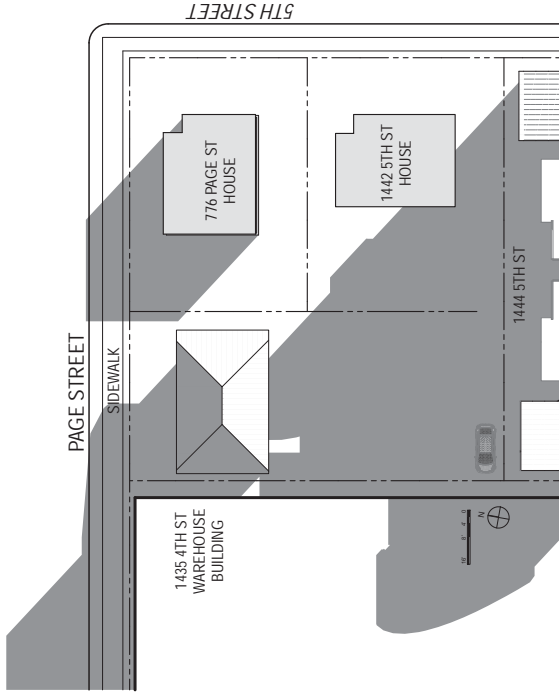
WADLUND+
Design Studio
MAY 18, 2020

PAGE STREET

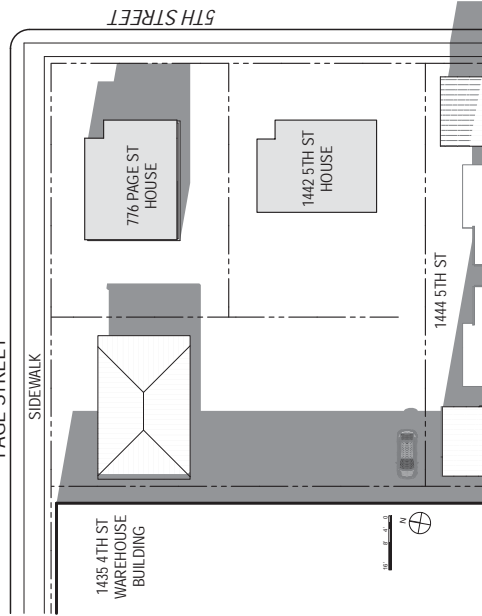
ARCHHEAD EDUCATION VERSION



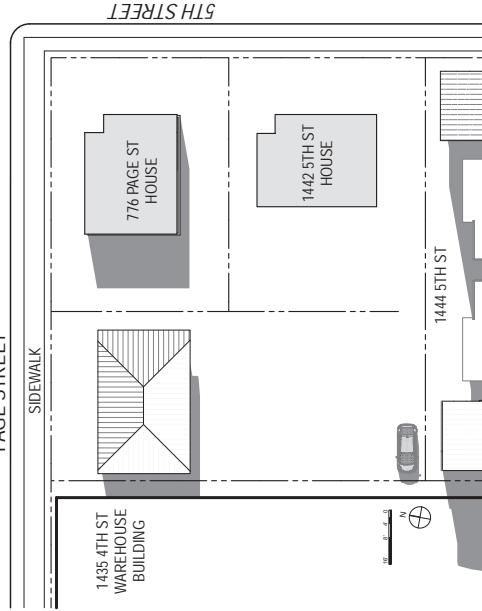
2 PROPOSED - DECEMBER 21 - 2 HOURS AFTER SUNSET
SCALE: 1/8" = 1'-0"



1 PROPOSED - DECEMBER 21 - 2 HOURS AFTER SUNRISE
SCALE: 1/8" = 1'-0"



4 PROPOSED - JUNE 21 - 2 HOURS BEFORE SUNSET
SCALE: 1/8" = 1'-0"

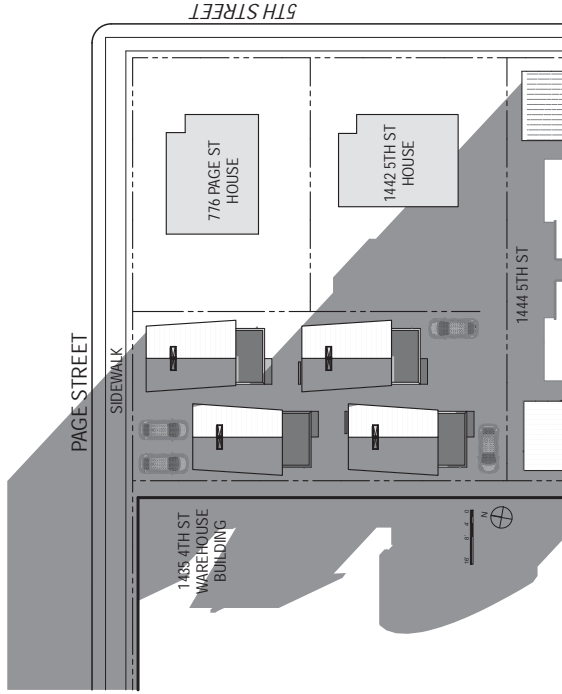


3 PROPOSED - JUNE 21 - 2 HOURS AFTER SUNRISE
SCALE: 1/8" = 1'-0"

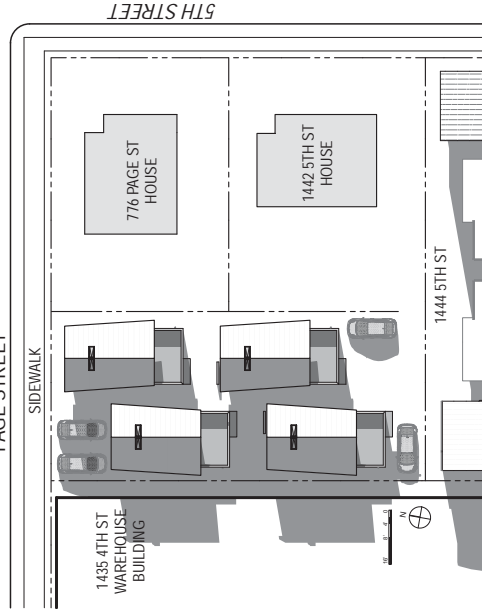
SHADOW STUDIES - EXISTING

770 PAGE STREET
USE PERMIT APPLICATION

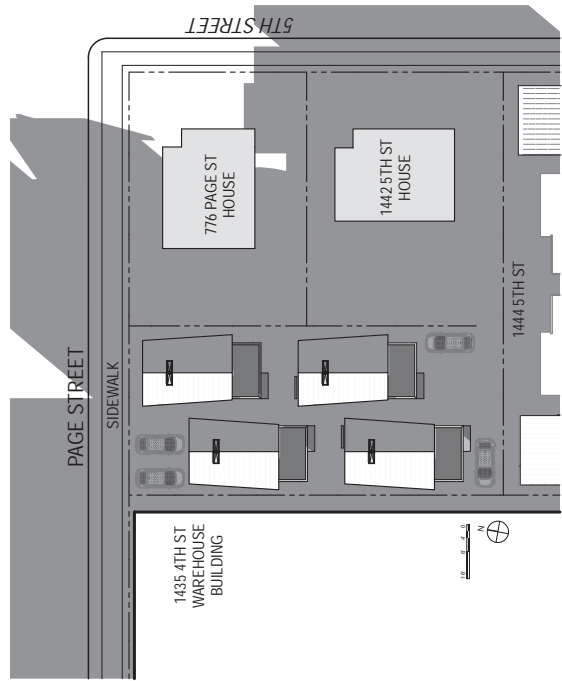
ARCHHEAD EDUCATION VERSION



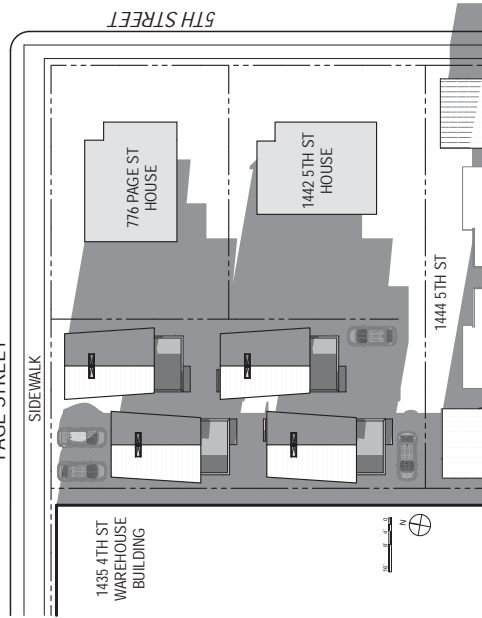
1 PROPOSED - DECEMBER 21 - 2 HOURS AFTER SUNRISE
SCALE: 1/8" = 1'-0"



3 PROPOSED - JUNE 21 - 2 HOURS AFTER SUNRISE
SCALE: 1/8" = 1'-0"



2 PROPOSED - DECEMBER 21 - 2 HOURS BEFORE SUNSET
SCALE: 1/8" = 1'-0"



4 PROPOSED - JUNE 21 - 2 HOURS BEFORE SUNSET
SCALE: 1/8" = 1'-0"

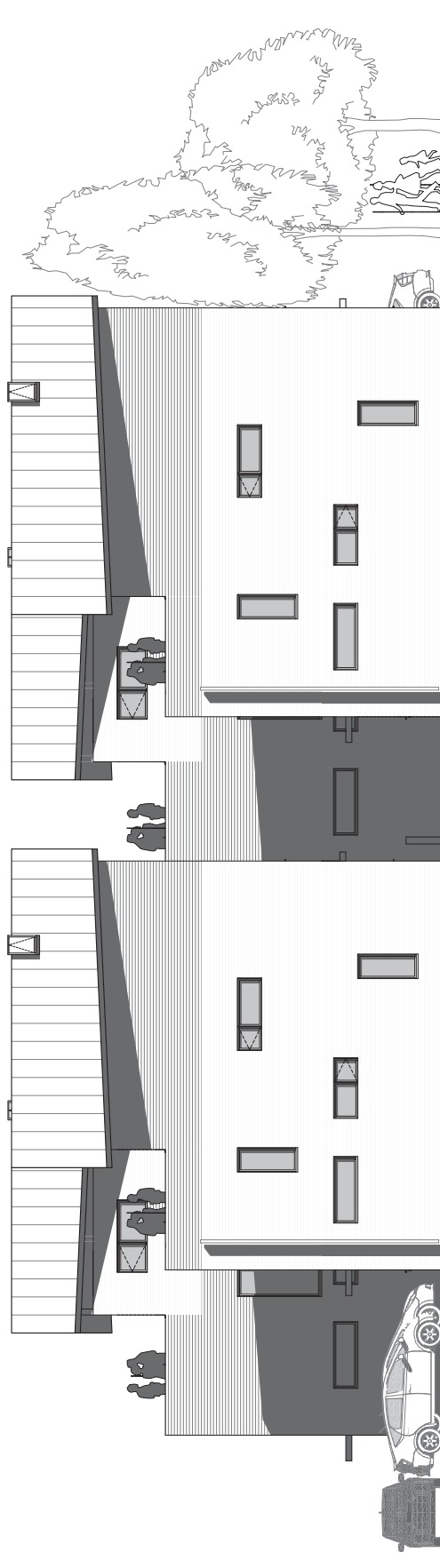
SHADOW STUDIES - PROPOSED

770 PAGE STREET
USE PERMIT APPLICATION

ARCHICAD EDUCATION VERSION



WEST ELEVATION - LOT INTERIOR



EAST ELEVATION - LOT INTERIOR



BUILDING ELEVATIONS

770 PAGE STREET

USE PERMIT APPLICATION

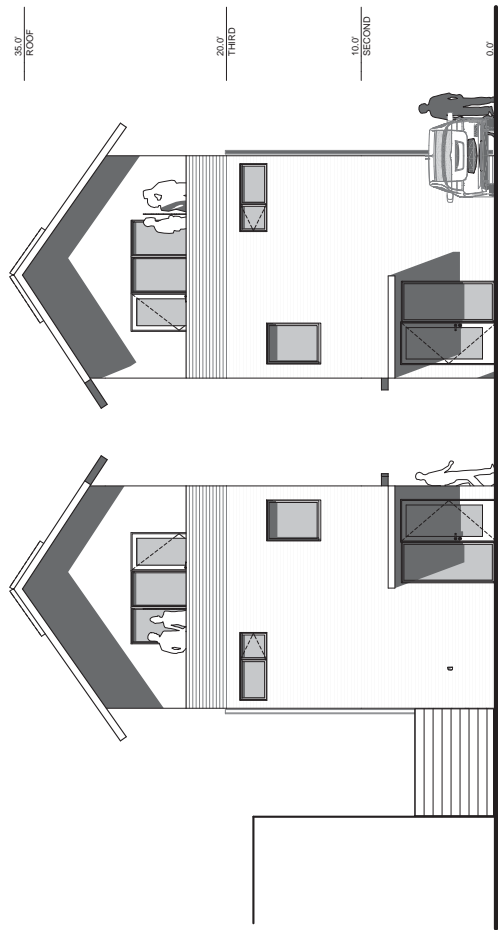
WADLUND+
Design Studio
MAY 18, 2020

ARCHICAD EDUCATION VERSION



NORTH ELEVATION
PAGE STREET

1435 4TH STREET
BUILDING



SOUTH ELEVATION
LOT INTERIOR

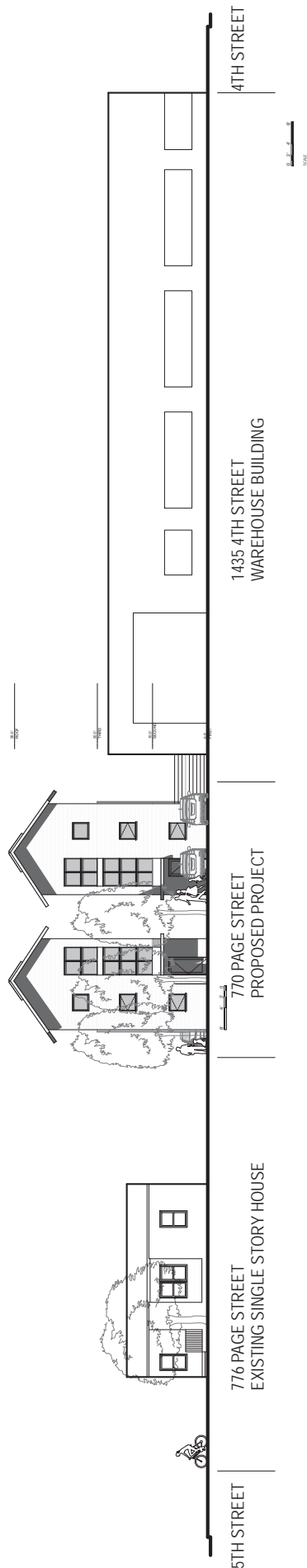
1435 4TH STREET
BUILDING

WADLUND+
Design Studio
MAY 18, 2020

770 PAGE STREET
USE PERMIT APPLICATION

BUILDING ELEVATIONS

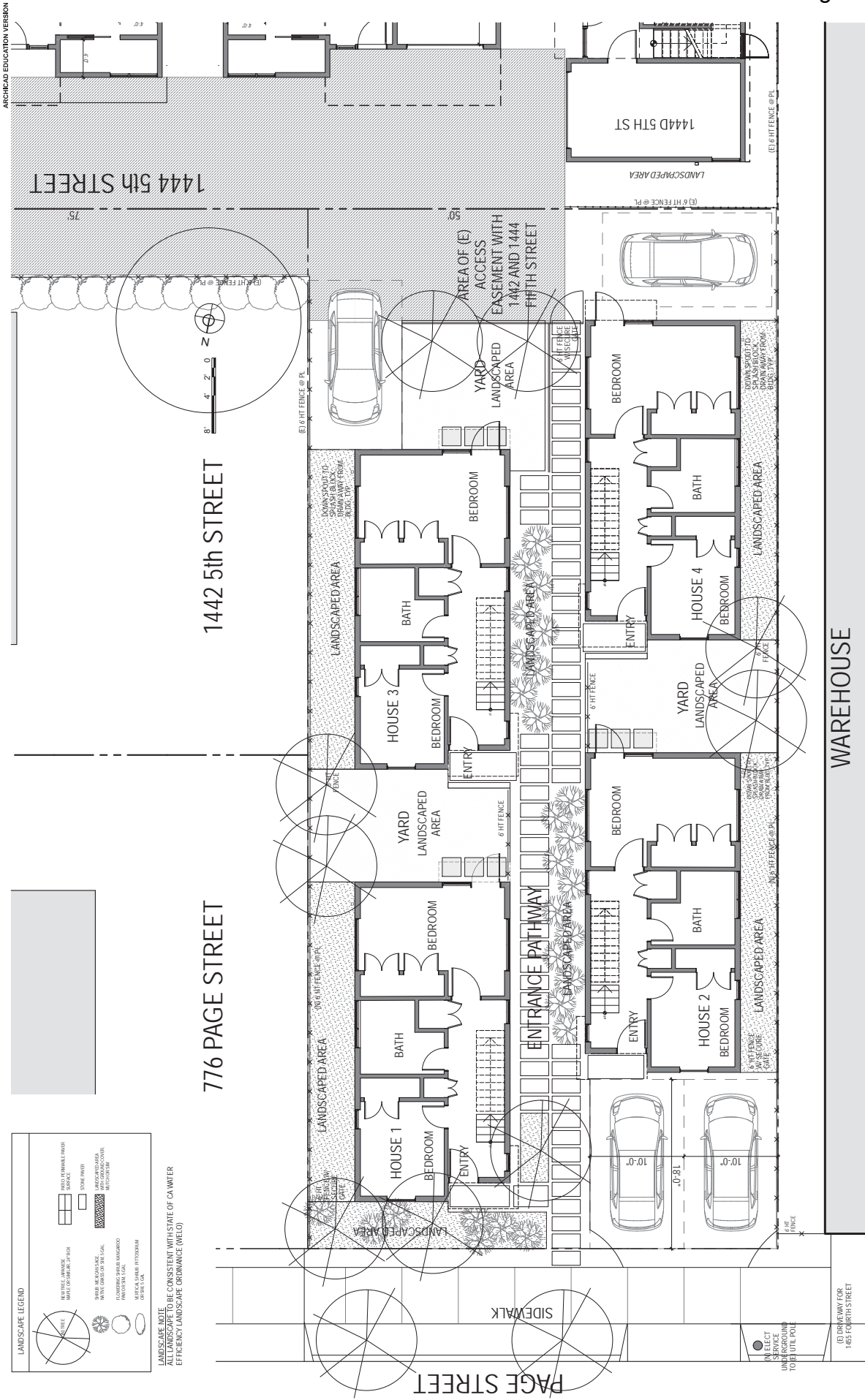
ARCHICAD EDUCATION VERSION



PAGE STREET ELEVATION

770 PAGE STREET

USE PERMIT APPLICATION



LANDSCAPE LEGEND

	6 FT FENCE @ PL
	8 FT FENCE @ PL
	12 FT FENCE @ PL
	6 FT FENCE @ PL
	8 FT FENCE @ PL
	12 FT FENCE @ PL
	6 FT FENCE @ PL
	8 FT FENCE @ PL
	12 FT FENCE @ PL
	6 FT FENCE @ PL
	8 FT FENCE @ PL
	12 FT FENCE @ PL

LANDSCAPE NOTE
ALL LANDSCAPE TO BE CONSISTENT WITH STATE OF CALIFORNIA EFFICIENT LANDSCAPE ORDINANCE (WELS)

WAREHOUSE

LANDSCAPE PLAN

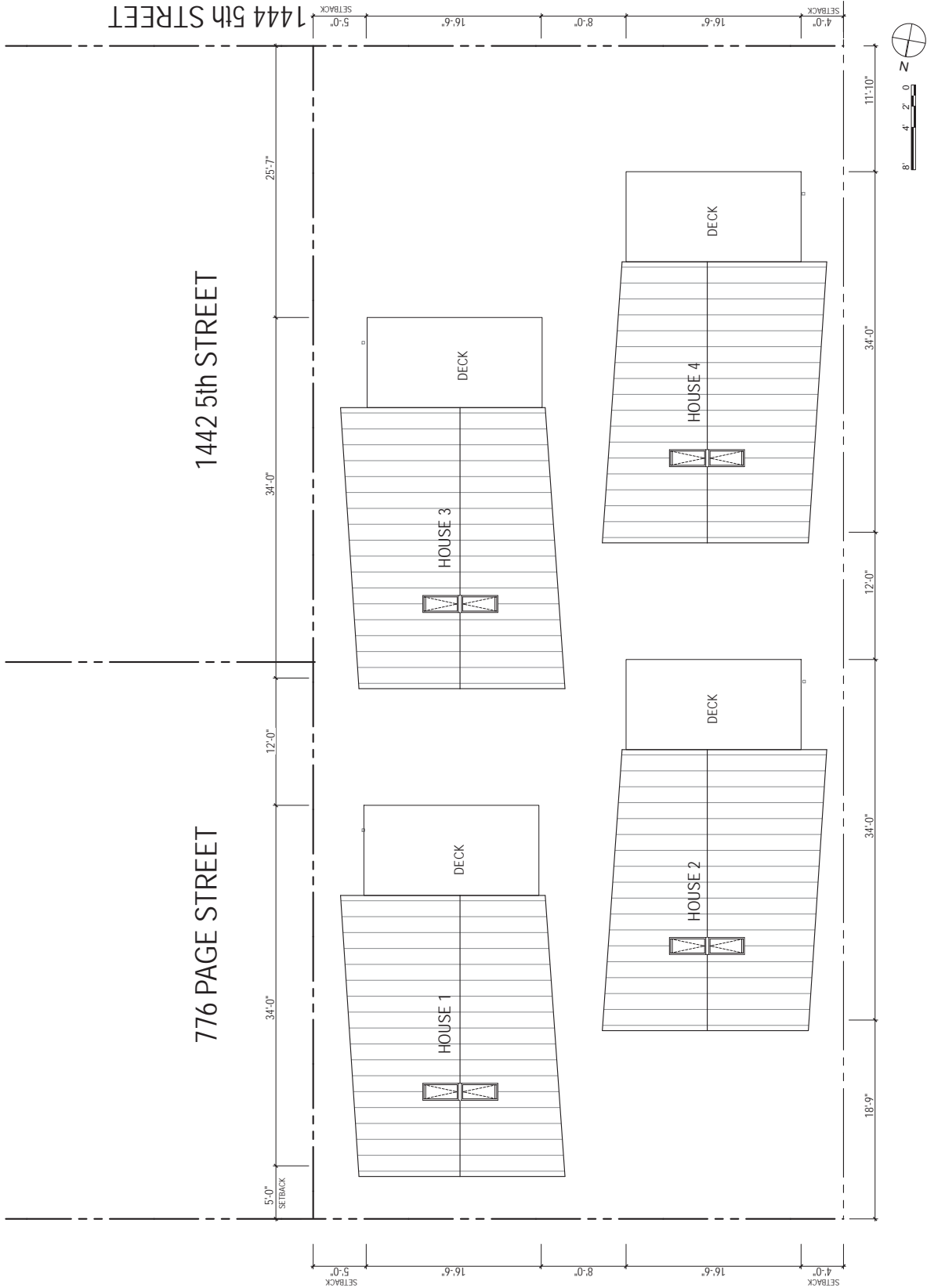
770 PAGE STREET
USE PERMIT APPLICATION

WADLUND+
Design Studio
MAY 18, 2020

(E) DRIVEWAY FOR 1465 FOURTH STREET

ARCHICAD EDUCATION VERSION

ARCHICAD EDUCATION VERSION

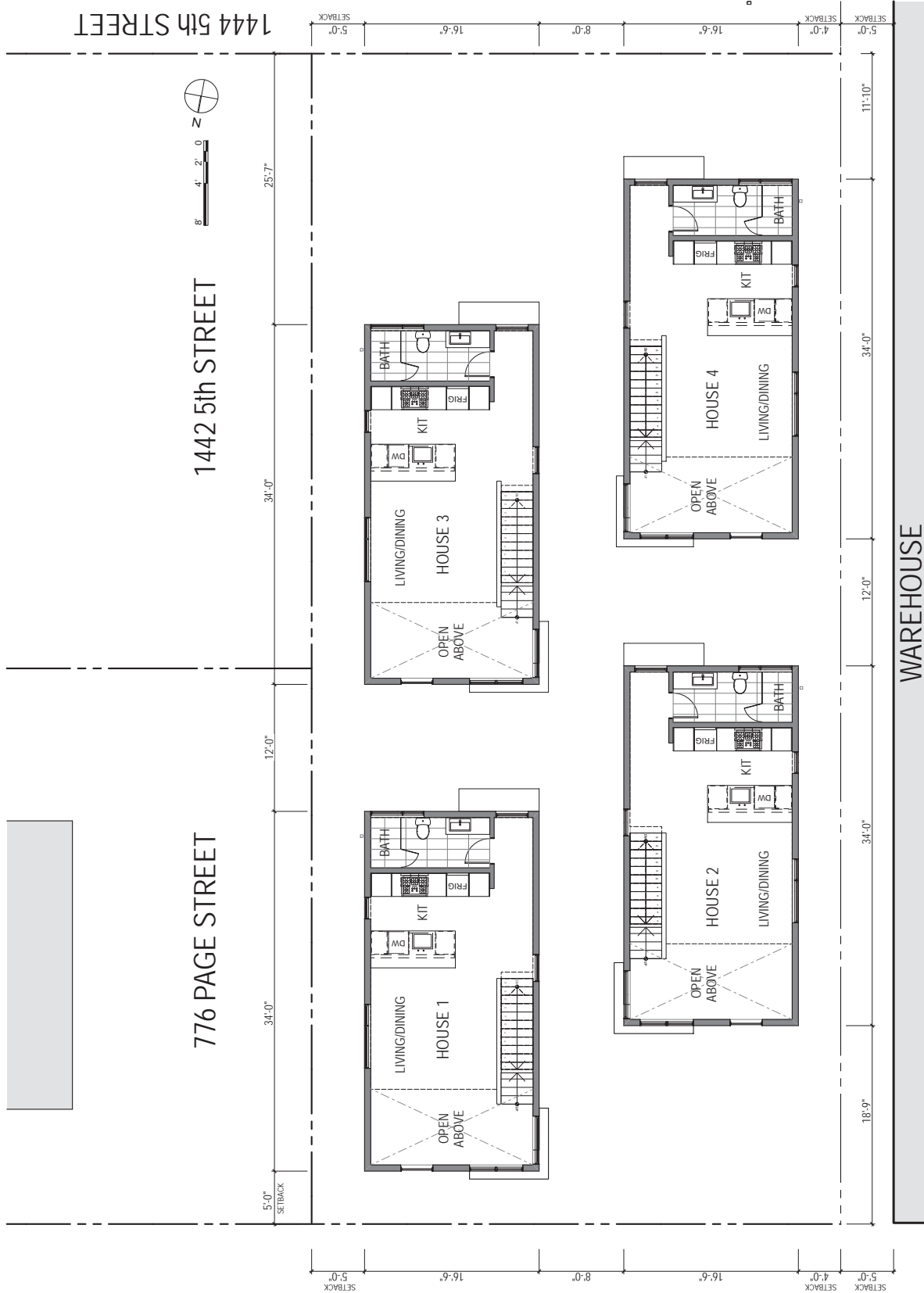


WADLUND+
Design Studio
MAY 18, 2020

770 PAGE STREET
USE PERMIT APPLICATION

ROOF PLAN

ARCHICAD EDUCATION VERSION



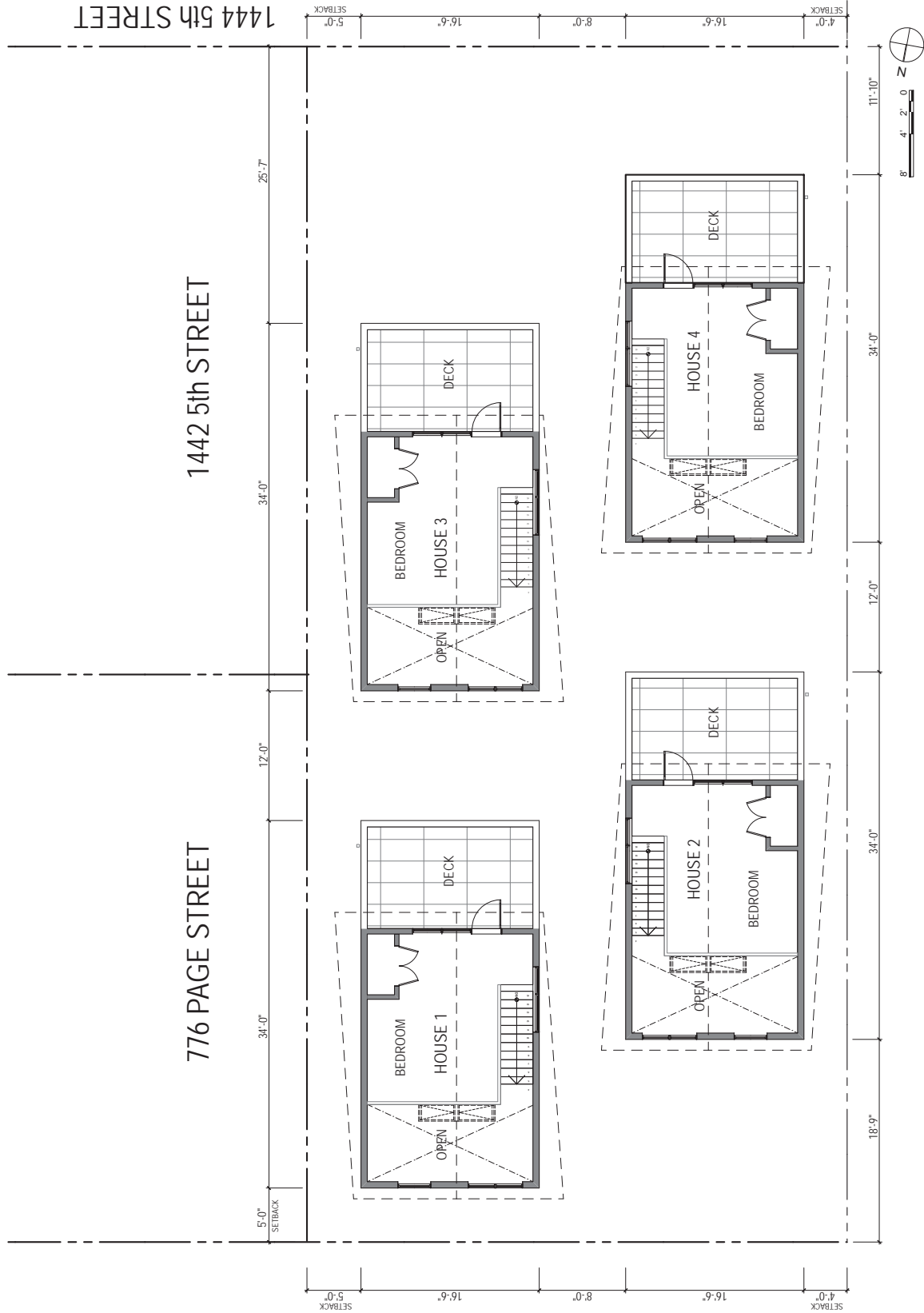
WADLUND+
Design Studio
MAY 18, 2020

770 PAGE STREET
USE PERMIT APPLICATION

WAREHOUSE

SECOND FLOOR PLAN

ARCHICAD EDUCATION VERSION

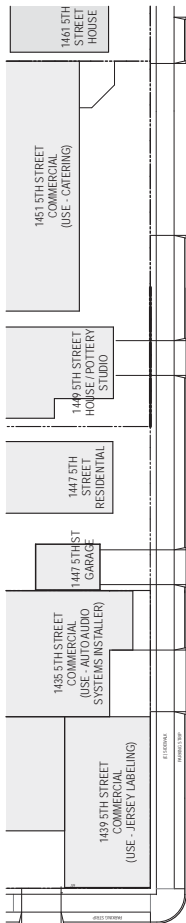


WADLUND+
Design Studio
MAY 18, 2020

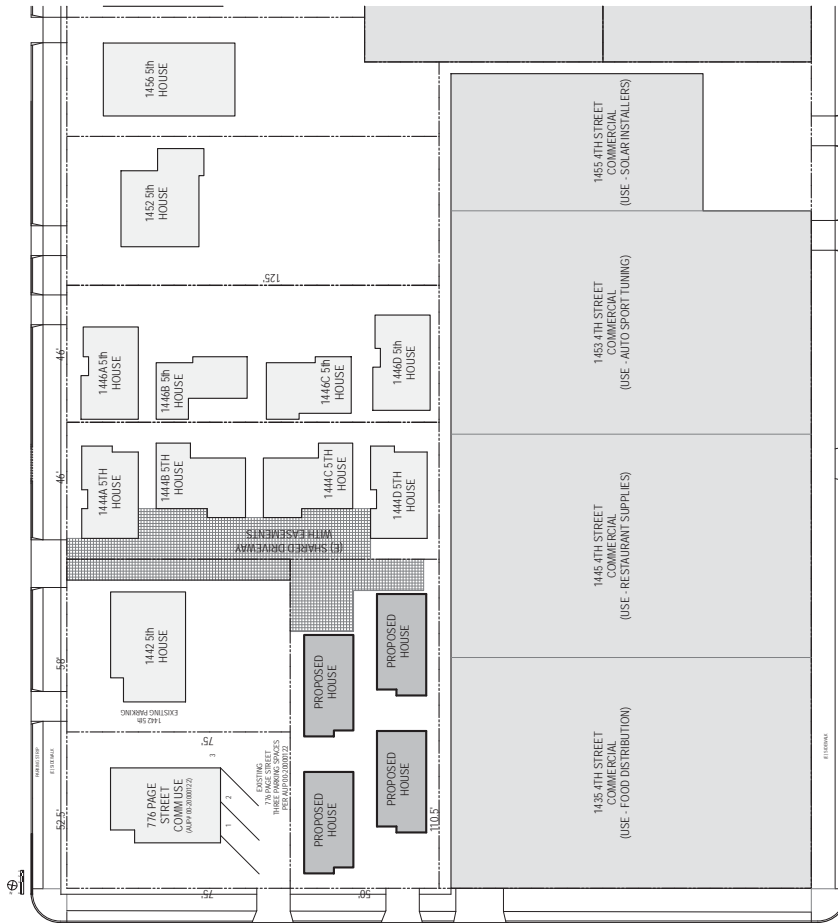
770 PAGE STREET
USE PERMIT APPLICATION

THIRD FLOOR PLAN

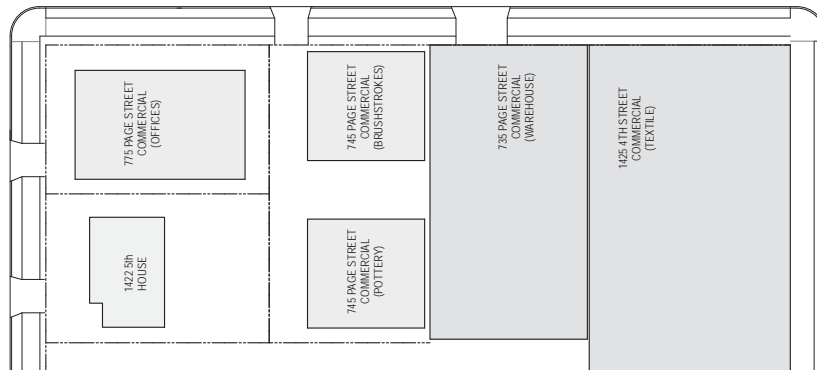
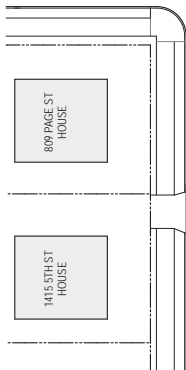
ARCHICAD EDUCATION VERSION



PAGE STREET



770 PAGE



VICINITY MAP

770 PAGE STREET
USE PERMIT APPLICATION

WADLUND+
Design Studio
MAY 18, 2020

Peters & Ross

Geotechnical & Geoenvironmental Consultants

Geotechnical Investigation for 770 Page Street Development



770 Page Street, Berkeley, California

Peters & Ross
*Geotechnical & Geoenvironmental
Consultants*

March 12, 2020
Project No. 20104.001

Mr. Matthew Wadlund
Wadlund + Design Studio
805 Jones Street
Berkeley, CA 94710

**Geotechnical Investigation
770 Page Street, Berkeley, California**

Dear Mr. Wadlund:

In accordance with your authorization, Peters & Ross has completed a geotechnical investigation for the above referenced project. The accompanying report presents the results of our field investigation, laboratory testing, and engineering analyses. Based on this information, it is Peters & Ross' opinion that the site is suitable for the proposed residential development.

Peters & Ross should also be retained:

- to review geotechnical aspects of project plans and specifications,
- to provide supplemental recommendations should significant changes in the planned improvements be made, and
- to provide geotechnical engineering observation and testing services during construction, in order to check that the recommendations presented in this report are properly implemented into the completed project.

We appreciate the opportunity to provide geotechnical engineering services to you. If you have any questions, please call.

Sincerely,



Peter K. Mundy, P.E., G.E.
Geotechnical Engineer 2217



770 Page Street Development
Project No. 20104.001

March 9, 2020
Page 1 of 11

INTRODUCTION

This report presents the results of a geotechnical investigation performed by Peters & Ross for the planned new residences to be constructed at 770 Page Street in Berkeley, California. The location of the project is shown on the Site Vicinity Map, Figure 1. The ground surface topography near the site is shown on Figure 2.

Project Description

The project site is a relatively level rectangular lot with total maximum plan dimensions of about 50 feet by 110 feet, located on the south side of Page Street. The site is currently occupied by an existing wood frame house, a parking lot, and a planter area. Plans are to demolish the existing house, parking lot and planter, and to construct a row of new three-story single-family homes.

Scope of Services

Peters & Ross services on the project were limited to the following:

- Drilling one exploratory test boring to a depth of 50 feet to assess liquefaction
- Pushing one electric piezocone penetrometer test (CPT) to 50 feet to assess liquefaction
- Logging the test boring and obtaining samples of the materials encountered
- Performing laboratory tests on selected samples
- Performing engineering analyses sufficient to develop conclusions and recommendations regarding:
 1. Site geology and seismicity including liquefaction susceptibility;
 2. Soil and groundwater conditions;
 3. The most appropriate foundation type for the new residences;
 4. Geotechnical design parameters for the recommended foundation type(s);
 5. Geotechnical aspects of site drainage; and
 6. Construction considerations.
- Preparing this report.

FIELD EXPLORATION AND LABORATORY TESTING

Subsurface conditions were explored by drilling one exploratory test boring to a depth of about 50 feet and pushing one electric piezocone penetrometer test to a depth of 48.7 feet at the locations shown on the Site Plan (Figure 3). Samples of the materials encountered in the boring were obtained at frequent depth intervals, for field classification and laboratory testing. A description of the drilling and sampling equipment used and other details of the subsurface exploration, as well as logs of the test boring and CPT, are presented in Appendix A. The laboratory tests performed are discussed in Appendix B.

770 Page Street Development
Project No. 20104.001

March 9, 2020
Page 2 of 11

SITE CONDITIONS

Geology and Seismicity

The site is located in the Coast Ranges geomorphic province of California. The Coast Ranges show strong northwest-southeast geologic trends induced by folds and faults. The site geology has been mapped by Radbruch (1957) and updated in the Seismic Hazard Zone for the Richmond Quadrangle (California Geological Survey, 2003). The geologic unit mapped at the site by Radbruch is described as the Quaternary Temescal formation, which is comprised of alluvial-fan deposits with interfingering lenses of clayey gravel, sandy silty clay, and sand-clay-silt mixtures. The CGS (2003) maps the site as having surficial soils of the Quaternary Holocene alluvial fan deposits and deeper soils of the older Quaternary Pleistocene alluvial fan deposits.

The site is located in a seismically active area of California. Several major fault systems capable of generating strong earthquake ground shaking have been identified near the site. The site is about 3.5 kilometers southwest of the active trace of the Hayward Fault. This and other regional faults are capable of generating large magnitude earthquakes that could cause strong groundshaking at the site. The site is located within an area susceptible to liquefaction as shown on the State Seismic Hazard Zones map.

Subsurface Conditions

Generally, 3 feet of sandy fat clays blanket the site. Atterberg limits tests of the fat clay materials taken at a depth of 2.5 feet in Boring 1 indicate a liquid limit of 51 percent and a plasticity index of 34 percent with 66 percent passing the No. 200 sieve. These results indicate that the sandy fat clay materials have a high expansion potential (expansive soils shrink and swell in response to changes in moisture). The fat clay materials were underlain by layers of sandy lean clays, clayey sand, and sandy lean clays with gravel materials which extended to the depths explored.

Groundwater

Groundwater was encountered at a depth of 16.5 feet and rose to 6.0 feet in one hour. Upon completion of the drilling the borehole and CPT were backfilled with grout in accordance with the City of Berkeley permit. It should be noted that groundwater levels typically fluctuate a few feet seasonally.

CONCLUSIONS AND RECOMMENDATIONS

Based on the field investigation, laboratory testing, and site observations completed during this investigation, it is Peters & Ross opinion that from a geotechnical engineering perspective the site is suitable for the planned new residences. The primary geotechnical concerns that need to be addressed are the presence of both highly expansive clay

770 Page Street Development
Project No. 20104.001

March 9, 2020
Page 3 of 11

materials and liquefiable materials. The recommendations presented subsequently should be incorporated into project plans and specifications, to reduce the likelihood of foundation problems and settlement.

1.0 Expansive Soils

The clayey soils that blanket the site have a very high expansion potential. When expansive soils are subjected to increases in moisture content, such as during the rainy season, they swell if unconfined. If concrete slabs or shallow foundations confine the expansive soils, they can exert significant pressures when subjected to moisture increases. These pressures can cause slabs and shallow foundations to heave and crack. When the soils dry, they shrink, causing slabs and shallow foundations to settle.

Expansive clays are common in the San Francisco Bay Area. Over the past several decades, expansive soil movements have caused extensive damage to residential and commercial structures, slabs, and pavements throughout the Bay Area. The local climate, with its pronounced wet and dry seasons, is a main cause of significant seasonal moisture changes that cause the expansive soils to shrink and swell.

There are a number of methods available for reducing the adverse effects of expansive soils. These include removing the expansive soils, replacing expansive soils with non-expansive engineered fill, deepening foundations to develop support below the zone of significant seasonal moisture change (about 32 to 48 inches), designing foundation/slab systems to resist uplift pressures generated by swelling soils, and/or providing drainage and landscaping to minimize seasonal moisture fluctuations in the near-surface soils. Drainage and landscaping improvements adjacent to slabs and foundations should be designed to promote efficient runoff during the rainy season and provide occasional sprinkling during the summer.

In order to minimize the adverse effects of expansive soils, the proposed improvements should be supported on a stiffened reinforced thin mat foundation system.

2.0 Seismic Hazards

Potential seismic hazards resulting from a nearby moderate to major earthquake can generally be classified as primary and secondary. The primary effect is ground rupture, also called surface faulting. The common secondary seismic hazards include ground shaking, and liquefaction. The following sections present a discussion of these hazards as they apply to the site. Based on topographic and lithologic data, the risk of landslides, tsunamis, flooding or seiches is considered low to negligible at this site.

2.1 Ground Rupture

The property is not located within an Earthquake Fault Special Study Zone. No active faults cross the site, therefore the risk of fault rupture is considered low.

770 Page Street Development
Project No. 20104.001

March 9, 2020
Page 4 of 11

2.2 Ground Shaking

An earthquake of moderate to high magnitude could cause considerable ground shaking at the site. According to OSHPD Earthquake Ground Motion Tool (2018) based on ASCE 7-16, the MCE peak ground acceleration for a CBC Site Class D (Stiff Soils) is 0.818g with a long period transition-period of 8 seconds. A site amplification factor of 1.10 was used to obtain a PGA_M of 0.90g.

2.3 Liquefaction

When a saturated, cohesionless soil liquefies, it experiences a temporary loss of shear strength created by a transient rise in excess pore pressure generated by strong ground motion. Soil susceptible to liquefaction includes loose to medium dense sand and gravel, low-plasticity silt, and some low-plasticity clay deposits. Flow failure, lateral spreading, differential settlement, loss of bearing strength, ground fissures and sand boils are evidence of excess pore pressure generation and liquefaction.

The site has been mapped within a zone of liquefaction potential on the map titled State of California Seismic Hazard Zones, Richmond Quadrangle, Official Map, prepared by the California Geological Survey (CGS), dated February 14, 2003. Special Publication 117 prepared by the California Geological Survey (2008) recommends subsurface investigation in mapped liquefaction potential areas be performed using rotary-wash borings and/or cone penetration tests.

Peters & Ross performed an evaluation of liquefaction potential on the data obtained from the exploratory test boring and CPT test. The evaluation was performed in accordance with the procedures outlined by Boulanger and Idriss dated April 2014. We used the computer software program CLiq by Geologismiki to perform a liquefaction analysis of the CPT results and LiqSVs of the SPT results.

Our liquefaction analyses indicate there are thin (less than four feet thick), discontinuous layers of silty sand and sandy silt layers below the groundwater table that are susceptible to liquefaction. We estimate total liquefaction-induced ground settlement of the underlying silty sand and sandy silt layers following a Maximum Considered Earthquake (MCE) event with PGA_M of 0.90g could be up to 0.75 inches and differential settlement could be up to 0.5 inches across a horizontal distance of 30 feet. The results of our analyses are included in Appendix C.

2.4 Lateral Spreading

Lateral spreading occurs when a continuous layer of soil liquefies at a depth and the soil layers above move toward an unsupported face, such as a shoreline slope, or in the direction of a regional slope or gradient. Since the site is level and the potentially liquefiable soil layers are not continuous, we conclude that the potential for lateral spreading to occur at the project site is low to negligible.

2.5 2019 CBC Seismic Design Parameters

To mitigate the shaking effects, all structures should be designed using sound engineering judgment and the 2019 California Building Code (CBC) requirements. In accordance with Section 1613 of the 2019 CBC, Peters & Ross classifies the site as Site Class D with a latitude of 37.876 degrees and a longitude of -122.302 degrees. The CBC parameters presented in the following table should be used for seismic design.

PERIOD (sec)	0.2	1.0
SPECTRAL RESPONSE S_s, S_1	1.947	0.745
SITE COEFFICIENT F_a, F_v (SITE CLASS D)	1.0	1.7 ¹
MAXIMUM SPECTRAL RESPONSE S_{MS}, S_{M1}	1.947	1.267 ¹
DESIGN SPECTRAL RESPONSE S_{DS}, S_{D1}	1.298	0.844 ¹

Note 1: See ASCE 7-16 Section 11.4.8

3.0 Corrosive Soils

Based on sulfate testing done at nearby sites, the native soils are classified within the negligible sulfate exposure levels. The materials placed at the finished pad grade may be different from the on-site soils. Therefore, additional samples should be collected after site grading for future corrosivity testing.

4.0 Earthwork

4.1 Clearing and Site Preparation

The site should be cleared of any foundations, flatwork, abandoned utilities, buried structures, and trees or shrubs identified for demolition on the construction plans and removed from the site. Holes resulting from the removal of any obstructions that extend below the proposed finished grade should be cleared and backfilled with suitable material compacted to the requirements given below under Compaction. We recommend that the backfilling operations for any excavations to remove deleterious material be carried out under the observation of the soil engineer, so that these excavations will be properly backfilled.

After clearing, the portions of the site containing surface vegetation or organic laden topsoil should be stripped to an appropriate depth to remove these materials. The amount of actual stripping should be determined in the field by the soil engineer at the time of construction. The cleared and stripped layer should be removed from the site or stockpiled for later use in landscaping, if desired.

4.2 Subgrade Preparation

After the site has been properly cleared and stripped and any necessary excavations made, the exposed soils to receive structural fill, slabs-on-grade or pavements should be

770 Page Street Development
Project No. 20104.001

March 9, 2020
Page 6 of 11

scarified to a depth of 6 inches, moisture conditioned to slightly above optimum water content and compacted to the requirements for structural fill.

4.3 Material for Fill

All on-site soils below the stripped layer and having an organic content of less than 3% by volume can be used as fill except where non-expansive import is required beneath the slabs. However, all fill placed at the site, including on-site soils, should not contain rocks or lumps larger than 6 inches in greatest dimension with not more than 15% larger than 2.5 inches. In addition, the required import fill should be predominantly granular with a plasticity index of 12 or less.

4.4 Compaction

All structural fill less than 5 feet thick should be compacted to at least 90% relative compaction as determined by ASTM Test Designation D 1557, except for the upper 6 inches of subgrade soils under pavements which should be compacted to at least 95% relative compaction. Structural fill or wall backfill greater than 5 feet high should be compacted to at least 95% relative compaction. Fill material should be spread and compacted in lifts not exceeding 8 inches in uncompacted thickness. We should note that if construction proceeds during or immediately after the wet winter months, it may require time to dry the on-site soils to be used as fill since their moisture content will probably be appreciably above optimum.

4.5 Trench Backfill

Pipeline trenches should be backfilled with fill placed in lifts not exceeding 8 inches in uncompacted thickness. The following table presents our recommendations for compaction requirements.

Condition	Trench Depth	Compaction Requirements*	
		Native Soils	Granular Import
Non-Improved Area	Any Depth	85%	90%
Improved Area	Less than 5 feet	Upper 3 feet 90% Lower 2 feet 85%	Entire backfill 90%
	5 feet or greater but less than 8 feet	Entire backfill 90%	Entire backfill 95%
	8 feet or greater	Entire backfill 95%	Entire backfill 95%

* Assumes a reasonable "cushion" layer around the pipe.

770 Page Street Development
Project No. 20104.001

March 9, 2020
Page 7 of 11

If imported granular soil is used, sufficient water should be added during the trench backfilling operations to prevent the soil from "bulking" during compaction. In all of the cases outlined above, we recommend that the upper 6 inches of subgrade under pavement and baserock be compacted to at least 95% relative compaction. All compaction operations should be performed by mechanical means only. We recommend against jetting unless the backfill material is granular (sand or gravel) and the water used in jetting is able to rapidly flow out of the trench.

If granular backfill is used for utility trenches, we recommend that an impermeable plug or mastic sealant be used where utilities enter the building to minimize the potential for free water or moisture to enter below the building. Finally, because of the potential for catastrophic collapse of trench walls we recommend that the contractor carefully evaluate the stability of all trenches and use temporary shoring where appropriate. The design and installation of the temporary shoring should be wholly the responsibility of the contractor. In addition, all state and local regulations governing safety around such excavations should be carefully followed.

4.6 Drainage

Positive surface drainage should be provided adjacent to the new residences to direct surface water away from the foundations into closed pipes that discharge to Page Street. Flexible drain pipe (flexline), 2000-pound crush pipe, leachfield, and ASTM F810 pipe are not recommended for use in the surface water drainage system because of the likelihood of damage to the pipe during installation due to the weak strength of these pipes. In addition, these drainpipes are sometimes difficult to clean with mechanical equipment without damaging the pipe. We recommend the use of Schedule 40 PVC, SDR 35 PVC or ABS, Contech A-2000 PVC drainpipe, or equivalent for the drain system. Ponding of surface water should not be allowed in any areas adjacent to site improvements.

We also recommend that rainwater collected from the roofs of the houses and in landscaped areas be transported through gutters, downspouts, and closed pipes that lead to suitable discharge facilities designed in accordance with the project landscape architect or civil engineer. We should note that suitable discharge facilities do not include so called "dry wells" and these should be avoided.

Some nominal maintenance of the drainage facilities should be expected after the initial construction has been completed. Should ownership of these residences change hands, the new owners should be informed of the existence of this report, not adversely change the grading or drainage facilities, and understand the importance of maintaining proper surface drainage.

770 Page Street Development
Project No. 20104.001

March 9, 2020
Page 8 of 11

5.0 Foundations

The site is blanketed by highly expansive soils underlain by moderately compressible alluvium. If the proposed new residences are supported on a shallow foundation system, settlement will occur due to compression of the underlying alluvium under static foundation loads. In addition, the shallow foundation system may also experience liquefaction-induced total and differential settlements, as discussed in Section 2.3. Based on our experience, we judge that the anticipated compression and settlement will exceed the typical tolerance of a conventional spread footing foundation system. Therefore Peters & Ross recommends that the proposed new residences be supported on a stiffened reinforced thin mat foundation system, or a mat foundation.

5.1 Stiffened Reinforced Thin Mat Foundation

Peters & Ross recommends that the planned new residences be supported on a stiffened reinforced thin mat foundation system. The mat foundation should have a minimum thickness of 5 inches and should be designed in accordance with the 2019 California Building Code Section 1808.6.2. The mat should be reinforced with steel reinforcing bars rather than welded wire mesh. At a minimum, slab reinforcement should consist of No. 4 bars on 12-inch centers in both directions, placed at the center of the slab thickness. Spacers should be placed beneath the mesh of reinforcing bars, to maintain their positioning near the center of the slab during the concrete pour.

The mat should be provided with exterior and interior stiffening beams with maximum spacing of 14 feet. The beams should have a minimum width of 12-inches and should extend a minimum of 36-inches below top of slab. In addition, the stiffening beams should be designed to span an unsupported distance of 10 feet and cantilever 5 feet at the corners. The subgrade material under the mat foundation should be uniform. The upper 12 inches of the pad subgrade should be scarified and moisture conditioned to a moisture content at least 5 percentage points above optimum (ASTM D-1557). The subgrade should be kept moist until the slab is poured. At least 6 inches of clean, crushed rock should be placed over the prepared subgrade, to provide a capillary moisture break.

If the migration of moisture vapor through the slab is undesirable, a vapor barrier blanketed with 2 inches of clean sand should be placed over the gravel. We also recommend that the specifications for the mat require that moisture emission tests be performed on the mat prior to the installation of the flooring. No flooring should be installed until safe moisture emission levels are recorded for the type of flooring to be used.

Due to the possibility of localized differential movements around the new foundation, flexible utility connections should be installed to reduce the likelihood of any utility pipes shearing off over the years or during severe movements. We anticipate that the mat foundation will generally perform well during a major earthquake but may need some releveling after the event.

770 Page Street Development
Project No. 20104.001

March 9, 2020
Page 9 of 11

5.2 Mat Foundation

Alternatively, in order to minimize the adverse effects of expansive and liquefiable soils, the proposed new residences could be supported on a well-reinforced concrete mat foundation. The mat can be designed for an allowable bearing capacity of 1500 pounds per square foot for dead plus live loads. This allowable bearing pressure is a net value; therefore, the weight of the mat can be neglected for design purposes. The mat should be designed so that the mat foundation system moves as a unit. The mat should be reinforced with top and bottom steel in both directions to allow the foundation to span local irregularities, on the order of 10 feet in diameter, that may result from potential differential settlements. The corners of the mat should be designed as a 5-foot cantilever.

Peters & Ross used the computer program CPeT-IT to estimate primary consolidation settlement of the mat. We anticipate a total static settlement of 0.75 inches with a differential settlement of 0.25 inches in 30 feet. The seismic settlement would be added to the static values for a total of up to 1.5 inches of settlement with 0.75 inches of differential settlement in 30 feet. Therefore, Peters & Ross recommends that the concrete mat be reinforced to withstand distortions on the order of 0.0025L.

Lateral loads on the structure may be resisted by passive pressures acting against the sides of the mat. We recommend an allowable passive pressure equal to an equivalent fluid weighing 300 pounds per cubic foot per foot of depth. Alternatively, an allowable friction coefficient of 0.25 can be used between the bottom of the mat and the subgrade soils. If the perimeter of the mat is poured neat against the soils, the passive pressure and friction coefficient may be used in combination.

To evaluate pressure distribution beneath the mat foundation, we recommend a modulus of subgrade reaction (K_s) of 50 kips per cubic foot (kcf). This value has been corrected to take into account the mat width and may be increased by 1/3 for total load considerations. Once the structural engineer estimates the distribution of bearing stress on the bottom of the mat, we should review the distribution and revise the modulus of subgrade reaction, if appropriate.

In areas where floor wetness would be undesirable, either 4 inches of free draining gravel or a properly designed waterproofing membrane can be used. Peters & Ross recommends that an allowable friction coefficient of 0.25 be used between the waterproofing membrane and the subgrade soils. Four inches of gravel should be placed beneath the mat to serve as a capillary barrier between the subgrade soil and the mat. In order to minimize vapor transmission through the gravel, a 10 mil visqueen should be placed over the gravel. The visqueen should be covered with 2 inches of sand to protect it during construction of the mat. The sand should be lightly moistened just prior to placing the concrete. We also recommend that the specifications for the mat require that moisture emission tests be performed on the mat prior to the installation of the flooring. No flooring should be installed until safe moisture emission levels are recorded for the type of flooring to be used.

770 Page Street Development
Project No. 20104.001

March 9, 2020
Page 10 of 11

Due to the possibility of localized differential movements around the new foundation, flexible utility connections should be installed to reduce the likelihood of any utility pipes shearing off over the years or during severe movements. We anticipate that the mat foundation will generally perform well during a major earthquake but may need some releveling after the event.

6.0 Exterior Slabs-on-Grade

We recommend that any slabs-on-grade be supported on a minimum of 9 inches of imported, compacted, non-expansive fill. The subgrade should be recompacted to at least 90 percent relative compaction at a moisture content of 5 percent above optimum. The subgrade should be kept moist until the slab is poured. In any slab area where minor floor wetness would be undesirable, at least 4 inches of $\frac{3}{4}$ inch gravel should be placed over the prepared subgrade, to provide a capillary moisture break. A 10-mil thick vapor barrier blanketed with 2 inches of clean sand should be placed over the gravel. This can be used in lieu of the upper 6 inches of the non-expansive fill.

The slab should have a minimum thickness of 4-inches and should be reinforced with steel reinforcing bars rather than welded wire mesh. At a minimum, slab reinforcement should consist of No. 4 bars on 18-inch centers in both directions, placed at the center of the slab thickness. Spacers should be placed beneath the mesh of reinforcing bars, to maintain their positioning near the center of the slab during the concrete pour. Score joints should be provided at a maximum spacing of 10 feet in both directions. The slabs should be appropriately reinforced according to structural requirements; concentrated loads may require additional reinforcing.

Exterior slabs should be structurally independent from the mat foundations and be free floating.

7.0 Plan Review and Geotechnical Engineering Services during Construction

Peters & Ross should review project plans, to check that the geotechnical engineering recommendations contained in this report are properly incorporated.

Peters & Ross should provide geotechnical observation and testing services on an as-needed basis during construction, to check that geotechnical aspects of the work are completed in accordance with the plans. These services should include observing site grading and foundation excavations, testing the compaction of fill, and checking surface drainage. In addition, Peters & Ross should provide consultation regarding geotechnical concerns that arise during construction. Peters & Ross cannot accept responsibility for geotechnical aspects of construction that are not observed by its staff.

We will make every reasonable effort to accommodate the contractor's work schedule during construction, so that necessary observations and tests can be performed in a timely manner to avoid construction delays. However, since our field services are often required

770 Page Street Development
Project No. 20104.001

March 9, 2020
Page 11 of 11

on several projects concurrently, we request that 48 hours advance notice be given for site visits, in order to minimize scheduling conflicts.

LIMITATIONS

Peters & Ross services consist of professional opinions and recommendations that are made in accordance with generally accepted geotechnical engineering principles and practices. The opinions and recommendations presented in this report are based on a site reconnaissance, one exploratory test boring and one CPT, laboratory testing, and engineering analyses including a liquefaction assessment. This warranty is in lieu of all other warranties either expressed or implied.

Subsurface conditions commonly vary significantly from those encountered at the test boring location. Unanticipated, adverse soil conditions encountered during construction often require additional expenditures to achieve a properly constructed project. It is advised that a contingency fund be established to accommodate possible consulting and construction cost increases due to unanticipated conditions.

LIST OF FIGURES

Figure 1	Site Vicinity Map
Figure 2	Site Topography
Figure 3	Site Plan

APPENDICES

Appendix A	Field Investigation
Appendix B	Laboratory Testing
Appendix C	Liquefaction Analysis

DISTRIBUTION

5 copies:	Mr. Matthew Wadlund Wadlund Design Studio 805 Jones Street Berkeley, CA 94710
-----------	--



Figure 1 - Site Vicinity Map

770 Page Development
770 Page Street
Berkeley, California

PROJECT No.	20104.001
DATE	March 2020

114 Hopeco Road
Pleasant Hill, CA 94523
tel. (925) 942-3629
fax. (925) 665-1700
PetersRoss@aol.com

Peters & Ross
Geotechnical and
Geoenvironmental Consultants

©2008 Rand McNally & Company

TOPO! map printed on 03/11/20 from "California.tpo" and "Untitled.tpg"
122°19.000' W WGS84 122°18.000' W

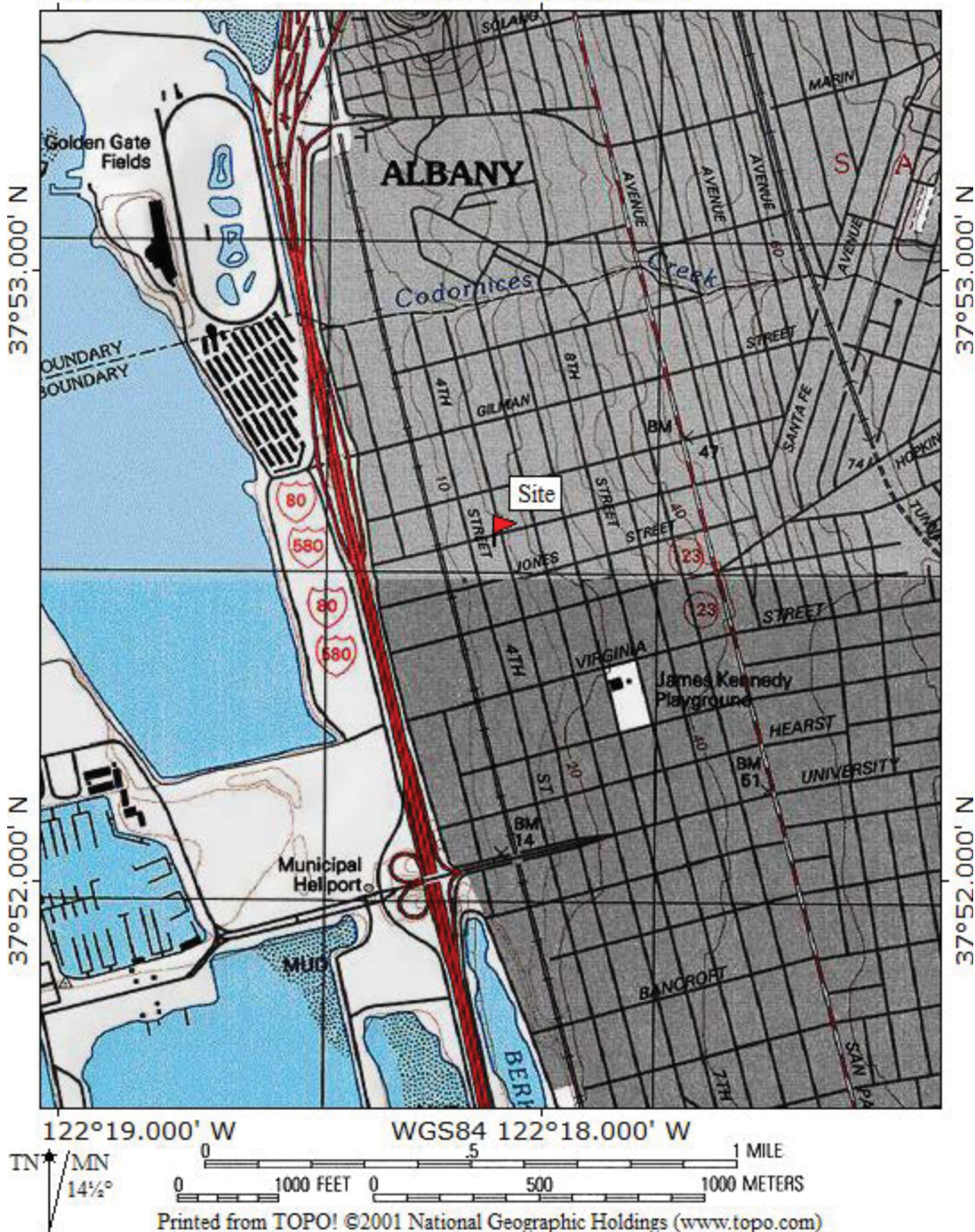


Figure 2 - Site Topography

Peters & Ross
Geotechnical and
Geoenvironmental Consultants

114 Hopeco Road
Pleasant Hill, CA 94523
tel. (925) 942-3629
fax. (925) 665-1700
PetersRoss@aol.com

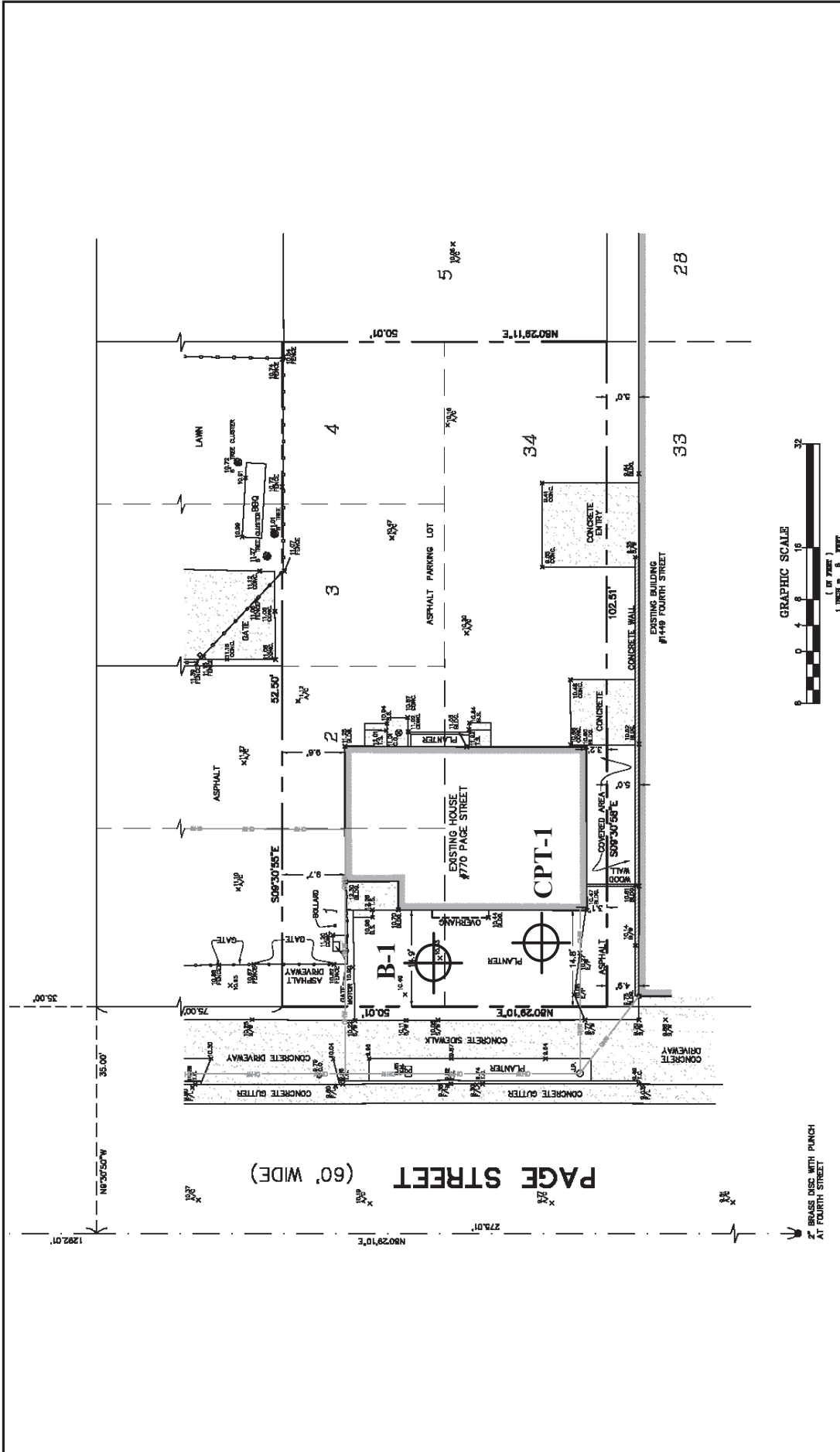
PROJECT No.

20104.001

DATE

March 2020

770 Page Development
770 Page Street
Berkeley, California



EXPLANATION: B-1 Approximate Location of Exploratory Test Borings

Figure 3 - Site Plan

114 Hopeco Road
Pleasant Hill, CA 94523
tel. (925) 942-3629
fax. (925) 665-1700
PetersRoss@aol.com

Peters & Ross
Geotechnical and
Geoenvironmental Consultants

PROJECT No.	770 Page Development 770 Page Street Berkeley, California
DATE	March 2020

APPENDIX A – FIELD INVESTIGATION

Peters & Ross explored subsurface conditions at the site by drilling one exploratory test boring and one electric piezocone penetrometer test (CPT) to a maximum depth of 50 feet. The locations of the test borings are shown on the Site Plan.

The boring was drilled with a portable, 3.5-inch diameter, hydraulic auger drill rig and the CPT was pushed with a 10-ton portable hydraulic rig. Both the drill and CPT rigs were operated by Benevent Building of Concord, California. Our field engineer continuously logged the materials encountered. The boring log and CPT that show the materials encountered are included in this Appendix. Soils are classified in accordance with the Unified Soil Classification System.

The boring and CPT logs indicate Peters & Ross interpretations of subsurface conditions encountered at the locations and times the borings were drilled, and may not be representative of subsurface conditions at other locations and times. Stratification lines represent the approximate boundaries between soil and rock types. The transitions between soil and rock layers are often gradual.

Samples of the materials encountered were obtained at frequent depth intervals, for visual classification and laboratory testing. Samples were obtained using a Standard Penetration Test sampler (outer diameter of 2.0 inches, inner diameter of 1.375 inches). The samplers were driven with a 140 pound safety hammer lifted and dropped 30 inches using a rope and cathead system.

BOREHOLE B-1

Peters & Ross Geotechnical Services

114 Hopeco Road, Pleasant Hill, CA 94523
925-942-3629 PetersRoss@aol.com

Project Name: 770 Page St Development

Project No.: 20104.001

Location: 770 Page St, Berkeley, CA

Client: Matt Wadlund




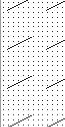
Drilling Method: Portable Hydraulic

Date Drilled: 2/4/2020

Elevation: 0

Water Level: Equilibrated at 6 feet

Remarks: Samplers driven with a 140 lb. safety hammer lifted and dropped 30 inches using a rope and cathead system.

DESCRIPTION	SYMBOL	DEPTH (ft)	SAMPLE TYPE	BLOWS/FT.	MOISTURE (%)	DRY DENSITY (pcf)	UNCONFINED STRENGTH (tsf)	REMARKS
Ground Surface		0						
Sandy FAT CLAY (CH) black, moist, medium stiff, medium plasticity, few mm-sized pebbles		1						
		2	SS	9	22			LL=51%; PI=34% -200 = 66 percent
CLAY with Sand (CL) dark greenish gray, (moist, medium stiff, medium plasticity, few mm-sized sedimentary pebbles		3						
		4	SS	13	23			
Sandy CLAY (CL) yellowish brown, moist, stiff, medium to high plasticity, faint blocky texture, some pebbles of diverse composition, varying amounts of sand, silt, and clay. Weathered alluvium.		5						
		6	SS	17	20			
		7						
		8						
		9	SS	17	24			
		10						
		11						
		12						
		13						
		14	SS	15	25			
		15						
		16						
Clayey SAND with Gravel (SP) mottled yellowish brown and reddish brown, saturated, clay-rich, fine to medium sand, dense, very firm, many subrounded pebbles of diverse composition		17						
		18						
		19	SS	37	22			-200 = 31 percent
		20						

BOREHOLE B-1

Peters & Ross Geotechnical Services

114 Hopeco Road, Pleasant Hill, CA 94523
925-942-3629 PetersRoss@aol.com

Project Name: 770 Page St Development

Project No.: 20104.001

Location: 770 Page St, Berkeley, CA

Client: Matt Wadlund

Drilling Method: Portable Hydraulic

Date Drilled: 2/4/2020

Elevation: 0

Water Level: Equilibrated at 6 feet

Remarks: Samplers driven with a 140 lb. safety hammer lifted and dropped 30 inches using a rope and cathead system.

DESCRIPTION	SYMBOL	DEPTH (ft)	SAMPLE TYPE	BLOWS/FT.	MOISTURE (%)	DRY DENSITY (pcf)	UNCONFINED STRENGTH (tsf)	REMARKS
		21						
Sandy CLAY (CL) yellowish brown, saturated, medium stiff, medium to high plasticity, trace pebbles		22						
		23						
		24	SS	27	29			-200 = 51 percent
		25						
		26						
		27						
		28						
		29	SS	11	33			LL=36%; PI=18% -200 = 62 percent
		30						
		31						
CLAY with Sand (CL) yellowish brown, saturated, medium stiff, medium to high plasticity, few pebbles		33						
		34	SS	21	34			-200 = 76 percent
		35						
		36						
		37						
		38						
		39	SS	13	32			LL=34%; PI=15% -200 = 75 percent
		40						

BOREHOLE B-1

Peters & Ross Geotechnical Services

114 Hopeco Road, Pleasant Hill, CA 94523
925-942-3629 PetersRoss@aol.com

Project Name: 770 Page St Development

Project No.: 20104.001

Location: 770 Page St, Berkeley, CA

Client: Matt Wadlund

Drilling Method: Portable Hydraulic

Date Drilled: 2/4/2020

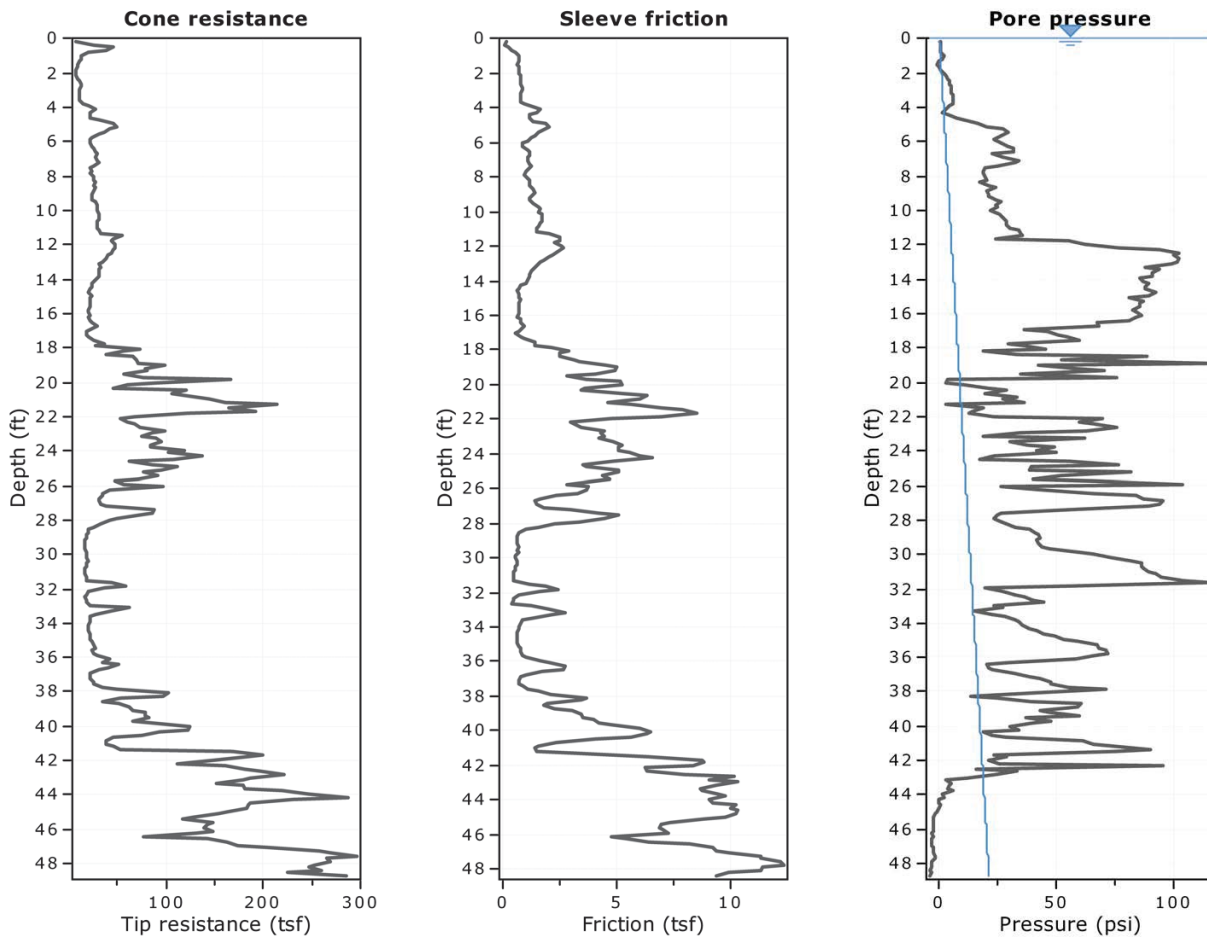
Elevation: 0

Water Level: Equilibrated at 6 feet

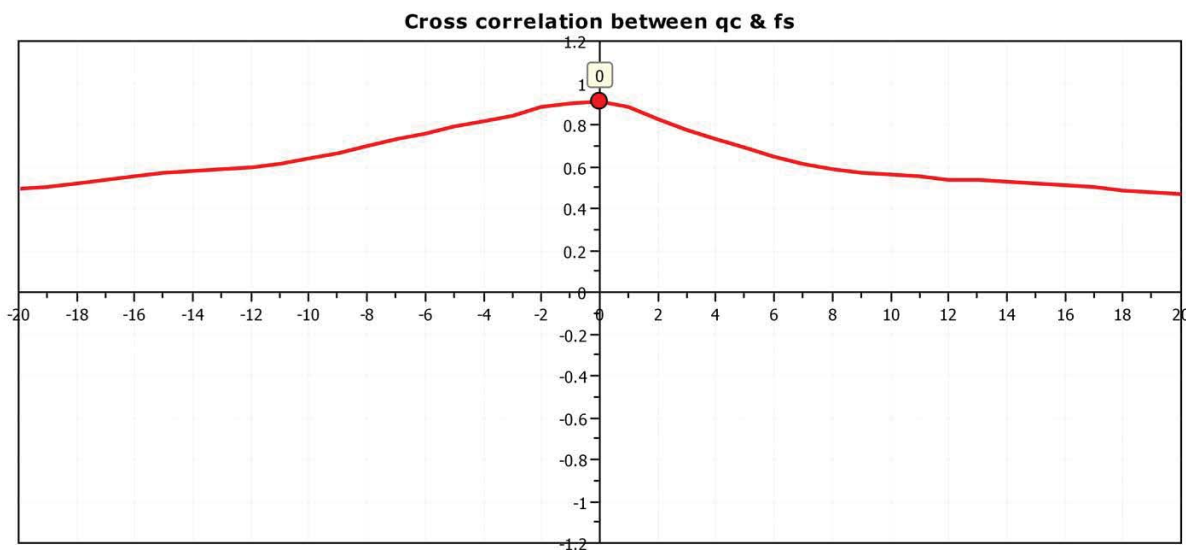
Remarks: Samplers driven with a 140 lb. safety hammer lifted and dropped 30 inches using a rope and cathead system.

DESCRIPTION	SYMBOL	DEPTH (ft)	SAMPLE TYPE	BLOWS/FT.	MOISTURE (%)	DRY DENSITY (pcf)	UNCONFINED STRENGTH (tsf)	REMARKS
		41						
		42						
		43						
		44	SS	36	27			-200 = 59 percent
		45						
		46						
Clayey SAND (SP) coarse, brown, saturated, medium dense, firm, many rounded to subrounded pebbles		47						
		48						
		49	SS	18	23			LL=36%; PI=18% -200 = 46 percent
CLAY (CL) mottled brown, saturated, stiff, defined layering, blocky texture		50						
End of Log		51						
<p>Notes:</p> <ol style="list-style-type: none"> 1. Penetration resistance values are not standard N values, they are the raw values measured in the field. 2. Stratification lines represent the approximate boundaries between material types, the transitions may be gradual. 3. Groundwater was encountered at 16.5 ft below ground surface (bgs) and equilibrated at 6 ft bgs. 4. The boring was backfilled with a grout mix of neat cement and water, tremied to the bottom of the boring. 5. The unconfined compressive strength values were obtained using a pocket penetrometer. 								
		55						
		56						
		57						
		58						
		59						
		60						

Project: 770 Page St. Development
 Location: 770 Page St., Berkeley, CA



The plot below presents the cross correlation coefficient between the raw qc and fs values (as measured on the field). X axes presents the lag distance (one lag is the distance between two successive CPT measurements).

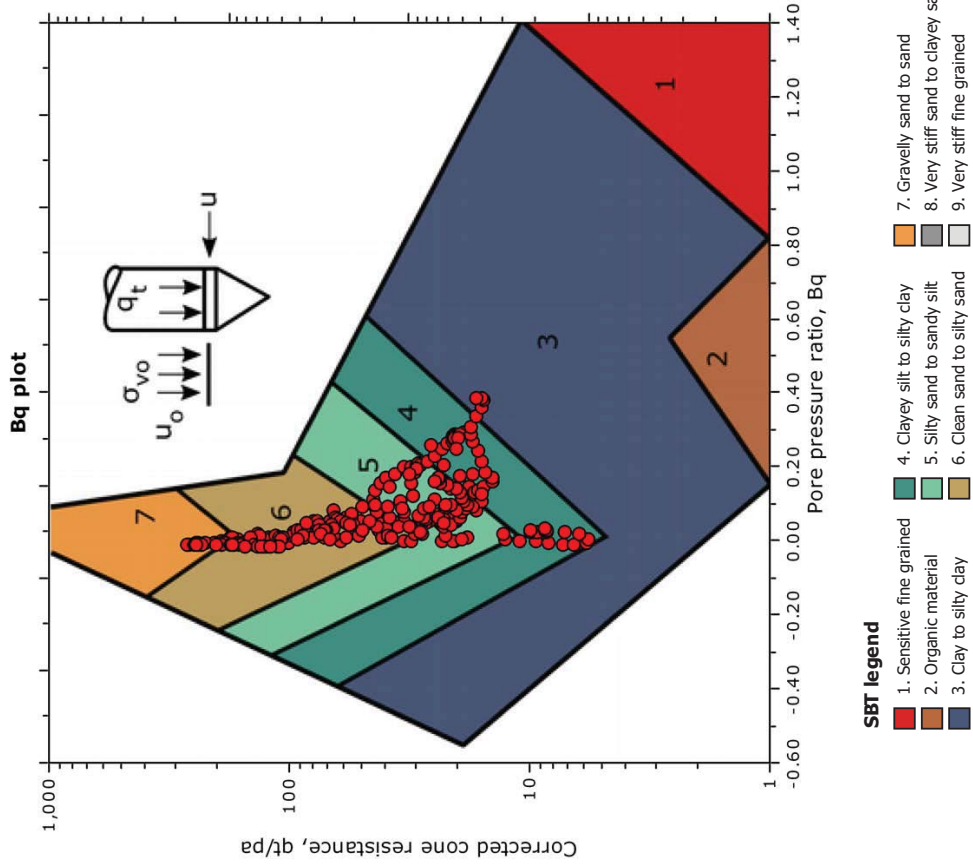
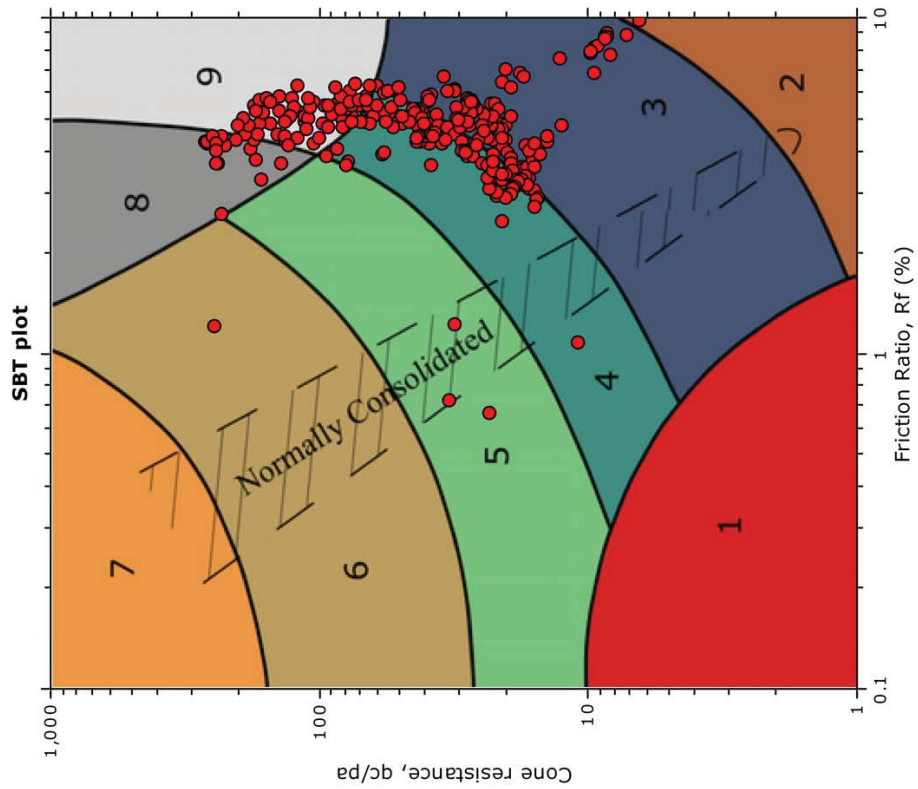


CPT: 770 Page St list file
 Total depth: 48.72 ft, Date: 3/12/2020
 Surface Elevation: 0.00 ft
 Coords: X:0.00, Y:0.00
 Cone Type:
 Cone Operator:

Peters & Ross
 Geotechnical & Geoenvironmental
 Consultants
 114 Hopewo Road
 Pleasant Hill, CA 94523
 PetersRoss@aol.com

Project: 770 Page St. Development
Location: 770 Page St., Berkeley, CA

SBT - Bq plots

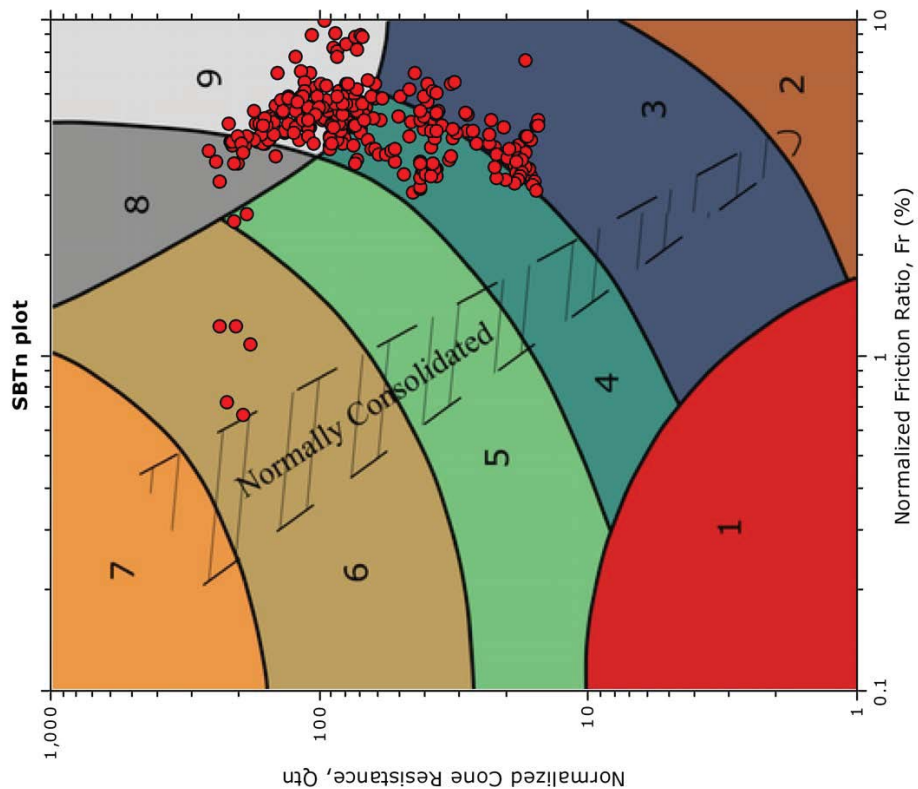
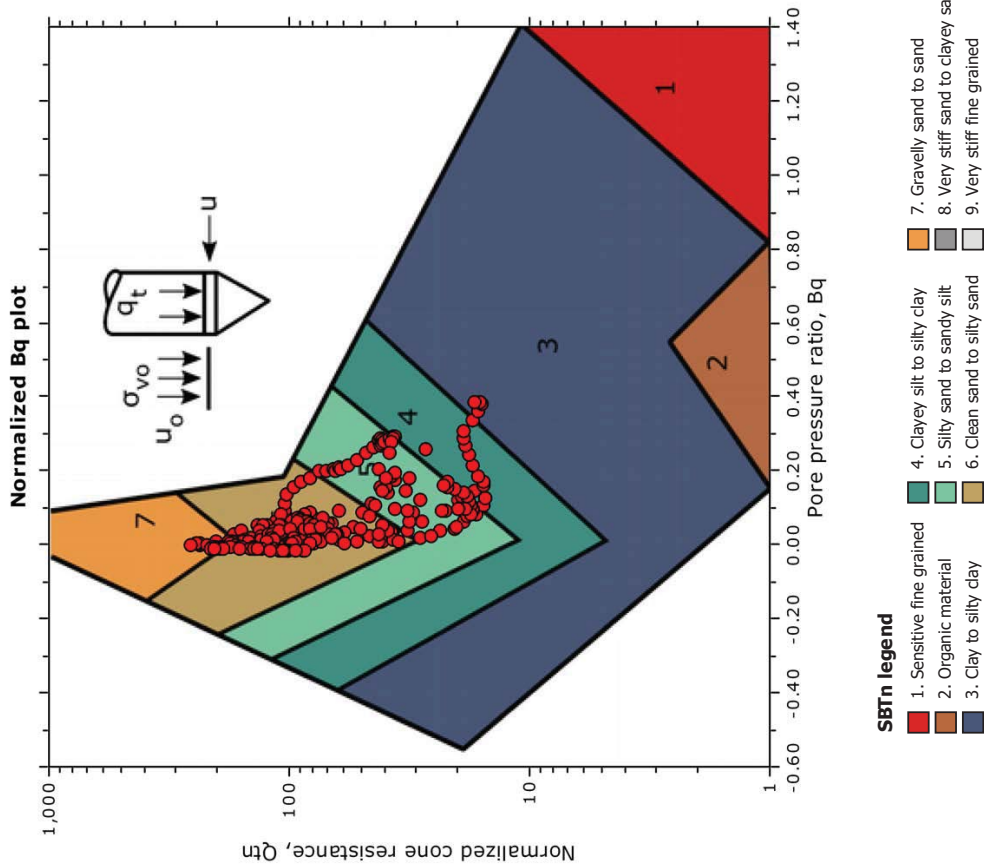


CPT: 770 Page St list file
 Total depth: 48.72 ft, Date: 3/12/2020
 Surface Elevation: 0.00 ft
 Coords: X:0.00, Y:0.00
 Cone Type:
 Cone Operator:

Peters & Ross
 Geotechnical & Geoenvironmental
 Consultants
 114 Hopewell Road
 Pleasant Hill, CA 94523
 PetersRoss@aol.com

Project: 770 Page St. Development
Location: 770 Page St., Berkeley, CA

SBT - Bq plots (normalized)



CPT: 770 Page St list file

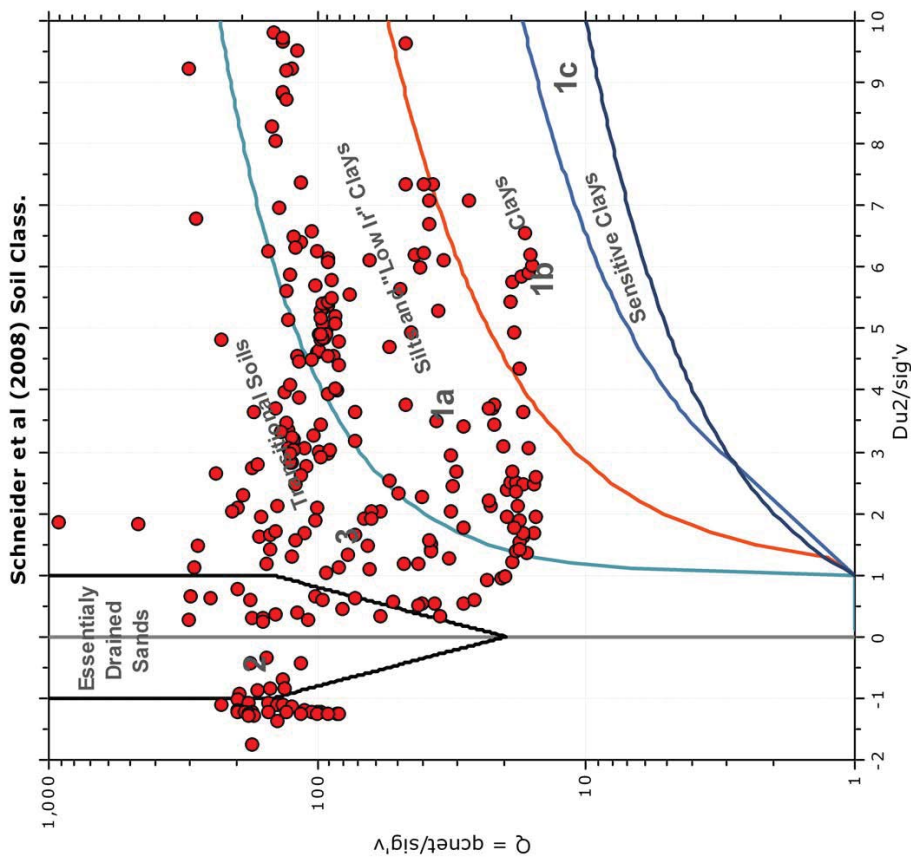
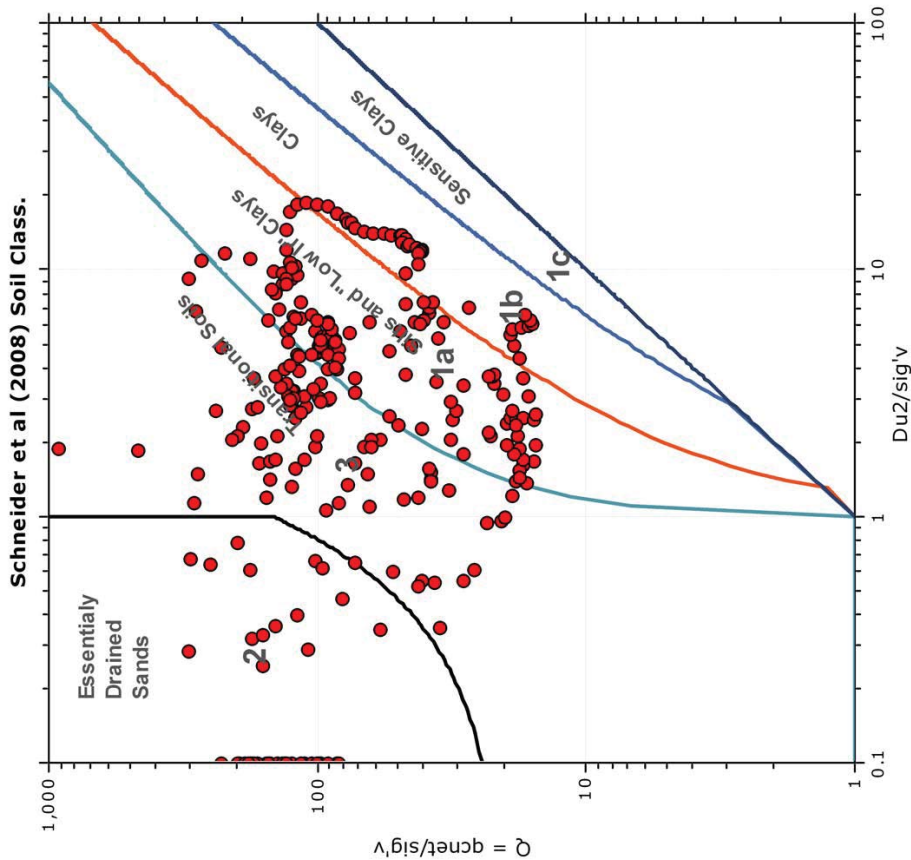
Total depth: 48.72 ft, Date: 3/12/2020
Surface Elevation: 0.00 ft
Coords: X:0.00, Y:0.00

Cone Type:
Cone Operator:

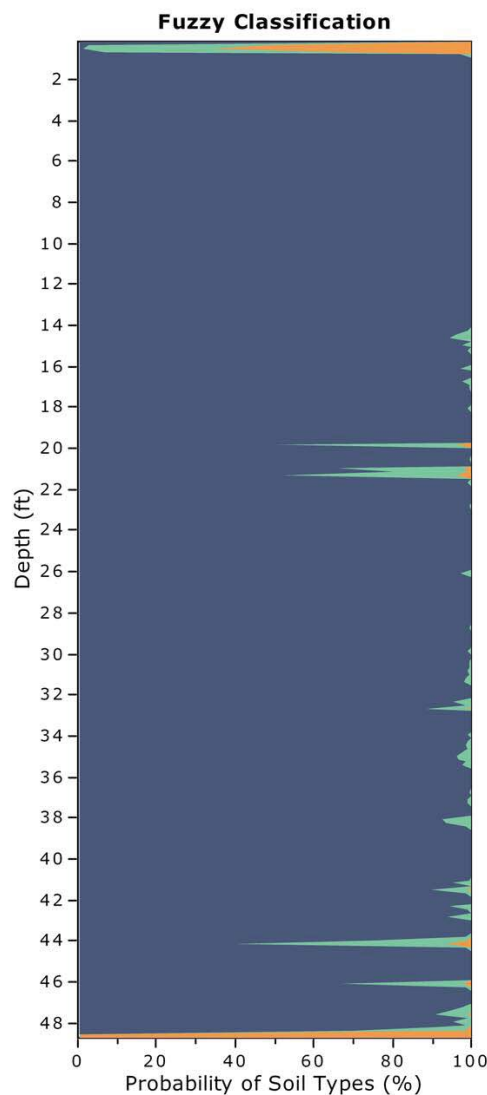
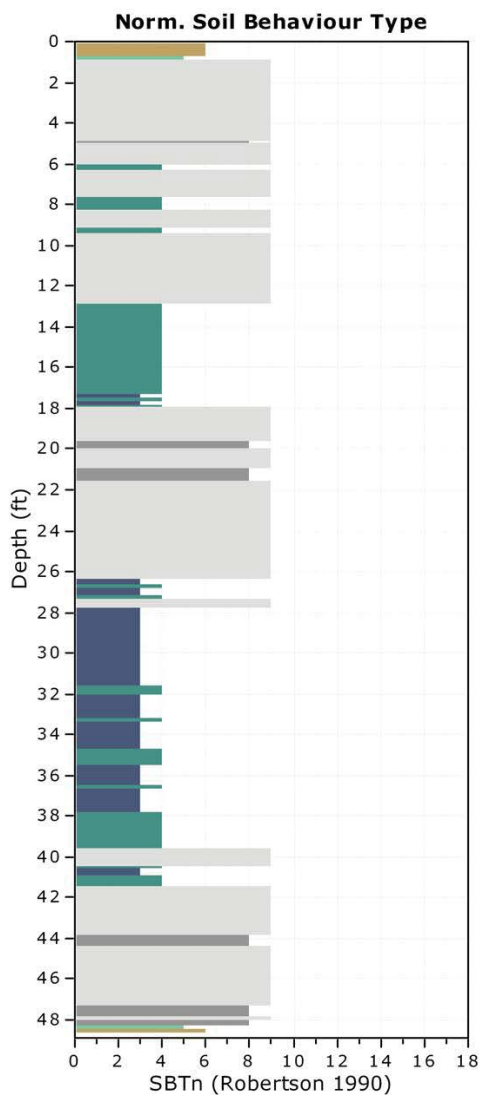
Peters & Ross
Geotechnical & Geoenvironmental Consultants
114 Hopewo Road
Pleasant Hill, CA 94523
PetersRoss@aol.com

Project: 770 Page St. Development
Location: 770 Page St., Berkeley, CA

Bq plots (Schneider)



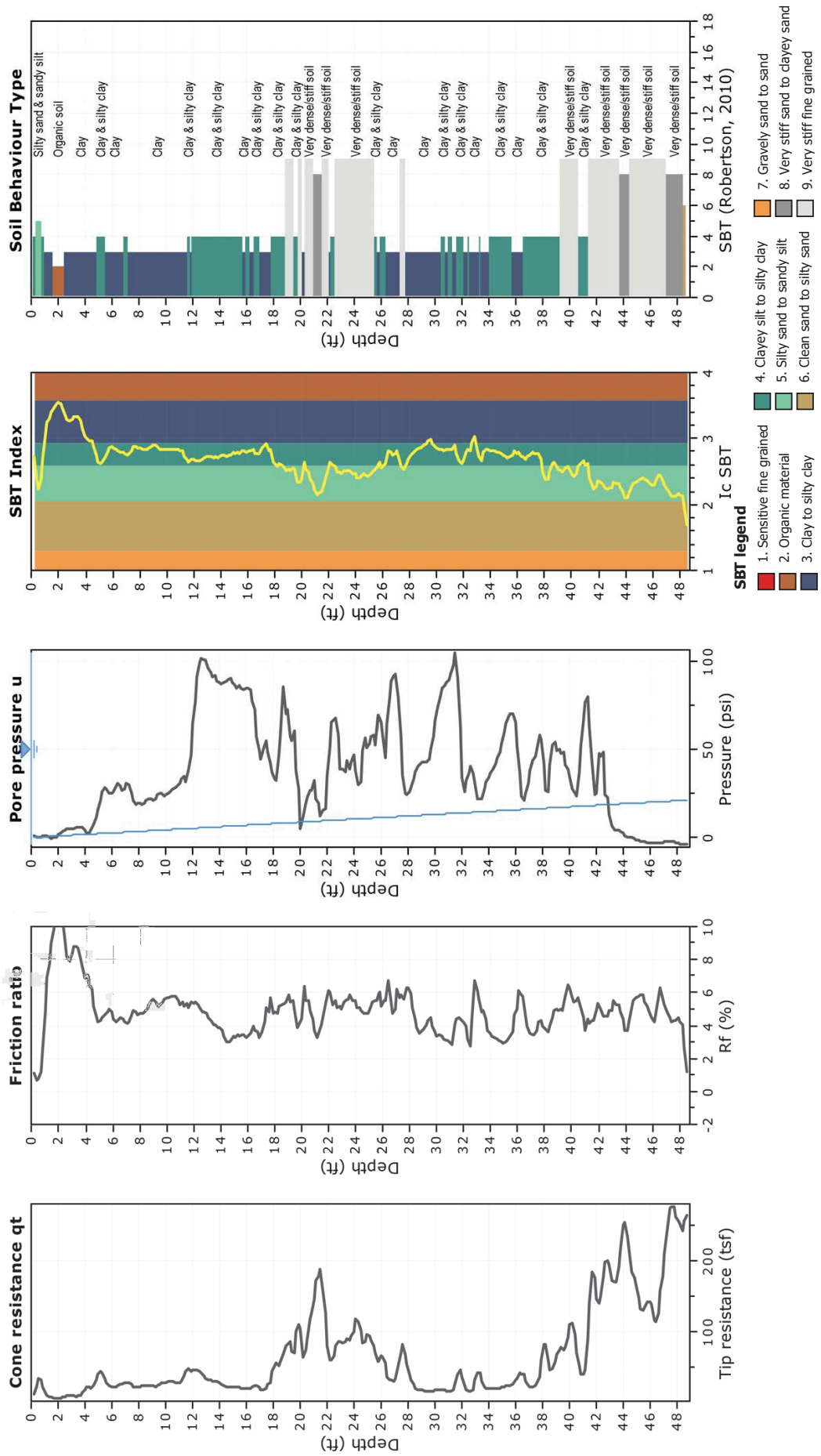
Project: 770 Page St. Development
Location: 770 Page St., Berkeley, CA



CPT: 770 Page St list file
 Total depth: 48.72 ft, Date: 3/12/2020
 Surface Elevation: 0.00 ft
 Coords: X:0.00, Y:0.00
 Cone Type:
 Cone Operator:

Peters & Ross
 Geotechnical & Geoenvironmental
 Consultants
 114 Hopewo Road
 Pleasant Hill, CA 94523
 PetersRoss@aol.com

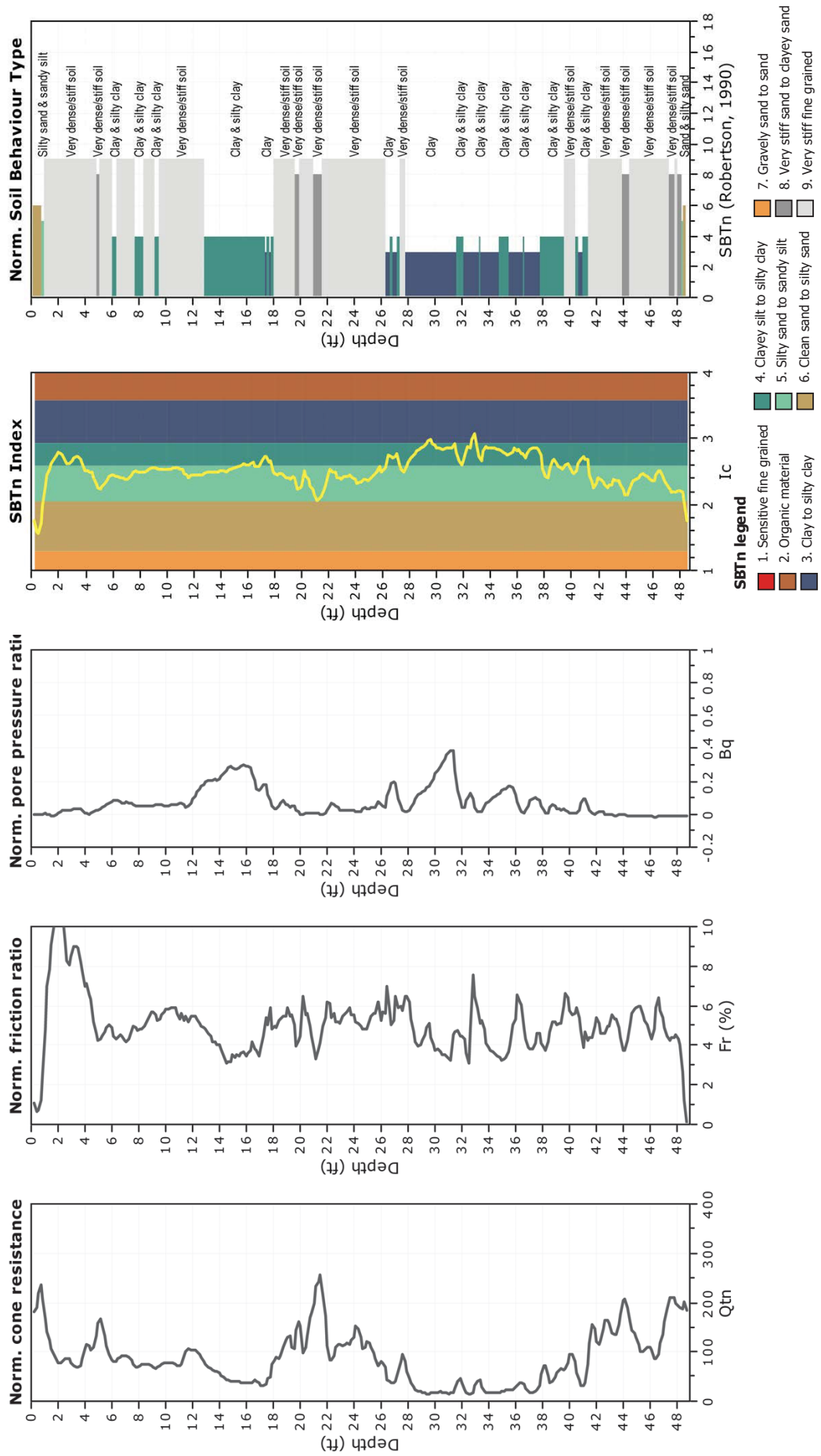
Project: 770 Page St. Development
Location: 770 Page St., Berkeley, CA



CPT: 770 Page St list file
 Total depth: 48.72 ft, Date: 3/12/2020
 Surface Elevation: 0.00 ft
 Coords: X:0.00, Y:0.00
 Cone Type:
 Cone Operator:

Peters & Ross
 Geotechnical & Geoenvironmental
 Consultants
 114 Hopeco Road
 Pleasant Hill, CA 94523
 PetersRoss@aol.com

Project: 770 Page St. Development
Location: 770 Page St., Berkeley, CA



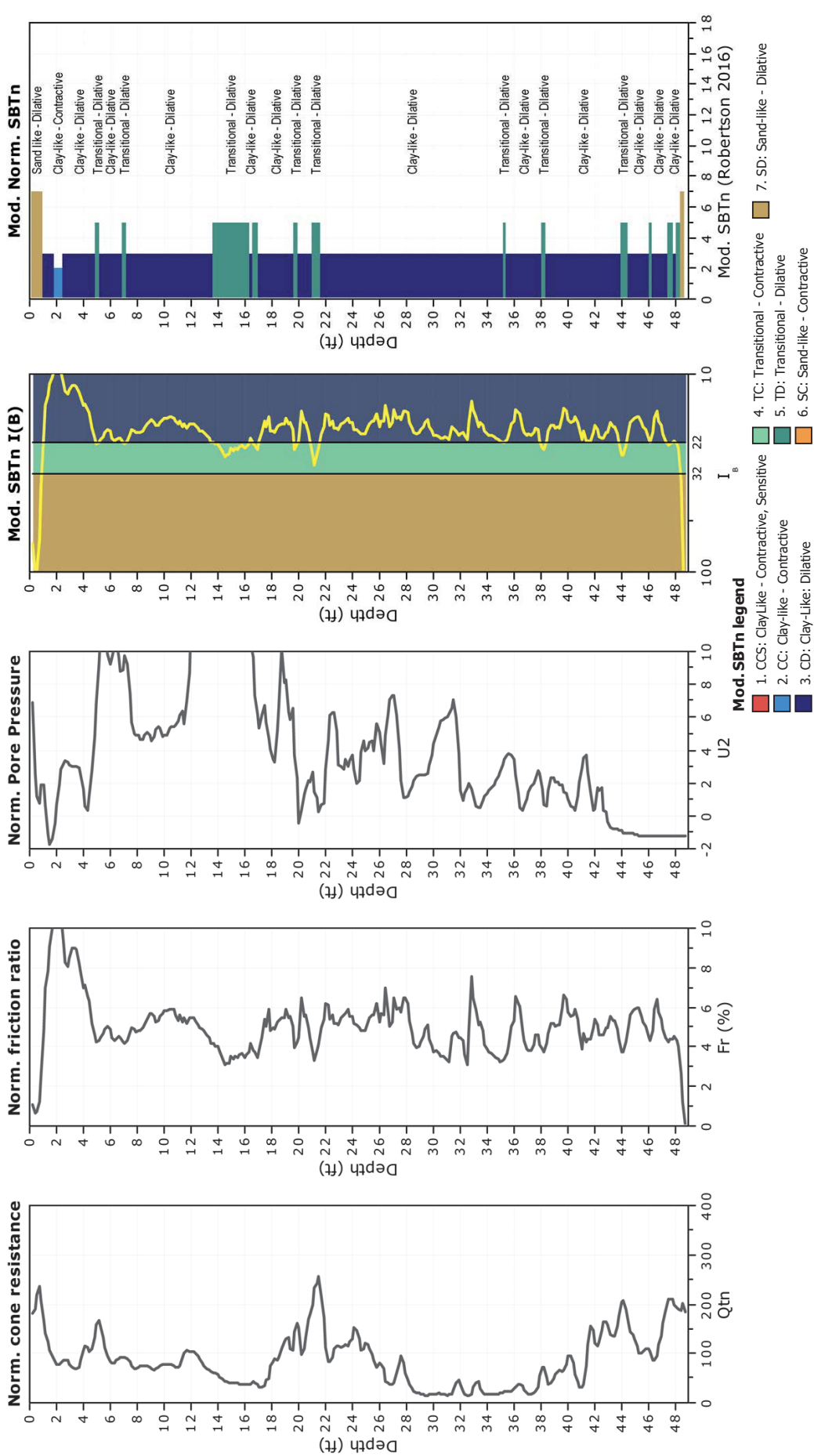
CPT: 770 Page St list file

Total depth: 48.72 ft, Date: 3/12/2020
Surface Elevation: 0.00 ft
Coords: X:0.00, Y:0.00

Cone Type:
Cone Operator:

Peters & Ross
Geotechnical & Geoenvironmental
Consultants
114 Hopeco Road
Pleasant Hill, CA 94523
PetersRoss@aol.com

Project: 770 Page St. Development
Location: 770 Page St., Berkeley, CA

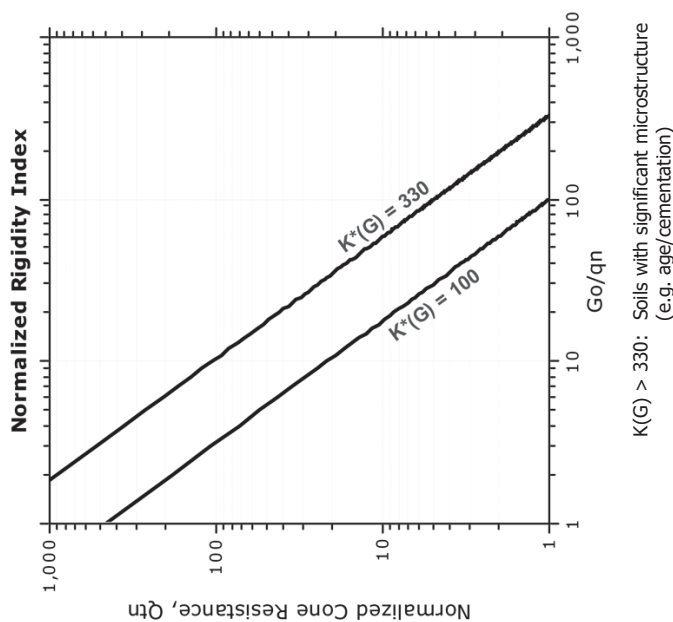
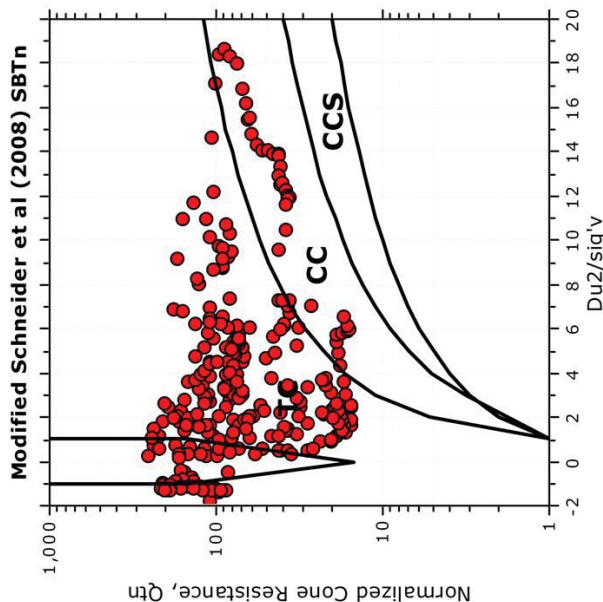
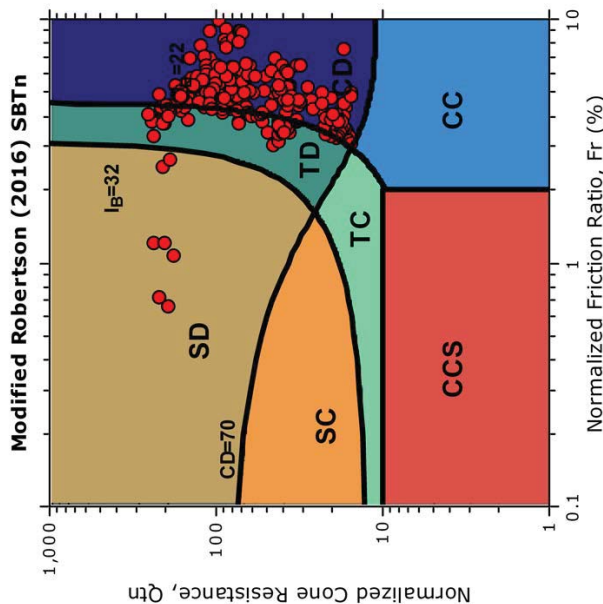


CPT: 770 Page St list file
 Total depth: 48.72 ft, Date: 3/12/2020
 Surface Elevation: 0.00 ft
 Coords: X:0.00, Y:0.00
 Cone Type:
 Cone Operator:

Peters & Ross
 Geotechnical & Geoenvironmental
 Consultants
 114 Hopewell Road
 Pleasant Hill, CA 94523
 PetersRoss@aol.com

Project: 770 Page St. Development
Location: 770 Page St., Berkeley, CA

Updated SBTn plots



$K(G) > 330$: Soils with significant microstructure (e.g. age/cementation)

- CCS: Clay-like - Contractive - Sensitive
- CC: Clay-like - Contractive
- CD: Clay-like - Dilative
- TC: Transitional - Contractive
- TD: Transitional - Dilative
- SC: Sand-like - Contractive
- SD: Sand-like - Dilative

CPT: 770 Page St list file

Total depth: 48.72 ft, Date: 3/12/2020
Surface Elevation: 0.00 ft
Coords: X:0.00, Y:0.00

Cone Type:
Cone Operator:

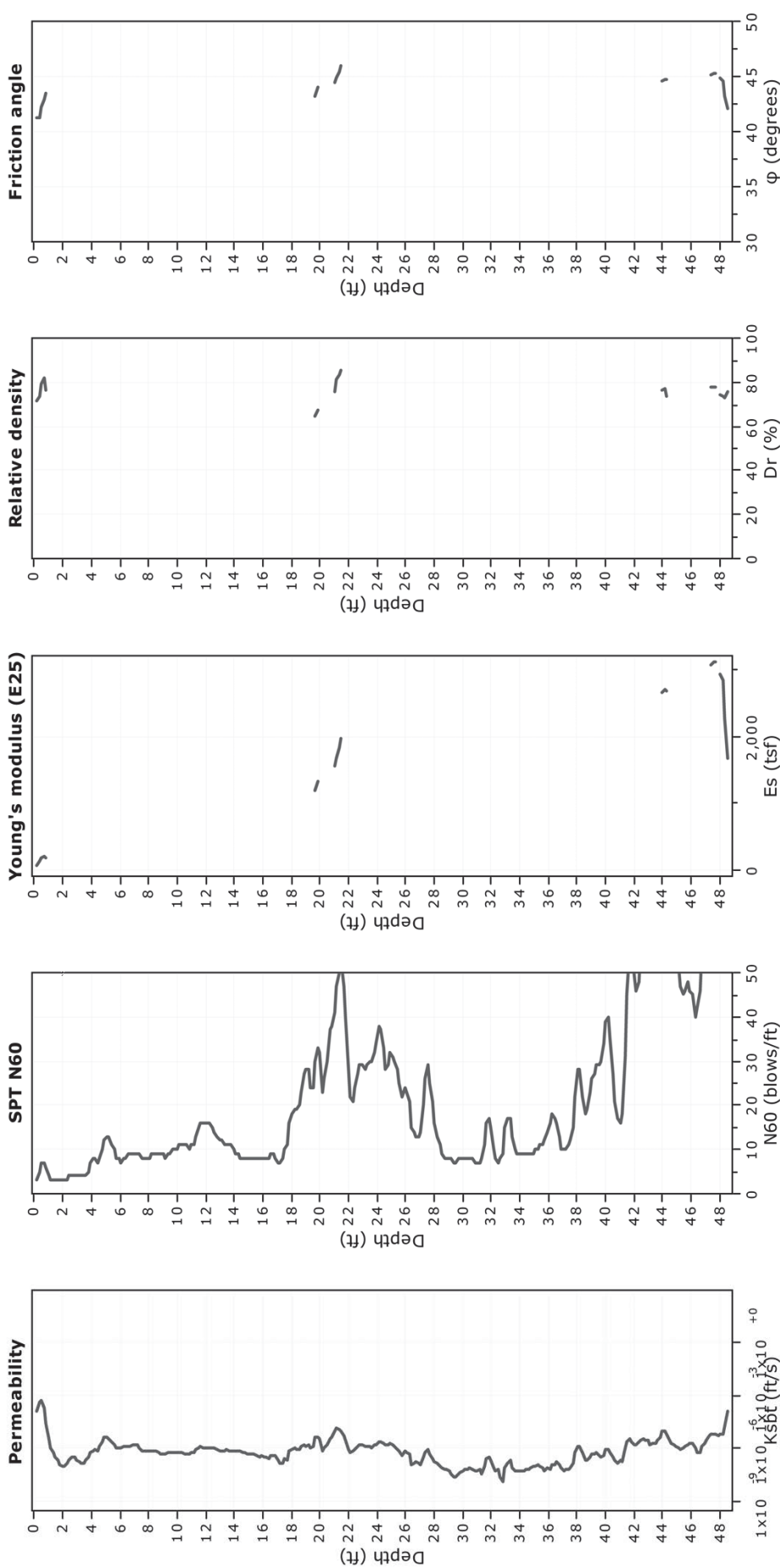
Peters & Ross

1114 Hopewell Road
Pleasant Hill, CA 94523
PetersRoss@aol.com

Peters & Ross

*Geotechnical & Geoenvironmental
Consultants*

Project: 770 Page St. Development
Location: 770 Page St., Berkeley, CA



Calculation parameters

Permeability: Based on SPT_n
SPT N₆₀: Based on I_c and q_t
Young's modulus: Based on variable alpha using I_c (Robertson, 2009) ● — User defined estimation data
Relative density constant, C_{Dr}: 350.0
Phi: Based on Kulhawy & Mayne (1990)

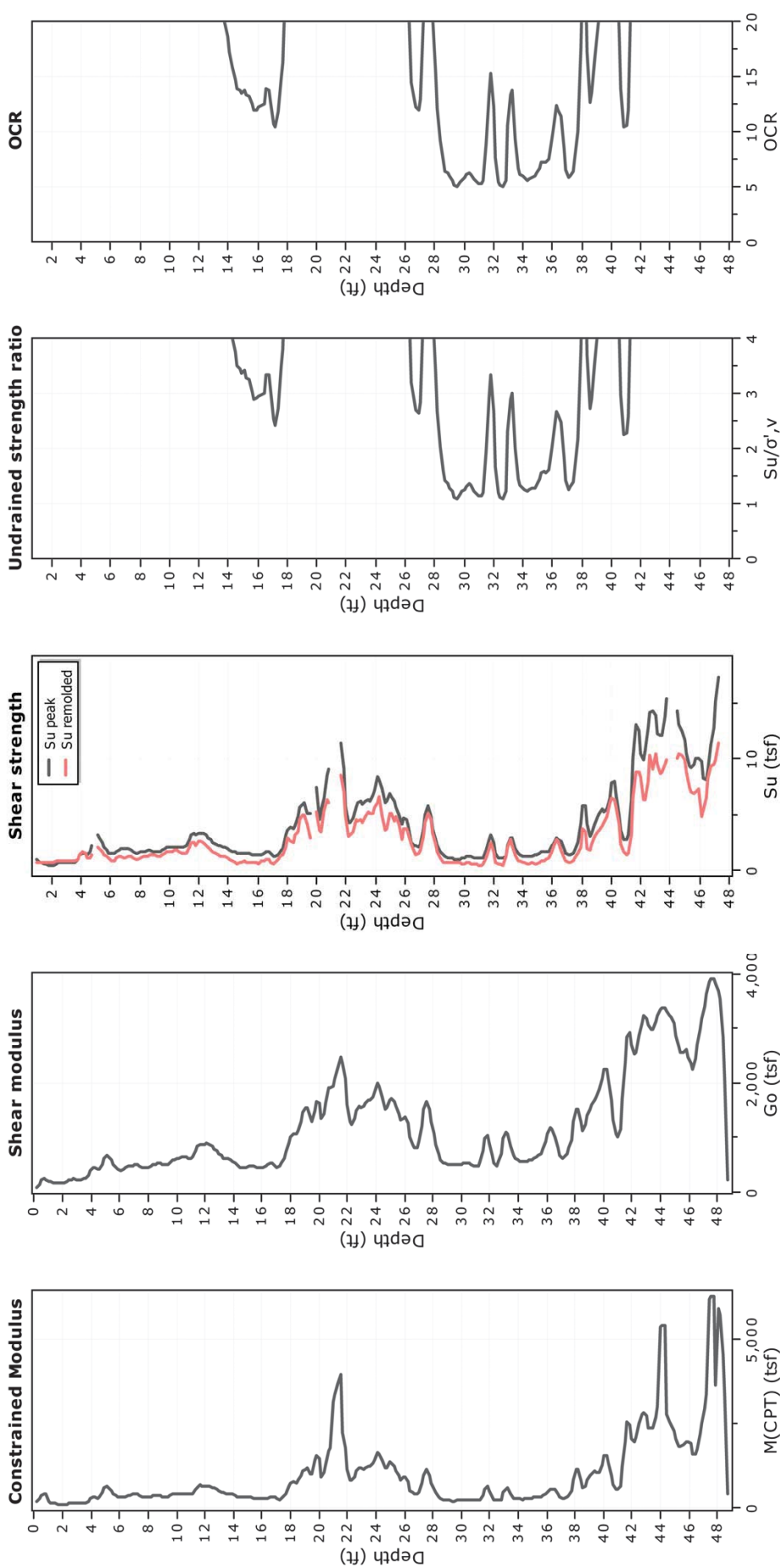
CPT: 770 Page St list file

Total depth: 48.72 ft, Date: 3/12/2020
Surface Elevation: 0.00 ft
Coords: X:0.00, Y:0.00

Cone Type:
Cone Operator:

Peters & Ross
Geotechnical & Geoenvironmental
Consultants
114 Hopewo Road
Pleasant Hill, CA 94523
PetersRoss@aol.com

Project: 770 Page St. Development
Location: 770 Page St., Berkeley, CA

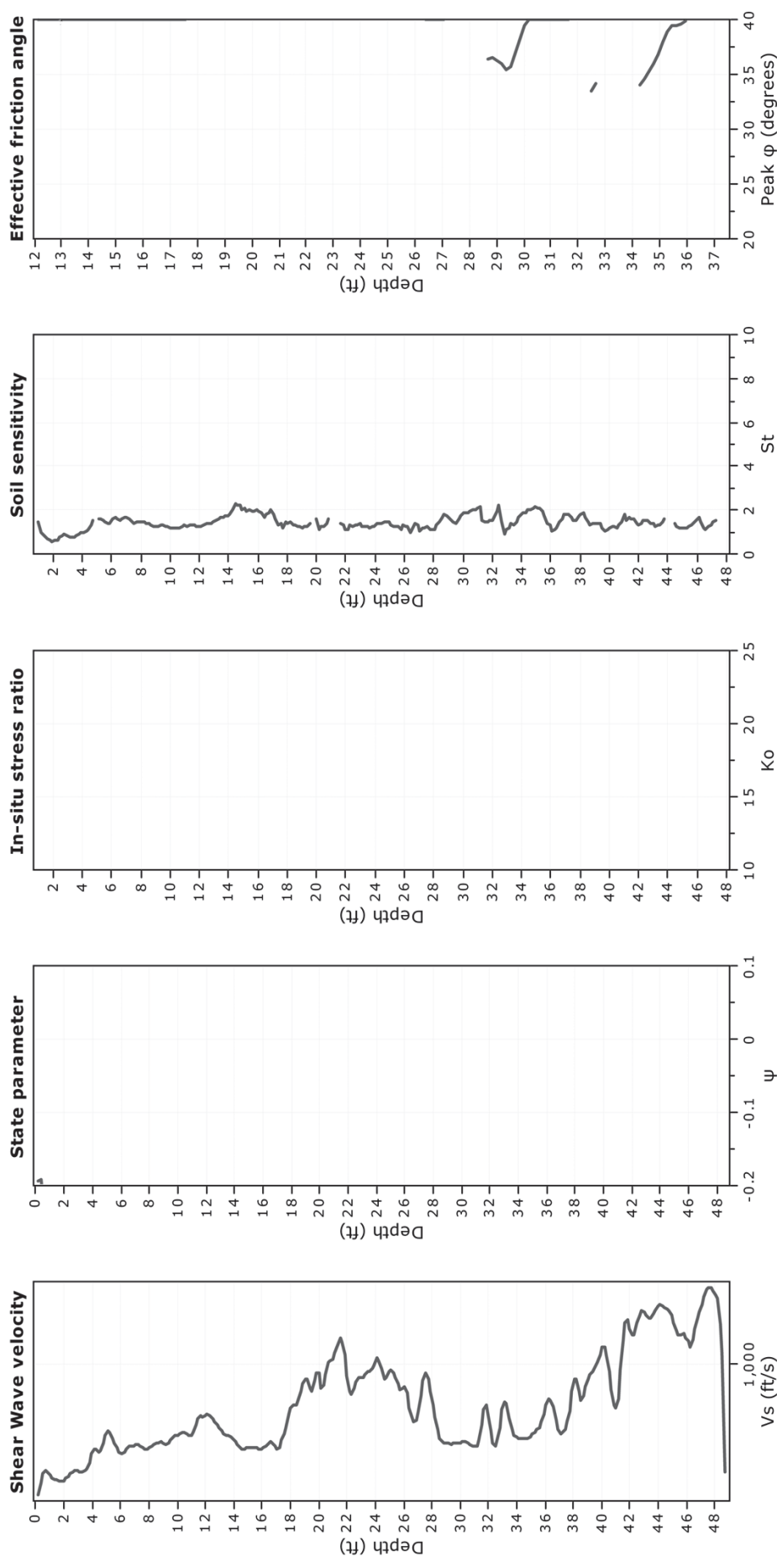


Calculation parameters

Constrained modulus: Based on variable alpha using I_c and Q_{cr} (Robertson, 2009)
Go: Based on variable alpha using I_c (Robertson, 2009)
Undrained shear strength cone factor for clays, N_{kt} : 14
OCR factor for clays, N_{kt} : 0.33
—●— User defined estimation data
—●— Flat Dilatometer Test data

CPT: 770 Page St list file
 Total depth: 48.72 ft, Date: 3/12/2020
 Surface Elevation: 0.00 ft
 Coords: X:0.00, Y:0.00
 Cone Type:
 Cone Operator:

Peters & Ross
 Geotechnical & Geoenvironmental
 Consultants
 114 Hopewo Road
 Pleasant Hill, CA 94523
 PetersRoss@aol.com
Project: 770 Page St. Development
Location: 770 Page St., Berkeley, CA



Calculation parameters
 Soil Sensitivity factor, N_s : 7.00
 —●— User defined estimation data

This software is licensed to: Peter Mundy

Presented below is a list of formulas used for the estimation of various soil properties. The formulas are presented in SI unit system and assume that all components are expressed in the same units.

:: Unit Weight, g (kN/m³) ::

$$g = g_w \cdot \left(0.27 \cdot \log(R_f) + 0.36 \cdot \log\left(\frac{q_t}{p_a}\right) + 1.236 \right)$$

where g_w = water unit weight

:: Permeability, k (m/s) ::

$$I_c < 3.27 \text{ and } I_c > 1.00 \text{ then } k = 10^{0.952-3.04 \cdot I_c}$$

$$I_c \leq 4.00 \text{ and } I_c > 3.27 \text{ then } k = 10^{-4.52-1.37 \cdot I_c}$$

:: N_{SPT} (blows per 30 cm) ::

$$N_{60} = \left(\frac{q_c}{p_a} \right) \cdot \frac{1}{10^{1.1268-0.2817 \cdot I_c}}$$

$$N_{I(60)} = Q_{tn} \cdot \frac{1}{10^{1.1268-0.2817 \cdot I_c}}$$

:: Young's Modulus, Es (MPa) ::

$$(q_t - \sigma_v) \cdot 0.015 \cdot 10^{0.55 \cdot I_c + 1.68}$$

(applicable only to $I_c < I_{c_cutoff}$)

:: Relative Density, Dr (%) ::

$$100 \cdot \sqrt{\frac{Q_{tn}}{k_{DR}}} \quad \text{(applicable only to SBT}_n\text{: 5, 6, 7 and 8 or } I_c < I_{c_cutoff}\text{)}$$

:: State Parameter, ψ ::

$$\psi = 0.56 - 0.33 \cdot \log(Q_{tn,cs})$$

:: Drained Friction Angle, ϕ (°) ::

(applicable only to SBT_n: 5, 6, 7 and 8 or $I_c < I_{c_cutoff}$)

:: 1-D constrained modulus, M (MPa) ::

If $I_c > 2.20$
 $\alpha = 14$ for $Q_{tn} > 14$
 $\alpha = Q_{tn}$ for $Q_{tn} \leq 14$
 $M_{CPT} = \alpha \cdot (q_t - \sigma_v)$

If $I_c \geq 2.20$

:: Small strain shear Modulus, Go (MPa) ::

$$G_0 = (q_t - \sigma_v) \cdot 0.0188 \cdot 10^{0.55 \cdot I_c + 1.68}$$

:: Shear Wave Velocity, Vs (m/s) ::

$$V_s = \left(\frac{G_0}{\rho} \right)^{0.50}$$

:: Undrained peak shear strength, Su (kPa) ::

$$N_{kt} = 10.50 + 7 \cdot \log(F_r) \text{ or user defined}$$

$$S_u = \frac{(q_t - \sigma_v)}{N_{kt}}$$

(applicable only to SBT_n: 1, 2, 3, 4 and 9 or $I_c > I_{c_cutoff}$)

:: Remolded undrained shear strength, Su(rem) (kPa) ::

$$S_{u(rem)} = f_s \quad \text{(applicable only to SBT}_n\text{: 1, 2, 3, 4 and 9 or } I_c > I_{c_cutoff}\text{)}$$

:: Overconsolidation Ratio, OCR ::

$$k_{OCR} = \left[\frac{Q_{tn}^{0.20}}{0.25 \cdot (10.50 + 7 \cdot \log(F_r))} \right]^{1.25} \text{ or user defined}$$

$$OCR = k_{OCR} \cdot Q_{tn}$$

(applicable only to SBT_n: 1, 2, 3, 4 and 9 or $I_c > I_{c_cutoff}$)

:: In situ Stress Ratio, Ko ::

$$K_o = (1 - \sin \phi') \cdot OCR^{\sin \phi'}$$

(applicable only to SBT_n: 1, 2, 3, 4 and 9 or $I_c > I_{c_cutoff}$)

:: Soil Sensitivity, S_t ::

$$S_t = \frac{N_s}{F_r}$$

(applicable only to SBT_n: 1, 2, 3, 4 and 9 or $I_c > I_{c_cutoff}$)

:: Peak Friction Angle, ϕ' (°) ::

$$\phi' = 29.5^\circ \cdot B_q^{0.121} \cdot (0.256 + 0.336 \cdot B_q + \log Q_t)$$

(applicable for $0.10 < B_q < 1.00$)

References

- Robertson, P.K., Cabal K.L., Guide to Cone Penetration Testing for Geotechnical Engineering, Gregg Drilling & Testing, Inc., 5th Edition, November 2012
- Robertson, P.K., Interpretation of Cone Penetration Tests - a unified approach., Can. Geotech. J. 46(11): 1337-1355 (2009)

APPENDIX B - LABORATORY TESTING

Laboratory tests were performed on representative samples of the materials encountered in the test boring, to achieve a quantitative and qualitative evaluation of the physical and mechanical properties of the materials that underlie the site. The tests were performed in B. Hillebrandt Soils Testing, Inc. of Alamo, California. The tests included moisture content determinations, Atterberg limit tests and #200 washed sieve tests. The test results are presented on the boring log in Appendix A. Test reports provided by the testing laboratory are included in this Appendix. Brief descriptions of the tests performed follow.

Moisture Content/Dry Density (ASTM 2937): Performed on undisturbed samples to determine the moisture content (the ratio of the weight of water to the weight of solids in the field sample, expressed as a percentage) and dry density (the ratio of the weight of solids in the field sample to its volume, expressed in pounds per cubic foot).

#200 Washed Sieve Test (ASTM D-1140): Performed on undisturbed or disturbed samples to determine the fine-grained (silt and clay) fraction of the materials. The fine-grained fraction is used to classify the soils according to the Unified Soils Classification System.

Atterberg Limits Test (ASTM D-4318): Performed on undisturbed or disturbed samples to determine the liquid limit (LL) and plastic limit (PL) of the samples. These limits are used to classify fine-grained soils and to evaluate the plasticity index (PI), the moisture content range over which the material exhibits plasticity. Atterberg limits correlations also provide an indication of the compressibility and expansion potential of the sample.

B. HILLEBRANDT SOILS TESTING, INC.

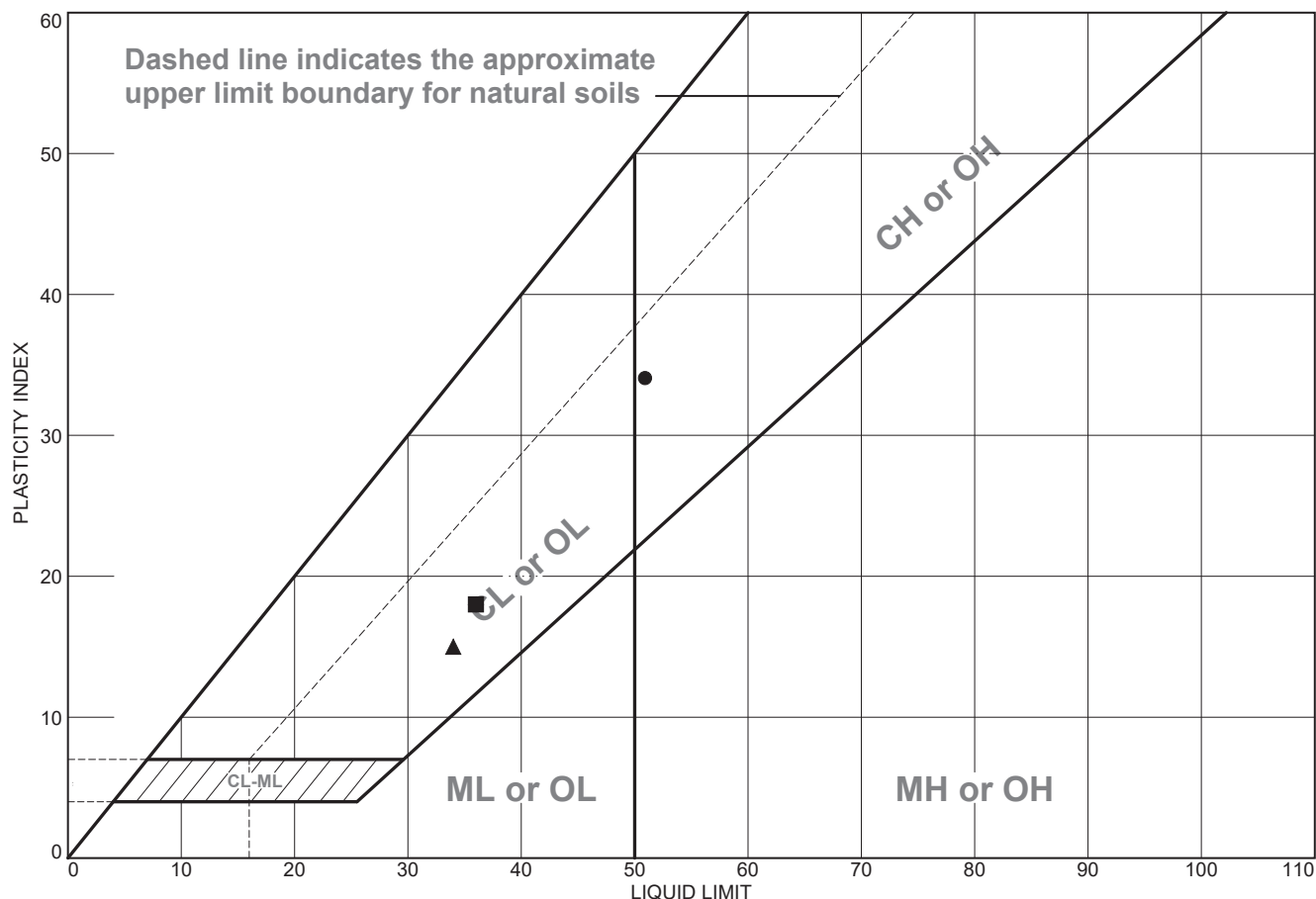
29 Sugarloaf Terrace, Alamo, CA 94507 - Tel: (510) 409-2916 - Fax: (925) 891-9267 - Email: soiltesting@aol.com

MOISTURE CONTENT WORKSHEET

Job #: 20104.001
 Job Name: 770 Page Street
 Date: 2/10/2020
 Tested by: B. Hillebrandt

Additional Tests:	PI, -200	-200	PI, -200						
Boring #:	B-1	B-1	B-1						
Depth:	40.0	45.0	50.0						
Sample Description:	Dark yellowish brown lean CLAY with sand	Dark yellowish brown sandy CLAY	Yellowish brown clayey SAND with gravel						
Can #:	341	304	339						
Wet Sample + can	219.4	253.4	303.0						
Dry Sample + can	175.1	207.7	254.1						
Weight can	37.9	38.8	37.9						
Weight water	44.3	45.7	48.9						
Weight Dry Sample	137.2	168.9	216.2						
WATER CONTENT (%)	32.3%	27.1%	22.6%						

LIQUID AND PLASTIC LIMITS TEST REPORT



	MATERIAL DESCRIPTION	LL	PL	PI	%<#40	%<#200	USCS
●	Dark brown sandy fat CLAY	51	17	34	87.1	66.0	CH
■	Brown sandy lean CLAY	36	18	18	96.8	61.7	CL
▲	Dark yellowish brown lean CLAY with sand	34	19	15	98.7	74.8	CL
◆	Yellowish brown clayey SAND with gravel	36	18	18	64.4	46.1	SC

Project No. 20104.001 **Client:** Peters & Ross
Project: 770 Page Street

● Source of Sample: B-1 **Depth:** 2.5'
■ Source of Sample: B-1 **Depth:** 30.0'
▲ Source of Sample: B-1 **Depth:** 40.0'
◆ Source of Sample: B-1 **Depth:** 50.0'

B. HILLEBRANDT SOILS TESTING, INC.
 +1 510-409-2816
 SoilTesting@aol.com

Remarks:

Figure

Tested By: BH

LIQUID AND PLASTIC LIMIT TEST DATA

2/23/2020

Client: Peters & Ross

Project: 770 Page Street

Project Number: 20104.001

Location: B-1

Depth: 2.5'

Material Description: Dark brown sandy fat CLAY

%<#40: 87.1

%<#200: 66.0

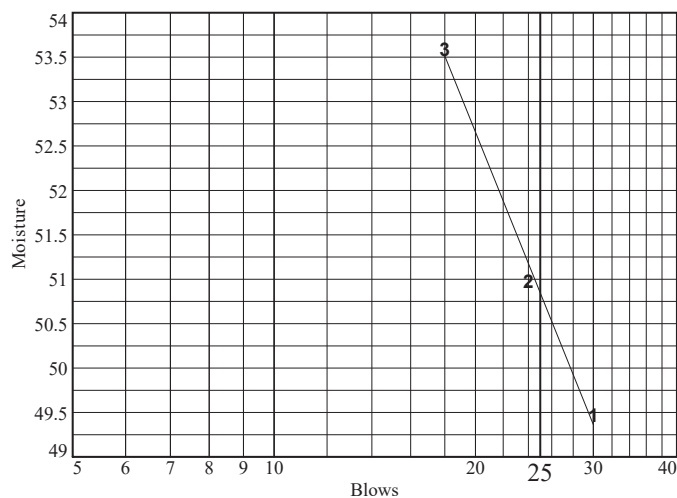
USCS: CH

AASHTO: A-7-6(20)

Tested by: BH

Liquid Limit Data

Run No.	1	2	3	4	5	6
Wet+Tare	25.59	27.49	26.66			
Dry+Tare	20.87	22.02	21.30			
Tare	11.33	11.29	11.30			
# Blows	30	24	18			
Moisture	49.5	51.0	53.6			



Liquid Limit= 51
Plastic Limit= 17
Plasticity Index= 34
Natural Moisture= 22.1
Liquidity Index= 0.2

Plastic Limit Data

Run No.	1	2	3	4
Wet+Tare	17.15	17.71		
Dry+Tare	16.29	16.77		
Tare	11.27	11.32		
Moisture	17.1	17.2		

LIQUID AND PLASTIC LIMIT TEST DATA

2/23/2020

Client: Peters & Ross
Project: 770 Page Street
Project Number: 20104.001
Location: B-1

Depth: 30.0'

Material Description: Brown sandy lean CLAY

%<#40: 96.8

%<#200: 61.7

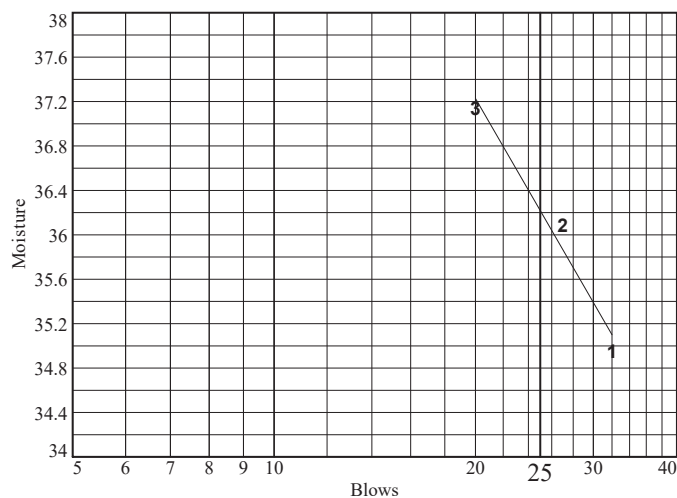
USCS: CL

AASHTO: A-6(9)

Tested by: BH

Liquid Limit Data

Run No.	1	2	3	4	5	6
Wet+Tare	28.77	28.26	30.54			
Dry+Tare	24.25	23.77	25.28			
Tare	11.32	11.33	11.12			
# Blows	32	27	20			
Moisture	35.0	36.1	37.1			



Liquid Limit= 36
Plastic Limit= 18
Plasticity Index= 18
Natural Moisture= 33.4
Liquidity Index= 0.9

Plastic Limit Data

Run No.	1	2	3	4
Wet+Tare	16.97	18.06		
Dry+Tare	16.09	17.01		
Tare	11.15	11.30		
Moisture	17.8	18.4		

LIQUID AND PLASTIC LIMIT TEST DATA

2/23/2020

Client: Peters & Ross

Project: 770 Page Street

Project Number: 20104.001

Location: B-1

Depth: 40.0'

Material Description: Dark yellowish brown lean CLAY with sand

%<#40: 98.7

%<#200: 74.8

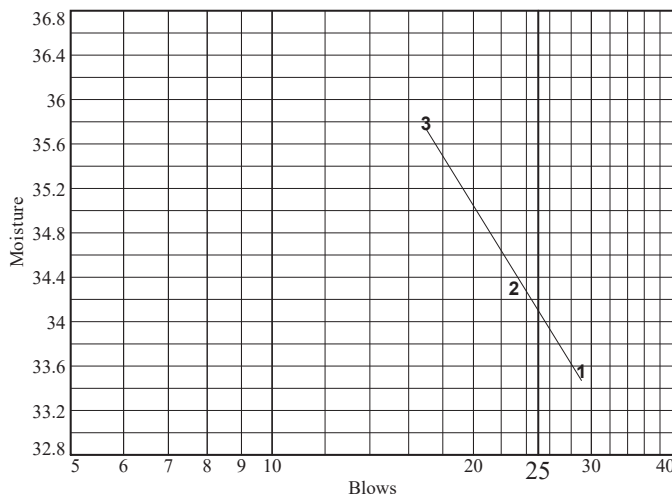
USCS: CL

AASHTO: A-6(10)

Tested by: BH

Liquid Limit Data

Run No.	1	2	3	4	5	6
Wet+Tare	29.28	26.37	28.71			
Dry+Tare	24.73	22.48	24.06			
Tare	11.17	11.14	11.07			
# Blows	29	23	17			
Moisture	33.6	34.3	35.8			



Liquid Limit= 34
Plastic Limit= 19
Plasticity Index= 15
Natural Moisture= 32.3
Liquidity Index= 0.9

Plastic Limit Data

Run No.	1	2	3	4
Wet+Tare	18.14	17.44		
Dry+Tare	17.05	16.44		
Tare	11.34	11.30		
Moisture	19.1	19.5		

LIQUID AND PLASTIC LIMIT TEST DATA

2/23/2020

Client: Peters & Ross

Project: 770 Page Street

Project Number: 20104.001

Location: B-1

Depth: 50.0'

Material Description: Yellowish brown clayey SAND with gravel

%<#40: 64.4

%<#200: 46.1

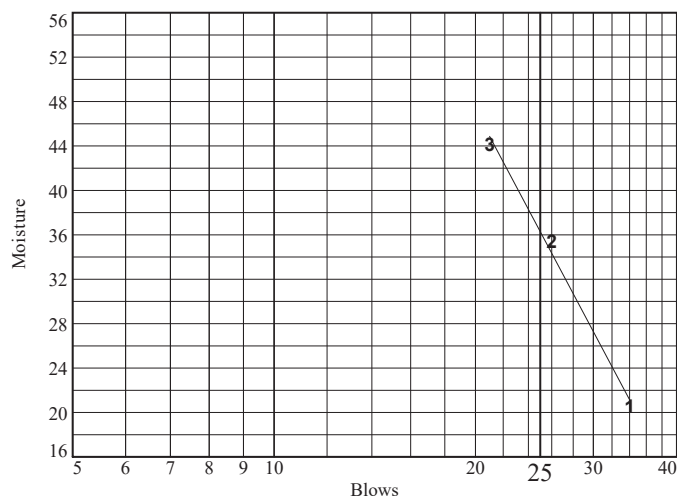
USCS: SC

AASHTO: A-6(4)

Tested by: BH

Liquid Limit Data

Run No.	1	2	3	4	5	6
Wet+Tare	27.18	28.22	29.31			
Dry+Tare	24.47	23.77	23.77			
Tare	11.33	11.24	11.24			
# Blows	34	26	21			
Moisture	20.6	35.5	44.2			

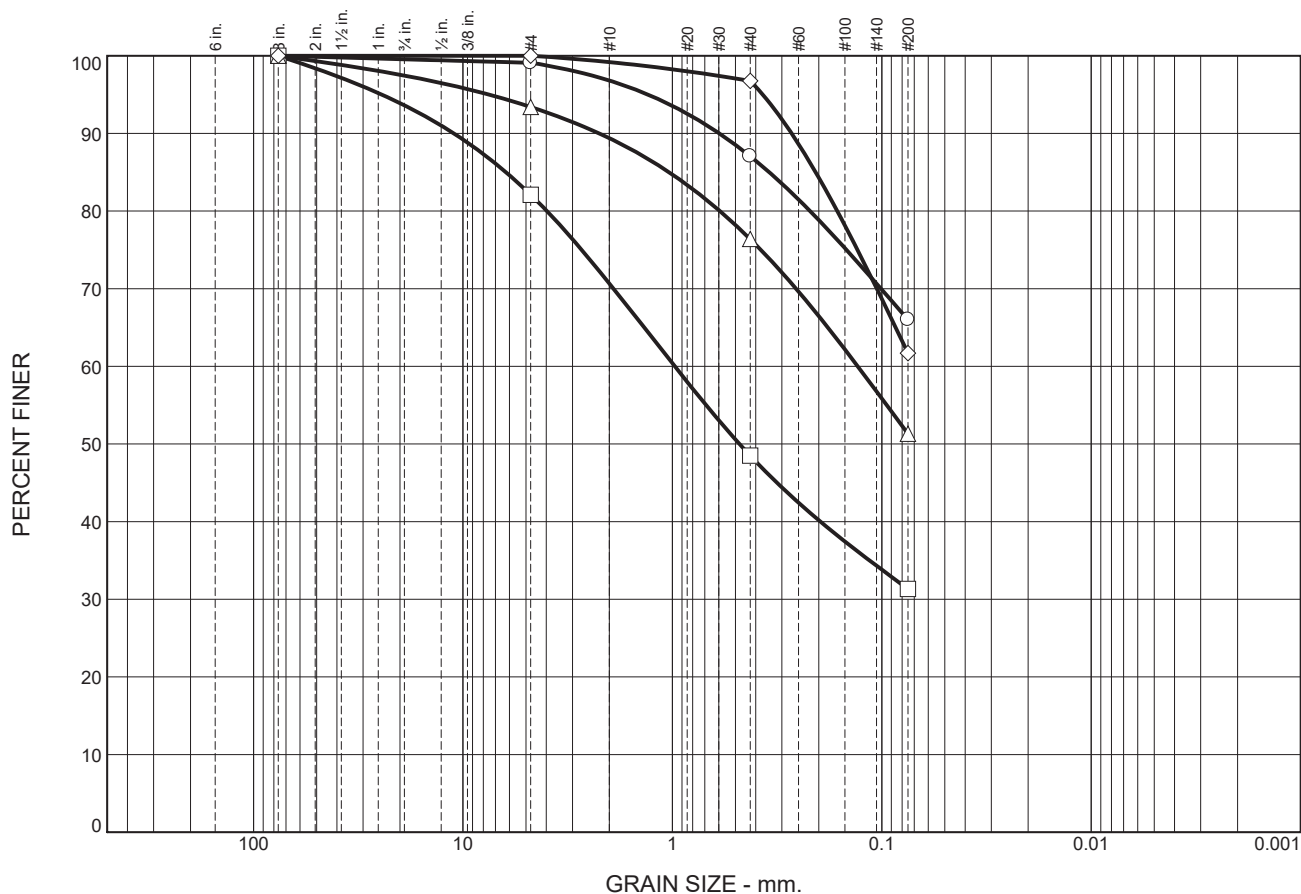


Liquid Limit= 36
Plastic Limit= 18
Plasticity Index= 18

Plastic Limit Data

Run No.	1	2	3	4
Wet+Tare	17.33	17.60		
Dry+Tare	16.36	16.65		
Tare	11.18	11.36		
Moisture	18.7	18.0		

Particle Size Distribution Report



	% +3"	% Gravel	% Sand	% Silt	% Clay
○	0.0	0.9	33.1	66.0	
□	0.0	17.9	50.8	31.3	
△	0.0	6.6	42.1	51.3	
◇	0.0	0.0	38.3	61.7	

SOIL DATA					
SYMBOL	SOURCE	SAMPLE NO.	DEPTH (ft.)	Material Description	USCS
○	B-1		2.5'	Dark brown sandy fat CLAY	CH
□	B-1		20.0'	Brown clayey SAND with gravel	SC
△	B-1		25.0'	Brown sandy CLAY	CL
◇	B-1		30.0'	Brown sandy lean CLAY	CL

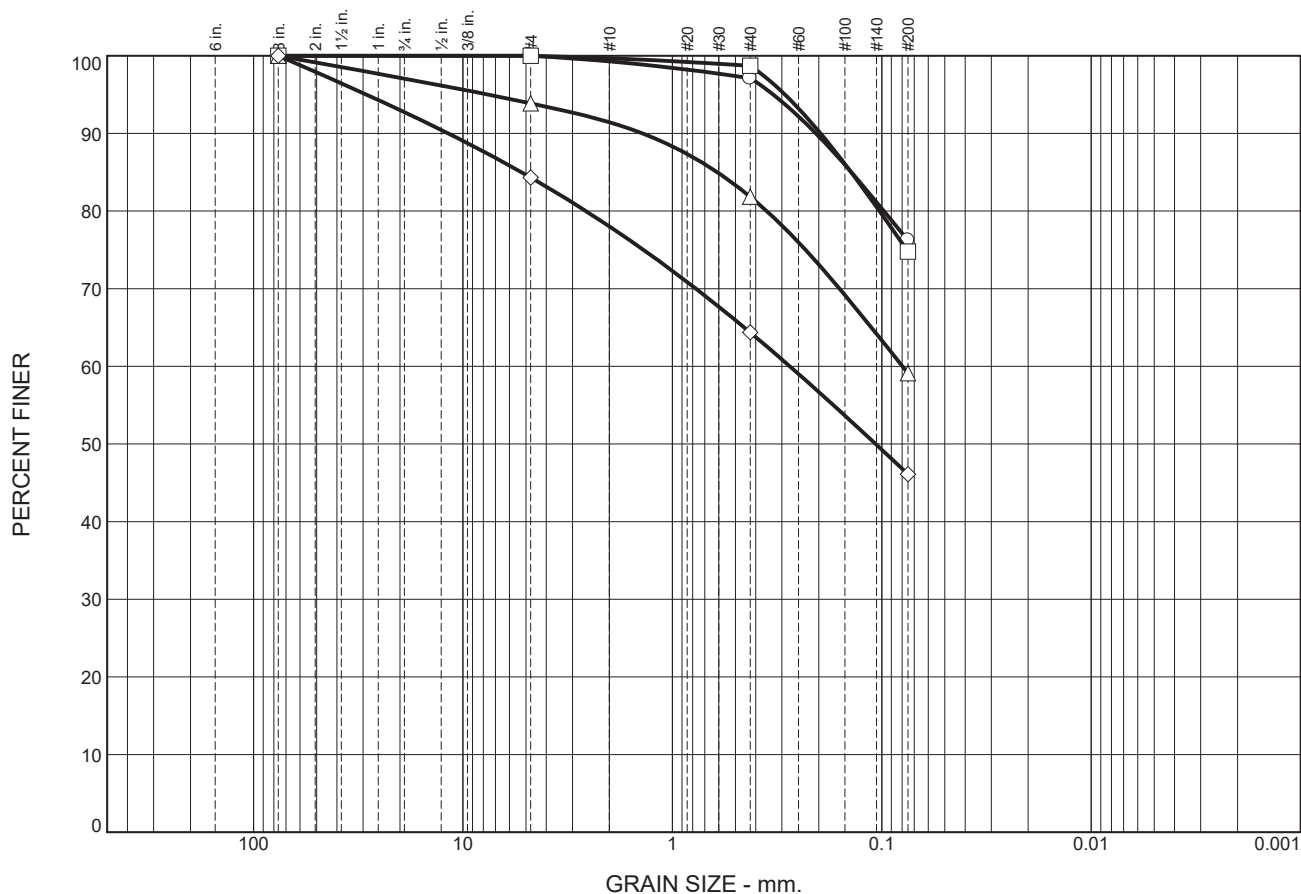
B. HILLEBRANDT SOILS TESTING, INC.
+1 510-409-2816
SoilTesting@aol.com

Client: Peters & Ross
Project: 770 Page Street
Project No.: 20104.001

Figure

Tested By: BH

Particle Size Distribution Report



	% +3"	% Gravel	% Sand	% Silt	% Clay
○	0.0	0.0	23.8	76.2	
□	0.0	0.0	25.2	74.8	
△	0.0	6.1	34.8	59.1	
◇	0.0	15.7	38.2	46.1	

SOIL DATA					
SYMBOL	SOURCE	SAMPLE NO.	DEPTH (ft.)	Material Description	USCS
○	B-1		35.0'	Dark yellowish brown CLAY with sand	CL
□	B-1		40.0'	Dark yellowish brown lean CLAY with sand	CL
△	B-1		45.0'	Dark yellowish brown sandy CLAY	CL
◇	B-1		50.0'	Yellowish brown clayey SAND with gravel	SC

B. HILLEBRANDT SOILS TESTING, INC.
+1 510-409-2816
SoilTesting@aol.com

Client: Peters & Ross
Project: 770 Page Street
Project No.: 20104.001

Figure

Tested By: BH

GRAIN SIZE DISTRIBUTION TEST DATA

2/23/2020

Client: Peters & Ross
Project: 770 Page Street
Project Number: 20104.001
Location: B-1
Depth: 2.5'
Material Description: Dark brown sandy fat CLAY
USCS: CH
Tested by: BH

Sieve Test Data

Dry Sample and Tare (grams)	Tare (grams)	Cumulative Pan Tare Weight (grams)	Sieve Opening Size	Cumulative Weight Retained (grams)	Percent Finer
169.40	37.90	0.00	3"	0.00	100.0
			#4	1.19	99.1
			#40	17.00	87.1
			#200	44.69	66.0

Fractional Components

Cobbles	Gravel	Sand	Silt	Clay
0.0	0.9	33.1		

D ₅	D ₁₀	D ₁₅	D ₂₀	D ₃₀	D ₄₀	D ₅₀	D ₆₀	D ₈₀	D ₈₅	D ₉₀	D ₉₅
								0.2204	0.3446	0.5964	1.3124

Fineness Modulus
0.62

GRAIN SIZE DISTRIBUTION TEST DATA

2/23/2020

Client: Peters & Ross
Project: 770 Page Street
Project Number: 20104.001
Location: B-1
Depth: 20.0'
Material Description: Brown clayey SAND with gravel
USCS: SC
Tested by: BH

Sieve Test Data

Dry Sample and Tare (grams)	Tare (grams)	Cumulative Pan Tare Weight (grams)	Sieve Opening Size	Cumulative Weight Retained (grams)	Percent Finer
195.00	37.60	0.00	3"	0.00	100.0
			#4	28.19	82.1
			#40	81.06	48.5
			#200	108.09	31.3

Fractional Components

Cobbles	Gravel	Sand	Silt	Clay
0.0	17.9	50.8		

D ₅	D ₁₀	D ₁₅	D ₂₀	D ₃₀	D ₄₀	D ₅₀	D ₆₀	D ₈₀	D ₈₅	D ₉₀	D ₉₅
					0.1964	0.4781	0.9742	3.9822	6.2344	11.0432	24.4225

Fineness Modulus

2.68

GRAIN SIZE DISTRIBUTION TEST DATA

2/23/2020

Client: Peters & Ross
Project: 770 Page Street
Project Number: 20104.001
Location: B-1
Depth: 25.0'
Material Description: Brown sandy CLAY
USCS: CL
Tested by: BH

Sieve Test Data

Dry Sample and Tare (grams)	Tare (grams)	Cumulative Pan Tare Weight (grams)	Sieve Opening Size	Cumulative Weight Retained (grams)	Percent Finer
175.00	33.10	0.00	3"	0.00	100.0
			#4	9.36	93.4
			#40	33.48	76.4
			#200	69.08	51.3

Fractional Components

Cobbles	Gravel	Sand	Silt	Clay
0.0	6.6	42.1		

D ₅	D ₁₀	D ₁₅	D ₂₀	D ₃₀	D ₄₀	D ₅₀	D ₆₀	D ₈₀	D ₈₅	D ₉₀	D ₉₅
							0.1302	0.5922	1.0394	2.2404	7.5170

Fineness Modulus
1.24

GRAIN SIZE DISTRIBUTION TEST DATA

2/23/2020

Client: Peters & Ross
Project: 770 Page Street
Project Number: 20104.001
Location: B-1
Depth: 30.0'
Material Description: Brown sandy lean CLAY
USCS: CL
Tested by: BH

Sieve Test Data

Dry Sample and Tare (grams)	Tare (grams)	Cumulative Pan Tare Weight (grams)	Sieve Opening Size	Cumulative Weight Retained (grams)	Percent Finer
173.20	38.00	0.00	3"	0.00	100.0
			#4	0.00	100.0
			#40	4.37	96.8
			#200	51.78	61.7

Fractional Components

Cobbles	Gravel	Sand	Silt	Clay
0.0	0.0	38.3		

D ₅	D ₁₀	D ₁₅	D ₂₀	D ₃₀	D ₄₀	D ₅₀	D ₆₀	D ₈₀	D ₈₅	D ₉₀	D ₉₅
								0.1632	0.2070	0.2697	0.3704

Fineness Modulus
0.35

GRAIN SIZE DISTRIBUTION TEST DATA

2/23/2020

Client: Peters & Ross
Project: 770 Page Street
Project Number: 20104.001
Location: B-1
Depth: 35.0'
Material Description: Dark yellowish brown CLAY with sand
USCS: CL
Tested by: BH

Sieve Test Data

Dry Sample and Tare (grams)	Tare (grams)	Cumulative Pan Tare Weight (grams)	Sieve Opening Size	Cumulative Weight Retained (grams)	Percent Finer
173.30	37.90	0.00	3"	0.00	100.0
			#4	0.00	100.0
			#40	3.91	97.1
			#200	32.21	76.2

Fractional Components

Cobbles	Gravel	Sand	Silt	Clay
0.0	0.0	23.8		

D ₅	D ₁₀	D ₁₅	D ₂₀	D ₃₀	D ₄₀	D ₅₀	D ₆₀	D ₈₀	D ₈₅	D ₉₀	D ₉₅
								0.0976	0.1398	0.2065	0.3295

Fineness Modulus
0.24

GRAIN SIZE DISTRIBUTION TEST DATA

2/23/2020

Client: Peters & Ross
Project: 770 Page Street
Project Number: 20104.001
Location: B-1
Depth: 40.0'
Material Description: Dark yellowish brown lean CLAY with sand
USCS: CL
Tested by: BH

Sieve Test Data

Dry Sample and Tare (grams)	Tare (grams)	Cumulative Pan Tare Weight (grams)	Sieve Opening Size	Cumulative Weight Retained (grams)	Percent Finer
175.10	37.90	0.00	3"	0.00	100.0
			#4	0.00	100.0
			#40	1.77	98.7
			#200	34.60	74.8

Fractional Components

Cobbles	Gravel	Sand	Silt	Clay
0.0	0.0	25.2		

D ₅	D ₁₀	D ₁₅	D ₂₀	D ₃₀	D ₄₀	D ₅₀	D ₆₀	D ₈₀	D ₈₅	D ₉₀	D ₉₅
								0.1026	0.1401	0.1961	0.2900

Fineness Modulus
0.20

GRAIN SIZE DISTRIBUTION TEST DATA

2/23/2020

Client: Peters & Ross
Project: 770 Page Street
Project Number: 20104.001
Location: B-1
Depth: 45.0'
Material Description: Dark yellowish brown sandy CLAY
USCS: CL
Tested by: BH

Sieve Test Data

Dry Sample and Tare (grams)	Tare (grams)	Cumulative Pan Tare Weight (grams)	Sieve Opening Size	Cumulative Weight Retained (grams)	Percent Finer
207.70	38.80	0.00	3"	0.00	100.0
			#4	10.34	93.9
			#40	30.65	81.9
			#200	69.06	59.1

Fractional Components

Cobbles	Gravel	Sand	Silt	Clay
0.0	6.1	34.8		

D ₅	D ₁₀	D ₁₅	D ₂₀	D ₃₀	D ₄₀	D ₅₀	D ₆₀	D ₈₀	D ₈₅	D ₉₀	D ₉₅
							0.0796	0.3548	0.6087	1.3980	7.6031

Fineness Modulus
1.02

GRAIN SIZE DISTRIBUTION TEST DATA

2/23/2020

Client: Peters & Ross
Project: 770 Page Street
Project Number: 20104.001
Location: B-1
Depth: 50.0'
Material Description: Yellowish brown clayey SAND with gravel
USCS: SC
Tested by: BH

Sieve Test Data

Dry Sample and Tare (grams)	Tare (grams)	Cumulative Pan Tare Weight (grams)	Sieve Opening Size	Cumulative Weight Retained (grams)	Percent Finer
254.10	37.90	0.00	3"	0.00	100.0
			#4	33.91	84.3
			#40	77.00	64.4
			#200	116.50	46.1

Fractional Components

Cobbles	Gravel	Sand	Silt	Clay
0.0	15.7	38.2		

D ₅	D ₁₀	D ₁₅	D ₂₀	D ₃₀	D ₄₀	D ₅₀	D ₆₀	D ₈₀	D ₈₅	D ₉₀	D ₉₅
						0.1071	0.2746	2.5939	5.2605	11.7434	28.9272

Fineness Modulus
2.03

APPENDIX C

CPT Liquefaction Analysis

SPT Liquefaction Analysis

Settlement Analysis

LIQUEFACTION ANALYSIS REPORT

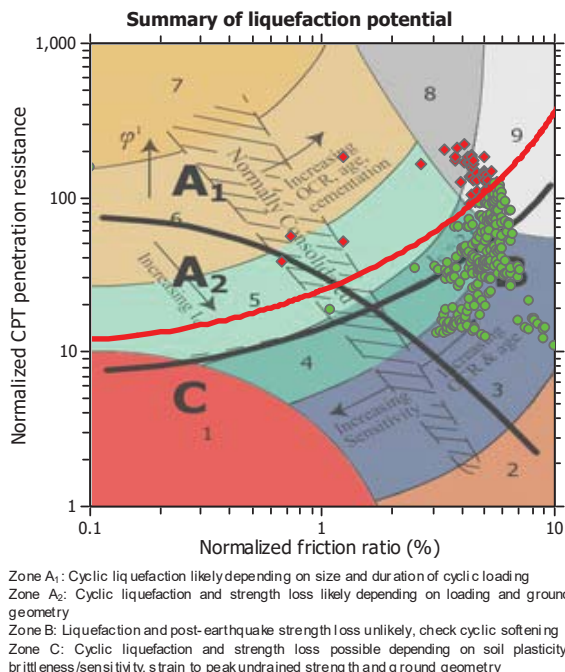
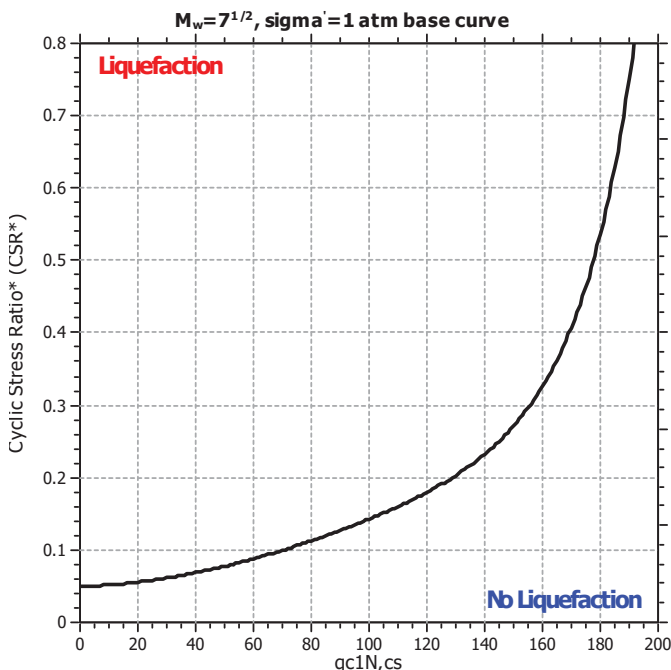
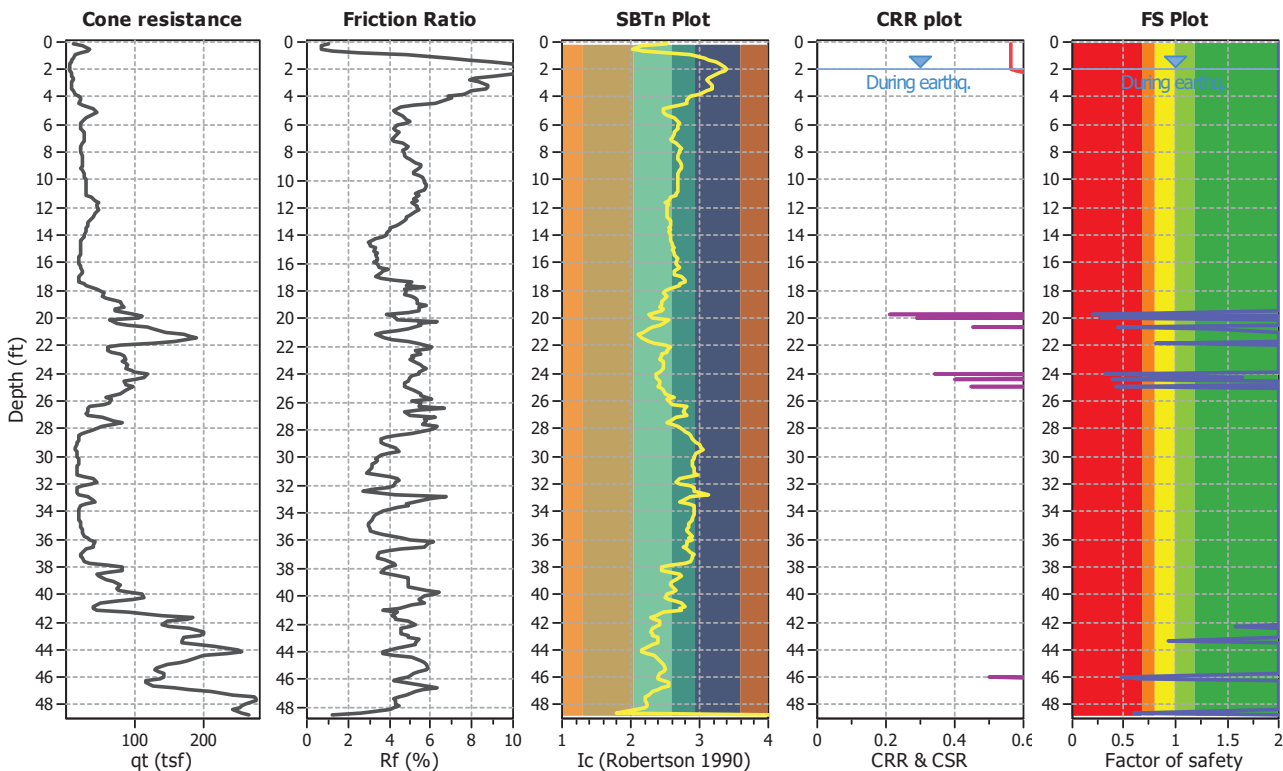
Project title : 770 Page St Development

Location : 770 Page Street, Berkeley, CA

CPT file : 770 Page St list file

Input parameters and analysis data

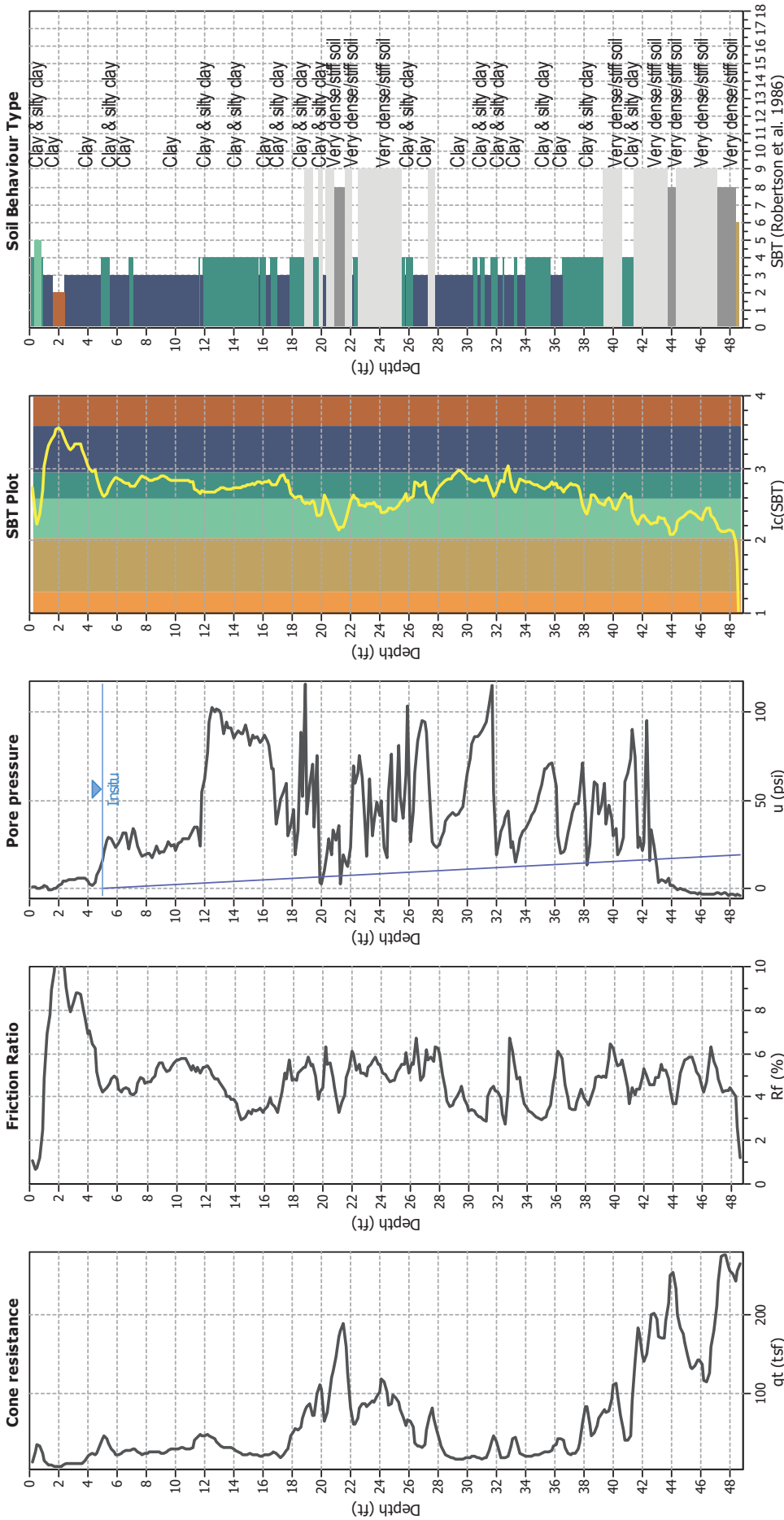
Analysis method:	I&B (2008)	G.W.T. (in-situ):	5.00 ft	Use fill:	No	Clay like behavior	
Fines correction method:	R&W (1998)	G.W.T. (earthq.):	2.00 ft	Fill height:	N/A	applied:	Sands only
Points to test:	Based on Ic value	Average results interval:	3	Fill weight:	N/A	Limit depth applied:	No
Earthquake magnitude M_w :	7.70	Ic cut-off value:	2.40	Trans. detect. applied:	No	Limit depth:	N/A
Peak ground acceleration:	0.90	Unit weight calculation:	Based on SBT	K_o applied:	Yes	MSF method:	Method based



CPT name: 770 Page St. list file

This software is licensed to: Peter Mundy

CPT basic interpretation plots



Input parameters and analysis data

Analysis method:	I&B (2008)	Fill weight:	N/A
Fines correction method:	R&W (1998)	Transition detect. applied:	No
Points to test:	Based on Ic value	K _o applied:	Yes
Earthquake magnitude M _w :	7.70	Clay like behavior applied:	Sands only
Peak ground acceleration:	0.90	Limit depth applied:	No
Depth to water table (insitu):	5.00 ft	Limit depth:	N/A
Depth to GW (earthq.):	2.00 ft		
Average results interval:	3		
Ic cut-off value:	2.40		
Unit weight calculation:	Based on SBT		
Use fill:	No		
Fill height:	N/A		

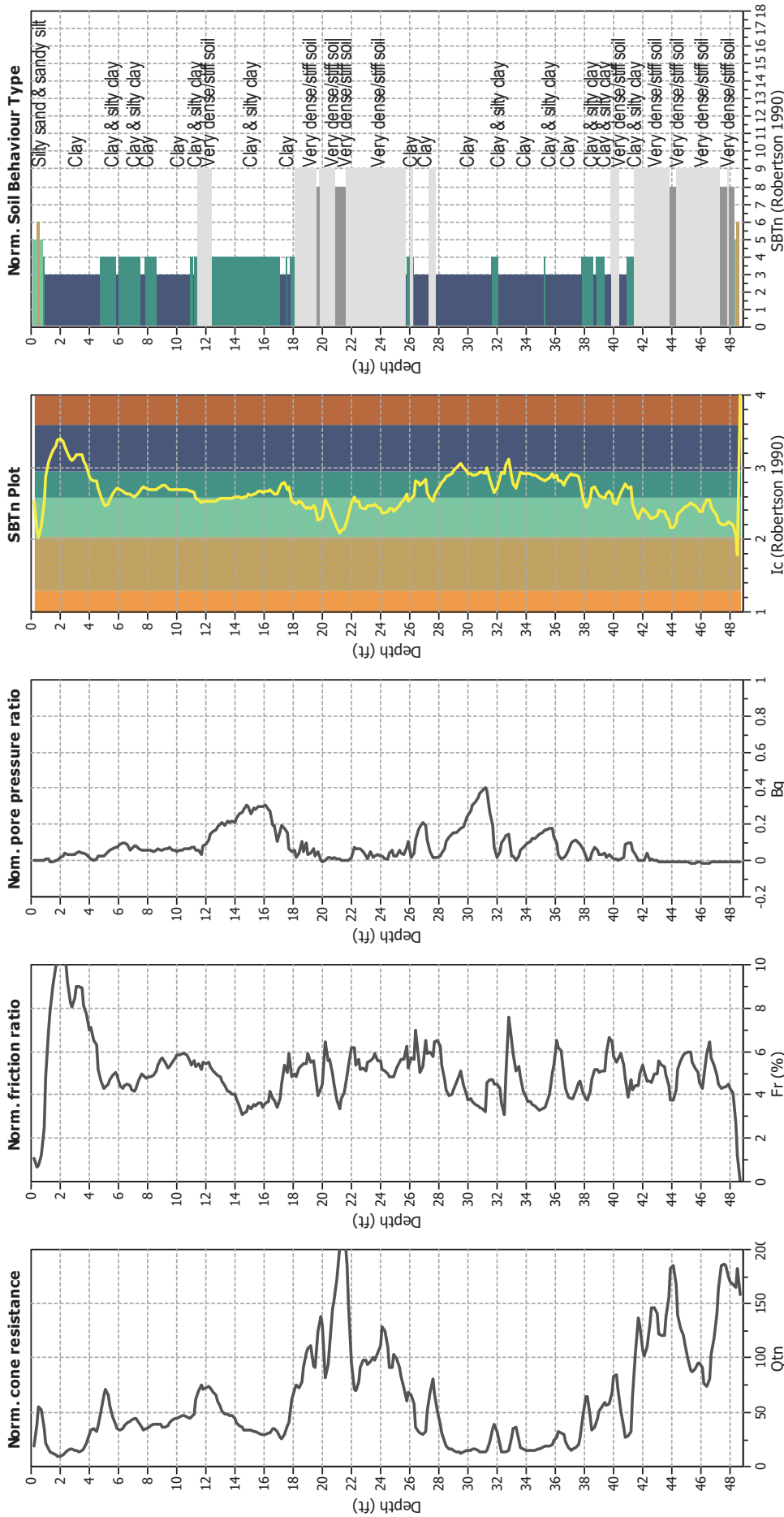
Clq v.3.0.3.2 - CPT Liquefaction Assessment Software - Report created on: 3/9/2020, 10:50:44 AM

Project file: C:\Users\Peter\Documents\WORK\Projects\2020 Projects\1442 Fifth Street\CPT Liquefaction Analysis.clq

CPT name: 770 Page St. list file

This software is licensed to: Peter Mundy

CPT basic interpretation plots (normalized)



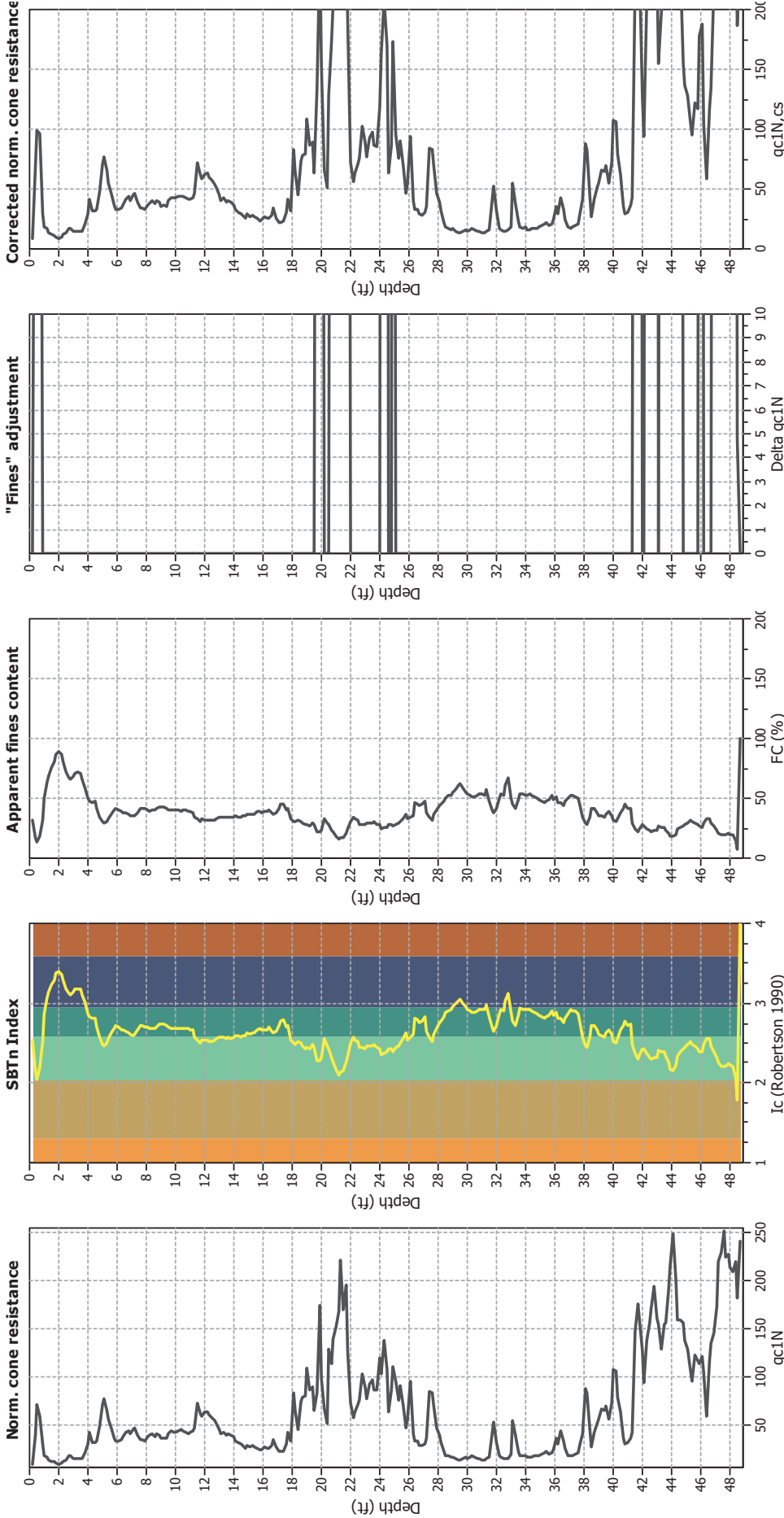
Input parameters and analysis data

Analysis method:	I&B (2008)	Depth to GWL (earthq.):	2.00 ft	Fill weight:	N/A
Fines correction method:	R&W (1998)	Average results interval:	3	Transition detect. applied:	No
Points to test:	Based on Ic value	Ic cut-off value:	2.40	K ₀ applied:	Yes
Earthquake magnitude M _w :	7.70	Unit weight calculation:	Based on SBT	Clay like behavior applied:	Sands only
Peak ground acceleration:	0.90	Use fill:	No	Limit depth applied:	No
Depth to water table (instu):	5.00 ft	Fill height:	N/A	Limit depth:	N/A

SBTn legend	1. Sensitive fine grained	4. Clayey silt to silty	7. Gravely sand to sand
2. Organic material	5. Silty sand to sandy silt	8. Very stiff sand to	
3. Clay to silty clay	6. Clean sand to silty sand	9. Very stiff fine grained	

CPT name: 770 Page St. list file

Liquefaction analysis overall plots (intermediate results)



This software is licensed to: Peter Mundy

Input parameters and analysis data

Analysis method:	I&B (2008)	Depth to GWL (earthq.):	2.00 ft	Fill weight:	N/A
Fines correction method:	R&W (1998)	Average results interval:	3	Transition detect. applied:	No
Points to test:	Based on Ic value	Ic cut-off value:	2.40	K _o applied:	Yes
Earthquake magnitude M _w :	7.70	Unit weight calculation:	Based on SBT	Clay like behavior applied:	Sands only
Peak ground acceleration:	0.90	Use fill:	No	Limit depth applied:	No
Depth to water table (insitu):	5.00 ft	Fill height:	N/A	Limit depth:	N/A

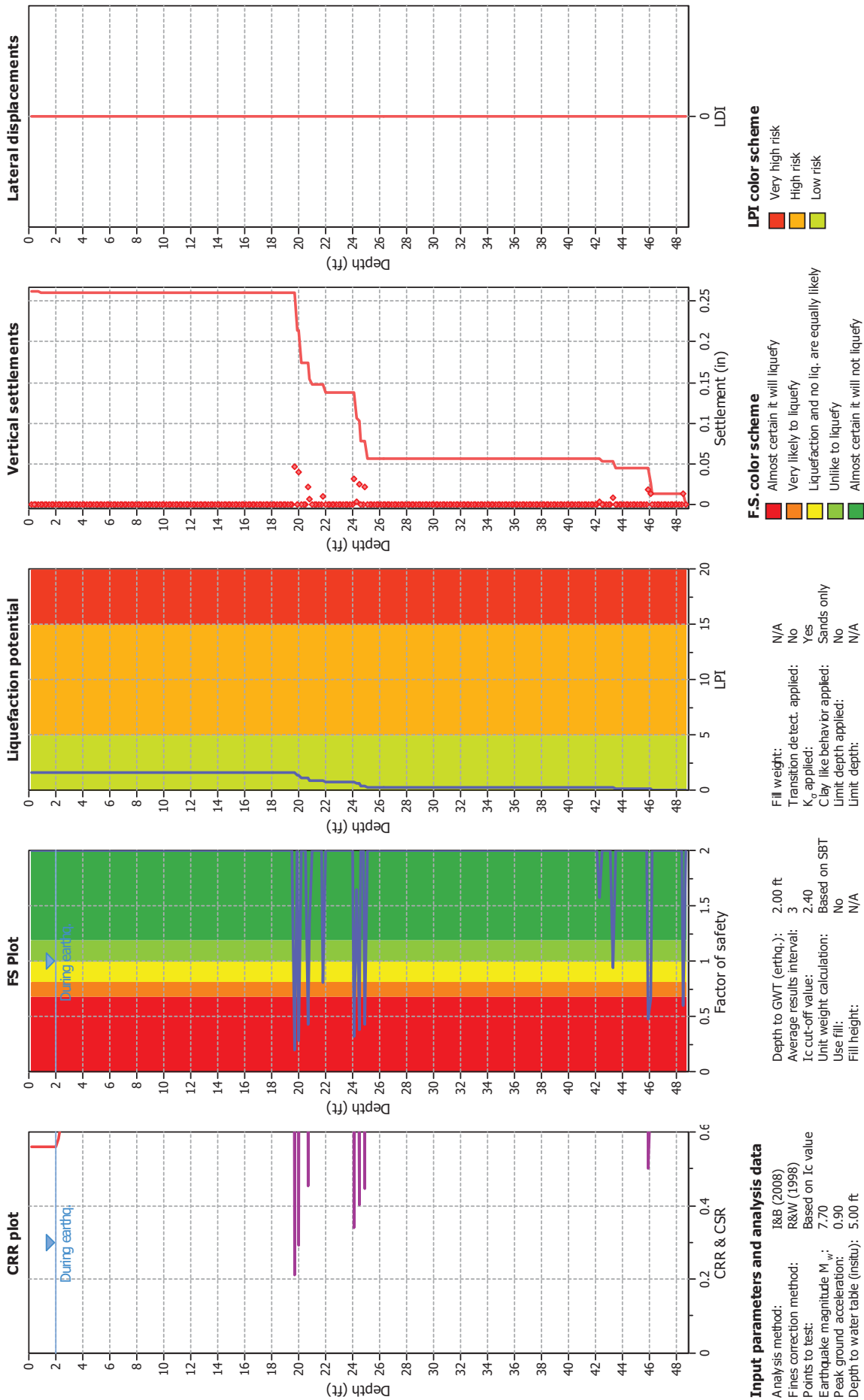
Clq v.3.0.3.2 - CPT Liquefaction Assessment Software - Report created on: 3/9/2020, 10:50:44 AM

Project file: C:\Users\Peter\Documents\WORK\Residential Clients\2020 Projects\1442 Fifth Street\CPT Liquefaction Analysis.clq

CPT name: 770 Page St. list file

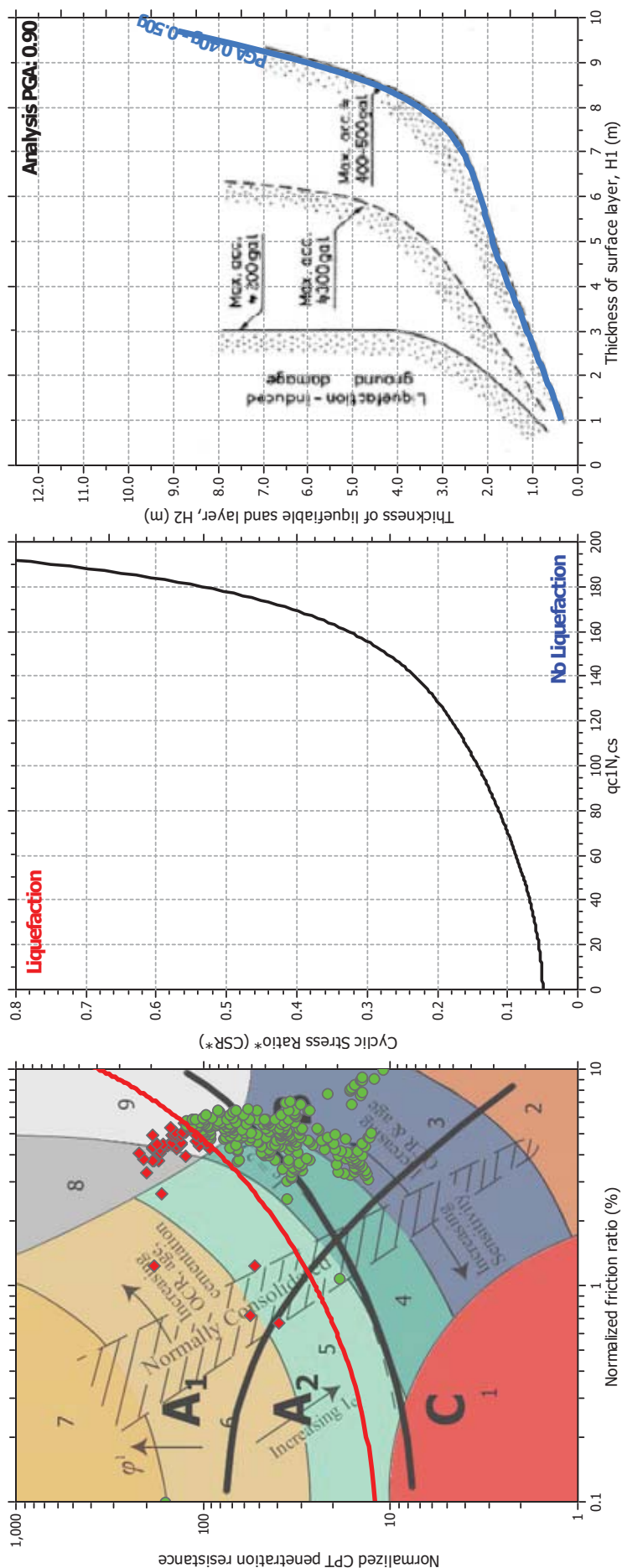
This software is licensed to: Peter Mundy

Liquefaction analysis overall plots



CPT name: 770 Page St. list file

Liquefaction analysis summary plots



Input parameters and analysis data

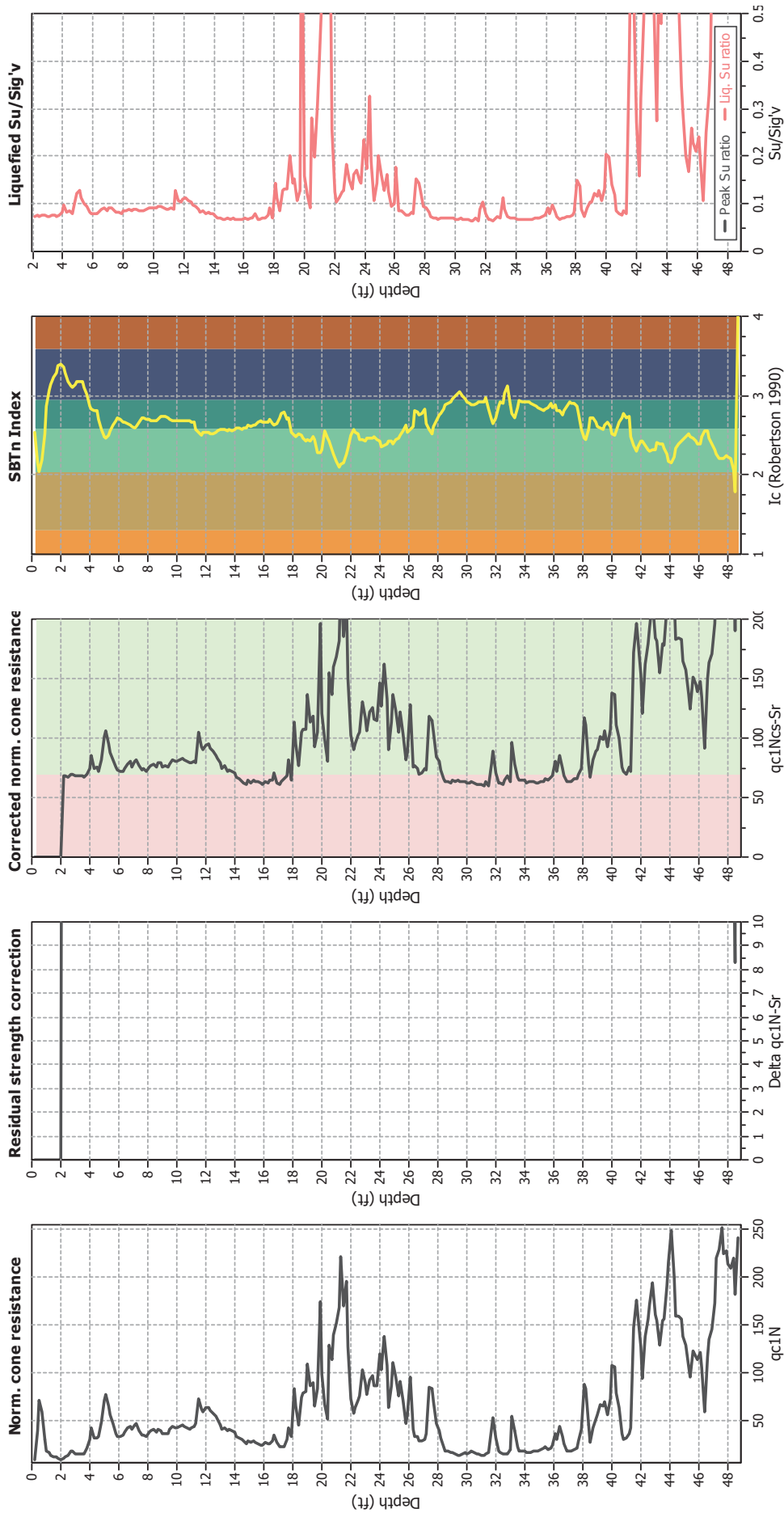
Analysis method:	I&B (2008)	Depth to GWL (earthq.):	2.00 ft	Fill weight:	N/A
Fines correction method:	R&W (1998)	Average results interval:	3	Transition detect. applied:	No
Points to test:	Based on I_c value	Ic cut-off value:	2.40	K_u applied:	Yes
Earthquake magnitude M_w :	7.70	Unit weight calculation:	Based on SBT	Clay like behavior applied:	Sands only
Peak ground acceleration:	0.90	Use fill:	No	Limit depth applied:	No
Depth to water table (insitu):	5.00 ft	Fill height:	N/A	Limit depth:	N/A

Clq v.3.0.3.2 - CPT Liquefaction Assessment Software - Report created on: 3/9/2020, 10:50:44 AM

Project file: C:\Users\Peter\Documents\WORK\Residential Clients\2020 Projects\1442 Fifth Street\CPT Liquefaction Analysis.clq

CPT name: 770 Page St. list file

Check for strength loss plots (Idriss & Boulanger (2008))



This software is licensed to: Peter Mundy

Input parameters and analysis data

Analysis method:	I&B (2008)	Fill weight:	N/A
Fines correction method:	R&W (1998)	Transition detect. applied:	No
Points to test:	Based on Ic value	K ₀ applied:	Yes
Earthquake magnitude M _w :	7.70	Clay like behavior applied:	Sands only
Peak ground acceleration:	0.90	Limit depth applied:	No
Depth to water table (insitu):	5.00 ft	Limit depth:	N/A

Depth to GW (earthq.): 2.00 ft
 Average results interval: 3
 Ic cut-off value: 2.40
 Unit weight calculation: Based on SBT
 Use fill: No
 Fill height: N/A

Clq v.3.0.3.2 - CPT Liquefaction Assessment Software - Report created on: 3/9/2020, 10:50:44 AM

Project file: C:\Users\Peter\Documents\WORK\Residential Clients\2020 Projects\1442 Fifth Street\CPT Liquefaction Analysis.clq

SPT BASED LIQUEFACTION ANALYSIS REPORT

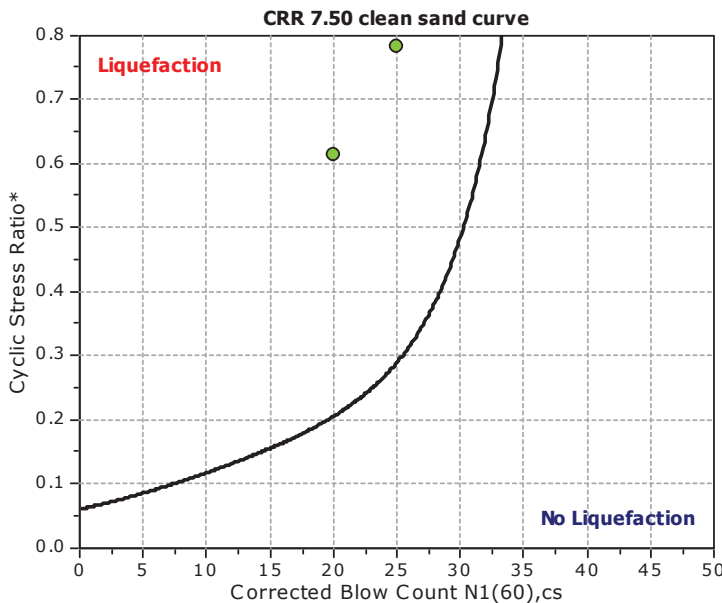
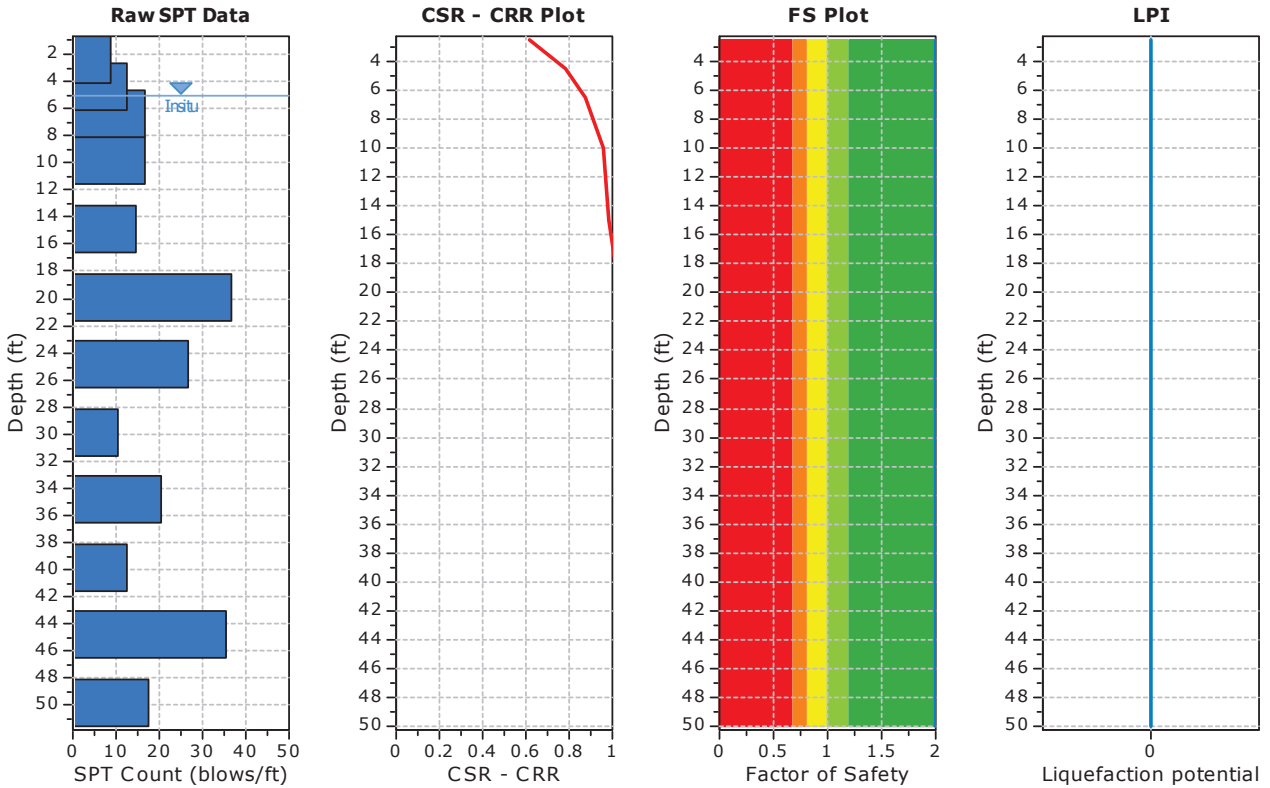
Project title : 770 Page St. Development

SPT Name: SPT #1

Location : 770 Page St., Berkeley, CA

:: Input parameters and analysis properties ::

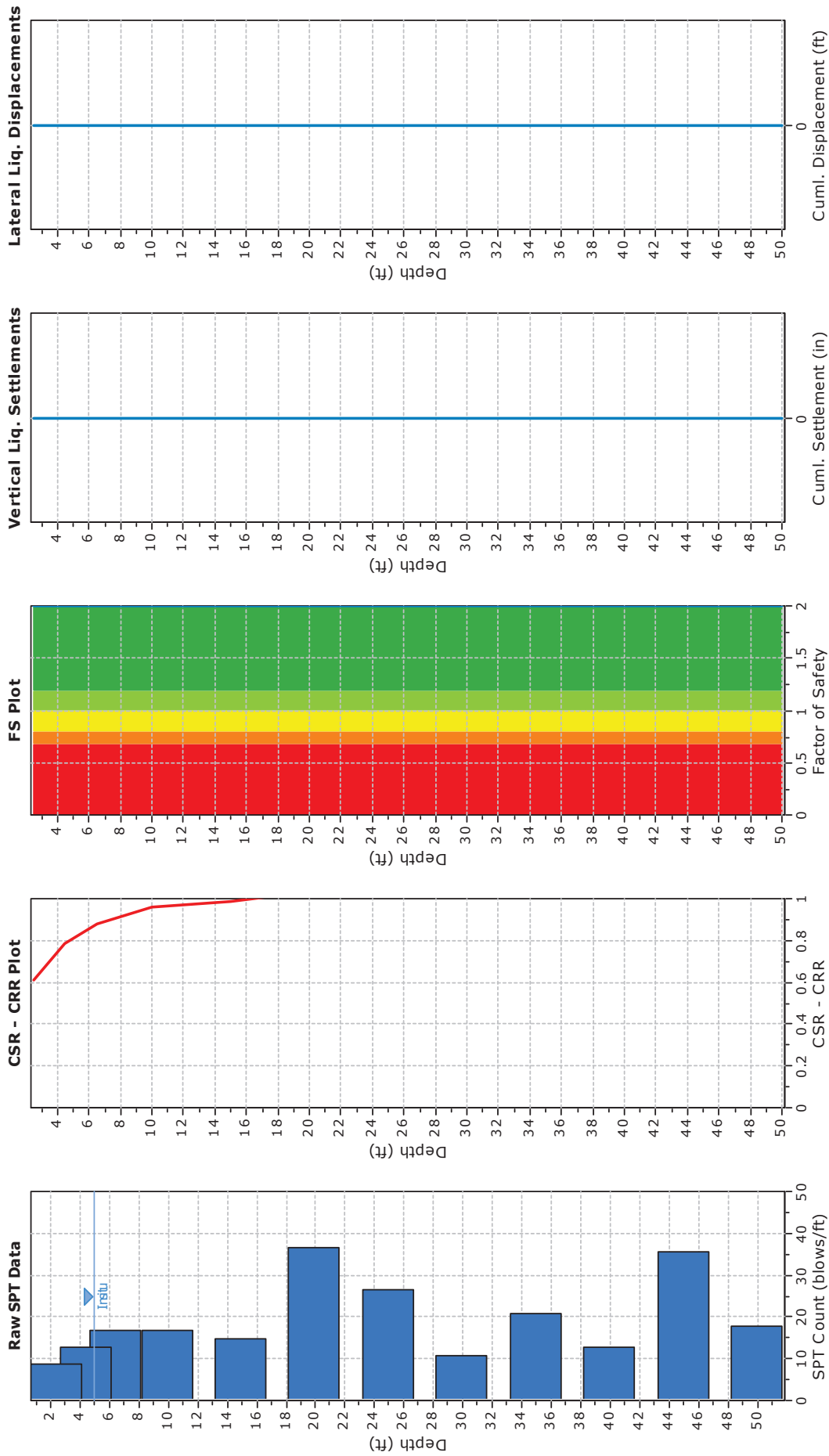
Analysis method:	Boulanger & Idriss, 2014	G.W.T. (in-situ):	5.00 ft
Fines correction method:	Boulanger & Idriss, 2014	G.W.T. (earthq.):	2.00 ft
Sampling method:	Sampler wo liners	Earthquake magnitude M_w :	7.70
Borehole diameter:	65mm to 115mm	Peak ground acceleration:	0.90 g
Rod length:	3.30 ft	Eq. external load:	0.00 tsf
Hammer energy ratio:	1.00		



- F.S. color scheme**
- Red: Almost certain it will liquefy
 - Orange: Very likely to liquefy
 - Yellow: Liquefaction and no liq. are equally likely
 - Light Green: Unlike to liquefy
 - Dark Green: Almost certain it will not liquefy
- LPI color scheme**
- Red: Very high risk
 - Orange: High risk
 - Yellow: Low risk

This software is registered to: Peters & Ross

:: Overall Liquefaction Assessment Analysis Plots ::



This software is registered to: Peters & Ross

:: Field input data ::					
Test Depth (ft)	SPT Field Value (blows)	Fines Content (%)	Unit Weight (pcf)	Infl. Thickness (ft)	Can Liquefy
2.50	9	66.00	120.00	2.50	No
4.50	13	50.00	120.00	2.50	No
6.50	17	50.00	120.00	2.50	No
10.00	17	50.00	120.00	5.00	No
15.00	15	50.00	120.00	5.00	No
20.00	37	31.00	120.00	5.00	Yes
25.00	27	51.00	120.00	5.00	No
30.00	11	62.00	120.00	5.00	No
35.00	21	76.00	120.00	5.00	No
40.00	13	75.00	120.00	5.00	No
45.00	36	59.00	120.00	5.00	Yes
50.00	18	46.00	120.00	5.00	No

Abbreviations

Depth: Depth at which test was performed (ft)
 SPT Field Value: Number of blows per foot
 Fines Content: Fines content at test depth (%)
 Unit Weight: Unit weight at test depth (pcf)
 Infl. Thickness: Thickness of the soil layer to be considered in settlements analysis (ft)
 Can Liquefy: User defined switch for excluding/including test depth from the analysis procedure

:: Cyclic Resistance Ratio (CRR) calculation data ::																
Depth (ft)	SPT Field Value	Unit Weight (pcf)	σ_v (tsf)	u_0 (tsf)	σ'_{vo} (tsf)	m	C_N	C_E	C_B	C_R	C_S	$(N_1)_{60}$	FC (%)	$\Delta(N_1)_{60}$	$(N_1)_{60cs}$	CRR _{7.5}
2.50	9	120.00	0.15	0.00	0.15	0.41	1.70	1.00	1.00	0.75	1.20	14	66.00	5.59	20	4.000
4.50	13	120.00	0.27	0.00	0.27	0.37	1.66	1.00	1.00	0.75	1.20	19	50.00	5.61	25	4.000
6.50	17	120.00	0.39	0.05	0.34	0.35	1.49	1.00	1.00	0.75	1.20	23	50.00	5.61	29	4.000
10.00	17	120.00	0.60	0.16	0.44	0.35	1.36	1.00	1.00	0.85	1.20	24	50.00	5.61	30	4.000
15.00	15	120.00	0.90	0.31	0.59	0.39	1.26	1.00	1.00	0.85	1.20	19	50.00	5.61	25	4.000
20.00	37	120.00	1.20	0.47	0.73	0.26	1.10	1.00	1.00	0.95	1.20	46	31.00	5.40	51	4.000
25.00	27	120.00	1.50	0.62	0.88	0.31	1.06	1.00	1.00	0.95	1.20	33	51.00	5.61	39	4.000
30.00	11	120.00	1.80	0.78	1.02	0.45	1.02	1.00	1.00	1.00	1.20	13	62.00	5.60	19	4.000
35.00	21	120.00	2.10	0.94	1.16	0.37	0.97	1.00	1.00	1.00	1.20	24	76.00	5.56	30	4.000
40.00	13	120.00	2.40	1.09	1.31	0.45	0.91	1.00	1.00	1.00	1.20	14	75.00	5.56	20	4.000
45.00	36	120.00	2.70	1.25	1.45	0.27	0.92	1.00	1.00	1.00	1.20	40	59.00	5.60	46	4.000
50.00	18	120.00	3.00	1.40	1.60	0.42	0.84	1.00	1.00	1.00	1.20	18	46.00	5.61	24	4.000

Abbreviations

σ_v : Total stress during SPT test (tsf)
 u_0 : Water pore pressure during SPT test (tsf)
 σ'_{vo} : Effective overburden pressure during SPT test (tsf)
 m: Stress exponent normalization factor
 C_N : Overburden correction factor
 C_E : Energy correction factor
 C_B : Borehole diameter correction factor
 C_R : Rod length correction factor
 C_S : Liner correction factor
 $N_{1(60)}$: Corrected N_{SPT} to a 60% energy ratio
 $\Delta(N_1)_{60}$: Equivalent clean sand adjustment
 $N_{1(60)cs}$: Corrected $N_{1(60)}$ value for fines content
 CRR_{7.5}: Cyclic resistance ratio for M=7.5

This software is registered to: Peters & Ross

:: Cyclic Stress Ratio calculation (CSR fully adjusted and normalized) ::

Depth (ft)	Unit Weight (pcf)	$\alpha_{v,eq}$ (tsf)	$u_{b,eq}$ (tsf)	$\sigma'_{v0,eq}$ (tsf)	r_d	α	CSR	MSF_{max}	$(N_1)_{60cs}$	MSF	$CSR_{eq,M=7.5}$	K_{σ}	CSR*	FS	
2.50	120.00	0.15	0.02	0.13	1.00	1.00	0.654	1.49	20	0.97	0.675	1.10	0.614	2.000	●
4.50	120.00	0.27	0.08	0.19	1.00	1.00	0.820	1.72	25	0.95	0.861	1.10	0.782	2.000	●
6.50	120.00	0.39	0.14	0.25	0.99	1.00	0.908	1.94	29	0.94	0.966	1.10	0.878	2.000	●
10.00	120.00	0.60	0.25	0.35	0.98	1.00	0.986	2.00	30	0.94	1.054	1.10	0.958	2.000	●
15.00	120.00	0.90	0.41	0.49	0.97	1.00	1.034	1.72	25	0.95	1.084	1.10	0.986	2.000	●
20.00	120.00	1.20	0.56	0.64	0.96	1.00	1.051	2.20	51	0.92	1.139	1.10	1.035	2.000	●
25.00	120.00	1.50	0.72	0.78	0.94	1.00	1.053	2.20	39	0.92	1.141	1.09	1.048	2.000	●
30.00	120.00	1.80	0.87	0.93	0.92	1.00	1.046	1.45	19	0.97	1.078	1.02	1.060	2.000	●
35.00	120.00	2.10	1.03	1.07	0.90	1.00	1.035	2.00	30	0.94	1.106	1.00	1.108	2.000	●
40.00	120.00	2.40	1.19	1.21	0.88	1.00	1.019	1.49	20	0.97	1.053	0.98	1.072	2.000	●
45.00	120.00	2.70	1.34	1.36	0.86	1.00	1.001	2.20	46	0.92	1.086	0.93	1.172	2.000	●
50.00	120.00	3.00	1.50	1.50	0.84	1.00	0.982	1.67	24	0.96	1.026	0.95	1.086	2.000	●

Abbreviations

- $\alpha_{v,eq}$: Total overburden pressure at test point, during earthquake (tsf)
- $u_{b,eq}$: Water pressure at test point, during earthquake (tsf)
- $\sigma'_{v0,eq}$: Effective overburden pressure, during earthquake (tsf)
- r_d : Nonlinear shear mass factor
- α : Improvement factor due to stone columns
- CSR : Cyclic Stress Ratio
- MSF : Magnitude Scaling Factor
- $CSR_{eq,M=7.5}$: CSR adjusted for M=7.5
- K_{σ} : Effective overburden stress factor
- CSR*: CSR fully adjusted (user FS applied)***
- FS: Calculated factor of safety against soil liquefaction

*** User FS: 1.00

:: Liquefaction potential according to Iwasaki ::

Depth (ft)	FS	F	wz	Thickness (ft)	I_L
2.50	2.000	0.00	9.62	2.00	0.00
4.50	2.000	0.00	9.31	2.00	0.00
6.50	2.000	0.00	9.01	2.00	0.00
10.00	2.000	0.00	8.48	3.50	0.00
15.00	2.000	0.00	7.71	5.00	0.00
20.00	2.000	0.00	6.95	5.00	0.00
25.00	2.000	0.00	6.19	5.00	0.00
30.00	2.000	0.00	5.43	5.00	0.00
35.00	2.000	0.00	4.67	5.00	0.00
40.00	2.000	0.00	3.90	5.00	0.00
45.00	2.000	0.00	3.14	5.00	0.00
50.00	2.000	0.00	2.38	5.00	0.00

Overall potential I_L : 0.00

- $I_L = 0.00$ - No liquefaction
- I_L between 0.00 and 5 - Liquefaction not probable
- I_L between 5 and 15 - Liquefaction probable
- $I_L > 15$ - Liquefaction certain

This software is registered to: Peters & Ross

:: Vertical & Lateral displacements estimation for saturated sands ::									
Depth (ft)	(N ₁) _{60cs}	Y _{lim} (%)	F _a	FS _{liq}	Y _{max} (%)	e _v (%)	dz (ft)	S _{v-1D} (in)	LDI (ft)
2.50	20	0.00	0.00	2.000	0.00	0.00	2.50	0.000	0.00
4.50	25	0.00	0.00	2.000	0.00	0.00	2.50	0.000	0.00
6.50	29	0.00	0.00	2.000	0.00	0.00	2.50	0.000	0.00
10.00	30	0.00	0.00	2.000	0.00	0.00	5.00	0.000	0.00
15.00	25	0.00	0.00	2.000	0.00	0.00	5.00	0.000	0.00
20.00	51	0.02	-1.67	2.000	0.00	0.00	5.00	0.000	0.00
25.00	39	0.00	0.00	2.000	0.00	0.00	5.00	0.000	0.00
30.00	19	0.00	0.00	2.000	0.00	0.00	5.00	0.000	0.00
35.00	30	0.00	0.00	2.000	0.00	0.00	5.00	0.000	0.00
40.00	20	0.00	0.00	2.000	0.00	0.00	5.00	0.000	0.00
45.00	46	0.19	-1.27	2.000	0.00	0.00	5.00	0.000	0.00
50.00	24	0.00	0.00	2.000	0.00	0.00	5.00	0.000	0.00

Cumulative settlements: 0.000 0.00

Abbreviations

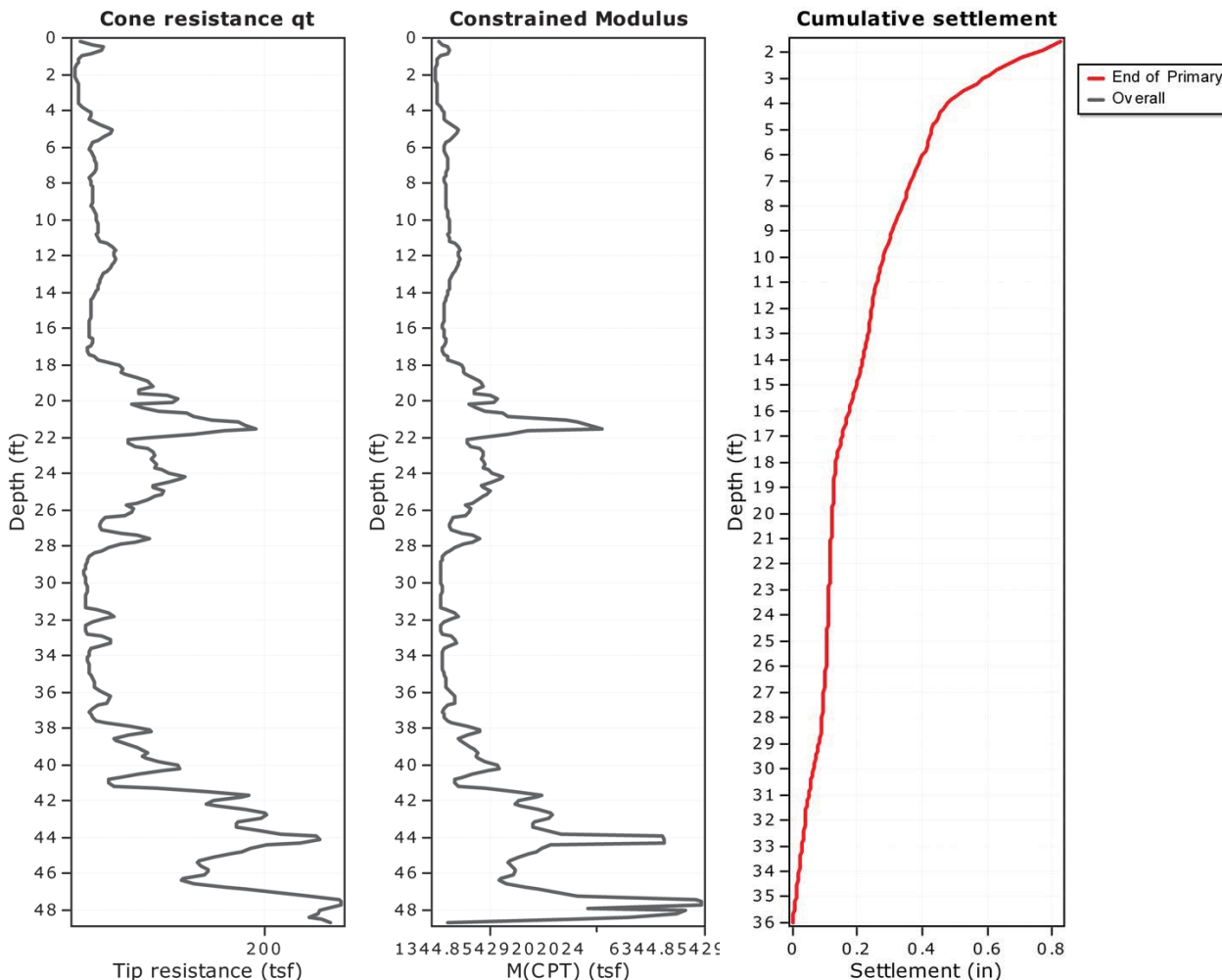
- Y_{lim}: Limiting shear strain (%)
- F_a/N: Maximum shear strain factor
- Y_{max}: Maximum shear strain (%)
- e_v: Post liquefaction volumetric strain (%)
- S_{v-1D}: Estimated vertical settlement (in)
- LDI: Estimated lateral displacement (ft)

References

- Ronald D. Andrus, Hossein Hayati, Nisha P. Mohanan, 2009. Correcting Liquefaction Resistance for Aged Sands Using Measured to Estimated Velocity Ratio, *Journal of Geotechnical and Geoenvironmental Engineering*, Vol. 135, No. 6, June 1
- Boulanger, R.W. and Idriss, I. M., 2014. CPT AND SPT BASED LIQUEFACTION TRIGGERING PROCEDURES. DEPARTMENT OF CIVIL & ENVIRONMENTAL ENGINEERING COLLEGE OF ENGINEERING UNIVERSITY OF CALIFORNIA AT DAVIS
- Dipl.-Ing. Heinz J. Priebe, Vibro Replacement to Prevent Earthquake Induced Liquefaction, *Proceedings of the Geotechnique-Colloquium at Darmstadt, Germany*, on March 19th, 1998 (also published in *Ground Engineering*, September 1998), Technical paper 12-57E
- Robertson, P.K. and Cabal, K.L., 2007, *Guide to Cone Penetration Testing for Geotechnical Engineering*. Available at no cost at <http://www.geologismiki.gr/>
- Youd, T.L., Idriss, I.M., Andrus, R.D., Arango, I., Castro, G., Christian, J.T., Dobry, R., Finn, W.D.L., Harder, L.F., Hynes, M.E., Ishihara, K., Koester, J., Liao, S., Marcuson III, W.F., Martin, G.R., Mitchell, J.K., Moriwaki, Y., Power, M.S., Robertson, P.K., Seed, R., and Stokoe, K.H., Liquefaction Resistance of Soils: Summary Report from the 1996 NCEER and 1998 NCEER/NSF Workshop on Evaluation of Liquefaction Resistance of Soils, *ASCE, Journal of Geotechnical & Geoenvironmental Engineering*, Vol. 127, October, pp 817-833
- Zhang, G., Robertson. P.K., Brachman, R., 2002, Estimating Liquefaction Induced Ground Settlements from the CPT, *Canadian Geotechnical Journal*, 39: pp 1168-1180
- Zhang, G., Robertson. P.K., Brachman, R., 2004, Estimating Liquefaction Induced Lateral Displacements using the SPT and CPT, *ASCE, Journal of Geotechnical & Geoenvironmental Engineering*, Vol. 130, No. 8, 861-871
- Pradel, D., 1998, Procedure to Evaluate Earthquake-Induced Settlements in Dry Sandy Soils, *ASCE, Journal of Geotechnical & Geoenvironmental Engineering*, Vol. 124, No. 4, 364-368
- R. Kayen, R. E. S. Moss, E. M. Thompson, R. B. Seed, K. O. Cetin, A. Der Kiureghian, Y. Tanaka, K. Tokimatsu, 2013. Shear-Wave Velocity-Based Probabilistic and Deterministic Assessment of Seismic Soil Liquefaction Potential, *Journal of Geotechnical and Geoenvironmental Engineering*, Vol. 139, No. 3, March 1

Project: 770 Page St. Development
Location: 770 Page St., Berkeley, CA

Settlements calculation according to theory of elasticity *



Calculation properties

Footing type: Rectangular
 Footing width: 19.00 (ft)
 L/B: 1.6
 Footing pressure: 1.50 (tsf)
 Embedment depth: 1.50 (ft)
 Footing is rigid: Yes
 Remove excavation load: Yes
 Apply 20% rule: Yes
 Calculate secondary settlements: No
 Time period for primary consolidation: N/A
 Time period for second. settlements: N/A

* Primary settlements calculation is performed according to the following formula:

$$S = \sum \frac{\Delta\sigma_v}{M_{CPT}} \Delta z$$

* Secondary (creep) settlements calculation is performed according to the following formula:

$$S_c = S_p \left(1 - e^{-t/t_p} \right)$$

where t_p is the duration of primary consolidation

This software is licensed to: Peter Mundy

CPT name: 770 Page St list file

:: Tabular results ::										
Point No	Start depth (ft)	End depth (ft)	Thickness (ft)	Relative depth (ft)	Delta P (tsf)	M _(CPT) (tsf)	Iz	Settlement (in)	Second. settlement (in)	Overall settlement (in)
1	1.48	1.64	0.16	0.07	1.41	104.74	1.00	0.023	0.000	0.023
2	1.64	1.80	0.16	0.22	1.41	93.96	1.00	0.030	0.000	0.030
3	1.80	1.97	0.17	0.39	1.41	84.06	1.00	0.033	0.000	0.033
4	1.97	2.13	0.16	0.55	1.41	81.77	1.00	0.034	0.000	0.034
5	2.13	2.30	0.16	0.72	1.40	88.74	0.99	0.031	0.000	0.031
6	2.30	2.46	0.16	0.88	1.40	102.20	0.99	0.027	0.000	0.027
7	2.46	2.63	0.16	1.04	1.39	122.91	0.98	0.022	0.000	0.022
8	2.63	2.79	0.16	1.21	1.38	137.71	0.98	0.020	0.000	0.020
9	2.79	2.95	0.16	1.37	1.36	142.08	0.97	0.019	0.000	0.019
10	2.95	3.12	0.16	1.54	1.35	133.00	0.96	0.020	0.000	0.020
11	3.12	3.28	0.16	1.70	1.33	124.55	0.95	0.021	0.000	0.021
12	3.28	3.45	0.16	1.86	1.32	122.54	0.93	0.021	0.000	0.021
13	3.45	3.61	0.16	2.03	1.30	124.90	0.92	0.020	0.000	0.020
14	3.61	3.77	0.16	2.19	1.28	142.23	0.91	0.018	0.000	0.018
15	3.77	3.94	0.16	2.36	1.26	185.88	0.89	0.013	0.000	0.013
16	3.94	4.10	0.16	2.52	1.24	262.00	0.88	0.009	0.000	0.009
17	4.10	4.27	0.16	2.68	1.22	295.90	0.86	0.008	0.000	0.008
18	4.27	4.43	0.16	2.85	1.20	303.01	0.85	0.008	0.000	0.008
19	4.43	4.59	0.16	3.01	1.18	279.54	0.83	0.008	0.000	0.008
20	4.59	4.76	0.16	3.18	1.15	326.73	0.82	0.007	0.000	0.007
21	4.76	4.92	0.16	3.34	1.13	440.02	0.80	0.005	0.000	0.005
22	4.92	5.09	0.16	3.50	1.11	567.13	0.79	0.004	0.000	0.004
23	5.09	5.25	0.16	3.67	1.09	617.99	0.78	0.003	0.000	0.003
24	5.25	5.41	0.16	3.83	1.08	573.44	0.76	0.004	0.000	0.004
25	5.41	5.58	0.16	4.00	1.06	485.45	0.75	0.004	0.000	0.004
26	5.58	5.74	0.16	4.16	1.04	401.82	0.74	0.005	0.000	0.005
27	5.74	5.91	0.17	4.32	1.02	337.19	0.72	0.006	0.000	0.006
28	5.91	6.07	0.16	4.49	1.00	298.75	0.71	0.007	0.000	0.007
29	6.07	6.23	0.16	4.65	0.99	292.73	0.70	0.007	0.000	0.007
30	6.23	6.40	0.16	4.82	0.97	304.04	0.69	0.006	0.000	0.006
31	6.40	6.56	0.16	4.98	0.95	328.77	0.68	0.006	0.000	0.006
32	6.56	6.73	0.16	5.14	0.94	356.10	0.67	0.005	0.000	0.005
33	6.73	6.89	0.16	5.31	0.92	366.97	0.66	0.005	0.000	0.005
34	6.89	7.05	0.16	5.47	0.91	378.65	0.64	0.005	0.000	0.005
35	7.05	7.22	0.16	5.64	0.90	386.52	0.64	0.005	0.000	0.005
36	7.22	7.38	0.16	5.80	0.88	382.77	0.63	0.005	0.000	0.005
37	7.38	7.55	0.16	5.96	0.87	347.19	0.62	0.005	0.000	0.005
38	7.55	7.71	0.16	6.13	0.86	310.32	0.61	0.005	0.000	0.005
39	7.71	7.87	0.16	6.29	0.84	291.10	0.60	0.006	0.000	0.006
40	7.87	8.04	0.16	6.46	0.83	300.36	0.59	0.005	0.000	0.005
41	8.04	8.20	0.16	6.62	0.82	311.53	0.58	0.005	0.000	0.005
42	8.20	8.37	0.16	6.78	0.81	331.38	0.57	0.005	0.000	0.005
43	8.37	8.53	0.16	6.95	0.80	333.27	0.57	0.005	0.000	0.005
44	8.53	8.69	0.16	7.11	0.79	340.24	0.56	0.005	0.000	0.005
45	8.69	8.86	0.16	7.28	0.78	339.51	0.55	0.005	0.000	0.005
46	8.86	9.02	0.16	7.44	0.77	333.12	0.54	0.005	0.000	0.005

This software is licensed to: Peter Mundy

CPT name: 770 Page St list file

:: Tabular results ::										
Point No	Start depth (ft)	End depth (ft)	Thickness (ft)	Relative depth (ft)	Delta P (tsf)	M _(CPT) (tsf)	Iz	Settlement (in)	Second. settlement (in)	Overall settlement (in)
47	9.02	9.19	0.16	7.60	0.76	320.90	0.54	0.005	0.000	0.005
48	9.19	9.35	0.16	7.77	0.75	311.09	0.53	0.005	0.000	0.005
49	9.35	9.51	0.16	7.93	0.74	327.72	0.52	0.004	0.000	0.004
50	9.51	9.68	0.16	8.10	0.73	352.90	0.52	0.004	0.000	0.004
51	9.68	9.84	0.16	8.26	0.72	377.45	0.51	0.004	0.000	0.004
52	9.84	10.01	0.16	8.43	0.71	387.46	0.51	0.004	0.000	0.004
53	10.01	10.17	0.16	8.59	0.71	391.20	0.50	0.004	0.000	0.004
54	10.17	10.34	0.16	8.75	0.70	399.85	0.50	0.003	0.000	0.003
55	10.34	10.50	0.16	8.92	0.69	407.73	0.49	0.003	0.000	0.003
56	10.50	10.66	0.16	9.08	0.68	405.76	0.48	0.003	0.000	0.003
57	10.66	10.83	0.16	9.24	0.68	395.53	0.48	0.003	0.000	0.003
58	10.83	10.99	0.16	9.41	0.67	390.77	0.47	0.003	0.000	0.003
59	10.99	11.16	0.16	9.57	0.66	394.85	0.47	0.003	0.000	0.003
60	11.16	11.32	0.16	9.74	0.65	415.94	0.46	0.003	0.000	0.003
61	11.32	11.48	0.16	9.90	0.65	532.48	0.46	0.002	0.000	0.002
62	11.48	11.65	0.16	10.07	0.64	604.32	0.45	0.002	0.000	0.002
63	11.65	11.81	0.16	10.23	0.63	653.95	0.45	0.002	0.000	0.002
64	11.81	11.98	0.16	10.39	0.63	620.94	0.45	0.002	0.000	0.002
65	11.98	12.14	0.16	10.56	0.62	633.47	0.44	0.002	0.000	0.002
66	12.14	12.30	0.16	10.72	0.62	646.41	0.44	0.002	0.000	0.002
67	12.30	12.47	0.16	10.89	0.61	633.92	0.43	0.002	0.000	0.002
68	12.47	12.63	0.16	11.05	0.60	601.22	0.43	0.002	0.000	0.002
69	12.63	12.80	0.16	11.21	0.60	567.22	0.42	0.002	0.000	0.002
70	12.80	12.96	0.16	11.38	0.59	523.13	0.42	0.002	0.000	0.002
71	12.96	13.12	0.16	11.54	0.59	477.20	0.42	0.002	0.000	0.002
72	13.12	13.29	0.16	11.71	0.58	447.70	0.41	0.003	0.000	0.003
73	13.29	13.45	0.16	11.87	0.58	425.02	0.41	0.003	0.000	0.003
74	13.45	13.62	0.16	12.03	0.57	422.18	0.41	0.003	0.000	0.003
75	13.62	13.78	0.16	12.20	0.57	410.94	0.40	0.003	0.000	0.003
76	13.78	13.94	0.16	12.36	0.56	404.79	0.40	0.003	0.000	0.003
77	13.94	14.11	0.16	12.53	0.56	381.65	0.39	0.003	0.000	0.003
78	14.11	14.27	0.16	12.69	0.55	353.64	0.39	0.003	0.000	0.003
79	14.27	14.44	0.16	12.85	0.55	328.08	0.39	0.003	0.000	0.003
80	14.44	14.60	0.16	13.02	0.54	309.90	0.38	0.003	0.000	0.003
81	14.60	14.76	0.16	13.18	0.54	292.83	0.38	0.004	0.000	0.004
82	14.76	14.93	0.16	13.35	0.53	291.10	0.38	0.004	0.000	0.004
83	14.93	15.09	0.16	13.51	0.53	286.70	0.37	0.004	0.000	0.004
84	15.09	15.26	0.16	13.67	0.52	294.89	0.37	0.003	0.000	0.003
85	15.26	15.42	0.16	13.84	0.52	287.21	0.37	0.004	0.000	0.004
86	15.42	15.58	0.16	14.00	0.51	286.07	0.36	0.004	0.000	0.004
87	15.58	15.75	0.16	14.17	0.51	270.89	0.36	0.004	0.000	0.004
88	15.75	15.91	0.16	14.33	0.51	261.82	0.36	0.004	0.000	0.004
89	15.91	16.08	0.16	14.49	0.50	264.82	0.36	0.004	0.000	0.004
90	16.08	16.24	0.16	14.66	0.50	270.58	0.35	0.004	0.000	0.004
91	16.24	16.40	0.16	14.82	0.49	276.03	0.35	0.004	0.000	0.004
92	16.40	16.57	0.16	14.99	0.49	281.48	0.35	0.003	0.000	0.003

This software is licensed to: Peter Mundy

CPT name: 770 Page St list file

:: Tabular results ::										
Point No	Start depth (ft)	End depth (ft)	Thickness (ft)	Relative depth (ft)	Delta P (tsf)	M _(CPT) (tsf)	Iz	Settlement (in)	Second. settlement (in)	Overall settlement (in)
93	16.57	16.73	0.16	15.15	0.48	317.71	0.34	0.003	0.000	0.003
94	16.73	16.90	0.16	15.31	0.48	319.19	0.34	0.003	0.000	0.003
95	16.90	17.06	0.16	15.48	0.48	295.79	0.34	0.003	0.000	0.003
96	17.06	17.22	0.16	15.64	0.47	247.36	0.34	0.004	0.000	0.004
97	17.22	17.39	0.16	15.81	0.47	237.30	0.33	0.004	0.000	0.004
98	17.39	17.55	0.16	15.97	0.47	271.37	0.33	0.003	0.000	0.003
99	17.55	17.72	0.16	16.13	0.46	350.97	0.33	0.003	0.000	0.003
100	17.72	17.88	0.16	16.30	0.46	386.96	0.33	0.002	0.000	0.002
101	17.88	18.05	0.16	16.46	0.45	609.22	0.32	0.001	0.000	0.001
102	18.05	18.21	0.16	16.63	0.45	707.15	0.32	0.001	0.000	0.001
103	18.21	18.37	0.16	16.79	0.45	760.67	0.32	0.001	0.000	0.001
104	18.37	18.54	0.16	16.95	0.44	726.71	0.31	0.001	0.000	0.001
105	18.54	18.70	0.16	17.12	0.44	786.99	0.31	0.001	0.000	0.001
106	18.70	18.87	0.16	17.28	0.44	943.66	0.31	0.001	0.000	0.001
107	18.87	19.03	0.16	17.45	0.43	1099.37	0.31	0.001	0.000	0.001
108	19.03	19.19	0.16	17.61	0.43	1141.30	0.31	0.001	0.000	0.001
109	19.19	19.36	0.16	17.78	0.43	1183.34	0.30	0.001	0.000	0.001
110	19.36	19.52	0.16	17.94	0.42	987.24	0.30	0.001	0.000	0.001
111	19.52	19.69	0.16	18.10	0.42	977.61	0.30	0.001	0.000	0.001
112	19.69	19.85	0.16	18.27	0.42	1378.13	0.30	0.001	0.000	0.001
113	19.85	20.01	0.16	18.43	0.41	1530.82	0.29	0.001	0.000	0.001
114	20.01	20.18	0.16	18.60	0.41	1452.31	0.29	0.001	0.000	0.001
115	20.18	20.34	0.16	18.76	0.41	885.04	0.29	0.001	0.000	0.001
116	20.34	20.51	0.16	18.92	0.40	1030.46	0.29	0.001	0.000	0.001
117	20.51	20.67	0.16	19.09	0.40	1248.68	0.28	0.001	0.000	0.001
118	20.67	20.83	0.16	19.25	0.40	1654.09	0.28	0.000	0.000	0.000
119	20.83	21.00	0.16	19.42	0.40	1765.63	0.28	0.000	0.000	0.000
120	21.00	21.16	0.16	19.58	0.39	3123.19	0.28	0.000	0.000	0.000
121	21.16	21.33	0.16	19.74	0.39	3362.61	0.28	0.000	0.000	0.000
122	21.33	21.49	0.16	19.91	0.39	3674.13	0.27	0.000	0.000	0.000
123	21.49	21.65	0.16	20.07	0.38	3965.11	0.27	0.000	0.000	0.000
124	21.65	21.82	0.16	20.24	0.38	2205.05	0.27	0.000	0.000	0.000
125	21.82	21.98	0.16	20.40	0.38	1754.22	0.27	0.000	0.000	0.000
126	21.98	22.15	0.16	20.56	0.38	1111.19	0.27	0.001	0.000	0.001
127	22.15	22.31	0.16	20.73	0.37	824.80	0.26	0.001	0.000	0.001
128	22.31	22.47	0.16	20.89	0.37	826.97	0.26	0.001	0.000	0.001
129	22.47	22.64	0.16	21.06	0.37	917.93	0.26	0.001	0.000	0.001
130	22.64	22.80	0.16	21.22	0.36	1101.76	0.26	0.001	0.000	0.001
131	22.80	22.97	0.16	21.38	0.36	1187.36	0.26	0.001	0.000	0.001
132	22.97	23.13	0.16	21.55	0.36	1192.71	0.25	0.001	0.000	0.001
133	23.13	23.29	0.16	21.71	0.36	1149.58	0.25	0.001	0.000	0.001
134	23.29	23.46	0.16	21.88	0.35	1188.88	0.25	0.001	0.000	0.001
135	23.46	23.62	0.16	22.04	0.35	1235.81	0.25	0.001	0.000	0.001
136	23.62	23.79	0.16	22.20	0.35	1207.39	0.25	0.001	0.000	0.001
137	23.79	23.95	0.16	22.37	0.35	1315.14	0.25	0.001	0.000	0.001
138	23.95	24.11	0.16	22.53	0.34	1395.51	0.24	0.000	0.000	0.000

This software is licensed to: Peter Mundy

CPT name: 770 Page St list file

:: Tabular results ::										
Point No	Start depth (ft)	End depth (ft)	Thickness (ft)	Relative depth (ft)	Delta P (tsf)	M _(CPT) (tsf)	Iz	Settlement (in)	Second. settlement (in)	Overall settlement (in)
139	24.11	24.28	0.16	22.70	0.34	1642.82	0.24	0.000	0.000	0.000
140	24.28	24.44	0.16	22.86	0.34	1589.38	0.24	0.000	0.000	0.000
141	24.44	24.61	0.16	23.02	0.34	1406.81	0.24	0.000	0.000	0.000
142	24.61	24.77	0.16	23.19	0.33	1169.63	0.24	0.001	0.000	0.001
143	24.77	24.93	0.16	23.35	0.33	1188.91	0.24	0.001	0.000	0.001
144	24.93	25.10	0.16	23.52	0.33	1341.18	0.23	0.000	0.000	0.000
145	25.10	25.26	0.16	23.68	0.33	1291.77	0.23	0.000	0.000	0.000
146	25.26	25.43	0.16	23.84	0.32	1203.41	0.23	0.001	0.000	0.001
147	25.43	25.59	0.16	24.01	0.32	1091.03	0.23	0.001	0.000	0.001
148	25.59	25.76	0.16	24.17	0.32	953.83	0.23	0.001	0.000	0.001
149	25.76	25.92	0.16	24.34	0.32	790.06	0.23	0.001	0.000	0.001
150	25.92	26.08	0.16	24.50	0.32	905.87	0.22	0.001	0.000	0.001
151	26.08	26.25	0.16	24.67	0.31	879.15	0.22	0.001	0.000	0.001
152	26.25	26.41	0.16	24.83	0.31	773.89	0.22	0.001	0.000	0.001
153	26.41	26.58	0.16	24.99	0.31	483.91	0.22	0.001	0.000	0.001
154	26.58	26.74	0.16	25.16	0.31	433.89	0.22	0.001	0.000	0.001
155	26.74	26.90	0.16	25.32	0.30	414.81	0.22	0.001	0.000	0.001
156	26.90	27.07	0.16	25.49	0.30	407.25	0.21	0.001	0.000	0.001
157	27.07	27.23	0.16	25.65	0.30	441.15	0.21	0.001	0.000	0.001
158	27.23	27.40	0.16	25.81	0.30	708.76	0.21	0.001	0.000	0.001
159	27.40	27.56	0.16	25.98	0.30	957.10	0.21	0.001	0.000	0.001
160	27.56	27.72	0.16	26.14	0.29	1117.82	0.21	0.001	0.000	0.001
161	27.72	27.89	0.16	26.31	0.29	931.88	0.21	0.001	0.000	0.001
162	27.89	28.05	0.16	26.47	0.29	724.88	0.21	0.001	0.000	0.001
163	28.05	28.22	0.16	26.63	0.29	541.11	0.20	0.001	0.000	0.001
164	28.22	28.38	0.16	26.80	0.29	429.68	0.20	0.001	0.000	0.001
165	28.38	28.54	0.16	26.96	0.28	327.64	0.20	0.002	0.000	0.002
166	28.54	28.71	0.16	27.13	0.28	260.71	0.20	0.002	0.000	0.002
167	28.71	28.87	0.16	27.29	0.28	231.29	0.20	0.002	0.000	0.002
168	28.87	29.04	0.16	27.45	0.28	225.45	0.20	0.002	0.000	0.002
169	29.04	29.20	0.16	27.62	0.28	214.07	0.20	0.003	0.000	0.003
170	29.20	29.36	0.16	27.78	0.27	202.45	0.19	0.003	0.000	0.003
171	29.36	29.53	0.16	27.95	0.27	186.10	0.19	0.003	0.000	0.003
172	29.53	29.69	0.16	28.11	0.27	185.28	0.19	0.003	0.000	0.003
173	29.69	29.86	0.16	28.27	0.27	197.97	0.19	0.003	0.000	0.003
174	29.86	30.02	0.16	28.44	0.27	208.50	0.19	0.003	0.000	0.003
175	30.02	30.18	0.16	28.60	0.27	217.15	0.19	0.002	0.000	0.002
176	30.18	30.35	0.16	28.77	0.26	227.16	0.19	0.002	0.000	0.002
177	30.35	30.51	0.16	28.93	0.26	234.33	0.19	0.002	0.000	0.002
178	30.51	30.68	0.16	29.09	0.26	232.16	0.18	0.002	0.000	0.002
179	30.68	30.84	0.16	29.26	0.26	217.03	0.18	0.002	0.000	0.002
180	30.84	31.00	0.16	29.42	0.26	205.68	0.18	0.002	0.000	0.002
181	31.00	31.17	0.16	29.59	0.25	200.98	0.18	0.002	0.000	0.002
182	31.17	31.33	0.16	29.75	0.25	204.02	0.18	0.002	0.000	0.002
183	31.33	31.50	0.16	29.91	0.25	216.17	0.18	0.002	0.000	0.002
184	31.50	31.66	0.16	30.08	0.25	348.48	0.18	0.001	0.000	0.001

:: Tabular results ::										
Point No	Start depth (ft)	End depth (ft)	Thickness (ft)	Relative depth (ft)	Delta P (tsf)	M _(CPT) (tsf)	Iz	Settlement (in)	Second. settlement (in)	Overall settlement (in)
185	31.66	31.82	0.16	30.24	0.25	533.98	0.18	0.001	0.000	0.001
186	31.82	31.99	0.16	30.41	0.25	609.15	0.17	0.001	0.000	0.001
187	31.99	32.15	0.16	30.57	0.24	490.91	0.17	0.001	0.000	0.001
188	32.15	32.32	0.16	30.73	0.24	307.07	0.17	0.002	0.000	0.002
189	32.32	32.48	0.16	30.90	0.24	219.42	0.17	0.002	0.000	0.002
190	32.48	32.64	0.16	31.06	0.24	205.10	0.17	0.002	0.000	0.002
191	32.64	32.81	0.16	31.23	0.24	204.15	0.17	0.002	0.000	0.002
192	32.81	32.97	0.16	31.39	0.24	227.74	0.17	0.002	0.000	0.002
193	32.97	33.14	0.16	31.55	0.24	433.95	0.17	0.001	0.000	0.001
194	33.14	33.30	0.16	31.72	0.23	550.68	0.17	0.001	0.000	0.001
195	33.30	33.47	0.16	31.88	0.23	573.21	0.16	0.001	0.000	0.001
196	33.47	33.63	0.16	32.05	0.23	385.60	0.16	0.001	0.000	0.001
197	33.63	33.79	0.16	32.21	0.23	280.91	0.16	0.002	0.000	0.002
198	33.79	33.96	0.16	32.38	0.23	256.94	0.16	0.002	0.000	0.002
199	33.96	34.12	0.16	32.54	0.23	250.17	0.16	0.002	0.000	0.002
200	34.12	34.28	0.16	32.70	0.23	244.40	0.16	0.002	0.000	0.002
201	34.28	34.45	0.16	32.87	0.22	239.18	0.16	0.002	0.000	0.002
202	34.45	34.61	0.16	33.03	0.22	246.06	0.16	0.002	0.000	0.002
203	34.61	34.78	0.16	33.20	0.22	251.49	0.16	0.002	0.000	0.002
204	34.78	34.94	0.16	33.36	0.22	257.23	0.16	0.002	0.000	0.002
205	34.94	35.11	0.16	33.52	0.22	268.79	0.15	0.002	0.000	0.002
206	35.11	35.27	0.16	33.69	0.22	291.06	0.15	0.001	0.000	0.001
207	35.27	35.43	0.16	33.85	0.22	315.46	0.15	0.001	0.000	0.001
208	35.43	35.60	0.16	34.02	0.21	320.24	0.15	0.001	0.000	0.001
209	35.60	35.76	0.16	34.18	0.21	319.71	0.15	0.001	0.000	0.001
210	35.76	35.93	0.16	34.34	0.21	332.37	0.15	0.001	0.000	0.001
211	35.93	36.09	0.16	34.51	0.21	414.42	0.15	0.001	0.000	0.001

Total primary settlement: 0.83
Total secondary settlement: 0.00

Total calculated settlement: 0.83

Abbreviations

- Start depth: Start depth of soil layer (penetration depth measured from ground free surface)
- End depth: End depth of soil layer (penetration depth measured from ground free surface)
- Thickness: Thickness of soil layer
- Relative depth: Depth of calculation relative to footing
- Iz: Stress influence factor
- Delta P: Footing imposed stress:
- Eff. stress: Effective stress
- M_(CPT): Constrained modulus from CPT
- Settlement: Primary settlement
- Second. settlement: Secondary settlements due to creep

FIRST GEN, LLC
805 Jones Street
Berkeley, CA

November 1, 2016

Richard Makdisi
Stellar Environmental Solutions
2198 6th Street, Suite 201
Berkeley CA 94710

RE: Phase One Reliance Letter for 1442-1448 5th Street, 770 & 776 Page Street, and 1435 – 1455 4th Street, Berkeley

Richard,

Thank you for taking my phone call today regarding the above referenced property and associated Phase One Assessment completed by Stellar Environmental Solutions in December 2012.

As we discussed, First Gen, LLC acquired the subject property November 1, 2016. We plan to move forward with improving the vacant lots at 1446 and 1444 5th Street apace. In order to fulfill City of Berkeley and construction lender financing requirements, First Gen, LLC wishes to contract with Stellar Environmental Solutions to complete a Reliance Letter for the existing Phase One Assessment.

Since the completion of Stellar's Phase One, all tenants are the same, except:

- The house at 770 Page Street is vacant
- The house at 1442 5th Street is vacant
- As of Oct 1, 2016, the warehouse space at 1445 4th is occupied by Charyn Auctions – an auction business of used restaurant equipment and furniture.

Let me know if you need any additional information.

Thanks Again,



Matthew Wadlund,
Managing Member,
First Gen, LLC

PHASE I ENVIRONMENTAL SITE ASSESSMENT

**1442-1448 5TH STREET
770 & 776 PAGE STREET
1435-1455 4TH STREET
BERKELEY, CALIFORNIA**

Prepared for:

**PAGE AND 5TH STREET PROPERTIES, INC.
SPARKS, NEVADA**

December 2012

**PHASE I ENVIRONMENTAL
SITE ASSESSMENT**

**1442-1448 5TH STREET
770 & 776 PAGE STREET
1435-1455 4TH STREET
BERKELEY, CALIFORNIA**

Prepared for:

**PAGE AND 5TH STREET PROPERTIES, INC.
1455 KLEPPE LANE
SPARKS, NEVADA 89431**

Prepared by:

**STELLAR ENVIRONMENTAL SOLUTIONS, INC.
2198 SIXTH STREET
BERKELEY, CALIFORNIA 94710**

December 11, 2012



2198 SIXTH STREET, SUITE 201-BERKELEY, CA 94710
TEL: (510)644-3123 · FAX: (510)644-3859
GEOSCIENCE & ENGINEERING CONSULTING

December 11, 2012

Mr. Michael Traynor
Page and 5th Street Properties, Inc.
1455 Kleppe Lane
Sparks, NV 89431

Subject: Phase I Report – 1442-1448 5th Street, 770 & 776 Page Street,
and 1435-1455 4th Street, Berkeley, California

Dear Mr. Traynor:

We, the undersigned consultant, have been retained by Page and 5th Street Properties, Inc. to provide a Phase I Environmental Site Assessment report (“Report”) on the referenced property. Please be advised that Page and 5th Street Properties, Inc. can rely on the Report entitled “Phase I Environmental Site Assessment: 1442-1448 5th Street, 770 & 776 Page Street, and 1435-1455 4th Street, Berkeley, California,” dated December 11, 2012, subject to the limitations and qualifications contained therein.

Stellar Environmental Solutions, Inc. has no present or contemplated future ownership interest nor financial interest in the real estate that is the subject of this Environmental Assessment Report; Stellar Environmental Solutions, Inc. has no personal interest with respect to the subject matter of the Environmental Assessment Report or the parties involved; and Stellar Environmental Solutions has no relationship with the property or the owners thereof which would prevent an independent analysis of the environmental or other conditions of the property.

Sincerely,

Steve Bittman
Senior Geologist

Richard Makdisi, R.G., R.E.A.
Principal



TABLE OF CONTENTS

Section	Page
EXECUTIVE SUMMARY.....	VI
Findings.....	vi
Opinion and Recommendations.....	ix
1.0 INTRODUCTION.....	1
Project Description.....	1
Purpose and Scope of Work.....	1
2.0 SUBJECT PROPERTY DESCRIPTION AND HISTORY.....	3
Subject Property Description and Current Usage.....	3
Subject property and Vicinity Historical Data.....	7
3.0 PHYSICAL SETTING.....	14
Topography and Drainage.....	14
Geology.....	14
Groundwater Hydrology.....	15
4.0 SUBJECT PROPERTY AND VICINITY INSPECTION.....	17
Introduction.....	17
Exterior Inspections.....	17
interior inspection.....	17
ACM/Lead-Based Paint/PCBs/Radon.....	20
Mold/Water Damage.....	21
Vicinity Reconnaissance.....	21
5.0 REGULATORY AGENCY RECORD SEARCH.....	22
Site Vicinity Findings.....	24
6.0 SUMMARY, CONCLUSIONS AND OPINION.....	30
Summary and Conclusions.....	30
Opinion and Recommendations.....	33
7.0 LIMITATIONS.....	35
8.0 REFERENCES.....	36

TABLE OF CONTENTS (continued)

Section	Page
Appendices	
Appendix A	Parcel Map, Subject Property Description, and Owner Interview Form
Appendix B	Historical Documentation
Appendix C	Photodocumentation
Appendix D	Regulatory Database
Appendix E	Subject Property Environmental Documentation
Appendix F	Vicinity Property Environmental Documentation
Appendix G	Report Preparers' Qualifications

TABLES AND FIGURES

Table	Page
Table 1 Site Inspection Checklist of Environmental Observations.....	18

Figure	Page
Figure 1 Site Location Map	5
Figure 2 Site Plan and Adjacent Land Use	6
Figure 3 Physical Setting Map.....	16
Figure 4 Map of Regulatory Agency-Listed Sites within 1-Mile Radius	25
Figure 5 Map of Regulatory Agency-Listed Sites within 1/4-Mile Radius	26

EXECUTIVE SUMMARY

Stellar Environmental Solutions, Inc. (Stellar Environmental) was retained by Page and 5th Street Properties, Inc. of Sparks, Nevada to conduct a Phase I Environmental Site Assessment (ESA) for the real property located at 1442-1448 5th Street, 770 & 776 Page Street, and 1435-1455 4th Street, Berkeley, California (subject property). Stellar Environmental performed this ESA in accordance with our November 6, 2012 proposal to Page and 5th Street Properties, Inc., and the terms and conditions contained therein. This ESA was conducted in accordance with the American Society for Testing and Materials Standard Practice for conducting Phase I ESAs.

FINDINGS

We declare that, to the best of our professional knowledge, we meet the definition of an Environmental Professional as defined by 40 CFR 312.10 of 40 CFR 312. We have the specific qualifications based on education, training, and experience to assess a property of the nature, history, and setting of the subject property. We have developed and performed all appropriate inquiries in conformance with the standards and practices set forth in 40 CFR Part 312. Stellar Environmental has performed the Phase I Environmental Site Assessment in conformance with the scope and limitations of ASTM Practice E 1527. There are no exceptions to, or deletions from, this practice described in this report.

The approximately 60,000-square foot subject property covers nine current street addresses.

- The 1435, 1445, 1453, and 1455 4th Street addresses [Assessor's Parcel Number (APN) 059-2325-018-3] are developed with two one-story warehouse spaces (tea and leather goods respectively, an automobile repair garage, a cabinet shop and a storage area for a landscaping contractor. The parcel measures approximately 36,875 square feet, and is zoned as "MU-LI," mixed-use light industrial.
- The 770 Page Street address (APN 059-2325-003) is developed with a one-story residence. The parcel is approximately 5,125 square feet and is zoned "MU-R," mixed-use residential. The building is currently occupied by a health clinic.
- The 776 Page Street address (APN 059-2325-004) is developed with a one-story residence. The parcel is approximately 3,938 square feet and is zoned "MU-R," mixed-use residential. This building is occupied by an acupuncturist.

- The 1442 5th Street address (APN 059-2325-005) is developed with a one-story residence. The parcel is approximately 3,750 square feet and is zoned “MU-R,” mixed-use residential. It is currently rented as a residence.
- The 1444 5th Street address (APN 059-2325-006) is undeveloped and is being used as a work rest area. The parcel is approximately 6,250 square feet and is zoned “MU-R,” mixed-use residential.
- The 1446/1448 5th Street address (APN 059-2325-007) is currently being used as the Ducks Nest School Community Garden. The parcel is approximately 6,250 square feet and is zoned “MU-R,” mixed-use residential.

Parcel 059-2325-18-3 is owned by DMBT Development Company (50%) and by Terry R. Haws and Jacquelin M. Haws Trust (50%). Parcels 059-2325-3, 059-2325-4, 059-2325-5, 059-2325-6, and 059-2325-7 are owned by Page and 5th Street Properties Inc.

The subject property parcels were occupied by residential dwellings as early as 1903. The 1435 4th Street building was constructed in 1945 by U.S. Die Casting and Manufacturing Co. to use as a war industry plant. The war ended before it could be used and the building sat vacant until the Haws Drinking Faucet Company moved there in 1949 and used the building for assembly only until 2000. The 1439/1445 4th Street building was constructed in 1955, and the southern section at 1453 4th Street was constructed in 1967 and was used by Haws. The loading dock and shipping warehouse adjacent to the east side of the 1435 4th Street warehouse was added between 1967 and 1970. The southernmost building at 1455 4th Street was constructed in 1975. The 1455 4th Street lot was used for parking and as an equipment staging area for several years prior to the construction of the current building there. The 770 and 776 Page Street residential dwellings were constructed between 1939 and 1946. The 1442 5th Street address was constructed between 1929 and 1939. The 1444 5th Street residence was constructed by 1903 and demolished by 1980. The 1446 5th Street residence was constructed by 1903 and demolished after 1980.

A voluntary seismic upgrade to the 1435-1445 4th Street buildings was conducted under the supervision of Ingraham DeJesse Associates 2008-2011. Holland and Harley Construction Co., of Berkeley CA completed the seismic upgrade per Ingraham DeJesse’s drawings in 2010.

The construction dates of the current buildings on the property pre-date federal regulations prohibiting the use of asbestos-containing materials (ACMs) in buildings. Other than fire rated doors Stellar Environmental did not note the typical, older 9 x 9 floor tiles and “popcorn” ceilings that can be asbestos containing. Areas not observed by Stellar Environmental could contain ACMs, but the materials observed appeared to be in good condition.

A sump observed to be located in the southwestern area of the 1435 4th Street warehouse space during the 2008 Phase I Assessment conducted by Stellar Environmental was subsequently removed during seismic upgrades done in 2010. This sump was historically used by Haws to collect water from eyewash stations, an air compressor and from roof downspouts. Given the location of the sump in the northern part of the property is not adjacent to automotive repair activity at 1453 4th Street, and the lack of historic and current operations suggesting subsurface contamination of groundwater, the former sump is not expected to pose a concern.

The subject property address is not listed in any commercially available database as a user or generator of hazardous waste. However, the 1453/1455 4th Street address does have a file with the Berkeley TMD. The historic tenants, German Auto Salvage and Karmakanix, (1986-2009) were listed in the file as hazardous waste generators. Chemicals stored on site included new and used motor oil and filters, coolant, and lead acid batteries. Degreaser and Safety Kleen aqueous cleaner were also listed. A facility closure of German Auto Salvage and Karmakanix at 1453/1455 4th Street was processed by the City TMD in February 2009. The work spaces were inspected by TMD staff and all hazardous materials had been removed from the buildings and from outside areas. Storm drains were judged by TMD to be clean.

The current tenant in the 1453 4th Street building, Tomas Sport Tuning, an automotive servicing facility, stores new and waste automotive fluids. At the time of the property inspection by Stellar Environmental, the waste fluids appeared properly stored with secondary containment, and the general housekeeping in this auto repair shop appeared good.

Inter Mountain Trading Company (1451 5th Street), located directly across 5th Street and to the east (upgradient) of the subject property—is listed on the Water Board SLIC database for groundwater contamination associated with TCE. Investigations conducted between 1989 and 1993 revealed minor levels (49 µg/L to 1.8 µg/L) of TCE in groundwater. Subsequently, four monitoring wells were installed. A source area was never found, but a groundwater pump and treat system was installed in 1993 to remediate the groundwater contamination. Tight soil conditions resulted in extremely low groundwater recharge; therefore, pump and treatment operations ceased 3 months later. The last monitoring event conducted in February 1995 showed 5.6 µg/L of TCE in well MW-4, located in 5th Street about 15 feet to the east of the subject property. This concentration is just slightly above the drinking water standard for TCE of 5.0 µg/L. Although the SLIC case remains open, there are currently no monitoring well events or active remediation being conducted or required by the TMD. Based on these data, this upgradient site is considered to have a negligible impact on the groundwater beneath the subject property, although any dewatering at the subject property in support of future development would require analysis of the groundwater and possible disposal based on the analytical results.

The subject property is listed by the City of Berkeley as being located in an Environmental Management Area designated by the city of Berkeley TMD for properties west of San Pablo Avenue. The function of this designation is to require potential buyers and developers of properties within this "Area" to complete environmental due diligence, as historical operations—particularly manufacturing ones—within the designated Environmental Management Area may have contaminated the subsurface environment. Thus, permit applicants with properties located in this area could encounter potential health and environmental concerns during construction involving underground excavation or dewatering. For large developments or redevelopments, a review of potential environmental impacts by the TMD, at the applicant's expense, is required. This status would not affect the subject property under circumstances where it would be continue in its current use. The TMD involvement would only be expected in the case of plans for deep excavations or ones that would require de-watering.

OPINION AND RECOMMENDATIONS

In the professional opinion of Stellar Environmental Solutions, an appropriate level of inquiry has been made into the previous ownership and uses of the property consistent with good commercial and customary practice in an effort to minimize liability.

The property has no Recognized Environmental Condition (RECs) based on regulatory database listings or association with the property as a definitive contaminant source.

Stellar Environmental recommends the following with regard to potential areas of BER:

The responsible party for the upgradient wells associated with 1451 5th Street and/or TMD should be contacted to resolve the issue associated with the four orphan monitoring wells that have apparently been forgotten about. Regulatory guidance calls for monitoring wells to either be monitored or—if supported by site closure—properly decommissioned. The existing four monitoring wells at the 1451 5th Street SLIC designated property should be sampled and the results shared with TMD. An application for site closure should be submitted if supported by the hydrochemical results. Following the TMD acceptance of site closure the four groundwater wells should be properly destroyed under permit. This would result in a clarification or removal of potential impacts of VOC contamination in the groundwater beneath the subject site. Although not currently anticipated, in the event dewatering is required to support future development on the subject property, characterization of groundwater will be necessary to obtain permits under the East Bay Municipal Utility District and/or the Water Board (in accordance with the National Pollution Discharge Elimination System).

In the event that any future redevelopment activities require significant soil and/or de-watering of excavations, Stellar Environmental recommends that a soil and groundwater management plan be completed for review and approval by the City of Berkeley TMD. Such a plan should delineate the planned redevelopment and describe soil profiling and other environmental screening measures consistent with the City of Berkeley Environmental Management Area designation requirements for properties west of San Pablo Avenue, and there being documented low level VOC contamination of the groundwater beneath 5th Street which has not been evaluated since 1995.

Although some ACM abatement has reportedly occurred in the 1435 4th street building, the subject property structures were constructed prior to the federal bans on ACMs and lead-based paint. Before any large-scale demolition or renovation is performed, the Bay Area Air Quality Management District requires a survey of building materials to verify the presence or absence of lead and/or ACMs. The State Department of Industrial Relations, Division of Occupational Safety and Health require that ACM abatement workers be appropriately trained, and that the work be supervised by a Certified Asbestos Consultant.

In the event that the current tenant of the 1453 4th Street building, Tomas Sport Tuning, vacates the building, Stellar environmental recommends that Berkeley TMD be notified and a hazardous material facility closure be conducted as required by the Berkeley TMD.

This report should be provided to potential property buyers, in accordance with real estate disclosure requirements.

1.0 INTRODUCTION

PROJECT DESCRIPTION

Stellar Environmental was retained by Page and 5th Street Properties, Inc. of Sparks, Nevada to conduct a Phase I Environmental Site Assessment (ESA) for the real property located at 1442-1448 5th Street, 770 & 776 Page Street, and 1435-1455 4th Street, Berkeley, California (subject property). Stellar Environmental performed this ESA in accordance with our November 6, 2012 proposal to Page and 5th Street Properties, Inc., and the terms and conditions contained therein. This ESA was conducted in accordance with the American Society for Testing and Materials (ASTM) Standard Practice for ESAs: Phase I Environmental Site Assessment Process (ASTM Designation 1527-05).

PURPOSE AND SCOPE OF WORK

The objective of the Phase I report is the development of environmental information about the site for use by the User and/or its lender in evaluating Business Environmental Risk (BER) associated with the property. Such information could include Recognized Environmental Conditions (RECs) that may affect the sale price of the property and/or require notification of potential purchasers, under real estate disclosure law. This Phase I ESA may also be used by the User to qualify under the “innocent landowner defense” of the Comprehensive Environmental Response, Compensation, and Liability Act.

This ESA evaluates potential hazardous waste materials or waste impacts that may be associated with the subject property, and assesses the potential impacts that could arise from historical site uses and/or offsite uses that have resulted in the migration of subsurface groundwater contamination onto the property. Tasks conducted for this ESA include:

- Evaluating historical land use;
- Evaluating the physical setting;
- Reviewing regulatory agency records and previous subject property environmental reports;
- Interviewing representatives of the property owner and current occupant; and
- Conducting a site reconnaissance.

We were not contracted to, nor did we, perform “non-scope considerations” delineated in the ASTM standard—including such tasks as sampling of asbestos, radon, lead-based paint, or lead in drinking water; regulatory compliance; evaluating ecological resources and risks to wetlands, cultural/historical, and endangered species; industrial hygiene; health and safety; indoor air quality; and high-voltage power line assessments.

2.0 SUBJECT PROPERTY DESCRIPTION AND HISTORY

This section describes the subject property and vicinity, and discusses current and historical land uses. The subject property description is based on a site inspection conducted by Stellar Environmental (see Section 4.0), and a description provided by the owner. The discussion of historical land use is based on a review of the following information sources: historical aerial photographs and topographic maps; Sanborn Fire Insurance Zonation maps; a city directory (Appendix B), and the property owner interview questionnaire (Appendix A). Specific sources of information are listed in the References section, and copies of relevant documents are included in the appendices of this report.

SUBJECT PROPERTY DESCRIPTION AND CURRENT USAGE

Figure 1 shows the general location of the subject property on an aerial photograph. Figure 2 shows the subject property and adjacent land uses. A detailed description of the subject property with regard to environmental issues is provided in Section 4.0, Subject Property and Vicinity Inspection.



The approximately 60,000-square foot subject property includes six structures totaling 32,935 square feet and covers nine current street addresses. Table 1 on the following page summarizes the current property configuration. An Assessor's Parcel Map and a Preliminary Title Report depicting the subject property individual parcels are included in Appendix A.

Table 1
Property Description
1442-1448 5th Street/770 & 776 Page Street
1435-1455 4th Street, Berkeley, California

Assessor's Parcel Number	Street Address	Improvements	Current use	Notes
059-2325-18-3 36,875 ft ²	1435 4 th St.	Building A: 7,039 ft ² warehouse and offices.	Leased to Tea Ventures International tea wholesaler. Zoned MU-LI.	Shares 2,592 ft ² loading dock with 1439/1445 4 th St.
059-2325-18-3 36,875 ft ²	1439/1445 4 th St.	Building B: 8,058 ft ² warehouse and offices.	Leased to Mulholland Leather Goods. Zoned MU-LI.	Shares 2,592 ft ² loading dock with 1435 4 th St.
059-2325-18-3 36,875 ft ²	1453 4 th St.	Building C: 10,184 ft ² shop space and office.	Leased to Tomas Sport Tuning (auto repair). Zoned MU-LI.	2,884 ft ² area occupied by landscape contractor.
059-2325-18-3 36,875 ft ²	1455 4 th St.	Building D: 4,040 ft ² shop space.	Leased to Wood Horse Construction (cabinet shop). Zoned MU-LI.	Includes 1,750 ft ² parking lot on west side.
059-2325-3 5,125 ft ²	770 Page St.	925 ft ² house.	Leased to Takeuche Acupuncture. Zoned MUR.	South side of parcel includes portion of paved parking lot.
059-2325-4 3,938 ft ²	776 Page St.	975 ft ² house.	Leased to Carol Lourie Health Center. Zoned MUR.	
059-2325-5 3,750 ft ²	1442 5 th St.	975 ft ² house.	Month to month private tenant. Zoned MUR.	
059-2325-6 6,250 ft ²	1444 5 th St.	Patio and garden.	Zoned MUR.	West side of parcel includes portion of paved parking lot.
059-2325-6 6,250 ft ²	1446/1448 5 th St.	Garden area.	Leased to Ducks Nest Pre-School. Zoned MUR.	West side of parcel includes portion of paved parking lot.



2012-41-01

	SITE LOCATION MAP		 STELLAR ENVIRONMENTAL SOLUTIONS, INC. <small>GEOSCIENCE & ENGINEERING CONSULTING</small>
	1442-1448 5th St., 770 & 776 Page St. & 1435-1455 4th St., Berkeley, CA	By: MJC	
Figure 1			



LEGEND	
	Monitoring well
	Warehouse
	Residence



SITE PLAN AND ADJACENT LAND USE

1442-1448 5th St., 770 & 776 Page St.,
& 1435-1455 4th St., Berkeley, CA

By: MJC

DECEMBER 2012

Figure 2



2012-41-02

SUBJECT PROPERTY AND VICINITY HISTORICAL DATA

Information was obtained on the subject property and site vicinity historical land uses dating from 1895. Research information sources reviewed for this task included:

- ***Aerial Photographs: 1939, 1946, 1959, 1965, 1972, 1982, 1993, 1998 and 2005.*** The scale of aerial photographs may be sufficient to allow discerning site-specific features such as drum storage, waste piles or manufacturing processes. However, often the scale is such that only building outlines are discernible. Appendix B contains copies of the aerial photographs reviewed.
- ***Sanborn Fire Insurance Zonation Maps: 1903, 1911, 1929, 1950, 1970, and 1980.*** A search for Sanborn maps was conducted by Environmental Data Resources, Inc. (EDR), which has access to the most complete collection of these maps. These maps generally indicate the location and type of developed structures, business names, and the use of flammable and other chemicals that are a potential fire hazard. Appendix B contains copies of the available maps.
- ***Historical Topographic Maps: 1895, 1915, 1948, 1949, 1959, 1968, 1980, and 1993.*** Topographic maps may depict urbanized land structures, farmlands, water resources, and well locations, and generally show only large commercial/industrial buildings. Several of the maps listed above are subsequent photo-revisions or reprints of an earlier base map, and show no significant changes. Appendix B contains copies of the topographic maps that document changes in land use in the immediate vicinity of the subject property.
- ***The EDR-City Directory: 1920-2012.*** Business directories including city, cross reference, and telephone directories are reviewed, if available, at 5-year intervals. Appendix B contains the City Directory report
- ***Previous Phase I Assessment: 2008.*** A phase I assessment of the subject property was conducted by Stellar Environmental in 2008 which was reviewed for the current assessment.
- ***Interview via questionnaire with Mr. Michael Traynor.*** Mr. Traynor is a representative of the current ownership group. Chairman of the Board of Haws Corporation (successor to Haws Drinking Faucet Co who occupied the property from 1946 to 2000). Worked onsite from 1950's to 2000 and was an employed by the company from 1964 to present.

The following is a chronological summary of subject property and immediate vicinity land uses, with an emphasis on historical usage of hazardous materials and land usage with the potential to

adversely impact the environment. Specific information regarding onsite and vicinity environmental issues is discussed in Sections 4.0 and 5.0.

Ownership and Tenancy Summary

A chain-of-title search was not conducted as part of this Phase I ESA. Ownership and tenancy information was provided by the current owner (Appendix A) and obtained from city directories (Appendix B) and past environmental inspections (Appendix E). Occupancy of the subject property addresses are listed in the city directories obtained from EDR summarized below:

Parcel 059-2325-18-3 is owned by DMBT Development Company (50%) and by Terry R. Haws and Jacqueline M. Haws Trust (50%). Parcels 059-2325-3, 059-2325-4, 059-2325-5, 059-2325-6, and 059-2325-7 are owned by Page and 5th Street Properties Inc.

The 1435 4th Street building was constructed in 1945 by U.S. Die Casting and Manufacturing Co. to use as a war industry plant, but the war ended before it could be used and the building sat vacant until the Haws Drinking Faucet Company moved there in 1949 and used the building for assembly only until 2000. North Atlantic Books occupied the property from 2001 to 2007. The building was vacant during seismic work and remodeling 2008-2011; currently occupied by Tea Ventures International (Traynor, 2012).

The 1439/1445 4th Street warehouse space was constructed by the Haws Drinking Faucet Co. in 1954 and was used as a warehouse, assembly machine shop and storage facility to the 1980's, then was leased for general warehousing until 2008. The building was vacant during remodeling 2008-2011; currently occupied by Mulholland Brothers leather goods (Traynor, 2012).

The 1453 4th Street warehouse space, constructed in approximately 1967 (previously a residence), was occupied by Haws Drinking Faucet Co. from 1967 to 1986, German Auto Salvage from 1986 to 2006, and German Autosport LLC from 2006 to 2008 as a warehouse/parts distribution space. The building was vacant during clean-up and remodeling 2008-2011; currently occupied by Tomas Speed Tuning (Traynor, 2012).

The 1455 4th Street parcel was open land until 1967, when it was occupied with a garage and staging yard by Haws Drinking Faucet Co. German Auto Salvage Inc. used the garage as an auto repair and storage yard until 2006, and Karmankanix has used the garage as auto repair and storage from 2006 to 2009. Currently occupied by Wood Horse Construction (Traynor, 2012).

The 770 Page Street residence was a home until 1966, when it was occupied by the Haws Drinking Faucet Co. as storage and office space from 1966 to 2000. From 2000 to 2005, it was

occupied by a chiropractic practice. The building was vacant for 2 years, and then occupied by an acupuncture practice from 2007 to the present (Traynor, 2012).

The 776 Page Street residence was a home until 1958, and was then used as either office/storage space, residential rental, and as an acupuncture practice to the present (Traynor, 2012).

The 1444 5th Street address was occupied by a home until 1957, and as a home rental from 1957 to 1970. The home was vacant from 1970 to 1976, and was then demolished. The site is currently being used as a worker rest area (Traynor, 2012).

The 1446 5th Street address was occupied as a residence until 1976. The residence was vacant from 1976 to 1986, and was then demolished. The lot was historically used as storage but is now being used by the Ducks Nest School as a community garden (Traynor, 2012).

The following are the City Directory search results for the subject property addresses.

1435 4th Street

1950, 1955, 1962, 1970, 1975, 1992, 1996, and 2000 – Haws Drinking Faucet Co.

2006 – North Atlantic Books

2012 – Favero Angela Hartley & Marks

1445 4th Street

1920 – EWR Little John

1933 – Nelson (Margt) Thompson and SPCO

1938 – DNR Thompson

1943, 1945, 1950, 1955, and 1962 – Paul and Juliette Bell

1970 and 1975 – Paul Angelo

2000 – Donna Rentel Presents

2012 – Mulholland Brothers

1453 4th Street

1933 – WM (Agnes) Church, Blacksmith

1943, 1945, and 1950 – Don Donaldson

1453 – Blanch Hollingsworth

1962 – Carrie Hollens

1986 – Silver Savings Systems

1992, 1996, and 2000 – German Auto Salvage

2006 – Karmakanix

2012 – Tomas Sport Tuning

1455 4th Street

1938, 1943, 1945, and 1950 – EHR Fredericks
1960, 1965, and 1970 – F Garbini
1979, 1984, and 1986 – Bruno Wartman
2012 Wood Horse Construction

770 Page Street

1950, 1955, and 1962 – Jesse James
2012 – Mitchell/Sapana Acupuncture

776 Page Street

1945 – Page Street Beauty Shop
1962 – Willie Woods
2006 – Carol Lourie Center for Natural Healing
2012 – Carol Lourie Center for Natural Healing

1442 5th Street

1925 – Frank Stagnaro
1956 – FW Tretzel
1965 – Gerald Kelly
1970 – WA Parsons
1975 and 1979 – Howard Lentzner

1444 5th Street

1950 and 1955 – Sisto Sanchez
1975 – Thos Eddy

1446 5th Street

1943 – Luther Cochran, Jack Burnett, and Sam Knight
1950 – HGR Bos
1962 – Louis Fernandez

The following is a detailed discussion of the review of the historical land use research findings. Specific information regarding onsite environmental issues is discussed in Sections 4.0 and 5.0.

- **1895 Topographic Map.** Property details on this map cannot be discerned due to scale; however, the subject property is situated in a grid, indicating urban development. West Berkeley is labeled.
- **1903 Sanborn Map.** The subject property is developed with five one-story residential dwellings and five associated one-story sheds. The buildings are located on the southern

half of the property with two of the houses/sheds located at 1444 and 1446 5th Street, and the other three houses/sheds are located at 1449-1455 4th Street. Adjacent properties are either undeveloped or developed residentially.

- **1911 Sanborn Map.** The subject property is further developed with an additional house at 1444 5th Street with what appear to be additional outbuildings on the 4th Street side of the property. Adjacent properties are either undeveloped or are developed residentially.
- **1915 Topographic Map.** Property details on this map cannot be discerned due to scale; however, the subject property is situated in a grid, indicating urban development. West Berkeley is labeled.
- **1929 Sanborn Map.** Three automobile garages have been added to the group of residences depicted in the 1911 Sanborn Map. The adjacent property to the south (1465 4th Street) is developed with a wood and metal preserving plant. Other nearby properties are either undeveloped or developed residentially.
- **1939 Aerial Photograph.** Details on this photograph are difficult to discern due to poor photographic resolution; however, the subject property appears partially developed in the southern half. The northern half of the property is undeveloped. The surrounding area is developed residentially to the west, and is undeveloped to the east; adjacent to Highway 80.
- **1945.** The 1435 4th Street warehouse is constructed (Traynor, 2012).
- **1946 Aerial Photograph.** The subject property is partially developed. The 1435 4th Street warehouse, and 770 and 776 Page Street addresses have been constructed. Residences are also present on the 1442-1448 5th Street parcels. However, the eastern and southern ends of the 1435 4th Street warehouse space are undeveloped. There appear to be residences on the 1449-1455 4th Street parcels as well. The area west of the property, adjacent to Highway 80, appears to be undergoing commercial development.
- **1948 and 1949 Topographic Maps.** The subject property is shaded, indicating urban development. Interstate 40 (Highway 80) and Highway 24 are featured. The Yacht Harbor is labeled to the west.
- **1950 Sanborn Map.** The 1435 4th Street property is developed with a one-story warehouse listed as "Drinking Faucet Factory." The 1449, 1453, and 1455 4th Street addresses are each developed with a one-story residential dwelling. The 1453 and 1455 4th Street address each contain a one-story shed. The 1455 4th Street address contains an automobile garage. The 770 and 776 Page Street address are developed with the present-day one-story residential dwellings. The 1442 5th Street and 1446 5th Street addresses are developed with one-story residences. 1444 5th Street is developed with two one-story

residences, two one-story sheds, and an automobile garage. 1452 5th Street is developed with a one-story residence and two one-story sheds. The adjacent property to the south, 1465 4th Street, is now listed as A&W Warehouse. The remaining adjacent properties are either undeveloped or developed residentially except for an auto parts warehouse located directly across 4th Street from the property. Railroad tracks, manufacturing, and warehouses are featured further to the west.

- **1954.** 1439/1445 4th Street warehouse is constructed (Traynor, 2012).
- **1959 Aerial Photograph.** The southern addition to the 1435 4th Street warehouse has been constructed. It appears as if the 1453 4th Street warehouse space has been constructed as well, but details are difficult to discern due to scale. Dwellings remain along the 5th Street side of the property.
- **1959 and 1968 Topographic Maps.** The subject property is shaded, indicating urban development. Golden Gate Fields is depicted to the northwest.
- **1965 Aerial Photograph.** The subject property 1435 4th Street warehouse has expanded to the south. The eastern side of the original building (the farthest north) is occupied by yard space and does not yet contain the current loading dock. The 1453 4th Street address appears to be occupied by a residence. The 1453 4th Street address appears to be parking. The 5th Street side of the property is fully occupied with homes.
- **1967.** The 1453 4th Street warehouse is constructed (Traynor, 2012).
- **1970 and 1980 Sanborn Maps.** The 1435 4th Street “Drinking Faucet Warehouse” has expanded to the south and east. The present day loading dock adjoin the east side of 1453 4th Street is now labeled as “Shipping.” The 1449 and 1453 4th Street addresses are now occupied with a single one-story warehouse labeled as “Carton Warehouse.” 1455 4th Street is labeled as “miscellaneous equipment staging.” The Page Street and 5th Street addresses remained developed with the same one-story residences; however, the second residence on 1444 5th Street (previously on the west side of the property) is no longer depicted. The adjacent property to the south is developed with a paper products warehouse and casting machine manufacturing. Properties across 5th Street and to the east are developed with welding shops, miscellaneous “warehouses,” residential dwellings, and a soil additive liquid warehouse. Adjacent properties to the west are developed with a plastic material warehouse, machine shop, electronic equipment facility, and residential dwellings. The properties across Page Street and to the north are developed with a machine shop and residential dwellings.
- **1973, 1980, and 1993 Topographic Maps.** The subject property is shaded, indicating urban development. Cordornices Creek can be seen just north of Harrison Street.

- **1974, 1982, 1993, 1998 and 2005 Aerial Photographs.** Details on these maps are difficult to discern due to the photographic quality; however, it appears as if the subject property is in its present-day configuration.
- **1975.** The 1455 4th Street building is constructed (Traynor, 2012).

The property parcels were occupied by residential dwellings as early as 1903. The 1435 4th Street building was constructed in 1945 by U.S. Die Casting and Manufacturing Co. to use as a war industry plant. The war ended before it could be used and the building sat vacant until the Haws Drinking Faucet Company moved there in 1949 and used the building for assembly only until 2000. The 1439/1445 4th Street building was constructed in 1955, and the southern section at 1453 4th Street was constructed in 1967 and was used by Haws. The loading dock and shipping warehouse adjacent to the east side of the 1435 4th Street warehouse was added between 1967 and 1970. The southernmost building at 1455 4th Street was constructed in 1975. The 1455 4th Street lot was used for parking and as an equipment staging area for several years prior to the construction of the current building there. The 770 and 776 Page Street residential dwellings were constructed between 1939 and 1946. The 1442 5th Street address was constructed between 1929 and 1939. The 1444 5th Street residence was constructed by 1903 and demolished by 1980. The 1446 5th Street residence was constructed by 1903 and demolished after 1980.

A voluntary seismic upgrade to the 1435-1445 4th Street buildings was conducted under the supervision of Ingraham DeJesse Associates 2008-2011. Holland and Harley Construction Co., of Berkeley CA completed the seismic upgrade per Ingraham DeJesse's drawings in 2010 (Traynor, 2012).

3.0 PHYSICAL SETTING

TOPOGRAPHY AND DRAINAGE

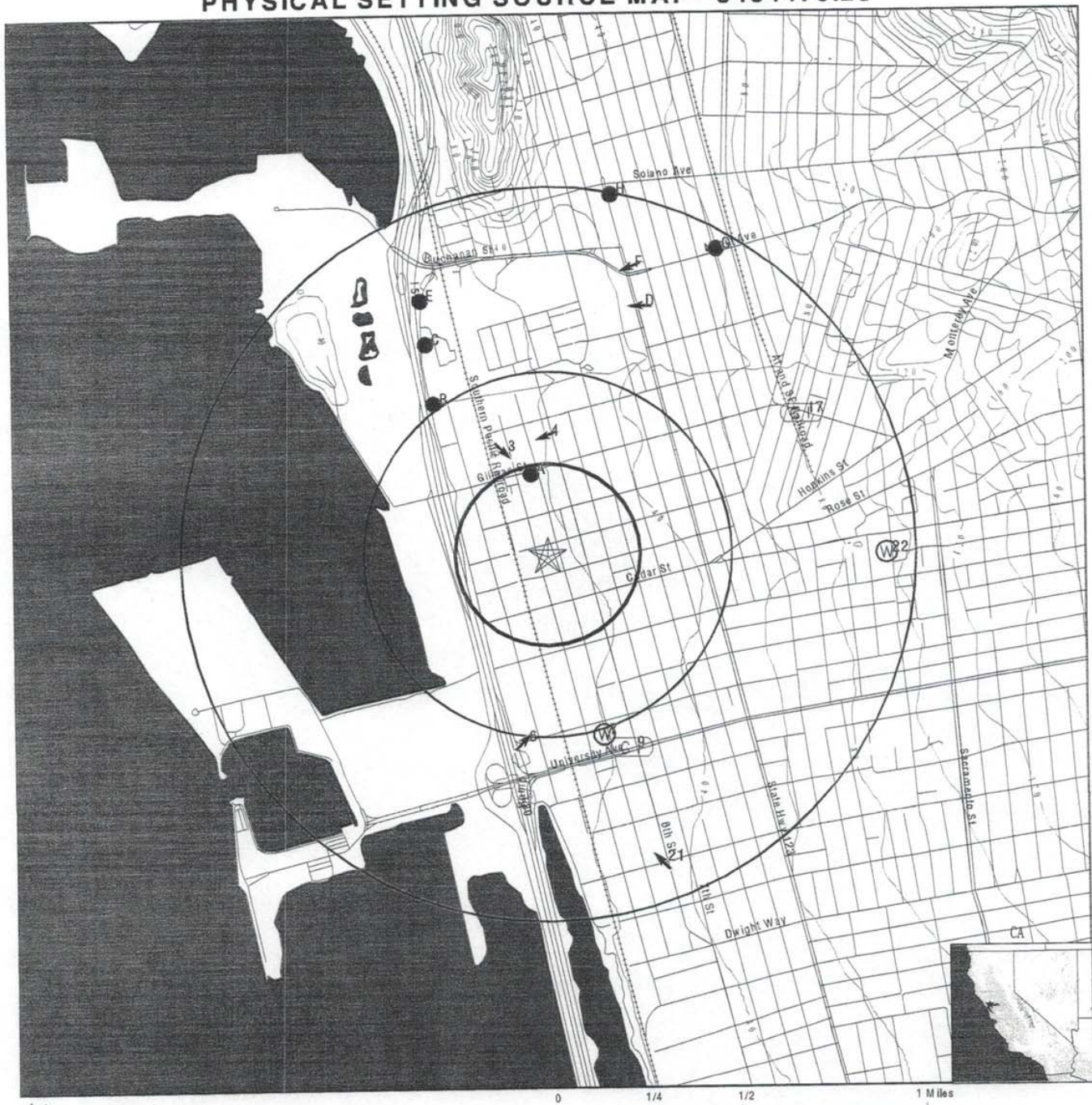
The subject property is located on a gently sloping alluvial fan approximately ½ mile east of San Francisco Bay, and approximately 2 miles west of the Berkeley/Oakland Hills that rise approximately 1,100 feet above mean sea level (amsl). The mean elevation of the subject property is approximately 15 feet amsl, and there is a general topographic gradient in the vicinity of the subject property and on the subject property to the west-southwest. The nearest surface water body is San Francisco Bay. The subject property is bordered on the eastern side by a 500-year flood zone. Stellar Environmental observed several storm drains in the streets on 4th Street, 5th Street, Page Street, and Jones Street during the time of the site inspections. The majority of stormwater runoff is conveyed off the property onto the street and enters the municipal storm drain system, and ultimately discharges, untreated, into San Francisco Bay.

GEOLOGY

The subject property is located within the Coast Range geomorphic province approximately 1½ miles west of the active Hayward Fault. The regional geology of the alluvial fan surficial sediments underlying the subject property consists of weakly consolidated, slightly weathered, poorly sorted, irregularly bedded gravels, sands, silts, and clays. In places, these sediments are overlain, at least in part, by artificial fill. The bedrock underlying the area at greater depth consists of tectonically-placed units of the Franciscan Assemblage; these units may consist of chert, graywacke, sandstone, and shale.

Soil borings drilled in 1994 on the site to the east at 812 Page Street, as part of a soil and groundwater investigation conducted there, showed the upper seven feet of subsurface soils to consist of moist, plastic clay. Sandy gravel was encountered between seven and ten feet below the ground surface (bgs), beneath which was another clay layer extending to the total drilled depth of approximately 17 feet bgs (Environmental Consulting Engineers, 1994).

PHYSICAL SETTING SOURCE MAP - 3454470.2s



- ⚡ County Boundary
- ⚡ Major Roads
- ⚡ Contour Lines
- ⚡ Earthquake Fault Lines
- ⊙ Earthquake epicenter, Richter 5 or greater
- ⊙ Water Wells
- ⊙ Public Water Supply Wells
- Cluster of Multiple Icons
- ↑ Groundwater Flow Direction
- (GI) Indeterminate Groundwater Flow at Location
- (GV) Groundwater Flow Varies at Location
- (HD) Closest Hydrogeological Data
- Oil, gas or related wells

Figure 3: Physical Setting Map

SITE NAME: 1435 4th Street
 ADDRESS: 1435 4th Street
 Berkeley CA 94710
 LAT/LONG: 37.8757 / 122.302

CLIENT: Stellar Enviro Solutions
 CONTACT: Steve Bittman
 INQUIRY #: 3454470.2s
 DATE: November 13, 2012 5:28 pm

4.0 SUBJECT PROPERTY AND VICINITY INSPECTION

INTRODUCTION

The site inspection was performed on November 28, 2012 by Mr. Steve Bittman of Stellar Environmental, who was escorted by Mr. Niels Traynor representative of the subject property owner. Figure 2 shows the site layout on an aerial photograph annotated with observations made during the site inspection. The interiors of the residence (1442 5th Street) and the acupuncture/holistic clinics (770 and 776 Page Street), as well as the roofs, were not available for inspection. Appendix C includes selected photographs taken during the inspection. Table 1 provides a checklist of observations made during the site inspection.

EXTERIOR INSPECTIONS

The exteriors of the 1435-1455 4th Street warehouse spaces are constructed of painted stucco. The 1455 4th Street shop is constructed of steel siding. The 1442 5th Street residence, and the 770 & 776 Page Street buildings are constructed of wood. The residences contain crawlspaces, while the warehouse and shop are constructed slab-on-grade. An asphalt paved parking area, accessed between 770 and 776 Page Street, extends to the southern end of the 1448 5th Street address. The asphalt appeared in fair condition, with some cracking observed. The concrete paved driveway in front of 1455 4th Street was observed to be in good condition. Stellar Environmental did note four pole-mounted transformers directly adjacent to the subject property. All appeared relatively new, and no leaking was observed. Stellar Environmental did not have access to the roofs during the subject property inspection; however, description of the roofs from an assessment conducted on the 1435-1455 4th Street warehouses in September 2007 is included in Appendix E (Rain Defense, 2007). Repairs and replacements have been made to the roofs evaluated in the 2007 report (Traynor, 2012).

INTERIOR INSPECTION

1435, 1445, 1453, and 1455 4th Street

The 1435, 1445, and 1453 4th Street building addresses are associated with the warehouse building. The 1435 4th Street space was constructed first; the 1445 and 1453 4th Street sections of the building, along with the eastern "shipping" section of the 1435 4th Street address, were

Table 1
Site Inspection Checklist of Environmental Observations

ASTM Inspection Categories	Findings
Radon	Listed as Zone 2 (between 2 and 4 picoCuries per liter air) (page A-15 of EDR report in Appendix D).
ACMs	Possibly, based on building ages.
Lead-Based Paint	Possibly, based on building ages.
Mercury in Transformers/Electrical	Not applicable.
PCBs in Transformers	Unlikely. See discussion.
PCBs in Fluorescent Light Ballast	Possibly, based on building ages.
Lead in Water	Possibly, based on age of buildings.
Urea-Formaldehyde	None observed.
Electromagnetic Fields	No high-tension wires cross the property.
Fiberglass Building Systems	Yes, on interior HVAC ducts.
CFC-containing Compounds	Not applicable.
Onsite Drains	Yes, both on the interior and exterior.
Sumps/Pits	Historic. See discussion.
Stressed Vegetation	None observed.
Hazardous Substances Storage, Use and/or Disposal	Yes. See discussion.
Containers and Drums	Yes. See discussion.
USTs	None observed or documented in regulatory agency files.
ASTs	None observed.
Ponds, Lagoons, Catch Basins, Ditches	None observed.
Wastewater Disposal	No onsite wastewater treatment occurs.
Groundwater Wells	None observed or documented in regulatory agency files.
Septic Tanks/Leach Fields	None observed.
Condition of Maintenance Areas	Good.

Notes:

- ACM = asbestos-containing material
- AST = aboveground storage tank
- CFC = chlorofluorocarbon
- EDR = Environmental Data Resources, Inc.
- HVAC = heating, ventilation, and air conditioning
- PCBs = polychlorinated biphenyls
- UST = underground storage tank

subsequently added. Originally, the sections were all one contiguous warehouse space occupied by the Haws Drinking Faucet Company; however, the buildings have since been divided by interior walls. The 1435 4th Street address occupied by Tea Ventures includes all of the northern section of the building, which is occupied by office space, warehouse space, and the shipping area. The 1445 4th Street address (the middle section), which is wholly warehouse space is currently occupied by Mulholland Brothers. Interior materials in these spaces include carpet, vinyl sheet floor covering, ceramic tiles, and concrete on floors; laid-in ceiling tiles, glued-on ceiling tiles and wood ceilings; and gypsum sheet rock, plaster, and concrete and steel walls. All of the building spaces are connected by the original fire-rated doors, including the 1453 4th Street section.

A sump observed to be located in the southwestern area of the 1435 4th Street warehouse space during the 2008 Phase I Assessment conducted by Stellar Environmental was subsequently removed during seismic upgrades done in 2010. This sump was historically used by Haws to collect water from eyewash stations, an air compressor and from roof downspouts. Given the location of the sump in the northern part of the property is not adjacent to automotive repair activity at 1453 4th Street, and the lack of historic and current operations suggesting subsurface contamination of groundwater, the former sump is not expected to pose a concern.

Stellar Environmental noted two drains in the loading dock shipping section of the 1435 4th Street. While the heating, ventilation, and air conditioning system for the offices in this building is located on the roof, the remaining warehouse areas have ceiling-mounted electrical heaters.

The 1453 4th Street address is occupied by the Tomas Sport Tuning auto repair shop. The concrete floors inside the work area appeared in good condition, with very little cracking that could create a conduit for subsurface contamination. Used motor oil, filters and coolant are located in 55-gallon steel drums, and the drums are stored in secondary steel "bucket" containment. Racks of typical small quantities of automotive chemicals and spare parts were also observed. In general, housekeeping in the area occupied by Tomas Sport Tuning appeared well organized and clean.

An approximately 900 square foot area located at the east end of the 1453 4th Street building occupied by "Landforms", a landscape contractor contains tools of that trade. The Landforms facility area appeared well organized.

1455 4th Street is occupied by Wood Horse construction which is a cabinet making and general contracting business. This shop appeared well run and orderly, with only small amounts of stored adhesives, stains and paints typical to the woodworking process.

770 and 776 Page Street; and 1442, 1444, and 1446 5th Street

Due to tenant privacy issues, Stellar Environmental did not conduct interior inspections of the 770 and 776 Page Street buildings (occupied by acupuncture/holistic clinics) or the 1442 5th Street residence (occupied by a single tenant). The interior grounds of the 1446 5th Street address (occupied as a garden/play area by the Duck's Nest School) was inspected with no issues found. The 1444 5th Street address is developed as a rest/lunch area with benches and a fountain.

ACM/LEAD-BASED PAINT/PCBS/RADON

The construction dates of the buildings on the property pre-date federal regulations prohibiting the use of asbestos-containing materials (ACMs) in buildings. Other than fire rated doors Stellar Environmental did not note the typical, older 9 x 9 floor tiles and "popcorn" ceilings that can be asbestos containing. Areas not observed by Stellar Environmental could contain ACMs, but the materials observed appeared to be in good condition. According to the property owner representative, an unspecified volume of ACMs were removed from the 1435 4th Street building during seismic upgrades and remodeling that occurred in 2010 (Traynor, 2012).

Because the construction date of the onsite buildings pre-dates the 1978 Consumer Products Safety Commission ban on the sale of lead-based paints, it is possible that painted finishes, especially underlying older finishes, contain lead. The majority of the interior and exterior walls are painted, and observed interior and exterior painted surfaces generally appeared in good condition. Lead-based paint is not considered a REC, and is unregulated in commercial buildings. It is also possible that pipes supplying drinking water contain lead. The California Department of Toxic Substances Control has established an "action level" of 15 parts per million of lead in drinking water, as measured at the tap.

Polychlorinated biphenyls (PCBs) are commonly found in the cooling oil of electrical transformers. Stellar Environmental observed several pole-mounted transformers both adjacent to the subject property buildings and on adjacent properties. All of these transformers appeared in good condition, and therefore would be unlikely to contain PCBs, as PG&E has been replacing the cooling oil in transformers and installing new transformers with non-PCB cooling oil since the early 1990s. PCBs can also be found in lighting tubes and ballasts. Stellar Environmental observed several lighting tubes and ballasts in the warehouse building areas.

Radon is a radioactive gas resulting from the natural breakdown of granitic rocks. Radon is generally not a concern in the San Francisco Bay Area because of the absence of surficial granitic bedrock exposure, and because most structures do not contain basements in which radon could accumulate. The EDR report (Appendix D and Table 1 of this report) lists the site as occurring

Other Potential Sources

There were several individual listings for “orphan” sites, which are not included in the site listings discussed above. Stellar Environmental was able to determine the location of these unmapped sites relative to the aforementioned criteria for potentially impacting the subject property. None of these meet the specified criteria for conducting additional regulatory agency file review.

The regulatory database cites three State water wells, and no federal public or U.S. Geological Survey water wells within 1 mile of the subject property (Figure 3 and Appendix D). No other potential sources of environmental contamination were listed in the regulatory databases.

The subject property is listed by the City of Berkeley as being located in an Environmental Management Area designated by the city of Berkeley TMD for properties west of San Pablo Avenue. The function of this designation is to require potential buyers and developers of properties within this “Area” to complete environmental due diligence, as historical operations—particularly manufacturing ones—within the designated Environmental Management Area may have contaminated the subsurface environment. Thus, permit applicants with properties located in this area could encounter potential health and environmental concerns during construction involving underground excavation or dewatering. For large developments or redevelopments, a review of potential environmental impacts by the TMD, at the applicant’s expense, is required. This status would not affect the subject property under circumstances where it would be continue in its current use. The TMD involvement would only be expected in the case of plans for deep excavations or ones that would require de-watering.

6.0 SUMMARY, CONCLUSIONS AND OPINION

The following conclusions are based on the Phase I Environmental Site Assessment for the subject property located at 1442-1448 5th Street, 770 & 776 Page Street, and 1435-1455 4th Street, Berkeley, California.

SUMMARY AND CONCLUSIONS

- We declare that, to the best of our professional knowledge, we meet the definition of an Environmental Professional as defined by 40 CFR 312.10 of 40 CFR 312. We have the specific qualifications based on education, training, and experience to assess a property of the nature, history, and setting of the subject property. We have developed and performed all appropriate inquiries in conformance with the standards and practices set forth in 40 CFR Part 312. Stellar Environmental has performed the Phase I Environmental Site Assessment in conformance with the scope and limitations of ASTM Practice E 1527. There are no exceptions to, or deletions from, this practice described in this report.
- The approximately 60,000-square foot subject property covers nine current street addresses:
 - The 1435, 1445, 1453, and 1455 4th Street addresses [Assessor's Parcel Number (APN) 059-2325-018-3] are developed with two one-story warehouse spaces (tea and leather goods respectively, an automobile repair garage, a cabinet shop and a storage area for a landscaping contractor. The parcel measures approximately 36,875 square feet, and is zoned as "MU-LI," mixed-use light industrial.
 - The 770 Page Street address (APN 059-2325-003) is developed with a one-story residence. The parcel is approximately 5,125 square feet and is zoned "MU-R," mixed-use residential. The building is currently occupied by a health clinic.
 - The 776 Page Street address (APN 059-2325-004) is developed with a one-story residence. The parcel is approximately 3,938 square feet and is zoned "MU-R," mixed-use residential. This building is occupied by an acupuncturist.
 - The 1442 5th Street address (APN 059-2325-005) is developed with a one-story residence. The parcel is approximately 3,750 square feet and is zoned "MU-R," mixed-use residential. It is currently rented as a residence.

- The 1444 5th Street address (APN 059-2325-006) is undeveloped and is being used as a work rest area. The parcel is approximately 6,250 square feet and is zoned “MU-R,” mixed-use residential.
- The 1446/1448 5th Street address (APN 059-2325-007) is currently being used as the Ducks Nest School Community Garden. The parcel is approximately 6,250 square feet and is zoned “MU-R,” mixed-use residential.
- Parcel 059-2325-18-3 is owned by DMBT Development Company (50%) and by Terry R. Haws and Jacquelin M. Haws Trust (50%). Parcels 059-2325-3, 059-2325-4, 059-2325-5, 059-2325-6, and 059-2325-7 are owned by Page and 5th Street Properties Inc.
- The subject property parcels were occupied by residential dwellings as early as 1903. The 1435 4th Street building was constructed in 1945 by U.S. Die Casting and Manufacturing Co. to use as a war industry plant. The war ended before it could be used and the building sat vacant until the Haws Drinking Faucet Company moved there in 1949 and used the building for assembly only until 2000. The 1439/1445 4th Street building was constructed in 1955, and the southern section at 1453 4th Street was constructed in 1967 and was used by Haws. The loading dock and shipping warehouse adjacent to the east side of the 1435 4th Street warehouse was added between 1967 and 1970. The southernmost building at 1455 4th Street was constructed in 1975. The 1455 4th Street lot was used for parking and as an equipment staging area for several years prior to the construction of the current building there. The 770 and 776 Page Street residential dwellings were constructed between 1939 and 1946. The 1442 5th Street address was constructed between 1929 and 1939. The 1444 5th Street residence was constructed by 1903 and demolished by 1980. The 1446 5th Street residence was constructed by 1903 and demolished after 1980.
- A voluntary seismic upgrade to the 1435-1445 4th Street buildings was conducted under the supervision of Ingraham DeJesse Associates 2008-2011. Holland and Harley Construction Co., of Berkeley CA completed the seismic upgrade per Ingraham DeJesse’s drawings in 2010.
- The construction dates of the current buildings on the property pre-date federal regulations prohibiting the use of asbestos-containing materials (ACMs) in buildings. An unspecified volume of ACMs were removed from the 1435 4th Street building during seismic upgrades and remodeling that occurred in 2010. Other than fire rated doors Stellar Environmental did not note the typical, older 9 x 9 floor tiles and “popcorn” ceilings that can be asbestos containing. Areas not observed by Stellar Environmental could contain ACMs, but the materials observed appeared to be in good condition.

- A sump observed to be located in the southwestern area of the 1435 4th Street warehouse space during the 2008 Phase I Assessment conducted by Stellar Environmental was subsequently removed during seismic upgrades done in 2010. This sump was historically used by Haws to collect water from eyewash stations, an air compressor and from roof downspouts. Given the location of the sump in the northern part of the property is not adjacent to automotive repair activity at 1453 4th Street, and the lack of historic and current operations suggesting subsurface contamination of groundwater, the former sump is not expected to pose a concern.
- The subject property address is not listed in any commercially available database as a user or generator of hazardous waste. However, the 1453/1455 4th Street address does have a file with the Berkeley TMD. The historic tenants, German Auto Salvage and Karmakanix, (1986-2009) were listed in the file as hazardous waste generators. Chemicals stored on site included new and used motor oil and filters, coolant, and lead acid batteries. Degreaser and Safety Kleen aqueous cleaner were also listed. A facility closure of German Auto Salvage and Karmakanix at 1453/1455 4th Street was processed by the City TMD in February 2009. The work spaces were inspected by TMD staff and all hazardous materials had been removed from the buildings and from outside areas. Storm drains were judged to be clean.
- The current tenant in the 1453 4th Street building, Tomas Sport Tuning, stores new and waste automotive fluids. At the time of the property inspection by Stellar Environmental, the waste fluids appeared properly stored with secondary containment, and the general housekeeping in the auto repair shop appeared good.
- Inter Mountain Trading Company (1451 5th Street), located directly across 5th Street and to the east (upgradient) of the subject property—is listed on the Water Board SLIC database for groundwater contamination associated with TCE. Investigations conducted between 1989 and 1993 revealed minor levels (49 µg/L to 1.8 µg/L) of TCE in groundwater. Subsequently, four monitoring wells were installed. A source area was never found, but a groundwater pump and treat system was installed in 1993 to remediate the groundwater contamination. Tight soil conditions resulted in extremely low groundwater recharge; therefore, pump and treatment operations ceased 3 months later. The last monitoring event conducted in February 1995 showed 5.6 µg/L of TCE in well MW-4, located in 5th Street about 15 feet to the east of the subject property. This concentration is just slightly above the drinking water standard for TCE of 5.0 µg/L. Although the SLIC case remains open, there are currently no monitoring well events or active remediation being conducted or required by the TMD. Based on these data, this upgradient site is considered to have a negligible impact on the groundwater beneath the

subject property, although any dewatering at the subject property in support of future development would require analysis of the groundwater and possible disposal based on the analytical results.

- The subject property is listed by the City of Berkeley as being located in an Environmental Management Area designated by the city of Berkeley TMD for properties west of San Pablo Avenue. The function of this designation is to require potential buyers and developers of properties within this “Area” to complete environmental due diligence, as historical operations—particularly manufacturing ones—within the designated Environmental Management Area may have contaminated the subsurface environment. Thus, permit applicants with properties located in this area could encounter potential health and environmental concerns during construction involving underground excavation or dewatering. For large developments or redevelopments, a review of potential environmental impacts by the TMD, at the applicant’s expense, is required. This status would not affect the subject property under circumstances where it would be continue in its current use. The TMD involvement would only be expected in the case of plans for deep excavations or ones that would require de-watering.

OPINION AND RECOMMENDATIONS

In the professional opinion of Stellar Environmental Solutions, an appropriate level of inquiry has been made into the previous ownership and uses of the property consistent with good commercial and customary practice in an effort to minimize liability.

The property has no Recognized Environmental Condition (RECs) based on regulatory database listings or association with the property as a definitive contaminant source.

Stellar Environmental recommends the following with regard to potential areas of BER:

- The responsible party for the upgradient wells associated with 1451 5th Street and/or TMD should be contacted to resolve the issue associated with the four orphan monitoring wells that have apparently been forgotten about. Regulatory guidance calls for monitoring wells to either be monitored or—if supported by site closure—properly decommissioned. The existing four monitoring wells at the 1451 5th Street SLIC designated property should be sampled and the results shared with TMD. An application for site closure should be submitted if supported by the hydrochemical results. Following the TMD acceptance of site closure the four groundwater wells should be properly destroyed under permit. This would result in a clarification or removal of potential impacts of VOC contamination in the groundwater beneath the subject site. Although not currently anticipated, in the event dewatering is required to support future development on the subject property, characterization of groundwater will be necessary to obtain

permits under the East Bay Municipal Utility District and/or the Water Board (in accordance with the National Pollution Discharge Elimination System).

- In the event that any future redevelopment activities require significant soil and/or de-watering of excavations, Stellar Environmental recommends that a soil and groundwater management plan be completed for review and approval by the City of Berkeley TMD. Such a plan should delineate the planned redevelopment and describe soil profiling and other environmental screening measures consistent with the City of Berkeley Environmental Management Area designation requirements for properties west of San Pablo Avenue, and there being documented low level VOC contamination of the groundwater beneath 5th Street which has not been evaluated since 1995.
- Although some ACM abatement has reportedly occurred in the 1435 4th street building, the subject property structures were constructed prior to the federal bans on ACMs and lead-based paint. Before any large-scale demolition or renovation is performed, the Bay Area Air Quality Management District requires a survey of building materials to verify the presence or absence of lead and/or ACMs. The State Department of Industrial Relations, Division of Occupational Safety and Health require that ACM abatement workers be appropriately trained, and that the work be supervised by a Certified Asbestos Consultant.
- In the event that the current tenant of the 1453 4th Street building, Tomas Sport Tuning, vacates the building, Stellar environmental recommends that Berkeley TMD be notified and a hazardous material facility closure be conducted as required by the Berkeley TMD.
- This report should be provided to potential property buyers, in accordance with real estate disclosure requirements.

7.0 LIMITATIONS

This report has been prepared for the use of Page and 5th Street Properties, Inc. of Sparks, Nevada and its authorized representatives. This assessment did not include a title search, and no subsurface sampling was conducted.

The findings and conclusions presented in this report are based on a review of site-specific documents provided by the property owner and its agents; historical aerial photographs, topographic maps, and Sanborn fire insurance zonation maps; a site inspection and property owner interview; a search of regulatory-listed databases; and a review of regulatory files. This report provides neither a certification nor guarantee that the property is free of hazardous substance contamination. This report has been prepared in accordance with generally accepted methodologies and standards of practice of the area. The personnel performing this assessment are qualified to perform such investigations and have accurately reported the information available, but cannot attest to the validity of that information. No warranty, expressed or implied, is made as to the findings, conclusions, and recommendations included in the report.

The findings of this report are valid as of the date of this report. Subject property conditions may change with the passage of time, natural processes, or human intervention, which can invalidate the findings and conclusions presented in this report.

AAI rule specifies that all appropriate inquiries must be undertaken within a 1-year period prior to the date a property is acquired. The EPA has defined the acquisition date to be the date on which the property title is transferred. To ensure full coverage under the AAI rule, a valid ESA report must be completed within a 12-month period prior to transfer of title.

However, selected ESA report components and supporting information sources must be updated if they were completed more than 6 months (180 days) prior to title transfer. The specific ESA components with a 180-day shelf life include: a site inspection; interviews with knowledgeable persons; review of government regulatory records; search for environmental cleanup liens; and declaration/signature of a certifying Environmental Professional.

The date shown on the cover of this report indicates the date that research was completed for the different components of this Phase I ESA.

8.0 REFERENCES

- Aerial Photograph, 1939. Flown by Fairchild. Scale is 1 inch equals 555 feet.
- Aerial Photograph, 1946. Flown by Jack Ammann. Scale is 1 inch equals 655 feet.
- Aerial Photograph, 1959. Flown by Cartwright. Scale is 1 inch equals 555 feet.
- Aerial Photograph, 1965. Flown by Cartwright. Scale is 1 inch equals 333 feet.
- Aerial Photograph, 1972. Flown by NASA. Scale is 1 inch equals 601 feet.
- Aerial Photograph, 1982. Flown by WSA. Scale is 1 inch equals 690 feet.
- Aerial Photograph, 1993. Flown by USGS. Scale is 1 inch equals 666 feet.
- Aerial Photograph, 1998. Flown by USGS. Scale is 1 inch equals 666 feet.
- Berkeley Toxics Management Division, 2012. Records reviewed November 28.
- Certified Environmental Consulting, Inc. (CEC), 1994. Cover Letter and Site Closure for 1451 5th Street, Berkeley. June 17.
- City of Berkeley, Emergency and Toxics Management Program, 1994. Communication letter to Mr. Robert Kelso of 1451 5th Street. November 16.
- Environmental Data Resources, Inc. (EDR), 2012. EDR City Directory Abstract (1920-2012), 1435 4th Street, Berkeley, California. November 13.
- Environmental Data Resources, Inc. (EDR), 2012. EDR Radius Map Report with GeoCheck, 1435 4th Street, Berkeley, California. November 13.
- Environmental Data Resources, Inc. (EDR), 2012. Certified Sanborn Map Report, 1435 4th Street, Berkeley, California. November 14.
- Environmental Data Resources, Inc. (EDR), 2012. Historical Topographic Map Report, 1435 4th Street, Berkeley, California. November 14.

- Golden Gate Tank Removal, Inc., 2007. Groundwater Monitoring Report. Former Brick and Pullman Dry Cleaners – 1507 San Pablo Avenue, Berkeley, California 94704. August 29.
- IHI Environmental, 2006. Sewage Contamination Assessment Report, Atlantic Books Suite, 1435 4th Street, Berkeley, CA. May 1.
- Kelso, Robert, 1995. Personal communication to Lorenzo Perez of the City of Berkeley Emergency and Toxics Management Program (with attached Chromalab, Inc. groundwater monitoring analytical results). February 23.
- Rain Defense, 2007. Supplemental Roof Maintenance Budget Report – 4th and Page Building, 1435, 1445, and 1453 5th Street, Berkeley, CA. September.
- Stellar Environmental Solutions, Inc., 2007. Subsurface Investigation Report of Findings, 1331 7th Street, Berkeley, California. November 20.
- Stellar Environmental Solutions, Inc., 2008. Phase I Environmental Site Assessment, 1442-1448 5th Street, 770 & 776 Page Street, 1435-1455 4th Street, Berkeley, California. March 31.
- Traynor, Michael, 2012. Personal communication to Steve Bittman of Stellar Environmental Solutions, Inc. Various dates in November and December.
- Traynor, Niels, 2012. Current tenant of the subject property. Personal communication to Steve Bittman of Stellar Environmental Solutions, Inc. November 28.
- U.S. Geological Survey (USGS), various dates. Oakland West Quadrangle, 7.5-minute series: 1949, 1959, 1968 (photo revised 1959), 1973 (photo revised 1959), and 1980 (photo revised 1959).
- U.S. Geological Survey (USGS), various dates. Richmond Quadrangle, 7.5-minute series: 1949, 1959, 1968 (photo revised 1959), 1973 (photo revised 1959), and 1980 (photo revised 1959), and 1993.
- U.S. Geological Survey (USGS), various dates. San Francisco Quadrangle, 15-minute series: 1915 and 1948.

APPENDIX A

**Parcel Map, Subject Property Description,
and Owner Interview Form**

ASSESSOR'S MAP 59 Code Area No. 13-000
Block 47 Tract B,

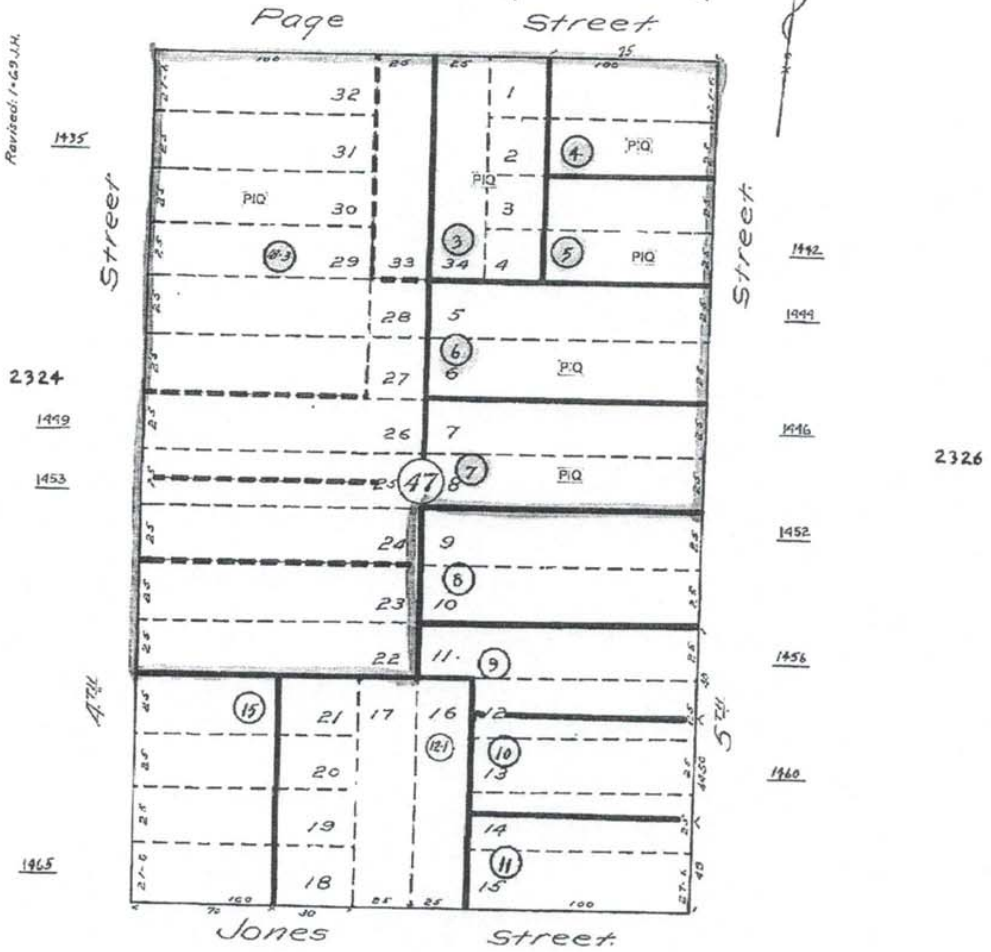
Berkeley Land and Town Improvement
Association (68 13 Pp. 73)
Scale: 1" = 40'

B 9
141

2325

2338

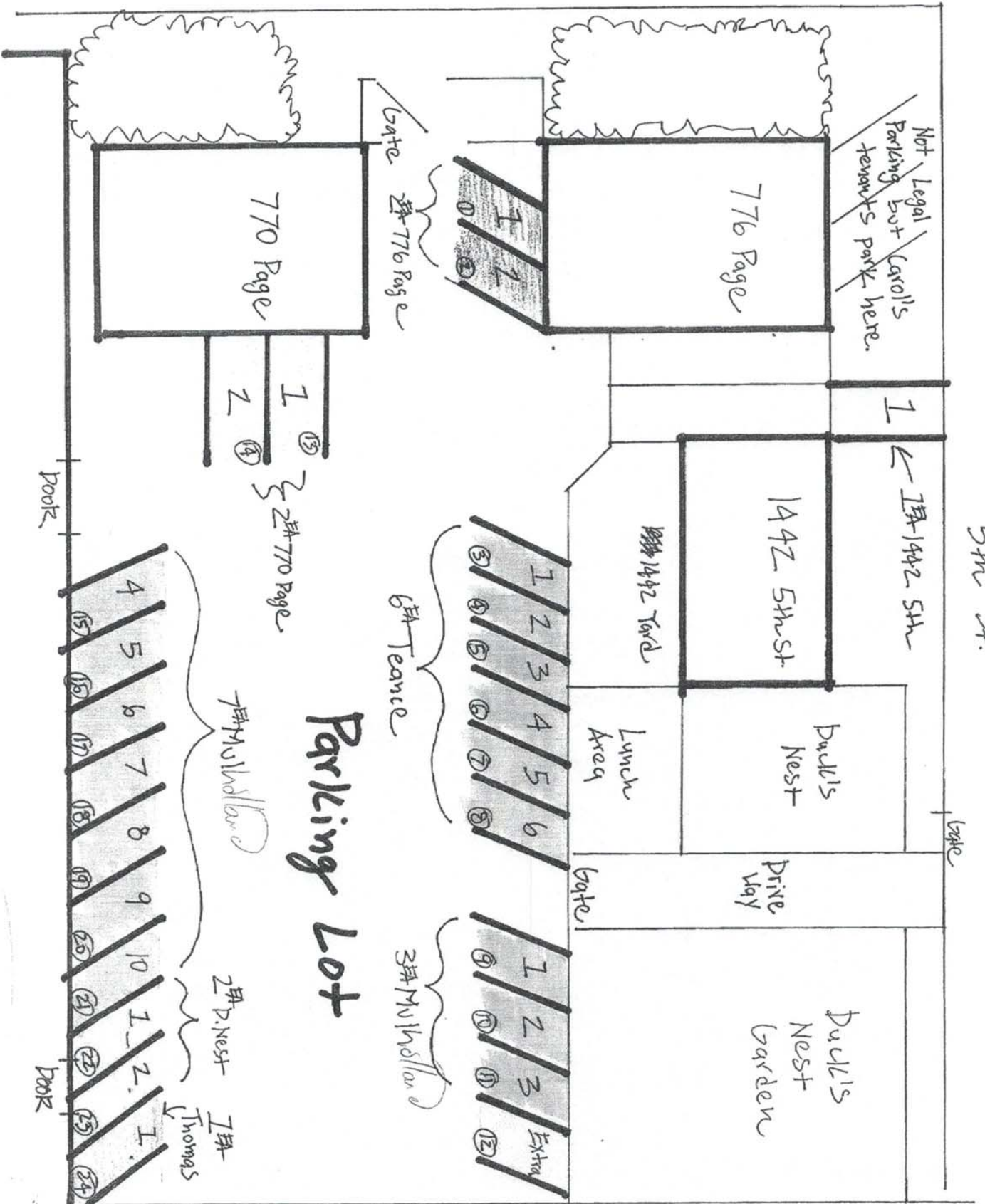
Revised: 1-29-34



Important: This plat is not a survey. It is furnished as a convenience to locate the land in relation to adjoining streets and other lands and not to guarantee any dimensions, distances, bearings or acreage.

2316

Page
st.



5th St.

1 ← ~~1442~~ 5th

1442 5th St

~~1442~~ Yard

Lunch Area

Duck's Nest

Drive Way

Duck's Nest Garden

Parking Lot

Teance

Mushlow

Duck's Nest

Thomas

~~770~~ Page

Gate ~~776~~ Page

Pool

Pool

Gate

Extra

=Stellar Environmental Solutions, Inc.
2198 Sixth Street, Berkeley, CA
Tel: 510-644-3123 ★ Fax: 510-644-3859

MEMORANDUM

Date: December 4, 2012

To: Steve Bittman - Stellar Environmental Solutions, Inc.

From: Mr. Mike Traynor

Subject: Phase I Environmental Site Assessment:
1435, 1445, 1453, and 1455 4th Street, 770 and 776 Page Street, 1442, 1444, 1446, 1448
5th Street, Berkeley, CA

Dear Steve:

Per your request, attached please find:

- Historical Tenant Summary
- Interview Form

Please let me know if you need any additional information. Thank you.

Table 1
Historical Tenant Summary:
1435, 1445, 1453, and 1455 4th Street, 770 and 776 Page Street, 1442, 1444, 1446, 1448 5th Street,
Berkeley, CA

Business Name	Business Use	Square Footage Occupied	Tenant Occupancy Period	Chemicals Used & Volumes
<u>1435 4th Street</u>	Open Space		Until 1945	Unknown
U.S. Die Casting and Manufacturing Co.	Built in 1945 to use as a war industry plant but war ended before it could be used and building sat vacant until Haws family members purchased it in 1946 and moved into the building in 1949.	6200	1945 to 1946	Unknown
Haws Drinking Faucet Co.	Vacant	6200	1946 to 1949	Unknown
Haws Drinking Faucet Co.	Office; warehouse; machine shop; assembly	6200	1949-2000	Aluminum paint/cleaning solvent
North Atlantic Books, Inc.	Office; warehouse	6200	2001-2008	Unknown
Page and 5 th Street Properties	Empty, remodel, seismic upgrade	6200	2008-2011	None
Tea Ventures International, Inc.	Office; warehouse	6200	8-1-2011 to present	Unknown
<u>1439 4th Street</u>	Home site	??		Unknown
Haws Drinking Faucet Co.	Warehouse; assembly; machine shop; dry storage	7800	1954 to 1980's	Aluminum paint/cleaning solvent/ machine oil
Leased for warehousing	General warehouse	7800	1980's-2001	Unknown
North Atlantic Books	Warehouse for books	7800	2001-2008	Unknown
Page and 5 th Street Properties, Inc.	Empty and clean up	7800	2008-2011	None
Mulholland Brothers, Inc.	Office; warehouse	7800	9-1-2011 to present	Unknown

1449-1453 4th Street	Home site	??	Until 1960	Unknown
Haws Drinking Faucet Company	Outdoor storage yard	8560	1960-1967	Unknown
Haws Drinking Faucet Company	Warehouse	8650	1967-1986	Unknown
German Auto Salvage Inc.	Office; warehouse, auto dismantling and repair	8650	1986-2006	Unknown
German Autosport, LLC	Office; warehouse, auto dismantling and repair	5500	2006-2008	Unknown
Page and 5 th Street Properties	Empty for remodel and clean up	5500	2008-2009	None
Tomas Speed Tuning	Office; warehouse and auto repair	5500	12-1-2009 to present	Unknown
1444 5th Street	Open space		Until 1967	Unknown
Haws Drinking Faucet Co.	Warehouse and outdoor storage	6000; 4000-bldg., 2000-outdoor storage	1967-1986	Unknown
German Auto Salvage Inc.	Auto repair; storage yard	4000	1986-2006	Unknown
Karmankanix	Auto repair; auto parking	4000/2000	2006-2008	Unknown
Page and 5 th St. Properties	Empty, clean up	4000/2000	2008-2009	None
Wood Horse Construction Co.	Warehouse; fabrication facility; auto parking	4000/2000	11-1-09 to present	Unknown
770 Page Street	Home site	?	Until 1966	Unknown
Haws Drinking Faucet Co.	Light storage and office	925	1966-2000	None
Chiropractic Practice	Chiropractic Office	925	2000-2005	Unknown
Leased to Yumeko Takeuchi, L.A.C., SAPANA Accpuncturist	Accupuncture office	925	2007 to present	Unknown
776 Page Street	Home site	925	Until 1958	Unknown
Haws Drinking Faucet Co.	Light storage; office	925	1958-1995	None
Office Rental	Office	925	1995-1997; 1997-2003	Unknown
Empty	Office	925	2003-2005	None

Stellar Environmental Solutions

<u>776 Page St., Continued</u>				
Leased to Carol Lourie, Accupuncturist	Accupuncture Office	925	2005-present	Unknown
<u>1442 5th Street</u>				
Haws Drinking Faucet Co.	Light storage and office	925	1958-1980's	None
Haws Drinking Faucet Co.	Residential rental	925	1980's to present	None
<u>1444 5th Street</u>				
Haws Drinking Faucet Co.	Residential Rental	??	1957-1970	None
	Abandoned Home	??	1970-1976	None
	Structure Removed; empty lot; display area for outdoor products; employee break area	??	1976 to present	None
<u>1446 5th Street</u>				
Haws Drinking Faucet Co.	Residential rental	??	1959-1976	None
	Abandoned Home	??	1976-1984	None
	Structure demolished	??	1984	None
	Employee parking lot; outdoor storage; empty lot	??	1984 to 2006	None
Duck's Nest Pre- School	Rented for use as a children's garden	??	2006 to present	None

PHASE I ENVIRONMENTAL SITE ASSESSMENT INTERVIEW

***1435, 1445, 1453, and 1455 4th Street, 770 and 776 Page Street, 1442, 1444, 1446,
1448 5th Street, Berkeley, CA***

(To be filled out by property owner or someone with historical site knowledge)

1. Date interview form completed:

November 21, 2012

2. Person completing interview form:

Michael Haws Traynor

3. Title of person completing form and relationship to the property:

Chairman of the Board of Haws Corporation (successor to Haws Drinking Faucet Co who occupied the property from 1946 to 2000). Worked onsite from 1950's to 2000 and was an employed by the company from 1964 to present. Property manager of complex since 2005 and son of Ora Haws Traynor who was one of the original owners of several parcels of the Berkeley complex of properties.

4. How long has interviewee been associated with the property?

Ora Haws, my mother, was the one of the co-owners of the Haws Drinking Faucet Co and co-purchaser of the 1435 4th St in 1946. Many of the answers given in this interview are based on knowledge I obtained from her, my father, who was General Manager/President of Haws from 1938 to 1968 and from Terry Haws, President of Haws from 1968 to 1995. Other answers are gained from documents held by Haws Corporation.

5. Any historical (not current) street addresses associated with the property?

Not to my knowledge

6. When was current building(s) constructed?

1435 4th St - 1945 with loading dock addition done in 1955

1439 4th St - 1955

1449-1453 4th St - 1967

1455 4th St - 1975

Homes at 770, 776 Page St and 1442 5th St, I believe are pre WWII

7. What was on land before current building(s)?

From my knowledge-open land, some had homes built on them, when some homes were demolished the space was converted into outdoor storage, employee parking and then some addresses mentioned above were built upon.

8. Historical property ownership history (provide names and dates of ownership):

Not available. Parcels purchased from 1946 to approximately 1965 and records have been lost.

9. Any knowledge of onsite asbestos (presence, surveys, remediation)?

Only knowledge of asbestos was that some material was removed by the contractor during the remodel of 1435 4th St.

10. Any knowledge of lead-based paint on structures?

Not to my knowledge. Existing houses have been painted many times and during one painting the houses were stripped to down to bare wood before repainting.

11. Any knowledge of historical spills/leaks of chemicals on the property?

Not to my knowledge

12. Any geotechnical reports available (drilling, foundations, etc.)?

The owners requested and obtained from Stephen DeJesse, SE of Ingraham DeJesse Associates, 1629 Telegraph Ave, Suite, 300, Oakland, CA 94612, 510-834-1629 a letter in 2009 which covered the Code Interpretation of Seismic Upgrade Requirements. It was decided by the owners to proceed with a Voluntary Seismic Upgrade to the buildings recommended by Stephen DeJesse and his firm completed engineering and construction drawings for the upgrade. Holland and Harley Construction Co., 702F Harrison St, Berkeley CA 94710 510-528-3373 completed the seismic upgrade per Ingraham DeJesse's drawings in 2010.

13. Any previous Phase I or environmental assessment reports available (such as groundwater monitoring well installation/monitoring/closure)?

A Phase I assessment was performed by Steve Bittman of Stellar Environmental in 2008 for Hudson McDonald, a prospective buyer of the property in 2008. I am not aware of any other environmental type reports on the property.

14. What chemicals/wastes are stored/used onsite?

When the buildings located at 1435 and 1439 4th St were occupied by Haws Drinking Faucet Co light assembly and light machine shop work were performed in the spaces. Aluminum paint, cleaning solvents and machine oil were used during this time. I have no knowledge of what was used by tenants when these and other buildings were leased out.

15. Any onsite underground or aboveground storage tanks (including heating oil tanks)?

Not to my knowledge

16. Any environmental permits attached to the property?

Not to my knowledge

17. Any active or inactive groundwater monitoring or water supply wells onsite?

No

18. Who supplies onsite drinking water?

East Bay Municipal Water District (EBMUD)

19. Any knowledge of mold/water damage inside the building?

A sewer back up occurred in the main bathroom of 1435 4th Street in late 2006 and water damage occurred. Floor coverings had to be replaced, some sheetrock was replaced and repainting was done to repair the damage. A contamination health assessment report was completed and is available for review.

APPENDIX B

Historical Documentation


1435 4th Street
1435 4th Street
Berkeley, CA 94710

Inquiry Number: 3454470.3
November 14, 2012

Certified Sanborn® Map Report



440 Wheelers Farms Road
Milford, CT 06461
800.352.0050
www.edrnet.com

Certified Sanborn® Map Report		11/14/12
Site Name: 1435 4th Street 1435 4th Street Berkeley, CA 94710	Client Name: Stellar Enviro Solutions 2198 6th Street Berkeley, CA 94710	
EDR Inquiry # 3454470.3	Contact: Steve Bittman	

The complete Sanborn Library collection has been searched by EDR, and fire insurance maps covering the target property location provided by Stellar Enviro Solutions were identified for the years listed below. The certified Sanborn Library search results in this report can be authenticated by visiting www.edrnet.com/sanborn and entering the certification number. Only Environmental Data Resources Inc. (EDR) is authorized to grant rights for commercial reproduction of maps by Sanborn Library LLC, the copyright holder for the collection.

Certified Sanborn Results:

Site Name: 1435 4th Street
Address: 1435 4th Street
City, State, Zip: Berkeley, CA 94710
Cross Street:
P.O. # NA
Project: NA
Certification # E172-4ACB-B49F



Sanborn® Library search results
Certification # E172-4ACB-B49F

Maps Provided:

- 1980
- 1970
- 1950
- 1929
- 1911
- 1903

The Sanborn Library includes more than 1.2 million Sanborn fire insurance maps, which track historical property usage in approximately 12,000 American cities and towns. Collections searched:

- Library of Congress
- University Publications of America
- EDR Private Collection

The Sanborn Library LLC Since 1866™

Limited Permission To Make Copies

Stellar Enviro Solutions (the client) is permitted to make up to THREE photocopies of this Sanborn Map transmittal and each fire insurance map accompanying this report solely for the limited use of its customer. No one other than the client is authorized to make copies. Upon request made directly to an EDR Account Executive, the client may be permitted to make a limited number of additional photocopies. This permission is conditioned upon compliance by the client, its customer and their agents with EDR's copyright policy; a copy of which is available upon request.

Disclaimer - Copyright and Trademark notice

This Report contains certain information obtained from a variety of public and other sources reasonably available to Environmental Data Resources, Inc. It cannot be concluded from this Report that coverage information for the target and surrounding properties does not exist from other sources. NO WARRANTY EXPRESSED OR IMPLIED, IS MADE WHATSOEVER IN CONNECTION WITH THIS REPORT. ENVIRONMENTAL DATA RESOURCES, INC. SPECIFICALLY DISCLAIMS THE MAKING OF ANY SUCH WARRANTIES, INCLUDING WITHOUT LIMITATION, MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE OR PURPOSE. ALL RISK IS ASSUMED BY THE USER. IN NO EVENT SHALL ENVIRONMENTAL DATA RESOURCES, INC. BE LIABLE TO ANYONE, WHETHER ARISING OUT OF ERRORS OR OMISSIONS, NEGLIGENCE, ACCIDENT OR ANY OTHER CAUSE, FOR ANY LOSS OF DAMAGE, INCLUDING, WITHOUT LIMITATION, SPECIAL, INCIDENTAL CONSEQUENTIAL, OR EXEMPLARY DAMAGES. ANY LIABILITY ON THE PART OF ENVIRONMENTAL DATA RESOURCES, INC. IS STRICTLY LIMITED TO A REFUND OF THE AMOUNT PAID FOR THIS REPORT. Purchaser accepts this Report "AS IS". Any analyses, estimates, ratings, environmental risk levels or risk codes provided in this Report are provided for illustrative purposes only, and are not intended to provide, nor should they be interpreted as providing any facts regarding, or prediction or forecast of, any environmental risk for any property. Only a Phase I Environmental Site Assessment performed by an environmental professional can provide information regarding the environmental risk for any property. Additionally, the information provided in this Report is not to be construed as legal advice.

Copyright 2012 by Environmental Data Resources, Inc. All rights reserved. Reproduction in any media or format, in whole or in part, of any report or map of Environmental Data Resources, Inc., or its affiliates, is prohibited without prior written permission.

EDR and its logos (including Sanborn and Sanborn Map) are trademarks of Environmental Data Resources, Inc. or its affiliates. All other trademarks used herein are the property of their respective owners.

Sanborn Sheet Thumbnails

This Certified Sanborn Map Report is based upon the following Sanborn Fire Insurance map sheets.



1980 Source Sheets



Volume 1, Sheet 1



Volume 1, Sheet 2



Volume 3, Sheet 318

1970 Source Sheets



Volume 3, Sheet 318

1950 Source Sheets



Volume 3, Sheet 318



Volume 1, Sheet 1



Volume 1, Sheet 2

1929 Source Sheets



Volume 3, Sheet 318



Volume 1, Sheet 1



Volume 1, Sheet 2

1911 Source Sheets



Volume 1, Sheet 13



Volume 1, Sheet 14



Volume 1, Sheet 15

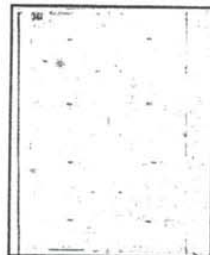


Volume 1, Sheet 16

1903 Source Sheets

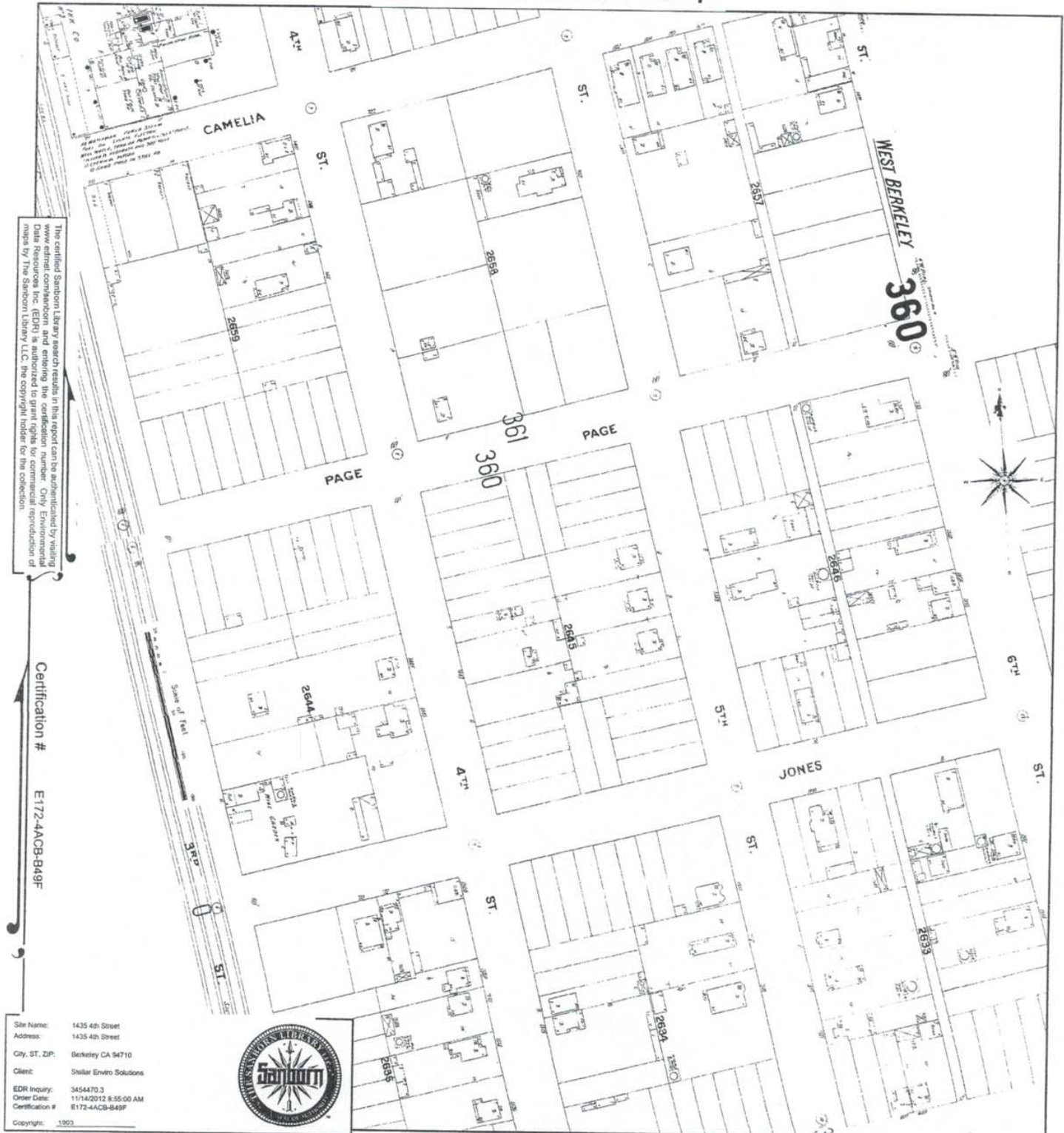


Volume 3, Sheet 360



Volume 3, Sheet 361

1903 Certified Sanborn Map



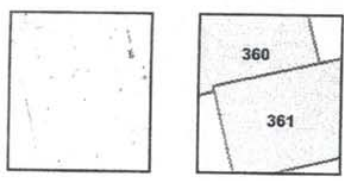
This certified Sanborn Library search results in this report can be authenticated by visiting the Sanborn Library website at www.sanborn.com and entering the certification number. Only Environmental Data Revision Inc. (EDRI) is authorized to grant rights for commercial reproduction of maps by The Sanborn Library LLC, the copyright holder for this collection.

Certification # E172-4ACB-B49F

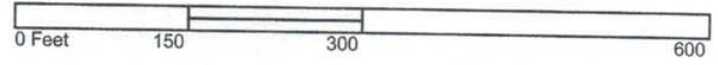
Site Name: 1435 4th Street
 Address: 1435 4th Street
 City, ST, ZIP: Berkeley CA 94710
 Client: Stellar Enviro Solutions
 EDR Inquiry: 3454470.3
 Order Date: 11/14/2012 8:55:00 AM
 Certification #: E172-4ACB-B49F
 Copyright: 1903



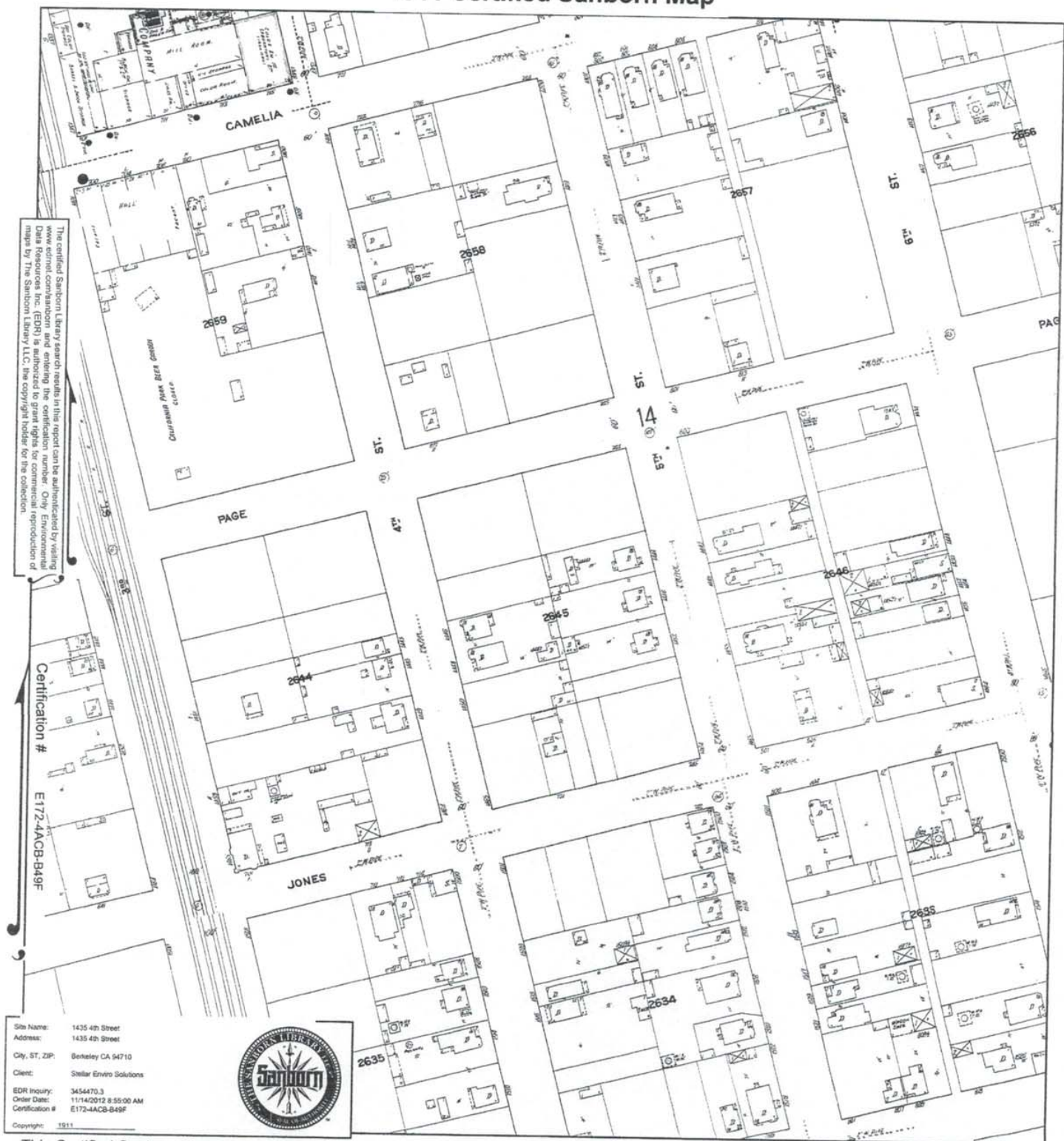
This Certified Sanborn Map combines the following sheets. Outlined areas indicate map sheets within the collection.



Volume 3, Sheet 360
 Volume 3, Sheet 361



1911 Certified Sanborn Map



The certified Sanborn Library search results in this report can be authenticated by visiting www.edr.com.
Data Resources Inc. (EDR) is authorized to reproduce and distribute the information contained in this report for non-commercial purposes only. EDR is not responsible for any errors or omissions in this report. The copyright holder for this collection of maps is The Sanborn Library LLC.

Certification #
E172-4ACB-849F

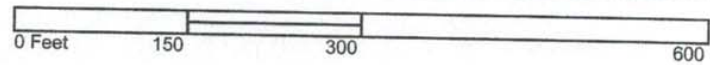
Site Name: 1435 4th Street
Address: 1435 4th Street
City, ST, ZIP: Berkeley CA 94710
Client: Stellar Enviro Solutions
EDR Inquiry: 3454470.3
Order Date: 11/14/2012 8:55:00 AM
Certification #: E172-4ACB-849F



This Certified Sanborn Map combines the following sheets.
Outlined areas indicate map sheets within the collection.



- Volume 1, Sheet 13
- Volume 1, Sheet 14
- Volume 1, Sheet 15
- Volume 1, Sheet 16



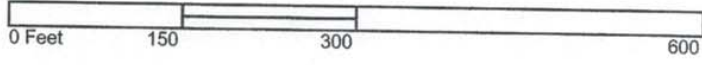
1929 Certified Sanborn Map



This Certified Sanborn Map combines the following sheets.
Outlined areas indicate map sheets within the collection.



- Volume 3, Sheet 318
- Volume 1, Sheet 1
- Volume 1, Sheet 2



1950 Certified Sanborn Map



The certified Sanborn Library search results in this report can be authenticated by visiting www.edrinfo.com/sanborn using the certification number. Only Environmental Data Resources Inc. (EDRI) is authorized to produce and distribute digital reproductions of maps by The Sanborn Library LLC, the copyright holder for the collection.

Certification # E172-4ACB-B49F

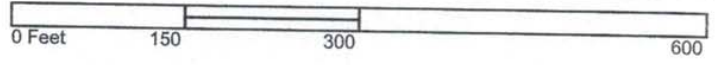
Site Name: 1435 4th Street
Address: 1435 4th Street
City, ST, ZIP: Berkeley CA 94710
Client: Stellar Enviro Solutions
EDR Inquiry: 3454470.3
Order Date: 11/14/2012 8:55:00 AM
Certification # E172-4ACB-B49F
Copyright: 1950



This Certified Sanborn Map combines the following sheets.
Outlined areas indicate map sheets within the collection.



Volume 3, Sheet 318
Volume 1, Sheet 1
Volume 1, Sheet 2





CITY OF BERKELEY

Permit Service Center
1947 Center St, 3rd floor
Berkeley, CA 94704

Receipt Date:

6/8/2020

Receipt Number:

626963

**R E C E I P T
ZP2020-0051**

Applicant Information

Matthew Wadlund
805 JONES ST
BERKELEY CA 94710

Property Information

Parcel Number: 059 232500301

Project Information

Type: Planning
Group: Zoning Permit
Category: NA
Sub-Category: NA
Project:

Location

770 PAGE St
BERKELEY, CA 94710

Work Description: Demolish existing single family dwelling and
construct four new Single-Family dwellings

Payor: Matthew Wadlund	Payment Status: Paid	Date Printed: 6/8/2020
Cashier: RASMITH	Payment Method: Credit Card	Auth: 05559d
Fees:		Amount
AUP010 - AUP Base Tier 1 - Most Complex projects in or adjacent to Residential District		\$2800.00
AUP110 - Records Management		\$50.00
CPF1 - Community Planning Fee		\$420.00
	Total:	\$3270.00

Property Address:

770 PAGE St
BERKELEY, CA 94710



Planning and Development Department
Land Use Planning Division

Sent via email to:

Matthew Wadlund at mwadlund@wdsplus.com

July 8, 2020

Matthew Wadlund
770 Page Street, LLC
804 Jones Street
Berkeley, CA 94710

Re: Use Permit ZP2020-0051 – 770 Page Street

Mr. Wadlund,

The Land Use Division has reviewed the above referenced application, formally submitted on June 8, 2020, for the development of four townhomes at the above referenced location. Staff has determined that the application is incomplete. Please note that so submittal items were deferred at the time of submittal due to the Shelter In Place Order, the majority are still required to complete the application submittal. I am unable further action on the project until all the items listed below are corrected and/or submitted:

Items Required for Submittal or Correction:

- **Permit Type and Fees:** The proposed project is subject to the following Use Permit and fees:
 - \$5,215: Tier 1 Use Permit for demolition of a dwelling unit pursuant to BMC 23C.08.010; and
 - \$460: Additional Administrative Use Permit to construct up to four dwelling units pursuant to BMC 23E.84.030.

Mistakenly, I did not assess the demolition Use Permit at intake and charged a total of \$3,270. I have attached an invoice for the remaining amount of \$2,405. Unfortunately this may also kick the Design Review up to Committee level. I have informed Anne and of my mistake and we will get back to you on the outcome.

In addition, the deposit for peer review of the seismic hazards investigation is \$1,500. Please find a separate invoice attached.

- **Tabulation Forms:** Please provide a tabulation form for each of the four buildings. Obviously, certain rows will be site-wide such as lot area, coverage, and Useable Open Space (UOS). Additionally, per BMC 23E.84.070.G.1, each dwelling unit requires 150 square feet of UOS, for a total of 600 square feet not the 480 listed. Correct. Also, there is no

- Lot Coverage and UOS Plan: Revise this plan to either dimension all the coverage areas or provide a chart that lists the feature in one column (e.g. House 1) and the coverage square footage in the second. Additionally, provide fully dimensioned UOS and/or chart that shows that proposed UOS meets the requirements of BMC 23D.04.050 including that no more than 50% of the total UOS may be satisfied as balconies and that at least 40% of the total UOS is landscaped.
- Project Plans: The electronic plan set does not measure to the scale bar listed. Please resubmit to a scale the correct scale. If this is not possible, I would like one to-scale paper copy plan set. Let me know and we can arrange for delivery.
- Parking: Pursuant to BMC 23E.28.080.B, no off-street parking spaces on the ground level are permitted within 20 feet of the street frontage of the subject lot, unless the parking is entirely within a building with walls. Revise the plan set accordingly.
- Shadow Studies: As required, submit diagrams showing shadows cast by the project prior to construction as well as after construction. Do not include shadows or shading from other structures. Clearly outline the new shadows on the study. Show all structures that the shadows from the proposed project will hit. Indicate in writing that all buildings being shadowed are shown on the diagram. If a shadow (existing or future) hits the wall of an adjacent structure, (1) show where existing shadow hits the wall, and (2) indicate locations of windows on walls affected. If increased shadowing caused by the proposed project would affect any windows on residential buildings, then indicate the use of those windows (garage, bedroom, bathroom, living room, etc.). I am attaching a sample shadow study for your review.
- Historic Resource Evaluation: As the project is proposing the demolition of a building older than 40 years old, subject to CEQA, submit State of California Department of Parks and Recreation (DPR) 523 form http://ohp.parks.ca.gov/?page_id=28351. Evaluation must include references to development history documentation (including but not limited to photographs, building permits, Sanborn maps, and directory listings); completed by a qualified historian, architectural historian or historic architect. Provide supplemental information in accordance with the Landmarks Preservation Ordinance criteria (BMC Section 3.24.110). California guidelines are available online at: <http://ohp.parks.ca.gov/pages/1054/files/manual95.pdf>
- Landscape Requirements: As a project creating 500 square feet or more of new landscaping, it must comply with water efficient landscaping as specified in the Model Water Efficient Landscape Ordinance (MWELO) and East Bay Municipal Utility District (EBMUD) Water Efficiency Review: Section 31 Regulations and MWELO Compliance, and all applicable measures in the Bay Friendly Basics checklist.

Submit MWELO-compliant landscape documentation including a planting, grading, and irrigation plan. Water budget calculations are also required for landscapes of 2,500 square feet or more. The reference evapotranspiration rate (ET_o) for Berkeley is 41.8. For more information, visit: [file:///C:/Users/lmendez/Downloads/EBMUD_-_Water_Efficiency_Review_-_Outdoor_Water_Use_Requirements%20\(1\).pdf](file:///C:/Users/lmendez/Downloads/EBMUD_-_Water_Efficiency_Review_-_Outdoor_Water_Use_Requirements%20(1).pdf)
- Natural Gas Prohibition: Required for newly constructed buildings (buildings that have never before been used or occupied for any purpose). Submit the following:
 1. A statement that the building will not include any natural gas infrastructure in compliance with BMC Chapter 12.80, or documentation to support an application

for an exception or public interest exemption to the Natural Gas Prohibition if the conditions of BMC Section 12.80.040A.1 or 12.80.050 are met.

2. A statement, and corresponding features on plans, that the proposed project is designed to comply with the Berkeley Energy Code (BMC Chapter 19.36) and Berkeley Green Code (BMC Chapter 19.37), adopted by City Council on December 3rd, 2019, including solar PV system, electric vehicle charging, and low-carbon concrete requirements. Building design must incorporate all-electric systems unless an exception or public interest exemption to the Natural Gas Prohibition is granted. Electric readiness and increased energy efficiency is required for any mixed-fuel building.
- Green Building Requirements: Required for newly constructed buildings, submit a completed GreenPoint Rated (GPR) Checklist (for residential and most mixed-use projects), showing that the proposed project is on track for GPR Silver certification or above.

As you are aware, City Council determined that contiguous parcels under ownership of the same individual are viewed as a project. As such, the following two submittal requirements are required:

- Housing Affordability Statement: Submit a written statement describing the following:
 - 1) How the project complies with the Inclusionary Housing Ordinance;
 - 2) Level of affordability that will be provided and/or amount of in lieu fee that will be paid
 - 3) Number and location of any affordable units provided
 4. Size and amenities (bedrooms, bathrooms, parking facilities) of any affordable units
- Anti-Discrimination Housing Policies: Submit a written statement answering the following questions and provide the requested documentation, if applicable:
 - Does the applicant or sponsor, including the applicant or sponsor's parent company, subsidiary, or any other business or entity with an ownership share of at least 30% of the applicant's company, engage in the business of developing real estate, owning properties, or leasing or selling individual dwelling units in states or jurisdictions outside of California?
 - If the answer to (1) is yes, which?
 - If the answer to (1) is yes, does the applicant or sponsor, as defined in (1), have policies in individual states that prohibit discrimination based on sexual orientation, gender identity, and/or gender expression in the sale, lease, or financing of any dwelling units enforced on every property in the state or states where the applicant or sponsor has an ownership or financial interest?

I look forward to working with you on this project. Do not hesitate to contact me if you have any questions or if you would like to set up a meeting. I can be reached at lmendez@cityofberkeley.info. Please be aware that if you do not take action on the above items within 60 days, staff will deem the project in active and will withdraw the application.

Sincerely,



Leslie Mendez
Senior Planner



Planning and Development Department
Land Use Planning Division

November 6, 2020

Matthew Wadlund
770 Page Street, LLC
804 Jones Street
Berkeley, CA 94710

Re: Use Permit ZP2020-0051 – 770 Page Street

Mr. Wadlund,

Thank you for the items you submitted on October 20, 2020 in response to the incomplete letter I sent out dated, July 8, 2020. I have reviewed the materials and still require the following submittals/corrections in order to deem the application complete:

Items Required for Submittal or Correction:

- **Tabulation Forms:** The tabulation form you submitted is blank. As the setbacks and Useable Open Space are different for each of the dwelling units, I am requesting that you provide this information. If you choose not to provide it in separate tabulation forms provide this information clearly in a different format. Regardless, please resubmit at least one filled out tabulation form that is revised from the initial submittal that: 1) correctly lists the required UOS (at 150 per unit); and 2) has the proposed lot coverage filled in. Please note that unlike the lot coverage chart you provided in the Open Space Diagram, in the Tabulation Form, please use the Zoning Ordinance definition of lot coverage when providing the proposed percentage: All the area of a lot, as projected on a horizontal plane, which is enclosed by the exterior walls of buildings or enclosed Accessory Structures; or covered by decks, porches, stairs and/or landings which cover an enclosed space or paved ground area.
- **Parking:** Pursuant to BMC 23E.28.080.E, all paved areas for off-street parking spaces, driveways and any other vehicle-related paving must be separated from an adjacent lot line by a landscaped strip that is to be used for screening purposes as per this section. The minimum width of such strip must be two feet at any point for areas adjacent to rear or side lot lines and three feet for areas adjacent to a public right-of-way or a front lot line. Revise the plan set accordingly. Once you have incorporated the required landscaped strips, I will review the layout with the Traffic Engineer to ensure compliance with Traffic Engineering requirements. It may be more efficient for you to have a consultation with the Traffic Engineer prior to resubmitting. If so, please contact Peter Chun directly (cc me please), at PChun@cityofberkeley.info. Useable Opens

Space and setbacks may change based on the revised parking layout. Ensure that the Tabulation Form (see above) is revised accordingly.

- UOS Plan: Pursuant to BMC 23D.04.050 revise the UOS calculation to eliminate the area of required walkway (G); and show both visually as well as in a calculation that at least 40% of the total UOS is landscaped.
- Landscape Requirements: Submit MWELO-compliant landscape *documentation* including a planting, grading, and irrigation plan. Water budget calculations are also required for landscapes of 2,500 square feet or more. The reference evapotranspiration rate (ET_o) for Berkeley is 41.8. For more information, visit: [file:///C:/Users/lmendez/Downloads/EBMUD - Water Efficiency Review - Outdoor Water Use Requirements%20\(1\).pdf](file:///C:/Users/lmendez/Downloads/EBMUD%20-%20Water%20Efficiency%20Review%20-%20Outdoor%20Water%20Use%20Requirements%20(1).pdf)
- Historical Resource Evaluation: Submit: State of California Department of Parks and Recreation (DPR) 523 forms, both A and B. Additionally, in accordance with State Historic Preservation Officer (SHPO) requirements, please be aware that a qualified professional, per SHIP standards must complete the forms. Qualified professionals include historians, architectural historians or historic architects. An architect that does not have a professional historic preservation background is not qualified to prepare an HRE.
- Existing Dwelling Past Occupancy: To ensure compliance with the State Housing Crisis Act of 2019, please provide a summary of dwelling occupancy for the past five years. Please state if occupancy was rental or ownership, and income level (e.g. Low Income, Moderate Income, etc.) of the occupants.

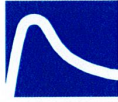
I have passed on the Geotechnical Report to the city's peer reviewer for review and comment. I will let you know if any further information is requested from these third parties.

Let me know if you have any questions or if you would like me to set up a meeting with Transportation.

Sincerely,



Leslie Mendez
Senior Planner



COTTON, SHIRES AND ASSOCIATES, INC.
CONSULTING ENGINEERS AND GEOLOGISTS

November 12, 2020
Z6090

TO: Leslie Mendez
Senior Planner
CITY OF BERKELEY
1947 Center Street, 2nd floor
Berkeley, California 94704

SUBJECT: **Geotechnical Peer Review – Liquefaction Zone**
RE: Wadlund; Four New Three-Story Single-Family Residences
ZP2020-0051
770 Page Street

At your request, we have completed a geotechnical peer review of the proposed use permit application at the subject property using:

- Geotechnical Report (report) prepared by Peters & Ross, Inc., dated March 12, 2020.

In addition, we have reviewed pertinent technical maps and reports from our office files, and plans provided by the project planner

DISCUSSION

Based on the materials provided for our peer review, we understand the applicant proposes to demolish the existing single-family residence and construct four, new three-story residences. The proposed project is located within a liquefaction hazard zone as mapped by the California Geological Survey. According to the State's Seismic Hazards Mapping Act, a qualifying project in this zone must be supported by a site-specific geotechnical investigation (report) addressing the mapped hazard.

The purpose of this geotechnical peer review is to determine whether the referenced 2020 Geotechnical Report is consistent with State criteria for project approval with respect to liquefaction hazards. When site seismic hazards are confirmed to exist, the State requires that a minimum level of mitigation for a project be performed to reduce the risk of ground failure during an earthquake to a level that does not cause the collapse of buildings for human occupancy. Our geotechnical peer review does not include evaluation of detailed construction plans and is not intended to address all geotechnical aspects of proposed project design.

Northern California Office
330 Village Lane
Los Gatos, CA 95030-7218
(408) 354-5542 • Fax (408) 354-1852

Central California Office
6417 Dogtown Road
San Andreas, CA 95249-9640
(209) 736-4252 • Fax (209) 736-1212

Southern California Office
699 Hampshire Road, Suite 101
Thousand Oaks, CA 91361-2352
(805) 370-8710

www.cottonshires.com

Leslie Mendez
Page 2

November 12, 2020
Z6090

SITE CONDITIONS AND GEOTECHNICAL EVALUATIONS

The Project Geotechnical Consultant (Peters & Ross) has advanced a subsurface exploration program at the site which included one Geotechnical boring and one Cone Penetration Test (CPT) to a depth of approximately 50 feet below the ground surface. Groundwater was first encountered at a depth of 16.5 feet below the ground surface but was later measured at a depth of approximately 6 feet below the ground surface. The boring log reports surficial fat clays (CH) overlying earth materials consistent with USCS group symbols CL and SP. The Geotechnical Consultant has also completed laboratory testing including Atterberg limits, washed sieve (#200), as well as moisture content/dry density testing.

The California Geological Survey (CGS) has mapped the historic high groundwater at depths less than 5 feet below the ground surface at the subject site. As previously mentioned, the site is located within a liquefaction hazard zone of required investigation delineated by the CGS. Based on the provided subsurface data and analysis, the Project Geotechnical Consultant concludes that the site has a potential for liquefaction induced total settlement on the order of 0.75 inches, or differential settlement of half an inch over 30 feet. The applicant's Consultant has also concluded that the potential for lateral spreading is low to negligible.

CONCLUSIONS AND RECOMMENDATIONS

Based on our review of the referenced report dated March 12, 2020, it appears that the potential for liquefaction has been satisfactorily evaluated by the Project Geotechnical Consultant. We conclude that the subsurface investigation has satisfactorily fulfilled State investigation requirements in the mapped potential liquefaction hazard zone. We recommend the Project Design Team discuss with the Project Geotechnical Consultant and consider the potential performance benefits of the additionally reinforced, thicker and stiffer mat foundation alternative given the identified geotechnical conditions and potential for seismic or static settlement and differential movement from expansive soils.

Given the adequate evaluation of site seismic hazards, we recommend geotechnical approval of the subject land use permit application with the following conditions attached:

1. **Geotechnical Plan Review** - The applicant's geotechnical consultant should review and approve all geotechnical aspects of the final project building and grading plans (i.e., site preparation and grading

COTTON, SHIRES AND ASSOCIATES, INC.

Leslie Mendez
Page 3

November 12, 2020
Z6090

including, site surface and subsurface drainage improvements, and design parameters for foundations and associated improvements) to ensure that their recommendations have been properly incorporated and to ensure that the project concept has not changed significantly.

The results of the plan review should be summarized by the geotechnical consultant in a letter and submitted to the City Engineer for review and approval prior to issuance of building permits.

2. **Geotechnical Construction Inspections** - The geotechnical consultant should inspect, test (as needed), and approve all geotechnical aspects of the project construction. The inspections should include, but not necessarily be limited to: site preparation and grading, site surface and subsurface drainage improvements, and excavations for foundations and slabs-on-grade prior to the placement of steel and concrete.

The results of these inspections and the as-built conditions of the project should be described by the geotechnical consultant in a letter and submitted to the City Engineer for review prior to final (granting of occupancy) project approval.

Leslie Mendez
Page 4

November 12, 2020
Z6090

LIMITATIONS

This geotechnical peer review has been performed to provide technical advice to assist the City with its discretionary permit decisions. Our services have been limited to review of the documents previously identified. Our opinions and conclusions are made in accordance with generally accepted principles and practices of the geotechnical profession. This warranty is in lieu of all other warranties, either expressed or implied.

Respectfully submitted,

**COTTON, SHIRES AND ASSOCIATES, INC.
CITY GEOTECHNICAL CONSULTANT**



Craig Stewart
Senior Geologist
PG 9786



David T. Schrier
Principal Geotechnical Engineer
GE 2334

DTS:CS:TS

COTTON, SHIRES AND ASSOCIATES, INC.

State of California <input type="checkbox"/> The Resources Agency DEPARTMENT OF PARKS AND RECREATION PRIMARY RECORD	Primary # HRI # Trinomial NRHP Status Code	Other Review Code	Reviewer	Date	Listings
--	--	----------------------	----------	------	----------

Page 1 of 2 *Resource Name or #: (Assigned by recorder) 770 Page Street
 P1. Other Identifier: None

*P2. Location: Not for Publication Unrestricted

*a. County Alameda and (P2c, P2e, and P2b or P2d. Attach a Location Map as necessary.)

*b. USGS 7.5' Quad Oakland West Date 1993 Township & Range --

c. Address 1207 10th St. City Berkeley Zip 94710

d. UTM: (Give more than one for large and/or linear resources) Zone , mE/ mN

e. Other Locational Data: (e.g., parcel #, directions to resource, elevation, decimal degrees, etc., as appropriate)
 Assessor's Parcel Number 059-2325-003

*P3a. Description:

The subject site is located on the south side of Page Street, between 5th and 4th streets in West Berkeley. The property at 770 Page Street is a flat, rectangular lot, approximately 50 feet wide and 110 feet deep. The subject property is occupied by a 900 square-foot, one-story wood framed single-family residence that dates to 1944. The house is side gabled with a slightly lower and recessed wing at its east side, a small covered entry stoop in that recess, its entry door facing east. The building is rustic board sided with wood and wood trimmed windows and door. A shallow bay window projects out the front and the other front window has exterior wood shutters. Roofing is composition shingles.

P5a. Photograph or Drawing



Fig.1 - 770 Page St., front (north)

*P3b. Resource Attributes:

HP2: single family
property

*P4. Resources Present: Building Structure Object Site District Element of District Other (Isolates, etc.)

P5b. Description of Photo: (view, date, accession # 1-2) Google Earth,
2020

*P6. Date Constructed/Age and Source: Historic Prehistoric Both

1944 (per permit #55192)

*P7. Owner and Address:

770 Page Street, LLC

805 Jones Street

Berkeley, CA 94710

*P8. Recorded by:

Mark Hulbert

446 17th St. #302

Oakland, CA 94612

*P9. Date Recorded:

Dec. 17, 2020

*P10. Survey Type: Intensive

*P11. Report Citation: None

*Attachments: NONE Location Map Continuation Sheet Building, Structure, and Object Record
 Archaeological Record District Record Linear Feature Record Milling Station Record Rock Art Record
 Artifact Record Photograph Record Other (List): _____

State of California The Resources Agency Primary #
DEPARTMENT OF PARKS AND RECREATION HRI#
BUILDING, STRUCTURE, AND OBJECT RECORD

*Resource Name or # 770 Page Street, Berkeley *NRHP Status Code _____
Page 2 of 2

B1. Historic Name: none
B2. Common Name: 770 Page St.
B3. Original Use: Residential B4. Present Use: same
*B5. Architectural Style: Minimal Ranch

*B6. Construction History:
An original building inspection record for the residence at 770 Page is dated Dec. 27, 1943 and indicates that the house was completed in May 1944. The owner-builder was Joseph M. Walker. The previously vacant parcel was first mapped in block 47 of the 1894 Berkeley Land and Town Improvement Association Tract B, when its future boundaries encompassed lot 34 and parts of lots 1-4. No alterations appear to have been made nor are there any subsequent building permit records. However, beginning in 1979, the building was used for offices, which uses extended into the 2010s.

*B7. Moved? No Yes Unknown Date: _____ Original Location: _____

*B8. Related Features: None
B9a. Architect: unknown/none b. Builder: J.W. Walker

*B10. Significance: Theme -- Area --
Period of Significance -- Property Type -- Applicable Criteria --

The building on the subject lot is a small house in the minimal Ranch style. It is one of a handful of like residences in the immediate vicinity and that include the two adjoining houses as well as others on the block directly north. J.M. Walker was a local home and apartment builder during World War II and whose units were created for workers. Overall, the building's character is without potential historic architectural attributes. Its having been a part of WWII era housing stock is of historical interest yet is, individually, as a minor residential building, is not of potential historical significance. Nor does the small number of like resources have potential historical significance as a grouping.

B11. Additional Resource Attributes: none

*B12. References:
Sanborn Map – 1950; City of Berkeley Permit Records.
Steven Finacom, "Berkeley, a Look Back: Housing built for WWII workers still standing," *East Bay Times*, Aug. 16, 2018.
Note: No deed research has been undertaken as research at the County Assessor's office is unavailable.

B13. Remarks: none
*B14. Evaluator: Mark Hulbert Preservation Architect
*Date of Evaluation: December 17, 2020

(This space reserved for official comments.)



PRESERVATION ARCHITECTURE

December 17, 2020

770 PAGE ST., BERKELEY City of Berkeley Historical Evaluation

As delineated below, per the City of Berkeley's *Landmarks Preservation Ordinance (LPO)*, the property and building located at 770 Page St. are not eligible for designation as a City of Berkeley Landmark or Structure of Merit.

3.24.110 Landmarks, historic districts and structures of merit--Designation--Criteria for consideration.

A. *Landmarks and historic districts. General criteria which the commission shall use when considering structures, sites and areas for landmark or historic district designation are as follows:*

1. *Architectural merit:*

a. *Property that is the first, last, only or most significant architectural property of its type in the region;*

The subject residential building is not the first, last, only or most significant residences of its type in the City of Berkeley.

b. *Properties that are prototypes of or outstanding examples of periods, styles, architectural movements or construction, or examples of the more notable works of the best surviving work in a region of an architect, designer or master builder; or*

The subject residential building is not prototypical or outstanding in any respect, nor is it a more notable or best surviving work of its original builder, Joseph M. Walker, who elsewhere in Berkeley constructed multi-unit residential buildings.

c. *Architectural examples worth preserving for the exceptional values they add as part of the neighborhood fabric.*

This minor residential building has no exceptional values to offer to the neighborhood fabric.

2. *Cultural value: Structures, sites and areas associated with the movement or evolution of religious, cultural, governmental, social and economic developments of the City;*

The subject residential property is generally associated with the World War II period yet, as an obviously minor house has minimal interest to that development period.

3. *Educational value: Structures worth preserving for their usefulness as an educational force;*

The subject residential building is not worth preserving for its minor educational interest.

4. *Historic value: Preservation and enhancement of structures, sites and areas that embody and express the history of Berkeley/Alameda County/California/United States. History may be social, cultural, economic, political, religious or military;*

The subject property and its building do not embody and express historic value.

5. Any property which is listed on the National Register described in Section 470A of Title 16 of the United States Code.

The subject property and building are not listed on the National Register.

B. Structures of merit. Criteria which the commission shall use when considering a structure for structure of merit designation are as follows:

1. General criteria shall be architectural merit and/or cultural, educational, or historic interest or value. If upon assessment of a structure, the commission finds that the structure does not currently meet the criteria as set out for a landmark, but it is worthy of preservation as part of a neighborhood, a block or a street frontage, or as part of a group of buildings which includes landmarks, that structure may be designated a structure of merit.

2. Specific criteria include, but are not limited to one or more of the following:

a. The age of the structure is contemporary with (1) a designated landmark within its neighborhood, block, street frontage, or group of buildings, or (2) an historic period or event of significance to the City, or to the structure's neighborhood, block, street frontage, or group of buildings.

The subject residential building is not contemporary with a designated landmark within its neighborhood, etc. While the existing building is contextual to the WWII period, the wide ranging WWII era constitutes an historic context, not an historic period or event with identifiable significance specific to the City of Berkeley or its neighborhoods.

b. The structure is compatible in size, scale, style, materials or design with a designated landmark structure within its neighborhood, block, street frontage, or group of buildings.

The subject building is not compatible with a designated structure within its neighborhood, etc.

c. The structure is a good example of architectural design.

This highly modest, minor residential building is not a good example of architectural design.

d. The structure has historical significance to the City and/or to the structure's neighborhood, block, street frontage, or group of buildings.

The subject residential building has no identifiable historical significance relative to the City of Berkeley or to its neighborhood, etc.

In conclusion, the property and building at 770 Page St. in Berkeley do not have potential historical significance under the criteria of the City of Berkeley's LPO.

Signed:



Mark Hulbert
Preservation Architect & Historic Resources Consultant

State of California <input type="checkbox"/> The Resources Agency DEPARTMENT OF PARKS AND RECREATION PRIMARY RECORD		Primary # HRI # Trinomial NRHP Status Code	Listings
Other Review Code	Reviewer	Date	

Page 1 of 2 *Resource Name or #: (Assigned by recorder) 770 Page Street
 P1. Other Identifier: None

*P2. Location: Not for Publication Unrestricted

*a. County Alameda and (P2c, P2e, and P2b or P2d. Attach a Location Map as necessary.)

*b. USGS 7.5' Quad Oakland West Date 1993 Township & Range --

c. Address 770 Page St. City Berkeley Zip 94710

d. UTM: (Give more than one for large and/or linear resources) Zone , mE/ mN

e. Other Locational Data: (e.g., parcel #, directions to resource, elevation, decimal degrees, etc., as appropriate)
 Assessor's Parcel Number 059-2325-003

*P3a. Description:

The subject site is located on the south side of Page Street, between 5th and 4th streets in West Berkeley. The property at 770 Page Street is a flat, rectangular lot, approximately 50 feet wide and 110 feet deep. The subject property is occupied by a 900 square-foot, one-story wood framed single-family residence that dates to 1944. The house is side gabled with a slightly lower and recessed wing at its east side, a small covered entry stoop in that recess, its entry door facing east. The building is rustic board sided with wood and wood trimmed windows and door. A shallow bay window projects out the front and the other front window has exterior wood shutters. Roofing is composition shingles.

P5a. Photograph or Drawing



Fig.1 - 770 Page St., front (north)

*P3b. Resource Attributes:

HP2: single family
property

*P4. Resources Present: Building Structure Object Site District Element of District Other (Isolates, etc.)

P5b. Description of Photo: (view, date, accession # 1-2) Google Earth,
2020

*P6. Date Constructed/Age and Source: Historic Prehistoric
 Both

1944 (per permit #55192)

*P7. Owner and Address:

770 Page Street, LLC

805 Jones Street

Berkeley, CA 94710

*P8. Recorded by:

Mark Hulbert

446 17th St. #302

Oakland, CA 94612

*P9. Date Recorded:

Dec. 17, 2020

*P10. Survey Type: Intensive

*P11. Report Citation: None

*Attachments: NONE Location Map Continuation Sheet Building, Structure, and Object Record
 Archaeological Record District Record Linear Feature Record Milling Station Record Rock Art Record
 Artifact Record Photograph Record Other (List): _____

State of California The Resources Agency Primary #
DEPARTMENT OF PARKS AND RECREATION HRI#
BUILDING, STRUCTURE, AND OBJECT RECORD

*Resource Name or # 770 Page Street, Berkeley *NRHP Status Code _____
Page 2 of 2

B1. Historic Name: none
B2. Common Name: 770 Page St.
B3. Original Use: Residential B4. Present Use: same
*B5. Architectural Style: Minimal Ranch

*B6. Construction History:
An original building inspection record for the residence at 770 Page is dated Dec. 27, 1943 and indicates that the house was completed in May 1944. The owner-builder was Joseph M. Walker. The previously vacant parcel was first mapped in block 47 of the 1894 Berkeley Land and Town Improvement Association Tract B, when its future boundaries encompassed lot 34 and parts of lots 1-4. No alterations appear to have been made nor are there any subsequent building permit records. However, beginning in 1979, the building was used for offices, which uses extended into the 2010s.

*B7. Moved? No Yes Unknown Date: _____ Original Location: _____

*B8. Related Features: None
B9a. Architect: unknown/none b. Builder: J.W. Walker

*B10. Significance: Theme -- Area --
Period of Significance -- Property Type -- Applicable Criteria --

The building on the subject lot is a small house in the minimal Ranch style. It is one of a handful of like residences in the immediate vicinity and that include the two adjoining houses as well as others on the block directly north. J.M. Walker was a local home and apartment builder during World War II and whose units were created for workers. Overall, the building's character is without potential historic architectural attributes. Its having been a part of WWII era housing stock is of historical interest yet is, individually, as a minor residential building, is not of potential historical significance. Nor does the small number of like resources have potential historical significance as a grouping.

B11. Additional Resource Attributes: none

*B12. References:
Sanborn Map – 1950; City of Berkeley Permit Records.
Steven Finacom, "Berkeley, a Look Back: Housing built for WWII workers still standing," *East Bay Times*, Aug. 16, 2018.
Note: No deed research has been undertaken as research at the County Assessor's office is unavailable.

B13. Remarks: none
*B14. Evaluator: Mark Hulbert Preservation Architect
*Date of Evaluation: December 17, 2020

(This space reserved for official comments.)





FEB 19, 2021

770 Page Street
Use Permit Application ZP 2020-0051

Response to Planning Use Permit Items for Correction November 2, 2020

TABULATION FORMS: See revised Tabulation form submitted, along with revised Open Space Diagram with Areas and Coverage tables. Given that all four houses are identical in size, four separate Tabulations provides very little additional information.

PARKING: See revised SITE PLAN addressing parking. Peter Chun reviewed the plan initially and revisions were made to parking space for house 1 and house 3. The City's elimination of the parking requirement allow for house 2 parking to be omitted, thus freeing up room for maneuvering in the Access Easement Area.

UOS PLAN: See revised Open Space Plan. All open space delineated on the Open Space plan is landscaped except as indicated by "pavers" - see Landscape Legend on Landscape Plan. Meaning, +/- 90% of the UOS is landscaped.

LANDSCAPE: See revised Landscape Plan. WELO stated on Plan. Planted area less than 2,500 SF, water calculations n/a. See BF Basic Checklist provided and statement regarding MWELo added to Use Permit Declarations submitted.

HISTORIC EVALUATION: Revised DPR 523a submitted.

NEXISTING DWELLING PAST OCCUPANCY: Exits Existing house at 770 Page was vacant when purchased in 2017. Currently rented to artist as temporary work / office space.

Bay-Friendly Basics Landscape Checklist



This Bay-Friendly Basics Checklist is for all new construction and renovation of landscapes that are 2,500 square feet of irrigated area or greater and require a permit. The Bay-Friendly Basics represents the 9 required practices from the Bay-Friendly Landscape Scorecard. It is considered a minimum set of practices to improve the environmental performance of the landscape. Projects are recommended to meet all applicable measures on the checklist. For measures that are not applicable or are not in the project's scope of work, check "N/A" and make a note of why the measure does not apply to the project (attach additional sheets if necessary). For electronic copies of this checklist, and other Bay-Friendly Landscaping resources, visit: www.BayFriendly.org

Project: _____
Address: _____ **Date:** _____

Earthwork & Soil Health

Yes No N/A	Measure & Requirement	Documentation	Notes
1. Mulch			
	<p>Requirement All soil on site is protected with a minimum of 3 inches of mulch after construction.</p> <p>Recommendation Use recycled or greenwaste mulch instead of landscape fabric. Trees identified for removal are chipped and used on site as mulch, on-site storage space permitting.</p> <p>Reference <i>Bay-Friendly Landscape Guidelines</i>, Practice 4.1; <i>Bay-Friendly Guide to Mulch</i>, available at www.BayFriendly.org. Provides sources of recycled mulch and proper application of mulch and information on sheet mulching.</p>	<ul style="list-style-type: none"> • Submit square footage of planting areas as well as cubic yards required to cover planting areas to a minimum three-inch (3") depth. • Submit a delivery ticket or receipt of purchased mulch and/or, • Submit receipts for sheet mulching materials and/or, • (Optional) Submit photos of trees being chipped for mulch (if applicable). 	
2. Amend the Soil with Compost Before Planting			
	<p>Requirement Compost is specified as the soil amendment, at the rates indicated by a soil analysis to bring the soil organic matter content to a minimum of 3.5% by dry weight or 1 inch of compost. If the imported or site soil meets the organic content of 3.5% or more, then the requirement is waived.</p> <p>Recommendation Purchase compost from a producer who participates in the U.S. Composting Council's Standard Testing Assurance(STA) program to ensure quality.</p> <p>Reference <i>Bay-Friendly Landscape Guidelines</i>, Practice 4.1; Model Bay-Friendly Soil specifications, at www.BayFriendly.org; U.S. Composting Council Standard Testing Assurance program explanation and list of participating producers can be found at: www.compostingcouncil.org</p>	<ul style="list-style-type: none"> • Submit the site soil or imported topsoil analysis. No soils analysis is required if 1" of compost is used. • Submit H35 compost details from construction documents. • Submit the receipt or delivery ticket for the compost, indicating the amount of the compost delivered/purchased. <p><i>If a waiver is requested based on soil organic matter content or the needs of plant palette,</i></p> <ul style="list-style-type: none"> • Submit a completed plant palette with species that need little/no soil organic matter identified, and include the source of information on their soil needs OR • Submit a soils report that indicates the soil has an organic matter content of 3.5% or greater. 	

Bay-Friendly Basics Landscape Checklist

Yes No N/A	Measure & Requirement	Documentation	Notes
------------	-----------------------	---------------	-------

Materials

3. Reduce and Recycle Landscape Construction Waste

<p>Requirement Divert 50% of landscape construction and demolition waste by weight. Verify the local jurisdiction's minimum requirement and reporting procedures for construction and demolition (C&D) recycling.</p> <p>Reference: StopWaste.Org, <i>Builders' Guide to Reuse & Recycling: A Directory for Construction and Demolition Materials</i> and sample Waste Management Plan for recycling C&D materials at www.BuildGreenNow.Org.</p>	<ul style="list-style-type: none"> • State the percent diversion goal in the design documents. • List specific goals and recycling and reuse requirements in plans and specifications. • Require contractors to review the waste management plan with subcontractors and to include contract language requiring subcontractors comply with the plan. • Prior to construction, complete a construction waste management plan. The City should provide a sample template, or one can be downloaded at www.BuildGreenNow.org. • After construction, provide final waste management plan with backup documentation. If materials were sent to a C&D Recycling facility, apply a facility average diversion rate because not all materials can be recycled. Most large C&D facilities have a calculated diversion rate and can provide you with documentation stating the percentage of materials recycled at that facility (typically 50% to 90%). 	
---	--	--

Planting

4. Choose & Locate Plants to Grow to Natural Size

<p>Requirement Species will be selected and plants spaced to allow them to grow to their natural size and shape . Pruning for structural integrity and health of plant is permitted. In addition, plants located in a row or adjacent to buildings, sidewalks or roads will be spaced between their minimum and maximum mature plant spread according to a published reference plant book and still fit into thier planting area without significant overhang. Trees must meet the spacing requirements only when adjacent to buildings, in a row or other adjacent to other vertical obstructions. Vines are not subject to spacing requirements.</p> <p>Reference <i>Bay-Friendly Landscape Guidelines</i> , Practices 2.1, Bay-Friendly Plant lists are available at www.BayFriendly.org; Bronsetin,Carol, David Fross and Bart O'Brien, <i>California Native Plants for the Garden</i>; East Bay Municipal Utility District, <i>Plants and Landscapes for Summer Dry Climates</i>; Sunset, <i>Western Garden Book</i>.</p>	<ul style="list-style-type: none"> • Submit plant legend indicating plant species, spacing and mature spread of plant. Indicate the source of information on spacing and spread. • Submit a statement signed by the Landscape Architect, Designer or Contractor verifying that installed plants meet this requirement. 	
---	--	--

Bay-Friendly Basics Landscape Checklist

Yes No N/A	Measure & Requirement	Documentation	Notes
	<p>5. Do Not Plant Invasive Plant Species</p> <p>Requirement None of the plant species listed by CAL-IPC's Don't Plant a Pest as invasive in the San-Francisco, Bay Area are included in the planting plan.</p> <p>Definition An invasive speices is defined as a species that is non-native (or alien) to the ecosystem under consideration and whose introduction causes or is likeley to cause economic or environmental harm or harm to human health. Federal Executive Order 1311.</p> <p>Reference Bay-Friendly Landscape Guielines, Practice 2.1d; Don't Plant A Pestbrochures for trees and plants available at www.cal-ipc.org; www.cal-ipc.org/ip/inventory/weedlist.php.</p>	<ul style="list-style-type: none"> • Compare the complete list of plants in the plant palette to the Cal-IPC list of plants that are invasive to the San Francisco Bay-Area. • Submit the complete plant palette. • Submit a statement signed by the Landscape Architect, Designer or Contractor confirming that no invasive species were substituted for specified species. 	
	<p>6. Grow drought tolerant CA native, Mediterranean or climate adapted plants</p> <p>Requirement A minimum of 75% of the total number of plants in non-turf areas must be species that require no or little summer watering once established. Species should be adapted to the climate in which they will be planted, as referenced by a published plant reference. If plants are given a range of water needs from "occasional to moderate" for example, the landscape designer must determine if the plant will require either occasional or moderate watering based on site, soil, and climate conditions and categorize the plant appropriately.</p> <p>Recommendation California native or Mediterranean species are strongly recommended.</p> <p>Reference <i>Bay-Friendly Landscape Guidelines</i> Practice 4.2; www.owue.water.ca.gov/docs/wucols00.pdf.</p>	<ul style="list-style-type: none"> • Submit a plant legend that identifies species, number of plants, irrigation requirements (and reference source of the water requirement), total number of drought tolerant plants and total number of non-turf plants. (download a Bay-Friendly plant legend template to facilitate this process at www.BayFriendly.org). • Submit a statement signed by the Landscape Architect, Designer or Contractor verifying that installed plants meet this requirement. 	

Bay-Friendly Basics Landscape Checklist

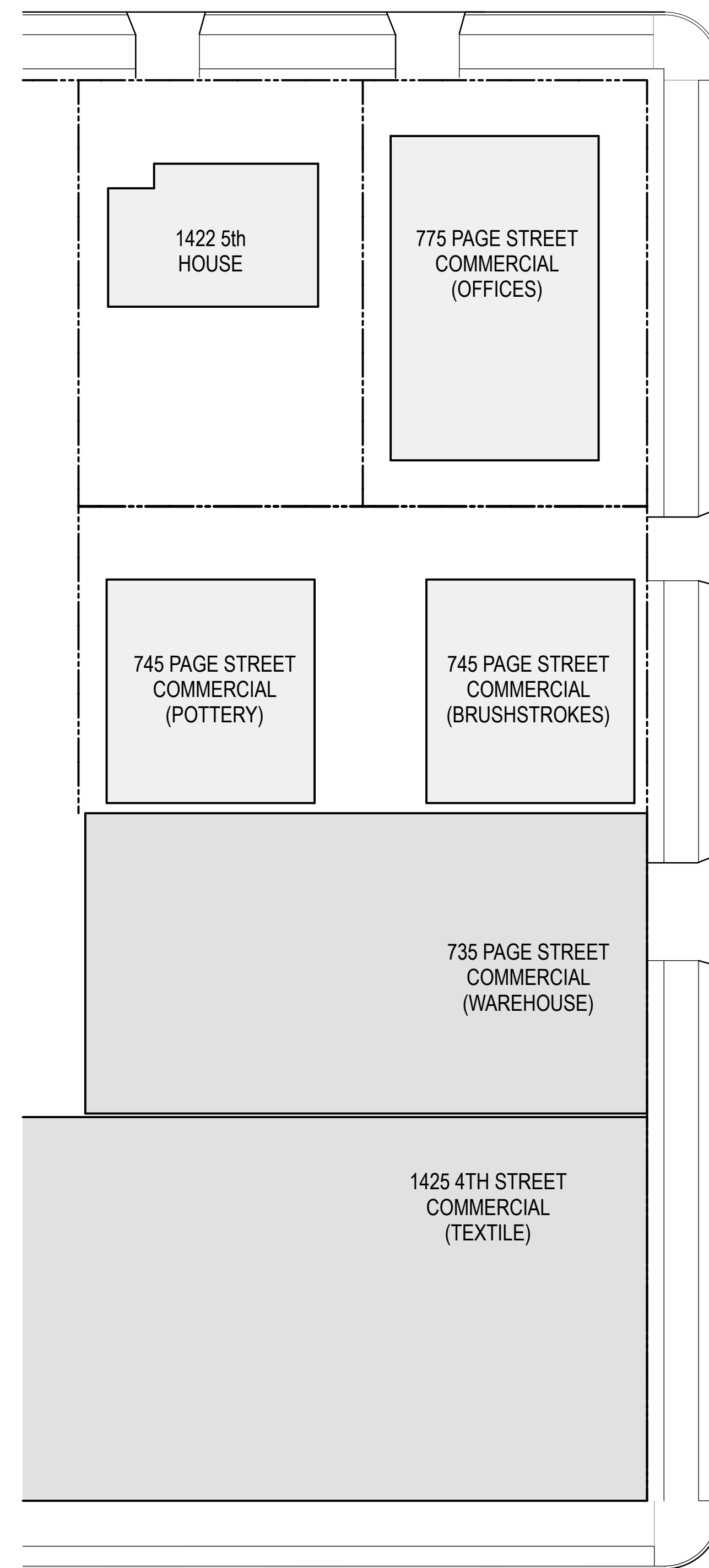
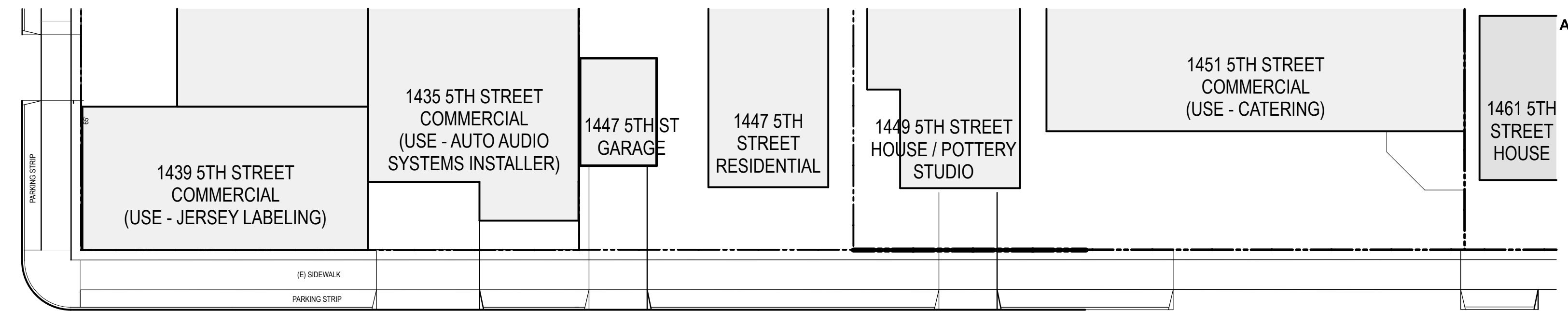
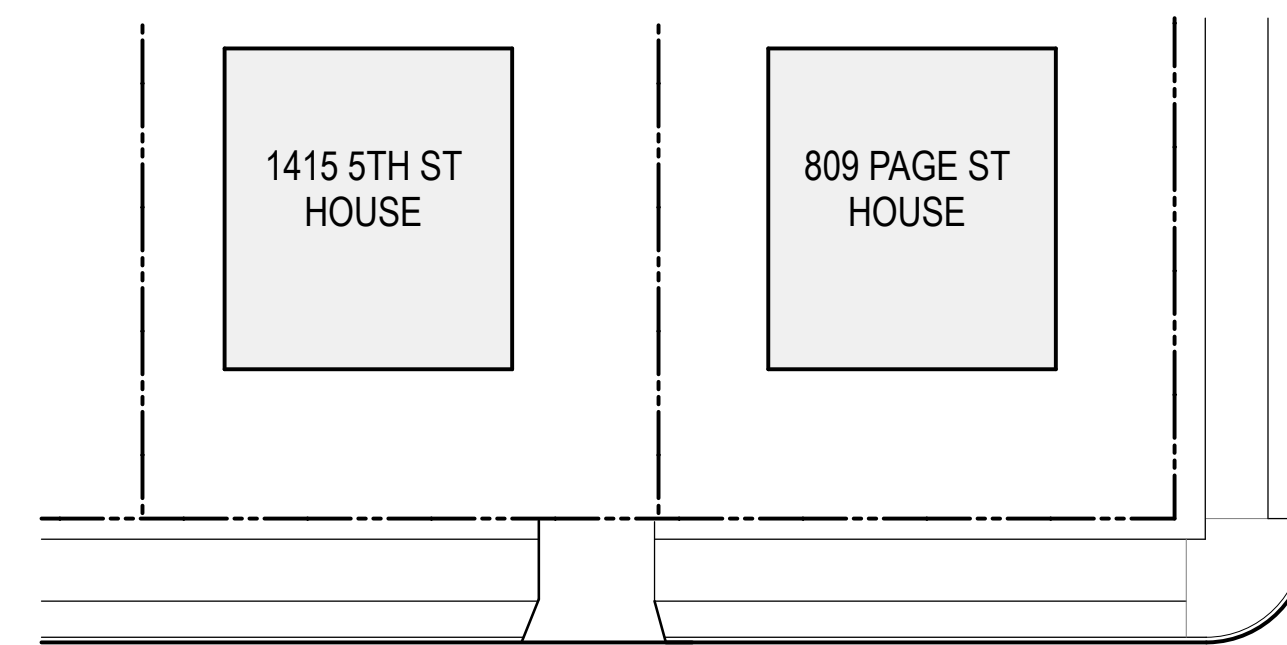
Yes No N/A	Measure & Requirement	Documentation	Notes
7. Minimize the lawn			
	<p>Requirement A maximum of 25% of total irrigated area is specified as turf, with sports or multiple use fields exempted.</p> <p>Reference <i>Bay-Friendly Landscape Guidelines</i>, Practice 4.3; Bay-Friendly Lawn Alternatives plant list at www.BayFriendly.org; Brooklyn Botanic Garden Publications, <i>Easy Lawns, Low Maintenance Native Grasses for Gardeners Everywhere</i>.</p>	<ul style="list-style-type: none"> • Submit calculations of square feet of turf, excluding sports and multiple use fields, and square feet of total irrigated area. • Submit planting plans with sports and multiple use fields identified. Include a statement about the purpose of multiple use fields. • Submit as statement signed by the Landscape Architect, Designer or Contractor that installed turf meets the requirements for this credit. 	

Irrigation

8. Specify Weather-Based Irrigation Controllers (automatic, self-adjusting) that Includes a Moisture &/or Rain Sensor Shutoff			
	<p>Requirement Weather-based irrigation controllers, soil moisture based controllers or other self-adjusting irrigation controllers, shall be required for all irrigation systems.</p> <p>Reference <i>Bay-Friendly Landscape Guidelines</i>, Practice 4.6; EBMUD website has a list of recommended self adjusting controllers at www.ebmud.com.</p>	<ul style="list-style-type: none"> • Submit the make and model and product sheet of the irrigation controller. • Provide a statement signed by the Landscape Architect, Designer or Contractor that the installed controller is a self-adjusting model and includes shut off capacity. 	
9. Sprinkler & Spray Heads are Not Specified for Areas Less Than 8 Feet Wide			
	<p>Requirement Sprinkler and spray heads are not specified in areas less than or equal to 8 feet wide to prevent overspray and runoff. Acceptable alternatives include drip, subsurface drip, bubblers or no irrigation. Bubblers shall not exceed 1.5 gallons per minute per bubbler.</p>	<ul style="list-style-type: none"> • Submit statement signed by the Landscape Architect, Designer or Contractor verifying that irrigation as installed does not have sprinkler or spray heads in planted areas less than 8 feet wide. 	

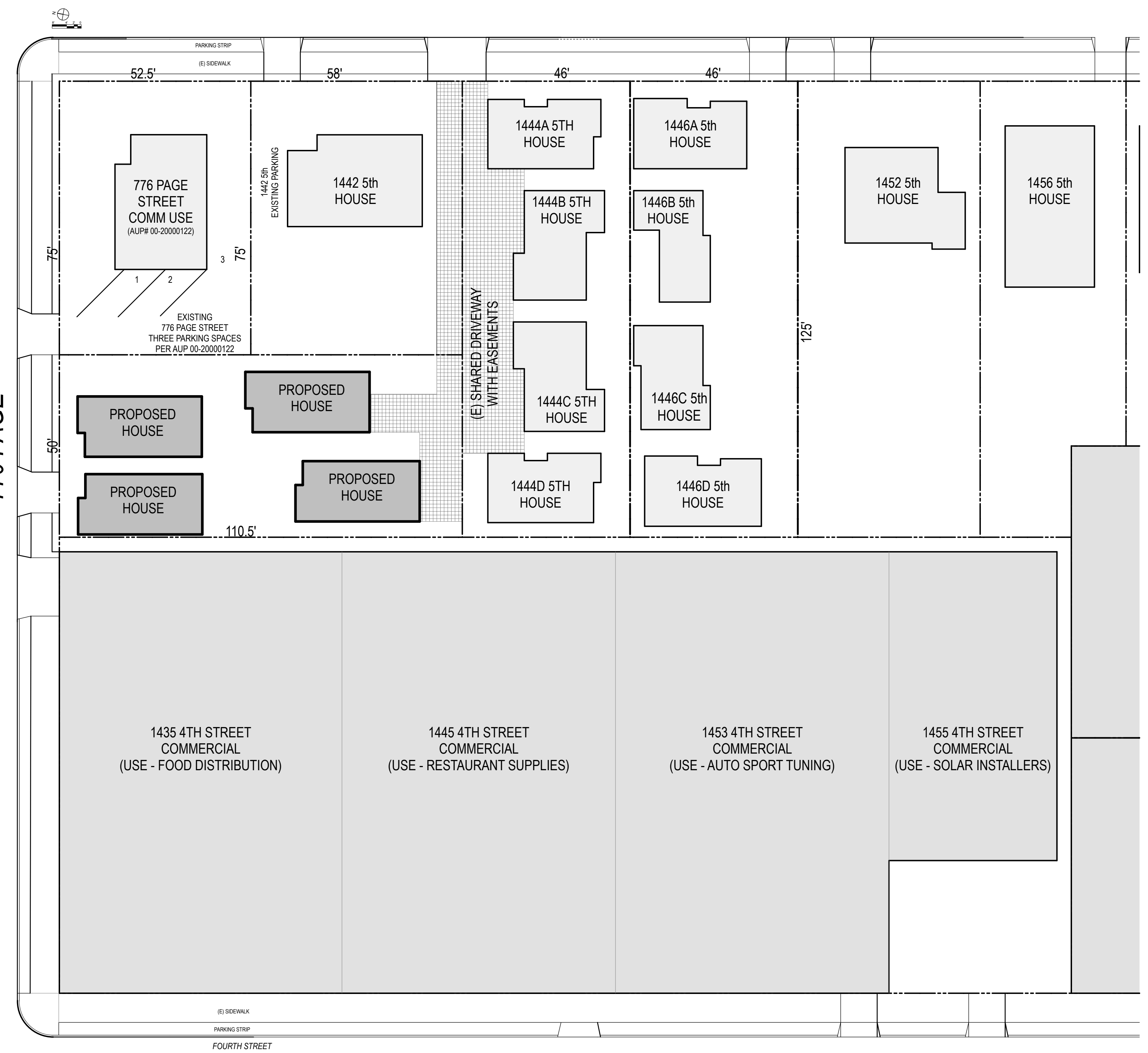
Bay-Friendly Basics: Bay-Friendly Basics represents the 9 required practices in the Bay-Friendly Landscape Scorecard. Landscapes that achieve the Bay-Friendly Basics will achieve significant environmental benefits for the project and community as well as taking the first step toward becoming a Bay-Friendly Rated Landscape. If a project is interested in seeking to qualify as a Bay-Friendly Rated Landscape, it must also earn a minimum of 60 points on the Bay-Friendly Landscape Scorecard and be evaluated by a qualified Bay-Friendly Rater. Please visit www.BayFriendlyCoalition.org to learn more about taking this next step in sustainability. The Bay-Friendly Basics is not a substitute for exercising sound judgment in particular circumstances. Rather, the Bay-Friendly Basics is designed to help local governments raise the minimum environmental requirements for landscape projects that require a permit.

This checklist works well with the Small Commercial Green Building Checklist available at www.stopwaste.org/smallcommercial.



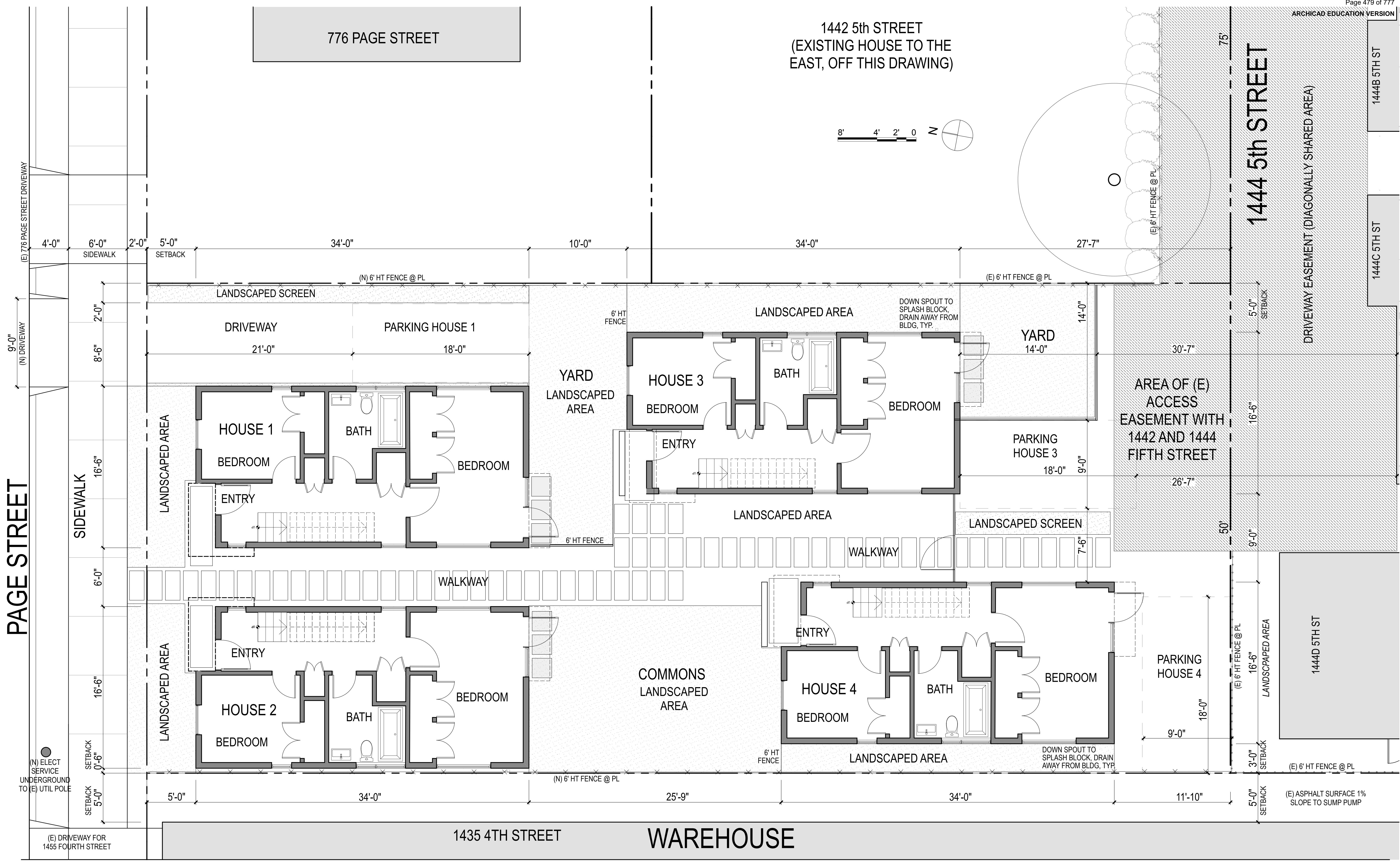
PAGE STREET

FIFTH STREET



VICINITY MAP

770 PAGE STREET USE PERMIT APPLICATION



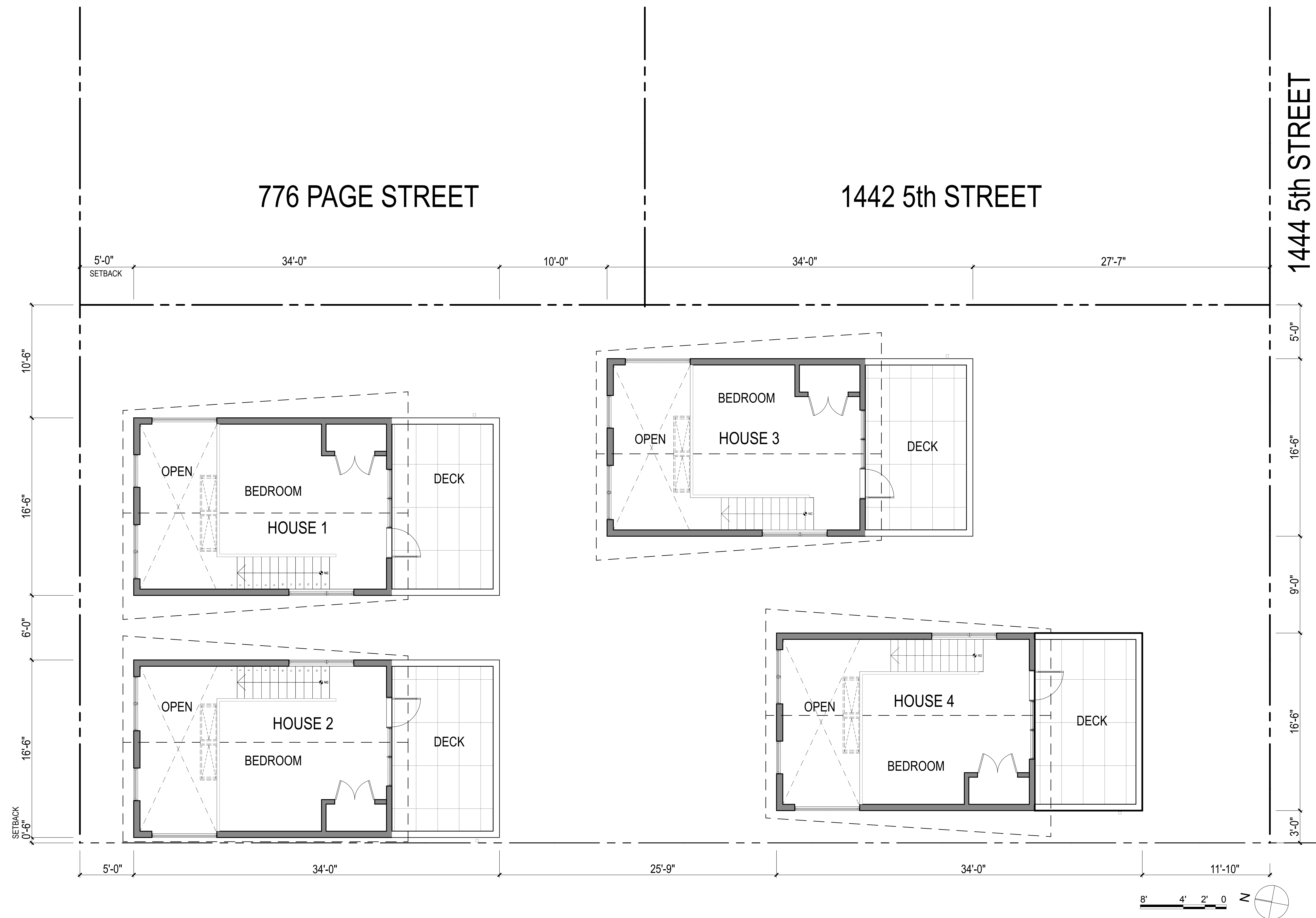
SITE PLAN WITH FIRST FLOOR

770 PAGE STREET
USE PERMIT APPLICATION



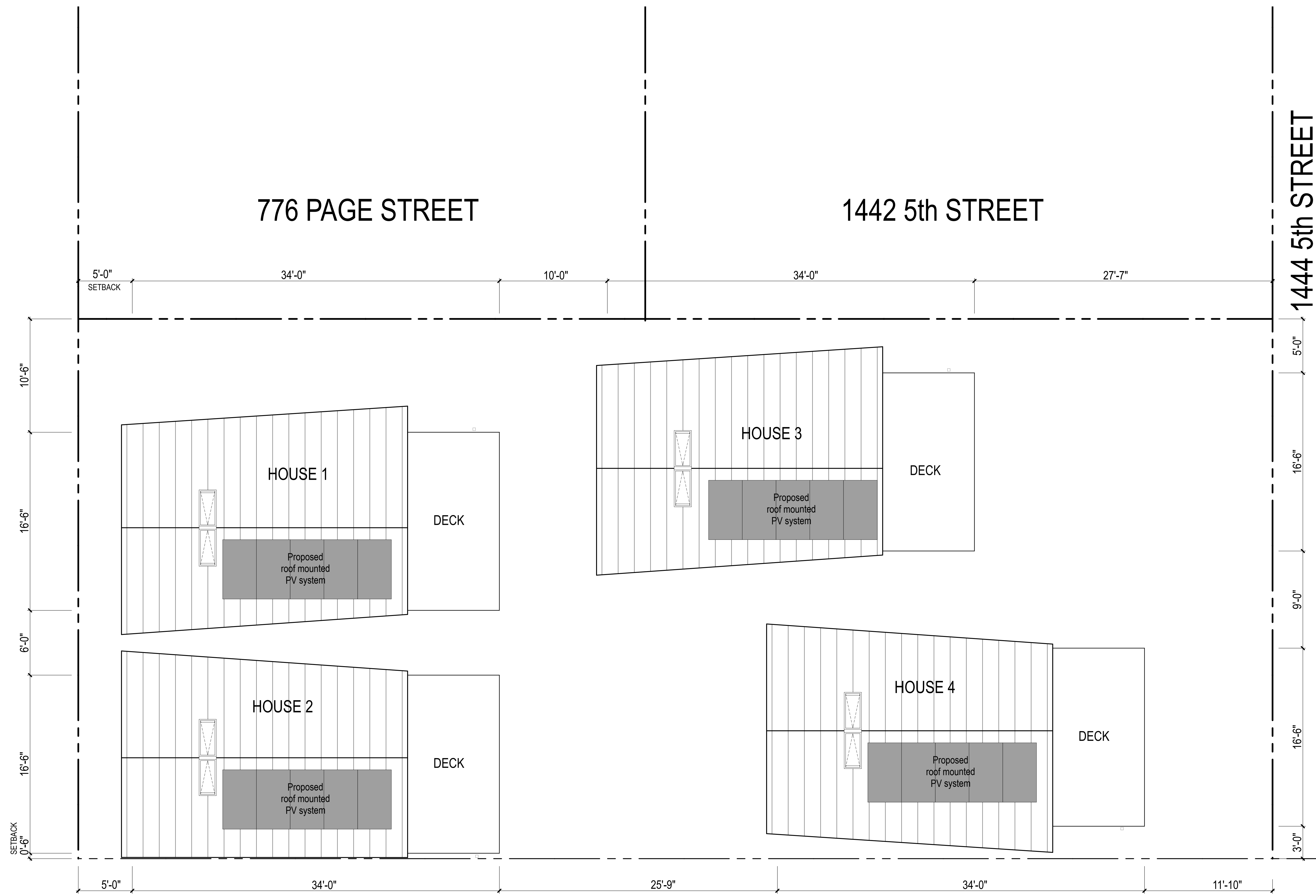
SECOND FLOOR PLAN

770 PAGE STREET
USE PERMIT APPLICATION



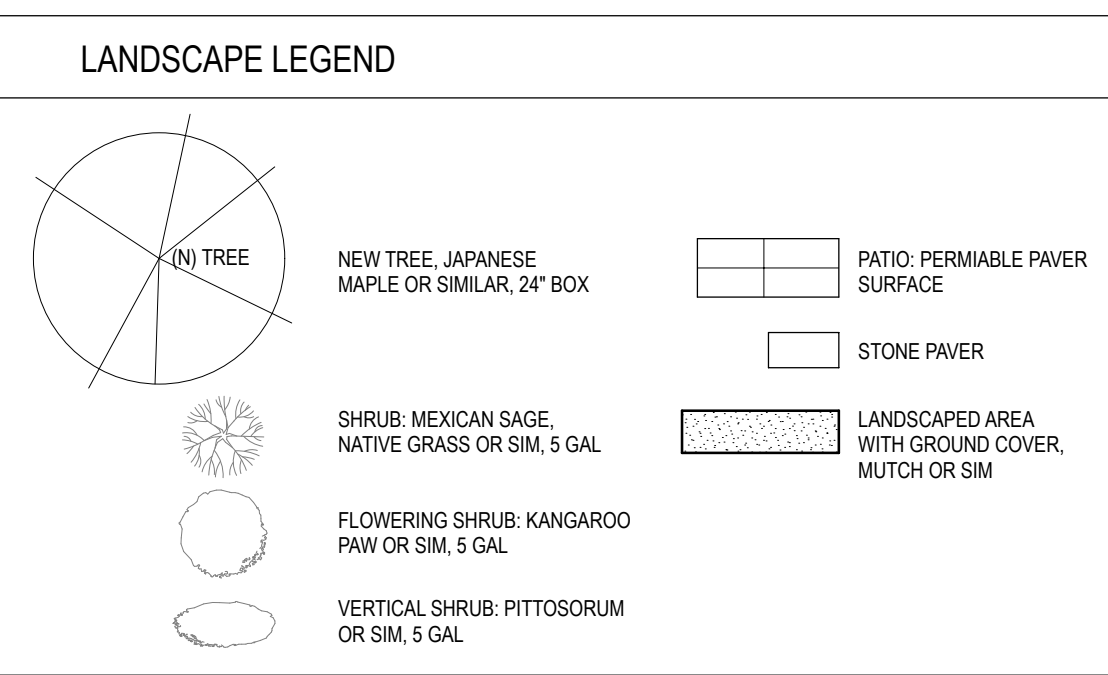
THIRD FLOOR PLAN

770 PAGE STREET
USE PERMIT APPLICATION



ROOF PLAN

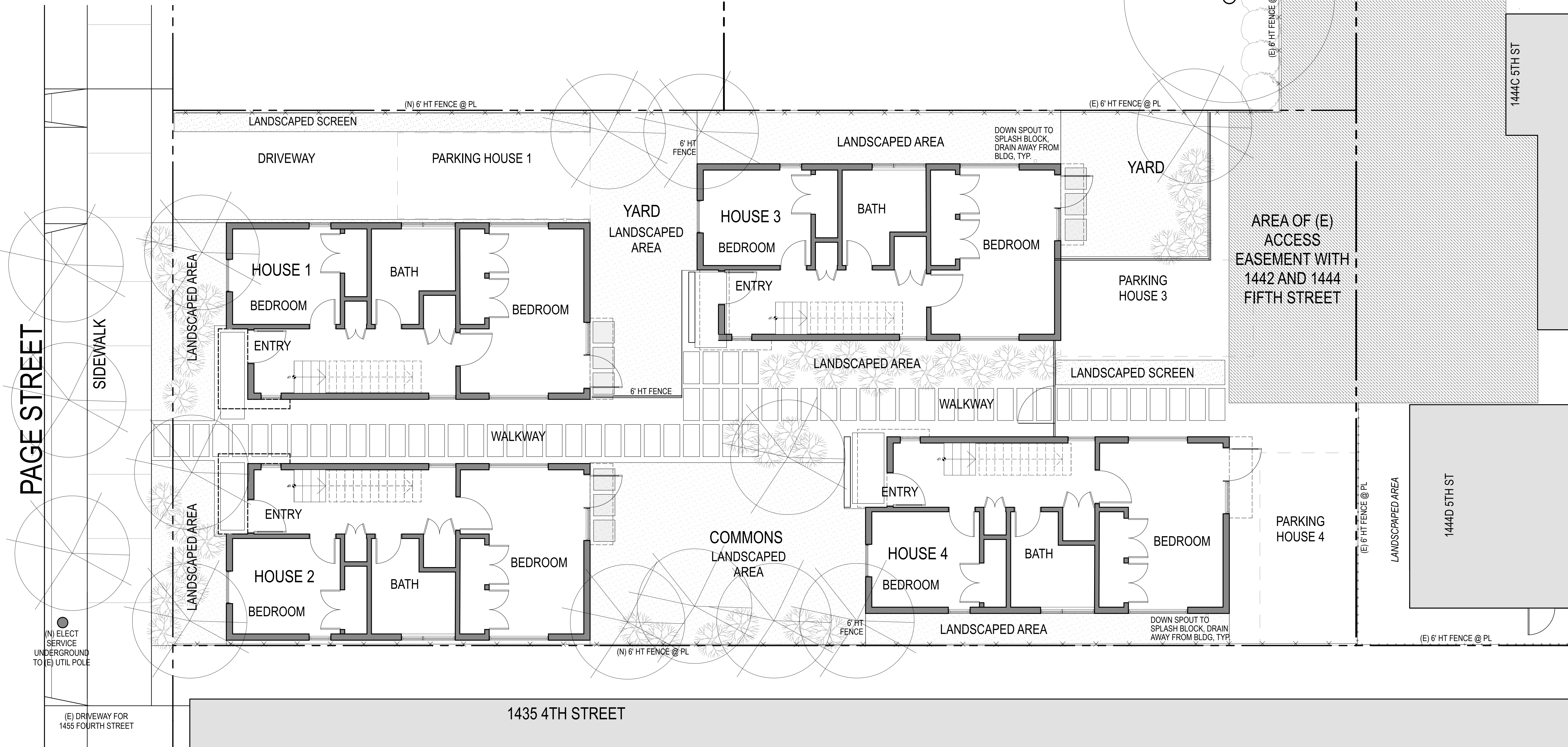
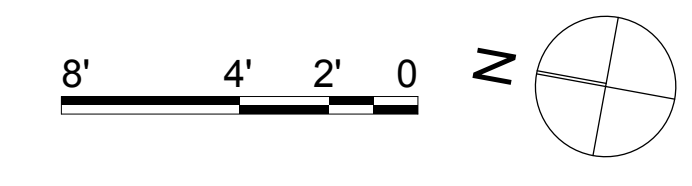
770 PAGE STREET
USE PERMIT APPLICATION



LANDSCAPE NOTE
ALL LANDSCAPE TO BE CONSISTENT WITH STATE OF CA WATER EFFICIENCY LANDSCAPE ORDINANCE (WELO)

776 PAGE STREET

1442 5th STREET
(EXISTING HOUSE TO THE EAST, OFF THIS DRAWING)





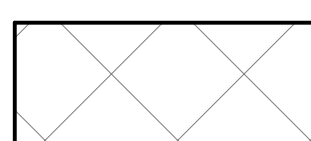
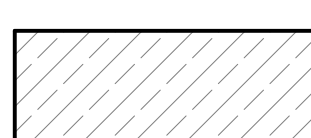

LANDSCAPE PLAN

770 PAGE STREET
USE PERMIT APPLICATION

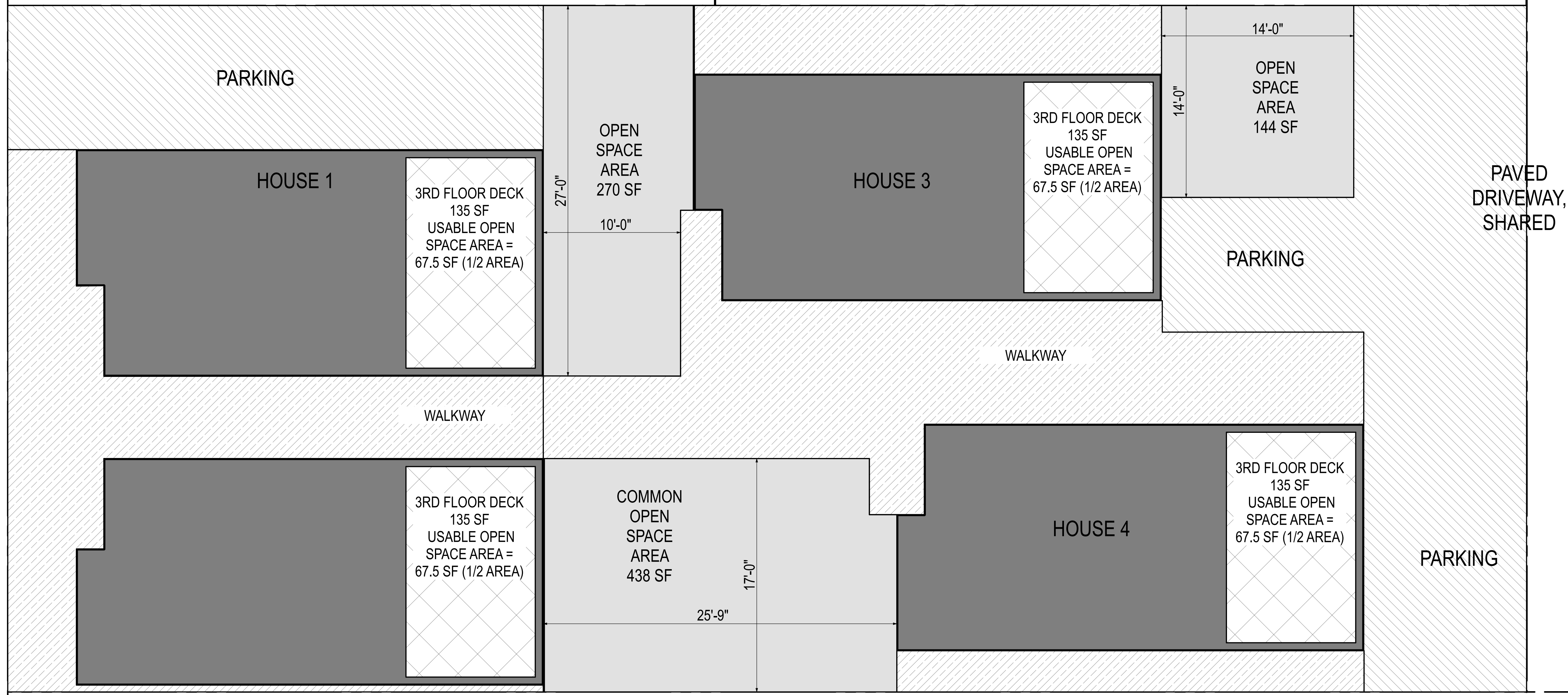
776 PAGE STREET

1442 5th STREET
 (EXISTING HOUSE TO THE
 EAST, OFF THIS DRAWING)

LEGEND

-  COVERED AREA
-  USABLE OPEN SPACE
-  OPEN 3RD FLOOR ROOF DECK
-  "NON-USABLE" OPEN SPACE
-  PARKING AND DRIVEWAY

OPEN SPACE AREAS		LOT COVERAGE	
USABLE OPEN SPACE AT GRADE	852	BUILDING FOOTPRINT: 561 SF X 4:	2,244
50% OF TOTAL DECK AREA	270	USABLE OPEN SPACE AT GRADE:	852
TOTAL USABLE OPEN SPACE	1,122	PARKING AND DRIVEWAY:	1,158
		NON-USEABLE OPEN SPACE:	1,278
		TOTAL	5,532



PAGE STREET

1444B 5th STREET

1444C 5th STREET

1444D 5th STREET

1435 4TH STREET

770 PAGE STREET

USE PERMIT APPLICATION

OPEN SPACE DIAGRAM



1435 4TH STREET
BUILDING

SOUTH ELEVATION LOT INTERIOR



1435 4TH STREET
BUILDING

NORTH ELEVATION PAGE STREET

BUILDING ELEVATIONS

770 PAGE STREET
USE PERMIT APPLICATION



WEST ELEVATION - LOT INTERIOR



EAST ELEVATION - LOT INTERIOR

8' 4' 2' 0



PAGE STREET ELEVATION

770 PAGE STREET
USE PERMIT APPLICATION



PLANNING & DEVELOPMENT

Land Use Planning, 1947 Center Street, Berkeley, CA 94704
Tel: 510.981.7410 TDD: 510.981.6903 Email: Planning@CityofBerkeley.info

TABULATION FORM

Project Address: 770 Page Street Date: 2/19/21
Applicant's Name: Matthew Wadlund
Zoning District: MU-R

Please print in ink the following numerical information for your Administrative Use Permit, Use Permit, or Variance application:

	<i>Existing</i>	<i>Proposed</i>	<i>Permitted/Required¹</i>
Units, Parking Spaces & Bedrooms			
Number of Dwelling Units (#)	1	4	4
Number of Parking Spaces (#)	1	3	0
Number of Bedrooms (#) (R-1, R-1A, R-2, R-2A, and R-3 only)	3	12	n/a
Yards and Height			
Front Yard Setback (Feet)	14	5	5
Side Yard Setbacks: (facing property) Left: (Feet)	9.7'	5'	5'
Right: (Feet)	3'	0'-6"	0
Rear Yard Setback (Feet)	62'	11.8'	10'
Building Height* (# Stories)	1	3	3
Average* (Feet)	14'	32.5'	35'
Maximum* (Feet)	16.5'	35'	35'
Areas			
Lot Area (Square-Feet)	5,532	41	n/a
Gross Floor Area* (Square-Feet) Total Area Covered by All Floors	900	6,000	8,287.5
Building Footprint* (Square-Feet) Total of All Structures	900	2,244	n/a
Lot Coverage* (%) Residential only (Building Footprint/Lot Area)	16	41	n/a
Useable Open Space* (Square-Feet)	140	1122	600
Floor Area Ratio* Non-Residential only (Except ES-R)	0.2	1.1	1.5

*See Definitions – Zoning Ordinance Title 23F.

Revised: 11/19

¹ See development standards for your Zoning District, per the Berkeley Municipal Code, Sub-Titles 23D and 23E
g:\landuse\forms & instructions\land use planning forms\word files\forms_zoning project application\zoning project application_tabulation form.docx

Feb 19, 2021

770 Page Street
Use Permit Application ZP 2020-0051

Use Permit Declarations

SHADOW STUDIES: All builds shadowed by new buildings proposed in this Use Permit are shown on the Shadow Study Diagrams.

NATURAL GAS: The project will not have natural gas. The proposed project is designed to comply with the Berkeley Energy Code (BMC Chapter 19.36) and the Berkeley Green Code (BMC Chapter 19.37)

ANTI-DISCRIMINATION: The applicant or sponsor, including the applicant or sponsor's parent company, subsidiary, or any other business or entity with an ownership share of at least 30% of the applicant's company, DOES NOT engage in the business of developing real estate, owning properties, or leasing or selling individual dwelling units in states or jurisdictions outside of California.

MODEL WATER EFFICIENCY LANDSCAPE ORDINANCE: The project will comply with MWEL, as is stated on the Landscape Plan submitted in the Use Permit drawings and will as be stated on the Building Permits.



PLANNING & DEVELOPMENT

Land Use Planning, 1947 Center Street, Berkeley, CA 94704
Tel: 510.981.7410 TDD: 510.981.6903 Email: Planning@CityofBerkeley.info

TABULATION FORM

Project Address: 770 Page Street - House 1 Date: 3/2/21
 Applicant's Name: Matthew Wadlund
 Zoning District: MU-R

Please print in ink the following numerical information for your Administrative Use Permit, Use Permit, or Variance application:

	<i>Existing</i>	<i>Proposed</i>	<i>Permitted/Required¹</i>
Units, Parking Spaces & Bedrooms	1	1	4
Number of Dwelling Units (#)			
Number of Parking Spaces (#)	1	1	0
Number of Bedrooms (#) (R-1, R-1A, R-2, R-2A, and R-3 only)	3	3	n/a
Yards and Height	14	5	5
Front Yard Setback (Feet)			
Side Yard Setbacks: (facing property)	9.7'	10.5'	5'
Left: (Feet)			
Right: (Feet)	3'	23'	0
Rear Yard Setback (Feet)	62'	71'-7"	10'
Building Height* (# Stories)	1	3	3
Average* (Feet)	14'	32.5'	35'
Maximum* (Feet)	16.5'	35'	35'
Areas	5,532	n/a	n/a
Lot Area (Square-Feet)			
Gross Floor Area* (Square-Feet) Total Area Covered by All Floors	900	1,500	8,287.5
Building Footprint* (Square-Feet) Total of All Structures	900	561	n/a
Lot Coverage* (%) Residential only (Building Footprint/Lot Area)	16	10	n/a
Useable Open Space* (Square-Feet)	140	211	150
Floor Area Ratio* Non-Residential only (Except ES-R)	0.2	0.3	1.5

*See Definitions – Zoning Ordinance Title 23F.

Revised: 11/19

¹ See development standards for your Zoning District, per the Berkeley Municipal Code, Sub-Titles 23D and 23E
 g:\landuse\forms & instructions\land use planning forms\word files\forms_zoning project application\zoning project application_tabulation form.docx



PLANNING & DEVELOPMENT

Land Use Planning, 1947 Center Street, Berkeley, CA 94704
Tel: 510.981.7410 TDD: 510.981.6903 Email: Planning@CityofBerkeley.info

TABULATION FORM

Project Address: 770 Page Street - House 2 Date: 3/2/21
Applicant's Name: Matthew Wadlund
Zoning District: MU-R

Please print in ink the following numerical information for your Administrative Use Permit, Use Permit, or Variance application:

	<i>Existing</i>	<i>Proposed</i>	<i>Permitted/Required¹</i>
Units, Parking Spaces & Bedrooms	1	1	4
Number of Dwelling Units (#)			
Number of Parking Spaces (#)	1	0	0
Number of Bedrooms (#) (R-1, R-1A, R-2, R-2A, and R-3 only)	3	3	n/a
Yards and Height	14	5	5
Front Yard Setback (Feet)			
Side Yard Setbacks: (facing property)			
Left: (Feet)	9.7'	33	5'
Right: (Feet)	3'	23'	0
Rear Yard Setback (Feet)	62'	71'-7"	10'
Building Height* (# Stories)	1	3	3
Average* (Feet)	14'	32.5'	35'
Maximum* (Feet)	16.5'	35'	35'
Areas	5,532	n/a	n/a
Lot Area (Square-Feet)			
Gross Floor Area* (Square-Feet) Total Area Covered by All Floors	900	1,500	8,287.5
Building Footprint* (Square-Feet) Total of All Structures	900	561	n/a
Lot Coverage* (%) Residential only (Building Footprint/Lot Area)	16	10	n/a
Useable Open Space* (Square-Feet)	140	286	150
Floor Area Ratio* Non-Residential only (Except ES-R)	0.2	0.3	1.5

*See Definitions – Zoning Ordinance Title 23F.

Revised: 11/19

¹ See development standards for your Zoning District, per the Berkeley Municipal Code, Sub-Titles 23D and 23E
g:\landuse\forms & instructions\land use planning forms\word files\forms_zoning project application\zoning project application_tabulation form.docx



PLANNING & DEVELOPMENT

Land Use Planning, 1947 Center Street, Berkeley, CA 94704
Tel: 510.981.7410 TDD: 510.981.6903 Email: Planning@CityofBerkeley.info

TABULATION FORM

Project Address: 770 Page Street - House 3 Date: 3/2/21
Applicant's Name: Matthew Wadlund
Zoning District: MU-R

Please print in ink the following numerical information for your Administrative Use Permit, Use Permit, or Variance application:

	<i>Existing</i>	<i>Proposed</i>	<i>Permitted/Required¹</i>
Units, Parking Spaces & Bedrooms			
Number of Dwelling Units (#)	1	1	4
Number of Parking Spaces (#)	1	1	0
Number of Bedrooms (#) (R-1, R-1A, R-2, R-2A, and R-3 only)	3	3	n/a
Yards and Height			
Front Yard Setback (Feet)	14	49'	5
Side Yard Setbacks: (facing property) Left: (Feet)	9.7'	5'	5'
Right: (Feet)	3'	29'-6"	0
Rear Yard Setback (Feet)	62'	27'-7"	10'
Building Height* (# Stories)	1	3	3
Average* (Feet)	14'	32.5'	35'
Maximum* (Feet)	16.5'	35'	35'
Areas			
Lot Area (Square-Feet)	5,532	n/a	n/a
Gross Floor Area* (Square-Feet) Total Area Covered by All Floors	900	1,500	8,287.5
Building Footprint* (Square-Feet) Total of All Structures	900	561	n/a
Lot Coverage* (%) Residential only (Building Footprint/Lot Area)	16	10	n/a
Useable Open Space* (Square-Feet)	140	211	150
Floor Area Ratio* Non-Residential only (Except ES-R)	0.2	0.3	1.5

*See Definitions – Zoning Ordinance Title 23F.

Revised: 11/19

¹ See development standards for your Zoning District, per the Berkeley Municipal Code, Sub-Titles 23D and 23E
g:\landuse\forms & instructions\land use planning forms\word files\forms_zoning project application\zoning project application_tabulation form.docx



PLANNING & DEVELOPMENT

Land Use Planning, 1947 Center Street, Berkeley, CA 94704
Tel: 510.981.7410 TDD: 510.981.6903 Email: Planning@CityofBerkeley.info

TABULATION FORM

Project Address: 770 Page Street - House 4 Date: 3/2/21
 Applicant's Name: Matthew Wadlund
 Zoning District: MU-R

Please print in ink the following numerical information for your Administrative Use Permit, Use Permit, or Variance application:

	<i>Existing</i>	<i>Proposed</i>	<i>Permitted/Required¹</i>
Units, Parking Spaces & Bedrooms			
Number of Dwelling Units (#)	1	1	4
Number of Parking Spaces (#)	1	1	0
Number of Bedrooms (#) (R-1, R-1A, R-2, R-2A, and R-3 only)	3	3	n/a
Yards and Height			
Front Yard Setback (Feet)	14	64'-9"	5
Side Yard Setbacks: (facing property) Left: (Feet)	9.7'	30'-6"	5'
Right: (Feet)	3'	3'	0
Rear Yard Setback (Feet)	62'	11'-10"	10'
Building Height* (# Stories)	1	3	3
Average* (Feet)	14'	32.5'	35'
Maximum* (Feet)	16.5'	35'	35'
Areas			
Lot Area (Square-Feet)	5,532	n/a	n/a
Gross Floor Area* (Square-Feet) Total Area Covered by All Floors	900	1,500	8,287.5
Building Footprint* (Square-Feet) Total of All Structures	900	561	n/a
Lot Coverage* (%) Residential only (Building Footprint/Lot Area)	16	10	n/a
Useable Open Space* (Square-Feet)	140	286	150
Floor Area Ratio* Non-Residential only (Except ES-R)	0.2	0.3	1.5

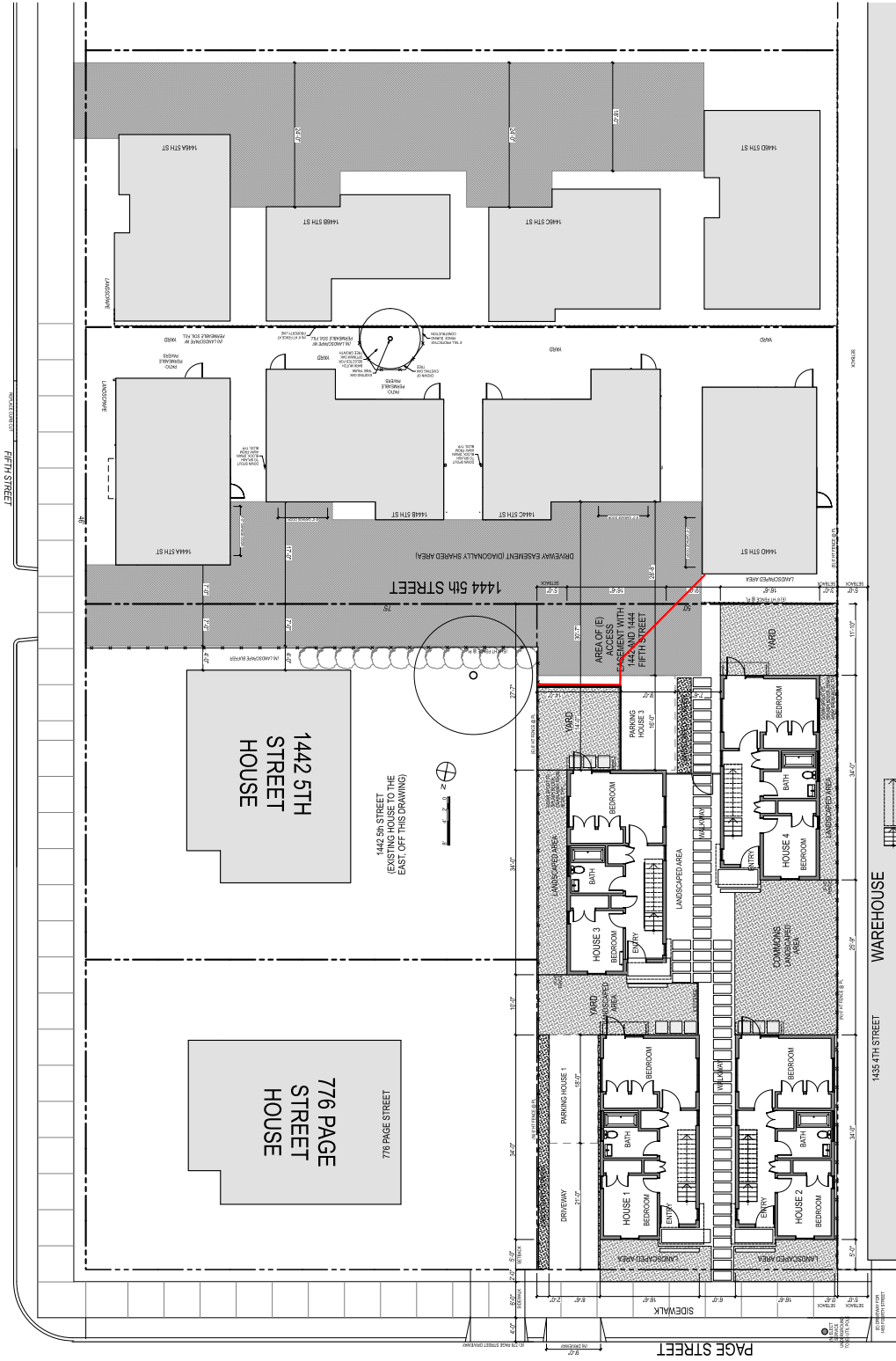
*See Definitions – Zoning Ordinance Title 23F.

Revised: 11/19

¹ See development standards for your Zoning District, per the Berkeley Municipal Code, Sub-Titles 23D and 23E
 g:\landuse\forms & instructions\land use planning forms\word files\forms_zoning project application\zoning project application_tabulation form.docx



770 PAGE STREET - PROPOSED PROJECT SIGN 3.12.21





Planning and Development Department
Land Use Planning Division

March 19, 2021

Matthew Wadlund
770 Page Street, LLC
804 Jones Street
Berkeley, CA 94710

Re: Use Permit ZP2020-0051 – 770 Page Street

Hello Matthew,

Thank you for the items you submitted on February 19th and March 2nd in response to the incomplete letter I sent out dated, November 6, 2020; as well as working through the proposed parking layout directly with me and Traffic Engineering. The application is currently incomplete and requires the following submittals/corrections in order to deem the application complete:

Items Required for Submittal or Correction:

- Parking/Easement: Formerly resubmit a plan set that includes the approved parking and easement layout mocked up by the Traffic Engineer. I have attached the mock up for your convenience.
- UOS Plan: With the elimination of parking for House 4, the Useable Open Space has increased on the site. Update the Useable Open Space plan and calculations in the plan set. As always, show both visually as well as in a calculation that at least 40% of the total UOS is landscaped.
- Tabulation Forms: As the parking and the Useable Open Space has been modified, submit updated tabulation form(s) that reflect these changes: one for House 4 and one potentially for the lot depending on how the UOS is distributed.
- Design Review: Design review is a subset of Zoning and the design review application needs to be complete in order to deem the Use Permit application complete. Please follow up on the items requested the email Anne Burns sent on July 2, 2020 and following. Staff notes the location of trash, compost, and recycling bins should be reflected on the Use Permit plan set as well.
 - Provide a renderings or photo simulation from Page Street so that we can see the proposed structures, the proposed front yard parking spaces, and any landscaping, streetscape improvements, and paving materials. Once any outstanding zoning or

transportation issues are addressed, please consider any design treatment that can help to reduce the visual impact of two parking spaces in the front yard of the project.

- There is a bedroom window located directly behind and in close proximity to the parking spaces proposed on Page Street. Again, once any outstanding zoning issues are addressed, look at a combination of relocating the bedrooms, windows, and developing a significant landscape screen to buffer that bedroom window.
- Any possible streetscape improvements, including new street tree locations in the sidewalk, should be reviewed with Urban Forestry and Public Works.
- Provide building sections through the site in the north-south and east-west directions and include building outlines on adjacent parcels.
- Clarify proposed open space for all four units. Note that open should comply with the Zoning Ordinance, including that the irrigated landscape component for required open space is 40%.
- Clearly illustrate the quality and plan changes of the proposed building elements, including windows. We recommend that you provide as much depth as possible.
- Clarify where the trash will be located for each unit.
- We may need additional information for proposed colors and materials, but can follow up with you further on in this process. It should not hold up this review.

Once you resubmit all requested items, I will work with Anne to coordinate posting of staff level design review with the Public Hearing Notice for ZAB.

Sincerely,



Leslie Mendez
Senior Planner



March 23, 2021

770 Page Street
Use Permit Application ZP 2020-0051

Response to Planning Use Permit Items for Correction March 19, 2021

PARKING/EASEMENT: See revised SITE PLAN. The line of easement layout needs to include access to House 3 parking space.

UOS PLAN: See revised Open Space Plan. The area that was House 4 parking (230 SF) becomes additional Open Space for House 4 exclusively. All open space delineated on the Open Space plan is landscaped except as indicated by "pavers" - see Landscape Legend on Landscape Plan. Meaning, +/- 90% of the UOS is landscaped.

TABULATION FORMS: See revised Tabulation for House 4 only, as revision from above impact only House 4.

DESIGN REVIEW:

RENDERING: See 770 Page Street Perspective submitted. The two (2) parking spaces in front have been omitted.

BEDROOM WINDOW: The two (2) parking spaces in front have been omitted, bedroom windows look out to landscaped front yard.

STREETSCAPE: Three new street trees will be planted in parkway. Parkway will also receive zeroscape beautification after final PG&E / EBMUD utility boxes have been placed. Front yards will be landscaped including three new smaller trees.

SITE BUILDING SECTIONS: See Site Building Sections submitted.

OPEN SPACE: See revised Open Space plan designating use. All open space delineated on the Open Space plan is landscaped except as indicated by "pavers" - see Landscape Legend on Landscape Plan. Meaning, +/- 90% of the UOS is landscaped.

PLAN CHANGES: Plan was revised to accommodate parking. No revisions were made to building elements from initial application. Exterior and window detailing and material quality will be in keeping with other projects completed recently in the vicinity.

TRASH LOCATION: Each house determines their own trash container use and location within their exclusive use area – there is no one location for all four house's refuse containers. In general, trash is located on the side of each house.

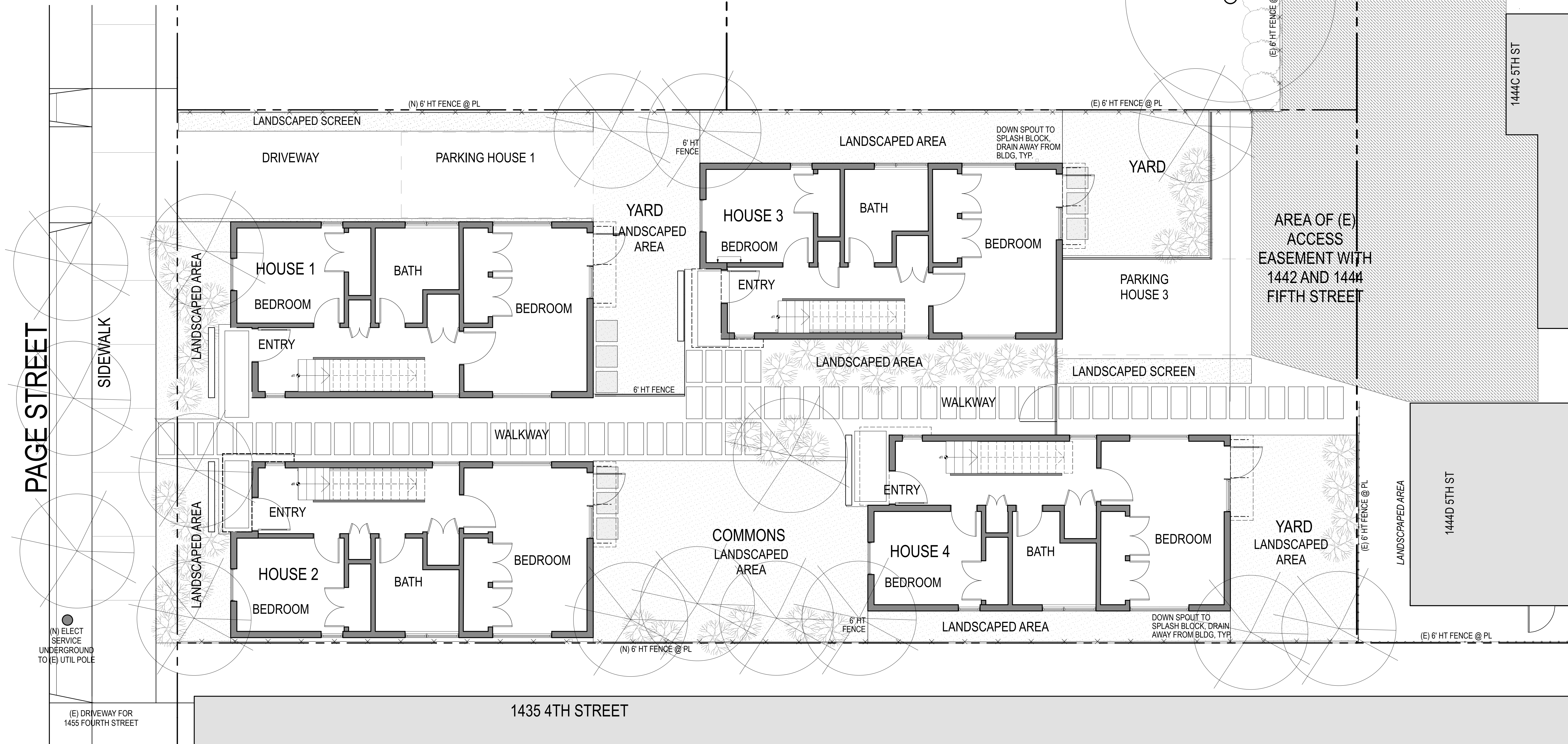
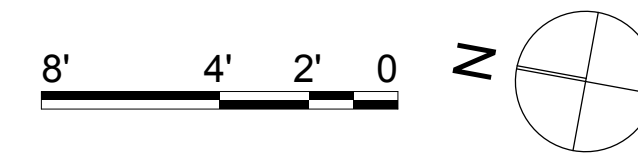
LANDSCAPE LEGEND

	(N) TREE		PATIO: PERMIABLE PAVER SURFACE
	NEW TREE: JAPANESE MAPLE OR SIMILAR, 24" BOX		STONE PAVER
	SHRUB: MEXICAN SAGE, NATIVE GRASS OR SIM, 5 GAL		LANDSCAPED AREA WITH GROUND COVER, MUNCH OR SIM
	FLOWERING SHRUB: KANGAROO PAW OR SIM, 5 GAL		
	VERTICAL SHRUB: PITTOSORUM OR SIM, 5 GAL		

LANDSCAPE NOTE
ALL LANDSCAPE TO BE CONSISTENT WITH STATE OF CA WATER EFFICIENCY LANDSCAPE ORDINANCE (WELO)

776 PAGE STREET

1442 5th STREET
(EXISTING HOUSE TO THE EAST, OFF THIS DRAWING)



PAGE STREET

SIDEWALK

DRIVEWAY

PARKING HOUSE 1

HOUSE 1

BATH

BEDROOM

BEDROOM

ENTRY

LANDSCAPED AREA

LANDSCAPED AREA

HOUSE 2

BATH

BEDROOM

BEDROOM

ENTRY

LANDSCAPED AREA

LANDSCAPED AREA

YARD

LANDSCAPED AREA

HOUSE 3

BEDROOM

BATH

BEDROOM

ENTRY

LANDSCAPED AREA

WALKWAY

LANDSCAPED SCREEN

PARKING HOUSE 3

AREA OF (E) ACCESS EASEMENT WITH 1442 AND 1444 FIFTH STREET

COMMONS
LANDSCAPED AREA

HOUSE 4

BEDROOM

BATH

BEDROOM

ENTRY

LANDSCAPED AREA

LANDSCAPED AREA

LANDSCAPED AREA

YARD
LANDSCAPED AREA

LANDSCAPED AREA

1444D 5TH ST

1444C 5TH ST

1444B 5TH ST

(E) DRIVEWAY FOR 1455 FOURTH STREET

1435 4TH STREET

770 PAGE STREET



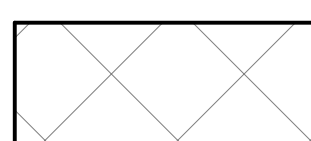
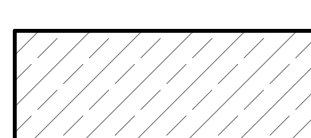

USE PERMIT APPLICATION

LANDSCAPE PLAN

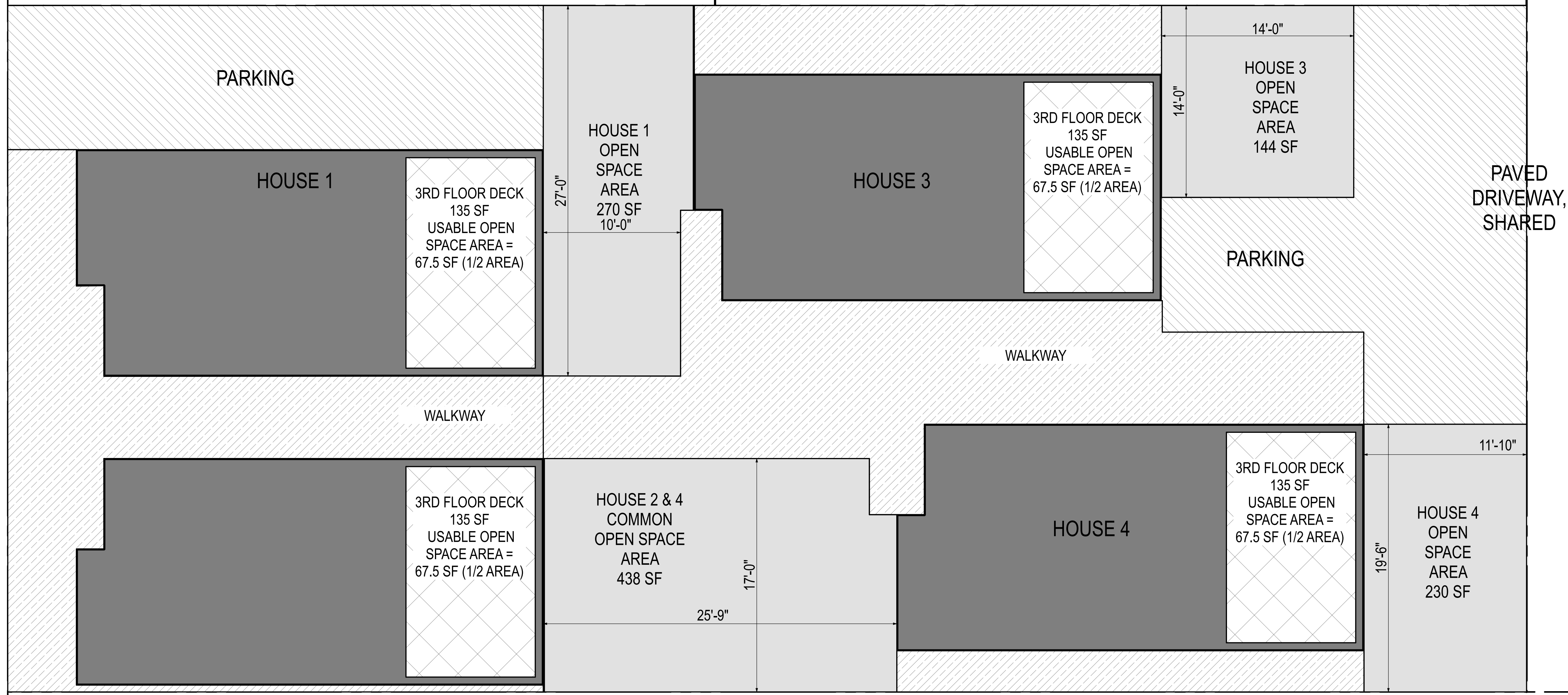
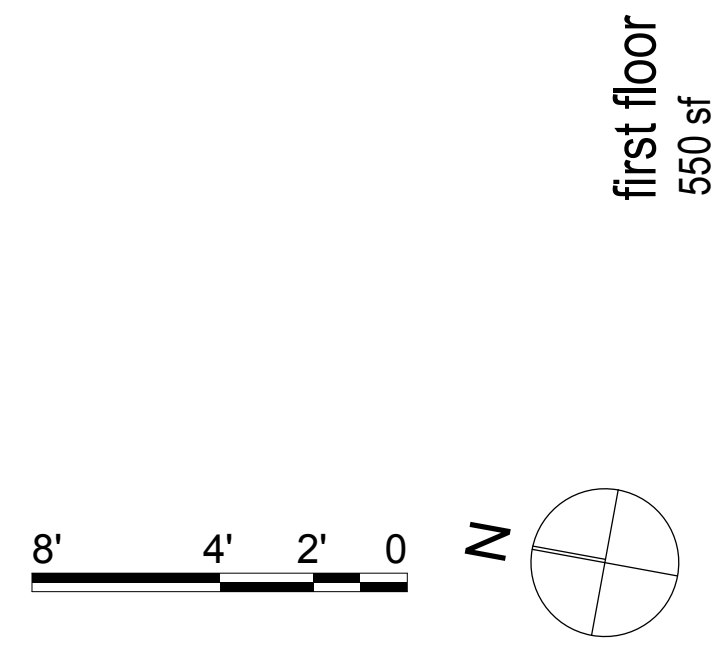
776 PAGE STREET

1442 5th STREET
 (EXISTING HOUSE TO THE EAST, OFF THIS DRAWING)

LEGEND

-  COVERED AREA
-  USABLE OPEN SPACE
-  OPEN 3RD FLOOR ROOF DECK
-  "NON-USABLE" OPEN SPACE
-  PARKING AND DRIVEWAY

OPEN SPACE AREAS		LOT COVERAGE	
USABLE OPEN SPACE AT GRADE	1,082	BUILDING FOOTPRINT: 561 SF X 4:	2,244
50% OF TOTAL DECK AREA	270	USABLE OPEN SPACE AT GRADE:	1,082
TOTAL USABLE OPEN SPACE	1,352	PARKING AND DRIVEWAY:	928
		NON-USEABLE OPEN SPACE:	1,278
		TOTAL	5,532



110'-7" PROPERTY LINE

1435 4TH STREET

PAGE STREET

1444D 5th STREET

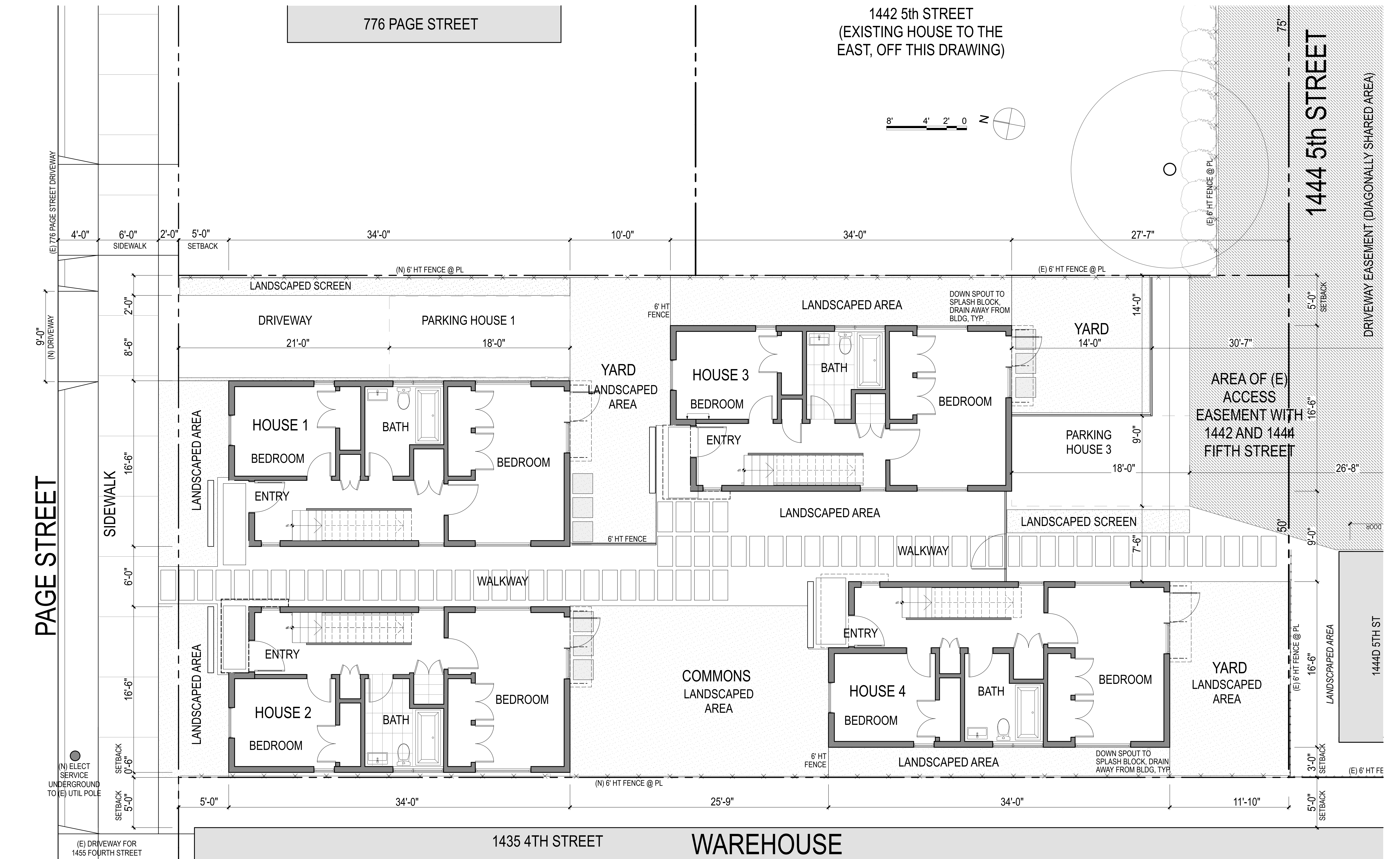
1444B 5th STREET

1444C 5th STREET

770 PAGE STREET

USE PERMIT APPLICATION

OPEN SPACE DIAGRAM



SITE PLAN WITH 1444 5TH STREET

770 PAGE STREET
USE PERMIT APPLICATION



TABULATION FORM Page 502 of 777

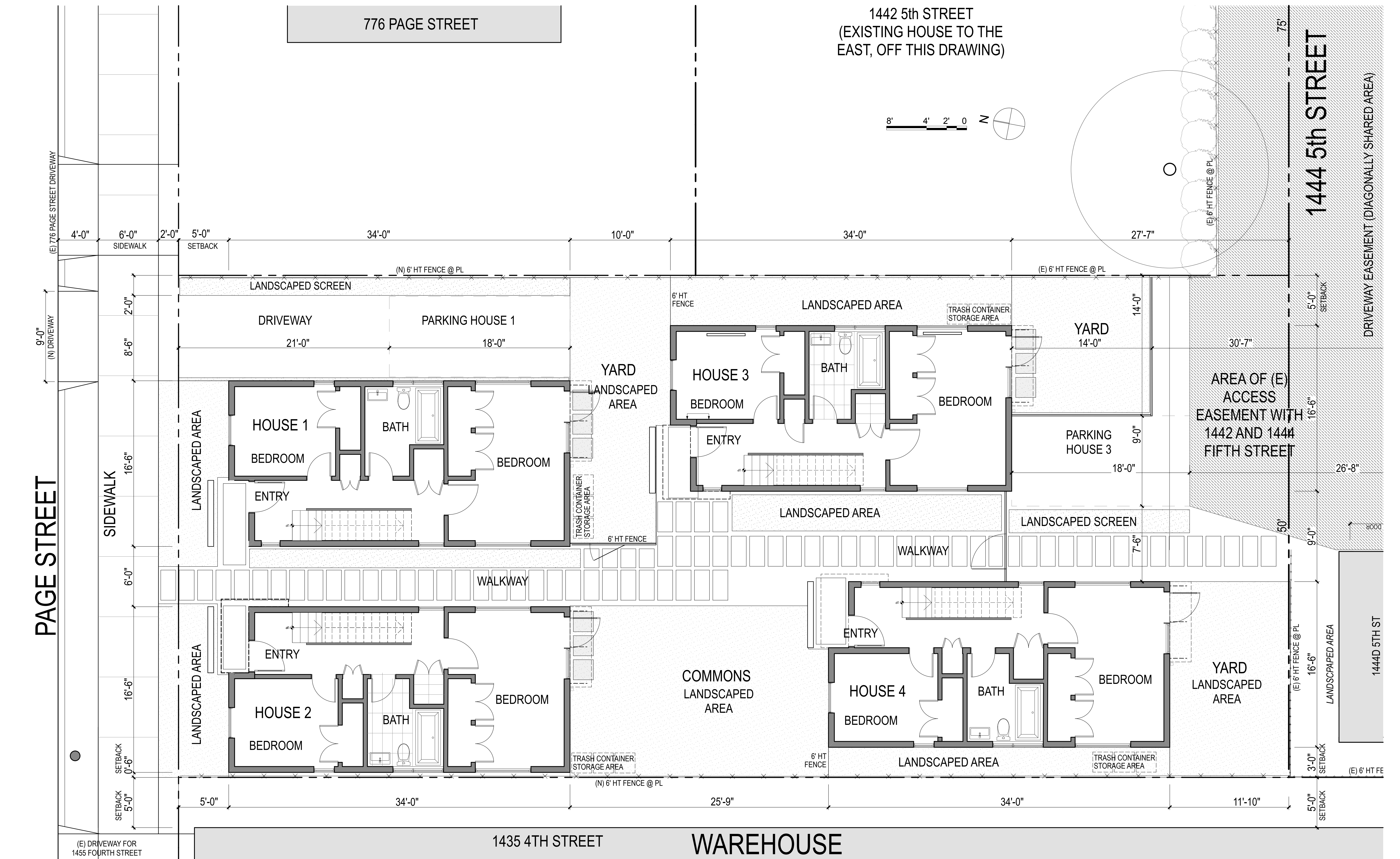
Project Address: 770 Page Street - House 4 Date: 3/23/21
 Applicant's Name: Matthew Wadlund
 Zoning District: MU-R

Please print in ink the following numerical information for your Administrative Use Permit, Use Permit, or Variance application:

	<i>Existing</i>	<i>Proposed</i>	<i>Permitted/Required¹</i>
Units, Parking Spaces & Bedrooms			
Number of Dwelling Units (#)	1	1	4
Number of Parking Spaces (#)	1	0	0
Number of Bedrooms (#) (R-1, R-1A, R-2, R-2A, and R-3 only)	3	3	n/a
Yards and Height			
Front Yard Setback (Feet)	14	64'-9"	5
Side Yard Setbacks: (facing property)			
Left: (Feet)	9.7'	30'-6"	5'
Right: (Feet)	3'	3'	0
Rear Yard Setback (Feet)	62'	11'-10"	10'
Building Height* (# Stories)	1	3	3
Average* (Feet)	14'	32.5'	35'
Maximum* (Feet)	16.5'	35'	35'
Areas			
Lot Area (Square-Feet)	5,532	n/a	n/a
Gross Floor Area* (Square-Feet)	900	1,500	8,287.5
Total Area Covered by All Floors			
Building Footprint* (Square-Feet)	900	561	n/a
Total of All Structures			
Lot Coverage* Residential only (%) (Building Footprint/Lot Area)	16	10	n/a
Useable Open Space* (Square-Feet)	140	516	150
Floor Area Ratio* Non-Residential only (Except ES-R)	0.2	0.3	1.5

*See Definitions – Zoning Ordinance Title 23F. Revised: 11/19

¹ See development standards for your Zoning District, per the Berkeley Municipal Code, Sub-Titles 23D and 23E
 g:\landuse\forms & instructions\land use planning forms\word files\forms_zoning project application\zoning project application_tabulation form.docx



SITE PLAN WITH 1444 5TH STREET

770 PAGE STREET

USE PERMIT APPLICATION

WADLUND+
Design Studio

FIRST SUBMITTED MAY 18, 2020
RESUBMITTED MARCH 23, 2021



Planning and Development Department
Land Use Planning Division
1947 Center Street, 2nd Floor
Berkeley, CA 94704


ZONING ADJUSTMENTS BOARD NOTICE OF PUBLIC HEARING

SUBJECT: 770 Page Street
Use Permit #ZP2020-0051

WHEN: Thursday, May 27, 2021.
Meeting starts at 7:00 pm.

WHERE: *This meeting will be conducted exclusively through videoconference and teleconference; there will not be a physical meeting location available. Please see:*
[https://www.cityofberkeley.info/uploadedFiles/Planning and Development/Level 3 - ZAB/2021-05-27 ZAB Agenda.pdf](https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_ZAB/2021-05-27_ZAB_Agenda.pdf) for details.

«NAME1»
«NAME2»
«ADDRESS1» «ADDRESS2»

 <p>CITY OF BERKELEY</p>	<p>SUBJECT: 770 Page Street, Use Permit #ZP2020-0051 to demolish an existing single-family dwelling unit and construct four detached, three-story approximately 1,500-square-foot dwelling units on a 5,532-square-foot lot.</p> <p>CEQA RECOMMENDATION: Categorically exempt pursuant to Sections 15301, 15303, and 15332 of the CEQA Guidelines ("Existing Facilities," "New Construction or Conversion of Small Structures," and "In-Fill Development").</p>
<p>NOTICE CONCERNING YOUR LEGAL RIGHTS: If you challenge the decision of the City in court, you may be limited to raising only those issues you or someone else raised at the public hearing.</p> <p>Post and Mail Date: May 13, 2021</p>	<p>All persons are welcome to attend the virtual hearing and will be given an opportunity to address the Board. Comments may be made verbally at the public hearing and/or in writing before the hearing. The Board may limit the time granted to each speaker.</p> <p>Send written comments to the Land Use Planning Division (Attn: ZAB Secretary), 1947 Center Street, Second Floor, Berkeley, CA 94704 or via e-mail to: zab@cityofberkeley.info. For further information, see the Agenda at: https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_ZAB/2021-05-27_ZAB_Agenda.pdf or call the Land Use Planning division (510) 981-7410.</p> <p>To request a disability-related accommodation(s) to participate in the meeting, including auxiliary aids or services, please contact the Disability Services specialist at 981-6418(V) or 981-6347(TDD) at least three business days before the meeting date.</p> <p>PLEASE NOTE: If your contact information is included in any communication to the Board, it will become part of the public record, and will be accessible on the City Website.</p>
	<p>All application materials are available at the Land Use Planning Division online at: http://www.cityofberkeley.info/zoningapplications</p> <p>The Zoning Adjustments Board final agenda and staff reports will be available online 6 days prior to this meeting at: http://www.cityofberkeley.info/zoningadjustmentsboard.</p>

770 Page Street

157 notices

NAME1	NAME2	ADDRESS1	ADDRESS2
Citizens Opposing Polluted Environment	1908 TENTH ST	BERKELEY CA 94710	
Fifth-Camelia Neighborhood Group	807 PAGE ST	BERKELEY CA 94710	
Page Street Neighbors	P.O. BOX 2296	BERKELEY CA 94702	
Paul Cox	890 CAMELIA ST	BERKELEY CA 94710	
University of California, Facilities Services	A&E Building, Room 300 University of California Berkeley	Berkeley, CA 94720-1382	
Urban Creeks Council	861 REGAL RD	BERKELEY CA 94708	
Bananas Inc.	5232 CLAREMONT AVE	OAKLAND CA 94618	
Heinz Avenue Arts Group	800 HEINZ AVE #3	BERKELEY CA 94710	
West Berkeley Association of Industrial Companies	PO BOX 2307	BERKELEY CA 94702	
Berkeley Central Library	2090 KITTREDGE STREET	BERKELEY CA 94704	
Adams Broadwell Joseph & Cardoza	601 GATEWAY BLVD. Su 1000	SOUTH SAN FRANCISCO CA 94080	
BPAZ HOLDINGS 1 LLC	1 SANSOME ST, #1500	SAN FRANCISCO CA	94104
1454 FOURTH STREET LLC	1321 SEVENTH ST	BERKELEY CA	94710
MITTONE FRANK R & SHERRILL D & G L & EVELYNE A TRS	1334 6TH ST	BERKELEY CA	94710
HART JAMES E & GOLOMB ELITE TRS	1337 JOSEPHINE ST	BERKELEY CA	94703
STOLTZ HOWARD L & VONGIERKESTOLTZ MONIKA TRS	1410 5TH ST	BERKELEY CA	94710
NILSSON ROBIN R TR	1418 5TH ST A	BERKELEY CA	94710
TRAYNOR NIELS P & MELANIE J TRS	1419 5TH ST	BERKELEY CA	94710
LAW MARY M	1421 5TH ST	BERKELEY CA	94710
BAERWALD JAN TR	1422 5TH STREET	BERKELEY CA	94710
OWENS LEROY & ANNIE E	1425 STANNAGE AVE	BERKELEY CA	94702
DILL VELMA	1438 6TH ST	BERKELEY CA	94710
HECKMAN HARRY H & KATHLEEN M TRS	144 HILL RD	BERKELEY CA	94708
ENDSIGHT 1440 LLC	1440 4TH ST B	BERKELEY CA	94710
YOON WILLIAM T & CHOI RENEE Y	1446 FIFTH ST C	BERKELEY CA	94710
TOOR HARMINDER S & KRISTINA C	1446A FIFTH ST	BERKELEY CA	94710
YI GANG & YATES MICHAEL L JR	1446B 5TH ST	BERKELEY CA	94710
HAMMOND FERGUS M & ALYSSA	1446D FIFTH ST	BERKELEY CA	94710
CARLSON DIANE & ARROYO DAVID	1447 5TH ST	BERKELEY CA	94710
YOON YON S & CHOE AMY	1449 5TH ST	BERKELEY CA	94710
WURM JAN M	1450 4TH ST 2	BERKELEY CA	94710
YOUNGER SUSAN TR	1452 5TH ST	BERKELEY CA	94710
ROBIDOUX JEFFREY & BETH	1460 5TH	BERKELEY CA	94710
YOON WILLIAM T & CHOI RENEE	1461 5TH ST 4	BERKELEY CA	94710
BLACK SIMON	1463 5TH ST 3	BERKELEY CA	94710
HICKS GRAHAM M & HUNTER MATTHEW R	1465 5TH ST 2	BERKELEY CA	94710
QUIRING DARO & TESTA BONNIE TRS	1467 5TH ST	BERKELEY CA	94710
DOMICILIO CONOCIDO II INC	14800 SAN PEDRO 3RD	SAN ANTONIO TX	78232
FARDIS ALIREZA & SHAIDA TRS	18 CLAREMONT CRESCENT	BERKELEY CA	94705
MCLAREN MARY TR	1813 SONOMA AVE	BERKELEY CA	94707
COMMON AREA OF TR 7220 12 THRU 26	1817 ROSE ST	BERKELEY CA	94703
HOADLEY DARAH & TALMON URI	1819 PARKER ST	BERKELEY CA	94703

770 Page Street

157 notices

mailed out 05-13-21

BORDOW RICHARD A & BORDOW ISABEL R TRS	2 DEWEY RD	KENSINGTON CA	94708
NMT FINANCIAL LLC	2150 PORTOLA AVE, #D118	LIVERMORE CA	94551
SIMMONS RACHEL A	2240 HOMESTEAD CT, #103	LOS ALTOS CA	94024
ROTHMAN ZEIDA TR	2331 ACTON ST	BERKELEY CA	94702
CERNY JANA TR	259 MISSOURI ST	SAN FRANCISCO CA	94107
INTERMOUNTAIN TRADING CO LTD	2836 TICE CREEK DR 1	WALNUT CREEK CA	94595
COOPER CAROL L & CHESTER MARGARET	3730 GAINSBOROUGH DR	CONCORD CA	94518
BERMAN MARSHALL JR & GARRETT PATRICIA TRS	5909 RINCON DR	OAKLAND CA	94611
MORIMOTO HIROSHI TR	623 VISTAMONT AVE	BERKELEY CA	94708
FOURTH & JONES LLC	626 BANCROFT WAY	BERKELEY CA	94710
DATHE ROBERT P & CARLOTTA R TRS	685 LOS PALOS DR	LAFAYETTE CA	94549
COMMON AREA OF PM 10293	801 JONES ST	BERKELEY CA	94710
DASILVA PHILIP V & CHRISTINA Y	802 PAGE ST	BERKELEY CA	94710
KEMNITZ STEVEN J & MARISA S ETAL	804 PAGE ST	BERKELEY CA	94710
1444 5TH STREET, LLC	805 JONES ST	BERKELEY CA	94710
OKELLY DENNIS & LISCHWE REBECCA J	806 PAGE ST	BERKELEY CA	94710
PRATHER DAVID H & PERSSON CRISTINA P	808 PAGE ST	BERKELEY CA	94710
OSULLIVAN EDMOND D & SABINE M TRS	809 CAMELIA ST	BERKELEY CA	94710
SPAHN JEFFREY M & BONTEKOE PAUL TRS	809 PAGE ST	BERKELEY CA	94710
COMMON AREA TR 8355	812 PAGE ST	BERKELEY CA	94710
HEINE DOUGLAS TR	813 PAGE ST	BERKELEY CA	94710
825 PAGE STREET LLC	825 PAGE ST	BERKELEY CA	94710
CAMPBELL DORIS & MARISCO CHARLES	925 EVERETT ST	EL CERRITO CA	94530
KEWEKORDES JOSEF II & SMART SHARON L	965 TULARE AVE	BERKELEY CA	94707
SELVIN NANCY B TRS	982 CRAGMONT AVE	BERKELEY CA	94708
TRILOGY LIMITED PROPERTIES LLC	P.O BOX 25667	FRESNO CA	93729
HUTCHINGS GREGORY J	PO BOX 2633	BERKELEY CA	94702
Occupant(s)	1409 FOURTH ST	BERKELEY CA	94710
Occupant(s)	1410 FIFTH ST	BERKELEY CA	94710
Occupant(s)	1411 FOURTH ST	BERKELEY CA	94710
Occupant(s)	1414 FOURTH ST	BERKELEY CA	94710
Occupant(s)	1415 FIFTH ST	BERKELEY CA	94710
Occupant(s)	1416 FIFTH ST	BERKELEY CA	94710
Occupant(s)	1417 FOURTH ST	BERKELEY CA	94710
Occupant(s)	1418 FIFTH ST	BERKELEY CA	94710
Occupant(s)	1418 FIFTH ST A	BERKELEY CA	94710
Occupant(s)	1418 FIFTH ST B	BERKELEY CA	94710
Occupant(s)	1418 FIFTH ST C	BERKELEY CA	94710
Occupant(s)	1419 FIFTH ST	BERKELEY CA	94710
Occupant(s)	1420 FIFTH ST	BERKELEY CA	94710
Occupant(s)	1421 FIFTH ST	BERKELEY CA	94710
Occupant(s)	1422 FIFTH ST	BERKELEY CA	94710
Occupant(s)	1425 FIFTH ST	BERKELEY CA	94710

770 Page Street

157 notices

mailed out 05-13-21

Occupant(s)	1425 FOURTH ST	BERKELEY CA	94710
Occupant(s)	1434 SIXTH ST	BERKELEY CA	94710
Occupant(s)	1434 SIXTH ST 1	BERKELEY CA	94710
Occupant(s)	1434 SIXTH ST 2	BERKELEY CA	94710
Occupant(s)	1434 SIXTH ST 3	BERKELEY CA	94710
Occupant(s)	1434 SIXTH ST 4	BERKELEY CA	94710
Occupant(s)	1435 FOURTH ST	BERKELEY CA	94710
Occupant(s)	1438 SIXTH ST	BERKELEY CA	94710
Occupant(s)	1439 FIFTH ST	BERKELEY CA	94710
Occupant(s)	1440 FOURTH ST A	BERKELEY CA	94710
Occupant(s)	1440 FOURTH ST B	BERKELEY CA	94710
Occupant(s)	1440 FOURTH ST C	BERKELEY CA	94710
Occupant(s)	1440 FOURTH ST D	BERKELEY CA	94710
Occupant(s)	1442 FOURTH ST	BERKELEY CA	94710
Occupant(s)	1442 SIXTH ST	BERKELEY CA	94710
Occupant(s)	1442 SIXTH ST REAR	BERKELEY CA	94710
Occupant(s)	1444 FOURTH ST	BERKELEY CA	94710
Occupant(s)	1445 FOURTH ST	BERKELEY CA	94710
Occupant(s)	1446 SIXTH ST	BERKELEY CA	94710
Occupant(s)	1446 SIXTH ST A	BERKELEY CA	94710
Occupant(s)	1446 SIXTH ST B	BERKELEY CA	94710
Occupant(s)	1446 SIXTH ST C	BERKELEY CA	94710
Occupant(s)	1446 SIXTH ST D	BERKELEY CA	94710
Occupant(s)	1447 FIFTH ST	BERKELEY CA	94710
Occupant(s)	1448 SIXTH ST	BERKELEY CA	94710
Occupant(s)	1449 FIFTH ST	BERKELEY CA	94710
Occupant(s)	1449 FIFTH ST B	BERKELEY CA	94710
Occupant(s)	1450 FOURTH ST 1	BERKELEY CA	94710
Occupant(s)	1450 FOURTH ST 10	BERKELEY CA	94710
Occupant(s)	1450 FOURTH ST 11	BERKELEY CA	94710
Occupant(s)	1450 FOURTH ST 12	BERKELEY CA	94710
Occupant(s)	1450 FOURTH ST 13	BERKELEY CA	94710
Occupant(s)	1450 FOURTH ST 14	BERKELEY CA	94710
Occupant(s)	1450 FOURTH ST 15	BERKELEY CA	94710
Occupant(s)	1450 FOURTH ST 2	BERKELEY CA	94710
Occupant(s)	1450 FOURTH ST 3	BERKELEY CA	94710
Occupant(s)	1450 FOURTH ST 4	BERKELEY CA	94710
Occupant(s)	1450 FOURTH ST 5	BERKELEY CA	94710
Occupant(s)	1450 FOURTH ST 6	BERKELEY CA	94710
Occupant(s)	1450 FOURTH ST 7	BERKELEY CA	94710
Occupant(s)	1450 FOURTH ST 8	BERKELEY CA	94710
Occupant(s)	1450 FOURTH ST 9	BERKELEY CA	94710
Occupant(s)	1450 FOURTH ST COM	BERKELEY CA	94710

770 Page Street

157 notices

mailed out 05-13-21

Occupant(s)	1450 FOURTH ST UTILI	BERKELEY CA	94710
Occupant(s)	1450 SIXTH ST	BERKELEY CA	94710
Occupant(s)	1451 FIFTH ST	BERKELEY CA	94710
Occupant(s)	1452 FIFTH ST	BERKELEY CA	94710
Occupant(s)	1452 SIXTH ST	BERKELEY CA	94710
Occupant(s)	1453 FOURTH ST	BERKELEY CA	94710
Occupant(s)	1454 FOURTH ST	BERKELEY CA	94707
Occupant(s)	1454 SIXTH ST	BERKELEY CA	94710
Occupant(s)	1455 FIFTH ST	BERKELEY CA	94707
Occupant(s)	1455 FOURTH ST	BERKELEY CA	94710
Occupant(s)	1455 THIRD ST	BERKELEY CA	94710
Occupant(s)	1456 FIFTH ST	BERKELEY CA	94710
Occupant(s)	1456 FOURTH ST	BERKELEY CA	94710
Occupant(s)	1456 FOURTH ST A	BERKELEY CA	94710
Occupant(s)	1456 FOURTH ST B	BERKELEY CA	94710
Occupant(s)	1456 FOURTH ST C	BERKELEY CA	94710
Occupant(s)	1460 FIFTH ST	BERKELEY CA	94710
Occupant(s)	1461 FIFTH ST	BERKELEY CA	94710
Occupant(s)	1461 FIFTH ST COM	BERKELEY CA	94710
Occupant(s)	1463 FIFTH ST	BERKELEY CA	94710
Occupant(s)	1465 FIFTH ST	BERKELEY CA	94710
Occupant(s)	1465 FOURTH ST	BERKELEY CA	94710
Occupant(s)	1467 FIFTH ST	BERKELEY CA	94710
Occupant(s)	731 JONES ST	BERKELEY CA	94710
Occupant(s)	737 JONES ST	BERKELEY CA	94710
Occupant(s)	737 PAGE ST	BERKELEY CA	94710
Occupant(s)	745 PAGE ST	BERKELEY CA	94710
Occupant(s)	775 PAGE ST	BERKELEY CA	94710
Occupant(s)	776 PAGE ST	BERKELEY CA	94710

Mendez, Leslie

From: Joe Cordes <jcordes@autom8.com>
Sent: Sunday, May 23, 2021 1:25 PM
To: Mendez, Leslie
Subject: Letter supporting Zoning Permit ZP2020-0051

WARNING: This is not a City of Berkeley email. Do not click links or attachments unless you trust the sender and know the content is safe.

Re: 770 Page Street Zoning Permit

Dear Ms. Mendez,

I am a business owner manufacturing neuroscience research equipment at 812 Page Street. My building was constructed by Matthew Wadlund in 2018. I have befriended investor/developer Sean Kenmore. I am writing in support of their latest project at 770 Page Street. As a long-time neighbor and Berkeley resident, I believe we are desperate for in-fill housing. Converting one house into four seems like a no-brainer. I believe their recent projects are attractive and fit nicely into the fabric of our neighborhood. I know my immediate neighbors agree.

I hope you will support 770 Page Street's permit.

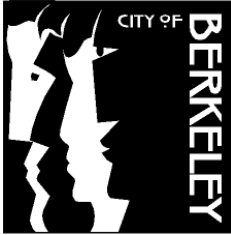
Sincerely,

Joe Kewekordes
President, AutoMate Scientific

AutoMate Scientific
812 Page Street
Berkeley, CA 94710

ph. (510) 845-6283
jcordes@autom8.com
fax (510) 280-3795 <https://www.autom8.com>





Planning and Development Department
Land Use Planning Division

PROOF OF SERVICE

DATE: June 1, 2021
TO: Whom It May Concern
FROM: Melinda Jacob, OSII
SUBJECT: **USE PERMIT #ZP2020-0051 – 700 PAGE STREET**

I, the undersigned, certify that I am employed in the City of Berkeley, County of Alameda, California; that I am over eighteen years of age; that I am not a party to the within action; and that my business address is 1947 Center Street, Berkeley, California 94704. On this date, I served the following documents:

ZONING ADJUSTMENTS BOARD NOTICE OF DECISION

On the parties stated below by placing true copies thereof in sealed envelope(s) addressed as shown below by the following means of service:

Matthew Wadlund
770 Page Street, LLC
805 Jones Street
Berkeley, CA 94710

- By First Class Mail - I am readily familiar with the City's practice for collecting and processing of correspondence for mailing. Under the practice, the correspondence is deposited with the U.S. Postal Service on the same day as collected, with First Class postage thereon fully prepaid, in Berkeley, California, for mailing to the addressee following ordinary business practices.
- By Personal Service - I caused each such envelope to be given to the City of Berkeley mail service person to personally deliver to the office of the addressee.

I declare under penalty of perjury that the foregoing is true and correct. Executed on June 1, 2021 at Berkeley, California.

Melinda Jacob, OSII



Z O N I N G
A D J U S T M E N T S
B O A R D
NOTICE OF DECISION

DATE OF BOARD DECISION: May 27, 2021
DATE NOTICE MAILED: June 1, 2021
APPEAL PERIOD EXPIRATION: June 15, 2021
EFFECTIVE DATE OF PERMIT (Barring Appeal or Certification)¹: June 16, 2021

770 Page Street

Use Permit #ZP2020-0051 to demolish an existing single-family dwelling unit and construct four detached, three-story approximately 1,500-square-foot dwelling units on a 5,532-square-foot lot.

The Zoning Adjustments Board of the City of Berkeley, **APPROVED** the following permits:

- Use Permit, under BMC 23C.08.010 to demolish of a dwelling unit
- Administrative Use Permit, under BMC Section 23E.84.030, to construct four new dwelling units

ZONING: MU-R – Mixed Use Residential District

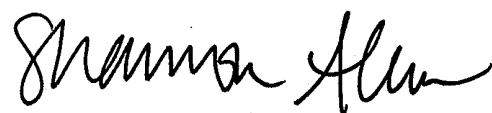
APPLICANT/OWNER: Matthew Wadlund, 770 Page Street, LLC, 805 Jones Street, Berkeley CA 94710

ENVIRONMENTAL REVIEW STATUS: Categorically exempt pursuant to Sections 15301, 15303, and 15332 of the CEQA Guidelines (“Existing Facilities,” “New Construction or Conversion of Small Structures,” and “In-Fill Development”).

FINDINGS, CONDITIONS AND APPROVED PLANS ARE ATTACHED TO THIS NOTICE

¹ Pursuant to BMC Section 23B.32.090, the City Council may certify any ZAB decision for review during the 14-day appeal period after the notice of the ZAB’s decision is issued. Certification has the same effect as an appeal. However, BMC Section 1.04.070 suspends or “tolls” the Council’s deadline to certify when the Council is on recess. Thus, in cases where the 14-day appeal period is scheduled to *end* during a Council recess, the certification deadline is extended past the end of the recess for the remainder of the appeal period. In cases where the appeal period *begins* during a Council recess, the certification deadline is extended until 14 days after the first Council meeting after the recess. *Extension of the certification deadline has no effect on the appeal deadline.*

	Yes	No	Abstain	Absent
DUFFY	X			
KAHN				X
KIM	X			
O'KEEFE	X			
OLSON	X			
SANDERSON	X			
THOMPSON	X			
GAFFNEY	X			
TREGUB	X			
BOARD VOTE:	8	0	0	1



ATTEST:
Shannon Allen, Zoning Adjustments Board
Secretary

PUBLICATION OF NOTICE:

Pursuant to BMC Section 23B.32.050, this notice shall be mailed to the applicant at the mailing address stated in the application and to any person who requests such notification by filing a written request with the Zoning Officer on or before the date of the Board action. This notice shall also be filed with the City Clerk. In addition, the notice shall be forwarded to the Zoning Adjustments Board and to the Main Library. The notice shall also be posted at a bulletin board at the Zoning Counter. The City Clerk shall make the notice available to interested members of the Council and the public.

FURTHER INFORMATION:

Questions about the project should be directed to the project planner, Leslie Mendez, at (510) 981-7426 or lmendez@cityofberkeley.info. All project application materials, including full-size plans, may be viewed online at <https://aca.cityofberkeley.info/Community/> or in the Permit Service Center at the Zoning Counter at 1947 Center Street, Third Floor, during normal office hours.

TO APPEAL THIS DECISION (see Section 23B.32.050 of the Berkeley Municipal Code):

Please note that the new method for appeal submittals described below have been put in place to comply with the requirements of the Shelter In Place Order and shall be effective for the duration of Shelter In Place requirements.

Mail your complete appeal to the City Clerk Department, 2180 Milvia Street, Berkeley, CA 94704 with payment of fees by check or money order included. Appeals submitted by mail must be postmarked on or before the deadline date for filing the appeal.

- A. The fee for persons other than the applicant is \$500. This fee may be reduced to \$100 if the appeal is signed by persons who lease or own at least 50 percent of the parcels or dwelling units within 300 feet of the project site, or at least 25 such persons (not including dependent children), whichever is less.
- B. The fee for all appeals by Applicants is \$2,500.

If no appeal is received, the permit will be issued on the first business day following expiration of the appeal period, and the project may proceed at that time.

NOTICE CONCERNING YOUR LEGAL RIGHTS:

If you object to this decision, the following requirements and restrictions apply:

1. If you challenge this decision in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the Zoning Adjustments Board at, or prior to, the public hearing.
2. You must appeal to the City Council within fourteen (14) days after the Notice of Decision of the action of the Zoning Adjustments Board is mailed. It is your obligation to notify the Land Use Planning Division in writing of your desire to receive a Notice of Decision when it is completed.
3. Pursuant to Code of Civil Procedure Section 1094.6(b) and Government Code Section 65009(c)(1), no lawsuit challenging a City Council decision, as defined by Code of Civil Procedure Section 1094.6(e), regarding a use permit, variance or other permit may be filed more than ninety (90) days after the date the decision becomes final, as defined in Code of Civil Procedure Section 1094.6(b). Any lawsuit not filed within that ninety (90) day period will be barred.
4. Pursuant to Government Code Section 66020(d)(1), notice is hereby given to the applicant that the 90-day protest period for any fees, dedications, reservations, or other exactions included in any permit approval begins upon final action by the City, and that any challenge must be filed within this 90-day period.
5. If you believe that this decision or any condition attached to it denies you any reasonable economic use of the subject property, was not sufficiently related to a legitimate public purpose, was not sufficiently proportional to any impact of the project, or for any other reason constitutes a "taking" of property for public use without just compensation under the California or United States Constitutions, your appeal of this decision must include the following information:
 - A. That this belief is a basis of your appeal.
 - B. Why you believe that the decision or condition constitutes a "taking" of property as set forth above.
 - C. All evidence and argument in support of your belief that the decision or condition constitutes a "taking" as set forth above.

If you do not do so, you will waive any legal right to claim that your property has been taken, both before the City Council and in court.

ATTACHMENT 1

FINDINGS AND CONDITIONS

MAY 27, 2021

770 Page Street

Use Permit #ZP2020-0051 to demolish an existing single-family dwelling unit and construct four detached, three-story approximately 1,500-square-foot dwelling units on a 5,532-square-foot lot.

PERMITS REQUIRED

- Use Permit, under BMC 23C.08.010, to demolish of a dwelling unit
- Administrative Use Permit, under BMC Section 23E.84.030, to construct four new dwelling units

I. CEQA FINDINGS

1. The project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA, Public Resources Code §21000, et seq. and California Code of Regulations, §15000, et seq.) pursuant to Sections 15301, 15303, and 15332 of the CEQA Guidelines (“Existing Facilities,” “New Construction or Conversion of Small Structures,” and “In-Fill Development”).

The project meets all of the requirements of this exemption, as follows:

- A. The project is consistent with the applicable General Plan designation and policies, and with the applicable zoning designation and regulations.
 - B. The project occurs within the Berkeley City limits on a project site of no more than five acres, and is surrounded by urban uses.
 - C. The parcels within the project site have previously been developed and have no value as habitat for endangered, rare or threatened species.
 - D. The project would not result in any significant effects relating to traffic, noise, air quality or water quality. The Traffic Impact Analysis prepared for the project was reviewed by the City Transportation Division which concurred with the findings of less than significant impacts. City Standard Conditions would address potential impacts related to traffic, noise, air quality, and water quality.
 - E. The site can be adequately served by all required utilities and public services.
2. Furthermore, none of the exceptions in CEQA Guidelines Section 15300.2 apply, as follows:
 - (a) the site is not located in an environmentally sensitive area, (b) there are no cumulative impacts, (c) there are no significant effects, (d) the project is not located near a scenic highway, (e) the project site is not located on a hazardous waste site pursuant to Government Code Section 65962.5, and (f) the project would not affect any historical resource.

II. FINDINGS FOR APPROVAL

1. The Housing Accountability Act §65589.5(j) requires that when a proposed housing development complies with applicable, objective general plan and zoning standards, a local

agency may not deny the project or approve it with reduced density unless the agency makes written findings supported by substantial evidence that:

- a. The development would have a specific adverse impact on public health or safety unless disapproved or approved at a lower density¹; and
- b. There is no feasible method to satisfactorily mitigate or avoid the specific adverse impact, other than the disapproval or approval at a lower density.

Because the project would comply with applicable, objective general plan and zoning standards, §65589.5(j) does apply to this project. No significant, quantifiable, direct and unavoidable impacts, based on objective, identified written public health or safety standards, polices, or conditions, have been identified by staff. The project includes construction of one dwelling unit on a lot that allows one dwelling.

2. Pursuant to Government Code §66300(d)(1), a City “shall not approve a housing development application that will require the demolition of residential dwelling units unless the project will create at least as many residential units as will be demolished.” This project proposes replacing the one dwelling proposed for demolition with four new dwellings; therefore, the application complies. Section 66300(d)(2) does not apply because the existing unit is not considered a “protected” unit under SB 330. The findings to approve the demolition of the dwelling unit under BMC Section 23C.08.010.B are therefore satisfied due to compliance with Government Code §66300(d)(3).
3. As required by Section 23B.32.040.A of the Zoning Ordinance, the project, under the circumstances of this particular case existing at the time at which the application is granted, would not be detrimental to the health, safety, peace, morals, comfort, and general welfare of the persons residing or working in the neighborhood of such proposed use or be detrimental or injurious to property and improvements of the adjacent properties, the surrounding area or neighborhood, or to the general welfare of the City because:
 - The proposed development on this parcel is equal to or below the Mixed-Use Residential (MU-R) standards set by BMC 23E.84.070 for maximum residential density, floor area, and height (four dwelling units on the 5,532 square-foot lot, where four dwelling units is the maximum allowed based on the size of this lot; floor area ratio of 1.1, where the maximum allowed is for residential development 1.5; average height of 32.5’, where the maximum allowed is 35’). The proposed project also meets or exceeds the requirements for setbacks and useable open space (1,082 square feet of useable open space, where 600 square feet is required (150 square feet per unit));
 - The proposed project retains the mixed but primarily residential character of the surrounding street and is consistent with the overall scale of the one-, two-, and three-story residences and commercial and manufacturing spaces in the neighborhood. The proposed design references the industrial context of West Berkeley and its mix of uses and aesthetics;
 - No substantial land use conflicts are expected from the project due to the site’s location in a mixed area of commercial and residential development, because the project’s density will be within the range of the surrounding development, and because no substantial privacy or shadow impacts will occur;
 - Sunlight: the project will not result in significant loss of direct sunlight on abutting residences for several reasons. No residences occur to the west and new shadows cast towards the

¹ As used in the Act, a “specific, adverse impact” means a “significant, quantifiable, direct and unavoidable impact, based on objective, identified written public health or safety standards, polices, or conditions as they existed on the date the application was complete.

east will primarily affect the rear façades of the dwelling units located at 776 Page Street and 1442 Fifth Street during the hours before sunset throughout the year. However, because impacts to neighboring residences would be limited to certain hours a day, these shading impacts are not deemed detrimental;

- Air: The Board finds that the proposal is consistent with the existing development and building-to-building separation pattern – or air – in this MU-R neighborhood because the buildings will exceed minimum setback and useable open space requirements; and
- Views: The proposed project will not result in additional obstruction of significant views in the neighborhood because there are limited significant views as defined in BMC Section 23F.04 (Definitions) available to residences in the area. The area is generally flat, developed with one- to three-story buildings, and includes mature vegetation which provides visual screening.

4. Pursuant to Berkeley Municipal Code Section 23E.84.090, the proposed project is consistent with the purposes of the MU-R District for the following reasons:

- The project will strengthen the residential concentration in this neighborhood. The residential use of the project will protect neighboring residents from the unreasonably detrimental effects of nonresidential uses, such as noise, vibration, odors, smoke, fumes, gases, dust, heat and glare;
 - The project is consistent with the West Berkeley Plan because the proposed massing and design is appropriate for the neighborhood and reflects the nature of the MU-R District;
 - The project is not likely, under reasonably foreseeable circumstances, to either induce or contribute to a cumulative change of use in buildings away from residential, live/work, light industrial, or arts and crafts uses because the site location is in an area of West Berkeley known for a diverse mix of land uses and because the project will continue the residential pattern from the west side of Fifth Street to the Page frontage of this city block; and
 - The proposed project is able to meet the applicable performance standards as described in BMC 23E.84.070.H because no additional performance standards are applicable to this project.
-

III. STANDARD CONDITIONS OF APPROVAL FOR ALL PROJECTS

The following conditions, as well as all other applicable provisions of the Zoning Ordinance, apply to this Permit:

1. Conditions Shall be Printed on Plans

The conditions of this Permit shall be printed on the *second* sheet of each plan set submitted for a building permit pursuant to this Use Permit, under the title 'Use Permit Conditions.' *Additional sheets* may also be used if the *second* sheet is not of sufficient size to list all of the conditions. The sheet(s) containing the conditions shall be of the same size as those sheets containing the construction drawings; 8-1/2" by 11" sheets are not acceptable.

2. Applicant Responsible for Compliance with Conditions

The applicant shall ensure compliance with all of the following conditions, including submittal to the project planner of required approval signatures at the times specified. Failure to comply with any condition may result in construction being stopped, issuance of a citation, and/or modification or revocation of the Use Permit.

3. Uses Approved Deemed to Exclude Other Uses (Section 23B.56.010)

- A. This Permit authorizes only those uses and activities actually proposed in the application, and excludes other uses and activities.
- B. Except as expressly specified herein, this Permit terminates all other uses at the location subject to it.

4. Modification of Permits (Section 23B.56.020)

No change in the use or structure for which this Permit is issued is permitted unless the Permit is modified by the Board, except that the Zoning Officer may approve changes that do not expand, intensify, or substantially change the use or building.

Changes in the plans for the construction of a building or structure, may be modified prior to the completion of construction, in accordance with Section 23B.56.030.D. The Zoning Officer may approve changes to plans approved by the Board, consistent with the Board's policy adopted on May 24, 1978, which reduce the size of the project.

5. Plans and Representations Become Conditions (Section 23B.56.030)

Except as specified herein, the site plan, floor plans, building elevations and/or any additional information or representations, whether oral or written, indicating the proposed structure or manner of operation submitted with an application or during the approval process are deemed conditions of approval.

6. Subject to All Applicable Laws and Regulations (Section 23B.56.040)

The approved use and/or construction is subject to, and shall comply with, all applicable City Ordinances and laws and regulations of other governmental agencies. Prior to construction, the applicant shall identify and secure all applicable permits from the Building and Safety Division, Public Works Department and other affected City divisions and departments.

7. Exercised Permit for Use Survives Vacancy of Property (Section 23B.56.080)

Once a Permit for a use is exercised and the use is established, that use is legally recognized, even if the property becomes vacant, except as set forth in Standard Condition #8, below.

8. Exercise and Lapse of Permits (Section 23B.56.100)

- A. A permit for the use of a building or a property is exercised when, if required, a valid City business license has been issued, and the permitted use has commenced on the property.
- B. A permit for the construction of a building or structure is deemed exercised when a valid City building permit, if required, is issued, and construction has lawfully commenced.
- C. A permit may be declared lapsed and of no further force and effect if it is not exercised within one year of its issuance, except that permits for construction or alteration of structures or buildings may not be declared lapsed if the permittee has: (1) applied for a building permit; or, (2) made substantial good faith efforts to obtain a building permit and begin construction, even if a building permit has not been issued and/or construction has not begun.

9. Indemnification Agreement

The applicant shall hold harmless, defend, and indemnify the City of Berkeley and its officers, agents, and employees against any and all liability, damages, claims, demands, judgments or other losses (including without limitation, attorney's fees, expert witness and consultant fees and other litigation expenses), referendum or initiative relating to, resulting from or caused by, or alleged to have resulted from, or caused by, any action or approval associated with the project. The indemnity includes without limitation, any legal or administrative challenge, referendum or initiative filed or prosecuted to overturn, set aside, stay or otherwise rescind any or all approvals granted in connection with the Project, any environmental determination made for the project and granting any permit issued in accordance with the project. This indemnity includes, without limitation, payment of all direct and indirect costs associated with any action specified herein. Direct and indirect costs shall include, without limitation, any attorney's fees, expert witness and consultant fees, court costs, and other litigation fees. City shall have the right to select counsel to represent the City at Applicant's expense in the defense of any action specified in this condition of approval. City shall take reasonable steps to promptly notify the Applicant of any claim, demand, or legal actions that may create a claim for indemnification under these conditions of approval.

IV. ADDITIONAL CONDITIONS IMPOSED BY THE ZONING ADJUSTMENTS BOARD

Pursuant to BMC 23B.32.040.D, the Zoning Adjustments Board attaches the following additional conditions to this Permit:

Prior to Submittal of Any Building Permit:

- 10. Project Liaison.** The applicant shall include in all building permit plans and post onsite the name and telephone number of an individual empowered to manage construction-related complaints generated from the project. The individual's name, telephone number, and responsibility for the project shall be posted at the project site for the duration of the project in a location easily visible to the public. The individual shall record all complaints received and actions taken in response, and submit written reports of such complaints and actions to the project planner on a weekly basis. **Please designate the name of this individual below:**

Project Liaison _____

Name

Phone #

- 11. Address Assignment.** The applicant shall file an "Address Assignment Request Application" with the Permit Service Center (1947 Center Street) for any address change or new address associated with this Use Permit. The new address(es) shall be assigned and entered into the City's database prior to the applicant's submittal of a building permit application.

12. Revised Driveway Easement. The applicant shall provide the recorded revised driveway easement, as depicted on the Site Plan, to the Zoning Officer.
13. Geotechnical Plan Review. The applicant shall follow all conditions and recommendations outlined in the geotechnical report and response letters prepared by Peters and Ross (March 2020) and the peer reviews prepared by Cotton, Shires and Associates, Inc. (November 12, 2020). In addition, the applicant's geotechnical consultant shall review and approve all geotechnical aspects of the project building and grading plans (i.e., site preparation and grading, site drainage improvements and design parameters for foundations, retaining walls, and driveway) to ensure that their recommendations have been properly incorporated. In addition the consultant shall review project drainage and grading plans and verify that proposed site drainage discharge is acceptable from a geotechnical perspective. The results of the plan review shall be summarized by the geotechnical consultant in a letter and submitted to the City Engineer for review and approval prior to issuance of building permits.

Prior to Issuance of Any Building & Safety Permit (Demolition or Construction)

14. Demolition. Demolition of the existing building cannot commence until a complete application is submitted for the replacement building. In addition, all plans presented to the City to obtain a permit to allow the demolition are subject to these conditions.
15. Construction and Demolition Diversion. Applicant shall submit a [Construction Waste Management Plan](#) that meets the requirements of BMC Chapter 19.37 including 100% diversion of asphalt, concrete, excavated soil and land-clearing debris and a minimum of 65% diversion of other nonhazardous construction and demolition waste.
16. Toxics. The applicant shall contact the Toxics Management Division (TMD) at 1947 Center Street or (510) 981-7470 to determine which of the following documents are required and timing for their submittal:
 - A. Environmental Site Assessments:
 - 1) Phase I & Phase II Environmental Site Assessments (latest ASTM 1527-13). A recent Phase I ESA (less than 6 months old*) shall be submitted to TMD for developments for:
 - All new commercial, industrial and mixed use developments and all large improvement projects.
 - All new residential buildings with 5 or more dwelling units located in the Environmental Management Area (or EMA).
 - EMA is available online at: http://www.cityofberkeley.info/uploadedFiles/IT/Level_3_-_General/ema.pdf
 - 2) Phase II ESA is required to evaluate Recognized Environmental Conditions (REC) identified in the Phase I or other RECs identified by TMD staff. The TMD may require a third party toxicologist to review human or ecological health risks that may be identified. The applicant may apply to the appropriate state, regional or county cleanup agency to evaluate the risks.
 - 3) If the Phase I is over 6 months old, it will require a new site reconnaissance and interviews. If the facility was subject to regulation under Title 15 of the Berkeley Municipal Code since the last Phase I was conducted, a new records review must be performed.
 - B. Soil and Groundwater Management Plan:
 - 1) A Soil and Groundwater Management Plan (SGMP) shall be submitted to TMD for all non-residential projects, and residential or mixed-use projects with five or more dwelling units, that: (1) are in the Environmental Management Area (EMA) and (2) propose any

excavations deeper than 5 feet below grade. The SGMP shall be site specific and identify procedures for soil and groundwater management including identification of pollutants and disposal methods. The SGMP will identify permits required and comply with all applicable local, state and regional requirements.

- 2) The SGMP shall require notification to TMD of any hazardous materials found in soils and groundwater during development. The SGMP will provide guidance on managing odors during excavation. The SGMP will provide the name and phone number of the individual responsible for implementing the SGMP and post the name and phone number for the person responding to community questions and complaints.
- 3) TMD may impose additional conditions as deemed necessary. All requirements of the approved SGMP shall be deemed conditions of approval of this Use Permit.

C. Building Materials Survey:

- 1) Prior to approving any permit for partial or complete demolition and renovation activities involving the removal of 20 square or lineal feet of interior or exterior walls, a building materials survey shall be conducted by a qualified professional. The survey shall include, but not be limited to, identification of any lead-based paint, asbestos, polychlorinated biphenyl (PBC) containing equipment, hydraulic fluids in elevators or lifts, refrigeration systems, treated wood and mercury containing devices (including fluorescent light bulbs and mercury switches). The Survey shall include plans on hazardous waste or hazardous materials removal, reuse or disposal procedures to be implemented that fully comply state hazardous waste generator requirements (22 California Code of Regulations 66260 et seq). The Survey becomes a condition of any building or demolition permit for the project. Documentation evidencing disposal of hazardous waste in compliance with the survey shall be submitted to TMD within 30 days of the completion of the demolition. If asbestos is identified, Bay Area Air Quality Management District Regulation 11-2-401.3 a notification must be made and the J number must be made available to the City of Berkeley Permit Service Center.

D. Hazardous Materials Business Plan:

- 1) A Hazardous Materials Business Plan (HMBP) in compliance with BMC Section 15.12.040 shall be submitted electronically at <http://cers.calepa.ca.gov/> within 30 days if on-site hazardous materials exceed BMC 15.20.040. HMBP requirement can be found at <http://ci.berkeley.ca.us/hmr/>

Prior to Issuance of Any Building (Construction) Permit

17. HVAC Noise Reduction. Prior to the issuance of building permits, the project applicant shall submit plans that show the location, type, and design of proposed heating, ventilation, and cooling (HVAC) equipment. In addition, the applicant shall provide product specification sheets or a report from a qualified acoustical consultant showing that operation of the proposed HVAC equipment will meet the City's exterior noise requirements in BMC Section 13.40.050. The City's Planning and Development Department shall review the submitted plans, including the selected HVAC equipment, to verify compliance with exterior noise standards.
18. Natural Gas Prohibition. The project shall comply with the Natural Gas Prohibition pursuant to BMC Chapter 12.80.
19. Electric Vehicle (EV) Charging. Each dwelling unit shall install a listed raceway, wiring, and power to allow for future Level 2 (240 Volt/40 amp) plug-in electric vehicle (EV) charging system installation as specified by the Berkeley Green Code (BMC Section 19.37.040). Readiness for EV charging and EV charging station installations shall be noted on the construction plans.

20. Water Efficient Landscaping. Landscaping, totaling 500 square feet of more of new landscaping or 2,500 square feet or more of renovated irrigated area, shall comply with the State's Model Water Efficient Landscape Ordinance (MWELo). MWELo-compliant landscape documentation including a planting, grading, and irrigation plan shall be included in site plans. Water budget calculations are also required for landscapes of 2,500 square feet or more and shall be included in site plans. The reference evapotranspiration rate (ET_o) for Berkeley is 41.8.
21. Recycling and Organics Collection. Applicant shall provide recycling and organics collection areas for occupants, clearly marked on site plans, which comply with the Alameda County Mandatory Recycling Ordinance (ACWMA Ordinance 2012-01).
22. Public Works ADA. Plans submitted for building permit shall include replacement of sidewalk, curb, gutter, and other streetscape improvements, as necessary to comply with current City of Berkeley standards for accessibility.

During Construction:

23. Construction Hours. Construction activity shall be limited to between the hours of 8:00 AM and 6:00 PM on Monday through Friday, and between 9:00 AM and Noon on Saturday. No construction-related activity shall occur on Sunday or any Federal Holiday.
24. Public Works - Implement BAAQMD-Recommended Measures during Construction. For all proposed projects, BAAQMD recommends implementing all the Basic Construction Mitigation Measures, listed below to meet the best management practices threshold for fugitive dust:
 - A. All exposed surfaces (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) shall be watered two times per day.
 - B. All haul trucks transporting soil, sand, or other loose material off-site shall be covered.
 - C. All visible mud or dirt track-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.
 - D. All vehicle speeds on unpaved roads shall be limited to 15 mph.
 - E. All roadways, driveways, and sidewalks to be paved shall be completed as soon as possible. Building pads shall be laid as soon as possible after grading unless seeding or soil binders are used.
 - F. Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to 5 minutes (as required by the California airborne toxics control measure Title 13, Section 2485 of California Code of Regulations [CCR]). Clear signage shall be provided for construction workers at all access points.
 - G. All construction equipment shall be maintained and properly tuned in accordance with manufacturer's specifications. All equipment shall be checked by a certified visible emissions evaluator.
 - H. Post a publicly visible sign with the telephone number and person to contact at the lead agency regarding dust complaints. This person shall respond and take corrective action within 48 hours. The Air District's phone number shall also be visible to ensure compliance with applicable regulations.
25. Construction and Demolition Diversion. Divert debris according to your plan and collect required documentation. Get construction debris receipts from sorting facilities in order to verify diversion requirements. Upload recycling and disposal receipts if using [Green Halo](#) and submit online for City review and approval prior to final inspection. Alternatively, complete the second page of the

original [Construction Waste Management Plan](#) and present it, along with your construction debris receipts, to the Building Inspector by the final inspection to demonstrate diversion rate compliance. The Zoning Officer may request summary reports at more frequent intervals, as necessary to ensure compliance with this requirement.

- 26. Low-Carbon Concrete.** The project shall maintain compliance with the Berkeley Green Code (BMC Chapter 19.37) including use of concrete mix design with a cement reduction of at least 25%. Documentation on concrete mix design shall be available at all times at the construction site for review by City Staff.
- 27. Transportation Construction Plan.** The applicant and all persons associated with the project are hereby notified that a Transportation Construction Plan (TCP) is required for all phases of construction, particularly for the following activities:
- Alterations, closures, or blockages to sidewalks, pedestrian paths or vehicle travel lanes (including bicycle lanes);
 - Storage of building materials, dumpsters, debris anywhere in the public ROW;
 - Provision of exclusive contractor parking on-street; or
 - Significant truck activity.

The applicant shall secure the City Traffic Engineer's approval of a TCP. Please contact the Office of Transportation at 981-7010, or 1947 Center Street, and ask to speak to a traffic engineer. In addition to other requirements of the Traffic Engineer, this plan shall include the locations of material and equipment storage, trailers, worker parking, a schedule of site operations that may block traffic, and provisions for traffic control. The TCP shall be consistent with any other requirements of the construction phase.

Contact the Permit Service Center (PSC) at 1947 Center Street or 981-7500 for details on obtaining Construction/No Parking Permits (and associated signs and accompanying dashboard permits). Please note that the Zoning Officer and/or Traffic Engineer may limit off-site parking of construction-related vehicles if necessary to protect the health, safety or convenience of the surrounding neighborhood. A current copy of this Plan shall be available at all times at the construction site for review by City Staff.

- 28. Avoid Disturbance of Nesting Birds.** Initial site disturbance activities, including vegetation and concrete removal, shall be prohibited during the general avian nesting season (February 1 to August 30), if feasible. If nesting season avoidance is not feasible, the applicant shall retain a qualified biologist to conduct a preconstruction nesting bird survey to determine the presence/absence, location, and activity status of any active nests on or adjacent to the project site. The extent of the survey buffer area surrounding the site shall be established by the qualified biologist to ensure that direct and indirect effects to nesting birds are avoided. To avoid the destruction of active nests and to protect the reproductive success of birds protected by the MBTA and CFGC, nesting bird surveys shall be performed not more than 14 days prior to scheduled vegetation and concrete removal. In the event that active nests are discovered, a suitable buffer (typically a minimum buffer of 50 feet for passerines and a minimum buffer of 250 feet for raptors) shall be established around such active nests and no construction shall be allowed inside the buffer areas until a qualified biologist has determined that the nest is no longer active (e.g., the nestlings have fledged and are no longer reliant on the nest). No ground-disturbing activities shall occur within this buffer until the qualified biologist has confirmed that

breeding/nesting is completed and the young have fledged the nest. Nesting bird surveys are not required for construction activities occurring between August 31 and January 31.

29. Archaeological Resources (Ongoing throughout demolition, grading, and/or construction). Pursuant to CEQA Guidelines section 15064.5(f), “provisions for historical or unique archaeological resources accidentally discovered during construction” should be instituted. Therefore:

- A. In the event that any prehistoric or historic subsurface cultural resources are discovered during ground disturbing activities, all work within 50 feet of the resources shall be halted and the project applicant and/or lead agency shall consult with a qualified archaeologist, historian or paleontologist to assess the significance of the find.
- B. If any find is determined to be significant, representatives of the project proponent and/or lead agency and the qualified professional would meet to determine the appropriate avoidance measures or other appropriate measure, with the ultimate determination to be made by the City of Berkeley. All significant cultural materials recovered shall be subject to scientific analysis, professional museum curation, and/or a report prepared by the qualified professional according to current professional standards.
- C. In considering any suggested measure proposed by the qualified professional, the project applicant shall determine whether avoidance is necessary or feasible in light of factors such as the uniqueness of the find, project design, costs, and other considerations.
- D. 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 measures for cultural resources is carried out.
- E. If significant materials are recovered, the qualified professional shall prepare a report on the findings for submittal to the Northwest Information Center.

30. Human Remains (Ongoing throughout demolition, grading, and/or construction). In the event that human skeletal remains are uncovered at the project site during ground-disturbing activities, all work shall immediately halt and the Alameda County Coroner shall be contacted to evaluate the remains, and following the procedures and protocols pursuant to Section 15064.5 (e)(1) of the CEQA Guidelines. If the County Coroner determines that the remains are Native American, the City shall contact the California Native American Heritage Commission (NAHC), pursuant to subdivision (c) of Section 7050.5 of the Health and Safety Code, and all excavation and site preparation activities shall cease within a 50-foot radius of the find until appropriate arrangements are made. If the agencies determine that avoidance is not feasible, then an alternative plan shall be prepared with specific steps and timeframe required to resume construction activities. Monitoring, data recovery, determination of significance and avoidance measures (if applicable) shall be completed expeditiously.

31. Paleontological Resources (Ongoing throughout demolition, grading, and/or construction). In the event of an unanticipated discovery of a paleontological resource during construction, excavations within 50 feet of the find shall be temporarily halted or diverted until the discovery is examined by a qualified paleontologist (per Society of Vertebrate Paleontology standards [SVP 1995,1996]). The qualified paleontologist shall document the discovery as needed, evaluate the potential resource, and assess the significance of the find. The paleontologist shall notify the appropriate agencies to determine procedures that would be followed before construction is allowed to resume at the location of the find. If the City determines that avoidance is not feasible, the paleontologist shall prepare an excavation plan for mitigating the effect of the

project on the qualities that make the resource important, and such plan shall be implemented. The plan shall be submitted to the City for review and approval.

- 32. Halt Work/Unanticipated Discovery of Tribal Cultural Resources.** In the event that cultural resources of Native American origin are identified during construction, all work within 50 feet of the discovery shall be redirected. The project applicant and project construction contractor shall notify the City Planning Department within 24 hours. The City will again contact any tribes who have requested consultation under AB 52, as well as contact a qualified archaeologist, to evaluate the resources and situation and provide recommendations. If it is determined that the resource is a tribal cultural resource and thus significant under CEQA, a mitigation plan shall be prepared and implemented in accordance with State guidelines and in consultation with Native American groups. If the resource cannot be avoided, additional measures to avoid or reduce impacts to the resource and to address tribal concerns may be required.
- 33. Stormwater Requirements.** The applicant shall demonstrate compliance with the requirements of the City's National Pollution Discharge Elimination System (NPDES) permit as described in BMC Section 17.20. The following conditions apply:
- A. The project plans shall identify and show site-specific Best Management Practices (BMPs) appropriate to activities conducted on-site to limit to the maximum extent practicable the discharge of pollutants to the City's storm drainage system, regardless of season or weather conditions.
 - B. Trash enclosures and/or recycling area(s) shall be covered; no other area shall drain onto this area. Drains in any wash or process area shall not discharge to the storm drain system; these drains should connect to the sanitary sewer. Applicant shall contact the City of Berkeley and EBMUD for specific connection and discharge requirements. Discharges to the sanitary sewer are subject to the review, approval and conditions of the City of Berkeley and EBMUD.
 - C. Landscaping shall be designed with efficient irrigation to reduce runoff, promote surface infiltration and minimize the use of fertilizers and pesticides that contribute to stormwater pollution. Where feasible, landscaping should be designed and operated to treat runoff. When and where possible, xeriscape and drought tolerant plants shall be incorporated into new development plans.
 - D. Design, location and maintenance requirements and schedules for any stormwater quality treatment structural controls shall be submitted to the Department of Public Works for review with respect to reasonable adequacy of the controls. The review does not relieve the property owner of the responsibility for complying with BMC Chapter 17.20 and future revisions to the City's overall stormwater quality ordinances. This review shall be shall be conducted prior to the issuance of a Building Permit.
 - E. All paved outdoor storage areas must be designed to reduce/limit the potential for runoff to contact pollutants.
 - F. All on-site storm drain inlets/catch basins must be cleaned at least once a year immediately prior to the rainy season. The property owner shall be responsible for all costs associated with proper operation and maintenance of all storm drainage facilities (pipelines, inlets, catch basins, outlets, etc.) associated with the project, unless the City accepts such facilities by Council action. Additional cleaning may be required by City of Berkeley Public Works Engineering Dept.
 - G. All on-site storm drain inlets must be labeled "No Dumping – Drains to Bay" or equivalent using methods approved by the City.

- H. Most washing and/or steam cleaning must be done at an appropriately equipped facility that drains to the sanitary sewer. Any outdoor washing or pressure washing must be managed in such a way that there is no discharge or soaps or other pollutants to the storm drain. Sanitary connections are subject to the review, approval and conditions of the sanitary district with jurisdiction for receiving the discharge.
- I. Sidewalks and parking lots shall be swept regularly to prevent the accumulation of litter and debris. If pressure washed, debris must be trapped and collected to prevent entry to the storm drain system. If any cleaning agent or degreaser is used, wash water shall not discharge to the storm drains; wash waters should be collected and discharged to the sanitary sewer. Discharges to the sanitary sewer are subject to the review, approval and conditions of the sanitary district with jurisdiction for receiving the discharge.
- J. The applicant is responsible for ensuring that all contractors and sub-contractors are aware of and implement all stormwater quality control measures. Failure to comply with the approved construction BMPs shall result in the issuance of correction notices, citations, or a project stop work order.
34. Public Works. All piles of debris, soil, sand, or other loose materials shall be covered at night and during rainy weather with plastic at least one-eighth millimeter thick and secured to the ground.
35. Public Works. The applicant shall ensure that all excavation takes into account surface and subsurface waters and underground streams so as not to adversely affect adjacent properties and rights-of-way.
36. Public Works. The project sponsor shall maintain sandbags or other devices around the site perimeter during the rainy season to prevent on-site soils from being washed off-site and into the storm drain system. The project sponsor shall comply with all City ordinances regarding construction and grading.
37. Public Works. Prior to any excavation, grading, clearing, or other activities involving soil disturbance during the rainy season the applicant shall obtain approval of an erosion prevention plan by the Building and Safety Division and the Public Works Department. The applicant shall be responsible for following these and any other measures required by the Building and Safety Division and the Public Works Department.
38. Public Works. The removal or obstruction of any fire hydrant shall require the submission of a plan to the City's Public Works Department for the relocation of the fire hydrant during construction.
39. Public Works. If underground utilities leading to adjacent properties are uncovered and/or broken, the contractor involved shall immediately notify the Public Works Department and the Building & Safety Division, and carry out any necessary corrective action to their satisfaction.

Prior to Final Inspection or Issuance of Occupancy Permit:

40. Compliance with Conditions. The project shall conform to the plans and statements in the Use Permit. The developer is responsible for providing sufficient evidence to demonstrate compliance with the requirements throughout the implementation of this Use Permit.

-
41. Compliance with Approved Plan. The project shall conform to the plans and statements in the Use Permit. All landscape, site and architectural improvements shall be completed per the attached approved drawings dated April 19, 2021, except as modified by conditions of approval.
 42. Housing Trust Fund Contributions. Pursuant to the Settlement Agreement between the City of Berkeley and 1444 Fifth Street, LLC and 1445 Fifth Street, LLC, the applicant shall make a payment of \$15,000 into the City of Berkeley Housing Trust Fund for each of the four dwelling units.

At All Times:

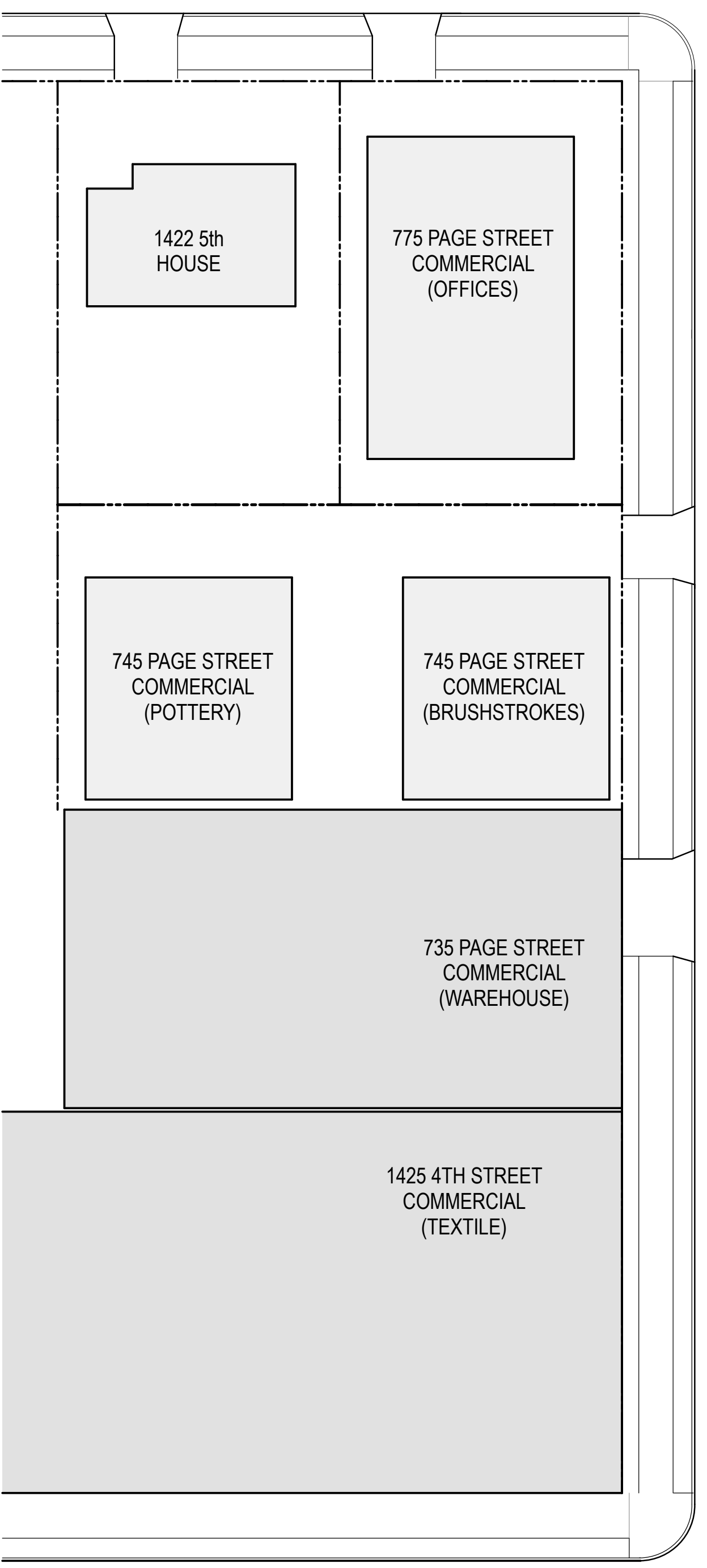
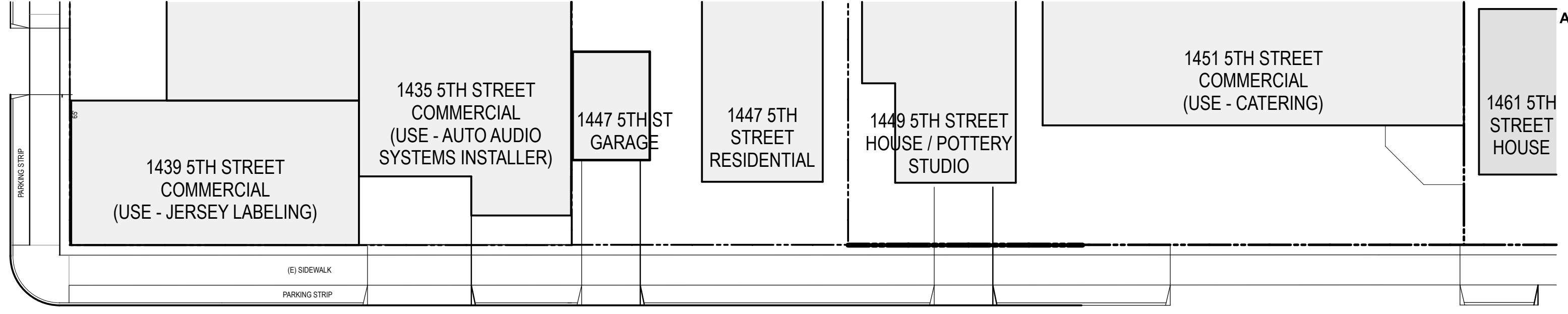
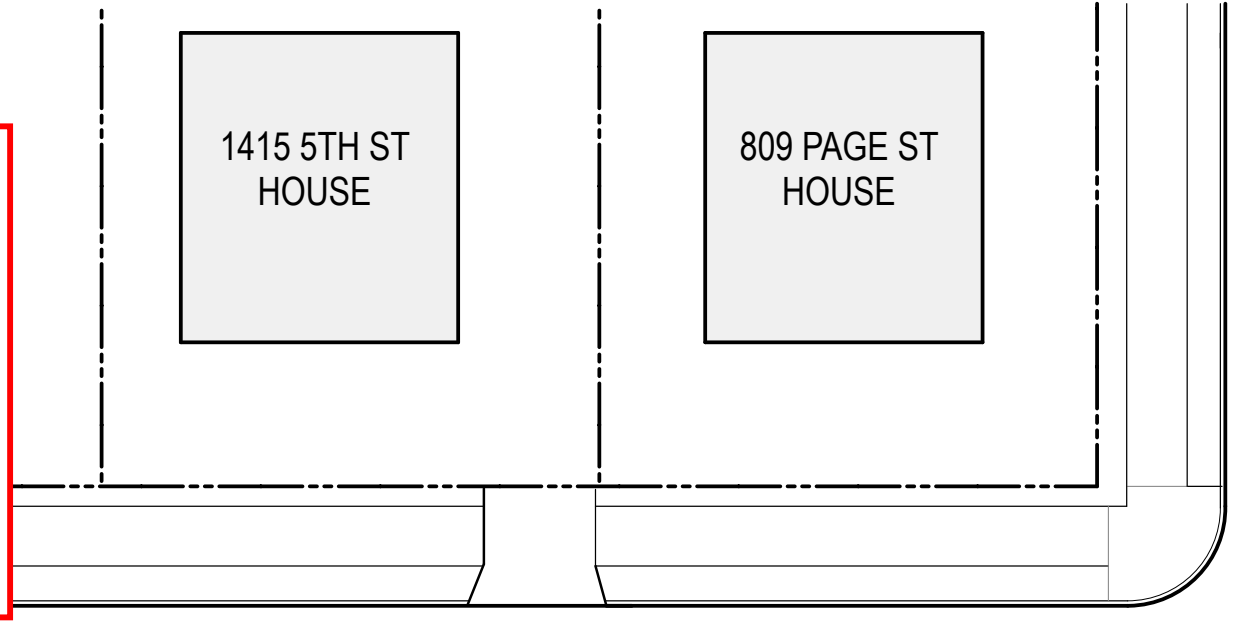
-
43. Exterior Lighting. All exterior lighting shall be energy efficient where feasible; and shielded and directed downward and away from property lines to prevent excessive glare beyond the subject property.
 44. Rooftop Projections. No additional rooftop or elevator equipment shall be added to exceed the approved maximum roof height without submission of an application for a Use Permit Modification, subject to Board review and approval.
 45. Design Review. Signage and any other exterior modifications, including but not limited to landscaping and lighting, shall be subject to Staff Level Design Review approval.
 46. Drainage Patterns. The applicant shall establish and maintain drainage patterns that do not adversely affect adjacent properties and rights-of-way. Drainage plans shall be submitted for approval of the Building & Safety Division and Public Works Department, if required.
 47. Electrical Meter. Only one electrical meter fixture may be installed per dwelling unit.
-

PLANS APPROVED BY ZONING ADJUSTMENTS BOARD

Shanna Alu **May 27, 2021**

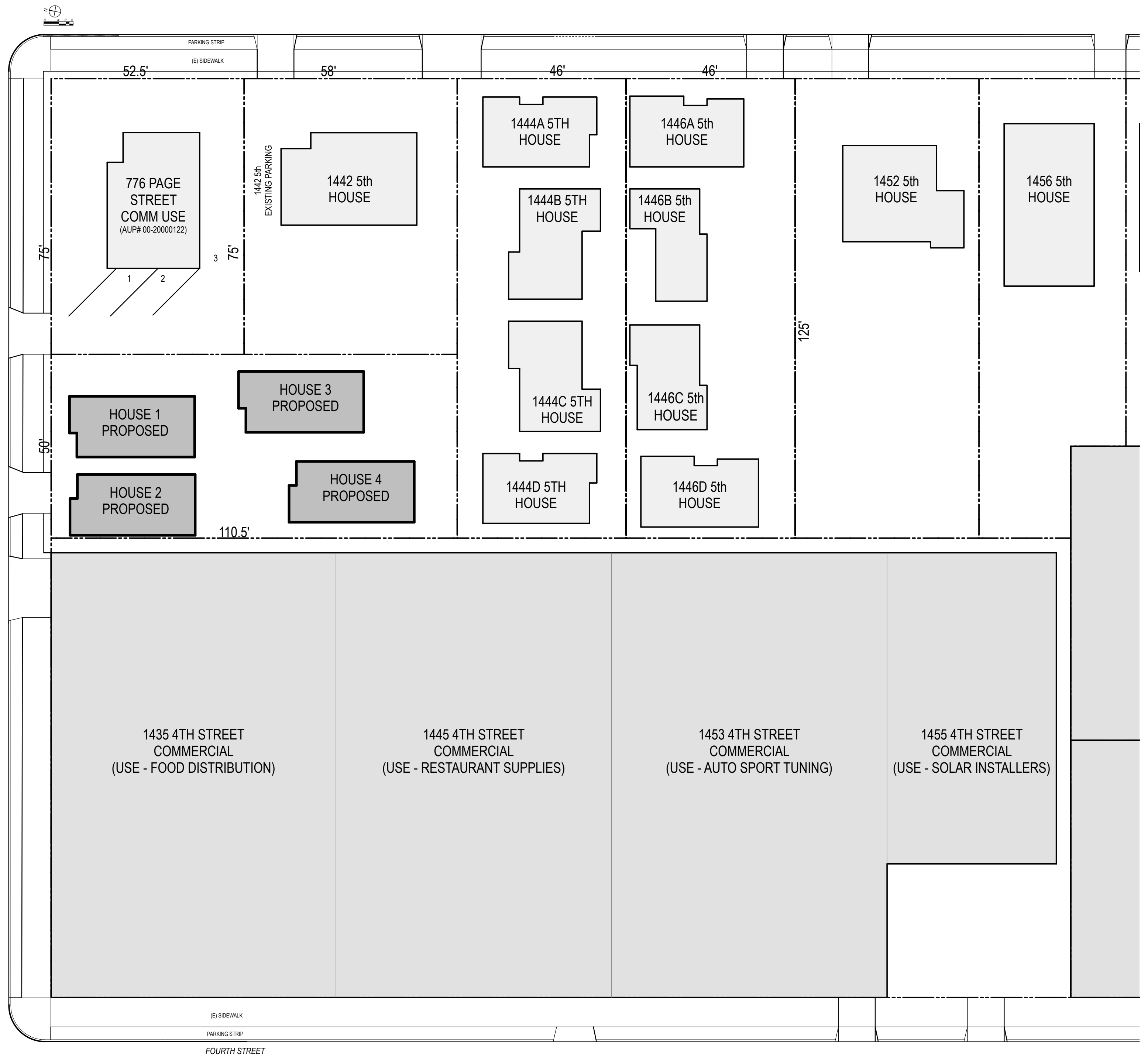
SIGNATURE DATE

* Findings and Conditions Attached



PAGE STREET

FIFTH STREET



770 PAGE

VICINITY MAP

770 PAGE STREET USE PERMIT APPLICATION

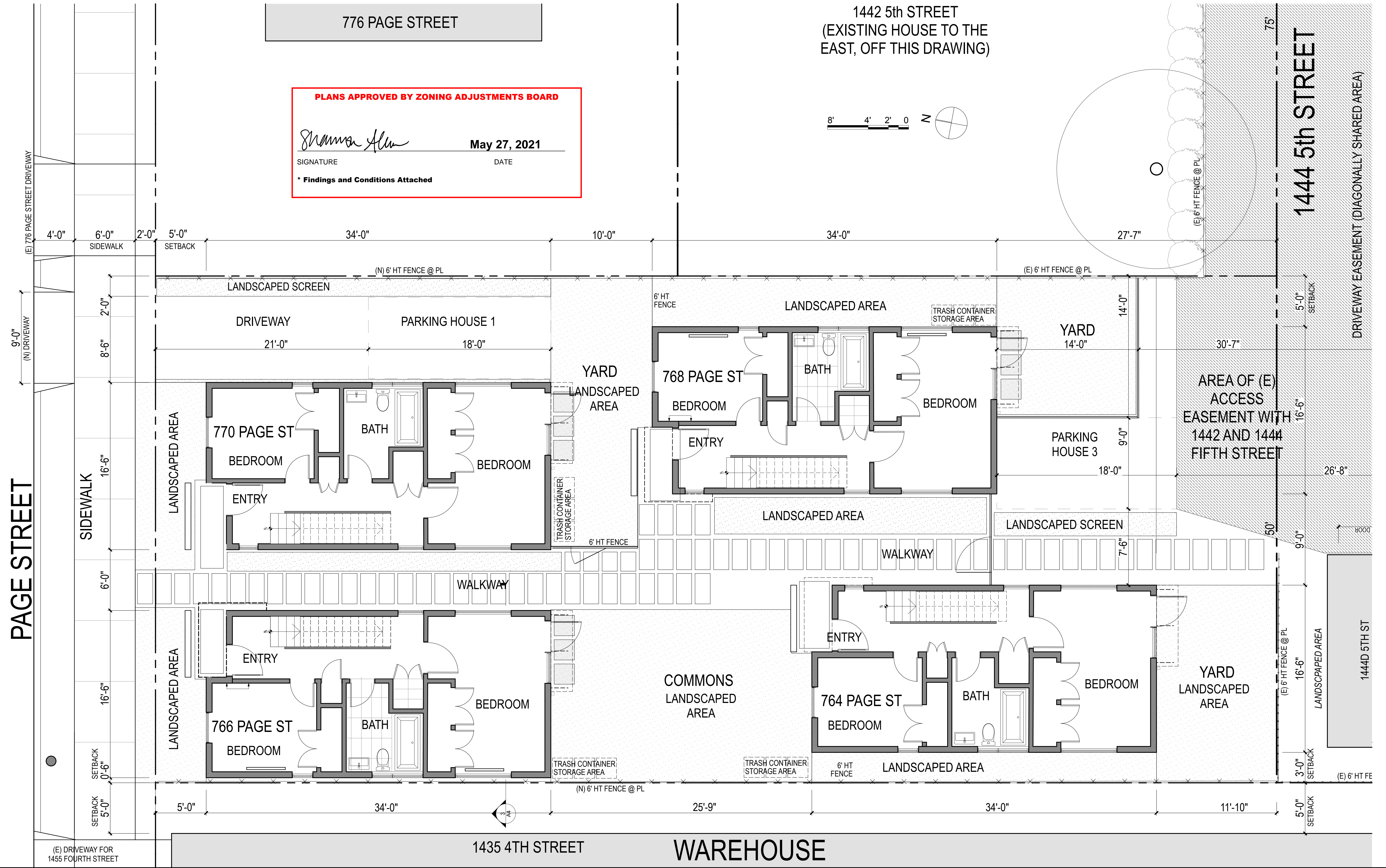
1442 5th STREET
(EXISTING HOUSE TO THE
EAST, OFF THIS DRAWING)

776 PAGE STREET

PLANS APPROVED BY ZONING ADJUSTMENTS BOARD
Shanna Alu **May 27, 2021**
SIGNATURE DATE
*** Findings and Conditions Attached**



1444 5th STREET



PAGE STREET

SITE PLAN WITH 1444 5TH STREET

770 PAGE STREET
USE PERMIT APPLICATION

PLANS APPROVED BY ZONING ADJUSTMENTS BOARD

Shanna Allen **May 27, 2021**

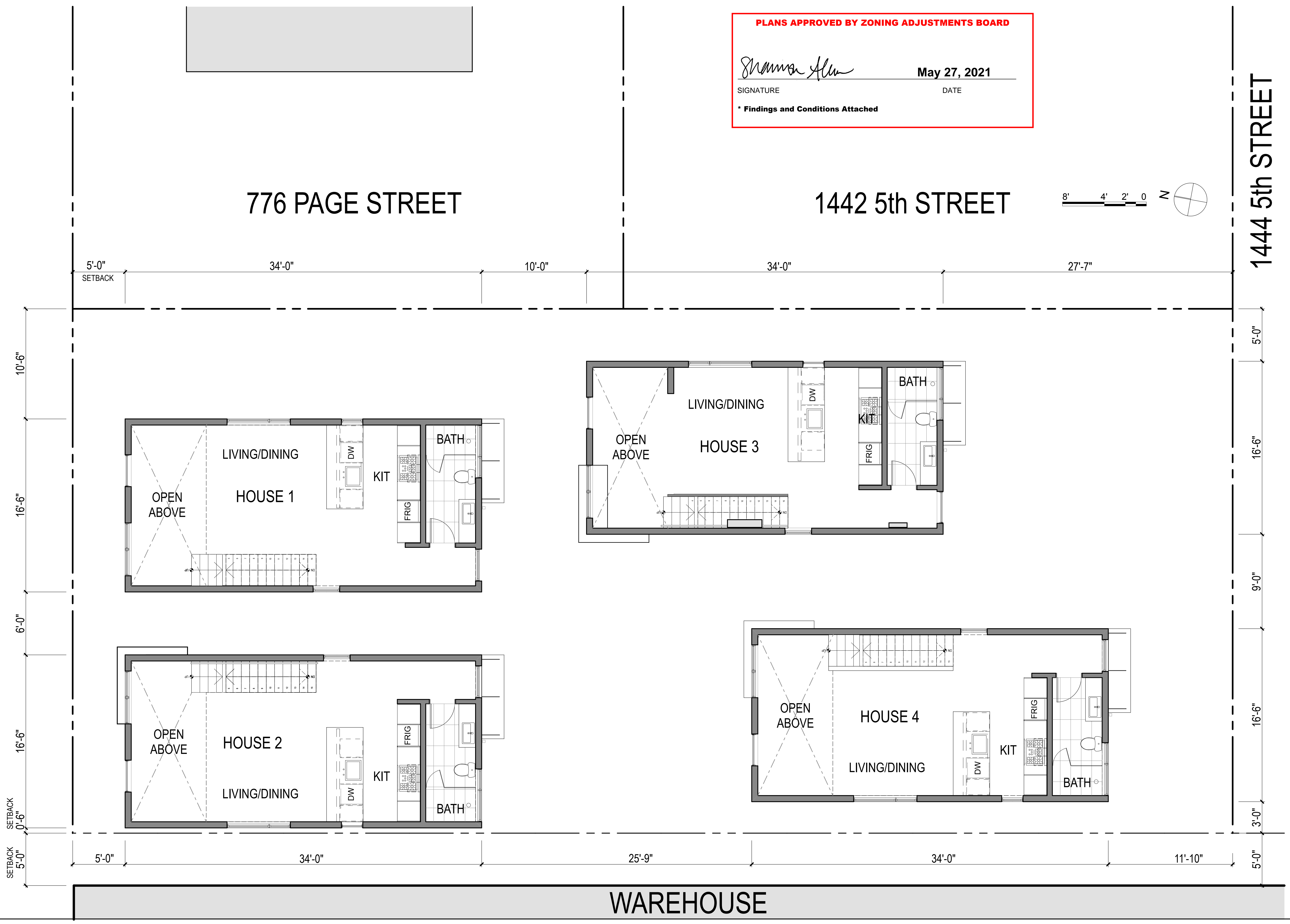
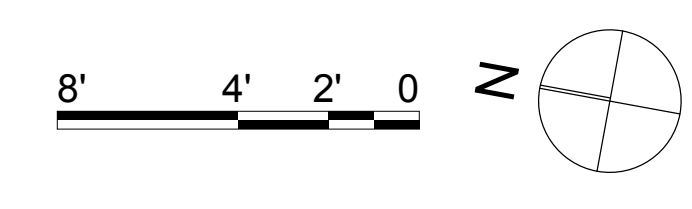
SIGNATURE DATE

* Findings and Conditions Attached

776 PAGE STREET

1442 5th STREET

1444 5th STREET



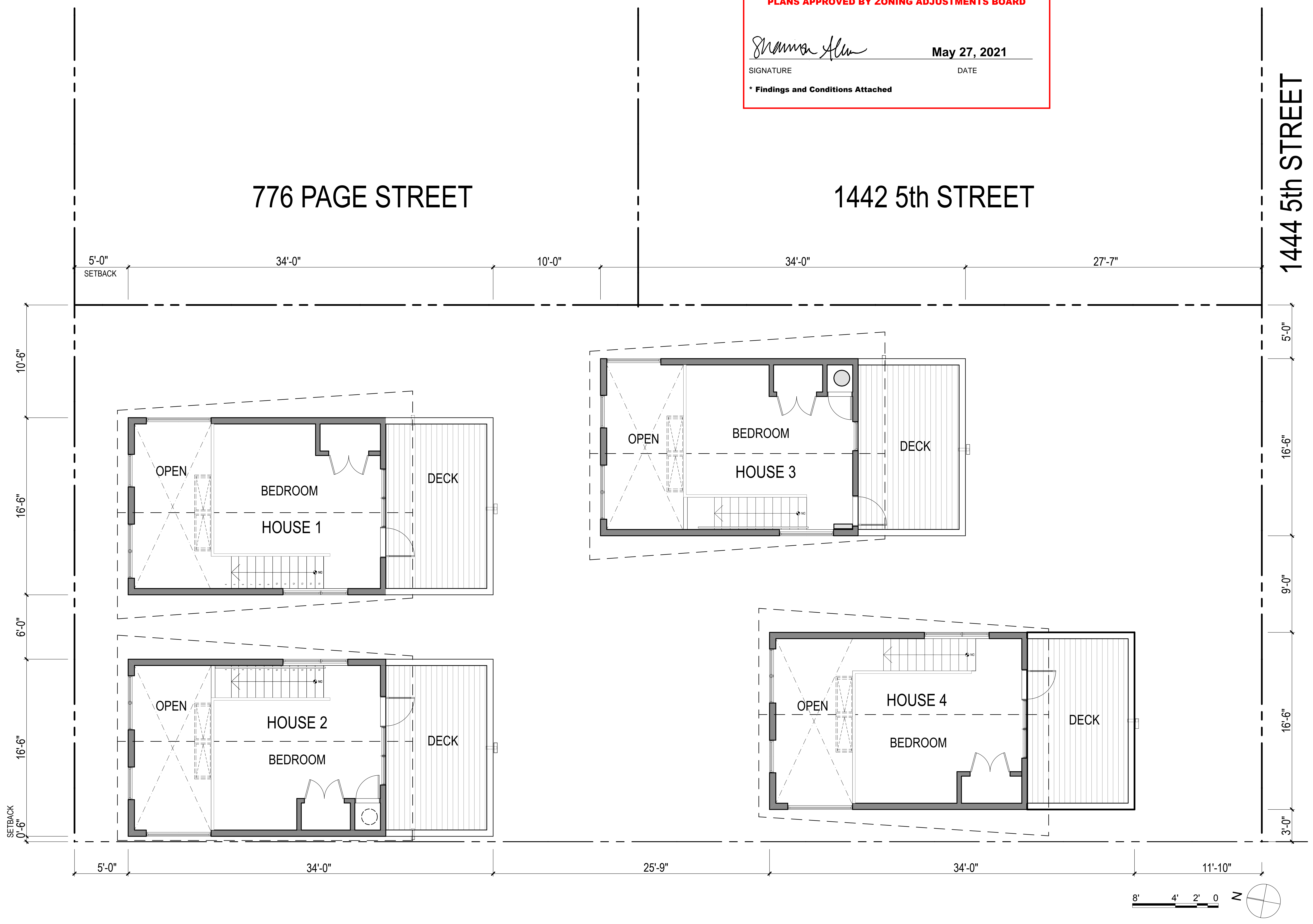
SECOND FLOOR PLAN

770 PAGE STREET
USE PERMIT APPLICATION

PLANS APPROVED BY ZONING ADJUSTMENTS BOARD

Shanna Allen **May 27, 2021**
SIGNATURE DATE

* Findings and Conditions Attached



THIRD FLOOR PLAN

770 PAGE STREET
USE PERMIT APPLICATION

PLANS APPROVED BY ZONING ADJUSTMENTS BOARD

Shanna Alu **May 27, 2021**

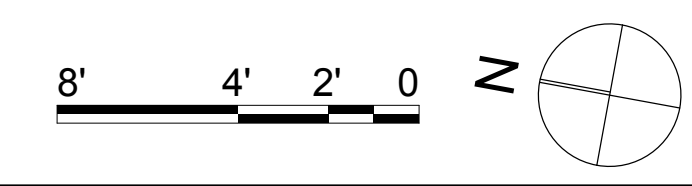
SIGNATURE DATE

* Findings and Conditions Attached



ROOF PLAN

770 PAGE STREET
USE PERMIT APPLICATION



LANDSCAPE LEGEND	
	(N) TREE
	NEW TREE: JAPANESE MAPLE OR SIMILAR, 24" BOX
	SHRUB: MEXICAN SAGE, NATIVE GRASS OR SIM, 5 GAL.
	FLOWERING SHRUB: KANGAROO PAW OR SIM, 5 GAL.
	VERTICAL SHRUB: PITTOSORUM OR SIM, 5 GAL.
	PATIO: PERMIABLE PAVER SURFACE
	STONE PAVER
	LANDSCAPED AREA WITH GROUND COVER, MULCH OR SIM.

LANDSCAPE NOTE
ALL LANDSCAPE TO BE CONSISTENT WITH STATE OF CA WATER EFFICIENCY LANDSCAPE ORDINANCE (WELO)

776 PAGE STREET

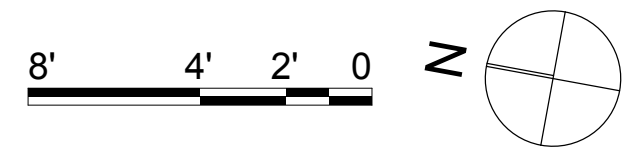
1442 5th STREET
(EXISTING HOUSE TO THE EAST, OFF THIS DRAWING)

PLANS APPROVED BY ZONING ADJUSTMENTS BOARD

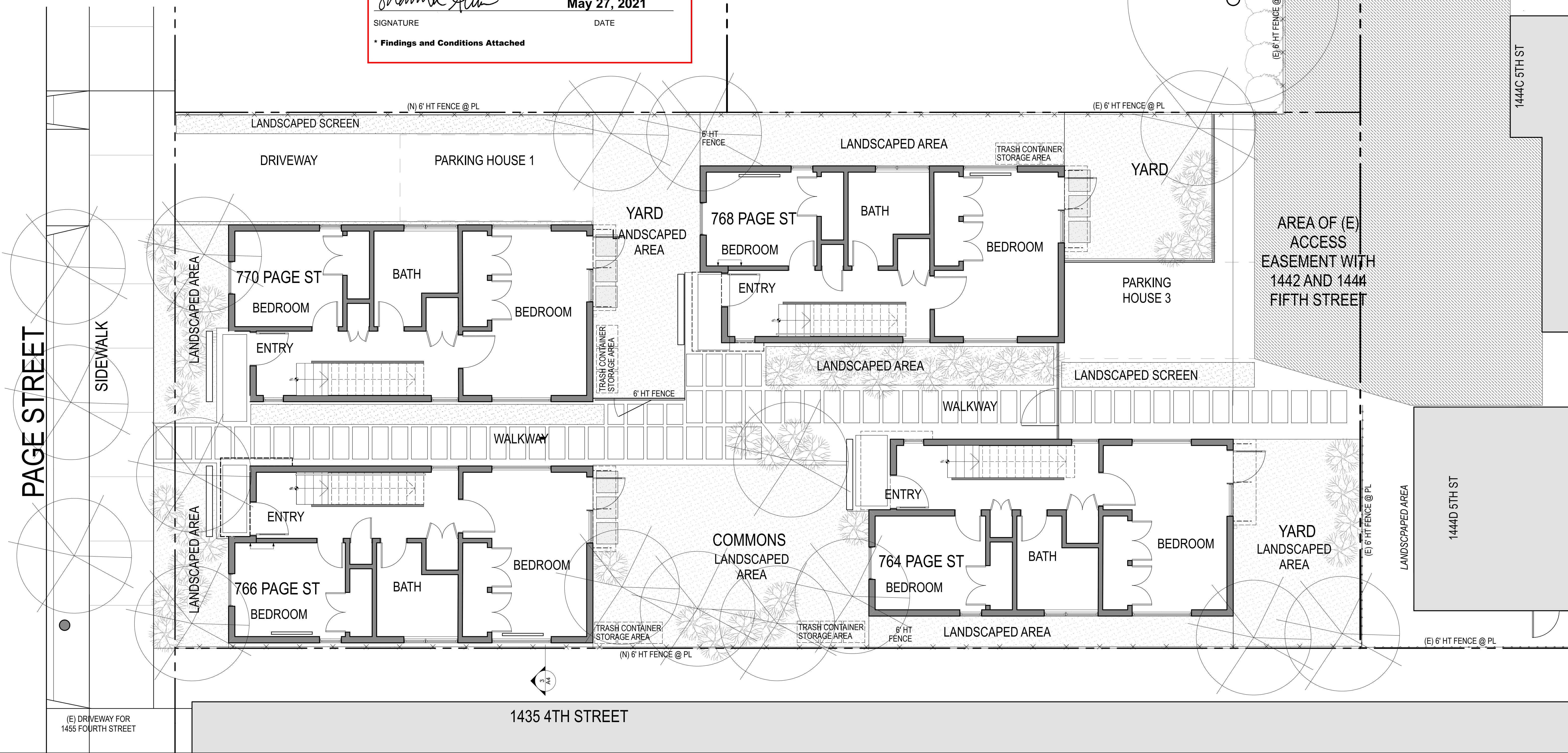
Shamma Alu **May 27, 2021**

SIGNATURE DATE

* Findings and Conditions Attached



ARCHICAD EDUCATION VERSION



PAGE STREET

SIDEWALK

1444B 5TH ST

1444C 5TH ST

1444D 5TH ST

LANDSCAPE PLAN

770 PAGE STREET

USE PERMIT APPLICATION



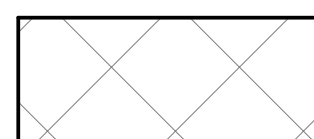


WADLUND+
Design Studio

MAY 18, 2020
RESUBMITTED MARCH 23, 2021

776 PAGE STREET

1442 5th STREET
(EXISTING HOUSE TO THE EAST, OFF THIS DRAWING)

LEGEND

-  COVERED AREA
-  USABLE OPEN SPACE
-  OPEN 3RD FLOOR ROOF DECK
-  "NON-USABLE" OPEN SPACE
-  PARKING AND DRIVEWAY

OPEN SPACE AREAS	LOT COVERAGE
USABLE OPEN SPACE AT GRADE 1,082	BUILDING FOOTPRINT: 561 SF X 4: 2,244
50% OF TOTAL DECK AREA 270	USABLE OPEN SPACE AT GRADE: 1,082
TOTAL USABLE OPEN SPACE 1,352	PARKING AND DRIVEWAY: 928
	NON-USEABLE OPEN SPACE: 1,278
	TOTAL 5,532

PLANS APPROVED BY ZONING ADJUSTMENTS BOARD

Shanna Alon **May 27, 2021**

SIGNATURE DATE

* Findings and Conditions Attached



PAGE STREET



1444B 5th STREET

1444C 5th STREET

1444D 5th STREET

110'-7" PROPERTY LINE

1435 4TH STREET

OPEN SPACE DIAGRAM

770 PAGE STREET

USE PERMIT APPLICATION

PLANS APPROVED BY ZONING ADJUSTMENTS BOARD

Shamir Alu **May 27, 2021**
SIGNATURE DATE

*** Findings and Conditions Attached**



WEST ELEVATION - LOT INTERIOR



EAST ELEVATION - LOT INTERIOR

8' 4' 2' 0

PLANS APPROVED BY ZONING ADJUSTMENTS BOARD

Shamina Abu **May 27, 2021**
SIGNATURE DATE

*** Findings and Conditions Attached**



1435 4TH STREET
BUILDING

SOUTH ELEVATION LOT INTERIOR

NORTH ELEVATION PAGE STREET

1435 4TH STREET
BUILDING

BUILDING ELEVATIONS

770 PAGE STREET
USE PERMIT APPLICATION

PLANS APPROVED BY ZONING ADJUSTMENTS BOARD

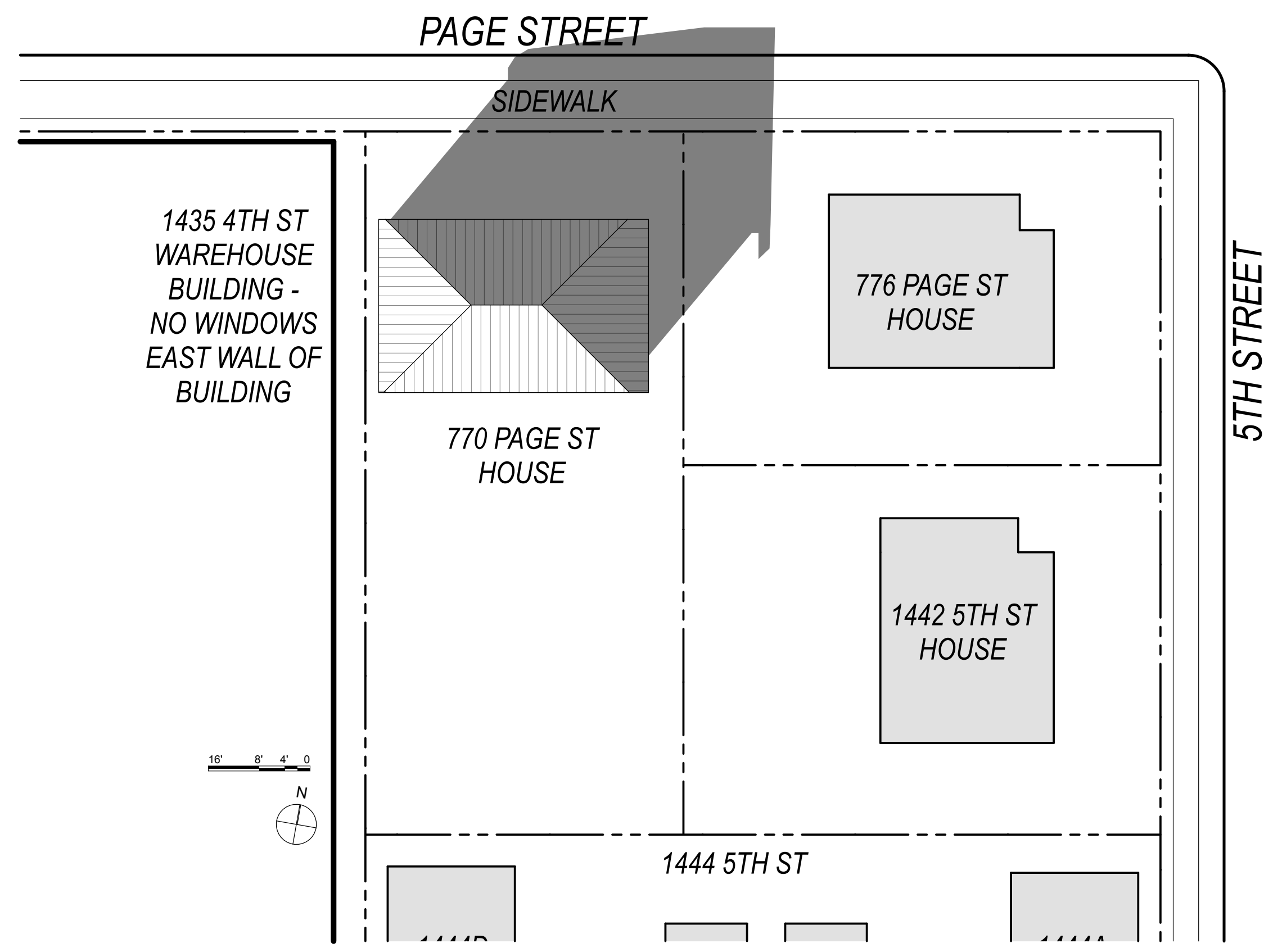
Shanna Alu **May 27, 2021**
SIGNATURE DATE

* Findings and Conditions Attached

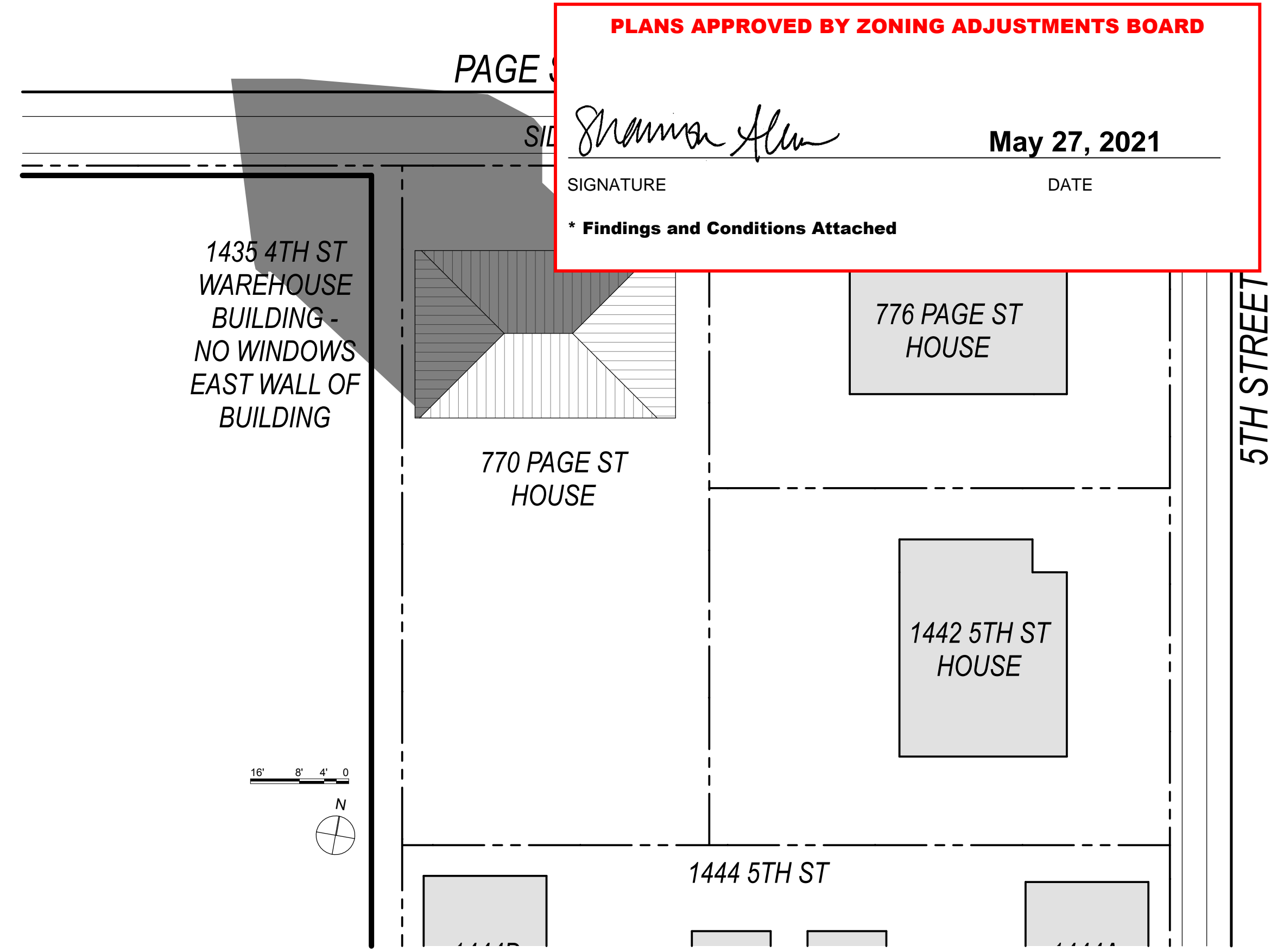


PAGE STREET ELEVATION

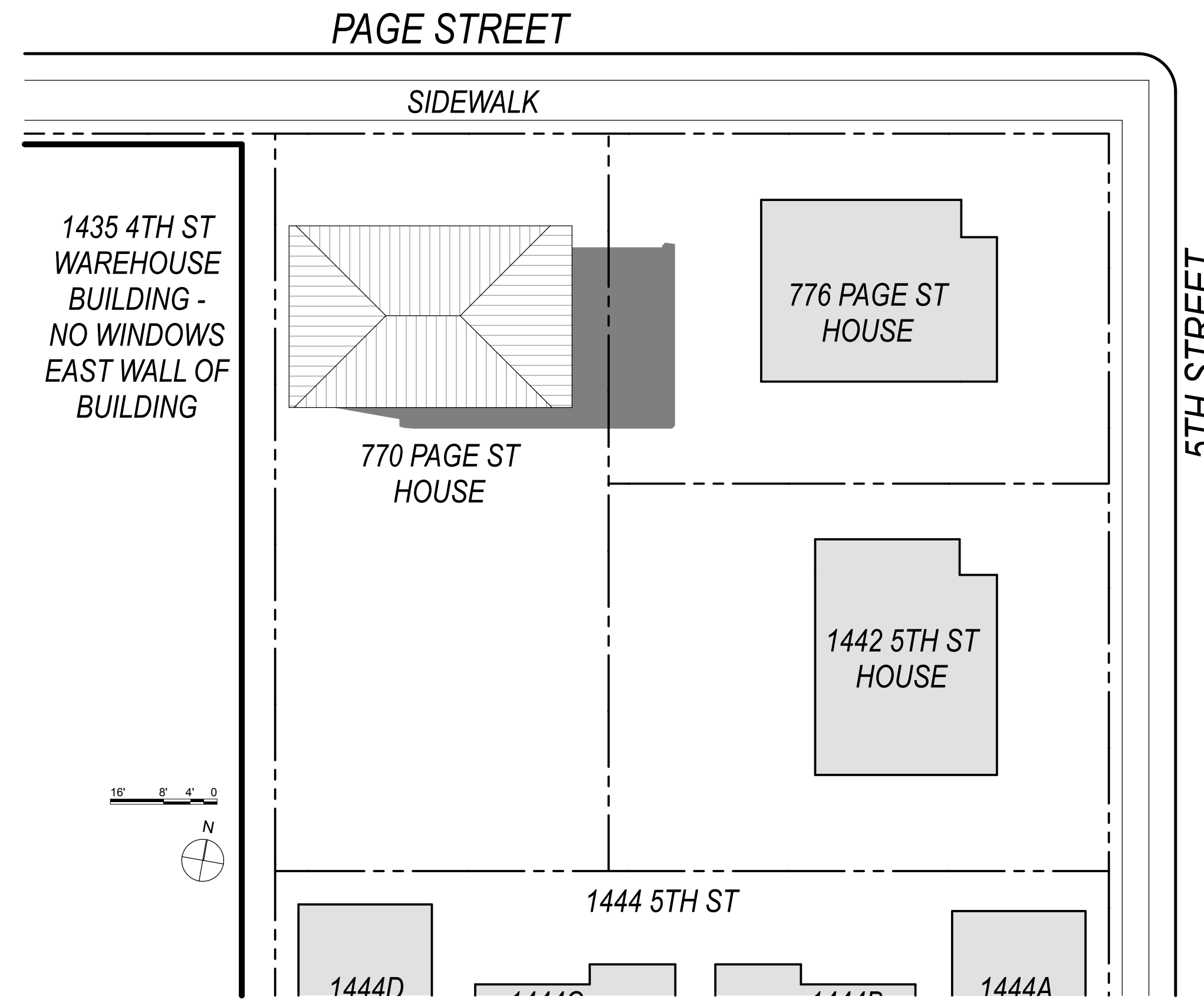
770 PAGE STREET
USE PERMIT APPLICATION



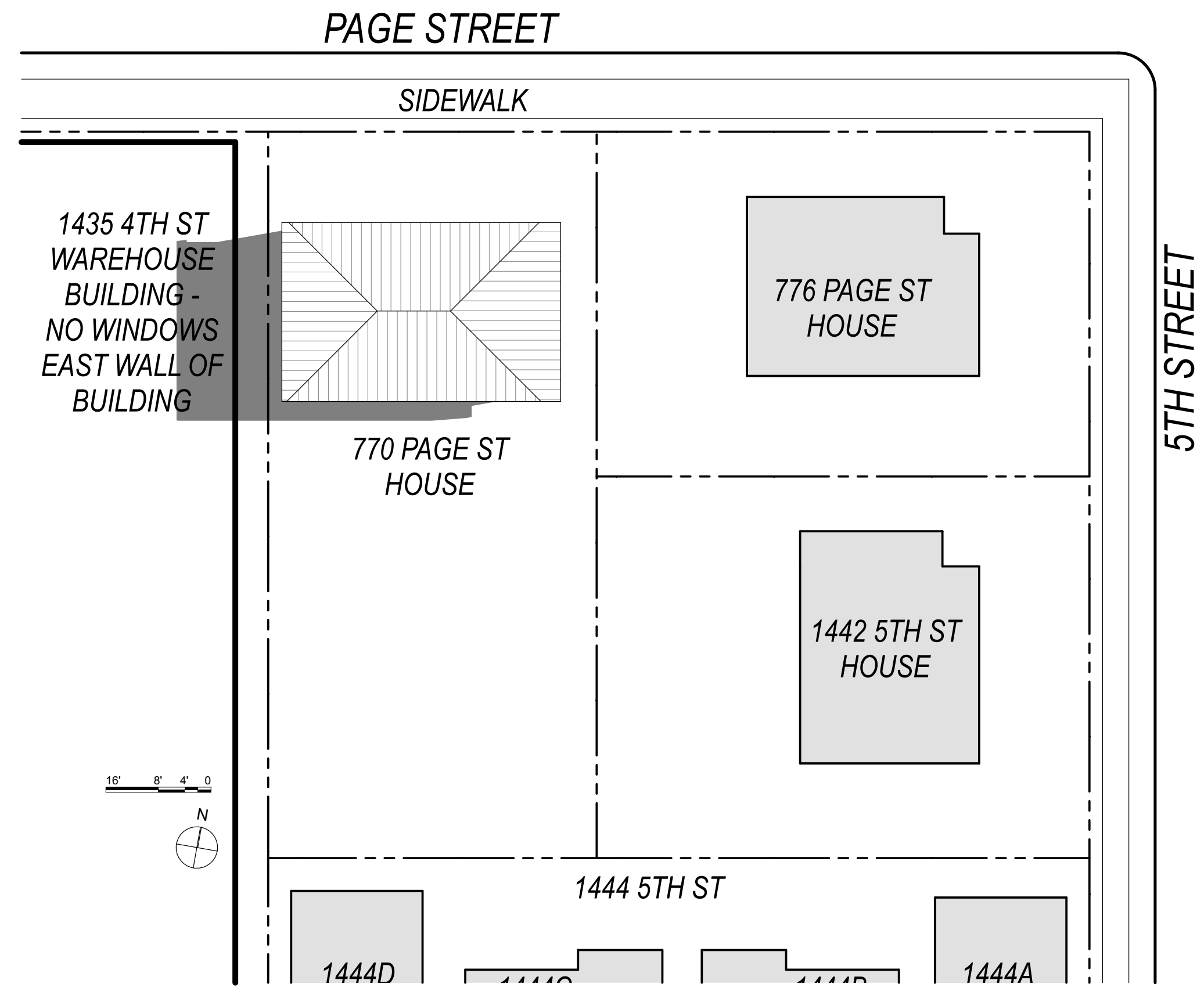
2 EXISTING - DECEMBER 21 - 2 HOURS BEFORE SUNSET
SCALE: 1/16" = 1'-0"



1 EXISTING - DECEMBER 21 - 2 HOURS AFTER SUNRISE
SCALE: 1/16" = 1'-0"



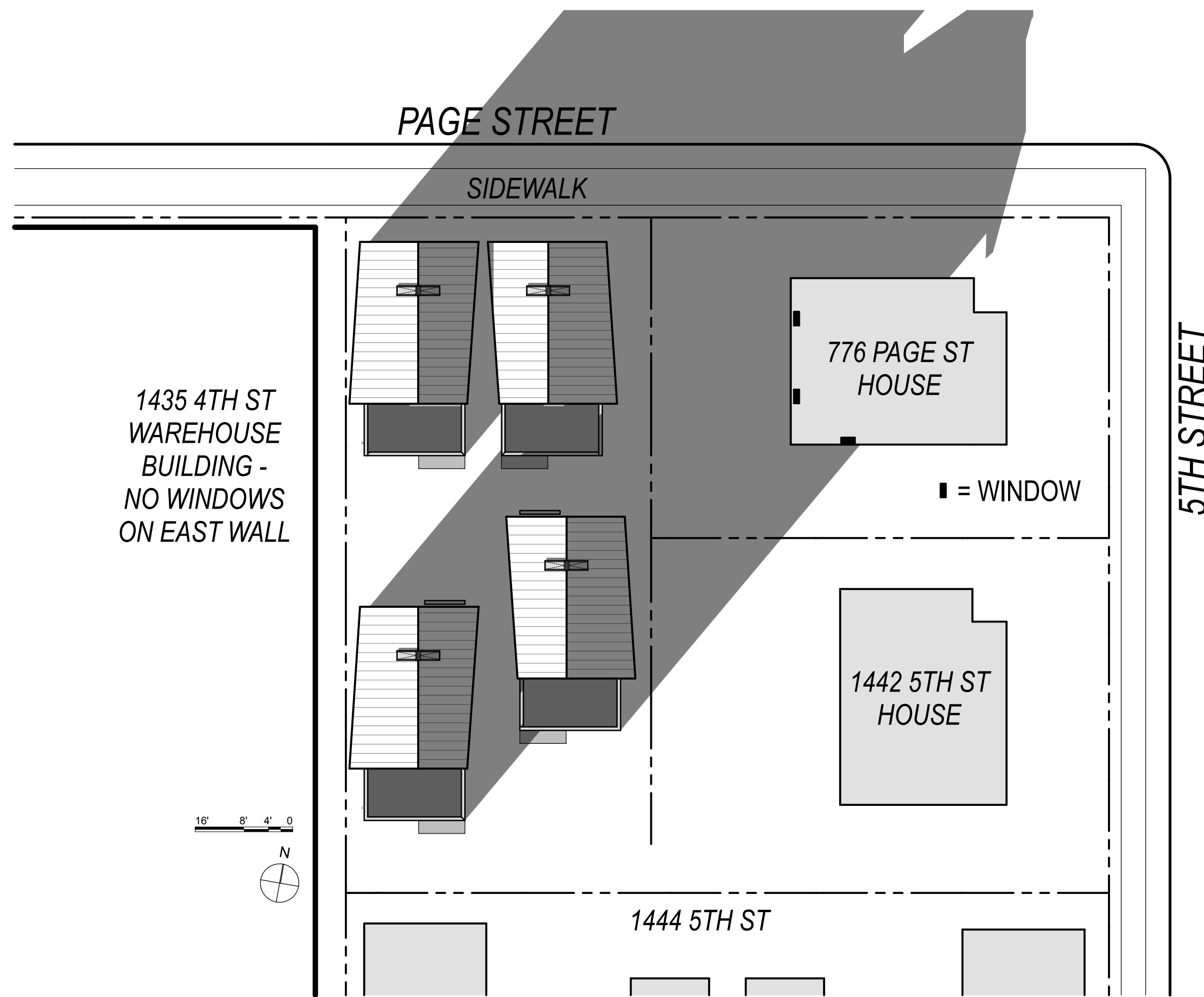
4 EXISTING - JUNE 21 - 2 HOURS BEFORE SUNSET
SCALE: 1/16" = 1'-0"



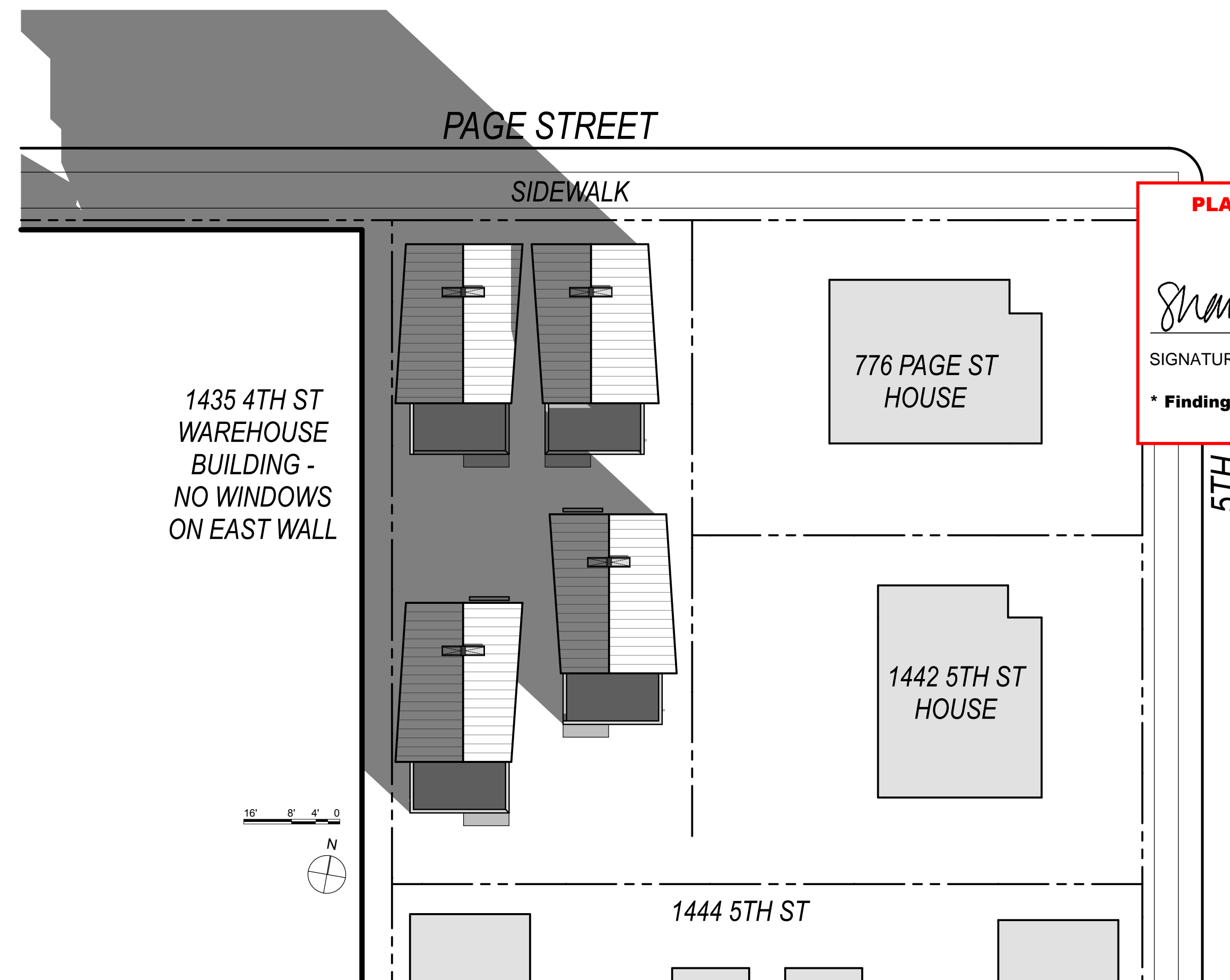
3 EXISTING - JUNE 21 - 2 HOURS AFTER SUNRISE
SCALE: 1/16" = 1'-0"

SHADOW STUDIES - EXISTING

770 PAGE STREET USE PERMIT APPLICATION



2 PROPOSED - DECEMBER 21 - 2 HOURS BEFORE SUNSET
SCALE: 1/16" = 1'-0"

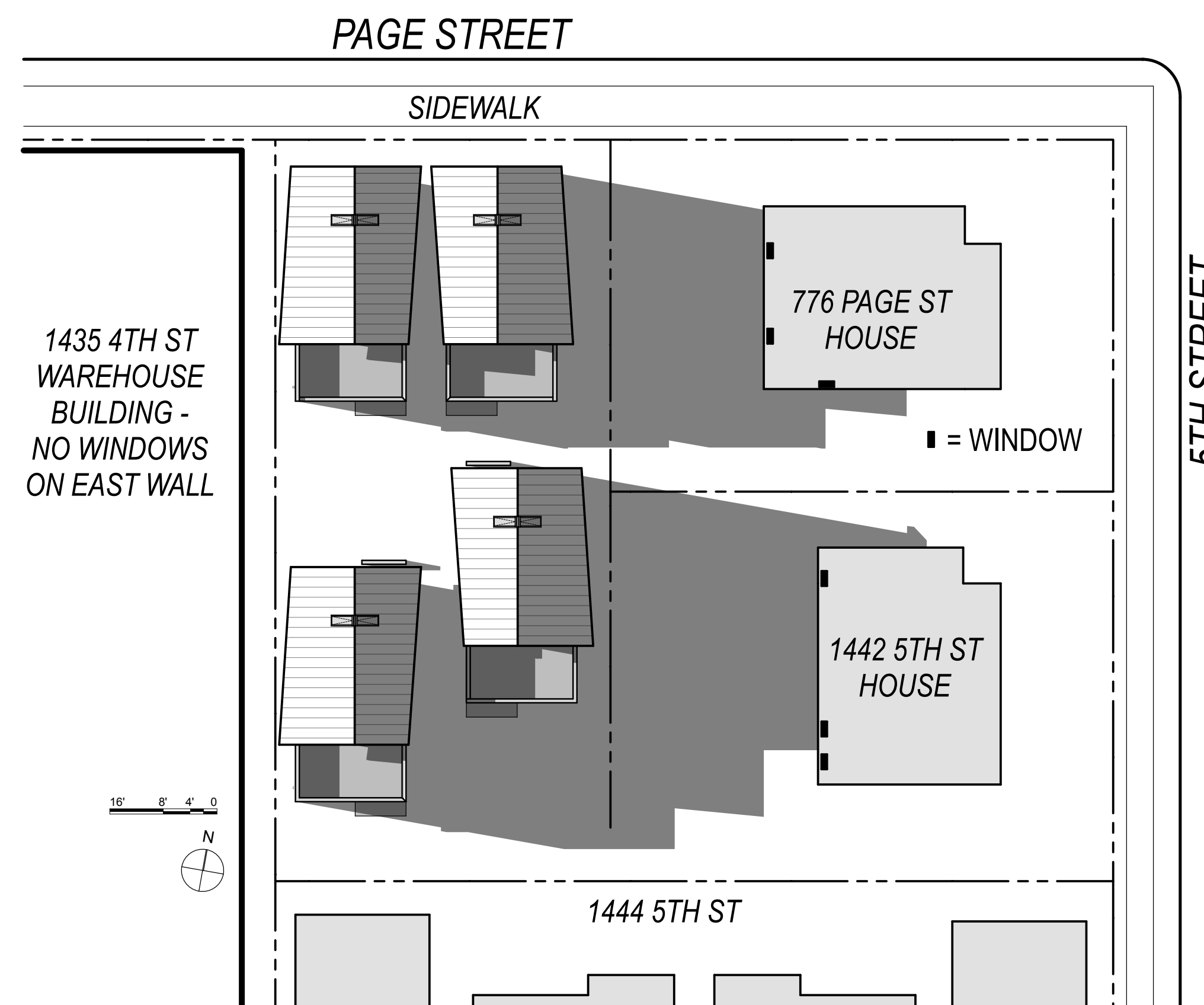


1 PROPOSED - DECEMBER 21 - 2 HOURS AFTER SUNRISE
SCALE: 1/16" = 1'-0"

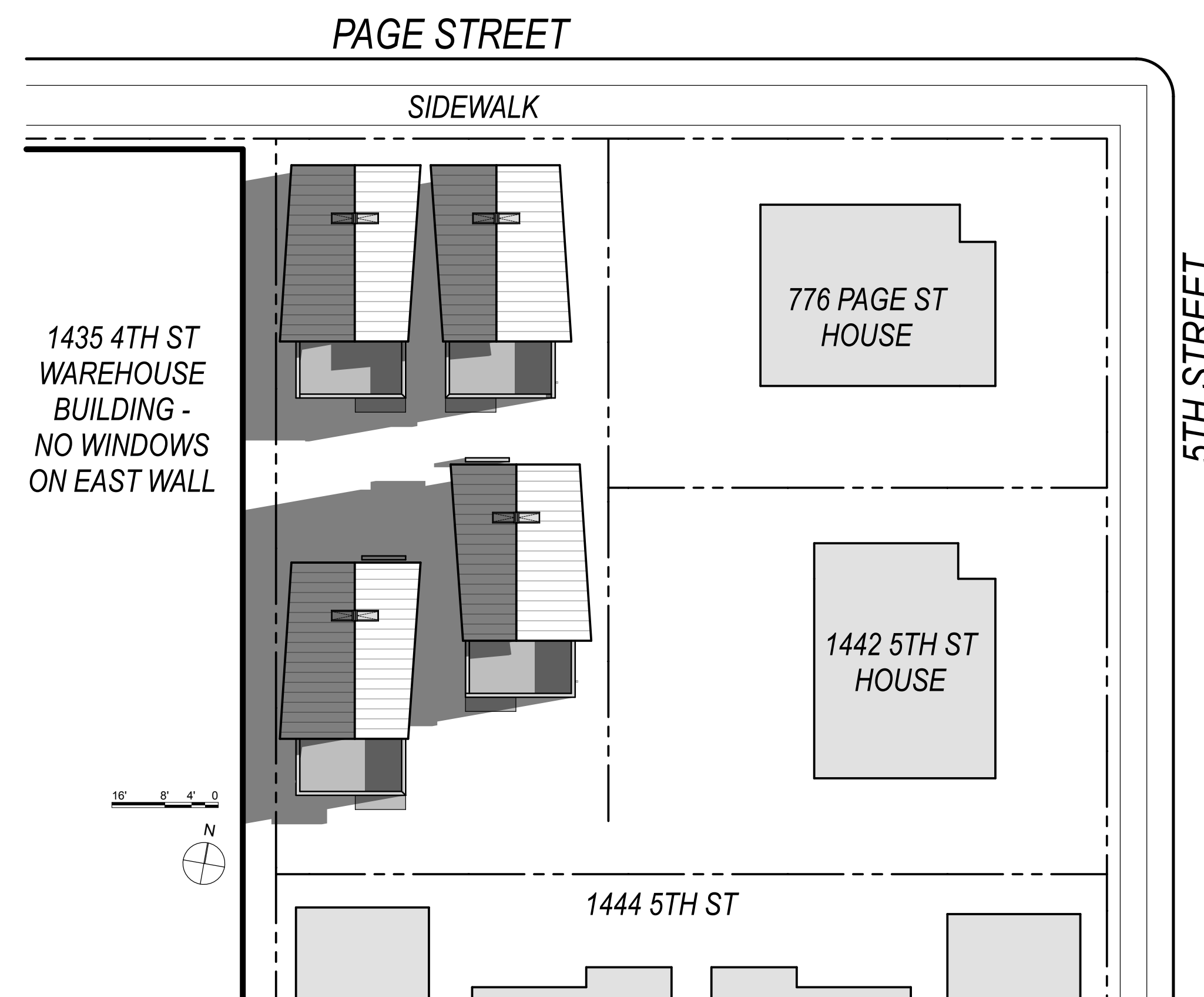
PLANS APPROVED BY ZONING ADJUSTMENTS BOARD

Shanna Alm **May 27, 2021**
SIGNATURE DATE

* Findings and Conditions Attached



4 PROPOSED - JUNE 21 - 2 HOURS BEFORE SUNSET
SCALE: 1/16" = 1'-0"



3 PROPOSED - JUNE 21 - 2 HOURS AFTER SUNRISE
SCALE: 1/16" = 1'-0"

SHADOW STUDIES - PROPOSED

770 PAGE STREET USE PERMIT APPLICATION



Jessica Taylor
2001 Addison Street, Suite 300
Berkeley, CA 94704
Phone: (510) 900-9502 x 705
Email: jtaylor@greenfirelaw.com
www.greenfirelaw.com

June 3, 2021

By USPS

City Clerk Department
2180 Milvia Street, 1st Floor
Berkeley, CA 94704

RECEIVED

JUN 07 2021

**CITY OF BERKELEY
CITY CLERK DEPARTMENT**

RE: 770 Page Street Administrative Use Permit #ZP2020-0051 Appeal

To Whom It May Concern:

Greenfire Law submits this appeal pursuant to Berkeley Municipal Code Section 23B.32.050, on behalf of the Oceanview Neighborhood Council, a group of residents from the West Berkeley neighborhood of Oceanview in Berkeley's Arts District, regarding the May 27, 2021 Zoning Adjustments Board decision to approve the Administrative Use Permit #ZP2020-0051. This letter and the attachments hereto are submitted to appeal the approval of Administrative Use Permit #ZP2020-0051 for the next phase of the Fifth and Page Street residential housing project, which is situated on the real property located at 770 Page Street. The continuation of the common development plan at this location is simply another phase of the same residential housing project that began at the adjacent and contiguous 1444 and 1446 Fifth Street locations. This project represents a multi-unit common development scheme that must comply with the inclusionary housing requirements set forth in Berkeley Municipal Code Sections 23C.12.010, *et seq.* These requirements should be disclosed to the developer immediately, and the developer should be required to either provide inclusionary housing in his project or pay the in-lieu fee as calculated by the formula put forth in Berkeley Municipal Code Section 23C.12.035.

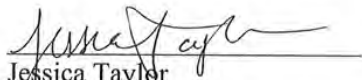
Further, the existing dwelling located at 770 Page Street is currently being rented at a rate significantly below market rate. Practically speaking, the next phase of the Fifth and Page Street residential housing project will eliminate what would otherwise constitute affordable housing available to the people of Berkeley and replace it with housing that lacks any inclusionary units and is not subject to the full in-lieu fee under Berkeley Municipal Code Section 23C.12.035. Preventing the erosion of affordable housing and its replacement with largely unaffordable units fits squarely within the purpose of Berkeley's Inclusionary Housing Requirements. This practical matter further supports our request that the developer in charge of this residential housing project be subject to the full in-lieu fee contemplated by the Berkeley Municipal Code.

Page 2 of 3

Additionally, pursuant to Berkeley Municipal Code Section 23C.08.020, when the Board approves a Use Permit to demolish a building on a property containing two or more dwelling units, the applicant must pay a fee for each unit demolished to mitigate the impact of the loss of affordable housing in the City of Berkeley. Alternatively, the applicant may provide a designated unit in the new project at a below market rate to a qualifying household in perpetuity. The demolition at 770 Page Street may only involve a single dwelling unit, however, it is the first of multiple dwellings that will ultimately be demolished as a part of the Fifth and Page Street residential housing project. The developer's strategy of seeking permits including demolition of only one dwelling at a time does not change the fact that practically, he is demolishing two or more dwellings, and thus has triggered the requirements set forth by Berkeley Municipal Code Section 23C.08.020A. This is yet another iteration of the developer's attempt to evade his responsibilities under the Municipal Code and usurp the financial obligations required to mitigate for a loss of affordable housing. As such, we request that you require the developer to pay either the housing demolition mitigation fee or to provide the requisite below market units in his common development scheme pursuant to Berkeley Municipal Code Section 23C.08.020A.

Attached, you will find documents previously submitted in appeal of the 1444 Fifth Street property along with the pending lawsuit and underlying Settlement Agreement and Resolution related to the development of 1444 Fifth Street, 1446 Fifth Street, 1442 Fifth Street, 770 Page Street, and 776 Page Street. The improper assignment of a \$15,000 Housing Trust Fund contribution for 770 Page Street pursuant to the above-mentioned Settlement Agreement and Resolution and as stated in item #42 in the City's Findings & Conditions is expressly at issue in the attached lawsuit and serves as an improper deviation from the in-lieu fee calculation under the Berkeley Municipal Code. Each of these documents and the arguments contained therein apply to the 770 Page Street project and make clear that this residential housing project is part of a common development scheme subject to inclusionary housing requirements. We request that you consider all of this information in your evaluation approval of Administrative Use Permit #ZP2020-0051 for 770 Page Street and direct the developer to either provide for inclusionary housing or remit the payment of a full in-lieu fee and housing demolition mitigation fee pursuant to Berkeley Municipal Code Sections 23C.12.010, *et seq.* and 23.08.020A, respectively.

Sincerely,



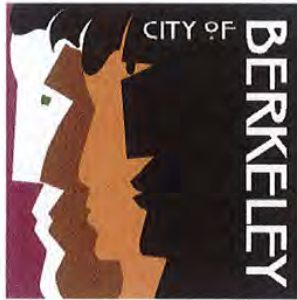
Jessica Taylor
Greenfire Law, P.C.
Attorney for Oceanview Neighborhood Council

Enclosures:

2019-04-26 ONC on Inclusionary Housing;
2019-04-29 Strauss Decl. ISO 1444 Appeal, Combined;
2019-04-29 Supp Memo ISO 1444 Appeal;
2019-04-29 Traynor Decl. ISO 1444 Appeal;

Page 3 of 3

2019-04-29 Younger Decl. ISO 1444 Appeal;
2021-09-11 Petition and Complaint, Taxpayer Waste
Appeal Fee



Z O N I N G
A D J U S T M E N T S
B O A R D
NOTICE OF DECISION

DATE OF BOARD DECISION: May 27, 2021
DATE NOTICE MAILED: June 1, 2021
APPEAL PERIOD EXPIRATION: June 15, 2021
EFFECTIVE DATE OF PERMIT (Barring Appeal or Certification)¹: June 16, 2021

770 Page Street

Use Permit #ZP2020-0051 to demolish an existing single-family dwelling unit and construct four detached, three-story approximately 1,500-square-foot dwelling units on a 5,532-square-foot lot.

The Zoning Adjustments Board of the City of Berkeley, **APPROVED** the following permits:

- Use Permit, under BMC 23C.08.010 to demolish of a dwelling unit
- Administrative Use Permit, under BMC Section 23E.84.030, to construct four new dwelling units

ZONING: MU-R – Mixed Use Residential District

APPLICANT/OWNER: Matthew Wadlund, 770 Page Street, LLC, 805 Jones Street, Berkeley CA 94710

ENVIRONMENTAL REVIEW STATUS: Categorically exempt pursuant to Sections 15301, 15303, and 15332 of the CEQA Guidelines (“Existing Facilities,” “New Construction or Conversion of Small Structures,” and “In-Fill Development”).

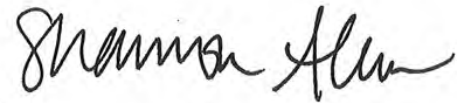
FINDINGS, CONDITIONS AND APPROVED PLANS ARE ATTACHED TO THIS NOTICE

¹ Pursuant to BMC Section 23B.32.090, the City Council may certify any ZAB decision for review during the 14-day appeal period after the notice of the ZAB’s decision is issued. Certification has the same effect as an appeal. However, BMC Section 1.04.070 suspends or “tolls” the Council’s deadline to certify when the Council is on recess. Thus, in cases where the 14-day appeal period is scheduled to *end* during a Council recess, the certification deadline is extended past the end of the recess for the remainder of the appeal period. In cases where the appeal period *begins* during a Council recess, the certification deadline is extended until 14 days after the first Council meeting after the recess. *Extension of the certification deadline has no effect on the appeal deadline.*

ZONING ADJUSTMENTS BOARD
May 27, 2021

770 PAGE STREET
Page 2 of 3

	Yes	No	Abstain	Absent
DUFFY	X			
KAHN				X
KIM	X			
O'KEEFE	X			
OLSON	X			
SANDERSON	X			
THOMPSON	X			
GAFFNEY	X			
TREGUB	X			
BOARD VOTE:	8	0	0	1



ATTEST:
Shannon Allen, Zoning Adjustments Board
Secretary

PUBLICATION OF NOTICE:

Pursuant to BMC Section 23B.32.050, this notice shall be mailed to the applicant at the mailing address stated in the application and to any person who requests such notification by filing a written request with the Zoning Officer on or before the date of the Board action. This notice shall also be filed with the City Clerk. In addition, the notice shall be forwarded to the Zoning Adjustments Board and to the Main Library. The notice shall also be posted at a bulletin board at the Zoning Counter. The City Clerk shall make the notice available to interested members of the Council and the public.

FURTHER INFORMATION:

Questions about the project should be directed to the project planner, Leslie Mendez, at (510) 981-7426 or lmendez@cityofberkeley.info. All project application materials, including full-size plans, may be viewed online at <https://aca.cityofberkeley.info/Community/> or in the Permit Service Center at the Zoning Counter at 1947 Center Street, Third Floor, during normal office hours.

TO APPEAL THIS DECISION (see Section 23B.32.050 of the Berkeley Municipal Code):

Please note that the new method for appeal submittals described below have been put in place to comply with the requirements of the Shelter In Place Order and shall be effective for the duration of Shelter In Place requirements.

Mail your complete appeal to the City Clerk Department, 2180 Milvia Street, Berkeley, CA 94704 with payment of fees by check or money order included. Appeals submitted by mail must be postmarked on or before the deadline date for filing the appeal.

ZONING ADJUSTMENTS BOARD
May 27, 2021

770 PAGE STREET
Page 3 of 3

- A. The fee for persons other than the applicant is \$500. This fee may be reduced to \$100 if the appeal is signed by persons who lease or own at least 50 percent of the parcels or dwelling units within 300 feet of the project site, or at least 25 such persons (not including dependent children), whichever is less.
- B. The fee for all appeals by Applicants is \$2,500.

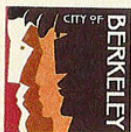
If no appeal is received, the permit will be issued on the first business day following expiration of the appeal period, and the project may proceed at that time.

NOTICE CONCERNING YOUR LEGAL RIGHTS:

If you object to this decision, the following requirements and restrictions apply:

1. If you challenge this decision in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the Zoning Adjustments Board at, or prior to, the public hearing.
2. You must appeal to the City Council within fourteen (14) days after the Notice of Decision of the action of the Zoning Adjustments Board is mailed. It is your obligation to notify the Land Use Planning Division in writing of your desire to receive a Notice of Decision when it is completed.
3. Pursuant to Code of Civil Procedure Section 1094.6(b) and Government Code Section 65009(c)(1), no lawsuit challenging a City Council decision, as defined by Code of Civil Procedure Section 1094.6(e), regarding a use permit, variance or other permit may be filed more than ninety (90) days after the date the decision becomes final, as defined in Code of Civil Procedure Section 1094.6(b). Any lawsuit not filed within that ninety (90) day period will be barred.
4. Pursuant to Government Code Section 66020(d)(1), notice is hereby given to the applicant that the 90-day protest period for any fees, dedications, reservations, or other exactions included in any permit approval begins upon final action by the City, and that any challenge must be filed within this 90-day period.
5. If you believe that this decision or any condition attached to it denies you any reasonable economic use of the subject property, was not sufficiently related to a legitimate public purpose, was not sufficiently proportional to any impact of the project, or for any other reason constitutes a "taking" of property for public use without just compensation under the California or United States Constitutions, your appeal of this decision must include the following information:
 - A. That this belief is a basis of your appeal.
 - B. Why you believe that the decision or condition constitutes a "taking" of property as set forth above.
 - C. All evidence and argument in support of your belief that the decision or condition constitutes a "taking" as set forth above.

If you do not do so, you will waive any legal right to claim that your property has been taken, both before the City Council and in court.



Planning and Development Department
Land Use Planning Division
1947 Center Street, 2nd Floor
Berkeley, CA 94704

neopost[®] FIRST-CLASS MAIL
06/03/2021
Post and Mail Date: **US POSTAGE \$000.51⁰**
June 3, 2021



ZIP 94704
041M12250756

NOTICE OF RECEIVE APPLICATION

UP #ZP2021-0083 – SUBMITTED on May 25, 2021
1442 Fifth Street

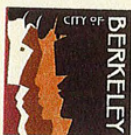
Demolition of an existing single-family dwelling and construction of three new, detached single-family dwellings

Contact information: (see reverse)

All application materials may be viewed online:
www.cityofberkeley.info/zoningapplications, or at
<https://berkeley.buildingeye.com>

Occupant(s)
1416 FIFTH ST
BERKELEY CA 94710

94710\$1324 C023



Planning and Development Department
Land Use Planning Division
1947 Center Street, 2nd Floor
Berkeley, CA 94704

neopost[®] FIRST-CLASS MAIL
06/03/2021
Post and Mail Date: **US POSTAGE \$000.51⁰**
June 3, 2021



ZIP 94704
041M12250756

NOTICE OF RECEIVE APPLICATION

UP #ZP2021-0084 – SUBMITTED on May 25, 2021
776 Page Street

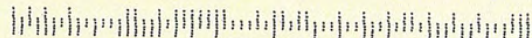
Demolition of an existing single-family dwelling and construction of three new, detached single-family dwellings

Contact information: (see reverse)

All application materials may be viewed online:
www.cityofberkeley.info/zoningapplications, or at
<https://berkeley.buildingeye.com>

Occupant(s)
1416 FIFTH ST
BERKELEY CA 94710

94710\$1324 C023





RACHEL S. DOUGHTY
2550 Ninth Street, Suite 204B
BERKELEY, CA 94710
PHONE: 510-900-0502 x2
EMAIL: rdoughty@greenfirelaw.com
WWW.GREENFIRELAW.COM

April 26, 2019

By Personal Delivery and Electronic Mail

To: Members of the Berkeley City Council
City Clerk
2180 Milvia Street
Berkeley, CA 94704
clerk@cityofberkeley.info

From: Greenfire Law, PC, on behalf of Oceanview Neighborhood Council

Subject: Protecting Berkeley's Affordable Housing Trust Fund

Honorable Members of the Berkeley City Council:

These comments are submitted on behalf of the Oceanview Neighborhood Council (ONC). ONC is comprised of residents of the West Berkeley neighborhood of Oceanview in Berkeley's Arts District, many of whom are artists of modest to moderate means.¹ ONC members have an interest in stemming the erosion of affordability in Berkeley for artists and other current and future residents of similar means, particularly in their neighborhood Arts District neighborhood.

Berkeley taxpayers, including members of ONC, are paying to fund low to middle income housing development.² Yet, ONC's research indicates that hundreds of thousands, if not

¹ First established in 2004, and updated in 2017, the City Arts and Culture Plan reiterates the City's policy goal to increase affordable housing for artists and incentivize development of affordable housing for artists. (City of Berkeley Arts and Culture Plan Update, 2017-2027, Goal 1, available at [https://www.cityofberkeley.info/uploadedFiles/City_Manager/Level_3_-_Civic_Arts/Art%20and%20Cultural%20Plan%202004-09-18%20Draft%20\(2\).pdf](https://www.cityofberkeley.info/uploadedFiles/City_Manager/Level_3_-_Civic_Arts/Art%20and%20Cultural%20Plan%202004-09-18%20Draft%20(2).pdf).) According to the West Berkeley Arts Field Survey, commissioned by the Berkeley Civic Arts Commission in 2008, 827 artists live or work in West Berkeley.

² In 2018, Berkeley voters overwhelmingly approved Measure O, authorizing the City to issue up to \$135 million in bonds to "acquire and improve affordable housing" for "low-, very low-, low-, median-, and



Oceanview Neighborhood Council Public Comment
April 26, 2019
Page 2 of 12

millions, of dollars and/or inclusionary housing development have been forfeited since the 1986 adoption of the Inclusionary Housing Ordinance because Berkeley has failed to collect fees developers are required to pay or require the inclusion of affordable housing in ownership projects. Therefore, ONC supports the Planning Commission's recommended language to provide more specific direction to City staff to ensure that the intention of the original policy defining the scope of the projects triggering application of the Inclusionary Housing Ordinance, is realized.

The Planning Commission's proposed amendments do not close a loophole or change the existing law. What they do is expressly state what information staff must be provided by applicants and consider in determining whether a proposed project triggers the Inclusionary Housing Ordinance. Berkeley planning staff have repeatedly said that they defer to applicants' definitions of "project." This is problematic because applicants have multiple incentives to downplay the scope of their project—including avoiding paying into the Housing Trust Fund what could instead be retained as profit. Taking developer representations at face value results depleted City resources (where a developer would have opted for payment of the fee), decreased stock of affordable housing in the City (where a developer would have opted to include affordable housing in the project), and increased risk to the City of legal challenge. The Planning Commission-recommended language rectifies this situation by ensuring that staff have the direction and information needed to implement the Inclusionary Housing Ordinance.

ONC provides a number of attachments pertinent to the consideration of the amendments:

1. **ATTACHMENT A:** FAQ Sheet which addresses a number of alleged practical and legal issues with the proposed language have been floated in recent days by a particular developer who has so far circumvented the Inclusionary Housing Ordinance.
2. **ATTACHMENT B:** Examples of recent evasion of the Inclusionary Housing Ordinance.
3. **ATTACHMENT C:** Quick Language Reference.

Sincerely,



Rachel S. Doughty
Greenfire Law, PC
Attorney for Oceanview Neighborhood Council

cc: apearson@cityofberkeley.info

middle-income individuals and working families, including teachers, seniors, veterans, the homeless, students, people with disabilities, and other vulnerable populations.”

Oceanview Neighborhood Council Public Comment
April 26, 2019
Page 3 of 12

Attachment A

FAQ Sheet

Q. What is the history of the Inclusionary Housing Ordinance?

The **Inclusionary Housing Ordinance** was enacted on July 15, **1986** (Ord. No. 5748) and, despite undergoing stylistic and formatting changes when the Zoning Code was re-organized in 1999 (Ord. No. 6478), the provision that is now 23C.12.022 is substantively unchanged since 1986. The objectives of the original Ordinance are furthered by the current proposal.

The initial draft of the ordinance proposed by a subcommittee of the Planning Commission in 1986 only applied to properties on which four or more residential units had been constructed. However, the Planning Commission advised the City Council that the ordinance should apply to lots on which it is feasible to build 5 or more residential units, to “close possible loopholes of building less units or building units incrementally as a means to avoid the requirements of the ordinance.” (Planning Commission Report, *Adoption of Inclusionary Zoning Ordinance* p.4, § IV(A) (June 10, 1986)). The City Council accepted the change suggested by the Planning Commission as what is now 23C.12.020(A)(3).

Among the formal findings of the original Ordinance are that “continued new development which does not include lower cost housing will serve to further aggravate the current housing shortage by reducing the supply of land” and the desirability of “encouragement of usage of density bonus”, which would occur if projects include affordable units. (Ord. No. 5748, § 15.B)

In **1999**, the City Council incorporated “Inclusionary Housing Requirements” into the Zoning Ordinance, to “promote achievement of the City Housing Element goals for developing affordable housing for Households with incomes below the median . . . by requiring the inclusion of affordable Dwelling Units in specified proposed developments, hereinafter referred to as *projects*.”³

Q. What currently triggers application of the Inclusionary Housing Ordinance?

The Inclusionary Housing Requirements apply to Dwelling Units that are constructed for sale, rather than rental by the developer, in the following project categories:

1. Residential housing projects for the construction of five or more Dwelling Units;
2. Residential housing projects for the construction of one to four new Dwelling Units, when such Units are added to an existing one to four-unit property, which has been developed after August 14, 1986, and the resulting number of units totals five or

³ BMC, § 23C.12.010 (emphasis added.)

Oceanview Neighborhood Council Public Comment
April 26, 2019
Page 4 of 12

more. All Units in such a property are subject to the requirements of this chapter;

3. Residential housing projects proposed on lots whose size and zoning designation is such to allow construction of five or more Dwelling Units.⁴

A Dwelling Unit is “a building or portion of a building designed for, or occupied exclusively by, persons living as one (1) household.”⁵ In a Mixed Use- Residential Zone—like West Berkeley—there “shall be no more than one Dwelling Unit or one live/work space per each 1,250 feet of lot area; provided, however, there may be one additional unit for any remaining lot area which may be less than 1,250 square feet but greater than 750 square feet.”⁶ Accordingly, if a West Berkeley lot consists of more than 5,750 square feet, it can accommodate five Dwelling Units, rendering the development subject to Inclusionary Housing Requirements.

Q. Does the revised language substantively change the trigger for application of the Inclusionary Housing Requirement?

No. The obligation to include units or pay into the Housing Trust Fund is still triggered by any of the same three conditions: (1) project of five or more units, (2) project commenced after 1986 on property to which additional units are added for a total of five or more units, and (3) project, regardless of number of units, on lots zoned to allow for construction of five or more units.

Q. What is the obligation of a developer whose project triggers the Inclusionary Housing Requirements?

Developers of residential projects subject to Inclusionary Housing Requirements must either:

(1) sell 20 percent of the total number of Dwelling Units to the City or to Low, Lower or Very Low-Income Households or set aside such units as affordable housing available for rent at below-market rates,⁷ or

(2) pay a fee into the City’s Housing Trust Fund in-lieu of providing such units.⁸

This Inclusionary “in-lieu” fee is calculated after the units are sold using the actual sales price, or the appraised price if it appears that the sale price is below market.⁹ The amount owed is

⁴ BMC, § 23C.12.020, subd. (A)(3).

⁵ BMC, § 23F.04.010.

⁶ BMC, § 23E.84.070, subd. (B).

⁷ BMC, § 23C.12.040, subd. (A).

⁸ BMC, §§ 23C.12.030; 23C.12.035.

⁹BMC at § 23C.12.035.

Oceanview Neighborhood Council Public Comment
April 26, 2019
Page 5 of 12

calculated by a formula found in BMC, section 23C.12.035, subd. (C)(1). Payment is due “no later than the closing date of the sale of a unit as a condition of said closing.”¹⁰

Q. Under current law, can a developer avoid triggering the Inclusionary Housing Ordinance by reducing its lot below the trigger size through a lot line adjustment?

No. Under the Zoning Ordinance, “No lot shall hereafter be subdivided or reduced in size, nor shall any lot line be adjusted or redrawn, so that any resultant lot conflicts with the provisions of this Ordinance.”¹¹ The “Ordinance” refers to the Zoning Ordinance of the City of Berkeley, which includes the Ordinance, reflected in Sub-Titles 23A through 23F, Appendices A and B, and the “Official Zoning Map,” reflected in Plates 1-9.¹² As discussed above, the Zoning Ordinance expressly denotes promotion of affordable housing as one of its goals.¹³ Municipalities may review individual applications for LLAs to prevent “gamesmanship.”¹⁴

Further, if the adjacent lot is part of the same project and that project includes construction of five or more Dwelling Units, the lot line adjustment will not accomplish the goal of evading the Inclusionary Housing Ordinance’s obligations. Nothing requires that the five Dwelling Units be on the same lot. If it did, the lot size and project size triggers for the Inclusionary Housing Ordinance would be redundant.¹⁵

Q. Is the Inclusionary Housing Ordinance’s Consideration of Ownership of Lots Illegal?

No. The staff report alludes to comments made by a developer’s expediter at the Planning Commission hearing that “proposed amendments treat certain property owners differently than the vast majority of other property owners in the City, potentially limiting their property rights in ways that could create a legal risk for the City.” There is no such risk under the existing or proposed language because there is no such principle in California law, and in fact, California law regularly takes into consideration the ownership patten of nearby lots.¹⁶

¹⁰ Id. at E.

¹¹ BMC, § 23A.12.020, subd. (A).

¹² BMC, § 23A.04.020, subd. (A).

¹³ Id. at (I) and (J).

¹⁴ *Sierra Club v. Napa Cnty. Bd. of Supervisors* (2012) 205 Cal.App.4th 162, 168.

¹⁵ Laws are interpreted to avoid surplusage where at all possible. (Code Civ. Proc., § 1858.)

¹⁶ See *Bright v. Cnty. Bd. of Supervisors* (1977) 66 Cal.App.3d 191, 195-96 (applying Subdivision Map Act to developer of two adjacent parcels where development of either alone would not trigger application of the Act). See also *Pratt v. Adams* (1964) 229 Cal.App. 2d 602 (Court declined to assist landowners in circumventing subdivision law where a group of individuals conspired to separately subdivide multiple lots in order to stay under the Subdivision Map Act’s threshold. This case showcases both the City’s existing authority to address specific instances of subterfuge and to anticipate and proactively prevent such schemes); *Blackmore v. Powell* (2007) 150 Cal.App.4th 1593, 1605 (“courts must be vigilant regarding schemes designed to avoid the regulatory controls”)

Oceanview Neighborhood Council Public Comment
April 26, 2019
Page 6 of 12

Additionally, as discussed above, the existing language already requires consideration of the entire project regardless of lot line.

Q. Does the proposed language cause the Inclusionary Housing Ordinance to violate the Housing Accountability Act?

No. A primary purpose of the Housing Accountability Act is to “enhance the approval and supply of housing affordable to Californians of all income levels” by limiting municipalities’ authority to deny proposed housing projects. Gov. Code, sec. 65589.5(a)(2)(B). The Act specifically permits a City to obligate a project “to comply with objective, quantifiable, written development standards, conditions, and policies appropriate to, and consistent with, meeting the jurisdiction’s share of the regional housing need pursuant to” its Housing Element. Gov. Code sec. 65589.5(f)(1). The Inclusionary Housing Ordinance (BMC Chap. 23C.12) is precisely such an objective, written standard.

The findings supporting the original Inclusionary Housing Ordinance, which are still applicable, specifically state that it is intended “to make available an adequate supply of housing for persons of all economic segments of the community” “as mandated by the Housing Element of the Master Plan”. Ord. 5748-N.S., sec. 15B.1(g) (July 15, 1986).

The 1999 amendments to the Ordinance reconfirmed that the “purpose of this chapter is to promote achievement of the City Housing Element goals for developing affordable housing for Households with incomes below the median”. BMC, sec. 23C.12.010. The proposed clarification, and the application of the current Ordinance, do not violate the Housing Accountability Act.

Q. Has the Inclusionary Housing Ordinance halted construction of ownership projects in Berkeley?

No. At several public hearings, it has been stated that only one condominium project has been built in Berkeley in recent years. This is simply not true. A quick and by no means comprehensive search of the Multiple Listing Service identified the following:

Condominiums Completed in Berkeley 2007-2018					
Address	Year Built	Dwelling Units	Lot Size	Affordable Units	In-Lieu Fees
2102-2018 6 th St	2007	4	4,760	Undetermined	
2012-2018 6 th St	2007	4	8,900		
1414-1418 Harmon	2007	7	11,200		
1406 San Pablo	2007	8	9,030		
2628 Telegraph	2007	15	6,910		
1912 7 th St	2008	7	10,000		
1532 MLK	2008	3	5,400		
2543 MLK	2008	12	9,000		
1912-1916 7 th St	2008	7	10,000		
1352-1354 Neilson	2009	3	7,500		

Oceanview Neighborhood Council Public Comment
April 26, 2019
Page 7 of 12

1520-1522 Fairview	2010	4	6,750		
2831-2843 7 th St	2010	4	9,450		
2813 MLK	2011	3	5,350		
1419 Ashby	2012	4	5,618		
1629.5 Harmon St	2015	3	6,750		
2747 San Pablo	2017	39	10,000+	6 Units	\$0
812 Page	2018	5	6,500	0	\$0
3046 Telegraph Ave	2018	3	7,684	Undetermined	
1032 Grayson St	2018	4	5,000	0	\$0
2817 8 th St	2018	4	7,786	0	\$189,570
<i>Total Projects: 20</i>		<i>Total Units: 143</i>		<i>Identified Affordable Units: 6 (4%)</i>	<i>Identified In-Lieu Fees: \$189,570</i>

Q. Has the City’s past reluctance or failure to apply the Inclusionary Housing Ordinance compromised its ability to do so now, whether under existing or amended language?

No. Commencement of a project, even pursuant to a permit, does not create a vested right to proceed in violation of the law.¹⁷ Further, a city does not “contract away the right to exercise its police power in the future” merely because an applicant begins to seek an entitlement, and can in fact be forced to comply with the law.¹⁸

Q. Do the proposed amendments impermissibly reduce project density in violation of the Housing Accountability Act?

No. The Housing Accountability Act restricts the circumstances in which a city may “impose a condition that the project be developed at lower density.”¹⁹ Contending that the Ordinance reduces density is backwards because the amendment is intended precisely to ensure that developers do not evade the application of the Inclusionary Housing Ordinance by making projects or lots smaller. It also does not reflect the reality.

One explicit purpose of the existing Inclusionary Housing Ordinance, in fact, is “encouragement [of] usage of density bonus” as an incentive to include affordable units as part of projects.²⁰ Nothing in the proposed amendments changes this. In fact, one developer’s agent has repeatedly

¹⁷ *Avco Community Developers v. South Coast Regional Commission* (1976) 17 Cal.3d 785, 794 (holding developer that subdivided land and began construction prior to change in permitting law still subject to new law). To the extent the argument is that the Inclusionary Housing Ordinance has not been reliably invoked previously, see, e.g., *Schafer v. City of Los Angeles* (2015) 237 Cal. App. 4th 1250 (court forced city to require parking lot owner to apply for a permit after 50 years of unpermitted use due to city misapplication of zoning ordinance, because city error cannot create a right against the public interest).

¹⁸ *Id.* at 800.

¹⁹ Gov. Code, § 65589.5(j)(1).

²⁰ Ord. 5748-N.S., sec. 15B.1(d) (July 15, 1986).

Oceanview Neighborhood Council Public Comment
April 26, 2019
Page 8 of 12

argued that one problem with the Inclusionary Housing Ordinance is that it encourages utilizing the density bonus to build more units but higher density “is not this developer’s product type.”²¹

Q. Will amending the Inclusionary Housing Ordinance cause violation of the Permit Streamlining Act?

No. The Permit Streamlining Act requires municipalities to approve or deny permits within given timeframes. The proposed amendments do not change processing timeline or prevent the City from complying with the Act. Only one condominium “project” is currently in the City's permitting pipeline: 1444 Fifth Street. This project has been administratively appealed. The Permit Streamlining Act does not apply to the duration of appeal proceedings.²²

²¹ See 1444 Fifth Street ZAB Appeal, 3hr:47min:23sec (Jan. 24, 2019), *video recording available at* http://berkeley.granicus.com/MediaPlayer.php?publish_id=80c43cb8-20f0-11e9-b021-0050569183fa.

²² Gov. Code, § 65922(b).

Oceanview Neighborhood Council Public Comment
April 26, 2019
Page 9 of 12

Attachment B

Examples of Inclusionary Housing Evasion

Example 1 (Page Street Project): Call One Unit Commercial Regardless of Intended Residential Use to Avoid Triggering Inclusionary Housing Requirements

On September 30, 2015, Developer Matthew Wadlund requested a Use Permit/Variance to demolish a commercial building, construct a new commercial building, and develop four Dwelling Units at 812 Page Street (the “Page Street Project”). In total, 812 Page Street was 6,500 square feet in size, rendering the project subject to Inclusionary Housing Requirements because the lot was zoned to accommodate five or more Dwelling Units.²³ The City approved Wadlund’s Variance Request in June 2016, and on November 6, 2017, the City approved Wadlund’s subdivision map, which divided the lot into five condominiums—four residential and one allegedly commercial—all market rate.²⁴ Thus, the Page Street Project should have triggered the Inclusionary Housing Requirements for two independent reasons: (1) the Page Street Project is “residential” and the lot upon which it was constructed was of sufficient size to allow for construction of five Dwelling Units, and (2) the Page Street Project included construction of five Dwelling Units.²⁵ Nevertheless, the Page Street Project contained no affordable units, and neither Wadlund nor any of the owners of any of the market rate condominiums has ever paid an in-lieu inclusionary housing fee for the Page Street Project.

Example 2 (1446 Fifth Project): Adjust Lot Lines to Shrink Ownership Project Lot Size to Avoid Triggering Inclusionary Housing Requirements

Next, Wadlund purchased five contiguous lots on the very next block at 1442, 1444, and 1446 Fifth Street, and 770 and 776 Page Street. Alone, because of their size, lots 1444 and 1446 each could have been developed with five or more Dwelling Units, so Wadlund applied for a Lot Line Adjustment (LLA) to reduce the total size of each of those lots below 5,750 square feet to 5,744 square feet, reducing the building capacity of 1444 and 1446 each to four units. Wadlund transparently told the Zoning Adjustment Board that he requested the LLA to avoid building inclusionary housing or paying an in-lieu fee for his proposed development of 1446 Fifth Street (1446 Fifth Project). The City responded to Wadlund’s admission by treating the approval of Wadlund’s application for the LLA needed to effect his scheme as a ministerial act which the City had no discretion to deny and then treated 1446 Fifth Project as too small (in size and number of Dwelling Units) to trigger the Inclusionary Housing Requirements. This despite the

²³ Wadlund, Matthew, Zoning Project Application Form, p. 2, Box 10, dated Sept. 30, 2015.

²⁴ Resolution No. 68, 192-N.S. (Oct. 17, 2017.); see also Dee Williams-Ridley, City Manager City of Berkeley Staff Report, *Final Map of Tract 8355- 812 Page Street* (Oct. 17, 2017). Wadlund conveyed the rebuilt commercial building back to its original owner on May 1, 2018. ONC members living nearby report that the commercial building is being used in whole or in part as Dwelling Unit by that original owner, who is believed to have continuously occupied the property

²⁵ BMC, § 23C.12.020, subd. (A).

Oceanview Neighborhood Council Public Comment
April 26, 2019
Page 10 of 12

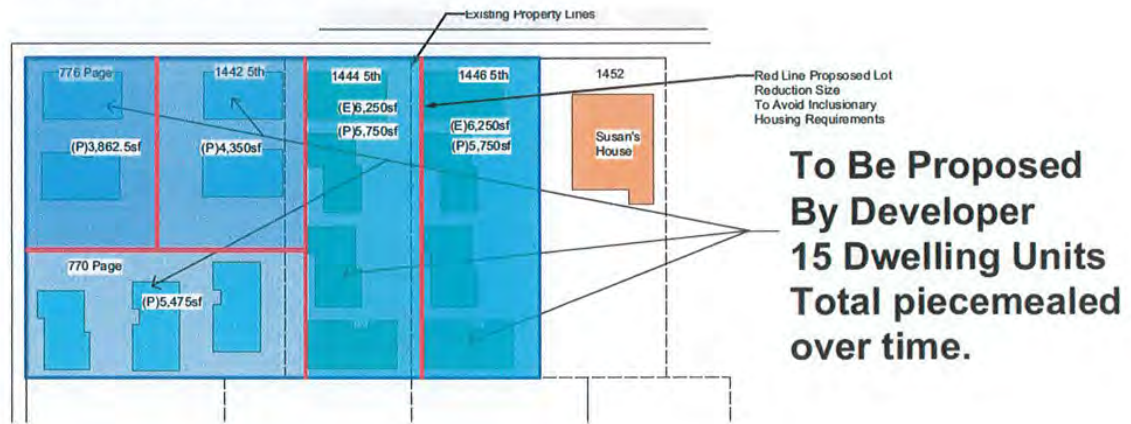
fact that the law expressly requires the City to ensure LLAs do not conflict with other provisions of the Zoning Ordinance.²⁶

The Fifth Street Project has been approved and is under construction.

Example 3 (1444 Fifth Project): Adjust Lot Size and Convey Back Easement to Avoid Payment without Giving Up Access to Land

As was always the intention, Wadlund now seeks to develop 1444 Fifth Street on the very same block. But, as a result of having lost land to his own lots at 1442 Fifth Street and 770 Page Street through his own LLA for the express purpose of avoiding the Inclusionary Housing Requirements, Wadlund now needs an easement to access the very same land he gave up (to himself) in order to effect his plans for development of market-rate housing on 1444. So Wadlund has advised the Planning Department that he will record an easement from 1442 Fifth Street that benefits 1444 Fifth Street in order to meet square footage requirements (the "Easement Swapback") for the project he has applied to complete at 1444 Fifth Street (1444 Fifth Project). The easement will provide access to multiple lots in the block, all of which Wadlund has stated he plans to develop.

The ZAB approved the 1444 Fifth Project on January 24, 2019. It is now stayed pending resolution of ONC's administrative appeal.



²⁶ BMC, § 23A.12.020, subd. (A).

Attachment C

Quick Reference Guide: Proposed Update to 23C.12.020 (Action Item #28 August 30, 2019, City Council Meeting)

Application: Section 23C.12.020 applies only to ownership projects. The mitigation fees for rental units is addressed separately in Chapter 22.20.

History of 23C.12.020

The Inclusionary Housing Ordinance was enacted on July 15, 1986 (Ord. No. 5748) and, despite undergoing stylistic and formatting changes when the Zoning Code was re-organized in 1999 (Ord. No. 6478), the provision that is now 23C.12.022 is substantively unchanged since 1986. The objectives of the original Ordinance are furthered by the current proposal.

The initial draft of the ordinance proposed by a subcommittee of the Planning Commission in 1986 only applied to properties on which four or more residential units had been constructed. However, the Planning Commission advised the City Council that the ordinance should apply to lots on which it is feasible to build 5 or more residential units, to “close possible loopholes of building less units or building units incrementally as a means to avoid the requirements of the ordinance.” (Planning Commission Report, *Adoption of Inclusionary Zoning Ordinance* p.4, § IV(A) (June 10, 1986)). The City Council accepted the change suggested by the Planning Commission as what is now 23C.12.020(A)(3).

Among the formal findings of the original Ordinance are that “continued new development which does not include lower cost housing will serve to further aggravate the current housing shortage by reducing the supply of land” and the desirability of “encouragement of usage of density bonus”, which would occur if projects include affordable units. (Ord. No. 5748, § 15.B)

Current Ordinance Language

23C.12.020, Applicability of Regulations

A. The following types of projects must comply with the inclusionary housing requirements of this chapter:

1. Residential housing projects for the construction of five or more Dwelling Units;
2. Residential housing projects for the construction of one to four new Dwelling Units, when such Units are added to an existing one to four unit property, which has been developed after August 14, 1986, and the resulting number of units totals five or more. All Units in such a property are subject to the requirements of this chapter;
3. Residential housing projects proposed on lots whose size and zoning designation is such to allow construction of five or more Dwelling Units.

B. This chapter does not apply to Dormitories, Fraternity and Sorority Houses, Boarding Houses, Residential Hotels or Live/Work Units, which are not considered Dwelling Units. Live/Work Units are subject to low income inclusionary provisions set forth in Section [23E.20.080](#).

Oceanview Neighborhood Council Public Comment
April 26, 2019
Page 12 of 12

C. This chapter sets forth specific inclusionary housing requirements for the Avenues Plan Area, which prevails over any inconsistent requirements set forth elsewhere in this chapter. (Ord. 6478-NS § 4 (part), 1999)

Language Proposed by Planning Commission

23C.12.020 Applicability of Regulations

A. The following types of projects must comply with the inclusionary housing requirements of this chapter:

1. Residential ~~h~~Housing ~~p~~Projects for the construction of five or more Dwelling Units;
2. Residential ~~h~~Housing ~~p~~Projects for the construction of one to four new Dwelling Units, when such Units are added to an existing one to four unit property, which has been developed after August 14, 1986, and the resulting number of units totals five or more. All Units in such a property are subject to the requirements of this chapter;
3. Residential ~~h~~Housing ~~p~~Projects proposed on lots any part of a single lot or on a grouping of contiguous lots under common ownership and/or control, design, marketing, or financing, whose collective size, including the area of any surface easements, and zoning designation is such to allow construction of five or more Dwelling Units, regardless of whether those units are all built simultaneously. For the purposes of this Section, "common ownership and/or control" shall be interpreted broadly.

B. For purposes of this Section, "Residential Housing Project" means a project involving the construction of at least one Dwelling Unit. This chapter does not apply to Dormitories, Fraternity and Sorority Houses, Boarding Houses, Residential Hotels or Live/Work Units, which are not considered Dwelling Units provided however that Live/Work Units are subject to low income inclusionary provisions set forth in Section 23E.20.080.

C. This chapter sets forth specific inclusionary housing requirements for the Avenues Plan Area, which prevails over any inconsistent requirements set forth elsewhere in this chapter. (Ord. 6478-NS § 4 (part), 1999).



JESSICA L. BLOME
2550 Ninth Street, Suite 204B
Berkeley, CA 94710
Phone: 510.900-9502
Email: jblome@greenfirelaw.com
greenfirelaw.com

April 29, 2019

By Electronic Mail

Hon. Mayor Jesse Arreguin
Members of the Berkeley City Council
2180 Milvia Street
Berkeley, CA. 94704
council@cityofberkeley.info
clerk@cityofberkeley.info

RE: Supplemental Memorandum in support of the Oceanview Neighborhood Council's appeal of the Zoning Adjustment Board's approval of the 1444 Fifth Street Project, ZAB No. ZP-2018-0172

Dear Mayor Arreguin and Councilmembers,

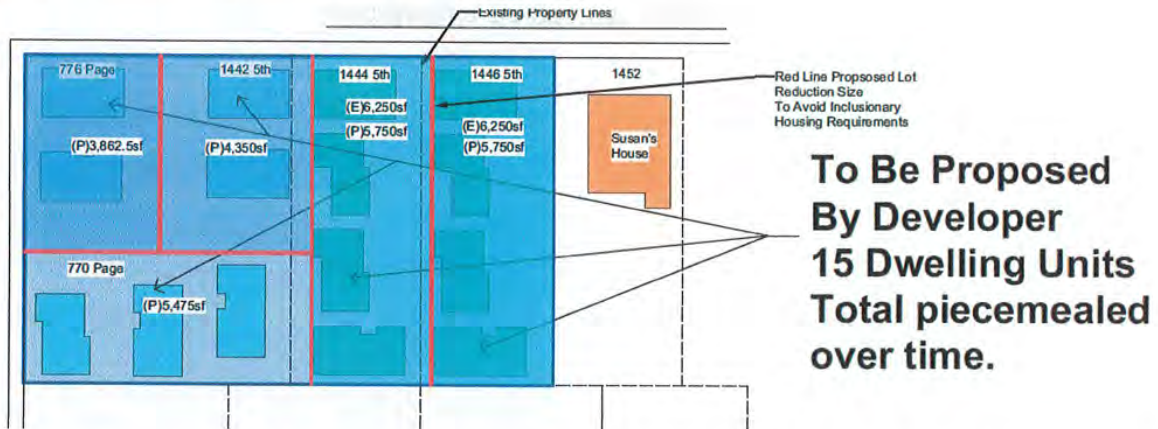
This law firm represents the interests of the Oceanview Neighborhood Council (ONC). ONC is comprised of residents of the West Berkeley neighborhood of Oceanview in the City's Arts & Artisans District, many of whom are artists with moderate incomes. ONC's members are working to stem the erosion of affordability in their neighborhood. ONC firmly believes the City's Zoning Ordinance and Inclusionary Housing Requirements are two of the City's primary tools to develop affordable housing in this area and Berkeley as a whole. According to the West Berkeley Arts Field Survey, commissioned by the Berkeley Civic Arts Commission in 2008, 827 artists live or work in West Berkeley.

Recently, a developer named Matthew Wadlund began constructing four residential Dwelling Units at 1446 Fifth Street, one of five lots he owns in a Mixed-Use Residential District located on the intersection of Fifth and Page Streets in the West Berkeley Arts and Artisans District. This memorandum will refer to these lots collectively as the "Oceanview Neighborhood Block" or "Block." The Zoning Adjustments Board (ZAB) approved Wadlund's proposal to develop a second lot, 1444 Fifth Street, on January 24, 2019, which approval ONC timely appealed on February 6, 2019.



Administrative Appeal
April 29, 2019
Page 2 of 9

Figure 1: Oceanview Neighborhood Block (the "Block")



With this appeal, the City Council has an opportunity to stop Wadlund from continuing his sequential development of the Oceanview Neighborhood Block, thereby escaping his obligations under the Zoning Ordinance, Inclusionary Housing Requirements, and Subdivision Map Act. Council's review of ZAB's approval is *de novo*, and so all materials presently before this Council may be considered, even if they were not considered by ZAB.¹ At the hearing regarding Wadlund's plans for 1444 Fifth Street, ZAB refused to consider evidence related to Wadlund's comprehensive development activities in the Oceanview Neighborhood Block. ONC submits this supplemental memorandum, so Council can review that evidence.

I. ZAB failed to consider evidence of Wadlund's master development plan for the Oceanview Neighborhood Block.

On January 24, 2019, Wadlund appeared before ZAB to win approval of his plan to develop 1444 Fifth Street into four Dwelling Units. During his presentation, Wadlund admitted that he intends to develop all five lots in the Oceanview Neighborhood Block serially. The following publicly available information corroborates his admission that he views the Block as a common development:

- (1) On August 31, 2016, Wadlund registered five separate limited liability companies with the California Secretary of State's Office, naming himself the sole organizer, member, and office holder. (Declaration of Ariel Strauss, Exh. A (hereinafter "Strauss Decl.").)
- (2) Just two months after registering his limited liability companies, Wadlund used the companies to purchase the lots that make up the Oceanview Neighborhood Block on the same date. (See Strauss Decl. Exhs. B, C.)
- (3) Wadlund's consultant evaluated the suitability and environmental health of the soil for 1444 and 1446 Fifth Street in the same report because, as early as October 2016, the consultant understood that these lots would be developed into eight Dwelling Units. (See Strauss Decl.

¹ BMC, §§ 23B.28.060, 23B.32.050, 23B.32.060.

Administrative Appeal
April 29, 2019
Page 3 of 9

Exh. D; see also Exh. E (“Our December 16, 2016, report was issued for both 1444 and 1446. We drilled on both lots and were aware that four units would be placed on each of them.”).)

- (4) After the July 20, 2017, Design Review Committee meeting, at which the Committee evaluated the suitability of Wadlund’s design plans for 1446 Fifth Street, Wadlund told ONC members they should be “happy” he is only building four houses because the City would allow him to build five on such a large lot. (See Declaration of Susan Younger, ¶ 2 (hereinafter “Younger Decl.”).)
- (5) During a February 6, 2018, City Council meeting to consider whether to approve Matthew Wadlund’s proposal to develop 1446 Fifth Street, Wadlund’s permit expeditor told Council that Matthew Wadlund intended to develop the lots that make up the Oceanview Neighborhood Block sequentially and could consolidate them at will anytime thereafter. (See Strauss Decl. Exh. F.)
- (6) Wadlund requested lot line adjustments (LLA(s)) to reduce the size of 1444 and 1446 Fifth Street after the February 6, 2018, City Council meeting in order to avoid triggering Inclusionary Housing Requirements. (See Strauss Decl. Exhs. F, I; see also Figure 1, *above*.)
- (7) The City Engineer did not consult with the Planning Department regarding the consistency of the 1444 or 1446 Fifth Street with the Zoning Ordinance, including Inclusionary Housing Requirements prior to approving the LLAs.
- (8) Wadlund’s architectural and design plans for 1444 and 1446 Fifth Street are substantially similar to each other, a fact Staff has repeatedly acknowledged and used as justification to expedite review of Wadlund’s plans for 1444 Fifth Street. (See Strauss Decl. Exhs. I, J.)
- (9) Wadlund’s team physically levelled 1444 and 1446 Fifth Street at the same time and with the same equipment. (Younger Decl. ¶ 3.)
- (10) Wadlund is using 1444 to stage construction of 1446, storing construction materials and equipment as well as waste on 1444, and placing the portable toilet and vehicles on 1444. (See Declaration of Niels Traynor ¶ 2, Exh. A (hereinafter “Traynor Decl.”).)
- (11) Wadlund intends for 1444 Fifth Street, 1442 Fifth Street, and 770 Page Street to share an access easement. (Strauss Decl. Exh. I, p. 7, Exh. M.)

During its presentation on January 24, 2019, ZAB Staff omitted any reference to the aforementioned evidence. Instead, according to Staff, because Wadlund has yet to submit a “master development plan” to the City, ZAB must take Wadlund at his word and refrain from considering whether Wadlund’s piecemeal development is part of a common development scheme.² Staff has accepted this strategy, stating publicly at a Planning Commission hearing that Staff accepts a developer’s description of project scope without question. (Traynor Decl. ¶ 3.) Thus—according to Staff—Wadlund is free to develop the Oceanview Neighborhood Block pursuant to his *personal* master plan as long as his applications to the City do not disclose his real intentions. Upon this advice—and without conducting a review of available

² See [ZAB Meeting Video Recording](#), Jan. 24, 2019, Time Stamp 3:33, Staff Comments.

Administrative Appeal
April 29, 2019
Page 4 of 9

evidence—ZAB approved Wadlund’s proposal to develop 1444 Fifth Street into four Dwelling Units. The City Council must reverse ZAB’s approval of Wadlund’s 1444 Fifth Street application and order the ZAB to treat Wadlund’s request for development of the remaining four lots as a common development scheme together with 1446 Fifth Street, subject to applicable City and state law, including the City’s Inclusionary Housing Requirements.

II. In approving Wadlund’s piecemeal development of the Oceanview Neighborhood Block, the City has failed to comply with Berkeley’s Inclusionary Housing Requirements.

The City Council adopted Berkeley’s Inclusionary Housing Requirements on July 15, 1986.³ Despite undergoing stylistic and formatting changes when Council reorganized the Zoning Ordinance in 1999⁴, Inclusionary Housing Requirements currently codified at 23C.12.022 are substantively similar to the original 1986 enactment. Among the formal findings in the original ordinance are: (1) “continued new development which does not include lower cost housing will serve to further aggravate the current housing shortage by reducing the supply of land” and (2) “encouragement of usage of density bonus.” (See Declaration of Ariel Strauss, ¶ 25, Exh. K, Berkeley Ordinance No. 5748, § 15.B (hereinafter “Strauss Decl.”))

As initially drafted in 1986, Inclusionary Housing Requirements applied to properties on which four or more residential units had been constructed. However, the Planning Commission advised Council that the Requirements should apply to projects on which it is feasible to build five or more residential units, to “close possible loopholes of building less units or building units incrementally as a means to avoid the requirements of the ordinance.” (See Strauss Decl. Exh. K, p.4, § IV(A).) Council accepted the Planning Commission’s recommendation and adopted the language that is now codified in Berkeley’s Zoning Ordinance at Chapter 23C.12.020(A)(3).

Today, the Inclusionary Housing Requirements compel an applicant for development of a residential housing project to either:

- (1) set aside 20 percent of the total number of Dwelling Units as affordable housing available for sale or rent at below-market rates, or
- (2) pay a fee into the City’s Housing Trust Fund in-lieu of providing units at below-market rates.⁵

This obligation applies to multiple types of projects including:

- (1) Residential housing project for the construction of five or more Dwelling Units;
- (2) [omitted because not relevant to appeal];

³ Berkeley Ordinance No. 5748.

⁴ Berkeley Ordinance No. 6478.

⁵ BMC, §§ 23C.12.030; 23C.12.035.

Administrative Appeal
April 29, 2019
Page 5 of 9

- (3) Residential housing projects proposed on lots whose size and zoning designation is such to allow construction of five or more Dwelling Units.⁶

Wadlund has been open about his plan to develop 1444 and 1446 Fifth Street into eight Dwelling Units, which is more than the five required to render this project subject to Inclusionary Housing Requirements. (See Strauss Decl. ¶ 13, Exh. F.) He has also advised Council that he will develop 1442 Fifth Street, 770 Page Street, and 776 Page Street into residential homes in the near future. (Id.) In permitting Wadlund to develop the Block sequentially in piecemeal fashion, the City is violating its obligations under the West Berkeley Plan, Inclusionary Housing Requirements, Housing Accountability Act, California Environmental Quality Act, and Subdivision Map Act. To put it bluntly, nothing in existing state or local law permits the City to ignore Wadlund's piecemeal development plan, as it has to date, and doing so leaves the City vulnerable to legal challenge.

III. ZAB unlawfully relied on Wadlund's self-serving LLAs to reject ONC's call for application of Inclusionary Housing Requirements.

Due to minimum lot square-footage-per-dwelling-unit requirements in Mixed Use-Residential Districts, such as much of the area covered by the West Berkeley Plan, five units can be built on lots **5,750 square feet** or larger in the Oceanview Neighborhood.⁷ Under the Berkeley Municipal Code, the City Engineer must review applications for LLAs⁸ to ensure compliance with the Government Code and for conformity with applicable zoning and building ordinances.⁹ This is not a ministerial task, as the Zoning Ordinance clearly states, "No lot shall hereafter be subdivided or reduced in size, nor shall any lot line be adjusted or redrawn, so that any resultant lot conflicts with the provisions of this Ordinance."¹⁰ The Inclusionary Housing Requirements are part of the Zoning Ordinance. The City Engineer retains ultimate discretion to approve, conditionally approve, or disapprove requested changes, and such review must include consultation with the "departments concerned."¹¹ Upon information and belief, no such consultation occurred prior to approval of Wadlund's requested LLAs.

Berkeley's requirement that Staff scrutinize the consistency of LLAs with the purpose of the Zoning Ordinance is consistent with Government Code section 66412, subdivision (d), which expressly authorizes municipalities to consider the consistency of proposed LLAs with the "local general plan, any applicable specific plan, any applicable coastal plan, and zoning and building ordinances." Under this authority, municipalities may review individual applications for LLAs to prevent "gamesmanship."¹²

In its presentation to ZAB, Staff argued that Wadlund's prior recording of LLAs in connection with his development plan for 1446 Fifth Street obviated Wadlund's obligation to comply with Inclusionary

⁶ BMC, § 23C.12.020(A)(3).

⁷ BMC, § 23E.84.00(B).

⁸ "Lot line adjustments are changes in the boundary between two or more existing adjacent parcels, where the land taken from one parcel is added to an adjacent parcel, and where a greater number of parcels than originally existed is not thereby created." (BMC § 21.32.020.)

⁸ BMC, § 21.040.050

⁹ BMC, § 21.32.030.

¹⁰ BMC, § 23A.12.020(A).

¹¹ Id.

¹² *Sierra Club v. Napa Cnty. Bd. of Supervisors* (2012) 205 Cal.App.4th 162, 168.

Administrative Appeal
April 29, 2019
Page 6 of 9

Housing Requirements for future projects. But Prior to Wadlund's request for LLAs, recorded square footage indicates that:

- 1446 Fifth Street included 6,254sf;
- 1444 Fifth Street included 6,251sf;
- 1442 Fifth Street included 3,750sf;
- 770 Page Street included 5,126sf; and
- 776 Page Street included 3,900sf.

Combined, Wadlund's contiguous holdings in the Oceanview Neighborhood Block total 25,2789sf, all of which Wadlund intends to develop. (Strauss Decl. ¶ 13, Exh. F; Exh. H.) Staff's advice to ZAB contradicts the Berkeley Municipal Code's requirement to scrutinize LLAs for compliance with the Zoning Ordinance. Council must reverse ZAB's approval of Wadlund's piecemeal project because they plainly constitute "gamesmanship" intended to circumvent the Inclusionary Housing Requirements and order Staff to comply with City law.

IV. The City failed to comply with the Subdivision Map Act.

The Subdivision Map Act vests in cities and counties the authority and responsibility for the review and approval of all proposed subdivision maps; the local agency's review is comprehensive.¹³ Specifically, the local agency must do the following:

- (1) Ensure consistency with local general plans, specific plans, and public health and safety requirements¹⁴;
- (2) Consider the site's suitability for development and the adequacy of local roads, sewer, drainage, and public services¹⁵;
- (3) Provide for the protection of natural resources and mitigation of environmental impacts¹⁶; and
- (4) Take steps to ensure the accuracy and validity of the recorded map¹⁷.

Among the Subdivision Map Act's purposes are "to encourage and facilitate orderly community development [and] coordinate planning with the community pattern established by local authorities."¹⁸

¹³ Gov. Code, § 66411.

¹⁴ See, e.g., Gov. Code, §§ 66473, 66473.5, 66474.

¹⁵ See, e.g., Gov. Code, §§ 66411, 66473.7, 66474, 66474.6.

¹⁶ See, e.g., Gov. Code, § 66474(e).

¹⁷ See, e.g., Gov. Code, §§ 66433–66443.

¹⁸ *Gomes v County of Mendocino* (1995) 37 Cal.4th 977, 985; see also *John Taft Corp. v Advisory Agency* (1984) 161 CA3d 749, 755; *Pratt v Adams* (1964) 229 Ca2d 602, 606.

Administrative Appeal
April 29, 2019
Page 7 of 9

“By generally requiring local review and approval of all proposed subdivisions, the Act aims to ‘control the design of subdivisions for the benefit of adjacent landowners, prospective purchasers and the public in general.’”¹⁹ Accordingly, the definition of “subdivision” is broadly drawn:

“Subdivision” means the division, by any subdivider, of any unit **or units** of improved or unimproved land, or any portion thereof, shown on the latest equalized county assessment roll as a unit **or as contiguous units**, for the purpose of sale, lease, or financing, **whether immediate or future**. Property shall be considered as contiguous units, even if it is separated by roads, streets, utility easement, or railroad rights-of-way. “Subdivision” includes a condominium project, as defined in Section 4125 or 6542 of the Civil Code, a community apartment project, as defined in Section 4105 of the Civil Code, or the conversion of five or more existing dwelling units to a stock cooperative, as defined in of Section 4190 or 6566 of the Civil Code.²⁰

To ensure compliance with these goals, the Map Act permits local governments to impose conditions or exactions on subdivisions to confirm to the local general plan, any applicable specific plan, and zoning and building ordinances.²¹ A subdivision must be consistent with the City’s General Plan as well as the West Berkeley Plan to win approval in Berkeley.²² Perfect conformity between a proposed subdivision map and the general plan is not required; rather, a proposed map must be in agreement or harmony with the plan and must further the objectives and policies of the plan.²³ Since the power to deny generally includes the power to approve with conditions,²⁴ the local agency may, impose such conditions as may be necessary to ensure consistency with the General Plan and West Berkeley Plan. The Map Act extends a local agency’s authority beyond the physical characteristics of the subdivision, to allow the local agency to address *use* of the property as well, so as to ensure compliance with all general plan elements.²⁵

Wadlund has stated he intends to develop the whole Oceanview Neighborhood Block into single family residences that will be sold as condominiums. In order to assign the parcels to new owners, Wadlund will need to subdivide the lots prior to the sale. Because City staff thus far refused to acknowledge and scrutinize Wadlund’s common development scheme, Wadlund will not only evade Inclusionary Housing Requirements but also potential conditions placed on the development of this subdivision.

¹⁹ *Gardner v County of Sonoma* (2003) 29 Cal.4th 990, 997 (quoting *Hays v Vanek* (1989) 217 Ca3d 271, 289).

²⁰ Gov. Code, § 66424 (emphasis added).

²¹ Gov. Code, § 66412(d).

²² See BMC, § 21.16.047.

²³ *Friends of Lagoon Valley v City of Vacaville* (2007) 154 Ca4th 807, 817.

²⁴ *Nollan v California Coastal Comm’n* (1987) 483 US 825, 836.

²⁵ Gov. Code, § 66473.5; See also *DeVita v County of Napa* (1995) 9 Ca4th 763, 772 (subdivision must be consistent with development policies of general plan); *City of Del Mar v City of San Diego* (1982) 133 Ca3d 401, 414 (subdivision must be consistent with affordable housing policies of the general plan).

Administrative Appeal
April 29, 2019
Page 8 of 9

V. Wadlund's request for a driveway easement encumbrance on 1442 5th Street and 770 Page Street is only needed because he reduced the lot size of 1444 Fifth Street to escape Inclusionary Housing Requirements.

Remarkably, Wadlund's proposed construction of four Dwelling Units at 1444 Fifth Street requires an easement encumbering 1442 Fifth Street and 770 Page Street—for the very same square footage that Wadlund relinquished by LLA from 1444 Fifth Street to avoid paying into the City's Housing Trust Fund. (See Strauss Decl. Exh. I, p. 7; see also ¶ 15, Exh. H; see also Exh. M.) Without the easement, 1444 Fifth Street is not large enough to include the necessary driveway to develop the four units planned on that lot. Wadlund advised the Planning Department that he will record the easement once the City Council approves his permit for 1444 Fifth Street. The City must not approve Wadlund's request for the project or the easement unless it rejects Wadlund's invitation to piecemeal develop the Oceanview Neighborhood Block and instead treat it as the common development scheme it is, subject to applicable City law, including Inclusionary Housing Requirements.

VI. Neighborhood Preservation Ordinance

On April 17, 1973, Berkeley voters adopted the Neighborhood Preservation Ordinance (NPO) through the initiative process. A true and correct copy of the NPO is attached to the Strauss Declaration as Exhibit L. Though not codified in the Berkeley Municipal Code, the Ordinance has never been amended or repealed. To amend or repeal the NPO, a majority of voters must approve the repeal or proposed amendment at a general municipal election.²⁶ According to the NPO, notice of public hearings related to a development project subject to the NPO—like Wadlund's—must be sent to all addresses and owners of property within a five hundred feet radius of the boundaries of the site of proposed construction and must include:

- (1) The number of housing units proposed;
- (2) The percentage of low-income units included in the structure;
- (3) A small reproduction of the site plan and perspective rendering of the proposed structure;
- (4) Time and place of public hearing; and
- (5) City departments to contact for further information.

(Strauss Decl. Exh. L § 7(a)(1)—(5).) This provision has not been repealed or amended, so the NPO controls. (Strauss Decl. Exh. L, § 9.) ZAB's published notice for hearings related to 1446 and 1444 Fifth Street violated the NPO because neither notice identified the total number of Dwelling Units proposed for the Oceanview Neighborhood Block. Without such critical information, ONC was forced to argue against Wadlund's *personal* development plan in a vacuum, and ZAB failed to consider critically relevant information. Council now has an opportunity to consider that evidence and comply with the NPO, Inclusionary Housing Requirements, Zoning Ordinance, and Subdivision Map Act.

²⁶ Berkeley City Charter, Art. XIII, Section 92, subd. (9).

Administrative Appeal
April 29, 2019
Page 9 of 9

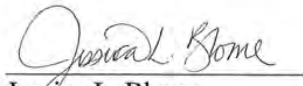
VII. The Design Review Committee failed to comply with public participation requirements in approving the Administrative Use Permit for 1444 Fifth Street after a “desk review.”

Compounding the effects of serially, piecemeal development of the Block, ZAB’s Design Review Committee approved Wadlund’s architectural and design plans for 1444 Fifth Street on a “desk review.” According to Staff, a desk review was appropriate because, “the proposed design of the buildings is similar to that of the recently approved development at the southern abutting lot, 1446 Fifth Street, which is currently under construction.” (Strauss Decl. Exh. I, p. 7, § III.) Indeed, implicit in Staff’s acknowledgement is the fact that these two lots are part of a common development.

Staff’s decision to conduct a desk review, apparently under the guise of the public having already had an opportunity to comment on this project, undermined the public participation process for residential housing developments in Berkeley and eliminated ONC’s opportunity to express its concerns with Wadlund’s design proposal for the 1444 Fifth Street Project. This treatment is also inconsistent with Staff’s accepting Wadlund’s applications for permission to develop 1444 and 1446 Fifth Street as separate projects completely at face value.

We look forward to the opportunity to present public comment at the Council hearing on May 14, 2019. I can be reached at jblome@greenfirelaw.com or (641) 431-0478 if you have any questions in the interim.

Sincerely,



Jessica L. Blome
Senior Associate Attorney

Attachments: Declaration of Ariel Strauss with Exhibits A through M, Declaration of Susan Younger, Declaration of Niels Traynor with Exhibit A

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

RACHEL S. DOUGHTY (Cal. Bar No. 255904)
JESSICA L. BLOME (Cal. Bar No. 314898)
GREENFIRE LAW, PC
2001 Addison Street, Suite 300
Berkeley, CA 94704
Telephone: 510-900-9502
Email: rdoughty@greenfirelaw.com
jblome@greenfirelaw.com

Attorneys for Plaintiff Oceanview Neighborhood Council

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA**

OCEANVIEW NEIGHBORHOOD COUNCIL,
an unincorporated citizen group,

Plaintiff,

vs.

CITY OF BERKELEY CITY COUNCIL and
CITY OF BERKELEY MANAGER DEE
WILLIAMS-RIDLEY,

Defendants.

MATTHEW WADLUND, an individual; 1442
FIFTH STREET, I.J.C, a California Limited
Liability Company; 1444 FIFTH STREET,
LLC, a California Limited Liability Company;
1446 FIFTH STREET, LLC, a California
Limited Liability Company; 770 PAGE
STREET LLC, a California Limited Liability
Company; and 776 PAGE STREET, LLC, a
California Limited Liability Company,

Real Parties in Interest.

FILED BY FAX
ALAMEDA COUNTY

March 12, 2021

CLERK OF
THE SUPERIOR COURT
By Joanne Downie, Deputy

CASE NUMBER:
RG21091748

Case No.

**VERIFIED PETITION FOR WRIT OF
MANDAMUS AND COMPLAINT
FOR DECLARATORY AND
INJUNCTIVE RELIEF**

Code Civ. Proc. §§ 1060, 526, 526a, 1085
(UNLIMITED JURISDICTION)

1 On December 15, 2020, Respondent CITY OF BERKELEY CITY COUNCIL adopted a
2 resolution approving the settlement of an action titled *1444 Fifth Street, LLC v. City of Berkeley*,
3 Case No. RG 1903243. The settlement required the City to pay \$250,000 in attorneys' fees to Real
4 Party in Interest 1444 FIFTH STREET, LLC and is anticipated to result in payments into the City
5 Housing Trust Fund in the amount of \$150,000. This lawsuit seeks declaratory relief that the
6 settlement agreement constitutes an unlawful amendment by contract of the City of Berkeley's
7 Zoning Ordinance because it requires the City to assess something other than the mandatory
8 inclusionary housing fee set by ordinance for a future residential housing project. This lawsuit also
9 seeks injunctive relief prohibiting the CITY OF BERKELEY from complying with that illegal
10 settlement agreement as well as a writ of mandate compelling the City to rescind the resolution
11 adopting the settlement agreement. In support of their Complaint for Declaratory and Injunctive
12 Relief, Plaintiff OCEANVIEW NEIGHBORHOOD COUNCIL, an unincorporated citizen group,
13 alleges as follows:

14 **PARTIES**

15 1. Plaintiff OCEANVIEW NEIGHBORHOOD COUNCIL (ONC) is a neighborhood
16 association comprised of residents of the West Berkeley neighborhood of Oceanview in the City's
17 Arts & Artisans District, many of whom are artists with moderate incomes. ONC's members work
18 to stem the erosion of affordability in their neighborhood. ONC firmly believes the City of
19 Berkeley's Zoning Ordinance and specifically its Inclusionary Housing Requirements are two of
20 the City's primary tools to develop affordable housing in their neighborhood and Berkeley as a
21 whole. All of the members of ONC pay some form of tax to the City of Berkeley, whether through
22 property taxes, sales taxes, business taxes, or others.

23 2. Plaintiff OCEANVIEW NEIGHBORHOOD COUNCIL has relied upon the City's
24 representations, expressed through the Inclusionary Housing Requirements and West Berkeley
25 Plan, that the Oceanview Neighborhood where the projects are located would remain affordable
26 and welcoming to artists. REAL PARTIES IN INTEREST have neither provided inclusionary
27 housing, nor paid the full in-lieu fee to the City's Housing Trust Fund for any of the developments
28

1 they have undertaken in the Oceanview Neighborhood, to the detriment of Plaintiff's interest in
2 housing that is affordable and welcoming to artists.

3 **Respondents**

4 3. Respondent CITY OF BERKELEY CITY COUNCIL is the legislative body of the
5 City of Berkeley, the jurisdiction where the proposed Project would be located. The City Council
6 has principal responsibility for determining whether projects within the City of Berkeley are
7 consistent with the City's General Plan, zoning and land use ordinances, and other applicable laws.
8 The City Council also has the power to enforce Berkeley's Inclusionary Housing Requirements.

9 4. Respondent CITY MANAGER DEE WILLIAMS-RIDLEY is the City Manager of
10 the City of Berkeley with authority to direct City staff in implementing and administering the City
11 of Berkeley Municipal Code, including the Zoning Ordinance and Inclusionary Housing
12 Requirements.

13 **Real Parties in Interest**

14 5. Real Party in Interest MATTHEW WADLUND was or is the sole member,
15 manager, officer, and organizer of 1442 FIFTH STREET, LLC; 1444 FIFTH STREET, LLC; 1446
16 FIFTH STREET, LLC; 770 PAGE STREET, LLC; and 776 PAGE STREET, LLC during the life
17 of each company. As the sole member, manager, officer, and organizer of each company, Wadlund
18 is the responsible corporate officer for any decisions made on behalf of each company, including in
19 deciding when and whether to apply for an administrative use permit to develop the property
20 ostensibly owned by each company.

21 6. Real Party in Interest 1442 FIFTH STREET, LLC is a limited liability company,
22 with its principal place of business at 805 Jones Street in Berkeley, Alameda County, California.
23 At all times relevant herein, 1442 FIFTH STREET, LLC owned the real property located at 1442
24 Fifth Street in Berkeley, Alameda County, California. Through Mr. Wadlund, 1442 FIFTH
25 STREET, LLC, plans to apply to the City of Berkeley for the administrative use permit necessary
26 to develop 1442 Fifth Street into four condominiums. 1442 FIFTH STREET, LLC is a beneficiary
27 of the settlement agreement and release entered into between Respondent CITY OF BERKELEY
28 and REAL PARTIES IN INTEREST 1444 FIFTH STREET, LLC and 1446 FIFTH STREET,

1 LLC, on December 15, 2020.

2 7. Real Party in Interest 1444 STREET, LLC is a limited liability company, with its
3 principal place of business at 805 Jones Street in Berkeley, Alameda County, California. At all
4 times relevant herein, 1444 FIFTH STREET, LLC owned the real property located at 1444 Fifth
5 Street in Berkeley, Alameda County, California. Through Mr. Wadlund, 1444 FIFTH STREET,
6 LLC, applied to the City of Berkeley for the administrative use permit necessary to develop 1444
7 Fifth Street into four condominiums. 1444 FIFTH STREET, LLC is a beneficiary of the settlement
8 agreement and release entered into between Respondent CITY OF BERKELEY and REAL
9 PARTIES IN INTEREST 1444 FIFTH STREET, LLC and 1446 FIFTH STREET, LLC, on
10 December 15, 2020.

11 8. Real Party in Interest 1446 STREET, LLC is a limited liability company, with its
12 principal place of business at 805 Jones Street in Berkeley, Alameda County, California. At all
13 times relevant herein, 1446 FIFTH STREET, LLC owned the real property located at 1446 Fifth
14 Street in Berkeley, Alameda County, California. Through Mr. Wadlund, 1446 Fifth Street, LLC,
15 applied to the City of Berkeley for the administrative use permit necessary to develop 1446 Fifth
16 Street into four condominiums. 1446 FIFTH STREET, LLC is a beneficiary of the settlement
17 agreement and release entered into between Respondent CITY OF BERKELEY and REAL
18 PARTIES IN INTEREST 1444 FIFTH STREET, LLC and 1446 FIFTH STREET, LLC, on
19 December 15, 2020.

20 9. Real Party in Interest 770 PAGE STREET, LLC is a limited liability company, with
21 its principal place of business at 805 Jones Street in Berkeley, Alameda County, California. At all
22 times relevant herein, 770 PAGE STREET, LLC owned the real property located at 770 Page
23 Street in Berkeley, Alameda County, California. Through Mr. Wadlund, 770 PAGE STREET,
24 LLC, applied to the City of Berkeley for the administrative use permit necessary to develop 770
25 Page Street into four condominiums. 770 PAGE STREET, LLC is a beneficiary of the settlement
26 agreement and release entered into between Respondent CITY OF BERKELEY and REAL
27 PARTIES IN INTEREST 1444 FIFTH STREET, LLC and 1446 FIFTH STREET, LLC, on
28

1 December 15, 2020.

2 10. Real Party in Interest 776 PAGE STREET, LLC is a limited liability company, with
3 its principal place of business at 805 Jones Street in Berkeley, Alameda County, California. At all
4 times relevant herein, 776 PAGE STREET, LLC owned the real property located at 776 Page
5 Street in Berkeley, Alameda County, California. Through Mr. Wadlund, 776 PAGE STREET,
6 LLC, plans to apply to the City of Berkeley for the administrative use permit necessary to develop
7 776 PAGE Street into four condominiums. 776 PAGE STREET, LLC is a beneficiary of the
8 settlement agreement and release entered into between Respondent CITY OF BERKELEY and
9 REAL PARTIES IN INTEREST 1444 FIFTH STREET, LLC and 1446 FIFTH STREET, LLC, on
10 December 15, 2020.

11 **JURISDICTION AND VENUE**

12 11. This Court has jurisdiction over this action pursuant to Code of Civil Procedure
13 sections 1085 (traditional writ of mandate).

14 12. Code Civil Procedure section 1060 gives this Court jurisdiction to grant declaratory
15 relief; Code of Civil Procedure section 526 gives this Court jurisdiction to issue injunctive relief;
16 and Code Civil Procedure section 526a gives this Court jurisdiction to issue injunctive relief
17 against local agencies for the illegal expenditure of resources in violation of municipal law,
18 including Berkeley's Inclusionary Housing Ordinance, Berkeley Municipal Code section
19 23C.12.010, et seq.

20 13. Venue is proper in Alameda County pursuant to Code Civil Procedure section 395,
21 subdivision (a) because the City of Berkeley is located there. In addition, the action arose in
22 Alameda County, pursuant to Code Civil Procedure section 393, because Plaintiff's members
23 reside in Berkeley, Alameda County and paid taxes within the last year while living there.

24 **GENERAL ALLEGATIONS**

25 **Relevant Legal Background**

26 14. The Government Code empowers the City of Berkeley to adopt and administer a
27 zoning ordinance that "regulates the use of buildings" by zones "of the number, shape, and area" it
28

1 deems best suited to carry out the purpose of the Government Code. (See Gov't Code, §§ 65800,
2 65850, 65851, 65852; see also Id. at § 37100.)

3 15. Government Code section 36931, et seq. sets forth the specific provisions a
4 municipality must follow to duly enact an ordinance. (Id. at § 36931, et seq.) For example, each
5 ordinance must be published at least once in a newspaper of general circulation in the City and
6 does not go into effect for thirty days after its second reading and final passage. (Id. at §§ 36933,
7 36937.)

8 16. The City Charter for the City of Berkeley mandates that “no ordinance shall be
9 revised, re-enacted, or amended . . . except in the method provided in this section or the adoption
10 of ordinances.” (City of Berkeley City Charter, Art. VIII, Sec. 44(10).)

11 17. Government Code section 65852 specifically requires uniformity in planning and
12 zoning by local governments.

13 18. No City can amend a duly enacted zoning ordinance by settlement agreement in
14 order to fit the needs of an individual developer. (See *Trancas Property Owners Assn. v. City of*
15 *Malibu* (2006) 138 Cal.App.4th 172, 181–182 (agreement between city and developer providing
16 exemption from zoning restrictions was invalid because it attempted to abrogate city’s zoning
17 authority for future projects.)

18 19. Resolutions adopting settlement agreements without the “formality” required of an
19 ordinance do not morph into an ordinance, as a duly enacted ordinance is a “law of this State”
20 within the meaning of a penal statute proscribing the violation of such law. (*City of Sausalito v.*
21 *County of Marin* (1970) 12 Cal.App.3d 550, 566.) “A resolution is not” a law of this State. (Id.)

22 **Inclusionary Housing Requirements**

23 20. The City of Berkeley’s Zoning Ordinance include a set of Inclusionary Housing
24 Requirements (IHR), which apply when a developer proposes a residential housing project “for the
25 construction of five or more Dwelling Units.” (BMC, § 23C.12.020(A)(1).) The number of lots
26 involved in the development is irrelevant, as the IHR applies when the developer plans to construct
27 five or more units in the “residential housing project.”
28

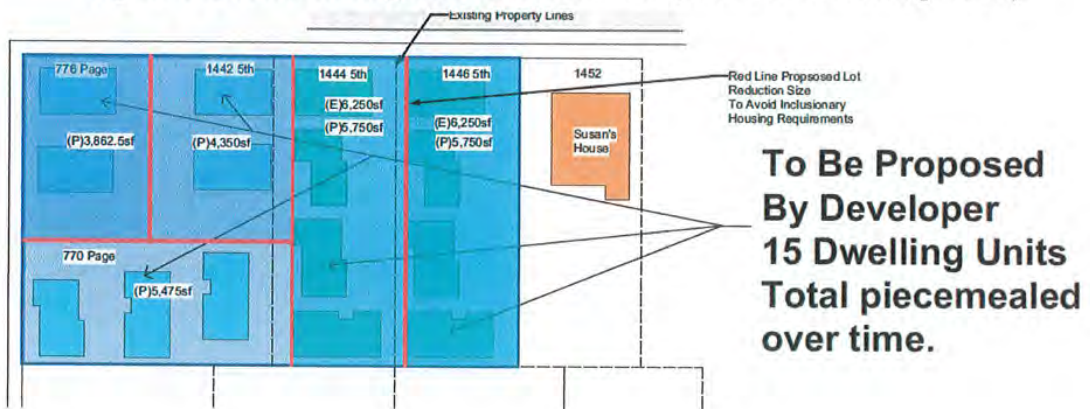
1 21. In Berkeley, developers subject to the IHR must set aside 20 percent of the total
2 number of homes as affordable housing available for sale at below-market rates or pay a fee into
3 the City’s Housing Trust Fund in-lieu of providing units at below-market rates. (BMC, §
4 23C.12.030.) This fee is often referred to as the “in-lieu fee.”

5 22. The IHR is mandatory: “The developer *shall be required* to pay the applicable in-
6 lieu fee no later than the closing date of the sale of a unit as a condition of said closing.” (Id. at §
7 23C.12.035(E) (emphasis added).) The City does not have discretion to alter the formula set by the
8 IHR for calculation of the in-lieu fee, which is based upon the sales price for the unit.

9
10 **West Berkeley’s Oceanview Neighborhood & the Corner Development**

11 23. Real Parties in Interest have been working to develop the five lots located at the
12 corner of Fifth and Page Streets in the Oceanview Neighborhood of West Berkeley’s Arts and
13 Artisans District for several years. This Complaint will refer to this corner as the “Corner
14 Development” throughout for ease of reference. Real Party in Interest Mathew Wadlund submitted
15 the following figure in connection with his first application for an Administrative Use Permit to
16 serially develop each of the five lots into two, three, or four Dwelling Units.

17 **Figure 1: Oceanview Neighborhood Corner Site (the “Corner Development”)**



25 24. West Berkeley’s Oceanview Neighborhood is characterized by a diverse mix of
26 uses, including sing-family and multi-family residential homes, art galleries and showrooms,
27 offices, warehouses, and light manufacturing.

1 25. City policy in West Berkeley is guided by the West Berkeley Plan, which seeks, in
2 part, to protect and preserve unconventional housing, such as live-work units for artists and
3 craftspeople. To that end, a guiding principle of the West Berkeley Plan is to maintain housing
4 affordability in West Berkeley by taking all reasonable steps in housing policy “to maintain and
5 foster the social and economic diversity of West Berkeley’s residents.” The West Berkeley Plan
6 further notes: “[o]ne of the key strategies for maintaining this diversity is to maintain West
7 Berkeley’s stock of affordable rental housing.”

8 26. As early as 1993, when Council adopted the West Berkeley Plan, Berkeley has
9 recognized that “West Berkeley’s reservoir of lower cost housing is likely to become increasingly
10 important over the West Berkeley Plan period, if inflationary forces continue to quickly drive up
11 house prices and rents elsewhere in the city.”

12 27. The City’s Arts and Culture Plan also expresses City policy to increase affordable
13 housing for artists and indicates the City will incentivize development of affordable housing for
14 artists in West Berkeley.

15 **Application of the Inclusionary Housing Requirements to the Corner Development**

16 28. The IHR allows a developer to pay a fee in-lieu or designate 20% of residences
17 constructed as inclusionary or affordable.

18 29. The IHR set forth the methodology for calculating the in-lieu fee as follows:

19 This fee shall be calculated and collected based on the sales prices of all of the
20 units in a project to which the inclusionary requirement applies, such that the
21 fee as charged shall be a percentage of the difference between the actual sales
22 price for each unit, and the sales price that would have been permitted had that
23 unit been an inclusionary unit. The percentage shall be determined using the
24 following formula: the number of units for which an in-lieu fee is substituted
25 for an inclusionary unit divided by the total number of units to which the
26 inclusionary ordinance applies, multiplied by 62.5%.

27 (BMC, § 23C.12.035.C.1.)

28 30. The allowable inclusionary sales price for the purpose of calculating the in-lieu fee
is three-times 80% of the Area Median Income (AMI) last reported as of the closing date of the
sale of the unit. (BMC, § 23C.12.035(D).) The affordable sales price for units of 1,200 square feet

1 or greater is to be calculated based on 80% of the AMI for a six-person household in the Oakland-
2 Fremont metropolitan area.

3 31. On August 31, 2016, Real Party in Interest Matthew Wadlund registered 1442 Fifth
4 Street, LLC; 1444 Fifth Street, LLC; 1446 Fifth Street, LLC; 770 Page Street, LLC; and 776 Page
5 Street, LLC with the California Secretary of State's Office, naming himself the sole organizer,
6 member, and office holder. Wadlund controls each LLC and is the true alter ego of each entity.

7 32. On paper, each LLC owns the lot associated with its name, all of which are located
8 in the Mixed-Use Residential Zone of the Oceanview Neighborhood in West Berkeley.

9 33. On December 14, 2016, Wadlund, on behalf of 1446 Fifth Street, LLC, submitted
10 applications for an Administrative Use Permit (AUP) and Staff Level Design Review to construct
11 four new single-family Dwelling Unites at 1446 Fifth Street. Staff deemed the application
12 complete in May 2017.

13 34. The City specifically declined to require compliance with the IHR for the
14 development of the homes at 1446 Fifth Street because Wadlund adjusted the lot lines for the five
15 contiguous and adjacent parcels that make up the Corner Development expressly to avoid
16 application of the IHR for the first phase of his residential housing project.

17 35. Wadlund has consistently publicly expressed his plan to avoid the IHR by building
18 Dwelling Units on each of the five lots sequentially because he personally believes the IHR to be
19 too expensive. In total, Wadlund has stated he will develop the Corner Development into
20 somewhere between 15 and 18 Dwelling Units.

21 36. According to the Alameda County Assessor/Recorder, Wadlund, through 1446 Fifth
22 Street, LLC, sold four single-family units for more than \$1,000,000 each.

23 37. When applying the IHR's formula to a project where the developer has elected to
24 construct no affordable units, the in-lieu fee is best represented as the difference between the actual
25 sales price and the inclusionary sales price for each unit, multiplied by 12.5%:
26
27
28

1
$$\text{In-lieu fee percentage per unit} = (\text{Units required})/(\text{Units built}) \times 62.5\% = 12.5\%^1$$

2 38. Wadlund and 1446 Fifth Street, LLC should have paid a total in-lieu fee of more
3 than \$300,000 to the City's Housing Trust Fund.

4 39. ONC filed a lawsuit to reverse the City's decision to ignore Wadlund's obligation to
5 comply with the IHR at 1446 Fifth Street.

6 40. The Superior Court of Alameda County dismissed ONC's lawsuit over Wadlund's
7 first phase of development at 1446 Fifth Street as untimely.

8 41. Wadlund, on behalf of 1444 Fifth Street, LLC, almost immediately submitted his
9 applications for an AUP and Staff Level Design Review to construct the next phase of his
10 residential housing project at 1444 Fifth Street. This phase of the project also consists of four
11 single-family Dwelling Units.

12 42. In the staff memo recommending approval of this phase of Wadlund's development,
13 Staff advised City officials to streamline its review because the proposal was nearly identical to
14 that of Wadlund's development plan for 1446 Fifth Street.

15 43. The City's Zoning Adjustments Board approved Wadlund's AUP for 1444 Fifth
16 Street on January 24, 2019, again declining to apply the IHR to phase two of Wadlund's residential
17 housing project.

18 44. ONC timely appealed the Zoning Adjustments Board's decision to the Berkeley
19 City Council on February 6, 2019.

20 45. After a hearing on the merits on May 28, 2019, the City Council concluded that
21 Wadlund's development plan for the five lots constituted a single residential housing project
22 subject to the IHR. The City Council would require Wadlund's compliance with the IHR upon the
23 sale of each Dwelling Unit. Per Berkeley Municipal Code section 23C.12.030, Wadlund could, of
24 course, designate the requisite number of Dwelling Units as inclusionary to avoid paying the in-
25 lieu fee.

26
27 _____

28 ¹ Since the IHR requires that 20% of units be affordable or the fee to be paid, this number is always 12.5% where the developer elects to construct no affordable units: $0.2 * 0.625$.

1 46. Wadlund, 1446 Fifth Street, LLC and 1444 Fifth Street, LLC filed a lawsuit in the
2 Superior Court of Alameda County against the City challenging the City Council’s decision to
3 impose the IHR on Wadlund’s phased development of a residential housing project.

4 47. ONC attempted to intervene in Wadlund’s lawsuit but was denied permissive
5 intervention.

6 48. On September 23, 2020, following a hearing on Wadlund’s petition for writ of
7 mandate, the Superior Court of Alameda County entered judgment in favor of Wadlund and his
8 limited liability companies. The Court ruled that the City impermissibly applied the IHR to phases
9 one and two of Wadlund’s development project because it imposed the condition more than 30
10 days after the City deemed the respective applications complete in violation of Government Code
11 section 65589.5, subdivision (j)(2).

12 49. On December 15, 2020, the City Council adopted Resolution No. 69,649-N.S.
13 authorizing the City Attorney to enter into a Settlement Agreement and Release with 1444 Fifth
14 Street, LLC and 1446 Fifth Street, LLC. A true and correct copy of the Settlement Agreement and
15 Release is attached hereto as **Exhibit A**.

16 50. The Settlement Agreement collectively refers to 770 Page Street, 776 Page Street,
17 and 1442 Fifth Street as “Undeveloped Parcels,” for which neither Wadlund nor his limited
18 liability companies had submitted application for development at the time of execution of the
19 Settlement Agreement, but for which Wadlund and his limited liability companies “contemplate
20 submitting application for the construction” of development projects in the future. (Id. at ¶ H.)

21 51. The Settlement Agreement provides, “The City shall not require compliance with
22 the Inclusionary Housing Ordinance for construction of dwelling units on any legal parcel that can
23 accommodate no more than four dwelling units under the development standards of the Berkeley
24 Zoning Ordinance,” . . . which includes “on the construction of new Dwelling Units on any of the
25 Undeveloped Parcels.” (Exh. A, ¶ 3.)

26 52. The Settlement Agreement also requires the City to comply with a number of
27 contractual deadlines when Wadlund applies to develop 1442 Fifth Street, 770 Page Street, and 776
28

1 Page Street at some point in the future.

2 53. The Settlement Agreement requires Wadlund and his limited liability companies to
3 pay a total in-lieu fee of \$15,000 per Dwelling Unit to the City of Berkeley Housing Trust Fund at
4 the time of sale for each of the Dwelling Units constructed on the Undeveloped Parcels in the
5 future. (Id. at ¶ 5.)

6 54. The agreed-upon in-lieu fee of \$15,000 per Dwelling Unit is a significantly and
7 substantially lower in-lieu fee than the expected mandatory fee imposed by the IHR and constitutes
8 an amendment to the IHR as applied to this individual developer.

9 **Taxpayer Waste**

10 55. The City Council is a local agency that authorizes budgets and expends money
11 every year to fund staff, resources, and supplies for the Berkeley Planning and Development
12 Department to administer the City's AUP program and processes, which includes implementation
13 of Inclusionary Housing Requirements.

14 56. The City created its Housing Trust Fund in 1990. A housing trust fund is a program
15 that pools funds for affordable housing construction from a variety of sources with different
16 requirements and makes them available through one single application process to local developers.
17 Listed among the many sources of revenue for the Housing Trust Fund is "Inclusionary Zoning
18 fees to be paid in-lieu of construction of housing units as allowed by the Inclusionary Housing
19 Ordinance, Berkeley Municipal Code Chapter 23C.12"²

20 57. The City Council has failed to conduct oversight of City staff's implementation of
21 the Inclusionary Housing Requirements.

22 58. Since its adoption in 2006, the City has failed to compel developers—including
23 Real Parties in Interest—to comply with IHR and therefore has failed to fund the City's Housing
24 Trust Fund.

25
26
27 ² See City of Berkeley's Housing Trust Fund Guidelines, Section I(B)(6), available at
28 https://www.cityofberkeley.info/uploadedFiles/Housing/Level_3_-_General/Revised%202016%20HTF%20GUIDELINES.pdf (last visited May 17, 2019).

1 59. According to the Settlement Agreement, in consideration for the City's commitment
2 to abdicate its legal duty to collect the in-lieu fee, Wadlund promises to pay up to \$150,000 in in-
3 lieu fees connected with the development of 10 Dwelling Units on 1442 Fifth Street, 770 Page
4 Street, and 776 Page Street at some unknown point in the future.

5 60. The City has failed to collect hundreds of thousands of dollars in in-lieu fees from
6 Real Parties In Interest pursuant to the plain language of the IHR.

7 61. Despite this abject failure to ensure funding of the City's Housing Trust Fund, on
8 November 6, 2018, the City Council asked voters to authorize the City to issue up to \$135 million
9 in bonds at an estimated tax rate of \$23 per \$100,000 in assessed property value for 36 years to
10 fund housing for "very low-, low-, median-, and middle-income individuals and working families,
11 including teachers, seniors, veterans, the homeless, students, people with disabilities, and other
12 vulnerable populations." (See Voter Guide, Measure O, Nov. 6, 2018.)

13 62. Berkeley residents overwhelmingly passed Measure O.

14 63. Members of ONC pay the property taxes assessed under authority of Measure O.

15 64. The City plans to use Measure O bond proceeds to leverage state and county funds
16 allocated for affordable housing against monies available in the City's Housing Trust Fund.

17 65. The City's failure to fully fund the City's Housing Trust Fund through the
18 collection of in-lieu fees under the IHR has resulted and will continue to result in wasted taxpayer
19 dollars because the City Housing Trust Fund has never been fully realized.

20 66. Without full funding of the City Housing Trust Fund, the City will never meet
21 affordable housing goals set forth in the West Berkeley Plan because it has failed and continues to
22 refuse to collect in-lieu fees owed to the Fund.

23 67. Plaintiff has no adequate remedy at law.

24 68. The City must be restrained from complying with the Settlement Agreement and
25 Release because it impermissibly amends the IHR as applied to Real Parties in Interest and because
26 it abdicates the police powers of future City Council bodies to correctly apply the IHR to
27 Wadlund's phased residential development project.

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CLAIMS FOR RELIEF

FIRST CAUSE OF ACTION

(Impermissible Promise to Abdicate Legislative Zoning Action, CCP § 526)

69. Plaintiff hereby realleges and incorporates all of the above paragraphs as if fully set forth herein.

70. A municipality may not contract away its legislative and governmental functions. (See *Morrison Homes Corp. v. City of Pleasanton* (1976) 58 Cal. App. 3d 724, 734.) Indeed, a long line of California cases establishes that a government may not bargain away its right to exercise its police power in the future. (See e.g., *Avco Community Developers, Inc. v. South Coast Regional Com.* (1976) 17 Cal.3d 785, 800; *Delucchi v. County of Santa Cruz* (1986) 179 Cal. App. 3d 814, 823.) A contract that purports to do so is invalid as contrary to public policy if the contract amounts to a municipality’s “surrender” or “abnegation” of its control of a municipal function. (*County Mobilehome Positive Action Com., Inc. v. County of San Diego* (1998) 62 Cal.App.4th 727.) This is especially true when the government attempts to amend its zoning ordinance, which requires uniformity for each class or kind of building throughout each zone, by settlement agreement. (See *Trancas Property Owners Assn. v. City of Malibu* (2006) 138 Cal.App.4th 172, 181–182 (agreement between city and developer providing exemption from zoning restrictions was invalid because it attempted to abrogate city's zoning authority); see also Gov’t Code, § 65852 (requiring uniformity in planning and zoning by local governments).)

71. Respondent impermissibly abdicated its zoning authority by binding future legislative bodies to the terms of the Settlement Agreement and Release, which amends the Zoning Ordinance’s Inclusionary Housing Requirements as applied to Real Parties in Interest only and binds the City to certain contractual deadlines and processing times not clearly required by the Berkeley Municipal Code.

72. Respondent did not have discretion to set the in-lieu fee the City will assess against future developments by contract. Respondent may only assess the fee applicable at the time of that future development.

73. In addition to amending the Inclusionary Housing Requirements as applied to future

1 development, the Settlement Agreement and Release constitutes an impermissible “promise by the
2 government that zoning laws thereafter enacted would not be applicable to” the “Undeveloped
3 Parcels” at 1442 Fifth Street, 770 Page Street, and 776 Page Street. (*Avco Community Developers,*
4 *Inc. v. South Coast Regional Com.* (1976) 17 Cal.3d 785; see also *Trancas v. City of Malibu* (Cal.
5 Ct. App. 2006) 138 Cal.App.4th 172, 181.)

6 74. Plaintiff’s members will be irreparably injured if Respondent is allowed to proceed
7 with the amendments to the Inclusionary Housing Requirements contained in the Settlement
8 Agreement and Release.

9 75. This Court has authority to enjoin the City from complying with the Settlement
10 Agreement and Release pursuant to Code of Civil Procedure, section 526.

11 **SECOND CAUSE OF ACTION**
12 **(Enjoining Taxpayer Waste, CCP § 526a)**

13 76. Plaintiff hereby realleges and incorporates all of the above paragraphs as if fully set
14 forth herein.

15 77. The Settlement Agreement and Release, which obligates Respondent to collect
16 substantially less than the mandatory in lieu fee imposed by the Inclusionary Housing
17 Requirements, is an illegal expenditure of, waste of, and injury to the property of the City of
18 Berkeley under Code of Civil Procedure section 526a.

19 78. Plaintiff has no plain, speedy, or adequate remedy in the ordinary course of law
20 within the meaning of Code of Civil Procedure section 526a because the City Council’s failure to
21 enforce the Inclusionary Housing Requirements is not otherwise reviewable in a manner that
22 provides an adequate remedy.

23 79. The City Council is able to perform the duties required by the City’s Inclusionary
24 Housing Requirements. Notwithstanding such ability, the City Council has failed to perform its
25 duties. Unless compelled by this Court to perform its duties, Respondent City Council will
26 continue to fail and refuse to do so.

27
28

THIRD CAUSE OF ACTION
(Writ of Mandate, CCP §1085)

1
2
3 80. Plaintiff hereby realleges and incorporates all of the above paragraphs as if fully set
4 forth herein.

5 81. Respondent City of Berkeley City Council violated Government Gov. Code secs.
6 65800, 65850, 65851, 65852; and § 37100, et seq. as well as the City of Berkeley City Charter
7 when it adopted Resolution No. 69,649-N.S. authorizing the City Attorney to enter into the
8 Settlement Agreement and Release because the Settlement Agreement amends an ordinance by
9 resolution and contract, rather than by legislative action.

10 82. Respondent has a nondiscretionary obligation to comply with the City Charter and
11 the Government Code.

12 83. Plaintiff has no plain, speedy, or adequate remedy in the ordinary course of law
13 within the meaning of Code of Civil Procedure section 1086, because the Respondent's adoption of
14 Resolution No. 69,649-N.S. is not reviewable in a manner that provides an adequate remedy other
15 than through this lawsuit.

16 84. Respondents are able to perform the duties required by the City Charter and
17 Government Code. Notwithstanding such ability, Respondent has failed to perform their duties.
18 Unless compelled by this Court to perform their duties, Respondent will continue to fail and refuse
19 to do so.

20 85. Section 1085 of the Code of Civil Procedure authorizes this Court to issue a writ of
21 mandate when it is required to compel Respondent to comply with the Inclusionary Housing
22 Requirements when approving the design and construction of small cell wireless facilities in the
23 future.

FOURTH CAUSE OF ACTION
(Declaratory Relief, CCP § 1060)

24
25 86. Plaintiff hereby realleges and incorporates all of the above paragraphs as if fully set
26 forth herein.

27 87. Plaintiff seeks declaratory relief the City of Berkeley's Inclusionary Housing
28

1 Requirements, located at Berkeley Municipal Code Chapter 23C.12, apply to the development of
2 1446 Fifth Street, 1444 Fifth Street, 1442 Fifth Street, 770 Page Street, and 776 Page Street
3 because the development plan it is a residential housing project “for the construction of five or
4 more Dwelling Units.”

5 88. Plaintiff has no plain, speedy, or adequate remedy in the ordinary course of law
6 within the meaning of Code of Civil Procedure section 1060, because the City’s failure to enforce
7 the Inclusionary Housing Requirements against Real Parties in Interest is not reviewable in a
8 manner that provides an adequate remedy other than through this lawsuit.

9 89. Respondent City of Berkeley is able to perform the duties required by the
10 Inclusionary Housing Requirements. Notwithstanding such ability, Respondent has failed to
11 perform their duties. Unless compelled by this Court to perform their duties, Respondent will
12 continue to fail and refuse to do so.

13 90. Declaratory relief under Code of Civil Procedure section 1060 is required to direct
14 the City to comply with the Inclusionary Housing Requirements as enacted.

15
16 **PRAYER FOR RELIEF**

17 WHEREFORE, Plaintiff pray for the following relief:

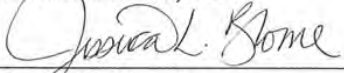
- 18 A. An ORDER DECLARING that the City of Berkeley’s Inclusionary Housing
19 Requirements apply to residential housing projects of five or more residential
20 housing units regardless of whether the units are located on the same parcel under
21 Berkeley Municipal Code section 23C.12.020(A)(1);
22 B. An ORDER ENJOINING the City of Berkeley from complying with the terms of the
23 Settlement Agreement and Release;
24 C. An ORDER ENJOINING the City of Berkeley to collect the in-lieu fee mandated by
25 the Inclusionary Housing Requirements in effect at the time of applicability.
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- D. An ORDER MANDATING that the City of Berkeley rescind Resolution No. 69,649-N.S. as an impermissible amendment of a zoning ordinance by resolution and contract;
- E. For the costs of suit.
- F. For an award of attorneys' fees pursuant to Code of Civil Procedure section 1021.5 and any other applicable provisions of law.
- G. For any other legal and equitable relief as this Court deems just and proper.

DATED: March 12, 2021

GREENFIRE LAW, PC

By: 

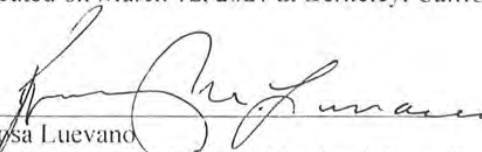
Rachel S. Doughty
Jessica L. Blome
Attorneys for Plaintiff
Oceanview Neighborhood Council

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

VERIFICATION

I, Rosa Luevano, am a member of the Oceanview Neighborhood Council, which is the plaintiff in this action. I have read the foregoing Verified Petition for Writ of Mandamus and Complaint of Declaratory and Injunctive Relief and know its contents. The facts alleged in the above Petition are within my own knowledge and I know these facts to be true, except as to matters alleged therein on information and belief.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct and that this declaration is executed on March 12, 2021 at Berkeley, California.



Rosa Luevano
Member, Oceanview Neighborhood Council

I, Niels Traynor, am a member of the Oceanview Neighborhood Council, which is the plaintiff in this action. I have read the foregoing Verified Petition for Writ of Mandamus and Complaint of Declaratory and Injunctive Relief and know its contents. The facts alleged in the above Petition are within my own knowledge and I know these facts to be true, except as to matters alleged therein on information and belief.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct and that this declaration is executed on March 12, 2021 at Berkeley, California.



Niels Traynor
Member, Oceanview Neighborhood Council

Exhibit A

RESOLUTION NO. 69,649-N.S.

AUTHORIZING THE CITY ATTORNEY TO SETTLE 1444 FIFTH STREET, LLC V.
CITY OF BERKELEY (ALAMEDA COUNTY CASE NO. RG19032434)

WHEREAS, on August 23, 2019, Petitioners 1444 Fifth Street, LLC and 1446 Fifth Street, LLC ("Petitioners") filed an action in Alameda County Superior Court entitled 1444 Fifth Street, LLC et al. v. City of Berkeley et al., Civil Case No. RG19032434 ("Action"), alleging causes of action for writ of mandate, declaratory judgment, and injunctive relief, and seeking an order or judgment that the City must rescind the inclusionary housing fee applied to petitioners' housing development project; and

WHEREAS, on September 23, 2020, the court granted a petition for writ of mandate and found that the City violated the Housing Accountability Act by imposing an additional condition on the housing development project requiring compliance with the City's Inclusionary Housing Ordinance, Berkeley Municipal Code Chapter 23C.12; and

WHEREAS, Petitioners and the City wish to resolve the dispute giving rise to the action.


NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Council of the City of Berkeley authorizes the City Attorney to enter into the settlement agreement with the 1444 Fifth Street, LLC and 1446 Fifth Street, LLC enclosed herewith as Exhibit A.

The foregoing Resolution was adopted by the Berkeley City Council on December 15, 2020 by the following vote:

Ayes: Bartlett, Droste, Hahn, Harrison, Kesarwani, Robinson, Taplin, Wengraf, and Arreguin.

Noes: None.

Absent: None.



Jesse Arreguin, Mayor

Attest: 

Mark Numainville, City Clerk

SETTLEMENT AGREEMENT AND RELEASE

This SETTLEMENT AGREEMENT AND RELEASE (“Settlement Agreement”) is made this 24th day of November, 2020, by and between Respondents and Defendants CITY OF BERKELEY and CITY OF BERKELEY CITY COUNCIL (collectively, “City”) and Petitioners and Plaintiffs 1444 FIFTH STREET, LLC and 1446 FIFTH STREET, LCC (“Petitioners”). The City and Petitioners are collectively referred to herein as the “Parties,” and are each individually referred to as a “Party.”

RECITALS

A. On January 10, 2019, the City of Berkeley Zoning Adjustments Board approved Administrative Use Permit #ZP2018-0172, which authorized the construction of a four-unit residential housing development at 1444 Fifth Street, Berkeley, California (the “Project”). The Zoning Adjustments Board’s decision was appealed to the Berkeley City Council.

B. On May 28, 2019, the Berkeley City Council held a public hearing, and following the hearing, affirmed the Zoning Adjustments Board’s approval of Administrative Use Permit #ZP2018-0172. In addition, the City Council imposed a new condition of approval requiring the Project to pay an inclusionary housing fee under Berkeley Municipal Code Chapter 23C.12 (the “Inclusionary Housing Ordinance”). The City Council imposed the condition of approval after determining that the Project and a previously approved, separately owned project on the adjacent property at 1446 Fifth Street constituted a single “residential housing project” under the Inclusionary Housing Ordinance. The condition required the Project to comply with the Inclusionary Housing Ordinance on behalf of both the Project and the previously approved project on the adjacent 1446 Fifth Street parcel.

C. On August 23, 2019, Petitioners filed an action in Alameda County Superior Court entitled *1444 Fifth Street et al. v. City of Berkeley et al.*, Civil Case No. RG19032434 (“Action”) alleging causes of action for writ of mandate, declaratory judgment, and injunctive relief, and seeking an order or judgment that the City must rescind the inclusionary housing fee applied to the construction of the Project.

D. On September 23, 2020, following a hearing on the petition for writ of mandate, the Court entered judgment in favor of Petitioners (“Judgment”), attached hereto as Exhibit 1. The Court ruled that (1) the Inclusionary Housing Ordinance applies to residential housing projects proposed on the same legal parcel, but cannot be lawfully applied to separate legal parcels where each individual parcel can accommodate no more than four dwelling units; and (2) the application of the Inclusionary Housing Ordinance to the Project violated Government Code section 65589.5(j)(2), which obligated the City to inform Petitioners within 30 days of the completeness of their respective applications of any “applicable plan, program, policy, ordinance, standard, requirement, or other similar provision” with which the Project was “inconsistent, not in compliance, or not in conformity.”

E. Further, the Court enjoined the City from applying the Inclusionary Housing Ordinance in a manner contrary to the Court's order, from taking any action inconsistent with the Order to preclude the issuance of revised conditions of approval for Administrative Use Permit #ZP2018-0172, and from taking any further unlawful actions to preclude the development of the Project.

F. Petitioners and/or their principals, agents, and/or affiliates, have submitted or contemplate submitting applications for the construction of separate housing development projects on three separate legal parcels located adjacent to the Project site, located at 770 Page Street, 776 Page Street, and 1442 Fifth Street (collectively, "Undeveloped Parcels").

G. The Parties wish to resolve their dispute regarding the subject matter of the Action, and regarding the application of the Inclusionary Housing Ordinance to development of the Undeveloped Parcels.

NOW, THEREFORE, in consideration of the mutual covenants, conditions and terms contained in this Agreement, and good and valuable consideration, and in full and final settlement of the Action and to compromise on the disputed claims contained therein, the Parties agree as follows:

AGREEMENT

1. Incorporation of Recitals. The above recitals are incorporated herein by reference.

2. Payment by the City. Within 15 days of the date of execution of this Settlement Agreement, the City shall pay to Petitioners attorneys' fees and costs of suit incurred in the amount of \$250,000. Payment shall be made to 1444 Fifth Street, LLC.

3. Compliance with Judgment. The City shall not require compliance with the Inclusionary Housing Ordinance for construction of dwelling units on any legal parcel that can accommodate no more than four dwelling units under development standards in the Berkeley Zoning Ordinance. The City agrees that under the Judgment, the condition of approval applying the Inclusionary Housing Ordinance in Administrative Use Permit #ZP2018-0172 has been held to be unlawful and unenforceable, but that otherwise Administrative Use Permit #ZP2018-0172 remains valid and in full force and effect for the approved housing project now under construction on 1444 Fifth Street. The City further agrees that as currently configured and under the City's Zoning Ordinance and current development standards, the City may not apply the Inclusionary Housing Ordinance or impose an inclusionary housing fee under that Ordinance on the construction of new dwelling units on any of the Undeveloped Parcels.

4. Review of Applications for Development of Undeveloped Parcels. The City will comply with applicable provisions of the Berkeley Zoning Ordinance and state law in reviewing any application to construct a housing development project on the Undeveloped Parcels. The City shall consider and process a housing development application on each separate legal lot independently of a housing development application on any other legal

lot under currently applicable provisions of the Berkeley Zoning Ordinance and state law. The City shall not apply the Berkeley Zoning Ordinance to consolidate an application for a housing development on an Undeveloped Legal Parcel with one or more applications on another Undeveloped Parcel, including but not limited to compliance with the Inclusionary Housing Ordinance or California Environmental Quality Act. The City will accordingly process each application for a housing development project on an Undeveloped Parcel as follows:

a. The City shall schedule a public hearing before the Zoning Adjustments Board and shall approve or disapprove each application to construct a housing development project on in a separate legal lot within 60 days of the date the application is determined to be complete, or within 60 days of the completion of any environmental review process required under the California Environmental Quality Act, whichever is later.

b. The City Council shall schedule a public hearing on any appeal of a determination made by the Zoning Adjustments Board under Paragraph 4.a within 60 days of the date of mailing of the Notice of Decision, and shall decide any appeal within 30 days of the date of the public hearing.

c. If a proposed housing development project on one or more of the Undeveloped Parcels complies with the applicable, objective general plan and zoning standards in effect at the time an application is deemed complete, the City shall not conduct more than five public hearings in connection with the approval of the project.

d. Any deadline set forth in this Paragraph 4 may be extended by mutual agreement of the project applicant and the City.

5. Housing Trust Fund Contributions by Petitioners. Notwithstanding the Judgment or any other provision of this Agreement, Petitioners agree to make a payment into the City of Berkeley Housing Trust Fund for each unit of housing constructed on any of the Undeveloped Parcels. Petitioners agree to pay \$15,000 per unit of housing, payable within thirty (30) days of the issuance of Certificate of Occupancy.

6. Waiver of Right to Appeal. Each Party hereby waives its right to appeal any order or judgment entered in the Action.

7. Mutual Release. Except as otherwise expressly set forth in this Settlement Agreement, Petitioners and the City hereby release and forever discharge each other, together with their agents, representatives, trustees, employees, officers, directors, partners, stockholders, attorneys, successors, assigns, heirs, personal representatives and executors, and all persons, firms, associations, co-partners, co-venturers, insurers, contractors, engineers, subcontractors, subsidiaries, parents, affiliates, or corporations connected therewith, and each of them from any and all claims, debts, liabilities, demands, obligations, costs, expenses, and attorneys' fees relating to the Action or the claims or causes of action set forth therein.

It is understood and agreed that this is a full and final mutual release of the Action. The Parties agree, as further consideration and inducement for this Agreement, to waive the provisions of California Civil Code §1542 which provides as follows:

“A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.”

This Release and Waiver only releases and waives claims arising from actions, failures to act, events and occurrences taking place on or before August 23, 2019, and does not release or waive any claims arising out of actions, failures to act, events or occurrences taking place after that date.

Notwithstanding any potentially inconsistent provisions in this Section, if the City does not comply fully with Sections 2 through 4 of this Agreement, Petitioners reserve the right to take any and all appropriate legal action to enforce the requirements of the Housing Accountability Act, Gov. Code § 65589.5, including but not limited to proceeding to litigate the claims brought in the Action and seeking an award of any and all attorney’s fees, costs of suits, and fines authorized under the Housing Accountability Act.

8. Cooperation on Additional Documents. Each of the Parties agrees to execute and deliver to each of the other Parties all additional documents, instruments, and agreements required to take such additional actions as are required to implement the terms and conditions of this Agreement.

9. Authorization to Execute. Each Party represents that the individual signing this Settlement Agreement is authorized to bind the Party on whose behalf he or she signs.

10. Entire Agreement. As to the matters set forth herein, this Settlement Agreement is the entire, integrated agreement and understanding of the Parties.

11. Waiver, Modification, and Amendment. No breach of this Settlement Agreement or of any provision herein can be waived except by an express written waiver executed by the Party waiving such breach. Waiver of any one breach shall not be deemed a waiver of any other breach of the same or other provisions of this Agreement. This Agreement may be amended, altered, modified, or otherwise changed in any respect or particular only by a writing duly executed by the Parties or their authorized representatives.

12. Notice. Any notice, demand, request, or other communication required or permitted to be given under this Agreement, (a) shall be made in writing; (b) shall be delivered by one of the following methods: (i) by personal delivery (with notice deemed given when delivered personally); (ii) by overnight courier (with notice deemed given upon written verification of receipt); or (iii) by certified or registered mail, return receipt requested (with notice deemed given upon verification of receipt); and (c) shall be addressed as provided in this Section or such other address as such Party may request by notice in accordance with the terms of this Section.

Notice to Petitioners shall be provided as follows:

1444 5th Street, LLC and 1446 5th Street, LLC
c/o WADLUND+ Design Studio
805 Jones Street
Berkeley, CA 94710

With copy to: Jennifer Hernandez
Holland & Knight LLP
50 California Street, Suite 2800
San Francisco, CA 94111
jennifer.hernandez@hklaw.com

Notice to the City shall be provided as follows:

City Attorney
City of Berkeley
2180 Milvia Street
Berkeley, CA 94704
attorney@cityofberkeley.info

13. Attorneys' Fees. In any proceeding at law or in equity to enforce any of the provisions or rights under this Settlement Agreement, the prevailing Party shall be entitled to recover from the unsuccessful Party all costs, expenses and reasonable attorneys' fees incurred in the enforcement proceeding by the prevailing Party (including, without limitation, such costs, expenses, and fees on any appeals) and if such prevailing Party shall recover judgment in any such action or proceeding, such costs, expenses, including those of expert witnesses, and attorneys' fees shall be included in and as part of the judgment.

14. Severability. If any part of this Settlement Agreement is found to be void, invalid or unenforceable, the remainder shall remain in full force and effect and shall be interpreted to carry out the Parties' intent with respect to their obligations and rights.

15. Drafting of Agreement. The Parties and/or their respective counsel have participated in the drafting and negotiation of this Settlement Agreement and, for all purposes, this Settlement Agreement shall be deemed to have been drafted jointly by all Parties.

16. Successors and Representatives. This Settlement Agreement shall be binding on and shall inure to the benefit of the successors and assigns of each Party.

17. Informed Consent. Each Party declares that prior to the execution of this Settlement Agreement, it and/or its duly authorized representatives have apprised themselves of sufficient relevant data, either through attorneys, experts or other sources of their own selection, in order to intelligently exercise their judgment in deciding whether to execute, and in deciding the contents of, this Settlement Agreement. Each Party states that

this Settlement Agreement is entered into freely and voluntarily, upon the advice and with the approval of its counsel.

18. Applicable Law. This Settlement Agreement shall be interpreted in accordance with California law, without reference to its choice of law provisions.

19. Execution in Counterparts. This Agreement may be executed in any number of counterparts, each of which may be deemed an original, and all of which together shall constitute a single instrument, notwithstanding that all the Parties are not signatories to the original or same counterpart. Photocopies or facsimiles shall constitute good evidence of such execution.

Dated: _____, 2020

1444 FIFTH STREET,LLC

By: _____
Name: Matthew Wadlund
Title: _____

Dated: _____, 2020

1446 FIFTH STREET, LLC

By: _____
Name: Sean Kenmore
Title: _____

Dated: _____, 2020

CITY OF BERKELEY

By: _____
Name: Farimah Brown
Title: City Attorney

APPROVED AS TO FORM:

Christopher D. Jensen
Assistant City Attorney

1 GREENFIRE LAW, PC
2 2550 Ninth Street, Suite 204B
3 Berkeley, CA 94710
4 Phone: (510) 900-9502
5 Fax: (510) 900-9502
6 rdoughty@greenfirelaw.com
7 jblome@greenfirelaw.com

8 *Attorneys for Petitioner Oceanview Neighborhood Council*

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Declaration of Susan Younger

*in support of the Oceanview Neighborhood Council's Appeal
of the Zoning Adjustment Board's approval of the 1444 Fifth Street Project
ZAB No. ZP-2018-0172*

I, Susan Younger, declare as follows:

1. I am a resident of Berkeley and a member of the Oceanview Neighborhood Council. I have personal knowledge of the facts declared herein, and will competently testify to them if called upon to do so.

2. I talked to Matthew Wadlund shortly after the Design Review Committee hearing on July 20, 2017, meeting where the Committee considered whether to approve Wadlund's design plans for 1446 Fifth Street. Several of the neighbors, including myself, had made statements against the design of this project. Matthew Wadlund told me that he could build five units on 1446 Fifth Street because it was large enough. Wadlund said we should be happy he's only building four houses. We did not know about the Inclusionary Housing Requirements at that point, but it bothered me that Wadlund acted as though he was doing me a favor for only putting in four houses when the law allowed five.

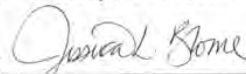
3. I live at 1452 Fifth Street which is adjacent to Fifth Street. Sometime in late summer or early fall of 2018, from the upstairs level of my home, I personally observed that construction workers had demolished a garden and play structure previously located on those lots and levelled the ground. The construction crew worked on the two lots at the same time.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on this 24th day of April 2019 at Berkeley, California.

/S/ Susan Younger
By: _____
SUSAN YOUNGER

I hereby attest that the law offices of Greenfire Law, PC have on file all holographic signatures corresponding to any signatures indicated by a conformed signature (*/S/*) within this e-filed document. Executed on this 29th day of April 2019 at Berkeley, California.

By: 

Jessica L. Blome
Senior Associate Attorney
Greenfire Law, PC

1 GREENFIRE LAW, PC
2 2550 Ninth Street, Suite 204B
3 Berkeley, CA 94710
4 Phone: (510) 900-9502
5 Fax: (510) 900-9502
6 rdoughty@greenfirelaw.com
7 jblome@greenfirelaw.com

8 *Attorneys for Petitioner Oceanview Neighborhood Council*

9
10 **Declaration of Niels Traynor**

11 *in support of the Oceanview Neighborhood Council's Appeal*
12 *of the Zoning Adjustment Board's approval of the 1444 Fifth Street Project*
13 **ZAB No. ZP-2018-0172**

14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I, Niels Traynor, declare as follows:

1. I am a resident of Berkeley and a member of the Oceanview Neighborhood Council. I have personal knowledge of the facts declared herein, and will competently testify to them if called upon to do so.

2. I live at 1419 Fifth Street, which is one block away from 1442, 1444, and 1446 Fifth Street. On Friday, April 26, 2019, I walked past the construction staging area for Matthew Wadlund's development of 1446 Fifth Street. Wadlund is using 1444 Fifth Street to stage construction of 1446 Fifth Street, storing construction materials and equipment as well as waste on 1444 Fifth Street, and placing the portable toilet and vehicles on 1444 Fifth Street. A true and accurate copy of a photograph depicting the activities happening on 1444 Fifth Street and 1446 Fifth Street as I personally observed on April 26, 2019, is attached hereto as Exhibit A. 1446 Fifth Street is on the left, and the empty lot on the right is 1444 Fifth Street.

3. At a Planning Commission hearing during which the Commission considered the merits of the Oceanview Neighborhood Council's appeal of the Zoning Adjustment Board's approval of Matthew Wadlund's development of 1446 Fifth Street, I heard Staff tell the Commission that it accepts a developer's description of project scope without question or further analysis.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on this 29th day of April, 2019 at Berkeley, California.

/S/ Niels Traynor

By: _____
NIELS TRAYNOR

I hereby attest that the law offices of Greenfire Law, PC have on file all holographic signatures corresponding to any signatures indicated by a conformed signature (/S/) within this e-filed document. Executed on this 29th day of April 2019 at Berkeley, California.

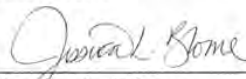
By:  _____
Jessica L. Blome
Senior Associate Attorney
Greenfire Law, PC

EXHIBIT A



1 GREENFIRE LAW, PC
2 2550 Ninth Street, Suite 204B
3 Berkeley, CA 94710
4 Phone: (510) 900-9502
5 Fax: (510) 900-9502
6 rdoughty@greenfirelaw.com
7 jblome@greenfirelaw.com

8 *Attorneys for Petitioner Oceanview Neighborhood Council*

9 **Declaration of Ariel Strauss**

10 *in support of the Oceanview Neighborhood Council's Appeal*
11 *of the Zoning Adjustment Board's approval of the 1444 Fifth Street Project*
12 *ZAB No. ZP-2018-0172*

13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I, Ariel Strauss, declare as follows:

1. I am an attorney licensed to practice in California. I have personal knowledge of the facts declared herein, and will competently testify to them if called upon to do so.

2. In April 2019, I conducted research through the websites for the Clerk-Recorder of Alameda County, California Secretary of State's Office, and City of Berkeley Planning and Zoning Department. The results of my research are reflected herein.

Matthew Wadlund Formed, Manages, and Controls the LLCs

3. On August 31, 2016, Matthew Wadlund registered the following limited liability companies with the California Secretary of State's Office:

770 Page Street, LLC
776 Page Street, LLC
1442 Fifth Street, LLC
1444 Fifth Street, LLC
1446 Fifth Street, LLC

These limited liability companies will be referred to collectively as the "LLCs" throughout this declaration.

4. True and correct copies of the formal "Articles of Organization," "Statements of Information," and "Statements of No Change" filed for the LLCs are attached hereto as **Exhibit A** and will be identified collectively as the "LLC Filings" throughout this Declaration.

5. According to the LLC Filings, Matthew Wadlund is the sole organizer, manager, agent for service of process, chief executive officer, and Managing Member for each LLC, and each LLC is located at 805 Jones Street, Berkeley, California 94701.

6. Aside from Matthew Wadlund, the only individual identified in the LLC Filings is Sean Kenmore, who filed "Statements of No Change" for each LLC in May 2018.

///

///

Matthew Wadlund's LLCs Simultaneously Acquired Five Lots

7. On October 31, 2016, just two months after Mathew Wadlund registered the LLCs, Denise Arriaza, Raul Ariaza, the Linda Lee Olson Trust, the Carl Edward Olson Trust, the Olson Family Trust, and the Linda Olson Trust transferred title of the following parcels to the identified LLC. A true and correct copy of the search results from the Clerk-Recorder of Alameda County's Grantor-Index is attached hereto as **Exhibit B**.

Table 1: Grantee Identification	
Accessor Parcel Number (APN)	New Property Owner/Grantee
APN 59-2325-3, 770 Page Street, Berkeley	770 Page Street, LLC
APN 59-2325-4, 776 Page Street, Berkeley	776 Page Street, LLC
APN 59-2325-5, 1442 Fifth Street, Berkeley	1442 Fifth Street, LLC
APN 59-2325-6, 1444 Fifth Street, Berkeley	1444 Fifth Street, LLC
APN 59-2325-7, 1446 Fifth Street Berkeley	1446 Fifth Street, LLC

Matthew Wadlund Investigated 1444 and 1446 Fifth Street as a Single Unit

8. A true and correct copy of the Parcel Map from the Alameda County Assessor's Office "Parcel Viewer" webpage depicting the intersection of Page and Fifth Streets in Berkeley, California is attached hereto as **Exhibit C**. The Parcel Map reflects that all five properties are adjacent to one another.

9. In December 2016, just two months after the LLCs' acquisitions identified in Table 1, Matthew Wadlund applied for approval from the City to develop 1446 Fifth Street into four Dwelling Units.

10. The application to develop 1446 Fifth Street submitted to the City by Matthew Wadlund included a "Geotechnical Investigation for 1444 & 1446 5th Street Development" dated December 16, 2016, authored by Peters & Ross, Geotechnical & GeoEnvironmental Consultants. A true and correct copy of the investigation is attached hereto as **Exhibit D**.

11. Matthew Wadlund's consultants, Peters & Ross treated 1444 and 1446 Fifth Street as a single "project site" with the two approximately 6,250 square foot lots described as one "relatively level rectangular lot with total maximum plan dimensions of about 100 feet by 125 feet [12,500 square feet]." (Exh. D, p. 1.)

12. At the time of the initial application for 1446 Fifth Street, Mathew Wadlund had planned to construct a total of eight Dwelling Units on 1444 and 1446 Fifth Street as reflected in a letter from Peters & Ross to Matthew Wadlund, dated October 11, 2018, in which Peters & Ross states "Our December 16, 2016, report was issued for both 1444 and 1446. We drilled on both lots and were aware that four units would be placed on each of them." A true and correct copy of the letter is Attached as **Exhibit E**.

Matthew Wadlund Considered All Lots as One Combined, Sequential Development

13. During a February 6, 2018, City Council meeting at which the Council considered whether to approve Matthew Wadlund's proposal to develop 1446 Fifth Street, Matthew Wadlund's agent repeatedly told the Council that all lots identified in Table 1 were owned by the same owner, this owner intends to develop the lots sequentially and this owner could consolidate all lots at will. An approximate transcript of applicable portions of the recording from the February 6, 2018, Council meeting is attached hereto as **Exhibit F**.

14. During the January 24, 2019, ZAB hearing to consider whether to approve Matthew Wadlund's plan to develop four Dwelling Units on 1444 Fifth Street, his representative confirmed that "the same owner owns that property [1444 Fifth Street] as well as 770 Page." An approximate transcript of applicable portions of the audio recording of the January 24, 2019, ZAB hearing for 1444 Fifth Street is attached hereto as **Exhibit G**.

Dimensions of the Four Lots Were Adjusted to Avoid Affordable Housing In-Lieu Fees

15. At the request of Matthew Wadlund, the City of Berkeley Approved a Lot Line Adjustment (LLA), which was recorded by Chicago Title Company in the Official Records of Alameda County on July 23, 2018 and identified as Instrument 2019144173. A true and correct copy of the LLA is attached hereto as **Exhibit H**.

16. The LLA altered the dimensions of the lots located at 770 Page Street, 1442 Fifth Street, 1444 Fifth Street and 1446 Fifth Street, as follows:

<i>Owner Entity Name</i>	<i>Address</i>	<i>Original Lot Size</i>	<i>Adjusted Lot Size</i>
770 Page Street, LLC	770 Page Street	5,126	5,532
1442 Fifth Street, LLC	1442 Fifth Street	3,750	4,358
1444 Fifth Street, LLC	1444 Fifth Street	6,251	5,744
1446 Fifth Street, LLC	1446 Fifth Street	6,251	5,744

17. Matthew Wadlund signed the authorization for the requested LLA as the “Managing Member” of the LLCs for each of the affected lots. As a result of the LLA, the dimensions of the 1444 Fifth Street and 1446 Fifth Street lots were each seven square feet smaller than 5,751 square feet. (See Exh. H.)

18. On January 24, 2019, Matthew Wadlund’s representative admitted that the purpose of the lot line adjustment is to reduce the size of the 1444 and 1446 Fifth Street lots specifically so that they would no longer be large enough to accommodate five units under the Zoning Code and thereby avoiding incurring the City’s Inclusionary Housing in-lieu fee. (See Exh. G.)

**Matthew Wadlund Proposed that Parking Amenities Cross Lot Lines
and be Shared Among the Lots**

19. On August 31, 2018, approximately one month after recording the LLA, Matthew Wadlund applied to the City for a permit to develop 1444 Fifth Street into four Dwelling Units. In his application, he proposed that the driveway for 1444 Fifth Street lot would straddle the north property line with the 1442 lot and also serve as a “shared access easement that would also provide access to the northern abutting parcels at 1442 Fifth Street and 770 Page Street”. A true and correct copy of the Staff Report to the Zoning Adjustments Board dated January 24, 2019, discussing the proposed easement is attached hereto as **Exhibit I** (see p.7). A true and correct copy of a drawing depicting the proposed easement provided by Matthew Wadlund in his October 16, 2018 supplemental application to the City for development of 1444 Fifth Street is attached as **Exhibit M**.

20. The LLA moved the north lot line of 1444 Fifth Street south by 8.11 feet (see Exh. A) and the shared access easement is proposed to be located almost entirely within land seceded by 1444 Fifth Street to 1442 Fifth Street. (see Ex. I, Fig. 2, p.3)

The Design and Layout of 1444 and 1446 Fifth Street Are Substantially Similar and Appear as a Combined Project

21. During the January 24, 2019, ZAB hearing, City staff declared that “this project [1444 Fifth Street] is very similar to an adjoining project to the south [1446 Fifth Street] . . . it's similar in pretty much every way.” (See Exh. G.)

22. The Staff Report of January 24, 2019, describes the 1444 and 1446 projects as being “similar” and “proposed by the same applicant”. (see Exh. I, p.6.)

23. I compared Matthew Wadlund’s proposed architectural and design plans for the four Dwelling Units he intends to construct at 1446 Fifth Street to the architectural and design plans for four Dwelling Units proposed at 1444 Fifth Street. The four structures proposed on each of the two adjacent lots are substantially similar in layout and exterior design. Excerpts from Matthew Wadlund’s application for Administrative Use Permit ZP2016-0247 (1446 Fifth Street) and Administrative Use Permit ZP2018-0172 (1444 Fifth Street) are attached as **Exhibit J**.

Additional Materials Reviewed

24. A true and correct copy of the Planning Commission’s Report regarding its recommendations for “Adoption of Inclusionary Zoning Ordinance,” dated June 10, 1986, is attached hereto as **Exhibit K**.

25. A true and correct copy of the Neighborhood Preservation Ordinance No. 4641-N.S., adopted on April 17, 1973, is attached hereto as **Exhibit L**.

Executed on this 29th day of April, 2019 at Berkeley, California.

By: _____

Ariel Strauss
Ariel Strauss
Attorney for Oceanview
Neighborhood Council

Exhibit A

LLC-1	Articles of Organization of a Limited Liability Company (LLC)
<p>To form a limited liability company in California, you can fill out this form, and submit for filing along with:</p> <ul style="list-style-type: none"> - A \$70 filing fee. - A separate, non-refundable \$15 service fee also must be included, if you drop off the completed form. <p>Important! LLCs in California may have to pay a minimum \$800 yearly tax to the California Franchise Tax Board. For more information, go to https://www.ftb.ca.gov.</p> <p>LLCs may not provide "professional services," as defined by California Corporations Code sections 13401(a) and 13401.3.</p> <p>Note: <i>Before submitting the completed form, you should consult with a private attorney for advice about your specific business needs.</i></p>	

201625210081

FILED
Secretary of State
State of California
AUG 31 2016

lcc

This Space For Office Use Only

For questions about this form, go to www.sos.ca.gov/business/be/filing-tips.htm.

LLC Name (List the proposed LLC name exactly as it is to appear on the records of the California Secretary of State.)

① 770 Page Street, LLC

Proposed LLC Name

The name must include: LLC, L.L.C., Limited Liability Company, Limited Liability Co., Ltd. Liability Co. or Ltd. Liability Company; and **may not** include: bank, trust, trustee, incorporated, inc., corporation, or corp., insurer, or insurance company. For general entity name requirements and restrictions, go to www.sos.ca.gov/business/be/name-availability.htm.

Purpose

② The purpose of the limited liability company is to engage in any lawful act or activity for which a limited liability company may be organized under the California Revised Uniform Limited Liability Company Act.

LLC Addresses

③ a. 805 Jones Street, Berkeley CA 94710

Initial Street Address of Designated Office in CA - Do not list a P.O. Box *City (no abbreviations)* *State* *Zip*

b. _____ _____

Initial Mailing Address of LLC, if different from 3a *City (no abbreviations)* *State* *Zip*

Service of Process (List a California resident or a California registered corporate agent that agrees to be your initial agent to accept service of process in case your LLC is sued. You may list any adult who lives in California. You may **not** list an LLC as the agent. Do not list an address if the agent is a California registered corporate agent as the address for service of process is already on file.)

④ a. Matthew Wadlund

Agent's Name

b. 805 Jones Street, Berkeley CA 94710

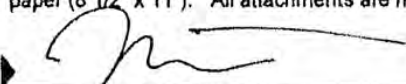
Agent's Street Address (if agent is not a corporation) - Do not list a P.O. Box *City (no abbreviations)* *State* *Zip*

Management (Check only one.)

⑤ The LLC will be managed by:

One Manager More Than One Manager All Limited Liability Company Member(s)

This form must be signed by each organizer. If you need more space, attach extra pages that are 1-sided and on standard letter-sized paper (8 1/2" x 11"). All attachments are made part of these articles of organization.



Organizer - Sign here

Matthew Wadlund

Print your name here

Make check/money order payable to: **Secretary of State**
Upon filing, we will return one (1) uncertified copy of your filed document for free, and will certify the copy upon request and payment of a \$5 certification fee.

By Mail
Secretary of State
Business Entities, P.O. Box 944228
Sacramento, CA 94244-2280

Drop-Off
Secretary of State
1500 11th Street., 3rd Floor
Sacramento, CA 95814



Secretary of State
Statement of No Change
(Limited Liability Company)

LLC-12NC

18-B91351

FILED

In the office of the Secretary of State
of the State of California

MAY 31, 2018

This Space For Office Use Only

IMPORTANT — Read instructions before completing this form. This form may be used only if a complete Statement of Information has been filed previously and there has been no change.

Filing Fee – \$20.00

Copy Fee – \$1.00;
Certification Fee - \$5.00 plus copy fee

1. Limited Liability Company Name (Enter the **exact** name of the LLC as it is recorded with the California Secretary of State. Note: If you registered in California using an alternate name, see instructions.)

770 PAGE STREET, LLC

2. 12-Digit Secretary of State File Number

201625210081

3. State, Foreign Country or Place of Organization (only if formed outside of California)

CALIFORNIA

4. No Change Statement (Do not alter the No Change Statement. If there has been any change, please complete a Statement of Information (Form LLC-12).)

There has been no change in any of the information contained in the previous complete Statement of Information filed with the California Secretary of State.

5. The information contained herein is true and correct.

05/31/2018

Date

Sean Kenmore

Type or Print Name of Person Completing the Form

Member

Title

Signature

Return Address (Optional) (For communication from the Secretary of State related to this document, or if purchasing a copy of the filed document, enter the name of a person or company and the mailing address. This information will become public when filed. (SEE INSTRUCTIONS BEFORE COMPLETING.)

Name:

Company:

Address:

City/State/Zip:

LLC-1 **Articles of Organization
of a Limited Liability Company (LLC)**

201625210087

To form a limited liability company in California, you can fill out this form, and submit for filing along with:

- A **\$70** filing fee.
- A separate, non-refundable **\$15** service fee also must be included, if you **drop off** the completed form.

Important! LLCs in California may have to pay a minimum \$800 yearly tax to the California Franchise Tax Board. For more information, go to <https://www.ftb.ca.gov>.

LLCs may not provide "professional services," as defined by California Corporations Code sections 13401(a) and 13401.3.

Note: Before submitting the completed form, you should consult with a private attorney for advice about your specific business needs.

FILED
Secretary of State
State of California
AUG 31 2016

lcc

This Space For Office Use Only

For questions about this form, go to www.sos.ca.gov/business/be/filing-tips.htm.

LLC Name (List the proposed LLC name exactly as it is to appear on the records of the California Secretary of State.)

① 776 Page Street, LLC

Proposed LLC Name

The name **must** include: LLC, L.L.C., Limited Liability Company, Limited Liability Co., Ltd. Liability Co. or Ltd. Liability Company; and **may not** include: bank, trust, trustee, incorporated, inc., corporation, or corp., insurer, or insurance company. For general entity name requirements and restrictions, go to www.sos.ca.gov/business/be/name-availability.htm.

Purpose

② The purpose of the limited liability company is to engage in any lawful act or activity for which a limited liability company may be organized under the California Revised Uniform Limited Liability Company Act.

LLC Addresses

③ a. 805 Jones Street, Berkeley CA 94710

Initial Street Address of Designated Office in CA - Do not list a P.O. Box *City (no abbreviations)* *State* *Zip*

b. _____
Initial Mailing Address of LLC, if different from 3a *City (no abbreviations)* *State* *Zip*

Service of Process (List a California resident or a California registered corporate agent that agrees to be your initial agent to accept service of process in case your LLC is sued. You may list any adult who lives in California. You may **not** list an LLC as the agent. **Do not** list an address if the agent is a California registered corporate agent as the address for service of process is already on file.)

④ a. Matthew Wadlund

Agent's Name

b. 805 Jones Street, Berkeley CA 94710

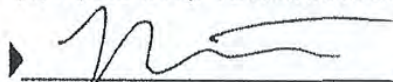
Agent's Street Address (if agent is not a corporation) - Do not list a P.O. Box *City (no abbreviations)* *State* *Zip*

Management (Check only one.)

⑤ The LLC will be managed by:

- One Manager More Than One Manager All Limited Liability Company Member(s)

This form must be signed by each organizer. If you need more space, attach extra pages that are 1-sided and on standard letter-sized paper (8 1/2" x 11"). All attachments are made part of these articles of organization.


Organizer - Sign here


Matthew Wadlund
Print your name here

Make check/money order payable to: **Secretary of State**
Upon filing, we will return one (1) uncertified copy of your filed document for free, and will certify the copy upon request and payment of a \$5 certification fee.

By Mail
Secretary of State
Business Entities, P.O. Box 944228
Sacramento, CA 94244-2280

Drop-Off
Secretary of State
1500 11th Street., 3rd Floor
Sacramento, CA 95814

16-793342

 Secretary of State Statement of Information (Limited Liability Company)	20	LLC-12
	<p>IMPORTANT — Read instructions before completing this form.</p> <p>Filing Fee - \$20.00</p> <p>Copy Fees – Face Page \$1.00 & .50 for each attachment page; Certification Fee - \$5.00</p>	

FILED
Secretary of State
State of California
DEC 12 2016

See Secretary of State's records for exact entity name.
This Space For Office Use Only

<p>1. Limited Liability Company Name 776 PAGE STREET</p>	
<p>2. 12-Digit Secretary of State File Number 2016 25210087</p>	<p>3. State or Place of Organization (only if formed outside of California)</p>

4. Business Addresses			
a. Street Address of Principal Office - Do not list a P.O. Box 805 JONES STREET	City (no abbreviations) BERKELEY	State CA	Zip Code 94710
b. Mailing Address of LLC, if different than item 4a	City (no abbreviations)	State	Zip Code
c. Street Address of California Office, if Item 4a is not in California - Do not list a P.O. Box	City (no abbreviations)	State CA	Zip Code

5. Manager(s) or Member(s) If no **managers** have been appointed or elected, provide the name and address of each **member**. At least one name and address must be listed. If the manager/member is an individual, complete Items 5a and 5c (leave Item 5b blank). If the manager/member is an entity, complete Items 5b and 5c (leave Item 5a blank). Note: The LLC cannot serve as its own manager or member. If the LLC has additional managers/members, enter the name(s) and addresses on Form LLC-12A (see Instructions).

a. First Name, if an individual - Do not complete Item 5b MATTHEW	Middle Name	Last Name WADLUND	Suffix
b. Entity Name - Do not complete Item 5a			
c. Address 805 JONES STREET	City (no abbreviations) BERKELEY	State CA	Zip Code 94710

6. Agent for Service of Process Item 6a and 6b: If the agent is an individual, the agent must reside in California and Item 6a and 6b must be completed with the agent's name and California address. Item 6c: If the agent is a California Registered Corporate Agent, a current agent registration certificate must be on file with the California Secretary of State and Item 6c must be completed (leave Item 6a-6b blank).

a. California Agent's First Name (if agent is not a corporation) MATTHEW	Middle Name	Last Name WADLUND	Suffix
b. Street Address (if agent is not a corporation) - Do not list a P.O. Box 805 JONES STREET	City (no abbreviations) BERKELEY	State CA	Zip Code 94710
c. California Registered Corporate Agent's Name (if agent is a corporation) - Do not complete item 6a or 6b			

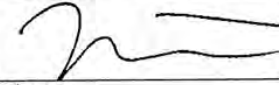
7. Type of Business

a. Describe the type of business or services of the Limited Liability Company REAL ESTATE

8. Chief Executive Officer, if elected or appointed

a. First Name MATTHEW	Middle Name	Last Name WADLUND	Suffix
b. Address 805 JONES STREET	City (no abbreviations) BERKELEY	State CA	Zip Code 94710

9. The information contained herein, including any attachments, is true and correct.

12/5/16	MATTHEW WADLUND	MANAGING MEMBER	
Date	Type or Print Name of Person Completing the Form	Title	Signature

Return Address (Optional) (For communication from the Secretary of State related to this document, or if purchasing a copy of the filed document enter the name of a person or company and the mailing address. This information will become public when filed. SEE INSTRUCTIONS BEFORE COMPLETING.)

Name:	[]
Company:	[]
Address:	[]
City/State/Zip:	[]



Secretary of State
Statement of No Change
(Limited Liability Company)

LLC-12NC

18-B91413

FILED

In the office of the Secretary of State
of the State of California

MAY 31, 2018

This Space For Office Use Only

IMPORTANT — **Read instructions** before completing this form. This form may be used only if a complete Statement of Information has been filed previously and there has been no change.

Filing Fee – \$20.00

Copy Fee – \$1.00;
Certification Fee - \$5.00 plus copy fee

1. Limited Liability Company Name (Enter the **exact** name of the LLC as it is recorded with the California Secretary of State. Note: If you registered in California using an alternate name, [see instructions](#).)

776 PAGE STREET, LLC

2. 12-Digit Secretary of State File Number

201625210087

3. State, Foreign Country or Place of Organization (only if formed outside of California)

CALIFORNIA

No Change Statement (Do not alter the No Change Statement. If there has been any change, please complete a Statement of Information (Form LLC-12).)

There has been no change in any of the information contained in the previous complete Statement of Information filed with the California Secretary of State.

5. The information contained herein is true and correct.

05/31/2018

Sean Kenmore

Member

Date

Type or Print Name of Person Completing the Form

Title

Signature

Return Address (Optional) (For communication from the Secretary of State related to this document, or if purchasing a copy of the filed document, enter the name of a person or company and the mailing address. This information will become public when filed. (SEE INSTRUCTIONS BEFORE COMPLETING.)

Name:

Company:

Address:

City/State/Zip:

201625210057

LLC-1	Articles of Organization of a Limited Liability Company (LLC)
<p>To form a limited liability company in California, you can fill out this form, and submit for filing along with:</p> <ul style="list-style-type: none"> - A \$70 filing fee. - A separate, non-refundable \$15 service fee also must be included, if you drop off the completed form. <p>Important! LLCs in California may have to pay a minimum \$800 yearly tax to the California Franchise Tax Board. For more information, go to https://www.ftb.ca.gov.</p> <p>LLCs may not provide "professional services," as defined by California Corporations Code sections 13401(a) and 13401.3.</p> <p>Note: <i>Before submitting the completed form, you should consult with a private attorney for advice about your specific business needs.</i></p>	

FILED
Secretary of State
State of California
AUG 31 2016

lcc

This Space For Office Use Only

For questions about this form, go to www.sos.ca.gov/business/be/filing-tips.htm.

LLC Name (List the proposed LLC name exactly as it is to appear on the records of the California Secretary of State.)

① 1442 Fifth Street, LLC
Proposed LLC Name

The name **must** include: LLC, L.L.C., Limited Liability Company, Limited Liability Co., Ltd. Liability Co. or Ltd. Liability Company; and **may not** include: bank, trust, trustee, incorporated, Inc., corporation, or corp., insurer, or insurance company. For general entity name requirements and restrictions, go to www.sos.ca.gov/business/be/name-availability.htm.

Purpose

② The purpose of the limited liability company is to engage in any lawful act or activity for which a limited liability company may be organized under the California Revised Uniform Limited Liability Company Act.

LLC Addresses

③ a. 805 Jones Street, Berkeley CA 94710
Initial Street Address of Designated Office in CA - Do not list a P.O. Box *City (no abbreviations)* *State* *Zip*

b. _____
Initial Mailing Address of LLC, if different from 3a *City (no abbreviations)* *State* *Zip*

Service of Process (List a California resident or a California registered corporate agent that agrees to be your initial agent to accept service of process in case your LLC is sued. You may list any adult who lives in California. You may **not** list an LLC as the agent. Do not list an address if the agent is a California registered corporate agent as the address for service of process is already on file.)

④ a. Matthew Wadlund
Agent's Name

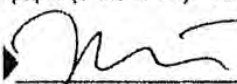
b. 805 Jones Street, Berkeley CA 94710
Agent's Street Address (if agent is not a corporation) - Do not list a P.O. Box *City (no abbreviations)* *State* *Zip*

Management (Check only one.)

⑤ The LLC will be managed by:

One Manager More Than One Manager All Limited Liability Company Member(s)

This form must be signed by each organizer. If you need more space, attach extra pages that are 1-sided and on standard letter-sized paper (8 1/2" x 11"). All attachments are made part of these articles of organization.



Organizer - Sign here


Matthew Wadlund

Print your name here

<p>Make check/money order payable to: Secretary of State</p> <p>Upon filing, we will return one (1) uncertified copy of your filed document for free, and will certify the copy upon request and payment of a \$5 certification fee.</p>	<p>By Mail</p> <p>Secretary of State Business Entities, P.O. Box 944228 Sacramento, CA 94244-2280</p>	<p>Drop-Off</p> <p>Secretary of State 1500 11th Street., 3rd Floor Sacramento, CA 95814</p>
---	--	--

16-793344

FILED
Secretary of State
State of California
DEC 12 2016

	Secretary of State Statement of Information (Limited Liability Company)	20	LLC-12
	IMPORTANT — Read instructions before completing this form. Filing Fee - \$20.00 Copy Fees – Face Page \$1.00 & .50 for each attachment page; Certification Fee - \$5.00		

See Secretary of State's records for exact entity name.

This Space For Office Use Only

1. Limited Liability Company Name		1442 FIFTH STREET
2. 12-Digit Secretary of State File Number	2016 2521005A	
3. State or Place of Organization (only if formed outside of California)		

4. Business Addresses			
a. Street Address of Principal Office - Do not list a P.O. Box	City (no abbreviations)	State	Zip Code
805 JONES STREET	BERKELEY	CA	94710
b. Mailing Address of LLC, if different than item 4a	City (no abbreviations)	State	Zip Code
c. Street Address of California Office, if Item 4a is not in California - Do not list a P.O. Box	City (no abbreviations)	State	Zip Code
		CA	

5. Manager(s) or Member(s) If no **managers** have been appointed or elected, provide the name and address of each **member**. At least one name **and** address must be listed. If the manager/member is an individual, complete Items 5a and 5c (leave Item 5b blank). If the manager/member is an entity, complete Items 5b and 5c (leave Item 5a blank). Note: The LLC cannot serve as its own manager or member. If the LLC has additional managers/members, enter the name(s) and addresses on Form LLC-12A (see instructions).

a. First Name, if an individual - Do not complete Item 5b	Middle Name	Last Name	Suffix
MATTHEW		WADLUND	
b. Entity Name - Do not complete Item 5a			
c. Address			
805 JONES STREET	BERKELEY	CA	94710

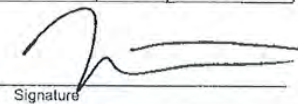
6. Agent for Service of Process Item 6a and 6b: If the agent is an individual, the agent must reside in California and Item 6a and 6b must be completed with the agent's name and California address. Item 6c: If the agent is a California Registered Corporate Agent, a current agent registration certificate must be on file with the California Secretary of State and Item 6c must be completed (leave Item 6a-6b blank).

a. California Agent's First Name (if agent is not a corporation)	Middle Name	Last Name	Suffix
MATTHEW		WADLUND	
b. Street Address (if agent is not a corporation) - Do not list a P.O. Box	City (no abbreviations)	State	Zip Code
805 JONES STREET	BERKELEY	CA	94710
c. California Registered Corporate Agent's Name (if agent is a corporation) - Do not complete item 6a or 6b			

7. Type of Business			
a. Describe the type of business or services of the Limited Liability Company			
REAL ESTATE			

8. Chief Executive Officer, if elected or appointed			
a. First Name	Middle Name	Last Name	Suffix
MATTHEW		WADLUND	
b. Address	City (no abbreviations)	State	Zip Code
805 JONES STREET	BERKELEY	CA	94710

9. The information contained herein, including any attachments, is true and correct.

12/5/16	MATTHEW WADLUND	MANAGING MEMBER	
Date	Type or Print Name of Person Completing the Form	Title	Signature

Return Address (Optional) (For communication from the Secretary of State related to this document, or if purchasing a copy of the filed document enter the name of a person or company and the mailing address. This information will become public when filed. SEE INSTRUCTIONS BEFORE COMPLETING.)	
Name:	[]
Company:	
Address:	
City/State/Zip:	[]



Secretary of State
Statement of No Change
(Limited Liability Company)

LLC-12NC

18-B91406

FILED

In the office of the Secretary of State
of the State of California

MAY 31, 2018

This Space For Office Use Only

IMPORTANT — **Read instructions** before completing this form. This form may be used only if a complete Statement of Information has been filed previously and there has been no change.

Filing Fee – \$20.00

Copy Fee – \$1.00;
Certification Fee - \$5.00 plus copy fee

1. Limited Liability Company Name (Enter the **exact** name of the LLC as it is recorded with the California Secretary of State. Note: If you registered in California using an alternate name, see instructions.)

1442 FIFTH STREET, LLC

2. 12-Digit Secretary of State File Number

201625210057

3. State, Foreign Country or Place of Organization (only if formed outside of California)

CALIFORNIA

4. No Change Statement (Do not alter the No Change Statement. If there has been any change, please complete a Statement of Information (Form LLC-12).)

There has been no change in any of the information contained in the previous complete Statement of Information filed with the California Secretary of State.

5. The information contained herein is true and correct.

05/31/2018

Date

Sean Kenmore

Type or Print Name of Person Completing the Form

Member

Title

Signature

Return Address (Optional) (For communication from the Secretary of State related to this document, or if purchasing a copy of the filed document, enter the name of a person or company and the mailing address. This information will become public when filed. (SEE INSTRUCTIONS BEFORE COMPLETING.)

Name:

Company:

Address:

City/State/Zip:

201625210418

LLC-1	Articles of Organization of a Limited Liability Company (LLC)
<p>To form a limited liability company in California, you can fill out this form, and submit for filing along with:</p> <ul style="list-style-type: none"> - A \$70 filing fee. - A separate, non-refundable \$15 service fee also must be included, if you drop off the completed form. <p>Important! LLCs in California may have to pay a minimum \$800 yearly tax to the California Franchise Tax Board. For more information, go to https://www.ftb.ca.gov.</p> <p>LLCs may not provide "professional services," as defined by California Corporations Code sections 13401(a) and 13401.3.</p> <p>Note: <i>Before submitting the completed form, you should consult with a private attorney for advice about your specific business needs.</i></p>	

FILED
Secretary of State
State of California
AUG 31 2016



1 cc

This Space For Office Use Only

For questions about this form, go to www.sos.ca.gov/business/be/filing-tips.htm.

LLC Name (List the proposed LLC name exactly as it is to appear on the records of the California Secretary of State.)

① 1444 Fifth Street, LLC

Proposed LLC Name

The name must include: LLC, L.L.C., Limited Liability Company, Limited Liability Co., Ltd. Liability Co. or Ltd. Liability Company; and may not include: bank, trust, trustee, incorporated, inc., corporation, or corp., insurer, or insurance company. For general entity name requirements and restrictions, go to www.sos.ca.gov/business/be/name-availability.htm.

Purpose

② The purpose of the limited liability company is to engage in any lawful act or activity for which a limited liability company may be organized under the California Revised Uniform Limited Liability Company Act.

LLC Addresses

③ a. 805 Jones Street, Berkeley

CA 94710

Initial Street Address of Designated Office in CA - Do not list a P.O. Box

City (no abbreviations)

State

Zip

b.

Initial Mailing Address of LLC, if different from 3a

City (no abbreviations)

State

Zip

Service of Process (List a California resident or a California registered corporate agent that agrees to be your initial agent to accept service of process in case your LLC is sued. You may list any adult who lives in California. You may not list an LLC as the agent. Do not list an address if the agent is a California registered corporate agent as the address for service of process is already on file.)

④ a. Matthew Wadlund

Agent's Name

b. 805 Jones Street, Berkeley

CA 94710

Agent's Street Address (if agent is not a corporation) - Do not list a P.O. Box

City (no abbreviations)

State

Zip

Management (Check only one.)


⑤ The LLC will be managed by:

One Manager

More Than One Manager

All Limited Liability Company Member(s)

This form must be signed by each organizer. If you need more space, attach extra pages that are 1-sided and on standard letter-sized paper (8 1/2" x 11"). All attachments are made part of these articles of organization.



Organizer - Sign here

Matthew Wadlund

Print your name here


Make check/money order payable to: **Secretary of State**
Upon filing, we will return one (1) uncertified copy of your filed document for free, and will certify the copy upon request and payment of a \$5 certification fee.

By Mail
Secretary of State
Business Entities, P.O. Box 944228
Sacramento, CA 94244-2280

Drop-Off
Secretary of State
1500 11th Street., 3rd Floor
Sacramento, CA 95814

10-153343

FILED
Secretary of State
State of California
DEC 12 2016

	Secretary of State Statement of Information (Limited Liability Company)	20	LLC-12
	IMPORTANT — Read instructions before completing this form.		

Filing Fee - \$20.00
 Copy Fees – Face Page \$1.00 & .50 for each attachment page;
 Certification Fee - \$5.00

See Secretary of State's records for exact entity name.
 This Space For Office Use Only

1. Limited Liability Company Name 1444 FIFTH STREET	
2. 12-Digit Secretary of State File Number 201625210418	3. State or Place of Organization (only if formed outside of California)

4. Business Addresses			
a. Street Address of Principal Office - Do not list a P.O. Box 805 JONES STREET	City (no abbreviations) BERKELEY	State CA	Zip Code 94710
b. Mailing Address of LLC, if different than item 4a	City (no abbreviations)	State	Zip Code
c. Street Address of California Office, if Item 4a is not in California - Do not list a P.O. Box	City (no abbreviations)	State CA	Zip Code

5. Manager(s) or Member(s) If no managers have been appointed or elected, provide the name and address of each member. At least one name and address must be listed. If the manager/member is an individual, complete Items 5a and 5c (leave Item 5b blank). If the manager/member is an entity, complete Items 5b and 5c (leave Item 5a blank). Note: The LLC cannot serve as its own manager or member. If the LLC has additional managers/members, enter the name(s) and addresses on Form LLC-12A (see instructions).

a. First Name, if an individual - Do not complete Item 5b MATTHEW	Middle Name	Last Name WADLUND	Suffix
b. Entity Name - Do not complete Item 5a			
c. Address 805 JONES STREET	City (no abbreviations) BERKELEY	State CA	Zip Code 94710


6. Agent for Service of Process Item 6a and 6b: If the agent is an individual, the agent must reside in California and Item 6a and 6b must be completed with the agent's name and California address. Item 6c: If the agent is a California Registered Corporate Agent, a current agent registration certificate must be on file with the California Secretary of State and Item 6c must be completed (leave Item 6a-6b blank).

a. California Agent's First Name (if agent is not a corporation) MATTHEW	Middle Name	Last Name WADLUND	Suffix
b. Street Address (if agent is not a corporation) - Do not list a P.O. Box 805 JONES STREET	City (no abbreviations) BERKELEY	State CA	Zip Code 94710
c. California Registered Corporate Agent's Name (if agent is a corporation) - Do not complete item 6a or 6b			

7. Type of Business	
a. Describe the type of business or services of the Limited Liability Company REAL ESTATE	

8. Chief Executive Officer, if elected or appointed			
a. First Name MATTHEW	Middle Name	Last Name WADLUND	Suffix
b. Address 805 JONES STREET	City (no abbreviations) BERKELEY	State CA	Zip Code 94710

9. The information contained herein, including any attachments, is true and correct.

<u>12/5/16</u>	<u>MATTHEW WADLUND</u>	<u>MANAGING MEMBER</u>	
Date	Type or Print Name of Person Completing the Form	Title	Signature

Return Address (Optional) (For communication from the Secretary of State related to this document, or if purchasing a copy of the filed document enter the name of a person or company and the mailing address. This information will become public when filed. SEE INSTRUCTIONS BEFORE COMPLETING.)

Name: []
 Company: []
 Address: []
 City/State/Zip: []



Secretary of State
Statement of No Change
(Limited Liability Company)

LLC-12NC

18-B91396

FILED

In the office of the Secretary of State
of the State of California

MAY 31, 2018

This Space For Office Use Only

IMPORTANT — Read instructions before completing this form. This form may be used only if a complete Statement of Information has been filed previously and there has been no change.

Filing Fee – \$20.00

Copy Fee – \$1.00;
Certification Fee - \$5.00 plus copy fee

1. Limited Liability Company Name (Enter the **exact** name of the LLC as it is recorded with the California Secretary of State. Note: If you registered in California using an alternate name, [see instructions.](#))

1444 FIFTH STREET, LLC

2. 12-Digit Secretary of State File Number

201625210418

3. State, Foreign Country or Place of Organization (only if formed outside of California)

CALIFORNIA

No Change Statement (Do not alter the No Change Statement. If there has been any change, please complete a Statement of Information (Form LLC-12).)

There has been no change in any of the information contained in the previous complete Statement of Information filed with the California Secretary of State.

5. The information contained herein is true and correct.

05/31/2018

Sean Kenmore

Member

Date

Type or Print Name of Person Completing the Form

Title

Signature

Return Address (Optional) (For communication from the Secretary of State related to this document, or if purchasing a copy of the filed document, enter the name of a person or company and the mailing address. This information will become public when filed. [\(SEE INSTRUCTIONS BEFORE COMPLETING.\)](#))

Name:

Company:

Address:

City/State/Zip:

201625210414

LLC-1 **Articles of Organization
of a Limited Liability Company (LLC)**

To form a limited liability company in California, you can fill out this form, and submit for filing along with:

- A **\$70** filing fee.
- A separate, non-refundable **\$15** service fee also must be included, if you **drop off** the completed form.

Important! LLCs in California may have to pay a minimum \$800 yearly tax to the California Franchise Tax Board. For more information, go to <https://www.ftb.ca.gov>.

LLCs may not provide "professional services," as defined by California Corporations Code sections 13401(a) and 13401.3.

Note: *Before submitting the completed form*, you should consult with a private attorney for advice about your specific business needs.

FILED
Secretary of State
State of California

AUG 31 2016

lcc

This Space For Office Use Only

For questions about this form, go to www.sos.ca.gov/business/be/filing-tips.htm.

LLC Name (List the proposed LLC name exactly as it is to appear on the records of the California Secretary of State.)

① 1446 Fifth Street, LLC

Proposed LLC Name

The name must include: LLC, L.L.C., Limited Liability Company, Limited Liability Co., Ltd. Liability Co. or Ltd. Liability Company; and may not include: bank, trust, trustee, incorporated, inc., corporation, or corp., insurer, or insurance company. For general entity name requirements and restrictions, go to www.sos.ca.gov/business/be/name-availability.htm.

Purpose

② The purpose of the limited liability company is to engage in any lawful act or activity for which a limited liability company may be organized under the California Revised Uniform Limited Liability Company Act.

LLC Addresses

③ a. 805 Jones Street, Berkeley

CA 94710

Initial Street Address of Designated Office in CA - Do not list a P.O. Box City (no abbreviations) State Zip

b.

Initial Mailing Address of LLC, if different from 3a City (no abbreviations) State Zip

Service of Process (List a California resident or a California registered corporate agent that agrees to be your initial agent to accept service of process in case your LLC is sued. You may list any adult who lives in California. You may not list an LLC as the agent. Do not list an address if the agent is a California registered corporate agent as the address for service of process is already on file.)

④ a. Matthew Wadlund

Agent's Name

b. 805 Jones Street, Berkeley

CA 94710

Agent's Street Address (if agent is not a corporation) - Do not list a P.O. Box City (no abbreviations) State Zip

Management (Check only one.)

⑤ The LLC will be managed by:



One Manager

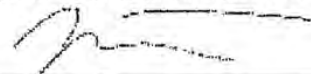


More Than One Manager



All Limited Liability Company Member(s)

This form must be signed by each organizer. If you need more space, attach extra pages that are 1-sided and on standard letter-sized paper (8 1/2" x 11"). All attachments are made part of these articles of organization.


Organizer - Sign here

Matthew Wadlund

Print your name here


Make check/money order payable to: **Secretary of State**
Upon filing, we will return one (1) uncertified copy of your filed document for free, and will certify the copy upon request and payment of a \$5 certification fee.

By Mail
Secretary of State
Business Entities, P.O. Box 944228
Sacramento, CA 94244-2280

Drop-Off
Secretary of State
1500 11th Street., 3rd Floor
Sacramento, CA 95814

16-793346

FILED
Secretary of State
State of California
DEC 12 2016

	Secretary of State Statement of Information (Limited Liability Company)	20	LLC-12
	IMPORTANT — Read instructions before completing this form. Filing Fee - \$20.00 Copy Fees – Face Page \$1.00 & .50 for each attachment page; Certification Fee - \$5.00		

See Secretary of State's records for exact entity name.

This Space For Office Use Only

1. Limited Liability Company Name 1446 FIFTH STREET	
2. 12-Digit Secretary of State File Number 201625210414	3. State or Place of Organization (only if formed outside of California)

4. Business Addresses			
a. Street Address of Principal Office - Do not list a P.O. Box 805 JONES STREET	City (no abbreviations) BERKELEY	State CA	Zip Code 94710
b. Mailing Address of LLC, if different than item 4a	City (no abbreviations)	State	Zip Code
c. Street Address of California Office, if Item 4a is not in California - Do not list a P.O. Box	City (no abbreviations)	State CA	Zip Code

5. Manager(s) or Member(s) If no managers have been appointed or elected, provide the name and address of each member. At least one name and address must be listed. If the manager/member is an individual, complete Items 5a and 5c (leave Item 5b blank). If the manager/member is an entity, complete Items 5b and 5c (leave Item 5a blank). Note: The LLC cannot serve as its own manager or member. If the LLC has additional managers/members, enter the name(s) and addresses on Form LLC-12A (see instructions).

a. First Name, if an individual - Do not complete Item 5b MATTHEW	Middle Name	Last Name WADLUND	Suffix
b. Entity Name - Do not complete Item 5a			
c. Address 805 JONES STREET	City (no abbreviations) BERKELEY	State CA	Zip Code 94710

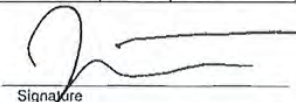
6. Agent for Service of Process Item 6a and 6b: If the agent is an individual, the agent must reside in California and Item 6a and 6b must be completed with the agent's name and California address. Item 6c: If the agent is a California Registered Corporate Agent, a current agent registration certificate must be on file with the California Secretary of State and Item 6c must be completed (leave Item 6a-6b blank).

a. California Agent's First Name (if agent is not a corporation) MATTHEW	Middle Name	Last Name WADLUND	Suffix
b. Street Address (if agent is not a corporation) - Do not list a P.O. Box 805 JONES STREET	City (no abbreviations) BERKELEY	State CA	Zip Code 94710
c. California Registered Corporate Agent's Name (if agent is a corporation) - Do not complete item 6a or 6b			


7. Type of Business
a. Describe the type of business or services of the Limited Liability Company REAL ESTATE

8. Chief Executive Officer, if elected or appointed			
a. First Name MATTHEW	Middle Name	Last Name WADLUND	Suffix
b. Address 805 JONES STREET	City (no abbreviations) BERKELEY	State CA	Zip Code 94710

9. The information contained herein, including any attachments, is true and correct.

12/5/16	MATTHEW WADLUND	MANAGING MEMBER	
Date	Type or Print Name of Person Completing the Form	Title	Signature

Return Address (Optional) (For communication from the Secretary of State related to this document, or if purchasing a copy of the filed document enter the name of a person or company and the mailing address. This information will become public when filed. SEE INSTRUCTIONS BEFORE COMPLETING.)	
Name:	[]
Company:	[]
Address:	[]
City/State/Zip:	[]

 Secretary of State Statement of No Change (Limited Liability Company)	LLC-12NC
	<p>IMPORTANT — Read instructions before completing this form. This form may be used only if a complete Statement of Information has been filed previously and there has been no change.</p> <p>Filing Fee – \$20.00</p> <p>Copy Fee – \$1.00; Certification Fee - \$5.00 plus copy fee</p>

18-B91353
FILED

In the office of the Secretary of State
of the State of California

MAY 31, 2018

This Space For Office Use Only

1. Limited Liability Company Name (Enter the **exact** name of the LLC as it is recorded with the California Secretary of State. Note: If you registered in California using an alternate name, **see instructions**.)

1446 FIFTH STREET, LLC

<p>2. 12-Digit Secretary of State File Number</p> <p style="text-align: center;">201625210414</p>	<p>3. State, Foreign Country or Place of Organization (only if formed outside of California)</p> <p style="text-align: center;">CALIFORNIA</p>
--	---

4. No Change Statement (Do not alter the No Change Statement. If there has been any change, please complete a Statement of Information (Form LLC-12).)

There has been no change in any of the information contained in the previous complete Statement of Information filed with the California Secretary of State.

5. The information contained herein is true and correct.

05/31/2018	Sean Kenmore	Member	
<small>Date</small>	<small>Type or Print Name of Person Completing the Form</small>	<small>Title</small>	<small>Signature</small>

Return Address (Optional) (For communication from the Secretary of State related to this document, or if purchasing a copy of the filed document, enter the name of a person or company and the mailing address. This information will become public when filed. (SEE INSTRUCTIONS BEFORE COMPLETING.)

Name: []

Company:

Address:

City/State/Zip: []

Exhibit B



Alameda County, California Clerk-Recorder Web Access

Welcome Visitor.

[View Basket](#)

Welcome	FBN	Marriage	Official Public Records	FAQ
Document Access				

[Click here for Search Instructions](#)

Criteria: Party Name Begins With ARRIAZA Name Type is Grantor Document Type is DEED
Showing Records 1 through 25 (34 records found as of 04/15/2019 07:48:43 AM count again)

Other Options
[New Search](#)
[Refine Search](#)

Sort By:

[Page 1](#)

#	<input type="checkbox"/>	Instrument # Book-Page	Date Filed	Document Type	Name Associated Name	Index Status
1	<input type="checkbox"/>	2005117863	03/25/2005	DEED	[R] ARRIAZA DENISE (+) [E] HEINZ STREET LOFTS LLC	Perm
2	<input type="checkbox"/>	2005394246	09/14/2005	DEED	[R] ARRIAZA DENISE (+) [E] SAN PABLO AVENUE 2747 LLC	Perm
3	<input type="checkbox"/>	2008092236	03/14/2008	DEED	[R] ARRIAZA DENISE (+) [E] OLSON CAROL EDWARD TR (+)	Perm
4	<input type="checkbox"/>	2008092237	03/14/2008	DEED	[R] ARRIAZA DENISE (+) [E] OLSON CARL E (+)	Perm
5	<input type="checkbox"/>	2016068831	03/22/2016	DEED	[R] ARRIAZA DENISE (+) [E] 1309 MADISON LLC	Perm
6	<input type="checkbox"/>	2016177172	07/14/2016	DEED	[R] ARRIAZA DENISE (+) [E] BERNSTEIN EVE TR (+)	Perm
7	<input checked="" type="checkbox"/>	2016284282	10/31/2016	DEED	[R] ARRIAZA DENISE (+) [E] 770 PAGE STREET LLC	Perm
8	<input checked="" type="checkbox"/>	2016284283	10/31/2016	DEED	[R] ARRIAZA DENISE (+) [E] 776 PAGE STREET LLC	Perm
9	<input checked="" type="checkbox"/>	2016284284	10/31/2016	DEED	[R] ARRIAZA DENISE (+)	Perm

						[E] 1442 FIFTH STREET LLC
10	<input checked="" type="checkbox"/>	2016284285	10/31/2016	DEED	[R] ARRIAZA DENISE (+) [E] 1444 FIFTH STREET LLC	Perm
11	<input checked="" type="checkbox"/>	2016284286	10/31/2016	DEED	[R] ARRIAZA DENISE (+) [E] 1446 FIFTH STREET LLC	Perm
12	<input checked="" type="checkbox"/>	2016284287	10/31/2016	DEED	[R] ARRIAZA DENISE (+) [E] 1435 FIFTH STREET LLC	Perm
13	<input type="checkbox"/>	2017111912	05/22/2017	DEED	[R] ARRIAZA DENISE (+) [E] BEAM DEVELOPMENT LLC	Perm
14	<input type="checkbox"/>	93201542 0-0	06/09/1993	DEED	[R] ARRIAZA DENISE MARIE [E] ARRIAZA RAUL	Perm
15	<input type="checkbox"/>	99177881 0-0	05/06/1999	DEED	[R] ARRIAZA DILCIA [E] ARRIAZA GUSTAVO	Perm
16	<input type="checkbox"/>	2002008020 0-0	01/08/2002	DEED	[R] ARRIAZA DILCIA [E] ARRIAZA GUSTAVO	Perm
17	<input type="checkbox"/>	2008086058	03/10/2008	DEED	[R] ARRIAZA GILBERTO (+) [E] ARRIAZA GILBERTO TR (+)	Perm
18	<input type="checkbox"/>	2008086059	03/10/2008	DEED	[R] ARRIAZA GILBERTO (+) [E] ARRIAZA GILBERTO TR (+)	Perm
19	<input type="checkbox"/>	2007165802	04/27/2007	DEED	[R] ARRIAZA GUSTAVO JR [E] ARRIAZA GUSTAVO JR (+)	Perm
20	<input type="checkbox"/>	2006269995	07/12/2006	DEED	[R] ARRIAZA JULIO C [E] ATANACIO ANNIE HOPE	Perm
21	<input type="checkbox"/>	93201543 0-0	06/09/1993	DEED	[R] ARRIAZA RAUL (+) [E] CITY HAYWARD	Perm
22	<input type="checkbox"/>	2005117863	03/25/2005	DEED	[R] ARRIAZA RAUL (+) [E] HEINZ STREET LOFTS LLC	Perm
23	<input type="checkbox"/>	2005394246	09/14/2005	DEED	[R] ARRIAZA RAUL (+) [E] SAN PABLO AVENUE 2747 LLC	Perm

24	<input type="checkbox"/>	2008092236	03/14/2008	DEED	[R] ARRIAZA RAUL (+) [E] OLSON CAROL EDWARD TR (+)	Perm
25	<input type="checkbox"/>	2008092237	03/14/2008	DEED	[R] ARRIAZA RAUL (+) [E] OLSON CARL E (+)	Perm

Other Options
[New Search](#)
[Refine Search](#)

Sort By:

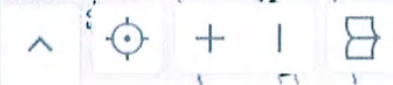
Exhibit C



Parcel Viewer
Alameda County Assessor's Office



I want to...



Alameda C...

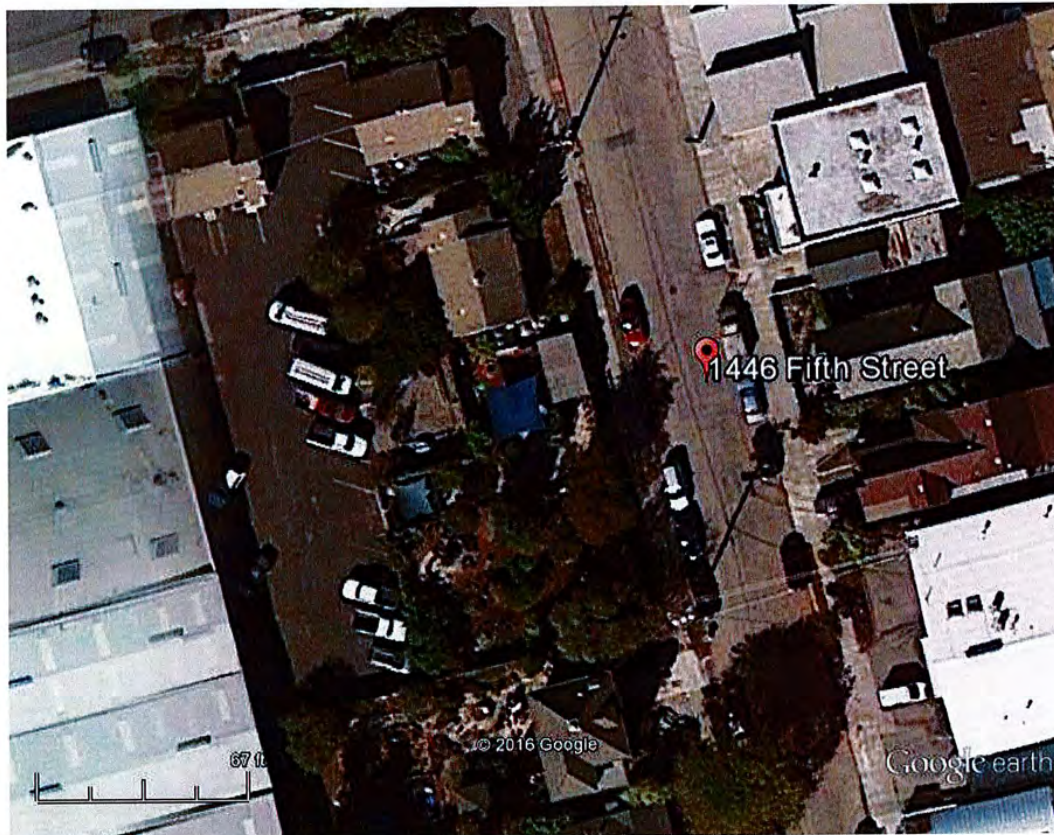


Exhibit D

Peters & Ross

Geotechnical & Geoenvironmental Consultants

Geotechnical Investigation for 1444 & 1446 5th Street Development



1444 & 1446 5th Street, Berkeley, California

Peters & Ross
Geotechnical & Geoenvironmental
Consultants

December 16, 2016
Project No. 16183.001

Mr. Matthew Wadlund
Wadlund + Design Studio
805 Jones Street
Berkeley, CA 94710

Geotechnical Investigation
1444 and 1446 5th Street, Berkeley, California

Dear Mr. Wadlund:

In accordance with your authorization, Peters & Ross has completed a geotechnical investigation for the above referenced project. The accompanying report presents the results of our field investigation, laboratory testing, and engineering analyses. Based on this information, it is Peters & Ross' opinion that the site is suitable for the proposed improvements.

Peters & Ross should also be retained:

- to review geotechnical aspects of project plans and specifications,
- to provide supplemental recommendations should significant changes in the planned improvements be made, and
- to provide geotechnical engineering observation and testing services during construction, in order to check that the recommendations presented in this report are properly implemented into the completed project.

We appreciate the opportunity to provide geotechnical engineering services to you. If you have any questions, please call.

Sincerely,

Peter K. Mundy, P.E., G.E.
Geotechnical Engineer 2217



1444 and 1446 5th Street
Project No. 16183.001

December 16, 2016
Page 1 of 10

INTRODUCTION

This report presents the results of a geotechnical investigation performed by Peters & Ross for the planned mixed use development to be constructed at 1444 and 1446 5th Street in Berkeley, California. The location of the project is shown on the Site Vicinity Map, Figure 1. The ground surface topography near the site is shown on Figure 2.

Project Description

The project site is a relatively level rectangular lot with total maximum plan dimensions of about 100 feet by 125 feet, located on the west side of 5th Street. The site is currently occupied by a parking lot and a garden area. Plans are to demolish the existing parking lot and garden and to develop new single-family homes and a mixed use facility.

Scope of Services

Peters & Ross services on the project were limited to the following:

- Drilling three exploratory test borings, extending one boring to 50 feet
- Logging the test borings and obtaining samples of the materials encountered
- Performing laboratory tests on selected samples
- Performing engineering analyses sufficient to develop conclusions and recommendations regarding:
 1. Site geology and seismicity including liquefaction susceptibility;
 2. Soil and groundwater conditions;
 3. The most appropriate foundation type for the new buildings;
 4. Geotechnical design parameters for the recommended foundation type;
 5. Geotechnical aspects of site drainage; and
 6. Construction considerations.
- Preparing this report.

FIELD EXPLORATION AND LABORATORY TESTING

Subsurface conditions were explored by drilling three test borings to a maximum depth of 50 feet using a truck mounted CME-75 drill rig. The location of the borings are shown on the Site Plan, Figure 3. Samples of the materials encountered in the borings were obtained at frequent depth intervals, for field classification and laboratory testing. A description of the drilling and sampling equipment used and other details of the subsurface exploration, as well as the logs of the test borings, are presented in Appendix A. The laboratory tests performed are discussed in Appendix B.

1444 and 1446 5th Street
Project No. 16183.001

December 16, 2016
Page 2 of 10

SITE CONDITIONS

Geology and Seismicity

The site is located in the Coast Ranges geomorphic province of California. The Coast Ranges show strong northwest-southeast geologic trends induced by folds and faults. The site geology has been mapped by Radbruch (1957) and updated by Seismic Hazard Zone for the Richmond Quadrangle (California Geological Survey, 2003). The geologic unit mapped at the site by Radbruch is described as the Quaternary Temescal formation, which is comprised of alluvial-fan deposits with interfingering lenses of clayey gravel, sandy silty clay, and sand-clay-silt mixtures. The CGS (2003) maps the site as having surficial soils of the Quaternary Holocene alluvial fan deposits and deeper soils of the older Quaternary Pleistocene alluvial fan deposits.

The site is located in a seismically active area of California. Several major fault systems capable of generating strong earthquake ground shaking have been identified near the site. The site is about 3.5 kilometers southwest of the active trace of the Hayward Fault. This and other regional faults are capable of generating large magnitude earthquakes that could cause strong groundshaking at the site. The site is located within an area susceptible to liquefaction as shown on the State Seismic Hazard Zones map.

Subsurface Conditions

Generally, 4.5 to 8.0 feet of sandy fat clays blanket the site. Atterberg limits tests of the fat clay materials taken at a depth of 4.5 feet in Boring 1 indicate a liquid limit of 58 percent and a plasticity index of 40 percent with 60 percent passing the No. 200 sieve. These results indicate that the sandy fat clay materials have a very high expansion potential (expansive soils shrink and swell in response to changes in moisture). The fat clay materials were underlain by layers of sandy lean clays and sandy lean clays with gravel materials which extended to the depths explored.

Groundwater

Groundwater was encountered at a depth of 25 feet in Boring 1, and 15 feet in Borings 2 and 3, during drilling, and rose to 4.5 feet. Upon completion of the drilling the boreholes were backfilled with grout in accordance with the City of Berkeley permit. It should be noted that groundwater levels typically fluctuate a few feet seasonally.

CONCLUSIONS AND RECOMMENDATIONS

From a soil and foundation engineering standpoint, it is our opinion that the site is suitable for the proposed development. The primary geotechnical concern is the presence of highly expansive clay soils. However, all of the conclusions and recommendations

Peters & Ross

1444 and 1446 5th Street
Project No. 16183.001

December 16, 2016
Page 3 of 10

presented in this report should be incorporated in the design and construction of the project to avoid possible soil and foundation problems.

1.0 Expansive Soils

The clayey soils that blanket the site have a very high expansion potential. When expansive soils are subjected to increases in moisture content, such as during the rainy season, they swell if unconfined. If concrete slabs or shallow foundations confine the expansive soils, they can exert significant pressures when subjected to moisture increases. These pressures can cause slabs and shallow foundations to heave and crack. When the soils dry, they shrink, causing slabs and shallow foundations to settle.

Expansive clays are common in the San Francisco Bay Area. Over the past several decades, expansive soil movements have caused extensive damage to residential and commercial structures, slabs, and pavements throughout the Bay Area. The local climate, with its pronounced wet and dry seasons, is a main cause of significant seasonal moisture changes that cause the expansive soils to shrink and swell.

There are a number of methods available for reducing the adverse effects of expansive soils. These include removing the expansive soils, replacing expansive soils with non-expansive engineered fill, deepening foundations to develop support below the zone of significant seasonal moisture change (about 32 to 48 inches), designing foundation/slab systems to resist uplift pressures generated by swelling soils, and/or providing drainage and landscaping to minimize seasonal moisture fluctuations in the near-surface soils. Drainage and landscaping improvements adjacent to slabs and foundations should be designed to promote efficient runoff during the rainy season, and provide occasional sprinkling during the summer.

In order to minimize the adverse effects of expansive soils, the proposed improvements should be supported on a deepened footing or a stiffened reinforced thin mat foundation system.

2.0 Seismic Hazards

Potential seismic hazards resulting from a nearby moderate to major earthquake can generally be classified as primary and secondary. The primary effect is ground rupture, also called surface faulting. The common secondary seismic hazards include ground shaking, and liquefaction. The following sections present a discussion of these hazards as they apply to the site. Based on topographic and lithologic data, the risk of soil liquefaction, lateral spreading, landslides, tsunamis, flooding or seiches is considered low to negligible at this site.

1444 and 1446 5th Street
Project No. 16183.001

December 16, 2016
Page 4 of 10

2.1 Ground Rupture

There are no known active faults crossing the site and the property is not located within an Earthquake Fault Special Study Zone. Therefore the risk of fault rupture is considered low at the site.

2.2 Ground Shaking

An earthquake of moderate to high magnitude could cause considerable ground shaking at the site. To mitigate the shaking effects, all structures should be designed using sound engineering judgment and the 2013 California Building Code (CBC) requirements. According to USGS 2013 Design Maps website, the MCE peak ground acceleration for a CBC Site Class D (Stiff Soils) is 0.770g with a long period transition-period of 8 seconds.

2.3 Liquefaction

Soil liquefaction results from loss of strength during cyclic loading, such as imposed by earthquakes. Soils most susceptible to liquefaction are clean, loose, saturated, uniformly graded, fine-grained sands. The materials encountered in the three exploratory test borings consisted of stiff sandy lean clays. We judge that the potential for liquefaction during seismic shaking at the site is low.

2.4 Lateral Spreading

Lateral spread is the finite, lateral displacement of sloping ground (0.1 to <6 percent) as a result of pore pressure buildup or liquefaction in a shallow, underlying soil deposit during an earthquake. Lateral spreading, as a result of liquefaction, occurs when a soil mass slides laterally on a liquefied layer, and gravitational and inertial forces cause the layer, and the overlying non-liquefied material, to move in a downslope direction. The magnitude of lateral spreading movements depends on earthquake magnitude, distance between the site and the seismic event, thickness of the liquefied layer, ground slope or ratio of free-face height to distance between the free face and structure, fines content, average particle size of the materials comprising the liquefied layer, and the standard penetration rates of the materials. As stated in the previous section the liquefaction potential was deemed to be low, therefore lateral spread potential at the building site is also considered low.

2.5 California Building Code (CBC) Seismic Design Parameters

In accordance with Section 1613 of the 2013 CBC, Peters & Ross classifies the site as Site Class D with a latitude of 37.8763 degrees and a longitude of -122.3010 degrees. The CBC parameters presented in the following table should be used for seismic design.

1444 and 1446 5th Street
Project No. 16183.001

December 16, 2016
Page 5 of 10

PERIOD (sec)	0.2	1.0
SPECTRAL RESPONSE S _s , S _I	2.002	0.815
SITE COEFFICIENT F _a , F _v (SITE CLASS D)	1.0	1.5
MAXIMUM SPECTRAL RESPONSE S _{ms} , S _{ml}	2.002	1.223
DESIGN SPECTRAL RESPONSE S _{Ds} , S _{DI}	1.335	0.815

3.0 Corrosive Soils

Based on sulfate testing done at nearby sites, the native soils are classified within the negligible sulfate exposure levels. The materials placed at the finished pad grade may be different from the on-site soils. Therefore, additional samples should be collected after site grading for future corrosivity testing.

4.0 Earthwork

4.1 Clearing and Site Preparation

The site should be cleared of any foundations, flatwork, retaining walls, trees, abandoned utilities, and buried structures identified for demolition on the construction plans and removed from the site. Holes resulting from the removal of any obstructions that extend below the proposed finished grade should be cleared and backfilled with suitable material compacted to the requirements given below under Compaction. We recommend that the backfilling operations for any excavations to remove deleterious material be carried out under the observation of the soil engineer, so that these excavations will be properly backfilled.

After clearing, the portions of the site containing surface vegetation or organic laden topsoil should be stripped to an appropriate depth to remove these materials. The amount of actual stripping should be determined in the field by the soil engineer at the time of construction. The cleared and stripped layer should be removed from the site or stockpiled for later use in landscaping, if desired.

4.2 Subgrade Preparation

After the site has been properly cleared and stripped and any necessary excavations made, the exposed soils to receive structural fill, slabs-on-grade or pavements should be scarified to a depth of 6 inches, moisture conditioned to slightly above optimum water content and compacted to the requirements for structural fill.

4.3 Material for Fill

All on-site soils below the stripped layer and having an organic content of less than 3% by volume can be used as fill except where non-expansive import is required beneath the slabs. However, all fill placed at the site, including on-site soils, should not contain rocks or lumps larger than 6 inches in greatest dimension with not more than 15% larger than

1444 and 1446 5th Street
Project No. 16183.001

December 16, 2016
Page 6 of 10

2.5 inches. In addition, the required import fill should be predominantly granular with a plasticity index of 12 or less.

4.4 Compaction

All structural fill less than 5 feet thick should be compacted to at least 90% relative compaction as determined by ASTM Test Designation D 1557, except for the upper 6 inches of subgrade soils under pavements which should be compacted to at least 95% relative compaction. Structural fill or wall backfill greater than 5 feet high should be compacted to at least 95% relative compaction. Fill material should be spread and compacted in lifts not exceeding 8 inches in uncompacted thickness. We should note that if construction proceeds during or immediately after the wet winter months, it may require time to dry the on-site soils to be used as fill since their moisture content will probably be appreciably above optimum.

4.5 Trench Backfill

Pipeline trenches should be backfilled with fill placed in lifts not exceeding 8 inches in uncompacted thickness. The following table presents our recommendations for compaction requirements.

Condition	Trench Depth	Compaction Requirements*	
		Native Soils	Granular Import
Non-Improved Area	Any Depth	85%	90%
Improved Area	Less than 5 feet	Upper 3 feet 90% Lower 2 feet 85%	Entire backfill 90%
	5 feet or greater but less than 8 feet	Entire backfill 90%	Entire backfill 95%
	8 feet or greater	Entire backfill 95%	Entire backfill 95%

* Assumes a reasonable "cushion" layer around the pipe.

If imported granular soil is used, sufficient water should be added during the trench backfilling operations to prevent the soil from "bulking" during compaction. In all of the cases outlined above, we recommend that the upper 6 inches of subgrade under pavement and baserock be compacted to at least 95% relative compaction. All compaction operations should be performed by mechanical means only. We recommend against jetting unless the backfill material is granular (sand or gravel) and the water used in jetting is able to rapidly flow out of the trench.

1444 and 1446 5th Street
Project No. 16183.001

December 16, 2016
Page 7 of 10

If granular backfill is used for utility trenches, we recommend that an impermeable plug or mastic sealant be used where utilities enter the building to minimize the potential for free water or moisture to enter below the building. Finally, because of the potential for catastrophic collapse of trench walls we recommend that the contractor carefully evaluate the stability of all trenches and use temporary shoring where appropriate. The design and installation of the temporary shoring should be wholly the responsibility of the contractor. In addition, all state and local regulations governing safety around such excavations should be carefully followed.

4.6 Drainage

Positive surface gradients of at least 3% for a minimum distance of 5 feet should be provided adjacent to the building so as to direct surface water away from foundations and slabs toward suitable discharge facilities. Ponding of surface water should not be allowed adjacent to the structure or on pavements. We also recommend that rainwater collected on the roof of the building be transported through gutters, downspouts and closed pipes to a suitable discharge facility. The best discharge location for the collected water is probably the storm drain line. We recommend that the landscape architect, general contractor, and landscaping contractor on this project be advised of this recommendation to minimize the potential for its omission during construction. Some nominal maintenance should be expected after the construction has been completed. Should ownership of this property change hands, the new owner should be informed of the existence of this report, the importance of maintaining proper surface drainage, and not adversely change the grading or drainage facilities.

5.0 Foundations

5.1 Footing Foundations

Peters & Ross recommends that the buildings be supported on conventional continuous and isolated spread footings bearing on undisturbed native soils. Any soft zones encountered in the footing trenches should be overexcavated and recompacted under the observation of the geotechnical engineer. All footings should be founded at least 24 inches below the lowest adjacent finished grade. Footings located adjacent to other footings or utility trenches should have their bearing surfaces situated below an imaginary 1.5 horizontal to 1 vertical plane projected upward from the bottom of the adjacent footing or utility trench.

At the above depth, the footings should be designed to impose net allowable bearing pressures not exceeding 2000 pounds per square foot (psf) due to dead loads, 3000 psf due to dead plus live loads, and 4000 psf for all loads including wind or seismic. Resistance to lateral loads will be provided by a combination of friction along the bottoms of the footings, and passive pressures developed along the sides of the footings. Frictional resistance should be calculated by multiplying the vertical dead load times a

1444 and 1446 5th Street
Project No. 16183.001

December 16, 2016
Page 8 of 10

friction coefficient of 0.35. Passive resistance should be calculated using an equivalent fluid weight of 350 pounds per cubic foot (pcf).

All continuous footings should be designed with adequate top and bottom reinforcement to provide structural continuity and to permit spanning of local irregularities. Any visible cracks in the bottoms of the footing excavations should be closed by wetting prior to construction of the foundations. To assure that footings are founded on appropriate material, we recommend that we observe the footing excavations prior to placing steel or concrete.

5.2 Stiffened Reinforced Thin Mat Foundation

Alternatively the planned structures can be supported on a stiffened reinforced thin mat foundation system. The mat foundation should have a minimum thickness of 5 inches and should be designed in accordance with the 2013 California Building Code Section 1808.6.2. The mat should be reinforced with steel reinforcing bars rather than welded wire mesh. At a minimum, slab reinforcement should consist of No. 4 bars on 12-inch centers in both directions, placed at the center of the slab thickness. Spacers should be placed beneath the mesh of reinforcing bars, to maintain their positioning near the center of the slab during the concrete pour.

The mat should be provided with exterior and interior stiffening beams with maximum spacing of 15 feet. The beams should have a minimum width of 12-inches and should extend a minimum of 30-inches below top of slab. In addition, the stiffening beams should be designed to cantilever 5 feet.

The subgrade material under the mat foundation should be uniform. The upper 12 inches of the pad subgrade should be scarified and moisture conditioned to a moisture content at least 5 percentage points above optimum (ASTM D-1557). The subgrade should be kept moist until the slab is poured. At least 6 inches of clean, crushed rock should be placed over the prepared subgrade, to provide a capillary moisture break. If the migration of moisture vapor through the slab is undesirable, a vapor barrier blanketed with 2 inches of clean sand should be placed over the gravel. We also recommend that the specifications for the mat require that moisture emission tests be performed on the mat prior to the installation of the flooring. No flooring should be installed until safe moisture emission levels are recorded for the type of flooring to be used.

7.0 Exterior Slabs –on-Grade

We recommend that any slabs-on-grade be supported on a minimum of 9 inches of imported, compacted, non-expansive fill. The subgrade should be recompact to at least 90 percent relative compaction at a moisture content of 5 percent above optimum. The subgrade should be kept moist until the slab is poured. In any slab area where minor floor wetness would be undesirable, at least 4 inches of $\frac{3}{4}$ inch gravel should be placed

1444 and 1446 5th Street
Project No. 16183.001

December 16, 2016
Page 9 of 10

over the prepared subgrade, to provide a capillary moisture break. A 10-mil thick vapor barrier blanketed with 2 inches of clean sand should be placed over the gravel. This can be used in lieu of the upper 6 inches of the non-expansive fill.

The slab should have a minimum thickness of 4-inches and should be reinforced with steel reinforcing bars rather than welded wire mesh. At a minimum, slab reinforcement should consist of No. 4 bars on 18-inch centers in both directions, placed at the center of the slab thickness. Spacers should be placed beneath the mesh of reinforcing bars, to maintain their positioning near the center of the slab during the concrete pour. Exterior slabs should be structurally independent from the perimeter grade beams and be free floating. Score joints should be provided at a maximum spacing of 10 feet in both directions. The slabs should be appropriately reinforced according to structural requirements; concentrated loads may require additional reinforcing.

The use of free floating slabs for interior floors may result in damage to the proposed architectural finishes. Peters & Ross should be contacted if interior slabs are proposed. Interior floors should be designed to resist an uplift pressure of 1000 pounds per square foot.

8.0 Plan Review and Geotechnical Engineering Services during Construction

Peters & Ross should review project plans, to check that the geotechnical engineering recommendations contained in this report are properly incorporated.

Peters & Ross should provide geotechnical observation and testing services on an as-needed basis during construction, to check that geotechnical aspects of the work are completed in accordance with the plans. These services should include observing site grading, observing foundation excavations, testing the compaction of fill, and checking surface drains. In addition, Peters & Ross should provide consultation regarding geotechnical concerns that arise during construction. Peters & Ross cannot accept responsibility for geotechnical aspects of construction that are not observed by its staff.

We will make every reasonable effort to accommodate the contractor's work schedule during construction, so that necessary observations and tests can be performed in a timely manner to avoid construction delays. However, since our field services are often required on several projects concurrently, we request that 48 hours advance notice be given for site visits, in order to minimize scheduling conflicts.

Peters & Ross

1444 and 1446 5th Street
Project No. 16183.001

December 16, 2016
Page 10 of 10

LIMITATIONS

Peters & Ross services consist of professional opinions and recommendations that are made in accordance with generally accepted geotechnical engineering principles and practices. The opinions and recommendations presented in this report are based on a site reconnaissance, three exploratory test borings, laboratory testing, and engineering analyses. This warranty is in lieu of all other warranties either expressed or implied.

Subsurface conditions commonly vary significantly from those encountered at the test boring location. Unanticipated, adverse soil conditions encountered during construction often require additional expenditures to achieve a properly constructed project. It is advised that a contingency fund be established to accommodate possible consulting and construction cost increases due to unanticipated conditions.

LIST OF FIGURES

Figure 1	Site Vicinity Map
Figure 2	Site Topography
Figure 3	Site Plan

APPENDICES

Appendix A	Field Investigation
Appendix B	Laboratory Testing

DISTRIBUTION

5 copies:	Mr. Matthew Wadlund Wadlund Design Studio 805 Jones Street Berkeley, CA 94710
-----------	--

Peters & Ross

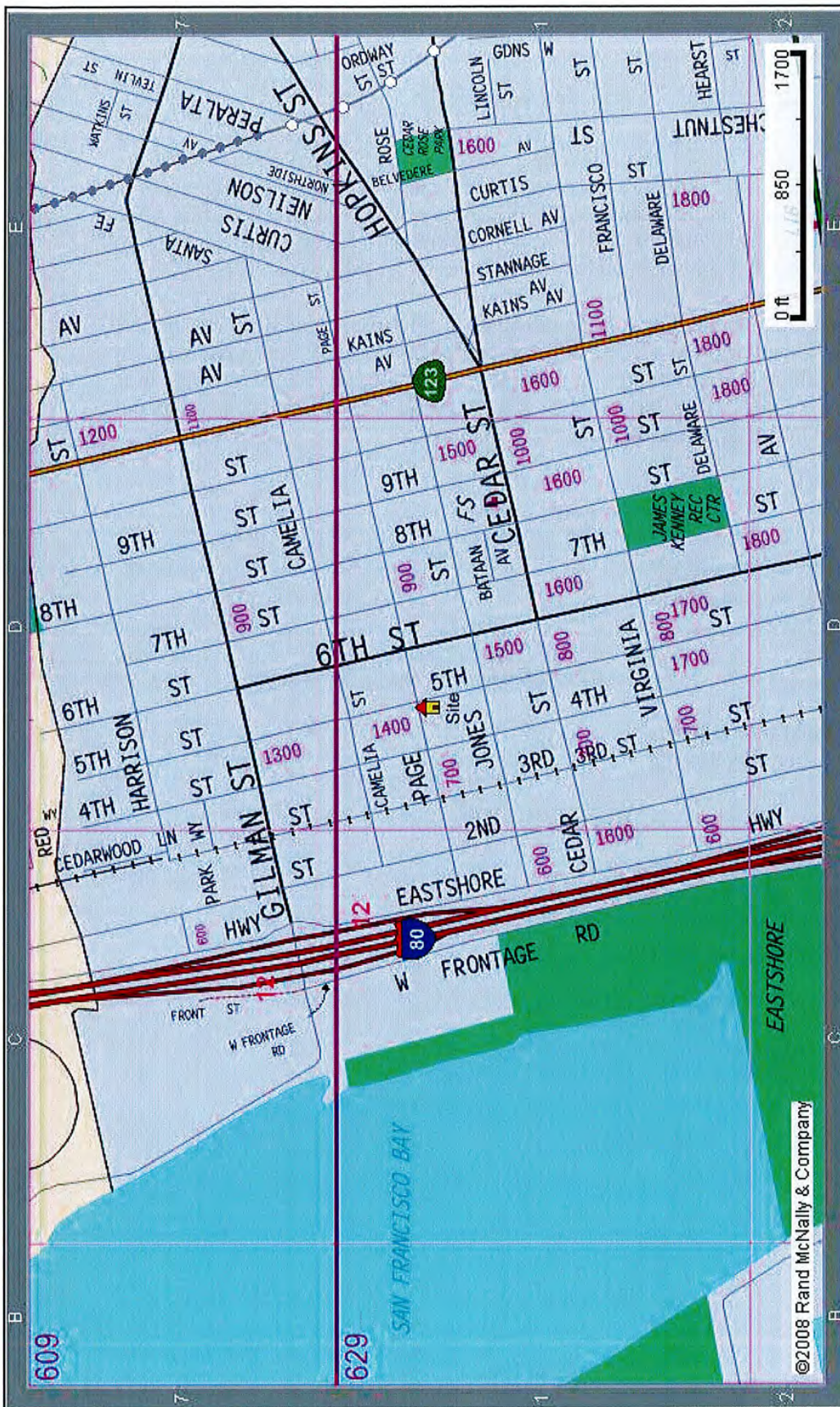


Figure 1 - Site Vicinity Map

1444 & 1446 5th Street
1444 & 1446 5th Street
Berkeley, California

PROJECT No.

16183.001

DATE

December 2016

114 Hopeco Road
Pleasant Hill, CA 94523
tel. (925) 942-3629
fax. (925) 665-1700
PetersRoss@col.com

Peters & Ross

Geotechnical and
Geoenvironmental Consultants

©2008 Rand McNally & Company

TOPO! map printed on 12/16/16 from "California.tpo" and "Untitled.tpg"
NAD27 122.30000° W

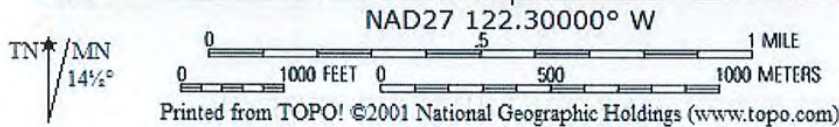
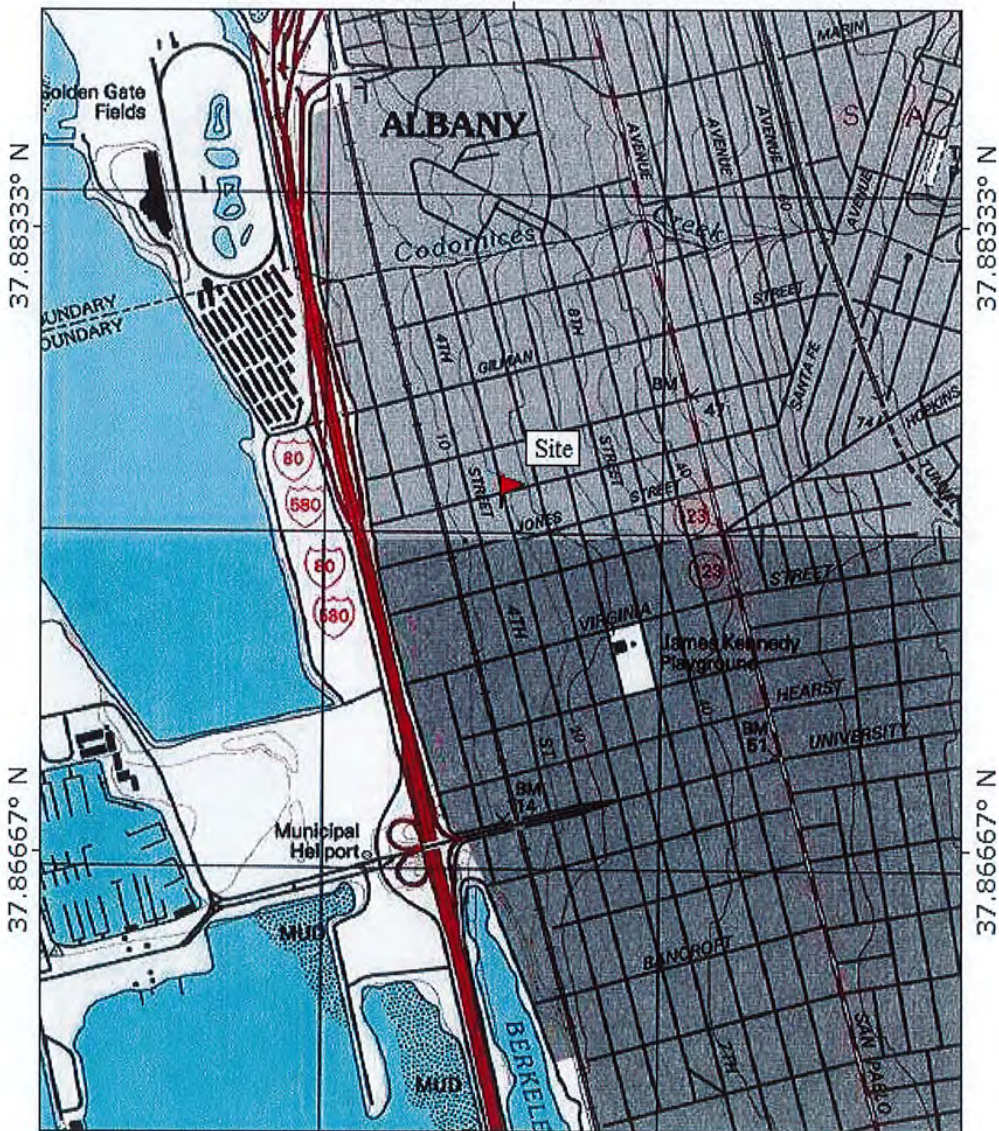


Figure 2 - Site Topography

Peters & Ross
Geotechnical and
Geoenvironmental Consultants

114 Hopeco Road
Pleasant Hill, CA 94523
tel. (925) 942-3629
fax. (925) 665-1700
PetersRoss@aol.com

PROJECT No.	16183.001
DATE	Dec. 2016

1444 & 1446 5th Street
1444 & 1446 5th Street
Berkeley, California

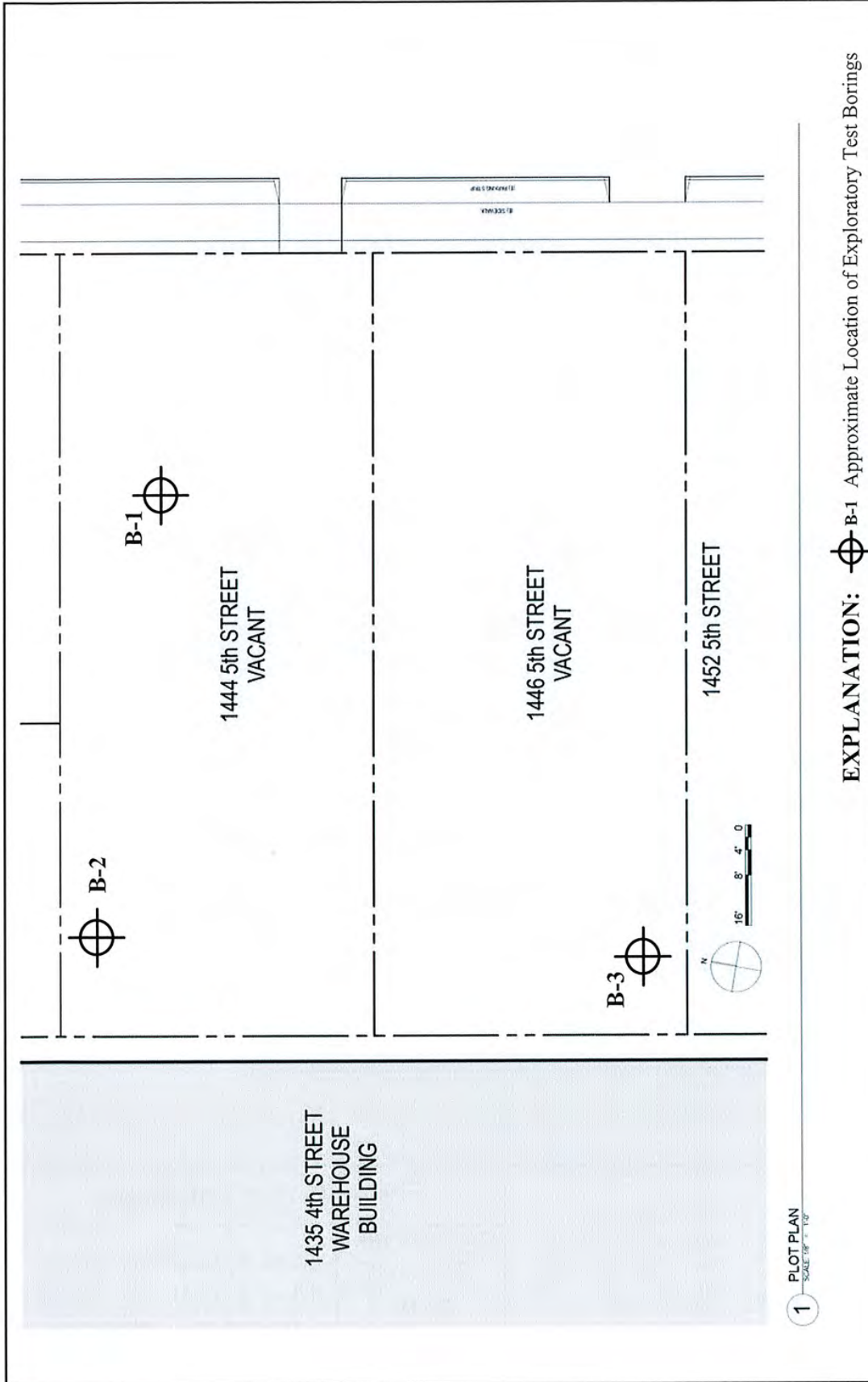


Figure 3 - Site Plan

114 Hopeco Road
Pleasant Hill, CA 94523
tel. (925) 942-3629
fax. (925) 665-1700
PetersRoss@aol.com

Peters & Ross
Geotechnical and
Geoenvironmental Consultants

PROJECT No.	1444 & 1446 5th Street 1444 & 1446 5th Street Berkeley, California
DATE	Dec. 2016

1444 and 1446 5th Street

Project No. 16183.001

APPENDIX A – FIELD INVESTIGATION

Peters & Ross explored subsurface conditions at the site by drilling three exploratory test borings to a maximum depth of 50 feet. The location of the test borings are shown on the Site Plan.

The borings were drilled using a truck mounted CME 75 drill rig with 8.0 inch diameter hollow stem auger and 6.0 inch diameter solid flight auger. The drill rig is operated by HEW Drilling of Palo Alto, California. Our field engineer continuously logged the materials encountered. The boring logs that show the materials encountered are included in this Appendix. Soils are classified in accordance with the Unified Soil Classification System.

The boring logs indicate Peters & Ross interpretations of subsurface conditions encountered at the locations and times the borings were drilled, and may not be representative of subsurface conditions at other locations and times. Stratification lines represent the approximate boundaries between soil and rock types. The transitions between soil and rock layers are often gradual.

Samples of the materials encountered were obtained at frequent depth intervals, for visual classification and laboratory testing. Samples were obtained using a Modified California sampler (outer diameter of 3.0 inches, inner diameter of 2.5 inches) with thin-wall brass sampler liners, and a Standard Penetration Test sampler (outer diameter of 2.0 inches, inner diameter of 1.375 inches). The samplers were driven with an automatic 140 pound safety hammer lifted and dropped 30 inches.

Peters & Ross Geotechnical Services
114 Hopeco Road
Pleasant Hill, CA 94523
925-942-3629

BOREHOLE B-1

Page: 1 of 3

Project Name: 1444 and 1446 5th Street
Location: 1444 & 1446 5th St., Berkeley, CA
Drilling Method: Truck Mounted CMe 75 w/ 8" HSA
Elevation: N/A

Project No.: 16183.001
Client: Wadlund + Design Studio
Date Drilled: 11/17/16
Water Level: See Note 3

Remarks: Samplers driven with 140 lb. automatic hammer using a 30 inch drop

DESCRIPTION	SYMBOL	DEPTH FT.	SAMPLE TYPE	BLOWS/FT.	MOISTURE %	DRY DENSITY PCF	UNCONFINED STRENGTH KSF	REMARKS
Ground Surface		0						
Sandy Fat CLAY (CH) black, wet, stiff, roots			SS	24	20			LL=58%, PI=40% -200 = 60 percent
			SS	19	20			
Sandy Lean CLAY (CL) olive brown, wet, stiff, roots, some black specks with depth		5						
			SS	22	22			
		10	SS	34	20			
Sandy Lean CLAY with Gravel (CL) yellow brown, wet, stiff, rock fragments and black specks		15						-200 = 68 percent
			SS	31	19			
		20						
			SS	29	23			

Peters & Ross Geotechnical Services
114 Hopeco Road
Pleasant Hill, CA 94523
925-942-3629


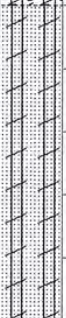

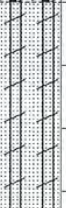
BOREHOLE B-1

Page: 2 of 3

Project Name: 1444 and 1446 5th Street
Location: 1444 & 1446 5th St., Berkeley, CA
Drilling Method: Truck Mounted CMe 75 w/ 8" HSA
Elevation: N/A

Project No.: 16183.001
Client: Wadlund + Design Studio
Date Drilled: 11/17/16
Water Level: See Note 3

Remarks: Samplers driven with 140 lb. automatic hammer using a 30 inch drop

DESCRIPTION	SYMBOL	DEPTH FT.	SAMPLE TYPE	BLOWS/FT.	MOISTURE %	DRY DENSITY PCF	UNCONFINED STRENGTH KSF	REMARKS
Sandy Lean CLAY with Gravel (CL) yellow brown, wet, stiff, rock fragments and black specks		25	SS	42	17			
		30	SS	22	23			
Sandy Lean CLAY (CL) yellow brown, wet, stiff, black specks		35	SS	45	18			
		40	SS	23	26			
Sandy Lean CLAY with Gravel (CL) olive brown, wet, stiff, rock fragments								
Sandy Lean CLAY (CL) olive brown, wet, stiff								

Peters & Ross Geotechnical Services
114 Hopeco Road
Pleasant Hill, CA 94523
925-942-3629

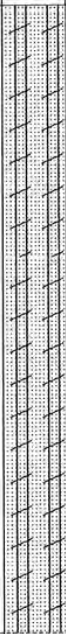
BOREHOLE B-1

Page: 3 of 3

Project Name: 1444 and 1446 5th Street
Location: 1444 & 1446 5th St., Berkeley, CA
Drilling Method: Truck Mounted CMe 75 w/ 8" HSA
Elevation: N/A

Project No.: 16183.001
Client: Wadlund + Design Studio
Date Drilled: 11/17/16
Water Level: See Note 3

Remarks: Samplers driven with 140 lb. automatic hammer using a 30 inch drop

DESCRIPTION	SYMBOL	DEPTH FT.	SAMPLE TYPE	BLOWS/FT.	MOISTURE %	DRY DENSITY PCF	UNCONFINED STRENGTH KSF	REMARKS
Sandy Lean CLAY (CL) olive brown, wet, stiff		45	SS	19	24			-200 = 60 percent
		50	SS	23	25			
Bottom of Borehole = 50 feet		55						
<p>NOTES:</p> <ol style="list-style-type: none"> 1. Penetration resistance values are not standard N values, they are the values measured in the field. 2. Stratification lines represent the approximate boundaries between material types, and the transitions may be gradual. 3. Groundwater was encountered at 25 feet during drilling. It rose to 4.5 feet prior to backfilling the hole with grout. 								
		60						

Peters & Ross Geotechnical Services
114 Hopeco Road
Pleasant Hill, CA 94523
925-942-3629




BOREHOLE B-2

Page: 1 of 1

Project Name: 1444 and 1446 5th Street
Location: 1444 & 1446 5th St., Berkeley, CA
Drilling Method: Truck Mounted CMe 75 w/ 6" SFA
Elevation: N/A

Project No.: 16183.001
Client: Wadlund + Design Studio
Date Drilled: 11/17/16
Water Level: See Note 3

Remarks: Samplers driven with 140 lb. automatic hammer using a 30 inch drop

DESCRIPTION	SYMBOL	DEPTH FT.	SAMPLE TYPE	BLOWS/FT.	MOISTURE %	DRY DENSITY PCF	UNCONFINED STRENGTH KSF	REMARKS
Ground Surface		0						
Sandy Fat CLAY (CH) black to dark olive brown, wet, stiff, roots			MC	25	22	103	(2.5)	
			MC	18	25	104	(1.5)	
			MC	42	20	111	(>4.5)	
Sandy Lean CLAY with Gravel (CL) yellow brown, wet, stiff, rock fragments and black specks			MC	50	20	111	(2.5)	
			MC	33	26	98	(3.5)	
Sandy Lean CLAY (CL) olive brown, wet, stiff		15						
Bottom of Borehole = 18.5 feet		20						
<p>NOTES:</p> <ol style="list-style-type: none"> 1. Penetration resistance values are not standard N values, they are the values measured in the field. 2. Stratification lines represent the approximate boundaries between material types, and the transitions may be gradual. 3. Groundwater was encountered at 15 feet during drilling. It rose to 4.5 feet prior to backfilling the hole with grout. 4. Shear strength values in Parentheses are in tons per square foot and were obtained using a pocket penetrometer. 								
		25						

Peters & Ross Geotechnical Services
114 Hopeco Road
Pleasant Hill, CA 94523
925-942-3629

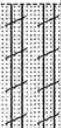


BOREHOLE B-3

Page: 1 of 1

Project Name: 1444 and 1446 5th Street
Location: 1444 & 1446 5th St., Berkeley, CA
Drilling Method: Truck Mounted CMe 75 w/ 6" SFA
Elevation: N/A

Project No.: 16183.001
Client: Wadlund + Design Studio
Date Drilled: 11/17/16
Water Level: See Note 3

Remarks: Samplers driven with 140 lb. automatic hammer using a 30 inch drop

DESCRIPTION	SYMBOL	DEPTH FT.	SAMPLE TYPE	BLOWS/FT.	MOISTURE %	DRY DENSITY PCF	UNCONFINED STRENGTH KSF	REMARKS
Ground Surface		0						
Sandy Fat CLAY (CH) black to dark olive brown, wet, stiff, roots			MC	18	23	99	(1.25)	
			MC	40	18	110	(4.0)	
Sandy Lean CLAY with Gravel (CL) yellow brown, wet, stiff, rock fragments and black specks		5						
			MC	35	22	105	(4.0)	-200 = 80 percent
		10	MC	53	18	114	(>4.5)	
Sandy Lean CLAY (CL) olive brown, wet, stiff								
			MC	22	25	102	(1.5)	-200 = 57 percent
		15						
			MC	47	22	109	(1.5)	
Bottom of Borehole = 20 feet		20						
<p>NOTES:</p> <ol style="list-style-type: none"> 1. Penetration resistance values are not standard N values, they are the values measured in the field. 2. Stratification lines represent the approximate boundaries between material types, and the transitions may be gradual. 3. Groundwater was encountered at 15 feet during drilling. It rose to 4.5 feet prior to backfilling the hole with grout. 4. Shear strength values in Parentheses are in tons per square foot and were obtained using a pocket penetrometer. 								
		-25						

1444 and 1446 5th Street

Project No. 16183.001

APPENDIX B - LABORATORY TESTING

Laboratory tests were performed on representative samples of the materials encountered in the test borings, to achieve a quantitative and qualitative evaluation of the physical and mechanical properties of the materials that underlie the site. The tests included moisture content/dry density determinations, #200 washed sieve tests, and Atterberg limits tests. The test results are presented on the boring logs in Appendix A. Test reports provided by the testing laboratory are included in this Appendix. Brief descriptions of the tests performed follow.

Moisture Content/Dry Density (ASTM 2937): Performed on undisturbed samples to determine the moisture content (the ratio of the weight of water to the weight of solids in the field sample, expressed as a percentage) and dry density (the ratio of the weight of solids in the field sample to its volume, expressed in pounds per cubic foot).

#200 Washed Sieve Test (ASTM D-1140): Performed on undisturbed or disturbed samples to determine the fine-grained (silt and clay) fraction of the materials. The fine-grained fraction is used to classify the soils according to the Unified Soils Classification System.

Atterberg Limits Test (ASTM D-4318): Performed on undisturbed or disturbed samples to determine the liquid limit (LL) and plastic limit (PL) of the samples. These limits are used to classify fine-grained soils and to evaluate the plasticity index (PI), the moisture content range over which the material exhibits plasticity. Atterberg limits correlations also provide an indication of the compressibility and expansion potential of the sample.

B. HILLEBRANDT SOILS TESTING, INC.

29 Sugarloaf Terrace, Alamo, CA 94507 - Tel: (510) 409-2916 - Fax: (925) 891-9267 - Email: soiltesting@aol.com

MOISTURE CONTENT/DRY DENSITY

Job #: 16183.001
 Job Name: Fifth Street Development
 Date: 11/29/16
 Tested by: Brad Hillebrandt

Additional Tests:						
Boring #:	B-2	B-2	B-2	B-2	B-2	B-3
Depth:	2.5	5.0	7.5	10.0	15.0	2.5
Sample Description:	Dark gray CLAY	Olive brown CLAY with some gravel	Dark yellowish brown CLAY with sand	Dark yellowish brown sandy, gravelly CLAY	Olive brown sandy CLAY	Dark gray CLAY
Can #:	420	338	305	312	318	327
Wet Sample + can	278.2	346.9	307.8	314.3	296.5	297.0
Dry Sample + can	234.7	285.6	263.7	268.8	243.1	247.1
Weight can	32.9	37.5	38.0	38.0	38.5	38.3
Weight water	43.5	61.3	44.1	45.5	53.4	49.9
Weight Dry Sample	201.8	248.1	225.7	230.8	204.6	208.8
WATER CONTENT (%)	21.6%	24.7%	19.5%	19.7%	26.1%	23.9%
Weight Sample + Liner	1147.6	1175.2	1190.1	1134.0	1118.4	1047.4
Weight Liner	261.7	262.6	246.1	275.1	270.5	257.9
Sample Length	6.0	6.0	6.0	5.5	5.8	5.4
Sample Diameter	2.39	2.39	2.40	2.39	2.39	2.40
DRY DENSITY (pcf)	103.1	103.6	110.8	110.8	98.4	99.4

B. HILLEBRANDT SOILS TESTING, INC.

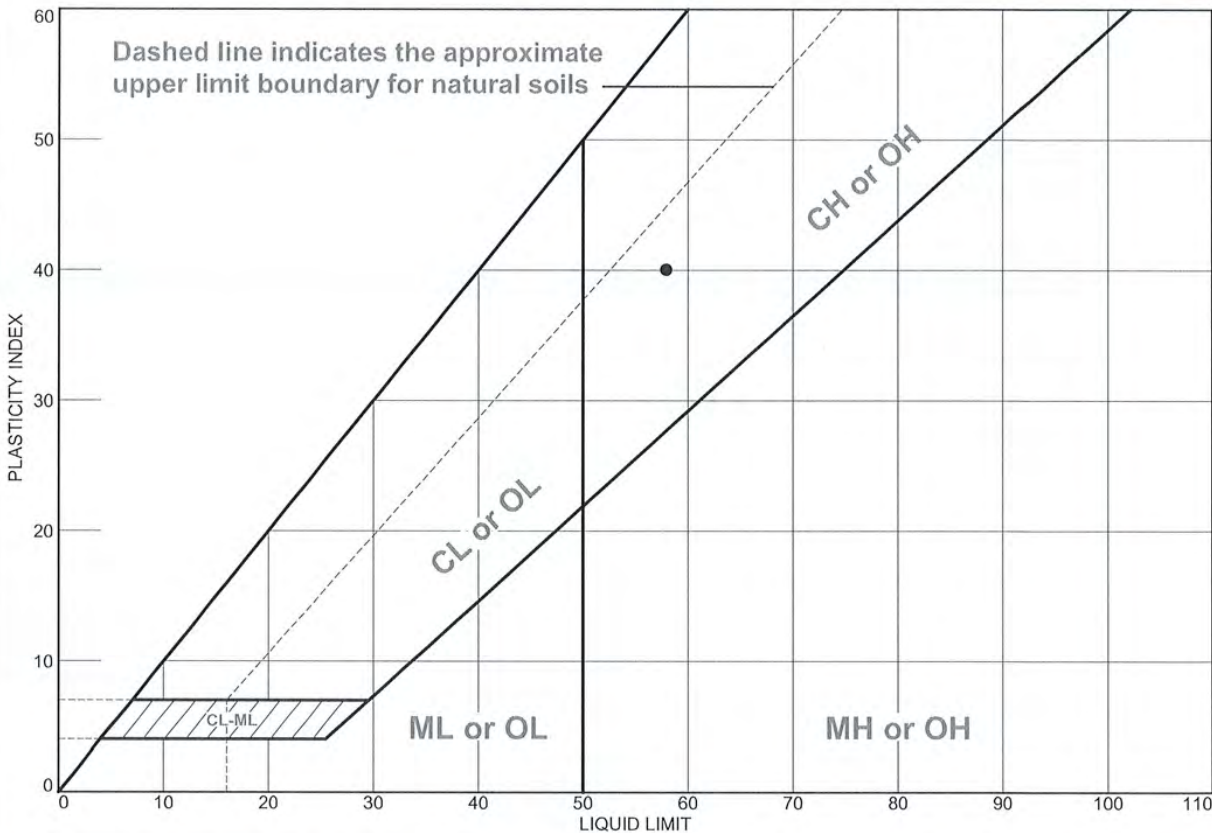
29 Sugarloaf Terrace, Alamo, CA 94507 - Tel: (510) 409-2916 - Fax: (925) 891-9267 - Email: soiltesting@aol.com

MOISTURE CONTENT/DRY DENSITY

Job #: 16183.001
 Job Name: Fifth Street Development
 Date: 11/29/16
 Tested by: Brad Hillebrandt

Additional Tests:		-200		-200		
Boring #:	B-3	B-3	B-3	B-3	B-3	
Depth:	5.0	7.5	10.0	15.0	20.0	
Sample Description:	Olivebrown clayey, gravelly SAND	Dark yellowish brown CLAY with sand	Dark yellowish brown sandy CLAY	Olive brown sandy CLAY	Olive brown CLAY with sand	
Can #:	501	370	349	339	362	
Wet Sample + can	356.1	264.1	266.9	348.7	321.6	
Dry Sample + can	306.4	223.6	230.5	286.7	270.7	
Weight can	34.0	37.8	32.5	37.7	33.8	
Weight water	49.7	40.5	36.4	62	50.9	
Weight Dry Sample	272.4	185.8	198	249	236.9	
WATER CONTENT (%)	18.2%	21.8%	18.4%	24.9%	21.5%	
Weight Sample + Liner	1184.1	1067.8	1208.0	1050.3	1115.3	
Weight Liner	269.0	256.4	256.3	249.3	256.4	
Sample Length	6.0	5.3	6.0	5.3	5.5	
Sample Diameter	2.39	2.41	2.39	2.40	2.39	
DRY DENSITY (pcf)	109.5	105.0	113.8	101.9	109.2	

LIQUID AND PLASTIC LIMITS TEST REPORT



	MATERIAL DESCRIPTION	LL	PL	PI	%<#40	%<#200	USCS
●	Dark brown sandy fat CLAY	58	18	40	84.6	60.4	CH

Project No. 16183.001 Client: Peters & Ross
 Project: Fifth Street Development
 ● Source of Sample: B-1 Depth: 5.0'

B. HILLEBRANDT SOILS TESTING, INC.
 +1 510-409-2816
 SoilTesting@aol.com

Remarks:

Figure

Tested By: BH _____

LIQUID AND PLASTIC LIMIT TEST DATA

12/9/20

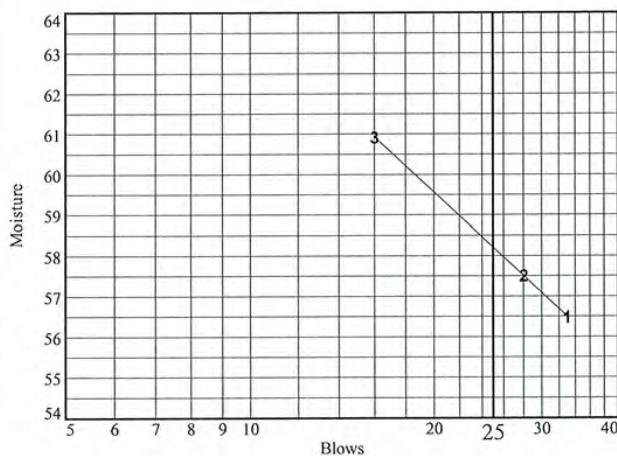
Client: Peters & Ross
 Project: Fifth Street Development
 Project Number: 16183.001
 Location: B-1
 Depth: 5.0'
 Material Description: Dark brown sandy fat CLAY
 %<#40: 84.6 %<#200: 60.4
 Tested by: BH

USCS: CH

AASHTO: A-7-6(21)

Liquid Limit Data

Run No.	1	2	3	4	5	6
Wet+Tare	23.01	25.51	24.63			
Dry+Tare	18.79	20.27	19.50			
Tare	11.32	11.16	11.08			
# Blows	33	28	16			
Moisture	56.5	57.5	60.9			



Liquid Limit= 58
 Plastic Limit= 18
 Plasticity Index= 40
 Natural Moisture= 20.1
 Liquidity Index= 0.1

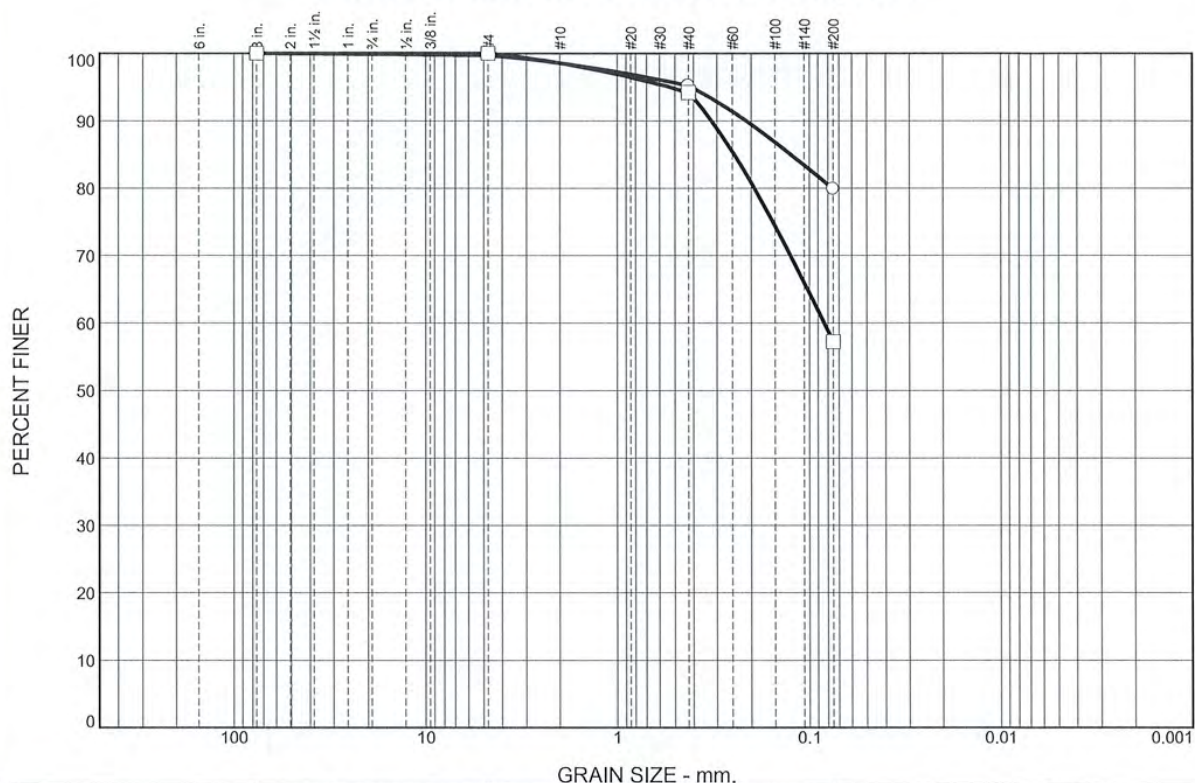
Plastic Limit Data

Run No.	1	2	3	4
Wet+Tare	17.27	17.05		
Dry+Tare	16.34	16.16		
Tare	11.13	11.33		
Moisture	17.9	18.4		

Natural Moisture Data

Wet+Tare	Dry+Tare	Tare	Moisture
240.4	206.5	37.8	20.1

Particle Size Distribution Report



% +3"	% Gravel		% Sand			% Fines	
	Coarse	Fine	Coarse	Medium	Fine	Silt	Clay

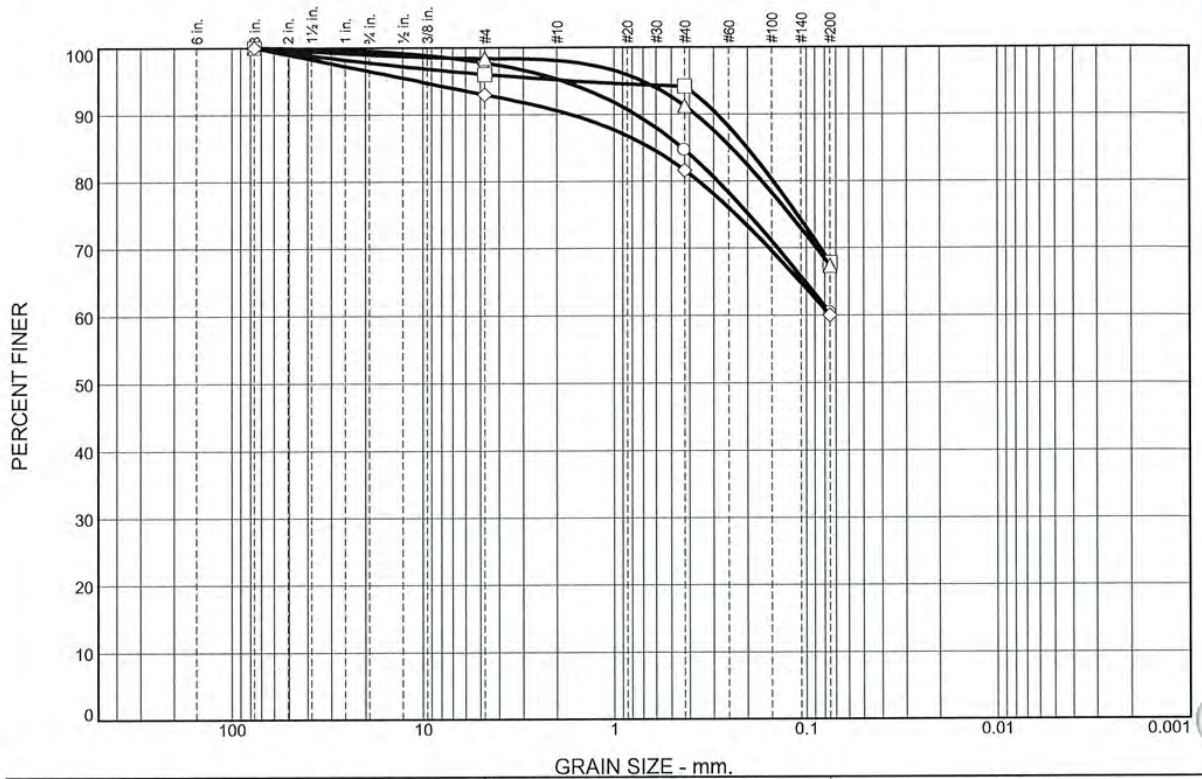
MATERIAL DATA					
SYMBOL	SOURCE	SAMPLE NO.	DEPTH (ft.)	Material Description	USCS
○	B-3		7.5'	Dark yellowish brown CLAY with sand	
□	B-3		15.0'	Olive brown sandy CLAY	

B. HILLEBRANDT SOILS TESTING, INC. +1 510-409-2816 SoilTesting@aol.com	Client: Peters & Ross
	Project: Fifth Street Development
	Project No.: 16183.001

Figure

Tested By: BH

Particle Size Distribution Report



% +3"	% Gravel		% Sand			% Fines	
	Coarse	Fine	Coarse	Medium	Fine	Silt	Clay

MATERIAL DATA					
SYMBOL	SOURCE	SAMPLE NO.	DEPTH (ft.)	Material Description	USCS
○	B-1		5.0'	Dark brown sandy fat CLAY	CH
□	B-1		15.0'	Olive brown sandy CLAY	
△	B-1		30.0'	Yellowish brown sandy CLAY	
◇	B-1		45.0'	Olive brown sandy CLAY	

B. HILLEBRANDT SOILS TESTING, INC. +1 510-409-2816 SoilTesting@aol.com	Client: Peters & Ross Project: Fifth Street Development
	Project No.: 16183.001
	Figure

Tested By: BH _____

GRAIN SIZE DISTRIBUTION TEST DATA

12/9/2016

Client: Peters & Ross
 Project: Fifth Street Development
 Project Number: 16183.001
 Location: B-1
 Depth: 5.0'
 Material Description: Dark brown sandy fat CLAY
 USCS: CH
 Tested by: BH

Sieve Test Data

Dry Sample and Tare (grams)	Tare (grams)	Sieve Opening Size	Weight Retained (grams)	Sieve Weight (grams)	Percent Finer
206.50	37.80	3"	0.00	0.00	100.0
		#4	3.88	0.00	97.7
		#40	22.03	0.00	84.6
		#200	40.97	0.00	60.4

Fractional Components

Cobbles	Gravel			Sand				Fines		
	Coarse	Fine	Total	Coarse	Medium	Fine	Total	Silt	Clay	Total
0.0	0.5	1.8	2.3	2.4	10.7	24.2	37.3			60.4

D ₅	D ₁₀	D ₁₅	D ₂₀	D ₃₀	D ₄₀	D ₅₀	D ₆₀	D ₈₀	D ₈₅	D ₉₀	D ₉₅
								0.2858	0.4397	0.7709	1.8705

Fineness Modulus
0.76

GRAIN SIZE DISTRIBUTION TEST DATA

12/9/20

Client: Peters & Ross
 Project: Fifth Street Development
 Project Number: 16183.001
 Location: B-1
 Depth: 15.0'
 Material Description: Olive brown sandy CLAY
 Tested by: BH

Sieve Test Data

Dry Sample and Tare (grams)	Tare (grams)	Sieve Opening Size	Weight Retained (grams)	Sieve Weight (grams)	Percent Finer
212.10	37.80	3"	0.00	0.00	100.0
		#4	6.99	0.00	96.0
		#40	3.21	0.00	94.1
		#200	45.83	0.00	67.9

Fractional Components

Cobbles	Gravel			Sand				Fines		
	Coarse	Fine	Total	Coarse	Medium	Fine	Total	Silt	Clay	Total
0.0	2.3	1.7	4.0	0.8	1.1	26.2	28.1			67.9

D ₅	D ₁₀	D ₁₅	D ₂₀	D ₃₀	D ₄₀	D ₅₀	D ₆₀	D ₈₀	D ₈₅	D ₉₀	D ₉₅
								0.1477	0.2013	0.2880	1.6615

Fineness Modulus
0.56

GRAIN SIZE DISTRIBUTION TEST DATA

12/9/2016

Client: Peters & Ross
Project: Fifth Street Development
Project Number: 16183.001
Location: B-1
Depth: 30.0'
Material Description: Yellowish brown sandy CLAY
Tested by: BH

Sieve Test Data

Dry Sample and Tare (grams)	Tare (grams)	Sieve Opening Size	Weight Retained (grams)	Sieve Weight (grams)	Percent Finer
220.40	34.10	3"	0.00	0.00	100.0
		#4	3.05	0.00	98.4
		#40	13.27	0.00	91.2
		#200	44.41	0.00	67.4

Fractional Components

Cobbles	Gravel			Sand				Fines		
	Coarse	Fine	Total	Coarse	Medium	Fine	Total	Silt	Clay	Total
0.0	1.1	0.5	1.6	0.4	6.8	23.8	31.0			67.4

D ₅	D ₁₀	D ₁₅	D ₂₀	D ₃₀	D ₄₀	D ₅₀	D ₆₀	D ₈₀	D ₈₅	D ₉₀	D ₉₅
								0.1687	0.2427	0.3737	0.7142

Fineness Modulus
0.50

GRAIN SIZE DISTRIBUTION TEST DATA

12/9/20

Client: Peters & Ross
 Project: Fifth Street Development
 Project Number: 16183.001
 Location: B-1
 Depth: 45.0'
 Material Description: Olive brown sandy CLAY
 Tested by: BH

Sieve Test Data

Dry Sample and Tare (grams)	Tare (grams)	Sieve Opening Size	Weight Retained (grams)	Sieve Weight (grams)	Percent Finer
225.00	38.10	3"	0.00	0.00	100.0
		#4	13.11	0.00	93.0
		#40	21.25	0.00	81.6
		#200	40.37	0.00	60.0

Fractional Components

Cobbles	Gravel			Sand				Fines		
	Coarse	Fine	Total	Coarse	Medium	Fine	Total	Silt	Clay	Total
0.0	3.5	3.5	7.0	2.4	9.0	21.6	33.0			60.0

D ₅	D ₁₀	D ₁₅	D ₂₀	D ₃₀	D ₄₀	D ₅₀	D ₆₀	D ₈₀	D ₈₅	D ₉₀	D ₉₅
								0.3595	0.6453	1.6868	10.6214

Fineness Modulus
1.06

GRAIN SIZE DISTRIBUTION TEST DATA

12/9/2016

Client: Peters & Ross
Project: Fifth Street Development
Project Number: 16183.001
Location: B-3
Depth: 7.5'
Material Description: Dark yellowish brown CLAY with sand
Tested by: BH

Sieve Test Data

Dry Sample and Tare (grams)	Tare (grams)	Sieve Opening Size	Weight Retained (grams)	Sieve Weight (grams)	Percent Finer
223.60	37.80	3"	0.00	0.00	100.0
		#4	0.54	0.00	99.7
		#40	8.42	0.00	95.2
		#200	28.41	0.00	79.9

Fractional Components

Cobbles	Gravel			Sand				Fines		
	Coarse	Fine	Total	Coarse	Medium	Fine	Total	Silt	Clay	Total
0.0	0.1	0.2	0.3	1.2	3.3	15.3	19.8			79.9

D ₅	D ₁₀	D ₁₅	D ₂₀	D ₃₀	D ₄₀	D ₅₀	D ₆₀	D ₈₀	D ₈₅	D ₉₀	D ₉₅
								0.0758	0.1241	0.2115	0.4125

Fineness Modulus
0.29

GRAIN SIZE DISTRIBUTION TEST DATA

12/9/20

Client: Peters & Ross
 Project: Fifth Street Development
 Project Number: 16183.001
 Location: B-3
 Depth: 15.0'
 Material Description: Olive brown sandy CLAY
 Tested by: BH

Sieve Test Data

Dry Sample and Tare (grams)	Tare (grams)	Sieve Opening Size	Weight Retained (grams)	Sieve Weight (grams)	Percent Finer
286.70	37.70	3"	0.00	0.00	100.0
		#4	0.00	0.00	100.0
		#40	14.41	0.00	94.2
		#200	92.09	0.00	57.2

Fractional Components

Cobbles	Gravel			Sand				Fines		
	Coarse	Fine	Total	Coarse	Medium	Fine	Total	Silt	Clay	Total
0.0	0.0	0.0	0.0	1.5	4.3	37.0	42.8			57.2

D ₅	D ₁₀	D ₁₅	D ₂₀	D ₃₀	D ₄₀	D ₅₀	D ₆₀	D ₈₀	D ₈₅	D ₉₀	D ₉₅
							0.0836	0.1920	0.2441	0.3208	0.5355

Fineness Modulus
0.45

Exhibit E

Peters & Ross
*Geotechnical & Geoenvironmental
Consultants*

October 11, 2018
Project No. 16183.001

Mr. Matthew Wadlund
Wadlund Design Studio
805 Jones Street
Berkeley, CA 94710

Response to Geotechnical Peer Review Email dated September 17, 2018
1444 5th Street, Berkeley, California
Permit Application ZP2018-0172

Dear Mr. Wadlund:

In accordance with your authorization, Peters & Ross has reviewed the September 17, 2018, email from Mr. Ted Sayre of Cotton, Shires and Associates, Inc. (CSA), the City of Berkeley's peer reviewer. The primary issues raised by CSA are 1) The seismic design values presented in our December 16, 2016 report. 2) Will these new seismic design values have any impact on our conclusions and recommendations regarding liquefaction, and 3) Is Peters & Ross aware of the new 4-unit development proposed for 1444 Fifth Street.

1) Seismic Design Values

In accordance with Section 1613 of the 2016 CBC, Peters & Ross classifies the site as Site Class D with a latitude of 37.876 degrees and a longitude of -122.301 degrees. The CBC parameters presented in the following table should be used for seismic design.

PERIOD (sec)	0.2	1.0
SPECTRAL RESPONSE S _s , S _l	2.002	0.815
SITE COEFFICIENT F _a , F _v (SITE CLASS D)	1.0	1.5
MAXIMUM SPECTRAL RESPONSE S _{ms} , S _{ml}	2.002	1.223
DESIGN SPECTRAL RESPONSE S _{Ds} , S _{Dl}	1.335	0.815

2) Liquefaction

The above values and the the MCE peak ground acceleration of 0.770g are the same values we computed for the 2013 CBC. Therefore our conclusions and recommendations regarding liquefaction are unchanged.

1444 5th Street
Project No. 16183.001

October 11, 2018
Page 2 of 2

3) Development of 1444 Fifth Street

Our December 16, 2016 report was issued for both 1444 and 1446. We drilled borings on both lots and were aware that four units would be placed on each of them.

Peters & Ross services consist of professional opinions and recommendations that are made in accordance with generally accepted geotechnical engineering principles and practices.

We appreciate the opportunity to provide geotechnical engineering services to you. If you have any questions, please call.

Sincerely,



Peter K. Mundy, P.E., G.E.
Geotechnical Engineer 2217



Exhibit F

City Council Hearing for 1446 Fifth Street Zoning Appeal

February 6, 2018¹

In response to being informed that the project would be subject to the Inclusionary Housing in-lieu fee due the site being capable of accommodating five units, Elisa Mikiten, project representative for the developer Matthew Wadlund, declared that the fee forces the developer to transform the project into one in which they will have “consolidated all their lots” (namely, 770 Page Street and 1442, 1444 and 1446 Fifth Street) to build a 27-unit apartment building (25:28-25:43). Ms. Mikiten then displayed the following slides depicting the building envelope of a 7-unit complex as compared with a 27-unit building straddling multiple lots:



Zoning appeal - 1446 5th Street (February 2018 Berkeley City Council)

13 views

Like 0 Dislike 0 Share Save ...



Zoning appeal - 1446 5th Street (February 2018 Berkeley City Council)

13 views

Like 0 Dislike 0 Share Save ...

¹ Available at https://www.youtube.com/watch?v=Fkwv_Do4KQ

Later in the proceeding, Vice Mayor Sophie Hahn and Ms. Mikiten engaged in the following exchange (30:30-31:57).

Vice Mayor Sophie Hahn: You're showing a bunch of parcels merged. Does your applicant own those parcels?

Elisa Mikiten: They do . . . Yes. They do.

SH: Is it the intent to develop them in the future with this kind of [indistinct] condos similar to what is proposed?

EM: That is their product. This is a test case. They just applied for one. . . .

SH: . . . I just didn't know that they own those other parcels.

EM: They do. Yes, yes.

SH: That's new information and I wanted to confirm that and it sounds like these parcels are easy to merge, and you're asserting that they can do that by right.

EM: I think so.

SH: And it seems like they have the intent to potentially develop them and that's all the information that I was looking for. Is that all correct?

EM: Yes. Especially with the vacant lot next door.

SH: Thank you very much. That is very helpful.

Exhibit G

Zoning Adjustment Board Appeal for 1444 Fifth Street

January 24, 2019¹

Planning Staff: This project [1444 Fifth Street] is very similar to an adjoining project to the south [1446 Fifth Street] . . . it's similar in pretty much every way . . . (3:19:20)

. . .

Board Member Teresa Clarke: The same owner owns that property as well as 770 Page?

Elisa Mikiten, project representative (EM): Correct. As well as 776. (3:33:26)

. . .

TC: Could someone please explain the City's rules as it relates to unit production versus fees and why a four-unit project would not be obligated to pay any fees even if it is not obligated to provide on-site affordable?

EM: So it goes by lot size. If a lot is large enough to accommodate five units then you have to pay the fee regardless of the number of proposed units. So typically what a development team does is adjust the lot line before making an application. We didn't see it coming. It came up as an appeal point. (3:45:50- 3:46:40)

¹ Available at http://berkeley.granicus.com/MediaPlayer.php?publish_id=80c43cb8-20f0-11e9-b021-0050569183fa.



CONFIDENTIALITY NOTICE

Whereas, the information contained in this report is confidential and its disclosure to the public would be in the best interests of the national defense, it is hereby ordered that this report be classified as CONFIDENTIAL.

It is the policy of the Department of Defense to protect the information contained in this report from unauthorized disclosure to the public. It is the responsibility of all personnel to whom this report is disseminated to ensure that it is not disclosed to the public.

This report is classified as CONFIDENTIAL and its disclosure to the public would be in the best interests of the national defense. It is the policy of the Department of Defense to protect the information contained in this report from unauthorized disclosure to the public.

It is the policy of the Department of Defense to protect the information contained in this report from unauthorized disclosure to the public. It is the responsibility of all personnel to whom this report is disseminated to ensure that it is not disclosed to the public.

Exhibit H

This map conforms to the requirements of the Subdivision Map Act and local ordinance. It has been examined by me, or under my direction by City of Berkeley staff, and I

By: Patrick M. Rei

DATE:

Patrick Rei
City Consultant Surveyor
P.L.S. 8178



APPROVED:
City of Berkeley

By: Nisha Patel

Nisha Patel
City Engineer
R.C.E. 72491

California All-Purpose Acknowledgement

A notary or other officer completing this certificate verifies only the identity of the individual who signs the document to which this certificate is attached and not the truthfulness, accuracy, or content of the document.

State of California}
County of Alameda}

On July 3, 2018, before me Mark Numainville
(Date) (Name of Notary)

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

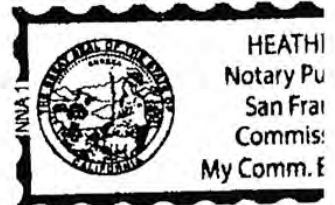
State of California
County of ALAMEDA

On JUNE 27 2018 before me, HEATHER MOORE
(insert name and

personally appeared MATTHEW WADWIND
who proved to me on the basis of satisfactory evidence to be the pers
subscribed to the within instrument and acknowledged to me that he/s
his/~~her~~/their authorized capacity(ies), and that by his/~~her~~/their signatur
person(s), or the entity upon behalf of which the person(s) acted, exer

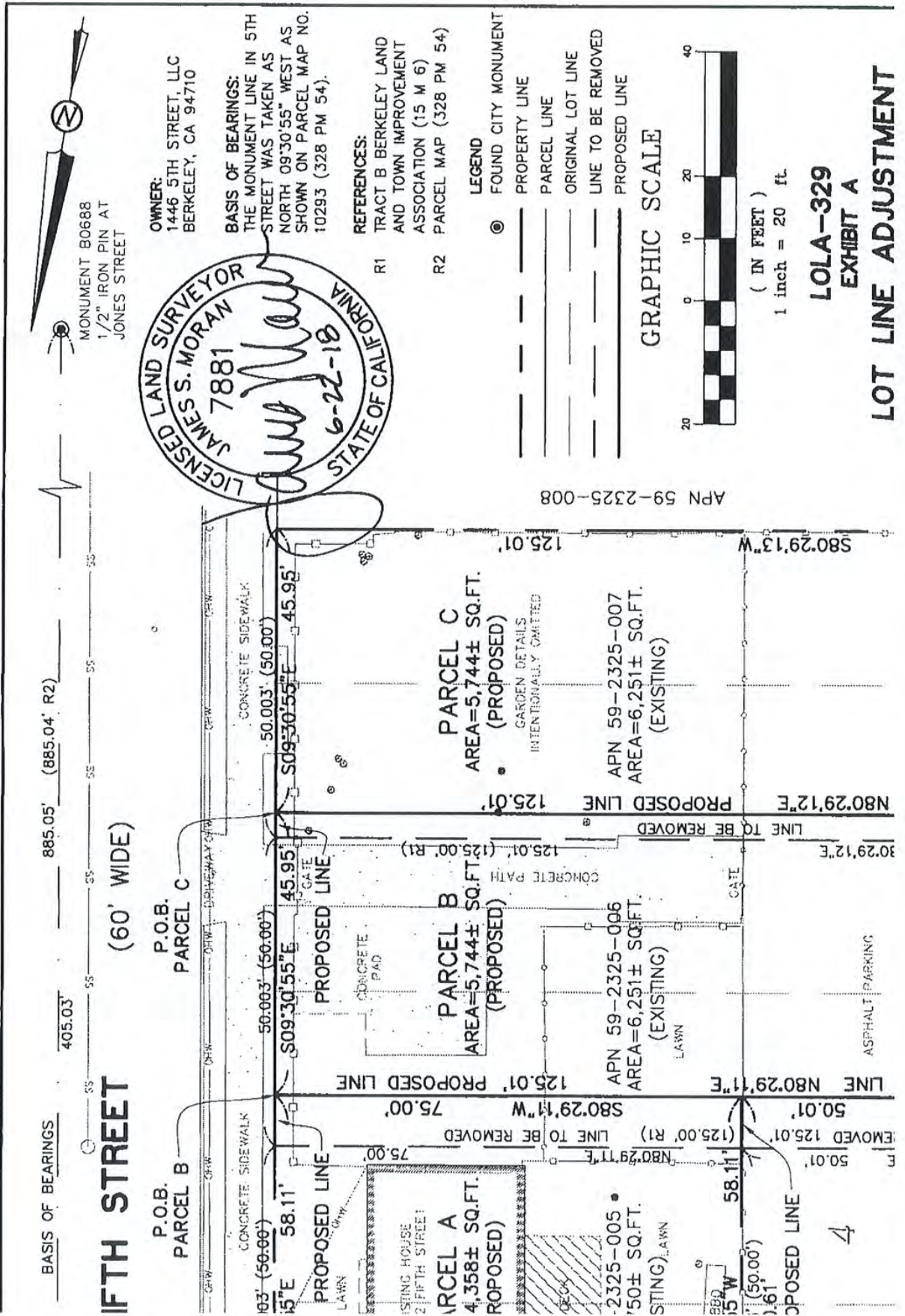
I certify under PENALTY OF PERJURY under the laws of the State of
paragraph is true and correct.

WITNESS my hand and official seal.



Signature [Handwritten Signature]

(Seal)



LICENSED LAND SURVEYOR
JAMES S. MORAN
 7881
[Signature]
 6-22-18
 STATE OF CALIFORNIA

LOT LINE ADJUSTMENT

LOLA-329
EXHIBIT A

EXHIBIT B

LOLA - 329

Adjusted Parcel A

REAL PROPERTY in the City of Berkeley, County of Alameda, State of follows:

Being a portion of Lots 3, 4 and 5, Block 47, Tract 'B', Berkeley I Association, filed November 8, 1894, in Book 15 at Page 6, in the offi Alameda County, more precisely described as follows:

Beginning at the point of intersection of the western line of Fifth Street as said street and lot line are shown on said map; thence, along sa 09°30'55" East 58.11 feet to a point distant South 09°30'55" East 110.61 Page Street as shown on said map; thence, leaving said western line, Sou thence, northerly, parallel with the line of Fifth Street North 09°30'55" \ line of Lot 3; thence, easterly along said northern line, North 80°29'11" Beginning.

Containing 4,358 square feet, more or less.

EXHIBIT B

LOLA - 329

Adjusted Parcel B

REAL PROPERTY in the City of Berkeley, County of Alameda, State of follows:

Being a portion of Lots 5, 6 and 7, Block 47, Tract 'B', Berkeley I Association, filed November 8, 1894, in Book 15 at Page 6, in the offi Alameda County, more precisely described as follows:

Beginning at the point on the western line of Fifth Street, distant Sout from the southern line of Page Street, as said streets are shown on said r Fifth Street South 09°30'55" East 45.95 feet; thence, leaving said wester 125.01 feet to the western line of said Lot 7; thence, northerly, along saic western lines of Lot 6 and Lot 5, North 09°30'58" East 45.95 feet; 1 125.01 feet to the Point of Beginning.

Containing 5,744 square feet, more or less.

EXHIBIT B

LOLA - 329

Adjusted Parcel C

REAL PROPERTY in the City of Berkeley, County of Alameda, State of California, as follows:

Being Lot 8 and a portion of Lot 7, Block 47, Tract 'B', Berkeley Improvement Association, filed November 8, 1894, in Book 15 at Page 6, in the official records of Alameda County, more precisely described as follows:

Beginning at the point on the western line of Fifth Street, distant South from the southern line of Page Street, as said streets are shown on said map; thence South 09°30'55" East 45.95 feet to the southern line of said Fifth Street; thence South 80°29'13" West 125.01 feet to the western line of said Lot 8; thence North 80°29'12" West 125.01 feet to the western line of Lot 7, North 09°30'58" West 45.95 feet to the Point of Beginning.

Containing 5,744 square feet, more or less.

EXHIBIT B

LOLA - 329

Adjusted Parcel D

REAL PROPERTY in the City of Berkeley, County of Alameda, State of follows:

Being Lot 34 and a portion of Lots 1, 2, 3, 4 and 5, Block 47, Tract ' Improvement Association, filed November 8, 1894, in Book 15 at Page Recorder of Alameda County, more precisely described as follows:

Beginning at the point of intersection of the southern line of Page Street : as said street and lot are shown on said map; thence, along said line of East 50.01 feet to a point distant South 80°29'11" West 75.00 feet from : as shown on said map; thence, leaving said southerly line, South 09°30' South 80°29'11" West 50.01 feet to the western line of Lot 5; thence, al and the western line of Lot 34, North 09°30'58" West 110.61 feet to the I

Containing 5,532 square feet, more or less.



Z O N I N G
A D J U S T M E N T S
B O A R D
S T A F F R E P O R T

FOR BOARD ACTION
JANUARY 24, 2019

1444 Fifth Street

Administrative Use Permit #ZP2018-0172 to construct four detached, three-story, approximately 1,900 square-foot single-family dwellings, each with an average height of 33 feet, on a 5,744 square-foot vacant lot.

I. Background

A. Land Use Designations:

- General Plan: MU – Manufacturing Mixed Use
- West Berkeley Plan Area
- Zoning: MU-R – Mixed Use Residential District

B. Zoning Permits Required:

- Administrative Use Permit, under BMC Section 23E.84.030, to construct four new dwelling units.

C. CEQA Determination: Categorically exempt pursuant to Section 15332 of the CEQA Guidelines (“In-Fill Development”).

D. Parties Involved:

- Applicant/Owner: 1444 5th Street, LLC, 805 Jones Street, Berkeley

Figure 1: Vicinity Map



Figure 2: Site Plan

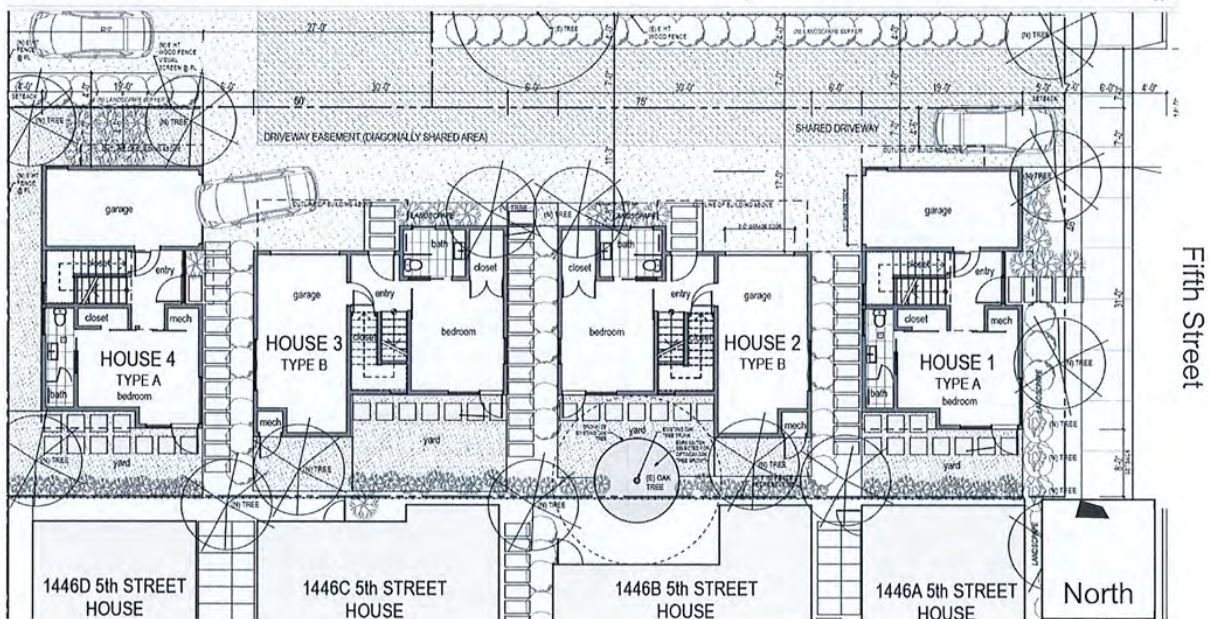


Table 1: Land Use Information

Location	Existing Use	Zoning District	General Plan Designation
Subject Property	Vacant		
Surrounding Properties	North	Single-family residential	MU – Mixed Use
	South	Four new detached dwelling units (developed by same applicant) currently under construction	
	East	Residential, commercial	
	West	Industrial, Warehouse	
		MU-R – Mixed Use Residential	
		MU-LI – Mixed Use-Light Industrial	

ZONING ADJUSTMENTS BOARD
January 24, 2018

1444 FIFTH STREET
Page 4 of 12

Table 2: Special Characteristics

Characteristic	Applies to Project?	Explanation
Affordable Child Care Fee for qualifying non-residential projects (Per Resolution 66,618-N.S.)	No	This fee applies to projects with net new 7,500 sq. ft. of non-residential floor area. The project involves only new residential floor area, and thus this requirement does not apply.
Affordable Housing Fee for qualifying non-residential projects (Per Resolution 66,617-N.S.)	No	This fee applies to projects with net new 7,500 sq. ft. of non-residential floor area. The project involves only new residential floor area, and thus this requirement does not apply.
Affordable Housing Mitigations for rental housing projects (Per BMC 22.20.065)	No	This fee applies to projects that propose 5 or more rental dwelling units. This project involves 4 new units, and thus this requirement does not apply.
Inclusionary Housing Requirements (Per BMC Chapter 23C.12)	No	This requirement applies to dwellings that are offered for sale as condominiums; at the time of this writing, the applicant has not applied for a condominium map at the project site. Moreover, the requirement applies to construction of less than 5 condominium units only on lots whose zoning designation allows for the construction of 5 or more units. Given the density standards in the MUR District, the existing lot can accommodate only 4 units. Thus, if the applicant did apply for a condominium parcel map, this fee would not apply.
Coast Live Oak Trees (BMC Section 6.52.010)	Yes	One Coast Live Oak tree that is subject to the moratorium on the removal of such trees is located near the south property line of the subject property. Two Conditions of Approval were added by the ZAB to an entitlement on the adjacent parcel at 1446 Fifth Street to ensure appropriate protection measures are taken during and after construction. Those Conditions of Approval are also included in the conditions for this project.
Creeks	No	The project site is not within a creek buffer zone.
Density Bonus	No	The applicant has not applied for a State Density Bonus.
Green Building Score		This project exceeds the minimum requirements of the GreenPoint Rated Checklist and must comply with the City's Building Code regarding project planning and design; energy, water, resources and material efficiency and conservation; and environmental quality. These requirements represent the minimum standards for green building in Berkeley, and the applicant may pursue further measures upon actual construction of this project is approved.
Historic Resources	No	The project does not involve the demolition of any building, nor is there any evidence to suggest that the site qualifies as a historic resource.
Rent Controlled Units	No	No rent-controlled units are at this site.
Residential Preferred Parking (RPP)	No	The neighborhood surrounding the subject site does not participate in the City's Residential Preferred Parking program.

Characteristic	Applies to Project?	Explanation
Seismic Hazards (SHMA)	Yes	The project site is located within an area susceptible to liquefaction as shown on the State Seismic Hazard Zones map. The applicant submitted a geotechnical investigation for the project (Peters & Ross, December 2016, May 2017, and October 2018), which concluded that the project is feasible from a geotechnical engineering standpoint provided the recommendations in the reports are followed. The City's geotechnical consultant peer reviewed the geotechnical investigations in memoranda of February 2017, May 2017, and October 2018 and concluded that the Peters & Ross report satisfactorily addresses the site geotechnical issues.
Soil/Groundwater Contamination	No	The project site is not listed on the Cortese List (an annually updated list of hazardous materials sites), however it is located within the City's Environmental Management Area. Standard Toxics Conditions of Approval apply.

Table 3: Project Chronology

Date	Action
August 31, 2018	Application submitted
November 19, 2018	Application deemed complete
January 10, 2019	Public hearing notices mailed/posted Staff Level Design Review approval posted on site
January 24, 2019	ZAB hearing

Table 4: Development Standards

Standard		Existing	Proposed Total	Permitted/ Required
BMC Sections 23E.84.070-080				
Lot Area (sq. ft.)		5,744	No Change	N/A
Gross Floor Area (sq. ft.)		0	Approximately 7,672 (1,900 per unit) ¹	N/A
Floor Area Ratio		0	1.3	1.5 max
Dwelling Units	Total	0	4	4 max (1 per 1,250 sq. ft. lot area, + 1 if remainder is 750 + sq. ft.)
Building Height	Average	N/A	33'	35' max
	Stories	N/A	3	3 max
Building Setbacks	Front	N/A	5'	5' min
	Rear	N/A	4'	0' min
	Left Side	N/A	4'6"	4'7" min ²
	Right Side	N/A	8'	4'7" min ²
Lot Coverage (%)		0	42%	N/A
Usable Open Space (sq. ft.)		N/A	816	600 min (150 per unit)
Parking	Automobile	N/A	4	4 min (1 per unit)
	Bicycle	0	0	None Required
¹ The originally submitted application included a proposal for 7,672 square feet of gross floor area. However, the applicant provided revised plans on December 24, 2018 to accommodate the required open space for each unit. The revised plans propose a reduction of approximately 30 square feet.				
² Per BMC Section 23E.84.070.E, if a side of a lot abuts a property with one or more dwelling units, the side yard shall be either 10', or 10% of the lot width, whichever is less.				

II. Project Setting

A. Neighborhood/Area Description: The project is in West Berkeley on the west side of Fifth Street between Page Street to the north and Jones Street to the south. A similar development project, which was proposed by the same applicant and also includes four detached, three-story dwelling units, is currently under construction at the southern abutting lot. One- and two-story residential buildings are located further south of the property for the length of the block to Jones Street and directly across Fifth Street.

This portion of the MU-R District provides a transition between the more exclusively residential areas to the east and the industrial areas to the west. The west side of the subject block, along Fourth Street, where the MU-LI District begins, includes industrial and warehouse uses. The east side of the block, along Fifth Street, where the project site is located, includes a residential concentration of one- and two-story buildings. The neighborhood further eastward features a mix of uses, including one- to three-story residential and commercial buildings. The concentration of residential uses increases further eastward.

B. Site Conditions: The project site is generally level, rectangular in shape and currently vacant, with no buildings or structures onsite. The western portion of the site is used

as part of a private parking area for the industrial and warehouse buildings on the west side of the block, including 1435, 1445, and 1453 Fifth Street.¹ The site contains one small Coast Live Oak tree located roughly 45 feet from the street near the southern property line. Several small trees are located along Fifth Street, in the public right-of-way in front of the project site.²

III. Project Description

The applicant proposes to construct four detached dwelling units. Each building would be three stories, with an average height of 33 feet, and would each provide approximately 1,900 square feet of gross floor area. The buildings would be located towards the south side of the property. A driveway serving each of the four proposed attached one-car garages would be aligned along the north side of the property and would be part of a proposed shared access easement that would also provide access to the northern abutting parcels at 1442 Fifth Street and 770 Page Street (see above, Figure 2).

The applicant has designed all four buildings according to the same general floor plan scheme. The ground floors would each include a garage, one bedroom, and one bathroom. The second floors would each include two bedrooms and a bathroom. The third floors would feature open floor plans, with connected living areas, dining areas, and kitchens. The front and rear buildings would have third floor decks with views of the street and rear yard, respectively. The two middle buildings would have rooftop decks with views in all directions. The proposed design of the buildings is similar to that of the recently approved development at the southern abutting lot, 1446 Fifth Street, which is currently under construction. Their design is intended to reference modern architecture and the industrial context of West Berkeley and would include wood and metal siding.

IV. Community Discussion

A. Neighbor/Community Concerns: As noted above, the same developer received an entitlement last year to develop the adjacent parcel at 1446 Fifth Street. That project also involved the construction of four new, detached, three-story dwellings on a vacant lot. Approvals by staff and the ZAB were appealed four times (once to the DRC, once to ZAB, and twice to City Council), and the application was ultimately approved at the City Council in July 2018. The appeal issues included concerns that the applicant was not meeting several City requirements, including the in-lieu fee required by the Inclusionary Housing Requirements, adequate review by Design Review staff, code-compliant parking spaces, protection of the Oak tree onsite, and notification of neighborhood residents.

¹ According to zoning records for these buildings, the off-street parking spaces for the existing businesses were provided on the same property as the businesses. While the parking does not occur entirely on the same property as these buildings (it occurs at portions of the eastern abutting properties), it appears that the City did not confirm the location of the parking spaces when zoning certificates were approved. However, per BMC Section 23B.20.020, because the approved zoning certificates do not contain evidence that required parking would be provided on different property, they do not validate approval of parking at the subject parcel.

² The attached Findings and Conditions include Conditions of Approval that apply to protection of the Coast Live Oak tree (#15) and proposed removal of any of the existing street trees (#16).

During the appeal process, in June 2018, the applicant obtained a Lot Line Adjustment of the property line between the subject parcel to 1446 Fifth Street, which shifted south by approximately 4 feet. The size of 1446 Fifth Street decreased to 5,744 square feet, and the size of the subject parcel increased to 5,744 square feet. Given the density standards in the MU-R District, each newly created lot can accommodate a maximum of four units. As noted in Table 2, the result of this change is that the Inclusionary Housing Requirements in BMC 23C.12 would not apply if the applicant chooses to submit a condominium parcel map for either parcel.

As allowed by BMC Section 23B.28.030 (Referral of Applications for AUPs to Board), because of the similarity between the proposed project and the neighboring approved project, and given the level of recent neighborhood interest, the Zoning Officer has scheduled the AUP application for a public hearing before the ZAB, instead of issuing a notice of decision administratively. In this case, the Board must review and act upon the application in the same manner as it acts upon other Use Permit Applications.

Prior to submitting this application to the city, a pre-application poster was erected by the applicant, and the applicant held a community meeting on August 23, 2018, which was attended by six people (meeting minutes are included as Attachment 4). On January 9, 2019, the City mailed public hearing notices to property owners and occupants within 300 feet of the subject site, and to interested neighborhood organizations, and the City posted notices within the neighborhood in three locations. At the time of this writing, staff has not received any communications regarding the project.

- B. Committee Review:** Since the project site is in a nonresidential zoning district, Staff Level Design Review is required. The applicant submitted a Staff Level Design Review application in conjunction with the Administrative Use Permit application on August 31, 2018. Design Review Staff concluded that the project is compatible with City-wide Design Guidelines and posted notices on-site on January 9, 2019. The Staff Level Design Review Approval included standard design review conditions for further review of building details and the landscape plan during the building permit process. The appeal and comment period for this approval is currently underway and will end on January 23, 2019, at 4:00 PM.

V. Issues and Analysis

- A. Housing Accountability Act:** The Housing Accountability Act §65589.5(j) requires that when a proposed housing development complies with the applicable, objective general plan and zoning standards, but a local agency proposes to deny the project or approve it only if the density is reduced, the agency must base its decision on written findings supported by substantial evidence that:

1. The development would have a specific adverse impact on public health or safety unless disapproved, or approved at a lower density;³ and

³ As used in the Act, a "specific, adverse impact" means a "significant, quantifiable, direct and unavoidable impact, based on objective, identified written public health or safety standards, polices, or conditions as they existed on the date the application was complete.

2. There is no feasible method to satisfactorily mitigate or avoid the specific adverse impact, other than the disapproval, or approval at a lower density.

Staff Analysis: The proposed project complies with applicable, objective general plan and zoning standards, including maximum height, density, and FAR, and minimum setbacks, useable open space, and number of parking spaces. Thus, the Housing Accountability Act applies. Staff is not aware of any basis to make the findings listed above.

B. New Dwelling Units in the MU-R District and Neighborhood Compatibility:

Pursuant to BMC Section 23E.84.090, the proposed project is consistent with the purposes of the MU-R District and the West Berkeley Plan because it would strengthen the residential concentration in this neighborhood. The project would protect neighboring residents from unreasonably detrimental effects of nonresidential uses, such as noise, vibration, odors, smoke, fumes, gases, dust, heat and glare because the proposal would add residences (not industrial uses) to the existing cluster of residential buildings at this block. Given the existing residential concentration on this block face, the project is also not likely to contribute to a cumulative change of use in buildings away from the mix of uses that surround this area of West Berkeley. Moreover, the proposed use and its industrial aesthetic would help contribute to a neighborhood that acts as a transition between the residential districts to the east and the industrial districts to the west.

The proposed project complies with all applicable MU-R District development standards (see Table 4). The applicant proposes to construct four units on a lot that can accommodate four units; a floor area ratio of 1.3 where the maximum allowed is 1.5; average height of 33 feet at all four buildings where the maximum average height allowed is 35 feet; and 816 square feet of useable open space where the minimum required is 600 square feet (150 per unit). The project would provide the required number of parking spaces, one per unit, and the City's Traffic Engineer has confirmed that the proposed parking and driveways would operate acceptably. (To ensure compliance with Traffic Engineering standards, Condition of Approval #12 requires that the applicant provide the recorded easements prior to issuance of a building permit.) The project would meet the required front yard setback and would exceed all side and rear yard setbacks.

Staff believes the proposal is consistent with the overall scale and development pattern of the one-, two-, and three-story residences and commercial and manufacturing spaces in the neighborhood, including the approved development on the southern abutting parcel. In addition, Design Review Staff found that the application is consistent with applicable design review guidelines and with the surrounding aesthetic context.

Sunlight: Staff believes the project would not result in significant loss of direct sunlight on abutting residences for several reasons. No residences occur to the west and new shadows cast towards the east would occur primarily along Fifth Street, and not any dwellings. The project would cast shadows on the northern abutting dwelling at 1442 Fifth Street during the winter solstice and on the southern abutting dwellings (currently

under construction) at 1446 Fifth Street during the summer solstice. However, in both cases, shadows would only affect some windows and occur during some morning hours. Because impacts to neighboring residences would be limited to certain hours a day and certain months of the year, staff believes these shading impacts would not be detrimental.

Air: Staff believes the proposal would be consistent with the existing development and building-to-building separation pattern – or air – in this MU-R neighborhood because the buildings would exceed minimum setback and useable open space requirements and would be three stories where the maximum allowed is three.

Views: Staff expects that the proposed project would not result in additional obstruction of significant views in the neighborhood because there are no significant views as defined in BMC Section 23F.04 (Definitions) available to residences in the area. The area is generally flat, developed with one- to three-story buildings, and includes mature vegetation which provides visual screening.

C. General Plan Consistency: The 2002 General Plan contains several policies applicable to the project, including the following:

1. Policy LU-3–Infill Development: Encourage infill development that is architecturally and environmentally sensitive, embodies principles of sustainable planning and construction, and is compatible with neighboring land uses and architectural design and scale.
2. Policy LU-7–Neighborhood Quality of Life, Action A: Require that new development be consistent with zoning standards and compatible with the scale, historic character, and surrounding uses in the area.
3. Policy UD-16–Context: The design and scale of new or remodeled buildings should respect the built environment in the area, particularly where the character of the built environment is largely defined by an aggregation of historically and architecturally significant buildings.
4. Policy UD-24–Area Character: Regulate new construction and alterations to ensure that they are truly compatible with and, where feasible, reinforce the desirable design characteristics of the particular area they are in.

Staff Analysis: The proposed project is an infill development that would add four new dwellings on a vacant lot in a primarily residential neighborhood. The massing, proportions, design, and use of the buildings would be compatible with the surrounding neighborhood. As noted above, the project meets or exceeds all development standards in the MU-R district.

5. Policy H-33–Regional Housing Needs: Encourage adequate housing production to meet City needs and the City's share of regional housing needs.

Staff Analysis: The applicant proposes to add four new dwelling units to the City of Berkeley housing stock.

6. Policy EM-5–“Green” Buildings: Promote and encourage compliance with “green” building standards. (Also see Policies EM-8, EM-26, EM-35, EM-36, and UD-6.)
7. Policy UD-33–Sustainable Design: Promote environmentally sensitive and sustainable design in new buildings.

Staff Analysis: The project would be constructed to comply with current green building standards that are required by the Building Code.

D. West Berkeley Plan Consistency: The 1993 West Berkeley Area Plan contains several policies applicable to the project, including the following:

1. Land Use Goal 1, Policy A: Retaining, through planning, zoning and land use policies which shield manufactures from economic and physical incompatibilities with other uses, sufficient land and buildings to maintain the current level of manufacturing employment at a minimum.
2. Land Use Goal 2, Policy D: Create a Mixed Residential district as a special mixed use district which will recognize and support the continued evolution of a unique mix of residential, light industrial, and arts and crafts uses, with a particular effort to strengthen residential concentrations existing there.

Staff Analysis: Since the proposed residential units would be located on a block that already contains a concentration of residential uses, the project would shield manufacturers elsewhere in the MU-R district from incompatibilities with residences that are too proximate. Given this compatibility of the proposed use, the project would support the mixed nature of the existing neighborhood.

3. Land Use Goal 4: Assure that new development in any sector is of a scale and design that is appropriate to its surroundings, while respecting the genuine economic and physical needs of the development.

Staff Analysis: As discussed above in Sections V.B and V.C, the proposed massing and scale would be compatible with the surrounding neighborhood context and would reflect the industrial nature of West Berkeley. The project would also provide four new dwelling units that meet all applicable zoning requirements for new residential uses.

VI. Recommendation

Because of the project’s consistency with the Zoning Ordinance and General Plan, and minimal impact on surrounding properties, staff recommends that the Zoning Adjustments Board **APPROVE** #ZP2018-0172 pursuant to Section 23B.28.060.C.1 and subject to the attached Findings and Conditions (see Attachment 1).

Attachments:

1. Findings and Conditions
2. Project Plans, received January 8, 2019
3. Notice of Public Hearing
4. Neighborhood Meeting Notes and Attendance

ZONING ADJUSTMENTS BOARD
January 24, 2018

1444 FIFTH STREET
Page 12 of 12

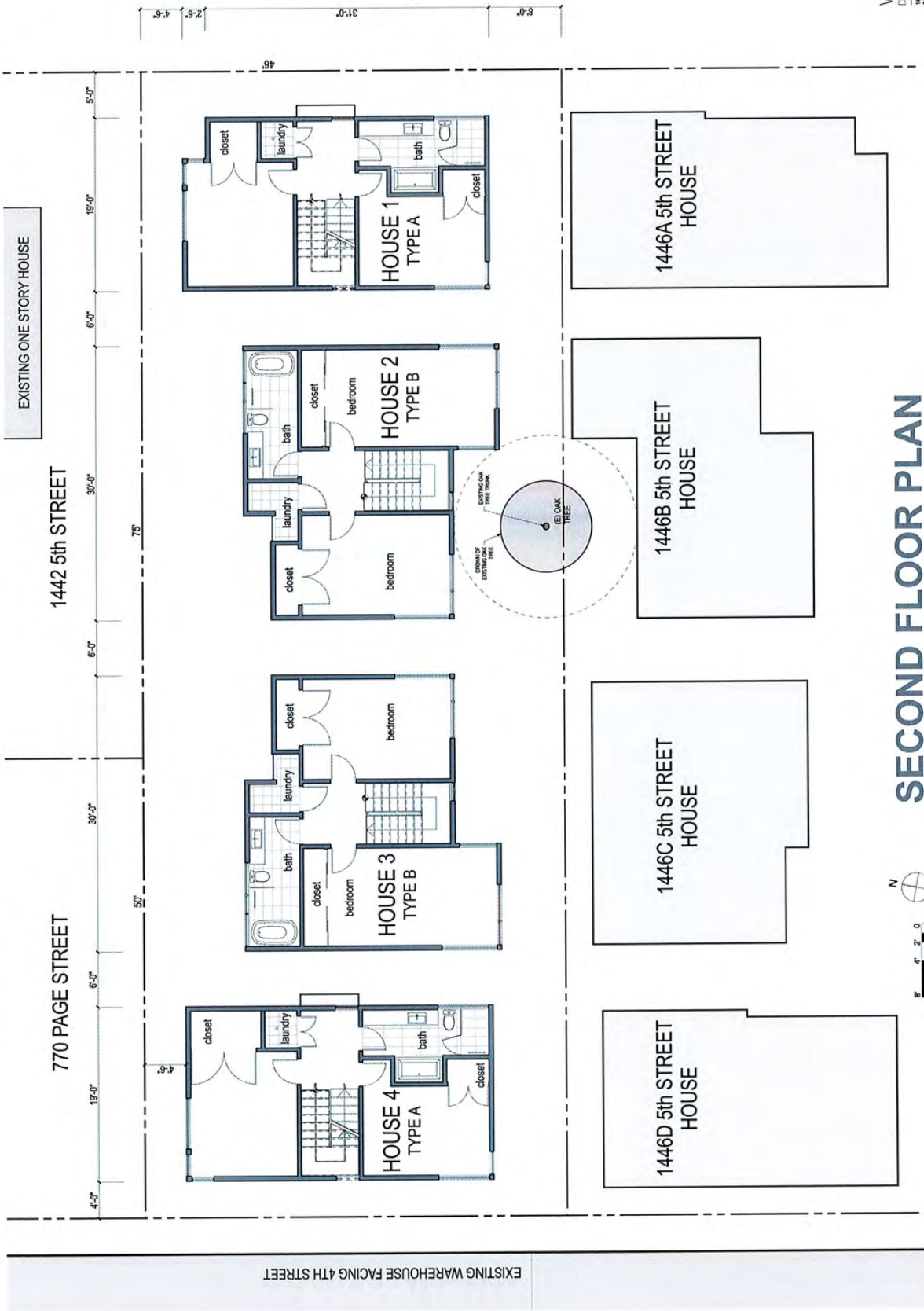
5. Correspondence Received

Staff Planner: Abe Leider, Contract Planner, aleider@rinconconsultants.com, (510) 671-0175 and
Leslie Mendez, LMendez@cityofberkeley.info, (510) 981-7426

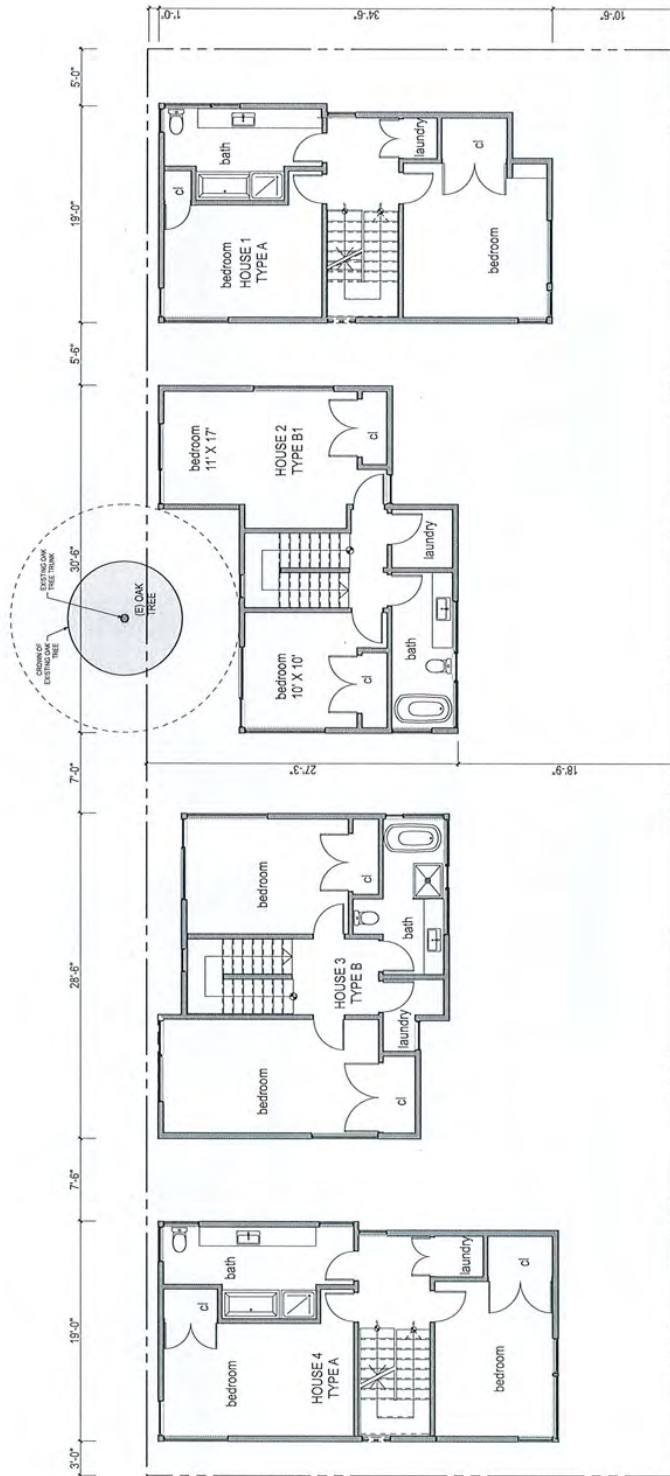
Exhibit J

ATTACHMENT:
JAG 01-24-17
ARCHITECTURAL VERSION

WADLUND+
Design Studio
1446A STREET - JAG
OCTOBER 2018



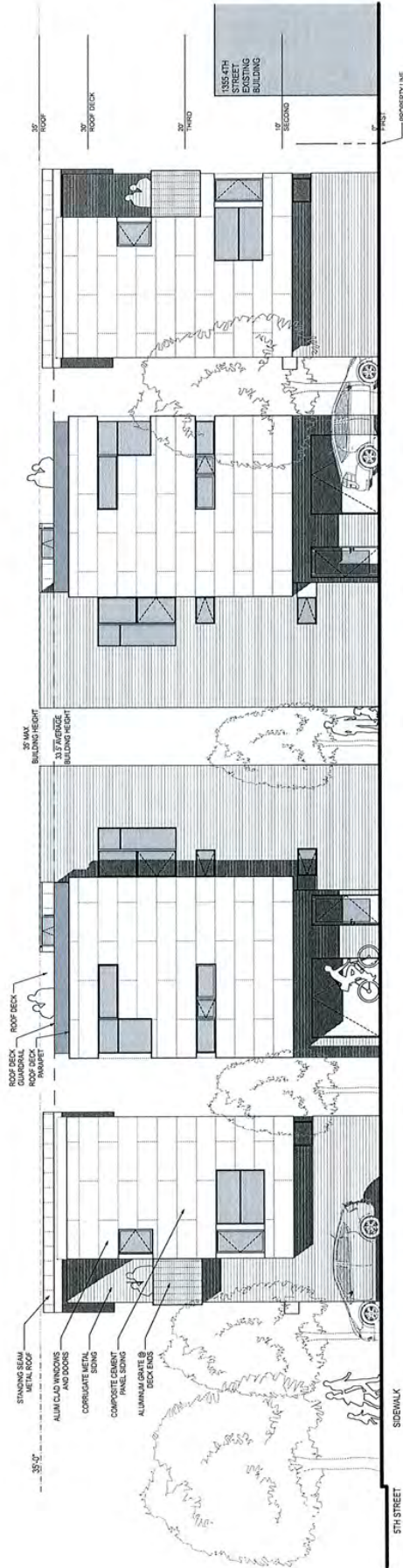
AMERICAN EDUCATION VERSION



WADLUND+
Design Studio
3000 N. W. 10th St., Suite 100
Fort Lauderdale, FL 33309
TEL: 954.575.1111
WWW.WADLUND.COM

SECOND FLOOR PLAN

ATTACHMENT
ZAB 01-24-1
ARCHICLAD EDUCATION BUILDING



NORTH ELEVATION - LOT INTERIOR



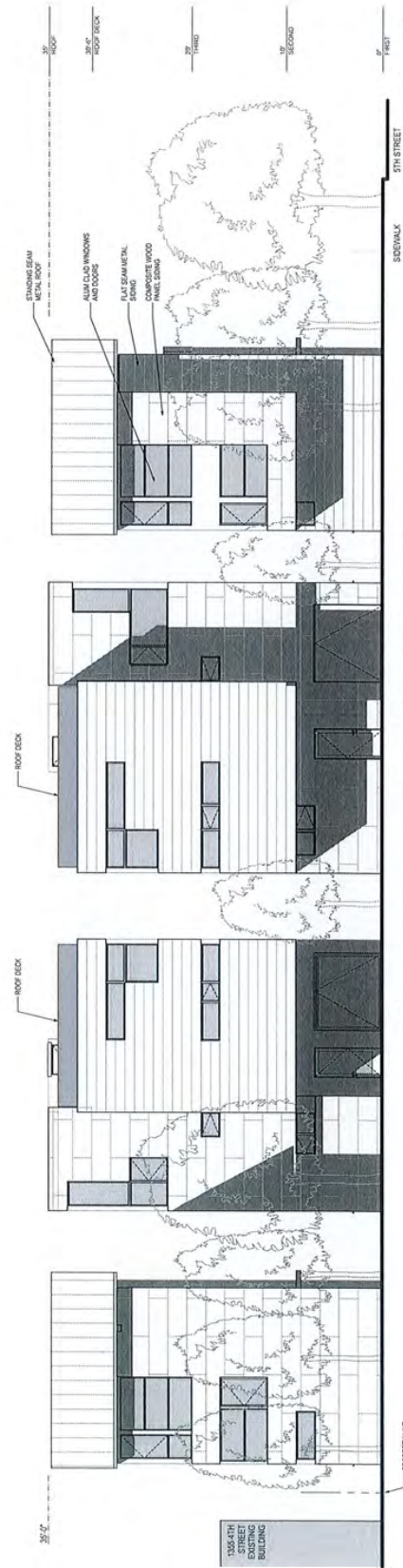
SOUTH ELEVATION - LOT INTERIOR

WADLUND+
Design Studio
144 5TH STREET - 4ND
REVISED DECEMBER 2018

ARCHITECT EDUCATION VERSION



NORTH ELEVATION - LOT INTERIOR



SOUTH ELEVATION - LOT INTERIOR

5TH STREET
SIDEWALK
PROPERTY LINE
1565 5TH STREET EXISTING BUILDING
WADLUND+
Devin Stubbins
ARCHITECT
1565 5TH STREET, SUITE 100
APRIL 2018

Exhibit K



U.S.A.
9:00 P.M. PUBLIC HEARING



City of Berkeley

Manager's Office
Martin Luther King, Jr.
Civic Center Building
2180 Milvia Street
Berkeley, California 94704

(415) 644-6580
TTY (415) 644-6915

FOR COUNCIL ACTION

June 10, 1986

Deadline For Council

Action: August 18, 1986

To: Honorable Mayor and
Members of the City Council

From: Hal Cronkite, Acting City Manager

Subject: ADOPTION OF INCLUSIONARY ZONING ORDINANCE

PRESENTED TO COUNCIL
CITY OF BERKELEY
JUN 10 1986
OFFICE OF
CITY CLERK

Introduction

The purpose of this report is to present for Council consideration a draft Ordinance which revises the Inclusionary Zoning Ordinance initiated by the Planning Commission.

RECOMMENDATION

1. That Council adopt a Negative Declaration and adopt the attached Ordinance which adds Chapter 15B to the City's Zoning Ordinance No. 2,018-N.S. to require inclusion of low income housing in certain residential housing projects.
2. That Council direct the City Manager to examine the Planning and Community Development Work Program to identify which activities must be deleted so that implementation of the Inclusionary Zoning Ordinance can be added.

Background

The attached draft Inclusionary Zoning Ordinance prepared by staff and recommended for adoption by Council is very similar in principle and content as that approved by the Planning Commission. This draft was developed as a result of legal review of the Planning Commission's Ordinance and staff discussion of certain issues which arose subsequent to approval of the Commission's Ordinance. Many of the changes are minor and technical in nature, some involve clarifications and elucidations, a few are substantive. A summary of the more salient changes and the rationale for those changes is provided below. Attachment B is the proposed Ordinance, while Attachment C is the proposed Ordinance with differences between it and the Planning Commission's version.

ADOPTION OF INCLUSIONARY ZONING ORDINANCE

FOR COUNCIL ACTION
June 10, 1986

I SUMMARY OF CHANGES

Applicability

The draft clarifies the Planning Commission's intention that the Ordinance applies to both proposed projects of five units or more and residential projects proposed on parcels suitable for development of five units or more.

Eliminated from this section is the requirement that no building or occupancy permit be issued unless the requirements of the Ordinance are met. That language was superflous since in the section on General Inclusionary Requirements the Ordinance specifies that no Use Permit shall be issued without appropriate inclusionary provisions.

The text exempting live/work projects has also been removed from this section since the exclusion of that category in the staff's draft is contained in the definition of "residential unit."

Purpose

This section better defines the purpose of the Ordinance.

Definitions

The location of the section has been changed and some of the definitions deemed not necessary eliminated. The major change in this section is in the definition of "residential unit." The definition clarifies that fraternities, sororities, residential hotels, and other group living quarters for purposes of this Ordinance are not considered "residential units" and, therefore, exempt from the Ordinance. Those exclusions were not discussed during the drafting of the Ordinance by the Planning Commission Committee. Nonetheless, they appear logical given the structure of the Ordinance. It would be extremely difficult to apply the Ordinance without substantive additions to accommodate those categories. Staff did not think it appropriate to recommend such changes. Furthermore, it did not appear likely that there would be any significant number of new projects in those categories.

Designated Implementing Authority

Unlike the Planning Commission's Ordinance which requires prior approval by that body of regulations and procedures, the proposed Ordinance allows the City Manager to develop and implement regulations. This change is necessary to avoid delay between passage of the Ordinance and processing of Use Permits. The Planning Commission would still have input but rather than being at the beginning of the process, review and input will occur within one year of passage of the Ordinance.

ADOPTION OF INCLUSIONARY ZONING ORDINANCE

FOR COUNCIL ACTION
June 10, 1986

General Inclusionary Requirements

Regulations pertaining to density bonuses have been eliminated as a separate section and incorporated into this section and other parts of the Ordinance for low income inclusionary units where a density bonus/incentives are provided is the same as that required when no density bonus/incentives are granted.

Use Permit Conditions

A section on Use Permit conditions present in the Planning Commission's Ordinance has been eliminated because it is too restrictive (for example, it requires information that may not be available at the time of the Use Permit application). The section is also superfluous since the previous section already states that applicable residential developments shall have conditions attached which will assure compliance with the provision of the Ordinance and require a written agreement between the City and developer as to specific requirements.

Inclusionary Requirements for Rental Projects

An addition has been made to this section to specify that when a density bonus/incentives are given to allow development of "lower income" units, those units shall be affordable to households with income that is 60% of median for this area. This addition is necessary to clarify what the actual price of the inclusionary units will be.

Inclusionary Unit Requirements for Ownership Projects

Language has been added to this section to exclude limited equity housing cooperatives from giving the City the right-of-first refusal to purchase units. Given the goals of limited equity cooperatives, it would be unlikely that the City would be interested in purchasing inclusionary units in such projects.

This section also has an addition that specifies that when a density bonus is granted in exchange for development of "low income" units those units shall be affordable to households at 70% of median income.

Another change in this section pertains to the time limit by which the City must either act on its right-of-first refusal or provide a purchaser list. This draft allows the City 60 days from completion of the project to take either of the above actions. The Planning Commission's Ordinance requires the City to take those actions within 60 days from completion of the development's foundation. Staff felt that the timeline contained in the Planning Commission's Ordinance was insufficient to give any indication as to the appearance of the inclusionary unit. Therefore, it would be difficult to find a buyer for the inclusionary unit. The time limit in the proposed draft would

ADOPTION OF INCLUSIONARY ZONING ORDINANCE

FOR COUNCIL ACTION
June 10, 1986

reduce that difficulty. It will give the developer sufficient time to sell the inclusionary unit at approximately the same time as other units in the project.

Control of Resale

This section has also been revised to exclude limited equity housing cooperatives (LEHC) from the resale controls contained in the Ordinance. Such exclusion appeared justified since LHEC's contain restrictions similar to those found in the Ordinance. The City still maintains the right to monitor the inclusionary units to ensure that affordability requirements are being met.

The staff's draft also proposes that only half of the cost of improvements may be recovered by the owner once the inclusionary unit is sold as opposed to the whole amount allowed in the Planning Commission's Ordinance. This change provides a balance between retaining an incentive for owners to improve their home but yet maintaining affordability for future households who are at the same income level as the original buyer.

In Lieu Fees

This section has been changed by adding language to cover in-lieu fees for residential rental projects. Since those units are not offered for sale, it is recommended that the in-lieu fee be the same as for the ownership units. However, rather than "actual sales price" the City would use "comparable sales price" to determine the amount to be paid by the developer.

Density Bonus/Other Incentives

This section has been incorporated into the section on General Inclusionary Requirements.

II ADOPTION OF A NEGATIVE DECLARATION

Since the proposed draft is very similar to that initiated by the Planning Commission, the Initial Environmental Study which justifies the issuance of a Negative Declaration for that Ordinance is equally valid for this draft. The Initial Environmental Study is contained in Attachment C of the Planning Commission's report being presented for Council action on this matter.

III IMPLEMENTATION

It is difficult to say precisely how much staff time will be involved in implementing the Ordinance since much depends on the level of applicable new residential projects developed. However, at least for the first year, approximately 0.5 FTE staffing will be required to: develop regulations, schedules, and procedures, prepare a referral list and certify eligibility, provide information to potential developers and other interested parties and prepare agreements. The level of staffing could be reduced by simplifying the

ADOPTION OF INCLUSIONARY ZONING ORDINANCE

FOR COUNCIL ACTION
June 10, 1986

Ordinance to decrease staff involvement. But if the City wishes to retain control on occupancy and future affordability of the inclusionary units, staff involvement is crucial. In any case, initial implementation of the Ordinance will require intensive and considerable staff time. It is extremely important to identify funding and staff not only to achieve the goals of the Ordinance but also to avoid major bottlenecks in the operation of the Zoning Division.

Financial Implications and Contact Person

Negligible
Vicki Elmer, 644-6073

Approved by:



Vicki Elmer
Vicki Elmer, Assistant City Manager
Planning and Community Development

- Attachments: A. Negative Declaration
B. Proposed Ordinance
C. Annotated Staff-Proposed Ordinance

08-03



City of Berkeley



Planning and Community
Development Department
Zoning Division
Martin Luther King, Jr.
Civic Center Building
2180 Milvia Street
Berkeley, California 94704

(415) 644-6570
TTY (415) 644-6915

P R O P O S E D
N E G A T I V E D E C L A R A T I O N

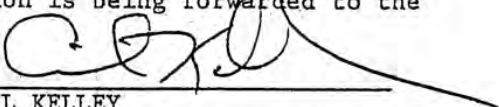
It is hereby declared that the project described below will not have a significant effect on the environment based on the Initial Study prepared according to CEQA guidelines:

INCLUSIONARY ZONING ORDINANCE

The purpose of an inclusionary zoning ordinance is to ensure that some units in multi-family housing projects be made affordable to low income households. The Ordinance will require that 20% of all new residential development projects be affordable. The Ordinance will be applicable to projects containing five or more residential units. Potential beneficiaries are households with income below the median income for this area. Other elements of the Ordinance include a City's right-of-first refusal to acquire inclusionary units, resale restrictions on inclusionary units to maintain long-term affordability, payment of an "in-lieu" fee instead of provision of fractional unit, provision of a density bonus or other incentives when State requirements are applicable. The Planning and Community Development Department is the designated implementing agency.

Anyone concerned with this project may review the application and other material composing the Initial Study on file in the Zoning Division, Martin Luther King, Jr. Civic Center Building, 2180 Milvia Street, Berkeley, CA 94704 (Phone 644-6570.)

The Planning Commission reviewed and recommended adoption of this Negative Declaration on May 21, 1986. The recommendation is being forwarded to the City Council for adoption.



GIL KELLEY
ENVIRONMENTAL REVIEW, ZONING DIVISION

ORDINANCE NO. -N.S.

Amending Zoning Ordinance No. 3018-N.S. by adding Chapter 15B to require the inclusion of low income housing in certain residential housing projects.

BE IT ORDAINED by the Council of the City of Berkeley that the Zoning Ordinance be amended as follows:

CHAPTER 15B

INCLUSIONARY UNITS

Section 15B.0 APPLICABILITY OF REGULATIONS

(a) The following regulations shall apply to Use Permit and variance applications for development of:

(1) projects containing five or more residential units.

(2) residential housing projects proposed on parcels whose size and zoning designation is such to allow construction of five or more dwelling units.

(3) projects of one to four residential units when such units are added to an existing one to four unit property which has been developed after passage of this Section and the resulting number of units totals five or more. All units in said property are subject to the requirements of this Chapter.

(b) no building permit shall be issued for a project subject to this Chapter unless the developer has agreed to meet the requirements of this Chapter except projects for which building permits were granted prior to February 19, 1986, shall not be required to comply with this Chapter's requirements.

Section 15B.1 FINDINGS

The City of Berkeley finds that:

(a) There is a shortage of housing affordable to low income residents.

(b) Persons with low incomes who live and/or work in the City have serious difficulties locating housing at prices they

can afford.

(c) The high cost of newly constructed housing does not, to any appreciable extent, provide housing affordable by low income households, and that continued new development which does not include lower cost housing will serve to further aggravate the current housing shortage by reducing the supply of land.

(d) The encouragement of usage of density bonus rather than other incentives in applicable cases will help increase the housing supply.

(e) Federal and State housing subsidy programs are not sufficient by themselves to satisfy the housing needs of low income households.

(f) The housing shortage for persons of low income is detrimental to the public health, safety and welfare of the City.

(g) The public purpose of the City and the public policy of the State of California as mandated by the Housing Element of the Master Plan is to make available an adequate supply of housing for persons of all economic segments of the community.

Section 15B.2 PURPOSE

The purpose of this Chapter is to promote achievement of goals number one, two, three, four, and six of the Housing Element by requiring development of affordable housing for households with income below this area's median.

Section 15B.3 DEFINITIONS

(a) Developer means any person, firm, partnership, joint venture, corporation, or any entity or combination of entities which City permits and approvals and/or develop a project pursuant to this Chapter.

(b) Household for purposes of inclusionary requirements shall be the same as the definition used for "family" in the federal Section 8 Existing Housing Program or its future equivalent.

(c) Residential unit or unit means a dwelling containing its own bathroom and kitchen facilities and used primarily for residential accommodations. For purposes of this Chapter dormitories, fraternity and sorority houses, boarding houses, residential hotels, and joint living and work quarters shall not be considered residential units and shall not be subject to this Chapter.

(d) Low income household means a household whose gross income is greater than 80% and less than 100% of the PMSA median income for this area.

(e) Lower income household means a household whose income is no greater than 80% and above 50% of the PMSA median income for this area.

(f) Very low income household means a household whose gross income is 50% or below of the PMSA median income for this area.

(g) Gross household income means the household income of all adult members of the household as determined according to the guidelines used by the Berkeley Housing Authority for its Section 8 rental subsidy program.

(h) Inclusionary unit means a residential unit which as required by this Chapter is to be affordable by households with income below the PMSA median income for this area.

(i) In-lieu fee means a fee paid to the City by a developer in place of construction of a required fraction of an inclusionary unit.

(j) Density bonus means an increase in the number of units authorized for a particular parcel of land beyond the maximum allowed by the Master Plan as provided for by the California Government Code Section 65915.

(k) Incentive means a benefit offered by the City instead of a density bonus to facilitate the construction of housing projects which include low income inclusionary units. Among others, benefits may include fee deferments and waivers, granting of variances, relaxation of otherwise applicable permit conditions, and provision of government benefits.

(l) Resale controls means a resale restriction placed on inclusionary units by which the price of such units and income of purchaser will be restricted in order to insure the affordability and occupancy by low, lower, or very low income households.

(m) Project means a project subject to any of the requirements of this Chapter as set forth in Section 15B.0.

Section 15B.4 DESIGNATED IMPLEMENTING AUTHORITY

(a) The City Manager or his or her designee shall be the designated authority to develop and implement rules and regulations pertaining to this Chapter, to require guarantees, to enter into recorded agreements with developers, and to take other appropriate steps necessary to assure that the required low income

and very low income dwelling units are provided and are occupied by low income households.

(b) Within one year from passage of this Chapter, administrative rules and regulations pertaining to this Chapter shall be brought before the Planning Commission for assessment and revisions as deemed necessary.

Section 15B.5 GENERAL INCLUSIONARY REQUIREMENTS

(a) Any new residential construction involving five or more dwelling units shall be required to include at least 20% of the total number of dwelling units within the project as inclusionary units. The 20% requirement shall also be applicable to residential projects proposed on parcels suited for the development of five residential units or more. In applying these percentages, any decimal fraction shall be paid as an in-lieu fee in conformity with Section 15B.12.

(b) If a developer agrees to construct at least 25% of low income units or 10% of lower income units as set forth in this Chapter, the City shall provide a 25% density bonus or incentives of equivalent financial value.

(1) The use of density bonus is to be preferred over other types of incentives.

(2) If the density bonus or equivalent incentive granted is above 25%, the developer shall agree to a cost certification process.

(c) Any use permit for new residential construction project of five or more units, or for residential construction on parcels that allow for the development of five or more units shall have conditions attached which will assure compliance with the provisions of this Chapter.

(c) All inclusionary units shall be sold to the City or its designee or to households whose gross income is below the Oakland Primary Metropolitan Standard Area (PMSA) median income figures, or rented to households of similar incomes.

Section 15B.6 PROVISION OF WRITTEN AGREEMENT

A written agreement shall be made between the developer and the City which indicates the number, type, location, approximate size and construction scheduling of all dwelling units and such information as shall be required by the City for the purpose of determining the developer's compliance with this Chapter.

Section 15B.7 GENERAL CONSTRUCTION REQUIREMENTS

10.

(a) All inclusionary units in a project and phases of a project shall be constructed concurrently with or prior to the construction of non-inclusionary units.

(b) All inclusionary units shall be reasonably dispersed throughout the project, shall contain on an average the same number of bedrooms and be of the same size as the non-inclusionary units in the project, and shall be comparable with the design or use of remaining units in terms of appearance, materials, and finished quality.

(c) In situations where the developer substantiates and staff concurs that the direct construction and financing costs of the inclusionary units, excluding marketing cost and profit (and also excluding land costs if a density bonus or equivalent incentives are provided), exceed the selling prices allowed for inclusionary units by this Chapter, the Board of Adjustment may approve one or more of the following measures to reduce costs or increase profitability:

(1) reduction of interior amenities of the inclusionary units provided that such units conform to the requirements of the City building and housing codes;

(2) reduction of the square footage of the inclusionary units provided all units conform to the requirements of the City's building and housing codes.

(3) allowance of an increase in the number of bedrooms in the inclusionary unit.

(d) In a homeownership project, the Board of Adjustment shall have the option of allowing the developer to construct rental units in a number sufficient to meet the inclusionary requirements of this Chapter. These rental units shall be subject to the "Inclusionary Unit Requirements for Rental Housing Projects" contained in Section 15B.8.

Section 15B.8 INCLUSIONARY UNIT REQUIREMENTS FOR RENTAL HOUSING PROJECTS

(a) All inclusionary units shall be occupied by low, lower, or very low income households. The Oakland PMSA income figures shall be used in determining income eligibility.

(b) The maximum rental price for inclusionary units shall be rent affordable to an appropriate-sized household whose income is 81% of the PMSA median for this area.

(c) In projects requiring more than one inclusionary unit,

//.

at least 50% of those units shall be rented at a price that is affordable to an appropriate-sized household whose income is at 50% of the PMSA median income provided that the City can make available rental subsidies through the Section 8 Existing Housing Program or an equivalent program. When there is an uneven number of inclusionary units, the uneven number shall be also be priced to be affordable to a household at 50% of median income if subsidies are available. If no rental subsidies are available, all inclusionary unit prices shall be affordable to households at 81% of the PMSA median income.

(d) If a developer agrees to provide 10% lower income inclusionary units, rental price for such units shall be affordable to a household with income that is 60% of the PMSA area median.

(e) A unit shall be considered affordable if the rent (including utilities) does not exceed 30% of a household's gross income. Gross household income and utility allowance shall be calculated according to the guidelines used by the Housing Authority for the Section 8 Existing Housing Program. For purposes of calculating rent, appropriate household size shall be determined by using the schedule contained in the administrative regulations for this Chapter.

(f) At least 20% of the units shall be inclusionary for a period of 59 years. In applying that percentage, any decimal fraction shall be paid as an in-lieu fee in conformity with Section 15B.12.

(g) The City or its designee shall screen applicants for the inclusionary units and refer eligible households of the appropriate household size for the unit. For purposes of occupancy, the appropriate household size standards used by the Housing Authority for the Section 8 Program or any future equivalent program shall be used. The developer or owner shall retain final discretion in the selection of the eligible households referred by the City.

(h) The owner shall provide the City with data on vacancies and other information required to insure the long-term affordability of the inclusionary unit by eligible households.

Section 15B.9 INCLUSIONARY UNIT REQUIREMENTS FOR
OWNERSHIP PROJECTS

(a) The first inclusionary unit shall be sold at a price that is affordable to an appropriate sized household whose income

is no more than 90% of the FMSA median. Thereafter, inclusionary units shall be sold at prices affordable to low income households of the appropriate size for the unit at a price that will result in the average cost being no more than 2.5 times the annual gross income of an appropriate-sized household whose income is no more than 81% of the FMSA for this area. "Lower income" inclusionary units shall be sold at a price that is affordable to an appropriate sized household whose income is 70% of median income. For determining sales price, appropriate size of household shall be calculated by using the schedule contained in the administrative regulations .

(b) The developer of a project other than a limited equity housing cooperative shall be required to give right-of-first refusal to purchase any or all inclusionary units to the City or a City designated agency or organization for a period of not less than 60 days from completion of construction.

(c) Should the City choose not to exercise its right-of-first refusal, it shall provide the developer or owner with a purchaser or with a list of eligible purchasers within that same time period. If the list is not provided, the developer may select a low income purchaser of his/her choice as long as the City verifies income eligibility and the unit is sold at an affordable price as described in this Ordinance.

(d) The City shall maintain a list of eligible low income households and review the assets and income of prospective purchasers of the inclusionary units on a project by project basis and refer potential purchasers to the developer or owner.

Section 15B.10 PURCHASER RESTRICTIONS

(a) All purchasers of inclusionary units shall be first time home buyers with Low, Lower, or Very Low Income. Purchasers shall also be required to occupy the unit except that such requirement may be waived with the approval of the City. In such cases, the unit shall be rented to a Low, Lower, or Very Low Income household at a rent affordable by such households..

(b) Eligible Berkeley residents will have first preference for inclusionary units; second preference will be given to eligible persons employed in the City of Berkeley. Other preferences and priorities may also be established administratively, with Planning Commission review, to help meet the City's Housing Element goals.

(c) The City shall advise all prospective purchasers on the City's eligibility list of the resale restrictions applicable to ownership of inclusionary units as specified in this Chapter and shall provide purchasers with a declaration of restrictions

applicable to ownership of inclusionary units as specified in this Chapter.

Section 15B.11 CONTROL OF RESALE

(a) Except for inclusionary units in limited equity cooperatives, in order to maintain the availability of affordable housing units, the City shall impose the following resale conditions :

(1) Homeownership inclusionary units offered for sale, or sold under the requirements of this Chapter shall be offered to the City or its designee for a period of at least 60 days by the first purchaser or subsequent purchaser(s) from the date of the owner's notification to the City of intent to sell. The resale price of the unit shall not exceed the original price and customary closing costs except to allow for any increase of the Consumer Price Index (CPI) for all urban consumers applicable to the Oakland PMSA for the downpayment amount. Fifty percent (50%) of the cost of improvements, except for debt financing costs, may also be added to the original price as long as the unit remains affordable to a household at the same income level as the original purchaser at the time of acquisition of the inclusionary unit.

(2) If the City does not act on its right-of-first refusal, the same procedure as contained in Section 15B.9(c) shall be used for selection of a purchaser.

(3) The seller shall not levy or change any additional fees nor shall any "finders fee" or other monetary consideration be allowed other than customary real estate commissions if the use of an agent becomes necessary.

(b) The City or its designee may monitor resale of inclusionary units by limited equity cooperatives. The City or its designee shall monitor the resale of ownership inclusionary units. The owners of any inclusionary units shall attach and legally reference in the Grant Deed conveying title of any such inclusionary ownership unit and record with the county recorder a Declaration of Restrictions provided by the City, stating the restrictions imposed pursuant to this Chapter. Violation of any of the terms thereof may be prosecuted by the City.

Section 15B.12 IN LIEU PARTICIPATION FEES

(a) In projects where the inclusionary requirement will result in a fraction of a unit, such a fraction shall be paid to the City as an in-lieu participation fee. The in-lieu fee shall be used by the City, or its designee such as a non-profit housing

development corporation, to provide, construct, or promote the creation or retention of low income housing in the City. The use of in-lieu fees for specific housing programs shall be brought before the Housing Advisory and Appeals Board for approval.

(b) The in-lieu fee shall be as follows:

(1) the difference between development cost (excluding marketing costs and profit) and actual sales price for the fraction of the unit in projects where Government Code 69515 does not apply.

(2) the difference between affordable cost for an appropriately-sized household and actual sales price for the fraction of the unit in projects where Government Code 69515 requiring a density bonus or equivalent incentives is applicable.

ANNOTATED STAFF-PROPOSED INCLUSIONARY ORDINANCE WITH CHANGES FROM
THE PLANNING COMMISSION'S INITIATED ORDINANCE UNDERLINED AND MAJOR
CHANGES EXPLAINED

ORDINANCE NO. -N.S.

Amending Zoning Ordinance No. 3018-N.S. by adding Chapter 15B
to require the inclusion of low income housing in certain
residential housing projects.

BE IT ORDAINED by the Council of the City of Berkeley that
the Zoning Ordinance be amended as follows:

CHAPTER 15B

INCLUSIONARY UNITS

Section 15B.0 APPLICABILITY OF REGULATIONS

(a) The following regulations shall apply to Use Permit and
variance applications for development of:

(1) projects containing five or more residential
units.

(2) residential housing projects proposed on parcels
whose size and zoning designation is such to allow
construction of five or more dwelling units.

CHANGED LANGUAGE TO SIMPLIFY

(3) projects of one to four residential units when such
units are added to an existing one to four unit property
which has been developed after passage of this Section and
the resulting number of units totals five or more. All units
in said property are subject to the requirements of this
Chapter.

(b) no building permit shall be issued for a project
subject to this Chapter unless the developer has agreed to meet
the requirement of this Chapter except for which building permits
were granted prior to February 19, 1986, shall not be required to
comply with this Chapter's requirements.

Section 15B.1 FINDINGS

The City of Berkeley finds that:

(a) There is a shortage of housing affordable to low income residents.

(b) Persons with low incomes who live and/or work in the City have serious difficulties locating housing at prices they can afford.

(c) The high cost of newly constructed housing does not, to any appreciable extent, provide housing affordable by low income households, and that continued new development which does not include lower cost housing will serve to further aggravate the current housing shortage by reducing the supply of land.

(d) The encouragement of usage of density bonus rather than other incentives in applicable cases will help increase the housing supply.

(e) Federal and State housing subsidy programs are not sufficient by themselves to satisfy the housing needs of low income households.

(f) The housing shortage for persons of low income is detrimental to the public health, safety and welfare of the City.

(g) The public purpose of the City and the public policy of the State of California as mandated by the Housing Element of the Master Plan is to make available an adequate supply of housing for persons of all economic segments of the community.

Section 15B.2 PURPOSE

The purpose of this Chapter is to promote achievement of goals number one, two, three, four, and six of the Housing Element by requiring development of affordable housing for households with income below this area's median.

CONCEPT THE SAME, CHANGED LANGUAGE TO MAKE CLEARER

Section 15B.3 DEFINITIONS

THIS SECTION MOVED FROM END OF ORDINANCE TO THIS SECTION FOR STRUCTURAL PURPOSES, CERTAIN DEFINITIONS LEFT OUT FROM THE DEFINITION SECTION BUT ARE INCLUDED IN THE BODY OF THE ORDINANCE

(a) Developer means any person, firm, partnership, joint venture, corporation, or any entity or combination of entities which City permits and approvals and/or develop a project pursuant to this Chapter.

3

(b) Household for purposes of inclusionary requirements shall be the same as the definition used for "family" in the federal Section 8 Existing Housing Program or its future equivalent.

(c) Residential unit or unit means a dwelling containing its own bathroom and kitchen facilities and used primarily for residential accommodations. For purposes of this Chapter dormitories, fraternity and sorority houses, boarding houses, residential hotels, and joint living and work quarters shall not be considered residential units and shall not be subject to this Chapter.

THIS DEFINITION CHANGED TO EXCLUDE CERTAIN CATEGORIES.
CHANGES SUBSTANTIAL BUT NOT EXPECTED TO BE OPPOSED BY PLANNING
COMMISSION - JUST NOT DISCUSSED

(d) Low income household means a household whose gross income is greater than 80% and less than 100% of the PMSA median income for this area.

(e) Lower income household means a household whose income is no greater than 80% and above 50% of the PMSA median income for this area.

(f) Very low income household means a household whose gross income is 50% or below of the PMSA median income for this area.

(g) Gross household income means the household income of all adult members of the household as determined according to the guidelines used by the Berkeley Housing Authority for its Section 8 rental subsidy program.

(h) Inclusionary unit means a residential dwelling which as required by Chapter 15B of the Zoning Ordinance is affordable by households with income below the PMSA median income for this area.

(i) In-lieu fee means a fee paid to the City by a developer in place of construction of a required fraction of an inclusionary unit.

(j) Density bonus means an increase in the number of units authorized for a particular parcel of land beyond the maximum allowed by the Master Plan as provided for by the California Government Code Section 65915.

(k) Incentive means a benefit offered by the City instead of a density bonus to facilitate the construction of housing projects which include low income inclusionary units. Among others, benefits may include fee deferments and waivers, granting of

4

variances, relaxation of otherwise applicable permit conditions, and provision of government benefits.

(l) Resale controls means a resale restriction placed on inclusionary units by which the price of such units and income of purchaser will be restricted in order to insure the affordability and occupancy by low, lower, or very low income households.

(m) Project means a project subject any of the requirements of this Chapter as set forth in Section 15B.0.

Section 15B.4 DESIGNATED IMPLEMENTING AUTHORITY

(a) The City Manager or his or her designee shall be the designated authority to develop and implement rules and regulations pertaining to this Chapter, to require guarantees, to enter into recorded agreements with developers, and to take other appropriate steps necessary to assure that the required low income and very low income dwelling units are provided and are occupied by low income households.

(b) Within one year from passage of this Chapter, administrative rules and regulations pertaining to this Chapter shall be brought before the Planning Commission for assessment and revisions as deemed necessary.

SUBSTANTIVE CHANGE HERE BECAUSE NO PRIOR PLANNING COMMISSION APPROVAL BUT NECESSARY IF THE ORDINANCE IS TO BE IMPLEMENTED IN A TIMELY MANNER.

Section 15B.5 GENERAL INCLUSIONARY REQUIREMENTS

(a) Any new residential construction involving five or more dwelling units shall be required to include at least 20% of the total number of dwelling units within the project as inclusionary units. The 20% requirement shall also be applicable to residential projects proposed on parcels suited for the development of five residential units or more. In applying these percentages, any decimal fraction shall be paid as an in-lieu fee in conformity with Section 15B.12.

(b) If a developer agrees to construct at least 25% of low income units or 10% of lower income units as set forth in this Chapter, the City shall provide a 25% density bonus or incentives of equivalent financial value.

(1) The use of density bonus is to be preferred over other types of incentives.

(2) If the density bonus or equivalent incentive granted is above 25%, the developer shall agree to a cost

19.

5

certification process.

THIS PORTION ON DENSITY BONUSES MOVED FOR STRUCTURAL REASONS, CONCEPT THE SAME EXCEPT THAT ONE PART LEFT OUT SPECIFYING THAT CITY MANAGER WOULD DETERMINE INCENTIVE AND BOARD OF ADJUSTMENT APPROVE. THIS IS USUALLY THE PROCESS AND CAN BE MORE CLEARLY DETAILED IN THE IMPLEMENTING REG'S

(c) Any use permit for new residential construction project of five or more units, or for residential construction on parcels that allow for the development of five or more units shall have conditions attached which will assure compliance with the provisions of this Chapter.

(c) All inclusionary units shall be sold to the City or its designee or to households whose gross income is below the Oakland Primary Metropolitan Standard Area (PMSA) median income figures, or rented to households of similar incomes.

SECTION 15B.6 USE PERMIT CONDITIONS

THIS PART ELIMINATED - SUPERFLUOUS, OTHER SECTION IN THE ORDINANCE SPECIFIES THAT USE PERMITS SHALL HAVE CONDITIONS ATTACHED

Section 15B.6 PROVISION OF WRITTEN AGREEMENT

A written agreement shall be made between the developer and the City which indicates the number, type, location, approximate size and construction scheduling of all dwelling units and such information as shall be required by the City for the purpose of determining the developer's compliance with this Chapter.

Section 15B.7 GENERAL CONSTRUCTION REQUIREMENTS

(a) All inclusionary units in a project and phases of a project shall be constructed concurrently with or prior to the construction of non-inclusionary units.

(b) All inclusionary units shall be reasonably dispersed throughout the project, shall contain on an average the same number of bedrooms and be of the same size as the non-inclusionary units in the project, and shall be comparable with the design or use of remaining units in terms of appearance, materials, and finished quality.

(c) In situations where the developer substantiates and staff concurs that the direct construction and financing costs of the inclusionary units, excluding marketing cost and profit (and also excluding land costs if a density bonus or equivalent incentives are provided), exceed the selling prices allowed for inclusionary units by this Chapter, the Board of Adjustment may

20.

6

approve one or more of the following measures to reduce costs or increase profitability:

(1) reduction of interior amenities of the inclusionary units provided that such units conform to the requirements of the City building and housing codes;

(2) reduction of the square footage of the inclusionary units provided all units conform to the requirements of the City's building and housing codes.

(3) allowance of an increase in the number of bedrooms in the inclusionary unit.

(d) In a homeownership project, the Board of Adjustment shall have the option of allowing the developer to construct rental units in a number sufficient to meet the inclusionary requirements of this Chapter . These rental units shall be subject to the "Inclusionary Unit Requirements for Rental Housing Projects" contained in Section 15B.8.

THIS SECTION, FOR ALL INTENT AND PURPOSE, IS THE SAME

Section 15B.8 INCLUSIONARY UNIT REQUIREMENTS FOR RENTAL HOUSING PROJECTS

(a) All inclusionary units shall be occupied by low, lower, or very low income households. The Oakland PMSA income figures shall be used in determining income eligibility.

(b) The maximum rental price for inclusionary units shall be rent affordable to an appropriate-sized household whose income is 81% of the PMSA median for this area.

(c) In projects requiring more than one inclusionary unit, at least 50% of those units shall be rented at a price that is affordable to an appropriate-sized household whose income is at 50% of the PMSA median income provided that the City can make available rental subsidies through the Section 8 Existing Housing Program or an equivalent program. When there is an uneven number of inclusionary units, the uneven number shall be also be priced to be affordable to a household at 50% of median income if subsidies are available. If no rental subsidies are available, all inclusionary unit prices shall be affordable to households at 81% of the PMSA median income.

(d) If a developer agrees to provide 10% lower income inclusionary units, rental price for such units shall be affordable to a household with income that is 65% of the PMSA area median.

21.

7

PART (d) ADDED TO GIVEN GREATER CLARIFICATION AS TO LEVEL OF LOWER INCOME INCLUSIONARY UNITS TO BE PROVIDED - NOT SPECIFIED IN THE PLANNING COMMISSION'S ORDINANCE

(e) A unit shall be considered affordable if the rent (including utilities) does not exceed 30% of a household's gross income. Gross household income and utility allowance shall be calculated according to the guidelines used by the Housing Authority for the Section 8 Existing Housing Program. For purposes of calculating rent, appropriate household size shall be determined by using the schedule contained in the administrative regulations for this Chapter.

(f) At least 20% of the units shall be inclusionary for a period of 59 years. In applying that percentage, any decimal fraction shall be paid as an in-lieu fee in conformity with Section 15B.12.

59 YEARS HAS BEEN SELECTED INSTEAD OF "LIFE OF THE INCLUSIONARY UNIT" BECAUSE OF CERTAIN IMPLICATIONS FOR THE KINDS OF REQUIREMENTS THAT CAN BE MADE

(g) The City or its designee shall screen applicants for the inclusionary units and refer eligible households of the appropriate household size for the unit. For purposes of occupancy, the appropriate household size standards used by the Housing Authority for the Section 8 Program or any future equivalent program shall be used. The developer or owner shall retain final discretion in the selection of the eligible households referred by the City.

(h) The owner shall provide the City with data on vacancies and other information required to insure the long-term affordability of the inclusionary unit by eligible households.

Section 15B.9 INCLUSIONARY UNIT REQUIREMENTS FOR OWNERSHIP PROJECTS

(a) The first inclusionary unit shall be sold at a price that is affordable to an appropriate sized household whose income is no more than 90% of the PMSA median. Thereafter, inclusionary units shall be sold at prices affordable to low income households of the appropriate size for the unit at a price that will result in the average cost being no more than 2.5 times the annual gross income of an appropriate-sized household whose income is no more than 81% of the PMSA for this area. "Lower income" inclusionary units shall be sold at a price that is affordable to an appropriate sized household whose income is 70% of median income. For determining sales price, appropriate size of household shall be calculated by using the schedule contained in the

8

administrative regulations .

THIS SECTION SPECIFIES THE PRICE LEVEL WHEN LOWER INCOME INCLUSIONARY UNITS ARE PROVIDED AND A DENSITY BONUS IS GIVEN.

(b) The developer of a project other than a limited equity housing cooperative, shall be required to give right-of-first refusal to purchase any or all inclusionary units to the City or a City designated agency or organization for a period of not less than 60 days from completion of construction.

SUBSTANTIVE CHANGE IN TIME PERIOD TO ALLOW PURCHASER KNOW WHAT HE/SHE IS BUYING; IT WILL BE VERY DIFFICULT FOR CITY TO FIND PURCHASERS IF NOTIFICATION OR REFERRAL LIST MUST BE GIVEN SOONER BY CITY. SHOULD NOT CAUSE MAJOR DIFFICULTY WITH DEVELOPER, ALTHOUGH THIS TOPIC WAS DISCUSSED AND PLANNING COMMISSION SPECIFIED A DIFFERENT TIME PERIOD.

THIS PART ADDED, NOT DISCUSSED WITH PLANNING COMMISSION, AFFECT LIKELY TO BE MINISCULE - NO CITY W/ INCLUSIONARY ZONING HAS ACTED ON ITS RIGHT OF FIRST REFUSAL. THERE REALLY WOULD BE NO NEED FOR THE CITY TO HAVE SUCH RIGHTS IN LEHC PROJECTS.

(c) Should the City choose not to exercise its right-of-first refusal, it shall provide the developer or owner with a purchaser or with a list of eligible purchasers within that same time period. If the list is not provided, the developer may select a low income purchaser of his/her choice as long as the City verifies income eligibility and the unit is sold at an affordable price as described in this Ordinance.

(d) The City shall maintain a list of eligible low income households and review the assets and income of prospective purchasers of the inclusionary units on a project by project basis and refer potential purchasers to the developer or owner.

Section 15B.10 PURCHASER RESTRICTIONS

(a) All purchasers of inclusionary units shall be first time home buyers with Low, Lower, or Very Low Income. Purchasers shall also be required to occupy the unit except that such requirement may be waived with the approval of the City. In such cases, the unit shall be rented to a Low, Lower, or Very Low Income household at a rent affordable by such households..

(b) Eligible Berkeley residents will have first preference for inclusionary units; second preference will be given to eligible persons employed in the City of Berkeley. Other preferences and priorities may also be established administratively, with Planning Commission review, to help meet the City's Housing Element goals.

9

(c) The City shall advise all prospective purchasers on the City's eligibility list of the resale restrictions applicable to ownership of inclusionary units as specified in this Chapter and shall provide purchasers with a declaration of restrictions applicable to ownership of inclusionary units as specified in this Chapter.

Section 15B.11 CONTROL OF RESALE

(a) Except for inclusionary units in limited equity cooperatives, in order to maintain the availability of affordable housing units, the City shall impose the following resale conditions :

LIMITED EQUITY COOPS HAVE LONG-TERM AFFORDABILITY REQUIREMENTS, LESS ADMINISTRATIVE COSTS IF THEY ARE EXCLUDED FROM MANY OF THE REQUIREMENTS OF THIS SECTION - MONITORING TO ASSURE COMPLIANCE WITH ORDINANCE STILL LEFT IN

(1) Homeownership inclusionary units offered for sale, or sold under the requirements of this Chapter shall be offered to the City or its designee for a period of at least 60 days by the first purchaser or subsequent purchaser(s) from the date of the owner's notification to the City of intent to sell. The resale price of the unit shall not exceed the original price and customary closing costs except to allow for any increase of the Consumer Price Index (CPI) for all urban consumers applicable to the Oakland PMSA for the downpayment amount. Fifty percent (50%) of the cost of improvements, except for debt financing costs, may also be added to the original price as long as the unit remains affordable to a household at the same income level as the original purchaser at the time of acquisition of the inclusionary unit.

THE QUESTION OF COST OF IMPROVEMENTS WAS DISCUSSED BY THE PLANNING COMMISSION -THIS DRAFT DOES NOT ALLOW FULL COST BECAUSE AFTER MORE THOUGHT AND DISCUSSION ON THE MATTER, IT DID NOT SEEM APPROPRIATE THAT THE OWNER SHOULD BE RETURNED FULL COST OF IMPROVEMENTS SINCE SHE/HE HAD BENEFITTED FROM THEM AS WELL AND WHAT ARE IMPROVEMENTS TO SOME MAY NOT REALLY APPEAR AS SUCH TO THE NEXT BUYER.

(2) If the City does not act on its right-of-first refusal, the same procedure as contained in Section 15B.9(c) shall be used for selection of a purchaser.

(3) The seller shall not levy or change any additional fees nor shall any "finders fee" or other monetary

consideration be allowed other than customary real estate commissions if the use of an agent becomes necessary.

(b) The City or its designee may monitor resale of inclusionary units by limited equity cooperatives. The City or its designee shall monitor the resale of ownership inclusionary units. The owners of any inclusionary units shall attach and legally reference in the Grant Deed conveying title of any such inclusionary ownership unit and record with the county recorder a Declaration of Restrictions provided by the City, stating the restrictions imposed pursuant to this Chapter. Violation of any of the terms thereof may be prosecuted by the City.

Section 15B.12 IN LIEU PARTICIPATION FEES

(a) In projects where the inclusionary requirement will result in a fraction of a unit, such a fraction shall be paid to the City as an in-lieu participation fee. The in-lieu fee shall be used by the City, or its designee such as a non-profit housing development corporation, to provide, construct, or promote the creation or retention of low income housing in the City. The use of in-lieu fees for specific housing programs shall be brought before the Housing Advisory and Appeals Board for approval.

(b) The in-lieu fee shall be as follows:

(1) the difference between development cost (excluding marketing costs and profit) and actual sales price for the fraction of the unit in projects where Government Code 69515 does not apply.

(2) the difference between affordable cost for an appropriately-sized household and actual sales price for the fraction of the unit in projects where Government Code 69515 requiring a density bonus or equivalent incentives is applicable.

SECTION ON DENSITY BONUS/OTHER INCENTIVES INCORPORATED INTO GENERAL INCLUSIONARY REQUIREMENTS SECTION

DEFINITION SECTION ALSO MOVED CHANGES IN THAT SECTION INCLUDED: MORE THOROUGH DEFINITION OF RESIDENTIAL UNIT, CLARIFICATION OF HOUSEHOLD AND LOW, LOWER, AND VERY LOW INCOME CATEGORIES, ELIMINATION OF CERTAIN DEFINITIONS BECAUSE INCORPORATED INTO THE BODY OF THE ORDINANCE (E.G., HOUSING COSTS, AFFORDABLE RENT).



Planning Commission
Martin Luther King, Jr.
Civic Center Building
2180 Milvia Street
Berkeley, California 94704

City of Berkeley

B.4a



PRESENTED TO COUNCIL
CITY OF BERKELEY

JUN 10 1986

OFFICE OF
CITY CLERK

FOR COUNCIL ACTION
June 10, 1986

Deadline for Council
Action August 18, 1986

(415) 644-6534
TTY (415) 644-6915

TO: Honorable Mayor and
Members of the Council

FROM: Planning Commission

SUBJECT: ADOPTION OF INCLUSIONARY ZONING ORDINANCE

Introduction

The purpose of this report is to provide background information and to present for Council consideration an inclusionary zoning ordinance initiated by the Planning Commission on February 19, 1986 which adds a new Chapter to the present Zoning Ordinance requiring low income units in certain new residential development projects. The ordinance is in effect on an interim basis until August 18 or until Council deliberation.

RECOMMENDATION

That Council approve the attached Inclusionary Zoning Ordinance adding Chapter 15B to the Zoning Ordinance No. 3018-N.S. and that Council adopt the attached Proposed Negative Declaration for that Ordinance.

Background

I. Process

The Planning Commission considered the use of inclusionary zoning as a mechanism to help deal with the housing crisis that exists in Berkeley for low income households some time ago. In June 1985 it established a subcommittee to work with staff and Housing Advisory and Appeals Board (HAAB) members to review a draft inclusionary ordinance prepared by Planning Commission members and revise that draft as appropriate. Many meetings and discussions regarding that ordinance and later versions of it were held with developers and staff.

A draft ordinance similar to that adopted by the Planning Commission was presented to the Board of Adjustments and to the HAAB for comment. On January 9, 1986, the HAAB unanimously approved (present: Tiedemann, Rios, Collins, Lambert) the ordinance presented with the following changes: Firstly, that the

INCLUSIONARY ZONING ORDINANCE

FOR COUNCIL ACTION
June 10, 1986

ordinance apply to all projects of four or more units; secondly, that the price of all inclusionary units be set at a price affordable to households with income at 81% of the median for this area.

An Initial Environmental Study (Attachment C) was prepared by staff on a draft ordinance which considered both a 20% and a 25% inclusionary requirement. That study indicated that no substantial negative environmental impact would result from the ordinance. The Planning Commission held a public hearing on the ordinance on February 5, 1986. Some changes to the ordinance were made as a result of that hearing before its approval by the Planning Commission on February 19 (in favor: Barragan, Gleason, Goldfarb, Gordon, Illgen, Peterson, Pinkston; against: Chong, abstaining: none). A minor change to the ordinance was made by the Commission on May 21 to clarify that exempted from the ordinance were projects involving new development of live/work quarters as well as projects receiving their building permit prior to its adoption.

II. Summary of the Problem and Assumptions

It is increasingly difficult for low income households to find affordable housing in Berkeley. There is little developable land and construction and financing costs are high. The challenge for the creation of an inclusionary zoning ordinance was to find a way to assure that a portion of new housing developments benefited low income households without placing an unbearable burden on the developer. Example of inclusionary zoning ordinances in effect or proposed elsewhere were of some utility but no one by itself could be used to deal effectively with Berkeley's situation. A summary of other inclusionary zoning regulations are contained in Attachment D.

The following assumptions were used in developing the ordinance:

- Given the dire need for affordable housing and given that most projects were likely to be small, the ordinance should be as inclusive as possible.
- The ordinance was not to serve as a mechanism to deter development, but development "at any cost" and under "all conditions" was not an overriding goal.
- The number of inclusionary units obtained through the inclusionary ordinance was not expected to be high because of the built-up nature of the City. However, some units would be obtained making the creation of an inclusionary ordinance a worthwhile endeavor.
- The principal objective of inclusionary zoning should be to assure that a portion of new residential developments be

INCLUSIONARY ZONING ORDINANCE

FOR COUNCIL ACTION
June 10, 1986

made available to low income households, therefore, inclusionary units should be on-site; and in-lieu fee would be allowed only where the inclusionary requirement resulted in a fraction of a unit.

● Given high development costs, the program could only benefit those whose income is within 81% to 99% of the median for this area unless further subsidies could be made available. Moderate income households should not be included in the targeted group because although they too have difficulty in finding affordable housing, their situation is not as dire as the low income.

● The costs of developing inclusionary units could be borne and/or shared by various entities:

The City - When the developer agreed to build 25% of "low" income units or 10% of "lower" income units the City would provide a 25% density bonus above the normal density allowed in an area, or provide other incentives of equivalent financial value.

The landowner - Developers might not be willing to pay the price being asked for land and owners really willing to sell their land might lower their land sale price.

Other purchasers or renters - Some increase to other purchasers or renters of the non-inclusionary units might result, but only if the private market was such that others would be willing to pay a higher price.

The developer - The developer's profit might be lowered.

● In order to ensure that targeted groups are the beneficiaries both initially and with subsequent purchasers and renters of inclusionary units, the City must maintain a high level of control even if it will involve additional administrative staff.

III. Ordinance Summary

The ordinance applies to new residential development projects of five units or more as well as residential units created on parcels which allow the development of five units or more. The ordinance applies to both ownership and rental projects with the inclusionary requirement set at 20%. The City will provide a 25% density bonus if the developer agrees to develop at least 25% of a project as low income housing, or

INCLUSIONARY ZONING ORDINANCE

FOR COUNCIL ACTION
June 10, 1986

10% as lower income units.

In ownership projects, the price of the first inclusionary unit is set at a level that is affordable to an appropriate-sized household with income that is at 90% of the median for the Berkeley area, other inclusionary units are to be affordable to households at 81% of median. A developer can also construct 10% of a project as inclusionary units if they are made affordable to a household with income 80% or below of the area median. An inclusionary unit is considered affordable if it is sold at two and one half times the households gross annual income. Attachment B contains a chart of income and affordable sales and rental prices for the inclusionary units. As an example, a sales price of \$72,000 would be affordable to a household with income at 90% of median.

In rental projects, all units are to be affordable to those at 81% of median income. However, if the City can make available Section 8 or other rental subsidies, 50% of the inclusionary units must be rented to households with income no higher than 50% of median. Affordability is calculated at 30% of the household's grossly monthly income.

Other major elements of the ordinance are: the right-of-first refusal to the City or its designee to purchase inclusionary units, selection controls for purchasers and renters of inclusionary units, resale restrictions to maintain long-term affordability, and in-lieu fees when the requirement results in a fraction of an inclusionary units.

IV. Content, Issues, and Explanations

A. Applicability of Regulations

Most residential projects likely to be built in Berkeley are expected to be comparatively small and this was the basis for making the ordinance applicable primarily to projects involving five or more units. The applicability section also contains language to close possible loopholes of building less units or building units incrementally as a means to avoid the requirements of the ordinance.

The HAAB's suggestion that the ordinance be applicable to projects containing four units or more was rejected. The Commission felt that because of the economies of scale, five unit projects were the lowest threshold to which an inclusionary requirement could apply without increasing the possibility of making a development prohibitive. Other proposals that the ordinance be applicable to projects containing 8-10 units or above were also rejected. Those

INCLUSIONARY ZONING ORDINANCE

FOR COUNCIL ACTION
June 10, 1986

proponents argued that it would be very difficult for small projects (i.e., five units), especially those involving creation of modest units, to absorb the inclusionary costs. They made the argument that a low threshold was combined with a high inclusionary requirement making it extremely difficult, if not impossible, to develop such projects. Even if projects were developed, occupants were likely to be a mix of either low income (occupants of inclusionary units) or very high income (occupants of luxury units).

In response to the above arguments and recognizing that smaller projects are likely to have higher costs (and recognizing the high cost of development in general) the ordinance allows the first inclusionary unit to be made affordable to households at 90% of the median income. Additionally, when development costs are higher than the sales price of the inclusionary unit, the Board of Adjustment has flexibility (such as allowing a smaller size for inclusionary units) to reduce development costs. The City can also offer density bonuses or provide other incentives to help make the project feasible.

B. General Inclusionary and Construction Requirements

A 20% requirement was selected by the Planning Commission because, given the little developable land, were the requirement to be lower, few inclusionary units would result from the ordinance. This requirement (except in the case of development of rental projects when rental subsidies are available) does not trigger a density bonus. The Commission recognized that it was advantageous for most developers to accept a 25% requirement and receive a density bonus and allowed for that. However, there may be a situation where a density bonus or other incentives would not be needed and in those cases a 20% requirement would reduce administrative involvement.

There was much discussion on the question of density bonus and what other incentives could be offered. It was clear that the City, to be in compliance with state law, had to provide either one or the other. If incentives were given, they had to be of an equivalent financial value to the developer as the density bonus. Incentives can include fee waivers or deferments, granting of variances, provision of government grants or loans, land donations, use of bonds monies for financing. The Commission was of the opinion that density bonuses should be preferred over other incentives. The issue of what type of incentives should be provided if density bonuses were not offered was also discussed. For consistency sake, it would be best to specify what incentives the City was willing to allow. In reality, it would be difficult to do so because each individual project would have different needs. Additionally, the City should not tie itself to specific incentives since the type of resources it has available at any one

INCLUSIONARY ZONING ORDINANCE

FOR COUNCIL ACTION
June 10, 1986

time also varies.

In terms of construction requirements, the ordinance requires that inclusionary units be built at the same time as the other units, that they be comparable to other units, and reasonably dispersed throughout the project. The issue in this area concerns situations where development costs for the inclusionary units would be higher than the inclusionary sales price, therefore, developers could be asked to build the inclusionary unit at below cost. In those cases, to bring sales costs for inclusionary costs more in line with actual development costs, the ordinance gives the Board of Adjustment the possibility of reducing the unit size and amenity level of the unit or other measures to facilitate construction of the inclusionary unit without undue hardship on the developer.

The issue of cost of developing inclusionary units was a major one discussed with developers. Staff research indicated that prototypical development costs were approximately \$73.40 a square foot without land cost, with the caveat that there is considerable variation in cost depending on quality and size of the development, financing rates available, and experience of the developer. In some cases, it would appear that development costs could be higher than inclusionary sales prices. However, given the measures contained in the ordinance to facilitate development in those cases, in general, the inclusionary requirement should not be prohibitive. Attachment B contains a Chart of inclusionary sales prices and prototype development costs for various size units.

C. Inclusionary Units: Prices and Occupancy

The inclusionary requirement varies depending on whether inclusionary units are in "for ownership" or rental projects. The difference in requirement is based on the economic feasibility for the different types of projects. For rental projects there are factors that permit providing housing to households at a somewhat lower income level. For example, there are certain tax advantages for rental properties; inclusionary units may also receive government rent subsidies.

For ownership units the ordinance requires that the first inclusionary unit be affordable to a purchaser with income that is 90% of the median for this area. Any other inclusionary unit has to be affordable to households at 81% of median income. For example, if a project contained three inclusionary units of a size appropriate for a family of four, the first unit would have to be sold for \$72,000, the others for \$64,800. Inclusionary units in rental projects must have rents that are affordable to households at 81% of the median for this area. However, if the City can make

INCLUSIONARY ZONING ORDINANCE

FOR COUNCIL ACTION
June 10, 1986

available Section 8 subsidies, 50% of the inclusionary units must be affordable to households with income that is 50% of median. This requirement would encourage placing inclusionary units on Section 8 without causing financial duress for the owner.

Some developers argued that the requirement was too prohibitive and that the inclusionary units should be priced to be affordable for households with incomes ranging from 80% to 120% of median. A group of developers of limited equity housing projects also suggested that if 75% of a limited equity housing project (or project with similar resale controls) were made available to households with income at 110% of the median, there should be no requirement to develop low income housing. This exception would encourage the development of limited equity cooperatives. While those proposals had merit, the overriding concern of the Commission was to use the Inclusionary Zoning Ordinance to provide housing for low income households.

The ordinance requires that the inclusionary units be made affordable to low income households. The definition of affordable is two and one-half times the gross household income for ownership units and 30% of a household's monthly income for rental units. The affordable definition for ownership units have been used in other locations with inclusionary zoning requirement; the definition of affordability of rental units is the standard used for the federal Section 8 program.

The definition of "low", "lower", and "very low" income is based on family size. Therefore, family size is used in the ordinance for calculating the sales/rental prices of inclusionary units. The appropriate family size for a unit is to be determined by the City and contained in a schedule in the administrative regulations. That schedule will take into consideration the number of bedrooms, the size of the unit, and occupancy standards to avoid overcrowding.

Since, the sales or rental price of inclusionary units is tied to household size, it is important for a developer to know what is an appropriate household size. A schedule is to be prepared that sets those sizes. That schedule will take into consideration number of bedrooms, size of the unit, and typical household size. For example, a project with two inclusionary units containing two bedrooms would make one unit affordable to a household of four and one unit affordable to a household of three.

In terms of actual occupancy, a unit may be occupied by a household that is either low or lower income. The ordinance allows for flexibility in selecting tenants who may be above the 81% or 90% of median if qualifying tenants at that level are not found (as long as they are still low income). Conversely, the inclusionary units may be made available to households with lower

INCLUSIONARY ZONING ORDINANCE

FOR COUNCIL ACTION
June 10, 1986

income if the City can find ways to subsidize the difference.

D. Selection of Purchasers and Renters

The ordinance specifies that the City or its designee shall have the right-of-first refusal to purchase inclusionary units. Although, at the present it is highly unlikely that the City would act on this right (as to date, no other city with inclusionary ordinances has), nonetheless, in the future the City may want, and have the possibility, to do so. Discussion on the topic of selection centered around who should have that right. After consideration of this issue, the Planning Commission committee recommended that the City should have the responsibility to prepare the eligibility list in order to better ensure that the targeted households were the actual beneficiaries. In regard to rental projects, if an owner is willing to place inclusionary units under the Section 8 or equivalent rental subsidy program, the owner will have the right of tenant selection as long as the tenant is participating in that program and the unit is of the correct size for the household.

Another issue regarding the topic of selection concerned the question of when in the process the developer would be provided with a list of eligible purchasers. Developers argued that a list should be provided as soon as possible (e.g., after subdivision tract approval, or issuance of a building permit). Others thought that the list should be given at the completion of the project. As a compromise solution, the ordinance requires the City to provide a list 60 days from completion of the project's foundation.

E. In-Lieu Participation Fees

The ordinance allows for an in-lieu fee only when the inclusionary requirement results in a fraction of a unit. The fee is set at the difference between development cost (or affordable cost, if a density bonus is given) and market sales price of the unit.

There was much discussion on the advisability of allowing in-lieu fees for other than fraction of units. One argument in favor of more general in-lieu fees was that if the fee was equivalent to actual construction of an inclusionary unit, the fee monies obtained could be better leveraged to provide housing for more low income households, either in existing housing or in new projects in a different location. Some argued that the inclusionary fee should be allowed but should be less than the cost of providing an actual unit since such a fee would make the development unfeasible. However, the Planning Commission was decidedly in favor of the creation of actual units on site, not only for achieving the overall goal of having a portion of new developments benefitting the low income, but also to avoid segregation on the

INCLUSIONARY ZONING ORDINANCE

FOR COUNCIL ACTION
June 10, 1986

basis of income. Another argument made by developers was that all new residential developments (including single family homes) should have an inclusionary requirement which would be paid as a fee in order that the cost of providing low income housing could be shared more equitably. This possibility was considered but rejected because more thought was necessary as to the structure and legal implications of such a general requirement.

F. Purchasers' Restrictions and Resale Controls

The ordinance restricts purchase of inclusionary units to first time homeowners and households that live or work in Berkeley. It allows the establishment of other preference and priorities to help meet the Housing Element goals. Owner-occupancy is also required unless City approval is obtained to rent the unit to a low income household.

A major element of any inclusionary ordinance is a mechanism for maintaining long-term affordability. One issue discussed in this area was how to allow some build up in the purchaser's equity and still maintain the unit affordable. The criterion adopted was similar to that used by limited equity housing cooperatives. Another concern was what policy should be followed when the household was no longer low income. Although, it was acknowledged that allowing the purchaser to occupy the unit even when no longer low income would result in a deviation from the targeting inclusionary units for low income households, in reality it would be difficult to device and administer a workable mechanism. The implications of this deviation, however, were not expected to be serious, since not all low income households (unfortunately) are upwardly mobile. Moreover, the patterns of physical moves are high so that in many cases, households who were no longer low income would be selling or renting their unit to a low income household.

G. Designated Implementing Authority

The City Manager or his/her designee has been designated as the implementing authority. This gives the City flexibility as to which City Department or Division, at any one time, is best equipped to implement the ordinance. The ordinance places many functions and responsibilities on the City Administration. Apart from developing regulations and implementing procedures, staff assignments include: providing information to both developers and tenants, negotiating with developers and preparing agreements on the inclusionary requirements, preparing and maintaining a referral list, verifying eligibility, and monitoring resale controls. Arguments were made that the ordinance should be more self-enforcing to avoid bureaucratic "red-tape". For example, the developer could select an eligible purchaser. However, the

INCLUSIONARY ZONING ORDINANCE

FOR COUNCIL ACTION
June 10, 1986

agreed.

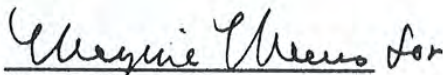
V. Conclusion

While recognizing that to administer an inclusionary zoning program is complex and time-consuming and places a burden on certain segments of the community, this recognition has to be counter-balanced with the effects on the community in absence of such a program. In balancing the two, the Planning Commission has seen the need for an inclusionary zoning ordinance. However, the many discussions on this topic have pointed out that although such a program is necessary, the impact on increasing the number of affordable units will be relatively small. The inclusionary zoning ordinance can only be one in a number of measures that should be instituted or enlarged to help maintain affordable housing for low income households residing in Berkeley.

Financial Implication and Contact Person

Approximately 0.5 to 1.0 FTE to administer the program depending on number of actual number of applicable residential projects constructed.

Rich Illgen, 525-0996



Rich Illgen
Chairperson

THE CITY MANAGER CONCURS IN PRINCIPLE WITH THE RECOMMENDATIONS FROM THE PLANNING COMMISSION. HOWEVER, HE IS RECOMMENDING ADOPTION OF A SLIGHTLY DIFFERENT ORDINANCE THAT CLARIFIES CERTAIN SECTIONS AND MAKES SOME TECHNICAL CHANGES.

Attachments

- A. Inclusionary Zoning Ordinance
- B. Eligible Income Guidelines, Affordability Prices, and Development Costs of Inclusionary Units
- C. Initial Environmental Study
- D. Summary of Other Inclusionary Zoning Regulations

08-02

ORDINANCE NO. -N.S.

AMENDING ZONING ORDINANCE NO. 3,018-N.S. BY ADDING CHAPTER 15B AND ADDING SECTIONS 22.55 THROUGH SECTIONS 22.55.11 TO REQUIRE THE INCLUSION OF LOW INCOME HOUSING IN RESIDENTIAL HOUSING PROJECTS.

BE IT ORDAINED by the Council of the City of Berkeley that the Zoning Ordinance be amended as follows:

CHAPTER 15B

INCLUSIONARY UNITS

Section 15B.0 APPLICABILITY OF REGULATIONS

(a) The following regulations shall apply to all developers, agents, successors, and assignees of a developer who apply for development of:

(1) Residential housing projects proposed on parcels that are zoned for five units or more.

(2) Projects of one to four residential units when such units are added to an existing one to four unit property developed consequent to passage of this Section and the resulting number of units total five or more. All units in said property are subject to the requirements of this Chapter.

(b) No building permit or occupancy permit shall be issued, nor any subdivision or development approval granted, which do not meet the requirements of this Chapter.

(c) The regulations of this Chapter shall not apply in the following cases:

(1) Development of joint live/work quarters as defined in Section 22.28-1 of Zoning Ordinance.

(2) Residential Development Projects which had building permits issued prior to February 19, 1986.

Section 15B.1 FINDINGS

The City of Berkeley finds that:

(a) There is a shortage of housing affordable to low income residents.

(b) Persons with low incomes who live and/or work in the City have serious difficulties locating housing at prices they can afford.

(c) The high cost of newly constructed housing does not, to any appreciable extent, provide housing affordable by low income household, and that continued new development which does not

include lower cost housing will serve to further aggravate the current housing shortage by reducing the supply of land.

(d) The encouragement of usage of density bonus rather than other incentives in applicable cases will help increase the housing supply.

(e) Federal and State housing subsidy programs are not sufficient by themselves to satisfy the housing needs of low income households.

(f) The housing shortage for persons of low income is detrimental to the public health, safety and welfare of the City.

(g) The public purpose of the City and the public policy of the State of California as mandated by the Housing Element of the Master Plan is to make available an adequate supply of housing for persons of all economic segments of the community.

Section 15B.2 PURPOSE

The purpose of this ordinance is to enhance the public welfare by providing affordable housing for certain portion of the population and to assure compatability between future housing development and the Housing Element of the Master Plan as it pertains to the use of the City's land for residential use.

Section 15B.3 DESIGNATED IMPLEMENTING AUTHORITY

(a) The City Manager or his or her assignee shall be the designated authority to develop rules and regulations pertaining to this Chapter, to require guarantees, to enter into recorded agreements with developers, and to take other appropriate steps necessary to assure that the required low income and very low income dwelling units are provided and are occupied by low income households.

(b) Administrative rules and regulations pertaining to this Chapter shall be brought before the Planning Commission for approval.

Section 15B.4 GENERAL INCLUSIONARY REQUIREMENTS

(a) Any new residential construction project involving five or more dwelling units shall be required to include at least 20% of the total number of dwelling units within the project as inclusionary units. In applying these percentages, any decimal fraction shall be paid as an in-lieu fee in conformity with Section 15B.12.

(b) Any use permit for new residential construction projects

on parcels that allow for the development of five or more units shall have conditions attached which will assure compliance with the provisions of this Chapter.

(c) All inclusionary units shall be sold to the City or its designee or to a low income household or rented to low income or very low income households as certified by the City or its designee.

Section 15B.5 USE PERMIT CONDITIONS

Use Permit conditions shall specify: the number of inclusionary units at appropriate price levels, provision for income certification and screening of potential purchasers and/or renters of inclusionary units, a resale control mechanism, and, density bonus or other incentives offered by the City.

Section 15B.6 PROVISION OF WRITTEN AGREEMENT

A written agreement shall be made between the developer and the City which indicates the number, type, location, approximate size and construction scheduling of all dwelling units and such information as shall be required by the City for the purpose of determining the developer's compliance with this Chapter.

Section 15B.7 GENERAL CONSTRUCTION REQUIREMENTS

(a) All inclusionary units in a project and phases of a project shall be constructed concurrently with or prior to the construction of non-inclusionary units.

(b) All inclusionary units shall be reasonably dispersed throughout the project, shall contain on an average the same number of bedrooms as the non-inclusionary units in the project, and shall be comparable with the design or use of remaining units in terms of appearance, materials, and finished quality.

(c) In situations where the developer substantiates and staff concurs that the direct construction and financing costs of the inclusionary units (excluding land cost, marketing cost, off-site improvements and profit) exceed the selling prices allowed for inclusionary units by this Chapter, staff shall have the option of recommending for Board of Adjustment approval one or more of the following measures to reduce costs or increase profitability:

(1) reduction of the interior amenity level of the inclusionary units provided that such units conform to the requirements of the City building and housing codes;

(2) reduction of the square footage of the inclusionary units provided all units conform to the requirements of the City's building and housing codes.

(3) allowance of an increase in the number of bedrooms in the unit.

(d) In a homeownership project, the Board of Adjustment shall have the option of allowing the developer to construct rental units in a number sufficient to meet the inclusionary requirements of this Chapter. These rental units shall be subject to the "Inclusionary Unit Requirements for Rental Housing Projects" contained in Section 15B.8.

Section 15B.8 INCLUSIONARY UNIT REQUIREMENTS FOR RENTAL HOUSING PROJECTS

(a) The Oakland Primary Metropolitan Standard Area (PMSA) income standards shall be used in determining income eligibility.

(1) Inclusionary units shall only be occupied by low income households at a price which will allow their housing costs to be no more than 30 percent of the gross income of an appropriate-sized household whose income is at 81% of the PMSA median income.

(2) Gross household income shall be calculated according to the guidelines used by the Housing Authority for rental subsidies programs. For purposes of calculating rent, the schedule contained in the administrative regulations for this Chapter shall be used.

(2) In projects requiring more than one inclusionary unit, at least 50% of the inclusionary units shall be made available to Very Low Income households at affordable rent provided that the owner is given the opportunity to place the unit on the Section 8 Existing Housing Program or similar rental subsidy programs. When there is an uneven number of inclusionary units, the uneven inclusionary unit shall be made available to very low income households if rental subsidies are available. When the City cannot make available rental subsidies, all rental prices of inclusionary units shall be the same as set forth in Section 15B.7(1) above.

(3) For the life of the project, at least 20% of the units shall be inclusionary. In applying that percentage, any decimal fraction shall be paid as an in-lieu fee in conformity with Section 15B.12.

14

(4) The City or its designee shall screen applicants for the inclusionary units and refer eligible households of the appropriate household size for the unit. For purposes of occupancy, the appropriate household size standards used by the Housing Authority for the Section 8 Program or any future equivalent program shall be used. The developer or owner shall retain final discretion in the selection of the eligible households referred by the City.

(5) The owner shall provide the City with data on vacancies and other information required to insure the long-term affordability to eligible households.

Section 15B.9 INCLUSIONARY UNIT REQUIREMENTS FOR OWNERSHIP PROJECTS

(1) The first inclusionary unit shall be sold at a price that is affordable to an appropriate sized household whose income is no more than 90% of the PMSA median. Thereafter, inclusionary units shall be sold at prices affordable to low income households of the appropriate size for the unit at a price that will result in the average cost being no more than 2.5 times the annual gross income of an appropriate-sized household at 81% of the PMSA for this area. In determining appropriate size for sale price calculation purposes, the schedule contained in the administrative regulations shall be used.

(2) The developer shall be required to give right-of-first refusal to the City or a City designated agency or organization for a period of not less than 60 days from completion of foundation construction for the project and City approval of the same.

(3) Should the City choose not to exercise its right-of-first refusal, it shall provide the developer or owner with a purchaser or with a list of eligible purchasers within that same time period. If the list is not provided, the developer may select a low income purchaser of his/her choice as long as the City verifies income eligibility and the unit is sold at an affordable price as described in this Ordinance.

(3) The City shall maintain a list of eligible low income households and review the assets and income of prospective purchasers of the inclusionary units on a project by project basis and refer potential purchasers to the developer or owner.

Section 15B.10 PURCHASER RESTRICTIONS

15.

(1). All purchasers of inclusionary units shall be first time home buyers with Low or Very Low Income.. Purchasers shall also be required to occupy the unit except with the approval of the City. In such cases, the unit shall be rented to a low or Very Low Income household.

(2). Berkeley residents will have first preference for inclusionary units which shall be made available to eligible purchasers; second preference will be given to persons employed in the City of Berkeley. Other preferences and priorities may also be established administratively, with Planning Commission, approval to help meet the City's Housing Element goals.

(3). The City shall advise all prospective purchasers on the City's eligibility list of the resale restrictions applicable to ownership of inclusionary units as specified in this Chapter and shall provide purchasers with a declaration of restrictions applicable to ownership of inclusionary units as specified in this Chapter.

Section 15B.11 CONTROL OF RESALE

(1) In order to maintain the availability of affordable housing units, the City shall impose the following resale conditions:

(a) Homeownership inclusionary units offered for sale, or sold under the requirements of this Chapter shall be offered to the City or its assignee for a period of at least 60 days by the first purchaser or subsequent purchaser(s) from the date of the owner's notification to the City of intent to sell. The sales price of the unit shall not exceed the original price and customary closing costs except to allow for any increase of the cost of living price (CPI) for the downpayment amount. The cost of improvements to the property may also be added to the original price as long as the unit remains affordable to low income households.

(b) If the City does not act on its right-of-first refusal, the same procedure as contained in Section 15B.9(3) shall be used for selection of a purchaser.

(c) The seller shall not levy or change any additional fees nor shall any "finders fee" or other monetary consideration be allowed other than customary real estate commissions if the use of an agent becomes necessary.

(2) The City or its designee shall monitor the resale of ownership inclusionary units. The owners of any inclusionary units shall attach and legally reference in the Grant Deed conveying title of any such inclusionary ownership unit a Declaration of Restrictions provided by the City, stating the restrictions imposed pursuant to this Chapter. Violation of any of the terms thereof may be prosecuted by the City.

Section 15B.12 IN LIEU PARTICIPATION FEES

(1) In projects where the inclusionary requirement will result in a fraction of a unit, such a fraction shall be paid to the City as an in-lieu participation fee. The in-lieu fee shall be used by the City, or its designee such as a non-profit housing development corporation, to provide, construct, or promote the creation or retention of low income housing in the City. The use of in-lieu fees for specific housing programs shall be brought before the Housing Advisory and Appeals Board for approval.

(2) The in-lieu fee shall be as follows:

(a) the difference between development cost (excluding marketing costs, off-site improvements, and profit) and actual sales price for the fraction of the unit in projects where Government Code 69515 does not apply.

(b) the difference between affordable cost for an appropriately-sized household and actual sales price for the fraction of the unit in projects where Government Code 69515 requiring a density bonus or equivalent incentives is applicable.

Section 15B.13 DENSITY BONUS/OTHER INCENTIVES

(a) If the owner agrees that the proposed project shall contain 25% or more of low income units or 10% of lower income units, the Board of Adjustments shall grant density bonuses or provide other incentives of equivalent financial value to all projects which are affected by this Chapter as provided by Government Code Section 69515. Density bonuses or incentives shall apply to fractional units as well.

(1) If incentives are over and above those required by Government code Section 69515, the developer shall agree to a cost certification process.

(2) The determination of what incentive to be provided in lieu of or in combination with a density bonus shall be determined by the City staff and referred to the Board of

Adjustments for approval, modification or denial. Use of density bonuses rather than other incentives shall be preferred.

Section 15B.14 DEFINITIONS

Definitions pertaining to this Chapter are contained in Section 22.55 through 22.55-11 of the Zoning Ordinance.

Section 22.55 DEVELOPER

Any person, firm, partnership, joint venture, corporation, or any entity or combination of entities which seek City permits and approvals and/or develop a project pursuant to Chapter 15B.

Section 22.55-1 AFFORDABLE HOUSING

Rental housing in which the yearly housing costs do not exceed 30 percent of a household's gross yearly income as defined by the Oakland Primary Metropolitan Standard Area (PMSA) for a household of the same size; or ownership housing where the total sales cost does not exceed 2.5 times annual gross income of a household of an appropriate size for the inclusionary unit.

Section 22.55-2 HOUSEHOLD

For purposes of inclusionary requirements, the definition of household shall be the same as that used for the federal Section 8 Existing Housing Program or its equivalent.

Section 22.55-3 LOW INCOME HOUSEHOLD

A household whose gross income is 81%-99% of the PMSA median income for this area.

Section 22.55-4 LOWER INCOME HOUSEHOLD

A household whose gross income is 51%-80% of the PMSA median income for this area.

Section 22.55-5 VERY LOW INCOME HOUSEHOLD

A household whose gross income is 50% or below of the PMSA median income for this area.

Section 22.55-6 ELIGIBLE INCOME

For purposes of Chapter 15B, the gross annual household income determined according to the guidelines used by the Berkeley

18:

Section 22.55-7 HOUSING COSTS

The monthly mortgage (principal and interest), property taxes, homeowners insurance, and condominium fees, where applicable, or the monthly rent plus utilities (utilities as defined in the Section 8 Existing Housing Program, Utility Schedule) for rental units.

Section 22.55-8 ACQUISITION COST

For purposes of acquisition of inclusionary units as provided in Chapter 15B, acquisition cost includes sales price plus closing costs.

Section 22.55-9 UNIT

All units referred to in Chapter 15B refer to residential and not commercial units.

Section 22.55-10 INCLUSIONARY UNIT

An ownership or rental housing unit as required by Chapter 15B which is affordable by households of low or very low income.

Section 2.55-11 IN-LIEU FEE

A fee paid to the City by a developer subject to the provisions of Chapter 15B in place of construction of a required fraction of an inclusionary unit.

Section 2.55-12 DENSITY BONUS

An increase in the number of units authorized for a particular parcel beyond that which would have otherwise been authorized under the applicable zoning ordinance and land use element of the Master Plan as provided for by the California Government Code Section 65915.

Section 2.55-13 INCENTIVES

Benefits offered by the City in-lieu of a density bonus to facilitate the construction of housing projects which include low income inclusionary units. Among others, benefits may include fee deferments and waivers, granting of variances, relaxation of otherwise applicable permit conditions, and provision of government benefits.

Section 2.55-14 RESALE CONTROLS

Legal restriction placed on inclusionary units by which the price of such units will be restricted in order to insure the affordability and occupancy by low or very low income households.



City of Berkeley



Planning and Community
Development Department
Zoning Division
Martin Luther King, Jr.
Civic Center Building
2180 Milvia Street
Berkeley, California 94704

(415) 644-6570
TTY (415) 644-6915

P R O P O S E D N E G A T I V E D E C L A R A T I O N

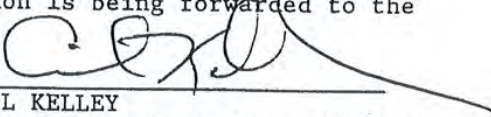
It is hereby declared that the project described below will not have a significant effect on the environment based on the Initial Study prepared according to CEQA guidelines:

INCLUSIONARY ZONING ORDINANCE

The purpose of an inclusionary zoning ordinance is to ensure that some units in multi-family housing projects be made affordable to low income households. The Ordinance will require that 20% of all new residential development projects be affordable. The Ordinance will be applicable to projects containing five or more residential units. Potential beneficiaries are households with income below the median income for this area. Other elements of the Ordinance include a City's right-of-first refusal to acquire inclusionary units, resale restrictions on inclusionary units to maintain long-term affordability, payment of an "in-lieu" fee instead of provision of fractional unit, provision of a density bonus or other incentives when State requirements are applicable. The Planning and Community Development Department is the designated implementing agency.

Anyone concerned with this project may review the application and other material composing the Initial Study on file in the Zoning Division, Martin Luther King, Jr. Civic Center Building, 2180 Milvia Street, Berkeley, CA 94704 (Phone 644-6570.)

The Planning Commission reviewed and recommended adoption of this Negative Declaration on May 21, 1986. The recommendation is being forwarded to the City Council for adoption.



GIL KELLEY
ENVIRONMENTAL REVIEW, ZONING DIVISION

20

ATTACHMENT B

INCOME AND AFFORDABILITY GUIDELINES

<u>PMSA INCOME</u>						
Household Size	1	2	3	4	5	6
100% of Median Income	\$22,375	\$25,625.	\$28,812	\$32,000	\$34,000	\$36,000
70% of Median Income	\$15,662.5	\$17,937.5	\$20,168.4	\$22,400.	\$23,800.	\$25,200
81% of Median Income	\$18,123.75	\$20,756.25	\$23,337.72	\$25,920.	\$27,540.	\$29,160
90% of Median Income	\$20,137.5	\$23,062.5	\$25,930.8	\$28,800.	\$30,600.	\$32,400.
<u>AFFORDABLE SALES PRICES*</u>						
Very Low 70%	\$39,156.25	\$44,843.75	\$56,000	\$56,000	\$59,500	\$63,000
Low Income 81%	\$45,309.38	\$51,890.63	\$58,344.30	\$64,800.	\$68,850	\$72,900
Median Income 90%	\$50,343.75	\$75,656.25	\$64,827	\$72,000	\$76,500	\$81,000
<u>AFFORDABLE RENTS</u>						
Affordable rents for households at 81% of median**	\$ 453	\$ 519	\$ 583	\$ 648	\$ 688	\$ 729

* CALCULATED AT 2.5 TIMES ANNUAL HOUSEHOLD INCOME

** CALCULATED AS 30% of MONTHLY HOUSEHOLD INCOME

ELIGIBLE INCOME, PROTOTYPE DEVELOPMENT COSTS* AND SUBSIDIES**
NEEDED TO MAKE INCLUSIONARY UNIT AFFORDABLE

Income Category	STUDIO (600 Sq. Ft. - Development Costs \$44,040)			
	1 Person	Subsidy	2 Persons	Subsidy
81% Median	\$45,309	---	\$51,891	---
90% Median	50,344	---	57,656	---
	ONE BEDROOM (750 Sq. Ft. - Development Costs \$55,050)			
	2 Persons	Subsidy	3 Persons	Subsidy
81% Median	\$51,891	\$ 3,159	\$58,344	---
90% Median	57,656	---	64,827	---
	TWO BEDROOMS (850 Sq. Ft. - Development Costs \$62,390)			
	3 Persons	Subsidy	4 Persons	Subsidy
81% Median	\$58,344	\$ 4,046	\$64,800	---
90% Median	64,827	---	72,000	---
	TWO BEDROOMS (1000 Sq. Ft. - Development Costs \$73,400)			
	3 Persons	Subsidy	4 Persons	Subsidy
81% Median	\$58,344	\$15,056	\$64,800	\$ 8,600
90% Median	64,827	8,573	72,000	1,400
	THREE BEDROOMS (1000 Sq. Ft. - Development Costs \$73,400)			
	5 Persons	Subsidy	6 Persons	Subsidy
81% Median	\$68,850	\$ 4,550	\$72,900	\$ 500
90% Median	76,500	---	81,000	---
	THREE BEDROOMS (1200 Sq. Ft. - Development Costs \$88,080)			
	5 Persons	Subsidy	6 Persons	Subsidy
81% Median	\$68,850	\$19,230	\$72,900	\$15,180
90% Median	76,500	11,580	81,000	7,080

AVERAGE MULTI-FAMILY DEVELOPMENT COSTS

Construction Costs	\$60.0 Sq. Ft.
Soft Costs	6.0 Sq. Ft.
Financing	7.4 Sq. Ft.
TOTAL	\$73.4 Sq. Ft.

* Development costs do not include land. If density bonus given would be equivalent to land costs.

** Subsidy equal to the difference between development costs and affordability. Subsidy would be greater if no density bonus provided.

CITY OF BERKELEY

ATTACHMENT C



Planning and Community Development Department
Zoning Division
Martin Luther King, Jr.
Civic Center Building
2180 Milvia Street
Berkeley, California 94704

(415) 644-6570
TTY (415) 644-6915

E N V I R O N M E N T A L I N I T I A L S T U D Y *

I. General Information

Project title (if any) and address or Assessor's block and parcel number(s):

INCLUSIONARY ZONING ORDINANCE

Use permit application number and date submitted (if any):

Date environmental information form submitted: 1/24 /86

Applicant's name, address and telephone number:

Planning and Community Development Department
Teri Piccolo
2180 Milvia Street, Berkeley, CA 94704
(415) 644-6001

II. Description of Attachments

~~xx~~ Environmental checklist and discussion (Lead Agency)

Environmental information form (Applicant)

Use permit or other application (Applicant)

Correspondence or memoranda: _____

Mitigation measures

Other: _____

III. Determination

On the basis of the attached initial evaluation, I find:

xxx That the proposed project COULD NOT have a significant effect on the environment, and a NEGATIVE DECLARATION will be prepared.

That although the proposed project could have a significant effect on the environment, there will not be a significant effect in this case because the mitigation measures described on the attached sheet have been added to the project. A NEGATIVE DECLARATION will be prepared.

That the proposed project MAY have a significant effect on the environment, and an ENVIRONMENTAL IMPACT REPORT is required.

Jan. 27, 1986
Date


Gil Kelley, Environmental Review

23

*(To be completed by Lead Agency.)

ENVIRONMENTAL INITIAL STUDY

(To be completed by Lead Agency)

Impact Rating

- 1 - No significant impact
- *2 - Potential impact, but not substantial

- *3 - Potential significant impact
- *4 - Significant impact

*Impact described on the attached sheet

<u>Earth</u> - Will the proposal result in:		
a. Unstable earth conditions or changes in geologic substructures?	1	
b. Disruptions, displacements, compaction or overcovering of the soil?	1	
c. Change in topography or ground surface relief features?	1	
d. The destruction, covering or modification of any unique geologic or physical features?	1	
e. Any increase in wind or water erosion of soils, either on or off the site?	1	
f. Changes in deposition or erosion of beach sands, or changes in siltation, deposition or erosion which may modify the channel of a river or stream or the bed of the ocean or any bay, inlet or lake?	1	
g. Exposure of people or property to geologic hazards such as earthquakes, landslides, mudslides, ground failure or similar hazards?	1	
<u>Air</u> - Will the proposal result in:		
a. Substantial air emissions or deterioration of ambient air quality?	1	
b. The creation of objectionable odors?	1	
c. Alteration of air movement, moisture or temperature, or any change in climate, either locally or regionally?	1	
<u>Water</u> - Will the proposal result in:		
a. Changes in currents, or the course or direction of water movements, in either marine or fresh waters?	1	
b. Changes in absorption rates, drainage patterns, or the rate and amount of surface water runoff?	1	
c. Alterations to the course or flow of flood waters?	1	
d. Change in the amount of surface water in any water body?	1	
e. Discharge into surface waters, or in any alteration of surface water quality, including but not limited to temperature, dissolved oxygen or turbidity?	1	
f. Alteration of the direction or rate of flow of ground waters?	1	
g. Change in the quantity of ground waters, either through direct additions or withdrawals, or through interception of an aquifer by cuts or excavations?	1	
h. Substantial reduction in the amount of water otherwise available for public water supplies?	1	
i. Exposure of people or property to water related hazards such as flooding or tidal waves?	1	
<u>Plant Life</u> - Will the proposal result in:		
a. Change in the diversity of species, or number of any species of plant?	1	
b. Reduction of the numbers of any unique, rare or endangered species of plants?	1	
c. Introduction of new species of plants into an area, or in a barrier to the normal replenishment of existing species?	1	
d. Reduction in acreage of any agricultural crop?	1	
<u>Animal Life</u> - Will the proposal result in:		
a. Change in the diversity of species, or numbers of any species of animals?	1	
b. Reduction of the numbers of any unique, rare or endangered species of animals?	1	
c. Introduction of new species of animals into an area, or result in a barrier to the migration or movement of animals?	1	
d. Deterioration to existing fish or wildlife habitat?	1	
<u>Noise</u> - Will the proposal result in:		
a. Increases in existing noise levels?	1	
b. Exposure of people to severe noise levels?	1	
<u>Light and Glare</u> - Will the proposal produce new light or glare?		1
<u>Land Use</u> - Will the proposal result in a substantial alteration of the present or planned land use of an area?		2
<u>Natural Resources</u> - Will the proposal result in:		
a. Increase in the rate of use of any natural resources?	1	
b. Substantial depletion of any non-renewable natural resource?	1	
<u>Risk of Upset</u> - Does the proposal involve a risk of an explosion or the release of hazardous substances (including oil, pesticides, chemicals or radiation) in the event of an accident or upset conditions?		1
<u>Population</u> - Will the proposal alter the location, distribution, density, or growth rate of the human population of an area?		2
<u>Housing</u> - Will the proposal affect existing housing or housing demand?		2
<u>Transportation/Circulation</u> - Will the proposal result in:		
a. Generation of substantial additional vehicular movement?	2	
b. Effects on existing parking facilities, or demand for new parking?	2	
c. Substantial impact upon existing transportation systems?	1	
d. Alterations to present patterns of circulation or movement of people and/or goods?	1	
e. Alterations to waterborne, rail or air traffic?	1	

- f. Increase in traffic hazards to motor vehicles, bicyclists or pedestrians? 1
- 14. Public Services. Will the proposal have an effect upon, or result in a need for new or altered governmental services in any of the following areas:
 - a. Fire protection? 2
 - b. Police protection? 2
 - c. Schools? 1
 - d. Parks or other recreational facilities? 1
 - e. Maintenance of public facilities, including roads? 1
 - f. Other governmental services? 1
- 15. Energy. Will the proposal result in:
 - a. Use of substantial amounts of fuel or energy? 1
 - b. Substantial increase in demand upon existing sources of energy, or require the development of new sources of energy? 1
- 16. Utilities. Will the proposal result in a need for new systems, or substantial alterations to the following utilities:
 - a. Power or natural gas? 1
 - b. Communications systems? 1
 - c. Water? 1
 - d. Sewer or septic tanks? 2
 - e. Storm water drainage? 1
 - f. Solid waste and disposal? 2
- 17. Human Health. Will the proposal result in:
 - a. Creation of any health hazard or potential health hazard (excluding mental health)? 1
 - b. Exposure of people to potential health hazards? 1

18. Aesthetics. Will the proposal result in the obstruction of any scenic vista or view open to the public, or will the proposal result in the creation of an aesthetically offensive site open to public view? 1

19. Recreation. Will the proposal result in an impact upon the quality or quantity of existing recreational opportunities? 1

20. Archeological/Historical. Will the proposal result in an alteration of a significant archeological or historical site, structure, object or building? 1

21. Mandatory Findings of Significance.

(a) Does the project have the potential to degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a rare or endangered plant or animal or eliminate important examples of the major periods of California history or prehistory? 1

b. Does the project have the potential to achieve short-term, to the disadvantage of long-term, environmental goals? (A short-term impact on the environment is one which occurs in a relatively brief, definitive period of time while long-term impacts will endure well into the future.) 1

c. Does the project have impacts which are individually limited, but cumulatively considerable? (A project may impact on two or more separate resources where the impact on each resource is relatively small, but where the effect of the total of those impacts on the environment is significant.) 1

d. Does the project have environmental effects which will cause substantial adverse effects on human beings, either directly or indirectly? 1

21.

III. DISCUSSION OF ENVIRONMENTAL EVALUATION

See Attached

ENVIRONMENTAL INITIAL STUDY page 1

ENVIRONMENTAL INITIAL STUDY: INCLUSIONARY ZONING PROGRAM

INTRODUCTION

In June 1985 the Planning Commission proposed that an inclusionary zoning ordinance be developed to ensure that a portion of new housing projects be made available for low income housing. This Environmental Initial Study has been undertaken by the Planning and Community Development Department to analyze potential environmental impacts of an inclusionary zoning requirement. Identified areas are land use, housing, transportation/circulation, public services, and utilities.

The Environmental Initial Study considers two possible inclusionary alternatives: the first containing a 25% inclusionary requirement for all new residential construction projects resulting in four units or more; the second requiring that in projects containing five or more units, 20% of the units be inclusionary. This study concludes that both alternatives would have negligible environmental impacts and that of the two, the second alternative would have least impact. At present, it appears that the second alternative is the one most likely to be considered for adoption.

PROJECT DESCRIPTION

Alternative One

The proposed inclusionary zoning program would become part of the City's Zoning Ordinance and would require that 25% of the dwelling units in new residential projects of four or more units be reserved for low income households. That requirement would apply to both rental and ownership projects.

The Oakland Primary Metropolitan Standard Area's (which includes Berkeley) income figures are used as a basis for calculating eligibility and sales or rental prices for inclusionary units. For purposes of this program income definitions are as follows:

- o Low income - household income that is 81% to 99% of median for this area,
- o lower income - household income that is 51% to 80% of median for this area,
- o very low income - household income that is 50% or below of median for this area.

23

28

Other salient features of the ordinance are:

- o All units are to be sold to households in the low income category except in rental units for which the City can provide rental subsidies through the Section 8 Program or some equivalent. Where the City can provide rental subsidies, 50% of the inclusionary units in rental projects shall be made available to the very low income.
- o The City or its designee has the right-of-first refusal to buy inclusionary units. This would allow control in assuring that the targeted group is benefitted as well as allow the City to make inclusionary units available to lower income or very low income households if further subsidies are available.
- o Resale restrictions on inclusionary units to ensure long-term affordability.
- o Allowance of an in-lieu fee for fractional units. (e.g., when the inclusionary requirement is 2.5 units, a fee could be paid for the 0.5 unit). The in-lieu fee would be equal to the difference between sales price and the price that would make the unit affordable to low income households.
- o Allow the City, in certain situations, to reduce amenities, unit size, or change configuration to keep the inclusionary requirement from being prohibitive while still providing housing that meets housing and building standards.
- o Provide a density bonus or other incentives of equivalent financial value. State law requires that a density bonus of 25% or equivalent incentives be given to the developer when 25% or more of a project is reserved for low/moderate income households at affordable costs, or when 10% a project is made available to lower income households. Whether a bonus or incentives would actually be given would be decided on a case-by-case basis. Incentives could include (but are not limited to) fee deferments or waivers, variances, land donations, or other assistance such as loans or grants to facilitate construction of the project.

Alternative Two

All features of this alternative are virtually the same as Alternative One except that there would be a 20% inclusionary requirement and only new residential construction projects resulting in five (instead of four) units would be covered. Under Alternative Two, less density bonuses/incentives would be required since the only case where the State law would be triggered would

ENVIRONMENTAL INITIAL STUDY page 3

be in rental projects for which the City could provide rental subsidies. In those cases, 10% of the inclusionary units would be made available to lower income households and a density bonus/incentives would be given by the City. Lastly, if no density bonus/incentives would be given, the in-lieu fee would be calculated as the difference between development cost of the fractional unit and sales price (rather than the difference between between low income affordability and sales price).

METHODOLOGY

In order to assess the potential of the proposed inclusionary zoning program to increase density substantially, staff examined the following:

- o data of actual residential construction involving four or more units for a ten year period (1975-1985),
- o use permit applications and approvals for the period 1984-85,
- o existing vacant land in Berkeley, and city-wide zoning patterns.

Information about other localities with inclusionary zoning in effect was also gathered but was not be used since it appeared to be of little comparative value for assessing the proposed ordinance. This is because few of the localities face the same developable land constraints as Berkeley, and also because there is no one locality with the same requirements as those being proposed in Berkeley.

HOUSING TRENDS

Past Construction

Data on residential construction of projects of four units or more during the period 1975-85 shows a total of 321 units completed in 35 structures containing four units or more. The data further shows that:

- o of the 35 structures, 32 contained less than 10 units;
- o structures containing more than 10 units were all publicly-assisted;
- o the 35 structures contained a total of 321 units; of these 248 were publicly-assisted, low income housing, leaving only 73 units built in the private, for-profit field;
- o the 32 structures were scattered throughout nine different census tracts.

For purposes of the inclusionary zoning program, only private for-profit projects can be validly used for projection purposes.

30.

ENVIRONMENTAL INITIAL STUDY page 4

Future Construction

Use Permit data for the period January 1984 through December 1985 (includes both applications and use permits granted) indicate that a total of 12 projects were proposed during that period. Two of the proposed projects are to be publicly-assisted (The Dwight-Derby Site Project and the Low Income Public Housing Project) and were excluded from this study. The ten proposed privately-developed, for profit projects, if constructed, would contain a total of 103 units and be located in nine different census tracts.

Vacant and Developable Land

A study done by the Planning and Community Development Department on existing vacant land indicates that there is very little vacant land in Berkeley. As of October 1984 there were 216 conforming residential vacant lots and 19 vacant lots in non-residential areas. Of the vacant residentially zoned lots, the overwhelming majority were in areas zoned as R-1. Census tracts 11, 12, 15, 16 which are virtually zoned as R-1 accounted for 209 of the vacant lots, possibly leaving 17 lots subject to the inclusionary requirement if used for development of residential projects of four or more units. The one major vacant land area in the City is the Waterfront, however, plans for that area do not envision housing of any kind.

One factor to consider in terms of future development of multi-unit residential projects is that of re-use of existing underutilized areas. However, although initial consideration is being given to facilitate such reutilization through rezoning and expansion of the redevelopment area, no studies or plans are actually in place. It is, therefore, not possible to predict how reutilization of existing developed areas may affect the number of new residential projects that is likely to be constructed in the future. However, local controls on demolition contained in the Neighborhood Preservation Ordinance (NPO) and the Neighborhood Commercial Preservation Ordinance (NCPO) should have a deterring effect on reutilization of land as indicated by the low level of demolitions since passage of those ordinances. At any rate, reutilization of existing developed areas will not be ministerial and will require environmental review at the time that proposals are made.

ANALYSIS OF IMPACT

Alternative One

Assuming that past construction trends continue and that a density bonus would be given in every situation, it can be projected that approximately two additional units would result from the inclusionary zoning ordinance (73 units were built in a ten year period, averaging 7.3 units per year. A 25% density bonus requirement would result in less than two units above the allowed maximums). This increase in itself would have negligible environmental impact, but would be further reduced for several reasons. Firstly, projects, would be likely to be under 10 units and scattered in various census tracts. Secondly, it is very unlikely that density bonuses would be given in every situation since the City has the option of providing different types of incentives. The recent trend in the City has been toward down-zoning and there has been a high concern among Berkeley residents with density. It can be expected, therefore, that other types of incentives which would not be likely to affect density would be given preference.

If one were to project from the use permit data, approximately twelve units per year could be expected if all units applied for would actually be constructed and if a density bonus would be given in every case (103 total units proposed for a two year period = 51.5 units per yr., divided by .25% = 12.67). While that number would not have a negative impact in any one year, cumulatively, some negative impact might result. However, it is highly unlikely that twelve additional units would result for the following reasons:

- o not all applications receive approval, nor all proposed units actually get constructed,
- o incentives with little environmental impact are likely to be used rather than density bonuses,
- o as projects are constructed on vacant land, vacant land becomes scarcer and project sites harder to find,
- o historically, new housing market demands are cyclical. The current housing market in the Bay Area is at the high end of the upswing with a downswing likely to follow and thus the average yearly figure can be expected to be lower.

Impacted Areas

Due to variation in zoning throughout the City some areas will be affected more than others by the inclusionary zoning program. The program will have little if any direct effect on areas zoned R-1, R-2, or R2-A because construction of projects with four or more units is not allowed in those areas (The map in Appendix A outlines the affected areas). However, even in affected areas past examples indicate that any impact should be mitigated because projects are likely to be small (i.e., under ten units) and scattered throughout census tracts.

32

ENVIRONMENTAL INITIAL STUDY page 6

Impact on Housing

The proposed inclusionary zoning program is expected to have a positive effect on housing by helping the City meet its housing goals as expressed in the Housing Element of the City's Master Plan. Among specific Housing Element policies that the program would address are:

- o Policy 3.10 - Encourage the development of housing for low and moderate income households.
- o Policy 3.11 - Whenever feasible, employ state/federal programs and pursue innovative ways to stimulate the development of new housing for rent or sale to low and moderate income households.

The beneficial effect on housing will result from the creation of new additional low income units as well as from any in-lieu fees received by the City which are specifically to be used for housing programs benefitting low income households.

However, a potentially negative impact on housing must also be considered. Were an inclusionary zoning program to make residential projects of four or more units prohibitive, then the overall housing goals for Berkeley of adding 1,611 housing units by 1990 would be more difficult to meet. The proposed programs offers several ways to avoid such an occurrence. Firstly, inclusionary units are to be made available to those at the upper end of the low income spectrum (i.e., those above 80% of median income) unless the government can make rental subsidies available. Secondly, density bonuses or incentives of equivalent financial value must be provided to the developer. Finally, to reduce developer subsidy costs for inclusionary units, the City may allow the lessening of amenities and square footage of the inclusionary units. Increasing the number of bedrooms while maintaining the same square footage may also be allowed, resulting in a higher price for the unit (by having more bedrooms the unit could be made available to a larger sized household. Since income is based on household size, a household with greater income but more household members would still be eligible for the inclusionary unit). The developer may also be given the option of maintaining the inclusionary units as rental units in a "for sale" project which may be financially advantageous to the developer.

Alternative Two

The environmental impact of the second alternative should be considerably less than Alternative One because in most cases there would be no density bonus requirement and fewer projects would be subject to the program (e.g., four-unit projects would not be

33

ENVIRONMENTAL INITIAL STUDY page 7

covered). Rental projects of 10 units or more would require a density bonus/incentives but few rental projects can be expected (there has been no private, for profit, multi-unit rental project constructed in the last ten years). Moreover, whenever density bonuses would be applicable, the same mitigating factors cited for Alternative one would also be operative.

CONCLUSION

It can be expected that any negative environmental impact in the areas cited should be negligible. As has been discussed, for Alternative One the probable increase in residential units above the allowed maximums range from a low of less than two per year to a high of 12 per year. All factors considered, a realistic estimate of actual increase is approximately five units or 11 additional persons (2.2 per unit). In terms of impact on density, it is difficult to state clearly what that impact is other than to say that it is negligible. Normally "unit per lot/parcel" or "people per acre" are used as density measures. In this case, because additional units are expected to be few and projects are likely to be small and scattered any increased density is virtually unquantifiable. In any case, any density increase will still be subject to discretionary decision and to appropriate environmental review on a case-by-case basis.

Alternative Two is expected to have even less negative environmental impact since in the majority of cases no density bonus or other incentives are required. Both alternatives contain mechanisms to keep the program from being prohibitive to developers.

8148

NOTICE OF DETERMINATION

TO: Secretary for Resources
1416 Ninth Street, Room 1311
Sacramento, California 95814
or
~~xxx~~ County Clerk
County of Alameda

FROM: (Public Agency) City of Berkeley
2180 Milvia Street
Berkeley, CA 94704

SUBJECT: Filing of Notice of Determination in compliance with Section 21108 or
21152 of the Public Resources Code.

INCLUSIONARY ZONING PROGRAM
Project Title

State Clearinghouse Number Contact Person Telephone Number
(If submitted to Clearinghouse)

CITY OF BERKELEY
Project Location

Section 15B has been added to the Zoning Ordinance to require the inclusion
Project Description

of low income housing (20% of the project) in certain residential developments.

This is to advise that the Planning and Community Development Dept.
(Lead Agency or Responsible Agency)
has approved the above described project and has made the following
determinations regarding the above described project:

1. The project will, ~~xxx~~ will not, have a significant effect on the environment.
2. An Environmental Impact Report was prepared for this project pursuant to the provisions of CEQA.
~~xxx~~ A Negative Declaration was prepared for this project pursuant to the provisions of CEQA.

The EIR or Negative Declaration and record of project approval may be examined at: _____

3. Mitigation measures were, ~~xxx~~ were not, made a condition of the approval of the project.
4. A statement of Overriding Considerations was, ~~xxx~~ was not, adopted for this project.

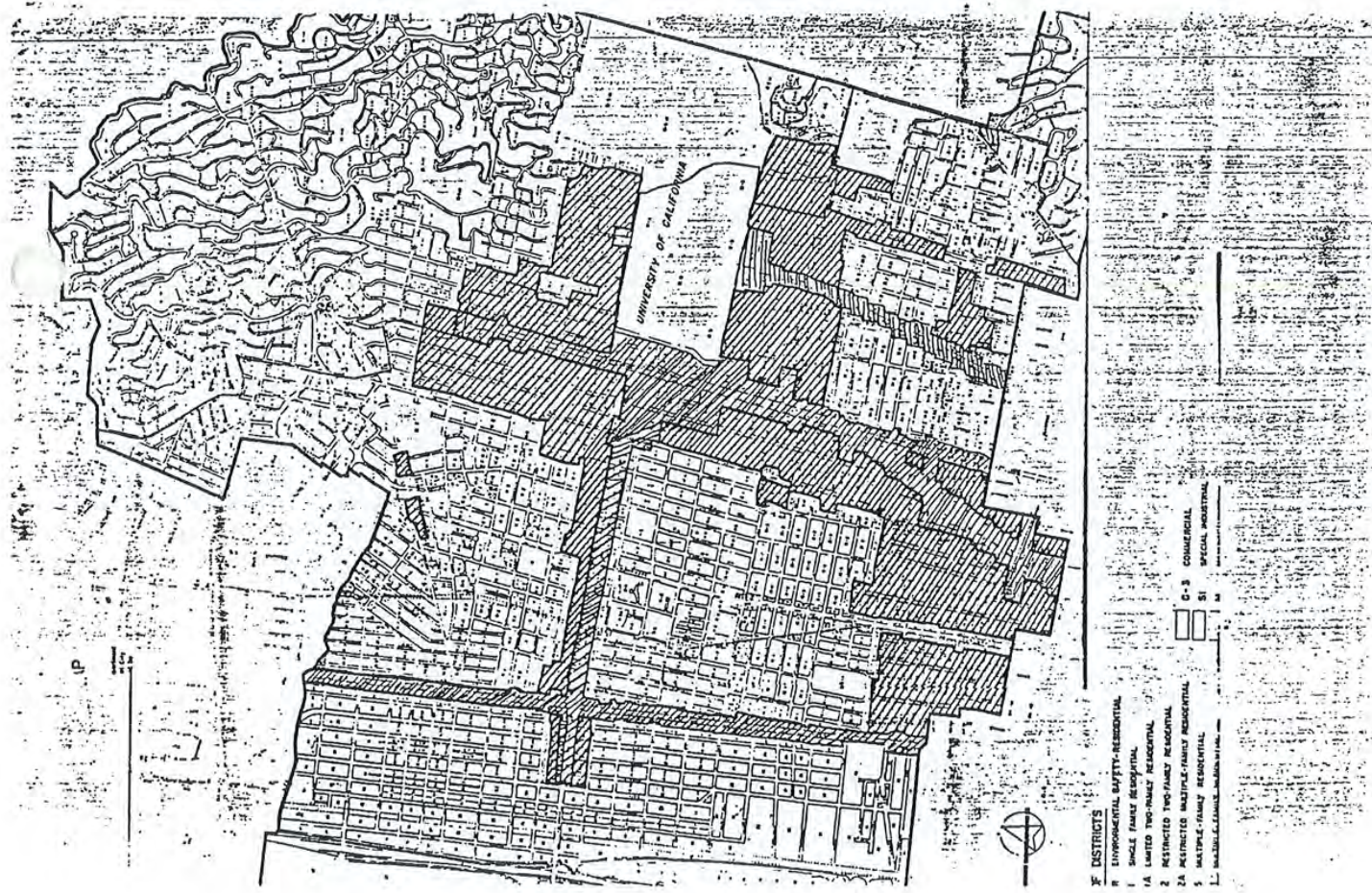
Date Received for FILED AND POSTED BY
Governor's Office of
Planning and Research

SEP 17 1986

Mario Reynolds Sr. Manager
Signature

Planning Administrator
Title

APPENDIX A



AREA AFFECTED BY PROPOSED INCLUSIONARY ZONING ORDINA

35.

SUMMARY OF EXAMPLES OF OTHER INCLUSIONARY ZONING REGULATIONS

1. PALO ALTO - Contained in housing element of the general Plan. Inclusionary requirement for 10 units or more, 10% requirement. Affordability to persons ranging from 80% to 100% of median income. Price of inclusionary units=actual cost of construction (except land, marketing costs and profit). Scaling down of inclusionary unit possible. In-lieu payment allowed = 3% of sales price of total project (no density bonus given). Deed restriction, City has right of first refusal, handled through non-profit (Palo Alto Hsg. Corp.). Fraction of required below market percentage handled by in-lieu payments.
2. MARIN COUNTY - Projects of 15 units or more, rental or ownership units, made affordable to those within 80%-120% of area median income (actual average between 100 -110% of median); 15% inclusionary requirement; amenities can be reduced, off-site development allowed, rental units allowed in "for sale" developments, 90 day resale controls, fractional percentages adjusted downward. In-lieu fee average construction cost for a unit less the affordable cost for the unit.
3. COASTAL COMMISSION - 16 units or more, for sale units only. 25% of units made available to low and moderate income households. Offsite units O.K. but twice the number for on-site. projects of 5 to 15 units must make payment of fee equal to 6% of total sales price of the project. Density bonuses and reduced other requirements must be consistent with environmental policy of the Commission.
4. SANTA MONICA - (soon to change) Projects with 3 units or more, 25% inclusionary requirement. First unit affordable to moderate income (120% of median), others within 80 -100% of median income. No in-lieu fee. Developer finds buyer.
5. STATE MODEL - sales and rentals, 75% of inclusionary units at moderate income, 25% lower income. Applicable to 5 units or more, 25% inclusionary requirement. Off-site o.k. Rental units rents same as Section 8 Fair Market Rents. In-lieu fees allowed for 20 units or less based on estimated sales price for 1200 square feet minus what is affordable to a moderate income household. Density bonus equal to one additional unit for every two inclusionary ones.
6. ORANGE COUNTY - 25% of all new developments and condo conversions (10% lower income -80%; 10% at 100% of median income; 5% moderate income 100-120% of median). Density bonus or relaxation of parking requirements, CDBG assistance and other incentives used. Alternatives, off-site development or land dedication. No resale restrictions unless government subsidy has been received.

36.

7. CUPERTINO - 10 units or more in areas with density of 6 units to an acre. 10% of units, affordability range 80 -120% of median income. Density bonus of up to 20% ; can scale down and reduce size but exterior of unit must be the same. City eliminates inspection fees, park dedication fees and other fees, uses CDBG to offset land, site improvement costs. City has right of first refusal.

8. LOS ANGELES - 5 units or more new developments or condos, 15% inclusionary requirement (6% low income, 9% moderate income). City has right of first refusal to buy at market price.

9. NAPA - "bonus points" given for low/moderate units. Exemption from rating system used to reduce development.

10. SAN DIEGO - (yet to be implemented), 15% low income units, 20% density bonus given.

11. CONCORD (proposed) 25% of units affordable at 120% of median; or 10% of units affordable at 80% of median, or sell 50% of units to elderly. Inclusionary units for rental housing as well, 25% at 120% of median; 10% of units at 20% of 80% of median. Negotiations often on a case-by-case basis. Additional incentives given for going above the 25% requirement.

Exhibit L

ORDINANCE NO. 4641 -N.S.

PROVIDING FOR THE ESTABLISHMENT OF A NEW PLANNING PROCESS TO ACHIEVE THE PRESERVATION AND ENHANCEMENT OF THE NEIGHBORHOODS OF THE CITY OF BERKELEY INCLUDING INTERIM REGULATIONS ON RESIDENTIAL CONSTRUCTION AND DEMOLITION.

The people of the City of Berkeley do ordain as follows:

Section 1. TITLE.

This ordinance shall be called the Neighborhood Preservation Ordinance.

Section 2. PURPOSE.

The purpose of this ordinance is to deal with an emergency situation arising from current development trends in the City of Berkeley.

(a) IMPACT OF CURRENT DEVELOPMENT TRENDS. An increasing number of neighborhoods in Berkeley are threatened by over-construction of dwellings which do not meet the needs of the community. It is essential that the residents of the city determine the processes which regulate the uses of available land. Housing which has not met the needs of underserved people in the community must become a prime priority in any consideration of such land use and must also rectify the problems presented by the concentration of dwellings in certain areas of the city. At all times the environmental impact of housing construction must be a major concern.

New construction in a city as built-up as Berkeley requires demolition, often of attractive low rent older homes, thus actually reducing the stock of decent housing available to those most in need of it -- families, low income and underserved, racial minorities and students. Although charging high rents, most new dwellings have

been of uniformly low quality. In addition, the design of new buildings often has disregarded the special needs of the aged and the handicapped.

Residents of Berkeley suffer from the effects of high-density construction which increases traffic, competes for limited recreational space, and experience drastically reduced views, light and air. The city as a whole also suffers. The tax rate has soared as the need for costly public services, such as recreation space, transportation services, police and fire protection, child care, health care, and waste disposal, increase in the affected neighborhoods. Higher taxes are necessitated because such developments fail to pay for the additional services; these increased taxes, therefore, represent an indirect subsidy to developers from the pockets of taxpayers.

(b) DEFICIENCIES IN MASTER PLAN AND ZONING ORDINANCE. These current development trends in Berkeley constitute a serious public emergency which deficiencies in the City's Master Plan and Zoning Ordinance have not been able to control. There has been no substantial reconsideration and revision of the Master Plan since its adoption in 1955, and this plan fails to reflect the current priorities and needs of Berkeley residents.

The Master Plan does not contain a housing element, as required for the City's continuing eligibility to participate in various Federal programs, such as rent and housing subsidy and loan programs. Neither the City's Master Plan or the Zoning Ordinance contain provisions insuring the development of low-income housing to meet the needs of low-income groups residing in the City of Berkeley, or establish procedures to insure the preservation of land space on which low-income housing may be constructed at such time as public or private funds for such housing are made available. The Master Plan also lacks protective provisions for Charter Cities, as required by a recent act of the State Legislature, including conservation, open space, noise abatement, and geological elements.

Major policies included in the Master Plan have not been followed. The Zoning Ordinance does not conform with the population guidelines of the Master Plan. The Zoning Ordinance allows vastly higher densities than recommended as a maximum by the Master Plan. The Ordinance also fails to provide for a public report concerning the environmental impact of proposed developments, as required by a recent decision of the California Supreme Court. Although a new development has its greatest impact on the surrounding neighborhood, the Zoning Ordinance makes little provision for neighborhood consideration of this impact.

Until the above-mentioned deficiencies are corrected, the critical conflict between current development trends and the public welfare will continue.

Section 3. PROCEDURES FOR THE CORRECTION OF DEFICIENCIES ENUMERATED
IN SECTION 2.

(a) COMPREHENSIVE REVISION OF BERKELEY MASTER PLAN AND ZONING ORDINANCE. The City Planning Commission shall prepare and submit to the City Council for its consideration a comprehensive revision of the Master Plan and Zoning Ordinance. The Planning Commission shall submit the revised Master Plan and Zoning Ordinance no later than March 31, 1975 or by such later date as the City Council may direct for good cause shown.

(b) RESIDENT PARTICIPATION. A Committee of interested residents shall be formed by the City Council to assist the Planning Commission during the revision of the Master Plan and Zoning Ordinance. Each council-member shall appoint an equal number of committee members. The City Council shall allocate sufficient funds to meet minor expenses incurred by low-income, handicapped or aged persons who may be serving on this advisory committee (ie: child care, transportation).

(c) CORRECTION OF DEFICIENCIES AND RESIDENT REVIEW. The Planning Commission shall include in the revised Master Plan and Zoning Ordinance correction of the deficiencies specified in Section 2 and provision for resident review at the neighborhood level of all proposed developments and changes in land use.

(d) PUBLIC HEARINGS. In order to insure that the City Planning Commission is adequately informed regarding the priorities and concerns of Berkeley residents and to insure that those residents are appraised from time to time of the status of the Commission's revisory work, the Planning Commission shall hold no fewer than five (5) public hearings throughout the City.

Section 4. INTERIM BUILDING REGULATIONS.

In order to regulate the issuance of building permits during the period between the enactment of the "Neighborhood Preservation Ordinance" and the final acceptance by the Berkeley City Council of the revised Master Plan and Zoning Ordinance, no residential building permits shall be issued except in conformity with the following requirements:

(a) USE PERMITS. Use Permits issued by the Board of Adjustments shall be required for the construction of all new residential construction of one or more units, excepting legal conversions and/or the addition of a single legal unit to an existing structure. The use permit shall be obtained before the issuance of a building permit. Decisions of the Board of Adjustments may be appealed to the City Council by any interested party.

(b) GRANTING OF USE PERMITS. A use permit may be granted if from the facts presented at a duly called public hearing at the Board of Adjustments, or the City Council on appeal finds the following:

(1) That the requirements of the Zoning Ordinance have been met, including those for use permits and variances as

specified therein.

(2) That the establishment, maintenance, or operation of the building applied for will not, under the circumstances of the particular case, be detrimental to the health, safety, peace, comfort and general welfare of persons residing or working in the neighborhood of such proposed use or to the general welfare of the city.

(3) That in the case of construction of new buildings with one or more units, the affected neighborhood has received notification as required by Section 7.

(4) That the developer and/or contractor has submitted and will comply with an affirmative action program conforming with Berkeley's affirmative action guidelines.

(5) That the proposed construction of four or more units shall have at least twenty-five percent (25%) low-income housing units as defined in Section 4(c) of this ordinance.

(6) That the environmental impact requirements have been met according to Section 6 of this ordinance.

In addition, for any proposed construction with less than 50% low income units, the Board of Adjustments shall make a finding of whether the proposed construction meets with the general approval of residents of the neighborhood where it is to be located. Neighborhood disapproval may not be based upon discrimination against the characteristics of potential residents. The Board shall consider this finding in determining whether requirements of Section 4(b)(2) has been met. "Neighborhood" shall be defined as provided for in Section 7(a) below.

(c) LOW-INCOME HOUSING. Low income housing is housing whose dwelling unit rents and income standards are defined in HUD guidelines for Section 236 housing. For buildings of eight units or larger, at least half of the minimum specified in Section 4(b)(5) must meet rent and income guidelines for Section 23 (Leased Housing).

Section 5. INTERIM BUILDING DEMOLITION REGULATIONS.

In order to protect the stock of older housing during the period between the enactment of the "Neighborhood Preservation Ordinance" and the final acceptance by the Berkeley City Council of the revised Master Plan and Zoning Ordinance, no residential demolition permits shall be issued except in conformity with the following requirements:

(a) DEMOLITION PERMITS. Demolition permits shall be required for the demolition of structures containing one or more residential units. These permits shall be issued by the Board of Adjustments. Decisions of the Board of Adjustments may be appealed to the City Council by any interested party.

(b) GRANTING OF DEMOLITION PERMITS. A demolition permit may be granted if, from all facts presented at a duly called public hearing at the Board of Adjustments, or the City Council upon appeal, finds:

(1) That the demolition would not be materially detrimental to the housing needs and public interest of the affected neighborhood and the City of Berkeley; and

(2) That the developer and/or owner of the proposed construction has provided alternative housing for the residents of the structure to be demolished, and further that this relocation housing is consistent with HUD relocation guidelines, including standards for a choice of housing of comparable quality and costs within the same community if the relocatee(s) so desire, and either

(3) That the demolition will remove a hazardous, unusable or unrepairable structure, or

(4) That the demolition is necessary to permit construction approved pursuant to Section 6(c)(5), and with the additional requirement that such construction contain at least the same number of housing units as the demolished structure, and, further, that provisions have been made for persons displaced by the proposed construction to have first choice in the new housing.

Section 6. ENVIRONMENTAL IMPACT REPORT AND FINDING.

(a) ESTABLISHMENT OF INTERIM ENVIRONMENTAL IMPACT GUIDELINES. The Planning Commission, as soon as possible after public hearings in which all interested parties are asked to participate, shall prepare for adoption by the City Council a set of interim guidelines to determine which construction and demolition projects may have a significant effect on the environment, and when permits should be issued for such projects.

(b) PREPARATION AND CONSIDERATION OF ENVIRONMENTAL IMPACT REPORT. No permit for construction or demolition which may have a significant effect on the environment shall be granted until:

(1) An Environmental Impact Report has been prepared by the Planning Department at the expense of the applicant. This cost to the applicant may be waived if the Board of Adjustments finds it to be a financial hardship.

(2) The Board of Adjustments has considered such Environmental Impact Report at the duly called public hearing on the granting of a use or demolition permit, and

(3) The Board of Adjustments has made a finding that the project will not have a significantly adverse environmental effect. (Decisions of the Board of Adjustments may be appealed to the City Council by any interested party.)

(b) PRESUMPTION OF ENVIRONMENTAL EFFECT. Until interim guidelines have been prepared by the Planning Commission after public hearings and have been adopted by the City Council, all projects involving construction or demolition of buildings which require approval by the Board of Adjustments shall be deemed to have a significant effect on the environment.

Section 7. REQUIRED PUBLIC NOTICE.

(a) NOTICE TO THE NEIGHBORHOOD. Notice of public hearings provided for in this Ordinance shall be sent at least 21 days before the public hearing date, to all addresses and owners of property within a radius of five hundred (500) feet from the boundaries of the site of the proposed construction or demolition. The Board of Adjustments may decrease this radius to not less than three hundred (300) feet in appropriate cases of small-scale development. The following information shall be included in the notice of public hearing:

(1) The number of housing units proposed.

(2) The percentage of low-income units included in the structure.

(3) A small reproduction of the site plan and perspective rendering of the proposed structure.

(4) Time and place of public hearing.

(5) City departments to contact for further information.

(b) NOTICE TO THE REGISTRY. The Board of Adjustments shall maintain a registry of all persons and groups requesting notice, to whom notice of all public hearings shall be sent as specified in Section 7(a)(1) through (5) above, and shall be sent at least 21 days before the public hearing date.

(c) NOTICE BY POSTING. A notice of public hearing shall be posted on the site of the proposed construction at least 21 days before the public hearing date. This posted notice shall be in lettering sufficiently large to be seen clearly and read easily by passersby, and the posted notice shall contain information as specified in Section 7(a)(1) through (5).

(d) COSTS OF NOTICE. All costs of giving notice shall be

paid by the applicant. This cost to the applicant may be waived if the Board of Adjustments finds it to be a financial hardship.

Section 8. DETERMINATION OF RULES AND PROCEDURES.

The Planning Commission shall determine rules and procedures necessary to make operative the Interim Building and Demolition regulations established by this ordinance.

Section 9. RELATIONSHIP TO OTHER ORDINANCES.

It is not the purpose of this Ordinance to repeal the existing Zoning Ordinance, except insofar as its provisions are in conflict with this Ordinance. Where there is no conflict, the Zoning Ordinance shall continue to apply. Wherever the existing Zoning Ordinance or other ordinances are in conflict with this Ordinance, this Ordinance shall apply.

Section 10. SEVERABILITY.

If any provision of this Ordinance or application thereof to any person or circumstance is held invalid, this invalidity shall not affect other provisions of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared to be severable.

In effect: April 17, 1973

ORDINANCE NO. 4641 —N.S.

Passed to Print:.....

Finally Adopted:.....

In Effect:..... April 17, 1973.....

Passed by the electors April 17, 1973 at the General Municipal Election.

~~At a regular meeting of the Council of the City of Berkeley, held on the.....day of
....., this Bill was passed to print and ordered published by posting by the
following vote:~~

~~Ayes:~~

~~Noes:~~

~~Absent:~~

~~Attest:~~

~~.....
City Clerk and ex-officio Clerk of the Council~~

~~At a regular meeting of the Council of the City of Berkeley, held on the.....day of
....., this Ordinance was finally adopted by the following vote:~~

~~Ayes:~~

~~Noes:~~

~~Absent:~~

~~Attest:~~

~~.....
City Clerk and ex-officio Clerk of the Council
of the City of Berkeley, California~~

~~Approved this.....day of.....~~

~~.....
Mayor and President of the Council
of the City of Berkeley, California~~

Exhibit M

770 PAGE STREET (E) ASPHALT PARKING AREA.

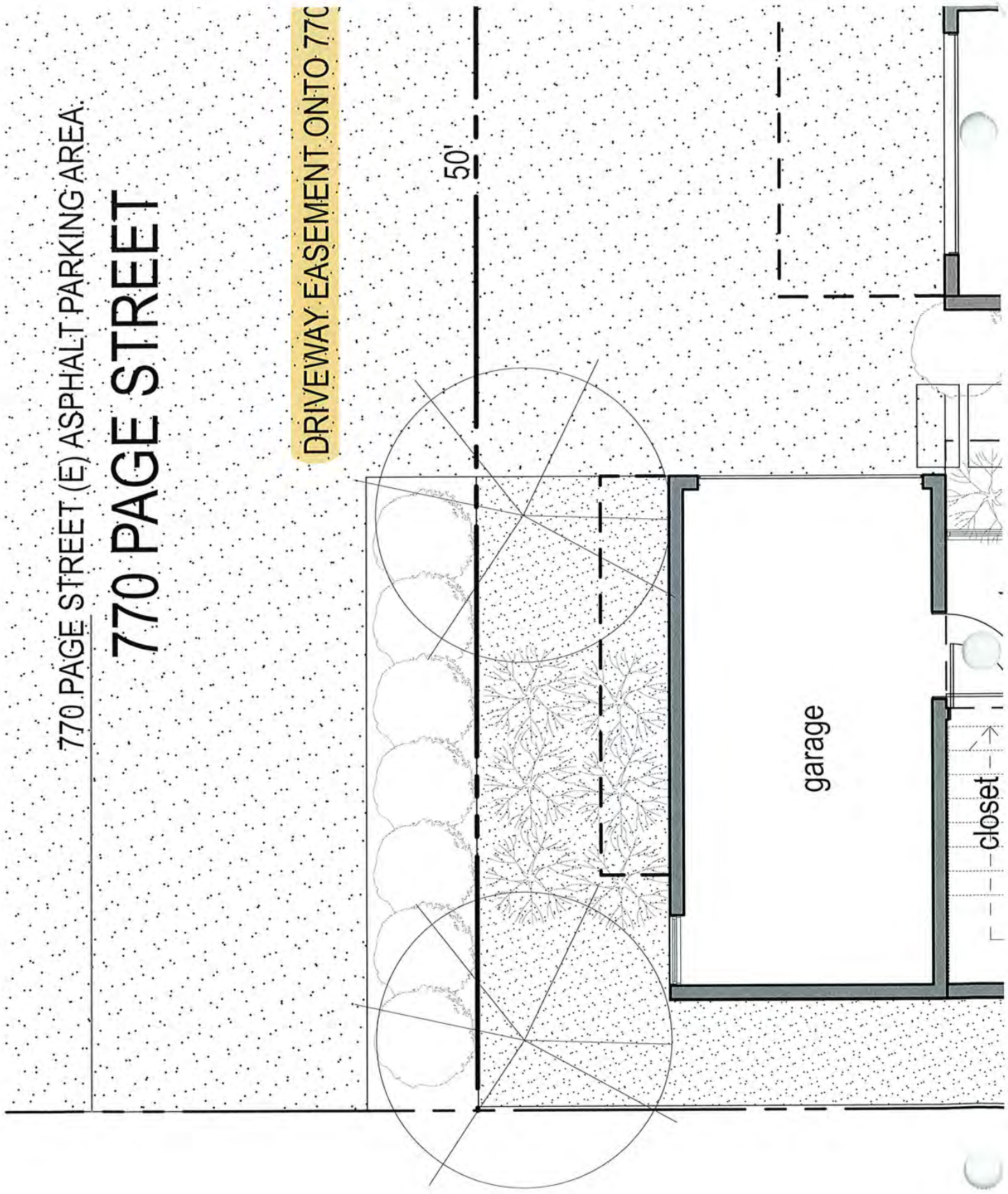
770 PAGE STREET

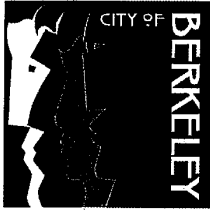
DRIVEWAY EASEMENT ONTO 770

50'

garage

closet





City Clerk Department

June 28, 2021

Jessica Taylor
Oceanview Neighborhood Council
Greenfire Law, P.C.
2001 Addison Street, Suite 300
Berkeley, CA 94704

RE: 770 Page Street – Appeal ZAB Decision Use Permit #ZP2020-0051

Dear Appellant:

This will acknowledge receipt of your appeal of the Zoning Adjustments Board decision of May 27, 2021, approving the following permits:

- Use Permit, under BMC 23C.08.010 to demolish of a dwelling unit
- Administrative Use Permit, under BMC Section 23E.84.030, to construct four new dwelling units

Your appeal has been referred to the Planning Department.

The Planning Department will transmit to Council a statement setting forth the reasons for the Zoning Adjustments Board decision. This report, as well as a copy of the appeal, will appear on the Council agenda of **July 27, 2021**.

This meeting of the Council will commence at 4:00 p.m. and will be held in the School District Board Room located at 1231 Addison Street. However, depending on future conditions, this meeting may be held exclusively through videoconference and teleconference to ensure the health and safety of the public.

Pursuant to the City Council Rules of Procedure, this appeal will appear on the City Council's agenda as a public hearing. Time shall be provided for five-minute presentations each by the appellant and applicant. Where the appellant is not the applicant, the appellants collectively shall have five minutes to comment and the applicant shall have five minutes to comment. Where the appellant is the applicant, the applicant/appellant shall have five minutes to comment and the persons supporting the action of the board or commission on appeal shall have five minutes to comment.

After the conclusion of the five-minute comment periods, members of the public may comment on the appeal pursuant to the Rules of Procedure in effect for the Council meeting.

RE: 770 Page Street – Appeal ZAB Decision Use Permit #ZP2020-0051

Page 2

The Council will then deliberate and determine to do one of three things: 1) continue the public hearing; 2) based on the record of the Council's consideration and hearing, reverse or affirm, wholly or partly, or modify any decision, determination, condition or requirement of the Board's original action; or 3) remand the matter to the Board to reconsider the application, or any revisions thereto submitted after the Board's action.

Communications to the City Council that are received by the City Clerk pursuant to the following deadlines will be accepted and distributed as follows:

Submission Deadline	Distributed	Packet
July 12, 2021, by 5:00 p.m. (Monday)	Twelve days before the meeting (Thursday)	Agenda Packet
July 20, 2021, by 5:00 p.m. (Tuesday)	Five days before the meeting (Thursday)	Supplemental 1
July 26, 2021, 12:00 p.m. (Monday)	By 5:00 pm the day before the meeting (Monday)	Supplemental 2

Communications should be submitted directly to the City Clerk to ensure receipt by all Councilmembers. Electronic communications may be submitted to council@cityofberkeley.info for immediate distribution to the Mayor, each City Councilmember, and the City Clerk for inclusion in the official record. Please note that for communications submitted in hardcopy, if the communication includes maps or photos or any other material not reproducible on a copy machine, fifteen copies should be provided to the City Clerk.

Please note that Berkeley's Lobbyist Registration Act (Berkeley Municipal Code Chapter 2.09) is effective beginning on January 1, 2020. Information and resources regarding the Lobbyist Registration Act are available from the City's website at: https://www.cityofberkeley.info/Clerk/Home/Lobbyist_Registration_Act.aspx

If you have any additional questions regarding this matter, please do not hesitate to contact me at (510) 981-6908.

A copy of the staff report and a City Council agenda will be available from this office upon request after 4:00 p.m. on Thursday, July 15, 2021 or can be viewed on our website at: www.CityofBerkeley.info/CityCouncil.

Sincerely,



Mark Numainville
City Clerk

cc: Jordan Klein, Director of Planning
Steven Buckley, Land Use Planning Manager
Leslie Mendez, Staff Planner

RE: 770 Page Street – Appeal ZAB Decision Use Permit #ZP2020-0051

Page 3

Farimah Brown, City Attorney
Matthew Wadlund, Applicant/Owner

NOTICE CONCERNING YOUR LEGAL RIGHTS: If you object to a decision by the City Council to approve or deny an appeal, the following requirements and restrictions apply: 1) Pursuant to Code of Civil Procedure Section 1094.6 and Government Code Section 65009(c)(1)(E), no lawsuit challenging a City decision to deny or approve a Zoning Adjustments Board decision may be filed and served on the City more than 90 days after the date the Notice of Decision of the action of the City Council is mailed. Any lawsuit not filed within that 90-day period will be barred. 2) Pursuant to Government Code Section 66020(d)(1), the 90-day protest period for any fees, dedications, reservations, or other exactions included in any permit approval begins upon final action by the City, and that any challenge must be filed within this 90-day period. 3) In any lawsuit that may be filed against a City Council decision to approve or deny a Zoning Adjustments Board decision, the issues and evidence will be limited to those raised by you or someone else, orally or in writing, at a public hearing or prior to the close of the last public hearing on the project.