

**CITY COUNCIL MEETING
TUESDAY, APRIL 25, 2017**

DOCUMENTS RECEIVED AFTER PUBLISHED AGENDA

Item #2 CONS 17-125

Item #3 CONS 17-181

Agenda Questions and Answers

AGENDA QUESTIONS & ANSWERS

MEETING DATE: April 25, 2017

<p>Item 2 - Requested by CM Lamnin: Authorization to Negotiate and Execute an Agreement with V5 Systems for the Purchase of Security Cameras</p>	<p><u>Response from Technology Services Director Adam Kostrzak :</u></p>
<p>2) Authorization to Negotiate and Execute an Agreement with V5 Systems for the Purchase of Security Cameras</p> <p>For Agenda Item 2 What are the additional costs for the surveillance cameras contract? Was this proposal vetted by the Technology Committee?</p>	<p>There are no additional costs outside of what is laid out in the report. The five year contract is structured to cover the costs for purchase of public safety cameras and the storage component of the video recorded by the solution. Each camera costs approximately \$11,000, which includes sales tax. The video storage component has an initial cost of approximately \$22,000, including sales tax. The contract also covers maintenance, support, and warranty of all video and storage hardware for an approximate initial cost of \$15,000. Once the five year mark of the contract ends, if the City wishes to maintain this solution, the City will need to renegotiate the contract with v5 Systems.</p> <p>This project has been discussed and demonstrated at CTAC following the conclusion of the 30 day pilot project in 2015 at the following CTAC sessions:</p> <p>10/21/15 – CTAC provided an overview and update on the project 12/9/15 – CTAC provided an update on the project and a demonstration of the technology</p> <p>In addition, to address concerns from CTAC regarding video retention and release, CTAC has been provided an overview of the City’s policies and procedures as it relates to the retention and release of recorded video last at the 11/3/16 CTAC meeting. CIP funding has also been approved for purchase of the camera solution. This request seeks payment for the ten cameras currently in use and the purchase of an additional six camera systems. The City will not take delivery of or deploy these six additional camera systems until after a public forum is held and the City Council has an opportunity to weigh in on the policy recommendations.</p>

Item 3 - Requested by CM Lamnin: Approval of Final Map Tract 8301 (Hideaway II), associated with the previously approved Vesting Tentative Tract Map and proposed development of 42 townhome-style condominium homes on a 2.31-acre site located at 25891 and 25915 Dollar Street, (444-0078-07-07, 444-0078-08-06); KB Home

Response from Development Services Director David Rizk :

2) Approval of Final Map Tract 8301 (Hideaway II), associated with the previously approved Vesting Tentative Tract Map and proposed development of 42 townhome-style condominium homes on a 2.31-acre site located at 25891 and 25915 Dollar Street, (444-0078-07-07, 444-0078-08-06); KB Home (Applicant/Owner)

We will attach a copy of the approved tentative map lot layout sheet and final map to all future final map staff reports.

Regarding tonight's agenda item #3, attached below is the final map. Note the final map attachment is comprised of several sheets that show proposed lots/parcels, with sheet 3 showing eight residential lots. Attachment IV (Site Map) to the report shows 42 condominium spaces as shown in the approved vesting tentative map, where multiple condominium spaces are contained within each lot/parcel.

For Agenda Item 3 and future items related to Final Map approval, Can the Vesting Tentative Tract Map please be included in the Staff report so that we can more easily compare it to the Final Map?

TRACT 8301 HIDEAWAY II

CONSISTING OF 7 SHEETS
A SUBDIVISION FOR 42 CONDOMINIUM UNITS
ALL OF THOSE LANDS DESCRIBED IN THE GRANT DEED RECORDED UNDER
INSTRUMENT NO. 2016233084, OFFICIAL RECORDS OF ALAMEDA COUNTY
CITY OF HAYWARD, ALAMEDA COUNTY

Carlson, Barbee & Gibson, Inc.

CIVIL ENGINEERS • SURVEYORS • PLANNERS
SAN RAMON, CALIFORNIA

MARCH 2017

OWNER'S STATEMENT

THE UNDERSIGNED, KB HOME SOUTH BAY INC. DOES HEREBY STATE THAT THEY ARE THE OWNERS OF THE LANDS DELINEATED AND EMBRACED WITHIN THE EXTERIOR BOUNDARY LINES OF THE HEREIN EMBODIED MAP ENTITLED "TRACT 8301 HIDEAWAY II, CITY OF HAYWARD, COUNTY OF ALAMEDA, CALIFORNIA" CONSISTING OF 7 SHEETS, THIS STATEMENT BEING ON SHEET ONE (1) THEREOF; THAT SAID OWNER HAS CAUSED SAID MAP TO BE PREPARED FOR RECORD; AND THAT SAID OWNER CONSENTS TO THE PREPARATION AND FILING OF SAID MAP;

AND THE UNDERSIGNED DO HEREBY DEDICATE TO THE PUBLIC FOREVER, EASEMENTS WITH THE RIGHT OF INGRESS AND EGRESS FOR THE PURPOSE OF CONSTRUCTION AND MAINTENANCE OF APPLICABLE STRUCTURES AND APPURTENANCES UNDER, UPON AND OVER ANY AREA OR STRIP OF LAND DESIGNATED AS "PUE" (PUBLIC UTILITY EASEMENT), AS DELINEATED WITHIN THE EXTERIOR BOUNDARY OF THIS MAP; AND THAT SAID AREAS OR STRIPS OF LAND ARE TO BE KEPT OPEN AND FREE FROM BUILDINGS OR STRUCTURES OF ANY KIND, EXCEPT APPLICABLE UTILITY STRUCTURES, DRAINAGE FACILITIES, SEWER FACILITIES, WATER FACILITIES, IRRIGATION SYSTEMS, APPURTENANCES, AND LAWFUL FENCES;

AND THE UNDERSIGNED DO HEREBY DEDICATE EASEMENTS TO THE CITY OF HAYWARD FOR PUBLIC USE, THE AREAS DESIGNATED AS "WLE" (WATER LINE EASEMENT) FOR INGRESS AND EGRESS, CONSTRUCTION AND MAINTENANCE OF WATER SYSTEM FACILITIES INCLUDING WATER LINES AND APPURTENANCES THERETO; MAINTENANCE OF SAID WATER SYSTEM FACILITIES, WATER LINES AND APPURTENANCES THERETO SHALL BE THE RESPONSIBILITY OF THE CITY OF HAYWARD;

AND THE UNDERSIGNED DO HEREBY DEDICATE EASEMENTS TO THE CITY OF HAYWARD FOR PUBLIC USE, THE AREAS DESIGNATED "SSE" (SANITARY SEWER EASEMENT) FOR SANITARY SEWER PURPOSES, INCLUDING INGRESS AND EGRESS, CONSTRUCTION AND MAINTENANCE OF IMPROVEMENTS, STRUCTURES, AND APPURTENANCES, WHETHER COVERED OR OPEN AND FOR THE CLEARING OF OBSTRUCTIONS AND VEGETATION; MAINTENANCE OF SAID SEWER IMPROVEMENTS, STRUCTURES AND APPURTENANCES THERETO SHALL BE THE RESPONSIBILITY OF THE CITY OF HAYWARD;

AND THE UNDERSIGNED DO HEREBY DEDICATE EASEMENTS TO THE PUBLIC SOLELY FOR EMERGENCY VEHICLE ACCESS OVER, UPON AND ACROSS THOSE AREAS DESIGNATED "EVAE" (EMERGENCY VEHICLE ACCESS EASEMENT); SAID AREAS DESIGNATED AS "EVAE" ARE NOT OFFERED FOR DEDICATION FOR ANY OTHER PUBLIC USE;

AND THE UNDERSIGNED DO HEREBY RESERVE THE PARCELS LABELED PARCEL B AND PARCEL C, FOR ACCESS, OPEN SPACE, UTILITY, DRAINAGE, WALL/FENCE MAINTENANCE, STORM WATER TREATMENT, AND LANDSCAPING PURPOSES TO BE CONVEYED TO THE HOMEOWNER'S ASSOCIATION BY SEPARATE INSTRUMENT;

AND THE UNDERSIGNED DO HEREBY RESERVE THE PARCEL LABELED PARCEL A (FANUNCIO LANE, DUENDES COURT, DE LA VEGA COURT AND OCAMPO COURT) FOR THE PURPOSES OF PRIVATE STREETS, PARKING AND DRIVEWAYS TO BE CONVEYED TO THE HOMEOWNER'S ASSOCIATION BY SEPARATE INSTRUMENT; SAID PARCEL HEREBY CONSTITUTE PRIVATE VEHICULAR AND PEDESTRIAN ACCESS EASEMENTS (PAE) AND PRIVATE STORM DRAINAGE EASEMENTS (PSDE) FOR THE BENEFIT OF ALL THE LOTS AND PARCELS WITHIN THIS MAP; MAINTENANCE OF SAID PARCEL SHALL BE THE RESPONSIBILITY OF SAID HOMEOWNER'S ASSOCIATION IN ACCORDANCE WITH THE RESTRICTIONS GOVERNING THIS SUBDIVISION; SAID PARCEL IS NOT OFFERED FOR DEDICATION TO THE PUBLIC.

THIS MAP SHOWS ALL EASEMENTS ON THE PREMISES, OR OF THE RECORD, UNLESS OTHERWISE NOTED.

IN WITNESS WHEREOF, THE UNDERSIGNED HAS CAUSED THIS STATEMENT AND THESE DEDICATIONS TO BE EXECUTED THIS _____ DAY OF _____, 20____.

KB HOME SOUTH BAY INC, A CALIFORNIA CORPORATION

BY: _____

PRINT NAME: _____

TITLE: _____

OWNER'S 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 } SS.
COUNTY OF ALAMEDA }

ON _____, BEFORE ME, _____, A NOTARY PUBLIC, PERSONALLY APPEARED _____, WHO PROVED TO ME ON THE BASIS OF SATISFACTORY EVIDENCE TO BE THE PERSON(S) WHOSE NAME(S) IS/ARE SUBSCRIBED TO 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:

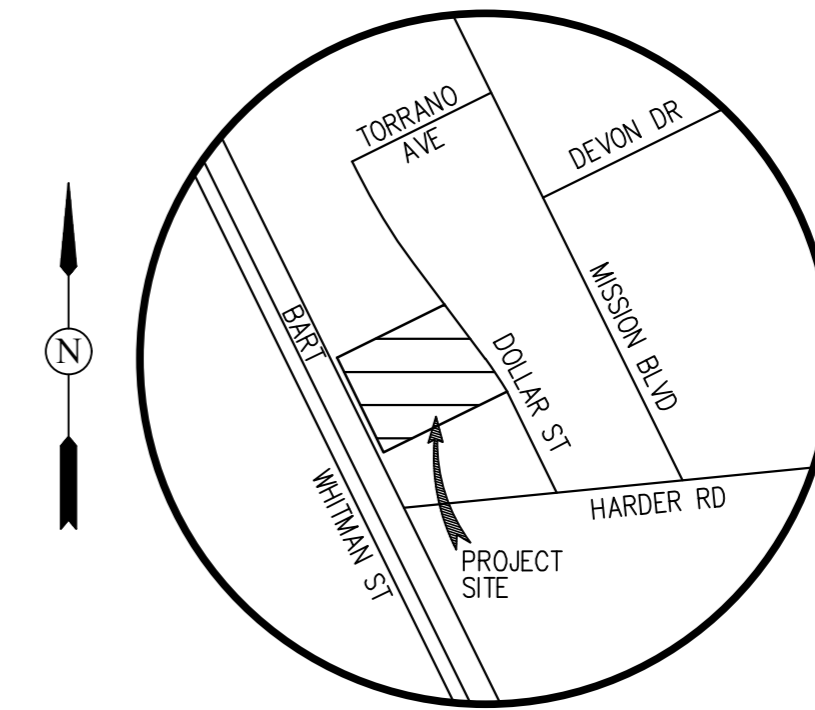
SIGNATURE: _____

NAME (PRINT): _____

PRINCIPAL PLACE OF BUSINESS: _____

MY COMMISSION NUMBER: _____

MY COMMISSION EXPIRES: _____



VICINITY MAP
(NOT TO SCALE)

CLERK OF THE BOARD OF SUPERVISORS STATEMENT

I, ANIKA CAMPBELL-BELTON, CLERK OF THE BOARD OF SUPERVISORS OF THE COUNTY OF ALAMEDA, STATE OF CALIFORNIA, DO HEREBY CERTIFY, AS CHECKED BELOW THAT:

[] AN APPROVED BOND HAS BEEN FILED WITH THE SUPERVISORS OF THE SAID COUNTY AND STATE IN THE AMOUNT OF \$ _____ CONDITIONED FOR PAYMENT OF ALL TAXES AND SPECIAL ASSESSMENTS COLLECTED AS TAXES, WHICH ARE NOT A LIEN AGAINST SAID LAND OR ANY PART THEREOF BUT NOT YET PAYABLE AND WAS DULY APPROVED BY SAID BOARD IN SAID AMOUNT.

[] ALL TAXES AND SPECIAL ASSESSMENTS COLLECTED AS TAXES HAVE BEEN PAID AS CERTIFIED BY THE TREASURER-TAX COLLECTOR OF THE COUNTY OF ALAMEDA.

IN WITNESS WHEREOF, I HEREUNTO SET MY HAND THIS _____ DAY OF _____, 20____.

ANIKA CAMPBELL-BELTON
CLERK OF THE BOARD OF SUPERVISORS
COUNTY OF ALAMEDA, CALIFORNIA

BY: _____
DEPUTY CLERK

SOIL / GEOTECHNICAL REPORT NOTE

A SOILS REPORT ON THIS PROPERTY HAS BEEN PREPARED BY ENGeo, INC. ENTITLED "GEOTECHNICAL INVESTIGATION, DOLLAR STREET - TRACT 8301" DATED FEBRUARY 18, 2016, WHICH HAS BEEN FILED WITH THE CITY OF HAYWARD.

COUNTY RECORDER'S STATEMENT

FILED FOR RECORD, THIS _____ DAY OF _____, 20____, AT _____ IN BOOK _____ OF MAPS, AT PAGE _____, AT THE REQUEST OF FIRST AMERICAN TITLE COMPANY.

STEVE MANNING
COUNTY RECORDER IN AND FOR THE
COUNTY OF ALAMEDA, STATE OF CALIFORNIA

BY: _____
DEPUTY COUNTY RECORDER

TRACT 8301 HIDEAWAY II

CONSISTING OF 7 SHEETS
A SUBDIVISION FOR 42 CONDOMINIUM UNITS
ALL OF THOSE LANDS DESCRIBED IN THE GRANT DEED RECORDED UNDER
INSTRUMENT NO. 2016233084, OFFICIAL RECORDS OF ALAMEDA COUNTY
CITY OF HAYWARD, ALAMEDA COUNTY

Carlson, Barbee & Gibson, Inc.

CIVIL ENGINEERS • SURVEYORS • PLANNERS
SAN RAMON, CALIFORNIA

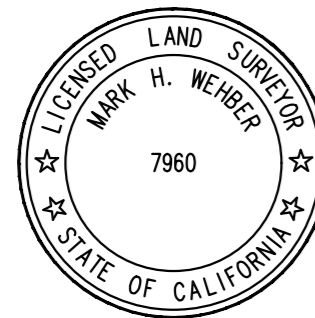
MARCH 2017

SURVEYOR'S STATEMENT

I, MARK H. WEHBER, A LICENSED LAND SURVEYOR IN THE STATE OF CALIFORNIA, HEREBY STATE THAT THIS FINAL MAP WAS PREPARED BY ME OR UNDER MY DIRECTION AND IS BASED UPON A FIELD SURVEY IN CONFORMANCE WITH THE REQUIREMENTS OF THE SUBDIVISION MAP ACT AND LOCAL ORDINANCE AT THE REQUEST OF KB HOME SOUTH BAY, INC. IN JULY 2016, AND IS TRUE AND COMPLETE AS SHOWN; THAT ALL THE MONUMENTS ARE OF THE CHARACTER AND OCCUPY THE POSITION INDICATED ON THIS FINAL MAP OR WILL BE SET IN THOSE POSITIONS INDICATED ON OR BEFORE JANUARY 2019, AND THAT SAID MONUMENTS WILL BE SUFFICIENT TO ENABLE THE SURVEY TO BE RETRACED. THE AREA OF THIS FINAL MAP CONTAINS 2.32 ACRES, MORE OR LESS.

I HEREBY STATE THAT THIS FINAL MAP SUBSTANTIALLY CONFORMS TO THE APPROVED TENTATIVE MAP.

DATE _____



MARK H. WEHBER, PLS
LS NO. 7960

CITY ENGINEER'S STATEMENT

I, MORAD FAKHRAI, CITY ENGINEER OF THE CITY OF HAYWARD, DO HEREBY STATE THAT THE HEREIN EMBODIED FINAL MAP, ENTITLED "TRACT 8301 HIDEAWAY II", CONSISTING OF 7 SHEETS, THIS STATEMENT BEING ON SHEET 2 THEREOF; HAS BEEN EXAMINED AND THAT THE SUBDIVISION, AS SHOWN UPON SAID MAP, IS SUBSTANTIALLY THE SAME AS SAID SUBDIVISION APPEARED ON THE APPROVED OR CONDITIONALLY APPROVED TENTATIVE MAP AND ANY APPROVED AMENDMENTS THEREOF; AND THAT ALL PROVISIONS OF THE SUBDIVISION MAP ACT OF THE STATE OF CALIFORNIA AND AMENDMENTS THERETO AND ANY LOCAL ORDINANCES APPLICABLE AT THE TIME OF APPROVAL OF THE TENTATIVE MAP HAVE BEEN COMPLIED WITH.

IN WITNESS WHEREOF, I HEREUNTO SET MY HAND THIS _____ DAY OF _____, 20____.

MORAD FAKHRAI, RCE NO. 43921
CITY ENGINEER, CITY OF HAYWARD
ALAMEDA COUNTY, CALIFORNIA

CITY CLERK'S STATEMENT

I, MIRIAM LENS, CITY CLERK AND CLERK OF THE COUNCIL OF THE CITY OF HAYWARD, ALAMEDA COUNTY, STATE OF CALIFORNIA, DO HEREBY CERTIFY THAT THE HEREIN EMBODIED FINAL MAP ENTITLED, "TRACT 8301 HIDEAWAY II" CONSISTING OF 7 SHEETS, THIS STATEMENT BEING ON SHEET 2 THEREOF, WAS PRESENTED TO SAID COUNCIL, AS PROVIDED BY LAW, AT A REGULAR MEETING HELD ON THE ____ DAY OF _____, 20____, AND THAT SAID COUNCIL DID THEREUPON, BY RESOLUTION NUMBER _____, PASSED AND ADOPTED AT SAID MEETING, APPROVED SAID MAP AND ACCEPTED ON BEHALF OF THE PUBLIC THE EASEMENTS OFFERED FOR DEDICATION AS "PUE" (PUBLIC UTILITY EASEMENT), "WLE" (WATER LINE EASEMENT), "SSE" (SANITARY SEWER EASEMENT) AND "EVAE" (EMERGENCY VEHICLE ACCESS EASEMENT).

IN WITNESS WHEREOF, I HEREUNTO SET MY HAND THIS _____ DAY OF _____, 20____.

MIRIAM LENS, CITY CLERK AND
CLERK OF THE COUNCIL OF THE CITY OF HAYWARD,
ALAMEDA COUNTY, STATE OF CALIFORNIA

CITY SURVEYOR'S STATEMENT

I, DAN S. SCOTT III, CITY SURVEYOR, HAVING BEEN AUTHORIZED TO PERFORM THE FUNCTIONS OF THE CITY SURVEYOR OF THE CITY OF HAYWARD, COUNTY OF ALAMEDA, STATE OF CALIFORNIA DO HEREBY CERTIFY THAT I HAVE EXAMINED THE HEREIN EMBODIED FINAL MAP ENTITLED "TRACT 8301 HIDEAWAY II, CITY OF HAYWARD, ALAMEDA COUNTY, CALIFORNIA";

I AM SATISFIED THAT THE SURVEY DATA SHOWN THEREIN IS TECHNICALLY CORRECT.

IN WITNESS WHEREOF, I HEREUNTO SET MY HAND THIS _____ DAY OF _____, 2016.

DAN S. SCOTT III, PLS NO 7840
CITY SURVEYOR
CITY OF HAYWARD, ALAMEDA COUNTY,
STATE OF CALIFORNIA
LICENSE EXPIRES 12/31/18

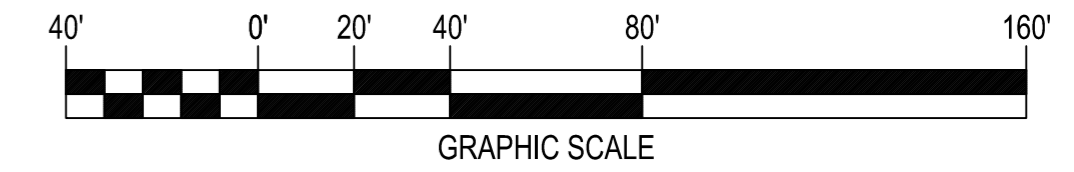
TRACT 8301 HIDEAWAY II

CONSISTING OF 7 SHEETS
A SUBDIVISION FOR 42 CONDOMINIUM UNITS
ALL OF THOSE LANDS DESCRIBED IN THE GRANT DEED RECORDED UNDER
INSTRUMENT NO. 2016233084, OFFICIAL RECORDS OF ALAMEDA COUNTY
CITY OF HAYWARD, ALAMEDA COUNTY

Carlson, Barbee & Gibson, Inc.

CIVIL ENGINEERS • SURVEYORS • PLANNERS
SAN RAMON, CALIFORNIA

SCALE: 1" = 40' MARCH 2017



BASIS OF BEARINGS:

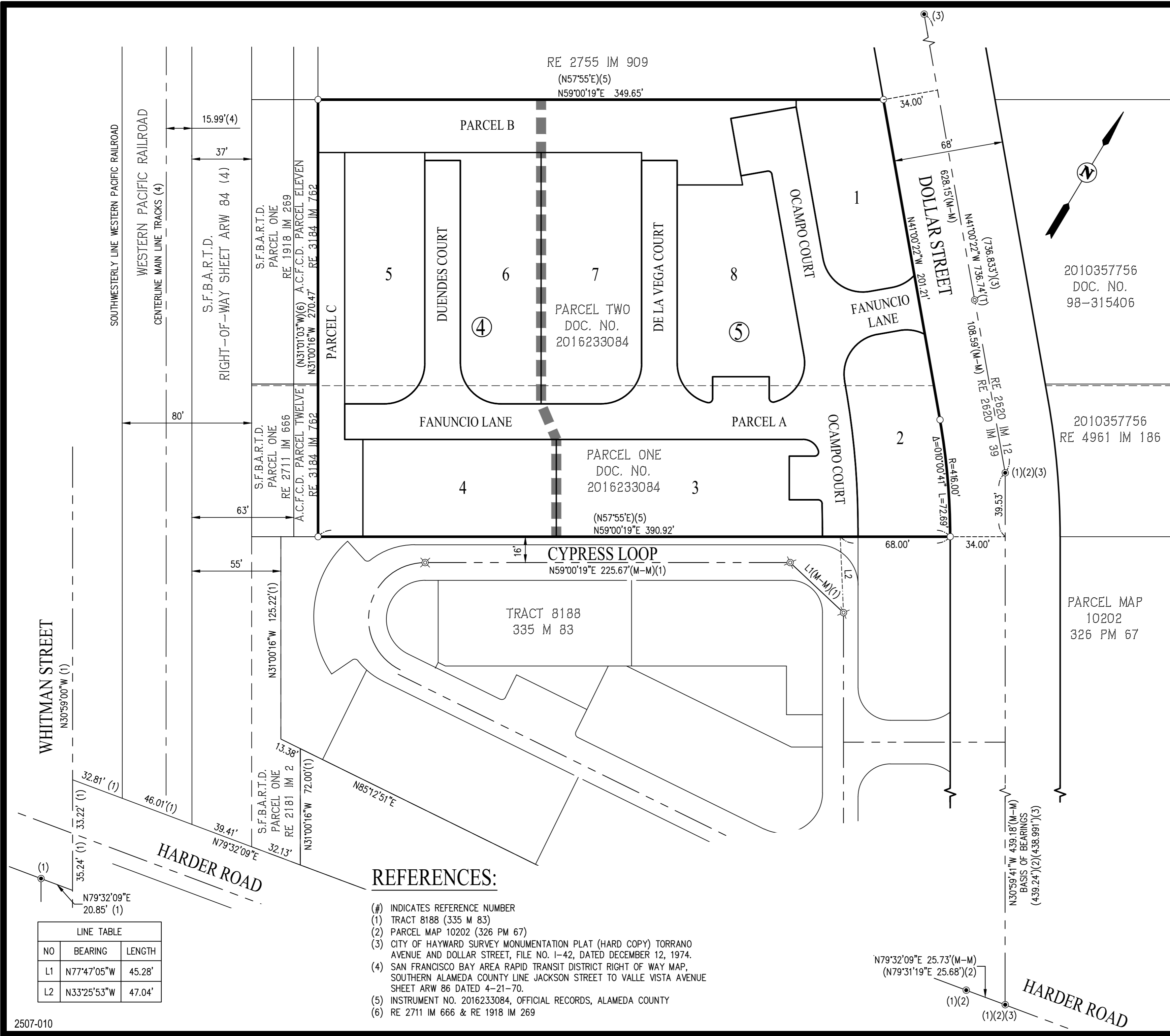
THE BASIS OF BEARINGS FOR THIS MAP IS DETERMINED BY FOUND MONUMENTS ON THE CENTERLINE OF DOLLAR STREET, THE BEARING BEING NORTH 30°59'41" WEST AS SHOWN ON TRACT 8188 FILED DECEMBER 18, 2015 IN BOOK 335 OF MAPS AT PAGE 83, ALAMEDA COUNTY RECORDS.

LEGEND

	SUBDIVISION BOUNDARY LINE
	RIGHT OF WAY LINE
	LOT LINE
	EASEMENT LINE
	MONUMENT LINE
	TIE LINE
(#)	REFERENCE NUMBER
(123.45')	REFERENCE INFORMATION
(T)	TOTAL DISTANCE
(R)	RADIAL BEARING
(M-M)	MONUMENT TO MONUMENT
(M-PL)	MONUMENT TO PROPERTY LINE
	FOUND STANDARD STREET MONUMENT
	SET STANDARD CITY OF HAYWARD STREET MONUMENT, LS 7960
	SET 5/8" REBAR AND CAP OR NAIL AND TAG LS 7960
	STANDARD CITY OF HAYWARD STREET MONUMENT, TO BE SET PER (1) LS 7960
EVAE	EMERGENCY VEHICLE ACCESS EASEMENT
PAE	PRIVATE ACCESS EASEMENT
PSDE	PRIVATE STORM DRAIN EASEMENT
PUE	PUBLIC UTILITY EASEMENT
SSE	SANITARY SEWER EASEMENT
WLE	WATER LINE EASMENT
S.F.B.A.R.T.D.	SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT
A.C.F.C.D.	ALAMEDA COUNTY FLOOD CONTROL DISTRICT
8	LOT NUMBER
④	SHEET NUMBER
	SHEET LIMIT

NOTES:

- SEE SHEET 6 & 7 FOR PUE DETAILS
- 5/8" REBAR AND CAP OR NAIL AND TAG, LS 7960 TO BE SET AT ALL FRONT, REAR LOT CORNERS AND BOUNDARY CORNERS, UNLESS OTHERWISE NOTED.



REFERENCES:

- (#) INDICATES REFERENCE NUMBER
- (1) TRACT 8188 (335 M 83)
- (2) PARCEL MAP 10202 (326 PM 67)
- (3) CITY OF HAYWARD SURVEY MONUMENTATION PLAT (HARD COPY) TORRANO AVENUE AND DOLLAR STREET, FILE NO. I-42, DATED DECEMBER 12, 1974.
- (4) SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT RIGHT OF WAY MAP, SOUTHERN ALAMEDA COUNTY LINE JACKSON STREET TO VALLE VISTA AVENUE SHEET ARW 86 DATED 4-21-70.
- (5) INSTRUMENT NO. 2016233084, OFFICIAL RECORDS, ALAMEDA COUNTY
- (6) RE 2711 IM 666 & RE 1918 IM 269

NO	BEARING	LENGTH
L1	N77°47'05"W	45.28'
L2	N33°25'53"W	47.04'

TRACT 8301 HIDEAWAY II

CONSISTING OF 7 SHEETS
A SUBDIVISION FOR 42 CONDOMINIUM UNITS
ALL OF THOSE LANDS DESCRIBED IN THE GRANT DEED RECORDED UNDER
INSTRUMENT NO. 2016233084, OFFICIAL RECORDS OF ALAMEDA COUNTY
CITY OF HAYWARD, ALAMEDA COUNTY

Carlson, Barbee & Gibson, Inc.

CIVIL ENGINEERS • SURVEYORS • PLANNERS
SAN RAMON, CALIFORNIA

SCALE: 1" = 20' MARCH 2017



BASIS OF BEARINGS:

THE BASIS OF BEARINGS FOR THIS MAP IS DETERMINED BY FOUND MONUMENTS ON THE CENTERLINE OF DOLLAR STREET, THE BEARING BEING NORTH 30°59'41" WEST AS SHOWN ON TRACT 8188 FILED DECEMBER 18, 2015 IN BOOK 335 OF MAPS AT PAGE 83, ALAMEDA COUNTY RECORDS.

LEGEND

	SUBDIVISION BOUNDARY LINE
	RIGHT OF WAY LINE
	LOT LINE
	EASEMENT LINE
	MONUMENT LINE
	TIE LINE
(#)	REFERENCE NUMBER
(123.45')	REFERENCE INFORMATION
(T)	TOTAL DISTANCE
(R)	RADIAL BEARING
(M-M)	MONUMENT TO MONUMENT
(M-PL)	MONUMENT TO PROPERTY LINE
●	FOUND STANDARD STREET MONUMENT
⊙	SET STANDARD CITY OF HAYWARD STREET MONUMENT, LS 7960
○	SET 5/8" REBAR AND CAP OR NAIL AND TAG LS 7960
⊗	STANDARD CITY OF HAYWARD STREET MONUMENT, TO BE SET PER (1) LS 7960
EVAE	EMERGENCY VEHICLE ACCESS EASEMENT
PAE	PRIVATE ACCESS EASEMENT
PSDE	PRIVATE STORM DRAIN EASEMENT
PUE	PUBLIC UTILITY EASEMENT
SSE	SANITARY SEWER EASEMENT
WLE	WATER LINE EASEMENT
S.F.B.A.R.T.D.	SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT
A.C.F.C.D.	ALAMEDA COUNTY FLOOD CONTROL DISTRICT
8	LOT NUMBER

NOTES:

- SEE SHEET 6 & 7 FOR PUE DETAILS
- 5/8" REBAR AND CAP OR NAIL AND TAG, LS 7960 TO BE SET AT ALL FRONT, REAR LOT CORNERS AND BOUNDARY CORNERS, UNLESS OTHERWISE NOTED.

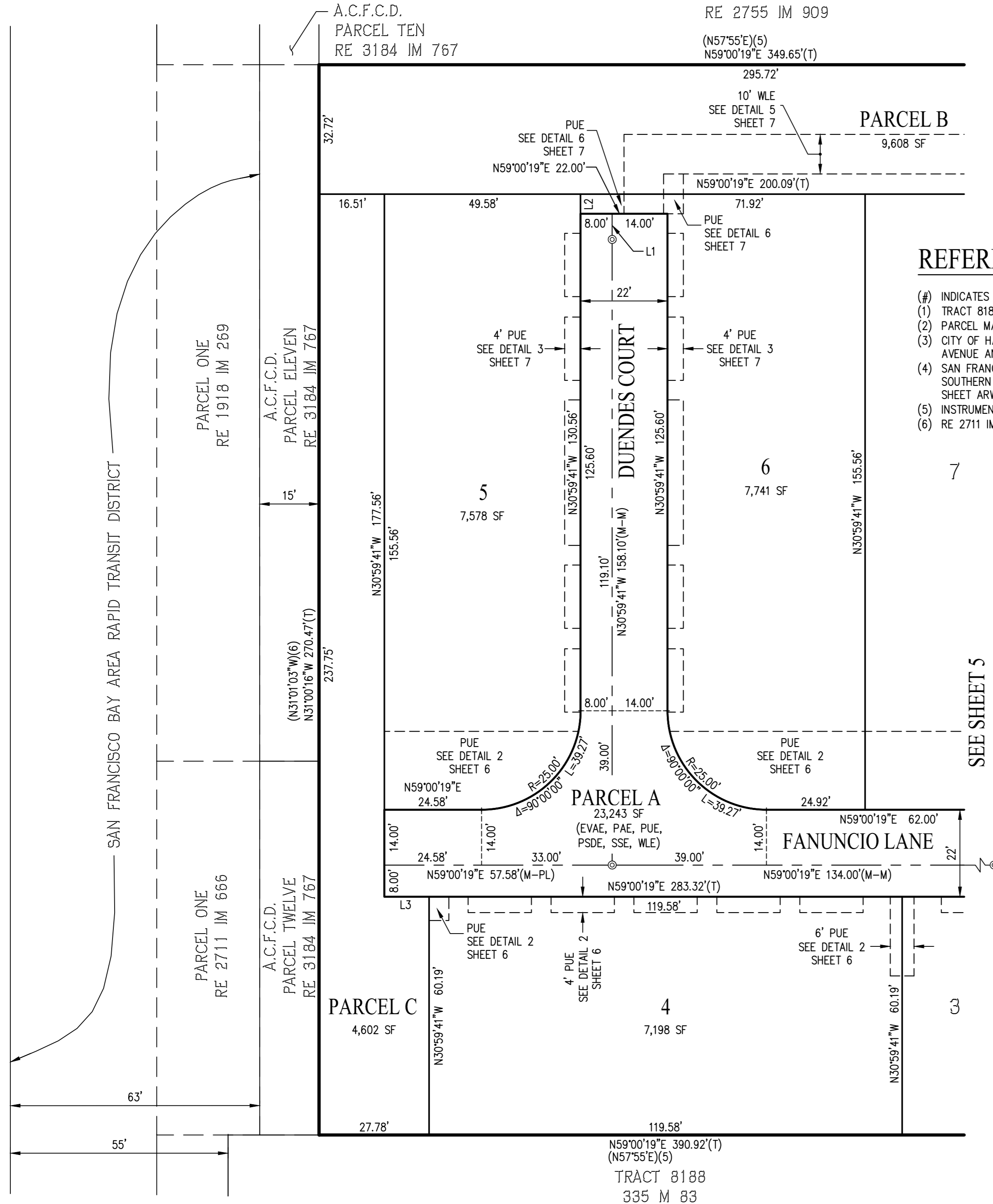
REFERENCES:

- (#) INDICATES REFERENCE NUMBER
 (1) TRACT 8188 (335 M 83)
 (2) PARCEL MAP 10202 (326 PM 67)
 (3) CITY OF HAYWARD SURVEY MONUMENTATION PLAT (HARD COPY) TORRANO AVENUE AND DOLLAR STREET, FILE NO. I-42, DATED DECEMBER 12, 1974.
 (4) SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT RIGHT OF WAY MAP, SOUTHERN ALAMEDA COUNTY LINE JACKSON STREET TO VALLE VISTA AVENUE SHEET ARW 86 DATED 4-21-70.
 (5) INSTRUMENT NO. 2016233084, OFFICIAL RECORDS, ALAMEDA COUNTY
 (6) RE 2711 IM 666 & RE 1918 IM 269

LINE TABLE		
NO	BEARING	LENGTH
L1	N30°59'41"W	6.50'
L2	N30°59'41"W	4.96'
L3	N59°00'19"E	11.30'

WESTERN PACIFIC RAILROAD

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT



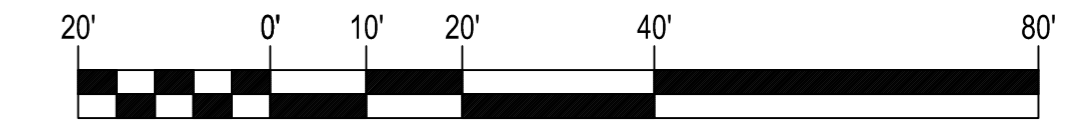
TRACT 8301 HIDEAWAY II

CONSISTING OF 7 SHEETS
A SUBDIVISION FOR 42 CONDOMINIUM UNITS
ALL OF THOSE LANDS DESCRIBED IN THE GRANT DEED RECORDED UNDER
INSTRUMENT NO. 2016233084, OFFICIAL RECORDS OF ALAMEDA COUNTY
CITY OF HAYWARD, ALAMEDA COUNTY

Carlson, Barbee & Gibson, Inc.

CIVIL ENGINEERS • SURVEYORS • PLANNERS
SAN RAMON, CALIFORNIA

SCALE: 1" = 20' MARCH 2017



BASIS OF BEARINGS:

THE BASIS OF BEARINGS FOR THIS MAP IS DETERMINED BY FOUND MONUMENTS ON THE CENTERLINE OF DOLLAR STREET, THE BEARING BEING NORTH 30°59'41" WEST AS SHOWN ON TRACT 8188 FILED DECEMBER 18, 2015 IN BOOK 335 OF MAPS AT PAGE 83, ALAMEDA COUNTY RECORDS.

LEGEND

	SUBDIVISION BOUNDARY LINE
	RIGHT OF WAY LINE
	LOT LINE
	EASEMENT LINE
	MONUMENT LINE
	TIE LINE
(#)	REFERENCE NUMBER
(123.45')	REFERENCE INFORMATION
(T)	TOTAL DISTANCE
(R)	RADIAL BEARING
(M-M)	MONUMENT TO MONUMENT
(M-PL)	MONUMENT TO PROPERTY LINE
●	FOUND STANDARD STREET MONUMENT
○	SET STANDARD CITY OF HAYWARD STREET MONUMENT, LS 7960
⊗	SET 5/8" REBAR AND CAP OR NAIL AND TAG LS 7960
⊗	STANDARD CITY OF HAYWARD STREET MONUMENT, TO BE SET PER (1) LS 7960
EVAE	EMERGENCY VEHICLE ACCESS EASEMENT
PAE	PRIVATE ACCESS EASEMENT
PSDE	PRIVATE STORM DRAIN EASEMENT
PUE	PUBLIC UTILITY EASEMENT
SSE	SANITARY SEWER EASEMENT
WLE	WATER LINE EASEMENT
S.F.B.A.R.T.D.	SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT
A.C.F.C.D.	ALAMEDA COUNTY FLOOD CONTROL DISTRICT
8	LOT NUMBER

REFERENCES:

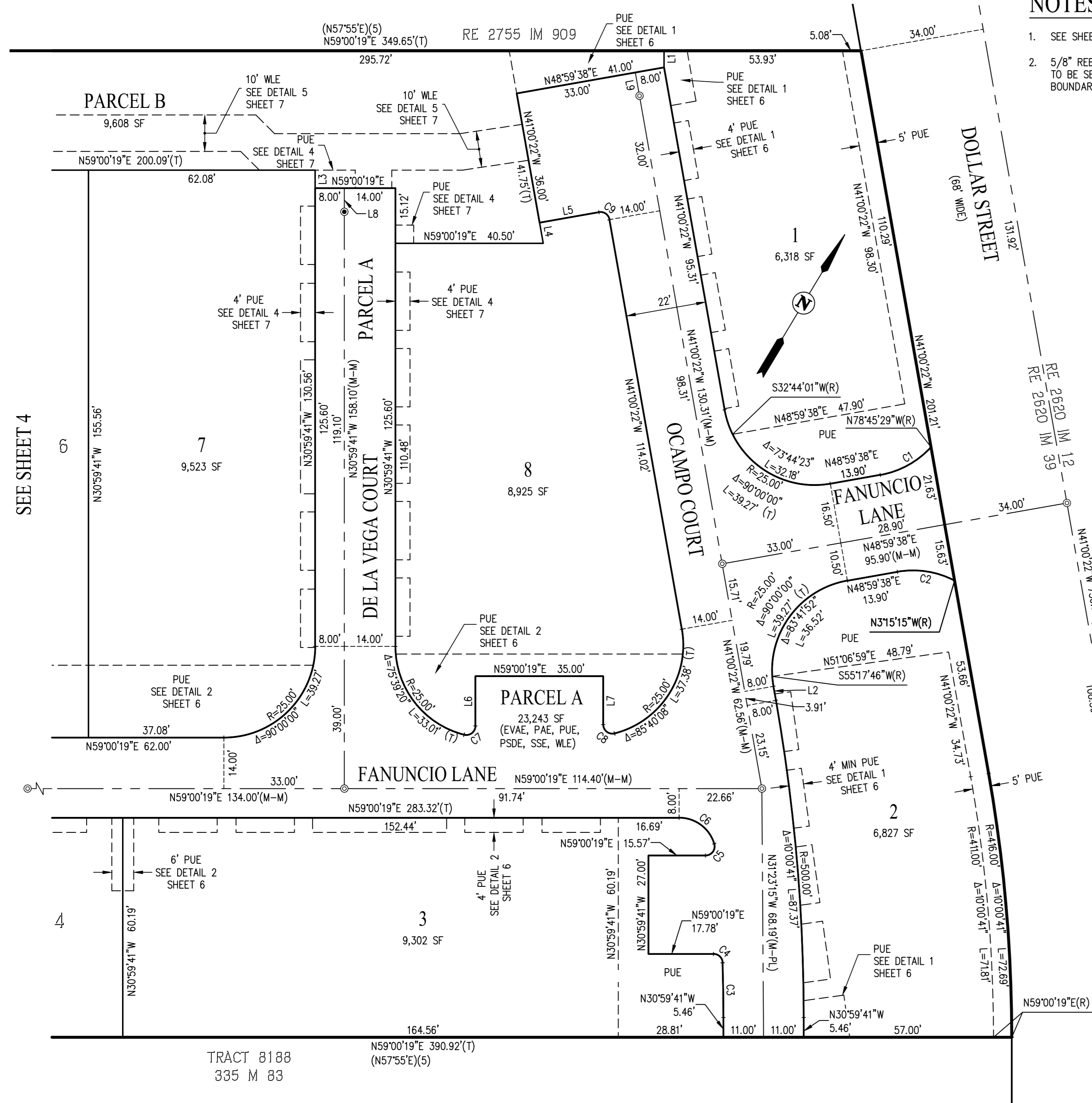
- (#) INDICATES REFERENCE NUMBER
- (1) TRACT 8188 (335 M 83)
- (2) PARCEL MAP 10202 (326 PM 67)
- (3) CITY OF HAYWARD SURVEY MONUMENTATION PLAT (HARD COPY) TORRANO AVENUE AND DOLLAR STREET, FILE NO. 1-42, DATED DECEMBER 12, 1974.
- (4) SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT RIGHT OF WAY MAP, SOUTHERN ALAMEDA COUNTY LINE JACKSON STREET TO VALLE VISTA AVENUE SHEET ARW 86 DATED 4-21-70.
- (5) INSTRUMENT NO. 2016233084, OFFICIAL RECORDS, ALAMEDA COUNTY
- (6) RE 2711 IM 666 & RE 1918 IM 269

NOTES:

- 1. SEE SHEET 6 & 7 FOR PUE DETAILS
- 2. 5/8" REBAR AND CAP OR NAIL AND TAG, LS 7960 TO BE SET AT ALL FRONT, REAR LOT CORNERS AND BOUNDARY CORNERS, UNLESS OTHERWISE NOTED.

NO	RADIUS	DELTA	LENGTH
C1	24.50'	37°45'07"	16.14'
C2	24.50'	37°45'07"	16.14'
C3	478.00'	1°47'46"	14.98'
C4	2.50'	88°12'14"	3.85'
C5	2.50'	106°48'34"	4.66'
C6	10.00'	73°11'26"	12.77'
C7	2.50'	104°20'40"	4.55'
C8	2.50'	104°20'33"	4.55'
C9	2.50'	90°00'00"	3.93'

NO	BEARING	LENGTH
L1	N30°59'41"W	4.56'
L2	S41°00'22"E	3.91'
L3	N30°59'41"W	4.96'
L4	N41°00'22"W	5.75'
L5	N48°59'38"E	16.50'
L6	N30°59'41"W	13.63'
L7	N30°59'41"W	13.27'
L8	N30°59'41"W	6.50'
L9	N41°00'22"W	6.50'



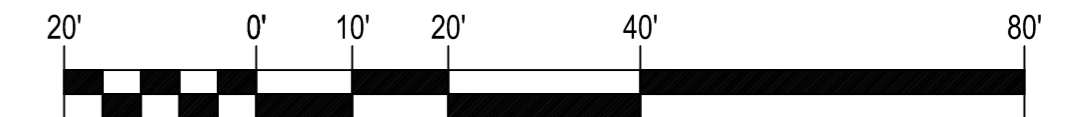
TRACT 8301 HIDEAWAY II

CONSISTING OF 7 SHEETS
A SUBDIVISION FOR 42 CONDOMINIUM UNITS
ALL OF THOSE LANDS DESCRIBED IN THE GRANT DEED RECORDED UNDER
INSTRUMENT NO. 2016233084, OFFICIAL RECORDS OF ALAMEDA COUNTY
CITY OF HAYWARD, ALAMEDA COUNTY

Carlson, Barbee & Gibson, Inc.

CIVIL ENGINEERS • SURVEYORS • PLANNERS
SAN RAMON, CALIFORNIA

SCALE: 1" = 20' MARCH 2017



GRAPHIC SCALE

BASIS OF BEARINGS:

THE BASIS OF BEARINGS FOR THIS MAP IS DETERMINED BY FOUND MONUMENTS ON THE CENTERLINE OF DOLLAR STREET, THE BEARING BEING NORTH 30°59'41" WEST AS SHOWN ON TRACT 8188 FILED DECEMBER 18, 2015 IN BOOK 335 OF MAPS AT PAGE 83, ALAMEDA COUNTY RECORDS.

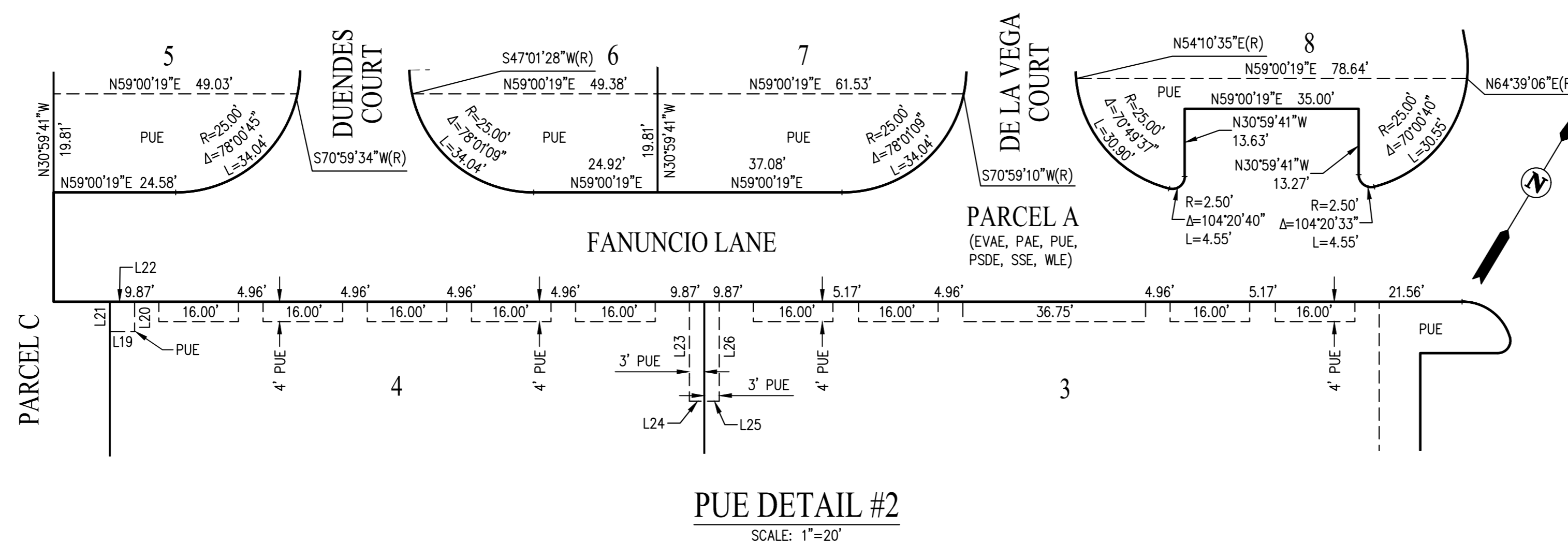
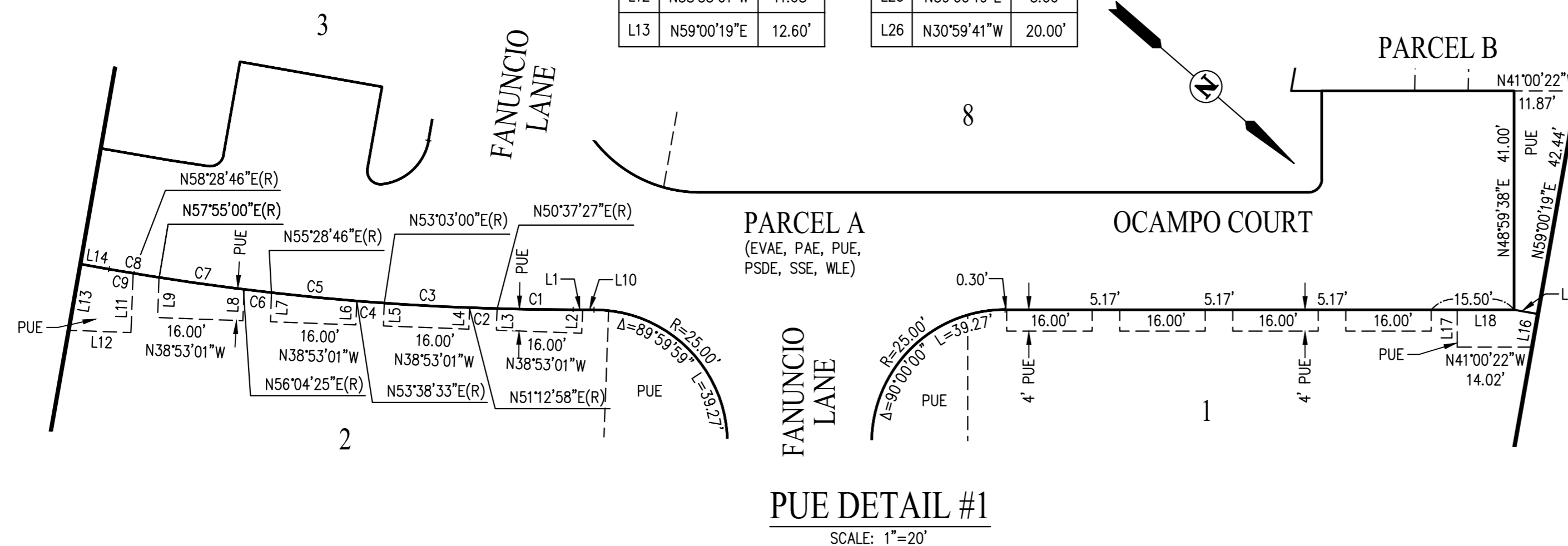
LEGEND

	SUBDIVISION BOUNDARY LINE
	RIGHT OF WAY LINE
	LOT LINE
	EASEMENT LINE
	MONUMENT LINE
	TIE LINE
(#)	REFERENCE NUMBER
(123.45')	REFERENCE INFORMATION
(T)	TOTAL DISTANCE
(R)	RADIAL BEARING
(M-M)	MONUMENT TO MONUMENT
(M-PL)	MONUMENT TO PROPERTY LINE
●	FOUND STANDARD STREET MONUMENT
⊙	SET STANDARD CITY OF HAYWARD STREET MONUMENT, LS 7960
○	SET 5/8" REBAR AND CAP OR NAIL AND TAG LS 7960
⊗	STANDARD CITY OF HAYWARD STREET MONUMENT, TO BE SET PER (1) LS 7960
EVAE	EMERGENCY VEHICLE ACCESS EASEMENT
PAE	PRIVATE ACCESS EASEMENT
PSDE	PRIVATE STORM DRAIN EASEMENT
PUE	PUBLIC UTILITY EASEMENT
SSE	SANITARY SEWER EASEMENT
WLE	WATER LINE EASEMENT
S.F.B.A.R.T.D.	SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT
A.C.F.C.D.	ALAMEDA COUNTY FLOOD CONTROL DISTRICT
8	LOT NUMBER

CURVE TABLE			
NO	RADIUS	DELTA	LENGTH
C1	500.00'	1°37'49"	14.23'
C2	500.00'	0°35'31"	5.17'
C3	500.00'	1°50'02"	16.00'
C4	500.00'	0°35'33"	5.17'
C5	500.00'	1°50'13"	16.03'
C6	500.00'	0°35'38"	5.18'
C7	500.00'	1°50'36"	16.09'
C8	500.00'	1°05'19"	9.50'
C9	500.00'	0°31'33"	4.59'

LINE TABLE		
NO	BEARING	LENGTH
L1	N41°00'22"W	1.78'
L2	N51°05'57"E	4.41'
L3	N51°06'00"E	4.02'
L4	N51°05'57"E	4.00'
L5	N51°06'00"E	4.28'
L6	N51°05'57"E	4.49'
L7	N51°06'00"E	5.45'
L8	N51°05'57"E	5.87'
L9	N51°06'00"E	7.52'
L10	N41°00'22"W	2.13'
L11	N51°06'59"E	11.12'
L12	N38°53'01"W	11.68'
L13	N59°00'19"E	12.60'

LINE TABLE		
NO	BEARING	LENGTH
L14	N30°59'41"W	5.46'
L15	N30°59'41"W	4.56'
L16	N59°00'19"E	6.30'
L17	N48°59'38"E	7.00'
L18	N41°00'22"W	10.63'
L19	N59°00'19"E	5.00'
L20	N30°59'41"W	6.00'
L21	N30°59'41"W	6.00'
L22	N59°00'19"E	5.00'
L23	N30°59'41"W	20.00'
L24	N59°00'19"E	3.00'
L25	N59°00'19"E	3.00'
L26	N30°59'41"W	20.00'



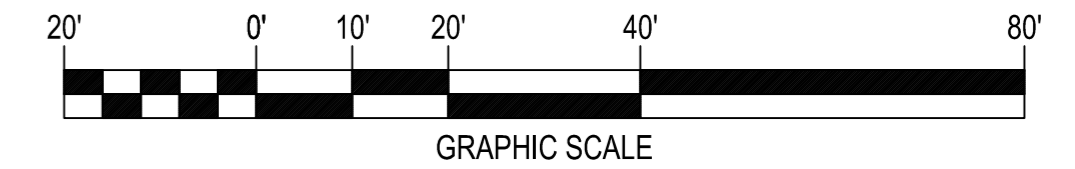
TRACT 8301 HIDEAWAY II

CONSISTING OF 7 SHEETS
A SUBDIVISION FOR 42 CONDOMINIUM UNITS
ALL OF THOSE LANDS DESCRIBED IN THE GRANT DEED RECORDED UNDER
INSTRUMENT NO. 2016233084, OFFICIAL RECORDS OF ALAMEDA COUNTY
CITY OF HAYWARD, ALAMEDA COUNTY

Carlson, Barbee & Gibson, Inc.

CIVIL ENGINEERS • SURVEYORS • PLANNERS
SAN RAMON, CALIFORNIA

SCALE: 1" = 20' MARCH 2017

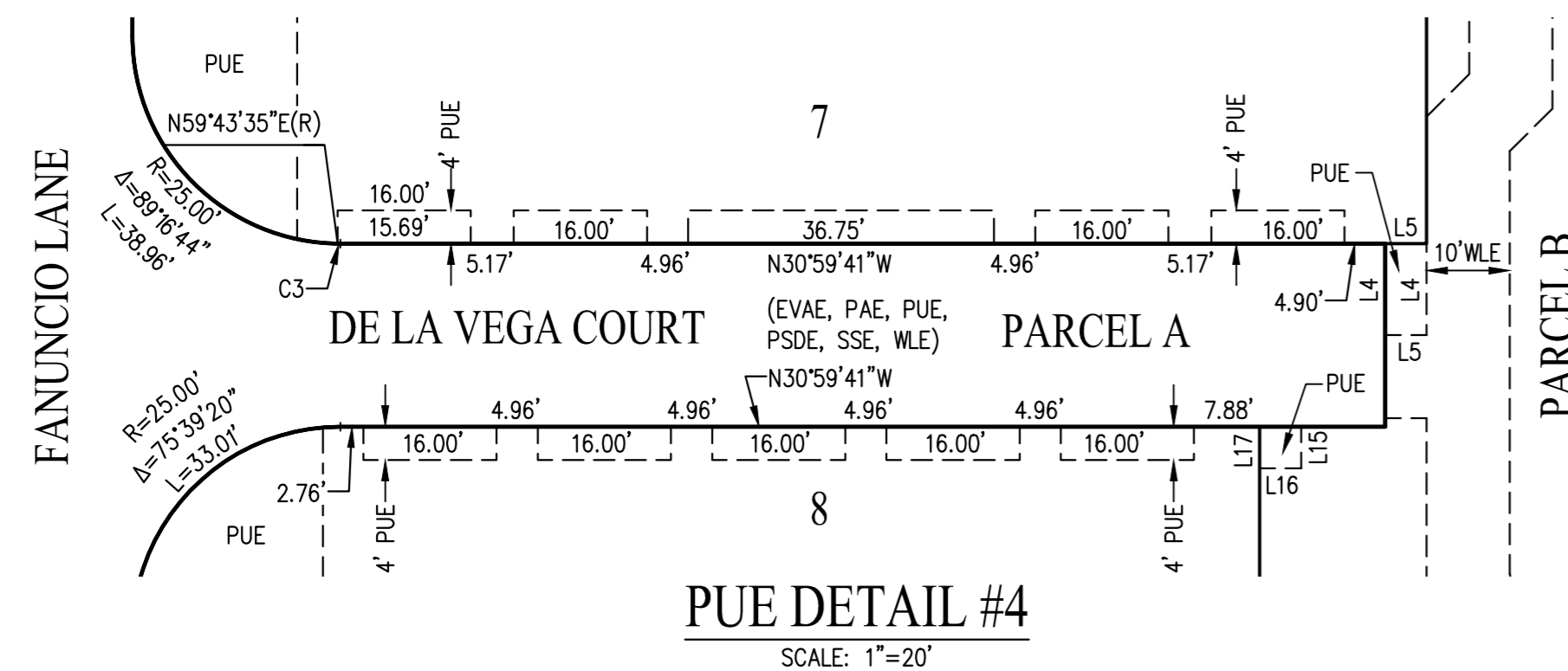
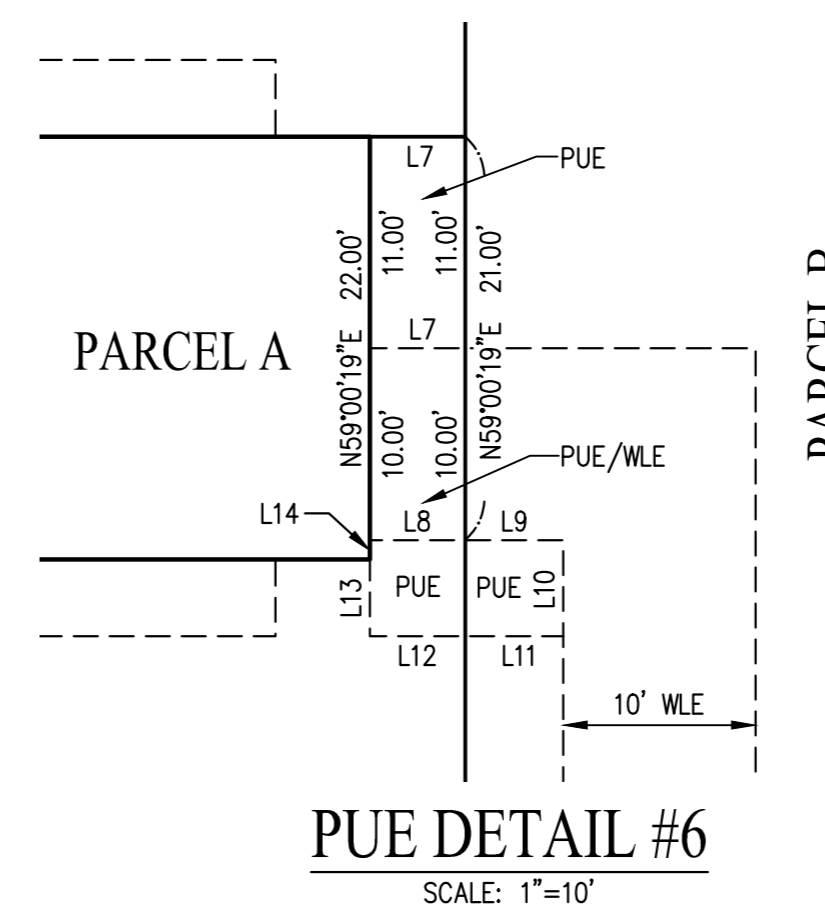
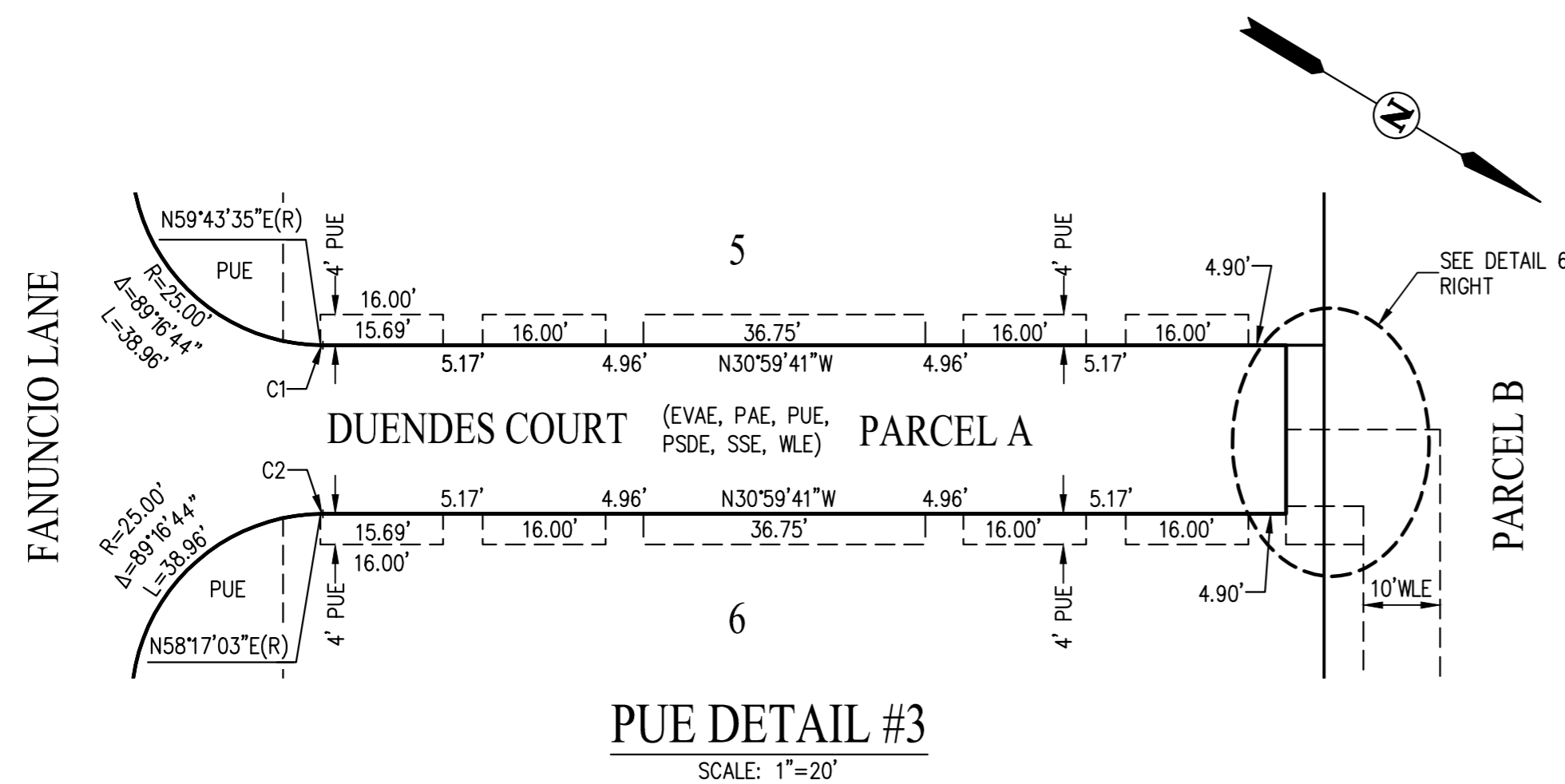


BASIS OF BEARINGS:

THE BASIS OF BEARINGS FOR THIS MAP IS DETERMINED BY FOUND MONUMENTS ON THE CENTERLINE OF DOLLAR STREET, THE BEARING BEING NORTH 30°59'41" WEST AS SHOWN ON TRACT 8188 FILED DECEMBER 18, 2015 IN BOOK 335 OF MAPS AT PAGE 83, ALAMEDA COUNTY RECORDS.

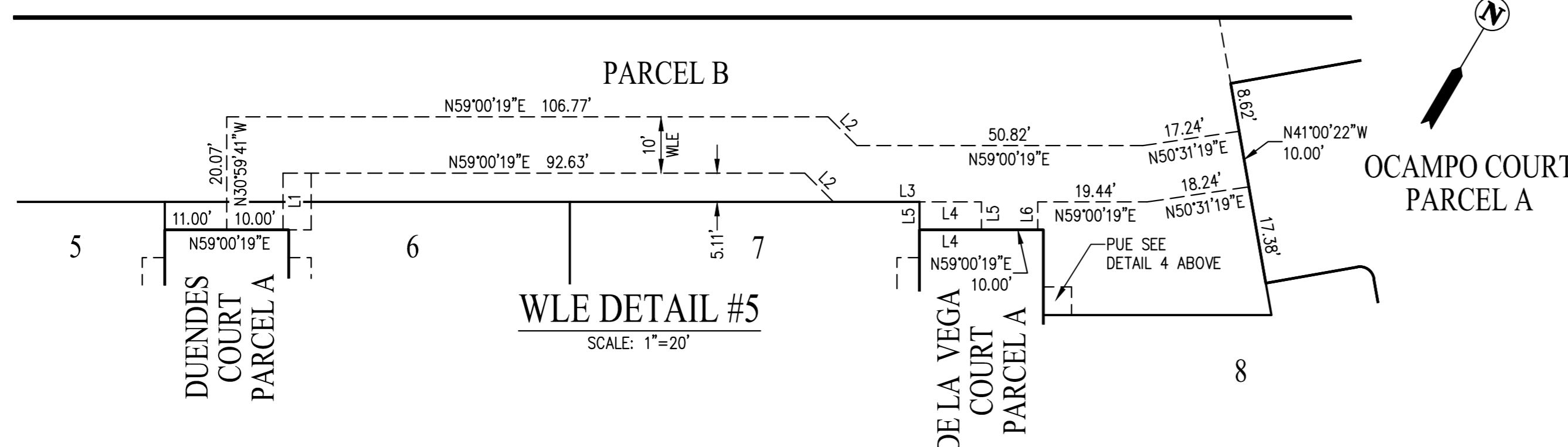
LEGEND

	SUBDIVISION BOUNDARY LINE
	RIGHT OF WAY LINE
	LOT LINE
	EASEMENT LINE
	MONUMENT LINE
	TIE LINE
(#)	REFERENCE NUMBER
(123.45')	REFERENCE INFORMATION
(T)	TOTAL DISTANCE
(R)	RADIAL BEARING
(M-M)	MONUMENT TO MONUMENT
(M-PL)	MONUMENT TO PROPERTY LINE
●	FOUND STANDARD STREET MONUMENT
⊙	SET STANDARD CITY OF HAYWARD STREET MONUMENT, LS 7960
○	SET 5/8" REBAR AND CAP OR NAIL AND TAG LS 7960
⊗	STANDARD CITY OF HAYWARD STREET MONUMENT, TO BE SET PER (1) LS 7960
EVAE	EMERGENCY VEHICLE ACCESS EASEMENT
PAE	PRIVATE ACCESS EASEMENT
PSDE	PRIVATE STORM DRAIN EASEMENT
PUE	PUBLIC UTILITY EASEMENT
SSE	SANITARY SEWER EASEMENT
WLE	WATER LINE EASEMENT
S.F.B.A.R.T.D.	SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT
A.C.F.C.D.	ALAMEDA COUNTY FLOOD CONTROL DISTRICT
8	LOT NUMBER



CURVE TABLE			
NO	RADIUS	DELTA	LENGTH
C1	25.00'	0°43'16"	0.31'
C2	25.00'	0°43'16"	0.31'
C3	25.00'	0°43'16"	0.31'

LINE TABLE		
NO	BEARING	LENGTH
L1	N30°59'41"W	10.07'
L2	N75°59'41"W	7.23'
L3	N59°00'19"E	26.26'
L4	N59°00'19"E	11.00'
L5	N30°59'41"W	4.96'
L6	N30°59'41"W	4.96'
L7	N30°59'41"W	4.96'
L8	N30°59'41"W	4.96'
L9	N30°59'41"W	5.11'
L10	N59°00'19"E	5.00'
L11	N30°59'41"W	5.11'
L12	N30°59'41"W	4.96'
L13	N59°00'19"E	4.00'
L14	N59°00'19"E	1.00'
L15	N59°00'19"E	5.00'
L16	N30°59'41"W	5.00'
L17	N59°00'19"E	5.00'



Item #8 PH 17-029

**Appeal by M.R. Wolfe & Associates
Lincoln Landing Mixed-Use Project**

Correspondence Received After Published Agenda

Alvin Jeong – Baxter International, Inc.

From: "Jeong, Alvin"

Date: April 21, 2017 at 8:00:24 PM PDT

To: "barbara.halliday@hayward-ca.gov" <barbara.halliday@hayward-ca.gov>, "david.rizk@hayward-ca.gov" <david.rizk@hayward-ca.gov>, "francisco.zermeno@hayward-ca.gov" <francisco.zermeno@hayward-ca.gov>, "al.mendall@hayward-ca.gov" <al.mendall@hayward-ca.gov>, "marvin.peixoto@hayward-ca.gov" <marvin.peixoto@hayward-ca.gov>, "sara.lamnin@hayward-ca.gov" <sara.lamnin@hayward-ca.gov>, "elisa.marquez@hayward-ca.gov" <elisa.marquez@hayward-ca.gov>, "mark.salinas@hayward-ca.gov" <mark.salinas@hayward-ca.gov>

Cc: Kim H

Subject: Support for the Lincoln Landing Project

Mayor Barbara Halliday & Members of the Hayward City Council,

As a Hayward Chamber of Commerce board member, long time area resident and local business executive I would like to express my support for the Lincoln Landing project by Dollinger Properties. I have reviewed the proposal and am excited to see this concept come to fruition. We need the economic development for our city. I urge you to support this project and not hinder it's completion.

Sincerely,

Baxter

Alvin Jeong

Operational Excellence Manager

Baxter International Inc.

21026 Alexander Court / Hayward, California 94545 / USA

T +1 510.723-6365, Baxter Tie-Line 871

Sandra C Estrada – CASE Industries

From: "Sandra@CaseIndustries.com" <sandra@caseindustries.com>

Date: April 24, 2017 at 11:37:18 AM PDT

To: <david.rizk@hayward-ca.gov>, <francisco.zermeno@hayward-ca.gov>, <al.mendall@hayward-ca.gov>, <barbara.halliday@hayward-ca.gov>, <marvin.peixoto@hayward-ca.gov>, <sara.lamnin@hayward-ca.gov>, <elisa.marquez@hayward-ca.gov>, <mark.salinas@hayward-ca.gov>

Subject: LINCOLN LANDING PROJECT

Hello City Officials,

It is a great season and history making time in our city!

I am excited to know that our city is making some great progress in the development of our economy! New building projects are being approved and coming to pass even as I write this email. That is of course, due in great part to this great group of leaders our city has at this time.

I am most excited about the new proposed project at the old Mervyn's site. I am in complete favor of the proposed Lincoln Landing Project. Please do not allow any group to intimidate and continue to hinder such amazing opportunities for our city to move into a new and improved future of economic growth and vitality!

It is a new season! Let us welcome the Lincoln Landing Project with open arms. We will all benefit from it!

Regards,

Sandra C Estrada



PO Box 6265
Hayward, CA 94540
(510)782-9000 Office
(510)732.0601 Facsimile
www.CaseIndustries.com

Jacques Gautreaux

From: Jacques Gautreaux
Sent: Monday, April 24, 2017 12:00 PM
To: David Rizk <David.Rizk@hayward-ca.gov>
Subject: re: Lincoln Landing Project

Dear Mr. Rizk ,

My name is Jacques Gautreaux and I am a long term resident of the Hayward area and currently serving on the Hayward Chamber of Commerce Board of Directors, The Hayward Area Historical Society Board of Directors (Treasurer) and most recently appointed to the Chabot Las Positas Measure A-B Bond measure Oversight Committee. I am writing to you today to encourage you to please vote in favor of the Lincoln Landing Project. I believe this project is good for the City of Hayward and needs to be built. Thank You for your consideration.

Sincerely,

Jacques Gautreaux
Hayward Chamber of Commerce Board Member
Treasurer Hayward Area Historical Society Board of Directors

Sherman Lewis

From: Sherman Lewis
Sent: Monday, April 24, 2017 3:59 PM
To: List-Mayor-Council <List-Mayor-Council@hayward-ca.gov>
Subject: Lincoln Landing

HAPA Comments on Lincoln Landing, April 25, 2017

Unbundling, Intermodal, and Other TDMs

HAPA agrees with staff that TDM (Transportation Demand Management) is evolving and needs to consider the large expansion of ehaul services like Uber and Lyft. In fact, HAPA's recommendations are designed to give the City opportunities that could otherwise be foreclosed. We advocated for curb space for public cars on Maple Court for the Maple Main project. We think it is important for Lincoln Landing to reduce dependency on cars, one of the major goals of the City.

Lincoln Landing has potential to accommodate the logical turn around for a fast frequent shuttle from the South Tower to BART. No significant change is required in the project. We understand more planning needs to be done for a shuttle and ehaul services. It is essential that a span of 12 feet at the east side of the tower parking area on City Center Dr. have no structural support that would interfere with a potential entry for the turn around. If the future plan calls for an intermodal center using the location, it can then be easily accomplished. However, if structural support is in the way, it could obstruct something the city might want to do. The entry would also provide pick up and drop off curbs for taxis, ehaul, car share, and car rental. **We do not confine TDMs to just our proposal, but rather seek to preserve the intermodal as an option.**

The TDM Plan requirement kicks the can down the road and creates continuing uncertainty, but could achieve something if the City has the will. So far, it seems that the City only implements what developers voluntarily agree to do. Council can add conditions to the project or give staff more direction for the TDM Plan policies.

The TDM options make possible two important policies HAPA is advocating. The problem is the distance from the unrequired official "measures such as..." to specific, real "measures are..." The developer is, at least, on notice about what the City might require. We just don't know what the City will require.

The Creekside Café

Concerning the Creekside café, Kent DeSpain says, "locating a coffee shop at the rear of Lincoln Landing will be impossible." We disagree.

"...the operator will have no exposure to any substantial vehicular traffic..." This has limited relevance for retail success except for freeway off ramps. Members of Council should ask themselves, do I go cafés because I see them from my car? In my case I have driven past many of them for years without trying them out. I do not patronize cafés based on visibility from my car (except at unfamiliar freeway off-ramps). Your expert, Pat Siegman of Nelson Nygaard, has told you about high traffic volume streets that are retail failures and successful streets with low traffic and high sidewalk use.

“...minor foot traffic...” True, and just as irrelevant as vehicle traffic. High major foot traffic is meaningless without the quality people want, and, with quality, people will come. A Yelp rating and reputation are far more important than vehicle or foot traffic.

“While a few of the local community might shop a café along the creek-walk, the reality is that is not enough business to support a location.” We agree. There would be, however, **enough business from a much larger clientele:** the community, and creek users, and about 1,000 renters in the project and Maple Main, and shoppers coming to the project.

“...no exposure to Foothill...” The café would have the same exposure to Foothill as the stores set back from Foothill. Those stores will have signs; the café would have a sign, and therefore the same visibility. The creek café would depend more on reputation than a café facing a parking lot because it would take people 15 seconds longer to get there walking down a breezeway. On the other hand, people might **prefer a café looking onto the creek walk to one looking onto a parking lot.**

Accessibility and reputation trump visibility. A prime example is the popular restaurant in the Oakland Museum, with no visibility, but good food in an attractive space. The developer may have written his letter before our concept was fully developed. **We think our proposal has simply been misunderstood.**

At this time, we advocate only that a shell be built suitable for tenant improvements to occur when there are enough people to support the café. It is very important to not preclude the potential construction of a café. We suggest that Council approve **permission to build a café so that it is part of the vesting** and the developer would not have to come back for policy approval.

Even More on Unbundling

Unbundling and overflow parking are basically unrelated. Overflow parking occurs entirely because parking is unregulated. We know, from many Hayward neighborhood parking program and from professional parking management in Walnut Creek, Pleasant Hill, and many other places where there is no unbundling, that **overflow parking whatever the cause can be controlled.**

We seem to have a problem of attitude, not analysis. The developer is concerned that his project has too much parking to allow unbundling. Yet Maple Main, which also has retail spaces and similar parking ratios, has no problem. The management for Maple Main has experience with both bundling and unbundling in their many projects. The proposed café and intermodal would use some parking and solve some of the problem of too much parking. The developer is the cause of the problem he is concerned about and is free to reduce parking to that required.

Unbundled apartments and parking managed for a five percent vacancy factor increases return on investment by optimizing for two markets instead of one. This does not need to be explained to savvy investors.

We want to see this project succeed, we hope that the city and developer will work together to create a more sustainable future for Hayward.

Sherman Lewis, President
Hayward Area Planning Association
April 24, 2017

Joy Rowan

From: Joy Rowan
Date: April 24, 2017 at 11:08:03 PM PDT
To: <list-Mayor-Council@Hayward-ca.gov>
Subject: Lincoln Landing project

Dear Mayor & City Council,

I appreciate all the effort that has gone into plans for Lincoln Landing by the developer, City staff, and also by Sherman Lewis on behalf of the Hayward Area Planning Association.

The current situation of this country and of the world — both politically and environmentally — require thoughtfulness and care in decisions we make today that will impact all of us (from individual to city to nation) for decades into the future.

Continuing to approach development and many other activities as we have always done is not a viable option. It is maybe the easiest for a developer to consider in the short term — but this city will have to live with the developer's project for many years, and the developer will not.

Hayward is growing fast, and needs its center to reflect the greatest potential possible for living, transportation, shopping, work, and play for our economically diverse current and future population.

The future is coming faster than you'd think, some call it the Exponential Age. Cell phones went from being a tech novelty to our essential phone, calendar, still & video camera, phone book, calculator, dictionary, news source, navigation tool, etc. The car industry is also changing quickly. Uber is just a software tool. It doesn't own any cars, yet has become the biggest taxi company in the world. Its customers only pay for the car travel that they use — no refueling, paying insurance, looking for a parking place.

Our car culture is evolving and branching into many creative auto transportation solutions. An important way for cities to be ready for these changes — and create a flexible transition — is not to force residents to pay for parking as part of their housing expense. Those who choose to own a car can buy or lease a parking place for it.

And, for the benefit of all residents, it is important to make public transportation easy and accessible with shuttle connections from residential hubs to BART and with easy-access pick up and drop off locations for taxis, e-hail, car share, and car rental.

As we begin to envision the possibility for a walkable, inviting, and charming downtown, it is also important not to close off the possibility for businesses like the HAPA-proposed Creekside Cafe location. Most

of our cafes look out onto lanes of traffic or a parking lot. We need to begin to allow for something better.

Because of these conditions and realities, I support the three main points in HAPA's comments about the Lincoln Landing development:

1. Support unbundling and manage nearby street parking with permit programs and other proven enforcement techniques. If this is expected to be viable for Maple Main, it should also work for Lincoln Landing.
2. Support a fast, frequent shuttle between Lincoln Landing and BART, as well as pickup/dropoff locations for alternate auto transportation (taxi, e-hail, etc).
3. Please provide for the possibility of a future cafe overlooking the Creek Walk. If the groundwork is laid now, making it an actual business in the future will be more assured. Patronage for a pleasant cafe will come from the residents, employees, and business patrons of LL and Maple Main as well as offices from the City Center complex across Foothill — and me!

Thank you for your time and consideration,
Joy Rowan
Hayward resident

Mimi Bauer

From: Mimi
Date: April 24, 2017 at 4:50:28 PM PDT
To: <List-Mayor-Council@hayward-ca.gov>
Subject: Lincoln Landing, public hearing April 25

Dear Mayor and City Council,

I don't always agree with everything HAPA puts out, however, I have to say that their requests as listed below seem reasonable and I support them.

Best regards,
Mimi Bauer

ACTION ALERT

City Council public hearing on Lincoln Landing

Tuesday, April 25, 2017, 7:00 p.m.

Your comments needed. Send email to [list-Mayor-Council@Hayward-ca.gov](mailto:List-Mayor-Council@Hayward-ca.gov).

Please support HAPA:

1. Ask Council to permit the project to have a cafe overlooking the Creek Walk so that the developer will not have to get special permission later on if he wants to provide one.
2. Support a fast, frequent shuttle between Lincoln Landing and BART, which can be implemented relatively quickly and at a low cost as a first step towards a circulator.
3. Support unbundling and manage parking using permit programs and other proven enforcement techniques. If Maple Main can do it, so can Lincoln Landing.

Staff reports can be viewed at <https://hayward.legistar.com/Calendar.aspx>.

Details:

HAPA Comments on Lincoln Landing

Unbundling, Intermodal, and Other TDMs

HAPA agrees with staff that TDM (Transportation Demand Management) plans are evolving and need to consider the large expansion of e-hail services like Uber and Lyft. In fact, HAPA's recommendations are designed to give the City opportunities that could otherwise be foreclosed. We advocated for curb space for public cars on Maple Court for the Maple Main project and we also think that they are important for Lincoln Landing to reduce dependency on cars, one of the major goals of the City.

Lincoln Landing has potential to accommodate the logical turn around for a fast frequent shuttle from the South Tower to BART. No significant change is required in the project. We understand more planning needs to be done for a shuttle and e-hail services. It is essential that a span of 12 feet at the east side of the tower parking area on City Center Dr. have no structural support that would interfere with a potential entry for the turn around. If the future plan calls for an intermodal center using the location it can then be easily accomplished. If structural support is in the way it could obstruct something the city might want to do. The entry would also provide pick up and drop off curbs for taxis,

ehail, car share, and car rental. **We do not confine TDMs to just our proposal, but rather seek to preserve the intermodal as an option.**

The TDM Plan requirement kicks the can down the road and creates continuing uncertainty, but could achieve something if the City has the will. The only consistency we see is that the City only implements what developers voluntarily agree to do. Council can add conditions to the project or give staff more direction for the TDM Plan policies.

The TDM options make possible two important policies HAPA is advocating. The problem is the distance from the official “measures such as...” to specific, real “measures are...” The developer is on notice about what the City might require. We just don’t know what the City will require.

The Creekside Café

Concerning the Creekside café, Kent DeSpain says, “locating a coffee shop at the rear of Lincoln Landing will be impossible.” We disagree.

“...the operator will have no exposure to any substantial vehicular traffic...” This has limited relevance for retail success except for freeway off ramps. Members of Council should ask themselves, do I go cafés because I see them from my car? In my case I have driven past many of them for years without trying them out. I do not patronize cafes based on visibility from my car (except at unfamiliar freeway off-ramps). Your expert, Pat Siegman of Nelson Nygaard, has told you about high traffic volume streets that are retail failures and successful streets with low traffic and high sidewalk use.

“...minor foot traffic...” True, and just as irrelevant as vehicle traffic. High major foot traffic is meaningless without the quality people want, and, with quality, people will go there. A Yelp rating is far more important than vehicle or foot traffic.

“While a few of the local community might shop a café along the creek-walk, the reality is that is not enough business to support a location.” We agree. There would be, however, **enough business from a much larger clientele:** the community, and creek users, and about 1,000 renters in the project and Maple Main, and shoppers coming to the project.

“...no exposure to Foothill...” The café would have the same exposure to Foothill as the stores set back from Foothill. Those stores will have signs; the café would have a sign, and therefore the same visibility. The creek café would depend more on reputation than a café facing a parking lot because it would take 15 seconds longer to get there walking down a breezeway. On the other hand, people might **prefer a café looking onto the creek walk to one looking onto a parking lot.**

Accessibility and reputation trump visibility. A prime example is the restaurant in the Oakland Museum, with no visibility, but good food in an attractive space. The developer may have written the letter before our concept was fully developed. **We think our proposal has simply been misunderstood.**

At this time, we only advocate only that a shell be built suitable for tenant improvements to occur when there are enough people to support the café. It is very important to not preclude the potential construction of a café. We suggest that Council approve **permission to build a café so that it is part of the vesting** and the developer would not have to come back for policy approval.

Even More on Unbundling

Unbundling and overflow parking are basically unrelated. Overflow parking occurs entirely because parking is unregulated. We know, from many Hayward neighborhood parking programs and from professional parking management in Walnut Creek, Pleasant Hill, and many other places where there is no unbundling, that **overflow parking whatever the cause can be controlled.**

We seem to have a problem of attitude, not analysis. The developer is concerned that his project has too much parking to allow unbundling. Yet Maple Main, which also has retail spaces and similar parking ratios, has no problem. The management for Maple Main has experience with both bundling and unbundling in their many projects. The proposed café and intermodal would use some parking and solve

some of the problem of too much parking. The developer is the cause of the problem he is concerned about and is free to reduce parking to that required.

Unbundling managed for a five percent vacancy factor increases return on investment by optimizing for two markets instead of one. This does not need to be explained to savvy investors.

We want to see this project succeed, we hope that the city and developer will work together to create a more sustainable future for Hayward.

Sherman Lewis, President

Hayward Area Planning Association

April 24, 2017

Peter D. Reimer

From: <peterreimer

Date: April 24, 2017 at 9:50:58 PM PDT

To: "list-mayor-council@hayward-ca.gov" <list-mayor-council@hayward-ca.gov>,

Subject: FW: Action Alert on Lincoln Landing, public hearing April 25

Mayor and Council,

Mayor and Council Members,

I support HAPA's three(3) recommendations, stated below, to you.

I request your respective replies.

Peter D. Reimer
Hayward, CA

Tuesday, April 25, 2017, 7:00 p.m.

1. Support the permit the project to have a cafe overlooking the Creek Walk so that the developer will not have to get special permission later on if he wants to provide one.
2. Support a fast, frequent shuttle between Lincoln Landing and BART, which can be implemented relatively quickly and at a low cost as a first step towards a circulator.
3. Support unbundling and manage parking using permit programs and other proven enforcement techniques. If Maple Main can do it, so can Lincoln Landing.

Mark R. Wolfe – M.R. WOLFE & ASSOCIATES, P.C.

April 25, 2017

**By E-Mail
Acknowledgment of Receipt Requested**

Hon. Mayor Barbara Halliday
Members of the City Council
c/o Miriam Lens, City Clerk
City of Hayward
777 B Street
Hayward CA 94541-5007
Miriam.Lens@hayward-ca.gov

**Re: Appeal of Planning Commission Approval of Lincoln Landing
Mixed-Use Project**

Dear Mayor Halliday and Members of the City Council:

On behalf of Desirae Schmidt, the appellant in the above-referenced matter, please accept the following points and authorities in support of her appeal of the Planning Commission's February 23, 2017 actions certifying a Final EIR and approving various land use entitlements for the Lincoln Landing Mixed Use Project. Since the appeal was filed, the following adult citizens of Hayward have come forward to support Ms. Schmidt's appeal, and have asked that their names be included here for your information and for the record:

Stacey M. Baker	Janet M. Nielsen
Manuel L. Farinha	Frank K. Raspberry
Sandra Macias	Carol T. Sturnhom
Evangelina Mares	Mark F. Taylor

For the reasons that follow, we respectfully request on behalf of all these individuals that the City Council UPHOLD the appeal and to decline to certify the Final EIR or approve the Project at this time.

I. The Failure to Include an Urban Decay Analysis In the EIR Violates CEQA.

While economic or social effects of proposed projects are outside CEQA's purview, if forecasted economic of a proposed project will directly or indirectly result in adverse physical changes in the environment, then CEQA requires disclosure and analysis of these resulting physical impacts. The CEQA Guidelines provide that when the economic effects of a project cause a physical change, this change is to be regarded as a significant effect in the same manner as any other physical change resulting from the project. *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1205 (*Bakersfield*); CEQA Guidelines, § 15064, subd. (e.). When there is evidence "suggesting that the economic and social effects caused by the proposed shopping center ultimately could result in urban decay or deterioration, then the lead agency is obligated to assess this indirect impact." *Id.* at p. 1207. *American Canyon Community United for Responsible Growth* (2006) 145 Cal.App.4th 1062, 1081-1082. Although proposed new retail developments "do not trigger a conclusive presumption of urban decay. . . when there is evidence suggesting that the economic and social effects caused by the proposed shopping center ultimately could result in urban decay or deterioration, then the lead agency is obligated to assess this indirect impact." *Bakersfield Citizens* at p. 1207.

Our comments on the Draft EIR explained that the Project's retail component risked causing urban decay by forcing nearby anchor-tenant retailers to close, and that the City should have evaluated this as a potential impact in the EIR. The comment responses in the Final EIR essentially dismissed this as a possibility and declined to perform a separate urban decay analysis. We again asked for an urban decay analysis in written testimony before the Planning Commission, and again our request was again disregarded. Now, for the first time on appeal, the City has produced a memorandum from EPS ("EPS memo") dated April 12, 2017 that purports to comprise an urban decay analysis. The City made the EPS memo available to us and to the public online on the afternoon of Friday, April 21.

As a threshold matter, we object to the late provision of this new study, just one full business day before the hearing on Ms. Schmidt's appeal. We further object to the City's failure to circulate this analysis for public review and comment in accordance with CEQA. In addition, we offer the following additional comments and objections.

It is well established under CEQA that the requisite facts and analysis supporting an agency's ultimate conclusions regarding a project's environmental impacts must be in the EIR itself, and not scattered elsewhere throughout an administrative record. *Environmental Defense Fund, Inc. v. Coastside County Water Dist.* (1972) 27 Cal.App.3d 695, 706 ("whatever is required to be considered in an EIR

must be in that formal report; what any official might have known from other writings or oral presentations cannot supply what is lacking in the report”). Thus, while an EIR may properly rely on third-party studies, it may do so only if it either appends the study in question or notifies the public of its location at the time it makes the EIR available for public review. *San Franciscans for Reasonable Growth v. City and County of San Francisco* (1987) 193 Cal.App.3d 1544, 1549. Failure to comply with these basic requirements is an abuse of discretion. *Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 442 (agency failed to proceed in the manner required by CEQA relying on information not actually incorporated or described and referenced in the EIR).

The late EPS memo underscores the inadequacy of the Final EIR’s responses to our comments on the Draft EIR requesting such a study. *See* Comment letter, Final EIR p. 2.0-61 - 2.0-62. Just as the discussion of environmental impacts in the body of an EIR itself, responses in a final EIR to substantive comments on a draft EIR must contain fact-based analysis. *People v. County of Kern* (1974) 39 Cal.App.3d 830, 841-842 (duty to provide “good faith, reasoned analysis in response”); Guidelines, § 15088(c) (“Conclusory statements unsupported by factual information will not suffice”). Where comments seek omitted facts or analysis essential to a draft EIR’s conclusions, the failure to correct those omissions “renders the EIR defective as an informational document.” *California Oak Foundation v. City of Santa Clarita* (2005) 133 Cal.App.4th 1219, 1244 (failure to provide reasoned analysis in response to comments pointing out uncertainty of water supply).

It is equally well established that where new information becomes available to cure an EIR’s failure to provide an adequate discussion of impacts, or shows that the analysis in the Draft EIR precluded meaningful comment, the agency’s sole course is to recirculate a corrected EIR so that the information may be tested by public comment and response. Guidelines, § 15088.5(a)(4) (recirculation required when new information shows “[t]he draft EIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded”). Here, the late EPS memorandum constitutes new information that should have at the very least been included in the Final EIR (if not the Draft EIR in the first instance), and that the public has had no opportunity to review or comment upon. The City should recirculate a revised draft EIR that includes this memo in accordance with the foregoing requirement.

III. Substantial Evidence Shows the Project Will Cause At Least Two Supermarkets to Close, and Likely More, Leading to Urban Decay Impacts in the Shopping Centers They Anchor.

In light of the City’s refusal to conduct a meaningful urban decay analysis in response to our timely submitted comments on the Draft EIR, we retained the

commercial real estate analytic consulting firm Area Research Associates (“ARA”) to evaluate whether and to what extent the Project is likely to directly or indirectly cause the closure of nearby competing supermarkets in this general area of Hayward and hence increase the risk of urban decay. ARA also reviewed the late EPS memo. Attached to this letter and incorporated by reference is a report of ARA’s conclusions.

In summary, based on the information contained in the EIR itself,¹ the EPS analysis, and publicly available data sources, ARA concludes the following:

- The existing Lucky Supermarket anchoring the City Center Gateway shopping center will almost certainly close as a direct result of the Project.
- The existing Food Source market anchoring the Mission Plaza neighborhood center is likely to close as a direct result of the Project.
- Three other stores within the Project’s trade area in Hayward, a Safeway, another Lucky, and Hayward Produce, will become unprofitable as a result of the Project and may eventually close.

To the extent these high-traffic grocery stores serve as anchor tenants generating customer traffic for the smaller retailers sharing their centers, it is more than reasonably foreseeable that their closure could result in urban decay effects. Rapid re-tenanting of the vacant supermarkets by another high-traffic grocer is obviously unlikely given the Project, and any replacement lower-traffic tenant may not generate sufficient customer traffic to support the smaller retailers that currently rely on a supermarket anchor to generate customer traffic.

Please note the purpose of our submittal of the ARA report is simply to show that urban decay is a substantial issue that warranted analysis under CEQA. The City’s omission of any such analysis whatsoever, even after a specific request made in

¹ Based on information in the record, ARA assumed the Project will include a full-service supermarket between 35,000 and 50,000 sf in size. The “Fiscal and Economic Impact Analysis of Lincoln Landing” prepared by the EPS firm and dated September 16, 2016 indicates a 50,000 sf “anchor” which, based on various news reports, appears likely to be a Whole Foods or similar supermarket. By contrast, the Draft EIR’s traffic analysis assumed trip generation rates for a 35,000 sf supermarket (ITE category 850). DEIR Table 3.1-5. This inconsistency by itself suggests the Final EIR’s traffic analysis likely understated the Project’s traffic impacts, rendering the analysis and conclusion invalid. See *Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 439 (inconsistencies in EIR result in no substantial evidence to support conclusions).

timely written comments on the Draft EIR, constitutes a violation of the information disclosure provisions of CEQA.

III. The Late, *Post Hoc* Urban Decay Analysis by EPS is Fundamentally Flawed and Does Not Constitute Substantial Evidence Supporting the Staff's Conclusion of No Urban Decay.

Despite the late provision of the EPS memo, ARA was able to perform a perfunctory peer review. As described in the attached report, the EPS analysis is fundamentally flawed for the following key reasons:

- The EPS memo assumes the Project comprises a generic “anchor retailer,” does not disclose that it is intended to be a supermarket, and hence fails to include an apples-to-apples evaluation of the impacts of the Project’s supermarket component on nearby supermarkets. As should be obvious, a new hardware store is not going to cause a nearby food store to close, and vice versa. The failure to evaluate the potential urban decay effects of the actual retail category assumed elsewhere in the EIR renders the EPS memo clearly inadequate and hence no substantial evidence.
- The EPS analysis relies upon a general retail leakage review for the entire City, when the Project’s potential retail tenants - supermarkets, drug stores, general merchandise stores, pet stores, etc. – plainly do not have a primary trade area encompassing all of Hayward. The southern portion of the City, located over 5 miles from the site, has little retail interaction with stores in the vicinity of the site, and the area in between is a densely populated semi-urban area. The EPS analysis of leakage is therefore improperly diluted. Meanwhile, the communities of Castro Valley & San Leandro are located less than a half mile from the site. An accurate analysis would evaluate impacts within the Project’s actual likely trade area.
- Other deficiencies in the EPS memo, including the prejudicial omission of the soon-to-open 43,000 square foot Seafood City Supermarket at Hesperian and La Playa, 2.2 miles from the site, are outlined in the attached ARA report.

IV. Incorporation by reference of earlier correspondence.

Finally, we hereby incorporate by reference the comments, concerns, and objections contained in: (1) our November 7, 2016 comments on the Draft EIR; (2)

our February 22, 2017 letter to the Planning Commission regarding the Project; and (3) our February 24, 2017 letter of appeal of the Planning Commission's action. More specifically, we incorporate our objections to the Final EIR's omission of an adequate analysis of the Project's cumulative impacts on Interstate 580, SR 92, and Interstate 238; and its lack of sufficient justification or rejecting the Reduced Development Alternative described in the Draft EIR. The comment responses contained in the Final EIR and Planning Commission staff report fail to adequately address the substance of our comments.

III. Conclusion

For the above reasons, we respectfully ask the City Council to UPHOLD the appeal and to decline to certify the Final EIR and approve the Project.

Yours sincerely,

M. R. WOLFE & ASSOCIATES, P.C.



Mark R. Wolfe
On behalf of Desirae Schmidt, et al.

MRW:

attachment

cc: Leigha Schmidt, Leigha.Schmidt@hayward-ca.gov

TO: Mark Wolfe
M. R. Wolfe & Associates
San Francisco, CA 94102

FROM: Tom Brennan
Area Research Associates
Tiburon, CA 94920

DATE: April 24, 2017

**Impacts on Area Supermarkets from Proposed Supermarket in Lincoln Landing
NWC of Foothill Blvd. & City Center Dr.
Hayward, California**

BACKGROUND

At your request, Area Research Associates has evaluated potential impacts on local supermarkets from the proposed opening of a major new supermarket within the Lincoln Landing development and the likely effect this would have on the potential for store closings and consequent risk of urban decay¹ within the city. A previous fiscal & economic analysis of the project² conducted for the city assumed that it would include 50,000 square feet of unspecified anchor retail while the DEIR traffic analysis assumed it would feature a 35,000 square foot supermarket. In addition, local newspaper articles and other unofficial reports have mentioned at least two different supermarket chains as possible tenants for this space but as of this time, a specific tenant has not been finalized. Since the focus of the present study is most similar to the earlier fiscal and economic analysis, we have assumed the retail portion of the project will include a standard 50,000 square foot grocery store. If a 35,000 square foot store were to be built here instead, the impacts projected in this report could be reduced somewhat, although not in proportion to the size difference, and not enough to eliminate the possibility of store closures and resulting risk of urban decay.

The trade area used for the proposed supermarket encompasses the northeastern portion of the city of Hayward and surrounding unincorporated portions of Castro Valley, San Lorenzo and Fairview in Alameda County (see map on page 5). In light of traffic patterns at the site and its proximity to the downtown area, the present study utilized a trade area extending out roughly 3 miles in all directions - slightly larger than would be typical for a supermarket at this population density. There are currently 29 existing supermarkets that directly serve this area and one additional store that is slated to open within the next year.

In order to assess the likelihood of store closings from the proposed supermarket in Lincoln Landing, the present study utilized a multi-step process that began with conducting a detailed inventory of major existing and planned stores that could reasonably be affected by the project. In particular, by gathering size and sales data for these stores, we were able to measure their likely current profitability against standard benchmarks. We then made use of an industry-standard gravity model to project how each store's sales would be affected by the proposed new project. Using those results, we were then able to examine the resulting profitability level of each store in the trade area after project opening and make an assessment of its viability for remaining in operation. Details on this general methodology can be found on page 3 with additional information on the gravity modeling process shown on pages 9-11.

¹ Urban decay is a physical effect that can result from extended vacancy, deferred maintenance and abandonment. As indicated in the Bay Area Economic Forum study, *Supercenters and the Transformation of the Bay Area Grocery Industry*, "the primary impetus of urban decay often stems from financial conditions faced by the individual property owners; if a landlord is unable to collect rent on a vacant property with minimal likelihood that it can be re-leased, s/he may lose the incentive to maintain it. The effect can spread to adjacent properties and become a self-fulfilling prophecy as customers start to avoid an area and other property owners or tenants perceive an area as no longer vital or safe."

² Economic & Planning Systems, Inc., *Fiscal and Economic Impact Analysis of Lincoln Landing*, September 2016

CONCLUSIONS

Based upon the projected impacts from the opening of the supermarket in Lincoln Landing and our knowledge of the sales levels necessary to maintain profitable operations, we project that sales at two supermarkets in Hayward - Lucky 715 & Food Source 710 - will be reduced to levels that are significantly below typical break-even profitability (see detailed store-level projections on page 8). Nearly all supermarkets close when their sales drop to these levels, except in cases where retailers believe that the future potential of an area will enable them to eventually return to profitability. Both of these operators are chains stores that could potentially continue operating at a slight loss if there were some upside from their contribution to the chain's private label sales or overall operating / advertising costs. However the depth of their projected unprofitability rules out this first option. The possible upside of future population growth within the Hayward trade area was also studied but was found to be insufficient to return either of these vulnerable stores to profitability by 2021. Therefore, there remains little chance that either one would decide to hang on until market conditions improve. Accordingly, we project that sales impacts from the proposed Lincoln Landing supermarket will produce the following major impacts:

- Lucky 715 will almost certainly have to close. This unit anchors the City Center Gateway, an 81,000 square foot neighborhood shopping center located in downtown Hayward. It is currently operating below the typical break-even level of profitability for a conventional supermarket so is already highly vulnerable. After opening of the proposed Lincoln Landing supermarket, Lucky is projected to experience a cumulative impact that would reduce its profitability to 26% below break-even. Although projected population growth in the immediate vicinity will help this unit, it would still be operating at 23% below break-even in 2021, certainly not enough incentive for it to continue operation.
- Food Source 710 is likely to close. This store is the anchor tenant of Mission Plaza, an older neighborhood center in Hayward that also contains Fitness 19, Bank of America and about 15 small shops. Food Source is currently operating below the normal break-even profitability for a warehouse supermarket so is also vulnerable to the effects of additional new competitors. The planned expansion of Chavez 3 and opening of a new Seafood City supermarket will reduce sales further at this unit and when combined with the proposed Lincoln Landing supermarket, will drop profitability to 16% below break-even levels. Population growth over the next 4 years will only minimally improve these impacts.
- 3 other Hayward stores will be pushed into an unprofitable range where they might close Safeway 797, Lucky 716 and Hayward Produce are all currently operating in the profitable range but will be pushed below break-even by project impacts. Safeway is projected to end up at 5% below break-even, Lucky is projected to be 4% below and Hayward Produce is projected to be 11% below. At these levels it is uncertain whether a given store will close but certainly there is a possibility that one in this group would. More than that would be considered unlikely since after one closed, some its sales would be redistributed to the remaining stores, thus potentially pushing them back above the break-even level.

The two supermarkets most likely to close as a result of the project - Lucky 715 & Food Source 710 - are both the respective anchor tenants of the shopping centers they occupy. Their closings could have a potential ripple effect on other stores in their center, which could lead to further store closures. As has been frequently noted, economic impacts that result in the closing of major supermarkets and large general merchandise stores are more likely to lead to urban decay, especially if they anchor shopping centers that contain other smaller retailers.

Finding replacement tenants for large, single-purpose buildings in neighborhood centers has become increasingly difficult in recent years, particularly since grocery stores - the most common replacement choice - are struggling to survive in an era of extreme competition. More generally, the retail sector is facing a huge glut of space with 8,600 stores expected to close this year - 40% higher than the previous record set during the 2008 economic crisis. Finally, many large box retailers prefer regional locations, leaving the owners of vacant neighborhood stores with limited replacement options. Even when maintained, these large vacancies can become a target for vandalism, loitering and graffiti. When a closure lasts over an extended time period, properties typically take on an unsightly, dilapidated appearance. These conditions set the stage for an increased likelihood of urban decay.

METHODOLOGY FOR ASSESSING LIKELIHOOD OF STORE CLOSINGS

Sales Impacts To assess how the project would impact sales at area supermarkets, we made use of the SITESPLUS® gravity model. This is the standard approach for projecting sales in the supermarket industry and required that we first gather population and spending data at the neighborhood level and conduct a detailed review of operating conditions at all existing major supermarket competitors. The resulting data was then imported into the gravity model to create a market simulation of the area reflecting where each store is drawing business from. This method not only enables predictions of future sales at a given site but provides detailed information on how sales will be redistributed at individual existing and future competitors, depending on their operating performance and relative proximity to the site.

Profitability Assessment

According to updated data from the Urban Land Institute³, sales of \$490 per square foot represent an average level of operating efficiency for a supermarket in California. However, this figure alone is insufficient to assess profitability of a given store, particularly in an industry where profit margins typically represent only 1% - 2% of total sales, leaving stores vulnerable to even small changes in operating performance. Furthermore, profitability is highly dependent on store type. Conventional supermarkets such as Lucky and Safeway have higher pay scales, greater service offerings and expanded product selection, all of which are offset by higher profit margins. In contrast, warehouse supermarkets drive sales volume through low prices, which in turn requires that they reduce labor costs, service and product selection.

We have previously had access to proprietary operating information at several major California supermarket chains for studies to specifically analyze the threshold at which stores are able to maintain profitability. Through this work, we have compared different types of stores in order to identify average levels of operating efficiency and specific break-even points that separate profit and loss. These figures are all expressed in sales per square foot, where the average profitability of all supermarket formats is approximately \$490 per square foot. In contrast to this average profitability figure, the break-even threshold between profit and loss for a conventional store is approximately \$370/square foot, or about 25% below the average sales per square foot.

It should be noted that a break-even average of \$370 per square foot does not mean that a store will always close if the sales per square foot fall below this threshold. In fact, because these are averages, stores do occasionally continue to operate below these levels depending upon a host of other factors such as occupancy costs, lease terms, overhead costs, store specific labor and profit margins and long term growth prospects. Furthermore, a supermarket chain might leave a store open that by itself is losing a small amount of money if it still contributes to other aspects of the chain's larger operation, such as participation in advertising or placement of its private label products. Nevertheless, our data indicates that when sales at a store drop to roughly 20% below its break-even threshold, there is a very high likelihood that it will close.

For a number of reasons, this typically does not happen immediately; for example, if a store were subject to a continued operation clause for the remainder of its lease term. Nevertheless, once a retailer has passed deep into unprofitability, it is generally only a matter of time before they are forced to close.

Through a combination of field methods, including discussions with store employees, we assessed the annual sales volume and facility size of each of the 29 existing supermarket competitors in the trade area and thus were able to gauge current operating efficiency as expressed in sales per square foot. This information was compared to industry benchmarks in order to determine the likely current profitability of individual supermarkets and to identify specific units that might be at risk from the proposed Lincoln Landing supermarket. We then utilized the gravity model to project how sales at area supermarkets would be redistributed if this store were to open. The resulting projected sales figures were used to determine new levels of operating efficiency for all stores after project opening, enabling us to measure their expected viability and assess the likelihood of any store closures.

³ Urban Land Institute, Dollars & Cents of Shopping Centers, 2008. Updated using 2017 Bureau of Labor CPI data and California Board of Equalization Taxable Sales Data by Type of Business, 2015.

COMMENTS ON EPS URBAN DECAY ANALYSIS

ARA briefly reviewed the EPS Lincoln Landing Urban Decay Analysis (provided to us the same day as this report) and notes the following:

Type of Retail Anchoring Lincoln Landing Not Identified The previous EPS fiscal and economic impact analysis assumed a general "anchor retail" for the commercial portion of Lincoln Landing and its urban decay analysis also does not identify a specific type of retail tenant for the project. Meanwhile, the DEIR traffic analysis assumed a 35,000 square foot supermarket. It is not possible to make an assessment of physical impacts on certain stores and the resulting potential for urban decay without knowing what type of retail tenant is being proposed at the project. Impacts do not either occur or not occur in a general city-wide context - they are specific to certain properties based on store types, the individual circumstances of that tenant and how their future viability may be affected by a given project. Without this crucial information, an urban decay analysis is unable to realistically address potential impacts on existing stores within the trade area.

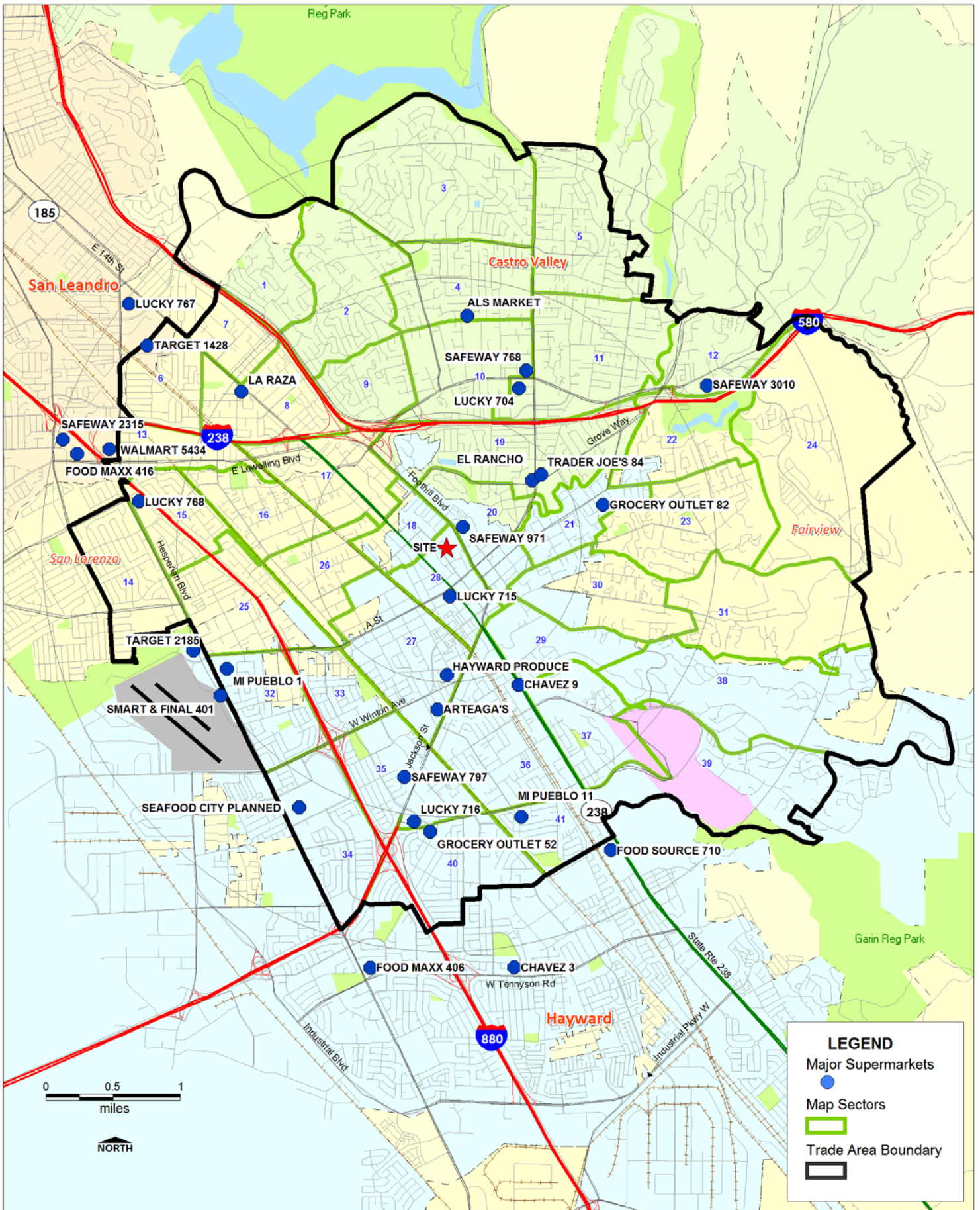
Use of a City-Wide Retail Leakage Survey The EPS analysis relies upon a general retail leakage review for the city as a whole but this level of geography is not an appropriate definition of the trade area for the project. While there is some discretion for defining a trade area for a given store type, there are almost no types of anchor retail at this site - supermarkets, drug stores, general merchandise stores, pet stores, etc. - that would have a primary trade area encompassing the entire city of Hayward. The southern portion of the city, located over 5 miles from the site, has little retail interaction with stores in the vicinity of the site and the area in between is a densely populated semi-urban area. Meanwhile, the communities of Castro Valley & San Leandro are located less than 1/2 mile from the site so for a complete analysis, data for these areas should certainly be incorporated into any likely trade area. A leakage supply versus demand analysis for the city of Hayward as a whole could be useful as a directional indicator of general retail potential but for analyzing store-level impacts, it cannot make meaningful conclusions regarding the smaller trade area for this project.

Excess of Retail Leakage & Impacts on Existing Stores The urban decay analysis concludes that the city of Hayward has an excess of potential spending (demand) compared to the level of actual city-wide retail sales (supply). Since residents "should" be spending more locally, it therefore assumes that the project will not produce any significant sales impacts at existing stores. In practice, new stores always cannibalize sales from existing competitors and supermarket chains in particular rely on this fact to predict their success when entering new areas. Furthermore, sales impacts from the new market entry are not distributed uniformly across local stores but depend on each facility's distance from the site, type of operation, ethnic appeal, competitive offering and general operational success. To realistically predict likely impacts, an analysis must take into account all of these specifics on a store-by-store basis.

Strength of Local Retailers EPS suggests that urban decay is unlikely to occur since the retail sector in the City of Hayward is "very strong". However, our detailed analysis of local supermarkets - one of the biggest retail sales generators - indicates that within the defined trade area, stores in Hayward are overall actually significantly weaker than those in either Castro Valley or San Lorenzo/San Leandro. Measured by sales per square foot - the most widely used indicator of operational strength in the retail industry - trade area supermarkets within the city of Hayward perform 27% lower than the supermarkets located outside the city limits (\$514/sq.ft. versus \$705/sq.ft.). This key industry metric indicates that area stores in at least this major retail category are clearly not experiencing an excess of potential as reported in the urban decay analysis. In fact, at least several major supermarkets in the city are currently almost certainly operating unprofitably, making them highly vulnerable to closing as a result of any new market entries.

Retail Pipeline In order to gauge the project's impact in the context of other planned market changes, EPS indicates that total pipeline retail projects excluding Lincoln Landing will add 78,754 new square feet to the trade area. However, this list did not include the anticipated opening of a 43,000 square foot Seafood City supermarket at Hesperian & La Playa, 2.2 miles from the site. This is a material omission that undermines the validity of the analysis' conclusions.

**MAP SECTORS & COMPETITION
TRADE AREA FOR SUPERMARKET AT LINCOLN LANDING**



IMPACT ON AREA SUPERMARKETS

Existing Market Conditions Table 1 indicates operating characteristics of the 29 existing major supermarket competitors that impact the Lincoln Landing trade area.

Table 1: Existing Supermarkets in Lincoln Landing / Hayward Trade Area

Name	Location	Existing 2017 Marketplace					
		Annual Sales	Square Feet	Sales per s.f.	Store Type	Break Even Threshold	+/- Break Even
Lucky 767	NEC Fairmont & Hesperian	\$25,000,000	59,000	\$424	Super	\$370	15%
Target 1428	SEC Hesperian & Fairmont	\$16,000,000	26,000	\$615	Supercenter	\$300	105%
La Raza	SC E 14th & 164th	\$3,000,000	6,600	\$455	Hispanic	\$350	30%
Als Market	NWC Somerset & Parsons	\$3,000,000	6,000	\$500	Indepen.	\$300	67%
Safeway 768	NWC Redwood & C.Valley	\$50,000,000	51,700	\$967	Super	\$370	161%
Lucky 704	SWC C.Valley & Redwood	\$15,000,000	30,000	\$500	Super	\$370	35%
Safeway 3010	SWC C.Valley & Chaparral	\$28,000,000	37,500	\$747	Super	\$370	102%
Safeway 2315	NEC Lewelling & Washington	\$28,000,000	42,700	\$656	Super	\$370	77%
Food Maxx 416	NWC Lewelling & Hwy 880	\$33,000,000	53,000	\$623	Whse	\$425	47%
Walmart 5434	NWC Lewelling & Hesperian	\$14,000,000	17,000	\$824	Discount	\$370	123%
Lucky 768	NC Hesperian & Post Office	\$21,000,000	41,000	\$512	Super	\$370	38%
Safeway 971	SEC Foothill & City Center	\$31,000,000	50,000	\$620	Super	\$370	68%
El Rancho	NWC Redwood & Grove Way	\$3,000,000	6,600	\$455	Hispanic	\$350	30%
Trader Joe's 84	NEC Redwood & Grove	\$42,000,000	16,600	\$2,530	Specialty	\$750	237%
Grocery Outlet 82	SC Vermont & B	\$7,000,000	18,200	\$385	Ltd. Assort.	\$275	40%
Lucky 715	SC Mission & A St	\$20,000,000	61,500	\$325	Super	\$370	-12%
Target 2185	SC Hesperian & Golf Course	\$15,000,000	26,000	\$577	Supercenter	\$300	92%
Hayward Produce	NWC Winton & Grand	\$4,000,000	12,600	\$317	Indepen.	\$300	6%
Mi Pueblo 1	SEC Hesperian & A	\$20,000,000	30,600	\$654	Hispanic	\$350	87%
Smart & Final 401	SWC Hesperian & Sueirro	\$18,000,000	23,400	\$769	Whse	\$425	81%
Arteaga's	NC Jackson St & Soto	\$6,000,000	5,900	\$1,017	Hispanic	\$350	191%
Chavez 9	SC Mission & Sycamore	\$9,000,000	16,400	\$549	Hispanic	\$350	57%
Safeway 797	WC Jackson & Amador	\$16,000,000	40,000	\$400	Super	\$370	8%
Lucky 716	SC Harder & Jackson	\$18,000,000	45,500	\$396	Super	\$370	7%
Grocery Outlet 52	SEC Harder & Evergreen St	\$7,000,000	15,500	\$452	Ltd. Assort.	\$275	64%
Mi Pueblo 11	SEC Harder & Monroe	\$14,000,000	20,300	\$690	Hispanic	\$350	97%
Food Source 710	SC Mission & Sorensen	\$19,000,000	50,100	\$379	Whse	\$425	-11%
Food Maxx 406	NEC Hesperian & Tennyson	\$32,000,000	54,000	\$593	Whse	\$425	39%
Chavez 3	NWC Tennyson & Tampa	<u>\$13,000,000</u>	<u>11,500</u>	<u>\$1,130</u>	Hispanic	\$350	223%
Total -		530,000,000	875,200	-			
Average -		18,275,862	30,179	\$606			

NOTE: Sales & square footage reflect supermarket-related portion of facility only

Discussions with store personnel and a review of the resulting inventory of data shown above indicates that most trade area grocers are currently operating at reasonable levels of profitability. However, two large supermarkets - Lucky 715 & Food Source 710 - are already below typical "break even" levels, suggesting that they are both highly vulnerable to any additional new market entries.

IMPACT ON AREA SUPERMARKETS

Seafood City Opens & Chavez 3 Expands Table 2 indicates sales impacts projected by the SITESPLUS model on existing supermarkets from currently approved market changes.

Table 2: Projected Supermarket Sales after Seafood City Opens & Chavez 3 Expands

Name	Location	Projected 2017 Marketplace					
		Annual Sales	Square Feet	Sales per s.f.	Store Type	Break Even Threshold	+/- Break Even
Lucky 767	NEC Fairmont & Hesperian	\$24,903,072	59,000	\$422	Super	\$370	14%
Target 1428	SEC Hesperian & Fairmont	\$15,958,868	26,000	\$614	Supercenter	\$300	105%
La Raza	SC E 14th & 164th	\$2,993,864	6,600	\$454	Hispanic	\$350	30%
Als Market	NWC Somerset & Parsons	\$2,984,660	6,000	\$497	Indepen.	\$300	66%
Safeway 768	NWC Redwood & C. Valley	\$49,695,644	51,700	\$961	Super	\$370	160%
Lucky 704	SWC C. Valley & Redwood	\$14,897,664	30,000	\$497	Super	\$370	34%
Safeway 3010	SWC C. Valley & Chaparral	\$27,881,024	37,500	\$743	Super	\$370	101%
Safeway 2315	NEC Lewelling & Washington	\$27,803,804	42,700	\$651	Super	\$370	76%
Food Maxx 416	NWC Lewelling & Hwy 880	\$32,888,304	53,000	\$621	Whse	\$425	46%
Walmart 5434	NWC Lewelling & Hesperian	\$13,956,372	17,000	\$821	Discount	\$370	122%
Lucky 768	NC Hesperian & Post Office	\$20,761,008	41,000	\$506	Super	\$370	37%
Safeway 971	SEC Foothill & City Center	\$30,335,908	50,000	\$607	Super	\$370	64%
El Rancho	NWC Redwood & Grove Way	\$2,989,652	6,600	\$453	Hispanic	\$350	29%
Trader Joe's 84	NEC Redwood & Grove	\$41,867,036	16,600	\$2,522	Specialty	\$750	236%
Grocery Outlet 82	SC Vermont & B	\$6,958,556	18,200	\$382	Ltd. Assort.	\$275	39%
Lucky 715	SC Mission & A St	\$19,387,700	61,500	\$315	Super	\$370	-15%
Target 2185	SC Hesperian & Golf Course	\$14,724,088	26,000	\$566	Supercenter	\$300	89%
Hayward Produce	NWC Winton & Grand	\$3,816,232	12,600	\$303	Indepen.	\$300	1%
Mi Pueblo 1	SEC Hesperian & A	\$19,826,424	30,600	\$648	Hispanic	\$350	85%
Smart & Final 401	SWC Hesperian & Sueirro	\$17,723,100	23,400	\$757	Whse	\$425	78%
Arteaga's	NC Jackson St & Soto	\$5,937,964	5,900	\$1,006	Hispanic	\$350	188%
Chavez 9	SC Mission & Sycamore	\$8,907,128	16,400	\$543	Hispanic	\$350	55%
Safeway 797	WC Jackson & Amador	\$15,152,816	40,000	\$379	Super	\$370	2%
Lucky 716	SC Harder & Jackson	\$17,064,052	45,500	\$375	Super	\$370	1%
Grocery Outlet 52	SEC Harder & Evergreen St	\$6,840,776	15,500	\$441	Ltd. Assort.	\$275	60%
Mi Pueblo 11	SEC Harder & Monroe	\$13,842,076	20,300	\$682	Hispanic	\$350	95%
Food Source 710	SC Mission & Sorensen	\$18,380,160	50,100	\$367	Whse	\$425	-14%
Food Maxx 406	NEC Hesperian & Tennyson	\$30,955,736	54,000	\$573	Whse	\$425	35%
Chavez 3	NWC Tennyson & Tampa	\$15,835,300	11,500	\$1,377	Hispanic	\$350	293%
Seafood City	NEC Hesperian & La Playa	\$19,725,524	<u>43,000</u>	<u>\$459</u>	Asian	\$350	31%
	Total -	544,994,512	918,200	-			
	Average -	18,166,484	30,607	\$594			

Even before the potential supermarket in Lincoln Landing opens, supermarkets in the Hayward area will experience a drop in operating profitability as a result of the opening of one new supermarket and the expansion of another.

IMPACT ON AREA SUPERMARKETS

Lincoln Landing Supermarket Opens Table 3 indicates sales impacts projected by the SITESPLUS model on existing / planned supermarkets after the opening of the proposed Lincoln Landing supermarket.

Table 3: Projected Supermarket Sales after Lincoln Landing Supermarket Opens

Name	Location	Projected 2017 Marketplace					
		Annual Sales	Square Feet	Sales per s.f.	Store Type	Break Even Threshold	+/- Break Even
Lucky 767	NEC Fairmont & Hesperian	\$24,218,128	59,000	\$410	Super	\$370	11%
Target 1428	SEC Hesperian & Fairmont	\$15,679,004	26,000	\$603	Supercenter	\$300	101%
La Raza	SC E 14th & 164th	\$2,953,148	6,600	\$447	Hispanic	\$350	28%
Als Market	NWC Somerset & Parsons	\$2,808,796	6,000	\$468	Indepen.	\$300	56%
Safeway 768	NWC Redwood & C.Valley	\$46,530,456	51,700	\$900	Super	\$370	143%
Lucky 704	SWC C.Valley & Redwood	\$13,883,404	30,000	\$463	Super	\$370	25%
Safeway 3010	SWC C.Valley & Chaparral	\$26,533,600	37,500	\$708	Super	\$370	91%
Safeway 2315	NEC Lewelling & Washington	\$27,040,600	42,700	\$633	Super	\$370	71%
Food Maxx 416	NWC Lewelling & Hwy 880	\$32,474,228	53,000	\$613	Whse	\$425	44%
Walmart 5434	NWC Lewelling & Hesperian	\$13,783,992	17,000	\$811	Discount	\$370	119%
Lucky 768	NC Hesperian & Post Office	\$19,950,172	41,000	\$487	Super	\$370	32%
Safeway 971	SEC Foothill & City Center	\$26,598,200	50,000	\$532	Super	\$370	44%
El Rancho	NWC Redwood & Grove Way	\$2,911,340	6,600	\$441	Hispanic	\$350	26%
Trader Joe's 84	NEC Redwood & Grove	\$41,088,440	16,600	\$2,475	Specialty	\$750	230%
Grocery Outlet 82	SC Vermont & B	\$6,658,100	18,200	\$366	Ltd. Assort.	\$275	33%
Lucky 715	SC Mission & A St	\$16,926,488	61,500	\$275	Super	\$370	-26%
Target 2185	SC Hesperian & Golf Course	\$14,169,664	26,000	\$545	Supercenter	\$300	82%
Hayward Produce	NWC Winton & Grand	\$3,361,908	12,600	\$267	Indepen.	\$300	-11%
Mi Pueblo 1	SEC Hesperian & A	\$19,507,300	30,600	\$637	Hispanic	\$350	82%
Smart & Final 401	SWC Hesperian & Sueirro	\$17,237,472	23,400	\$737	Whse	\$425	73%
Arteaga's	NC Jackson St & Soto	\$5,815,816	5,900	\$986	Hispanic	\$350	182%
Chavez 9	SC Mission & Sycamore	\$8,686,232	16,400	\$530	Hispanic	\$350	51%
Safeway 797	WC Jackson & Amador	\$14,131,068	40,000	\$353	Super	\$370	-5%
Lucky 716	SC Harder & Jackson	\$16,197,056	45,500	\$356	Super	\$370	-4%
Grocery Outlet 52	SEC Harder & Evergreen St	\$6,678,224	15,500	\$431	Ltd. Assort.	\$275	57%
Mi Pueblo 11	SEC Harder & Monroe	\$13,656,384	20,300	\$673	Hispanic	\$350	92%
Food Source 710	SC Mission & Sorensen	\$17,838,320	50,100	\$356	Whse	\$425	-16%
Food Maxx 406	NEC Hesperian & Tennyson	\$30,251,708	54,000	\$560	Whse	\$425	32%
Chavez 3	NWC Tennyson & Tampa	\$15,542,748	11,500	\$1,352	Hispanic	\$350	286%
Seafood City	NEC Hesperian & La Playa	\$18,079,048	43,000	\$420	Asian	\$350	20%
Site	NWC Foothill & City Center	\$25,181,676	<u>50,000</u>	\$504	Super	\$370	36%
	Total -	546,372,720	968,200	-			
	Average -	17,624,926	31,232	\$564			

The proposed store is projected to generate annual sales of about \$25 million, a figure that puts its sales at about average for this size. As a result of this development, five stores in Hayward will be pushed below break-even levels, two of which will be in the profitability range when most stores close. After projecting how future growth might mitigate the impact of this opening (see page 18), we found insufficient future potential for either Lucky 715 or Food Source 710 to justify weathering an extended period of heavy losses.

TRADE AREA DEMAND TRENDS

Future population growth can benefit supermarkets that have lost sales volume to new competitors by increasing the supply of available customers. The rate of this growth will help a retailer determine the time frame they may require before a return to earlier levels of profitability. In order to gauge population trends, we first gathered historical data on population growth to put current growth into a larger context. Table 4 summarizes population levels from 2000 to 2021 within 1) the portion of the trade area in the city of Hayward and 2) the surrounding unincorporated areas that comprise the remainder of the trade area. This information was used to provide a trade area level population forecast for the next four years. The population totals were then apportioned down to individual map sectors based on known development activity and availability of land designated for long term residential development.

Table 4: Historical & Projected Population Growth in Trade Area

Year	Portion in City of Hayward	Portion in Unincorporated Alameda County	Total Trade Area	Change from Previous Period	Avg. Annual Growth
2010	73,122	106,731	179,853	-	-
2011	73,202	106,840	180,042	189	0.1%
2012	73,303	106,916	180,219	177	0.1%
2013	74,040	107,452	181,492	1,273	0.7%
2014	75,081	108,235	183,316	1,824	1.0%
2015	76,310	109,013	185,323	2,007	1.1%
2016	78,403	110,825	189,228	3,905	2.1%
2017	79,743	111,942	191,685	2,457	1.3%
2018	81,068	113,177	194,245	2,560	1.3%
2019	82,393	114,411	196,804	2,559	1.3%
2020	84,193	115,557	199,750	2,946	1.5%
2021	85,682	116,702	202,384	2,635	1.3%

NOTE: Projections assume that the residential portion of the project is done in 2020.

FORECAST MODELING DATA

The trade area used for the SITESPLUS market simulation includes a portion of the city of Hayward and portions of the unincorporated areas of Castro Valley, San Lorenzo and Fairview in Alameda County. It is subdivided into 41 population map sectors – small area neighborhoods where residents have roughly similar shopping alternatives. For each of the map sectors, current and future populations were determined and annual per capita supermarket expenditures were calculated using tables derived from Bureau of Labor Consumer Expenditure Survey and U.S. Census demographic data. This data was then entered into the SITESPLUS system to represent the “demand” side of the market simulation as indicated in Table 5 on the following page.

FORECAST MODELING DATA

**Table 5: Population & Supermarket Expenditure by Map Sector
Lincoln Landing Supermarket Trade Area**

Map Sector	Median HH Income	HH Size	Annual Per Capita Supermarket Expenditure	2017	2018	2019	2020	2021
				Pop	Pop	Pop	Pop	Pop
1	\$65,254	3.40	2,173	2,236	2,245	2,255	2,268	2,277
2	\$85,321	2.79	2,805	5,648	5,649	5,651	5,657	5,654
3	\$95,034	2.77	2,853	5,878	5,905	5,932	5,968	5,995
4	\$98,657	2.84	2,813	4,878	4,923	4,969	5,026	5,076
5	\$100,329	2.81	2,811	4,766	4,780	4,795	4,816	4,830
6	\$56,905	3.14	2,725	4,201	4,205	4,209	4,216	4,218
7	\$35,411	2.97	2,662	4,724	4,795	4,866	4,953	5,033
8	\$39,663	2.96	2,657	7,178	7,176	7,174	7,178	7,170
9	\$70,056	2.71	2,765	2,731	2,732	2,734	2,738	2,738
10	\$60,822	2.56	2,645	6,107	6,134	6,161	6,198	6,224
11	\$68,832	2.51	2,757	6,817	6,837	6,857	6,886	6,905
12	\$96,793	2.90	2,862	1,370	1,368	1,366	1,364	1,361
13	\$69,871	3.18	2,708	1,718	1,720	1,722	1,725	1,726
14	\$65,985	3.13	2,728	5,561	5,562	5,563	5,568	5,564
15	\$80,617	3.28	2,757	3,371	3,371	3,372	3,375	3,374
16	\$65,789	3.32	2,665	4,866	4,893	4,920	4,956	4,984
17	\$56,637	2.84	2,697	4,581	4,616	4,651	4,695	4,733
18	\$43,857	2.79	2,699	2,906	2,927	2,947	2,974	2,997
19	\$56,423	2.33	2,693	7,704	7,848	7,992	8,167	8,330
20	\$45,876	2.17	2,700	3,942	3,973	4,005	4,046	4,080
21	\$60,253	2.83	2,537	3,242	3,310	3,377	3,431	3,479
22	\$93,034	2.90	2,792	2,462	2,481	2,499	2,523	2,543
23	\$76,832	2.92	2,759	4,265	4,298	4,332	4,375	4,411
24	\$149,764	3.28	2,902	3,823	3,843	3,863	3,890	3,910
25	\$55,983	3.10	2,647	8,073	8,207	8,340	8,504	8,655
26	\$41,925	3.28	2,630	5,038	5,076	5,113	5,161	5,202
27	\$55,660	3.30	2,668	9,223	9,580	9,936	10,365	10,777
28	\$71,238	2.46	2,682	2,775	3,072	3,367	3,973	4,574
29	\$60,563	2.54	2,713	2,552	2,574	2,597	2,626	2,650
30	\$78,784	2.49	2,771	3,658	3,684	3,710	3,743	3,770
31	\$111,177	2.79	2,855	1,552	1,565	1,579	1,597	1,612
32	\$57,126	3.69	2,670	7,316	7,414	7,512	7,633	7,743
33	\$68,618	3.26	2,736	3,517	3,556	3,594	3,643	3,685
34	\$64,001	2.89	2,731	3,569	3,585	3,602	3,624	3,640
35	\$58,258	2.87	2,693	7,265	7,315	7,365	7,429	7,482
36	\$54,627	3.30	2,681	10,378	10,567	10,756	10,934	11,095
37	\$54,173	2.50	2,651	2,905	3,026	3,146	3,219	3,286
38	\$108,772	2.57	2,863	3,427	3,480	3,532	3,597	3,657
39	\$114,200	3.79	2,787	*	3,402	3,432	3,462	3,501
40	\$56,456	3.79	2,679	8,872	8,915	8,959	9,016	9,060
41	<u>\$73,676</u>	<u>3.59</u>	<u>2,741</u>	<u>3,186</u>	<u>3,605</u>	<u>4,024</u>	<u>4,191</u>	<u>4,351</u>
Total -	-	-	-	191,685	194,245	196,804	199,750	202,384
Avg. -	\$67,450	2.92	2,711	-	-	-	-	-

* Includes student population

FORECAST MODELING DATA

To create the “supply” side of the simulation, supermarket sales volumes, sizes, store types and location data were also entered into the SITESPLUS software. The combination of data layers enabled us to calculate likely market shares for every store in the model, each of which is “balanced” against known sales volumes and populations to ensure an accurate real-world simulation. Once the model was balanced, new market entries could be added to determine how market shares and sales would be re-distributed among all stores within the trade area. Table 6 below indicates SITESPLUS-derived existing market conditions.

Table 6 - Current Hayward Marketplace

Store Name	Map Key	Total Area	Current Annual Sales	Projected Annual Sales	Sales /SqFt	Draw	Image	PTA Change	
								Dollars	%
Lucky 767	1	59000	\$ 25,000,000	\$ 25,000,000	\$ 424	45	89	0	0.0
Target 1428	2	26000	\$ 16,000,000	\$ 16,000,000	\$ 615	40	87	0	0.0
La Raza	3	6600	\$ 3,000,000	\$ 3,000,000	\$ 455	70	64	0	0.0
Als Market	4	6000	\$ 3,000,000	\$ 3,000,000	\$ 500	90	87	0	0.0
Safeway 768	5	51700	\$ 50,000,000	\$ 50,000,000	\$ 967	80	164	0	0.0
Lucky 704	6	30000	\$ 15,000,000	\$ 15,000,000	\$ 500	80	84	0	0.0
Safeway 3010	7	37500	\$ 28,000,000	\$ 28,000,000	\$ 747	65	181	0	0.0
Safeway 2315	8	42700	\$ 28,000,000	\$ 28,000,000	\$ 656	40	120	0	0.0
Food Maxx 416	9	53000	\$ 33,000,000	\$ 33,000,000	\$ 623	35	76	0	0.0
Walmart 5434	10	17000	\$ 14,000,000	\$ 14,000,000	\$ 824	35	113	0	0.0
Lucky 768	11	41000	\$ 21,000,000	\$ 21,000,000	\$ 512	50	80	0	0.0
Safeway 971	12	50000	\$ 31,000,000	\$ 31,000,000	\$ 620	90	106	0	0.0
El Rancho	13	6600	\$ 3,000,000	\$ 3,000,000	\$ 455	90	87	0	0.0
Trader Joe's 84	14	16600	\$ 42,000,000	\$ 42,000,000	\$ 2,530	70	218	0	0.0
Grocery Outlet 82	15	18200	\$ 7,000,000	\$ 7,000,000	\$ 385	80	60	0	0.0
Lucky 715	16	61500	\$ 20,000,000	\$ 20,000,000	\$ 325	90	53	0	0.0
Target 2185	17	26000	\$ 15,000,000	\$ 15,000,000	\$ 577	60	98	0	0.0
Hayward Produce	18	12600	\$ 4,000,000	\$ 4,000,000	\$ 317	95	57	0	0.0
Mi Pueblo 1	19	30600	\$ 20,000,000	\$ 20,000,000	\$ 654	70	118	0	0.0
Smart & Final 401	20	23400	\$ 18,000,000	\$ 18,000,000	\$ 769	60	105	0	0.0
Arteaga's	21	5900	\$ 6,000,000	\$ 6,000,000	\$ 1,017	75	148	0	0.0
Chavez 9	22	16400	\$ 9,000,000	\$ 9,000,000	\$ 549	85	95	0	0.0
Safeway 797	23	40000	\$ 16,000,000	\$ 16,000,000	\$ 400	75	63	0	0.0
Lucky 716	24	45500	\$ 18,000,000	\$ 18,000,000	\$ 396	65	60	0	0.0
Grocery Outlet 52	25	15500	\$ 7,000,000	\$ 7,000,000	\$ 452	60	52	0	0.0
Mi Pueblo 11	26	20300	\$ 14,000,000	\$ 14,000,000	\$ 690	65	107	0	0.0
Food Source 710	27	50100	\$ 19,000,000	\$ 19,000,000	\$ 379	55	73	0	0.0
Food Maxx 406	28	54000	\$ 32,000,000	\$ 32,000,000	\$ 593	35	109	0	0.0
Chavez 3	29	11500	\$ 13,000,000	\$ 13,000,000	\$ 1,130	25	147	0	0.0
Chavez 3 Exp.	29.1	16000	\$ -	\$ -	\$ -	25	140	0	0.0
Seafood City	30	Closed	\$ -	\$ -	\$ -	65	90	0	0.0
Site	100	Closed	\$ -	\$ -	\$ -	90	100	0	0.0
Totals		891,200	\$ 530,000,000	\$ 530,000,000					
Averages		29,707	\$ 16,562,500	\$ 16,562,500	\$ 595		100		

FORECAST MODELING DATA

Table 7 indicates SITESPLUS-derived market shares for each of the current supermarkets in the trade area.

Table 7 - Current Marketplace / Market Share by Map Sector for Existing Supermarkets															
Sectors	Lucky 767	Target 1428	La Raza	Al's	Safeway 768	Lucky 704	Safeway 3010	Safeway 2315	Food Maxx 416	Wal-Mart 5434	Lucky 768	Safeway 971	El Rancho	Trader Joe's 84	Grocery Outlet 82
1	16.1	7.3	1.7	0.8	6.6	2.0	1.1	5.9	5.6	2.1	2.3	2.8	0.2	3.7	0.4
2	6.9	3.5	1.3	1.8	14.9	4.4	2.5	3.3	3.3	1.2	2.2	4.9	0.4	6.1	0.8
3	3.6	1.6	0.5	2.8	23.2	6.0	6.4	1.4	1.5	0.4	0.7	2.5	0.5	8.4	1.0
4	1.8	0.9	0.4	3.1	26.1	7.0	5.3	0.9	1.0	0.3	0.6	3.2	0.7	7.7	1.1
5	0.6	0.3	0.1	1.6	24.9	6.1	13.9	0.3	0.4	0.1	0.2	2.8	0.6	7.7	1.2
6	14.7	9.4	1.2	0.2	1.4	0.5	0.2	11.1	9.5	4.4	4.3	1.2	0.1	1.4	0.1
7	15.6	8.3	2.0	0.5	4.1	1.3	0.7	7.4	6.8	2.8	2.8	2.3	0.2	3.0	0.3
8	8.9	5.4	2.5	0.6	5.6	1.8	0.9	6.3	5.8	2.7	4.9	3.9	0.3	4.1	0.5
9	3.7	2.1	1.0	1.3	14.8	4.7	2.4	2.5	2.7	1.2	2.1	7.6	0.6	6.7	0.8
10	1.1	0.6	0.3	1.7	26.2	8.1	4.4	0.7	0.9	0.3	0.6	4.3	0.8	8.0	1.3
11	0.3	0.1	0.1	0.8	24.2	6.4	14.6	0.2	0.2	0.1	0.1	3.6	0.7	7.2	1.6
12	0.1	0.1	0.0	0.4	10.7	2.9	36.0	0.1	0.1	0.0	0.1	2.1	0.5	6.6	1.7
13	5.5	3.3	0.6	0.1	1.2	0.4	0.2	12.3	11.5	6.6	10.4	1.4	0.1	1.4	0.1
14	2.3	1.4	0.3	0.1	0.6	0.2	0.1	8.8	9.0	3.7	10.3	1.3	0.1	1.3	0.1
15	3.1	1.9	0.5	0.1	1.2	0.4	0.3	8.9	9.1	4.6	12.4	2.1	0.1	1.8	0.2
16	2.5	1.6	0.8	0.2	2.8	0.9	0.7	5.4	5.8	2.8	7.1	5.6	0.3	3.8	0.5
17	3.3	2.1	1.1	0.5	5.7	1.9	1.2	3.8	4.2	1.9	4.4	8.7	0.5	5.7	0.7
18	0.8	0.5	0.3	0.2	6.5	2.3	1.8	1.1	1.3	0.5	1.3	16.4	0.9	7.4	1.2
19	0.4	0.2	0.1	0.5	16.7	5.7	5.0	0.3	0.4	0.2	0.3	9.8	1.8	11.9	2.1
20	0.3	0.2	0.1	0.2	8.1	2.8	2.9	0.4	0.5	0.2	0.5	17.5	1.4	9.5	1.9
21	0.2	0.1	0.1	0.3	10.4	3.6	6.1	0.2	0.3	0.1	0.3	10.9	1.8	13.3	4.3
22	0.1	0.1	0.0	0.4	13.2	3.9	18.0	0.1	0.2	0.1	0.1	5.1	1.2	11.7	4.2
23	0.1	0.1	0.0	0.3	9.9	3.5	13.4	0.1	0.2	0.1	0.1	6.8	1.4	14.2	5.9
24	0.1	0.1	0.0	0.3	12.2	3.5	18.9	0.1	0.2	0.0	0.1	3.9	0.9	14.4	4.7
25	1.1	0.7	0.3	0.1	1.2	0.4	0.3	3.7	4.1	1.7	5.2	3.5	0.2	2.5	0.3
26	1.3	0.8	0.4	0.2	3.3	1.2	0.9	2.5	2.9	1.2	3.4	9.1	0.5	4.9	0.7
27	0.3	0.2	0.1	0.1	2.7	1.0	1.0	0.7	0.9	0.3	0.9	9.2	0.5	5.0	0.8
28	0.4	0.2	0.1	0.1	4.6	1.6	1.6	0.6	0.7	0.3	0.7	14.2	0.8	6.6	1.3
29	0.2	0.1	0.1	0.1	3.4	1.2	1.4	0.3	0.4	0.1	0.3	10.1	0.7	6.6	1.2
30	0.2	0.2	0.1	0.2	5.5	1.9	2.3	0.3	0.5	0.1	0.4	15.2	1.1	10.8	2.0
31	0.2	0.1	0.1	0.1	4.7	1.7	2.1	0.3	0.5	0.1	0.3	14.2	1.0	14.8	2.2
32	0.4	0.3	0.1	0.0	0.8	0.3	0.3	1.7	2.1	0.7	2.3	2.7	0.1	2.0	0.3
33	0.3	0.2	0.1	0.1	1.4	0.5	0.5	1.1	1.4	0.5	1.5	5.0	0.2	3.2	0.5
34	0.1	0.0	0.0	0.0	0.3	0.1	0.1	0.4	0.5	0.1	0.4	1.2	0.1	1.3	0.2
35	0.1	0.1	0.0	0.0	0.7	0.2	0.3	0.3	0.4	0.1	0.4	2.4	0.1	2.1	0.3
36	0.1	0.1	0.0	0.0	1.3	0.5	0.6	0.2	0.3	0.1	0.3	4.2	0.3	3.4	0.6
37	0.1	0.1	0.0	0.0	1.5	0.5	0.6	0.2	0.2	0.1	0.2	4.7	0.3	4.1	0.6
38	0.1	0.1	0.0	0.1	1.8	0.7	0.8	0.2	0.3	0.1	0.2	6.0	0.4	6.7	0.9
39	0.0	0.0	0.0	0.0	1.0	0.4	0.5	0.1	0.2	0.0	0.1	3.4	0.2	4.1	0.5
40	0.0	0.0	0.0	0.0	0.4	0.1	0.2	0.2	0.2	0.1	0.2	1.4	0.1	1.5	0.2
41	0.0	0.0	0.0	0.0	0.5	0.2	0.2	0.1	0.2	0.0	0.1	1.8	0.1	2.0	0.3
Totals	2.2	1.2	0.4	0.5	7.7	2.3	3.5	2.2	2.2	0.9	2.0	5.4	0.5	5.7	1.1

FORECAST MODELING DATA

Table 7 Continued - Current Marketplace / Market Share by Map Sector for Existing Supermarkets

Sectors	Lucky 715	Target 2185	Hayward Produce	MJ Pueblo 1	Smart & Final	Arreaga's	Chavez 9	Safeway 797	Lucky 716	Grocery Outlet 52	MJ Pueblo 11	Food Source 710	Food Maxx 406	Chavez 3	Seafood City	Site
1	1.0	0.7	0.1	0.9	0.8	0.1	0.1	0.1	0.1	0.1	0.1	0.0	0.1	0.0	0.0	0.0
2	1.7	0.6	0.2	0.8	0.8	0.2	0.3	0.2	0.2	0.1	0.1	0.1	0.2	0.0	0.0	0.0
3	0.8	0.2	0.1	0.3	0.4	0.1	0.1	0.1	0.1	0.0	0.1	0.0	0.1	0.0	0.0	0.0
4	1.0	0.2	0.1	0.3	0.4	0.1	0.2	0.1	0.1	0.1	0.1	0.1	0.1	0.0	0.0	0.0
5	0.8	0.1	0.1	0.1	0.2	0.1	0.2	0.1	0.1	0.0	0.1	0.0	0.1	0.0	0.0	0.0
6	0.5	0.7	0.1	0.7	0.7	0.1	0.1	0.1	0.1	0.0	0.0	0.0	0.1	0.0	0.0	0.0
7	0.9	0.8	0.1	1.1	0.9	0.1	0.1	0.2	0.1	0.1	0.1	0.0	0.2	0.0	0.0	0.0
8	1.7	1.5	0.2	1.9	1.6	0.2	0.3	0.3	0.2	0.1	0.1	0.1	0.3	0.0	0.0	0.0
9	2.8	0.9	0.3	1.3	1.1	0.3	0.4	0.4	0.3	0.1	0.2	0.1	0.3	0.0	0.0	0.0
10	1.3	0.3	0.1	0.4	0.4	0.1	0.3	0.1	0.1	0.1	0.1	0.1	0.1	0.0	0.0	0.0
11	1.1	0.1	0.1	0.2	0.2	0.1	0.2	0.1	0.1	0.1	0.1	0.1	0.1	0.0	0.0	0.0
12	0.7	0.0	0.1	0.1	0.1	0.1	0.2	0.1	0.1	0.0	0.1	0.0	0.1	0.0	0.0	0.0
13	0.7	2.0	0.1	2.2	1.7	0.1	0.1	0.2	0.2	0.1	0.1	0.0	0.3	0.0	0.0	0.0
14	1.0	7.0	0.2	7.1	5.1	0.2	0.2	0.6	0.5	0.2	0.1	0.1	0.8	0.1	0.0	0.0
15	1.3	4.2	0.2	4.8	3.3	0.2	0.2	0.5	0.4	0.2	0.1	0.1	0.5	0.1	0.0	0.0
16	3.3	4.2	0.5	5.7	3.9	0.5	0.6	1.0	0.7	0.3	0.3	0.2	0.8	0.1	0.0	0.0
17	4.2	2.4	0.5	3.4	2.5	0.5	0.7	0.8	0.6	0.3	0.3	0.2	0.6	0.1	0.0	0.0
18	8.0	1.2	0.9	2.1	1.7	0.8	1.3	1.2	0.8	0.4	0.6	0.5	0.7	0.1	0.0	0.0
19	3.2	0.3	0.3	0.4	0.4	0.3	0.7	0.4	0.3	0.1	0.3	0.2	0.3	0.1	0.0	0.0
20	7.2	0.5	0.8	0.9	0.8	0.7	1.6	0.9	0.7	0.3	0.6	0.6	0.6	0.1	0.0	0.0
21	4.8	0.3	0.5	0.5	0.5	0.5	1.1	0.6	0.4	0.2	0.4	0.4	0.4	0.1	0.0	0.0
22	2.0	0.1	0.2	0.2	0.2	0.2	0.4	0.2	0.2	0.1	0.2	0.1	0.2	0.0	0.0	0.0
23	3.1	0.2	0.3	0.3	0.4	0.3	0.7	0.4	0.3	0.2	0.2	0.2	0.3	0.1	0.0	0.0
24	1.6	0.1	0.2	0.1	0.2	0.1	0.3	0.2	0.1	0.1	0.1	0.1	0.2	0.0	0.0	0.0
25	2.7	8.3	0.5	12.0	7.2	0.7	0.6	1.7	1.2	0.5	0.4	0.3	1.5	0.2	0.0	0.0
26	6.4	3.8	1.0	5.8	4.1	1.0	1.2	1.9	1.3	0.5	0.6	0.4	1.3	0.2	0.0	0.0
27	10.3	1.8	2.4	3.4	2.6	2.4	3.0	3.9	2.8	1.0	1.7	1.3	2.2	0.4	0.0	0.0
28	12.7	1.0	1.4	1.8	1.5	1.3	2.4	1.9	1.3	0.5	1.0	0.9	1.1	0.2	0.0	0.0
29	9.0	0.6	2.0	1.2	1.1	1.9	6.6	2.8	2.3	0.9	2.8	3.1	1.7	0.6	0.0	0.0
30	9.6	0.5	1.2	1.0	1.0	1.0	2.4	1.3	1.0	0.5	0.9	0.8	0.9	0.2	0.0	0.0
31	9.1	0.4	1.1	0.8	1.0	0.9	2.2	1.2	0.8	0.5	0.8	0.7	0.9	0.2	0.0	0.0
32	2.5	7.2	0.6	14.2	10.3	0.8	0.6	3.5	2.8	0.9	0.9	0.5	3.4	0.4	0.0	0.0
33	5.5	3.7	1.7	6.9	4.8	2.3	1.9	6.1	4.5	1.4	1.8	1.2	4.0	0.6	0.0	0.0
34	1.5	1.7	0.7	3.4	3.7	1.2	1.1	6.8	10.0	3.1	3.1	2.2	17.5	2.0	0.0	0.0
35	3.1	1.2	1.4	2.6	2.6	2.4	2.2	11.9	9.9	2.8	4.0	2.7	7.0	1.4	0.0	0.0
36	4.9	0.7	2.1	1.3	1.4	2.9	5.5	6.4	6.0	2.1	6.6	5.4	4.0	1.5	0.0	0.0
37	4.7	0.4	1.6	0.8	0.9	1.9	6.4	3.9	4.0	1.7	7.4	11.0	3.1	1.8	0.0	0.0
38	5.2	0.3	1.3	0.6	0.7	1.4	5.7	2.5	2.5	1.3	5.4	13.5	2.7	1.7	0.0	0.0
39	3.2	0.2	1.0	0.4	0.7	1.2	4.3	2.6	2.9	1.5	6.8	20.9	3.8	2.7	0.0	0.0
40	1.8	0.7	0.9	1.4	1.6	1.4	1.8	7.0	10.9	3.9	6.9	5.7	10.1	4.1	0.0	0.0
41	<u>2.0</u>	<u>0.3</u>	<u>0.9</u>	<u>0.7</u>	<u>0.9</u>	<u>1.3</u>	<u>2.8</u>	<u>4.3</u>	<u>5.6</u>	<u>2.3</u>	<u>11.2</u>	<u>15.0</u>	<u>6.1</u>	<u>3.8</u>	<u>0.0</u>	<u>0.0</u>
Totals -	3.5	1.7	0.7	2.7	2.1	0.9	1.5	2.3	2.3	0.8	1.8	2.0	2.2	0.6	0.0	0.0

FORECAST MODELING DATA

Table 8 indicates SITESPLUS-derived market conditions after Seafood City opens and Chavez 3 expands.

Table 8 - Projected Marketplace After Planned Market Changes

Seafood City Opens, Chavez 3 Expands

Store Name	Map Key	Total Area	Current		Projected		Sales /SqFt	Draw	Image	PTA Change	
			Annual Sales	Annual Sales	Annual Sales	Annual Sales				Dollars	%
Lucky 767	1	59000	\$ 25,000,000	\$ 24,903,072	\$ 422	45	89	-96,928	-0.4		
Target 1428	2	26000	\$ 16,000,000	\$ 15,958,868	\$ 614	40	87	-41,132	-0.3		
La Raza	3	6600	\$ 3,000,000	\$ 2,993,864	\$ 454	70	64	-6,136	-0.2		
Als Market	4	6000	\$ 3,000,000	\$ 2,984,660	\$ 497	90	87	-15,340	-0.5		
Safeway 768	5	51700	\$ 50,000,000	\$ 49,695,644	\$ 961	80	164	-304,356	-0.6		
Lucky 704	6	30000	\$ 15,000,000	\$ 14,897,664	\$ 497	80	84	-102,336	-0.7		
Safeway 3010	7	37500	\$ 28,000,000	\$ 27,881,024	\$ 743	65	181	-118,976	-0.4		
Safeway 2315	8	42700	\$ 28,000,000	\$ 27,803,804	\$ 651	40	120	-196,196	-0.7		
Food Maxx 416	9	53000	\$ 33,000,000	\$ 32,888,304	\$ 621	35	76	-111,696	-0.3		
Walmart 5434	10	17000	\$ 14,000,000	\$ 13,956,372	\$ 821	35	113	-43,628	-0.3		
Lucky 768	11	41000	\$ 21,000,000	\$ 20,761,008	\$ 506	50	80	-238,992	-1.1		
Safeway 971	12	50000	\$ 31,000,000	\$ 30,335,908	\$ 607	90	106	-664,092	-2.1		
El Rancho	13	6600	\$ 3,000,000	\$ 2,989,652	\$ 453	90	87	-10,348	-0.3		
Trader Joe's 84	14	16600	\$ 42,000,000	\$ 41,867,036	\$ 2,522	70	218	-132,964	-0.3		
Grocery Outlet 82	15	18200	\$ 7,000,000	\$ 6,958,556	\$ 382	80	60	-41,444	-0.6		
Lucky 715	16	61500	\$ 20,000,000	\$ 19,387,700	\$ 315	90	53	-612,300	-3.1		
Target 2185	17	26000	\$ 15,000,000	\$ 14,724,088	\$ 566	60	98	-275,912	-1.8		
Hayward Produce	18	12600	\$ 4,000,000	\$ 3,816,232	\$ 303	95	57	-183,768	-4.6		
Mi Pueblo 1	19	30600	\$ 20,000,000	\$ 19,826,424	\$ 648	70	118	-173,576	-0.9		
Smart & Final 401	20	23400	\$ 18,000,000	\$ 17,723,100	\$ 757	60	105	-276,900	-1.5		
Arteaga's	21	5900	\$ 6,000,000	\$ 5,937,964	\$ 1,006	75	148	-62,036	-1.0		
Chavez 9	22	16400	\$ 9,000,000	\$ 8,907,128	\$ 543	85	95	-92,872	-1.0		
Safeway 797	23	40000	\$ 16,000,000	\$ 15,152,816	\$ 379	75	63	-847,184	-5.3		
Lucky 716	24	45500	\$ 18,000,000	\$ 17,064,052	\$ 375	65	60	-935,948	-5.2		
Grocery Outlet 52	25	15500	\$ 7,000,000	\$ 6,840,776	\$ 441	60	52	-159,224	-2.3		
Mi Pueblo 11	26	20300	\$ 14,000,000	\$ 13,842,076	\$ 682	65	107	-157,924	-1.1		
Food Source 710	27	50100	\$ 19,000,000	\$ 18,380,160	\$ 367	55	73	-619,840	-3.3		
Food Maxx 406	28	54000	\$ 32,000,000	\$ 30,955,736	\$ 573	35	109	-1,044,264	-3.3		
Chavez 3	29	11500	\$ 13,000,000	\$ -	\$ -	25	147	13,000,000	-100		
Chavez 3 Exp.	29	16000	\$ -	\$ 15,835,300	\$ 990	25	140	15,835,300	N.A.		
Seafood City	30	43000	\$ -	\$ 19,725,524	\$ -	65	90	19,725,524	N.A.		
Site	100	Closed	\$ -	\$ -	\$ -	90	100	0	N.A.		
Totals		934,200	\$ 530,000,000	\$ 544,994,512							
Averages		30,135	\$ 16,562,500	\$ 17,031,079	\$ 583		100				

FORECAST MODELING DATA

Table 9 indicates SITESPLUS-derived market conditions after planned market changes occur and the proposed Lincoln Landing supermarket opens.

Table 9 - Projected Marketplace

Planned Market Changes Occur & Supermarket Opens in Lincoln Landing

Store Name	Map Key	Total Area	Current		Projected		Sales /SqFt	Draw	Image	PTA Change	
			Annual Sales	Annual Sales	Annual Sales	Annual Sales				Dollars	%
Lucky 767	1	59000	\$ 25,000,000	\$ 24,218,128	\$ 410	45	89	-781,872	-3.1		
Target 1428	2	26000	\$ 16,000,000	\$ 15,679,004	\$ 603	40	87	-320,996	-2.0		
La Raza	3	6600	\$ 3,000,000	\$ 2,953,148	\$ 447	70	64	-46,852	-1.6		
Als Market	4	6000	\$ 3,000,000	\$ 2,808,796	\$ 468	90	87	-191,204	-6.4		
Safeway 768	5	51700	\$ 50,000,000	\$ 46,530,456	\$ 900	80	164	-3,469,544	-6.9		
Lucky 704	6	30000	\$ 15,000,000	\$ 13,883,404	\$ 463	80	84	-1,116,596	-7.4		
Safeway 3010	7	37500	\$ 28,000,000	\$ 26,533,600	\$ 708	65	181	-1,466,400	-5.2		
Safeway 2315	8	42700	\$ 28,000,000	\$ 27,040,600	\$ 633	40	120	-959,400	-3.4		
Food Maxx 416	9	53000	\$ 33,000,000	\$ 32,474,228	\$ 613	35	76	-525,772	-1.6		
Walmart 5434	10	17000	\$ 14,000,000	\$ 13,783,992	\$ 811	35	113	-216,008	-1.5		
Lucky 768	11	41000	\$ 21,000,000	\$ 19,950,172	\$ 487	50	80	-1,049,828	-5.0		
Safeway 971	12	50000	\$ 31,000,000	\$ 26,598,200	\$ 532	90	106	-4,401,800	-14.2		
El Rancho	13	6600	\$ 3,000,000	\$ 2,911,340	\$ 441	90	87	-88,660	-3.0		
Trader Joe's 84	14	16600	\$ 42,000,000	\$ 41,088,440	\$ 2,475	70	218	-911,560	-2.2		
Grocery Outlet 82	15	18200	\$ 7,000,000	\$ 6,658,100	\$ 366	80	60	-341,900	-4.9		
Lucky 715	16	61500	\$ 20,000,000	\$ 16,926,488	\$ 275	90	53	-3,073,512	-15.4		
Target 2185	17	26000	\$ 15,000,000	\$ 14,169,664	\$ 545	60	98	-830,336	-5.5		
Hayward Produce	18	12600	\$ 4,000,000	\$ 3,361,908	\$ 267	95	57	-638,092	-16.0		
Mi Pueblo 1	19	30600	\$ 20,000,000	\$ 19,507,300	\$ 637	70	118	-492,700	-2.5		
Smart & Final 401	20	23400	\$ 18,000,000	\$ 17,237,472	\$ 737	60	105	-762,528	-4.2		
Arteaga's	21	5900	\$ 6,000,000	\$ 5,815,816	\$ 986	75	148	-184,184	-3.1		
Chavez 9	22	16400	\$ 9,000,000	\$ 8,686,232	\$ 530	85	95	-313,768	-3.5		
Safeway 797	23	40000	\$ 16,000,000	\$ 14,131,068	\$ 353	75	63	-1,868,932	-11.7		
Lucky 716	24	45500	\$ 18,000,000	\$ 16,197,056	\$ 356	65	60	-1,802,944	-10.0		
Grocery Outlet 52	25	15500	\$ 7,000,000	\$ 6,678,224	\$ 431	60	52	-321,776	-4.6		
Mi Pueblo 11	26	20300	\$ 14,000,000	\$ 13,656,384	\$ 673	65	107	-343,616	-2.5		
Food Source 710	27	50100	\$ 19,000,000	\$ 17,838,320	\$ 356	55	73	-1,161,680	-6.1		
Food Maxx 406	28	54000	\$ 32,000,000	\$ 30,251,708	\$ 560	35	109	-1,748,292	-5.5		
Chavez 3	29	Closed	\$ 13,000,000	\$ -	\$ -	25	147	13,000,000	-100		
Chavez 3 Exp.	29	16000	\$ -	\$ 15,542,748	\$ 971	25	140	15,542,748	N.A.		
Seafood City	30	43000	\$ -	\$ 18,079,048	\$ -	65	90	18,079,048	N.A.		
Site	100	50000	\$ -	\$ 25,181,676	\$ -	90	100	25,181,676	N.A.		
Totals		972,700	\$ 530,000,000	\$ 546,372,720							
Averages		31,377	\$ 16,562,500	\$ 17,624,926	\$ 562		100				

FORECAST MODELING DATA

Table 10 indicates SITESPLUS-derived market shares for existing, planned and proposed supermarkets.

Table 10 - Projection / Market Share by Map Sector for Existing & Planned Supermarkets															
Sectors	Lucky 767	Target 1428	La Raza	A/s	Safeway 768	Lucky 704	Safeway 3010	Safeway 2315	Food Maxx 476	Walmart 5434	Lucky 768	Safeway 971	E/Rancho	Trader Joes 84	Grocery Outlet 82
1	15.3	7.0	1.6	0.8	6.3	1.9	1.1	5.6	5.5	2.1	2.2	2.6	0.2	3.6	0.4
2	6.4	3.3	1.3	1.6	13.7	4.1	2.3	3.0	3.2	1.2	2.0	4.5	0.4	5.9	0.7
3	3.5	1.5	0.5	2.7	22.4	5.8	6.2	1.3	1.5	0.4	0.7	2.5	0.5	8.3	1.0
4	1.7	0.9	0.4	3.0	25.0	6.7	5.1	0.9	1.0	0.3	0.6	3.1	0.7	7.6	1.1
5	0.6	0.3	0.1	1.6	24.0	5.9	13.4	0.3	0.4	0.1	0.2	2.7	0.6	7.6	1.2
6	14.3	9.3	1.2	0.2	1.4	0.4	0.2	10.8	9.4	4.4	4.2	1.1	0.1	1.4	0.1
7	15.0	8.1	2.0	0.4	3.9	1.2	0.7	7.1	6.6	2.8	2.7	2.2	0.2	2.9	0.3
8	8.2	5.1	2.4	0.5	5.2	1.7	0.9	5.8	5.6	2.6	4.6	3.6	0.3	4.1	0.4
9	3.3	2.0	1.0	1.2	13.0	4.1	2.2	2.2	2.6	1.1	1.9	6.7	0.6	6.5	0.8
10	1.0	0.6	0.3	1.6	24.7	7.6	4.2	0.7	0.8	0.3	0.6	4.0	0.8	7.9	1.2
11	0.3	0.1	0.1	0.8	23.1	6.1	14.0	0.2	0.2	0.1	0.1	3.5	0.7	7.1	1.6
12	0.1	0.1	0.0	0.4	10.4	2.8	35.1	0.1	0.1	0.0	0.1	2.0	0.5	6.5	1.7
13	5.3	3.2	0.6	0.1	1.1	0.4	0.2	11.9	11.3	6.5	10.0	1.3	0.1	1.4	0.1
14	2.2	1.4	0.3	0.1	0.6	0.2	0.1	8.4	8.8	3.6	9.8	1.2	0.1	1.3	0.1
15	2.9	1.8	0.5	0.1	1.2	0.4	0.2	8.4	8.8	4.4	11.6	2.0	0.1	1.8	0.2
16	2.2	1.5	0.8	0.2	2.5	0.8	0.6	4.7	5.4	2.6	6.2	4.8	0.3	3.7	0.4
17	2.8	1.9	1.0	0.4	4.8	1.6	1.0	3.2	3.8	1.8	3.7	7.3	0.5	5.5	0.7
18	0.6	0.4	0.3	0.2	4.8	1.7	1.3	0.8	1.1	0.4	1.0	12.1	0.8	6.9	1.0
19	0.3	0.2	0.1	0.5	14.5	5.0	4.4	0.3	0.4	0.1	0.3	8.5	1.7	11.5	2.0
20	0.3	0.2	0.1	0.2	6.2	2.2	2.2	0.3	0.5	0.2	0.4	13.5	1.3	9.0	1.7
21	0.2	0.1	0.1	0.3	8.7	3.0	5.2	0.2	0.3	0.1	0.2	9.1	1.8	12.7	3.9
22	0.1	0.1	0.0	0.4	12.3	3.7	16.7	0.1	0.2	0.1	0.1	4.7	1.2	11.5	4.0
23	0.1	0.1	0.0	0.3	8.8	3.1	12.0	0.1	0.2	0.1	0.1	6.1	1.4	13.8	5.6
24	0.1	0.1	0.0	0.3	11.4	3.3	17.8	0.1	0.2	0.0	0.1	3.7	0.9	14.2	4.6
25	0.9	0.6	0.3	0.1	1.1	0.4	0.3	3.2	3.8	1.6	4.5	3.1	0.2	2.4	0.3
26	1.0	0.7	0.4	0.2	2.6	0.9	0.7	2.0	2.6	1.1	2.7	7.2	0.4	4.7	0.6
27	0.3	0.2	0.1	0.1	2.1	0.7	0.8	0.6	0.8	0.3	0.7	7.2	0.5	4.7	0.7
28	0.3	0.2	0.1	0.1	3.4	1.2	1.2	0.4	0.6	0.2	0.5	10.5	0.7	6.2	1.1
29	0.1	0.1	0.1	0.1	2.7	1.0	1.1	0.2	0.4	0.1	0.3	8.0	0.6	6.3	1.1
30	0.2	0.1	0.1	0.1	4.2	1.5	1.7	0.3	0.4	0.1	0.3	11.6	1.0	10.2	1.7
31	0.1	0.1	0.1	0.1	3.6	1.3	1.6	0.2	0.4	0.1	0.2	10.8	0.9	13.9	1.9
32	0.4	0.2	0.1	0.0	0.7	0.2	0.2	1.5	1.9	0.7	2.0	2.3	0.1	1.9	0.2
33	0.3	0.2	0.1	0.0	1.1	0.4	0.4	0.9	1.3	0.4	1.2	4.0	0.2	3.1	0.4
34	0.1	0.0	0.0	0.0	0.2	0.1	0.1	0.3	0.5	0.1	0.3	0.9	0.1	1.2	0.1
35	0.1	0.1	0.0	0.0	0.6	0.2	0.3	0.3	0.4	0.1	0.3	2.1	0.1	2.0	0.3
36	0.1	0.1	0.0	0.0	1.1	0.4	0.5	0.2	0.3	0.1	0.2	3.6	0.3	3.3	0.5
37	0.1	0.0	0.0	0.0	1.3	0.4	0.5	0.1	0.2	0.1	0.2	4.0	0.3	4.0	0.6
38	0.1	0.1	0.0	0.0	1.5	0.5	0.7	0.1	0.2	0.1	0.1	5.0	0.4	6.4	0.8
39	0.0	0.0	0.0	0.0	0.9	0.3	0.4	0.1	0.2	0.0	0.1	3.0	0.2	4.0	0.5
40	0.0	0.0	0.0	0.0	0.3	0.1	0.2	0.1	0.2	0.1	0.2	1.2	0.1	1.5	0.2
41	<u>0.0</u>	<u>0.0</u>	<u>0.0</u>	<u>0.0</u>	<u>0.5</u>	<u>0.2</u>	<u>0.2</u>	<u>0.1</u>	<u>0.1</u>	<u>0.0</u>	<u>0.1</u>	<u>1.5</u>	<u>0.1</u>	<u>1.9</u>	<u>0.3</u>
Totals -	2.0	1.2	0.4	0.5	7.0	2.1	3.2	2.0	2.1	0.9	1.8	4.5	0.5	5.5	1.0

FORECAST MODELING DATA

Table 10 Continued - Projection / Market Share by Map Sector for Existing & Planned Supermarkets

Sectors	Lucky 715	Target 2185	Hayward Produce	Mi Pueblo 1	Smart & Final	Arteaga's	Chavez 9	Safeway 797	Lucky 716	Grocery Outlet 52	Mi Pueblo 11	Food Source 710	Food Maxx 406	Chavez 3	Seafood City	Site
1	0.9	0.7	0.1	0.9	0.8	0.1	0.1	0.1	0.1	0.1	0.1	0.0	0.1	0.0	0.2	2.3
2	1.6	0.6	0.2	0.8	0.7	0.2	0.3	0.2	0.1	0.1	0.1	0.1	0.2	0.0	0.2	3.8
3	0.7	0.2	0.1	0.3	0.4	0.1	0.1	0.1	0.1	0.0	0.1	0.0	0.1	0.0	0.1	1.7
4	0.9	0.2	0.1	0.3	0.4	0.1	0.2	0.1	0.1	0.1	0.1	0.1	0.1	0.0	0.1	2.2
5	0.8	0.1	0.1	0.1	0.2	0.1	0.2	0.1	0.1	0.0	0.1	0.0	0.1	0.0	0.1	1.9
6	0.5	0.7	0.1	0.7	0.7	0.1	0.1	0.1	0.1	0.0	0.0	0.0	0.1	0.0	0.1	1.1
7	0.9	0.8	0.1	1.0	0.9	0.1	0.1	0.2	0.1	0.1	0.1	0.0	0.2	0.0	0.2	2.0
8	1.6	1.4	0.2	1.9	1.5	0.2	0.3	0.3	0.2	0.1	0.1	0.1	0.3	0.0	0.3	3.4
9	2.5	0.8	0.3	1.2	1.0	0.3	0.4	0.3	0.2	0.1	0.2	0.1	0.3	0.1	0.3	5.8
10	1.2	0.3	0.1	0.4	0.4	0.1	0.3	0.1	0.1	0.1	0.1	0.1	0.1	0.0	0.1	2.9
11	1.1	0.1	0.1	0.2	0.2	0.1	0.2	0.1	0.1	0.1	0.1	0.0	0.1	0.0	0.1	2.5
12	0.7	0.0	0.1	0.1	0.1	0.1	0.2	0.1	0.1	0.0	0.1	0.0	0.1	0.0	0.1	1.4
13	0.7	2.0	0.1	2.2	1.7	0.1	0.1	0.2	0.2	0.1	0.1	0.0	0.2	0.0	0.3	1.4
14	0.9	6.8	0.2	7.0	5.0	0.2	0.2	0.6	0.4	0.2	0.1	0.1	0.8	0.1	0.9	1.4
15	1.2	4.1	0.2	4.7	3.2	0.2	0.2	0.5	0.3	0.2	0.1	0.1	0.5	0.1	0.6	2.2
16	2.8	3.9	0.4	5.5	3.6	0.5	0.5	0.9	0.6	0.3	0.3	0.2	0.7	0.1	0.8	5.2
17	3.5	2.1	0.4	3.3	2.3	0.5	0.6	0.7	0.5	0.2	0.3	0.2	0.5	0.1	0.6	7.2
18	5.9	1.0	0.7	2.0	1.5	0.8	1.3	0.9	0.6	0.3	0.5	0.4	0.5	0.1	0.5	12.4
19	2.8	0.2	0.3	0.4	0.4	0.3	0.7	0.3	0.2	0.1	0.2	0.2	0.2	0.1	0.2	6.2
20	5.5	0.4	0.6	0.9	0.7	0.7	1.5	0.7	0.5	0.3	0.6	0.5	0.4	0.1	0.4	10.9
21	4.0	0.2	0.5	0.5	0.5	0.4	1.1	0.5	0.4	0.2	0.4	0.3	0.3	0.1	0.3	7.2
22	1.8	0.1	0.2	0.2	0.2	0.2	0.4	0.2	0.2	0.1	0.2	0.1	0.2	0.0	0.1	3.5
23	2.7	0.1	0.3	0.3	0.3	0.3	0.7	0.3	0.2	0.1	0.2	0.2	0.2	0.1	0.2	4.8
24	1.5	0.1	0.2	0.1	0.2	0.1	0.3	0.2	0.1	0.1	0.1	0.1	0.1	0.0	0.1	2.8
25	2.4	7.6	0.5	11.6	6.8	0.6	0.5	1.5	1.0	0.4	0.4	0.3	1.3	0.2	1.4	3.6
26	5.1	3.2	0.8	5.5	3.7	1.0	1.1	1.5	1.0	0.5	0.6	0.4	1.0	0.2	1.1	8.3
27	8.0	1.5	1.9	3.2	2.3	2.3	2.8	3.1	2.2	0.9	1.6	1.1	1.7	0.4	1.4	8.8
28	9.4	0.8	1.1	1.7	1.3	1.2	2.2	1.4	1.0	0.4	0.9	0.7	0.8	0.2	0.7	12.3
29	7.1	0.5	1.6	1.1	0.9	1.8	6.2	2.2	1.8	0.8	2.7	2.8	1.3	0.6	0.8	8.3
30	7.3	0.4	0.9	0.9	0.9	1.0	2.3	1.0	0.7	0.4	0.8	0.7	0.7	0.2	0.5	10.6
31	7.0	0.4	0.8	0.8	0.9	0.9	2.1	0.9	0.6	0.4	0.7	0.6	0.7	0.2	0.5	9.9
32	2.1	6.4	0.5	13.7	9.5	0.8	0.6	3.0	2.4	0.9	0.9	0.5	2.9	0.4	3.1	2.8
33	4.5	3.2	1.4	6.5	4.3	2.2	1.8	5.0	3.6	1.3	1.7	1.0	3.2	0.6	3.2	5.1
34	1.2	1.5	0.5	3.2	3.3	1.1	1.0	5.4	8.0	2.7	3.0	2.0	13.9	2.1	8.5	1.2
35	2.7	1.1	1.2	2.5	2.4	2.3	2.2	10.4	8.7	2.6	3.9	2.5	6.1	1.7	3.1	2.6
36	4.2	0.6	1.8	1.3	1.3	2.8	5.3	5.5	5.1	2.0	6.4	5.0	3.4	1.7	1.8	4.1
37	4.0	0.4	1.3	0.8	0.9	1.9	6.1	3.3	3.4	1.5	7.1	10.1	2.6	2.0	1.3	4.2
38	4.3	0.3	1.1	0.6	0.7	1.3	5.4	2.0	2.1	1.2	5.2	12.3	2.2	1.9	0.9	5.3
39	2.8	0.2	0.9	0.4	0.6	1.2	4.2	2.2	2.5	1.4	6.5	19.6	3.3	3.1	1.1	3.1
40	1.5	0.6	0.7	1.4	1.5	1.4	1.8	6.0	9.4	3.6	6.7	5.3	8.7	4.6	3.9	1.4
41	<u>1.8</u>	<u>0.3</u>	<u>0.8</u>	<u>0.7</u>	<u>0.9</u>	<u>1.3</u>	<u>2.7</u>	<u>3.8</u>	<u>4.9</u>	<u>2.1</u>	<u>10.9</u>	<u>14.1</u>	<u>5.4</u>	<u>4.4</u>	<u>1.9</u>	<u>1.8</u>
Totals -	2.9	1.6	0.6	2.6	1.9	0.8	1.4	2.0	1.9	0.8	1.7	1.9	1.8	0.7	1.2	4.4

FORECAST MODELING DATA

Table 11 uses a combination of market shares after store openings and population increase at the map sector level to project how area supermarket sales will grow in future years of the forecast period.

**Table 11 - Projected Sales Growth Based on Map Sector Market Shares
Lincoln Landing Supermarket Trade Area**

Store Name	Map Key	Total Area	April 2017		April 2019		April 2021	
			Projected Annual Sales	Sales /SqFt	Projected Annual Sales	Sales /SqFt	Projected Annual Sales	Sales /SqFt
Lucky 767	1	59000	\$ 24,217,908	410	\$ 24,332,568	412	\$ 24,458,616	415
Target 1428	2	26000	\$ 15,678,780	603	\$ 15,744,976	606	\$ 15,817,568	608
La Raza	3	6600	\$ 2,953,184	447	\$ 2,978,040	451	\$ 3,005,184	455
Als Market	4	6000	\$ 2,808,780	468	\$ 2,839,824	473	\$ 2,873,832	479
Safeway 768	5	51700	\$ 46,530,432	900	\$ 47,103,056	911	\$ 47,717,748	923
Lucky 704	6	30000	\$ 13,883,428	463	\$ 14,066,884	469	\$ 14,262,872	475
Safeway 3010	7	37500	\$ 26,534,092	708	\$ 26,769,132	714	\$ 27,019,564	721
Safeway 2315	8	42700	\$ 27,040,780	633	\$ 27,158,040	636	\$ 27,285,284	639
Food Maxx 416	9	53000	\$ 32,473,948	613	\$ 32,616,012	615	\$ 32,769,256	618
Walmart 5434	10	17000	\$ 13,783,640	811	\$ 13,838,292	814	\$ 13,897,624	818
Lucky 768	11	41000	\$ 19,950,060	487	\$ 20,069,348	489	\$ 20,198,516	493
Safeway 971	12	50000	\$ 26,598,208	532	\$ 27,326,520	547	\$ 28,077,244	562
El Rancho	13	6600	\$ 2,911,272	441	\$ 2,980,744	452	\$ 3,052,712	463
Trader Joe's 84	14	16600	\$ 41,088,216	2475	\$ 41,785,224	2517	\$ 42,498,248	2560
Grocery Outlet 82	15	18200	\$ 6,657,976	366	\$ 6,784,336	373	\$ 6,913,868	380
Lucky 715	16	61500	\$ 16,926,520	275	\$ 17,519,840	285	\$ 18,120,752	295
Target 2185	17	26000	\$ 14,169,688	545	\$ 14,355,380	552	\$ 14,553,968	560
Hayward Produce	18	12600	\$ 3,361,956	267	\$ 3,493,464	277	\$ 3,619,356	287
Mi Pueblo 1	19	30600	\$ 19,507,072	637	\$ 19,856,044	649	\$ 20,227,012	661
Smart & Final 401	20	23400	\$ 17,237,220	737	\$ 17,497,272	748	\$ 17,767,308	759
Arteaga's	21	5900	\$ 5,815,888	986	\$ 5,992,948	1016	\$ 6,158,932	1044
Chavez 9	22	16400	\$ 8,686,340	530	\$ 9,007,544	549	\$ 9,295,832	567
Safeway 797	23	40000	\$ 14,131,104	353	\$ 14,486,576	362	\$ 14,807,364	370
Lucky 716	24	45500	\$ 16,197,116	356	\$ 16,544,008	364	\$ 16,840,876	370
Grocery Outlet 52	25	15500	\$ 6,678,256	431	\$ 6,821,308	440	\$ 6,942,208	448
Mi Pueblo 11	26	20300	\$ 13,656,448	673	\$ 14,142,076	697	\$ 14,498,016	714
Food Source 710	27	50100	\$ 17,838,320	356	\$ 18,405,724	367	\$ 18,802,784	375
Food Maxx 406	28	54000	\$ 30,252,612	560	\$ 30,577,924	566	\$ 30,849,988	571
Chavez 3 Exp.	29	16000	\$ 14,664,936	917	\$ 15,381,704	961	\$ 15,900,404	994
Seafood City	30	21000	\$ 18,079,360	861	\$ 18,629,780	887	\$ 19,137,716	911
Site	100	<u>50000</u>	<u>\$ 25,181,676</u>	<u>504</u>	<u>\$ 26,038,688</u>	<u>521</u>	<u>\$ 26,920,296</u>	<u>538</u>
Totals		950,700	\$545,495,216		\$ 555,143,276		\$ 564,290,948	
Averages		30,668	\$ 17,596,620	574	\$ 17,907,848	584	\$ 18,202,934	594

ABOUT AREA RESEARCH ASSOCIATES

Area Research Associates (ARA) was established in 1992 and provides site location expertise to the supermarket and other convenience-oriented industries. Tom Brennan, a partner at ARA since 1996, has been involved in the field of site location research since 1977, when he began work for A & P in New Jersey. Since that time, he has worked as a consultant to a number of national and international companies requiring services in facility sales forecasting, site selection, market strategy, consumer research and software development.

From 1980 to 1989, Tom worked as a consultant to Smith's Food & Drug of Salt Lake City and was responsible for identifying new opportunities for store development in major market areas of Arizona, New Mexico and Nevada. During that time, he also conducted extensive studies in consumer attitudes and shopping behavior in order to refine techniques in store location research. Assignments in the Middle East in the early 1980's led to the development of the first major Western-style supermarket in the Sultanate of Oman as well as new supermarket facilities in Dubai, United Arab Emirates.

While working as a consultant with Retail Systems, Inc. in Minneapolis, Tom headed their Los Angeles office with primary responsibility for servicing retail and convenience-oriented clients in the western part of the United States. He has directed site location research for the northwestern division of Safeway, Inc. and has conducted market studies for all their remaining divisions. In addition to working with many major supermarket, retail, medical and convenience-oriented chains across the United States, Tom's clients have included numerous real estate developers and REITs.

Tom holds a Bachelor of Science degree in Cognitive Psychology from Tufts University in Medford, Massachusetts.



Supporting the Ea

THI

Share
on via
Facebook
Twitter
Email

New project proposed for empty Mervyn's site

[Yesenia Martinez](#),
Politics Editor

December 4, 2014



Illustration | Brittany England

Hayward's city council is considering yet another plan to develop the empty 11-acre lot on Foothill Boulevard where Mervyn's headquarters once stood.

A preliminary review of the proposed project was presented last night to the city council to build new residential and commercial space at the site. Dollinger Properties, Retail West, Inc., and Johnson Lyman Architects presented potential plans for the development project.

The ground-level retail plan will encompass 66,000 square feet of the property and some of the proposed vendors are Whole Foods Market, Bed Bath & Beyond, Chipotle, Panera, and local start-up ice cream company, Smitten Ice Cream.

The site has been empty since 2008 when Mervyn's, a retail department store chain, [filed for bankruptcy](#) and went out of business.

The 5-story residential living space will contain 545 apartment units with up to 150 designated parking stalls. Units will be one or two bedrooms with modern amenities on the property such as a tennis court, club room, pool, and fitness center.

The presentation emphasized the target demographic is a "quality tenant mix" and specifically in terms of residents "targeting millennials and lower to middle class...college students and faculty."

A similar proposal was previously presented to the city council and they expressed that it needed improvement regarding the plan not being green enough and sustainable; this current proposal takes into account those concerns and addresses the issue of sustainability by complying with and meeting LEED-gold certification. Following the presentation, council members made comments and voiced concerns on the project proposal.

Councilmember Marvin Peixoto inquired further about the affordability for college students and wondered what the average price of a unit would be. Developers gave a rough estimate of \$1,600 – \$1,700 a month for a residential unit.

Councilmember Sara Lamnin is worried whether current local businesses will be affected by the construction of new retail stores.

"I'm concerned about the Safeway across the street," said Lamnin. "I have deep concerns for the local businesses."

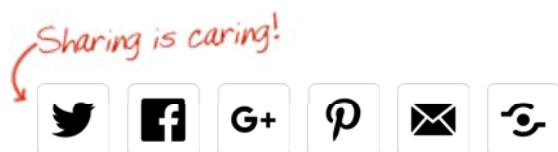
Councilmember Francisco Zermeno touched on the potential grocers of the project and how it could attract more local and outside business to Hayward.

Renee Rettig, manager of [The Book Shop](#) in downtown Hayward and a part of the merchant's association of Hayward, attended tonight's council meeting and voiced how the developers this time around had a promising proposal.

"I came tonight mostly because of curiosity, and because the last proposal was lacking and not considering other merchants in the area," said Rettig. "Questions from the council members had equal merit. I've worked 19 years in downtown, I drive down the Foothill corridor every day and Hayward deserves to be vibrant."

City Manager Fran David emphasized that the project is still in the very early stages and that anything presented in Tuesday's council meeting may or may not be included in the final project.

"This process does not constitute a project approval or denial," said David. "There will be meetings with the community; there will be meetings before the planning commission. There will be more than enough opportunity for input."



Leave a Comment

Name (required)

Email Address (required)

Fran David

From: Fran David

Sent: Tuesday, April 25, 2017 8:43 AM

To: Barbara Halliday <Barbara.Halliday@hayward-ca.gov>; Francisco Zermeno <Francisco.Zermeno@hayward-ca.gov>; Al Mendall <Al.Mendall@hayward-ca.gov>; Sara Lamnin <Sara.Lamnin@hayward-ca.gov>; Elisa Marquez <Elisa.Marquez@hayward-ca.gov>; Marvin Peixoto <Marvin.Peixoto@hayward-ca.gov>; Mark Salinas <Mark.Salinas@hayward-ca.gov>

Cc: David Rizk <David.Rizk@hayward-ca.gov>; Miriam Lens <Miriam.Lens@hayward-ca.gov>; Kelly McAdoo <Kelly.McAdoo@hayward-ca.gov>; Kim Huggett

Subject: Urging Approval of Lincoln Landing

Mayor Halliday and Council, I am writing to you today as a member of the Chamber's Governmental Relations Committee in regards to Agenda Item PH 17-029, related to your consideration of the Lincoln Landing Project proposed on the Old Mervyn's site on Foothill Blvd. I am urging your approval of the project.

The City, the developer and the community have spent several years and many hours developing the concept and expanding on the details of this project. The project reflects and captures this robust input. The developer has addressed many of the community's concerns through design evolution; and the project reflects many of the values of Hayward – environmentally conscious, protection of view corridors, extensive retail along Foothill, community amenities, and quality housing. Of course there remain issues with the project for some folks as there always will be for a project of this size and scope; and one that signals significant change in a neighborhood.

I trust that you will find a way to address some of the more political but no less important issues that remain unresolved without putting unreasonable success-quelling constraints on the project, the developer, or future retail/commercial tenants. As there has been for several years, there is significant tension between what the community wants to see in their neighborhoods vs some of these broader social and political concerns. Both are important and can be strategically and creatively balanced without destroying good projects.

As always, I admire the difficult and successful job you all do every day for Hayward. I apologize for not being there in person tonight to clearly demonstrate my strong support for this project. However, I am out of town.

Thank you for allowing me to weigh in on this critical issue.

Sincerely,

Fran David
ICMA-CM

Ben Goulart

From: Ben Goulart
Sent: Monday, April 24, 2017 6:31 PM
To: David Rizk <David.Rizk@hayward-ca.gov>
Subject: Lincoln Landing

Hi David, I hope all is well with you. I wanted to check in on the Lincoln Landing project. As I am sure you know The Prospect Hill Neighborhood Association, as a majority, does support the development. Scott has really been great to work with, as he has made changes and additions in the scope of the project to reflect our concerns and ideas. One of our big points was to try and secure a healthy organic market to shop at. We think a Whole Foods, Sprouts or New Leaf would be a great addition to our city, and be a great draw for more people. We understand that most of these markets are not union. However after research we found that they treat their employees quite well, and usually hire locally. Our group feels that Dollinger is hiring a majority of labor through the local unions, as well as hiring local workers. That really is quite a commitment to local labor. I hear that he also has the support of most the other local unions, except the one food workers union.

We hope you will consider supporting the push for an organic market, for our health and our family. The local food workers union cannot supply us with an organic market to choose from. We would love to support the union if they would only find an organic market that we could hire. They have said that they don't have one, and that we should support a union over our health. I think they should see the need and desire for organic foods, and find a market to work with. Until then I think that our long term health and pursuit of happiness should not be abridged just by some localized dispute.

We have all made some sacrifices for this project to move forward, and our neighborhood will have the most ill affects. This market is and was a "carrot" for our support of the development, It is our neighborhood that really wants this organic market. After all of the years of working to achieve a suitable project, I hope we can get the Organic Market everyone wants. So please support us to not use union workers on this one small part of an otherwise super local project, and achieve healthier options with a Whole Foods.

Thank you for your ongoing support,

Benjamin Goulart
President, Prospect Hill Neighborhood Association

Al and Jo Murdach

From: Allison Murdach
Sent: Monday, April 24, 2017 4:34 PM
To: List-Mayor-Council <List-Mayor-Council@hayward-ca.gov>
Subject: Lincoln Landing

We support HAPA's recommendations for the Lincoln Landing development.

Al and Jo Murdach

Sean Marciniak - Miller Starr Regalia



**MILLER STARR
REGALIA**

1331 N. California Blvd.
Fifth Floor
Walnut Creek, CA 94596

T 925 935 9400
F 925 933 4126
www.mslegal.com

Sean R. Marciniak
Direct Dial: 925 941 3245
sean.marciniak@msrlegal.com

April 25, 2017

VIA E-MAIL

Honorable Mayor Barbara Halliday
Members of the City Council
c/o Miriam Lens, City Clerk
City of Hayward
777 B Street
Hayward, CA 94541
E-Mail: Miriam.Lens@hayward-ca.gov

Re: Reply to April 25, 2017 Letter from Appellant re Lincoln Landing Project;
Item 8 on the City Council's April 25, 2017 Agenda

Dear Honorable Mayor Halliday and Members of the City Council:

Miller Starr Regalia represents Dollinger Properties in its application for land use entitlements necessary to construct and operate the Lincoln Landing Project. The Planning Commission approved this Project by a 6-1 vote in February and, as you know, tonight you will consider Desirae Schmidt's appeal of this approval. By this letter, we seek to respond to various assertions made by the appellant's counsel in a letter delivered to the City earlier today. These assertions consist wholly of claims that the Project will cause urban decay but, as set forth below, we respectfully submit that these claims are the legal equivalent of gossip, and should not impact the City Council's consideration of the Project.

The EIR adequately addressed the issue of urban decay, and the EPS study submitted on behalf of the applicant was prepared only to confirm the EIR's conclusions. The appellant claims a study prepared by Economic & Planning Systems, Inc., dated April 12, 2017, constitutes a great deal of information that was circulated at the last minute, which appellant asserts is improper under CEQA. Please consider the following points:

- ***The EIR provided substantial evidence the Project would not result in Urban Decay.*** The EIR squarely addressed the issue of urban decay, pointing out that the main source of urban blight in the City is the vacant, 335,000-square-foot office building *on the Project site* which, under the buildout scenario envisioned by the Project, will be replaced by a vibrant, commercial use that will serve as a regional destination. (See Final EIR, p. 2.0-65.) Moreover, and *as confirmed by appellant's own data*, the

Honorable Mayor Barbara Halliday
Members of the City Council
c/o Miriam Lens, City Clerk
April 25, 2017
Page 2

160,000 square feet of vacant retail space in the City (see Final EIR, p. 2.0-6 [Comment 11-7]) constitutes roughly a 2 percent vacancy rate when compared to the Citywide inventory of 7.7 million square feet of retail.

- ***The EPS report was submitted merely to confirm that urban decay will not be an issue.*** The EPS report was prepared on behalf of the applicant, and was prepared merely to confirm that information in the administrative record of proceedings supported the EIR's determinations that urban decay would not be an issue. That is, we submitted this document to provide the City Council with comfort that the EIR determinations were accurate. We note that the EPS report contains much the same information as appeared in an economic analysis that the applicant first submitted months ago; this is a reference to a report entitled *Fiscal and Economic Impact Analysis of Lincoln Landing* and dated September 12, 2016, which was Attachment IX to the Staff Report for the Planning Commission earlier this year.

Ultimately, the fact that the applicant supplemented the administrative record of proceedings for the Project does not mean the existing record was inadequate. The Project's EIR analyzed urban decay in a manner consistent with applicable law.

CEQA does not even require an urban decay analysis in every circumstance — and does not require one here. An EIR only must assess urban decay impacts “when there is evidence suggesting that the economic and social effects caused by [project] ultimately result in urban decay or deterioration.” (*Melom v. City of Madera* (2010) 183 Cal.App.4th 41, 54, *citing Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1207.) An argument that “it is arguably possible that in some instances the establishment of a retail business may have social or economic effects, and ... [that] it is arguably possible that in some instances social or economic effects can cause physical changes in the environment” does not warrant a discussion of these economic effects in an EIR. (*Friends of Davis v. City of Davis* (2000) 83 Cal.App.4th 1004, 1020.) The appellant did not raise, during the EIR comment period, any information viably suggesting that any retail use, much less a supermarket use, would lead to urban decay, but only submitted data that confirmed the City's market for retail businesses is robust. (see Final EIR, p. 2.0-6 [Comment 11-7, indicating only 160,000 square feet of vacant retail space existed Citywide]))

The City is not obligated to respond to late comments but, nevertheless, appellant's submittal today does not change the calculus; these late comments are inconsequential. CEQA does not require that a lead agency respond to comments received after the close of an EIR's public comment period (see Pub. Res. Code, § 21091(d)), and appellant's letter of today clearly qualifies as a “late comment.” Nevertheless, there is nothing in that letter of legal consequence. For instance:

- ***Appellant is speculating that the Project will contain a supermarket.*** Appellant suggests that a supermarket *will* operate on-site, but this is speculation that does not warrant further analysis. (See *Friends of Davis*, 83 Cal.App.4th at 1207; see, e.g., 14 CCR, §§ 15064(d)(3), 15145.) While the EIR's traffic analysis does assume 35,000 square feet of supermarket on the Project site, this use was assumed for purposes of the analysis *because it is a conservative assumption, resulting in higher traffic levels than might really occur*. As can be discerned from the Draft EIR and its supporting traffic analysis, and as distilled in the attached letter from expert traffic consultant TJKM, supermarket uses generate 2.4 to 3.5 times more traffic than a "plain vanilla" retail use. It is common in EIRs for consultants to assume a "worst case" development intensity in order to provide decisionmakers with comfort that the EIR captures all reasonably possible environmental impacts.¹ We wish to re-emphasize that CEQA does not require a lead agency, in preparing an environmental review document, to speculate. (14 CCR, §§ 15064(d)(3), 15145.) Finally, as appellant's urban decay consultant confirms, it "is not possible to make an assessment of physical impacts on certain stores and the resulting potential for urban decay without knowing what type of retail tenant is being proposed at the project." (Area Research Associates report, dated April 24, 2017, p. 4.) This is an accurate statement, and explains why the type of robust analysis that appellant is asking for is not legally required.
- ***Even if a supermarket did establish itself at the Project site, there is no evidence it will result in the closure of other supermarkets.*** As first disclosed in a report that was prepared eight months ago, and has been in the Project's administrative record for quite some time, the City experiences, on an annual basis, some \$75.5 million worth of sales "leakage" associated with Food and Beverage Stores, meaning there is an under-supply of grocery and other food-related stores in the City. Appellant's urban decay consultant appears to confirm the vibrancy of the local grocery marketplace, indicating that while Hayward grocery stores generate less sales per square foot as other Bay Area grocery stores (i.e., \$514/sf versus \$705/sf), the "break-even" point is \$370 in sales per square foot. (Area Research Associates report, dated April 24, 2017, pp. 3-4.) In fact, appellant's data shows that multiple supermarkets are able to operate within close proximity to one another. (Area Research Associates report, dated April 24, 2017, p. 5 [map showing close proximity of Safeway and Lucky stores, Lucky and Grocery Outlet stores, Safeway and Food Maxx store, etc.].) Appellant's consultant also fails to address the fact that certain supermarkets, like Trader Joe's, Whole Foods, and others, are specialty markets that constitute

¹ Appellant's urban consultant assumes the Project would include 50,000 square feet of supermarket space, which is a possibility of appellant's own manufacture, presumably to ensure the facts fit appellant's theories.

a regional draw of consumers,² attracting customers that would not otherwise visit the area.³ For instance, there are eight-four Whole Foods in California, which works out to one for every 470,000 people, where Whole Foods seeks a target market of roughly 200,000 people within a 20-minute drive time, and is focused on college-educated consumers.⁴ By contrast, there are 497 Safeway stores in California, which works out to one for every 80,000 population.⁵ These comparisons indicate that Whole Foods expects to draw from a much larger area than does a typical (and typically larger) Safeway or its kind. But please note, none of this is to say that the Project applicant has any indication that a Whole Foods or other supermarket will establish itself on the Project site. We present these analyses for the sake of the argument, and to show that appellant's analysis is presumptive and unsound. We do not intend that this discussion should override the larger point that appellant's arguments and theories are, self-admittedly, speculative. (See Area Research Associates report, dated April 24, 2017, p. 4.)

- ***Even if a handful of supermarkets would close, this fact does not establish that urban decay would occur.*** The possibility of two or three supermarkets closing does not mean urban decay would result.⁶ For urban decay to happen, a site must be vacant for some period of time, attracting vandalism and other blight. As discussed in the Project's record of proceedings, the future of Hayward's commercial market is vibrant, suggesting that retail vacancies will be quickly filled. To reach its conclusion

² Appellant's consultant also claims that the trade area defined by EPS is materially deficient because the Project site is located in the northern portion of the City. EPS' trade area gives an accurate snapshot of the City's economic condition and, moreover, it is the City's trade area that is important for purposes of the City's economic planning. The consultant's claims about the trade area are also misplaced for other reasons identified in footnote 3.

³ Seafood City supermarket, which appellant's consultant says has not been accounted for to the City's material detriment, is a Filipino-oriented supermarket chain that more properly qualifies as a specialty food store in its offering of diverse food choices to consumers. Even if, for the sake of the argument, this store generates \$20 to 25 million in sales that address the City's annual sales leakage, more than \$50 million in Food and Beverage Store sales leakage would occur. This is not a material omission, as the consultant claims.

⁴ See <http://www.wholefoodsmarket.com/company-info/real-estate>, which also is attached.

⁵ See <http://investor.safeway.com/phoenix.zhtml?c=64607&p=irol-stores>, which also is attached.

⁶ We also submit that if a store is under-performing, it is not necessarily the case that the economy is to blame. Appellant does not address this possibility.

Honorable Mayor Barbara Halliday
Members of the City Council
c/o Miriam Lens, City Clerk
April 25, 2017
Page 5

of urban decay, appellant must perform acrobatics, following a shaky and improbable causal chain of events.

Appellant's late comments do not affect the City's determination that urban decay is unlikely to occur. Attaching credentials to a logically unsound argument does not transform such speculation into "substantial evidence," must less evidence that deconstructs the ample amount of fact-based analysis in the record that support's the City's conclusion.

Sincerely,

MILLER STARR REGALIA

A handwritten signature in blue ink, appearing to read "S. Marciniak", is positioned below the typed name.

Sean Marciniak

SRM:srm

Attachments: Letter from TJKM; Whole Foods and Safeway website printouts

cc: Leigha Schmidt, Senior Planner, City of Hayward (Leigha.Schmidt@hayward-ca.gov)
Michael S. Lawson, City Attorney, City of Hayward (Michael.Lawson@hayward-ca.gov)
Clients



April 25, 2017

Sean Marciniak
 Miller Starr Regalia
 1331 North California Boulevard
 Walnut Creek, CA 94596

Re: Lincoln Landing EIR

Dear Mr. Marciniak:

As you requested, here is information regarding comparative trip generation rates. According to the Institute of Transportation Engineers' *Trip Generation, 9th Edition*, the following rates apply:

Land Use	Daily Trips Per Thousand Square Feet (KSF)	A.M. Peak Hour Rate Trips per KSF	P.M. Peak Hour Rate Trips per KSF
Supermarket	102.24	3.40	9.48
Retail	42.70	0.96	3.71

As can be seen, the daily rate for supermarket is 2.4 times that of retail; in the a.m. peak the factor is 3.5 and in the p.m. it is 2.5.

Please contact me if there are any additional questions.

Very truly yours,

Chris D. Kinzel, P.E.
 Vice President

REAL ESTATE

Whole Foods Market has grown from a single, small natural and organic foods store to a chain recognized nationally and internationally for high standards and amazing quality. Some of our stores are largely unchanged from the early days of our company and are neighborhood fixtures. Our newer stores are larger and offer a greater selection of products, but we continue to respect the neighborhood to which we are moving and strive to become an integral part of the community. We like to think that it isn't just the food that makes shopping at Whole Foods a great experience, but the store itself is a part of the experience. The architecture, the location, and layout of the products available to our shoppers — every single store is unique.

If you have a retail location you think would make a good site for Whole Foods Market, Inc., please review the following guidelines carefully for consideration:

- Typically, 200,000 people or more in a 20-minute drive time
- 25,000-50,000 Square Feet
- Large number of college-educated residents
- Abundant parking available for our exclusive use
- Stand alone preferred, would consider complementary
- Easy access from roadways, lighted intersection
- Excellent visibility, directly off of the street
- Must be located in a high traffic area (foot and/or vehicle)

Please refer to our [Master Broker List](#) (XLSX) to find contact information. To submit a site for consideration, please send as much of the following information as possible:

- Photographs (or renderings if under development/construction)
- Site/Building plan
- Information about surrounding businesses
- Area demographics and/or neighborhood information

Suggest a Store

- [Master Broker List](#) (XLSX)
- [Suggest a Store](#)

WHOLE
HISTOR'

[Read our h](#)
[http://ww](http://www)
[info/whole](http://www)

STORES

[See our sto](#)
<http://ww>
[info/stores](http://www)



- [Grocery Delivery](#)
- [Gas Rewards](#)
- [My List](#)

No Store Selected
[Select A Store](#) | [Store Locator](#)

Welcome, Guest
[Sign In](#) | [Register](#)

Search By Keyword

- [Grocery Delivery](#)
- [Our Store](#)
- [Recipes & Meals](#)
- [Pharmacy & Nutrition](#)

[Weekly Ad](#)

Investor Relations

[Safeway at a Glance](#)

[Investor Information](#)

[Stock Information](#)

[Financial Reports](#)

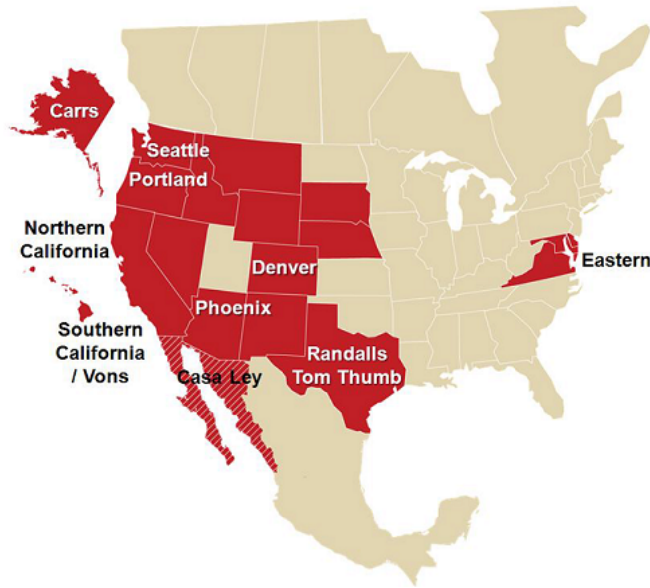
[Historical News Releases](#)

Related Links

[SEC Documents](#)

[Historical News Releases](#)

[Quarterly Earnings](#)



Investor Tools

- [HTML](#) [Investor Kit](#)
- [Print Page](#)
- [E-mail Page](#)
- [RSS Feeds](#)

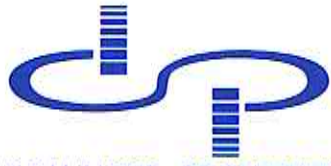
STORES BY DIVISION

Denver	128
Eastern	125
NorCal	266
Northwest	315
Phoenix	114
Randalls	107
Vons	<u>271</u>
TOTAL	1,326

STORES BY STATE

Alaska	28
Arizona	113
California	497
Colorado	107
District of Columbia	14
Delaware	4
Hawaii	21
Idaho	6
Maryland	65
Montana	12
Nebraska	5
Nevada	19
New Mexico	4
Oregon	99
Pennsylvania	1
South Dakota	3
Texas	107
Virginia	41
Washington	170
Wyoming	<u>10</u>
TOTAL U. S.	1,326

Kim Grover – Dollinger Properties



DOLLINGER PROPERTIES

April 25, 2017

Hon. Mayor Barbara Halliday
Members of the City Council
c/o Miriam Lens, City Clerk
City of Hayward
777 B Street
Hayward, CA 94541-5007
Miriam.Lens@hayward-ca.gov

Dear Mayor Halliday and Members of the City Council:

I am the Director of Marketing and Acquisitions for Dollinger Properties, the applicant for the Lincoln Landing project that you will be considering this evening. The project will bring thousands of new residents and shoppers to Hayward, serving as a catalyst for the economic revitalization of the Downtown area. The City's Planning Commission voted 6-1 to approve the project on February 23, 2017 and, four days later, this decision was appealed by Desirae Schmidt, represented by M.R. Wolfe & Associates, on environmental grounds.

By this letter, I wish to communicate what I believe to be the motive behind this appeal. It is with some hesitation that I write this letter, as it is my preference to focus on the merits of the project, but I believe the intentions behind the appeal should be day-lighted. The appellant, Ms. Schmidt, is an employee of the United Food and Commercial Works Local 5,¹ and this appeal appears to have been orchestrated in coordination with the union's goals. Specifically, it seems that the Lincoln Landing project is being attacked on environmental grounds in an effort to compel Dollinger Properties to either (1) prohibit the project from hosting a grocery market or (2) enter into a labor agreement with the UFCW Local 5 should a grocery store become a tenant. It does not appear that the appellant truly has concerns about impacts on the environment.

First, I would like to clarify that Dollinger Properties is not adverse to using union labor. In fact, in planning the Lincoln Landing project, we have entered into no less than four project labor agreements with local unions, including the International Brotherhood of Electrical Workers Local 595, UA Plumbers & Pipefitters Local 342, Sheet Metal Workers Local 104, and Sprinkler Fitters & Apprentices Local 483. But what the UFCW Local 5 is asking is unreasonable. Dollinger Properties cannot exclude a whole class of retailers, such as grocery markets, from

¹ This fact is readily verifiable by visiting the website <http://ufcw5.org/local-5-staff-2/>. Printed copies of these web pages and the other documents I've included in the footnotes below are all attached to this letter for your review.

establishing operations at the project, especially during a time when the retail industry is shrinking. For the same reasons, we cannot commit to use UFCW Local 5 for labor.

What follows is a brief account of the interwoven history of the project and my dealings with the UFCW Local, which show the reasoning behind why the Lincoln Landing project has been challenged:

- In early 2016, I was contacted by Mike Henneberry, the UFCW Local 5's Director of Communications & Politics and a member of the union's Executive Board, and John Nunes, the union's President.² All of us agreed to meet at the Starbucks, across the street from the Lincoln Landing project site, on February 2, 2016. In the course of the conversation, Mr. Nunes said the union had ensured a Sprouts would not open in nearby Castro Valley after bringing an environmental challenge to that project's approvals. The details of the union's challenges are described in multiple public sources.³ These websites indicate that the Castro Valley Sprout's project been attacked on CEQA grounds by M.R. Wolfe and Associates, acting on behalf of a Castro Valley resident and UFCW Local 5 Executive Board Member Cassandra Hunter. At the end of that meeting, Mr. Henneberry, Mr. Nunes and I agreed to keep in touch with respect to the Lincoln Landing project.
- Sometime before July 2016, the Lincoln Landing project underwent a scoping session before the City Planning Commission. Afterwards, on July 5, 2017, Mr. Henneberry contacted me by email, and attached, for my consideration, copies of three "labor peace/card check neutrality agreements" that the UFCW Local 5 negotiated with other developers in the Bay Area.⁴ He also asked that we reconvene in the future.
- The City Planning Commission considered the Lincoln Landing project at its meeting on February 23, 2017 and approved the project by a vote of 6-1. On February 27, 2017, the City received an appeal from M.R. Wolfe & Associates, acting on behalf of union employee Ms. Schmidt. The appeal letter alleged the Lincoln Landing project violated CEQA for a number of reasons.
- On March 22, 2017, I met again with Mr. Henneberry and Mr. Nunes at the Starbucks across the street from the project site. Greg Bonato, of the International Brotherhood of Electrical Workers Local 595, also attended as an observer. At this meeting, Mr. Nunes became irate, and accused me of not working with him, and insisted that I sign an agreement with the union, prohibiting the establishment of any grocery use at the site. I informed Mr. Nunes that I was meeting with him now in the spirit of cooperation, but that I could not make such an agreement, as the retail sector was not doing well and that, by limiting who could operate a store at the project site, I was threatening its economic viability. At that point, Mr. Nunes said that he would beat the project up and drag out the process for years. We left the meeting without any agreement.
- Around April 10, 2017, I understand the City received a letter from M.R. Wolfe & Associates, asking that the appeal of the Planning Commission's approval of the project, scheduled for April 25, 2017, be continued to a subsequent date. I also understand that, on April 12, 2017, the Hayward City Attorney sent M.R. Wolfe & Associates a letter

² The offices that these gentlemen hold are readily verifiable by visiting the website <http://ufcw5.org/local-5-officers/>.

³ Please see, for instance, <http://castrovalleymatters.org/2016/04/27/sprouts-project-cancelled/>, <http://castrovalleymatters.org/2016/05/08/how-ceqa-scuttles-projects-like-sprouts-even-when-its-not-about-the-environment/>, and

⁴ This email and the attached agreements are attached to this letter.

indicating that the City would consider continuing the hearing if the appellant and Dollinger Properties stipulated to do so, and provided an explanation of why the hearing should be continued.

- That same day, I received a voicemail message from Mr. Henneberry indicating that “we put a call into the city manager to see if we can get the hearing for the 25th kicked for a couple of weeks” but that, before considering such a request, the City wanted the developer to agree to a continuance. Accordingly, Mr. Henneberry asked if I would agree to postpone the appeal hearing a few weeks while the union and Dollinger Properties tried to work things out, and so that we could avoid a “big hullabaloo” on the 25th.
- After conferring with Dave Dollinger, we decided not to agree to a postponement. We felt that, with weeks remaining before the hearing, there would be plenty of time to work things out with the UFCW Local 5, if it was willing to show some flexibility in its terms.

The foregoing events summarize my experiences with the appellant, the UFCW Local 5, and M.R. Wolfe & Associates in the matter at hand, but I've since discovered that these three parties have coordinated efforts before. In 2012, M.R. Wolfe & Associates jointly represented Ms. Schmidt and the Union in challenging a grocery store proposed at 2480 Whipple Road in the City of Hayward.⁵ In that challenge, the parties challenged the grocery store on land use and CEQA grounds, submitting appeal letters on April 4, 2012⁶ and May 21, 2012.⁷

Based on the above, I think it is reasonable to conclude that the appellant here does not truly have any concerns that the Lincoln Landing project will cause any environmental impacts, but that the present challenge is meant to compel Dollinger Properties to enter into a labor agreement with the UFCW Local 5. I do not want this issue to dominate the City Council's consideration of the Lincoln Landing project — rather, I merely wished to clarify the record.

We anticipate that the Lincoln Landing project will revitalize Downtown Hayward, and that the project EIR comprehensively and adequately accounted for the Project's environmental footprint and, where legally required, imposed mitigation measures that sufficiently addressed any impacts.

Thank you for consideration of these matters,



Scott Athearn
Director of Acquisitions

Attachments

⁵ Please see the February 3, 2012 appeal of Building Application Numbers BI-2011-0885/0989/0990 and Conditional Use Permit Number PL-2004-0039.

⁶ A copy of this letter is attached.

⁷ A copy of this letter is attached.




[HOME](#)
[ABOUT US](#)
[UNION OFFICES](#)
[UPDATE YOUR CONTACT INFORMATION](#)
[LOCAL 5 OFFICERS](#)
[LOCAL 5 STAFF DIRECTORY](#)
[DEPARTMENTS](#)
[MEMBER RESOURCES](#)
[MEETINGS](#)
[THEME PARK & MOVIE TICKETS](#)
[UFCW 5 SCHOLARSHIP PROGRAM](#)

LOCAL 5 STAFF DIRECTORY

WELCOME TO UFCW LOCAL 5 DIRECTORY

(Below is a list of all UFCW Local 5 staff with their phone number and email address)

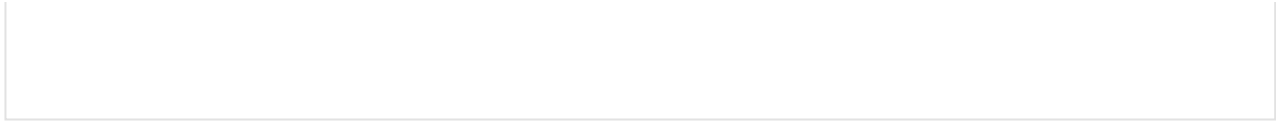
Alameda County – Hayward

Tiffany Hawkins	510-583-8405	thawkins@ufcw5.org
John Bueno	510-583-8425	jbueno@ufcw5.org
Aida Carabes	510-583-8403	acarabes@ufcw5.org
Marla Donati	510-583-8419	mdonati@ufcw5.org
Anne Ellis	510-583-8422	aellis@ufcw5.org
Maggie Feder	510-583-8424	mfeder@ufcw5.org
Melinda Garcia	510-583-8414	mgarcia@ufcw5.org
Pat Gordillo	510-583-8408	pgordillo@ufcw5.org

Paula Harley	510-583-8400	pharley@ufcw5.org
Mike Henneberry	510-583-8420	mhenneberry@ufcw5.org
Violet Perez	510-583-8406	vperez@ufcw5.org
Melodie Lum-Sasada	510-583-8430	msasada@ufcw5.org
Jami Moore	510-583-8421	jmoore@ufcw5.org
John Nunes	510-583-8410	jnunes@ufcw5.org
Roger Rivera	510-583-8418	rrivera@ufcw5.org
Desirae Schmidt	510-583-8411	dschmidt@ufcw5.org
Angela Jo Wilmes	510-583-8423	ajoe@ufcw5.org
Julian Perez	510-583-8426	jperez@ufcw5.org
Yolanda Sanchez	510-583-8401	ysanchez@ufcw5.org
Contra Costa County – Martinez		
Lucia Cardoso	925-269-2408	lcardoso@ufcw5.org
Alyse Davidson	925-269-2422	adavidson@ufcw5.org
Alfredo Delgado	925-269-2417	adelgado@ufcw5.org
Anne Ellis	925-269-2415	aellis@ufcw5.org
Beverly Flemming	925-269-2410	bflemming@ufcw5.org
Jack Landes	925-269-2426	jlandes@ufcw5.org
Bambi Marien	925-269-2421	bmarien@ufcw5.org
Oscar Orozco	925-269-2420	oorozco@ufcw5.org
John Rossi	925-269-2445	jrossi@ufcw5.org
Amy Segura	925-269-2407	asegura@ufcw5.org
Teresa Zuniga	925-269-2409	tzuniga@ufcw5.org
Kenny Scanlon	925-269-2442	kscanlon@ufcw5.org
Eureka		
John Frahm	707-442-1752 #1752	jfracm@ufcw5.org
Kevin Lennox	707-442-1751	klennox@ufcw5.org

	#1751	
Novato		
Deborah Chesbrough	415-761-6003 #6003	dchesbrough@ufcw5.org
Pam Danniell	415-761-6002 #6002	pkramer@ufcw5.org
Rose Mossi	415-761-6001 #6001	rmossi@ufcw5.org
San Francisco		
Katie Johnston	415-675-7640 #7640	kjohnston@ufcw5.org
Mike Jones	415-675-7641 #7641	mjones@ufcw5.org
Greg McInnis	415-675-7642 #7642	gmcinnis@ufcw5.org
South San Francisco		
Margarita Alvarez	650-871-3538	malvarez@ufcw5.org
Elise Blazek	650-871-3508	eblazek@ufcw5.org
Yadira Felix	650-871-3556	yfelix@ufcw5.org
Mike Frenna	650-871-3539	mfrenna@ufcw5.org
Joanne Los Banos	650-871-3514	jlosbanos@ufcw5.org
Irene O'Hair	650-871-3524	iohair@ufcw5.org
Charlene Luchini	650-877-3540	cluchini@ufcw5.org
Lucinda Roman	650-871-3522	lroman@ufcw5.org
Norma Mendoza	650-871-3531 #3531	nmendoza@ufcw5.org
Julian Perez	650-871-3526	jperez@ufcw5.org
Santa Clara County – San Jose		
Nancy Anderson	408-625-5630	nlanderson@ufcw5.org
Angie Figueroa	408-625-5633	afigueroa@ufcw5.org
Jamie Cortez	408-625-5635	jcortez@ufcw5.org

Mia Candelaria	408-625-5646	mflores@ufcw5.org
Gladis Gallardo	408-625-5645	ggallardo@ufcw5.org
Ann Garcia	408-625-5641	agarcia@ufcw5.org
Monica Gutierrez	408-625-5617	mgutierrez@ufcw5.org
Claudia Herrera	408-625-5612	cherrera@ufcw5.org
Ana Lopez	408-625-5628	alopez@ufcw5.org
Ruth Marx	408-625-5640	rmarx@ufcw5.org
Laurie Mesa	408-625-5624	lmesa@ufcw5.org
Carl Nakano	408-625-5615	cnakano@ufcw5.org
Letresa Perkins	408-625-5607	lperkins@ufcw5.org
Donna Robles	408-625-5622	drobles@ufcw5.org
Jeff Soares	408-625-5636	jsoares@ufcw5.org
Todd Tamone	408-625-5611	ttamone@ufcw5.org
Maria Torres	408-625-5634	mtorres@ufcw5.org
Dustin Tyssen	408-625-5593	dtyssen@ufcw5.org
Hector Moreno	408-625-5618	hmoreno@ufcw5.org
Amber Marx	408-625-5610	amarx@ufcw5.org
Christina Escobar	408-625-5616	cescobar@ufcw5.org
Glenda Villalta	408-625-5632	gvillalta@ufcw5.org
Letressa Perkins	408-625-5607	lperkins@ufcw5.org
Salinas		
Efrain Aguilera	408-625-5592	eaguilera@ufcw5.org
Ysenia Andrada	408-625-5642	yandrada@ufcw5.org
Blas Barroso	408-625-5598	bbarroso@ufcw5.org
Juan Cervantes	408-625-5649	jcervantes@ufcw5.org
Della Garcia	408-625-5588	dgarcia@ufcw5.org
Pete Maturino	408-625-5595	pmaturino@ufcw5.org
Alma McAfee	408-625-5590	amcafee@ufcw5.org
Cindy Mendoza	408-625-5643	cmendoza@ufcw5.org



UNION OFFICES

HEALTH AND WELFARE

MEETINGS

UFCW5 Strength & Solidarity




[HOME](#)
[ABOUT US](#)
[UNION OFFICES](#)
[UPDATE YOUR CONTACT INFORMATION](#)
[LOCAL 5 OFFICERS](#)
[LOCAL 5 STAFF DIRECTORY](#)
[DEPARTMENTS](#)
[MEMBER RESOURCES](#)
[MEETINGS](#)
[THEME PARK & MOVIE TICKETS](#)
[UFCW 5 SCHOLARSHIP PROGRAM](#)

LOCAL 5 OFFICERS

ADMINISTRATION

JOHN NUNES	PRESIDENT
JACK LANDES	SECRETARY-TREASURER
TAMARA PERINE	RECORDER

LOCAL 5 EXECUTIVE BOARD

CARL NAKANO	MARLA DONATI
CARMEN SOTO	CASSANDRA HUNTER
CLAUDETTE ALDRICH	JOHN BUENO
DANIEL COLLINS	WILLIAM BEARRY

Join Our Mailing List for Monthly E-Newsletter!

Join our Mailing list for our monthly E-Newsletter, important member updates, events and actions and more!

First Name

Last Name


Store

Example: Macy's

DELLA GARCIA	GENENE CAPITO
DOROTHY SMITH	DOREEN MARTINEZ
EDDIE NODAL	RICK OTOMO
FRANK TALLERICO	DUSTIN TYSEN
MIKE HENNEBERRY	OSCAR AVELLAN
PETE MATURINO	MICHAEL FRENNA
RICK GOMEZ	CHARLENE LUCHINI
ROBERT SIIRILA	JOHN FRAHM
TRACY LYNESS- THOMPSON	MIKE JONES
VICENTE HERRERA	MATTHEW REISING
OSCAR OROZCO	

Share this:
 Facebook

 Twitter

 Email

 Google

 Pinterest

 Print

Email (required) *

By submitting this form, you are granting: UFCW LOCAL 5, 28870 Mission Blvd, Hayward, CA, 94544, permission to email you.

You may unsubscribe via the link found at the bottom of every email. (See our Email Privacy Policy

(<http://constantcontact.com/legal/privacy-statement>) for details.)

Emails are serviced by Constant Contact.

**UFCW Local 5
Twitter Feed**

[ABOUT CASTRO VALLEY MATTERS](#)[BLOG ROLL](#)[UPCOMING EVENTS](#)[CIVIC TOOLKIT](#)[ELECTED MAC](#)[PLACEMAKING AND PUBLIC ART](#)[JOIN CVM TODAY!](#)

Sprouts Project Cancelled

APRIL 27, 2016 BY [MICHAEL KUSIAK](#) — [25 COMMENTS](#)



Sprouts is no longer coming to Castro Valley, according to an article published in today's *Castro Valley Forum*. The developer of the project, Kin Properties, Inc., cited a recently filed environmental protest against the project for cancelling the project, according to the *Forum*.

Sprouts would have been located at the current site of Rite-Aid on Castro Valley Boulevard. Rite-Aid would have occupied a smaller, renovated space at the property along with a third

retailer to be determined.

Public interest law firm M.R. Wolfe and Associates of San Francisco filed the protest under the California Environmental Quality Act (CEQA) and had previously filed an appeal to the Alameda County Planning Commission in March. The appeal, filed on behalf of Castro Valley resident Cassandra Hunter and denied by the Commission, asserted that the new store "would constitute a substantial intensification of the existing land use, generating significant new impacts relating to traffic, air quality, noise and/or urban decay."

No discernible public opposition to the project has been encountered during the planning process, on social media, or in letters to the Castro Valley Forum; however, residents in the neighborhood surrounding the Rite-Aid property received flyers from opponents of the Sprouts project.

[The International Brotherhood of Teamsters has targeted Sprouts for its labor practices in previous store openings.](#)

UPDATE: Supervisor Nate Miley's office provided this statement about the cancelled Sprouts project:

"Supervisor Miley is open and willing to meet with the property owner and the appellant to work out the issues so that the project can continue. He supports Sprouts Farmers Market coming to Castro Valley. The likelihood that another project can happen at this site is high, but he would still like to have Sprouts Farmers Market at the location."

FILED UNDER: [ECONOMIC DEVELOPMENT](#), [FEATURED STORY](#), [HEADLINE STORY](#), [UNCATEGORIZED](#)

TAGGED WITH: [RITE-AID](#), [SPROUTS](#)

About Michael Kusiak

Michael is a founding member and President of Castro Valley Matters. He works at the University of California, Office of the President. He earned his BA in German and Economics at the University of Richmond and completed his MA in European Studies at Washington University in St. Louis. He has worked in a variety of research administration and policy roles at the University of California. Much of his current work focuses on developing applications to streamline the policy decision making process. He lives in Castro Valley with his two young sons and wife.

ABOUT CASTRO VALLEY MATTERS

BLOG ROLL

UPCOMING EVENTS

CIVIC TOOLKIT

ELECTED MAC

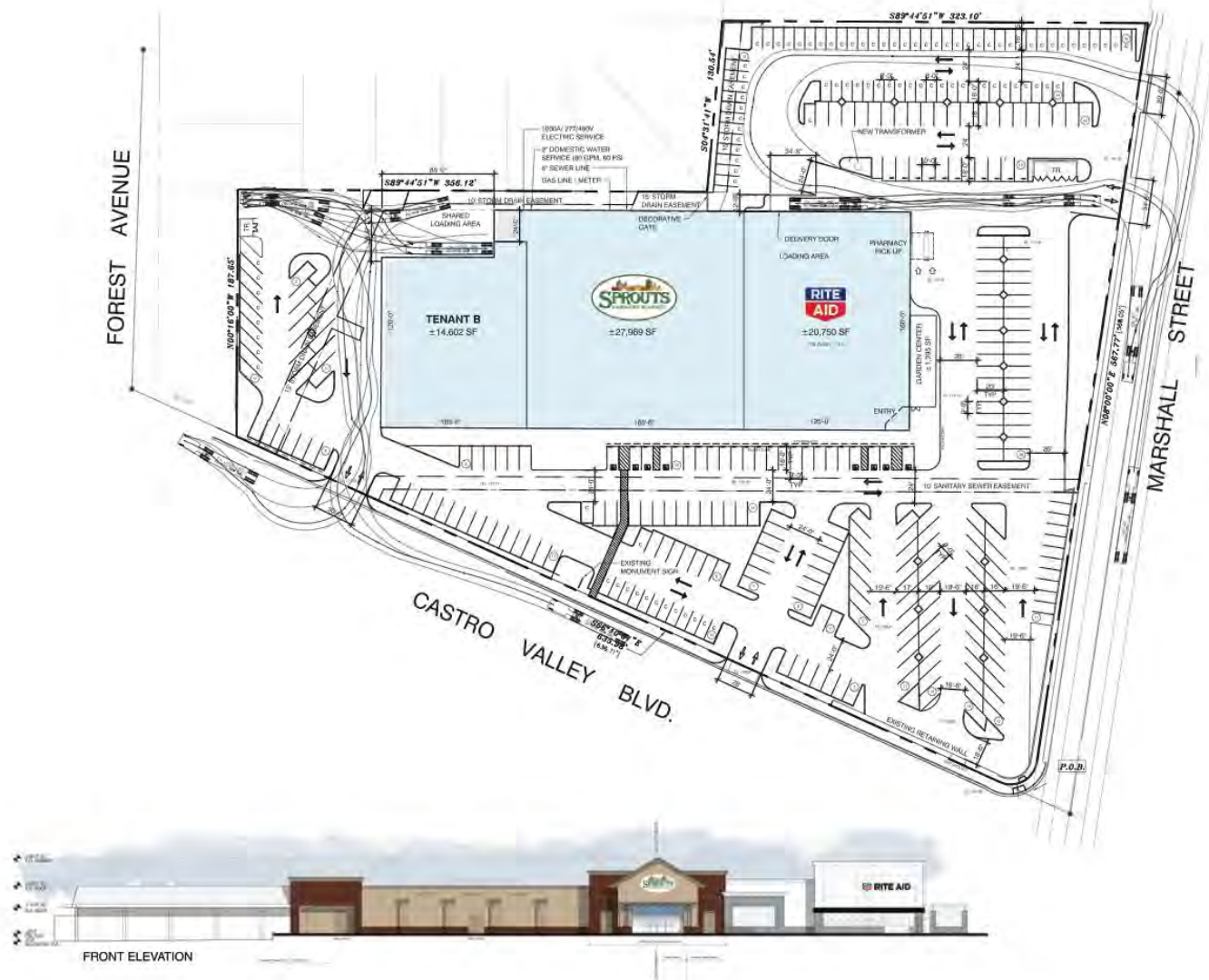
PLACEMAKING AND PUBLIC ART

JOIN CVM TODAY!



How CEQA scuttles projects like Sprouts, even when it's not about the environment

MAY 8, 2016 BY [MICHAEL KUSIAK](#) — [3 COMMENTS](#)



A rendering of a remodeled, smaller Rite-Aid along with a Sprouts and a third unnamed retailer at 3848 Castro Valley Boulevard.

A half-empty Rite-Aid on Castro Valley Boulevard was about to be revitalized into a shopping center featuring a Sprouts grocery store. Now a law originally envisioned to protect California's environment may scuttle the transformation of the eastern gateway to Castro Valley's business district.

Enacted in 1970, the California Environmental Quality Act (CEQA) "requires state and local agencies to identify the significant environmental impacts of their actions and to avoid or mitigate those impacts, if feasible," [according to the California Natural Resources Agency](#). While CEQA was meant to ensure that the environmental impact of land-use projects be considered before their development, it is now regularly used to battle non-environmental disagreements.

Sprouts planning timeline

- [A Planning Department Staff Report prepared for the Castro Valley Municipal Advisory Council \(MAC\)](#) in February 2016 found the Sprouts project to be "Categorically Exempt from the requirements of the California Environmental Quality Act; Article 19, Section 15301, Class 1, Existing Facilities."
- [The MAC approved the project at its February 8 meeting.](#)
- Planning Director Albert Lopez approved the site review of the project on February 10.
- [In a February 16 letter on behalf of Castro Valley resident Cassandra Hunter to the Alameda County Planning department](#), Mark R. Wolfe, attorney at [M. R. Wolfe & Associates, P.C.](#), that specializes in CEQA litigation, disagreed that the site was exempt from CEQA environmental review requirements writing that "the subdivision of a single pharmacy building to accommodate three retail tenants, including a grocery store, constitutes a substantial intensification of the existing land use that will generate significant new traffic, air quality noise, and/or urban decay impacts as a result. An initial study leading either to a negative declaration or environmental impact report is therefore required under CEQA before the project may lawfully be approved." Hunter is a member of the [Executive Board of United Food and Commercial Workers \(UFCW\) Local 5](#), and, according to a [December 2015 UFCW Local 5 newsletter](#), employed by Lucky.
- The Alameda County Planning Commission denied Hunter's appeal on March 21. [On March 28, Wolfe sent another letter on behalf of Hunter](#) "to appeal the March 21, 2016 action by the Alameda County Planning Commission denying an appeal of the February 10, 2016 Planning Director's approval of the above-referenced Site Development Review Application." In that letter, Wolfe asserted that a "negative declaration or environmental impact report is therefore required under CEQA before the project may lawfully be approved." He also stated that neither Hunter or his office received timely notice of the public hearing of the appeal before the Planning Commission.

Sprouts a focus of organized labor

UNCW Local 1000, based in Oklahoma and North Texas, [writes on its website](#):

“ Sprouts Farmers Market workers deserve better. Sprouts opens new stores and pumps wages up, often luring away unsuspecting workers from union and nonunion competitors. Sprouts then caps wages for these workers or treats them so badly that they quit, never realizing they were tricked into helping Sprouts get off the ground. It's a vicious cycle.

Sean Marciniak

From: Scott A. Athearn <Scott@dollingerproperties.com>
Sent: Monday, April 17, 2017 5:35 PM
To: Sean Marciniak
Subject: FW: Hayward Mervyns Site-Update Meeting
Attachments: CCNA-Final.docx; UFCW CCNA 15 1616 Executed.pdf; 2016_07_05_12_47_22.pdf

From: Mike Henneberry [<mailto:mhenneberry@ufcw5.org>]
Sent: Tuesday, July 05, 2016 1:03 PM
To: Scott A. Athearn
Cc: 'John Nunes'
Subject: Hayward Mervyns Site-Update Meeting

Hi Scott:

At our last meeting at Starbucks we all agreed that we'd circle around again as your plans for the Hayward Mervyns site were a little more fleshed out. I left a message on your cellphone this morning about this. Since the project has gone through a planning commission scoping session it seems like soon would be a good time to reconvene. Please contact me as soon as you are able to set up a date to meet.

I've attached copies of labor peace/card check neutrality agreements Local 5 negotiated with Lennar in San Francisco and with SunCal and Ernst Development (SunCal's successor) in Alameda. These are not completely on point to Hayward but will give you the gist of how the agreements work.

I look forward to speaking with you soon to set up a meeting.

Sincerely,

Mike Henneberry
Communications & Political Director
UFCW Local 5
28870 Mission Blvd.
Hayward, CA 94501 USA
www.ufcw5.org

Memorandum of Agreement – Hospitality/Retail at Alameda Point

1. This Agreement is made this ____ day of _____, ____ by and between [SCC Alameda, LLC](#) (“Developer”) and UNITE HERE Local 2850 and UFCW Local 5 (each “the Union” and collectively “the Unions”). “Developer” shall be deemed to include any person, firm, partnership, corporation, joint venture or other legal entity substantially under the control of the Developer or one or more principal(s) of the Developer or a subsidiary of the Developer, or any person, firm, partnership, corporation, joint venture or other legal entity which substantially controls the Developer. Developer is engaged in the development of a mixed-use project commonly known as Alameda Point (the “Project”) to be located in the City of Alameda, State of California. The Project covered by this Agreement may include a hotel and/or hostel and/or restaurant and/or retail store (collectively, the “Operations,” and each an “Operation”). Many jobs will be created in the process. Both of the Unions are interested in organizing the Employees of the various Operations. “Employees” means all employees of an Operator at the Project, but does not include office clerical employees, guards or managerial or professional employees as defined under the National Labor Relations Act. “Operator” means any person, firm, proprietorship, partnership, corporation, joint venture or other form of business organization which has or acquires any right to operate an Operation at the Project, including the Developer itself if it operates an Operation at the Project.

2. In consideration for Developer's covenants made herein to establish conditions favorable for employees of the enterprises at the Project to choose whether to be represented by labor organizations in an atmosphere without delay, intimidation or labor-management conflict, each Union promises and covenants for itself and on behalf of its members that (A) it will not oppose the Project, and (B) it will not engage in any strike, picketing, or boycott with respect to the Project as a whole or with respect to any Operation of said Project, provided that this promise shall terminate immediately and without notice with respect to any unit of Employees in such an Operation upon the recognition of any union other than a Union signatory to this Agreement as the exclusive collective bargaining representative for the Employees in that unit or any part of it, or upon the conclusion of a collective bargaining agreement between an Operator and the Union for that unit. The Unions and the Developer will not file any charges with the National Labor Relations Board or commence any other action in law or equity in connection with any act or omission occurring within the context of this agreement; arbitration under this Agreement shall be the exclusive remedy.

3. (a) Developer shall give the Unions written notice of its intent to solicit bids or proposals from any potential Operator(s) at the time of the solicitation, and it shall inform the Unions in writing of the identity and contact information of any potential Operator which has submitted a bid or proposal or has expressed an interest in doing so. Developer shall incorporate the entirety of subsections (b), (c), (d), (e), (f) and (g) of section 3 of this Memorandum of Agreement in any existing or future purchase and sale contract, lease, sublease, management agreement, operating agreement, franchise agreement or any other agreement or instrument disposing any interest in a Project and shall obligate any person who has taken or takes such interest, and any and all successors and assigns of such person, to in turn incorporate said subsections in any further purchase and sale contract, lease, sublease, operating agreement, franchise agreement or any other agreement or instrument disposing any interest in the

Project. Developer shall enforce such provisions, or at its option, assign its rights to do so, to the Union. The terms "Operator," "Operation," and "Project" shall be modified in each such agreement or instrument to conform to the terminology in such agreement or instrument but retain the same meaning as in this Agreement. The Developer shall provide to the Unions, upon request, copies of those portions of any such agreement or instrument showing the parties thereto and that it has been duly executed, the effective date(s) and term(s), and that the provisions required by this Agreement have been included therein.

(b) The duly authorized representatives of the Union seeking to communicate with employees of the Operator in any unit consisting of Employees in a unit consisting of one or more of the following job groups:

Retail store operations, hotel and hostel housekeeping (including room cleaners and housepersons), food & beverage (including kitchen employees, servers, bussers, bartenders, cashiers and hosts), hotel and hostel service (including bell persons, door persons, front desk, telephone operators, and concierges), hotel and hostel-connected recreation services (including spa, pool, and fitness center employees), and hotel and hostel-connected laundry, parking, or retail (including gift shop employees). However, the above shall not include any freestanding retail operation (including coffee shops) of less than 5000 square feet unless other stores of such retailer are already covered by labor agreements with UNITE HERE or UFCW.

(hereinafter referred to as Employees) shall be permitted to enter upon the premises of the Project for that purpose, provided that such representatives shall only communicate with Employees on the Employees' non-work time and in places that are non-work areas for them and shall not interfere with the orderly operations conducted by the Operator.

(c) Within ten (10) days following receipt from the Union of written notice of intent to organize a unit of an Operator's Employees, the Operator shall furnish the Union with a complete list of Employees in the unit, including both full and part-time Employees, showing their place of employment, job classification, departments, phone numbers and home addresses. Thereafter, the Operator shall provide updated complete lists monthly.

(d) The Operator will take a positive approach to the unionization of Employees. The Operator shall not take any action or make any statement that will directly or indirectly state or imply the Operator's opposition to or support for the selection by Employees of a collective bargaining representative, or preference for or opposition to any particular union as a bargaining agent.

(e) If the Union requests recognition as the exclusive collective bargaining agent for employees in a unit as defined above, the arbitrator identified in paragraph (g), or another person mutually acceptable to the Operator and the Union, will conduct a review of employees' authorization cards submitted by the Union in support of its claim to represent a majority of such employees. If that review establishes that a majority of such employees has designated the Union as their exclusive collective bargaining representative, the Operator will recognize the Union as such representative of such employees. The Operator will not file a petition with the National Labor Relations Board for any

election in connection with any demands for recognition provided for in this agreement or file a notice of voluntary recognition with the NLRB, so that the decision of when and whether to provide such notice is within the sole discretion of the Union. If the Union notifies the NLRB of recognition pursuant to this Agreement, the Operator shall post the NLRB notice of recognition in accordance with the instructions from the NLRB immediately upon receipt of the notice. The Operator agrees that if any other person or entity petitions the National Labor Relations Board for any election as a result of or despite recognition of the Union pursuant to this subsection, (a) the Operator will join in any request by the Union that the NLRB dismiss the petition on grounds of recognition bar or, if the Operator and the Union have agreed to a collective bargaining agreement covering Employees at the time the petition is filed, on grounds of contract bar, (b) if the petition is not dismissed, the Operator shall agree to a full consent election agreement under Section 102.62(c) of the NLRB's Rules and Regulations, and (c) the Operator shall at all times abide by the provisions of this Agreement. The Operator will not file any charges with the National Labor Relations Board or commence any other action in law or equity in connection with any act or omission occurring within the context of this agreement; arbitration under Paragraph (g) shall be the exclusive remedy.

(f) If the Union is recognized as the exclusive collective bargaining representative as provided in this subsection, negotiations for a collective bargaining agreement shall be commenced immediately and conducted diligently and in good faith to the end of reaching agreement expeditiously. If the Union and Operator are unable to reach agreement on a collective bargaining agreement within ninety (90) days after recognition pursuant to paragraph (e), all unresolved issues shall be submitted for resolution to final and binding arbitration pursuant to paragraph (g) below. The arbitrator identified in paragraph (g) shall be the arbitrator, unless another arbitrator is mutually agreed to by the parties. This subsection shall apply only to the first collective bargaining agreement and not to any successor or replacement agreements.

(g) The parties agree that any disputes over the interpretation or application of this Agreement shall be submitted to expedited and binding arbitration, with John Kagel serving as the arbitrator. If he is unavailable to serve within thirty (30) calendar days of notification then Gerald McKay, or another mutually acceptable person, shall be the arbitrator. The arbitrator shall have the authority to determine the arbitration procedures to be followed. The arbitrator shall also have the authority to order the non compliant party to comply with this Agreement, and the court shall also have this equitable authority in order to preserve the efficacy of the arbitral remedy. The United States District Court for the Northern District of California shall have exclusive jurisdiction in any action concerning arbitration under this Agreement. The parties hereto agree to comply with any order of the arbitrator, which shall be final and binding, and furthermore consent to the entry of any order of the arbitrator as the order or judgment of the court, without entry of findings of fact and conclusions of law. Any party unsuccessfully challenging its duty to arbitrate or to comply with an arbitral award shall be liable for the other party's attorneys fees and other expenses of litigation.

4. This Agreement shall be in full force and effect with respect to each Operation from the date it is fully executed on behalf of the Developer and the Union until three years from the full public opening of each

Operation subject to the provisions of Section 2. This Agreement is not otherwise revocable even if it takes many years for the first or last opening to occur.

5. In the event that the Developer sells, transfers, or assigns all or any part of its right, title, or interest in the Project or assets to be used in the Project, or in the event there is a change in the form of ownership of the Developer, the Developer shall give the Union reasonable advance notice thereof in writing, and the Developer further agrees that as a condition to any such sale, assignment, or transfer, the Developer will obtain from its successor or successors in interest a written assumption of this Agreement and furnish a copy thereof to the Union, in which event the Developer shall be relieved of its obligations hereunder to the extent that it fully transferred its right, title, or interest.

6. The provisions of section 3(b)-(g) of this Agreement may be modified in a bona fide agreement between an Operator and the Union, but only if the modification is explicitly set forth in such agreement in clear and unambiguous terms.

7. Any disputes over the interpretation or application of this Agreement shall be submitted to expedited and binding arbitration pursuant to the procedure in paragraph 3(g).

[SCC Alameda, LLC](#)

By: _____

Its: _____

Date: _____

UNITE HERE Local 2850

Date: _____

By: _____

UFCW Local 5

Its: _____

By: _____

Its: _____

Date: _____

CORE COMMUNITY BENEFITS AGREEMENT

**HUNTERS POINT SHIPYARD / CANDLESTICK POINT INTEGRATED
DEVELOPMENT PROJECT**

This CORE COMMUNITY BENEFITS AGREEMENT (this "Agreement" or this "CCBA") is dated as of May 30, 2008 (the "Effective Date") by and between LENNAR COMMUNITIES, INC., a California corporation ("Lennar Communities"), and LENNAR – BVHP, LLC, a California limited liability company ("Lennar BVHP" and together with Lennar Communities, "Lennar" or "Developer"); and the SAN FRANCISCO LABOR COUNCIL, an unincorporated association maintaining nonprofit status as a 501(c)(5) ("SFLC"); THE SAN FRANCISCO ORGANIZING PROJECT, a California nonprofit corporation ("SFOP"); and SAN FRANCISCO ACORN, the local chapter of the Association of Community Organizations for Reform Now, an Arkansas nonprofit corporation ("SF-ACORN").

RECITALS

A. Lennar BVHP and Lennar Communities entered into the ENA with the Agency. The ENA contemplates that Developer will work with the Agency to: (i) plan for the redevelopment of the Project Site; (ii) enter into the Term Sheet; and (iii) following the approval of the Term Sheet, negotiate and enter into the DDA for the conveyance, management and redevelopment of the Project Site. As a part of such planning, the ENA envisions that Developer will work with the CAC and the PAC to plan for the community benefits to be provided as a part of the Project to ensure that the revitalization of the Project Site is in the best interest of the BVHP residents, businesses and community organizations.

1010, B. In furtherance of that community planning, the Parties intend to work with the CAC, the PAC and the Agency to achieve a job and housing ladder that ensures that the Project provides the maximum feasible benefit to the BVHP community while preserving the Project's essential financial feasibility. Having conducted extensive review of the financial feasibility of the Project and having worked with the City, the Agency, the CAC, the PAC and numerous other community stakeholders, the Parties believe that the community benefits outlined in this CCBA provide maximum feasible benefits to the BVHP community in relation to the benefit areas contained herein.

C. Accordingly, the Parties desire to continue to work with the CAC, the PAC, the Agency and the City to advocate for the inclusion of the commitments of this CCBA in the Term Sheet, the DDA and other operative agreements related to the development of the Project on the Project Site. The Parties are entering into this agreement to establish the commitments of the Parties to each other with respect to the Project.

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

ARTICLE 1 DEFINITIONS

As used in this CCBA, the following capitalized terms shall have the following meanings.

"60-Day Cure Period" is defined in Section 10.4.2.

"Affordable" means with respect to a residential dwelling, a monthly rent or purchase price, as applicable, which is consistent with the guidelines set from time to time by the Mayor's Office of Housing, of the City.

"Affordable Housing Table" is defined in Section 2.1.

"Affordable Housing Unit" means a residential dwelling unit, offered for sale or rent, as applicable, which is Affordable to those in the AMI ranges specified in the Affordable Housing Table.

"Agency" means the Redevelopment Agency of the City and County of San Francisco, a public body, corporate and politic, of the State of California.

"Agreement" is defined in the introductory paragraph hereto.

"Alice Griffith" means the Alice Griffith Housing Project (also known as Double Rock) located in BVHP.

"AMI" means the median income for the City, as calculated by the Mayor's Office of Housing using data from HUD, and adjusted for household size. If data from HUD specific to the City is unavailable, AMI may be calculated by the Mayor's Office of Housing using other publicly available and credible data and adjusted for household size.

"Applicable Requirements" means (i) all of the provisions of this Agreement except Section 2.2 (Community First Housing Fund), Section 2.5 (Alice Griffith Construction), Section 2.6 (Alice Griffith Resident Relocation Assistance), Section 3.1 (Workforce Development Fund Commitment) and Section 6.1 (Implementation Committee) and (ii) any of the provisions of this Agreement referenced in clause (i) above to the extent that Developer and a Developer Successor elect in the Assumption Agreement executed by them to cause the Developer Successor to assume and be subject to the same.

"Approved Foundation" means the San Francisco Foundation, the Walter and Elise Haas Fund, the Evelyn and Walter Haas, Jr. Fund, the Tides Foundation or any other foundation that is mutually agreed to in writing by the Lead Organizations and Developer.

"Assumption Agreement" shall have the meaning set forth in Section 7.2.

"BVHP" means the area of the City contained in zip code 94124.

"CAC" means the Hunters Point Shipyard Citizen's Advisory Committee.

"Candlestick Point" shall mean the "Candlestick Point" property as such term is described in the ENA, including Exhibit A-2 thereto.

"CCBA" is defined in the introductory paragraph hereto.

"Certificate of Preference Holders" means those holding a residential Certificate of Preference issued by the Agency.

"City" means the City and County of San Francisco, and any of its departments and/or agencies.

"City Card Check Policy" is defined in Section 4.1.

"Community First Housing Fund" means a trust administered by an Approved Foundation. Such fund shall be formed and managed as provided in Section 2.2 and Section 9.1 hereof.

"Community First Housing Fund Contribution" is defined in Section 2.2.1.

"Complete" or **"Completed"** when used with respect to a residential dwelling unit means that a certificate of occupancy has been issued for such unit.

"Critical Project Event" means any of the following: (i) the conduct and completion of the environmental remediation on the Shipyard or any significant portion thereof by the United States Department of the Navy; (ii) the date on which Developer has access to the site of the football stadium at Candlestick Point for the purpose of demolition and site preparation, as set forth in the Term Sheet; (iii) the receipt of any significant entitlement or consent contemplated by the Term Sheet from a public entity necessary to the anticipated development and construction of the Project beyond the time contemplated in the Term Sheet; and (iv) the inability to obtain customary financing (including tax increment and private financing) for any significant portion of the Project at the time and in the amount contemplated in the pro forma financial information for the Project presented to the Agency and the Mayor's Office of the City at the time that the Term Sheet is approved by the Mayor's Office.

"DA" shall mean a statutory development agreement in accordance with Government Code Sections 65865 through 65869.5 between the City and Developer, regarding development on the Project Site, as such agreements may be amended from time to time.

"DDA" shall mean the disposition and development agreement contemplated by the ENA.

"Developer" is defined in the introductory paragraph hereto.

“Developer Successor” means any entity other than a Permitted Transferee that is a successor in interest or assign of Developer to all or any portion of Developer’s interest in this Agreement, the ENA, DDA or all or any portion of the Project, including without limitation, any Lennar JV, any entity in which Lennar Communities or Lennar BVHP become a member, any person or entity that acquires a fee simple interest or a ground lease from Developer for the purpose of developing all or any portion of the Project, any vertical developers or retail developers participating in the Project.

“District 10” means the “Tenth Supervisorial District” as such term is defined in Appendix E of the City Charter.

“Effective Date” is defined in the introductory paragraph hereto.

“ENA” means that certain Second Amended and Restated Exclusive Negotiations and Planning Agreement, dated as of May 1, 2007, by and between Lennar BVHP, Lennar Communities and the Agency, as amended from time to time.

“Failure” is defined in Section 10.4.2.

“Failure Notice” is defined in Section 10.4.2.

“Final Approval” means (i) with respect to the Term Sheet, the endorsement of the Term Sheet by the Agency, the City’s Park and Recreation Department, and the City’s Board of Supervisors, as applicable, and (ii) with respect to the DDA or DA, the adoption, execution and delivery thereof by all parties thereto with all relevant appeal periods having expired without the filing of a challenge or appeal, or if a challenge or appeal is filed, with such challenge or appeal resolved in a manner reasonably satisfactory to Developer.

“First Source Hiring Program” means the policies contained in Attachment A hereto.

“Grocery Store” means a retail store commonly known as a grocery store or a supermarket for which the substantial majority of retail sales are household foodstuffs for offsite consumption, including fresh produce, meats, poultry, fish, deli products, dairy products, canned foods, dry foods, beverages, baked foods, and prepared foods, with other household supplies or other products sold by such establishment being secondary to the retailer’s primary purpose of food sales and the operator of which has more than twenty-five (25) regular full time or regular part time employees.

“HUD” means the United States Department of Housing and Urban Development.

“Implementation Committee” means a committee consisting of seven (7) members, which shall include one representative from Developer, one representative from SFOP, one representative from SF-ACORN, one representative from SFLC, one representative from the CAC, one representative from the PAC, and one additional representative from an organization mutually agreed to by Lead Organizations and Developer.

“Interim Public Housing” is defined in Section 2.6.

“JAMS” is defined in Section 10.4.4.

“JAMS Rules” is defined in Section 10.4.4.1.

“Lennar” is defined in the introductory paragraph hereto.

“Lennar BVHP” is defined in the introductory paragraph hereto.

“Lennar Communities” is defined in the introductory paragraph hereto.

“Lennar JV” shall have the meaning ascribed to it in the ENA.

“Lead Organization” means SFOP, SF-ACORN and the SFLC.

“Objecting Party” is defined in Section 10.4.2.

“Other Participants” means those parties added to this Agreement following the Effective Date through the mutual agreement of the Lead Organizations and Developer and the execution and delivery of this Agreement by such parties.

“Other Party” is defined in Section 10.4.2.

“PAC” means the Bayview Hunters Point Project Area Committee.

“Party” means each of the signatories to this Agreement and “Parties” means all of such signatories.

“Permitted Transferee” means any of the following persons or entities to whom Developer or a successor in interest to Developer consummates a Transfer pursuant to the DDA, a Vertical DDA, as required by law or as necessary in the reasonable judgment of Developer or such successor in interest in connection with the normal and customary development of the Project or the Project Site: (i) any governmental or quasi-governmental entity or (ii) any public or private utility, except to the extent, in either case, that either of the entities in clause (i) or (ii) above develop housing units at the Project Site.

“Phase” shall mean the segmentation of the Project into two development projects, each of which contains five thousand (5,000) housing units (such amount to be proportionately adjusted if the Project Entitlements contain more or less than 10,000 housing units).

“Project” means the Project Site and any improvements constructed thereon by Developer.

“Project Entitlements” means any governmental approvals or permits requested by Developer for construction, development or operation of the Project, including without limitation, issuance of any permits or agreements as shall be determined by the Agency and such approvals and consents of governmental third parties as are necessary in order to develop, construct or complete the Project or any discrete, relevant portion thereof.

“Project Site” shall mean the Shipyard and Candlestick Point together.

“Proposition F” means the initiative measure submitted to City voters on the June 3, 2008 ballot titled the *Affordable Housing Requirement for the Candlestick Point and Hunters Point Shipyard Mixed-Use Development Project*.

“Proposition G” means the initiative measure submitted to City voters on the June 3, 2008 ballot titled the *Mixed-Use Development Project for Candlestick Point and Hunters Point Shipyard*.

“Qualified Arbitrator” means an arbitrator who meets the standards of impartiality and independence required by the JAMS Rules who has not been engaged or employed by any Party in any capacity within the prior two (2) years and who is experienced in arbitrating or otherwise deciding complex commercial or real estate issues.

“Relocation Option” is defined in Section 2.6.

“Senior and Disabled Housing” means housing available for senior and disabled residents, as defined by HUD standards.

“SF-ACORN” is defined in the introductory paragraph hereto.

“SFOP” is defined in the introductory paragraph hereto.

“SFLC” is defined in the introductory paragraph hereto.

“Shipyard” shall mean the “Shipyard” property as described in the ENA, including Exhibit A-2.

“Successor” means any successor or assign in interest of a Party or the Parties, as the context may require.

“Tenant” means any person or entity that conducts any portion of its operations within the Project, including without limitation, any person or entity leasing space within the Project.

“Term Sheet” means a term sheet between Developer and Agency outlining, among other things, the scope of the development of the Project, a financially feasible proforma, a community benefits program, including economic development opportunities and levels of affordable housing.

“Transfer” is defined in Section 7.1.

“Workforce Contribution” is defined in Section 3.1.

“Workforce Programs” is defined in Section 3.1.

“Workforce Development Fund” means a trust administered by an Approved Foundation. Such fund shall be formed and managed as provided in Article 3 and Section 9.1 hereof.

**ARTICLE 2
AFFORDABLE HOUSING BENEFITS**

2.1 Project-Wide Affordability Requirements. Developer and/or Developer Successors shall construct not less than thirty-one and eighty-six one hundredths percent (31.86%) of the housing units in the Project as Affordable Housing Units in the proportions and with the characteristics set forth in the table contained in this Section 2.1 (the "Affordable Housing Table"). For example, when all housing units in the Project have been Completed, at least fifteen and sixty-six hundredths percent (15.66%) of all such housing units shall be rental units Affordable to households whose income is equal to or less than sixty percent (60%) of AMI. Thus, if 10,000 housing units were Completed in the Project, the number and type of Affordable Housing Units reserved for households qualifying for each AMI tier described in the Affordable Housing Table would be as shown in column 4 of such table.

AMI Percentage Range	Affordable Housing Type	Percentage of Total Project Units	Affordable Housing Units ⁶	Qualifying Income for 4-person household (2008) ⁷
0-60% ¹	Affordable Rentals	15.66%	1,566	\$49,750
80-100% ²	Affordable For-Sale	3.45%	345	\$74,610 (90% AMI)
120% ³	Affordable For-Sale	4.25%	425	\$99,500
140% ⁴	Affordable For-Sale	4.25%	425	\$116,060
141-160% ⁵	Affordable For-Sale	4.25%	425	\$124,350 (150% AMI)
Total Affordable Housing Units		31.86%	3,186	

- 1 All units in this tier must be Affordable at no greater than 60% of AMI.
- 2 All units in this tier must be Affordable at between 80% and 100% of AMI, and the average affordability level of units in this tier must be no greater than 90% of AMI.
- 3 All units in this tier must be Affordable at no greater than 120% of AMI.
- 4 All units in this tier must be Affordable at no greater than 140% of AMI.
- 5 All units in this tier must be Affordable at between 141% and 160% of AMI, and the average affordability level of units in this tier must be no greater than 150% of AMI.
- 6 Assuming 10,000 total units of Completed housing units in the Project.
- 7 For illustrative purposes only.

2.1.1 Phase-Specific Affordability Requirements. Developer and/or Developer Successors shall ensure that: (a) when all housing units in any Phase are Completed, at least thirty-one and eighty-six one hundredths percent (31.86%) of such housing units shall be Affordable Housing Units; (b) the Phases are built sequentially such that the construction of housing units will not commence in any given Phase until the Affordable Housing Units in the prior Phase have been Completed; and (c) the infrastructure work, including grading and paving, is completed for any pads on which Affordable Housing Units will be constructed simultaneously with completion of such work for pads for market rate housing in such Phase.

2.2 Community First Housing Fund.

2.2.1 Community First Housing Fund Commitment. Developer and/or Developer Successors shall contribute \$27,300,000 (the "Community First Housing Fund Contribution") to the Community First Housing Fund. This amount shall be proportionally adjusted if the Project Entitlements permit construction of more or less than 10,000 housing units within the Project as a whole. For example, if Project Entitlements permit construction of 8,000 housing units within the Project as a whole, the contribution pursuant to this Section 2.2.1 shall be \$21,840,000; and if Project Entitlements permit construction of 12,000 housing units within the Project as a whole, the contribution pursuant to this Section 2.2.1 shall be \$32,760,000. If such proportional adjustment is necessary, each amount set forth in Section 2.2.2 below shall be proportionally adjusted as well. The Community First Housing Fund Contribution shall be used to assist qualifying residents listed in Section 2.4 below in the purchase of market-rate units in District 10 through opportunities such as down payment assistance, rent-to-own opportunities, purchase of buildable pads, and/or the purchase of market rate housing units, inside or outside of the Project, by individuals meeting the income standards to qualify for purchase of Affordable Housing Units. The Parties anticipate that the funds and strategies described in this Section 2.2 will assist over 340 District 10 households in purchasing homes; however, such statement of anticipation does not create a legal obligation under this Agreement.

2.2.2 Community First Housing Fund Deposit Schedule. Developer and/or Developer Successors shall deposit the Community First Housing Fund Contribution in the Community First Housing Fund in installments of the following amounts (such amounts to be proportionately adjusted if the Project Entitlements permit the construction of more or less than 10,000 housing units within the Project) within sixty (60) days of the following dates:

- 2.2.2.1 five million four hundred sixty thousand dollars (\$5,460,000) on September 15, 2009 (anticipated Final Approval of the DDA); - 2012, rec'd
- 2.2.2.2 three million one hundred twenty thousand dollars (\$3,120,000) on January 15, 2011;
- 2.2.2.3 three million one hundred twenty thousand dollars (\$3,120,000) on January 15, 2012;
- 2.2.2.4 three million one hundred twenty thousand dollars (\$3,120,000) on January 15, 2013;
- 2.2.2.5 three million one hundred twenty thousand dollars (\$3,120,000) on January 15, 2014;
- 2.2.2.6 three million one hundred twenty thousand dollars (\$3,120,000) on January 15, 2015;
- 2.2.2.7 three million one hundred twenty thousand dollars (\$3,120,000) on January 15, 2016; and

2.2.2.8 three million one hundred twenty thousand dollars (\$3,120,000) on January 15, 2017.

However: (i) the date for deposit of each installment of the Community First Housing Fund Contribution shall be automatically extended by a period equal to the number of days between the anticipated date of Final Approval for the DDA (which is September 15, 2009) and the actual date of Final Approval of the DDA; and (ii) if the Developer is further delayed in the prosecution of the Project or any major portion thereof due to the actual date for the occurrence of any Critical Project Event being more than six (6) months later than the anticipated date for such Critical Project Event as set forth in the Term Sheet, then the date for deposit of each installment shall be extended for the period by which the Critical Project Event was delayed; provided, that such extension in this clause (ii) shall only be effective to the extent that the delay in the Critical Project Event is not the fault of Developer. Whether the need for the extension is or is not the fault of Developer shall be determined, reasonably, by the Parties (and if they cannot so agree it shall be subject to the provisions of Section 10.4.4).

2.2.3 Average Bedrooms for Affordable Housing Units. Developer and/or Developer Successors shall ensure that: (i) the average number of bedrooms of all rental Affordable Housing Units, taken as a whole, excluding those constituting Senior and Handicapped Housing, shall be at least 2.5; and (ii) the average number of bedrooms of all for-sale Affordable Housing Units, taken as a whole, excluding those constituting Senior and Handicapped Housing, shall be at least 2.5. These averages shall be maintained during each Phase.

2.3 Senior and Disabled Housing. Developer and/or Developer Successors shall ensure that certain of the Affordable Housing Units are designated as Senior and Disabled Housing. Prior to the receipt of Project Entitlements, Developer shall work with Lead Organizations, the City, the CAC, the PAC and the Agency to identify sites, funding and developers to construct a portion of the Affordable Housing Units as Senior and Disabled Housing.

2.4 Affordable Housing Preference. Developer and/or Developer Successors shall target Affordable Housing Units, to the maximum extent allowed by law, to the following groups through a marketing strategy, point system or other community-based preference system:

- 2.4.1 Certificate of Preference Holders;
- 2.4.2 Residents of BVHP;
- 2.4.3 Rent-burdened individuals, meaning persons residing in a unit has a rent of above thirty percent (30%) of monthly combined household income; ✓
- 2.4.4 Residents of District 10;
- 2.4.5 Residents displaced by Agency development projects;
- 2.4.6 Prior residents of District 10; and ✓

2.4.7 Family members of residents of District 10.

2.5 Alice Griffith Construction. Subject to the timely receipt of all necessary governmental approvals, including those from the City, the Agency and HUD, Developer and/or Developer Successors shall construct the replacement Alice Griffith units in the first Phase. Developer and/or Developer Successors shall work diligently with the City, the Agency and HUD to timely obtain the governmental approvals that are required to commence construction of the replacement for Alice Griffith units at the beginning of the first Phase and to begin construction promptly after all necessary governmental approvals have been obtained.

2.6 Alice Griffith Resident Relocation Assistance. Developer and/or Developer Successors shall ensure that Alice Griffith residents have the opportunity to move directly from their current Alice Griffith units to replacement Alice Griffith units without having to relocate to any other area. In addition, to the extent that other replacement housing can be made available by the City, the Agency, or the San Francisco Housing Authority, Developer and/or Developer Successors agrees that Alice Griffith residents be, at their election, eligible to temporarily relocate to any affordable housing dedicated as replacement public housing during the construction of the replacement Alice Griffith units (the "Interim Public Housing") and to return to a replacement Alice Griffith unit when such units are Completed.

Prior to submission of a development and disposition proposal to HUD with respect to the construction of replacement Alice Griffith units, Developer shall work with Lead Organizations, the San Francisco Housing Authority, the Mayor's Office of Housing and the Agency to create a relocation plan consistent with both federal and state relocation law. This plan shall include funding for a relocation specialist and relocation assistance, including moving services from the current Alice Griffith units to the replacement Alice Griffith units and, for those Alice Griffith residents who have elected to and have received the right to move to the Interim Public Housing, to and from the Interim Public Housing; provided, that it is anticipated that if public funding is insufficient for such relocation specialist and relocation assistance, the City will seek and receive reasonable funding from Developer to cover such expenses.

In addition, Developer shall work with Lead Organizations, the City and the Agency to minimize the impact of construction of the replacement Alice Griffith units. Further, during such period, Developer shall work with Lead Organizations, the Agency, the San Francisco Housing Authority and the City to ensure that Alice Griffith follows the existing HOPE SF principles and to support a future modification of the HOPE SF principles to ensure that the public housing residents living in HOPE SF projects may elect, in their sole discretion, to move either directly to a new unit or to temporarily relocate during the construction of the replacement public housing units (the "Relocation Option"). Developer shall work with Lead Organizations to encourage the San Francisco Housing Authority and the Mayor's Office of Housing to negotiate and enter into a memorandum of understanding with Lead Organizations which will include the City's commitment to work with Lead Organizations to identify and, to the extent feasible, provide additional financial and policy support to this Project for the Relocation Option.

2.7 Alice Griffith Efforts Under Shipyard Project. If the Developer enters into negotiations with the Agency regarding a DDA relating only to the Shipyard, and not including development of Candlestick Point, Developer shall meet and confer with Lead Organizations and

the Alice Griffith Resident Council to consider options to rebuild Alice Griffith promptly as part of that Shipyard development. Developer and Lead Organizations agree that prompt rebuilding of Alice Griffith is a highly important priority for the BVHP community.

ARTICLE 3 WORKFORCE DEVELOPMENT BENEFITS

3.1 Workforce Development Fund Commitment. Developer and/or Developer Successors shall contribute \$8,500,000 (the "Workforce Contribution") to a fund to be entitled the "Workforce Development Fund," to be held by an Approved Foundation. This amount shall be proportionally increased if the Project Entitlements permit construction of more than 10,000 housing units within the Project as a whole. For example, if Project Entitlements permit construction of 12,000 housing units within the Project as a whole, Developer's contribution pursuant to this Section 3.1 shall be \$10,200,000. If such proportional increase is necessary, each amount set forth in Section 3.2 below shall be proportionally increased as well. The Workforce Contribution shall be used for workforce development programs designed to create a gateway to career development for residents of District 10 (the "Workforce Programs"). Developer shall work cooperatively with Lead Organizations to maximize funding for the Workforce Development Fund from the City, the State, the federal government and private contributors.

3.2 Workforce Development Fund Deposit Schedule. Developer and/or Developer Successors shall deposit the Workforce Contribution in the Workforce Development Fund in the following installments (which shall be proportionately increased if the Project Entitlements contain more than 10,000 housing units) within sixty (60) days of the following dates:

- 3.2.1** five hundred thousand dollars (\$500,000) on December 15, 2008 (anticipated Final Approval of the Term Sheet);
- 3.2.2** one million five hundred thousand dollars (\$1,500,000) on September 15, 2009 (anticipated Final Approval of the DDA);
- 3.2.3** one million eighty-three thousand three hundred thirty-three dollars and thirty-three cents (\$1,083,333.33) on July 15, 2010;
- 3.2.4** one million eighty-three thousand three hundred thirty-three dollars and thirty-three cents (\$1,083,333.33) on July 15, 2011;
- 3.2.5** one million eighty-three thousand three hundred thirty-three dollars and thirty-three cents (\$1,083,333.33) on July 15, 2012;
- 3.2.6** one million eighty-three thousand three hundred thirty-three dollars and thirty-three cents (\$1,083,333.33) on July 15, 2013;
- 3.2.7** one million eighty-three thousand three hundred thirty-three dollars and thirty-three cents (\$1,083,333.33) on July 15, 2014; and

3.2.8 one million eighty-three thousand three hundred thirty-three dollars and thirty three cents (\$1,083,333.33) on July 15, 2015.

However: (i) the date for deposit of each installment of the Workforce Contribution shall be automatically extended by a period equal to the number of days between the anticipated date of Final Approval for the Term Sheet (which is December 15, 2008) and the actual date of Final Approval of the Term Sheet; (ii) the date for deposit of each installment of the Workforce Contribution shall be automatically extended by a period equal to the number of days between the anticipated date of Final Approval for the DDA (which is September 15, 2009) and the actual date of Final Approval of the DDA; and (iii) if the Developer is further delayed in the prosecution of the Project or any material portion thereof due to the actual date for the occurrence of any Critical Project Event being more than six (6) months later than the anticipated date for such Critical Project Event as set forth in the Term Sheet, then the date for deposit of each installment (other than the installment in Section 3.2.1) shall be extended for the period by which the Critical Project Event was delayed; provided, that such extension in this clause (iii) shall only be effective to the extent that the delay in the Critical Project Event is not the fault of Developer. Whether the need for the extension is or is not the fault of Developer shall be determined, reasonably, by the Parties (and if they cannot so agree it shall be subject to the provisions of Section 10.4.4).

ARTICLE 4 EMPLOYMENT BENEFITS

4.1 Card Check. Developer and/or Developer Successors shall use require any Hotel or Restaurant Project (as such term is defined in the San Francisco Administrative Code Section 23.51) to comply with the provisions of the San Francisco Administrative Code Sections 23.50 to 23.56 (the "City Card Check Policy"), irrespective of any proprietary interests or, with respect to items (i) and (ii) immediately below, industry limitations contained therein. Further, Developer and/or Developer Successors shall require that (i) any agreement for the provision of security, custodial or stationary engineers for which the total annual economic consideration paid for such service exceeds twenty-five thousand dollars (\$25,000) for security, twenty-five thousand dollars (\$25,000) for custodial, and fifty thousand dollars (\$50,000) for stationary engineers; and (ii) any agreement for the lease or sale of land to be used as a Grocery Store will each similarly comply with the general requirements of the City Card Check Policy. Developer and/or Developer Successors shall include requirements of this Section 4.1 in any contract Developer and/or Developer Successors enter into with any purchaser, general contractor, or Tenants with respect to the Project.

4.2 Living Wage. Developer and/or Developer Successors shall require that the Project be subject to living wage requirements promulgated by the Agency to the extent applicable and effective at time of Final Approval of the DDA, and that such living wage requirements will apply to any subsequent purchasers or lessees of the land located in the Project Site. Developer and/or Developer Successors shall include requirements of this Section 4.2 in any contract Developer and/or Developer Successors enter into with any purchaser, general contractor, Tenants or the Agency with respect to the Project.

4.3 Non-Construction Local Hiring. Developer and/or Developer Successors shall require that the Project be subject to the Agency's BVHP Employment and Contracting Policy to the extent applicable and effective as of the time of Final Approval of the DDA. In addition, Developer and/or Developer Successors shall ensure that each non-construction employer within the Project agrees to abide by the First Source Hiring Program in the form attached hereto. In the event that the Agency requires different first source hiring standards or procedures, the Parties shall work together in good faith so that employers will be required to abide by a single set of first source hiring standards and procedures.

ARTICLE 5 SUPPORT OBLIGATIONS

In light of the community benefits related to Affordable housing, workforce development and employment contained herein, Lead Organizations shall take the following positions and provide the assistance contained in this Article 5 with respect to the Project. The obligations herein of the Lead Organizations shall solely be obligations of the Lead Organizations, as distinct from the associated and constituent organizations and individuals making up such Lead Organizations. However, the Lead Organizations shall use their reasonable, good faith efforts (i) to cause such associated and constituent organizations and individuals to support fully the agreements and obligations of the Lead Organizations and Other Participants contained herein and (ii) to obtain the commitment of each of the officers of each Lead Organization to support fully such agreements and obligations. In the context of (ii), *supra*, "reasonable, good faith efforts" shall mean a series of persuasive conversations with the officers in question, but shall not mean terminating a Lead Organization's relationship with an officer that does not in his or her individual capacity support the agreements and obligations of this Agreement.

5.1 Proposition F & Proposition G. Each Lead Organization shall support a "yes" vote on Proposition G and a "no" vote on Proposition F.

5.2 Letter of Support. Upon the request of Developer, each Lead Organization shall send a letter in general support of the Project, the text of which is set forth in Attachment B, to any governmental or public entity specified by Developer. The Parties may mutually agree to revise the text of such letter.

5.3 Hearing Attendance – Each Lead Organization. If requested by Developer in writing with at least five days' notice, each Lead Organization shall send at least one representative knowledgeable about the Project to speak in support of the Project, with a message generally consistent with that contained in Attachment B, at the following hearings:

- 5.3.1 consideration by the Agency of approval of the Term Sheet;
- 5.3.2 consideration by the Agency of approval of the DDA; and
- 5.3.3 any hearing regarding the Project in front of the City's Board of Supervisors.

5.4 Hearing Attendance – At Least One Lead Organization. If requested by Developer in writing with at least five days' notice, at least one Lead Organization shall send at least one representative knowledgeable about the Project to speak in support of the Project, with a message generally consistent with that contained in Attachment B, at hearings on Project Entitlements not set forth in Section 5.3, above.

5.5 Position Regarding CCBA Issues. Each Lead Organization shall publicly oppose any efforts by public or private individuals or organizations or governmental bodies to require greater commitments for the provision of community benefits related to affordable housing, workforce development programs, card check agreements or other union labor requirements, or any other matter contained in this Agreement; provided, however, that notwithstanding the requirements of this Section 5.5: (i) following Final Approval of the Term Sheet and prior to Final Approval of the DDA, the SFLC may advocate for the expansion of Section 4.1 hereof to include card check requirements for all retail businesses in the Project.

ARTICLE 6 IMPLEMENTATION COMMITTEE AND COMPLIANCE

6.1 Implementation Committee. To assist with the implementation of this Agreement, Developer and Lead Organizations shall promptly form an Implementation Committee. The purpose for the Implementation Committee shall be to work closely with the CAC, the PAC and all residents of District 10 to ensure that the implementation of this Agreement meets the needs of the BVHP community and reflects the substantial work of the CAC and the PAC in identifying the needs of BVHP and District 10. The Implementation Committee shall meet regularly to develop strategies and procedures for the implementation of the policies and programs set forth in this Agreement. Developer shall provide \$75,000 per year for the operation of the Implementation Committee. Voting procedures and other rules of operation of the Implementation Committee shall be determined jointly by the Lead Organizations and Developer. The Implementation Committee shall establish processes and priorities for expenditures of the Workforce Development Fund and the Community First Housing Fund, within the purposes set forth in this Agreement. In establishing these processes and priorities the Implementation Committee shall be guided by an inclusive, comprehensive, community-driven process, to determine BVHP community needs within the parameters of the funding obligations and purposes set forth in this Agreement.

6.2 Implementation through Relevant Contracts. Where this Agreement requires Developer and/or Developer Successors to impose responsibilities on entities that are not parties to this Agreement, Developer and/or Developer Successors shall ensure that relevant contracts: (i) impose such responsibilities on such entities; (ii) require such entities to impose such responsibilities on subcontractors or other entities involved in the Project through the contract in question to the extent contemplated by this Agreement; and (iii) state with regard to such responsibilities imposed on any such entities that Lead Organizations are intended third party beneficiaries with enforcement rights; and (iv) include any other provisions which Developer and/or Developer Successors and Lead Organization agree, acting reasonably, are necessary to ensure application and enforceability of such requirements by Lead Organization. Subject to Article 7, any entity that imposes an obligation required by this Agreement on another entity

shall, in event of failure by that other entity to comply with such obligation, enforce that obligation against the other entity or terminate the contractual relationship in question.

6.3 Compliance Information. Upon the reasonable written request from any Party, Lead Organization, Developer, and/or Developer's Successors shall provide reasonable records or information demonstrating that the requested entity is in compliance with responsibilities set forth in this Agreement. No Party shall make such request of any single entity more often than twice per year, except to the extent that the nature of the obligation being monitored requires more frequent reporting, as reasonably agreed upon by the Parties.

ARTICLE 7 TRANSFER

7.1 Transfer. The Parties shall not assign or otherwise transfer ("Transfer") all or any part of or any interest in this Agreement without the prior written consent of the other Parties; provided, however, that Developer may transfer all or any part of or any interest in this Agreement to any person or entity which acquires all or part of or any interest in Developer's interest in the ENA, the DDA or the Project, so long as such Transfer is in compliance with all requirements of Section 7.2.

7.2 Assumption Agreements. Developer shall not execute any deed conveying an interest in all or any portion of the Project Site, and shall not transfer all or any portion of its interest in this Agreement, the ENA, the DDA or the Project, unless (i) Developer and the relevant Developer Successor have executed an assumption agreement (a "Assumption Agreement") governing conveyance of such interest in the Project, (ii) the Assumption Agreement requires Developer Successor to assume all Applicable Requirements with respect to the interest in the Project Site being acquired (provided, that any Developer Successor that acquires all or substantially all of Developer's interest in the Project Site, and any Developer Successor which is a party to the DDA or the ENA, must assume all of Developer's obligations under this Agreement, and shall have such financial resources as shall be reasonably sufficient to perform obligations of Developer under Sections 2.2 and 3.2 hereof), (iii) such Assumption Agreement includes the requirements contained in this Agreement as a material term therein, (iv) such Assumption Agreement provides that such requirements are enforceable by any Lead Organization as intended third party beneficiaries, specifically, that Lead Organizations shall have the same rights to enforce such assumed obligations against such Developer Successor as Lead Organizations had against Developer prior to execution of any Assumption and Agreement, and (v) in the case of the Transfer of all or substantially all of Developer's obligations under Section 2.2 or 3.2 hereof, Developer Successor shall have such financial resources as shall be reasonably sufficient to perform the obligations of Developer that are being so Transferred. Thirty (30) days prior to the execution by any entity of any Assumption Agreement, Developer shall deliver to Lead Organizations a copy of each such Assumption Agreement. Prior to the execution of any Assumption Agreements between Developer and any Developer Successor, Developer and Lead Organizations shall also meet and confer regarding such agreements to confirm the mechanism by which Developer Successor shall assume all obligations of Developer pursuant to this Agreement in order to ensure that this Agreement is implemented by any Developer Successor as intended by the Parties. Upon execution of any such Assumption Agreements, Developer shall deliver an executed copy thereof to Lead Organizations.

7.3 Developer Liability. Developer shall be relieved of any obligations under this Agreement as a result of any such Transfer to the extent, but only to the extent, that Developer Successor assumes such obligations in an Assumption Agreement that satisfies Section 7.2, above, a copy of which shall be delivered to Lead Organizations. In such case neither Developer nor any owner of a different interest in the Project shall be liable for any breach of this Agreement by such Developer Successor, solely with respect to the interest being transferred.

ARTICLE 8 TERM

8.1 Term. This Agreement shall be effective as of the Effective Date and shall terminate on the earliest to occur of:

8.1.1 the date on which written notification from Developer to the other Parties is delivered; provided, that the San Francisco Board of Supervisors shall have first certified that either (i) Proposition F received an affirmative vote of more than a majority of the votes cast thereon and was therefore passed by the voters or (ii) Proposition G failed to receive an affirmative vote of more than a majority of the votes cast thereon and therefore failed to be passed by the voters;

8.1.2 the termination of the ENA so long as Final Approval of the DDA or any DA has not occurred by such time. Developer agrees (which agreement shall survive termination pursuant to this Section 8.1.2) that if this Agreement is terminated pursuant to this Section 8.1.2, Developer will not enter into another disposition and development agreement or exclusive negotiating agreement regarding the Project Site within ninety (90) days of such termination;

8.1.3 the date as of which Developer and/or Developer Successor have made all of the payments required by Sections 2.2 and 3.2, but no earlier than January 1, 2025;

8.1.4 the termination of the ENA with respect to Candlestick Point; however if Developer exercises its right to terminate this Agreement under this Section 8.1.4, Developer shall provide Lead Organizations with written notice, and shall not enter into the DDA or any DA within six months of providing such notice;

8.1.5 termination of the DDA; or

8.1.6 upon the mutual, written agreement of Developer and the Lead Organizations.

ARTICLE 9 MANAGEMENT OF FUNDS

9.1 Management of Community First Housing Fund and Workforce Development Fund. Developer and Lead Organizations shall jointly negotiate an agreement with an Approved Foundation regarding that foundation's acceptance of funds provided by Developer under this Agreement (the "Funding Agreement"). The Funding Agreement shall require the foundation to:

9.1.1 establish a trust to maintain such funds;

9.1.2 require the foundation to deposit and maintain such funds in a bank designated in the Funding Agreement (such bank being selected by Developer with reasonable approval of Lead Organizations);

9.1.3 restrict grants of such funds to the purposes set forth in this Agreement;

9.1.4 within the nonprofit purposes and other operating practices of the foundation described or referenced in Fund Agreement, distribute such funds through timelines and processes, and for particular purposes, as directed by the Implementation Committee from time to time.

ARTICLE 10 MISCELLANEOUS

10.1 Binding on Successors.

10.1.1 Subject to Article 7, this Agreement shall be binding upon and inure to the benefit of the Parties and each of their respective heirs, administrators, executors, successors in interest and assigns, including, but not limited to any Developer Successor and any permitted successors of Lead Organizations or any of their respective permitted successors and assigns. To the extent permitted by Section 10.2, this Agreement may be enforced by Lead Organizations and Developer, and may be enforced against each of the Lead Organizations, together with their respective successors and assigns in interest. . Except as otherwise indicated in this Section 10.1, references in this Agreement to a transferee shall be deemed to apply to any Successor of that transferee.

10.1.2 The Parties agree and acknowledge that neither this Agreement nor the Applicable Requirements shall be deemed to be a lien on the Project or the Project Site, and that under no circumstances shall Lead Organizations or their successors in interest be entitled to foreclose upon or otherwise be entitled to obtain any interest in the Project or the Project Site as a result of this Agreement. Should any Permitted Transferee require of Developer or its Successors that this Agreement not apply to the interest in the Project Site acquired by such Permitted Transferee, the Parties shall execute and deliver in recordable form such instruments as such Permitted Transferee shall reasonably request in order to meet such requirement.

10.1.3 Notwithstanding the provisions of Section 10.1 and Article 7, no Developer Successor or Permitted Transferee shall be subject to or obligated by the provisions of Articles 2 or 3 of this Agreement to the extent of its ownership of any part of the Project Site upon which no housing units are to be developed.

10.1.4 Notwithstanding any other provision of this Agreement, mortgages, deeds of trust and personal property and fixture security interests (including assignments of leases and ground leases to a lender as security for a loan) (collectively, "Debt Instruments") are permitted to be placed upon the Project, the Project Site and this Agreement or any interest in them for the purpose of securing loans and other obligations related to acquiring the Project or the Project Site, obtaining entitlements thereon and developing and constructing infrastructure or horizontal

or vertical improvements thereon and paying all expenses related thereto. Without limiting the generality of the foregoing, Debt Instruments of any kind for bonds or other evidences of indebtedness relating to tax increment or similar financings which are required by the relevant lenders shall be permitted. Under no circumstances shall the holders (which are not owned, controlled or under common control with Developer or any constituent entity of Developer) of such Debt Instruments or their successors or assigns in interest have any liability or obligation under this Agreement; provided, that should such holders or their successors in interest (whether through foreclosure or otherwise) elect to construct improvements on the Project Site (other than to preserve the value thereof or for public health or safety purposes), such holders and successors in interest shall be bound by the provisions of this Agreement to the extent of their interest in the Project Site. Lead Organizations agree to execute and deliver in recordable form such documents and instruments as may reasonably be requested by the holder or holders, or prospective holder or holders, of Debt Instruments in order to clarify and confirm the provisions of this Section 10.1.4.

10.2 Recordation. The obligations of the Parties set forth herein shall constitute covenants running with the land and promptly upon Developer's purchase of any fee interest in the Project, Developer shall prepare a private land use restriction memorializing all obligations set forth in this Agreement, acceptable to Lead Organizations in their reasonable discretion, which private land use restriction, or a memorandum of private land use restriction, shall be recorded in the official records for San Francisco County, California, and upon recordation, such private land use restriction shall inure to the benefit of, and be binding upon, any future owner of an interest in the Project and each of their respective heirs, successors in interest and assigns.

10.3 Intentionally Deleted.

10.4 Default; Remedies.

10.4.1 Default. The failure by any Party to perform or comply in any material respect with any of its obligations under this Agreement shall be deemed to be a default under this Agreement if such failure is not cured after notice and opportunity to cure as set forth in Section 10.4.2.

10.4.2 Right to Cure. If any Party (an "Objecting Party") believes that another Party (the "Other Party") has failed to perform or comply in any material respect with any of such Other Party's obligations under this Agreement (a "Failure"), the Objecting Party shall have the right to give written notice to the Other Party of the Failure (the "Failure Notice"). Any Failure Notice must specify the nature of the alleged Failure, where appropriate the manner in which the alleged Failure may be cured, and, at the option of the Objecting Party, contain the notice required by Section 10.4.5 that the Objecting Party may institute legal proceedings in a court of competent jurisdiction to enforce the specific performance of this Agreement by the Other Party and/or enjoin the Other Party from violation of this Agreement. Within twenty (20) days after the giving of the Failure Notice, the Objecting Party and the Other Party shall meet and confer in good faith to negotiate a resolution of the alleged Failure. If the event that the Objecting Party and the Other Party fail to agree on the resolution of any Failure by, and if the Other Party fails to cure a Failure by no later than sixty (60) days after delivery of the Failure

Notice ("60-Day Cure Period"), the Other Party shall thereupon without further notice or opportunity to cure be in default of this Agreement.

10.4.3 Implementation Meetings and Voluntary Mediation. Before or during the 60-Day Cure Period, the Parties may elect to resolve any alleged Failure at regularly scheduled meetings of the Implementation Committee, or in voluntary confidential mediation requested by any Party to this Agreement; provided, however, negotiation of any alleged Failure at meetings of the Implementation Committee or participation in such mediation by either the Objecting Party or the Other Party shall not be deemed a condition precedent to the referral of any controversy or claim to binding arbitration under Section 10.4.4 below.

10.4.4 Binding Arbitration. If a Failure has not been resolved by negotiation or voluntary mediation or cured within the 60-Day Cure Period as set forth above, then any controversy or claim pertaining or relating to such Failure shall be settled by binding arbitration in San Francisco, California administered by JAMS ("JAMS").

10.4.4.1 Arbitration Rules. Any Failure referred to JAMS for settlement by arbitration hereunder shall be administered by JAMS pursuant to its Comprehensive Arbitration Rules ("JAMS Rules") except that the provisions of this Section 10.4.4 shall supersede any conflicting or inconsistent provisions of the JAMS Rules.

10.4.4.2 Selection of Arbitrators. Notwithstanding any contrary provision in the JAMS Rules, any controversy or claim submitted to arbitration shall be resolved by one (1) Qualified Arbitrator.

10.4.4.3 Hearing and Award. The arbitrator so appointed shall meet and shall, if possible, hear and determine such matter within sixty (60) days after the arbitrator is appointed and his or her determination shall be binding on the parties. The award shall be in writing and signed by the arbitrator, and executed in the manner required by law. Notwithstanding any contrary provision of Section 10.11 below, judgment on the award rendered by the arbitrators may be entered by any court having jurisdiction thereof.

10.4.4.4 Costs of Arbitration. The costs and expenses of the arbitration, including JAMS administrative fees and arbitrator fees, shall be borne equally by the Parties and paid when due during the course of the arbitration. Each Party shall bear its own attorneys' fees and expenses incurred in connection with the arbitration.

10.4.5 Equitable Relief in Cases of Alleged Irreparable Injury. Notwithstanding anything to the contrary in this Section 10.4, in the event that a Party reasonably believes that it will suffer irreparable injury if the alleged Failure specified in its Failure Notice is not cured with a period of time shorter than sixty (60) days after the giving of the Failure Notice, or within the 60-Day Cure Period, the Objecting Party may institute legal proceedings in any court of competent jurisdiction to enforce the specific performance of this Agreement by the Other Party and/or temporarily, preliminarily or permanently enjoin the Other Party from violation of this Agreement, but only to the extent that the Failure Notice contains a prominent notice to the effect that the Objecting Party intends to seek such relief. Such proceedings shall be in addition

to, and not in lieu of, any other right which a Party may have under this Agreement, including any rights to arbitration of the merits of such disputed Failure under Section 10.4 above.

10.4.6 Remedies. The Parties hereto agree that monetary damages would be an inadequate remedy for any breach of this Agreement and agree that this Agreement shall be enforced by preliminary or permanent injunction, by a decree of specific performance, or other such order or decree of an arbitrator as described above or a court of competent jurisdiction. With the exception of an order or award to a Party to pay sums it has agreed to pay under this Agreement, including of its share of the costs and expenses of arbitration as set forth in Section 10.4 above, monetary damages shall in no circumstances be available as a remedy for default of this Agreement.

10.5 No Fee Shifting. Except as otherwise provided in Section 10.4 above, each Party shall bear its own costs and attorneys' fees in any action or arbitration arising out of or relating to this Agreement.

10.6 Election. No payment provided pursuant to this Agreement is intended to or shall be construed as a payment or offer of payment in consideration for any person to vote or refrain from voting at any election.

10.7 Enforcement. Each of the Parties hereto may enforce the provisions of this Agreement. Notwithstanding any language contained in this Agreement, this Agreement shall not give any Lead Organization nor any of the Other Participants an independent right to seek to enforce or to enforce the provisions of the DDA. Any proceeding of any kind brought to enforce against Developer or to interpret the provisions of this Agreement shall be brought and prosecuted by no less than two of the three Lead Organizations.

10.8 Waiver. No provision of this Agreement shall be deemed waived except by a writing executed by the waiving party. The waiver by any Party of any provision or term of this Agreement shall not be deemed a waiver of any other provision or term of this Agreement. The mere passage of time, or failure to act upon a breach, shall not be deemed a waiver of any provision or term of this Agreement.

10.9 Construction. Each of the Parties has had the opportunity to be advised by counsel with regard to this Agreement. Accordingly, this Agreement shall not be strictly construed against any Party, and any rule of construction that any ambiguities be resolved against the drafter shall not apply to this Agreement.

10.10 Entire Agreement; Amendment. The Agreement (including Attachments A and B, each of which is hereby incorporated by reference) contains the entire agreement between the Parties with respect to the subject matter hereof. Any prior correspondence, memoranda, agreements, warranties or representations relating to such subject matter, whether written or oral, are superseded in total by this Agreement. This Agreement may be amended solely by a written instrument executed and delivered by Developer and no less than two of the three Lead Organizations.

10.11 Agreement Lawful and Enforceable. All Parties agree that this Agreement is lawful, enforceable, and binding on all Parties; agree to waive any challenges to the

enforceability of this Agreement; and agree not to either affirmatively, or by way of defense, seek to invalidate or otherwise avoid application of the terms of this Agreement in any judicial action or arbitration proceeding.

10.12 Time of the Essence. Time is of the essence with respect to each provision of this Agreement in which time is a factor.

10.13 Governing Law; Jurisdiction and Venue. This Agreement shall be governed and construed in accordance with the laws of the State of California, without regard to any principles of conflict of laws. Except for disputes required to be referred hereunder to binding arbitration, the Parties agree that any disputes arising out of or relating to this Agreement may be resolved in the Superior Court of the State of California in and for the County of San Francisco.

10.14 Severability. Each provision of this Agreement is severable. If any such provision is determined by a court of competent jurisdiction to be invalid, void, unenforceable or illegal, the validity and enforceability of the remainder of this Agreement shall be unaffected and shall continue in full force and effect.

10.15 Notices. Any notices required or permitted to be given hereunder shall be given in writing and shall be delivered (a) in person, (b) by certified mail, postage prepaid, return receipt requested, (c) by facsimile with confirmation of receipt, or (d) by a commercial overnight courier that guarantees next day delivery and provides a receipt. Such notices shall be addressed as follows:

If to Developer: Lennar – BVHP, LLC
c/o Lennar Urban
49 Stevenson Street, Suite 600
San Francisco, California 94105
Attention: Kofi Bonner
Facsimile: 415.995.1778

Lennar Communities, Inc.
c/o Lennar Urban
49 Stevenson Street, Suite 600
San Francisco, California 94105
Attention: Kofi Bonner
Facsimile: 415.995.1778

With a copy to: Paul, Hastings, Janofsky & Walker LLP
55 Second Street, 24th Floor
San Francisco, California 94105
Attention: Charles V. Thornton, Esq.
Facsimile: 415.856.7100

and

Attention: David A. Hamsher, Esq.
Facsimile: 415.856.7100

If to SFOP: San Francisco Organizing Project
3215 Cesar Chavez Street
San Francisco, California 94110
Attention: Erika Katske
Facsimile: 415.821.5009

With a copy to: San Francisco Organizing Project
3215 Cesar Chavez Street
San Francisco, California 94110
Attention: Eleanor Williams
Facsimile: 415.695.1804

If to the SFLC: San Francisco Labor Council
1188 Franklin Street, Suite 203
San Francisco, California 94109
Attention: Tim Paulson
Facsimile: 415.440.9297

With a copy to: Law Office of Julian Gross
870 Market Street, Suite 915
San Francisco, California 94102
Attention: Julian Gross, Esq.
Facsimile: 415.544.9946

If to SF-ACORN: San Francisco ACORN
5319 Mission Street
San Francisco, California 94112
Attention: John Eller
Facsimile:

With a copy to: Law Office of Julian Gross
870 Market Street, Suite 915
San Francisco, California 94102
Attention: Julian Gross, Esq.
Facsimile: 415.544.9946

or to such other address as either Party may from time to time specify in writing to the other Party. Any notice or other communication delivered as herein above provided shall be deemed effectively given (a) on the date of delivery, if delivered in person; (b) on the date mailed if sent by certified mail, postage prepaid, return receipt requested or by a commercial overnight courier; or (c) on the date of transmission, if sent by facsimile with confirmation of receipt. Such notices shall be deemed received (a) on the date of delivery, if delivered by hand or overnight express delivery service; (b) on the date indicated on the return receipt if mailed; or (c) on the date of transmission, if sent by facsimile. If any notice mailed is properly addressed but returned for any reason, such notice shall be deemed to be effective notice and to be given on the date of mailing.

Any notice sent by the attorney representing a Party, shall qualify as notice under this Agreement.

10.16 References to this Agreement; Approvals. Numbered or lettered articles, sections and subsections herein refer to articles, sections and subsections of this Agreement unless otherwise expressly stated. Except as otherwise expressly stated herein, all approvals by any Party shall be in the sole and absolute discretion of such Party. All headings herein are inserted only for convenience and ease of reference and are not to be considered in the construction or interpretation of any provision of this Agreement.

10.17 Interpretation. Specific provisions of this Agreement shall take precedence over conflicting general provisions.

10.18 Gender and Number. Whenever the context requires or clearly indicates, the singular shall include the plural, and vice versa, and the male, female and neuter genders shall include each of the others.

10.19 Authority of Signatories. The individuals executing this Agreement represent and warrant that they have the authority to sign on behalf of their respective Parties.

10.20 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

10.21 Further Assurances. The Parties agree, without further consideration, to take such actions and execute such additional documents as are reasonably necessary to carry out the provisions of this Agreement.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date set forth in the introductory paragraph of this Agreement.

LENNAR – BVHP, LLC,
a California limited liability company

By: Lennar Southland I, Inc.,
a California corporation
its Managing Member

By: 
Name: Kofi Bonner
Title: Vice President

LENNAR COMMUNITIES, INC.,
a California corporation

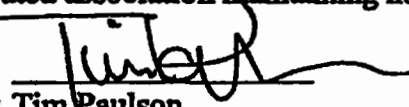
By: 
Name: Kofi Bonner
Title: Vice President

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

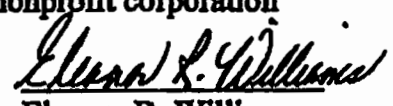
SAN FRANCISCO ACORN,
a project of the Association of Community Organizations for Reform Now,
an Arkansas nonprofit corporation

By: _____
Name:
Title:

SAN FRANCISCO LABOR COUNCIL,
an unincorporated association maintaining nonprofit status as a 501(c)(5)

By: 
Name: Tim Paulson
Title: Executive Director

THE SAN FRANCISCO ORGANIZING PROJECT,
a California nonprofit corporation

By: 
Name: Eleanor R. Williams
Title: Co-President

SAN FRANCISCO ACORN

a project of the Association of Community Organizations for Reform Now,
an Arkansas nonprofit corporation

By: [Signature]
Name: Michael [unclear]
Title: Assistant [unclear]

SAN FRANCISCO LABOR COUNCIL

an unincorporated association maintaining nonprofit status as a 501(c)(5)

By: _____
Name: Tim Paulson
Title: Executive Director

THE SAN FRANCISCO ORGANIZING PROJECT

a California nonprofit corporation

By: _____
Name: Eleanor R. Williams
Title: Co-President

ATTACHMENT A

First Source Hiring Program

SECTION I. PURPOSE.

The purpose of this First Source Hiring Program is to facilitate the employment of Targeted Job Applicants by Employers in the Project. It is a goal of this First Source Hiring Program that the processes contemplated herein will benefit Employers in the Project by providing a pool of qualified job applicants whose job training has been specifically tailored to the needs of Employers in the Project through a non-exclusive referral system.

SECTION II. DEFINITIONS.

As used in this First Source Hiring Program, the following capitalized terms shall have the following meanings. Capitalized terms used but not defined in this First Source Hiring Program shall have the meanings ascribed to them in the CCBA.

“CCBA” shall mean that certain Core Community Benefits Agreement originally executed on or about May 30, 2008, to which this Program is attached as Attachment A.

“Contract” shall mean a contract related to use, maintenance, or operation of the Project or part thereof.

“Contractor” shall mean a prime contractor, a subcontractor, or any other business entering into a contract related to the use, maintenance, or operation of the Project or part thereof. “Contractor” shall not include Tenants or construction contractors. “Contractor” shall not include consultants, which are defined as businesses retained solely to provide expert advice or to produce a written work product.

“Covered Job” shall mean any entry-level job as determined by the First Source Referral System (“Entry Level”) for which at least half of work hours are performed on-Site, except for jobs for which hiring procedures are governed by a collective bargaining agreement that conflicts with the First Source Hiring Program described in this Program. If the Implementation Committee determines that the First Source Referral System has capacity to refer substantial numbers of Targeted Applicants in categories other than Entry Level jobs, then Covered Jobs shall also mean jobs in such categories.

“Program” shall mean this First Source Hiring Program.

“Employer” shall mean a non-governmental business or nonprofit corporation that conducts any portion of its operations in the Project Site, with at least eight (8) regular full time equivalent employees. “Employer” includes but is not limited to Tenants, Contractors, and landowners conducting any portion of operations on-Site. “Employer” shall include the Developer.

“First Source Referral System” shall mean the organization designated by the Agency to operate and administer the First Source Hiring Program.

“Goal” shall mean with respect to an Entry Level job, fifty percent (50%), and with respect to any additional category of Covered Jobs as determined by the Implementation Committee, a percentage as determined by the Implementation Committee.

“Low-Income Individual” shall mean an individual whose household income is no greater than eighty percent (80%) of AMI.

“Moderate-Income Individual” shall mean an individual whose household income is no greater than one hundred percent (100%) of AMI.

“Targeted Job Applicant” shall mean an individual referred to an Employer by the First Source Referral System. It is anticipated that the First Source Referral System will refer individuals in the following categories, with prioritization as described below:

- **First Priority:** individuals whose residence or place of employment has been displaced as part of the Project; and San Francisco Housing Authority Residents and rent assisted Residents living in District 10, with emphasis on residents of Alice Griffith, Hunters View, Hunters Point, Potrero Annex and Terrace, Westbrook and Sunnyvale.
- **Second Priority:** Low-and Moderate-Income individuals living in District 10.
- ✓ **Third Priority:** Low- and Moderate-Income individuals living in zip codes within the City in which the average household income is no greater than fifty percent (50%) of AMI.

“Tenant” shall mean any entity that enters into a lease agreement or similar agreement for use of space within the Project Site. “Tenant” shall not include any individual person whose legal residence is in the Project Site.

SECTION III. FIRST SOURCE HIRING PROGRAM.

A. Coverage. This First Source Hiring Program shall apply to hiring by Employers for all Covered Jobs.

B. Long-Range Planning. No later than six months prior to initial hiring for any Covered Job by an Employer, that Employer shall provide to the First Source Referral System its best available estimate of the approximate number and type of jobs that will need to be filled and the basic qualifications necessary. An Employer whose first enters into a Contract or lease agreement less than six months prior to initial hiring for Covered Jobs shall provide such information within two weeks of entering into the Contract or lease agreement. Each Employer shall, at the time of provision of information under this Section III.B, designate a liaison for issues related to this First Source Hiring Program.

C. Hiring process.

(1) **Notification of job opportunities.** Prior to hiring for any Covered Job, an Employer will notify the First Source Referral System of available job openings and provide a description of job responsibilities and qualifications, including expectations, salary, work schedule, duration of employment, required standard of appearance, and any special requirements (e.g. language skills, drivers' license, etc.). Job qualifications shall be limited to skills directly related to performance of job duties.

(2) **Hiring.**

a. When hiring employees for any Covered Job prior to commencement of an Employer's operations in the Project Site, an Employer will hire only qualified Targeted Job Applicants for a three-week period following the notification of job opportunities described in Section III.C.1, above.

b. When making hires after the commencement of operations in the Project, an Employer will for any Covered Job hire only Targeted Job Applicants for a five-day period following the notification of job opportunities described in Section III.C.1, above.

c. During the periods described in Sections III.C.(2).a-b, above, Employers will use normal hiring practices, including interviews and evaluations, to consider all individuals referred by the First Source Referral System.

d. After the periods described in Sections III.C.(2).a-b, above, Employers shall make good-faith efforts to hire Targeted Job Applicants, but may hire any applicant recruited or referred through any source.

e. Employers shall promptly inform the First Source Referral System once a Covered Job is filled, and whether or not the Employer hired a Targeted Job Applicant for that position.

D. Goal. Any Employer who has filled more than the Goal for the Covered Jobs available during a particular six-month period with Targeted Job Applicants, shall be deemed to be in compliance with this First Source Hiring Program for all hiring during that quarter. Any Employer who has complied with remaining provisions of this First Source Hiring Program is in compliance with this First Source Hiring Program even it has not met the Goal during a particular six-month period.

E. No Referral Fees. Employers shall not be required to pay any fee, cost or expense of the First Source Referral System or any potential employees referred to the Employer by the First Source Referral System in connection with such referral.

F. [Reporting And Recordkeeping Requirements; Meet & Confer.]

SECTION IV. MISCELLANEOUS.

A. Compliance with State and Federal Law. This Program shall only be enforced to the extent that it is consistent with the laws of the State of California and the United States. If any provision of this Program is held by a court of law to be in conflict with state or federal law,

the applicable law shall prevail over the terms of this Program, and the conflicting provisions of this Program shall not be enforceable.

B. Compliance with Court Order. Notwithstanding the provisions of this Program, the Developer, Employers, Tenants, and Contractors shall be deemed to be in compliance with this Program if subject to by a court or administrative order or decree, arising from a labor relations dispute, which governs the hiring of workers and contains provisions which conflict with terms of this Program.

C. Severability Clause. If any term, provision, covenant, or condition of this Program is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of this Program shall continue in full force and effect.

D. Binding on Successors. This Program shall be binding upon and inure to the benefit of the successors in interest, transferees, assigns, present and future partners, subsidiary corporations, affiliates, agents, representatives, heirs, and administrators of each party that agrees to the terms of this Program. Any reference in this Program to a party shall be deemed to apply to any successor in interest, transferee, assign, present or future partner, subsidiary corporation, affiliate, agent, representative, heir, or administrator of such party.

E. Lease Agreements and Contracts. Tenants and Contractors shall not execute any Contract, or any lease agreement or similar agreement related to the rental, lease, or occupancy of the entirety of or any portion of the Site, unless the entirety of this Program is included as a material term of the Contract or lease agreement in question.

F. Material Terms. The provisions of this Program are material terms of any deed, lease, or contract in which it is included.

G. Assurance Regarding Preexisting Contracts. Each Tenant and Contractor warrants that as of the date of execution of any contract incorporating this Program, it has executed no lease agreement, contract, or purchase agreement that would violate any provision of this Program had it been executed after the effective date of this Program.

H. Intended Beneficiaries. The Coalition are intended third-party beneficiaries of contracts and other agreements which incorporate this Program, with regard to the terms and provisions of this Program. The City, the Agency and the Coalition shall each independently have the right to enforce the provisions of this Program against all parties incorporating this Program into contracts or other agreements.

I. Term. This Program shall become effective on the date of mutual execution of any contract or agreement into which it is incorporated, and shall terminate upon expiration or termination of that contract or agreement. Upon termination of the effectiveness of this Program as described in this Section I, all entities with responsibilities under this Program shall have no further responsibilities.

ATTACHMENT B
Support Letter

Organization Letterhead]

[Date]

[Recipient]

re: Integrated Development of the Hunters Point Shipyard and Candlestick Point

Dear [Recipient]:

This letter states [Organization's] support of the integrated development of the Hunters Point Shipyard and Candlestick Point (the "Project").

[Organization] worked with numerous District 10 community stakeholders, including the Hunters Point Shipyard Citizens Advisory Committee, the Bayview Project Area Committee, the Mayor's Office of Housing and Office of Workforce and Economic Development, and the San Francisco Redevelopment Agency, to assess the needs of the Bayview Hunters Point community. We also conducted an extensive review of the project development plan and its financial feasibility.

In May of 2008, we entered into a Core Community Benefits Agreement ("CCBA") with the developers of this important Project. The legally-binding CCBA contains the developers' unprecedented commitments for the provision of community benefits related to affordable housing, workforce development and employment.

We are proud to join with so many community-based organizations and leaders, particularly Bayview Hunters Point organizations, in support of this Project which will speed the environmental clean-up of the Shipyard while bringing affordable homes, economic opportunities and new parks and open space to the Bayview.

[Organization] and the other community-based organizations that signed the CCBA believe that the Project provides strong, enforceable commitments on issues of major importance to the community. [Organization] therefore urges the developer, the City and County of San Francisco, the San Francisco Redevelopment Agency, and all community members to resolve all issues in a way that addresses the needs of Bayview Hunters Point and allows this important project to be built in a financially feasible manner.

The Bayview Hunters Point community has waited long enough for the substantial benefits of this Project. We hope you will join with us in support of this community-supported plan.

Sincerely,

[name]

[position with Organization]

Memorandum of Agreement – Grocery Store at Alameda Point

1. This Agreement is made this 16th day of June, 2015 by and between Alameda Point Partners, LLC (“Developer”) and United Food and Commercial Workers Local 5 (“Union”). “Developer” shall be deemed to include any person, firm, partnership, corporation, joint venture or other legal entity substantially under the control of the Developer or one or more principal(s) of the Developer or a subsidiary of the Developer, or any person, firm, partnership, corporation, joint venture or other legal entity which substantially controls the Developer. Developer is engaged in the development of a mixed-use project at Site A of the area commonly known as Alameda Point (the “Project”) to be located in the City of Alameda, State of California. The Project covered by this Agreement shall consist of a single-Operator (as defined below) supermarket in excess of 25,000 sq. ft., and shall include both a large form of the traditional grocery store having a self-service shop offering a wide variety of food and household products, organized into aisles and providing meat and seafood, fresh produce and flowers, dairy, beverages and baked goods aisles, along with shelf space reserved for canned and packaged goods as well as for various non-food items such as kitchenware, household cleaners, pharmacy products and pet supplies; and provide a variety of other services which may include, but not be limited to a bank, cafe, photo processing, video rentals, pharmacies and/or gas station (the “Operation”). Many jobs will be created in the process. The Union is interested in organizing the Employees of the Operator. “Employees” means all employees of an Operator on the Project, but does not include office clerical employees, sales employees and all supervisors, confidential employees, guards, managerial or professional employees as defined under the National Labor Relations Act. “Operator” means any single person, firm, proprietorship, partnership, corporation, joint venture or other form of business organization which has or acquires any right to operate an Operation at the Project, including the Developer itself if it operates an Operation at the Project.

2. In consideration for Developer's covenants made herein to establish conditions favorable for employees of an Operation at the Project to choose whether to be represented by a labor organization in an atmosphere without delay, intimidation or labor-management conflict, the Union promises and covenants for itself and on behalf of its members that it will not engage in any strike, picketing, opposition or boycott with respect to the Project as a whole or with respect to any Operation of said Project, provided that this promise shall terminate immediately and without notice with respect to any unit of Employees in such an Operation upon the recognition of any union other than the Union signatory to this Agreement as the exclusive collective bargaining representative for the Employees in that unit or any part of it, or upon the conclusion of a collective bargaining agreement between an Operator and the Union for that unit. The Union and the Developer will not file any charges or petition with the National Labor Relations Board or commence any other action in law or equity in connection with any act or omission occurring within the context of this agreement; arbitration under this Agreement shall be the exclusive

remedy. The Union will actively support the Project and will not assist or encourage any person, group or entity in challenging or opposing the Project.

3. (a) Developer shall give the Union written notice of its intent to solicit bids or proposals from any potential Operator(s) at the time of the solicitation, and it shall inform the Union in writing of the identity and contact information of any potential Operator which has submitted a bid or proposal or has expressed a written interest in doing so. Developer shall incorporate the entirety of subsections (b), (c), (d), (e), (f) and (g) of section 3 of this Memorandum of Agreement in any existing or future purchase and sale contract, lease, sublease, management agreement, operating agreement, franchise agreement or any other agreement or instrument disposing any interest in the Project or an Operation and shall obligate any person who has taken or takes such interest, and any and all successors and assigns of such person, to in turn incorporate said subsections in any further purchase and sale contract, lease, sublease, operating agreement, franchise agreement or any other agreement or instrument disposing any interest in the Project or Operation. Developer shall enforce such provisions, or at its option, assign its rights to do so, to the Union. The terms "Operator," "Operation," and "Project" shall be modified in each such agreement or instrument to conform to the terminology in such agreement or instrument but retain the same meaning as in this Agreement. The Developer shall provide to the Union, upon request, copies of those portions of any such agreement or instrument showing the parties thereto and that it has been duly executed, the effective date(s) and term(s), and that the provisions required by this Agreement have been included therein. Should Developer pursue for the Project a single Operator supermarket of less than 25,000 sq. ft., which includes both a form of the traditional grocery store having a self-service shop offering a wide variety of food and household products, organized into aisles and providing meat and seafood, fresh produce and flowers, dairy, beverages and baked goods aisles, along with shelf space reserved for canned and packaged goods as well as for various non-food items such as kitchenware, household cleaners, pharmacy products and pet supplies; and provide a variety of other services which may include, but not be limited to a bank, cafe, photo processing, video rentals, pharmacies and/or gas station, it will contact the entities listed on Exhibit A, either directly or through a broker, and inform them of the opportunity. If a grocery operator listed on Exhibit A expresses an interest in locating a store in the Project, Developer will negotiate in good faith in an attempt to reach an agreement. However, there is no obligation on the part of the Developer to select or provide special terms to a grocery operator from Exhibit A

(b) The duly authorized representatives of the Union seeking to organize Employees of an Operator shall be permitted to enter upon the premises of the Project for that purpose after submitting a written notice of intent to organize, provided that such representatives shall only communicate with Employees on the Employees' non-work time and in places that are non-work areas for them and shall not interfere with the orderly operations conducted by the Operator.

(c) Within ten (10) days following receipt from the Union of written notice of intent to organize a unit of an Operator's Employees, the Operator shall furnish the Union with a

complete list of Employees in the unit, including both full and part-time Employees, showing their place of employment, job classification and departments. Home addresses, and phone numbers to the extent known by the Employer will also be provided, provided an Employee has not objected in writing to providing their home address and /or phone number to the Union. An Operator will not encourage or request such objection from an employee. Thereafter, the Operator shall provide updated lists upon request but not more frequently than monthly. The Union shall keep such contact information confidential.

(d) The Operator will take a neutral approach to the unionization of Employees. The Operator shall not take any action or make any statement that will directly or indirectly state or imply the Operator's opposition to or support for the selection by Employees of a collective bargaining representative, or preference for or opposition to any particular union as a bargaining agent.

(e) If the Union requests recognition as the exclusive collective bargaining agent for Employees in a unit as defined above, the arbitrator identified in paragraph (g), or another person mutually acceptable to the Operator and the Union, will conduct a review of employees' authorization cards submitted by the Union in support of its claim to represent a majority of such employees and any revocations. Such review shall keep the identity of signers confidential from supervisors. If that review establishes that a majority of such Employees has designated the Union as their exclusive collective bargaining representative, the Operator will recognize the Union as such representative of such Employees. The Operator will not file a petition with the National Labor Relations Board for any election in connection with any demands for recognition provided for in this agreement, nor will it file a notice of voluntary recognition with the NLRB, so that the decision of when and whether to provide such notice is within the sole discretion of the Union. If the Union notifies the NLRB of recognition pursuant to this Agreement, the Operator shall post the NLRB notice of recognition in accordance with the instructions from the NLRB immediately upon receipt of the notice. The Operator agrees that if any other person or entity petitions the National Labor Relations Board for any election as a result of or despite recognition of the Union pursuant to this subsection, (a) the Operator will join in any request by the Union that the NLRB dismiss the petition on grounds of recognition bar or, if the Operator and the Union have agreed to a collective bargaining agreement covering Employees at the time the petition is filed, on grounds of contract bar, (b) if the petition is not dismissed, the Operator shall agree to a full consent election agreement under Section 102.62(c) of the NLRB's Rules and Regulations, and (c) the Operator shall at all times abide by the provisions of this Agreement. The Operator will not file any charges with the National Labor Relations Board or commence any other action in law or equity in connection with any act or omission occurring within the context of this agreement; arbitration under Paragraph (g) shall be the exclusive remedy.

(f) If the Union is recognized as the exclusive collective bargaining representative as provided in this subsection, negotiations for a collective bargaining agreement shall be

commenced promptly and conducted diligently and in good faith to the end of reaching agreement expeditiously.

(g) The parties agree that any disputes over the interpretation or application of this Agreement shall be submitted to expedited and binding arbitration, with Luella Nelson serving as the arbitrator. If she is unavailable to serve within thirty (30) calendar days of notification then John Kagel, or another mutually acceptable person, shall be the arbitrator. The arbitrator shall have the authority to determine the arbitration procedures to be followed. The arbitrator shall also have the authority to order the non-compliant party to comply with this Agreement, and the court shall also have this equitable authority in order to preserve the efficacy of the arbitral remedy. The United States District Court for the Northern District of California shall have exclusive jurisdiction in any action concerning arbitration under this Agreement. The parties hereto agree to comply with any order of the arbitrator, which shall be final and binding, and furthermore consent to the entry of any order of the arbitrator as the order or judgment of the court, without entry of findings of fact and conclusions of law. Any party unsuccessfully challenging its duty to arbitrate or to comply with an arbitral award shall be liable for the other party's attorneys' fees and other expenses of litigation.

4. This Agreement shall be in full force and effect with respect to each Operation from the date it is fully executed on behalf of the Developer and the Union until three years from the full public opening of an Operation subject to the provisions of Section 2.

5. In the event that the Developer sells, transfers, or assigns all or any part of its right, title, or interest in the Project or substantially all of the assets used in the Operation of the Project, or in the event there is a change in the form of ownership of the Developer, the Developer shall give the Union reasonable advance notice thereof in writing, and the Developer further agrees that as a condition to any such sale, assignment, or transfer, the Developer will obtain from its successor or successors in interest a written assumption of this Agreement and furnish a copy thereof to the Union, in which event the assignor shall be relieved of its obligations hereunder to the extent that the assignor has fully transferred its right, title, or interest.

6. The provisions of section 3(b)-(g) of this Agreement may be modified in a bona fide agreement between an Operator and the Union, but only if the modification is explicitly set forth in such agreement in clear and unambiguous terms.

7. Any disputes over the interpretation or application of this Agreement shall be submitted to expedited and binding arbitration pursuant to the procedure in paragraph 3(g).

8. This Agreement constitutes the entire understanding of the parties on the subjects covered. This Agreement can only be modified in writing signed by each party.

Alameda Point Partners, LLC (Developer)

By: [Signature]

Its: Member

Date: 6-16-15

United Food and Commercial Workers,
Local 5

By: [Signature]

Its: Comm & Pol Director

Date: 6-16-15

Exhibit A

Andronico's (SF)
Bianchini's (Woodside)
Diablo Foods (Lafayette)
Draegers (Menlo Park)
Encinal Market (Alameda)
Gene's Fine Foods (SJ)
Harvest Market (Fort Bragg)
Lucky Stores (Modesto)
Lunardi's (SSF)
Mollie Stone's (Sausalito)
Mill Valley Market (Mill Valley)
Nob Hill (West Sacramento)
Novato Foods-Harvest Market (Novato)
North Coast Coop (Arcata)
Piazza's Fine Foods (Palo Alto)
Piedmont Grocery Company
Safeway (Pleasanton)
Scotty's Market (San Rafael)
United Markets (San Anselmo)
Village Market (Oakland)

February 3, 2012

RECEIVED

By Hand Delivery

FEB 03 2012

PLANNING DIVISION

Community Development Department
Attn: Appeals
City of Hayward
777 B Street
Hayward, CA 94541-3340

Re: Appeal to Hayward Planning Commission of the Approval of the Application for Proposed Walmart Market Grocery Store at 2480 Whipple Road in Hayward, California; Building Application Numbers BI-2011-0885/0989/0990; Conditional Use Permit Number PL-2004-0039

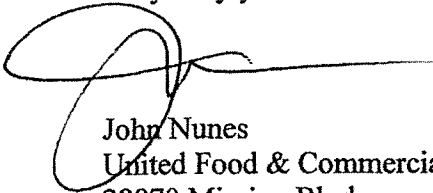
To Whom It May Concern:

Hayward City resident Desirae Schmidt, joined by United Food & Commercial Workers Local 5 and its members who live and/or work in the City of Hayward, hereby appeal the above-referenced action by the Development Services Director/Planning Director. A check in to cover the appeal fees is enclosed.

The basis for the aforementioned appeal, but not limited to, is that the approval is not consistent with the original conditional use permit (Conditional Use Permit Number PL-2004-0039) or the City of Hayward Zoning Code/Ordinance for the former Circuit City building located at 2480 Whipple Road, and therefore not an allowed use.

If you have any questions please feel free to call.

Very truly yours.



John Nunes
United Food & Commercial Workers Local 5
28870 Mission Blvd.
Hayward, CA 94544
(510) 583-8410



Desirae Schmidt
Hayward, CA 94541

April 4, 2012

By Fax & E-Mail

Elisa Márquez, Chair
 Members of the Planning Commission
 c/o City Clerk
 City of Hayward
 777 B Street
 Hayward, CA 94541
 Fax: (510) 583-3636
 Email: CityClerk@hayward-ca.gov

**Re: Appeal of Planning Director's Zoning Consistency Determination –
 Proposed Walmart Neighborhood Market at 2480 Whipple Road
 (CUP No. PL-2004-0039)**

Dear Chairperson Márquez and members of the Planning Commission:

On behalf of appellants Desirae Schmidt and UFCW Local 5 and its members who live and/or work in Hayward, we write to urge the Planning Commission to UPHOLD the above-referenced appeal, and to overturn the Planning Director's January 19, 2012 determination that a proposed 34,000 square foot Walmart Neighborhood Market occupying the former Circuit City building at 2480 Whipple Road is consistent with governing provisions of the Hayward Zoning Ordinance as well as with applicable conditions contained in CUP No. PL-2004-0039. As explained in further detail below, a relatively small, neighborhood serving grocery store is plainly inconsistent with the Zoning Ordinance and the CUP, both of which mandate that any commercial use at this location serve a regional or sub-regional market base. Since the Neighborhood Market clearly does not, the Planning Commission should require the applicant to apply for a variance and/or modification to the CUP.

I. Introduction And Summary.

With due respect to the Planning Director, the consistency determination finds no basis in the plain language of the zoning ordinance, the use permit conditions, nor indeed in common sense. The proposed 34,000 s.f. supermarket is simply not a region or sub-region-serving commercial retail use by any reasonable measure. In terms of its size and product mix it bears all the characteristics of a typical neighborhood or community-serving grocery store. Indeed, Walmart has explicitly promoted this retail format nationwide as "Neighborhood Markets," describing it as offering a "quick and convenient

April 4, 2012
Page 2

shopping experience.” (See www.walmartstores.com/about-us). To conclude that customers will travel from across the Bay Area region or the East Bay sub-region to patronize a 32,000 s.f. supermarket – smaller than an average Safeway – is patently unreasonable. Because the store will not serve a regional or sub-regional market base, it is therefore impermissible in the Industrial Zoning District under the clear provisions of the Hayward Zoning Code.

Moreover, contrary to the Planning Director’s conclusions, a new supermarket at this location will in fact generate new or more severe environmental impacts than the closed Circuit City. A supermarket generates significantly more vehicle trips from customers than an electronics store (needless to say, consumers shop for groceries far more frequently than for home electronics), and significantly more deliveries by heavy-duty diesel trucks. The proposed Neighborhood Market will therefore not only aggravate traffic congestion in the area, but will increase noise levels and emissions of air pollutants, including particulate matter from diesel exhaust, potentially impacting citizens living in the nearby residential area in Union City. These impacts were neither fully evaluated nor mitigated in the 2004 negative declaration originally approved for the original shopping center project’s CUP. Further environmental review in the context of a rezone or variance application is therefore warranted.

Finally, the fact that the Circuit City building has been vacant since 2009 by itself suggests that a new CUP is required under Section 10-1.3270, which provides that any use that ceases operation for more than six consecutive months must be deemed “discontinued.”

Each of these points is elaborated upon further below.

II. The Proposed Neighborhood Market Will Not Serve a Regional or Sub-Regional Marketing Base.

The Planning Director’s determination that the proposed “Neighborhood Market” will serve a regional or sub-regional market is based on three premises, all of which are faulty.

First, the Planning Director concludes that “the proposed Walmart Market store will provide a full range of grocery products, as well as pharmaceutical and general merchandise products, which will serve not only the immediate surrounding neighborhood in Hayward and Union City, but also customers in the general area and those commuting along Interstate 880.” This incorrectly suggests that the range of products offered at the market somehow determines the size of the trade area. By this logic, any grocery store regardless of size would, by definition, serve a regional or sub-regional market simply by virtue of offering a “full range” of groceries, pharmaceuticals, and general merchandise. All existing supermarkets in Hayward – and potentially even some larger convenience stores - would thus become regional or sub-regional commercial uses under this definition.

April 4, 2012

Page 3

Importantly, the Zoning Ordinance itself recognizes that supermarkets are neighborhood-serving and not region-serving commercial uses. The Ordinance identifies “Supermarket” as a “primary” land use only in the Neighborhood Commercial (CN) Zoning District (§ 10-1.815(a)(5)(ee)), and nowhere else. By contrast, “Supermarket” is permissible in the Regional Commercial (CR) District (§10-1.1400(b)(1)(e)), only if it is ancillary and secondary to a primary commercial use defined as a “major retail anchor” of at least 100,000 square feet. Thus, the Zoning Ordinance clearly considers supermarkets as neighborhood-serving, and by no means regional or sub-regional commercial uses.

The Planning Director also cites the Neighborhood Market’s “site to store” program as evidence that it will serve a regional/sub-regional market base. There is no indication of how or why this program, which allows shoppers to order products online and pick them up at the store (much like the average take-out restaurant) would necessarily broaden a small supermarket’s trade area. The implication that shoppers will be willing to drive longer distances from throughout the region or sub-region simply because they can pre-order items online again lacks any factual or analytic basis.

The third basis for the Planning Director’s consistency determination is the existing CUP’s incorporation by reference of a list of uses permissible in the Central Business District (CBD). As stated in the Director’s letter, the conditions of approval for Use Permit No. PL-2004-0039 include the following:

“The uses permitted in the ‘Shops’ buildings shall be limited to those Retail Commercial Uses that have a regional/sub-regional marketing base and are listed in Section 10-1.1315(a)(5) (Central Business District – Retail Commercial Uses)[.]” emphasis added.

The list of uses in the referenced section 10-1.1315(a)(5) includes “supermarkets.” From this language, the Planning Director concludes:

“Given the condition language that identifies such listed uses, including supermarkets by reference to the Central Business District, as being considered as having a regional or sub-regional marketing base, it is appropriate to consider the proposed 34,000 square foot market store and business model as also serving a regional or sub-regional marketing base.” In other words, the Planning Director has determined that because “supermarket” is included in the list of uses permitted in the CBD by Section 10-1.1315(a)(5), it must therefore necessarily have a regional or sub-regional marketing base.

This conclusion, too, is also patently erroneous. First, as a threshold matter, the condition on its face applies only to the “shops,” *i.e.*, the two secondary retail buildings of 5,100 and 6,000 square feet. It does not apply to the separately identified “34,000 square-foot regional retail building.” See Condition 1 of “Conditions of Approval” for

April 4, 2012
Page 4

Use Permit No. PL-2004-0039. Second, the condition clearly states that in order for a use to be permissible in the shopping center must not only be included in the list of permissible uses in the CBD contained in Section 10-1.1315(a)(5), but must also, as a separate condition, serve a regional/sub-regional marketing base.

Finally, a simple examination of the uses listed in Section 10-1.1315(a)(5) reveals the error of the Planning Director's conclusion. Among the uses included in that list are the following: "Antique store," "Art and art supplies store," "Bakery," "Bicycle Shop," "Bookstore," "Card shops," "Delicatessen," "Floral shop," "Locksmith," etc., etc. By the Planning Director's logic, all of these uses would be deemed to have a regional/sub-regional marketing bases simply by virtue of being included in the list of permissible CBD uses contained in Section 10-1.1315(a)(5). Obviously this is not the case.

We submit that the Planning Director's interpretation of both the CUP and this provision of the Zoning Ordinance is patently erroneous and must be overturned.

III. A Supermarket Will Have New And More Severe Traffic, Air Quality, And Noise Impacts Compared To The Originally Permitted Circuit City Store.

The Planning Director also found that the proposed Walmart Neighborhood Market is consistent with the original CUP because a grocery store would have similar environmental impacts as the closed Circuit City electronics store, primarily in terms of traffic impacts, and that "the proposed change in the type of use would not cause any environmental impact requiring additional CEQA review." Again, this conclusion is unsupported by logic or evidence.

As should be obvious, a supermarket attracts substantially more customer vehicle trips than an electronics outlet. According to the Institute of Transportation Engineers (ITE), trip generation rates for the "Supermarket" land use category (850) are substantially higher than for the "Electronics Superstore" category (863).¹ For example, during the PM peak hour, electronics superstores generate 4.5 trips per 1,000 square feet, while supermarkets generate more than twice that amount: 10.5 trips per 1,000 square feet. See ITE, "Trip Generation" Manual, 8th Ed. The extent to which this doubling of vehicle trips during the PM peak period will have significant impacts on nearby roadway segments and intersections is far from clear.

Although the Planning Director's determination letter references a "review" of the 2004 traffic study by the Public Works Department that concluded that any additional delays caused by the grocery store would not reduce levels of service at affected intersections, that "review" was described by the Public Works Department itself as "rudimentary," and was never circulated for public review. In any event, regardless of the trip generation differential, baseline traffic conditions have obviously changed since

¹ The traffic study performed in 2004 in connection with the issuance of the original use permit assumed this building would house an electronics superstore.

April 4, 2012

Page 5

2004 and a new, updated impact analysis – with appropriate mitigation measures as necessary – is clearly warranted.

A supermarket will also contribute significantly more noise and air pollution relative to an electronics store, to the detriment of nearby residents. Based on satellite images obtained online, it appears that the building's loading dock is located approximately 200 feet from residences on Mifflin Avenue to the southeast. Because the proposed Neighborhood Market will generate more customer vehicle trips and more diesel truck deliveries, the Planning Director's conclusion that the change in use would not cause environmental impacts warranting CEQA review is incorrect.

IV. A New CUP Is Required Because The Site Has Been Vacant For More Than Six Consecutive Months.

According to the Planning Director, the Circuit City closed in 2009 and the building has remained vacant ever since. Under these circumstances, and given that commercial uses in the Industrial Zoning District are only conditionally permitted, a new CUP is required.

Section 10-1.3270 of the Zoning Ordinance, titled "Discontinued Uses," states:

"All uses that cease operation for a period of more than six consecutive months shall be deemed to be discontinued, and the use permit establishing said use shall become null and void. Reestablishment of said use shall only be permitted upon obtaining a new use permit."

The Circuit City was the primary commercial use authorized by CUP No. PL-2004-0039. It clearly constitutes a "discontinued use" under the unambiguous provisions of the Section 10-1.3270. Reestablishment of a new commercial use at this industrially zoned location therefore requires a new conditional use permit.

Requiring the applicant to obtain a new use permit is sound policy, given that it would trigger at least some form of additional environmental review. Thus, any new or more severe environmental impacts in the areas of traffic, noise, or air quality could be evaluated and mitigated as necessary within that context.

V. Conclusion.

For all the foregoing reasons, the Planning Director's January 19, 2012 consistency determination is clearly erroneous. The Planning Commission should therefore uphold the appeal and overturn that decision.

April 4, 2012
Page 6

Thank you for your consideration of these points.

Yours sincerely,

M. R. WOLFE & ASSOCIATES, P.C.

A handwritten signature in black ink, appearing to read 'M Wolfe', with a long horizontal flourish extending to the right.

Mark R. Wolfe

MRW:am

May 21, 2012

**By E-Mail
Acknowledgement of Receipt Requested**

Mayor Michael Sweeney
Members of the City Council
c/o City Clerk
City of Hayward
777 B Street
Hayward, CA 94541
Email: CityClerk@hayward-ca.gov; List-Mayor-Council@hayward-ca.gov

**Re: Appeal of Planning Commission Action Overturning Planning
Director's Determination – Walmart Neighborhood Market at
2480 Whipple Road (CUP No. PL-2004-0039)**

Dear Mayor Sweeney and members of the City Council:

On behalf of the original appellants Desirae Schmidt and UFCW Local 5 and its members who live and/or work in Hayward, we write to urge the City Council to AFFIRM the Planning Commission's April 5, 2012 action overturning the Planning Director's January 19, 2012 determination that a proposed 34,000 square foot Walmart Neighborhood Market occupying the former Circuit City building at 2480 Whipple Road is consistent with governing provisions of the Hayward Zoning Ordinance and conditions contained in CUP No. PL-2004-0039. As explained further below, this relatively small grocery store is an unambiguously local, neighborhood-serving use, and is therefore inconsistent with the Zoning Ordinance and the CUP, both of which mandate that any commercial use at this location serve a regional or sub-regional market base. The Planning Director's determination was therefore erroneous. In addition, the proposed supermarket will have new and more intense environmental impacts in the areas of traffic and air quality than the Circuit City had, also contrary to the Planning Director's finding.

I. Introduction And Summary.

As a majority of the Planning Commission agreed, the Planning Director's consistency determination finds no basis in the plain language of the Hayward Zoning Ordinance, the use permit conditions, nor common sense. The proposed 34,000 s.f. supermarket is simply not a region or sub-region-serving commercial retail use by any reasonable measure. In terms of its size and product mix, it bears all the hallmarks of a typical neighborhood or community-serving grocery store. Indeed, Walmart itself has explicitly promoted this retail format nationwide as "Neighborhood Markets," describing

May 21, 2012

Page 2

it as offering a “quick and convenient shopping experience.” (*See* [www.walmartstores.com/about us](http://www.walmartstores.com/about-us)). To conclude that customers will travel from across the Bay Area region or the East Bay sub-region to patronize a 32,000 s.f. supermarket – smaller than an average Safeway – is patently unreasonable.

Moreover, contrary to the Planning Director’s conclusions, a new supermarket at this location will in fact generate new or more severe environmental impacts than the closed Circuit City. A supermarket generates more daily and peak-hour vehicle trips from customers than does an electronics store (needless to say, consumers shop for groceries far more frequently than for home electronics), and significantly more deliveries by heavy-duty diesel trucks. The proposed Neighborhood Market may aggravate traffic congestion in the area, while increasing noise levels and emissions of air pollutants, including particulate matter from diesel exhaust, potentially impacting citizens living in the nearby residential area in Union City. These impacts were neither fully evaluated nor mitigated in the 2004 negative declaration originally approved for the original shopping center project’s CUP. Further environmental review in the context of a rezone or variance application is therefore warranted.

Finally, the fact that the Circuit City building has been vacant since 2009 by itself suggests that a new CUP is required under Section 10-1.3270, which provides that any use that ceases operation for more than six consecutive months must be deemed “discontinued.”

Each of these points is elaborated upon further below.

II. The Proposed Neighborhood Market Will Not Serve a Regional or Sub-Regional Marketing Base.

The Planning Director’s determination that the proposed “Neighborhood Market” will serve a regional or sub-regional market is based on three premises, all of which are faulty.

First, the Planning Director concludes that “the proposed Walmart Market store will provide a full range of grocery products, as well as pharmaceutical and general merchandise products, which will serve not only the immediate surrounding neighborhood in Hayward and Union City, but also customers in the general area and those commuting along Interstate 880.” This incorrectly suggests that the range of products offered at the market somehow determines the size of the trade area. By this logic, any grocery store regardless of size would, by definition, serve a regional or sub-regional market simply by virtue of offering a “full range” of groceries, pharmaceuticals, and general merchandise. All existing supermarkets in Hayward – and potentially even some larger convenience stores - would thus become regional or sub-regional commercial uses under this definition.

May 21, 2012

Page 3

Importantly, the Zoning Ordinance itself recognizes that supermarkets are neighborhood-serving and not region-serving commercial uses. The Zoning Ordinance identifies “Supermarket” as a “primary” land use only in the Neighborhood Commercial (CN) Zoning District (§ 10-1.815(a)(5)(ee)), and nowhere else. By contrast, “Supermarket” is permissible in the Regional Commercial (CR) District (§10-1.1400(b)(1)(e)), only if it is ancillary and secondary to a primary commercial use defined as a “major retail anchor” of at least 100,000 square feet. Thus, the Zoning Ordinance clearly considers supermarkets as neighborhood-serving, and by no means regional or sub-regional commercial uses.

The Planning Director also cites the Neighborhood Market’s “site to store” program as evidence that it will serve a regional/sub-regional market base. There is no indication of how or why this program, which allows shoppers to order products online and pick them up at the store (much like the average take-out restaurant) would necessarily broaden a small supermarket’s trade area. The implication that shoppers will be willing to drive longer distances from throughout the region or sub-region simply because they can pre-order items online again lacks any factual or analytic basis.

The third basis for the Planning Director’s consistency determination is the existing CUP’s incorporation by reference of a list of uses permissible in the Central Business District (CBD) per the Zoning Ordinance. As stated in the Director’s letter, the conditions of approval for Use Permit No. PL-2004-0039 include the following:

“The uses permitted in the ‘Shops’ buildings shall be limited to those Retail Commercial Uses that have a regional/sub-regional marketing base and are listed in Section 10-1.1315(a)(5) (Central Business District – Retail Commercial Uses)[.]” emphasis added.

The list of uses in the referenced section 10-1.1315(a)(5) includes “supermarkets.” From this language, the Planning Director concludes:

“Given the condition language that identifies such listed uses, including supermarkets by reference to the Central Business District, as being considered as having a regional or sub-regional marketing base, it is appropriate to consider the proposed 34,000 square foot market store and business model as also serving a regional or sub-regional marketing base.” In other words, the Planning Director has determined that because “supermarket” is included in the list of uses permitted in the CBD by Section 10-1.1315(a)(5), it must therefore necessarily have a regional or sub-regional marketing base.

This conclusion, too, is also patently erroneous. First, as a threshold matter, the condition on its face applies only to the “shops,” *i.e.*, the two secondary retail buildings of 5,100 and 6,000 square feet that are ancillary components of the shopping center. It does not apply to the separately identified “34,000 square-foot regional retail building.” See Condition 1 of “Conditions of Approval” for Use Permit No. PL-2004-0039.

May 21, 2012

Page 4

Second, the condition clearly states that in order for a use to be permissible in the shopping center must not only be included in the list of permissible uses in the CBD contained in Section 10-1.1315(a)(5), but must also, as a separate condition, serve a regional/sub-regional marketing base.

Finally, a simple examination of the uses listed in Section 10-1.1315(a)(5) reveals the fallacy of the Planning Director's conclusion. Among the uses included in that list are the following: "Antique store," "Art and art supplies store," "Bakery," "Bicycle Shop," "Bookstore," "Card shops," "Delicatessen," "Floral shop," "Locksmith," etc., etc. By the Planning Director's logic, all of these uses would be deemed to have a regional/sub-regional marketing bases simply by virtue of being included in the list of permissible CBD uses contained in Section 10-1.1315(a)(5). Obviously this is not the case.

We submit that the Planning Director's interpretation of both the CUP and this provision of the Zoning Ordinance is patently erroneous and must be overturned.

III. The City's Traffic Analyses Reflect Staff's Own Assumption That the Walmart Will Be A Local And Not A Regional Use.

The Planning Director found that the proposed Walmart Neighborhood Market is consistent with the original CUP because a grocery store would have similar environmental impacts as the closed Circuit City electronics store, primarily in terms of traffic impacts, and that "the proposed change in the type of use would not cause any environmental impact requiring additional CEQA review." Again, this conclusion is unsupported by logic or evidence.

We asked Tom Brohard, P.E., a traffic engineer with over 40 years of experience, to evaluate traffic impacts associated with the Neighborhood Market use. Mr. Brohard's attached comments show that when City staff evaluated traffic impacts associated with the Walmart use, they assumed that the Walmart project would have a significantly different trip distribution than the permitted Circuit City use. In particular, City staff assumed that 80 percent of the Walmart trips would be local trips coming from the east, whereas the Circuit City traffic analysis assumed that only 13 percent would come from the east on Whipple Road. The bulk of the Circuit City trips, 60 percent, were projected to come from I-880, and these trips are clearly regional. However, only 5 percent or 10 percent of the Walmart trips are assumed to come from I-880. Clearly, the City staff members evaluating traffic impacts do not believe the Walmart traffic distribution reflects a regional or sub-regional marketing base.

The difference in the trip distribution assumptions between the Walmart and the Circuit City use was critical to the City staff's conclusion that Walmart traffic impacts would not be more severe or significant. The original traffic study performed for the Circuit City assumed only 13 percent of trips generated would originate locally from points east along Whipple Road (with 60 percent originating from I-880). See "Trip

May 21, 2012

Page 5

Distribution” Table from “Revised Draft Traffic Impact Study,” March 3, 2004, excerpts attached to Mr. Brohard’s letter. When the City’s Transportation Manager first evaluated potential impacts from the Neighborhood Market, he concluded that the increase in peak hour trips “is significant and . . . would likely require a traffic study to determine, among other impacts, the impact to the northbound off ramp to determine whether there will be queuing back onto the freeway.” Don Frascinella, e-mail to David Temkin, January 3, 2012 (copy attached).

Later, on request, the Transportation Manager revised the trip distribution assumptions so that **80 percent** of trips would originate locally from the east, concluding that that the impact to the Whipple Road/I-880 Northbound Ramp intersection would not be significant. Don Frascinella, e-mail to David Temkin, January 4, 2012 (copy also attached). Moreover, during the April 5, 2012 hearing before the Planning Commission, the Transportation Manager repeatedly stated that staff’s traffic analysis had assumed that all or nearly all of the traffic generated by the Neighborhood Market would be local

In other words, if the Neighborhood Market is assumed to be a regional use with trip distribution patterns similar to the Circuit City (and therefore permissible under the Zoning Ordinance), then the traffic impacts at nearby intersections will be significant and a new traffic study would be required per City staff’s own conclusion. Only if the Market is assumed to be a local use (and thus impermissible under the Zoning Ordinance), with 80 percent of trips originating local from the east on Whipple Road as opposed to 13 percent, can the conclusion be reached that traffic impacts will not be significant and that no further study or mitigation is required.

In sum, it is clear from the City’s own evaluation of traffic impacts that the Walmart use would be local, not regional or sub-regional. The City cannot consistently maintain that the use is regional, but that it would not cause traffic impacts because traffic would originate locally.

IV. The Neighborhood Market Will Have New and More Severe Traffic Impacts

As noted, we asked Tom Brohard to evaluate traffic impacts from the proposed Walmart use. Mr. Brohard’s attached comments shows that the new supermarket use would more than double daily and peak hour trips. Mr. Brohard also shows that the City has not adequately evaluated traffic impacts. City staff admits that the one-page analysis is “rudimentary.” No documentation was generated to evaluate existing conditions and levels of service. No calculations were provided to justify trip generation and trip distribution assumptions or to determine intersection level of service or queuing impacts. Even though staff determined that trips would come predominately from the east instead of from I-880, there was no analysis of impacts to intersections to the east.

Furthermore, as Mr. Brohard also explains, the addition of peak hour trips to the Whipple Road/I-880 Northbound Ramp intersection will in fact contribute considerably to a cumulatively significant impact at that intersection. Mr. Brohard’s analysis is based

May 21, 2012

Page 6

on data contained in the City's General Plan. Thus, the contention that the Walmart use would not result in new or more severe significant impacts is incorrect.

V. A Supermarket Will Have New And More Severe Air Quality Impacts Compared To The Originally Permitted Circuit City Store.

There is no evidence that the City has considered other types of impacts from the proposed Neighborhood Market, including impacts to air quality. We asked Greg Gilbert of Autumn Wind Associates to evaluate the proposed new use. Mr. Gilbert is an air quality expert with over 22 years of experience.

Unlike the Circuit City, the Neighborhood Market would require large numbers of diesel delivery vehicles, of which as many as half would include diesel-powered Transport Refrigeration Units ("TRUs"), both of which would generate Toxic Air Contaminants ("TACs") that would affect adjacent residential uses. In addition, the Neighborhood Market would more than double customer trips, of which some portion is made in diesel vehicles.

Mr. Gilbert's attached comments demonstrate that TACs from the Walmart use may, by themselves, exceed the Bay Area Air Quality Management District's ("BAAQMD's") threshold for significant project-specific TAC impacts. Mr. Gilbert also demonstrates, based on data from BAAQMD and the California Air Resources Board, that the neighbors adjacent to the proposed Walmart use are already subject to a significant cumulative TAC impact from I-880. Thus, even if the Neighborhood Market's TAC emissions were not individually significant, they would represent a considerable contribution to the existing significant cumulative impact. This impact would be substantially more severe than any TAC impact from the Circuit City use.

Mr. Gilbert also shows that the greenhouse gas impact of the proposed Walmart use would be substantially greater than the Circuit City use, because it generates more than twice the vehicle trips and because it would use energy, water, and packaging more intensively. Based on screening and modeling tools recommended by BAAQMD, Mr. Gilbert determined that the Neighborhood Market use would have significant greenhouse gas impacts.

For these reasons, as well as for those discussed regarding traffic impacts, above, the proposed new use does not qualify for the CEQA exemption for Existing Facilities, (Section 15301 of the CEQA Guidelines), since there will be a substantial expansion of use beyond that existing at the time of the 2004 approval. Even if the Market nominally qualified for this exemption, it would still be subject to environmental review under the Section 15300.2 (exceptions to exemptions when new significant impacts are present).

May 21, 2012

Page 7

VI. A New CUP Is Required Because The Site Has Been Vacant For More Than Six Consecutive Months.

According to the Planning Director, the Circuit City closed in 2009 and the building has remained vacant ever since. Under these circumstances, and given that commercial uses in the Industrial Zoning District are only conditionally permitted, a new CUP is required.

Section 10-1.3270 of the Zoning Ordinance, titled "Discontinued Uses," states:

"All uses that cease operation for a period of more than six consecutive months shall be deemed to be discontinued, and the use permit establishing said use shall become null and void. Reestablishment of said use shall only be permitted upon obtaining a new use permit."

The Circuit City was the primary commercial use authorized by CUP No. PL-2004-0039. It clearly constitutes a "discontinued use" under the unambiguous provisions of the Section 10-1.3270. Reestablishment of a new commercial use at this industrially zoned location therefore requires a new conditional use permit.

Requiring the applicant to obtain a new use permit is sound policy, given that it would trigger at least some form of additional environmental review. Thus, any new or more severe environmental impacts in the areas of traffic, noise, or air quality could be evaluated and mitigated as necessary within that context.

VII. Conclusion.

For all the foregoing reasons, the Planning Director's January 19, 2012 consistency determination is clearly erroneous. The Planning Commission should therefore uphold the appeal and overturn that decision.

Thank you for your consideration of these points.

Yours sincerely,

M. R. WOLFE & ASSOCIATES, P.C.

A handwritten signature in black ink, appearing to read 'M. R. Wolfe', with a long horizontal flourish extending to the right.

Mark R. Wolfe

MRW:am
attachments

Anna May

From: "Anna May, REALTOR"

To: "List-Mayor-Council" <List-Mayor-Council@hayward-ca.gov>

Subject: Lincoln Landing

All, all the way down is a message I'm forwarding which I shared with fellow downtown businesses last month. In addition to what I'm forwarding, the only comments I have about what you're reviewing this evening are as follows:

-Sizes of units: I'm in full support of a "micro-unit" concept. I realize that's not part of the project but for future reference, there will continue to be demand for micro-units as our community flourishes.

-Restaurant/cafe at the rear: Not sure where this idea came from but from my perspective as a former restaurateur, this suggestion is silly. Unless the individual(s) or entity/ies who made this suggestion wants(s) to put their money where their mouths are and build/operate a restaurant there themselves, then please ignore such a suggestion.

Here are a few comments that were shared with me in recent months, just FYI:

I think it is a good idea to take it (the existing building) down. I hope we have a good public transportation and a safe walking area in the downtown, then the traffic should not be a big issue. I love redwood trees. If plant many redwood trees around the building and add more around the downtown, it would look classy.

-R.S.

I like the idea of upscale, as someone who works in down town Hayward and lives in south Hayward. I welcome higher end options.

-Jessica R.

I like the Lincoln Landing project. It is not perfect, but has so much going for it over the other projects that were proposed for that site in the past years. It has the potential to really enliven downtown and Foothill Blvd. You might say, ah but (DELETED) what if it was in your back yard. In truth, if it was in my back yard I would be asking why haven't you approved it yet and started digging.

-M.B.

The lincoln landing project sounds great with silicon valley expanding every day this type of project would be in demand with the housing aspect and the retail aspect it would generate a lot of revenue for Hayward which would boost the city economy. That project will be a benefit to all the Hayward community. Also it may attract some high end retailers and high end restaurants down(town) could expand with all the new high end consumers. Downtown hayward is like a hidden gem.

-Frank Hernandez

Thank you for your service to our City!

Anna May

----- Forwarded message -----

From: **Anna May, REALTOR**

Date: Wed, Mar 15, 2017 at 12:37 PM

Subject: Re: Downtown Specific Plan - Must become a reality not just a Plan...

Attached are two photos in support of no-brainer changes to be made with regard to traffic & walkability downtown, especially in light of the proposed new developments:

Photo 1) Low-cost & sensible planter boxes to be put along Foothill between A Street and Hazel/City Center where there is currently no parking allowed. Having them will settle these problems:

- allow pedestrians to feel more comfortable walking
- allow the restaurants to put tables and chairs out (Cannery Cafe, China Bistro)
- re-open the Foothill Blvd entrance (China Bistro)
- add greenery to a currently very sterile-looking series of facades

Photo 2) The second photo represents typical rush-hour traffic in front of the historical society building, such scene also being similar in front of the Big 5/China Bistro/paint store as well as the Safeway center/old Mervyn's building. Hardly anybody is ever in the right lane! Please see for yourselves!

No parking is currently allowed along his stretch of Foothill, which makes no sense given this typical rush-hour scene. Allowing parking here will solve these problems:

- make it easier for potential customers to park and spend their money at the adjacent businesses.
- it will slow down traffic!

Now is the time to work on allowing parking in these areas in preparation of the influx of new residents from the housing developments being built.

We ask that City staff explore these suggestions and make them happen. Hopefully this time we won't be tossed the usual "it can't be done" excuses from the engineers...

Thanks!





Anna May
Broker/Owner
Realty World Neighbors
Sent from my iPhone

On Mar 15, 2017, at 12:16 PM, Anna May, REALTOR wrote:

Attached are two photos in support of changes downtown

Anna May
Broker/Owner
Realty World Neighbors

Sent from my iPhone

On Mar 11, 2017, at 5:21 PM, <sid@eko-coffee.com> wrote:

I hope everyone can make one of these meetings and give their input on the specific plan charette. everyone's feedback will have a significant impact on the development of the final version.

Check this link for further information on schedule and meetings from TUESDAY TO FRIDAY.

<https://www.hayward-ca.gov/sites/default/files/documents/17.03.07%20DetailedHaywardDesignCharrette.pdf>

Best
Sid

PUBLIC COMMENTS

Charlie Peters



Clean Air Performance Professionals

April 23, 2017

Mayor Jesse Arreguin
City of Berkeley
2180 Milvia Street
Berkeley, CA 94704
(510) 981-7140 / Fax: 7144
jarreguin@city of Berkeley.info

Honorable Mayor Arreguin,

RE: Trump EPA GMO corn climate crisis

Congratulations on your election as Mayor, WOW!

The administration of our President George W. Bush's rejection of your friend and my hero California Congressman Henry Waxman's request for a fuel oxygenate waiver supported by 52 of 53 California congressional members, may deserve a review of our waiver request.

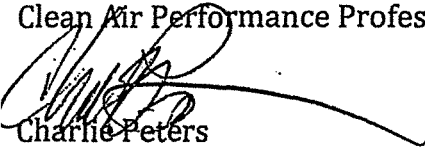
GMO fuel waiver & elimination of E-85 flex fuel credit can cut our Ozone and CO2 transportation Pollution.

We want clean air and water

Lets improve performance of California climate law SB1 in 2017 with a Trump EPA ethanol waiver.

Mayor Arreguin thank you for your interest in Trump Climate Policy.

Clean Air Performance Professionals (CAPP), an award winning coalition of motorists.


Charlie Peters
(510) 537-1796
cappcharlie@earthlink.net
cc: interested parties

CAPP contact: Charlie Peters (510) 537-1796 cappcharlie@earthlink.net



Clean Air Performance Professionals

Saturday, February 4, 2017

Mr. President Donald Trump

RE: Clean Air and Clean Water

It is reported that corn along I-5 south of Sacramento, California uses up to 1500 gallons of water to grow corn for 1 gallon of GMO ethanol for our gas tanks.

- * Should CA Governor Brown consider a corn fuel waiver supported by the UN?
- * Mr. President is your EPA confused when a Lodi CA bread baker is taken to court to collect about a \$million fine for generating ozone from the ethanol made by baking bread while supporting your ethanol mandate?
- * Mr. President does your ATF audit for payment of the \$17 per gallon tax on likker refiners?
- * Has the moffia ever played skip the tax game?
- * Mr President thank you for your service.

CAPP an award winning coalition of motorists.

Charlie Peters

Cc: interested parties

CAPP contact: Charlie Peters (510) 537-1796 cappcharlie@earthlink.net