

# **CITY OF HAYWARD**

Hayward City Hall  
777 B Street  
Hayward, CA 94541  
[www.Hayward-CA.gov](http://www.Hayward-CA.gov)



CITY OF  
**HAYWARD**  
HEART OF THE BAY

## **Agenda**

**Thursday, April 14, 2016**

**7:00 PM**

**Council Chambers**

## **Planning Commission**

**MEMBERS OF THE AUDIENCE WISHING TO ADDRESS THE PLANNING COMMISSION:**

Obtain a speaker's identification card, fill in the requested information, and give the card to the Commission Secretary. The Secretary will give the card to the Commission Chair who will call on you when the item in which you are interested is being considered. When your name is called, walk to the rostrum, state your name and address for the record and proceed with your comments. The Chair may, at the beginning of the hearing, limit testimony to three (3) minutes per individual and five (5) minutes per an individual representing a group of citizens for organization. Speakers are expected to honor the allotted time.

**ROLL CALL****SALUTE TO FLAG****PUBLIC COMMENT:**

(The PUBLIC COMMENTS section provides an opportunity to address the Planning Commission on items not listed on the agenda. The Commission welcomes your comments and requests that speakers present their remarks in a respectful manner, within established time limits and focus on issues which directly affect the City or are within the jurisdiction of the City. As the Commission is prohibited by State law from discussing items not listed on the agenda, your item will be taken under consideration and may be referred to staff for further action.)

**ACTION ITEMS:**

(The Commission will permit comment as each item is called for Public Hearing. Please submit a speaker card to the Secretary if you wish to speak on a public hearing item.)

**PUBLIC HEARINGS:**

For agenda item No. 1, the decision of the Planning Commission is final unless appealed. The appeal period is 10 days from the date of the decision. If appealed, a public hearing will be scheduled before the City Council for final decision.

1. [PH 16-029](#) Appeal of Planning Director Decision to Deny an Administrative Use Permit to Establish an Outdoor Concrete and Asphalt Crushing Operation at 30120 Industrial Parkway Southwest in the Industrial (I) District, Frank Sanchez (Applicant)/Steve Navarro, Industrial Parkway LLC (Owner).

**Attachments:** [Attachment I Planning Director Findings for Denial 10.27.15](#)  
[Attachment II Area Zoning and Land Use Map](#)  
[Attachment III Appeal](#)  
[Attachment IV Project Plans](#)  
[Attachment V NorCal Historic Aerial Photos](#)  
[Attachment VI Block Wall Collapse](#)  
[Attachment VII NorCal Site Photos March 2016](#)  
[Attachment VIII NorCal Neighbor Complaints 2014](#)  
[Attachment IX Correspondence from Andy Liu in Opposition to Project](#)  
[Attachment X Correspondence from Holder Law Group in Opposition to Project](#)  
[Attachment XI Correspondence from Soluri Meserve in Opposition to Project](#)  
[Attachment XII NorCal Letter to Planning Commissioners](#)  
[Attachment XIII NorCal Business License Application 2012.pdf](#)

**COMMISSION REPORTS:**

2. Oral Report on Planning and Zoning Matters
3. Commissioners' Announcements, Referrals

**APPROVAL OF MINUTES**

4. [MIN 16-029](#) Approval of the Minutes of the Planning Commission Meeting on March 17, 2016.

**Attachments:** [Attachment I Draft Minutes of March 17, 2016.doc](#)

5. [MIN 16-030](#) Approval of the Minutes of the Planning Commission Meeting on March 24, 2016

**Attachments:** [Attachment I Draft Minutes of March 24, 2016.doc](#)

**ADJOURNMENT**

**PLEASE TAKE NOTICE** that if you file a lawsuit challenging any final decision on any public hearing item listed in this agenda, the issues in the lawsuit may be limited to the issues which were raised at the City's public hearing or presented in writing to the City Clerk at or before the public hearing.

**PLEASE TAKE FURTHER NOTICE** that the City Council has adopted Resolution No. 87-181 C.S., which imposes the 90 day deadline set forth in Code of Civil Procedure section 1094.6 for filing of any lawsuit challenging final action on an agenda item which is subject to Code of Civil Procedure section 1094.5.

**NOTE:** Materials related to an item on this agenda submitted to the Planning Commission after distribution of the agenda packet are available for public inspection in the Permit Center, first floor at the above address. Copies of staff reports for agenda items are available from the Commission Secretary and on the City's website the Friday before the meeting.





# CITY OF HAYWARD

Hayward City Hall  
777 B Street  
Hayward, CA 94541  
[www.Hayward-CA.gov](http://www.Hayward-CA.gov)

## Staff Report

---

**File #:** PH 16-029

---

**DATE:** April 14, 2016

**TO:** Planning Commission

**FROM:** Planning Manager

### SUBJECT

Appeal of Planning Director Decision to Deny an Administrative Use Permit to Establish an Outdoor Concrete and Asphalt Crushing Operation at 30120 Industrial Parkway Southwest in the Industrial (I) District, Frank Sanchez (Applicant)/Steve Navarro, Industrial Parkway LLC (Owner).

### RECOMMENDATION

That the Planning Commission denies the appeal and upholds the decision of the Planning Director to deny the administrative use permit for the proposed outdoor concrete and asphalt crushing operation, subject to the Findings for Denial set forth in Attachment I.

### SUMMARY

In October 2015, the Planning Director adopted findings for denial of an Administrative Use Permit (AUP) associated with an existing outdoor concrete and aggregate recycling plant that was the subject of a Code Enforcement action. The Planning Director denied the proposed project on the following grounds: the outdoor, heavy industrial use is not in character with the regional commercial center located approximately 300 feet south and west of the site; the use is not necessary for public convenience in that the City has two approved concrete and aggregate recycling plants within the City limits; and the use could be detrimental to public welfare in that it could result in visual, polluting dust and noise impacts on surrounding properties and individuals, among other rationale detailed in Attachment I.

Following the Planning Director's denial, the applicant filed an appeal of 1) the Planning Director's determination that an AUP is required for this use in this location; and 2) the Planning Director's findings related to the denial. Staff believes that the findings stand for the reasons stated in Attachment I and in this staff report and recommends that the Planning Commission deny the appeal and uphold the Planning Director's decision based on the findings.

### BACKGROUND

On November 17, 2011, NorCal Rock Inc. ("NorCal") submitted a business license application to the City's Planning Division. The business license application description noted "*aggregates/retail*." NorCal is located on the same site as FGY Stone, which obtained a business license in 2005. The business license description for FGY Stone specified that the business consisted of "*retail sales of stone/marble/cabinets NO OUTDOOR STORAGE (MAY REQUIRE OBTAINING A PERMIT)*." Thus, NorCal's business license was

approved and the use was considered a continuation of the existing retail sales of aggregates on the site in line with FGY Stone's stated use. There was no mention of the site being used to crush and otherwise process concrete or aggregates, nor did the City approve such a use related to the site (Attachment XIII).

In October 2011, the City received an initial complaint about dirt and gravel being tracked onto Industrial Parkway from contractor vehicles visiting the subject site. At the time, it was inconclusive whether the materials emanated from NorCal or an adjacent aggregate retail sales business. In February 2012, the City received a complaint related to dust emanating from concrete crushing activities at the site; however, Code Enforcement records do not indicate that there was a site visit to verify whether the use was being conducted at the site. Following a third complaint September 2013, Code Enforcement inspected the site and determined that the use at the site was not "*aggregates/retail*" as described in the business license. Rather, the use was confirmed as an unpermitted outdoor concrete and aggregate recycling operation with major outdoor storage. Following this determination, a Notice of Violation was sent to the business and property owner.

On October 31, 2013, NorCal filed an application for AUP to operate a concrete and aggregate recycling business outside of a building, and the application was deemed incomplete on November 26, 2013. Between November 2013 and May 2014, the applicant failed to make the application complete; however, the business continued to operate without approvals or permits. In addition, the applicant constructed an approximately ten foot tall unengineered concrete block wall between 2013 and 2014 without appropriate permits or approvals, which collapsed onto the adjacent property on at least one documented occasion (Attachment VI).

Following a thorough review of the AUP application materials submitted to the Planning Division up to that date, the AUP was denied on May 9, 2014. On May 16, 2014, the applicant contested the denial pursuant to Hayward Municipal Code (HMC) Section 10-1.2815(d), which requires that an application be deemed complete prior to issuance of a decision. Following review of the application materials, the City rescinded the denial of the AUP and continued processing the application.

Throughout 2014, the applicant provided partial resubmittals related to the project resulting in incomplete status letters dated July 16, 2014 and November 17, 2014. The application remained incomplete because the resubmittals did not adequately address dust suppression, stormwater run-off control and landscaping.

In July 2014, the applicant obtained permits from the Bay Area Air Quality Management District (BAAQMD) to allow stockpiles, screening, and conveying related to a portable crushing plant and diesel generator at the site. The BAAQMD did not contact the City prior to issuing the permits. According to the permits, conditions limited the tonnage processed at the site as well as the hours of operation (no more than 495 hours per year which translates into approximately one and a half hours per day). Condition No. 1a of the BAAQMD Permit to Operate described the crushing plant and diesel generator as "portable" and stated that the equipment shall not be stored or operated at any one location for more than twelve consecutive months. Further, the condition disallows the operator to move the equipment and then return it to the same location in an attempt to circumvent the portable equipment time requirement.

Although the application remained incomplete, the use continued to operate. Recognizing that the

continued operation of the unpermitted use was illegal and unsafe, the City's Code Enforcement Division issued a Notice of Violation on July 28, 2015, and the City of Hayward Division of Stormwater Management and Urban Run-Off Control issued a Warning Notice on August 5, 2015.

On September 16, 2015, following the official notices of warning and violation, NorCal submitted revised plans that addressed the unresolved comments and issues provided in the most recent status letter and in subsequent correspondence between the applicant and Planning staff. On October 5, 2015, Planning staff notified the applicant that the application was deemed complete. On October 27, 2015, the Planning Director administratively denied the AUP.

*Other Concrete & Aggregate Recycling Businesses in Hayward* - It is essential to note as part of the Background on this project that two other concrete and aggregate recycling businesses were also cited for illegal operation around 2013, and were also notified about the need to apply for and receive AUP approval in order to continue to process concrete and aggregates outside of a building.

In June 2013, A1 Tank submitted an AUP application for outdoor concrete recycling at an approximately one-acre site at 1069-1089 Industrial Parkway West in the Industrial District. Following community opposition from a nearby residential neighborhood, the applicant modified the application to move the concrete crushing operation into a building. Following release of a Negative Declaration for the requisite 20-day public review, the applicant was granted Site Plan Review (SPR) approval for the building and use in February 2015. As of this date, the applicant submitted building permit plans for the site preparation and grading.

In April 2014, Bay Area Concrete Recycling submitted an application for outdoor concrete and aggregate recycling at an approximately seven-acre site at 3898 and 3890 Depot Road in the Industrial District. Following release of a Mitigated Negative Declaration for the requisite 20-day public review, the applicant was granted AUP approval for the use and associated site improvements in May 2015. As of this date, the applicant is exploring a project change to bring the operation into a building or under cover based on potential stormwater run-off issues related to uncovered piles and processing of concrete.

*Zoning* - The proposed project site is located in the Industrial District, which is intended to provide for and encourage the development of industrial uses in areas suitable for the same, and to promote a desirable and attractive working environment with a minimum of detriment to surrounding properties.

Outdoor concrete and asphalt recycling is not specifically listed as a primary or conditional use in the HMC. Pursuant to HMC 10-1.140, when a use is not specifically listed in the sections devoted to "Uses Permitted," it shall be assumed that such uses are prohibited unless it is determined by the Planning Director or on appeal, that the use is similar to and not more objectionable or intensive than the uses listed. Other relevant sections of the Municipal Code (HMC Sections 10-1.175 and HMC Sections 10-1.1645) strictly call for all uses and activities to occur entirely within a building.

Pursuant to the authority granted by the Municipal Code, the Planning Director determined that the proposed outdoor concrete and aggregate recycling use would be subject to an AUP based on the fact that the proposed use involved operations, processing and storage of heavy machinery and materials outside of a building, which is more intensive and objectionable than the uses listed as permitted without

need for a use permit in the I District.

General Plan - The proposed project site has an Industrial Technology and Innovation Corridor General Plan land use designation where professional offices and corporate campuses, research and development, warehousing and logistics, traditional, advanced and specialized manufacturing and biotechnology and high technology uses are allowed. Various goals and policies support employee intensive uses (Goal LU-6, and Policy LU-6.1); to support upgrading existing sites and buildings to improve the economic viability of properties and to enhance the visual character of the corridor (Policy LU-6.6); and to implement design strategies such as screening areas used for outdoor storage and processing (Policy LU-6.7), among others.

Approximately 300 feet south and west of the project site, there are several properties with a Retail and Office Commercial General Plan land use designation where regional and community shopping centers and professional office developments are identified primary uses.

Proposed Site and Project - The flat, roughly rectangular 2.18 acre project site is accessed from an approximately 35-foot wide driveway from Industrial Parkway SW over the Alameda County Flood Control channel. The driveway extends to an approximately 14,500 square foot access easement which runs along the western portion of the property and provides access and parking for the project site and adjacent parcels. The subject site is partially developed with an approximately 7,430 square foot warehouse that was constructed in the mid-1960s. FGY Stone occupies the warehouse and a small portion of the site.

The proposed concrete and aggregate recycling plant would be located on an approximately 1.5-acre portion of the subject site. The concrete and aggregate recycling area is surrounded by a combination security fence with gate and a perimeter block wall that reaches ten feet tall along the northern, southern and western boundaries of the subject site and approximately seven and a half feet tall along the interior property lines.

There are five or six large uncovered piles of aggregate, processed sand, rock, concrete and asphalt placed around the site. The piles reach roughly fifteen to twenty feet in height and are placed up against the southern boundary wall, a few feet away from the northern property line and about ten feet away from the eastern (rear) property line. All of the truck circulation and processing equipment is placed at the center and rear of the property as shown in Attachment IV (Project Plans). With regard to operations, the AUP application request sought a permit to operate twenty-four hours a day, seven days a week with typical operating hours on Monday through Friday from 6 a.m. to 4 p.m.

Current photos of the site are included as Attachment VII, and videos of the use in operation both from the site and a neighboring property are available for view [online](https://www.dropbox.com/sh/egnjd19c6f88hmv/AABAtpuY0c0-macTpt1RVvsYa?dl=0) [<https://www.dropbox.com/sh/egnjd19c6f88hmv/AABAtpuY0c0-macTpt1RVvsYa?dl=0>](https://www.dropbox.com/sh/egnjd19c6f88hmv/AABAtpuY0c0-macTpt1RVvsYa?dl=0).

## **DISCUSSION AND STAFF ANALYSIS**

As described in the November 12, 2015 appeal letter (Attachment III), the applicant is appealing two decisions. The first issue on appeal is the Planning Director determination that an AUP is required and the second issue on appeal relates to the denial of the AUP; both issues are discussed in detail below.

Appeal of Planning Director Determination that an Administrative Use Permit is Required - NorCal obtained a business license under the pretense of operating as an aggregate retailer like FGY Stone, which is located on the same site. In light of the exclusionary nature of the City's Zoning Ordinance as described above, the Planning Director has the authority to require a discretionary approval process if a use proves to be more objectionable or intensive than the primary uses listed in the subject district.

The HMC plainly states that all uses and activities shall be conducted indoors with the exception of minor open storage and based on compatibility with adjoining uses. Thus, any use that involves processing of materials solely outdoors would constitute a significant deviation from standard land use and zoning practice and deserves added scrutiny and consideration of compatibility with surrounding uses.

Primary uses listed in the Industrial District occur within buildings. Thus the proposal to operate a concrete and aggregate crushing operation outdoors is significantly more intensive than the primary uses envisioned for the subject district, and could arguably result in objectionable impacts related to dust and noise, polluted stormwater run-off as well as visual impacts related to large-scale equipment and aggregate piles. In summary, the Planning Director was within the authority granted by the Municipal Code to require that the business apply for and obtain a discretionary administrative use permit to operate.

The appeal letter claims that the concrete and aggregate recycling operation is a continuation of an existing use on the site (i.e. "grandfathered in"); specifically, page 2 of the applicant's letter states that the prior use on the site involved composting and providing outdoor storage for trucks, freighters and equipment. However, historic aerial photos of the site (Attachment V) show that the site was solely used as a passive truck and equipment storage yard and there was no visible evidence indicating that any active, outdoor processing of any materials was conducted on the site. Further, there are no City records (prior use permit or business license) indicating that such activity occurred on the site.

In summary, there is no evidence indicating that the use was being conducted prior to 2009.

Appeal of Planning Director Denial of Administrative Use Permit for Outdoor Concrete and Aggregate Recycling - The applicant's appeal states that the findings for denial cannot be supported by and are unrelated to the findings for an AUP as set forth in the HMC. However, staff believes that all of the findings are supported and are underpinned by one significant issue: the land use incompatibility between the proposed use and the surrounding area. Specifically, the proposed use involving concrete and aggregate crushing with large-scale equipment and stockpiling of materials up to twenty feet tall outside of a building is fundamentally incompatible with the nearby retail center commercial uses and the City's overall long-term vision for the area.

According to HMC Section 10-1.3105, the purpose for requiring an AUP is to assure that certain specified uses are permitted where there is a *community need* and to assure that said uses occur in *maximum harmony with the area* and *in accordance with official City policies*.

With regard to the question of *community need*, staff does acknowledge that there is a need for such

services in the region; however, the City approved two concrete and aggregate recyclers within the City limits. One will operate within a building and the other will operate on a five-acre parcel, surrounded by other heavy industrial uses. According to records provided by the BAAQMD for Alameda and Santa Clara counties, the only jurisdictions with more than one permitted concrete recycler are Oakland (population 413,775 in 2014) and San Jose (population 1,015,785 in 2014), both of which are clearly many times larger than Hayward (population 154,612 in 2014). Thus, there is not a demonstrated community need for a third outdoor concrete and aggregate recycler within the City of Hayward limits, particularly for one that would be located in close proximity to a well-established regional commercial center.

The proposed use is *not in maximum harmony with the area*. The use is proposed within a few hundred feet of a major regional commercial center, which is described in the City's General Plan (Land Use Goal LU-5) as an opportunity to "promote attractive and vibrant community and regional centers that provide convenient and enhanced opportunities for shopping, services, entertainment, social interaction and culture."

Although the project site is located in the Industrial District, the area surrounding the site has changed significantly over the past twenty years and it is continuing to evolve from industrial to light industrial and commercial, retail uses that are consistent with the City's General Plan vision for the area. In fact, the transformation of the area south and west of the site into a regional commercial and retail center is well-established both in the current and planned development. The approximately one-acre project site is located less than 1,000 feet northeast of retail and commercial uses including a Motel 6, McDonald's and Denny's that were built in the 1980's; a Home Depot and other supporting retail uses constructed in the early 1990s; a large-scale Target store established in the early 2000s; a strip retail center with Panda Express among other commercial uses that was built in 2005; and more recently, a 24-Hour Fitness (2013) and City Health Club along with supporting commercial uses were established in the vicinity of the project site in 2013. In addition, the City is currently processing an application to convert an existing warehouse adjacent to the site into a large scale retail center to expand the regional commercial uses in the area in line with the expansion over the past two decades.

It is true that the immediately adjacent neighboring properties to the project site involve light industrial uses and outdoor storage of materials; however, those uses are primarily passive and do not involve major processing outside of a building as is the case with NorCal. While formal noise, air quality and other environmental studies were not provided for the proposed project, staff visited the site and observed the operation on several occasions. The tall stockpiles and large scale industrial equipment on the site is clearly visible from surrounding streets and commercial sites; and noise is audible on adjacent sites when the use is operating. In addition, based on conversations with adjacent businesses in the multi-tenant building located at 30162 through 30208 Industrial Parkway Southwest and the warehouse building located at 312589 and 31281 Wiegman Road, there is a large amount of dust blown onto adjacent properties, which may be attributable to the site.

Further, the proposed use accepts concrete and aggregate materials from various jobs and contractors and cannot know the chemicals, fillers or other materials mixed with the concrete and aggregate. There is a high potential for windblown contamination from concrete dust containing silica dust, Mercury and polychlorinated biphenyl (PCBs) among other potential contaminants. Dust and chemicals escaping the site will settle on adjacent properties, roadways and cars and will run-off following exposure to

rainwater into the City's storm drain system, and nearby drainages such as the Alameda County flood control channel approximately 100 feet from the site and eventually into the San Francisco Bay. The high potential of polluted runoff from such a proposed use is in direct violation of the City's Municipal Code Section 11-5.19 and the Municipal Regional Permit (MRP) issued from the San Francisco Regional Water Quality Control Board that regulates the City's stormwater runoff.

Overall, the proposed project is not consistent with the City's vision, goals or policies for the Industrial Corridor and the nearby Retail and Office Commercial General Plan land use designations; it is incompatible with the surrounding neighborhood; has high potential to impact air and water quality; and it would not promote a desirable or attractive working environment.

### **ENVIRONMENTAL REVIEW**

Pursuant to California Environmental Quality Act (CEQA) Guidelines Section 15270(a), CEQA does not apply to projects that are disapproved by a public agency. While a formal Initial Study was not completed for the project, staff has observed or is aware of aesthetic, noise, air quality and stormwater related impacts from the ongoing use of the site as an outdoor concrete and aggregate recycling plant.

### **PUBLIC OUTREACH**

In November 2013, an Official Notice of receipt of the use permit application was sent to adjacent property owners and businesses within a 300 foot radius of the proposed project site. Following this notice and throughout 2014 and 2015, staff received numerous complaints from an adjacent neighbor/owner related to dust, air quality impacts, odors and noise (Attachment VIII). Staff met with the neighbor and observed the operation from the adjacent site verifying that there is noise emanating from the operation and dust accumulation on materials stored outdoors, which may be emanating from the proposed use. Staff also visited the adjacent retail center and notified the tenants about the proposed project and appeal of the Planning Director's decision. The same adjacent neighbor/owner recently submitted the same letter he submitted in 2014 (Attachment IX).

On October 27, 2015, a Notice of Denial was sent to adjacent property owners and businesses within a 300 foot radius of the proposed project site as well as a list of interested parties. An official notice of the applicant's appeal was not provided to the standard 300 foot mailing list. However, staff visited the nearest commercial tenants and notified them about the appeal.

On April 4, 2016, a Notice of Public Hearing for the Planning Commission meeting was mailed to adjacent property owners and businesses within a 300 foot radius of the proposed project, and to interested parties. At the time this report was written, staff has received correspondence from representatives of the adjacent property (30104 Industrial Parkway SW) urging the Commission to support staff's recommendation of denial (Attachments X and XI); and, correspondence from the applicant inviting the Commission to visit the site and uphold the applicant's appeal (Attachment XII).

### **NEXT STEPS**

Should the Planning Commission take action on the appeal at this hearing, the Commission's decision would begin a 10-day appeal period, where an appeal of the Commission's action to the City Council could be filed (or call-up to Council by a Council member could be submitted), which would expire at 5:00 p.m. on April 25, 2016.

If the current appeal is upheld, and there is no appeal of the Commission's action filed within that time period, then the application will come back to Planning staff for environmental analysis. (Per the California Environmental Quality Act (CEQA), environmental impact analysis is not required to be done for projects that are denied.) The applicant would be required to submit formal Air Quality and Noise studies, among other items if deemed necessary, to allow staff to conduct environmental impact analysis and prepare an Initial Study for the proposed use. Following the requisite public review, staff would prepare findings and conditions of approval, including all mitigation measures to reduce environmental impacts for the proposed project. .

If the appeal is denied and no appeal of that action is filed, the decision of the Planning Commission would be final and Code Enforcement would issue a violation letter requiring that the property be cleared of the use within a certain timeframe. If the use continues to operate illegally, Code Enforcement would cloud the title and assess fines until the applicant ceases the use and clears the property.

*Prepared by:* Leigha Schmidt, Senior Planner

Approved by:



Sara Buizer, AICP, Planning Manager



David Rizk, AICP  
Development Services Director

Attachments:

Attachment I -Findings for Denial  
Attachment II - Area and Zoning Map  
Attachment III - Appeal Letter  
Attachment IV - Project Plans  
Attachment V - Historic Aerial Photos  
Attachment VI - Block Wall Collapse  
Attachment VII - Site Photos  
Attachment VIII - Neighbor Complaints and Photos (2014)



---

**File #:** PH 16-029

---

Attachment IX - Correspondence from Andy Liu in Opposition to Project, April 4, 2016

Attachment X - Correspondence from Holder Law Group in Opposition to Project, April 6, 2016

Attachment XI - Correspondence from Soluri Meserve in Opposition to Project, April 7, 2016

Attachment XII - Correspondence from NorCal Rock in Favor of Project, April 7, 2016

Attachment XIII - NorCal Business License Application (2012)

**CITY OF HAYWARD  
PLANNING DIVISION  
ADMINISTRATIVE USE PERMIT  
October 27, 2015**

**ADMINISTRATIVE USE PERMIT PL-2013-0468 – Frank Sanchez for Norcal Rock, Inc. (Applicant)/ Industrial Parkway LLC (Owner)** – Denial of an administrative use permit request to operate an outdoor concrete and aggregate recycling facility at 30120 Industrial Parkway SW in the Industrial (I) District, (APN: 475-0010-006-00).

**FINDINGS FOR DENIAL .**

- A. Pursuant to California Environmental Quality Act (CEQA) Guidelines Section 15270(a), CEQA does not apply to projects that are disapproved by a public agency.
- B. The proposed outdoor concrete and aggregate recycling facility is not desirable for the public welfare in that the facility will generate noise, dust and visual impacts that cannot be contained to the site. The proposed use which involves large-scale industrial equipment and crushing activities will be conducted entirely outdoors and would be visible from surrounding properties and Interstate 880. At 25 feet in height, the stockpiles and equipment cannot be effectively screened by 12 and one-half foot tall perimeter walls.

In addition to visual impacts, noise and dust will migrate over the perimeter walls resulting in nuisances on adjacent light industrial and large-scale retail centers located south and west of the project site. Though the proposed administrative use permit plans include a perimeter dust suppression system with irrigation sprinklers evenly spaced along the perimeter walls, the sprinklers, which will only operate during business hours, cannot reach all areas of the stockpiles at all times. Tall, uncovered stockpiles will result in a high potential for windblown contamination from concrete dust containing silica dust, Mercury and polychlorinated biphenyl (PCBs), among other potential contaminants from pre-treated concrete and aggregate materials. Dust and chemicals escaping the site will settle on adjacent properties, roadways and cars and will run-off following exposure to rainwater into the City's storm drain system, and nearby drainages such as the Alameda County drainage approximately 100 feet from the site and eventually into the San Francisco Bay. Noise and dust will also be generated from unloading and loading the trucks and the concrete crushing machinery as well as movement of concrete rubble around the approximately one-acre project site, which is detrimental to the welfare of nearby businesses and their customers.

The City acknowledges that there is a need for concrete and aggregate recycling services in the region. However, there are already two approved concrete and aggregate recyclers located within the City of Hayward. One concrete recycler would be operated indoors thus mitigating dust and noise impacts to sensitive receptors; and, the other concrete and aggregate recycler was approved to conduct outdoor operations on an approximately five

acre parcel adjacent to automobile wrecking yards, the Russel City Energy Center and other heavy industrial uses, which are located thousands of feet away from established commercial and residential districts and land use designations. Approval of a third concrete and aggregate recycler with outdoor operations adjacent to well-established commercial uses that are frequented by sensitive receptors is not necessary for the convenience of the City residents or businesses.

- C. The concrete and aggregate recycling facility impairs the character of the surrounding area. The facility is highly visible from existing commercial uses as well as Interstate 880 because the stockpiles and equipment reach above the height of the screening walls. In addition, the site is located within 1,000 feet (and as close as 400 feet at points) to existing, large-scale commercial retailers, a hotel, and restaurants that are frequented by sensitive receptors.

Although the project site is located in the Industrial District, the area surrounding the site has changed significantly over the past twenty years and it is continuing to evolve from industrial to light industrial and commercial, retail uses that are consistent with the City's General Plan vision for the area. In fact, the transformation of the area south and west of the site into a regional commercial and retail center is well-established both in the current and planned development. The approximately one-acre project site is located less than 1,000 feet northeast of retail and commercial uses including a Motel 6, McDonald's and Denny's that were built in the 1980's; a Home Depot and other supporting retail uses constructed in the early 1990s; a large-scale Target store established in the early 2000s; and a strip retail center with Panda Express among other commercial uses that was built in 2005. In addition, the City is processing an application to convert an existing warehouse adjacent to the site into a large scale retail center to expand the regional commercial uses in the area. While immediately adjacent properties to the project site involve light industrial uses and outdoor storage of materials, the uses do not involve processing outside of a building as is contemplated with the proposed use. In conclusion, the stockpiles, dust and noise generated from an outdoor concrete and aggregate recycling processing use are incompatible with the surrounding neighborhood as a whole and would be more appropriately placed inside a structure or in industrial areas located further from commercial corridors and retail and commercial centers.

- D. The outdoor concrete and aggregate recycling facility will be detrimental to the public health, safety, or general welfare in that the uncovered and uncontrollable dust created by the concrete crushing process poses a potential health risk. This administrative use permit is intended to legalize a use that has been operating in the City over the past several years. During that time, the City has received complaints related to dust generated by ongoing operations and has documented the user's failure to control fugitive sediment on the property at the ingress/egress to the site and at nearby stormwater inlets. Though the proposed administrative use permit plans include a perimeter dust suppression system with irrigation sprinklers spaced around the piles, dust from crushing activity will escape the site due to the fact that the sprinklers are not able to reach all areas of the stockpiles. In addition, dust will escape during non-business hours when the uncovered stockpiles are not watered. When concrete and aggregate materials are crushed into smaller particles, a percentage of the particulate material released is crystalline silica dust which can lead to

lung disease following repeated exposure. Further, uncovered stockpiles of this material will result in a high potential for windblown contamination from concrete dust containing Mercury and polychlorinated biphenyl (PCBs). The dust and chemicals escaping the site will settle on adjacent properties, roadways and cars and will run-off following exposure to rainwater into the City's storm drain system, into nearby drainages such as the Alameda County drainage approximately 100 feet from the site and eventually into the San Francisco Bay. In addition to dust-related impacts, the outdoor facility will also result in continual noise which cannot be wholly contained by the 12 and one-half foot walls surrounding the use because the equipment will reach above the perimeter walls designed to buffer the noise.

- E. The outdoor concrete and aggregate recycling facility is not in harmony with the intent and purpose of the Industrial District nor is it consistent with the City's General Plan. According to Hayward Municipal Code (HMC) Section 10-1.1605:

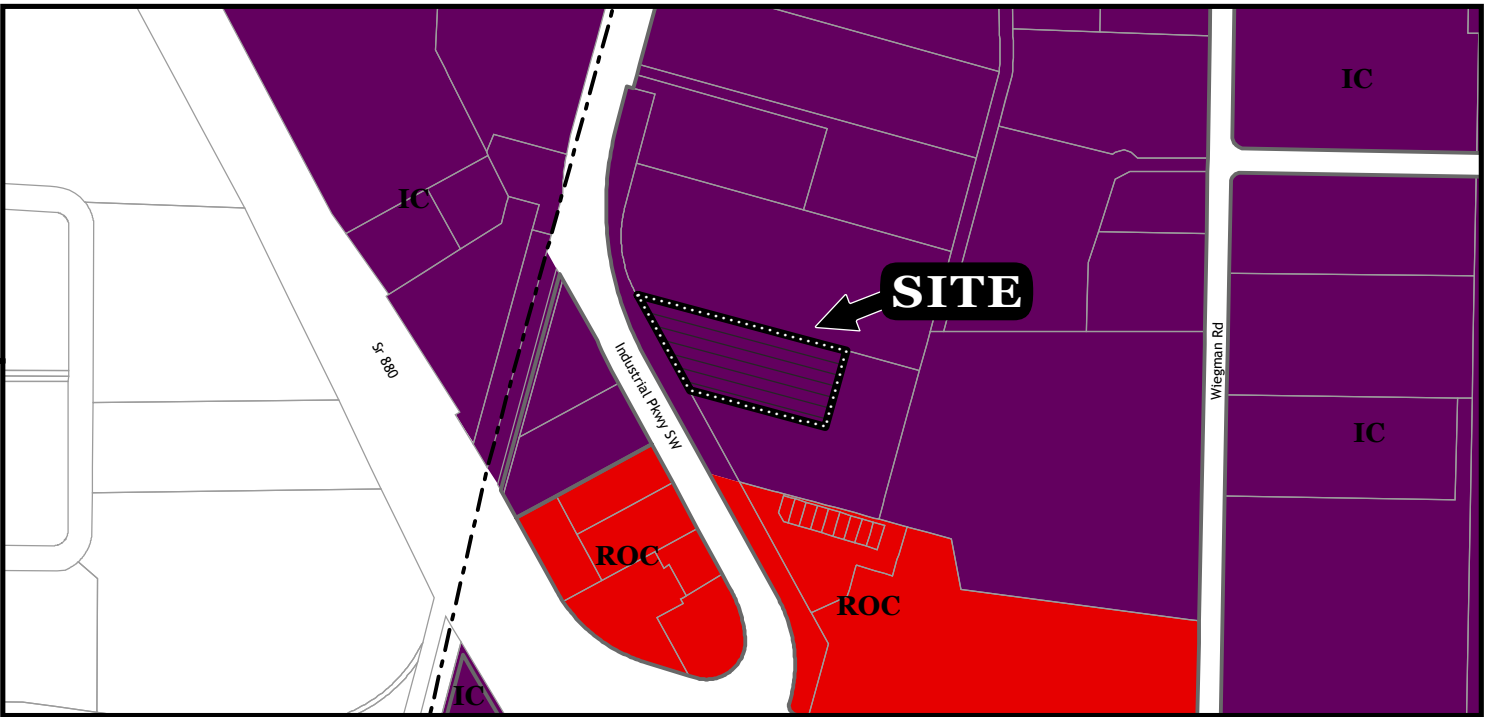
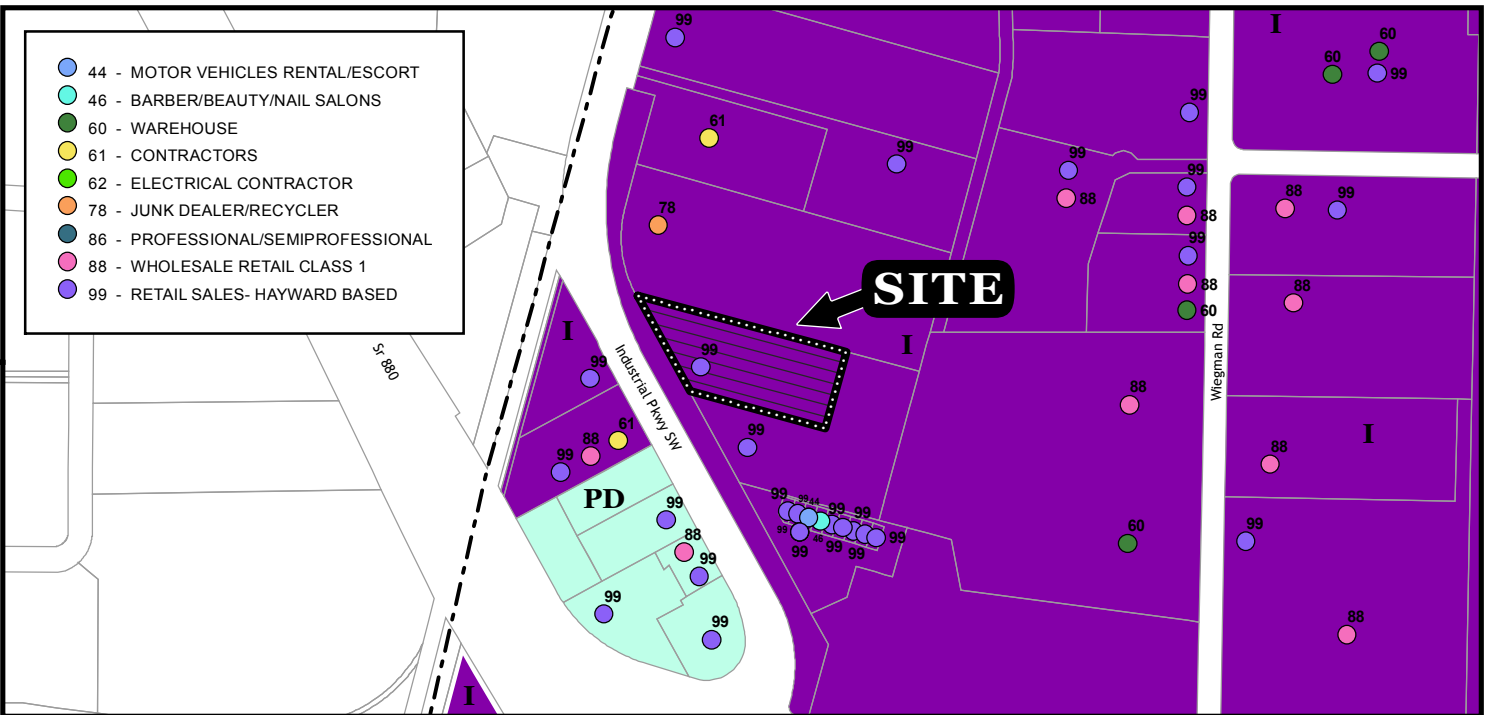
*"The purpose of the Industrial (I) District is to provide for and encourage the development of industrial uses in areas suitable for same, and to promote a desirable and attractive working environment with a minimum of detriment to surrounding properties."*

Pursuant to HMC Section 10-1.1645(o), "all uses shall be conducted wholly within enclosed buildings." Open storage of goods in conjunction with a use that includes indoor processing may be permitted with an administrative or conditional use permit; and, some outdoor processing may occur on very large industrial sites that do not result in significant visual, dust, noise or other impacts. However, the proposed outdoor concrete and aggregate recycling use would occur outside on a relatively small site with visible equipment and stockpiles within 1,000 feet of established commercial and retail uses resulting in visual and environmental detriments to visitors to the well-established, nearby commercial centers.

The proposed project is also incompatible with General Plan policies related to new development in the Industrial Corridor land use designation. Although the proposed use includes minor landscaping improvements along a parking strip, the proposed use would not upgrade existing site facilities to improve the economic viability of the property nor would it enhance the visual character of the corridor (as promoted by Policy LU-6.6) in that it would result in visible concrete crushing equipment and stockpiles from nearby roadways and commercial centers. Nor would the proposed project meet General Plan Policy ED-5.5 which requires new development to include quality site, architectural and landscape design to improve and protect the appearance and reputation of Hayward in that the applicant is not proposing any improvements to the land other than monolithic, masonry walls and minor frontage landscaping. Nor is the project consistent with Policy LU-6.8, which encourages employee amenities in that the proposed project does not include on-site structures such as an employee break-room or restrooms. Overall, the proposed project is not consistent with the City's vision, goals or policies for the Industrial Corridor and it is incompatible with the surrounding neighborhood and would not promote a desirable or attractive working environment.



# Area & Zoning Map



**PL-2013-0468 AUP**

Address:  
**30120 Industrial Parkway SW**

Applicant:  
**Frank Sanchez**

Owner:  
**Industrial Parkway LLC**

## Zoning

- I (Industrial)
- PD (Planned Development)

## General Plan Land Use

- IC (Industrial Technology and Innovation Corridor)
- ROC (Retail and Office Commercial)

0 100 200 300  
Feet

NOV 12 2015



1111 Broadway, 24th Floor  
Oakland, CA 94607-4036

T: 510-834-6600  
F: 510-808-4730

www.wendel.com  
tawilliams@wendel.com

PLANNING DIVISION

November 12, 2015

**VIA HAND DELIVERY**

Mr. David Rizk, Development Services Director  
City of Hayward  
Development Services Department, Planning Division  
777 B Street  
Hayward, CA 94541

**Re: Administrative Use Permit PL-2013-0468  
NorCal Rock Inc., 30120 Industrial Parkway SW  
Appeal of Denial of AUP Application**

Dear Mr. Rizk:

On behalf of NorCal Rock, Inc. ("NorCal"), owner of the property at 30120 Industrial Parkway SW, the purpose of this letter is to formally appeal the Planning Director's Findings of Denial of NorCal's Administrative Use Permit Application No. PL-2013-0468 to the City of Hayward Planning Commission (dated October 27, 2015), pursuant to Hayward Municipal Code sections 10-1.3145(a) and 10-1.2845. Enclosed with this appeal is a check for the required appeal deposit of \$6,000.

**Specific Action Appealed:** Planning Director's Denial of Administrative Use Permit Application No. PL-2013-0468 ("AUP") to the City of Hayward Planning Commission, dated October 27, 2015 (the "Decision"), and the Planning Director's determination that an AUP is required.

**Grounds for Appeal:** As set forth herein, the appeal of the Decision should be granted because, in issuing the Decision, the Planning Director proceeded without, or in excess of, his jurisdiction, denied NorCal a fair hearing, and committed a prejudicial abuse of discretion by not proceeding in the manner required by law, by failing to support the Decision with adequate findings and by failing to support the findings with evidence. (Code of Civil Proc. § 1094.5(b); *Topanga Ass'n for a Scenic Cmty. v. County of Los Angeles* (1974), 11 Cal. 3d, 514.) The purported findings contained in the Decision are not and cannot be supported, and are unrelated to the required findings for an AUP set forth in the City's zoning ordinance in that the purported findings are not relevant to the AUP application, contain speculative and inaccurate assumptions and are based on inadequate and incomplete information, and ignores relevant information that supports approval of the AUP.

**Relief Sought:** For the reasons discussed below, NorCal requests that the Planning Commission determine that an AUP is not required for NorCal's current use which was previously approved by the City's Planning Department. Should the Planning Commission determine that an AUP is required (despite prior approvals and assurances), NorCal requests the Planning Commission grant this appeal and overturn the Planning Director's Decision to deny



David Rizk / City of Hayward  
November 12, 2015  
Page 2

WENDEL, ROSEN, BLACK & DEAN LLP

the AUP and direct staff to prepare an initial study and mitigated negative declaration to support approval of the AUP subject to conditions shown to be necessary to mitigate any identified potential impacts on the environment. NorCal seeks a stay of the operative effect of the Decision pursuant to Code section 10-1.2845(c), and an appeal hearing before the City of Hayward Planning Commission (per section 10-1.2845(e)).<sup>1</sup>

### **Background and Staff's Confirmation of Allowed Use**

NorCal's site is located in south Hayward near the Union City border. NorCal's parcel is designated industrial corridor in the City's General Plan, is zoned industrial (I) and is surrounded by other industrially-designated and zoned parcels with industrial uses including Sims Metal Recycling and U-Save Rockery. The Alameda County Flood Control channel parcel that separates these parcels from Industrial Parkway Southwest. As such, the subject property lacks frontage on Industrial Parkway Southwest. NorCal's operation is sandwiched between two other industrial businesses, including outdoor uses. The area has been used for heavy industrial uses for decades.

In 2007, Nor-Cal Rock was formed in anticipation of conducting business in Hayward as an aggregate recycling company. In late 2007/early 2008, NorCal's Steven Navarro went to the City Planning Department and spoke with then Planning Manager Richard Patenaude. Mr. Patenaude looked up NorCal's site address and, informed Mr. Navarro that NorCal's intended use of the property was grandfathered in and that it could proceed without any additional land use permits. Mr. Navarro was forthcoming and honest in representing the scope of NorCal's operations which would, of course, be easily verifiable given the outdoor nature of the business. The operations associated with Mr. Navarro's previous use involved creating compost and providing outdoor storage for trucks, freighters, and contractors' heavy equipment. Basically, the same process used for crushing concrete was used in the previous compost-making operation.

In reliance on Mr. Patenaude's determination, NorCal commenced operations and invested thousands of dollars in its business to serve the City of Hayward and the surrounding community.

In 2011 and 2012, while processing a business tax receipt, NorCal again communicated with the Planning Department since its approval was necessary in connection with the tax form. NorCal followed specific written instructions from City staff to "[f]irst, proceed to PLANNING AND ZONING DEPT., 1st floor for approval stamp." Nor-Cal's Vice President Frank Sanchez personally met with planning staff, and was asked the nature of NorCal's business. He informed staff that NorCal recycles concrete and asphalt and makes aggregates for resale to the public. NorCal never attempted to disguise the nature of its business (which is open to the public) which had been previously described to, and approved by, Mr. Patenaude

---

<sup>1</sup> Alternatively, the Planning Commission should determine that NorCal's concrete recycling use was previously approved and, as such, an AUP is not necessary.

David Rizk / City of Hayward  
November 12, 2015  
Page 3

WENDEL, ROSEN, BLACK & DEAN LLP

As in NorCal's prior meeting with the City, Mr. Sanchez was completely forthcoming regarding the nature of the business (which had been in operation for several years by that point). Planning staff assisted him in completing the form, instructing him on which words to use to describe the use as "aggregates/retail." The planner then provided the department's stamp of approval on the form, and it was noted by Planning Manager Sara Buizer that NorCal's operation was a "continuation of use" and was "approved." NorCal was again told that it was permitted to operate. In both of these contacts with the City's planning staff, NorCal was completely forthright regarding the nature and scope of its business – to crush, recycle and sell aggregates.<sup>2</sup>

Over a five-year span, NorCal invested tens of thousands of dollars in equipment and in its business in reliance on City planning staff's repeated assurances that no additional land use permits were required and that it would be allowed to operate.

In or around September of 2013, NorCal was notified by planner Carl Emura that it would have to apply for an AUP. Mr. Emura said that the City had changed its policy in 2013 regarding concrete recycling facilities and was now requiring an AUP for such operations. In reality, there was no formal action by a decision-making body; rather it was a determination by the City's Development Services Director that concrete crushing operations are more intense than previously established operations and, as such, approval of administrative use permits would be necessary for the crushing activities to continue. NorCal's operation is a legal use in its industrial zone that pre-existed the City's requirement that an AUP be obtained. Moreover, NorCal's use was previously approved by planning staff, and is no more intense than its previously authorized use at the site. As such, no AUP is required to continue such use and the City's requirement is legally improper as to NorCal. Regardless, the City planning staff insisted that NorCal process an AUP application despite the fact that its operations were existing as previously approved by planning staff, and its present operation is not more intense than its previous use and was not in the process of expanding. NorCal was informed that failure to obtain approval of an AUP would be a violation of the City's zoning ordinance and penalties could be imposed. NorCal subsequently applied for an AUP under duress and protest.

In October 2013, Mr. Emura, along with other members of the planning staff, visited NorCal's site in Hayward and complimented NorCal on its clean and organized operation in comparison to others Mr. Emura had visited. He also assured NorCal that the AUP application process was essentially a formality as the Director was in support. While NorCal disagreed with the AUP requirement, it submitted the Application out of concern that the City would institute an enforcement action, and because Mr. Emura assured it that the AUP would be granted, even

---

<sup>2</sup> Moreover, since NorCal's operation was easily open to inspection and because materials from the City's public works department had been frequently brought to NorCal for recycling, any attempt to hide NorCal's use would have been pointless and easily discovered. NorCal's good faith belief that it was always operating (and continues to operate) legally is supported by the fact that NorCal contacted the City in 2013 to alert it that an unpermitted crushing operation had commenced on an adjacent parcel. As explained herein, it was dust from that unapproved operation that led to a complaint from a business located adjacent to that operation and over 300 feet away from NorCal.



David Rizk / City of Hayward  
November 12, 2015  
Page 4

WENDEL, ROSEN, BLACK & DEAN LLP

saying that he would not have asked NorCal to expend money required for an AUP application if the Director did not support granting it.

Although NorCal fundamentally disagreed that the City could legally require an AUP for it to continue its legal, continuing, previously-approved use, NorCal filed the AUP application under protest in late October 2013 and received initial comments from the City staff on November 26, 2013.<sup>3</sup> In response to those comments, it provided responses through its engineering consultant Peter Clark to various City departments including fire, landscape, utilities and planning in December 2013, January 2014 and February 2014, and pursued approvals from other regulatory agencies in connection with its application. At no point was the application abandoned or withdrawn, nor was it ever inactive for a period of six months. Either Mr. Navarro, Mr. Sanchez, or Mr. Clark were in frequent contact with the City staff during this period.

On May 9, 2014, Mr. Emura prematurely denied NorCal's AUP application. However, the Development Services Director later withdrew this denial (based on concerns regarding noise, dust and surrounding uses) acknowledging that since NorCal's AUP application had not yet been deemed complete and was still being pursued, a determination on the AUP should not have been made.<sup>4</sup>

Throughout the rest of 2014 and 2015, NorCal and Mr. Clark worked with various staff members to supply all necessary information requested by City departments (including but not limited to planning, fire, utilities & environmental services, and engineering) as well as the Alameda County Flood Control District in order to make the AUP application complete.<sup>5</sup> In addition, NorCal received a permit to operate from the Bay Area Air Quality Management District (which has been renewed and is current), of which planning staff was informed.

In May 2015, NorCal's representatives met with City planning staff, including planner Leigha Schmidt to discuss outstanding items that the City requested to be addressed, including curbing, fencing, landscaping, masonry block walls and stormwater treatment. On June 3, Ms. Schmidt provided NorCal with conditions of approval that were part of AUP PL-2014-0225 for an outdoor concrete recycling facility located on Depot Road which included conditions to address issues relating to air quality, noise and dust. Ms. Schmidt also mentioned the preparation of an initial study pursuant to the California Environmental Quality Act.

---

<sup>3</sup> The City's planning department has acknowledged that NorCal has acted in good faith regarding its use of the property and in providing information to the City, and that there is a basis in fact for NorCal's position that the City previously informed it that its use was allowed, and, in reliance on that information, NorCal made significant investments in its operations.

<sup>4</sup> In a letter sent July 2014 by Mr. Sanchez, NorCal also responded to the concerns raised by Mr. Emura in his premature denial of the AUP and explained why the findings to grant the AUP could be made.

<sup>5</sup> During this time, various different staff planners were assigned to work on NorCal's application including Carl Emura, Donna Kenney and Leigha Schmidt.

David Rizk / City of Hayward  
November 12, 2015  
Page 5

WENDEL, ROSEN, BLACK & DEAN LLP

Over the summer, NorCal address the items requested by the City and provided additional information, including a comprehensive stormwater management plan featuring a closed loop system so that no stormwater runoff from the site would enter the flood control district channel.<sup>6</sup>

In late July 2015, NorCal received a notice of violation from Maggie Flores of the Code Enforcement Division regarding a masonry block wall on the site that required a building permit. Ms. Flores indicated that the City could not issue a building permit to address the wall for any “un permitted use (i.e. concrete recycling operation)” but that if the business reverted to “retail sales – aggregates” then a building permit could potentially be issued. In other words, if NorCal scaled back its operations to only aggregate sales, without concrete recycling, then it could continue to operate and obtain ministerial building permits.

On September 16, 2015, NorCal resubmitted a comprehensive site plan to the City addressing all known comments discussed by the City in May 2015, and provided follow up responses over the next few weeks regarding any question posed by the City.<sup>7</sup>

On October 15, 2015, the City deemed NorCal’s application complete and did not request any additional information from NorCal. Ms. Schmidt stated that “Planning staff will move forward with evaluating the proposed project against the required Administrative Use Permit findings. I will prepare a draft decision in the next week or two and will be in touch.” However, at no point did Ms. Schmidt contact NorCal to indicate what staff’s draft decision was, nor did she mention that the City had any additional environmental concerns (such as those pertaining to noise, dust or visual impacts), nor did she propose a meeting to discuss conditions of approval to address any environmental concerns, nor did she ask NorCal to prepare any additional studies relating to any environmental issues in connection with an initial study. Instead, on October 27, 2015, the City’s Planning Director administratively denied the AUP application and demanded that NorCal cease all operations related to the “outdoor concrete recycling business.”

### **AUP Findings and Conditions**

The findings for an AUP are set forth in Section 10-1.3125 of the Code which states:

The approving authority may approve or conditionally approve an application when all of the following findings are made:

- a. The proposed use is desirable for the public convenience or welfare;
- b. The proposed use will not impair the character and integrity of the zoning district and surrounding area;

---

<sup>6</sup> At no point did the City ask NorCal to submit any noise or air quality studies.

<sup>7</sup> This office wrote to the City regarding the notice of violation in August 2015 to note that the violation should be held in abeyance while the AUP application was pending. No further action has been taken by the City regarding the notice of violation.



David Rizk / City of Hayward  
November 12, 2015  
Page 6

WENDEL, ROSEN, BLACK & DEAN LLP

- c. The proposed use will not be detrimental to the public health, safety, or general welfare; and
- d. The proposed use is in harmony with applicable City policies and the intent and purpose of the zoning district involved.

In addition, Section 10-1.3130 (Conditions for AUP) states:

In the event of conditional approval, such conditions as may be reasonably necessary to achieve a beneficial affect [sic] may be imposed and may include but not be limited to:

- a. Site plan architectural requirements such as building arrangement, safe and efficient access, adequate open spaces, landscaping, screening, parking and yards, shielded lighting, compatible signs, harmonious external building design, and sufficient variety to avoid monotony in external appearance.
- b. Activities and equipment permitted;
- c. Time of day activities shall be permitted;
- d. Specified time period within which approval is valid;
- e. Furnishing of guarantees assuring compliance with conditions;
- f. Adequate safeguards against the emission of dust, heat, glare, electromagnetic interference, odors, smoke and particulate matter, wastes, refuse, water pollution and the like. An application may be referred to qualified consultants if a report is deemed necessary. Cost of consultant services shall be paid for by the applicant.

**The Planning Director's Denial Is Inadequate, Unsupported and Constitutes an Abuse of Discretion**

The Planning Director's Decision regarding the AUP identifies several purported reasons why the AUP findings could not be made. The findings supporting the Decision address CEQA (Finding A) and the four required AUP findings (Findings B-E). These are addressed in turn below. However, as a preliminary matter, it is notable that the findings do not cite any evidence, nor do they mention NorCal's permit to operate issued by BAAQMD (the regional agency charged with monitoring and enforcing air quality regulations), the stormwater plan submitted by NorCal, nor is there any discussion as to whether any of the issues raised in the findings could be addressed by conditions of approval as was done with similar facilities in the City.

**Finding A (CEQA not required).** The Decision notes that pursuant to CEQA Guidelines section 15270(a), CEQA does not apply to projects that are disapproved.

**Response:** While an agency need not comply with CEQA when rejecting a project, the Decision's findings are based on alleged environmental concerns pertaining to noise, dust and pollutants, but are not supported by any substantial evidence of scientific study. Without such

David Rizk / City of Hayward  
November 12, 2015  
Page 7

WENDEL, ROSEN, BLACK & DEAN LLP

information, the Decision is premature (as was Mr. Emura's action to deny the AUP before the application was complete). As requested above, the City should prepare an initial study pursuant to CEQA, but not, as was done in the Decision, predetermine the outcome or claim, without support, that an environmental impact would occur. In approving the facility on Depot Road, the City prepared an initial study and adopted a mitigated negative declaration to determine that that project would not, as conditioned, result in any significant impacts.<sup>8</sup>

**Finding B (proposed use is not desirable for the public convenience or welfare).** The Decision alleges that the project will generate noise, dust and will have visual impacts that cannot be contained on the site. It also claims that impacts (such as dust) will migrate to adjacent sites and be transmitted to the storm drain system, and that dust suppression systems may not be effective. It purports that the project will negatively impact surrounding businesses and their customers, and claims that since there are two other approved facilities, that NorCal's facility is not necessary.

**Response:** The Decision's basis for denial, that the use may include noise and dust and is visible can be said about virtually all uses operating within the Industrial zone. As for visibility, the site's operation is not prominently visible from I-880. Proposed improvements contained in the AUP application would further assist to screen the site which is set back from the street due to the flood district channel, and conditions of approval could further address this issue if necessary. The commercial businesses that can view the site, chose to locate in this industrial area despite the presence of industrial uses. They should not be the tail that wags the dog. The mere fact that the property is visible should not have any effect on the ability to operate an allowed use within an industrially-designated and zoned property. Otherwise, this site is being singled out and treated differently than its neighboring industrial properties.

As noted above, the City acknowledges that, at a minimum, NorCal is permitted to operate as a retail aggregate sales use without a permit. Concerning noise, the Decision appears to assume that the crushing equipment is the cause of unacceptable levels of noise. There is no evidence to support such an assumption, and this is untrue. The largest noise generated for a crusher is the type of power that supplies the engine. The sound generated by a diesel engine is much greater than the sound of concrete running through the closed compartment crushing equipment. To address this concern, NorCal has already switched to an electric motor to power the crusher and added exhaust stacks according to BAAQMD recommendations that further reduced and minimized the modest noise that comes from the equipment.

As for claims that impacts will migrate to adjacent sites, there is no factual proof or evidentiary support for this claim, or the claim that the dust-suppression system would be ineffective.<sup>9</sup> In regards to dust-born particles being transmitted to the storm drain system,

---

<sup>8</sup> Mitigation measures identified in the mitigated negative declaration for the Depot Road site were included as conditions of approval for that AUP.

<sup>9</sup> Conditions of approval for other aggregate recycling facilities with the same size material piles have required a weather-activated dust suppression system (e.g., one that operates at certain wind levels). Planning staff never discussed its purported concern that NorCal's



David Rizk / City of Hayward  
November 12, 2015  
Page 8

WENDEL, ROSEN, BLACK & DEAN LLP

NorCal has addressed and negated this concern by designing a closed loop system to prevent runoff from reaching the flood control channel or entering into the City's storm drain system.<sup>10</sup>

Similarly, there is no evidence to support the claim that NorCal will or has had any negative impacts on nearby businesses and customers. The only documented complaint came years ago and was actually related to an unpermitted use on another parcel that – unlike NorCal – was immediately adjacent to a large commercial site and was not implementing any dust-suppression measures. There have been no recent complaints regarding NorCal's operation. Moreover, there are no sensitive receptors located near this site. (Certainly these would have been noted by BAAQMD.) The Decision's claim that parking areas for commercial business located hundreds of feet away are somehow gathering areas for sensitive receptors strains credulity and would result in outlawing virtually all industrial uses in the City.<sup>11</sup>

The fact that City has approved two materials recycling facilities does not support the finding that NorCal's facility is not desirable for the public welfare. NorCal has been successfully operating (with the City's permission) for a number of years. During that time, a very significant percentage of the material that it has recycled has come from within the City of Hayward including public facilities. NorCal's site, and others, also operate regionally and prevent additional truck traffic on 880 from having to haul concrete from urban areas to more distant processing facilities. The Decision's finding insinuating that two aggregate recyclers are enough to serve the community is wholly unsupported by any facts or economic study, and is totally inappropriate in a free enterprise system.<sup>12</sup> It was not known at the time the finding was written if one of the projects will come to fruition, if one or both might go out of business after initial opening, or even if a third such business would create greater competition and reduce overall prices for recycling concrete, which would be a benefit to their customers, including the City and other public agencies that utilize these services. It is not the planning director's job to pick which competing business to favor over another.

The existing, primarily outdoor, industrial use operated by NorCal involving concrete and asphalt crushing and recycling is desirable for the public convenience or welfare in that it provides necessary material to local and regional consumers and contractors for construction-related purposes, including base aggregate for travel ways and for construction of and additions to office buildings, retail buildings, warehouses, homes, and patios. In addition, individuals and business entities – including notably the City of Hayward itself – in need of a location for

---

existing system was not effective, nor proposed the use of a weather-activated system or other measures.

<sup>10</sup> Moreover, the aggregate piles that the Decision claims would be the source of the dust would be present even if the operation did not include a crusher.

<sup>11</sup> Under the Decision's logic, no industrial uses should be permitted in industrially-designated and zoned areas near freeways since sensitive receptors pass by on such roadways.

<sup>12</sup> In addition, this finding ignores that NorCal has been successfully operating for several year pursuant to the City's earlier approvals.

David Rizk / City of Hayward  
November 12, 2015  
Page 9

WENDEL, ROSEN, BLACK & DEAN LLP

disposing of concrete and asphalt find NorCal's Industrial Parkway Southwest site both a convenient and suitable location.

NorCal accepted recycled material and supplied aggregate material related to the Hayward school rehabilitation and Industrial Boulevard floodwall projects. It also supplied identical services for the new Burger King and Sonic restaurants. In addition, it provides a Cal Trans state certified aggregate material that has been utilized on many highway projects along Interstate 880 as well as BART extensions.

The public convenience and welfare are served by NorCal's recycling of concrete and asphalt materials in that it reduces the amount of material which would otherwise be deposited in landfills. NorCal's business carries out the intent of the *California Integrated Waste Management Act of 1989*, the *Alameda County Waste Reduction and Recycling Act of 1990*, and the purpose of the City of Hayward, *Construction and Debris Waste Reduction and Recycling Requirements* [Hayward Municipal Code, Section 5, Article 10].

NorCal's well-situated location along a major transportation corridor reduces the amount of miles traveled by local businesses that transport materials to be recycled or which acquire recycled products for use elsewhere. As a result, (1) impacts on local streets are reduced; (2) impacts on air quality are lessened, specifically particulate matter, ozone and carbon monoxide which would otherwise be generated; and (3) NorCal's operation reduces costs for local businesses. Diesel-powered crushing equipment has been replaced with electric-powered equipment, further reducing emissions.

**Finding C (proposed use will impair the character and integrity of the zoning district and surrounding area):** The Decision claims that NorCal's operation is incompatible with the evolving nature of the adjacent sites and would impair the character of the area.

**Response:** This claim is both incorrect, but, more importantly, it is improper. The use is industrial in nature and is contained in an industrial district under the general plan. The required finding relates to whether the use will impair the character and integrity of the applicable zoning district, not some speculative future use that might be inconsistent with the general plan and zoning designations. The site is located within a long standing Industrial Zone, whereas the use is acceptable. Changes to adjacent zoning places a burden on pre-existing uses. When the commercial center located several hundred feet away from NorCal's site was approved, the approval action included a finding that the commercial center was compatible with surrounding uses, even those industrial in nature. The motel and fast-food restaurant in the area have operated in harmony with and have served the industrial district and uses for decades.

NorCal's operation does not, and will not, impair the character and integrity of the zoning district and surrounding area in that NorCal is an industrial use in the Industrial zoning district where intensive industrial uses have been carried on for decades. A significant distinction is the name of the street where NorCal is located: Industrial Parkway Southwest. The General Plan designation of the property is "*Industrial Corridor*." There are no active proposals to change



David Rizk / City of Hayward  
November 12, 2015  
Page 10

WENDEL, ROSEN, BLACK & DEAN LLP

either the General Plan designation or the zoning of the property or the properties immediately surrounding it.

The NorCal's property is sandwiched between two heavy industrial uses, and either retaining or eliminating the concrete crushing operation would not change the character of the area. NorCal's property is separated from Industrial Parkway Southwest by a 2.37-acre parcel owned by the Alameda County Flood Control District, and it is further encumbered by an access easement running along its the westerly property line parallel to Industrial Parkway Southwest which provides access to a neighboring heavy industrial business to the east. A utility easement runs along this access easement, which further limits development potential of the NorCal's property. Any significant commercial development of the NorCal site and surrounding properties would involve considerable costs to bridge the flood control channel and design around or eliminate a railroad spur. These costs may render the property less desirable for commercial development than other locations.

As noted above in regards to Finding B, there is no evidence to support the claim that dust from NorCal's operation is having any negative impact on other properties in the area.

**Finding D** (The proposed use will be detrimental to the public health, safety, or general welfare): The Decision claims that the City has received complaints regarding dust migrating from the site, and alleges that the dust is "uncontainable" and poses a significant health risk.<sup>13</sup>

**Response:** There is no evidence to support these claims. NorCal is aware of a single complaint relating to dust that came from a property owner located over 300 feet away approximately two years ago. This owner also disclosed that it had reasons unrelated to dust to object to the AUP application, namely a speculative desire to *possibly* convert to a different retail use at some undetermined point in the future. Prior to the filing of NorCal's AUP application, this property owner never complained about its operation, waiting until such time as he decided to consider possible future development of his property. Moreover, another aggregate recycling business was in operation at that time on a parcel immediately adjacent to this property owner. That business is no longer in operation; thus, dust issues have been minimized. In addition, a photo taken from that property and purporting to show dust from NorCal's business, actually shows dust being kicked up by a moving vehicle located on a separate property (U-Save Rockery). Furthermore, there has been no evidence of any dust originating from the NorCal site on vehicles parked in the adjacent commercial center. NorCal is not aware of any complaints from individual users and patrons of surrounding properties regarding dust from its site.

The Decision alleges that the dust-suppression sprinkler system installed by NorCal prior to its AUP application is not able to reach all areas of the stockpiles, and that crystalline silica

---

<sup>13</sup> This finding also claims the AUP is needed to "legalize" NorCal's concrete crushing use. As explained above, the City has previously determined that NorCal's use is legal, and NorCal proceeded in reliance on these determinations when it invested thousands of dollars in its operations.

David Rizk / City of Hayward  
November 12, 2015  
Page 11

WENDEL, ROSEN, BLACK & DEAN LLP

dust presents a health risk. As noted above, this claim is not supported by any evidence. Moreover, the City has previously determined that conditions of approval can address these issues as was done for the Depot Road concrete recycling facility (which included conditions regarding a dust suppression system and measures to protect from exposure to crystalline silica dust). However, the City staff has not proposed any such conditions or alternatives to NorCal. In addition, the Decision's claim that NorCal's operation would result in "continual noise" is grossly inaccurate and unsupported by any noise study.

The continuation of NorCal's operation is not and will not be detrimental to the public health, safety, or general welfare in that significant measures have been taken or are planned to be soon installed to reduce dust. These measures include having a two thousand gallon water truck on site at all times, a five thousand gallon recycled water storage tank on site with pumps capable of supplying water to all conveyor systems as well as hose bibs and valves for dust control on crushing equipment, watering down the site on a regular basis, installing water misters along interior property lines, and by constructing a tall masonry block wall which helps to contain dust within NorCal's property. Prevailing winds blow primarily from the west to the east, and the wall was constructed in such a way as to shield the property from these winds, which in turn reduces dust. Moreover, NorCal has already obtained a permit to operate from BAAQMD.

Noise generated by NorCal is not significant in that (1) the crushing machinery is operated only between the hours of 7 a.m. to 4 p.m., and typically not more than two days a week for two to six hours on those days when it is operating; (2) noise from the operation relating to material processing and truck traffic is muffled by a 10-foot-high and 2 foot-thick masonry block wall; (3) noise from the operation is not continuous; (4) there are no nearby residences or sensitive receptors; (5) (as noted above) formerly diesel-powered equipment has been replaced with quieter electric-operated equipment; and (6) ambient noise levels are high resulting from other nearby industrial uses and traffic on Industrial Parkway Southwest and Interstate 880, all of which help to obscure noise generated by the NorCal operation. Had the staff actually observed the crushing activity, they would have learned that a conversation can be carried on while standing within a few feet of the crushing activity. Furthermore, the City's "*Land Use Compatibility Standards for Community Noise Environments*" found in its General Plan, does not put a ceiling on noise levels for industrial uses.

From an aesthetic standpoint, along with its distance from Industrial Parkway Southwest and Interstate 880, a masonry block wall serves to obscure much of NorCal's operation. Furthermore, the site is not easily viewed from Interstate 880 due to the distance and the numerous mature trees and structures located between the NorCal property and Interstate 880. Because land owned by the Alameda County Flood Control District containing a flood control channel separates the NorCal property from Industrial Parkway Southwest, landscaping and other measures within the NorCal property can effectively screen its operations as viewed by those travelling on Industrial Parkway Southwest.

NorCal has worked with the City to address concerns regarding landscaping and proposes to install trees between the flood control channel and NorCal's operation. Easements running along the Industrial Parkway SW property line limits the installation of landscaping because to



David Rizk / City of Hayward  
November 12, 2015  
Page 12

WENDEL, ROSEN, BLACK & DEAN LLP

do so would interfere with the purposes of the easements. This constraint exists under the current operation and will continue with any future development, including retail projects. Because the NorCal property is a flag lot, with the Alameda County Flood Control channel parcel separating it from Industrial Parkway Southwest, the Planning Director has the discretion with regard to determining if the front yard is parallel to the right-of-way. If the determination is made that it is not parallel to the right-of-way, there is no requirement to landscape the area.

NorCal has also addressed concerns relating to truck queueing with the installation of elevated conveyers and a reconfiguration of truck travel paths on the site to avoid any queueing outside the property. Typically, approximately five trucks per hour visit the NorCal Rock, Inc. site and only remain for a maximum average time of 5 to 10 minutes (depending on whether they are off-loaded by hand or automatically) thereby minimizing any concern of truck queueing.

**Finding E** (The proposed use is not in harmony with applicable City policies and the intent and purpose of the zoning district involved): The Decision claims that NorCal's operation is "not in harmony with the intent and purpose of the Industrial District and is inconsistent with the City's General Plan.

**Response:** This finding is false and is not supported by evidence. The Decision states that the proposed use is inconsistent with General Plan policies related to new development in the Industrial Corridor land use designation.

The proposed use would upgrade the facilities to improve economic viability of the property/ corridor. NorCal's AUP application includes proposed improvements to fencing and landscaping that would enhance the visual character of the site consistent with General Plan Policy LU-6.6 and ED-5.5, and conforms with all direction given in this regard by City staff. As to development of employee amenities, NorCal has proposed that the site use adjacent facilities (on land owned by NorCal's owners) and a condition of approval could address this issue in conformance with General Plan Policy LU-6.8.

The industrial land use designation for NorCal's site was not changed during the recent General Plan update process. The proposed continuation of NorCal's use is in harmony with, and promotes applicable City policies and the intent and purpose of the applicable zoning district in that it is an industrial use in an industrial zone under the General Plan designation of "*Industrial Corridor*," and it is located on a street named for the operations found on that street, which is Industrial Parkway Southwest.

In denying the AUP, the Decision speculates that the NorCal property and surrounding properties are anticipated to be developed with commercial uses. If this were to be the case, their finding that significant investments in permanent industrial-type structures rather than outdoor storage lacks common sense.

Per Section 10-1.1605 of the City of Hayward Zoning Ordinance, "*The purpose of the Industrial (I) District is to provide for and encourage the development of industrial uses in areas suitable for same, and to promote a desirable and attractive working environment with a*

David Rizk / City of Hayward  
November 12, 2015  
Page 13

WENDEL, ROSEN, BLACK & DEAN LLP

*minimum of detriment to surrounding properties.*” NorCal is within a suitable location, being situated between two heavy industrial uses; the operation is screened by masonry block walls; and with the incorporation of noise- and dust-reducing measures, there is no significant detriment to surrounding properties.

General Plan Policy LU 1.8 includes the following: “Encourage use of durable, sustainably-sourced, and/or recycled building materials,” and “Reduce landfill waste by promoting practices that reduce, reuse, and recycle solid waste.” NorCal Rock, Inc.’s use supports these policies. In addition, a policy of the section of the General Plan entitled, “*Economic Development Policies and Strategies*” encourages the retention of existing businesses.

A use permit was required for nearby retail developments, and the purpose of the use permit is, in part, “to assure said uses occur in maximum harmony with the area.” Accordingly, a finding was made that the retail uses would not impair the character and integrity of the surrounding uses, which are industrial uses, including NorCal Rock, Inc.

Denying a use such as NorCal’s (that has been in legal existence for years) would add costs, traffic and associated impacts to those in the construction trade. It is far preferable and in keeping with principles of sustainability that such material that is generated locally, be processed locally and not transported long distances unnecessarily.

To deny NorCal’s use – which is wholly consistent with the applicable zoning and General Plan designations – purportedly due in part to near-by non-industrial uses, and leave its property empty until some speculative future non-industrial user chooses to locate on NorCal’s land – assuming a general plan amendment, a zone change and a use permit for that use would be approved – is denying NorCal any realistic use of its land. The ideal use of land in an area of transition is one involving minimal improvements, such as outdoor storage which can easily be converted to another use. It is illogical that the current Industrial zoning would allow construction of a manufacturing facility or a research and development facility by right and without any discretionary permits, yet these types of uses involving a considerable capital investment would be less likely to encourage retail development.

### **Conclusion**

NorCal’s business has operated for years in the City without incident and with the repeated approval of the City’s Planning Department. While staff’s demand for an AUP is not justified, NorCal has addressed each concern raised by the City’s staff, and has worked with diligence and in good faith to comprehensively address its longstanding, approved use at the site via the AUP process. In summary, the Decision to deny the AUP is unjustified and illegal.

Ample evidence supports the findings to grant the AUP whereas the findings for denial are speculative and unsupported. Moreover, any of the non-speculative concerns raised in the Decision can be addressed through conditions of approval as was done with other similarly-

David Rizk / City of Hayward  
November 12, 2015  
Page 14

WENDEL, ROSEN, BLACK & DEAN LLP

situated aggregate recycling facilities in the City. As such, NorCal respectfully requests that its appeal of the Denial should be granted along with the relief sought as outlined above.

Regards,

WENDEL, ROSEN, BLACK & DEAN LLP

A handwritten signature in black ink, appearing to read "Todd A. Williams". The signature is fluid and cursive, with the first name "Todd" being more prominent.

Todd A. Williams

TAW/cab

cc: Steve Navarro  
Frank Sanchez  
Peter Clark  
Dyana Anderly









**W.B. Clausen**  
Structural Engineers

1727 64TH Street  
Emeryville, California 94608  
Ph: 510.655.4144  
Fx: 510.655.1133  
www.clausenengineers.com

PROJECT NAME:

# Nor Cal Rock Administrative Use Permit

30120 INDUSTRIAL PARKWAY SW  
HAYWARD, CALIFORNIA

STAMP:

DATE REVIEWED:	
DATE	DESCRIPTION

REVISIONS:		
NO.	DATE	DESCRIPTION
1		
2		
3		
4		

DRAWING TITLE:

## PROPOSED CONDITIONS SITE PLAN

SCALE:



DRAWN:

CHECKED:

PHC

SHEET NO.:

# C1.0

PROJECT NO.:

25657

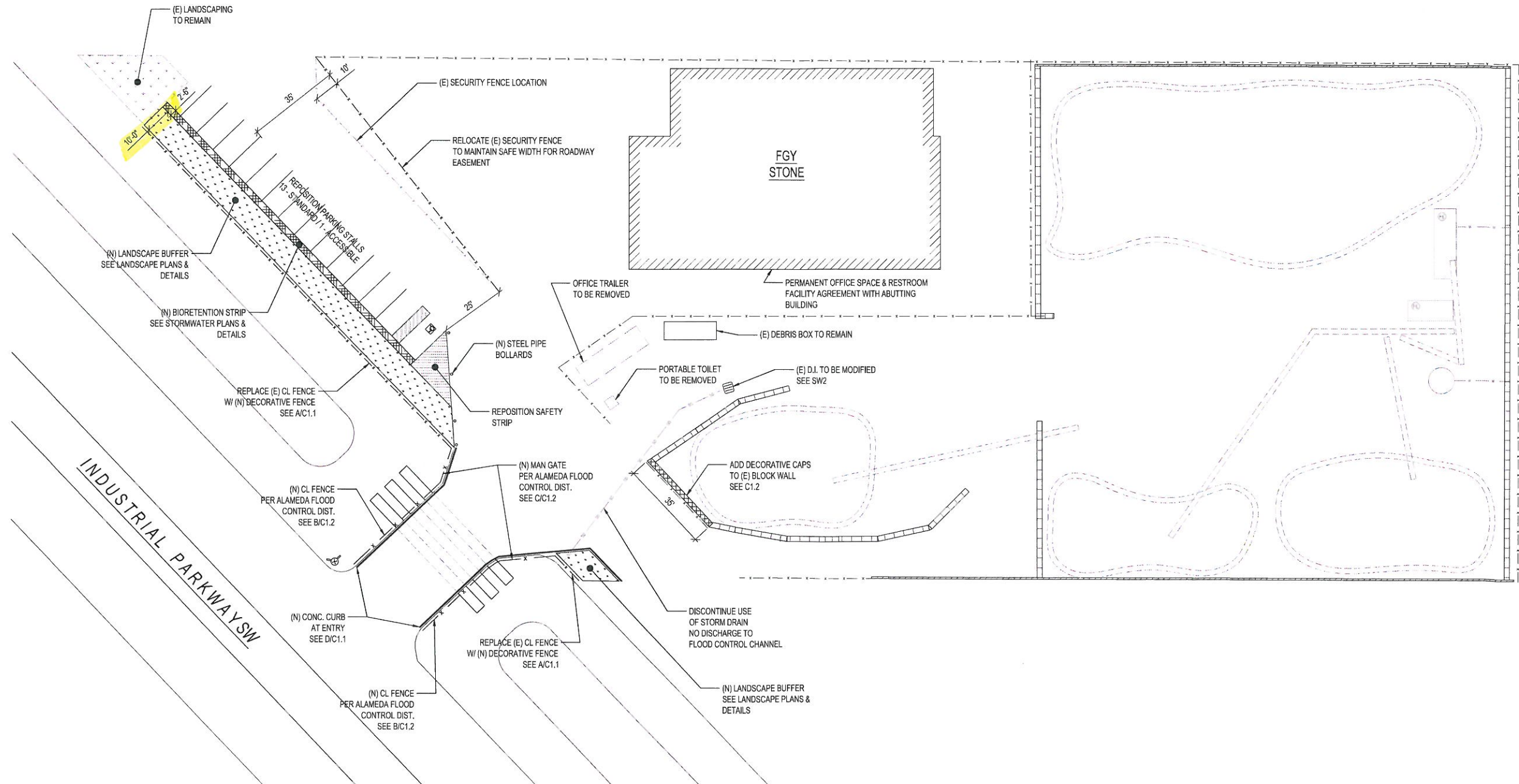
CAD FILE:

25657/AUP APPLICATION

DATE MOVED:

9/16/15

All drawings and written material appearing herein constitute the original and unpublished work of Clausen Engineers and the same may not be duplicated, used, or disclosed without the written consent of Clausen Engineers.



## PROPOSED SITE PLAN

1" = 20'

A  
C1.0









**W.B. Clausen**  
**Structural Engineers**

1727 64TH Street  
Emeryville, California 94608  
Ph: 510.655.4144  
Fax: 510.655.1133  
www.clausenengineers.com

PROJECT NAME:

**Nor Cal Rock**  
**Administrative use Permit**

30120 INDUSTRIAL PARKWAY SW  
HAYWARD, CALIFORNIA

DRAWN:

DATES REVIEWED:

DATE	DESCRIPTION

REVISIONS:

NO.	DATE	DESCRIPTION

DRAWING TITLE:

**PROPOSED  
EXTERIOR WALL  
PLAN**

SCALE:



DRAWN:

CHECKED:

PHC

SHEET NO.:

**C1.2**

PROJECT NO.:

25657

DATE FILED:

25657/AUP APPLICATION

DATE MOVED:

9/16/15

All drawings and written material appearing herein constitute the original and unpublished work of Clausen Engineers and the same may not be duplicated, used, or disclosed without the written consent of Clausen Engineers.



LEGEND

- 10'-0" HIGH ULTRABLOCK WALL
- 7'-6" HIGH ULTRABLOCK WALL
- 10'-0" CMU WALL



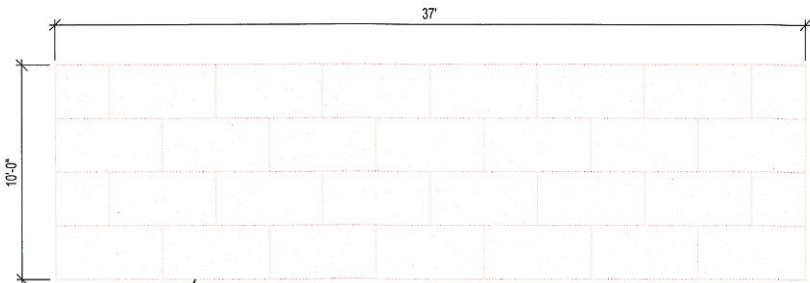
EXISTING SITE AERIAL  
NTS

A  
W-1



EXISTING WALL PHOTO  
NTS

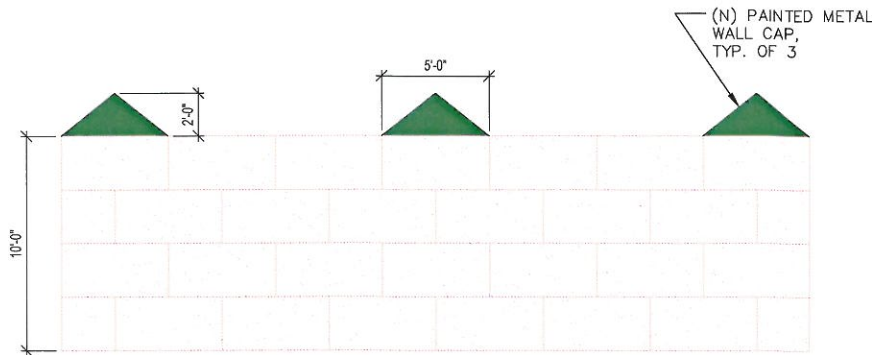
B  
W-1



INDIVIDUAL TEXTURED  
ULTRABLOCK UNITS  
TO REMAIN

EXISTING WALL DETAIL  
1/4" = 1'

C  
W-1



PROPOSED WALL DETAIL  
1/4" = 1'

D  
W-1



PROP. WALL RENDERING  
NTS

E  
W-1



Attachment IV	REVISIONS	BY

PLANTING PLAN

NORCAL ROCK

20120 INDUSTRIAL PARKWAY SW

HAYWARD, CALIFORNIA

WESLEY T. SAKAMOTO

LANDSCAPE ARCHITECT #1078

665 HOLLYHOCK DRIVE

SAN LEANDRO, CA 94578

DRAWN

WTS

CHECKED

DATE

6/8/15

SCALE

1" = 10'

JOB NO.

SHEET

1

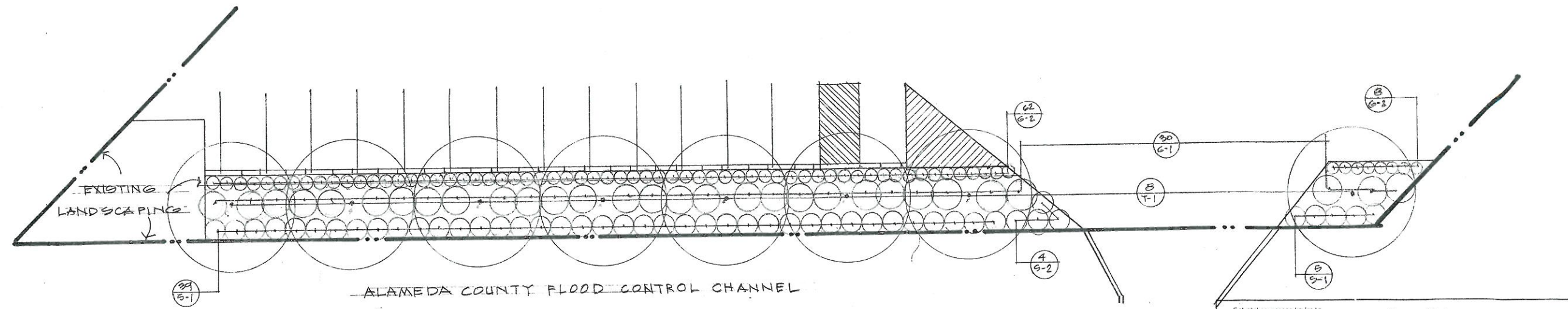
OF

SHEETS

LANDSCAPE ARCHITECT

W. T. SAKAMOTO

STATE OF CALIFORNIA

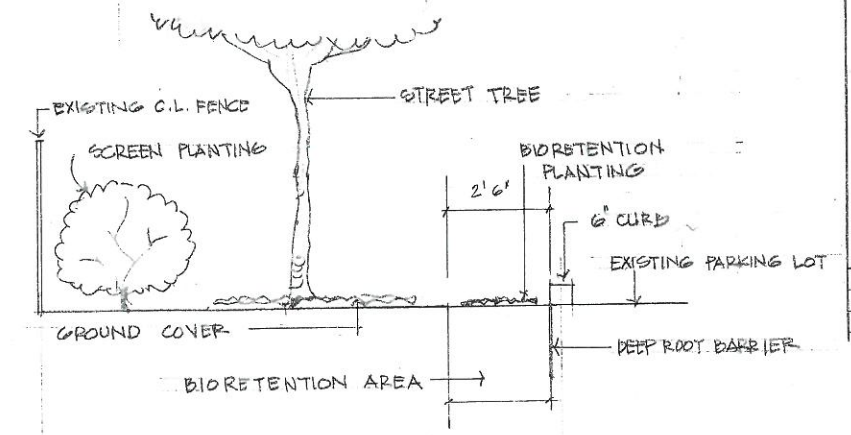


# PLANT LIST

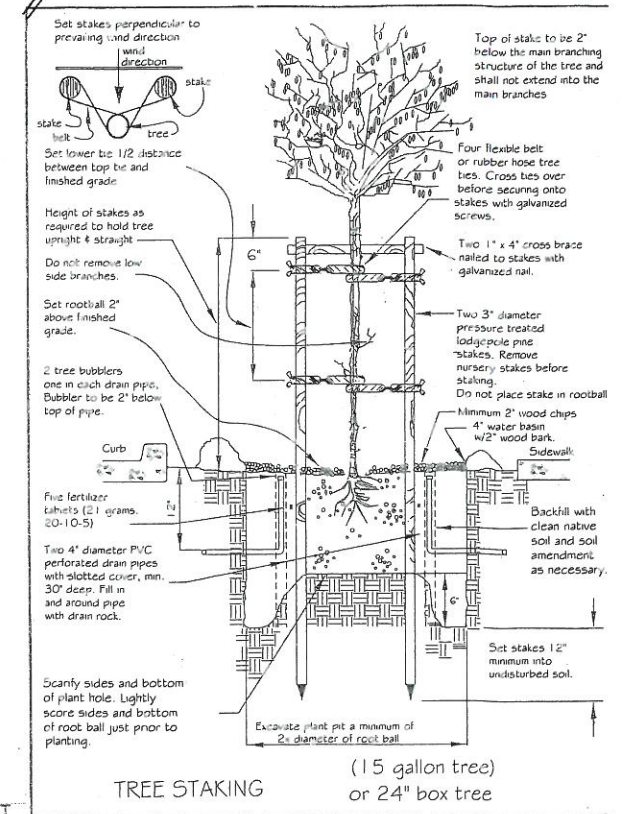
SYMBOL	QUANTITY	BOTANICAL AND COMMON NAME	SPACING	SIZE
T-1	8	TREES: LAEGERSTROEMIA 'MUSKOGEE' - CRAPE MYRTLE	24' O.C.	24" BOX
S-1	44	SHRUBS: CISTUS 'DORIS HIBBERSON' - ROCK ROSE	4' O.C.	5GC
S-2	4	NERIUM OLEANDER 'PETITE PINK' - OLEANDER	4' O.C.	5GC
G-1	30	GROUND COVERS: ARCTOSTAPHYLOS UVA-UREI - BEARBERRY	6' O.C.	1GC
G-2	70	ERIOGONUM UMBELLATUM - SULPHUR DICKWHEAT	3' O.C.	1GC

## NOTES:

- INSTALL NINE CUBIC YARDS OF ORGANIC COMPOST PER 1000 SQ. FT. FOR ALL PLANTING AREAS. ROTOTILL INTO MINIMUM OF NINE INCHES OF EXISTING SOIL.
- BACKFILL MIX FOR PLANTS SHALL BE ONE PART ORGANIC COMPOST TO TWO PARTS NATIVE SOIL.
- INSTALL 3" OF ORGANIC RECYCLED CHIPPED WOOD OR ARBOR CHIPPED MULCH IN DARK BROWN SHADE OR GREENWASTE IN ALL PLANTING AREAS.
- INSTALL DEEP ROOT 16" WIDE ROOT BARRIER AT ALL LOCATIONS WHERE BIORETENTION AREAS ARE ADJACENT TO PAVED AREAS.



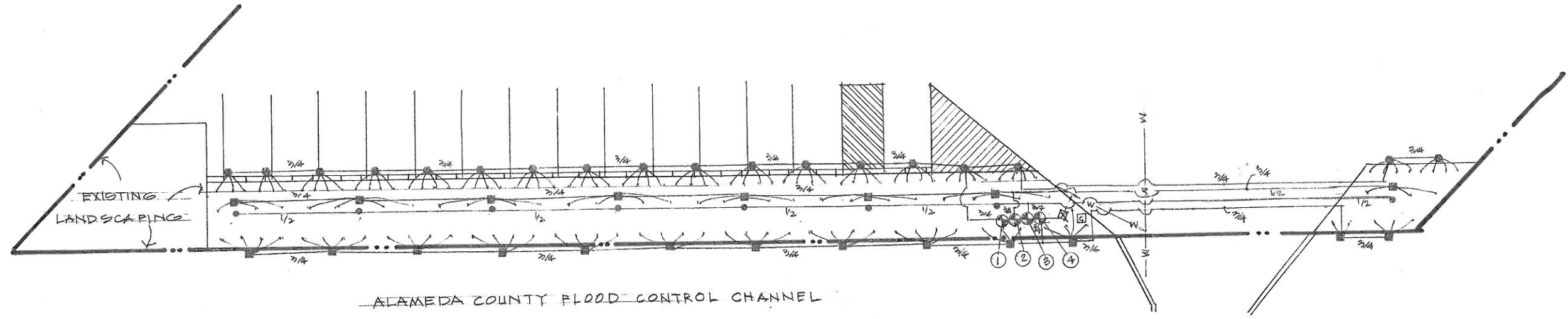
LANDSCAPE BUFFER BIORETENTION DETAIL  
SCALE 1/2" = 1'-0"



TREE STAKING  
(15 gallon tree) or 24" box tree  
CITY OF HAYWARD  
ENGINEERING DIVISION  
DRAWN BY P. MORALES DATE MAY 7, 2002  
CHECKED BY W. T. SAKAMOTO DATE 6/8/15  
SCALE 1" = 10'  
JOB NO. 1078  
SHEET 1 OF 2







ALAMEDA COUNTY FLOOD CONTROL CHANNEL

### LEGEND

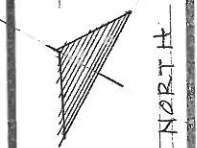
- ☒ FETCO NO. 825 Y BY 3/4" REDUCED PRESSURE BACKFLOW PREVENTER
- ⊕ RICHTEL NO. 711 APR 3/4" REMOTE CONTROL VALVE
- FETCO QUADRA BUBBLER (GREEN PORTS)
- FETCO QUADRA BUBBLER (BLUE PORTS)
- FETCO QUADRA BUBBLER TUBING WITH INSECT PLUS
- MAIN LINE 3/4" SCHEDULE 40 PVC
- LATERAL LINES CLASS 200 PVC
- RAINBIRD NO. 1402 BUBBLER
- ⊕ RAINBIRD NO. ESP - SMTE SMART CONTROLLER WITH RAIN SENSOR.
- EXISTING WATER MAIN

### VALVE CHART

VALVE NO	SIZE	GPM	PRESSURE	TYPE
1	3/4"	0.6	40 PSI	DRIP
2	3/4"	0.3	40 PSI	DRIP
3	3/4"	4.0	40 PSI	BUBBLER
4	3/4"	5.4	40 PSI	DRIP

NOTES:  
 INSTALL CASE FOR BACKFLOW PREVENTER, SEE DETAIL.  
 PROVIDE POWER TO CONTROLLER LOCATION.  
 INSTALL CONTROLLER IN LEMOUR BOX PAINTED GREEN.  
 INSTALL 1 1/2" GALVANIZED PIPE 0' ABOVE GRADE.  
 ADJACENT TO CONTROLLER LOCATION FOR RAIN SENSOR.  
 INSTALL SCHEDULE 40 PVC SLEEVES UNDER PAVING.  
 SLEEVES TO BE TWICE PIPE SIZE.

IRRIGATION PLAN  
 NORCAL ROCK  
 30120 INDUSTRIAL PARKWAY SW  
 HAYWARD, CALIFORNIA



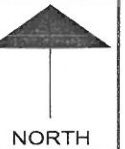
WESLEY T. SAKAMOTO  
 LANDSCAPE ARCHITECT #1076  
 665 HOLLYHOCK DRIVE  
 SAN LEANDRO, CA 94578



DRAWN WTS	CHECKED
DATE 6/8/15	SCALE 1" = 10'
JOB NO.	SHEET L2
OF	SHEETS

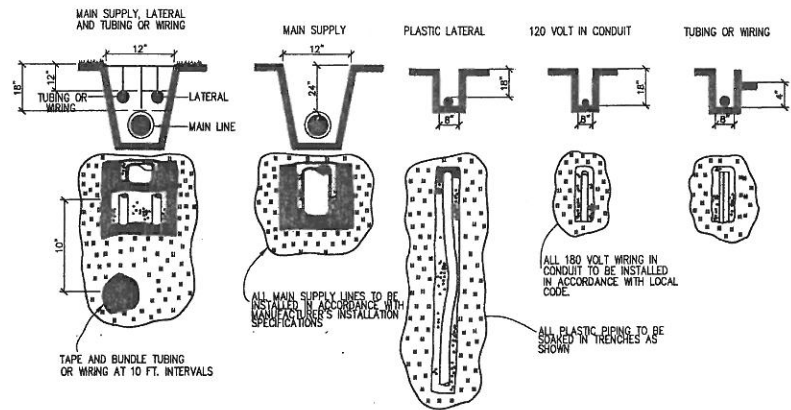
REVISIONS	BY

IRRIGATION DETAILS

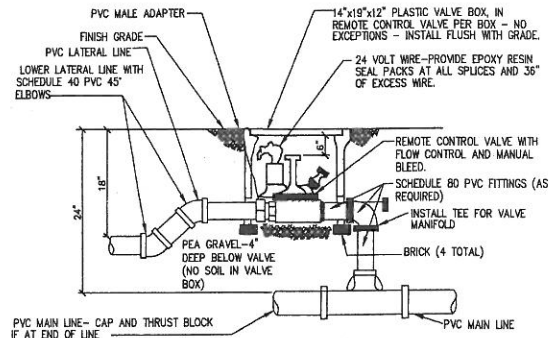


WESLEY T. SAKAMOTO  
LANDSCAPE ARCHITECT # 1078  
665 HOLLYHOCK DRIVE  
SAN LEANDRO, CA 94578

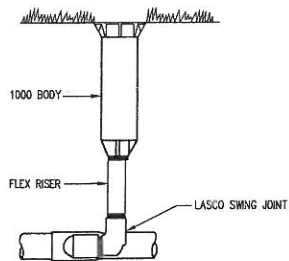
DRAWN WTS
CHECKED
DATE
SCALE NO SCALE
JOB NO.
SHEET L 3
OF SHEETS



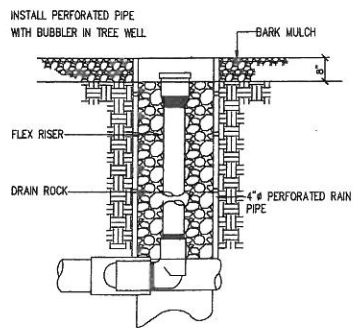
TYPICAL TRENCHING DETAIL  
NOT TO SCALE



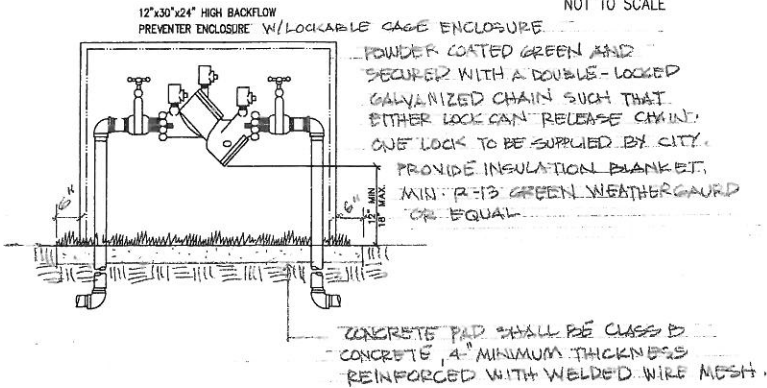
REMOTE CONTROL VALVE DETAIL  
NOT TO SCALE



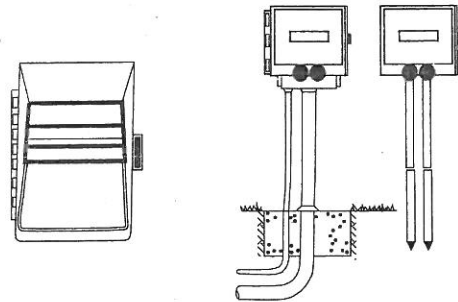
SPRAY HEAD DETAIL  
NOT TO SCALE



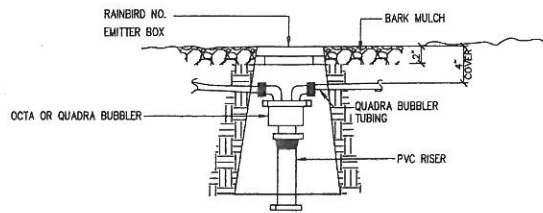
BUBBLER DETAIL  
NOT TO SCALE



BACKFLOW PREVENTER  
NOT TO SCALE

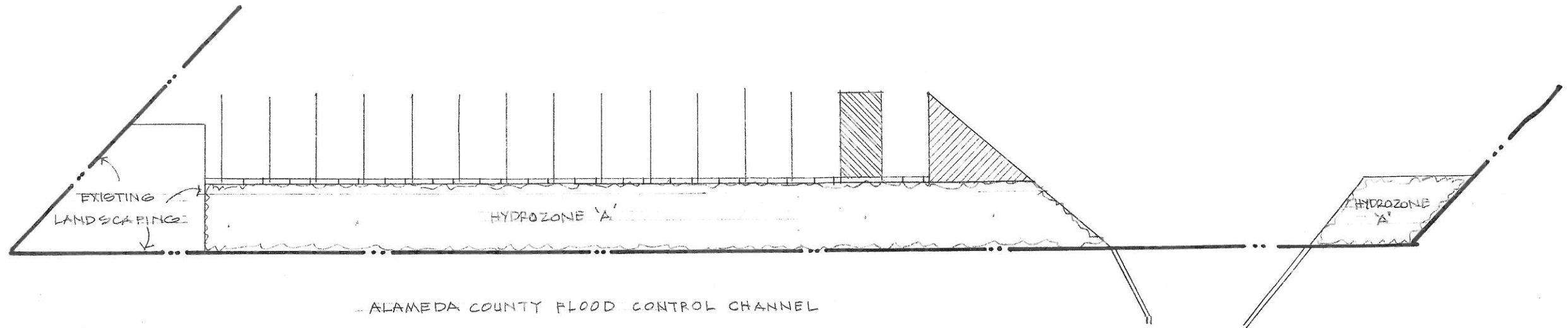
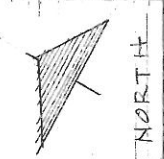


CONTROLLER DETAIL  
NOT TO SCALE



OCTA AND QUADRA BUBBLER  
NOT TO SCALE





MAXIMUM APPLIED WATER ALLOWANCE

$$MAWA = (ET_0)(0.62)(0.7 \times \text{LANDSCAPED AREA})$$
$$MAWA = (44.2)(0.62)(0.7 \times 2288 \text{ S.F.}) = 43,884 \text{ GALLONS}$$

ESTIMATED TOTAL WATER USE

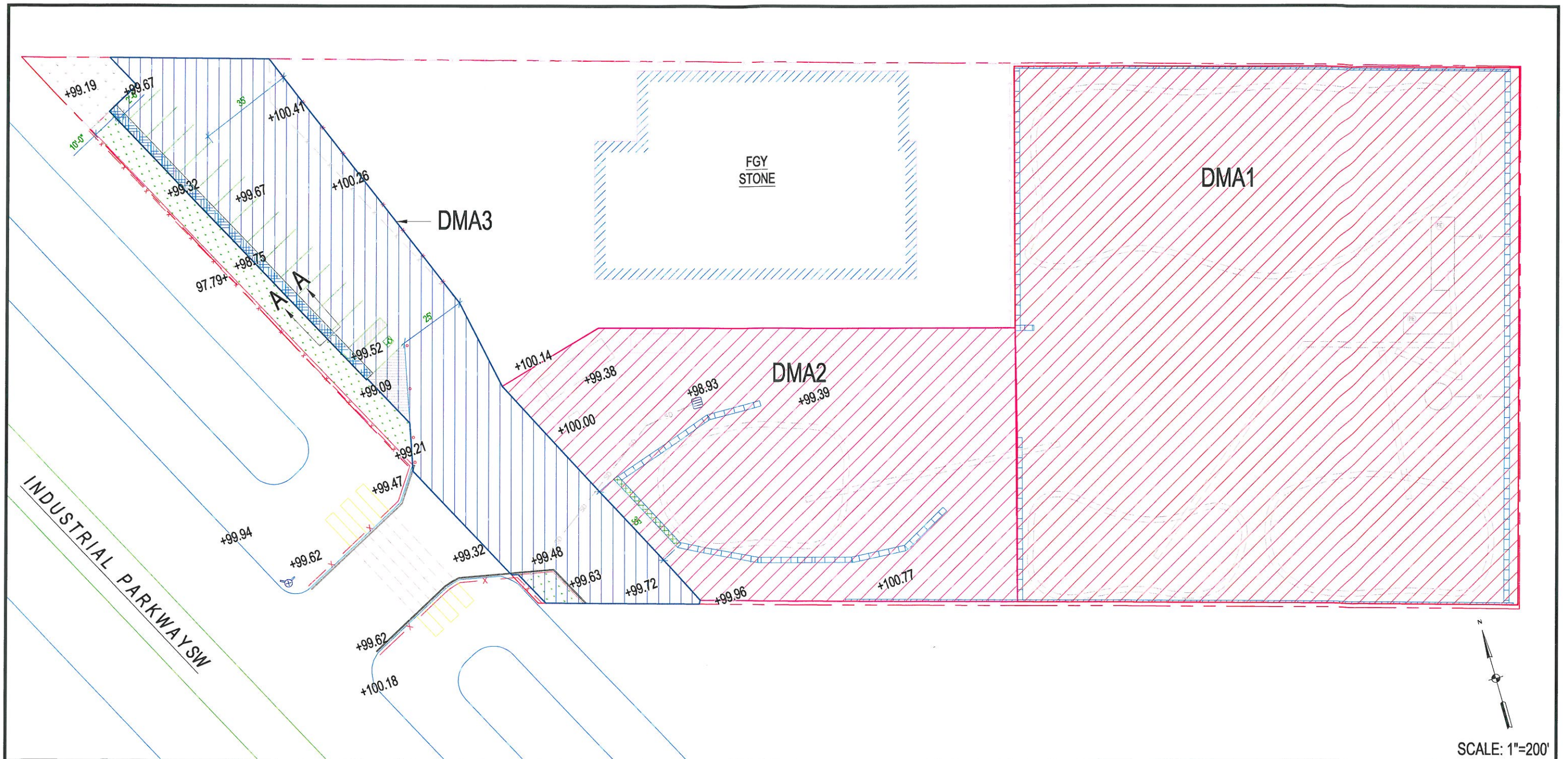
HYDROZONE	HYDROZONE AREA	PLANT FACTOR	IRR. EFFICIENCY	ETWU
'A'	2288 S.F.	.2	.85	14,751 GAL
TOTAL	2288 S.F.			14,751 GAL

$$ETWA = (ET_0)(0.62) \left( \frac{PF \times HA}{IE} \right) = \text{ETWA GALLONS/YEAR}$$
$$ETWA = (44.2)(0.62) \left( \frac{.2 \times 2288}{.85} \right) = 14,751 \text{ GALLONS/YEAR}$$

HYDROZONE INFORMATION TABLE

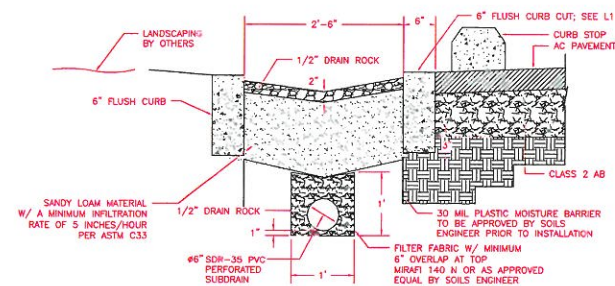
HYDROZONE	VALVE	IRRIGATION METHOD	AREA (S.F.)	% OF LA
'A'	1	D	2288	
'A'	2	D	"	
'A'	3	B	"	
'A'	4	D	"	
TOTAL			2288	100%





### DRAINAGE MANAGEMENT AREA

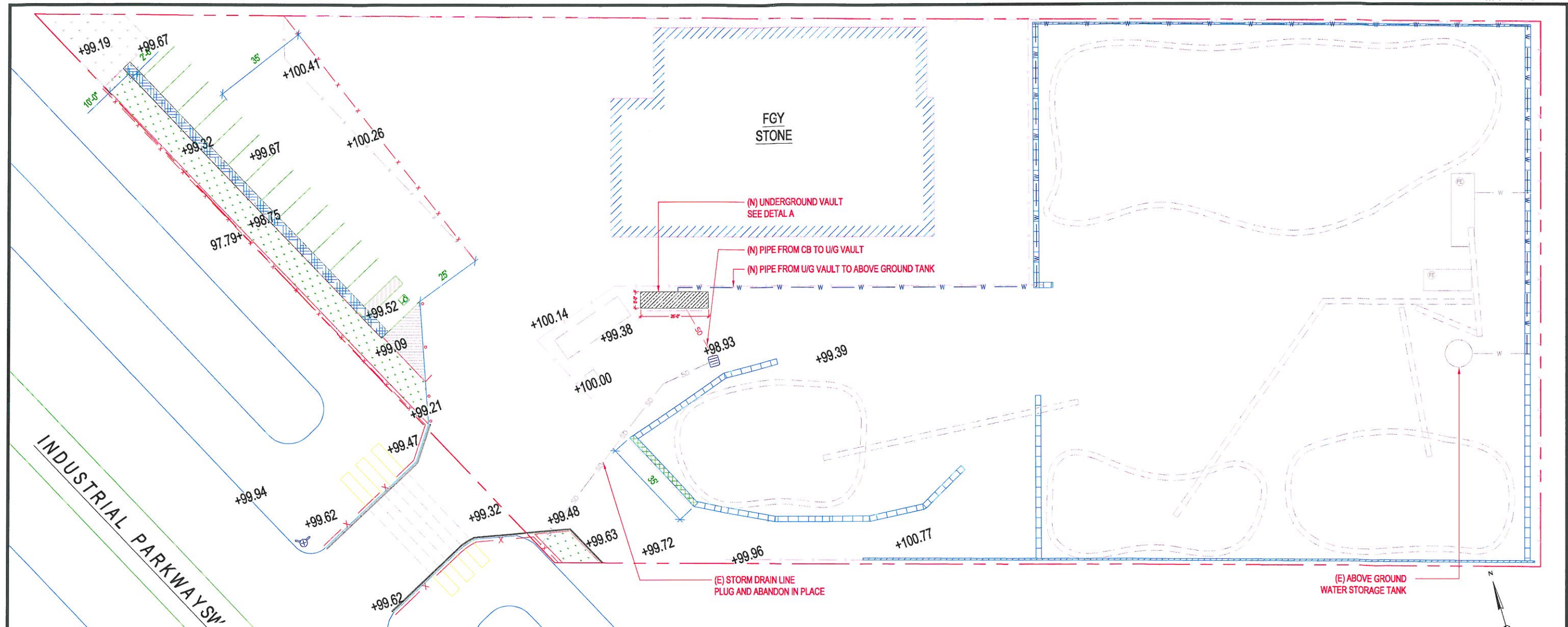
DMA 1 - PROCESSING AREA = 36,579 SQ. FT. - SELF TREATING AREA  
 DMA 2 - STOCKPILE AREA = 15,778 SQ. FT. - AREA DRAINS TO IMP'S  
 DMA 3 - ENTRANCE/PARKING = 12,248 SQ. FT. - AREA DRAINS TO IMP'S



DETAIL:  
SECTION A-A  
NTS

<b>CAL</b> ENVIRONMENTAL VACAVILLE, CA 95688	SERVICES <b>INC</b> 707-446-7996	JOB NUMBER: XXXX	DRAWN BY: B WOOLF	DATE: 9/15/2015
		REVISION: 9/15/2015	CAD FILENAME: XXXXFIG_1A	SCALE: AS NOTED
30120 INDUSTRIAL PARKWAY SW HAYWARD, CA DMA SITE MAP				DWG#: <b>SW 1</b>

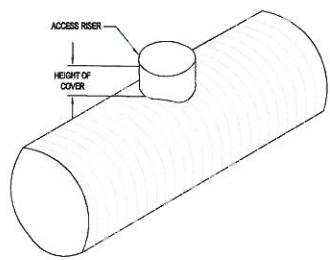




**NOTES**

1. Footprint of cistern from attached sizing spreadsheet is 6'x25' - depth of excavation.
2. The 72" diameter SRPE cistern requires a minimum of 1.5' of cover and 6" of bedding, minimum depth approx. 8'.
3. This plan is for Water Control Plan (WCP) purposes.

SCALE: 1"=200'



URBANGREEN 72" SRPE CISTERN

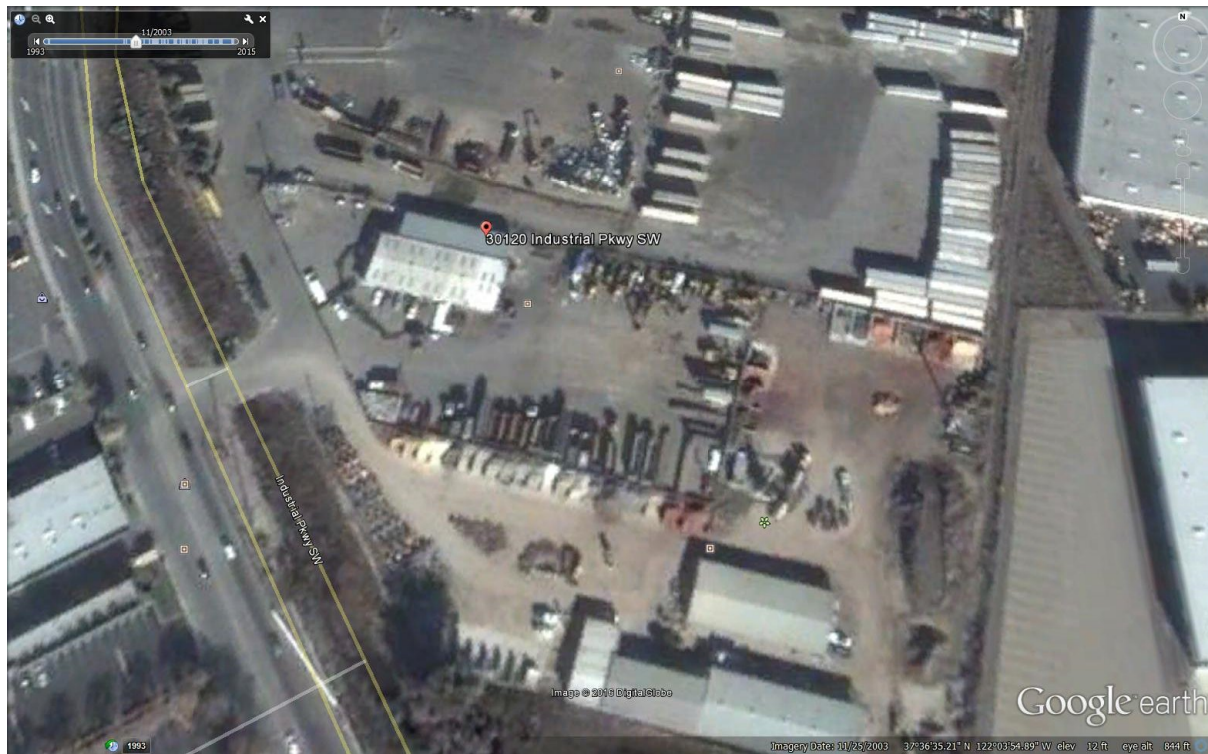
DETAIL A  
NTS

<b>CAL</b> ENVIRONMENTAL VACAVILLE, CA 95588	<b>SERVICES</b> <b>INC</b> 707-446-7996	JOB NUMBER: XXXX	DRAWN BY: B WOOLF	DATE: 9/15/2015
		REVISION: 9/15/2015	CAD FILENAME: XXXXFIG_1A	SCALE: AS NOTED
		<b>NOR CAL ROCK</b> 30120 INDUSTRIAL PARKWAY SW HAYWARD, CA CISTERN LOCATION		

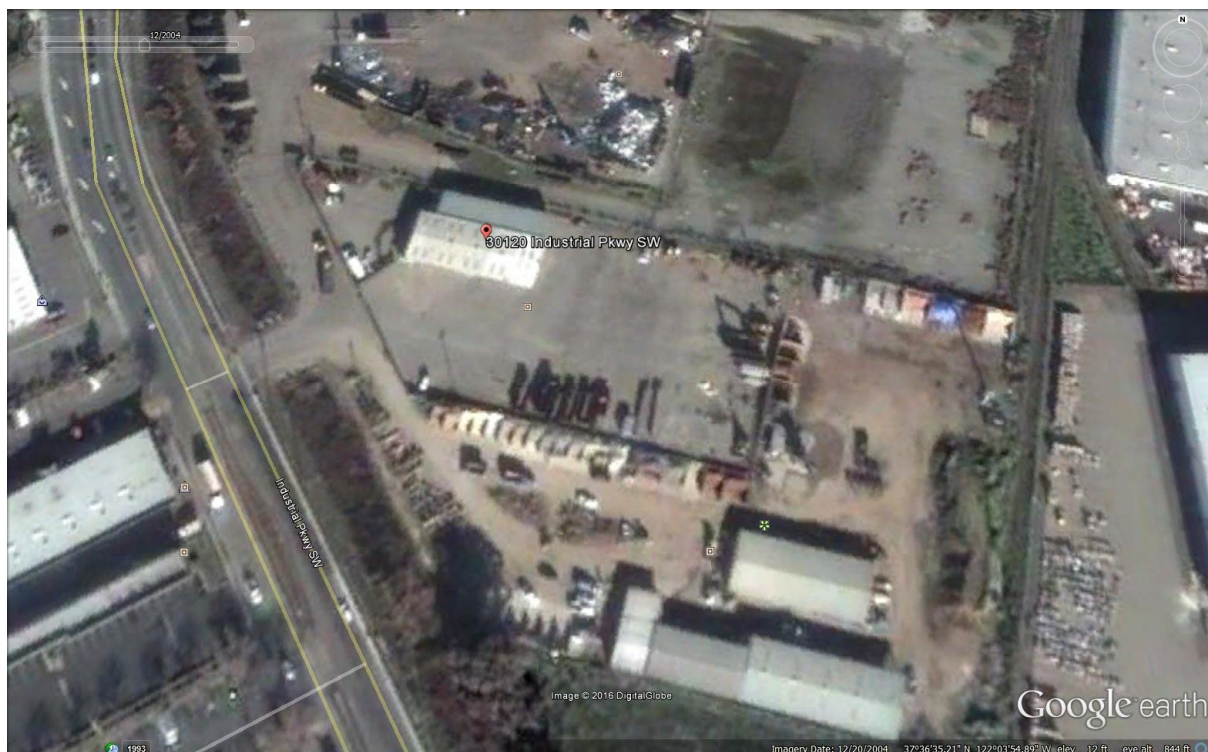
DWG#: **SW 2**



NorCal Historic Aerial Photos (2003 through 2016)



November 2003

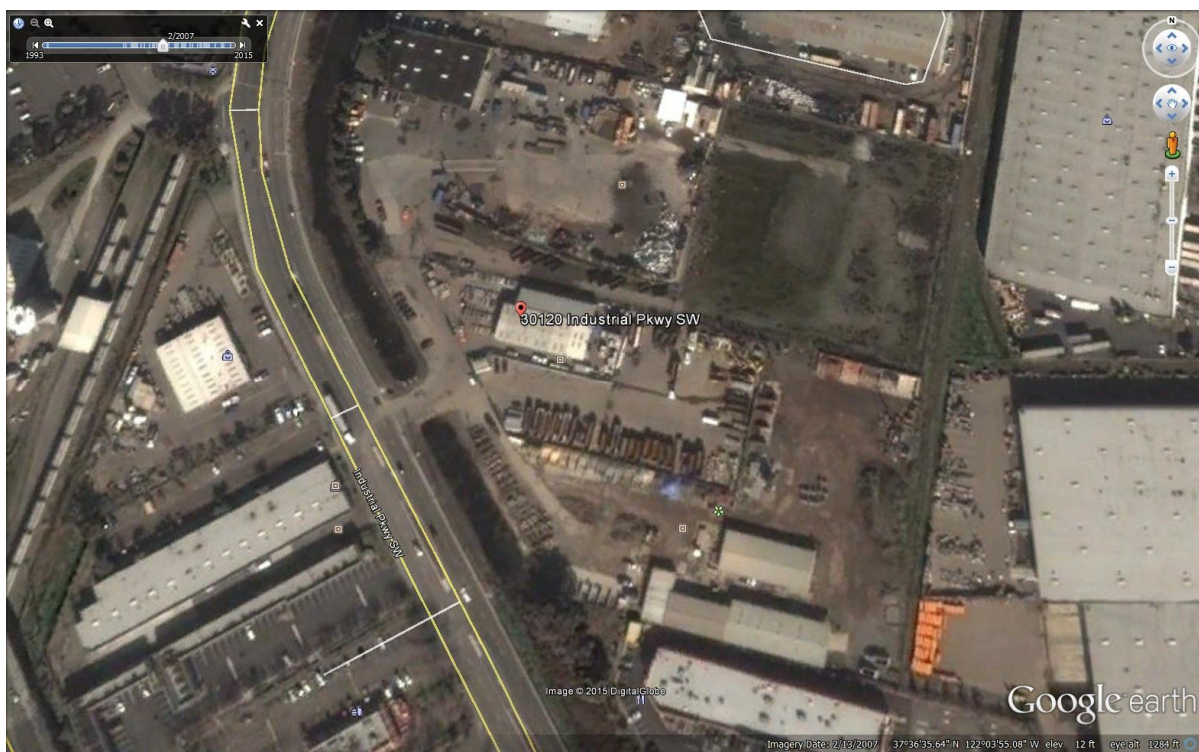


December 2004





December 2005

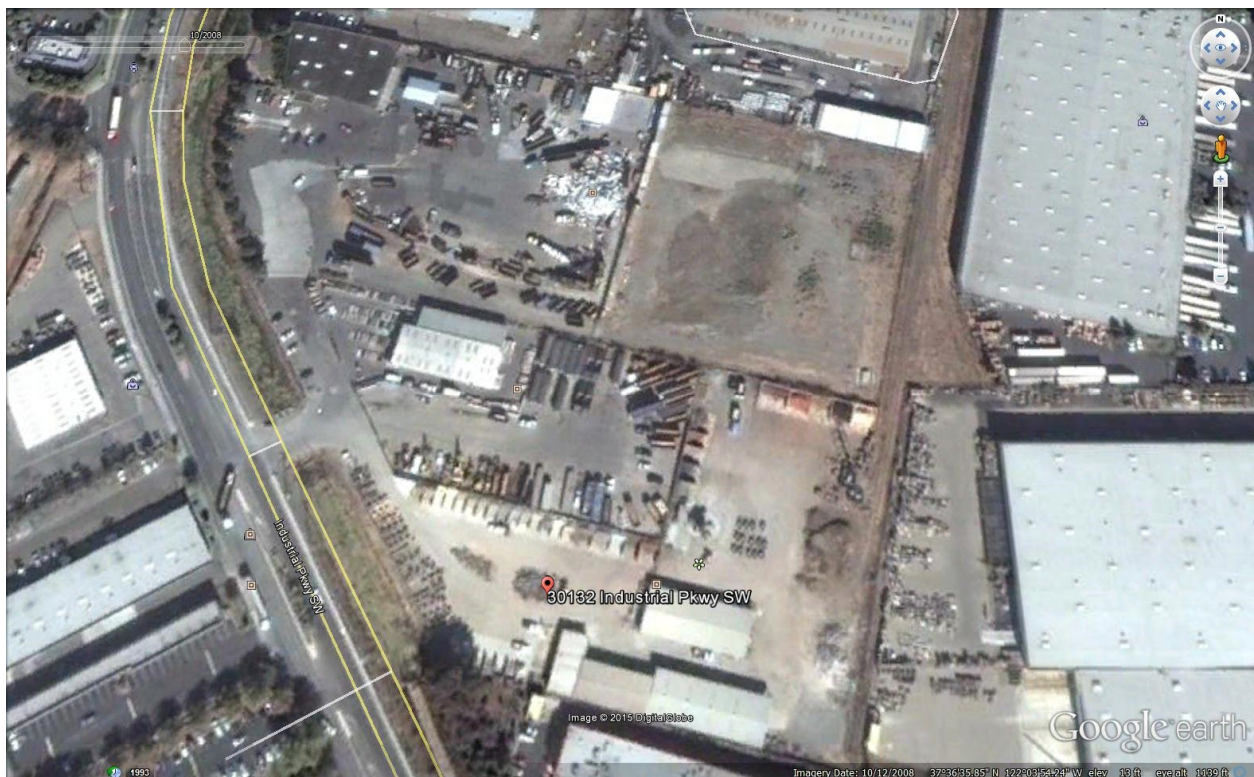


February 2007





August 2008



October 2008





December 2008



October 2009





April 2011



August 2012





June 2013



October 2015











NorCal Site Photos (March 2016)













Che Chen & Shu Fen Liu  
31259 Wiegman Road  
Hayward, CA 94544  
T: 510-487-9129  
F: 510-487-4018

To: City of Hayward Planning

Attention: Carl Emura

Date: 3-31-14

Re: concrete recycling at APN 475-0010-005 & 475-0010-006

I am writing you to submit my opposition to grant concrete recycling business permits to the above parcels. We are the Owners of the parcel commonly known as 31281 Wiegman Road Hayward CA 94544. We have owned the property since 2005, have lived and operated business in Hayward since 1979, and own 9 parcels of real estate in Hayward. We are deeply committed to living and continuing doing business in Hayward for the long term. We are opposed to them operating for the following reasons:

- Dust in the Air- Per my last correspondence, there has been a dramatic increase in dust in the air and my employees are constantly complaining about it
- Unsightly from 880/major shopping channel- Since the sites are so close to 880, Target, Home Depot, Food Max etc, this is not the appropriate site or image Hayward wants to show right off the freeway
- Higher level of use adjacent- We are planning to propose major renovations to our parcel which would accommodate some major national retail stores into the City of Hayward. This would be highest and best use for the site, would create more job growth, and tremendously increase sales tax dollars into the City of Hayward. Having 2 concrete recycling sites adjacent to the project would not be aesthetically beneficial to it.

Thank you very much for your kind attention. Please don't hesitate to contact us with any questions.

Andy Liu

## Leigha Schmidt

---

**From:**  
**Sent:** Monday, March 21, 2016 11:56 AM  
**To:** Leigha Schmidt  
**Subject:** Fwd: 31259 wiegman road hayward ca 94542  
**Attachments:** IMG\_2133.JPG; IMG\_2134.JPG; IMG\_2136.JPG

-----Original Message-----

**From:** \n  
**To:** carl.emura <[carl.emura@hayward-ca.gov](mailto:carl.emura@hayward-ca.gov)>  
**Sent:** Fri, Apr 11, 2014 5:24 pm  
**Subject:** Re: 31259 wiegman road hayward ca 94542

Attached are photos. FYI

Andy

-----Original Message-----

**From:**  
**To:** carl.emura <[carl.emura@hayward-ca.gov](mailto:carl.emura@hayward-ca.gov)>;  
**Sent:** Fri, Apr 11, 2014 3:08 pm  
**Subject:** 31259 wiegman road hayward ca 94542

Hello,

The foul odor is still persisting and my employees are complaining about nausea and breathing problems. I would like to ask if I could please schedule an appointment at my office so I can take you to the back and you can smell for yourself the odor. I am 100% positive it is coming from the soils from the illegally operating recycling company at my rear.

This really needs to be addressed.

Thank you for your kind attention. I am best reached on my cell phone.

Andy Liu  
Royola Pacific  
31259 Wiegman Road  
Hayward, CA 94544  
T: 510-487-9129  
F: 510-487-4018  
C: 510-918-9381



**Leigha Schmidt**

---

**From:**  
**Sent:** Monday, March 21, 2016 12:00 PM  
**To:** Leigha Schmidt  
**Subject:** Fwd: 30120 industrial pkwy sw  
**Attachments:** Binder1.pdf

-----Original Message-----

**From:**  
**To:** Carl Emura <[Carl.Emura@hayward-ca.gov](mailto:Carl.Emura@hayward-ca.gov)>  
**Sent:** Mon, Nov 25, 2013 3:38 pm  
**Subject:** RE: 30120 industrial pkwy sw

Hi Carl,

These photos were just taken. As you know, there are already 2 recyclers right behind our operation. Isn't this enough for us to take? If you look closely there is constant dust in the air and we have to look at these 2 concrete recyclers along with Sims Metal all the time. I will take a photo later when they actually receive a shipment and there are giant clouds of dust.

Our workers constantly complain about this and God knows what's in the dust clouds. Should you approve further recycling, please make note that the dust is not only a nuisance, there could be possibly health issues down the line with people who are down wind from these operations that have to breathe the air. I do not think you would like to be working in the same environment we are in and have to breathe the same air. Our employees used to plant vegetables and fruits along the back of our building where excess soil is and now they won't even grow anymore due to the soot which accumulates on them.

We are pro business and we don't have anything personal against our neighbors. We can't take massive amounts of dust anymore and strongly encourage you to decline the application due to the air pollution that is currently having to be borne from all the neighbors.

Andy

-----Original Message-----

**From:** Carl Emura <[Carl.Emura@hayward-ca.gov](mailto:Carl.Emura@hayward-ca.gov)>  
**To:** 1>  
**Sent:** Mon, Nov 25, 2013 1:57 pm  
**Subject:** RE: 30120 industrial pkwy sw

Mr. Liu,

Thank you for your comments. We are still reviewing this application and have not made a decision to approve or not approve the use at that location. This information is valuable, as often, the concrete recycler will indicate that the machinery and spraying down the site controls the dust. Feel free to pass on any other issues you or your neighbors have with the concrete recycling businesses to me. There are actually two Concrete Recycling Facilities operation, one at 30120 Industrial Parkway SW and another 30104 Industrial Parkway SW. The facility at 30104 has yet to submit their application. Again thank you for your comments.

Carl Emura  
 Associate Planners  
 (510) 583-4209





























Che Chen & Shu Fen Liu  
31259 Wiegman Road  
Hayward, CA 94544  
T: 510-487-9129  
F: 510-487-4018

To: City of Hayward Planning

Attention: Carl Emura

Date: ~~3-31-14~~ 4-4-16 AL

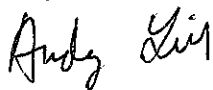
Re: concrete recycling at APN 475-0010-005 & 475-0010-006

I am writing you to submit my opposition to grant concrete recycling business permits to the above parcels. We are the Owners of the parcel commonly known as 31281 Wiegman Road Hayward CA 94544. We have owned the property since 2005, have lived and operated business in Hayward since 1979, and own 9 parcels of real estate in Hayward. We are deeply committed to living and continuing doing business in Hayward for the long term. We are opposed to them operating for the following reasons:

- Dust in the Air- Per my last correspondence, there has been a dramatic increase in dust in the air and my employees are constantly complaining about it
- Unsightly from 880/major shopping channel- Since the sites are so close to 880, Target, Home Depot, Food Max etc, this is not the appropriate site or image Hayward wants to show right off the freeway
- Higher level of use adjacent- We are planning to propose major renovations to our parcel which would accommodate some major national retail stores into the City of Hayward. This would be highest and best use for the site, would create more job growth, and tremendously increase sales tax dollars into the City of Hayward. Having 2 concrete recycling sites adjacent to the project would not be aesthetically beneficial to it.

Thank you very much for your kind attneion. Please don't hesitate to contact us with any questions.

Andy Liu





## Holder Law Group

1736 Franklin Street, Suite 550  
Oakland, CA 94612

holderecolaw.com

(510) 338-3759  
jason@holderecolaw.com

April 6, 2016

VIA EMAIL AND U.S. MAIL

City of Hayward  
Planning Commission  
c/o Leigha Schmidt, AICP, Senior Planner  
Hayward City Hall  
777 B Street  
Hayward, CA 94541  
Email: leigha.schmidt@hayward-ca.gov

Re: **Comments Supporting Denial of Administrative Use Permit for Outdoor Concrete and Aggregate Recycling Facility (PL-2013-0468)**

Dear Members of the Hayward Planning Commission:

On behalf of our client, Sierra Equipment Co., Inc., we request that the commission uphold the Planning Division's denial of the administrative use permit sought by NorCal Rock, Inc. (Applicant) and Industrial Parkway, LLC (Owner). Sierra Equipment Co., Inc. is an owner of property (APN: 475-0010-005-00) located immediately adjacent to the parcel where the outdoor concrete and aggregate recycling facility is proposed (APN: 475-0010-006-00). Our client, as well as its tenant on the property, Sims Metal Management, would be adversely affected by the proposed use.

Our client has reviewed the findings supporting the denial of the permit issued by the City's Planning Division on October 27, 2015, and generally agrees with those findings. In addition, our client is concerned about other potentially significant impacts the proposed use would have, including potential groundwater and geo-technical issues related to the ground surcharge from the pre- and post-recycled material, increased traffic in an already congested area and constrained ingress and egress through a common driveway. If the commission is inclined to reverse the Planning Divisions denial of the administrative use permit, we request that it impose conditions, pursuant to its broad authority under Municipal Code section 10-1.3130, that would protect neighboring property owners and businesses from the use's adverse impacts.

Further, because the proposed use has the potential to cause significant environmental impacts, the City would be required to comply with the California Environmental Quality Act (CEQA) before issuing the discretionary administrative use permit sought by the applicant. If the Planning Commission reverses the denial of the permit and remands the application to the



Planning Division for further consideration, we request notice of any CEQA documents that may be prepared for the proposed use, pursuant to Public Resources Code, section 21092.2. Such notice should be sent to the undersigned via the email address in the above header as well as via mail to our client at:

Sierra Equipment Co. Inc.  
Attn.: David Weiss, Director  
3501 Breakwater Court  
Hayward, CA 94545

We also request that these comments be included in the administrative record for the project.

Thank you for receiving and considering these comments.

Very truly yours,

A handwritten signature in black ink, appearing to read 'JW Holder', with a long horizontal stroke extending to the right.

Jason W. Holder

cc: (via email only)  
David Weiss, Director, Sierra Equipment Co. Inc.  
Patrick Soluri, counsel for Sims Metal Management



tel: 916.455.7300 · fax: 916.244.7300  
1010 F Street, Suite 100 · Sacramento, CA 95814

April 7, 2016

**SENT VIA EMAIL (leigha.schmidt@hayward-ca.gov)**

Leigha Schmidt, AICP, Senior Planner  
City of Hayward, Planning Division  
777 B Street  
Hayward, CA 94541

**RE: Comments on April 14, 2016 Planning Commission  
Hearing re: PL-2013-0468**

Dear Ms. Schmidt:

This letter is submitted on behalf of Sims Metal Management (“Sims”), which operates a recycling center located at 30104, Industrial Parkway, S.W., in Hayward, California. We understand that Norcal Rock, Inc. is appealing the City Planning Director’s decision to deny an administrative use permit (“AUP”) authorizing an outdoor concrete and aggregate recycling facility at 30120 Industrial Parkway. The Norcal site is located adjacent to Sims’ facility.

The purpose of this letter is to express support for the Planning Director’s *denial* of Norcal’s requested AUP. Most relevant to Sims’ position is the following finding of the Planning Director:

This administrative use permit is intended to legalize a use that has been operating in the City over the past several years. During that time, the City has received complaints related to dust generated by ongoing operations and has documented the user’s failure to control fugitive sediment on the property at the ingress/egress to the site and at nearby stormwater inlets.

(Planning Director Findings for Denial dated October 27, 2015, ¶ D.)

Sims is troubled that Norcal has operated “over the past several years” without land use entitlements for its existing operations. It is not surprising that Norcal has “received complaints related to dust generated by ongoing operations” and has a documented “failure to control fugitive sediment” since Norcal’s existing operations have not been the subject to operational conditions that would address such impacts.



Leigha Schmidt, AICP, Senior Planner  
City of Hayward, Planning Division  
April 7, 2016  
Page 2 of 2

Unlike Norcal, Sims operates pursuant to longstanding land use and regulatory entitlements that address operational impacts on surrounding properties and the environment. Sims takes very seriously its duty to maintain compliance with all such requirements designed to ensure that Sims is a good neighbor. Operators that flout these important responsibilities contribute to the unfortunate perception that industrial uses should not be located in proximity to other types of commercial uses.

Sims appreciates the opportunity to comment on this matter.

Very truly yours,

**SOLURI MESERVE**  
A Law Corporation

By:   
Patrick M. Soluri

PS/mre

cc: Jason Holder, Counsel for Sierra Equipment Co., Inc.  
(jason@holderecolaw.com)

**NOR-CAL ROCK, INC.**

ASPHALT + CONCRETE → 'DISPOSAL'

April 7, 2016

City of Hayward Planning Commission  
c/o City of Hayward City Clerk  
777 B Street  
Hayward, CA 94541

**RE: Appeal of Denial of Administrative Use Permit for 30120 Industrial Parkway Southwest**

Dear Members of the Planning Commission:

As a Planning Commissioner you will be hearing our appeal of an administrative use permit that was denied by the Planning Manager. At issue is our concrete recycling facility, Norcal, located at 30120 Industrial Parkway Southwest. We are aware that you are encouraged to visit the properties under consideration prior to the hearing. We want to extend our personal invitation to you to meet us at our facility, that has been in operation for over eight years serving Hayward and the surrounding area, so that you can be assured that you become adequately familiar with our operation. We will be calling you to arrange a time that is best for you.

There are some critical issues associated with our business, of which you should be aware:<sup>1</sup>

- We were legally established in our current location, having first cleared our operation through the then-Planning Manager Richard Patenaude in late 2007/early 2008 and later by the subsequent Planning Manager Sara Buizer in 2011. Current City staff claims that the concrete crushing segment of our operation was not disclosed. This is not correct. We would not have made the effort to seek a clearance, made substantial investments in our facility, operate out in the open on a major arterial, and accept concrete for processing – including from the City of Hayward Public Works Department – without first obtaining clearance to do so. Acting otherwise would be irrational and makes no logical sense. And most obviously, when concrete is delivered by trucks in large pieces and is then sold as aggregate, somewhere in that process crushing occurs!
- Although a concrete crushing business is not specifically called out in the Zoning Ordinance, the Zoning Ordinance allows the Planning Director or his or her designee may determine that the use is appropriate if it is similar to and not more objectionable or intensive than the uses listed. In our case, the Planning Manager found our use to be similar to and not more objectionable than the uses listed. In fact, previous to our concrete recycling business, we operated a trucking operation from our property, as well

<sup>1</sup> A more complete explanation is contained in our appeal submittal dated November 12, 2015.





as a composting operation and heavy trucks entered and exited our site much more frequently than our current operation.

- With City staff taking the position that we should not operate in our present location without an approved administrative use permit – despite the City’s prior planning clearances – we submitted an application under protest while under the City’s threat of fines. However, before our application was even deemed complete, City staff prematurely denied it, citing environmental issues for which there was no evidence. Due to these egregious errors, the Director of Development Services Manager David Rizk withdrew the denial action. This occurred about nine months after we started the application process. Our application was then assigned to a second planner for processing.
- Subsequently, the City assigned a third planner to process our application. With all of the planner changes, we were now well over a year into the application process. Our application was finally deemed complete in September 2015, but was then denied by City staff. You will be considering our appeal on this latest denial action.
- The first finding for denial is again based on environmental issues. As before, there is no evidence to support this finding. Our crusher operates only about 4 hours per day and many days, not at all, and is an environmentally insignificant portion of our operation. Our operation has been issued a permit from the Bay Area Air Quality Management District (BAAQMD) which includes conditions to address air quality and dust, as well as a stormwater permit from the California Water Board. In addition, our facility utilizes dust suppression techniques, is screened from view from the freeway by an approximately 28’ high building, and conversations can occur in proximity to the crusher, negating the claim that there is an excessive noise impacts. The largest noise generator for a crusher is the type of engine used. The sound generated by a diesel engine is much greater than the sound of concrete running through the closed compartment crushing equipment. To address this concern, we have already switched to an electric motor to power the crusher and added exhaust stacks per BAAQMD recommendations that further reduce and minimize the modest noise that comes from the equipment. No sensitive receptors are located in the vicinity. Furthermore, the planner who made the denial findings never visited our site before issuing her decision and did not propose any measures to address environmental concerns.
- Another alleged basis for City staff’s denial is that it claims our property is ripe for commercial development and that approving our administrative use permit would make that more difficult. However, when the General Plan was last amended our area was intentionally excluded from any commercial designation. For the staff to pre-suppose that the City Council will change the General Plan to Commercial at some future date is pure conjecture. We are still baffled on how decisions can be made that conflict with current General Plan designations and policies based on a speculative, future zoning



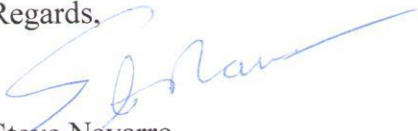
change that will impact our livelihood? We are in operation now, we have been since 2007 and have done nothing but act in good faith in our dealings with the City.

- Under the property's current Industrial zoning designation, an industrial building could be currently built on the site by right. If, in fact, there is future commercial interest in the land, there is no better situation than a parcel without a building to demolish. Outdoor businesses like ours are most conducive to being acquired and converted to other purposes.
- Our property and the surrounding area presents barriers for commercial development. The area in which our property is located is one of numerous parcels. To be clear, our parcel is sandwiched between two Industrial parcels whose business (retail rock, gravel and soil sales and a metals recycling facility) is very similar to ours. In order to be developed with a commercial development, all property owners must agree to sell and properties assembled or re-configured. Moreover, the developable area has no frontage on Industrial Parkway Southwest because of the presence of a 60-foot wide open flood control channel that separates the properties from the street. There is also an access easement (which we own) and a utility easement that constrain development; a railroad spur is located on the eastern most properties; and our property has limited visibility from the freeway due to a commercial building located between our property and the freeway.
- Staff's denial findings acknowledge that there is a need for concrete and aggregate services in the region. However, staff's findings claim that since there are already two approved concrete and aggregate recyclers in Hayward, approval of a third is unnecessary. One is described as an all indoor facility that mitigates impacts to sensitive receptors, while the other is located on a large lot far away from other uses that they also would have no impacts. In fact, neither of these sites exists as the City claims. The "indoor" site is in full operation *outdoors* and has been for years. It does not even appear to be open to the public. The other approved site is being used as truck storage yard on half, and pallet storage on the other half, with no crushing operation present at the approved location. The actual site being used is on Clawiter Road. Both of these sites currently appear to be operated inconsistent with their "approval" and/or are not providing crushing services. It appears that planning staff has not visited these sites either, as they have both been in operation for some time.

We look forward to meeting you and showing you our operation. The City's General Plan and policies send a clear message that "Green" is a priority for government, business, community and life. Norcal Rock embodies the City's message. Our whole business model centers on recycling material that would otherwise be hauled long distances and disposed of in landfills. Our business serves the community as well as your own municipality. We believe it will become obvious to you that our facility and use is responsibly operated (and has been for over 8 years), and is consistent with the intent of the Industrial General Plan Corridor designation and Industrial Zoning District and surrounding industrial uses on Industrial Parkway Southwest.



Regards,



Steve Navarro

Norcal Rock, Inc.

510-636-9860 office

415-990-6773 cell



# CITY OF HAYWARD

777 "B" Street  
Hayward, CA 94541-5077  
(510) 583-4600 • TDD (510) 247-3340  
REVENUE DIVISION  
BUSINESS TAX FORM 1  
www.hayward-ca.gov

Attachment XIII

This is your receipt when validated.

Valid from \_\_\_\_\_ through 12/31/2012

Post until "Valid through" date.

## For Office Use Only

Tax # 146956

SIC Code 5999

Renewal Period (A, Q, or O) A

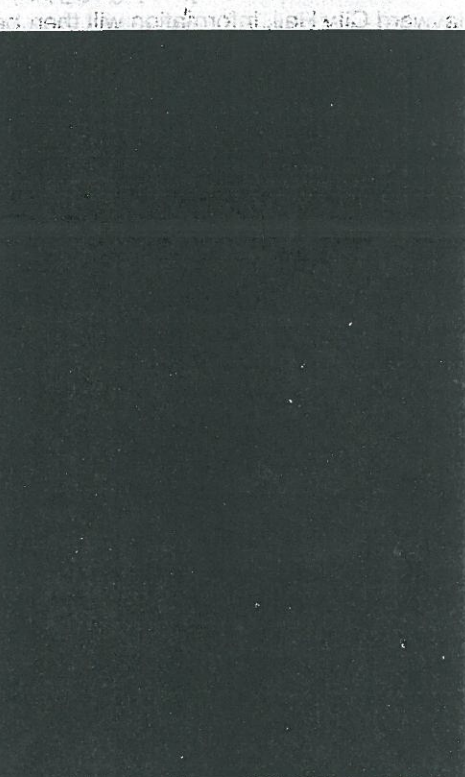
Business Type Code 99-E

Special District \_\_\_\_\_

Business Name Change ☐

Business Address Change ☐

Business Officer / Ownership Change ☐



Zoning Dist.: F

Initial: SMB

Date: 1/25/12

Notes: \_\_\_\_\_

(Continuation of use)

(Approved)

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_





# CITY OF HAYWARD

Hayward City Hall  
777 B Street  
Hayward, CA 94541  
[www.Hayward-CA.gov](http://www.Hayward-CA.gov)

## Staff Report

---

**File #:** MIN 16-029

---

Attached is a copy of the Draft Minutes of the Planning Commission Meeting on March 17, 2016.



**MINUTES OF THE SPECIAL MEETING OF THE  
CITY OF HAYWARD PLANNING COMMISSION  
Council Chambers  
Thursday, March 17, 2016, 7:00 p.m.  
777 B Street, Hayward, CA94541**

---

**MEETING**

A regular meeting of the Hayward Planning Commission was called to order at 7:00 p.m. by Chair Parso-York.

**ROLL CALL**

Present: COMMISSIONERS: Willis Jr., Schott, McDermott, Faria  
VICE CHAIR: Enders  
Absent: COMMISSIONER: Goldstein  
CHAIR: Parso-York

**SALUTE TO FLAG**

Commissioner Faria led in the Pledge of Allegiance.

Staff Members Present: Alvarado Jr., Ajello, Andres, Brick, Chan, Cruz, Hinkle, Kelley, Nguyen, Quach, Rizk

General Public Present: 15

**PUBLIC COMMENT:**

Ben Goulart speaking on behalf of Sally Baxter, said the project will impact her quality of life and the issues in Ms. Baxter's email were against the project.

Kim Huggett, President of the Hayward Chamber of Commerce, spoke about the many activities sponsored by the Chamber and wanted to notify the community that the event with Dr. Andres Roemer, Consul General of Mexico, has been rescheduled to April 12<sup>th</sup>.

**WORK SESSION**

**1. Preliminary Review of Proposed Project: Maple and Main Mixed-Use Project**

Development Services Director Rizk said staff has been working with the developer for some time and that it was appropriate to bring this item forward as a Work Session prior to the Public Hearing because of the size of the project and the amount of inquiries that staff has received. Mr. Rizk said the purpose of the Work Session was to have a brief staff presentation, have the proponent provide a project summary and allow for discussion and to answer questions from the Commission and the community.





**MINUTES OF THE SPECIAL MEETING OF THE  
CITY OF HAYWARD PLANNING COMMISSION  
Council Chambers  
Thursday, March 17, 2016, 7:00 p.m.  
777 B Street, Hayward, CA94541**

---

Senior Planner Ajello presented a PowerPoint and provided a synopsis of the staff report. Staff recommended hearing the project proponent's presentation prior to the question and discussion period. Ms. Ajello said staff was currently in the process of completing the project's environmental review, once completed the document will be circulated for public review and comment, a public notice will be sent out when the document is available, and then staff will schedule and notice a public hearing for the project.

Mr. Paul Meuser, principle planner with Wood Rodgers and representing the project sponsors Klein Financial Corporation and Bay Area Property Developers, provided an overview of the project and the overarching goal to establish a mix of businesses and other activities which will enhance the vitality of the downtown area. Mr. Meuser described the different components of the project including, but not limited to, the design and architectural aspects; renovations to the medical building; unbundled parking in the garage which will allow for more efficient parking; character of proposed amenities; mixed use sustainability; location near different types of transportation and the downtown area; bay friendly landscaping; and that the buildings comply with CalGreen standards which uses one-third less energy and 50% less water.

Mr. Robert Klein, of Klein Financial Corporation, spoke about his corporation's Residential Housing Awards and how the proponent was committed to quality projects and summarized the key public policy and housing objectives. Mr. Klein spoke about surpassing the energy efficiency requirements; emphasized public transportation options; the importance in upgrading the medical building; parking options; and how they want to partner with the City of Hayward and be responsive to any issues. Mr. Klein relayed how the proponents listened to the community's comments and has made modifications to the parking garage height to be in line with the residential height. Mr. Klein was open to discussion and questions and how the applicant wants to do the right thing.

In response to Commissioner Schott, Mr. Klein said the developer builds Class A office buildings and will renovate the entire medical office building both interior and exterior to improve function and efficiency which includes seismic upgrades. Mr. Klein said the parking structure accommodates both the residents and medical building. Mr. Schott did not care for the exterior design of the west side of the medical building and feels more work needs to be done. Mr. Klein said the west side elevation still needs to be revised and will provide this to staff and the Planning Commission.

Commissioner McDermott said any renovation to the medical building will be an improvement and was glad for the forty-seven affordable housing units which are critical in today's rental environment. Mr. Klein said the applicant will completely renovate the medical building. Mr. Klein added that if the Commission feels there should be assigned parking for each unit the developer would be agreeable to this as they are trying to be responsive to what



**MINUTES OF THE SPECIAL MEETING OF THE  
CITY OF HAYWARD PLANNING COMMISSION  
Council Chambers  
Thursday, March 17, 2016, 7:00 p.m.  
777 B Street, Hayward, CA94541**

---

the community has voiced. Ms. McDermott liked the contemporary feel and look of the residential units; it can blend well with the community and spoke about the need for diversification in the downtown area. Mr. Klein said the workforce units will be built to the same standards as the market rate units.

In response to Commissioner Willis Jr., Mr. Klein said, because of limited roof space, there expects to be approximately 25% energy generation which will help power the open and common area spaces and noted full electrical plans will be forth coming. Mr. Willis said to have limited charging stations would be inconvenient and he does not want problems to develop among homeowners. Mr. Klein said the hi-speed charging stations were expensive and will work with staff and Planning Commission on this and noted that if the project was financially successful, then the developer can come back and install more charging stations. Mr. Willis said this is a great project as it will bring more homes to Hayward with good people and families that can help to revitalize the downtown area.

In response to Commissioner Faria, Mr. Klein confirmed there will be an onsite resident manager and maintenance person and spoke about the residential building technology that will make the building extremely convenient and informational friendly, which includes residents reserving time at the charging stations and in the additional clothes wash areas. Mr. Klein spoke about the plans for ground floor areas on Main Street that includes ground floor retail and the leasing lobby for the residential units and the advantages of having the retail and leasing office next to each other. Mr. Klein said the five-story residential building, the parking garage and the medical building will be fifty-five feet at their highest points.

In response to Vice-Chair Enders, Mr. Klein will make every effort to preserve the old coastal redwood tree and plaque that is in front of the medical building. Ms. Enders asked if the developer will pay homage to the design detail and historical significance of the Hayward hotel that was located directly across from this location. In response, Mr. Klein admitted that he was unaware of this, but his company has integrated historical features and design into the lobbies and clubhouses of previous projects and he will look into this and see what can be done.

Vice-Chair Enders opened the Public Comment period at 8:04 p.m.

Mr. Frank Goulart, Hayward resident, felt staff should have provided the public with the traffic study; indicated he liked the projects green elements and the 20% affordable housing aspect, but said this area was Central City Commercial and was not in line with the General Plan as the project does not have all ground floor commercial. Mr. Goulart said the City doesn't need more rental apartments and the community would be happier if this was a homeownership project. Mr. Goulart had concerns about the site as it used to be seasonal wetlands where the Ohlone Indians buried their dead which should be cause for a full scale environmental review.





**MINUTES OF THE SPECIAL MEETING OF THE  
CITY OF HAYWARD PLANNING COMMISSION  
Council Chambers  
Thursday, March 17, 2016, 7:00 p.m.  
777 B Street, Hayward, CA94541**

---

Mr. Kim Huggett, President of the Hayward Chamber of Commerce, endorsed the project, was excited about the project and said one of the ways to rejuvenate the downtown area was to live there. Mr. Huggett was excited about having more people living in the downtown area; how they will have the opportunity to experience the entertainment zone, new library and multitude of businesses and amenities. Mr. Huggett was also pleased with the provision for 60 new bicycle parking spaces and hopes this will emphasize for the Downtown Specific Plan Task Force about the need for alternative transportation options such as bicycles.

Mr. Benjamin Goulart, Hayward resident, thanked the Planning Commission, staff and developer and noted the developer has been very open and talking to the community about the project. Mr. Goulart had concerns about the impact to traffic that can be detrimental to pedestrians; impacts to schools and quality of life. Mr. Goulart said the project has a lot of good amenities but he preferred the height be reduced to three to four stories and said the community could support a three to four story project which will have less people; less impact to traffic; and the views.

Mr. Per Bothner, Hayward resident, thought this was a good project; and to include Maple Court in plans for ground floor retail and said the ground floor retail element was important for the growth and vitality of the downtown area. He was okay with the unbundled parking; but if parking becomes an issue residents may need to have permit parking in the area; felt the height should be reduced and the current building would impact quality of life. Mr. Bothner made the following recommendations: have the entrance on Main Street and the exit on Maple Court which would help ease traffic and install the less expensive 110 to 220 volt charging stations at every parking space.

Mr. Croft Jervis, retired Hayward resident, spends a lot of time using the downtown resources; appreciated the developers outreach; but was concerned that the development would create high density; there is insufficient parking spaces; a parking space fee will push a lot of the cars onto the streets and create a parking issue for existing residents; and doesn't want to lose existing ground floor retail space as once gone it cannot be regained. Mr. Croft would like to see more ground floor retail including Maple Court; reduce the building height to be four stories; and asked the Commission to seriously consider the effects of congestion; increase in the amount of vehicles and the impacts to traffic and parking.

Mr. Benjamin Goulart, speaking on behalf of Ms. Sally Baxter, Hayward resident, read from an email he received from Ms. Baxter, who was unable to attend tonight's meeting. Ms. Baxter's text as read by Mr. Goulart indicated she was vehemently opposed to the project; and that her house was opposite from the fire lane for the proposed project; the five story building will greatly impact the quality of life for the Prospect Hill neighborhood; the loop has already greatly impacted her street, McKeever Avenue, as drivers use McKeever as a shortcut to bypass the loop and has made it dangerous whenever she wants to leave her house. Ms.



**MINUTES OF THE SPECIAL MEETING OF THE  
CITY OF HAYWARD PLANNING COMMISSION  
Council Chambers  
Thursday, March 17, 2016, 7:00 p.m.  
777 B Street, Hayward, CA94541**

---

Baxter's text indicated five stories was too high and that she was not opposed to a three to four story project, but the project will greatly impact school resources, negatively affect the quality of education, and have negative impacts to traffic and City resources.

Vice-Chair Enders closed the Public Comments at 8:24 p.m.

Commissioner Willis Jr. recommended that staff conduct more studies and requested a feasibility study be conducted on having a charging station at every parking space or at least equipped with charging station infrastructure and to also include motorcycle charging stations. Mr. Willis pointed out that the majority of electric car charging will be done at night and was concerned that the limited charging stations will be very inconvenient, cause problems between residents and could have emotional and mental health impacts to residents.

Commissioner Faria asked staff to validate the information about the impact to school capacity. Mr. Klein responded to Ms. Faria that the developer would have to study the economics of both the medical and residential buildings if the height was to be lowered. Also, Mr. Klein said a profile study indicates a young age group data which indicated a low number of school age children per unit.

Commissioner McDermott recommended an incentive to residents such as a break in rent if they don't need a parking space which also will encourage residents to utilize public transportation. Ms. McDermott said the five story height could be obstructive; and said the City wants buildings to stand out in a positive way.

Commissioner Schott pointed out the designated school for this area is Cherryland School which is designed for 800 students but there could be capacity impacts at other schools. Mr. Schott said these types of urban environment projects do not attract families; he likes the proposed 48,000 feet of commercial space; the downtown area needs daytime activity to be successful where working people will frequent the surrounding establishments for lunch. Mr. Schott said there is a shift away from all electric vehicles to hybrid gas/electric vehicles and applauds the developer in working with a difficult space and suggested that the architect work with AutoCAD renderings to show sun angles through the day and seasonal sun angles to enable residents to see what can be expected with the addition of the project.

Development Services Director Rizk responded to Vice-Chair Enders that staff was still conducting analysis on the environmental impacts and will be making a decision in the near future. Senior Planner Ajello clarified that the traffic study was conducted as part of the environmental review and since staff was still analyzing the environmental review data, the traffic study documents have not been released. Ms. Enders expressed concern about building a five story building in an area near one of the Alquist-Priolo fault zones and wants the





**MINUTES OF THE SPECIAL MEETING OF THE  
CITY OF HAYWARD PLANNING COMMISSION  
Council Chambers  
Thursday, March 17, 2016, 7:00 p.m.  
777 B Street, Hayward, CA94541**

---

appropriate action taken into consideration. Ms. Enders said the project was in line with the General Plan, Guiding Principle #2, which she indicated says, "Hayward should have a thriving commercial center, inspire residents to live active, healthy and green lifestyles and provide easy access to jobs." Ms. Enders spoke about the North Hayward Neighborhood Plan from the 1990's, page 42, which states, "New development along Main Street should complement the character of the original homes and garden on the hill (Ms. Enders pointed out this was Prospect Hill), avoiding blocky buildings and parking lots adjacent to the street or channel." Ms. Enders continued that members of the community took the time to provide input and volunteer their time to draw up this plan of their vision for the future and asked staff and applicant to take a look at the North Hayward Neighborhood Plan and the need to take into consideration existing and future residents. Ms. Enders had a concern about one of the balcony plans that can be dangerous for children that had very thin wires set six inches apart. Ms. Enders likes the level 6 landscape rooftop plans and its level of detail. Ms. Enders requested a detailed pedestrian-oriented plan from the applicant and for the applicant to take into consideration the character of the neighborhood which should have a sense of connectivity between the project and the Prospect Hill neighborhood.

Commissioner Schott suggested the City reach out to the neighborhoods to update the neighborhood plans that were drawn up over 20 years ago. Mr. Schott said it seems one of the main issues of the Prospect Hill residents is the impact caused by the loop and how drivers use the neighborhood as a shortcut to avoid the loop. Mr. Schott says similar issues will arise with the proposed Mervyn's project. Senior Planner Ajello said the traffic issues would have to be presented to the Director of Public Works, Engineering and Transportation. Transportation Manager Kelley said that staff was well aware of the cut-through traffic issues in the Prospect Hill neighborhood and has asked the developer to come up with strategies to mitigate these issues. Mr. Kelley said staff will look at these strategies as part of the traffic study and the Planning Commission will see this when the environmental review and traffic study was released.

Vice-Chair Enders thanked the applicant for working with staff and taking into consideration the neighborhood issues. Vice-Chair Enders allowed for one more public comment.

Mr. Benjamin Goulart, Hayward resident, asked if he conducted a survey and polled the neighborhood about the height of the proposed development, will the Planning Commission take the survey into consideration. Vice-Chair Enders said the Commissioners welcome all comments and will take into consideration any feedback or documents from the community, and directed Mr. Goulart to City staff for guidelines.

## **COMMISSION REPORTS**

### **2. Oral Report on Planning and Zoning Matters**



**MINUTES OF THE SPECIAL MEETING OF THE  
CITY OF HAYWARD PLANNING COMMISSION  
Council Chambers  
Thursday, March 17, 2016, 7:00 p.m.  
777 B Street, Hayward, CA94541**

---

Development Services Director Rizk mentioned that staff would like to hear about the Commissioners experience at the Planning Commission Academy. Staff will place the item on the agenda for a future meeting.

**3. Commissioners' Announcements, Referrals**

Commissioner Schott thanked the City for sponsoring the Commissioners to go to the Planning Commissioners Academy.

**APPROVAL OF MINUTES**

**4. Approval of Minutes of the Planning Commission Meeting on February 11, 2016.**

AYES: Commissioners Willis Jr., Schott, McDermott, Faria  
Vice-Chair Enders  
NOES: None  
ABSENT: Commissioner Goldstein, Chair Parso-York,  
ABSTAIN: None

**5. Approval of Minutes of the Planning Commission Meeting on February 25, 2016.**

AYES: Commissioners Willis Jr., Schott, McDermott, Faria  
Vice-Chair Enders  
NOES: None  
ABSENT: Commissioner Goldstein, Chair Parso-York,  
ABSTAIN: Faria

**ADJOURNMENT**

Vice-Chair Enders adjourned the meeting at 8:49 p.m.





**MINUTES OF THE SPECIAL MEETING OF THE  
CITY OF HAYWARD PLANNING COMMISSION  
Council Chambers  
Thursday, March 17, 2016, 7:00 p.m.  
777 B Street, Hayward, CA94541**

---

APPROVED:

---

Brian Schott, Secretary  
Planning Commission

ATTEST:

---

Denise Chan, Senior Secretary  
Office of the City Clerk



# CITY OF HAYWARD

Hayward City Hall  
777 B Street  
Hayward, CA 94541  
[www.Hayward-CA.gov](http://www.Hayward-CA.gov)

## Staff Report

---

**File #:** MIN 16-030

---

Attached is a copy of the Draft Minutes of the Planning Commission Meeting on March 24, 2016.





**MINUTES OF THE REGULAR MEETING OF THE  
CITY OF HAYWARD PLANNING COMMISSION  
Council Chambers  
Thursday, March 24, 2016, 7:00 p.m.  
777 B Street, Hayward, CA94541**

---

**MEETING**

A regular meeting of the Hayward Planning Commission was called to order at 7:00 p.m. by Chair Parso-York.

**ROLL CALL**

Present: COMMISSIONERS: Willis Jr., Enders, Schott, McDermott, Faria  
CHAIRPERSON: Parso-York  
Absent: COMMISSIONER: Goldstein

**SALUTE TO FLAG**

Commissioner Enders led in the Pledge of Allegiance.

Staff Members Present: Ajello, Alvarado Jr., Brick, Buizer, Camire, Chan, Hamilton, Hinkle, Quach, Rizk

General Public Present: 20

**PUBLIC COMMENT:**

There were none.

**PUBLIC HEARINGS:** For agenda item No. 1 and agenda item No. 3, the decision of the Planning Commission is final unless appealed. The appeal period is 10 days from the date of the decision. If appealed, a public hearing will be scheduled before the City Council for final action. For agenda item No. 2, the Planning Commission may make a recommendation to the City Council.

1. Proposed construction of sixteen attached single-family townhome-style condominiums located at 24755 O'Neil Avenue, requiring Site Plan Review, a Warrant to exceed the fence height standard for a proposed wall adjacent to the BART right-of-way, and approval of a Tentative Condominium Tract Map 8289 – Cypress Group, Tim Henderson (Applicant and Owner)

Associate Planner Hamilton provided a synopsis of the staff report. Ms. Hamilton pointed out a modification to Condition 66 (c) under Public Improvement, noting this was discussed and agreed upon by the applicant, the new requirement is to grind and overlay O'Neil Avenue from curb to curb across the entire frontage. Ms. Hamilton said staff has received two residents' input about replacing the fences between their development and



**MINUTES OF THE REGULAR MEETING OF THE  
CITY OF HAYWARD PLANNING COMMISSION  
Council Chambers  
Thursday, March 24, 2016, 7:00 p.m.  
777 B Street, Hayward, CA94541**

---

the proposed project and along the BART tracks. Ms. Hamilton said there will be a 14 foot masonry wall built along the BART tracks to help mitigate some of the noise currently coming through the existing cyclone fence. Additionally, the condition of the existing fence will be assessed and will be repaired/replaced as necessary by the developer. The other issue was parking congestion along the street; Ms. Hamilton said there could be a Code Enforcement issue related to residents of an existing development that are required to pay for parking are instead parking their cars on the street. Ms. Hamilton noted the proposed project exceeds the Form-Based Code parking requirements.

Chair Parso-York opened and closed the public hearing at 7:09 p.m.

Commissioner Enders was in agreement with staff findings that the proposed project was compatible with surrounding structures and this was an important infill project that will breathe new life into the neighborhood. Ms. Enders liked the project, was not opposed to the three story height; it was positive for the neighborhood; liked the four bedroom four bath unit plans; the project was walkable to amenities and transportation but wants the applicant to reconsider the tandem garages.

Commissioner Willis Jr. agreed with Commissioner Enders, the project was ideally located and will provide more good housing and families to the City.

Associate Planner Hamilton responded to Commissioner Faria that the proposed 14 foot masonry wall will be similar to the existing decorative 14 foot wall.

Commissioner Schott expressed concern about graffiti on the new masonry walls and asked if there will be space for crews to deal with the graffiti.

Mr. Tim Henderson, applicant and owner with Cypress Group, said based on the sound engineer's recommendation they will be building a 14 foot sound wall to match existing conditions and design and a chain link fence with be replaced which will allow access to any graffiti issues. Mr. Henderson spoke about the advantages of tandem garages such as: they allow for greater density; enabled the developer to conform to the General Plan; and enabled the design to be in line with the arts and crafts style townhomes.

Kurt Anderson, project architect, said they looked at the tandem garages very closely and this element allowed for: twelve out of sixteen units to be end units; groups of green spaces; and enabled the developer to come up with an attractive solution for a difficult site.

Commissioner Enders thanked the applicant and architect for their explanations of their efforts in looking at multiple different solutions, the need to utilize the tandem garage choice to be able to conform to the General Plan and she will support the tandem garages.





**MINUTES OF THE REGULAR MEETING OF THE  
CITY OF HAYWARD PLANNING COMMISSION  
Council Chambers  
Thursday, March 24, 2016, 7:00 p.m.  
777 B Street, Hayward, CA94541**

---

Ms. Enders addressed staff that tandem garages are not the best idea and that a lot of times the homeowners of homes with tandem garages will tend to convert the garage to an illegal living space and she wants to avoid a possible problem.

Mr. Kurt Anderson said the City has a great staff that worked with the applicant through several designs.

Associate Planner Hamilton responded to Commissioner Schott regarding his concerns about the sound wall and possible graffiti and whether or not BART has been involved with discussions. Ms. Hamilton said staff will look into this and will reach out to BART to find a resolution to the issues of new walls for a development, not just for this project but also for future projects. Ms. Hamilton added if in reaching out to BART results in making some changes to the project plan, staff will work with the applicant and come back to the Planning Commission with this information.

Chair Parso-York said he was looking forward to hearing the results of the discussions with BART as there is a lot of graffiti along the tracks.

Commissioner McDermott agreed with Commissioner Enders in regards to the tandem garages. Mr. Henderson responded to Ms. McDermott that in the Conditions of Approval (COA) there is a condition in the Covenants, Conditions and Restrictions (CC&R) that the tandem garages cannot be converted to living space or storage areas.

Associate Planner Hamilton said in subsection J under HOA Condition 112 the garages must be maintained for off street parking for two vehicles and cannot be converted to living or storage areas.

Commissioner Willis Jr. pointed out that CC&Rs can be amended at any time if the community as a whole wants the change and with a majority vote the homeowners are legally within their rights. Mr. Willis said the City would need to be diligent to ensure that conversions are not allowed and he added as time goes by change can occur.

Commissioner McDermott made a motion to approve the item per the staff recommendation which includes the amendment to Condition 66. Commissioner Willis Jr. seconded the motion.

The motion passed with the following vote:

AYES:	Commissioners Willis Jr., Enders, Schott, McDermott, Faria Chair Parso-York
NOES:	None



**MINUTES OF THE REGULAR MEETING OF THE  
CITY OF HAYWARD PLANNING COMMISSION  
Council Chambers  
Thursday, March 24, 2016, 7:00 p.m.  
777 B Street, Hayward, CA94541**

---

ABSENT: Commissioner Goldstein  
ABSTAIN: None

2. Proposal to subdivide a 2.3 acre parcel and construct 42 Townhomes at 25891 and 25912 Dollar Street, north of the Harder Road intersection, requiring approval of an Amendment to the Thoroughfare Plan of the Hayward Mission Boulevard Corridor Plan Form-Based Code, Site Plan Review, Warrants for Parking and Roof Pitch, and Vesting Tentative Tract Map; Donald Babbitt/Warmington Residential (Applicant), Lakhbir Singh, Dubba, LLC (Owner)

Associate Planner Camire provided a synopsis of the staff report.

Commissioner Schott said KB Home has made a big improvement to this area and noted Warmington was one of the first builders in the Stonebrae development. Mr. Schott has concerns about the lack of street lighting on Dollar Street and also suggests to rename a part of Torrance Avenue to Dollar Street, noting this could make locating this street easier. Mr. Schott noted this project was a good opportunity to clean up the neighborhood as there was a lot of dumping done in this area. Ms. Camire said the developer was required to install street lights and staff will follow up with Public Works about the street name and street signs.

Commissioner Faria acknowledged the applicant for their efforts to increase bike usability and for placing ceiling bike racks in the garage which encourages more alternatives to cars.

Commissioner McDermott requested information on the AC Transit pilot program of more bus service on Mission Boulevard noting the complaints from the public was the length of waiting time between buses. Ms. McDermott wants this development to be in line with the previous development that was approved to have the same requirement of 75% homeownership. Ms. Camire will make this change to 75% homeownership.

Commissioner Enders thanked staff and applicant, noted she was impressed as it was evident how much time and effort has gone into the project and that Planning Commission recommendations are heard by both staff and developers. This was evident as the development exceeded the open space and green elements; development was compatible with surrounding structures especially with the adjacent KB Homes project. Ms. Enders said in regards to the two warrants, there were no adverse impacts from the roof pitch; and the addition of eleven visitor parking spaces was justified. Ms. Enders will be supporting the project.





**MINUTES OF THE REGULAR MEETING OF THE  
CITY OF HAYWARD PLANNING COMMISSION  
Council Chambers  
Thursday, March 24, 2016, 7:00 p.m.  
777 B Street, Hayward, CA94541**

---

Commissioner Willis Jr. supported the project, said this was a good project, it will provide 42 new homes for the City and was very close to public transportation and shopping and will be a benefit to the City.

Chair Parso-York opened the public hearing at 7:54 p.m.

Don Babbitt, with Warmington Residential, spoke about the great process and commended staff, spoke about the amenities of the project such as; it is a walkable project with many outdoor features; outdoor exercise equipment; GreenPoint rated; and garages with windows that will allow the HOA to check that the garages are used for cars and not for storage or illegal rooms.

Chair Parso-York appreciated the walkability of the project.

Chair Parso-York closed the public hearing at 7:57 p.m.

Commissioner Willis Jr. added if homeowners want to make changes to their homes it can be difficult because they have to go through the HOA committees for design and architectural reviews for approval. Mr. Willis noted the CC&Rs would require the necessary City permits for any changes and these rules also govern the color scheme of the units.

Commissioner Willis Jr. made a motion to approve the item per the staff recommendation. Commissioner Faria seconded the motion.

AYES:	Commissioners Willis Jr., Enders, Schott, McDermott, Faria Chair Parso-York
NOES:	None
ABSENT:	Commissioner Goldstein
ABSTAIN:	None

3. Proposed Conversion of a Single-Room Occupancy Facility to an Apartment Building in the Green Shutter Hotel building located at Main and B Streets, requiring approval of a Conditional Use Permit to allow residential units on the ground floor in the Central City Plaza (CC-P) and Central City Commercial (CC-C) Zoning Districts. Trent Kloppenburg, Structure Properties (Applicant/Owner)

Senior Planner Ajello provided a synopsis of the staff report.

Mr. Trent Kloppenburg, applicant with Structure Properties, thanked staff for their efforts for their assistance with the process; said he was excited about the opportunity to build in the downtown core; wants to pay homage to the historical significance of the building; and felt the downtown core is hinging on this long term investment



**MINUTES OF THE REGULAR MEETING OF THE  
CITY OF HAYWARD PLANNING COMMISSION  
Council Chambers  
Thursday, March 24, 2016, 7:00 p.m.  
777 B Street, Hayward, CA94541**

---

Mr. Kloppenburg responded to Commissioner Schott that they will be reaching out to a stained glass contractor to look at the stained glass windows along the southern corridor and see about retaining elements of the original design.

Mr. Kloppenburg responded to Commissioner Enders that Structure Properties will be managing the building plus there will be a new onsite resident manager.

Mr. Kloppenburg responded to Commissioner Willis Jr. that there will be conversion to deck space on the second floor with sliding glass doors for the new tenants and there will be a new 4,000 square foot roof space that will be a common area for all tenants. Mr. Kloppenburg stated it was not feasible to restore the roof to its previous open space because of seismic upgrades over the years.

Commissioner McDermott was very excited about finally being able to renovate the Green Shutter property and the target population was young professionals and students. Staff did share that there have been problems where fire, police and Code Enforcement personnel have been called to the site for a multitude of issues in the hotel. Senior Planner Ajello said the permitted parking fee was still being established through Public Works, Transportation Division and that per Transportation Manager Kelley, there be residential and employee permit parking.

Chair Parso-York opened the public hearing at 8:21 p.m.

Ms. Toni Rediske, Hayward resident, was 100% for project which will provide a safe environment for visitors to the downtown area. Ms. Rediske commented that she usually does not frequent the area at night and is happy to say the project will allow her to enjoy her downtown area and enable her to attend evening events.

Mr. Kim Huggett, President of the Hayward Chamber of Commerce, said the project was across the street from his office; spoke about current problems at the Green Shutter Hotel which was detrimental to existing businesses that often involves the City's first responders; because of negative activities and public health issues. Mr. Huggett said he was glad Structure Properties will be renovating the property and spoke about the multiple transportation options near this site which includes the CalState Shuttle. Mr. Kim favored the project and was pleased with staff's recommendation.

Mr. Ci Y Nie, Hayward business owner on B Street, said this was a giant big step toward the goal to renovate a historic hotel; he was all for this; and asked about the status of plans for a parking lot which can greatly benefit the project.





**MINUTES OF THE REGULAR MEETING OF THE  
CITY OF HAYWARD PLANNING COMMISSION  
Council Chambers  
Thursday, March 24, 2016, 7:00 p.m.  
777 B Street, Hayward, CA94541**

---

Mr. Frank Goulart, Hayward business owner on Main Street, supported the project and was happy the applicant will renovate the Green Shutter Hotel; improve the corner and hopes this will encourage other businesses to improve their properties and was glad that the street frontage businesses were remaining intact. Mr. Goulart said the six units in back were okay as they did not affect the street frontages and that there was a need to preserve the historic district and historic buildings and encouraged the Planning Commission to support the project.

Chair Parso-York closed the public hearing at 8:31p.m.

Mr. Kloppenburg responded to Commissioner Willis Jr. that they will not be retaining the Green Shutter name because of the negative connotation associated with the name on the internet and the new name has yet to be determined. Mr. Kloppenburg said there was a few remaining residents and Structure Properties was actively working to find them equivalent alternative housing and are also offering the residents buyouts. Mr. Kloppenburg said they would be actively cleaning up the property and will address all public health issues. He said all the commercial tenants were being retained.

Commissioner McDermott commented she was excited about the renovation project; there were a lot of good businesses in this area but they were suffering because of the negative element from the Green Shutter Hotel residents. Ms. McDermott said this project will help achieve the goal of Main Street looking like a main street.

Commissioner Schott commented to Structure Properties that this renovation project can be the cornerstone of changing the downtown area and develop a downtown core; noting that the Green Shutter Hotel has been hindering this progress. Mr. Schott applauds the decision to change the name and does not have a problem with no additional parking. Mr. Schott echoed Mr. Huggett's comments about the alternative transportation options close by and said for the businesses to survive it was important to bring people to the downtown area to live where the downtown resources are within walking distance. Mr. Schott heartily endorses the project.

Commissioner Enders disclosed that she spoke with the applicant by phone today. Ms. Enders thinks this TOD will be great for the downtown area; was very happy that staff included the requirement that each unit has a separate storage unit. Ms. Enders raised concerns about insufficient closet space in the back units; noise from the entertainment district and also from within the building itself; and privacy issues between new second floor decks. Ms. Enders was happy to report that the applicant said they will address all of these issues by: considering the possibility of having the fully furnished back units for students or persons in transition; address any possibility of noise issues; and provide privacy between the decks utilizing options such as a green wall. Ms. Enders was looking forward to this project and thanked staff for working with the applicant.



**MINUTES OF THE REGULAR MEETING OF THE  
CITY OF HAYWARD PLANNING COMMISSION  
Council Chambers  
Thursday, March 24, 2016, 7:00 p.m.  
777 B Street, Hayward, CA94541**

---

Commissioner Faria supported the project, said the project will benefit the downtown area and Hayward. Ms. Faria thanked Mr. Kloppenburg for bringing the project forward.

Chair Parso-York supported the project; felt it was a good project for Hayward; and was delighted that the applicant was retaining the historical integrity of the building

Commissioner Willis Jr. made a motion to approve the item per the staff recommendation. Commissioner Schott seconded the motion.

The motion passed with the following vote:

AYES:	Commissioners Willis Jr., Enders, Schott, McDermott, Faria Chair Parso-York
NOES:	None
ABSENT:	Commissioner Goldstein
ABSTAIN:	None

#### COMMISSION REPORTS

4. Oral Report on Planning and Zoning Matters

There were none.

5. Commissioners' Announcements, Referrals

The Planning Commissioners shared their positive experiences at the Planning Commissioners Academy sponsored by the League of California Cities. They agreed that it was informative, educational and interesting. The Commissioners thanked staff for alerting them about the Academy and appreciated the opportunity to attend.

Commissioner Faria highlighted the public engagement efforts and shared that some agencies send out public hearing notices as far as 600 feet; some use public media and social networking and commented that she felt the City has lacked more public engagement for meetings and on important items. Ms. Faria said an eye-opening presentation was on autonomous vehicles and asked what as a City was Hayward doing? Ms. Faria wants the Planning Commission be kept informed if plans are in place for the City. She also spoke about the importance of data and pointed out that the presentation from the Planning Commission meeting of March 17, 2016, could have been more beneficial if there had been a presentation of what the project would look like in the neighborhood and how it would impact the surrounding area. This could help the Planning Commission have a better visual perspective of how a project would impact the surrounding areas.



**MINUTES OF THE REGULAR MEETING OF THE  
CITY OF HAYWARD PLANNING COMMISSION  
Council Chambers  
Thursday, March 24, 2016, 7:00 p.m.  
777 B Street, Hayward, CA94541**

---

Commissioner Willis Jr. enjoyed the academy, used the application to look up the seminars, look over the biographical data of the speakers which enabled him to attend all of the sessions he signed up for.

Commissioner Schott said there was a lot of information directed at staff rather than at Planning Commissioners; felt there could have been a better job at splitting up the presentations. Mr. Schott echoed Commissioner Faria comments about the data. Mr. Schott felt it was a worthwhile experience and mentioned that next year the academy will be held at Los Angeles International Airport.

Commissioner McDermott was glad that the City was on the cutting edge about receiving the Planning Commission agenda packets electronically and mentioned taking the Ethics course and how it was presented in such a way that was educational and entertaining. Ms. McDermott commented she felt what could have been improved was that a lot of speakers were from high end cities such as Beverly Hills and Malibu and the Academy needed to have more down to earth speakers and noted that some cities don't have term limits for Planning Commissioners.

Chair Parso-York echoed the comments of his fellow Commissioners; liked the presentation on the new Complete Streets; the presentation on autonomous cars was very interesting; the need to look at having charging stations in every garage; and there was tremendous progress on the autonomous cars. Mr. Parso-York said he learned a lot and was able to learn some tools researching rules and regulations.

Development Services Director Rizk said staff has been tracking autonomous cars and there has been a lot of information and discussion on how to figure out from a roadway design and land use perspective; and agrees that autonomous cars will become the norm of the future.

Chair Parso-York said autonomous cars will be a positive element and much safer with zero accidents, especially for an aging population.

Commissioner Faria noted the autonomous cars will change the entire economy.

#### **APPROVAL OF MINUTES**

6. None.





**MINUTES OF THE REGULAR MEETING OF THE  
CITY OF HAYWARD PLANNING COMMISSION  
Council Chambers  
Thursday, March 24, 2016, 7:00 p.m.  
777 B Street, Hayward, CA94541**

---

**ADJOURNMENT**

Chair Parso-York adjourned the meeting at 8:57 p.m.

**APPROVED:**

---

Brian Schott, Secretary  
Planning Commission

**ATTEST:**

---

Denise Chan, Senior Secretary  
Office of the City Clerk