


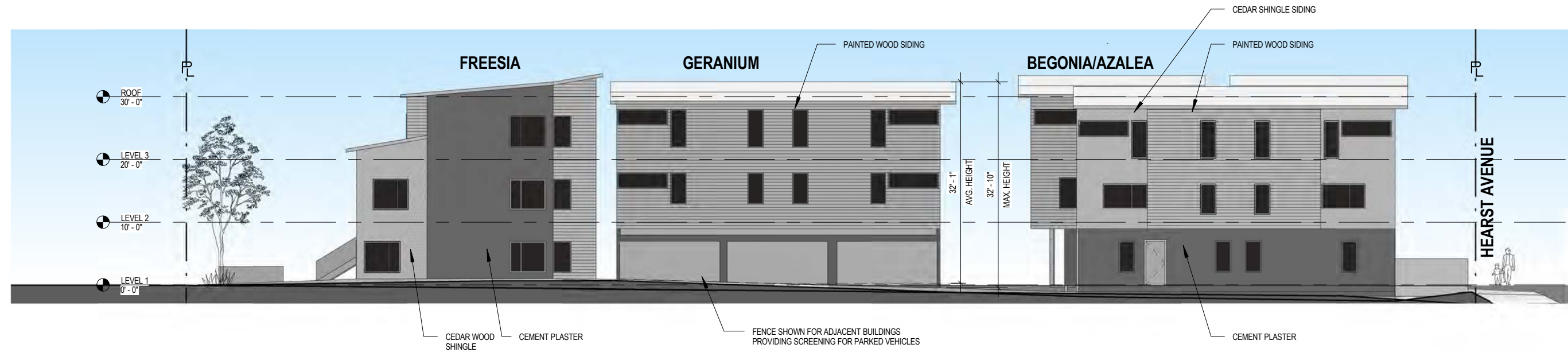


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**MATERIAL LEGEND**

	PAINTED WOOD SIDING
	CEDAR SHINGLE SIDING
	CEMENT PLASTER

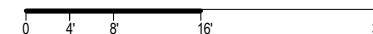


ZAB

08.24.2017

HEARST GARDENS

DEVI DUTTA ARCHITECTURE INC.

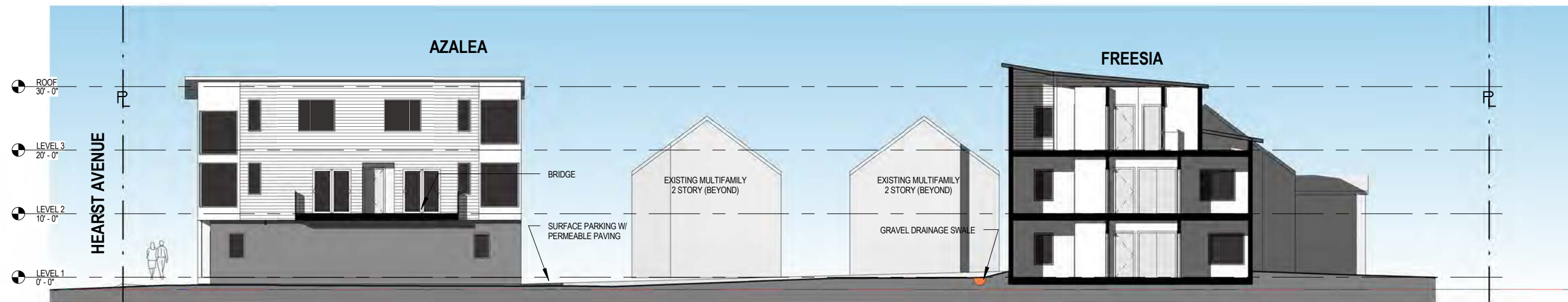


WEST SITE ELEVATION

SCALE: 1/16" = 1'-0"

**A2.3**

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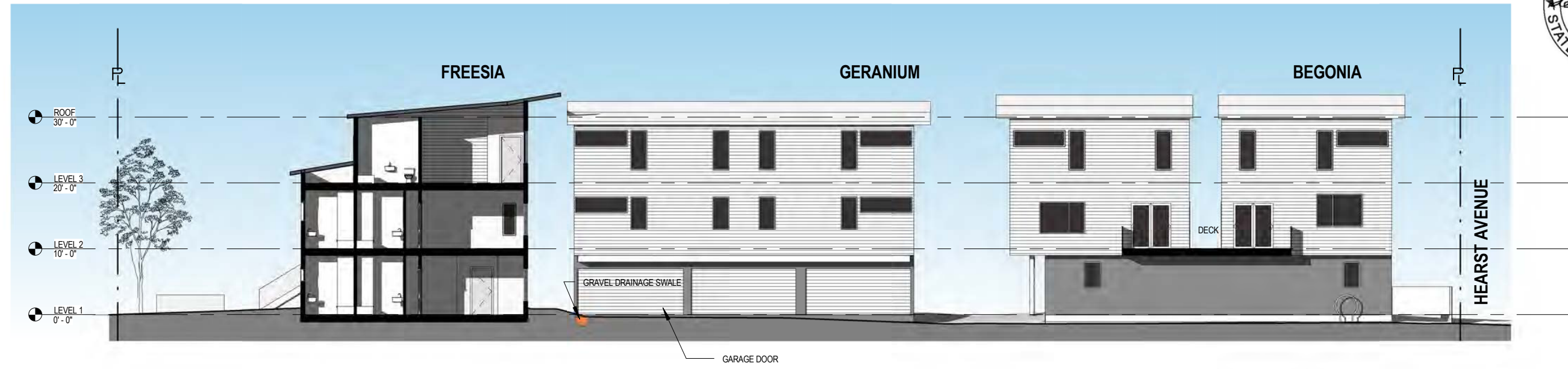
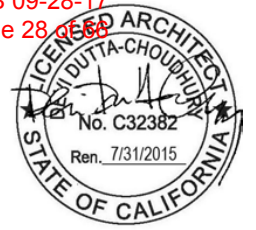


**1** Site Section Looking West Through Driveway  
 1/16" = 1'-0"

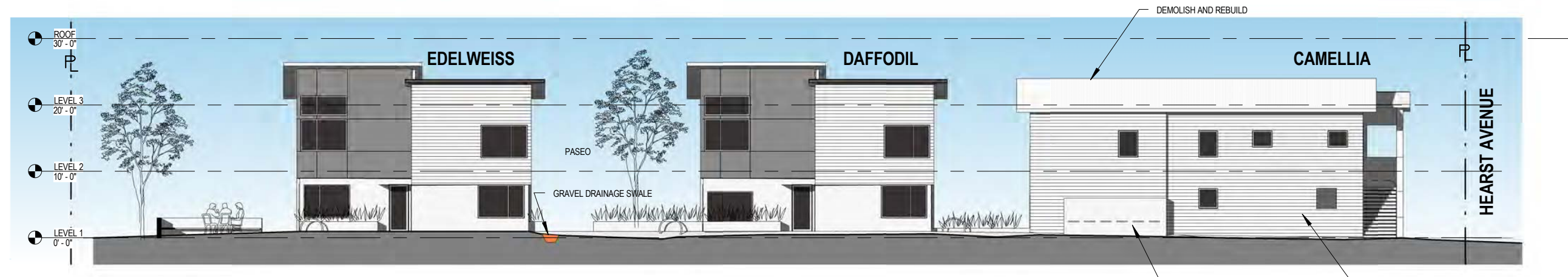


**2** Site Section Looking West Through Paseo  
 1/16" = 1'-0"

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**1 Site Section Looking East Through Driveway**  
 1/16" = 1'-0"



**2 Site Section Looking East Through Paseo**  
 1/16" = 1'-0"

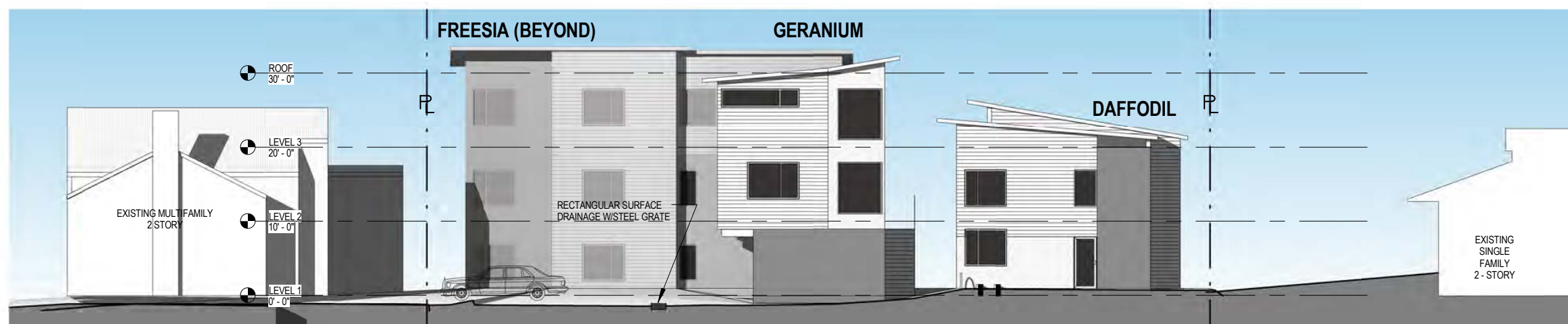


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1 Site Section Looking North @ Freesia Building

1/16" = 1'-0"



2 Site Section Looking North

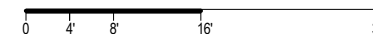
1/16" = 1'-0"

ZAB

08.24.2017

HEARST GARDENS

DEVI DUTTA ARCHITECTURE INC.



SITE SECTIONS LOOKING NORTH

SCALE: 1/16" = 1'-0"

A3.2



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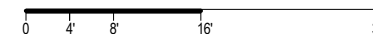
1 Site Section Looking South

1/16" = 1'-0"

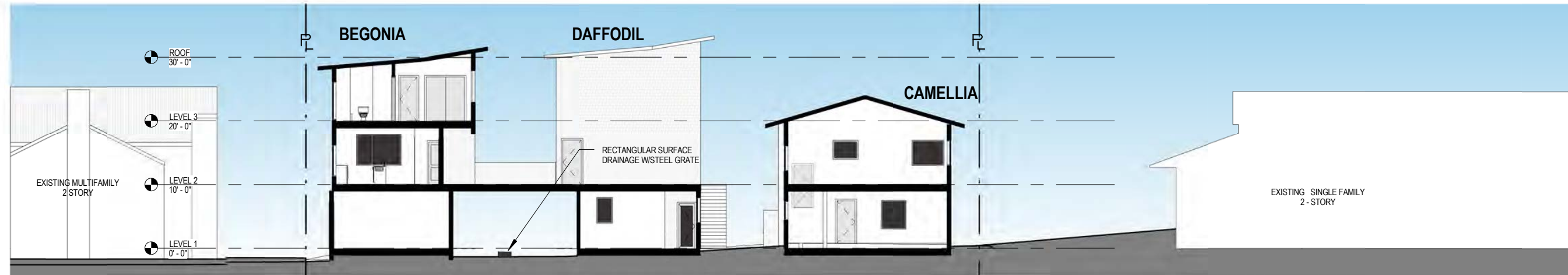
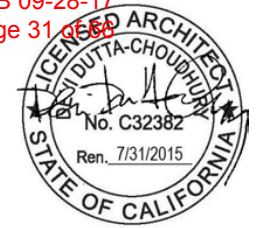


2 Site Section Looking South @ Parking Lot

1/16" = 1'-0"



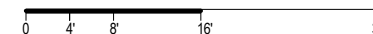
ATTACHMENT 2  
 ZAB 09-28-17  
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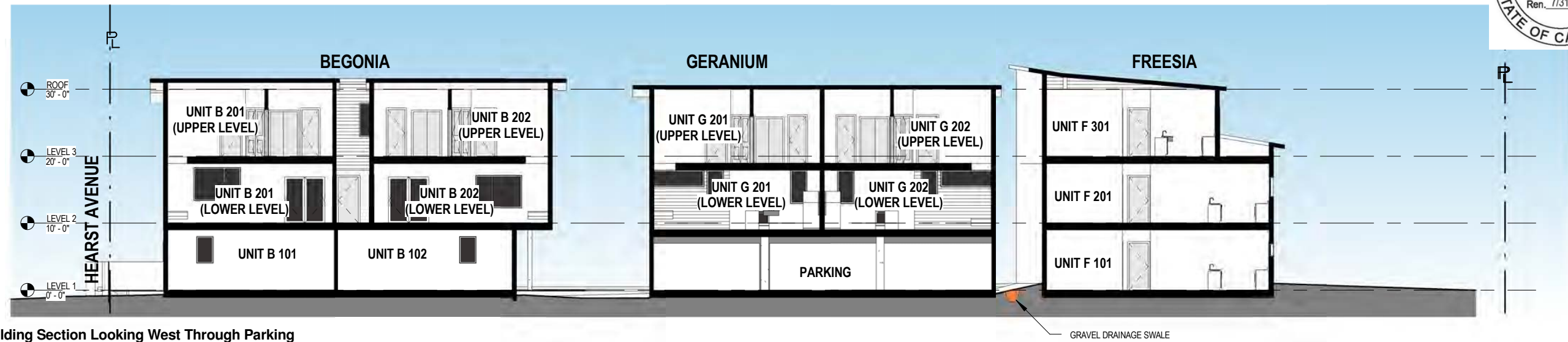
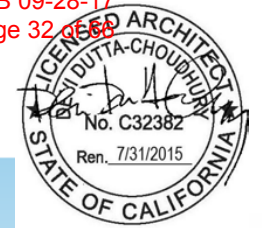
**1 Building Section Looking North Through Stair**  
 1/16" = 1'-0"



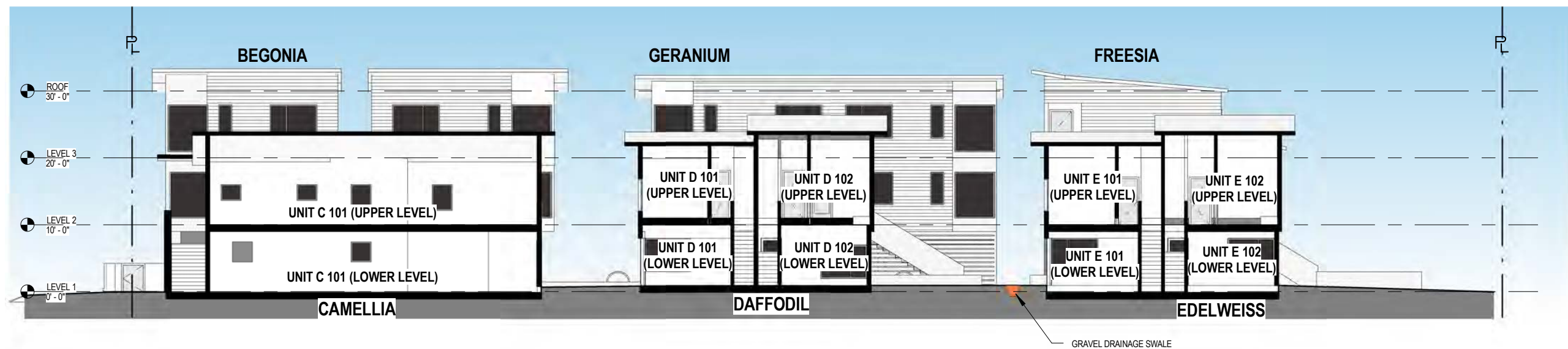
**2 Building Section Through Covered Parking Looking North**  
 1/16" = 1'-0"



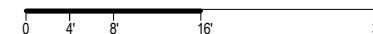
ATTACHMENT 2  
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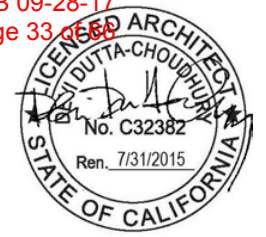
1 Building Section Looking West Through Parking  
 1/16" = 1'-0"



2 Building Section Looking West  
 1/16" = 1'-0"

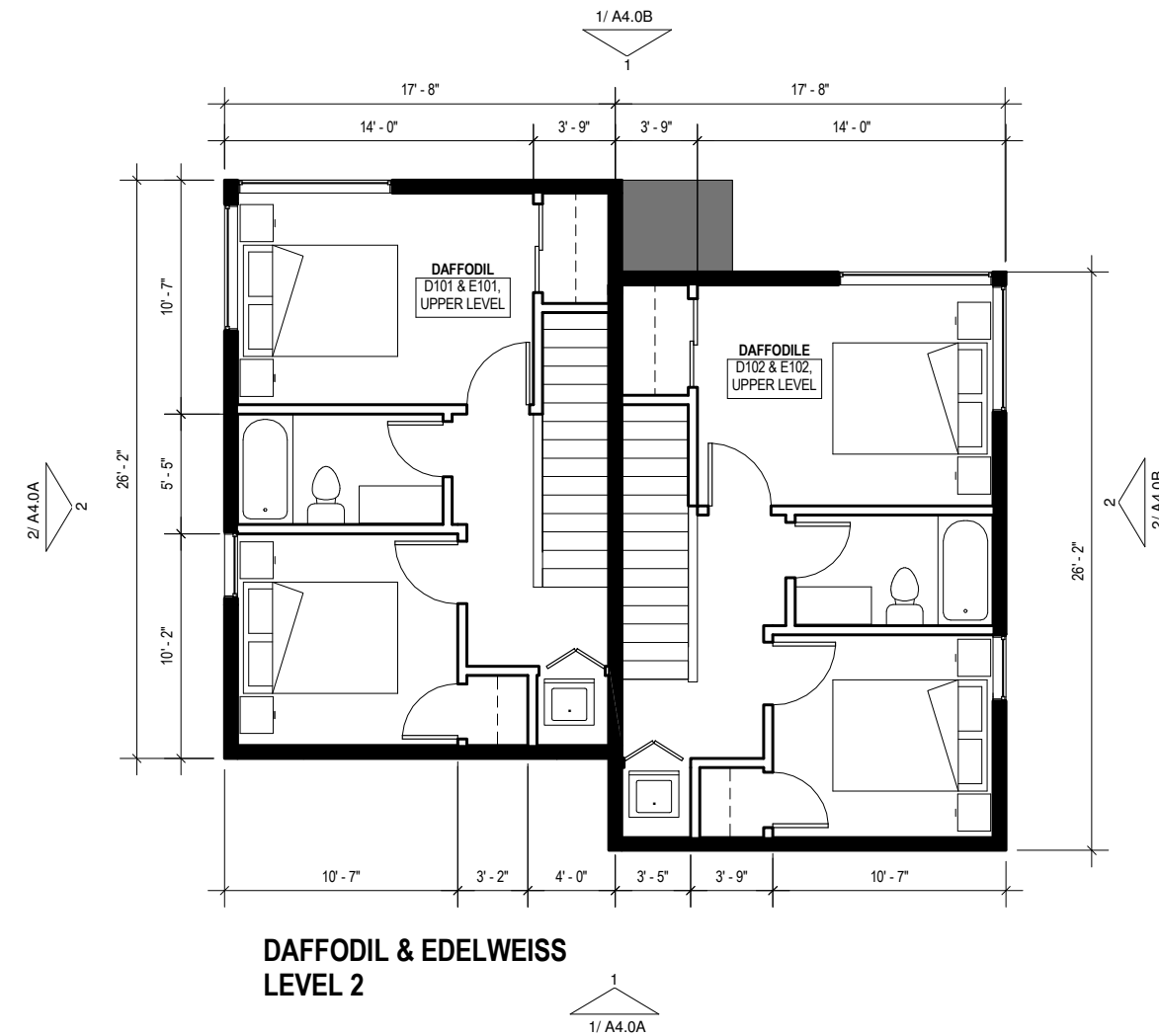
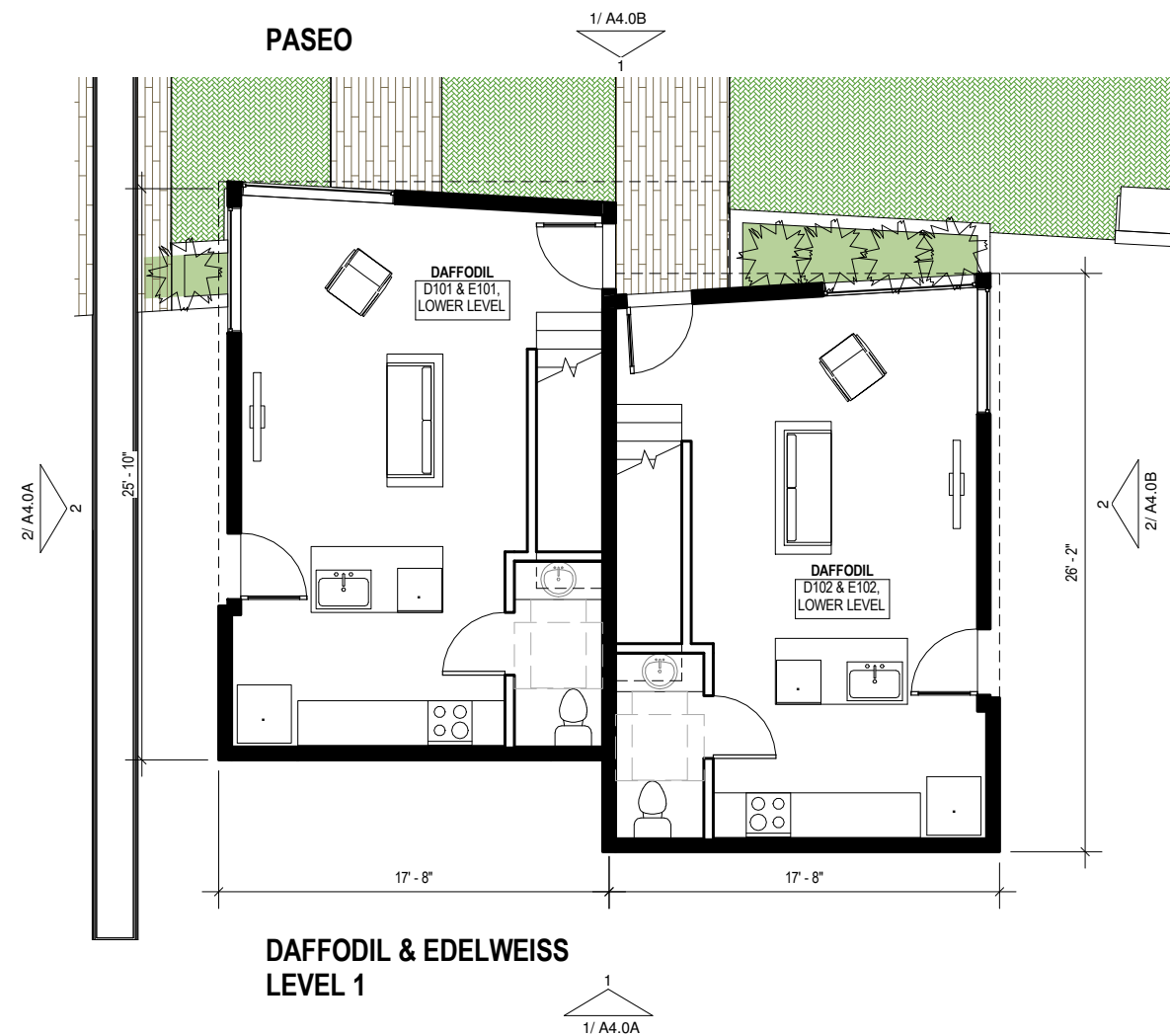




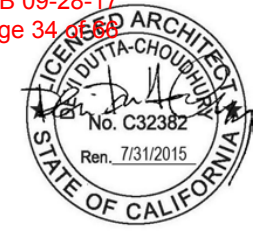


- LEGEND**
- NEW EXTERIOR WALL
  - (E) WALL
  - NEW INTERIOR WALL

**NOTE:** SEE SHEET A1.5  
 FOR OPEN SPACE



ATTACHMENT 2  
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**MATERIAL LEGEND**

	PAINTED WOOD SIDING
	CEDAR SHINGLE SIDING
	CEMENT PLASTER



**2 DAFFODIL & EDELWEISS SOUTH ELEVATION**  
 1/8" = 1'-0"



**1 DAFFODIL & EDELWEISS EAST ELEVATION**  
 1/8" = 1'-0"

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**MATERIAL LEGEND**

	PAINTED WOOD SIDING
	CEDAR SHINGLE SIDING
	CEMENT PLASTER



**2 DAFFODIL & EDELWEISS NORTH ELEVATION**  
 1/8" = 1'-0"

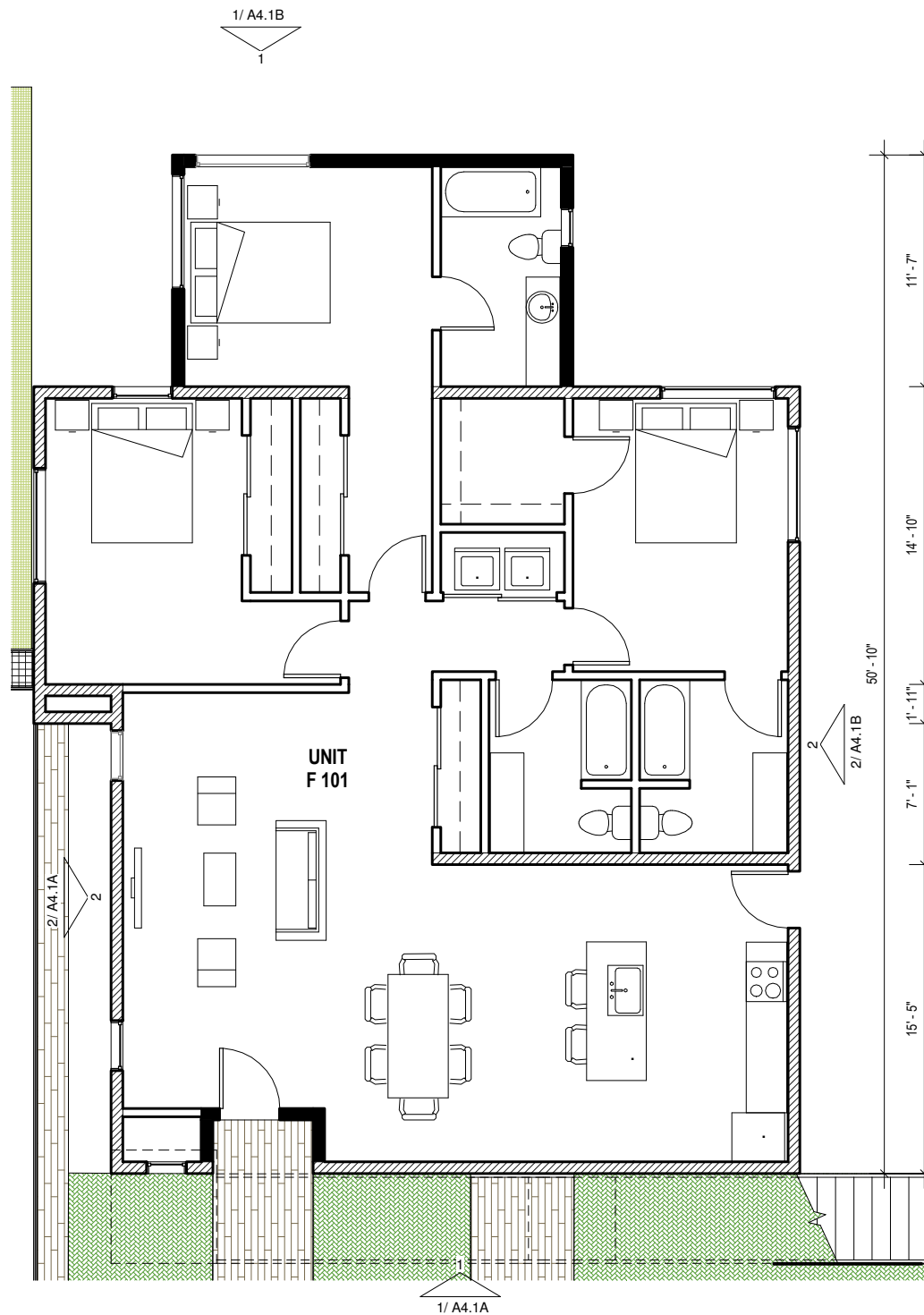
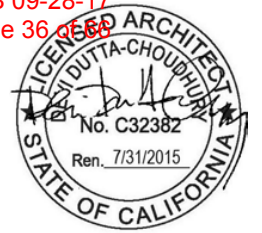


**1 DAFFODIL & EDELWEISS WEST ELEVATION**  
 1/8" = 1'-0"

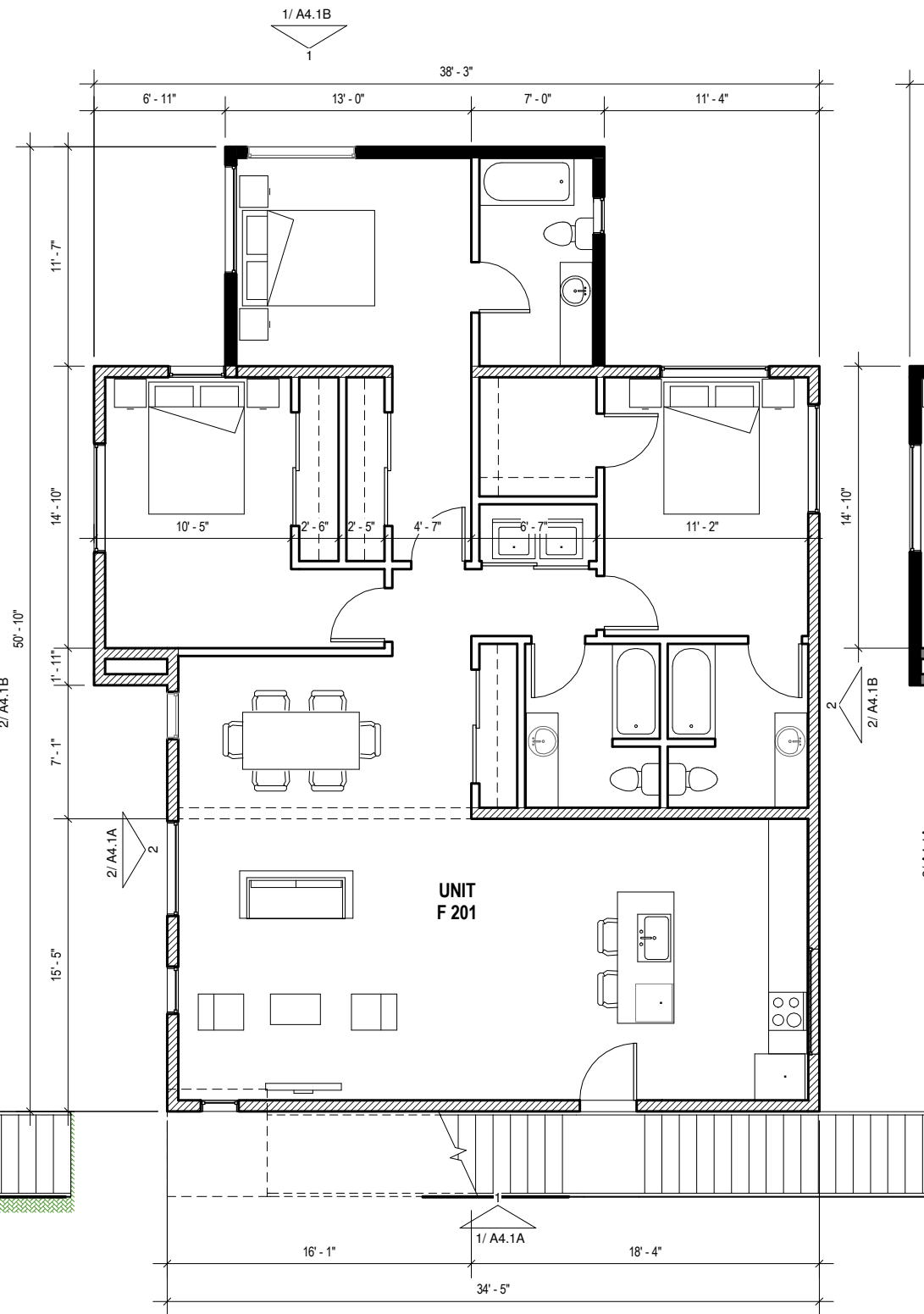


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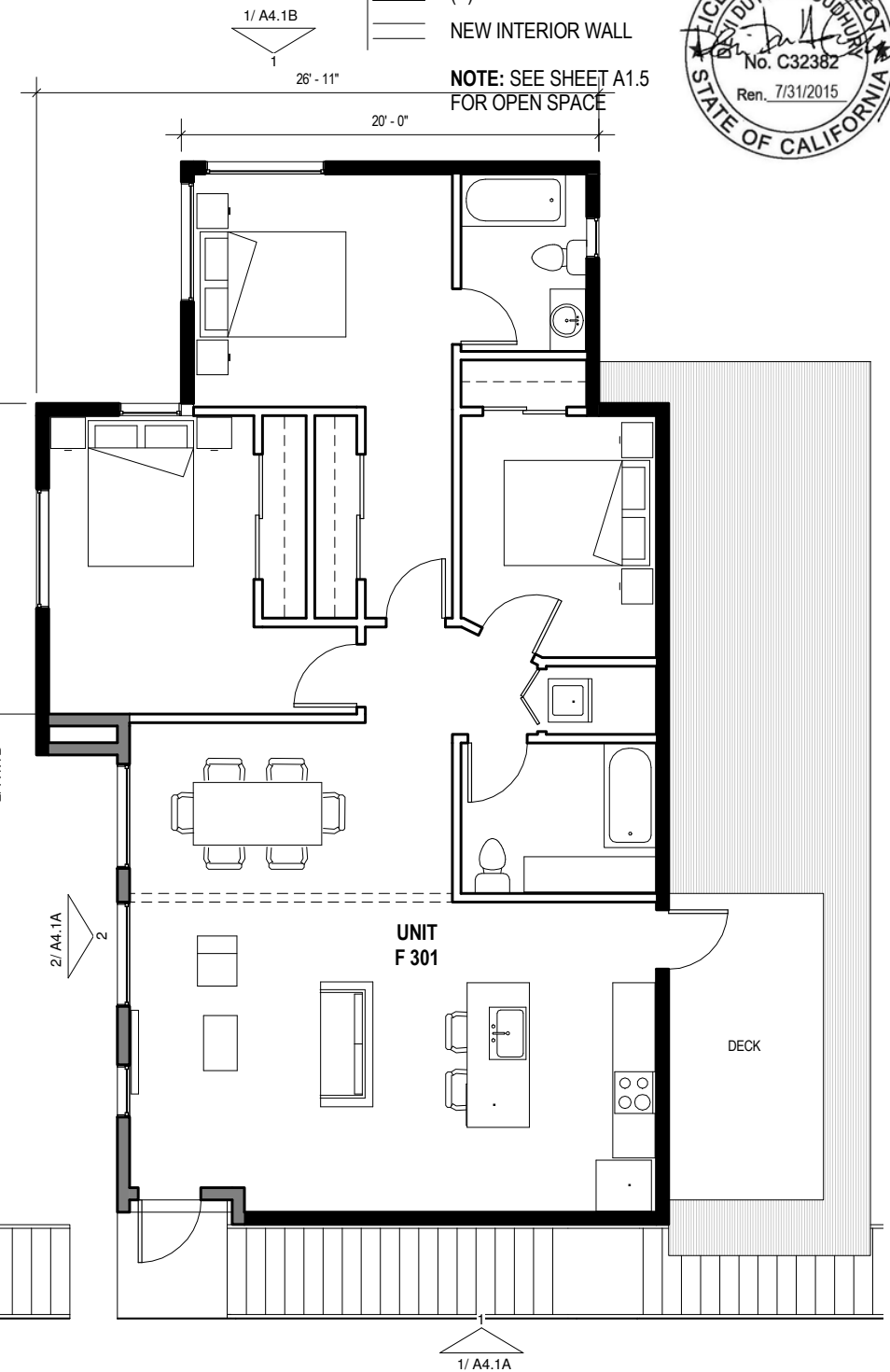
**LEGEND**  
 ■ NEW EXTERIOR WALL  
 ▨ (E) WALL  
 ▬ NEW INTERIOR WALL  
**NOTE:** SEE SHEET A1.5  
 FOR OPEN SPACE



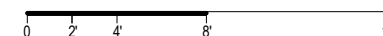
**FRESIA  
 LEVEL 1**



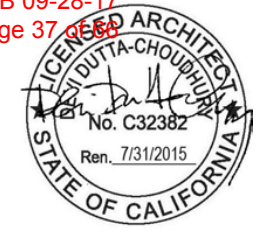
**FRESIA  
 LEVEL 2**



**FRESIA  
 LEVEL 3 NEW**

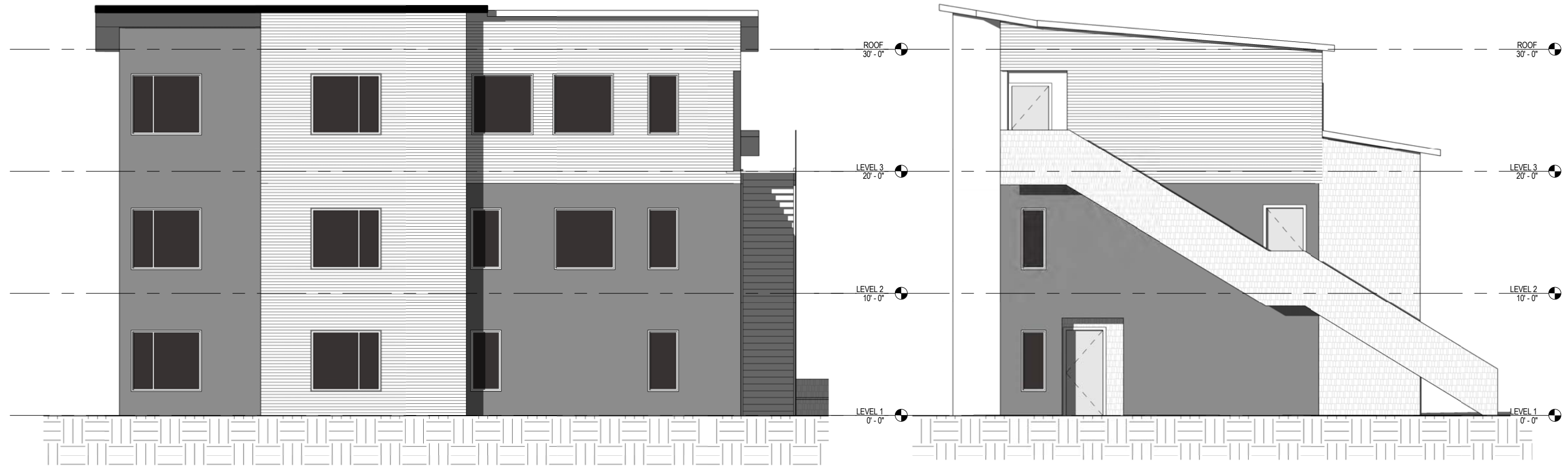


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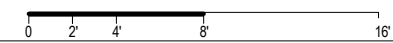
**MATERIAL LEGEND**

	PAINTED WOOD SIDING
	CEDAR SHINGLE SIDING
	CEMENT PLASTER



**2 FREESIA SOUTH ELEVATION**  
 1/8" = 1'-0"

**1 FREESIA EAST ELEVATION**  
 1/8" = 1'-0"

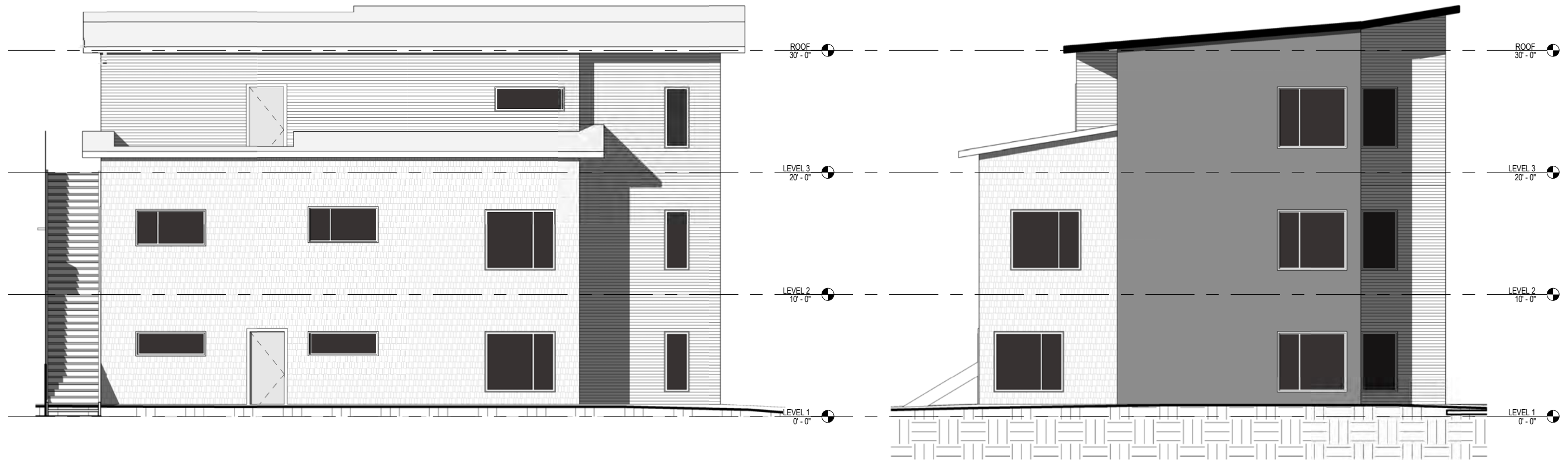


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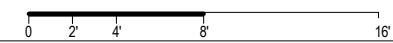
**MATERIAL LEGEND**

	PAINTED WOOD SIDING
	CEDAR SHINGLE SIDING
	CEMENT PLASTER



**2 FREESIA NORTH ELEVATION**  
 1/8" = 1'-0"

**1 FREESIA WEST ELEVATION**  
 1/8" = 1'-0"





ATTACHMENT 2  
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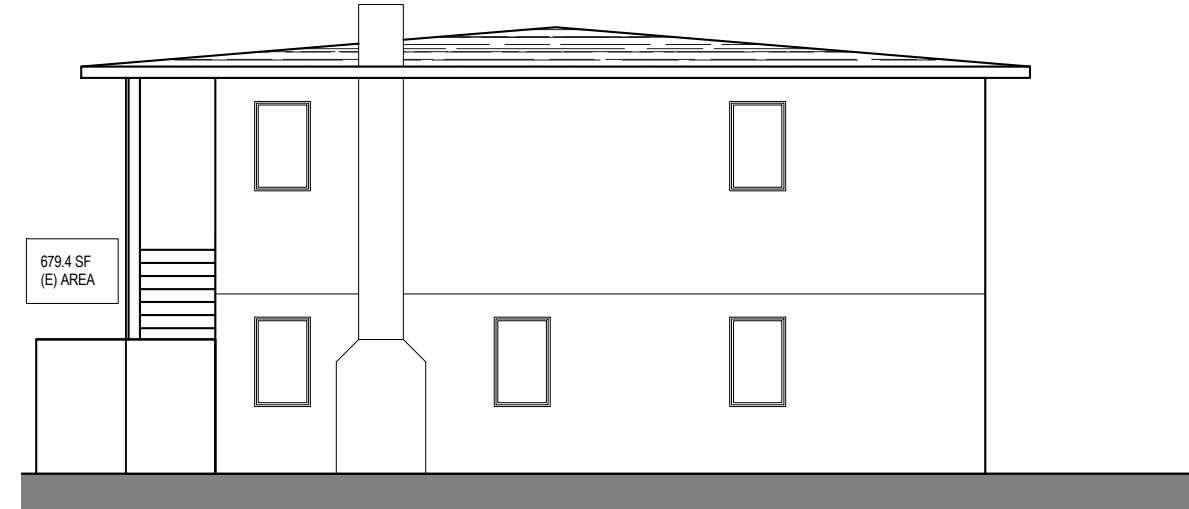
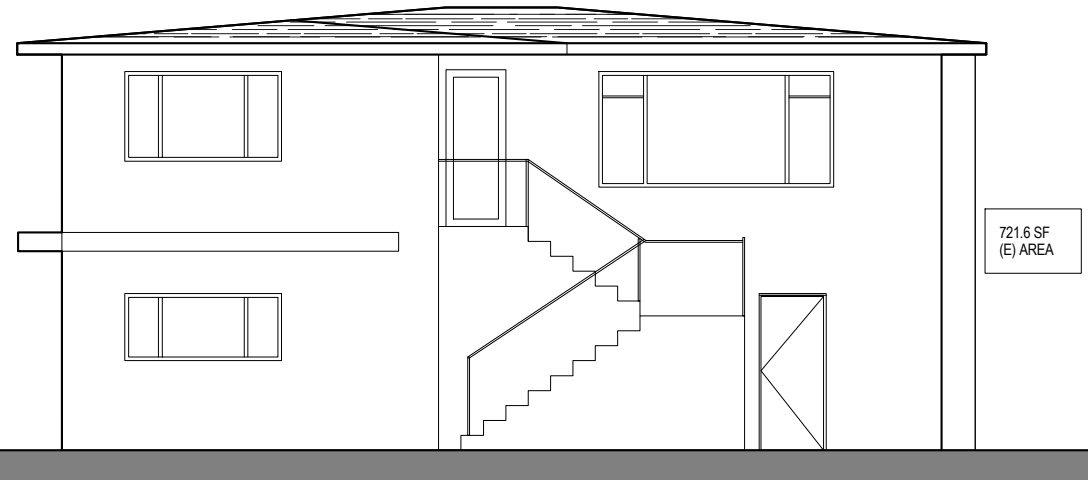
**PERCENT PROPOSED**

FACADE	SOUTH	EAST	NORTH	WEST	TOTAL
PROPOSED	82.2 SF	77.3 SF	116.9 SF	93.1SF	369.5 SF
TOTAL AREA	721.6 SF	679.4 SF	722.9 SF	676.9 SF	2800.8 SF
PERCENT PROPOSED					13.2%

**PROPOSED AREAS**

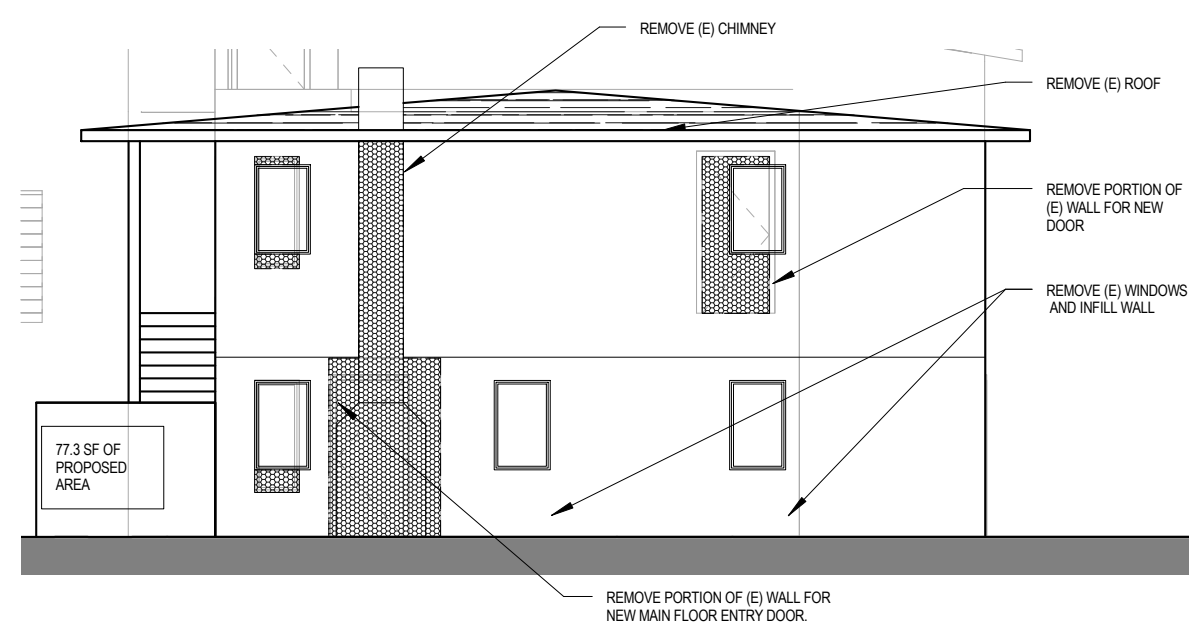
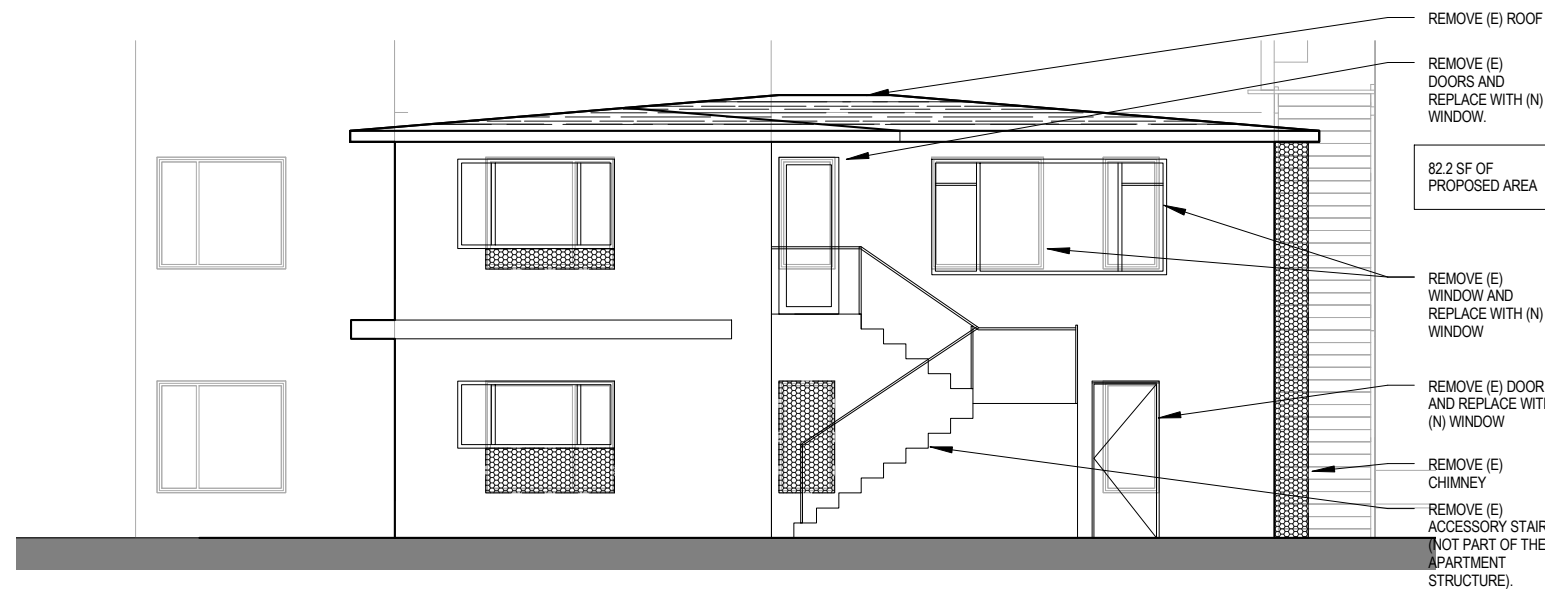


ENCLOSING EXTERIOR WALL AREA TO BE REMOVED PER ZONING ORDINANCE SECTION 23F  
 (N) = NEW  
 (E) = EXISTING



**3 FREESIA SOUTH ELEVATION EXISTING**  
 1/8" = 1'-0"

**4 FREESIA EAST ELEVATION EXISTING**  
 1/8" = 1'-0"



**1 FREESIA SOUTH ELEVATION REMOVED**  
 1/8" = 1'-0"

**2 FREESIA EAST ELEVATION REMOVED**  
 1/8" = 1'-0"

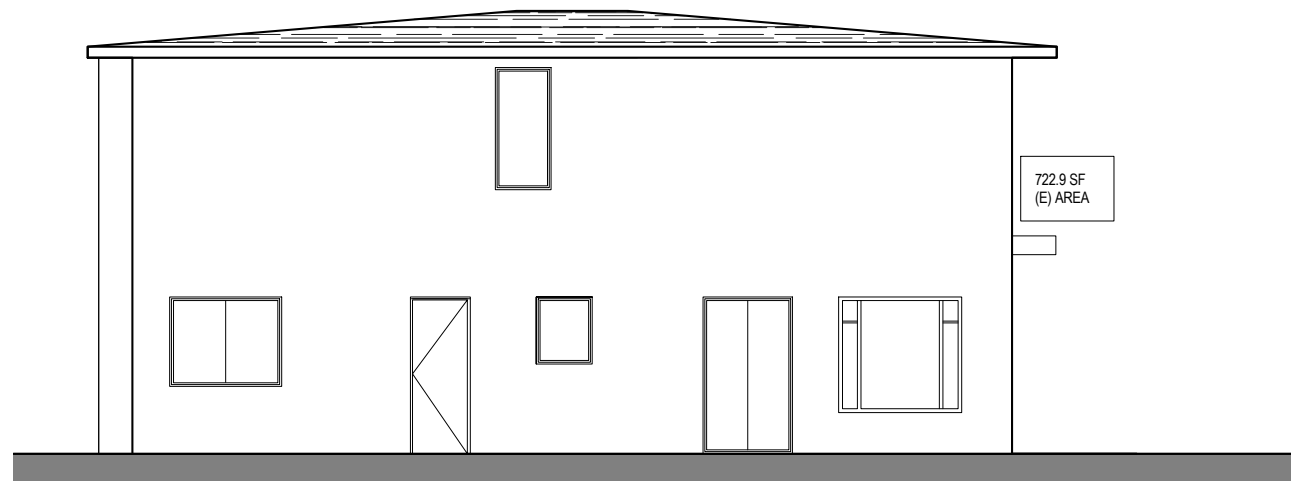
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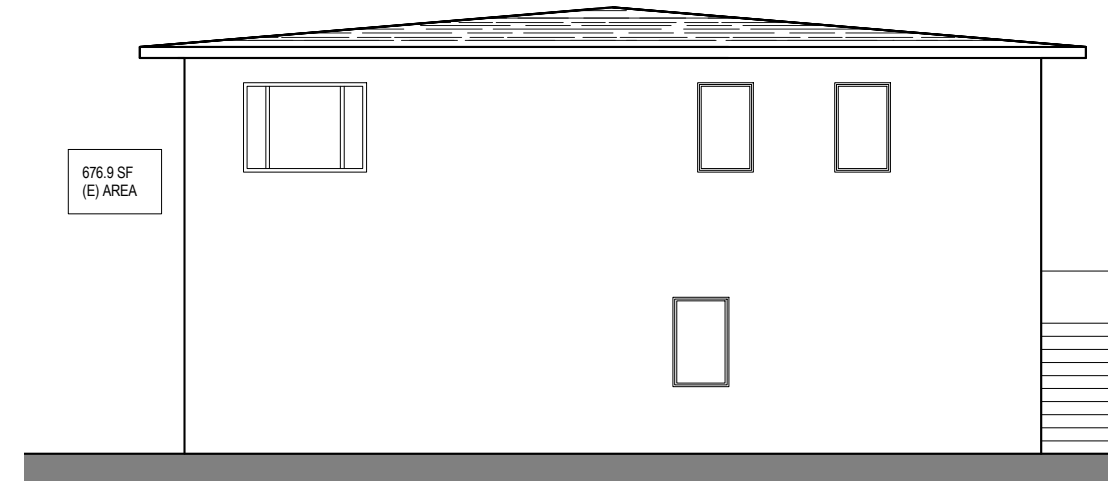
PERCENT PROPOSED (SEE SHEET A4.1C)

**PROPOSED AREAS**  
 ENCLOSING EXTERIOR WALL AREA TO BE REMOVED PER ZONING ORDINANCE SECTION 23F

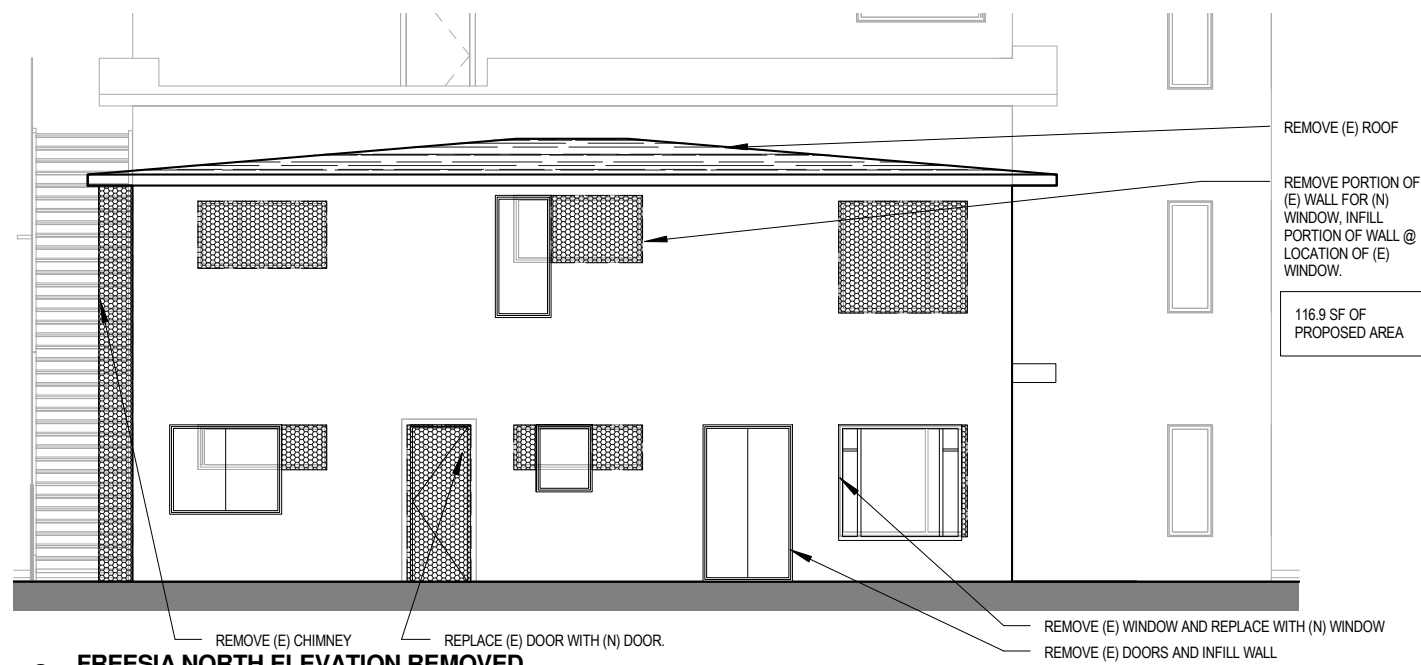
**ABBREVIATIONS**  
 (N) = NEW  
 (E) = EXISTING



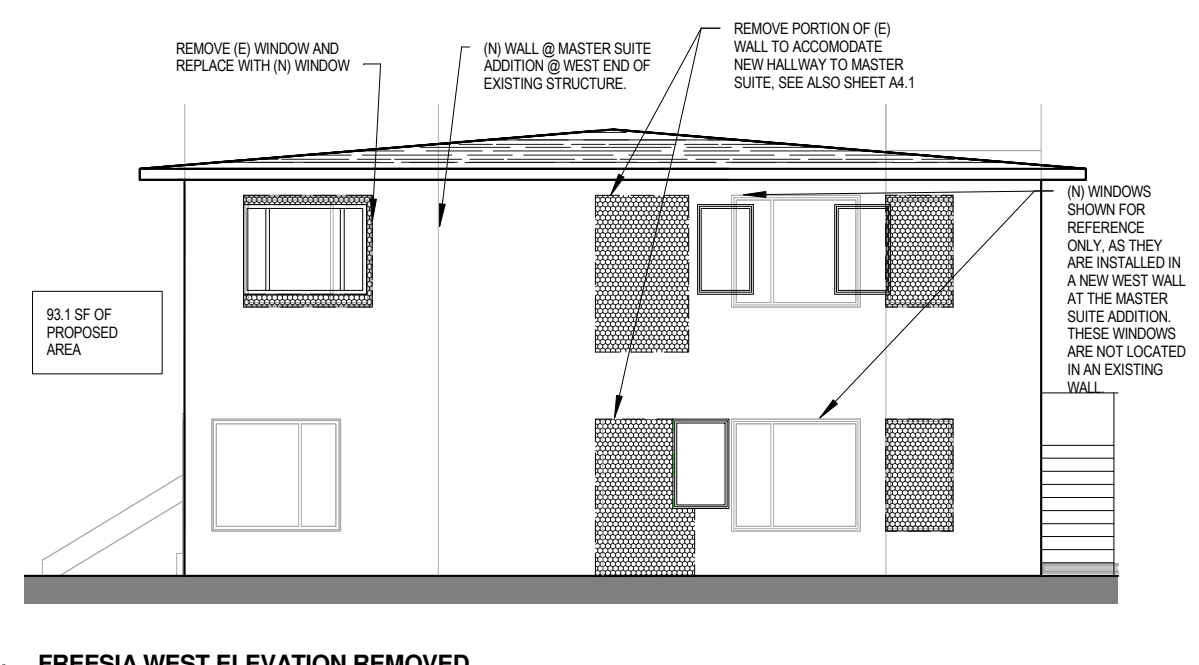
**4 FREESIA NORTH ELEVATION EXISTING**  
 1/8" = 1'-0"



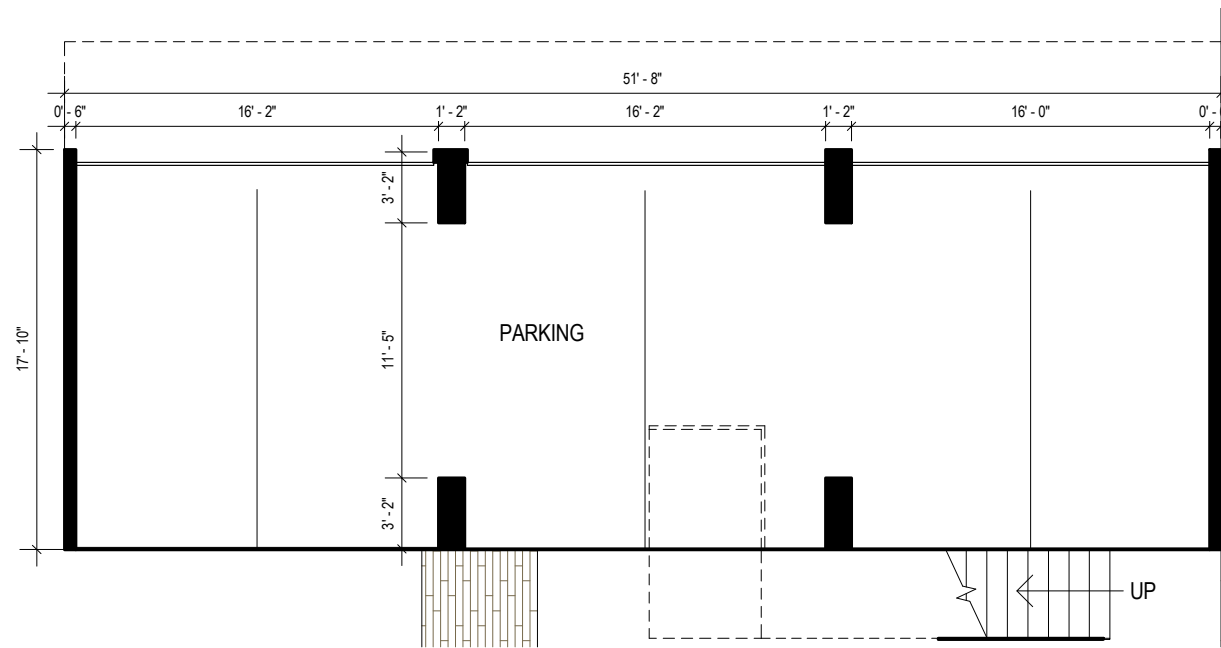
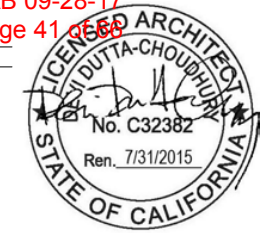
**3 FREESIA WEST ELEVATION EXISTING**  
 1/8" = 1'-0"



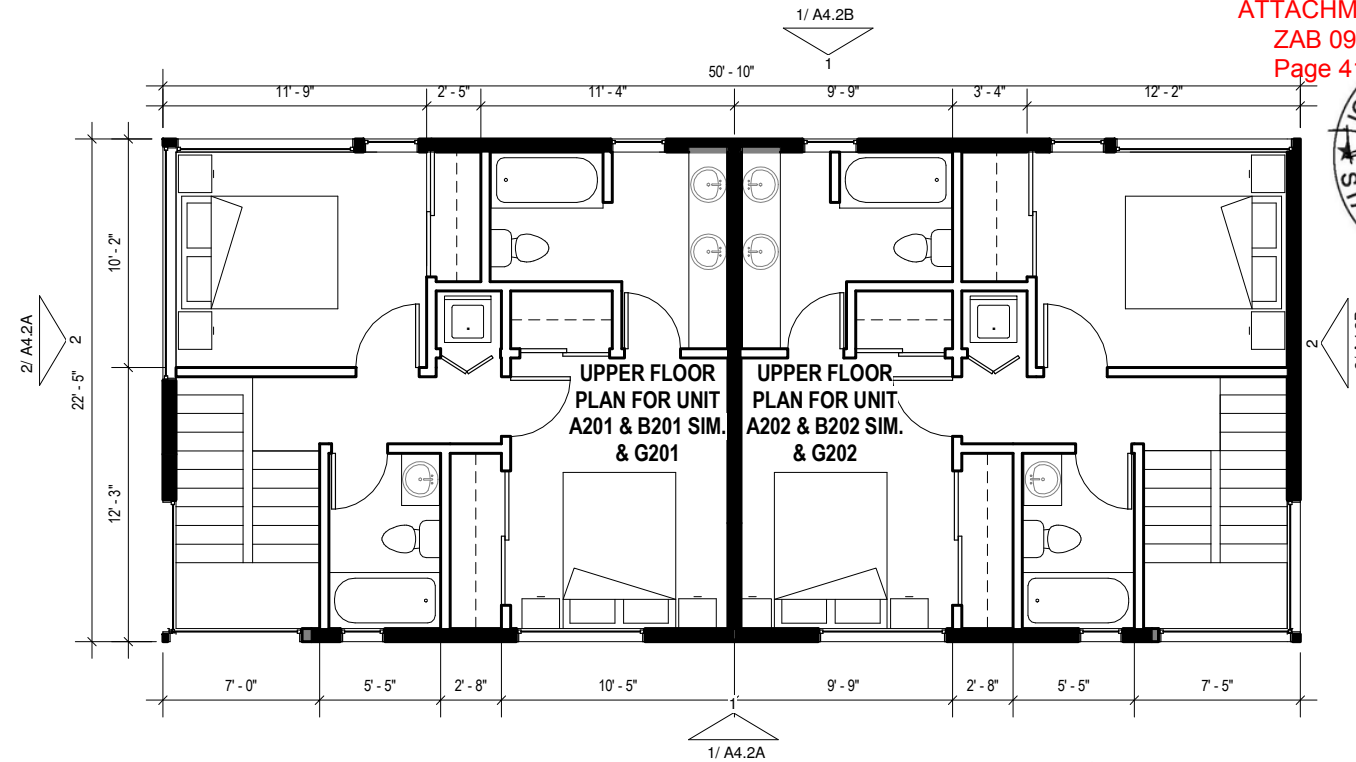
**2 FREESIA NORTH ELEVATION REMOVED**  
 1/8" = 1'-0"



**1 FREESIA WEST ELEVATION REMOVED**  
 1/8" = 1'-0"



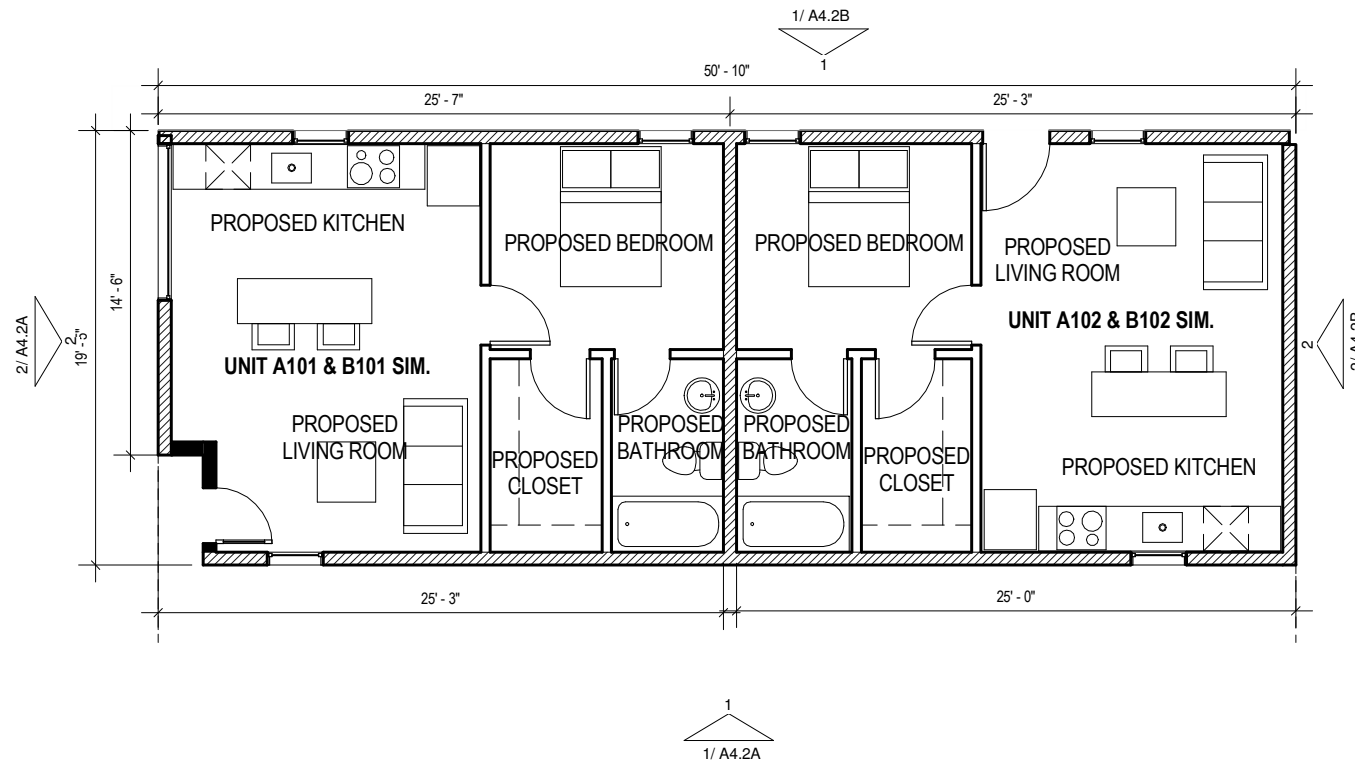
PROPOSED GERANIUM  
 LEVEL 1



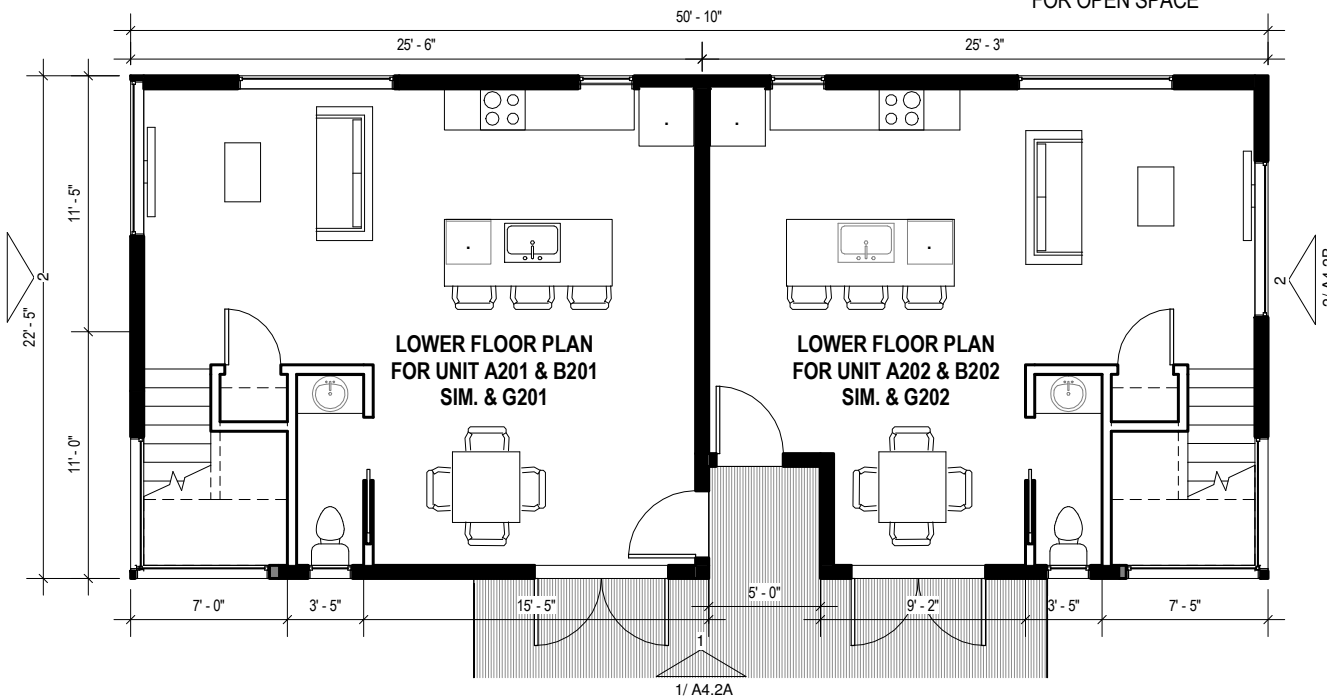
PROPOSED AZALEA, BEGONIA, GERANIUM  
 TOWNHOMES  
 LEVEL 3

- LEGEND**
- NEW EXTERIOR WALL
  - (E) WALL
  - NEW INTERIOR WALL

**NOTE:** SEE SHEET A1.5  
 FOR OPEN SPACE

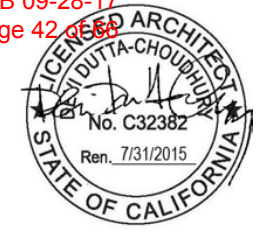


PROPOSED - AZALEA & BEGONIA  
 LEVEL 1






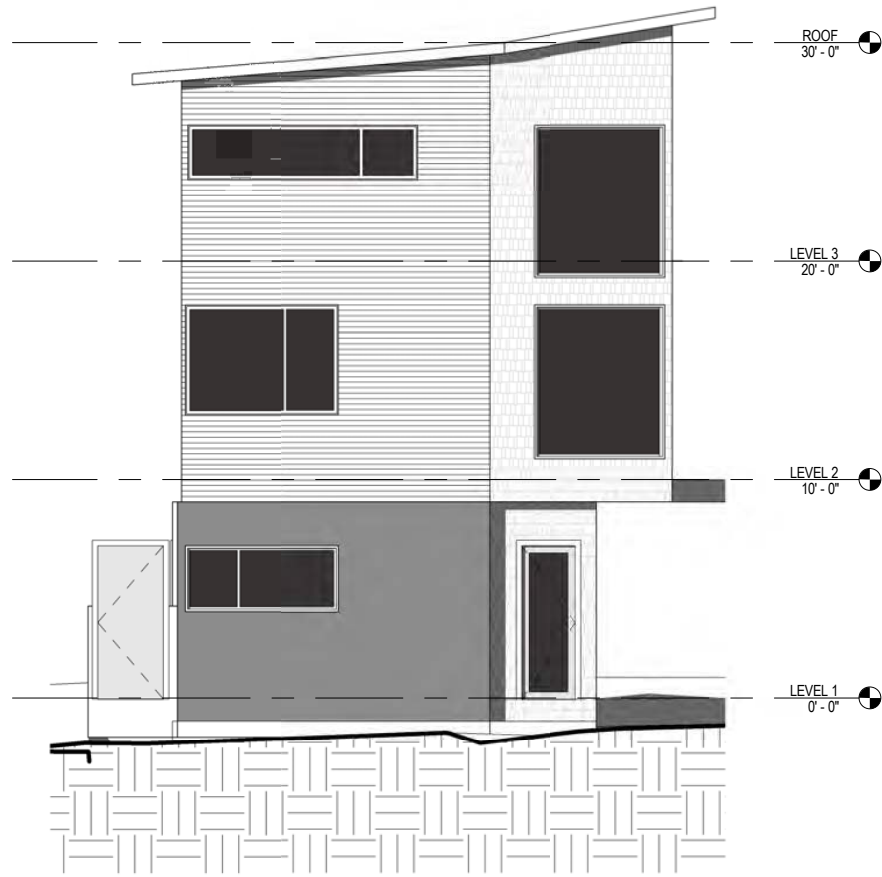
PROPOSED - AZALEA, BEGONIA, GERANIUM  
 LEVEL 2

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**MATERIAL LEGEND**

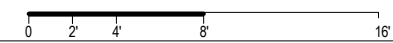
	PAINTED WOOD SIDING
	CEDAR SHINGLE SIDING
	CEMENT PLASTER



**2 AZALEA SOUTH ELEVATION**  
 1/8" = 1'-0"

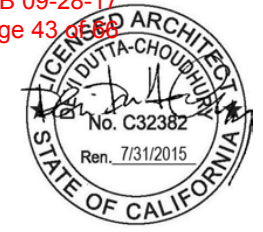


**1 AZALEA EAST ELEVATION**  
 1/8" = 1'-0"








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**MATERIAL LEGEND**

	PAINTED WOOD SIDING
	CEDAR SHINGLE SIDING
	CEMENT PLASTER



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**PERCENT PROPOSED**

FACADE	SOUTH	EAST	NORTH	WEST	TOTAL
PROPOSED	50.8 SF	171.2 SF	14.6 SF	72.2 SF	308.8 SF
TOTAL AREA	251.1 SF	654.4 SF	251.1 SF	654.4 SF	1811.0 SF
PERCENT PROPOSED					17.1%

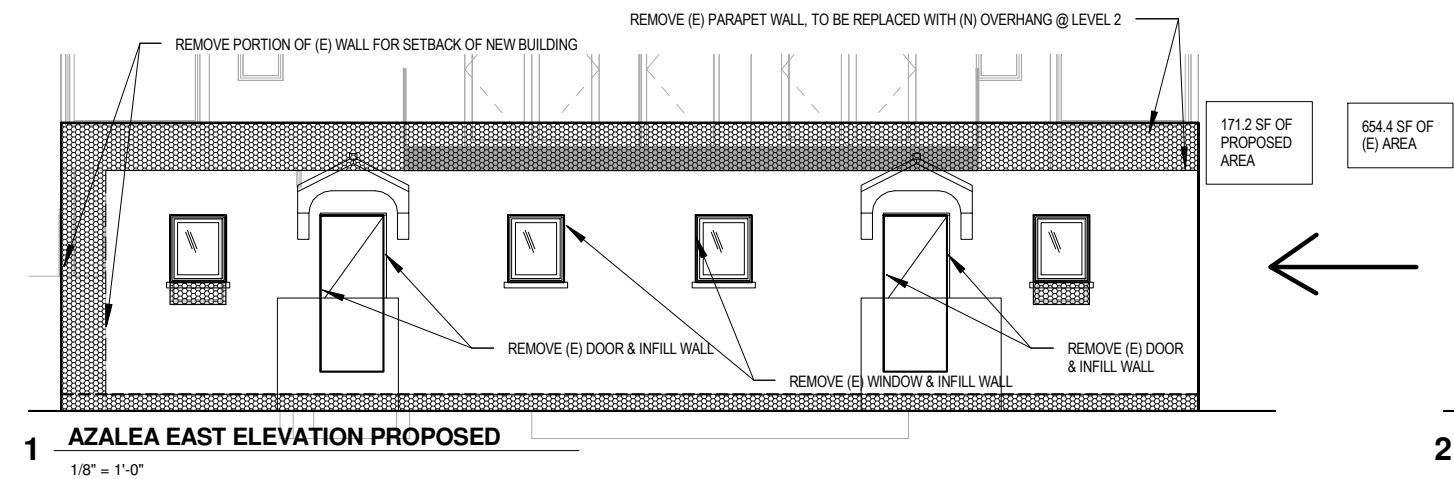
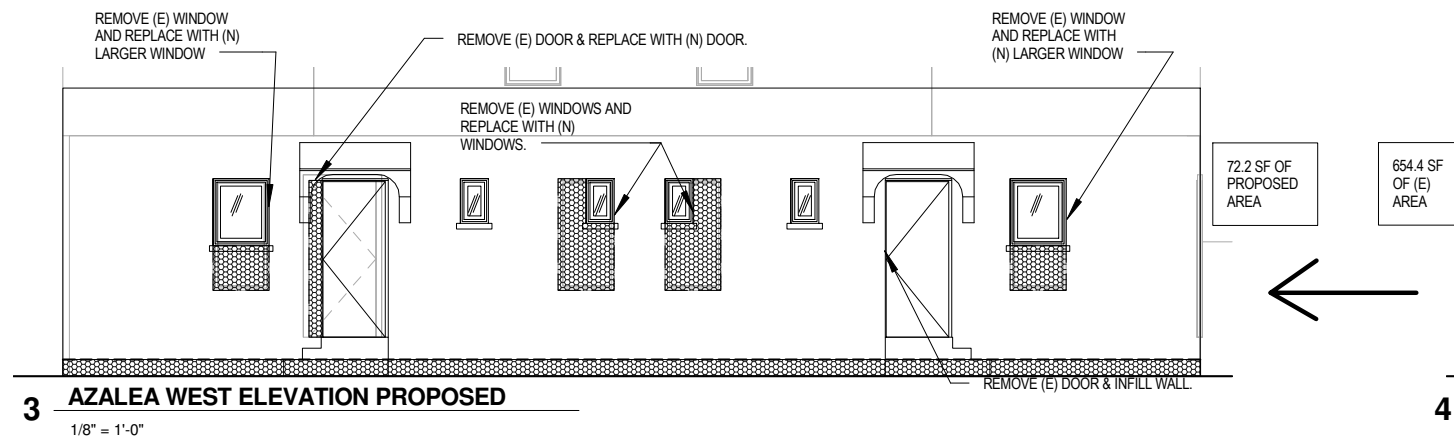
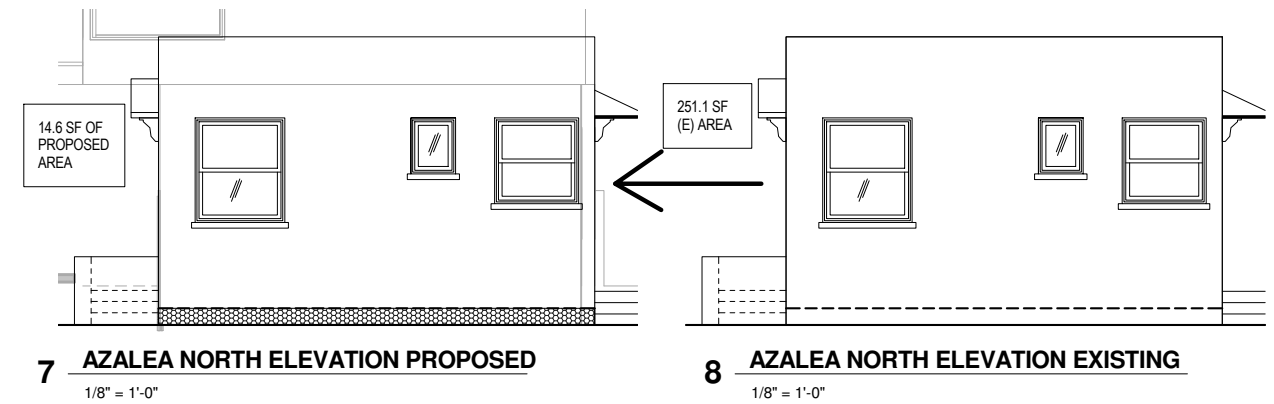
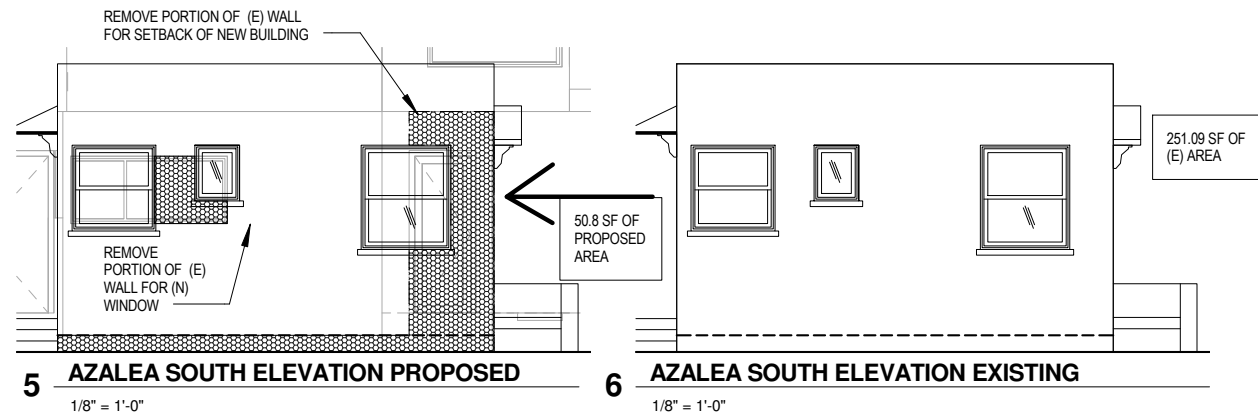
**PROPOSED AREAS**



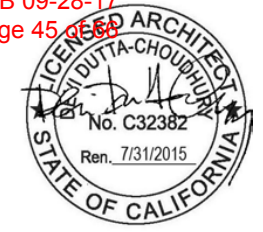
ENCLOSING EXTERIOR WALL AREA TO BE REMOVED PER ZONING ORDINANCE SECTION 23F

**ABBREVIATIONS**




(N) = NEW  
 (E) = EXISTING

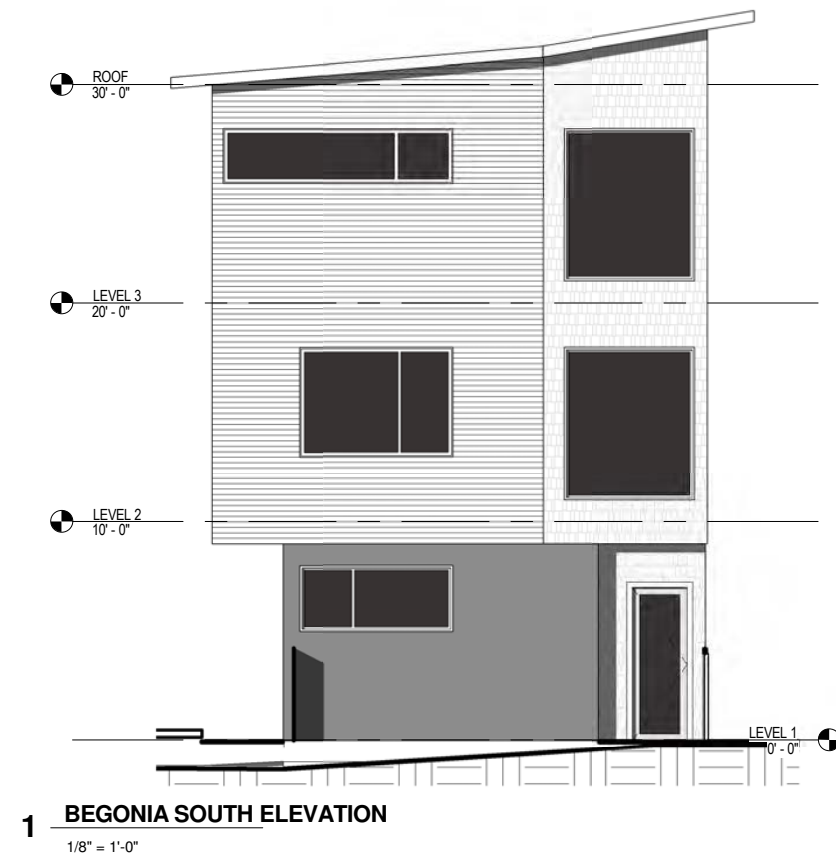


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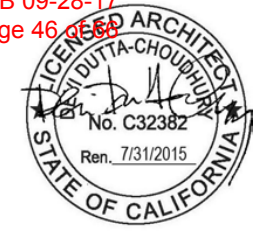


**MATERIAL LEGEND**

	PAINTED WOOD SIDING
	CEDAR SHINGLE SIDING
	CEMENT PLASTER

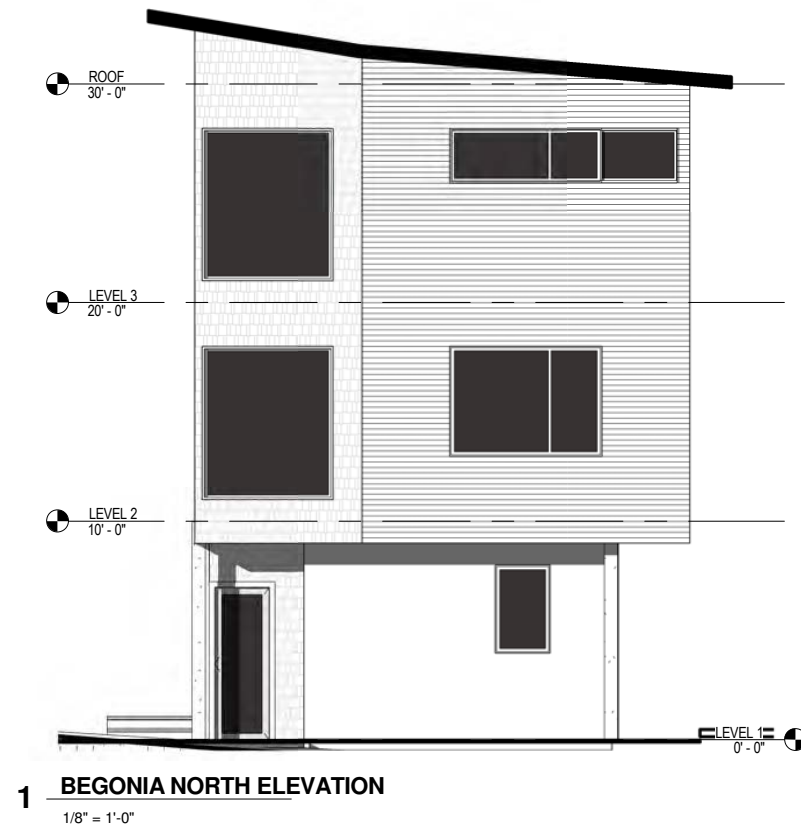


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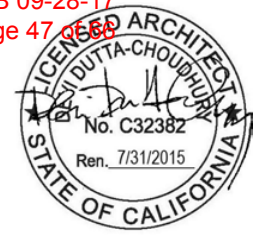
**MATERIAL LEGEND**

	PAINTED WOOD SIDING
	CEDAR SHINGLE SIDING
	CEMENT PLASTER





ATTACHMENT 2  
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**PERCENT PROPOSED**

FACADE	SOUTH	EAST	NORTH	WEST	TOTAL
PROPOSED	60.6 SF	95.6 SF	52 SF	209.3 SF	417.5 SF
TOTAL AREA	251.1 SF	678.6 SF	251.1 SF	678.6 SF	1859.4 SF
PERCENT PROPOSED					22.4%

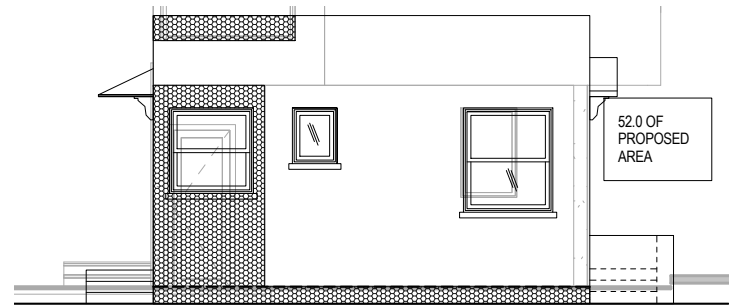
**PROPOSED AREAS**



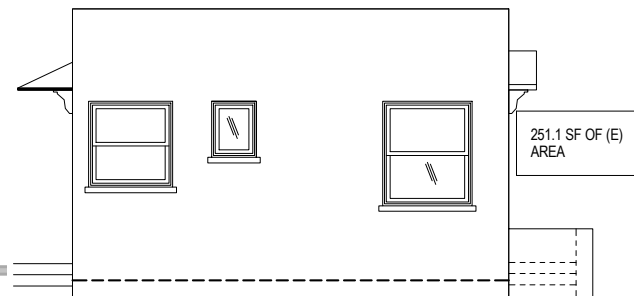
ENCLOSING EXTERIOR WALL AREA TO BE REMOVED PER ZONING ORDINANCE SECTION 23F

**ABBREVIATIONS**

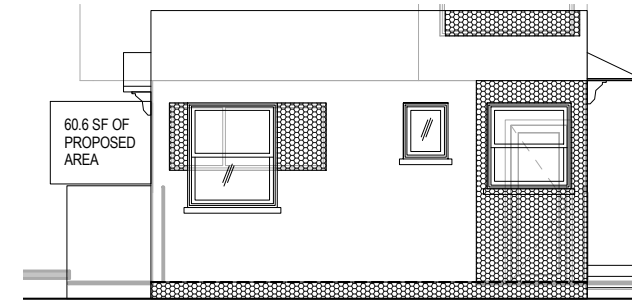
(N) = NEW  
 (E) = EXISTING



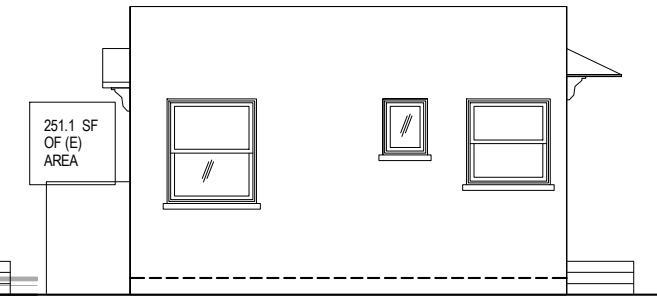
**5 BEGONIA NORTH ELEVATION PROPOSED**  
 1/8" = 1'-0"



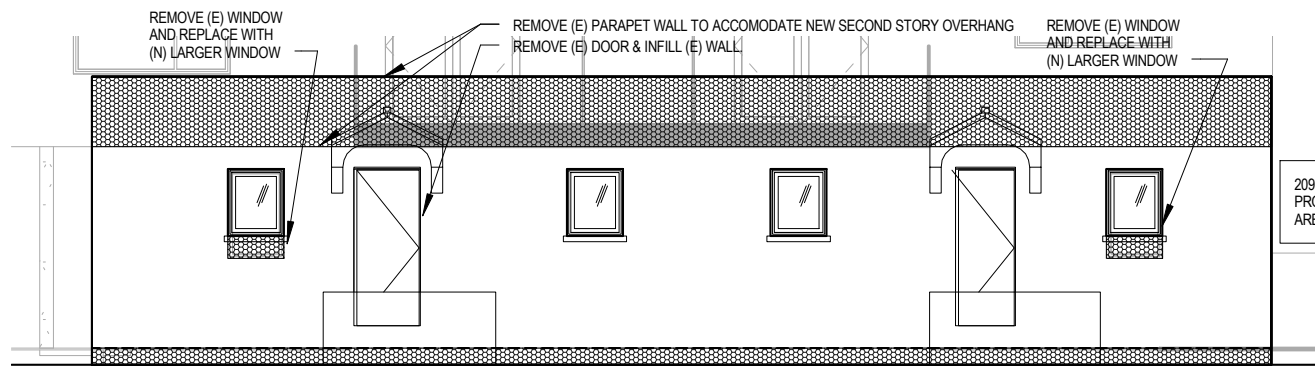
**6 BEGONIA NORTH ELEVATION EXISTING**  
 1/8" = 1'-0"



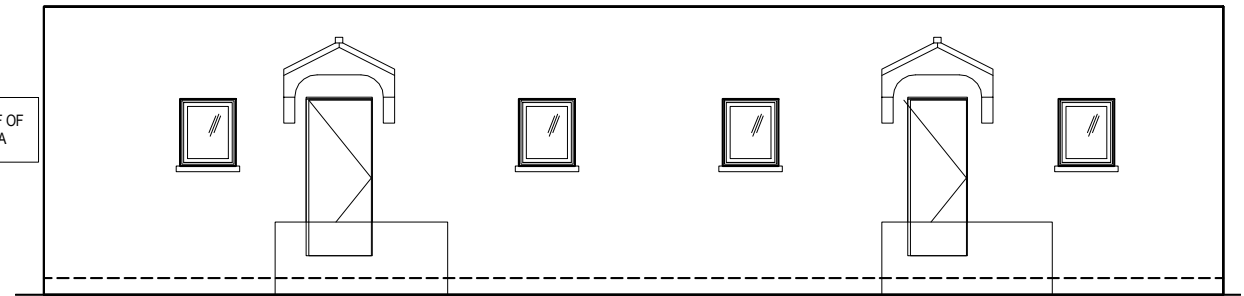
**7 BEGONIA SOUTH ELEVATION PROPOSED**  
 1/8" = 1'-0"



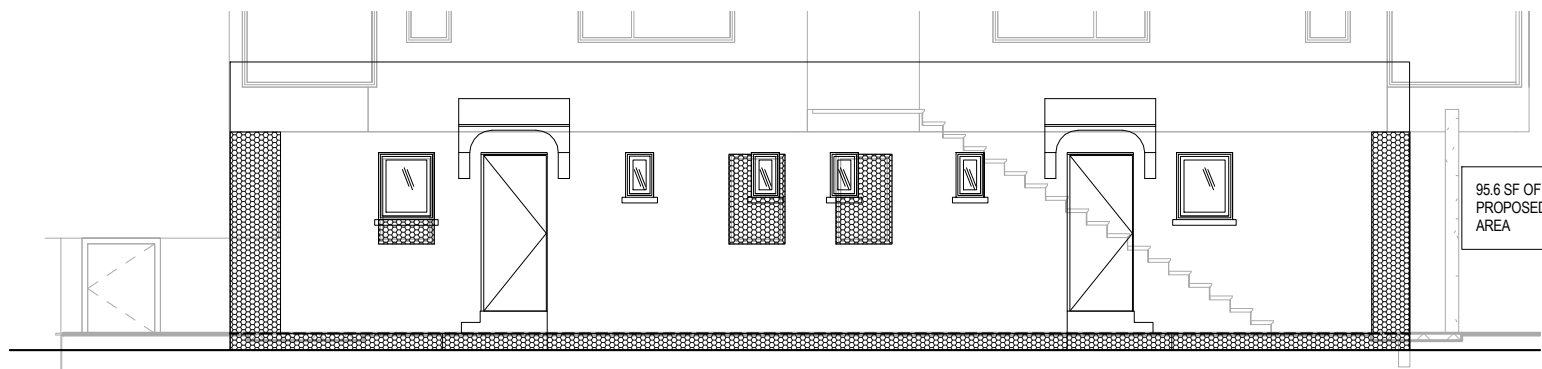
**8 BEGONIA SOUTH ELEVATION EXISTING**  
 1/8" = 1'-0"



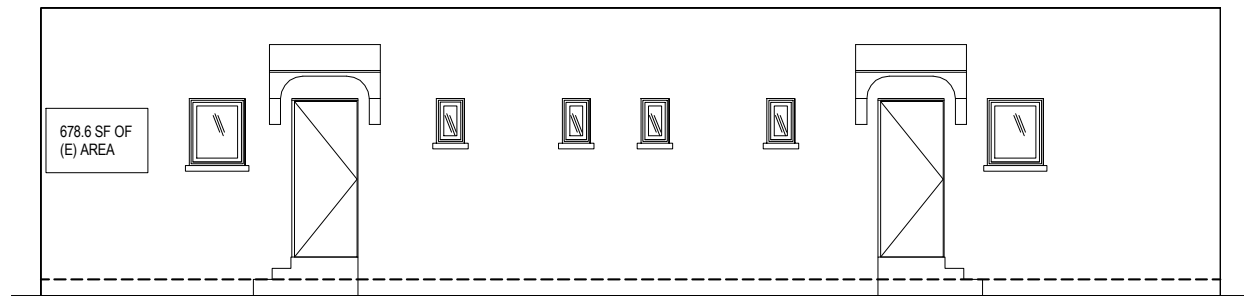
**3 BEGONIA WEST ELEVATION PROPOSED**  
 1/8" = 1'-0"



**4 BEGONIA WEST ELEVATION EXISTING**  
 1/8" = 1'-0"



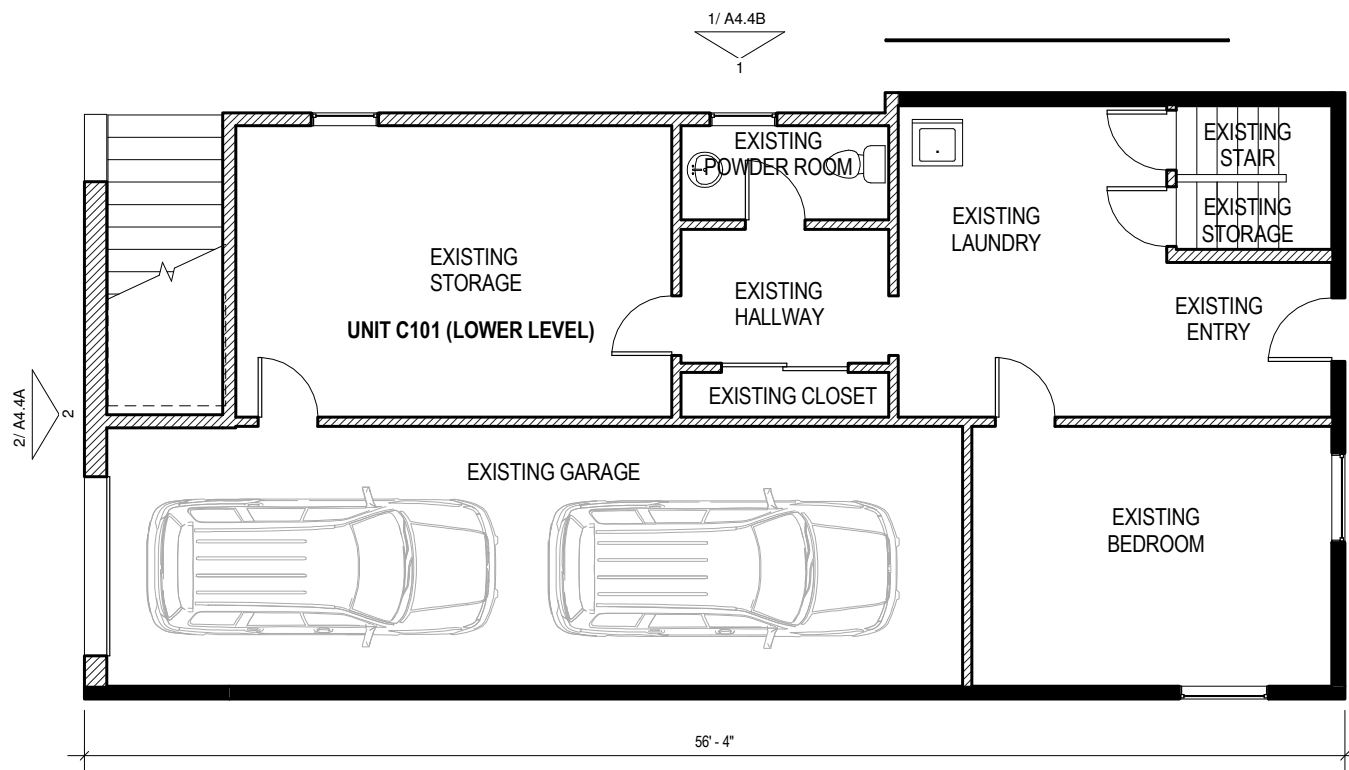
**1 BEGONIA EAST ELEVATION PROPOSED**  
 1/8" = 1'-0"



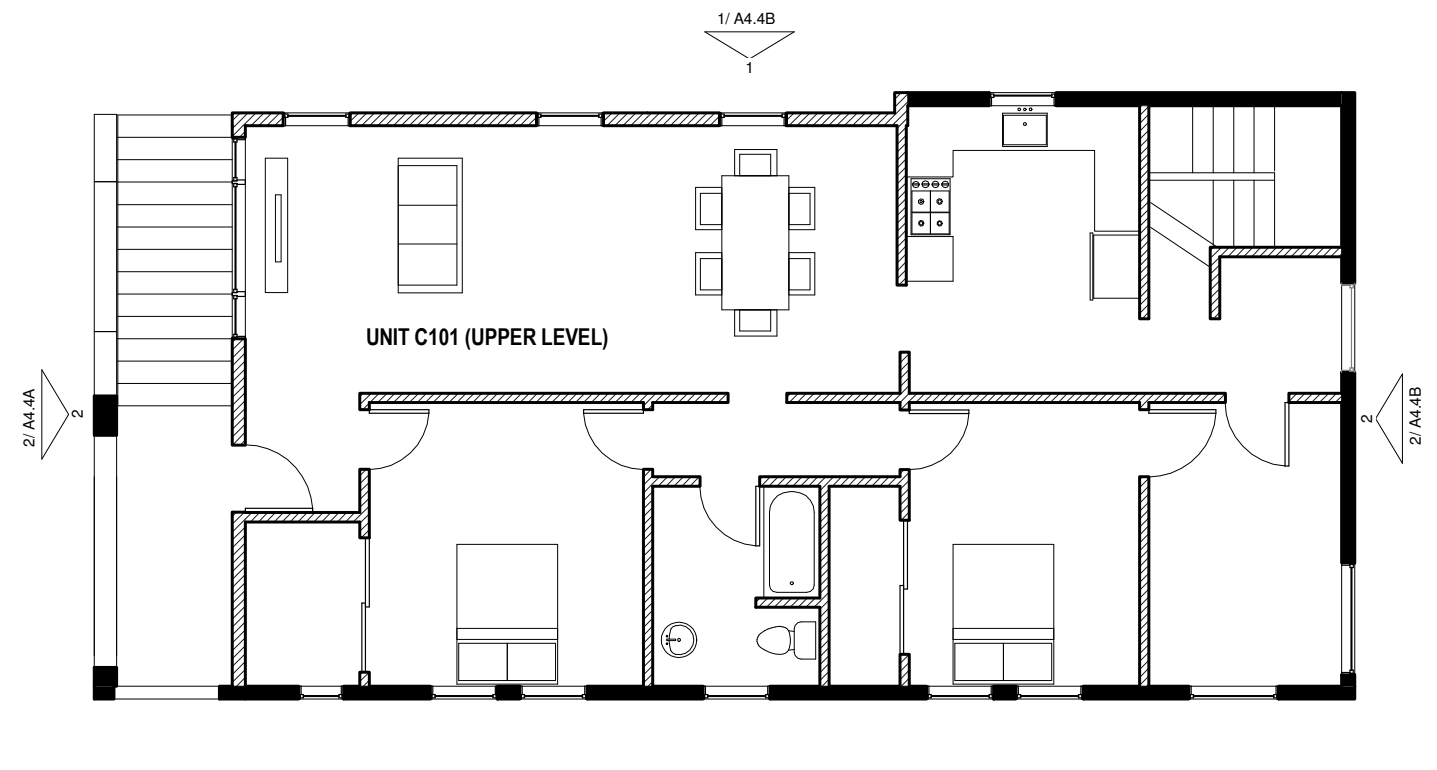
**2 BEGONIA EAST ELEVATION EXISTING**  
 1/8" = 1'-0"



**LEGEND**  
 ■ NEW EXTERIOR WALL  
 ▨ (E) WALL  
 — NEW INTERIOR WALL  
 NOTE: SEE SHEET A1.5  
 FOR OPEN SPACE



PROPOSED - CAMELLIA BASEMENT PLAN



PROPOSED - CAMELLIA LEVEL 2

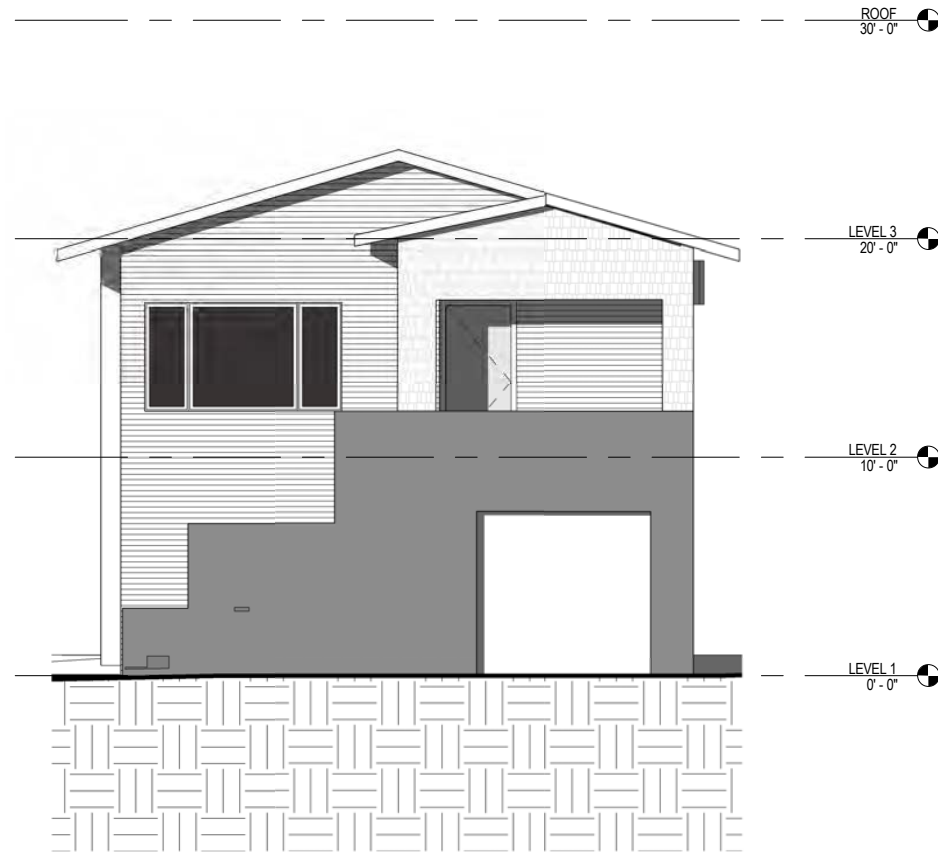


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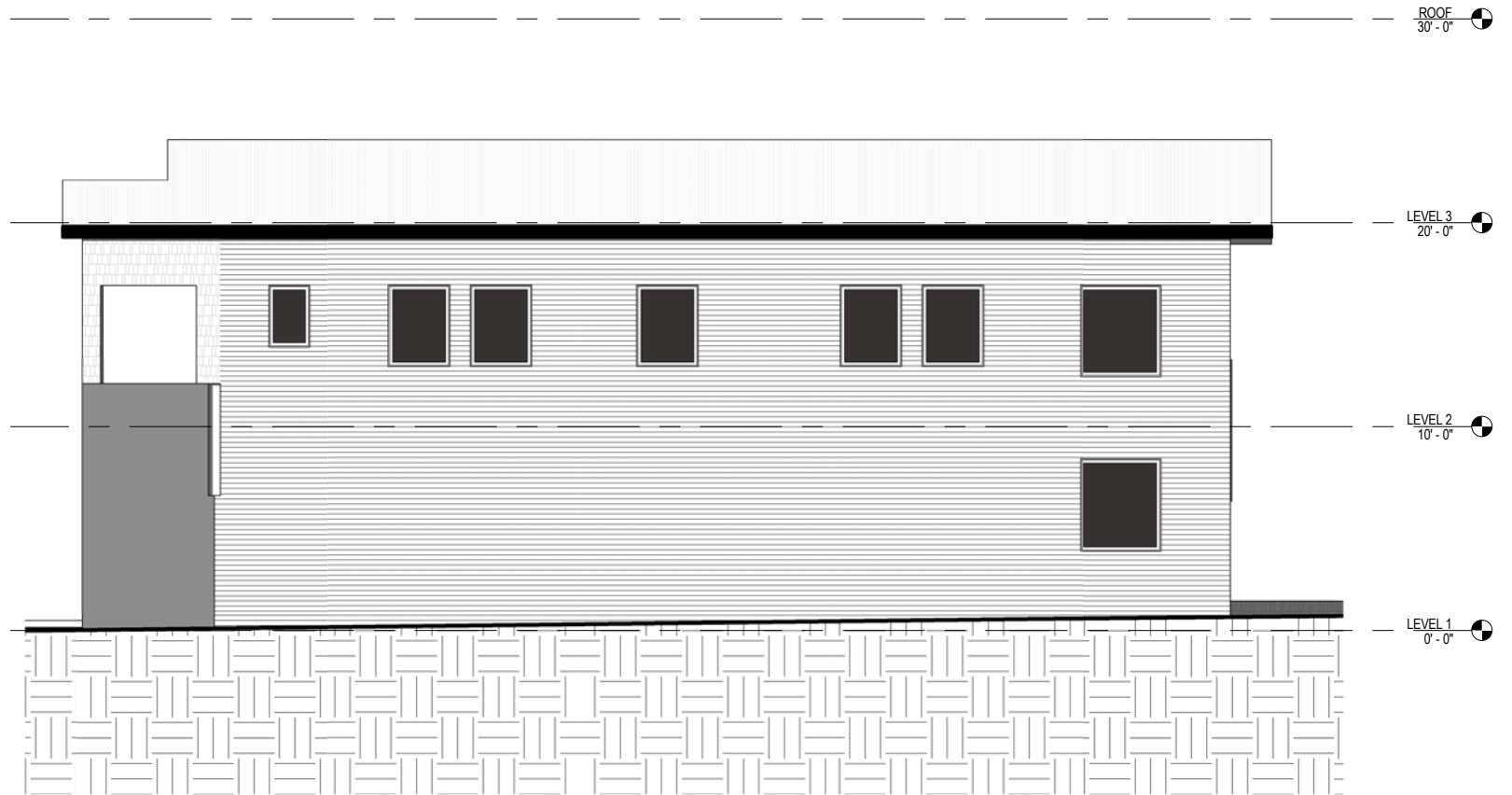


**MATERIAL LEGEND**

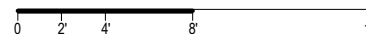
	PAINTED WOOD SIDING
	CEDAR SHINGLE SIDING
	CEMENT PLASTER



**2 CAMELLIA SOUTH ELEVATION**  
 1/8" = 1'-0"



**1 CAMELLIA EAST ELEVATION**  
 1/8" = 1'-0"

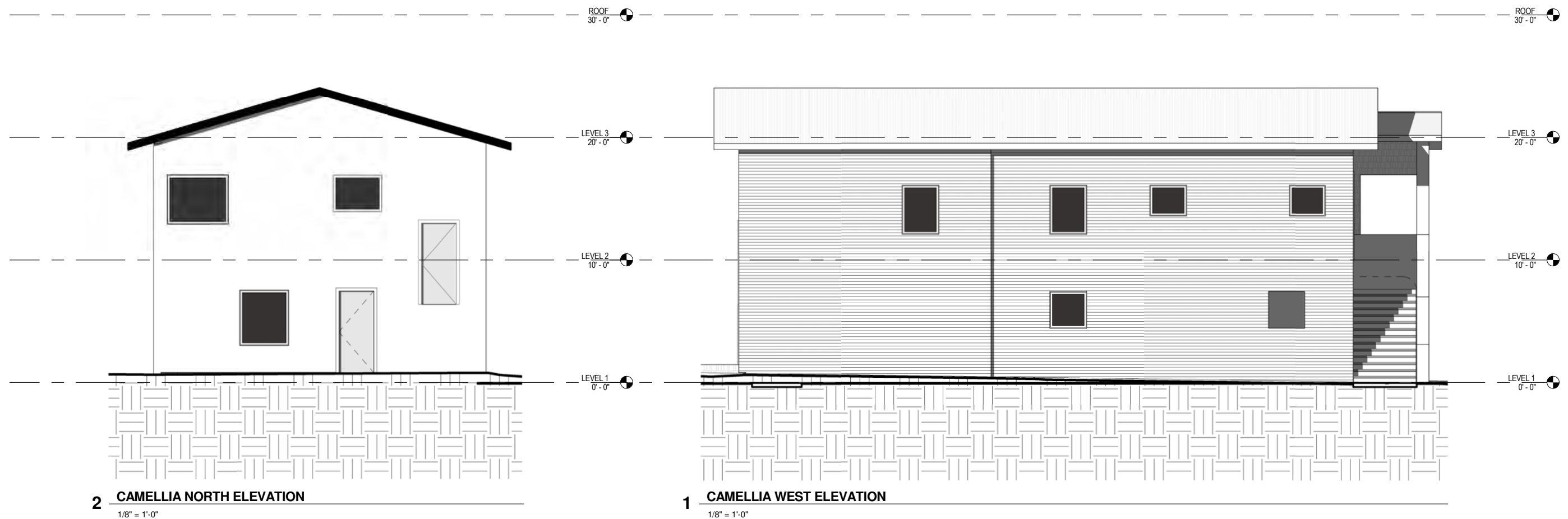


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**MATERIAL LEGEND**

	PAINTED WOOD SIDING
	CEDAR SHINGLE SIDING
	CEMENT PLASTER



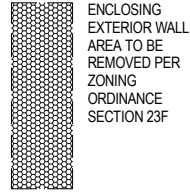




**PERCENT PROPOSED (TECHNICAL DEMOLITION OF CAMELIA)**

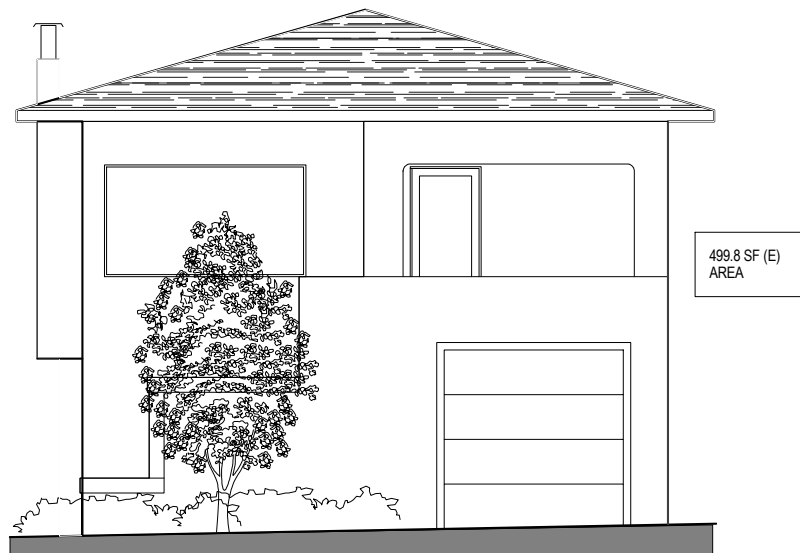
FACADE	SOUTH	EAST	NORTH	WEST	TOTAL
PROPOSED	149.0 SF	968.5 SF	506.5 SF	434.4 SF	2058.4 SF
TOTAL AREA	499.8 SF	968.5 SF	506.5 SF	987.0 SF	2961.8 SF
PERCENT PROPOSED					69.5%

**PROPOSED AREAS**



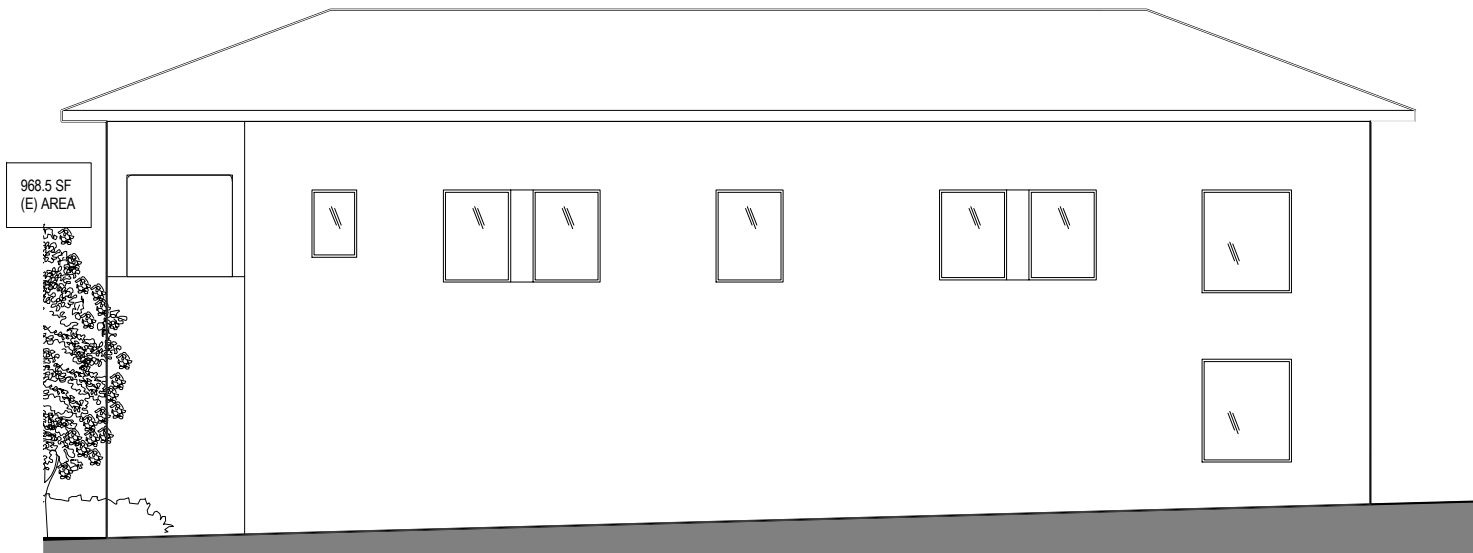
**ABBREVIATIONS**

(N) = NEW  
 (E) = EXISTING



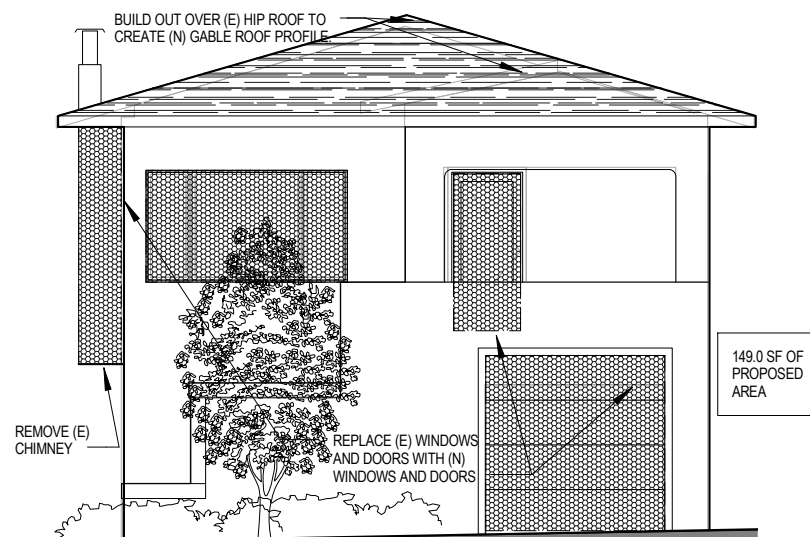
**3 CAMELLIA SOUTH ELEVATION EXISTING**

1/8" = 1'-0"



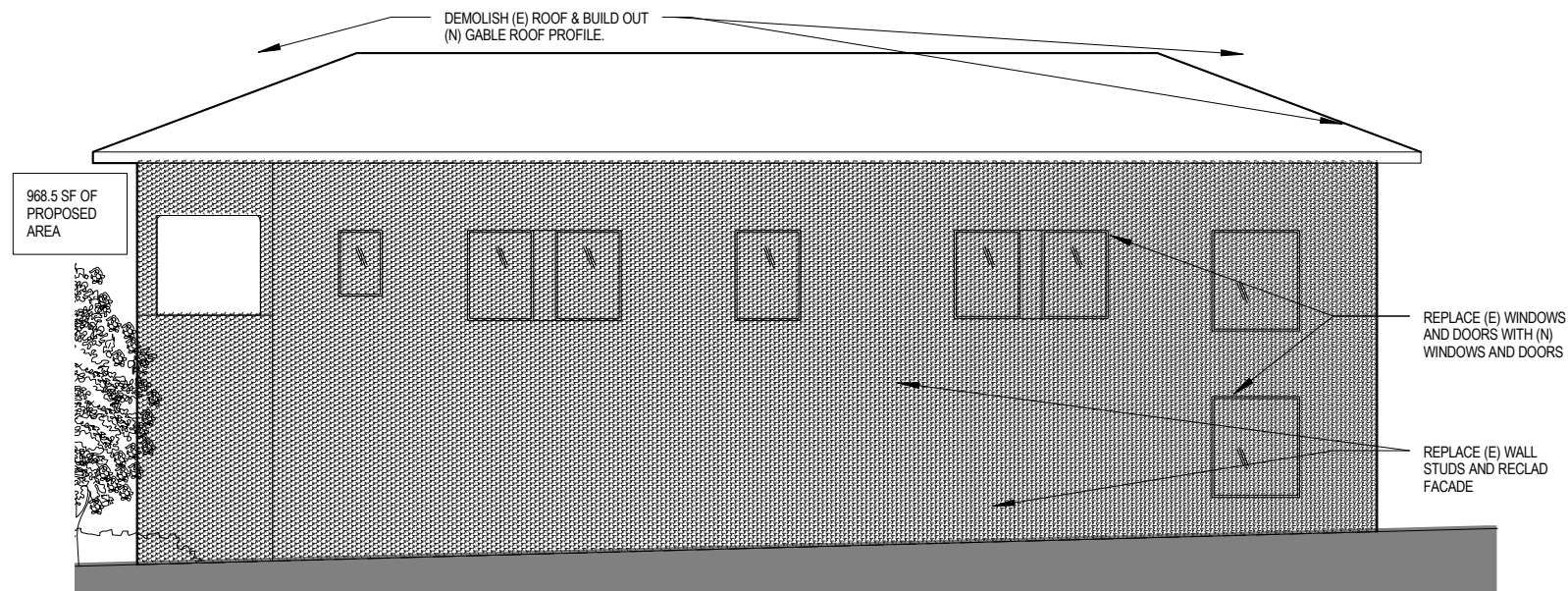
**4 CAMELLIA EAST ELEVATION EXISTING**

1/8" = 1'-0"



**1 CAMELLIA SOUTH ELEVATION PROPOSED**

1/8" = 1'-0"



**2 CAMELLIA EAST ELEVATION PROPOSED**

1/8" = 1'-0"

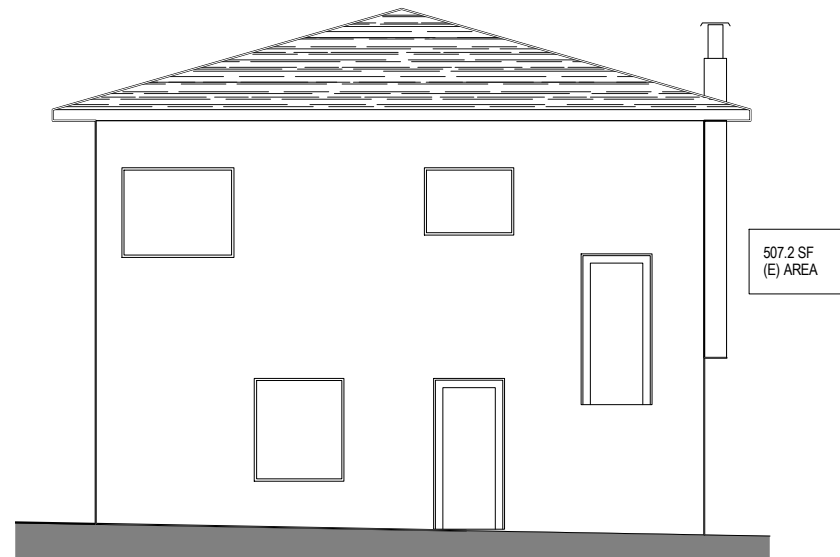
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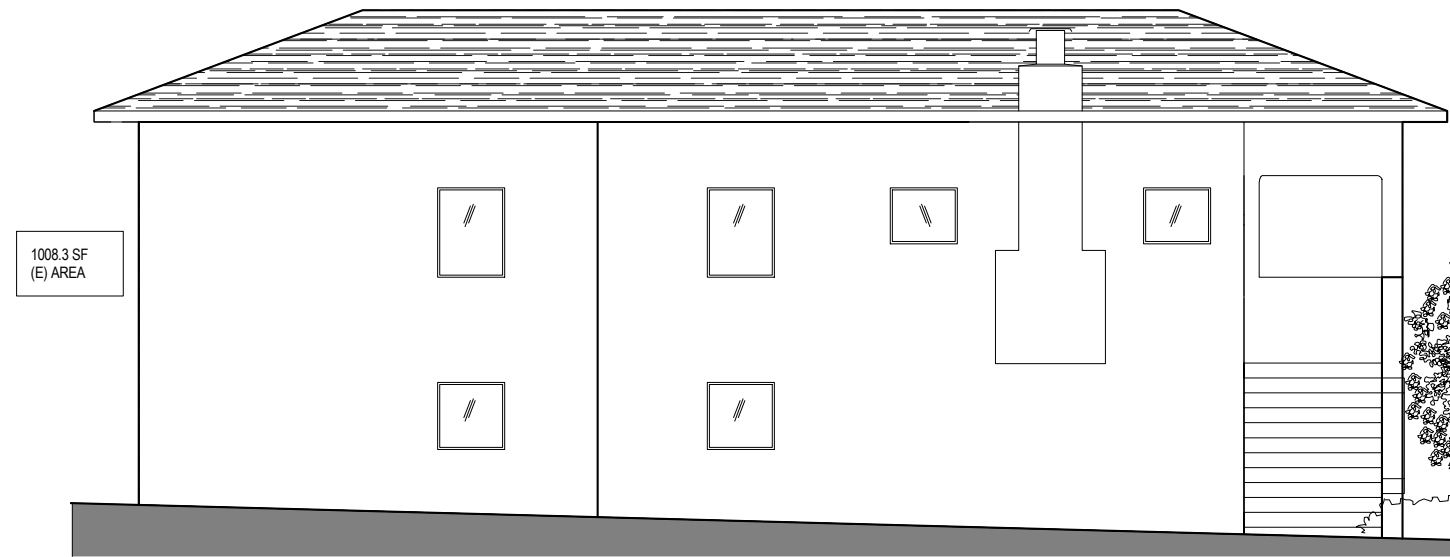
PERCENT PROPOSED (SEE SHEET A4.3C)

**PROPOSED AREAS**  
 ENCLosing EXTERIOR WALL AREA TO BE REMOVED PER ZONING ORDINANCE SECTION 23F

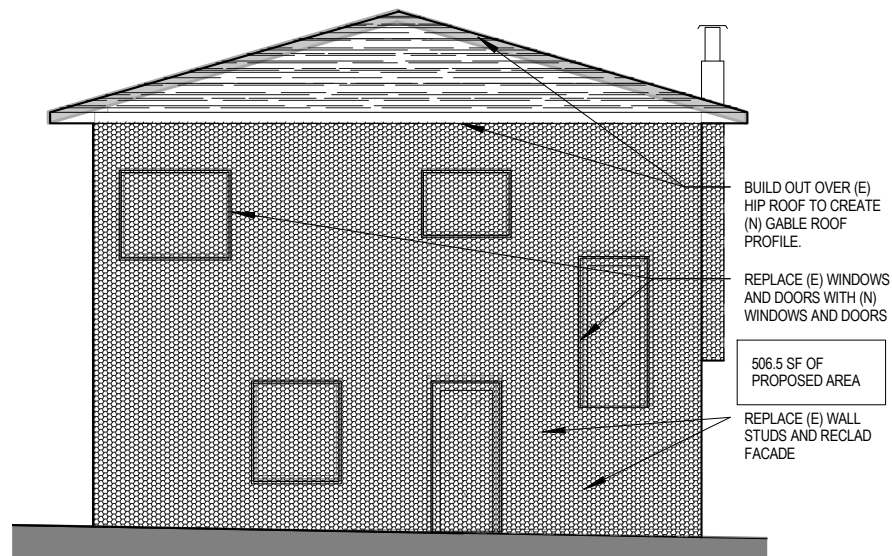
**ABBREVIATIONS**  
 (N) = NEW  
 (E) = EXISTING



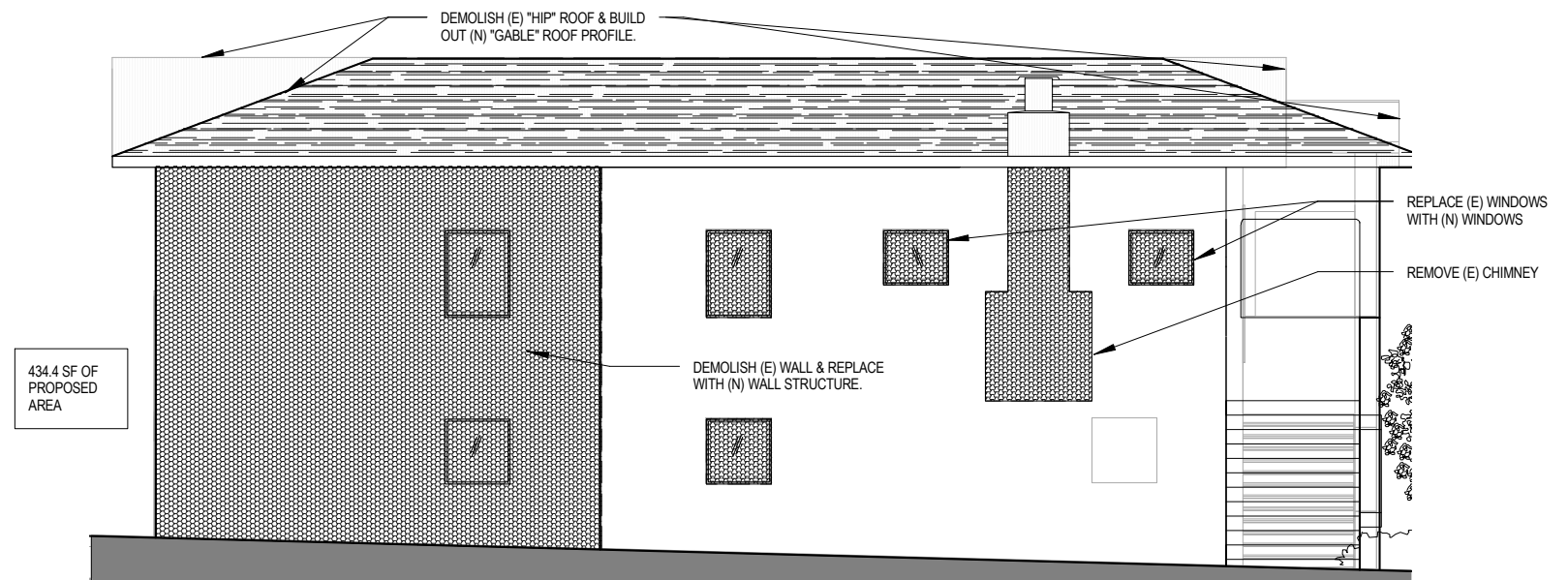
**3 CAMELLIA NORTH ELEVATION EXISTING**  
 1/8" = 1'-0"



**4 CAMELLIA WEST ELEVATION EXISTING**  
 1/8" = 1'-0"



**1 CAMELLIA NORTH ELEVATION PROPOSED**  
 1/8" = 1'-0"



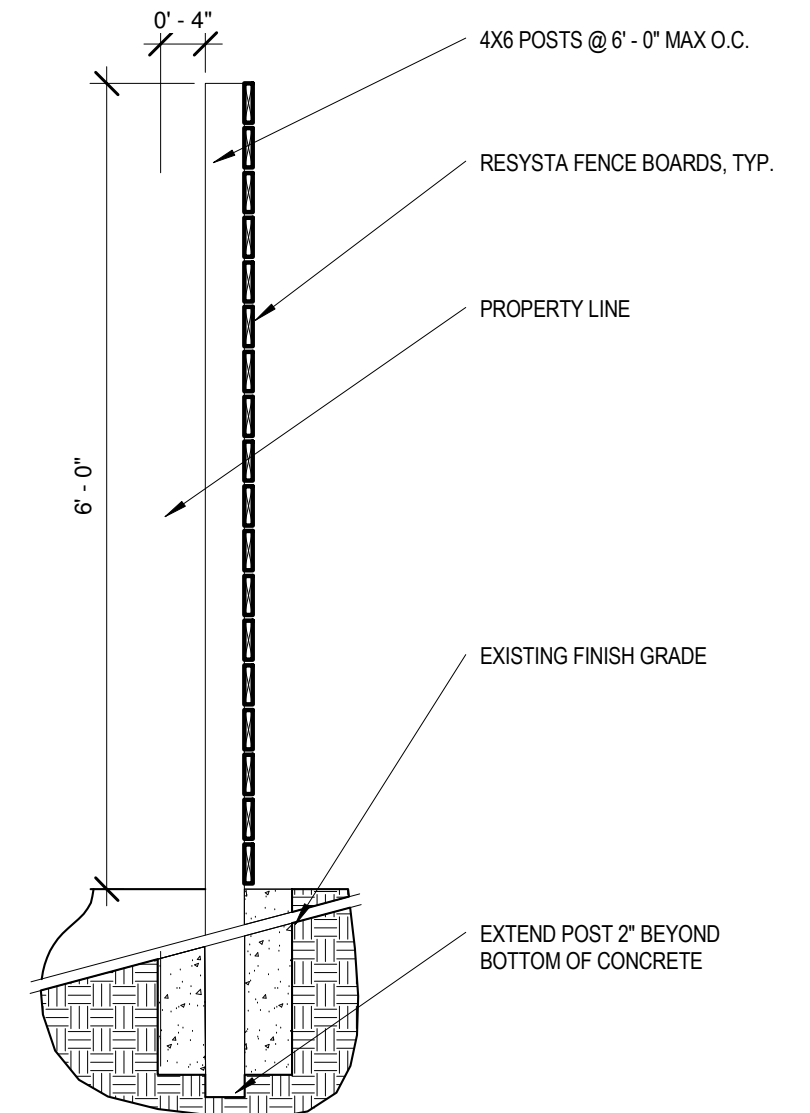
**2 CAMELLIA WEST ELEVATION PROPOSED**  
 1/8" = 1'-0"



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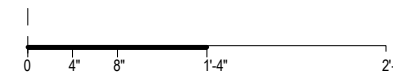


CEDAR FENCE ALONG PROPERTY LINE



**1 CEDAR FENCE DETAIL**

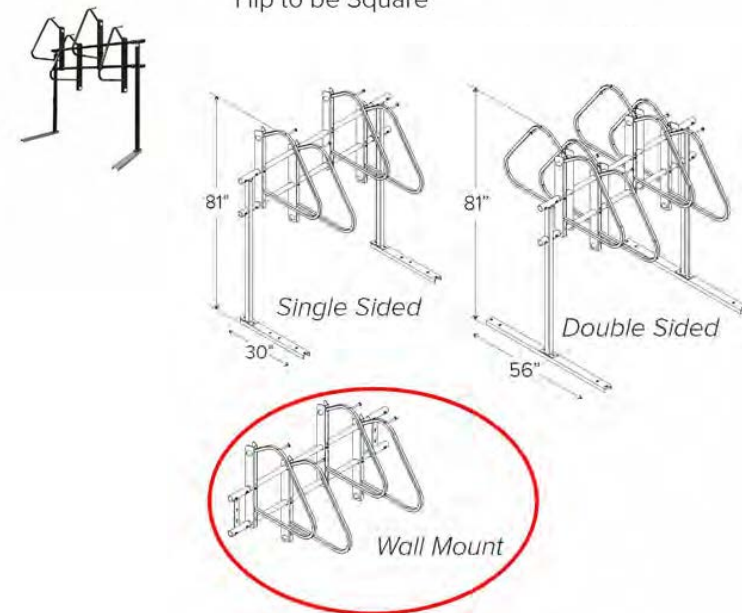
3/4" = 1'-0"





ULTRA SPACE SAVER SQUARED

Hip to be Square

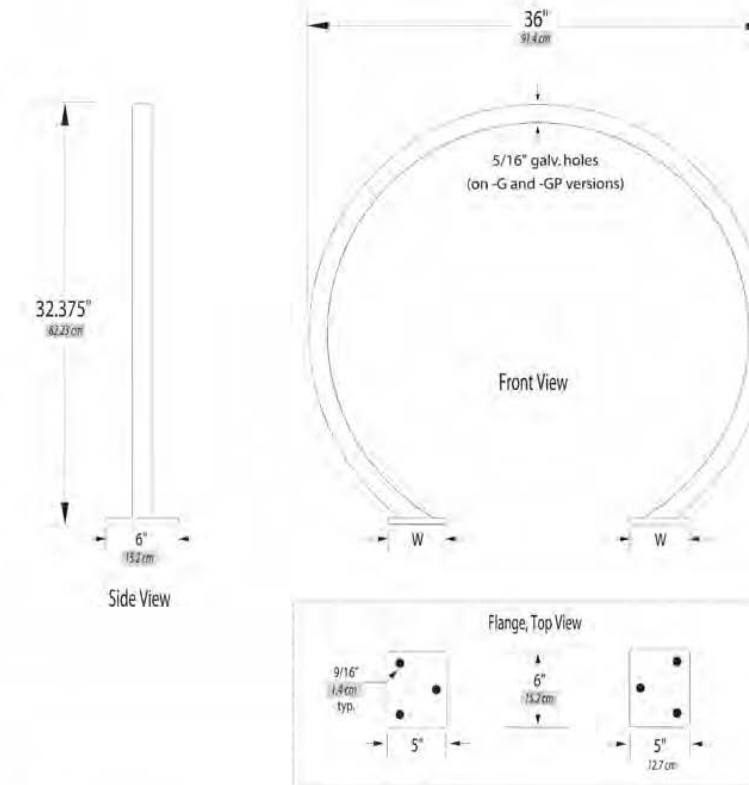


WALL MOUNT, SQUARE PROFILE BIKE STORAGE. LOCATED ON EAST WALL OF BEGONIA BUILDING.



DARK GREY POWDERCOAT FINISH AT BIKE STORAGE

**BIKEPARKING.COM™** [Welle™ Circular Rack] Square Tube Surface Flange  
 Tel: 415.333.6428 Tel: 888.764.2453 Fax: 415.333.2032 E: info@bikeparking.com  
 Palmer Group, LLC · 1728 Ocean Avenue #132 San Francisco CA 94112 USA



Welle™ Circular Rack Square Tube Surface Flange						
Tubing	Model	Weight	Finish Options	Hoop	Surface Mount Flanges (Same material as Hoop)	Anchors (Not Provided)
Square Tube	WC02-SQ-SF	38 lbs 17.1 kg	-G Hot Dipped Galvanized -P Powder Coated (color) -GP Hot Dipped Galvanized with Powder Coat (color) Top-Coat -SS Stainless #4 Brush Finish	-G, -P, -GP 2" x 2" x 0.188" Square Tube (Regular Steel) 12.7mm 5.1cm x 5.1cm x 5mm -SS 2" x 2" x 0.188" Square Tube (304 SS Alloy) 5.1cm x 5.1cm x 5mm	(2) 5" x 6" x 3/8" Plates, 12.7cm x 15.2cm x 10mm each with (3) 9/16" Holes 14mm	(2) 1/2" x 2.75" 13mm x 7cm Rawl Spike (4) 1/2" x 3.75" 13mm x 9.5cm Wedge Anchor Bolt

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2012.04.11

GROUND ANCHORED, SQUARE PROFILE BIKE STORAGE CIRCULAR RACK. 2 BIKES PER RACK. LOCATED ALONG THE PASEO, AND FLANKING THE DRIVEWAY BETWEEN AZALEA AND BEGONIA.



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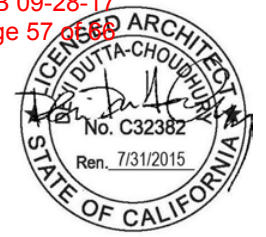


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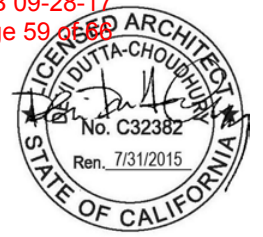


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FOOTPRINT OF "GERANIUM" BUILDING IS  
SHOWN (WALLS & ROOF ARE HIDDEN)





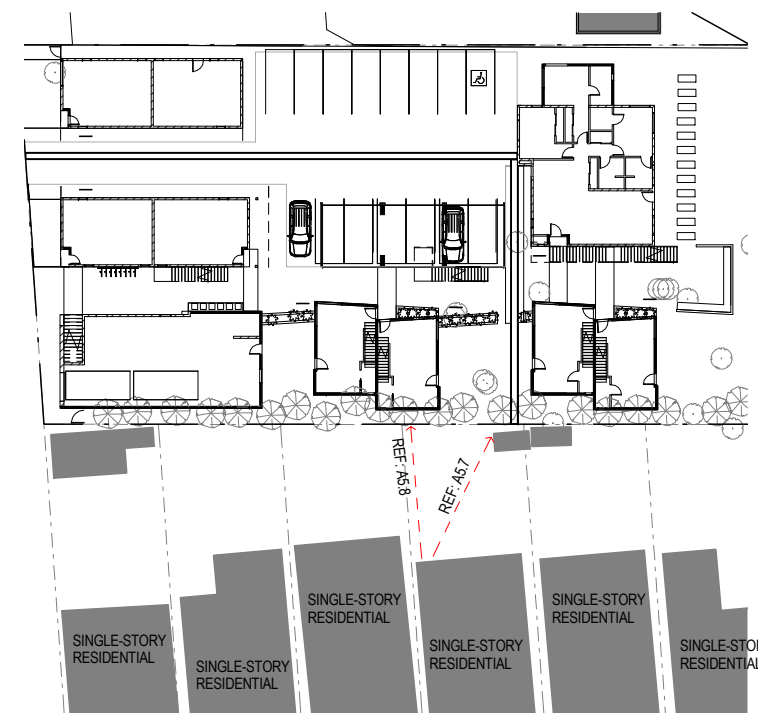




FOOTPRINT OF "FREESIA" BUILDING IS SHOWN  
(WALLS & ROOF ARE HIDDEN)



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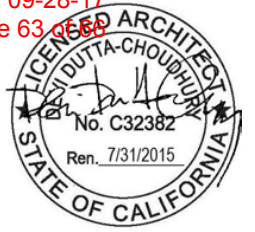


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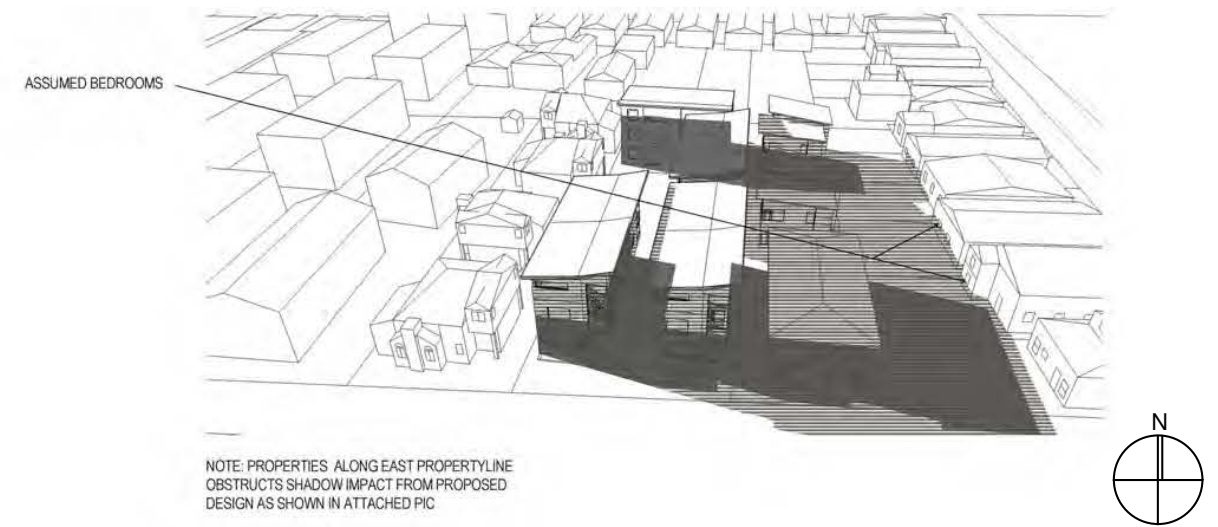
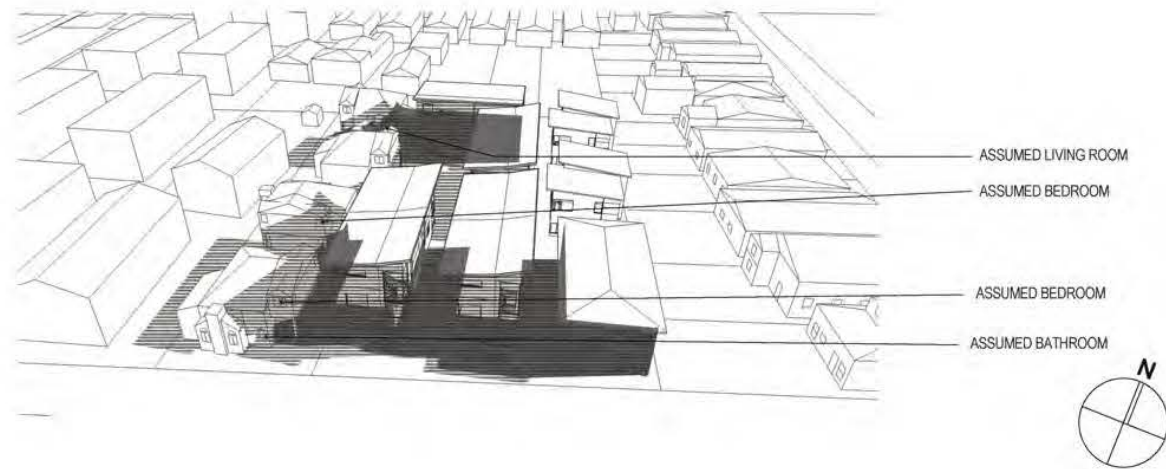
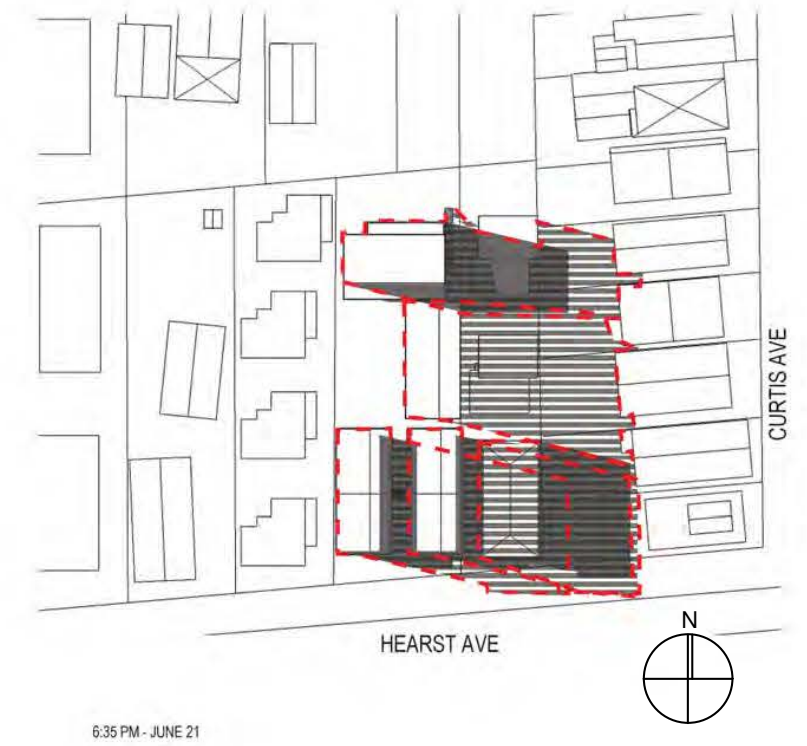
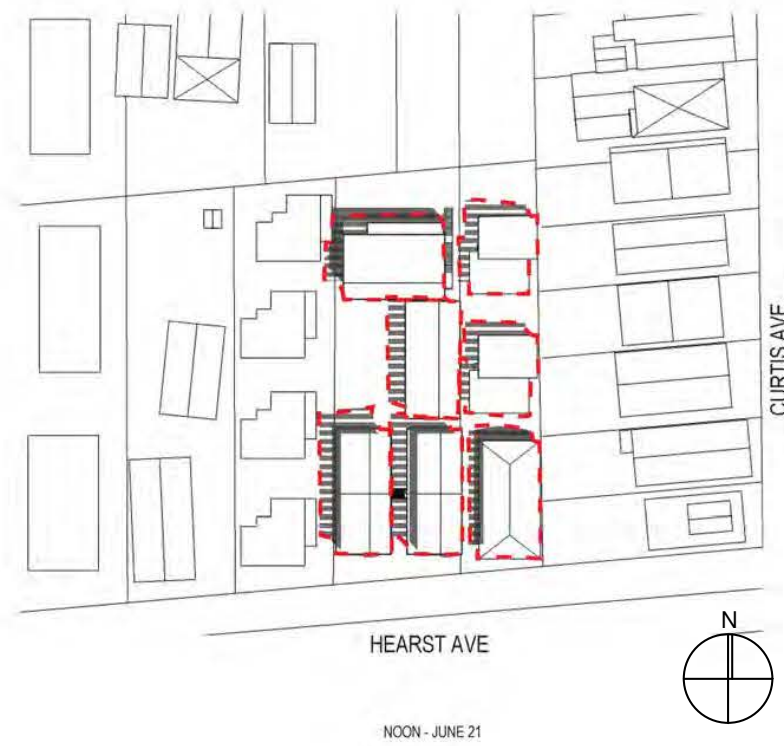
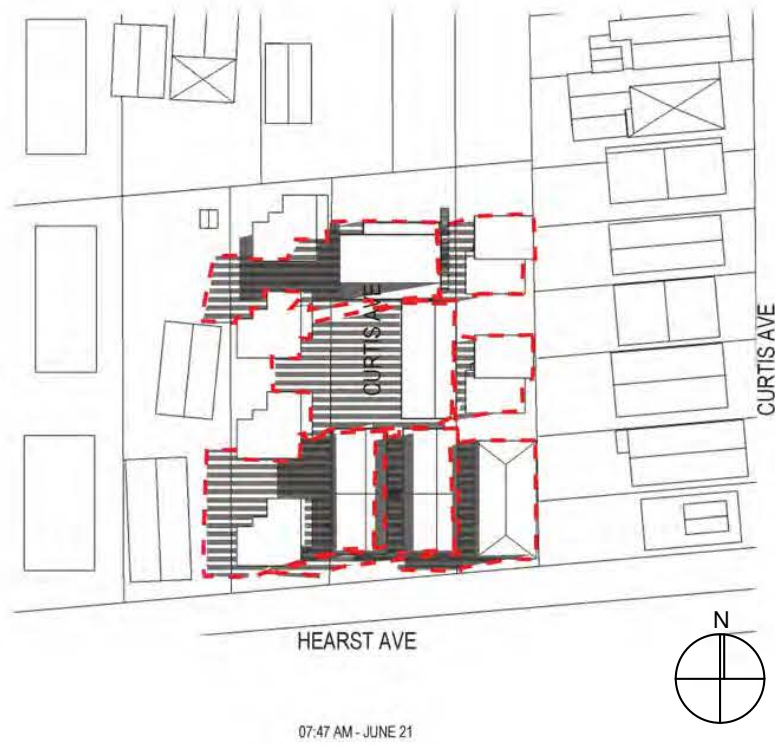


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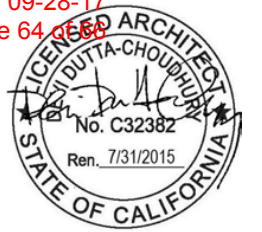


**LEGEND**




-  SHADOWS CAST FROM DENSITY BONUS PROJECT
-  SHADOWS CAST FROM EXISTING PROJECT
-  SHADOW OUTLINE



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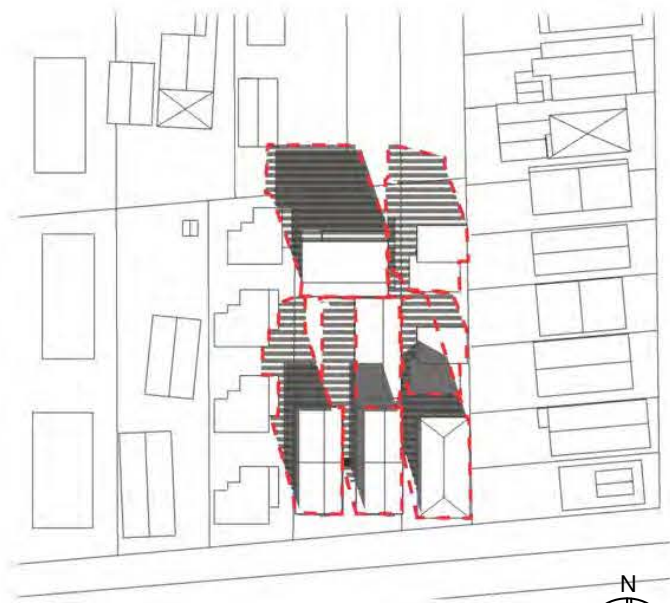


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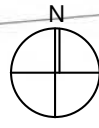
-  SHADOWS CAST FROM DENSITY BONUS PROJECT
-  SHADOWS CAST FROM EXISTING PROJECT
-  SHADOW OUTLINE



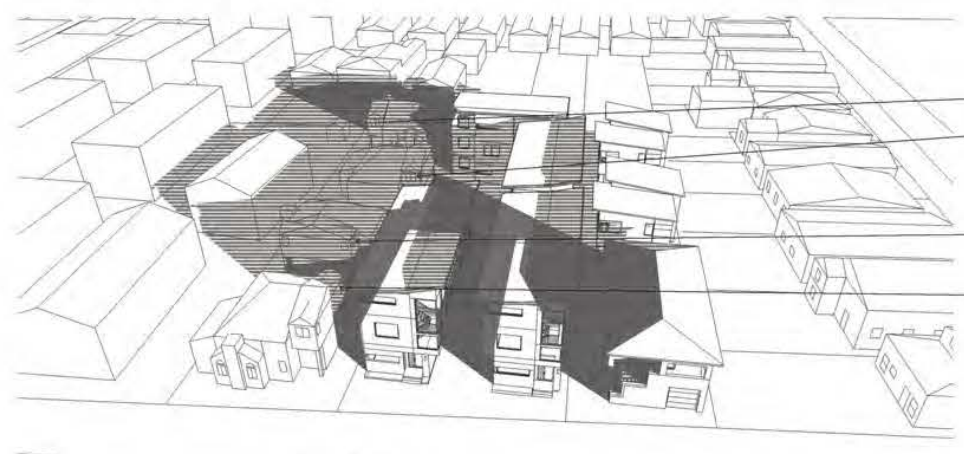
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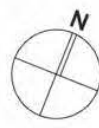
NOON - DEC 21



3:14 PM - DEC 21



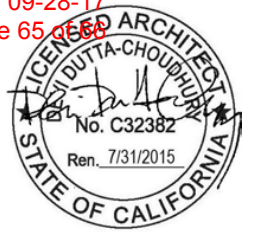
- ASSUMED BEDROOM
- ASSUMED BEDROOM
- ASSUMED BEDROOM
- ASSUMED BEDROOM






9:23 AM - DEC 21

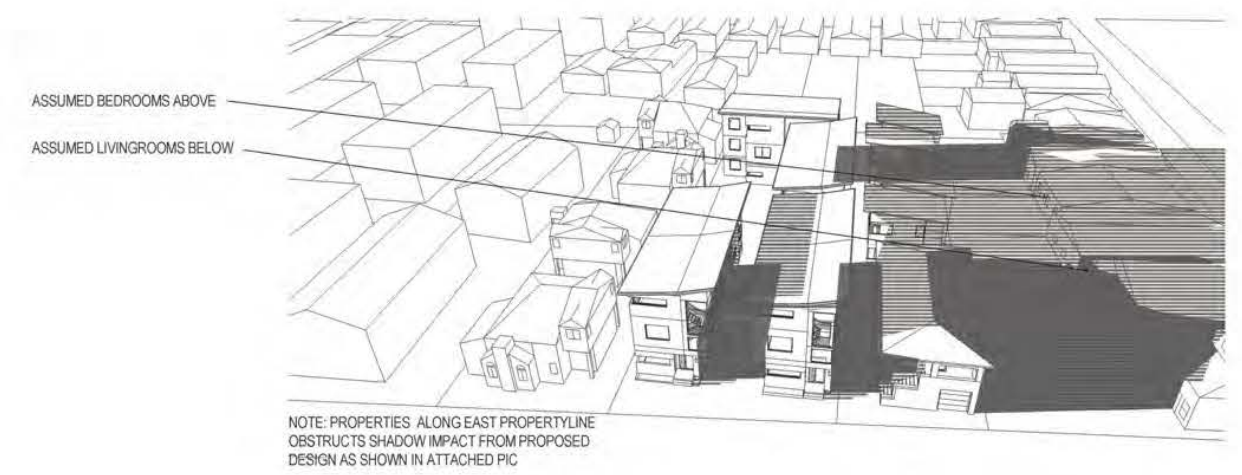
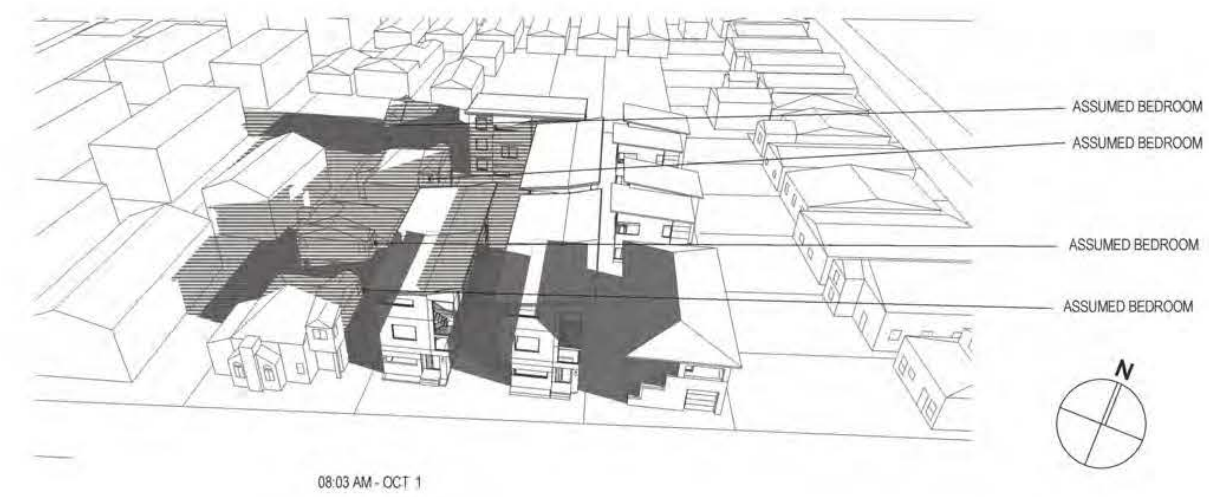
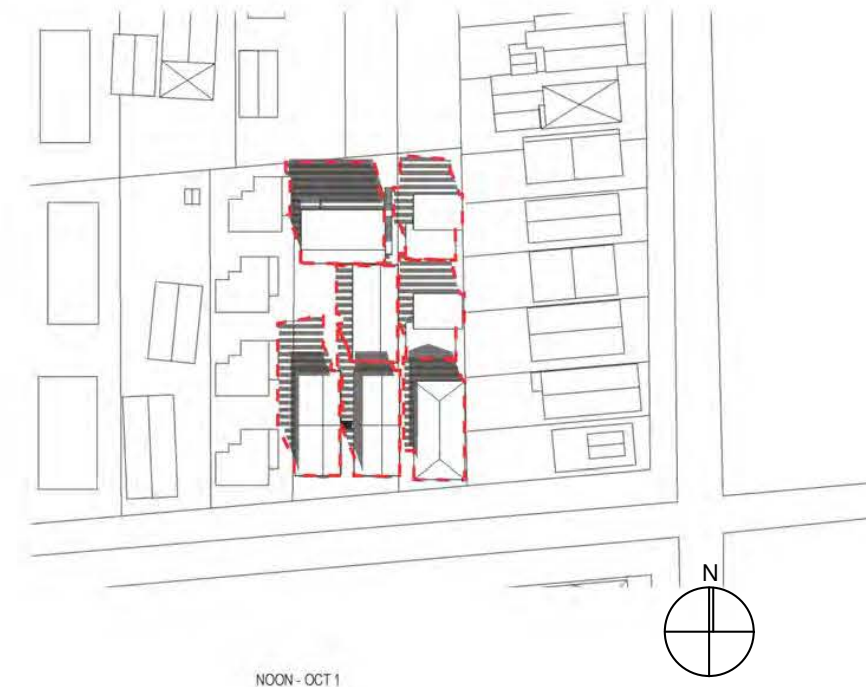


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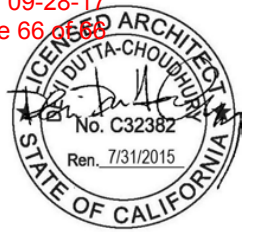
**LEGEND**

-  SHADOWS CAST FROM DENSITY BONUS PROJECT
-  SHADOWS CAST FROM EXISTING PROJECT
-  SHADOW OUTLINE

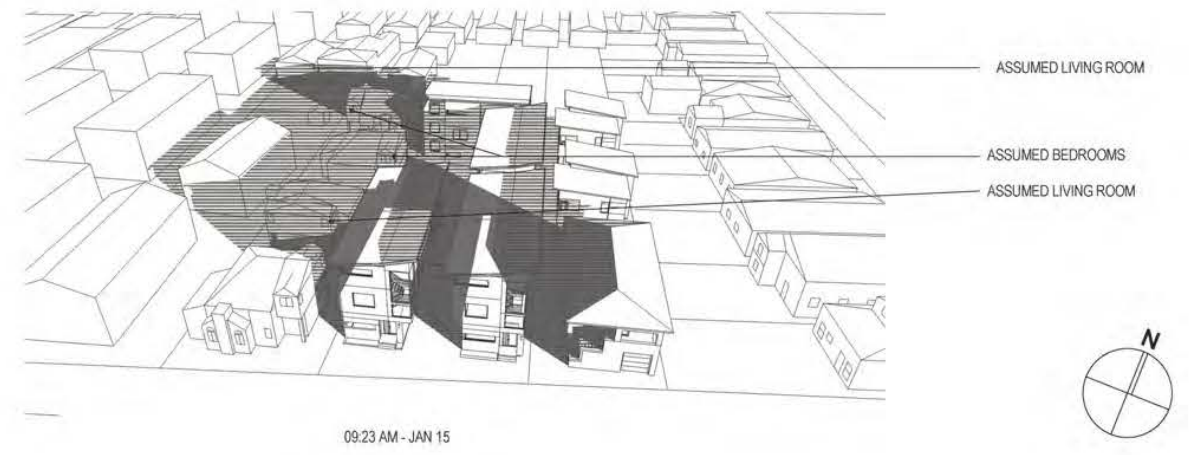
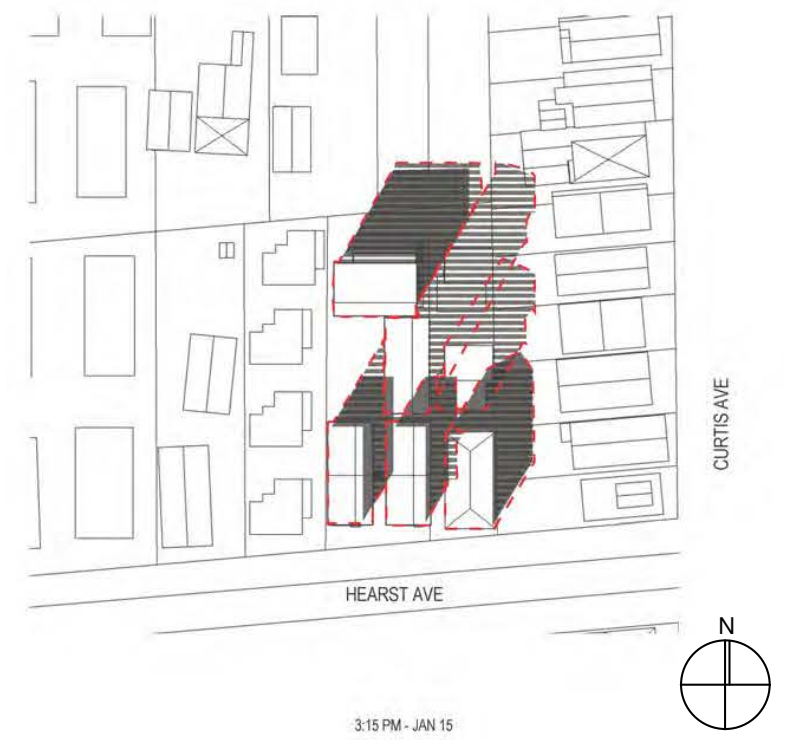
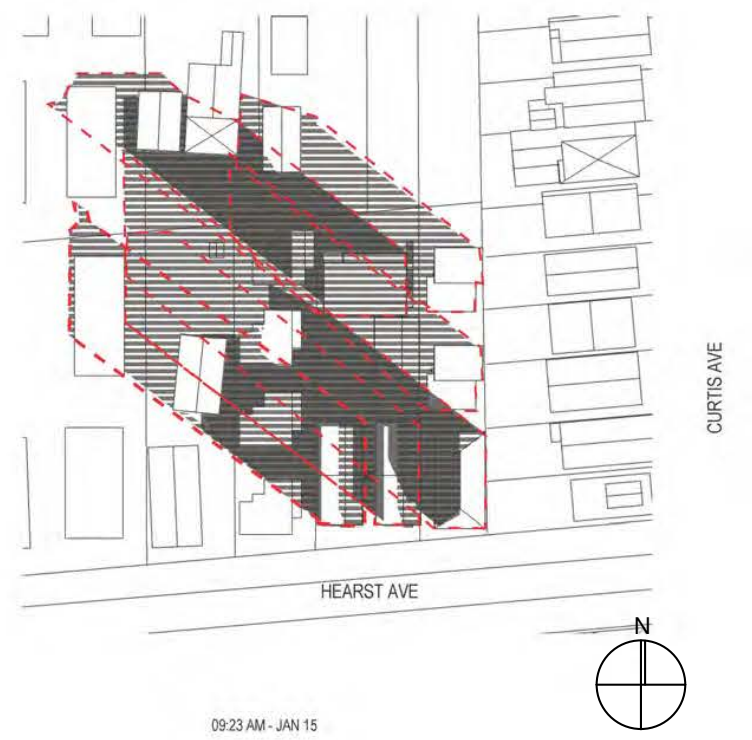




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- LEGEND**
- SHADOWS CAST FROM DENSITY BONUS PROJECT
  - SHADOWS CAST FROM EXISTING PROJECT
  - SHADOW OUTLINE



PHOTOGRAPHS TAKEN AT 3:15 PM JAN 15

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

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Notice of Public Hearing

## 1155-1173 Hearst Street

**Use Permit #ZP2016-0028 to merge two lots, substantially rehabilitate seven existing dwelling units, and construct eleven new dwelling units**

The Zoning Adjustments Board of the City of Berkeley will hold a public hearing on the above matter, pursuant to Zoning Ordinance Section 23B.32.020, on **Thursday, August 24, 2017** at the Maudelle Shirek Building, 2134 Martin Luther King, Jr. Way, second floor Council chambers (wheelchair accessible). The meeting starts at 7:00 p.m.

### PERMITS REQUIRED:

- Use Permit for construction of dwelling units
- Administrative Use Permit for residential additions greater than 14' in average height
- Administrative Use Permit to construct a main building greater than 28' in average height
- Administrative Use Permit to extend a non-conforming front and side yard

**APPLICANT:** Hearst Avenue Cottages, LLC c/o Rhoades Planning Group, 46 Shattuck Square, Suite 11, Berkeley, CA 94704

**ZONING DISTRICT:** R-2A – Restricted Multiple-Family Residential

**ENVIRONMENTAL REVIEW STATUS:** Categorically exempt under Section 15332 of the California Environmental Quality Act (CEQA) Guidelines (“In-Fill Development Projects”).

**The Zoning Application and application materials for this project is available online at:**  
<http://www.cityofberkeley.info/zoningapplications>

**The agenda and staff report for this meeting will be available online 3 to 5 days prior to this meeting at:** <http://www.cityofberkeley.info/zoningadjustmentsboard>

This material is available in alternative formats upon request. Alternative formats include audio-format, braille, large print, electronic text, etc. Please contact the Disability Services Specialist and allow 7-10 days for production of the material in an alternative format. Contact Ella Callow- Disability Services Specialist.

Email: [ecallow@cityofberkeley.info](mailto:ecallow@cityofberkeley.info) Phone: 1-510-981-6418 TTY: 1-510-981-6347

### **Correspondence and Notice of Decision Requests**

- Communications to Berkeley boards, commissions or committees are public record and will become part of the City's electronic records, which are accessible through the City's website. **Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to a City board, commission or committee, will become part of the public record.** If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service or in person to the secretary of the relevant board, commission or committee. If you do not want your contact information included in the public record, please do not include that information in your communication. Please contact the secretary to the relevant board, commission or committee for further information.
- **To distribute correspondence to Board members *prior to the meeting date*** -- submit comments **by 12:00 noon, seven (7) days before the meeting.** Please provide 15 copies of any correspondence with more than ten (10) pages or if in color or photographic format.
- Correspondence received by 5:00 p.m. on the Tuesday before the meeting will be posted on the ZAB web site for review by the Board and public prior to the meeting. Correspondence received later, and after the meeting, will be posted to the web site following the meeting.
- Any correspondence received after this deadline will be given to Board members on the meeting date just prior to the meeting.
- Staff will not deliver to Board members any additional written (or e-mail) materials received after 12:00 noon on the day of the meeting.
- Members of the public may submit written comments themselves early in the meeting. To distribute correspondence at the meeting, please provide 15 copies and submit to the Zoning Adjustments Board Clerk just before or at the beginning of the meeting.
- Written comments, or a request for a Notice of Decision should be directed to the ZAB Secretary at: Land Use Planning Division (Attn: ZAB Secretary), 2120 Milvia Street, Berkeley, CA 94704 OR at [zab@ci.berkeley.ca.us](mailto:zab@ci.berkeley.ca.us).



### **Accessibility Information / ADA Disclaimer**

This meeting is being held in a wheelchair accessible location. To request a disability-related accommodation(s) to participate in the meeting, including auxiliary aids or services, please contact the Disability Services specialist at 981-6418 (V) or 981-6437 (TDD) at least three business days before the meeting date. Please refrain from wearing scented products to this meeting.

### **SB 343 Disclaimer**

Any writings or documents provided to a majority of the Commission regarding any item on this agenda will be made available for public inspection at the Permit Service Center, Planning and Development Department located at 2120 Milvia Street, Berkeley, during regular business hours.

### **Notice Concerning Your Legal Rights**

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

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

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

### **Further Information**

Questions about the project should be directed to the project planner, Leslie Mendez, at (510) 981-7410 or LMendez@cityofberkeley.info. All project application materials, including full-size plans, may be viewed at the Permit Service Center (Zoning counter), 2120 Milvia Street, during normal office hours.





## CLEARWATER HYDROLOGY

Consultants in Hydrology  
and Water Resources

Watershed Management

Stream and Wetland  
Restoration

Wetland Delineation  
and Permit Acquisition

Stormwater Drainage  
and Flooding

### STORMWATER AND FLOODING ASSESSMENT AND MITIGATION DESIGN FOR THE HEARST AVENUE PROJECT 1161-1173 HEARST AVE. BERKELEY, CA

Prepared by:  
William Vandivere, M.S., P.E., Principal  
Shreya Hegde, M.S., Water Res. Engr.  
Neil Mock, EIT, Water Res. Engr.  
Clearwater Hydrology  
Berkeley, CA

Prepared for:  
Hearst Avenue Cottages, LLC  
Oakland, CA

July 12, 2017  
(Revised)

2974 Adeline St.  
Berkeley, CA 94703  
Tel: 510 841 1836  
Fax: 510 841 1610

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FIGURES

TECHNICAL APPENDIX

- Existing and Project Plans with Topography
- Peak Discharge Computations- Hearst Ave. System:
  - ACFCWCD Rational Method-2016
  - USGS Rantz Rational Method-1971
- HEC-RAS Tabular Output Data Summaries
- Pipe Discharge Computations
- Hydraflow Express- Normal Depth Computation
- Peak Flow Computations: Pre- vs. Post-Project
- Project Stormwater Storage Requirement for Mitigation

## EXECUTIVE SUMMARY

Clearwater Hydrology (CH) conducted the initial hydrologic and hydraulic assessment in January 2016. As part of the review process the City of Berkeley had Balance Hydrologics perform a peer review of the technical aspects of the document. As a result, CH prepared a comparative assessment of the peak flow calculations using the USGS regional version of the Rational Method (Rantz 1971) and a more recent version of the same method published by the Alameda County Flood Control and Water Conservation District(2016). For the ACFCWCD computations, the roadway areas of each of the subwatersheds were segregated from the parcels and a composite C values were used, rather than the bulk “C” value related to residential density prescribed in Rantz. The Alameda County approach resulted in higher estimated peak flow rates due primarily to the higher storm rainfall intensities in the method’s depth-duration-frequency tables (Attachment 7). The difference in peak flow rates for the two versions of the Rational Method was greater for smaller storm events, and less pronounced for larger events.

Clearwater Hydrology (CH) conducted hydrologic and hydraulic assessments of existing stormwater drainage and flooding conditions through the lower, northside Hearst Avenue corridor. The objective of the assessments was the development of a storm drainage system design for the proposed Hearst Avenue Project at 1155-1173 Hearst Avenue in west Berkeley. The hydrologic/hydraulic assessments confirmed anecdotal evidence gleaned from the developer and one local resident (along Curtis Street) that stormwater runoff backs-up along Curtis, north of the Hearst Ave. intersection, and discharges over residential driveways into a topographic depression west of Curtis St. This depression and its uneven bottom topography create ponding of stormwaters of up to 1.0 ft in the back yards of the west side Curtis St. properties prior to discharging west-southwest through the Project area to Hearst Avenue. Minor nuisance ponding of accumulated stormwater occurs on the Project site while it is discharged through driveways and side yard corridors to the Hearst Ave. gutter between 1153-1155 Hearst and a north-south driveway through an apartment complex at 1139 Hearst.

Based on the findings of the technical assessment, including development of a HEC-RAS hydraulic model for the lower northside Hearst Ave. corridor, piped and open channel drainage scenarios for the Project were tested for their ability to provide proper drainage without on-site flooding during the 10-yr. design rainstorm. A secondary requirement of the drainage design was the imperative to improve, even marginally, the flooding conditions that occur along the neighboring Curtis St. properties for rainstorms exceeding roughly the 2-yr. recurrence interval. The selected drainage design is depicted in plan, profile and cross-section in Figures 8-10, respectively, and includes the following components:

- A 2.5 ft. wide, 0.4 ft. deep rectangular channel with a slope of 0.8% inset within the Project main driveway, extending north to the northern edge of the new parking lot; and
- A trapezoidal grassed swale with side slopes 3:1, channel slope of 1.0% and a minimum depth of 0.3 ft. extending eastward from the parking lot to the eastern Project boundary.

To protect the rectangular channel from degradation by vehicular traffic, the channel would be covered by a metal grate with solid metal sidewalls. At its mild slope of 0.8%, its capacity would be 5.5 cfs, which is exceed the combined 25-yr. peak discharge (4.51 cfs) from the lands

normally draining to the depression (Sub-Watershed A in Figure 2) and the entire diverted peak discharge for the west side Curtis St. sub-watershed (Sub-Watershed B in Figure 2). Since some discharge from the depression will also occur through driveways and side yards west of 1155 Hearst, the capacity of the system would likely exceed the capacity of the main drain outlet channel. The proposed design would also reduce the severity of flooding on the neighboring properties to the east along Curtis Street.

## 1.0 INTRODUCTION

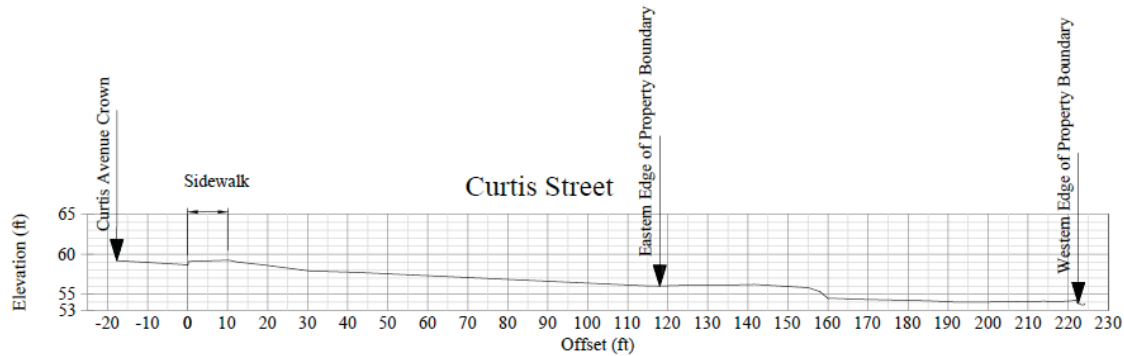
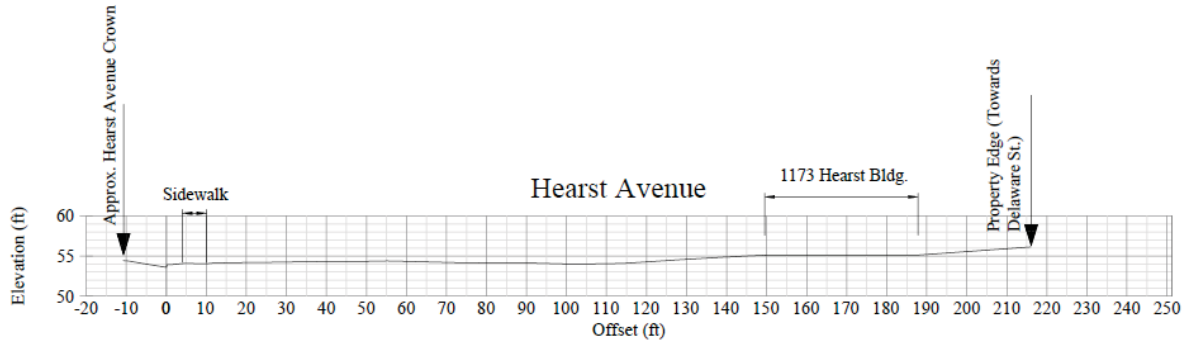
The 0.5-acre Hearst Avenue project (Project) will replace four existing residential buildings (one single family residence at 1173 Hearst and three apartment buildings at 1155, 1157, 1159, 1161, and 1163 Hearst) situated on two adjoining parcels with seven residential buildings on a combined single parcel. The new building array will also include both single family and apartment structures. Plan views of the existing and project building configurations (Devi-Dutta Architects 2015) are attached in the Technical Appendix. In both the existing and project configurations, all but one of the buildings (single family residence at 1173 Hearst) are serviced by a driveway and interior parking lot, set back from Hearst Avenue. As noted on the architectural plans, the project impervious surface area of 10,892 sq. ft. (sf) would increase the existing impervious surface area at the site (10,495 sf) by 1.8 percent. Also, all of the proposed project hardscape features (driveway, parking lot and walkway areas) would consist of either pervious paving or pervious brick pavers. Therefore, the project impervious surface total excludes those areas of the site.

Rhoades Planning Group (RPG) retained Clearwater Hydrology (CH) to assess stormwater drainage and flooding issues affecting the existing properties, and peripherally the adjoining properties along the west sides of Curtis Street, between Hearst Avenue and Delaware Street, and to develop solutions to alleviate the inefficient drainage conditions at the project site.

## 2.0 EXISTING CONDITIONS- HYDROLOGIC SETTING

The project site is located in a topographic depression roughly bounded to the south by Hearst Avenue, to the north by Delaware Street, to the east by Curtis Ave. and to the west by a residential driveway that traverses a cluster of apartment buildings 100-200 ft. west of the site. As shown in Figure 1, the site lies within the Strawberry Creek Watershed and appears to occupy a portion of a former surface tributary of the historical Strawberry Creek channel. It is possible that the depression is a remnant feature of that drainage, since subsidence could not have lowered the land surface relative to the streetside topography to such an extent. Based on integrated topographic mapping prepared for the site and the west side of Curtis Ave. by Moran Engineering and CH (Curtis St. portion), CH prepared the East-West and South-North cross-sections below that help visualize the depression's extents. All surveyed elevations reference the City of Berkeley Datum, which correspond that used for the referenced street monuments.





## 2.1 Hearst Avenue Watershed

CH obtained all available information on the storm drain system tributary to the site drainage outlet at Hearst from the City of Berkeley Department of Public Works (DPW). We also conducted a walking survey of Hearst Avenue east of the Project site to confirm drainage directions, storm drain inlet locations and characteristics, and to assist us in delineating sub-watershed boundaries for areas tributary to the local Hearst St. drainage network.

Based on our review of the City-supplied documentation and on discussions with City staff, we determined that there are no storm drains underlying Hearst Avenue between the west side of Sacramento Avenue and San Pablo Avenue. Following our walking inspection, which was conducted during an early December rainstorm, and our supplemental topographic survey of Curtis Street between Delaware St. and Hearst, we delineated sub-watersheds tributary to the north side of Hearst Ave. These north side Hearst Ave. sub-watersheds are shown in Figure 2.

The north side of Hearst Ave. extending west from southbound Sacramento Avenue and portions of the east and west side properties along the intervening cross-streets (e.g. Short, Acton, Franklin, West, Chestnut and Curtis) drain to the intersection of Hearst and Curtis. Here gutter flow is directed across Curtis in a shallow concrete swale to the lower end of the Curtis Street gutter, then turns south at 90 degrees for a distance of approximately 40 ft. where the gutter again turns 90 degrees to the north side of Hearst.

The supplemental CH topographic survey included Curtis Street between Delaware and Hearst and some of the west side properties whose rear yards adjoin the project site. The objective of that survey was to enable hydraulic modeling of flows converging at the corner of Hearst and Curtis and west to the project site. Anecdotal evidence and an informal discussion with one of the Curtis St. residents indicated that intense rainstorms trigger roadway backwater conditions and the diversion of ponded floodwater into the Curtis St. rear yards via their steeply sloping driveways. These diverted flows join with runoff from within the boundaries of the topographic depression to create nuisance flooding of both the Curtis St. properties and portions of the Project site.

## **2.2 Project Site Drainage**

Surface drainage on the site is generally toward the west-southwest. Local differential settlement of the parking lot appears to have created some local lowering of the grade. However, only minor ponding may occur before accumulating stormwater breaches the parking lot at its southwestern corner (elev. 53.91 ft.) and flows along the side yard to the Hearst Ave. sidewalk. This side yard discharge occurs prior to runoff overtopping the intervening high point along the driveway edge. Once flow reaches the Hearst Ave. gutter, it joins upgradient Hearst Ave. gutter flow and proceeds west to San Pablo Avenue.

As shown in the east-west (Curtis) cross-section above, there is an abrupt 1.0- 2.0 drop in elevation at the fenceline between the back yard at 1173 Hearst and the eastern edge of the adjoining Project parcel (1155-1163 Hearst) and its parking lot. Based on the limited survey data taken at the western edge of the Curtis St. properties, at the corners of two shed buildings, the lowest elevation just east of that fenceline is about 55.28 feet. Land elevations along the bulk of the back yard area at 1173 Hearst average around 56.5 ft., with the lowest breakover point at 56.3 feet. Thus, for the existing site conditions, ponding of up to 1.0 foot may occur during intense storms when Curtis Street stormwater breaches the west side driveways.

## **2.3 Site Soils and Local Groundwater Levels**

A geotechnical assessment has not yet been performed for the property, so the exact nature of the soils underlying the Project site has not been determined. However, the surface soils likely consist of loamy fill imported for residential building pad construction. Given the site's position within the topographic depression and possibly a relic Strawberry Creek tributary alignment, it is possible that the seasonal groundwater table underlying the site could affect local infiltration rates, at least in wet years.

## **2.4 Flooding Characteristics along Northside Hearst Avenue**

### *2.4.1 Overview of HEC-RAS Hydraulic Model Development*

No modeling of floodflow behavior was previously done for the local north side Hearst Avenue surface drainage system. In order to determine the constraints on site stormwater design, CH developed a hydraulic model of that system using the US Army Corps of Engineers' (USACE) HEC-RAS (River Analysis System, Vers. 4.1) computer program. The HEC-RAS model is

capable of computing flood water surface profiles for open channel, culverts, bridge crossings and other hydraulic structures. The program requires input data on design peak flows, channel reach and junction configurations, hydraulic roughness values and channel geometries. A schematic representation of the Hearst Ave. hydraulic model is shown in Figure 3. It consists of two Hearst Ave. gutter reaches (Hearst Reach 1 and Reach 2) and one west side Curtis St. gutter reach (Curtis Reach 1) with a hydraulic junction at the western end of the concrete valley gutter that delivers Hearst gutter flow to the west Curtis St. gutter.

Roughness values for gutter flow were set at 0.013 (Chow 1959) and modeled flow obstructions were limited to assumed tire blockage within the gutter and road edges. Channel cross-sections delineated along the Curtis St. and Hearst Ave. gutter/roadway reaches were extracted from the integrated DTM developed in AutoCAD Civil 3D 2014, which was based on the Moran and CH topographic surveys conducted in 2015. Along the modeled Curtis St. reach, three mid-reach channel cross-sections were incorporated to simulate the potential driveway diversion of stormwater westward to the topographic depression in the Project area. The reach length between these channel cross-sections was set at 60 feet, which was the cumulative width of all driveways determined to drain downgradient to the depression. The middle cross-section (Station 1+85) was configured to incorporate a driveway sloping downward (westward) from the sidewalk to the rear yard level. The entire driveway extents were not surveyed, so the extent of fall is only suggested by the downward sloping portion of the cross-section in the right overbank. The “ineffective flow option” in HEC-RAS was used to negate any floodwater conveyance in the portions of these cross-sections that were at lower elevations than the street level until breakover points along the sidewalk (per the survey data) were reached.

#### *2.4.2 Peak Flow Rates for Model Input*

CH initially used the USGS version of the Rational Method (Rantz 1971) developed for SF Bay Region to compute the peak discharges for the project area sub-watersheds A-J that influence the efficacy of site drainage. We then conducted the same computations using the more recent version of the Rational Method published by the Alameda County Flood Control and Water Conservation District (ACFCWCD), and compared the results of the two versions.

In accordance with the HEC-RAS model configuration shown in Figure 3, upstream sub-watersheds (B-J in Figure 2) drain to the intersection of Hearst Ave. and Curtis Street. Sub-Watersheds F-J were combined into a single sub-watershed to compute the discharge at the head of Hearst Ave. Reach 1 (at the Chestnut/Hearst intersection). The peak discharges computed for Sub-Watersheds D and E were then added to obtain the combined peak discharge at the eastern edge of the Curtis/Hearst intersection. These discharges were maintained across the concrete valley gutter on Curtis St. and then augmented by the Sub-Watershed B discharges at the western end of the swale. These discharges were maintained until the lower end of the modeled Hearst Ave. Reach 2, where the discharge generated along lower Hearst Ave. (Sub-Watershed C) was added.

Similarly, peak discharges were computed for Sub-Watershed A, which comprises the rear yard areas fronting on Delaware St., the Curtis St. rear-yards, the interior of the existing Project site and some additional rear yard area to the west of the Project site. Sub-watershed A drainage



likely departs via several side yards strips along Hearst Avenue. However, a full topographic model for the entire block was not within the scope of this assessment. So the peak discharges computed for this sub-watershed were viewed in conjunction with Curtis St. flow diversions as potential flows to evacuate from the Project area without surface flooding, at least for the 10-yr. design storm. This assumption is a conservative one, since the HEC-RAS modeling showed that less than half of the west-side Curtis Ave. peak discharge and volume would be diverted to Sub-watershed A during the 10-yr. and higher magnitude storm events.

The peak flow computations for all of these sub-watersheds for the 2, 10, 25 and 100-yr. recurrence interval rainstorms are attached in the Technical Appendix, and are summarized in Table 1 below. Estimates computed using both the USGS (Rantz 1971) and the ACFCWCD (2016) versions of the Rational Method are cited in Table 1. One other set of peak discharges was generated using the USGS version, with segregated roadway sub-areas and composite runoff coefficient 'C' values in response to the City's peer review. However, the corresponding composite C values and peak flows computed using the ACFCWCD's Rational Method were substantially higher than the amended USGS values. Thus, the amended USGS values are omitted from Table 1 and the more conservative ACFCWCD values were used for both the HEC-RAS analysis and the site drainage design.

For the initial USGS Rational Method computations, land use within the project area sub-watersheds for purposes of runoff coefficient 'C' value determination was defined as the upper end of the medium density residential classification (7-10 units per acre), which matches the actual residential density of the contributing areas. The associated impervious surface area cited in Rantz (1971) is 25 percent, which is somewhat low for the tributary sub-watersheds. The C values used in deriving the peak flows for this method were in the mid-range for medium density residential use, except for Sub-watershed A which had a C value of 0.45, which is at the low end of the high density use designation (w/ 40% impervious cover).

For the ACFCWCD peak flow computations, the land use classification applied was that of Residential (3600-5000 sf lots) on Hydrologic Soil Group (HSG) 'D' soils, which refer to low permeability soils as per NRCS soil survey classifications. Table 2 of the Hydrology and Hydraulics Manual lists the base runoff coefficient value, which was then adjusted to reflect local ground slopes and a rainfall intensity factor. The composite C value results from the addition of the base C value and the adjustment factor values. Roadway right-of-way sub-areas were treated independently in the same manner and an overall composite C value was determined for each sub-watershed, i.e. for lots and segregated roadways apportioned to each one. Design rainfall intensities at the computed runoff concentration times were initially determined through use of precipitation depth-duration-frequency data in Table 4 of Rantz for the mean annual rainfall of 22 inches (ACFCWCD 2003, in Clean Water Program 2015). Rainfall intensities for the ACFCWCD method for the respective times of concentration and storm recurrence intervals were obtained from Attachment 7 of the Hydrology and Hydraulics Manual. It should be noted that the isohyetal map included in the 2016 Hydrology and Hydraulics Manual is substantially different from the isohyetal map referenced in the Alameda County's C3 stormwater guidelines in the Berkeley flatlands. The mean annual rainfall value for the project area watersheds determined using the Manual's map is more than an inch higher than That indicated by the C3 map.

Design peak discharges computed for the two versions of the Rational Method for the 2-yr, 10-yr, 25-yr and 100-yr rainstorms are summarized below in Table 1:

**Table 1: Peak Discharge Rates for Modeled Hearst Ave. Storm Flows**

Sub-Watershed	Area, ac.	Peak Discharges (Rantz/Alameda County), cfs			
		2-yr	10-yr	25-yr	100-yr
A	2.35	0.99/1.36	1.88/2.52	2.97/3.11	3.41/4.06
B	0.60	0.26/0.65	0.49/1.13	1.07/1.40	1.53/1.76
C	0.25	0.07/0.33	0.22/0.57	0.35/0.69	0.50/0.86
D	1.16	0.50/1.11	0.94/2.00	1.50/2.49	2.10/3.17
E	1.10	0.50/1.07	0.94/1.91	1.50/2.38	2.13/3.02
F-J	12.70	4.47/9.08	8.65/16.10	13.50/19.79	19.04/25.17

*2.4.3 HEC-RAS Flood Modeling: Results*

HEC-RAS model output for the 2-yr. to 100-yr. recurrence interval storm flows is detailed in the Technical Appendix and summarized in Figures 4- 7. The salient points drawn from the modeling were:

- Hydraulic backwater conditions occur in the vicinity of the junction of the west side Curtis St. gutter and the concrete swale that crosses Curtis St., where the two channels meet at 90 degrees, which is an ineffective junction angle resulting in locally high energy losses. In addition, the on-contour Curtis St. gutter maintains a gentler slope than the Hearst Ave. gutter segments, which outside of the intersection, roughly follow the general terrain slope.
- The severity of the backwater influence on flow depths along the Curtis St. west side gutter increases with increasing storm recurrence interval. At roughly mid-block (Station 1+85), ponded stormwater for storms greater than approximately the 5-yr. storm, breach the sidewalk elevation and divert down driveways of those residences to the topographic depression and the Project site (see Figure 7). Even at the 2-yr. peak discharge, the floodwater depth increases from 0.24 ft. at Station 1+85 to 1.54 ft. at Station 0+12 (12 ft. upstream/north of the concrete swale and the junction with the Hearst Ave. gutter flow). This suggests that even at the 2-yr. peak discharge, the flood water surface will exceed the sidewalk level along the lower (southern) segment of Curtis and divert stormwater toward the depression. The volume of diverted flow reaching the topographic depression continues to increase for higher recurrence interval storm events. Note that the HEC-RAS model extends the ends of the channel cross-sections vertically where their extent is not sufficient to contain those flows. Thus, the depths of weir-type flow over the sidewalk may be less than indicated in the model. However, the overflow simulated in the model would occur regardless of the lateral cross-section extents.
- While stormwater storage levels and volumes were not computed for the Curtis St. back yards and the rest of the topographic depression extending through the Project site, the local topography surveyed along the Project’s eastern boundary indicates that portions of

the west side Curtis Street properties flood to depths of up to 1.0 foot during most intense rainstorms. Above this depth, surface drainage occurs westward onto the Project site and then toward Hearst Avenue.

- Downstream of the Curtis St. intersection, flows are contained within the roadway gutter and portions of the driveway outlets (below the sidewalk level) even during the 100-yr. storm. For the 10-yr. storm, the depth of flow in the vicinity of the main Project driveway outlet (Sta. 0+48.26) was computed at roughly 0.46 ft., which is slightly above the top of curb. This is largely due to the substantial gutter slope along this lower portion of the modeled reach, which generates critical to supercritical flow conditions and lower flow depths.

### 3.0 PROJECT DRAINAGE AND FLOODING MITIGATION

As outlined above, for even moderately severe rainstorms, the Project site drains via overland flow by both the westerly side yard area and eventually via the main driveway. The absence of a gravity storm drain under Hearst Ave. to accept piped flow from the Project area complicates the stormwater design for the proposed Project. In addition, raising the site grade could potentially exacerbate flooding along the west side Curtis Street properties that form the eastern portion of the topographic depression.

CH investigated two options for mitigating the undesirable storm drainage and flooding conditions within the Project site and its area of influence. Accordingly, the main objective was to devise passive measures that would drain the site efficiently during the 10-yr. design storm, while also improving the flooding conditions on the west side Curtis St. properties, or at a minimum, not worsen the existing conditions. The two options analyzed were:

- 1) Install small diameter sub-drains that would drain the Project site and discharge evacuated stormwater to the Hearst Ave. north gutter;
- 2) Install a surface channel, embedded in the driveway, or possibly the westernmost side yard, that would discharge evacuated stormwater to the Hearst gutter.

A third possible option, installation of subgrade detention facilities (e.g. pipe array) was not investigated in depth due to its active management requirement. Any such facility would require pumping to evacuate accumulated stormwater. Furthermore, due to the tendency of electrical service to be disrupted during severe storm events, a backup emergency generator would also be required. Thus, this option would represent a fall-back scenario if neither of the first two options were determined to be feasible.

As cited in Table 1 above, the combined 10-yr. peak flow for Sub-Watersheds A (topographic depression) and B (west side Curtis St.) is 3.65 cfs. This assumes that the bulk of the flow from the west-side Curtis St. sub-watershed (B) is diverted from Curtis St. to the depression during backwater flood conditions. Similarly, the combined 25-yr. peak flow for Sub-Watersheds A and B totals 4.51 cfs.



CH computed the pipe discharge capacity for a set of two 4-inch and 6-inch diameter sub-drains, given the available subgrade slopes between the eastern Project boundary and the Hearst Ave. gutter, given the 10-yr. hydraulic grade line (HGL) modeled by HEC-RAS.

Two issues were apparent for either of the pipe scenarios:

- a) at best, twin 6-inch, smooth walled pipes would discharge 1.18 cfs at the available gradient of 0.8%, and,
- b) there would be insufficient clearance for these pipes between the 10-yr. HGL and the sidewalk elevations along Hearst.

The 4-inch pipes could physically fit under the sidewalk, but they only delivered 0.4 cfs, so they were insufficient to mitigate the site flooding conditions.

The channel option was analyzed for various configurations, including that of a swale in gravel or brick pavers. Any swale configuration was deemed problematic due to the spatial requirements forced by transition side slopes at 2:1 or milder. If such a channel were embedded in the entrance driveway, errant tires would eventually breakdown its structure and that of the driveway pavement treads. So the configuration that provided sufficient stormwater conveyance capacity and was technically feasible to construct was a 2.5 ft.-wide rectangular channel with a concrete bottom and an inverted, U-shaped steel channel 0.4 ft. in height fit over the channel bottom. The sides of the steel channel could be solid, while the top would be integrated with a steel grate. The steel would be sufficiently thick to withstand the required vehicular loading for the Project. The rectangular channel at a minimum slope of 0.8 percent would convey the 10-yr. post-project design discharge at a flow depth of 0.31 foot. This would be sufficient to evacuate in excess of the 10-yr. to 25-yr. storm peak discharge entering the depression. As previously noted, the actual contribution of diverted Sub-watershed B discharge entering the Sub-watershed A depression would be less than assumed. Most of that Curtis Ave. west-side discharge would proceed toward the intersection at Hearst.

A plan view of the proposed rectangular channel alignment is shown in Figure 8. Also noted on that figure is a connecting grassed swale that would extend eastward from the northern edge of the new parking lot to the eastern property line. This swale would have a minimum depth of 0.3 ft., which at that point along the property line would give it an invert elevation of approximately 55.8 feet. According to the Moran project topo data, the lowest surveyed rear yard elevation at the property line was 55.28 feet. As noted previously, the lowest breakover point in the back yard of 1173 Hearst is about 56.3 feet. Thus, the proposed grass swale depicted on Figure 8 would allow some drainage of floodwater to occur 0.5 ft. lower than it does under the current conditions. This should reduce the severity of flooding along the west side Curtis St. properties, although it will not alleviate the condition entirely. Figures 9 and 10 depict the longitudinal profile and typical cross-sections for the design solution shown in Figure 8.

An alternative alignment would likely be feasible for the passive drainage system depicted in Figures 8-10. The east-west gravel swale could be extended to a point just inside the western Project site boundary. The rectangular channel could then be constructed along the western

property line, where the available clearance is about 3.5 feet. Choice of this alternative alignment would negate the need for the grated channel to traverse the driveway and parking lot. It could also improve the outlet conditions, since the north Hearst Ave. gutter elevation decreases quickly relative to the adjoining property elevations with distance downstream of the driveway.

For either the investigated option in Figure 8 or the alternative alignment, the channel outlet under the Hearst Ave. sidewalk would require some additional engineering to ensure the design is compatible with the sidewalk crossing. The sidewalk grade at the driveway crossing (elev.= 54.0 ft.) may need to be raised by 0.3-0.4 ft. to facilitate rectangular outlet channel discharge that also clear the 10-yr. HGL in the gutter (elev.=54.15 ft.). Use of the alternative side-yard alignment could eliminate the complexity of the outlet relative to clearing the 10-yr. HGL in the gutter.

#### **4.0 PROJECT PEAK FLOW RATES**

Aside from the stormwater evacuation measures, most if not all development projects in the City of Berkeley are required to mitigate for any increases in peak flow rates due to increases in impervious surface coverage. For the current design, the increase in impervious surface coverage would be 1.8%. CH used the ACFCWCD Rational Method to compute pre- and post-project peak flow rates for the Project site watershed (i.e. the site area only) generated during the 10-yr. and 100-yr. design rainstorms. While the nature of the residential development would remain unchanged (high density residential) and thus the runoff coefficient, 'C' value, would remain essentially the same, CH did compute pre- and post-project peak discharges for the two storm events. The 100-yr. peak discharges remained unchanged at 1.25 cfs, while the 10-yr. peak discharge increased from 0.81 to 0.82 cfs for the 10-yr. storm event.

Applying these peak discharges to a triangular synthetic hydrograph geometry formulated by the Soil Conservation Service (now NRCS), the volumetric storage computed to mitigate for the slight increase in peak flow rates for the 10-yr. event was 5.6 cubic feet, or 116 gallons. This amount of storage can easily be provided using a single rain cistern attached to the apartment building roof gutter. Another alternative would be to reduce the Project's impervious area to match that of the existing site condition. According to the Alameda County C3 guidelines for stormwater treatment (2015), mitigation for hydromodification at development sites is only required if the overall project area totals one acre or more. However, the CEQA assessment is currently underway and the City could decide to attach a peak flow mitigation to the project conditions. Regardless, either the cistern or a minor reduction in the project impervious surface area would satisfy any detention storage requirement.

#### **5.0 PROJECT CLEAN WATER C3 PROGRAM REQUIREMENTS**

According to the Alameda County C3 Guidelines, all development projects that create and/or replace 10,000 square ft. or more of impervious surface must comply with Provision C.3 of the Municipal Regional Stormwater Permit (MRP) adopted by the RWQCB in 2009 (Clean Water Program 2015). In conjunction with that provision, the guidelines require that development projects provide some combination of stormwater controls including:

- Site design measures
- Source control measures, and
- Low impact development (LID) treatment measures, e.g. evapotranspiration, infiltration and/or rainwater harvesting and reuse.

For the Project site, it is unclear whether the seasonal groundwater table is low enough to support infiltration measures such as rain gardens, or “self-retaining” (i.e. ponding) areas. So, biotreatment systems are likely the best fit to the site conditions. Flow-through bioretention planters (see Technical Appendix for typical planter schematic) can be located adjacent to buildings such that they capture and filter roof runoff before being discharged to the site drainageways. As a conservative estimate, the surface area of these planter facilities can be set at 4 percent of the total impervious footprint, or 436 sf. For a final design, the surface area can be reduced somewhat when the volumetric storage within each bioretention planter is considered. For the preliminary 436 sf requirement, 218 lineal ft. of 2 ft.-wide planters would be required. The requisite analysis and design of these facilities was not within the scope of work for this drainage and flooding assessment.



## 6.0 REFERENCES

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Jacob, Melinda

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**From:** Zoning Adjustments Board (ZAB)  
**Subject:** FW: Project at 155-1173 Hearst

**From:** tracey emerson [mailto:emersontracey2003@yahoo.com]  
**Sent:** Wednesday, September 20, 2017 8:55 PM  
**To:** Zoning Adjustments Board (ZAB) <Planningzab@cityofberkeley.info>  
**Subject:** Project at 155-1173 Hearst

To the members of the Zoning Board,

I am writing to you as a very concerned tenant from 1157 Hearst Ave. I am requesting that the proposed condominium project at the 1155-1173 Hearst Avenue in Berkeley be denied. As a public school teacher, I rely on my current rent control situation. For the last eight years, I have been able to live in beautiful Berkeley and serve the East Bay community.

Given the current lack of affordable housing in Berkeley and the Bay Area, if displaced, I will not be able to find comparable housing. I will have to leave my beloved neighborhood and quite possibly the school where I've been teaching for almost a decade, building relationships, and helping families in East Oakland. For me, it's not an issue of how large or how much they're going to build. Whether or not this project gets approved will greatly impact my ability to continue living and working in the Bay Area.

It has been obvious that the current owners care very little about our community and the tenants living in this small 6 apartment village for so long. They have proven to be dishonest, absentee property owners. My rent checks "mysteriously" disappeared and needed to be reissued on several occasions. My bathroom sink was clogged for over a year, despite numerous emails, phone calls, and visits from incompetent maintenance men. After the bathtub clogged, they finally sent a certified professional plumber who replaced the pipes.

Please consider the effects this proposed project will have on the current tenants and surrounding community. Everyone will be affected negatively, except those making a profit. Everyone else loses if this project is approved. In my case, other than me, it may be the community and the children I work so hard to educate and positively impact.

Thank you,  
Tracey Emerson

Jacob, Melinda

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**From:** Zoning Adjustments Board (ZAB)  
**Subject:** FW: Zoning application # ZP2016-0028.

**From:** Rolf Williams [mailto:rolf.williams@gmail.com]  
**Sent:** Tuesday, September 12, 2017 9:53 AM  
**To:** Zoning Adjustments Board (ZAB) <Planningzab@cityofberkeley.info>  
**Subject:** Zoning application # ZP2016-0028.

Hello city of Berkeley ZAB,

I wanted to express my concern with the proposed condo project at 1145-57 Hearst Avenue, zoning application # ZP2016-0028. I oppose this project in its current form for three primary reasons:

1. This project will displace several exist, long-term renters living in rent-controlled housing. The folks renting the existing units have been told that they will be able to stay, but rents will rise. Once this building is started, I contend that that those units will be converted to market rate condos as soon as Mr. Rhodes can, one way or another, make it happen.

The city is getting a raw deal on the affordable housing this project is going to provide. Only two units, three bedrooms in total, located above a carport will be reserved as low income. And for that, the project is awarded three additional market rate condo units -- a total of 5 units above the intended zoning for this area. It hardly seems worth it to the city – it surely is not worth it to the neighbors or existing rent control tenants.

2. The project does not provide enough off-street parking. Mr. Rhodes claims to be providing a space for every unit, but that is not true. Two of the spaces are for the sole use of the single family home on the property, provide nose to tail parking, and are located behind a garage door. The spaces in the open parking area are super small; one of which, under the car port has a an obstruction and seems unusable by an average sized car.

Over the past several years, the development of large multi-unit buildings nearby, the easing of regulation allowing for more backyard units, and the advent of Airbnb have put considerable pressure on parking availability in our already very dense neighborhood. Today, if we come home past seven or eight PM, it is unlikely we will find a spot on our block. We like living in Berkeley, but we just don't feel that safe walking down Delaware alone in the dark. I know you probably don't like to hear this, but it really is becoming a safety issue.

As much as I wish it were true, people are not getting out of their cars. In fact, I think that the availability of moderately priced hybrid and electric vehicles is easing the guilt of our greener citizens, putting them back behind the wheel. I think that there are more cars on the street than ever. Many of the people who live in Berkeley do not work in the east bay—so they drive. The affluent folks who buy \$700,000+ two bedroom, two bath condos will likely have one or two cars. We must insist on sufficient off-street parking; considering that this project is replacing twelve bedrooms with thirty-five bedrooms, one spot per unit will not cut it.

3. Flooding in our back yards is a real problem and there is little evidence that this project is taking the seasonal flooding problem seriously and addressing it accordingly. If we do not act diligently now ensure our proproperties are safeguarded from this detriment, we may find ourselves kneed deep in water with little



recourse. Independent review is warranted here especially since Mr. Rhodes is not always forthcoming with the truth.

Please insist that Mr. Rhodes' rethink this project to keep it in scale with the rest of the neighborhood. When he was asked if after hearing the neighbors' concerns, he would considered something more livable, for the neighbors and the future tenants, Mark Rhodes said that he refused to consider any changes. And true to that sentiment we saw the same plans that he showed the neighbors at the start of this process, over a year ago.

Make no mistake this project is about Mark Rhodes maximizing profits for himself and his out-of-town investors, and is unconcerned about what will happen to the neighborhood as a result of this gross over building. He has no qualms about misleading or straight out lying to anyone who gets in his way. I do not think that he is the sort of developer that makes a good partner for the city of Berkeley.

Too tall, too many units on the site, not enough parking, displaces existing affordable housing, and very ugly.

Best Regards,

Rolf Williams

1814 Curtis St.

**Mendez, Leslie**

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**From:** teal major <tealmajor@gmail.com>  
**Sent:** Thursday, August 24, 2017 3:03 PM  
**To:** Mendez, Leslie  
**Subject:** More building on Curtis Street

Hello Zab Members,

Below is an item from BUSD. A housing development one block from the proposed 1155-1173 Hearst is being considered. West Berkeley can't be expected to bear the brunt of all development.

Hello Neighbors of Berkeley Adult School.

Last night's BUSD Board meeting included a Discussion Item (15.1) about the district building rental housing for BUSD employees. District staff presented the board four possibilities of district properties that are large enough to accommodate multifamily housing development and that are currently zoned to permit such development. These were offered as illustrative examples with no intent to recommend any of these sites. One of the four sites given as illustration was the Berkeley Adult School (sometimes referred to as the "Franklin site") San Pablo Street parking lot. As the district continues to investigate employee housing, other locations could be studied as well.

BUSD staff will come to the Board again in December. Prior to that, staff will be doing surveys of employees and assembling information about possible funding sources. I would characterize the board's attitude toward providing employee housing as curious at this point; actions are exploratory.

If you are interested in hearing the Board meeting discussion, it is available here:

<https://www.youtube.com/watch?v=w6EkHuX3fFw>

... beginning at time point [1:18:00](#) (approx.). The packet for last night's Board meeting is found here:

<http://agendaonline.net/public/Meeting.aspx?AgencyID=232&MeetingID=46943&AgencyTypeID=1&IsArchived=False>

Thank you for your interest in Berkeley Adult School and BUSD. Please let me know if I can help you in any way.

Warm regards,

Tom Reid  
BAS Principal  
[thomasreid@berkeley.net](mailto:thomasreid@berkeley.net)  
[510-644-8960](tel:510-644-8960)

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Posted

Sent from my iPhone

Jacob, Melinda

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**From:** Zoning Adjustments Board (ZAB)  
**Subject:** FW: permit number ZP2016-0028 at address 1155-1173 Hearst Avenue  
**Attachments:** Terraphase Review of Balance Hydrologics Peer Review Report\_071017.pdf; 2017-03-16\_RPT\_PeerReview\_Hydrology\_Balance Hydrologics\_1155-75 Hearst.pdf

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

From: Dawn Marie Wadle [mailto:dwadix@earthlink.net]  
Sent: Thursday, August 17, 2017 8:36 PM  
To: Zoning Adjustments Board (ZAB) <Planningzab@cityofberkeley.info>  
Cc: Maio, Linda <LMaio@cityofberkeley.info>; Mendez, Leslie <LMendez@cityofberkeley.info>  
Subject: permit number ZP2016-0028 at address 1155-1173 Hearst Avenue

Zoning Adjustments Board,

I am a neighbor of the proposed Hearst Condos, living at 1828 Curtis Street.

I am concerned about the proposed development.

I have attended a meeting with the developer, Mark Rhoades, and had email contact with him, though was not able to attend the most recent meeting he held.

Here's some info you can include in your email to the zoning adjustments board (ZAB). You can mention that you were at the informational meeting tonight with Mark Rhoades or that you were informed about the meeting by a neighbor. For those who don't know, this is an 18 unit infill condo development that is unpopular with both neighbors and city planners. We CAN make a difference if we speak up.

Please reference ; refer to "Hearst Condos" in your email. Send to:

My primary concerns drainage. The hydrology report presented by Mr. Rhoades is not adequate. Neighbors have paid for two independent peer reviews, both of which claim the report is inadequate. This area frequently floods under current conditions. It is not clear that the area can tolerate the increase in ground cover and mass with the creek bed that runs through the property and the current drainage problems.

My secondary concern is the loss of 6 currently occupied rent controlled units. We as neighbors have consulted the rent board, and it is clear that Mr. Rhoades would not have to offer the new units at the current rates. It is not acceptable to offer financial benefits to the developer (density bonuses, concessions and waivers) for creating housing that is less affordable than the housing he eliminated.

My third concern is that the addition of 18 condo with 35 bedrooms and 17 parking lots in place of 7 units and 12 bedrooms in a neighborhood of 1-2 story single family homes is not appropriate density.

I have other concerns: inadequate parking in area with already inadequate parking, tall buildings too close to current properties, loss of a beautiful garden. I am not actually asking you to consider those, however, because I understand that we have a housing crisis in Berkeley and the Bay Area. Flooding yards and homes and displacing current renters, however, are just not acceptable.

Dawn Marie Wadle  
1828 Curtis Street





## TECHNICAL MEMORANDUM

To:  
Rain Sussman, Guy Sussman  
1824 Curtis Street  
Berkeley, CA 94702

From:  
Lucas W. Paz, Ph.D., CPESC, QSD  
Terraphase Engineering, Inc.

Date:  
July 7, 2017

Project Number:  
0132.001.001

Subject: Preliminary review and comments on the Third-Party Hydrologic Evaluation prepared by Balance Hydrologics for the 1161-1173 Hearst Avenue, Berkeley, California project

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### Introduction

Terraphase Engineering Inc. (Terraphase) has prepared this technical memorandum based on our review of the March 16, 2017 Stormwater and Flooding Assessment Peer Review prepared by Balance Hydrologics, Inc. (Balance) for the Hearst Avenue Project 1161-1173 Hearst Avenue, Berkeley, California. On behalf of the City of Berkeley, Balance conducted a technical review of the "Stormwater and Flooding Assessment and Mitigation Design for the Hearst Avenue Project, 1161 – 1173 Hearst Avenue, Berkeley, CA" prepared by Clearwater Hydrology (Clearwater) for the developer and dated January 7, 2016. Terraphase generally agrees with the findings and appreciates the quality of the technical peer review conducted by Balance Hydrologics regarding the proposed 1161-1173 Hearst Avenue Project. The Peer Review is well-supported, clearly written, and we agree with each of the review findings. However, Terraphase believes further issues of concern require attention in addition to those items identified by Balance. Terraphase has summarized the findings of Balance in the first paragraph of each section below. Following each Balance summary, Terraphase has provided additional commentary as well as highlighting previous Terraphase findings that have yet to be resolved by the developer. We have added questions, concerns or suggestions to this review where we feel additional information or analysis is needed.

### Review Comments/ Findings

#### 1. Soil Characteristics and Depth to Groundwater

Section 2.3 of the Clearwater Report states that information on soil properties and depth to groundwater had not been collected. In their review of the Clearwater Report, Balance states that information on soil properties and depth to groundwater for the site will be important in the ultimate design of the site facilities. The Clearwater report should clearly state that published soil survey data for the site identifies the soils as majority Urban Land – Tierra

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Complex, classified as Hydrologic Soil Group D, which has the highest runoff potential. If seasonal high groundwater data is not available, then the drainage design should assume that high groundwater conditions will prevail.

Additionally, Terraphase believes that the uncertainty of the seasonal groundwater table, along with the other concerns identified in the remainder of this review, warrant a geotechnical and groundwater evaluation for the site. Based on historical maps, a segment of a primary tributary to Strawberry Creek previously extended downstream across the 1155-1163 Hearst properties. Carole Schemmerling of the Urban Creeks Council determined in 2002 that the north branch of Strawberry Creek was filled with soil and debris prior to development. The area is also classified as "filled wetlands" and as "seismically unstable and subject to liquefaction." There is no record of properly engineered fill or a culvert or storm drain being installed. Therefore, water comes up to the surface during storm conditions so that the subsurface becomes saturated.

Terraphase believes that a geotechnical and groundwater evaluation is necessary to determine subsurface drainage conditions so that existing groundwater release preferential pathways are not impacted during the construction project. The geotechnical and groundwater evaluation would also allow for proper evaluation of the surface and subsurface conditions of the proposed site and the impacts of development on the surrounding properties.

## 2. Design Guidance

The Clearwater Report relies predominantly on generalized urban drainage design parameters from the U.S. Geological Survey Open-File Report by Rantz in 1971. While the 1971 Rantz based Rational Method is a reasonable resource, Terraphase and Balance Hydrologics are concerned that the climatic/rainfall data and associated flow rates based on pre-1971 data are insufficient. This concern is based on the fact that the last 44+ years of rainfall data was not utilized in this model and that changing climate projections indicate extreme events are now more likely to occur.

Balance suggested use of The Alameda County Flood Control and Water Conservation District (ACFC) Hydrology and Hydraulics Manual instead of the Rantz based Rational Method. The ACFC manual provides a more detailed and current calculation framework for design guidance than the USGS Survey. The ACFC Hydrology and Hydraulics Manual is missing specific information about the City of Berkeley, however, Balance and Terraphase agree that this would be a better model to use for the purposes of this survey.

- a. *Runoff Coefficients*: Balance mentioned that further evaluation of the runoff coefficients from Rantz compared to those used by ACFC reveal that the runoff coefficients for the ACFC will be higher. This indicates a higher peak flow potential than currently presented in the Clearwater Report.

Without a full topographic model, Terraphase is unsure that the amount of stormwater estimated to impact the site and surrounding properties is accurately quantified. A December 2015 rainfall event generated approximately 1.4" of rain which produced significant flooding based on observations and video footage. This video footage suggests that portions of Hearst Street stormwater flow does reach the sidewalk level, contrary to

the following statement in section 2.4.3 of the Clearwater Report: "Downstream of the Curtis St. intersection, flows are contained within the roadway gutter and portions of the driveway outlets (below the sidewalk level) even during the 100-yr. storm." The Clearwater Report also does not clarify how the peak discharges from the gutters were added to watershed A and Table 1 in the Clearwater Report is missing peak discharge rates for Sub-Watershed A.

- b. *Impervious Cover*: The current calculations use land use classifications that significantly underestimate the actual impervious cover. Balance recommends a composite runoff coefficient approach.

Terraphase agrees with the above findings provided by Balance and is also concerned about assumptions regarding the proposed mix of impervious and pervious cover and associated assumptions as described further under section 4.0 Project Drainage.

- c. *Time of Concentration*: According to Balance, the time of Concentration calculations appear to be inconsistent for the project site. Calculations should be reviewed.

Terraphase agrees with the above findings provided by Balance.

- d. *Rainfall Intensity*: Rainfall intensity for a given time of concentration for the ACFC are consistently higher (at least 30%) than those used in the Rantz model.

Furthermore, Terraphase believes that the changing climate projections, which indicate extreme events are more likely in the future, should be considered. As such, a more conservative factor of safety should be applied by designing for a larger 100-yr storm event capacity and more conservative BMPs should be designed for future drainage element on the project site.

### 3. HEC-RAS Modeling and overflow from Curtis Street

The Clearwater Report states that only stormwater flows through the yards along Curtis Street will reach the east side of the project and it is a relatively low flow rate. However, the completed model has information that predicts flow depths and overflow rates could be quite large, which the Clearwater report does not address. The Clearwater report also does not clarify why backflows from upper Hearst Avenue are not to be expected.

Terraphase agrees with the above findings provided by Balance and further believes that the Clearwater Report should clarify the following items: 1). How the model or other calculations account for the surface flow from watershed A to B. Clearwater should also provide additional information for Sub watershed B flow conditions. 2). How the model explicitly accounts for the flows and routes flows diverted from the Curtis St. reach into the topographic depression of the project area. 3). How the model accounts for contributions/connections from the Curtis street back yard areas.

The subsurface hydrologic conditions mentioned in the Clearwater report (and described in section 1 of this review) suggest a shallow groundwater table in the vicinity of the project site. A rising water table in the winter months due to stormwater infiltration into the ground, which



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recharges the shallow water table. The rising water table eventually comes in contact with the surface soils and produces ponding in the low-lying areas of the site so that the groundwater is elevated near the surface. Therefore, saturated soils along with high groundwater conditions increases runoff rates and the amount of ponding. Compaction, foundation installation, as well as other construction activity would modify and impede subsurface flow levels, pathways and/or direction, which could exacerbate subsurface conditions and worsen existing flooding.

#### 4. Project Drainage

Section 3 of the Clearwater Report and the Appendix present options for drainage to Hearst Avenue through a grated rectangular channel and a gravel swale. Site topography constrains the use of piped drainage. Low roughness values in the Manning's roughness coefficient need to be justified or calculations should be updated to use more conservative roughness values.

Terraphase agrees with the above findings provided by Balance and with Clearwater that raising the site grade would cause significant impacts to the site. However, new impervious surfaces and foundations also would exacerbate flooding conditions. Clearwater investigated two options for mitigating storm drainage and flooding conditions within the project site and area of influence. Terraphase does not believe that either or both options presented by Clearwater would effectively mitigate storm drainage and flooding conditions. Terraphase believes that the third option that was presented by Clearwater and subsequently dismissed, should still be considered, as well as a combined system, or treatment train. If everything is routed to the proposed channel, Clearwater will need to clarify how the channel will collect flow from the adjacent properties. The design could be expanded to include a collection trench or sub-drain behind the houses to direct water into the proposed rectangular channel.

Drainage conditions and areas assessed by Clearwater are appropriate, however, we question the contributing watershed areas that generate flows along the Curtis Street gutter. In their report Clearwater states the following "Since some discharge from the depression will also occur through driveways and side yards west of 1155 Hearst, the capacity of the system would likely be greater than that of a 25-yr. storm. The proposed design would also reduce the severity of flooding on the neighboring properties to the east along Curtis Street." Terraphase believes that the language in the first sentence is unclear. Clearwater should clarify whether they are stating that the discharge from the depression is coming into the driveways and side yards, or if it is leaving the driveways and side yards, and if it is leaving the driveways and side yards, where is it going? Additionally, there is evidence to suggest that a larger area may contribute than just watersheds A and B. Terraphase is concerned that the current limited proposed drainage improvements may not significantly improve current flooding conditions for the adjacent properties along Curtis Street, therefore further exploration and clarification is needed from Clearwater.

#### 5. Changes in Peak Flow

The Clearwater report considers impaired drainage along the eastern boundary but concludes that there will be no increase in peak discharge from the site. The following should be considered:

- a. *Loss of De Facto Detention storage:* the Clearwater Report states that site grading and drainage enhancements mean that flooding depths on adjacent properties may be lowered as much as 6 inches. This means an increased flow rate to Hearst and potentially to neighboring properties. The report needs to address how reduced flooding depths and more efficient on-site conveyance can be accomplished w/o increasing peak flow rates to Hearst and/or how any increases are acceptable in the downstream drainage system.

Terraphase agrees with the above findings provided by Balance. Additionally, the language in the Clearwater report is unclear about discharge through driveways and side yards of Hearst and the proposed design. Due to a combination of existing conditions, there is a concern that the limited proposed drainage features may not significantly alleviate the current ponding experienced. Terraphase also agrees with section 3 of the Clearwater Report that raising the site grade would cause significant impacts to the site. However, new impervious surfaces and foundations could exacerbate current flooding conditions.

- b. *Post Project Impervious Cover:* The Clearwater Report states that a minimal increase in peak flow would result due to a small (1.8%) increase in impervious cover compared to pre-project conditions. This value does not include contribution from driveways, parking areas and walkways which are constructed of pervious paving or brick pavers. Pervious surface treatments are improvements from traditional but still offer low soil permeability and potential high ground levels. Therefore, those areas should not be discounted entirely for peak flow calculations.

Terraphase agrees with the findings provided by Balance that the proposed development will increase the quantity of impervious surfaces by more than 1.8%. All pervious areas should not be considered equivalent. The existing vegetated area allows for attenuation and the temporary detention of stormwater flows so that it can slowly infiltrate and recharge the groundwater beneath the surface. However, the proposed pervious paving or pervious brick paver areas would have reduced infiltration capacity when compared to the existing open space vegetated area.

## 6. C.3 Compliance

The bioretention planters proposed in the Clearwater report are an excellent approach to meet the pertinent requirements for roof runoff. However, per C.3 Guidance, in this instance, pervious pavement surfaces can only be considered self-treating if underlain by a course of sub-grade material sufficient to store the required treatment volume. The Clearwater report should be revised to acknowledge this and confirm that the under-course can be actively drained out to Hearst Avenue.

Terraphase agrees with the above findings provided by Balance and, additionally, would like to highlight the City of Berkeley C3 program requirements. According to the City of Berkeley C.3.i Stormwater Requirements Checklist (C.3.i Checklist), "Per the MRP, pavement that meets the following definition of pervious pavement is NOT an impervious surface. Pervious pavement is defined as pavement that stores and infiltrates rainfall at a rate equal to immediately surrounding unpaved, landscaped areas, or that stores and infiltrates the rainfall runoff volume described in Provision C.3.d." Terraphase does not believe that pervious paving or pervious brick

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pavers would provide the same level of permeability as the existing loamy soil open space vegetated area in the north eastern portion of the development area. This existing vegetated area allows for attenuation and the temporary detention of stormwater flows so that it can slowly infiltrate and recharge the groundwater beneath the surface. All pervious areas should not be considered equivalent, the range of permeability will depend on the actual product or design and can vary greatly. The proposed pervious paving or pervious brick paver areas would have reduced infiltration capacity when compared to the existing open space vegetated area. If permeable pavers are determined as the best available technology for use on this project, Clearwater must consider that the permeable pavers will clog and provide reduced holding capacity over time and therefore will need ongoing maintenance. Additionally, the project impervious surface area listed in the C.3.i Stormwater Requirements checklist are inconsistent with the impervious surface area listed in the Clearwater drainage report.

**7. Additional Comments for Clearwater Hydrology pertaining to the Stormwater and Flooding Assessment and Mitigation Design for the Hearst Avenue Project, 1161 – 1173 Hearst Avenue, Berkeley, CA:**

- a. The referenced estimated peak discharge rates should be provided in the Executive Summary and the data should be cross referenced in table 1 of the Clearwater Report.
- b. A North Arrow and label for Curtis Street should be added to all figures for reference.
- c. Clearwater should delineate the topographic depression area (a rough outline) on the figures.
- d. The ends of the cross sections in section 2 need to be labeled east/west and north/south. The headings and titles of cross sections need to be labeled as well: it appears that Hearst Ave and Curtis Street should be switched.
- e. In Section 2.2, Clearwater should clarify that Curtis Street runs north to south and the units should be labeled in feet.
- f. Clearwater Hydrology should provide a more detailed evaluation of the proposed site current conditions vs. proposed.
- g. The executive summary of the Clearwater Report states “the flooding conditions that occur along the neighboring Curtis St. properties for rainstorms exceeding roughly the 5-yr. recurrence interval.” The references to peak discharge rates should remain consistent so that both say a 2-yr. storm event will produce flood conditions on Curtis street.



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## Closing

We are grateful for the opportunity to offer our services on this important project. Should you have any questions or comments regarding this submittal, please contact the undersigned at (510) 645-1850 or by e-mail at [Lucas.Paz@terraphase.com](mailto:Lucas.Paz@terraphase.com).

Sincerely,

For Terraphase Engineering, Inc.



Lucas W. Paz, PhD, CPESC, QSD  
Associate Hydrologist



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March 16, 2017

Ms. Leslie Mendez  
Land Use Planning Division  
City of Berkeley  
1947 Center Street, 3<sup>rd</sup> Floor  
Berkeley, California 94704

**RE: Peer Review of the Stormwater and Flooding Assessment  
for the Hearst Avenue Project, City of Berkeley**

Dear Ms. Mendez:

Thank you again for contacting Balance Hydrologics regarding peer review of the drainage analyses completed for the proposed Hearst Avenue Project (“Project”). Specifically, you have requested a review of the document titled “Stormwater and Flooding Assessment and Mitigation Design for the Hearst Avenue Project, 1161 – 1173 Hearst Avenue, Berkeley, CA” prepared by Clearwater Hydrology and dated January 7, 2016. I have completed my review of the Project document (herein, “report”), and this letter summarizes my observations and comments related to the information presented therein.

Overall, the document presents a good discussion and supporting analyses related to the stormwater management issues pertinent to the site in question. Perhaps most notably, it acknowledges the impaired drainage conditions at the site and neighboring properties, such as flooding at the back of adjacent lots off Curtis Street. The drainage design explicitly pursues solutions that would avoid worsening those conditions, with the potential to improve them as well.

***Peer Review Comments***

The following comments relate to clarifications or additional information that should be provided to assure that the proposed project has fully addressed the pertinent issues and requirements for stormwater management.

1. *Soil Characteristics and Depth to Groundwater.* The report acknowledges (Section 2.3) that information on soil properties and depth to groundwater had not been collected. However, both parameters will be important in the ultimate design of the site facilities. Absent specific information the report should be clear on use of the published soil survey data for the site, which identifies the soils as essentially completely Urban Land – Tierra Complex falling in Hydrologic Soil Group D (highest runoff potential). If information on seasonal high

Ms. Leslie Mendez  
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groundwater data is not available, then the drainage design should proceed under the assumption that high groundwater conditions will prevail.

2. *Design Guidance.* The report relies almost exclusively on generalized urban drainage design parameters provided in the U.S. Geological Survey Open-File Report authored by Rantz in 1971. Though I acknowledge the past value of this document in providing a standardized design framework for urban drainage systems in the Bay Area, the project report does not clearly establish reasoning for not using more up-to-date and specific design guidance at this site. Absent specific information from the City of Berkeley, the Hydrology and Hydraulics Manual prepared by the Alameda County Flood Control and Water Conservation District (“ACFC”) provides a more detailed and current calculational framework, particularly for the rational method runoff calculations that are presented. The following items are of particular note:
  - a. *Runoff Coefficients.* Back-checks of the runoff coefficients from Rantz versus those used by ACFC show that the latter will generally be higher and therefore indicate a higher peak flow potential than currently presented in the report.
  - b. *Impervious Cover.* Directly associated with the above, the calculations in the Technical Appendix appear to use land use classifications from Rantz such as “medium density residential” that are called out as 25% impervious cover. This would appear to significantly underestimate the actual impervious cover in the respective sub-watersheds, particularly those such as Sub-Watershed B which are largely street surfaces. In such cases, a composite runoff coefficient approach should be considered.
  - c. *Time of Concentration.* The project site itself comprises a part of the identified Sub-Watershed A. The calculations in the Appendix (pdf page 29) give a time of concentration of 20 minutes for that Sub-Watershed for the 10-year design condition. However, calculations later in the Appendix for the project site itself yield an existing condition time of concentration of 27 minutes (pdf page 72). The calculations need to be reviewed, as it is difficult to reconcile how a smaller sub-area can have a higher time of concentration in this case.
  - d. *Rainfall Intensity.* Back-checks of the rainfall intensity for a given time of concentration show that values from the ACFC manual are consistently higher (by 30% or more) than those used from Rantz, calling into question whether the analyses are sufficiently conservative.
3. *HEC-RAS Modeling and Overflow from Curtis.* HEC-RAS modeling was apparently completed, in part, to provide insight into the amount of gutter flow that might overtop driveways along Curtis Street and therefore ultimately result in run-on to the project site. The completed model would appear to have sufficient information to use the predicted flow depths to calculate peak overflow rates, which could be quite large. However, the report states that a conservative assumption is that only the Sub-Watershed B runoff flows through the yards along Curtis to reach the east side of the project, and it is that relatively low flow rate which is used to inform the drainage channel sizing. The report should be revised to clarify why potentially even larger backflows from upper Hearst Avenue are not to be expected or to include provision for larger on-site conveyance capacity.



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4. Project Drainage. Section 3 of the report and the Appendix present options for draining the depressed site topography out to Hearst Avenue and identify a grated rectangular channel and a gravel swale at the primary stormwater conveyance facilities. It is understood that the site topography imposes significant constraints on the use of piped drainage. However, the calculations presented in the Appendix use a Manning's roughness coefficient of 0.011, a very low value for a gravel lined conveyance. The low roughness values will need to be justified or these calculations (and the conveyance channel dimensions) will need to be updated to use more conservative roughness values.
5. Changes in Peak Flow. As noted previously, the report is commendable for considering the impaired drainage conditions existing along the eastern boundary (flooding depths of up to 12 inches in adjoining yards). However, the report concludes that there will be no increase in peak discharge from the site for the 100-year event and only a small (0.02 cfs) increase for the 10-year event. This conclusion should be reviewed in light of the following:
  - a. Loss of De Facto Detention Storage. The report states that site grading and drainage enhancements are such that flooding depths on adjacent properties may be lowered by as much as 6 inches (pdf page 10). The flooding of the neighboring properties, though an acknowledged problem, almost certainly represents de facto detention storage that modulates peak flow rates out to Hearst Avenue, as does the cited impaired side lot drainage from the project property itself. The report should be revised to directly address how reduced flooding depths and more efficient on-site conveyance can be accomplished without increasing peak flow rates to Hearst Avenue and/or how any increases are acceptable in the downstream drainage system.
  - b. Post-project Impervious Cover. Central to the report's conclusion related to minimal increase in peak flow is a small (1.8%) increase in impervious cover compared to pre-project conditions. However, this value is achieved by completely discounting the contribution from driveways, parking areas, and walkways, which are proposed to be constructed of pervious paving or brick pavers. Such pervious surface treatments are definite improvements from traditional asphalt and concrete surfaces. However, given the low soil permeability and potential high ground levels, the report should be revised to substantiate the conclusion that those surfaces can indeed be discounted entirely in the rational method calculations of peak flow.
6. C.3 Compliance. The report appropriately cites the Alameda County C.3 Guidance as a source of design information for stormwater quality management at the site. The proposed bioretention planters are an excellent approach to meeting the pertinent requirements for roof runoff. However, it should be noted that, per the C.3 Guidance, pervious pavement surfaces overlying low permeability soils can only be considered self-treating if underlain by a course of sub-grade material sufficient to store the required treatment volume. The report should be revised to acknowledge this constraint and confirm that such an under-course could be actively drained out to Hearst Avenue.

### ***Closing***

Thank you again for the opportunity to provide peer review comments related to stormwater management for the Hearst Avenue Project. Though the site presents several challenges, it appears that the major issues are being addressed, subject to the recommended additional information needs I have noted.

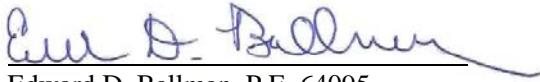
Balance Hydrologics, Inc.

Ms. Leslie Mendez  
March 16, 2017  
Page 4

Do not hesitate to contact us if you have questions related to the scope of my review or the conclusions presented herein.

Sincerely,

BALANCE HYDROLOGICS, Inc.



Edward D. Ballman, P.E. 64095  
Principal Engineer



Jacob, Melinda

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**From:** Zoning Adjustments Board (ZAB)  
**Subject:** FW: Regarding Permit #ZP2016-0028 (1155-1173 Hearst Avenue)

**From:** Erika Oba [mailto:erika.oba@gmail.com]  
**Sent:** Thursday, August 17, 2017 9:52 PM  
**To:** Zoning Adjustments Board (ZAB) <Planningzab@cityofberkeley.info>  
**Subject:** Re: Regarding Permit #ZP2016-0028 (1155-1173 Hearst Avenue)

To Mr. Greg Powell and the Zoning Adjustment Board,

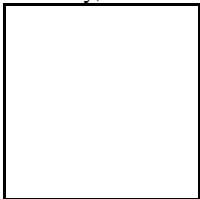
I am writing to express my concern over zoning application permit #ZP2016-0028 (Hearst Avenue) for the proposed condo development at 1155-1173 Hearst Avenue. I am a lifelong Berkeley resident. I currently live in South Berkeley, but I grew up in a rental unit at 1159 Hearst Avenue. My parents have lived at that address for 22 years. They are both immigrants and they worked very hard and sacrificed a lot so that my sister and I could grow up in Berkeley. Should this permit be approved and the condo development progress, they will be unable to continue living in their home.

I have been in conversation with my parents and they are concerned for the following reasons:

- 1) They had initially been told by the developer (Mr. Mark Rhoades) that the property would be converted into new rental units, which they would be able to continue renting. They later heard that the plans for the property are now to make condo units to sell, rather than units for rent. If this is true, my parents would never be able to afford to buy such units and would be displaced. They are both senior citizens and my father is retired.
- 2) Mr. Rhoades has told the current tenants that during construction, they would have to relocate. While he has told the tenants that the owners would subsidize the difference in rent, there is a cap on how much he is required to pay. Given the cost of rent in Berkeley today, the subsidies within the ceiling that Mr. Rhoades would pay would not be enough for them to stay in Berkeley. They would have to move far from where they currently are, which would take my mother away from her workplace, and my retired father from his community and support systems.
- 3) They were initially told that they could move back in once construction is done and continue to pay their current rent. When pressed, Mr. Rhoades amended this statement to say that the cost of construction would be added to their current rent. As of yet, he has not given them a specific estimate for what this cost might be.
- 4) My parents currently have two parking spaces available to them, which they both use. They have been told that after the renovation, their parking space will be reduced to one unit. They both have cars and given their age and where they live, they both rely heavily on each having access to a car. Street parking is getting increasingly crowded in their neighborhood and this would have a tangibly negative impact on their daily lives.

I understand that Berkeley is in need of building and developing more housing, but as you review zoning permits I urge you to consider how to do so without sacrificing current residents. Berkeley has historically been a beacon of progressive politics and human rights advocacy; it would be a poor stain upon that legacy if our current housing policies continue to displace those most vulnerable like immigrants, senior citizens, and lower income households.

Sincerely,



Erika Oba  
3018 Fulton St. Apt. A  
Berkeley, CA 94705

On Thu, Aug 17, 2017 at 9:51 PM, Erika Oba <erika.oba@gmail.com> wrote:

To Mr. Greg Powell and the Zoning Adjustment Board,



I am writing to express my concern over zoning application permit #ZP2016-0028 (Hearst Avenue) for the proposed condo development at 1155-1173 Hearst Avenue. I am a lifelong Berkeley resident. I currently live in South Berkeley, but I grew up in a rental unit at 1159 Hearst Avenue. My parents have lived at that address for 22 years. They are both immigrants and they worked very hard and sacrificed a lot so that my sister and I could grow up in Berkeley. Should this permit be approved and the condo development progress, they will be unable to continue living in their home.

I have been in conversation with my parents and they are concerned for the following reasons:

- 1) They had initially been told by the developer (Mr. Mark Rhoades) that the property would be converted into new rental units, which they would be able to continue renting. They later heard that the plans for the property are now to make condo units to sell, rather than units for rent. If this is true, my parents would never be able to afford to buy such units and would be displaced. They are both senior citizens and my father is retired.
- 2) Mr. Rhoades has told the current tenants that during construction, they would have to relocate. While he has told the tenants that the owners would subsidize the difference in rent, there is a cap on how much he is required to pay. Given the cost of rent in Berkeley today, the subsidies within the ceiling that Mr. Rhoades would pay would not be enough for them to stay in Berkeley. They would have to move far from where they currently are, which would take my mother away from her workplace, and my retired father from his community and support systems.
- 3) They were initially told that they could move back in once construction is done and continue to pay their current rent. When pressed, Mr. Rhoades amended this statement to say that the cost of construction would be added to their current rent. As of yet, he has not given them a specific estimate for what this cost might be.
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I understand that Berkeley is in need of building and developing more housing, but as you review zoning permits I urge you to consider how to do so without sacrificing current residents. Berkeley has historically been a beacon of progressive politics and human rights advocacy; it would be a poor stain upon that legacy if our current housing policies continue to displace those most vulnerable like immigrants, senior citizens, and lower income households.

Sincerely,

Erika Oba  
3018 Fulton St. Apt. A  
Berkeley, CA 94705

Jacob, Melinda

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**From:** Zoning Adjustments Board (ZAB)  
**Subject:** FW: 1155-1173 Hearst Avenue

**From:** Pamela Ormsby [mailto:pormsby@aol.com]  
**Sent:** Sunday, August 13, 2017 1:20 PM  
**To:** Zoning Adjustments Board (ZAB) <Planningzab@cityofberkeley.info>  
**Subject:** 1155-1173 Hearst Avenue

ZAB

I am a 46 year resident of 1148 Delaware . My backyard backs onto the proposed development of 1155-1173 Hearst Avenue.  
This neighborhood has traditionally been a neighborhood of single family modest bungalows with family gardens. The neighborhood has included small multi-unit cottages, again with gardens. These homes have been the affordable owner and rental units of Berkeley.

My concern re. this proposed development is that the size and density and internal design creates a market level group of units more designed to house a group of students in dense proximity than to preserve affordable housing or to provide for families.

As a former teacher of 50 years in Berkeley, I feel these units will not provide for housing for those who serve our community.  
They will not be affordable for the teachers, cooks, librarians, city employees who serve our community. It does not serve the community to eliminate affordable housing for public servants and families. The current rent-controlled cottages are close to the ground and thus serve seniors and those who can not manage stairs.

I am also extremely concerned that current tenants, most of whom are long-term, will eventually be forced out by the construction costs (owner-profitability need) of the condos. It is unclear as to the long-term protections afforded to these tenants.

I request that the ZAB board clarify with the Rent Control Board and with the current renters, in writing, the options for continued rent control and under what circumstances the developer can raise the rents in the future . Under what circumstances can these rent control units lose their rent control status?

To avoid a "mini-dorm" building, what condo restrictions can be applied to a permit in order to assure long-term residents-vs. short term rentals ? Will these become owner investment opportunities w/o providing for affordable long-term housing for Berkeley residents?

I would appeal to the ZAB board to put in place protections with setbacks and fences so that the current homes and gardens are visually and noise-protected against a group of tall buildings with dense residency. The fences to the east, the west, and the north need to be taller than 6 feet and constructed of noise-reducing construction materials. The current tall trees on the 1155-1173 lots should be retained. The construction materials for the parking area should be materials that reduce the traffic noise and traffic sights to the adjacent single family homes. Street parking is already impacted by proximity to BART and street parking used by Berkeley Auto Body around the corner.

I support the tallest buildings fronting on Hearst St., not adjacent to the 1-2 story surrounding homes on Curtis and Delaware.

This proposed development is too dense and too high for the surrounding neighborhood. It replaces currently affordable rent control units and imposes height and density negative impact on the surrounding single family homes.

I hope the ZAB board will protect the surrounding neighborhood and residents.  
Thank you for your consideration. Please feel free to contact me if you have any questions.

Pam Ormsby

1148 Delaware St.  
Berkeley, Ca. 94702  
(510 524-6080  
[pormsby@aol.com](mailto:pormsby@aol.com)



**Masanori Oba**

1159 Hearst Ave. Apt. A  
Berkeley, CA 94702

August 15, 2017

Zoning Adjustments Board  
1947 Center Street, 2<sup>nd</sup> Floor  
Berkeley, CA 94704

**SUBJECT: 1155-1173 HEARST AVENUE  
Use Permit #ZP2016-0028**

To whom it may concern,

I am writing to voice my concern about the proposed condo development at 1155-1173 Hearst Avenue, zoning application permit #ZP2016-0028, Hearst Avenue.

My wife and I are both senior citizens and have been living at the above address for more than 22 years. We are afraid that we will not be able to live in the Bay Area once this development starts for the following reasons:

1. If the property were to be converted into condos, we could not afford to purchase it and would have to move out. Mr. Mark Rhoades, one of the developers/owners who held the meeting with the tenants on 6/28/17, initially told us that the development is for rental housings, not converting to condos. We later found out that this was not true.
2. If we had to relocate during construction, we would have to move to a remote area far from where we are. While the owners are legally obligated to subsidize the difference in rent, there is a ceiling on the amount the owner has to pay. The ceiling on the rent subsidy is below market rates for rent in the Bay Area. Mr. Rhodes repeatedly told us that they will pay the gap during the meeting on 6/28/17 but did not mention the ceiling, which he must have been familiar with considering his career.
3. Once the construction is done and we move back, Mr. Rhodes told us there would be no change in the monthly rent. He did not tell us that the cost of renovation would be added to the current rent. He admitted it when one of the neighbors asked him at the meeting on 8/1/17. He said it would be minimum, but he did not give us any estimates on how much it would be.
4. Our original contract with the landlord included a parking space and an external storage space which was later demolished and converted to a parking space. We have two parking spaces right now. Currently, there are nine cars parking in the

ATTACHMENT 5  
ZAB 09-28-17  
Page 22 of 100

six unit apartment lot. After the renovation, it will be reduced to one per unit. The street parking here is already getting worse and I am afraid that we would have to park the car far away from our unit and walk back during the night. The situation would apply during construction as well.

Unless the owner guarantees in writing that the rent will be the same after the renovation, that we will be properly subsidized during construction to enable our continued residence in Berkeley (as Mr. Rhodes was trying to make us believe), and that we will be able to keep our current parking spaces, I oppose the project.

Sincerely,

\_\_\_\_\_ Date: \_\_\_\_\_  
Masanori Oba

\_\_\_\_\_ Date: \_\_\_\_\_  
Hisako Oba

**B N C**

**Berkeley Neighborhoods Council  
P.O. Box 5108  
Berkeley, CA 94705**

**Dedicated to improving the quality of life for all by creating  
a unified neighborhood voice for promoting livability and resolving problems**

**Website: [www.berkeleyneighborhoodscouncil.com](http://www.berkeleyneighborhoodscouncil.com)  
E-mail: [bnc50@berkeleyneighborhoodscouncil.com](mailto:bnc50@berkeleyneighborhoodscouncil.com)**

ZAB - care of the Berkeley Planning Dept.  
Linda Maio, District 1 Council Member  
L Mendez, Berkeley Planning Department  
City Council

August 14, 2017

Ref: **Permit number ZP2016-0028** at address **1155-1173 Hearst Avenue**

**ZAB Members,**

The project at 1155-1173 Hearst Street high-lights many of the issues facing Berkeley today. This project would demolish housing units that are rent controlled with no assurances they will be replaced. This we believe is against all Berkeley stands for and is not allowed under Berkeley's' existing ordinances. If the project is allowed to be built, the State Density Bonus Law requires that the existing affordable units that will be replaced, must remain affordable for 35 years and possibly for 55 years. This must be written into the permit for the project.

The Elimination of 6 occupied, rent-controlled units for conversion to condos is not what the housing crisis is about. The developer must not be allowed to use the "density bonuses," "concessions" and "waivers" for creating housing that is less affordable than the housing this project will eliminate and displace long-time residents.

Height and massing are not appropriate for this neighborhood of 1-2 story single family homes (18 condos, 35 bedrooms, 17 parking places, planned on combined lots that now have 7 units and 12 bedrooms total).

The creek bed under this project creates problems that are not addressed by the project developers. Their hydrology report is not adequate per 2 peer reviewers.

A soils study is needed to determine whether the creek bed that runs through the property is stable enough to safely build the 35-foot-tall buildings in the developer's plan and to assess whether archeological artifacts are present on this site.

Story poles must be erected prior to any ZAB meeting so members of ZAB and the public can assess the impact of height and mass. Only then will the magnitude of the project and the impact to the community be come apparent.

The many questions this project raises must be addressed before any ZAB hearing is scheduled. The Planning Department must work with the community so that a project at this location fits in with its surroundings with minimum impacts before it is approved.

Dean Metzger  
For BNC

ATTACHMENT 5  
ZAB 09-28-17  
Page 24 of 100



ATTACHMENT 5  
ZAB 09-28-17  
Page 25 of 100

Jacob, Melinda

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**From:** Zoning Adjustments Board (ZAB)  
**Subject:** FW: About condo development at 1155-1173 Hearst Ave, zoning application permit # ZP2016-0028

**From:** wcory [mailto:cory888@gmail.com]  
**Sent:** Tuesday, August 15, 2017 8:13 AM  
**To:** Zoning Adjustments Board (ZAB) <Planningzab@cityofberkeley.info>  
**Subject:** About condo development at 1155-1173 Hearst Ave, zoning application permit # ZP2016-0028

Hello,

I am writing to **oppose** the condo development at 1155-1173 Hearst Ave, zoning application permit # ZP2016-0028, Hearst Avenue Cottages. Scheduled for Aug 24th, 2017 at 7:00 pm. There are many concerns that I have as a citizens and one of the tenants.

- **The permanent removal of protected housing units.**

(The citizens that live in protected units have been a vital part of the city of Berkeley. With more and more of protected units disappearing so does a part of what makes Berkeley, Berkeley. Berkeley was known for its strong community, now with all the new development this is drastically disappearing we need to protect our communities and the face of Berkeley.)

- **Displacement of existing long-term tenants.**

(Let's be realistic here, it's not displacement it's evicting citizens out of their city. I know the rest of the tenants here and if they had to move out they would be forced to leave the city of Berkeley permanently, where they love and have been paying their taxes for years. With the area's high rents and the cost of housing the tenants would not be able to afford to stay in Berkeley. As the new owner keeps on saying they will have 1 or 2 low-income housing/BMR units (Below Market Rate), what about the other 4-5 citizens? I don't think any of the tenants would qualify for low-income housing/BMR. With the extremely low income qualification of low-income housing/BMR (\$34,000 - \$45,000) and other restrictions makes this almost unrealistic for one to qualify.)

- **High density impacting noise, privacy, and neighborhood parking.**

(It's hard to park now on the streets here. We've had cars block the driveway of the apartment units where one could not get out. Adding more density units would increase city street parking and create more issues. According to the owners they have allotted 18-20 parking spaces in their new project but with 2 and 3 bedroom units that's not going to cover even half of the cars that will end up here. It will cause an addition 20+ car's to have to park on city streets.)

- **The subtraction of quality of life**

(For both tenants and neighbors while the work is being done there will be excessive noise, dust, removal of street parking/unit parking both during and after the project. Interruption of life while construction is going on when people are still living in the units.)

When reviewing this plan, please consider the rights of the citizens of Hearst Avenue Cottages and the neighboring citizens that have been paying taxes for years and decades. I have been proud to live and work in Berkeley but if this project goes through I will be forced outside of the city of Berkeley to live and most likely will work elsewhere too. Leaving my home and the city I love forever.

Respectfully,

Wayne Cory  
1159 Hearst Ave #B  
Berkeley, CA. 94702  
[cory888@gmail.com](mailto:cory888@gmail.com)

**Mendez, Leslie**

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**From:** taproot@lmi.net  
**Sent:** Tuesday, August 15, 2017 11:33 PM  
**To:** "Berk Zoning board Linda Maio L Mendez @" "  
<LMendez@cityofberkeley.info>"@mx1.ci.berkeley.ca.us  
**Subject:** re: permit # ZP2016-0028, Hearst st Condos, 1155-1173 Hearst st @ Curtis St

8/15/2017

I am writing representatives of the City and the Berkeley Zoning board to express concerns about what I see as problems with the Hearst St. condos project at 1155-1173 Hearst st between Curtis and San Pablo Av.

I am not opposed to in-fill housing in Berkeley, but I am concerned that such projects have the right sized height, mass, and density of people and vehicles to not overwhelm and degrade our neighborhood. I have specific concerns with this project:

- 1) The condo development will replace 6 apartments under rent-control and displace longtime residents.
- 2) The site is on a buried creek bed, a spur of Strawberry creek. Because of the established scientific assurance that there will be a major earthquake in the foreseeable future on the Hayward fault-line a proper soil study must be done to determine if the ground can support the larger mass of 18 condo units at the site. My understanding is that the hydrology report that was done is inadequate.
- 3) Story poles must be erected on the site to help display the mass and height of the proposed buildings so the impact of the mass, height and shadows created by the project on nearby properties can be assessed by the public and adjacent neighbors.
- 4) Going from 8 housing units to 18 units in that space it is clear that counting up the additional residents, their visitors and deliveries, there will be a great increase vehicle traffic where we already have problems with too many speeding cars, and not enough on street parking.

In short I think the project is too large and dense for the neighborhood, would be built on a site that may be un-safe, and displaces lower-income Berkeley residents.

Thank you for your consideration, Curt Gray , 1930 Curtis St. #8 Berkeley  
510-704-8817



Jacob, Melinda

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**From:** Zoning Adjustments Board (ZAB)  
**Subject:** FW: 1155-73 Hearst

**From:** teal major [mailto:tealmajor@gmail.com]  
**Sent:** Monday, August 14, 2017 4:26 PM  
**To:** Zoning Adjustments Board (ZAB) <Planningzab@cityofberkeley.info>; Maio, Linda <LMaio@cityofberkeley.info>; Maio, Linda <LMaio@cityofberkeley.info>  
**Subject:** 1155-73 Hearst

Hello ZAB Members,

I am writing to express my opposition to the proposed project at 1155-11-73 Hearst. When Mark Rhoades first contacted us in May of 2015 he said he wanted to work with our neighborhood to design a project we could all support. He was acquainted with us from the rezoning of this area from R2 to R2A. Jump to August 3, 2017 when I very politely asked him if he considered building a project that provided plenty of parking for the new building as well as a smaller scale project that wouldn't be so impacting on us. His response was very simply "no". I think this is a very good indicator of his intent to replace the rent controlled apartments currently on the site. We all agree housing is important and I hope we all agree that Berkeley is best when it has a variety of citizens; lawyers, tech, teachers, artists, small business owners, city employees. The building Mark Rhoades is proposing will be attainable to the wealthiest of people. That in short is white, male, tech professionals.

Within one half mile of this site are hundreds of new housing units are being built. West Berkeley is doing it's part to help rectify the situation and Berkeley is doing it's part to provide housing in the Bay Area.

The Mark Rhodes project is out of line with the neighborhood. This is a neighborhood of small bungalows. The proposed 3 stories with 35 bedrooms from the current 12 is just too large. Although we are one block from University and San Pablo we are blessed with trees and wild life. It is quite and restful. We know each other and most of us have been here for 20 plus years. Currently this is not a transient area but it is rapidly becoming one.

As the plan is now there is insufficient parking. 2 of the proposed spaces are behind a garage door and one space is too small for a car. There has been no hydrology report or story poles. Parking is already impossible. We do not have parking restrictions and have become a place for people to park their cars while taking Bart to work, while they are away for vacation. The advent of Airbnb has home owners renting rooms at a staggering rate and those visitors have cars too. Last week a house was rented for the weekend and friends came from several places. There were 4 additional cars on our street for 3 days. So where do home owners park? Blocks away. Berkeley is nice but safe after dark?

There are families that have 3 generations under one roof. All of them have cars. Please take the time to consider this project. Please help keep Berkeley liveable for the people already here. Please don't let developers overbuild our every green space.

--

Teal  
Major

**Mendez, Leslie**

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**From:** damien curry <dxcurry@yahoo.com>  
**Sent:** Friday, August 11, 2017 8:10 AM  
**To:** Mendez, Leslie  
**Subject:** ZP2016-0028, 1153 - 1173 Hearst

Dear members of the Board,

thank you for the opportunity to comment on the above referenced project. We have the following concerns:

The project is out of scale with the established neighborhood both in form and in the number of dwelling units.

The project lacks adequate access and parking.

The project will displace current residents by eliminating 6 occupied, rent-controlled units.

Damien Curry and Amy Billstrom  
1815 Curtis St  
Berkeley CA

**Mendez, Leslie**

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**From:** Mary Jo Thoresen <maryjo@chezpanisse.com>  
**Sent:** Thursday, August 10, 2017 6:51 PM  
**To:** Mendez, Leslie  
**Subject:** Permit ZP2016-0028

August 10, 2017

Permit number: ZP2016-0028

Linda Maio lmaio@cityofberkeley.info

Leslie Mendez lmendez@cityofberkeley.info

Good Day,

I am writing once again to express my deep concerns about this project. It seems that Mark Rhoades has not been forthright with the neighbors, and in fact it seems perhaps deceitful. I was unable to attend the last meeting, but keep in close touch with my neighborhood group on this matter. This was the summary of the last meeting, which you may have already read.

The plans remain the same - no substantive changes since they were submitted to the city 1.5 years ago, despite intense opposition from the public and even from within the planning department.

Nobody expressed support for the plan, and almost all expressed serious concern/opposition. Even a pro-development neighbor, and the owner of a multi- family rental complex across the street were critical of the project.

In particular, the renters living in the rent controlled units (RCUs) were very concerned They have spoken to Matt Seigel Esquire at the Berkeley rent board. It's clear that they will not have adequate protections to stay in their units, and the rent board confirm this. They are in grave risk of being displaced if this plan goes through.

After promising that the RCUs will be rentals forever, and the existing tenants can stay, Mark aims to push the project through ZAB. Then, as he himself admitted, he will seek approval for his subdivision map which will designate all the units as condominiums including the RCUs. He tried to claim that he was only mapping the units this way in order to secure a bank loan - that the bank would not loan to him unless the units were mapped as condos. However, If the bank knows it's not economically feasible, why should we believe that he genuinely wants a mixed rental/condo situation? The landlord across the street, who was looking at it from a bottom line perspective, challenged Mark on this in the meeting, saying it would be impossible for him to turn a profit unless he does sell all the units as condos. Makes sense to me.

So, the question then becomes, how does he plan to get the rent controlled folks to move? Someone accused him of planning to buy them out, which he denied. Apparently, he may not need to, because his other options became apparent in the meeting. He was forced to admit that he plans to recoup the costs (technically, amortize the capital improvement costs) of "upgrading" the RCUs. and increase the rent accordingly, which is allowed according to rent control ordinance. In practice, the increased rent could result in people not being able to afford their units after construction. This will play into his hands nicely, as he can then sell the units as condos. Once they are sold, they are no longer subject to rent control.

So again, we are back to a situation of losing affordable rent controlled housing stock and having it converted to less affordable BMR condos, all the while rewarding the developer with a density bonus.

Mark is trying to pull the wool over everyone's eyes, claiming that there will be rentals and condos in perpetuity in this complex. Not true. It will be 100% condos, the plan all along. His plans for the subdivision map is the key piece that makes it all so clear.

Of course, there are also the issues of drainage, soil stability, etc. to raise. Please fill in the gaps, those of you who were there, on any other important things that came out of this meeting.

**Before a ZAB meeting is scheduled, the developer must fix these problems with the permit application:**

- **Elimination of 6 occupied, rent-controlled units** for conversion to condo is not acceptable. Developer should not get rewarded (with "density bonuses," "concessions" and "waivers") for creating housing that is less affordable than the housing he will eliminate, and will displace long-time residents.
- **Height and massing** are not appropriate for neighborhood of 1-2 story single family homes (18 condos, 35 bedrooms, 17 parking places planned on combined lot that now has 7 units and 12 bedrooms total).
- **Hydrology report is not adequate** per 2 peer reviewers. See attached.
- **Soils study** is needed to determine whether the creek bed that runs through the property is stable enough to safely build the 35 foot tall buildings in the developer's plan, and to assess whether archeological artifacts are present on site.
- **Story Poles** should be erected prior to the ZAB meeting so the public can assess the impact of height and mass. This is super important!!!

. A development of this size and scope is not appropriate for our neighborhood. I cannot think of ONE neighbor who thinks this is a good idea. I urge you to look at this carefully and to listen to the hard- working people of Hearst Ave. and Delaware St. present the well researched and thought out argument against this terribly ill conceived plan.

Thank you again for your time.  
Mary Jo Thoresen  
1195 Hearst Ave.  
Berkeley



Jacob, Melinda

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**From:** Zoning Adjustments Board (ZAB)  
**Subject:** FW: Hearst Ave Development

**From:** Yashu Jiang [mailto:yashujiang@gmail.com]  
**Sent:** Monday, August 07, 2017 8:57 AM  
**To:** Zoning Adjustments Board (ZAB) <Planningzab@cityofberkeley.info>  
**Subject:** Hearst Ave Development

Dear Zoning Adjustments Board staff,

I am writing to express my concerns about permit ZP2016-0028 regarding 1155-1173 Hearst Avenue.

My name is Yashu Jiang, and I have been a resident at 1163 Hearst Ave for the last 6 years. I have loved living in this neighborhood, and the project will directly impact my rent-controlled housing and the housing of many long-time (over 20 years) tenants.

The developers will likely claim that they have explained to the tenants how the project would affect our housing, but the information we as tenants have been presented have been inconsistent and sometimes untrue altogether. For example, at a tenants meeting, we were told explicitly that the new development will be all rental units and not condos, that if the construction will negatively impact us, then we will be relocated to comparable apartments and allowed to move back at the same rent.

At the neighborhood meeting a month later, we were told that there is in fact a plan to convert to condos. We also found out from the Rent Board that we may lose our rent control status altogether and that there is actually a ceiling and time limit for relocation costs. We were then told by the developers that should we move back, the rent will be increased due to the "improvements" made, with the amount to be determined.

A quick Craigslist search will reveal that there not only is a lack of affordable housing in Berkeley right now, but any comparable unit's monthly rent will likely exceed the cap for how much the landlords will cover. The developers will say they are creating housing for Berkeley when they are in fact they are only creating housing for those who can afford to purchase condos or the high rents they will charge. It makes absolutely no sense to me that building 2 BMR units justifies the potential displacement of 6 households.

I work full time as a civil servants and if I lose my rent controlled housing, I will no longer be able to live and work in the Bay Area. I do not trust that the developers have any interest in preserving our affordable housing.

This is not even mentioning how the development would affect parking (there is no way 17 spaces can fit in the lot and there will be more than 17 cars for 18 units, some of them 3 bedroom units), noise, drainage, and the character of the neighborhood. If you come and see this block and this neighborhood, you will instantly notice how out of place a large 18 unit, 3 story tall development with its current ultra modern blocky design would appear on our street. The neighborhood does not need or want this development.

Thank you for your attention to my concerns.

Yashu Jiang

678-559-4213  
1163 Hearst Ave  
Berkeley, CA 94701

UC Berkeley MSW 2013

Jacob, Melinda

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**From:** Zoning Adjustments Board (ZAB)  
**Subject:** FW: permit#zp2016-0028

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

**From:** Deno Gianopoulos [mailto:denogian@earthlink.net]  
**Sent:** Friday, August 04, 2017 10:26 AM  
**To:** Zoning Adjustments Board (ZAB) <Planningzab@cityofberkeley.info>; Maio, Linda <LMaio@cityofberkeley.info>; Mendez, Leslie <LMendez@cityofberkeley.info>  
**Subject:** permit#zp2016-0028

I Live and own the house at 1151 hearst ave., Berkeley ,ca .94702 —next door to the development of this subject and am appalled that the city of Berkeley is allowing -seemingly - that this construction go forward without real scrutiny and with proper amendments to the said development .

1. 17 parking places for 35 bedrooms is absurd.
- 2.the height for this development is aesthetically out of bounds for this neighborhood and whatever 'charm' is left to the dwindling 'charm of Berkeley'.
- 3.the creek- bed ,under the property has not been properly studied for supporting such a development and there is a possibility of catastrophe for the entire neighborhood .

Please reconsider this development.

yours truly,

Deno Gianopoulos  
1151 hearst ave.  
Berkeley, ca. 94702  
tel: 510-981-1244

Jacob, Melinda

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**From:** Zoning Adjustments Board (ZAB)  
**Subject:** FW: 1155-1173 Hearst proposal

**From:** Blaze Woodlief [mailto:blazewoodlief66@gmail.com]

**Sent:** Friday, August 04, 2017 11:20 AM

**To:** Zoning Adjustments Board (ZAB) <Planningzab@cityofberkeley.info>; Maio, Linda <LMaio@cityofberkeley.info>; Mendez, Leslie <LMendez@cityofberkeley.info>

**Cc:** rain.sussman@gmail.com

**Subject:** 1155-1173 Hearst proposal

I'm writing to express my concerns about the 18-condo project proposed for this address. I live around the corner, at 1812 Curtis street. The developer has not responded in any significant way to neighbor's concerns about the height, the impact on our parking (which is already quite difficult), or the potential issues with water and soil conditions, given that it is above an underground creek. The existing tenants are likely to lose their housing as well.

While Berkeley needs more housing, it does not need housing that degrades existing neighborhoods by impacting parking and imposing such tall structures in a residential areas. It's incumbent on the zoning board to keep developments in line with the neighborhood. This project needs to be shorter and provide more off-street parking. Berkeley should also require a better hydrology report and soils engineering report.

Thank you

Blaze



Jacob, Melinda

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**From:** Zoning Adjustments Board (ZAB)  
**Subject:** FW: Hearst Condos 1155-73 Hearst Ave

**From:** Stacey Shulman [mailto:staceyberkeley@yahoo.com]  
**Sent:** Friday, August 04, 2017 12:00 PM  
**To:** Zoning Adjustments Board (ZAB) <Planningzab@cityofberkeley.info>  
**Cc:** Mendez, Leslie <LMendez@cityofberkeley.info>; Maio, Linda <LMaio@cityofberkeley.info>; Personal <rain.sussman@gmail.com>  
**Subject:** Hearst Condos 1155-73 Hearst Ave

To the Berkeley ZAB Board:

I write with great concern regarding the proposed Hearst avenue condos at 1155-1173 Hearst Avenue (permit ZP2016-0028). I was unable to attend the meeting held last night, August 3, 2017, where my neighbors have informed me Mark Rhoades, representing the developer, presented the same project design he has previously, with no updates as he represented in his flyer. The mailed notification flyer for the meeting also led neighbors to believe that he would be presenting "housing opportunities within a sensitive neighborhood design."

The plan as it exists is not a sensitive neighborhood design, nor has it taken into account several significant issues the neighborhood has brought forward previously. The application has not addressed community concerns with regard to:

- 1) the elimination of six occupied rent-controlled units for conversion to condos;
- 2) an informed response to two peer hydrology reports that cite incomplete information and questionable assumptions used in the applicant's hydrology report (which relies on a USGS study authored over 45 years ago in 1971) regarding rainfall intensity, runoff co-efficients, flow depths and overflow rates, impervious cover projections; and potential influence of contributing watershed areas, well known to be problematic in this vicinity;
- 3) the lack of a soils study that would address the stability of the ground to support several 35 foot tall structures;
- 4) the lack of any assessment as to whether or not there are likely historical Native American remains along the underground creekbed that lies beneath the proposed property, as were recently unearthed a year ago one mile away at the Spenger's parking lot project;
- 5) an architectural design that is inconsistent with our historic neighborhood, is way out of scale with the surrounding homes in terms of height and density, and is front loaded on the 1173 Hearst side, which as a former single family home site adjacent to the backyards of six single family homes on Curtis Streets, should not have such dense lot coverage; and finally
- 6) the applicant has not provided any story poles so that neighbors can assess the impact of the height and mass.

The applicant should address these *before* a ZAB meeting is scheduled.

Respectfully,

Stacey Shulman  
1818 Curtis Street

Jacob, Melinda

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**From:** Zoning Adjustments Board (ZAB)  
**Subject:** FW: 'Hearst Condos' (ZB2016-0028; 1155-1173 Hearst St.)

**From:** Mail [mailto:allen.phil@yahoo.com]  
**Sent:** Friday, August 04, 2017 1:14 PM  
**To:** Zoning Adjustments Board (ZAB) <Planningzab@cityofberkeley.info>; Maio, Linda <LMaio@cityofberkeley.info>  
**Cc:** Rain Sussman <rain.sussman@gmail.com>  
**Subject:** 'Hearst Condos' (ZB2016-0028; 1155-1173 Hearst St.)

August 4, 2017

Hello to all in receipt:

I found a request to respond to the above project just this morning. Particulars in argument against 'Hearst Condos' are being supplied by those affected most closely, so I will generalize..

Although I recently signed a petition regarding the subject-named property, I have not to my recollection been notified of nor have I attended any meetings regarding it since that initial sundown driveway event, illuminated by the headlights of the developer's truck.

According to recent communication from proximate neighbors, this and all attendant permitting requests should be examined with all due prejudice, based on the developer's record of disdain and duplicity for his works' effects on neighbors, on the permanently displaced, on the neighborhood, on little incidentals like parking, on the city in general, and most remarkably for those who will inhabit his shoddy constructions. Since condos are bought rather than rented, to charge so much for so little is a realization that may bring actual financial ruin to the unwary. (I haven't been allowed inside *any* of the recent market-rate residences; something about appearance.. I'm not thin enough.. or young enough..) And let's not forget that scent of entitlement, bolstered by questionable law, decisions, and a rabid 'dispossessed' following.

For the good of neighborhood and the city's future, examine the project and proponent carefully. Require alternate proposals. Require him to demonstrate what Berkeley *needs* will be addressed by it. Providing expensive housing for out-of-towners is not one of them.

phil allen  
1733 San Pablo Avenue

[disclosure: I'm a Landmarks preservation Commissioner. I do not see a conflict with *this* opinion and my duties as a commissioner.]

Jacob, Melinda

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**From:** Zoning Adjustments Board (ZAB)  
**Subject:** FW: permit number ZP2016-0028 at address 1155-1173 Hearst Avenue  
**Attachments:** 2017-03-16\_RPT\_PeerReview\_Hydrology\_Balance Hydrologics\_1155-75 Hearst.pdf; Terraphase Review of Balance Hydrologics Peer Review Report\_071017.pdf

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**From:** Dale Anania [mailto:daanania@yahoo.com]  
**Sent:** Friday, August 04, 2017 5:08 PM  
**To:** Zoning Adjustments Board (ZAB) <Planningzab@cityofberkeley.info>; Maio, Linda <LMaio@cityofberkeley.info>; Mendez, Leslie <LMendez@cityofberkeley.info>  
**Cc:** Dale Anania <daanania@yahoo.com>  
**Subject:** permit number ZP2016-0028 at address 1155-1173 Hearst Avenue

I had to miss the meeting with Mark Rhoades about the Hearst Condos but was given much needed information by my neighbors.

**Before a ZAB meeting is scheduled, the developer must fix these problems with the permit application:**

- **Elimination of 6 occupied, rent-controlled units** for conversion to condo is not acceptable. Why would a Developer get rewarded (with "density bonuses," "concessions" and "waivers") for creating housing that is less affordable than the housing that will be eliminated, and that will displace long-time residents who are valued members of the neighborhood
- **Height and massing** are not appropriate for a neighborhood of 1-2 story single family homes (18 condos, 35 bedrooms, 17 parking places planned on combined lot that now has 7 units and 12 bedrooms total).
- **Hydrology report is not adequate** per 2 peer reviewers (see attached)
- **Soils study** is needed to determine whether the creek bed that runs through the property is stable enough to safely build the 35 foot tall buildings in the developer's plan, and to assess whether archeological artifacts are present on site.
- **Story Poles** should be erected prior to the ZAB meeting so the public can assess the impact of height and mass. Thank you for taking these concerns and requests seriously.

Dale Anania  
1819 Curtis St  
Berkeley



800 Bancroft Way • Suite 101 • Berkeley, CA 94710 • (510) 704-1000  
224 Walnut Avenue • Suite E • Santa Cruz, CA 95060 • (831) 457-9900  
PO Box 1077 • Truckee, CA 96160 • (530) 550-9776  
www.balancehydro.com • email: office@balancehydro.com

March 16, 2017

Ms. Leslie Mendez  
Land Use Planning Division  
City of Berkeley  
1947 Center Street, 3<sup>rd</sup> Floor  
Berkeley, California 94704

**RE: Peer Review of the Stormwater and Flooding Assessment  
for the Hearst Avenue Project, City of Berkeley**

Dear Ms. Mendez:

Thank you again for contacting Balance Hydrologics regarding peer review of the drainage analyses completed for the proposed Hearst Avenue Project (“Project”). Specifically, you have requested a review of the document titled “Stormwater and Flooding Assessment and Mitigation Design for the Hearst Avenue Project, 1161 – 1173 Hearst Avenue, Berkeley, CA” prepared by Clearwater Hydrology and dated January 7, 2016. I have completed my review of the Project document (herein, “report”), and this letter summarizes my observations and comments related to the information presented therein.

Overall, the document presents a good discussion and supporting analyses related to the stormwater management issues pertinent to the site in question. Perhaps most notably, it acknowledges the impaired drainage conditions at the site and neighboring properties, such as flooding at the back of adjacent lots off Curtis Street. The drainage design explicitly pursues solutions that would avoid worsening those conditions, with the potential to improve them as well.

***Peer Review Comments***

The following comments relate to clarifications or additional information that should be provided to assure that the proposed project has fully addressed the pertinent issues and requirements for stormwater management.

1. *Soil Characteristics and Depth to Groundwater.* The report acknowledges (Section 2.3) that information on soil properties and depth to groundwater had not been collected. However, both parameters will be important in the ultimate design of the site facilities. Absent specific information the report should be clear on use of the published soil survey data for the site, which identifies the soils as essentially completely Urban Land – Tierra Complex falling in Hydrologic Soil Group D (highest runoff potential). If information on seasonal high



Ms. Leslie Mendez  
March 16, 2017  
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groundwater data is not available, then the drainage design should proceed under the assumption that high groundwater conditions will prevail.

2. *Design Guidance.* The report relies almost exclusively on generalized urban drainage design parameters provided in the U.S. Geological Survey Open-File Report authored by Rantz in 1971. Though I acknowledge the past value of this document in providing a standardized design framework for urban drainage systems in the Bay Area, the project report does not clearly establish reasoning for not using more up-to-date and specific design guidance at this site. Absent specific information from the City of Berkeley, the Hydrology and Hydraulics Manual prepared by the Alameda County Flood Control and Water Conservation District (“ACFC”) provides a more detailed and current calculational framework, particularly for the rational method runoff calculations that are presented. The following items are of particular note:
  - a. *Runoff Coefficients.* Back-checks of the runoff coefficients from Rantz versus those used by ACFC show that the latter will generally be higher and therefore indicate a higher peak flow potential than currently presented in the report.
  - b. *Impervious Cover.* Directly associated with the above, the calculations in the Technical Appendix appear to use land use classifications from Rantz such as “medium density residential” that are called out as 25% impervious cover. This would appear to significantly underestimate the actual impervious cover in the respective sub-watersheds, particularly those such as Sub-Watershed B which are largely street surfaces. In such cases, a composite runoff coefficient approach should be considered.
  - c. *Time of Concentration.* The project site itself comprises a part of the identified Sub-Watershed A. The calculations in the Appendix (pdf page 29) give a time of concentration of 20 minutes for that Sub-Watershed for the 10-year design condition. However, calculations later in the Appendix for the project site itself yield an existing condition time of concentration of 27 minutes (pdf page 72). The calculations need to be reviewed, as it is difficult to reconcile how a smaller sub-area can have a higher time of concentration in this case.
  - d. *Rainfall Intensity.* Back-checks of the rainfall intensity for a given time of concentration show that values from the ACFC manual are consistently higher (by 30% or more) than those used from Rantz, calling into question whether the analyses are sufficiently conservative.
3. *HEC-RAS Modeling and Overflow from Curtis.* HEC-RAS modeling was apparently completed, in part, to provide insight into the amount of gutter flow that might overtop driveways along Curtis Street and therefore ultimately result in run-on to the project site. The completed model would appear to have sufficient information to use the predicted flow depths to calculate peak overflow rates, which could be quite large. However, the report states that a conservative assumption is that only the Sub-Watershed B runoff flows through the yards along Curtis to reach the east side of the project, and it is that relatively low flow rate which is used to inform the drainage channel sizing. The report should be revised to clarify why potentially even larger backflows from upper Hearst Avenue are not to be expected or to include provision for larger on-site conveyance capacity.

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Page 3

4. Project Drainage. Section 3 of the report and the Appendix present options for draining the depressed site topography out to Hearst Avenue and identify a grated rectangular channel and a gravel swale at the primary stormwater conveyance facilities. It is understood that the site topography imposes significant constraints on the use of piped drainage. However, the calculations presented in the Appendix use a Manning's roughness coefficient of 0.011, a very low value for a gravel lined conveyance. The low roughness values will need to be justified or these calculations (and the conveyance channel dimensions) will need to be updated to use more conservative roughness values.
5. Changes in Peak Flow. As noted previously, the report is commendable for considering the impaired drainage conditions existing along the eastern boundary (flooding depths of up to 12 inches in adjoining yards). However, the report concludes that there will be no increase in peak discharge from the site for the 100-year event and only a small (0.02 cfs) increase for the 10-year event. This conclusion should be reviewed in light of the following:
  - a. Loss of De Facto Detention Storage. The report states that site grading and drainage enhancements are such that flooding depths on adjacent properties may be lowered by as much as 6 inches (pdf page 10). The flooding of the neighboring properties, though an acknowledged problem, almost certainly represents de facto detention storage that modulates peak flow rates out to Hearst Avenue, as does the cited impaired side lot drainage from the project property itself. The report should be revised to directly address how reduced flooding depths and more efficient on-site conveyance can be accomplished without increasing peak flow rates to Hearst Avenue and/or how any increases are acceptable in the downstream drainage system.
  - b. Post-project Impervious Cover. Central to the report's conclusion related to minimal increase in peak flow is a small (1.8%) increase in impervious cover compared to pre-project conditions. However, this value is achieved by completely discounting the contribution from driveways, parking areas, and walkways, which are proposed to be constructed of pervious paving or brick pavers. Such pervious surface treatments are definite improvements from traditional asphalt and concrete surfaces. However, given the low soil permeability and potential high ground levels, the report should be revised to substantiate the conclusion that those surfaces can indeed be discounted entirely in the rational method calculations of peak flow.
6. C.3 Compliance. The report appropriately cites the Alameda County C.3 Guidance as a source of design information for stormwater quality management at the site. The proposed bioretention planters are an excellent approach to meeting the pertinent requirements for roof runoff. However, it should be noted that, per the C.3 Guidance, pervious pavement surfaces overlying low permeability soils can only be considered self-treating if underlain by a course of sub-grade material sufficient to store the required treatment volume. The report should be revised to acknowledge this constraint and confirm that such an under-course could be actively drained out to Hearst Avenue.

### ***Closing***

Thank you again for the opportunity to provide peer review comments related to stormwater management for the Hearst Avenue Project. Though the site presents several challenges, it appears that the major issues are being addressed, subject to the recommended additional information needs I have noted.

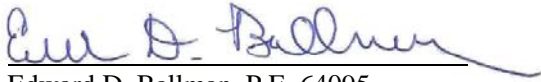
Balance Hydrologics, Inc.

Ms. Leslie Mendez  
March 16, 2017  
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Do not hesitate to contact us if you have questions related to the scope of my review or the conclusions presented herein.

Sincerely,

BALANCE HYDROLOGICS, Inc.



Edward D. Ballman, P.E. 64095  
Principal Engineer





## TECHNICAL MEMORANDUM

To:  
Rain Sussman, Guy Sussman  
1824 Curtis Street  
Berkeley, CA 94702

From:  
Lucas W. Paz, Ph.D., CPESC, QSD  
Terraphase Engineering, Inc.

Date:  
July 7, 2017

Project Number:  
0132.001.001

Subject: Preliminary review and comments on the Third-Party Hydrologic Evaluation prepared by Balance Hydrologics for the 1161-1173 Hearst Avenue, Berkeley, California project

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### Introduction

Terraphase Engineering Inc. (Terraphase) has prepared this technical memorandum based on our review of the March 16, 2017 Stormwater and Flooding Assessment Peer Review prepared by Balance Hydrologics, Inc. (Balance) for the Hearst Avenue Project 1161-1173 Hearst Avenue, Berkeley, California. On behalf of the City of Berkeley, Balance conducted a technical review of the "Stormwater and Flooding Assessment and Mitigation Design for the Hearst Avenue Project, 1161 – 1173 Hearst Avenue, Berkeley, CA" prepared by Clearwater Hydrology (Clearwater) for the developer and dated January 7, 2016. Terraphase generally agrees with the findings and appreciates the quality of the technical peer review conducted by Balance Hydrologics regarding the proposed 1161-1173 Hearst Avenue Project. The Peer Review is well-supported, clearly written, and we agree with each of the review findings. However, Terraphase believes further issues of concern require attention in addition to those items identified by Balance. Terraphase has summarized the findings of Balance in the first paragraph of each section below. Following each Balance summary, Terraphase has provided additional commentary as well as highlighting previous Terraphase findings that have yet to be resolved by the developer. We have added questions, concerns or suggestions to this review where we feel additional information or analysis is needed.

### Review Comments/ Findings

#### 1. Soil Characteristics and Depth to Groundwater

Section 2.3 of the Clearwater Report states that information on soil properties and depth to groundwater had not been collected. In their review of the Clearwater Report, Balance states that information on soil properties and depth to groundwater for the site will be important in the ultimate design of the site facilities. The Clearwater report should clearly state that published soil survey data for the site identifies the soils as majority Urban Land – Tierra



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Evaluation provided by Balance Hydrologics for the 1161-1173 Hearst  
Avenue, Berkeley, California Project

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Complex, classified as Hydrologic Soil Group D, which has the highest runoff potential. If seasonal high groundwater data is not available, then the drainage design should assume that high groundwater conditions will prevail.

Additionally, Terraphase believes that the uncertainty of the seasonal groundwater table, along with the other concerns identified in the remainder of this review, warrant a geotechnical and groundwater evaluation for the site. Based on historical maps, a segment of a primary tributary to Strawberry Creek previously extended downstream across the 1155-1163 Hearst properties. Carole Schemmerling of the Urban Creeks Council determined in 2002 that the north branch of Strawberry Creek was filled with soil and debris prior to development. The area is also classified as "filled wetlands" and as "seismically unstable and subject to liquefaction." There is no record of properly engineered fill or a culvert or storm drain being installed. Therefore, water comes up to the surface during storm conditions so that the subsurface becomes saturated.

Terraphase believes that a geotechnical and groundwater evaluation is necessary to determine subsurface drainage conditions so that existing groundwater release preferential pathways are not impacted during the construction project. The geotechnical and groundwater evaluation would also allow for proper evaluation of the surface and subsurface conditions of the proposed site and the impacts of development on the surrounding properties.

## 2. Design Guidance

The Clearwater Report relies predominantly on generalized urban drainage design parameters from the U.S. Geological Survey Open-File Report by Rantz in 1971. While the 1971 Rantz based Rational Method is a reasonable resource, Terraphase and Balance Hydrologics are concerned that the climatic/rainfall data and associated flow rates based on pre-1971 data are insufficient. This concern is based on the fact that the last 44+ years of rainfall data was not utilized in this model and that changing climate projections indicate extreme events are now more likely to occur.

Balance suggested use of The Alameda County Flood Control and Water Conservation District (ACFC) Hydrology and Hydraulics Manual instead of the Rantz based Rational Method. The ACFC manual provides a more detailed and current calculation framework for design guidance than the USGS Survey. The ACFC Hydrology and Hydraulics Manual is missing specific information about the City of Berkeley, however, Balance and Terraphase agree that this would be a better model to use for the purposes of this survey.

- a. *Runoff Coefficients*: Balance mentioned that further evaluation of the runoff coefficients from Rantz compared to those used by ACFC reveal that the runoff coefficients for the ACFC will be higher. This indicates a higher peak flow potential than currently presented in the Clearwater Report.

Without a full topographic model, Terraphase is unsure that the amount of stormwater estimated to impact the site and surrounding properties is accurately quantified. A December 2015 rainfall event generated approximately 1.4" of rain which produced significant flooding based on observations and video footage. This video footage suggests that portions of Hearst Street stormwater flow does reach the sidewalk level, contrary to

the following statement in section 2.4.3 of the Clearwater Report: "Downstream of the Curtis St. intersection, flows are contained within the roadway gutter and portions of the driveway outlets (below the sidewalk level) even during the 100-yr. storm." The Clearwater Report also does not clarify how the peak discharges from the gutters were added to watershed A and Table 1 in the Clearwater Report is missing peak discharge rates for Sub-Watershed A.

- b. *Impervious Cover*: The current calculations use land use classifications that significantly underestimate the actual impervious cover. Balance recommends a composite runoff coefficient approach.

Terraphase agrees with the above findings provided by Balance and is also concerned about assumptions regarding the proposed mix of impervious and pervious cover and associated assumptions as described further under section 4.0 Project Drainage.

- c. *Time of Concentration*: According to Balance, the time of Concentration calculations appear to be inconsistent for the project site. Calculations should be reviewed.

Terraphase agrees with the above findings provided by Balance.

- d. *Rainfall Intensity*: Rainfall intensity for a given time of concentration for the ACFC are consistently higher (at least 30%) than those used in the Rantz model.

Furthermore, Terraphase believes that the changing climate projections, which indicate extreme events are more likely in the future, should be considered. As such, a more conservative factor of safety should be applied by designing for a larger 100-yr storm event capacity and more conservative BMPs should be designed for future drainage element on the project site.

### 3. HEC-RAS Modeling and overflow from Curtis Street

The Clearwater Report states that only stormwater flows through the yards along Curtis Street will reach the east side of the project and it is a relatively low flow rate. However, the completed model has information that predicts flow depths and overflow rates could be quite large, which the Clearwater report does not address. The Clearwater report also does not clarify why backflows from upper Hearst Avenue are not to be expected.

Terraphase agrees with the above findings provided by Balance and further believes that the Clearwater Report should clarify the following items: 1). How the model or other calculations account for the surface flow from watershed A to B. Clearwater should also provide additional information for Sub watershed B flow conditions. 2). How the model explicitly accounts for the flows and routes flows diverted from the Curtis St. reach into the topographic depression of the project area. 3). How the model accounts for contributions/connections from the Curtis street back yard areas.

The subsurface hydrologic conditions mentioned in the Clearwater report (and described in section 1 of this review) suggest a shallow groundwater table in the vicinity of the project site. A rising water table in the winter months due to stormwater infiltration into the ground, which

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 Evaluation provided by Balance Hydrologics for the 1161-1173 Hearst  
 Avenue, Berkeley, California Project

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recharges the shallow water table. The rising water table eventually comes in contact with the surface soils and produces ponding in the low-lying areas of the site so that the groundwater is elevated near the surface. Therefore, saturated soils along with high groundwater conditions increases runoff rates and the amount of ponding. Compaction, foundation installation, as well as other construction activity would modify and impede subsurface flow levels, pathways and/or direction, which could exacerbate subsurface conditions and worsen existing flooding.

#### 4. Project Drainage

Section 3 of the Clearwater Report and the Appendix present options for drainage to Hearst Avenue through a grated rectangular channel and a gravel swale. Site topography constrains the use of piped drainage. Low roughness values in the Manning's roughness coefficient need to be justified or calculations should be updated to use more conservative roughness values.

Terraphase agrees with the above findings provided by Balance and with Clearwater that raising the site grade would cause significant impacts to the site. However, new impervious surfaces and foundations also would exacerbate flooding conditions. Clearwater investigated two options for mitigating storm drainage and flooding conditions within the project site and area of influence. Terraphase does not believe that either or both options presented by Clearwater would effectively mitigate storm drainage and flooding conditions. Terraphase believes that the third option that was presented by Clearwater and subsequently dismissed, should still be considered, as well as a combined system, or treatment train. If everything is routed to the proposed channel, Clearwater will need to clarify how the channel will collect flow from the adjacent properties. The design could be expanded to include a collection trench or sub-drain behind the houses to direct water into the proposed rectangular channel.

Drainage conditions and areas assessed by Clearwater are appropriate, however, we question the contributing watershed areas that generate flows along the Curtis Street gutter. In their report Clearwater states the following "Since some discharge from the depression will also occur through driveways and side yards west of 1155 Hearst, the capacity of the system would likely be greater than that of a 25-yr. storm. The proposed design would also reduce the severity of flooding on the neighboring properties to the east along Curtis Street." Terraphase believes that the language in the first sentence is unclear. Clearwater should clarify whether they are stating that the discharge from the depression is coming into the driveways and side yards, or if it is leaving the driveways and side yards, and if it is leaving the driveways and side yards, where is it going? Additionally, there is evidence to suggest that a larger area may contribute than just watersheds A and B. Terraphase is concerned that the current limited proposed drainage improvements may not significantly improve current flooding conditions for the adjacent properties along Curtis Street, therefore further exploration and clarification is needed from Clearwater.

#### 5. Changes in Peak Flow

The Clearwater report considers impaired drainage along the eastern boundary but concludes that there will be no increase in peak discharge from the site. The following should be considered:

- a. *Loss of De Facto Detention storage:* the Clearwater Report states that site grading and drainage enhancements mean that flooding depths on adjacent properties may be lowered as much as 6 inches. This means an increased flow rate to Hearst and potentially to neighboring properties. The report needs to address how reduced flooding depths and more efficient on-site conveyance can be accomplished w/o increasing peak flow rates to Hearst and/or how any increases are acceptable in the downstream drainage system.

Terraphase agrees with the above findings provided by Balance. Additionally, the language in the Clearwater report is unclear about discharge through driveways and side yards of Hearst and the proposed design. Due to a combination of existing conditions, there is a concern that the limited proposed drainage features may not significantly alleviate the current ponding experienced. Terraphase also agrees with section 3 of the Clearwater Report that raising the site grade would cause significant impacts to the site. However, new impervious surfaces and foundations could exacerbate current flooding conditions.

- b. *Post Project Impervious Cover:* The Clearwater Report states that a minimal increase in peak flow would result due to a small (1.8%) increase in impervious cover compared to pre-project conditions. This value does not include contribution from driveways, parking areas and walkways which are constructed of pervious paving or brick pavers. Pervious surface treatments are improvements from traditional but still offer low soil permeability and potential high ground levels. Therefore, those areas should not be discounted entirely for peak flow calculations.

Terraphase agrees with the findings provided by Balance that the proposed development will increase the quantity of impervious surfaces by more than 1.8%. All pervious areas should not be considered equivalent. The existing vegetated area allows for attenuation and the temporary detention of stormwater flows so that it can slowly infiltrate and recharge the groundwater beneath the surface. However, the proposed pervious paving or pervious brick paver areas would have reduced infiltration capacity when compared to the existing open space vegetated area.

## 6. C.3 Compliance

The bioretention planters proposed in the Clearwater report are an excellent approach to meet the pertinent requirements for roof runoff. However, per C.3 Guidance, in this instance, pervious pavement surfaces can only be considered self-treating if underlain by a course of sub-grade material sufficient to store the required treatment volume. The Clearwater report should be revised to acknowledge this and confirm that the under-course can be actively drained out to Hearst Avenue.

Terraphase agrees with the above findings provided by Balance and, additionally, would like to highlight the City of Berkeley C3 program requirements. According to the City of Berkeley C.3.i Stormwater Requirements Checklist (C.3.i Checklist), "Per the MRP, pavement that meets the following definition of pervious pavement is NOT an impervious surface. Pervious pavement is defined as pavement that stores and infiltrates rainfall at a rate equal to immediately surrounding unpaved, landscaped areas, or that stores and infiltrates the rainfall runoff volume described in Provision C.3.d." Terraphase does not believe that pervious paving or pervious brick



Rain & Guy Sussman  
 Preliminary review and comments on the Third Party Hydrologic  
 Evaluation provided by Balance Hydrologics for the 1161-1173 Hearst  
 Avenue, Berkeley, California Project

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pavers would provide the same level of permeability as the existing loamy soil open space vegetated area in the north eastern portion of the development area. This existing vegetated area allows for attenuation and the temporary detention of stormwater flows so that it can slowly infiltrate and recharge the groundwater beneath the surface. All pervious areas should not be considered equivalent, the range of permeability will depend on the actual product or design and can vary greatly. The proposed pervious paving or pervious brick paver areas would have reduced infiltration capacity when compared to the existing open space vegetated area. If permeable pavers are determined as the best available technology for use on this project, Clearwater must consider that the permeable pavers will clog and provide reduced holding capacity over time and therefore will need ongoing maintenance. Additionally, the project impervious surface area listed in the C.3.i Stormwater Requirements checklist are inconsistent with the impervious surface area listed in the Clearwater drainage report.

**7. Additional Comments for Clearwater Hydrology pertaining to the Stormwater and Flooding Assessment and Mitigation Design for the Hearst Avenue Project, 1161 – 1173 Hearst Avenue, Berkeley, CA:**

- a. The referenced estimated peak discharge rates should be provided in the Executive Summary and the data should be cross referenced in table 1 of the Clearwater Report.
- b. A North Arrow and label for Curtis Street should be added to all figures for reference.
- c. Clearwater should delineate the topographic depression area (a rough outline) on the figures.
- d. The ends of the cross sections in section 2 need to be labeled east/west and north/south. The headings and titles of cross sections need to be labeled as well: it appears that Hearst Ave and Curtis Street should be switched.
- e. In Section 2.2, Clearwater should clarify that Curtis Street runs north to south and the units should be labeled in feet.
- f. Clearwater Hydrology should provide a more detailed evaluation of the proposed site current conditions vs. proposed.
- g. The executive summary of the Clearwater Report states “the flooding conditions that occur along the neighboring Curtis St. properties for rainstorms exceeding roughly the 5-yr. recurrence interval.” The references to peak discharge rates should remain consistent so that both say a 2-yr. storm event will produce flood conditions on Curtis street.

Rain & Guy Sussman  
Preliminary review and comments on the Third Party Hydrologic  
Evaluation provided by Balance Hydrologics for the 1161-1173 Hearst  
Avenue, Berkeley, California Project

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## Closing

We are grateful for the opportunity to offer our services on this important project. Should you have any questions or comments regarding this submittal, please contact the undersigned at (510) 645-1850 or by e-mail at [Lucas.Paz@terraphase.com](mailto:Lucas.Paz@terraphase.com).

Sincerely,

For Terraphase Engineering, Inc.



Lucas W. Paz, PhD, CPESC, QSD  
Associate Hydrologist

Jacob, Melinda

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**From:** Zoning Adjustments Board (ZAB)  
**Subject:** FW: Proposed 18 condos onHearst near Curtis

**From:** Carol Cohen [mailto:cohen1815@gmail.com]

**Sent:** Thursday, August 03, 2017 9:54 PM

**To:** Imaio@cityofberkeley.info; Mendez, Leslie <LMendez@cityofberkeley.info>; rain.sussman@gmail.com; Zoning Adjustments Board (ZAB) <Planningzab@cityofberkeley.info>

**Subject:** Proposed 18 condos onHearst near Curtis

To the ZAB, councilmember Maio, and city planner Mendez:

I am concerned about the size of the proposed project onHearst and the probable displacement of tenants. In addition it appears that the hydrology report is inadequate and there is no soils report despite the presence of a buried creek bed.

I live at 1815 Chestnut, two blocks away- for 39 years. I was unable to attend the neighborhood meeting today but was informed about these issues by a neighbor.

Thank you for your attention.

Sincerely,

Carol Cohen

Jacob, Melinda

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**From:** Zoning Adjustments Board (ZAB)  
**Subject:** FW: Condo development at 1155 hearst avenue

**From:** Peter [mailto:bitahp@yahoo.com]  
**Sent:** Thursday, August 03, 2017 10:16 PM  
**To:** Zoning Adjustments Board (ZAB) <Planningzab@cityofberkeley.info>  
**Cc:** Rain Sussman <rain.sussman@gmail.com>  
**Subject:** Condo development at 1155 hearst avenue

Dear city of berkeley ZAB,

Greetings, I am one of tenants living at 1155 Heast Avenue, our landlord is trying to develop the existing 6 units into 35 bedrooms/18 units condos with 18 parking spots.

Most neighbors and the tenants concern if this project go through, it will impact the quality of the neighborhood forever, including parking, noise, privacy, shadows, and draining/flooding issues.

When viewing this plan, please consider the rights and wishes of existing neighborhood residents, many have lived here for more than two decades, we are proud to have created this tight-knit community and wish that any future changes bring only positive results.

Best regards,

Berkeley resident,  
Pite Pan



Jacob, Melinda

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**From:** Zoning Adjustments Board (ZAB)  
**Subject:** FW: 1155 Hearst condo development

**From:** Peter [mailto:bitahp@yahoo.com]  
**Sent:** Thursday, August 03, 2017 11:08 PM  
**To:** Zoning Adjustments Board (ZAB) <Planningzab@cityofberkeley.info>  
**Cc:** Rain Sussman <rain.sussman@gmail.com>  
**Subject:** 1155 Hearst condo development

Dear city of Berkeley ZAB,

My name is Pi-Te Pan, current tenant at 1155 Hearst Avenue, our landlord is trying to turn the 6 units property into a 36 bedrooms/18 units condo with only 16 parking!

Here are some of the issues of the project.

**permit number ZP2016-0028** at address **1155-1173 Hearst Avenue**

- **Elimination of 6 occupied, rent-controlled units** for conversion to condo is not acceptable. Developer should not get rewarded (with "density bonuses," "concessions" and "waivers") for creating housing that is less affordable than the housing he will eliminate, and will displace long-time residents.
- **Height and massing** are not appropriate for neighborhood of 1-2 story single family homes (18 condos, 35 bedrooms, 17 parking places planned on combined lot that now has 7 units and 12 bedrooms total).
- **Hydrology report is not adequate** per 2 peer reviewers. See attached.
- **Soils study** is needed to determine whether the creek bed that runs through the property is stable enough to safely build the 35 foot tall buildings in the developer's plan, and to assess whether archeological artifacts are present on site.
- **Story Poles** should be erected prior to the ZAB meeting so the public can assess the impact of height and mass. This is super important!!

Thanks for your attention,

Pi-Te Pan  
1155 Hearst Avenue

**Mendez, Leslie**

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**From:** Hussein Saffouri <Hussein@ramseylawgroup.com>  
**Sent:** Wednesday, May 31, 2017 2:55 PM  
**To:** Mendez, Leslie  
**Subject:** RE: 1155-75 Hearst Project  
**Attachments:** Rhoades flier 5-23-16 convert to condo.jpg

Hi Leslie. I am sending you an early flier which Mark Rhoades passed out to the neighborhood in May of 2016 in which he indicates that his plan is to retain the existing rent controlled units and then convert them to condominiums. I thought that you might be interested in having this, if you do not already, as it seems to be germane to the unanswered question about the developer's intentions regarding the existing units, and the steps required to comply with the law depending on his intentions.

Regards, Hussein.

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HUSSEIN SAFFOURI  
Attorney  
[hussein@ramseylawgroup.com](mailto:hussein@ramseylawgroup.com)  
(925) 284-2002 Direct  
(510) 708-1122 Cell  
(925) 402-8053 Fax

Ramsey Law Group, a professional corporation  
3736 Mt. Diablo Blvd., Suite 300  
Lafayette, CA 94549

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The foregoing applies even if this notice is embedded in a message that is forwarded or attached.

# 1155-1173 Hearst Avenue

## Socially Equitable and Environmentally Sustainable Housing for Berkeley



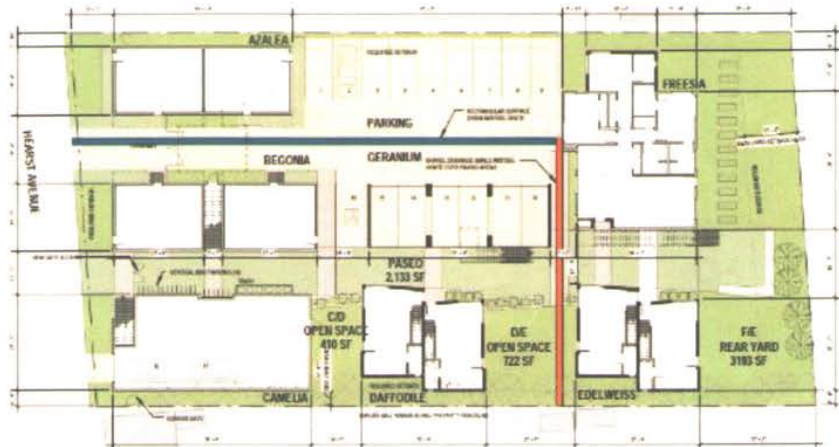
Proposal – 11 new dwelling units on @ 22,000 sf of land. Retain six existing rent controlled apartments (ultimately convert to condominium for sale at below market rates with first right of refusal for existing tenants), plus one additional below market rate unit where the sales price is set at a level to be affordable to someone earning 50% of the area median income. There will be 11 market rate units. That's a project with **39% affordable units!** No other project in Berkeley is providing that kind of affordability. Other features and benefits for the community:

- No existing dwelling units will be demolished, rent controlled units will retain their affordability and those tenants can stay.
- Shadows – New buildings meet setback requirements with one exception along the west property line. Shadows will have negligible, if any, effect on adjacent Curtis or Delaware properties and minor effects to the west. The three story elements of the proposal are located nearly 70' from adjacent Curtis Street neighbors, and over 100' from any Delaware Street neighbors. No shadow impacts on Curtis or Delaware neighbors from three story buildings.
- Open space – The project's proposed open spaces exceed requirements and are spread around the property with yard areas and play areas in the rear just like all of the adjacent properties that have yards and play areas.
- Hydrology – The project has been designed to address the hydrologic issues in the neighborhood, primarily from water collection from the historic drainage of a former arm of Strawberry Creek.



### Project modifications that are a result of working with neighbors:

- Elimination of an entire duplex structure in the northeast corner of the property and the placement of those units straddling the driveway at Hearst Street.
- Elimination of third floor elements and decks on the duplexes facing the Curtis Street neighbors.
- Change in roof form on the Curtis Street facing duplexes so that the lowest profile possible faces that direction while still providing livable two story townhomes as allowed by the Berkeley Zoning Ordinance.
- One parking space per unit, where the original proposal had 16 spaces for 18 units.
- All three-story project elements are either in the middle of the site or are on the west of the site. In fact, the nearest three story element to a Curtis Street neighbor is nearly 50' from the east property line and nearly 70' from any Curtis Street residence. Three story elements are more than 100' from any Delaware Street neighbor.
- Substantial reduction in size of the rehabilitation/addition to the existing house structure at the northwest corner of the project.
- Completion of a full hydrologic study with design features built in to the project that will eliminate any drainage impacts from the site to any other neighboring property.
- Retention of existing mature landscaping where possible along the east property line.



**Mendez, Leslie**

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**From:** teal major <tealmajor@gmail.com>  
**Sent:** Saturday, May 20, 2017 4:19 PM  
**To:** Mendez, Leslie  
**Subject:** Permit number ZP2016-0028  
**Attachments:** strawberry meeting20052017.pdf

Attached is the original sign in sheet from the meeting on 11/30/2015. Most of the people that signed in have requested an additional meeting.

Thank you,

--

Teal  
Major



# 1155 – 1173 Hearst Avenue

## Project Neighborhood Meeting



Monday, November 30, 2015, 6:30 p.m. to 7:30 p.m.

1155 Hearst Avenue Parking Lot

NAME	Contact Info
Farah Kassar	kassar.farah@gmail.com
George Wilson	g1wilson@yahoo.com
Phil Allen	allen.phil@yahoo.com
<del>BRENDA &amp; HILDA REISSER</del>	<del>1820 Cortez St. 510-548-3478</del>
<del>Stacey Shulman &amp; Alan Spector</del>	<del>188 Curtis St. staceyberkeley@yahoo.com</del>
<del>Alan Spector</del>	<del>RETINOLIS@YAHOO.COM</del>
<del>Vijay Vengopal</del>	<del>VVV@SBCGLOBAL.NET</del>
+ 20 OTHER NEIGHBORS	

I, the undersigned, rescind my signature as shown above. I do not endorse the "Neighborhood Meeting" on 11/30/15 as valid. Reasons include, but are not limited to, the applicant's express statements during said "meeting" about the unofficial nature of the event: (audio file available, transcript below)

"WE'VE DECIDED TO HAVE THIS MEETING HERE, LIKE THIS IS NOT REQUIRED FOR US TO DO ... WE WON'T SUBMIT THIS UNTIL WE HAVE AT LEAST ONE MORE NEIGHBORHOOD MEETING." – Mark Rhoades

1. Vijay Vengopal.  5/14/17
2. Stacey Shulman & Alan Spector 5/14/17
3. Brenda Reisser 5/14/17
4. Hilda Reisser 5/14/2017
5. Phil Allen 5/17/2017
6. Alan Spector  5/24/17

Leslie Mendez  
Senior Planner City of Berkeley  
1947 Center Street  
2nd Floor  
Berkeley, CA 94704

**RECEIVED**  
MAY 16 2017  
LAND USE PLANNING

Re: Permit number ZP2016-0028  
at address 1155-1173 Hearst Avenue  
Hearst Condos

Ms. Mendez,

I am writing once again to express my deep concern over the proposed project referenced above. Some of my concerns are the lack of thorough water studies to determine whether the creek bed that runs through the property is stable enough to safely support the planned buildings. We have significant water problems on Curtis Street and i fear is that this project will compound them for my neighbors.

I also have been made aware that the developer plans to eliminate 6 rent controlled units and replace them with "below market rate" condos, but is not being transparent about this in the application. BMR condos may be more affordable than market rate ones, but are less affordable than the rent controlled units they would replace. The developer should not be rewarded with density bonuses, concessions or waivers for creating less affordable housing. There is also the question of a possible archaeological site....has there been an evaluation of this site?

Further, the lot holds, what i believe, is significant historical value. In a previous letter sent to you, i identified myself at the pastry chef at Chez Panisse. I moved to Berkeley and started working there in 1981. At that time, the lot behind the single family house on Hearst Avenue was the first garden for Chez Panisse, providing lettuces, herbs and a small amount of produce. This was the "seed" for the entire local, sustainable practices that have grown into a world wide Slow Food movement , the Edible School Yard movement and an awareness of how we approach eating, farming and stewardship of the land. The idea of paving this over to accommodate an oversized, dense lot of 18 units is horrifying and heart breaking. The Curtis Street and Hearst Avenue neighbors, who are among the most thoughtful, supportive and community oriented people i have the privilege to know, would be significantly impacted by this inappropriate development in so many ways. The greenery, the birds and the quiet this piece of land provides for many neighbors holds tremendous value. It's unthinkable to take this away from our neighbors. This special area must remain for all to enjoy. There are so few, and it is short sighted to disregard this important fact. Once a piece of land is developed, we can never have it back. People need these spaces to feel connected, peaceful and part of the natural world....we give up quality of life when we eliminate these spaces. This neighborhood is dense enough and we need to stop packing people in and stressing out the area with traffic, parking issues and noise. This project does not belong here, it doesn't make any sense, and i don't think you could fine even one neighbor who supports this development. How could the city possibly want to send this message to its citizens.....that the city of Berkeley doesn't care what kind of impact this will have on them? What exactly is the motivation to move forward with this?

Thank you for your time.

Sincerely,

Mary Jo Thoresen mthoresen@sonic.net  
1195 Hearst Avenue

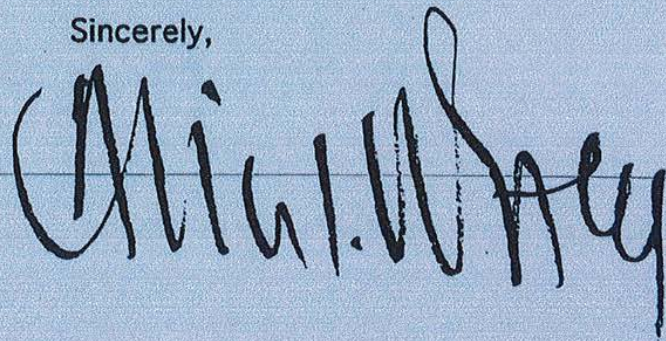


16 November, 2001

Dear City Council & Planning Commission,

I am writing to express my support for the rezoning of the N side of the 1100 block of Hearst from R3 to R2A. I am personally familiar with this specific area and neighborhood as **the original Chez Panisse salad gardens** were located at 1173 and 1115 Hearst. These open, green areas provided me with unexpected opportunities. These places seem rarer and rarer in our densely populated communities. Also, knowing two former long term employees that live in the neighborhood, provided me with insight on this problem. Please help preserve the character of this neighborhood by rezoning the 1100 block to R2A.

Sincerely,



Alice Waters

*This is how long we have been trying to maintain this space as a natural one!*



Leslie Mendez  
Senior Planner City of Berkeley  
1947 Center Street  
2nd Floor  
Berkeley, CA 94704

**RECEIVED**  
MAY 16 2017  
**LAND USE PLANNING**

Re: Permit number ZP2016-0028  
at address 1155-1173 Hearst Avenue  
Hearst Condos

Ms. Mendez,

I am writing once again to express my deep concern over the proposed project referenced above. Some of my concerns are the lack of thorough water studies to determine whether the creek bed that runs through the property is stable enough to safely support the planned buildings. We have significant water problems on Curtis Street and i fear is that this project will compound them for my neighbors.

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Further, the lot holds, what i believe, is significant historical value. In a previous letter sent to you, i identified myself at the pastry chef at Chez Panisse. I moved to Berkeley and started working there in 1981. At that time, the lot behind the single family house on Hearst Avenue was the first garden for Chez Panisse, providing lettuces, herbs and a small amount of produce. This was the "seed" for the entire local, sustainable practices that have grown into a world wide Slow Food movement, the Edible School Yard movement and an awareness of how we approach eating, farming and stewardship of the land. The idea of paving this over to accommodate an oversized, dense lot of 18 units is horrifying and heart breaking. The Curtis Street and Hearst Avenue neighbors, who are among the most thoughtful, supportive and community oriented people i have the privilege to know, would be significantly impacted by this inappropriate development in so many ways. The greenery, the birds and the quiet this piece of land provides for many neighbors holds tremendous value. It's unthinkable to take this away from our neighbors. This special area must remain for all to enjoy. There are so few, and it is short sighted to disregard this important fact. Once a piece of land is developed, we can never have it back. People need these spaces to feel connected, peaceful and part of the natural world....we give up quality of life when we eliminate these spaces. This neighborhood is dense enough and we need to stop packing people in and stressing out the area with traffic, parking issues and noise. This project does not belong here, it doesn't make any sense, and i don't think you could fine even one neighbor who supports this development. How could the city possibly want to send this message to its citizens.....that the city of Berkeley doesn't care what kind of impact this will have on them? What exactly is the motivation to move forward with this?

Thank you for your time.

Sincerely,

Mary Jo Thoresen    mthoresen@sonic.net  
1195 Hearst Avenue

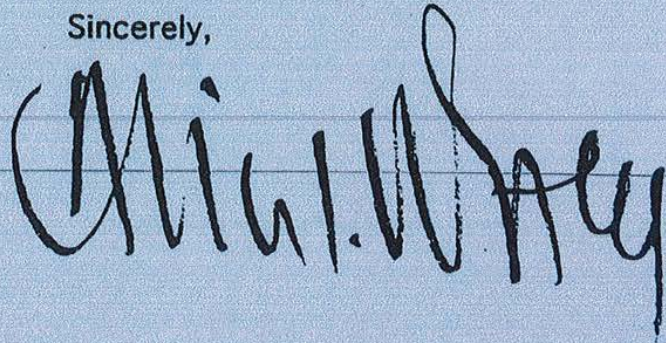


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Sincerely,

A handwritten signature in black ink that reads "Alice Waters". The signature is written in a cursive, flowing style.

Alice Waters

This is how long we have been trying to maintain this space as a natural one!



**Mendez, Leslie**

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**From:** teal major <tealmajor@gmail.com>  
**Sent:** Monday, May 15, 2017 9:29 PM  
**To:** Mendez, Leslie; Zoning Adjustments Board (ZAB)  
**Subject:** Hearst Condo project

Hello

I'd like to add my voice to the concern about the proposed building at 1173 Hearst. We are a small intimate neighborhood and the project being propose is out of scale. We already feel the squeeze from the massive amount of building on the main corridors adjacent to us. There is no parking during the day or night and we have considerable more traffic as people use Curtis and Hearst as alternatives to University and San Pablo. More and more homeowners are renting rooms through AirBNB. The increased amount of foot traffic is stunning.

The proposed condo project is bad for this neighborhood. It removes rent controlled apartments. Three stories are simply inappropriate here. Small bungalows would be keeping with the surrounding homes. The builder has not kept up his word to keep the neighbors informed and hold a meeting. The 11/15/15 night time driveway meeting cannot be considered appropriate. The builders car headlights were the only illumination and they didn't even shine on the table holding the plans. It was cold and children were running around the table.

Please support us in our fight to keep the integrity and intimacy of this neighborhood.

--

Teal  
Major  
1814 Curtis Street

**Mendez, Leslie**

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**From:** Stacey Shulman <staceyberkeley@yahoo.com>  
**Sent:** Monday, May 15, 2017 9:40 AM  
**To:** Mendez, Leslie  
**Subject:** Hearst Condos ZP2016-0028

Dear Ms. Mendez:

I write to urge you NOT to approve the permit application for the Hearst Condo development, located at 1155-73 Hearst Avenue, at this time, as there has not yet been a valid community meeting. The meeting that took place on 11-30-15 was held outside on an extremely cold evening. The area was dimly lit and it was a brief presentational evening. At that meeting we were told that this was not a mandatory meeting and that *there would be at least one more meeting*. We anticipated we would have another opportunity for discussion with the developer, where our concerns would be addressed with the hope of a positive outcome of benefit to the neighborhood. This has not happened. Therefore, approval of this permit application is premature. In addition, there have not been adequate studies of the known creekbed that runs underneath the proposed property, and we have had no explanations or assurances about ongoing housing security for the long-time residents who live in the currently existing rent-controlled properties on the site.

Thank you,

Stacey Shulman  
Curtis Street Resident

Mendez, Leslie

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**From:** Rain Sussman <rain.sussman@gmail.com>  
**Sent:** Monday, May 15, 2017 3:42 PM  
**To:** Mendez, Leslie  
**Cc:** Zoning Adjustments Board (ZAB)  
**Subject:** Hearst Condos - ZP2016-0028 - no community meeting  
**Attachments:** Nov 30 15 meeting Mark-1-1-1.m4a

Dear Leslie,

Thanks for meeting with us last week. I appreciate your time and careful attention to the Hearst Street Condos permit application.

However, I was shocked to learn that the permit application is deemed nearly complete without a valid community meeting having taken place.

The applicant's intent to obfuscate and dissemble is apparent in the misrepresentations he has made to the neighborhood about the development, and the misrepresentations he has made to the Planning Department about community involvement.

One blatant example - the verbal statements made at the event on November 30, 2015. Transcript (below) and audio clip (attached). The applicant falsely claims that this event meets the requirement for a community meeting. (There are other problems with the "community involvement" section of the application, which I will address in a separate email.)

*Rain: Can you tell us about the discretionary process. What is that?*

*Mark: So we also made an application that has umm all the reports and studies. Remind me to come back and talk about the hydrology work. Umm, we'll submit an application in the next couple of weeks, that has all of our reports and studies and our application plans that umm. We'll work with city staff, to umm make sure that they have all the materials that are on the city submittal requirements check list so they can do their full analysis. Usually within 6 to 7 months of submitting that to the city, unless something's gone really sideways, umm, you'll it it. But given there's a lot of traffic in the city right now for project work, so it might be 9 or 10 months. But then you'd see a public hearing notice 2 to 3 weeks before the meeting of the zoning adjustments board, umm inviting you all to participate in that meeting. Or write letters to the ZAB members etc. umm about what you think of the project. **WE'VE DECIDED TO HAVE THIS MEETING HERE, LIKE THIS IS NOT REQUIRED FOR US TO DO UMM BUT. UHH LOOK, UHH I'M I'M SORT OF IN THE NEIGHBORHOOD. I KNOW WHAT IT'S LIKE TO HAVE A PROJECT BUILT IN MY NEIGHBORHOOD. AND I UHH YOU KNOW, AS AS WE TOLD OUR CURTIS STREET NEIGHBORS, WE WON'T SUBMIT THIS UNTIL WE HAVE UHH AT LEAST ONE MORE NEIGHBORHOOD MEETING.***

I did not sign the sign-in sheet because the applicant made it clear that this was not a required meeting. I saw no need to do so, as he already had my email address. Perhaps this is the reason that most other attendees did not sign in either.

I am galled that the applicant, to put it plainly, *lied to us* about the nature of the meeting. We *must* have a valid community meeting before this project is sent to ZAB.

Please ensure that the proper procedures are followed at every step in this highly controversial case.

Thank you,

Rain Sussman  
1824 Curtis Street  
Berkeley, CA 94702



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**Mendez, Leslie**

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**From:** Rolf Williams <rolfwilliams@netscape.net>  
**Sent:** Sunday, May 14, 2017 2:44 PM  
**To:** Mendez, Leslie  
**Cc:** strawberryfork@yahoogroups.com; rain.sussman@gmail.com  
**Subject:** Permit number ZP2016-0028 at address 1155-1173 Hearst Avenue

Dear Ms. Mendez:

Many of the neighbors on Hearst Street and the adjacent blocks of Curtis and Delaware Streets, myself included, contend that there has been insufficient neighborhood inclusion and feedback for the city to consider this application in its current form. Because this is a large scale condo development relative to the small dense neighborhood that surrounds it, coupled with swiftly increasing density on the main corridors that run adjacent to our neighborhood, is it important that we know exactly what this developer is proposing to build so close to our homes.

On the evening of 11/30/2015, Mark Rhodes invited neighbors to a meeting that was held in the darkened drive way of 1173 Hearst Street. Some neighbors came to see plans and discuss the project, but it was not what I would consider a good turnout for this neighborhood. It was virtually impossible to get a complete understanding of what was being planned, because apparently no planning went into this meeting as evidenced by the fact the only the light from which to view the plans came from the headlights of the developer's car, no seating was provided, and some attendees found it difficult to stand on the concrete drive this very cold November evening -- especially the elderly.

Per meeting transcripts, Mr. Rhodes stated that that he did not consider the November 2015 meeting to be a required meeting, and insisted that he would be scheduling another one with the neighbors, presumably in a warm well lit room with seating, before submitting the final plans — to date the second meeting has not been scheduled. Since the only neighborhood meeting was so unashamedly inadequate we need Berkeley City Planning to intervene and insist an acceptable overview of the proposed development be arrange for the citizenry in our neighborhood.

I can state with confidence that I have the support of the majority of my neighbors on Curtis, Hearst, and Delaware Streets when asking the city to please stop processing the building permit application for 1155 and 1173 Hearst Street condo project until Mark Rhoads and his partner developers present the final proposal to me and my neighbors as promised so that meaningful public comment on this large neighborhood development may ensue.

Respectfully,

Rolf Williams  
1814 Curtis Street  
Berkeley, CA

**Mendez, Leslie**

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**From:** Yashu Jiang <yashujiang@gmail.com>  
**Sent:** Sunday, May 14, 2017 3:07 PM  
**To:** Mendez, Leslie  
**Subject:** permit number ZP2016-0028, Hearst Condos

Hi Leslie,

I'm writing as a resident of 1163 Hearst Ave, which is part of the condominium project in permit ZP2016-0028. I am concerned that the developers have not adequately reached out to and addressed the concerns of the residents here and the broader community.

First, a valid community meeting did not take place, the developers did have a meeting which took place outside, at night, in the dark, and the information they presented and the plans they showed at this meeting looked completely different than the ones in the application, with less buildings, and less stories for the buildings.

As resident at 1163 Hearst for 5 and a half years, who is only able to continue to afford to live in Berkeley because of rent control, neither myself nor my neighbors have gotten any information from the developers about their intentions for our continued residence here. We are told there will be "below market rate" units, but there has been no indication of whether they will be available to us, and at what price. Please consider the continued stable housing of many long-time residents (6 households) in reviewing the application. We have all lived in this neighborhood and in Berkeley for many years, we work hard and contribute to the community and local economy, and if displaced, will not be able to continue living in Berkeley.

Thanks for reading my concerns.

Yashu Jiang

UC Berkeley MSW 2013  
678-559-4213  
[yashujiang@gmail.com](mailto:yashujiang@gmail.com)

**Mendez, Leslie**

---

**From:** Hussein Saffouri <Hussein@ramseylawgroup.com>  
**Sent:** Tuesday, April 25, 2017 2:02 PM  
**To:** Mendez, Leslie  
**Subject:** RE: 1155-1173 Hearst Ave. - Zoning Permit ZP2016-0028

Hi Leslie. Thank you for the response. A meeting in person attended by my client as well would be great. Please provide me some times you are available in the next five to seven days, and I will check with my client as to her availability, and confirm a time with you.

Also, would it be possible to have our hydrologist meet with the folks doing the peer review of the developer's drainage plan? I sent you his analysis of that plan, and I think that it would be important that his concerns and questions be considered.

I remain concerned, too, about the applicability of the density bonus law in light of the existing low income rental units which will be impacted by this project, and look forward to discussing the current status of this analysis with you.

At the meeting we can also discuss with you the other concerns raised by the proposal's excessive bulk, density, and encroachment into neighboring setbacks.

Regards, Hussein.

---

HUSSEIN SAFFOURI  
Attorney  
[hussein@ramseylawgroup.com](mailto:hussein@ramseylawgroup.com)  
(925) 284-2002 Direct  
(510) 708-1122 Cell  
(925) 402-8053 Fax

Ramsey Law Group, a professional corporation  
3736 Mt. Diablo Blvd., Suite 300  
Lafayette, CA 94549

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The foregoing applies even if this notice is embedded in a message that is forwarded or attached.

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**From:** Mendez, Leslie [mailto:LMendez@cityofberkeley.info]  
**Sent:** Tuesday, April 25, 2017 1:48 PM  
**To:** Hussein Saffouri  
**Subject:** RE: 1155-1173 Hearst Ave. - Zoning Permit ZP2016-0028

Hi Hussein,

The project is very nearing completion. Any issues are more than appropriate to bring up.

Do you want to set up a time to talk either on phone or in person?

Let me know.



Thanks,  
Leslie

---

**From:** Hussein Saffouri [<mailto:Hussein@ramseylawgroup.com>]  
**Sent:** Monday, April 24, 2017 2:32 PM  
**To:** Mendez, Leslie <[LMendez@cityofberkeley.info](mailto:LMendez@cityofberkeley.info)>  
**Subject:** 1155-1173 Hearst Ave. - Zoning Permit ZP2016-0028

Hi Leslie. Has there been any movement on this project of late? Also, would it be helpful to you if I sent you comments to the last set of revised plans submitted by the builder (for example the builder's own shadow study clearly shows the dramatic adverse impact on the neighbors' light, and there are several inconsistencies and discrepancies throughout the documents), or would it be better if I deferred those comments? Thanks.

Regards, Hussein.

---

HUSSEIN SAFFOURI  
Attorney  
[hussein@ramseylawgroup.com](mailto:hussein@ramseylawgroup.com)  
(925) 284-2002 Direct  
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Hussein M Saffouri  
Attorney

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925-402-8053

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A Professional Corporation



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FEB 08 2017

**LAND USE PLANNING**

February 3, 2017

Zach Cowan, Esq.  
Berkeley City Attorney  
2180 Milvia Street, 4<sup>th</sup> Floor  
Berkeley, CA 94704

Leslie Mendez  
Senior Planner  
Planning and Development Department  
Land Use Planning Division  
2120 Milvia Street  
Berkeley, CA 94704

Re: Use Permit #ZP2016-0028  
1155-1173 Hearst Avenue

Dear Mr. Cowan and Ms. Mendez:

I represent Rain Sussman who owns the home located at 1842 Curtis Street in Berkeley which is directly next door to the development project proposed by the Rhodes Planning Group ("Rhoades") for 1155-1173 Hearst Avenue (the "Project"). I am writing to advise you that the Project, as currently proposed, does not qualify for a density bonus under the California Density Bonus Law ("DBL"). Moreover, even if it did, it would qualify for fewer units than Rhoades is demanding. Consequently, the City should reject the Project.

The Project includes 7 existing, occupied rent controlled rental units. As a result, it is not entitled to a density bonus unless the developer satisfies specific requirements with respect to those rental units. Rhoades, however, has not met any of those requirements. Government Code section 65915(c)(3) prohibits a project from receiving a density bonus if it will eliminate existing rent controlled units – unless it will replace those units and make each other unit in the development (i.e. all units) affordable to and occupied by households of lower or very low income households. (Government Code section 65915(c)(3)(A).) Moreover, the project must provide at least the same number of units of the same size or type or both, as any rent controlled units which are occupied on the date of the application, and make them available at affordable rent or housing cost to persons and families in the same or lower income category as the existing tenants. (Government Code section 65915(c)(3)(B)(i).)

Additionally, the Berkeley Rent Control Ordinance (BMC 13.76) and the Costa Hawkins Act (Civil Code sections 1954.50-1954.535) require the developer to house the existing tenants for the duration of the project and give them the right of first refusal to return to their units at the same rent they were paying at the time of the application. Finally, the developer must elect whether to proceed with the units as low income rentals or as units to be sold at affordable housing prices. The election, in turn, has an impact on the City's obligations with regard to providing financial incentives to allow the project to go forward.

February 3, 2017  
Page 2

Rhoades has failed to fulfill any of these requirements. It does not plan to make all units affordable, as required by the DBL, has not provided for replacement of the occupied units with economically similar ones as required by the DBL, or committed to housing the existing tenants for the duration of the project as required by the Berkeley rent Control Ordinance and the Costa Hawkins Ace. Finally, nowhere in its proposal does Rhoades indicate whether it is electing to proceed with rent controlled units or affordable units for sale. Until it does each of these things explicitly and expressly, Rhoades is not entitled to a density bonus for the Project.

Moreover, once Rhoades complies with the requirements for gaining entitlement to a density bonus, it will be entitled to fewer units than it is currently demanding. Rhoades argues that it is entitled to a total of 18 units. The City counters that the applicant is entitled only to a possible maximum of 17. The City asserts that under Government Code section single family residences are not counted for purposes of the density bonus calculation. The City is correct, and as a result, the existing single unit property on the Project site (identified in the plans as "Camelia") must be excluded from the density bonus calculation.

Rhoades argues (in its letter from counsel dated October 6, 2016) that although the second sentence of 65915(i) *only* provides that developments which convert a *commercial* project to residential use or rehabilitate an existing *multifamily* dwelling qualify for density bonus treatment, that sentence in reality expands the bonus density law to *any* project including the rehabilitation of *any* existing dwelling. Rhoades, essentially, argues that the limiting language in this sentence is superfluous and should be disregarded. However, well accepted rules of statutory interpretation hold otherwise. First, statutes may not be construed so as to render their provisions superfluous. (*Imperial Merchant Services, Inc. v. Hunt* (2009) 47 Cal.4th 381.) Thus, the limiting language in section 65915(i) may not be disregarded. That language, moreover, is susceptible to only one meaning, namely, that only properties of the type it expressly identifies qualify for a density bonus, and, accordingly, those it does not identify do not. (*Dyna-Med, Inc. v. Fair Employment & Housing Com.* (1987) 43 Cal.3d 1379, 1391 fn. 13 (when a statute specifically includes one thing, it excludes that which is not included); *United Farm Workers of America v. Agricultural Lab. Rel. Bd.* (1995) 41 Cal.App.4th 303, 316.)

Rhoades cites extensively to *Wollmer v. City of Berkeley* (2011) 193 Cal.App.4th 1329 in support of its argument that the language of section 65915(i) should be disregarded. But *Wollmer* does not interpret or apply the provision at issue. Rhoades also argues that the legislative intent should trump the plain reading of the statute. This argument is specious, first because Rhoades fails to cite anything in the legislative history that supports this argument, and second, because even if there were, legislative history does not alter the plain language of a statute.

Rhoades finally contends that under the DBL all zoning standards which conflict with the proposed project must be waived or modified. That argument, too, is entirely without merit. *Wollmer* only holds that a municipality must waive or modify development standards which, if upheld, would physically or economically preclude the development. (*Wollmer* 193 Cal.App.4th at 1346-1347.) Other than waivers or modifications required for these reasons, the developer is only entitled to the required number of concessions as provided in the code. Nowhere does it say that a developer is entitled to a waiver of any and all standards which simply conflict with the project as envisioned and proposed even if application of those standards can be accommodated by reasonable changes to the project which do not impede its construction.

February 3, 2017  
Page 3

In sum, Rhoades' position regarding the DBL as it applies to the Project is entirely incorrect. At this time, the Project in its current form fails to qualify for a density bonus at all. Moreover, even if Rhoades were able to comply with the requirements of Government Code section 65915(c)(3), the Berkeley Rent Control Ordinance and the Costa Hawkins Act so as to qualify for a density bonus, the Project will only be entitled to no more than a total of 17 units, and will still be limited to the the number of concessions as provided by the DBL. Any further discussions of a density bonus, however, are premature because Rhoades has yet to comply with those requirements. It is imperative that the City require and enforce such compliance before the Project can proceed.

Please do not hesitate to contact me if you have any questions or wish to discuss this matter further.

Very truly yours,

Hussein Saffouri



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FEB 7 2017  
LAND USE PLANNING

February 3, 2017

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Please do not hesitate to contact me if you have any questions or wish to discuss this matter further.

Very truly yours,



Hussein Saffouri







We, the Strawberry Branch Neighbors, object to zoning application permit # ZP2016-0028, (Hearst Avenue Cottages) as it is currently presented. The plan contains several features that are inappropriate for the site, which is embedded in a 100 year-old residential neighborhood where residents value the community's livability and historic character. As presented, the density of the proposed development would: a) **be detrimental to the neighborhood aesthetic** (including building heights); b) be designed incongruently with neighborhood architectural styles; c) have setbacks on side boundaries that create looming exterior walls towering over neighbors' yards; d) destroy privacy, light, and air; e) **create safety issues for our senior and differently-abled residents** who will experience increased stress competing for parking and require neighbors to park up to four blocks away at night; and f) create storm runoff problems due to an inadequate drainage design.

While the plan would create additional housing units that Berkeley needs, it is unsuitable to pack so much density in so small a space and overloading the resources of the existing neighborhood. We ask that a full CEQA study be required before further consideration of this plan, and that the plan be revised to reduce the number of units; change the building design to conform to existing architectural styles respecting existing building heights and reasonable setbacks; and provide a comprehensive plan for storm runoff and drainage.

Name	Address	Email or Phone	Comment
RALEIGH WILLIAMS	1814 CURTIS ST	(510) 527-9141	<u>TOO BIG!</u> POORLY THOUGHT OUT
BLAZE WOODLIEF	1812 CURTIS ST	510 558-1568	TOO Tall, too many units (shading)
Carrie Mason	1810 Curtis St.	510 527-0195	This is a warm, family oriented street that enjoys sunshine.
Shelly Nakaghi	1809 Curtis	415 504 3805	Parking is already a problem
MADISON WILLIAMS	1814 Curtis	510-325-0026	TOO BIG - PARKING IS ALREADY A PROBLEM AND THIS WILL MAKE IT WORSE - WILL CREATE TOO MUCH DENSITY - DECREASES OUR PROPERTY VALUES
DAMIEN CURRY	1815 Curtis	510 735 6693	Too Many Units; Excessive Parking pressure @ neighborhood
Amy Billstrom	1815 CURTIS ST.	510/229-8133	parking pressure, loss of green space
L Daly	1806 Curtis St	510 316 2259	
Amy Brookes	1811 Curtis St	510-735-1796	<u>TOO BIG</u> - not appropriate for neighborhood

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Name	Address	Email or Phone	Comment
Curtis Gray	1930 Curtis St #8 Berkeley CA 94702		
Deno Giannopoulos	1151 Hearst 94702 Berkeley	deno.gian@earthlink.net	change it keep it "small" in sync?
Dean Metzger	1 HAZEL RD 94705		
Fusako deAngelis	1271 Hearst Ave Berkeley, CA 94702		
MASANORI OBA	1159 Hearst Ave Apt. A Berkeley	517-3814	I want to stay in the apartment I have lived for 21 yrs.
CARDLYN CORY	1141 HEARST AVE BERKELEY CA 94702	510 417 2575	I WANT A HAPPY INCLUSIVE NEIGHBORHOOD
CAROL COHEN	1815 Chestnut St 94702	cohen1815@yahoo	
Mark Songey	1281 Hearst	1281hearst@gmail.com	
Brenda Ruser	1820 Curtis	brendahappy@gmail.com	We need to preserve our neighborhood, neighborhoods that add an affordable units and units not affordable to low income people 3/7



We, the Strawberry Branch Neighbors, object to zoning application permit # ZP2016-0028, (Hearst Avenue Cottages) as it is currently presented. The plan contains several features that are inappropriate for the site, which is embedded in a 100 year-old residential neighborhood where residents value the community's livability and historic character. As presented, the density of the proposed development would: a) **be detrimental to the neighborhood aesthetic** (including building heights); b) be designed incongruently with neighborhood architectural styles; c) have setbacks on side boundaries that create looming exterior walls towering over neighbors' yards; d) destroy privacy, light, and air; e) **create safety issues for our senior and differently-abled residents** who will experience increased stress competing for parking and require neighbors to park up to four blocks away at night; and f) create storm runoff problems due to an inadequate drainage design.

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Name	Address	Email or Phone	Comment
Michael Lott Bob Brettker	1179 Delaney 1241 Hearst Ave	510 735-5692	
Stacey Sulman	188 Curtis	Staceyberkeley @yahoo.	
Mark Long	1281 Hearst Ave	510/704 9837	
<del>REDACTED</del>			
Carolyn Long	1141 Hearst		
Yashu Jiang	1163 Hearst	678-559-4213	
Rain Sussman	1824 Curtis St	rain-elizabeth@ hotmail.com	detrimental to neighborhood need full CEQA study
<del>REDACTED</del>			
Paula Behrman	1149 Hearst Ave	415 710 - 6016	

We, the Strawberry Branch Neighbors, object to zoning application permit # ZP2016-0028, (Hearst Avenue Cottages) as it is currently presented. The plan contains several features that are inappropriate for the site, which is embedded in a 100 year-old residential neighborhood where residents value the community's livability and historic character. As presented, the density of the proposed development would: a) **be detrimental to the neighborhood aesthetic** (including building heights); b) be designed incongruently with neighborhood architectural styles; c) have setbacks on side boundaries that create looming exterior walls towering over neighbors' yards; d) destroy privacy, light, and air; e) **create safety issues for our senior and differently-abled residents** who will experience increased stress competing for parking and require neighbors to park up to four blocks away at night; and f) create storm runoff problems due to an inadequate drainage design.

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Name	Address	Email or Phone	Comment
Linda Reusew Joseph Michael	1820 Curtis 1819 1/2 Curtis St	Linda Eleanor email.com river.joseph @aol.com	
↓	↓		
MARILYN NAPARST	1757 CADISTRAD Berkeley, CA	mnaparst@ gmail.com	
HILLARY MITCHELL	1821 CURTIS ST. BERKELEY, CA, 94702	hillary.a. mitchell@ gmail.com	
Jesse McCorvey	1821 Curtis St Berkeley CA 94702	pretty now - ugly before @ yahoo.com	
LYNN SMITH	1827 CURTIS ST. B BERKELEY 94702	lynn.guitar@gmail.com	
Sandy Hrdlicka	1827 Curtis, Apt. A Berkeley, CA 94702	shrdlicka@yahoo.com	
Dale Anania	1819 Curtis St Berkeley CA 94702	daananiae yahoo.com	
Alan Spector	1419 Curtis St Berkeley, CA 94702	alan.965@comcast.net	



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Name	Address	Email or Phone	Comment
Teal Major	1814 Curtis St	tealmajor@gmail.com	I oppose the development
Rolf Williams	1814 Curtis St	rolfwilliams@gmail.com	Some the neighborhood for an too much density

6/7

We, the Strawberry Branch Neighbors, object to zoning application permit # ZP2016-0028, (Hearst Avenue Cottages) as it is currently presented. The plan contains several features that are inappropriate for the site, which is embedded in a 100 year-old residential neighborhood where residents value the community's livability and historic character. As presented, the density of the proposed development would: a) be **detrimental to the neighborhood aesthetic** (including building heights); b) be designed incongruently with neighborhood architectural styles; c) have setbacks on side boundaries that create looming exterior walls towering over neighbors' yards; d) destroy privacy, light, and air; e) **create safety issues for our senior and differently-abled residents** who will experience increased stress competing for parking and require neighbors to park up to four blocks away at night; and f) create storm runoff problems due to an inadequate drainage design.

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Name	Address	Email or Phone	Comment
BARRY FORTUNE	1149 HEARST AVE. BERK.	BARRY@HEYWHAT.COM	
Lance Hackney	1154 Hearst Ave	hackneylance@gmail.com	
Melissa MacDonnau	1257 HEARST AVE 94702	mmacdonaldm@yahoo.com	
Mark Songey	1281 Hearst	1281hearst@gmail.com	

7/7



## Template Letter (suggested) to ZAB and Councilmember Linda Maio

(See reverse for addresses)

RECEIVED

JUN 16 2016

LAND USE PLANNING

I am writing **[to oppose; to voice my concerns about]** the proposed condo development at 1145-57 Hearst Avenue, zoning application permit # ZP2016-0028, Hearst Avenue Cottages. There are many issues that **[need clarification; are unacceptable]**. Among them:

- Displacement of existing long-term tenants in subsidized housing
- 35 foot roof height in a neighborhood of one and two story homes
- High density impacting noise, privacy, and neighborhood parking
- Grave safety concerns for our elderly and physically challenged neighbors caused by anticipated parking difficulties
- Shadows that potentially jeopardize neighbors' solar rights (existing shadow study insufficient)
- Insufficient studies to consider environmental impact on historic creek, flooding, and draining issues

When reviewing this plan, please consider the rights and wishes of existing neighborhood residents, many of whom have lived here for more than two decades and take great pride in having created a stable, tight-knit community. We have seen many changes over the years, and we seek to ensure that any future changes bring only positive results.

Name *HILLARY MITCHELL + JESSE MCGARVEY*  
Address *1821 CURTIS ST., BERKELEY, CA, 94702*  
Phone *(707) 478-7617*  
Email *hillary46@hotmail.com*



## Contact these Agencies and Express your Views on the Condo Development at 1155 Hearst Ave

Land Use Planning Division  
2120 Milvia Street  
Berkeley, CA 94707

Attn: Greg Powell – Zoning Adjustments Board Secretary  
510 981 7410

email: [zab@ci.berkeley.ca.us](mailto:zab@ci.berkeley.ca.us)

---

Councilmember Linda Maio  
2180 Milvia Street 5<sup>th</sup> Floor  
Berkeley, CA 94704  
510 981 7110

email: [Lmaio@cityofberkeley.info](mailto:Lmaio@cityofberkeley.info)

---

### For More Information go to:

<https://permits.cityofberkeley.info/Community/default.aspx>

In upper right corner of the page find the search box  
(under the words "Accessibility Support").  
Enter the following permit number

**ZP2016-0028**

**Jacob, Melinda**

---

**From:** Zoning Adjustments Board (ZAB)  
**Subject:** FW: Concern about Condo proposal at 1155 Hearst (attn Greg Powell, ZAB secretary)

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

**From:** Alma & Blaze [mailto:woodprins@att.net]  
**Sent:** Tuesday, June 14, 2016 11:46 AM  
**To:** Zoning Adjustments Board (ZAB) <Planningzab@ci.berkeley.ca.us>; Maio, Linda <LMaio@ci.berkeley.ca.us>  
**Cc:** Blaze and Alma <woodprins@att.net>  
**Subject:** Concern about Condo proposal at 1155 Hearst (attn Greg Powell, ZAB secretary)

Dear Zoning Adjustments Board and Councilmember Maio —

I'm writing to express my concerns about a proposed development at 1145-57 Hearst Avenue (zoning permit #ZP2016-0028). As a member of this neighborhood, I hope that the ZAB and the City Council consider the rights and wishes of those who live here as you consider zoning changes and new developments. I'm particularly concerned about this project because of its height — 35 feet being much higher than other buildings in this area — and because of the increase in density, not just in these blocks but in the surrounding neighborhood. There are already two large developments in the works within a half mile in either direction on San Pablo — one at Jones with 170 units and one proposed at Addison with 91 units. I understand the need for more housing and I hope that all these nearby developments will be considered when you consider a density bonuses at Hearst. I don't think our neighborhood can handle much more density without it starting to be extremely congested. It's already hard to park on Curtis Street on the weekends, and with that many more units already in the works, I expect parking will become an even bigger challenge, which is a safety concern for elderly and physically challenged residents. In addition, on Hearst, there are already serious issues with flooding due to the historic creek under the area. I don't think the studies done to date consider the environmental impact as much as they need to. I love my Berkeley neighborhood — and I hope that whatever is built at the Hearst lot maintains the current residential neighborhood's character and quality.

Thank you for your consideration

Blaze Woodlief  
1812 Curtis Street  
510 558 1568  
woodprins@att.net

## Template Letter (suggested) to ZAB and Councilmember Linda Maio

(See reverse for addresses)

RECEIVED

JUN 10 2016

I am writing **[to oppose; to voice my concerns about]** the proposed condo development at 1145-57 Hearst Avenue, zoning application permit # ZP2016-0028, Hearst Avenue Cottages. There are many issues that **[need clarification; are unacceptable]**. Among them:

LAND USE PLANNING

- Displacement of existing long-term tenants in subsidized housing
- 35 foot roof height in a neighborhood of one and two story homes
- High density impacting noise, privacy, and neighborhood parking
- Grave safety concerns for our elderly and physically challenged neighbors caused by anticipated parking difficulties
- Shadows that potentially jeopardize neighbors' solar rights (existing shadow study insufficient)
- Insufficient studies to consider environmental impact on historic creek, flooding, and draining issues

When reviewing this plan, please consider the rights and wishes of existing neighborhood residents, many of whom have lived here for more than two decades and take great pride in having created a stable, tight-knit community. We have seen many changes over the years, and we seek to ensure that any future changes bring only positive results.

Name *Brenda Reuser*  
Address *1820 Coates, Berkeley Calif. 94702*  
Phone *(510) 548-3478*  
Email *brendahappy@gmail.com*



## Template Letter (suggested) to ZAB and Councilmember Linda Maio

(See reverse for addresses)



I am writing **[to oppose; to voice my concerns about]** the proposed condo development at 1145-57 Hearst Avenue, zoning application permit # ZP2016-0028, Hearst Avenue Cottages. There are many issues that **[need clarification; are unacceptable]**. Among them:

- Displacement of existing long-term tenants in subsidized housing
- 35 foot roof height in a neighborhood of one and two story homes
- High density impacting noise, privacy, and neighborhood parking
- Grave safety concerns for our elderly and physically challenged neighbors caused by anticipated parking difficulties
- Shadows that potentially jeopardize neighbors' solar rights (existing shadow study insufficient)
- Insufficient studies to consider environmental impact on historic creek, flooding, and draining issues

When reviewing this plan, please consider the rights and wishes of existing neighborhood residents, many of whom have lived here for more than two decades and take great pride in having created a stable, tight-knit community. We have seen many changes over the years, and we seek to ensure that any future changes bring only positive results.

Name *Linda Reisen*  
Address *1820 Curtis - Berkeley - 94702*  
Phone *510-548-3478*  
Email *linda.eleanor@gmail.com*



Leslie Mendez  
Associate Planner  
Planning Use and Development Department  
City of Berkeley  
2120 Milvia Street  
Berkeley, CA 94704

RECEIVED

JUN 07 2016

LAND USE PLANNING

Re: Use permit #ZP2016-0028  
1155-1173 Hearst Ave.

Good Day,

I am writing with deep concern for the proposed development referenced above. I live at 1195 Hearst and have lived here since 1989. There are many concerns you may be aware of including water issues, density, parking, loss of light and the over all height of the project. Years back, our neighborhood was faced with development of this space and we successfully illustrated how the proposed project was out of character with our residential neighborhood street, and the project never went forward. Now we are facing this same battle and are joining forces again. A development like this does not belong in a neighborhood, but on a main street such as University or San Pablo.

It occurred to me that there is another reason, maybe not of the same weight as the others, but a concern just the same. I am the pastry chef at Chez Panisse, and began my career there in 1981. At that time, the lot behind 1155 Hearst (the single family house) was used as one of (if not the) first gardens to provide the restaurant with lettuces, herbs and a small amount of produce. This garden holds a significant place in the history of the restaurant and the beginnings of the now nationally recognized slow food movement, the Edible School Yard Project and the idea of locally sourced foods. This has transformed the way we approach eating, stewardship of the land and sustainability. It would be heartbreaking to see this garden paved over to accommodate a dense lot of 18 units that would deprive the neighborhood of the greenery, the restorative sounds of birds and animals that currently make this site an oasis for all around it. My neighbors along Curtis street will be profoundly impacted by this development in this way as well. They have always enjoyed their back yards backing up to this natural and beautiful garden and we must be careful and thoughtful about eliminating these rare spaces. Once we plow them under and build on them, we can never have it back....ever. In my mind, this short sighted and morally improper. People need these spaces to feel connected, peaceful and part of the natural world. We give up quality of life when we elect to eliminate these spaces...a high price to pay.

Please consider this as you are evaluating the project further. Thank you for you time. I am happy to continue the discussion and feel free to contact me at any time.

Very Sincerely,



Mary Jo Thoresen  
1195 Hearst Ave.  
Berkeley, CA  
[mthoresen@sonic.net](mailto:mthoresen@sonic.net)

cc: Linda Maio

Jacob, Melinda

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**From:** Zoning Adjustments Board (ZAB)  
**Subject:** FW: proposed condo development on Hearst

**From:** Norma Torres [mailto:normality.not@gmail.com]  
**Sent:** Friday, June 03, 2016 8:39 PM  
**To:** Zoning Adjustments Board (ZAB) <Planningzab@ci.berkeley.ca.us>; Maio, Linda <LMaio@ci.berkeley.ca.us>  
**Subject:** proposed condo development on Hearst

I am writing to express my concerns about the proposed condo development at 1145-57 Hearst avenue, zoning application permit #ZP2016-0028, Hearst Avenue Cottages.

I live in the neighborhood and I am concerned about the displacement of the tenants that live in rent-controlled apartments located on that property. They don't know what will happen to their housing, and in this market, what will happen to them. Since these are condos that are being proposed, does that mean we will be losing those units from the Berkeley rent-controlled housing stock? This is shameful and greedy.

The planned development also brings in high density housing into a portion of the neighborhood with narrow streets, dim lighting, traffic and parking problems, and not to mention the crime and homicide problems that we are already struggling with. We have existing apartment buildings but they are closer to the major streets and are appropriately built for the number of units they contain. The proposed development appears to squish as many units as it can, regardless of livability for the tenants or neighbors. This is not good planning.

I also understand there are issues about the streams that run underground and that occasionally produce wet trails on the sidewalks and roadways. Are environmental studies being done to assess the effect of high density housing to that area? Will the streams have an effect on the building and its maintenance? Yes, the balcony crash of the Library Gardens does come to mind. We need to ensure these developers don't just build, sell, and walk away with their money leaving others to deal with shoddy construction and worse, death.

Please take the thoughts and concerns of the neighborhood residents into consideration. This is a very nice welcoming community with a blend of owners and renters. We look out for each other and for the neighborhood. Please don't let greedy developers ruin a lovely neighborhood. And please don't diminish the stock of rent-controlled apartments in Berkeley. People's homes are at stake. Thank you.

Sincerely,  
Norma Torres  
1930 Curtis St, #6  
Berkeley 94702  
[normality.not@gmail.com](mailto:normality.not@gmail.com)

**Mendez, Leslie**

---

**From:** Zoning Adjustments Board (ZAB)  
**Sent:** Thursday, May 26, 2016 8:43 AM  
**To:** 'teal major'  
**Cc:** Mendez, Leslie  
**Subject:** RE: 1155 Hearst

**From:** teal major [<mailto:tealmajor@gmail.com>]

**Sent:** Wednesday, May 25, 2016 1:40 PM

**To:** Maio, Linda <[LMaio@ci.berkeley.ca.us](mailto:LMaio@ci.berkeley.ca.us)>; Zoning Adjustments Board (ZAB) <[Planningzab@ci.berkeley.ca.us](mailto:Planningzab@ci.berkeley.ca.us)>; Moore, Darryl <[DMoore@ci.berkeley.ca.us](mailto:DMoore@ci.berkeley.ca.us)>

**Subject:** 1155 Hearst

May 25, 2016

Regarding the proposed building project at 1155 Hearst ZP2016-0028

To whom it concerns,

I am writing to express my opposition to the proposed project as it is currently planned. This project is massively over sized for the neighborhood. 3 story buildings are planned to be build between existing one story single family and 2 story multi family properties.

Because of the proposed height the Curtis Street houses will be in complete shadow at 6:30 pm on June 21st and at 3:30 on December 21st. This is according to the builders own shadow studies. In this neighborhood our backyards are where we spend the majority of our time when we are home. It is completely unacceptable for anyones yard to be thrust into shadow when there is 3 more hours of day light.

This is not a transient neighborhood. The vast majority of us have been living here since the early 1990's. As we age we are planning to stay in this neighborhood. Obviously parking is limited. We are now parking a block from our homes. Although many people don't get to park in front of their homes the thing to remember is that until the very recent past we could. Several of the homeowners are now renting rooms through Air BnB to make ends meet. This brings cars. There are multiple 2 bedroom houses on my block with 3 cars. The proposed project on Hearst Ave will bring 18 two and three bedroom units with only 18 parking spaces. Where will the additional 18-36 cars park? We all know that public transportation is lacking in Berkeley and people will have a car.

Curtis and Hearst is already a difficult intersection to navigate. It is off set and impatient drivers threaten pedestrians every single day. More cars plus more pedestrians is dangerous combination.

10 years ago a project was voted down on this same property. It was deemed detrimental to the character of the neighborhood. A larger version of the project is logically more detrimental.

With the vast amount of high density housing being build on University and San Pablo it is the cities responsibility to protect the neighborhoods as much as possible. This is the exact type of project that should be scaled back. It is in a residential neighborhood already declared by the City of Berkeley as historic and worth protecting.

Please don't be short sited and let this large project be built. The reason this neighborhood is a gem is because we are one block from University and San Pablo and we are fortunate enough to live in a garden setting. We all look out onto trees and gardens, birds, butterflies, critters. It is magical here. The impact of this project will literally destroy what we have. I have owned my home since 1994. Why would it be acceptable for investors from North Carolina and greedy developers get to destroy it? It is the responsibility of the City of Berkeley to protect those of us that have dedicated decades of our lives to making this a livable place.

Thank you,  
Teal Major  
1814 Curtis Street  
510-527-9141 [tealmajor@gmail.com](mailto:tealmajor@gmail.com)

--  
Teal

**Mendez, Leslie**

---

**From:** Rhiannon <pwrbus@pacbell.net>  
**Sent:** Tuesday, May 03, 2016 6:19 PM  
**To:** Mendez, Leslie  
**Subject:** Proposed project at 1155 - 1173 Hearst  
**Attachments:** 1155 - 1173 hearst ave - questions and comments.pdf

Hi there,

I live in the area and started looking through this project and writing down some questions and comments, but there were more questions than I realized, so it kind of became a project of its own. I hope you don't mind the pdf file, I tried to be as clear and concise as I could, and I hope you can help clear up some of my confusion re: this project.

I do have a suggestion: Density Bonus Law doesn't really have a niche for "Hybrid" projects and this one won't exactly shoehorn into either a VLI or a Common Interest Development. However, Gov't Code 65915.5 (AB 2222) was written specifically to cover Density Bonus requirements for rental to condominium conversion projects. I guess they saw the need and filled it.

Please let me know if you have any clarifications on the other questions and comments I've attached.

Thanks, and good luck. It's a confusing project.

rhiannon



lmendez@cityofberkeley.info

PROPOSED PROJECT : 1155 – 1173 HEARST AVE, BERKELEY

QUESTIONS, CONCERNS, AND COMMENTS

*All citations are CA Government Code or Berkeley Municipal Code except where noted, all emphases are my own.*

Rhiannon – May 4, 2015

I have several questions and comments regarding the project at 1155-1173 Hearst Ave, first and foremost being: *is the applicant proposing this as a rental project or an ownership project?* The two types of projects have vastly different Density Bonus requirements and bonus percentages, and both the City's Affordable Housing Mitigation Fees (AHMF) and Inclusionary rules as they existed at the time of the application are also very different between rental and condominium projects. CA Density Bonus Law, (CA Gov't Codes 65915 thru 65917) (DBL) makes no allowances for a project containing high income home ownership opportunities combined with very low income rent controlled units. Such a project would certainly appear, if not be, discriminatory.

## **AFFORDABILITY**

CA DBL 65915 (c)(3)(B) forbids any Density Bonus for a project that contains rent controlled units unless all the RC units are replaced, and the replacement units, whether as condo ownership or rentals. are:

*“to be made available at affordable rent or affordable housing cost to, and occupied by, persons and families in the same or lower income category as those households in occupancy.” (not at 50% of AMI as suggested by the applicant)*

And:

*“If the replacement units will be rental dwelling units, these units shall be subject to a recorded affordability restriction for at least 55 years. If the proposed development is for-sale units, the units replaced shall be subject to paragraph (2)”*

While the 55-year covenant takes care of any long term rental restrictions, DBL also carries the *“same or lower income”* requirement for condo or home ownership. The City needs to be aware and concerned about its own responsibilities and requirements under paragraph (2). In order to ensure that any replacement RC units are sold to what could be extremely low income homeowners, 65915 (c)(2)(B) mandates that *the City subsidize the full market rate sale value* of any rent controlled replacement unit conversion under an equity sharing program,

2

minus whatever down payment is affordable to someone at “the same or lower income category” as the current tenants. The City can recoup its subsidy only when the low income owners later sell, and the proceeds are to be deposited in the HTF and earmarked for homeownership opportunities (CA Health & Safety Code 33334.2). This ensures not only equity but equality in the treatment of the resident owners.

Of course, the twist is that once the City complies and subsidizes the full market rate asking price, the project no longer has the low income units required to earn a Density Bonus. This is why, when calculating the Density Bonus, the rent control replacement units are *included in the total number of base units*.

65915(c)(3)(a)(i) “The proposed housing development, *inclusive of the units replaced* pursuant to this paragraph, contains affordable units at the percentages set forth in subdivision (b)”.

While non-replacement bonus units are *excluded* from any determination:

65915. (b)(1) “when an applicant for a housing development seeks and agrees to construct a housing development, *excluding any units* permitted by the Density Bonus awarded pursuant to this section, that will contain at least any one of the following...”

Regardless of their status as Rent Controlled units subject to current rent ceilings, these replacement units *do not count* as BMR units when determining the base project for a Density Bonus or any incentives or concessions. And Section 65915.(b)(1) doesn’t really fit this project, either as VLI rentals (B) or as Common Interest Development (D).

**If I may suggest**, a better fit for this project might be DBL section 65915.5 (AB 2222, CHAPTER 682) which deals specifically with Density Bonuses for conversion of rentals to condominium projects. While it still requires the rent controlled unit replacements to be counted as part of the base project, and limits costs to affordable “at or below” the existing tenant’s income levels; it does give cities a little more leeway in negotiating administrative costs and other financial incentives such as waiving of condominium conversion fees, ensuring affordability of long term sales, etc. CA DBL notwithstanding, no negotiation or incentive can override the tenant protections of BMC 21.28.090(C)&(D) or the increased Inclusionary mitigations and Density Bonus requirements of (E).

While DBL does not require the return of existing tenants, but only the “*same or lower income category*” requirements and the 55 year covenant; both Costa-Hawkins (CA Civil Code 1954.50-1954.535) and the RSO (BMC 13.76) grant current tenants the right of first refusal to re-occupy their unit at the same rent. They both require a landlord to subsidize rent differentials and any temporary relocation expenses to a comparable unit. Costa Hawkins defines comparable as:

3

“rental units that have approximately the same living space, have the same number of bedrooms, are located in the same or similar neighborhoods, and feature the same, similar, or equal amenities and housing services.” [Civ code 1954.51(a)]

And while I haven’t found any BMC definition of comparable, Section 1301(B) of the RSO provides negotiations to determine whether units are comparable:

“The parties may present or may be required by the hearing examiner to provide evidence concerning the value differential of the condition, size, services, location, and other amenities of the two units.”

Both Costa Hawkins and BMC’s RSO forbid the imposition of a new, higher rent ceiling upon reoccupation of the units after construction, whether by the original tenants or any new residents.

## BASE PROJECT

This site was the subject of a proposed project around 2000 -2001. If I recall (it’s hard to find files online sometimes) the proposal began with a base project of 12 units with 4 Density Bonus units, 16 units total. Over the next several years as the project wound its way through Planning and Zoning and appeals and the City Council and appeals, and the Courts, and appeals, it was denied a Use Permit at every turn. At some point between the ZAB and the Council, it was determined that this site could only sustain a base project of 8 units, but even when the applicant reduced the total to 12 units (8 base and 4 DB), the Use Permit was still denied. A base project of 13 units with a total of 18 units is far more than this site could reasonably hold.

The applicant claims that there are 6 rent controlled apartment units and a single family home, but the “single family home” is in fact a duplex and both of its units (upper and lower) are registered with the Rent Board and have posted established rent ceilings. Since the same corporation owns all 8 units and treats them all as one project, both units of the duplex are part of the total number of rentals on site. None of these are owner occupied, so there are in fact 8 price restricted units (6 one-bedroom units and 2 three-bedroom units, according to the City’s website) which need to be replaced in kind before determining any Density Bonus<sup>1</sup>

## MITIGATIONS

The City Council recently moved towards adopting an Inclusionary requirement, along with up to \$34,000 in lieu fee, for rental units only. The 2009 Palmer decision, limiting a city’s ability to impose inclusionary housing,

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<sup>1</sup> <http://www.ci.berkeley.ca.us/RentBoardUnitSearch.aspx> (see attached screenshot)

4

affected only rentals, so Berkeley's 20% Inclusionary requirement for condominium or ownership projects has remained in continuous effect since at least 1999<sup>2</sup>. While the City did commission a Nexus Study to determine its AHMF, unless and until the City Council adopts the \$75,000 condominium/ownership mitigation fee suggested by the Study<sup>3</sup>, the codified calculation of the in-lieu fee for ownership projects remains a bit confusing and expensive:

#### **BMC Section 23C.12.035 Payment of In-Lieu Fees as an Alternative to Providing Inclusionary Units**

##### **C. Amount of Fee.**

1. The in-lieu fee shall be sixty-two and a half percent (62.5%) of the difference between the permitted sale price for inclusionary units and the amounts for which those units are actually sold by the applicant.
2. This fee shall be calculated and collected based on the sales prices of all of the units in a project to which the inclusionary requirement applies, such that the fee as charged shall be a percentage of the difference between the actual sales price for each unit, and the sales price that would have been permitted had that unit been an inclusionary unit.

##### **D. Calculation of Inclusionary Sales Price.**

1. The allowable inclusionary sales price for the purpose of calculating the in-lieu fee pursuant to this section shall be three (3) times eighty percent (80%) of the Area Median Income (AMI) last reported as of the closing date of the sale of the unit,

So, if I'm reading this Code Section correctly, the formula is something like:

$$.625 \times (\text{actual price of condo} - [3 \times \{\text{AMI} \times .8\}])$$

*(though I'm old and math was never my strong suit)*

With the price of homes skyrocketing in this City, and the stagnation of the AMI, the Inclusionary in-lieu fee for ownership can only get more costly, so the City should really consider adopting the Nexus Study's proposed ownership Inclusionary in-lieu mitigation fee. And remember, the Inclusionary requirement is 20% over and

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<sup>2</sup> 2015 Draft Nexus Study, pg 11 / 73

<[https://www.cityofberkeley.info/uploadedFiles/Planning\\_and\\_Development/Level\\_3\\_-\\_Commissions/Commission\\_for\\_Planning/2015-09-02\\_Item%209\\_Housing%20Impact%20Mitigation%20Fee-Combined.pdf](https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_Commissions/Commission_for_Planning/2015-09-02_Item%209_Housing%20Impact%20Mitigation%20Fee-Combined.pdf) >

<sup>3</sup> Ibid pg 43 / 73



5

above the replacement rent controlled units, minus any BMR units used to qualify for any Density Bonus or concessions.

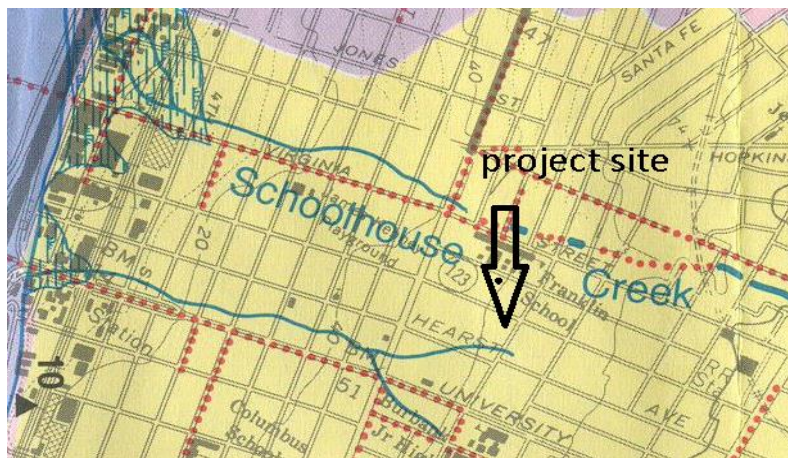
## HYDROLOGY

This area, Hearst and Curtis, has long had a problem with flooding. Notes from a meeting of neighbors and Public Works staff in 2006 reveals that:

- Curtis Street floods every year
- Yards get 12-24 inches of standing water
- Sump pumps are overwhelmed, basements are flooded
- Ground gets saturated – water table issues

Public Works Staff notes: “Needs specialists available who know about groundwater and where the creeks run<sup>4</sup>”

In fact, this is the site of a branch of Strawberry Creek noted on historic maps from 1880 all the way through the City’s current Historic Creeks Map. This branch originates just West of Curtis St and travels directly through the project site towards the bay. It’s possible that there is a spring that feeds (or fed) this branch. The culverting of various creeks over a century ago was often piecemeal and few are still in good working order. Since this is to be an ownership project it’s vital that this be investigated and remedied before any construction or sale, possibly with additional culverting under Curtis St., to prevent any future problems when the drought ends and the normal rain cycles return.



<sup>4</sup> Storm meeting notes: <<http://www.ci.berkeley.ca.us/council2/Storm%20Meeting%20Notes.PDF>>

From "My Rent Ceiling" <<http://www.cityofberkeley.info/RentBoardUnitSearch.aspx>>

Unit Address	Unit Status	Tenancy Start	Rent Ceiling	Housing Services	Other
1155 HEARST AVE ⚙	RENTED - Rented or Available	8/10/2011	\$1,124.34	Garbage	# Bed: 1 # Occ: 1
1157 HEARST AVE ⚙	RENTED - Rented or Available	7/1/2009	\$1,090.08	Garbage	# Bed: 1 # Occ: 1
1159 HEARST AVE #A ⚙	RENTED - Rented or Available	5/31/1980	\$1,209.47	Parking	# Bed: 1 # Occ: 0
1159 HEARST AVE #B ⚙	RENTED - Rented or Available since 6/14/1997	n/a	\$1,091.44	Garbage, Parking, Water	# Bed: 3
1161 HEARST AVE ⚙	RENTED - Rented or Available	7/1/2009	\$1,150.32	Garbage	# Bed: 1 # Occ: 2
1163 HEARST AVE ⚙	RENTED - Rented or Available	12/12/2011	\$1,177.88	Garbage	# Bed: 1 # Occ: 1

Unit Address	Unit Status	Tenancy Start	Rent Ceiling	Housing Services	Other
1173 HEARST AVE #LOWER ⚙	RENTED - Rented or Available since 7/1/2015	n/a	\$742.07	Furnishings, Garbage, Parking, Storage	# Bed: 1
1173 HEARST AVE #UPPER ⚙	RENTED - Rented or Available since 7/1/2015	n/a	\$1,299.31	Furnishings, Garbage, Parking, Storage	# Bed: 3

**Mendez, Leslie**

---

**From:** Hussein Saffouri <Hussein@ramseylawgroup.com>  
**Sent:** Wednesday, March 02, 2016 4:55 PM  
**To:** Mendez, Leslie  
**Subject:** 1155-1173 Hearst Ave.

Dear Leslie, as we discussed, I am sending you a bullet point list of items which we have noted are missing from the developer's application for the development proposed for 1155-1173 Hearst Ave. Thank you for taking the time to review and consider these comments:

- Hydrology report is missing (developer had indicated this would be included – it is not)
- C.3.i Stormwater Checklist conflicts with the hydrology report previously shared with neighbors
- Geo-tech report is missing (developer had indicated this would be included – it is not)
- Parking buffer zone on West side is missing
- Height of buildings on all surrounding properties are not provided
- Shadow studies are inadequate; 6.4 Seems inaccurate and definitely confusing
- Story poles are needed but are not provided or addressed
- No elevation model or photo study is provided
- The application claims three density bonus concessions whereas the City's calculation concludes that the developer is only entitled to two
- Proper evidence of adequate community/neighborhood meetings is lacking (sign in sheet shows six attendees but is filled in by developer claiming greater attendance)

There are also certain items which are unclear and raise immediate questions which should be clarified before the application should be considered complete, including:

- Whether the lot coverage and open space stated are accurate and adequate
- The actual number of stories along Curtis Street (it is unclear whether they really are all two stories)
- The project does not match the fabric of the block and the zoning of the area (Less dense R2 to north and east of the subject property, the side yard of the proposed two story buildings (with requested height increase to 35 feet) abut the rear yards of neighboring single family homes with minimum 4' setback. Lower buildings, set further from the property line would be more consistent with the urban fabric.)

Please feel free to call me if you have any questions. Thank you again for taking the time to review these comments.

Regards, Hussein.

**Please Take Note of Our New Address Below**

---

HUSSEIN SAFFOURI  
Attorney

[hussein@ramseylawgroup.com](mailto:hussein@ramseylawgroup.com)  
(925) 284-2002 Direct  
(510) 708-1122 Cell  
(925) 402-8053 Fax

Ramsey Law Group  
3736 Mt. Diablo Blvd., Suite 300  
Lafayette, CA 94549

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The foregoing applies even if this notice is embedded in a message that is forwarded or attached.



Jacob, Melinda

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**From:** Zoning Adjustments Board (ZAB)  
**Subject:** FW: Comment re: 1155-1173 Hearst Ave. Development

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

From: Alma Prins [mailto:woodprins@att.net]  
Sent: Tuesday, September 26, 2017 9:09 PM  
To: Zoning Adjustments Board (ZAB) <Planningzab@cityofberkeley.info>  
Cc: Rain Sussman <rain.sussman@gmail.com>; Blaze <blazewoodlief66@gmail.com>  
Subject: Comment re: 1155-1173 Hearst Ave. Development

Dear Berkeley Zoning Board:

I am writing with serious concerns about the plans for condos on Hearst Ave, behind our home and several other neighbors on the 1800 block of Curtis Street. As you may see in photos during the meeting on 9/28, our street has serious flooding/drainage problems during times of heavy rain - which happens yearly (or which we hope for during drought years!). Our backyard consistently turns into a huge deep puddle/pool during that time - in the past when our kids were small they would love to play out there but come in drenched because the water was so deep it went over their rubber boots.

At this point I have not heard of any plan the developers have to address these flooding drainage issues, which this additional development will likely exacerbate.

The proposed development also does not have sufficient parking for the number of units, and our neighborhood streets simply do not have room for more cars. As it is, it's often difficult to park near our house.

I hope you will take these serious concerns into consideration when making decisions about these plans.

Thank you,  
Alma Prins,  
1812 Curtis Street, Berkeley 94702

**Jacob, Melinda**

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**From:** Zoning Adjustments Board (ZAB)  
**Subject:** FW: 11155-1173 Hearst-order of presentation

**From:** Pamela Ormsby [mailto:pormsby@aol.com]  
**Sent:** Tuesday, September 26, 2017 9:21 AM  
**To:** Zoning Adjustments Board (ZAB) <Planningzab@cityofberkeley.info>  
**Subject:** 11155-1173 Hearst-order of presentation

Dear Mr. Frank,

I am representing the neighbors of 1161-1173 Hearst who will be presenting opposition/concern re. the project as presented.  
We believe that there will be many speakers on Th. 9/28.

Would it be possible for this action item to be taken up earlier in the evening ?

Thank you for this consideration.

Pam Ormsby  
neighbor of 1155-1173 Hearst.  
[pormsby@aol.com](mailto:pormsby@aol.com)

Jacob, Melinda

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**From:** Zoning Adjustments Board (ZAB)  
**Subject:** FW: 1161-1173 Hearst Ave. proposed condos

**From:** Pamela Ormsby [mailto:pormsby@aol.com]  
**Sent:** Monday, September 25, 2017 3:07 PM  
**To:** Zoning Adjustments Board (ZAB) <Planningzab@cityofberkeley.info>  
**Subject:** 1161-1173 Hearst Ave. proposed condos

Dear Mr. Powell and City of Berkeley ZAB Board members,

I am a 46 year resident of 1148 Delaware St.-on the north side of the proposed condo development at 1161-1173 Hearst St..

I have a long experience with seasonal ponding up to 3 feet at the north-east corner of this lot .

In addition, the soil at that part of the lot seems to be tending toward a sinkhole character. I can put a long stick into the soil at the base of my willow tree and it disappears.

I have put a hose down that hole and water never reaches the top of the hole. Has the filled in creek settled since 1875 and lost it's fill ?

A geo-technical evaluation should be taken.

**The City of Berkeley needs to protect the current and future owners and tenants as to the ground stability over the "filled -in creek"..**

The developer has stated that the proposed north-end building-Freesia- will be at a distance from the back of the three Delaware St. houses.

This fails to take into account that ADUs are in consideration for these lots.

The ADU rental houses and sites will be impacted by the height and proximity of this Freesia building. by both reduced light and noise.. The Freesia condo units are proposed to be 3 bedroom, 3 bath units.

This sounds like dorm room rentals.

**ADUs are the correct density for in-fill without impacting the density of the small home character of our neighborhood.**

**This proposed development is too dense and too high for its site. It belongs on University Ave or San Pablo Ave.**

Please share with the ZAB board for the 9/28/17 meeting and future meetings.

Thank you for your consideration.

Pam Ormsby  
(510) 524-6080  
[pormsby@aol.com](mailto:pormsby@aol.com)

Jacob, Melinda

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**From:** Zoning Adjustments Board (ZAB)  
**Subject:** FW: 9/28/2017 ZAB meeting: Proposed project at 1155 - 1173 Hearst  
**Attachments:** 1155 - 1173 hearst ave - questions and comments.pdf

**From:** Rhiannon [mailto:pwrbus@pacbell.net]  
**Sent:** Sunday, September 24, 2017 4:14 AM  
**To:** Zoning Adjustments Board (ZAB) <Planningzab@cityofberkeley.info>  
**Subject:** 9/28/2017 ZAB meeting: Proposed project at 1155 - 1173 Hearst

1155-1173 Hearst St.

In calculating the Density Bonus the applicant mistakenly applied the percentages and affordability levels for a rental project **[CA Gov't 61915.(f)(1)]** rather than those levels required of a Condominium development **[Gov't 61915.(f)(4)]**.

While a rental development is allowed a 35% Density Bonus for providing 11% VLI units, that same 11% in affordable condominiums only grants a 6% Density Bonus which in this project is less than 1 unit. In order to get the full 35% Density Bonus, a Condominium development must provide 40% of the base units affordable for moderate income buyers. For a 13 unit project, 6 must be affordable to get the requested 5 bonus units. DBL does allow a Condominium project bonuses and concessions:

*"provided that all units in the development are offered to the public for purchase."  
[Gov't 61915.(b)(1)(D)]*

That means Market Rate, BMR, Inclusionary, DB, qualifying - all units must be offered for sale to the public. There is no allowance for part rental/part condo projects, there is no allowance for in-lieu fees. All of the BMR or affordable units must be provided on site (or off-site as long as they're all available at the same time) and offered for sale to qualifying folks.

If I may respectfully suggest, the ZAB, Planning Commission, City Council, and us regular folks would likely benefit from a workshop/consultation with Goldfarb & Lipman who are highly respected in this field; to clarify Berkeley's responsibilities under DBL, especially regarding replacement of existing affordable housing; condo/rental mixed housing; conversions and calculating affordability among other practices. We need more transparency.

This is Berkeley's workforce housing, the moderate income housing for teachers and firemen and nurses and contractors; this is the 'missing middle' that's so vital now, and by not enforcing State statutes the City is throwing away all pretense of support for the working stiffs along with these desperately needed additional units. How many other condominium projects have been given full Density Bonuses as rentals and then converted to condominiums without requiring sale or the correct percentages? How many have been offered for sale? And why is the City letting the opportunity to create these moderate income homes slip away?

rhiannon



I've attached a pdf that I sent in two years ago regarding this project which contains the listed rent ceilings for each of the existing units (all of them affordable) from the Rent Board's website in 2015 (pg 6). The applicant's "Hearst Avenue Cottages - Occupancy Doc" lists the occupancy date of each of the units as 2/1/2015. The current rent for 1173 Hearst is listed as \$5595 for 2 units since 2/1/2015; but the Rent Board's listed rent ceiling for the 2 units at 1173 combined was only \$2041.07 and they were "rented or available since 7/1/2015" (*my emphasis*); later and much more affordable than the Occupancy Doc claims.

lmendez@cityofberkeley.info

PROPOSED PROJECT : 1155 – 1173 HEARST AVE, BERKELEY

QUESTIONS, CONCERNS, AND COMMENTS

*All citations are CA Government Code or Berkeley Municipal Code except where noted, all emphases are my own.*

Rhiannon – May 4, 2015

I have several questions and comments regarding the project at 1155-1173 Hearst Ave, first and foremost being: *is the applicant proposing this as a rental project or an ownership project?* The two types of projects have vastly different Density Bonus requirements and bonus percentages, and both the City's Affordable Housing Mitigation Fees (AHMF) and Inclusionary rules as they existed at the time of the application are also very different between rental and condominium projects. CA Density Bonus Law, (CA Gov't Codes 65915 thru 65917) (DBL) makes no allowances for a project containing high income home ownership opportunities combined with very low income rent controlled units. Such a project would certainly appear, if not be, discriminatory.

## **AFFORDABILITY**

CA DBL 65915 (c)(3)(B) forbids any Density Bonus for a project that contains rent controlled units unless all the RC units are replaced, and the replacement units, whether as condo ownership or rentals, are:

*“to be made available at affordable rent or affordable housing cost to, and occupied by, persons and families in the same or lower income category as those households in occupancy.” (not at 50% of AMI as suggested by the applicant)*

And:

*“If the replacement units will be rental dwelling units, these units shall be subject to a recorded affordability restriction for at least 55 years. If the proposed development is for-sale units, the units replaced shall be subject to paragraph (2)”*

While the 55-year covenant takes care of any long term rental restrictions, DBL also carries the *“same or lower income”* requirement for condo or home ownership. The City needs to be aware and concerned about its own responsibilities and requirements under paragraph (2). In order to ensure that any replacement RC units are sold to what could be extremely low income homeowners, 65915 (c)(2)(B) mandates that *the City subsidize the full market rate sale value* of any rent controlled replacement unit conversion under an equity sharing program,

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minus whatever down payment is affordable to someone at “the same or lower income category” as the current tenants. The City can recoup its subsidy only when the low income owners later sell, and the proceeds are to be deposited in the HTF and earmarked for homeownership opportunities (CA Health & Safety Code 33334.2). This ensures not only equity but equality in the treatment of the resident owners.

Of course, the twist is that once the City complies and subsidizes the full market rate asking price, the project no longer has the low income units required to earn a Density Bonus. This is why, when calculating the Density Bonus, the rent control replacement units are *included in the total number of base units*.

65915(c)(3)(a)(i) “The proposed housing development, *inclusive of the units replaced* pursuant to this paragraph, contains affordable units at the percentages set forth in subdivision (b)”.

While non-replacement bonus units are *excluded* from any determination:

65915. (b)(1) “when an applicant for a housing development seeks and agrees to construct a housing development, *excluding any units* permitted by the Density Bonus awarded pursuant to this section, that will contain at least any one of the following...”

Regardless of their status as Rent Controlled units subject to current rent ceilings, these replacement units *do not count* as BMR units when determining the base project for a Density Bonus or any incentives or concessions. And Section 65915.(b)(1) doesn’t really fit this project, either as VLI rentals (B) or as Common Interest Development (D).

**If I may suggest**, a better fit for this project might be DBL section 65915.5 (AB 2222, CHAPTER 682) which deals specifically with Density Bonuses for conversion of rentals to condominium projects. While it still requires the rent controlled unit replacements to be counted as part of the base project, and limits costs to affordable “at or below” the existing tenant’s income levels; it does give cities a little more leeway in negotiating administrative costs and other financial incentives such as waiving of condominium conversion fees, ensuring affordability of long term sales, etc. CA DBL notwithstanding, no negotiation or incentive can override the tenant protections of BMC 21.28.090(C)&(D) or the increased Inclusionary mitigations and Density Bonus requirements of (E).

While DBL does not require the return of existing tenants, but only the “*same or lower income category*” requirements and the 55 year covenant; both Costa-Hawkins (CA Civil Code 1954.50-1954.535) and the RSO (BMC 13.76) grant current tenants the right of first refusal to re-occupy their unit at the same rent. They both require a landlord to subsidize rent differentials and any temporary relocation expenses to a comparable unit. Costa Hawkins defines comparable as:

3

“rental units that have approximately the same living space, have the same number of bedrooms, are located in the same or similar neighborhoods, and feature the same, similar, or equal amenities and housing services.” [Civ code1954.51(a)]

And while I haven't found any BMC definition of comparable, Section 1301(B) of the RSO provides negotiations to determine whether units are comparable:

“The parties may present or may be required by the hearing examiner to provide evidence concerning the value differential of the condition, size, services, location, and other amenities of the two units.”

Both Costa Hawkins and BMC's RSO forbid the imposition of a new, higher rent ceiling upon reoccupation of the units after construction, whether by the original tenants or any new residents.

#### **BASE PROJECT**

This site was the subject of a proposed project around 2000 -2001. If I recall (it's hard to find files online sometimes) the proposal began with a base project of 12 units with 4 Density Bonus units, 16 units total. Over the next several years as the project wound its way through Planning and Zoning and appeals and the City Council and appeals, and the Courts, and appeals, it was denied a Use Permit at every turn. At some point between the ZAB and the Council, it was determined that this site could only sustain a base project of 8 units, but even when the applicant reduced the total to 12 units (8 base and 4 DB), the Use Permit was still denied. A base project of 13 units with a total of 18 units is far more than this site could reasonably hold.

The applicant claims that there are 6 rent controlled apartment units and a single family home, but the “single family home” is in fact a duplex and both of its units (upper and lower) are registered with the Rent Board and have posted established rent ceilings. Since the same corporation owns all 8 units and treats them all as one project, both units of the duplex are part of the total number of rentals on site. None of these are owner occupied, so there are in fact 8 price restricted units (6 one-bedroom units and 2 three-bedroom units, according to the City's website) which need to be replaced in kind before determining any Density Bonus<sup>1</sup>

#### **MITIGATIONS**

The City Council recently moved towards adopting an Inclusionary requirement, along with up to \$34,000 in lieu fee, for rental units only. The 2009 Palmer decision, limiting a city's ability to impose inclusionary housing,

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<sup>1</sup> <http://www.ci.berkeley.ca.us/RentBoardUnitSearch.aspx> (see attached screenshot)



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affected only rentals, so Berkeley's 20% Inclusionary requirement for condominium or ownership projects has remained in continuous effect since at least 1999<sup>2</sup>. While the City did commission a Nexus Study to determine its AHMF, unless and until the City Council adopts the \$75,000 condominium/ownership mitigation fee suggested by the Study<sup>3</sup>, the codified calculation of the in-lieu fee for ownership projects remains a bit confusing and expensive:

#### **BMC Section 23C.12.035 Payment of In-Lieu Fees as an Alternative to Providing Inclusionary Units**

##### **C. Amount of Fee.**

1. The in-lieu fee shall be sixty-two and a half percent (62.5%) of the difference between the permitted sale price for inclusionary units and the amounts for which those units are actually sold by the applicant.
2. This fee shall be calculated and collected based on the sales prices of all of the units in a project to which the inclusionary requirement applies, such that the fee as charged shall be a percentage of the difference between the actual sales price for each unit, and the sales price that would have been permitted had that unit been an inclusionary unit.

##### **D. Calculation of Inclusionary Sales Price.**

1. The allowable inclusionary sales price for the purpose of calculating the in-lieu fee pursuant to this section shall be three (3) times eighty percent (80%) of the Area Median Income (AMI) last reported as of the closing date of the sale of the unit,

So, if I'm reading this Code Section correctly, the formula is something like:

$$.625 \times (\text{actual price of condo} - [3 \times \{\text{AMI} \times .8\}])$$

*(though I'm old and math was never my strong suit)*

With the price of homes skyrocketing in this City, and the stagnation of the AMI, the Inclusionary in-lieu fee for ownership can only get more costly, so the City should really consider adopting the Nexus Study's proposed ownership Inclusionary in-lieu mitigation fee. And remember, the Inclusionary requirement is 20% over and

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<sup>2</sup> 2015 Draft Nexus Study, pg 11 / 73

<[https://www.cityofberkeley.info/uploadedFiles/Planning\\_and\\_Development/Level\\_3\\_-\\_Commissions/Commission\\_for\\_Planning/2015-09-02\\_Item%209\\_Housing%20Impact%20Mitigation%20Fee-Combined.pdf](https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_Commissions/Commission_for_Planning/2015-09-02_Item%209_Housing%20Impact%20Mitigation%20Fee-Combined.pdf)>

<sup>3</sup> Ibid pg 43 / 73

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above the replacement rent controlled units, minus any BMR units used to qualify for any Density Bonus or concessions.

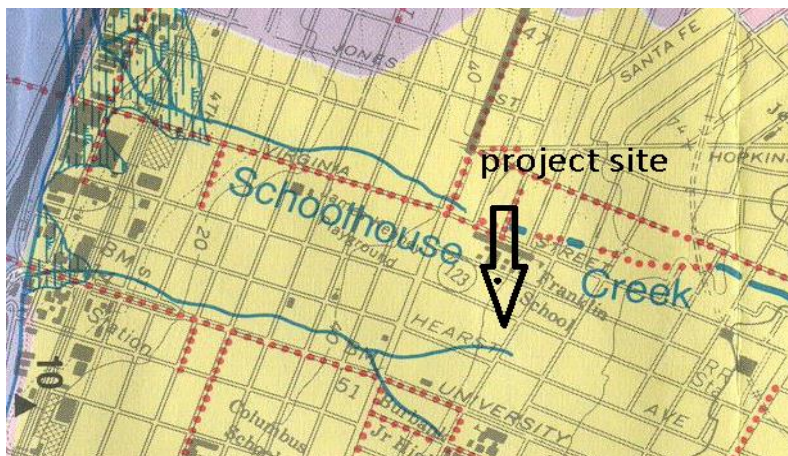
## HYDROLOGY

This area, Hearst and Curtis, has long had a problem with flooding. Notes from a meeting of neighbors and Public Works staff in 2006 reveals that:

- Curtis Street floods every year
- Yards get 12-24 inches of standing water
- Sump pumps are overwhelmed, basements are flooded
- Ground gets saturated – water table issues







Public Works Staff notes: “Needs specialists available who know about groundwater and where the creeks run<sup>4</sup>”



In fact, this is the site of a branch of Strawberry Creek noted on historic maps from 1880 all the way through the City’s current Historic Creeks Map. This branch originates just West of Curtis St and travels directly through the project site towards the bay. It’s possible that there is a spring that feeds (or fed) this branch. The culverting of various creeks over a century ago was often piecemeal and few are still in good working order. Since this is to be an ownership project it’s vital that this be investigated and remedied before any construction or sale, possibly with additional culverting under Curtis St., to prevent any future problems when the drought ends and the normal rain cycles return.



<sup>4</sup> Storm meeting notes: <<http://www.ci.berkeley.ca.us/council2/Storm%20Meeting%20Notes.PDF>>

From "My Rent Ceiling" <<http://www.cityofberkeley.info/RentBoardUnitSearch.aspx>>

Unit Address	Unit Status	Tenancy Start	Rent Ceiling	Housing Services	Other
1155 HEARST AVE 	RENTED - Rented or Available	8/10/2011	\$1,124.34	Garbage	# Bed: 1 # Occ: 1
1157 HEARST AVE 	RENTED - Rented or Available	7/1/2009	\$1,090.08	Garbage	# Bed: 1 # Occ: 1
1159 HEARST AVE #A 	RENTED - Rented or Available	5/31/1980	\$1,209.47	Parking	# Bed: 1 # Occ: 0
1159 HEARST AVE #B 	RENTED - Rented or Available since 6/14/1997	n/a	\$1,091.44	Garbage, Parking, Water	# Bed: 3
1161 HEARST AVE 	RENTED - Rented or Available	7/1/2009	\$1,150.32	Garbage	# Bed: 1 # Occ: 2
1163 HEARST AVE 	RENTED - Rented or Available	12/12/2011	\$1,177.88	Garbage	# Bed: 1 # Occ: 1

Unit Address	Unit Status	Tenancy Start	Rent Ceiling	Housing Services	Other
1173 HEARST AVE #LOWER 	RENTED - Rented or Available since 7/1/2015	n/a	\$742.07	Furnishings, Garbage, Parking, Storage	# Bed: 1
1173 HEARST AVE #UPPER 	RENTED - Rented or Available since 7/1/2015	n/a	\$1,299.31	Furnishings, Garbage, Parking, Storage	# Bed: 3

Jacob, Melinda

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**From:** Zoning Adjustments Board (ZAB)  
**Subject:** FW: Condo building at 1155-1173 Hearst Ave

**From:** Melissa MacDonald [mailto:mmacdonaldm@yahoo.com]  
**Sent:** Thursday, September 28, 2017 9:03 AM  
**To:** Zoning Adjustments Board (ZAB) <Planningzab@cityofberkeley.info>; Maio, Linda <LMaio@cityofberkeley.info>; Mendez, Leslie <LMendez@cityofberkeley.info>  
**Subject:** Condo building at 1155-1173 Hearst Ave

Zoning board members,

Unfortunately I will be unable to attend the Zoning board meeting for the construction of 18 units at 1155-1173 Hearst Ave taking place this evening but I would like to voice my concerns to the board.

I reside on the 1200 block of Hearst Ave and have been following the discussion of the proposed development down the street.

I am not anti-development of the area but have concerns pertaining to the building boom of Berkeley. There are a few items that have been brought up on the Hearst Ave condos such as the elimination of rent controlled units, the soils report, the height of the buildings and density of the residents and parking as well as traffic that are cause for concern.

The loss of rent controlled units and older buildings means people who have been here for years will have to move away. This is happening more often now that property owners can get a huge return on their investment. Older buildings house the people who make things, do things and entertain and allow them to survive in places that are far too expensive to live otherwise. Why is the developer not being held to rehousing the rent controlled tenants?

As for the soil study, all the houses on this block of Hearst have sunk towards the back of the property. When it pours for weeks the back yards flood and become saturated with water and the buildings unless they have been lifted all slope to the back by at least 6". The street is a river and the intersection of Hearst and Curtis has been dug up and worked on at least four times since I moved to the area 11 years ago. This should be taken into consideration for developing this property.

This is a relatively peaceful area being that it is so close to University and San Pablo. Buildings of the height and density of the proposed project belong on larger streets. The project could be quite reasonable if diminished to 12 or 13 units. The streets on Hearst, Curtis and Chestnut are packed with cars day and night now. During construction of this project the streets will be lined with contractors trucks and we locals will have to deal with the overflow as well as inconveniences getting around our neighborhood.

I hope some consideration is taken in regards to the concerns of the people who live in the area when allowing this project to go through.

Sincerely,

Melissa MacDonald

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Jacob, Melinda

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**From:** Zoning Adjustments Board (ZAB)  
**Subject:** FW: 1155-1173 Hearst Avenue ZP2016-0028

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

From: Mike Pavone [mailto:pavone@retrodev.com]  
Sent: Thursday, September 28, 2017 1:09 AM  
To: Zoning Adjustments Board (ZAB) <Planningzab@cityofberkeley.info>  
Subject: 1155-1173 Hearst Avenue ZP2016-0028

I am writing to express my strong support for this project on Hearst Avenue. As you are well aware, the booming bay area economy has led to a substantial increase in demand for housing units and supply has not kept up. This mismatch has resulted in soaring prices for both renters and homebuyers alike. While any increase in the number of units will help this situation, middle density units like those in this project are sorely needed.

Not only are units like this needed, this is nearly an ideal location for them. The area near the intersection of San Pablo and University is rich with amenities within walking distance including multiple grocery and laundry options. It is well served by transit including easy access to two transbay bus lines and a number of local lines. Even BART is quite accessible without a car. Walking to North Berkeley BART is a little inconvenient (though quite doable as I live further away than the proposed project and have done it many times), but a bicycle will get you there in just a few minutes.

I find the suggestion by a number of my neighbors that this development is out of scale with the neighborhood absurd. There is a 4-story apartment building on the same block of Hearst Avenue! Is that building somehow not part of the neighborhood? What about the larger buildings on Curtis between Hearst and University?

I am sympathetic to the concerns of the current tenants, but it is not clear how much of their concern is based on correct information. For instance, I see concerns about the rent differential ceiling given the high cost of rent in Berkeley, but the ceiling appears quite high (e.g. \$2045 for a 1BR). A quick look at Craigslist suggest that there are a number of 1 and 2 bedroom apartments that have a rental cost that is quite close to the the maximum differential for those apartment sizes and a couple are even below it. Since the current tenants are presumably paying more than zero dollars it seems like there should be a decent selection for which the full price differential is covered.

Even if their fears are actually well founded, I ask that you balance their concerns against the next generation of Berkeley residents. Rent control obviously makes a huge difference for people who have lived in the same place for a long time, but it does little for young people looking to move out on their own for the first time or couples looking for a bigger place to start a family. 11 new units are not going to fix our housing shortage by themselves, but each time we delay or deny new housing we perpetuate that shortage.

Mike Pavone  
West Berkeley Resident

Jacob, Melinda

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**From:** Zoning Adjustments Board (ZAB)  
**Subject:** FW: 1155-1173 Hearst Ave. Development

**From:** Blaze Woodlief [mailto:blazewoodlief66@gmail.com]  
**Sent:** Wednesday, September 27, 2017 7:16 PM  
**To:** Zoning Adjustments Board (ZAB) <Planningzab@cityofberkeley.info>  
**Cc:** rain.sussman@gmail.com  
**Subject:** Re: 1155-1173 Hearst Ave. Development

Dear members of the Zoning Board --

I won't be able to attend the zoning board meeting tomorrow due to our child's BHS open house. However, I have serious concerns about this proposed development that I think should be taken into account.

One major issue is parking -- 18 units with only 18 parking spaces is not sufficient, given that many units are multi-bedroom -- what's needed is at least 2 spaces per unit. Our streets simply CANNOT accommodate the extra cars. Seriously, even as it is I often have trouble parking on my own street.

The drainage issues are significant in our neighborhood as well -- the city put in some street drainage a few years ago but even with that, ALL the backyards behind Curtis street flood with heavy rains. This development would likely make that worse and it looks like proper assessment of the environmental impact and drainage issues has NOT been done.

Tenants in 6 rent-controlled units are also going to be out of their homes, replaced not by new rental housing (which Berkeley badly needs), but by condos. There are many new developments within 1 - 2 miles of this neighborhood that have (and will) add more multi-unit condos and units -- what we need is to not deplete our rent-controlled units, but add to them with more affordable options.

Also, note that the nearby developments already in the works will increase neighborhood density considerably (thus impacting parking as well).

I count on the ZAB to make the right choices for Berkeley and for our neighborhood -- which means NOT removing rent-controlled units and adding an inappropriately large development without enough parking, sitting on top of a flood-prone area!

thank you

Blaze Woodlief  
1812 Curtis street

Jacob, Melinda

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**From:** Zoning Adjustments Board (ZAB)  
**Subject:** FW: 1161-1173 Hearst Ave. proposed condos

**From:** Vijay [mailto:vcv@sbcglobal.net]  
**Sent:** Wednesday, September 27, 2017 5:53 PM  
**To:** Zoning Adjustments Board (ZAB) <Planningzab@cityofberkeley.info>  
**Cc:** Personal <rain.sussman@gmail.com>  
**Subject:** 1161-1173 Hearst Ave. proposed condos

Dear Mr. Powell and City of Berkeley ZAB Board members,

I am unable to attend the 9/28 ZAB meeting regarding the condo development at [1155-1173 Hearst St.](#), but would like to register my concern about the safety of the project as currently proposed. My property lies directly to the east of the development site, and a 25-foot tall structure is proposed to be built 4 feet from my property line.

It is known that an underground fork of strawberry creek runs through the neighborhood, which was never properly infilled or culverted. It is likely that this creek runs under the 25-foot tall building that will loom over my backyard.

I say this based on excavations on my own property, which revealed problems with subsidence and high water table, likely linked to the presence of said creek. These problems were identified by my engineer during foundation work in April, 2012. The water table was just a few feet below ground when this work was done (see attached photos).

Before large structures are built on this site, a soils analysis and geotechnical study must be completed.

Please share with the ZAB board for the [9/28/17](#) meeting and future meetings.

Thank you for your consideration.

Vijay Venugopal  
[1826 Curtis Street](#)

SUPPLEMENTAL COMMUNICATIONS ROUND2  
ZAB 09-28-17  
Page 5 of 8





SUPPLEMENTAL COMMUNICATIONS ROUND2  
ZAB 09-28-17  
Page 6 of 8



SUPPLEMENTAL COMMUNICATIONS ROUND2  
ZAB 09-28-17  
Page 7 of 8







# **B N C**

**Berkeley Neighborhoods Council**  
P.O. Box 5108  
Berkeley, CA 94705

Dedicated to improving the quality of life for all by creating  
a unified neighborhood voice for promoting livability and resolving problems

Website: [www.berkeleyneighborhoodscouncil.com](http://www.berkeleyneighborhoodscouncil.com)  
E-mail: [bnc50@berkeleyneighborhoodscouncil.com](mailto:bnc50@berkeleyneighborhoodscouncil.com)

Zoning Adjustments Broad

Sept. 28, 2017

Igor Tregub – Chair  
Denise Pinkston -Vice Chair  
Teresa Clarke  
Patrick Sheahan  
John Selawsky  
Carrie Olson  
Shoshana O’Keefe  
Charles Kahn  
Brazile Clark

Late Communications  
Zonino Adjustments Board

SEP 28 2017  
**RECEIVED**  
at Meeting

Ref: **Permit number ZP2016-0028** at address **1155-1173 Hearst Avenue**

## **ZAB Members,**

This project should be denied and sent back to the owners for a redesign that resolves the many problems it has environmentally and the impacts it has on the adjacent residents and the neighborhood.

BNC is a BIINBY (Beauty and Inclusion In My Back Yard). We reject being labelled NIMBY’s when we are for development of affordable housing. The issue is preserving our neighborhoods while providing the necessary housing for our very low, low and moderate-income residents (affordable housing).

The project at 1155-1173 does not do that.

1. It is not safe to build the currently designed project on this site. The dry creek bed floods the lots and the neighborhood around it during the rainy season. Liquification in an earth quake is very likely.
2. Removing 6 rent controlled units and replacing them with three units is against Berkeley’s idea of providing affordable housing. It may even be unlawful. Guarantees must be written into any permit that is given for this project.
3. Because of the environmental issues raised by this project, a CEQA study must be required.
4. The scale of the buildings in this project do not fit the surrounding neighborhood and will create many problems. It is not on a major street so parking will be an issue. Drainage of run-off water will create more flooding in the neighborhood as much of the property will become hard surfaces so water will not be absorbed into the soil.

Please deny this project until it addresses the problems and issues it created for the City and the neighboring residents.

Dean Metzger – Chair, Berkeley Neighborhoods Council



Rhodes Planning Group

Late Communications  
Zoning Adjustments Board

SEP 28 2017

Overview and Project Information

RECEIVED  
at Meeting

Rhodes Planning Group is pleased to present this proposal for a new residential condominium and transit/neighborhood-oriented development project located at 1155-1173 Hearst Avenue. The project site currently is two separate parcels that support six apartments on one and one single family residence on the other. The proposed project will include 11 new dwellings for a total of 18 on site condominium units. The project site is zoned Restricted Multiple Family Residential (R2-A), which allows one dwelling unit per each 1,650 square feet of lot area. The project furthers the goals of the district by providing medium density housing development in a transit-oriented location and improving the Hearst Avenue neighborhood and frontage.

18\*  
condos

The proposed project is located between an existing infill project to the west (condominiums) and homes/apartments south and single family homes to the north and east. This proposed project has been designed to work within the constraints imposed by surrounding homes while providing a high quality living environment along the San Pablo Avenue (one of Berkeley's most significant transit corridors) adjacent block of Hearst Avenue.

Project Description

The proposed project proposes to add 11 condominium dwelling units to seven existing units on two parcels that will be combined to create a 21,920 square foot single parcel that will be held by a Homeowners' Association. The project proposes to provide two affordable units and existing rent controlled units will be handled consistent with Subdivision Map Act requirements (see Housing Affordability Statement).

The site has been designed to allow the maximum open space and neighbor buffering possible. In addition, an onsite drainage system has been designed, and is included in the project's site plan

Late Communications  
Zoning Adjustments Board

SEP 28 2017

RECEIVED  
at Meeting

1155-1173 Hearst Avenue

Applicant Statement

February 2, 2016



Replacing  
6 RC units  
with 2  
BMR  
condos ≠

"Affordability"  
or DB entitlement!

In order to address the unknown household incomes as the project progresses, staff proposes the following conditions to project approval:

***Prior to Submittal of Any Building Permit:***

- 10. *Household Income Verification.*** *The applicant shall provide income verification of the existing tenant household or, if vacant, the most recent household in occupancy. If this information is unavailable or otherwise not provided for any of the units, pursuant to Government Code Section 65915(c)(3)(B), it shall be presumed that lower income renter households occupied these units in the same proportion of lower income renter households to all renter households within the jurisdiction, as determined by the most recently available data from the United States Department of Housing and Urban Development's Comprehensive Housing Affordability Strategy database. All replacement calculations resulting in fractional units shall be rounded up to the next whole number.*
- 12. *Number of Below Market Rate Units.*** *The number of below market rate units in the project will be determined upon receipt of Household Income information required by Condition 10. At a minimum, the project shall provide two (2) below market rate (BMR) rental dwelling units restricted to Very Low Income (VLI) Households and which satisfy BMC Section 22.20.065 if rental, and BMC Chapter 23C.12 if ownership. The initial location of the BMR Units shall be designated in the Regulatory Agreement and shall be reasonably dispersed throughout the project; be of the same size and contain, on average, the same number of bedrooms as the non-BMR units in the project; and be comparable with the design or use of non-BMR units in terms of appearance, materials and finish quality. The designation of BMR units shall conform to the addresses assigned to the building by the City.*

- C. Tenant Protections:** As of the writing of this staff report, the single-family dwelling is vacant and all six rent controlled units have existing tenants that have been there since the before the date of application. On June 28, 2017, the applicant met with the tenants and informed them that the development plan is to construct the new buildings first and leave the existing units as they are until such time that the owners decide to renovate and add on to the existing buildings. The applicant has stated that the existing rental units would remain as rent controlled rental units after renovation. The applicant has committed to providing notice in advance of the City's noticing requirements both before construction commences on the new buildings as well as before tenants might be relocated for construction on their units, and has confirmed that all tenants would be relocated in accordance with the City's tenant relocation requirements (BMC Section 13.84), including property owner payment of the rent differential for a similar type of unit in Berkeley. ~~As stated above, however, it is unclear whether any of the six existing units would be required to be below market rate and/or whether existing tenants would qualify and/or be selected for the units if they were to be replaced as BMR units.~~ In the absence of the information required to solidify the final replacement unit plan, in order to safeguard existing tenants, staff proposes a new condition and modified a standard condition as follows:

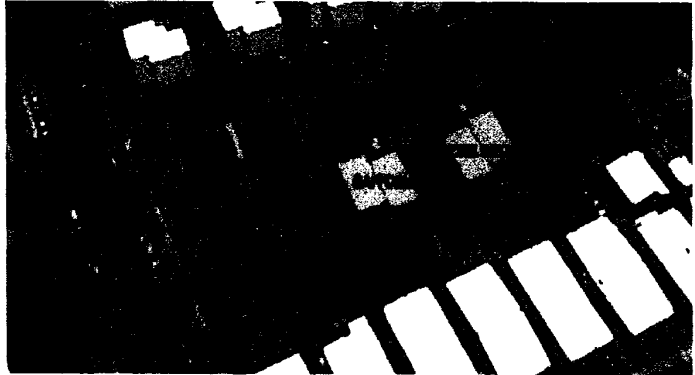
# 1155-1173 Hearst Avenue

## Socially Equitable and Environmentally Sustainable Housing for Berkeley



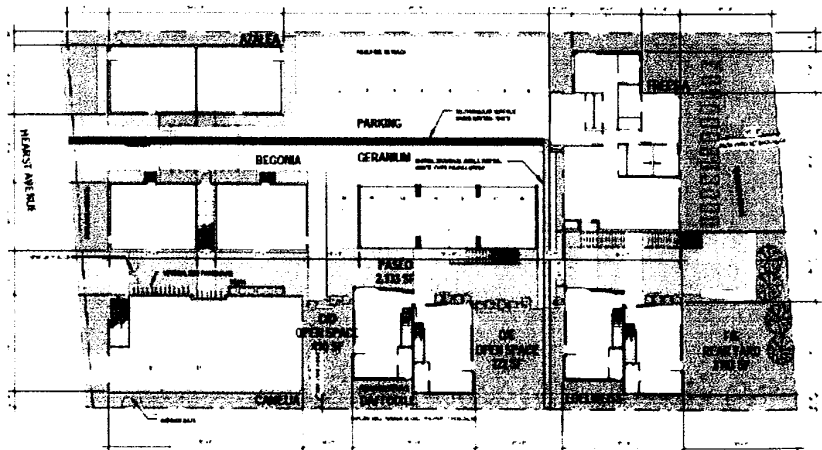
Proposal – 11 new dwelling units on @ 22,000 sf of land. Retain six existing rent controlled apartments (ultimately convert to condominium for sale at below market rates with first right of refusal for existing tenants), plus one additional below market rate unit where the sales price is set at a level to be affordable to someone earning 50% of the area median income. There will be 11 market rate units. That's a project with **39% affordable units!** No other project in Berkeley is providing that kind of affordability. Other features and benefits for the community:

- No existing dwelling units will be demolished, rent controlled units will retain their affordability and those tenants can stay.
- Shadows – New buildings meet setback requirements with one exception along the west property line. Shadows will have negligible, if any, effect on adjacent Curtis or Delaware properties and minor effects to the west. The three story elements of the proposal are located nearly 70' from adjacent Curtis Street neighbors, and over 100' from any Delaware Street neighbors. No shadow impacts on Curtis or Delaware neighbors from three story buildings.
- Open space – The project's proposed open spaces exceed requirements and are spread around the property with yard areas and play areas in the rear just like all of the adjacent properties that have yards and play areas.
- Hydrology – The project has been designed to address the hydrologic issues in the neighborhood, primarily from water collection from the historic drainage of a former arm of Strawberry Creek.



### Project modifications that are a result of working with neighbors:

- Elimination of an entire duplex structure in the northeast corner of the property and the placement of those units straddling the driveway at Hearst Street.
- Elimination of third floor elements and decks on the duplexes facing the Curtis Street neighbors.
- Change in roof form on the Curtis Street facing duplexes so that the lowest profile possible faces that direction while still providing livable two story townhomes as allowed by the Berkeley Zoning Ordinance.
- One parking space per unit, where the original proposal had 16 spaces for 18 units.
- All three-story project elements are either in the middle of the site or are on the west of the site. In fact, the nearest three story element to a Curtis Street neighbor is nearly 50' from the east property line and nearly 70' from any Curtis Street residence. Three story elements are more than 100' from any Delaware Street neighbor.
- Substantial reduction in size of the rehabilitation/addition to the existing house structure at the northwest corner of the project.
- Completion of a full hydrologic study with design features built in to the project that will eliminate any drainage impacts from the site to any other neighboring property.
- Retention of existing mature landscaping where possible along the east property line.





Rain Sussman <rain.sussman@gmail.com>

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## Berkeley Municipal Code Sections re: denial for unreasonable impact on access to sunlight

1 message

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Hussein Saffouri <Hussein@ramseylawgroup.com>

Mon, Sep 18, 2017 at 12:20 PM

To: "rain.sussman@gmail.com" <rain.sussman@gmail.com>, Guy Sussman <skyguy1299@gmail.com>, "lucas.paz@terraphase.com" <lucas.paz@terraphase.com>

### 23D.32.020 Purposes

The purposes of the Restricted Multiple-family Residential (R-2A) Districts are to:

- A. Implement Master Plan policy by encouraging the development of medium density residential areas characterized by small multiple-family and garden-type apartment structures with a maximum of open space consistent with this type of development;
- B. Make available housing for persons who desire apartment-type accommodations with a maximum of open space;
- C. Protect adjacent properties from unreasonable obstruction of light and air;
- D. Permit only that intensity of use which will be compatible with existing low density residential structures and will not be detrimental to the immediate neighborhood. (Ord. 6478-NS § 4 (part), 1999)

### 23D.32.090 Findings

- A. In order to approve any Permit under this chapter, the Zoning Officer or Board must make the finding required by Section 23B.32.040. If the Zoning Officer or Board makes the applicable finding required by the following paragraph of this section then the permit shall be denied.
- B. To deny a Use Permit for a major residential addition or residential addition subject to 23D.32.070 the Zoning Officer or Board must find that although the proposed residential addition satisfies all other standards of this Ordinance, the addition would unreasonably obstruct sunlight, air or views. (Ord. 7426-NS § 20, 2015: Ord. 6980-NS § 5 (part), 2007: Ord. 6763-NS § 20 (part), 2003: Ord. 6478-NS § 4 (part), 1999)

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HUSSEIN SAFFOURI

Attorney

hussein@ramseylawgroup.com

(925) 284-2002 Direct

(510) 708-1122 Cell





Office of the City Attorney

RECEIVED

DEC 05 2000

CURRENT PLANNING

December 1, 2000

To: WENDY COSIN, Director of Planning and Development  
MARK RHOADES, Current Planning Manager  
MATTHEW Le GRANT, Senior Planner

From: MANUELA ALBUQUERQUE, City Attorney  
By: LAURA N. McKINNEY, Deputy City Attorney *LM*

Re: Definition of a Creek Under the Creek Ordinance – BMC § 17.08

ISSUE:

If a creek does not appear on both the Geological Survey Map and the 1975 Berkeley Creeks map, but does appear on the 1990 Berkeley Creeks map, is it "creek" protected by the Creek Ordinance pursuant to BMC § 17.08?

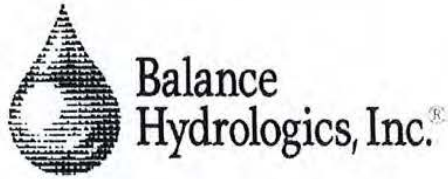
CONCLUSION:

[REDACTED]

BACKGROUND -

The owners of 137 Bret Harte Road have applied for an Administrative Use Permit (AUP) for continuation of an existing non-conforming creek setback in the same plane pursuant to BMC § 23C.04.070.B. The necessity for this AUP has been assumed to be as a result of the fact that a creek exists on the property which is subject to protection under BMC § 17.08.

However, after a dispute arose between a neighbor to this property regarding the accuracy of the application's representation of the creek on the property, the property owner asserted that the creek in question was not protected by the Creek Ordinance due to the fact that it did not appear on either the Geological Survey Map nor the 1975 Berkeley Creeks map as an above ground creek.



500 Bancroft Way • Suite 101 • Berkeley, CA 94710 • (510) 704-1000  
224 Walnut Avenue • Suite F • Santa Cruz, CA 95060 • (831) 457-9900  
PO Box 1077 • Truckee, CA 96160 • (530) 550-9776  
www.balancehydro.com • email: office@balancehydro.com

August 11, 2017

Ms. Leslie Mendez  
Land Use Planning Division  
City of Berkeley  
1947 Center Street, 3<sup>rd</sup> Floor  
Berkeley, California 94704

**RE: Follow-up Peer Review of the Stormwater and Flooding Assessment  
for the Hearst Avenue Project, City of Berkeley**

Dear Ms. Mendez:

I'd like to begin by again thanking you for your work to facilitate further review of the drainage analyses prepared for the Hearst Avenue Project ("Project"). You have provided two additional documents related to the site. These include a technical memorandum by Terraphase Engineering dated July 7, 2017 that provides a third-party review of the original Clearwater Hydrology report (dated January 7, 2016). The Terraphase technical memorandum includes comments and references based on my earlier peer review letter to you dated March 16, 2017. Additionally, you have forwarded a revised version of the Clearwater Report, dated July 12, 2017 (herein, "revised report"), which apparently was prepared, at least in part, to address items raised in the previous peer reviews.

I have completed my review of the revised report, with consideration of the information provided in the Terraphase memorandum. This letter summarizes my observations and comments related to the information presented therein.

The revised report presents significantly improved information about the stormwater management issues pertinent to the site, including adoption of several design parameters suggested in the earlier reviews. In important respects, the revised report is now based on a substantially more conservative estimate of peak runoff rates and, therefore, includes inherently higher factors of safety for the drainage design.

***Follow-up Peer Review Comments***

The following comments build on the issues I raised in my letter of March 16. In each case, I have used the topic heading and numbering to facilitate your assessment of how the earlier comments have been addressed.

1. *Soil Characteristics and Depth to Groundwater*. Section 2.3 of the revised report continues to note that **information on soil properties and depth to groundwater has not yet been collected**

Rain & Guy Sussman  
Preliminary review and comments on the Third Party Hydrologic  
Evaluation provided by Balance Hydrologics for the 1161-1173 Hearst  
Avenue, Berkeley, California Project

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Complex, classified as Hydrologic Soil Group D, which has the highest runoff potential. If seasonal high groundwater data is not available, then the drainage design should assume that high groundwater conditions will prevail.

Additionally, Terraphase believes that the uncertainty of the seasonal groundwater table, along with the other concerns identified in the remainder of this review, warrant a geotechnical and groundwater evaluation for the site. Based on historical maps, a segment of a primary tributary to Strawberry Creek previously extended downstream across the 1155-1163 Hearst properties. Carole Schemmerling of the Urban Creeks Council determined in 2002 that the north branch of Strawberry Creek was filled with soil and debris prior to development. The area is also classified as "filled wetlands" and as "seismically unstable and subject to liquefaction." There is no record of properly engineered fill or a culvert or storm drain being installed. Therefore, water comes up to the surface during storm conditions so that the subsurface becomes saturated.

Terraphase believes that a geotechnical and groundwater evaluation is necessary to determine subsurface drainage conditions so that existing groundwater release preferential pathways are not impacted during the construction project. The geotechnical and groundwater evaluation would also allow for proper evaluation of the surface and subsurface conditions of the proposed site and the impacts of development on the surrounding properties.

## 2. Design Guidance

The Clearwater Report relies predominantly on generalized urban drainage design parameters from the U.S. Geological Survey Open-File Report by Rantz in 1971. While the 1971 Rantz based Rational Method is a reasonable resource, Terraphase and Balance Hydrologics are concerned that the climatic/rainfall data and associated flow rates based on pre-1971 data are insufficient. This concern is based on the fact that the last 44+ years of rainfall data was not utilized in this model and that changing climate projections indicate extreme events are now more likely to occur.

Balance suggested use of The Alameda County Flood Control and Water Conservation District (ACFC) Hydrology and Hydraulics Manual instead of the Rantz based Rational Method. The ACFC manual provides a more detailed and current calculation framework for design guidance than the USGS Survey. The ACFC Hydrology and Hydraulics Manual is missing specific information about the City of Berkeley, however, Balance and Terraphase agree that this would be a better model to use for the purposes of this survey.

- a. *Runoff Coefficients*: Balance mentioned that further evaluation of the runoff coefficients from Rantz compared to those used by ACFC reveal that the runoff coefficients for the ACFC will be higher. This indicates a higher peak flow potential than currently presented in the Clearwater Report.

Without a full topographic model, Terraphase is unsure that the amount of stormwater estimated to impact the site and surrounding properties is accurately quantified. A December 2015 rainfall event generated approximately 1.4" of rain which produced significant flooding based on observations and video footage. This video footage suggests that portions of Hearst Street stormwater flow does reach the sidewalk level, contrary to



Rain Sussman <rain.sussman@gmail.com>

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**Comment re: 1155-1173 Hearst Ave. Development**

1 message

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**Alma Prins** <woodprins@att.net>

Tue, Sep 26, 2017 at 9:08 PM

To: ZAB@cityofberkeley.info

Cc: Rain Sussman <rain.sussman@gmail.com>, Blaze <blazewoodlief66@gmail.com>

Dear Berkeley Zoning Board:

I am writing with serious concerns about the plans for condos on Hearst Ave, behind our home and several other neighbors on the 1800 block of Curtis Street. As you may see in photos during the meeting on 9/28, our street has serious flooding/drainage problems during times of heavy rain - which happens yearly (or which we hope for during drought years!). Our backyard consistently turns into a huge deep puddle/pool during that time - in the past when our kids were small they would love to play out there but come in drenched because the water was so deep it went over their rubber boots.

At this point I have not heard of any plan the developers have to address these flooding drainage issues, which this additional development will likely exacerbate.

The proposed development also does not have sufficient parking for the number of units, and our neighborhood streets simply do not have room for more cars. As it is, it's often difficult to park near our house.

I hope you will take these serious concerns into consideration when making decisions about these plans.

Thank you,  
Alma Prins,  
1812 Curtis Street, Berkeley 94702



Dear ZAB,

As a homeowner who is approx one block east of this project, I have twice been seriously flooded. The City storm drains are not capable of handling the sudden downpours now occurring.

In an unrelated event (to major storm events), EBMUD explicitly told me that a spring ran under my house, which is why a long ditch along my house filled with water one summer when I dug deep (3 feet) to update a pipe. The information you've sent out is very important. There are springs running down Hearst.

Perhaps we'll all be gone when our earthquake happens but I do want to do right by future generations and spend what I have now to provide security for the future. I put in a "french drain" to minimize flooding on my ground floor. It is appropriate to demand that builders also spend the money to mitigate future damage from flooding, rather than fantasize that the City will be able to upgrade their storm drains and our personal flooding problems will be solved.

Gayna Sanders

1273 Hearst Ave



Rain Sussman <rain.sussman@gmail.com>

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**Re: 1155-1173 Hearst Ave. Development**

1 message

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**Blaze Woodlief** <blazewoodlief66@gmail.com>

Wed, Sep 27, 2017 at 7:16 PM

To: zab@ci.berkeley.ca.us

Cc: rain.sussman@gmail.com

Dear members of the Zoning Board --

I won't be able to attend the zoning board meeting tomorrow due to our child's BHS open house. However, I have serious concerns about this proposed development that I think should be taken into account.

One major issue is parking -- 18 units with only 18 parking spaces is not sufficient, given that many units are multi-bedroom -- what's needed is at least 2 spaces per unit. Our streets simply CANNOT accommodate the extra cars. Seriously, even as it is I often have trouble parking on my own street.

The drainage issues are significant in our neighborhood as well -- the city put in some street drainage a few years ago but even with that, ALL the backyards behind Curtis street flood with heavy rains. This development would likely make that worse and it looks like proper assessment of the environmental impact and drainage issues has NOT been done.

Tenants in 6 rent-controlled units are also going to be out of their homes, replaced not by new rental housing (which Berkeley badly needs), but by condos. There are many new developments within 1 - 2 miles of this neighborhood that have (and will) add more multi-unit condos and units -- what we need is to not deplete our rent-controlled units, but add to them with more affordable options.

Also, note that the nearby developments already in the works will increase neighborhood density considerably (thus impacting parking as well).

I count on the ZAB to make the right choices for Berkeley and for our neighborhood -- which means NOT removing rent-controlled units and adding an inappropriately large development without enough parking, sitting on top of a flood-prone area!

thank you

Blaze Woodlief  
1812 Curtis street



Rain Sussman <rain.sussman@gmail.com>

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**1161-1173 Hearst Ave. proposed condos**

1 message

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**Vijay** <vcv@sbcglobal.net>

Wed, Sep 27, 2017 at 5:53 PM

To: zab@ci.berkeley.ca.us

Cc: Personal <rain.sussman@gmail.com>

Dear Mr. Powell and City of Berkeley ZAB Board members,

I am unable to attend the 9/28 ZAB meeting regarding the condo development at 1155-1173 Hearst St., but would like to register my concern about the safety of the project as currently proposed. My property lies directly to the east of the development site, and a 25-foot tall structure is proposed to be built 4 feet from my property line.

It is known that an underground fork of strawberry creek runs through the neighborhood, which was never properly infilled or culverted. It is likely that this creek runs under the 25-foot tall building that will loom over my backyard.

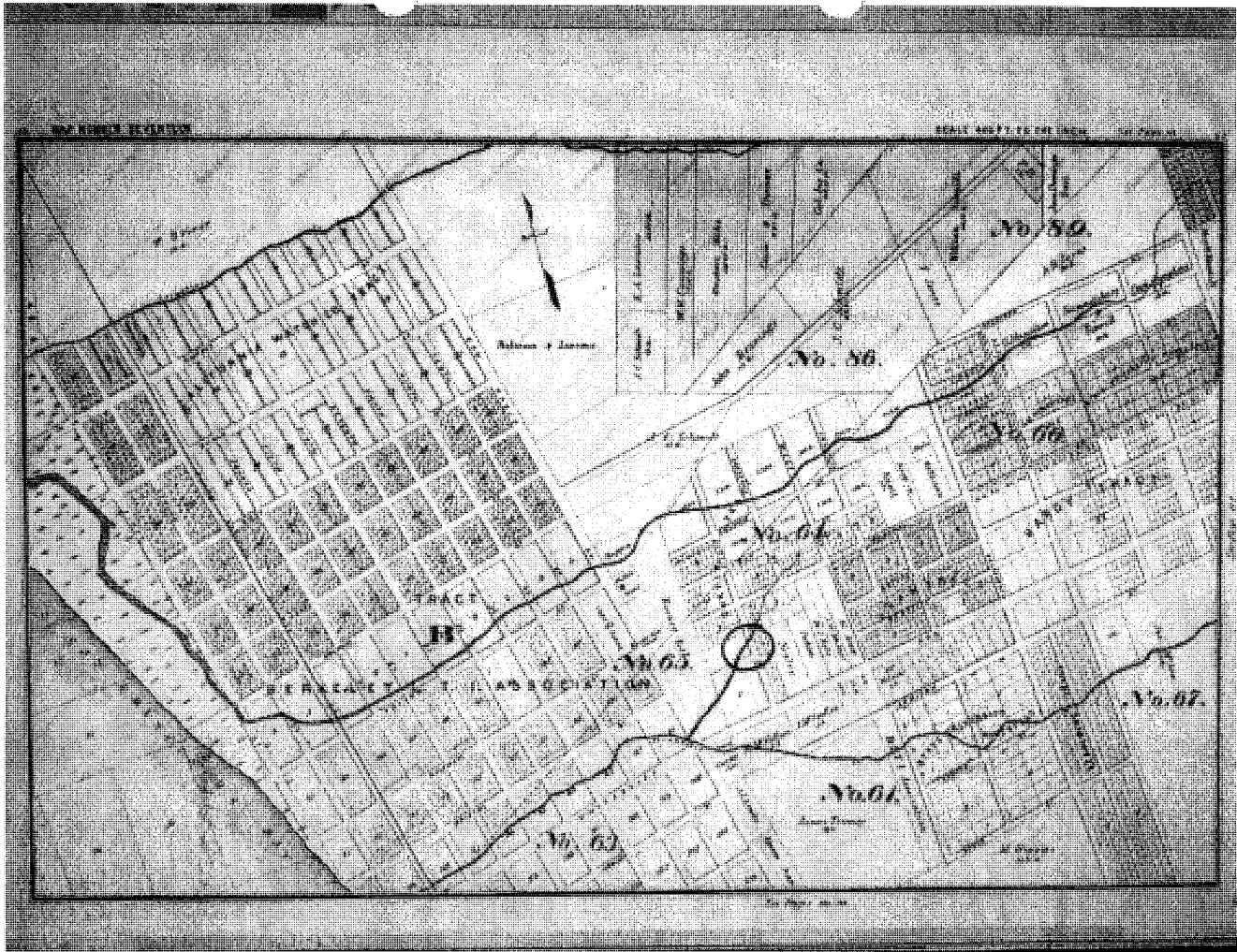
I say this based on excavations on my own property, which revealed problems with subsidence and high water table, likely linked to the presence of said creek. These problems were identified by my engineer during foundation work in April, 2012. The water table was just a few feet below ground when this work was done (see attached photos).

Before large structures are built on this site, a soils analysis and geotechnical study must be completed.

Please share with the ZAB board for the 9/28/17 meeting and future meetings.

Thank you for your consideration.

Vijay Venugopal  
1826 Curtis Street



retrieved from

[www.historicmapworks.com](http://www.historicmapworks.com)

9/28/17





Portion of Creek & Watershed Map of Oakland & Berkeley -- [Purchase Printed Map](#)



[Schoolhouse Creek Information](#)

[Strawberry Creek Information](#)

[Glossary](#)



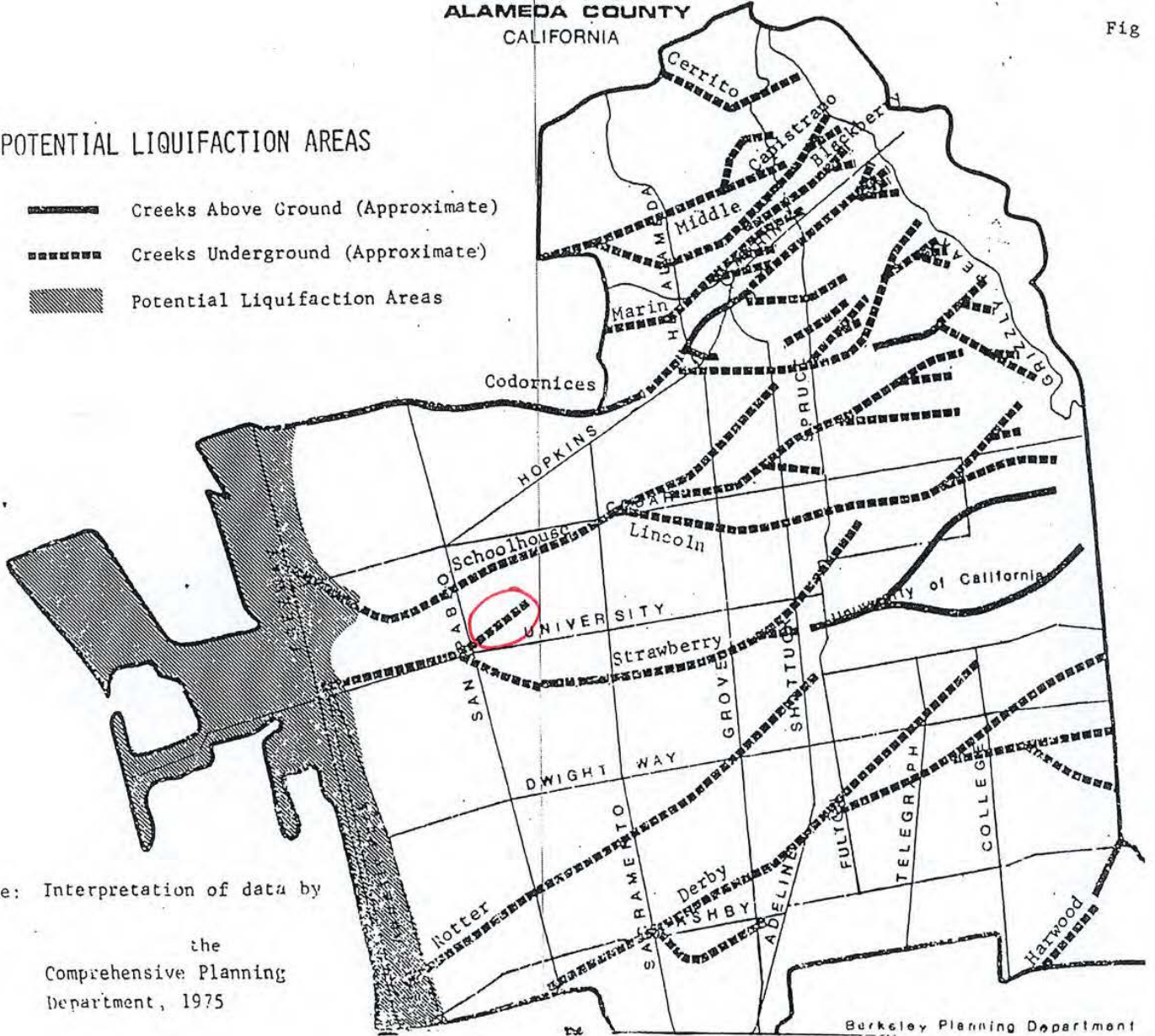


**BERKELEY**  
ALAMEDA COUNTY  
CALIFORNIA

Fig

**POTENTIAL LIQUIFICATION AREAS**

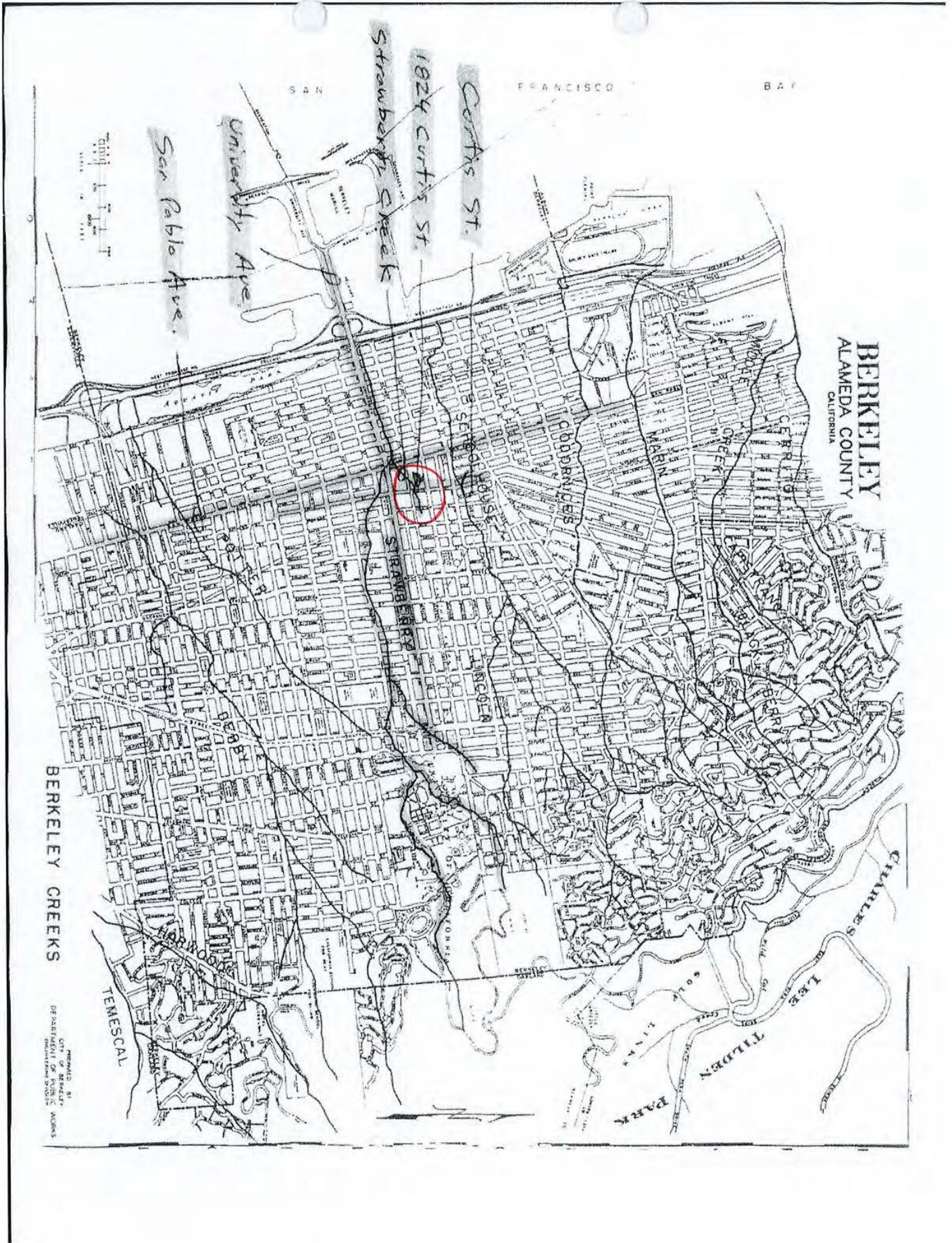
- Creeks Above Ground (Approximate)
- - - Creeks Underground (Approximate)
- ▨ Potential Liquification Areas



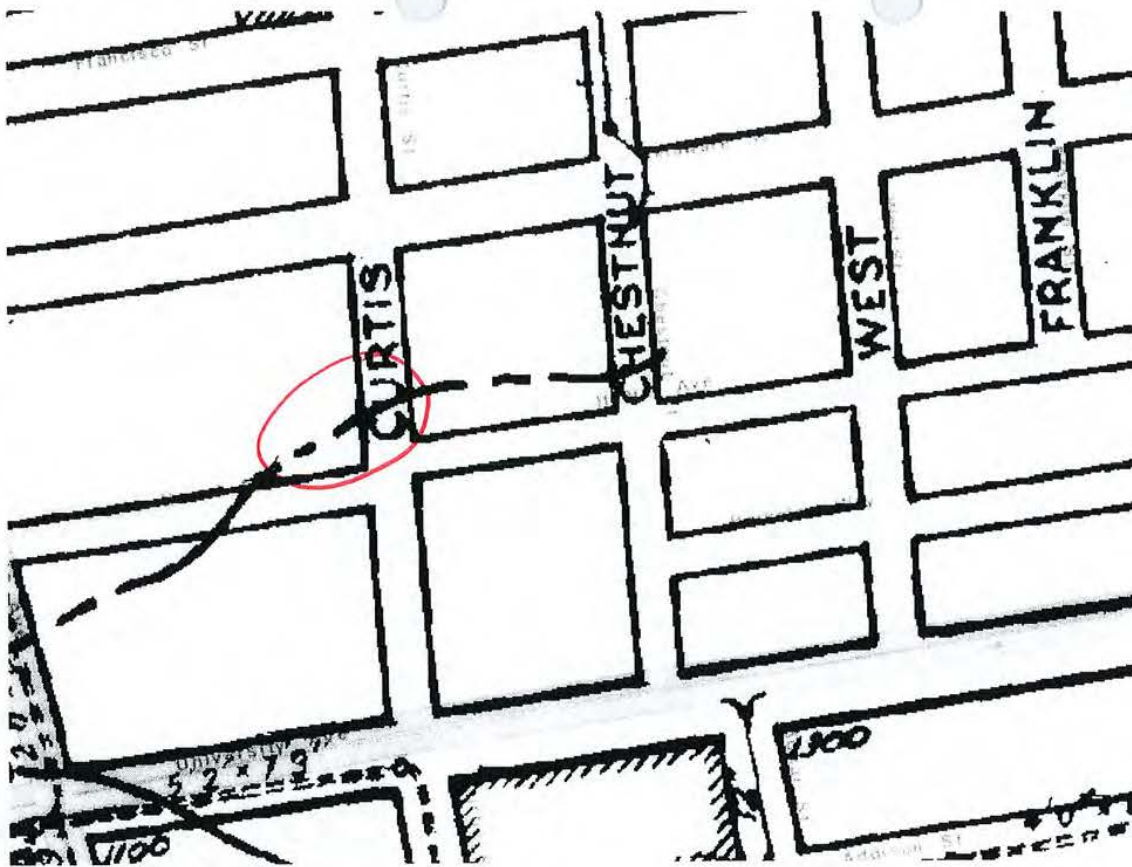
Source: Interpretation of data by  
the  
Comprehensive Planning  
Department, 1975

Berkeley Planning Department









1990 City of Berkeley  
Creek Map





Rain Sussman <rain.sussman@gmail.com>

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**Fwd: 1161-1173 Hearst Ave. proposed condos**

1 message

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**Pamela Ormsby** <pormsby@aol.com>  
To: rain.sussman@gmail.com

Mon, Sep 25, 2017 at 3:07 PM

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

From: Pamela Ormsby <pormsby@aol.com>  
To: zab <zab@ci.berkeley.ca.us>  
Sent: Mon, Sep 25, 2017 3:07 pm  
Subject: 1161-1173 Hearst Ave. proposed condos

Dear Mr. Powell and City of Berkeley ZAB Board members,

I am a 46 year resident of 1148 Delaware St.-on the north side of the proposed condo development at 1161-1173 Hearst St.. I have a long experience with seasonal ponding up to 3 feet at the north-east corner of this lot . In addition, the soil at that part of the lot seems to be tending toward a sinkhole character. I can put a long stick into the soil at the base of my willow tree and it disappears. I have put a hose down that hole and water never reaches the top of the hole. Has the filled in creek settled since 1875 and lost it's fill ?

A geo-technical evaluation should be taken.

**The City of Berkeley needs to protect the current and future owners and tenants as to the ground stability over the "filled -in creek"..**

The developer has stated that the proposed north-end building-Freesia- will be at a distance from the back of the three Delaware St. houses.

This fails to take into account that ADUs are in consideration for these lots.

The ADU rental houses and sites will be impacted by the height and proximity of this Freesia building. by both reduced light and noise.. The Freesia condo units are proposed to be 3 bedroom, 3 bath units.

This sounds like dorm room rentals.

**ADUs are the correct density for in-fill without impacting the density of the small home character of our neighborhood.**

**This proposed development is too dense and too high for its site. It belongs on University Ave or San Pablo Ave.**

Please share with the ZAB board for the 9/28/17 meeting and future meetings.

Thank you for your consideration.

Pam Ormsby  
(510) 524-6080  
pormsby@aol.com

**Allen, Shannon**

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**From:** Kelekian, Jay  
**Sent:** Thursday, September 28, 2017 1:23 PM  
**To:** Mendez, Leslie  
**Cc:** Bursell, Lief; 'charles@studiokda.com'; Allen, Shannon; Powell, Greg  
**Subject:** 2811-2815 Channing Way  
**Attachments:** 2811 Channing\_RSB\_MEMO 2017-09-27\_signed.pdf

Late Communications  
Zoning Adjustments Board

SEP 28 2017  
RECEIVED  
at Meeting

Leslie,

Could you make sure the ZAB receive this communication tonight?

Dear Members of the Zoning Adjustments Board,

Last night we received the attached letter signed by the property owner that acknowledges agreement with conditions related to preserving rent control and mitigating the projects impact to the existing tenants at 2811-15 Channing Way. We appreciate both the applicant and owner's willingness to work with us on resolving issues.

While we generally agree with the terms outlined in this letter, there have been several projects in the past few years in which the ZAB approved conditions related to maintaining existing rent control protections that did not work out as intended. All these cases involved agreements made at the last minute in which the intended protections (and how to achieve them) were not clearly articulated. In one instance, there was agreement by the parties and ZAB but we were later told the terms were unenforceable. These outcomes could have been averted if the Rent Board, Planning Staff and the City Attorney's office had time to fully review and vet any proposed conditions to ensure their legality and enforceability.

To that end, we ask that you continue this item so that we can memorialize the contents and implementation terms of this agreement and have it reviewed by both our legal staff and the City Attorney's Office. Naturally, we will include the owner and his/her representative in these discussions.

Thank you.

**Jay Kelekian**

**Executive Director, Rent Stabilization Program**

City of Berkeley  
2125 Milvia Street  
Berkeley, CA 94704

Tel.: 510.981-4949

Fax: 510.981-4940

E-mail: [jkelekian@ci.berkeley.ca.us](mailto:jkelekian@ci.berkeley.ca.us)



September 27, 2017

Berkeley Rent Stabilization Board  
2125 Milvia Street  
Berkeley, CA 94704

Re: 2815 & 2811 Channing Way proposed development

Dear Matthew, Jen, and Lief,

Thank you for meeting with the studio KDA project representatives, Darshan Amrit and Charles Kahn, on September 19<sup>th</sup> regarding the 2811, 2813 & 2815 Channing Way project. We are excited by the prospect of expanding the availability of rent-controlled housing in our community through this project. The following summarizes the salient points of that conversation:

- 1) All (11) current and existing rent controlled units will be preserved.
- 2) There will be a net add of (2) rent controlled units and (1) new unit will be exempt with this approval from ZAB
  - a. (1) Additional unit in building 'A' (2815 Channing) will be added to the rent control roster due to the Interior sub-division of the existing larger multi-story unit into (2) new smaller single-story units (A201 & A301).
  - b. (1) New unit (A101) in building 'A' will be created via excavation and site grading and will be considered as exempt from rent control.
  - c. The existing (8) units in building 'B' (2811 Channing) will remain as (8) rent-controlled units; (4) of these units will be increase in size from 2-bedroom units to 4-bedroom units and (4) units will remain as 2-bedroom units of the same size.
  - d. (1) Additional unit in building 'C' (2813 Channing) will be added to the rent control roster as a result of the addition and expansion to the existing (2) rent controlled units.
- 3) The building owner will phase construction by building in order to reduce impacts on existing tenants and will schedule construction based on the natural seasonal voluntary vacation of units (summer months)

www.studiokda.com  
1810 Sixth St., Berkeley, CA 94710  
Telephone: 510.841.3555  
Fax: 510.841.1255

NOTES FOR COMMENTS TO ZAB FOR 9/28/17 HEARING RE: 1155-1173 HEARST AVE.

Late Communications  
Zoning Adjustments Board  
SEP 28 2017  
RECEIVED  
at Meeting

I. INTRODUCTION

My name is Hussein Saffouri. I am an attorney representing Rain Sussman who lives at 1842 Curtis Street, which abuts the project to the east and will see significant impacts from this project. I am going to address three issues:

1. The inadequacy of the proposal under the Bonus Density Law ("DBL").
2. The inadequacy of the proposal's impact on the neighbors' access to sunlight.
3. The inadequacy of the proposal under the applicable environmental laws – namely CEQA and the Berkeley Creek Ordinance.

II. DISCUSSION

1. The developer seeks to maximize the number of units it can build (more than doubling the number of existing units and tripling the existing bedrooms) by leveraging the DBL. To benefit from that law, the developer must strictly comply with it and the City must ensure that it does. However, the staff report's discussion of the applicability of the DBL is incomplete. And the findings and conditions completely fail to include any of the necessary conditions to ensure compliance with the DBL.

This is an unusual project in that it already contains six rent controlled rental units. As a result, particular provisions of the DBL apply to ensure the preservation of these existing BMR rental units. (Cal. Gov't Code § 65915(c).) Those provisions require, as the staff report correctly notes, that a certain number of the existing rental units be replaced by units of similar affordability (based on the tenants' actual income levels if known or, if not, a formula). In order to ensure compliance, the DBL requires, if the units will be rental units as the developer claims in this case, that they "be subject to a recorded affordability restriction for at least 55 years." (Cal. Gov't Code § 65915(c)(B)(i).) If they are to be units for sale then they are subject to other appropriate affordability restrictions.

The findings and conditions fail entirely to include any requirement or condition ensuring that the project complies with these provisions of the BMR. (See items 12-16) They are limited only to requirements necessary to satisfy the BMC. Most critically, there is no condition that the required affordability restriction be recorded. In other words they are incomplete and legally inadequate. It is not enough to give lip service to the mandatory applicable requirements of the DBL in the staff report (which mentions is and appropriately requires that the tenants' actual incomes be verified). They have to be applied and enforced – and that is the obligation and responsibility of the City – of you ladies and gentlemen. The project must not go forward until compliance with the DBL is ensured.

This Use Permit must be amended to include conditions ensuring compliance with the DBL (with a clearly, expressly defined affordability restriction which complies with the code – i.e. that will keep the appropriate units low income rentals for at least 55 years).

2. The developer's own shadow studies belie the staff report's conclusion that the project will not unreasonably obstruct adjacent properties' access to sunlight. The studies show that the development



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will cast new shadows year round on the back yards of the adjacent properties along Curtis Street – in some cases keeping the entire yard in shadow nearly every afternoon of the year.

The BMC expressly protects adjacent properties' access to light in two separate provisions - BMC 23D.32.020 and 23D.32.090. In fact, 23D.32.090 requires that ZAB deny a project if it would unreasonably obstruct sunlight, even if it satisfies all other standards of the BMC. Failure to protect sunlight also violates Policy UD-32-Shadows of the General Plan.

The staff report improperly interprets the BMC to protect only access to sunlight inside adjacent properties. It goes so far as to conclude that because the project will not obstruct direct sunlight to all of the windows of any neighboring property, it does not unreasonably obstruct sunlight. Under that interpretation no project would ever unreasonably obstruct sunlight. That conclusion is improper and unsupported by the BMC. Nothing in the language of the BMC limits it to protecting only sunlight in interior (or any other) spaces. It protects entire properties (by contrast other cities' view ordinances specifically protect views only from certain, defined spaces inside homes).

In fact, there is no basis to assume that sunlight in an outdoor space is unimportant or unworthy of protection. Here the degree of shadowing of the backyards shown by the shadow studies is excessive. It will prohibit the adjacent neighbors from enjoying afternoon sunlight in their backyards year round. It will impact their enjoyment and the value of their properties. Any who are mobility impaired will lose access to the only readily accessible outdoor sunlight and will thus also negatively impact their health.

3. The staff report also reaches incorrect conclusions regarding the environmental impact of this project – which, too, will have significant impacts on health and safety. The staff report misinterprets and misapplies the City Attorney's December 1, 2000 letter. That letter concludes that the version of the Creek Ordinance in effect at the time protected any creek shown on any Berkeley Creeks map, and not only the 1975 Berkeley Creeks map.

Significantly, however, the Creek Ordinance has been amended since that time. It no longer defines creeks by reference to maps, but does so more broadly as:

A. "Creek" means a watercourse (1) that carries water from either a permanent or natural source, either intermittently or continuously, in a defined channel, continuous swale or depression, or in a culvert that was placed in the general historic location thereof; and (2) the water either merges with a larger watercourse or body of water, or is diverted into an engineered structure that does not follow the general historic course of a creek. A "creek" does not include any part of an engineered structure developed for collection of storm or flood waters (e.g. a storm drainpipe) that does not follow the general historic course of a creek. 1. A "permanent or natural source" includes a spring, artesian well, lake, estuary, or a rainfall drainage area that covers at least one-third acre (14,520 square feet).

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(BMC 17.08.030) The definition therefore depends on the actual conditions and evidence observed with regard to the property at issue.

In this regard, the staff report's conclusion that "no creek actually exists on the property" *is unsupported by the evidence and therefore in conflict with the law*. There has never been an empirical finding that there is no creek. To the contrary, there is evidence suggesting a creek *does exist* on the property (its presence on past maps coupled with flooding events). At best, whether it exists or not is uncertain. The existence of a creek should be properly investigated before a conclusion can be drawn.

As a result, it is incorrect (or at best premature at best) to conclude that there is no creek on the property at issue and that this project is either exempt from the requirements of the Berkeley Creek Ordinance or categorically exempt from CEQA.

In fact, it is not categorically exempt from CEQA, because infill projects are not categorically exempt if they are subject to a flood plain or flood way (Cal. Pub. Res. Code § 21159.21(h)(5)) or have a significant effect on historical resources. (Cal. Pub. Res. Code § 21159.21(g).) The recurrent flooding here suggests that the former condition likely exists, and should be investigated. There is also historical information suggesting that the latter should be investigated too.

Also, a categorical exemption does not apply "where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances." (Cal. Code Regs. tit. 14, § 15300.2(c).) Here the evidence suggests that unusual circumstances exist due to the significant and recurrent flooding which occurs and as a result of which there is a reasonable possibility the project will have a significant effect on the environment.

To be sure, the project will have a significant impact on the flooding – as will be explained by Mr. Paz, my client's hydrologist – and as is reported by the peer review. Failure to properly address this issue – and to conduct an appropriate study to ensure the impacts are mitigated will (especially as the world gets wetter) have a direct impact on health and safety.

Thus, because there is substantial evidence before ZAB that the project may have a "significant effect on the environment," ZAB should require an EIR. (Pub. Resources Code, §§ 21065, 21080, 21100, 21151.)

**III. CONCLUSION**

For these reasons – and the others you will hear – ZAB should either deny use permit ZP2016-0028 or defer its decision and, as appropriate, add conditions of approval and/or modify the proposed use permit to require and ensure it complies with the DBL, undergoes an EIR, undergoes a creek study and complies with the Berkeley Creek Ordinance as appropriate based on its findings, revises the drainage plan to address the concerns raised in the peer review study and by others, and changes the design to stop unreasonably impacting the neighbors' access to sunlight in violation of the BMC.

**EXHIBIT A**

§ 65915. Applicants seeking density bonus; concessions or..., CA GOVT § 65915

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KeyCite Yellow Flag - Negative Treatment  
Proposed Legislation

West's Annotated California Codes  
Government Code (Refs & Annos)  
Title 7. Planning and Land Use (Refs & Annos)  
Division 1. Planning and Zoning (Refs & Annos)  
Chapter 4.3. Density Bonuses and Other Incentives (Refs & Annos)

West's Ann.Cal.Gov.Code § 65915

§ 65915. Applicants seeking density bonus; concessions or incentives;  
conditions, agreements and submission requirements; duties of local officials

Effective: January 1, 2017

Currentness

(a)(1) When an applicant seeks a density bonus for a housing development within, or for the donation of land for housing within, the jurisdiction of a city, county, or city and county, that local government shall comply with this section. A city, county, or city and county shall adopt an ordinance that specifies how compliance with this section will be implemented. Failure to adopt an ordinance shall not relieve a city, county, or city and county from complying with this section.

(2) A local government shall not condition the submission, review, or approval of an application pursuant to this chapter on the preparation of an additional report or study that is not otherwise required by state law, including this section. This subdivision does not prohibit a local government from requiring an applicant to provide reasonable documentation to establish eligibility for a requested density bonus, incentives or concessions, as described in subdivision (d), waivers or reductions of development standards, as described in subdivision (e), and parking ratios, as described in subdivision (p).

(3) In order to provide for the expeditious processing of a density bonus application, the local government shall do all of the following:

(A) Adopt procedures and timelines for processing a density bonus application.

(B) Provide a list of all documents and information required to be submitted with the density bonus application in order for the density bonus application to be deemed complete. This list shall be consistent with this chapter.

(C) Notify the applicant for a density bonus whether the application is complete in a manner consistent with Section 65943.

(b)(1) A city, county, or city and county shall grant one density bonus, the amount of which shall be as specified in subdivision (f), and, if requested by the applicant and consistent with the applicable requirements of this section, incentives or concessions, as described in subdivision (d), waivers or reductions of development standards, as described



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in subdivision (e), and parking ratios, as described in subdivision (p), when an applicant for a housing development seeks and agrees to construct a housing development, excluding any units permitted by the density bonus awarded pursuant to this section, that will contain at least any one of the following:

(A) Ten percent of the total units of a housing development for lower income households, as defined in Section 50079.5 of the Health and Safety Code.

(B) Five percent of the total units of a housing development for very low income households, as defined in Section 50105 of the Health and Safety Code.

(C) A senior citizen housing development, as defined in Sections 51.3 and 51.12 of the Civil Code, or a mobilehome park that limits residency based on age requirements for housing for older persons pursuant to Section 798.76 or 799.5 of the Civil Code.

(D) Ten percent of the total dwelling units in a common interest development, as defined in Section 4100 of the Civil Code, for persons and families of moderate income, as defined in Section 50093 of the Health and Safety Code, provided that all units in the development are offered to the public for purchase.

(E) Ten percent of the total units of a housing development for transitional foster youth, as defined in Section 66025.9 of the Education Code, disabled veterans, as defined in Section 18541, or homeless persons, as defined in the federal McKinney-Vento Homeless Assistance Act (42 U.S.C. Sec. 11301 et seq.). The units described in this subparagraph shall be subject to a recorded affordability restriction of 55 years and shall be provided at the same affordability level as very low income units.

(2) For purposes of calculating the amount of the density bonus pursuant to subdivision (f), an applicant who requests a density bonus pursuant to this subdivision shall elect whether the bonus shall be awarded on the basis of subparagraph (A), (B), (C), (D), or (E) of paragraph (1).

(3) For the purposes of this section, "total units" or "total dwelling units" does not include units added by a density bonus awarded pursuant to this section or any local law granting a greater density bonus.

(c)(1) An applicant shall agree to, and the city, county, or city and county shall ensure, the continued affordability of all very low and low-income rental units that qualified the applicant for the award of the density bonus for 55 years or a longer period of time if required by the construction or mortgage financing assistance program, mortgage insurance program, or rental subsidy program. Rents for the lower income density bonus units shall be set at an affordable rent as defined in Section 50053 of the Health and Safety Code.

(2) An applicant shall agree to, and the city, county, or city and county shall ensure that, the initial occupant of all for-sale units that qualified the applicant for the award of the density bonus are persons and families of very low, low, or moderate income, as required, and that the units are offered at an affordable housing cost, as that cost is defined in

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Section 50052.5 of the Health and Safety Code. The local government shall enforce an equity sharing agreement, unless it is in conflict with the requirements of another public funding source or law. The following apply to the equity sharing agreement:

(A) Upon resale, the seller of the unit shall retain the value of any improvements, the downpayment, and the seller's proportionate share of appreciation. The local government shall recapture any initial subsidy, as defined in subparagraph (B), and its proportionate share of appreciation, as defined in subparagraph (C), which amount shall be used within five years for any of the purposes described in subdivision (e) of Section 33334.2 of the Health and Safety Code that promote home ownership.

(B) For purposes of this subdivision, the local government's initial subsidy shall be equal to the fair market value of the home at the time of initial sale minus the initial sale price to the moderate-income household, plus the amount of any downpayment assistance or mortgage assistance. If upon resale the market value is lower than the initial market value, then the value at the time of the resale shall be used as the initial market value.

(C) For purposes of this subdivision, the local government's proportionate share of appreciation shall be equal to the ratio of the local government's initial subsidy to the fair market value of the home at the time of initial sale.

(3)(A) An applicant shall be ineligible for a density bonus or any other incentives or concessions under this section if the housing development is proposed on any property that includes a parcel or parcels on which rental dwelling units are or, if the dwelling units have been vacated or demolished in the five-year period preceding the application, have been subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of lower or very low income; subject to any other form of rent or price control through a public entity's valid exercise of its police power; or occupied by lower or very low income households, unless the proposed housing development replaces those units, and either of the following applies:

(i) The proposed housing development, inclusive of the units replaced pursuant to this paragraph, contains affordable units at the percentages set forth in subdivision (b).

(ii) Each unit in the development, exclusive of a manager's unit or units, is affordable to, and occupied by, either a lower or very low income household.

(B) For the purposes of this paragraph, "replace" shall mean either of the following:

(i) If any dwelling units described in subparagraph (A) are occupied on the date of application, the proposed housing development shall provide at least the same number of units of equivalent size to be made available at affordable rent or affordable housing cost to, and occupied by, persons and families in the same or lower income category as those households in occupancy. If the income category of the household in occupancy is not known, it shall be rebuttably presumed that lower income renter households occupied these units in the same proportion of lower income renter households to all renter households within the jurisdiction, as determined by the most recently available data from the United States Department of Housing and Urban Development's Comprehensive Housing Affordability Strategy

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database. For unoccupied dwelling units described in subparagraph (A) in a development with occupied units, the proposed housing development shall provide units of equivalent size to be made available at affordable rent or affordable housing cost to, and occupied by, persons and families in the same or lower income category as the last household in occupancy. If the income category of the last household in occupancy is not known, it shall be rebuttably presumed that lower income renter households occupied these units in the same proportion of lower income renter households to all renter households within the jurisdiction, as determined by the most recently available data from the United States Department of Housing and Urban Development's Comprehensive Housing Affordability Strategy database. All replacement calculations resulting in fractional units shall be rounded up to the next whole number. If the replacement units will be rental dwelling units, these units shall be subject to a recorded affordability restriction for at least 55 years. If the proposed development is for-sale units, the units replaced shall be subject to paragraph (2).

(ii) If all dwelling units described in subparagraph (A) have been vacated or demolished within the five-year period preceding the application, the proposed housing development shall provide at least the same number of units of equivalent size as existed at the highpoint of those units in the five-year period preceding the application to be made available at affordable rent or affordable housing cost to, and occupied by, persons and families in the same or lower income category as those persons and families in occupancy at that time, if known. If the incomes of the persons and families in occupancy at the highpoint is not known, it shall be rebuttably presumed that low-income and very low income renter households occupied these units in the same proportion of low-income and very low income renter households to all renter households within the jurisdiction, as determined by the most recently available data from the United States Department of Housing and Urban Development's Comprehensive Housing Affordability Strategy database. All replacement calculations resulting in fractional units shall be rounded up to the next whole number. If the replacement units will be rental dwelling units, these units shall be subject to a recorded affordability restriction for at least 55 years. If the proposed development is for-sale units, the units replaced shall be subject to paragraph (2).

(C) Notwithstanding subparagraph (B), for any dwelling unit described in subparagraph (A) that is or was, within the five-year period preceding the application, subject to a form of rent or price control through a local government's valid exercise of its police power and that is or was occupied by persons or families above lower income, the city, county, or city and county may do either of the following:

(i) Require that the replacement units be made available at affordable rent or affordable housing cost to, and occupied by, low-income persons or families. If the replacement units will be rental dwelling units, these units shall be subject to a recorded affordability restriction for at least 55 years. If the proposed development is for-sale units, the units replaced shall be subject to paragraph (2).

(ii) Require that the units be replaced in compliance with the jurisdiction's rent or price control ordinance, provided that each unit described in subparagraph (A) is replaced. Unless otherwise required by the jurisdiction's rent or price control ordinance, these units shall not be subject to a recorded affordability restriction.

(D) For purposes of this paragraph, "equivalent size" means that the replacement units contain at least the same total number of bedrooms as the units being replaced.

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(E) Subparagraph (A) does not apply to an applicant seeking a density bonus for a proposed housing development if his or her application was submitted to, or processed by, a city, county, or city and county before January 1, 2015.

(d)(1) An applicant for a density bonus pursuant to subdivision (b) may submit to a city, county, or city and county a proposal for the specific incentives or concessions that the applicant requests pursuant to this section, and may request a meeting with the city, county, or city and county. The city, county, or city and county shall grant the concession or incentive requested by the applicant unless the city, county, or city and county makes a written finding, based upon substantial evidence, of any of the following:

(A) The concession or incentive does not result in identifiable and actual cost reductions, consistent with subdivision (k), to provide for affordable housing costs, as defined in Section 50052.5 of the Health and Safety Code, or for rents for the targeted units to be set as specified in subdivision (c).

(B) The concession or incentive would have a specific, adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon public health and safety or the physical environment or on any real property that is listed in the California Register of Historical Resources and for which there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact without rendering the development unaffordable to low-income and moderate-income households.

(C) The concession or incentive would be contrary to state or federal law.

(2) The applicant shall receive the following number of incentives or concessions:

(A) One incentive or concession for projects that include at least 10 percent of the total units for lower income households, at least 5 percent for very low income households, or at least 10 percent for persons and families of moderate income in a common interest development.

(B) Two incentives or concessions for projects that include at least 20 percent of the total units for lower income households, at least 10 percent for very low income households, or at least 20 percent for persons and families of moderate income in a common interest development.

(C) Three incentives or concessions for projects that include at least 30 percent of the total units for lower income households, at least 15 percent for very low income households, or at least 30 percent for persons and families of moderate income in a common interest development.

(3) The applicant may initiate judicial proceedings if the city, county, or city and county refuses to grant a requested density bonus, incentive, or concession. If a court finds that the refusal to grant a requested density bonus, incentive, or concession is in violation of this section, the court shall award the plaintiff reasonable attorney's fees and costs of suit. Nothing in this subdivision shall be interpreted to require a local government to grant an incentive or concession that has



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a specific, adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon health, safety, or the physical environment, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact. Nothing in this subdivision shall be interpreted to require a local government to grant an incentive or concession that would have an adverse impact on any real property that is listed in the California Register of Historical Resources. The city, county, or city and county shall establish procedures for carrying out this section, that shall include legislative body approval of the means of compliance with this section.

(4) The city, county, or city and county shall bear the burden of proof for the denial of a requested concession or incentive.

(e)(1) In no case may a city, county, or city and county apply any development standard that will have the effect of physically precluding the construction of a development meeting the criteria of subdivision (b) at the densities or with the concessions or incentives permitted by this section. An applicant may submit to a city, county, or city and county a proposal for the waiver or reduction of development standards that will have the effect of physically precluding the construction of a development meeting the criteria of subdivision (b) at the densities or with the concessions or incentives permitted under this section, and may request a meeting with the city, county, or city and county. If a court finds that the refusal to grant a waiver or reduction of development standards is in violation of this section, the court shall award the plaintiff reasonable attorney's fees and costs of suit. Nothing in this subdivision shall be interpreted to require a local government to waive or reduce development standards if the waiver or reduction would have a specific, adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon health, safety, or the physical environment, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact. Nothing in this subdivision shall be interpreted to require a local government to waive or reduce development standards that would have an adverse impact on any real property that is listed in the California Register of Historical Resources, or to grant any waiver or reduction that would be contrary to state or federal law.

(2) A proposal for the waiver or reduction of development standards pursuant to this subdivision shall neither reduce nor increase the number of incentives or concessions to which the applicant is entitled pursuant to subdivision (d).

(f) For the purposes of this chapter, "density bonus" means a density increase over the otherwise maximum allowable gross residential density as of the date of application by the applicant to the city, county, or city and county, or, if elected by the applicant, a lesser percentage of density increase, including, but not limited to, no increase in density. The amount of density increase to which the applicant is entitled shall vary according to the amount by which the percentage of affordable housing units exceeds the percentage established in subdivision (b).

(1) For housing developments meeting the criteria of subparagraph (A) of paragraph (1) of subdivision (b), the density bonus shall be calculated as follows:

Percentage Low-Income Units	Percentage Density Bonus
10	20
11	21.5
12	23

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13	24.5
14	26
15	27.5
17	30.5
18	32
19	33.5
20	35

(2) For housing developments meeting the criteria of subparagraph (B) of paragraph (1) of subdivision (b), the density bonus shall be calculated as follows:

Percentage Very Low Income Units	Percentage Density Bonus
5	20
6	22.5
7	25
8	27.5
9	30
10	32.5
11	35

(3)(A) For housing developments meeting the criteria of subparagraph (C) of paragraph (1) of subdivision (b), the density bonus shall be 20 percent of the number of senior housing units.

(B) For housing developments meeting the criteria of subparagraph (E) of paragraph (1) of subdivision (b), the density bonus shall be 20 percent of the number of the type of units giving rise to a density bonus under that subparagraph.

(4) For housing developments meeting the criteria of subparagraph (D) of paragraph (1) of subdivision (b), the density bonus shall be calculated as follows:

Percentage Moderate-Income Units	Percentage Density Bonus
10	5
11	6

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12	7
13	8
14	9
15	10
16	11
17	12
18	13
19	14
20	15
21	16
22	17
23	18
24	19
25	20
26	21
27	22
28	23
29	24
30	25
31	26
32	27
33	28
34	29
35	30
36	31
37	32
38	33

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39	34
40	35

(5) All density calculations resulting in fractional units shall be rounded up to the next whole number. The granting of a density bonus shall not require, or be interpreted, in and of itself, to require a general plan amendment, local coastal plan amendment, zoning change, or other discretionary approval.

(g)(1) When an applicant for a tentative subdivision map, parcel map, or other residential development approval donates land to a city, county, or city and county in accordance with this subdivision, the applicant shall be entitled to a 15-percent increase above the otherwise maximum allowable residential density for the entire development, as follows:

Percentage Very Low Income	Percentage Density Bonus
10	15
11	16
12	17
13	18
14	19
15	20
16	21
17	22
18	23
19	24
20	25
21	26
22	27
23	28
24	29
25	30
26	31
27	32
28	33



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29	34
30	35

(2) This increase shall be in addition to any increase in density mandated by subdivision (b), up to a maximum combined mandated density increase of 35 percent if an applicant seeks an increase pursuant to both this subdivision and subdivision (b). All density calculations resulting in fractional units shall be rounded up to the next whole number. Nothing in this subdivision shall be construed to enlarge or diminish the authority of a city, county, or city and county to require a developer to donate land as a condition of development. An applicant shall be eligible for the increased density bonus described in this subdivision if all of the following conditions are met:

(A) The applicant donates and transfers the land no later than the date of approval of the final subdivision map, parcel map, or residential development application.

(B) The developable acreage and zoning classification of the land being transferred are sufficient to permit construction of units affordable to very low income households in an amount not less than 10 percent of the number of residential units of the proposed development.

(C) The transferred land is at least one acre in size or of sufficient size to permit development of at least 40 units, has the appropriate general plan designation, is appropriately zoned with appropriate development standards for development at the density described in paragraph (3) of subdivision (c) of Section 65583.2, and is or will be served by adequate public facilities and infrastructure.

(D) The transferred land shall have all of the permits and approvals, other than building permits, necessary for the development of the very low income housing units on the transferred land, not later than the date of approval of the final subdivision map, parcel map, or residential development application, except that the local government may subject the proposed development to subsequent design review to the extent authorized by subdivision (i) of Section 65583.2 if the design is not reviewed by the local government prior to the time of transfer.

(E) The transferred land and the affordable units shall be subject to a deed restriction ensuring continued affordability of the units consistent with paragraphs (1) and (2) of subdivision (c), which shall be recorded on the property at the time of the transfer.

(F) The land is transferred to the local agency or to a housing developer approved by the local agency. The local agency may require the applicant to identify and transfer the land to the developer.

(G) The transferred land shall be within the boundary of the proposed development or, if the local agency agrees, within one-quarter mile of the boundary of the proposed development.

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(H) A proposed source of funding for the very low income units shall be identified not later than the date of approval of the final subdivision map, parcel map, or residential development application.

(h)(1) When an applicant proposes to construct a housing development that conforms to the requirements of subdivision (b) and includes a child care facility that will be located on the premises of, as part of, or adjacent to, the project, the city, county, or city and county shall grant either of the following:

(A) An additional density bonus that is an amount of square feet of residential space that is equal to or greater than the amount of square feet in the child care facility.

(B) An additional concession or incentive that contributes significantly to the economic feasibility of the construction of the child care facility.

(2) The city, county, or city and county shall require, as a condition of approving the housing development, that the following occur:

(A) The child care facility shall remain in operation for a period of time that is as long as or longer than the period of time during which the density bonus units are required to remain affordable pursuant to subdivision (c).

(B) Of the children who attend the child care facility, the children of very low income households, lower income households, or families of moderate income shall equal a percentage that is equal to or greater than the percentage of dwelling units that are required for very low income households, lower income households, or families of moderate income pursuant to subdivision (b).

(3) Notwithstanding any requirement of this subdivision, a city, county, or city and county shall not be required to provide a density bonus or concession for a child care facility if it finds, based upon substantial evidence, that the community has adequate child care facilities.

(4) "Child care facility," as used in this section, means a child day care facility other than a family day care home, including, but not limited to, infant centers, preschools, extended day care facilities, and schoolage child care centers.

(i) "Housing development," as used in this section, means a development project for five or more residential units, including mixed-use developments. For the purposes of this section, "housing development" also includes a subdivision or common interest development, as defined in Section 4100 of the Civil Code, approved by a city, county, or city and county and consists of residential units or unimproved residential lots and either a project to substantially rehabilitate and convert an existing commercial building to residential use or the substantial rehabilitation of an existing multifamily dwelling, as defined in subdivision (d) of Section 65863.4, where the result of the rehabilitation would be a net increase in available residential units. For the purpose of calculating a density bonus, the residential units shall be on contiguous sites that are the subject of one development application, but do not have to be based upon individual subdivision maps

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or parcels. The density bonus shall be permitted in geographic areas of the housing development other than the areas where the units for the lower income households are located.

(j)(1) The granting of a concession or incentive shall not require or be interpreted, in and of itself, to require a general plan amendment, local coastal plan amendment, zoning change, study, or other discretionary approval. For purposes of this subdivision, "study" does not include reasonable documentation to establish eligibility for the concession or incentive or to demonstrate that the incentive or concession meets the definition set forth in subdivision (k). This provision is declaratory of existing law.

(2) Except as provided in subdivisions (d) and (e), the granting of a density bonus shall not require or be interpreted to require the waiver of a local ordinance or provisions of a local ordinance unrelated to development standards.

(k) For the purposes of this chapter, concession or incentive means any of the following:

(1) A reduction in site development standards or a modification of zoning code requirements or architectural design requirements that exceed the minimum building standards approved by the California Building Standards Commission as provided in Part 2.5 (commencing with Section 18901) of Division 13 of the Health and Safety Code, including, but not limited to, a reduction in setback and square footage requirements and in the ratio of vehicular parking spaces that would otherwise be required that results in identifiable and actual cost reductions, to provide for affordable housing costs, as defined in Section 50052.5 of the Health and Safety Code, or for rents for the targeted units to be set as specified in subdivision (c).

(2) Approval of mixed-use zoning in conjunction with the housing project if commercial, office, industrial, or other land uses will reduce the cost of the housing development and if the commercial, office, industrial, or other land uses are compatible with the housing project and the existing or planned development in the area where the proposed housing project will be located.

(3) Other regulatory incentives or concessions proposed by the developer or the city, county, or city and county that result in identifiable and actual cost reductions to provide for affordable housing costs, as defined in Section 50052.5 of the Health and Safety Code, or for rents for the targeted units to be set as specified in subdivision (c).

(l) Subdivision (k) does not limit or require the provision of direct financial incentives for the housing development, including the provision of publicly owned land, by the city, county, or city and county, or the waiver of fees or dedication requirements.

(m) This section does not supersede or in any way alter or lessen the effect or application of the California Coastal Act of 1976 (Division 20 (commencing with Section 30000) of the Public Resources Code).

(n) If permitted by local ordinance, nothing in this section shall be construed to prohibit a city, county, or city and county from granting a density bonus greater than what is described in this section for a development that meets the

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requirements of this section or from granting a proportionately lower density bonus than what is required by this section for developments that do not meet the requirements of this section.

(o) For purposes of this section, the following definitions shall apply:

(1) "Development standard" includes a site or construction condition, including, but not limited to, a height limitation, a setback requirement, a floor area ratio, an onsite open-space requirement, or a parking ratio that applies to a residential development pursuant to any ordinance, general plan element, specific plan, charter, or other local condition, law, policy, resolution, or regulation.

(2) "Maximum allowable residential density" means the density allowed under the zoning ordinance and land use element of the general plan, or, if a range of density is permitted, means the maximum allowable density for the specific zoning range and land use element of the general plan applicable to the project. Where the density allowed under the zoning ordinance is inconsistent with the density allowed under the land use element of the general plan, the general plan density shall prevail.

(p)(1) Except as provided in paragraphs (2) and (3), upon the request of the developer, a city, county, or city and county shall not require a vehicular parking ratio, inclusive of handicapped and guest parking, of a development meeting the criteria of subdivisions (b) and (c), that exceeds the following ratios:

(A) Zero to one bedroom: one onsite parking space.

(B) Two to three bedrooms: two onsite parking spaces.

(C) Four and more bedrooms: two and one-half parking spaces.

(2) Notwithstanding paragraph (1), if a development includes the maximum percentage of low-income or very low income units provided for in paragraphs (1) and (2) of subdivision (f) and is located within one-half mile of a major transit stop, as defined in subdivision (b) of Section 21155 of the Public Resources Code, and there is unobstructed access to the major transit stop from the development, then, upon the request of the developer, a city, county, or city and county shall not impose a vehicular parking ratio, inclusive of handicapped and guest parking, that exceeds 0.5 spaces per bedroom. For purposes of this subdivision, a development shall have unobstructed access to a major transit stop if a resident is able to access the major transit stop without encountering natural or constructed impediments.

(3) Notwithstanding paragraph (1), if a development consists solely of rental units, exclusive of a manager's unit or units, with an affordable housing cost to lower income families, as provided in Section 50052.5 of the Health and Safety Code, then, upon the request of the developer, a city, county, or city and county shall not impose a vehicular parking ratio, inclusive of handicapped and guest parking, that exceeds the following ratios:



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(A) If the development is located within one-half mile of a major transit stop, as defined in subdivision (b) of Section 21155 of the Public Resources Code, and there is unobstructed access to the major transit stop from the development, the ratio shall not exceed 0.5 spaces per unit.

(B) If the development is a for-rent housing development for individuals who are 62 years of age or older that complies with Sections 51.2 and 51.3 of the Civil Code, the ratio shall not exceed 0.5 spaces per unit. The development shall have either paratransit service or unobstructed access, within one-half mile, to fixed bus route service that operates at least eight times per day.

(C) If the development is a special needs housing development, as defined in Section 51312 of the Health and Safety Code, the ratio shall not exceed 0.3 spaces per unit. The development shall have either paratransit service or unobstructed access, within one-half mile, to fixed bus route service that operates at least eight times per day.

(4) If the total number of parking spaces required for a development is other than a whole number, the number shall be rounded up to the next whole number. For purposes of this subdivision, a development may provide onsite parking through tandem parking or uncovered parking, but not through onstreet parking.

(5) This subdivision shall apply to a development that meets the requirements of subdivisions (b) and (c), but only at the request of the applicant. An applicant may request parking incentives or concessions beyond those provided in this subdivision pursuant to subdivision (d).

(6) This subdivision does not preclude a city, county, or city and county from reducing or eliminating a parking requirement for development projects of any type in any location.

(7) Notwithstanding paragraphs (2) and (3), if a city, county, city and county, or an independent consultant has conducted an areawide or jurisdictionwide parking study in the last seven years, then the city, county, or city and county may impose a higher vehicular parking ratio not to exceed the ratio described in paragraph (1), based upon substantial evidence found in the parking study, that includes, but is not limited to, an analysis of parking availability, differing levels of transit access, walkability access to transit services, the potential for shared parking, the effect of parking requirements on the cost of market-rate and subsidized developments, and the lower rates of car ownership for low-income and very low income individuals, including seniors and special needs individuals. The city, county, or city and county shall pay the costs of any new study. The city, county, or city and county shall make findings, based on a parking study completed in conformity with this paragraph, supporting the need for the higher parking ratio.

(8) A request pursuant to this subdivision shall neither reduce nor increase the number of incentives or concessions to which the applicant is entitled pursuant to subdivision (d).

(q) Each component of any density calculation, including base density and bonus density, resulting in fractional units shall be separately rounded up to the next whole number. The Legislature finds and declares that this provision is declaratory of existing law.

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(r) This chapter shall be interpreted liberally in favor of producing the maximum number of total housing units.

**Credits**

(Added by Stats.1979, c. 1207, p. 4748, § 10, eff. Oct. 2, 1979. Amended by Stats.1982, c. 1263, § 2, eff. Sept. 22, 1982; Stats.1983, c. 634, § 1; Stats.1984, c. 1333, § 2; Stats.1989, c. 842, § 3; Stats.1990, c. 31 (A.B.1259), § 3, eff. March 26, 1990; Stats.1991, c. 1091 (A.B.1487), § 64; Stats.1998, c. 689 (S.B.1362), § 6; Stats.1999, c. 968 (S.B.948), § 7; Stats.2000, c. 556 (A.B.2755), § 1; Stats.2002, c. 1062 (A.B.1866), § 3; Stats.2003, c. 430 (A.B.305), § 1; Stats.2004, c. 724 (A.B.2348), § 5; Stats.2004, c. 928 (S.B.1818), § 1; Stats.2005, c. 496 (S.B.435), § 2; Stats.2008, c. 454 (A.B.2280), § 1; Stats.2012, c. 181 (A.B.806), § 53, operative Jan. 1, 2014; Stats.2013, c. 76 (A.B.383), § 102; Stats.2014, c. 682 (A.B.2222), § 1, eff. Jan. 1, 2015; Stats.2015, c. 699 (A.B.744), § 2, eff. Jan. 1, 2016; Stats.2016, c. 756 (A.B.2442), § 1, eff. Jan. 1, 2017; Stats.2016, c. 758 (A.B.2501), § 1, eff. Jan. 1, 2017; Stats.2016, c. 761 (A.B.2556), § 1.7, eff. Jan. 1, 2017.)

West's Ann. Cal. Gov. Code § 65915, CA GOVT § 65915

Current with urgency legislation through Ch. 309 of 2017 Reg.Sess

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End of Document

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**EXHIBIT B**



Office of the City Attorney

RECEIVED

DEC 05 2000

CURRENT PLANNING

December 1, 2000

To: WENDY COSIN, Director of Planning and Development  
~~MARK RHOADES~~, Current Planning Manager  
MATTHEW Le GRANT, Senior Planner

From: MANUELA ALBUQUERQUE, City Attorney  
By: LAURA N. MCKINNEY, Deputy City Attorney *LM*

Re: Definition of a Creek Under the Creek Ordinance – BMC § 17.08

ISSUE:

If a creek does not appear on both the Geological Survey Map and the 1975 Berkeley Creeks map, but does appear on the 1990 Berkeley Creeks map, is it "creek" protected by the Creek Ordinance pursuant to BMC § 17.08?

CONCLUSION:

Yes. If a creek appears on the 1990 Berkeley Creeks map, it is a creek that is protected under BMC § 17.08.

BACKGROUND:

The owners of 137 Bret Harte Road have applied for an Administrative Use Permit (AUP) for continuation of an existing non-conforming creek setback in the same plane pursuant to BMC § 23C.04.070.B. The necessity for this AUP has been assumed to be as a result of the fact that a creek exists on the property which is subject to protection under BMC § 17.08.

However, after a dispute arose between a neighbor to this property regarding the accuracy of the application's representation of the creek on the property, the property owner asserted that the creek in question was not protected by the Creek Ordinance due to the fact that it did not appear on either the Geological Survey Map nor the 1975 Berkeley Creeks map as an above ground creek.



Wendy Cosin, Director of Planning and Development  
Mark Rhoades, Current Planning Manager  
Matt Le Grant, Senior Planner  
December 1, 2000  
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DISCUSSION:

Essentially, Berkeley's Creek Ordinance protects watercourses in Berkeley in two ways. First, it prohibits obstruction or interference with any natural watercourse in Berkeley and prohibits culverting and riprapping unless a permit is obtained.<sup>1</sup> Second, it requires a setback of 30 feet from the centerline of the creek for all new construction.<sup>2</sup>

The Ordinance defines "creek" as:

[A] naturally occurring swale or depression, which carries water either seasonally or year-round, and which appears as an above ground creek on the Geological Survey Map and in the 1975 Berkeley creeks map prepared by the Planning Department to show the approximate undergrounding of the watercourse. The word creek will be synonymous with natural watercourse as used in the chapter. BMC § 17.08.030.A.

To determine whether the City of Berkeley intended to limit protection of creeks in Berkeley to only those identified on both the Geological Survey Map and the Berkeley 1975 map for all time, it is necessary to ascertain the legislative intent of the Creeks Ordinance.

Courts have held that to interpret statutory construction:

[T]he court should ascertain the intent of the Legislature so as to effectuate the purpose of the law. Secondly, the provision must be given a reasonable and common sense interpretation consistent with the apparent purpose and intention of the lawmakers, practical rather than technical in nature, which upon application will result in wise policy rather than mischief or absurdity. The court should take into account matters such as context, the object in view, the evils to be remedied, the history of the times and of legislation upon the same subject, public policy, and contemporaneous construction.

*DeYoung v. San Diego*, 147 Cal.App.3d 11, 17 (1983).

Further, the court in *California School Employees Assn. v. Governing Bd.* 8 Cal.4th 333, 342 (1994) held:

Ordinarily, if the statutory language is clear and unambiguous, there is no need for judicial construction. Nonetheless, a court may determine whether the literal meaning of a statute comports with its purpose. We need not follow the plain meaning of a statute

<sup>1</sup> However, these protections only relate to structures or conditions constructed after the effective date of the ordinance. See BMC §§ 17.08.040 and 17.08.060.

<sup>2</sup> See BMC § 17.08.050.

Wendy Cosin, Director of Planning and Development  
Mark Rhoades, Current Planning Manager  
Matt Le Grant, Senior Planner  
December 1, 2000  
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when to do so would "frustrate[] the manifest purposes of the legislation as a whole or [lead] to absurd results."

A review of the legislative history leads to the conclusion that the City's purpose in enacting the Creeks Ordinance was to protect all naturally occurring waterways in Berkeley, not just those identified on a particular map. For instance, in its November 21, 1989 report to Council recommending adoption of the Creeks Ordinance, the Parks and Recreation Commission stated that it was providing the Council with an ordinance "regarding the preservation and restoration of natural watercourses in the City of Berkeley". In addition, the report stated that the Parks and Recreation Commission was "interested in preserving the few stretches of natural creeks remaining in Berkeley"; that it had developed "an ordinance which would primarily restrict further culverting of existing open creeks"; and that the "ordinance would forbid the issuance of any permit to culvert or perform any construction in a natural watercourse without review."<sup>3</sup>

Nowhere in this discussion does it appear that the intent to protect creeks in Berkeley should be limited to only those that appear on a certain map or combination of maps. Instead, it appears that the City's intent was to attempt to preserve and restore *all* natural watercourses in Berkeley city limits.

The definition of "creeks" in the ordinance attempted to assist in the identification of above ground creeks, but cannot be read to limit the protection the City intended to extend to all creeks in Berkeley. To read the statute otherwise would forever freeze the protection afforded to creeks in Berkeley to those identified on a Geological Survey Map and a 1975 Berkeley map ~~although the existence of natural waterways in Berkeley could be subject to dramatic changes as a result of natural conditions in the years following 1975.~~ This interpretation would lead to absurd results and, therefore, the statute should not be read in this manner.

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<sup>3</sup> In addition, the purpose of the ordinance states that it was intended to "establish a policy on: (1) the issuance of permits for culverting open creeks; (2) the rehabilitation and restoration of natural waterways; and (3) the management of watersheds." BMC § 17.08.010.

ZONING ADJUSTMENTS BOARD

JUNE 27, 2002

1155 HEARST AVENUE - USE PERMIT # 01-10000087

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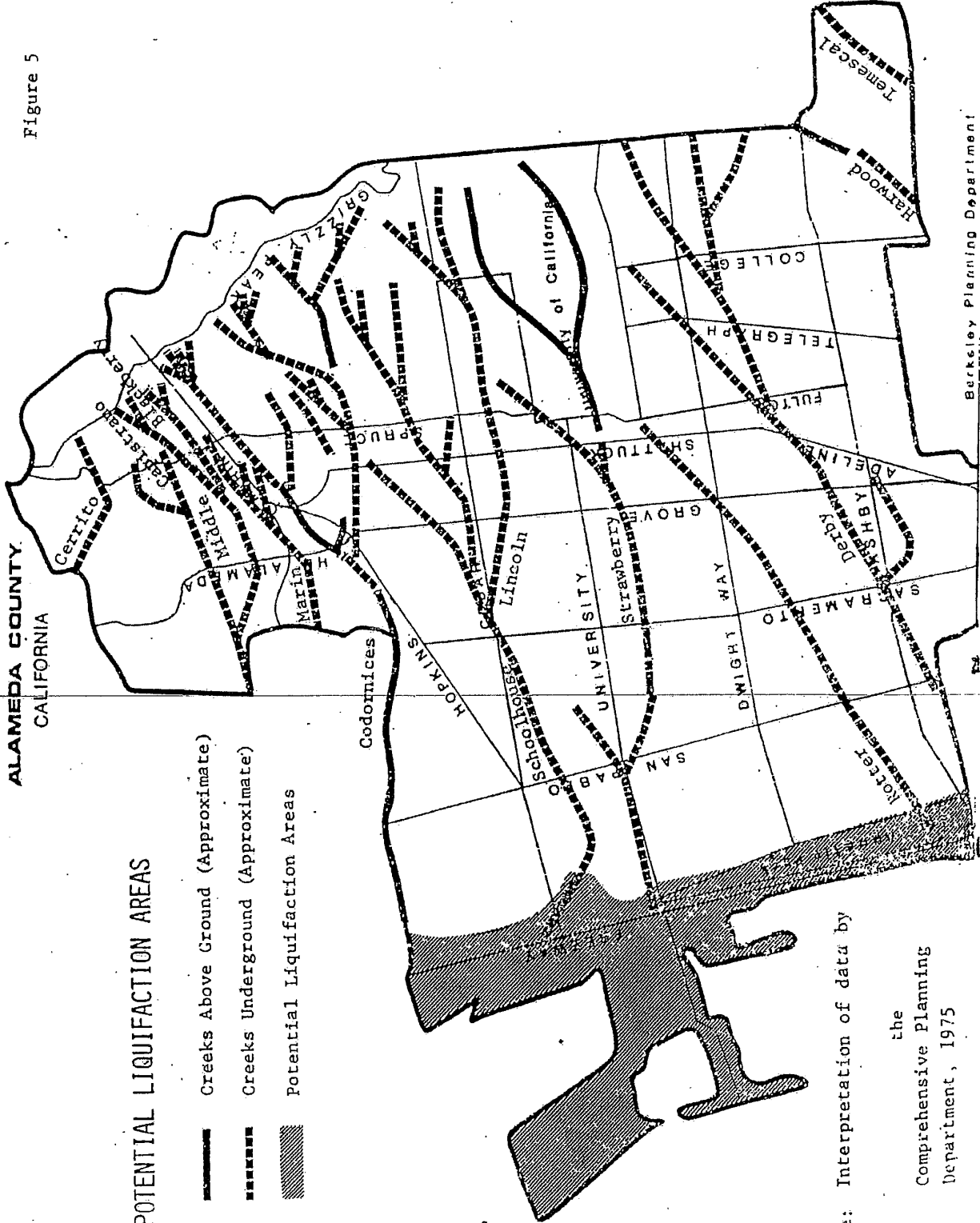
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Figure 5

**BERKELEY**  
ALAMEDA COUNTY,  
CALIFORNIA

**POTENTIAL LIQUIFICATION AREAS**

- Creeks Above Ground (Approximate)
- ▬▬▬▬▬▬ Creeks Underground (Approximate)
- ▨▨▨▨▨▨ Potential Liquification Areas



Berkeley Planning Department

Interpretation of data by  
the  
Comprehensive Planning  
Department, 1975



Creek and watershed map of oakland and Berkeley

