



Office of the City Manager

INFORMATION CALENDAR
March 21, 2023

To: Honorable Mayor and Members of the City Council
From: Dee Williams-Ridley, City Manager
Submitted by: Jordan Klein, Director, Planning and Development Department
Subject: LPO NOD: 1911 Fourth Street /#LMSAP2022-0014

INTRODUCTION

The attached Landmarks Preservation Commission Notice of Decision (NOD) is presented to the Mayor and City Council pursuant to Berkeley Municipal Code/Landmarks Preservation Ordinance (BMC/LPO) Section 3.24.240.A, which requires that “a copy of the Notice of Decision shall be filed with the City Clerk and the City Clerk shall present said copy to the City Council at its next regular meeting.”

CURRENT SITUATION AND ITS EFFECTS

The Landmark Preservation Commission (LPC/Commission) has approved a Structural Alteration Permit (SAP) for the subject City Landmark property. This action is subject to a 15-day appeal period, which began on March 7, 2023.

BACKGROUND

BMC/LPO Section 3.24.300 allows City Council to review any action of the Landmarks Preservation Commission in granting or denying a Structural Alteration Permit. In order for Council to review the decision on its merits, Council must appeal the Notice of Decision. To do so, a Council member must move this Information Item to Action and then move to set the matter for hearing on its own. Such action must be taken within 15 days of the mailing of the Notice of Decision, or by March 21, 2023. Such certification to Council shall stay all proceedings in the same manner as the filing of an appeal.

If the Council chooses to appeal the action of the Commission, then a public hearing will be set. The Council must then rule on the designation within 30 days of closing the hearing, otherwise the decision of the Commission is automatically deemed affirmed.

Unless the Council wishes to review the determination of the Commission and make its own decision, the attached NOD is deemed received and filed.

ENVIRONMENTAL SUSTAINABILITY & CLIMATE IMPACTS

Landmark designation provides opportunities for the adaptive re-use and rehabilitation of historic resources within the City. The rehabilitation of these resources, rather than their removal, achieves construction and demolition waste diversion, and promotes investment in existing urban centers.

POSSIBLE FUTURE ACTION

The Council may choose to appeal the decision, in which case it would conduct a public hearing at a future date.

FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

There are no known fiscal impacts associated with this action.

CONTACT PERSON

Fatema Crane, Principal Planner, Planning and Development, 510-981-7410

Attachments:

1: Notice of Decision – #LMSAP2022-0014/1911 Fourth Street



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

Notice of Decision

DATE OF BOARD DECISION: February 2, 2023
DATE NOTICE MAILED: March 6, 2023
APPEAL PERIOD EXPIRATION: March 21, 2023
EFFECTIVE DATE OF PERMIT (Barring Appeal): March 22, 2023¹

1911 Fourth Street – Spenger’s Fish Grotto

Structural Alteration Permit #LMSAP2022-0014 to install two temporary structures immediately adjacent to a tenant space within a City Landmark property.

The Landmarks Preservation Commission of the City of Berkeley, after conducting a public hearing, **APPROVED** the following request:

- **Structural Alteration Permit**

APPLICANT: Olin Cohan, Masaya Trading Company

ZONING DISTRICT: Commercial West Berkeley (C-W)

ENVIRONMENTAL REVIEW STATUS: Categorically exempt pursuant to Section 15331 of the CEQA Guidelines (Historical Resource Restoration and Rehabilitation).

The Application materials for this project are available online at:

<https://berkeleyca.gov/construction-development/land-use-development/zoning-projects>

FINDINGS, CONDITIONS AND APPROVED PLANS ARE ATTACHED TO THIS NOTICE

¹ Pursuant to BMC Section 1.04.070, if the close of the appeal period falls on a weekend or holiday, then the appeal period expires the following business day. Pursuant to BMC Section 3.24.190, the City Council may “certify” any decision of the LPC for review, within fifteen days from the mailing of the NOD. Such certification shall stay all proceedings in the same manner as the filing of a notice of appeal.

LANDMARKS PRESERVATION COMMISSION
NOTICE OF DECISION
#LMSAP2022-0014
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COMMISSION VOTE: 8-0-0-1

YES: ADAMS, ENCHILL, FINACOM, LEUSCHNER, LINVILL, MONTGOMERY,
SCHWARTZ, TWU

NO: [NONE]

ABSTAIN: [NONE]

ABSENT: CRANDALL

TO APPEAL THIS DECISION (see Section 3.24.300 of the Berkeley Municipal Code)

An appeal may be taken to the City Council by the City Council on its own motion, by motion of the Planning Commission, by motion of the Civic Art Commission, by the verified application of the owners of the property or their authorized agents, or by the verified application of at least fifty residents of the City aggrieved or affected by any determination of the commission made under the provisions of this chapter.

Such appeal shall be taken by filing a written notice of appeal with the City Clerk within fifteen days after the mailing of the notice of the decision of the commission. The notice of appeal shall clearly and concisely set forth the grounds upon which the appeal is based. If the appeal is taken by an owner of the property affected, or an authorized agent, the notice of appeal shall be filed in duplicate and the City Clerk shall immediately forward one copy to the secretary of the commission. If the appeal is taken by someone other than an owner of affected property or an authorized agent, the notice of appeal shall be filed in triplicate and the City Clerk shall immediately forward one copy to the owner or authorized agent of the affected property and one copy to the secretary of the commission. Within ten days after the filing of a notice of appeal, the secretary of the commission shall transmit to the City Council a copy of the application, a copy of the notice of appeal and a written statement setting forth the reasons for the commission's decision, and shall make available to the council, at the time the matter is considered by the council, all other papers constituting the record upon which the action appealed from was taken.

The City Clerk is located at 2180 Milvia Street, 1st Floor, Berkeley. The City Clerk's facsimile number is (510) 981-6901. The City Clerk's telephone number is (510) 981-6900.

An appeal must be received prior to 5:00 p.m. on the "APPEAL PERIOD EXPIRATION" date shown above (if the close of the appeal period falls on a weekend or holiday, then the appeal period expires the following business day).

The required fee is as follows (checks and money orders must be payable to "City of Berkeley"):

LANDMARKS PRESERVATION COMMISSION
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- a. The basic fee for persons other than the applicant is \$500. This fee may be reduced to \$100 if the appeal is signed by persons who lease or own at least 50 percent of the parcels or dwelling units within 300 feet of the project site, or at least 25 such persons (not including dependent children), whichever is less.
- b. The fee for appeals of affordable housing projects (defined as projects which provide 50 percent or more affordable units for households earning 80% or less of Area Median Income) is \$500, which may not be reduced.
- c. The fee for all appeals by Applicants is \$2,500.

STRUCTURAL ALTERATION PERMIT ISSUANCE:

If no appeal is received, the Structural Alteration Permit will be issued on the first business day following expiration of the appeal period, and the project may proceed at that time. Information about the Building Permit process can be found at the following link:
<http://www.ci.berkeley.ca.us/permitservicecenter/>.

NOTICE CONCERNING YOUR LEGAL RIGHTS:

If you object to this decision, the following requirements and restrictions apply:

1. If you challenge this decision in court, you may be limited to raising only those issues you or someone else raised in a public hearing and/or written correspondence during the proceedings related to this permit.
2. You must appeal to the City Council within fifteen (15) days after the Notice of Decision of the action of the Landmarks Preservation Commission is mailed.
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 permit may be filed more than ninety (90) days after the date the decision becomes final, as defined in Code of Civil Procedure Section 1094.6(b). Any lawsuit not filed within that ninety (90) day period will be barred.
4. Pursuant to Government Code Section 66020(d)(1), notice is hereby given to the applicant that the 90-day protest period for any fees, dedications, reservations, or other exactions included in any permit approval begins upon final action by the City, and that any challenge must be filed within this 90-day period.
5. If you believe that this decision or any condition attached to it denies you any reasonable economic use of the subject property, was not sufficiently related to a legitimate public purpose, was not sufficiently proportional to any impact of the project, or for any other reason constitutes a "taking" of property for public use without just compensation under the California or United States Constitutions, your appeal of this decision must including the

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following information:

- A. That this belief is a basis of your appeal.
- B. Why you believe that the decision or condition constitutes a "taking" of property as set forth above.
- C. All evidence and argument in support of your belief that the decision or condition constitutes a "taking" as set forth above.

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

PUBLIC COMMENT:

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.

FURTHER INFORMATION:

Questions about the project should be directed to the project planner, Desiree Dougherty, at (510) 981-7431 or ddougherty@cityofberkeley.info. All project application materials, including full-size plans, may be viewed at the Permit Service Center (Zoning counter), 1947 Center Street, during regular business hours.

ATTACHMENTS:

1. Findings and Conditions
2. Project Plans, dated **DECEMBER 23, 2022**

ATTEST:



Fatema Crane, Principal Planner
Secretary to the Landmarks Preservation Commission

cc: City Clerk

LANDMARKS PRESERVATION COMMISSION
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Applicant: Olin Cohan, Masaya Trading Company, 3820 Charlotte Avenue,
Nashville TN 37209
Property Owner: Jamestown Urban Management, 1700 Montgomery Street, Suite
215, San Francisco, CA 94111

Attachment 1, part 2

Findings and Conditions

1911 Fourth Street – Spenger’s Fish Grotto

Structural Alteration Permit #LMSAP2022-0014 to install two temporary structures immediately adjacent to a tenant space within a City Landmark property.

CEQA FINDINGS

1. The project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA, Public Resources Code §21000, et seq. and California Code of Regulations, §15000, et seq.) pursuant to Section 15331 of the CEQA Guidelines (“Historic Resource Restoration/Rehabilitation”). Furthermore, none of the exceptions in CEQA Guidelines Section 15300.2 apply, as follows: (a) the site is not located in an environmentally sensitive area, (b) there are no cumulative impacts, (c) there are no significant effects, (d) the project is not located near a scenic highway, and (e) the project site is not located on a hazardous waste site pursuant to Government Code Section 65962.5.

SECRETARY OF THE INTERIOR’S STANDARDS FINDINGS

Regarding the Secretary of the Interior’s Standards for Rehabilitation, the Landmarks Preservation Commission of the City of Berkeley makes the following findings:

1. The proposed project does not require a change of use. The property will retain its historic commercial use.
2. The project avoids removal of distinctive materials and any alteration of features that characterize the property. The project scope is limited to the construction of two temporary accessory structures in the outdoor patio located directly adjacent to the subject tenant space. No demolition or alteration to the building façade is proposed.
3. The project proposed two modern designed structures, a pergola and a display shed. Because these structures are contemporary and temporary, they will not result in a false sense of historical development.
4. The subject property does not feature changes that have acquired significance in their own right.
5. Distinctive materials, features, finishes, and construction techniques, or examples of craftsmanship that characterize the Spenger’s Grotto will be preserved as the scope will not touch the historic structure.

6. As conditioned herein, if deteriorated historic features will be affected by this request, then they would be repaired or replaced to match the materials, design, and finishes of the original items.
7. The applicant does not propose chemical or physical treatments. However, standard conditions of Structural Alteration Permit approval would require any chemical or physical treatments to be undertaken using the gentlest means possible.
8. The project does not have the potential to affect any archaeological resources because the applicant proposes no excavation.
9. The proposed new work is designed with complimentary, high-quality materials in simplified, contemporary style employing colors and finishes that harmonize with the design elements of the existing non-historic building. Owing to these aspects, new work will be sufficiently differentiated from the historic design.
10. If the proposed improvements were removed in the future, they would not permanently impair the integrity or essential form of the subject building.

FINDINGS FOR APPROVAL

1. As required by Section 3.24.260 of the Landmarks Preservation Ordinance, the Commission finds that proposed work is appropriate for and consistent with the purposes of the Ordinance, and will preserve and enhance the characteristics and features specified in the designation for this property. Specifically:
 - a. The proposed area of scope is limited to the outdoor space located on the andmarked parcel, but not a part of the landmarked structure. No changes are proposed on the landmarked building.
 - b. The proposed project would provide temporary display opportunities for the subject tenant space and would be removed once the lease of the space has come to term. There are no aspects of this proposal that would be detrimental to the character of the landmarked commercial building.

STANDARD CONDITIONS

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

1. Conditions Shall be Printed on Plans

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

2. Plans and Representations Become Conditions

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

3. Subject to All Applicable Laws and Regulations

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

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

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

5. Indemnification Agreement

The applicant shall hold the City of Berkeley and its officers harmless in the event of any legal action related to the granting of this Permit, shall cooperate with the City in defense of such action, and shall indemnify the City for any award of damages or attorneys fees that may result.

ADDITIONAL CONDITIONS

The following additional conditions are attached to this Permit:

- 6. The proposed façade upgrades are approved as shown on the drawings dated “received December 23, 2022” subject to the following conditions.
- 7. No changes can be made to these approved plans without prior approval.
- 8. **CITY PERMITS.** This Structural Alteration Permit (SAP) approval is contingent upon approval of the requisite Use Permit and Public Work Permit for the project scope.
- 9. **PLANS COMPLIANCE.** Construction and building permit plans shall substantially conform to the Structural Alteration Permit (SAP) project plans dated/received **December 23, 2022.**

10. **REMOVAL OF TEMPORARY STRUCTURES.** Applicant shall be responsible for disassembly and removal of the pergola and shed at the termination of their lease and for any necessary repairs to the patio surface.
11. Chemical or physical treatments, if appropriate, shall be undertaken using the gentlest means possible. Treatments that cause damage to historic materials shall not be used.
12. **COLORS.** Prior to Landmarks plan checker sign-off of the Building Permit set of drawings, the applicant shall submit color and materials information for review and approval by Landmarks staff, in coordination with the LPC Chair as needed.
13. **CLEAR GLASS.** All glass is assumed to be clear glass. Any proposed glass that is not clear glass, or includes signage, shall be indicated on all drawings, and shall be reviewed for approval by Landmarks staff.
14. **DETAILS.** Prior to Landmarks plan checker sign-off of the Building Permit set of drawings, the applicant shall submit pergola and display shed details for review and approval by the Landmarks plan checker.
15. **LIGHTING.** Prior to Landmarks plan checker sign-off of the building permit set of drawings, the applicant shall submit lighting details showing all existing and proposed site and building lighting. Exterior lighting, including for signage, shall be downcast and not cause glare on the public right-of-way and adjacent parcels.
16. The applicant shall be responsible for identifying and securing all applicable permits from the Building and Safety Division and all other affected City divisions/departments prior to the start of work.
17. The applicant is responsible for complying with all the above conditions. Failure to comply with any condition could result in construction work being stopped, issuance of citations, as well as further review by the Landmarks staff, which may modify or impose additional conditions, or revoke approval.
18. All building permit drawings and subsequent construction shall substantially conform to the approved plans as outlined in Condition #1. Any modifications must be reviewed by the Landmarks plan checker to determine whether the modification requires approval.
19. The applicant shall hold harmless, defend, and indemnify the City of Berkeley and its officers, agents, and employees against any and all liability, damages, claims, demands, judgments or other losses (including without limitation, attorney's fees, expert witness and consultant fees and other litigation expenses), referendum or initiative relating to, resulting from or caused by, or alleged to have resulted from, or caused by, any action or approval associated with the project. The indemnity includes without limitation, any legal or administrative challenge, referendum or initiative filed or prosecuted to overturn, set aside, stay or otherwise rescind any or all approvals granted in connection with the Project, any environmental determination made for the project and granting any permit issued in accordance with the project. This indemnity includes, without limitation,

payment of all direct and indirect costs associated with any action specified herein. Direct and indirect costs shall include, without limitation, any attorney's fees, expert witness and consultant fees, court costs, and other litigation fees. City shall have the right to select counsel to represent the City at Applicant's expense in the defense of any action specified in this condition of approval. City shall take reasonable steps to promptly notify the Applicant of any claim, demand, or legal actions that may create a claim for indemnification under these conditions of approval.

20. **Repair and replacement of character-defining features.** Repair and replacement of character-defining features. Deteriorated historic features shall be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature shall match the old or historic feature in design, color, texture, and, where possible, materials. Replacement of missing features will be substantiated by documentary and physical evidence.
21. **Chemical Treatments.** Any chemical treatments needed as construction progresses will be undertaken using the gentlest means possible.

MASAYA TENANT IMPROVEMENT PATIO PLAN AUP/SAP SUBMITTAL

1911 FOURTH STREET, SUITE 104
BERKELEY, CA 94710



PATIO AREA NOTES:

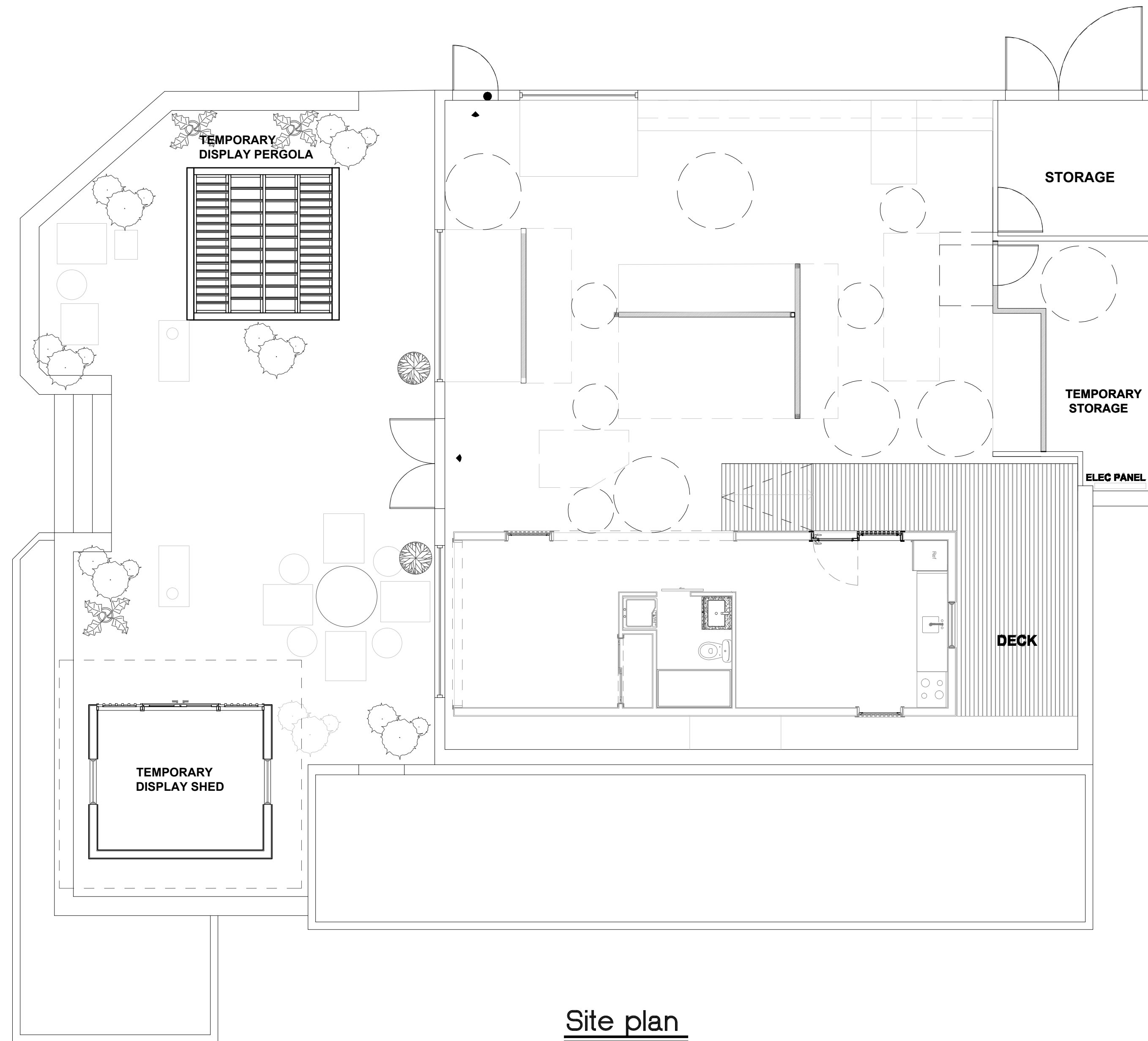
Current bocci ball court and picnic table to be removed.

Temporary sustainably grown teak display shed and pergola will be placed in existing patio area with NO structural or landscape modifications.

Loose furniture collections to be presented and available for public use, to be secured after hours with security wire and locking system.

Cornhole game to be provided for public use and offered for sale. To be stored inside after hours.

Planters to be included throughout patio area to match planters or similar across the shopping mall. Large, weighted planters to be specified for security purposes, smaller planters to be store inside after hours.



Site plan
3/16" = 1'-0"

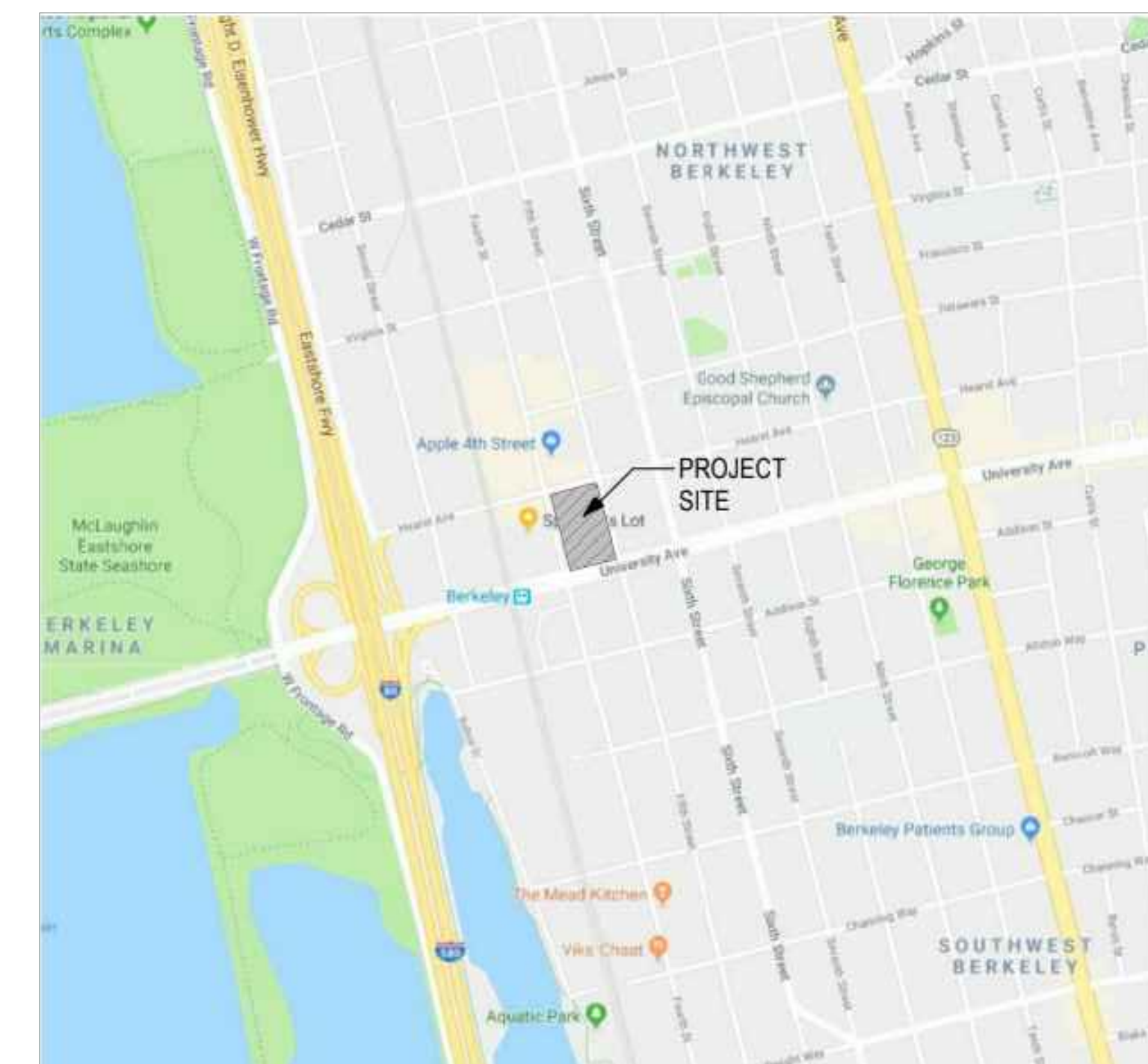
SHEET INDEX:

ARCHITECTURAL

Sheet #:	Contents
AUP 1.0	Vicinity & Site plan
AUP 2.0	Landscape plan
AUP 3.0	Elevation display shed
AUP 4.0	Elevation display pergola



VICINITY MAP



LOCATION MAP

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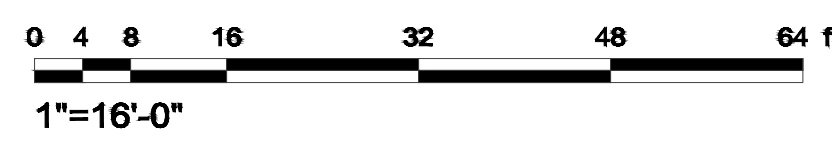
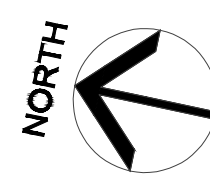
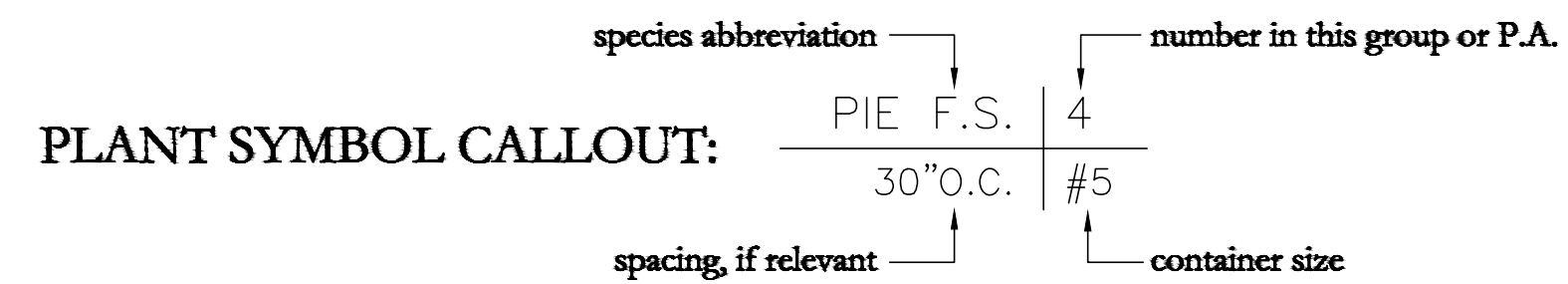
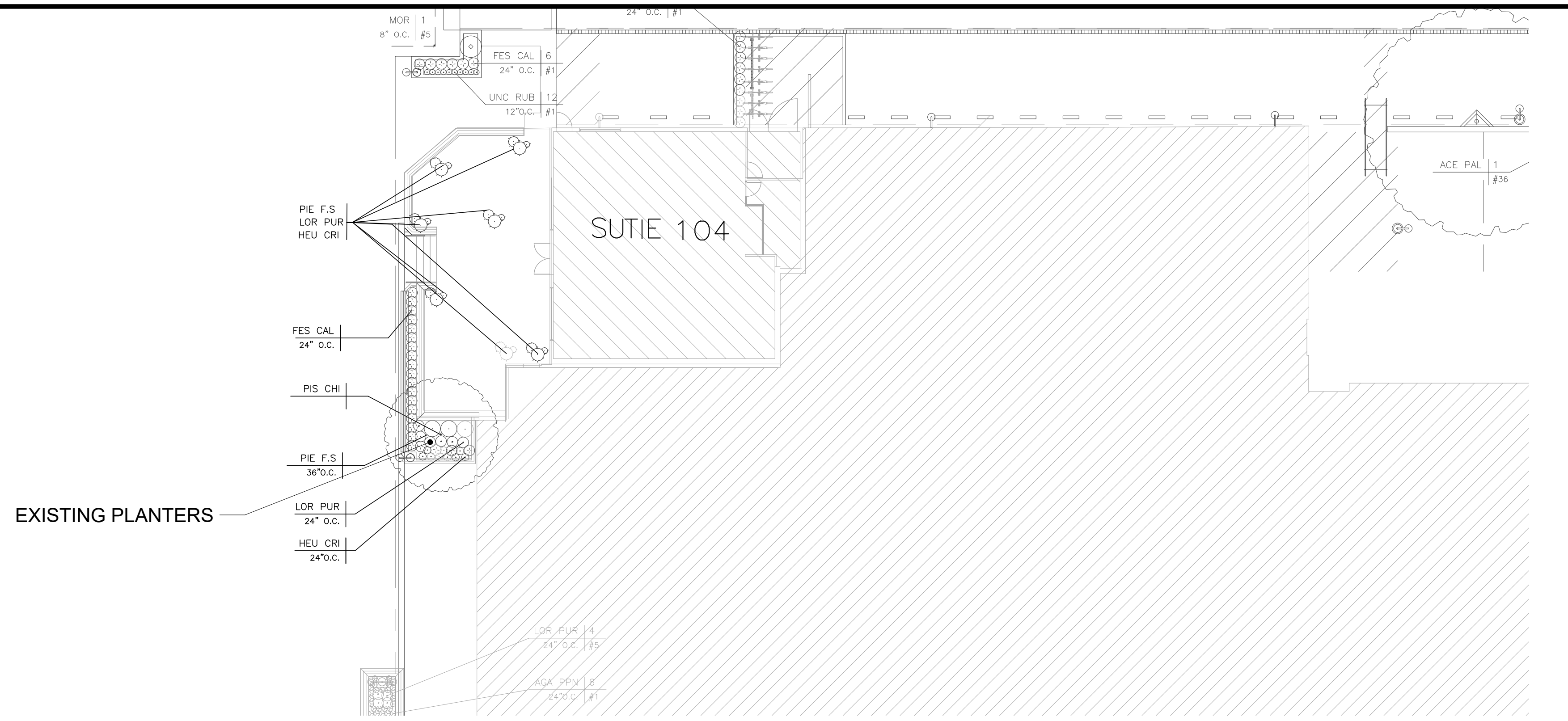
1911 4th St, Suite 104 TI
AUP/SAP Submittal
Vicinity & Site plan

SUBMITTED
12/23/2022

DATE: 12/23/2022

SHEET NO.:

AUP1.0



Landscape Plan
3/16" = 1'-0"

SYMBOL	SCIENTIFIC NAME	COMMON NAME	FORM	MAX HT	MAX SP	SUN	PS	SD	WATER	36" #15	#5	#1	NOTES
TREES													
PIS CHI	PISTACIA CHINENSIS	CHINESE PISTACHE	TREE	30-60	30-60					1			
SHRUB													
PIE F.S.	PIERIS JAPONICA 'FLAMING SILVER'	LILY-OF-THE-VALLEY SHRUB	SHRUB	4	4		X		Med	27			3' O.C.
LOR PUR	LOROPETALUM CHINESE 'PURPLE PIXE'		SHRUB	1	4-5	X	X		Med	19			
PERENNIALS													
HEU CRI	HEUCHERA HYBRID 'CRIMSON CURLS'	CORAL BELL 'CRIMSON CURLS'	PERENNIAL	1.5		X	X		Low			40	
GRASSES AND SEDGES													
FES CAL	FESTUCA CALIFORNICA	CALIFORNIA FESCUE	GRASS/RUSH/SEDGE	2-3	1-2	X	X		Low			274	

SHRUB



PIERIS JAPONICA 'FLAMING SILVER'
LILY-OF-THE-VALLEY SHRUB



LOROPETALUM CHINENSE 'PURPLE PIXE'

PERENNIALS



HEUCHERA HYBRID 'CRIMSON CURLS'
CORAL BELL 'CRIMSON CULS'

GRASSES AND SEDGES



FESTUCA CALIFORNICA
CALIFORNIA FESCUE

masaya * homes

3360 SANSONE CT
SANTA ROSA, CA 95403

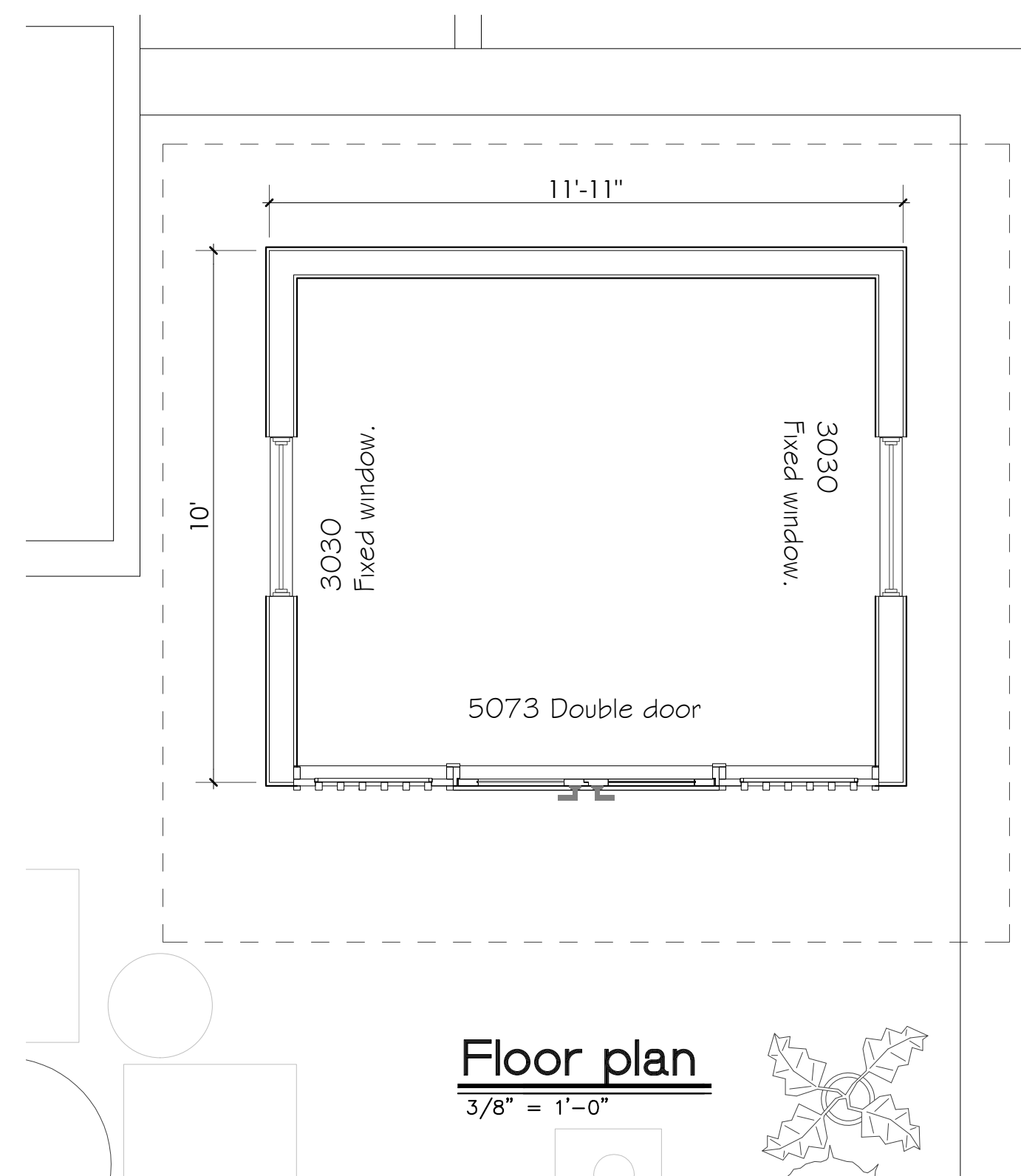
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1911 4th St. Suite 104 TI
AUP/SUP Submittal
Landscape plan

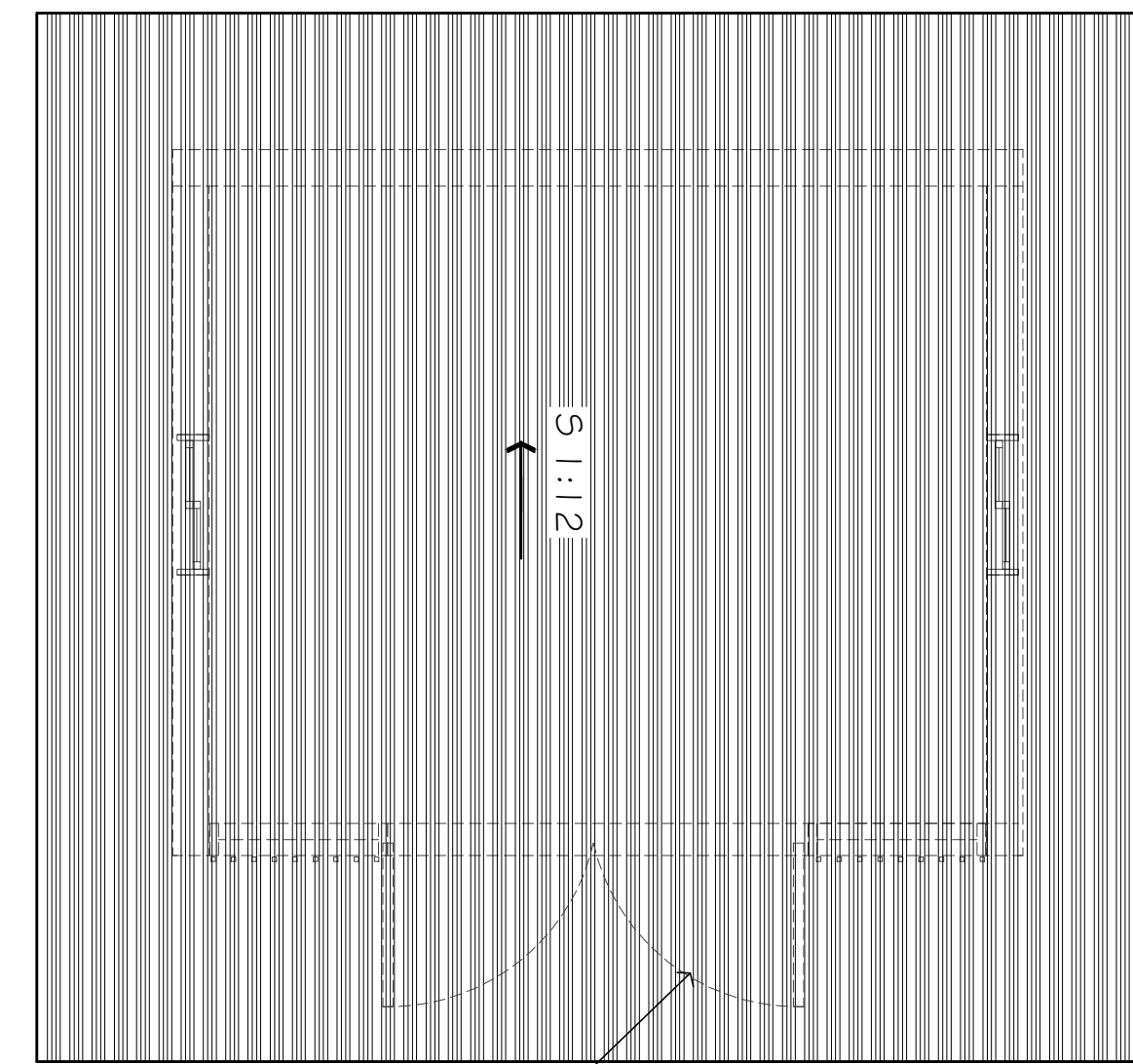
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12/23/2022

DATE: 12/23/2022
SHEET NO.:

AUP 2.0

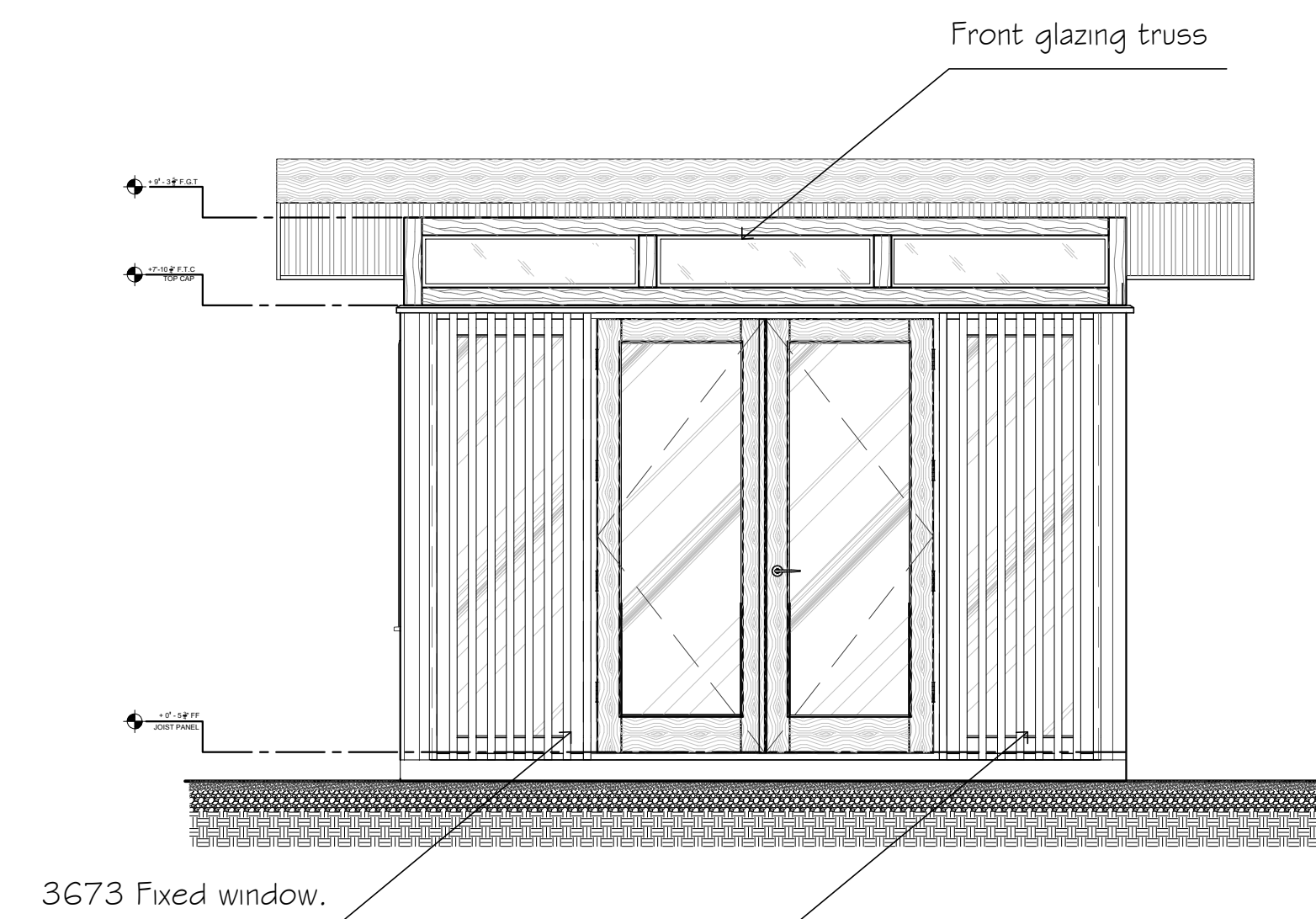


Floor plan
3/8" = 1'-0"

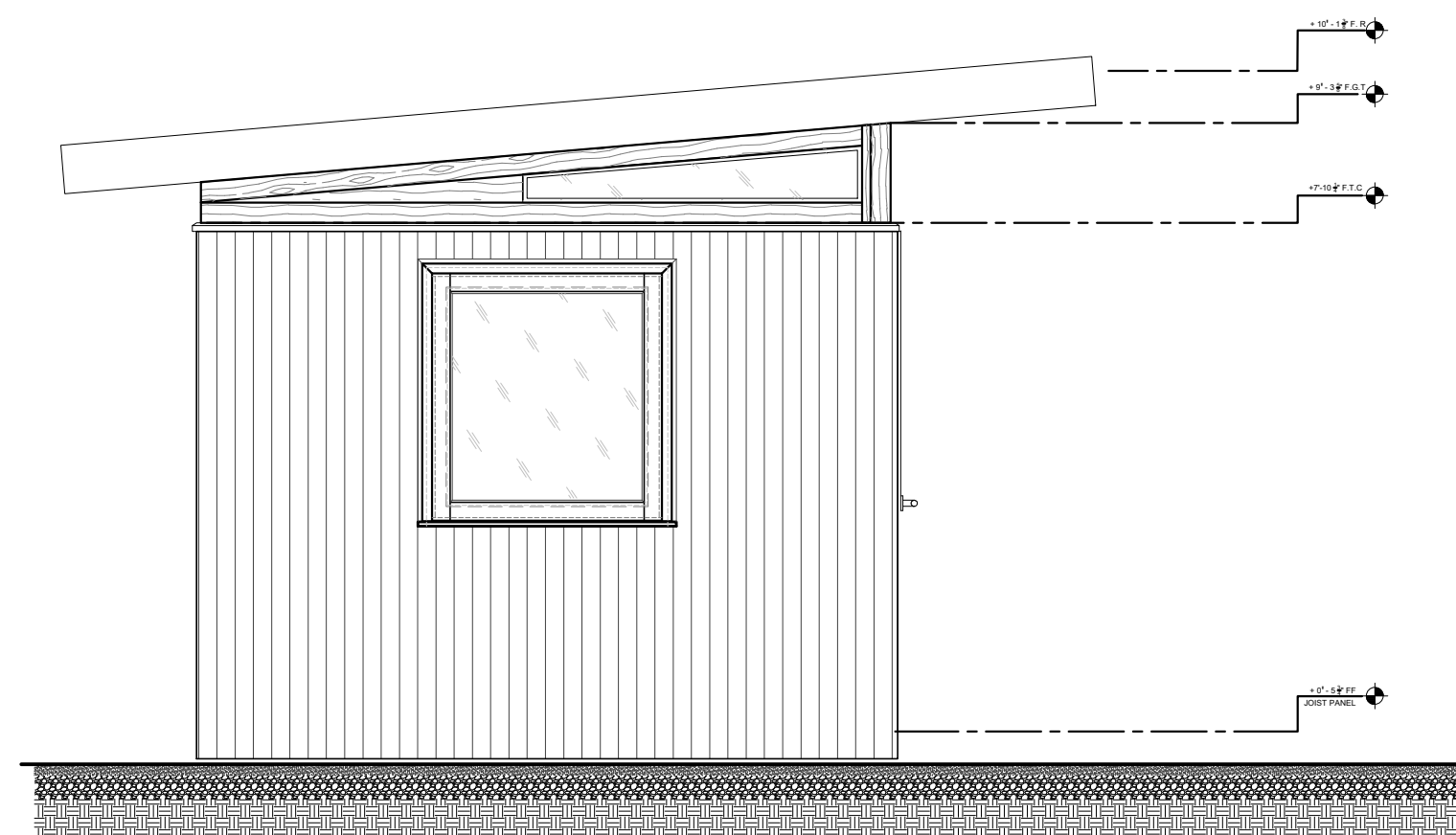


PBU 26 gage metal roof
(or approved equal).

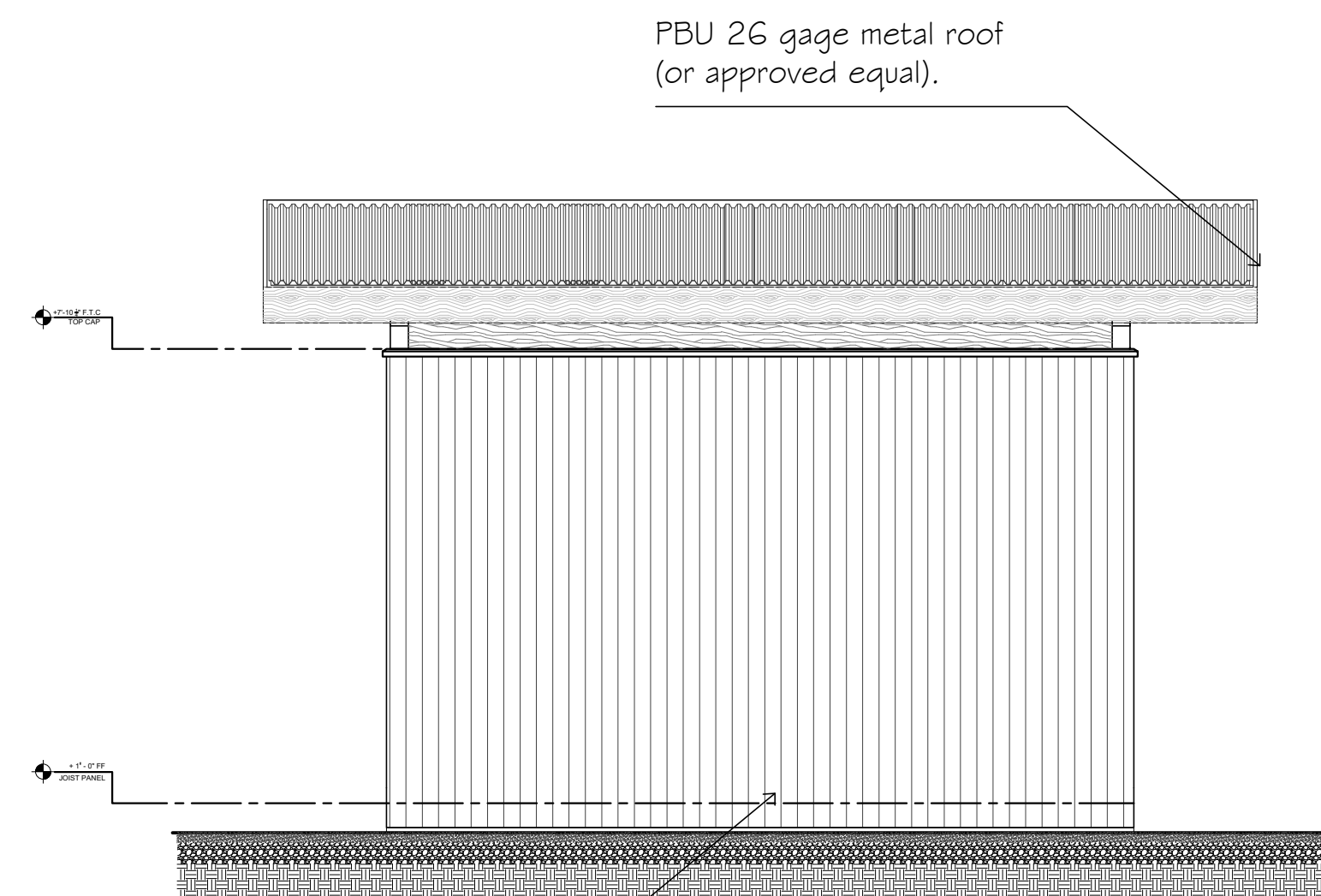
Roof plan
3/8" = 1'-0"



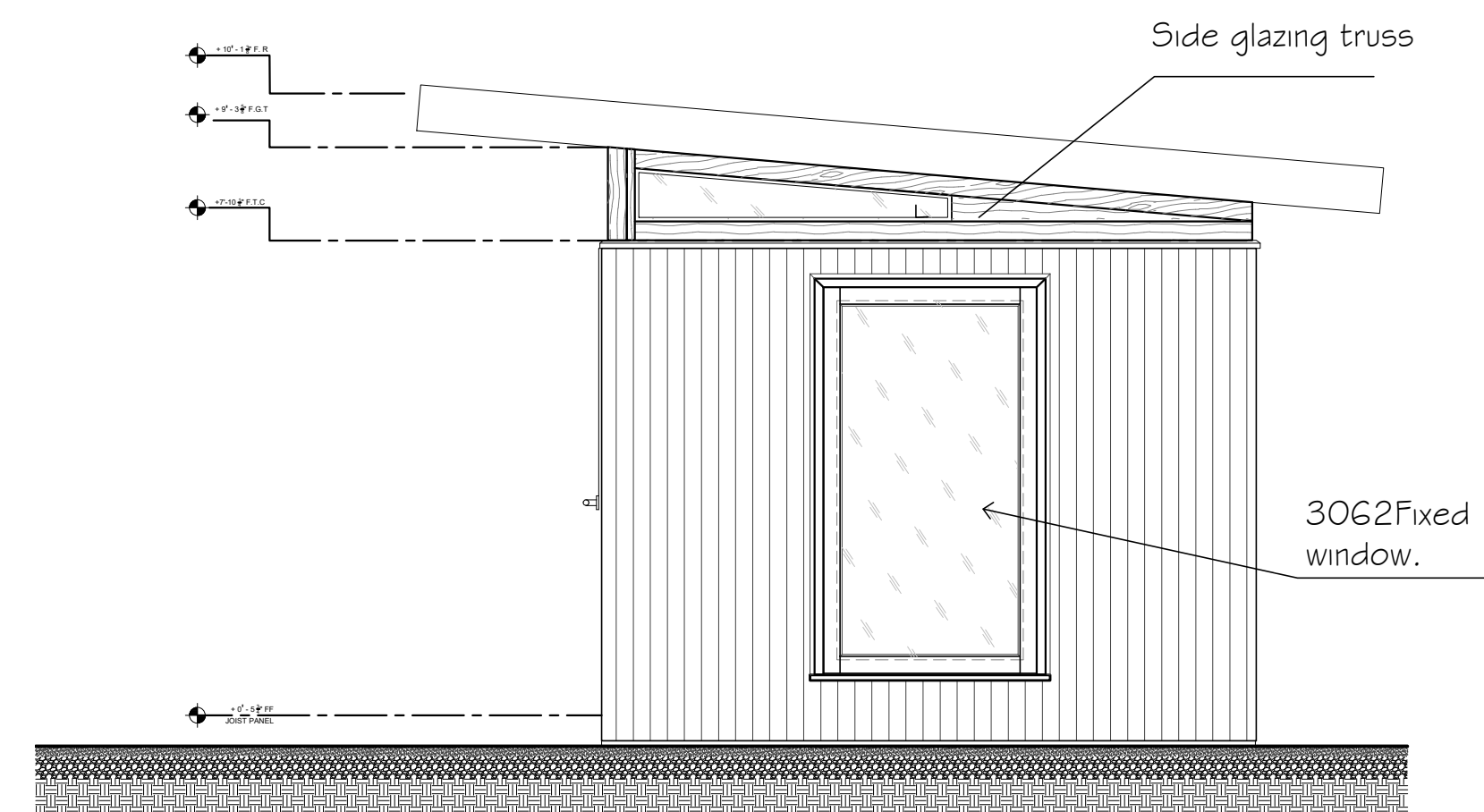
East elevation
3/8" = 1'-0"



South elevation
3/8" = 1'-0"



West elevation
3/8" = 1'-0"



North elevation
3/8" = 1'-0"

masaya * homes

3360 SANSONE CT
SANTA ROSA, CA 95403

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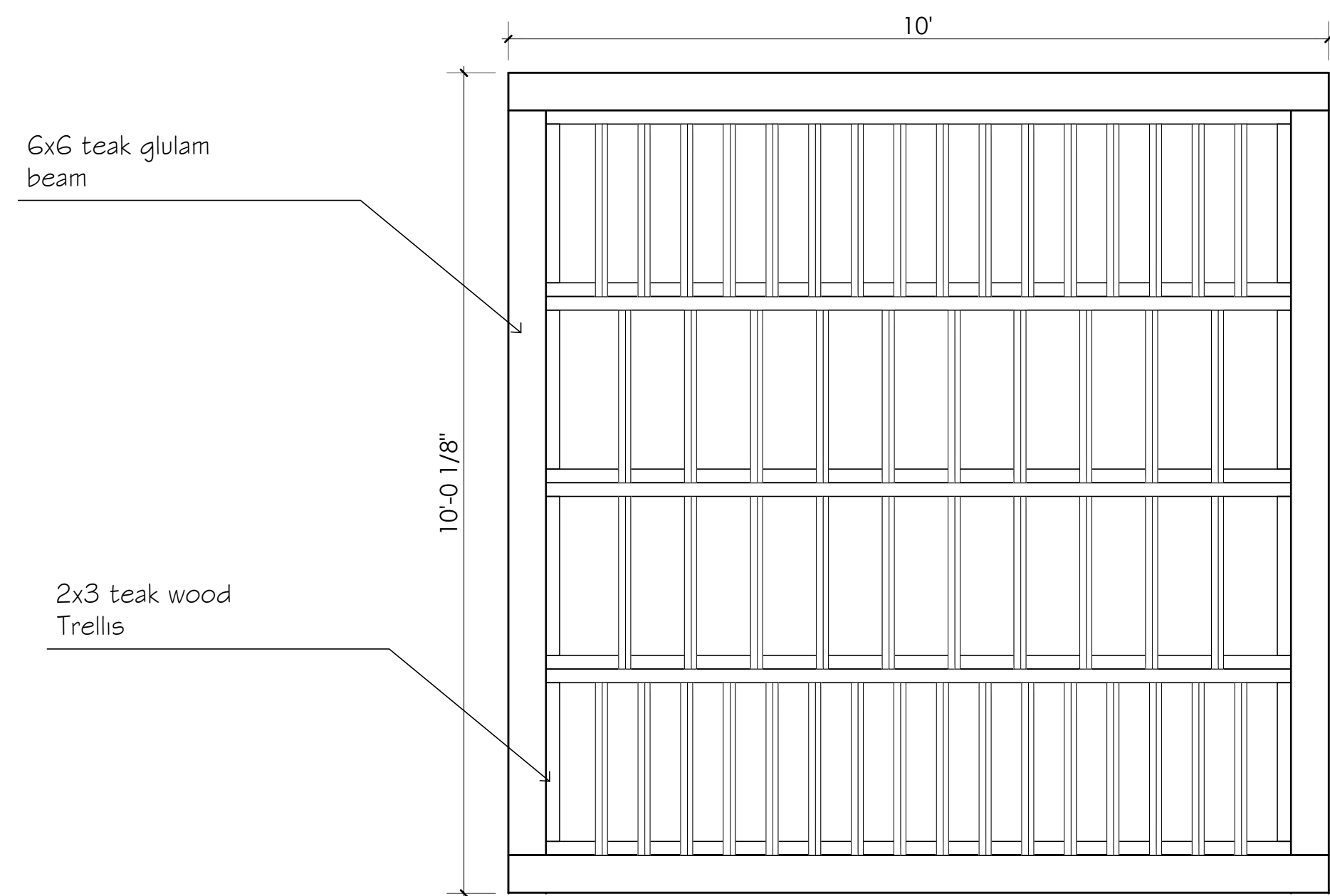
1911 4th St. Suite 104 TI
AUP/SUP Submittal
Elevation display shed

SUBMITTED
12/23/2022

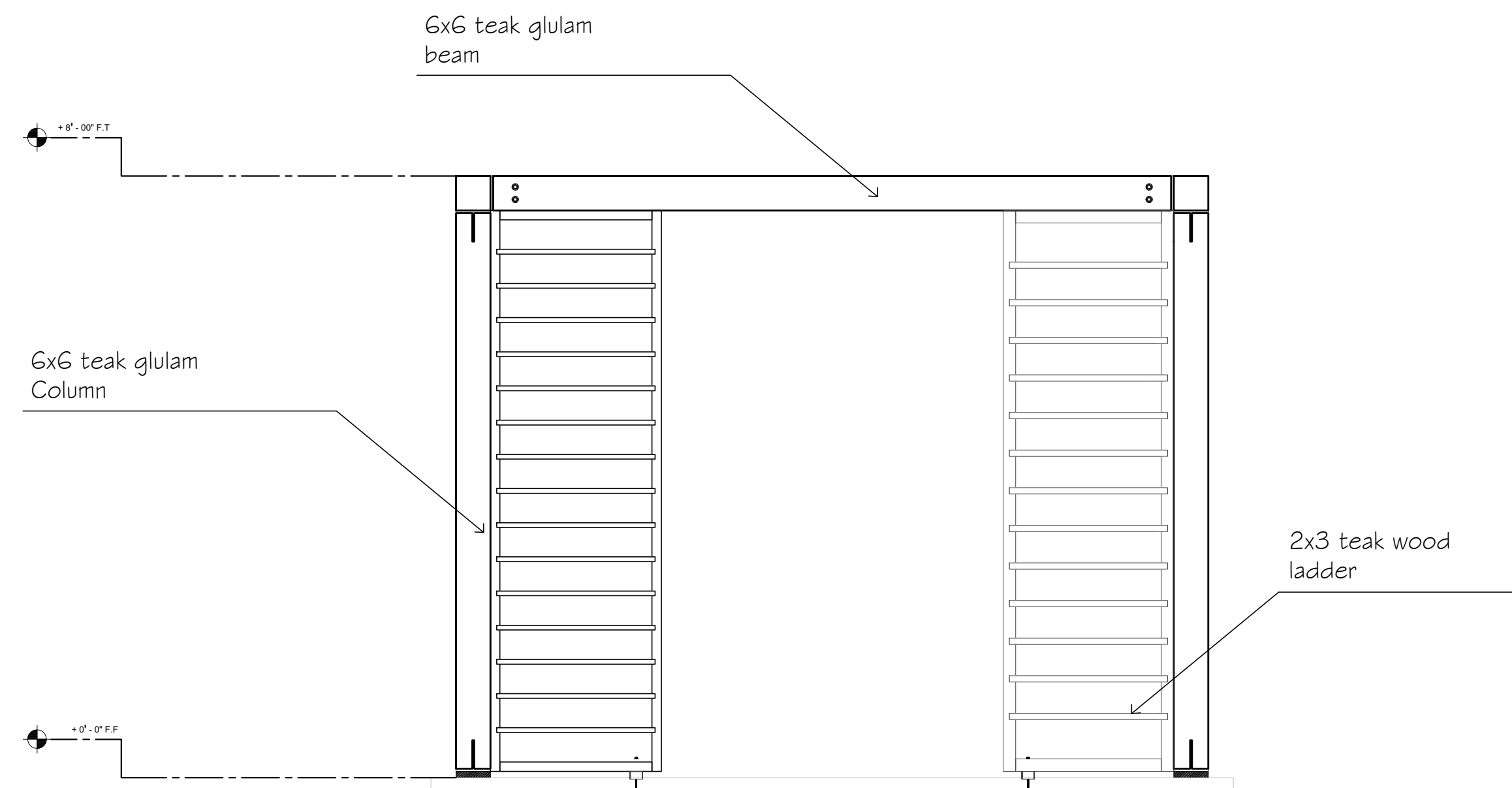
DATE: 12/23/2022

SHEET NO:

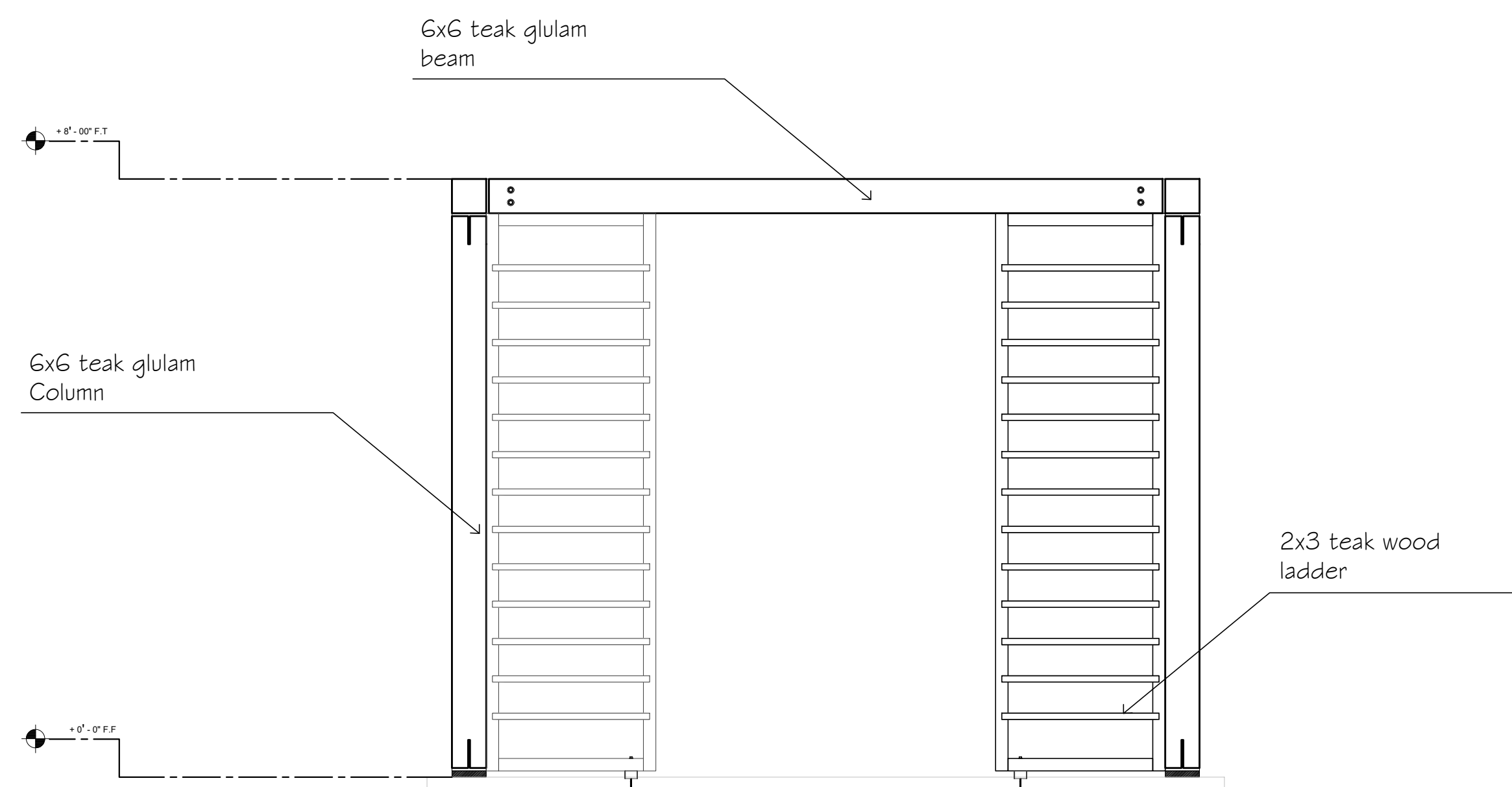
AUP 3.0



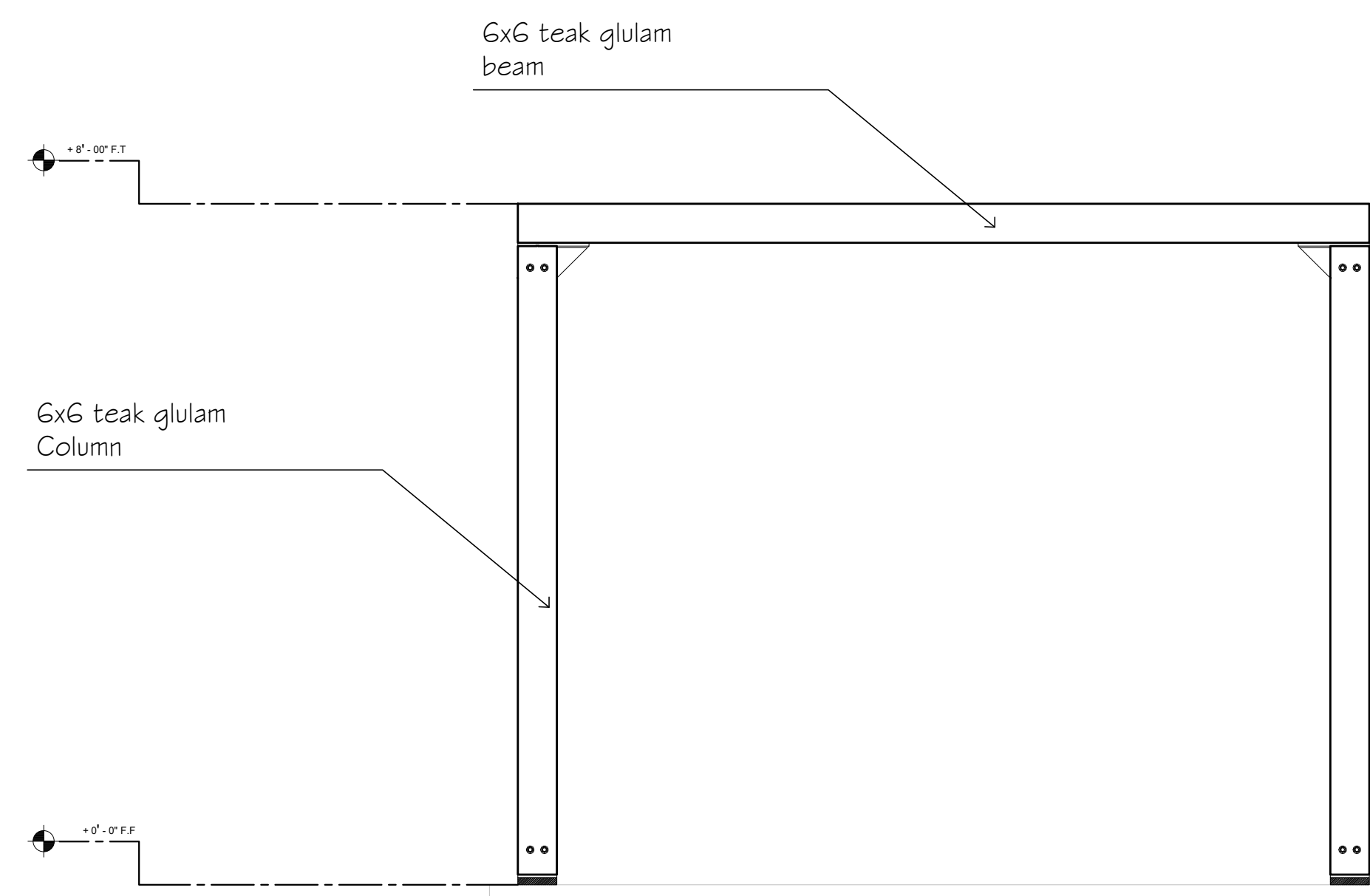
Floor plan
3/8" = 1'-0"



East elevation
3/8" = 1'-0"



West elevation
3/8" = 1'-0"



North Elevation
3/8" = 1'-0"

masaya * homes

3360 SANSONE CT
SANTA ROSA, CA 95403

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1911 4th St, Suite 104 TI
AUP/SUP Submittal
Elevation display pergola

SUBMITTED
12/23/2022

DATE: 12/23/2022
SHEET NO.:

AUP 4.0