Date: August 19, 2014
To: El Cerrito City Council
From: Margaret Kavanaugh-Lynch, Development Services Manager
Melanie Mintz, Interim Community Development Director

Subject: Appeal of the Planning Commission’s approval of Conditional Use Permit; and a General Plan Amendment, Development Agreement, the creation of a Planned Development District including a Zoning Map Amendment for a development project that consists of the construction of 14 new dwelling units, the relocation and conversion of an existing dwelling unit into a community center type use that will remain on site with 15 parking spaces, 1,548 square feet of private open space, and 2,874 square feet of common open space.

ACTION REQUESTED

Staff recommends that the City Council hold a single, consolidated public hearing to consider the actions necessary to consider both the proposed development at 1715 Elm Street (the “Project”) and the related appeal of the Planning Commission’s approval of the Planned Development Use Permit for the Project. The analysis of the appeal was discussed in a separate staff report for the Project and distributed to Council for the June 2, 2014 Council meeting. Please refer to all previous staff reports, California Environmental Quality Act (CEQA) documentation and correspondence as part of the record for this project. These documents may be found on the city website at: www.elcerrito.org/1715Elm or by request at the public counter at El Cerrito City Hall.

Staff additionally recommends that, at the conclusion of the consolidated public hearing, the City Council act to approve Option 2, 14 new dwelling units, the relocation and conversion of an existing dwelling unit into a community center type use, and preservation and enhancement of existing creek channel, as described in this staff report by taking the following actions:

1. Adopt a resolution approving the Initial Study/Mitigated Negative Declaration for the Project;
2. Waive first reading and introduce an ordinance approving Planned Development Zoning for the Project property and amend the Zoning Map accordingly;
3. Adopt a resolution denying an appeal of the Planning Commission’s approval of a Planned Development Use Permit for the Project; and
4. Waive first reading and introduce an ordinance approving a Development Agreement.
BACKGROUND
The Planning Commission approved a Mitigated Negative Declaration and Mitigation Monitoring and Reporting Plan (“MND/MMRP”) and a Planned Development Use Permit for the Project on April 16, 2014. The Commission’s decision was subsequently appealed. On May 21, 2014, the Planning Commission recommended that the City Council not approve a General Plan Amendment, an ordinance rezoning the Project property to PD (Planned Development), and an ordinance approving a Development Agreement with the applicant. (The General Plan Amendment would not be necessary with the recommended Option 2, as discussed below.) The City Council’s consideration of the MND/MMRP, General Plan Amendment, rezoning ordinance, and Development Agreement, as well as the appeal of the Planned Development Use Permit, were scheduled to be heard on June 2, 2014.

At the beginning of the June 2nd appeal hearing, the proposed project at 1715 Elm Street consisted of the construction of 14 new dwelling units, the relocation and restoration of one existing historic dwelling unit to be retained on site; 15 parking spaces; 1,548 square feet of private open space, and 2,874 square feet of common open space. For the sake of clarity, this version of the project is known as Option 1.

Staff noted that the applicant modified the Project at the June 2nd hearing (and noted those changes in a letter to the City Council dated June 10, 2014, included in the June 23, 2014 staff report.) Specifically, Mr. Biggs (“Applicant”) offered to decrease the number of dwelling units by converting the historic dwelling into a use that would be of benefit to the community and offered it in a long-term lease to the City or to a third party for that purpose. He also agreed to allow the open space in the front of the historic dwelling to be made available for public use during daylight hours. Finally, he offered to decrease the term of the Development Agreement from ten years to five years. This version of the project is known as Option 2.

At the June 2, 2014 hearing, the City Council opened the public hearing and received testimony from the appellants, the applicant and other interested parties. They closed the public hearing and agreed to continue the item to June 23, 2014 to hold their deliberations.

On June 23, 2014 the City Council met and deliberated on the Project. During the deliberations, Council member Lyman asked if a full hydrological report had been prepared for the Project to determine if the creek channel could be restored as a meandering stream. The Council re-opened the public hearing for the limited purpose of receiving comments on retaining the stone-lined channel versus restoration of a riparian channel. Additional public testimony was received from the public as well as the applicant and appellants. After additional deliberation, the City Council determined to keep the public hearing open for the purpose of obtaining more information regarding the feasibility of creek restoration at the site, in the form of a hydrology and sinuosity report. The meeting was continued off calendar and rescheduled and re-noticed for tonight. This conceptual version of the project is known as Option 3.
**DISCUSSION**

Since the June 23rd hearing, the applicant retained Restoration Design Group ("RDG"), a well-regarded firm with significant experience restoring creeks in urbanized environments, to prepare the additional information that the City Council requested. RDG has completed a *Channel Restoration Feasibility Analysis Memorandum* with a project alternative comparison chart, a revised project description and site plan and a preliminary cost estimate for the implementation of the riparian enhanced plan. These documents are all included as attachments to this report as Attachments 12, 13 and 14.

At the meeting this evening, the City Council has four options:

1. Approve the project as first presented to the City Council at the June 2nd hearing and deny the appeal (*Option 1*);
2. Approve the Project as revised at the June 2nd hearing and deny the appeal (*Option 2*);
3. Deny the Project without prejudice and direct staff to expedite the review of a new application for a revised project that retains the aspects of the current Project favored by the City Council but that focuses on riparian creek restoration (known as *Option 3*); or
4. Deny the project and uphold the appeal.

This Project requires legislative actions; therefore the Permit Streamlining Act is not applicable. However, the El Cerrito Municipal Code does require that the City Council take action on appeals in a timely manner. Section 19.39.040. G. states that the hearing body shall render its decision within 30 days of the date the hearing is closed. If the City Council chooses to close the hearing at tonight’s meeting, a decision regarding the appeal would be required by September 18th. The next regularly scheduled meeting is September 22, so if the members of the Council do not take action on the appeal this evening, a special meeting would be needed.

To assist the members of the City Council in their deliberation, below is a description and analysis of the first three options.

**Option 1**

The project as proposed at the start of the June 2nd meeting consisted of:

1. The construction of 14 new dwelling units in a three story building;
2. The preservation and restoration of the existing historic single family dwelling on site, relocating it to the southeast corner of the property.
3. 15 parking spaces tucked under the proposed main building;
4. 1,548 square feet of private open space; and
5. 2,874 square feet of common open space

This is the project for which all of the Planning Commission staff reports were written, as well as what was analyzed in the reports the City Council received for the June 2,
2014 hearing. Please refer to prior Council reports or see website www.el-cerrito.org/1715Elm for the details of the analysis. The revised Project documents needed to approve Option 1 are included as Attachments 1, 2, 3, 4, 5 and 6 to this staff report.

**Option 2**

As noted above, a revised Project was introduced at the June 2, 2014 meeting. While causing no change to the site plan included in the original Project, it changed the use of the historic structure, revised the use of the open space and changed the term of the Development Agreement. Staff has worked with the applicant to modify the necessary entitlements to define these changes to the Project. The revised Project documents needed to approve Option 2 are included as Attachments 7, 8, 9, 10 and 11 to this staff report. The details of these changes are listed below.

**Historic Structure**

If approved, the City would become the lessee of the historic structure and staff would develop a process to identify the best user for the site, such as a Request for Proposals. The City Council would approve the user which would allow the City to act as arbiter between possible new uses and the surrounding community.

The conditions of approval added to the resolution approving the Planned Development Use Permit and the Development Agreement restrict the use of the former dwelling to a community center type use that would be compatible with adjacent residential development. Those nonresidential uses of the structure would thereby become part of the PD zoning for the site. Community Center uses are a conditionally permitted use in the underlying RM zoning district.

The Development Agreement further refines the allowable use of the structure to ensure compatibility with the adjacent residential development. It also establishes the hours of operation to avoid any unnecessary traffic or noise impacts on the neighborhood. Special events that extended beyond these hours would require the approval of a Temporary Use Permit and approval of the future homeowners association (HOA) of 1715 Elm Street.

The applicant/developer shall be required to complete the following before the City enters into the lease agreement:

1. Restore the exterior of the building façade, including windows, the historic wood trim around the doors and windows, and the door in the main entrance to the Department of Interior Standards*.
2. The historic structure shall be placed on a new foundation in the location shown on the site plan.
3. The plumbing and electrical will be updated in compliance with the current building code.
4. An Americans Disabilities Act compliant bathroom and exterior lift will be added the structure.
*The Mitigation Monitoring and Reporting Plan notes that only the primary elevation of the structure was to be restored to the Department of Interior Standards. The applicant voluntarily agreed to restore the other three sides of the historic structure to this standard.

The details of all the construction and the new floor plan will be completed to the satisfaction of the Development Services Manager. The structure will then be offered to the City for 99 years at the cost of one dollar ($1) total rent. The City would be responsible for maintenance of the house, whereas the surrounding grounds would be the responsibility of the HOA. The City would be able to sublease the structure to a nonprofit entity. The sub-lessee would be responsible for any on-going maintenance cost of the structure, such as utilities and taxes.

**Common/Public Open Space**

The Development Agreement has been amended to acknowledge that the use of the open space in front of the historic structure will be available for public use during daylight hours and that the land will be owned and maintained by the HOA created by the applicant for the 1715 Elm Street project.

A revised site plan has been submitted showing additional gates on the bridge and along Elm Street to facilitate this change in use of the open space area. (Attachment 11)

**Length of the Development Agreement**

The applicant has offered to shorten the length of the Development Agreement. The members of the City Council stated that they favored a length of five years over the proposed length of ten. The shorter term has also been added to the Development Agreement.

The City Attorney and legal counsel representing the applicant met and developed the proposed Development Agreement for this project. The resulting legal document would take effect only after the passage of the ordinance creating the Planned Development District by the City Council. This Development Agreement serves as the legal framework that encompasses the entitlement details of the Planned Development District. Although the Development Agreement will end in five years, the lease of the house will continue for 99 years.

**Option 3**

As noted in the background section of this staff report, at its June 23rd, 2014 meeting, the City Council directed the applicant to prepare a hydrology and sinuosity report to explore the possibility of integrating an enhanced riparian creek restoration into the proposed Project. Attached to this report is a Channel Restoration Feasibility Analysis Memorandum with a project alternative comparison chart, site plan and finally, a preliminary cost estimate for the implementation of the riparian enhanced plan, including hard and soft costs.

The applicant has informed staff that due to the additional anticipated costs, the conversion of the historic building for the uses described above as Option 2 would have to be reconsidered. As part of Option 3, the historic structure would be converted into a
private home, as initially proposed by the applicant. To accommodate the meandering path of the enhanced riparian restoration of the creek, the applicant stated that the historic house would have to be relocated to the front of the site, on the Elm Street frontage. With the common open space proposed to be located behind the historic structure, the applicant noted it would be problematic to offer it for public use and they could no longer offer it as publicly accessible open space.

The *Channel Restoration Feasibility Analysis Memorandum* prepared by the Restoration Design Group (RDG), evaluated the feasibility of converting the current stone-lined channel into a meandering creek. (Attachment 12) The analysis demonstrated that it would be “feasible to place a restored channel on-site; however the space for the channel is confined between the buildings.” Further, the *Memorandum* noted that “Restoring this section of channel can provide ecological benefits to the site; however these benefits are significantly muted when compared to a naturally functioning creek.”

The *Project Alternative Comparison Chart* included in the analysis was also prepared by RDG. It provides additional context for the City Council members to consider in their decision by listing nine different criteria for use in the comparison of the existing condition of the creek, the proposed condition created by Option 1 and 2 versus the proposed condition created by *Option 3*.

If the City Council directs staff to move forward with *Option 3*, several components of previous analysis would need to be revised. Staff contacted the planning consultant, PMC, which prepared the existing Initial Study and Mitigated Negative Declaration, and asked them what possible changes to the document could be needed for *Option 3*. It is noted that without an actual complete project description in front of them, it was impossible for the consultant to state with certainty, but in their professional opinion they believed that both a new *Historic Resource Evaluation* and new *Biological Report* would be required to accurately reflect the removal of the stones in the existing creek bed and the creation of the new streambed; as the removal of any part of the existing stone-lined channel and the reconfiguration of the creek bed were not contemplated in the existing document. They were also not able to say without completing the analysis whether or not this change would be something that could be mitigated to a less than significant impact or if an Environmental Impact Report would be required, but indicated it was likely that an EIR would be required.

Pursuant to Section 15064 of the CEQA Guidelines, if an impact on a historic resource cannot be mitigated to less than significant, the Lead Agency may no longer use an Initial Study to analyze a project under the California Environmental Quality act (CEQA). Staff estimates that if mitigations could be identified to reduce the adverse impacts of the revised project to less than significant, then the revised Initial Study could take approximately six months, after the new project description was deemed complete. If the impacts cannot be mitigated, an Environmental Impact Report (EIR) is required to complete the analysis. Staff estimates that the additional work would require approximately one year to prepare the EIR and return the revised project and all necessary documentation back before the Planning Commission or City Council for their consideration.
Staff informed the applicant of the potential need for an EIR for Option 3. The applicant prepared their preliminary financial cost estimate based on that information, along with their professional opinion of the additional costs and time that would be required to complete the redesign of the Project, (Attachment 14). They also noted the time needed to prepare all necessary documents and complete regional permits, including the Joint Aquatic Resource Permit Application, (JARPA). Staff was not involved in the preparation of the document, but has reviewed it and considers the time and costs shown to be a reasonable estimate of the tasks shown.

**Conclusion**

Options 1, 2 and 3 all offer a high density, multifamily project with good urban design. Option 3 offers some additional benefits in terms of creek restoration; however the overall benefit appears minor compared to Option 1 and 2, which both preserve the historic channel walls and open creek as well as promote riparian plant species diversity and provide groundwater infiltration. Option 2 preserves the stone-lined channel, makes the rehabilitated historic structure available to the City for a use that benefits the public; and provides publicly accessible open space, which collectively staff considers to be a compelling public benefit. Staff also notes that there is an amount of uncertainty created by the additional required time, resources and approvals needed to bring Option 3 forward. While Council could direct staff to expedite a new application, it is uncertain given the added time and resources that would be required of the applicant, when or whether this would occur. It is estimated, that at a minimum the project construction date would be delayed 12-18 months, largely dependent upon the level of CEQA analysis required.

After evaluating all of the variables, staff recommends Option 2.

**LEGAL CONSIDERATIONS**

The City Attorney has reviewed the resolutions, ordinances, and Development Agreement for the Project. The resolution approving the Mitigated Negative Declaration and Mitigation Monitoring and Reporting Plan and the resolution denying the appeal and approving the Planned Development Use Permit would go into effect immediately. The ordinance rezoning the Project property to Planned Development and the ordinance approving the Development Agreement both require second readings. The rezoning ordinance would not go into effect until the Development Agreement goes into effect and is recorded. The Development Agreement Ordinance would go into effect 30 days after Council adoption.

 Reviewed by:

Scott Hanin, City Manager
For Option 1:
1. Draft Resolution approving the Initial Study and Mitigated Negative Declaration for Option 1.
2. Draft General Plan Amendment for Option 1.
3. Draft Planned Development Ordinance for Option 1.
5. Draft Development Agreement Ordinance (with Development Agreement as Attachment) for Option 1.

For Option 2:
7. Draft Resolution approving the Initial Study and Mitigated Negative Declaration for Option 2.
10. Draft Development Agreement Ordinance (with Development Agreement as Exhibit) for Option 2.

For Option 3:
13. Comparison Chart.
A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EL CERRITO ADOPTING AN INITIAL STUDY WITH A MITIGATED NEGATIVE DECLARATION AND ADOPTING A MITIGATION MONITORING AND REPORTING PROGRAM FOR THE CONSTRUCTION OF 14 NEW DWELLING UNITS AND THE PRESERVATION OF AN EXISTING DWELLING UNIT AT 1715 ELM STREET, APPLICATION NO. 6133

WHEREAS, the Edward and Loretta Biggs Revocable Trust proposes a development project that includes the preservation of an existing historical single-family detached house, the construction of 14 new one- and two-bedroom dwelling units, and the preservation of an existing creek on 0.42 acre site. The project proposes rezoning the property to PD (Planned Development); a Planned Development Use Permit; Design Review; a subdivision map and condominium plan; and a Development Agreement (the “Project”); and

WHEREAS, the subject site is located at 1715 Elm Street; and

WHEREAS, the zoning district of the site is RM (Multifamily Residential); and

WHEREAS, the general plan land use designation of the site is High Density; and

WHEREAS, on January 13, 2014 the City circulated an Initial Study/Mitigated Negative Declaration for the Project pursuant to the CEQA Guidelines; and

WHEREAS, at its March 19, 2014 meeting, the Planning Commission held a duly noticed public hearing, received public testimony and directed staff to bring the project back for formal action; and

WHEREAS, at their April 16, 2014 meeting, the Planning Commission held a duly noticed public hearing, received public testimony and adopted Resolution PC14-06, adopting an Initial Study and Mitigated Negative Declaration; and

WHEREAS, on June 2, 2014, the City Council held a duly noticed public hearing to consider the Project, including the negative declaration and mitigation monitoring and reporting program. The City Council closed the hearing and continued consideration of the Project to June 23. At the June 23 meeting, the City Council requested additional information and continued deliberations. On August 19, the City Council reopened the hearing and received the additional information. The City Council held a properly noticed public hearing on the Project, and all interested parties had the opportunity to be heard. After due consideration of all evidence and reports offered for review, the City Council does find and determine the following:

The City Council has considered the proposed negative declaration together with any comments received during the public review process, and finds, on the basis of the whole record before it, that:

(1) There is no substantial evidence the project will have a significant effect on the environment, and

(2) The negative declaration reflects the lead agency’s independent judgment and analysis.
NOW THEREFORE, BE IT RESOLVED, by the City Council of the City of El Cerrito that after careful consideration of maps, facts, exhibits, correspondence, and testimony, and other evidence submitted in this matter, and, in consideration of the findings, the El Cerrito City Council hereby adopts the Initial Study/Mitigated Negative Declaration and adopts the Mitigation Monitoring and Reporting Program, hereto attached as Exhibit A, for the construction of 14 new dwelling units and the preservation of one existing dwelling unit at 1715 Elm Street.

I CERTIFY that at a special meeting on August 19, 2014 the City Council of the City of El Cerrito passed this Resolution by the following vote:

AYES: COUNCILMEMBERS:
NOES: COUNCILMEMBERS:
ABSTAIN: COUNCILMEMBERS:
ABSENT: COUNCILMEMBERS:

IN WITNESS of this action, I sign this document and affix the corporate seal of the City of El Cerrito on August X, 2014.

Cheryl Morse, City Clerk

APPROVED:

Janet Abelson, Mayor

Exhibit A: Initial Study and Mitigated Negative Declaration also located on the City’s Website at: Initial Study [http://www.el-cerrito.org/DocumentCenter/View/3445](http://www.el-cerrito.org/DocumentCenter/View/3445)
RESOLUTION 2014–XX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EL CERRITO APPROVING
A GENERAL PLAN AMENDMENT AT 1715 ELM STREET

WHEREAS, the subject site is located at 1715 Elm Street; and

WHEREAS, the zoning district of the site is RM (Multifamily Residential); and

WHEREAS, the general plan land use designation of the site is High Density; and

WHEREAS, on January 13, 2014 the City circulated an Initial Study/Mitigated Negative
Declarations pursuant to the CEQA Guidelines; and

WHEREAS, at their March 19, 2014 meeting, the Planning Commission held a duly
noticed public hearing, received public testimony and directed staff to bring the project back
for formal action; and

WHEREAS, at their April 16, 2014 meeting, the Planning Commission held a duly
noticed public hearing, received public testimony and adopted Resolution PC14-06, adopting
an Initial Study and Mitigated Negative Declaration; and

WHEREAS, at their April 16, 2014 meeting, the Planning Commission held a duly
noticed public hearing, received public testimony and adopted Resolution PC14-07,
approving a Planned Development Use Permit; and

WHEREAS, at their May 21, 2014 meeting, the Planning Commission held a duly
noticed public hearing, received public testimony and adopted Resolution PC14-10,
recommending denial of a Planned Development District, General Plan Amendment and
Development Agreement; and

WHEREAS, on June 2, 2014, the City Council held a duly noticed public hearing to
consider a General Plan Amendment. The City Council closed the hearing and continued
consideration of the Project to June 23. At the June 23 meeting, the City Council requested
additional information and continued deliberations. On August 19, the City Council reopened
the hearing and received the additional information. The City Council held a properly noticed
public hearing on the Project, and all interested parties had the opportunity to be heard; and

WHEREAS, based upon the evidence presented in the record on this matter, including
the staff report and oral and written testimony and the proceedings before the Planning
Commission, the Council has considered a General Plan Amendment.

NOW, THEREFORE, BE IT RESOLVED:

The City Council of the City of El Cerrito finds that:

1. The proposed residential project will be a transit oriented development (TOD)
located within 800 feet of a BART station (1,400 feet by foot). It will add 14 new
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Attachment 2

dwelling units while preserving a historic dwelling and retain an existing creek. The balance of all these core values on the site is considered to be in the public interest.

2. The project is consistent with the purposes of the district and conforms in all significant respects with the General Plan as conditioned; in that it consists of high density multifamily development that utilizes good urban design principles including reduced parking requirements, parking concealed under the new building, and a mix of unit types. It also preserves an important historic resource and protects an existing creek by including it within its landscaped area. The project will implement the following General Plan goals and policies: Land Use 1.2: Multifamily Neighborhoods, Land Use, 1.3: Quality of Development, Land Use 1.5: Suitable Housing, Land Use 1.6: Variety of Housing Types, Land Use 5.1 BART Station Areas, Community Design 1.3: High-Quality Design, Community Design 1.9: Building Design, Community Design 4.2: Building Articulation, Community Design 5.1: Design Review Process, Community Design 5.2 Planned Development. Community Design 3.5 Creek Preservation. Resources 1.9 Developments near Creeks, Resources 2.1: Historic Preservation, Resources 2.5: Public Awareness.

3. The proposed residential project will be a transit oriented development with good urban design. It will add 14 new dwelling units to the neighborhood while preserving a historic structure and retaining the existing creek. It will not unduly shade surrounding dwellings or create unacceptable traffic or parking impacts; and as conditioned it will not be detrimental to the abutting properties or neighborhood.

4. An Initial Study and Mitigated Negative Declaration (MND) pursuant to the California Environmental Quality Act (CEQA) have been approved for this project. All factors are reduced to a less than significant level pursuant to the California Environmental Quality Act with the implementation of mitigation measures. The Mitigation Monitoring Plan has been incorporated in the conditions of approval.

BE IT FURTHER RESOLVED that after careful consideration of facts, correspondence, and testimony, and other evidence submitted in this matter, the El Cerrito City Council hereby approves the General Plan Amendment at 1715 Elm Street.

I CERTIFY that at a regular meeting on August 19, 2014, the El Cerrito City Council passed this Resolution by the following vote:

AYES: COUNCILMEMBERS:
NOES: COUNCILMEMBERS:
ABSENT: COUNCILMEMBERS:
IN WITNESS of this action, I sign this document and affix the corporate seal of the City of El Cerrito on August X, 2014.

________________________
Cheryl Morse, City Clerk

APPROVED:

________________________
Janet Abelson, Mayor
AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF EL CERRITO REZONING
1715 ELM STREET TO A PLANNED DEVELOPMENT ZONING DISTRICT –
APPLICATION 6133

THE CITY COUNCIL OF THE CITY OF EL CERRITO DOES HEREBY ORDAIN AS
FOLLOWS:

SECTION 1. RECITALS

A. The Applicant, the Edward and Loretta Biggs Revocable Trust, proposes a development
project that includes the preservation and renovation of an existing historical single-family
detached house on the Property, the construction of 14 new one- and two-bedroom dwelling
units, and the preservation of an existing creek on 0.42 acre site. The project proposes a Planned
Development District; a Planned Development Use Permit; Design Review; a subdivision map
and condominium plan; and this Development Agreement. The proposed development and
applications are collectively known as the “Project”; related approvals of the applications are
collectively known as the “Project Approvals.”

B. The Project site is located at 1715 Elm Street in El Cerrito, California (the “Property”).

C. The Applicant has applied to change the zoning of the Property to a Planned
Development District subject to certain terms, attached to this ordinance, and to amend the City’s
Zoning Map accordingly.

D. The California Environmental Quality Act (CEQA), together with the state guidelines
and City environmental regulations, require that certain projects be reviewed for environmental
impacts and that environmental documents be prepared.

E. An Initial Study and Mitigated Negative Declaration (MND) pursuant to the California
Environmental Quality Act (CEQA) have been prepared for this Project. All potential impacts
identified are reduced to a less than significant level pursuant to the California Environmental
Quality Act with the implementation of mitigation measures.

F. On April 16, 2014, the Planning Commission held a properly noticed public hearing on
the Project, and adopted Resolution PC 14-07 recommending that the City Council adopt
the Planned Development Use Permit, which Resolution is incorporated herein by reference and
available for review at City Hall during normal business hours.

G. On May 21, 2014, the Planning Commission held a properly noticed public hearing on
the Project, including the proposed General Plan Amendment, Planned Development District and
Development Agreement, and adopted Resolution PC14-10 recommending that the City
Council deny the General Plan Amendment, Planned Development District and Development
Agreement, which Resolution is incorporated herein by reference and available for review at City
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Attachment 3

Hall during normal business hours.

H. On June 2, 2014, the City Council held a duly noticed public hearing to consider the Project Approval, including the Development Agreement. The City Council closed the hearing and continued consideration of the Project Approvals to June 23. At the June 23 meeting, the City Council requested additional information and continued deliberations.

I. A Staff Report, dated August 19, 2014 and incorporated herein by reference, described and analyzed the Project, including the Planned Development rezoning for the City Council.

J. On August 19, 2014, the City Council received the additional information requested at the June 23 meeting and held a properly noticed public hearing on the Project, including the proposed Planned Development rezoning at which time all interested parties had the opportunity to be heard.

K. On August 19, 2014, the City Council adopted Resolution 2014-XX adopting an Initial Study and Mitigated Negative Declaration and a Mitigation Monitoring and Reporting Program for the Project.

L. The City Council considered the adopted Initial Study and Mitigated Negative Declaration and all above-referenced reports, recommendations, and testimony prior to taking action on the Project.

SECTION 2. FINDINGS


1. The proposed residential Project will be a transit oriented development located within 800 feet of a BART station (1,400 feet by foot). It will add fourteen new dwelling units while preserving a historic dwelling and retaining an existing creek. The balance of all these core values on the site is considered to be in the public interest.

2. The project is consistent with the purposes of the district and conforms in all significant respects with the amended General Plan, as conditioned in that it consists of high density multifamily development that utilizes good urban design principles including reduced parking requirements, parking concealed under the new building, and a mix of unit types. It also preserves an important historic resource and protects an existing creek by including it within its landscaped area. The project will implement the following General Plan goals and policies: Land Use 1.2: Multifamily Neighborhoods, Land Use, 1.3: Quality of Development, Land Use 1.5: Suitable Housing, Land Use 1.6: Variety of Housing Types, Land Use 5.1 BART Station Areas, Community Design 1.3: High-Quality Design, Community Design 1.9: Building Design, Community Design 4.2: Building Articulation, Community Design, 5.1: Design Review Process, Community Design 5.2 Planned Development, Community Design 3.5 Creek Preservation Resources 1.9 Developments near Creeks, Resources 2.1: Historic Preservation, Resources 2.5: Public Awareness.
3. The proposed residential project will be a transit oriented development with good urban design. It will add fourteen new dwelling units to the neighborhood while preserving a historic dwelling and retaining the existing creek. It will not unduly shade surrounding dwellings or create unacceptable traffic or parking impacts; and as conditioned it will not be detrimental to the abutting properties or neighborhood.

4. An Initial Study and Mitigated Negative Declaration (MND) pursuant to the California Environmental Quality Act (CEQA) have been approved for this project. All factors are reduced to a less than significant level pursuant to the California Environmental Quality Act with the implementation of mitigation measures. The Mitigation Monitoring Plan has been incorporated in the conditions of approval.

5. The proposed residential project will be a transit oriented development with good urban design. It will add fourteen new dwelling units to the neighborhood while preserving a historic dwelling and retaining the existing creek. It will not unduly shade surrounding dwellings or create unacceptable traffic or parking impacts; and as conditioned it will not be detrimental to the public interest, health, safety, convenience or welfare of the City.

6. The proposed amendment is a planned development district. It is consistent with applicable provisions of the zoning code including the purpose and intent of the Residential Mixed Use zone.

7. The Project will add fourteen new dwelling units to the neighborhood while preserving a historic building and retaining the existing creek. The site is 0.42 acres in size with a relatively level grade. It has direct access onto Elm Street and will be served by existing utilities in the area. It will not unduly shade surrounding dwellings or create unacceptable traffic or parking impacts; and as conditioned it will not adversely affect the livability of the abutting properties or neighborhood.

8. This project is demonstratively superior to the development that could occur under the standards applicable to the underlying base district in that it represents a balance of many of El Cerrito’s core values. It is a transit oriented development; thereby reducing Vehicle Miles Traveled with good urban design; successful historic preservation and preservation of an existing creek. Had the project been governed by the base district standards and strict interpretation of the creek protection ordinance, much of the open space would have been lost to surface parking spaces, the number of units would have to have been decreased due to the reduced building footprint, the building would two stories with a mansard roof, which would have greatly reduce the number of dwelling units.

9. The project is consistent with the purposes of the district and conforms in all significant respects with the General Plan, as conditioned, in that it consists of high density multifamily development that utilizes good urban design principles including reduced parking requirements, parking concealed under the new building, and a mix of unit types.
10. The Project is a transit oriented development, thereby reducing Vehicle Miles Traveled with good urban design, successful historic preservation and preservation of an existing creek. All of these goals are public benefits to the City of El Cerrito.

SECTION 3. ZONING MAP AMENDMENT

Pursuant to Chapter 19.14 of the City of El Cerrito Municipal Code the City of El Cerrito Zoning Map is amended to rezone the property described below to a Planned Development Zoning District:

0.42 acres at 1715 Elm Street (“Project site”).

A map of the rezoning area is shown in Exhibit A. The allowable use of the Property is described in the Planned Development Use Permit for the Project.

Compliance with adopted Mitigation Measures. The Applicant/Developer shall comply with all adopted mitigation measures of the Initial Study and Mitigate Negative Declaration prepared for 1715 Elm Street.

Confirmation of ownership. The Applicant/Developer shall provide the City with a recorded copy of the deed vesting title to the Property in its name.

SECTION 4. NOTICING, POSTING AND PUBLICATION

This ordinance is adopted pursuant to the procedures established by state law, and all required notices have been given, and the public hearing has been properly held and conducted.

SECTION 5. EFFECTIVE DATE

This ordinance shall not take effect until the Development Agreement for the Project takes effect and is recorded on the Property.

THE FOREGOING ORDINANCE was introduced at a regular meeting of the City Council on August 19, 2014 and passed by the following vote:

AYES: Councilmembers
NOES: Councilmembers
ABSTAIN: Councilmembers
ABSENT: Councilmembers
ADOPTED AND ORDERED published at a regular meeting of the City Council held on September 22, 2014 and passed by the following vote:

AYES: Councilmembers
NOES: Councilmembers
ABSENT: Councilmembers

APPROVED:

__________________________
Janet Abelson, Mayor

ATTEST:

__________________________
Cheryl Morse, City Clerk

IN WITNESS of this action, I sign this document and affix the corporate seal of the City of El Cerrito on September XX, 2014.

__________________________
Cheryl Morse, City Clerk

ORDINANCE CERTIFICATION

I, Cheryl Morse, City Clerk of the City of El Cerrito, do hereby certify that this Ordinance is the true and correct original Ordinance No. 2014-XX of the City of El Cerrito, that said Ordinance was duly enacted and adopted by the City Council of the City of El Cerrito at a meeting of the City Council held on the __ day of September 2014; and that said ordinance has been published and/or posted in the manner required by law.

WITNESS my hand and the Official Seal of the City of El Cerrito, California, this __ day of September, 2014.

__________________________
Cheryl Morse, City Clerk
RESOLUTION 2014–XX

A RESOLUTION OF THE EL CERRITO CITY COUNCIL DENYING AN APPEAL AND UPHOLDING THE PLANNING COMMISSION’S APPROVAL OF A PLANNED DEVELOPMENT USE PERMIT AT 1715 ELM STREET.

WHEREAS, the subject site is located at 1715 Elm Street; and

WHEREAS, the zoning district of the site is RM (Multifamily Residential); and

WHEREAS, the general plan land use designation of the site is High Density; and

WHEREAS, on January 13, 2014 the City circulated an Initial Study/Mitigated Negative Declarations pursuant to the CEQA Guidelines; and

WHEREAS, at their March 19, 2014 meeting, the Planning Commission held a duly noticed public hearing, received public testimony and directed staff to bring the project back for formal action; and

WHEREAS, at their April 16, 2014 meeting, the Planning Commission held a duly noticed public hearing, received public testimony and adopted Resolution PC14-06, adopting an Initial Study and Mitigated Negative Declaration; and

WHEREAS, at their April 16, 2014 meeting, the Planning Commission held a duly noticed public hearing, received public testimony and adopted Resolution PC14-07, approving a Planned Development Use Permit; and

WHEREAS on April 28, 2014, Howdy Goudey Robin Mitchell Jason Hasley, Keystone Montessori School Linda Shehabi, Dan & Henia Pines and Julia Lucia filed an appeal of the Planning Commission’s Planned Development Use Permit approval at 1715 Elm Street; and

WHEREAS, on June 2, 2014, the City Council held a duly noticed public hearing to consider the appeal. The City Council closed the public hearing and continued consideration of the appeal to June 23. At the June 23 meeting, the City Council requested additional information and continued deliberations. On August 19, the City Council reopened the hearing, received the additional information; and

WHEREAS, based upon the evidence presented in the record on this matter, including the staff report and oral and written testimony and the proceedings before the Planning Commission, the Council has considered the appeal.

NOW THEREFORE, BE IT RESOLVED:

The City Council of the City of El Cerrito finds that:

1. The proposed residential project will be a transit oriented development (TOD) with good urban design. It will add 14 new dwelling units to the neighborhood while
Agenda Item No. 6
Attachment 4

preserving a historic structure and retaining the existing creek. It will not unduly shade surrounding dwellings or create unacceptable traffic or parking impacts; and as conditioned it will not adversely affect the livability of the abutting properties or neighborhood.

2. The location and design of the project will provide a functional living environment that has good urban design. With the required vehicle parking tucked under the building, day-lighted creek and landscaped area and clear sightlines to the restored historic building, it will be an attractive amenity for the City.

3. The project is consistent with the purposes of the district and conforms in all significant respects with the General Plan as conditioned; in that it consists of high density multifamily development that utilizes good urban design principles including reduced parking requirements, parking concealed under the new building, and a mix of unit types. It also preserves an important historic resource and protects an existing creek by including it within its landscaped area. The project will implement the following General Plan policies: LU1.3: Quality of Development, LU1.5: Suitable Housing, LU1.6: Various Housing Types, LU1.7: Maximum Density, LU5.5: Pedestrians, Bicycles, and Access, LU6.4: Water Conservation, CD1.2: Design Concept, CD1.3: High-Quality Design, CD1.5: Landmarks Preservation, CD1.9: Building Design, CD3.3: Site Landscaping, CD4.2: Building Articulation, CD5.1: Design Review Process and R2.2: Historic Preservation.

4. The proposed residential project will be a transit oriented development (TOD) located within 800 feet of a BART station (1,400 feet by foot). It will add 14 new dwelling units while preserving a historic dwelling and retain an existing creek.

5. The proposed project offers a range of attached and detached dwellings on site. In the new construction it includes both one bedroom and two bedroom housing unit styles. All units’ prices will be set by the market. It is expected that the prices will reflect the different unit sizes.

6. While this is an important consideration, there was no feasible way to include a mandate to offer these units at an affordable price to persons and families of low and moderate income or lower income homes as defined by the State of California.

7. The existing infrastructure is sufficient to serve the proposed development as proposed.

8. While requiring relief from some development standards of the RM zone, it exceeds the zone requirements for both common area and private open space and allows for ten percent less lot coverage than could have been allowed in this district.

9. The use of the development area is exclusively residential.

10. The design of the new construction has been designed to allow acceptable levels of light and air into the interior spaces of the building. As conditioned, it shall meet or exceed all requirements of the California Building Code. In addition, the distance
between the re-located historic building and the adjacent pre-school is approximately 13 feet.

11. This project will contribute to the enhancement of the neighborhood character and the environment of El Cerrito in the long term in that it represents a balance of many of El Cerrito’s core values. It incorporates transit oriented development and good urban design with successful historic preservation and stewardship of an existing creek.

12. The project is proposing to provide 14 new one and two bedroom dwelling units on a 0.42 acre site that is designated in the General Plan for high density. It also proposes to restore and relocate the existing historic single-family detached house on site to provide a fifteenth living unit and preserving an important historic resource. Finally, the project is proposing to keep the creek in place, thereby protecting the 115 foot long water course which is a tributary of the Baxter Creek and utilizing it as an amenity to the overall site.

After careful consideration of facts, correspondence, and testimony, and other evidence submitted in this matter, the El Cerrito City Council hereby denies the subject appeal and upholds the Planning Commission’s approval of Planned Development Use Permit at 1715 Elm Street. Application No. 6133, subject to the following conditions:

1. The project will be constructed substantially in conformance with the plans dated January 20, 2014. Minor changes may be approved by the Zoning Administrator. All improvements shall be installed in accordance with these approvals. Once constructed or installed, all improvements shall be maintained as approved. Minor changes may be approved by the Zoning Administrator.

2. If the Applicant constructs buildings or makes improvements in accordance with these approvals, but fails to comply with any of the conditions of approval or limitations set forth in these Conditions of Approval and does not cure any such failure within a reasonable time after notice from the City of El Cerrito, then such failure shall be cause for non-issuance of a certificate of occupancy, revocation or modification of these approvals or any other remedies available to the City.

3. These Conditions of Approval shall apply to any successor in interest in the property and the Applicant shall be responsible for assuring that the successor in interest is informed of the terms and conditions of this approval.

4. All new residential developments of five or more units are required to comply with the Art in Public Places ordinance pursuant to El Cerrito Municipal Code Section 13.50. This is a requirement of any project with development costs of two hundred fifty thousand dollars or more. The applicant shall devote an amount not less than one percent of such costs for acquisition and installation of public art on the development site, subject to a maximum of one hundred fifty thousand dollars. Compliance with the provisions of this chapter shall be demonstrated by the applicant at the time of filing a building permit application in one of the following ways:
a) Payment of the full amount of the public art in-lieu contribution; or

b) Written proof to the community development department of a contractual agreement to commission or purchase and install the required public art on the subject development site and a written acknowledgement by the visual art professional and the owner or developer, in a form approved by the city, that the proposed public art complies with the following criteria:

1) The public art shall be designed and constructed by any person experienced in the production of such art and recognized by critics and by his or her peers as one who produces works of art,

2) The public art shall require a low level of maintenance and that the proposed maintenance provisions are adequate for the long-term integrity and enjoyment of the work,

3) The public art shall be related in terms of scale, material, form and content to immediate and adjacent buildings and architecture, landscaping or other setting so as to complement the site and its surroundings and shall be consistent with any corresponding action of the planning commission, design review board or city council as it may relate to any development entitlements,

4) Permanent public art shall be a fixed asset to the property,

5) The public art shall be maintained by the property owner in a manner acceptable to the city,

6) The public art meets all applicable building code requirements.

The applicant shall provide the city with proof of installation of the required public art project on the development site prior to the issuance of a certificate of occupancy. If installation prior to the date of occupancy is impracticable, as determined by the city manager or his or her designee, a certificate of occupancy may be approved for the building or portion thereof if the application submitted pursuant to this section has been approved, the applicant has executed a written agreement with the city to install the public art, and the applicant has filed security in an amount and form acceptable to the city attorney to guarantee installation of the public art.

Community Development Department
Building and Planning Division:

5. The mitigation measures identified in the mitigation monitoring plan (MMRP) shall be considered conditions of approval of the project. They are included as Exhibit A to the resolution.

6. Prior to the issuance of a building permit, the Building Official shall confirm that the building permit plans, specifications and other related information conform to the California Codes in effect at the time, and all other applicable local ordinances. Compliance with the California Codes and local ordinances shall include, but not be
limited to, seismic and geotechnical requirements for Seismic Zone 4, and Title 24 energy conservation and disabled access requirements.

7. Prior to the issuance of a building permit, Applicant shall submit to the Building Official proof of compliance with all other permits necessary from the applicable regulatory agencies, including but not limited to the Stege Sanitary District, West Contra Costa Unified School District, Pacific Gas and Electric and East Bay Municipal Utility District.

8. A demolition permit for all proposed demolition shall be submitted to and approved by the City of El Cerrito prior to issuance of a building permit.

9. Prior to the issuance of a demolition or building permit, the Building Official shall confirm that a survey of lead-based paint (LBP) and asbestos-containing materials (ACMs) shall be completed and all identified ACMs and any loose or peeling LBP must be abated. If intact LBP is present on the site and not abated, demolition and construction activities must comply with the State’s construction lead standard (Title 8, California Code of Regulators, Section 1532.1).

10. Prior to the issuance of a building permit the applicant and/or construction company shall submit the location of construction staging areas for materials, equipment, and vehicles to the Zoning Administrator for review and approval.

11. Prior to the issuance of a building permit the applicant and/or construction company shall submit a parking management plan for all construction workers and their equipment to ensure that construction workers or construction equipment and vehicles do not occupy on-street spaces.

12. In the City of El Cerrito, the hours of construction work are limited to:
   a) 7:00 a.m. to 6:00 p.m. Monday through Friday
   b) 8:00 a.m. to 5:00 p.m. on Saturdays
   c) Work is prohibited on Sundays and holidays.
   d) Work may be prohibited during inclement weather by order of the City Building Official.

13. No construction shall take place on June 27, 2014 at the request of the preschool.

14. To ensure that the construction of the project is completed with minimal impact to the existing neighborhood, the following requirements shall be met before the issuance of a building permit:
   a) Applicant shall submit a construction sign for approval by the Development Services Manager. The sign shall be made of a permanent material with professional lettering. The sign shall be at least 2 feet by 3 feet with a minimum letter size of 2 inches. The sign shall include the following information: the project name; name of the owner/developer; the name and phone number of a contact person, available at all times to address complaints and with the authority to control construction activity on the site; name and phone number of the contractor; and the approved hours of construction. The sign shall be posted at the time of placing temporary fencing and
start of construction activity. The sign shall be placed on the Elm Street frontage of the site in a location facing the street where the information can be easily read.

b) Prior to issuance of a building permit, the applicant shall submit a site security and safety plan to assure that grading and construction activities are adequately secured during off-work hours. This will include the temporary construction fence required in the Public Works Department condition listed below. The height of the construction fence on the south side of the property shall be twelve feet in height.

15. The applicant shall stipulate in the construction bid information for the project that construction company shall be required to do the following:

a) A notification procedure stating their plan to notify adjacent property owners as to when major deliveries, detours and lane closures may occur. At a minimum, this notification plan will include a written notice sent electronically as soon as possible to all neighbors that request such notification. The list of interested parties will be kept by the Community Development Department.

b) A monthly meeting in person with the operators of the preschool to go over any issues or concerns.

c) Every possible effort shall be made to have the construction site turn off all unnecessary heavy equipment, generators and power tools from noon until 1:00 pm.

16. Prior to issuance of a certificate of occupancy, the Zoning Administrator shall confirm that:

a) All mechanical equipment, including electrical and gas meters, heating/air conditioning or ventilation units, radio/TV antennas or satellite dishes shall be appropriately screened from off-site view, and electrical transformers shall be either placed underground or appropriately screened.

b) All visible vents, gutters, down spouts, flashings, and the like shall match the color of adjacent surfaces, or shall be incorporated into the overall exterior color and materials scheme for the building.

17. All landscaping improvements shall be maintained in a healthy, growing condition at all times. The landscaped areas shall be irrigated by an automatic sprinkler system designed to reduce water usage. Applicant shall replace all landscaping that dies with the exact living species, or substitutes approved by the Zoning Administrator.

18. The applicant has volunteered to donate four thousand dollars to the City of El Cerrito towards the creation and installation of up to two historical plaques. (This money will be held in a draw down account and any unused funds will be refunded.) The purpose of commemorative plaques would be to explain the history of the Rodini house as well as the history of the surrounding Little Italy neighborhood. The Zoning Administrator shall work with the El Cerrito Historical Society to create these plaques. The plaques will be installed on the front fence of the new project.

19. If for some reason, the City Council denies the Development Agreement, the General Plan Amendment or the Planned Development District, this entitlement is null and void.
Public Works Department:

20. A complete Stormwater Control Plan (Narrative Report and Exhibit) prepared in accordance with the latest version of Contra Costa Stormwater C.3 Guidebook, must be submitted as soon as possible to ensure the stormwater design, site plan, and landscaping plan are congruent.

21. Any changes to existing storm drain channel will require a Public Works Encroachment Permit and may require that storm drain easement be recorded. The applicant must furnish plans, specifications and hydrology/hydraulics studies, as appropriate, prior to consideration of the permit application. The City may impose conditions as are appropriate to eliminate any diminution in the capacity of the existing drain to carry off the volume of water reasonably anticipated. If conflict exists between the Encroachment Permit and the JARPA permit, the JARPA permit shall prevail.

22. Remove and replace all sidewalk and driveway approaches to comply with Americans with Disability Act and all other applicable City standards. Sidewalk and driveway improvements shall require a Public Works Encroachment Permit.

23. All site grading shall be done per Chapters 8 and 13 of the El Cerrito Municipal Code and all other relevant laws, rules and regulations. Prior to commencing any grading in excess of 50 cubic yards, the applicant shall obtain a Grading & Transportation Permit and approval from the Public Works Department.

24. New street tree types and locations shall be approved by the City Arborist prior to issuance of building permit.

25. Prior to issuance of a building, demolition or grading permit for any portion of the project, applicant shall submit a Traffic and Parking Management Plan for review and approval by the Public Works Director and the Zoning Administrator. The plan shall include any City restrictions and limitations on using certain local streets for construction traffic, proposed truck delivery and haul routes, parking arrangements for construction personnel, ingress and egress, noise, efforts to address street debris and dust control and proposed on-site staging and equipment/material storage areas.

26. Prior to the issuance of a building permit, applicant shall install a temporary construction fence around the perimeter of the site that provides for continued pedestrian traffic meeting the standards of the Americans with Disabilities Act as approved by the Public Works Director and the Zoning Administrator. On the southern property line, the fence shall be 12 feet high to provide an additional visual and safety screen for the adjacent school. The applicant shall submit the materials for the fence to the Zoning Administrator for review and approval before the fence is installed.

27. Applicant, through its contractor, shall implement comprehensive traffic control measures as set forth in the approved Traffic and Parking Management Plan, including scheduling of major truck trips and deliveries to avoid peak hours (normally 7 a.m. to 9 a.m. and 4 p.m. to 6 p.m.).
28. All mud, dirt and construction debris carried off the construction site onto adjacent streets shall be removed and cleaned daily. Failure to adequately sweep the streets may result in the City undertaking the effort at Applicant’s cost.

29. Dust control measures to minimize air quality impacts shall be implemented including:

   a) Cover stockpiles of debris, soil, sand or other materials that can be blown by the wind.
   b) Cover all trucks hauling soil, sand, and other loose materials.
   c) Pave, apply non-potable water three times daily, or apply (non-toxic) soil stabilizers on all unpaved access roads, parking areas and staging areas at site.
   d) Limit traffic speeds on unpaved roads to 5 mph.
   e) Install, maintain and replace sandbags or other erosion control measures to prevent silt runoff to public roadways.
   f) Minimize removal and replant vegetation in disturbed areas as quickly as possible.
   g) No grading between October 1st and April 15th unless the City Engineer has approved an erosion and sedimentation control plan.

30. Applicant shall be deemed responsible for any damage to public improvements that occurs during construction and shall repair such damage at its expense and to the satisfaction of the City Engineer, including but not limited to sidewalk repair, street slurry seal or street reconstruction.

31. Prior to issuance of a certificate of occupancy, the Public Works Director shall confirm that all off-site and on-site public improvements (including sidewalk and driveway approaches) are completed in accordance with the final building permit and improvement plans or that other arrangements acceptable to the Public Works Director have been made for ensuring that the work is completed, such as an irrevocable standby letter of credit.

32. Prior to issuance of a building permit, the applicant shall provide provision for pickup and hauling of solid waste and recycling to the satisfaction of the City of El Cerrito Operations & Environmental Services Division. This includes a written description of the plan for the removal of solid waste and recycling items; the plans clearly showing the location of the solid waste and recycling area and the proposed access for both users and waste haulers. The solid waste and recycling area must include:

   a) Access doors that are at least 8 feet wide.
   b) The solid waste and recycling storage areas/room shall be lined with metal bands 2 feet wide at a height starting 3 feet from the ground.
   c) There shall be sloping curbs in front of the access door to the solid waste and recycling storage areas/rooms.

33. Prior to the issuance of a building permit, the applicant shall submit a Construction/Demolition Waste Management Plan to the satisfaction of the City of El Cerrito Operations and Environmental Services Division. This plan must comply with the California Building Code requirement that at least 50% by weight of jobsite debris generated by new construction be recycled, reused or otherwise diverted from landfill disposal.
34. Upon completion of construction and demolition activities, but before the Certificate of Occupancy, the applicant shall submit the CWM Report to demonstrate achievement of the diversion requirement to the satisfaction of the City of El Cerrito Operations and Environmental Services Division.

Fire Department:

35. Approved numbers or address shall be provided in such a position to be plainly visible and legible from the street fronting the property.
   a) The address numbers shall be of contrasting color of the background
   b) Shall be internally or externally illuminated.
   c) If address cannot be placed as stated above a monument shall be placed where the address is plainly visible from the street.

36. An Automatic Fire Sprinkler System is required for this project.

37. A fire hydrant is required within 50’ of the Fire Department Connection (FDC) and shall be on the same side of the street as the FDC unless approved by the Fire Marshal.

38. Building shall have a “Wet Fire Standpipe in rear stairwell.

39. Standpipes shall be interconnected with the fire sprinkler system.

40. The fire alarm system shall be installed in accordance with NFPA 72.

41. Fire alarm System shall have the FACP located in an approved location and shall be easily accessible and access doors clearly labeled.

42. If the FACP cannot be located for easy access a remote enunciator shall be placed in an approved location.

43. Knox box shall be placed adjacent to entry doors, doors inclosing the fire sprinkler riser and or fire alarms control panel and any remote annunciating locations, and locking gates.

44. Electronic gate shall have a Knox Key Entry System installed for emergency operations.

45. All Knox Box Entry Systems used in this building shall be approved by the Fire Marshall before installation.

46. Fire Extinguishers shall be placed on each level and throughout the building.
   a) Spacing shall have a maximum travel distance of 75’.
   b) Travel distance to an extinguisher shall not exceed 75’ of travel distance.
   c) The location of each extinguisher shall be conspicuously posted with an approved sign.
   d) Mount Fire extinguishers on wall with the top no higher than 5 feet from the ground.

47. All electrical breakers shall be labeled. Major equipment shall have corresponding labels.
48. The Fire Department shall review building plans for compliance of these before a building permit is issued. The applicant shall provide Fire Prevention Division with 24-hour notice prior to any inspections. Implementation of these conditions shall be verified prior to the issuance of the Certificate of Occupancy.

Police Department:

49. The building plans shall note that exterior lighting shall provide adequate illumination for on-site security and display purposes for the building, parking lot and pedestrian accessways while limiting off-site spillover of light through shielding. This condition shall be reviewed for compliance prior to the Certificate of Occupancy.

I CERTIFY that at a regular meeting on August 19, 2014, the El Cerrito City Council passed this Resolution by the following vote:

AYES: COUNCILMEMBERS:
NOES: COUNCILMEMBERS:
ABSENT: COUNCILMEMBERS:

IN WITNESS of this action, I sign this document and affix the corporate seal of the City of El Cerrito on August X, 2014.

________________________
Cheryl Morse, City Clerk

APPROVED:

________________________
Janet Abelson, Mayor
CEQA Mitigation Monitoring Plan 1715 Elm Street

INTRODUCTION

The California Environmental Quality Act (CEQA) requires review of any project that could have significant adverse effects on the environment. In 1988, CEQA was amended to require reporting on and monitoring of mitigation measures adopted as part of the environmental review process. This Mitigation Monitoring and Reporting Program (MMRP) is designed to aid the City of El Cerrito in its implementation and monitoring of measures included in the Initial Study prepared for the proposed project located at 1715 Elm Street.

MITIGATION MEASURES

The MMRP describes the actions that must take place to implement each mitigation measure, the timing of those actions, and the entities responsible for monitoring the actions.

MMRP COMPONENTS

The components of each monitoring form are addressed briefly, below.

Mitigation Measure: All mitigation measures that were identified in the 1715 Elm Street Initial Study are presented and numbered accordingly.

Timing/Implementation: Each action must take place prior to the time at which a threshold could be exceeded. Implementation of the action must occur prior to or during some part of approval, project design or construction or on an ongoing basis. The timing for each measure is identified. Within the City of El Cerrito, the responsibility for implementation of the measures would lie with the Planning and Building Division.

Enforcement/Monitoring Party: The City of El Cerrito is responsible for ensuring that mitigation measures are successfully implemented.

Air Quality Mitigations

AQ-1 To adequately control dust, the project applicant shall ensure construction contracts contain requirements for implementing the BAAQMD’s basic construction mitigation measures from Table 8-1 of the BAAQMD’s CEQA Guidelines. Construction contracts shall also contain the following measures in order to reduce the emissions of toxic pollutants generated by heavy-duty diesel powered equipment during construction.

1. Keep all construction equipment in proper tune in accordance with manufacturers’ specifications.
2. Use late-model heavy-duty diesel-powered equipment during construction to the extent that it is readily available in the San Francisco Bay Area.
3. Use diesel-powered equipment that has been retrofitted with after-treatment products (e.g., engine catalysts) to the extent that it is readily available in the
4. Use low-emission diesel fuel for all heavy-duty diesel-powered equipment operating and refueling at construction sites to the extent that it is readily available and cost effective in the San Francisco Bay Area. (This requirement does not apply to diesel-powered trucks traveling to and from the site.)

5. Utilize alternative-fuel construction equipment (i.e., compressed natural gas, liquid petroleum gas, and unleaded gasoline) to the extent that the equipment is readily available and cost effective in the San Francisco Bay Area.

6. Limit truck and equipment idling time to 5 minutes or less.

7. Rely on the electricity infrastructure surrounding the construction site rather than electrical generators powered by internal combustion engines to the extent feasible.

**Timing/Implementation:** Prior to construction  
**Enforcement/Monitoring:** City of El Cerrito Planning Division

### Biological Mitigations

**BIO-1 Survey for Migratory Birds.**  
If clearing and/or construction activities will occur during the migratory bird nesting season (April 15–August 15), preconstruction surveys for nesting migratory birds shall be conducted by a qualified biologist, up to 14 days before initiation of construction activities. The qualified biologist shall survey the construction zone and a 250-foot radius surrounding the construction zone to determine whether the activities taking place have the potential to disturb or otherwise harm nesting birds.

If active nest(s) are identified during the preconstruction survey, a qualified biologist shall monitor the nest to determine when the young have fledged. Monthly monitoring reports, documenting nest status, shall be submitted to the City Planning Division until the nest(s) is deemed inactive. The biological monitor shall have the authority to cease construction if there is any sign of distress to a raptor or migratory bird. Reference to this requirement and to the Migratory Bird Treaty Act shall be included in the construction specifications.  

**Timing/Implementation:** Prior to construction  
**Enforcement/Monitoring:** City of El Cerrito Planning Division

**BIO-2 Survey for Active Raptor Nests.**  
If construction activities will occur during the nesting season for raptors (January 15–August 15), all suitable raptor nesting habitat within 0.5 mile of the impacted area shall be surveyed for active raptor nests before construction activity commences. If an active raptor nest is located within 0.5 mile of the construction site, a no-activity buffer shall be erected around the nest while the nest is active to protect the nesting raptors. This buffer distance may be amended to account for nests that are not within the line of sight of the construction activity.

**Timing/Implementation:** Prior to construction  
**Enforcement/Monitoring:** City of El Cerrito Planning Division

**BIO-3 Conduct Surveys for Bird Nests in Structures.**  
If demolition of on-site structures is proposed to take place during the migratory bird nesting season (April 15–August 15), a survey for nesting migratory birds (e.g., swallows, phoebes) shall be conducted by a qualified biologist prior to demolition. If bird nests are discovered in the structure, the structure shall not be removed until the nest(s) become inactive.

**Timing/Implementation:** Prior to demolition  
**Enforcement/Monitoring:** City of El Cerrito Planning Division
BIO-4 Conduct Surveys for Potential Bat Roosts.  
Demolition of on-site structures shall be preceded by a survey for bat presence. Structures being used by bats will not be removed until it has been determined that bats are no longer using the site or until demolition can be carried out without harming any bats.  
*Timing/Implementation: Prior to demolition*  
*Enforcement/Monitoring: City of El Cerrito Planning Division*  

BIO-5 Mitigate for Loss of Waters of the United States. If the US Army Corps of Engineers identifies that the feature is jurisdictional, the project applicant shall ensure that the project will result in no net loss of waters of the United States by providing mitigation through impact avoidance, impact minimization, and/or compensatory mitigation for the impact, as determined in the CWA Section 404/401 permits and/or 1602 Streambed Alteration Agreement.  
*Timing/Implementation: Prior to construction*  
*Enforcement/Monitoring: City of El Cerrito Planning Division*  

Cultural Resource Mitigations  

CULT-1 Prior to any alterations of structures on the project site, the project applicant shall complete Historic American Building Survey (HABS) level documentation. Prior to occupancy of any structure on the project site, the applicant shall complete façade restoration, and salvage and reuse building materials and landscape features, as discussed below.  

a) The project applicant shall document the affected historical resource and its setting, in accordance with HABS. The intent is to preserve an accurate record of historic property that can be used in research and other preservation activities. To serve these purposes, the documentation must include information that permits assessment of its reliability. Generally, this includes:  
- Drawings: Select existing drawings, where available, should be photographed with large-format negatives or photographically reproduced on Mylar.  
- Photographs: Photographs with large-format negatives of exterior and interior views, or historic views, where available.  
- Written data: History and description in narrative or outline format.  
HABS material standards regarding reproducibility, durability, and size shall be met. Copies of the photographs and report shall be presented to repositories that are invested in archiving the history of El Cerrito.  

b) Restore the building façade, including windows, the historic wood trim around the doors and windows on the primary façade, and the door in the main entrance, as determined by documentation by either physical and/or documentary evidence to the extent documentation is available. If physical evidence is inconclusive or historic photographs are not available, comparable, intact properties built during the same period as the Rodoni house may be used to inform the appearance of the façade.  
*Timing/Implementation: Prior to construction or demolition activities*  
*Enforcement/Monitoring: City of El Cerrito Planning Division*  

CULT-2 In the event any archeological resources are encountered during construction, work within 100 feet of the find shall cease and a qualified paleontologist shall be contacted by the project applicant to determine whether the resource is significant. If the find is determined to be of significance, an excavation plan shall be created and resources shall be donated to an appropriate cultural center. All work products and plans shall be reviewed and approved by the City prior to execution.  
*Timing/Implementation: During construction*
CULT-3 In the event paleontological resources are encountered during construction, the construction manager shall cease operation at the site of the discovery and immediately notify the City of El Cerrito Environmental & Development Services Department. The project applicant shall retain a qualified paleontologist to provide an evaluation of the find and to prescribe mitigation measures to reduce impacts to a less than significant level. In considering any suggested mitigation proposed by the consulting paleontologist, the City of El Cerrito Environmental & Development Services Department shall determine whether avoidance is necessary and feasible in light of factors such as the nature of the find, project design, costs, and other considerations. If avoidance is unnecessary or infeasible, other appropriate measures (e.g., data recovery) shall be instituted. Work may proceed on other parts of the project site while mitigation for paleontological resources is carried out.

Timing/Implementation: During construction

CULT-4 If human remains are encountered during project construction, work within 100 feet of the remains shall be suspended immediately, and the City of El Cerrito Environmental & Development Services Department and the Contra Costa County Coroner shall be immediately notified. If the remains are determined by the County Coroner to be Native American, the Native American Heritage Commission (NAHC) shall be notified within 24 hours. A professional archaeologist with Native American burial experience shall conduct a field investigation of the specific site and consult with the Most Likely Descendant, if any, identified by the NAHC. As necessary, the archaeologist may provide professional assistance to the Most Likely Descendant, including the excavation and removal of the human remains. The City of El Cerrito Environmental & Development Services Department will be responsible for the approval of recommended mitigation, taking account of the provisions of state law, as set forth in CEQA Guidelines Section 15064.5(e) and Public Resources Code Section 5097.98. The project applicant shall implement the approved mitigation, to be verified by the City of El Cerrito Environmental & Development Services Department, before the resumption of activities at the site where the remains were discovered.

Timing/Implementation: During construction

GHG-1 Prior to issuance of grading or building permits, the project applicant shall specify on the final project plans implementation of BAAQMD-recommended construction-related measures to reduce GHG emissions during construction activities. These measures include, as feasible:
1. Use alternative-fueled (i.e., biodiesel, electric) construction vehicles and equipment to the maximum extent possible.
2. Use local construction materials (within 100 miles) to the maximum extent possible.
3. Recycle construction waste and demolition materials to the maximum extent possible.

Timing/Implementation: Prior to grading permits

Enforcement/Monitoring: City of El Cerrito Planning Division
ORDINANCE 2014–XX

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF EL CERRITO APPROVING A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF EL CERRITO AND THE EDWARD AND LORETTA BIGGS REVOCABLE TRUST FOR 1715 ELM STREET – APPLICATION 6133

THE CITY COUNCIL OF THE CITY OF EL CERRITO DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. RECITALS

A. The Applicant, the Edward and Loretta Biggs Revocable Trust, proposes a development project that includes the preservation and relocation of an existing historical single-family detached house on the Property, the construction of 14 new one- and two-bedroom dwelling units, and the preservation of an existing creek on 0.42 acre site. The project proposes a Planned Development Use Permit; Design Review; a subdivision map and condominium plan; and this Development Agreement. The proposed development and applications are collectively known as the “Project”; related approvals of the applications are collectively known as the “Project Approvals”.

B. The Project site is located at 1715 Elm Street in El Cerrito, California (the “Property”).

C. The Applicant and City desire to enter into a Development Agreement subject to certain terms, attached to this ordinance, and the vesting of the Project Approvals for ten years.

D. The California Environmental Quality Act (CEQA), together with the state guidelines and City environmental regulations, require that certain projects be reviewed for environmental impacts and that environmental documents be prepared.

E. An Initial Study and Mitigated Negative Declaration (MND) pursuant to the California Environmental Quality Act (CEQA) have been prepared for this Project. All potential impacts identified are reduced to a less than significant level pursuant to the California Environmental Quality Act with the implementation of mitigation measures.

F. On April 16, 2014, the Planning Commission held a properly noticed public hearing on the Project, and adopted Resolution PC14-07 recommending that the City Council adopt the Planned Development Use Permit, which Resolution is incorporated herein by reference and available for review at City Hall during normal business hours.

G. On May 21, 2014, the Planning Commission held a properly noticed public hearing on the Project, including the proposed General Plan Amendment, Planned Development District and Development Agreement, and adopted Resolution 14-10 recommending that the City Council not adopt the General Plan Amendment, Planned Development District and
Development Agreement, which Resolution is incorporated herein by reference and available for review at City Hall during normal business hours.

H. On June 2, 2014, the City Council held a duly noticed public hearing to consider the Project Approval, including the Development Agreement. The City Council closed the hearing and continued consideration of the Project Approvals to June 23. At the June 23 meeting, the City Council requested additional information and continued deliberations. On August 19, the City Council reopened the hearing and received the additional information, and all interested parties had the opportunity to be heard.

I. A staff report dated August 19, 2014 and incorporated herein by reference, described and analyzed the Project, including the Development Agreement, for the City Council.

J. The City Council used their independent judgment and considered the staff report, the Initial Study and Mitigated Negative Declaration, and all reports, recommendations and testimony referenced above and adopted Resolution No. 2014-XX adopting the Initial Study and Mitigated Negative Declaration prior to approving the Development Agreement.

K. The City Council has considered the recommendation of the Planning Commission on the Development Agreement, including the Planning Commission’s reasons for its recommendation, the staff report, all comments received in writing, and all testimony received at the public hearing.

SECTION 2. FINDINGS AND DETERMINATIONS

On the basis of: (a) the foregoing Recitals which are incorporated herein, (b) the City of El Cerrito General Plan; (c) Initial Study and Mitigated Negative Declaration, (d) the staff report; (e) information in the entire record of proceedings for the Project, and on the basis of the specific conclusions set forth below, the City Council finds and determines that:

1. The Development Agreement is consistent with the objectives, policies, general land uses and programs specified and contained in the City’s General Plan in that: (a) the General Plan land use designations, policies, programs and objectives are incorporated into the Development Agreement and not altered by the Development Agreement; and (b) the Project is consistent with the fiscal policies of the General Plan with respect to the provision of infrastructure and public services.

2. The Development Agreement is compatible with the uses authorized in, and the regulations prescribed for, the land use districts in which the real property is located.

3. The Development Agreement is in conformity with public convenience, general welfare, and good land use policies in that the Project will implement land use guidelines set forth in the General Plan.

4. The Development Agreement will not be detrimental to the health, safety, and
general welfare in that the Developer’s proposed Project will proceed in accordance with all the programs and policies of the General Plan and Project Approvals.

5. The Development Agreement will not adversely affect the orderly development of property or the preservation of property values in that the Project will be consistent with the General Plan and Project Approvals.

6. The Development Agreement complies with the requirements of §§ 65864 et seq. of the California Government Code and El Cerrito Municipal Code Chapter 19.14 and specifies the duration of the agreement, the permitted uses of the property, the density or intensity of use, the maximum height and size of proposed buildings, and provisions for reservation of open space. The Development Agreement contains an indemnity and insurance clause requiring the developer to indemnify and hold the City harmless against claims arising out of the development process, including all legal fees and costs.

SECTION 3. APPROVAL

The City Council hereby approves the Development Agreement (Attachment A to the Ordinance) and authorizes the City Manager to execute it.

SECTION 4. NOTICING, POSTING, PUBLICATION AND RECORDATION

This ordinance is adopted pursuant to the procedures established by state law, and all required notices have been given, and the public hearing has been properly held and conducted. Within ten days after the Development Agreement is fully executed by all parties, the Development Services Manager shall submit the Agreement to the County Recorder for recordation.

SECTION 5. EFFECTIVE DATE

This ordinance shall take effect thirty days after the date of its adoption, and prior to the expiration of fifteen days from the passage thereof, the ordinance or a summary thereof shall be posted or published as may be required by law, and thereafter the same shall be in full force and effect.

THE FOREGOING ORDINANCE was introduced at a regular meeting of the City Council on August 19, 2014 and passed by the following vote:

AYES: Councilmembers
NOES: Councilmembers
ABSTAIN: Councilmembers
ABSENT: Councilmembers

ADOPTED AND ORDERED published at a regular meeting of the City Council held on the September ______, 2014 and passed by the following vote:
AYES: Councilmembers
NOES: Councilmembers
ABSTAIN: Councilmembers
ABSENT: Councilmembers

APPROVED:

______________________________
Janet Abelson, Mayor

ATTEST:

______________________________
Cheryl Morse, City Clerk

IN WITNESS of this action, I sign this document and affix the corporate seal of the City of El Cerrito on September XX, 2014.

______________________________
Cheryl Morse, City Clerk

ORDINANCE CERTIFICATION

I, Cheryl Morse, City Clerk of the City of El Cerrito, do hereby certify that this Ordinance is the true and correct original Ordinance No. 2014-XX of the City of El Cerrito, that said Ordinance was duly enacted and adopted by the City Council of the City of El Cerrito at a meeting of the City Council held on the ___ day of September 2014; and that said ordinance has been published and/or posted in the manner required by law.

WITNESS my hand and the Official Seal of the City of El Cerrito, California, this ___ day of September, 2014.

______________________________
Cheryl Morse, City Clerk
Exhibit A

Legal Description of the Property

The land referred to is situated in the State of California, County of Contra Costa, City of El Cerrito, and is described as follows:

Lots 12, 13 and 14, in Block “B” as designated on the map entitled “Map of Schmidt Village, Contra Costa County, California”, filed June 27, 1896, in Book C of Maps, Page 70, Contra Costa County Records.

EXCEPTING THEREFROM: The Northeast 7.00 feet thereof, as described in the Deed to City of El Cerrito, recorded February 9, 1965, in Book 4801 Official Records of Contra Costa County, Page 144.

(APN 502-112-038)
DRAFT DEVELOPMENT AGREEMENT

BETWEEN THE

CITY OF EL CERRITO

AND

THE EDWARD AND LORETTA BIGGS REVOCABLE TRUST
DATED MARCH 22, 2011

FOR 1715 ELM STREET
THIS DEVELOPMENT AGREEMENT ("Agreement" or "Development Agreement") is made and entered into in the City of El Cerrito on __________ 2014, by and between the City of El Cerrito, a municipal corporation ("City") and The Edward and Loretta Biggs Revocable Trust dated March 22, 2011 ("Developer") pursuant to the authority of §§ 65864 et seq. of the California Government Code and El Cerrito Municipal Code, Chapters 19.14 and 19.41. City and Developer are, from time-to-time, individually referred to in this Agreement as a “party,” and collectively as “parties.”

RECITALS

A. California Government Code §§ 65864 et seq. ("Development Agreement Law") and Chapter 19.41 of the El Cerrito Municipal Code ("Chapter 19.41") authorize the City to enter into a development agreement for the development of real property with any person having a legal or equitable interest in such property in order to establish certain development rights in such property. Chapter 19.14 of the El Cerrito Municipal Code ("Chapter 19.14") requires a development agreement for all projects for which Planned Development District zoning is approved.

B. Developer owns the real property located at 1715 El Street in the City (APN 502-112-038) and that is more particularly described in Exhibit A attached hereto and is incorporated herein by reference (the "Property").

C. The proposed development of the Property includes the relocation and renovation of an existing historical single-family detached house on the Property, the construction of 14 new one- and two-bedroom dwelling units, and the preservation of an existing creek on 0.42 acre site (the "Project").

D. Developer has applied for and City has approved or is processing, various land use approvals in connection with the Project, including, without limitation, a General Plan Amendment; Planned Development District zoning; a Planned Development Use Permit; Design Review; a subdivision map and condominium plan; and this Development Agreement. All such approvals, collectively, together with any approvals or permits now or hereafter issued with respect to the Project, are referred to as the “Project Approvals.” None of the Project Approvals take effect until the Development Agreement takes effect.

E. City desires the timely, efficient, orderly and proper development of the Project.

F. The City Council has found that, among other things, this Development Agreement is consistent with its General Plan, as amended, and has been reviewed and evaluated in accordance with the Development Agreement Law and Chapters 19.14 and 19.41.
G. City and Developer have reached agreement and desire to express herein a Development Agreement that will facilitate development of the Project, subject to conditions set forth herein.

H. The El Cerrito Planning Commission approved a Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program for the Project on April 16, 2014 by the adoption of Planning Commission Resolution No. PC14-06. The Mitigated Negative Declaration analyzed the environmental impacts of this Agreement. No significant unavoidable impacts were identified in the Mitigated Negative Declaration.

I. On _____, __ 2014, the City Council adopted Ordinance No. ___ approving this Development Agreement (the “Approving Ordinance”). The Approving Ordinance states that it will take effect on ______________ (the “Ordinance Effective Date”).

NOW, THEREFORE, with reference to the foregoing recitals and in consideration of the mutual promises, obligations and covenants herein contained, City and Developer agree as follows:

AGREEMENT

1. Description of Property.

The Property that is the subject of this Agreement is described in Exhibit A attached hereto.

2. Interest of Developer.

The Developer owns the Property.

3. Relationship of City and Developer.

It is understood that this Agreement is a contract that has been negotiated and voluntarily entered into by the City and Developer and that the Developer is not an agent of the City. The City and Developer hereby renounce the existence of any form of joint venture or partnership between them, and agree that nothing contained herein or in any document executed in connection herewith shall be construed as making the City and Developer joint ventures or partners.

4. Effective Date, Term, and Termination.

4.1. Effective Date. The effective date of this Agreement shall be the Ordinance Effective Date (“Effective Date”).

4.2. Term. The term of this Agreement shall commence on the Effective Date and extend 10 years thereafter, unless said term is otherwise terminated or
modified pursuant to the provisions of this Agreement. As authorized by California Government Code Sections 65863.9 and 66452.6(a)(1), the terms of the Project Approvals shall be the longer of: (a) the term of this Agreement; or (b) the term normally given each approval under controlling law.

4.3. **Termination.**

4.3.1. **Termination on Sale of Individual Lots.** Notwithstanding the foregoing Section 4.2, the provisions of this Agreement shall terminate with respect to any individual lot and such lot shall be released from and shall no longer be subject to this Agreement (without the execution or recordation of any further document or the taking of any further action) upon the lot being finally subdivided and sold or leased to a member of the public or any other ultimate user. City shall cooperate with Developer, at no cost to City, in executing in recordable form any document that Developer (including any successor to the title of the Developer in and to any of the aforedescribed lots) may submit to confirm the termination of this Agreement as to any such lot. For purposes of this Section 4.3.1, each reference to a “lot” shall be deemed to include an individual dwelling unit that is a standalone structure or constructed within a multi-unit building, whether leased as an apartment or single-family home or sold as a condominium or similar interest in the Property.

4.3.2. **Termination Upon Completion of Project.** Notwithstanding the foregoing Sections 4.2 and 4.3.1, upon completing construction of the Project and satisfying all terms and conditions of this Agreement and the Project Approvals, Developer may send City written notice terminating this Agreement. City shall cooperate with Developer, at no cost to City, in executing in recordable form any document that Developer (including any successor to the title of Developer in and to any portion of the Property) may submit to confirm the termination of this Agreement.

5. **Use of the Property.**

5.1. **Right to Develop.** Developer shall have the vested right to develop the Project on the Property in accordance with the terms and conditions of this Agreement, the Project Approvals (as and when issued), and any amendments to any of them as shall, from time to time, be approved pursuant to this Agreement. (Such amendments, once effective, shall become part of the law Developer is vested into without an additional amendment of this Agreement.) Notwithstanding the foregoing or anything to the contrary herein, any amendment to the General Plan not in effect on the Effective Date shall not become part of the law Developer is vested into under this Agreement unless an additional amendment of this Agreement is entered into between Developer and City in accordance with state and City laws.
5.2. **Permitted Uses.** The permitted uses of the Property, the density and intensity of use, the maximum height, bulk, and size of proposed buildings, the provisions for reservation or dedication of land for public purposes, the location and maintenance of on-site and off-site improvements, the location of public utilities, and other terms and conditions of development applicable to the Property, shall be those set forth in this Agreement, the Project Approvals and any amendments to this Agreement or the Project Approvals, subject to the provisions of Section 5.1.

5.3. **Rules Regarding Permitted Uses.** For the term of this Agreement, the City’s ordinances, resolutions, rules, regulations and official policies governing the permitted uses of the Property and governing density and intensity of use of the Property and the maximum height, bulk and size of proposed buildings shall be those in force and effect on the Effective Date of this Agreement.

5.4. **Rules Regarding Design and Construction.** Unless otherwise expressly provided in Section 5 of this Agreement, the ordinances, resolutions, rules, regulations and official policies governing design, improvement and construction standards and specifications applicable to the Project shall be those in force and effect at the time of the applicable discretionary approval, whether the date of that approval is prior to or after the date of this Agreement. Ordinances, resolutions, rules, regulations and official policies governing design, improvement and construction standards, and specifications applicable to public improvements to be constructed by Developer shall be those in force and effect at the time of the applicable discretionary approval, whether the date of that approval is prior to or after the date of this Agreement.

5.5. **Building and Other Codes Applicable.** The Project shall be constructed in accordance with the provisions of the Building, Mechanical, Plumbing, Electrical, and Fire Codes and Title 24 of the California Code of Regulations, relating to Building Standards, in effect at the time of approval of the appropriate building, grading, encroachment or other construction permits for the Project.

6. **Subsequently Enacted Rules and Regulations.**

6.1. **New Rules and Regulations.** Consistent with Government Code section 65866, during the term of this Agreement, the City may apply new or modified ordinances, resolutions, rules, regulations and official policies of the City, whether adopted by the City or through the referendum or initiative process ("New City Laws") to the Property, which were not in force and effect on the Effective Date of this Agreement and which are not in conflict with those applicable to the Property as set forth in this Agreement and are not in conflict with the Project Approvals. Without limiting the generality of the foregoing, or any other provision of this Agreement, a New City Law shall be deemed to conflict
with this Agreement to the extent it limits or controls the timing of construction or occupancy of the Project.

6.2. Approval of Application. Nothing in this Agreement shall prevent the City from denying or conditionally approving any subsequent land use permit or authorization for the Project on the basis of such New City Laws except that such subsequent actions shall be subject to any conditions, terms, restrictions, and requirements expressly set forth herein.

7. Subsequently Enacted or Revised Fees, Assessments and Taxes.

Notwithstanding anything to the contrary contained herein, the Project shall be subject to subsequently enacted or revised fees, assessments and taxes adopted by the City after the Effective Date of this Agreement. Nothing in this Agreement creates a vested right for the Project in the amount or type of fees, assessments and taxes in effect on the Effective Date of this Agreement.

8. Amendment or Cancellation.

8.1. Modification Because of Conflict with State or Federal Laws. The Project and Property shall be subject to state and federal laws and regulations and this Agreement does not create any vested right in state and federal laws and regulations in effect on the Effective Date. In the event that state or federal laws or regulations enacted after the Effective Date of this Agreement prevent or preclude compliance with one or more provisions of this Agreement or require changes in plans, maps, or permits approved by the City, the parties shall meet and confer in good faith in a reasonable attempt to modify this Agreement to comply with such federal or state law or regulation. Any such amendment or suspension of the Agreement shall be subject to approval by the City Council in accordance with Chapter 8.56 of the Municipal Code.

8.2. Amendment by Mutual Consent. This Agreement may be amended in writing from time to time by mutual consent of the parties hereto and in accordance with the procedures of state law and Chapter 19.41.

8.3. Insufficient Amendments. Notwithstanding the provisions of the preceding Paragraph 8.2, any amendments to this Agreement that do not relate to (a) the term of the Agreement as provided in Paragraph 4.2; (b) the permitted uses of the Property as provided in Paragraph 5.2; (c) the density or intensity of use of the Project; (d) the maximum height or size of proposed buildings; or (e) monetary contributions by Developer as provided in this Agreement, shall not, except to the extent otherwise required by law, require notice or public hearing before either the Planning Commission or the City Council before the parties may execute an amendment hereto.
8.4. **Cancellation By Mutual Consent.** Except as otherwise permitted herein, this Agreement may be canceled in whole or in part only by the mutual consent of the parties or their successors in interest, in accordance with the provisions of Chapter 19.41.

9. **Annual Review.**

9.1. **Review Date.** The annual review date for this Agreement shall be between June 1 and July 1, 2015 and thereafter between each June 1 and July 1 during the Term.

9.2. **Initiation of Review.** Developer shall initiate annual review of this Agreement by submitting an annual application. Developer shall submit with such application a report to the City's Community Development Director describing the Developer's good faith substantial compliance with the terms of this Agreement during the preceding year and include supporting evidence. Such report shall include a statement that the report is submitted to the City pursuant to the requirements of Government Code Section 65865.1 and of this Agreement. The report shall comply with Section 19.41.050 of Chapter 19.41. The burden of proof by substantial evidence of compliance is upon the Developer.

9.3. **Finding of Compliance.** Within thirty (30) days after Developer submits its report hereunder, the City's Community Development Director shall review Developer's submission to ascertain whether Developer has demonstrated good faith substantial compliance with the material terms of this Agreement. If the Community Development Director finds and determines, in consultation with the City Manager and the City's Public Works Director, that Developer has in good faith substantially complied with the material terms of this Agreement, or does not determine otherwise within 30 days after delivery of Developer's report, then the annual review shall be concluded. If the Community Development Director initially determines that such report is inadequate in any respect, then he or she shall provide written notice to that effect to Developer, and Developer may supply such additional information or evidence as may be necessary to demonstrate good faith substantial compliance with the material terms of this Agreement. Following consultation with the City Manager and the City's Public Works Director, if the Community Development Director concludes that Developer has not demonstrated good faith substantial compliance with the material terms of this Agreement, then he or she shall so notify Developer within 30 days after delivery of the additional information and prepare a report to the City Council with respect to the conclusions of the Community Development Director and the contentions of Developer with respect thereto.

9.4. **City Council Hearing Regarding Non-Compliance.** After submission of the staff report of the City's Community Development Director, the City Council shall conduct a noticed public hearing to consider the determination that Developer has not demonstrated good faith substantial compliance with the
material terms of this Agreement. At least ten (10) days prior to hearing, the Community Development Director shall provide to the City Council, Developer and to all interested persons requesting the same, copies of all staff reports and other information concerning Developer's good faith substantial compliance with the material terms of this Agreement and the conclusions and recommendations of the Community Development Director. At such hearing, Developer and any other interested person shall be entitled to submit evidence, orally or in writing, and address all the issues raised in the staff report on, or with respect or germane to, the issue of Developer's good faith substantial compliance with the material terms of this Agreement. If, after receipt of any written or oral response of Developer, and after considering all of the evidence at such public hearing, the City Council finds and determines, on the basis of substantial evidence, that Developer has not substantially complied in good faith with the material terms of this Agreement, then the City Council shall specify to Developer the respects in which Developer has failed to comply, and shall also specify a reasonable time for Developer to meet the terms of compliance, which time shall be not less than thirty (30) days after the date of the City Council's determination, and shall be reasonably related to the time necessary to adequately bring Developer's performance into good faith substantial compliance with the material terms of this Agreement.

If the areas of noncompliance specified by the City Council are not corrected within the time limits prescribed by the City Council hereunder, then the City Council may by subsequent noticed hearing extend the time for compliance for such period as the City Council may determine (with conditions, if the City Council deems appropriate), terminate, or modify this Agreement, or take such other actions as permitted under applicable law, Any notice to Developer of a determination of noncompliance by Developer hereunder, or of a failure by Developer to remedy the areas of noncompliance hereunder, shall specify in reasonable detail the grounds therefore and all facts demonstrating such noncompliance or failure, so that Developer may address the issues raised in the notice of noncompliance or failure on point-by-point basis in any hearing held by the City Council hereunder.

9.5. Meet and Confer Process. If either the City's Community Services Director or the City Council makes a determination that Developer has not demonstrated good faith substantial compliance with the material terms of this Agreement, then the City Manager and/or designated City Council representatives may initiate a meet and confer process with Developer pursuant to which the Parties shall meet and confer to determine a resolution acceptable to both Parties of the bases upon which the Community Services Director or City Council has determined that Developer has not demonstrated good faith substantial compliance with the material terms of this Agreement. The results and recommendations of the meet and confer process shall be presented to the City Council for review and consideration at its next regularly scheduled public meeting, including consideration of such amendments to this Agreement as may
be necessary or appropriate to effectuate the resolution through such meet and confer process, Developer shall be deemed to be in good faith substantial compliance with the material terms of this Agreement, only upon the City Council's acceptance of the results and recommendation of the meet and confer process.

9.6. **Staff Reports.** To the extent practical, the City shall deposit in the mail and fax or email to Developer a copy of all staff reports, and related exhibits concerning contract performance at least five (5) days prior to any annual review.

9.7. **Costs.** Costs reasonably incurred by the City in connection with the annual review shall be paid by Developer in accordance with the City's schedule of fees in effect at the time of review.

10. **Default.**

10.1. **Other Remedies Available.** Upon the occurrence of an event of default, the parties may pursue all other remedies at law or in equity that are not otherwise provided for in this Agreement or in the City's regulations governing development agreements, expressly including the remedy of specific performance of this Agreement.

10.2. **Notice and Cure.** Upon the occurrence of an event of default by either party, the nondefaulting party shall serve written notice of such default upon the defaulting party. If the default is not cured by the defaulting party within thirty (30) days after service of such notice of default, the nondefaulting party may then commence any legal or equitable action to enforce its rights under this Agreement; provided, however, that, if the default cannot be cured within such thirty (30) day period, the nondefaulting party shall refrain from any such legal or equitable action so long as the defaulting party begins to cure such default within such thirty (30) day period and diligently pursues such cure to completion. Failure to give notice shall not constitute a waiver of any default.

10.3. **No Damages Against City.** Notwithstanding anything to the contrary contained herein, in no event shall damages be awarded against the City upon an event of default or upon termination of this Agreement.

11. **Estoppel Certificate.**

Either party may, at any time, and from time to time, send written notice to the other party requesting such party to certify in writing that (a) this Agreement is in full force and effect and a binding obligation of the parties, (b) this Agreement has not been amended or modified either orally or in writing, or, if so amended, identifying the amendments, and (c) to the knowledge of the certifying party, the requesting party is not in default in the performance of its obligations under this Agreement, or, if in default, to describe therein the nature and amount
of any such defaults. A party receiving a request hereunder shall execute and return such certificate within thirty (30) days following the receipt thereof, or such longer period as may reasonably be agreed to by the parties. City Manager of the City shall be authorized to execute any certificate requested by Developer. Should the party receiving the request not execute and return such certificate within the applicable period, this shall not be deemed to be a default, provided that such party shall be deemed to have certified that the statements in clauses (a) through (c) of this Section are true, and any party may rely on such deemed certification.

12. Mortgagee Protection; Certain Rights of Cure.

12.1. Mortgagee Protection. This Agreement shall be superior and senior to any lien placed upon the Property, or any portion thereof after the date of recording this Agreement, including the lien for any deed of trust or mortgage (“Mortgage”). Notwithstanding the foregoing, no breach hereof shall defeat, render invalid, diminish, or impair the lien of any Mortgage made in good faith and for value, but all the terms and conditions contained in this Agreement shall be binding upon and effective against any person or entity, including any deed of trust beneficiary or mortgagee (“Mortgagee”) who acquires title to the Property, or any portion thereof, by foreclosure, trustee’s sale, deed in lieu of foreclosure, or otherwise.

12.2. Mortgagee Not Obligated. Notwithstanding the provisions of Section 12.1 above, no Mortgagee shall have any obligation or duty under this Agreement, before or after foreclosure or a deed in lieu of foreclosure, to construct or complete the construction of improvements, or to guarantee such construction of improvements, or to guarantee such construction or completion, or to pay, perform or provide any fee, dedication, improvements or other exaction or imposition; provided, however, that the Mortgagee shall not be entitled to devote the Property to any uses or to construct any improvements thereon other than those uses or improvements provided for or authorized by the Project Approvals or by this Agreement without new approvals by the City as may be required for such other uses or improvements.

12.3. Notice of Default to Mortgagee and Extension of Right to Cure. If the City receives notice from a Mortgagee requesting a copy of any notice of default given Developer hereunder and specifying the address for service thereof, then the City shall deliver to such Mortgagee, concurrently with service thereon to Developer, any notice given to Developer with respect to any claim by the City that Developer has committed an event of default. Each Mortgagee shall have the right during the same period available to Developer to cure or remedy, or to commence to cure or remedy, the event of default claimed set forth in the City’s notice. The City, through its City Manager, may extend the thirty-day cure period provided in Paragraph 10.2 for not more than an additional sixty (60) days upon request of Developer or a Mortgagee.
13. **Severability.**

The unenforceability, invalidity, or illegality of any provision, covenant, condition, or term of this Agreement shall not render the other provisions unenforceable, invalid, or illegal.

14. **Attorneys' Fees and Costs.**

If the City or Developer initiates any action at law or in equity to enforce or interpret the terms and conditions of this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs in addition to any other relief to which it may otherwise be entitled. If any person or entity not a party to this Agreement initiates an action at law or in equity to challenge the validity of any provision of this Agreement or the Project Approvals, the parties shall cooperate in defending such action. Developer shall bear its own costs of defense as a real party in interest in any such action, and shall reimburse the City for all reasonable court costs and attorneys’ fees expended by the City in defense of any such action or other proceeding.

15. **Transfers and Assignments.**

15.1. **Right to Assign.** Developer may wish to sell, transfer, or assign all or portions of its Property to another entity (each such other entity is referred to as a “Transferee”). In connection with any such sale, transfer, or assignment to a Transferee, Developer may sell, transfer, or assign to such Transferee any or all rights, interests, and obligations of Developer arising hereunder and that pertain to the portion of the Property being sold or transferred to such Transferee, provided, however, that no such transfer, sale, or assignment of Developer’s rights, interests, and obligations hereunder shall occur without prior written notice to City and approval by the City Manager, which approval shall not be unreasonably withheld, conditioned or delayed.

15.2. **Approval and Notice of Sale, Transfer or Assignment.** The City Manager shall consider and decide on any transfer, sale, or assignment within ten (10) days after Developer’s notice, provided all necessary documents, certifications, and other information are provided to the City Manager to enable the City Manager to determine whether the proposed Transferee can perform the Developer’s obligations hereunder. Notice of any such approved sale, transfer, or assignment (which includes a description of all rights, interests and obligations that have been transferred and those which have been retained by Developer) shall be recorded in the official records of Contra Costa County, in a form acceptable to the City Manager, concurrently with such sale, transfer, or assignment.
15.3. Release Upon Transfer. Upon the transfer, sale, or assignment of all of Developer’s rights, interests, and obligations hereunder pursuant to Paragraph 15.1 of this Agreement, Developer shall be released from the obligations under this Agreement, with respect to the Property transferred, sold, or assigned, arising subsequent to the date of City Manager approval of such transfer, sale, or assignment; provided, however, that if any Transferee approved by the City Manager expressly assumes all of the rights, interests, and obligations of Developer under this Agreement, Developer shall be released with respect to all such rights, interests, and assumed obligations. In any event, the transferee, purchaser, or assignee shall be subject to all the provisions hereof and shall provide all necessary documents, certifications, and other necessary information prior to City Manager approval.

15.4. Developer’s Right to Retain Specified Rights or Obligations. Notwithstanding Paragraphs 15.1 and 15.2 and Paragraph 16, Developer may withhold from a sale, transfer, or assignment of this Agreement certain rights, interests, and/or obligations, which Developer shall retain, provided that Developer specifies such rights, interests, and/or obligations in a written document to be appended to this Agreement and recorded with the Contra Costa County Recorder prior to the sale, transfer, or assignment of the Property. Developer’s Transferee shall then have no interest or obligations for such rights, interests and obligations, and this Agreement shall remain applicable to Developer with respect to such retained rights, interests, and/or obligations.

16. Agreements Run With the Land

All of the provisions, rights, terms, covenants, and obligations contained in this Agreement shall be binding upon the parties and their respective heirs, successors and assigns, representatives, lessees, and all other persons acquiring the Property, or any portion thereof, or any interest therein, whether by operation of law or in any manner whatsoever. All of the provisions of this Agreement shall be enforceable as equitable servitudes and shall constitute covenants running with the land pursuant to applicable laws, including, but not limited to, Section 1468 of the Civil Code of the State of California. Each covenant to do, or refrain from doing, some act on the Property hereunder, or with respect to any owned property (a) is for the benefit of such properties and is a burden upon such properties, (b) runs with such properties, and (c) is binding upon each party and each successive owner during its ownership of such properties or any portion thereof, and shall be a benefit to and a burden upon each party and its property hereunder and each other person succeeding to an interest in such properties.
17. **Bankruptcy.**

The obligations of this Agreement shall not be dischargeable in bankruptcy.

18. **Indemnification.**

Developer agrees to indemnify, defend and hold harmless the City, and its elected and appointed councils, boards, commissions, officers, agents, employees, and representatives from any and all claims, costs (including legal fees and costs) and liability for any personal injury or property damage which may arise directly or indirectly as a result of any actions or inactions by the Developer, or any actions or inactions of Developer's contractors, subcontractors, agents, or employees in connection with the construction, improvement, operation, or maintenance of the Project, provided that Developer shall have no indemnification obligation with respect to negligence or wrongful conduct of the City, its contractors, subcontractors, agents or employees or with respect to the maintenance, use or condition of any improvement after the time it has been dedicated to and accepted by the City or another public entity (except as provided in an improvement agreement or maintenance bond). If City is named as a party to any legal action, City shall cooperate with Developer, shall appear in such action and shall not unreasonably withhold approval of a settlement otherwise acceptable to Developer.

19. **Insurance.**

19.1. **Public Liability and Property Damage Insurance.** During the term of this Agreement, whenever Developer is conducting work on the Property pursuant to the Project Approvals, Developer shall maintain in effect a policy of comprehensive general liability insurance with a per-occurrence combined single limit of not less than One Million Dollars ($1,000,000.00) with a One Hundred Thousand Dollar ($100,000) self-insurance retention per claim. The policy so maintained by Developer shall name the City as an additional insured and shall include either a severability of interest clause or cross-liability endorsement.

19.2. **Workers Compensation Insurance.** During the term of this Agreement, whenever Developer is conducting work on the Property pursuant to the Project Approvals, Developer shall maintain Worker’s Compensation insurance for all persons employed by Developer for work at the Project site. Developer shall require each contractor and subcontractor similarly to provide Worker’s Compensation insurance for its respective employees. Developer agrees to indemnify the City for any damage resulting from Developer’s failure to maintain any such insurance.

19.3. **Evidence of Insurance.** Prior to issuance of any permits for the Project, including grading permits, Developer shall furnish the City satisfactory
evidence of the insurance required in Sections 19.1 and 19.2 and evidence that the carrier is required to give the City at least fifteen (15) days prior written notice of the cancellation or reduction in coverage of a policy. The insurance shall extend to the City, its elective and appointive boards, commissions, officers, agents, employees, and representatives and to Developer performing work on the Project.


All notices required or provided for under this Agreement shall be in writing. Notices required to be given to the City shall be addressed as follows:

City Manager
City of El Cerrito
10890 San Pablo Ave.
El Cerrito, CA 94530
Fax: (510) 864-7025
Email: sch@ci.el-cerrito.ca.us

Notices required to be given to Developer shall be addressed as follows:

The Edward and Loretta Biggs Revocable Trust dated March 22, 2011
4271 Valley Lane
Fairfield, CA 94534
Fax: (707) 864-8150

A party may change its address by giving notice in writing to the other party. Thereafter, all notices shall be addressed and transmitted to the new address. Notices shall be deemed given and received upon personal delivery, or, if mailed, upon the expiration of 48 hours after being deposited in the United States Mail. Notices may also be given by overnight courier which shall be deemed given the following day, or by facsimile, which shall be deemed given upon verification of receipt if received before 5:00 p.m. on a regular business day or else on the next business day. The City will accept notice by email transmission, which shall be deemed given upon verification of receipt if received before 5:00 p.m. on a regular business day or else on the next business day. Developer may accept notice by email by providing notice to the City consistent with this section.

21. Agreement is Entire Understanding.

This Agreement constitutes the entire understanding and agreement of the parties.
22. **Exhibits.**

The following documents are referred to in this Agreement and are attached hereto and incorporated herein as though set forth in full:

**Exhibit A**  Legal Description of Property

23. **Counterparts.**

This Agreement is executed in three (3) duplicate originals, each of which is deemed to be an original.

24. **Recordation.**

The City shall record a copy of this Agreement within ten (10) days following the Effective Date.

*Execution Page Follows*
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date and year first above written.

CITY OF EL CERRITO

By: __________________________
Scott Hanin, City Manager

Its: Trustee

DEVELOPER

The Edward and Loretta Biggs Revocable Trust dated March 22, 2011

By: __________________________

Attest:

Cheryl Morse, City Clerk

Approved as to Form:

Sky Woodruff, City Attorney

(NO T A R I ZATIO N A T T A C H E D)
Exhibit A

Legal Description of the Property

The land referred to is situated in the State of California, County of Contra Costa, City of El Cerrito, and is described as follows:

Lots 12, 13 and 14, in Block “B” as designated on the map entitled “Map of Schmidt Village, Contra Costa County, California”, filed June 27, 1896, in Book C of Maps, Page 70, Contra Costa County Records.

EXCEPTING THEREFROM: The Northeast 7.00 feet thereof, as described in the Deed to City of El Cerrito, recorded February 9, 1965, in Book 4801 Official Records of Contra Costa County, Page 144.

(Being APN 502-112-038)
EXISTING HOUSE IN FOREGROUND
SEE SHEET A-10 FOR MATERIALS

1. EAST ELEVATION

2. WEST ELEVATION

KEY PLAN

CONCEPTUAL ELEVATIONS

SCALE: 1/8" = 1'-0"

PROJECT NORTH
AERIAL VIEW

VIEWS OF EXISTING HOUSE FROM ELM ST.
CONCEPTUAL BUILDING COLORS AND MATERIALS

ASPHALT SHINGLE ROOFING
MANUF: TIMBERLINE HD
COLOR: BARKWOOD

SIDING COLOR #1
MANUF: KELLY MOORE
COLOR: MAYBECK MUSLIN HLS4254-1

SIDING COLOR #2
MANUF: KELLY MOORE
COLOR: BUNGALOW BROWN HLS4213-3

SIDING COLOR #3
MANUF: KELLY MOORE
COLOR: WILD CATTAIL KM4518-3

TRIM/RAILING COLOR #1
MANUF: KELLY MOORE
COLOR: DAISY WHITE HLS4295-1

TRIM/RAILING COLOR #2
MANUF: KELLY MOORE
COLOR: AMERICANO KM4512-5

ACCENT COLOR #1
MANUF: KELLY MOORE
COLOR: DRIVE-IN CHERRY HLS4231

NOTE: Paint chip colors/numbers, material and manufacturers shown on this board are representative only. Final approval will be based on sample portion of building. Call the architect or owner for field review. The owner reserves the right to change any listed manufacturer. The changes in manufacturer shall match paint chip color/material as noted.

SCALE: 1:64
DATE: 2-15-13
REVISIONS: 8/12/13, 9/23/13, 10/28/13
PROJECT NO. 12048
SHEET OF 7
Open Greenhouse Trellis

Drought tolerant Mediterranean Planting

Border Herbs

Dwarf Fruit Orchard

Edible Landscape Features

Decomposed Granite

Permeable Brick Pavers

Paving

Grass Oval

Picket Fence

Stone seatwall
WHEREAS, the Edward and Loretta Biggs Revocable Trust proposes a development project that includes the conversion and renovation of an existing historical single-family detached house into a museum, art studio or offices or other community center type uses, the construction of 14 new one- and two-bedroom dwelling units, and the preservation of an existing creek on 0.42 acre site. The project proposes rezoning the property to PD (Planned Development); a Planned Development Use Permit; Design Review; a subdivision map and condominium plan; and a Development Agreement (the “Project”); and

WHEREAS, the subject site is located at 1715 Elm Street; and

WHEREAS, the zoning district of the site is RM (Multifamily Residential); and

WHEREAS, the general plan land use designation of the site is High Density; and

WHEREAS, on January 13, 2014 the City circulated an Initial Study/Mitigated Negative Declaration for the Project pursuant to the CEQA Guidelines; and

WHEREAS, at its March 19, 2014 meeting, the Planning Commission held a duly noticed public hearing, received public testimony and directed staff to bring the project back for formal action; and

WHEREAS, at their April 16, 2014 meeting, the Planning Commission held a duly noticed public hearing, received public testimony and adopted Resolution PC14-06, adopting an Initial Study and Mitigated Negative Declaration; and

WHEREAS, at their April 16, 2014 meeting, the Planning Commission held a duly noticed public hearing, received public testimony and adopted Resolution PC14-07, approving a Planned Development Use Permit; and

WHEREAS, on June 2, 2014, the City Council held a duly noticed public hearing to consider the Project, including the negative declaration and mitigation monitoring and reporting program. The City Council closed the hearing and continued consideration of the Project to June 23. At the June 23 meeting, the City Council requested additional information and continued deliberations. On August 19, the City Council reopened the hearing and received the additional information. The City Council held a properly noticed public hearing on the Project, and all interested parties had the opportunity to be heard. After due consideration of all evidence and reports offered for review, the City Council does find and determine the following:

The City Council has considered the proposed negative declaration together with any comments received during the public review process, and finds, on the basis of the whole record before it, that:
(1) There is no substantial evidence the project will have a significant effect on the environment, and

(2) The negative declaration reflects the lead agency’s independent judgment and analysis.

NOW THEREFORE, BE IT RESOLVED, by the City Council of the City of El Cerrito that after careful consideration of maps, facts, exhibits, correspondence, and testimony, and other evidence submitted in this matter, and, in consideration of the findings, the El Cerrito City Council hereby adopts the Initial Study/Mitigated Negative Declaration and adopts the Mitigation Monitoring and Reporting Program for the construction of 14 new dwelling units and the conversion of one existing dwelling unit into a community center located at 1715 Elm Street.

I CERTIFY that at a special meeting on August 19, 2014 the City Council of the City of El Cerrito passed this Resolution by the following vote:

AYES: COUNCILMEMBERS:
NOES: COUNCILMEMBERS:
ABSTAIN: COUNCILMEMBERS:
ABSENT: COUNCILMEMBERS:

IN WITNESS of this action, I sign this document and affix the corporate seal of the City of El Cerrito on August _, 2014.

Cheryl Morse, City Clerk

APPROVED:

Janet Abelson, Mayor

Exhibit A: Initial Study and Mitigated Negative Declaration attached hereto and located on the City’s Website at:
Initial Study http://www.el-cerrito.org/DocumentCenter/View/3445
Biological Resources Assessment http://www.el-cerrito.org/DocumentCenter/View/3438
ORDINANCE 2014–XX

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF EL CERRITO REZONING
1715 ELM STREET TO A PLANNED DEVELOPMENT ZONING DISTRICT –
APPLICATION 6133

THE CITY COUNCIL OF THE CITY OF EL CERRITO DOES HEREBY ORDAIN AS
FOLLOWS:

SECTION 1. RECITALS

A. The Applicant, the Edward and Loretta Biggs Revocable Trust, proposes a development project that includes the conversion and renovation of an existing historical single-family detached house on the Property into a community center, the construction of 14 new one- and two-bedroom dwelling units, and the preservation of an existing creek on 0.42 acre site. The project proposes a Planned Development District; a Planned Development Use Permit; Design Review; a subdivision map and condominium plan; and this Development Agreement. The proposed development and applications are collectively known as the “Project”; related approvals of the applications are collectively known as the “Project Approvals.”

B. The Project site is located at 1715 Elm Street in El Cerrito, California (the “Property”).

C. The Applicant has applied to change the zoning of the Property to a Planned Development District subject to certain terms, attached to this ordinance, and to amend the City’s Zoning Map accordingly.

D. The California Environmental Quality Act (CEQA), together with the state guidelines and City environmental regulations, require that certain projects be reviewed for environmental impacts and that environmental documents be prepared.

E. An Initial Study and Mitigated Negative Declaration (MND) pursuant to the California Environmental Quality Act (CEQA) have been prepared for this Project. All potential impacts identified are reduced to a less than significant level pursuant to the California Environmental Quality Act with the implementation of mitigation measures.

F. On April 16, 2014, the Planning Commission held a properly noticed public hearing on the Project, and adopted Resolution PC14-07 recommending that the City Council adopt the Planned Development Use Permit, which Resolution is incorporated herein by reference and available for review at City Hall during normal business hours.

G. On May 21, 2014, the Planning Commission held a properly noticed public hearing on the Project, including the proposed General Plan Amendment, Planned Development District and Development Agreement, and adopted Resolution 14-10 recommending that the City Council
deny the General Plan Amendment, Planned Development District and Development Agreement, which Resolution is incorporated herein by reference and available for review at City Hall during normal business hours.

H. On June 2, 2014, the City Council held a duly noticed public hearing to consider the Project Approval, including the Development Agreement. The City Council closed the hearing and continued consideration of the Project Approvals to June 23. At the June 23 meeting, the City Council requested additional information and continued deliberations.

I. A Staff Report, dated August 19, 2014 and incorporated herein by reference, described and analyzed the Project, including the Planned Development rezoning for the City Council.

J. On August 19, 2014, the City Council received the additional information requested at the June 23 meeting and held a properly noticed public hearing on the Project, including the proposed Planned Development rezoning at which time all interested parties had the opportunity to be heard.

K. On August 19, 2014, the City Council adopted Resolution 2014-XX adopting an Initial Study and Mitigated Negative Declaration and a Mitigation Monitoring and Reporting Program for the Project.

L. The City Council considered the adopted Initial Study and Mitigated Negative Declaration and all above-referenced reports, recommendations, and testimony prior to taking action on the Project.

SECTION 2. FINDINGS


1. The proposed residential Project will be a transit oriented development located within 800 feet of a BART station (1,400 feet by foot). It will add fourteen new dwelling units while preserving a historic building and retaining an existing creek. The balance of all these core values on the site is considered to be in the public interest.

2. The project is consistent with the purposes of the district and conforms in all significant respects with the amended General Plan, as conditioned in that it consists of high density multifamily development that utilizes good urban design principles including reduced parking requirements, parking concealed under the new building, and a mix of unit types. It also preserves an important historic resource and protects an existing creek by including it within its landscaped area. The project will implement the following General Plan goals and policies: Land Use 1.2: Multifamily Neighborhoods, Land Use 1.3: Quality of Development, Land Use 1.5: Suitable Housing, Land Use 1.6: Variety of Housing Types, Land Use 5.1 BART Station Areas, Community Design 1.3: High-Quality Design, Community Design 1.9: Building Design, Community Design 4.2: Building Articulation, Community Design
5.1: Design Review Process, Community Design 5.2 Planned Development. Community Design 3.5 Creek Preservation. Resources 1.9 Developments near Creeks, Resources 2.1: Historic Preservation, Resources 2.5: Public Awareness.

3. The proposed residential project will be a transit oriented development with good urban design. It will add fourteen new dwelling units to the neighborhood while preserving a historic structure and retaining the existing creek. It will not unduly shade surrounding dwellings or create unacceptable traffic or parking impacts; and as conditioned it will not be detrimental to the abutting properties or neighborhood.

4. An Initial Study and Mitigated Negative Declaration (MND) pursuant to the California Environmental Quality Act (CEQA) have been approved for this project. All factors are reduced to a less than significant level pursuant to the California Environmental Quality Act with the implementation of mitigation measures. The Mitigation Monitoring Plan has been incorporated in the conditions of approval.

5. The proposed residential project will be a transit oriented development with good urban design. It will add fourteen new dwelling units to the neighborhood while preserving a historic structure and retaining the existing creek. It will not unduly shade surrounding dwellings or create unacceptable traffic or parking impacts; and as conditioned it will not be detrimental to the public interest, health, safety, convenience or welfare of the City.

6. The proposed amendment is a planned development district. It is consistent with applicable provisions of the zoning code including the purpose and intent of the Residential Mixed Use zone.

7. The Project will add fourteen new dwelling units to the neighborhood while preserving a historic structure and retaining the existing creek. The site is 0.42 acres in size with a relatively level grade. It has direct access onto Elm Street and will be served by existing utilities in the area. It will not unduly shade surrounding dwellings or create unacceptable traffic or parking impacts; and as conditioned it will not adversely affect the livability of the abutting properties or neighborhood.

8. This project is demonstratively superior to the development that could occur under the standards applicable to the underlying base district in that it represents a balance of many of El Cerrito’s core values. It is a transit oriented development; thereby reducing Vehicle Miles Traveled with good urban design; successful historic preservation and preservation of an existing creek. Had the project been governed by the base district standards and strict interpretation of the creek protection ordinance, much of the open space would have been lost to surface parking spaces, the number of units would have to have been decreased due to the reduced building footprint, the building would two stories with a mansard roof, which would have greatly reduce the number of dwelling units.

9. The project is consistent with the purposes of the district and conforms in all significant respects with the General Plan, as conditioned, in that it consists of high
density multifamily development that utilizes good urban design principles including reduced parking requirements, parking concealed under the new building, and a mix of unit types.

10. The Project is a transit oriented development, thereby reducing Vehicle Miles Traveled with good urban design, successful historic preservation and preservation of an existing creek. All of these goals are public benefits to the City of El Cerrito.

SECTION 3. ZONING MAP AMENDMENT

Pursuant to Chapter 19.14 of the City of El Cerrito Municipal Code the City of El Cerrito Zoning Map is amended to rezone the property described below to a Planned Development Zoning District:

0.42 acres at 1715 Elm Street (“Project site”).

A map of the rezoning area is shown in Exhibit A. The allowable use of the Property is described in the Planned Development Use Permit for the Project.

11. Compliance with adopted Mitigation Measures. The Applicant/Developer shall comply with all adopted mitigation measures of the Initial Study and Mitigate Negative Declaration prepared for 1715 Elm Street.

12. Confirmation of ownership. The Applicant/Developer shall provide the City with a recorded copy of the deed vesting title to the Property in its name.

SECTION 4. NOTICING, POSTING AND PUBLICATION

This ordinance is adopted pursuant to the procedures established by state law, and all required notices have been given, and the public hearing has been properly held and conducted.

SECTION 5. EFFECTIVE DATE

This ordinance shall not take effect until the Development Agreement for the Project takes effect and is recorded on the Property.

THE FOREGOING ORDINANCE was introduced at a regular meeting of the City Council on August 19, 2014 and passed by the following vote:

AYES: Councilmembers
NOES: Councilmembers
ABSTAIN: Councilmembers
ABSENT: Councilmembers

ADOPTED AND ORDERED published at a regular meeting of the City Council held on
September 22, 2014 and passed by the following vote:

AYES: Councilmembers
NOES: Councilmembers
ABSENT: Councilmembers

APPROVED:

Janet Abelson, Mayor

ATTEST:

Cheryl Morse, City Clerk

IN WITNESS of this action, I sign this document and affix the corporate seal of the City of El Cerrito on September XX, 2014.

Cheryl Morse, City Clerk

ORDINANCE CERTIFICATION

I, Cheryl More, City Clerk of the City of El Cerrito, do hereby certify that this Ordinance is the true and correct original Ordinance No. 2014-XX of the City of El Cerrito, that said Ordinance was duly enacted and adopted by the City Council of the City of El Cerrito at a meeting of the City Council held on the ___ day of September 2014; and that said ordinance has been published and/or posted in the manner required by law.

WITNESS my hand and the Official Seal of the City of El Cerrito, California, this ___ day of September, 2014.

Cheryl Morse, City Clerk
RESOLUTION 2014–XX

A RESOLUTION OF THE EL CERRITO CITY COUNCIL DENYING AN APPEAL AND UPHOLDING THE PLANNING COMMISSION’S APPROVAL OF A PLANNED DEVELOPMENT USE PERMIT AT 1715 ELM STREET

WHEREAS, the Edward and Loretta Biggs Revocable Trust proposes a development project that includes the conversion and renovation of an existing historical single-family detached house into a community center type use, the construction of 14 new one- and two-bedroom dwelling units, and the preservation of an existing creek on 0.42 acre site. The project proposes rezoning the property to PD (Planned Development); a Planned Development Use Permit; Design Review; a subdivision map and condominium plan; and a Development Agreement (the “Project”); and

WHEREAS, the subject site is located at 1715 Elm Street; and

WHEREAS, the zoning district of the site is RM (Multifamily Residential); and

WHEREAS, the general plan land use designation of the site is High Density; and

WHEREAS, on January 13, 2014 the City circulated an Initial Study/Mitigated Negative Declarations pursuant to the CEQA Guidelines; and

WHEREAS, at their March 19, 2014 meeting, the Planning Commission held a duly noticed public hearing, received public testimony and directed staff to bring the project back for formal action; and

WHEREAS, at their April 16, 2014 meeting, the Planning Commission held a duly noticed public hearing, received public testimony and adopted Resolution PC14-06, adopting an Initial Study and Mitigated Negative Declaration for the Project; and

WHEREAS, at their April 16, 2014 meeting, the Planning Commission held a duly noticed public hearing, received public testimony and adopted Resolution PC14-07, approving a Planned Development Use Permit for the Project; and

WHEREAS on April 28, 2014, Howdy Goudey, Robin Mitchell, Jason Hasley, Keystone Montessori School, Linda Shehabi, Dan & Henia Pines and Julia Lucia filed an appeal of the Planning Commission’s Planned Development Use Permit approval for the Project; and

WHEREAS, on June 2, 2014, the City Council held a duly noticed public hearing to consider the appeal. The City Council closed the public hearing and continued consideration of the appeal to June 23. At the June 23 meeting, the City Council requested additional information and continued deliberations. On August 19, the City Council reopened the hearing, received the additional information; and
WHEREAS, based upon the evidence presented in the record on this matter, including the staff report and oral and written testimony and the proceedings before the City Council and the Planning Commission, the Council has considered the appeal.

NOW THEREFORE, BE IT RESOLVED:

The City Council of the City of El Cerrito finds that:

1. The proposed project will be a transit oriented development (TOD) with good urban design. It will add 14 new dwelling units to the neighborhood while preserving a historic structure and retaining the existing creek. It will not unduly shade surrounding dwellings or create unacceptable traffic or parking impacts; and as conditioned it will not adversely affect the livability of the abutting properties or neighborhood.

2. The location and design of the project will provide a functional living environment that has good urban design. With the required vehicle parking tucked under the building, daylighted creek and landscaped area and clear sightlines to the restored historic building, it will be an attractive amenity for the City.

3. The project is consistent with the purposes of the district and conforms in all significant respects with the General Plan as conditioned; in that it consists of high density multifamily development that utilizes good urban design principles including reduced parking requirements, parking concealed under the new building, and a mix of unit types. It also preserves an important historic resource and protects an existing creek by including it within its landscaped area. The project will implement the following General Plan policies: LU1.3: Quality of Development, LU1.5: Suitable Housing, LU1.6: Various Housing Types, LU1.7: Maximum Density, LU5.5: Pedestrians, Bicycles, and Access, LU6.4: Water Conservation, CD1.2: Design Concept, CD1.3: High-Quality Design, CD1.5: Landmarks Preservation, CD 1.9: Building Design, CD3.3: Site Landscaping, CD4.2: Building Articulation, CD5.1: Design Review Process and R2.2: Historic Preservation.

4. The proposed project will be a transit oriented development (TOD) located within 800 feet of a BART station (1,400 feet by foot). It will add 14 new dwelling units while preserving a historic dwelling and retain an existing creek.

5. The new construction includes both one bedroom and two bedroom housing unit styles. All units’ prices will be set by the market. It is expected that the prices will reflect the different unit sizes.

6. While this is an important consideration, there was no feasible way to include a mandate to offer these units at an affordable price to persons and families of low and moderate income or lower income homes as defined by the State of California.

7. The existing infrastructure is sufficient to serve the proposed development as proposed.
8. While requiring relief from some development standards of the RM zone, it exceeds the zone requirements for both common area and private open space and allows for ten percent less lot coverage than could have been allowed in this district.

9. The use of the development area is primarily residential with community center type uses allowed in the historical structure. Other uses may be permitted consistent with the regulations for the RM zone.

10. The design of the new construction has been designed to allow acceptable levels of light and air into the interior spaces of the building. As conditioned, it shall meet or exceed all requirements of the California Building Code. In addition, the distance between the re-located historic structure and the adjacent pre-school is approximately 13 feet.

11. This project will contribute to the enhancement of the neighborhood character and the environment of El Cerrito in the long term in that it represents a balance of many of El Cerrito’s core values. It incorporates transit oriented development and good urban design with successful historic preservation and stewardship of an existing creek.

12. The project is proposing to provide 14 new one and two bedroom dwelling units on a 0.42 acre site that is designated in the General Plan for high density. It also proposes to restore and relocate the existing historic structure on site preserving an important historic resource. Finally, the project is proposing to keep the creek in place, thereby protecting the 115 foot long water course which is a tributary of the Baxter Creek and utilizing it as an amenity to the overall site.

BE IT FURTHER RESOLVED that after careful consideration of facts, correspondence, and testimony, and other evidence submitted in this matter, the El Cerrito City Council hereby denies the subject appeal and upholds the Planning Commission’s approval of Planned Development Use Permit at 1715 Elm Street. Application No. 6133, subject to the following conditions:

Building and Planning Division:

1. The project will be constructed substantially in conformance with the plans dated January 20, 2014, as amended in the revised site/landscape plan of April 15, 2014. Minor changes may be approved by the Zoning Administrator. All improvements shall be installed in accordance with these approvals. Once constructed or installed, all improvements shall be maintained as approved. Minor changes may be approved by the Zoning Administrator.

2. If Applicant constructs buildings or makes improvements in accordance with these approvals, but fails to comply with any of the conditions of approval or limitations set forth in these Conditions of Approval and does not cure any such failure within a reasonable time after notice from the City of El Cerrito, then such failure shall be cause
3. These Conditions of Approval shall apply to any successor in interest in the property and Applicant shall be responsible for assuring that the successor in interest is informed of the terms and conditions of this approval.

4. All new residential developments of five or more units are required to comply with the Art in Public Places ordinance pursuant to El Cerrito Municipal Code Section 13.50. This is a requirement of any project with development costs of two hundred fifty thousand dollars or more. The applicant shall devote an amount not less than one percent of such costs for acquisition and installation of public art on the development site, subject to a maximum of one hundred fifty thousand dollars. Compliance with the provisions of this chapter shall be demonstrated by the applicant at the time of filing a building permit application in one of the following ways:

   a. Payment of the full amount of the public art in-lieu contribution; or

   b. Written proof to the community development department of a contractual agreement to commission or purchase and install the required public art on the subject development site and a written acknowledgement by the visual art professional and the owner or developer, in a form approved by the city, that the proposed public art complies with the following criteria:

      1. The public art shall be designed and constructed by any person experienced in the production of such art and recognized by critics and by his or her peers as one who produces works of art;

      2. The public art shall require a low level of maintenance and that the proposed maintenance provisions are adequate for the long-term integrity and enjoyment of the work;

      3. The public art shall be related in terms of scale, material, form and content to immediate and adjacent buildings and architecture, landscaping or other setting so as to complement the site and its surroundings and shall be consistent with any corresponding action of the planning commission, design review board or city council as it may relate to any development entitlements;

      4. Permanent public art shall be a fixed asset to the property;

      5. The public art shall be maintained by the property owner in a manner acceptable to the city;

      6. The public art meets all applicable building code requirements.

The applicant shall provide the city with proof of installation of the required public
art project on the development site prior to the issuance of a certificate of occupancy. If installation prior to the date of occupancy is impracticable, as determined by the city manager or his or her designee, a certificate of occupancy may be approved for the building or portion thereof if the application submitted pursuant to this section has been approved, the applicant has executed a written agreement with the city to install the public art, and the applicant has filed security in an amount and form acceptable to the city attorney to guarantee installation of the public art.

5. The mitigation measures identified in the mitigation monitoring plan (MMRP) shall be considered conditions of approval of the project. They are included as Exhibit A to the resolution.

6. Prior to the issuance of a building permit, the Building Official shall confirm that the building permit plans, specifications and other related information conform to the California Codes in effect at the time, and all other applicable local ordinances. Compliance with the California Codes and local ordinances shall include, but not be limited to, seismic and geotechnical requirements for Seismic Zone 4, and Title 24 energy conservation and disabled access requirements.

7. Prior to the issuance of a building permit, Applicant shall submit to the Building Official proof of compliance with all other permits necessary from the applicable regulatory agencies, including but not limited to the Stege Sanitary District, West Contra Costa Unified School District, Pacific Gas and Electric and East Bay Municipal Utility District.

8. A demolition permit for all proposed demolition shall be submitted to and approved by the City of El Cerrito prior to issuance of a building permit.

9. Prior to the issuance of a demolition or building permit, the Building Official shall confirm that a survey of lead-based paint (LBP) and asbestos-containing materials (ACMs) shall be completed and all identified ACMs and any loose or peeling LBP must be abated. If intact LBP is present on the site and not abated, demolition and construction activities must comply with the State’s construction lead standard (Title 8, California Code of Regulators, Section 1532.1).

10. Prior to the issuance of a building permit the applicant and/or construction company shall submit the location of construction staging areas for materials, equipment, and vehicles to the Zoning Administrator for review and approval.

11. Prior to the issuance of a building permit the applicant and/or construction company shall submit a parking management plan for all construction workers and their equipment to ensure that construction workers or construction equipment and vehicles do not occupy on-street spaces.

12. In the City of El Cerrito, the hours of construction work are limited to:
a. 7:00 a.m. to 6:00 p.m. Monday through Friday
   8:00 a.m. to 5:00 p.m. on Saturdays
b. Work is prohibited on Sundays and holidays.
c. Work may be prohibited during inclement weather by order of the City Building
   Official.

13. No construction shall take place on June 27, 2014 graduation day at the request of the
    preschool.

14. To ensure that the construction of the project is completed with minimal impact to the
    existing neighborhood, the following requirements shall be met before the issuance of a
    building permit:

   a. Applicant shall submit a construction sign for approval by the Development
      Services Manager. The sign shall be made of a permanent material with
      professional lettering. The sign shall be at least 2 feet by 3 feet with a minimum
      letter size of 2 inches. The sign shall include the following information: the
      project name; name of the owner/developer; the name and phone number of a
      contact person, available at all times to address complaints and with the authority
      to control construction activity on the site; name and phone number of the
      contractor; and the approved hours of construction.

   b. The sign shall be posted at the time of placing temporary fencing and start of
      construction activity. The sign shall be placed on the Elm Street frontage of the
      site in a location facing the street where the information can be easily read by
      people in the right-of-way.

15. Prior to issuance of a building permit, the applicant shall submit a site security and
    safety plan to assure that grading and construction activities are adequately secured
    during off-work hours. This will include the temporary construction fence required in the
    Public Works Department condition listed below. The height of the construction fence on
    the south side of the property shall be twelve feet in height.

16. The applicant shall stipulate in the construction bid information for the project that
    construction company shall be required to do the following:

   a. A notification procedure stating their plan to notify adjacent property owners as to
      when major deliveries, detours and lane closures may occur. At a minimum, this
      notification plan will include a written notice sent electronically as soon as possible
      to all neighbors that request such notification. The list of interested parties will be
      kept by the Community Development Department.

   b. A monthly meeting in person with the operators of the preschool to go over any
      issues or concerns.

   c. Make every possible effort shall be made to have the construction site turn off all
      unnecessary heavy equipment, generators and power tools from noon until 1:00
      p.m.
17. Prior to issuance of a certificate of occupancy, the Zoning Administrator shall confirm that:

   a. All mechanical equipment, including electrical and gas meters, heating/air conditioning or ventilation units, radio/TV antennas or satellite dishes shall be appropriately screened from off-site view, and electrical transformers shall be either placed underground or appropriately screened.

   b. All visible vents, gutters, down spouts, flashings, and the like shall match the color of adjacent surfaces, or shall be incorporated into the overall exterior color and materials scheme for the building.

18. All landscaping improvements shall be maintained in a healthy, growing condition at all times. The landscaped areas shall be irrigated by an automatic sprinkler system designed to reduce water usage. Applicant shall replace all landscaping that dies with the exact living species, or substitutes approved by the Zoning Administrator.

19. The applicant has volunteered to donate four thousand dollars to the City of El Cerrito towards the creation and installation of up to two historical plaques. (This money will be held in a draw down account and any unused funds will be refunded.) The purpose of commemorative plaques would be to explain the history of the Rodini house as well as the history of the surrounding Little Italy neighborhood. The Zoning Administrator shall work with the El Cerrito Historical Society to create these plaques. The plaques will be installed on the front fence of the new project.

20. If for some reason, the City Council denies the Development Agreement, or the Planned Development District, this entitlement is null and void.

21. Any future use of the historic building located on site shall be as a museum, art studio or offices, which are all uses seen in community centers. The hours of operation shall not exceed 10:00 am to 5:00 pm, Monday through Saturday. Any event held at subject property beyond the stipulated hours of operation shall be required to receive a Temporary Use Permit and requires the approval of the Home Owners Association of 1715 Elm Street.

22. The private open space in front of the historic building shall be available for public use for the same hours as stipulated for the historic structure. Any trash or damage to the open space generated by the users of the house shall be remediated by the users, not the future Home Owners Association.

23. As stated in the Development Agreement, the historic structure located on site shall be leased to the City of El Cerrito for a term of 99 years for $1.00. The City shall utilize this building as a museum, art studio or offices, which are all uses seen in community centers.
24. Prior to the issuance of the building/relocation permit for the historic structure, the applicant/developer shall submit a set of plans that illustrate the floor plan of the structure, the addition of new foundation, the restoration of the east or main elevation of the structure to the Department of Interior standards for rehabilitation, as well as the restoration plans for the remaining three exterior elevations to match the east elevation in terms of colors and materials. A new roof to match the existing roof is required as well. Further, the plans shall note the location and construction of a restroom and an exterior lift on the eastern elevation, both of which shall be designed to be compliant with Title 24 of the California Building Code and the Americans with Disabilities Act requirements. Finally, the all plumbing and electrical components of the historical building shall be revised to comply with current California Building Code requirements. These plans must be created to the satisfaction of the Development Services Manager and the Building Official.

25. The renovation of the historic structure shall be complete prior to the issuance of the Certificate of Occupancy of the new 14 unit building.

26. All landscaping shown on the site/landscape plan dated April 15, 2014 must also be complete prior to the Certificate of Occupancy of the 14 unit building.

Public Works Department:

27. A complete Stormwater Control Plan (Narrative Report and Exhibit) prepared in accordance with the latest version of Contra Costa Stormwater C.3 Guidebook, must be submitted as soon as possible to ensure the stormwater design, site plan, and landscaping plan are congruent.

28. Any changes to the existing storm drain channel will require a Public Works Encroachment Permit and may require that a storm drain easement be recorded. The applicant must furnish plans, specifications and hydrology/hydraulics studies, as appropriate, prior to consideration of the permit application. The City may impose conditions as are appropriate to eliminate any diminution in the capacity of the existing drain to carry off the volume of water reasonably anticipated. If conflict exists between the Encroachment Permit and the JARPA permit, the JARPA permit shall prevail.

29. Remove and replace all sidewalk and driveway approaches to comply with Americans with Disability Act and all other applicable City standards. Sidewalk and driveway improvements shall require a Public Works Encroachment Permit.

30. All site grading shall be done per Chapters 8 and 13 of the El Cerrito Municipal Code and all other relevant laws, rules and regulations. Prior to commencing any grading in excess of 50 cubic yards, the applicant shall obtain a Grading & Transportation Permit and approval from the Public Works Department.
31. New street tree types and locations shall be approved by the City Arborist prior to issuance of a building permit.

32. Prior to issuance of a building, demolition or grading permit for any portion of the project, applicant shall submit a Traffic and Parking Management Plan for review and approval by the Public Works Director and the Zoning Administrator. The plan shall include any City restrictions and limitations on using certain local streets for construction traffic, proposed truck delivery and haul routes, parking arrangements for construction personnel, ingress and egress, noise, efforts to address street debris and dust control and proposed on-site staging and equipment/material storage areas.

33. Prior to the issuance of a building permit, applicant shall install temporary construction fence around the perimeter of the site that provides for continued pedestrian traffic meeting the standards of the Americans with Disabilities Act as approved by the Public Works Director and the Zoning Administrator. On the southern property line, the fence shall be 12 feet high to provide an additional visual and safety screen for the adjacent school. The applicant shall submit the materials for the fence to the Zoning Administrator for review and approval before the fence is installed.

34. Applicant, through its contractor, shall implement comprehensive traffic control measures as set forth in the approved Traffic and Parking Management Plan, including scheduling of major truck trips and deliveries to avoid peak hours (normally 7 a.m. to 9 a.m. and 4 p.m. to 6 p.m.).

35. All mud, dirt and construction debris carried off the construction site onto adjacent streets shall be removed and cleaned daily. Failure to adequately sweep the streets may result in the City undertaking the effort at Applicant’s cost.

36. Dust control measures to minimize air quality impacts shall be implemented including:

   a. Cover stockpiles of debris, soil, sand or other materials that can be blown by the wind. b) Cover all trucks hauling soil, sand, and other loose materials.
   b. Pave, apply non-potable water three times daily, or apply (non-toxic) soil stabilizers on all unpaved access roads, parking areas and staging areas at site.
   c. Limit traffic speeds on unpaved roads to 5 mph.
   d. Install, maintain and replace sandbags or other erosion control measures to prevent silt runoff to public roadways.
   e. Minimize removal and replant vegetation in disturbed areas as quickly as possible.
   f. No grading between October 1st and April 15th unless the City Engineer has approved an erosion and sedimentation control plan.

37. Applicant shall be deemed responsible for any damage to public improvements that
occur during construction and shall repair such damage at its expense and to the satisfaction of the City Engineer, including but not limited to sidewalk repair, street slurry seal or street reconstruction.

38. Prior to issuance of a certificate of occupancy, the Public Works Director shall confirm that all off-site and on-site public improvements (including sidewalk and driveway approaches) are completed in accordance with the final building permit and improvement plans or that other arrangements acceptable to the Public Works Director have been made for ensuring that the work is completed, such as an irrevocable standby letter of credit.

Operations and Environmental Services Division

39. Prior to issuance of a building permit, the applicant shall provide provision for pickup and hauling of solid waste and recycling to the satisfaction of the City of El Cerrito Operations & Environmental Services Division. This includes a written description of the plan for the removal of solid waste and recycling items; the plans clearly showing the location of the solid waste and recycling area and the proposed access for both users and waste haulers. The solid waste and recycling area must include:

   a. Access doors that are at least 8 feet wide.
   b. The solid waste and recycling storage areas/room shall be lined with metal bands 2 feet wide at a height starting 3 feet from the ground.
   c. There shall be sloping curbs in front of the access door to the solid waste and recycling storage areas/rooms.

40. Prior to the issuance of a building permit, the applicant shall submit a Construction/Demolition Waste Management Plan to the satisfaction of the City of El Cerrito Operations and Environmental Services Division. This plan must comply with the California Building Code requirement that at least 50% by weight of jobsite debris generated by new construction be recycled, reused or otherwise diverted from landfill disposal.

41. Upon completion of construction and demolition activities, but before the Certificate of Occupancy, the applicant shall submit the CWM Report to demonstrate achievement of the diversion requirement to the satisfaction of the City of El Cerrito Operations and Environmental Services Division.

Fire Department:

42. Approved numbers or address shall be provided in such a position to be plainly visible and legible from the street fronting the property.
   a. The address numbers shall be of contrasting color of the background shall be internally or externally illuminated.
b. If address cannot be placed as stated above a monument shall be placed where the address is plainly visible from the street.

43. An Automatic Fire Sprinkler System is required for this project.

44. A fire hydrant is required within 50’ of the Fire Department Connection (FDC) and shall be on the same side of the street as the FDC unless approved by the Fire Marshal.

45. Building shall have a “Wet Fire Standpipe in rear stairwell.

46. Standpipes shall be interconnected with the fire sprinkler system.

47. The fire alarm system shall be installed in accordance with NFPA 72.

48. Fire alarm System shall have the FACP located in an approved location and shall be easily accessible and access doors clearly labeled.

49. If the FACP cannot be located for easy access a remote enunciator shall be placed in an approved location.

50. Knox box shall be placed adjacent to entry doors, doors inclosing the fire sprinkler riser and or fire alarms control panel and any remote annunciating locations, and locking gates.

51. Electronic gate shall have a Knox Key Entry System installed for emergency operations.

52. All Knox Box Entry Systems used in this building shall be approved by the Fire Marshall before installation.

53. Fire Extinguishers shall be placed on each level and throughout the building.
   a. Spacing shall have a maximum travel distance of 75’.
   b. Travel distance to an extinguisher shall not exceed 75’ of travel distance.
   c. The location of each extinguisher shall be conspicuously posted with an approved sign. Mount Fire extinguishers on wall with the top no higher than 5 feet from the ground.

54. All electrical breakers shall be labeled. Major equipment shall have corresponding labels.

55. The Fire Department shall review building plans for compliance of these before a building permit is issued. The applicant shall provide Fire Prevention Division with 24-hour notice prior to any inspections. Implementation of these conditions shall be verified prior to the issuance of the Certificate of Occupancy.

Police Department:

56. The building plans shall note that exterior lighting shall provide adequate illumination for
on-site security and display purposes for the building, parking lot and pedestrian access ways while limiting off-site spillover of light through shielding. This condition shall be reviewed for compliance prior to the Certificate of Occupancy.

I CERTIFY that at a regular meeting on August 19, 2014, the El Cerrito City Council passed this Resolution by the following vote:

AYES: COUNCILMEMBERS:
NOES: COUNCILMEMBERS:
ABSTAIN: COUNCILMEMBERS:
ABSENT: COUNCILMEMBERS:

IN WITNESS of this action, I sign this document and affix the corporate seal of the City of El Cerrito on August X, 2014.

Cheryl Morse, City Clerk

APPROVED:

Janet Abelson, Mayor
CEQA Mitigation Monitoring Plan

INTRODUCTION

The California Environmental Quality Act (CEQA) requires review of any project that could have significant adverse effects on the environment. In 1988, CEQA was amended to require reporting on and monitoring of mitigation measures adopted as part of the environmental review process. This Mitigation Monitoring and Reporting Program (MMRP) is designed to aid the City of El Cerrito in its implementation and monitoring of measures included in the Initial Study prepared for the proposed project located at 1715 Elm Street.

MITIGATION MEASURES

The MMRP describes the actions that must take place to implement each mitigation measure, the timing of those actions, and the entities responsible for monitoring the actions.

MMRP COMPONENTS

The components of each monitoring form are addressed briefly, below.

Mitigation Measure: All mitigation measures that were identified in the 1715 Elm Street Initial Study are presented and numbered accordingly.

Timing/Implementation: Each action must take place prior to the time at which a threshold could be exceeded. Implementation of the action must occur prior to or during some part of approval, project design or construction or on an ongoing basis. The timing for each measure is identified. Within the City of El Cerrito, the responsibility for implementation of the measures would lie with the Planning and Building Division.

Enforcement/Monitoring Party: The City of El Cerrito is responsible for ensuring that mitigation measures are successfully implemented.

Air Quality Mitigations

AQ-1 To adequately control dust, the project applicant shall ensure construction contracts contain requirements for implementing the BAAQMD’s basic construction mitigation measures from Table 8-1 of the BAAQMD’s CEQA Guidelines. Construction contracts shall also contain the following measures in order to reduce the emissions of toxic pollutants generated by heavy-duty diesel powered equipment during construction.

1. Keep all construction equipment in proper tune in accordance with manufacturers’ specifications.
2. Use late-model heavy-duty diesel-powered equipment during construction to the extent that it is readily available in the San Francisco Bay Area.
3. Use diesel-powered equipment that has been retrofitted with after-treatment products (e.g., engine catalysts) to the extent that it is readily available in the
San Francisco Bay Area.

4. Use low-emission diesel fuel for all heavy-duty diesel-powered equipment operating and refueling at construction sites to the extent that it is readily available and cost effective in the San Francisco Bay Area. (This requirement does not apply to diesel-powered trucks traveling to and from the site.)

5. Utilize alternative-fuel construction equipment (i.e., compressed natural gas, liquid petroleum gas, and unleaded gasoline) to the extent that the equipment is readily available and cost effective in the San Francisco Bay Area.

6. Limit truck and equipment idling time to 5 minutes or less.

7. Rely on the electricity infrastructure surrounding the construction site rather than electrical generators powered by internal combustion engines to the extent feasible.

**Timing/Implementation:** Prior to construction

**Enforcement/Monitoring:** City of El Cerrito Planning Division

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**Biological Mitigations**

**BIO-1 Survey for Migratory Birds.**

If clearing and/or construction activities will occur during the migratory bird nesting season (April 15–August 15), preconstruction surveys for nesting migratory birds shall be conducted by a qualified biologist, up to 14 days before initiation of construction activities. The qualified biologist shall survey the construction zone and a 250-foot radius surrounding the construction zone to determine whether the activities taking place have the potential to disturb or otherwise harm nesting birds.

If active nest(s) are identified during the preconstruction survey, a qualified biologist shall monitor the nest to determine when the young have fledged. Monthly monitoring reports, documenting nest status, shall be submitted to the City Planning Division until the nest(s) is deemed inactive. The biological monitor shall have the authority to cease construction if there is any sign of distress to a raptor or migratory bird. Reference to this requirement and to the Migratory Bird Treaty Act shall be included in the construction specifications.

**Timing/Implementation:** Prior to construction

**Enforcement/Monitoring:** City of El Cerrito Planning Division

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**BIO-2 Survey for Active Raptor Nests.**

If construction activities will occur during the nesting season for raptors (January 15–August 15), all suitable raptor nesting habitat within 0.5 mile of the impacted area shall be surveyed for active raptor nests before construction activity commences. If an active raptor nest is located within 0.5 mile of the construction site, a no-activity buffer shall be erected around the nest while the nest is active to protect the nesting raptors. This buffer distance may be amended to account for nests that are not within the line of sight of the construction activity.

**Timing/Implementation:** Prior to construction

**Enforcement/Monitoring:** City of El Cerrito Planning Division

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**BIO-3 Conduct Surveys for Bird Nests in Structures.**

If demolition of on-site structures is proposed to take place during the migratory bird nesting season (April 15–August 15), a survey for nesting migratory birds (e.g., swallows, phoebes) shall be conducted by a qualified biologist prior to demolition. If bird nests are discovered in the structure, the structure shall not be removed until the nest(s) become inactive.

**Timing/Implementation:** Prior to demolition

**Enforcement/Monitoring:** City of El Cerrito Planning Division
BIO-4 Conduct Surveys for Potential Bat Roosts. Demolition of on-site structures shall be preceded by a survey for bat presence. Structures being used by bats will not be removed until it has been determined that bats are no longer using the site or until demolition can be carried out without harming any bats.  
**Timing/Implementation:** Prior to demolition  
**Enforcement/Monitoring:** City of El Cerrito Planning Division

BIO-5 Mitigate for Loss of Waters of the United States. If the US Army Corps of Engineers identifies that the feature is jurisdictional, the project applicant shall ensure that the project will result in no net loss of waters of the United States by providing mitigation through impact avoidance, impact minimization, and/or compensatory mitigation for the impact, as determined in the CWA Section 404/401 permits and/or 1602 Streambed Alteration Agreement.  
**Timing/Implementation:** Prior to construction  
**Enforcement/Monitoring:** City of El Cerrito Planning Division

### Cultural Resource Mitigations

**CULT-1** Prior to any alterations of structures on the project site, the project applicant shall complete Historic American Building Survey (HABS) level documentation. Prior to occupancy of any structure on the project site, the applicant shall complete façade restoration, and reuse building materials and landscape features, as discussed below.

a) The project applicant shall document the affected historical resource and its setting, in accordance with HABS. The intent is to preserve an accurate record of historic property that can be used in research and other preservation activities. To serve these purposes, the documentation must include information that permits assessment of its reliability. Generally, this includes:
   - **Drawings:** Select existing drawings, where available, should be photographed with large-format negatives or photographically reproduced on Mylar.
   - **Photographs:** Photographs with large-format negatives of exterior and interior views, or historic views, where available.
   - **Written data:** History and description in narrative or outline format. HABS material standards regarding reproducibility, durability, and size shall be met. Copies of the photographs and report shall be presented to repositories that are invested in archiving the history of El Cerrito.

b) Restore the building façade, including windows, the historic wood trim around the doors and windows on the primary façade, and the door in the main entrance, as determined by documentation by either physical and/or documentary evidence to the extent documentation is available. If physical evidence is inconclusive or historic photographs are not available, comparable, intact properties built during the same period as the Rodoni house may be used to inform the appearance of the façade.  
**Timing/Implementation:** Prior to construction or demolition activities  
**Enforcement/Monitoring:** City of El Cerrito Planning Division

**CULT-2** In the event any archeological resources are encountered during construction, work within 100 feet of the find shall cease and a qualified paleontologist shall be contacted by the project applicant to determine whether the resource is significant. If the find is determined to be of significance, an excavation plan shall be created and resources shall be donated to an appropriate cultural center. All work products and plans shall be reviewed and approved by the City prior to execution.  
**Timing/Implementation:** During construction


**CULT-3** In the event paleontological resources are encountered during construction, the construction manager shall cease operation at the site of the discovery and immediately notify the City of El Cerrito Environmental & Development Services Department. The project applicant shall retain a qualified paleontologist to provide an evaluation of the find and to prescribe mitigation measures to reduce impacts to a less than significant level. In considering any suggested mitigation proposed by the consulting paleontologist, the City of El Cerrito Environmental & Development Services Department shall determine whether avoidance is necessary and feasible in light of factors such as the nature of the find, project design, costs, and other considerations. If avoidance is unnecessary or infeasible, other appropriate measures (e.g., data recovery) shall be instituted. Work may proceed on other parts of the project site while mitigation for paleontological resources is carried out.

*Timing/Implementation: During construction*

**CULT-4** If human remains are encountered during project construction, work within 100 feet of the remains shall be suspended immediately, and the City of El Cerrito Environmental & Development Services Department and the Contra Costa County Coroner shall be immediately notified. If the remains are determined by the County Coroner to be Native American, the Native American Heritage Commission (NAHC) shall be notified within 24 hours. A professional archaeologist with Native American burial experience shall conduct a field investigation of the specific site and consult with the Most Likely Descendant, if any, identified by the NAHC. As necessary, the archaeologist may provide professional assistance to the Most Likely Descendant, including the excavation and removal of the human remains. The City of El Cerrito Environmental & Development Services Department will be responsible for the approval of recommended mitigation, taking account of the provisions of state law, as set forth in CEQA Guidelines Section 15064.5(e) and Public Resources Code Section 5097.98. The project applicant shall implement the approved mitigation, to be verified by the City of El Cerrito Environmental & Development Services Department, before the resumption of activities at the site where the remains were discovered.

*Timing/Implementation: During construction*

**GHG-1** Prior to issuance of grading or building permits, the project applicant shall specify on the final project plans implementation of BAAQMD-recommended construction-related measures to reduce GHG emissions during construction activities. These measures include, as feasible:
1. Use alternative-fueled (i.e., biodiesel, electric) construction vehicles and equipment to the maximum extent possible.
2. Use local construction materials (within 100 miles) to the maximum extent possible.
3. Recycle construction waste and demolition materials to the maximum extent possible.

*Timing/Implementation: Prior to grading permits*
ORDINANCE 2014–XX

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF EL CERRITO APPROVING A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF EL CERRITO AND THE EDWARD AND LORETTA BIGGS REVOCABLE TRUST FOR 1715 ELM STREET – APPLICATION 6133

THE CITY COUNCIL OF THE CITY OF EL CERRITO DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. RECITALS

A. The Applicant, the Edward and Loretta Biggs Revocable Trust, proposes a development project that includes the conversion and renovation of an existing historical single-family detached house on the Property into a community center type uses, the construction of 14 new one- and two-bedroom dwelling units, and the preservation of an existing creek on 0.42 acre site. The project proposes a Planned Development Use Permit; Design Review; a subdivision map and condominium plan; and this Development Agreement. The proposed development and applications are collectively known as the “Project”; related approvals of the applications are collectively known as the “Project Approvals”.

B. The Project site is located at 1715 Elm Street in El Cerrito, California (the “Property”).

C. The Applicant and City desire to enter into a Development Agreement subject to certain terms, attached to this ordinance, and the vesting of the Project Approvals for ten years.

D. The California Environmental Quality Act (CEQA), together with the state guidelines and City environmental regulations, require that certain projects be reviewed for environmental impacts and that environmental documents be prepared.

E. An Initial Study and Mitigated Negative Declaration (MND) pursuant to the California Environmental Quality Act (CEQA) have been prepared for this Project. All potential impacts identified are reduced to a less than significant level pursuant to the California Environmental Quality Act with the implementation of mitigation measures.

F. On April 16, 2014, the Planning Commission held a properly noticed public hearing on the Project, and adopted Resolution 14-07 recommending that the City Council adopt the Planned Development Use Permit, which Resolution is incorporated herein by reference and available for review at City Hall during normal business hours.

G. On May 21, 2014, the Planning Commission held a properly noticed public hearing on the Project, including the proposed General Plan Amendment, Planned Development District and Development Agreement, and adopted Resolution 14-10 recommending that the City Council not adopt the General Plan Amendment, Planned Development District and Development Agreement, which Resolution is incorporated herein by reference and available for review at City Hall during normal business hours.
H. On June 2, 2014, the City Council held a duly noticed public hearing to consider the Project Approval, including the Development Agreement. The City Council closed the hearing and continued consideration of the Project Approvals to June 23. At the June 23 meeting, the City Council requested additional information and continued deliberations. On August 19, the City Council reopened the hearing and received the additional information, and all interested parties had the opportunity to be heard.

I. A staff report dated August 19, 2014 and incorporated herein by reference, described and analyzed the Project, including the Development Agreement, for the City Council.

J. The City Council used their independent judgment and considered the staff report, the Initial Study and Mitigated Negative Declaration, and all reports, recommendations and testimony referenced above and adopted Resolution No. 14-XX adopting the Initial Study and Mitigated Negative Declaration prior to approving the Development Agreement.

K. The City Council has considered the recommendation of the Planning Commission on the Development Agreement, including the Planning Commission’s reasons for its recommendation, the staff report, all comments received in writing, and all testimony received at the public hearing.

SECTION 2. FINDINGS AND DETERMINATIONS

On the basis of: (a) the foregoing Recitals which are incorporated herein, (b) the City of El Cerrito General Plan; (c) Initial Study and Mitigated Negative Declaration, (d) the staff report; (e) information in the entire record of proceedings for the Project, and on the basis of the specific conclusions set forth below, the City Council finds and determines that:

1. The Development Agreement is consistent with the objectives, policies, general land uses and programs specified and contained in the City’s General Plan in that: (a) the General Plan land use designations, policies, programs and objectives are incorporated into the Development Agreement and not altered by the Development Agreement; and (b) the Project is consistent with the fiscal policies of the General Plan with respect to the provision of infrastructure and public services.

2. The Development Agreement is compatible with the uses authorized in, and the regulations prescribed for, the land use districts in which the real property is located.

3. The Development Agreement is in conformity with public convenience, general welfare, and good land use policies in that the Project will implement land use guidelines set forth in the General Plan.

4. The Development Agreement will not be detrimental to the health, safety, and general welfare in that the Developer’s proposed Project will proceed in accordance with all the programs and policies of the General Plan and Project Approvals.
5. The Development Agreement will not adversely affect the orderly development of property or the preservation of property values in that the Project will be consistent with the General Plan and Project Approvals.

6. The Development Agreement complies with the requirements of §§ 65864 et seq. of the California Government Code and El Cerrito Municipal Code Chapter 19.14 and specifies the duration of the agreement, the permitted uses of the property, the density or intensity of use, the maximum height and size of proposed buildings, and provisions for reservation of open space. The Development Agreement contains an indemnity and insurance clause requiring the developer to indemnify and hold the City harmless against claims arising out of the development process, including all legal fees and costs.

SECTION 3. APPROVAL

The City Council hereby approves the Development Agreement (Exhibit A to the Ordinance) and authorizes the City Manager to execute it.

SECTION 4. NOTICING, POSTING, PUBLICATION AND RECORDATION

This ordinance is adopted pursuant to the procedures established by state law, and all required notices have been given, and the public hearing has been properly held and conducted. Within ten days after the Development Agreement is fully executed by all parties, the Development Services Manager shall submit the Agreement to the County Recorder for recordation.

SECTION 5. EFFECTIVE DATE

This ordinance shall take effect thirty days after the date of its adoption, and prior to the expiration of fifteen days from the passage thereof, the ordinance or a summary thereof shall be posted or published as may be required by law, and thereafter the same shall be in full force and effect.

THE FOREGOING ORDINANCE was introduced at a regular meeting of the City Council on August 19, 2014 and passed by the following vote:

AYES: Councilmembers
NOES: Councilmembers
ABSTAIN: Councilmembers
ABSENT: Councilmembers
ADOPTED AND ORDERED published at a regular meeting of the City Council held on the September _____, 2014 and passed by the following vote:

AYES:            Councilmembers
NOES:            Councilmembers
ABSTAIN: Councilmembers
ABSENT: Councilmembers

APPROVED:

______________________________
Janet Abelson, Mayor

ATTEST:

______________________________
Cheryl Morse, City Clerk

IN WITNESS of this action, I sign this document and affix the corporate seal of the City of El Cerrito on September XX, 2014.

______________________________
Cheryl Morse, City Clerk

ORDINANCE CERTIFICATION

I, Cheryl Morse, City Clerk of the City of El Cerrito, do hereby certify that this Ordinance is the true and correct original Ordinance No. 2014-XX of the City of El Cerrito, that said Ordinance was duly enacted and adopted by the City Council of the City of El Cerrito at a meeting of the City Council held on the ___ day of September 2014; and that said ordinance has been published and/or posted in the manner required by law.

WITNESS my hand and the Official Seal of the City of El Cerrito, California, this ___ day of September, 2014.

______________________________
Cheryl Morse, City Clerk
Exhibit A
Legal Description of the Property

The land referred to is situated in the State of California, County of Contra Costa, City of El Cerrito, and is described as follows:

Lots 12, 13 and 14, in Block “B” as designated on the map entitled “Map of Schmidt Village, Contra Costa County, California”, filed June 27, 1896, in Book C of Maps, Page 70, Contra Costa County Records.

EXCEPTING THEREFROM: The Northeast 7.00 feet thereof, as described in the Deed to City of El Cerrito, recorded February 9, 1965, in Book 4801 Official Records of Contra Costa County, Page 144.

(APN 502-112-038)
DEVELOPMENT AGREEMENT

BETWEEN THE

CITY OF EL CERRITO

AND

THE EDWARD AND LORETTA BIGGS REVOCABLE TRUST
DATED MARCH 22, 2011

FOR 1715 ELM STREET
THIS DEVELOPMENT AGREEMENT ("Agreement" or "Development Agreement") is made and entered into in the City of El Cerrito on __________ 2014, by and between the City of El Cerrito, a municipal corporation ("City") and The Edward and Loretta Biggs Revocable Trust dated March 22, 2011 ("Developer") pursuant to the authority of §§ 65864 et seq. of the California Government Code and El Cerrito Municipal Code, Chapters 19.14 and 19.41. City and Developer are, from time-to-time, individually referred to in this Agreement as a “party,” and collectively as “parties.”

RECITALS

A. California Government Code §§ 65864 et seq. ("Development Agreement Law") and Chapter 19.41 of the El Cerrito Municipal Code ("Chapter 19.41") authorize the City to enter into a development agreement for the development of real property with any person having a legal or equitable interest in such property in order to establish certain development rights in such property. Chapter 19.14 of the El Cerrito Municipal Code ("Chapter 19.14") requires a development agreement for all projects for which Planned Development District zoning is approved.

B. Developer owns the real property located at 1715 Elm Street in the City (APN 502-112-038) and that is more particularly described in Exhibit A attached hereto and is incorporated herein by reference (the "Property").

C. The proposed development of the Property includes the relocation and conversion of an existing historical single-family detached house on the Property into a museum, art studio, office, or other community center type use, the construction of 14 new one- and two-bedroom dwelling units, and the preservation of an existing open space channel on the 0.42 acre site (the "Project").

D. Developer has applied for and City has approved or is processing, various land use approvals in connection with the Project, including, without limitation, a General Plan Amendment; Planned Development District zoning; a Planned Development Use Permit; Design Review; a subdivision map and condominium plan; and this Development Agreement. All such approvals, collectively, together with any approvals or permits now or hereafter issued with respect to the Project, are referred to as the "Project Approvals." None of the Project Approvals take effect until the Development Agreement takes effect.

E. City desires the timely, efficient, orderly and proper development of the Project.

F. The City Council has found that, among other things, this Development Agreement is consistent with its General Plan, as amended, and has been reviewed and evaluated in accordance with the Development Agreement Law and Chapters 19.14 and 19.41.
G. City and Developer have reached agreement and desire to express herein a Development Agreement that will facilitate development of the Project, subject to conditions set forth herein.

H. The El Cerrito Planning Commission approved a Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program for the Project on April 16, 2014 by the adoption of Planning Commission Resolution No. PC14-XX. The Mitigated Negative Declaration analyzed the environmental impacts of this Agreement. No significant unavoidable impacts were identified in the Mitigated Negative Declaration.

I. On ________, __ 2014, the City Council adopted Ordinance No. ___ approving this Development Agreement (the “Approving Ordinance”). The Approving Ordinance states that it will take effect on ______________ (the “Ordinance Effective Date”).

NOW, THEREFORE, with reference to the foregoing recitals and in consideration of the mutual promises, obligations and covenants herein contained, City and Developer agree as follows:

AGREEMENT

1. Description of Property.

The Property that is the subject of this Agreement is described in Exhibit A attached hereto.

2. Interest of Developer.

The Developer owns the Property.

3. Relationship of City and Developer.

It is understood that this Agreement is a contract that has been negotiated and voluntarily entered into by the City and Developer and that the Developer is not an agent of the City. The City and Developer hereby renounce the existence of any form of joint venture or partnership between them, and agree that nothing contained herein or in any document executed in connection herewith shall be construed as making the City and Developer joint venturers or partners.

4. Effective Date, Term, and Termination.

4.1. Effective Date. The effective date of this Agreement shall be the Ordinance Effective Date (“Effective Date”).

4.2. Term. The term of this Agreement shall commence on the Effective Date and extend five (5) years thereafter, unless said term is otherwise
terminated or modified pursuant to the provisions of this Agreement. As authorized by California Government Code Sections 65863.9 and 66452.6(a)(1), the terms of the Project Approvals shall be the longer of: (a) the term of this Agreement; or (b) the term normally given each approval under controlling law.

4.3. **Termination.**

4.3.1. **Termination on Sale of Individual Lots.** Notwithstanding the foregoing Section 4.2, the provisions of this Agreement shall terminate with respect to any individual lot and such lot shall be released from and shall no longer be subject to this Agreement (without the execution or recordation of any further document or the taking of any further action) upon the lot being finally subdivided and sold or leased to a member of the public or any other ultimate user. City shall cooperate with Developer, at no cost to City, in executing in recordable form any document that Developer (including any successor to the title of the Developer in and to any of the aforedescribed lots) may submit to confirm the termination of this Agreement as to any such lot. For purposes of this Section 4.3.1, each reference to a “lot” shall be deemed to include an individual dwelling unit that is a standalone structure or constructed within a multi-unit building, whether leased as an apartment or single-family home or sold as a condominium or similar interest in the Property.

4.3.2. **Termination Upon Completion of Project.** Notwithstanding the foregoing Sections 4.2 and 4.3.1, upon completing construction of the Project and satisfying all terms and conditions of this Agreement and the Project Approvals, Developer may send City written notice terminating this Agreement. City shall cooperate with Developer, at no cost to City, in executing in recordable form any document that Developer (including any successor to the title of Developer in and to any portion of the Property) may submit to confirm the termination of this Agreement.

5. **Use of the Property.**

5.1. **Right to Develop.** Developer shall have the vested right to develop the Project on the Property in accordance with the terms and conditions of this Agreement, the Project Approvals (as and when issued), and any amendments to any of them as shall, from time to time, be approved pursuant to this Agreement. (Such amendments, once effective, shall become part of the law Developer is vested into without an additional amendment of this Agreement.) Notwithstanding the foregoing or anything to the contrary herein, any amendment to the General Plan not in effect on the Effective Date shall not become part of the law Developer is vested into under this Agreement unless an additional amendment of this Agreement is entered into between Developer and City in accordance with state and City laws.
5.2. **Permitted Uses.** The permitted uses of the Property, the density and intensity of use, the maximum height, bulk, and size of proposed buildings, the provisions for reservation or dedication of land for public purposes, the location and maintenance of on-site and off-site improvements, the location of public utilities, and other terms and conditions of development applicable to the Property, shall be those set forth in this Agreement, the Project Approvals and any amendments to this Agreement or the Project Approvals, subject to the provisions of Section 5.1.

5.3. **Rules Regarding Permitted Uses.** For the term of this Agreement, the City’s ordinances, resolutions, rules, regulations and official policies governing the permitted uses of the Property and governing density and intensity of use of the Property and the maximum height, bulk and size of proposed buildings shall be those in force and effect on the Effective Date of this Agreement.

5.4. **Rules Regarding Design and Construction.** Unless otherwise expressly provided in Section 5 of this Agreement, the ordinances, resolutions, rules, regulations and official policies governing design, improvement and construction standards and specifications applicable to the Project shall be those in force and effect at the time of the applicable discretionary approval, whether the date of that approval is prior to or after the date of this Agreement. Ordinances, resolutions, rules, regulations and official policies governing design, improvement and construction standards, and specifications applicable to public improvements to be constructed by Developer shall be those in force and effect at the time of the applicable discretionary approval, whether the date of that approval is prior to or after the date of this Agreement.

5.5. **Building and Other Codes Applicable.** The Project shall be constructed in accordance with the provisions of the Building, Mechanical, Plumbing, Electrical, and Fire Codes and Title 24 of the California Code of Regulations, relating to Building Standards, in effect at the time of approval of the appropriate building, grading, encroachment or other construction permits for the Project.

5.6. **Treatment of Existing House.** The existing house that Developer plans to move and renovate within the Property as part of the Project (the "House"), shall be subject to the following terms and conditions.

5.6.1. **Relocation and Restoration of House.** Developer shall relocate the House to the location shown in the Project Approvals, which shall be part of the common area owned by the Homeowners Association for the Project ("HOA"). The House shall be placed on a new foundation. Plumbing and electrical systems shall be updated in compliance with applicable codes. A bathroom and exterior lift will be installed compliant with the Americans with Disabilities Act ("ADA"). Recognizing its historic
status, the exterior of the House shall be restored to applicable Department of Interior standards for restoration of historic structures; the ADA-compliant lift is allowed under the California Historic Building Code, which also applies to restoration of the House. Construction details and floor plan revisions shall be subject to the reasonable satisfaction of City’s Development Services Manager.

5.6.2. Lease to City. Developer agrees to lease the House to City after the structure has been moved and renovated, and City agrees to accept and enter into a lease for the House, subject to the terms and conditions in Section 5.6. The lease shall be for a term of ninety-nine (99) years, at a total rent of One Dollar ($1.00) payable in advance. Following expiration or earlier termination of the lease, the HOA shall be free to sell, lease or use the House as it sees fit, including residential use, subject to applicable regulations, including but not limited to obtaining an amendment to the City’s General Plan to allow for the resulting density.

5.6.3. Use of House. The lease shall specify that City may only use the House for (a) a museum, (b) an art studio, or (c) offices or similar community center type use, as are conditionally permitted in the underlying RM Zoning District. “Community center type use” shall be consistent with the foregoing specific uses and shall comply with applicable provisions of the El Cerrito Municipal Code, including limits on outdoor noise levels for residential areas (Section 19.21.050.B.2.a). No use of the House by City or a subtenant shall draw crowds or produce noise disruptive to the residents of the residential component of the Project, except for approved special events. Any special events would require an Administrative Use Permit. The House may be used by the City or a subtenant only Monday through Saturday between 8:00 a.m. and 6:00 p.m., unless the HOA agrees to different hours for special events. The House may only be opened to the general public during the same hours as the Publicly Available Open Space, set forth in Section 5.8 below. City acknowledges that the allowed uses of the House are intended to be compatible with the neighborhood and avoid traffic, parking and noise concerns. For the avoidance of doubt, the parties agree that while the lease is in effect the House may not be used as a residence.

5.6.4. Maintenance of House. While the lease is in effect, City shall be solely responsible for maintenance of the House (but not surrounding grounds which shall be the responsibility of the HOA), and neither Developer nor the HOA shall have any obligation or liability for maintenance of the House.

5.6.5. Parking. Developer shall reserve one (1) parking space in the Project for the exclusive use of the House.
5.6.6. **Sublease of House.** City may sublease the House to a non-profit organization ("NPO"), which subtenant shall be subject to the terms and restrictions described in this Section 5.6 which City covenants to include in any such sublease and enforce on any such subtenant. The HOA shall be informed of each change in tenancy in order to monitor use of the reserved parking space and the party responsible for maintenance of the House.

5.7. **HOA Maintenance Responsibilities.** In addition to its other responsibilities, the HOA shall be responsible for maintaining (a) the open space channel traversing the Project and the abutting landscaping, walkway and related improvements, (b) the oval open space area south of the channel and in front of the House (the "Publicly Accessible Open Space"), and (c) the grounds surrounding the House; provided, City or its subtenant shall be responsible for cleaning up after their use of the grounds surrounding the House related to their use of the House, and for repairing any damage to the grounds caused by such use. The HOA responsibilities shall be specified in Covenants, Conditions and Restrictions ("CC&Rs") for the Project, and City responsibilities shall be specified in the lease and any sublease for the House.

5.8. **Public Use of Open Space.** The Publicly Accessible Open Space, including the pathway within and partially abutting the south side of the open space channel from Elm Street to the front of the House as shown in the Project Approvals, shall be open to the public Monday through Saturday between 10:00 a.m. and 5:00 p.m., except as needed for maintenance purposes. The fence across the Elm Street frontage of the Project shall include an opening to provide access to the Publicly Accessible Open Space and the House, with a gate which the HOA may lock to enforce the hours of public use described in Section 5.6 and this Section. City’s lease of the House and the grant of public access to the Publicly Accessible Open Space shall not entitle City or any subtenant to use the Publicly Accessible Open Space for an organized event or use the Publicly Accessible Open Space as part of its use of the House, without the consent of the HOA in its sole discretion, and City shall be responsible for cleaning and repairing the Publicly Accessible Open Space after any such use whether or not approved by the HOA. Notwithstanding the foregoing, neither City nor a subtenant shall require HOA approval for use of the Public Accessible Open Space as part of either’s use of the House if the use is consistent with the intended passive recreational purposes of the Publicly Accessible Open Space.

6. **Subsequently Enacted Rules and Regulations.**

6.1. **New Rules and Regulations.** Consistent with Government Code section 65866, during the term of this Agreement, the City may apply new or modified ordinances, resolutions, rules, regulations and official policies of the City, whether adopted by the City or through the referendum or initiative process ("New City Laws") to the Property, which were not in force and effect on the
Effective Date of this Agreement and which are not in conflict with those applicable to the Property as set forth in this Agreement and are not in conflict with the Project Approvals. Without limiting the generality of the foregoing, or any other provision of this Agreement, a New City Law shall be deemed to conflict with this Agreement to the extent it limits or controls the timing of construction or occupancy of the Project.

6.2. Approval of Application. Nothing in this Agreement shall prevent the City from denying or conditionally approving any subsequent land use permit or authorization for the Project on the basis of such New City Laws except that such subsequent actions shall be subject to any conditions, terms, restrictions, and requirements expressly set forth herein.

7. Subsequently Enacted or Revised Fees, Assessments and Taxes.

Notwithstanding anything to the contrary contained herein, the Project shall be subject to subsequently enacted or revised fees, assessments and taxes adopted by the City after the Effective Date of this Agreement. Nothing in this Agreement creates a vested right for the Project in the amount or type of fees, assessments and taxes in effect on the Effective Date of this Agreement.

8. Amendment or Cancellation.

8.1. Modification Because of Conflict with State or Federal Laws. The Project and Property shall be subject to state and federal laws and regulations and this Agreement does not create any vested right in state and federal laws and regulations in effect on the Effective Date. In the event that state or federal laws or regulations enacted after the Effective Date of this Agreement prevent or preclude compliance with one or more provisions of this Agreement or require changes in plans, maps, or permits approved by the City, the parties shall meet and confer in good faith in a reasonable attempt to modify this Agreement to comply with such federal or state law or regulation. Any such amendment or suspension of the Agreement shall be subject to approval by the City Council in accordance with Chapter 8.56 of the Municipal Code.

8.2. Amendment by Mutual Consent. This Agreement may be amended in writing from time to time by mutual consent of the parties hereto and in accordance with the procedures of state law and Chapter 19.41.

8.3. Insubstantial Amendments. Notwithstanding the provisions of the preceding Paragraph 8.2, any amendments to this Agreement that do not relate to (a) the term of the Agreement as provided in Paragraph 4.2; (b) the permitted uses of the Property as provided in Paragraph 5.2; (c) the density or intensity of use of the Project; (d) the maximum height or size of proposed buildings; or (e) monetary contributions by Developer as provided in this Agreement, shall not, except to the extent otherwise required by law, require notice or public hearing.
before either the Planning Commission or the City Council before the parties may execute an amendment hereto.

8.4. Cancellation By Mutual Consent. Except as otherwise permitted herein, this Agreement may be canceled in whole or in part only by the mutual consent of the parties or their successors in interest, in accordance with the provisions of Chapter 19.41.

9. Annual Review.

9.1. Review Date. The annual review date for this Agreement shall be between June 1 and July 1, 2015 and thereafter between each June 1 and July 1 during the Term.

9.2. Initiation of Review. Developer shall initiate annual review of this Agreement by submitting an annual application. Developer shall submit with such application a report to the City's Community Development Director describing the Developer's good faith substantial compliance with the terms of this Agreement during the preceding year and include supporting evidence. Such report shall include a statement that the report is submitted to the City pursuant to the requirements of Government Code Section 65865.1 and of this Agreement. The report shall comply with Section 19.41.050 of Chapter 19.41. The burden of proof by substantial evidence of compliance is upon the Developer.

9.3. Finding of Compliance. Within thirty (30) days after Developer submits its report hereunder, the City's Community Development Director shall review Developer's submission to ascertain whether Developer has demonstrated good faith substantial compliance with the material terms of this Agreement. If the Community Development Director finds and determines, in consultation with the City Manager and the City's Public Works Director, that Developer has in good faith substantially complied with the material terms of this Agreement, or does not determine otherwise within 30 days after delivery of Developer's report, then the annual review shall be concluded. If the Community Development Director initially determines that such report is inadequate in any respect, then he or she shall provide written notice to that effect to Developer, and Developer may supply such additional information or evidence as may be necessary to demonstrate good faith substantial compliance with the material terms of this Agreement. Following consultation with the City Manager and the City's Public Works Director, if the Community Development Director concludes that Developer has not demonstrated good faith substantial compliance with the material terms of this Agreement, then he or she shall so notify Developer within 30 days after delivery of the additional information and prepare a report to the City Council with respect to the conclusions of the Community Development Director and the contentions of Developer with respect thereto.
9.4. **City Council Hearing Regarding Non-Compliance.** After submission of the staff report of the City’s Community Development Director, the City Council shall conduct a noticed public hearing to consider the determination that Developer has not demonstrated good faith substantial compliance with the material terms of this Agreement. At least ten (10) days prior to hearing, the Community Development Director shall provide to the City Council, Developer and to all interested persons requesting the same, copies of all staff reports and other information concerning Developer’s good faith substantial compliance with the material terms of this Agreement and the conclusions and recommendations of the Community Development Director. At such hearing, Developer and any other interested person shall be entitled to submit evidence, orally or in writing, and address all the issues raised in the staff report on, or with respect or germane to, the issue of Developer’s good faith substantial compliance with the material terms of this Agreement. If, after receipt of any written or oral response of Developer, and after considering all of the evidence at such public hearing, the City Council finds and determines, on the basis of substantial evidence, that Developer has not substantially complied in good faith with the material terms of this Agreement, then the City Council shall specify to Developer the respects in which Developer has failed to comply, and shall also specify a reasonable time for Developer to meet the terms of compliance, which time shall be not less than thirty (30) days after the date of the City Council’s determination, and shall be reasonably related to the time necessary to adequately bring Developer’s performance into good faith substantial compliance with the material terms of this Agreement.

If the areas of noncompliance specified by the City Council are not corrected within the time limits prescribed by the City Council hereunder, then the City Council may by subsequent noticed hearing extend the time for compliance for such period as the City Council may determine (with conditions, if the City Council deems appropriate), terminate, or modify this Agreement, or take such other actions as permitted under applicable law. Any notice to Developer of a determination of noncompliance by Developer hereunder, or of a failure by Developer to remedy the areas of noncompliance hereunder, shall specify in reasonable detail the grounds therefore and all facts demonstrating such noncompliance or failure, so that Developer may address the issues raised in the notice of noncompliance or failure on point-by-point basis in any hearing held by the City Council hereunder.

9.5. **Meet and Confer Process.** If either the City’s Community Services Director or the City Council makes a determination that Developer has not demonstrated good faith substantial compliance with the material terms of this Agreement, then the City Manager and/or designated City Council representatives may initiate a meet and confer process with Developer pursuant to which the Parties shall meet and confer to determine a resolution acceptable to both Parties of the bases upon which the Community Services Director or City
Council has determined that Developer has not demonstrated good faith substantial compliance with the material terms of this Agreement. The results and recommendations of the meet and confer process shall be presented to the City Council for review and consideration at its next regularly scheduled public meeting, including consideration of such amendments to this Agreement as may be necessary or appropriate to effectuate the resolution through such meet and confer process, Developer shall be deemed to be in good faith substantial compliance with the material terms of this Agreement, only upon the City Council's acceptance of the results and recommendation of the meet and confer process.

9.6. **Staff Reports.** To the extent practical, the City shall deposit in the mail and fax or email to Developer a copy of all staff reports, and related exhibits concerning contract performance at least five (5) days prior to any annual review.

9.7. **Costs.** Costs reasonably incurred by the City in connection with the annual review shall be paid by Developer in accordance with the City’s schedule of fees in effect at the time of review.

10. **Default.**

10.1. **Other Remedies Available.** Upon the occurrence of an event of default, the parties may pursue all other remedies at law or in equity that are not otherwise provided for in this Agreement or in the City’s regulations governing development agreements, expressly including the remedy of specific performance of this Agreement.

10.2. **Notice and Cure.** Upon the occurrence of an event of default by either party, the nondefaulting party shall serve written notice of such default upon the defaulting party. If the default is not cured by the defaulting party within thirty (30) days after service of such notice of default, the nondefaulting party may then commence any legal or equitable action to enforce its rights under this Agreement; provided, however, that, if the default cannot be cured within such thirty (30) day period, the nondefaulting party shall refrain from any such legal or equitable action so long as the defaulting party begins to cure such default within such thirty (30) day period and diligently pursues such cure to completion. Failure to give notice shall not constitute a waiver of any default.

10.3. **No Damages Against City.** Notwithstanding anything to the contrary contained herein, in no event shall damages be awarded against the City upon an event of default or upon termination of this Agreement.

11. **Estoppel Certificate.**

Either party may, at any time, and from time to time, send written notice to the other party requesting such party to certify in writing that (a) this Agreement
is in full force and effect and a binding obligation of the parties, (b) this
Agreement has not been amended or modified either orally or in writing, or, if so
amended, identifying the amendments, and (c) to the knowledge of the certifying
party, the requesting party is not in default in the performance of its obligations
under this Agreement, or, if in default, to describe therein the nature and amount
of any such defaults. A party receiving a request hereunder shall execute and
return such certificate within thirty (30) days following the receipt thereof, or such
longer period as may reasonably be agreed to by the parties. City Manager of
the City shall be authorized to execute any certificate requested by Developer.
Should the party receiving the request not execute and return such certificate
within the applicable period, this shall not be deemed to be a default, provided
that such party shall be deemed to have certified that the statements in clauses
(a) through (c) of this Section are true, and any party may rely on such deemed
certification.

12. Mortgagee Protection; Certain Rights of Cure.

12.1. Mortgagee Protection. This Agreement shall be superior and
senior to any lien placed upon the Property, or any portion thereof after the date
of recording this Agreement, including the lien for any deed of trust or mortgage
(“Mortgage”). Notwithstanding the foregoing, no breach hereof shall defeat,
render invalid, diminish, or impair the lien of any Mortgage made in good faith
and for value, but all the terms and conditions contained in this Agreement shall
be binding upon and effective against any person or entity, including any deed of
trust beneficiary or mortgagee (“Mortgagee”) who acquires title to the Property,
or any portion thereof, by foreclosure, trustee’s sale, deed in lieu of foreclosure,
or otherwise.

12.2. Mortgagee Not Obligated. Notwithstanding the provisions of
Section 12.1 above, no Mortgagee shall have any obligation or duty under this
Agreement, before or after foreclosure or a deed in lieu of foreclosure, to
construct or complete the construction of improvements, or to guarantee such
construction of improvements, or to guarantee such construction or completion,
or to pay, perform or provide any fee, dedication, improvements or other exaction
or imposition; provided, however, that the Mortgagee shall not be entitled to
devote the Property to any uses or to construct any improvements thereon other
than those uses or improvements provided for or authorized by the Project
Approvals or by this Agreement without new approvals by the City as may be
required for such other uses or improvements.

12.3. Notice of Default to Mortgagee and Extension of Right to Cure. If
the City receives notice from a Mortgagee requesting a copy of any notice of
default given Developer hereunder and specifying the address for service
thereof, then the City shall deliver to such Mortgagee, concurrently with service
thereon to Developer, any notice given to Developer with respect to any claim by
the City that Developer has committed an event of default. Each Mortgagee shall
have the right during the same period available to Developer to cure or remedy, or to commence to cure or remedy, the event of default claimed set forth in the City’s notice. The City, through its City Manager, may extend the thirty-day cure period provided in Paragraph 10.2 for not more than an additional sixty (60) days upon request of Developer or a Mortgagee.

13. **Severability.**

The unenforceability, invalidity, or illegality of any provision, covenant, condition, or term of this Agreement shall not render the other provisions unenforceable, invalid, or illegal.

14. **Attorneys’ Fees and Costs.**

If the City or Developer initiates any action at law or in equity to enforce or interpret the terms and conditions of this Agreement, the prevailing party shall be entitled to recover reasonable attorneys’ fees and costs in addition to any other relief to which it may otherwise be entitled. If any person or entity not a party to this Agreement initiates an action at law or in equity to challenge the validity of any provision of this Agreement or the Project Approvals, the parties shall cooperate in defending such action. Developer shall bear its own costs of defense as a real party in interest in any such action, and shall reimburse the City for all reasonable court costs and attorneys’ fees expended by the City in defense of any such action or other proceeding.

15. **Transfers and Assignments.**

15.1. **Right to Assign.** Developer may wish to sell, transfer, or assign all or portions of its Property to another entity (each such other entity is referred to as a “Transferee”). In connection with any such sale, transfer, or assignment to a Transferee, Developer may sell, transfer, or assign to such Transferee any or all rights, interests, and obligations of Developer arising hereunder and that pertain to the portion of the Property being sold or transferred to such Transferee, provided, however, that no such transfer, sale, or assignment of Developer’s rights, interests, and obligations hereunder shall occur without prior written notice to City and approval by the City Manager, which approval shall not be unreasonably withheld, conditioned or delayed.

15.2. **Approval and Notice of Sale, Transfer or Assignment.** The City Manager shall consider and decide on any transfer, sale, or assignment within ten (10) days after Developer’s notice, provided all necessary documents, certifications, and other information are provided to the City Manager to enable
the City Manager to determine whether the proposed Transferee can perform the Developer’s obligations hereunder. Notice of any such approved sale, transfer, or assignment (which includes a description of all rights, interests and obligations that have been transferred and those which have been retained by Developer) shall be recorded in the official records of Contra Costa County, in a form acceptable to the City Manager, concurrently with such sale, transfer, or assignment.

15.3. Release Upon Transfer. Upon the transfer, sale, or assignment of all of Developer’s rights, interests, and obligations hereunder pursuant to Paragraph 15.1 of this Agreement, Developer shall be released from the obligations under this Agreement, with respect to the Property transferred, sold, or assigned, arising subsequent to the date of City Manager approval of such transfer, sale, or assignment; provided, however, that if any Transferee approved by the City Manager expressly assumes all of the rights, interests, and obligations of Developer under this Agreement, Developer shall be released with respect to all such rights, interests, and assumed obligations. In any event, the transferee, purchaser, or assignee shall be subject to all the provisions hereof and shall provide all necessary documents, certifications, and other necessary information prior to City Manager approval.

15.4. Developer’s Right to Retain Specified Rights or Obligations. Notwithstanding Paragraphs 15.1 and 15.2 and Paragraph 16, Developer may withhold from a sale, transfer, or assignment of this Agreement certain rights, interests, and/or obligations, which Developer shall retain, provided that Developer specifies such rights, interests, and/or obligations in a written document to be appended to this Agreement and recorded with the Contra Costa County Recorder prior to the sale, transfer, or assignment of the Property. Developer’s Transferee shall then have no interest or obligations for such rights, interests and obligations, and this Agreement shall remain applicable to Developer with respect to such retained rights, interests, and/or obligations.

16. Agreements Run With the Land.

All of the provisions, rights, terms, covenants, and obligations contained in this Agreement shall be binding upon the parties and their respective heirs, successors and assigns, representatives, lessees, and all other persons acquiring the Property, or any portion thereof, or any interest therein, whether by operation of law or in any manner whatsoever. All of the provisions of this Agreement shall be enforceable as equitable servitudes and shall constitute covenants running with the land pursuant to applicable laws, including, but not limited to, Section 1468 of the Civil Code of the State of California. Each covenant to do, or refrain from doing, some act on the Property hereunder, or with respect to any owned property (a) is for the benefit of such properties and is a burden upon such properties, (b) runs with such properties, and (c) is binding upon each party and each successive owner during its ownership of such
properties or any portion thereof, and shall be a benefit to and a burden upon each party and its property hereunder and each other person succeeding to an interest in such properties.

17. **Bankruptcy.**

The obligations of this Agreement shall not be dischargeable in bankruptcy.

18. **Indemnification.**

Developer agrees to indemnify, defend and hold harmless the City, and its elected and appointed councils, boards, commissions, officers, agents, employees, and representatives from any and all claims, costs (including legal fees and costs) and liability for any personal injury or property damage which may arise directly or indirectly as a result of any actions or inactions by the Developer, or any actions or inactions of Developer’s contractors, subcontractors, agents, or employees in connection with the construction, improvement, operation, or maintenance of the Project, provided that Developer shall have no indemnification obligation with respect to negligence or wrongful conduct of the City, its contractors, subcontractors, agents or employees or with respect to the maintenance, use or condition of any improvement after the time it has been dedicated to and accepted by the City or another public entity (except as provided in an improvement agreement or maintenance bond). If City is named as a party to any legal action, City shall cooperate with Developer, shall appear in such action and shall not unreasonably withhold approval of a settlement otherwise acceptable to Developer.

19. **Insurance.**

19.1. **Public Liability and Property Damage Insurance.** During the term of this Agreement, whenever Developer is conducting work on the Property pursuant to the Project Approvals, Developer shall maintain in effect a policy of comprehensive general liability insurance with a per-occurrence combined single limit of not less than One Million Dollars ($1,000,000.00) with a One Hundred Thousand Dollar ($100,000) self-insurance retention per claim. The policy so maintained by Developer shall name the City as an additional insured and shall include either a severability of interest clause or cross-liability endorsement.

19.2. **Workers Compensation Insurance.** During the term of this Agreement, whenever Developer is conducting work on the Property pursuant to the Project Approvals, Developer shall maintain Worker’s Compensation insurance for all persons employed by Developer for work at the Project site. Developer shall require each contractor and subcontractor similarly to provide Worker’s Compensation insurance for its respective employees. Developer
agrees to indemnify the City for any damage resulting from Developer’s failure to maintain any such insurance.

19.3. **Evidence of Insurance.** Prior to issuance of any permits for the Project, including grading permits, Developer shall furnish the City satisfactory evidence of the insurance required in Sections 19.1 and 19.2 and evidence that the carrier is required to give the City at least fifteen (15) days prior written notice of the cancellation or reduction in coverage of a policy. The insurance shall extend to the City, its elective and appointive boards, commissions, officers, agents, employees, and representatives and to Developer performing work on the Project.

20. **Notices.**

All notices required or provided for under this Agreement shall be in writing. Notices required to be given to the City shall be addressed as follows:

City Manager  
City of El Cerrito  
10890 San Pablo Ave.  
El Cerrito, CA  94530  
Fax: (510) 864-7025  
Email: sch@ci.el-cerrito.ca.us

Notices required to be given to Developer shall be addressed as follows:

The Edward and Loretta Biggs Revocable Trust dated March 22, 2011  
4271 Valley Lane  
Fairfield, CA 94534  
Fax: (707) 864-8150

A party may change its address by giving notice in writing to the other party. Thereafter, all notices shall be addressed and transmitted to the new address. Notices shall be deemed given and received upon personal delivery, or, if mailed, upon the expiration of 48 hours after being deposited in the United States Mail. Notices may also be given by overnight courier which shall be deemed given the following day, or by facsimile, which shall be deemed given upon verification of receipt if received before 5:00 p.m. on a regular business day or else on the next business day. The City will accept notice by email transmission, which shall be deemed given upon verification of receipt if received before 5:00 p.m. on a regular business day or else on the next business day. Developer may accept notice by email by providing notice and an email address to the City consistent with this section.
21. **Agreement is Entire Understanding.**

   This Agreement constitutes the entire understanding and agreement of the parties concerning the subject matter of this Agreement.

22. **Exhibits.**

   The following documents are referred to in this Agreement and are attached hereto and incorporated herein as though set forth in full:

   - Exhibit A  Legal Description of Property

23. **Counterparts.**

   This Agreement is executed in three (3) duplicate originals, each of which is deemed to be an original.

24. **Recordation.**

   The City shall record a copy of this Agreement within ten (10) days following the Effective Date.

   *[Execution Page Follows]*
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date and year first above written.

CITY OF EL CERRITO

DEVELOPER

The Edward and Loretta Biggs Revocable Trust dated March 22, 2011

__________________________
Scott Hanin, City Manager

By: __________________________
Its: Trustee

Attest:

__________________________
Cheryl Morse, City Clerk

Approved as to Form:

__________________________
Sky Woodruff, City Attorney

(NOTARIZATION ATTACHED)
Exhibit A

Legal Description of the Property

The land referred to is situated in the State of California, County of Contra Costa, City of El Cerrito, and is described as follows:

Lots 12, 13 and 14, in Block “B” as designated on the map entitled “Map of Schmidt Village, Contra Costa County, California”, filed June 27, 1896, in Book C of Maps, Page 70, Contra Costa County Records.

EXCEPTING THEREFROM: The Northeast 7.00 feet thereof, as described in the Deed to City of El Cerrito, recorded February 9, 1965, in Book 4801 Official Records of Contra Costa County, Page 144.

(Being APN 502-112-038)
1715 Elm Street
El Cerrito, California

Channel Restoration Feasibility Analysis Memorandum
July 25, 2014
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Channel Restoration Analysis Memorandum

1. Introduction
This memorandum summarizes the results of our analysis of the channel characteristics for the above ground unnamed channel running through the subject parcel at 1715 Elm Street. The intent of this analysis is to provide the necessary background information to develop restoration concept designs for restoring the creek on the site to evaluate the potential for restoring the creek at the site. The analysis included site visits to the project site and watershed to assess existing conditions; review of topographic and storm drainage maps to determine watershed size; and a regression analysis to develop appropriate hydraulic geometry of the channel.

2. Existing Conditions

2.1. Existing Channel Conditions through the Project Site
The existing channel enters the site upstream through a 48-inch concrete box culvert under Elm Street. The channel runs straight through a 5-foot wide "U" shaped channel for approximately 115 feet at a 3.2% slope before re-entering the existing storm drain system through a 48-inch concrete box culvert with a wooden lid. The channel through this short stretch is confined and as a result is entirely lined with stacked rock walls. The channel bed is composed of 3 to 9-inch imported angular rock.

The channel is part of a greater storm drain network and does not appear to be in the location of a historical creek channel. From looking at historical data, it appears there were two creek channels about a block to the north and south of the project site, although the discrepancy between the mapped historical channels and the current channel location on-site may be within the margin of error of the data used to produce the historical maps. Additionally the project site is located at the base of the steeper hills, which is where the creek channels would historically become undifferentiated as they formed distributary channels across the flatter alluvium at the base of the hills.

Today this unnamed channel drains about 0.2 square miles of the East Bay Hills at the project site. The watershed originates above Arlington Blvd in the Mira Vista Golf and Country Club. Below the project site the creek travels towards San Francisco Bay through storm drains until joining Baxter Creek adjacent to Interstate 580.
Figure 1: Existing Channel with Imported Cobble Bed

Figure 2: Existing "U" Shaped Channel

Figure 3: View Looking into Downstream Culvert

Figure 4: Wooden Lid Culvert on Downstream Parcel
Figure 5: Watershed and Stream Network

Legend

- Historical Creek
- Creeks and Waterways
- Engineered Channel
- Engineered Channel, Minor
- Distributary Point
- Creek
- Creek, Minor
- Underground culvert or storm drain
- Well located

Credits: Historical and Contemporary Creek Data (Oakland Museum 2006)
2.2. Hydrology

This creek is ungaged and therefore design flows must be estimated rather than developed more directly from a flood frequency curve of measured flow values. We often use several approaches in unaged watersheds and then select one set or multiple flow values depending on the intended use of the flow values. The results of the following approaches are shown in Table 1.

Method 1 – Regional Regression (Rantz)

S.E. Rantz of the USGS analyzed raingage and streamflow data for the San Francisco Bay Area and developed regression equations for streamflow rates under natural and urbanized conditions (Rantz, 1971). The values of peak flow rates at various recurrence intervals from the regression based estimate are shown in column 1 of Table 1: Project Flow Rates and for this project assume 80% impervious area and 65% culverted.

Method 2 – Regional Regression (USGS Updated 2012)

Peak flow rates as determined by the updated USGS regression equations (Gotvald, Veilleux, & Parrett, 2012) are also shown in Table 1 for a mean annual precipitation of 24.4 inches and a drainage area of 0.2 mi² for the California North Coast Hydrologic Region. These regression equations represent updated statistical analysis at a large number of stream gage sites but do not include any specific local adjustment factors for percent urbanization. To account for urbanization RDG used the same factors recommended by Rantz.

Table 1: Project Flow Rates

<table>
<thead>
<tr>
<th>Return Period</th>
<th>Peak Flow Rate (cfs) Rantz 1971</th>
<th>Peak Flow Rate (cfs) USGS 2012</th>
</tr>
</thead>
<tbody>
<tr>
<td>Q_{1.5}</td>
<td>22</td>
<td>25</td>
</tr>
<tr>
<td>Q_{2}</td>
<td>26</td>
<td>27</td>
</tr>
<tr>
<td>Q_{10}</td>
<td>66</td>
<td>66</td>
</tr>
<tr>
<td>Q_{50}</td>
<td>180</td>
<td>103</td>
</tr>
<tr>
<td>Q_{100}</td>
<td>254</td>
<td>124</td>
</tr>
</tbody>
</table>

The USGS 2012 flows were used for this analysis because the Rantz regression equations often overestimate the magnitude of the larger, less frequent storm events. Both methods resulted in very similar flows for storms equal to or more frequent than the 10 year recurrence interval event.

3. Restoration Concept for Evaluation

This analysis evaluates the concept of restoring the 115 foot above ground section of creek that runs through the subject parcel in an effort to improve overall creek function and to increase benefits to water quality and wildlife habitat. The channel will be set within a reworked site.
development plan to provide room for the creek to naturally meander through the site between to the two existing culverts on either end of the project.

3.1. Hydraulic Geometry

Hydraulic geometry is based on the theory that for alluvial channels (i.e. channels free to adjust their boundaries to the imposed sediment and water loading conditions) there is an equilibrium set of channel dimensions (i.e. width, depth, cross-sectional area and planform) that are the most efficient in transporting sediment and water without excessive erosion or aggradation of sediment. We derived the hydraulic geometry for the project site primarily from regional curves that compile metrics such as width, depth and cross sectional area plotted as a function of drainage area.

RDG developed the restoration geometry based on the results from the regional curve analysis; taking into account both physical and process-based differences between the project site and the survey sites used to develop the regional curve. The width, depth and area dimensions equate to the channel at bankfull flow or a flow approximating the 1.2-1.6 year recurrence interval peak annual event which is typical for streams in the SF Bay Area.

Table 2: Hydraulic Geometry

<table>
<thead>
<tr>
<th>Parameter</th>
<th>WRI</th>
<th>Design</th>
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</thead>
<tbody>
<tr>
<td>Cross Sectional Area (sf)</td>
<td>6.36</td>
<td>6.4</td>
</tr>
<tr>
<td>Channel Width (ft)</td>
<td>7.48</td>
<td>7.5</td>
</tr>
<tr>
<td>Average Depth (ft)</td>
<td>0.85</td>
<td>0.85</td>
</tr>
<tr>
<td>Max Depth (ft)</td>
<td>--</td>
<td>1.5</td>
</tr>
<tr>
<td>W/D Ratio</td>
<td>8.80</td>
<td>8.8</td>
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</table>

Table 3: Planform Geometry

<table>
<thead>
<tr>
<th>Parameter</th>
<th>Regime Equations</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Min</td>
</tr>
<tr>
<td>Meander Wavelength</td>
<td>38</td>
</tr>
<tr>
<td>Belt Width</td>
<td>20</td>
</tr>
<tr>
<td>Radius of Curvature</td>
<td>8</td>
</tr>
</tbody>
</table>
3.2. Restoration Design

Figure 7: Concept Plan

The 7.5-foot channel width noted in Table 2 is for the bankfull channel, which is the channel that will contain the 1.2 to 1.6 year recurrence interval peak flow before overtopping. This bankfull channel must fit within a larger channel corridor, which contains the upper slopes between the top of the bankfull channel and the surrounding grade. For this creek there is approximately 3.1-feet of elevation between the top of the bankfull channel and the adjacent grade on the parcel. Assuming a maximum allowable natural slope of 2 horizontal to 1 vertical (2:1), the channel corridor needs an additional 6.2-feet on either side of the creek to rise to the adjacent grade.
grade; this results in a minimum channel corridor width of 20-ft. Any narrower and walls would be required to make up the grade at a slope steeper than 2:1. See Section A and B in Figure 7 for illustrations of this in cross section.

The concept places this channel corridor through the site connecting the up and downstream culverts. The corridor is placed between the buildings in the site plan while maintaining setback requirements. The channel design also provided a minimum clearance of 5-ft around all buildings to allow for access at the top of bank. This is the minimum clearance recommended.

Walls are placed where the space between the buildings is narrower than 20-ft. Going through this process of adding walls where required to achieve the minimum 5-ft setback between buildings and the top of bank resulted in 165-ft of walls being preserved or created to allow the creek to flow through the site. There are currently about 220-feet of walls along the channel today, which means the channel improvements reduce the length of walls by 55-feet. Guardrails will be required where the fall is greater than 30 inches.

As shown the added sinuosity of the channel adds 10-ft of channel length and, along with the wider channel in the design, doubles the channel surface area through the property.

3.3. Evaluation of Restoration Feasibility

The analysis shows that it is feasible to place a restored channel on-site; however the space for the channel is confined between the buildings. Even with utilizing walls to maximize the space for the channel, the buildings can only be set back five feet from the top of bank. This limits the width of the riparian corridor, but does provide an improved condition when compared to the existing conditions.

Restoring this section of channel can provide ecological benefits to the site; however these benefits are significantly muted when compared to a naturally functioning creek. The benefits are derived from providing a more naturalistic plan form and hydraulic geometry that will improve sediment deposition and delivery through the reach. This will lead to a more diverse channel, which will in turn support a greater diversity and number of plant and animal species. For example, the channel may develop shallow pools on the outside bends of the meanders that provide additional habitat for plants and invertebrate species. These pools are nonexistent today. In addition, the wider channel will allow for more streamside vegetation on-site which has been shown to have water quality benefits in much the same way that bioretention facilities improve water quality. However, the degree of ecological benefit that could be attained will be stunted due to the lack of contiguous riparian corridor and naturally flowing creek adjacent to the project site. The small size of the site will also mean that the site will experience heavy
impacts from the surrounding neighborhood, including from light and sound pollution, house cats, and invasive plant and animal species.

To put the benefit of this type of restoration into context of published work on levels of restoration; we reference the three levels of restoration defined by Van Diggelen in 2001. He suggests restoration work falls within one of these categories; reclamation, rehabilitation or full restoration. Using these categories, this project falls into the lower end of the “rehabilitation” category. Rehabilitation is defined as work which attempts to reintroduce some ecological function back into the landscape but will not necessarily result in significant increase in biodiversity or work to restore the complete structure of a natural community. At its best this project will improve some ecological function but due to the limited project area and suburban context, it is not possible to provide significant improvement to ecological function typical of many urban stream restoration projects.
4. References


<table>
<thead>
<tr>
<th></th>
<th>Existing Condition</th>
<th>Proposed Project</th>
<th>&quot;Restoration&quot; Approach</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Temporary Environmental Impacts</td>
<td>NA</td>
<td>Yes</td>
</tr>
<tr>
<td>2</td>
<td>Environmental Regulatory Compliance</td>
<td>NA</td>
<td>Completed</td>
</tr>
<tr>
<td>3</td>
<td>Total Length of Retaining Walls</td>
<td>220 lf</td>
<td>220 lf</td>
</tr>
<tr>
<td>4</td>
<td>Channel Surface Area</td>
<td>575 sf</td>
<td>575 sf</td>
</tr>
<tr>
<td>5</td>
<td>Long-term Channel Stability</td>
<td>Unknown (no signs of instability identified)</td>
<td>Unknown (no signs of instability identified)</td>
</tr>
<tr>
<td>6</td>
<td>Provides Groundwater Infiltration</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>7</td>
<td>Promotes Riparian Plant Species Diversity</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>8</td>
<td>Retains Historic Channel Walls</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>9</td>
<td>Improves Stormwater Capacity *</td>
<td>NA</td>
<td>No</td>
</tr>
</tbody>
</table>

* A comparative hydraulic model has not been conducted.
The following is our preliminary assessment of the financial impact of introducing a Meandering Creek into the project to replace the existing rock lined channel:

- Construction of new creek, including backfilling existing channel. (budget provided by Restoration Design Group) 130,000
- Construction Contingency 26,000
- Feasibility study 7,000
- Design Fees and permits 25,000
- Construction Admin and project management 12,000
- 5 year monitoring 10,000
- Legal costs 4,000
- Property tax and insurance 6,000
- EIR Consultants 100,000
- City review 30,000
- Owners admin of the EIR 40,000
- Redesign Fees 25,000

$ 415,000

In addition to the direct costs we anticipate the project will be delayed by 12 to 18 months. While it is not possible to allocate cost to such a delay, it will inevitably have implications.