



AGENDA

SPECIAL CITY COUNCIL MEETING

Monday, June 23, 2014 – 7:00 p.m.

City Council Chambers

Meeting Location

El Cerrito City Hall

10890 San Pablo Avenue, El Cerrito

Janet Abelson – Mayor

Mayor Pro Tem Rebecca Benassini
Councilmember Jan Bridges

Councilmember Mark Friedman
Councilmember Greg Lyman

ROLL CALL

7:00 p.m.

CONVENE SPECIAL CITY COUNCIL MEETING

1. PLEDGE OF ALLEGIANCE TO THE FLAG OR OBSERVATION OF MOMENT OF SILENCE – Councilmember Lyman.

2. COUNCIL / STAFF COMMUNICATIONS (*Reports of Closed Session, commission appointments and informational reports on matters of general interest which are announced by the City Council & City Staff.*)

3. ORAL COMMUNICATIONS FROM THE PUBLIC

All persons wishing to speak should sign up with the City Clerk. Remarks are typically limited to 3 minutes per person. The Mayor may reduce the time limit per speaker depending upon the number of speakers. Kindly state your name and city of residence for the record. Comments regarding non-agenda, presentation and consent calendar items will be heard first. Comments related to items appearing on the Public Hearing or Policy Matter portions of the Agenda are taken up at the time the City Council deliberates each action item. Individuals wishing to comment on any closed session scheduled after the regular meeting may do so during this public comment period or after formal announcement of the closed session.

4. PRESENTATION – None

5. ADOPTION OF THE CONSENT CALENDAR – None

6. PUBLIC HEARINGS

A. Project at 1715 Elm Street – Planned Development and Appeal

On June 2, 2014, the City Council convened a consolidated public hearing to consider both the approval of a General Plan Amendment, Planned Development rezoning, and

development agreement for the Project, as well as an appeal of the Planning Commission's approval of a Planned Development Use Permit for the Project. The Project includes 14 new multi-family residential units in a 42-foot tall structure, preservation and partial restoration of a historic residence, 15 on-site parking spaces tucked under the multi-family structure, planting of creek-related vegetation, and the creation of private open space. The City Council closed the public hearing on June 2, 2014 and continued deliberations regarding the Project, including the appeal, to its June 23, 2014 meeting.

Staff recommends that, at the conclusion of its deliberations, the City Council take the following actions:

- 1) Adopt a resolution approving the Initial Study/Mitigated Negative Declaration for the Project;
- 2) Adopt a resolution approving a General Plan Amendment;
- 3) Introduce by title and waive any further reading of an ordinance approving the rezoning of 1715 Elm Street to a Planned Development Zoning District and amending the Zoning Map accordingly;
- 4) Adopt a resolution denying an appeal of the Planning Commission's approval of a Planned Development Use Permit for the Project; and
- 5) Introduce by title and waive any further reading of an ordinance approving a Development Agreement between the City of El Cerrito and the Edward and Loretta Biggs revocable trust for 1715 Elm Street. Application 6133.

Because the City Council closed the public hearing on this matter at its June 2, 2014 meeting, public comments will be heard after deliberations, unless the City Council votes to reopen the public hearing.

7. POLICY MATTERS – None

8. COUNCIL LOCAL AND REGIONAL LIAISON ASSIGNMENT REPORTS

Mayoral and City Council communications regarding local and regional liaison assignments and committee reports.

9. ADJOURN SPECIAL CITY COUNCIL MEETING

The next City Council meeting is Tuesday, July 15, 2014 at 7:00 p.m. at City Hall, 10890 San Pablo Avenue, El Cerrito, California.

The City of El Cerrito serves, leads and supports our diverse community by providing exemplary and innovative services, public places and infrastructure, ensuring public safety and creating an economically and environmentally sustainable future.

- Council Meetings can be heard live on FM Radio, KECG – 88.1 and 97.7 FM and viewed live on Cable TV - KCRT-Channel 28 and AT&T Uverse Channel 99. The meetings are rebroadcast on Channel 28 the following Thursday and Monday at 12 noon, except on holidays. Live and On-Demand Webcast of the Council Meetings can be accessed from the City's website <http://www.el-cerrito.org/ind-ex.aspx?NID=114>. Copies of the agenda bills and other written documentation relating to items of business referred to on the agenda are on file and available for public inspection in the Office of the City Clerk, at the El Cerrito Library and posted on the City's website at www.el-cerrito.org prior to the meeting.
- In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the City Clerk, (510) 215-4305. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting. (28 CFR 35.102-35.104 ADA Title I).
- ***The Deadline for agenda items and communications*** is eight days prior to the next meeting by 12 noon, City Clerk's Office, 10890 San Pablo Avenue, El Cerrito, CA. Tel: 215-4305 Fax: 215-4379, email cmorse@ci.el-cerrito.ca.us
- IF YOU CHALLENGE A DECISION OF THE CITY COUNCIL IN COURT, YOU MAY BE LIMITED TO RAISING

ONLY THOSE ISSUES YOU OR SOMEONE ELSE RAISED AT THE COUNCIL MEETING. ACTIONS CHALLENGING CITY COUNCIL DECISIONS SHALL BE SUBJECT TO THE TIME LIMITATIONS CONTAINED IN CODE OF CIVIL PROCEDURE SECTION 1094.6.

- The City Council believes that late night meetings deter public participation, can affect the Council's decision-making ability, and can be a burden to staff. City Council Meetings shall be adjourned by 10:30 p.m., unless extended to a specific time determined by a majority of the Council.



AGENDA BILL

Agenda Item No. 6

Date: June 23, 2014

To: El Cerrito City Council

From: Margaret Kavanaugh-Lynch, Development Services Manager
Melanie Mintz, Interim Community Development Director

Subject: Consideration of a General Plan Amendment, Development Agreement, and the creation of a Planned Development District including a Zoning Map Amendment to allow for the construction of 14 new dwelling units, the relocation and restoration of 1 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 on property located at 1715 Elm Street.

RECOMMENDATION

On June 2, 2014, the City Council held a single, consolidated public hearing to consider both the actions necessary to approve 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 City Council closed the public hearing but continued the matter to a special meeting on June 23, 2014 for deliberation and decision.

Staff recommends that, at the conclusion of its deliberations, the City Council:

1. Adopt a resolution approving the Initial Study/Mitigated Negative Declaration for the Project;
2. Adopt a resolution approving a General Plan Amendment;
3. Waive first reading and introduce an ordinance to approve Planned Development Zoning for the Project property and amend the Zoning Map accordingly;
4. Adopt a resolution denying an appeal of the Planning Commission's approval of a Planned Development Use Permit for the Project; and
5. Waive first reading and introduce and ordinance to approve a Development Agreement.

BACKGROUND

As the members of the City Council recall, this project was the subject of a public hearing on June 2, 2014. After hearing presentations from staff, the applicant, the appellant, and receiving public testimony, the public hearing was closed. The City Council then made a motion to continue this item to June 23, 2014 at 7:00 pm.

The project is before the Council this evening just as it was paused on the evening of June 2nd. The Council continued the matter for the purpose of deliberation and making a decision on the Project approvals and appeal of the Planning Commission's action to

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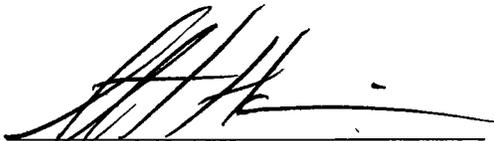
approve the Planned Development Use Permit for the Project. If the Council would like to ask questions to receive additional information, they would need to vote to reopen the public hearing to take that testimony.

Since this item was continued from the June 2 meeting, you may refer to your packets for the June 2 meeting for the staff reports and all attachments. The only materials reproduced for this staff report are the resolutions and ordinances. Members of the public seeking to review the initial staff report and all attachments may find them at <http://www.elcerrito.org/DocumentCenter/View/3712>, or may review them, along with communications received at the June 2 meeting at the City Clerk's Office.

The applicant has submitted a letter to the City Council since the June 2nd hearing. It is included as Attachment 6. Staff has reviewed the document and notes that it summarizes statements that the applicant made during the public hearing, does not contain any new information that has not been discussed as part of the public testimony.

After the members of the City Council complete their deliberations, staff recommends that action be taken to approve the Project and deny the appeal, as described above. Alternatively, the Council may uphold the appeal and deny the Project as proposed, or approve a modified version of the Project, if the majority of the City Council favors a revised project.

Reviewed by:



Scott Hanin, City Manager

Attachments:

1. Resolution approving the Initial Study/Mitigated Negative Declaration for the Project (Exhibit A to the Resolution online at <http://www.elcerrito.org/DocumentCenter/View/3712>)
2. Resolution approving a General Plan Amendment
3. Ordinance approving a Planned Development District for the project property and amending the Zoning Map
Exhibit A: Site Plan
4. Resolution denying an appeal of the Planning Commission's approval of a Planned Development Use Permit for the Project.
5. Ordinance approving a Development Agreement
Exhibit A: Development Agreement
6. Correspondence from the applicant dated June 10, 2014.

A RESOLUTION OF THE CITY OF EL CERRITO CITY COUNCIL 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 CONSERVATION OF AN EXISTING DWELLING UNIT AT 1715 ELM STREET. APPLICATION NO. 6133

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 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 of the City of El Cerrito, after due consideration of all evidence and reports offered for review, 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 conservation of one existing dwelling unit located at 1715 Elm Street.

I CERTIFY that at a special meeting on June 23, 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 June____, 2014.

Cheryl Morse, City Clerk

APPROVED:

Janet Abelson, Mayor

Exhibit A: Initial Study and Mitigated Negative Declaration located on the City's Website at:

Initial Study <http://www.el-cerrito.org/DocumentCenter/View/3445>
Traffic Analysis 2009 <http://www.el-cerrito.org/DocumentCenter/View/3443>
Review Letter 2013 <http://www.el-cerrito.org/DocumentCenter/View/3444>
Historic Resource Evaluation <http://www.el-cerrito.org/DocumentCenter/View/3439>
Biological Resources Assessment <http://www.el-cerrito.org/DocumentCenter/View/3438>

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 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 its 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 its 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 its May 21, 2014 meeting, the Planning Commission held a duly noticed public hearing, received public testimony and adopted Resolution PC14-10, recommending denial of 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; 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 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 13 new 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.

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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 Mitigate 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.

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 June 23, 2014, the El Cerrito City Council passed this Resolution by the following vote:

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

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

Cheryl Morse, City Clerk

APPROVED:

Janet Abelson, Mayor

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 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 proposes a General Plan Amendment to change the allowable density to 35.7 units per acre; 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 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

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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. A Staff Report, dated June 2, 2014 and incorporated herein by reference, described and analyzed the Project, including the Planned Development rezoning for the City Council.

I. On June 2, 2014, the City Council 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.

J. On June 2, 2014, the City Council adopted Resolution xx-xx adopting an Initial Study and Mitigated Negative Declaration and a Mitigation Monitoring and Reporting Program for the Project.

K. 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

A. Pursuant to Sections 19.14.040.A and 19.40.040.D of the El Cerrito Municipal Code, the City Council finds as follows.

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 thirteen new 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 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

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- 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 Mitigate 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. It 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 had 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 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.

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10. It 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.

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 special meeting of the City Council on June X, 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 July X, 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 July XX, 2014.

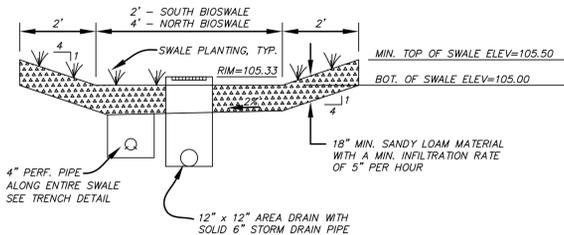
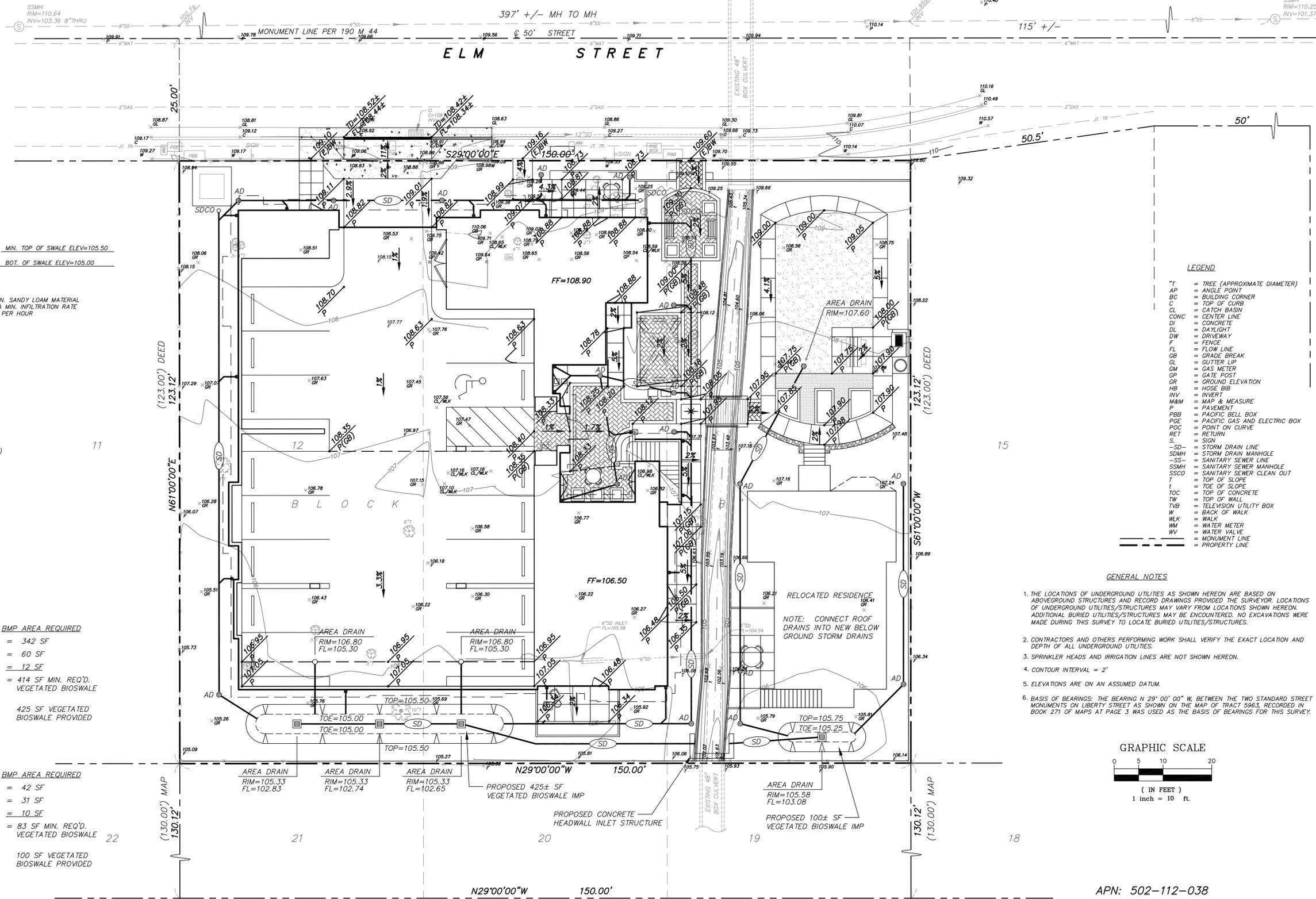
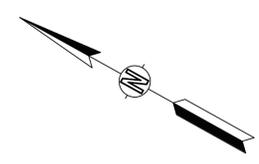
Cheryl Morse, City Clerk

ORDINANCE CERTIFICATION

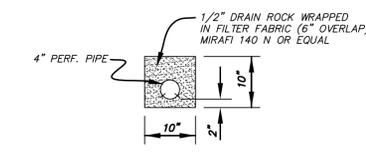
I, Cheryl Morse, City Clerk of the City of El Cerrito, do hereby certify that this Ordinance is the true and correct original Ordinance No. 2014-XX of the City of El Cerrito; that said Ordinance was duly enacted and adopted by the City Council of the City of El Cerrito at a meeting of the City Council held on the __ day of July, 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 __th day of July, 2014.

Cheryl Morse, City Clerk



VEGETATED BIOSWALE CROSS SECTION
NTS



TRENCH DETAIL
NTS

NORTH SIDE VEGETATED BIOSWALE

DMA NAME	AREA	DMA & IMP SIZING FACTOR	BMP AREA REQUIRED
CONDOMINIUM ROOF	8,538 SF	(1.00 x .04)	= 342 SF
PAVED WALKWAY	1,508 SF	(1.00 x .04)	= 60 SF
LANDSCAPING	2,920 SF	(0.10 x .04)	= 12 SF
			= 414 SF MIN. REQ'D. VEGETATED BIOSWALE
			425 SF VEGETATED BIOSWALE PROVIDED

SOUTH SIDE VEGETATED SWALE

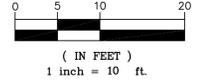
DMA NAME	AREA	DMA & IMP SIZING FACTOR	BMP AREA REQUIRED
RESIDENTIAL ROOF	1,065 SF	(1.00 x .04)	= 42 SF
PAVED WALKWAY	768 SF	(1.00 x .04)	= 31 SF
LANDSCAPING	2,442 SF	(0.10 x .04)	= 10 SF
			= 83 SF MIN. REQ'D. VEGETATED BIOSWALE
			100 SF VEGETATED BIOSWALE PROVIDED

- LEGEND**
- T = TREE (APPROXIMATE DIAMETER)
 - AP = ANGLE POINT
 - BC = BUILDING CORNER
 - C = TOP OF CURB
 - CL = CATCH BASIN
 - CONC = CENTER LINE
 - DI = CONCRETE
 - DL = DAYLIGHT
 - DW = DRIVEWAY
 - F = FENCE
 - FL = FLOW LINE
 - GB = GRADE BREAK
 - GL = GUTTER LIP
 - GM = GAS METER
 - GP = GATE POST
 - GR = GROUND ELEVATION
 - HB = HOSE BIB
 - INV = INVERT
 - M&M = MAP & MEASURE
 - P = PAVEMENT
 - PBB = PACIFIC BELL BOX
 - POE = PACIFIC GAS AND ELECTRIC BOX
 - POC = POINT ON CURVE
 - RET = RETURN
 - SIGN = SIGN
 - SD = STORM DRAIN LINE
 - SDMH = STORM DRAIN MANHOLE
 - SS = SANITARY SEWER LINE
 - SSMH = SANITARY SEWER MANHOLE
 - SSCO = SANITARY SEWER CLEAN OUT
 - T = TOP OF SLOPE
 - TOC = TOP OF CONCRETE
 - TW = TOP OF WALL
 - TUB = TELEVISION UTILITY BOX
 - WB = BACK OF WALK
 - WLK = WALK
 - WM = WATER METER
 - WV = WATER VALVE
 - ML = MONUMENT LINE
 - PL = PROPERTY LINE

GENERAL NOTES

- THE LOCATIONS OF UNDERGROUND UTILITIES AS SHOWN HEREON ARE BASED ON ABOVEGROUND STRUCTURES AND RECORD DRAWINGS PROVIDED THE SURVEYOR. LOCATIONS OF UNDERGROUND UTILITIES/STRUCTURES MAY VARY FROM LOCATIONS SHOWN HEREON. ADDITIONAL BURIED UTILITIES/STRUCTURES MAY BE ENCOUNTERED. NO EXCAVATIONS WERE MADE DURING THIS SURVEY TO LOCATE BURIED UTILITIES/STRUCTURES.
- CONTRACTORS AND OTHERS PERFORMING WORK SHALL VERIFY THE EXACT LOCATION AND DEPTH OF ALL UNDERGROUND UTILITIES.
- SPRINKLER HEADS AND IRRIGATION LINES ARE NOT SHOWN HEREON.
- CONTOUR INTERVAL = 2'
- ELEVATIONS ARE ON AN ASSUMED DATUM.
- BASIS OF BEARINGS: THE BEARING N 29° 00' 00" W BETWEEN THE TWO STANDARD STREET MONUMENTS ON LIBERTY STREET AS SHOWN ON THE MAP OF TRACT 5963, RECORDED IN BOOK 271 OF MAPS AT PAGE 3 WAS USED AS THE BASIS OF BEARINGS FOR THIS SURVEY.

GRAPHIC SCALE



APN: 502-112-038

LEGEND	REFERENCES	REVISIONS	KISTER, SAVIO & REI, INC. LAND SURVEYORS - CIVIL ENGINEERS 3095 RICHMOND PARKWAY, SUITE 214 RICHMOND, CALIFORNIA 94806 PHONE: (510) 222-4020 FAX: (510) 222-3718 E-MAIL: info@ksrinc.net	DESCRIPTION PRELIMINARY CIVIL SITE PLAN STORMWATER CONTROL PLAN ELM STREET CONDOMINIUMS
NOTE: CONTOURS BY INTERPOLATION, APPROXIMATE ONLY.	FIELD BOOK No. FILE MAP: G-2 TITLE CO.: POLICY No.: DATUM: ASSUMED MSC. REF.: B-8846 R-803, R-1124	FOR: ED BIGGS SCALE: 1"=10' DATE: DECEMBER 20, 2013		

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 I 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; 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 preserving a historic structure and retaining the existing creek. It will not unduly shade surrounding

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- 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, 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 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 13 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 is 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.

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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 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 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

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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:

1. The mitigation measures identified in the mitigation monitoring plan (MMRP) shall be considered conditions of approval of the project. They are included as Attachment A to the resolution.
2. 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.
3. 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

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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.

4. 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.
5. 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 Regulations, Section 1532.1).
6. 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.
7. 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.
8. 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.
9. No construction shall take place on June 27, 2014 at the request of the preschool.
10. 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.

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- 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.
11. 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.
12. 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.
13. 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.
14. 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.
15. 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:

16. 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.
17. 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.
18. 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.
19. 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.
20. New street tree types and locations shall be approved by the City Arborist prior to issuance of building permit.
21. 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.
22. 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.
23. 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.).

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24. 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.
25. 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.
26. 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.
27. 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

28. 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.
29. 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.

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30. 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:

31. 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 back ground
 - 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.
32. An Automatic Fire Sprinkler System is required for this project.
33. 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.
34. Building shall have a "Wet Fire Standpipe in rear stairwell.
35. Standpipes shall be interconnected with the fire sprinkler system.
36. The fire alarm system shall be installed in accordance with NFPA 72.
37. Fire alarm System shall have the FACP located in an approved location and shall be easily accessible and access doors clearly labeled.
38. If the FACP cannot be located for easy access a remote enunciator shall be placed in an approved location.
39. 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.
40. Electronic gate shall have a Knox Key Entry System installed for emergency operations.
41. All Knox Box Entry Systems used in this building shall be approved by the Fire Marshall before installation.
42. 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.
43. All electrical breakers shall be labeled. Major equipment shall have corresponding labels.

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44. 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:

45. 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 June 23, 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 June X, 2014.

Cheryl Morse, City Clerk

APPROVED:

Janet Abelson, Mayor

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 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 proposes a General Plan Amendment to change the allowable density to 35.7 units per acre; 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 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

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Development Agreement, which Resolution is incorporated herein by reference and available for review at City Hall during normal business hours.

H. The City Council held a properly noticed public hearing on the Project, including the proposed Development Agreement, on June 2, 2014 at which time all interested parties had the opportunity to be heard.

I. A staff report dated June 2, 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, (e) the staff report; (f) 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.

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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 special meeting of the City Council on June 23, 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 July ____, 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 July 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 ___th day of July, 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 July, 2014.

Cheryl Morse, City Clerk

RECORDING REQUESTED BY:

CITY OF EL CERRITO

When Recorded Mail To:

City Clerk
City of El Cerrito
10890 San Pablo Ave.
El Cerrito, CA 94530

*Exempt from Recorder's Fees
Pursuant to Government Code §§ 27383, 6103*

Space above this line for Recorder's use

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-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 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 aforescribed 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. 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
271 Valley Lane
Fairfield, CA 94532
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

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)

245 YGNACIO VALLEY ROAD WALNUT CREEK, CA 94596 TEL: 925.944.1626 FAX: 925.944.1666
1970 BROADWAY, SUITE 800 OAKLAND, CA 94612 TEL: 510.272.1060 FAX: 510.272.1066

June 10, 2014

Cheryl Morse
City Clerk
City of El Cerrito
10890 San Pablo Avenue
El Cerrito, CA 94530

Dear Mayor Abelson and Members of the El Cerrito City Council,

On behalf of Mr. Eddie Biggs, we would like to clarify certain subjects discussed during the Council Meeting held on June 3rd, 2014, where approval of the 1715 Elm Street project was discussed.

Historic House

We would like to confirm the Mr. Biggs is willing to restore the exterior to State Historic Standards and relocate it on new foundations south of the creek, to the rear of the property, as shown on our site plans. Additionally, he will update the plumbing and electrical installation to current codes; install a bathroom and ADA accessible lift. On completion of the foregoing he is willing to donate the house to a public entity the City approves of (which could include the City of El Cerrito).

Private open space common area

We would confirm that Mr. Biggs is prepared to donate this land for use as a public "pocket park", open during daylight hours (exact details to be determined). This park could incorporate demonstration gardens if deemed appropriate, as interest in this use has been expressed at several public hearings.

Development Agreement

Several comments have been made regarding the proposed 10 year development agreement, suggesting that Mr. Biggs is not serious about proceeding with the project. This term came about during negotiations between Mr. Biggs' attorney and the City Attorney, and reflects what we believe is normal practice. Notwithstanding this, Mr. Biggs is prepared to negotiate a shorter term if this is considered desirable. Mr. Biggs would like to re-confirm his intent to proceed with the project as soon as possible.

Best Regards,


Carl E. Campos, CEO
LCA Architects, Inc.
CA License C10482


Date 6/11/14 Eddie Biggs Date 6-11-14