Maggie

LAW OFFICES OF
A. ALAN BERGER
95 South Market Street
Suite 545
San Jose, CA 95113
Telephone: 408-536-0500
Facsimile: 408-536-0504

RECEIVED
AUG 15 2017
SAN FRANCISCO BAY CONSERVATION
& DEVELOPMENT COMMISSION

August 15, 2017

San Francisco Bay Conservation and Development Commission
455 Golden Gate Avenue, suite 10600
San Francisco, CA 94102

Re: Statement of Defense to Violation Report/Complaint Investigation ER2014.015

Gentlepersons:

Please find attached the Statement of Defense for Heron Bay Homeowners Association to the Violation Report/Complaint currently pending. Because the response is considerably longer that the space provided on the Statement of Defense, we have presented our statement on Attachment A which you will find following the Statement. The Attachment follows the seven item numbers in the Statement of Defense format. If you have any questions, please do not hesitate to call.

Very truly yours,

A. Alan Berger
Attorney for Heron Bay Homeowners Association

Cc: Client
AAB/ceb

Statement of Defense Form

Enforcement Investigation ER2014.015

Heron Bay Homeowners Association

FAILURE (1) TO COMPLETE THIS FORM, (2) TO INCLUDE WITH THE COMPLETED FORM ALL DOCUMENTS, DECLAREATIONS UNDER PENALTY OF PERJURY, AND OTHER EVIDENCE YOU WANT PLACED IN THE RECORD AND TO BE CONSIDERED BY THE COMMISSION, (3) TO LIST ANY WITNESSES WHOSE DECLARATION IS PART OF THE STAFF'S CASE AS IDENTIFIED IN THE VIOLATION REPORT THAT YOU WISH TO CROSS-EXAMINE, THE AREA OF KNOWLEDGE ABOUT WHICH YOU WANT TO CROSS-EXAMINE THE WITNESS, AND THE INFORMATION YOU HOPE TO ELICIT BY CROSS-EXAMINATION, AND (4) TO RETURN THE COMPLETED FROM AND ALL INCLUDED MATERIALS TO THE SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION STAFF OR TO CONTACT **MAGGIE WEBER** OR **JOHN BOWERS** OF THE SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION ENFORCEMENT STAFF BY **JULY 20, 2017** MEANS THAT THE COMMISSION CAN REFUSE TO CONSIDER SUCH STATEMENTS AND EVIDENCE WHEN THE COMMISSION HEARS THIS MATTER.

DEPENDING ON THE OUTCOME OF FURTHER DISCUSSIONS THAT OCCUR WITH THE SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION ENFORCEMENT STAFF AFTER YOU HAVE COMPLETED AND RETURNED THIS FORM, ADMINISTRATIVE OR LEGAL ENFORCEMENT PROCEEDINGS MAY NEVERTHELESS BE INITIATED AGAINST YOU. IF THAT OCCURS, ANY STATEMENTS THAT YOU MAKE ON THIS FORM WILL BECOME PART OF THE ENFORCEMENT RECORD AND MAY BY USED AGAINST YOU.

YOU MAY WISH TO CONSULT WITH OR RETAIN AND ATTORNEY BEFORE YOU COMPLETE THIS FORM OR OTHERWISE CONTACT THE SAN FRANCISCO BAY CONSERVATION AND DEVLOPMENT COMMISSION ENFORCEMENT STAFF.

This form is enclosed with a violation report. The violation report indicates that you may be responsible for or in some way involved in either a violation of the Commission's laws, a Commission permit, or a Commission cease and desist order. The violation report summarizes what the possible violation involves, who may be responsible for it, where and when it occurred, if the Commission staff is proposing any civil penalty and, if so, how much, and other pertinent information concerning the possible violation.

This form requires you to respond to the alleged facts contained in the violation report, to raise any affirmative defenses that you believe apply, to request any cross-examination that you believe necessary, and to inform the staff of all facts that you believe may exonerate you of any legal responsibility for the possible violation or may mitigate your responsibility. This form also requires you to enclose with the completed statement of defense form copies of all written documents, such as letters, photographs, maps drawings, etc. and written declarations under penalty of perjury that you want the Commission to consider as part of this enforcement hearing. This form also requires you to identify by name any person whom you may want to cross-examine prior to the enforcement hearing on this matter, the area of knowledge that you want to cover in the cross-examination, the nature of the testimony that you hope to elicit, and the reasons that you believe other means of producing this evidence are unsatisfactory. Finally, if the staff is only proposing a civil penalty, i.e., no issuance of either a cease or desist order or a permit revocation order, this form allows you alternatively to pay the proposed fine without contesting the matter subject to ratification of the amount by the Commission.

IF YOU WANT TO CROSS-EXAMINE ANY PERSON ON WHOSE TESTIMONY THE STAFF HAS RELIED IN THE VIOLATION REPORT, YOU MUST COMPLETE PARAGRAPH SEVEN TO THIS STATEMENT OF DEFENSE FORM. THIS PARAGRAPH REQUIRES YOU TO SET OUT (1) THE NAME(S) OF THE PERSON(S) YOU WANT TO CROSS-EXAMINE, ()2) REFERENCES TO ANY DOCUMENTS ABOUT WHICH YOU WANT TO CROSS-EXAMINE THE PERSON, (3) THE AREA OF KNOWLEDGE ABOUT WHICH YOU WANT TO CROSS-EXAMINE THE PERSON, (4) THE INFORMATION THAT YOU BELIEVE CAN BE ELICITED BY CROSS-EXAMINATION, AND (5) THE REASON WHY YOU BELIEVE THIS INFORMATION CANNOT BE PRESENTED BY DECLARATION OR OTHER DOCUMENT.

You should complete the form as fully and accurately as you can as quickly as you can and return it no later than 35 days after its having been mailed to you to the Commission's enforcement staff at the address:

San Francisco Bay Conservation and Development Commission
455 Golden Gate Avenue, Suite 10600
San Francisco, California 94102

If you believe that you have good cause for not being able to complete this form within 35 days of its having been mailed, please complete it to the extent that you can and within 35 days of the mailing of the violation report send the statement of defense form completed as much as possible with a written explanation of what additional information you need to complete the form in its entirety, how long it will take to obtain the additional information needed to complete the form, and why it will take longer than 35 days to obtain the additional information, send all of this to the Commission's staff at the above address. Following this procedure does not mean that the Executive Director will automatically allow you to take the additional time to complete the form. Only if the Executive Director determines that you have shown good cause for the delay and have otherwise complete the form as much as is currently possible will be grant an extension to complete the form.

If the staff violation report/complaint that accompanied this statement of defense form included a proposed civil penalty, you may, if you wish, resolve the civil penalty aspect of the alleged violation by simply providing to the staff a certified cashier's check in the amount of the proposed fine within the 35-day time period. If you choose to follow this alternative, the Executive Director will cash your check and place a brief summary of the violation and proposed penalty along with a notation that you are choosing to pay the penalty rather than contesting it on an administrative permit listing. If no Commissioner objects to the amount of the penalty, your payment will resolve the civil penalty portion of the alleged violation. If a Commissioner objects to the proposed payment of the penalty, the Commission shall determine by a majority of those present and voting whether to let the proposed penalty stand. If such a majority votes to let the proposed penalty stand, your payment will resolve the civil penalty portion of the alleged violation. If such a majority does not let the proposed penalty stand, the Commission shall direct the staff to return the money paid to you and shall direct you to file your completed statement of defense form and all supporting documents within 35 days of the Commission's action. Of course, you also have the opportunity of contesting the fine from the outset by completing this form and filing it and all supporting documents within 35 days of its having been mailed to you.

If you have any questions, please contact as soon as possible **MAGGIE WEBER** or **JOHN BOWERS** of the Commission Enforcement Staff at telephone number **415-352-3600**.

1. Facts or allegations contained in the violation report that you admit (with specific reference to the paragraph number in the violation report):

See Attachment A

2. Facts or allegations contained in the violation report that you deny (with specific reference to paragraph number in the violation report):

See Attachment A

3. Facts or allegations contained in the violation report of which you have no personal knowledge (with specific reference to paragraph number in the violation report):

See Attachment A

4. Other facts which may exonerate or mitigate your possible responsibility or otherwise explain your relationship to the possible violation (be as specific as you can; if you have or know of any documents, photographs, maps, letters, or other evidence that you believe are relevant, please identity it by name, date, type, and any other identifying information and provide the original or a copy if you can):

See Attachment A

5. Any other information, statement, etc. that you want to make:

See Attachment A

6. Documents, exhibits, declarations under penalty of perjury or other materials that you have attached to this statement to support your answers or that you want to be made part of the administrative record for this enforcement proceeding (Please list in chronological order by date, author, title and enclose a copy with this completed form):

See Attachment A

7. Name of any person whose declaration under penalty of perjury was listed in the violation report as being part of the staff's case who the respondent wants to cross-examine, all documents about which you want to cross-examine the person, area or areas of information about which the respondent wants to cross-examine the witness, information that the respondent hopes to elicit in cross-examination, and the reason(s) why some other method of proving this information is unsatisfactory:

See Attachment A

LAW OFFICES OF
A. ALAN BERGER
95 South Market Street
Suite 545
San Jose, CA 95113
Telephone: 408-536-0500
Facsimile: 408-536-0504

ATTACHMENT A TO STATEMENT OF DEFENSE FORM

ENFORCEMENT INVESTIGATION ER2014.015

Submitted on behalf of Heron Bay Homeowners Association in response to Violation Report/Complaint for the Imposition of Civil Penalties Enforcement Investigation No. ER2014.015.

Heron Bay Homeowners Association (hereinafter referred to as "Heron Bay," "the HOA," or "the association") notes that the factual history of the issuance of the 1994 Permit that is the subject of this Violation Report/Complaint in relation to the formation of the HOA and the times subsequent thereto are an essential element in the defense to be presented. While those historical facts would otherwise be presented as a preamble to any argument, Heron Bay, in an attempt to closely follow the form Statement of Defense presented, will defer that discussion to items 4 & 5 of the Defense form. Heron Bay asks that this Honorable reviewing body carefully review the statements of facts within the response to item 4 & 5 in formulating their decision.

Heron Bay also asks the decision makers to consider the fact that within the last month, Heron Bay and BCDC staff, subject to Commission approval, have agreed on a resolution of all of the outstanding violations. The as-built condition of the streets will remain. Heron Bay is in the process of providing a new as-built map with the exact dimensions of the public access easement. The HOA has agreed to install bicycle sharrows of a size and spacing been approved by BCDC and a map of those locations has been provided. The HOA has agreed to new signage of a type, size and location that has already been approved by BCDC and a map of those locations has been provided. It has been agreed the BCDC staff and the HOA that a surveyor will have a certain period of time (for example, 90 days) to provide a specific meets and bounds map of the site and the public easement and that a permanent guarantee will immediate follow that incorporates the surveyed map. Please note that the HOA has consistently agreed since the inception of these proceedings in 2014 to provide sharrows, to provide approved signage, and to prepare a surveyed map and permanent guarantee. These matters have never been in question since the alleged violations were first brought to the attention of the HOA.

Because of the space limitations presented in the supplied form, the following is submitted as an attachment A to the Statement as if set forth fully therein.

STATEMENT OF DEFENSE

Item 1. Heron Bay Homeowners Association admits the existence of the permit identified as Citation Permit, BCDC Permit No. M1992.057.01 as stated in particular in Section II, A, C, D, F and G. However Heron Bay specifically denies that it is or was in violation of any of the specific violations contained in those sections. Heron Bay, in a telephone conversation with Maggie Weber and John Bowers on or about August 9, 2017, was advised that BCDC was dropping the allegations of violation contained in Section II, B and D and respondent will not therefore comment on those sections.

Heron Bay admits the facts contained in the following items of the Violation Report: III, IV (except as to those lands controlled and maintained by Heron Bay Maintenance Assessment District 96-3 and/or the City of San Leandro), VI (D) (E) (J) (M) (N) (P) (Q) (R) (S) (T) (U) (V) (W) (X) (Y) (Z) (AA) (BB) (DD) (EE) (FF) and (GG).

Item 2. Heron Bay denies the following allegations:

Section II (A). Firstly the HOA would state that the definition of "Lewelling Boulevard Extension" as stated in the permit (and the violation) is not limited to Bayfront Drive. The permit refers to a "1450-foot Lewelling Boulevard Extension from Robert's Landing Slough east past the railroad tracks to the City's public street (Segment 3)." All of the Lewelling Extension East of the railroad tracks, and the short straight section and 120-foot roundabout west of the railroad are all City public streets, with the railroad maintained by the City, and landscaping maintained by the City-managed Heron Bay Maintenance Assessment District 96-3. Heron Bay HOA maintains the 435 feet of Bayfront Drive, along with sidewalks and landscaping, as a private street. The approximately 900 feet of the Bay Trail from the westerly edge of the Heron Bay property to the bridge at Robert's Landing Slough are under the jurisdiction of the Heron Bay Maintenance Assessment District 96-3, administered by the City of San Leandro. BCDC admitted the existence of this special District and acknowledged its official creation in a City of San Leandro Resolution No. 96-56, dated April 15, 1996. A true copy of that document is marked as Exhibit A and attached to this Statement of Defense as if set forth fully herein.

Heron Bay specifically denies that it has failed to submit and gain approval of public access plans. As BCDC staff well knows, the HOA did not even take control of the project from the developer, Citation Homes, until October 12, 1999 (admitted in Violation Report, page 3, item V (E)). Heron Bay had no part in the designing of the streets, sidewalks and public access but rather took over the project when all of the subject improvements had been in place for several years. While Heron Bay admits that is it the successor in interest to Citation Homes in ownership of the project, it cannot be legally or equitably argued that the association in fact violated those conditions. In fact it is without argument that BCDC was not even aware of this project as a whole or of any specific or particular violations until the matter was raised by Heron Bay in an application to the City of San Leandro in April, 2014 (see Violation Report, page 6, item J).

The irony of BCDC attempting to argue that the HOA failed to submit (which they could not have done as they did not yet exist) or gain approval of the public access plans is that even BCDC agrees that the current condition that was in fact installed by Citation is far superior to that which was originally guaranteed. As later stated in response to Statement of Defense Item 4, the original permit required a minimum 12-foot wide, handicapped accessible, pedestrian and bicycle path, with a minimum 8-foot wide, asphalt primary use area and a minimum total of 4 feet of shoulder. The as-built condition, which BCDC has since accepted during the HOA attempts to resolve the violations is far superior to that which was called for by the original permit. The as-built includes a 36-foot wide two-lane asphalt street, curb and planter beds which are 12-feet wide on the north side of Bayfront and a strip on the south side of Bayfront that is approximately 5 ½ feet wide. In recent discussions, BCDC staff has accepted this as-built condition and Heron Bay has provided the to-scale maps demonstrating the exact dimensions of the as-built condition. It is important to note that in each of the respondent's three applications for a permit, respondent has offered to tear out the existing street and sidewalk and to install the exact condition as originally permitted. All parties agree that this would be aesthetically unpleasing and a reduction in public access to the bay trails. It is absurd to attempt to create a violation against the HOA that had nothing to do with the as-built condition, particularly when the HOA has agreed on multiple occasions to return the area to the less pleasing requirement of the permit. It is further interesting to note that to the HOA's knowledge, not one person has complained to BCDC over the lack of the original access requirements in the approximately 18 years that the condition has been in place. This attempted violation seems to be an attempt of BCDC to obfuscate the fact that they also were unaware of the permit requirements for many, many years and tacitly approved the existing condition over that time period.

Section II (B). Heron Bay understands that BCDC has dropped this allegation.

Section II (C). Heron Bay categorically denies that they have failed to permanently guarantee all public access areas. Respondent has consistently in all dealings with BCDC and in all three applications for an Amended Permit agreed to permanently guarantee public access. This has never been an issue. In support of this statement, Heron Bay marks as exhibit B a true copy of their May 18, 2017 Third Application for Amended Permit. (Heron Bay also marks as Exhibit C for the commission's review an earlier application for an Amended Permit, dated July 13, 2016.) As the commission can plainly see on page 6 of that Exhibit B, the HOA again agreed to provide such a permanent guarantee. This same promise was made in the earlier applications of September 16, 2015 and July 12, 2016 (Exhibit C). In every conversation that the undersigned has had with BCDC staff this same statement was made, to wit: that the permanent guarantee would be provided as soon as the Amended Permit was approved by BCDC. BCDC staff has agreed that the permanent guarantee could be submitted after the amended permit was granted and the land surveyed. It is erroneous to try and assess Heron Bay with a violation and a fine for an issue that they have conceded from the very beginning. Please recall that Heron Bay was unaware of any requirement for a guarantee before their first dealings with BCDC in early 2014 and also that BCDC did not ask for said permanent guarantee for some 19 years.

Section II (D). This alleged violation, according to footnote 2 in the violation report, involves the failure to provide the 8-foot wide path with a minimum of a 4-foot shoulder. The argument to this alleged violation is contained in the response to Section II (A) above and is incorporated herein by reference. It is absurd to argue the existence of a violation when the as-built condition is far superior to that called for in the permit, has been used for more than 19 years without issue and has been tacitly approved by BCDC staff since 2014. No rational argument would suggest that the as-built street, sidewalk, curbs and landscaping be removed for a rougher, less aesthetically pleasing condition. Furthermore, as stated above, Heron Bay had absolutely nothing to do with the as-built condition but inherited it from the developer. Furthermore, the as-built condition was apparently accepted by the City of San Leandro 19 years ago.

Section II (E). Heron Bay understands that BCDC has dropped this allegation.

Section II (F). Heron Bay absolutely denies this allegation. From its first dealings with BCDC in 2014, Heron Bay has never denied that it is bound by the conditions of the Citation Permit. All three of its attempts to secure an Amended Permit and at every in-person meeting with BCDC the HOA made it clear that it fully accepted its responsibility to comply with the permit. The HOA continues to argue that it is not responsible for the alleged violations as they had no part in the negotiations and did not construct the project after the permit was issued, but they have steadfastly agreed that they are bound by the terms of the permit and would comply with those terms. They have agreed to bicycle sharrows as demanded by BCDC, they have agreed to new signage as demanded by BCDC, they have agreed to remove old signage as demanded by BCDC, they have provided the new maps and each change thereto demanded by BCDC and they have agreed to sign the permanent guarantee, pursuant to the permit. A copy of the map recently submitted to BCDC is marked as Exhibit D and attached hereto by reference. While BCDC has asked for an addition showing the actual easement dimensions to be shown on the map, that will be provided. BCDC has indicated that it will accept this map with the additions. It is legally and equitably unsustainable to attempt to charge the HOA with this technical violation when BCDC is well aware that the violation expressed is not a real violation.

Furthermore, it is important to note that not one time prior to the violation complaint has this issue been raised by BCDC as a separate violation. Respondent has carefully read every written correspondence from BCDC in response to the HOA's efforts to obtain an amended permit and not in one letter or communication is this separate violation listed or spelled out (For example, see letter from BCDC to Heron Bay dated August 12, 2016 and marked as Exhibit E). It is legally unsustainable to attempt now to charge a maximum fine for an issue that was not once raised by BCDC in their communications with the HOA and one that represents a technicality as it is absolutely obvious from the numerous communications between the parties that the HOA has never taken the position that they are not currently bound by the terms of 1994 permit language and in fact have made every effort to conform to same.

Section II (G). This violation again represents a red herring and is another attempt of BCDC staff to paint the HOA in a most unfavorable light. As the commission can see from a review of the three amended permit applications, the HOA has always been ready and willing to deliver whatever signage demanded by BCDC and has, in a recent meeting with BCDC, advised staff that it is willing to take down the one offending sign the existence of which was actually pointed out by one of the HOA board members. At the time when the one sign in question was placed by the HOA, substantially before 2014, the HOA had no contact with BCDC and was totally unaware of their obligations under the Citation permit. The sign in question "No Public Parking-Private Streets" is not out of compliance with the public access requirement of the permit: "walking, sitting, bicycling, viewing, picnicking, and related purposes." The sign in question is part of the private street signage required by California Vehicle Code Section 21107.7. However, if the sign in question is in violation of the McAteer-Petris Act, as alleged by BCDC, the HOA was unaware of same and of its obligations under the Act. While this may not be a strict defense under the law, equity would demand that the commission recognize that the HOA agreed to take down the sign as soon as the issue was presented to them and has been fully cooperative in this regard. BCDC admits that they did not complain of this sign until recently. The HOA has immediately agreed to remove this sign. The overall sign requirements of BCDC have been agreed to by the HOA and the placement of those signs is indicated on Exhibit D. The HOA should not be penalized for this oversight, particularly when there is no history whatsoever of complaints relating to this particular sign or its affect on accessibility to the bay trails.

Section V. The respondent has no information regarding when the work on site was performed that created the alleged violations. The respondent did not take possession of the properties until 1999 at which time all of the improvements listed as alleged violations had already been constructed. Again, the HOA had no knowledge at all of the issues until 2014. Without independent knowledge of the fact situation, the HOA denies each and every allegation of this Section based on information and belief.

Item C (K) on page 6. While the issue of the proposed gates has long been moot, the HOA denies that the installation of the planned gates would have discouraged members of the public from being able to reach the required public access areas. The HOA maintains that the presence of gates and an attendant would have aided members of the public as the attendant would have directed the public to available parking which was being discussed as possible (please be aware that the original plan and permit required and allowed for no public parking on Bayfront or near the trail area) and would have handed out informational sheets to the visitors as is done in State and Federal Parks. Also the installation of the gates specifically would not have hindered bicycles and pedestrians from using the trail area as special gates were being provided for their use.

Item VIII. The HOA argues that no fine or penalty should be imposed. As described in the narrative in response to Statement of Defense Item 4 below, the HOA was unaware of any of the alleged violations until the HOA first applied to the City of San Leandro for entrance gates in 2014. BCDC had allowed the alleged violations in question to remain without complaint for almost 19 years. It is unconscionable to now

demand that the HOA pay fines totaling $124,500.00 for violations that they did not create, construct, authorize or condone in any way. Yes the HOA is the successor in interest to Citation Homes and yes the HOA has agreed that they are bound by the terms of the Citation permit, but that does not mean that they should be charged with monetary loss for these violations that occurred some 19 years ago and which may have been in place for 3 or more years before the HOA even came into existence and took over the property from the developer. If offends the basic concept of due process to charge the HOA with these ancient violations and the mounting fines when the evidence is absolutely clear that the HOA has cooperated with and attempted to resolve each of the issues over the past years since their discovery. What responsibility does BCDC bear for their failure to timely enforce the permit in question? While is has taken some time for the issues to be resolved, and it is the HOA's understanding that they are now resolved and are being implemented, the HOA has not on any occasion refused to take every action demanded by BCDC to complete the amended permit application.

Furthermore, the HOA asks the commission to consider the fact that Heron Bay HOA is a non-profit, mutual benefit California Corporation consisting of 629 homes. The only money the corporation generates is from the collection of dues from the members and by California law, the Davis-Sterling Act, Civil Code Section 4000 et.seq. it cannot collect dues for any purpose except for the maintenance and repair of the common areas. Its yearly budgets are predicated on estimates of actual expenses to be incurred in the upcoming years. There are no extra monies or slush funds to pay for potential fines such as those being presented by BCDC. For the benefit of the commission, Heron Bay has attached its current balance sheet dated July 31, 2017, marked as Exhibit F and attached hereto by reference. The HOA has $231,201.36 in its operating account. All of these monies are need for the day-to-day expenses of running a large association with multiple streets and grounds. The proposed fine of $124,500.00 would take 54% of the total operating budget of the association. This is an unreasonable taking and would leave the association in a serious shortfall.

The commission may also take note that according to the U.S. Census Bureau the average length of time of home ownership is 5.9 years. Only 37 percent of homeowners have owned their homes for longer than 10 years. Considering these statistics, it is fair to assume that the great majority of the owners at Heron Bay did not own their homes when the alleged violations took place and had no responsibility for the creation of same. Again, it violates the principles of due process and equity to assess homeowners who were not present at the time of the violations and had nothing to do with the violations 54 percent of their operating budget in payment of fines. Fines without culpability and without responsibility should not and will not stand a court challenge.

The above concludes Heron Bays Statement of Defense comments as to item 2.

Item 3. The following facts and allegations of the Violation Report generally are alleged to have taken place at a time before the involvement of the Heron Bay Homeowners Association. Therefore these facts and allegations are outside the knowledge of the HOA and the HOA has no personal knowledge of same. Those items are as follows: Sections VI (A) (B) (C) (F) (G) (H) (I) (L) (O) (CC), Section VII and Section IX.

Items 4 & 5. As stated in the opening paragraphs of this attachment to the Statement of Defense, Heron Bay submits the following factual scenario in support of their position that they are not culpable for and should not be charged with any resultant fines, particularly as they have now agreed with BCDC to provide every item that will result in an approval of the Amended Permit. There will, therefore, be no continuing violations. Although some of the following facts may have been discussed above in response to individual items, they are repeated here for continuity.

For the record we would note that the original permit was issued to Citation Homes, the original developer and builder of the Heron Bay complex, which is comprised of 629 homes. There was no existing construction of homes prior to the issuing of the subject permit. Citation Homes turned over control of the complex to the original homeowner controlled Board of Directors in approximately 1999 with no reference whatsoever to the existing permit 1992.057. At the time the HOA became the successor in interest under the original BCDC permit, the current private streets and sidewalks including, but not limited to, Bayfront Drive road bed, curbs, pedestrian sidewalk, and landscaping were already completely constructed by Citation Homes or their contractors and had, on information and belief it is alleged, been inspected and signed off by the City Building inspectors for the City of San Leandro. The current HOA had no knowledge of the existence of the permit nor or any alleged failures to comply until mid-summer 2014 when the HOA made application to the City of San Leandro for the installation of entrance gates at the complex because of growing crime on the grounds of the HOA. At no time from 1994 through 2014 did BCDC notify or communicate in any way with the HOA regarding non-compliance with the permit. Apparently both the City of San Leandro and BCDC were unaware that the various entities were then in violation of the referenced permit. At that time the Association was advised by BCDC of the existence of the permit and alleged violations of that permit, in particular violations of the requirements of section F (3) Public Access Improvements. Since that time the HOA has been meeting with and working with the staff of BCDC and the City of San Leandro to achieve mutually agreeable solutions to the existing problems. Since that time various items of correspondence from BCDC, including the most recent letter of April 14, 2017 (item number 21 in the BCDC's Index of Documents), seem to infer that the Association has somehow been less than diligent in their pursuit of compliance with the permit terms. This is simply not the case. At all times since the HOA became aware of BCDC's claim of permit non-compliance, and particularly during the past months, the HOA has been diligently working on proposals that would satisfy all permit needs and best serve all members of the community who may wish to use the bay trails. Let us state again at this point that Heron Bay Homeowners Association does now and has always vigorously supported the public use of the bay trails. The HOA has undertaken no action, proposed or actual, that would disrupt or interfere with the bay trail access. The difficulty has been preparing a plan that would incorporate the as-built condition of Bayfront Drive, an as-built condition that was approved by the City more than 20 years ago, with the requirements of BCDC, the planning guidelines of the City of San Leandro and the needs and rights of the HOA and the owners of Heron Bay homes.

As the staff of BCDC is well aware, several proposals have been made to the City involving the use of an attendant on Heron Bay property and the placement of a kiosk to

enable that attendant to have shelter and a restroom area. The concept was that the presence of an attendant would provide some safety and security to the residents of the complex without affecting the free use of the bay trails by the general public. As stated by BCDC in their April 14, 2017 notice, BCDC has been kept aware of those various applications by the HOA and by the City of San Leandro. BCDC has recognized that as late as December 19, 2016, the City of San Leandro City Council denied the pending application to place the kiosk on Heron Bay property, completely removed from the area of the public access easement. Heron Bay would like to point out to BCDC that this denial does not represent the complete story. In fact the City Planning Department Staff approved the placement of the kiosk as presented. The City Council denied the pending permit stating that they would not approve any plan that allowed the attendant at the kiosk to stop cars for any purpose, even if that purpose was to determine whether those non-residents were entering the private property for a legitimate purpose which would have included the use of the bay trails. The intent, as earlier described to BCDC staff, was to have the attendant hand out approved information on the trails and to be welcoming to the public to the use of the trails. The City Council also wanted the HOA to further inform their members in several languages of the HOA's intent. It is important to note that the City Council denied the application without prejudice. The HOA has spent the past several months preparing for a resubmittal addressing the concerns of the City Council, keeping in mind that the Planning Staff has already approved the concept of the plan.

However, the Association presented its third application for an Amended Permit without the kiosk/attendant proposal. Since that time, in discussions with BCDC staff, it has been tentatively agreed that the Amended Permit Application will be granted subject to Heron Bay submitting a List of Interested Parties and one additional version of the tract map showing the exact dimensions of the easement area. The Permit will then be approved subject to the HOA submitting a surveyor's map of the exact area subject to the easement and the permanent guarantee within a designated time period. Both parties have agreed that the permanent guarantee cannot be submitted until the permit is approved. Once the amended permit is approved and the surveyor's map and permanent guarantee approved, the HOA will be in compliance and there will be no continuing violations.

Item 6: In addition to the Exhibits mentioned above, Heron Bay submits the following Exhibits for consideration as if set forth at length herein:

Exhibit A: Resolution of the City Council of the City of San Leandro dated April 15, 1996.

Exhibit B: Third Application of Heron Bay for Amended Permit, dated May 18, 2017.

Exhibit C: Application of Heron Bay for Amended Permit, dated July 13, 2016.

Exhibit D: Application of Heron Bay for Amended Permit, dated September 16, 2015.

Exhibit E: Letter from Heron Bay to BCDC dated February 27, 2015.

Exhibit F: Letter from BCDC to Heron Bay dated August 12, 2016.

Exhibit G: Heron Bay balance sheet dated July 31, 2017.

Exhibit H: Map of proposed signs, sharrows, etc. presented to BCDC in August 2017.

Item 7. The violation report did not list or include any person's declaration under penalty of perjury as being part of the staff's case.

Submitted: August 15, 2017

A. Alan Berger, Attorney for Heron Bay Homeowners Association

EXHIBIT A

IN THE CITY COUNCIL OF THE CITY OF SAN LEANDRO

RESOLUTION NO. 96- 56 (2690)

RESOLUTION AUTHORIZING THE CITY MANAGER
TO EXECUTE AN AGREEMENT BETWEEN
ROBERTS LANDING INC. dba
CITATION HOMES CENTRAL
A CALIFORNIA CORPORATION,
SANTA CLARA LAND TITLE COMPANY, AND
THE CITY OF SAN LEANDRO
RELATED TO GDP CONDITION XIV
AND FINANCING FOR PUBLIC IMPROVEMENTS
DEDICATED TO THE CITY

Recitals

An Agreement between the City of San Leandro, ROBERTS LANDING, INC. dba CITATION HOMES CENTRAL A CALIFORNIA CORPORATION, AND SANTA CLARA LAND TITLE COMPANY, a copy of which is attached hereto, has been presented to this Council.

The City Council is familiar with the contents thereof.

The City Manager has recommended the approval of said document.

NOW, THEREFORE, the City Council of the City of San Leandro does RESOLVE as follows:

That said agreement is hereby approved and execution thereof by the City Manager is hereby authorized.

Introduced by Council Member Perry and passed and adopted this 15th day of April, 1996, by the following called vote:

Members of the Council:

AYES: Council Members Galvan, Kerr, Myers, Perry, Polvorosa; Mayor Corbett (6)

NOES: None (0)

ABSENT: Council Member Loeffler (1)

Attest: Alice Calvert
ALICE CALVERT, City Clerk

AGREEMENT AMONG
ROBERT'S LANDING, INC. dba
CITATION HOMES CENTRAL
A CALIFORNIA CORPORATION,
SANTA CLARA LAND TITLE COMPANY, AND
THE CITY OF SAN LEANDRO
RELATED TO GDP CONDITION XIV
AND FINANCING FOR PUBLIC IMPROVEMENTS
DEDICATED TO THE CITY

RECITALS

This is an agreement among Robert's Landing, Inc., dba Citation Homes Central, a California corporation, Santa Clara Land Title Company, and the City of San Leandro and is dated this 15th day of April, 1996.

1. WHEREAS, Roberts Landing Incorporated, dba Citation Homes Central and Santa Clara Land Title Company (hereinafter "Citation") received approval from the City of San Leandro (hereinafter "City") for a General Development Plan (hereinafter "GDP") in April, 1992;

2. WHEREAS, GDP condition of approval XIV titled "Financial" anticipated the formation of an assessment district to construct, install, purchase and maintain various public improvements which specially benefit Citation's property;

3. WHEREAS, pursuant to GDP condition of approval XIV, Citation agreed to participate in all proceedings necessary to form said assessment district;

4. WHEREAS, GDP condition of approval XIV identified certain public improvements for inclusion in the assessment district including, but are not limited to:

a. Design, construction and maintenance of Water Circulation and Drainage improvements as depicted in that certain document entitled "Water Circulation and Drainage Plan" dated July 19, 1991, and prepared by ESA subject to regulatory agency amendments;

b. Design, construction and maintenance of the Shoreline Trail and trail extension through open space lands adjacent to and serving Citation's property;

c. Design, construction and maintenance of existing and newly-constructed shoreline levies, outfalls, tidegates, pumps, maintenance roads, bank protection, drainage facilities, and wetland habitat;

d. Design, construction, reconstruction and maintenance of levies separating Citation's property from the City's 100-acre dredged disposal area, and any remedial actions or improvements associated therewith;

e. Design, construction, and maintenance of levees, weirs, dikes, outfalls, drainage facilities, pumps, flapgates, tide gates and other improvements necessary to implement that certain plan entitled WESCO Mitigation Plan dated January, 1992 [currently identified as the "RMI Mitigation and Monitoring Plan dated May 1995" for the Citation marsh];

f. Any other public improvements customarily financed and maintained through special assessment proceedings, including but not limited to, streets, sidewalks, public rights of way, sewers, waterlines, soundwalls, traffic signals, signage, streetlights, drains, stormwater facilities, parks, landscaping, and lift stations.

5. WHEREAS, GDP condition XIV further provides that the development project will be assessed an annual maintenance assessment not exceeding One Hundred Thousand Dollars ($100,000) to offset the cost of maintenance for items (a) through (d) of recital 4;

6. WHEREAS, Citation proposes to fulfill GDP Condition No. II(H), which requires Citation to dedicate to the City or a public agency specified by the City it's Roberts Landing property zoned open space as shown on Map 1 (143.45 acres), following issuance of a fill permit from the Army Corps of Engineers and implementation of the RMI Mitigation and Monitoring Plan;

7. Whereas Citation desires to retain full financial responsibility for complete implementation of the RMI Mitigation and Monitoring Plan until such time as Army Corps of Engineers and any other applicable governmental regulatory agency has determined that the improvements are complete and that management, monitoring and maintenance is no longer necessary to establish compliance with the

applicable regulatory agency conditions including, but not limited to those provided by the Army Corps of Engineers;

8. Whereas Citation further proposes to dedicate to the City as prospective public improvements those areas delineated on Maps 2 and 3 attached hereto and incorporated herein by reference, specifically including: (1) the sidewalks, landscaping and sound walls associated with the Lewelling Boulevard extension westerly of Wicks Boulevard through the round-a-bout Westerly of the Southern Pacific Railroad tracks and (2) portions of the buffer areas including the "Interpretive Center";

9. Whereas Citation has or will dedicate certain improvements to the Alameda County Flood Control District including the lift station, pond and on-site roads located in southeast corner of Roberts Landing Phase 1A and the stormwater detention pond located in Roberts Landing Phase 1B, both more particularly shown on Map 2 attached hereto and incorporated herein by reference;

10. Whereas Citation and the City acknowledge that these dedicated public improvements will specially benefit the Roberts Landing Development and that maintenance of these improvements will result in costs incurred by the City either directly or through agreements with other governmental agencies which will be reimbursed to the City through the assessment district identified herein;

11. Whereas the City and Citation agree that all other common improvements shown on Maps 2 and 3 attached hereto are to be maintained by the Homeowners Association. These improvements included, but are not limited to:

A. The landscaped area, soundwall and decorative fencing fronting Anchorage Drive near the lift station in Phase 1A;

B. Maintenance of the Southeast Emergency Vehicle Access in Phase 1A;

C. Landscaped area fronting the street near the Stormwater Pond in Phase 1B;

D. The small entryway parcels at the end of the cul-de-sacs, as well as the fencing along the real property lines adjoining the buffer area, and the drainage system in the buffer area;

E. The park area north of Phase IIB between the rear property fence

and the trail;

F. The two paseos in Phases IIA and III;

G. The parks within Phases IA and III;

H. The ten-foot landscaped buffer area east of Phase III between the Southern Pacific railroad tracks and the soundwalls;

I. The soundwalls north of Lewelling, adjacent to Phase III; north of Lewelling adjacent to the Mission Bay Mobilehome Park; south of Lewelling, adjacent to Phase IIA and IA and south of Lewelling adjacent to the Sandev Mobile home Park;

J. The trail/sidewalk along Bay Front Drive;

K. The monuments in the public right-of-way along Lewelling Boulevard.

12. Whereas the City and Citation desire to form a maintenance assessment district to fund the costs of maintaining the prospective public improvements to be dedicated to the City and other governmental agencies,

AGREEMENT

NOW, THEREFORE, the parties hereby agrees as follows:

1. Citation and the City hereby agree to form a maintenance assessment district to fund the City's full cost of maintaining the prospective public improvements identified herein to be dedicated to the City of San Leandro, specifically including: (1) the sidewalks, landscaping and sound walls associated with the Lewelling Boulevard extension westerly of Wicks Boulevard through the roundabout westerly of the Southern Pacific railroad tracks; (2) portions of the buffer areas including the Interpretive Center; (3) the $100,000 annual maintenance obligation for the items set forth in Recital No. 4, subsections A through D, and all costs to the City for maintenance, monitoring and management of the 143.45 acre Citation marsh (shown on Map 1) to be dedicated to the City.

2. Citation agrees that until such time as the Army Corps of Engineers or any other applicable governmental regulatory agency releases Citation from any further monitoring requirements associated with implementation of the Robert's Landing Mitigation and Monitoring Plan for the Citation marsh, Citation will assume all responsibilities, take any and all necessary actions, and pay all costs for remediation or work of any kind necessary to bring the Citation marsh into compliance with the RMI Mitigation and Monitoring Plan wherein such compliance shall be determined by the Army Corps of Engineers or any other applicable governmental regulatory agency.

3. Citation, as owner of all property subject to assessment at the time of formation of the assessment district, hereby petitions the City to form the maintenance assessment district described herein.

4. Citation further agrees that it shall place into its condition, covenants and restrictions for Phases IA, IB, IIA, IIB and III, a restriction prohibiting the homeowners from protesting reasonable assessment levied by the City to fund the monitoring, maintenance and managements costs associated with the public improvements to be dedicated to the City.

5. Citation also agrees to place into the conditions, covenants and restrictions for Phases IA, IB, IIA, IIB, and III a condition which provides that in the event that subsequent legislative changes limit the City's authority to impose assessments for the maintenance, management, and monitoring of the public improvements identified herein, the City will have authority to impose a lien upon all property within Phases IA, IB, IIA, IIB and III of the Robert's Landing Development for the purpose of collecting the costs associated with maintenance, management and monitoring of the public improvements to be dedicated to the City.

6. This Agreement shall be interpreted pursuant to the laws of the State of California.

Property Owner

4-11-96

Stephen C. Schott, President
Citation Homes Central

Date

Wayne Miyahara, as Asst. Vice-President for

Santa Clara Land Title Company

Date

a California corporation, with the authority to sign for said corporation

City

4-17-96

Mike Oliver, City Manager
City of San Leandro

Date

APPROVED AS TO FORM:

Steven R. Meyers, City Attorney
City of San Leandro

J:\WPD\CSL\136\AGREE\CITOPAGT.107

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Santa Clara

On April 11, 1996 (Date) before me, Patti A. Patterson, Notary Public (Name and Title of Officer (e.g., "Jane Doe, Notary Public"))

personally appeared Stephen C. Schott (Name(s) of Signer(s))

☒ personally known to me – ☐ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

PATTI A. PATTERSON
Commission # 1072445
Notary Public — California
Santa Clara County
My Comm. Expires Sep 17, 1999

WITNESS my hand and official seal.

Patti A. Patterson
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

☐ Individual
☐ Corporate Officer
Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney-in-Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing:

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

Signer's Name: _____

☐ Individual
☐ Corporate Officer
Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney-in-Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing:

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

© 1994 National Notary Association • 8236 Remmet Ave., P.O. Box 7184 • Canoga Park, CA 91309-7184 Prod. No. 5907 Reorder: Call Toll-Free 1-800-876-6827

CERTIFICATE OF ACKNOWLEDGMENT OF NOTARY PUBLIC

State of California
County of Santa Clara

On 4-12-96 before me, D. Taylor, notary public, personally appeared Wayne T. Miyahara, Asst. Vice President personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies) and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

D. TAYLOR
COMM. # 972694
Notary Public — California
SANTA CLARA COUNTY
My Comm. Expires SEP 3, 1996

Signature _____

(Seal)

STATE OF CALIFORNIA

County of Alameda

Title or type of Document Agreement
Number of Pages 6 Date of Document April 15 1996
Signer(s) Other than named below Stephen C Schott
Wayne Miyahara

On April 17th 1996 before me Robert F. Caughell, Notary Public personally appeared
Mike Oliver

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/~~are~~ subscribed to the within instrument and acknowledged to me ~~that he/she/they~~ that executed the same in his/~~her/their~~ authorized capacity(ies), and that by this/~~her/their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

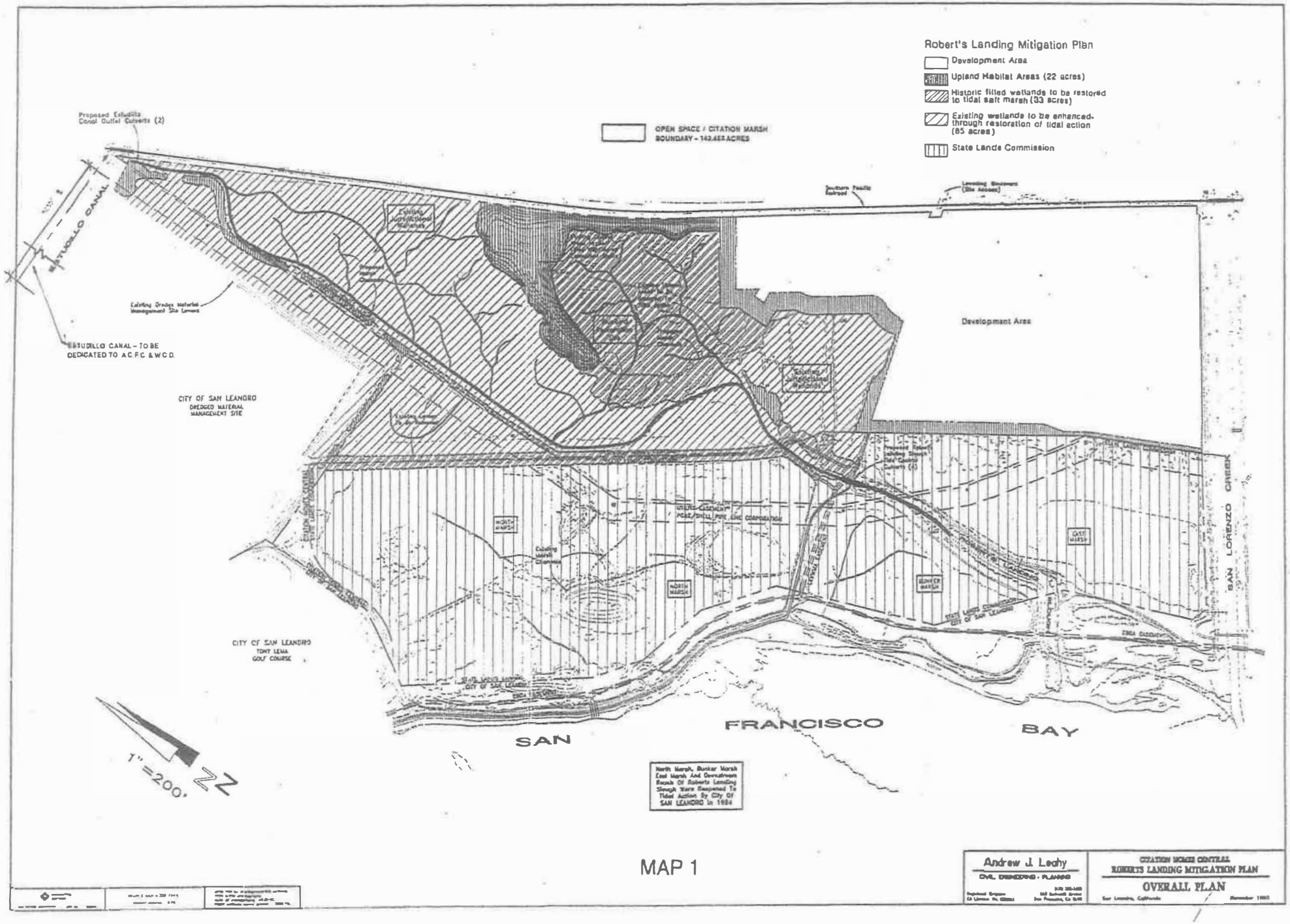
Signature Robert F. Caughell (Seal)
Notary Public in and for said County and State

ROBERT F. CAUGHELL
COMM. 1073820
NOTARY PUBLIC - CALIFORNIA
ALAMEDA COUNTY
MY COMM EXPIRES OCT. 12, 1999

UD01 (Rev. 4/94)

FOR A COPY OF THE 3 MAPS RE.
ROBERTS LANDING RESOLUTION NO. 96-56:

SEE CITY CLERK'S OFFICE COPY OF RESOLUTION NO. 96-56
(IN THE BOUND BOOKS OR FILE #2690)


Robert's Landing Mitigation Plan
Development Area
Upland Habitat Areas (22 acres)
Historic filled wetlands to be restored to tidal salt marsh (33 acres)
Existing wetlands to be enhanced through restoration of tidal action (85 acres)
State Lands Commission
OPEN SPACE / CITATION MARSH BOUNDARY - 142.452 ACRES
Proposed Estudillo Canal Outlet Culverts (2)
ESTUDILLO CANAL
Existing Dredge Material Management Site Levees
ESTUDILLO CANAL - TO BE DEDICATED TO A.C.F.C. & W.C.D.
CITY OF SAN LEANDRO DREDGED MATERIAL MANAGEMENT SITE
CITY OF SAN LEANDRO TONY LEMA GOLF COURSE
Southern Pacific Railroad
Development Area
NORTH MARSH
BUNKER MARSH
EAST MARSH
SAN LORENZO CREEK
SAN FRANCISCO BAY
1" = 200'
North Marsh, Bunker Marsh East Marsh And Downstream Reach Of Roberts Landing Slough Were Restored To Tidal Action By City Of SAN LEANDRO In 1984
Andrew J. Leahy
CIVIL ENGINEERING · PLANNING
CITATION HOMES CENTRAL
ROBERTS LANDING MITIGATION PLAN
OVERALL PLAN
San Leandro, California

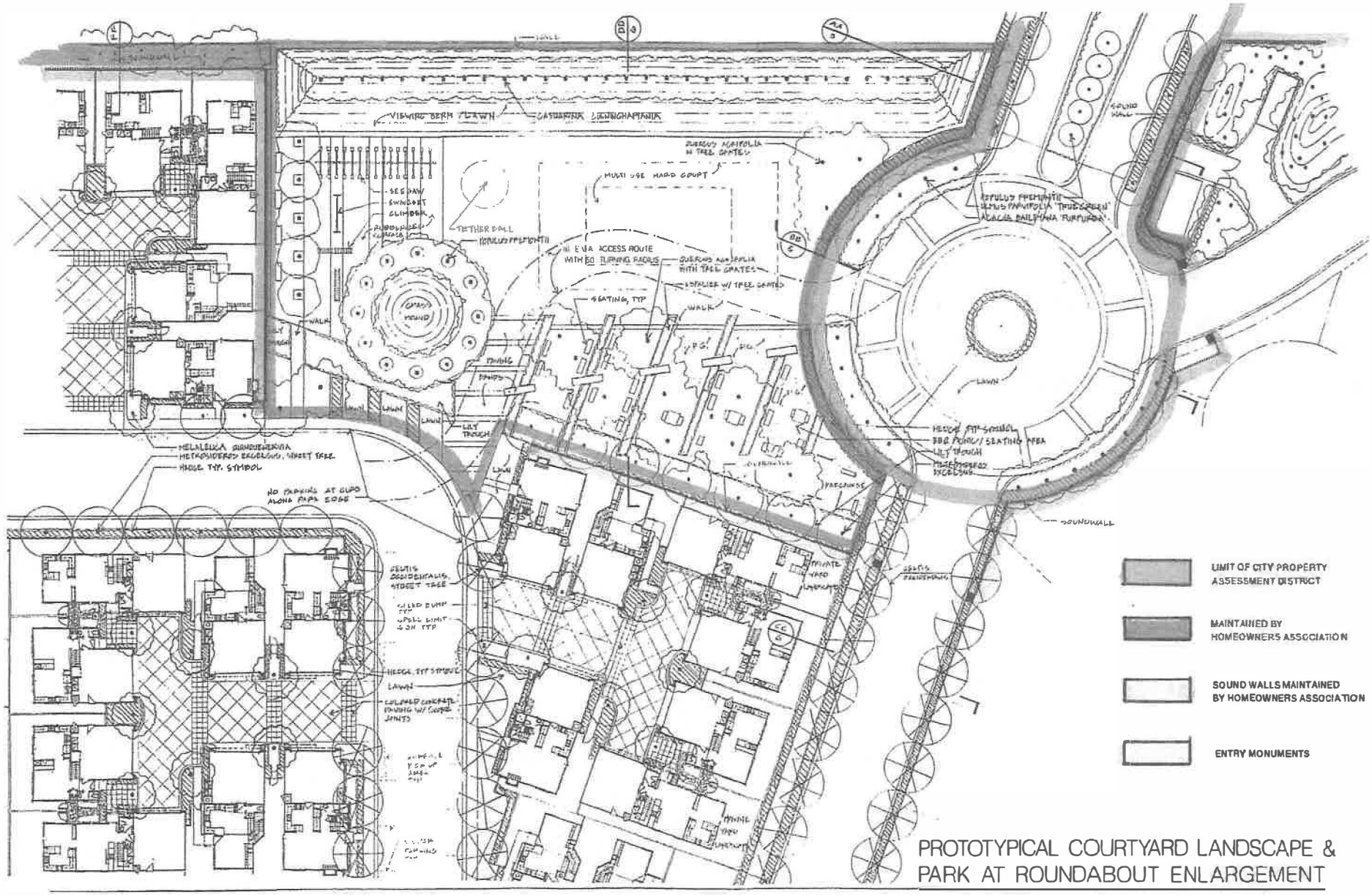
MAP 1

Precise Development Plan
Roberts Landing Phases 2A, 2B & 3
San Leandro, California

Citation Homes - Developer

SWA Group - Planner
MacKay & Somps - Engineers

MAP 2



PROTOTYPICAL COURTYARD LANDSCAPE & PARK AT ROUNDABOUT ENLARGEMENT

Citation Homes - Developer

SWA Group - Planner & Landscape Architect
Mackay & Somps- Engineers

Precise Development Plan
Roberts Landing Phase 2A, 2B & 3
San Leandro California

Scale - 1" = 16'-0"

REVISED NOV 15 1995
REVISED OCTOBER 24 1995
Date - October 20, 1995

Sheet No. 2

MAP 3

EXHIBIT B

RECEIVED
AUG 15 2017
SAN FRANCISCO BAY CONSERVATION
& DEVELOPMENT COMMISSION

LAW OFFICES OF
A. ALAN BERGER
95 South Market Street
Suite 545
San Jose, CA 95113
Telephone: 408-536-0500
Facsimile: 408-536-0504

RECEIVED
MAY 19 2017
SAN FRANCISCO BAY CONSERVATION
& DEVELOPMENT COMMISSION

May 18, 2017

San Francisco Bay Conservation and Development Commission
455 Golden Gate Avenue, suite 10600
San Francisco, CA 94102

Re: Third Application for Amended Permit (Amended from first application dated September 16, 2015 and from second application dated July 13, 2016) re: Required Shoreline Access from Lewelling Boulevard, in the City of San Leandro, over Heron Bay Homeowner Association Property (BCDC Permit No. 1992.057, dated July 5, 1994).

Gentlepersons:

This Third Amended Application is presented on behalf of Heron Bay Homeowners Association (hereinafter referred to as "the HOA" or "the Association" or "Heron Bay") in the matter of the alleged non-compliance of the Association with San Francisco Bay Conservation and Development Commission, Permit No. 1992.057 (alternately referred to on the Recorder's Copy of the Permit as Permit No. M92-57 (hereinafter referred to as "the permit"). This correspondence will constitute the Association's Third Application for an Amended Permit seeking approval of as-built conditions that will put the HOA in compliance with the terms of the original permit and of several new additions. The HOA notes that their original application was presented on September 16, 2015. That application was rejected by BCDC. The second application was presented on July 13, 2016. That application was rejected by the BCDC as incomplete. Subsequently the Association received a letter from BCDC dated April 14, 2017 labeled in part "Termination of Standardized Fine Process to Resolve Violations of BCDC Permit No. M1992.05." This Third Amended Application is submitted within 35 days of the date of the above referenced correspondence.

For the record we would note that the original permit was issued to Citation Homes, the original developer and builder of the Heron Bay complex, which is comprised of 629 homes. There was no existing construction of homes prior to the issuing of the subject permit. Citation Homes turned over control of the complex to the original homeowner controlled Board of Directors more than twenty years ago with no reference whatsoever to the existing permit 1992.057. The current HOA had no knowledge of the existence of the permit nor or any alleged failures to comply until mid-summer 2014 when the HOA made application to the City of San Leandro for the installation of entrance gates at the complex because of growing crime on the grounds of the HOA. Apparently both the City of San Leandro and BCDC were unaware that the various entities were then in violation

of the referenced permit. At that time the Association was advised by BCDC of the existence of the permit and alleged violations of that permit, in particular violations of the requirements of section F (3) Public Access Improvements. Since that time the HOA has been meeting with and working with the staff of BCDC and the City of San Leandro to achieve mutually agreeable solutions to the existing problems. Since that time various items of correspondence from BCDC, including the most recent letter of April 14, 2017, seem to infer that the Association has somehow been less than diligent in their pursuit of compliance with the permit terms. This is simply not the case. At all times since the HOA became aware of BCDC's claim of permit non-compliance, and particularly during the past months, the HOA has been diligently working on proposals that would satisfy all permit needs and best serve all members of the community who may wish to use the bay trails. Let us state again at this point that Heron Bay Homeowners Association does now and has always vigorously supported the public use of the bay trails. The HOA has undertaken no action, proposed or actual, that would disrupt or interfere with the bay trail access. The difficulty has been preparing a plan that would incorporate the as-built condition of Bayfront Drive, an as-built condition that was approved by the City more than 20 years ago, with the requirements of BCDC, the planning guidelines of the City of San Leandro and the needs and rights of the HOA and the owners of Heron Bay homes.

As the staff of BCDC is well aware, several proposals have been made to the City involving the use of an attendant on Heron Bay property and the placement of a kiosk to enable that attendant to have shelter and a restroom area. The concept was that the presence of an attendant would provide some safety and security to the residents of the complex without affecting the free use of the bay trails by the general public. As stated by BCDC in their April 14, 2017 notice, BCDC has been kept aware of those various applications by the HOA and by the City of San Leandro. BCDC has recognized that as late as December 19, 2016, the City of San Leandro City Council denied the pending application to place the kiosk on Heron Bay property, completely removed from the area of the public access easement. Heron Bay would like to point out to BCDC that this denial does not represent the complete story. In fact the City Planning Department Staff approved the placement of the kiosk as presented. The City Council denied the pending permit stating that they would not approve any plan that allowed the attendant at the kiosk to stop cars for any purpose, even if that purpose was to determine whether those non-residents were entering the private property for a legitimate purpose which would have included the use of the bay trails. The intent, as earlier described to BCDC staff, was to have the attendant hand out approved information on the trails and to be welcoming to the public to the use of the trails. The City Council also wanted the HOA to further inform their members in several languages of the HOA's intent. It is important to note that the City Council denied the application without prejudice. The HOA has spent the past several months preparing for a resubmittal addressing the concerns of the City Council, keeping in mind that the Planning Staff has already approved the concept of the plan.

However, at this time the Association is presenting this Application for an Amended Permit without the kiosk/attendant proposal. The Association will continue to work for a kiosk solution that will satisfy the City's requirements, but this Amended Permit will not

anticipate a kiosk. Should the City later approve the concept of a kiosk with an attendant who will not stop vehicles for any purpose, the Association will advise BCDC of their intent and, if required, will ask for another amendment to the exiting amended permit. It is hard to imagine how this later proposal, if presented, would affect BCDC's and the public's interest. The kiosk would not be located on public ground, it would not be located within the area of the public access easement and there would be no stopping of vehicles or blockage of the public's use of the bay trails. Nevertheless, considerations related to the kiosk are irrelevant at this point as no kiosk plan is currently pending. In fact, no application to the City is currently pending. This Amended Application should be considered on its own merits as seeking compliance with the language and spirit of the original permit requirements.

The purpose of this Third Amended Permit Application is to resolve the allegations of lack of compliance in the area of Public Access Improvements to the satisfaction of BCDC and the HOA. We would note that another check in the amount of $600.00 is enclosed representing the application fee (2X) as suggested by BCDC and as confirmed by Ms. Maggie Weber in a telephone conversation with the undersigned on May 18, 2017. (See attachment Exhibit A).

For the record the HOA is also aware that the City of San Leandro was in default on certain terms contained in Permit no. 14-89, issued on March 7, 1990, as amended through June 28, 2000, and as recorded on October 6, 2000 as document no. 2000302674. It is the Association's understanding that the City has resolved it's permit issues by providing six parking spaces in the roundabout at the beginning of Bayfront Drive, albeit over the objection of the HO. It is important and interesting to note that the City to date has not informed the HOA where those six parking spaces are to be located and, in fact, no parking has been yet marked or provided by the City in the roundabout. While the HOA does not approve of nor appreciate the concept of parking in the roundabout for a variety of safety reasons, the HOA will not further comment on this agreement at this time.

To recap the HOA understands that Permit 1992.057, section F (3)(c) required a minimum 12-foot wide, handicapped accessible, pedestrian and bicycle path, with a minimum 8-foot wide, asphalt, primary use area and a minimum total of 4 feet of shoulder. In fact the as-built condition contains a 36-foot wide two-lane asphalt street; curb and planter beds which are 12-feet wide on the north side of Bayfront and a strip on the south side of Bayfront that is approximately 5 ½-feet wide. These dimensions generally run from the beginning of Bayfront Drive to the bay trails. It is obvious that the as-built conditions, approved by the City more than 20 years ago and incorporated into the recorded map for Tract 6810 (a subdivision of parcels 2 and 3 of parcel map 6828) represent a far superior solution to the concept of bay trial access than that originally contemplated in the existing permit. The HOA is informed and believes that BCDC does not seriously want the HOA to tear out the as-built improved condition to revert to the more primitive access description described in Permit 1992.057. The HOA after carefully considering the comments and requirements of BCDC over the past several years and after consideration of the requirements of the existing permit request that the

following amendment to the permit be approved. The HOA offers two options at the pleasure of BCDC. Option 1 represents the strong preference of the Association.

Option 1.

1. That the as-built condition of Bayfront Drive consisting of a 36-foot wide two-lane asphalt street; curb and planter beds which are 12-feet wide on the north side of Bayfront and a strip on the south side of Bayfront that is approximately 5 ½-feet wide be approved and become a part of the amended permit in lieu of the original requirement of a minimum 12-foot wide, handicapped accessible, pedestrian and bicycle path, with a minimum 8-foot wide, asphalt, primary use area and a minimum total of 4 feet of shoulder. The as-built dimensions generally run from the beginning of Bayfront Drive to the bay trails.

2. The HOA will paint bicycle sharrows on both lanes of Bayfront Drive, the exact location of which to be approved by BCDC, within 30 days of the approval of the amended permit. The HOA, at the pleasure of BCDC, in addition to or in lieu of the bicycle sharrows would add a painted 6' wide bay trail access bicycle lane along the curb that blends in with the existing bike lane along Lewelling Boulevard for bicycle use during the hours the bay trail is operational.

3. The HOA will erect bay trail way-finding signage along the bay trail access easements as per BCDC standards and as approved by BCDC. At the direction of BCDC, this approved signage will be placed at the interpretive shelter, at the entrance to the bay trail at the westerly termination of Bayfront Dive, on the roundabout as required, on Lewelling as directed by BCDC and approved by the City of San Leandro and such other locations as directed by BCDC. This signage, subject to availability, will be placed within 60 days of the approval of the amended permit.

Option 2.

At the outset let us state that the HOA considers Option 2, which reverts Bayfront Drive to the original permit requirements a far inferior choice to that of Option 1. This Option basically conforms to the original permit requirements and, therefore, does not need an amended permit. Nevertheless, the HOA proposes should BCDC prefer this option:

The HOA would remove 4' of existing landscaping between the vertical curb face and the existing sidewalk. They would further remove 2' of existing landscape between the existing sidewalk and the existing wall leaving approximately 2' of landscape adjacent to the existing wall. The HOA would pave the two described areas of former landscaping to provide a 12' wide public access along the length of Bayfront Drive. The HOA would have to move 4 existing street lights and realign electrical equipment boxes in the remaining landscape area to avoid encroachment into the airspace above the now 12' wide public trail easement. While this option represents the strict language of the original permit, it is hard to say that this is the most beneficial to the public and the residents of San Leandro. This option creates a harsher, less visually pleasing entrance to

the bay trails and adds nothing to the actual public access. Please note that this existing access has been in place for almost twenty years without complaint from the public. One would ask if it is really necessary to revert to a less attractive, less inviting environment for the sake of compliance with a forgotten permit? Heron Bay HOA urges BCDC to approve Option 1 of the amended permit application. Heron Bay HOA believes that the plan as outlined in Option 1 offers compliance and betterment for all parties and the public.

Issue of Public Parking.

In discussion with Ms. Maggie Weber on May 18, 2017, BCDC was advised that Heron Bay HOA's current application for an amended permit does not include the addition of any public parking at the Westerly end of Bayfront Drive. Ms. Weber asked that the HOA explain this lack of additional parking. The following is submitted in explanation.

BCDC will remember that the proposed offer of additional parking on HOA property was at the suggestion of the HOA during the time period that the first kiosk to be located in the middle of the roundabout was under consideration. Neither BCDC nor the City of San Leandro had ever suggested or planned for parking on Heron Bay property. There is no language in the original permit that demanded parking and no parking is shown on any approved map of the area. In fact the HOA has always maintained that the public access as demonstrated on the recorded map for Tract 6810 specifically recognizes that there is no public vehicle access on Bayfront Drive and that the use of Bayfront for public vehicle access is permissive only. Nevertheless, in conjunction with the approval of a kiosk, the HOA was willing to consider some public parking on Bayfront. Every single letter, document or application ever produced by the HOA made it clear that any parking would be subject to the kiosk/attendant approval.

The reason for this condition is both legal and practical in nature. All of the streets within Heron Bay are private and belong exclusively to the Association. The HOA has always maintained and continues to maintain that there is no public parking allowed on Heron Bay streets. This fact has never been challenged by any authority or agency. All residents of Heron Bay have parking placards issued to them which allow limited parking on the streets in certain conditions, the details of which are not important to this discussion. California Vehicle Code Section 22658 controls issues related to public parking on private streets and the removal of vehicles. Section (a) (1) states that if private property is not open to the public and if the proper signage is displayed, that the owner of the private property may remove a vehicle that is parked in a restricted area (which all of Heron Bay would be). There are no time restrictions as to when a vehicle that is illegally parking may be towed. If, however, private property is open to the public, then the owner of the property is generally required to give 96 hours notice of parking violations before any tow may take place. Heron Bay vigorously enforces its right to tow any vehicle not displaying an owner or visitors permit from the private streets. The HOA knows that if a vehicle does not display the proper permit that it is considered an illegally parked vehicle and they may tow it.

The concept of the kiosk and an attendant from the outset anticipated that the attendant could briefly stop non-resident vehicles from entering the private streets only to determine the parties' intent. If the persons were entering to use the bay trail, then they would have been provided with welcoming information and would have been directed to one of the new parking spaces along Bayfront. The HOA even discussed preparing a script to be approved by BCDC for use by the attendant. The HOA could then have continued to remove other non-permitted vehicles from the complex other than those directed to the parking spaces. However, as the City, and presumably BCDC, opposed the concept of a brief stop of vehicles, which in the opinion of the HOA would have done nothing to discourage public access, but which would have encouraged public access in the addition of public parking, the concept of public parking became impossible. An attendant would have identified the persons parking in the available spaces. Without the attendant being able to stop and inquire and direct parking the HOA would have no idea who was parking in the available spaces. Because the property would now be considered to be open to the public, the HOA could not remove cars from anywhere on the premises without giving statutory notice of 96 hours notice (a provision of Section 22658) which would make parking enforcement impossible. Additional parking spaces were always conditioned upon the approval by all parties of a kiosk and an attendant who could make reasonable inquiry and who could direct members of the public to the available parking spaces. Because of the City's insistence on a no-stop policy for any attendant, the HOA has no choice but to remove the concept of additional parking from the amended permit application.

While not a condition of the amended permit application, in the spirit of full disclosure, the HOA discloses that it may erect license plate readers on columns and possibly other security cameras strategically along Bayfront Drive on HOA property so as to not encroach on easements of record. These devices, if placed, will be completely off the public right-of-way and will be sited so as to avoid encroaching upon any easements of record. Such devices will have no effect on the public access to the bay trails.

Permanent Guarantee.

The HOA is aware that one of the permit requirements was a permanent guarantee of public access. Again, the HOA was unaware of this requirement until first notice in 2014. The Association has always supported public access to the bay trails and is more than happy to execute a permanent guarantee as for public access and to buffer areas as described in Segment 2 and Segment 3 in Special Condition II.F.1. In discussions with Ms. Weber on May 18, 2017, it was agreed that Heron Bay was not able to prepare the permanent guarantee until such time as the issue of the amended permit was resolved. The HOA has agreed to have the easement, once determined, surveyed and to prepare the recordable document for BCDC's approval. This guarantee will be prepared within 30 days of approval of the amended permit application or when the issue of the exact location and nature of the easement is determined. Again, this is a non-issue for the HOA as the HOA is ready, willing and able to execute such an agreement as soon as the necessary information has been decided upon.

This document and the attached copy of the fees paid constitute the Heron Bay Homeowners Association application to BCDC for an Amended Permit. If BCDC has any questions regarding the materials submitted or the intent of the Association in so filing, please do not hesitate to contact the undersigned. The HOA reserves the right to submit additional materials or clarifying statements during the pendency of the application.

Very truly yours,

A. Alan Berger
Attorney for Heron Bay Homeowners Association

Cc: Client
AAB/ceb

EXHIBIT C

RECEIVED
AUG 15 2017
SAN FRANCISCO BAY CONSERVATION
& DEVELOPMENT COMMISSION

LAW OFFICES OF
A. ALAN BERGER
95 South Market Street
Suite 545
San Jose, CA 95113
Telephone: 408-536-0500
Facsimile: 408-536-0504

RECEIVED
JUL 13 2016
SAN FRANCISCO BAY CONSERVATION
& DEVELOPMENT COMMISSION
@ 3:14 pm

July 13, 2016

San Francisco Bay Conservation and Development Commission
455 Golden Gate Avenue, suite 10600
San Francisco, CA 94102

Re: Application for Amended Permit (Amended from first application dated September 16, 2015) re: Required Shoreline Access from Lewelling Boulevard, in the City of San Leandro, over Heron Bay Homeowner Association Property (BCDC Permit No. 1992.057, dated July 5, 1994).

Gentlepersons:

This Amended Application is presented on behalf of Heron Bay Homeowners Association (hereinafter referred to as "the HOA" or "the Association" or "Heron Bay") in the matter of the alleged non-compliance of the Association with San Francisco Bay Conservation and Development Commission, Permit No. 1992.057 (alternately referred to on the Recorder's Copy of the Permit as Permit No. M92-57 (hereinafter referred to as "the permit"). This correspondence and the attached documents will constitute the Association's Second application for an Amended Permit seeking approval of as-built conditions that will put the HOA in compliance with the terms of the original permit and of several new additions. The HOA notes that their original application was presented on September 16, 2015. That application was rejected by BCDC. The Association received a letter from BCDC on May 26, 2016 advising them of the fact that the HOA was in violation of the referenced permit and then received a 35-day notice on the agreed-upon date of June 8, 2016.

For the record we would note that the original permit was issued to Citation Homes, the original developer and builder of the Heron Bay complex, which is comprised of 629 homes. There was no existing construction of homes prior to the issuing of the subject permit. Citation Homes turned over control of the complex to the original homeowner controlled Board of Directors more than twenty years ago with no reference whatsoever to the existing permit 1992.057. The current HOA had no knowledge of the existence of the permit nor or any alleged failures to comply until mid-summer 2014 when the HOA made application to the City of San Leandro for the installation of entrance gates at the complex because of growing crime on the grounds of the HOA. Apparently both the City of San Leandro and BCDC were unaware that the various entities were then in violation of the referenced permit. At that time the Association was advised by BCDC of the existence of the permit and alleged violations of that permit, in particular violations of the

requirements of section F (3) Public Access Improvements. Since that time the HOA has been meeting with and working with the staff of BCDC and the City of San Leandro to achieve mutually agreeable solutions to the existing problems. The May 26, 2016 letter from BCDC seems to infer that the Association has somehow been less than diligent in its pursuit of compliance with the permit terms. This is simply not the case. At all times during the past nine months the HOA has been diligently working on proposals that they contend would satisfy all permit needs and best serve all members of the community who may wish to use the bay trails. Several proposals have been made to the City involving the use and placement of a kiosk that would provide safety and security to the residents of the complex without affecting the free use of the bay trails by the general public. As will be demonstrated in this application, the HOA has made several proposals to the City for their review and acceptance. As acknowledged by BCDC in their May 26th letter, BCDC has been kept aware of those various applications both by BCDC and by the HOA. While the process has been slow and City responses have taken some time, the process has always been active and vigorous. And, as will be shown, the City has responded with suggestions regarding the permit application from the HOA for a kiosk and attendant which have been addressed. While the May 26th letter discusses the disapproval of a kiosk in the roundabout at the entrance to Bayfront Drive, that proposal was abandoned some time ago after rejection by the City. The fact of the matter is that the current proposed location of the kiosk is on Heron Bay property and is not on any property controlled or owned by the City of San Leandro. The HOA has received positive feedback and suggestions from the City and all of those suggestions have been incorporated into the current submittals. The HOA believes that they are on the verge of receiving acceptance of the current proposal from the City. The HOA asks that BCDC recognize this current situation and allow this proposal with the City to run its course. BCDC has always maintained that it would not consider any kiosk proposal until such time as the City would grant approval of same. The HOA believes that said approval may be very close. Of course once that approval would be obtained, then the HOA will present the plan to BCDC for comment and approval, as the HOA has always said they would do. The HOA maintains that the current proposal to the City is by far the most advantageous for the HOA, for BCDC and all of the residents of the bay area who might utilize the bay trails and for the City of San Leandro. As will be stated, the new proposal will grant parking close to the bay trail that will not be provided if the HOA is forced to strictly comply with the original permit requirements.

The purpose of this Second Amended Permit Application is to resolve the allegations of lack of compliance in the area of Public Access Improvements to the satisfaction of BCDC and the HOA. We would note that another check in the amount of $600.00 is enclosed representing the application fee (2X) as suggested by BCDC in an email of September 11, 2015.

The HOA is also aware that the City of San Leandro was in default on certain terms contained in Permit no. 14-89, issued on March 7, 1990, as amended through June 28, 2000, and as recorded on October 6, 2000 as document no. 2000302674. It is the Association's understanding that the City has resolved it's permit issues by providing six parking spaces in the roundabout at the beginning of Bayfront Drive in mitigation of

other requirements. While the HOA does not approve of nor appreciate this suggested parking, and while they find it unnecessary should the HOA's proposal for a kiosk by approved (which includes the addition of six parking spaces), the HOA will not comment on this agreement at this time. As BCDC pointed out in conversation, after the HOA resolves permit compliance with BCDC, the HOA is then free to attempt to convince the City to withdraw the roundabout parking in an Amended Permit Application. As previously stated the HOA considers parking in the roundabout to be potentially dangerous, impossible to monitor and a poor solution to the lack of parking for those using the bay trails, particularly when the first option for compliance presented by the HOA includes far more convenient parking than that provided by the City.

To recap the HOA understands that Permit 1992.057, section F (3)(c) required a minimum 12-foot wide, handicapped accessible, pedestrian and bicycle path, with a minimum 8-foot wide, asphalt, primary use area and a minimum total of 4 feet of shoulder. In fact the as-built condition contains a 36-foot wide two-lane asphalt street; curb and planter beds which are 12-feet wide on the north side of Bayfront and a strip on the south side of Bayfront that is approximately 5 ½-feet wide. These dimensions generally run from the beginning of Bayfront Drive to the bay trails. The HOA, after considering the recent requirements of the City and the comments of BCDC in the recent letter, is suggesting three different options that would hopefully satisfy the requirements of BCDC, the City and yet offer Heron Bay the additional safety measures which was the impetus for the requests for gates in the first instance. These options are submitted in the order of preference to Heron Bay. The HOA firmly believes that Option 1 clearly will most benefit the users of the bay trail, will be the most aesthetically pleasing to the City of San Leandro and its residents and will best meet the safety concerns of the HOA. The options are as follows in order of preference:

Option 1:

Heron Bay proposes to the City of San Leandro (currently under review) and to BCDC to construct a new, smaller, fully contained kiosk that will be erected and sited on HOA property near the entrance to Bayfront Drive. This kiosk will be entirely off of the Bay Trail Access easement nearest the northwest junction of Bayfront Drive and the Lewelling Bulb, with a dedicated accessible nearby parking space for the entry attendant. This latter provision was a requirement of the City. In exchange for an approval of the kiosk, Heron Bay will dedicate a total of 6 standard sized parking spaces including accessible compliant spaces, as required by current ADA regulations, at the western end of Bayfront Drive for use by bay trail users during bay trail hours plus one hour past sunset. This grant of parking for bay trail users is contingent upon approval of the kiosk proposal. The HOA will erect license plate readers columns strategically along Bayfront Drive so as to not encroach on easements of record. The HOA will paint sharrows on both lanes of Bayfront Drive. The HOA will further erect bay trail way-finding signage along the bay trial access easements as per BCDC standards. For the benefit of BCDC, a rendition of this proposal is attached to this application, marked Exhibit A, and made a part hereof by reference.

Though not a part of the BCDC Option 1 permit application, as a courtesy the HOA is notifying BCDC that, at the suggestion of the City, the HOA is proposing to erect an automated barrier arm, fold away bollards, and a license plate reader column on Anchorage Drive, completely off the public right-of-way and sited so as to avoid encroaching upon any easements of record. This plan for Anchorage Drive will in no way affect the visual recognition of the bay trails to the general public.

In support of the HOA's Option 1 proposal, the HOA submits the following materials in order to document their good faith in attempting to resolve the compliance issues with BCDC. As BCDC will see from the brief chronology, the HOA has been diligent in their pursuit of approval from the City that would then allow the HOA to complete the permit application to BCDC and the HOA has every reason to expect that they will soon obtain approval from the City.

1. Exhibit B attached hereto consists of true copies of the Agreement for Payment of Fees for Application Processing, Planning Permit Application and map of Tract 6810 showing. You will please notice that this application was submitted on March 14, 2016. We apologize for the quality of the copy but this was the best that could be obtained.

2. Exhibit C attached hereto (without attachments) consists of a letter dated April 15, 2016 from the City of San Leandro, Elmer Penaranda, stating that the application of Heron Bay is incomplete and suggesting several items that need to be addressed in order to make it complete. We note that BCDC was copied with this letter. Heron Bay now states that the modifications and changes that are suggested in Exhibit C have in fact been addressed.

3. Exhibit D attached hereto is the back check letter response of Jeff Tepper, consultant for the HOA, dated June 14, 2016 that included engineering drawings for Anchorage Drive, drawings depicting the rest room inside of the kiosk, deleted the monument sign on Lewelling Boulevard from this application and added the accessible parking space for the entry attendant. This letter demonstrates that the HOA continues to work closely with the City to meet their requirements for approval of the kiosk plan.

The above attachments clearly demonstrate that the HOA has been active in attempting to gain City approval for the current kiosk proposal, which, after all, is the course of action that was suggested by BCDC. The correspondence indicates that the City is working with the HOA to approve a kiosk that satisfies both the City and the HOA needs and the HOA has no reason to believe that such an agreement will not be reached in the near future. The HOA urges BCDC to grant the HOA the likely short period of time that will be required to gain approval from the City for the kiosk plan as demonstrated in Option 1. This plan will clearly be the most beneficial to all and will give six extra parking spaces to the users of the bay trails, bicycle sharrows, all without disturbing the pleasant environment and landscaping already present on Bayfront Drive. If, however, BCDC were unable or unwilling to grant this additional time period, keeping in mind that twenty years have passed since the issuance of the original permit, then the HOA would suggest the following options in order of preference.

Option 2:

The HOA would propose to leave the existing 6' wide sidewalk and 4' wide landscape strips on each side intact. The HOA would add a painted 6' wide bay trail access bike lane along the curb that blends in with the existing bike lane along Lewelling Boulevard for bicyclists to use during the hours the bay trail is operational. In this way the total width of the public access easement meets the 12' total width required in the original permit. The kiosk and the conditional Bayfront Drive parking would be deleted from this proposal. This proposal would eliminate the need to destroy existing sidewalk and landscape which will be a terrible eyesore to members of the public and to those wishing to use the bay trails. Certainly we can agree that a bicycle lane plus sidewalk equaling 12' wide is more attractive and useful that 12' of paving with no landscape. If BCDC does not approve of this option, then option 3 below would be the final suggestion of the HOA.

Option 3:

The HOA would remove 4' of existing landscaping between the vertical curb face and the existing sidewalk. They would further remove 2' of existing landscape between the existing sidewalk and the existing wall leaving approximately 2' of landscape adjacent to the existing wall. The HOA would pave the two described areas of former landscaping to provide a 12' wide public access along the length of Bayfront Drive. The HOA would have to move 4 existing street lights and realign electrical equipment boxes in the remaining landscape area to avoid encroachment into the airspace above the now 12' wide public trail easement. The kiosk and the conditional Bayfront Drive parking would be deleted from this proposal. While this option represents the strict language of the original permit, it is hard to say that this is the most beneficial to the public and the residents of San Leandro. This option creates a harsher, less visually pleasing entrance to the bay trails and adds nothing to the actual public access. Please remember that this existing access has been in place for almost twenty years without complaint from the public. Is it really necessary to revert to a less attractive, less inviting environment for the sake of compliance with a forgotten permit? Again, Heron Bay urges BCDC to allow it to complete its applications to the City for Option 1. Heron Bay would then immediately submit the City approved permit to BCDC for review. Hopefully, Option 1 offers compliance and betterment for all parties.

Legal Instrument to Guarantee the Public Access.

The HOA has received BCDC's comments on the necessity for a legal instrument guaranteeing public access and the fine structure should one not be produced during the 35 day time period. As BCDC itself points out, the HOA is caught in a Catch 22. Until it is determined what remedial plan will be implemented, and which Option approved, the HOA cannot have a surveyor specify the exact property description subject to the permanent guarantee and produce the required document. From the beginning the HOA

has stated its willingness to produce such a guarantee. It is prevented from doing so until such time as the permit application for whichever plan is to be implemented is approved. It strikes the HOA as being unreasonable to threaten fines for lack of a document that has been missing from both the HOA and the City for twenty years when the parties have been diligently working toward a solution that would allow the HOA to, in fact, produce the required guarantee. Particularly considering there has never been a single instance of denied public access and considering that the HOA has consistently stated that they are more than happy to produce said requirement when the final solution is approved and put into place.

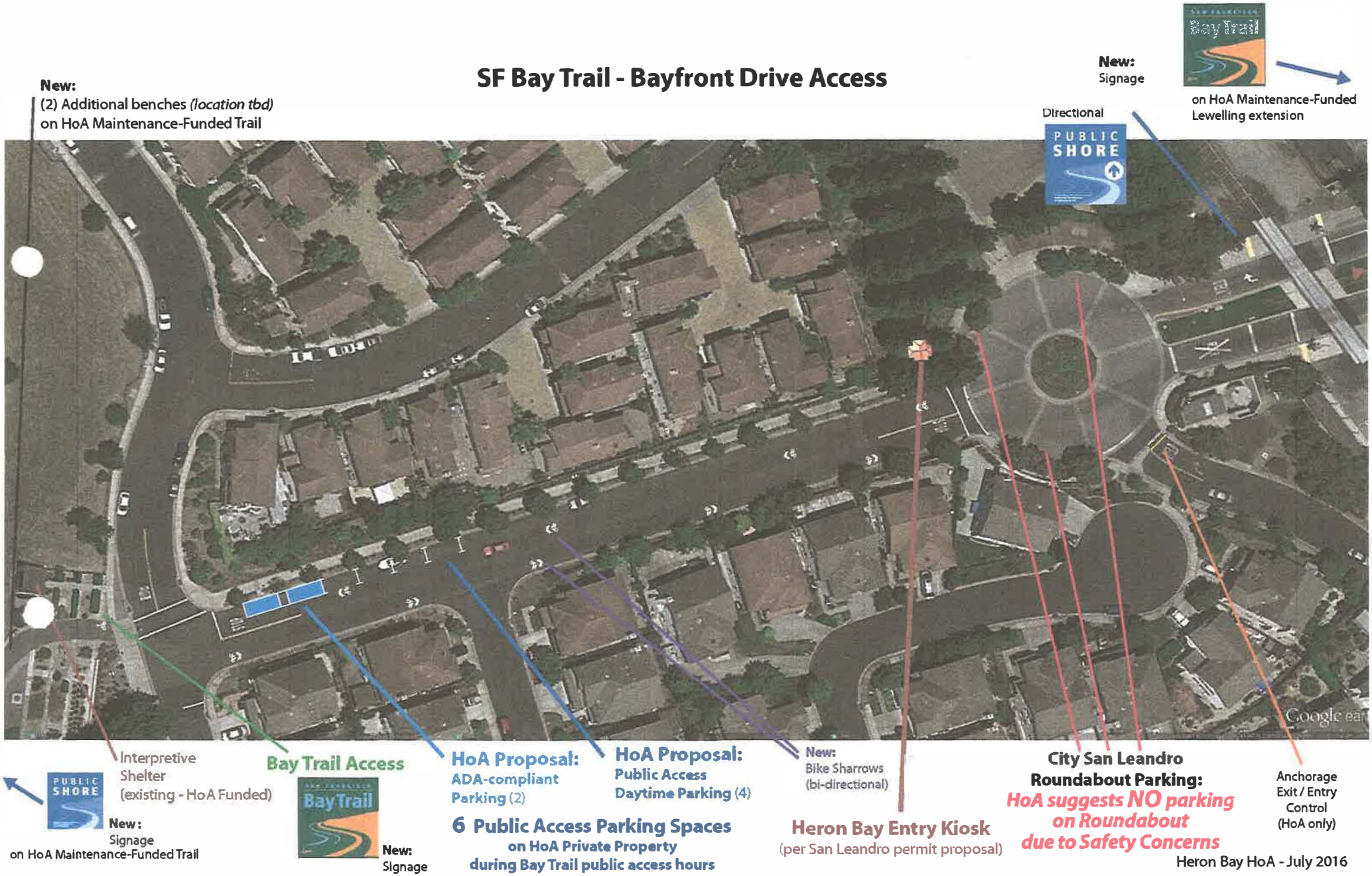
This document and the attachments thereto constitute the Heron Bay Homeowners Association's second application to BCDC for an Amended Permit. If BCDC has any questions regarding the materials submitted or the intent of the Association in so filing, please do not hesitate to contact the undersigned. The HOA reserves the right to submit additional materials or clarifying statements during the pendency of the application.

Very truly yours,

A. Alan Berger
Attorney for Heron Bay Homeowners Association

Cc: Client
AAB/ceb

SF Bay Trail - Bayfront Drive Access



Heron Bay HoA - July 2016

COPY

CITY OF SAN LEANDRO
Community Development Department · Planning Services
835 East 14th Street · San Leandro, CA 94577
(510) 577 – 3325 · www.sanleandro.org
Hours: Monday – Thursday 8:30 am – 3:00 pm; Friday by appointment

AGREEMENT FOR PAYMENT OF FEES FOR APPLICATION PROCESSING

Please type or print legibly

Project Address/Name: HERON DRIVE KIOSK

PLN _____ APN: 806-1406-26

Applicant (owner lessee ✓ agent of owner other): JEFF PEPPER

Legal Name (✓ individual corporation joint venture partnership): _____

Mailing Address: 1487 CHERRY AV Daytime Phone: ( )

City: SAN JOSE State: CA Zip: 95125 Fax: ( )

Email Address (optional): JATEPPER@COMCAST.NET Cell Phone: (408) 315-5665

I (We) hereby agree to pay all personnel and related direct and indirect costs (including 205% of employee benefits and overhead) for the review and processing of application(s) for the subject project, at such time as requested by the Community Development Director. *Direct costs include, but are not limited to review of project application for completeness by all applicable City Departments; telephone or written communication with applicant/property owner/architect, engineer, etc.; preparation of staff reports; and attendance by staff at public hearings.* If applicable, I (we) also hereby agree to pay all contract costs for preparing an environmental document in compliance with the California Environmental Quality Act.

Payments are due and payable within 30 days. Interest will accrue on all costs unpaid 30 days after billing at the maximum legal rate and the City is entitled to recover its costs, including attorney's fees, in collecting unpaid accounts.

If the City is unable to collect all costs from the applicant or authorized agent, the property owner will be responsible for the amount due. Delinquent accounts may result in a lien being placed on the property.

Furthermore, I (we) hereby agree to hold the City harmless from all costs and expenses, including attorney's fees, incurred by the City or held to be the liability of the City in connection with the City's defense of its actions in any proceeding brought in any State or Federal Court challenging the City's actions with respect to my (our) project.

Date: 3/18/16 Applicant's Signature: [signature]

Property Owner (if the applicant is not the owner): HERON BAY HOA
HERON BAY HOA c/o HSS, INC

Legal Name (individual ✓ corporation joint venture partnership): _____

Mailing Address: 2266 CAMINO RAMON Daytime Phone: 925 830-4848 x17

City: SAN RAMON State: CA Zip: 94583 Cell/Fax: _____

Date: 3-14-16 Property Owner's Signature: [signature] President Heron Bay HOA

Date Stamp Received/Paid

COMM. DEVEL. DEPT.
MAR 18 2016
SAN LEANDRO
RECEIVED

TO BE COMPLETED BY CITY STAFF

Deposit: _____ Receipt #: _____ cc: _____ Finance
_____ Eng/Trans
Customer #: _____ Date: _____ _____ Fire

Staff Comments: _____

cpy

CITY OF SAN LEANDRO
Community Development Department · Planning Services
835 East 14th Street · San Leandro, CA 94577
(510) 577 – 3325 · www.sanleandro.org
Hours: Monday – Thursday 8:30 am – 3:00 pm; Friday by appointment

PLANNING PERMIT APPLICATION

Please type or print legibly

Project Address: HERON DRIVE Assessor's Parcel Number: 80G-1426-26

Please check all applicable permits.

- ☐ Conditional Use Permit
- ☐ Variance
- ☐ Parking Exception
- ☐ Fence Modification
- ☐ Zoning Map Amendment
- ☐ Tentative Map
- ☒ Planned Development
- Other modification
- ☐ Site Plan Review:
  - Δ Major
  - Δ Minor
  - Δ RS-VP

Please describe the project associated with your application request (attach additional sheets if necessary).

SEE ATTACHED NARRATIVE

Please provide a supporting statement for your application request (attach additional sheets if necessary).

SEE ATTACHED CORRESPONDENCE

COMM. DEVEL. DEPT.
MAR 18 2016
SAN LEANDRO
RECEIVED

APPLICANT (☐ owner ☐ lessee ☒ other): JEFFREY TEPPER

Legal Name (☒ individual ☐ corporation ☐ joint venture ☐ partnership): LAND USE CONSULTANT

Mailing Address: 1487 CHERRY AV Work Phone: ( )

City: SAN JOSE State: CA Zip: 95125 Home Phone: ( )

Email Address (optional): JATEPPER@COMCAST.NET Cell Phone: (408) 345-5665

I (We) hereby certify under penalty of perjury that I (we) join in said application and that the statements and information contained herein are in all respects true and correct.

Date: 2/18/16 Applicant's Signature: [signature]

PROPERTY OWNER (if the applicant is not the owner): HERON BAY HOA

Legal Name (☐ individual ☒ corporation ☐ joint venture ☐ partnership): HERON BAY HOA c/o HSS, INC

Mailing Address: 2266 CAMINO RAMON Work Phone: (925) 830-4848 X17

City: SAN RAMON State: CA Zip: 94582 Home Phone: ( )

Email Address (optional): BRITTER@HOASERVICES.NET Cell Phone: ( )

I (We) hereby certify under penalty of perjury that I (we) join in said application and that the statements and information contained herein are in all respects true and correct.

Date: 3-14-16 Property Owner's Signature: Fred Dumon - President, Heron Bay HOA

TO BE COMPLETED BY CITY STAFF

Project #: PLN _____ Date/Received: _____ By: _____ Zoning District: _____

Reviewing Body: _____ Fee/Deposit paid: _____ Code Section: _____

Hearing Date: _____ Receipt #: _____ Environmental: ☐ Exempt ☐ Neg Dec ☐ EIR

Customer Number: _____

Staff Comments: _____

Project Address: [illegible] Assessor's Parcel Number: [illegible]

Please check all applicable permits.

- ☐ Conditional Use Permit
- ☐ Variance
- ☐ Parking Exception
- ☐ Fence Modification
- ☐ Zoning Map Amendment
- ☐ Tentative Map
- ☒ Planned Development
- ☐ Other mod, tree-trim
- ☐ Site Plan Review:
  - Δ Major
  - Δ Minor
  - Δ RS-VP

Please describe the project associated with your application request (attach additional sheets if necessary).

SEE ATTACHED NARRATIVE

Please provide a supporting statement for your application request (attach additional sheets if necessary).

SEE ATTACHED CORRESPONDENCE

COMM. DEVEL. DEPT.
MAR 18 2016
SAN LEANDRO
RECEIVED

APPLICANT (☐ owner ☐ lessee ☑ other): JEFFREY TEPPER

Legal Name (☑ individual ☐ corporation ☐ joint venture ☐ partnership): LAND USE CONSULTANT

Mailing Address: 1487 CHERRY AV Work Phone: ( )

City: SAN JOSE State: CA Zip: 95125 Home Phone: ( )

Email Address (optional): JATEPPER@COMCAST.NET Cell Phone: (408) 315-5665

I (We) hereby certify under penalty of perjury that I (we) join in said application and that the statements and information contained herein are in all respects true and correct.

Date: 3/18/16 Applicant's Signature: [signature]

PROPERTY OWNER (if the applicant is not the owner): HERON BAY HOA

Legal Name (☐ individual ☑ corporation ☐ joint venture ☐ partnership): HERON BAY HOA c/o HSS, INC

Mailing Address: 2266 CAMINO RAMON Work Phone: (925) 820-4848 X17

City: SAN RAMON State: CA Zip: 94582 Home Phone: ( )

Email Address (optional): BRITTER@HOASERVICES.NET Cell Phone: ( )

I (We) hereby certify under penalty of perjury that I (we) join in said application and that the statements and information contained herein are in all respects true and correct.

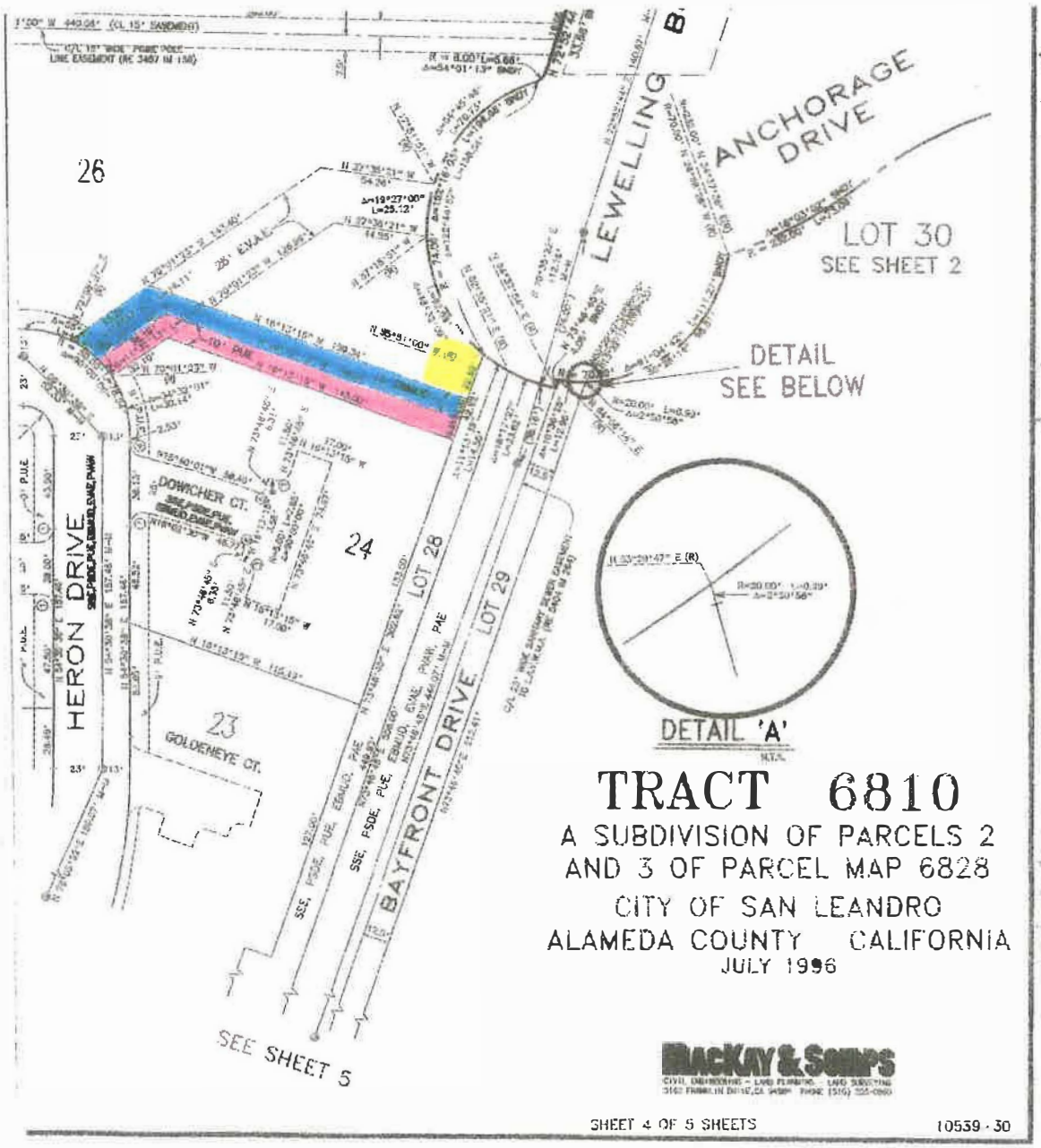
Date: 3-14-16 Property Owner's Signature: Fred Dimon - President, Heron Bay HOA

TO BE COMPLETED BY CITY STAFF

Project #: PLN _____ Date/Received: _____ By: _____ Zoning District: _____

Reviewing Body: _____ Fee/Deposit paid: _____ Code Section: _____

Hearing Date: _____ Receipt #: _____ Environmental: ☐ Exempt ☐ Neg Dec ☐ EIR



6810

Map Bk 230

copy

CITY OF SAN LEANDRO
Community Development Department · Planning Services
835 East 14th Street · San Leandro, CA 94577
(510) 577 – 3325 · www.sanleandro.org
Hours: Monday – Thursday 8:30 am – 3:00 pm; Friday by appointment

PLANNING PERMIT APPLICATION

Please type or print legibly

Project Address: HERON DRIVE

Assessor's Parcel Number: 80G-1006-21

City of San Leandro
Civic Center, 835 E. 14th Street
San Leandro, California 94577
www.sanleandro.org

April 15, 2016

Mr. Jeffrey Tepper
1487 Cherry Avenue
San Jose, California 95125

Subject: Incomplete Application for Planned Development Modification proposal to construct a new entry kiosk for an attendant at Heron Bay (PLN16-0009).

Dear Mr. Tepper,

In accordance with the California Government Code Section 65943, this letter will serve as notification that your application is determined by this office to be incomplete. The following corrections and information, highlighted in yellow, are necessary to continue an evaluation of your application. The other information not highlighted are comments or recommendations.

Engineering & Transportation Department Review

1. New kiosk building construction would need to add an accessible parking space. Probable accessible parking could be at the northwest planter area. See attached roundabout enhancement comments.
2. Heron Bay entry monument in the median on Lewelling Boulevard shall be relocated approximately 20 feet to the east direction so that it is outside the Union Pacific Railroad right-of-way. See attached roundabout enhancement comments.

In addition, the City noted that the restroom location could be relocated so it is adjacent to the kiosk. Review of improvement plans for the subdivision shows that there is an existing eight (8) inch sewer line in the 10 foot easement adjacent to proposed kiosk location (See attached Bayfront Drive and Sanitary Sewer plans, Case1201 Drawing 214 and 216). Furthermore the City has attached the following material for your reference which may be helpful in designing or future work in the immediate area.

- Joint Trench Composite plan and details near the proposed kiosk construction are shown in Case 1201 Drawings 509 and 510.
- There is an existing gas line at the proposed kiosk location (see Composite Joint Trench Drawing Case 1201 Drawing 510 - Trench section T).

Pauline Russo Cutter, Mayor

City Council: Deborah Cox Benny Lee Corina N. López
Jim Prola Ursula Reed Lee Thomas

Alameda County Fire Department Review

1. Provide a complete detail of the entry/exit point to Anchorage Drive. Signs for Emergency vehicle access, deterrents, barriers, roadway, etc. and all dimensions.
2. Show all parking that will be located in the Roundabout Enhancement project. A diagram in a 30, 40, or 50 scale shall be provided. A parking plan for the roundabout at the scale of one inch equals 30 feet is attached for reference. Also for reference, a black and white exhibit with notes is provided which shows future enhancements and improvements to parking and signage at Lewelling Boulevard roundabout. Both these documents are pending final approval by the Bay Conservation Development Commission (BCDC).

Environmental Services Division Comment

City Environmental Services Inspectors, upon proper identification with City ID Card/Business Card, shall be provided passage rights for performing inspections of the Alameda County Pump Station or Livermore Amador Valley Water Management Association (LAVWMA) pump station, which are located within Heron Bay, and for responding to spills or illicit discharge complaints either when within Heron Bay or when needing to access the marsh area adjacent to Heron Bay.

Building and Safety Services Division Review

1. Please see Engineering and Transportation Department (E&T) comment requiring an accessible parking space and Alameda County Fire Department comments as well.

Planning Services Review Comments

1. In addition to the E&T requirement to relocate the monument sign outside of the railroad right-of way, the design should include copy that welcomes and directs Bay Trail users in the westerly direction to the Trail.

Please provide the requested information as 5 full sized plans and 1 reduced sized (11-x17-inches) plan sets (changes marked with clouds or similar), 1 revised (as necessary) Applicant's Statement, and 1 set of an errata sheet detailing how and where each comment has been addressed. In addition, the outstanding balance for Heron Bay's Customer Number 25871 of $4,210.38 is required to be paid in full. No further City resources will be used to process this current application for the proposed kiosk and other related improvements until Heron Bay's past due invoices are paid. The acceptable form of payment is a check made payable to the City of San Leandro.

If you have any questions or need more information, I may be reached directly at 510-577-3314.

Sincerely,

Elmer Penaranda

Elmer Penaranda, Senior Planner
Community Development Department

Enclosures: Roundabout Enhancement Comments
Bayfront Drive and Sanitary Sewer Plans, Case 1201 Drawings 214 and 216
Heron Bay Joint Trench Composite Plan and Details, Case1201 Drawings 509 and 510
Parking Plan for the Roundabout at the Scale of one inch equals 30 feet
Future Enhance/Improvements to Parking and Signage at Lewelling Blvd. Roundabout

cc: Brian Ritter, Homeowner Association Services, 2266 Camino Ramon, San Ramon, CA 94583
Jerry Smith, Chief Building Official
Michael Stella, Principal Engineer
Phillip Toste, Associate Engineer
Vibha Deshmukh, Assistant Engineer
Robert Snodgrass, Deputy Fire Marshal
Melanie Braun, Permit Center Coordinator
Cynthia Battenberg, Community Development Director
Debbie Pollart, Public Works Director
John Camp, Environmental Services Manager
File Folder PLN16-0009

Jeffrey Tepper
1487 Cherry Avenue
San Jose, CA 95125
June ____ , 2016

Elmer Penaranda, Senior Planner
City of San Leandro
835 E 14th Street
San Leandro, CA 94577

Re: Heron Bay Kiosk Project - PLN16-0009

Dear Elmer:

On behalf of the Heron Bay HOA, I am responding to your letter dated April 15, 2016.

Engineering & Transportation Department Review

1. An accessible parking space will be provided along Bayfront Drive for the entry Kiosk attendant.
2. The HOA remains concerned that new parking around the Lewelling bulb may create a traffic hazard especially when large vehicles such as fire apparatus equipment and full size moving vans attempt to negotiate the narrowed traffic lane with vehicles parked along the curved curb. If the City would be willing to entertain an amendment to its BCDC permit to remove the new bulb parking spaces, the HOA would be amenable to granting a like number of additional Bay Trail parking spaces along Bayfront Drive with "compliance credit" for those spaces, for BCDC purposes, going to the City.
3. The entry monument renovation is hereby withdrawn from the pending permit application and will be handled separately through the Lamp and Lighting District and Debbie Pollart.
4. Upon further review of the private restroom location for the entry attendant, the City's suggestion of co-locating the restroom within the Kiosk is being adopted by the HOA. Revised drawings depicting the new location of the attendant restroom are attached to this letter.

Alameda County Fire Department Review

1. Requested detail for entry/exit point modifications to Anchorage Drive is reflected in the revised drawings attached to this letter. A narrative describing the operational aspects of the design is attached to this letter.
2. Roundabout Enhancement Project is not a part of this permit application. Notwithstanding the foregoing, the attached drawing depicting the proposed modifications to Anchorage Drive (Private Roadway) in the scale of 1" = 4' should provide Fire with sufficient information to determine free clearance into Anchorage Drive. Further, as indicated above, the HOA is on record and remains concerned that new proposed parking around the Lewelling bulb proposed by the City may create a traffic hazard especially when large vehicles such as firefighting apparatus / equipment and full size moving vans attempt to negotiate the narrowed traffic lane with vehicles parked along the curved curb.

Environmental Services Division Comment

Existing service vehicle easement of record provides access to utility maintenance service vehicles over HOA private property. The proposed Kiosk does not encroach on such easement.

Building and Safety Services Division Comment

See above responses to Engineering & Transportation Department Review comments on accessible parking and Fire Department review comments.

Planning Services Review Comments

1. Monument Sign component is withdrawn from this application. . Wayfinding signage within the Bay Trail access easement on HOA property is part of the pending BCDC permit amendment and within BCDC jurisdiction. Wayfinding signage on City property is not a part of this permit application.

Consistent with our phone conversation, this letter and pdf copies of the revised drawings are being emailed to you. Thanks again for your assistance.

Once you have had a chance to review these back check comments, please let me know if there are any other questions.

Regards,

Jeffrey Tepper on behalf of Heron Bay HOA

cc: Brian Ritter
Heron Bay HOA Board of Directors
BCDC

Attachments:

Kiosk Concept renderings dated 5-17-16 (3 pages)

Anchorage Drive Engineering drawing dated 6-3-16 (1 page)

Anchorage Drive Operational Narrative dated 6-14-16 (1 page)

Heron Bay Kiosk Proposal 6-14-16

Anchorage Drive Controlled Entry/Exit Narrative

This proposal calls for the installation of:

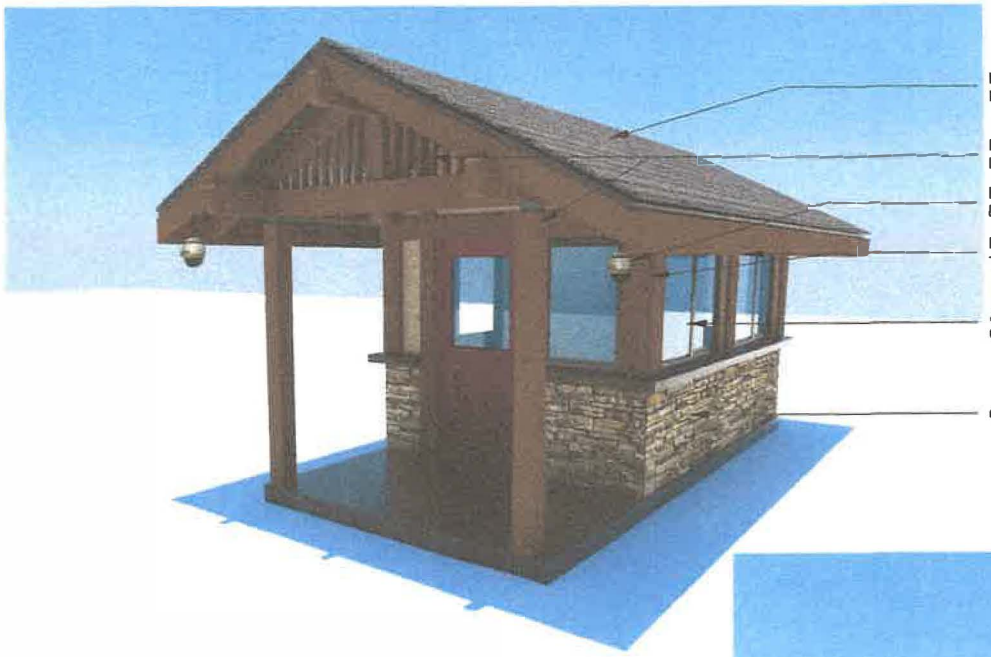
A drivable landscape barrier with fold over type bollards per SLFD requirements for the entry lane onto Anchorage from Lewelling Blvd circle preventing general vehicular entry from that point while allowing firefighting and other emergency equipment to roll over and past the barrier for access to Anchorage Drive;

An electric powered automated swing arm for the exit lane from Anchorage Drive mounted at the edge of existing roadbed triggered by buried exit loops.

Operationally, the swing arm will remain in the down position except when activated by buried exit loops. In the event of a power outage, the backup battery will automatically open the swing arm to allow for exit during the power outage.

If required, a pole mounted Knox Box switch will be installed allowing emergency response vehicles to raise the swing arm if needed.

All components will be installed on private property belonging to the HOA without encroaching on any existing easements of record.



barry|wynn
ARCHITECTS
117-C Town & Country Drive
Danville, CA 94526
925 837 1432
925 837 1436 (f)
www.barrywynn.com

Project Title:
HERON BAY HOA
ENTRY KIOSK

SAN LEANDRO, CA

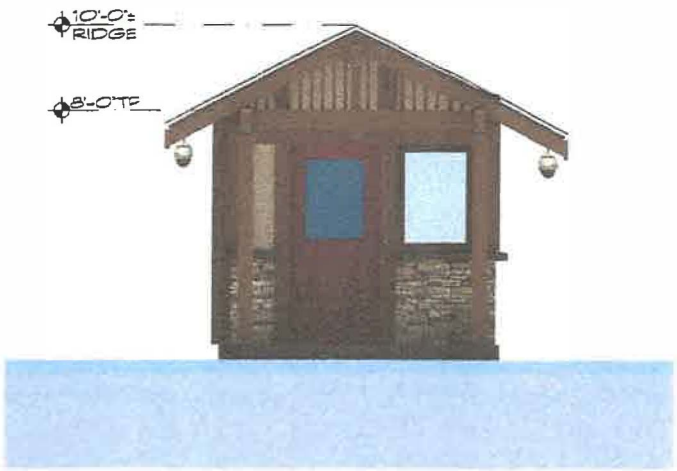
Sheet Title:
CONCEPT RENDERINGS

Revisions:

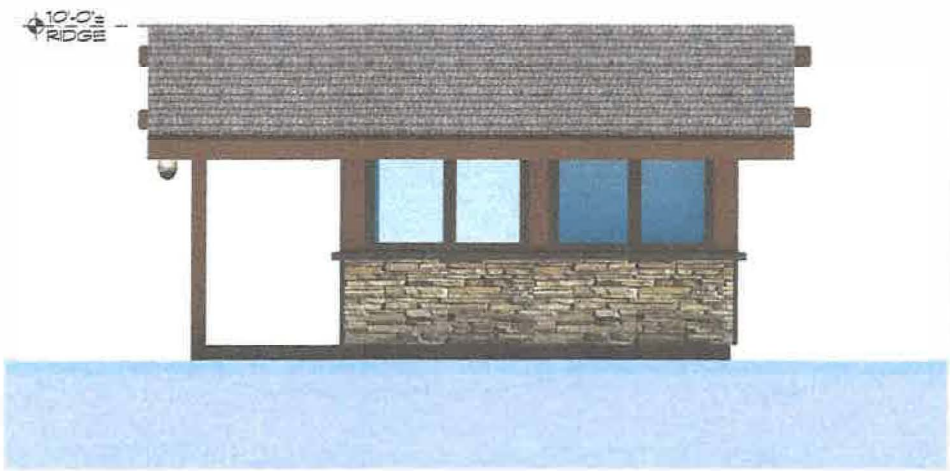
Scale:	NO SCALE
Drawn By:	RH
Approved:	SW
Job No.:	
Date:	03-04-18

Sheet No.:

1



FRONT ELEVATION



RIGHT ELEVATION

BACK ELEVATION

LEFT ELEVATION

barry | wynn
ARCHITECTS
117-G Town & Country Drive
Danville, CA 94526
925.837.1422
925.837.1429 (f)
www.barrywynn.com

Project Title:
HERON BAY HOA
ENTRY KIOSK

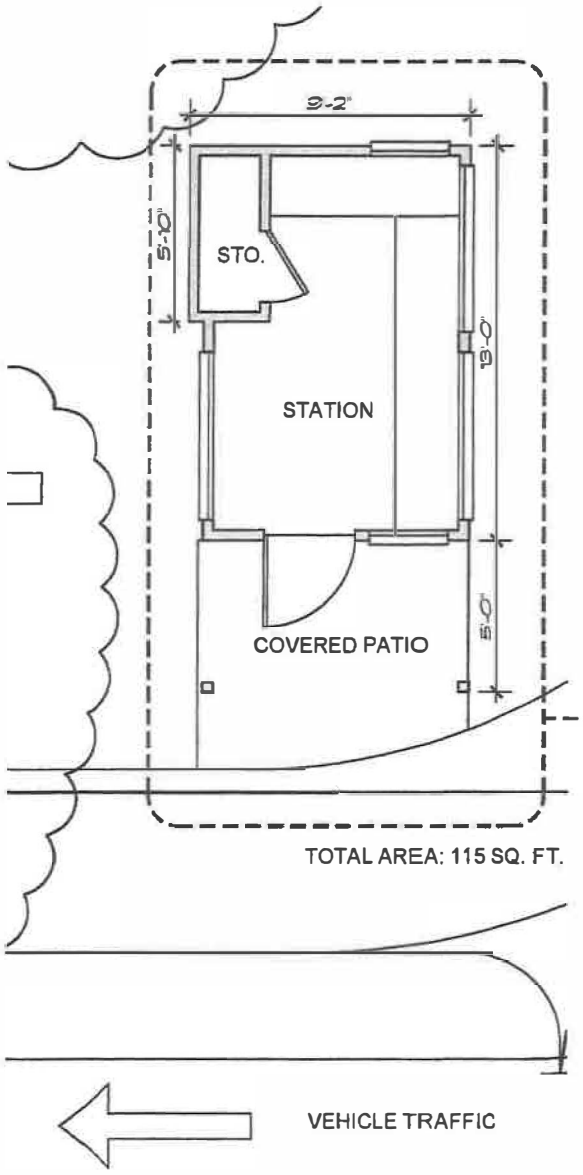
SAN LEANDRO, CA

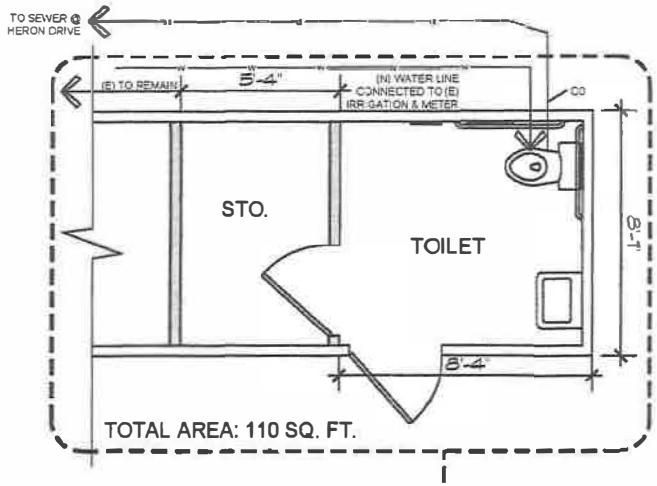
Sheet Title:
CONCEPT
EXTERIOR
ELEVATIONS

Revisions:

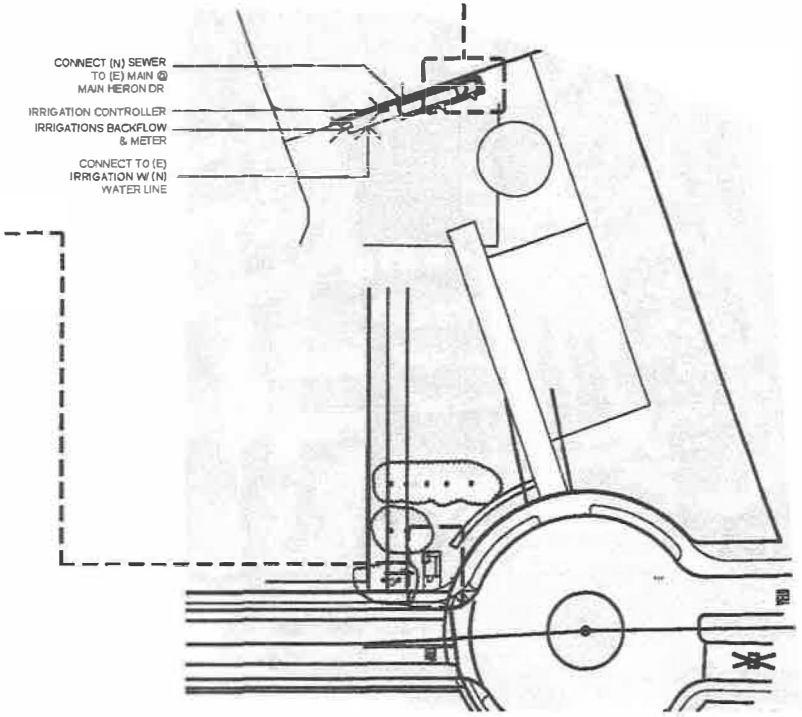
Scale:	1/4" = 1'-0"
Drawn By:	RH
Approved:	SW
Job No.:	
Date:	03-14-16

Sheet No.:
2





NOTE: (N) DESIGNATED ELECTRICAL CIRCUIT FOR TOILET ROOM ON (E) SUBPANEL



barry lwyon
ARCHITECTS
117-G Town & Country Drive
Danville, CA 94526
925.837.1422
925.837.1426 (f)
www.barrylwyon.com

Project Title:
HERON BAY HOA
ENTRY KIOSK

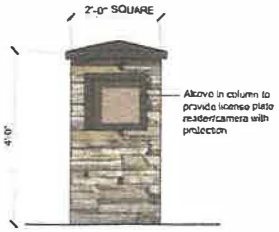
SAN LEANDRO, CA

Sheet Title:
CONCEPT FLOOR PLAN

Revisions:

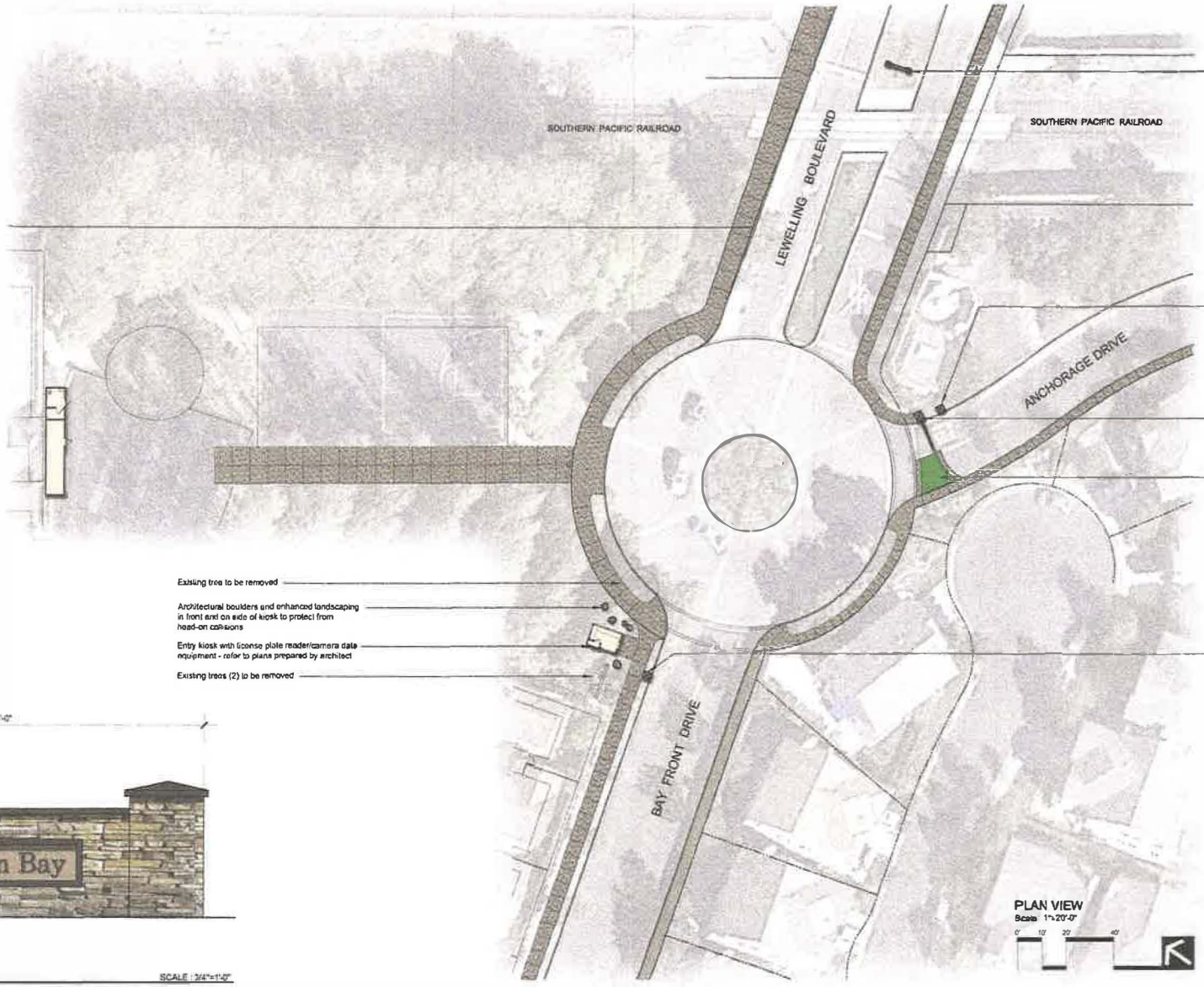
Scale:	1/4" = 1'-0"
Drawn By:	RH
Approved:	SW
Job No.:	
Date:	03-14-16

Sheet No.:
3



LPR COLUMN SCALE : 3/4"=1'-0"

ENTRY MONUMENT SCALE : 3/4"=1'-0"



Roundabout Enhancements

LAW OFFICES OF A. ALAN BERGER
ATTORNEYS
95 S. MARKET STREET, SUITE 545
SAN JOSE, CA 95113
(408) 536-0500

EXPLANATION	AMOUNT

23291

EZShield™ Check Fraud Protection for Business

11-4288-1210

PAY AMOUNT OF Six hundred and 00/100 DOLLARS

CHECK AMOUNT

DATE	TO THE ORDER OF	DESCRIPTION	CHECK NUMBER
7/13/16	BCDC	permit app - Heron Bay	23291

$ 600.00

Security Features Included Details on Back

Wells Fargo Bank, N.A.

A A Berger

⑈023291⑈ ⑆121042882⑆ 6862320030⑈

RECEIVED
JUL 13 2016
SAN FRANCISCO BAY CONSERVATION & DEVELOPMENT COMMISSION
@ 3:14 pm

EXHIBIT D

RECEIVED
AUG 15 2017
SAN FRANCISCO BAY CONSERVATION
& DEVELOPMENT COMMISSION

LAW OFFICES OF
A. ALAN BERGER
95 South Market Street
Suite 545
San Jose, CA 95113
Telephone: 408-536-0500
Facsimile: 408-536-0504

RECEIVED
SEP 17 2015
SAN FRANCISCO BAY CONSERVATION
& DEVELOPMENT COMMISSION

September 16, 2015

San Francisco Bay Conservation and Development Commission
455 Golden Gate Avenue, suite 10600
San Francisco, CA 94102

Re: Application for Amended Permit re: Required Shoreline Access from Lewelling Boulevard, in the City of San Leandro, over Heron Bay Homeowner Association Property (BCDC Permit No. 1992.057, dated July 5, 1994).

Gentlepersons:

As you are aware, we represent the interests of Heron Bay Homeowners Association (hereinafter referred to as "the HOA" or "the Association" or "Heron Bay") in the matter of the alleged non-compliance of the Association with San Francisco Bay Conservation and Development Commission, Permit No. 1992.057 (alternately referred to on the Recorder's Copy of the Permit as Permit No. M92-57 (hereinafter referred to as "the permit"). This correspondence and the attached documents will constitute the Association's application for an Amended Permit seeking approval of as-built conditions that will put the HOA in compliance with the terms of the original permit and of several new additions.

For the record we would note that the original permit was issued to Citation Homes, the original developer and builder of the Heron Bay complex, which is comprised of 629 homes. There was no existing construction of homes prior to the issuing of the subject permit. Citation Homes turned over control of the complex to the original homeowner controlled Board of Directors more than twenty years ago with no reference whatsoever to the existing permit 1992.057. The current HOA had no knowledge of the existence of the permit nor or any alleged failures to comply until mid-summer 2014 when the HOA made application to the City of San Leandro for the installation of entrance gates at the complex because of growing crime on the grounds of the HOA. At that time the Association was advised by BCDC of the existence of the permit and alleged violations of that permit, in particular violations of the requirements of section F (3) Public Access Improvements. Since that time the HOA has been meeting with and working with the staff of BCDC and the City of San Leandro to achieve mutually agreeable solutions to the existing problems. The purpose of this Amended Permit Application is to resolve the allegations of lack of compliance in the area of Public Access Improvements to the satisfaction of BCDC and the HOA. We would note that a check in the amount of

$600.00 is enclosed representing the application fee (2X) as suggested by BCDC in an email of September 11, 2015.

The HOA is also aware that the City of San Leandro is in default on certain terms contained in Permit no. 14-89, issued on March 7, 1990, as amended through June 28, 2000, and as recorded on October 6, 2000 as document no. 2000302674. It is the Association's understanding that the City has until September 17, 2015 to submit their Amended Permit Application. The HOA is not privy to the information that may be contained in that Amended Permit Application but reserves the right to object to and comment upon any proposals or guarantees in said application that may affect the Heron Bay Homeowners Association.

The HOA understands that Permit 1992.057, section F (3)(c) required a minimum 12-foot wide, handicapped accessible, pedestrian and bicycle path, with a minimum 8-foot wide, asphalt, primary use area and a minimum total of 4 feet of shoulder. In fact the as-built condition contains a 36-foot wide two-lane asphalt street; curb and planter beds which are 12-feet wide on the north side of Bayfront and a strip on the south side of Bayfront that is approximately 5 ½-feet wide. These dimensions generally run from the beginning of Bayfront Drive to the bay trails. As these as-built conditions are substantially wider and more improved than the original requirement, no changes are being suggested by the HOA other than the addition of parking spaces (subject to kiosk approval), the addition of signage, benches and sharrows, all of which are discussed within and in the attached application.

As part of this Amended Permit Application, the HOA is submitting a request for permission to develop an entry kiosk located in the roundabout located between Lewelling Avenue and Bayfront Drive. It is noted that the roundabout area where the kiosk would be located is owned by the City of San Leandro and is out of HOA and BCDC control. However, it is recognized that BCDC has the right to determine whether or not any suggested improvement will violate any of the conditions of Public Access. The HOA would refer to the photos marked as Exhibit C and Exhibit D to this application. Those photos indicate that the site lines from the entry to the complex to the bay trails are not in any way impeded by the proposed placement of the kiosk. The white poles with yellow flags on top in the photos simulate the actual horizontal and vertical height of the kiosk. BCDC has been previously provided renderings of the conceptual plan for the proposed kiosk. The HOA has stated and continues to state that they will comply with all reasonable requests of BCDC regarding the time the kiosk will be manned, the information that would be given to bay trail users by the kiosk attendants, the signage in and around the kiosk, and any other issues or restrictions that may or may not affect public access. The HOA has been advised that BCDC will not approve the kiosk proposal unless the City of San Leandro has already given its approval. This application will advise BCDC that an application for a permit for this improvement will be submitted to the City of San Leandro for approval within the next fourteen (14) days. The HOA respectfully requests that either BCDC delay ruling on this application for Amended Permit until such time as the City make a decision on the application to be

presented or, alternatively, grant the Amended Permit Application subject to City approval.

The HOA is also aware that the City of San Leandro is filing for an Amended Permit at the same time as is the HOA. It is the HOA's understanding that the City's application, at the request of BCDC, will include proposed parking in the roundabout at the entrance to Bayfront Drive. While the HOA is not formally objecting to that proposal at this time, the HOA reserves the right to do so in an appropriate forum as the HOA is doubtful that there is enough room to place parking in that location and still have clearance for large delivery trucks and the longest fire trucks to pass into the complex if the roundabout is filled with parked cars. Furthermore, as is stated in the attached application summary, the HOA is suggesting that if their request for an entry kiosk is approved by the City of San Leandro and BCDC, that they will provide 15 additional parking spaces (2 of which will be designated as handicapped) along Bayfront Drive. These proposed spaces would be closer to the bay trails and much easier to navigate for parking should they be approved as part of the kiosk proposal than would be parking in the roundabout. The HOA's parking proposal would render the City's proposed parking in the roundabout unnecessary. The HOA has agreed to place electronic monitors on the spaces to be located on Bayfront Drive so that the attendant at the kiosk may advise potential visitors to the bay trails of the availability of parking on the drive.

The HOA is aware that one of the permit requirements was a permanent guarantee of public access. Again, the HOA was unaware of this requirement until first notice in 2014. The Association has always supported public access to the bay trails and is more than happy to execute a permanent guarantee as for public access and to buffer areas as described in Segment 2 and Segment 3 in Special Condition II.F.1. If BCDC will supply the language they require along with the appropriate legal description that satisfies their interests, the HOA will execute same forthwith. If BCDC does not have the document to deliver to the HOA, the HOA will work with BCDC staff within the next 14 days to agree on appropriate language for said permanent guarantee. Again, this is a non-issue for the HOA as the HOA is ready, willing and able to execute such an agreement.

This document and the attached Application for Amended Permit and attachments thereto constitute the Heron Bay Homeowners Association application to BCDC for an Amended Permit. If BCDC has any questions regarding the materials submitted or the intent of the Association in so filing, please do not hesitate to contact the undersigned. The HOA reserves the right to submit additional materials or clarifying statements during the pendency of the application.

Very truly yours,

A. Alan Berger
Attorney for Heron Bay Homeowners Association

Cc: Client

Heron Bay HOA Amended Permit Application
Permit No. 1992-057

Background Facts:

The original BCDC Permit # 1992-057 executed on July 6, 1994 and recorded on August 5, 1994 prescribes a public access pedestrian and bicycle easement between the westerly end of Lewelling Blvd and the future Bay Trail head adjacent to the western edge of the future Heron Bay residential development. The approved and recorded Final Tract Map, which depicts the then future development, shows the public access easement over the parcel containing the future private street described as "Bayfront Drive". As built, Bayfront Drive is and has always been a two-lane asphalt street bounded on its northern edge by a City standard concrete sidewalk and planter beds containing a variety of plants and shade trees. Since the HOA succeeded the developer as the permitee more than 20 years ago, the HOA has consistently honored and respected the public access pedestrian and bicyclist easement as built.

In 2014, BCDC determined that the existing concrete sidewalk and road bed does not comply with the original design standard parameters as stated in F (3) of the permit and has required that the public access easement be brought into standard or, in the alternative, that the permit be amended to allow the as-built public access to remain. As part of such amendment, BCDC requests/requires additional mitigation to offset the past impact on the public access across the easement although applicant is unaware of any specific complaint of lack of public access over the past many years.

The following constitutes applicant's suggestions for improvements to the site in question and is part of the application to amend the original permit described above. Applicant believes and intends that the following improvements, if approved, will bring the HOA into substantial compliance with the terms of the original permit and will, in fact, constitute a significant betterment to the original permit requirements.

Amendment Goals:

1. Per BCDC policy, Bay Trail access shall be open and accessible to the maximum extent possible;

2. BCDC further seeks enhanced directional signage to facilitate maximum accessibility;

3. BCDC seeks a welcoming environment for Bay Trail users crossing HOA property;

4. BCDC seeks the addition of vehicle-parking privileges, not required in the original permit, within the HOA property for Bay Trail users arriving by motor vehicle.

Amendment Methods proposed to achieve the above stated goals with additional bay trail user enhancements including onsite parking and entry kiosk:

1. HOA to install and maintain BCDC approved directional signage along the public access easement as depicted in the attached overhead graphic of Bayfront Drive to assist pedestrians and bicyclists accessing the Bay Trail. The HOA will amend this application to include any further or differing signage that BCDC may require as a condition to the approval of this application.

2. HOA to install and maintain "Sharrows" as required by BCDC standard along the roadbed of Bayfront Drive;

3. Subject to City of San Leandro and BCDC approval, HOA to build an entry Kiosk within the Lewelling Bulb planter area as depicted in the attached artist renderings, to serve as a permanent structure to provide shelter and basic services to an Entry Attendant hired by the HOA whose job includes greeting all vehicles coming onto the property, providing directional assistance for Bay Trail users arriving by motor vehicle, and assistance to Bay Trail pedestrians and bicyclists upon request. The exact location of the kiosk will be such that it will not obstruct bay views to visitors upon entering Heron Bay.

4. HOA to install separate welcoming signage on the Kiosk (depicted in the overhead graphic) as well as in the approach to Heron Bay as allowed by the City of San Leandro;

5. HOA to install additional benches along the easement for the use of members of the public while using the Bay Trail access. The exact number and location of which are to be determined by agreement between BCDC and the HOA.

6. HOA to install additional trash receptacles along the trail access easement and dog poop bag dispensers. The exact number and location of which are to be determined by agreement between BCDC and the HOA.

7. HOA to designate and mark 15 vehicular parking spaces along Bayfront Drive for use by Bay Trail users during daylight hours plus one hour past sunset on a first come, first served, space available basis. At all other times, HOA permit parking rules would apply. These spaces would be marked to include 2 ADA compliant (Blue) spaces and 13 City standard spaces with electronic parking availability transmitted to the entry kiosk. In this manner the attendant is able to advise potential visitors of the availability of

parking on Bayfront Drive. *The designation of 15 parking spaces is expressly contingent upon approval of the Kiosk by the City and BCDC.*

8. Simultaneously with this application, the HOA is proceeding forward with an application to the City of San Leandro for approval of the Kiosk as proposed.

Attachments :

1. Overhead graphics depicting the proposed changes to the existing public access easement;

2. Artist's renderings of the proposed Kiosk;

3. Photos of site depicting current conditions.

   A. SF Bay Trail- Bayfront Drive Access.

   B. Proposed Kiosk- Roundabout Enhancements.

   C. Westerly view of Bayfront Drive and Roundabout demonstrating the proposed location of the kiosk (see the placement of the poles).

   D. Westerly view of Bayfront Drive and Roundabout from railroad tracks from Lewelling Drive demonstrating the proposed location of the kiosk (see the placement of the poles).

EXHIBIT E

RECEIVED
AUG 15 2017
SAN FRANCISCO BAY CONSERVATION
& DEVELOPMENT COMMISSION

LAW OFFICES OF
A. ALAN BERGER
95 South Market Street
Suite 545
San Jose, CA 95113
Telephone: 408-536-0500
Facsimile: 408-536-0504
Email: aabtwo@aol.com

February 27, 2015

Ms. Adrienne Klein
Chief of Enforcement
San Francisco Bay Conservation and Development Commission (BCDC)
455 Golden Gate Avenue, Suite 10600
San Francisco, CA 94102-7019

Re: Heron Bay Homeowners Association re: access permits

Dear Ms. Klein;

This correspondence is meant as a reminder that the Board of Directors of Heron Bay Homeowners Association ("Board") awaits BCDC's comments on the oral proposal submitted to you in early January 2015. In order to further deter ongoing violent attacks within Heron Bay, the Board is moving forward on planning for the project anticipating that BCDC will approve of the proposed changes to the site, including, but not limited to, ten newly created bay trail access parking spaces (two of which will be ADA accessible), new signage to BCDC's approval, markings for bicycle lanes and, other items that were discussed with you and the Board. Of course, all of the above are subject to the approval of the City of San Leandro.

While we are waiting for your comments and suggestions, the Board did commission a preliminary drawing of the entry kiosk that we had discussed. The building was designed with the intent of making it as friendly looking and as welcoming to trail users as possible. To assist with your decision on the concepts presented, I am including a copy of the preliminary drawing of the entry kiosk. Of course the Board remains flexible and would welcome any suggestions that BCDC might have.

The Heron Bay Homeowners Association plans to submit entry kiosk and associated plans to the City of San Leandro in March 2015. We look forward to hearing from you soon, by March 13, 2015, if at all possible, with your comments and, hopefully, an approval of the Association's preliminary plans subject, of course, to any suggestions that you may have.

Very truly yours,

A. Alan Berger

Enclosure
Cc: Client
AAB/ceb

EXHIBIT F

San Francisco Bay Conservation and Development Commission
455 Golden Gate Avenue, Suite 10600, San Francisco, California 94102 tel 415 352 3600 fax 415 352 3606

August 12, 2016

RECEIVED
AUG 15 2017
SAN FRANCISCO BAY CONSERVATION
& DEVELOPMENT COMMISSION

Heron Bay HOA
C/O Law Office of Alan Berger
95 South Market Street, Suite 545
San Jose, CA 95113

SUBJECT: Request for Amendment No. Three to BCDC Permit No. M1992.057.02 to resolve violations at the Heron Bay HOA, City of San Leandro, Alameda County (Enforcement File No. ER2014.015)

Dear Mr. Berger:

Thank you for responding to the May 26, 2016, enforcement letter that commenced a standardized fine clock for the failure by the Heron Bay Homeowner's Association ("HOA"), your client, to comply with BCDC Permit No. M1992.057.01 ("Permit"). In your response, dated July 13, 2016, received in this office the same day, you include a request to amend the Permit in one of three ways. You express a preference for "Option 1," which requests authorization to retain the as-built public access (after-the-fact) in lieu of constructing the currently-required public access, construct a security kiosk, and provide new public access amenities consisting of bike sharrows, signed public shore parking spaces and public shore signs at Bayfront Drive to offset the difference between the currently-required versus the as-built public access.

Presently, Special Condition II.F.3.c of the Permit requires "a minimum of an 8-foot-wide paved path, with a minimum total of 4 feet of shoulder" on Bayfront Drive.[1]

As you know, BCDC staff will not be able to consider the security kiosk until the City of San Leandro authorizes your proposal. For this reason, among others that are discussed below, staff cannot file your amendment request as complete. Your decision to join the request for the security kiosk with your application to resolve violations to the Permit and Settlement Agreement voluntarily extends the amount of time it will take to resolve the violations, and in turn, allows for more stipulated penalties to accrue.

[1] This public access is also required by the settlement agreement, "Agreement Regarding Limits of Jurisdiction and Land Use," that was entered into by BCDC and Citation Homes on June 16, 1994 and recorded on title with Alameda County on July 22, 1994 ("Settlement Agreement"). Since "Option 1" proposes to retain public access on Bayfront Drive not consistent with the recorded Settlement Agreement, the stipulated document will also have to be amended and rerecorded along with the Permit. I have enclosed a copy of the Settlement Agreement for your convenience.

Our review of the "Option 1" amendment request has determined that it is incomplete pending the submittal of the following items:

1. **Total Project and Site Information.** From reviewing your application, it appears that "Option 1" involves the following activities:

   a. Construct a 12-foot-wide curb and planter with a paved pedestrian path located on the north side of Bayfront Drive, and a 5-and-a-half-foot-wide curb and planter located on the south side of Bayfront Drive (after-the-fact);

   b. Construct a 115-square-foot security kiosk located at the northeast entrance of Bayfront Drive outside of the public access easement with a parking space exclusively reserved for the security kiosk attendant;

   c. Provide six pubic shore parking spaces, two of which will be ADA accessible, located at the northwestern end of Bayfront Drive;

   d. Install license plate reader columns located on Bayfront Drive outside of the public access easement;

   e. Paint bicycle sharrows along both sides of Bayfront Drive; and

   f. Post new public access signage at the security kiosk along Bayfront Drive.

   Staff requires a more information as follows in order to fully understand your proposed project:

   a. Provide the width of the as-built paved pedestrian path located on the north side of Bayfront Drive;

   b. Explain the purpose of the kiosk and its attendant, how the HOA plans to use the kiosk attendant to interact with the public, and finally, how the HOA will ensure the public – whether travelling to or from the shoreline by foot, bicycle or vehicle -- will not be impacted by the presence of the kiosk and its attendant. Additionally, provide the proposed location for the dedicated parking space for the attendant;

   c. Explain why you are proposing six instead of ten public access parking spaces, two of which will be ADA accessible, as proposed on January 7, 2015. There appears to be ample space for fifteen spaces and staff is concerned that six spaces will not be enough to serve the public;

   d. State the purpose of the license plate readers, and provide a site plan that shows what the readers look like, the quantity you are proposing to install, and the specific locations you are planning to install the readers, how the information will be managed and used and explain how the HOA will ensure that the public will not be impacted by their presence;

   e. Provide a site plan to show the location of the proposed bicycle sharrows; and

f. Provide more information about the content and quantity of the public access signs.

2. **Project Plans.** Please submit one full size set of project plans and one reduced size set of project plans (8-1/2" x 11") for your proposed project. These plans must include, at a minimum, a vicinity map, site plan, property lines, the as-built public access, the security kiosk, the six public shore parking spaces, the license plate reader columns, the bicycle sharrows, and the public access signage, a scale, a north arrow, and finally, the date and the name of the person who prepared the plans.

3. **Signage Plan.** Please provide a signage plan that shows both the content and quantity of the proposed public access signage plans. For guidance on the content of the public access signs, please refer to our public access signage guide available on our website.

4. **Local Government Approval.** Thank you for your diligence in working with the City of San Leandro to obtain the necessary approval of your proposed project at the local level. Please submit all the relevant documentation, which clearly indicates that all the local government discretionary approvals have been received for the project.

5. **Processing Fee.** Thank you for submitting the $600 application fee. Staff deposited the check on July 13, 2016.

6. **Environmental Documentation.** Please provide environmental documentation, as required under the California Environmental Quality Act (CEQA), in the form of a categorical or statutory exemption, negative declaration, or other certified environmental impact document.

7. **Interested Parties.** Please provide a list of parties interested in this project.

Until the above-mentioned information is submitted and reviewed for adequacy, your application will be held as incomplete. Administrative penalties will continue to accrue until you resolve the violations, as provided in the May 26, 2016 enforcement letter.

Other Issues

1. **Public Notice.** While not required to file your request as complete, we believe it is in your interest to post a notice for the public about the project. To the end, please find enclosed a completed "Notice of Application" to be posted at or near the project site in a prominent location. Please post the Notice so that it will be visible to the members of the public, complete the form that certifies that you have posted the Notice, and return the form to the Commission's office.

2. **Resolution of Current Violation.** Since the onset of our discussions, staff has stated that a minimum of ten[2] public shore parking spaces on Bayfront Drive is necessary to resolve this violation. The public shore parking would serve to offset the as-built condition of the public

[2] On September 16, 2015, fifteen public shore parking spaces were proposed.

access, which is less than what the Commission found to constitute maximum feasible public access. If you do not amend the application to increase the number of proposed public shore parking spaces from six to ten/fifteen, you may face a formal enforcement proceeding to secure additional public shore spaces through a cease and desist and civil penalty order.

If you have any questions, please do not hesitate to contact me at 415-352-3668 or maggie.weber@bcdc.ca.gov.

Sincerely,

Maggie Weber

MAGGIE WEBER
Enforcement Analyst

MW/go

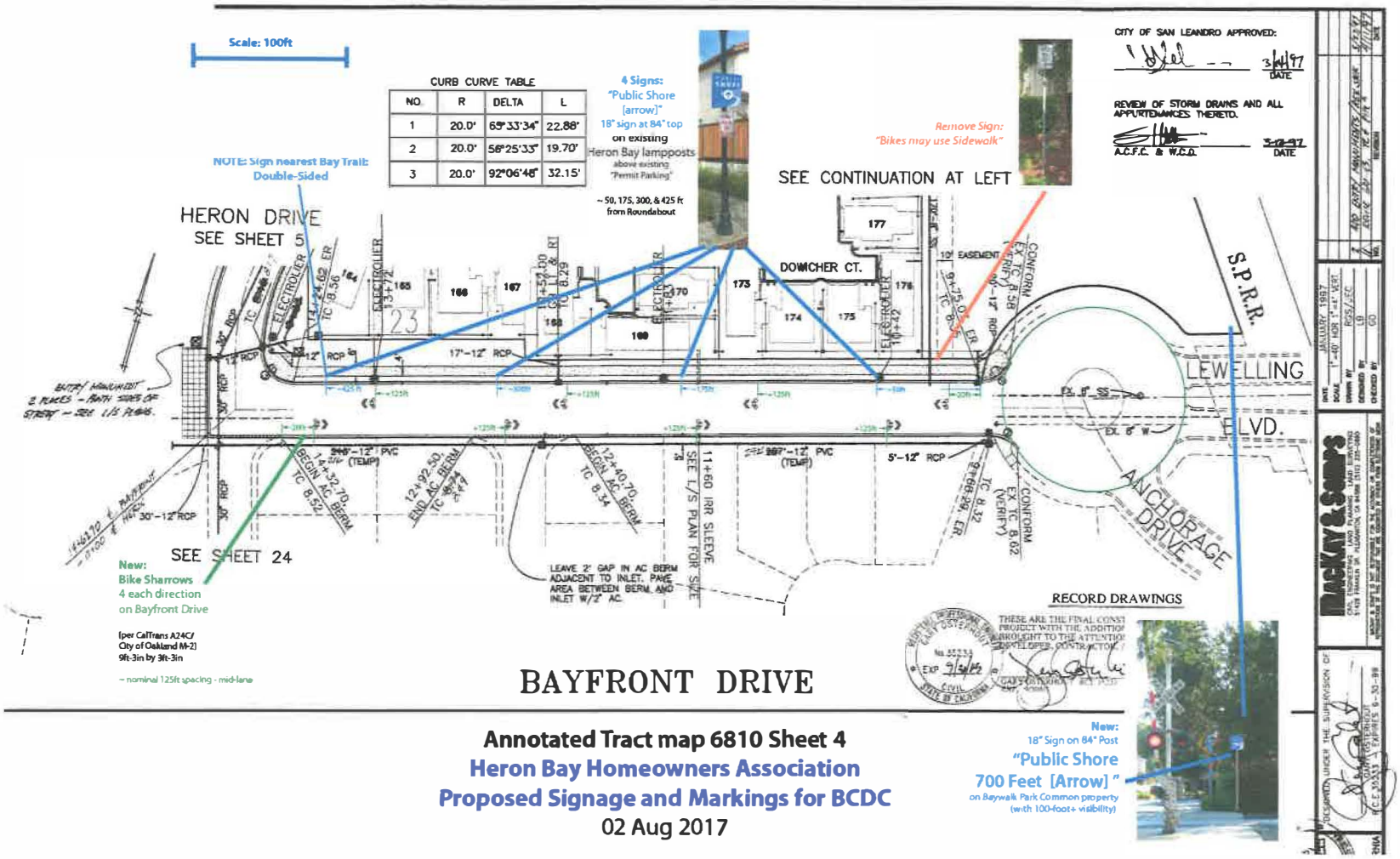
Enc. Settlement Agreement

EXHIBIT G

Heron Bay Homeowners Association
Balance Sheet
7/31/2017

Assets		
Operating		
1110 - Heritage Bank Operating Account	$231,201.36	
Operating Total	$231,201.36	
Receivables		
1310 - Assessments Receivable	$21,422.43	
1320 - Late Fees Receivable	$2,560.00	
1340 - Other Receivables	$26,392.34	
1345 - Allowance for Bad Debt	($7,000.00)	
Receivables Total	$43,374.77	
Assets Total		$274,576.13
Liabilities and Equity		
Short Term Liabilities		
2110 - Prepaid Assessments	$51,765.51	
Short Term Liabilities Total	$51,765.51	
Retained Earnings	$172,770.24	
Net Income	$50,040.38	
Liabilities & Equity Total		$274,576.13

EXHIBIT H



Annotated Tract map 6810 Sheet 4

Heron Bay Homeowners Association

Proposed Signage and Markings for BCDC

02 Aug 2017