

# San Francisco Bay Conservation and Development Commission

375 Beale Street, Suite 510, San Francisco, California 94105 tel 415 352 3600 fax 888 348 5190

State of California | Gavin Newsom – Governor | [info@bcdc.ca.gov](mailto:info@bcdc.ca.gov) | [www.bcdc.ca.gov](http://www.bcdc.ca.gov)

December 6, 2024

**TO:** Commissioners

**FROM:** Lawrence J. Goldzband, Executive Director, (415/352-3653; [larry.goldzband@bcdc.ca.gov](mailto:larry.goldzband@bcdc.ca.gov))  
Bella Castrodale, Lead Enforcement Attorney, (415/352-3628; [bella.castrodale@bcdc.ca.gov](mailto:bella.castrodale@bcdc.ca.gov))

**SUBJECT: Executive Director's Recommended Enforcement Decision and Proposed Stipulated Civil Penalty Order No. CCD2024.002.00, Joe and Heidi Shekou, Unauthorized Solar Power Plant in Richmond, Contra Costa County (Enforcement Case ER2017.004.00)**  
(For Commission consideration on December 19, 2024)

## Summary

The Executive Director recommends that the Commission votes to adopt this Recommended Enforcement Decision (RED) to resolve a violation of Section 66632(a) of the McAteer-Petris Act. This recommendation includes issuing proposed stipulated Civil Penalty Order (CCD2024.002.00), which requires Robert and Heidi Shekou (the "Respondents") to pay \$30,000 in administrative civil liability within thirty days of Order issuance.

In or around August 2016, without BCDC authorization, Respondents installed and have since maintained a two-megawatt, photovoltaic solar power plant consisting of photovoltaic solar panel arrays and a fence located within BCDC's jurisdiction. On June 22, 2017, BCDC staff established Enforcement Case ER2017.004.00. On October 25, 2017, BCDC staff sent a notice of violation to Respondents informing them they must apply to BCDC for an after-the-fact permit to install the solar panels and fence with a public access proposal and that they would be subject to standardized fines if a filed application was not provided within 35 days of the date of the letter. Between October 25, 2017 and April 11, 2024, Respondents had not submitted the information required by the Commission's regulations to file as complete their pending incomplete application for an after-the-fact permit to install the solar panels and fence with a public access proposal.

On April 11, 2024, the Enforcement Committee voted to adopt a Recommended Enforcement Decision (RED) (Exhibit C) that included a proposed Cease and Desist and Civil Penalty Order (CCD2024.002.00) which would require Respondents to: 1. submit a filed, BCDC permit application with feasible public access plan to install and operate the portion of the unauthorized solar power plant located within BCDC's jurisdiction; 2. If Respondents failed to submit a filed application by a set date and/or if Respondents failed to obtain after-the-fact BCDC permit authorization within ninety (90) days of filing the application as complete, Respondents would be required to entirely remove all fill located within BCDC's jurisdiction; and 3. pay \$30,000 in administrative civil liability within thirty days of Order issuance.



To date, the RED adopted by the Enforcement Committee to issue CCD2024.002.00 (Exhibit C) has not been calendared on a Commission meeting agenda. On August 21, 2024, Respondents complied in substantial part with the proposed terms of CCD2024.002.00 by submitting a filed, BCDC permit application with a feasible public access plan to install and operate the portion of the unauthorized solar power plant located within BCDC's jurisdiction. Respondents' administrative permit was listed at the Commission's October 17, 2024 meeting, and later issued in December 2024. Therefore, the Respondents' main outstanding obligation as set forth in CCD2024.002.00 is payment of fines. Staff and Respondent have engaged in confidential settlement negotiations which have resulted in Proposed Stipulated Civil Penalty Order CCD2024.002.00 to resolve the single unresolved physical violation through payment of \$30,000 in fines.

If the proposed stipulated Order is adopted by the Commission, it will become effective as of the date of execution by the Executive Director. Adoption of this Recommended Enforcement Decision by the Commission shall immediately resolve Enforcement Case ER2017.004.00 and, at such time, this matter, including the proposed Order, shall be referred to BCDC Compliance for compliance monitoring until Respondents demonstrate full compliance with the terms and conditions of the Order. Should Respondents fail to comply fully with the Order, this matter shall be referred to the Office of the Attorney General for resolution by the superior court.

## Background

In 1977, BCDC issued Claim of Exemption No. CE 74-15 to a former owner of the property that is the subject of this formal enforcement proceeding. CE 74-15 was for a specific project, portions of which were built and portions of which were not built. Between 1977 and 1989, BCDC was in communication with the party who obtained CE 74-15 and with subsequent purchasers of the property subject to this enforcement action. BCDC believes that the record makes clear that CE 74-15 applies only to the project described therein and does not transfer to subsequent owners and, therefore, that the construction of any project other than the one described in CE 74-15 requires a BCDC permit as does the construction of any project undertaken by a party other than the one who obtained CE 74-15. (See RED Exhibit B: Violation Report and Complaint Exhibits 3-7 and 20)

On May 31, 2000, Respondents purchased the four parcels on which the unauthorized solar power plant is constructed and operating. (VR&C Exhibit 2).

In 2014, Respondents retained land surveyors to survey the site and a contractor and project manager to obtain permits from the City of Richmond and the US Army Corps of Engineers to construct a solar power plant and perimeter fence on their property. At least one of Respondents' permits includes a condition of approval that states that the solar power plant project shall not encroach on BCDC 100-foot jurisdiction without a BCDC permit. Based on this permit, BCDC believes Respondents knew that they should contact BCDC to assess BCDC jurisdiction and regulatory authority (See RED Exhibit B: VR&C Exhibits 8-14)

Nevertheless, between January and October 2016, Respondents did not contact BCDC and constructed an unauthorized fenced, two-megawatt solar power plant at the site (See RED Exhibit B: VR&C Exhibits 19 and 20).



In January 2017, BCDC received a report that Respondents had apparently undertaken unauthorized construction of a solar power plant adjacent to Elmar Court/Freethy Boulevard without a BCDC permit (See RED Exhibit B: VR&C Exhibit 15).

In April 2017, Respondents' Project Manager Robert Herbst informed staff that Respondents had not obtained a BCDC permit prior to installing the solar power plant and security fence because they believed it was exempt from the requirement pursuant to Claim of Exemption CE 74-15 BCDC. (See RED Exhibit B: VR&C Exhibits 17-18)

Between April 2017 and February 2019, BCDC regulatory and legal staff and Respondents were in communication about BCDC's jurisdiction at the site and, in an October 2017 letter, BCDC informed Respondents that they needed to apply for BCDC approval to operate the solar farm. This letter commenced an administrative civil penalty clock (See RED Exhibit B: VR&C Exhibits 16, 18-20).

One year and four months later, in February 2019, Respondents submitted an after-the-fact permit application to BCDC, which staff deemed to be incomplete and responded to in March 2019 (See RED Exhibit B: VR&C Exhibits 21, 22 and 23).

Three years and two months later, in May and September 2022, Respondents submitted an updated application and public access plan, which staff again deemed to be incomplete and responded to in June and November 2022 (See RED Exhibit B: VR&C Exhibits 26, 27, 34, 35).

One year and nine months following staff's June 3, 2022, letter (and November 19, 2022 email), Respondents had not fully responded to BCDC's application-related communications by: 1. Providing an explanation of how the project is consistent with San Francisco Bay Plan Policy 1 regarding maximum feasible public access; 2. Addressing whether and how staff's December 9, 2021, guidance has been considered; 3. Providing accurate jurisdictional information on the plans that depict the edge of the Bay and the corresponding shoreline band on the entire north, and a portion of the east side, of the property; 4. Providing public access details and dimensions on the project plans, including relocating portions of the unauthorized fence and solar panels away from the edge of the decomposed granite trail shoulder so that the public can use the full width of the shoreline pathway; 5. To assess the appropriate application fee, providing a revised total project cost that includes the costs associated with solar farm construction in addition to those associated with the public access; and 6. Providing a copy of the environmental documentation required by CEQA (See RED Exhibit B: VR&C Exhibits 24, 31 and 41).

On February 12, 2024, Respondents' Project Manager informed staff that they had not received the email, dated November 19, 2022, which staff shared with them on February 15, 2024 (RED Exhibit C: Exhibit B.1).

On February 15, 2024, one day prior to issuance of the Violation Report and Complaint, Respondents' Project Manager submitted an email stating they want to get the project back on track and will work with their designer to ensure that both ends of the trail connect to the existing Bay Trail segments and to create the space staff requested between the trail edge and the solar power plant perimeter fence (RED Exhibit C: Exhibit B.1).

However, between February 16, 2024, and March 26, 2024, Respondents did not update their pending incomplete application to provide the information needed to file it as complete.

On March 26, 2024, in response to an email initiated by staff, Respondents' Project Manager submitted a revised public access plan (RED Exhibit C: Exhibit B.2). On the same date, staff informed Respondents' Project Manager that to file the application as completed, Respondents must still provide the information outlined in the June 3, 2022, letter and the November 19, 2022, email (RED Exhibit C: Exhibit B.2).

On April 11, 2024, the Enforcement Committee voted to adopt the Recommended Enforcement Decision to issue CCD2024.002.00 which would require Respondents to submit a filed BCDC permit application with a feasible public access plan to install and operate the portion of the unauthorized solar power plant located within BCDC's jurisdiction.

On August 21, 2024, Respondents' BCDC permit application with a feasible public access plan to install and operate the portion of the unauthorized solar power plant located within BCDC's jurisdiction was filed as complete.

Respondents' administrative permit, M2019.004.00, was listed at the San Francisco Bay Conservation and Development Commission's October 17, 2024 meeting.

### **Admitted and Contested Essential Allegations**

The Statement of Defense form was due on March 22, 2024. Respondents did not submit a statement of defense.

### **Unresolved Issues**

As this is a stipulated Order, there are no unresolved issues.

### **Previous Enforcement Actions**

No prior enforcement actions have been taken in this matter.

### **Recommendation**

Respondents have been responsible for this violation since January 2016, when solar power plant construction commenced, and since May 2018, when crushed asphalt was placed onsite to elevate the grade to allow for solar panel maintenance, a period of at least 3,195 days or more than eight years. This violation persists to the present. After considering the factors required by McAteer-Petris Act § 66641.9, BCDC staff recommends a \$30,000 penalty for this violation, the maximum administrative liability allowed by law.

The nature and extent of harm caused by the legal violation is moderate. Respondents have been operating a solar power plant for at least eight years with no BCDC authorization. With the provision of maximum feasible public access consistent with the project, the portion of the solar power plant operation within the Commission's shoreline band jurisdiction should be eligible for after-the-fact authorization, although the public cannot regain the lost public access benefit in the

form of a shoreline trail within the shoreline band portions of the project site that should have been in place at least since solar power plant operation commenced.

While the violation is susceptible to resolution through retroactive authorization, the public has been deprived of any public access at this site consistent with the project for more than eight years since its construction.

The Commission finds the cost to the state in pursuing this case since 2017 was high. BCDC staff has been working with Respondents for more than seven years to cause them to submit a permit application. BCDC's Compliance staff will invest additional time in pursuing this case following order issuance.

Respondents are culpable for the violation due to their failure to: 1. Contact BCDC prior to commencing solar power plant construction in January 2016; 2. Submit a fileable application between at least 2017, when BCDC first contacted Respondents, and the present; 3. Obtain after-the-fact authorization for the solar power plant and provide public access between January 2016 and the present.

Respondents submitted no defenses regarding their ability to pay.

Based on these penalty factors the staff finds that an \$1,200 penalty per day for the failure to obtain a BCDC permit prior to commencing construction is appropriate.

Penalties are appropriate because Respondents had been operating an unauthorized solar power plant since sometime in 2016. They had failed to submit a fileable permit application until August 2024, and had failed to secure a BCDC permit until October 2024. They have privately benefitted from the project while the public has permanently lost the opportunity to use this section of Bay shoreline during that time.

In accordance with Cal. Code Regs. tit. 14, § 11332(c), Respondents have agreed in writing to accept this Recommended Enforcement Decision (RED Exhibit D). As this is a stipulated order between the parties, Respondents hereby waive any rights they may have to file a writ of mandate for review of this order. The Executive Director also agrees to accept the recommended enforcement decision.

**The Executive Director recommends that the Commission adopt this Recommended Enforcement Decision and issue proposed stipulated Civil Penalty Order CCD2024.002.00.**

### **Proposed Order CCD2024.002.00**

Proposed Civil Penalty Order CCD2024.002.00 consistent with this recommendation is attached (RED Exhibit A), along with the Violation Report and Complaint dated February 16, 2024 (RED Exhibit B), the April 11, 2024 Recommended Enforcement Decision with Exhibits (RED Exhibit C), and Respondents' written acceptance of this Recommended Enforcement Decision (RED Exhibit D).

Attachments: RED Exhibit A: Proposed Stipulated Civil Penalty Order CCD2024.002.00

RED Exhibit B: Violation Report and Complaint with exhibits

RED Exhibit C: April 11, 2024, Recommended Enforcement Decision with Exhibits

RED Exhibit D: Respondents' Written Acceptance of this RED

## San Francisco Bay Conservation and Development Commission

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### Commission

**Stipulated Civil Penalty Order:** CCD2024.002.00

**Effective Date:** [Effective upon execution by the Executive Director, for Commission consideration on December 19, 2024]

**Respondents:** Joe and Heidi Shekou

### To Joe and Heidi Shekou:

## I. Stipulated Civil Penalty Order

Pursuant to Cal. Gov. Code § 66641.6, Joe and Heidi Shekou (“Respondents”) are hereby ordered to:

- A. Pay administrative civil liability of thirty thousand dollars (\$30,000) to BCDC by cashier’s check made payable to the San Francisco Bay Conservation and Development Commission, to be deposited into the Bay Fill Clean-up and Abatement Fund, within thirty (30) days of issuance of this Order. The administrative civil liability consists of:
  1. Thirty thousand dollars (\$30,000) for the installation and operation since in or around January 2016 of an unauthorized two-megawatt, photovoltaic solar power plant within the Commission’s jurisdiction, a violation of Section 66632(a) of the McAteer-Petris Act.

## II. Findings

**Factual Findings.** This Commission Civil Penalty Order is based on the findings summarized below. The enforcement record in support of these findings includes all documents cited herein and all documents identified at Cal. Code Regs. tit. 14, § 11370. A comprehensive set of findings is found in the Violation Report and Complaint for Administrative Civil Penalties (VR&C) that was issued on February 16, 2024.

- A. On May 31, 2000, Respondents Joe and Heidi Shekou purchased the four parcels on which the unauthorized solar power plant is constructed and operating. (VR&C Exhibit 2)
- B. In 2014, Respondents and/or their agents pursued regulatory approvals from the City of Richmond, including CEQA compliance, and a jurisdictional determination from the United States Army Corps of Engineers. One of Respondents’ City approvals included express notice to contact SF BCDC. Respondents did not contact BCDC to pursue a jurisdictional determination nor regulatory approval to construct a solar power plant at their property. (VR&C Exhibits 9, 10, 11, 13)



- C. Between January and October 2016, Respondents constructed a fenced, two-megawatt solar power plant at the site without a BCDC permit. (VR&C Exhibits 19 and 20)
- D. On January 18, 2017, BCDC Enforcement received a report that Respondents had undertaken unauthorized construction of a solar power plant and security fence adjacent to Elmar Court/Freethy Boulevard in Richmond, Contra Costa County without a BCDC permit. (VR&C Exhibit 15)
- E. On April 25, 2017, BCDC staff contacted Respondents whose Project Manager, Robert Herbst, informed BCDC staff that they had not obtained a BCDC permit prior to installing the solar power plant and security fence because they believed it was exempt from the requirement pursuant to Claim of Exemption CE 74-15, issued in May 1977. (VR&C Exhibits 17, 18 and 3-7)
- F. On June 22, 2017, BCDC staff established Enforcement Case ER2017.004.00. (VR&C Exhibit 16)
- G. On October 25, 2017, BCDC staff sent a notice of violations to Respondents informing them that Claim of Exemption CE 74-15 did not apply to the solar power plant project, and, therefore, they must apply to BCDC for an after-the-fact permit to install the solar panels and fence and must include a public access proposal. This notice initiated the accrual of standardized fines. (VR&C Exhibit 18)
- H. On December 7, 2017, Respondents met with BCDC staff to discuss the enforcement matter. (VR&C Exhibit 19)
- I. On February 5, 2018, Respondents, through their attorney, submitted a settlement offer, later rejected by staff.
- J. On May 16, 2018, BCDC staff conducted a site visit. Staff took measurements from the edge of tidal marsh toward the fence to establish the approximate location of the BCDC's jurisdiction at the property, which extends around three sides of the property due to the presence of a tidally-influenced channel that runs along the entire north side of the project site and partially along the east side of the project site. (VR&C Exhibit 19)
- K. On September 13, 2018, in response to the February 5<sup>th</sup> letter from Respondents' attorney, staff affirmed its position that BCDC has jurisdiction over the portion of the solar power plant built without authorization within BCDC's 100-foot shoreline band jurisdiction and stated that Respondents must seek and obtain an after-the-fact permit to authorize the project, provide maximum feasible public access consistent with the project, and pay an appropriate penalty. (VR&C Exhibits 20, 4, 5, 6, 7, and 8)
- L. On February 13, 2019, Respondents' representative, Mr. Herbst, submitted a cover letter and BCDC permit application. (VR&C Exhibits 21 and 22)
- M. On March 18, 2019, BCDC staff informed Respondents that Application M2019.004.00 was incomplete pending submittal of additional information such as project jurisdiction, project description and public access and open space exhibit, Bay Trail project details, a



- Bay Trail maintenance plan, a sea level rise risk assessment, site photographs, property interest documentation, other government approvals, environmental documentation, local government approval, a processing fee and confirmation of posting a public notice.. (VR&C Exhibits 23 and 27)
- N. On November 8, 2021, through Mr. Herbst, Respondents informed BCDC staff that they were prepared to proceed with a permit application for the solar power plant. (VR&C Exhibit 24)
- O. On November 16, 2021, staff informed Respondents, through Mr. Herbst, that they should proceed with filing the pending incomplete application or start with a new application and that in both cases maximum feasible public access would be required at the site. (VR&C Exhibit 24)
- P. On December 9, 2021, BCDC staff met with Mr. Ashwin Gulati, on behalf of Respondents, and stated that they needed to complete their pending incomplete application for the solar power plant. (VR&C Exhibits 25 & 26)
- Q. On January 27, 2022, Respondents, through Mr. Gulati, stated to staff that they were assembling a new team to address the BCDC matter and that he would reach back out in several weeks. On April 5 and 13, 2022, Mr. Gulati informed staff that Respondents had retained *WRA Consultants* to assist them with the BCDC requirements and that they would respond to BCDC within a few weeks. On April 6, 2022, staff informed Respondents, through their representatives, that BCDC would be escalating the case to formal enforcement, but urged them to continue with the permitting process. (VR&C Exhibit 25)
- R. On May 4, 2022, Respondents responded to staff's application filing letter, dated March 18, 2019, by submitting a letter and updated project description. (VR&C Exhibit 27)
- S. On May 27, 2022, Respondents, through Mr. Gulati, requested coordination with BCDC on development of the Bay Trail segment. (VR&C Exhibit 28)
- T. On June 3, 2022, BCDC staff responded to Respondents' application submittal, dated May 4, 2022, by requesting additional information necessary to file the permit application as complete. (VR&C Exhibit 26)
- U. On June 21, 2022, Mr. Gulati stated that he had met with the owners and requested a meeting with BCDC staff to discuss next steps, which was scheduled for June 29, 2022. (VR&C Exhibit 29)
- V. On June 29, 2022, staff informed Respondents, through Mr. Gulati, to contact staff with permitting questions and stated that a formal enforcement proceeding was imminent. (VR&C Exhibit 30)
- W. On June 30, 2022, Respondents, through Mr. Herbst, requested a meeting with BCDC staff to discuss a "best path forward to achieve maximum safe public access to the property." (VR&C Exhibit 31)

- X. On July 1, 2022, Respondents, through Mr. Herbst, stated that they had recently made a resubmittal to BCDC and received the staff's response. Mr. Herbst stated Respondents wanted to meet with staff to better understand staff's expectations of maximum feasible public access. Mr. Herbst was subsequently referred to BCDC Permits staff to discuss permitting questions. (VR&C Exhibit 32)
- Y. On September 19, 2022, Mr. Herbst provided BCDC with an updated public access plan, dated September 15, 2022, prepared by *Vallier Design*. (VR&C Exhibits 34 and 35)
- Z. On November 19, 2022, Ms. Katharine Pan responded to the updated plan submittal dating from September 19, 2022, requesting changes to the plans. (VR&C Exhibit 34)
- AA. On February 13, 2024, BCDC enforcement staff notified Respondents that the Executive Director had rescinded the opportunity to resolve this case using the standardized fine process, pursuant to BCDC Regulation 11390. (VR&C Exhibit 36)
- BB. On April 11, 2024, the Enforcement Committee voted to adopt the Recommended Enforcement Decision to issue a cease and desist order which would require Respondents to submit a filed BCDC permit application with a feasible public access plan to install and operate the portion of the unauthorized solar power plant located within BCDC's jurisdiction.
- CC. On August 21, 2024, Respondents' BCDC permit application with a feasible public access plan to install and operate the portion of the unauthorized solar power plant located within BCDC's jurisdiction was filed as complete.
- DD. Respondents' administrative permit, M2019.004.00, was listed at the San Francisco Bay Conservation and Development Commission's October 17, 2024 meeting.

**Legal Findings**

- A. The Commission finds that Respondents have violated Section 66632(a) of the McAteer-Petris Act since January 2016, when solar power plant construction commenced, and since May 2018, when crushed asphalt was placed onsite to elevate the grade to allow for solar panel maintenance.
- B. The Commission finds that BCDC staff correctly identified one distinct violation of the law in this matter.
- C. The Commission finds that based on the factors provided by MPA Section 66641.9, a \$30,000 penalty for the single violation is appropriate.
- D. The Commission finds that the nature and extent of harm caused by the legal violation is moderate. Respondents have been operating a solar power plant for at least eight years with no BCDC authorization and no public access. With the provision of maximum feasible public access consistent with the project as provided by the McAteer Petris Act Section 66632.4, the portion of the solar power plant operation within the Commission's shoreline band jurisdiction should be eligible for after-the-fact authorization. Although, the public has permanently lost the opportunity to enjoy a

shoreline public access benefit that should have been in place at least since solar power plant operation commenced in January 2016, a period of more than eight years.

- E. The Commission finds that while the violation may be susceptible to resolution through retroactive authorization, the public has been deprived of any public access at this site consistent with the project for more than eight years since its construction as described in Legal Finding D above.
- F. The Commission finds the cost to the state in pursuing this case since 2017 has been high as BCDC staff has been working with Respondents for more than seven years to cause them to submit a permit application.
- G. The Commission finds that Respondents are culpable for the violation due to their failure to: 1. Contact BCDC prior to commencing solar power plant construction in January 2016; 2. Submit a complete fileable application between at least 2017, when BCDC first contacted Respondents, and August 21, 2024; and 3. Obtain after-the-fact authorization and provide public access between January 2016 and the present.
- H. The Commission finds that as Respondents did not avail themselves of the opportunity to submit any defenses, including regarding their ability to pay, the Commission cannot consider potentially mitigating factors and imposition of the full penalty is appropriate.
- I. Based on these penalty factors, the Commission finds that an \$1,200 penalty per day for the failure to obtain a BCDC permit prior to commencing construction is appropriate.
- J. The Commission finds that Respondents have been responsible for the McAteer-Petris Act violation since January 2016 through the present, a period of at least 3,195 days or more than eight years.
- K. The Commission thus finds that the violation is subject to the maximum penalty allowed by the McAteer-Petris Act: \$30,000.
- L. The Commission finds that Respondents have received due process in the prosecution of this enforcement matter to date.

### **III. Terms**

- A. The Executive Director may, at his discretion, grant an extension of time for demonstrated good cause to comply with any provision of this Order.
- B. This Order does not affect any duties, rights, or obligations established under private agreements or by the laws and regulations of other public bodies.
- C. This Order does not constitute a recognition of property rights.
- D. This Order immediately and fully resolves Enforcement Case ER2017.004.00.
- E. This Order is effective upon issuance thereof.

## IV. Judicial Review

- A. Under Cal. Gov. Code §§ 66639 & 66641.7(a), within thirty (30) days after service of a copy of a cease-and-desist order and civil penalty order issued by the Commission, an aggrieved party may file with the superior court a petition of writ of mandate for review of the order pursuant to Section 1094.5 of the Code of Civil Procedure.

Executed at San Francisco, California, on behalf of the San Francisco Bay Conservation and Development Commission on the date first above written.

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LAWRENCE J. GOLDZBAND, BCDC Executive Director

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Date

**Full Commission Motion and Action:**

Please check one of the four boxes indicating your decision, then sign and return the memorandum to BCDC Staff:

☐ By a vote of \_\_\_ yeses, \_\_\_ noes, and \_\_\_ abstentions, the Commission concurs with the Executive Director's Recommended Enforcement Decision and issues the proposed Civil Penalty Order.

☐ By a vote of \_\_\_ yeses, \_\_\_ noes, and \_\_\_ abstentions, the Commission votes to dismiss this matter and declines to issue the proposed Civil Penalty Order for the reasons specified in the attached memorandum.

☐ By a vote of \_\_\_ yeses, \_\_\_ noes, and \_\_\_ abstentions, the Commission votes to remand the matter back to the Enforcement Committee for further action for the reasons specified in the attached memorandum.

☐ By a vote of \_\_\_ yeses, \_\_\_ noes, and \_\_\_ abstentions, the Commission rejects the Executive Director's Recommended Enforcement Decision and decides to consider the entire matter de novo at the Commission meeting on \_\_\_\_\_.

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Zachary Wasserman, Commission Chair  
San Francisco Bay Conservation and Development Commission

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Date:

# Exhibit B

## San Francisco Bay Conservation and Development Commission

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### ***Via E-mail***

Mailing Date: February 16, 2024

Joe and Heidi Shekou  
2165 Francisco Boulevard  
San Rafael, CA 94901  
Email: Sapidrood@yahoo.com and jshekou@jhsproperties.net

**SUBJECT: BCD C Enforcement Case ER2017.004.00: Commencement of Formal Enforcement Proceeding for an Unauthorized Solar Farm, constructed in 2016 and located at Freethy Boulevard/Elmar Court and Goodrick Avenue, City of Richmond, Contra Costa County**

Dear Joe and Heidi Shekou:

The Executive Director is commencing Commission enforcement proceedings in accordance with sections 11321 through 11334 of the Commission's regulations to correct a violation consisting of unauthorized construction of a solar farm in the Commission's jurisdiction on property located in the City of Richmond as described above, in violation of section 66632 of the McAteer-Petris Act.

Please review the enclosed Violation Report and Complaint for Administrative Civil Penalties and its attachments, the statement of defense form, and the Commission's enforcement regulations (Chapter 13). Pursuant to regulations section 11322, within thirty-five (35) days of the mailing date of this notice you shall submit either (1) a certified cashier's check in the amount of the proposed civil penalty or (2) the completed statement of defense form, copies of all documents that you want to be made part of the record of the enforcement proceeding, and any request to allow cross-examination in accordance with subsection (b) section 11322.

We look forward to assisting you in resolving this enforcement matter. You can reach me by phone by calling 415-352-3609 or by email at [adrienne.klein@bcdc.ca.gov](mailto:adrienne.klein@bcdc.ca.gov).

Respectfully,

DocuSigned by:  
  
7A7D306B8570A3E

ADRIENNE KLEIN

Principal Enforcement Analyst

San Francisco Bay Conservation and Development Commission  
375 Beale Street, Suite 510





JHS Properties and Robert Herbst  
Enforcement Case No. ER2017.004.00

San Francisco, California 94105  
Tel: 415-352-3609  
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Website: [www.bcdca.gov](http://www.bcdca.gov)

AK/mm

Encl(s).

cc: Robert Herbst, JHS Properties, [rherbst@jhsproperties.net](mailto:rherbst@jhsproperties.net)  
Shasa Curl, City Manager, Richmond, [shasa\\_curl@ci.richmond.ca.us](mailto:shasa_curl@ci.richmond.ca.us)  
Irene Lozano, Executive Assistant to the City Manager, Richmond,  
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## San Francisco Bay Conservation and Development Commission

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**Number: ER2017.004.00**

**Permit Application Number: M2019.004.00**

**Date Mailed: February 16, 2024**

**35<sup>th</sup> Day after Mailing: March 22, 2024**

**60<sup>th</sup> Day after Mailing: April 16, 2024**

**Enforcement Committee Hearing Date: April 11, 2024**

### **VIOLATION REPORT/COMPLAINT FOR THE IMPOSITION OF ADMINISTRATIVE CIVIL PENALTIES: JOE AND HEIDI SHEKOU**

**FAILURE TO RESPOND TO THIS VIOLATION REPORT/COMPLAINT FOR THE ADMINISTRATIVE IMPOSITION OF CIVIL PENALTIES BY COMPLETING THE ENCLOSED STATEMENT OF DEFENSE FORM AND ENCLOSING ALL PERTINENT DECLARATIONS UNDER PENALTY OF PERJURY, PHOTOGRAPHS, LETTERS AND OTHER WRITTEN DOCUMENTS COULD RESULT IN A CEASE AND DESIST ORDER, A PERMIT REVOCATION ORDER, OR A CIVIL PENALTY ORDER BEING ISSUED TO YOU OR IN A SUBSTANTIAL ADMINISTRATIVE CIVIL PENALTY BEING IMPOSED ON YOU WITHOUT YOUR HAVING AN OPPORTUNITY TO CONTEST THEM OR TO INTRODUCE ANY EVIDENCE.**

The San Francisco Bay Conservation and Development Commission is issuing this violation report/complaint for the administrative imposition of civil penalties and the enclosed statement of defense form because the Commission's staff believes that you may be responsible for or involved with a possible violation of either the Commission's laws or a Commission permit. The report contains a brief summary of all the pertinent information that staff currently has concerning the possible violation and references to all pertinent evidence that the staff currently relies on. All the evidence that this report refers to is available in the enforcement file for this matter located at the Commission's office or to have copies made at your expense or both contacting Adrienne Klein of the Commission's staff at telephone number 415-352-3609. The staff also intends that the report inform you of the nature of the possible violation so that you can fill out the enclosed statement of defense form and otherwise be prepared for the Commission enforcement proceedings.

Receipt of the report and the enclosed statement of defense form is the first step in formal Commission enforcement proceedings. Subsequently, either the Commission or its enforcement committee may hold an enforcement hearing and the Commission will determine what, if any, enforcement action to take.

Careful reading and a timely response to these materials is essential to allow you to present your side of the case to the Commission. A copy of the Commission's enforcement regulations



is also included so that you can fully understand the Commission's enforcement procedures. If you have any questions concerning either the violation report, the enclosed statement of defense form, the procedures that the Commission and its enforcement committee follow, or anything else pertinent to this matter, you should contact as quickly as possible Adrienne Klein of the Commission's staff at telephone number 415-352-3609. Thank you for your cooperation.

## Violation Report and Complaint for Administrative Civil Liability

### 1. Person or persons believed responsible for illegal activity:

Joe and Heidi Shekou (property owners of record)

### 2. Brief description of the nature of the illegal activity:

Unauthorized installation and use of a two-megawatt, photovoltaic solar farm and wire mesh security fence, partially located within the Commission's jurisdiction. At least a single unauthorized placement of crushed asphalt to raise the site elevation around the solar panel. (Exhibit 1)

### 3. Description of and location of property on which illegal activity occurred:

The solar farm is located on four parcels (APNs 408-220-006, -007, -035, and -048) comprising approximately eight acres located north and west of Elmar Court that commences at Goodrick Avenue in Richmond, Contra Costa County. San Francisco Bay bounds the property to its west, east, and to its north via a tidal marsh and a tidally influenced channel located on two of Respondent's parcels, placing the solar farm partially within BCDC's 100-foot shoreline band jurisdiction. (Exhibits 2)

### 4. Name of owner, lessee (if any), and other person(s) (if any) who controls property on which illegal activity occurred:

Joe and Heidi Shekou (Exhibit 2)

### 5. Approximate date (and time if pertinent and known) illegal activity occurred:

January 2016, when solar farm construction commenced, and May 2018, when crushed asphalt was placed onsite to elevate the grade to allow for solar panel maintenance. These violations persist to the present. (Exhibits 19)

### 6. Summary of all pertinent information currently known to the staff in the form of proposed findings with references to all pertinent supporting evidence contained in the staff's enforcement file (The file is available at the Commission's offices for you to review. You should call the above listed staff enforcement officer to arrange to review or copy the file.):

- A. On August 15, 1977, BCDC issued Claim of Exemption No. CE 74-15 to Elmer J. Freethy, a former owner of the property that is the subject of this VR&C. The Commission's



resolution on this matter occurred on May 5, 1977. Specifically, CE 74-15 was for the following project:

- a. To complete a road system that had been under construction since 1963, including the placement of fill on tidal areas running from the easterly line of the property to the westerly line of the property.
  - b. To place fill behind the completed roadway system to raise the approximately 84.34 acres of land to grade according to Freethy's development plan that he finalized in 1964.
  - c. To use the 84.3- acre area for light industrial facilities and purposes. (Exhibit 3)
- B. On December 17, 1979, in response to receiving a copy of a tentative subdivision map for the Freethy Industrial Park Subdivision No. 5794 that proposed several smaller parcels, a new road, two cul-de-sacs, and an office park that were not included in the granted claim of exemption, BCDC informed the City of Richmond that:
- a. Without a site plan, it could not be sure whether or not CE 74-15 "would apply to the project Mr. Freethy now intend[ed] to build."
  - b. "[i]f a change of use was to occur, as determined by BCDC, a permit for all construction within 100 feet of the line of highest tidal action would be required."
  - c. "[t]he Commission could not approve a project if maximum feasible public access consistent with the project were not provided."
  - d. "[i]f uses, which the Commission believes are heavy industrial uses, are placed on the site, and if the streets are constructed as shown on the tentative map, it is possible that construction would be exempt from BCDC permit authority."

Therefore, beginning in 1979, BCDC made it clear that project changes may result in CE 74-15 becoming inapplicable and that a project other than the one described in CE 74-15 would need a BCDC permit and would need to provide maximum feasible public access consistent with the project. (Exhibit 4)

- C. On February 6, 1980, in response to receiving and reviewing the initial study for the then proposed Freethy Industrial Subdivision, in relevant part, staff informed the Richmond Planning Director that, as the project applicant was Hahn Real Estate and not Mr. Freethy, and, if equity were to pass from Mr. Freethy to a third party, it was staff's opinion that the exemption would not apply. Therefore, beginning in 1980, BCDC made it clear that a transfer of interest in property title would render CE 74-15 inapplicable to the site. (Exhibit 5)
- D. On November 10, 1981, former BCDC Staff Counsel Jonathan Smith informed former owner Elmer Freethy and then current owner Ainsley Corporation, who was in the process of applying for regulatory project approvals from the City and the State, that:



- a. A claim of exemption issued by the Commission is personal to the applicant and cannot be transferred when the holder of the exemption conveys the property.
- b. The Ainsley Corporation would need a permit from the Commission for any filling, dredging, or substantial change in use within the Commission's jurisdiction.
- c. The Commission has, but as of yet had not implemented, authority to require a permit for a subdivision.
- d. The work described in the notice of application makes it appear that actual development will involve work for which a Commission permit is required, thus, prior to the commencement of any work, owner should contact BCDC staff to determine what type of permit, if any, would be required.

Therefore, in 1981, BCDC reiterated its position that CE 74-15 could not be transferred and that a BCDC permit would be required for a project pursued by a new owner, including for a subdivision. (Exhibit 6)

- E. On October 23, 1989, BCDC informed Ross Kersey, a presumed former owner of Respondents' property, that any activity in this area could be considered the placement of fill, extraction of materials or a substantial change in use, requiring Commission authorization. (Exhibit 7)

Therefore, in 1989, BCDC again reiterated its position that CE 74-15 could not be transferred and that a BCDC permit would be required for a project pursued by a new owner.

- F. On May 31, 2000, Respondents purchased the four parcels on which the unauthorized solar farm is constructed and operating. (Exhibits 2)
- G. On February 24, 2014, Kister, Savio & Rei, Inc., Land Surveyors and Civil Engineers, prepared site plans that incompletely demarcate BCDC's 100-foot-shoreline jurisdiction along only the western property boundary and depict a conceptual shoreline path. (Exhibit 8)
- H. On April 28, 2014, CJC Trucking, a contractor working for Respondents, applied for City of Richmond Grading Permit #EN14-05203 at Freethy Boulevard/Elmar Court. The application states "Applicant is hereby made to perform grading work in accordance with requirements of Grading Ordinance No. 4-80 N.S., as specified," which includes Condition 8, which states "Issuance of this permit by the City of Richmond does not necessarily constitute full approval by all Government Agencies. Applicant shall contact all other concerned agencies, agencies, specifically but not necessarily limited to....Bay Conservation and Development Commission..." (Exhibit 9)

Therefore, Respondents received notice through a City permit that they must contact other agencies, including BCDC, to inquire about needed permits to conduct grading work.



- I. On May 2, 2014, Mr. Herbst, JHS Properties, submitted a planning application to the City of Richmond for the Solar Farm at Freethy Industrial Park. (Exhibit 10)
- J. On May 20, 2014, LSA Associates, Inc. acting on behalf of Respondents, requested a preliminary jurisdictional determination of the extent of navigable waters of the US and waters of the US occurring Respondents' property. Therefore, Respondents pursued regulatory approval from the United States Army Corps of Engineers, but did not pursue regulatory approval from BCDC. (Exhibit 11)
- K. On June 17, 2014, the City of Richmond adopted Resolution No. 56-14, Resolution of the City of Richmond City Council Interpreting and Implementing the Richmond General Plan 2030 and State of California Policy Regarding Solar Energy Systems, to guide its governance of solar farms. In relevant part, this resolution states that solar energy systems shall be permitted ministerially under CEQA and shall not encroach on BCDC 100-foot jurisdiction without a BCDC permit. Therefore, Respondents received notice through City Resolution No. 56-14 that they should not conduct solar farm construction within the BCDC's jurisdiction without a BCDC permit. (Exhibit 12)
- L. On September 29, 2014, Respondents submitted an electric commercial application to the City of Richmond to install a ground mount solar system, but they did not submit an application to BCDC for the same. (Exhibit 13)
- M. On October 9, 2014, Robert Herbst, Project Manager, on behalf of Respondents, submitted an application for a Notice of Exemption #2014108139 under CEQA with the City of Richmond, Department of Planning and Building, to install a 2-megawatt ground mount photovoltaic solar system on approximately eight acres of level land at Freethy Industrial Park. On October 10, 2014, the application was stamped filed by Contra Costa County and stamped received by the State Clearing House. (Exhibit 14)
- N. Between January and October 2016, Respondents constructed a fenced, two-megawatt solar farm at the site without a BCDC permit. (Exhibits 19 and 20)
- O. On January 18, 2017, Bruce Bayaert, a representative of Trails for Richmond Action (TRAC), reported to BCDC that Respondents had apparently undertaken unauthorized construction of a solar farm adjacent to Elmar Court/Freethy Boulevard without a BCDC permit. (Exhibit 15)
- P. On April 25, 2017, BCDC staff contacted Heidi Shekou, who referred staff to Respondents' employee, Len Nibby. (Exhibit 17)
- Q. On April 25, 2017, Respondents' Project Manager, Robert Herbst, informed BCDC staff that Respondents had not obtained a BCDC permit prior to installing the solar farm and security fence because they believed it was exempt from the requirement pursuant to CE 74-15. (Exhibit 18)
- R. On October 25, 2017, BCDC staff sent a notice of violations to Respondents informing them that while staff did not dispute that CE 74-15 applies to the former placement of





fill and grading to construct the roadway and raise the site elevation located within a former tidal marsh, BCDC staff did not agree that CE 74-15 applies to the solar farm constructed without a permit by subsequent property owners because:

- a. The solar farm is not within the scope of the project for which Freethy was issued CE 74-15 because it was not constructed in accordance with the plans incorporated with the Claim of Exemption;
- b. CE 74-15 has been abandoned pursuant to BCDC Regulation Section 10921 and no longer applies to the property, for reasons addressed in detail in the letter; and
- c. The project was not constructed in accordance with the plans incorporated with CE 74-15. (Exhibit 18)

As such, BCDC informed Respondents that because CE 74-15 did not apply to the solar farm project, they must apply to BCDC for an after-the-fact permit to install the solar panels and fence and must include a public access proposal. This notice initiated the accrual of standardized fines. (Exhibit 18)

- S. On June 22, 2017, BCDC staff established Enforcement Case ER2017.004.00, noting the existence of CE 74-15. (Exhibit 16)
- T. On December 7, 2017, a meeting occurred with the following attendees: Joe Shekou, owner, Bob Herbst, son-in-law to Respondents, Ivo Keller, lawyer for Respondents, John Bowers, BCDC staff counsel, and BCDC staff Adrienne Klein and Matthew Trujillo.
  - a. Respondents described the solar farm project and their position with regard to CE 74-15.
  - b. BCDC Staff stated that they did not believe that CE 74-15 applied to the solar farm; a BCDC permit is necessary; the property is located within the 100-foot shoreline band; the Respondents must provide maximum feasible public access consistent with the project. (Exhibit 19)
- U. On February 5, 2018, Mr. Keller submitted a letter titled "Confidential Settlement Communication" to BCDC staff. The majority of the letter provides Respondents' support for its interpretation that CE 74-15 applies to the property/project. The letter also contains a settlement offer, later rejected by staff. (This letter is not attached due to the portion of its content related to the settlement offer but, as noted in Finding W, the legal arguments presented by Respondent are summarized and rebutted by staff and many of its attachments, all public records, are included in this VR&C.)
- V. On May 16, 2018, Len Nibby, representing Respondents, escorted BCDC staff on a site visit. Staff took measurements from the edge of tidal marsh toward the fence both to establish the approximate location of the shoreline band jurisdiction at the property and



to assess whether there would be room for a shoreline public access trail adjacent to the existing, unauthorized fence. Staff made the following observations:

- a. At the southwest fence corner, staff measured a distance of 54.6 feet between the fence and the inland extent of tidal marsh vegetation.
  - b. At the northwest fence corner, staff measured a distance of 13.8 feet between the fence and the inland extent of tidal marsh vegetation, concluding that at this end, there appeared to be inadequate room for shoreline access with the existing fence location.
  - c. The jurisdiction along the tidal marsh is delineated by the location where the historic fill was placed. The elevation of the land slopes up from the tidal marsh plain.
  - d. The jurisdiction along the northern project boundary, also adjacent to the Rod and Gun Club, appears to extend inland to Goodrick Avenue, and even around the corner to the location of a culvert, located 83.4 feet from the 90' turn. The tide influences this entire area and marsh vegetation is also present, with the species transitioning to brackish halfway up the channel (bulrush, alterniflora, salt grass, pickleweed). The approximate distance from the fence to the bottom of the slope was approximately 30 feet.
  - e. New fill was being imported within the area of the solar farm, which Len described as crushed asphalt that is being laid down to raise the grade elevation so that maintenance workers can reach the solar panels to clean them. While staff did not observe this fill being placed within the 100-foot shoreline band, it seemed evident that this material would be placed throughout the site including within the 100-foot shoreline band. This raised water quality impacts concerns from runoff following rain events. (Exhibit 19)
- W. On September 13, 2018, in response to Mr. Keller's February 5<sup>th</sup> letter, staff affirmed its position that BCDC has jurisdiction over the portion of the solar farm built within BCDC's 100-foot shoreline band jurisdiction without authorization and stated that Respondents must seek and obtain an after-the-fact permit to authorize the project, pay an appropriate penalty and provide maximum feasible public access, consistent with the project.
- a. Staff refuted Mr. Keller's position that the project is covered by CE 74-15 and exempt from BCDC permit requirements by reporting the results of its re-evaluation of the extent to which the exemption remains in effect or has been abandoned.
  - b. Staff provided a 2018 Google Earth image of the entire area covered by the exemption and noted that:

- i. Portions of the area, particularly to the west and northwest were never filled and remain subject to tidal action or influence as open water or tidal marsh.
  - ii. Portions of the area were or may have been filled pursuant to the exemption but were never developed and have become subject to tidal action through reversion to open water or tidal marsh.
  - iii. Portions of the area were filled and developed and, as a result of such filling and development are neither presently subject to tidal action as either open water or tidal marsh, nor are they located within 100 feet of any such tidally influenced area.
- c. Staff clarifies that the fact that the exemption mentions light industrial use and the solar farm may be a light industrial use does not render it automatically applicable and, in fact, it is not because there was a detailed specific plan for the development of a light industrial park on certain exhibits to CD1974.15 and they do not include a solar farm as conceived and constructed approximately 50 years later.
- d. Staff states that Respondents' assertion that CE 74-15 applies to the solar farm fails to address either: (1) California Super Court determination, in *San Francisco Bay v. Emeryville* (1968) 69 Cal.2d 533, 545, that the Legislature used the word "project" as a term of limitation in a grandfather clause permitting exempting in the MPA (Section 66632.1); or (2) the Commission's reservation of jurisdiction, codified at 14 C.C.R. section 10918, to require a permit when a substantial change is made to a project for which a claim of exemption was previously granted. Staff states that Respondents' counsel failed to address evidence of abandonment of CE 74-15 provided by BCDL in its October 25, 2017, letter and affirms that it has repeatedly asserted jurisdiction over the property.
- e. Staff states there is no evidence in its records that Respondents conducted due diligence in connection with its purchase of the property.
- f. Staff states that the site is subject to the Commission's Bay jurisdiction along the entire northern side of the solar farm and a portion of the eastern side up to the northern edge of the culvert under eastern end of Elmar Court and, therefore, that there exists a 100-foot shoreline band jurisdiction adjacent to the Bay jurisdiction that encompasses the northwestern and northern sides of the solar farm facility, its northeastern side, and approximately 50 feet of its southeastern side, estimating that approximately 73,400 square feet of the solar farm are located in the 100-foot shoreline band, meaning that all structures built and fill placed and uses made within this area (e.g., solar panels, fencing, asphalt ground cover, maintenance, etc.) constitute unpermitted "fill," as that term is defined by MPA Section 66632(a).



- g. Staff states that Respondents' identified location of the edge of the Bay is incorrectly identified as the MHHW line depicted in the March 1982 Subdivision Map 5754 and in the February 2014 plans by Kister Savio and Rei. Staff informs Respondents that the limit of the bay jurisdiction includes all marshlands on the Bay lying between mean high tide and five feet above mean sea level and that during its site visit on May 16, 2018, staff had identified tidal marshland along three sides of the property.
  - h. Staff cites letters dated December 17, 1979, February 6, 1980, November 10, 1981, October 23, 1989, and May 22, 2014, as evidence of its continued assertion of jurisdiction over the site.
  - i. Staff rejects Respondents' claim that it developed the property under a good faith belief" that it was not located within BCDC's jurisdiction, stating that it is a matter of public record that BCDC's jurisdiction over portions of the property has been scrutinized in the past and this is not the first instance where BCDC has declared its jurisdiction over the site. They note that Respondents have a long history of developing properties around the Bay shoreline and are well aware of BCDC's jurisdiction and, as a result, should have approached BCDC to request a site assessment prior to commencing with any development that may have been subject to its jurisdiction, rather than making assumptions based on the interpretation of a thirty-year-old letter and a set of equally outdated site plans. Staff then states that as a result, the solar farm could have been constructed outside of Commission's jurisdiction to avoid having to apply for and obtain the Commission's approval for the project.
  - j. Staff concluded this communication by requesting that Respondents submit a filed application by December 31, 2018, for the portion of the solar farm that is within the Commission jurisdiction including a public access proposal and stated that Respondents' failure to meet this deadline may result in the commencement of a formal enforcement proceeding, two public hearings and possible issuance of a Cease and Desist and Civil Penalty Order by the Commission. (Exhibit 20 with only its first attachment as all of its other attachments are previously attached as Exhibits 4, 5, 6, 7, and 8 )
- X. On February 13, 2019, Respondents' representative, Mr. Herbst, submitted a cover letter and BCDC application. The cover letter states that, as the adjacent Richmond Development Company's PowerPlant project is delayed, and pursuant to direction from BCDC enforcement staff, Respondents are independently pursuing an application and intend to build and maintain their section of the Bay Trail.
  - a. Mr. Herbst states that the proposed Bay Trail will terminate 200 feet from the Richmond Rod and Gun Club property line in recognition of potential public safety hazards related to existing gun club operations.

- b. Mr. Herbst states that Respondents reserve the right to contest BCDC's jurisdiction over, and authority to require a permit for development of, the lands owned by Respondents, that their submission of the application shall not be construed as an admission the BCDC has jurisdiction over any portion of the property nor shall it be construed as a waiver of Respondents' right to contest BCDC's jurisdiction on any basis, including, without limitation, the issuance of a letter of exemption to Respondents' predecessor owner, the previous grading and partial development of the property, and/or the elevation of the property and its distance from any areas that may be within BCDC's jurisdiction.
- c. Mr. Herbst states that Respondents are proceeding with application submission in reliance upon their understanding that BDC has agreed not to construct the submission as a waiver or admission of any kind, and that the reservation shall remain in effect even if BCDC should issue a permit for any portion of the property and shall expire only if and when Respondents give BCDC written notice of permit acceptance and Respondents have realized the benefits of the permit.
- d. The application includes the following information in relevant part:
  - i. Box 2, Total Project and Site Information, states that the project name is "JHS Properties – Solar Farm" and lists the project street address as Elmar Court, Current no street number."
  - ii. Box 2, Brief Project Description, states "An approximately 8-acre installation of solar power generation panels (built in 2014). Construction of a 200-foot extension of bay Trail (10-foot-wide asphalt paved trail, with (2) two-foot-wide decomposed granite shoulder to commence concurrent with similar project on adjacent property in 2020."
  - iii. Box 4, Shoreline Band Information states that the type of activity to be undertaken or fill, materials or structures to be placed within the shoreline band are "Approximately 200 linear feet of 12-foot-wide asphalt trail with (3) three -foot-wide decomposed granite shoulder on the side with areas of native planting. Extension of Bay Trail will require compacted Class II aggregate base (Cal Trans standard), wood headers, asphalt paving, and decomposed granite paving."
  - iv. Box 5, Public Access, states that the average trail width will be 15 feet. (Exhibits 21 and 22)

So, while Respondents failed to meet a December 2017 application submittal deadline, they submitted an application in February 2018 in which they request permission to construct a solar farm and to provide shoreline public access along the western edge of the solar farm site.

- Y. On March 18, 2019, BCDC staff informed Respondent that the application (Application M2019.004.00) was incomplete pending submittal of additional information such as



project jurisdiction, project description and public access and open space exhibit, Bay Trail project details, a Bay Trail maintenance plans, a sea level rise risk assessment, site photographs, property interest documentation, other government approvals, environmental documentation, local government approval, a processing fee and confirmation of posting a public notice. Respondents did not respond to this letter for more than three years, until May 4, 2022. (Exhibit 23)

- Z. During the period between March 2019 and November 2021, Respondents were working with Richmond Development Company, the City of Richmond and BCDC staff to jointly develop a public access proposal for the solar farm project and a proposed, adjacent marijuana processing facility project. (Exhibit 23)
- AA. On November 8, 2021, Robert Herbst informed BCDC Enforcement Attorney Brent Plater that Respondent was prepared to proceed with a permit application for the solar farm. (Exhibit 24)
- BB. On November 16, 2021, Mr. Plater informed Mr. Herbst that Respondent should proceed with filing its pending incomplete application or start with a new application and that in both cases maximum feasible public access would be required at the site. (Exhibit 24)
- CC. On November 19, 2021, Ashwin Gulati, Respondents' representative, requested a meeting to discuss the solar farm permit application. On December 9, 2021, BCDC staff met with Mr. Gulati and stated that now that it was apparent that a joint application for the solar farm and adjacent proposed marijuana production facility would not be forthcoming, Respondent would need to complete their pending incomplete application for the solar form. Staff provided some guidance as to what might constitute maximum feasible public access for this project. (Exhibits 25 & 26)
- DD. On January 26, 2022, Mr. Plater provided Mr. Gulati and Mr. Herbst with a summary of the December 9, 2021, discussion. (Exhibit 25)
- EE. On January 27, 2022, Mr. Gulati thanked Mr. Plater for reaching out and stated that they were assembling a new team to address the BCDC matter and that he would reach back out in several weeks. On April 5 and 13, 2022, Mr. Gulati informed Mr. Plater that Respondents had retained WRA consultants to assist them with the BCDC requirements and that they would respond to BDC within a few weeks. On April 6, 2022, Mr. Plater informed Respondents' representatives that BCDC would be escalating the case but to continue with the permitting process (Exhibit 25)
- FF. On May 4, 2022, Respondents responded to staff's application filing letter, dated March 18, 2019, by submitting a letter and updated project description. Respondents proposed to:
  - a. Construct, use, and maintain in-kind an extension of the Bay Trail along the northwest easement portion of the property. The proposed length of the trail extension is approximately 200 feet. The proposed width of the trail is 18 feet,





which includes a 12-foot-wide asphalt path, a three-foot soft edge condition of decomposed granite, and a three-foot soft edge condition of gravel.

- b. Construct, use, and maintain in-kind 800 square feet of low-maintenance and drought tolerant planting along a portion of the proposed trail extension.
  - c. The letter included the following six attachments:
    - i. Site Plan from Original Permit Application
    - ii. Site Photographs
    - iii. Property Report
    - iv. Notice of Exemption, Building Permit and Permit Plans
    - v. JHS Letter Dated February 13, 2019
    - vi. Form Verifying Posting of Public Notice (Exhibit 27)
- GG. On May 27, 2022, Mr. Gulati requested coordination with BCDC on development of the Bay Trail segment in light of the City's approval of the Power Plant project to the south of the solar power farm. (Exhibit 28)
- HH. On June 3, 2022, BCDC staff responded to Respondents' application submittal, dated May 4, 2022, by:
- a. Requesting additional information explaining how the project is consistent with San Francisco Bay Plan Public Access Policy 1, which states that "[a] proposed project should increase public access to the maximum extent feasible...."
  - b. Asking Respondents to address whether and how staff's guidance provided on December 9, 2021, was considered in the response.
  - c. Stating that the site plan does not provide a sufficient level of detail regarding the design of the proposed trail and requesting: a set of project plans showing and labeling the locations and extents all proposed improvements, including the components of the trail and the proposed landscaping; one full set of project plans, which must include, at minimum, a vicinity map, site plan, property lines, existing and proposed structures or improvements (including elevations and sections if necessary), the shoreline [MHW or 5' ABOVE MSL], any marshes, wetlands or mudflats, the corresponding 100-foot shoreline band line, scale, north arrow, date and the name of the person who prepared the plans; and stating that additional information may be needed on the plans depending upon the scope of the proposed project.
  - d. Noting that in the letter from BCDC staff John Bowers and Matthew Trujillo to Ivo Keller, dated September 13, 2018, staff had provided a description of BCDC's jurisdiction at the property, requesting that Respondents refer to this description for the depiction of BCDC's Bay and shoreline band jurisdictions in their project plans.

- e. Requesting a revised total project cost to assess the appropriate application fee.
  - f. Requesting a copy of the environmental documentation as required by CEQA. (Exhibit 26)
- II. On June 21, 2022, Mr. Gulati stated that he had met with the owners and requested a meeting with BCDC staff to discuss next steps, which was scheduled for June 29, 2022. (Exhibit 29)
- JJ. On June 29, 2022, Mr. Plater informed Mr. Gulati in relevant part that:
  - a. Staff would request its Enforcement Committee to recommend to the Commission to adopt an order that requires Respondent to implement a maximum feasible public access plan at the solar farm, including removal of structures that interfere with said plan.
  - b. Staff would pursue administrative civil penalties.
  - c. Respondents should reach out to permit analyst Katharine Pan with permitting questions. (Exhibit 30)
- KK. On June 30, 2022, Mr. Herbst requested a meeting with BCDC staff to discuss a, “best path forward to achieve maximum safe public access to the property.” (Exhibit 31)
- LL. On July 1, 2022, Mr. Plater noted that over the past five years, creative solutions to the enforcement matter were reviewed by staff and had to-date failed to resolve the enforcement matter. He made himself available to answer enforcement questions. (Exhibit 32)
- MM. On July 1, 2022, Mr. Herbst stated that they had recently made a resubmittal to BCDC and received the staff’s response. Mr. Herbst stated Respondents wanted to meet with staff to better understand staff’s expectations of maximum feasible public access. On July 2, 2022, Mr. Plater referred Mr. Herbst to Ms. Pan for permitting questions. (Exhibit 32)
- NN. On September 19, 2022, Mr. Herbst provided BCDC with an updated public access plan, dated September 15, 2022, prepared by Vallier Design, showing a public access trail that loops around the solar farm and back to Goodrick Avenue. The proposal includes a 12-foot-wide paved trail flanked by three-foot-wide shoulders. Mr. Herbst states that this would require relocating the existing fence and removing some solar panels at the ends of the panel rows; that while that is the public access configuration shown in the plan, they would like to reduce the paved trail section in Area B to 10 feet to avoid the need to remove solar panels. (Exhibits 34 and 35)
- OO. On November 19, 2022, Ms. Pan responded to the updated plan submittal dating from September 19, 2022, by stating that it would be better if there were 18-24 inches of space between the fence and the edge of the trail so that the full width of the trail could be used. (Exhibit 34)



PP. On February 13, 2024, BCDC enforcement staff notified Respondents that the Executive Director had rescinded the opportunity to resolve this case using the standardized fine process, pursuant to BCDC Regulation 11390. (Exhibit 36)

**7. Provisions of Commission law or permit that the staff alleges has been violated:**

Section 66632(a) of the McAteer-Petris Act

**8. If the staff is proposing that the Commission impose an administrative civil penalty as part of this enforcement proceeding the amount of the proposed penalty:**

\$30,000 (See Section 9 for more information.)

**9. Any other statement or information that the staff believes is either pertinent to the alleged violation or important to a full understanding of the alleged violation:**

For the purpose of proposing an administrative civil penalty amount for the violation in this violation report and complaint for administrative civil liability, and as provided by the Commission's Administrative Civil Penalty Policy found in Appendix J, Part I, of the BCDC's Regulations (14 CCR), the initial base penalty amount has been calculated by determining the gravity of harm caused by this permit violation (moderate) and the extent of deviation from the permit requirement to provide the public restroom (major), Respondent will be assessed a \$1,200 per day penalty for 2965 days. The initial total penalty is \$30,000, the administrative maximum.

Based on Respondent's degree of culpability, the initial total penalty has been adjusted upward by 5%. Based on Respondent's voluntary efforts to resolve, or lack thereof, the initial total penalty has been adjusted upward by 5%. However, because the initial total base penalty is at the administrative maximum, the upward adjustments do not result in an elevated penalty.

Administrative Record Number	Date	Description
1	2023.04.25	Google Earth Aerial Image of four solar farm parcels, with SF Bay to the west, gun club to the north, Goodrick Avenue to the east and Freethy Boulevard/Elmar Court, vacant parcels and the Richmond Parkway to the south
2	2000.05.31	RealQuest Property Detail Reports for APNs 408-220-006, -007, -035, -048 and Grant Deed
3	1977.08.15	Claim of Exemption CE 74-15
4	1979.12.17	BCDC to City of Richmond regarding CE 74-15 applicability
5	1980.02.06	BCDC to City of Richmond regarding CE 74-15 applicability



6	1981.11.10	BCDC to Freethy and Ainsley Corporation regarding CE 74-15 applicability
7	1989.10.23	BCDC to Buzz Oates Real Estate regarding CE 74-15 applicability
8	2014.02.24	Site Plans by Kister Savio and Rei Surveyors and Civil Engineers
9	2016.05.13	Letter from USACE to LSA Associates, responding to a May 20, 2014, request for a jurisdictional determination
10	2014.05.02	JHS Properties applies to the City of Richmond for solar farm planning approval
11	2016.05.13	USACE to Respondents' representative about jurisdiction
12	2014.06.17	City of Richmond adopted Resolution No. 56-14
13	2014.09.29	Respondents apply to the City of Richmond for an electric commercial permit
14	2014.10.09	Respondents apply to the City of Richmond for a Notice of Exemption under CEQA
15	2017.01.18	Bruce Bayaert, TRAC, notifies BCDC about the solar farm
16	2017.06.22	BCDC completes an enforcement report and opens ER2017.004
17	2017.04.25	BCDC contacts Heidi Shekou and speaks with Robert Herbst
18	2017.10.25	BCDC issues enforcement letter to Respondents commencing administrative penalty clock and providing application filing guidance
19	2017.12.07 and 2018.05.16	Two sets of staff site visit notes
20	2018.09.13	BCDC Letter to Respondents' Counsel refuting applicability of CE 74-15 with Ex A only b/c all other exhibits are previously provided herein
21	2019.02.13	Respondents' representative submits an application cover letter
22	2019.02.13	Respondents' representative submits a BCDC permit application for the solar farm
23	2019.03.18	BCDC issues an application filing letter to Respondents (1 <sup>st</sup> one)
24	2021.11.08 - 2021.08.16	Email communications between Respondents' representative/s and staff

25	2021.11.19 - 2022.04.13	Email communications between Respondents' representative/s and staff
26	2022.06.03	BCDC issues an application filing letter to Respondents (2nd one)
27	2022.05.04	Respondents' representative submits an updated BCDC permit application for the solar farm
28	2022.05.27	Email communications between Respondents' representative/s and staff
29	2022.06.03 - 2022.06.22	Email communications between Respondents' representative/s and staff
30	2022.06.28 - 2022.06.29	Email communications between Respondents' representative/s and staff
31	2022.06.30	Email communications between Respondents' representative/s and staff
32	2022.07.01 - 2022.07.02	Email communications between Respondents' representative/s and staff
33	2022.07.11	Email communications between Respondents' representative/s and staff
34	2022.09.19 - 2022.11.19	Respondent's Representative submit revised public access plan and staff provides comments
35	2022.09.15	Vallier Design public access plan, which depicts public access on the west, north and a portion of the east side of the project site
36	2024.02.13	BCDC Notice of Rescission of Opportunity to Resolve the case using standardized administrative fines.
-	-	BCDC Permit File 1993.002.01
-	-	BCDC Application File M2019.004.00
-	-	BCDC Enforcement Case File ER2017.004.00



# Exhibit 1



Property Detail Report

For Property Located At :  
FREETHY BLVD, RICHMOND, CA 94801

Exhibit 2



Owner Information

Owner Name: SHEKOU JOE/SHEKOU HEIDI

Mailing Address: 2167 FRANCISCO BLVD E #A, SAN RAFAEL CA 94901-5509 C200

Vesting Codes: / / CP

Location Information

Legal Description: T05754AL0006 B

County: CONTRA COSTA, CA

Census Tract / Block: 3780.00 /

Township-Range-Sect:

Legal Book/Page:

Legal Lot: 6

Legal Block:

Market Area:

Neighbor Code:

APN: 408-220-006-6

Alternate APN:

Subdivision:

Map Reference: /

Tract #: 5754AL00

School District: W CONTRA COSTA

School District Name: W CONTRA COSTA

Munic/Township:

Owner Transfer Information

Recording/Sale Date: /

Sale Price:

Document #:

Deed Type:

1st Mtg Document #:

Last Market Sale Information

Recording/Sale Date: 05/31/2000 /

Sale Price: \$3,488,000

Sale Type: FULL

Document #: 110331

Deed Type: GRANT DEED

Transfer Document #:

New Construction:

Title Company: CHICAGO TITLE CO

Lender:

Seller Name: CRADER GWEN BOWEN TRE

1st Mtg Amount/Type: /

1st Mtg Int. Rate/Type: /

1st Mtg Document #:

2nd Mtg Amount/Type: /

2nd Mtg Int. Rate/Type: /

Price Per SqFt:

Multi/Split Sale: MULTIPLE

Prior Sale Information

Prior Rec/Sale Date: 05/31/2000 /

Prior Sale Price:

Prior Doc Number: 110323

Prior Deed Type: AGREEMENT OF SALE

Prior Lender:

Prior 1st Mtg Amt/Type: /

Prior 1st Mtg Rate/Type: /

Property Characteristics

Year Built / Eff: /

Gross Area:

Building Area:

Tot Adj Area:

Above Grade:

# of Stories:

Other Improvements:

Total Rooms/Offices

Total Restrooms:

Roof Type:

Roof Material:

Construction:

Foundation:

Exterior wall:

Basement Area:

Garage Area:

Garage Capacity:

Parking Spaces:

Heat Type:

Air Cond:

Pool:

Quality:

Condition:

Site Information

Zoning:

Lot Area: 101,190

Land Use: INDUSTRIAL ACREAGE

Acres: 2.32

Lot Width/Depth: x

Res/Comm Units: /

County Use: VACANT INDUSTRIAL (50)

State Use:

Water Type:

Site Influence:

Sewer Type:

Tax Information

Total Value: \$883,946

Land Value: \$883,946

Improvement Value:

Total Taxable Value: \$883,946

Assessed Year: 2023

Improved %:

Tax Year: 2023

Property Tax: \$13,134.56

Tax Area: 08120

Tax Exemption:

Parcel Map Report

For Property Located At



FREETHY BLVD, RICHMOND, CA 94801

[View map - 408-22 , sheet 1](#)

If you have any problems displaying a parcel map after clicking on a map link above, please contact our Customer Service Department at 800-345-7334.

Feedback



Property Detail Report

For Property Located At :  
FREETHY BLVD, RICHMOND, CA 94801

Exhibit 2



Owner Information

Owner Name: SHEKOU JOE/SHEKOU HEIDI

Mailing Address: 2167A FRANCISCO BLVD E, SAN RAFAEL CA 94901-5509 C200

Vesting Codes: / /

Location Information

Legal Description: T05754AL0007 B

County: CONTRA COSTA, CA

Census Tract / Block: 3780.00 /

Township-Range-Sect:

Legal Book/Page:

Legal Lot: 7

Legal Block:

Market Area:

Neighbor Code:

APN: 408-220-007-4

Alternate APN:

Subdivision:

Map Reference: /

Tract #: 5754AL00

School District: W CONTRA COSTA

School District Name: W CONTRA COSTA

Munic/Township:

Owner Transfer Information

Recording/Sale Date: /

Sale Price:

Document #:

Deed Type:

1st Mtg Document #:

Last Market Sale Information

Recording/Sale Date: 04/12/2016 /

Sale Price: \$600,000

Sale Type: FULL

Document #: 65963

Deed Type: GRANT DEED

Transfer Document #:

New Construction: Y

Title Company: CHICAGO TITLE CO

Lender:

Seller Name: RICHMOND DEV CO LLC

1st Mtg Amount/Type: /

1st Mtg Int. Rate/Type: /

1st Mtg Document #:

2nd Mtg Amount/Type: /

2nd Mtg Int. Rate/Type: /

Price Per SqFt:

Multi/Split Sale: MULTI

Prior Sale Information

Prior Rec/Sale Date: 05/31/2000 / 04/25/2000

Prior Sale Price: \$2,512,500

Prior Doc Number: 110332

Prior Deed Type: GRANT DEED

Prior Lender:

Prior 1st Mtg Amt/Type: /

Prior 1st Mtg Rate/Type: /

Property Characteristics

Year Built / Eff: /

Gross Area:

Building Area:

Tot Adj Area:

Above Grade:

# of Stories:

Other Improvements:

Total Rooms/Offices

Total Restrooms:

Roof Type:

Roof Material:

Construction:

Foundation:

Exterior wall:

Basement Area:

Garage Area:

Garage Capacity:

Parking Spaces:

Heat Type:

Air Cond:

Pool:

Quality:

Condition:

Site Information

Zoning:

Lot Area: 85,726

Land Use: INDUSTRIAL ACREAGE

Acres: 1.97

Lot Width/Depth: x

Res/Comm Units: /

County Use: VACANT INDUSTRIAL (50)

State Use:

Water Type:

Site Influence:

Sewer Type:

Tax Information

Total Value: \$381,170

Land Value: \$381,170

Improvement Value:

Total Taxable Value: \$381,170

Assessed Year: 2023

Improved %:

Tax Year: 2023

Property Tax: \$5,994.64

Tax Area: 08120

Tax Exemption:

Parcel Map Report

For Property Located At

FREETHY BLVD, RICHMOND, CA 94801

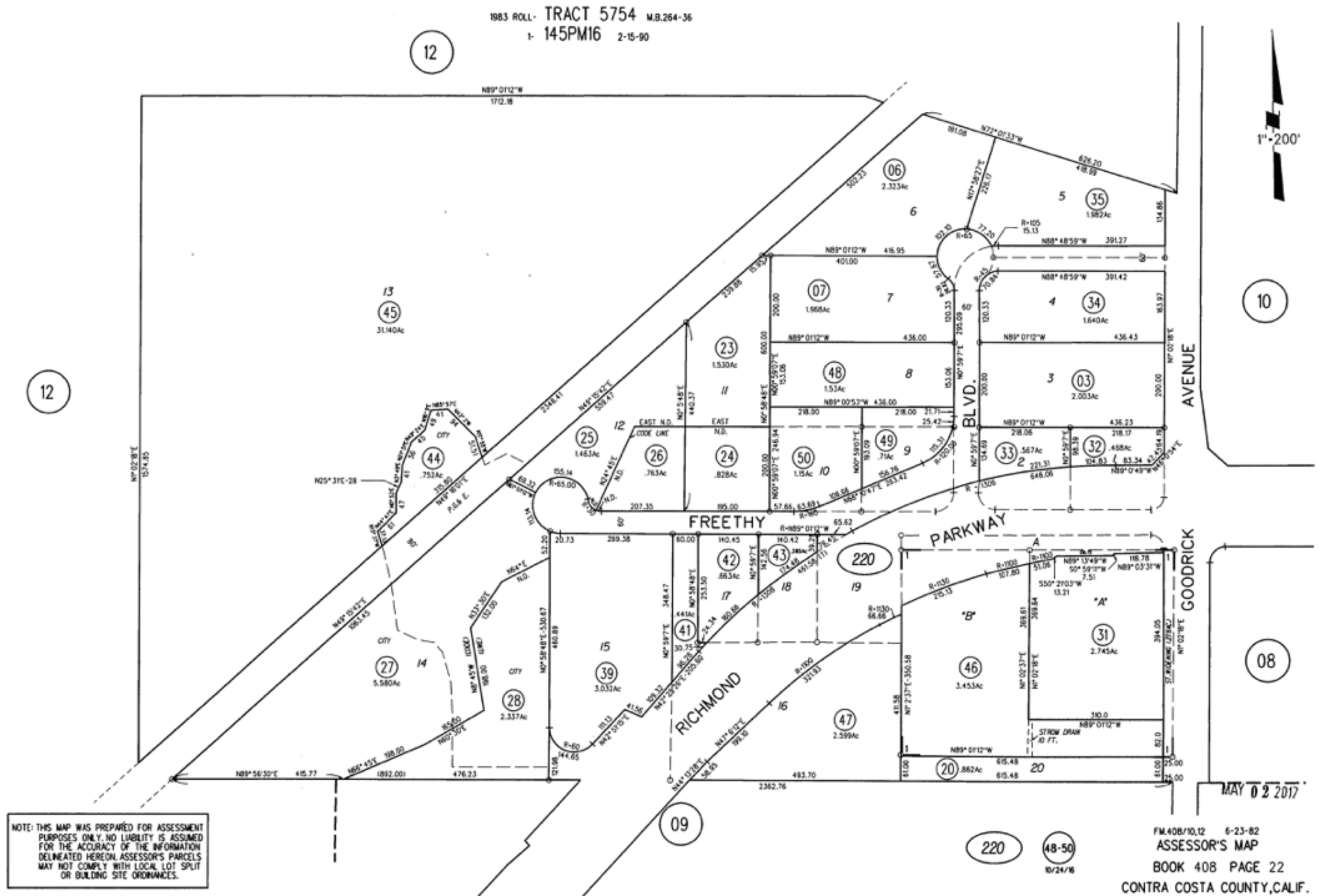


[View map - 408-22 , sheet 1](#)

If you have any problems displaying a parcel map after clicking on a map link above, please contact our Customer Service Department at 800-345-7334.

Feedback





Property Detail Report

For Property Located At :

FREETHY BLVD, RICHMOND, CA 94801

Exhibit 2



Owner Information

Owner Name:

SHEKOU JOE/SHEKOU HEIDI

Mailing Address:

2167A FRANCISCO BLVD E, SAN RAFAEL CA 94901-5509 C200

Vesting Codes:

//

Location Information

Legal Description:

T5754 POR LOT 8

County:

CONTRA COSTA, CA

APN:

408-220-048-8

Census Tract / Block:

3780.00 /

Alternate APN:

Township-Range-Sect:

Subdivision:

Legal Book/Page:

Map Reference:

/

Legal Lot:

8

Tract #:

Legal Block:

School District:

W CONTRA COSTA

Market Area:

School District Name:

W CONTRA COSTA

Neighbor Code:

Munic/Township:

Owner Transfer Information

Recording/Sale Date:

/

Deed Type:

Sale Price:

1st Mtg Document #:

Document #:

Last Market Sale Information

Recording/Sale Date:

/

1st Mtg Amount/Type:

/

Sale Price:

1st Mtg Int. Rate/Type:

/

Sale Type:

1st Mtg Document #:

Document #:

2nd Mtg Amount/Type:

/

Deed Type:

2nd Mtg Int. Rate/Type:

/

Transfer Document #:

Price Per SqFt:

New Construction:

Multi/Split Sale:

Title Company:

Lender:

Seller Name:

Prior Sale Information

Prior Rec/Sale Date:

/

Prior Lender:

Prior Sale Price:

Prior 1st Mtg Amt/Type:

/

Prior Doc Number:

Prior 1st Mtg Rate/Type:

/

Prior Deed Type:

Property Characteristics

Year Built / Eff:

/

Total Rooms/Offices:

Garage Area:

Gross Area:

Total Restrooms:

Garage Capacity:

Building Area:

Roof Type:

Parking Spaces:

Tot Adj Area:

Roof Material:

Heat Type:

Above Grade:

Construction:

Air Cond:

# of Stories:

Foundation:

Pool:

Other Improvements:

Exterior wall:

Quality:

Basement Area:

Condition:

Site Information

Zoning:

Acres:

1.53

County Use:

VACANT INDUSTRIAL (50)

Lot Area:

66,647

Lot Width/Depth:

x

State Use:

Land Use:

INDUSTRIAL

Res/Comm Units:

/

Water Type:

ACREAGE

Site Influence:

Sewer Type:

Tax Information

Total Value:

\$301,523

Assessed Year:

2023

Property Tax:

\$4,863.58

Land Value:

\$301,523

Improved %:

Tax Area:

08120

Improvement Value:

Tax Year:

2023

Tax Exemption:

Total Taxable Value:

\$301,523

Parcel Map Report

For Property Located At

FREETHY BLVD, RICHMOND, CA 94801



[View map - 408-22 , sheet 1](#)

If you have any problems displaying a parcel map after clicking on a map link above, please contact our Customer Service Department at 800-345-7334.

Feedback

RECORDING REQUESTED BY  
CHICAGO TITLE COMPANY  
AND WHEN RECORDED MAIL TO

JOE AND HEIDI SHEKOU  
C/O R H REAL ESTATE  
2173 "D" FRANCISCO BLVD.  
SAN RAFAEL, CA 94901

CONTRA COSTA Co Recorder Office  
STEPHEN L. WEIR, Clerk-Recorder  
DOC- 2000-0110331-00  
Acct 2- Chicago Title  
W, MAY 31, 2000 00:00:00  
CCC\$3,836.00 RIC\$24,416.00 NIC \$1.00  
MOD \$14.00 REC \$18.00 TCF \$13.00  
Ttl Pd\$28,286.00 Nbr-0000004688  
rrc/R2/1-14

Escrow No. 911342 - LE - OAK  
Order No. 911342

SPACE ABOVE THIS LINE FOR RECORDER'S USE

## GRANT DEED

THE UNDERSIGNED GRANTOR(S) DECLARE(S)

DOCUMENTARY TRANSFER TAX IS \$ 3,836.80 City of Richmond \$24,416.00

☐ unincorporated area ☒ City of Richmond

☒ computed on the full value of the interest or property conveyed, or is

☐ computed on the full value less the value of liens or encumbrances remaining at time of sale, and

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,  
SEE GRANTOR EXHIBIT ATTACHED HERETO AND MADE A PART HEREOF BY REFERENCE

hereby GRANT(S) to  
JOE SHEKOU AND HEIDI SHEKOU, HUSBAND AND WIFE, AS COMMUNITY PROPERTY

the following described real property in the City of Richmond  
County of Contra Costa, State of California:

LEGAL DESCRIPTION ATTACHED HERETO AND MADE A PART HEREOF BY REFERENCE

Dated April 25, 2000

SEE ATTACHED SIGNATURE PAGE EXHIBIT

STATE OF CALIFORNIA

COUNTY OF \_\_\_\_\_ ) SS.

On \_\_\_\_\_ before me,

a Notary Public in and for said County and State, personally appeared

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.

Signature of Notary

Date My Commission Expires

FOR NOTARY SEAL OR STAMP

MAIL TAX STATEMENTS TO PARTY SHOWN ON FOLLOWING LINE: IF NO PARTY SO SHOWN, MAIL AS DIRECTED ABOVE  
JOE AND HEIDI SHEKOU c/o 2173 "D" FRANCISCO BLVD., SAN RAFAEL, CA 94901

Name

Street Address

City, State & Zip

911342 I

Order No. 911342 - MEW

## LEGAL DESCRIPTION

110331

CITY OF RICHMOND

LOTS 1, 2, 3, 4, 5, 6, 11 AND 12, MAP OF SUBDIVISION 5754, FILED JUNE 18, 1982, MAP BOOK 264, PAGE 36, CONTRA COSTA COUNTY RECORDS.

EXCEPTING THEREFROM, THOSE PORTIONS OF LOTS 1, 2, 3, 4 AND 5, SUBDIVISION 5754, DESCRIBED IN THE FINAL ORDER OF CONDEMNATION ENTERED OCTOBER 21, 1977, IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF CONTRA COSTA, CASE NO. C95-01074, A CERTIFIED COPY OF WHICH RECORDED JANUARY 29, 1998, SERIES NO. 98-017835, OFFICIAL RECORDS.

ASSESSOR'S PARCEL NOS. 408-220-032 (LOT 1)  
408-220-033 (LOT 2)  
408-220-003 (LOT 3)  
408-220-034 (LOT 4)  
408-220-035 (LOT 5)  
408-220-006 (LOT 6)  
408-220-023 (LOT 11)  
408-220-024 (LOT 11)  
408-220-025 (LOT 12)  
408-220-026 (LOT 12)

Signature Page Exhibit

110331

Bowen Family Living Trust dated 6/1/89

By: \_\_\_\_\_  
David E. Bowen, Trustee

By: \_\_\_\_\_  
Georgene L. Bowen, Trustee

Gwen Bowen Crader 1993 Revocable  
Trust Dated March 4, 1993.

By: \_\_\_\_\_  
Gwen Bowen Crader, Trustee

\_\_\_\_\_  
Gayle Bowen Nolasco

\_\_\_\_\_  
Bruce David Bowen

Geraldine Lloyd Hicks by Robert B. Hicks as Attorney in Fact  
Geraldine Lloyd Hicks

Robin Jeffrey Hicks by Robert B. Hicks as Attorney in Fact  
Robin Jeffrey Hicks

Alan Ainsley Hicks by Robert B. Hicks as Attorney in Fact  
Alan Ainsley Hicks

Alcinda Hicks by Robert B. Hicks as Attorney in Fact  
Alcinda Hicks

Alcinda Hicks Pearlman by Robert B. Hicks as Attorney in Fact  
Alcinda Hicks Pearlman

Signature Page Exhibit

110331

Bowen Family Living Trust dated 6/1/89

By: \_\_\_\_\_  
David E. Bowen, Trustee

By: \_\_\_\_\_  
Georgene L. Bowen, Trustee

Gwen Bowen Crader 1993 Revocable  
Trust Dated March 4, 1993.

By: \_\_\_\_\_  
Gwen Bowen Crader, Trustee

\_\_\_\_\_  
Gayle Bowen Nolasco

  
Bruce David Bowen

\_\_\_\_\_  
Geraldine Lloyd Hicks

\_\_\_\_\_  
Robin Jeffrey Hicks

\_\_\_\_\_  
Alan Ainsley Hicks

\_\_\_\_\_  
Alcinda Hicks

\_\_\_\_\_  
Alcinda Hicks Pearlman

110331

ILLEGIBLE NOTARY SEAL DECLARATION (GOVERNMENT CODE 27361.7)

I CERTIFY UNDER PENALTY OF PERJURY THAT THE NOTARY SEAL ON THE DOCUMENT  
TO WHICH THIS STATEMENT IS ATTACHED READS AS FOLLOWS:

NAME OF NOTARY: STACY E BALL

DATE COMMISSION EXPIRES: 9-18-00

STATE: California

COUNTY: SACRAMENTO

PLACE OF EXECUTION OF THIS DECLARATION: Contra Costa County

DATE: 5/30/2000

SIGNATURE: [Signature]

AGENT FOR: CHICAGO TITLE COMPANY

## CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

NC 590

State of CALIFORNIA

110331

County of MONTEREYOn MAY 18, 2000 before me, NOREEN M. SANCHEZ, NOTARY PUBLIC

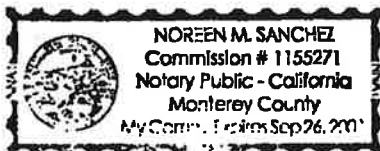
DATE

NAME, TITLE OF OFFICER - E.G., "JANE DOE, NOTARY PUBLIC"

personally appeared ROBERT B. HICKS

NAME(S) OF SIGNER(S)

☐ 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.

Noreen M. Sanchez  
SIGNATURE OF NOTARY

## OPTIONAL

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

## CAPACITY CLAIMED BY SIGNER

- ☐ INDIVIDUAL  
☐ CORPORATE OFFICER

TITLE(S)

- ☐ PARTNER(S) ☐ LIMITED  
☒ ATTORNEY-IN-FACT ☐ GENERAL  
☐ TRUSTEE(S)  
☐ GUARDIAN/CONSERVATOR  
☐ OTHER: \_\_\_\_\_

## DESCRIPTION OF ATTACHED DOCUMENT

Grant Deed  
 TITLE OR TYPE OF DOCUMENT

NUMBER OF PAGES

DATE OF DOCUMENT

## SIGNER IS REPRESENTING:

NAME OF PERSON(S) OR ENTITY(IES)

Geraldine Lloyd Hicks, Robin Jeffrey Hicks,  
Alan Ainsky Hicks, Alcinda Hicks aka  
Alcinda Hicks Pearlman

SIGNER(S) OTHER THAN NAMED ABOVE



## CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

110331

State of California

County of Monterey }

SS.

On 5/26/00

Date

before me, Tammy Consoli, Monterey Public

Notary Public

personally appeared David & Bowen

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.

WITNESS my hand and official seal.

Tammy Consoli  
Signature of Notary Public

Place Notary Seal Above

## 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: 425100 Grant DeedDocument Date: 4/25/00Number of Pages: 4Signer(s) Other Than Named Above: Yes

## Capacity(ies) Claimed by Signer

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

STATE OF CALIFORNIA

EDMUND G. BROWN JR., Governor

## SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION

30 VAN NESS AVENUE  
SAN FRANCISCO, CALIFORNIA 94102  
PHONE: 557-3686



August 15, 1977

Mr. Elmer J. Freethy  
1432 Kearney  
El Cerrito, California 94530

Dear Mr. Freethy:

Enclosed is a copy of the Commission's determination of your claim of exemption. We would appreciate your acknowledgment of receipt of the determination so that our file can be brought up to date on this matter. Of course, acknowledgment of receipt does not mean that you agree or disagree with the determination itself.

Thank you for your cooperation.

Very truly yours,

ALAN R. PENDLETON  
Staff Counsel

Enclosure

ARP/lis

cc: Mr. Arthur M. Shelton

PAGE 7

STATE OF CALIFORNIA

EDMUND G. BROWN JR., Governor

## SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION

30 VAN NESS AVENUE  
SAN FRANCISCO, CALIFORNIA 94102  
PHONE: 557-3686



CLAIM OF EXEMPTION NO. CE 74-15

August 15, 1977

Mr. Elmer J. Freethy  
1432 Kearney  
El Cerrito, California 94530

Dear Mr. Freethy:

On May 5, 1977, the San Francisco Bay Conservation and Development Commission, by a vote of 19 affirmative, 0 negative, and 2 abstentions, approved the following resolution:

I. Determination

The claim of exemption is granted for the industrial development and uses on approximately 84.34 acres within Assessor's Parcels 408-100-019, 408-100-018, and 408-120-016, as shown on a drawing entitled "Land Development Plan for Freethy Land and Investment, Richmond, California" dated December, 1964, including future work involving (1) completion of a road system that was under construction since 1963, including placing fill on tidal areas running from the easterly line of the property to the westerly line; (2) placing fill behind the completed roadway system to bring all of the approximately 84.34 acres of land to grade according to the plan finalized in 1964; and (3) using the 84.34-acre area for light industrial facilities and purposes.

The claim of exemption is denied for any work or uses on approximately 5 acres (known as Parcel 4) within Assessor's Parcel 408-090-018 included in the claim.

II. Findings and Declarations

This determination is made on the basis of the Commission's findings and declarations that the work and uses claimed to be exempt from the Commission's normal permit requirements satisfy the requirements of Section 66632.1, 66655, or 66656 of the McAteer-Petris Act for the following reasons:

A. Exempt Portions of the Claim

1. There is a "Project" at Claimant's Development Site Within the Meaning of Sections 66632.1 and 66656 of the McAteer-Petris Act. Under Sections 66632.1 and 66656

Mr. Elmer J. Freethy  
CLAIM OF EXEMPTION NO. CE 74-3  
Page 2

of the BCDC law, a claimant must meet three tests in order to have an exempt "project": (a) there must have been a "project" as of September 17, 1965; (b) prior to September 17, 1965, the claimant must have obtained all necessary permits to allow commencement of the diking or filling for that "project"; and (c) the claimant must have actually commenced the diking and filling process prior to September 17, 1965.

- a. A "Detailed and Specific Plan" Exists. In BCDC v. Emeryville, 69 Cal. 2d 533 (1968), the California Supreme Court defined "project" for the purpose of the "grandfather" clause contained in Government Code Section 66632.1 (substantially re-enacted in 1969 as Section 66656), as follows:

"In view of the manifest intent of the Legislature 'to protect the present shoreline and body of the San Francisco Bay to the maximum extent possible'...we are convinced the Legislature used the term 'project' as a term of limitation.

"The dominant theme underlying all generally accepted definitions of the word 'project' is that of a detailed and specific plan prepared in furtherance of a determination to accomplish a certain objective." (Emphasis added.)

The Commission finds that, as of September 17, 1965, the claimant had prepared and adopted a detailed and specific plan for the development of a light industrial park. This specific and detailed plan is shown and described on Exhibits 3 through 10 (CT, pp. 7 through 10) and consists of drawings showing an industrial park layout with sufficient utilities, road and rail services to accommodate full development of the property then controlled by the claimant. The first, preliminary plan was prepared in April of 1962 and revised on March 15, 1963. Further modifications were made in December of 1964. The 1964 development plan (Exhibit 5, CT p. 8) covers approximately 84.34 acres of land consisting of three parcels then owned by Freethy which are Contra Costa County Assessor's Parcels 408-100-019, 408-100-018,

Mr. Elmer J. Freethy  
 CLAIM OF EXEMPTION NO. CE 74-3  
 Page 3

and 408-120-016. Since the claimant acquired Parcel 4 after September 17, 1965, the 1964 development plan does not establish a specific and detailed plan for that parcel. Evidence also indicates that utility services had been designed and located to serve the three parcels (CT, p. 24). The drawings, letters and description of the industrial project indicate that the claimant had prepared a plan for an industrial park development on approximately 84.34 acres (Parcels 1, 2 and 3) and that this plan was sufficiently detailed to satisfy that aspect of a "project" as defined by the Supreme Court in the Emeryville case.

- b. A "Determination to Accomplish a Certain Objective" Exists. Besides requiring a "specific" and "concrete plan," Emeryville sets forth an additional requirement for determining whether or not a "project" exists:

"...A determination without a concrete plan is not a 'project' because the means of achieving the ultimate objective are not delineated sufficiently to permit prudent commencement of the enterprise. A plan without a determination is not a 'project' because the objective has not been made. (Emphasis added.) Only when that decision has been made and a plan has been conceived in the detail necessary for the prudent commencement of physical efforts to achieve the objective does a 'project' come into being." Id. pp. 545-6.

The Commission finds that, as of September 17, 1965, the claimant had the necessary determination to commence construction of the project pursuant to its specific plan. The claimant's intent in this regard (see Staff Summary dated February 4, 1977, Exhibits 3 through 10, and CT pp. 7 through 10 and pp. 12, 24, 27, 30, 31, 34, and 35) is evidenced by:

- (1) An agreement in February, 1963, between claimant and Southern Pacific Company regarding the construction of the drill track on the property, and a letter dated February 14, 1963 from the

Mr. Elmer J. Freethy  
 CLAIM OF EXEMPTION NO. CE 74-3  
 Page 4

Southern Pacific Company showing the commencement of the first stage of construction in April, 1963;

- (2) An agreement between claimant and Pacific Gas and Electric Company in November, 1964, to secure the right to fill and use the surface land under Pacific Gas and Electric's transmission line which traverses the property from southwest to northeast;
- (3) City of Richmond Permit No. 60352 issued to claimant on March 11, 1963 for the construction of the Bustin Steel Products industrial building on the property;
- (4) Hugh M. O'Neil Company plans dated September 10, 1964 for the construction of the Freethy buildings shown on the development plan;
- (5) Utility improvements consisting of the drill track extension with Southern Pacific Railway in 1963, and the installation of sewer, electrical, and gas systems in 1963;
- (6) Road work construction commencing in 1963;
- (7) Completed construction of Bustin Steel Products building in 1963, and Freethy Company warehouse building in 1964;
- (8) As of September 17, 1964, the placement of several hundred thousand cubic yards of fill on the property at a cost of \$45,000; and
- (9) As of September 17, 1965, expenditures in excess of 50,000 incurred for the development.

The Commission thus finds that the claimant had the requisite "concrete plan" and the "determination" for the industrial development and thus had a "project" under Sections 66632.1 and 66656 of the McAteer-Petris Act, as amplified by the Emeryville case.

Mr. Elmer J. Freethy  
CLAIM OF EXEMPTION NO. CE 74-3  
Page 5

2. As of September 17, 1965, the Claimant did not Need Local or Corps Approvals to Allow Commencement of the Filling Process
  - a. Local Approval by the City of Richmond not Required for Filling. The Commission finds that on September 17, 1965 the claimant did not need a City permit to commence filling operations on the site pursuant to Section 12.44.060 of the City of Richmond Zoning Ordinance (CT, pp. 32 and 33). At that time, the subject property was zoned "M-3 Heavy Industrial District." Section 12.44.080 of the Richmond Zoning Code exempts industrial areas and marshland areas where industrial use is permitted from a City permit requirement for fill operations. Accordingly, the claimant was advised by the City of Richmond that no permit was required by the City to commence the fill work. With respect to building construction, the claimant applied for and was issued building permits by the City of Richmond on March 3, 1963, February 9, 1966, and on July 11, 1966 for three industrial buildings on the property (CT, p. 33).
  - b. As of September 17, 1965, an Army Corps of Engineers Permit was not Required. The Commission finds that, as of September 17, 1965, no Corps of Engineers permit was required to commence filling and diking on claimant's property. At that time, the Corps did not require persons doing work in marshland areas to obtain Corps permits (letter dated August 1, 1972 from Col. Lammie of the Corps of Engineers to Alan Pendleton at BCDC). While a Corps permit is now required to place fill below the plane of Mean Higher High Water (MHHW), the claimant was not required to obtain a permit from the Corps as of September 17, 1965, by which time filling and diking had been well begun.

On June 11, 1971, the San Francisco office of the Army Corps of Engineers issued Public Notice No. 71-22 which extended the Corps' permit jurisdiction to the line of the shore reached by the plane of Mean Higher High Water. In September, 1972, the Army Corps of Engineers promulgated a regulation which specified for the first time that the plane of MHHW would be the shoreward limit of jurisdiction (33 C.F.R. Section 209.260).

Mr. Elmer J. Freethy  
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Page 6

The westerly portion of claimant's property, approximately 23 acres, consists of marshlands and mudflats, and the claimant had filled portions of those areas pursuant to his development plan. On August 10, 1971, the Corps issued a "cease and desist" order prohibiting the claimant from placing future fill without a permit over the marshland and mudflat areas that fell within the Corps' jurisdiction following its issuance of Public Notice No. 71-22. After apparent non-compliance by claimant, a lawsuit was filed in U. S. District Court in August, 1973 at the request of the Army Corps of Engineers, asking for a Court order requiring the claimant to remove all existing fill in those areas over which the Corps had jurisdiction, and to enjoin him from placing further fill without the required Corps permit. A court decision was rendered on February 24, 1975. It held, basically, that the claimant was not required to remove existing fill since he had justifiably relied on the Corps' pre-1971 policy and expended substantial funds on the development and that the Corps was equitably estopped now from demanding fill removal based on a distinct change of policy. The court also held that any future filling would require the necessary Corps permit, and the claimant was enjoined from future filling on portions of his property bayward of the plane of MHHW, as shown on the Corps topographical survey made after placement of the fill, without prior Corps of Engineers approval.

3. No Substantial Changes. The evidence shows that there were minor changes made to the development plan after September 17, 1965. One was the construction of an additional industrial building. Another was the acquisition of a fourth parcel of land in 1968 consisting of 5 acres to the south of the development. The exemption determination does not apply to Parcel 4 and the change in locations and design of the industrial building does not significantly change the nature or extent of the project as originally envisioned.

B. Non-Exempt Portions of the Claim

1. Filling on Assessor's Parcel 408-090-018. The Commission concludes that any fill on Assessor's Parcel 408-090-018 which is not included within the Industrial Development Plan of 1964 is not exempt from BCDC permit requirements.



park in 1962, three years before the state gave BCDC the right to require permits for shoreline fill.

Along with about 30 others, Freethy filed for an exemption to the requirement under a "grandfather" clause which allows fill without permits if the developer already has begun the project and has detailed plans.

Most of the claims have been denied, a handful are waiting on title disputes, and only Freethy's and two others have been accepted.

BCDC's exemption was influenced by a U.S. District Court decision handed down in a suit between the Freethy Land and Investment Co.

action) in a 23-acre marsh area at the site. Freethy has not filled on that area since the Corps began its action in 1971.

This means that even though the developer does not need any BCDC permits, he does need a Corps permit for that 23 acres, part of the 90 acres in dispute.

When BCDC granted the exemption it noted: "The commission advises the claimant that it intends to comment on any public notice received from the Corps for such filling and to indicate whether the proposed project is consistent or inconsistent

plans, the commission said. Freethy claims that BCDC is not involved with the five-acre site although the commission said he would need a BCDC permit for any work there within 100 feet of the highest tidal action line.

Besides Freethy's own corporation yard, there are two other companies at the site, Bustin Steel Products, and Colloids of California. Freethy said he has plans for more development when he has worked out his permit application with the Corps, but he did not want to reveal what these are.

He added that his fight with government agencies over the development has cost him "half a century of lawyers."

Exhibit 3

The evidence shows that this parcel was acquired in 1968 to enlarge the development site. It is now shown on the Development Plan of 1964 which claimant has submitted to establish a specific and detailed plan for the development. As title to this 5-acre parcel was not acquired until 1968, it cannot be considered to be part of the "project" as it existed on September 17, 1965, and thus is not exempt under Sections 66632.1 and 66656 of the McAtteer-Petris Act.

2. Parcel 4 is not an integral part of the "project". Claimant has stated that this parcel is an integral part of the development project. Yet he also states that Parcel 3, Assessor's Parcel 408-120-016, which was purchased on December 14, 1964, was acquired to complete the land acquisition required for completion of the central part of the project. It appears, therefore, that, as of September 17, 1965, claimant had contemplated completion of the development on only three parcels of land consisting of approximately 84.34 acres. Also, claimant has submitted no evidence of any specific plan to be carried out with respect to Parcel 4, other than placing fill on it. The Commission finds that Parcel 4 is not an integral part of the overall "project" as conceived prior to September 17, 1965 and is therefore not exempt from BCDC permit requirements.
3. Section 66655 is inapplicable. As an alternative basis for the claim, the claimant relies on Government Code Section 66655. The Commission finds that Section 66655 is inapplicable here because the subject area is within the Commission's "bay" jurisdiction as defined in Section 66610(a). Section 66655 is available only for vested rights perfected within the areas defined in subdivisions (b), (c) and (d) of Section 66610 (shoreline band, salt ponds, and managed wetlands).

### III. Conclusions

The determination made herein represents a determination only that, because of Sections 66632.1 and 66656 of the McAtteer-Petris Act, a permit from the Commission is not required at this time for the placement of fill or the development of light industrial uses on Parcels 1, 2, and 3, consisting of approximately 84.34 acres and including approximately 23 acres of marsh and tideland. It does not represent, and should not be construed to represent, a determination by the Commission that the proposed project is consistent or inconsistent with any other provision of the McAtteer-Petris Act or the San Francisco Bay Plan.

Elmer J. Freethy  
 AIM OF EXEMPTION NO. CE 74-3  
 Page 8

The Commission has also noted herein that the federal court has decided that a Corps permit is required for filling below the plane of Mean Higher High Water within the approximately 23-acre area of marsh and tideland at the site. The Commission advises the claimant that it intends to comment on any public notice received from the Corps for such filling and to indicate whether the proposed project is consistent or inconsistent with the fill and use policies of the San Francisco Bay Plan, the McAteer-Petris Act, the California Environmental Quality Act of 1970 and the Commission's Management Program for San Francisco Bay.

The Commission has also hereby determined that work and uses on Parcel 4, approximately 5 acres, acquired after September 17, 1965, are not exempt from BCDC permit requirements. Thus any work or uses either below the line of highest tidal action or within 100 feet inland of the line of highest tidal action on Parcel 4 requires a BCDC permit. The Commission also notes that it appears that most of Parcel 4 is not within the Commission's jurisdiction because it is above the line of highest tidal action; however, no survey information has been submitted sufficient to determine the Commission's jurisdiction at Parcel 4 precisely.

The Attorney-General's Office concurs in this conclusion.

\_\_\_\_\_  
 CHARLES R. ROBERTS  
 Executive Director

CRR/lrs

cc: U. S. Army Corps of Engineers, Attn: Regulatory Functions Branch  
 S. F. Bay Regional Water Quality Control Board, Attn: Certification Section  
 Environmental Protection Agency, Attn: Chris Vais, E-4-2  
 San Francisco Department of City Planning  
 City of Richmond, Attn: City Manager

\* \* \* \* \*

Receipt acknowledged, contents understood and agreed to:

Executed at \_\_\_\_\_

\_\_\_\_\_  
 Applicant

On \_\_\_\_\_ By: \_\_\_\_\_

\_\_\_\_\_  
 Title

STATE OF CALIFORNIA

EDMUND G. BROWN JR., Governor

## SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION

30 VAN NESS AVENUE  
SAN FRANCISCO, CALIFORNIA 94102  
PHONE: 557-3686



December 17, 1979

City of Richmond  
City Planning Department  
City Hall, Civic Center  
Richmond, California 94804

SUBJECT: Preliminary Tentative Subdivision Map 754 Freethy Industrial  
Park Claim of Exemption No. CE 74-15 and BCDC Inquiry File No.  
CC.NR.6619.1

Gentlemen:

Thank you for sending us the tentative subdivision map for the Freethy Industrial Park Subdivision No. 5754. We have reviewed the map and find that the present development contains several new smaller parcels, a new road and two cul-de-sacs which were not included in the BCDC Exemption No. CE 74-15. We do not know whether the small size of these parcels would be consistent with the M-3 Heavy Industrial zoning ordinance as it existed at the time of the exemption, or whether the project that will eventually be built would more likely be an office park. Since we do not have a site plan, we do not know at this time whether or not the exemption would apply to the project Mr. Freethy now intends to build.

If a change of use were to occur, as determined by the BCDC, a permit for all construction within 100 feet of the line of highest tidal action would be required. The Commission could not approve a project if maximum feasible public access consistent with the project were not provided. Access along the marsh edge along the PG & E right-of-way would most likely be required. If uses, which the Commission believes are heavy industrial uses, are placed on the site, and if the streets are constructed as shown on the tentative map, it is possible that construction would be exempt from BCDC permit authority.

If you have any further questions, do not hesitate to contact me.

Very truly yours,

A handwritten signature in cursive script that reads 'Nancy Twiss'.

NANCY TWISS  
Permit Analyst

NT/st

STATE OF CALIFORNIA

EDMUND G. BROWN JR., Governor

## SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION

30 VAN NESS AVENUE  
SAN FRANCISCO, CALIFORNIA 94102  
PHONE: 557-3686



February 6, 1980

Mr. C. E. Woodward  
Planning Director  
City of Richmond  
City Hall  
Richmond, California 94804

SUBJECT: Freethy Property - ~~CE77-15~~ and BCDC Inquiry File No. CC.MR.6619.1

Gentlemen:

We have reviewed the initial study for the proposed Freethy Industrial Subdivision and believe that the Richmond Planning Department has correctly determined that an Environmental Impact Report is required for this project. The Planning Department staff has correctly identified five significant impacts. After reading the initial study, we believe that location of this project in the 100-year flood plain should also be identified as a significant impact. In addition, several environmental factors have been checked "unknown" on the initial study.

It is likely that some of these would result in significant impacts. For example, the fiscal and economic impact is checked as beneficial. However, the services required for the project have not been determined at this time. Development on low lying bay muds is often costly because differential settlement causes sewers and water lines to rupture. Police and fire services will be required, but until more is known about the development, the costs of these services cannot be determined. It is possible that the costs of services would exceed revenues generated, especially since the passage of the Jarvis-Gann Initiative.

Exemption

In our previous correspondence we stated we did not know at this time whether or not the Commission has jurisdiction over the project. We have not received any additional information that would allow such a determination to be made. However, we note that the applicant for the project is Hahn Real Estate rather than Mr. Freethy. If this parcel is subdivided and equity passes to a third party, it is our opinion that the exemption would not apply. Since the Commission cannot file a permit application until an environmental determination is made, and since significant impacts have been identified, we believe that the City should prepare an EIR at this time. If the exemption were not to apply, preparation of an environmental document by the City would also save the developer a good deal of time, since the Commission would have to prepare an EIR. The Commission does not have any staff assigned to EIR preparation and all consultant contracts must be approved by the Commission and three separate state offices.

Mr. C. E. Woodward  
February 6, 1980  
Page Two

If you have any further questions, please contact Nancy Twiss of our staff who is most familiar with the project.

Very truly yours,

FRANK BROADHEAD  
Staff Counsel

FB/pm

STATE OF CALIFORNIA

EDMUND G. BROWN JR., Governor

## SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION

30 VAN NESS AVENUE  
SAN FRANCISCO, CALIFORNIA 94102  
PHONE: 557-3686



November 10, 1981

Mr. Elmer J. Freethy  
1432 Kearney Street  
El Cerrito, California 94530

AND

Ainsley Corporation  
43 North Harrison  
Campbell, California 95008

SUBJECT: Development of San Pablo Bay Industrial Park  
(BCDC File No. CE 74-15)

Gentlemen:

The Commission has received a notice from the City of Richmond that the Ainsley Corporation, through Elmer J. Freethy acting as its agent, has applied for a tentative subdivision map for the subdivision of the San Pablo Bay Industrial Park. A review of the Commission's files indicates that the Commission issued Claim of Exemption No. CE 74-15 to Elmer J. Freethy for the development of the property. However, the notice of the application for a tentative subdivision map states that the owner is now the Ainsley Corporation.

A claim of exemption issued by the Commission is personal to the applicant and cannot be transferred when the holder of the exemption conveys the property. Therefore, the Ainsley Corporation as the new owner of the property will need a permit from the Commission for any filling, dredging, or substantial change of use within the Commission's jurisdiction. Although the Commission has the authority to require a permit for the act of subdividing property, it has not yet implemented its authority. However, the development of the property as described in the notice of application makes it appear that the actual development will involve work for which a Commission permit is required. Thus, prior to the commencement of any work, you should contact the Commission staff to determine what type of permit, if any, will be required.

Mr. Elmer J. Freethy  
and The Ainsley Corporation  
November 10, 1981  
Page Two

If you have any questions about the non-transferability of the claim of exemption, please contact me. If you need information about applying for BCDC permits please contact Robert Hickman.

Thank you very much for your cooperation.

Very truly yours,

JONATHAN T. SMITH  
Staff Counsel

JTS/mm

cc: Kathy Mikkelson, Attorney General's Office

## SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION

THIRTY VAN NESS AVENUE, SUITE 2011

SAN FRANCISCO, CA 94102-6080

PHONE: (415) 557-3686



October 23, 1989

Mr. Ross Kersey  
Buzz Oates Real Estate  
8515 Elder Creek Road  
Sacramento, California 95828

SUBJECT: BCDC Jurisdiction Over Portions of Richmond Subdivision 5754  
(Freethy Property); CE 74-15.

Dear Mr. Kersey:

This letter is in response to our phone conversation of October 13, 1989 in which you requested a jurisdictional determination and letter regarding Richmond Subdivision 5754, Freethy Boulevard, Richmond, California. As I indicated, the Commission has jurisdiction over all areas of the Bay below the line of highest tidal action and all areas within 100 feet inland of the line of highest tidal action. The jurisdiction over the tidal area is referred to as "Bay" jurisdiction. In the vicinity of Subdivision 5754, the line of highest tidal action is 5.9 feet above mean sea level (NGVD). Jurisdiction over the inland area is referred to as "shoreline band" jurisdiction.

Since you do not have an elevation survey map of the 5.9-foot MSL contour at the site, we cannot define the Commission's jurisdiction over the site. However, the November 5, 1979 survey map of the site, prepared by Charles Savio, provides sufficient spot elevation data that we can determine that all of lots one, two, three, four, eight, nine, and ten are outside of the Commission's jurisdiction. A copy of this map is attached. Estimates of the line of highest tidal action and the Commission's shoreline band jurisdiction, are marked on the map. This estimate is based on the survey points which are above the 5.9-foot MSL elevation.

However, portions of lot five, six, seven, eleven, twelve, fourteen, and possibly the other remaining lots, are within the Commission's jurisdiction. Any activity in these areas that could be considered placement of fill, extraction of materials, or a substantial change of use, requires Commission authorization.



Mr. Ross Kersey  
October 20, 1989  
Page 2

Pursuant to Calif. Administrative Code Title 14, Division 5, Chapter 9, Article 2, Section 10920, Claim of Exemption 74-15 which was issued to Mr. Elmer J. Freethy on August 15, 1977 for the site is "ineffective". That section states:

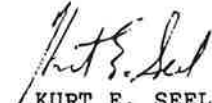
"An exemption that the Commission grants shall be personal to the claimant and shall not be transferable. A transfer of the property...on which the exempted activity exists...shall render the claim ineffective as it applies to any...substantial change in use that would occur after the date of the transfer."

As of the date of the property transfer to Ainsley Corporation, the Claim of Exemption 74-15 became ineffective.

I assume this letter provides sufficient description of the Commission's jurisdiction over the site for your present needs. A final and binding jurisdictional determination can only be provided when a survey of the line of highest tidal action is provided to our staff.

If you have any additional questions please contact me or Chris Parry at (415) 557-3686.

Very truly yours,

  
KURT E. SEEL  
Legal Intern

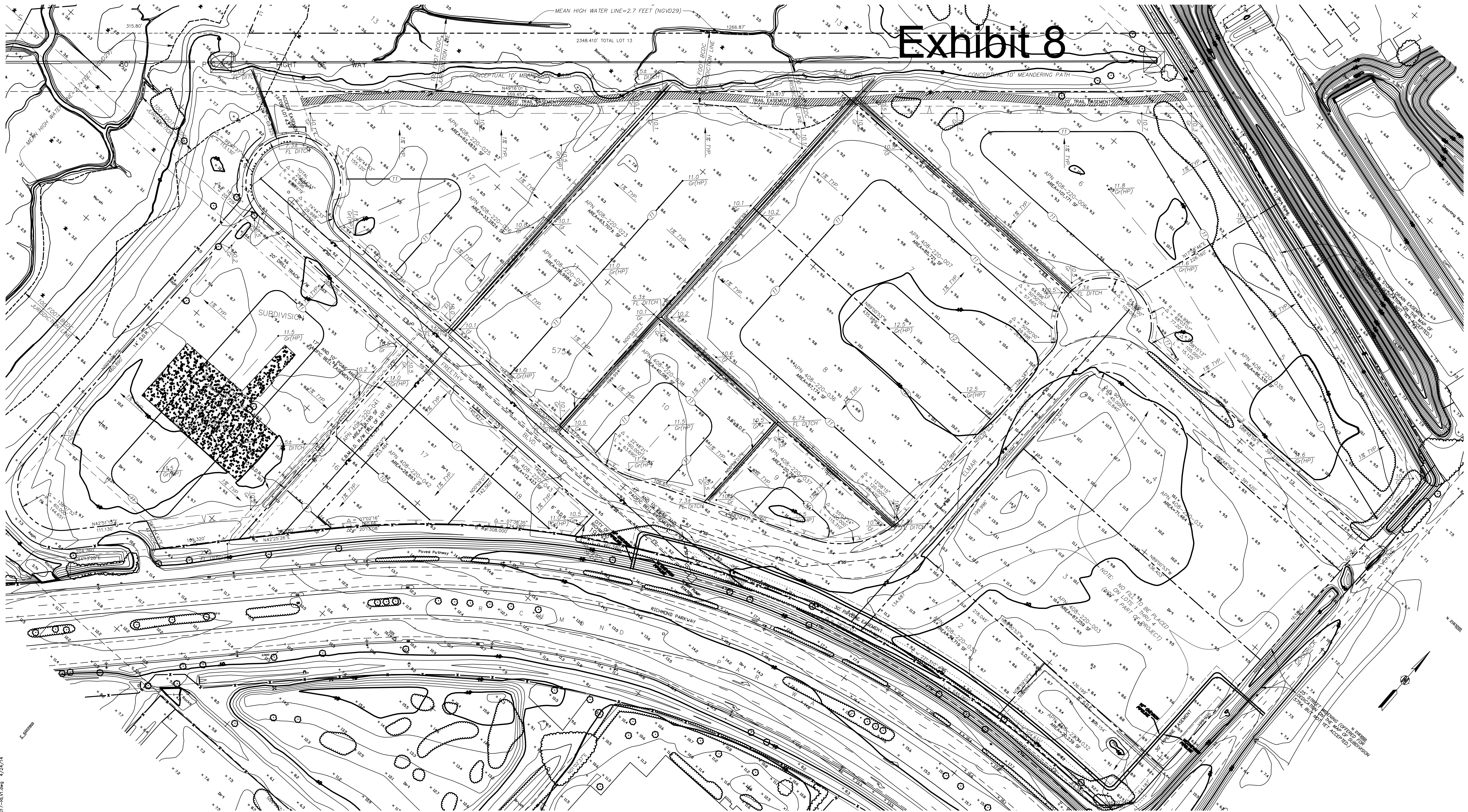
KES/qjg

Enclosure

5394B



# Exhibit 8



## LEGEND

Gr	—	GROUND ELEVATION
HP	—	HIGH POINT
11	—	CONTOUR ELEVATION
—	—	HIGH POINT/GRADE BREAK
—	—	3:1 SLOPE OR FLATTER

## LOT OWNERSHIP & FILL AMOUNTS

LOT #	OWNERSHIP	FILL AMOUNT
1 THRU 4	JOE & HEIDI SHEKOU	0 CUBIC YARDS
5 & 6	JOE & HEIDI SHEKOU	8,610 CUBIC YARDS
7 & 8	RICHMOND DEVELOPMENT CO.	10,080 CUBIC YARDS
9	RICHMOND DEVELOPMENT CO.	1,050 CUBIC YARDS
10	RICHMOND DEVELOPMENT CO.	2,550 CUBIC YARDS
11	JOE & HEIDI SHEKOU	6,460 CUBIC YARDS
12	JOE & HEIDI SHEKOU	5,470 CUBIC YARDS
15	RICHMOND DEVELOPMENT CO.	6,830 CUBIC YARDS
16 THRU 18	RICHMOND DEVELOPMENT CO.	2,720 CUBIC YARDS
		TOTAL = 43,770 CUBIC YARDS

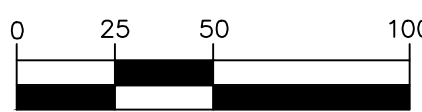
## GRADING NOTES

- 1) LOTS 1 THRU 4 NOT TO BE FILLED.
- 2) LOT 15 NOT TO BE FILLED UNLESS EXISTING CONCRETE FOUNDATION IS REMOVED.
- 3) STRIP 2" OF MATERIAL OFF ALL AREAS TO BE FILLED AND STOCKPILE ON-SITE.
- 4) REFER TO NOTE #14, SHEET C3, FOR STRIPPING VOLUMES.
- 5) CONTRACTOR TO COMPACT FILL IN 8" LIFTS, MAX, COMPACTED TO 90% REL. COMPACTION.
- 6) CONTRACTOR TO BE AWARE OF AND PROTECT ALL CONCRETE "V-DITCHES" DURING GRADING OPERATIONS. REPLACE IN-KIND ANY "V-DITCHES" THAT ARE DAMAGED.

## OWNER INFORMATION

JOE & HEIDI SHEKOU 2167 FRANCISCO BLVD SAN RAFAEL, CA 94901 415-472-7700	RICHMOND DEVELOPMENT COMPANY 125 PARK PLACE, SUITE 210 RICHMOND, CA 94801 510-237-6916
---	---

## GRAPHIC SCALE



( IN FEET )  
1 inch = 50 ft.

## LEGEND

NOTE: CONTOURS BY INTERPOLATION.  
APPROXIMATE ONLY.

## REFERENCES

FIELD BOOK NO.  
FILE MAP: R-1092  
TITLE CO:  
POLICY NO:  
DATE: NOV 29  
MISC. REF: B-9010, X-3280,  
17643 FILE, X-3247-1  
9642, 17643, 18636, 0-1017

## REVISIONS

4/11/14 - MISC. REV.  
4/18/14 - ADD BCDC  
LINE

KISTER, SAVIO & REI, INC.  
LAND SURVEYORS - CIVIL ENGINEERS  
3095 RICHMOND PARKWAY, SUITE 214  
RICHMOND, CALIFORNIA 94806  
PHONE (510) 222-4020 FAX (510) 222-3718  
E-MAIL info@ksrinc.net

FOR: CJC TRUCKING, INC.  
SCALE 1" = 50'  
DATE: FEBRUARY 24, 2014

JOB NO. 19327  
DWG NO. 0-1267

RICHMOND,

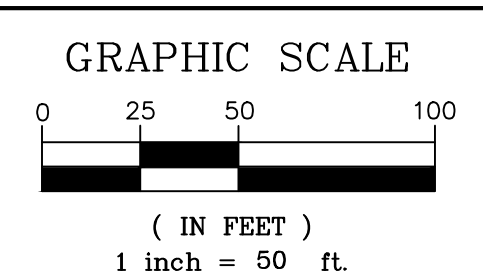
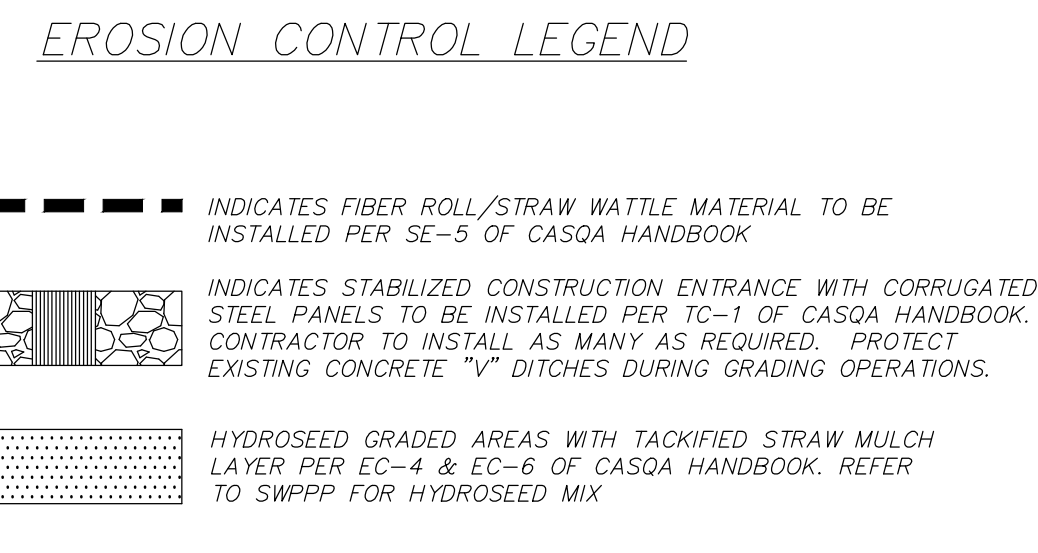
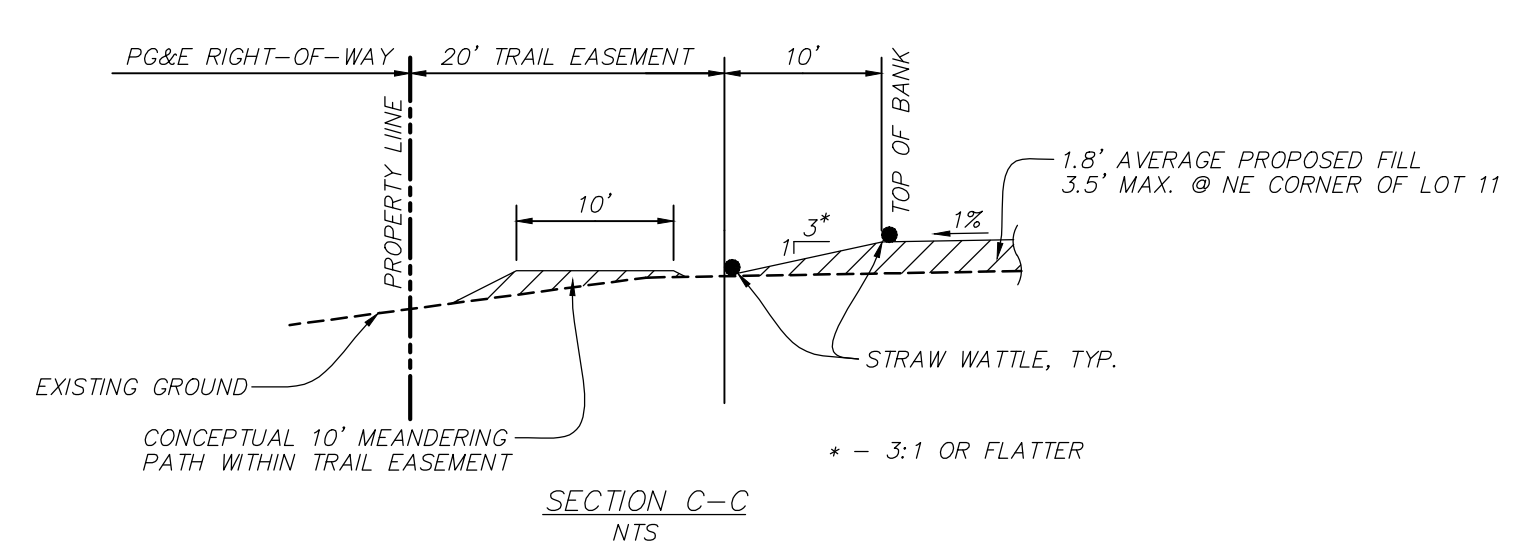
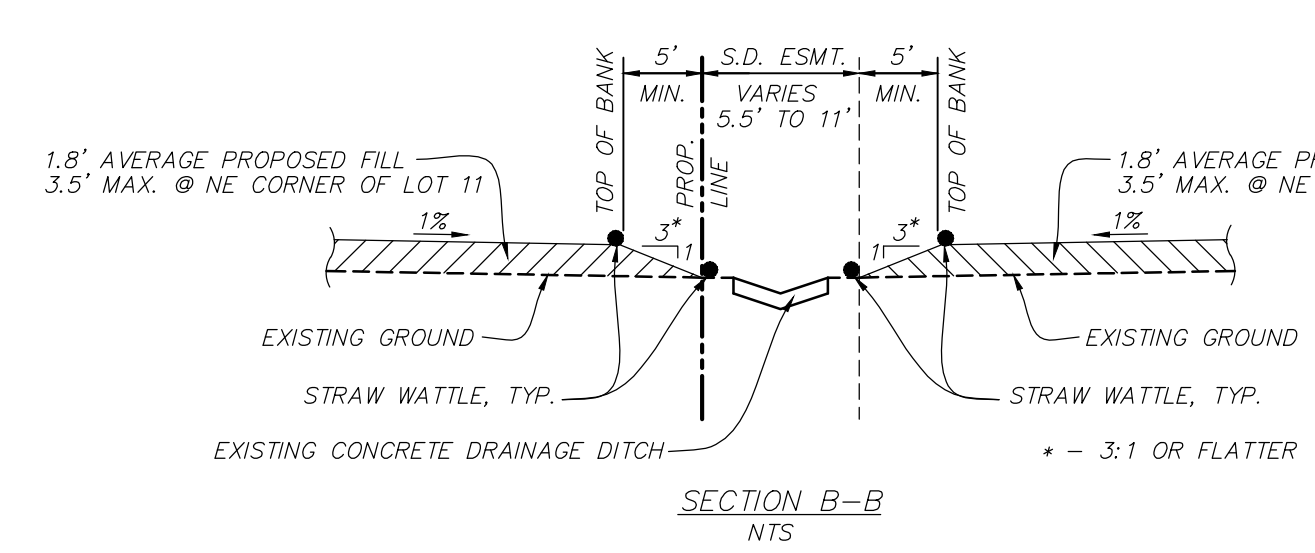
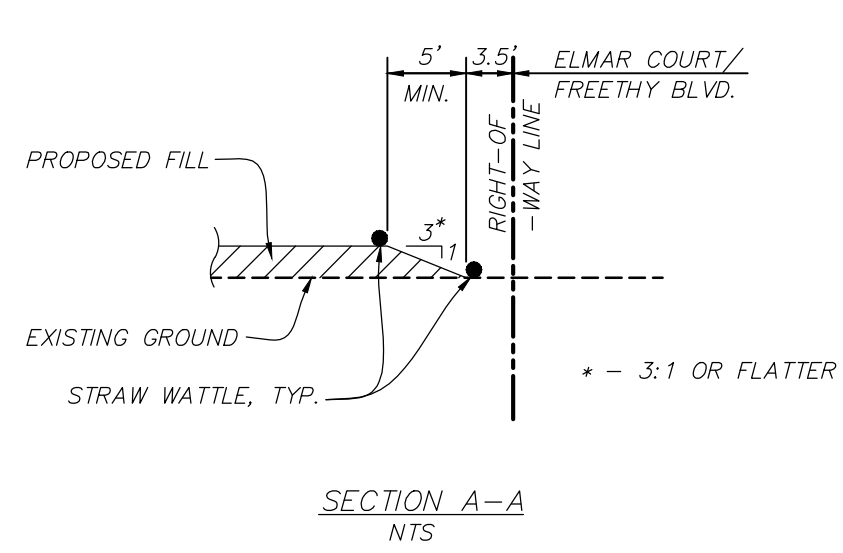
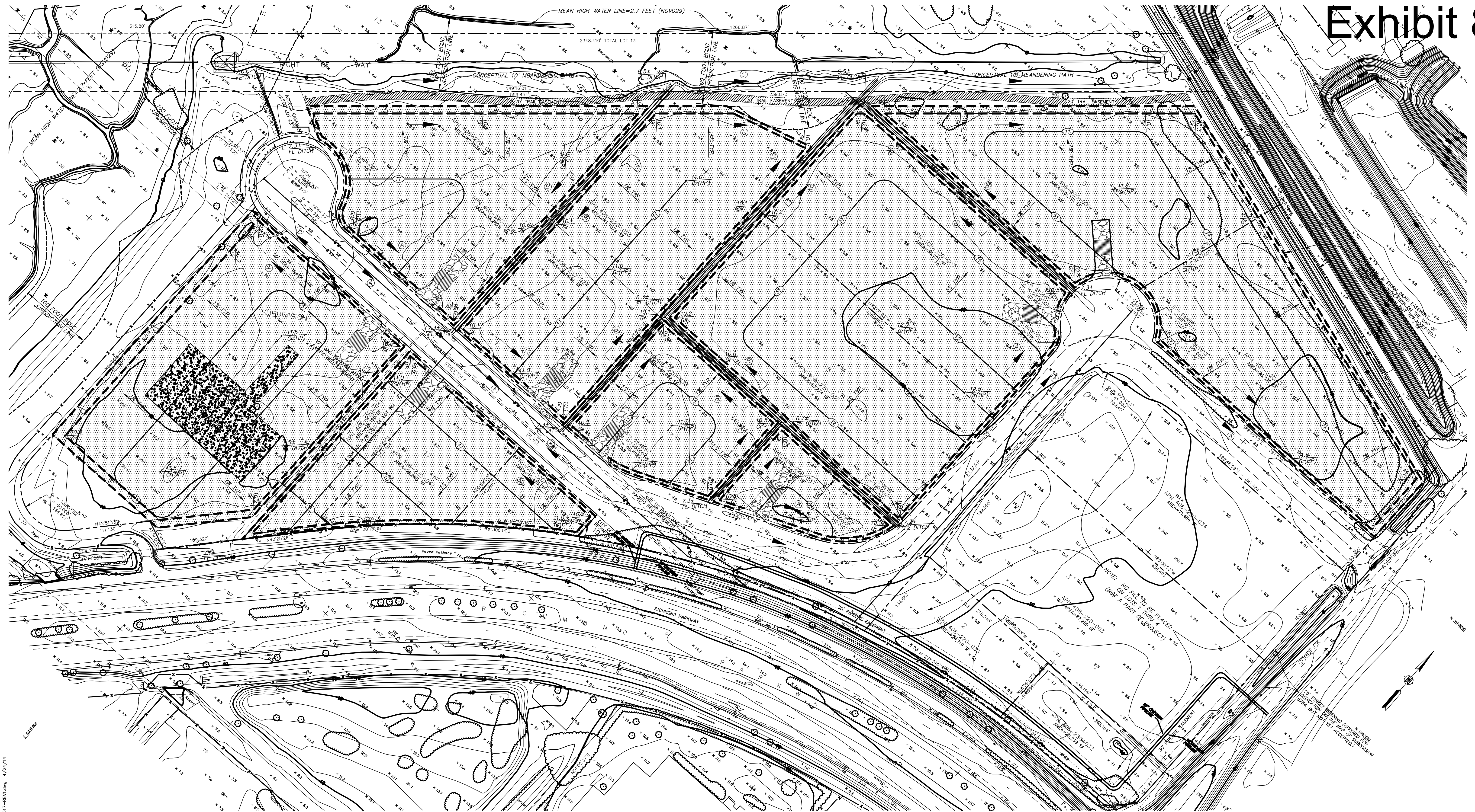
CALIFORNIA

## DESCRIPTION

GRADING PLAN  
SUBDIVISION 5754

C1





C:\Users\j\OneDrive\Documents\Projects\Richmond\Richmond.dwg 4/24/14

LEGEND		REFERENCES	REVISIONS	KISTER, SAVO & REI, INC. LAND SURVEYORS - CIVIL ENGINEERS 3095 RICHMOND PARKWAY, SUITE 214 RICHMOND, CALIFORNIA 94806 PHONE (510) 222-4020 FAX (510) 222-3718 E-MAIL info@ksrinc.net	DESCRIPTION	
NOTE: CONTOURS BY INTERPOLATION, APPROXIMATE ONLY.		FIELD BOOK No. FILE MAP: R-1092 TITLE CO: POLICY No: DATE: NOV 29 MISC. REF: B-9010, X-3280, 17643.F1E, X-3247-1 9642, 17643, 18636, O-1017	4/11/14 - MISC. REV. 4/18/14 - ADD BODC LINE	FOR: CJC TRUCKING, INC. SCALE 1" = 50' DATE: FEBRUARY 24, 2014	JOB No. 19327 DWG No. O-1267	EROSION CONTROL PLAN SUBDIVISION 5754 RICHMOND, CALIFORNIA



CITY OF RICHMOND GRADING SECTION GENERAL NOTES

- "BY ACCEPTING THIS PERMIT, THE PERMITTEE, FOR HIMSELF, HIS CONTRACTORS, AND EMPLOYEES, PROMISES TO SAVE, INDEMNIFY AND HOLD HARMLESS THE CITY OF RICHMOND AND ITS EMPLOYEES, AGENTS AND REPRESENTATIVES FROM ALL LIABILITIES AND CLAIMS FOR DAMAGES BY REASON OF INJURY OR DEATH TO ANY PERSON(S), OR DAMAGE TO PROPERTY, FROM ANY CAUSE WHATSOEVER WHILE IN, UPON OR IN ANY WAY CONNECTED WITH THE WORK COVERED BY THIS GRADING PERMIT, AND DOES FURTHER PROMISE TO DEFEND THESE INDEMNITEE IN ANY CLAIM OR ACTION ARISING OUT OF OR AS A RESULT OF THE WORK DONE UNDER THIS PERMIT".
- ALL GRADING, SITE PREPARATION, PLACING AND COMPACTION OF FILL TO BE DONE IN ACCORDANCE WITH CITY OF RICHMOND CHAPTER 12.44 OF THE RICHMOND MUNICIPAL CODE – EXCAVATION, GRADING AND EARTHWORK CONSTRUCTION; ALSO UNDER THE DIRECT SUPERVISION OF A GEOTECHNICAL ENGINEER. SUBSEQUENT TO COMPLETION OF THE WORK, THE GEOTECHNICAL ENGINEER SHALL SUBMIT TO THE COUNTY BUILDING INSPECTION DEPARTMENT A REPORT STATING THAT ALL WORK HAS BEEN DONE TO ITS SATISFACTION.
- CONTRACTOR TO NOTIFY CITY OF RICHMOND PUBLIC WORKS DEPARTMENT 48 HOURS PRIOR TO START OF WORK.
- ALL CUT SLOPES SHALL BE ROUNDED TO MEET EXISTING GRADES AND BLEND WITH SURROUNDING TOPOGRAPHY. ALL GRADED SLOPES SHALL BE PLANTED WITH SUITABLE GROUND COVER.
- ANY DEVIATION FROM APPROVED PLAN REQUIRES APPROVAL OF THE CONTRA COSTA CTY SENIOR GRADING INSPECTOR.
- ALL SLIDE REPAIR WORK, KEYWAYS, SUBDRAIN INSTALLATION, AND LINED DITCH WORK SHALL BE INSPECTED BY THE CITY OF RICHMOND. REPORT FROM THE GEOTECHNICAL ENGINEER SHALL BE SUBMITTED TO THE CITY OF RICHMOND REGARDING THE SLIDE REPAIR AND/OR SUBDRAIN INSTALLATION, IF ANY..
- DURING GRADING OPERATIONS, CONTRACTOR SHALL IMPLEMENT DUST CONTROL MEASURES ON SITE AND HAUL ROUTES.
- A FINAL REPORT BY THE CIVIL ENGINEER CERTIFYING THAT ALL GRADING, LOT DRAINAGE AND DRAINAGE FACILITIES HAVE BEEN COMPLETED AND THE SLOPE PLANTING INSTALLED IN CONFORMANCE WITH THE APPROVED PLANS, SHALL BE SUBMITTED TO THE CITY OF RICHMOND PRIOR TO ISSUANCE OF BUILDING PERMITS/COMPLETION OF PROJECT.
- SILT AND EROSION CONTROL PLANS REQUIRED FOR WORK DURING RAINY SEASON. (OCTOBER 1 THROUGH APRIL 15). SILT AND EROSION CONTROL METHODS WILL BE EMPLOYED YEAR-ROUND.
- GRADING WORK HOURS ARE 7:30 AM TO 5:30 PM, MONDAY THRU FRIDAY. NO GRADING WORK WILL BE PERFORMED ON OBSERVED NATIONAL HOLIDAYS.

PROJECT GENERAL NOTES

- TOPOGRAPHIC SURVEY BY KISTER, SAVIO & REI, INC. AERIAL PHOTOGRAMMETRY AND SUPPLEMENTAL FIELD SURVEYING DATED AUGUST, 2006. DATUM: NGVD 1929.
- WORK SHALL NOT BEGIN UNTIL ADEQUATE TEMPORARY BARRICADES, BARRIERS, FENCES, SIGNS, LIGHTS, OR OTHER SUCH TRAFFIC AND PEDESTRIAN WARNING AND CONTROL DEVICES ARE IN PLACE.
- ALL KNOWN EXISTING UNDERGROUND UTILITIES ARE SHOWN ON THE PLAN AS BEST AS CAN BE ESTABLISHED FROM AVAILABLE INFORMATION. THE CONTRACTOR SHALL PROCEED WITH DUE CAUTION DURING UNDERGROUND OPERATIONS AND SHALL REPAIR OR REPLACE ALL UTILITIES AND SERVICES, EITHER MARKED IN THE FIELD OR INDICATED ON THE PLANS, WHICH ARE DAMAGED DURING CONSTRUCTION AT HIS OWN EXPENSE.
- CONTRACTOR IS ENCOURAGED TO CONTACT AN UNDERGROUND UTILITY LOCATING SERVICE PRIOR TO BEGINNING ANY EXCAVATION WORK FOR ASSISTANCE IN LOCATING UNDERGROUND UTILITIES.
- ELEVATIONS AND LOCATIONS OF ALL EXISTING UTILITIES WHICH CROSS THE LINE OF CONSTRUCTION SHALL BE VERIFIED BY THE CONTRACTOR PRIOR TO THE START OF ANY CONSTRUCTION AFFECTING SAID LINES.
- CONTRACTOR IS TO VERIFY WORK IN THE FIELD AND SHALL SATISFY HIMSELF AS TO THE ACCURACY BETWEEN THE WORK SET FORTH ON THESE PLANS AND THE WORK IN THE FIELD. ANY DISCREPANCIES SHALL BE BROUGHT TO THE ATTENTION OF THE ENGINEER PRIOR TO THE START OF CONSTRUCTION.
- CONTRACTOR SHALL REPLACE OR REPAIR, AT HIS OWN EXPENSE, ALL DAMAGED, REMOVED OR OTHERWISE DISTURBED WALLS, FENCES, CURBS, ABOVE-GRADE IMPROVEMENTS OR PHYSICAL FEATURES OF WHATEVER NATURE TO THEIR ORIGINAL CONDITIONS, WHETHER SPECIFICALLY INDICATED ON THE PLANS OR NOT. THIS NOTE APPLIES TO DAMAGE BY THE CONTRACTOR OUTSIDE THE IMMEDIATE AREA OF THE WORK.
- ALL TRENCHING OPERATIONS SHALL BE IN ACCORDANCE WITH THE REQUIREMENTS OF TITLE 8 (CAL/OSHA).
- HAND TUNNELING/DIGGING WILL BE REQUIRED FOR EXCAVATION WORK IN WHICH EXISTING UTILITIES ARE WITHIN 24" OR LESS VERTICALLY OR HORIZONTALLY OF THE TRENCH LINE.
- UPON COMPLETION OF THE WORK, THE CONTRACTOR SHALL CERTIFY THAT ALL WORK WAS PERFORMED IN ACCORDANCE WITH THE REQUIREMENTS OF THE CONTRACT DOCUMENTS. VARIATIONS SHALL BE DECLARED AND PRESENTED TO THE OWNERS REPRESENTATIVE IN WRITING UPON COMPLETION OF CONSTRUCTION.
- IT SHALL BE THE CONTRACTOR'S RESPONSIBILITY TO MAINTAIN CONTROL OF THE ENTIRE CONSTRUCTION OPERATION AND TO THIS END KEEP THE ENTIRE SITE FREE FROM EROSION.
- THE OWNER'S REPRESENTATIVE WILL NOT DIRECTLY CONTROL THE PHYSICAL ACTIVITIES OF THE CONTRACTOR OR ANY SUBCONTRACTORS. CONTRACTOR WILL BE SOLELY AND COMPLETELY RESPONSIBLE FOR WORKING CONDITIONS ON THE JOB SITE, INCLUDING SAFETY OF ALL PERSONS AND PROPERTY DURING PERFORMANCE OF THE WORK. THIS REQUIREMENT WILL APPLY CONTINUOUSLY AND NOT BE LIMITED TO NORMAL WORKING HOURS.
- EARTHWORK QUANTITIES (UNADJUSTED FOR SHRINK OR SWELL):
  - 2" STRIPPING OVER 811,706 SF (INCLUDING LOT 15): 5,000 CY±
  - 2" STRIPPING OVER 680,230 SF (NOT INCLUDING LOT 15): 4,200 CY±STRIPPINGS TO BE STOCKPILED AND UTILIZED TO CAP ALL PROPOSED FILL.
- SOIL IMPORTATION: 44,720 CY± (INCLUDING LOT 15)  
SOIL IMPORTATION: 37,890 CY± (NOT INCLUDING LOT 15)  
  
SOIL EXCAVATION AND OFFHAUL: 0 CY±
- THE ESTIMATED EARTHWORK QUANTITIES ARE DETERMINED BY STANDARD ENGINEERING METHODS UTILIZING THE BEST INFORMATION AVAILABLE. IT IS THE CONTRACTOR'S RESPONSIBILITY TO PERFORM AN INDEPENDENT QUANTITY ESTIMATE FOR BIDDING PURPOSES AND TO VERIFY THE ENGINEER'S ESTIMATE OF GRADING QUANTITIES. ESTIMATED EARTHWORK QUANTITIES MAY VARY DEPENDING UPON THE ACTUAL DEPTH OF STRIPPING AND DEMOLITION ACTIVITIES.

TEMPORARY STABILIZED CONSTRUCTION ENTRANCE DESIGN AND CONSTRUCTION SPECIFICATIONS

- THE MATERIAL FOR CONSTRUCTION OF THE PAD SHALL BE 2" TO 3" STONE.
- THE THICKNESS OF THE PAD SHALL NOT BE LESS THAN 8".
- THE WIDTH OF THE PAD SHALL NOT BE LESS THAN THE FULL WIDTH OF ALL POINTS OF INGRESS OR EGRESS.
- THE LENGTH OF THE PAD SHALL BE AS REQUIRED, BUT NOT LESS THAN 25 FEET.
- THE ENTRANCE SHALL BE MAINTAINED IN A CONDITION THAT WILL PREVENT TRACKING OR FLOWING OF SEDIMENT ONTO PUBLIC RIGHT-OF-WAY. THIS MAY REQUIRE PERIODIC TOP DRESSING WITH ADDITIONAL STONE AS CONDITIONS DEMAND, AND REPAIR AND/OR CLEANING OF ANY MEASURES USED TO TRAP SEDIMENT. ALL SEDIMENT SPILLED, DROPPED, WASHED OR TRACKED ONTO PUBLIC RIGHT-OF-WAY SHALL BE REMOVED IMMEDIATELY.
- WHEN NECESSARY, WHEELS SHALL BE CLEANED TO REMOVE SEDIMENT PRIOR TO ENTRANCE ONTO PUBLIC RIGHT-OF-WAY. WHEN WASHING IS REQUIRED, IT SHALL BE DONE ON AN AREA STABILIZED WITH CRUSHED STONE THAT DRAINS INTO AN APPROVED SEDIMENT TRAP OR SEDIMENT BASIN. ALL SEDIMENT SHALL BE PREVENTED FROM ENTERING ANY STORM DRAIN, DITCH, OR WATERCOURSE THROUGH THE USE OF SAND BAGS, GRAVEL, BOARDS OR OTHER APPROVED METHODS.

SILT FENCE/FILTER BARRIER MAINTENANCE NOTES:

- SILT FENCES AND FILTER BARRIERS SHALL BE INSPECTED IMMEDIATELY AFTER EACH RAINFALL AND AT LEAST DAILY DURING PROLONGED RAINFALL. ANY REQUIRED REPAIRS SHALL BE MADE IMMEDIATELY.
- SHOULD THE FABRIC ON A SILT FENCE OR FILTER BARRIER DECOMPOSE OR BECOME INEFFECTIVE PRIOR TO THE END OF THE BARRIER'S EXPECTED USABLE LIFE AND THE BARRIER STILL IS NECESSARY, THE FABRIC SHALL BE REPLACED PROMPTLY.
- SEDIMENT DEPOSITS SHOULD BE REMOVED WHEN DEPOSITS REACH APPROXIMATELY ONE-HALF THE HEIGHT OF THE BARRIER.
- ANY SEDIMENT DEPOSITS REMAINING IN PLACE AFTER THE SILT FENCE OR FILTER BARRIER IS NO LONGER REQUIRED SHALL BE DRESSED TO CONFORM WITH THE EXISTING GRADE, PREPARED AND SEEDED.

FIBER ROLL/STRAW WATTLE NOTES CONSTRUCTION AND MAINTENANCE:

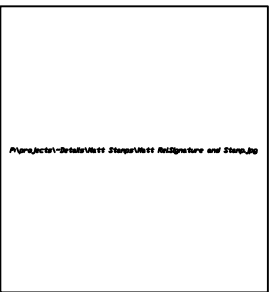
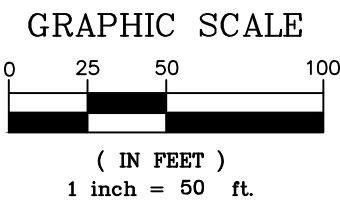
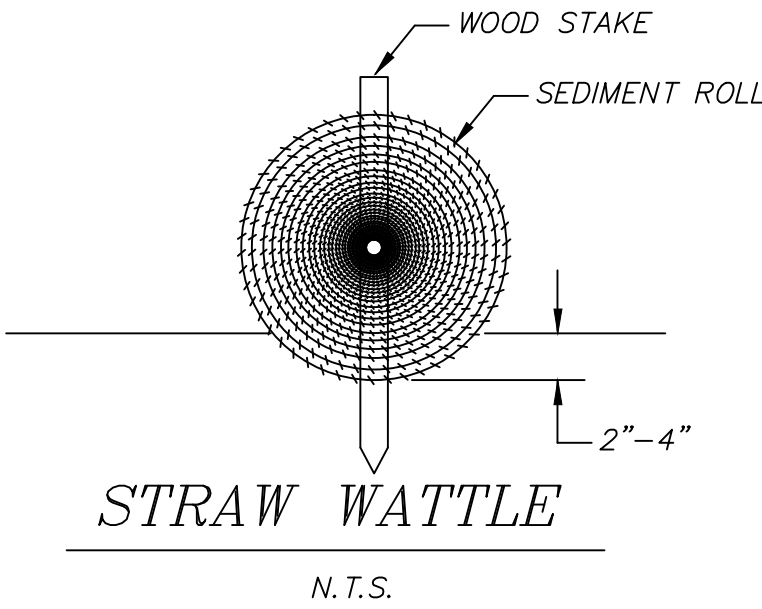
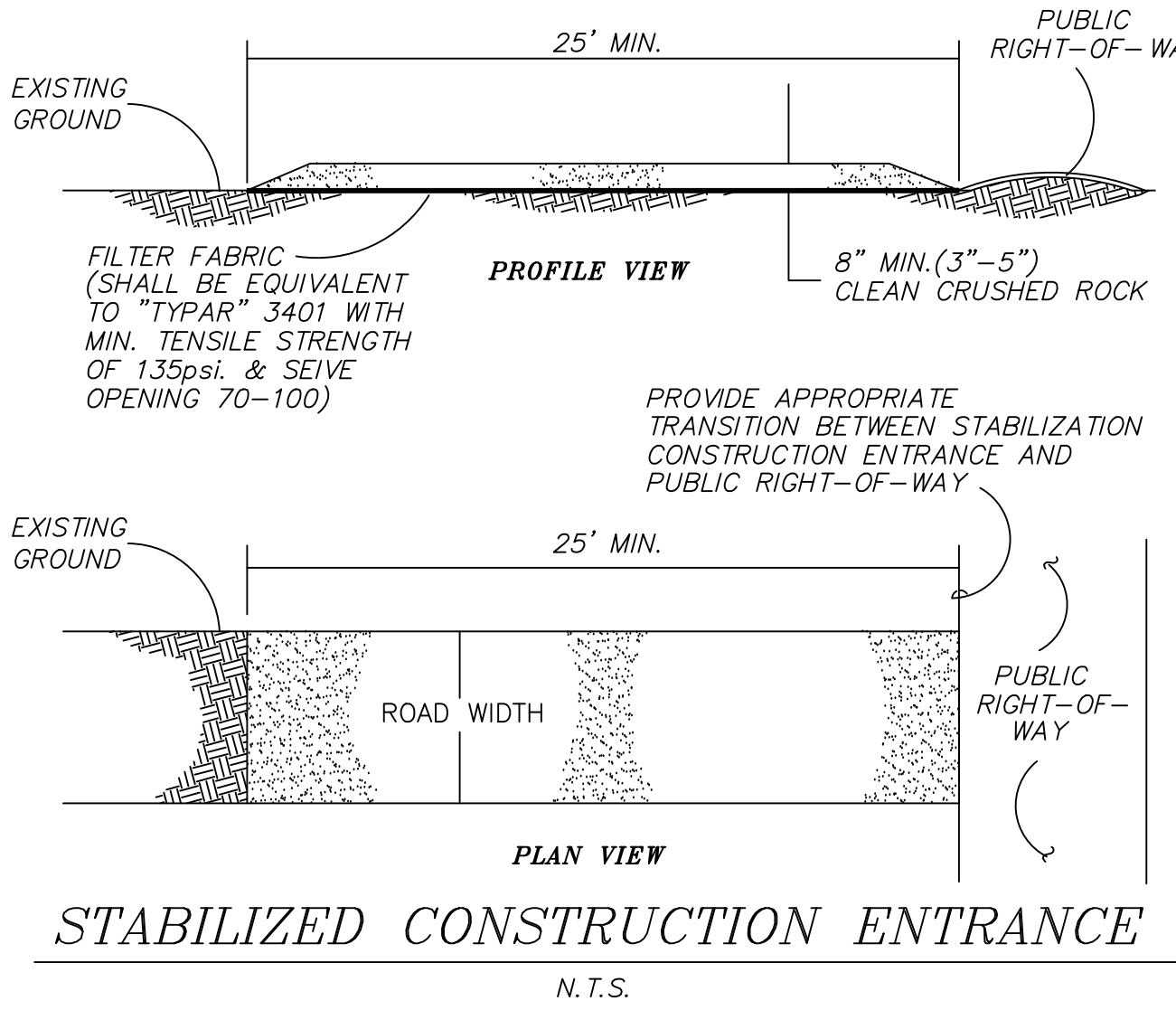
- FOLLOW MANUFACTURER'S RECOMMENDATIONS FOR INSTALLATION. IN GENERAL, WILL BE AS FOLLOWS:
- FINE GRADE THE SUBGRADE BY HAND, DRESSING WHERE NECESSARY TO REMOVE LOCAL DEVIATIONS AND TO REMOVE LARGER STONES OR DEBRIS THAT WILL INHIBIT INTIMATE CONTACT OF THE FIBER ROLL WITH THE SUBGRADE.
- PRIOR TO ROLL INSTALLATION, CONTOUR A CONCAVE KEY TRENCH 50 TO 100 mm (2 TO 4 INCHES) DEEP ALONG THE PROPOSED INSTALLATION ROUTE.
- SOIL EXCAVATED IN TRENCHING SHOULD BE PLACED ON THE UPHILL OR FLOW SIDE OF THE ROLL TO PREVENT WATER FROM UNDERCUTTING THE ROLL.
- PLACE FIBER ROLLS INTO THE KEY TRENCH AND STAKE IN THE CENTER OF THE ROLL WITHIN 6 FEET OF EACH END AND THEN EVERY SIX FEET WITH 1" X 2" X 23" STAKES.
- STAKES ARE TYPICALLY DRIVEN INTO THE CENTER OF THE ROLL, WHEN MORE THAN ONE FIBER ROLL IS PLACED IN A ROW, THE ROLLS SHOULD BE ABUTTED SECURELY TO ONE ANOTHER TO PROVIDE A TIGHT JOINT, NOT OVERLAPPED.
- DESIGNED FOR LOW SURFACE FLOWS NOT TO EXCEED 1 CFS FOR SMALL AREAS.
- DESIGNED FOR SHORT SLOPES OR SLOPES FLATTER THAN 3:1. PRIMARY PURPOSE IS NOT SEDIMENT CONTROL, ALTHOUGH DO PROVIDE SOME SEDIMENT REMOVAL.
- REPAIR OT REPLACE SPLIT, TORN, UNRAVELING, OR SLUMPING FIBER ROLLS.
- INSPECT FIBER ROLLS WHEN RAIN IS FORECAST, FOLLOWING RAIN EVENTS, AND AT LEAST DAILY DURING PROLONGED RAINFALL. PERFORM REQUIRED MAINTENANCE.
- IN MOST CASES, FIBER ROLLS DO NOT REQUIRE REMOVAL AND CAN BE ABANDONED IN PLACE. IF NOT EXCESSIVELY SOILED, ROLLS MAY BE REMOVED, REPLACED, AND REUSED.

GRADING AND EROSION CONTROL NOTES:

- MATERIALS FROM EXCAVATION IN THE PREMISES THAT ARE NOT NEEDED FOR BACKFILL SHALL BE TRANSPORTED AWAY FROM THE WORK SITE. IF NEEDED FOR FUTURE BACKFILL, THE EXCAVATED MATERIALS MUST BE DEPOSITED IN A SUITABLE AREA AND MUST BE COVERED WITH FIBER MAT, PLASTIC SHEETS, OR OTHER EQUIVALENT PROTECTION FROM WEATHER TO PREVENT EROSION.
- WHEN RAINING OR WHEN WORK IS NOT BEING DONE, EXPOSED SLOPES OR GROUNDS SHALL BE COVERED WITH WATERPROOF COVERING OR WITH FIBER MAT.
- ALL SOIL STOCKPILES MUST BE PROTECTED WITH PLASTIC COVER AFTER EVERY WORKDAY.
- THE STREET AREA MUST BE SWEEPED AND CLEANED TO ELIMINATE TRACK OF DIRT DURING THE DAY AND AT THE END OF WORKDAY.
- CONSTRUCTION PARKING MUST BE LIMITED TO WITHIN THE STABILIZED CONSTRUCTION ENTRANCE OR INSIDE THE OWNER'S PROPERTY.
- CONSTRUCTION SIGN MUST BE POSTED IN FRONT OF THE PROPERTY AND INSTALLED FIVE FEET FROM THE EDGE OF PAVEMENT OR BACK OF SIDEWALK. THE SIGN MUST CONTAIN THE NAME AND PHONE NUMBER OF THE CONTRACTOR WHERE HE CAN BE CONTACTED TWENTY-FOUR HOURS A DAY, SEVEN DAYS A WEEK (24/7) AND MUST BE VISIBLE AND LEGIBLE FROM THE STREET OR ROAD FRONTING THE PROPERTY. THE SIZE OF THE LETTERING FOR THE NAME AND PHONE NUMBER OF THE CONTRACTOR SHALL BE NOT LESS THAN THREE INCHES IN HEIGHT.
- TWENTY FOUR HOURS PRIOR TO START OF GRADING, THE APPLICANT MUST NOTIFY IN WRITING THE IMMEDIATE OR ADJACENT NEIGHBORS ABOUT THE IMPENDING GRADING WORK.
- THE GRADING CONTRACTOR HAS TO OBSERVE STRICTLY THE WORKING HOURS STIPULATED IN THE CONDITIONS OF APPROVAL BY THE CASE PLANNER.
- EVERY TIME A VEHICLE GETS OUT OF THE WORK AREA AND INTO THE STREET, IT MUST HAVE ITS TIRES WASHED AT A LOCATION INSIDE THE PROPERTY DESIGNATED AS "VEHICLE TIRE WASHING AREA".

ADDITIONAL EROSION CONTROL NOTES

- EROSION CONTROL MEASURES PER: 1) "MANUAL OF STANDARDS FOR EROSION & SEDIMENT CONTROL MEASURES," PUBLISHED BY ABAG AND 2) "EROSION AND SEDIMENT CONTROL BMPs", PUBLISHED BY CALIFORNIA STORM WATER QUALITY ASSOCIATION.
- NOTWITHSTANDING EROSION CONTROL MEASURES SHOWN ON THIS PLAN, SEDIMENT AND EROSION CONTROL IS REQUIRED FOR ALL AREAS WITH DISTURBED OR GRADED SOIL. AFTER EACH STORM EVENT, ALL SEDIMENT AND EROSION CONTROL MEASURES SHALL BE INSPECTED, MAINTAINED, AND MODIFIED AS REQUIRED.
- THE DOWNSTREAM STORM SYSTEM(S) SHOULD BE INSPECTED TO VERIFY FREEDOM FROM OBSTRUCTIONS AND PROPER FUNCTION.
- THIS PLAN MAY NOT COVER ALL THE SITUATIONS THAT ARISE DURING CONSTRUCTION DUE TO UNANTICIPATED FIELD CONDITIONS. VARIATIONS MAY BE MADE TO THESE PLANS IN THE FIELD, SUBJECT TO APPROVAL OF THE GRADING INSPECTOR.
- ALL EROSION CONTROL MEASURES SHALL BE MAINTAINED UNTIL DISTURBED AREAS ARE STABILIZED AND CHANGES TO THIS EROSION AND SEDIMENT CONTROL PLAN SHALL BE MADE TO MEET FIELD CONDITIONS ONLY WITH THE APPROVAL OF OR AT THE DIRECTION OF THE GRADING INSPECTOR.



LEGEND
NOTE: CONTOURS BY INTERPOLATION, APPROXIMATE ONLY.

REFERENCES
FIELD BOOK No.
FILE MAP: R-1092
POLICY No.:
DATE: NGVD 29
MISC. REF: B-9010, X-3280, 17643 FILE, X-3247-1
9642, 17643, 18636, 0-1017

REVISIONS
4/11/14 - MISC. REV.

KISTER, SAVIO & REI, INC. LAND SURVEYORS – CIVIL ENGINEERS 3095 RICHMOND PARKWAY, SUITE 214 RICHMOND, CALIFORNIA 94806 PHONE: (510) 222-4020 FAX: (510) 222-3718 E-MAIL: info@srinc.net	
FOR: CJC TRUCKING, INC.	JOB No. 19327
SCALE: 1" = 50'	
DATE: FEBRUARY 24, 2014	DWG No. 0-1267

DESCRIPTION
GRADING & EROSION CONTROL NOTES
SUBDIVISION 5754
RICHMOND, CALIFORNIA

**ENGINEERING SERVICES DEPARTMENT****CITY OF RICHMOND**450 Civic Center Plaza, Suite 400, CA 94804  
Phone: (415) 779-2100 Fax: (415) 779-2101**GRADING PERMIT**CJC TRUCKING  
180 BROADWAY #G  
RICHMOND, CA 94804
 Permit Number: **EN14-05203**  
 Address: FREETHY BLVD  
 Invoice Date: April 23, 2014  
 Permit Tech: GD

<b>Fee Description</b>	<b>Account</b>	<b>Units</b>	<b>Amount</b>
STRM - Swpp Monthly Insp	40623431320239	1	\$630.00
<b>ENG - Grading Inspection Fees</b>			
<b>Fee Description</b>	<b>Account</b>	<b>Units</b>	<b>Amount</b>
Grading Inspection > 10,000 Cubic Yards	15121131341506	0	\$920.00
	<b>Subtotal for ENG - Grading Inspection Fees</b>		<b>920.00</b>
<b>Engineering Services Fee</b>			
<b>Fee Description</b>	<b>Account</b>	<b>Units</b>	<b>Amount</b>
Administrative Processing Fee	15121131340418	0	\$108.00
Consultant Services	151 206624	0	\$1,080.00
	<b>Subtotal for Engineering Services Fee</b>		<b>1,188.00</b>
<b>Engineering Services Hourly Rates</b>			
<b>Fee Description</b>	<b>Account</b>	<b>Units</b>	<b>Amount</b>
Senior Civil Engineer	15121131341506	6	\$1,260.00
	<b>Subtotal for Engineering Services Hourly Rates</b>		<b>1,260.00</b>
<b>Stormwater Hourly Rates</b>			
<b>Fee Description</b>	<b>Account</b>	<b>Units</b>	<b>Amount</b>
STRM - Source Control Inspector II	40623431320239	16	\$2,336.00
	<b>Subtotal for Stormwater Hourly Rates</b>		<b>2,336.00</b>
<b>TOTAL:</b>			<b>\$6,334.00</b>
<b>AMOUNT PAID:</b>			<b>6,334.00</b>
<b>TOTAL AMOUNT DUE:</b>			<b>\$0.00</b>

SEE BACK SIDE

**GRADING PERMIT #EN14-05203**

"The Permittee, for himself, his contractors and employees, agrees to save, indemnify and hold harmless the City of Richmond or it's representative from all liabilities and claims for damages by reason of injury or death to any person or persons, or damage to property from any cause whatsoever while in, upon or in any way connected with the work covered by this Grading Permit, and does further agree to defend the City in any claim arising out of or as a result of the work done under this permit."

I hereby acknowledge that I have read this application and state that the information is correct and agree to comply with all City Ordinances and State laws, and the regulations of the State Department of Industrial Relations and Industrial Accident Commission, relating to the character of work, equipment and labor personnel involved in the project.

Owner/Representative (Print): Connexis Garbon

Signature: [Signature]

Date: 4-28-14

***Applicant is hereby made to perform grading work in accordance with requirements of Grading Ordinance No. 4-80 N.S., as specified.***

1. All work performed under the authority of this permit shall be limited to the hours of 8:00 a.m. to 5:00 p.m. Monday through Friday, exclusive.
2. All equipment and supplies used in conjunctions with work performed under this permit, including equipment used in the transportation of the equipment or supplies, must be stored off of public right-of-way.
3. Applicant is responsible to keep all public rights-of-way and off-site areas clean from all dirt, mud, dust and debris at all times. Water trucks(s) are required on the job site.
4. All exposed slopes shall be re-vegetated for erosion and sediment control, refer to A.B.A.G. "Manual of Standards for Erosion and Sediment Control Measures."
5. Any graded areas that will be left incomplete or unlandscaped by September 1 will require an erosion control plan which must be submitted for approval.
6. Applicant shall indemnify and save the City, its agents, officers and employees harmless from and against any and all liability, claims, suits, actions, damages, penalties and/or causes of action arising during the term of this Grading Permit out of any personal injury, bodily injury, loss of life or damage to property, violation of any Federal, State or municipal law or ordinance or other cause in connection with the activities of Applicant, contractors, subcontractors, agents and employees under this Grading Permit or on account of the performance or character of the work; unforeseen difficulties, accidents, occurrences or other causes and from and against all costs, counsel fees, expenses incurred in obtaining expert testimony and the attendance of witnesses, expenses and liability incurred in and about any such claim, the investigation thereof or the defense of any action or proceedings brought thereon; and from and against any orders judgments or decrees which may be entered therein unless arising out of the sole negligence or willful misconduct of the City.
7. In authorizing activities under this Permit, the City has relied on the information and data which permittee has provided in connection with this permit application. If such information and data provide to be false, incomplete or inaccurate the activity may be disqualified from this permit and City may, in addition, institute appropriate legal proceedings.
8. Issuance of this permit by the City of Richmond does not necessarily constitute full approval by all Government Agencies. Applicant shall contact all other concerned agencies, agencies, specifically but not necessarily limited to Contra Costa County Flood Control District, Environmental Protection Agency, County Health Department, Bay Conservation and Development Commission, State of California Department of Fish & Game and United States Army Corps of Engineers before this permit can be considered valid.

Engineering Services Department 04/14

BACK SIDE

**JHS  
Properties**

2165 Francisco Boulevard East • Suite A  
San Rafael, CA 94901  
(415) 453-0212  
fax (415) 453-0421

May 2, 2014

Richard Mitchell  
Planning Director  
City of Richmond  
hand delivered

**Re: Planning Application For Solar Farm at Freethy Industrial Park**

Dear Richard,

Attached please find our application for planning approval for the 2 megawatt ground mount solar farm to be built on 6 acres of land at Freethy Industrial Park.

As we discussed, the power will be sold to Marin Clean Energy (MCE) pursuant to their Feed-In-Tariff program. It is a competitive program, and we currently are in a race with at least two other projects in Marin County to qualify for top tier pricing for our project. Without top tier pricing, our project will not pencil economically. To beat the other projects, we need to demonstrate planning approval for our project. For that purpose we are applying for a Zoning Determination Letter. With that in hand, we can sign a contract with MCE and proceed to a full Building Permit application including all required electrical and structural engineering.

You had asked us to review the setback, fencing, and landscaping requirements to ensure consistency with the North Richmond Shoreline Specific Plan (NRSSP). We have done so and can report the following:

**Street Right of Way:**

The solar project fronts on Elmar Court, which is a City owned street. Existing pavement width ranges from 30-44 feet, within an overall 60 feet public right-of-way. There are no sidewalks or landscaping along the existing street front. The street has been blocked off from public access since at least the mid-1990's, and the City has not maintained the streets. As a result they are in dis-repair with weeds growing though the pavement in places. For security reasons, we prefer that the street continue to be blocked off from public access until such time as future development in the area provides 'eyes-on' daily activity to help prevent vandalism and theft.

**Building Setback:**

Freethy Industrial Park is designated Office/Industrial Flex in the NRSSP. Table 2 on page 54, titled 'Development Standards' (copy attached), shows a setback requirement of zero for front, side, street side, and rear yards. Our security fencing for the project has therefore been placed on the property line, leaving a distance of 9-15 feet to the edge of existing pavement on Elmar Court. This complies with the "Typical Street" diagram contained on page 66 of the NSRRP (copy attached).



**Landscaping:**

Theoretically the 9-15 foot area between the fencing and existing street pavement could be landscaped with shrubs and groundcover, as outlined in Table 5 page 94 of the NRSSP (copy attached). However, it seems to make little sense to maintain and water a landscaped street front when the street itself has weeds growing through it. Rather, for security and screening reasons, we propose to plant thorn bushes on 10 foot centers around the entire perimeter of the security fence. We have chosen *Colletia paradoxa* (Anchor Plant) for its formidable thorns and attractive appearance. It grows 6-8 feet tall and 8-12 feet wide, which is perfect for screening our proposed fencing. While not native, *Colletia paradoxa* loves sun and is highly drought and deer tolerant. As such, it is extremely well suited to thrive in this setting. A drip irrigation system will be installed, though the plant reportedly needs little water once established. A cut sheet and photos are included in the project plans.

**Fencing:**

Far and away the largest challenge we face at this location will be to prevent vandalism and theft of the solar panels and copper wiring. This area, and this site in particular, has had wires stripped out of street lights, including on the Richmond Parkway itself. There is very little 'eyes on' human activity in this area, so it is absolutely critical that the project include a robust security fencing system. We have chosen to use a carbon steel welded wire mesh fencing system, which is highly impervious to cutting or climbing. Unlike chain link fencing, the welded mesh openings are too small (1/2 inch tall by 3 inches) for bolt cutters or fingers and toes to reach into. Green thorn bushes planted along the fence will provide attractive landscape screening. As the NRSSP does not contain any design standards for fencing, we feel this provides an acceptable aesthetic approach. Photos of the fencing with solar panels in the background are included in the plan set.

Please let me know if you have questions on any of the above. I may be reached at 415-472-7700, or by email at [rherbst@jhsproperties.com](mailto:rherbst@jhsproperties.com).

Best regards,



Bob Herbst  
JHS Properties

CITY OF RICHMOND  
**PLANNING DIVISION**  
 Phone: (510) 620-6706  
 Fax: (510) 620-6858



450 Civic Center Plaza  
 Richmond, California 94804-1630  
 P.O. Box 4046  
 www.ci.richmond.ca.us/planning

## PLANNING APPLICATION FORM

### IMPORTANT NOTICE TO APPLICANT!

Applicants are strongly encouraged to contact their neighborhood council prior to submitting an application to be reviewed or heard by the Design Review Board or the Planning Commission. Neighborhood council contact information is available at the Planning Division information counter.

#### APPLICATION TYPE(S)

- |   |  |   |  |
|---|--|---|--|
| <input type="checkbox"/> Plan Amendment/Rezone      | <input type="checkbox"/> Variance                    | <input type="checkbox"/> Certificate of Compliance    | <input checked="" type="checkbox"/> Zoning Verification Letter |
| <input type="checkbox"/> Zoning Ordinance Amendment | <input type="checkbox"/> Design Review Permit        | <input type="checkbox"/> Lot Line Adjustment          | <input type="checkbox"/> Over-the-Counter Plan Check           |
| <input type="checkbox"/> Conditional Use Permit     | <input type="checkbox"/> Zoning Administrator Permit | <input type="checkbox"/> Historic Preservation Permit | <input type="checkbox"/> Other:                                |
| <input type="checkbox"/> Administrative Use Permit  | <input type="checkbox"/> Tentative Parcel Map        | <input type="checkbox"/> Sign Permit                  |  |
| <input type="checkbox"/> Temporary Use Permit       | <input type="checkbox"/> Tentative Tract Map         | <input type="checkbox"/> Fence Permit                 |  |

#### PROJECT INFORMATION

Site Address: Northwest Corner Goodrick Ave / Richmond Pkwy, <sup>Freeport</sup> ~~Industrial~~ Park  
 APN(s): 408-220 - 06, 07, 35, 36, 37, 38  
 Project Description: 2 megawatt ground mount solar farm

#### PROPERTY OWNER ACKNOWLEDGEMENT & AUTHORIZATION

Property Owner's Name: Joe & Heidi Shekoy, Richmond Development Co, LLC  
 Mailing Address: (Street, City, State, Zip) 400 F Smith Ranch Rd, San Rafael, CA 94903  
 Phone: 415 472 7700 Fax: 415 507 0299 Email: rherbst@jhsproperties.net

I recognize that this application is subject to the California Environmental Quality Act (CEQA). The City, in granting this application, may attach any conditions necessary to insure that the proposal will not be detrimental to the welfare of property or persons residing or working in the neighborhood or in the City. I further certify that the information and exhibits submitted for this proposal are true and correct. In signing this application, I, as property owner, have full legal capacity to, and hereby do, authorize the filing of this application. I understand that conditions of approval are binding. I agree to be bound by those conditions, subject only to the right to object at the hearing on this application or during the appeal period.

X Joe Shekoy 5/2/14  
 Signature Date

#### APPLICANT ACKNOWLEDGEMENT & AUTHORIZATION

Applicant's Name: Robert Herbst  
 Mailing Address: (Street, City, State, Zip) 400 F Smith Ranch Rd  
 Phone: 415 472 7700 Fax: 415 507 0299 Email: rherbst@jhsproperties.net

In signing this application, I, as applicant, represent to have obtained authorization of the property owner to file this application. I agree to be bound by conditions of approval, subject only to the right to object at the hearing on this application or during the appeal period. If this application has not been signed by the property owner, I have attached separate documentation of full legal capacity to file this application and agreement to conditions of approval, subject only to the right to object at the hearings or during the appeal period.

X Robert Herbst 5/2/14  
 Signature Date

#### PLANNING DIVISION USE ONLY

File No.:	Intake Staff:	Applied Date:
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DEPARTMENT OF THE ARMY  
SAN FRANCISCO DISTRICT, U.S. ARMY CORPS OF ENGINEERS  
1455 MARKET STREET, 16<sup>TH</sup> FLOOR  
SAN FRANCISCO, CALIFORNIA 94103-1398

MAY 13 2016

Regulatory Division

Subject: File No. 2006-303600S

Mr. Chip Bouril  
LSA Associates, Inc.  
157 Park Place  
Point Richmond, California 94801

Dear Mr. Bouril:

This correspondence is in reference to your submittal of May 20, 2014, on behalf of JHS Properties, requesting a preliminary jurisdictional determination of the extent of navigable waters of the United States (U.S.) and waters of the U.S. occurring on a roughly rectangular property of approximately 28 acres, known as the Bayside Village project site, located on the north side of the Richmond Parkway, west of Goodrick Avenue, east of San Pablo Bay, in the City of Richmond, Contra Costa County, California (APNs 408-220-003, 408-220-0006, 408-220-007, 408-220-023, 408-220-024, 408-220-025, 408-220-026, 408-220-032, 408-220-033, 408-220-034, 408-220-035, 408-220-036, 408-220-037, 408-220-038, 408-220-039, 408-220-041, 408-220-042, and 408-220-043, Lat: 37.9769° N, Lon: 122.3685° W).

All proposed discharges of dredged or fill material occurring below the plane of ordinary high water in non-tidal waters of the U.S.; or below the high tide line in tidal waters of the U.S.; and within the lateral extent of wetlands adjacent to these waters, typically require Department of the Army authorization and the issuance of a permit under Section 404 of the Clean Water Act of 1972, as amended (33 U.S.C. § 1344 *et seq.*). Waters of the U.S. generally include the territorial seas; all traditional navigable waters which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including waters subject to the ebb and flow of the tide; wetlands adjacent to traditional navigable waters; non-navigable tributaries of traditional navigable waters that are relatively permanent, where the tributaries typically flow year-round or have continuous flow at least seasonally; and wetlands directly abutting such tributaries. Where a case-specific analysis determines the existence of a "significant nexus" effect with a traditional navigable water, waters of the U.S. may also include non-navigable tributaries that are not relatively permanent; wetlands adjacent to non-navigable tributaries that are not relatively permanent; wetlands adjacent to but not directly abutting a relatively permanent non-navigable tributary; and certain ephemeral streams in the arid West.

All proposed structures and work, including excavation, dredging, and discharges of dredged or fill material, occurring below the plane of mean high water in tidal waters of the U.S.; in former diked baylands currently below mean high water; outside the limits of mean high water but affecting the navigable capacity of tidal waters; or below the plane of ordinary high water in

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non-tidal waters designated as navigable waters of the U.S., typically require Department of the Army authorization and the issuance of a permit under Section 10 of the Rivers and Harbors Act of 1899, as amended (33 U.S.C. § 403 *et seq.*). Navigable waters of the U.S. generally include all waters subject to the ebb and flow of the tide; and/or all waters presently used, or have been used in the past, or may be susceptible for future use to transport interstate or foreign commerce.

The enclosed delineation map entitled, "Preliminary Jurisdictional Determination: Bayside Village, File 2006-303600S," in one sheet and date certified May 12, 2016, depicts the extent and location of wetlands and other waters of the U.S. within the boundary area of the site that **may be** subject to U.S. Army Corps of Engineers' regulatory authority under Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act. This preliminary jurisdictional determination is based on the current conditions of the site, as previously verified during a field investigation of November 13, 2006, and June 20, 2007, a review of available digital photographic imagery, and a review of other data included in your submittal. While this preliminary jurisdictional determination was conducted pursuant to Regulatory Guidance Letter No. 08-02, *Jurisdictional Determinations*, it may be subject to future revision if new information or a change in field conditions becomes subsequently apparent. The basis for this preliminary jurisdictional determination is fully explained in the enclosed *Preliminary Jurisdictional Determination Form*, which has been signed and dated by this office. You are requested to sign and date this form and return it to this office within two weeks of receipt.

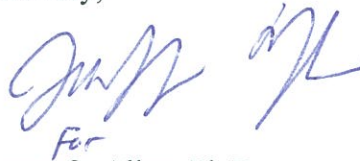
You are advised that the preliminary jurisdictional determination may **not** be appealed through the U.S. Army Corps of Engineers' *Administrative Appeal Process*, as described in 33 C.F.R. Part 331 (65 Fed. Reg. 16,486; Mar. 28, 2000). Under the provisions of 33 C.F.R. § 331.5(b)(9), non-appealable actions include preliminary jurisdictional determinations since they are considered to be only advisory in nature and make no definitive conclusions on the jurisdictional status of the water bodies in question. However, you may request this office to provide an approved jurisdictional determination that precisely identifies the scope of jurisdictional waters on the site; an approved jurisdictional determination may be appealed through the *Administrative Appeal Process*. If you anticipate requesting an approved jurisdictional determination at some future date, you are advised not to engage in any on-site grading or other construction activity in the interim to avoid potential violations and penalties under Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act. Finally, you may provide this office new information for further consideration and request a reevaluation of this preliminary jurisdictional determination.

You may refer any questions on this matter to Justin Yee of my Regulatory staff by telephone at (415) 503-6788 or by e-mail at Justin.J.Yee@usace.army.mil. All correspondence should be addressed to the Regulatory Division, South Branch, referencing the file number at the head of this letter.

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The San Francisco District is committed to improving service to our customers. My Regulatory staff seeks to achieve the goals of the Regulatory Program in an efficient and cooperative manner, while preserving and protecting our nation's aquatic resources. If you would like to provide comments on our Regulatory Program, please complete the Customer Service Survey Form available on our website:  
<http://www.spn.usace.army.mil/Missions/Regulatory.aspx>.

Sincerely,

A handwritten signature in blue ink, appearing to read "A. Allen", with a small "For" written below it.

Aaron O. Allen, Ph.D.  
Acting Chief, Regulatory Division

Enclosures

Copy Furnished (w/o encls):

CA RWQCB, Oakland, CA  
CA SWRCB, Sacramento, CA



## PRELIMINARY JURISDICTIONAL DETERMINATION FORM

## San Francisco District

**This Preliminary Jurisdictional Determination finds that there “*may be*” waters of the United States in the subject review area and identifies all such aquatic features, based on the following information:**

Regulatory Division: South Branch

File Number: 2006-303600S

PJD Completion Date: 05-12-2016

**Review Area Location**

City/County: Richmond/Contra Costa County State: California

Nearest Named Waterbody: San Pablo Bay

Approximate Center Coordinates of Review Area

Latitude (degree decimal format): 37.9769°N

Longitude (degree decimal format): -122.3685°W

Approximate Total Acreage of Review Area: 28 Select

File Name: Bayside Village

**Applicant or Requestor Information**

Name: Chip Bouril

Company Name: LSA Associates, Inc.

Street/P.O. Box: 157 Park Place

City/State/Zip Code: Point Richmond, CA

**Estimated Total Amount of Waters in Review Area**Non-Wetland Waters: 160 lineal feet 4 feet wide and/or  
0.019 acre(s) Flow Regime: IntermittentWetlands: lineal feet feet wide and/or  
0.242 acre(s) Cowardin Class: Palustrine- emergent**Name of Section 10 Waters Occurring in Review Area**

Tidal: Brackish Tidal Ditch

Non-Tidal: N/A

☒ Office (Desk) Determination☐ Field Determination:

Date(s) of Site Visit(s):

**SUPPORTING DATA: Data reviewed for Preliminary JD (check all that apply – checked items should be included in case file and, where checked and requested, appropriately reference sources below)**

☒ Maps. Plans, plots or plat submitted by or on behalf of applicant/requestor (specify): LSA, 2014☒ Data sheets submitted by or on behalf of applicant/requestor (specify): LSA, 2007, and 2014 references☒ Corps concurs with data sheets/delineation report.☐ Corps does not concur with data sheets/delineation report.☐ Data sheets prepared by the Corps.☐ Corps navigable waters' study (specify):☐ U.S. Geological Survey Hydrologic Atlas:☐ USGS NHD data.☐ USGS HUC maps.☒ U.S. Geological Survey map(s) (cite quad name/scale): CA-RICHMOND☐ USDA Natural Resources Conservation Service Soil Survey.☐ National wetlands inventory map(s) (specify):☐ State/Local wetland inventory map(s) (specify):☐ FEMA/FIRM maps.☐ 100-year Floodplain Elevation (specify, if known):☐ Photographs: ☐ Aerial (specify name and date):☐ Other (specify name and date):☐ Previous JD determination(s) (specify File No. and date of response letter):☒ Other information (specify): This is a re-verification of an approved JD that was verified by site visits by the prior project manager in 2007. The re-verification request includes the results of a 2014 field investigation that confirms there are no changes.

**IMPORTANT NOTE: If the information recorded on this form has not been verified by the Corps, the form should not be relied upon for later jurisdictional determinations.**

Signature and Date of Regulatory Project Manager  
(REQUIRED)

Signature and Date of Person Requesting Preliminary JD  
(REQUIRED, unless obtaining the signature is impracticable)

## Exhibit 11

**EXPLANATION OF PRELIMINARY AND APPROVED JURISDICTIONAL DETERMINATIONS:**

1. The Corps of Engineers believes that there may be jurisdictional waters of the United States on the subject site, and the permit applicant or other affected party who requested this preliminary JD is hereby advised of his or her option to request and obtain an approved jurisdictional determination (JD) for that site. Nevertheless, the permit applicant or other person who requested this preliminary JD has declined to exercise the option to obtain an approved JD in this instance and at this time.

2. In any circumstance where a permit applicant obtains an individual permit, or a Nationwide General Permit (NWP) or other general permit verification requiring “preconstruction notification” (PCN), or requests verification for a non-reporting NWP or other general permit, and the permit applicant has not requested an approved JD for the activity, the permit applicant is hereby made aware of the following: (1) the permit applicant has elected to seek a permit authorization based on a preliminary JD, which does not make an official determination of jurisdictional waters; (2) that the applicant has the option to request an approved JD before accepting the terms and conditions of the permit authorization, and that basing a permit authorization on an approved JD could possibly result in less compensatory mitigation being required or different special conditions; (3) that the applicant has the right to request an individual permit rather than accepting the terms and conditions of the NWP or other general permit authorization; (4) that the applicant can accept a permit authorization and thereby agree to comply with all the terms and conditions of that permit, including whatever mitigation requirements the Corps has determined to be necessary; (5) that undertaking any activity in reliance upon the subject permit authorization without requesting an approved JD constitutes the applicant’s acceptance of the use of the preliminary JD, but that either form of JD will be processed as soon as is practicable; (6) accepting a permit authorization (e.g., signing a proffered individual permit) or undertaking any activity in reliance on any form of Corps permit authorization based on a preliminary JD constitutes agreement that all wetlands and other water bodies on the site affected in any way by that activity are jurisdictional waters of the United States, and precludes any challenge to such jurisdiction in any administrative or judicial compliance or enforcement action, or in any administrative appeal or in any Federal court; and (7) whether the applicant elects to use either an approved JD or a preliminary JD, that JD will be processed as soon as is practicable. Further, an approved JD, a proffered individual permit (and all terms and conditions contained therein), or individual permit denial can be administratively appealed pursuant to 33 C.F.R. Part 331, and that in any administrative appeal, jurisdictional issues can be raised (see 33 C.F.R. 331.5(a)(2)). If, during that administrative appeal, it becomes necessary to make an official determination whether CWA jurisdiction exists over a site, or to provide an official delineation of jurisdictional waters on the site, the Corps will provide an approved JD to accomplish that result, as soon as is practicable.

[illegible]



**RESOLUTION NO. 56-14****RESOLUTION OF THE CITY OF RICHMOND CITY COUNCIL INTERPRETING AND IMPLEMENTING THE RICHMOND GENERAL PLAN 2030 AND STATE OF CALIFORNIA POLICY REGARDING SOLAR ENERGY SYSTEMS**

WHEREAS, The California Solar Rights Act<sup>1</sup> includes Civil Code Sections 714, 714.1, 801 and 801.5; Government Code Sections 65850.5, 66475.3 and 66473.1 and California Health and Safety Code Section 17959.1; and,

WHEREAS, California is a world leader in renewable energy generation. Solar and wind power, as well as emerging technologies such as biomass and fuel cells, are transforming California. Renewable energy is helping to power the state's economy, reducing our state's reliance on imported energy sources, and decreasing air pollution. California's state and local governments have set aggressive goals to expand renewable energy. Small-scale renewable energy benefits California communities. It increases energy reliability for residents and businesses by generating electricity near where it is consumed. This type of energy can also provide stable electricity prices for consumers and creates thousands of jobs across California.

WHEREAS, the State of California has adopted multiple public policy positions that support renewable energy sources, particularly solar energy, including The California Solar Initiative, a 2006 initiative to install 3,000 megawatts (M) of additional solar power by 2016.<sup>2</sup> Included in it is the Million Solar Roof Initiative. In 2011, this goal was expanded to 12,000 MW by 2020;<sup>3</sup> and,

WHEREAS, Richmond General Plan 2030 includes multiple policies, including Energy and Climate Change Policies EC1.1, EC1.2, EC3.1, EC3.A and EC3.B, that encourage the use of solar generated energy in Richmond; and,

WHEREAS, the City of Richmond is a member of Marin Clean Energy (MCE), whose mission includes "local economic and workforce benefits" by encouraging local generation projects as sources of its purchased renewable energy portfolio; and,

WHEREAS, the California Legislature has passed into law numerous provisions that encourage the installation of solar energy generating systems and removal of barriers to the installation of solar energy systems, including:

- Civil Code Section 714(a): "...it is the policy of the state to promote and encourage the use of solar energy systems and to remove obstacles thereto. Accordingly, reasonable restrictions on a solar energy system are those restrictions that do not significantly increase the cost of the system or significantly decrease its efficiency or specified performance, or that allow for an alternative system of comparable cost, efficiency, and energy conservation benefits. :
- Government Code Section 65850.5 (a): The implementation of consistent statewide standards to achieve the timely and cost effective installation of solar energy systems is not a municipal affair, as that term is used in Section 5 of Article XI of the California Constitution, but is instead a matter of statewide concern. It is the intent of the Legislature that local agencies not adopt ordinances that create unreasonable barriers to the installation of solar energy systems, including, but not limited to, design review for aesthetic purposes, and not unreasonably restrict the ability of homeowners and agricultural and business concerns to install solar energy systems. It is the policy of the state to promote and encourage the use of solar energy systems and to limit obstacles to their use. It is the intent of the Legislature that local agencies comply not only with the language of this section, but also the legislative intent to encourage the installation of

<sup>1</sup> [http://solar-rights.com/files/THE\\_CALIFORNIA\\_SOLAR\\_RIGHTS\\_ACT2.pdf](http://solar-rights.com/files/THE_CALIFORNIA_SOLAR_RIGHTS_ACT2.pdf)

<sup>2</sup> <http://www.gosolarcalifornia.ca.gov/about/csi.php>

<sup>3</sup> <http://www.energy.ca.gov/renewables/>

solar energy systems by removing obstacles to, and minimizing costs of, permitting for such systems.

- Health & Safety Code Section 17591.1(a): A city or county shall administratively approve applications to install solar energy systems through the issuance of a building permit or similar nondiscretionary permit. However, if the building official of the city or county has a good faith belief that the solar energy system could have a specific, adverse impact upon the public health and safety, the city or county may require the applicant to apply for a use permit.
- Health & Safety Code Section 17591.1(b) A city or county may not deny an application for a use permit to install a solar energy system unless it makes written findings based upon substantial evidence in the record that the proposed installation would have a specific, adverse impact upon the public health or safety, and there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact. This finding shall include the basis for the rejection of potential feasible alternatives of preventing the adverse impact.
- California Health & Safety Code Section 17591.1(c): Any conditions imposed on an application to install a solar energy system must be designed to mitigate the specific, adverse impact upon the public health and safety at the lowest cost possible.
- Government Code Section 65850.5 (b): A city or county shall administratively approve applications to install solar energy systems through the issuance of a building permit or similar nondiscretionary permit. Review of the application to install a solar energy system shall be limited to the building official's review of whether it meets all health and safety requirements of local, state, and federal law. The requirements of local law shall be limited to those standards and regulations necessary to ensure that the solar energy system will not have a specific, adverse impact upon the public health or safety. However, if the building official of the city or county has a good faith belief that the solar energy system could have a specific, adverse impact upon the public health and safety, the city or county may require the applicant to apply for a use permit.
- Government Code Section 65850.5 (c): A city or county may not deny an application for a use permit to install a solar energy system unless it makes written findings based upon substantial evidence in the record that the proposed installation would have a specific, adverse impact upon the public health or safety, and there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact. The findings shall include the basis for the rejection of potential feasible alternatives of preventing the adverse impact; and,

WHEREAS, the California Legislature passed into law the following definition of a “solar energy system:

- California Civil Code Section 801.5(a)(1): Any solar collector or other solar energy device whose primary purpose is to provide for the collection, storage, and distribution of solar energy for space heating, space cooling, electric generation, or water heating.
- California Civil Code Section 801.5(a)((2) Any structural design feature of a building, whose primary purpose is to provide for the collection, storage, and distribution of solar energy for electricity generation, space heating or cooling, or for water heating; and,

WHEREAS, the California Legislature adopted the following definitions:

- California Health and Safety Code Section 17591 (e): The following definitions apply to this section:
  - (1) "A feasible method to satisfactorily mitigate or avoid the specific, adverse impact" includes, but is not limited to, any cost effective method, condition, or mitigation imposed by a city or county on another similarly situated application in a prior successful application for a permit. A city or county shall use its best efforts to ensure that the selected method, condition, or mitigation meets the conditions of subparagraphs (A) and (B) of paragraph (1) of subdivision (d) of Section 714 of the Civil Code
  - (3) A "specific, adverse impact" means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified, and written public health or

safety standards, policies, or conditions as they existed on the date the application was deemed complete.

WHEREAS the California Legislature has also passed into law provisions to ensure that solar energy systems do not adversely impact health and safety, including:

- California Civil Code Section 714(c)(1): A solar energy system shall meet applicable health and safety standards and requirements imposed by state and local permitting authorities.
- California Civil Code Section 714(c)(3): A solar energy system for producing electricity shall also meet all applicable safety and performance standards established by the National Electrical Code, the Institute of Electrical and Electronics Engineers, and accredited testing laboratories such as Underwriters Laboratories and, where applicable, rules of the Public Utilities Commission regarding safety and reliability.
- California Government Code Section 65850.5 (d): The decision of the building official pursuant to subdivisions (b) and (c) may be appealed to the planning commission of the city or county.
- California Government Code Section 65850.5 (e): Any conditions imposed on an application to install a solar energy system shall be designed to mitigate the specific, adverse impact upon the public health and safety at the lowest cost possible; and,

WHEREAS, CEQA generally applies to discretionary projects, including those undertaken by private parties. A discretionary project is one that requires the exercise of judgment or deliberation by a public agency in determining whether the project will be approved, or if a permit will be issued; and.

- WHEREAS, CEQA does not apply to ministerial projects. A ministerial project is one that requires only conformance with a fixed standard or objective measurement and requires little or no personal judgment by a public official as to the wisdom or manner of carrying out the project.
- CEQA Guidelines 15268.state: “(a) Ministerial projects are exempt from the requirements of CEQA. The determination of what is “ministerial” can most appropriately be made by the particular public agency involved based upon its analysis of its own laws, and each public agency should make such determination either as a part of its implementing regulations or on a case by-case basis. (b)In the absence of any discretionary provision contained in the local ordinance or other law establishing the requirements for the permit, license, or other entitlement for use, the following actions shall be presumed to be ministerial :(1)Issuance of building permits....”
- WHEREAS, Section 21080.35 of the Public Resources Code establishes a statutory exemption from CEQA for certain solar energy systems:

21080.35. (a) Except as provided in subdivision (d), this division does not apply to the installation of a solar energy system on the roof of an existing building or at an existing parking lot.

(b) For the purposes of this section, the following terms mean the following: (1) "Existing parking lot" means an area designated and used for parking of vehicles as of the time of the application for the solar energy system and for at least the previous two years. (2) "Solar energy system" includes all associated equipment. Associated equipment consists of parts and materials that enable the generation and use of solar electricity or solar-heated water, including any monitoring and control, safety, conversion, and emergency responder equipment necessary to connect to the customer's electrical service or plumbing and any equipment, as well as any equipment necessary to connect the energy generated to the electrical grid, whether that connection is onsite or on an adjacent parcel of the building and separated only by an improved right-of-way. "Associated equipment" does not include a substation.

(c) (1) Associated equipment shall be located on the same parcel of the building, except that associated equipment necessary to connect the energy generated to the electrical grid may be located immediately adjacent to the parcel of the building or immediately adjacent to the parcel of the building

and separated only by an improved right-of-way. (2) Associated equipment shall not occupy more than 500 square feet of ground surface and the site of the associated equipment shall not contain plants protected by the Native Plant Protection Act (Chapter 10 (commencing with Section 1900) of Division 2 of the Fish and Game Code).

(d) This section does not apply if the associated equipment would otherwise require one of the following: (1) An individual federal permit pursuant to Section 401 or 404 of the federal Clean Water Act (33 U.S.C. Sec. 1341 or 1344) or waste discharge requirements pursuant to the Porter-Cologne Water Quality Control Act (Division 7 (commencing with Section 13000) of the Water Code).

(2) An individual take permit for species protected under the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.) or the California Endangered Species Act (Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code).

(3) A streambed alteration permit pursuant to Chapter 6 (commencing with Section 1600) of Division 2 of the Fish and Game Code. (e) This section does not apply if the installation of a solar energy system at an existing parking lot involves either of the following:

(1) The removal of a tree required to be planted, maintained, or protected pursuant to local, state, or federal requirements, unless the tree dies and there is no requirement to replace the tree.

(2) The removal of a native tree over 25 years old.

(f) This section does not apply to any transmission or distribution facility or connection.

THEREFORE BE IT RESOLVED that the City Council of the City of Richmond finds that the Department of Planning and Building Services shall implement California State law as strictly defined by the Legislature in the statutes and in the CEQA Guidelines as follows:

- A “solar energy system” shall mean any solar collector or other solar energy device whose primary purpose is to provide for the collection, storage, and distribution of solar energy for space heating, space cooling, electric generation, or water heating and shall not be limited to residential systems or systems mounted on buildings and may include ground-mount systems.
- A “solar energy system” shall be allowed in any zoning district or General Plan designated area.
- A solar energy system shall be permitted ministerially, and any permit conditions shall be limited to those reasonably protecting the health and safety of the public and persons involved in the construction and operation of the system.
- An application for a solar energy system shall be subject to ministerial review by the City building official. The building official’s review of the solar energy system application shall be limited to whether the solar energy system meets all health and safety requirements of local, state, and federal law. Any permit conditions shall be limited to those reasonably protecting the health and safety of the public and persons involved in the construction and operation of the system in accordance with building and other code requirements.
- The building official shall ministerially approve applications for solar energy systems unless the building official makes written findings based upon substantial evidence in the record that the proposed installation would have a specific, adverse impact upon the public health or safety. The building official’s findings are appealable to the Planning Commission pursuant to Government Code Section 65850.5 (d).
- Ministerial application requirements and conditions may include those customarily used for other ministerial permits, including submission of drawings and specifications, structural calculations when appropriate and surveys to confirm property rights and boundaries. Solar Energy systems shall conform to setbacks and height limits otherwise defined in the General Plan and Zoning Ordinance, shall not encroach on BCDC 100-foot jurisdiction without a

BCDC permit and shall not encroach on streams or wetlands<sup>4</sup> or destroy critical habitat of endangered species<sup>5</sup>.. For more information, see *California Solar Permitting Guidebook*, Governor’s Office of Planning and Research ([http://opr.ca.gov/docs/California\\_Solar\\_Permitting\\_Guidebook.pdf](http://opr.ca.gov/docs/California_Solar_Permitting_Guidebook.pdf)).

- CEQA review shall not be required for any solar energy system application that is subject to ministerial review by the building official.
- CEQA shall not apply to any solar energy system on an existing roof or parking lot unless one of the conditions in 21080.35(d) applies.

.....

<sup>4</sup> Requiring an individual federal permit pursuant to Section 401 or 404 of the federal Clean Water Act (33 U.S.C. Sec. 1341 or 1344) or waste discharge requirements pursuant to the Porter-Cologne Water Quality Control Act (Division 7 (commencing with Section 13000) of the Water Code) streambed alteration permit pursuant to Chapter 6 (commencing with Section 1600) of Division 2 of the Fish and Game Code

<sup>5</sup> Contain plants protected by the Native Plant Protection Act (Chapter 10 (commencing with Section 1900) of Division 2 of the Fish and Game Code)

I certify that the foregoing resolution was passed and adopted by the Council of the City of Richmond at a regular meeting thereof held on **June 17, 2014**, by the following vote:

AYES: Councilmembers Bates, Boozé, Butt, Myrick, Rogers, Vice Mayor Beckles, and Mayor McLaughlin.

NOES: None.

ABSENT: None.

ABSTENTION: None.

DIANE HOLMES  
CLERK OF THE CITY OF RICHMOND

(SEAL)

Approved:

GAYLE MCLAUGHLIN  
Mayor

Approved as to form:

BRUCE GOODMILLER  
City Attorney

State of California     }  
County of Contra Costa     : ss.  
City of Richmond     }

I certify that the foregoing is a true copy of **Resolution No. 56-14**, finally passed and adopted by the City Council of the City of Richmond at a regular meeting held on June 17, 2014.

**BUILDING REGULATIONS****CITY OF RICHMOND**

450 Civic Center Plaza  
 Richmond, CA 94804  
 Phone : (510) 620-6868  
 Fax : (510) 621-1239

**PERMIT # B14-08040**

Job Site Address:

Permit Technician: AA

**FREETHY BLVD**

Parcel APN:	408220006	Today's Date:	09/29/2014
Permit:	<b>B14-08040</b>	Type of Construction:	
Type of Permit:	ELC COMMERCIAL	Date Applied:	08/29/2014
		Date Issued:	09/29/2014
PROPERTY OWNER:	SHEKOU JOE & HEIDI	CONTRACTOR:	TBD
Street Address:	2167 E FRANCISCO BLVD #A	Street Address:	
City/St/Zip:	SAN RAFAEL, CA 94901	City/St/Zip:	
Owner Phone:	(415) 472-7700	Daytime Phone:	
		Business License:	
		Exp:	
Description of Work: INSTALL GROUND MOUNT SOLAR PV SYSTEM-			
Permit Fee Details:		TOTAL VALUATION: \$	1,500,000.00
		TOTAL FEES: \$	1,820.00

**Owner Builder Declaration:**

I hereby affirm under penalty of perjury that I am exempt from the Contractors' License Law for the following reason (Section 7031.5, Business and Profession Code states that any City or County which requires a permit to construct, alter, improve, demolish, or repair any structure prior to its issuance also requires the applicant for such permit to file a signed statement that he or she is a license pursuant to the provisions of the Contractor's License Law (Chapter 9 commencing with section 7000 of Division 3 of the Business and Profession Code) or that he or she is exempt from licensure and the basis for the alleged exemption. Any violation of section 7031.5 by any applicant for a permit subjects the applicant to a civil penalty of not more than (\$500).)

I, as owner of the property, or my employees with wages as their sole compensation, will do the work, and the structure is not intended or offered for sale. (Section 7044 Business and Professions Code: The Contractors' State License Law does not apply to the owner of the property who builds or improves their own, and who does such work himself or herself or through his or her own employees, provided that such improvements are not intended or offered for sale. If, however, the building or improvement is sold within one year of completion, the Owner Builder will have the burden of proving that he she did not build or improve for the purpose of sale.)

I, as owner of the property, and exclusively contracting with licensed contractors to construct the project (Section 7044, Business and Professions and Codes states that the current Contractors' State License Law does not apply to an owner of property who builds or improves as thereon, and who contracts for such projects with a licensed Contractor pursuant to the Contractors' License Law).

I am exempt under section \_\_\_\_\_ Business and Professions Code for this reason \_\_\_\_\_

Applicant \_\_\_\_\_ Date: \_\_\_\_\_

**Workers Compensation Declaration:**

I hereby affirm under penalty of perjury one of the following declarations: I have and will maintain a certificate of consent to self insure for workers compensation, as provided for by (Section 3700) of the Labor Code, for the performance of the work for which this permit is issued.

I have and will maintain Workers Compensation insurance, as required by Section 3700 of the Labor Code, for the performance of the work for which this permit is issued, my workers compensation carrier and policy numbers are:

Carrier: \_\_\_\_\_ Policy# \_\_\_\_\_ Expires \_\_\_\_\_

I certify that in the performance of the work for which this permit is issued, I shall not employ any person in a manner so as to become subject to the workers compensation laws of California, and agree that if I should become subject to the workers compensation provisions of section 3700 of the labor code, and I shall forthwith comply with these provisions.

Date: \_\_\_\_\_ Applicant: \_\_\_\_\_

Warning: Failure to secure workers compensation coverage is unlawful, and shall subject an employer to criminal penalties and civil fines of up to \$1000 in addition to the cost of compensation, damages as provided for in section 3706 of the labor code, interest and attorneys fees.

I certify that I have read this application and state that the above information is correct. I agree to comply with all City ordinances and other laws relating to this permit and hereby authorize representatives of the City of Richmond to enter upon the above mentioned property for inspection purposes. This permit will expire on **3/28/2015 12:00:00AM** unless revoked, renewed or extended by the Building Official.

Customer No:

Signature of applicant or agent

Date 9/29/14

Building Dept. by

Date 9/29/14

**PAID**

SEP 29 2014

CITY OF RICHMOND  
FINANCE DEPARTMENT



SnapRack™  
PV Mounting Systems

MANUFACTURER

SNAPNRACK, INC.

775 FIERO LANE, SUITE 200  
SAN LUIS OBISPO, CA 93401  
PH (877) 732-2860

THE INFORMATION IN THIS DRAWING IS CONFIDENTIAL  
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OR USE THEREOF IS PROHIBITED WITHOUT THE  
WRITTEN CONSENT OF SNAPNRACK, INC.

STRUCTURAL/CIVIL ENGINEER

ENGINEERED POWER  
SOLUTIONS

1405 SPRING STREET, SUITE 204  
PASO ROBLES, CA 93446  
CONTACT: MATTHEW B. GILLIS, P.E.  
PH: (805) 423-1326



FOR STRUCTURAL  
ELEMENTS ONLY  
See "Structural Documentation  
Packet" for Additional Info.

CLIENT

RUSSELL PACIFIC

320 SUNSET WAY  
MUIR BEACH, CA 94965

PROJECT

FREETHY  
INDUSTRIAL PARK

NORTHWEST CORNER  
GOODRICK AVE  
RICHMOND PARKWAY, CA 94801  
APN 408-220-06, 07, 35, 36, 37, 38

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REV	DATE	DESCRIPTION
DATE	08/20/2014	
PROJECT NUMBER	RUS1-RUSP4801	
APPLICATIONS ENGINEER	DEON TODD	
STRUCTURAL ENGINEER	STRUCTURAL ENGINEER	
PROJECT MANAGER	PM	
DESIGN ENGINEER	DESIGN ENGINEER	
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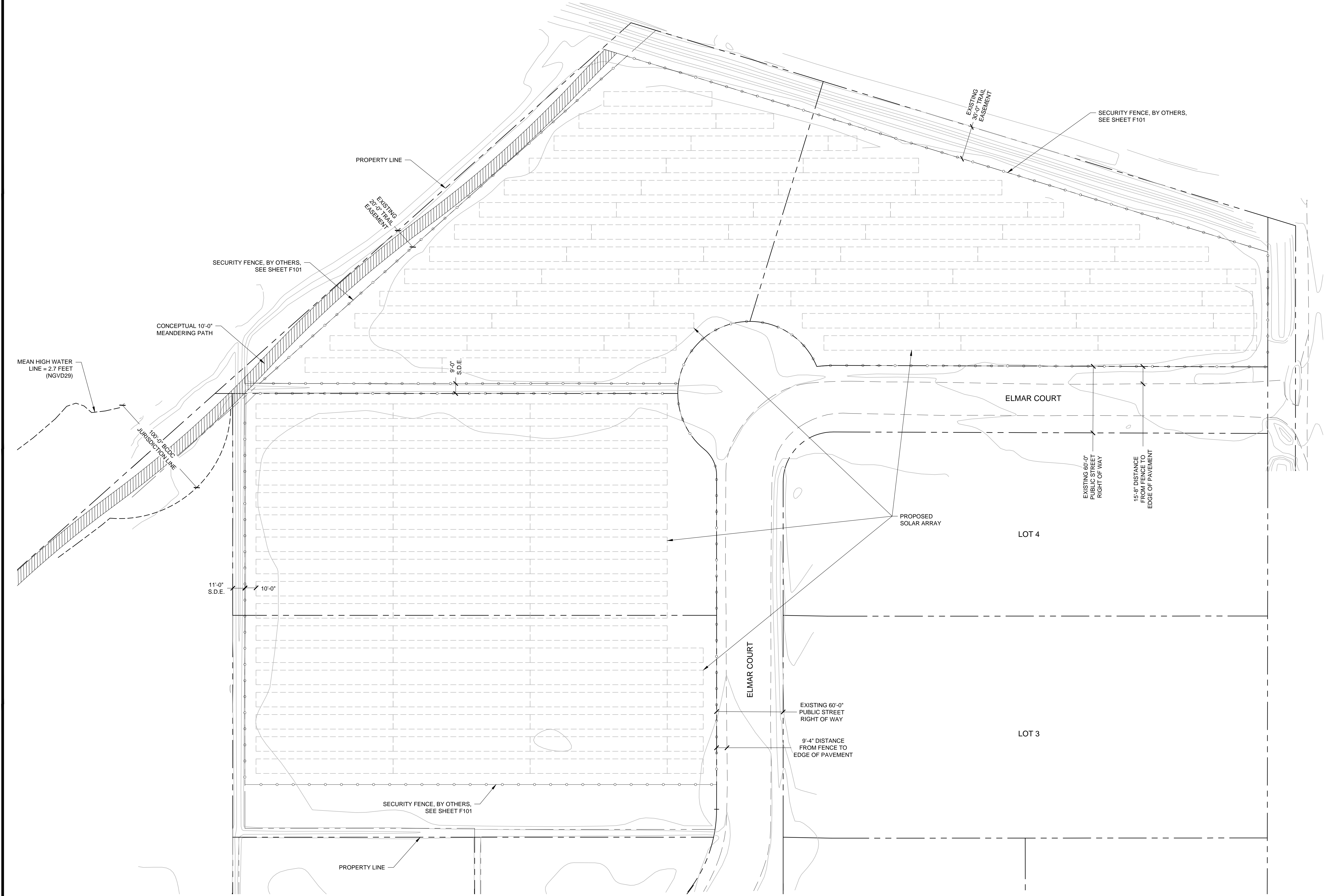
PERMIT SET

SHEET TITLE

SITE PLAN

SHEET NUMBER

S001





SNAPNRACK, INC.

775 FIERO LANE, SUITE 200  
SAN LUIS OBISPO, CA 93401  
PH (877) 732-2860

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PH: (805) 423-1326



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CLIENT

RUSSELL PACIFIC

320 SUNSET WAY  
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PROJECT MANAGER	PM	
DESIGN ENGINEER	DESIGN ENGINEER	
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SHEET TITLE

STRUCTURAL LAYOUT

SHEET NUMBER

S101

NOTES

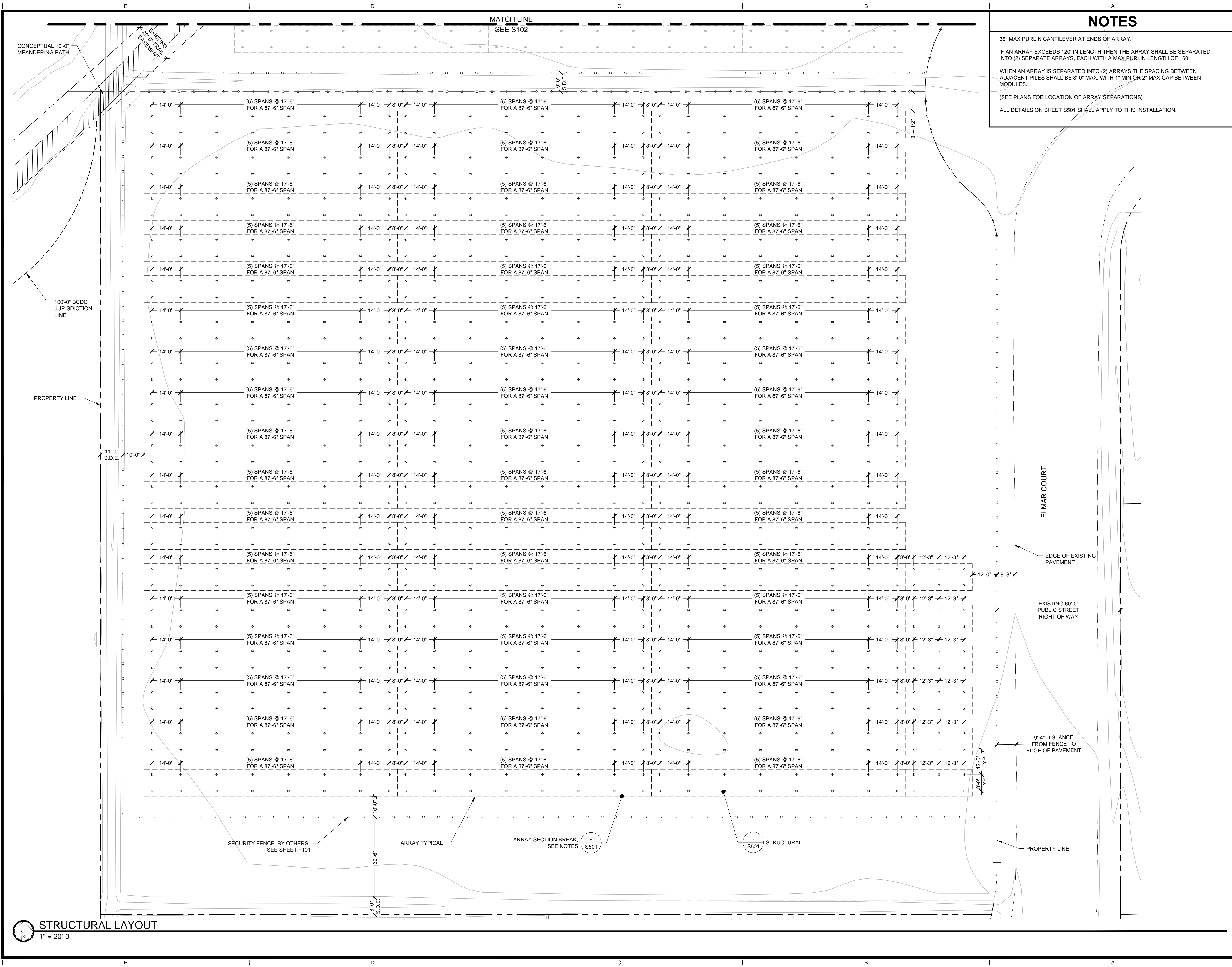
36" MAX PURLIN CANTILEVER AT ENDS OF ARRAY.

IF AN ARRAY EXCEEDS 120' IN LENGTH THEN THE ARRAY SHALL BE SEPARATED INTO (2) SEPARATE ARRAYS, EACH WITH A MAX PURLIN LENGTH OF 160'.

WHEN AN ARRAY IS SEPARATED INTO (2) ARRAYS THE SPACING BETWEEN ADJACENT PILES SHALL BE 8'-0" MAX, WITH 1" MIN OR 2" MAX GAP BETWEEN MODULES.

(SEE PLANS FOR LOCATION OF ARRAY SEPARATIONS)

ALL DETAILS ON SHEET S501 SHALL APPLY TO THIS INSTALLATION.





SNAPNRACK, INC.

775 FIERO LANE, SUITE 200  
SAN LUIS OBISPO, CA 93401  
PH (877) 732-2860

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STRUCTURAL/CIVIL ENGINEER

ENGINEERED POWER  
SOLUTIONS

1405 SPRING STREET, SUITE 204  
PASO ROBLES, CA 93446  
CONTACT: MATTHEW B. GILLIS, P.E.  
PH: (805) 423-1326



FOR STRUCTURAL  
ELEMENTS ONLY  
See "Structural Documentation  
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CLIENT

RUSSELL PACIFIC

320 SUNSET WAY  
MUIR BEACH, CA 94965

PROJECT

FREETHY  
INDUSTRIAL PARK

NORTHWEST CORNER  
GOODRICK AVE  
RICHMOND PARKWAY, CA 94801

APN 408-220-06, 07, 35, 36, 37, 38

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DATE	08/20/2014	
PROJECT NUMBER	RUS1-RUP4801	
APPLICATIONS ENGINEER	DEON TODD	
STRUCTURAL ENGINEER	STRUCTURAL ENGINEER	
PROJECT MANAGER	PM	
DESIGN ENGINEER	DESIGN ENGINEER	
CHECKED BY		

PERMIT SET

SHEET TITLE

STRUCTURAL LAYOUT

SHEET NUMBER

S102

NOTES

36" MAX PURLIN CANTILEVER AT ENDS OF ARRAY.

IF AN ARRAY EXCEEDS 120' IN LENGTH THEN THE ARRAY SHALL BE SEPARATED  
INTO (2) SEPARATE ARRAYS, EACH WITH A MAX PURLIN LENGTH OF 160'.

WHEN AN ARRAY IS SEPARATED INTO (2) ARRAYS THE SPACING BETWEEN  
ADJACENT PILES SHALL BE 8'-0" MAX, WITH 1" MIN OR 2" MAX GAP BETWEEN  
MODULES.

(SEE PLANS FOR LOCATION OF ARRAY SEPARATIONS)

ALL DETAILS ON SHEET S501 SHALL APPLY TO THIS INSTALLATION.





SNAPNRACK, INC.

775 FIERO LANE, SUITE 200  
SAN LUIS OBISPO, CA 93401  
PH (877) 732-2860

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STRUCTURAL/CIVIL ENGINEER

ENGINEERED POWER  
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CONTACT: MATTHEW B. GILLIS, P.E.  
PH: (805) 423-1326



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Packet" for Additional Info.

CLIENT

RUSSELL PACIFIC

320 SUNSET WAY  
MUIR BEACH, CA 94965

PROJECT

FREETHY  
INDUSTRIAL PARK

NORTHWEST CORNER  
GOODRICK AVE  
RICHMOND PARKWAY, CA 94801

APN 408-220-06, 07, 35, 36, 37, 38

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REV	DATE	DESCRIPTION
DATE	08/20/2014	
PROJECT NUMBER	RUS1-RUP4801	
APPLICATIONS ENGINEER	DEON TODD	
STRUCTURAL ENGINEER	STRUCTURAL ENGINEER	
PROJECT MANAGER	PM	
DESIGN ENGINEER	DESIGN ENGINEER	
CHECKED BY		

PERMIT SET

SHEET TITLE

STRUCTURAL LAYOUT

SHEET NUMBER

S103

NOTES

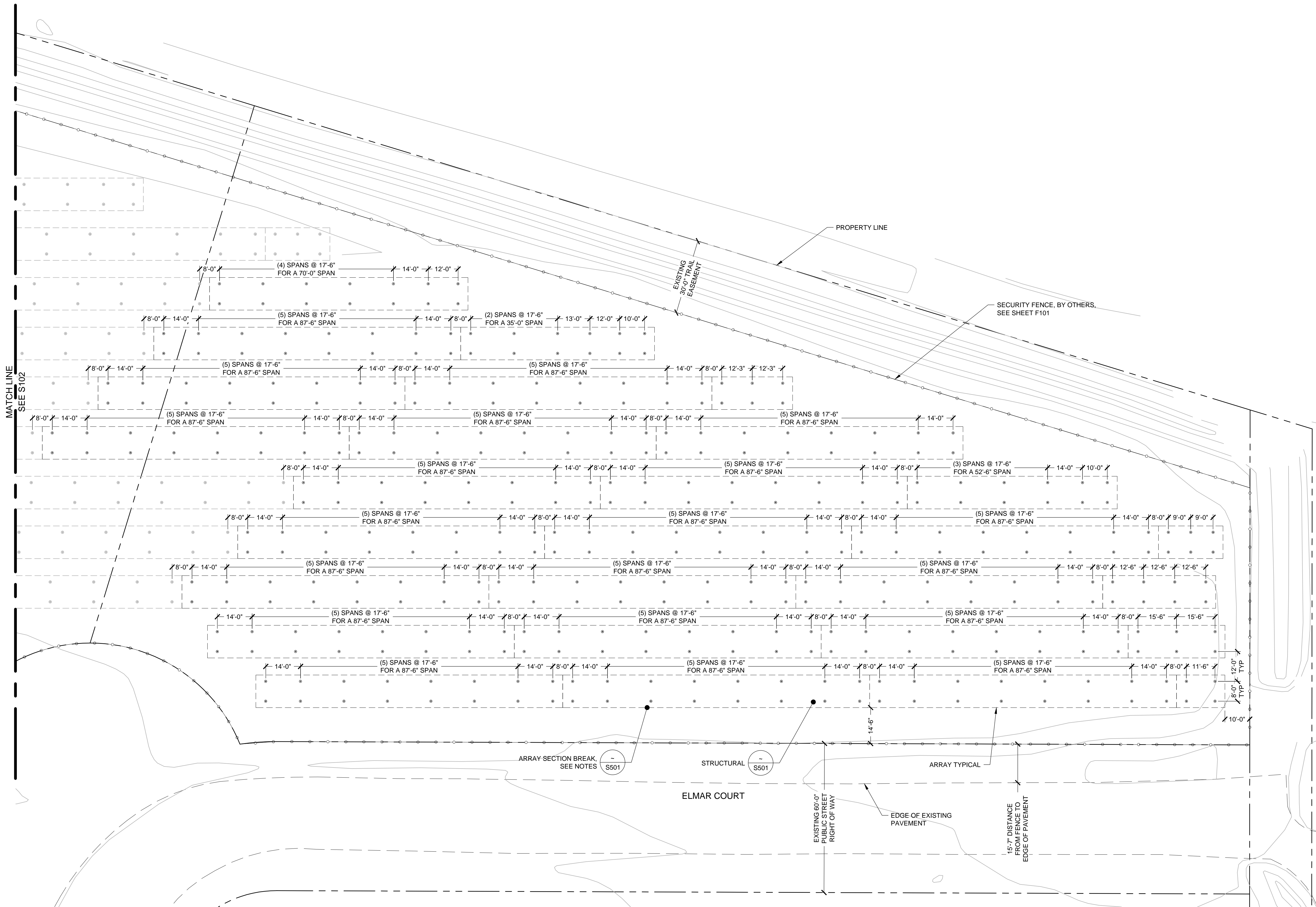
36" MAX PURLIN CANTILEVER AT ENDS OF ARRAY.

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WHEN AN ARRAY IS SEPARATED INTO (2) ARRAYS THE SPACING BETWEEN ADJACENT PILES SHALL BE 8'-0" MAX, WITH 1" MIN OR 2" MAX GAP BETWEEN MODULES.

(SEE PLANS FOR LOCATION OF ARRAY SEPARATIONS)

ALL DETAILS ON SHEET S501 SHALL APPLY TO THIS INSTALLATION.





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REV	DATE	DESCRIPTION
	DATE	08/20/2014
	PROJECT NUMBER	RUS1-RUP4801
	APPLICATIONS ENGINEER	DEON TODD
	STRUCTURAL ENGINEER	STRUCTURAL ENGINEER
	PROJECT MANAGER	PM
	DESIGN ENGINEER	DESIGN ENGINEER
	CHECKED BY	

PERMIT SET

NOTES

**SERIES 350: 18 DEGREE TILT**  
DEVELOPED AS AN EFFICIENT MOUNTING STRUCTURE FOR LARGE SCALE GROUND MOUNT INSTALLATIONS. THE SYSTEM IS BASED ON A STEEL SUB-STRUCTURE MANUFACTURED FROM READILY AVAILABLE STEEL ROLL FORMS AND MODULE MOUNTING RAILS TO ACCOMMODATE 0-35 DEGREE TILT SYSTEMS. DETAILED SPECIFICATIONS FOR PURLIN SPANS AND PIER DEPTHS ARE AVAILABLE IN THE STRUCTURAL ENGINEERING PACKET FOR THE SYSTEM. MULTIPLE FOUNDATION OPTIONS MAKE SERIES 350 ADAPTABLE TO VIRTUALLY ANY INSTALLATION SITE AND CONFIGURATION. ARRAYS FOLLOW CONTOURS OF THE SITE (NORTH TO SOUTH & EAST TO WEST)

**POST TOLERANCES:**  
EAST/WEST DIRECTION IS 3" OR ±2" AT TOP OF POST. NORTH/SOUTH DIRECTION IS 1" OR ±1" AT TOP OF POST. TWISTING IS 1" OR ±1/8" AT TOP OF POST.

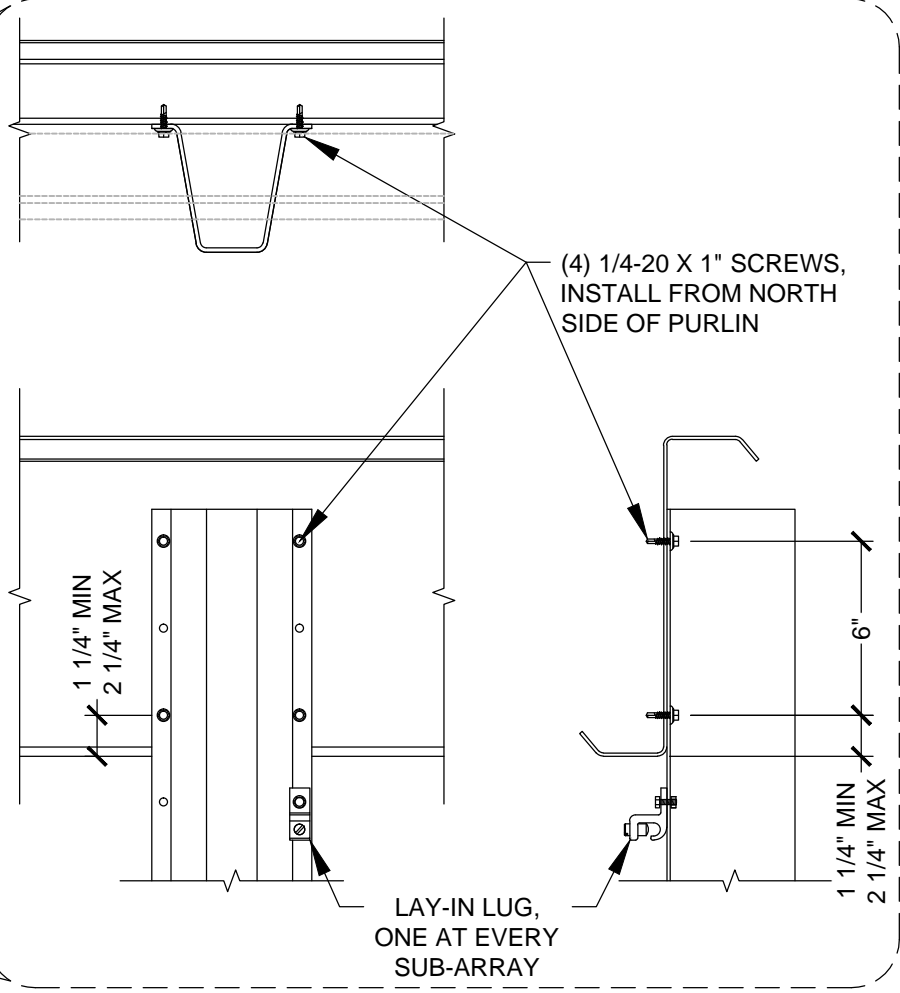
**PURLIN TO POST:**  
(4) 1/4-20 X 1" BI-METAL W/ CARBON STEEL TIP, SS SELF-DRILLING SCREWS SHALL BE USED AT PURLIN TO POST. TORQUE SCREW TO 5 FT-LBS. SCREWS SHALL ALIGN AND BE INSTALLED THRU PRE-PUNCHED HOLES IN POST.

**PURLIN SPLICE:**  
(6) 1/4-20 X 1" BI-METAL W/ CARBON STEEL TIP, SS SELF-DRILLING SCREWS SHALL BE USED AT PURLIN SPLICE. CENTER SCREWS IN FLANGE USING PRE-DRILLED HOLES. TORQUE SCREWS TO 5 FT-LBS. ZEE PURLIN MAY BE SPICED AT ANY POINT ALONG THEIR LENGTH. ZEE PURLIN HAS ONE FLANGE THAT IS 0.2" LONGER THAN THE OTHER TO FACILITATE NESTING AS SHOWN IN SECTION 'B'. EVERY OTHER ZEE PURLIN IS FLIPPED 180°, THE WIDER FLANGE IS PRE-PUNCHED TO FACILITATE THIS. AFTER ALL SCREWS ARE INSTALLED, SPRAY BOTH SIDES WITH "BRITC COLD GALVANIZED PAINT".

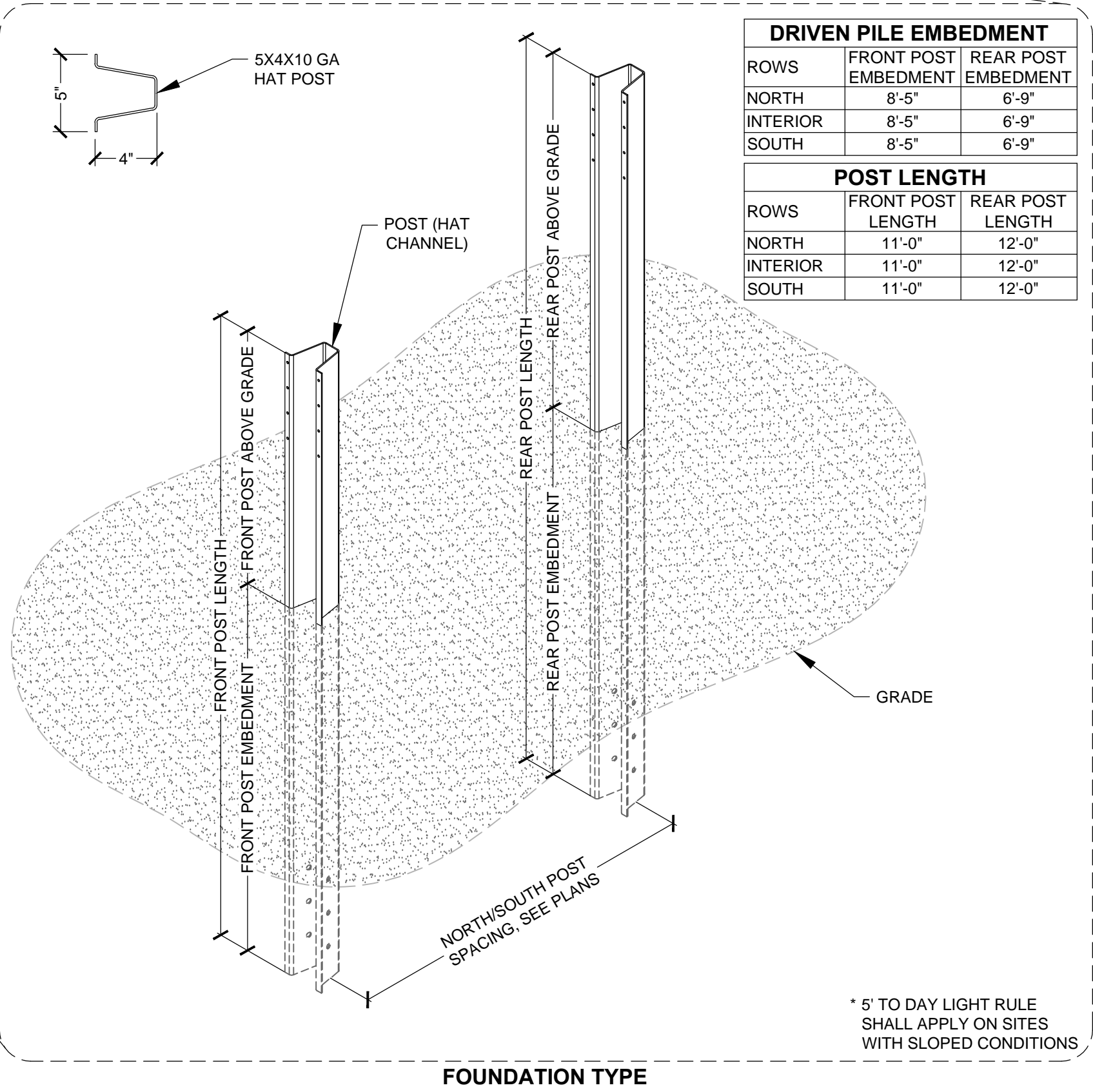
**PURLIN CLAMP:**  
INSTALL ONE PURLIN CLAMP AT EVERY PURLIN/RAIL CONNECTION, WITH 5/16" X 1 1/4" HOT DIPPED BOLT, SPLIT LOCK WASHER, TORQUE TO 12-16 FT LBS.

**PURLIN BRACE:**  
INSTALL TWO PURLIN BRACE AT EACH PURLIN 1/3 & 2/3 SPAN BETWEEN POSTS. ATTACH PURLIN BRACE TO RAIL CLOSEST TO 1/3 & 2/3 OF SPAN. (1) 1/4-20 X 1" BI-METAL W/ CARBON STEEL TIP, SS SELF-DRILLING SCREWS SHALL BE USED AT BRACE TO PURLIN, TORQUE TO 5 FT-LBS. (2) 1/4-20 X 1" BI-METAL W/ CARBON STEEL TIP, SS SELF-DRILLING SCREWS SHALL BE USED AT BRACE TO RAIL, TORQUE TO 1 FT-LBS.

**GROUNDING:**  
RACKING AND PV SYSTEM IS FULLY GROUNDING DOWN TO POST(S). INSTALL (1) LAY-IN LUG PER SUB-ARRAY AT PRE-DRILLED HOLE OF POST(S) TO (EGC). USE 1/4" X 20 X 1 1/4" HOT DIPPED NUT AND BOLT, TORQUE TO 6 FT-LBS.

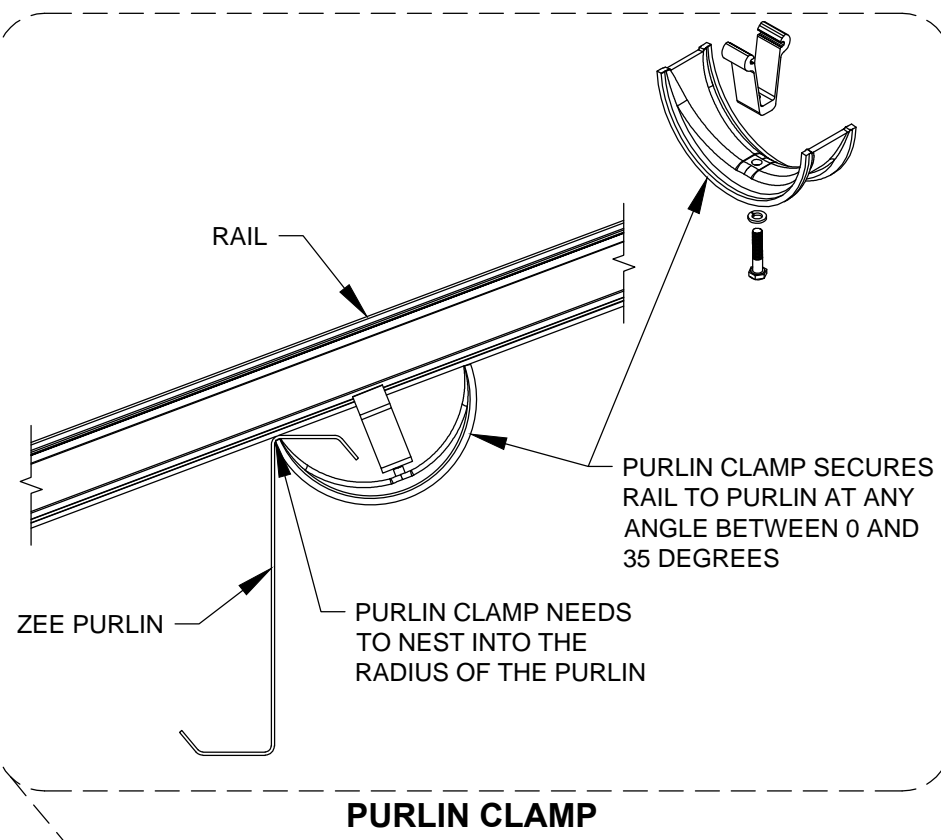


PURLIN TO POST

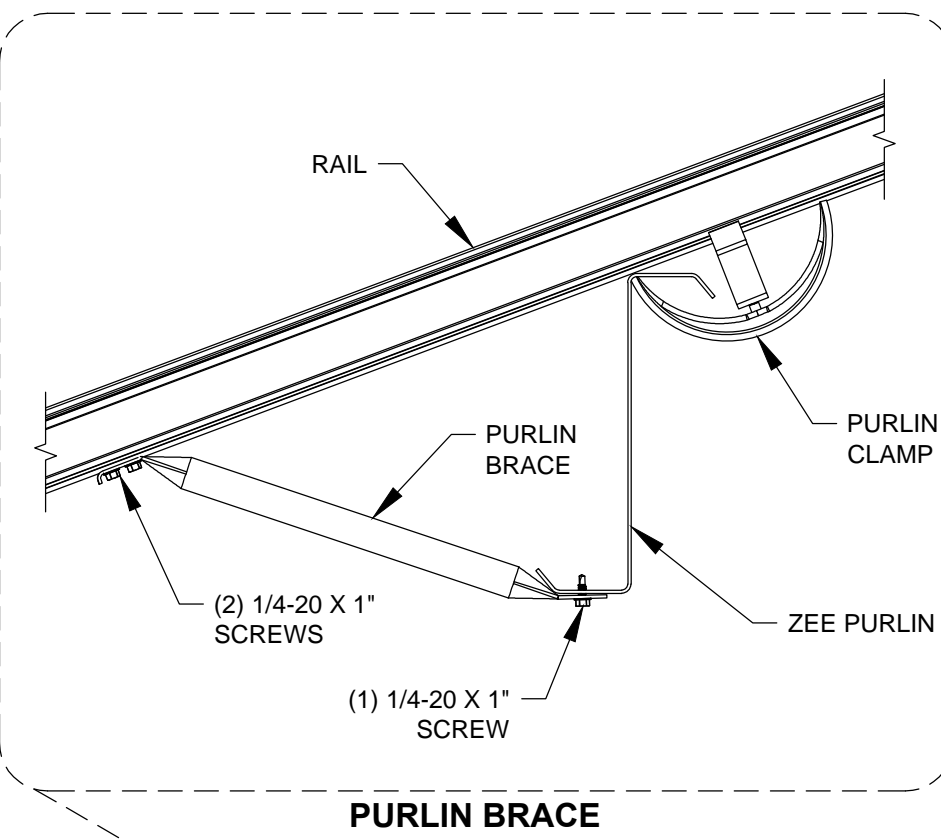


DRIVEN PILE EMBEDMENT		
ROWS	FRONT POST EMBEDMENT	REAR POST EMBEDMENT
NORTH	8'-5"	6'-9"
INTERIOR	8'-5"	6'-9"
SOUTH	8'-5"	6'-9"

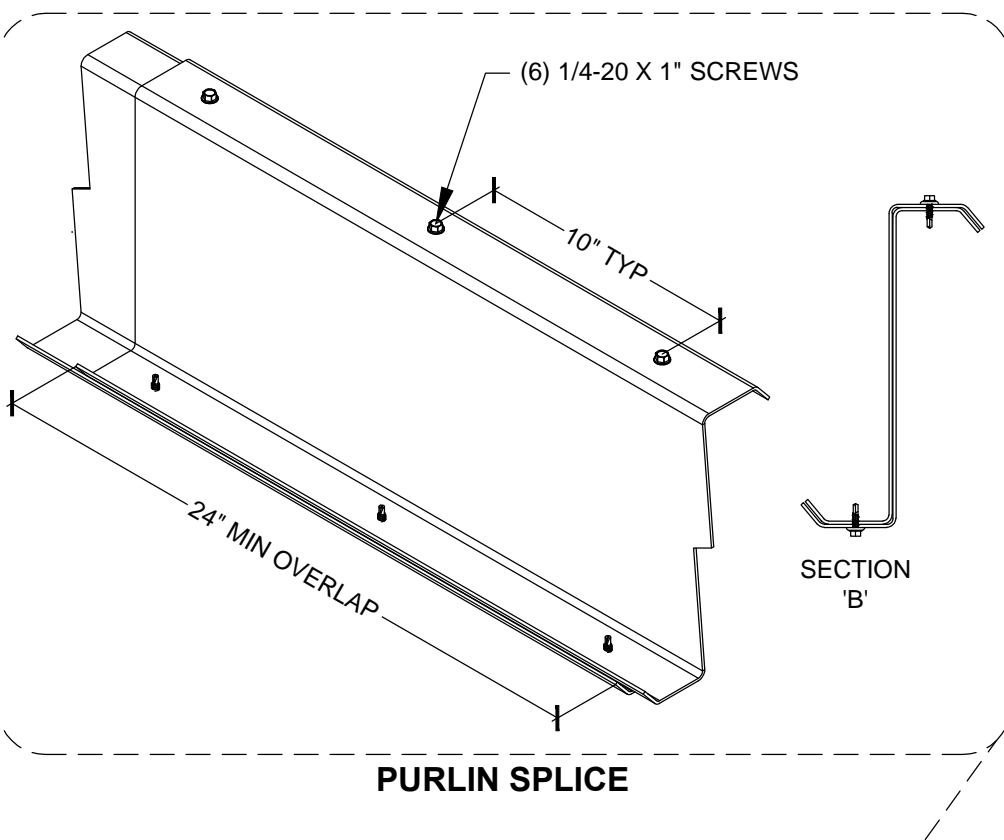
POST LENGTH		
ROWS	FRONT POST LENGTH	REAR POST LENGTH
NORTH	11'-0"	12'-0"
INTERIOR	11'-0"	12'-0"
SOUTH	11'-0"	12'-0"



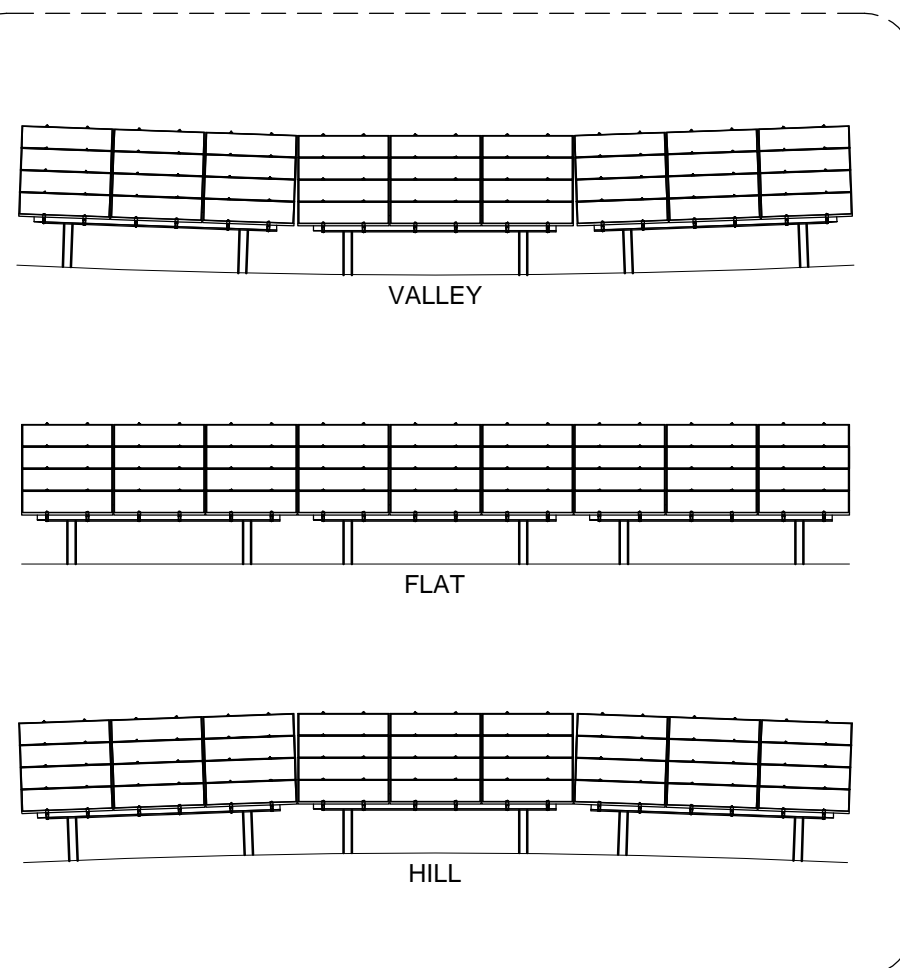
PURLIN CLAMP



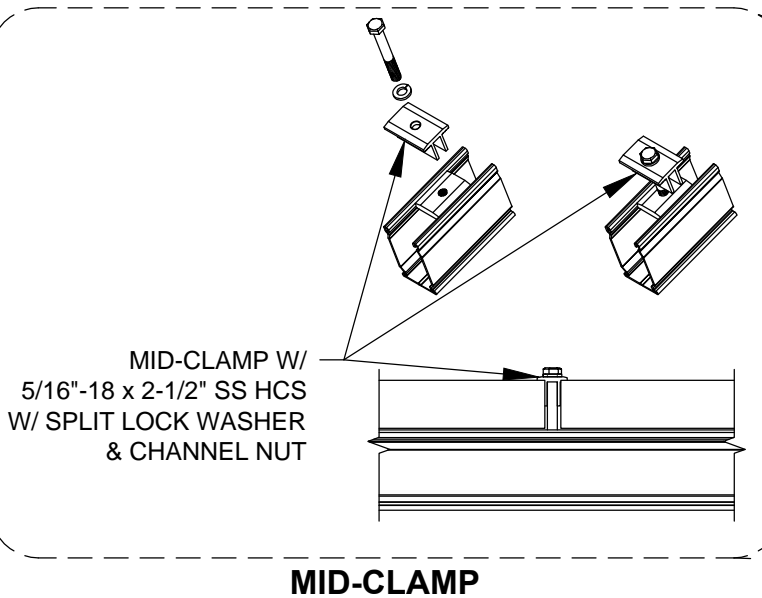
PURLIN BRACE



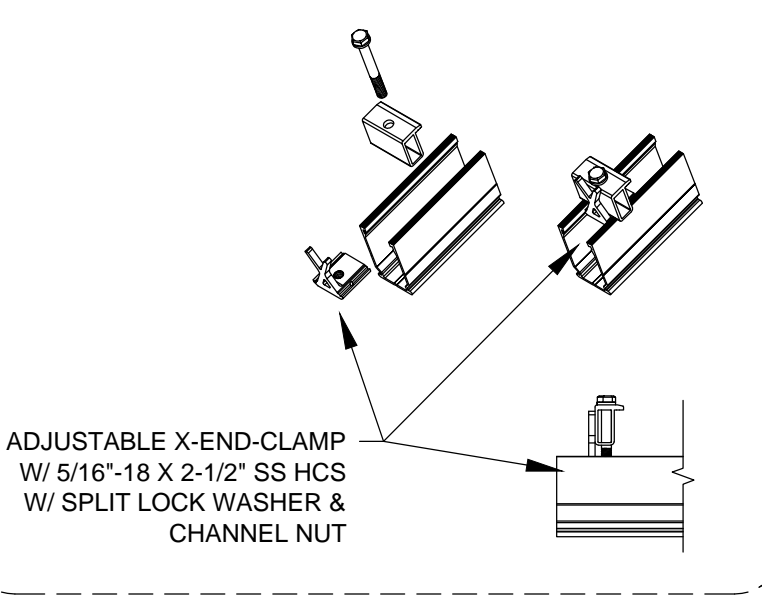
PURLIN SPLICE



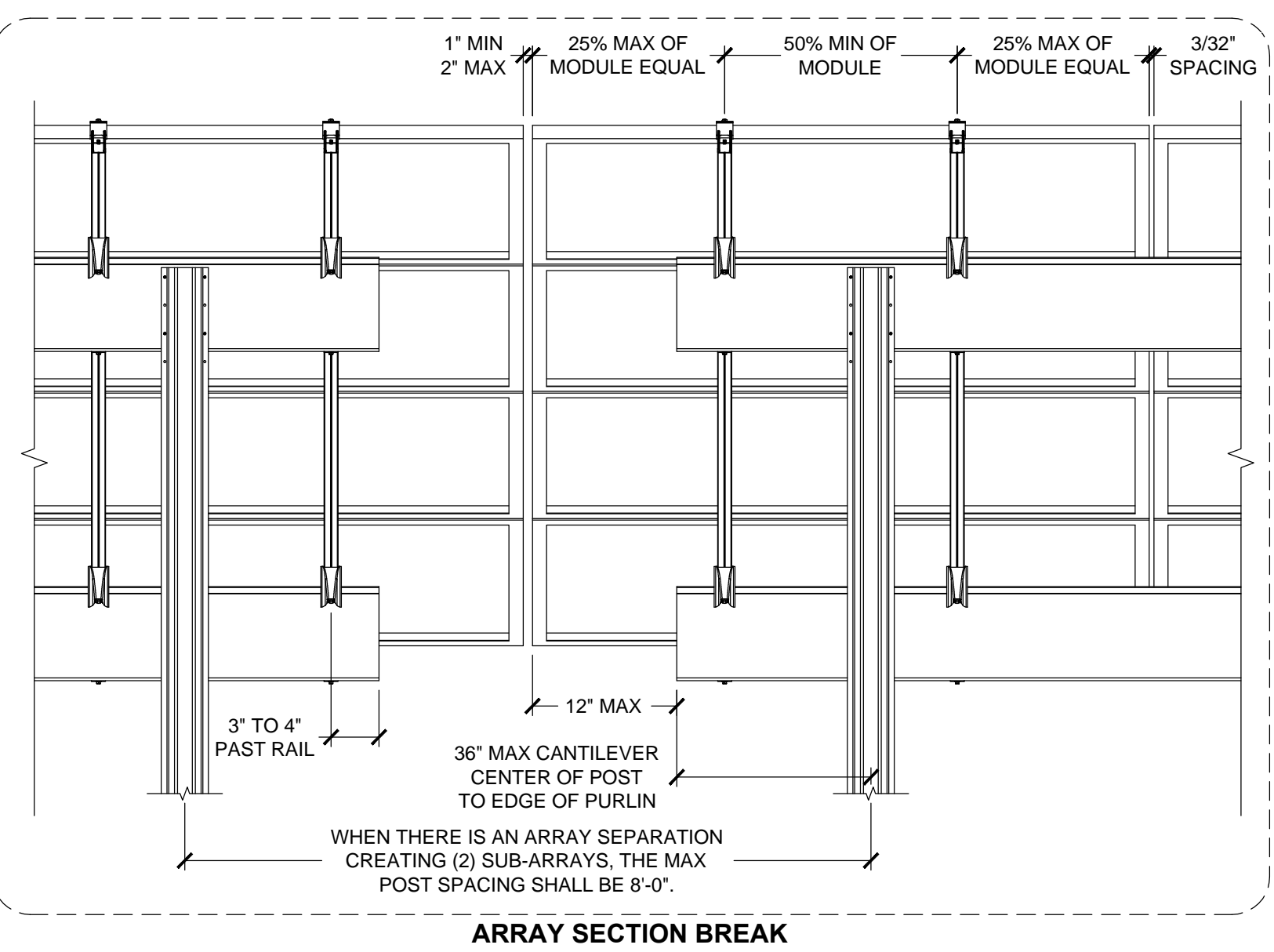
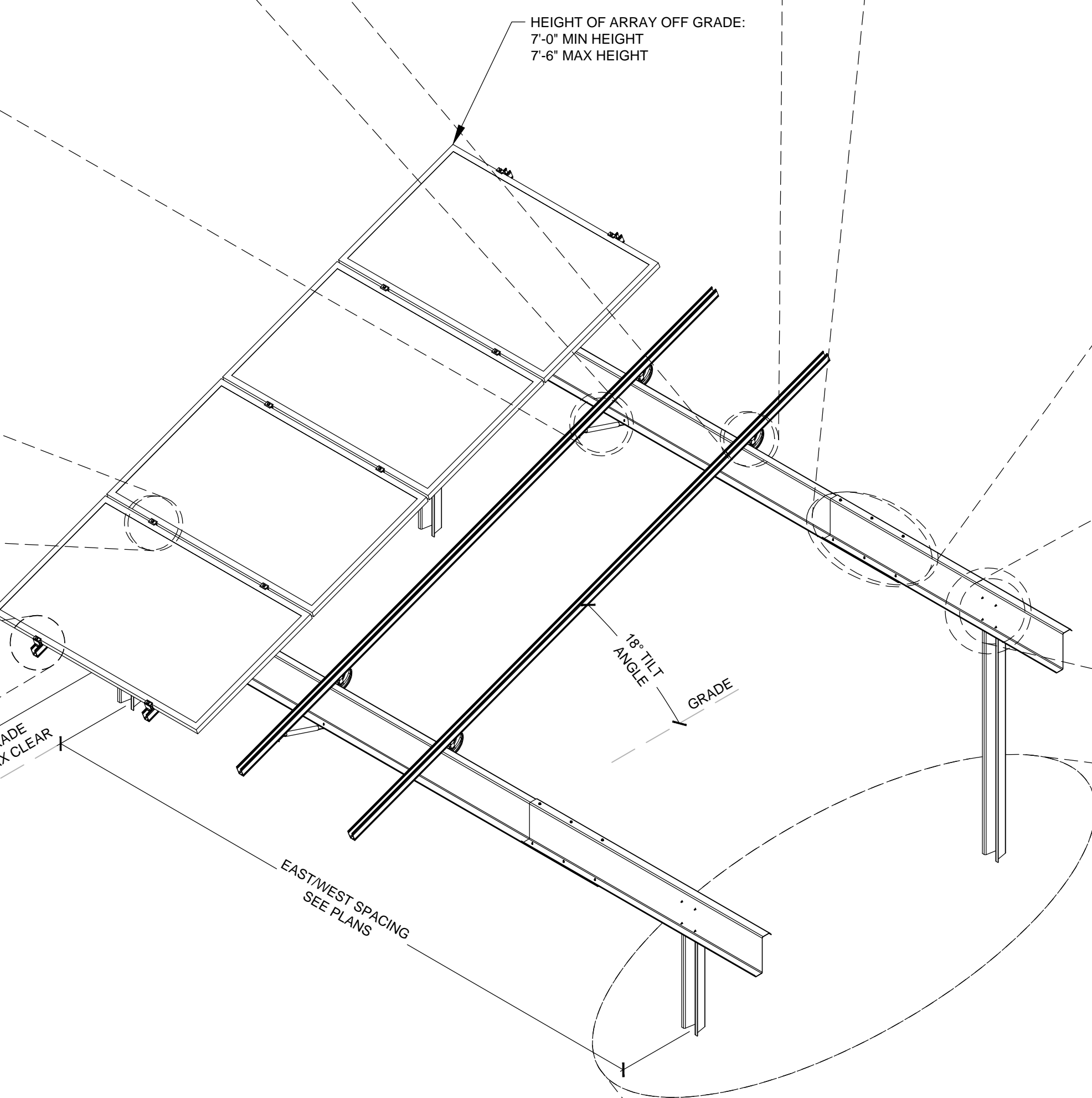
EXAMPLE OF ARRAY FOLLOWING CONTOURS



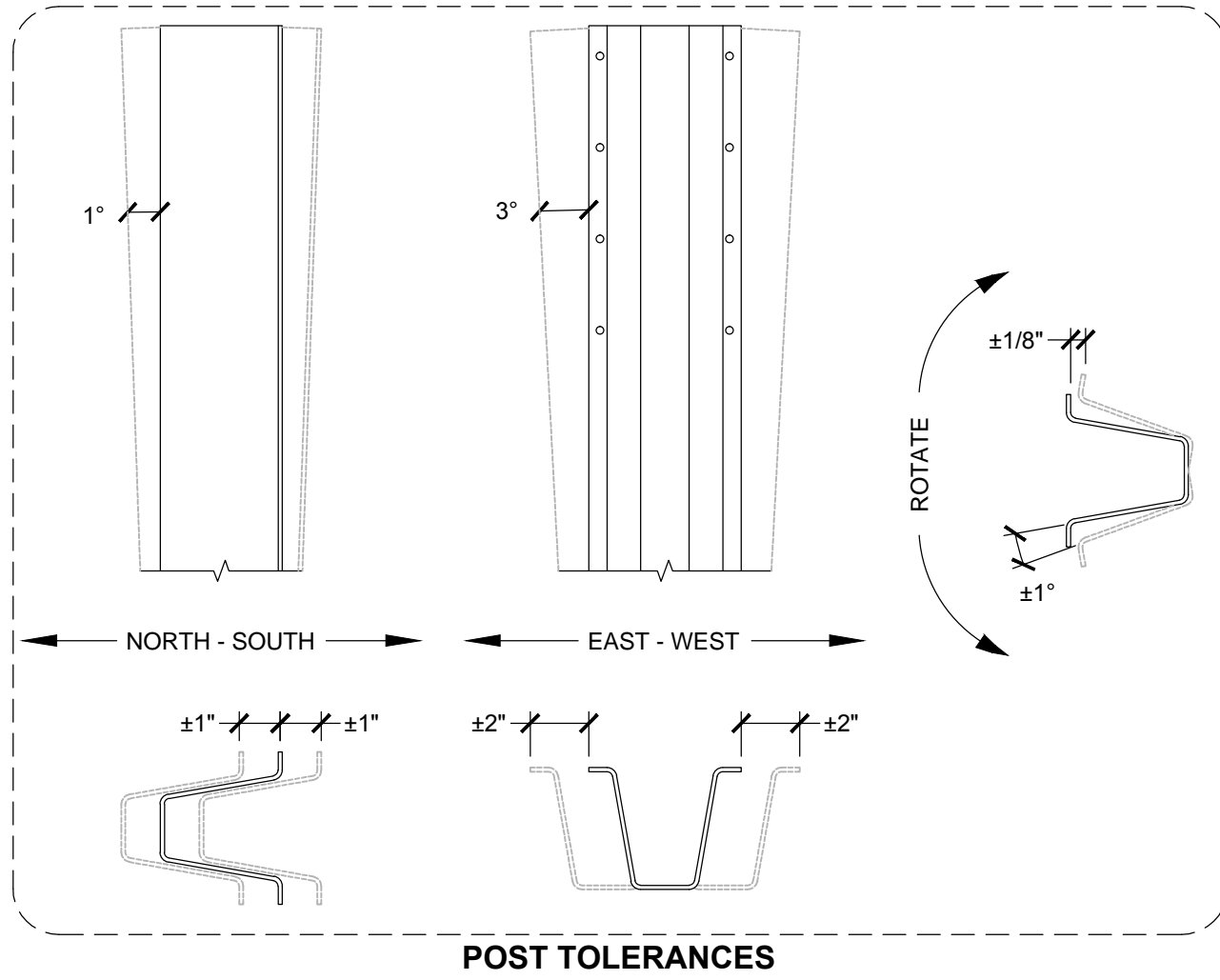
MID-CLAMP



END-CLAMP



ARRAY SECTION BREAK



POST TOLERANCES

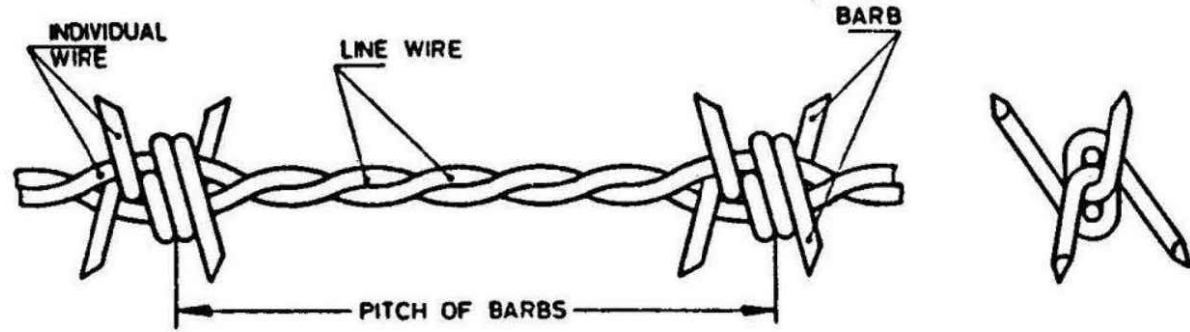




2221 Canada Dry Street  
Houston TX 77023 USA  
TEL: 713.924.4300  
FAX: 713.928.2324  
[www.ceshepherd.com](http://www.ceshepherd.com)

C.E. SHEPHERD High Tensile Barbed Wire

Certificate of Quality



C.E. Shepherd Barbed wire is offered in Class 3 galvanized, coating, Class 3 Galvanized coating lasts three times longer than Class 1.

Detailed specifications as below:

Double Strand: 4 Point

Barbed type: round

Finish: Class 3

Line wire: 0.067" (1.70 MM) or 15.5 GA

Distance between barb : 3"

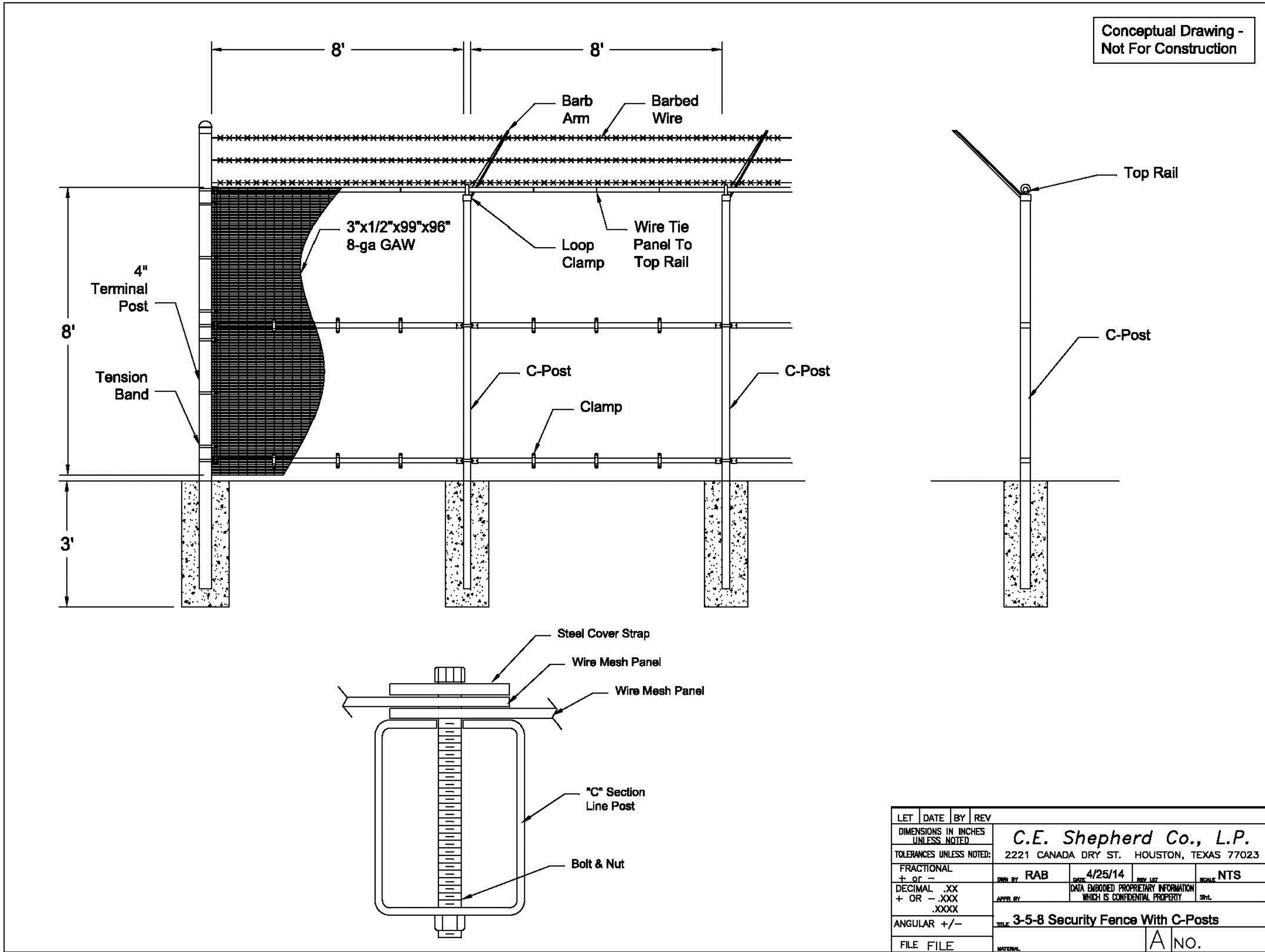
Length per Reel 1320 Ft (includes inner spool for easy assembly)

Weight: Approx. 51 Lbs. /Reel

Packed on Inner Spool

C.E. SHEPHERD L.P. MAXTOP Products certifies that the above material meets or exceeds specified

ASTM A 121 standards



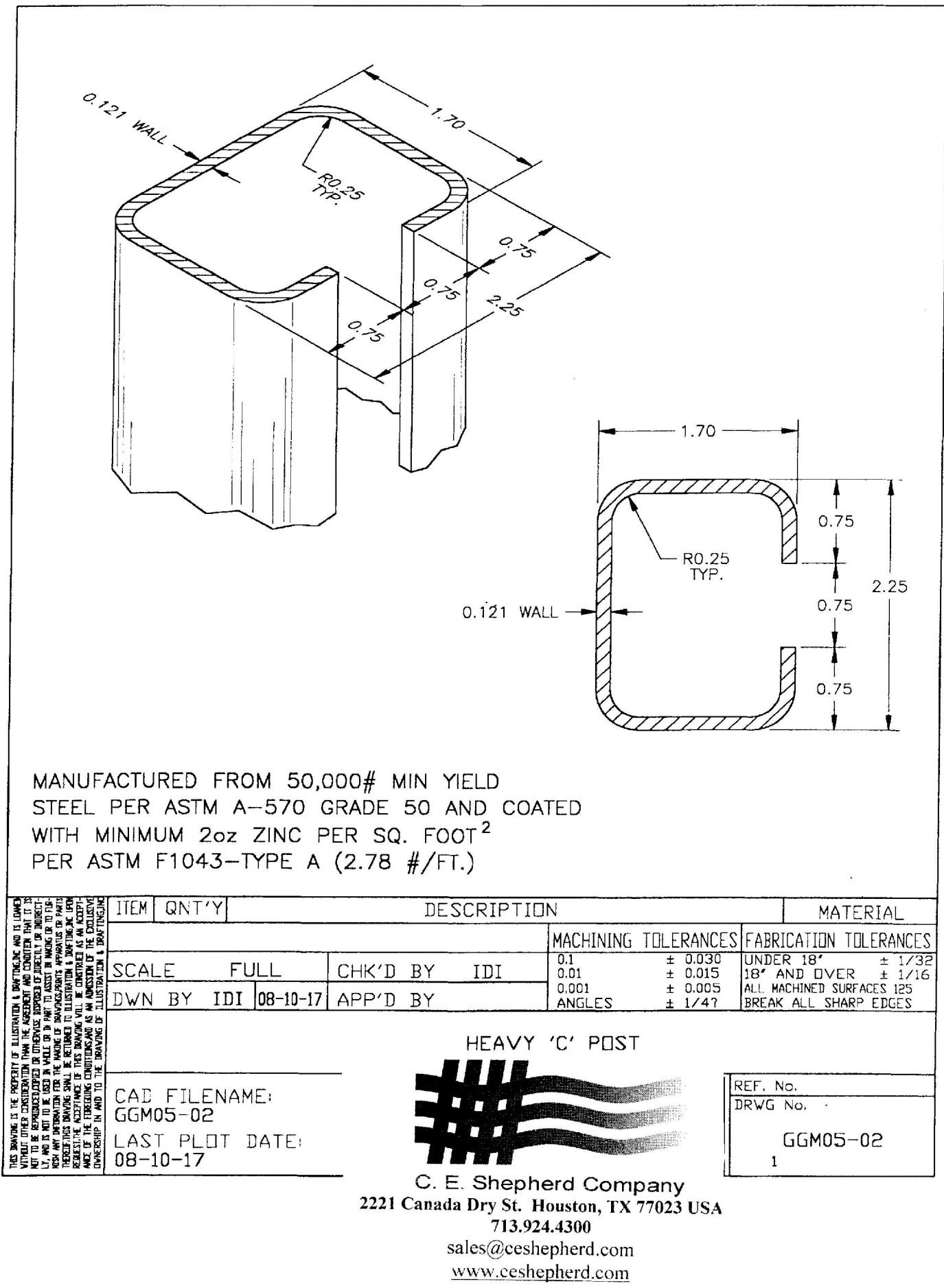
LET	DATE	BY	REV
DIMENSIONS IN INCHES			
TOLERANCES UNLESS NOTED:			
FRACTIONAL	± 1/8"	± 1/16"	± 1/32"
DECIMAL	± .005"	± .002"	± .001"
ANGULAR	± 1/2°	± 1/4°	± 1/8°
FILE	FILE	FILE	FILE

C.E. Shepherd Co., L.P.  
2221 CANADA DRY ST. HOUSTON, TEXAS 77023

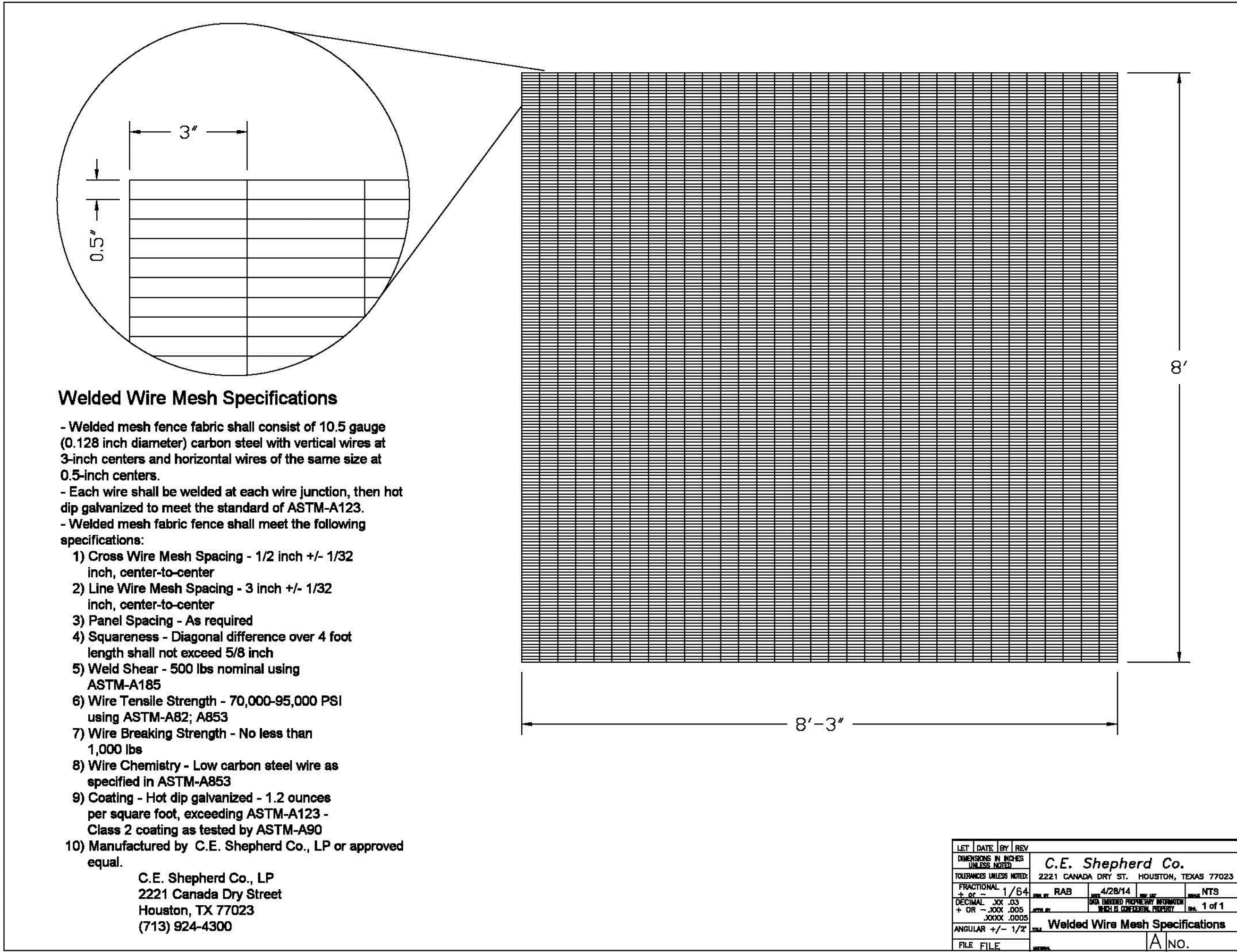
DATE: 4/25/14  
BY: RAB  
CHECKED: NTS  
DESIGNED: NTS  
WELDING INFORMATION: WELD IS CONFORMANT TO SPECIFICATION

3-5-8 Security Fence With C-Posts

NO.



ITEM	QNTY	DESCRIPTION	MATERIAL
SCALE	FULL	CHK'D BY IDI	MACHINING TOLERANCES: UNDER 18" ± 1/32"
OWN BY	IDI	APP'D BY	18" AND OVER ± 1/16"
MANUFACTURED FROM 50,000# MIN YIELD STEEL PER ASTM A-570 GRADE 50 AND COATED WITH MINIMUM 2oz ZINC PER SQ. FOOT <sup>2</sup> PER ASTM F1043-TYPE A (2.78 #/FT.)			ALL MACHINED SURFACES 125° BREAK ALL SHARP EDGES
HEAVY 'C' POST			
C.E. Shepherd Company 2221 Canada Dry St. Houston, TX 77023 USA 713.924.4300 sales@ceshepherd.com www.ceshepherd.com			



Welded Wire Mesh Specifications

- Welded mesh fence fabric shall consist of 10.5 gauge (0.128 inch diameter) carbon steel with vertical wires at 3-inch centers and horizontal wires of the same size at 0.5-inch centers.
- Each wire shall be welded at each wire junction, then hot dip galvanized to meet the standard of ASTM-A123.
- Welded mesh fabric fence shall meet the following specifications:
- 1) Cross Wire Mesh Spacing - 1/2 inch +/- 1/32 inch, center-to-center
- 2) Line Wire Mesh Spacing - 3 inch +/- 1/32 inch, center-to-center
- 3) Panel Spacing - As required
- 4) Squariness - Diagonal difference over 4 foot length shall not exceed 5/8 inch
- 5) Weld Shear - 500 lbs nominal using ASTM-A185
- 6) Wire Tensile Strength - 70,000-95,000 PSI using ASTM-A82; A853
- 7) Wire Breaking Strength - No less than 1,000 lbs
- 8) Wire Chemistry - Low carbon steel wire as specified in ASTM-A853
- 9) Coating - Hot dip galvanized - 1.2 ounces per square foot, exceeding ASTM-A123 - Class 2 coating as tested by ASTM-A90
- 10) Manufactured by C.E. Shepherd Co., LP or approved equal.

LET	DATE	BY	REV
DIMENSIONS IN INCHES			
TOLERANCES UNLESS NOTED:			
FRACTIONAL	± 1/8"	± 1/16"	± 1/32"
DECIMAL	± .005"	± .002"	± .001"
ANGULAR	± 1/2°	± 1/4°	± 1/8°
FILE	FILE	FILE	FILE

C.E. Shepherd Co.  
2221 CANADA DRY ST. HOUSTON, TEXAS 77023

DATE: 4/25/14  
BY: RAB  
CHECKED: NTS  
DESIGNED: NTS  
WELDING INFORMATION: WELD IS CONFORMANT TO SPECIFICATION

Welded Wire Mesh Specifications

NO.

C.E. SHEPHERD  
COMPANY, L.P.  
2221 CANADA DRY STREET  
HOUSTON, TX 77023  
PH (713) 924-4300

RUSSELL PACIFIC  
320 SUNSET WAY  
MUIR BEACH, CA 94965

FREETHY  
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NORTHWEST CORNER  
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RICHMOND PARKWAY, CA 94801  
APN 408-220-06, 07, 35, 36, 37, 38

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PROJECT MANAGER	PM	
DESIGN ENGINEER	DESIGN ENGINEER	
CHECKED BY		

PERMIT SET

FENCE AND PLANT DETAILS

SHEET NUMBER  
F101



## Notice of Exemption

2014108139

Appendix E

To: Office of Planning and Research  
P.O. Box 3044, Room 113  
Sacramento, CA 95812-3044

County Clerk

County of: Contra Costa  
P.O. Box 950

Martinez, CA 94553

From: (Public Agency): City of Richmond  
Planning and Building, 450 Civic Center Plaza  
Richmond, CA 94804

(Address)

Project Title: Freethy Industrial Park Solar Photovoltaic System (Freethy Solar Project)

Project Applicant: Joe & Heidi Shekou and Richmond Development Company LLC

Project Location - Specific:

The northwest corner of Richmond Parkway and Goodrick Avenue in the City of Richmond, CA.

Project Location - City: RichmondProject Location - County: Contra Costa

Description of Nature, Purpose and Beneficiaries of Project:

Install 2 megawatt ground mount photovoltaic solar system on approximately 6 acres of level land at Freethy Industrial Park. The electricity generated by the project will be sold to Marin Clean Energy, pursuant to a long term power purchase agreement.

Name of Public Agency Approving Project: City of Richmond, Department of Planning and Building

Name of Person or Agency Carrying Out Project: Joe & Heidi Shekou, Richmond Development Co. LLC

Exempt Status: (check one):

- ☒ Ministerial (Sec. 21060(b)(1); 15266);  
☐ Declared Emergency (Sec. 21060(b)(3); 15269(a));  
☐ Emergency Project (Sec. 21060(b)(4); 15269(b)(c));  
☐ Categorical Exemption. State type and section number: \_\_\_\_\_  
☐ Statutory Exemptions. State code number: \_\_\_\_\_

Reasons why project is exempt:

The Freethy Solar Project qualifies for ministerial and non-discretionary review and approval pursuant to Health and Safety Code 17501.1(a), Government Code 65850.5(b) and City Resolution 56-14 (adopted June 17, 2014). The only approval required for the Freethy Solar Project is a building permit which is ministerial decision and pursuant to the above laws, is exempt from CEQA review.

Lead Agency Contact Person: Angelina Almarinez

Area Code/Telephone/Extension: 510-621-1285

If filed by applicant:

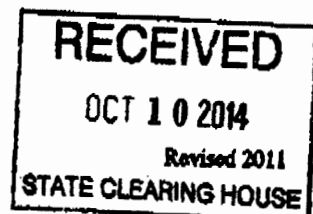
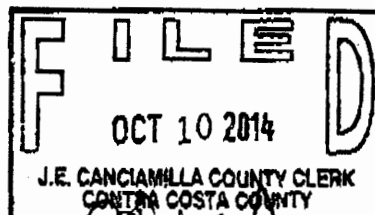
1. Attach certified document of exemption finding.  
 2. Has a Notice of Exemption been filed by the public agency approving the project? ☐ Yes ☐ No

Signature: Robert A. Albert Date: 10/9/14 Title: Project Manager

☐ Signed by Lead Agency ☒ Signed by Applicant

Authority cited: Sections 21060 and 21110, Public Resources Code.

Reference: Sections 21106, 21152, and 21152.1, Public Resources Code.

Date Received for filing at OPRE: OCT 10 2014

**Subject:** Freethy Industrial Park Solar Electric Installation

**Date:** Wednesday, January 18, 2017 at 4:37:01 PM Pacific Standard Time

**From:** TRAC <tracbaytrail@earthlink.net>

**To:** McCrea, Brad@BCDC <brad.mccrea@bcdc.ca.gov>

**CC:** Nancy Strauch <nancystrauch@sbcglobal.net>, Bruce Brubaker <bbrubaker@placeworks.com>

Brad,

Following up on sat image, photos and plan drawing I sent, attached is the application package filed by JHS Properties for a solar electric array on the two northern parcels of the former Freethy Industrial Park. Note that the package includes an email from Michelle Levenson.

Unfortunately, the Richmond City Council adopted a resolution in June 2014 (since rescinded) interpreting the State Solar Rights Act to go beyond rooftop solar installations and exempt any kind of solar project from CEQA and all discretionary project reviews entailing conditional approvals. Thus, the project was built as shown in the sat image i sent without CEQA compliance and without a design review permit, which normally would require the applicant to build and operate the planned Bay Trail section on the property in accordance with Richmond General Plan 2030.

The site plan sent you shows trail easements along the two northern sides of the project; however, there is a wide drainage ditch in the middle of the easement on the northern side of the project, and the solar array fencing is very close to the edge of this tidal ditch making it economically infeasible to construct a trail.

This raises several questions, including:

1. Did JHS Properties apply for and obtain a solar facility permit or an exemption from BCDC?
2. Believing that the trail easements may go back to an agreement between BCDC and Elmer Freethey dating circa 1970, how could a ditch have been built in the middle of a trail easement?

BCDC's help in unraveling this would be appreciated greatly. Many thanks!

Bruce

-----  
Bruce Beyaert, TRAC Chair

[tracbaytrail@earthlink.net](mailto:tracbaytrail@earthlink.net)

tel./fax 510-235-2835

<http://www.pointrichmond.com/baytrail/>

<http://www.ci.richmond.ca.us/109/TRAC>

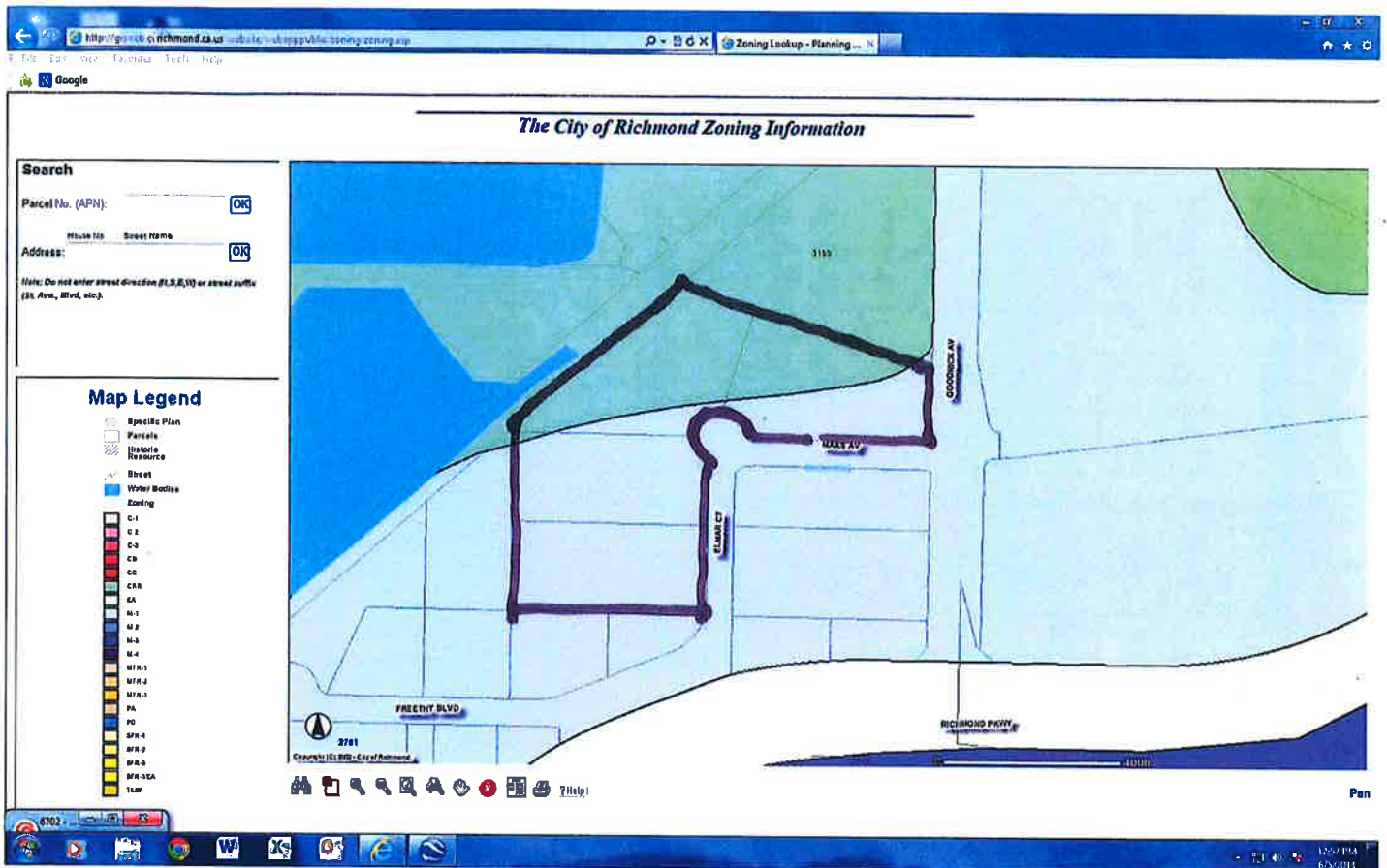
Photos: <https://sfbaytrailinrichmond.shutterfly.com/pictures/5> .



**SAN FRANCISCO  
BAY TRAIL PROJECT**  
Richmond







ZONING : CRR AND M-1

**SAN FRANCISCO BAY CONSERVATION  
AND DEVELOPMENT COMMISSION**

**Violation Investigation Report Form**

Report Taken By <b>BRAD McCREA</b>	Date <b>1/18/17</b>	Time
Reported By <b>TRAC/Bruce Bayne</b>	Mailing Address	Telephone No. <b>510.235.2835</b>
Description of Alleged Violation <b>Construction w/out a permit.</b>		
Location, City, County <b>Freethy Blvd. Richmond. CA</b>	APN(S)	
Name of Accused <b>Be + Heidi Sherry?</b>	Mailing Address <b>Richmond Dev. Co, LLC</b>	Telephone No.(s) <b>97277</b>
Name of Contractor/Agent	Mailing Address	Telephone No.(s)

Investigated By	Date Undertaken
Date ER File Established <b>6/22/17</b>	Number Given <b>EP2017-004</b>
Related File(s)	

**Details of Facts and Contacts to Prove or Further Explain the Violation(s)**

This site has a claim of exemption.  
It is unclear whether or not the exemption  
still applies and, if so, whether the  
Solar Farm is consistent w/ the agreement.  
#CE-74-15

How Resolved and When	Dollar Amount of Fine (if any)	Date Paid
-----------------------	--------------------------------	-----------



4/25/17

Exhibit 17

Bob Herbst - called back

→ exemption letter

↳ he says this applies  
so NO BCDC permit  
necessary

→ follow up with Bob

Hey Erik,  
I started making  
some calls, but  
Adrienne wants you  
to write that  
exemption  
memo so  
→

JHS Properties (415) 453-0212  
4/25/17

Heidi Shekou

Maggie spoke with owner,  
Heidi Shekou, and she said  
that her employee Len  
Niby <sup>(ex.#1)</sup> deals with the  
property and will be available  
to show after May 10 when  
returns from vacation. Heidi  
says she got all the  
proper permits from City  
of Richmond.

5/1/17

Maggie and Matthew visited  
site 4/28. File in Maggie's  
office. Scored this case as  
SLB and the score is



## 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

October 25, 2017

Joe and Heidi Shekou, Owners  
JHS Properties  
400F Smith Ranch Road  
San Rafael, CA 94903

SUBJECT: Enforcement Action—Failure to obtain authorization prior to constructing a solar farm in violation of the McAteer-Petris Act, located on Freethy Road in Richmond, Contra Costa County (BCDC Enforcement Case No. ER2017.004)

Dear Mr. and Mrs. Shekou:

This letter serves as a follow up to my conversations with Mrs. Shekou, Owner, and your business associate, Bob Herbst, in April 2017 regarding the unauthorized two-megawatt ground mount solar farm and associated carbon steel welded wire mesh security fence constructed without a BCDC permit on your eight-acre property, located on Freethy Road in Richmond, partially within BCDC's shoreline band jurisdiction. This action is in violation of the McAteer-Petris Act and may be subject to standardized fines. This letter describes the basis for BCDC staff's position that the solar farm project is not exempt from the requirement to secure the Commission's approval through the permit application process, describes the permit application process, and the standardized fines to which you will likely be subject during the time it will take to resolve this violation.

### **I. Claim of Exemption History and Determination That It Does Not Apply**

In April 2017, Mr. Herbst informed me that JHS Properties did not obtain a BCDC permit prior to constructing the solar farm and security fence because he believed the project was exempt from the McAteer-Petris Act pursuant to the "Freethy Property" Claim of Exemption No. CE 74-15 (CE 1974.15) issued by BCDC on August 15, 1977, to Elmer J. Freethy, a former owner of the property, for light industrial facilities and purposes. Mr. Freethy was granted the Claim of Exemption for a specific project that did not include a solar farm. Freethy's Claim of Exemption was for the following project: (1) To complete a road system that had been under construction since 1963, including the placement of fill on tidal areas running from the easterly line of the property to the westerly line of the property; (2) To place fill behind the completed roadway system to raise the approximately 84.34 acres of land to grade according to Freethy's development plan he finalized in 1964; and (3) To use the 84.34 acre area for light industrial facilities and purposes.

BCDC staff does not dispute that the Claim of Exemption applies to the placement of fill and grading to construct the roadway and raise the site elevation (partially/entirely) within a former tidal marsh. However, BCDC staff does not agree with Mr. Herbst's interpretation that the Claim of Exemption applies to the solar farm constructed without a permit by subsequent property owners because: (1) the solar farm is not within the scope of the project for which Freethy was issued a Claim of Exemption because it was not constructed in accordance with the plans incorporated with the Claim of Exemption; and (2) the Claim of Exemption has been abandoned pursuant to BCDC Regulation Section 10921 and no longer applies to the property, both of which reasons are explained below; and (3) the project was not constructed in accordance with the plans incorporated with the Claim of Exemption.

1. **Scope of Project.** In *BCDC v. City of Emeryville* (1968) 69 Cal 2d 533, the California Supreme Court determined that a claim of exemption must be narrowly construed for a specific project, and cannot authorize a general activity or use such as "industrial use". The proceedings that concluded with the issuance of the Claim of Exemption focused on the fill plans Freethy had developed in the 1960s and did not focus on the planned industrial uses for the property. The general provision in the Claim of Exemption for "light industrial facilities and purposes" should not be interpreted as a broad exemption from the McAteer-Petris Act permitting requirements but rather, for the specific project that Freethy was engaged in at the time of the Exemption based on the plans provided as part of the Claim. The specific plans that were submitted as part of the Claim were to complete the fill and the roads and construct buildings similar to those already constructed that would have been leased to industrial tenants. There is no discussion of a solar farm or power generation at the site, which, although they could be considered industrial activities, are simply not of the same nature as the development Mr. Freethy had already constructed and, therefore, cannot be part of the Claim of Exemption.
2. **Abandonment.** BCDC Regulation Section 10921 states that, "Failure to put any land, water, or structure to use for which the Commission issued a claim of exemption for a period of two years shall create a presumption that the structure or the use of the land, water, or structure has been abandoned so that the exemption no longer applies." Google Earth images<sup>1</sup> demonstrate that there was no development activity and the project was not in use for more than a two-year consecutive period from 1977 to 2013 and, therefore, the Claim of Exemption was abandoned. It appears that the solar farm construction did not begin until 2014, over thirty years after the Claim of Exemption was issued.

---

<sup>1</sup> Dated July 1993, July 2002, and June 2013.

3. **Inconsistent with Plans.** BCDC Regulation Section 10918 states, in part, "...no substantial change may be made in any such project [provided a claim of exemption] without a permit from the Commission and provided that the claim shall not cover any subsequent maintenance work on the project." Freethy's Claim included a specific plan with a specific road design that showed straight roads terminating at Goodrick Avenue. However, sometime in the intervening years a new curved road (Elmer Court) was constructed inconsistent with this plan. Taken together with the removal of the existing Freethy Building, it appears the project was substantially changed from the previous specific plan submitted with the Claim.
4. **Conclusion.** The Exemption does not apply to the solar farm and associated fence. The City of Richmond contacted BCDC by email on May 20, 2014, and inquired whether a permit was needed to develop the property for a solar farm. On May 22, 2014, BCDC staff informed the City that, based on reviewing aerial images of the property, it appears that the project is located within BCDC's 100-foot shoreline band jurisdiction and that the proposed solar farm use could be authorized so long as the development provides maximum feasible public access to the Bay and that any potential impacts to Bay resources are minimized.

## II. How to Resolve the Violation and Permit Application Process

The violation of unauthorized development in the shoreline band can likely be resolved through obtaining a BCDC permit to authorize the solar farm and fence after-the-fact and require maximum feasible public access on site or removal of all unauthorized fill and uses and restoration of the site to its condition prior to commencing the solar farm project.

**Applying for a Permit.** In order to retain the solar farm and the fence, you must submit a complete filable permit application to BCDC that requests after-the-fact authorization. The application must include a public access proposal that provides maximum feasible public access consistent with the project already constructed on your property. The application process will require you to obtain local approval from the City of Richmond for your public access proposal before BCDC can authorize it. I have attached a clean permit application with instructions to this letter. An electronic copy can be found on BCDC's website at [www.bcdc.ca.gov/forms/forms.html](http://www.bcdc.ca.gov/forms/forms.html).

In order to complete the permit application, you must complete the CEQA process, obtain local discretionary approval, and satisfy the policies and requirements of the McAteer-Petris Act and San Francisco Bay Plan, including providing maximum feasible public access as part of your project. Your property is the site of a planned Bay Trail section and in order to obtain a permit to authorize the solar farm and fence, a proposal for maximum feasible public access will likely require that you build, operate, and maintain this much-desired section of trail.



### III. Enforcement Process

1. **Standardized Fines.** If the solar farm and associated security fence is removed and the area is restored to its prior status within 35 days of the date of this letter, no civil penalty will apply. If you chose to apply for after-the-fact authorization for the solar farm and fence, one of the two standardized fine schedules provided below will apply depending on whether or not the Commission determines that the project is consistent with its laws and policies.

- a. **Regulation Section 11386(e)(4): For the failure to obtain a Commission permit prior to undertaking any activity that can be authorized after-the-fact by an administrative permit,** if either a filable application is submitted between thirty-six (36) and sixty-five (65) days and a permit is obtained within one hundred and fifty-five (155) days after the date of the mailing of this notice, or the unauthorized activity is completely corrected between thirty-six (36) and sixty-five (65) days after the mailing of this notice: \$2,000 in standardized fines.

If either a filable application is submitted between sixty-six (66) and ninety-five (95) days and a permit is obtained within one hundred and eighty-five (185) days after the date of the mailing of this notice, or the unauthorized activity is completely corrected between sixty-six (66) and ninety-five (95) days after the mailing of this notice: \$5,000 in standardized fines.

If a filable application is submitted more than ninety-five (95) days after the date of the mailing of this notice or the unauthorized activity is completely corrected within the same time limits: \$5,000 in standardized fines plus \$100 per day from the ninety-sixth (96<sup>th</sup>) day to the date a permit is obtained or the activity is completely corrected.

- b. **Regulation Section 11386(e)(6): For the placement of fill, the extraction of materials, or a change in use that could not be authorized under the Commission's laws and policies but is an activity similar in size and scope to the activities listed in Sections 10601(a) through 10601(e),** if the violation is corrected and the area is restored to its prior status between thirty-six (36) and sixty-five (65) days after the date of the mailing of this notice: \$3,000 in standardized fines.

If the violation is corrected and the area is restored to its prior status between sixty-six (66) and ninety-five (95) days after the date of the mailing of this notice: \$8,000 in standardized fines.

If the violation is corrected and the area returned to its prior status more than 95 days after the mailing of this notice: \$8,000 in standardized fines plus \$100 per day to the date the violation is completely corrected.



JHS Properties  
October 25, 2017  
ER2017.004  
Page 5

2. **Enforcement Options.** Pursuant to section 11386 of BCDC's administrative regulations, you may resolve the penalty portion of the alleged violations by paying the standardized fines described above or you have the option to seek resolution through a formal enforcement proceeding that would involve a public hearing.
3. If you have not corrected the violation within 125 days of the date of this letter, you may no longer have the option to settle this matter with standardized fines and staff may, pursuant to sections 66638 and 66641.5(e) of the McAteer-Petris Act, commence a formal enforcement proceeding that could lead to the issuance of a cease and desist and civil penalty order with an administratively imposed civil penalty of between \$10 and \$2,000 per day up to a maximum of \$30,000 for the violation.
4. If any of your actions are determined to be knowing and intentional violations or violate a term of a cease and desist order, the law (sections 66641.5(c) and 66641 of the McAteer-Petris Act, respectively) provides that we may refer this matter to the Office of the Attorney General, which could subject you to court imposed penalties.

**Conclusion.** Please contact me either by phone at (415) 352-3633 or email at [Matthew.Trujillo@bcdca.gov](mailto:Matthew.Trujillo@bcdca.gov) as soon as you receive this letter to schedule a meeting to discuss the steps necessary to resolve the violation. Thank you in advance for your cooperation.

Sincerely,

  
MATTHEW TRUJILLO  
Enforcement Analyst

Enc.

MW/gg

cc: Hector Lopez, Senior Planner, City of Richmond  
Bob Herbst, JHS Properties

Meeting with Joe Shekou, owner, JHS Properties; Bob Herbst, son in law; and Ivo Keller, Counsel, SSL Law Firm, arranged in response to BCDC's letter dated October 25, 2017. BCDC staff present: John Bowers, Matthew Trujillo, Adrienne Klein

Enforcement Case No. ER2017.004

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Bob Herbst provided the site history - Site is 24 acres; Back in the day Freethy conducted fill. City prepared an EIR.

Solar Farm is operating on seven parcels owned by Shekou: APNs 408-220-03, 06, 07, 33, 34, 35, and 48.

1984: Construction of the fill placement, road, concrete lined ditches and lightpoles and utilities occurred pursuant to the COE. Also, 3 warehouse buildings were constructed which have since been removed. At this time, the City and Freethy negotiated a 30-foot-wide public access easement along the east and north sides of the property.

1995: Condemnation of portions of the property occurred by the City of Richmond to allow for construction of the Richmond Parkway.

2000: The Shekou's purchased the property and have since had trouble securing permission from the City to implement their three project proposals. There is bad blood between the Shekous and City as a result. The site was zoned light industrial and they had developed a plan for a live-work project but could not obtain City approval. The City councils have changed from pro- to anti-development and rezoned property to cultural/open space. They also imposed a building moratorium in 2016 which is due to expire in February 2018.

2006: Shekous met with Bob Batha and showed him a public access plan. Unclear whether Bob was aware of the COE and how he advised them? If Bob indicated that a BCDC permit was necessary, then their action to proceed absent a permit is not negligent.

2013: Nevertheless, the Shekous secured approval for the solar farm project, which is allowed in any zoning district. They can connect to the power grid along Goodrich Boulevard; this proximity makes the economic investment feasible. Solar is an off-peak power generator. Economically, it is not a good use of the land but it was the only use they could get approval for. They need to keep the site in solar for 20 years to secure a tax incentive. They have spent \$5 million on the project. Marin Energy buys the power.

2016: Construction of the solar farm began in January and was completed in October. It is a 2MW system, which provides power for 2,400 homes (online press release says 600 homes?). There is an onsite resident named Jerry to secure the facility from vandalism.

The fence that bounds the north and east sides of the property is set back to allow for future implementation of the public access in the pre-established 1984 public access easement.

They are willing to build the pre-existing public access trail easement when the rest of the site builds out. Currently, the site is used for dumping and the PA would lead to a dead end. There is lots of vandalism. All the wiring from the light poles has been stolen. The Rod and Gun Club to the north has damaged 10 solar panels so far. Access along the east side would be very loud and potentially dangerous in Bob's opinion.

Shekou/Herbst Position Regarding Claim of Exemption (COE): They believe their project is fully covered by the COE issued by BCDC and do not want to apply for a BCDC permit. John suggested that they consider applying for a permit under a "reservation of rights" jurisdiction so that if the outcome isn't favorable, they would not have forfeited their right to make a legal claim against BCDC regarding the difference of opinion regarding the scope/limits of the COE.

Future Use of Adjacent Parcels: Shekou owns two additional parcels (APN 408-220-25 and 26). The Richmond Development Company owns APN 48-220-23, 24, 49 and 50. On these six parcels, they are working together to secure approval to construct two, 4,000 sf warehouses to cultivate marijuana. The project is called "Power Plant."

Dumas Sliding Doors is/will be located south of Freethy Boulevard on APNs 48-220-39, 41, 42 and 43.

Matthew Trujillo: Asked if they had installed the concrete barriers limiting vehicular and pedestrian access on Freethy Boulevard at its juncture with Goodrich. They said they had because of the vandalism. Matthew correctly is concerned that this adversely impacts the public's ability to make use of the public access required by BCDC Permit No. 1993. 002, issued to the City of Richmond. Made a copy of a letter from BCDC, dated December 7, 1971, to which they referred to establish their position.

Adrienne Klein: Explained that the BCDC staff does not believe that the COE applies to solar farm and that we believe a BCDC permit is necessary, that the property is considered shoreline band, that the policy consideration is that the project provide must maximum feasible public access consistent with the project, that public access is typically required prior to occupancy, that public shore parking, view corridors, signage and other benefits are often part of a public access proposal along with an ADA accessible shoreline trail. Explained the difference between and administrative and a major permit, mentioned the DRB. Said that they are a step ahead since they have their local approval and CEQA exemption. (Did I explain the enforcement process or not?). Mentioned the Plains' consultant who was very successful at addressing a similar vandalism issue and offered up the name if they were interested.

# Exhibit 19

Ivo Keller: They believe property is subject to exemption and that it is valid on entire property including the future planned developments. They filed a lawsuit against the City of Richmond on December 1<sup>st</sup> regarding the rezoning matter. They would be willing to enter into a settlement agreement to accommodate our position but not to apply for a permit.

John Bowers: A settlement agreement would not satisfy the requirements of the McAteer-Petris Act for a permit.

## Questions:

Should we look at original EIR to see what project it authorized?

Should we find out what Bob Batha advised the Shekous?

Review Permit No. 1993.002 and ensure that public access and habitat improvements have been fully installed as required.

## Next Steps:

Matthew is preparing a second letter for JHS Properties outlining the BCDC position

Adrienne advised Larry and Steve that a public hearing may be necessary to air the difference of opinion regarding the extent and status of the COE.

## **Site Visit to JHS Properties at Mean High Tide on Wednesday, May 16, 2018**

Len Nibby, representing Shekou Family

Matthew Trujillo, Schuyler Olsson, John Bowers and Adreinne Klein representing BCDC.

### **Jurisdiction and Public Access**

We were able to walk around two full sides of the property at the edges adjacent to tidal influence. We measured the distance from the fence to the inland extent of tidal marsh vegetation at two locations. At the southwest fence corner, the distance measured 54.6 feet. At the northwest fence corner, facing the Rod and Gun Club, the distance measured 13.8 feet. Therefore, at the narrow end of this area, there appears to be inadequate room for a public access trail along the shoreline with the current configuration of the fence protecting the panels.

The jurisdiction along the tidal marsh is delineated by the location where the historic fill was placed. The elevation of the land slopes up from the tidal marsh plain.

The jurisdiction adjacent to the Rod and Gun Club appears to extend inland to the roadway, and even around the corner to the location of a culvert, which is 83.4 feet from the 90' turn.

The tide definitely influences this entire area and marsh vegetation is also present, though the species transition to brackish about half way up the channel (bulrush, alterniflora, saltgrass, pickleweed). The approximate distance from the fence to the bottom of the slope was approximately 30 feet, though we neglected to write this measurement down and are not all in agreement.

### **Adjacent Marsh**

Pursuant to signs in the marsh, the EBRPD owns this property. There was some minor amount of debris near the base of the manmade slope that may be worth removing if the opportunity for mitigation presents.

### **Crushed Asphalt**

We observed new fill importation within the area of the solar farm, which Len described as crushed asphalt that is being laid down to raise the grade elevation so that maintenance workers can reach the solar panels to clean them. While we did not observe this fill being placed within the 100-foot shoreline band, it seems evident that this material will be placed throughout the site so that some of it will eventually be located in the SB. I am concerned about water quality impacts from the runoff.

### **Gated Road**

John asked Len if JHS had installed the gate at the entrance to the public road and he said that they had with the City's cooperation to preclude ongoing vandalism of public infrastructure.

**Existing Public Access**

We also walked the existing public access required by Permit No. 1993.002, which is in a state of disrepair. The trail surface has cracks and bulges and the adjacent feral vegetation is overgrown.

## 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

Via Email &amp; US Mail

September 13, 2018

Ivo Keller  
SSL Law Firm LLP  
575 Market Street, Suite 2700  
San Francisco, California 94105

SUBJECT: BCDC Staff's Findings Regarding the Applicability of BCDC's Jurisdiction Over the JHS Solar Farm Site in Richmond, Contra Costa County  
(BCDC Enforcement File No. ER2017.004, BCDC Claim of Exemption File No. CE 74-15)

Dear Mr. Keller:

Thank you for your February 5, 2018 letter entitled, "BCDC Enforcement Case No. ER2017.004." In preparation for our response, BCDC staff carefully considered your arguments in comparison to the records in BCDC Claim of Exemption File No. CE 74-15. We also conducted a visit to site of the JHS Solar Farm facility ("solar farm" or "Property") on May 16, 2018 to examine the as-built conditions and assess the extent of tidal action. As discussed below, staff affirms that BCDC has jurisdiction over portions of the solar farm that were built within BCDC's 100-foot shoreline band jurisdiction without authorization, and that your clients must seek and obtain an after-the-fact permit to authorize the project, must pay an appropriate penalty, and must provide maximum feasible public access, consistent with the project.

**I. Continued Applicability of Claim of Exemption Granted by the Commission**

In my October 25, 2017 letter, I stated that the claim of exemption granted by the Commission on August 15, 1977 does not apply to the solar farm project because: (1) the solar farm is not within the scope of the "project" for which Mr. Freethy's claim of exemption was granted because the solar farm was not constructed in accordance with the plans referenced in the claim of exemption; (2) the claim of exemption was abandoned pursuant to 14 C.C.R. § 10921 and no longer applies to the property on which the solar farm is located; and (3) no substantial change may be made in any exempt project without a permit from the Commission pursuant to 14 C.C.R. § 10918.

In your response letter, dated February 5, 2018, you simply assert, with no citation to authority, that the solar farm project is exempt from BCDC permit requirements under the claim of exemption granted by the Commission in 1977, regardless of whether or not the project site falls within the 100-foot shoreline band as that area is defined in section 66610(b) of the McAteer-Petris Act (MPA). This assertion appears to be based on the Commission's statement, in the "conclusions" section of its letter granting the claim of exemption, that no permit was required at that time for the development of "light industrial uses" on the subject parcels and your clients' professed belief that the solar farm constitutes a "light industrial" facility or use. However, the Commission's reference to "light industrial uses" in the



Ivo Keller  
September 13, 2018  
Page 2

"conclusions" section of its letter must be read in the context of its earlier reference to Mr. Freethy's "detailed and specific plan for the development of a light industrial park," as shown on certain exhibits to the claim of exemption. Commission Determination on Claim of Exemption (Aug. 15, 1977), at 2. Those plans do not include the solar farm conceived and constructed approximately 50 years later.

Your assertion that the exemption granted by the Commission applies to the solar farm fails to address either: (1) the California Supreme Court's determination, in *San Francisco BCDC v. Emeryville* (1968) 69 Cal. 2d 533, 545, that the Legislature used the word "project" as a term of limitation in a grandfather clause permitting exemption in the MPA (Section 66632.1); or (2) the Commission's reservation of jurisdiction, codified at 14 C.C.R. section 10918, to require a permit when a substantial change is made to a project for which a claim of exemption was previously granted. Similarly, on the issue of whether the exemption was abandoned, your response fails to address the evidence of abandonment cited in my October 25, 2017 letter and simply asserts that BCDC has previously taken the opposite position. However, as discussed below, BCDC has repeatedly asserted jurisdiction over the property. Moreover, there is no documentation in our files supporting your claim that at the time JHS conducted due diligence in connection with its purchase of the property, Bob Batha, BCDC's former Chief of Permits, informed JHS that the exemption remained valid.

Notwithstanding the above, and without waiving any of our arguments regarding the inapplicability of the exemption granted by the Commission to Mr. Freethy for improvements described in plans Mr. Freethy submitted to the Commission in 1974, we have reevaluated the extent to which the exemption remains in effect or has been abandoned. In doing so, we have considered current on-site conditions in the entire geographic area covered by the exemption granted by the Commission. As you know, the Commission granted the claim of exemption for specific planned development and uses on approximately 84.34 acres within identified Assessor's parcels, as shown on a drawing entitled "Land Development Plan for Freethy Land and Investment, Richmond, California," dated December 1964. Determination on Claim of Exemption, at 1. A staff-annotated 2018 Google Earth image of the entire area covered by the exemption granted by the Commission, attached hereto as Exhibit A, shows that: (1) portions of the area, particularly to the west and northwest, were never filled and remain subject to tidal action or influence as open water or tidal marsh; (2) portions of the area were or may have been filled pursuant to the exemption but were never developed and have become subject to tidal action through reversion to open water or tidal marsh; and (3) portions of the area were filled and developed and, as a result of such filling and development, are neither presently subject to tidal action as either open water or tidal marsh, nor are they located within 100 feet of any such tidally influenced area.

Considering the geographic area for which the Commission granted an exemption in its entirety, we have determined that it would be reasonable and appropriate to interpret the potential continued applicability or not of the exemption as follows:

1. The exemption has been abandoned and is no longer in effect in those areas that either: (a) were never filled or developed; (b) may have been filled in the past but were not developed and have reverted to open water, tidal marsh, or are otherwise subject to tidal action; or (c) are located within 100 feet of areas described by (a) or (b); and
2. The exemption remains in effect in those areas that were filled and developed in the past and that, as a result of such filling, are not presently either subject to tidal action as either open water or tidal marsh or located within 100 feet of any such areas.

In other words, whether the exemption granted by the Commission remains in effect or has been abandoned as to any particular location within the area covered by the exemption when it was granted by the Commission in 1977 is to be determined based on existing conditions at that particular location.

Thus, the exemption remains in effect and a permit from the Commission is not required for any location that has been filled and developed and, as a result of such activity, fails under existing conditions to exhibit the physical characteristics (specifically, tidal action or influence or location within 100 feet of such action or influence) required for such a location to be within the Commission's jurisdiction; and the exemption has been abandoned and such a permit is required for any location that, under existing conditions, exhibits such physical characteristics and consequently falls within the Commission's SF Bay or shoreline band jurisdiction, as defined in MPA §§ 66610(a) and (b), respectively,<sup>1</sup>

## II. BCDC Jurisdiction at the Property

As you know, on May 16, 2018, BCDC staff, accompanied by JHS representative Len Nibby, visited the Freethy Industrial Park (FIP) to observe the extent of tidal action at the site, take measurements, and examine the as-built condition of the solar farm. Our observations revealed that: (1) there exists a tidal channel on the northern and northeastern perimeters of the solar farm that, as a physical feature that satisfies the definition of the term "slough" in the Commission's regulations,<sup>2</sup> is subject to the Commission's Bay jurisdiction along the entire

<sup>1</sup> Even where an exemption remains in effect, a permit from the Commission is required pursuant to 14 C.C.R. section 10918 for a substantial change to the project for which an exemption was granted. Thus, under section 10918, a permit from the Commission certainly would be required in a situation analogous to that presented in the *Emeryville* case, where the proposed project described the exempted development plans was changed prior to the commencement of filling that removed an area from the Commission's jurisdiction. See *San Francisco BCDC v. Emeryville*, 69 Cal. 2d at 542 (subsequent events required town to make fundamental changes in its development proposal). In contrast, and once again without waiving our prior arguments, it may be appropriate to interpret the "no substantial change" provisions of section 10918 as not applying in a situation where: (1) an area was removed from the Commission's jurisdiction by the placement of fill and developed in accordance with a claim of exemption granted by the Commission; (2) the filled and developed area continuously failed to exhibit the physical characteristics (specifically, tidal action or influence or location within 100 feet of any area where such action or influence is present) required for an area to fall within the Commission's area of jurisdiction; and (3) the area is subsequently redeveloped, decades after the initial exempted development, after the uses described in the plans referenced in the claim of exemption terminate or otherwise cease to exist.

<sup>2</sup> 14 C.C.R. § 10122.

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northern side of the solar farm and a portion of the eastern side up to the northern edge of the culvert under eastern end of Elmer Court; (2) there exists a 100-foot shoreline band jurisdiction adjacent to the Bay jurisdiction that encompasses the northwestern and northern sides of the solar farm facility, its northeastern side, and approximately 50 feet of its southeastern side; therefore; and (3) approximately 73,400 square feet of the solar farm are located in the 100-foot shoreline band, which means that all structures built and fill placed and uses made within this area (e.g., solar panels fencing, asphalt groundcover, maintenance etc.) constitute unpermitted "fill," as that term is defined by MPA § 66632(a) .

In your February 5, 2018 letter you contend that: (1) the solar farm is located outside of the Commission's shoreline band jurisdiction, as depicted in an unnamed set of proposed grading and erosion control plans prepared by Kister, Savio and Rei, Inc. (KSI), dated February 24, 2014, included as Exhibit 1 to your letter; (2) the Mean Higher High Water (MHHW) line depicted in a set of proposed site plans entitled, "Subdivision 5754," prepared by KSI, dated March 1982, included as Exhibit 2 to your letter, exists approximately 200 feet away from the Property; and (3) a letter dated November 12, 1981 from the Elmer J. Freethy Company to BCDC staff entitled, "BCDC Letter November 10, 1981 Development of San Pablo Bay Industrial Park BCDC File No. CE 74-15," included as Exhibit 3 to your letter, confirmed that BCDC would not require a permit for municipal improvements at the Property and that the proposed improvements for the San Pablo Bay Industrial Park would not be located within 100 feet of the San Francisco Bay.

Staff has reviewed each of the pieces of evidence you presented in comparison to the records in BCDC Claim of Exemption File No. CE 1974-15, the relevant provisions of the McAteer-Petris Act, and BCDC Regulations (14 CCR) Sections 10910 – 10921. Our conclusions are as follows:

1. **BCDC Jurisdiction at the Property.** You assert that the MHHW line depicted in the March 1982 Subdivision Map No. 5754 by KSI and the February 2014 plans by KSI demonstrated that the solar farm is located outside of BCDC's jurisdiction. This conclusion is incorrect, because the MHHW line is not the limit of the Bay jurisdiction at this site. Pursuant to Section 66610(a) of the MPA, the San Francisco Bay jurisdiction includes all marshlands of the Bay lying between mean high tide and five feet above mean sea level. On May 16, 2018, BCDC staff identified tidal marshland along the western side the Property that extends to a distance ranging from approximately 39 feet to 67 feet from the fence of the solar farm. Furthermore, staff observed that the channel along the northern and eastern edges of the Property is tidally influenced, which means that, as a "slough" that satisfies the definition of that term in the Commission's regulations, the channel is subject to the Commission's Bay jurisdiction.

## 2. BCDC Has Historically Asserted Its Jurisdiction Over the Property

- a. To support your claim that BCDC has historically affirmed that it had no jurisdiction over the Property until this case arose in 2016, you included Exhibit 3 to your May 2<sup>nd</sup> letter from Francis Mansell, Operations Manager for the Elmer J. Freethy Company, to BCDC staff, dated November 12, 1981. You contend this letter confirms that the Property is located outside of the Commission's jurisdiction; however, when read in its proper context Mr. Mansell's letter is a follow-up to a conversation that took place with BCDC staff between November 10, 1981 and November 12, 1981. It is clear that Mr. Mansell's letter was intended to encapsulate the understanding by BCDC Staff and Mr. Mansell that if a proposed development project at the Property by the Ainsley Corporation, the Freethy Company's successor in interest, would not occur "within 100 feet of the San Francisco Bay," as asserted by Mr. Mansell, the project would not be within the Commission's 100-foot shoreline band jurisdiction and thus would not require a permit from the Commission. The letter also contains Mr. Mansell's "understanding" that a BCDC permit would be required for any further development of the Property that would involve any "additional filling, dredging, or substantial change in usage of the property."

You also assert that BCDC did not make any attempt to assert its jurisdiction over the site in 1981 or at any other time, and that our present assertion of jurisdiction is inconsistent with past practice. However, the record clearly demonstrates that between 1979 and 1989 BCDC staff repeatedly asserted jurisdiction and permitting authority over the Property as follows:

- (1) **December 17, 1979.** In a letter from BCDC permit analyst Nancy Twiss to the City of Richmond Planning Department entitled, "Preliminary Tentative Subdivision Map 754 Freethy Industrial Park Claim of Exemption No. CE 74-15 and BCDC Inquiry File No. CC.NR.6619.1," in response to the submission of a tentative subdivision map of the original Property by the City to BCDC staff for review, Ms. Twiss asserted that the Commission would have 100-foot shoreline band jurisdiction over the Property where further development constituted a change in the use of the Property (e.g., the construction of an office park). Ms. Twiss' conclusion is consistent with BCDC Regulation (14 CCR) Section 10918, "Effect of Grant of Exemption." See Exhibit B, attached hereto, a copy of Ms. Twiss' letter.
- (2) **February 6, 1980.** In a letter from BCDC staff counsel Frank Broadhead to the City of Richmond Planning Director entitled, "Freethy Property - CE74-15 and BCDC Inquiry File No. CC.MR.6619.1," Mr. Broadhead noted that since it appeared that Elmer Freethy was no longer the owner of the Property, pursuant to BCDC Regulation Section 10920, "Effect of Transfer of Property on Claim of Exemption," the granted exemption no longer applied.<sup>3</sup> See Exhibit C, attached hereto, a copy of Mr. Broadhead's letter.

<sup>3</sup> Section 10920 was amended in 1998 to allow the transfer of grants of exemptions to successors in fee ownership.

- (3) **November 10, 1981.** In a letter from BCDC staff counsel Jonathan Smith to Elmer Freethy and the new owner of the site, the Ainsley Corporation, entitled, "Development of San Pablo Bay Industrial Park," Mr. Smith emphatically asserts that the claim of exemption was issued exclusively to Mr. Freethy and was not transferrable to the Ainsley Corporation, and he directed the new owner of the Property to seek and obtain a Commission permit for any new filling, dredging or substantial change of use at the Property. See Exhibit D, attached hereto, a copy of Mr. Smith's letter.
  - (4) **October 23, 1989.** In a letter from BCDC Legal Intern Kurt Seel to the Buzz Oates Real Estate Agency, entitled, "BCDC Jurisdiction Over Portions of Richmond Subdivision 5754," Mr. Seel informed the agent that lots 5, 6, 7, 11, 12, and 14--all lots on which the solar farm was built--are located within the Commission's shoreline band jurisdiction. He also asserted that the property transfer from Elmer Freethy to Ainsley Corporation nullified the granted exemption. See Exhibit E, attached hereto, a copy of Mr. Seel's letter.
  - (5) **May 22, 2014.** In an e-mail from BCDC permit analyst Michelle Levenson to Richmond City Planner Hector Lopez, entitled, "Proposed Solar Farm in the City of Richmond," Ms. Levenson stated that the proposed project appeared to be located with BCDC's jurisdiction, and, thus, a BCDC permit and the provision of public access would be required. See Exhibit F, attached hereto, a copy of Ms. Levenson's e-mail.
3. **Failure of the Property Owners to Conduct Their Due Diligence Prior to Constructing the Solar Farm.** In your letter, you state that the solar farm was developed under "a good faith belief" that the Property is not located within BCDC's jurisdiction. However, as documented above, it is a matter of public record that BCDC's jurisdiction over portions of the Property has been scrutinized in the past and this is not the first instance where BCDC has declared its jurisdiction over this site. Staff rejects the assertion that this project was developed "under a good faith belief that the Property is not located within BCDC's jurisdiction." The Shekous have a long history of developing properties around the Bay shoreline and are well aware of BCDC's jurisdiction. As such, they should have approached BCDC to request an assessment of the site prior to commencing with any development that may have been subject to its jurisdiction, rather than making assumptions based on the interpretation of a thirty-year-old letter and a set of equally outdated site plans. As a result, the solar farm could possibly have been constructed outside of the Commission's jurisdiction to avoid having to apply for and obtain the Commission's approval for the project.

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### III. Public Access

You assert that public access at the site is infeasible and inconsistent with the project. However, as you yourself acknowledge in your February 5 letter is shown on the "KSR Plans" attached as Ex. 1 to your letter, the property on which the Shekous constructed their solar farm project as well as other property owned by the Shekous in the Freethy Industrial Park is encumbered by the dedication to the City of Richmond of 1) a public access easement that consists of a 20-foot-wide, and approximately 1,000-foot-long trail along the western perimeter of such property, and 2) a 30-ft.-wide "trail and storm drain easement" along the northern boundary of the solar farm property. Thus, the Shekous constructed the solar farm project with at least constructive notice of the existence of both of these trail dedications. Therefore, if public access was contemplated at the time the Shekous constructed the solar farm project, it is illogical to argue, as you do, that public access is infeasible or otherwise precluded today.<sup>4</sup>

BCDC staff acknowledges the current challenges to the public's ability to access the shoreline, particularly as stated in your assertion that public access is "inconsistent with the nature of the Solar Farm Project." However, we do not believe these challenges to be insurmountable. It is common for BCDC staff to work closely with permit applicants and their contractors in the pre-application and application stages of a project to design suitable public access amenities to address relevant safety and related concerns. Your clients are encouraged to meet and consult with BCDC's staff for advice on the most suitable public access improvements for the Property prior to submitting their application.

### IV. Conflict of Interest

You assert that Commissioner Tom Butt, Mayor of Richmond, has a conflict of interest in this enforcement case. As far as we are aware, Commissioner Butt has no knowledge of this enforcement investigation. We hope to process the permit application for the solar farm project including onsite public access as an administrative permit, which can be issued by the Executive Director, rather than as a major permit application, which would bring this matter before the full Commission. If this matter goes before the Commission in the future, we will consider your concerns in more depth at that time. Such consideration will include but may not be limited to an evaluation of the outcome of the judicial and administrative proceedings concerning Commissioner Butt's alleged conflict of interest with respect to your clients' development plans.

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<sup>4</sup> Your infeasibility argument is based in part on the activities of a neighboring property owner, the Richmond Rod & Gun Club, in the form of "numerous incidents of bullets and other projectiles from the rifle range ...striking the Solar Farm Project's photovoltaic panels or [otherwise] landing on the property." The Commission does not believe it is appropriate for an otherwise feasible public access plan to be rendered infeasible by the tortious conduct of a neighboring landowner.

You also base your infeasibility argument on the fact that a portion of the western shoreline of the FIP is owned by "an independent third party," the Richmond Development Co., LLC (RCD). However, when the RCD acquired title to its property along the western shoreline of the FIP it did so subject to the same, above-described 20-foot-wide and approximately 1,000-foot-long public access trail as shown on the KSR Plans for the FIP.

## V. Conclusion

We hope that the presentation of these facts will clear the way to move forward with retroactively permitting the solar farm and providing public access at the site in a timely manner without further delay. To that end, we request that by December 31, 2018, your clients file a complete application with the BCDC staff that requests after-the-fact authorization for construction of that portion of the solar farm that is within the Commission's jurisdiction. A "complete" application is one in which all of the filing requirements have been met. To ensure that you have enough time to complete the application process, we encourage you to submit the application early so that the BCDC staff can review the application and provide you with a list of outstanding items, should there be any.

The application should include a proposal for a suite of improvements at the Property that will provide maximum feasible public access to the shoreline for walking, bicycling, sitting, viewing, picnicking, and related purposes. The public access improvements should include a multi-use, accessible pathway that provides at least one connection to an existing spur of the Bay Trail, BCDC public access trail, and/or public street to enable ease of access for cyclists and pedestrians. The public access proposal should, at a minimum, comport with any existing public access easements of dedications in force at the property that the City of Richmond may have required in connection with its previous development approvals. Please encourage your clients to meet with BCDC staff as soon as possible (prior to submitting a permit application) to discuss the possible options for public access at the site.<sup>5</sup>

If your clients fail to file a complete application December 31, 2018, BCDC Enforcement Staff may commence a formal enforcement proceeding which, under the provisions of Sections 66637 – 66642 of the MPA and Chapter 13 of the Commission's administrative regulations, will likely result in at least two public hearings before the BCDC Enforcement Committee and the full Commission, respectively, and the possible issuance of a Commission Cease and Desist and Civil Penalty Order.

---

<sup>5</sup> In this connection we acknowledge your "offer of compromise" on page five of your February 5, 2018, letter which, among other elements, includes your offer to facilitate discussions with other property owners in the FIP, including most notably the RDC, with the goal of formulating and implementing a public access plan for this overall site that is in the best interests of all interested parties. Such a plan will include, but not necessarily be limited to, the 20-ft.-wide approximately 1,000-ft.-long public access trail along the western boundary of the FIP. We agree that cooperation by RDC in a comprehensive public access plan for this site may well be desirable in order to achieve such an outcome. However, we hasten to emphasize the essentiality of formulating and implementing such a global, comprehensive solution to the public access issues raised by your clients' development activities in the context of the permit proceeding we are directing your clients to initiate, as opposed to having such a solution be contingent upon "construction of any project for further developing the remainder of FIP...within the next 10 years."



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Please feel free to contact us with any further questions or concerned at the phone numbers or e-mail addresses provided below.

Best Regards,

A handwritten signature in black ink, appearing to read "John Bowers", with a large, sweeping initial "J".

JOHN BOWERS  
Staff Counsel  
jbowers@bcdcc.ca.gov  
(415) 352-3610

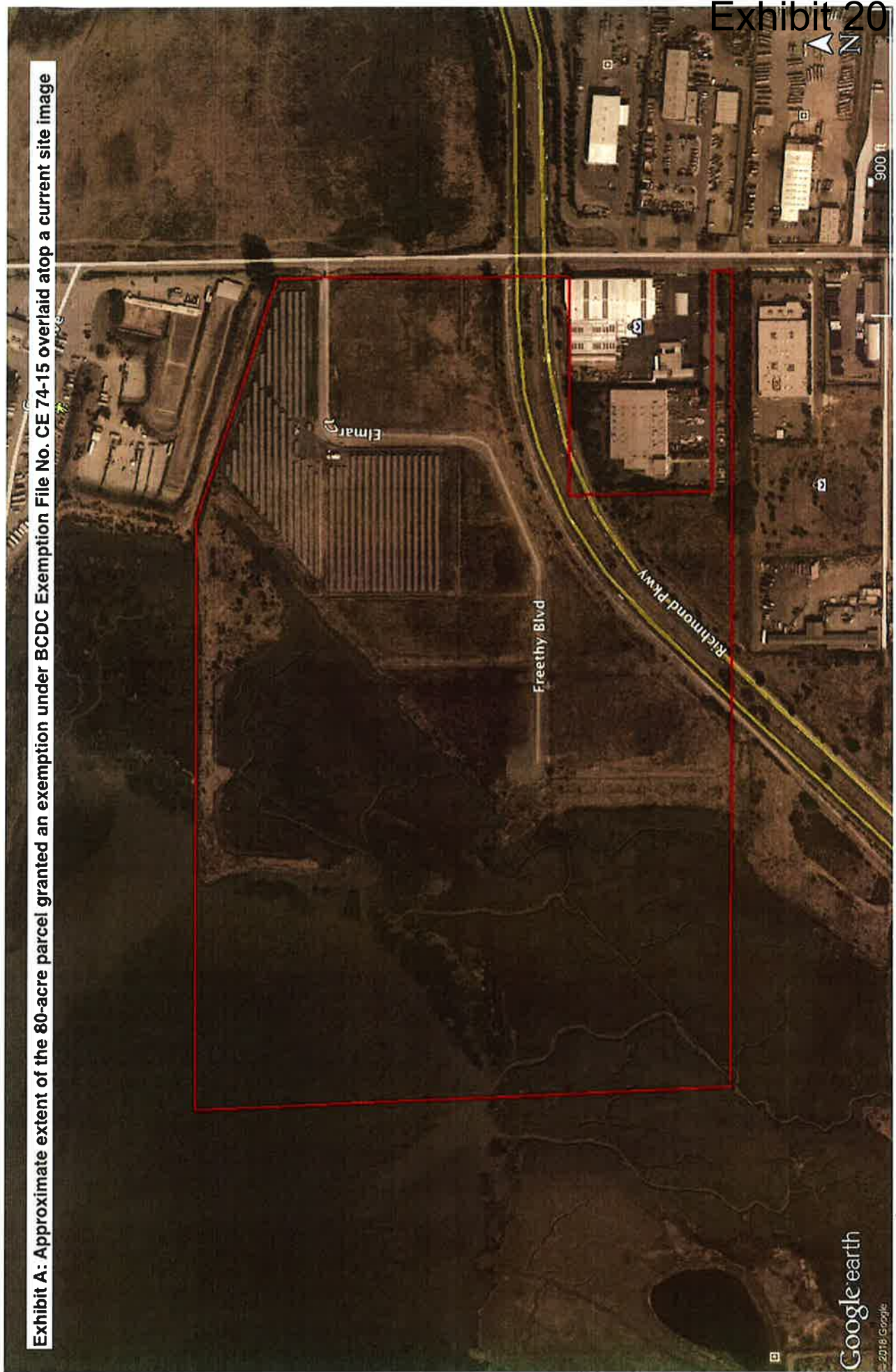
A handwritten signature in blue ink, appearing to read "Matthew A. Trujillo", with a stylized "M" and "T".

MATTHEW TRUJILLO  
Coastal Program Analyst  
mtrujillo@bcdcc.ca.gov  
(415) 352-3633

Attached: Exhibits A – F

cc: JHS Properties, c/o Joe Shekou and Bob Herbst  
Marc Zeppetello, Chief Counsel  
Brad McCrea, Regulatory Program Director

Exhibit A: Approximate extent of the 80-acre parcel granted an exemption under BCDC Exemption File No. CE 74-15 overlaid atop a current site image



February 13, 2019

Mr. Ethan Lavine  
Chief of Bay Resources and Permits  
Bay Conservation and Development Corporation  
455 Golden Gate Avenue  
San Francisco, CA 94102

Dear Ethan,

Thanks for your help over the past several months in helping us plan the design of a new public shoreline trail at Freethy industrial Park. We had hoped to submit our application at the same time as PowerPlant Park, but we understand their application has been delayed over issues related to the City of Richmond's existing BCDC permit conditions for Freethy Boulevard. We therefore must submit our application separately per the request of Matthew Trujillo, but please know that we do intend to build and maintain our trail section in conjunction with PowerPlant's planned shoreline improvements with which you are familiar.

As discussed at our two meetings together in the last several months, we have terminated the trail about 200 feet from the Richmond Gun Club property line, in recognition of potential public safety hazards related to existing gun club operations.

In submitting this application, Joe and Heidi Shekou (JHS) expressly reserve the right to contest the San Francisco Bay Conservation and Development Commission's (BCDC) jurisdiction over, and authority to require a permit for development of, the land owned by JHS in Freethy Subdivision in Richmond, California (the Property). JHS's submission of the application shall not be construed as an admission that BCDC has jurisdiction over any portion of the Property; nor shall it be construed as a waiver of JHS's right to contest BCDC's jurisdiction on any basis, including, without limitation, the issuance of a letter of exemption to JHS's predecessor-in-interest as owner of the Property, the previous grading and partial development of the Property, and/or the elevation of the Property and its distance from any areas that may be within BCDC's jurisdiction.

JHS is proceeding with submission of the application in reliance upon its understanding that BCDC has agreed not to construe the submission as a waiver or admission of any kind. Further, this reservation shall remain in effect even if BCDC should issue a permit for any portion of the Property, and shall expire only if and when (i) JHS gives BCDC written notice of JHS's acceptance of a permit issued by BCDC for the Property, in JHS's sole discretion, and (ii) JHS has realized the benefits of that permit.

Please feel free to call me with any questions regarding our application.

Best regards,

Bob Herbst  
JHS Properties  
415-472-7700

# SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION

455 Golden Gate Avenue • Suite 10600 • San Francisco, California 94102 • (415) 352-3600 • Fax: (415) 352-3606 • www.bcdc.ca.gov

## Exhibit 22 BCDC Application Form

### For BCDC Use Only

Application number: \_\_\_\_\_

Fee: \_\_\_\_\_

### Checklist of Application Requirements (For Applicant's Use)

	Major Permit	Administrative Permit	Regionwide Permit
<input checked="" type="checkbox"/> Application Form	One fully completed and signed original and seven copies	One fully completed and signed original	One fully completed and signed original
<input checked="" type="checkbox"/> Large Scale Project Site Plan	One copy	One copy	One copy
<input checked="" type="checkbox"/> 8.5"x11" Project Site Plan	Seven copies	One copy	One copy
<input checked="" type="checkbox"/> 8.5"x11" Public Access and Open Space Plan	Seven copies	One copy	None
<input checked="" type="checkbox"/> 8.5"x11" Vicinity Map	Seven copies	One copy	One copy
<input checked="" type="checkbox"/> Proof of Legal Property Interest	One copy	One copy	One copy
<input checked="" type="checkbox"/> Local Government Discretionary Approval	One copy	One copy	None
<input checked="" type="checkbox"/> Environmental Documentation	One copy of environmental determination and EIR or EIS Summary	One copy of environmental determination	None
<input checked="" type="checkbox"/> Water Quality Certification/Waiver	One copy, if applicable	One copy, if applicable	One copy, if applicable
<input type="checkbox"/> Dept. of Toxic Substances Control Approval	One copy, if applicable	One copy, if applicable N/A See Email memo from DTSC 1-3-19	One copy, if applicable
<input type="checkbox"/> Biological Opinion/Take Authorization from state and federal agencies	One copy, if applicable	One copy, if applicable N/A - See pages 40&41 of Draft MND	Not applicable
<input type="checkbox"/> Application Processing Fee	As specified in Commission regulations, Appendix M	As specified in Commission regulations, Appendix M	As specified in Commission regulations, Appendix M
<input type="checkbox"/> Notice of Application*	Posted at project site	Posted at project site	Posted at project site
<input type="checkbox"/> Certification of Posting the Notice of Application*	One signed original returned to BCDC	One signed original returned to BCDC	One signed original returned to BCDC

\*BCDC staff will provide the forms for posting the Notice of application and the Certification.

Authority: Sections 66632, Government Code; and Section 29201(e), Public Resources Code.

Reference: Sections 65940-65942, 66605, 66632(b) and (f) and 84308, Government Code; Sections 2770, 2774, 21080.5, 21082, 21160 and 29520, Public Resources Code; and the San Francisco Bay Plan.



**Box 1**

**Property Ownership and Application** **Exhibit 22**  
(must be completed by all applicants)

**a. APPLICANT:**

☒ Owns  
project  
site

☐ Leases  
project  
site

☐ Homeowner  
Association  
owns/will own

☐ Other Property Rights: \_\_\_\_\_

Name/Title: Joe Shekou

Address: 2165 Francisco Blvd.

City, State, Zip: San Rafael, CA 94901

Telephone: (415) 453-0212 Fax: (415) 453-0212

Email: sapidrood@yahoo.com

**APPLICANT'S REPRESENTATIVE:** ☒ None

Name/Title: Robert Herbst

Address: 400F Smith Ranch Road

City, State, Zip: San Rafael, CA 94903

Telephone: (415) 472-7700 Fax: (415) 507-0299

Email: rherbst@jhsproperties.net

I hereby authorize Robert Herbst

to act as my representative and bind me in all matters concerning this application.

[Signature]

Signature of Applicant

JOE SHEKOU

Print Name

2/13/19

Date (mm/dd/yyyy)

**b. CO-APPLICANT:**

☐ Owns  
project  
site

☐ Leases  
project  
site

☐ Homeowner  
Association  
owns/will own

☐ Other Property Rights: \_\_\_\_\_

Name/Title: \_\_\_\_\_

Address: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_

Email: \_\_\_\_\_

**CO-APPLICANT'S REPRESENTATIVE:** ☐ None

Name/ Title: \_\_\_\_\_

Address: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_

Email: \_\_\_\_\_

I hereby authorize \_\_\_\_\_

to act as my representative and bind me in all matters concerning this application.

\_\_\_\_\_  
Signature of Co-Applicant

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Date (mm/dd/yyyy)

**c. PROPERTY OWNER:** ☒ Same As Applicant or Co-Applicant

**OWNER'S REPRESENTATIVE:** ☐ None

Name/Title: \_\_\_\_\_

Name/Title: \_\_\_\_\_

Address: \_\_\_\_\_

Address: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_

Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_

Email: \_\_\_\_\_

Email: \_\_\_\_\_

I hereby authorize \_\_\_\_\_

to act as my representative and bind me in all matters concerning this application.

\_\_\_\_\_  
Signature of Owner

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Date ( mm/dd/yyyy)

- d. Provide documentation of property interests, such as a copy of a grant deed, lease or easement, and Conditions Covenants and Restrictions, for a homeowner's association, that demonstrates that the owner or applicant has adequate legal interest in the property to undertake the proposed project. See Commission regulations Appendix F for complete details.

**e. DISCLOSURE OF CAMPAIGN CONTRIBUTIONS:**

The following contributions of more than \$250 were made by the applicant or applicant's representative to a BCDC commissioner or commissioner's alternate in the preceding twelve months to support the commissioner's or alternate's campaign for election to a local, state or federal office.

Contribution Made To:

Contribution Made By:

Date of Contribution:

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

☒ No such contributions have been made.

**f. CERTIFICATION OF ACCURACY OF INFORMATION AND AUTHORIZATION TO INSPECT:**

*I hereby certify under penalty of perjury that to the best of my knowledge the information in this application and all attached exhibits is full, complete, and correct, and I understand that any misstatement or omission of the requested information or of any information subsequently requested shall be grounds for denying the permit, for suspending or revoking a permit issued on the basis of these or subsequent representations, or for the seeking of such other and further relief as may seem proper to the Commission. I further agree that the Commission staff may, with 24 hours notice, inspect the project site while this application is pending.*

■ 

Signature of Applicant or Applicant's Representative

2/13/19

Date ( mm/dd/yyyy)

■

Signature of Co-applicant or Co-applicant's Representative

Date ( mm/dd/yyyy)

■

Signature of Co-applicant or Co-applicant's Representative

Date( mm/dd/yyyy)

■

Signature of Co-applicant or Co-applicant's Representative

Date ( mm/dd/yyyy)

# Box 2

## Total Project and Site Information (must be completed by all applicants)

Exhibit 22

- a. Project Street Address: Elmar Court - currently no street number-see attached diagrams
- b. City, County, Zip: Richmond, Contra Costa, 94801
- c. Assessor's Parcel Number(s): 408-220-006 +007 408-220-035+036
- d. Latitude: 37.58.30.8north Longitude: 122.22.03.2west
- e. Previous BCDC permit number(s) for work at this site: N/A
- f. Project Name: JHS Properties - Solar Farm
- g. Brief Project Description: An approximately 8 acre installation of solar power generation panels (built 2014). Construction of a 200' extension of Bay Trail (10' wide asphalt paved trail w/ 2' DG shoulder) to commence concurrent with similar project on adjacent property in 2020.
- h. Date work is expected to begin: 07/01/2020  
Date work is expected to be completed: 09/30/2020
- i. Total Project Cost: \$ \$45,000.00 Estimated construction cost for new Bay Trail Extension
- j. Length of shoreline on the project site: No shoreline - see attached feet
- k. Length of shoreline at adjacent property owned or controlled by the applicant: N/A see attached Wetland Delineation Map dated 5-12-2016 feet
- l. Approximate size of project site within BCDC's "shoreline band" jurisdiction: 3,800 square feet
- m. Approximate size of project site within BCDC's "Bay" or "certain waterway" jurisdiction: N/A square feet
- n. Approximate size of project site within BCDC's managed wetland or salt pond jurisdiction: N/A square feet
- o. Approximate size of project site within the Suisun Marsh: N/A square feet
- p. Approximate size of project site outside of BCDC's jurisdiction: 320,330 square feet
- q. Approximate total size of project site (including areas outside BCDC's jurisdiction): 360,400 square feet
- r. Area of total project site reserved for non-public access uses: 356,600 square feet
- s. Area of total project site reserved for public access: 3,800 square feet
- t. Does the project involve development within the primary management area of the Suisun Marsh?  
☐ Yes ☒ No

If "Yes," provide any relevant duck club number(s): \_\_\_\_\_



# Exhibit 22

## (Box 2, Total Project and Site Information, continued)

u. Project Details. Complete all that apply.

Proposed Elements of the Project	In BCDC's Bay, Certain Waterway, Managed Wetlands or Suisun Marsh Jurisdiction*	In BCDC's Shoreline Band jurisdiction	Outside BCDC's jurisdiction	Totals
1. Structures	0 _____sq.ft.	26,000 _____sq.ft.	270,500 _____sq.ft.	296,500 _____sq.ft.
2. All Roads, Parking, Pathways, Sidewalks	0 _____sq.ft.	3,000 _____sq.ft.	0 _____sq.ft.	3,000 _____sq.ft.
3. Number of Parking Spaces:	0	0	0	0
4. All Landscaping	0 _____sq.ft.	800 _____sq.ft.	0 _____sq.ft.	0 _____sq.ft.
5. Left undeveloped	0 _____sq.ft.	0 _____sq.ft.	0 _____sq.ft.	0 _____sq.ft.
6. Shoreline Protection	0 _____sq.ft.	0 _____sq.ft.	0 _____sq.ft.	0 _____sq.ft.
7. Piers, docks and other marine-related purposes	0 _____sq.ft.	0 _____sq. ft.	0 _____sq.ft.	0 _____sq.ft.
8. Areas used for other purposes (specify)	0 _____sq.ft.	10,300 _____sq.ft.	49,800 _____sq.ft.	61,500 _____sq.ft.
Totals:	0 _____sq.ft.	40,100 _____sq.ft.	320,300 _____sq.ft.	360,400 _____sq.ft.

\* If project will occur in more than one of these jurisdictions, provide the requested information for each area separately.

(Box 2, Total Project and Site Information, continued) **Exhibit 22**

v. **INFORMATION ABOUT THE TOTAL PROJECT AND SITE (PROVIDE IN AN ATTACHMENT):**

1. Provide a detailed project description.
2. Describe the existing condition of the site, including the elevations, underwater topography, vegetation, structures and uses. Provide one or more photographs of existing site conditions.
3. Identify bathymetric features, tidal hydrology and sediment movement at the project site and describe how the project may influence these factors.
4. Endangered or Threatened Species.
  - a. Identify any known threatened or endangered species, or any species that the California Department of Fish and Game or a federal wildlife agency has determined are candidates for listing as threatened or endangered species, or any species that provide substantial public benefits that may be found at the project site.
  - b. Provide any "biological opinion" issued by a state or federal agency as the result of an endangered species consultation.
  - c. Provide any "take" authorizations issued by the state or federal resource agencies.
5. Identify any subtidal areas that are scarce or that have an abundance and diversity of fish, other aquatic organisms and wildlife (e.g., eel grass beds, sandy deep water or underwater pinnacles) at the site. Add the identified areas to the project site plan (see below).
6. Indicate whether the project would involve the release of pollutants or have the potential for accidental pollutant discharge into the Bay. If so, describe how the proposed project has been designed and would be constructed and maintained to prevent or minimize the discharge of pollutants into the Bay, including non-point source pollution (storm water runoff). Provide any storm water pollution prevention plans, when available, storm water management plans, or other water pollution or erosion and sediment control plans showing proposed best management practices developed for the project and the project site.
7. Identify any suspected or known sites of toxic contamination on or in proximity to the project site, and provide the following information: (a) the types of pollutants present; (b) the location of the pollutants (show on the site plan); (c) the extent to which the pollutants are accessible to humans, fish, wildlife or vegetation, or are moving offsite; and (d) steps being taken (including government actions) to control or clean up the pollutants.
8. Provide a copy of any water quality certification or waste discharge requirements that are required by the San Francisco Bay Regional Water Quality Control Board, and any approvals that are required by the State Department of Toxic Substances Control.
9. You must provide information to show that your project would be consistent with the Commission's laws and policies. This application addresses the most common policies raised by most projects. The Commission staff will assist you in identifying additional policies, if any, that apply to your project. Once they are identified, please explain how they offer support for your project and how the project would be consistent with them. The Commission's laws and policies may be found in the digital library at [www.bcdc.ca.gov](http://www.bcdc.ca.gov).
10. **PROJECT PLANS:** Provide the following types of plans: (a) vicinity map sized 8.5"x11"; (b) public access and open space exhibit; (c) project site plan reduced to 8.5"x11"; and (d) full-sized project site plan.

**PLAN REQUIREMENTS:** The public access and open space exhibit must include property boundaries, proposed structures, and an accurate depiction of areas to be provided as public access, open space and view corridors. At a minimum, the project site plan must include property boundaries, all existing and proposed structures and improvements (with cross sections and elevations if necessary), and any tidal marshes and tidal flats. All plans must include a graphic scale, a north arrow, the date and name of the person who prepared the plans, and a depiction of the edge of the Commission's jurisdiction over the Bay or certain waterway (mean high water or, in tidal marshlands, the inland edge of marsh vegetation up to five feet above Mean Sea Level), and the edge of the Commission's shoreline band jurisdiction (100 feet wide measured from the edge of the Bay). See also **Appendix F** for details.

(“Fill” means earth or any other substance or material, including pilings or structures placed on pilings, and structures floating at some or all times and moored for extended periods, such as houseboats and floating docks. Gov. Code Section 66632(a))

- ☐ San Francisco Bay      ☐ Salt pond      ☐ Managed wetland      ☐ "Certain waterway"
- ☐ Primary management area of the Suisun Marsh      ☒ Other: 100' Shoreline Band

Public access: \_\_\_\_\_ square feet

## Exhibit 22

**g. INFORMATION REGARDING FILL (PROVIDE IN AN ATTACHMENT):**

1. Provide dimensions of portions of all structures to be built on new fill, including length, width, area, height and number of stories.
2. Provide one or more photographs of existing shoreline conditions.
3. Explain the purpose of fill in the Bay, salt pond, managed wetland, certain waterway, or Suisun Marsh considering that the Commission can approve new fill for only five purposes: (a) accommodating a water-oriented use; (b) minor fill for improving shoreline appearance; (c) minor fill for providing new public access to the Bay; (d) accommodating a project that is necessary to the health, safety, or welfare of the public in the entire Bay Area; and (e) accommodating a project in the Suisun Marsh that is consistent with either: (1) the Suisun Marsh Preservation Act and the Suisun Marsh Protection Plan; or (2) the Suisun Marsh Local Protection Program.
4. Explain:
  - (a) what possible impacts the fill would have on the Bay Area, including impacts on: (1) the volume of Bay waters, on Bay surface area, or on the circulation of Bay water; (2) water quality; (3) the fertility of marshes or fish or wildlife resources; and (4) other physical conditions that exist within the area, including land, air, water, minerals, flora, fauna, noise, or objects of historic or aesthetic significance; and
  - (b) how the nature, location, and extent of the fill would minimize possible harmful conditions or effects to the Bay.
5. For projects in subtidal areas that have an abundance and diversity of fish, other aquatic organisms and wildlife, or are scarce such as eelgrass beds and sandy deep water, identify feasible alternatives and public benefits associated with the project.
6. Explain: (a) why the fill would be the minimum amount necessary; and (b) why there is no alternative upland location for the project that would avoid the need for Bay fill.
7. If the fill is to be used for improving shoreline appearance or providing new public access to the Bay, explain why it is physically impossible or economically infeasible to accomplish these goals without filling the Bay.
8. Explain how the fill would result in a stable and permanent shoreline.
9. Explain the steps that would be taken to assure that the project will provide reasonable protection to persons and property against hazards of unstable geologic or soil conditions, of sea level rise, or of flood or storm waters.
10. Provide the names, addresses, and telephone numbers of any licensed geologists, engineers, or architects involved in the project design who can provide technical information and certify the safety of the project.
11. Describe in detail the anticipated impacts of the fill on the tidal and subtidal environment, and describe how these impacts would be addressed or mitigated, and explain how the public benefits of the project would clearly exceed the public detriment from the loss of water area, tidal marsh or tidal flats.
12. For marina projects, indicate how many berths, if any, are to be made available for live-aboard boats and explain how these live-aboard boats would contribute to public trust purposes.
13. For tidal, subtidal and other wetland restoration projects, including mitigation projects: (a) identify specific long-term and short-term biological and physical goals; (b) identify success criteria; (c) provide a monitoring program intended to assess the success and sustainability of the project; (d) include an adaptive management plan with corrective measures, if needed, to achieve success and sustainability; and (e) identify the provisions for long-term maintenance, as required by the Bay Plan policies on Mitigation, Tidal and Subtidal Areas. The Commission's laws and policies may be found at [www.bcdc.ca.gov](http://www.bcdc.ca.gov) in the digital library.

## Box 4

### Shoreline Band Information

("Shoreline band" means the land area lying between the Bay shoreline and a line drawn parallel to and 100 feet from the Bay shoreline. The Bay shoreline is the Mean High Water Line, or five feet above Mean Sea Level in marshlands.)

- a. Does the project involve development within the 100-foot shoreline band around San Francisco Bay?

☒ Yes ☐ No

If "Yes," complete this box.

- b. Types of activities to be undertaken or fill, materials or structures to be placed within the shoreline band:

Approximately 200 LF of 12' wide asphalt trail with 3' wide decomposed granite shoulder on one side with areas of native planting.

Extension of Bay Trail will require compacted Class II aggregate base (Cal Trans standard), wood headers, asphalt paving, and decomposed granite paving.

- c. Would the project be located within a priority use area designated in the San Francisco Bay Plan?

☐ Yes ☒ No

The Bay Plan and Maps that depict priority use areas can be viewed in the digital library at [www.bcdc.ca.gov](http://www.bcdc.ca.gov).

If "No," go to section (d). If "Yes," please indicate which priority use the area is reserved for: \_\_\_\_\_

Would the project use be consistent with the priority use for which the site is reserved?

☐ Yes ☐ No

If "Yes," go to section (d). If "No," attach an explanation of how the project can be approved despite this inconsistency.

- d. Total shoreline band area: Within project site: Approx 40,100 square feet
- To be reserved for private, non-public access uses: 320,300 square feet
- To be reserved for public access: 30,000 square feet
- Public access trail plus open space beyond private property fence line.

- e. INFORMATION ABOUT WORK PROPOSED IN THE SHORELINE BAND (PROVIDE IN AN ATTACHMENT):

1. Provide dimensions of portions of all structures to be built within the shoreline band, including length, width, area, height, and number of stories.
2. Provide one or more photographs of existing conditions within the 100-foot shoreline band.



**a. PUBLIC ACCESS DETAILS:**

1. Does public access to the shoreline or do views to the Bay presently exist at the project site, at a contiguous property, or from nearby roads or public access areas?

☒ Yes ☐ No

If "Yes" attach a description of the existing public access and views at these areas.

If "No," explain what is preventing public access to, or views of, the shoreline.

2. Describe how the project would or would not adversely impact present and future public access and views to the Bay. If so, describe how the proposed public access would offset the impact.
3. For most large projects, identify: (1) the existing number of people or employees using the site; and (2) the existing number of cars, bicycles, and pedestrians visiting the site and the level of service of all nearby roads leading to the site. Describe how the project would change these factors.
4. Identify the public's use of existing nearby parks, public access, public parking and other recreational areas on the shoreline and the roads leading to the site and describe the impact the project is expected to have on that use.
5. Do public safety considerations or significant use conflicts make it infeasible to provide new public access to the shoreline on the project site?

☐ Yes ☒ No

If "Yes," describe the public safety considerations or significant use conflicts that make it infeasible to provide public access at the project site and either: (1) identify an offsite area where public access to the shoreline is proposed as part of the project and describe the proposed public access area and improvements at that location; or (2) explain why no offsite public access is proposed as part of the project.

# Exhibit 22

## (Box 5, Public Access, continued)

6. Dimensions of the public access areas: ☐ None Proposed

	Existing		Proposed	
Total public access area including areas outside the Commission's jurisdiction:	<u>0</u>	square feet	<u>30,000</u>	square feet
<small>Public access trail plus open space beyond private property fence line.</small>				
Public access within Commission's shoreline band jurisdiction:	<u>0</u>	square feet	<u>30,000</u>	square feet
	<u>0</u>	linear feet	<u>200</u>	linear feet
	<u>0</u>	average width	<u>15'</u>	average width
Public access pathways, sidewalks in the shoreline band:	<u>0</u>	square feet	<u>3000</u>	square feet
	<u>0</u>	linear feet	<u>200</u>	linear feet
	<u>0</u>	average width	<u>15'</u>	average width
Public access area, landscaping in the shoreline band:	<u>0</u>	square feet	<u>800</u>	square feet
Public access on fill within Commission's Bay, certain waterway, and managed wetlands jurisdiction:	<u>0</u>	square feet	<u>0</u>	square feet
	<u>0</u>	linear feet	<u>0</u>	linear feet
	<u>0</u>	average width	<u>0</u>	average width
Public access on piers or decks over water/wetlands:	<u>0</u>	square feet	<u>0</u>	square feet
	<u>0</u>	linear feet	<u>0</u>	linear feet
	<u>0</u>	average width	<u>0</u>	average width
View Corridor(s):	<u>0</u>	square feet	<u>30,000</u>	square feet
	<u>0</u>	linear feet	<u>200</u>	linear feet
	<u>0</u>	average width	<u>15'</u>	average width
Public Access Parking:	<u>0</u>	stalls	<u>0</u>	stalls

Public access parking is provided by similar Bay Trail extension project currently by adjacent property owner.

### b. ADDITIONAL PUBLIC ACCESS INFORMATION (PROVIDE IN AN ATTACHMENT):

- Describe the existing and proposed public access improvements, both on-site and off-site, including decks, piers, pathways, sidewalks, signs, benches, landscaping, parking, and any other proposed public improvements.
- Describe how the public access area and facilities would be accessible to disabled persons.
- Describe the proposed connections to existing public streets or offsite public pathways.
- Specify how the public access areas would be permanently guaranteed (e.g., dedication, deed restriction, etc.) and how the areas and improvements would be maintained.
- Describe the species present, wildlife use, and habitat conditions in and adjacent to the proposed public access areas and the likely type and degree of human use of the site (i.e., bicycling, dog walking, birding, frequency of use, etc.). Describe how any potential adverse effects on wildlife from public access would be avoided or minimized through the siting, design and management of the public access being proposed at the site.

## Box 6

## Dredging and Mining Information

- a. Complete this box if the project involves mining, dredging or the disposal of dredged material in any of the following areas.

☐ San Francisco Bay
 ☐ Salt pond
 ☐ Managed wetland
 ☐ "Certain waterway"
   
☐ Primary management area of the Suisun Marsh
 ☐ Other: \_\_\_\_\_

- b. Are you submitting a separate application to the Dredged Material Management Office (DMMO)?

☐ Yes
 ☐ No

If "Yes," attach a copy of that application; it is not necessary to complete this Box. If "No," complete this box.

- c. Type of activity:
 ☐ Maintenance Dredging
 ☐ New Dredging
 ☐ Mining

- d. Method of dredging or mining: \_\_\_\_\_

- e. Total volume and area of material to be dredged or mined from:

Open waters: \_\_\_\_\_ cubic yards \_\_\_\_\_ square feet

Tidal marshes: \_\_\_\_\_ cubic yards \_\_\_\_\_ square feet

Tidal flats: \_\_\_\_\_ cubic yards \_\_\_\_\_ square feet

Salt ponds: \_\_\_\_\_ cubic yards \_\_\_\_\_ square feet

Managed wetlands in the primary management area of the Suisun Marsh:

\_\_\_\_\_ cubic yards \_\_\_\_\_ square feet

Other managed wetlands: \_\_\_\_\_ cubic yards \_\_\_\_\_ square feet

Subtidal areas that are scarce or have an abundance and diversity of fish, other aquatic organisms and wildlife, such as eelgrass beds and sandy deep water:

\_\_\_\_\_ cubic yards \_\_\_\_\_ square feet

Other (specify): \_\_\_\_\_ cubic yards \_\_\_\_\_ square feet

- f. Are knockdowns proposed as part of the dredging project?

☐ Yes
 ☐ No

Number of knockdowns: \_\_\_\_\_

Volume per knockdown event: \_\_\_\_\_ cubic yards

# Exhibit 22

## (Box 6,Dredging and Mining Information, continued)

g. Location(s) where dredged or mined material will be deposited: \_\_\_\_\_  
\_\_\_\_\_

h. Total volume of dredged material to be disposed:  cubic yards

Beneficially re-used:  cubic yards

i. Estimated future maintenance dredging required annually: \_\_\_\_\_ cubic yards

j. For dredging projects:

Proposed design depths (MLLW): (1) \_\_\_\_\_ (2) \_\_\_\_\_ (3) \_\_\_\_\_

Proposed over-depth dredging (+ feet): (1) \_\_\_\_\_ (2) \_\_\_\_\_ (3) \_\_\_\_\_

Number of dredging episodes: \_\_\_\_\_

k. Does this project have an annual average dredging average of 50,000 cubic yards or less?

☐ Yes ☐ No

### I. ADDITIONAL INFORMATION (PROVIDE IN AN ATTACHMENT):

1. If the dredged material is to be disposed of in the Bay, explain why the material cannot feasibly be beneficially re-used or disposed of in the ocean, upland, or inland outside of the Commission's jurisdiction.
2. Provide the results of testing for biological, chemical or physical properties of the material to be dredged.
3. Provide a copy of a water quality certification or waste discharge requirements for the dredging or disposal of dredged material from the San Francisco Bay Regional Water Quality Control Board.
4. Identify local and Bay-wide effects of the project on: (a) the possible introduction or spread of invasive species; (b) tidal hydrology and sediment movement; (c) fish, other aquatic organisms and wildlife; (d) aquatic vegetation; and (e) the Bay's bathymetry.
5. For projects in subtidal areas that have an abundance and diversity of fish, other aquatic organisms and wildlife, or are scarce such as eelgrass beds and sandy deep water, identify feasible alternatives and public benefits associated with the project.

# Box 7

## Information on Government Approvals (must be completed by all applicants)

Exhibit 22

	Required YES NO	Type of Approval	Date Approval Expected/Received	Agency Contact and Phone Number
<b>Local Government</b>				
<b>Discretionary Approval(s):</b>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<u>Bldg. Permit</u>	<u>9/29/2014</u>	<u>Bldg. Official_(510)620-6868</u>
<b>State Lands</b>				
<b>Commission:</b>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			
<b>Regional Water Quality</b>				
<b>Control Board:</b>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			
			Regional Board Number:	
<b>California Dept. of Toxic</b>				
<b>Substances Control:</b>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			
<b>California Department</b>				
<b>of Fish and Game</b>				
<b>Streambed Alteration</b>				
<b>Permit:</b>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			
<b>DF&amp;G Take Authorization:</b>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			
<b>Other DF&amp;G Permit:</b>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			
<b>U.S. Army Corps</b>				
<b>Of Engineers:</b>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			
			Public Notice Number:	
<b>U.S. Fish and</b>				
<b>Wildlife Service:</b>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			
<b>Take Authorization</b>				
<b>Biological Opinion:</b>	<input type="checkbox"/> Yes <input type="checkbox"/> No			
<b>NOAA Fisheries Service:</b>				
<b>Take Authorization</b>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			
<b>Biological Opinion</b>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			
<b>U.S. Coast Guard:</b>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			
<b>Federal Funding:</b>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			
<b>Other Approval (Specify):</b>				



## Box 8

## Environmental Impact Document Exhibit 22 (must be completed by all applicants)

- a. Is the project statutorily or categorically exempt from the need to prepare any environmental documentation?

☒

Yes

☐

No

If "Yes," please attach a statement that identifies and supports this statutory or categorical exemption.

- b. Has a government agency other than BCDC, serving as the lead agency, adopted a negative declaration or certified an environmental impact report or environmental impact statement on the project?

☒

Yes

☐

No

If "Yes," attach a copy of the document. If the environmental impact report or statement is longer than ten pages, also provide a summary of up to ten pages. If "No," provide sufficient information to allow the Commission to make the necessary findings regarding all applicable policies. The certified document must be submitted prior to action on the permit.

## Box 9

## Public Notice Information (must be completed by all applicants)

- a. Owners and residents of all properties located within 100 feet of the project site (if more than four, provide the information electronically):

### North:

Name: Richmond Rod & Gun Club

Address: 3155 Goodrick Avenue

City, State, Zip: Richmond, CA 94801

Telephone: (415) 333-3333

### East:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

Telephone: (415) 333-3333

### South:

Name: PowerPlant LLC

Address: 116 Washington Ave.

City, State, Zip: Richmond, CA 94804

Telephone: (510) 459-5566  
(415) 333-3333

### West:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

Telephone: (415) 333-3333

- b. Other persons known to be interested in this project:  
(if more than two, provide the information electronically).

☒

None

Name: \_\_\_\_\_

Address: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

Telephone: (415) 333-3333

Name: \_\_\_\_\_

Address: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

Telephone: (415) 333-3333

## **Narrative Response to Box 2, U. 1-8**

1. The structures described in Box 2 U.1 are above ground solar power generation panels.
8. Open space for access and maintenance of solar power generation panels

## **Narrative Response to Box 2, V. Information about project and site**

1. This project consists of an approximately 8-acre solar power generation facility with an approximately 200' long extension of the Richmond Bay Trail on its western edge. The solar generation facility is entirely fenced with an access gate from Elmar Court. Note, the solar power generation facility was permitted by the City of Richmond and constructed in 2014. Prior to construction of the solar power generation facility, the City of Richmond authorized the placement of fill on the property. Historic permits and plans for both of these earlier projects are included in this application. Bay trail extension related to this property to be constructed concurrent with a similar project to be undertaken by adjacent property owner. Likely start date of that work is spring 2020.

## **Narrative Response to Box 5, 6.a. Public Access Details**

1. This project consists of an approximately 8-acre solar power generation facility with an approximately 200' long extension of the Richmond Bay Trail on its western edge. The solar generation facility is entirely fenced with an access gate from Elmar Court. Note, the solar power generation facility was permitted by the City of Richmond and constructed in 2014. Bay trail extension related to this property to be constructed concurrent with a similar project to be undertaken by adjacent property owner. Likely start date of that work is spring 2020.

## **Narrative Response to Box 5, 6.a. Public Access Details**

2. This project does not create adverse impacts to present or future public access. Construction of the trail provides public access to an area that is currently inaccessible.
3. There are no employees on site at the solar power generation facilities. Site visits by employees to repair and maintain equipment are made using a light truck or van. These trips are infrequent. Impacts to the level of service to nearby roads leading to the sites is negligible.
4. The only publicly accessible amenity in the vicinity of the projects is a length of Bay Trail located on the western side of the Richmond Parkway. That existing length of trail includes a trail head and designated parking at the terminus of Freethy Blvd. The trail extension project proposed as a part of this project would enhance this existing public access point by providing additional length of trail. Note, the property owner to the south of this project is in the planning stages for a similar trail extension project. That project is necessary to provide connection between the trail extension proposed for this project and the existing trailhead. See illustrative plan included with this application.

## **Narrative Response to Box 5, 6.b. Additional Public Access Information**

1. The proposed project includes an approximately 200' long extension of an existing spur of the Bay Trail in Richmond, California. This section of Bay Trail will provide public access to an area with views to the west of San Francisco and San Pablo Bays. The trail extension is a 10' wide asphalt paved path with a 2' wide decomposed granite shoulder. Planting areas totaling

## Exhibit 22

approximately 400 square feet will be located at intervals along the path. These to be planted with native species consistent with Bay Trail design guidelines.

2. This section of trail extension is dependent on construction of a similar length of trail to be built in the future by adjacent property owner to the south. That section of trail is currently in the planning stages. When completed, both sections of trail will be universally accessible from parking located at the terminus of Freethy Blvd. See illustrative plan included with this application.
3. The path will connect to an existing trailhead for the Bay Trail. See illustrative plan included with this application.
4. This section of trail to be maintained under separate agreement with the City of Richmond.
5. The Initial Study/Mitigated Negative Declaration recently prepared for the proposed adjacent project to the south did not identify significant wildlife use of the site or habitat of significance. With this information in mind, the new section of trail proposed as a part of this project was located as far as possible from the shoreline where wildlife and/or habitat might be found at some point in the future. Trail alignment is at farthest inland edge of BCDC 100' shoreline band. See illustrative plan included with this application.





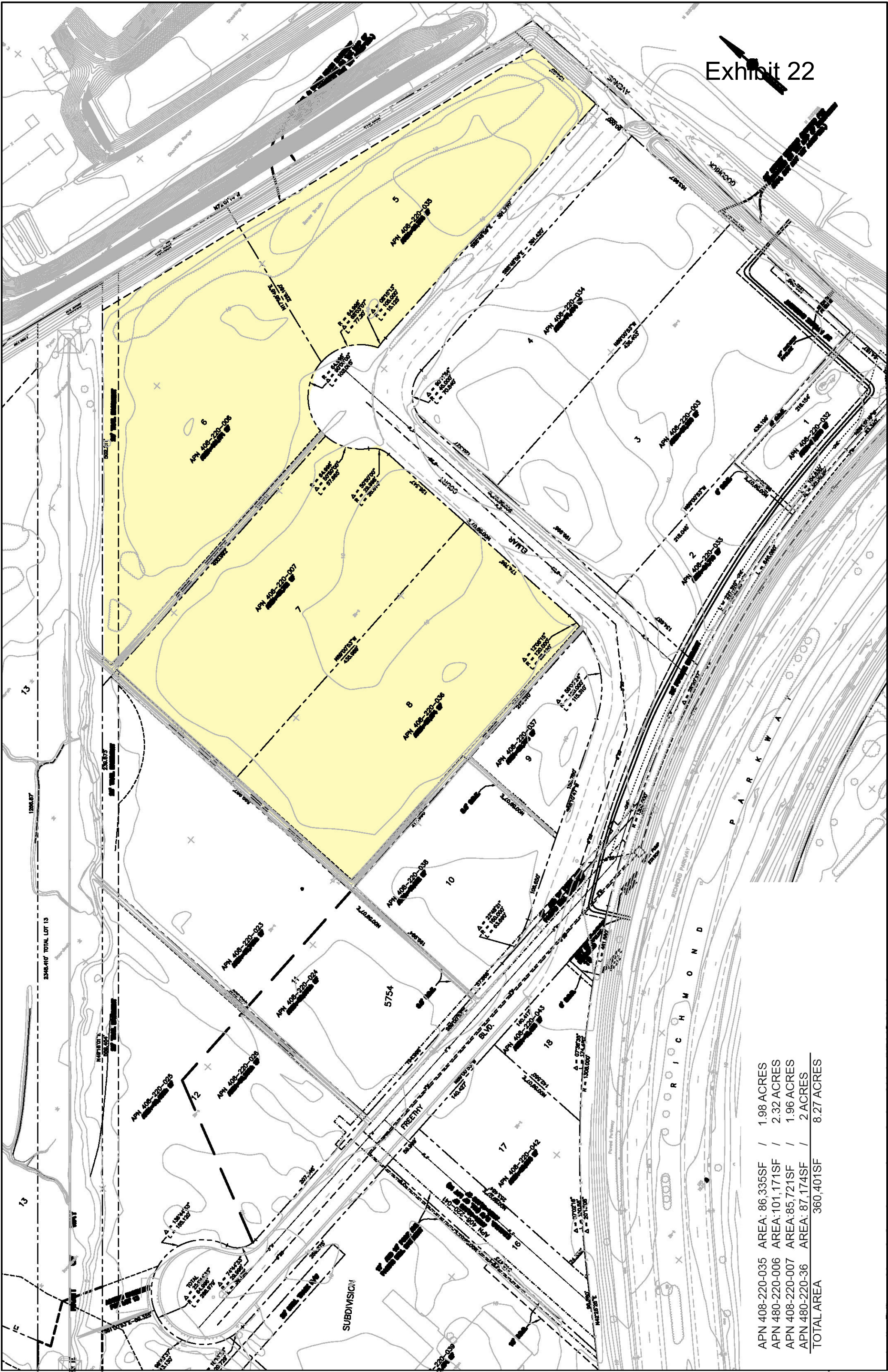












APN 408-220-035	AREA: 86,335SF	/	1.98 ACRES
APN 480-220-006	AREA: 101,171SF	/	2.32 ACRES
APN 408-220-007	AREA: 85,721SF	/	1.96 ACRES
APN 480-220-36	AREA: 87,174SF	/	2 ACRES
TOTAL AREA	360,401SF		8.27 ACRES



# BUILDING REGULATION Exhibit

## CITY OF RICHMOND

450 Civic Center Plaza  
Richmond, CA 94804  
Phone : (510) 620-6868  
Fax : (510) 621-1239

## PERMIT # B14-08040

Job Site Address:

Permit Technician: AA

**FREETHY BLVD**

Parcel APN:	408220006	Today's Date:	09/29/2014
Permit:	<b>B14-08040</b>	Date Applied:	08/29/2014
Type of Permit:	ELC COMMERCIAL	Date Issued:	09/29/2014

PROPERTY OWNER: SHEKOU JOE & HEIDI  
Street Address: 2167 E FRANCISCO BLVD #A  
City/St/Zip: SAN RAFAEL, CA 94901  
Owner Phone: (415) 472-7700

CONTRACTOR: TBD  
Street Address:  
City/St/Zip: Business License:  
Daytime Phone: Exp:

Description of Work: INSTALL GROUND MOUNT SOLAR PV SYSTEM-

Permit Fee Details:	TOTAL VALUATION: \$	1,500,000.00
	TOTAL FEES: \$	1,820.00

### Owner Builder Declaration:

I hereby affirm under penalty of perjury that I am exempt from the Contractors' License Law for the following reason (Section 7031.5, Business and Profession Code states that any City or County which requires a permit to construct, alter, improve, demolish, or repair any structure prior to its issuance also requires the applicant for such permit to file a signed statement that he or she is a license pursuant to the provisions of the Contractor's License Law (Chapter 9 commencing with section 7000 of Division 3 of the Business and Profession Code) or that he or she is exempt from licensure and the basis for the alleged exemption. Any violation of section 7031.5 by any applicant for a permit subjects the applicant to a civil penalty of not more than (\$500).)

I, as owner of the property, or my employees with wages as their sole compensation, will do the work, and the structure is not intended or offered for sale. (Section 7044 Business and Professions Code: The Contractors' State License Law does not apply to the owner of the property who builds or improves their own, and who does such work himself or herself or through his or her own employees, provided that such improvements are not intended or offered for sale. If, however, the building or improvement is sold within one year of completion, the Owner Builder will have the burden of proving that he she did not build or improve for the purpose of sale.)

I, as owner of the property, and exclusively contracting with licensed contractors to construct the project (Section 7044, Business and Professions and Codes states that the current Contractors' State License Law does not apply to an owner of property who builds or improves as thereon, and who contracts for such projects with a licensed Contractor pursuant to the Contractors' License Law).

I am exempt under section Business and Professions Code for this reason

Applicant Date:

### Workers Compensation Declaration:

I hereby affirm under penalty of perjury one of the following declarations: I have and will maintain a certificate of consent to self insure for workers compensation, as provided for by (Section 3700) of the Labor Code, for the performance of the work for which this permit is issued.

I have and will maintain Workers Compensation insurance, as required by Section 3700 of the Labor Code, for the performance of the work for which this permit is issued, my workers compensation carrier and policy numbers are:

Carrier: Policy# Expires

I certify that in the performance of the work for which this permit is issued, I shall not employ any person in a manner so as to become subject to the workers compensation laws of California, and agree that if I should become subject to the workers compensation provisions of section 3700 of the labor code, and I shall forthwith comply with these provisions.

Date: Applicant:

Warning: Failure to secure workers compensation coverage is unlawful, and shall subject an employer to criminal penalties and civil fines of up to \$1000 in addition to the cost of compensation, damages as provided for in section 3706 of the labor code, interest and attorneys fees.

I certify that I have read this application and state that the above information is correct. I agree to comply with all City ordinances and other laws relating to this permit and hereby authorize representatives of the City of Richmond to enter upon the above mentioned property for inspection purposes. This permit will expire on **3/28/2015 12:00:00AM** unless revoked, renewed or extended by the Building Official.

Customer No:

Signature of applicant or agent

Date 9/29/14

Building Dept. by

Date 9/29/14

**PAID**

SEP 29 2014

CITY OF RICHMOND  
FINANCE DEPARTMENT



DEPARTMENT OF THE ARMY  
SAN FRANCISCO DISTRICT, U.S. ARMY CORPS OF ENGINEERS  
1455 MARKET STREET, 16<sup>TH</sup> FLOOR  
SAN FRANCISCO, CALIFORNIA 94103-1398

Exhibit 22

MAY 13 2016

Regulatory Division

Subject: File No. 2006-303600S

Mr. Chip Bouril  
LSA Associates, Inc.  
157 Park Place  
Point Richmond, California 94801

Dear Mr. Bouril:

This correspondence is in reference to your submittal of May 20, 2014, on behalf of JHS Properties, requesting a preliminary jurisdictional determination of the extent of navigable waters of the United States (U.S.) and waters of the U.S. occurring on a roughly rectangular property of approximately 28 acres, known as the Bayside Village project site, located on the north side of the Richmond Parkway, west of Goodrick Avenue, east of San Pablo Bay, in the City of Richmond, Contra Costa County, California (APNs 408-220-003, 408-220-0006, 408-220-007, 408-220-023, 408-220-024, 408-220-025, 408-220-026, 408-220-032, 408-220-033, 408-220-034, 408-220-035, 408-220-036, 408-220-037, 408-220-038, 408-220-039, 408-220-041, 408-220-042, and 408-220-043, Lat: 37.9769° N, Lon: 122.3685° W).

All proposed discharges of dredged or fill material occurring below the plane of ordinary high water in non-tidal waters of the U.S.; or below the high tide line in tidal waters of the U.S.; and within the lateral extent of wetlands adjacent to these waters, typically require Department of the Army authorization and the issuance of a permit under Section 404 of the Clean Water Act of 1972, as amended (33 U.S.C. § 1344 *et seq.*). Waters of the U.S. generally include the territorial seas; all traditional navigable waters which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including waters subject to the ebb and flow of the tide; wetlands adjacent to traditional navigable waters; non-navigable tributaries of traditional navigable waters that are relatively permanent, where the tributaries typically flow year-round or have continuous flow at least seasonally; and wetlands directly abutting such tributaries. Where a case-specific analysis determines the existence of a "significant nexus" effect with a traditional navigable water, waters of the U.S. may also include non-navigable tributaries that are not relatively permanent; wetlands adjacent to non-navigable tributaries that are not relatively permanent; wetlands adjacent to but not directly abutting a relatively permanent non-navigable tributary; and certain ephemeral streams in the arid West.

All proposed structures and work, including excavation, dredging, and discharges of dredged or fill material, occurring below the plane of mean high water in tidal waters of the U.S.; in former diked baylands currently below mean high water; outside the limits of mean high water but affecting the navigable capacity of tidal waters; or below the plane of ordinary high water in

non-tidal waters designated as navigable waters of the U.S., typically require Department of the Army authorization and the issuance of a permit under Section 10 of the Rivers and Harbors Act of 1899, as amended (33 U.S.C. § 403 *et seq.*). Navigable waters of the U.S. generally include all waters subject to the ebb and flow of the tide; and/or all waters presently used, or have been used in the past, or may be susceptible for future use to transport interstate or foreign commerce.

The enclosed delineation map entitled, "Preliminary Jurisdictional Determination: Bayside Village, File 2006-303600S," in one sheet and date certified May 12, 2016, depicts the extent and location of wetlands and other waters of the U.S. within the boundary area of the site that **may be** subject to U.S. Army Corps of Engineers' regulatory authority under Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act. This preliminary jurisdictional determination is based on the current conditions of the site, as previously verified during a field investigation of November 13, 2006, and June 20, 2007, a review of available digital photographic imagery, and a review of other data included in your submittal. While this preliminary jurisdictional determination was conducted pursuant to Regulatory Guidance Letter No. 08-02, *Jurisdictional Determinations*, it may be subject to future revision if new information or a change in field conditions becomes subsequently apparent. The basis for this preliminary jurisdictional determination is fully explained in the enclosed *Preliminary Jurisdictional Determination Form*, which has been signed and dated by this office. You are requested to sign and date this form and return it to this office within two weeks of receipt.

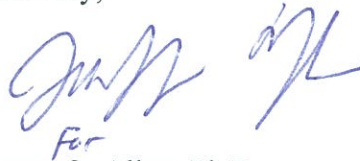
You are advised that the preliminary jurisdictional determination may **not** be appealed through the U.S. Army Corps of Engineers' *Administrative Appeal Process*, as described in 33 C.F.R. Part 331 (65 Fed. Reg. 16,486; Mar. 28, 2000). Under the provisions of 33 C.F.R. § 331.5(b)(9), non-appealable actions include preliminary jurisdictional determinations since they are considered to be only advisory in nature and make no definitive conclusions on the jurisdictional status of the water bodies in question. However, you may request this office to provide an approved jurisdictional determination that precisely identifies the scope of jurisdictional waters on the site; an approved jurisdictional determination may be appealed through the *Administrative Appeal Process*. If you anticipate requesting an approved jurisdictional determination at some future date, you are advised not to engage in any on-site grading or other construction activity in the interim to avoid potential violations and penalties under Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act. Finally, you may provide this office new information for further consideration and request a reevaluation of this preliminary jurisdictional determination.

You may refer any questions on this matter to Justin Yee of my Regulatory staff by telephone at (415) 503-6788 or by e-mail at Justin.J.Yee@usace.army.mil. All correspondence should be addressed to the Regulatory Division, South Branch, referencing the file number at the head of this letter.



The San Francisco District is committed to improving service to our customers. My Regulatory staff seeks to achieve the goals of the Regulatory Program in an efficient and cooperative manner, while preserving and protecting our nation's aquatic resources. If you would like to provide comments on our Regulatory Program, please complete the Customer Service Survey Form available on our website:  
<http://www.spn.usace.army.mil/Missions/Regulatory.aspx>.

Sincerely,

A handwritten signature in blue ink, appearing to read "A. Allen", with a small "For" written below it.

Aaron O. Allen, Ph.D.  
Acting Chief, Regulatory Division

Enclosures

Copy Furnished (w/o encls):

CA RWQCB, Oakland, CA  
CA SWRCB, Sacramento, CA

# PRELIMINARY JURISDICTIONAL DETERMINATION FORM

## San Francisco District

This Preliminary Jurisdictional Determination finds that there *"may be"* waters of the United States in the subject review area and identifies all such aquatic features, based on the following information:

Exhibit 22

Regulatory Division: South Branch

File Number: 2006-303600S

PJD Completion Date: 05-12-2016

### Review Area Location

City/County: Richmond/Contra Costa County State: California

Nearest Named Waterbody: San Pablo Bay

Approximate Center Coordinates of Review Area

Latitude (degree decimal format): 37.9769°N

Longitude (degree decimal format): -122.3685°W

Approximate Total Acreage of Review Area: 28 Select

File Name: Bayside Village

### Applicant or Requestor Information

Name: Chip Bouril

Company Name: LSA Associates, Inc.

Street/P.O. Box: 157 Park Place

City/State/Zip Code: Point Richmond, CA

### Estimated Total Amount of Waters in Review Area

Non-Wetland Waters: 160 lineal feet 4 feet wide and/or  
0.019 acre(s) Flow Regime: Intermittent

Wetlands: lineal feet feet wide and/or  
0.242 acre(s) Cowardin Class: Palustrine- emergent

### Name of Section 10 Waters Occurring in Review Area

Tidal: Brackish Tidal Ditch

Non-Tidal: N/A

☒ Office (Desk) Determination

☐ Field Determination:

Date(s) of Site Visit(s):

**SUPPORTING DATA:** Data reviewed for Preliminary JD (check all that apply – checked items should be included in case file and, where checked and requested, appropriately reference sources below)

☒ Maps. Plans, plots or plat submitted by or on behalf of applicant/requestor (specify): LSA, 2014

☒ Data sheets submitted by or on behalf of applicant/requestor (specify): LSA, 2007, and 2014 references

☒ Corps concurs with data sheets/delineation report.

☐ Corps does not concur with data sheets/delineation report.

☐ Data sheets prepared by the Corps.

☐ Corps navigable waters' study (specify):

☐ U.S. Geological Survey Hydrologic Atlas:

☐ USGS NHD data.

☐ USGS HUC maps.

☒ U.S. Geological Survey map(s) (cite quad name/scale): CA-RICHMOND

☐ USDA Natural Resources Conservation Service Soil Survey.

☐ National wetlands inventory map(s) (specify):

☐ State/Local wetland inventory map(s) (specify):

☐ FEMA/FIRM maps.

☐ 100-year Floodplain Elevation (specify, if known):

☐ Photographs: ☐ Aerial (specify name and date):

☐ Other (specify name and date):

☐ Previous JD determination(s) (specify File No. and date of response letter):

☒ Other information (specify): This is a re-verification of an approved JD that was verified by site visits by the prior project manager in 2007. The re-verification request includes the results of a 2014 field investigation that confirms there are no changes.

**IMPORTANT NOTE:** If the information recorded on this form has not been verified by the Corps, the form should not be relied upon for later jurisdictional determinations.

Signature and Date of Regulatory Project Manager  
(REQUIRED)

Signature and Date of Person Requesting Preliminary JD  
(REQUIRED, unless obtaining the signature is impracticable)

# Exhibit 22

1. The Corps of Engineers believes that there may be jurisdictional waters of the United States on the subject site, and the permit applicant or other affected party who requested this preliminary JD is hereby advised of his or her option to request and obtain an approved jurisdictional determination (JD) for that site. Nevertheless, the permit applicant or other person who requested this preliminary JD has declined to exercise the option to obtain an approved JD in this instance and at this time.

2. In any circumstance where a permit applicant obtains an individual permit, or a Nationwide General Permit (NWP) or other general permit verification, requiring "preconstruction notification" (PCN), or requests verification for a non-reporting NWP or other general permit, and the permit applicant has not requested an approved JD for the activity, the permit applicant is hereby made aware of the following: (1) the permit applicant has elected to seek a permit authorization based on a preliminary JD, which does not make an official determination of jurisdictional waters; (2) that the applicant has the option to request an approved JD before accepting the terms and conditions of the permit authorization, and that basing a permit authorization on an approved JD could possibly result in less compensatory mitigation being required or different special conditions; (3) that the applicant has the right to request an individual permit rather than accepting the terms and conditions of the NWP or other general permit authorization; (4) that the applicant can accept a permit authorization and thereby agree to comply with all the terms and conditions of that permit, including whatever mitigation requirements the Corps has determined to be necessary; (5) that undertaking any activity in reliance upon the subject permit authorization without requesting an approved JD constitutes the applicant's acceptance of the use of the preliminary JD, but that either form of JD will be processed as soon as is practicable; (6) accepting a permit authorization (e.g., signing a proffered individual permit) or undertaking any activity in reliance on any form of Corps permit authorization based on a preliminary JD constitutes agreement that all wetlands and other water bodies on the site affected in any way by that activity are jurisdictional waters of the United States, and precludes any challenge to such jurisdiction in any administrative or judicial compliance or enforcement action, or in any administrative appeal or in any Federal court; and (7) whether the applicant elects to use either an approved JD or a preliminary JD, that JD will be processed as soon as is practicable. Further, an approved JD, a proffered individual permit (and all terms and conditions contained therein), or individual permit denial can be administratively appealed pursuant to 33 C.F.R. Part 331, and that in any administrative appeal, jurisdictional issues can be raised (see 33 C.F.R. 331.5(a)(2)). If, during that administrative appeal, it becomes necessary to make an official determination whether CWA jurisdiction exists over a site, or to provide an official delineation of jurisdictional waters on the site, the Corps will provide an approved JD to accomplish that result, as soon as is practicable.

[illegible]

**GRADING PERMIT #EN14-05203**

**Exhibit 22**

"The Permittee, for himself, his contractors and employees, agrees to save, indemnify and hold harmless the City of Richmond or it's representative from all liabilities and claims for damages by reason of injury or death to any person or persons, or damage to property from any cause whatsoever while in, upon or in any way connected with the work covered by this Grading Permit, and does further agree to defend the City in any claim arising out of or as a result of the work done under this permit."

I hereby acknowledge that I have read this application and state that the information is correct and agree to comply with all City Ordinances and State laws, and the regulations of the State Department of Industrial Relations and Industrial Accident Commission, relating to the character of work, equipment and labor personnel involved in the project.

Owner/Representative (Print): Connexis Garbon

Signature: [Signature]

Date: 4-28-14

***Applicant is hereby made to perform grading work in accordance with requirements of Grading Ordinance No. 4-80 N.S., as specified.***

1. All work performed under the authority of this permit shall be limited to the hours of 8:00 a.m. to 5:00 p.m. Monday through Friday, exclusive.
2. All equipment and supplies used in conjunctions with work performed under this permit, including equipment used in the transportation of the equipment or supplies, must be stored off of public right-of-way.
3. Applicant is responsible to keep all public rights-of-way and off-site areas clean from all dirt, mud, dust and debris at all times. Water trucks(s) are required on the job site.
4. All exposed slopes shall be re-vegetated for erosion and sediment control, refer to A.B.A.G. "Manual of Standards for Erosion and Sediment Control Measures."
5. Any graded areas that will be left incomplete or unlandscaped by September 1 will require an erosion control plan which must be submitted for approval.
6. Applicant shall indemnify and save the City, its agents, officers and employees harmless from and against any and all liability, claims, suits, actions, damages, penalties and/or causes of action arising during the term of this Grading Permit out of any personal injury, bodily injury, loss of life or damage to property, violation of any Federal, State of municipal law or ordinance or other cause in connection with the activities of Applicant, contractors, subcontractors, agents and employees under this Grading Permit or on account of the performance or character of the work; unforeseen difficulties, accidents, occurrences or other causes and from and against all costs, counsel fees, expenses incurred in obtaining expert testimony and the attendance of witnesses, expenses and liability incurred in and about any such claim, the investigation thereof or the defense of any action or proceedings brought thereon; and from and against any orders judgments or decrees which may be entered therein unless arising out of the sole negligence or willful misconduct of the City.
7. In authorizing activities under this Permit, the City has relied on the information and data which permittee has provided in connection with this permit application. If such information and data provide to be false, incomplete or inaccurate the activity may be disqualified from this permit and City may, in addition, institute appropriate legal proceedings.
8. Issuance of this permit by the City of Richmond does not necessarily constitute full approval by all Government Agencies. Applicant shall contact all other concerned agencies, agencies, specifically but not necessarily limited to Contra Costa County Flood Control District, Environmental Protection Agency, County Health Department, Bay Conservation and Development Commission, State of California Department of Fish & Game and United States Army Corps of Engineers before this permit can be considered valid.

Engineering Services Department 04/14

BACK SIDE

**ENGINEERING SERVICES DEPARTMENT**

CITY OF RICHMOND

450 Civic Center Plaza, Suite 200, CA 94804  
Phone: (415) 771-2200 Fax: (415) 771-2201**GRADING PERMIT****EN14-05203**CJC TRUCKING  
180 BROADWAY #G  
RICHMOND, CA 94804Permit Number:  
Address: FREETHY BLVD  
Invoice Date: April 23, 2014  
Permit Tech: GD

<u>Fee Description</u>	<u>Account</u>	<u>Units</u>	<u>Amount</u>
STRM - Swpp Monthly Insp	40623431320239	1	\$630.00
<b>ENG - Grading Inspection Fees</b>			
<u>Fee Description</u>	<u>Account</u>	<u>Units</u>	<u>Amount</u>
Grading Inspection > 10,000 Cubic Yards	15121131341506	0	\$920.00
	<b>Subtotal for ENG - Grading Inspection Fees</b>		<b>920.00</b>
<b>Engineering Services Fee</b>			
<u>Fee Description</u>	<u>Account</u>	<u>Units</u>	<u>Amount</u>
Administrative Processing Fee	15121131340418	0	\$108.00
Consultant Services	151 206624	0	\$1,080.00
	<b>Subtotal for Engineering Services Fee</b>		<b>1,188.00</b>
<b>Engineering Services Hourly Rates</b>			
<u>Fee Description</u>	<u>Account</u>	<u>Units</u>	<u>Amount</u>
Senior Civil Engineer	15121131341506	6	\$1,260.00
	<b>Subtotal for Engineering Services Hourly Rates</b>		<b>1,260.00</b>
<b>Stormwater Hourly Rates</b>			
<u>Fee Description</u>	<u>Account</u>	<u>Units</u>	<u>Amount</u>
STRM - Source Control Inspector II	40623431320239	16	\$2,336.00
	<b>Subtotal for Stormwater Hourly Rates</b>		<b>2,336.00</b>
<b>TOTAL:</b>			<b>\$6,334.00</b>
<b>AMOUNT PAID:</b>			<b>6,334.00</b>
<b>TOTAL AMOUNT DUE:</b>			<b>\$0.00</b>

SEE BACK SIDE



**Notice of Exemption****2014108139 Exhibit 2**

To: Office of Planning and Research  
P.O. Box 3044, Room 113  
Sacramento, CA 95812-3044

County Clerk  
County of: Contra Costa  
P.O. Box 350  
Martinez, CA 94553

From: (Public Agency): City of Richmond  
Planning and Building, 450 Civic Center Plaza  
Richmond, CA 94804

(Address)

Project Title: Freethy Industrial Park Solar Photovoltaic System (Freethy Solar Project)

Project Applicant: Joe & Heidi Shekou and Richmond Development Company LLC

Project Location - Specific:  
The northwest corner of Richmond Parkway and Goodrick Avenue in the City of Richmond, CA.

Project Location - City: Richmond

Project Location - County: Contra Costa

## Description of Nature, Purpose and Beneficiaries of Project:

Install 2 megawatt ground mount photovoltaic solar system on approximately 6 acres of level land at Freethy Industrial Park. The electricity generated by the project will be sold to Marin Clean Energy, pursuant to a long term power purchase agreement.

Name of Public Agency Approving Project: City of Richmond, Department of Planning and Building

Name of Person or Agency Carrying Out Project: Joe & Heidi Shekou, Richmond Development Co. LLC

## Exempt Status: (check one):

- ☒ Ministerial (Sec. 21080(b)(1); 15266);  
☐ Declared Emergency (Sec. 21080(b)(3); 15269(a));  
☐ Emergency Project (Sec. 21080(b)(4); 15269(b)(c));  
☐ Categorical Exemption. State type and section number: \_\_\_\_\_  
☐ Statutory Exemptions. State code number: \_\_\_\_\_

## Reasons why project is exempt:

The Freethy Solar Project qualifies for ministerial and non-discretionary review and approval pursuant to Health and Safety Code 17501.1(a), Government Code 65850.5(b) and City Resolution 56-14 (adopted June 17, 2014). The only approval required for the Freethy Solar Project is a building permit which is ministerial decision and pursuant to the above laws, is exempt from CEQA review.

Lead Agency  
Contact Person: Angelina Almarinez

Area Code/Telephone/Extension: 510-621-1285

## If filed by applicant:

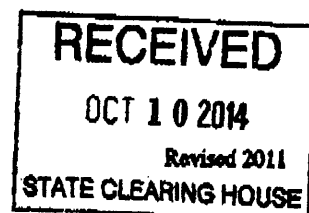
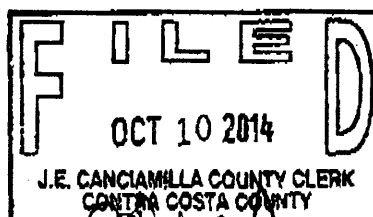
1. Attach certified document of exemption finding.  
 2. Has a Notice of Exemption been filed by the public agency approving the project? ☐ Yes ☐ No

Signature: Robert A. Albert Date: 10/9/14 Title: Project Manager

☐ Signed by Lead Agency ☒ Signed by Applicant

Authority cited: Sections 21080 and 21110, Public Resources Code.  
 Reference: Sections 21108, 21152, and 21152.1, Public Resources Code.

Date Received for filing at CPR: OCT 10 2014



**RESOLUTION OF THE CITY OF RICHMOND CITY COUNCIL INTERPRETING AND IMPLEMENTING THE RICHMOND GENERAL PLAN 2030 AND STATE OF CALIFORNIA POLICY REGARDING SOLAR ENERGY SYSTEMS**

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WHEREAS, The California Solar Rights Act<sup>1</sup> includes Civil Code Sections 714, 714.1, 801 and 801.5; Government Code Sections 65850.5, 66475.3 and 66473.1 and California Health and Safety Code Section 17959.1; and,

WHEREAS, California is a world leader in renewable energy generation. Solar and wind power, as well as emerging technologies such as biomass and fuel cells, are transforming California. Renewable energy is helping to power the state's economy, reducing our state's reliance on imported energy sources, and decreasing air pollution. California's state and local governments have set aggressive goals to expand renewable energy. Small-scale renewable energy benefits California communities. It increases energy reliability for residents and businesses by generating electricity near where it is consumed. This type of energy can also provide stable electricity prices for consumers and creates thousands of jobs across California.

WHEREAS, the State of California has adopted multiple public policy positions that support renewable energy sources, particularly solar energy, including The California Solar Initiative, a 2006 initiative to install 3,000 megawatts (M) of additional solar power by 2016.<sup>2</sup> Included in it is the Million Solar Roof Initiative. In 2011, this goal was expanded to 12,000 MW by 2020;<sup>3</sup> and,

WHEREAS, Richmond General Plan 2030 includes multiple policies, including Energy and Climate Change Policies EC1.1, EC1.2, EC3.1, EC3.A and EC3.B, that encourage the use of solar generated energy in Richmond; and,

WHEREAS, the City of Richmond is a member of Marin Clean Energy (MCE), whose mission includes "local economic and workforce benefits" by encouraging local generation projects as sources of its purchased renewable energy portfolio; and,

WHEREAS, the California Legislature has passed into law numerous provisions that encourage the installation of solar energy generating systems and removal of barriers to the installation of solar energy systems, including:

- Civil Code Section 714(a): "...it is the policy of the state to promote and encourage the use of solar energy systems and to remove obstacles thereto. Accordingly, reasonable restrictions on a solar energy system are those restrictions that do not significantly increase the cost of the system or significantly decrease its efficiency or specified performance, or that allow for an alternative system of comparable cost, efficiency, and energy conservation benefits. :
- Government Code Section 65850.5 (a): The implementation of consistent statewide standards to achieve the timely and cost effective installation of solar energy systems is not a municipal affair, as that term is used in Section 5 of Article XI of the California Constitution, but is instead a matter of statewide concern. It is the intent of the Legislature that local agencies not adopt ordinances that create unreasonable barriers to the installation of solar energy systems, including, but not limited to, design review for aesthetic purposes, and not unreasonably restrict the ability of homeowners and agricultural and business concerns to install solar energy systems. It is the policy of the state to promote and encourage the use of solar energy systems and to limit obstacles to their use. It is the intent of the Legislature that local agencies comply not only with the language of this section, but also the legislative intent to encourage the installation of

<sup>1</sup> [http://solar-rights.com/files/THE\\_CALIFORNIA\\_SOLAR\\_RIGHTS\\_ACT2.pdf](http://solar-rights.com/files/THE_CALIFORNIA_SOLAR_RIGHTS_ACT2.pdf)

<sup>2</sup> <http://www.gosolarcalifornia.ca.gov/about/csi.php>

<sup>3</sup> <http://www.energy.ca.gov/renewables/>

solar energy systems by removing obstacles to, and minimizing costs of permitting for such systems.

- Health & Safety Code Section 17591.1(a): A city or county shall administratively approve applications to install solar energy systems through the issuance of a building permit or similar nondiscretionary permit. However, if the building official of the city or county has a good faith belief that the solar energy system could have a specific, adverse impact upon the public health and safety, the city or county may require the applicant to apply for a use permit.
- Health & Safety Code Section 17591.1(b) A city or county may not deny an application for a use permit to install a solar energy system unless it makes written findings based upon substantial evidence in the record that the proposed installation would have a specific, adverse impact upon the public health or safety, and there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact. This finding shall include the basis for the rejection of potential feasible alternatives of preventing the adverse impact.
- California Health & Safety Code Section 17591.1(c): Any conditions imposed on an application to install a solar energy system must be designed to mitigate the specific, adverse impact upon the public health and safety at the lowest cost possible.
- Government Code Section 65850.5 (b): A city or county shall administratively approve applications to install solar energy systems through the issuance of a building permit or similar nondiscretionary permit. Review of the application to install a solar energy system shall be limited to the building official's review of whether it meets all health and safety requirements of local, state, and federal law. The requirements of local law shall be limited to those standards and regulations necessary to ensure that the solar energy system will not have a specific, adverse impact upon the public health or safety. However, if the building official of the city or county has a good faith belief that the solar energy system could have a specific, adverse impact upon the public health and safety, the city or county may require the applicant to apply for a use permit.
- Government Code Section 65850.5 (c): A city or county may not deny an application for a use permit to install a solar energy system unless it makes written findings based upon substantial evidence in the record that the proposed installation would have a specific, adverse impact upon the public health or safety, and there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact. The findings shall include the basis for the rejection of potential feasible alternatives of preventing the adverse impact; and,

WHEREAS, the California Legislature passed into law the following definition of a “solar energy system:

- California Civil Code Section 801.5(a)(1): Any solar collector or other solar energy device whose primary purpose is to provide for the collection, storage, and distribution of solar energy for space heating, space cooling, electric generation, or water heating.
- California Civil Code Section 801.5(a)((2) Any structural design feature of a building, whose primary purpose is to provide for the collection, storage, and distribution of solar energy for electricity generation, space heating or cooling, or for water heating; and,

WHEREAS, the California Legislature adopted the following definitions:

- California Health and Safety Code Section 17591 (e): The following definitions apply to this section:
  - (1) "A feasible method to satisfactorily mitigate or avoid the specific, adverse impact" includes, but is not limited to, any cost effective method, condition, or mitigation imposed by a city or county on another similarly situated application in a prior successful application for a permit. A city or county shall use its best efforts to ensure that the selected method, condition, or mitigation meets the conditions of subparagraphs (A) and (B) of paragraph (1) of subdivision (d) of Section 714 of the Civil Code
  - (3) A "specific, adverse impact" means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified, and written public health or

safety standards, policies, or conditions as they existed on the date the application was deemed complete.

WHEREAS the California Legislature has also passed into law provisions to ensure that solar energy systems do not adversely impact health and safety, including:

- California Civil Code Section 714(c)(1): A solar energy system shall meet applicable health and safety standards and requirements imposed by state and local permitting authorities.
- California Civil Code Section 714(c)(3): A solar energy system for producing electricity shall also meet all applicable safety and performance standards established by the National Electrical Code, the Institute of Electrical and Electronics Engineers, and accredited testing laboratories such as Underwriters Laboratories and, where applicable, rules of the Public Utilities Commission regarding safety and reliability.
- California Government Code Section 65850.5 (d): The decision of the building official pursuant to subdivisions (b) and (c) may be appealed to the planning commission of the city or county.
- California Government Code Section 65850.5 (e): Any conditions imposed on an application to install a solar energy system shall be designed to mitigate the specific, adverse impact upon the public health and safety at the lowest cost possible; and,

WHEREAS, CEQA generally applies to discretionary projects, including those undertaken by private parties. A discretionary project is one that requires the exercise of judgment or deliberation by a public agency in determining whether the project will be approved, or if a permit will be issued; and.

- WHEREAS, CEQA does not apply to ministerial projects. A ministerial project is one that requires only conformance with a fixed standard or objective measurement and requires little or no personal judgment by a public official as to the wisdom or manner of carrying out the project.
- CEQA Guidelines 15268.state: “(a) Ministerial projects are exempt from the requirements of CEQA. The determination of what is “ministerial” can most appropriately be made by the particular public agency involved based upon its analysis of its own laws, and each public agency should make such determination either as a part of its implementing regulations or on a case by-case basis. (b) In the absence of any discretionary provision contained in the local ordinance or other law establishing the requirements for the permit, license, or other entitlement for use, the following actions shall be presumed to be ministerial : (1) Issuance of building permits....”
- WHEREAS, Section 21080.35 of the Public Resources Code establishes a statutory exemption from CEQA for certain solar energy systems:

21080.35. (a) Except as provided in subdivision (d), this division does not apply to the installation of a solar energy system on the roof of an existing building or at an existing parking lot.

(b) For the purposes of this section, the following terms mean the following: (1) "Existing parking lot" means an area designated and used for parking of vehicles as of the time of the application for the solar energy system and for at least the previous two years. (2) "Solar energy system" includes all associated equipment. Associated equipment consists of parts and materials that enable the generation and use of solar electricity or solar-heated water, including any monitoring and control, safety, conversion, and emergency responder equipment necessary to connect to the customer's electrical service or plumbing and any equipment, as well as any equipment necessary to connect the energy generated to the electrical grid, whether that connection is onsite or on an adjacent parcel of the building and separated only by an improved right-of-way. "Associated equipment" does not include a substation.

(c) (1) Associated equipment shall be located on the same parcel of the building, except that associated equipment necessary to connect the energy generated to the electrical grid may be located immediately adjacent to the parcel of the building or immediately adjacent to the parcel of the building

and separated only by an improved right-of-way. (2) Associated equipment shall not occupy more than 500 square feet of ground surface and the site of the associated equipment shall not contain plants protected by the Native Plant Protection Act (Chapter 10 (commencing with Section 1900) of Division 2 of the Fish and Game Code).

(d) This section does not apply if the associated equipment would otherwise require one of the following: (1) An individual federal permit pursuant to Section 401 or 404 of the federal Clean Water Act (33 U.S.C. Sec. 1341 or 1344) or waste discharge requirements pursuant to the Porter-Cologne Water Quality Control Act (Division 7 (commencing with Section 13000) of the Water Code).

(2) An individual take permit for species protected under the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.) or the California Endangered Species Act (Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code).

(3) A streambed alteration permit pursuant to Chapter 6 (commencing with Section 1600) of Division 2 of the Fish and Game Code. (e) This section does not apply if the installation of a solar energy system at an existing parking lot involves either of the following:

(1) The removal of a tree required to be planted, maintained, or protected pursuant to local, state, or federal requirements, unless the tree dies and there is no requirement to replace the tree.

(2) The removal of a native tree over 25 years old.

(f) This section does not apply to any transmission or distribution facility or connection.

THEREFORE BE IT RESOLVED that the City Council of the City of Richmond finds that the Department of Planning and Building Services shall implement California State law as strictly defined by the Legislature in the statutes and in the CEQA Guidelines as follows:

- A “solar energy system” shall mean any solar collector or other solar energy device whose primary purpose is to provide for the collection, storage, and distribution of solar energy for space heating, space cooling, electric generation, or water heating and shall not be limited to residential systems or systems mounted on buildings and may include ground-mount systems.
- A “solar energy system” shall be allowed in any zoning district or General Plan designated area.
- A solar energy system shall be permitted ministerially, and any permit conditions shall be limited to those reasonably protecting the health and safety of the public and persons involved in the construction and operation of the system.
- An application for a solar energy system shall be subject to ministerial review by the City building official. The building official’s review of the solar energy system application shall be limited to whether the solar energy system meets all health and safety requirements of local, state, and federal law. Any permit conditions shall be limited to those reasonably protecting the health and safety of the public and persons involved in the construction and operation of the system in accordance with building and other code requirements.
- The building official shall ministerially approve applications for solar energy systems unless the building official makes written findings based upon substantial evidence in the record that the proposed installation would have a specific, adverse impact upon the public health or safety. The building official’s findings are appealable to the Planning Commission pursuant to Government Code Section 65850.5 (d).
- Ministerial application requirements and conditions may include those customarily used for other ministerial permits, including submission of drawings and specifications, structural calculations when appropriate and surveys to confirm property rights and boundaries. Solar Energy systems shall conform to setbacks and height limits otherwise defined in the General Plan and Zoning Ordinance, shall not encroach on BCDC 100-foot jurisdiction without a



BCDC permit and shall not encroach on streams or wetlands<sup>4</sup> or destroy critical habitat of endangered species<sup>5</sup>.. For more information, see *California Solar Permitting Guidebook*, Governor’s Office of Planning and Research ([http://opr.ca.gov/docs/California\\_Solar\\_Permitting\\_Guidebook.pdf](http://opr.ca.gov/docs/California_Solar_Permitting_Guidebook.pdf)).

- CEQA review shall not be required for any solar energy system application that is subject to ministerial review by the building official.
- CEQA shall not apply to any solar energy system on an existing roof or parking lot unless one of the conditions in 21080.35(d) applies.

.....

<sup>4</sup> Requiring an individual federal permit pursuant to Section 401 or 404 of the federal Clean Water Act (33 U.S.C. Sec. 1341 or 1344) or waste discharge requirements pursuant to the Porter-Cologne Water Quality Control Act (Division 7 (commencing with Section 13000) of the Water Code) streambed alteration permit pursuant to Chapter 6 (commencing with Section 1600) of Division 2 of the Fish and Game Code

<sup>5</sup> Contain plants protected by the Native Plant Protection Act (Chapter 10 (commencing with Section 1900) of Division 2 of the Fish and Game Code)

I certify that the foregoing resolution was passed and adopted by the Council of the City of Richmond at a regular meeting thereof held on **June 17, 2014**, by the following vote:

- AYES: Councilmembers Bates, Boozé, Butt, Myrick, Rogers, Vice Mayor Beckles, and Mayor McLaughlin.
- NOES: None.
- ABSENT: None.
- ABSTENTION: None.

DIANE HOLMES  
CLERK OF THE CITY OF RICHMOND

(SEAL)

Approved:

GAYLE MCLAUGHLIN  
Mayor

Approved as to form:

BRUCE GOODMILLER  
City Attorney

State of California }  
County of Contra Costa : ss.  
City of Richmond }

I certify that the foregoing is a true copy of **Resolution No. 56-14**, finally passed and adopted by the City Council of the City of Richmond at a regular meeting held on June 17, 2014.

## Exhibit 22

FW: POWERPLANT PARK PROJECT  
Lina Velasco [Lina\_Velasco@ci.richmond.ca.us]  
Sent: Wednesday, February 06, 2019 5:12 PM  
To: [JC](#)  
JC,

This is the email I received from DTSC.

Thanks,

Lina

**From:** Murphy, Daniel@DTSC [mailto:Daniel.Murphy@dtsc.ca.gov]  
**Sent:** Thursday, January 03, 2019 10:29 AM  
**To:** Lina Velasco  
**Subject:** POWERPLANT PARK PROJECT

Hi Lina. I am lazy and do not want to write a letter. I just want to let you know that the Hazards section does not mention that DTSC did a site screen on the 2781 Goodrick Avenue site. This DTSC evaluation site is the eastern end of your project site. Although there was a determination that no action was required, for completeness' sake you may want to have the consultant include note of that. Cheers.

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

From: JC [mailto:[JC@vallierdesign.com](mailto:JC@vallierdesign.com)]  
Sent: Wednesday, February 06, 2019 10:15 AM  
To: Lina Velasco  
Subject: Bay Trail Extnsion BCDC Permit Application for PowerPlant Park and JHS Properties- Information Needed

Good Morning Lina,

We are in the process of preparing BCDC permit applications for the Bay Trail extensions associated with the PowerPlant Park and JHS projects.

I realize that there are ongoing discussions between the City, BCDC, and the property

## Exhibit 22

owners that affect the trail extension and will likely draw out any permit approval from BCDC. Apart from this we are working on the application, largely in response to the February 15, 2019 deadline that the BCDC has given for the permit application from JHS.

First Carbon Solutions has provided us with much of the information needed to support the permit application - information developed for the Draft MND, but there are a couple of pieces that they did not have.

One of these was the Department of Toxic Substances Control Approval. They advised me that the site received a clearance on this item in 2001 and told me that this was confirmed to you in an email from Daniel Murphy at the EPA on January 3, 2019. Further, they told me that a copy of that email would be sufficient to satisfy the BCDC for the application. Is it possible for you to provide me with a copy of the relevant section of that email? I realize this is a somewhat odd request and appreciate any help that you could give on this.

Thanks, I know that you are busy and I appreciate your time.

Best Regards,

JC Miller, ASLA  
Principal, Landscape Architect License #CA5107

VALLIER DESIGN ASSOCIATES, INC.  
210 WASHINGTON AVENUE, SUITE G  
POINT RICHMOND, CA 94801

EMAIL [jc@vallierdesign.com](mailto:jc@vallierdesign.com)  
OFFICE PHONE 510.237.7745 / CELL 415.518.1710



## 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

March 18, 2019

Mr. Robert Herbst  
JHS Properties  
400F Smith Ranch Road  
San Rafael, California 94903

**SUBJECT:** JHS Properties Solar Farm Bay Trail Extension;  
BCDC Permit Application No. M20019.004.00

Dear Mr. Hearst,

Thank you for your application dated February 13, 2019, received in this office on February 15, 2019 for a proposed Bay Trail extension located at Elmar Court (exact address to be determined), in the City of Richmond, Contra Costa County. Our review of the application 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 the proposed project occurs within the Commission's 100-foot shoreline band jurisdiction:

**Within 100-foot shoreline band:**

- A. **Proposed Bay Trail Extension.** Construct, use, and maintain in-kind an extension of the Bay Trail along the northwest easement portion of the property. The proposed length of the trail extension is approximately 200 feet. The proposed width of the trail is 18 feet, which includes a 12 foot-wide asphalt path; a three-foot soft edge condition of decomposed granite; and a three-foot soft edge condition of gravel; and
- B. **Landscaping Improvements.** Construct, use, and maintain in-kind 800 square feet of low-maintenance and drought tolerant planting along a portion of the proposed trail extension.

Please verify whether the proposed project has been described accurately and in full; if not, please provide any missing or corrected details.

2. **Public Access and Open Space Exhibit.** Please submit a revised public access and open space exhibit that accurately describes areas to be provided as public access, open space, and view corridors. If the Commission approves this project, the exhibit would be used to illustrate the public access areas required by the permit. Therefore, we may



Mr. Robert Hearst  
JHS Properties  
March 18, 2019  
Page 2

have additional comments on the design and presentation of the exhibit to ensure that it clearly and accurately depicts the public access areas and improvements provided as part of the project. Please consider the following in preparing your revised exhibit:

- A. The exhibit should clearly depict property boundaries in relation to the edge of the Commission's shoreline band jurisdiction;
  - B. Labels, hatching, a legend, or call-out boxes are often helpful to depict important dimensions of public access facilities (e.g., the width of the Bay Trail, or the area of a lawn) and the location and/or quantity of particular improvements (e.g., site furnishings); and
  - C. Please also ensure that if the exhibit is in color that it is legible when reproduced in black and white.
3. **Bay Trail Project Details:** Please clarify how the San Francisco Bay Trail Design Guidelines and Toolkit were used in refining the design for the proposed Bay Trail extension.
4. **Bay Trail Maintenance Plan.** Please provide a maintenance plan that clarifies the roles and responsibilities with this proposed Bay Trail extension in relation to the adjacent property owners scope of work.
5. **Sea Level Rise.** The Bay Plan requires that any public access provided as a condition of development for a BCDC permit should either be required to remain viable in the event of future sea level rise or flooding, or equivalent access consistent with the project should be provided nearby. Please indicate if any areas within the project site are now, or will be in the future given anticipated sea level rise, at risk of flooding. This discussion should be based on the results of a sea level rise risk assessment if one has been prepared for the proposed project. The Bay Plan's Climate Change policies state that a risk assessment should be based on the estimated 100-year flood elevation that takes into account the best estimates of future sea level rise and current flood projection and planned flood protection that will be funded and constructed when needed to provide protection for the proposed project. A range of sea level rise for mid-century and end of century based on the best scientific data available, found in the State of California's Sea Level Rise Guidance (updated 2018), should be used in the risk assessment. The risk assessment would identify all types of potential flooding, degrees of uncertainty, consequences of defense failure, and risks to existing habitat from proposed flood protection devices, if applicable.
6. **Photographs.** Please submit photographs of the project site that illustrate views to the Bay from: (1) the project site and (2) nearby roads or public access areas.

Mr. Robert Hearst  
JHS Properties  
March 18, 2019  
Page 3

7. **Proof of Adequate Property Interest.** Please submit documentation, such as a copy of a grant deed or lease which demonstrates that the applicant has adequate legal interest in the property, or a letter which authorizes the applicant to act on behalf of the property owner for all matters pertaining to this permit.
8. **Other Governmental Approvals.** Please provide a copy of the water quality certification or waiver thereof from the San Francisco Bay Regional Water Quality Control Board when it is available. If applicable to the proposed project, we will also need to receive project approval(s) from the Department of Toxic Substances Control, and all "take" authorizations from the state and federal resource agencies. Our regulations prohibit us from filing an application prior to receiving this documentation.
9. **Environmental Documentation.** Please clarify that the environmental documentation under this scope of work, 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 has been provided.
10. **Local Government Approval.** Please verify that the relevant submitted documentation under this scope of work clearly indicates that all the local government discretionary approvals have been received for the project.
11. **Processing Fee.** Per Appendix M of BCDC Regulations, "total project cost" is defined as: "all expenditures, including the cost for planning, engineering, architectural and other services, made or to be made for designing the project plus the estimated cost of construction of all aspects of the project both inside and outside the Comissions's jurisdiction". The fee for this permit will be calculated using a percentage of the total project cost of the unpermitted work completed in 2014, combined with the total project cost of the proposed Bay Trail extension proposed in this application. Please clarify the total project cost for both projects. Once the fee for the permit has been established, per Appendix M (i) of BCDC Regulation, the fee will be doubled due to an active BCDC enforcement case (ER2017.014).
12. **Public Notice.** Please find enclosed the completed "Notice of Application" which the Commission's regulations require to be posted at or near the project site in a prominent location before a permit application can be filed. 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.

Mr. Robert Hearst  
JHS Properties  
March 18, 2019  
Page 4

Until the above-mentioned information is submitted and reviewed for adequacy, your application will be held as incomplete.

If you have any questions, please do not hesitate to contact me at 415-352-3616 or [yuriko.jewett@bcdca.gov](mailto:yuriko.jewett@bcdca.gov).

Sincerely,



YURIKO JEWETT  
Shoreline Development Analyst

YJ/cj  
Enc.  
Cc:  
Joe Shekou

BCDC PERMIT APPLICATION NO. M2019.04.00

Joe Shekou

## CERTIFICATION OF POSTING OF NOTICE

**Yuriko Jewett**

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

RE:

Construct a new Bay Trail extension at JHS Solar Farm

*(brief description of project)*

I,

*(name of applicant or agent)*

hereby certify that on

*(date)*

I or my agent or employee posted in a prominent location at or near the project site the Notice of Application provided by the San Francisco Bay Conservation and Development Commission.

Date:

By:

*(Signature)*

Title:

*(Title)*

DATE POSTED: \_\_\_\_\_

# NOTICE OF PERMIT APPLICATION

NOTICE is hereby given that:

Joe Shekou has applied for a permit to the **SAN FRANCISCO BAY CONSERVATION & DEVELOPMENT COMMISSION** to:

Construct a new Bay Trail extension at JHS Solar Farm

at a **PROPERTY** known as:

Elmar Court (exact address TBD) in the City of Richmond, Contra Costa County

Comments or questions on the proposed project should be submitted immediately in writing  
or by contacting the Commission,

Attn: Yuriko Jewett at 415-352-3616 or [yuriko.jewett@bcdca.gov](mailto:yuriko.jewett@bcdca.gov)

Permit application, any supplementary materials and notice of any hearings related to the  
above project, are available for review upon request.



**From:** [Plater, Brent@BCDC](mailto:Plater, Brent@BCDC)  
**To:** ["Robert Herbst"](#)  
**Cc:** [Ashwin Gulati](#)  
**Subject:** RE: ER2017.004  
**Date:** Tuesday, November 16, 2021 3:16:00 PM

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Hi Bob,

I'm checking-in on the permit requirement for your property. Richard has informed us that he will not be seeking a BCDC permit with you. If that is your understanding, than you will need to obtain a BCDC permit directly.

I understand you previously submitted a permit application. You may choose to restart that application process, or initiate a new application. In either case, we will be required to ensure that maximum feasible public access is provided at the site. I understand that you believe there are some conditions on the site that make some bay trail extension proposals challenging. I would like to schedule a time to discuss those with you, so I can more clearly understand how we can address our basic permitting requirements.

Let me know when you have some time to discuss.

Thank you,

bp

---

Brent Plater | Lead Enforcement Attorney  
SF Bay Conservation & Development Commission  
375 Beale St., Suite 510  
San Francisco, CA 94105  
Phone: (415) 352-3628  
Email: [brent.plater@bcdcc.ca.gov](mailto:brent.plater@bcdcc.ca.gov)

---

**From:** Robert Herbst <[rherbst@jhsproperties.net](mailto:rherbst@jhsproperties.net)>  
**Sent:** Monday, November 8, 2021 2:43 PM  
**To:** Plater, Brent@BCDC <[brent.plater@bcdcc.ca.gov](mailto:brent.plater@bcdcc.ca.gov)>  
**Cc:** Ashwin Gulati <[ashwingulati@gmail.com](mailto:ashwingulati@gmail.com)>  
**Subject:** RE: ER2017.004

Hi Brent,

Nice speaking with you as well. I have an email in to Richard Treiber at Power Plant Park to see how we should handle this. Pre-Covid we had joint discussions and meetings with BCDC staff, and I believe the conclusion was that we would be co-permittees with Richard on a single application that included our solar farm. I believe subsequently Richard decided to build his project in phases, and modified his BCDC application to include only Phase 1, which had very limited intrusion into the 100

foot shoreline band (some small bio-swale facilities I believe). To my knowledge we were not included as a co-permittee on that.

We're prepared to proceed with our own separate BCDC application for the solar farm if necessary. Please let me get back to you after speaking with Richard.

Best,  
Bob Herbst  
JHS Properties  
415-472-7700

---

**From:** Plater, Brent@BCDC <[brent.plater@bcdcc.ca.gov](mailto:brent.plater@bcdcc.ca.gov)>  
**Sent:** Monday, November 8, 2021 2:13 PM  
**To:** Robert Herbst <[rherbst@jhsproperties.net](mailto:rherbst@jhsproperties.net)>  
**Subject:** ER2017.004

Hi Bob,

It was good to talk to you today. As I mentioned, Power Plant Park has submitted an application for Phase 1 of its project, but did not indicate that you (or the solar facility generally) would be a co-permittee, perhaps under the assumption that a subsequent permit could address the solar facility's permitting requirements.

If that's the case, there are two potential issues: first, we need to resolve your permit issue sooner rather than later, and second, generally we require public access elements to be constructed before or simultaneous with the uses we authorize, because our experience has been that the public access often does not get constructed otherwise. This would be true even if the project is, in the mind of the project proponent, a phased project.

Thanks for checking-in with Power Plant Park to confirm that your preferred plan is still to submit a joint permit application to BCDC. Let me know how you intend to proceed once you've had a chance to speak. I look forward to working with you.

Sincerely,

bp

-----  
Brent Plater | Lead Enforcement Attorney  
SF Bay Conservation & Development Commission  
375 Beale St., Suite 510  
San Francisco, CA 94105  
Phone: (415) 352-3628

Email: [brent.plater@bccdc.ca.gov](mailto:brent.plater@bccdc.ca.gov)



Scanned by [McAfee](#) and confirmed virus-free.

**From:** [Ashwin Gulati](#)  
**To:** [Plater, Brent@BCDC](#)  
**Cc:** [Pan, Katharine@BCDC](#); [rherbst@jhsproperties.net](#)  
**Subject:** Re: BCDC/Solar Farm Richmond  
**Date:** Wednesday, April 13, 2022 1:21:26 PM

---

Brent / Katherine,

I wanted to provide you with a quick update.

We met with WRA today to discuss your letter and we will respond in the coming weeks, so hopefully we can reduce the number of issues presented to the enforcement committee.

Regards

Ashwin

On Apr 6, 2022, at 11:35 AM, Plater, Brent@BCDC <[brent.plater@bcdcc.ca.gov](mailto:brent.plater@bcdcc.ca.gov)> wrote:

Dear Mr. Gulati and Mr. Herbst,

We have tentatively scheduled a formal enforcement hearing to resolve ER2017.004 on June 22, 2022, before BCDC's Enforcement Committee. You will receive a Violation Report and Complaint on or before May 8, 2022, presuming the case schedule is not delayed.

Anything you resolve through permitting in advance of the hearing will reduce the number of issues presented to the Enforcement Committee.

If you have any questions about BCDC's administrative enforcement process feel free to contact me at any time.

Sincerely,

bp

---

Brent Plater | Lead Enforcement Attorney  
SF Bay Conservation & Development Commission  
375 Beale St., Suite 510  
San Francisco, CA 94105  
Phone: (415) 352-3628  
Email: [brent.plater@bcdcc.ca.gov](mailto:brent.plater@bcdcc.ca.gov)

---

**From:** Ashwin Gulati <[ashwingulati@gmail.com](mailto:ashwingulati@gmail.com)>  
**Sent:** Tuesday, April 5, 2022 8:47 PM  
**To:** Pan, Katharine@BCDC <[katharine.pan@bcdc.ca.gov](mailto:katharine.pan@bcdc.ca.gov)>  
**Cc:** Plater, Brent@BCDC <[brent.plater@bcdc.ca.gov](mailto:brent.plater@bcdc.ca.gov)>; Robert Herbst <[rherbst@jhsproperties.net](mailto:rherbst@jhsproperties.net)>  
**Subject:** Re: BCDC/Solar Farm Richmond

Brent/Pan

Hope you are well.

I wanted to let you know that we have retained WRA Environmental Consultants to assist us with the BCDC requirements at the Solar Farm. I will circle back with you shortly with a response to your letter

Thanks

Ashwin

On Dec 9, 2021, at 2:08 PM, Pan, Katharine@BCDC <[katharine.pan@bcdc.ca.gov](mailto:katharine.pan@bcdc.ca.gov)> wrote:

Hi Ashwin,  
Here is the letter submitted by Yuriko Jewett in March 2019 in response to the original application.

**Katharine Pan**

Principal Shoreline Development Analyst  
Direct: (415) 352-3650 | [katharine.pan@bcdc.ca.gov](mailto:katharine.pan@bcdc.ca.gov)

San Francisco Bay Conservation and Development Commission  
Bay Area Metro Center  
375 Beale Street, Ste. 510  
San Francisco, CA 94105  
Main: (415) 352-3600  
[www.bcdc.ca.gov](http://www.bcdc.ca.gov) | [@SFBCDC](https://twitter.com/SFBCDC)

---

**From:** Ashwin Gulati <[ashwingulati@gmail.com](mailto:ashwingulati@gmail.com)>  
**Date:** Monday, November 29, 2021 at 10:37 AM  
**To:** Pan, Katharine@BCDC <[katharine.pan@bcdc.ca.gov](mailto:katharine.pan@bcdc.ca.gov)>



**Cc:** Plater, Brent@BCDC <[brent.plater@bcdc.ca.gov](mailto:brent.plater@bcdc.ca.gov)>, [rherbst@jhsproperties.net](mailto:rherbst@jhsproperties.net) <[rherbst@jhsproperties.net](mailto:rherbst@jhsproperties.net)>

**Subject:** Re: BCDC/Solar Farm Richmond

Hi Katharine/Brent,

12/9 2 pm works well with Bob Herbst as well. I've sent you a calendar invite. Here's the zoom link.

Topic: BCDC/Richmond Solar Farm

Time: Dec 9, 2021 02:00 PM Pacific Time (US and Canada)

Join Zoom Meeting

<https://us02web.zoom.us/j/85097640462>

Meeting ID: 850 9764 0462

One tap mobile

+16699009128,,85097640462# US (San Jose)

+12532158782,,85097640462# US (Tacoma)

Cheers

Ashwin

On Nov 24, 2021, at 6:35 PM, Pan, Katharine@BCDC  
<[katharine.pan@bcdc.ca.gov](mailto:katharine.pan@bcdc.ca.gov)> wrote:

Hi Ashwin, I'm going to be out of the office next week, so the Friday I had suggested is actually the 19<sup>th</sup>. When you settle on a time, please do send out a zoom invite. Thanks, looking forward to talking soon.

**Katharine Pan**

Principal Shoreline Development Analyst

Direct: (415) 352-3650 | [katharine.pan@bcdc.ca.gov](mailto:katharine.pan@bcdc.ca.gov)

San Francisco Bay Conservation and Development  
Commission

Bay Area Metro Center

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Main: (415) 352-3600

[www.bcdc.ca.gov](http://www.bcdc.ca.gov) | [@SFBCDC](https://twitter.com/SFBCDC)

---

**From:** Ashwin Gulati <[ashwingulati@gmail.com](mailto:ashwingulati@gmail.com)>  
**Date:** Wednesday, November 24, 2021 at 6:27 PM  
**To:** Pan, Katharine@BCDC <[katharine.pan@bcdc.ca.gov](mailto:katharine.pan@bcdc.ca.gov)>  
**Cc:** Plater, Brent@BCDC <[brent.plater@bcdc.ca.gov](mailto:brent.plater@bcdc.ca.gov)>, [rherbst@jhsproperties.net](mailto:rherbst@jhsproperties.net) <[rherbst@jhsproperties.net](mailto:rherbst@jhsproperties.net)>  
**Subject:** Re: BCDC/Solar Farm Richmond

Hi Katharine,

How about 9 am on Friday 12/3.

Bob, does that work for you?

I can send out a zoom link.

Have a great Thanksgiving!

Cheers

Ashwin

On Nov 24, 2021, at 6:08 PM, Pan,  
Katharine@BCDC  
<[katharine.pan@bcdc.ca.gov](mailto:katharine.pan@bcdc.ca.gov)> wrote:

Hi Ashwin,  
It's nice to meet you. It looks like Brent and I  
can be available on Thursday, 12/9 after 1pm  
and Friday, 12/19 anytime. Let us know what  
works for you.

**Katharine Pan**

Principal Shoreline Development Analyst  
Direct: (415) 352-3650 |  
[katharine.pan@bcdc.ca.gov](mailto:katharine.pan@bcdc.ca.gov)

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---

**From:** Ashwin Gulati  
<[ashwingulati@gmail.com](mailto:ashwingulati@gmail.com)>  
**Date:** Friday, November 19, 2021 at 8:37 AM  
**To:** Pan, Katharine@BCDC  
<[katharine.pan@bcdc.ca.gov](mailto:katharine.pan@bcdc.ca.gov)>  
**Cc:** Plater, Brent@BCDC  
<[brent.plater@bcdc.ca.gov](mailto:brent.plater@bcdc.ca.gov)>, [rherbst@jhsproperties.net](mailto:rherbst@jhsproperties.net)<[rherbst@jhsproperties.net](mailto:rherbst@jhsproperties.net)>  
**Subject:** BCDC/Solar Farm Richmond

Hi Katharine

I've been referred to you by Wayne Leach of CSW/Stuber-Stroeh Engineering who has been working with you on the BCDC application for Powerplant project in Richmond, CA.

I'm working with the Bob Herbst who is the owner of the Solar Farm above Powerplant project and I believe we had a pre-existing BCDC Application (see attached docs) that was paused due to Powerplant's discussions with BCDC and the City of Richmond.

It's our understanding from communications with Brent that we would need a separate application and we would like to take steps towards re-instituting the application.

As a next step, I would like to suggest we get on a zoom call to make sure we are all on the same page on the process and requirements.

Pease suggest some days/times that work for you and I'll pick one. I'm cc'ing both Bob and Brent to join us if they can.

Best Regards

Ashwin

**From:** [Ashwin Gulati](#)  
**To:** [Plater, Brent@BCDC](#)  
**Cc:** [Pan, Katharine@BCDC](#); [rherbst@jhsproperties.net](#); [Trujillo, Matthew@BCDC](#)  
**Subject:** Re: BCDC/Solar Farm Richmond  
**Date:** Thursday, January 27, 2022 7:16:11 AM

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Hi Brent,

Thanks for reaching out.

We have been assembling a new team for addressing the BCDC matter and will need a few weeks to respond to your letter.

I will reach out to you in the coming weeks.

thanks much

Ashwin

On Jan 26, 2022, at 11:13 AM, Plater, Brent@BCDC  
<[brent.plater@bcdcc.ca.gov](mailto:brent.plater@bcdcc.ca.gov)> wrote:

Ashwin and Bob,

I'm following up on our December 9, 2021 Zoom meeting where we discussed BCDC's enforcement case ER2017.004 and the public access requirements that must be satisfied to resolve it.

At this meeting we described the Bay Trail access plans that have been in place for this property, and the need to remove the gate that currently prevents the public from accessing the dedicated public access parking spaces at Freethy Blvd.'s cul-de-sac.

BCDC's previous decision to delay enforcement proceedings was based on an expectation of a joint permit application from you and Power Plant Park that included the requisite public access requirements for both projects. Because this joint application is no longer a possibility, we have resumed the enforcement process.

We have tentatively scheduled an enforcement hearing before BCDC's enforcement committee in this matter for June 23, 2022. You can expect to receive a Violation Report detailing the alleged violations of the McAteer Petris Act no later than 60-days prior to the hearing. The Violation Report will also provide instructions for responding to the allegations and presenting your case at the June 23, 2022 hearing.

Feel free to contact me if you have any questions about this process.

Sincerely,

bp

-----  
Brent Plater | Lead Enforcement Attorney  
SF Bay Conservation & Development Commission  
375 Beale St., Suite 510  
San Francisco, CA 94105  
Phone: (415) 352-3628  
Email: [brent.plater@bcdcc.ca.gov](mailto:brent.plater@bcdcc.ca.gov)

---

**From:** Ashwin Gulati <[ashwingulati@gmail.com](mailto:ashwingulati@gmail.com)>  
**Sent:** Monday, November 29, 2021 10:37 AM  
**To:** Pan, Katharine@BCDC <[katharine.pan@bcdcc.ca.gov](mailto:katharine.pan@bcdcc.ca.gov)>  
**Cc:** Plater, Brent@BCDC <[brent.plater@bcdcc.ca.gov](mailto:brent.plater@bcdcc.ca.gov)>; [rherbst@jhsproperties.net](mailto:rherbst@jhsproperties.net)  
**Subject:** Re: BCDC/Solar Farm Richmond

Hi Katharine/Brent,

12/9 2 pm works well with Bob Herbst as well. I've sent you a calendar invite. Here's the zoom link.

Topic: BCDC/Richmond Solar Farm  
Time: Dec 9, 2021 02:00 PM Pacific Time (US and Canada)

Join Zoom Meeting  
<https://us02web.zoom.us/j/85097640462>

Meeting ID: 850 9764 0462  
One tap mobile  
+16699009128,,85097640462# US (San Jose)  
+12532158782,,85097640462# US (Tacoma)

Cheers

Ashwin



On Nov 24, 2021, at 6:35 PM, Pan, Katharine@BCDC  
<[katharine.pan@bcdcc.ca.gov](mailto:katharine.pan@bcdcc.ca.gov)> wrote:

Hi Ashwin, I'm going to be out of the office next week, so the Friday I had suggested is actually the 19<sup>th</sup>. When you settle on a time, please do send out a zoom invite. Thanks, looking forward to talking soon.

**Katharine Pan**

Principal Shoreline Development Analyst

Direct: (415) 352-3650 | [katharine.pan@bcdcc.ca.gov](mailto:katharine.pan@bcdcc.ca.gov)

San Francisco Bay Conservation and Development Commission  
Bay Area Metro Center  
375 Beale Street, Ste. 510  
San Francisco, CA 94105  
Main: (415) 352-3600  
[www.bcdcc.ca.gov](http://www.bcdcc.ca.gov) | [@SFBCDC](https://twitter.com/SFBCDC)

---

**From:** Ashwin Gulati <[ashwingulati@gmail.com](mailto:ashwingulati@gmail.com)>  
**Date:** Wednesday, November 24, 2021 at 6:27 PM  
**To:** Pan, Katharine@BCDC <[katharine.pan@bcdcc.ca.gov](mailto:katharine.pan@bcdcc.ca.gov)>  
**Cc:** Plater, Brent@BCDC <[brent.plater@bcdcc.ca.gov](mailto:brent.plater@bcdcc.ca.gov)>, [rherbst@jhsproperties.net](mailto:rherbst@jhsproperties.net) <[rherbst@jhsproperties.net](mailto:rherbst@jhsproperties.net)>  
**Subject:** Re: BCDC/Solar Farm Richmond

Hi Katharine,

How about 9 am on Friday 12/3.

Bob, does that work for you?

I can send out a zoom link.

Have a great Thanksgiving!

Cheers

Ashwin

On Nov 24, 2021, at 6:08 PM, Pan, Katharine@BCDC  
<[katharine.pan@bcdcc.ca.gov](mailto:katharine.pan@bcdcc.ca.gov)> wrote:

Hi Ashwin,

It's nice to meet you. It looks like Brent and I can be available on Thursday, 12/9 after 1pm and Friday, 12/19 anytime. Let us know what works for you.

**Katharine Pan**

Principal Shoreline Development Analyst

Direct: (415) 352-3650 | [katharine.pan@bcdc.ca.gov](mailto:katharine.pan@bcdc.ca.gov)

San Francisco Bay Conservation and Development

Commission

Bay Area Metro Center

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San Francisco, CA 94105

Main: (415) 352-3600

[www.bcdc.ca.gov](http://www.bcdc.ca.gov) | [@SFBCDC](https://twitter.com/SFBCDC)

---

**From:** Ashwin Gulati <[ashwingulati@gmail.com](mailto:ashwingulati@gmail.com)>

**Date:** Friday, November 19, 2021 at 8:37 AM

**To:** Pan, Katharine@BCDC <[katharine.pan@bcdc.ca.gov](mailto:katharine.pan@bcdc.ca.gov)>

**Cc:** Plater, Brent@BCDC <[brent.plater@bcdc.ca.gov](mailto:brent.plater@bcdc.ca.gov)>, [rherbst@jhsproperties.net](mailto:rherbst@jhsproperties.net)<[rherbst@jhsproperties.net](mailto:rherbst@jhsproperties.net)>

**Subject:** BCDC/Solar Farm Richmond

Hi Katharine

I've been referred to you by Wayne Leach of CSW/Stuber-Stroeh Engineering who has been working with you on the BCDC application for Powerplant project in Richmond, CA.

I'm working with the Bob Herbst who is the owner of the Solar Farm above Powerplant project and I believe we had a pre-existing BCDC Application (see attached docs) that was paused due to Powerplant's discussions with BCDC and the City of Richmond.

It's our understanding from communications with Brent that we would need a separate application and we would like to take steps towards re-instituting the application.

As a next step, I would like to suggest we get on a zoom call to make sure we are all on the same page on the process and requirements.

# Exhibit 25

Pease suggest some days/times that work for you and I'll pick one. I'm cc'ing both Bob and Brent to join us if they can.

Best Regards

Ashwin

375 Beale Street, Suite 510, San Francisco, California 94105 tel 415 352 3600 fax 888 348 5190

State of California | Gavin Newsom – Governor | [info@bcdc.ca.gov](mailto:info@bcdc.ca.gov) | [www.bcdc.ca.gov](http://www.bcdc.ca.gov)

June 3, 2022

JHS Properties

Via Email: <[ashwingulati@gmail.com](mailto:ashwingulati@gmail.com)>

ATTN: Ashwin Gulati

WRA

2169-G East Francisco Boulevard

San Rafael, CA 94901

Via Email: <[knecht@wra-ca.com](mailto:knecht@wra-ca.com)>

ATTN: Ellie Knecht

**SUBJECT: JHS Properties Solar Farm Bay Trail Extension; (BCDC Permit Application No. M2019.004.00)**

Dear Ashwin and Ellie:

Thank you for your submission dated May 4, 2022, received in this office on May 4, 2022, of additional information to support the application for a Bay Trail segment at Elmar Court (exact address to be determined), in the City of Richmond, Contra Costa County. Our review of the application has determined that the application is incomplete pending the submittal of the following items:

## 1. Total Project and Site Information

Thank you for confirming that your project would involve the following activities:

### Within the 100-foot shoreline band:

- A. **Proposed Bay Trail Extension.** Construct, use, and maintain in-kind an extension of the Bay Trail along the northwest easement portion of the property. The proposed length of the trail extension is approximately 200 feet. The proposed width of the trail is 18 feet, which includes a 12 foot-wide asphalt path, a three-foot soft edge condition of decomposed granite, and a three-foot soft edge condition of gravel; and
- B. **Landscaping Improvements.** Construct, use, and maintain in-kind 800 square feet of low-maintenance and drought tolerant planting along a portion of the proposed trail extension.

In addition, please provide the street address for the property where the project is proposed.



## 2. Authorization of Representative

In the original application, Joe Shekou, the applicant, authorized Robert Herbst to act as the project representative and bind the applicant in all matters concerning the application. If Ashwin Gulati and/or Ellie Knecht are to replace Robert Herbst as project representatives, please provide a signed acknowledgement from the applicant. This may be in the form of a letter, or a new signed Box 1.a from the BCDC permit application (attached).

## 3. Project Clarifications

Please provide additional information explaining how the project is consistent with San Francisco Bay Plan Public Access Policy 1: "A proposed project should increase public access to the maximum extent feasible...." Note that in a meeting with Ashwin Gulati on December 9, 2021, BCDC staff provided some guidance as to what might constitute maximum feasible public access for this project, considering its location and its relationship to the unpermitted solar farm project and Enforcement Case ER2017.014. Staff's guidance included providing a connection to the proposed trail at the adjacent Power Plant Park property, an extension of the proposed trail along the northwest edge of the property, and a connection to Goodrick Avenue. Please address whether and how this guidance was considered in your response.

## 4. Project Plans

Thank you for providing the site plan in Attachment 1 of your response. However, this site plan does not provide a sufficient level of detail regarding the design of the proposed trail. Please provide a set of project plans showing and labeling the locations and extents all proposed improvements, including the components of the trail and the proposed landscaping. Please provide one full set of project plans, which must include, at minimum, a vicinity map, site plan, property lines, existing and proposed structures or improvements (including elevations and sections if necessary), the shoreline [MHW or 5' ABOVE MSL], any marshes, wetlands or mudflats, the corresponding 100-foot shoreline band line, scale, north arrow, date and the name of the person who prepared the plans. Additional information may be needed on the plans depending upon the scope of the proposed project.

Additionally, note that in the attached letter from BCDC staff John Bowers and Matthew Trujillo to Ivo Keller, dated September 13, 2018, staff provided a description of BCDC's jurisdiction at the property. Please refer to this description for the depiction of BCDC's Bay and shoreline band jurisdictions in your project plans.

## 5. Processing Fee

Per Appendix M of BCDC's Regulations, "total project cost" is defined as: "all expenditures, including the cost for planning, engineering, architectural and other services, made or to be made for designing the project plus the estimated cost of construction of all aspects of the project both inside and outside the Comissions's



jurisdiction." The fee for this permit will be calculated using a percentage of the total project cost of the unpermitted work completed at the project site for development of the solar farm, combined with the total project cost of the proposed Bay Trail extension proposed in this application. Please clarify the total project cost for both projects. Once the fee for the permit has been established, per Appendix M (i) of BCDC Regulation, the fee will be doubled due to an active BCDC enforcement case (ER2017.014).

## 6. Environmental Documentation

Please state whether the project is statutorily or categorically exempt from the need to prepare any environmental documentation, as required under the California Environmental Quality Act (CEQA). If the project is exempt, provide a statement that identifies and supports this statutory or categorical exemption.

Additionally, note that in the original application, the applicant indicated that a government agency other than BCDC, serving as the lead agency, had adopted a negative declaration or certified an environmental impact report or environmental impact statement for the project. Please provide the document referenced.

Until the above-mentioned information is submitted and reviewed for adequacy, your application will be held as incomplete. If you have any questions, please do not hesitate to contact me at 415-352-3650 or [katharine.pan@bcdc.ca.gov](mailto:katharine.pan@bcdc.ca.gov).

Sincerely,

*Katharine Pan*

KATHARINE PAN

Principal Shoreline Development Analyst

Enclosures:

1. BCDC Application Box 1
2. Letter from BCDC to Ivo Keller, "BCDC Staff's Findings Regarding the Applicability of BCDC's Jurisdiction over the JHS Solar Farm Site in Richmond, Contra Costa County," September 13, 2018.

KP/ra

cc: Joe Shekou, <[sapidrood@yahoo.com](mailto:sapidrood@yahoo.com)>

**From:** [Ashwin Gulati](#)  
**To:** [Plater, Brent@BCDC](#)  
**Cc:** [Pan, Katharine@BCDC](#); [rherbst@jhsproperties.net](#); [Ellie Knecht](#); [Geoff Smick](#); [Joe Shekou](#)  
**Subject:** BCDC/Solar Farm Richmond  
**Date:** Wednesday, May 4, 2022 11:09:23 AM  
**Attachments:** [Response to BCDC 050422.pdf](#)

---

Hi Brent

Please find attached response to BCDC's enforcement case ER2017.004.

We look forward to working with your team in bringing this matter to a successful completion.

Best Regards

Ashwin



May 4, 2022

Katharine Pan and Brent Plater  
San Francisco Bay Conservation and Development Commission  
375 Beale Street, Suite 510  
San Francisco CA 94105

**RE: JHS Properties Solar Farm Bay Trail Extension (BCDC Permit Application No. 20019.004.00 and Enforcement Case ER2017.004); Response to Request for Additional Information**

Dear Katharine and Brent:

This letter responds to BCDC's request for more information dated March 18, 2019 regarding a pending BCDC application for a proposed Bay Trail extension located at Elmar Court, in the City of Richmond, Contra Costa County (20019.004.00 and ER2017.004). The application process has been on hold based on the expectation that a joint permit application would be submitted with the adjacent development. Because a joint application is no longer possible, JHS Properties (the applicant) is seeking BCDC authorization for the portion of the Bay Trail extension in front of their existing solar facility.

This letter provides the additional information requested by BCDC in the 2019 letter (Items 1 – 12). This letter also addresses BCDC's request made by email on January 26, 2022 to remove the gate at the entrance to Elmar Court.

### **Gate at Elmar Court**

The applicant has informed the City of Richmond that they will open the gate at the entrance to Elmar Court upon the City's written request (which hasn't been received yet). The applicant proposes to open the gate from sunrise to sunset. However, please note that the applicant has severe concerns over illegal dumping, homeless encampments, vandalism, and theft affecting the solar farm and ongoing cannabis construction. Furthermore, the City of Richmond has not maintained Elmar Court and Freethy Boulevard for over 25 years, so the roadway does not comply with current City safety standards for usability. For these reasons, the applicant proposes keeping the gate closed after sunset.

### **Item #1. Total Project and Site Information**

BCDC Item 1: From reviewing your application, it appears that the proposed project occurs within the Commission's 100-foot shoreline band jurisdiction:

Within 100-foot shoreline band:

- A. Proposed Bay Trail Extension. Construct, use, and maintain in-kind an extension of the Bay Trail along the northwest easement portion of the property. The proposed length of the trail extension is approximately 200 feet. The proposed width of the trail is 18 feet, which includes a 12 foot-wide asphalt path; a three-foot soft edge condition of decomposed granite; and a three-foot soft edge condition of gravel; and
- B. Landscaping Improvements. Construct, use, and maintain in-kind 800 square feet of low-maintenance and drought tolerant planting along a portion of the proposed trail extension.

Please verify whether the proposed project has been described accurately and in full; if not, please provide any missing or corrected details.

Response to Item #1: Yes, the project as described above is accurate. Please note that if the trail elevation is raised for sea level rise considerations, some grading beyond the trail footprint may be required (see Item 5 for additional discussion regarding sea level rise).

## **Item #2. Public Access and Open Space Exhibit**

BCDC Item #2: Please submit a revised public access and open space exhibit that accurately describes areas to be provided as public access, open space, and view corridors. If the Commission approves this project, the exhibit would be used to illustrate the public access areas required by the permit. Therefore, we may have additional comments on the design and presentation of the exhibit to ensure that it clearly and accurately depicts the public access areas and improvements provided as part of the project. Please consider the following in preparing your revised exhibit:

- A. The exhibit should clearly depict property boundaries in relation to the edge of the Commission's shoreline band jurisdiction;
- B. Labels, hatching, a legend, or call-out boxes are often helpful to depict important dimensions of public access facilities (e.g., the width of the Bay Trail, or the area of a lawn) and the location and/or quantity of particular improvements (e.g., site furnishings); and
- C. Please also ensure that if the exhibit is in color that it is legible when reproduced in black and white.

Response to Item #2: The applicant proposes to provide the area containing the 200-foot long trail extension and extending between the northwestern JHS property line and the existing fence for public access. This area is shown on the site plan provided in the original application, and attached here for reference with additional notations (Attachment 1). A separate exhibit will be provided under a separate cover that shows this area, including acreage, in more detail. No dedicated view corridors are proposed.

## **Item #3. Bay Trail Project Details**

BCDC Item #3: Please clarify how the San Francisco Bay Trail Design Guidelines and Toolkit were used in refining the design for the proposed Bay Trail extension.

Response to Item #3: The Bay Trail Design Guidelines and Toolkit recommend that the Bay Trail and its clear space should consist of a minimum 18-foot width. The proposed design for the Bay Trail extension at this location adheres to this standard.

## Item #4. Bay Trail Maintenance Plan

BCDC Item #4: Please provide a maintenance plan that clarifies the roles and responsibilities with this proposed Bay Trail extension in relation to the adjacent property owners scope of work.

Response to Item #4: JHS properties will maintain long-term ownership and maintenance responsibility over the portion of the Bay Trail extension proposed in front of the solar facility.

## Item #5. Sea Level rise

BCDC Item #5: The Bay Plan requires that any public access provided as a condition of development for a BCDC permit should either be required to remain viable in the event of future sea level rise or flooding, or equivalent access consistent with the project should be provided nearby. Please indicate if any areas within the project site are now, or will be in the future given anticipated sea level rise, at risk of flooding. This discussion should be based on the results of a sea level rise risk assessment if one has been prepared for the proposed project. The Bay Plan's Climate Change policies state that a risk assessment should be based on the estimated 100-year flood elevation that takes into account the best estimates of future sea level rise and current flood projection and planned flood protection that will be funded and constructed when needed to provide protection for the proposed project. A range of sea level rise for mid-century and end of century based on the best scientific data available, found in the State of California's Sea Level Rise Guidance (updated 2018), should be used in the risk assessment. The risk assessment would identify all types of potential flooding, degrees of uncertainty, consequences of defense failure, and risks to existing habitat from proposed flood protection devices, if applicable.

Response to Item #5: The applicant understands that the current ground elevations at the proposed trail location are around 10 feet NAVD88, which are generally above present-day 100-year tide elevations (9.57 feet NAVD88) and the location may be subject to flooding by mid-century during extreme tides (see Table 1). The 100-year tide plus 2050 sea level rise (1.9 feet) may be up to 11.47 feet NAVD88. This does not take into account other effects on the future still water elevations at the site including wave runup or land subsidence. Given the portion of Bay Trail extension in front of the solar facility will only be accessed via the Bay Trail that will be provided on the adjacent development, the applicant proposes that the portion of Bay Trail in front of the solar facility be built to the same elevation as the adjacent development. If a design elevation has been identified and approved for the adjacent development, please let us know what that is so the applicant can determine if it could be applied to this property.

Table 1. Tidal and Sea Level Rise Elevations

	Approximate Elevation (feet NAVD88)
Typical current ground elevation where trail is proposed <sup>1</sup>	10
MHW <sup>2</sup>	5.64
100-year tide elevation <sup>2</sup>	9.57
MHW + 2050 sea level rise (1.9 feet) <sup>3</sup>	7.54
100-year flood elevation + 2050 sea level rise (1.9 feet) <sup>3</sup>	11.47

<sup>1</sup>Elevation is approximate based on available LIDAR.

<sup>2</sup>Point ID 445, Source: AECOM. 2016. San Francisco Bay Tidal Datums and Extreme Tides Study. FEMA and BCDC.

<sup>3</sup>Medium - High Risk Aversion / High Emissions Scenario, Source: California Ocean Protection Council. 2018. "State of California Sea-Level Rise Guidance 2018 Update."



## **Item #6. Photographs**

BCDC Item #6: Please submit photographs of the project site that illustrate views to the Bay from: (1) the project site and (2) nearby roads or public access areas.

Response to Item #6: Photographs are provided in Attachment 2.

## **Item #7. Proof of Adequate Property Interest**

BCDC Item #7: Please submit documentation, such as a copy of a grant deed or lease which demonstrates that the applicant has adequate legal interest in the property, or a letter which authorizes the applicant to act on behalf of the property owner for all matters pertaining to this permit.

Response to Item #7: Property reports are provided in Attachment 3.

## **Item #8. Other Government Approvals**

BCDC Item #8: Please provide a copy of the water quality certification or waiver thereof from the San Francisco Bay Regional Water Quality Control Board when it is available. If applicable to the proposed project, we will also need to receive project approval(s) from the Department of Toxic Substances Control, and all "take" authorizations from the state and federal resource agencies. Our regulations prohibit us from filing an application prior to receiving this documentation.

Response to Item #8: The project will be constructed in uplands, thus avoiding areas potentially subject to RWQCB jurisdiction. No approvals from DTSC are required. The project will be implemented in a manner that minimizes effects to state and federally protected wildlife species, and no "take" is anticipated.

## **Item #9. Environmental Documentation**

BCDC Item #9: Please clarify that the environmental documentation under this scope of work, 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 has been provided.

Response to Item #9: The City of Richmond issued a building permit for the solar facility and shoreline trail on September 29, 2014. Issuance of the building permit relied on a Notice of Exemption for the solar facility under CEQA. The Notice of Exemption was prepared by the City of Richmond and filed with the State Clearinghouse on October 10, 2014. The Notice of Exemption, building permit, and permit plans (showing the shoreline trail) are included in Attachment 4.

## **Item #10. Local Government Approval**

BCDC Item #10: Please verify that the relevant submitted documentation under this scope of work clearly indicates that all the local government discretionary approvals have been received for the project.

Response to Item #10: No local discretionary approvals are required for the Bay Trail extension in front of the solar facility.

## **Item #11. Processing Fee**

BCDC Item #11: Per Appendix M of BCDC Regulations, "total project cost" is defined as: "all expenditures, including the cost for planning, engineering, architectural and other services, made or to be made for designing the project plus the estimated cost of construction of all aspects of the project both inside and outside the Commission's jurisdiction". The fee for this permit will be calculated using a percentage of the total project cost of the unpermitted work completed in 2014, combined with the total project cost of the proposed Bay Trail extension proposed in this application. Please clarify the total project cost for both projects. Once the fee for the permit has been established, per Appendix M (i) of BCDC Regulation, the fee will be doubled due to an active BCDC enforcement case (ER2017.014).

Response to Item #11: The applicant disagrees that unpermitted work has been performed on the property. The applicant states that the City of Richmond issued a building permit for the work, in reliance upon the BCDC Claim of Exemption issued in 1977 for the property, and the solar portion of the project was constructed in 2017. The City allowed the trail portion to be deferred pending further development of Freethy Industrial Park, for reasons of safety and security (there have been major historical vandalism and homeless problems at the property, which is remote). BCDC subsequently has contested the validity of the 1977 Claim of Exemption for the solar farm project, a position with which applicant disagrees. To resolve the matter, the applicant agreed to seek BCDC approval for the trail, which the applicant did on Feb. 13, 2019. With that application, the applicant reserved the right to contest BCDC's jurisdiction over the property (Attachment 5). The applicant has not agreed to pay any penalty fees or fees for the solar work, but is willing to pay fees for the trail work based on the provided estimated cost of \$45,000.

## **Item #12. Public Notice**

BCDC Item #12: Please find enclosed the completed "Notice of Application" which the Commission's regulations require to be posted at or near the project site in a prominent location before a permit application can be filed. 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.

Response to Item 12: The public notice has been posted at the project site in a prominent location. The form verifying posting is enclosed (Attachment 6).

Should you have any questions or need additional information, please let us know.

Sincerely,

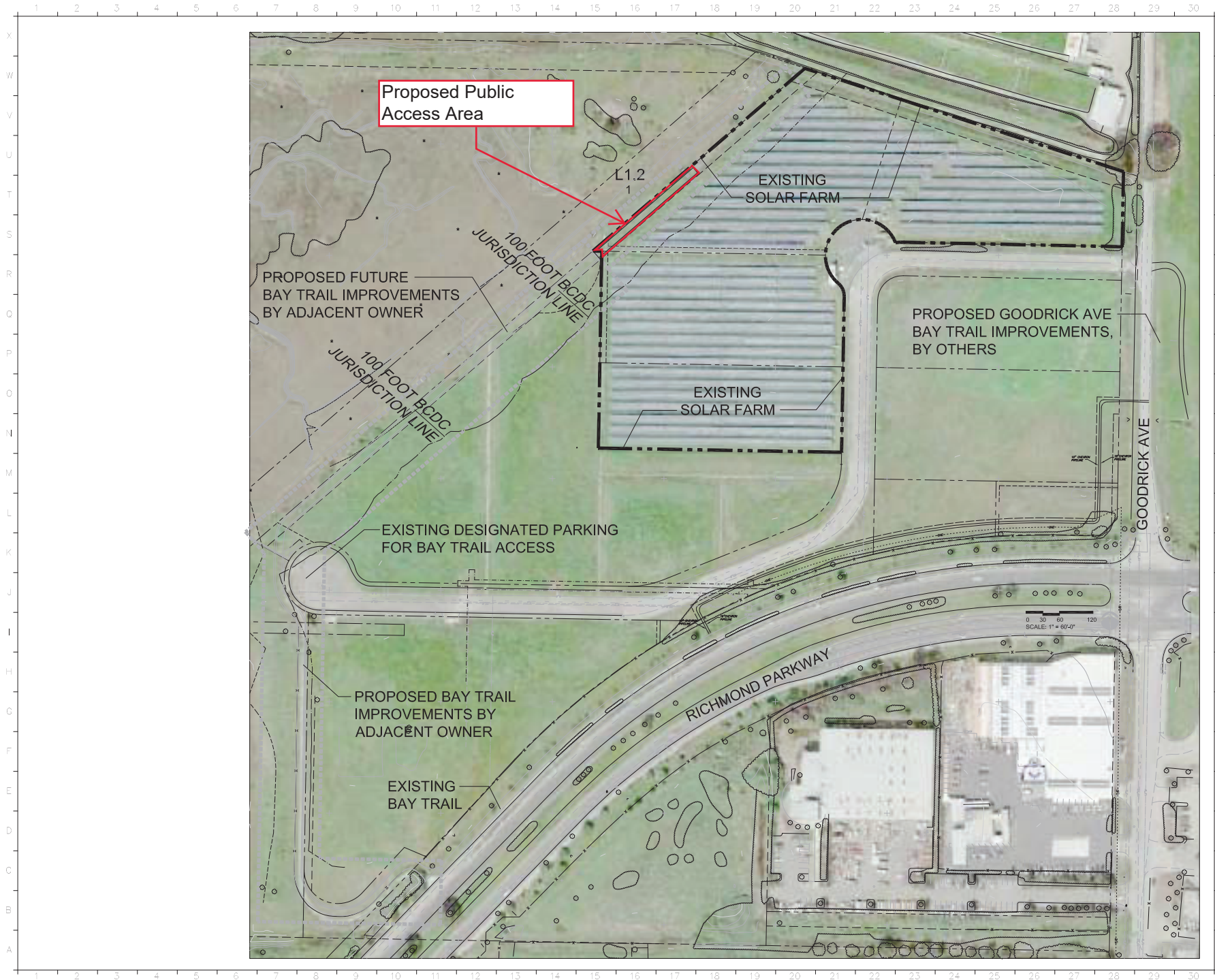
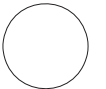
Ashwin Gulati, JHS Properties  
ashwingulati@gmail.com

Ellie Knecht, WRA  
knecht@wra-ca.com

**Attachments:**

1. Site Plan from Original Permit Application
2. Site Photographs
3. Property Report
4. Notice of Exemption, Building Permit, and Permit Plans
5. JHS Letter Dated February 13, 2019
6. Form Verifying Posting of Public Notice

## **Attachment 1. Site Plan From Original Permit Application**

[illegible]

CONSULTANT:
-------------



**VALLIER DESIGN ASSOCIATES INC.**  
LANDSCAPE ARCHITECTURE • PLANNING • DESIGN  
210 WILSONS AVENUE, SUITE G  
PO BOX 80000, LOS ANGELES, CA 90008  
TELEPHONE 310.271.7745 FAX/MAIL 310.271.5750

PROJECT:

SHEKOU  
PROPERTY  
BAY TRAIL  
IMPROVEMENTS

SHEET TITLE:

8.5" x 11"  
PROJECT  
SITE PLAN

PROJ. NO.

PREPARED BY
PREPARATION AND REVIEW
DATE

DRAWN BY:
DESIGNER:

PROJ MGR:	
PEER REVIEW	

SHEET NUMBER:

## L2.1



## **Attachment 2. Site Photographs**



Photo 1. View of the proposed Bay Trail location. Photo taken April 24, 2022.



Photo 2. View of the Bay from the proposed Bay Trail location. Photo taken April 24, 2022.



Photo 3. View from the proposed Bay Trail location from the Freethy Blvd cul-de-sac. Photo taken April 24, 2022.

## **Attachment 3. Property Report**



PARCELQUEST LITE

County - Gus Kramer, Assessor

# FULL PROPERTY DETAIL REPORT

Property Address:**FREETHY BLVD RICHMOND CA 94801**Parcel # (APN):**408-220-006-6**

## General Information

Parcel # (APN): **408-220-006-6**Owner: **SHEKOU JOE & HEIDI**Mailing Address: **2167 FRANCISCO BLVD E #A  
SAN RAFAEL CA 94901-5509**Legal Description: **T05754AL0006 B**

## Assessment

Total Value: **\$849,622**Land: **\$849,622**

Structures:

Other:

% Improved: **0%**

Exempt Amt:

HO Exempt: **N**Tax Rate Area: **008-120**

Census Tract:

Price/SqFt:

Year Assd: **2021**

Zoning:

Use Code: **50**Use Type: **VACANT**

## Sale History

	Sale 1	Sale 2	Sale 3	Transfer
Document Date:	<b>05/31/2000</b>			<b>05/31/2000</b>
Document Number:	<b>110331</b>			<b>110331</b>
Document Type:				
Transfer Amount:	<b>\$3,488,000</b>			
Seller (Grantor):				

## Property Characteristics

Bedrooms:	Fireplace:	Units:
Baths (Full):	A/C:	Stories:
Baths (Half):	Heating:	Quality:
Total Rooms:	Pool:	Building Class:
Bldg/Liv Area:	Park Type:	Condition:
Lot Acres: <b>2.323</b>	Spaces:	Site Influence:
Lot SqFt: <b>101,190</b>	Garage SqFt:	Timber Preserve:
Year Built:		Ag Preserve:
Effective Year:		





PARCELQUEST LITE

County - Gus Kramer, Assessor

# FULL PROPERTY DETAIL REPORT

Property Address:**FREETHY BLVD RICHMOND CA 94801**Parcel # (APN):**408-220-007-4**

## General Information

Parcel # (APN): **408-220-007-4**Owner: **SHEKOU JOE & HEIDI**Mailing Address: **2167A FRANCISCO BLVD E  
SAN RAFAEL CA 94901-5509**Legal Description: **T05754AL0007 B**

## Assessment

Total Value: **\$656,186**Land: **\$656,186**

Structures:

Other:

% Improved: **0%**

Exempt Amt:

HO Exempt: **N**Tax Rate Area: **008-120**

Census Tract:

Price/SqFt:

Year Assd: **2021**

Zoning:

Use Code: **50**Use Type: **VACANT**

## Sale History

	<b>Sale 1</b>	<b>Sale 2</b>	<b>Sale 3</b>	<b>Transfer</b>
Document Date:	<b>04/12/2016</b>	<b>05/31/2000</b>		<b>04/12/2016</b>
Document Number:	<b>65963</b>	<b>110332</b>		<b>65963</b>
Document Type:				
Transfer Amount:	<b>\$600,000</b>	<b>\$2,512,500</b>		
Seller (Grantor):				

## Property Characteristics

Bedrooms:	Fireplace:	Units:
Baths (Full):	A/C:	Stories:
Baths (Half):	Heating:	Quality:
Total Rooms:	Pool:	Building Class:
Bldg/Liv Area:	Park Type:	Condition:
Lot Acres: <b>1.968</b>	Spaces:	Site Influence:
Lot SqFt: <b>85,726</b>	Garage SqFt:	Timber Preserve:
Year Built:		Ag Preserve:
Effective Year:		

## **Attachment 4. Notice of Exemption, Building Permit, and Permit Plans**

## Notice of Exemption

2014108139

Appendix E

To: Office of Planning and Research  
P.O. Box 3044, Room 113  
Sacramento, CA 95812-3044

County Clerk  
County of: Contra Costa  
P.O. Box 350  
Martinez, CA 94553

From: (Public Agency): City of Richmond  
Planning and Building, 450 Civic Center Plaza  
Richmond, CA 94804

(Address)

Project Title: Freethy Industrial Park Solar Photovoltaic System (Freethy Solar Project)

Project Applicant: Joe & Heidi Shekou and Richmond Development Company LLC

Project Location - Specific:  
The northwest corner of Richmond Parkway and Goodrick Avenue in the City of Richmond, CA.

Project Location - City: Richmond

Project Location - County: Contra Costa

## Description of Nature, Purpose and Beneficiaries of Project:

Install 2 megawatt ground mount photovoltaic solar system on approximately 6 acres of level land at Freethy Industrial Park. The electricity generated by the project will be sold to Marin Clean Energy, pursuant to a long term power purchase agreement.

Name of Public Agency Approving Project: City of Richmond, Department of Planning and Building

Name of Person or Agency Carrying Out Project: Joe & Heidi Shekou, Richmond Development Co. LLC

## Exempt Status: (check one):

- ☒ Ministerial (Sec. 21080(b)(1); 15266);  
☐ Declared Emergency (Sec. 21080(b)(3); 15269(a));  
☐ Emergency Project (Sec. 21080(b)(4); 15269(b)(c));  
☐ Categorical Exemption. State type and section number: \_\_\_\_\_  
☐ Statutory Exemptions. State code number: \_\_\_\_\_

## Reasons why project is exempt:

The Freethy Solar Project qualifies for ministerial and non-discretionary review and approval pursuant to Health and Safety Code 17501.1(a), Government Code 65850.5(b) and City Resolution 56-14 (adopted June 17, 2014). The only approval required for the Freethy Solar Project is a building permit which is ministerial decision and pursuant to the above laws, is exempt from CEQA review.

Lead Agency  
Contact Person: Angelina Almarinez

Area Code/Telephone/Extension: 510-621-1285

## If filed by applicant:

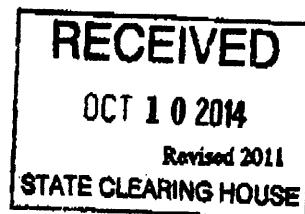
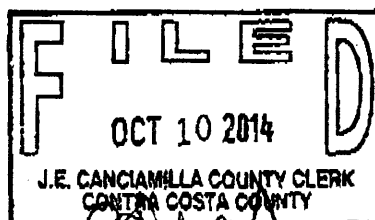
1. Attach certified document of exemption finding.  
2. Has a Notice of Exemption been filed by the public agency approving the project? ☐ Yes ☐ No

Signature: Robert A. Albert Date: 10/9/14 Title: Project Manager

☐ Signed by Lead Agency ☒ Signed by Applicant

Authority cited: Sections 21080 and 21110, Public Resources Code.  
Reference: Sections 21108, 21152, and 21152.1, Public Resources Code.

Date Received for filing at CPR: OCT 10 2014



**BUILDING REGULATIONS****CITY OF RICHMOND**

450 Civic Center Plaza  
 Richmond, CA 94804  
 Phone : (510) 620-6868  
 Fax : (510) 621-1239

**PERMIT # B14-08040**

Job Site Address:

Permit Technician: AA

**FREETHY BLVD**

Parcel APN: 408220006	Today's Date: 09/29/2014
Permit: <b>B14-08040</b>	Date Applied: 08/29/2014
Type of Permit: <b>ELC COMMERCIAL</b>	Date Issued: 09/29/2014
PROPERTY OWNER: SHEKOU JOE & HEIDI Street Address: 2167 E FRANCISCO BLVD #A City/St/Zip: SAN RAFAEL, CA 94901 Owner Phone: (415) 472-7700	CONTRACTOR: TBD Street Address: City/St/Zip: . Daytime Phone: Business License: Exp:
Description of Work: INSTALL GROUND MOUNT SOLAR PV SYSTEM-	
Permit Fee Details:	TOTAL VALUATION: \$ 1,500,000.00 TOTAL FEES: \$ 1,820.00

**Owner Builder Declaration:**

I hereby affirm under penalty of perjury that I am exempt from the Contractors' License Law for the following reason (Section 7031.5, Business and Profession Code states that any City or County which requires a permit to construct, alter, improve, demolish, or repair any structure prior to its issuance also requires the applicant for such permit to file a signed statement that he or she is a license pursuant to the provisions of the Contractor's License Law (Chapter 9 commencing with section 7000 of Division 3 of the Business and Profession Code) or that he or she is exempt from licensure and the basis for the alleged exemption. Any violation of section 7031.5 by any applicant for a permit subjects the applicant to a civil penalty of not more than (\$500).)

I, as owner of the property, or my employees with wages as their sole compensation, will do the work, and the structure is not intended or offered for sale. (Section 7044 Business and Professions Code: The Contractors' State License Law does not apply to the owner of the property who builds or improves their own, and who does such work himself or herself or through his or her own employees, provided that such improvements are not intended or offered for sale. If, however, the building or improvement is sold within one year of completion, the Owner Builder will have the burden of proving that he she did not build or improve for the purpose of sale.)

I, as owner of the property, and exclusively contracting with licensed contractors to construct the project (Section 7044, Business and Professions and Codes states that the current Contractors' State License Law does not apply to an owner of property who builds or improves as thereon, and who contracts for such projects with a licensed Contractor pursuant to the Contractors' License Law).

I am exempt under section \_\_\_\_\_ Business and Professions Code for this reason \_\_\_\_\_

Applicant \_\_\_\_\_ Date: \_\_\_\_\_

**Workers Compensation Declaration:**

I hereby affirm under penalty of perjury one of the following declarations: I have and will maintain a certificate of consent to self insure for workers compensation, as provided for by (Section 3700) of the Labor Code, for the performance of the work for which this permit is issued.

I have and will maintain Workers Compensation insurance, as required by Section 3700 of the Labor Code, for the performance of the work for which this permit is issued, my workers compensation carrier and policy numbers are:

Carrier: \_\_\_\_\_ Policy# \_\_\_\_\_ Expires \_\_\_\_\_

I certify that in the performance of the work for which this permit is issued, I shall not employ any person in a manner so as to become subject to the workers compensation laws of California, and agree that if I should become subject to the workers compensation provisions of section 3700 of the labor code, and I shall forthwith comply with these provisions.

Date: \_\_\_\_\_ Applicant: \_\_\_\_\_

Warning: Failure to secure workers compensation coverage is unlawful, and shall subject an employer to criminal penalties and civil fines of up to \$1000 in addition to the cost of compensation, damages as provided for in section 3706 of the labor code, interest and attorneys fees.

I certify that I have read this application and state that the above information is correct. I agree to comply with all City ordinances and other laws relating to this permit and hereby authorize representatives of the City of Richmond to enter upon the above mentioned property for inspection purposes. This permit will expire on **3/28/2015 12:00:00AM** unless revoked, renewed or extended by the Building Official.

Customer No:

Signature of applicant or agent

Date 9/29/14

Building Dept. by

Date 9/29/14

**PAID**

SEP 29 2014

CITY OF RICHMOND  
FINANCE DEPARTMENT

SnapRack™  
PV Mounting Systems

MANUFACTURER

SNAPNRACK, INC.

775 FIERO LANE, SUITE 200  
SAN LUIS OBISPO, CA 93401  
PH (877) 732-2860

THE INFORMATION IN THIS DRAWING IS CONFIDENTIAL  
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OR USE THEREOF IS PROHIBITED WITHOUT THE  
WRITTEN CONSENT OF SNAPNRACK, INC.

STRUCTURAL/CIVIL ENGINEER

ENGINEERED POWER  
SOLUTIONS

1405 SPRING STREET, SUITE 204  
PASO ROBLES, CA 93446  
CONTACT: MATTHEW B. GILLIS, P.E.  
PH: (805) 423-1326



FOR STRUCTURAL  
ELEMENTS ONLY  
See "Structural Documentation  
Packet" for Additional Info.

CLIENT

RUSSELL PACIFIC

320 SUNSET WAY  
MUIR BEACH, CA 94965

PROJECT

FREETHY  
INDUSTRIAL PARK

NORTHWEST CORNER  
GOODRICK AVE  
RICHMOND PARKWAY, CA 94801  
APN 408-220-06, 07, 35, 36, 37, 38

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REV	DATE	DESCRIPTION
DATE	08/20/2014	
PROJECT NUMBER	RUS1-RUSP4801	
APPLICATIONS ENGINEER	DEON TODD	
STRUCTURAL ENGINEER	STRUCTURAL ENGINEER	
PROJECT MANAGER	PM	
DESIGN ENGINEER	DESIGN ENGINEER	
CHECKED BY		

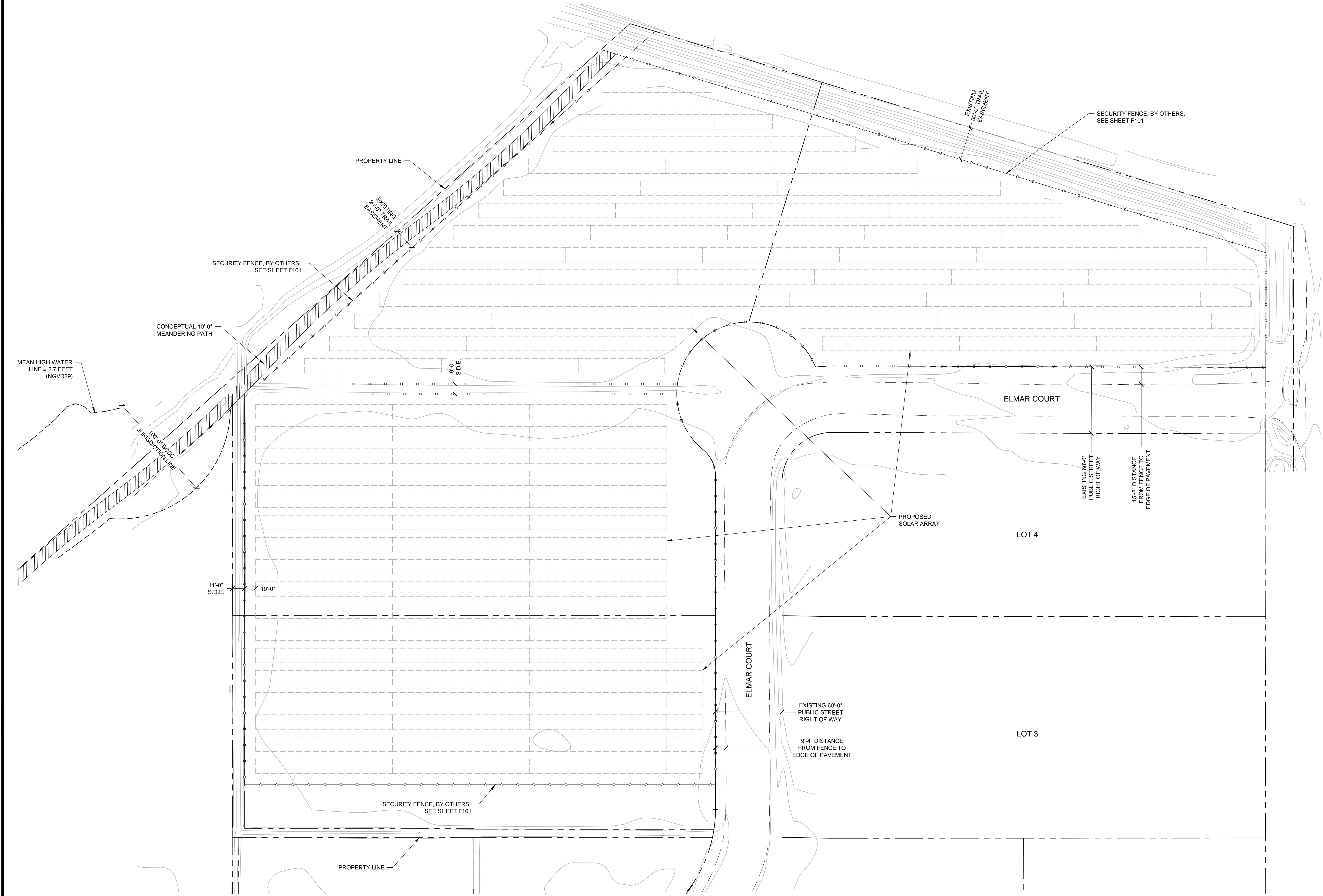
PERMIT SET

SHEET TITLE

SITE PLAN

SHEET NUMBER

S001



SITE PLAN  
1" = 40'-0"



SNAPNRACK, INC.

775 FIERO LANE, SUITE 200  
SAN LUIS OBISPO, CA 93401  
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CONTACT: MATTHEW B. GILLIS, P.E.  
PH: (805) 423-1326



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CLIENT

RUSSELL PACIFIC

320 SUNSET WAY  
MUIR BEACH, CA 94965

PROJECT

FREETHY  
INDUSTRIAL PARK

NORTHWEST CORNER  
GOODRICK AVE  
RICHMOND PARKWAY, CA 94801

APN 408-220-06, 07, 35, 36, 37, 38

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REV	DATE	DESCRIPTION
DATE	08/20/2014	
PROJECT NUMBER	RUS1-RUSP4801	
APPLICATIONS ENGINEER	DEON TODD	
STRUCTURAL ENGINEER	STRUCTURAL ENGINEER	
PROJECT MANAGER	PM	
DESIGN ENGINEER	DESIGN ENGINEER	
CHECKED BY		

PERMIT SET

SHEET TITLE

STRUCTURAL LAYOUT

SHEET NUMBER

S101

NOTES

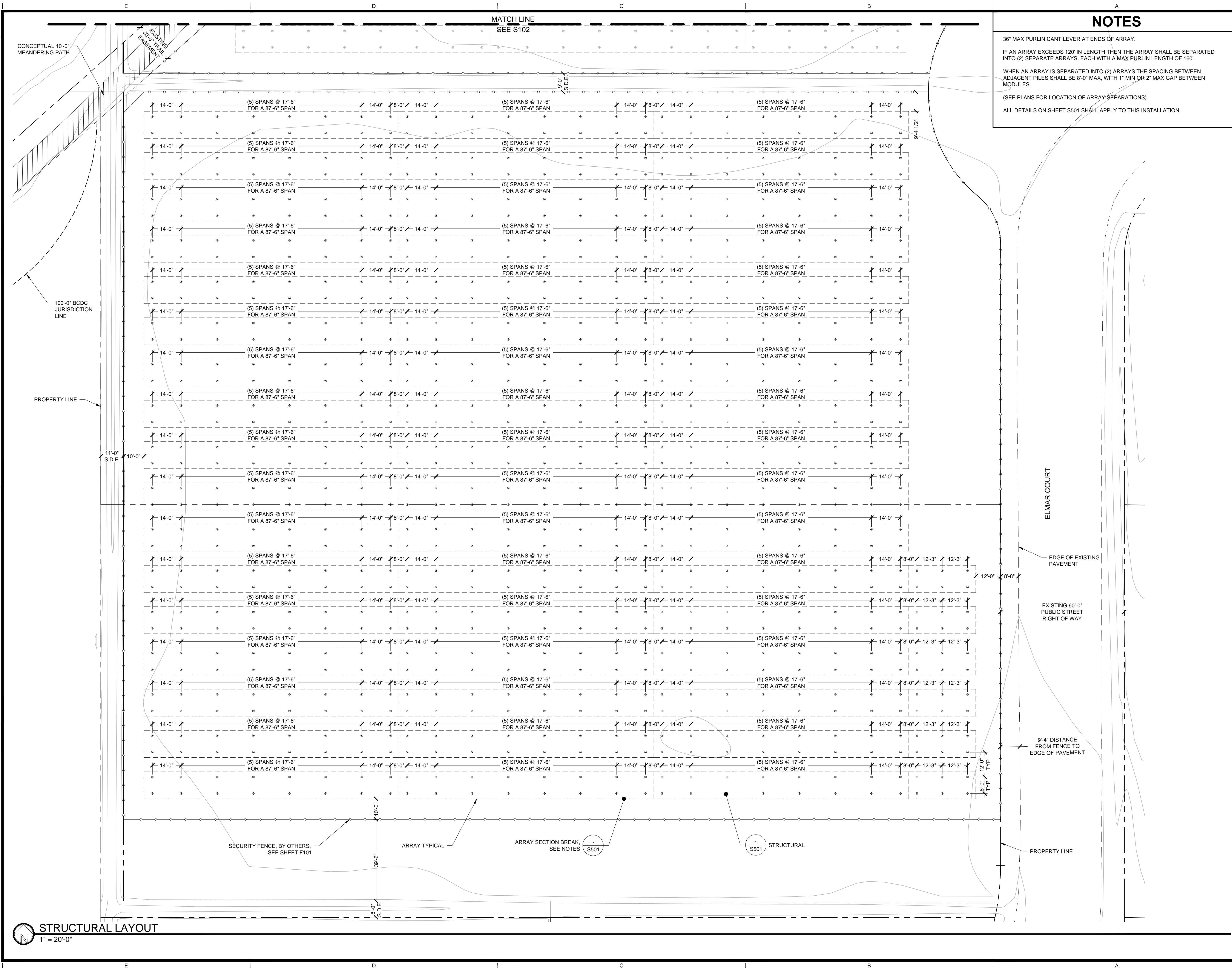
36" MAX PURLIN CANTILEVER AT ENDS OF ARRAY.

IF AN ARRAY EXCEEDS 120' IN LENGTH THEN THE ARRAY SHALL BE SEPARATED  
INTO (2) SEPARATE ARRAYS, EACH WITH A MAX PURLIN LENGTH OF 160'.

WHEN AN ARRAY IS SEPARATED INTO (2) ARRAYS THE SPACING BETWEEN  
ADJACENT PILES SHALL BE 8'-0" MAX, WITH 1" MIN OR 2" MAX GAP BETWEEN  
MODULES.

(SEE PLANS FOR LOCATION OF ARRAY SEPARATIONS)

ALL DETAILS ON SHEET S501 SHALL APPLY TO THIS INSTALLATION.





SNAPNRACK, INC.

775 FIERO LANE, SUITE 200  
SAN LUIS OBISPO, CA 93401  
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STRUCTURAL/CIVIL ENGINEER

ENGINEERED POWER  
SOLUTIONS

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CLIENT

RUSSELL PACIFIC

320 SUNSET WAY  
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NORTHWEST CORNER  
GOODRICK AVE  
RICHMOND PARKWAY, CA 94801

APN 408-220-06, 07, 35, 36, 37, 38

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REV	DATE	DESCRIPTION
DATE	08/20/2014	
PROJECT NUMBER	RUS1-RUP4801	
APPLICATIONS ENGINEER	DEON TODD	
STRUCTURAL ENGINEER	STRUCTURAL ENGINEER	
PROJECT MANAGER	PM	
DESIGN ENGINEER	DESIGN ENGINEER	
CHECKED BY		

PERMIT SET

SHEET TITLE

STRUCTURAL LAYOUT

SHEET NUMBER

S102

NOTES

36" MAX PURLIN CANTILEVER AT ENDS OF ARRAY.

IF AN ARRAY EXCEEDS 120' IN LENGTH THEN THE ARRAY SHALL BE SEPARATED  
INTO (2) SEPARATE ARRAYS, EACH WITH A MAX PURLIN LENGTH OF 160'.

WHEN AN ARRAY IS SEPARATED INTO (2) ARRAYS THE SPACING BETWEEN  
ADJACENT PILES SHALL BE 8'-0" MAX, WITH 1" MIN OR 2" MAX GAP BETWEEN  
MODULES.

(SEE PLANS FOR LOCATION OF ARRAY SEPARATIONS)

ALL DETAILS ON SHEET S501 SHALL APPLY TO THIS INSTALLATION.





SNAPNRACK, INC.

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SAN LUIS OBISPO, CA 93401  
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PH: (805) 423-1326



FOR STRUCTURAL  
ELEMENTS ONLY  
See "Structural Documentation  
Packet" for Additional Info.

CLIENT

RUSSELL PACIFIC

320 SUNSET WAY  
MUIR BEACH, CA 94965

PROJECT

FREETHY  
INDUSTRIAL PARK

NORTHWEST CORNER  
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RICHMOND PARKWAY, CA 94801

APN 408-220-06, 07, 35, 36, 37, 38

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REV	DATE	DESCRIPTION
DATE	08/20/2014	
PROJECT NUMBER	RUS1-RUSP4801	
APPLICATIONS ENGINEER	DEON TODD	
STRUCTURAL ENGINEER	STRUCTURAL ENGINEER	
PROJECT MANAGER	PM	
DESIGN ENGINEER	DESIGN ENGINEER	
CHECKED BY		

PERMIT SET

SHEET TITLE

STRUCTURAL LAYOUT

SHEET NUMBER

S103

NOTES

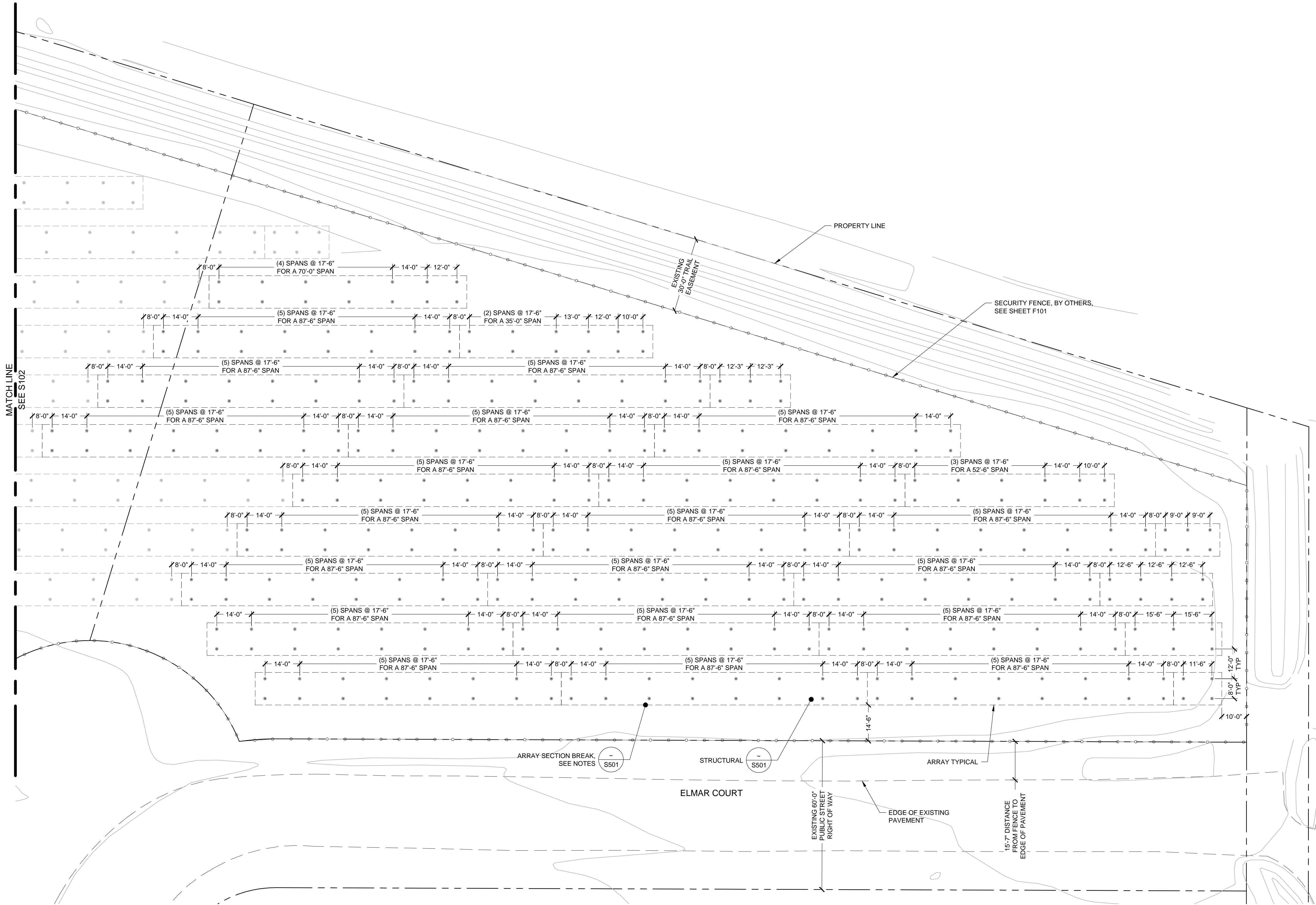
36" MAX PURLIN CANTILEVER AT ENDS OF ARRAY.

IF AN ARRAY EXCEEDS 120' IN LENGTH THEN THE ARRAY SHALL BE SEPARATED INTO (2) SEPARATE ARRAYS, EACH WITH A MAX PURLIN LENGTH OF 160'.

WHEN AN ARRAY IS SEPARATED INTO (2) ARRAYS THE SPACING BETWEEN ADJACENT PILES SHALL BE 8'-0" MAX, WITH 1" MIN OR 2" MAX GAP BETWEEN MODULES.

(SEE PLANS FOR LOCATION OF ARRAY SEPARATIONS)

ALL DETAILS ON SHEET S501 SHALL APPLY TO THIS INSTALLATION.





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REV	DATE	DESCRIPTION
DATE	08/20/2014	
PROJECT NUMBER	RUS1-RUP4801	
APPLICATIONS ENGINEER	DEON TODD	
STRUCTURAL ENGINEER	STRUCTURAL ENGINEER	
PROJECT MANAGER	PM	
DESIGN ENGINEER	DESIGN ENGINEER	
CHECKED BY		

PERMIT SET

NOTES

**SERIES 350: 18 DEGREE TILT**  
DEVELOPED AS AN EFFICIENT MOUNTING STRUCTURE FOR LARGE SCALE GROUND MOUNT INSTALLATIONS. THE SYSTEM IS BASED ON A STEEL SUB-STRUCTURE MANUFACTURED FROM READILY AVAILABLE STEEL ROLL FORMS AND MODULE MOUNTING RAILS TO ACCOMMODATE 0-35 DEGREE TILT SYSTEMS. DETAILED SPECIFICATIONS FOR PURLIN SPANS AND PIER DEPTHS ARE AVAILABLE IN THE STRUCTURAL ENGINEERING PACKET FOR THE SYSTEM. MULTIPLE FOUNDATION OPTIONS MAKE SERIES 350 ADAPTABLE TO VIRTUALLY ANY INSTALLATION SITE AND CONFIGURATION. ARRAYS FOLLOW CONTOURS OF THE SITE (NORTH TO SOUTH & EAST TO WEST)

**POST TOLERANCES:**  
EAST/WEST DIRECTION IS 3" OR ±2" AT TOP OF POST. NORTH/SOUTH DIRECTION IS 1" OR ±1" AT TOP OF POST. TWISTING IS 1" OR ±1/8" AT TOP OF POST.

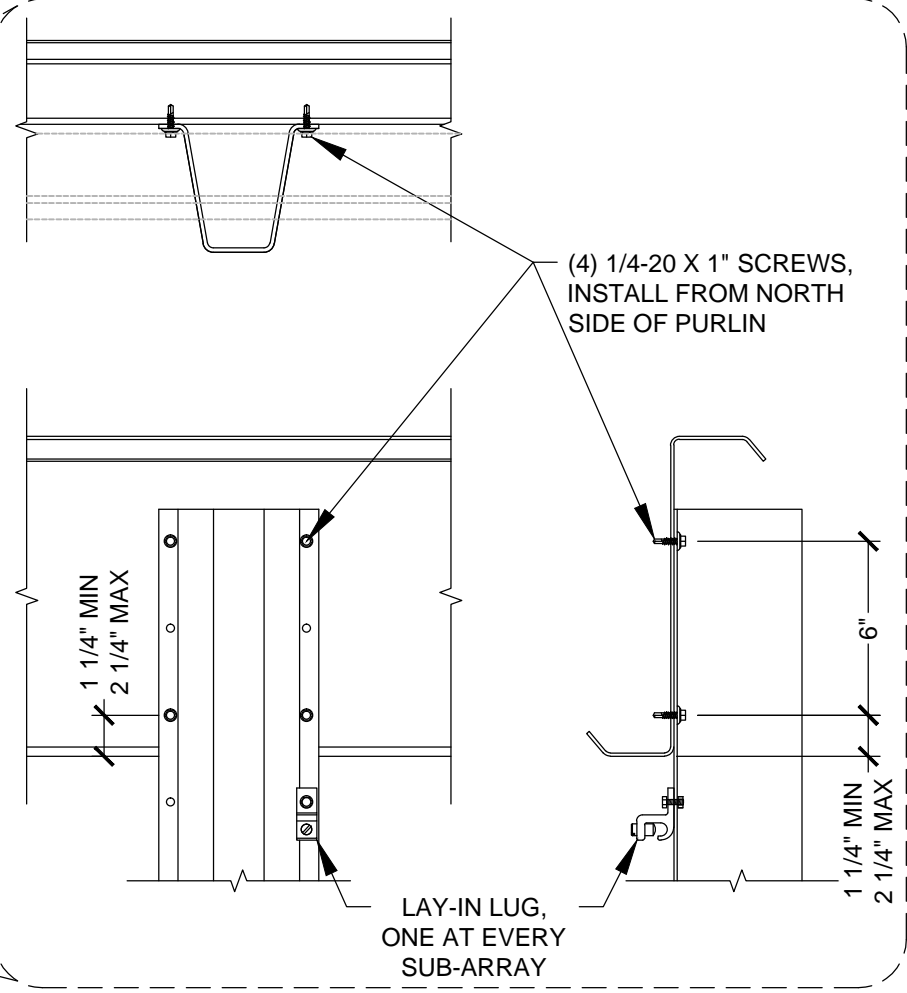
**PURLIN TO POST:**  
(4) 1/4-20 X 1" BI-METAL W/ CARBON STEEL TIP, SS SELF-DRILLING SCREWS SHALL BE USED AT PURLIN TO POST. TORQUE SCREW TO 5 FT-LBS. SCREWS SHALL ALIGN AND BE INSTALLED THRU PRE-PUNCHED HOLES IN POST.

**PURLIN SPLICE:**  
(6) 1/4-20 X 1" BI-METAL W/ CARBON STEEL TIP, SS SELF-DRILLING SCREWS SHALL BE USED AT PURLIN SPLICE. CENTER SCREWS IN FLANGE USING PRE-DRILLED HOLES. TORQUE SCREWS TO 5 FT-LBS. ZEE PURLIN MAY BE SPICED AT ANY POINT ALONG THEIR LENGTH. ZEE PURLIN HAS ONE FLANGE THAT IS 0.2" LONGER THAN THE OTHER TO FACILITATE NESTING AS SHOWN IN SECTION 'B'. EVERY OTHER ZEE PURLIN IS FLIPPED 180°, THE WIDER FLANGE IS PRE-PUNCHED TO FACILITATE THIS. AFTER ALL SCREWS ARE INSTALLED, SPRAY BOTH SIDES WITH "BRITE COLD GALVANIZED PAINT".

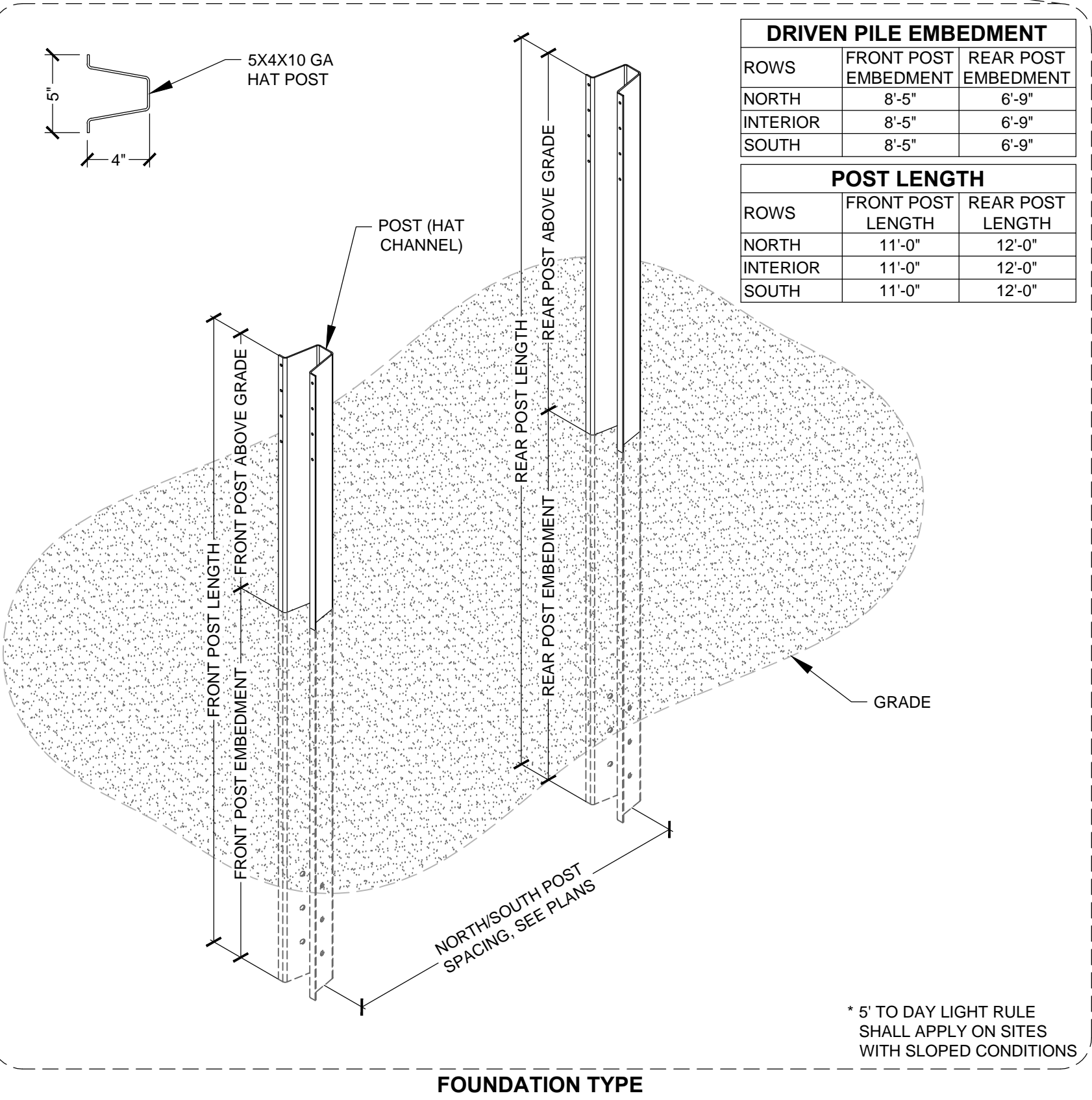
**PURLIN CLAMP:**  
INSTALL ONE PURLIN CLAMP AT EVERY PURLIN/RAIL CONNECTION, WITH 5/16" X 1 1/4" HOT DIPPED BOLT, SPLIT LOCK WASHER, TORQUE TO 12-16 FT LBS.

**PURLIN BRACE:**  
INSTALL TWO PURLIN BRACE AT EACH PURLIN 1/3 & 2/3 SPAN BETWEEN POSTS. ATTACH PURLIN BRACE TO RAIL CLOSEST TO 1/3 & 2/3 OF SPAN. (1) 1/4-20 X 1" BI-METAL W/ CARBON STEEL TIP, SS SELF-DRILLING SCREWS SHALL BE USED AT BRACE TO PURLIN, TORQUE TO 5 FT-LBS. (2) 1/4-20 X 1" BI-METAL W/ CARBON STEEL TIP, SS SELF-DRILLING SCREWS SHALL BE USED AT BRACE TO RAIL, TORQUE TO 1 FT-LBS.

**GROUNDING:**  
RACKING AND PV SYSTEM IS FULLY GROUNDING DOWN TO POST(S). INSTALL (1) LAY-IN LUG PER SUB-ARRAY AT PRE-DRILLED HOLE OF POST(S) TO (EGC). USE 1/4" X 20 X 1 1/4" HOT DIPPED NUT AND BOLT, TORQUE TO 6 FT-LBS.



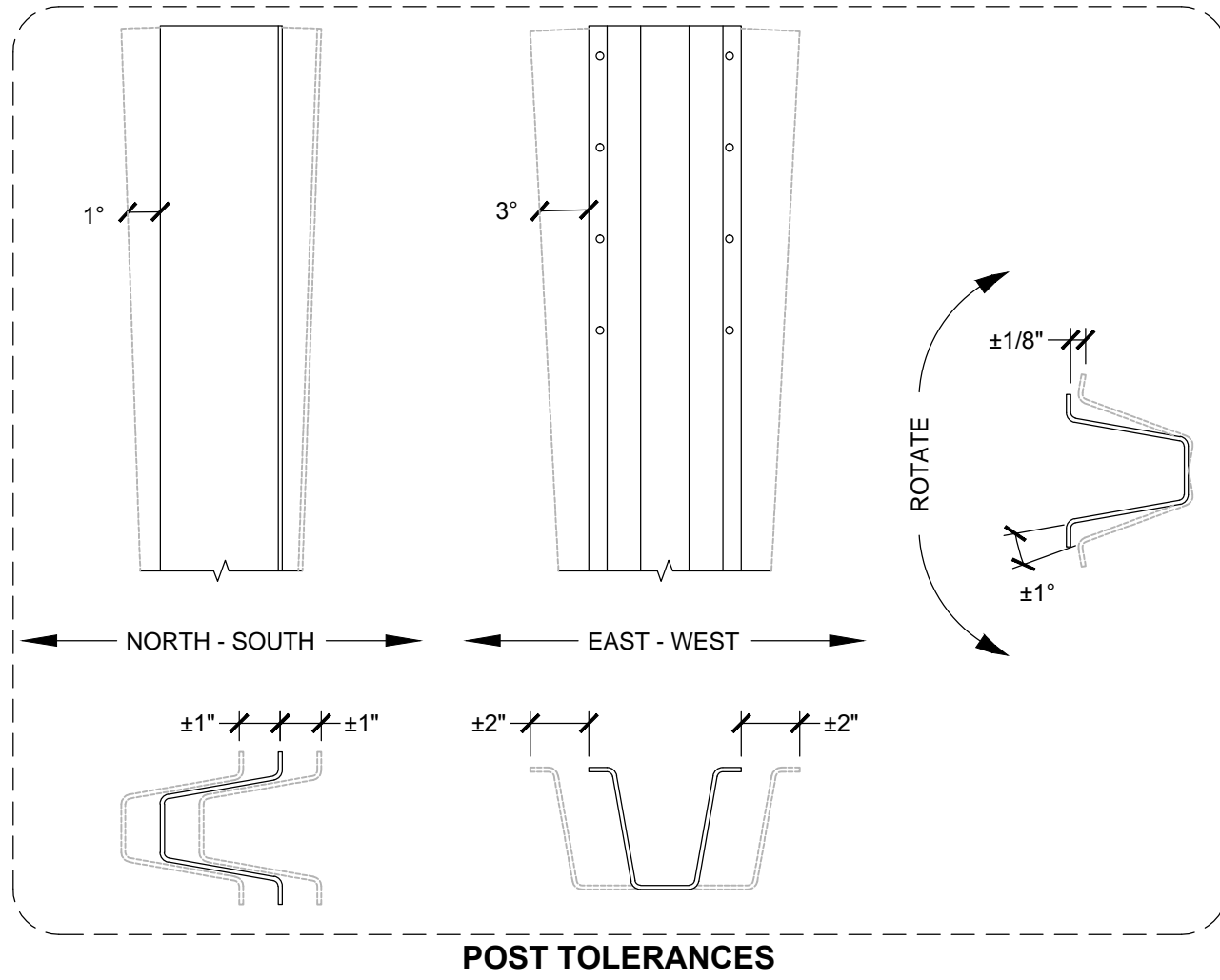
PURLIN TO POST



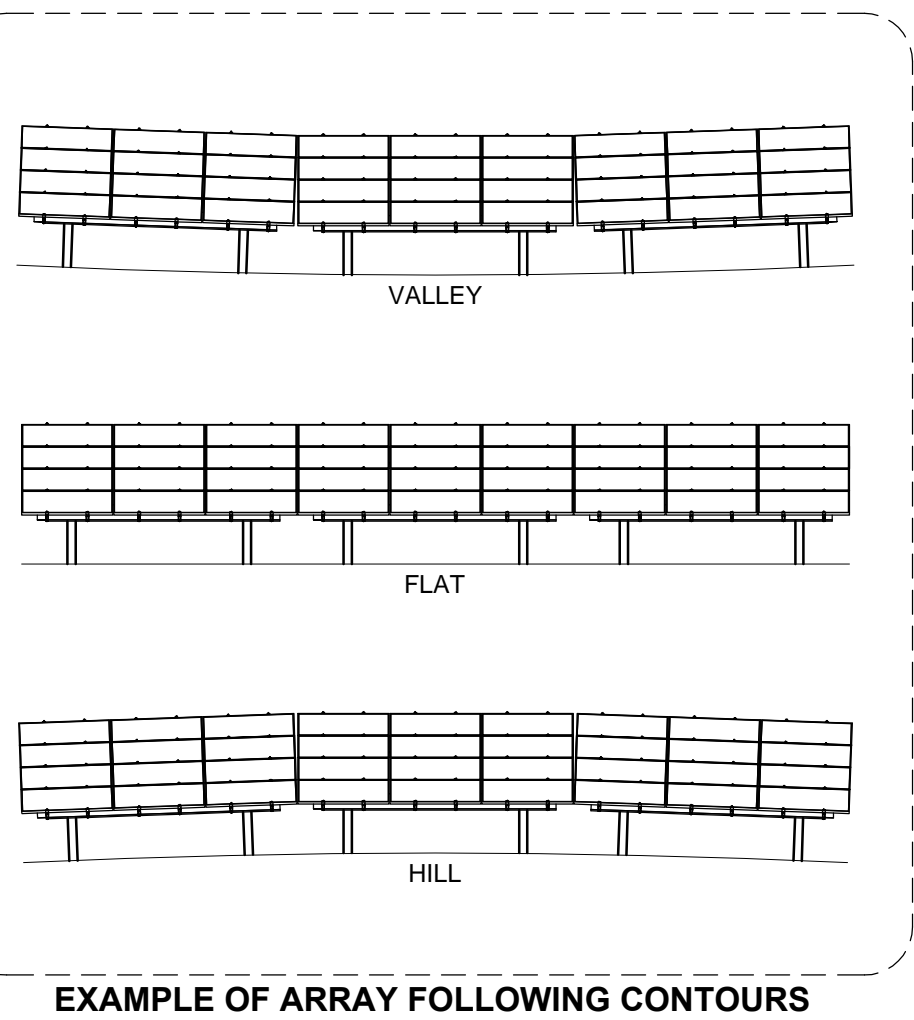
ROWS	FRONT POST EMBEDMENT	REAR POST EMBEDMENT
NORTH	8'-5"	6'-9"
INTERIOR	8'-5"	6'-9"
SOUTH	8'-5"	6'-9"

ROWS	FRONT POST LENGTH	REAR POST LENGTH
NORTH	11'-0"	12'-0"
INTERIOR	11'-0"	12'-0"
SOUTH	11'-0"	12'-0"

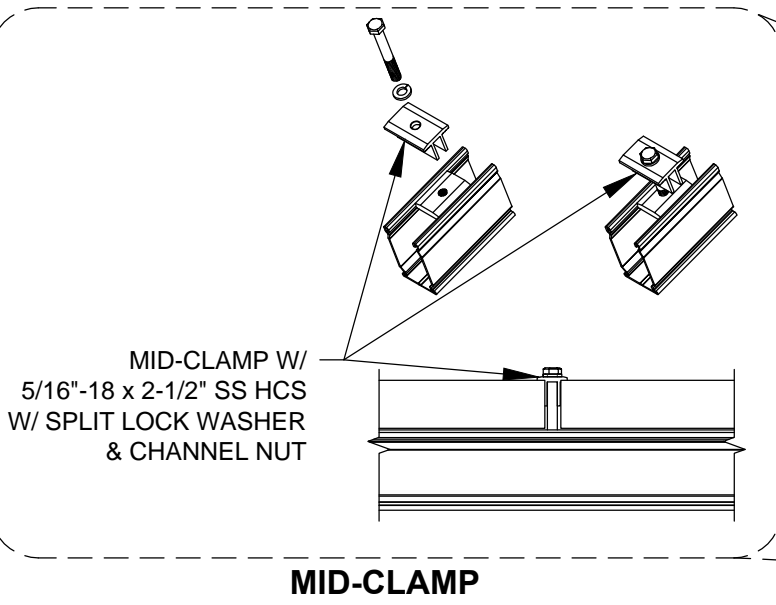
\* 5' TO DAY LIGHT RULE SHALL APPLY ON SITES WITH SLOPED CONDITIONS



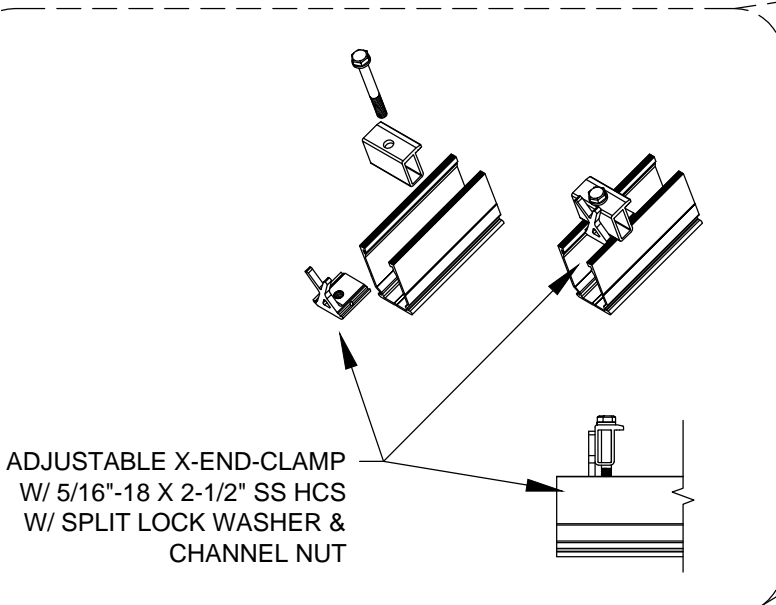
POST TOLERANCES



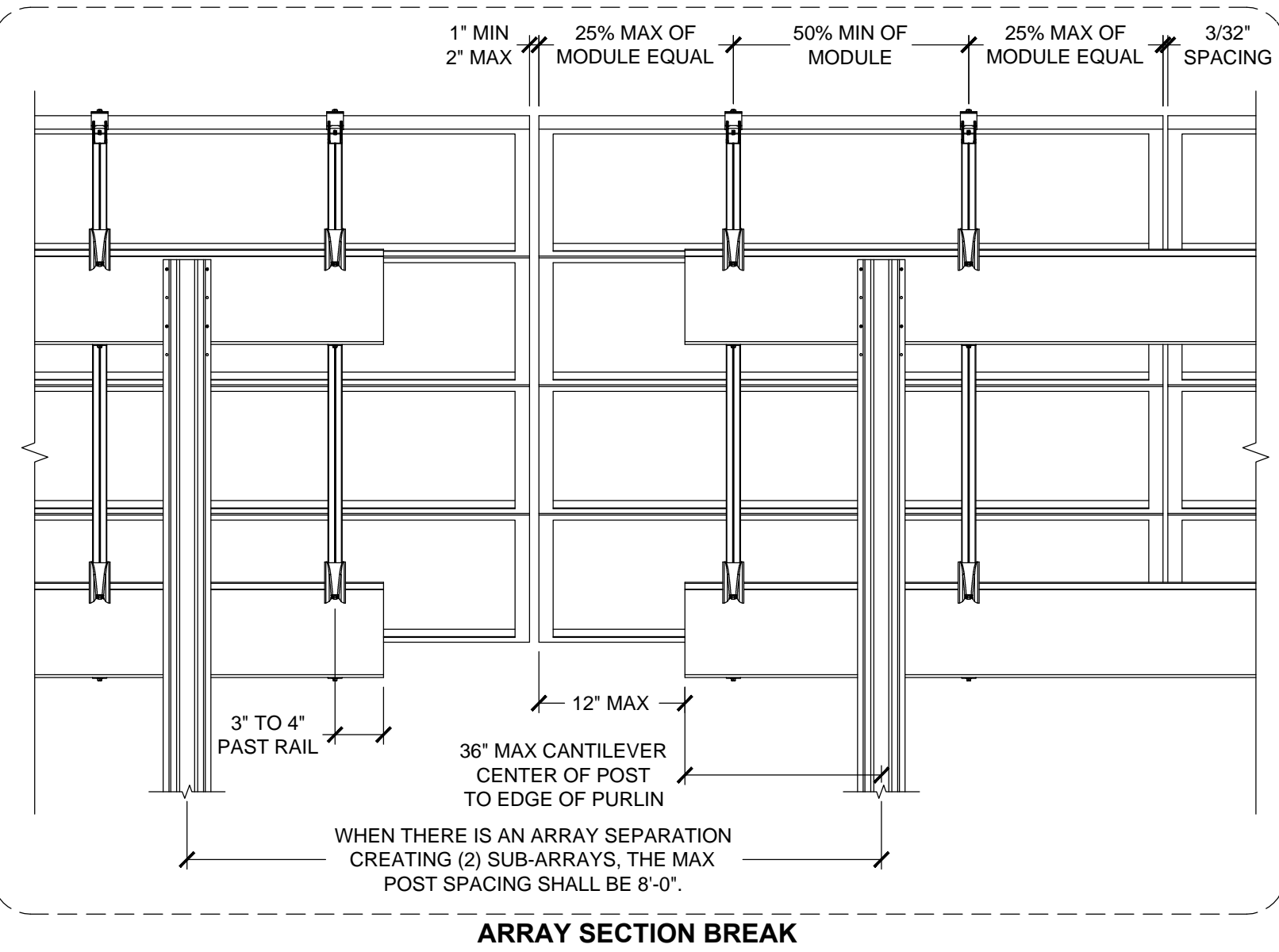
EXAMPLE OF ARRAY FOLLOWING CONTOURS



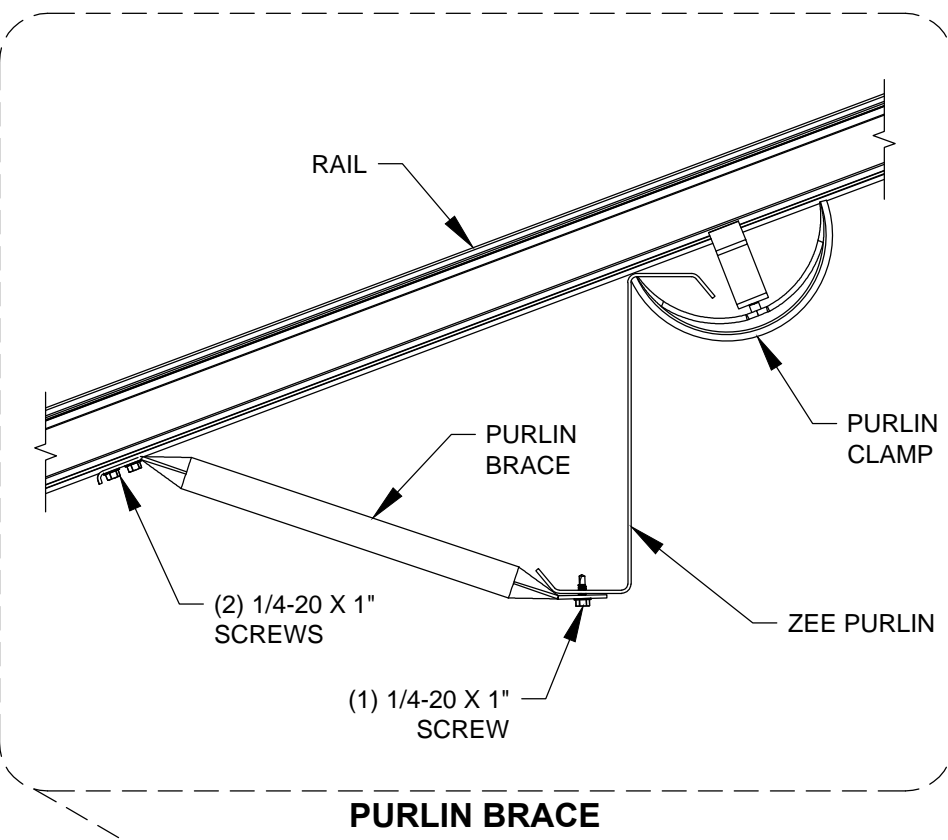
MID-CLAMP



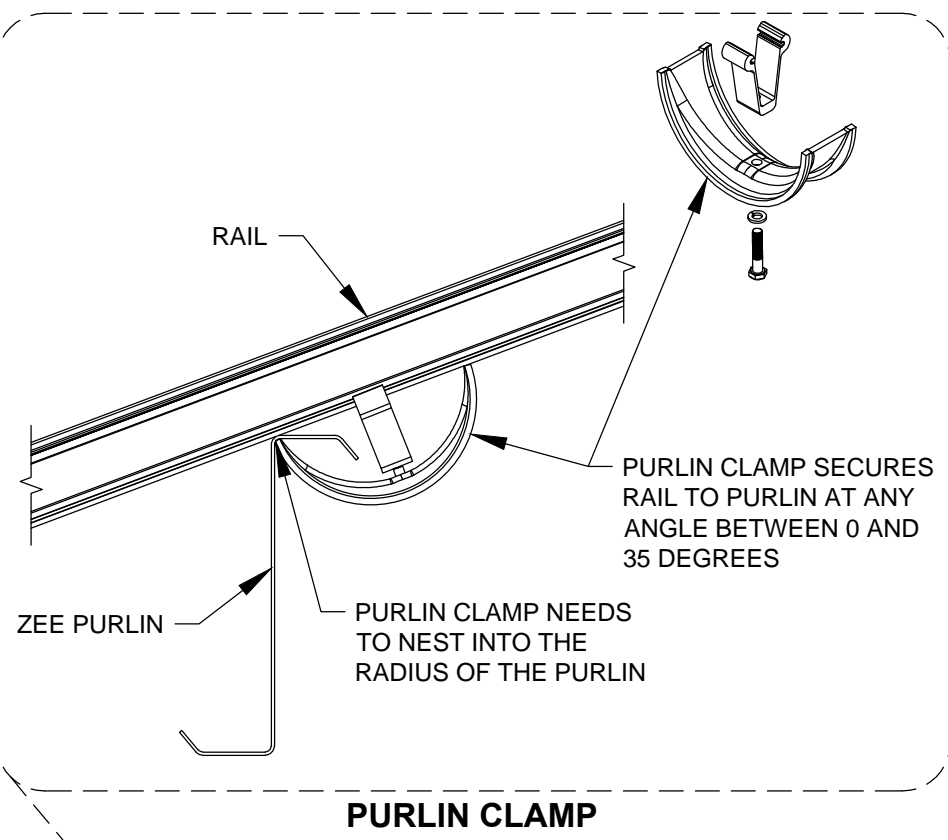
END-CLAMP



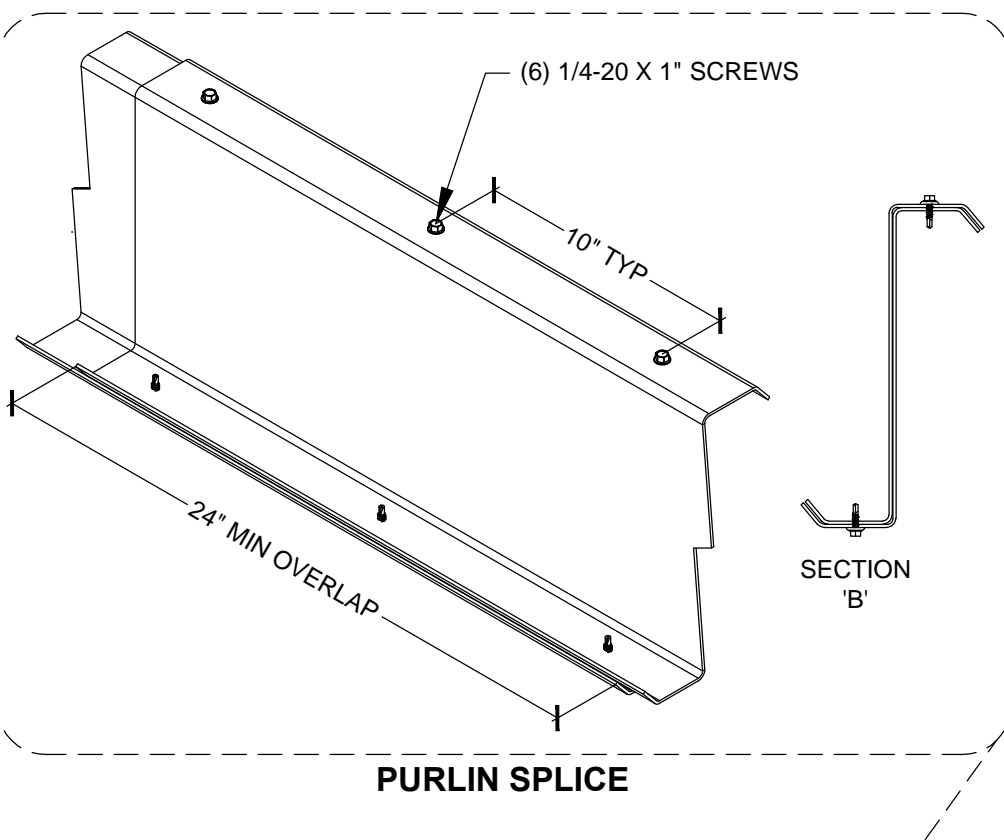
ARRAY SECTION BREAK



PURLIN BRACE



PURLIN CLAMP



PURLIN SPLICE





MANUFACTURER  
**C.E. SHEPHERD  
COMPANY, L.P.**  
2221 CANADA DRY STREET  
HOUSTON, TX 77023  
PH (713) 924-4300

**RUSSELL PACIFIC**  
320 SUNSET WAY  
MUIR BEACH, CA 94965

**FREETHY  
INDUSTRIAL PARK**  
NORTHWEST CORNER  
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APN 408-220-06, 07, 35, 36, 37, 38

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REV	DATE	DESCRIPTION
DATE	08/20/2014	
PROJECT NUMBER	RUS1-RUSP4801	
APPLICATIONS ENGINEER	DEON TODD	
STRUCTURAL ENGINEER	STRUCTURAL ENGINEER	
PROJECT MANAGER	PM	
DESIGN ENGINEER	DESIGN ENGINEER	
CHECKED BY		

**PERMIT SET**

SHEET TITLE  
**FENCE AND PLANT DETAILS**

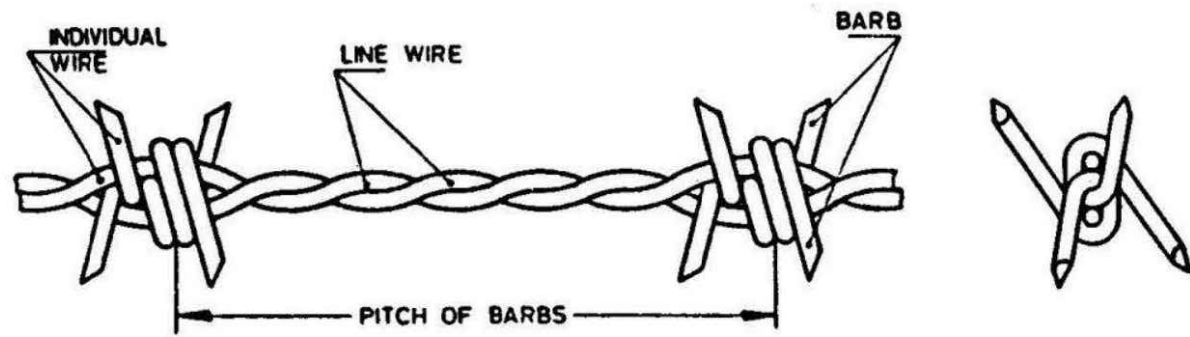
SHEET NUMBER  
**F101**



2221 Canada Dry Street  
Houston TX 77023 USA  
TEL: 713.924.4300  
FAX: 713.928.2324  
[www.ceshepherd.com](http://www.ceshepherd.com)

C.E. SHEPHERD High Tensile Barbed Wire

**Certificate of Quality**



**TYPE A**

C.E. Shepherd Barbed wire is offered in Class 3 galvanized, coating, Class 3 Galvanized coating lasts three times longer than Class 1.

Detailed specifications as below:

Double Strand: 4 Point

Barbed type: round

Finish: Class 3

Line wire: 0.067" (1.70 MM) or 15.5 GA

Distance between barb : 3"

Length per Reel 1320 Ft (includes inner spool for easy assembly)

Weight: Approx. 51 Lbs. /Reel

Packed on Inner Spool

C.E. SHEPHERD L.P. MAXTOP Products certifies that the above material meets or exceeds specified

ASTM A 121 standards



MANUFACTURED FROM 50,000# MIN YIELD  
STEEL PER ASTM A-570 GRADE 50 AND COATED  
WITH MINIMUM 2oz ZINC PER SQ. FOOT<sup>2</sup>  
PER ASTM F1043-TYPE A (2.78 #/FT.)

ITEM	QNTY	DESCRIPTION	MATERIAL
SCALE	FULL	CHK'D BY IDI	MACHINING TOLERANCES: UNDER 18" ± 1/32 18" AND OVER ± 1/16
OWN BY	IDI	APP'D BY	0.01 ± 0.005 ALL MACHINED SURFACES 125 0.001 ± 0.003 BREAK ALL SHARP EDGES

CAD FILENAME: GGM05-02  
LAST PLOT DATE: 08-10-17

**HEAVY 'C' POST**

C. E. Shepherd Company  
2221 Canada Dry St. Houston, TX 77023 USA  
713.924.4300  
sales@ceshepherd.com  
www.ceshepherd.com

REF. No. GGM05-02  
BRWG No. 1

3"x1/2"x99"x96"  
8-ga GAW

Conceptual Drawing -  
Not For Construction

LET	DATE	BY	REV
DIMENSIONS IN INCHES TOLERANCES UNLESS NOTED:			
FRACTIONAL	± 1/8"	± 1/16"	± 1/32"
DECIMAL	± .005"	± .003"	± .001"
ANGULAR	± 1/2°	± 1/4°	± 1/8°
FILE	FILE	FILE	FILE

C.E. Shepherd Co., L.P.  
2221 CANADA DRY ST. HOUSTON, TEXAS 77023

DATE: 4/25/14  
BY: RAB  
CHECKED: JTS  
DESIGNED: JTS  
PROJECT: 3-5-8 Security Fence With C-Posts  
NO.

**Welded Wire Mesh Specifications**

- Welded mesh fence fabric shall consist of 10.5 gauge (0.128 inch diameter) carbon steel with vertical wires at 3-inch centers and horizontal wires of the same size at 0.5-inch centers.
- Each wire shall be welded at each wire junction, then hot dip galvanized to meet the standard of ASTM-A123.
- Welded mesh fabric fence shall meet the following specifications:

- 1) Cross Wire Mesh Spacing - 1/2 inch +/- 1/32 inch, center-to-center
- 2) Line Wire Mesh Spacing - 3 inch +/- 1/32 inch, center-to-center
- 3) Panel Spacing - As required
- 4) Squariness - Diagonal difference over 4 foot length shall not exceed 5/8 inch
- 5) Weld Shear - 500 lbs nominal using ASTM-A185
- 6) Wire Tensile Strength - 70,000-95,000 PSI using ASTM-A82; A853
- 7) Wire Breaking Strength - No less than 1,000 lbs
- 8) Wire Chemistry - Low carbon steel wire as specified in ASTM-A853
- 9) Coating - Hot dip galvanized - 1.2 ounces per square foot, exceeding ASTM-A123 - Class 2 coating as tested by ASTM-A90
- 10) Manufactured by C.E. Shepherd Co., LP or approved equal.

C. E. Shepherd Co., LP  
2221 Canada Dry Street  
Houston, TX 77023  
(713) 924-4300

LET	DATE	BY	REV
DIMENSIONS IN INCHES TOLERANCES UNLESS NOTED:			
FRACTIONAL	± 1/8"	± 1/16"	± 1/32"
DECIMAL	± .005"	± .003"	± .001"
ANGULAR	± 1/2°	± 1/4°	± 1/8°
FILE	FILE	FILE	FILE

C.E. Shepherd Co.  
2221 CANADA DRY ST. HOUSTON, TEXAS 77023

DATE: 4/25/14  
BY: RAB  
CHECKED: JTS  
DESIGNED: JTS  
PROJECT: Welded Wire Mesh Specifications  
NO.



## **Attachment 5. JHS Letter Dated February 13, 2019**

**Exhibit 27**  
**JHS**  
**Properties**

2173 Francisco Boulevard East • Suite D  
San Rafael, CA 94901  
(415) 453-0212  
fax (415) 453-0421

**February 13, 2019**

**Mr. Ethan Lavine**  
**Chief of Bay Resources and Permits**  
**Bay Conservation and Development Corporation**  
**455 Golden Gate Avenue**  
**San Francisco, CA 94102**

**Dear Ethan,**

**Thanks for your help over the past several months in helping us plan the design of a new public shoreline trail at Freethy industrial Park. We had hoped to submit our application at the same time as PowerPlant Park, but we understand their application has been delayed over issues related to the City of Richmond's existing BCDC permit conditions for Freethy Boulevard. We therefore must submit our application separately per the request of Matthew Trujillo, but please know that we do intend to build and maintain our trail section in conjunction with PowerPlant's planned shoreline improvements with which you are familiar.**

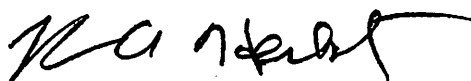
**As discussed at our two meetings together in the last several months, we have terminated the trail about 200 feet from the Richmond Gun Club property line, in recognition of potential public safety hazards related to existing gun club operations.**

**In submitting this application, Joe and Heidi Shekou (JHS) expressly reserve the right to contest the San Francisco Bay Conservation and Development Commission's (BCDC) jurisdiction over, and authority to require a permit for development of, the land owned by JHS in Freethy Subdivision in Richmond, California (the Property). JHS's submission of the application shall not be construed as an admission that BCDC has jurisdiction over any portion of the Property; nor shall it be construed as a waiver of JHS's right to contest BCDC's jurisdiction on any basis, including, without limitation, the issuance of a letter of exemption to JHS's predecessor-in-interest as owner of the Property, the previous grading and partial development of the Property, and/or the elevation of the Property and its distance from any areas that may be within BCDC's jurisdiction.**

**JHS is proceeding with submission of the application in reliance upon its understanding that BCDC has agreed not to construe the submission as a waiver or admission of any kind. Further, this reservation shall remain in effect even if BCDC should issue a permit for any portion of the Property, and shall expire only if and when (i) JHS gives BCDC written notice of JHS's acceptance of a permit issued by BCDC for the Property, in JHS's sole discretion, and (ii) JHS has realized the benefits of that permit.**

**Please feel free to call me with any questions regarding our application.**

**Best regards,**



**Bob Herbst**  
**JHS Properties**  
**415-472-7700**

## **Attachment 6. Form Verifying Posting of Public Notice**

# Exhibit 27 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

BCDC PERMIT APPLICATION NO. M2019.04.00  
Joe Shekou

## CERTIFICATION OF POSTING OF NOTICE

**Yuriko Jewett**

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

RE:

Construct a new Bay Trail extension at JHS Solar Farm

*(brief description of project)*

I,

Ashwin Gulati

*(name of applicant or agent)*

hereby certify that on

4/21/22

*(date)*

I or my agent or employee posted in a prominent location at or near the project site the Notice of Application provided by the San Francisco Bay Conservation and Development Commission.

Date: 4/21/22

By:

*(Signature)*

Title:

*(Title)*

**From:** [Ashwin Gulati](#)  
**To:** [Plater, Brent@BCDC](#); [Pan, Katharine@BCDC](#)  
**Cc:** [Robert Herbst](#); [Joeshekou](#)  
**Subject:** Fwd: BCDC/Solar Farm Richmond Thursday,  
**Date:** May 26, 2022 5:28:23 PM

---

Hi Brent,

Hope all is well.

I wanted to follow up as per my email below.

Since Richmond Planning and DRB have now approved the Powerplant project, we believe we should coordinate the Bay Trail development and work closely with your staff that is working on the Powerplant trail.

Can you please suggest some days/times that work best for you to for us all to get on a call and align next steps?

Thanks much

Ashwin

Begin forwarded message:

**From:** Ashwin Gulati <ashwingulati@gmail.com>  
**Subject:** BCDC/Solar Farm Richmond  
**Date:** May 4, 2022 at 11:09:01 AM PDT  
**To:** "Plater, Brent@BCDC" <brent.plater@bcdc.ca.gov>  
**Cc:** "Pan, Katharine@BCDC" <katharine.pan@bcdc.ca.gov>, "rherbst@jhsproperties.net" <rherbst@jhsproperties.net>, Ellie Knecht <knecht@wra-ca.com>, Geoff Smick <smick@wra-ca.com>, Joe Shekou <Sapidrood@yahoo.com>

Hi Brent

Please find attached response to BCDC's enforcement case ER2017.004.

We look forward to working with your team in bringing this matter to a successful completion.

Best Regards

Ashwin



**From:** [Ashwin Gulati](#)  
**To:** [Plater, Brent@BCDC](#)  
**Cc:** [Ellie Knecht](#); [Pan, Katharine@BCDC](#); [rherbst@jhsproperties.net](#); [Joeshekou](#)  
**Subject:** Re: Response Letter to Application No. M2019.004.00\_JHS Properties Solar Farm Bay Trail Extension  
**Date:** Wednesday, June 22, 2022 1:47:13 PM

---

Brent... Actually, let's move to Wednesday 1 pm via zoom.

Just sent out zoom invite.

Ashwin

On Jun 22, 2022, at 12:33 PM, Plater, Brent@BCDC <[brent.plater@bcdca.gov](mailto:brent.plater@bcdca.gov)> wrote:

Ashwin,

Katharine and I are available at 1pm on Tuesday, Wednesday, and Friday of next week. Let us know which one of those slots works for you.

Thanks,

bp

-----  
Brent Plater | Lead Enforcement Attorney  
SF Bay Conservation & Development Commission  
375 Beale St., Suite 510  
San Francisco, CA 94105  
Phone: (415) 352-3628  
Email: [brent.plater@bcdca.gov](mailto:brent.plater@bcdca.gov)

---

**From:** Ashwin Gulati <[ashwingulati@gmail.com](mailto:ashwingulati@gmail.com)>  
**Sent:** Tuesday, June 21, 2022 11:05 AM  
**To:** Ellie Knecht <[knecht@wra-ca.com](mailto:knecht@wra-ca.com)>  
**Cc:** Plater, Brent@BCDC <[brent.plater@bcdca.gov](mailto:brent.plater@bcdca.gov)>; Pan, Katharine@BCDC <[katharine.pan@bcdca.gov](mailto:katharine.pan@bcdca.gov)>; Robert Herbst <[rherbst@jhsproperties.net](mailto:rherbst@jhsproperties.net)>; Joeshekou <[Sapidrood@yahoo.com](mailto:Sapidrood@yahoo.com)>  
**Subject:** Re: Response Letter to Application No. M2019.004.00\_JHS Properties Solar Farm Bay Trail Extension

Ellie,

Thanks much for the response. I've met with the owners and we would like to set up a meeting with BCDC to discuss next steps together.

Brent, can you please suggest some days/times that work for you and your team in the coming weeks?

Thanks much

Ashwin

On Jun 14, 2022, at 4:34 PM, Ellie Knecht <[knecht@wra-ca.com](mailto:knecht@wra-ca.com)> wrote:

Hi Ashwin, I think the items in this BCDC letter are largely decision points for the applicant. WRA is not currently scoped to assist with further BCDC coordination, although we do have some funds remaining in our contract if you'd like to talk through any of these items.

Thank you,  
Ellie

----- Forwarded message -----

From: **Amezcu, Reyna@BCDC** <[reyna.amezcua@bcdca.gov](mailto:reyna.amezcua@bcdca.gov)>  
Date: Fri, Jun 3, 2022 at 3:34 PM  
Subject: Response Letter to Application No. M2019.004.00\_JHS Properties  
Solar Farm Bay Trail Extension  
To: [ashwingulati@gmail.com](mailto:ashwingulati@gmail.com) <[ashwingulati@gmail.com](mailto:ashwingulati@gmail.com)>, [knecht@wra-ca.com](mailto:knecht@wra-ca.com) <[knecht@wra-ca.com](mailto:knecht@wra-ca.com)>  
Cc: [sapidrood@yahoo.com](mailto:sapidrood@yahoo.com) <[sapidrood@yahoo.com](mailto:sapidrood@yahoo.com)>, Pan, Katharine@BCDC <[katharine.pan@bcdca.gov](mailto:katharine.pan@bcdca.gov)>

Dear Ashwin and Ellie,

On behalf of Katharine Pan, please find the attached response letter for the above-referenced permit application. Should you have any questions, please contact Ms. Pan, project manager, at 415-352-3650 or [katharine.pan@bcdca.gov](mailto:katharine.pan@bcdca.gov).

Thank you.

Reyna Amezcua  
Secretary | Regulatory Division  
San Francisco Bay Conservation and Development Commission  
Bay Area Metro Center

375 Beale St., Suite 510  
San Francisco, CA 94105  
[reyna.amezcua@bcdcc.ca.gov](mailto:reyna.amezcua@bcdcc.ca.gov)  
[info@bcdcc.ca.gov](mailto:info@bcdcc.ca.gov)  
Main Office Number: (415) 352-3600

--

ELLIE KNECHT | Associate | d: 510.296.0537 | o: 415.454.8868 x 1910 | c:  
510.207.0623 | [knecht@wra-ca.com](mailto:knecht@wra-ca.com)  
WRA, Inc. | [www.wra-ca.com](http://www.wra-ca.com) | 4225 Hollis St., Emeryville, CA 94608 | San  
Rafael | San Diego | Fort Bragg | Denver  
\*Please note that I am out of the office on Fridays.

<Response Letter to Application No. M2019.004.00\_JHS Properties Solar  
Farm Bay Trail Extension.pdf><M2019.004.00\_30DL2\_Box1.pdf>  
<2018.09.13 ER2017.004JHSProperties\_IvoKellerResponseLetter.pdf>

**From:** [Plater, Brent@BCDC](mailto:Plater, Brent@BCDC)  
**To:** [Ashwin Gulati](mailto:Ashwin.Gulati)  
**Cc:** [Pan, Katharine@BCDC](mailto:Pan, Katharine@BCDC); [rherbst@jhsproperties.net](mailto:rherbst@jhsproperties.net); [Matthew Trujillo \(Matthew.Trujillo@bcdcc.ca.gov\)](mailto:Matthew.Trujillo@bcdcc.ca.gov)  
**Subject:** RE: Tomorrow's meeting / reschedule..  
**Date:** Wednesday, June 29, 2022 10:13:00 AM

---

Dear Mr. Gulati:

As I've stated before, BCDC intends to present ER2017.004 to BCDC's enforcement committee. However, it is now more likely to be heard this fall rather than this summer.

At that hearing staff will request that the committee recommend that the Commission adopt a cease and desist order requiring you to implement a maximum feasible public access plan as determined by BCDC. "Maximum feasible public access" will be assessed based on the legal condition of the site, i.e., before your unauthorized project was constructed. You will be required to remove any structures that interfere with this maximum feasible public access plan, and allow the rest to remain. Staff will also request issuance of a civil penalty order, which given the length of time your project has been out of compliance, will likely equal the maximum administrative civil liability allowed under law.

If you wish to pursue a permit that reduces the enforcement issues presented to the Commission you are free to do so. However, I have reviewed the permit application you have submitted and do not see how it is consistent with a properly conducted maximum feasible public access analysis. As I understand it, such an analysis would require a trail that offers connectivity to existing and proposed future Bay Trail segments, and provides a public access loop around the parcel for members of the public accessing the shoreline along Freethy Blvd. What you have submitted to date does not demonstrate any intention to provide this required amount of public access, and therefore fails to reduce the number of issues that will be presented to the Commission through the enforcement committee.

From BCDC's enforcement perspective it does not matter if the requisite public access is achieved through an enforcement order or through a permit. However, you may prefer the permitting process because it will likely provide you with additional opportunities to provide input on precisely where the public access will be aligned, and it may be viewed by the Commission as a factor for reducing your exposure to civil administrative liability. See Cal. Gov't Code § 66641.9(a).

This is everything I intended to tell you today, So I believe it is unnecessary for me to attend a rescheduled meeting. If you have questions about BCDC's permitting process, feel free to contact Katharine directly. If you have questions about BCDC's enforcement process you may contact me at any time.

Sincerely,

bp

-----  
Brent Plater | Lead Enforcement Attorney  
SF Bay Conservation & Development Commission  
375 Beale St., Suite 510  
San Francisco, CA 94105  
Phone: (415) 352-3628  
Email: [brent.plater@bcdcc.ca.gov](mailto:brent.plater@bcdcc.ca.gov)

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

From: Ashwin Gulati <[ashwingulati@gmail.com](mailto:ashwingulati@gmail.com)>  
Sent: Tuesday, June 28, 2022 5:36 PM  
To: Plater, Brent@BCDC <[brent.plater@bcdcc.ca.gov](mailto:brent.plater@bcdcc.ca.gov)>  
Cc: Pan, Katharine@BCDC <[katharine.pan@bcdcc.ca.gov](mailto:katharine.pan@bcdcc.ca.gov)>; [rherbst@jhsproperties.net](mailto:rherbst@jhsproperties.net)  
Subject: Tomorrow's meeting / reschedule..

# Exhibit 30

Hi Brent / Katharine,

Our sincere apologies but something has come up on our end and we are unable to make tomorrow's meeting, and need to reschedule.

Can you please suggest some additional days/times that you are available and we'll pick one.

Thanks much for your understanding.

Cheers

Ashwin



**From:** [Robert Herbst](#)  
**To:** [Plater, Brent@BCDC](#); [Ashwin Gulati](#)  
**Cc:** [Pan, Katharine@BCDC](#); [Trujillo, Matthew@BCDC](#)  
**Subject:** RE: Tomorrow's meeting / reschedule..  
**Date:** Thursday, June 30, 2022 3:33:11 PM

---

Hi Brent,

I apologize for needing to postpone yesterday's meeting on such short notice. My wife scheduled me for an angiogram without my knowledge, which created the conflict. We've been waiting over 2 months to get an appointment, so I really couldn't miss it. Again, I apologize.

Our hope in meeting with staff is to gain a better understanding of the following:

1. What exactly would staff like to see and support?
2. What is status of adjacent trail project, submitted by Richard Treiber for his cannabis development, and how will it relate in time and scope to our project?

When we initially met with BCDC staff regarding the enforcement action, we and staff mutually agreed to work collaboratively on a comprehensive trail project that included Richard Treiber's trail section, and which preserved the solar farm in its existing form. BCDC staff members present were John Bowers, Matthew Trujillo, Andrea Gaffney, and Yuriko Jewett. We were told then by BCDC staff that they supported green energy, and would be satisfied with a 30 foot trail alignment adjacent to the solar farm, contingent on staff satisfaction with a full 100 foot public access build-out on the adjacent Treiber shoreline parcels. Staff did express then a desire to loop the trail around the solar farm and back to Goodrick Avenue. We provided evidence at that time of public safety hazards related to such a loop, given it's immediate proximity to the adjacent high power shooting range at Richmond Gun Club. The noise is horrendous and to date over 25 of our solar panels have been broken by airborne bullet fragments, including full copper jacketed slugs (photos and maps attached). Staff at that time instructed us to end the path short of the gun club property line, which is what is contained in our current application.

As staff is no doubt aware, Richard Treiber's cannabis project has experienced a winding and ever-changing path over the last several years, with prolonged Covid shutdowns thrown in to boot. We are no longer affiliated with his project, other than he has a purchase contract option with us for our 2 remaining shoreline parcels (where much of his public access improvements are planned for his project). It remains unclear to us even now whether he will close escrow on those parcels, and indeed whether any part of his project will actually get built (including of course the promised shoreline improvements). We were therefore hopeful to receive an update from BCDC on his project.

When Richmond Mayor Tom Butt (and current BCDC Commissioner) spearheaded the City approvals of our solar farm (including leading the passage of a new City ordinance exempting solar projects from CEQA review), the City agreed that the shoreline path component of the project (shown in our approved solar project plans) could be built once there was other development at Freethy Industrial Park, such that there would be "eyes on" daily presence to prevent theft, vandalism, and dumping (all of which have been endemic historical problems throughout our ownership at Freethy Industrial Park).

As I'm sure you can appreciate, this is not an easy site nor a straightforward project, which is why we would respectfully request a meeting with BCDC staff to discuss the above issues in order to reach consensus on the best path forward to achieve maximum safe public access to the property.

Sincerely,  
Bob Herbst  
JHS Properties

**From:** [Plater, Brent@BCDC](mailto:Plater, Brent@BCDC)  
**To:** [Robert Herbst](#); [Ashwin Gulati](#)  
**Cc:** [Pan, Katharine@BCDC](mailto:Pan, Katharine@BCDC); [Trujillo, Matthew@BCDC](mailto:Trujillo, Matthew@BCDC)  
**Subject:** RE: Tomorrow's meeting / reschedule..  
**Date:** Friday, July 1, 2022 6:39:00 PM

---

Mr. Herbst,

Please do put me in touch with Mr. Jason or anyone else at the Gun Club that can discuss the concrete steps it will take to abate this nuisance permanently.

As I said in my message to you on June 29, if you have questions about BCDC's permitting process feel free to contact Katharine directly. If you have questions about BCDC's enforcement process you may contact me at any time.

Sincerely,

bp

-----  
Brent Plater | Lead Enforcement Attorney  
SF Bay Conservation & Development Commission  
375 Beale St., Suite 510  
San Francisco, CA 94105  
Phone: (415) 352-3628  
Email: [brent.plater@bcdca.gov](mailto:brent.plater@bcdca.gov)

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

From: Robert Herbst <[rherbst@jhsproperties.net](mailto:rherbst@jhsproperties.net)>  
Sent: Friday, July 1, 2022 5:38 PM  
To: Plater, Brent@BCDC <[brent.plater@bcdca.gov](mailto:brent.plater@bcdca.gov)>; Ashwin Gulati <[ashwingulati@gmail.com](mailto:ashwingulati@gmail.com)>  
Cc: Pan, Katharine@BCDC <[katharine.pan@bcdca.gov](mailto:katharine.pan@bcdca.gov)>; Trujillo, Matthew@BCDC <[Matthew.Trujillo@bcdca.gov](mailto:Matthew.Trujillo@bcdca.gov)>  
Subject: RE: Tomorrow's meeting / reschedule..

Hi Brent,

Richmond Rod & Gun Club actually has a professional forensic ballistics investigator as a member. I'm happy to put you in touch with him. His name is Alex Jason, and he prepared and signed the attached report dated Jan. 5, 2018. After Jason's report and testimony to the club board, they accepted responsibility for the damaged panels and compensated us for replacement. We are happy to provide any additional documentation you require to prove to your satisfaction and that of the BCDC Commission that bullet shrapnel has, and continues, to fall on our property and damage our solar panels. Obviously we feel this should be of equal if not more important concern to BCDC, since solar panels are easily replaced, whereas someone's eye (or even worse) are not. For our part, we have instructed our on-site caretaker and 3rd party contractors that they should wear hard hats and eye protection any time they are outside on property. Thankfully a solar farm needs very little maintenance so there is little outside activity needed. Not so for a public path running immediately adjacent to a high powered shooting range.

We have in fact demanded that the gun club eliminate shrapnel from entering our property. They have taken measures, but as you can see from the Nov. 2020 panel washing report, we had 5 new broken panels so they have not succeeded in eliminating the problem. We are washing the panels again over the next two weeks, and we will be happy to report to you then how many additional new broken panels we discover. We simply do not have the funds to engage in an expensive lawsuit against the gun club, so we do our best to engage them cooperatively to minimize the economic impact of the damage. Previous BCDC staff recognized the limitations of our situation, and sought to work cooperatively with us to provide maximum safe public access, while also recognizing the public value of green

energy. You may not be aware, but the power we produce on site is sold to MCE, which is the state's 1st community power cooperative whose goal is 100% renewable energy supplies for their customers, which now includes over 25 towns and counties in the Bay Area: <https://www.mcecleanenergy.org/faq-items/where-does-mce-offer-service/>. It would seem that the Bay Conservation and Development Commission would be supportive of a green energy project promulgated by another Bay area wide governmental organization focused on improving the environment. Certainly in previous discussions with BCDC staff, that has been the case, so we're frankly confused by the current situation and unsure of what to do.

At significant expense we recently completed a permit re-submittal that had been in abeyance due to a variety of factors out of our control, including obviously Covid, but also changing plans of Richard Treiber along with negotiations between BCDC and the City of Richmond regarding unmet trail and parking obligations related to the Richmond Parkway construction. We had no influence over or responsibility for any of that, nor were we asked by BCDC, the City, or Treiber to participate in any of it. So we completed our re-submittal, and we received a response back from BCDC staff asking for more information. We have requested a meeting with staff so that we can gain a better understanding of what they are looking for, especially related to maximum feasible public access. I believe it's customary for staff to meet with applicants for this purpose, so I'm unclear why our request is being denied.

To be clear, we are asking to pursue option 1 you list below, and are in the middle of a permit process to achieve that. We simply want to meet with staff to discuss their recent request for more information, so that we know how best to respond. What do you recommend that we do?

Best regards & Happy 4th,  
Bob Herbst  
JHS Properties  
415-472-7700

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

From: Plater, Brent@BCDC <brent.plater@bcdca.gov>  
Sent: Friday, July 1, 2022 3:55 PM  
To: Robert Herbst <rherbst@jhsproperties.net>; Ashwin Gulati <ashwingulati@gmail.com>  
Cc: Pan, Katharine@BCDC <katharine.pan@bcdca.gov>; Trujillo, Matthew@BCDC <Matthew.Trujillo@bcdca.gov>  
Subject: RE: Tomorrow's meeting / reschedule..

Dear Mr. Herbst,

I've spent some time at shooting ranges (although never at Richmond Rod & Gun Club). From those experiences I can say that those do not look like bullet fragments to me, but I'm no expert in ballistics. If they are bullet fragments there is simply no excuse for any bullet fragment to ever leave the grounds of a shooting range for any reason. If it is the case that your neighbor shot 25 of your solar panels I recommend you take action to end that ultra-hazardous nuisance immediately, if only for your safety and the safety of your employees.

I understand that over the past five years creative solutions to this enforcement matter were previously reviewed by BCDC staff. As you note, they have all failed to resolve this matter. Only two paths forward remain: (1) provide maximum feasible public access through a permitting process for your project, or (2) have MFPA established for your project by Commission order. We could meet weekly and this would not change.

Again, If you have questions about BCDC's enforcement process you may contact me at any time.

Sincerely,

bp

-----  
Brent Plater | Lead Enforcement Attorney SF Bay Conservation & Development Commission  
375 Beale St., Suite 510  
San Francisco, CA 94105  
Phone: (415) 352-3628  
Email: [brent.plater@bcdc.ca.gov](mailto:brent.plater@bcdc.ca.gov)

**From:** [Plater, Brent@BCDC](mailto:Plater,Brent@BCDC)  
**To:** [Alexander Jason](mailto:Alexander Jason)  
**Subject:** RE: Fwd: introduction to BCDC  
**Date:** Monday, July 11, 2022 9:33:00 AM

---

Mr. Alexander,

I am not available for another site visit at this time: a Zoom or Teams call should suffice.

I can virtually meet with you and any other members of the Gun Club to discuss this matter in the afternoon on Monday July 18; I am free all day Tuesday July 19. Let me know what works for you within my windows of availability.

Sincerely,

bp

-----  
Brent Plater | Lead Enforcement Attorney  
SF Bay Conservation & Development Commission  
375 Beale St., Suite 510  
San Francisco, CA 94105  
Phone: (415) 352-3628  
Email: [brent.plater@bcdcc.ca.gov](mailto:brent.plater@bcdcc.ca.gov)

---

**From:** Alexander Jason <[ajasonaj@gmail.com](mailto:ajasonaj@gmail.com)>  
**Sent:** Sunday, July 10, 2022 9:44 PM  
**To:** Plater, Brent@BCDC <[brent.plater@bcdcc.ca.gov](mailto:brent.plater@bcdcc.ca.gov)>; Robert Herbst <[rherbst@jhsproperties.net](mailto:rherbst@jhsproperties.net)>; Edward Tung <[edward.o.tung@gmail.com](mailto:edward.o.tung@gmail.com)>  
**Subject:** Re: Fwd: introduction to BCDC

You don't often get email from [ajasonaj@gmail.com](mailto:ajasonaj@gmail.com). [Learn why this is important](#)

Hello Mr. Plater,

Yes, we can meet on Sunday, July 17 at 11AM at the solar field.

Alex Jason

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

From "Plater, Brent@BCDC" <[brent.plater@bcdcc.ca.gov](mailto:brent.plater@bcdcc.ca.gov)>  
To "[ajason@alexanderjason.com](mailto:ajason@alexanderjason.com)" <[ajason@alexanderjason.com](mailto:ajason@alexanderjason.com)>  
Date 7/8/2022 10:51:00 PM  
Subject Fwd: introduction to BCDC

| Dear Mr. Alexander,



I would like to speak to you, and any other representatives from the Club if they wish to participate, to discuss Mr. Herbst's allegations that projectiles fired from within the Richmond Gun Club's property have damaged property at Mr. Herbst's solar farm. Please let me know when you are available next week.

Thank you,

bp

-----  
Brent Plater | Lead Enforcement Attorney  
SF Bay Conservation & Development Commission  
375 Beale St., Suite 510  
San Francisco, CA 94105  
Phone: (415) 352-3628  
Email: [brent.plater@bcdcd.ca.gov](mailto:brent.plater@bcdcd.ca.gov)

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**From:** Robert Herbst <[rherbst@jhsproperties.net](mailto:rherbst@jhsproperties.net)>  
**Sent:** Wednesday, July 6, 2022 4:11 PM  
**To:** Alexander Jason <[ajason@alexanderjason.com](mailto:ajason@alexanderjason.com)>  
**Cc:** Plater, Brent@BCDC <[brent.plater@bcdcd.ca.gov](mailto:brent.plater@bcdcd.ca.gov)>  
**Subject:** introduction to BCDC

Hi Jason,

Bob Herbst here from the solar farm next door to Richmond Gun Club.

Brent Plater from BCDC has asked me to provide your contact info in relation to the gun fragment damage to our solar panels. I explained that you are a gun club member and a forensic ballistics investigator, and that you reviewed the damaged solar panels on behalf of the gun club. I provided Brent with photos of the damaged panels, including the attached report you put together.

BCDC as you may know governs land use within 100 feet of the SF Bay shoreline, and seeks to provide public access including trails and other amenities. We are currently working with BCDC to provide walking trails along our solar farm. They have asked us to provide a public walking trail at our property boundary directly adjacent to the gun club's high powered shooting range. We explained we thought this was a bad idea, both because of the bullet fragments, and also because of how loud it is at that location when the high power range is in use. Neither is conducive in our estimation to a safe or pleasant public experience.

I did explain to Brent that the gun club has taken voluntary measures to eliminate the bullet fragments, however last year we did have 5 more broken panels so the measures have apparently only been partially successful thus far. We will be washing

the panels again in the next 2 weeks, so we'll know then whether additional panels have been broken in the last 12 months. 5 broken panels/year is a relatively minor nuisance for a solar farm with 6000 panels, but It's a quite different risk I believe to expose members of the public to this potential hazard. I also explained to Brent that we have enjoyed a cooperative relationship with the gun club during our 20+ years as a club neighbor, and we have chosen to work collaboratively with the club to ameliorate negative impacts.

I highly recommend that you invite Brent to walk the site with you when your high powered range is in use. It's scary loud which is no big deal for a passive solar farm, but something quite different for the public expecting a peaceful shoreline experience. I have not explained to Brent the state law protections afforded to gun clubs, but that's an important consideration for him to understand as well, and I believe best comes from gun club representatives.

Best,  
Bob Herbst  
JHS Properties  
415-472-7700

**To:** [Robert Herbst](#)  
**Cc:** [Gaffney, Andrea@BCDC](#); [Plater, Brent@BCDC](#)  
**Subject:** RE: BCDC/ Solar Farm - Bay Trail  
**Date:** Friday, November 18, 2022 5:00:49 PM

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Hi Bob,

Thanks for your patience. Our only major comment after reviewing the design is that it would be better if there were 18-24 inches of space between the fence and the edge of the trail so that the full width of the trail could be used. We also have a few questions about the trail connections, below. You can either address these now or as part of your application materials, we just want to make sure we understand what's happening around the trail connections and may have additional questions or comments about the details.

1. Have you communicated with the Powerplant Park project proponents about how this will connect to their segment? I think you mentioned you were in contact, so it would be great to hear a little about that planning if you've discussed it.
2. For the eastern end of the trail, how does the segment eventually connect to the shared path on Goodrick? Would it be more effective to connect the trail to Goodrick rather than Elmar, or is there reason you're proposing Elmar? Can you tell us a little more about the end of the trail, how it's graded/striped/signed to be a smooth connection?

**Katharine Pan**

Principal Shoreline Development Analyst

Direct: (415) 352-3650 | [katharine.pan@bcdcc.ca.gov](mailto:katharine.pan@bcdcc.ca.gov)

San Francisco Bay Conservation and Development Commission

Bay Area Metro Center

375 Beale Street, Ste. 510

San Francisco, CA 94105

Main: (415) 352-3600

[www.bcdcc.ca.gov](http://www.bcdcc.ca.gov) | [@SFB CDC](#)

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**From:** Robert Herbst <rherbst@jhsproperties.net>  
**Sent:** Monday, October 17, 2022 3:20 PM  
**To:** Plater, Brent@BCDC <brent.plater@bcdcc.ca.gov>; Pan, Katharine@BCDC <katharine.pan@bcdcc.ca.gov>  
**Subject:** FW: BCDC/ Solar Farm - Bay Trail

Hi Brent & Katharine,

Just following up on the email below. Any comments or should we proceed with a revised application?

Thanks,

Bob

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**From:** Robert Herbst  
**Sent:** Monday, September 19, 2022 11:06 AM

**To:** Plater, Brent@BCDC <[brent.plater@bcd.ca.gov](mailto:brent.plater@bcd.ca.gov)>; Pan, Katharine@BCDC <[katharine.pan@bcd.ca.gov](mailto:katharine.pan@bcd.ca.gov)>  
**Subject:** FW: BCDC/ Solar Farm - Bay Trail

Hi Brent & Katherine,

Vallier Design has completed their plan showing the trail looping around the solar farm back to Goodrick Avenue, as you requested in our last discussions. To do a full 12 foot paved trail plus 3 foot shoulders on each side will require moving the existing fence and removing some solar panels at the ends of the panel rows. That's what we show on the attached plan, but ideally we'd like to reduce the paved trail section in this area (Section B) to 10 feet to avoid the need to remove solar panels. Please let us know if that might be a possibility, and provide any other feedback you have on the drawing. We're ready to resubmit for BCDC review and approval.

Best,  
Bob Herbst  
JHS Properties  
415-472-7700

It's going to require moving the perimeter fence and some solar panels at the ends of the

We've managed to fit it in without removing any solar panels, but it did require us to move the existing perimeter fence right up against the back of the solar panels.

This creates a bunch of dead ends in the panel rows, which makes maintenance more difficult and time consuming, but we'll deal with it.

It requires us to move the existing perimeter fence along the gun club property boundary

---

**From:** Ashwin Gulati <[ashwingulati@gmail.com](mailto:ashwingulati@gmail.com)>  
**Sent:** Thursday, September 15, 2022 3:39 PM  
**To:** Robert Herbst <[rherbst@jhsproperties.net](mailto:rherbst@jhsproperties.net)>  
**Cc:** Joe Shekou <[Sapidrood@yahoo.com](mailto:Sapidrood@yahoo.com)>  
**Subject:** BCDC/ Solar Farm - Bay Trail

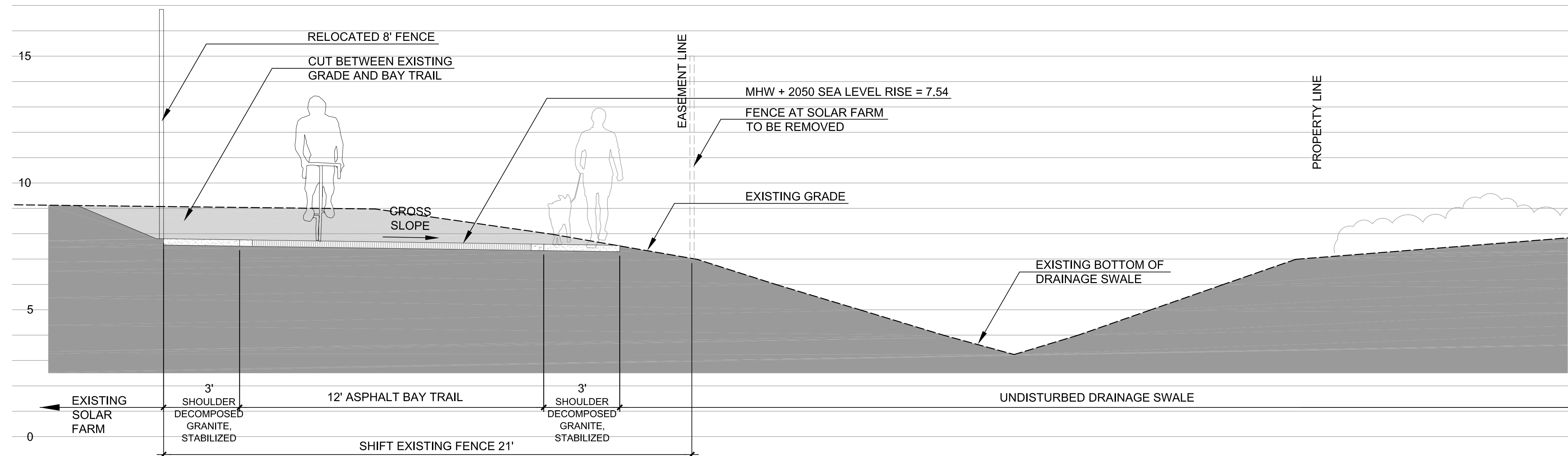
Bob,

Attached are the updated plans with rails removed....Vallier recommends having some sort of barrier at the edge of the trail if there is a drop off of more than 2"

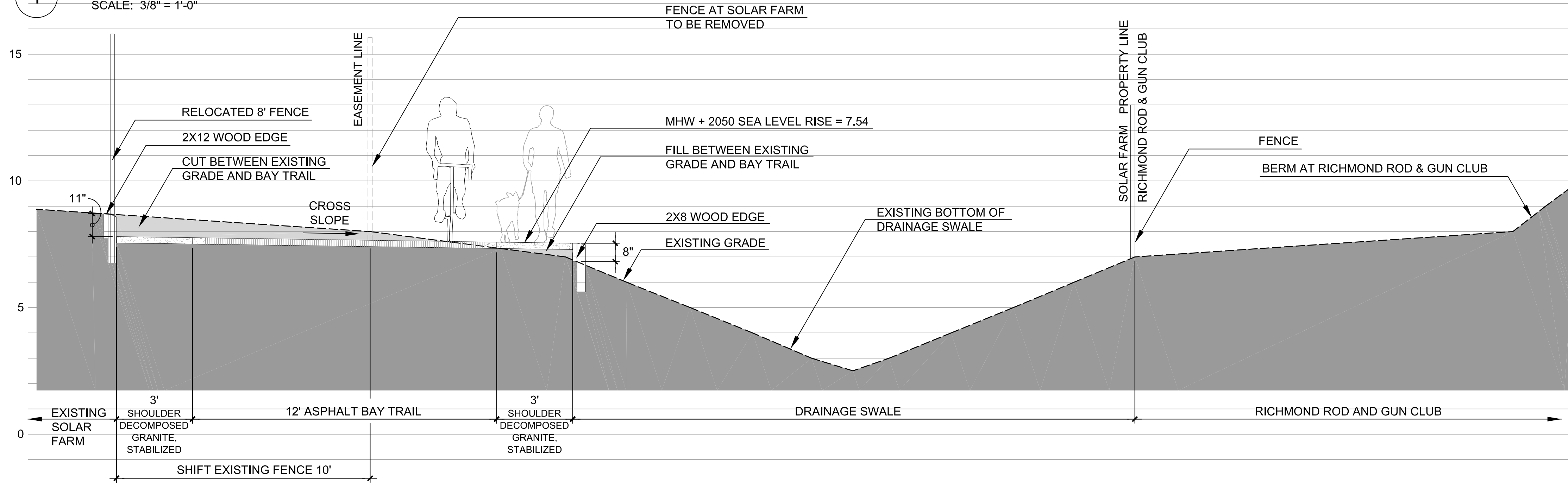
Let's see what BCDC says and take it from there.

Ashwin

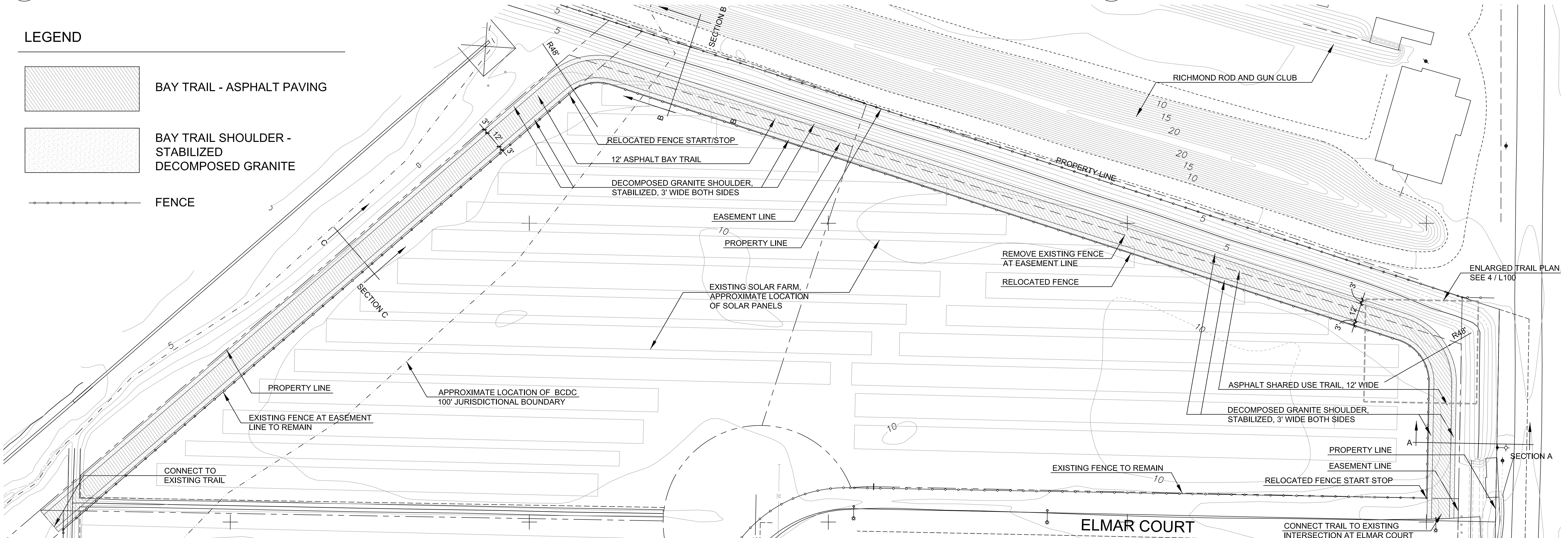
Exhibit 35



1 BAY TRAIL SECTION A  
SCALE: 3/8" = 1'-0"



2 BAY TRAIL SECTION B  
SCALE: 3/8" = 1'-0"

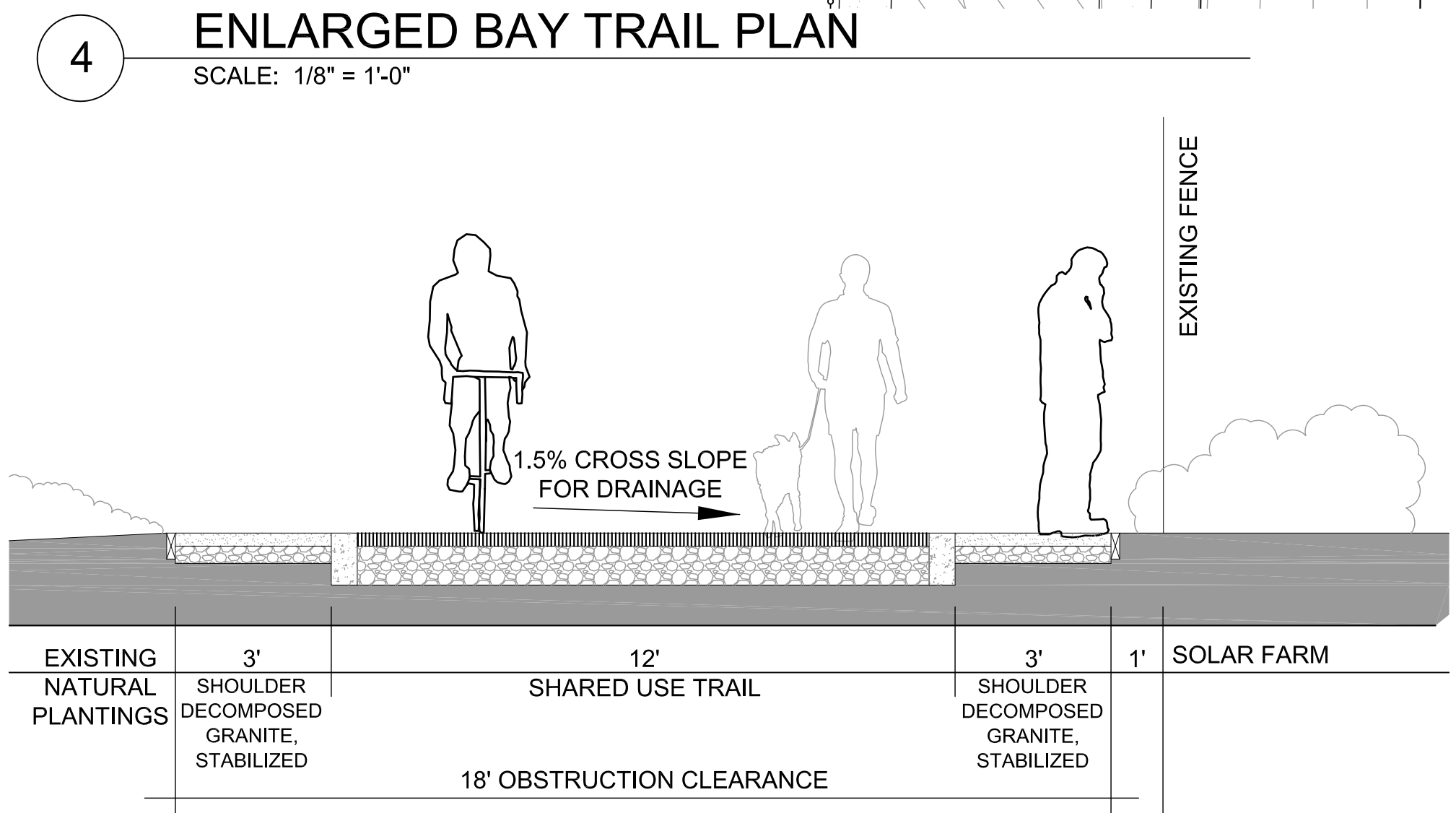


3 BAY TRAIL PLAN  
SCALE: 1" = 30'-0"

LEGEND

- BAY TRAIL - ASPHALT PAVING
- BAY TRAIL SHOULDER - STABILIZED DECOMPOSED GRANITE
- FENCE

4 ENLARGED BAY TRAIL PLAN  
SCALE: 1/8" = 1'-0"



5 BAY TRAIL SECTION C  
SCALE: 3/8" = 1'-0"

REVISION	DESCRIPTION	INITIAL	DATE
1	BCDC INITIAL REVIEW		9/15/2022
2	ISSUED FOR PLAN CHECK		
3	ISSUED FOR PERMIT		
4	ISSUED FOR BID		
5	ISSUED FOR CONSTRUCTION		

CONSULTANT:

PROJECT: Bay Trail Solar Farm

SHEET TITLE: BAY TRAIL PLAN

PROJ. NO.: L100

PREPARATION AND REVIEW

DRAWN BY: [Signature]

DESIGNER: [Signature]

PROJ. MGR: [Signature]

PEER REVIEW: [Signature]

CHECKER: [Signature]

SHEET NUMBER: 1



**From:** [Bruce Beyaert](#)  
**To:** [Matthew Trujillo](#)  
**Cc:** [John Gioia](#); [Harriet Lai Ross](#); [Katherine Pan](#); [Ethan Lavine](#); [Greg Scharff](#); [Bruce Brubaker](#); [Klein, Adrienne@BCDC](#)  
**Subject:** Re: JHS Solar After-the-fact permit  
**Date:** Friday, February 2, 2024 1:04:18 PM  
**Attachments:** [Outlook-signature\\_.png](#)

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Matthew,

Thanks for letting TRAC know about BCDC's lack of progress on the JHS solar enforcement case. It has been a long time since Adrienne and I collaborated on a BCDC enforcement action, and it will be a pleasure to work with her again.

We know from prior experience that JHS Properties management are recalcitrant and uncooperative with regard to the Bay Trail and public amenities, the worst that TRAC has encountered during its 25 years of working with the private sector to complete the Bay Trail in Richmond. Why did BCDC allow them to evade submittal of a complete permit application for more than six years following the October 2017 35-day letter?

Bruce

Bruce Beyaert, TRAC Chair  
[baytrailtrac@gmail.com](mailto:baytrailtrac@gmail.com)  
tel. 510-235-2835  
<http://www.pointrichmond.com/baytrail/>  
<http://www.ci.richmond.ca.us/109/TRAC>

On Feb 2, 2024, at 9:47 AM, Trujillo, Matthew@BCDC <[Matthew.Trujillo@bcdc.ca.gov](mailto:Matthew.Trujillo@bcdc.ca.gov)> wrote:

Hi Bruce,

For your awareness, I have assigned the enforcement case on the solar farm (ER2017.004.00) to Adrienne Klein to pursue a formal enforcement action against the landowner. She will ensure that your name as well as Mr. Brubaker's are added to the interest parties list to receive updates on potential hearing dates as appropriate. In the meantime, please correspond with Adrienne on all matters pertaining to this case.

As for Powerplant Park, we are actively monitoring their actions as well.

Best Regards,

MATTHEW TRUJILLO  
Enforcement Policy Manager  
(415) 352-3633  
[Matthew.Trujillo@bcdc.ca.gov](mailto:Matthew.Trujillo@bcdc.ca.gov)  
<http://bcdc.ca.gov/enforcement>

San Francisco Bay Conservation and Development Commission  
375 Beale St., Suite 510  
San Francisco, CA 94105  
FAX: (415) 352-3606  
Main Number: (415) 352-3600  
Business Days & Hours:  
M-F 8:30a – 5:00p



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**From:** Bruce Beyaert <[baytrailtrac@gmail.com](mailto:baytrailtrac@gmail.com)>  
**Sent:** Friday, February 2, 2024 9:41 AM

**To:** Pan, Katharine@BCDC <[katharine.pan@bcdc.ca.gov](mailto:katharine.pan@bcdc.ca.gov)>

**Cc:** Lavine, Ethan@BCDC <[ethan.lavine@bcdc.ca.gov](mailto:ethan.lavine@bcdc.ca.gov)>; Trujillo, Matthew@BCDC <[Matthew.Trujillo@bcdc.ca.gov](mailto:Matthew.Trujillo@bcdc.ca.gov)>; Scharff, Greg@BCDC <[greg.scharff@bcdc.ca.gov](mailto:greg.scharff@bcdc.ca.gov)>; Bruce Brubaker <[bbrubaker@placeworks.com](mailto:bbrubaker@placeworks.com)>

**Subject:** Re: Powerplant Park and JHS Solar After-the-fact permit

Katherine,

Following up, did you receive TRAC's Jan. 23 email below asking when the JHS solar Bay Trail section will be open pursuant to BCDC's October, 2017 35-day order?

Bruce

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Bruce Beyaert, TRAC Chair

[baytrailtrac@gmail.com](mailto:baytrailtrac@gmail.com)

tel. 510-235-2835

<http://www.pointrichmond.com/baytrail/>

<http://www.ci.richmond.ca.us/109/TRAC>

On Jan 23, 2024, at 4:31 PM, Bruce Beyaert <[baytrailtrac@gmail.com](mailto:baytrailtrac@gmail.com)> wrote:

Katherine,

I'm sharing with you the good news that construction finally has started on the Powerplant Park medical cannabis project, which will extend the Bay Trail NE toward the JHS solar facility, leaving a gap along the northern side of the JHS property in order to complete the loop to the Bay Trail along Goodrick Avenue per attached project plan and Bay Trail map.

I assume that BCDC issued JHS a permit per the attached 35-day letter sent 10/25/17. If so, what Bay Trail alignment will be constructed and when will it be completed and open to public access?

Bruce

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Bruce Beyaert, TRAC Chair

[baytrailtrac@gmail.com](mailto:baytrailtrac@gmail.com)

tel. 510-235-2835

<http://www.pointrichmond.com/baytrail/>

<http://www.ci.richmond.ca.us/109/TRAC>

<PPP BT PlansSummary.pdf>

<RichmondBayTrailMap\_042423.pdf>

<EWR2017.10.25\_35dayletterER2017.004F.pdf>

NOTE: Authority cited: Section 29418(c), Public Resources Code. Reference: Section 29418(c), Public Resources Code.

#### HISTORY

1. New section filed 5-18-87; operative 6-17-87 (Register 87, No. 30).

### § 11214. Designation of an Amendment as Minor.

(a) If the Executive Director intends to determine that a proposed amendment is minor, he or she shall notify the Commission of this intent by summarizing the proposed amendment and stating the intent as part of the administrative listing of administrative permits and consistency determinations that Section 10620 requires.

(b) The Executive Director shall send the listing to or shall otherwise notify in writing the County of Solano, the Cities of Benicia, Fairfield, and Suisun City, the Solano County Local Agency Formation Commission, the Solano County Mosquito Abatement District, the Suisun Resource Conservation District, the California Department of Fish and Game, the United States Fish and Wildlife Service, and the United States Bureau of Reclamation at least nine (9) working days before the meeting at which the Commission may comment on the listing.

(c) If two (2) or more members of the Commission object to the Executive Director's proposed determination that the proposed amendment is minor, the determination shall not become effective and the Commission shall process the amendment pursuant to Section 11212.

(d) If less than two (2) members of the Commission object to the Executive Director's proposed determination that the proposed amendment is minor, the proposed determination shall become effective and the amendment shall become effective on the tenth (10th) working day following the meeting at which the amendment was listed.

(e) The Executive Director shall give written notice of final action on the proposed amendment to the entity that proposed the amendment and to all persons who have requested in writing that they receive such notice.

NOTE: Authority cited: Section 29418(c), Public Resources Code. Reference: Section 29418(c), Public Resources Code.

#### HISTORY

1. New section filed 5-18-87; operative 6-17-87 (Register 87, No. 30).

### § 11215. Frequency of Amendments.

No local government, district, nor the Solano County Local Agency Formation Commission shall submit an amendment to the Commission or the Executive Director for certification more frequently than three (3) times during any calendar year.

NOTE: Authority cited: Section 29201(e), Public Resources Code. Reference: Section 29418, Government Code; and Section 65361, Government Code.

#### HISTORY

1. New section filed 5-18-87; operative 6-17-87 (Register 87, No. 30).

## Chapter 13. Enforcement Procedures

### Subchapter 1. General Provisions

#### § 11300. Grounds for the Issuance of Cease and Desist Orders.

Any one of the following actions shall constitute grounds for the issuance by the Commission of a cease and desist order: (1) the undertaking or threat to undertake an activity that requires a Commission permit without having obtained a Commission permit, (2) the violation of a term or condition of a Commission permit, or (3) the inclusion of inaccurate information in a permit application or at the public hearing on the permit application.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66638, Government Code; and Section 29601, Public Resources Code.

#### HISTORY

1. Renumbering and amendment of former Section 11300 to Section 11301, and new Section 11300 filed 10-11-89; operative 11-10-89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

#### § 11301. Grounds for Permit Revocation.

Any one of the following actions shall be grounds for the complete or partial revocation of a Commission permit:

- (a) the violation of a term or condition of a permit,
- (b) the violation of a Commission cease and desist order or an Executive Director's cease and desist order, or
- (c) the inclusion of inaccurate information in a permit application or at the public hearing on a permit application.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66638 and 66641(d), Government Code; Section 29601, Public Resources Code; and *Sunset Amusement Company v. Board of Police Commissioners* (1972) 7 Cal.3d 64, 80.

#### HISTORY

1. Renumbering and amendment of former Section 11301 to Section 11303, and renumbering and amendment of former Section 11300 to Section 11301 filed 10-11-89; operative 11-10-89 (Register 89, No. 43). For prior history, see Register 87, No. 30.
2. Redesignation of former subsections (1)-(3) as subsections (a)-(c) and amendment of NOTE filed 6-7-2022; operative 10-1-2022 (Register 2022, No. 23).

#### § 11302. Grounds for the Imposition of Administrative Civil Liability.

Any one of the following actions shall constitute grounds for the imposition of administrative civil liability by the Commission:

- (a) the undertaking of any activity that requires a Commission permit without having obtained the Commission permit or
- (b) the violation of any term or condition of a Commission permit.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66641.5(e) and 66641.6, Government Code; and Sections 29610 and 29611, Public Resources Code.

#### HISTORY

1. New section filed 5-18-87; operative 6-17-87 (Register 87, No. 30).
2. Repealer and new section filed 10-11-89; operative 11-10-89 (Register 89, No. 43).
3. Amendment of section heading, designation of former subsection (1)-(2) as subsection (a)-(b) and amendment of NOTE filed 6-7-2022; operative 10-1-2022 (Register 2022, No. 23).

#### § 11303. Referral to the Attorney General by the Commission or the Executive Director.

(a) A violation of any one of the following shall be grounds for the referral of the violation by the Commission or the Executive Director to the Attorney General's Office without the Commission's having issued either a cease and desist order or a permit revocation order: (1) the McAteer-Petris Act, (2) the Suisun Marsh Preservation Act, (3) the Federal Coastal Zone Management Act, or (4) a term or condition of a Commission permit.

(b) In addition, a violation of either a Commission cease and desist order or a Commission permit revocation order shall also be grounds for the referral of the violation by either the Commission or the Executive Director to the Attorney General's Office.

(c) A referral made to the Attorney General's Office pursuant to subsections (a) and (b) may include any other unresolved, alleged violation including those of the type enumerated in Section 11390.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66640(a), 66641(b) and 66642(a), Government Code; and Section 29601, Public Resources Code.

#### HISTORY

1. Repealer of former Section 11303, and renumbering and amendment of former Section 11301 to Section 11303 filed 10-11-89; operative 11-10-89 (Register 89, No. 43). For prior history, see Register 87, No. 30.
2. Amendment filed 5-22-2003; operative 6-21-2003 (Register 2003, No. 21).
3. Amendment of subsection (c) and amendment of NOTE filed 6-7-2022; operative 10-1-2022 (Register 2022, No. 23).

## Subchapter 2. Procedures for the Issuance of Cease and Desist Orders, Permit Revocation Orders, and Orders Setting Administrative Civil Liability

### Article 1. Definitions

#### § 11310. Definitions.

The following definitions are applicable to this chapter:

(a) "Complaint," as used in subsection (b) of Section 66641.6 of the Government Code, means the document that initiates the possible imposition of administrative civil liability by the Commission. A complaint shall contain the information required by Government Code Section 66641.6(b) and follow the format and include the information for a staff violation report/complaint as set out in Appendix H.

(b) "Enforcement committee," as used in this chapter, means a committee that the Commission has established pursuant to Commission resolution. The Chair shall appoint Commission members or other representatives of the Commission to the enforcement committee with the concurrence of the Commission to assist the Commission in carrying out its enforcement responsibilities. The enforcement committee shall consist of no fewer than four and no more than six Commission members or other representatives of the Commission. A quorum of the enforcement committee necessary to conduct business, to hold hearings and to vote on recommended enforcement decisions shall consist of three members notwithstanding the total number of enforcement committee members. The enforcement committee shall select from its members a chair, who shall serve for a period agreed upon by a majority of the enforcement committee members. The enforcement committee shall conduct its hearings in accordance with the Commission's laws and regulations upon matters referred to it by either the Executive Director or the Commission. The Chair of the Commission may change the members of the enforcement committee from time to time as necessary due to changes in membership of the Commission or to fill vacancies on the committee provided that the Chair notifies the Commission prior to such change at a Commission meeting and the Commission concurs.

(c) "Enforcement hearing," as used in this chapter, means any public hearing held before the enforcement committee or the Commission as part of a Commission enforcement proceeding.

(d) "Person," as used in Sections 66637 through 66642 of the Government Code and in this chapter, means any individual, firm, association, organization, partnership, business trust, corporation, company, or governmental agency.

(e) "Respondent," as used in this chapter, means a person to whom the Commission staff has issued a violation report or complaint and a statement of defense form in accordance with Section 11321(c).

(f) As used in this Chapter, "significant harm to the Bay's resources or to existing or future public access" shall be determined based on both the context and intensity of the violation.

(1) "Context" refers to the location of the violation and the characteristics of the area where it occurs. Areas with important environmental or ecological significance (e.g., habitat or refugia for sensitive species) are generally considered to be more significant than previously degraded habitat or areas with limited habitat value, and highly visible and/or frequently used areas are generally considered to be more significant than isolated areas with low visibility or infrequent usage.

(2) "Intensity" refers to the severity of the impact and the degree to which it affects the environment or public access. Violations presenting significant ecosystem hazards (e.g., toxic or biohazardous fill) or involving large portions of a particular site shall generally be considered to be more severe. In addition, violations that substantially interfere with the

ability to use designated public access or encompass large portions of a designated public access area will be considered to be more significant.

(3) Where multiple violations are alleged at a site, if a single violation results in harm that is individually limited but cumulatively significant when added to other violations at the site, it shall be determined that the violation has resulted in significant harm to the Bay's resources or to existing or future public access.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66637, 66638, 66641.5(e), 66641.6 and 66643, Government Code; and Section 29601, Public Resources Code.

#### HISTORY

1. Renumbering and amendment of former Section 11310 to Section 11710, and renumbering and amendment of Section 11010 to Section 11310 filed 5-18-87; operative 6-17-87 (Register 87, No. 30). For prior history, see Registers 86, No. 39 and 73, No. 50.
2. Renumbering of former subsection (a) to subsection (c), repealer of former subsections (b) and (c), new subsections (a)-(d), and renumbering of former subsection (d) to subsection (f) filed 10-11-89; operative 11-10-89 (Register 89, No. 43).
3. Amendment of subchapter heading, section and NOTE filed 6-7-2022; operative 10-1-2022 (Register 2022, No. 23).

## Article 2. Commission Cease and Desist Orders, Permit Revocation Orders, and Orders Setting Administrative Civil Liability

#### § 11320. Staff Investigation and Discovery, and Appointment of a Hearing Officer.

(a) As part of any enforcement investigation, the Executive Director may issue subpoenas and the staff may send interrogatories, conduct depositions, and inspect property at any time.

(b) At the request of the Executive Director or the chair of the enforcement committee, or on its own initiative, the Commission may appoint a hearing officer to conduct an investigation or hold a hearing, make proposed findings of fact, and recommend to the Commission what action it should take on an enforcement matter. A hearing officer appointed to hold an enforcement hearing shall proceed in accordance with the procedural requirements of Section 11327 and shall adopt a recommended enforcement decision in accordance with Section 11330.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 11180, 11181, 66637, 66638, 66641.5(e), 66641.6 and 66643, Government Code; and Section 29601, Public Resources Code.

#### HISTORY

1. Repealer of former Section 11320, and renumbering and amendment of former Section 11331 to Section 11320 filed 10-11-89; operative 11-10-89 (Register 89, No. 43). For prior history, see Register 87, No. 30.
2. Amendment of article heading, section and NOTE filed 6-7-2022; operative 10-1-2022 (Register 2022, No. 23).

#### § 11321. Commencing Commission Enforcement Proceedings.

(a) If the Executive Director believes, as a result of an enforcement investigation, that any person has caused or threatens to cause significant harm to the Bay's resources or to existing or future public access, or that the nature, circumstances, extent, and gravity of the violation or violations so warrant, the Executive Director shall commence Commission enforcement proceedings by issuing at least 45 days prior to holding an enforcement hearing on the matter the following materials to the last known address of each party that the Executive Director believes may be legally responsible in some manner for the alleged violation:

(1) a violation report that follows the format and contains the information set out in Appendix H,

(2) a complaint for administrative civil liability that follows the format and contains the information set out in Appendix H if the staff seeks civil penalties, and

(3) a statement of defense form that follows the format and requests the information set out in Appendix I. The violation report and complaint for administrative civil liability can be combined into a single document so long as it contains all the information required for both.

(b) The violation report and/or complaint shall list all documents, including any declarations under penalty of perjury, on which the staff relies to provide a prima facie case of the violations alleged and copies of all such documents shall be attached to or accompany the violation report and/or complaint or shall be provided to the respondent in electronic format upon request.

(c) Issuance of a violation report and/or complaint shall occur when the violation report and/or complaint is mailed by certified mail to all persons or entities named as a respondent in the violation report and/or complaint. Upon written consent of the respondent or respondent's authorized representative, a violation report and/or complaint shall be mailed to the respondent or the respondent's authorized representative by email.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66638, 66641.5(e) and 66641.6, Government Code; and Sections 29601, 29610 and 29611, Public Resources Code.

#### HISTORY

1. Renumbering and amendment of former Section 11330 to Section 11321 and Section 11322 filed 10-11-89; operative 11-10-89 (Register 89, No. 43). For prior history, see Register 87, No. 30.
2. Amendment of section and NOTE filed 6-7-2022; operative 10-1-2022 (Register 2022, No. 23).

### § 11322. Respondent's Required Response to the Violation Report or Complaint, the Executive Director's Consideration of the Respondent's Response, and Extensions of Time.

(a) Within thirty-five (35) days of the issuance of the violation report and/or complaint and the statement of defense form, each respondent shall submit to the Commission at its office an original and one copy of the completed statement of defense form (or an original and one copy of a document providing the information requested by the form) and an original (or verified copy) and one copy of all documents that the respondent wants to be made part of the record of the enforcement proceeding, including any declarations under penalty of perjury and any documentary evidence such as letters, photographs, and similar matters. Once submitted, all such declarations and documents shall be permanently retained by the Commission as part of the enforcement record.

(b) If a respondent believes that cross-examination of a person whose declaration under penalty of perjury has been submitted with the violation report and/or complaint is needed to show or contest a fact alleged in the violation report and/or complaint, the respondent shall request such cross-examination in the completed statement of defense form. The completed statement of defense form or an addendum shall list the name of each person whose declaration under penalty of perjury has been submitted with the violation report and/or complaint that the respondent wants to cross examine, all documents referred to in such person's declaration about which the respondent wants to cross-examine, a description of the area of knowledge about which the respondent wants to cross-examine the person, including a specific reference to the fact or information respondent disputes, the information that respondent believes can be elicited by cross-examination, and the reasons the respondent believes that the information can best be provided by cross-examination rather than by the submittal of declarations or other written evidence.

(c) Within 35 days of the issuance of a complaint for administrative civil liability and a statement of defense form, each respondent shall submit to the Commission at its office either (1) a certified cashier's check in the amount of the proposed administrative civil penalty or (2) the completed statement of defense form, copies of all documents that the respondent wants to be made part of the record of the enforcement proceeding in accordance with subsection (a), and any request to allow cross-examination in accordance with subsection (b).

(d) If the staff wants to cross-examine any person whose declaration under penalty of perjury has been submitted with a respondent's completed statement of defense form, the staff shall, within seven days of receiving the completed statement of defense form, mail to all respondents a list of all persons whose declaration under penalty of perjury has been submitted by respondent that the staff wants to cross examine, all documents referred to in such person's declaration about which staff wants to cross-examine the person, a description of the area or areas of knowledge about which the staff wants to cross-examine the witness, and the information that the staff hopes to elicit in cross-examination.

(e) If the Executive Director sends a violation report and a complaint for administrative civil liability together, paying the civil penalties will not release the respondent from the possible issuance of a cease and desist order or permit revocation order.

(f) If the Executive Director issues a violation report only, and not a complaint for administrative civil liability, the Executive Director shall for good cause extend the 35-day time limit imposed by subsection (a) upon receipt within the 35-day time limit of a written request for such extension and demonstration of good cause. If the Executive Director issues a violation report and complaint for administrative civil liability or only a complaint for administrative civil liability, the Executive Director shall for good cause extend the 35-day time limit imposed by paragraphs (a) and (c) of this section upon receipt within the 35-day time limit of a written request for such extension, demonstration of good cause, and waiver of and consent to extend the 60-day time limit for a hearing on the complaint under Government Code Section 66641.6(b). Any extension shall be valid only to those specific items or matters that the Executive Director identifies to the requesting party as being exempt from the 35-day filing requirement and shall be valid only for such additional time as the Executive Director allows.

(g) If a respondent responds to a complaint for administrative civil liability by submitting a cashier's check in the amount of the penalty proposed in the complaint to the Executive Director in a timely fashion, the Executive Director shall cash the check and list the violation, the amount of the proposed penalty, and the fact that the respondent has agreed to pay the penalty as part of the administrative permit listing within 30 days of receipt of the check.

(h) At the next Commission meeting after receiving the listing, the Commission can object to the amount of a proposed administrative civil penalty that a respondent has paid by voting by a majority of those present and voting. If the Commission so objects, the Executive Director shall return the respondent's money and the respondent shall submit his or her completed statement of defense form and supporting documents within 35 days of the Commission's action. Thereafter, the enforcement matter shall proceed according to these regulations.

(i) At any time after issuance of a violation report and/or complaint, the Executive Director and a respondent may agree on the terms of a proposed stipulated order or a proposed settlement agreement to resolve a violation or violations, which may include a schedule of corrective actions to be implemented by the respondent and payment of administrative civil penalties. The Executive Director shall include the proposed stipulated order or proposed settlement agreement in his or her recommended enforcement decision prepared in accordance with Section 11326. If the Commission fails to adopt the proposed stipulated order or proposed settlement agreement, and the respondent has not submitted a completed statement of defense form, copies of any supporting documents, and any request for cross-examination in accordance with subsections (a) and (b), the respondent shall submit his or her completed statement of defense form, copies of any supporting documents, and any request for cross-examination within 35 days of the Commission's failure to adopt the proposed stipulated order or proposed settlement agreement. Thereafter, the enforcement matter shall proceed according to these regulations. If the Commission fails to adopt the proposed stipulated order or proposed settlement agreement, and the respondent has previously submitted a completed statement of defense form, copies of any supporting documents, and any request for cross-examination, the Executive Director shall prepare a new recommended enforcement decision in accordance with Section 11326 within 30 days of the Commission's failure to adopt the proposed stipulated order or proposed settlement agreement, and thereafter, the enforcement matter shall proceed according to these regulations.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 11415.60, 66638,



66641.5(e) and 66641.6, Government Code; and Sections 29601, 29610 and 29611, Public Resources Code.

#### HISTORY

1. Renumbering and amendment of former Section 11330(d) to Section 11322 filed 10–11–89; operative 11–10–89 (Register 89, No. 43). For prior history, see Register 87, No. 30.
2. Amendment of section heading, section and NOTE filed 6–7–2022; operative 10–1–2022 (Register 2022, No. 23).

### § 11323. Distribution of Notice of Enforcement Hearings.

(a) At least ten (10) days prior to the initial enforcement hearing on a proposed Commission cease and desist order, a proposed permit revocation order, or a proposed Commission civil penalty order, whether held before the enforcement committee or the Commission the Executive Director shall mail by first class mail or send by email, and shall also make available on the Commission's website, a written notice of the date, time, and place of the initial enforcement hearing to all respondents at their last known address, the Deputy Attorney General advising the enforcement committee or Commission, and to all members of the public who have requested in writing that they receive such notice, provided that no notice need be mailed to the respondent if the respondent has already received notice of the hearing in a cease and desist order issued by the Executive Director. A meeting notice mailed and posted on the Commission's website pursuant to California Government Code Section 11125 will meet this notice requirement.

(b) After the initial enforcement hearing, notice of further enforcement hearings may be given by either announcing the date, time, and place of the further meeting on the record at the close of the preceding enforcement hearing or by mailing by first class mail or sending by email, and also making available on the Commission's website, written notice of the date, time, and place of the further meeting to all respondents at least 10 days prior to the further enforcement hearing.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66638, 66641.5(e) and 66641.6, Government Code; and Section 29601, Public Resources Code.

#### HISTORY

1. Renumbering and amendment of Former Section 11337 to Section 11323 filed 10–11–89; operative 11–10–89 (Register 89, No. 43). For prior history, see Register 87, No. 30.
2. Amendment of section and NOTE filed 6–7–2022; operative 10–1–2022 (Register 2022, No. 23).

### § 11324. Distribution of the Violation Report, Complaint, Statement of Defense Form(s), and Recommended Enforcement Decision.

At least ten (10) days prior to the enforcement hearing, the Executive Director shall make available on the Commission's website and shall mail by first class mail or send by email the following materials to each respondent, to the committee members if the enforcement hearing will be held before the enforcement committee or to the Commission if the enforcement hearing will be held before the Commission, and to the Deputy Attorney General advising the enforcement committee or Commission: (1) the violation report and/or complaint for administrative civil liability and all documents or other evidence cited therein or listed on an index of supporting documents or evidence attached thereto, (2) each completed statement of defense form and the enclosed exhibits, with a notation that indicates if any of the statements have been filed in an untimely fashion, and (3) a recommended enforcement decision that complies with Section 11326.

NOTE: Authority cited: Section 66632(f), Government Code and Section 29201(e), Public Resources Code. Reference: Sections 66638 and 66641.6, Government Code; and Section 29601, Public Resources Code.

#### HISTORY

1. Renumbering and amendment of former Section 11336 to Section 11324 filed 10–11–89; operative 11–10–89 (Register 89, No. 43). For prior history, see Register 87, No. 30.
2. Amendment of section heading, section and NOTE filed 6–7–2022; operative 10–1–2022 (Register 2022, No. 23).

### § 11325. Ex Parte Contacts. [Repealed]

NOTE: Authority cited: section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66637–66638 and 66641.6, Government Code; and Section 29601, Public Resources Code.

#### HISTORY

1. Renumbering and amendment of former Section 11333 to Section 11325 filed 10–11–89; operative 11–10–89 (Register 89, No. 43). For prior history, see Register 87, No. 30.
2. Repealer filed 12–27–2004; operative 1–26–2005 (Register 2004, No. 53).

### § 11326. Contents of an Executive Director's Recommended Enforcement Decision.

(a) The Executive Director shall prepare a recommended enforcement decision on a proposed Commission cease and desist order, a proposed permit revocation order, or a proposed order setting administrative civil liability.

(b) The Executive Director's recommended enforcement decision shall be in writing and shall include:

(1) a summary of (A) any background to the alleged violation, (B) the allegations made by staff in its violation report and/or complaint, (C) the allegations either admitted or not contested by respondent(s), and (D) all defenses and mitigating factors raised by the respondent(s);

(2) any staff response to the defenses, mitigating factors, or arguments raised by the respondent(s), and any rebuttal evidence submitted by the staff to matters raised in the statement of defense form, with references to supporting documents;

(3) a summary and analysis of all disputed issues;

(4) a recommended enforcement decision on a proposed order setting administrative civil liability shall identify all violations for which administrative civil penalties are proposed and include:

(A) the total amount of proposed administrative civil penalties; and

(B) a statement of the applicable factors set forth in Government Code Section 66641.9 that the Executive Director considered, consistent with the Administrative Civil Penalty Policy in Appendix J of these regulations, in determining the total amount of the proposed administrative civil penalties;

(5) a statement of whether the Executive Director has issued a cease and desist order and its expiration date;

(6) a recommendation on what action the Commission should take; and

(7) the proposed text of any cease and desist order, permit revocation order, order setting administrative civil liability, or stipulated order that the Executive Director recommends that the Commission issue or any settlement agreement that the Executive Director recommends that the Commission approve.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66638, 66641.5(e), 66641.6 and 66641.9, Government Code; and Sections 29601, 29610 and 29611, Public Resources Code.

#### HISTORY

1. Renumbering and amendment of former Section 11335 to Section 11326 filed 10–11–89; operative 11–10–89 (Register 89, No. 43). For prior history, see Register 87, No. 30.
2. Amendment of section and NOTE filed 6–7–2022; operative 10–1–2022 (Register 2022, No. 23).

### § 11327. Enforcement Hearing Procedure.

Enforcement hearings shall proceed in the following manner:

(a) the Chair or enforcement committee chair shall announce the matter, ask all respondents or their attorneys present to identify themselves for the record, and announce any imposition of time limits for presentations to be made by the staff, the respondent(s), and the public at the hearing;

(b) the Chair or enforcement committee chair may impose time limits based on the circumstances of the alleged violation(s), the number of other items contained on the meeting agenda, the number of persons who intend to speak, and such other factors as the Chair believes relevant;

(c) the staff shall summarize the violation report and/or complaint for administrative civil liability and recommended enforcement decision with particular attention to limiting its presentation to issues of controversy;

(d) each respondent shall summarize its position(s) on the matter(s) relevant to the alleged violation or proposed order with particular attention to those issue(s) where an actual controversy exists between the staff and the respondent party or parties;

(e) members of the public may speak concerning the matter;

(f) presentations made by the staff, a respondent, and the public shall be limited to responding to (1) evidence already made part of the enforcement record and (2) the policy implications of such evidence; the enforcement committee or the Commission shall not allow oral testimony unless the committee or Commission believes that such testimony is essential to resolve any factual issues that remain unresolved after reviewing the existing written record and whose resolution is essential to determining whether a violation has occurred or to determining what remedy is appropriate. If the committee or Commission allows oral testimony, such testimony shall be taken under oath, and all representatives of the staff and all respondents shall be given a right to examine or cross-examine all witnesses who are allowed to testify;

(g) cross-examination of any witness whose declaration under penalty of perjury has become part of the enforcement record shall be permitted only if the party who wishes to cross-examine has identified in writing pursuant either to Section 11322(b) or Section 11322(d) the person to be cross-examined, the area or areas of information into which the cross-examination will delve, and the information sought to be uncovered. Following cross-examination of a witness whose declaration under penalty of perjury has become part of the enforcement record, a representative of the opposing party shall be entitled to examine the witness on the area or areas of information addressed during cross-examination. Neither cross-examination nor direct examination shall be allowed of any person who has not submitted a declaration under penalty of perjury which has become part of the enforcement record and who has not been identified in writing pursuant to either Section 11322(b) or Section 11322(d), including any member of the public who has commented on an enforcement matter or submitted information related to an alleged violation.

(h) enforcement committee members or Commissioners may ask questions at any time during the hearing or deliberations.

(i) the enforcement committee or Commission shall close the public hearing after the staff, all respondents, and the public have completed their presentations and committee members or Commissioners have completed their questioning;

(j) the enforcement committee or Commission shall rule on any objections to the admissibility of evidence or the acceptance of late evidence and identify any evidence submitted but rejected because it was not filed in a timely manner or in violation of Section 11328.

(k) the enforcement committee or Commission shall deliberate and vote on an enforcement matter; and

(l) if a hearing officer has been appointed for an enforcement matter, the hearing officer shall render a written decision that follows the format of an enforcement committee recommended enforcement decision in accordance with Section 11330 within 14 days of the closing of the enforcement hearing.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66638, 66641.5(e) and 66641.6, Government Code; and Section 29601, Public Resources Code.

#### HISTORY

1. Renumbering and amendment of former Section 11328 to Section 11327 filed 10-11-89; operative 11-10-89 (Register 89, No. 43). For prior history, see Register 87, No. 30.
2. Amendment of section and NOTE filed 6-7-2022; operative 10-1-2022 (Register 2022, No. 23).

### § 11328. Acceptance of Late Evidence.

The introduction of surprise testimony and exhibits at enforcement hearings shall be discouraged. All documents and declarations under penalty of perjury shall be submitted with the violation report and/or complaint or the completed statement of defense form, except to the extent otherwise provided by Section 11322(d) or the Executive Director has extended the time for such submittal pursuant to Section 11322(f), or the Commission or enforcement committee admits the testimony into

the record pursuant to Section 11327(f) and this section. To this end, the Commission or the enforcement committee shall not accept into the record or consider any statement of defense form or any written evidence not filed in a timely manner unless the Commission or enforcement committee finds that (1) the person seeking to introduce the evidence made all reasonable efforts to obtain and submit the evidence in a timely manner but was unable to do so and would be substantially prejudiced if the evidence were not admitted and (2) no other party would suffer substantial prejudice by its admission.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66638, 66641.5(e) and 66641.6, Government Code; and Section 29601, Public Resources Code.

#### HISTORY

1. New section filed 10-11-89; operative 11-10-89 (Register 89, No. 43).
2. Amendment of section and NOTE filed 6-7-2022; operative 10-1-2022 (Register 2022, No. 23).

### § 11329. Admissibility of Evidence.

(a) Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule that might make improper the admission of such evidence over objection in civil actions.

(b) Hearsay evidence, including but not limited information provided by the public to the Commission or staff or in public comments, may be admitted and used for the purpose of supplementing or explaining other evidence but shall not be sufficient in itself to support a finding unless it would be admissible over objection in a civil action or unless it is in the form of a declaration under penalty of perjury and the declarant is subject to cross-examination as provided in Sections 11322 and 11327.

(c) The rules of privilege shall be effective to the extent that they are otherwise required by statute to be recognized at the hearing, and irrelevant or unduly repetitious evidence shall be excluded.

(d) The Chair or the enforcement committee chair shall have the final authority to determine whether any evidence whose admissibility is challenged by objection shall be admitted into evidence and become part of the record.

(e) In determining whether to admit testimony or exhibits into the record over objection, the Chair or the enforcement committee chair shall consult with the Deputy Attorney General advising the Commission or enforcement committee at the hearing.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66638, 66641.5(e) and 66641.6, Government Code; Section 29601, Public Resources Code; and Section 351, Evidence Code.

#### HISTORY

1. Renumbering and amendment of former section 11339 to section 11329 filed 10-11-89; operative 11-10-89 (Register 89, No. 43). For prior history, see Register 87, No. 30.
2. Amendment of portions of subsection (a) to create new subsections (b) and (c) and relettering of former subsections (b) and (c) filed 9-3-92; operative 10-5-92 (Register 92, No. 36).
3. Amendment of subsections (b), (d) and (e) and amendment of NOTE filed 6-7-2022; operative 10-1-2022 (Register 2022, No. 23).

### § 11330. Adoption of an Enforcement Committee Recommended Enforcement Decision.

(a) After the enforcement committee has closed the enforcement hearing and completed its deliberations, it shall adopt a recommended enforcement decision, which shall include all of the following:

(1) a summary of (A) any background to the alleged violations, (B) the allegations made by staff in its violation report and/or complaint, (C) the allegations either admitted or not contested by respondent(s), (D) the defenses and mitigating factors raised by the respondent(s), and (E) the staff's response to the defenses, mitigating factors, or arguments raised by the respondent(s);

(2) a statement of any rulings by the enforcement committee;

(3) a recommended enforcement decision on a proposed order setting administrative civil liability shall identify the violations for which penalties are proposed and include:

(A) the total amount of proposed administrative civil penalties; and

(B) a statement of the applicable factors set forth in Government Code Section 66641.9 that the enforcement committee considered, consistent with the Administrative Civil Penalty Policy in Appendix J of these regulations, in determining the total amount of the proposed administrative civil penalties;

(4) a statement of whether the Executive Director has issued a cease and desist order and its expiration date;

(5) any further written report on or explanation of the enforcement proceedings as the enforcement committee believes is appropriate;

(6) a recommendation on what action the Commission should take; and

(7) the proposed text of any cease and desist order, permit revocation order, order setting administrative civil liability, or stipulated order that the enforcement committee recommends that the Commission issue or any settlement agreement that the enforcement committee recommends that the Commission approve.

(b) The enforcement committee can adopt with or without change the Executive Director's recommended enforcement decision. The chair of the enforcement committee shall direct Commission counsel to prepare the enforcement committee recommended enforcement decision, provided that: (1) Commission counsel shall submit the enforcement committee recommended enforcement decision to the respondent(s) by email for review not less than three days before the Executive Director mails the recommended decision to the Commission and respondent(s) in accordance with Section 11331; and (2) if the respondent(s) provides written comments on or objections to the recommended decision within two days of receipt thereof, the Executive Director may modify the recommended decision based on such comments or objections, if he or she determines that such modifications are appropriate, and shall include the respondent's comments or objections when mailing the recommended decision to the Commission and respondent(s) in accordance with Section 11331.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66638, 66641.5(e), 66641.6 and 66641.9, Government Code; and Sections 29601, 29610 and 29611, Public Resources Code.

#### HISTORY

1. Renumbering and amendment of former Section 11330 to Section 11321 and 11322, and new Section 11330 filed 10–11–89; operative 11–10–89 (Register 89, No. 43). For prior history, see Register 87, No. 30.
2. Amendment of section heading, section and NOTE filed 6–7–2022; operative 10–1–2022 (Register 2022, No. 23).

### § 11331. Referral of the Recommended Enforcement Decision to the Commission.

At least ten (10) days prior to the Commission's consideration of a recommended enforcement decision referred to it either directly by the Executive Director or by the enforcement committee, the staff shall mail by first class mail or send by email, and shall also make available on the Commission's website, the recommended enforcement decision to all respondents, to all Commissioners, and to the Deputy Attorney General advising the Commission.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66638, 66641.5(e) and 66641.6, Government Code; and Section 29601, Public Resources Codes.

#### HISTORY

1. Renumbering and amendment of former Section 11331 to Section 11320, and new Section 11331 filed 10–11–89; operative 11–10–89 (Register 89, No. 43). For prior history, see Register 87, No. 30.
2. Amendment of section and NOTE filed 6–7–2022; operative 10–1–2022 (Register 2022, No. 23).

### § 11332. Commission Action on Recommended Enforcement Decision.

(a) Except as provided in subsection (c), when the Commission acts on a recommended enforcement decision, the Commission shall allow representatives of the staff, each respondent, and members of the public an opportunity to present their respective arguments or comments on the recommendation, subject to such reasonable time limits as the Chair may

impose and subject to a prohibition against the introduction of any new evidence unless the Commission proceeds either to remand the matter or hold a de novo evidentiary hearing.

(b) Thereafter, the Commission shall do one of the following:

(1) adopt the recommended enforcement decision without any change in any proposed cease and desist order, permit revocation order, or order setting administrative civil liability;

(2) either (A) dismiss the entire matter by voting not to issue any proposed cease and desist order, proposed permit revocation order, or proposed order setting administrative civil liability or (B) if the recommended enforcement decision includes one or more of a proposed cease and desist order, a proposed permit revocation order, and a proposed order setting administrative civil liability, adopt the recommended enforcement decision with regard to one or more proposed orders and dismiss the other proposed order(s) recommended in the recommended enforcement decision by voting not to issue them;

(3) remand the matter to the enforcement committee or the staff for further action as the Commission directs; or

(4) reject the recommended enforcement decision and decide to consider the entire matter de novo. In this event, the Commission shall continue the public hearing to the next available Commission meeting, when it shall proceed in accordance with the same procedural requirements as the Commission must follow under these regulations pursuant to Section 11327. As part of this de novo proceeding, the Commission can accept additional evidence only in compliance with Sections 11327 and 11328 or if the Commission provides the staff, all respondents, and the public a reasonable opportunity to review and respond to the additional evidence prior to the Commission's de novo review.

(c) If the respondent(s) agrees in writing to accept the recommended enforcement decision, and the Executive Director also agrees to accept the recommended decision, the Executive Director shall calendar the recommended enforcement decision as a consent item on a Commission meeting agenda. At the Commission meeting, after allowing public comment on the consent item the Commission shall determine by a majority of those commissioners present and voting whether to adopt the recommended enforcement decision on consent without any change and without any further proceedings. If a majority of those commissioners present and voting do not determine to adopt the recommended decision on consent, the Commission shall proceed to act on the matter in accordance with subsections (a) and (b).

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66638, 66641.5(e), 66641.6 and 66641.9, Government Code; and Sections 29601, 29610 and 29611, Public Resources Code.

#### HISTORY

1. New section filed 5–18–87; operative 6–17–87 (Register 87, No. 30).
2. Repealer and new section filed 10–11–89; operative 11–10–89 (Register 89, No. 43).
3. Amendment of section and NOTE filed 6–7–2022; operative 10–1–2022 (Register 2022, No. 23).

### § 11333. Commission Hearing Procedures on Direct Referral of an Enforcement Matter by the Executive Director.

The Executive Director shall determine whether to refer an enforcement matter to the Commission or to the enforcement committee. When the Executive Director refers an enforcement matter directly to the Commission, the Commission shall follow the procedures set out in Sections 11327 through 11329 and in Section 11334.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66638, 66641.5(e) and 66641.6, Government Code; and Section 29601, Public Resources Code.

#### HISTORY

1. Renumbering and amendment of former Section 11333 to Section 11325, and new Section 11333 filed 10–11–89; operative 11–10–89 (Register 89, No. 30). For prior history, see Register 87, No. 30.
2. Amendment of section and NOTE filed 6–7–2022; operative 10–1–2022 (Register 2022, No. 23).

**§ 11334. Voting on a Proposed Commission Cease and Desist Order, a Proposed Commission Permit Revocation Order, or a Proposed Commission Order Setting Administrative Civil Liability.**

(a) The Commission shall vote on a recommended enforcement decision, a proposed Commission cease and desist order, a proposed permit revocation order, or a proposed order setting administrative civil liability by roll call in alphabetical order except that the Chair shall vote last;

(b) Any member may change his or her vote at any time before the Chair announces the final tally; and

(c) The decision of whether or not to issue an order shall be by majority vote of those present and voting.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66638, and 66641.5(e) and 66641.6, Government Code; and Section 29601, Public Resources Code.

**HISTORY**

1. Repealer of former Section 11334, and renumbering and amendment of former Section 11341 to Section 11334 filed 10–11–89; operative 11–10–89 (Register 89, No. 43). For prior history, see Register 87, No. 30.
2. Amendment of section heading, subsection (a) and NOTE filed 6–7–2022; operative 10–1–2022 (Register 2022, No. 23).

**§ 11335. Staff Report and Recommendation. [Renumbered]**

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66637–66642, Government Code; and Section 29601, Public Resources Code.

**HISTORY**

1. Renumbering and amendment of former Section 11335 to Section 11326 filed 10–11–89; operative 11–10–89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

**§ 11336. Distribution of Staff Report and Recommendation. [Renumbered]**

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66637–66642, Government Code; and Section 29601, Public Resources Code.

**HISTORY**

1. Renumbering and amendment of former Section 11336 to Section 11324 filed 10–11–89; operative 11–10–89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

**§ 11337. Notice of Public Hearing. [Renumbered]**

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(c), Public Resources Code. Reference: Sections 66637–66642, Government Code; and Section 29601, Public Resources Code.

**HISTORY**

1. Renumbering and amendment of former Section 11337 to Section 11323 filed 10–11–89; operative 11–10–89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

**§ 11338. Public Hearing Procedure. [Renumbered]**

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66637–66642, Government Code; and Section 29601, Public Resources Code.

**HISTORY**

1. Renumbering and amendment of former Section 11338 to Section 11327 filed 10–11–89; operative 11–10–89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

**§ 11339. Admissibility of Evidence. [Renumbered]**

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 11513 and 66637–66642, Government Code; and Section 29601, Public Resources Code.

**HISTORY**

1. Renumbering and amendment of former Section 11339 to Section 11329 filed 10–11–89; operative 11–10–89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

**§ 11340. Contents of Cease and Desist Orders.**

(a) Cease and desist orders shall be signed by the Executive Director and shall contain the following:

(1) a statement of whether the Executive Director is issuing the order pursuant to Section 66637 of the Government Code or the Commission is issuing the order pursuant to Section 66638 of the Government Code;

(2) the names of the person or persons who have undertaken or who are threatening to undertake the activity that is the subject of the order;

(3) identification of the property where the activity has been undertaken or may be undertaken;

(4) a description of the activity;

(5) the effective date of the order;

(6) the expiration date, if any, of the order;

(7) any terms, conditions, or other provisions necessary to bring the activity into compliance with the provisions of the McAteer–Petris Act, the Suisun Marsh Preservation Act, or a permit;

(8) written findings that (1) explain the decision to issue the order and (2) provide the factual and legal basis for the issuance of the order;

(9) in the case of an order issued by the Executive Director, notice of the date and place of any public hearing to be held on any cease and desist order proposed to be issued by the Commission relating to the same activity if the Executive Director has scheduled one;

(10) notice that a respondent may file with the superior court a petition for writ of mandate for review of the order pursuant to Section 1094.5 of the Code of Civil Procedure within thirty (30) days after service of a copy of the order; and

(11) such other provisions that the Commission has approved, including provisions relating to:

(A) a disclaimer of any effect of the order upon any duties, rights, or obligations under private agreements or under regulations of other public bodies;

(B) the obligation to conform strictly to the order and the consequences of the failure to do so; and

(C) the fact that the order does not constitute a recognition of property rights.

(b) A cease and desist order can be combined with a permit revocation order and/or an order setting administrative civil liability so long as the combined order contain all the information required under these regulations for each type of order.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66638, Government Code; and Section 29601, Public Resources Code.

**HISTORY**

1. Repealer of former Section 11340, and renumbering and amendment of former Section 11343 to Section 11340 filed 10–11–89; operative 11–10–89 (Register 89, No. 43). For prior history, see Register 87, No. 30.
2. Amendment of subsection (b) and NOTE filed 6–7–2022; operative 10–1–2022 (Register 2022, No. 23).

**§ 11341. Modifications of Cease and Desist Orders Issued by the Executive Director.**

The Executive Director may modify a cease and desist order that he or she has issued for good cause, but he or she shall not do so in a manner that extends the 90–day expiration period provided for in Section 66637 of the Government Code unless a respondent stipulates in writing to the extension. The Executive Director may, however, issue consecutive cease and desist orders for a persisting violation or a persisting threatened violation.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66637, Government Code; and Section 29601, Public Resources Code.

**HISTORY**

1. Renumbering and amendment of former Section 11341 to Section 11334, and renumbering and amendment of former Section 11344(a) to Section 11341 filed 10–11–89; operative 11–10–89 (Register 89, No. 43). For prior history, see Register 87, No. 30.
2. Amendment of section and NOTE filed 6–7–2022; operative 10–1–2022 (Register 2022, No. 23).

**§ 11342. Modification of Cease and Desist Orders Issued by the Commission.**

The Executive Director may modify a cease and desist order issued by the Commission for good cause if the modification would not be a material alteration of the order.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66638, Government Code; and Section 29601, Public Resources Code.

## HISTORY

1. Renumbering and amendment of former Section 11342 to Section 11370, and renumbering and amendment of former Section 11344(b) to Section 11342 filed 10-11-89; operative 11-10-89 (Register 89, No. 43). For prior history, see Register 87, No. 30.
2. Amendment of section and NOTE filed 6-7-2022; operative 10-1-2022 (Register 2022, No. 23).

### § 11343. Appeal from the Modification of a Commission Cease and Desist Order.

(a) A person who has been personally served with a Commission cease and desist order or to whom the Commission has mailed by certified mail a cease and desist order and to whom the order is directed may appeal to the Commission any modification of the order by the Executive Director by filing a written statement that the party is appealing the modification and the reasons for the appeal.

(b) If the appeal is filed within ten days of the personal service or mailing by certified mail of the modification to the order, the appeal shall stay the effect of the modification, but the previously effective order shall remain in effect.

(c) Appeals of modifications of a cease and desist order by the Executive Director cannot be filed more than ten days after the personal service or mailing by certified mail of the modification.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66638, Government Code; and Section 29601, Public Resources Code.

## HISTORY

1. Renumbering and amendment of former Section 11343 to Section 11340, and renumbering and amendment of former Section 11344(c) to Section 11343 filed 10-11-89; operative 11-10-89 (Register 89, No. 43). For prior history, see Register 87, No. 30.
2. Amendment of section and NOTE filed 6-7-2022; operative 10-1-2022 (Register 2022, No. 23).

### § 11344. Amendments to Cease and Desist Orders. [Renumbered]

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66637-66642, Government Code; Section 29601, Public Resources Code; and *Bel Mar Estates v. California Coastal Commission* (1981) Cal. App. 3d 936, 940.

## HISTORY

1. Renumbering and amendment of former Section 11344 to Sections 11341, 11342, and 11343 filed 10-11-89; operative 11-10-89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

### § 11350. Contents of Permit Revocation Orders.

(a) Commission permit revocation orders shall be signed by the Executive Director and shall contain the following:

(1) the names of the person or persons who have violated a term or condition of a Commission permit or a Commission cease and desist order or who have misstated any information on a permit application or at a public hearing;

(2) an identification of the term or condition of a permit or a cease and desist order that was violated, or the information that was misstated on the permit application;

(3) the effective date of the order;

(4) the work and uses that are no longer authorized and the date by which any corrective actions or termination of uses must occur;

(5) any terms, conditions, or other provisions that the Commission may determine that, if complied with, could avoid revocation of the permit;

(6) written findings that (A) explain the decision to issue the permit revocation order and (B) provide the factual and legal basis for the issuance of the order;

(7) notice that an aggrieved party can file with the superior court a petition for a writ of mandate for review of the order pursuant to Section 1094.5 of the Code of Civil Procedure.

(b) A permit revocation order can be combined with a cease and desist order and/or an order setting administrative civil liability so long as the combined order contains all the information required by these regulations for each type of order.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66638, Government Code; Section 29601, Public Resources Code; and *Sunset Amusement Company v. Board of Police Commissioners* (1972) 7 Cal.3d 64, 80.

## HISTORY

1. New section filed 5-18-87; operative 6-17-87 (Register 87, No. 30).
2. Amendment filed 10-11-89; operative 11-10-89 (Register 89, No. 43).
3. Amendment of subsections (a)(2) and (b) and amendment of NOTE filed 6-7-2022; operative 10-1-2022 (Register 2022, No. 23).

### § 11351. Modification of Permit Revocation Orders.

The Executive Director may modify a permit revocation order for good cause if the modification would not materially change the order.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66638, Government Code; and Sections 29600 and 29601, Public Resources Code.

## HISTORY

1. New section filed 10-11-89; operative 11-10-89 (Register 89, No. 43).
2. Amendment of section and NOTE filed 6-7-2022; operative 10-1-2022 (Register 2022, No. 23).

### § 11352. Appeal from Modification of a Permit Revocation Order.

(a) A person to whom the Commission has issued a permit revocation order may appeal to the Commission any modification of the order by the Executive Director by filing within ten (10) days of the date of the personal service or mailing by certified mail of the modification a written statement that the party is appealing the modification and the reasons for the appeal.

(b) If the appeal is filed within ten days of the personal service or mailing by certified mail of the modification to the order, the appeal shall stay the effect of the modification, but the previously effective order shall remain in effect.

(c) Appeals of modifications of a permit revocation order by the Executive Director cannot be filed more than ten days after the personal service or mailing by certified mail of the modification.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66638, Government Code; and Section 29601, Public Resources Code.

## HISTORY

1. New section filed 10-11-89; operative 11-10-89 (Register 89, No. 43).
2. Amendment of subsections (b)-(c) and amendment of NOTE filed 6-7-2022; operative 10-1-2022 (Register 2022, No. 23).

### § 11360. Preparation and Execution of Commission Cease and Desist Orders, Permit Revocation Orders, and Orders Setting Administrative Civil Liability.

The Executive Director shall prepare and sign a cease and desist order, a permit revocation order, or an order setting administrative civil liability authorized by the Commission no later than the fifth (5th) working day following approval.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66638, 66641.5(e) and 66641.6, Government Code; and Sections 29601, 29610 and 29611, Public Resources Code.

## HISTORY

1. Renumbering and amendment of Section 11051 to Section 11360 filed 5-18-87; operative 6-17-87 (Register 87, No. 30). For prior history, see Register 73, No. 50.
2. Amendment of section heading, section and NOTE filed 6-7-2022; operative 10-1-2022 (Register 2022, No. 23).

### § 11361. Issuance.

"Issuance" of a cease and desist order, a permit revocation order, an order setting administrative civil liability, or of any modification of such orders, is complete when the Executive Director executes the original copy of the order or modification and it is stamped "Issued BCDC" with the date.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66637, 66638, 66641.5(e) and 66641.6, Government Code; and Sections 29600 and 29601, Public Resources Code.



## HISTORY

1. Renumbering and amendment of Section 11050 to Section 11361 filed 5-18-87; operative 6-17-87 (Register 87, No. 30). For prior history, see Register 73, No. 50.
2. Amendment filed 10-11-89; operative 11-10-89 (Register 89, No. 43).
3. Amendment of section and NOTE filed 6-7-2022; operative 10-1-2022 (Register 2022, No. 23).

**§ 11362. Service of Copies.**

(a) Persons to Whom the Order or Modification is Issued. The Executive Director shall cause to be personally served or mailed by certified mail an original copy of a cease and desist order, a permit revocation order, and of any modification of such orders to each person to whom the order or modification is being issued and the owner of the property on which any violation addressed by the order occurred no later than the second working day following the date of issuance, except that with the written consent of the party to be served, the Executive Director shall serve any such order or order modification by email. The Executive Director shall cause to be personally served or mail by registered mail an order setting administrative civil liability or modification to such order to each person to whom the order is being issued no later than the second working day following the date of issuance, except that with the written consent of the party to be served, the Executive Director shall serve any such order or modification by email.

(b) Other Interested Persons. The Executive Director shall personally serve on or shall mail by certified mail a copy of a cease and desist order or a permit revocation order authorized by the Commission and of any modification of such an order to each person who appeared at the hearing and submitted a written request for a copy no later than the second working day following the date of issuance, except that with the written consent of the party to be served, the Executive Director shall serve any such order or order modification by email. The Executive Director shall cause to be personally served or mail by registered mail an order setting administrative civil liability or modification to such order to each person who appeared at the hearing and submitted a written request for a copy, except that with the consent of the party to be served, the Executive Director shall serve any such order or order modification by email. In addition, the Executive Director shall post on the Commission's website a copy of a cease and desist order, permit revocation order, or an order setting administrative civil liability, or any modification of such orders no later than the second working day following issuance.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66637, 66638, 66641.5(e) and 66641.6, Government Code; and Sections 29600 and 29601, Public Resources Code.

## HISTORY

1. Renumbering and amendment of Section 11052 to Section 11362 filed 5-18-87; operative 6-17-87 (Register 87, No. 30). For prior history, see Register 73, No. 50.
2. Amendment filed 10-11-89; operative 11-10-89 (Register 89, No. 43).
3. Amendment of section and NOTE filed 6-7-2022; operative 10-1-2022 (Register 2022, No. 23).

**§ 11370. Enforcement Record.**

The record of an enforcement proceeding shall consist of

- (a) the violation report, including all documents referred to in the report;
- (b) any complaint for administrative civil liability;
- (c) all timely filed statement of defense form(s), including all documents submitted therewith;
- (d) all untimely filed statement of defense forms that have nevertheless been admitted into evidence;
- (e) the Executive Director's recommended enforcement decision, including all documents and any other evidence referred to or included in the recommendation;
- (f) minutes or a verbatim transcript of all enforcement committee and Commission enforcement hearings and deliberations, provided, that if any oral testimony or any cross-examination and direct examination of a person whose declaration under penalty of perjury has become part of

the enforcement record is allowed at the enforcement hearing, a verbatim transcript of such testimony shall also be included;

(g) all evidence submitted but rejected because it was not filed in a timely manner or violated Section 11328, with a notation that it was rejected and is included in the record only so that a reviewing court will know what evidence was rejected;

(h) any enforcement committee's or hearing officer's recommended enforcement decision,

(i) any order that the Commission issues,

(j) such other permit or other Commission files as have explicitly been made a part of the record,

(k) the McAteer-Petris Act, if relevant to any of the issues raised in the proceeding,

(l) the San Francisco Bay Plan, if relevant to any of the issues raised in the proceeding,

(m) the Suisun Marsh Preservation Act, if relevant to any of the issues raised in the proceeding,

(n) the Suisun Marsh Protection Plan, if relevant to any of the issues raised in the proceeding,

(o) the Suisun Marsh Local Protection Program, if relevant to any of the issues raised in the proceeding, and

(p) the Commission's regulations.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66638, 66640, 66641.5(e), 66641.6 and 66641.7, Government Code; and Sections 29600 and 29601, Public Resources Code.

## HISTORY

1. Renumbering and amendment of former Section 11342 to Section 11370 filed 10-11-89; operative 11-10-89 (Register 89, No. 43).
2. Amendment of section and NOTE filed 6-7-2022; operative 10-1-2022 (Register 2022, No. 23).

**§ 11380. Content of Complaint for Administrative Civil Liability.**

The complaint shall follow the format and contain the information set out in Appendix H to these regulations. The complaint shall identify the violations for which administrative civil penalties are proposed and include:

(a) a list or table of all alleged violations for which staff is proposing a penalty;

(b) the total amount of proposed administrative civil penalties; and

(c) a statement of the applicable factors set forth in Government Code Section 66641.9 that the Executive Director considered, consistent with the Administrative Civil Penalty Policy in Appendix J of these regulations, in determining the total amount of the proposed administrative civil penalties;

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66641.5(e), 66641.6 and 66641.9, Government Code; and Sections 29610 and 29611, Public Resources Code.

## HISTORY

1. New section filed 10-11-89; operative 11-10-89 (Register 89, No. 43).
2. Amendment of section heading, section and NOTE filed 6-7-2022; operative 10-1-2022 (Register 2022, No. 23).

**§ 11381. Commission Hearing on Complaint for Administrative Civil Liability.**

(a) The Commission shall comply with the requirements of Cal. Govt. Code Section 66641.6(b) by either: (1) hearing the matter itself within 60 days of the service of the complaint; or (2) by having the enforcement committee hold a hearing within 60 days of the service of the complaint. With the written consent of the respondent(s) to whom a complaint is issued, the Executive Director shall for good cause extend the 60-day time limit for a hearing on the complaint under Government Code Section 66641.6(b).

(b) The Executive Director shall determine whether to refer a complaint for administrative civil liability to the Commission or to the enforcement committee.

(c) When the Executive Director determines whether to refer a complaint to the Commission or to the enforcement committee, he or she shall consider the following factors:

(1) the time that it would take the Commission or enforcement committee to complete consideration of the complaint,

(2) whether the Executive Director has issued a cease and desist order for the violation or violations alleged in the complaint, and whether the Executive has proposed that any order setting administrative civil liability be combined with a Commission cease and desist order and/or a permit revocation order,

(3) the relative workloads of the Commission and the enforcement committee at the time,

(4) whether the complaint involves any policy issues that should be determined by the Commission initially,

(5) whether the Commission or the enforcement committee has already heard any enforcement matter that is related to the complaint, and

(6) any request by the Commission that it hear the matter directly.

NOTE: Authority cited: Section 66632(f), Government Code. Reference: Sections 66641.5(e) and 66641.6, Government Code.

#### HISTORY

1. New section filed 10-11-89; operative 11-10-89 (Register 89, No. 43).
2. Amendment of section heading, section and NOTE filed 6-7-2022; operative 10-1-2022 (Register 2022, No. 23).

### § 11382. Further Procedures for Commission Review of Complaints for Administrative Civil Liability.

The Commission shall follow the procedures established by Sections 11321 through 11334 of these regulations when it considers a recommended enforcement decision from either the staff or the enforcement committee relative to the possible imposition of administrative civil liability.

NOTE: Authority cited: Section 66632(f), Government Code. Reference: Sections 66641.5(e), 66641.6 and 66641.9, Government Code.

#### HISTORY

1. New section filed 10-11-89; operative 11-10-89 (Register 89, No. 43).
2. Amendment of section heading, section and NOTE filed 6-7-2022; operative 10-1-2022 (Register 2022, No. 23).

### § 11383. Contents of a Commission Order Setting Administrative Civil Liability.

(a) A Commission order setting administrative civil liability shall be signed by the Executive Director and shall contain the following:

(1) the name(s) of the person(s) required to pay the civil penalties;

(2) the amount of the civil penalties and findings that address the applicable factors set forth in Government Code Section 66641.9 that the Commission considered in determining the amount of the civil penalties;

(3) the date by which the civil penalties must be paid in full, or, if the penalties are to be paid in installments, the amount of each installment and the date by which each installment must be paid;

(4) written findings that (1) explain the decision to issue the order setting administrative civil liability and (2) provide the factual and legal basis for the issuance of the order, and

(5) notice that a person to whom the Commission issues an order setting administrative civil liability may file with the superior court a petition for writ of mandate for review of the order pursuant to Section 1094.5 of the Code of Civil Procedure within thirty (30) days after service of a copy of the order.

(b) An order setting administrative civil liability can be combined with a cease and desist order or a permit revocation order so long as the combined order contains all the information required under these regulations for each type of order.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(c), Public Resources Code. Reference: Sections 66641.5(e), 66641.6 and 66641.9, Government Code; and Sections 29610 and 29611, Public Resources Code.

#### HISTORY

1. New section filed 10-11-89; operative 11-10-89 (Register 89, No. 43).
2. Amendment of section heading, section and NOTE filed 6-7-2022; operative 10-1-2022 (Register 2022, No. 23).

### § 11384. Modification of a Commission Order Setting Administrative Civil Liability.

The Executive Director may modify an order setting administrative civil liability for good cause if the modification would not alter the total amount of the civil penalties or otherwise materially change the order.

NOTE: Authority cited: Section 66632(f), Government Code. Reference: Sections 66641.5(e), 66641.6 and 66641.9, Government Code.

#### HISTORY

1. New section filed 10-11-89; operative 11-10-89 (Register 89, No. 43).
2. Amendment of section heading, section and NOTE filed 6-7-2022; operative 10-1-2022 (Register 2022, No. 23).

### § 11385. Appeal from Modification of an Order Setting Administrative Civil Liability.

(a) A person to whom the Commission has issued an order setting administrative civil liability may appeal to the Commission any modification of the order by the Executive Director by filing within ten (10) days of the date of personal service or mailing by registered mail of the modification a written statement that the party is appealing the modification and the reasons for the appeal.

(b) If the appeal is filed within ten days of the personal service or mailing by registered mail of the modification to the order, the appeal shall stay the effect of the modification, but the previously effective order shall remain in effect.

(c) Appeals of modifications of an order setting administrative civil liability by the Executive Director cannot be filed more than ten days after the personal service or mailing by registered mail of the modification.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(c), Public Resources Code. Reference: Sections 66641.5(e), 66641.6 and 66641.9, Government Code.

#### HISTORY

1. New section filed 10-11-89; operative 11-10-89 (Register 89, No. 43).
2. Amendment of section heading, section and NOTE filed 6-7-2022; operative 10-1-2022 (Register 2022, No. 23).

## Article 3. Standardized Fines

### § 11386. Applicability of Article.

(a) This Article shall apply to an enforcement action if the Executive Director determines:

(1) that an alleged violation is one of the types identified in Section 11390;

(2) that the alleged violation has not resulted in significant harm to the Bay's resources or to existing or future public access; and

(3) that the alleged violation can be corrected in a manner consistent with the Commission's laws and policies.

(b) For purposes of this Article, "significant harm to the Bay's resources or to existing or future public access" shall be determined in accordance with Section 11310(f).

(c) If an enforcement action involves both an alleged violation that has not resulted in significant harm to the Bay's resources or to existing or future public access and an alleged violation that has resulted in significant harm to such resources or public access or that is otherwise not subject to resolution under this Article, the Executive Director may, depending on the nature and extent of all the violations and on whether the responsible party has taken appropriate action to resolve the violations, commence Commission enforcement proceedings for all the alleged violations by following the procedures established by Sections 11321 through 11334 of these regulations.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(c), Public Resources Code. Reference: Section 66641.5(e), Government Code; and Section 29610, Public Resources Code.

#### HISTORY

1. New section filed 2-26-93; operative 3-29-93 (Register 93, No. 9).
2. Amendment filed 6-26-97; operative 7-26-97 (Register 97, No. 26).
3. Amendment of section and NOTE filed 12-9-98; operative 1-8-99 (Register 98, No. 50).
4. Amendment filed 5-22-2003; operative 6-21-2003 (Register 2003, No. 21).
5. New article 3 heading, amendment of section heading and subsections (a)-(a)(10), renumbering of former subsections (b)-(b)(3) to new section

11387, renumbering of former subsection (c) to new section 11388, renumbering of former subsection (d) to new section 11389, renumbering of former subsections (e)–(h) to new section 11390, renumbering of former subsections (i)–(k) to new section 11391, new subsections (b)–(c) and amendment of NOTE filed 6–7–2022; operative 10–1–2022 (Register 2022, No. 23).

#### § 11387. Notice of Alleged Violation.

If this Article applies to an enforcement action, the Executive Director shall mail a written notice to the person(s) responsible for the alleged violation(s) that contains all of the following information:

(a) the nature of the alleged violation(s) and each and every action that must be taken to correct the alleged violation;

(b) the fact that if the alleged violation(s) are fully corrected within 35 days of the mailing of the notice, the Commission shall not impose any fine; and

(c) the fact that if the alleged violation(s) are not fully corrected within 35 days of mailing of the notice, the person responsible for the alleged violation(s) may be subject to the payment of a fine and may resolve the alleged violation(s) by taking each and every corrective action required by the notice and paying the standardized fine specified in Section 11390(a) or 11390(b) without having to go through a Commission enforcement proceeding pursuant to Sections 11321 through 11334, except as provided in Section 11390(d).

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66641.5(e), Government Code; and Section 29610, Public Resources Code.

##### HISTORY

1. Renumbering and amendment of former section 11386, subsections (b)–(b)(3) to new section 11387 filed 6–7–2022; operative 10–1–2022 (Register 2022, No. 23).

#### § 11388. Opportunity to Complete Corrective Action without Imposition of a Standardized Fine.

Except as provided in Section 11390(c), if the person responsible for the alleged violation(s) submits to the Executive Director information demonstrating that the alleged violation(s) have not occurred or that such person has completed each and every corrective action specified in the notice pursuant to Section 11387 within thirty-five (35) days after the mailing of the notice, the Commission shall not impose any standardized fine.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66641.5(e), Government Code; and Section 29610, Public Resources Code.

##### HISTORY

1. Renumbering and amendment of former section 11386, subsection (c) to new section 11388 filed 6–7–2022; operative 10–1–2022 (Register 2022, No. 23).

#### § 11389. Opportunity to Complete Corrective Action with Imposition of a Standardized Fine.

Except as provided in Sections 11390(c) and 11390(d), if the person responsible for the alleged violation(s) fails to submit to the Executive Director information demonstrating that such person has completed each and every corrective action required by the notice pursuant to Section 11387 within thirty-five (35) days after the date of the mailing of the notice, the responsible person may resolve the alleged violation(s) by completing each and every corrective action required by the notice sent pursuant to Section 11387 and by paying a fine in the amount provided in Sections 11390(a) or 11390(b).

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66641.5(c), Government Code; and Section 29610, Public Resources Code.

##### HISTORY

1. Renumbering and amendment of former section 11386, subsection (d) to new section 11389 filed 6–7–2022; operative 10–1–2022 (Register 2022, No. 23).

#### § 11390. Violations Subject to a Standardized Fine and Schedule of Standardized Fines.

(a) The following standardized fines shall apply to the following types of alleged violations:

(1) for the failure to return an acknowledged, executed Commission permit before commencing the work authorized by the permit, or, for any permit issued to authorize previously commenced or completed work,

for failure to return an acknowledged, executed permit within the time period stated in the permit:

(A) if the fully executed permit is returned between thirty-six (36) and sixty-five (65) days after the date of the mailing of the notice required by Section 11387: TWO THOUSAND DOLLARS (\$2,000.00); or

(B) if the fully executed permit is returned more than sixty-five (65) days after the date of the mailing of the notice required by Section 11387: FIVE THOUSAND DOLLARS (\$5,000.00) plus FIVE HUNDRED DOLLARS (\$500.00) per day from the sixty-fifth (65) day to the date the fully executed permit is received by the staff.

(2) for the failure to submit any document other than an acknowledged, executed Commission permit in the form, manner or time required by a Commission permit:

(A) if a required document is submitted between thirty-six (36) and sixty-five (65) days after the date of the mailing of the notice required by Section 11387: TWO THOUSAND DOLLARS (\$2,000.00) per document;

(B) if a required document is submitted between sixty-six (66) and ninety-five (95) days after the date of the mailing of the notice required by Section 11387: FIVE THOUSAND DOLLARS (\$5,000.00) per document; or

(C) if a required document is submitted more than ninety-five (95) days after the date of the mailing of the notice required by Section 11387: FIVE THOUSAND DOLLARS (\$5,000.00) for each document plus FIVE HUNDRED DOLLARS (\$500.00) per day for each document, from the ninety-sixth (96th) day to the date the document is received by the staff.

(3) for the failure to comply with any condition required by a Commission permit not covered by subsections (a)(1) or (a)(2):

(A) if corrected between thirty-six (36) and sixty-five (65) days after the date of the mailing of the notice required by Section 11387: TWO THOUSAND DOLLARS (\$2,000.00) for each violation of each separate permit requirement; or

(B) if corrected between sixty-six (66) and ninety-five (95) days after the date of the mailing of the notice required by Section 11387: FIVE THOUSAND DOLLARS (\$5,000.00) for each violation of each separate permit requirement; or

(C) if corrected more than ninety-five (95) days after the date of the mailing of the notice required by Section 11387: FIVE THOUSAND DOLLARS (\$5,000.00) for each violation of each separate permit requirement, plus FIVE HUNDRED DOLLARS (\$500.00) per day for each violation, from the ninety-sixth (96th) day to the date the violation is corrected or the required improvements are provided.

(4) for the failure to obtain a Commission permit or an amendment to a previously issued Commission permit prior to undertaking any activity that can be authorized by an administrative permit or an amendment to previously issued Commission permit:

(A) if either a complete and properly executed application accompanied by a check or money order for the applicable application fee, as determined pursuant to Appendix M, Section (b) of the Commission's regulations, is submitted between thirty-six (36) and sixty-five (65) days and a permit or permit amendment is obtained within one hundred and fifty-five (155) days after the date of the mailing of the notice required by Section 11387 or the unauthorized activity is completely corrected between thirty-six (36) and sixty-five (65) days after the date of the mailing of the notice required by Section 11387: TWO THOUSAND DOLLARS (\$2,000.00);

(B) if either a complete and properly executed application accompanied by a check or money order for the applicable application fee, as determined pursuant to Appendix M, Section (b) of the Commission's regulations, is submitted between sixty-six (66) and ninety-five (95) days and a permit or permit amendment is obtained within one hundred and eighty-five (185) days after the date of the mailing of the notice required by Section 11387 or the unauthorized activity is completely corrected between sixty-six (66) and ninety-five (95) days after the date of the mail-

ing of the notice required by Section 11387: FIVE THOUSAND DOLLARS (\$5,000.00);

(C) if a complete and properly executed application accompanied by a check or money order for the applicable application fee, as determined pursuant to Appendix M, Section (b) of the Commission's regulations, is submitted more than ninety-five (95) days after the date of the mailing of the notice required by Section 11387 or the unauthorized activity is completely corrected within the same time limits: FIVE THOUSAND DOLLARS (\$5,000.00) plus FIVE HUNDRED DOLLARS (\$500.00) per day from the ninety-sixth (96th) day to the date the fully complete and properly executed application accompanied by a check or money order for the applicable application fee is submitted or the activity is completely corrected.

(5) for the failure to obtain a Commission permit prior to undertaking any activity that can be authorized by a regionwide permit or an abbreviated regionwide permit:

(A) if either a complete notice of intent to proceed under a regionwide permit or abbreviated regionwide permit is submitted between thirty-six (36) and sixty-five (65) days and the Executive Director approves the notice of intent to proceed within one hundred and fifty-five (155) days after the date of the mailing of the notice required by Section 11387 or the unauthorized activity is completely corrected between thirty-six (36) and sixty-five (65) days after the date of the mailing of the notice required by Section 11387: TWO THOUSAND DOLLARS (\$2,000.00);

(B) if either a complete notice of intent to proceed under a regionwide permit or an abbreviated regionwide permit is submitted between sixty-six (66) and ninety-five (95) days and the Executive Director approves the notice of intent to proceed within one hundred and eighty-five (185) days after the date of the mailing of the notice required by Section 11387 or the unauthorized activity is completely corrected between sixty-six (66) and ninety-five (95) days after the date of the mailing of the notice required by Section 11387: FOUR THOUSAND DOLLARS (\$4,000.00);

(C) if a complete notice of intent to proceed under a regionwide permit or an abbreviated regionwide permit is submitted more than ninety-five (95) days after the date of the mailing of the notice required by Section 11387 or the unauthorized activity is completely corrected within the same time limits: FOUR THOUSAND DOLLARS (\$4,000.00) plus FIVE HUNDRED DOLLARS (\$500.00) per day from the ninety-sixth (96th) day to the date the complete notice of intent to proceed is submitted or the unauthorized activity is completely corrected.

(6) for the placement of fill, the extraction of materials or a change in use that could not be authorized under the Commission's laws and policies:

(A) if the violation is corrected and the area restored to its prior status between thirty-six (36) and sixty-five (65) days after the mailing of the notice required by Section 11387: THREE THOUSAND DOLLARS (\$3,000.00);

(B) if the violation is corrected and the area restored to its prior status between sixty-six (66) and ninety-five (95) days after the mailing of the notice required by Section 11387: EIGHT THOUSAND DOLLARS (\$8,000.00);

(C) if the violation is corrected and the area returned to its prior status more than ninety-five (95) days after the mailing of the notice required by Section 11387: EIGHT THOUSAND DOLLARS (\$8,000.00) plus FIVE HUNDRED DOLLARS (\$500.00) per day to the date the violation is completely corrected.

(b) A person responsible for any alleged violation must pay double the amount listed in subsection (a) to resolve the alleged violation if that person has previously paid or has been assessed but has failed to pay any standardized fine pursuant to subsection (a) and Section 11391 within the five years prior to resolution of the alleged violation.

(c) If a violation resolved pursuant to Section 11388 is repeated by the same person within five years of the resolution of the prior violation, Section 11388 and subsections (a) and (b) shall not apply. Instead, the person responsible for the subsequent violation may resolve the subsequent al-

leged violation by paying TWO HUNDRED DOLLARS (\$200.00) per day for each day the subsequent alleged violation occurs or persists after the date of the mailing of the notice required by Section 11387.

(d) If the person responsible for the alleged violation does not complete all the required corrective actions within 125 days of the notice mailed pursuant to Section 11387 or does not pay the amount of standardized fines assessed in accordance with this section when payment is due under Section 11391(c) or (d), the Executive Director may commence Commission enforcement proceedings in accordance with Sections 11321 through 11334. If the Executive Director determines that the person responsible for the violation has not made a good-faith effort to correct an alleged violation, the Executive Director may terminate the opportunity for resolution of the violation using the standardized fine process by mailing a notice stating that the process is no longer available. After mailing such notice, the Executive Director shall commence Commission enforcement proceedings in accordance with Sections 11321 through 11334 to resolve the violation.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66641.5(e), Government Code; and Section 29610, Public Resources Code.

#### HISTORY

1. Renumbering and amendment of former section 11386, subsections (c)–(h) to new section 11390 filed 6–7–2022; operative 10–1–2022 (Register 2022, No. 23).

### § 11391. Notice of Liability for Standardized Fines and Opportunity to Appeal or to Resolve Violation through Commission Enforcement Proceedings.

(a) After the violation has been completely resolved, the Commission staff shall notify the person responsible for the violation by first class mail or email of the amount of standardized fines assessed in accordance with Section 11390. The notice shall state that if any person subject to standardized fines believes that the amount of standardized fines is inappropriate or was not properly determined in accordance Section 11390, that person can appeal the amount of the fines to the Executive Director and the Chair by submitting to the Executive Director within 21 days of the date of the notice a written statement that the person is appealing and the reasons for the appeal. The Commission staff shall submit to the Executive Director a response to the appeal within 14 days after receipt thereof. The Executive Director and the Chair can reduce the amount of the standardized fines to an amount that they believe is appropriate and can establish a schedule for the payment of the standardized fines in installments.

(b) If any person subject to the standardized fines listed in Sections 11390(a), (b), or (c) believes that the 35-day time limit for resolution without a standardized fine established pursuant to Sections 11387 and 11388 is not feasible, that person may appeal the time limit to the Executive Director and the Chair by submitting to the Executive Director within 35-days of the notice mailed pursuant to Section 11387 a written statement that the person is appealing the 35-day time limit, the reasons for the appeal, and a proposed alternative date to complete the required corrective action. The Executive Director and the Chair can modify the 35-day time limit and the time periods for accrual of standardized fines set forth in Section 11390(a) for the violation as they believe appropriate.

(c) If any person subject to standardized fines does not appeal the amount of such fines within 21 days of receiving notice from Commission staff under subsection (a), the full amount of such fines shall be due and payable by cashier's check thirty (30) days after the date of the notice provided under subsection (a).

(d) If any person subject to standardized fines appeals the amount of such fines within 21 days of receiving notice from Commission staff under subsection (a), any fines the Executive Director and Chair determine to be appropriate shall be due and payable by cashier's check by the date or dates specified in their decision on the appeal.

(e) Any person receiving a notice under Section 11387 may waive the opportunity to resolve the violation under this Article by submitting a let-



ter to the Executive Director indicating such a waiver and requesting that the violation be resolved through Commission enforcement proceedings in accordance with Sections 11321 through 11334 if that person believes such proceedings are necessary to fairly determine liability for the violation, the appropriate remedy, or the appropriate fine or administrative civil penalty amount. A waiver of the opportunity to resolve a violation under this Article and request that the violation be resolved through Commission enforcement proceedings may be submitted at any time after receipt of a notice under Section 11387 but no later than: (1) twenty one (21) days after the date of the notice provided by Commission staff under subsection (a) of amount of standardized fines assessed, if the person receiving such notice elects not to appeal the amount of such fines to the Executive Director and Chair; or (2) fourteen (14) days after the date of the decision of the Executive Director and Chair on any appeal of the amount of standardized fines. If a letter waiving the opportunity to resolve a violation under this Article and requesting that the violation be resolved through Commission enforcement proceedings is submitted after the Commission staff has provided notice under subsection (a) of the amount of standardized fines assessed or after the decision of the Executive Director and Chair on any appeal of the amount of standardized fines, no such fines shall be due pursuant to that notice or that decision, and the appropriate amount of fines or administrative civil penalties shall be determined through Commission enforcement proceedings.

(f) If a person subject to standardized fines fails to pay such fines when due and payable under subsection (c) or (d), as applicable, and if such person has not submitted a letter waiving the opportunity to resolve a violation under this Article and requesting that the violation be resolved through Commission enforcement proceedings under subsection (e), the Executive Director shall commence Commission enforcement proceedings in accordance with Sections 11321 through 11334 to resolve the violation. In those proceedings, the person subject to such fines may not contest his or her liability for the violation or that the violation occurred, and the Commission shall determine only whether the amount of standardized fines was properly calculated in accordance with Section 11390.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66641.5(e), Government Code; and Section 29610, Public Resources Code.

#### HISTORY

1. Renumbering and amendment of former section 11386, subsections (i)–(k) to new section 11391 filed 6–7–2022; operative 10–1–2022 (Register 2022, No. 23).

## Chapter 14. Marsh Development Permits Issued by Local Governments and Appeals Therefrom

### Subchapter 1. Marsh Development Permits Issued by Local Governments

#### Article 1. Application

##### § 11400. Application of Chapter.

This Chapter shall govern the issuance of a marsh development permit or any other local permit that incorporates the provisions of a marsh development permit, hereinafter referred to as “a marsh development authorization,” by local governments pursuant to California Public Resources Code Section 29502(a) and appeals from marsh development authorizations issued by local governments.

NOTE: Authority cited: Sections 29201(e) and 29521, Public Resources Code. Reference: Section 29502, Public Resources Code.

#### HISTORY

1. Renumbering and amendment of Section 11225 to Section 11400 filed 5–18–87; operative 6–17–87 (Register 87, No. 30). For prior history, see Register 86, No. 39.

#### Article 2. Marsh Development Permits Issued by Local Governments

##### § 11410. Order of Permits.

If a Suisun Marsh development requires both a marsh development permit from the Commission and a marsh development authorization from a local government because part of the development site is located within either the primary management area of the Suisun Marsh or within tidelands, submerged lands, or other public trust lands within the secondary management area and if another part of the development site is located within the secondary management area of the Suisun Marsh, the person or entity who proposes the development shall first obtain the marsh development authorization from the appropriate local government for that part of the site or development that is within the secondary management area before requesting a marsh development permit from the Commission for that part of the site or development that is within the primary management area.

NOTE: Authority cited: Sections 29201(e) and 29521, Public Resources Code. Reference: Sections 29300 and 29502, Public Resources Code.

#### HISTORY

1. New section filed 5–18–87; operative 6–17–87 (Register 87, No. 30).
2. Change without regulatory effect amending section filed 12–31–2020 pursuant to section 100, title 1, California Code of Regulations (Register 2021, No. 1). (OAL review extended 60 calendar days pursuant to Executive Order N–40–20.)

##### § 11411. Application.

(a) The person or entity applying for a marsh development authorization from local government for a development within the secondary management area shall submit to the local government and the local government shall require the person or entity to provide the following:

(1) an application that provides detailed information about the development and that includes a site plan that shows the property lines of the site and the location and extent of existing and proposed work and uses information that clearly distinguishes existing improvements from proposed improvements, and existing shoreline public access areas from proposed shoreline public access areas, the location of any existing levees and water transporting and water control structures, and information that identifies all building elevations, the approximate distance from the development to the nearest marsh, the location of any managed wetland and any tidal area in the vicinity, and the name and location of the nearest public road;

(2) a statement that describes all environmental impacts that may arise from the proposed development with supporting facts and information;

(3) a statement that the person signing the application is either the applicant or has the authority to bind legally the applicant;

(4) sufficient evidence that shows the applicant either owns the land, has a lease of sufficient duration to allow a reasonable return on any investment, or has an enforceable option on the land on which the development will occur or other similar authority to use the property; and

(5) a statement under penalty of perjury by the person signing the application that all the information submitted is complete and accurate.

(b) The local government may either incorporate the request for this information into its existing applications forms or may request this information separately.

NOTE: Authority cited: Sections 29201(e) and 29521, Public Resources Code. Reference: Section 29502, Public Resources Code.

#### HISTORY

1. Renumbering and amendment of Section 11227 to Section 11411 filed 5–18–87; operative 6–17–87 (Register 87, No. 30). For prior history, see Register 86, No. 39.

##### § 11412. Notice to the Commission of Pending Applications.

(a) Within five (5) working days of the filing of an application with the local government for a marsh development authorization, the local government shall provide in writing to the Commission the following information:



## Statement of Defense Form

**Enforcement Case ER2017.004.00**

### **JHS Properties and Robert Herbst**

FAILURE (1) TO COMPLETE THIS FORM, (2) TO INCLUDE WITH THE COMPLETED FORM ALL DOCUMENTS, DECLARATIONS 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 FORM AND ALL INCLUDED MATERIALS TO THE SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION STAFF OR TO CONTACT **ADRIENNE KLEIN** OR **MATTHEW TRUJILLO** OF THE SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION ENFORCEMENT STAFF BY MARCH 22, 2024, **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 BE USED AGAINST YOU.

YOU MAY WISH TO CONSULT WITH OR RETAIN AN ATTORNEY BEFORE YOU COMPLETE THIS FORM OR OTHERWISE CONTACT THE SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT 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  
375 Beale Street, Suite 510  
San Francisco, California 94105**

**The forms should also be emailed to Margie Malan at [margie.malan@bcdcc.ca.gov](mailto:margie.malan@bcdcc.ca.gov).**

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 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 **ADRIENNE KLEIN** of the Commission Enforcement Staff at telephone number **415-352-3609**.

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

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

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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/Complaint):

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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 identify it by name, date, type, and any other identifying information and provide the original or a copy if you can):

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5. If the Executive Director is proposing that the Commission impose an administrative civil penalty as part of this enforcement proceeding and if you would be unable to pay the proposed penalty or paying the proposed penalty would have a substantial adverse effect on your ability to continue in business, provide factual information establishing such inability to pay or such adverse effect. Submit all relevant supporting documentation which may include but not limited to audited financial statements and reports (or if not audited, then those that are the basis of tax returns or regulatory filings), balance sheets, profit and loss statements, statements of net worth, annual budgets, bond prospectuses, and tax returns including supporting forms and schedules as may be applicable. Before submitting this information redact (cover or blackout) all personal information including your social security or tax-payer identification number, driver's license/state identification number, financial account number and any other private non-public personal information including a residential address, telephone numbers, or personal email address.

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

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7. 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):

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

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9. 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:

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# Exhibit C

## San Francisco Bay Conservation and Development Commission

375 Beale Street, Suite 510, San Francisco, California 94105 tel 415 352 3600 fax 888 348 5190

State of California | Gavin Newsom – Governor | [info@bcdc.ca.gov](mailto:info@bcdc.ca.gov) | [www.bcdc.ca.gov](http://www.bcdc.ca.gov)

March 29, 2024

**TO:** Enforcement Committee Members

**FROM:** Lawrence J. Goldzband, Executive Director, (415/352-3653; [larry.goldzband@bcdc.ca.gov](mailto:larry.goldzband@bcdc.ca.gov))  
Adrienne Klein, Principal Enforcement Analyst (415/352-3609 [adrienne.klein@bcdc.ca.gov](mailto:adrienne.klein@bcdc.ca.gov))

**SUBJECT:** **Executive Director’s Recommended Enforcement Decision and Proposed Cease and Desist and Civil Penalty Order No. CCD2024.002.00, Joe and Heidi Shekou, Unauthorized Solar Power Plant in Richmond, Contra Costa County (Enforcement Case ER2017.004.00)**  
(For Committee consideration on April 11, 2024)

### Summary

The Executive Director recommends that the Enforcement Committee votes to adopt as its recommendation to the full Commission this Recommended Enforcement Decision (RED) to resolve a violation of Section 66632(a) of the McAteer-Petris Act.

In or around January 2016, without BCDC authorization, Respondents installed and have since maintained a two-megawatt, photovoltaic solar power plant consisting of photovoltaic solar panel arrays and a fence located within BCDC’s jurisdiction. On June 22, 2017, BCDC staff established Enforcement Case ER2017.004.00. On October 25, 2017, BCDC staff sent a notice of violation to Respondents informing them they must apply to BCDC for an after-the-fact permit to install the solar panels and fence with a public access proposal and that they would be subject to standardized fines if a filed application was not provided within 35 days of the date of the letter. Between October 25, 2017, and the date of mailing of this RED, Respondents have not submitted the information required by the Commission’s regulations to file as complete their pending incomplete application for an after-the-fact permit to install the solar panels and fence with a public access proposal.

This recommendation includes a proposed Cease and Desist and Civil Penalty Order (CCD2024.002.00), which requires the Robert and Heidi Shekou (“Respondents”) to: 1. By June 30, 2024, submit a filed, BCDC permit application with feasible public access plan to install and operate the portion of the unauthorized solar power plant located within BCDC’s jurisdiction; 2. If Respondent fails to submit a filed application by June 30, 2024, and/or if Respondent fails to obtain after-the-fact BCDC permit authorization within ninety (90) days of filing the application as complete, Respondent shall entirely remove all fill located within BCDC’s jurisdiction; and 3. Pay \$30,000 in administrative civil liability within thirty days of Order issuance.





If the proposed Order is adopted by the Commission, it will become effective as of the date of execution by the Executive Director. Adoption of this Recommended Enforcement Commission shall immediately resolve Enforcement Case ER2017.004.00, at such time, this matter, including the proposed Order, shall be referred to BCDC Compliance for compliance monitoring until Respondents demonstrate full compliance with the terms and conditions of the Order. Should Respondents fail to comply fully with the Order, this matter shall be referred to the Office of the Attorney General for resolution by the superior court.

## Background

In 1977, BCDC issued Claim of Exemption No. CE 74-15 to a former owner of the property that is the subject of this formal enforcement proceeding. CE 74-15 was for a specific project, portions of which were built and portions of which were not built. Between 1977 and 1989, BCDC was in communication with the party who obtained CE 74-15 and with subsequent purchasers of the property subject to this enforcement action. The record makes clear that CE 74-15 applies only to the project described therein and does not transfer to subsequent owners and, therefore, that the construction of any project other than the one described in CE 74-15 requires a BCDC permit as does the construction of any project undertaken by a party other than the one who obtained CE 74-15. (See RED Exhibit C: Violation Report and Complaint Exhibits 3-7 and 20)

On May 31, 2000, Respondents purchased the four parcels on which the unauthorized solar power plant is constructed and operating. (VR&C Exhibit 2).

In 2014, Respondents retained land surveyors to survey the site and a contractor and project manager to obtain permits from the City of Richmond and the US Army Corps of Engineers to construct a solar power plant and perimeter fence on their property. At least one of Respondents' permits includes a condition of approval that states that the solar power plant project shall not encroach on BCDC 100-foot jurisdiction without a BCDC permit. Therefore, Respondents knew that they should contact BCDC to assess BCDC jurisdiction and regulatory authority (See RED Exhibit C: VR&C Exhibits 8-14)

Nevertheless, between January and October 2016, Respondents did not contact BCDC and constructed an unauthorized fenced, two-megawatt solar power plant at the site (See RED Exhibit C: VR&C Exhibits 19 and 20).

In January 2017, BCDC received a report that Respondents had apparently undertaken unauthorized construction of a solar power plant adjacent to Elmar Court/Freethy Boulevard without a BCDC permit (See RED Exhibit C: VR&C Exhibit 15).

In April 2017, Respondents' Project Manager Robert Herbst informed staff that Respondents had not obtained a BCDC permit prior to installing the solar power plant and security fence because they believed it was exempt from the requirement pursuant to Claim of Exemption CE 74-15 BCDC. (See RED Exhibit C: VR&C Exhibits 17-18)

Between April 2017 and February 2019, BCDC regulatory and legal staff and Respondents were in communication about BCDC's jurisdiction at the site and, in an October 2017 letter, BCDC informed Respondents that they needed to apply for BCDC approval to operate the solar farm.

This letter commenced an administrative civil penalty clock (See RED Exhibit C: VR&C Exhibits 16, 18-20).

One year and four months later, in February 2019, Respondents submitted an incomplete after-the-fact permit application to BCDC, to which staff responded in March 2019 (See RED Exhibit C: VR&C Exhibits 21, 22 and 23).

Three years and two months later, in May and September 2022, Respondents submitted an updated application and public access plan, respectively, both still incomplete, to which staff responded in June and November 2022 (See RED Exhibit C: VR&C Exhibits 26, 27, 34, 35).

One year and nine months following staff's June 3, 2022, letter (and November 19, 2022 email), Respondents have not fully responded to BCDC's application-related communications by: 1. Providing an explanation of how the project is consistent with San Francisco Bay Plan Policy 1 regarding maximum feasible public access; 2. Addressing whether and how staff's December 9, 2021, guidance has been considered; 3. Providing accurate jurisdictional information on the plans that depicts the edge of the Bay and the corresponding shoreline band on the entire north, and a portion of the east side, of the property; 4. Providing public access details and dimensions on the project plans, including relocating portions of the unauthorized fence and solar panels away from the edge of the decomposed granite trail shoulder so that the public can use the full width of the shoreline pathway; 5. To assess the appropriate application fee, providing a revised total project cost that includes the costs associated with solar farm construction in addition to those associated with the public access; and 6. Providing a copy of the environmental documentation required by CEQA (See RED Exhibit C: VR&C Exhibits 24, 31 and 41).

On February 12, 2024, Respondents' Project Manager informed staff that they had not received the email, dated November 19, 2022, which staff shared with them on February 15, 2024 (RED Exhibit B.1).

On February 15, 2024, one day prior to issuance of the Violation Report and Complaint, Respondents' Project Manager submitted an email stating they want to get the project back on track and will work with their designer to ensure that both ends of the trail connect to the existing Bay Trail segments and to create the space staff requested between the trail edge and the solar power plant perimeter fence (RED Exhibit B.1).

However, between February 16, 2024, and March 26, 2024, Respondents did not update their pending incomplete application to provide the information needed to file it as complete.

On March 26, 2024, in response to an email initiated by staff, Respondents' Project Manager submitted a revised public access plan (RED Exhibit B.2). On the same date, staff informed Respondents' Project Manager that to file the application as completed, Respondents must still provide the information outlined in the June 3, 2022, letter and the November 19, 2022, email (RED Exhibit B.2).

## Admitted and Contested Essential Allegations

The Statement of Defense form was due on March 22, 2024. Respondents did not submit a statement of defense.

## Unresolved Issues

There are no unresolved issues.

## Previous Enforcement Actions

No prior enforcement actions have been taken in this matter.

## Penalty Factors and Recommendation

Respondents have been responsible for this violation since January 2016, when solar power plant construction commenced, and since May 2018, when crushed asphalt was placed onsite to elevate the grade to allow for solar panel maintenance, a period of at least 2,965 days or more than eight years. This violation persists to the present. After considering the factors required by McAteer-Petris Act § 66641.9, BCDC staff recommends a \$30,000 penalty for this violation, the maximum administrative liability allowed by law.

The nature and extent of harm caused by the legal violation is moderate. Respondents have been operating a solar power plant for at least eight years with no BCDC authorization. With the provision of maximum feasible public access consistent with the project, the portion of the solar power plant operation within the Commission's shoreline band jurisdiction should be eligible for after-the-fact authorization, although the public cannot regain the lost public access benefit in the form a shoreline trail within the shoreline band portions of the project site that should have been in place at least since solar power plant operation commenced.

While the violation is susceptible to resolution through retroactive authorization, the public has been deprived of any public access at this site consistent with the project for more than eight years since its construction.

The Commission finds the cost to the state in pursuing this case since 2018 was high. BCDC staff has been working with Respondents for more than eight years to cause them to submit a permit application. BCDC's Compliance staff will invest additional time in pursuing this case following order issuance.

Respondents are culpable for the violation due to their failure to: 1. Contact BCDC prior to commencing solar power plant construction in January 2016; 2. Submit a fileable application between at least 2018, when BCDC first contacted Respondents, and the present; 3. Obtain after-the-fact authorization for the solar power plant and provide public access between January 2016 and the present.

Respondents submitted no defenses regarding their ability to pay.

Based on these penalty factors the staff finds that an \$1,200 penalty per day for the failure to obtain a BCDC permit prior to commencing construction is appropriate.

Penalties are appropriate because the Shekous have been operating an unauthorized solar power plant since sometime in 2017 and in these more than seven years they have failed to submit a

fileable permit application to BCDC, to secure a BCDC permit and to provide maximum feasible public access consistent with the project as required by the McAteer-Petris Act. They have privately benefitted from the project while the public has permanently lost the opportunity to use this section of Bay shoreline during that time.

The Executive Director recommends that the Enforcement Committee adopt this Recommended Enforcement Decision, including proposed Cease and Desist and Civil Penalty Order CCD2024.002.00.

## Proposed Order

Proposed Cease and Desist and Civil Penalty Order CCD2024.002.00 is attached as "RED Exhibit A."

Attachments: RED Exhibit A: Proposed Cease and Desist and Civil Penalty Order CCD2024.002.00

RED Exhibit B.1: February 15, 2024, Email, Herbst to Pan re: Solar Farm Bay Trail

RED Exhibit B.2: March 26, 2024, Email, Klein to Herbst and response with revised public access plan

RED Exhibit C: Violation Report and Complaint with exhibits

**Enforcement Committee Recommendation to the Full Commission:**

Please check one of the three boxes indicating your decision, then sign and return the memorandum to BCDC Staff:

☐ By a vote of \_\_\_ yeses, \_\_\_ noes, and \_\_\_ abstentions, the Enforcement Committee adopts the Executive Director's Recommended Enforcement Decision as its recommendation to the full Commission.

☐ By a vote of \_\_\_ yeses, \_\_\_ noes, and \_\_\_ abstentions, the Enforcement Committee conditionally adopts the Executive Director's Recommended Enforcement Decision as its recommendation to the full Commission as specified in the attached memorandum.

☐ By a vote of \_\_\_ yeses, \_\_\_ noes, and \_\_\_ abstentions, the Enforcement Committee declines to adopt the Executive Director's Recommended Enforcement Decision and recommends that the full Commission decline to issue the proposed Cease and Desist and Civil Penalty Order for the reasons specified in the attached memorandum.

---

MARIE GILMORE, Chair

Enforcement Committee

San Francisco Bay Conservation and Development Commission

---

Date



## San Francisco Bay Conservation and Development Commission

375 Beale Street, Suite 510, San Francisco, California 94105 tel 415 352 3600 fax 888 348 5190

State of California | Gavin Newsom – Governor | [info@bcdc.ca.gov](mailto:info@bcdc.ca.gov) | [www.bcdc.ca.gov](http://www.bcdc.ca.gov)

### Commission Cease and Desist and Civil Penalty Order:

CCD2024.002.00

### Effective Date:

[Effective upon execution by the Executive Director,  
for Enforcement Committee consideration  
on April 11, 2024]

### Respondents:

Joe and Heidi Shekou

### To Joe and Heidi Shekou:

## I. Commission Cease and Desist Order

Pursuant to Cal. Gov. Code § 66638, Joe and Heidi Shekou (“Respondents”) are hereby ordered to:

- A. Cease and desist from violating Section 66632(a) of the McAtteer-Petris Act by illegally installing and operating an unauthorized two-megawatt, photovoltaic solar power plant within the Commission’s jurisdiction.
- B. By June 30, 2024, submit a filed, BCDC permit application with a feasible public access plan to install and operate the portion of the unauthorized two-megawatt, photovoltaic solar power plant and appurtenant fill located within BCDC’s jurisdiction.
- C. If a permit application is not filed as complete by June 30, 2024, and/or if Respondents fail to obtain after-the-fact BCDC authorization within ninety (90) days of completing their permit application, then Respondents shall entirely remove all unauthorized fill from the Commission’s jurisdiction within sixty (60) days of written notice to that effect by or on behalf of the Executive Director.
- D. Fully comply with the Requirements of Sections II, IV, and V of this Cease and Desist and Civil Penalty Order (“Order”).

## II. Civil Penalty Order

Pursuant to Cal. Gov. Code § 66641.6, Respondents are hereby ordered to:

- A. Pay administrative civil liability of thirty thousand dollars (\$30,000) to BCDC by cashier’s check made payable to the San Francisco Bay Conservation and Development Commission, to be deposited into the Bay Fill Clean-up and Abatement Fund, within thirty (30) days of issuance of this Order. The administrative civil liability consists of:
  1. Thirty thousand dollars (\$30,000) for the installation and operation since in or around January 2016 of an unauthorized two-megawatt, photovoltaic solar power



plant the Commission's jurisdiction, a violation of Section 66632(a) of the McAteer-Petris Act.

### III. Findings

**Factual Findings.** This Commission Cease and Desist and Civil Penalty Order is based on the findings summarized below. The enforcement record in support of these findings includes all documents cited herein and all documents identified at Cal. Code Regs. tit. 14, § 11370. A comprehensive set of findings is found in the Violation Report and Complaint for Administrative Civil Penalties (VR&C) that was issued on February 16, 2024.

- A. On May 31, 2000, Respondents the Joe and Heidi Shekou purchased the four parcels on which the unauthorized solar power plant is constructed and operating. (VR&C Exhibit 2)
- B. In 2014, Respondents and/or their agents pursued regulatory approvals from the City of Richmond, including CEQA compliance, and a jurisdictional determination from the United States Army Corps of Engineers. One of Respondents' City approvals included express notice to contact SF BCDC. Respondents did not contact BCDC to pursue a jurisdictional determination nor regulatory approval to construct a solar power plant at their property. (VR&C Exhibits 9, 10, 11, 13).
- C. Between January and October 2016, Respondents constructed a fenced, two-megawatt solar power plant at the site without a BCDC permit. (VR&C Exhibits 19 and 20)
- D. On January 18, 2017, BCDC Enforcement received a report that Respondents had undertaken unauthorized construction of a solar power plant and security fence adjacent to Elmar Court/Freethy Boulevard in Richmond, Contra Costa County without a BCDC permit. (VR&C Exhibit 15)
- E. On April 25, 2017, BCDC staff contacted Respondents whose Project Manager, Robert Herbst, informed BCDC staff that they had not obtained a BCDC permit prior to installing the solar power plant and security fence because they believed it was exempt from the requirement pursuant to Claim of Exemption CE 74-15, issued in May 1977. (VR&C Exhibits 17, 18 and 3-7)
- F. On June 22, 2017, BCDC staff established Enforcement Case ER2017.004.00. (VR&C Exhibit 16)
- G. On October 25, 2017, BCDC staff sent a notice of violations to Respondents informing them that Claim of Exemption CE 74-15 did not apply to the solar power plant project, and, therefore, they must apply to BCDC for an after-the-fact permit to install the solar panels and fence and must include a public access proposal. This notice initiated the accrual of standardized fines. (VR&C Exhibit 18)
- H. On December 7, 2017, Respondents met with BCDC staff to discuss the enforcement matter. (VR&C Exhibit 19)

- I. On February 5, 2018, Respondents, through attorney Ivo Keller, submitted a settlement offer, later rejected by staff.
- J. On May 16, 2018, BCDC staff conducted a site visit. Staff took measurements from the edge of tidal marsh toward the fence both to establish the approximate location of the BCDC's jurisdiction at the property, which extends around three side of the property due to the presence of a tidally-influenced channel that runs along the entire north side of the project site and partially along the east side of the project site. (VR&C Exhibit 19)
- K. On September 13, 2018, in response to Mr. Keller's February 5<sup>th</sup> letter, staff affirmed its position that BCDC has jurisdiction over the portion of the solar power plant built without authorization within BCDC's 100-foot shoreline band jurisdiction and stated that Respondents must seek and obtain an after-the-fact permit to authorize the project, provide maximum feasible public access consistent with the project, and pay an appropriate penalty. (VR&C Exhibits 20, 4, 5, 6, 7, and 8)
- L. On February 13, 2019, Respondents' representative, Mr. Herbst, submitted a cover letter and BCDC permit application, a full two years and 10 months after staff notified Respondents to seek after-the-fact BCDC project approval (VR&C Exhibits 21 and 22)
- M. On March 18, 2019, BCDC staff informed Respondent that Application M2019.004.00 was incomplete pending submittal of additional information such as project jurisdiction, project description and public access and open space exhibit, Bay Trail project details, a Bay Trail maintenance plans, a sea level rise risk assessment, site photographs, property interest documentation, other government approvals, environmental documentation, local government approval, a processing fee and confirmation of posting a public notice. Respondents did not respond to this letter for more than three years, until May 4, 2022. (VR&C Exhibits 23 and 27)
- N. On November 8, 2021, through Mr. Herbst, Respondents informed BCDC staff that they were prepared to proceed with a permit application for the solar power plant. (VR&C Exhibit 24)
- O. On November 16, 2021, staff informed Respondents, through Mr. Herbst, that they should proceed with filing its pending incomplete application or start with a new application and that in both cases maximum feasible public access would be required at the site. (VR&C Exhibit 24)
- P. On December 9, 2021, BCDC staff met with Mr. Ashwin Gulati, on behalf of Respondents, and stated that they needed to complete their pending incomplete application for the solar power plant. (VR&C Exhibits 25 & 26)
- Q. On January 27, 2022, Respondents, through Mr. Gulati, stated to staff that they were assembling a new team to address the BCDC matter and that he would reach back out in several weeks. On April 5 and 13, 2022, Mr. Gulati informed staff that Respondents had retained *WRA Consultants* to assist them with the BCDC requirements and that they would respond to BDC within a few weeks. On April 6, 2022, staff informed

- Respondents, through their representatives, that BCDC would be escalating the case to formal enforcement, but urged them to continue with the permitting process (VR&C Exhibit 25)
- R. On May 4, 2022, Respondents responded to staff's application filing letter, dated March 18, 2019, by submitting a letter and updated project description. (VR&C Exhibit 27)
  - S. On May 27, 2022, Respondents, through Mr. Gulati, requested coordination with BCDC on development of the Bay Trail segment. (VR&C Exhibit 28)
  - T. On June 3, 2022, BCDC staff responded to Respondents' application submittal, dated May 4, 2022, by requesting additional information necessary to file the permit application as complete. (VR&C Exhibit 26)
  - U. On June 21, 2022, Mr. Gulati stated that he had met with the owners and requested a meeting with BCDC staff to discuss next steps, which was scheduled for June 29, 2022. (VR&C Exhibit 29)
  - V. On June 29, 2022, staff informed Respondents, through Mr. Gulati, to contact staff with permitting questions and, stated that a formal enforcement proceeding was imminent. (VR&C Exhibit 30)
  - W. On June 30, 2022, Respondents, through Mr. Herbst, requested a meeting with BCDC staff to discuss a "best path forward to achieve maximum safe public access to the property." (VR&C Exhibit 31)
  - X. On July 1, 2022, Respondents, through Mr. Herbst, stated that they had recently made a resubmittal to BCDC and received the staff's response. Mr. Herbst stated Respondents wanted to meet with staff to better understand staff's expectations of maximum feasible public access. Mr. Herbst was subsequently referred to BCDC Permits staff to discuss permitting questions. (VR&C Exhibit 32)
  - Y. On September 19, 2022, Mr. Herbst provided BCDC with an updated public access plan, dated September 15, 2022, prepared by *Vallier Design*. (VR&C Exhibits 34 and 35)
  - Z. On November 19, 2022, Ms. Katharine Pan responded to the updated plan submittal dating from September 19, 2022, requesting changes to the plans. (VR&C Exhibit 34)
  - AA. On February 13, 2024, BCDC enforcement staff notified Respondents that the Executive Director had rescinded the opportunity to resolve this case using the standardized fine process, pursuant to BCDC Regulation 11390. VR&C (Exhibit 36)

### Legal Findings

- A. The Commission finds that Respondent has violated and is violating Section 66632(a) of the McAteer-Petris Act since January 2016, when solar power plant construction commenced, and since May 2018, when crushed asphalt was placed onsite to elevate the grade to allow for solar panel maintenance.

- B. The Commission finds that BCDC staff correctly identified one distinct violation of the law in this matter.
- C. The Commission finds that based on the factors provided by MPA Section 66641.9, a \$30,000 penalty for the single violation is appropriate.
- D. The Commission finds that the nature and extent of harm caused by the legal violation is moderate. Respondent has been operating a solar power plant for at least eight years with no BCDC authorization and no public access. With the provision of maximum feasible public access consistent with the project as provided by the McAteer Petris Act Section 66632.4, the portion of the solar power plant operation within the Commission's shoreline band jurisdiction should be eligible for after-the-fact authorization. Although, the public has permanently lost the opportunity to enjoy a shoreline public access benefit that should have been in place at least since solar power plant operation commenced in January 2016, a period of more than eight years.
- E. The Commission finds that while the violation may be susceptible to resolution through retroactive authorization, the public has been deprived of any public access at this site consistent with the project for more than eight years since its construction as described in Legal Finding D above.
- F. The Commission finds the cost to the state in pursuing this case since 2018 has been high as BCDC staff has been working with Respondent for more than eight years to cause them to submit a permit application.
- G. The Commission finds that Respondents are culpable for the violation due to their failure to: 1. Contact BCDC prior to commencing solar power plant construction in January 2016; 2. Submit a fileable application between at least 2018, when BCDC first contacted Respondents, and the present; and 3. Obtain after-the-fact authorization and provide public access between January 2016 and the present.
- H. The Commission finds that as Respondents did not avail of the opportunity to submit any defenses, including regarding their ability to pay, the Commission cannot consider potentially mitigating factors and imposition of the full penalty is appropriate.
- I. Based on these penalty factors, the Commission finds that an \$1,200 penalty per day for the failure to obtain a BCDC permit prior to commencing construction is appropriate.
- J. The Commission finds that Respondent has been responsible for the McAteer-Petris Act violation since January 2016 through the present, a period of at least 2,965 days or more than eight years.
- K. The Commission thus finds that the violation is subject to the maximum penalty allowed by the McAteer-Petris Act: \$30,000.
- L. The Commission finds that Respondents have received due process in the prosecution of this enforcement matter to date.



#### IV. Terms

- A. The Executive Director may, at his discretion, grant an extension of time for demonstrated good cause to comply with any provision of this Order.
- B. Respondents must strictly conform to the express terms of this Order. Under Cal. Gov. Code § 66641, any person who intentionally or negligently violates any part of any cease-and-desist order issued by the Commission may be liable civilly in the sum of up to \$6,000 for each day in which such violations persist. In addition, upon the failure of any person to comply with any cease-and-desist order issued by the Commission and upon the request of the Commission, the Attorney General of the State of California may petition the superior court for the issuance of a preliminary or permanent injunction, or both, restraining the person or persons from continuing any activity in violation of the cease-and-desist order.
- C. This Order does not affect any duties, rights, or obligations established under private agreements or by the laws and regulations of other public bodies.
- D. This Order does not constitute a recognition of property rights.
- E. This Order is effective upon issuance thereof.

#### IV. Judicial Review

- A. Under Cal. Gov. Code §§ 66639 & 66641.7(a), within thirty (30) days after service of a copy of a cease-and-desist order and civil penalty order issued by the Commission, an aggrieved party may file with the superior court a petition of writ of mandate for review of the order pursuant to Section 1094.5 of the Code of Civil Procedure.

Executed at San Francisco, California, on behalf of the San Francisco Bay Conservation and Development Commission on the date first above written.

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LAWRENCE J. GOLDZBAND, BCDC Executive Director

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Date

## Full Commission Motion and Action:

Please check one of the four boxes indicating your decision, then sign and return the memorandum to BCDC Staff:

☐ By a vote of \_\_\_ yeses, \_\_\_ noes, and \_\_\_ abstentions, the Commission concurs with the Enforcement Committee's Recommended Enforcement Decision and issues the proposed Cease and Desist and Civil Penalty Order.

☐ By a vote of \_\_\_ yeses, \_\_\_ noes, and \_\_\_ abstentions, the Commission votes to dismiss this matter and declines to issue the proposed Cease and Desist and Civil Penalty Order for the reasons specified in the attached memorandum.

☐ By a vote of \_\_\_ yeses, \_\_\_ noes, and \_\_\_ abstentions, the Commission votes to remand the matter back to the Enforcement Committee for further action for the reasons specified in the attached memorandum.

☐ By a vote of \_\_\_ yeses, \_\_\_ noes, and \_\_\_ abstentions, the Commission rejects the Enforcement Committee's Recommended Enforcement Decision and decides to consider the entire matter de novo at the Commission meeting on \_\_\_\_\_.

---

Zachary Wasserman, Commission Chair  
San Francisco Bay Conservation and Development Commission

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Date:

# RED Exhibit B1

**From:** [Robert Herbst](#)  
**To:** [katharine.pan@bcdc.ca.gov](mailto:katharine.pan@bcdc.ca.gov)  
**Cc:** [Klein, Adrienne@BCDC](#); [Joe Shekou](#)  
**Subject:** RE: BCDC/ Solar Farm - Bay Trail  
**Date:** Wednesday, February 14, 2024 4:59:41 PM

---

Hi Katherine,

Adrienne Klein sent over the below email from you to me. I'm not really sure what happened, but we're eager to get the permit application back on track now and get the trail built.

In answer to your comments/questions, we'll revisit with the designer whether we can squeeze out any extra space between the trail and the solar farm fence.

Regarding Powerplant Park, we are using the same designer as them (Vallier Design Associates), and our trail segment is specifically designed to mate with their trail segment.

The eastern end of the trail returns to Elmar Court because there is a wide and deep tidal drainage ditch that separates the solar farm from Goodrick Avenue. The only crossing of that ditch is located at Elmar Court. The existing Bay Trail segment is actually located on the opposite side of Goodrick Avenue from the solar farm. Therefore the safest Goodrick crossing point (and the natural location for a crosswalk) is at the Elmar Court/Goodrick Avenue intersection. Elmar Court is paved and maintained by the City of Richmond. There is no curb and gutter along Elmar Court, so the new paved trail will meet the existing Elmar Court pavement section at grade. We will add a Bay Trail sign at this junction.

I'll reach back out to Vallier Design Associates to make the changes discussed above and finalize and resubmit our permit application. Please let me know if you have any further questions/comments on the information provided above.

Best,  
Bob Herbst  
JHS Properties  
415-472-7700

---

**From:** Klein, Adrienne@BCDC <adrienne.klein@bcdc.ca.gov>  
**Sent:** Wednesday, February 14, 2024 12:30 PM  
**To:** Robert Herbst <rherbst@jhsproperties.net>; sapidrood@yahoo.com; Joe Shekou <jshekou@jhsproperties.net>  
**Cc:** shasa\_curl@ci.richmond.ca.us; irene\_lozano@ci.richmond.ca.us; Malan, Margie@BCDC <margie.malan@bcdc.ca.gov>  
**Subject:** 2024.02.14\_ER2017.004.00Includes2022.11.19PanEmail

Dear Bob,

# RED Exhibit B1

Many thanks for communicating Joe's preference to receive BCDC communication by email AND US post. We can and will oblige. Is this the address he prefers or is there another: Joe and Heidi Shekou, 2165 Francisco Boulevard, San Rafael, CA 94901

I have copy and pasted the email content that you have requested and were unable to read as an attachment.

Sincerely,

Adrienne

## **BEGINNING OF PASTED EMAIL COMMUNICATION YOU REQUESTED**

### **From:**

**Sent on:** Saturday, November 19, 2022 1:00:49 AM

**To:** Robert Herbst [rherbst@jhsproperties.net](mailto:rherbst@jhsproperties.net)

**CC:** Gaffney, Andrea@BCDC [andrea.gaffney@bcdcc.ca.gov](mailto:andrea.gaffney@bcdcc.ca.gov); Plater, Brent@BCDC [brent.plater@bcdcc.ca.gov](mailto:brent.plater@bcdcc.ca.gov)

**Subject:** RE: BCDC/ Solar Farm - Bay Trail

Hi Bob,

Thanks for your patience. Our only major comment after reviewing the design is that it would be better if there were 18-24 inches of space between the fence and the edge of the trail so that the full width of the trail could be used. We also have a few questions about the trail connections, below. You can either address these now or as part of your application materials, we just want to make sure we understand what's happening around the trail connections and may have additional questions or comments about the details.

1. Have you communicated with the Powerplant Park project proponents about how this will connect to their segment? I think you mentioned you were in contact, so it would be great to hear a little about that planning if you've discussed it.
2. For the eastern end of the trail, how does the segment eventually connect to the shared path on Goodrick? Would it be more effective to connect the trail to Goodrick rather than Elmar, or is there reason you're proposing Elmar? Can you tell us a little more about the end of the trail, how it's graded/striped/signed to be a smooth connection?

### **Katharine Pan**

Principal Shoreline Development Analyst

Direct: (415) 352-3650 | [katharine.pan@bcdcc.ca.gov](mailto:katharine.pan@bcdcc.ca.gov)

San Francisco Bay Conservation and Development Commission

Bay Area Metro Center

375 Beale Street, Ste. 510

San Francisco, CA 94105

Main: (415) 352-3600

[www.bcdcc.ca.gov](http://www.bcdcc.ca.gov) | [@SFBCDC](https://twitter.com/SFBCDC)

# RED Exhibit B1

**From:** Robert Herbst [rherbst@jhsproperties.net](mailto:rherbst@jhsproperties.net)  
**Sent:** Monday, October 17, 2022 3:20 PM  
**To:** Plater, Brent@BCDC [brent.plater@bcdcc.ca.gov](mailto:brent.plater@bcdcc.ca.gov); Pan, Katharine@BCDC [katharine.pan@bcdcc.ca.gov](mailto:katharine.pan@bcdcc.ca.gov)  
**Subject:** FW: BCDC/ Solar Farm - Bay Trail

Hi Brent & Katharine,  
Just following up on the email below. Any comments or should we proceed with a revised application?  
Thanks,  
Bob

**From:** Robert Herbst  
**Sent:** Monday, September 19, 2022 11:06 AM  
**To:** Plater, Brent@BCDC <[brent.plater@bcdcc.ca.gov](mailto:brent.plater@bcdcc.ca.gov)>; Pan, Katharine@BCDC <[katharine.pan@bcdcc.ca.gov](mailto:katharine.pan@bcdcc.ca.gov)>  
**Subject:** FW: BCDC/ Solar Farm - Bay Trail

Hi Brent & Katherine,

Vallier Design has completed their plan showing the trail looping around the solar farm back to Goodrick Avenue, as you requested in our last discussions. To do a full 12 foot paved trail plus 3 foot shoulders on each side will require moving the existing fence and removing some solar panels at the ends of the panel rows. That's what we show on the attached plan, but ideally we'd like to reduce the paved trail section in this area (Section B) to 10 feet to avoid the need to remove solar panels. Please let us know if that might be a possibility, and provide any other feedback you have on the drawing. We're ready to resubmit for BCDC review and approval.

Best,  
Bob Herbst  
JHS Properties  
415-472-7700

It's going to require moving the perimeter fence and some solar panels at the ends of the

We've managed to fit it in without removing any solar panels, but it did require us to move the existing perimeter fence right up against the back of the solar panels.

This creates a bunch of dead ends in the panel rows, which makes maintenance more difficult and time consuming, but we'll deal with it.

It requires us to move the existing perimeter fence along the gun club property boundary

**From:** Ashwin Gulati <[ashwingulati@gmail.com](mailto:ashwingulati@gmail.com)>



# RED Exhibit B1

**Sent:** Thursday, September 15, 2022 3:39 PM  
**To:** Robert Herbst <[rherbst@jhsproperties.net](mailto:rherbst@jhsproperties.net)>  
**Cc:** Joe Shekou <[Sapidrood@yahoo.com](mailto:Sapidrood@yahoo.com)>  
**Subject:** BCDC/ Solar Farm - Bay Trail

Bob,

Attached are the updated plans with rails removed....Vallier recommends having some sort of barrier at the edge of the trail if there is a drop off of more than 2"

Let's see what BCDC says and take it from there.

Ashwin

**END OF PASTED EMAIL COMMUNICATION YOU REQUESTED**

---

**From:** Robert Herbst <[rherbst@jhsproperties.net](mailto:rherbst@jhsproperties.net)>  
**Date:** Tuesday, February 13, 2024 at 4:23 PM  
**To:** Klein, Adrienne@BCDC <[adrienne.klein@bcdc.ca.gov](mailto:adrienne.klein@bcdc.ca.gov)>, [sapidrood@yahoo.com](mailto:sapidrood@yahoo.com) <[sapidrood@yahoo.com](mailto:sapidrood@yahoo.com)>, Joe Shekou <[jshekou@jhsproperties.net](mailto:jshekou@jhsproperties.net)>  
**Cc:** [shasa\\_curl@ci.richmond.ca.us](mailto:shasa_curl@ci.richmond.ca.us) <[shasa\\_curl@ci.richmond.ca.us](mailto:shasa_curl@ci.richmond.ca.us)>, [irene\\_lozano@ci.richmond.ca.us](mailto:irene_lozano@ci.richmond.ca.us) <[irene\\_lozano@ci.richmond.ca.us](mailto:irene_lozano@ci.richmond.ca.us)>, Malan, Margie@BCDC <[margie.malan@bcdc.ca.gov](mailto:margie.malan@bcdc.ca.gov)>  
**Subject:** RE: 2024.02.12\_ER2017.004.00NoticeOfRecission and Request for Permission to Communicate by Electronic Mail

Hi Adrienne,

Joe asked if you could continue to send postal communications along with email copies. We've had some recent hacking of our email accounts here so we prefer not to trust it as our sole means of communication given the nature of the correspondence.

Also could you please try resending the Nov. 2022 BCDC communication, I believe you said from Katherine Pan? We weren't able to open the file format in which it was sent. You could try simply forwarding the original email over to us if that works for you. As I said yesterday, we'd like to respond back to Katherine ASAP and get the permit application back on track.

Best,  
Bob Herbst  
JHS Properties  
415-472-7700

---

**From:** Klein, Adrienne@BCDC <[adrienne.klein@bcdc.ca.gov](mailto:adrienne.klein@bcdc.ca.gov)>  
**Sent:** Monday, February 12, 2024 4:03 PM  
**To:** [sapidrood@yahoo.com](mailto:sapidrood@yahoo.com); Joe Shekou <[jshekou@jhsproperties.net](mailto:jshekou@jhsproperties.net)>

# RED Exhibit B1

**Cc:** [shasa\\_curl@ci.richmond.ca.us](mailto:shasa_curl@ci.richmond.ca.us); [irene\\_lozano@ci.richmond.ca.us](mailto:irene_lozano@ci.richmond.ca.us); Robert Herbst  
<[rherbst@jhsproperties.net](mailto:rherbst@jhsproperties.net)>; Malan, Margie@BCDC <[margie.malan@bcdc.ca.gov](mailto:margie.malan@bcdc.ca.gov)>

**Subject:** 2024.02.12\_ER2017.004.00NoticeOfRecission and Request for Permission to Communicate by Electronic Mail

024.02.12\_ER2017.004.00

Notice Of Recission

Request for Permission to Communicate by Electronic Mail

Dear Joe Shekou,

Please see:

1. The attached letter, being resent to include Bob Herbst at his correct email address (our apologies for the typo this morning), which rescinds your opportunity to resolve the enforcement case involving an unauthorized solar farm, using standardized fines. BCDC plans to issue a Violation Report and Complaint this week, which will lead to two public hearings and likely a cease and desist and civil penalty order; and
2. BCDC's last communication to you, care of Mr. Herbst, sent in November 2022, a copy of which Mr. Herbst asked me to reshare during a telephone conversation we completed 15 minutes ago.

Please advise if you'd prefer to receive the Violation Report and Complaint, and its attachments, and all subsequent communications from BCDC, by email or by US postal service?

As Mr. Herbst noted during our call, you may certainly proceed with filing your BCDC application concurrently with the enforcement proceeding. Katharine Pan is still the BCDC contact for the application process and I would welcome to be copied.

Sincerely,

Adrienne Klein  
415-352-3609

---

**From:** Malan, Margie@BCDC <[margie.malan@bcdc.ca.gov](mailto:margie.malan@bcdc.ca.gov)>

**Date:** Monday, February 12, 2024 at 9:57 AM

**To:** [sapidrood@yahoo.com](mailto:sapidrood@yahoo.com) <[sapidrood@yahoo.com](mailto:sapidrood@yahoo.com)>

**Cc:** [rherbst@jhsproperties.com](mailto:rherbst@jhsproperties.com) <[rherbst@jhsproperties.com](mailto:rherbst@jhsproperties.com)>, [ashwingulati@gmail.com](mailto:ashwingulati@gmail.com) <[ashwingulati@gmail.com](mailto:ashwingulati@gmail.com)>, [shasa\\_curl@ci.richmond.ca.us](mailto:shasa_curl@ci.richmond.ca.us) <[shasa\\_curl@ci.richmond.ca.us](mailto:shasa_curl@ci.richmond.ca.us)>, [irene\\_lozano@ci.richmond.ca.us](mailto:irene_lozano@ci.richmond.ca.us) <[irene\\_lozano@ci.richmond.ca.us](mailto:irene_lozano@ci.richmond.ca.us)>, Klein, Adrienne@BCDC <[adrienne.klein@bcdc.ca.gov](mailto:adrienne.klein@bcdc.ca.gov)>

**Subject:** 2024.02.1\_ER2017.004.00NoticeOfRecission

# RED Exhibit B1

Dear Joe and Heidi Shekou:

Please see attached letter on behalf of Adrienne Klein. If you have any questions, please contact Adrienne by phone at 415-352-3609 or by email at [adrienne.klein@bcdc.ca.gov](mailto:adrienne.klein@bcdc.ca.gov).

Sincerely,

Margie F. Malan, Legal Secretary

San Francisco Bay Conservation and Development Commission (BCDC)

Bay Area Metro Center

375 Beale St, Suite 510, San Francisco, CA 94105

Direct: (415) 352-3675

Main: (415) 352-3600

Email: [margie.malan@bcdc.ca.gov](mailto:margie.malan@bcdc.ca.gov)

Website: [www.bcdc.ca.gov](http://www.bcdc.ca.gov)

# RED Exhibit B2

**From:** [Klein, Adrienne@BCDC](mailto:Klein,Adrienne@BCDC)  
**To:** [Robert Herbst](#); [Joe Shekou](#)  
**Cc:** [Pan, Katharine@BCDC](#); [Trujillo, Matthew@BCDC](#)  
**Subject:** Re: 2024.03.26 BCDC Solar Farm -Bay Trail  
**Date:** Tuesday, March 26, 2024 2:28:19 PM

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Dear Bob,

I am confirming receipt of this email and the updated plans, which will be reviewed by BCDC staff. However, as noted in my email this morning, please reply in full to the letter dated June 3, 2022, to file your application as complete.

I don't expect that the BCDC staff will postpone the hearing but your request is copied to Matthew Trujillo, who will correct me if I am mistaken.

Sincerely,

Adrienne Klein

---

**From:** Robert Herbst <rherbst@jhsproperties.net>  
**Date:** Tuesday, March 26, 2024 at 2:22 PM  
**To:** Klein, Adrienne@BCDC <adrienne.klein@bcdca.gov>, Joe Shekou <jshekou@jhsproperties.net>  
**Cc:** Pan, Katharine@BCDC <katharine.pan@bcdca.gov>, Trujillo, Matthew@BCDC <Matthew.Trujillo@bcdca.gov>  
**Subject:** RE: 2024.03.26 BCDC Solar Farm -Bay Trail

Hi Adrienne,

We just received the revised project plans (attached) from Vallier Design Associates, which address Katherine Pan's comments in the chain below. We would like to request a postponement of the enforcement hearing to give us time to complete the BCDC application based on these revised plans. If no postponement can be granted, we will of course attend the hearing, but either way as we have stated, our intention has been and remains to complete the proposed trail alignment in accordance with recommendations we have received from BCDC staff.

Best,  
Bob Herbst  
JHS Properties  
415-472-7700

---

**From:** Klein, Adrienne@BCDC <adrienne.klein@bcdca.gov>  
**Sent:** Tuesday, March 26, 2024 11:59 AM  
**To:** Robert Herbst <rherbst@jhsproperties.net>; Joe Shekou <jshekou@jhsproperties.net>

# RED Exhibit B2

**Cc:** Pan, Katharine@BCDC <katharine.pan@bcdcc.ca.gov>; Trujillo, Matthew@BCDC <Matthew.Trujillo@bcdcc.ca.gov>

**Subject:** 2024.03.26 BCDC Solar Farm -Bay Trail

Dear Joe Shekou and Bob Herbst,

This morning, I called both of you to check in about the formal enforcement proceeding commenced by BCDC on February 16<sup>th</sup> with the issuance of a Violation Report and Complaint to address the unauthorized solar farm operating in Richmond.

I did not reach either of you. I left a message for Bob and, when trying to reach Joe, Nima answered the telephone and referred me to Len Nibby. When I stated I had left a message for Bob, Nima confirmed that he represents Joe and that Bob would call me back.

BCDC emailed and mailed a Violation Report and Complaint (VR&C) on February 16, 2024. On or before March 22, 2024, we expected, but did not receive, a Statement of Defense (SOD). The deadline to submit the SOD has passed.

As noted in the VR&C, the public is hearing scheduled for April 11, 2024. On Friday, March 29, 2024, BCDC staff will mail a Recommended Enforcement Decision and Proposed Cease and Desist and Civil Penalty Order to the BCDC Enforcement Committee, to be considered at the public hearing on April 11, 2024. Please plan to attend this hearing, which you may do either in person at 375 Beale Street in SF or virtually via Zoom.

As noted below, on February 14, 2024, Bob wrote to Katharine Pan stating that that he would update the application with the information staff needs to file it as complete. **Between February 14 and today, I find no record that you have submitted any updated application filing materials.**

Please respond immediately and in full to BCDC's letter, dated June 3, 2022, and email, dated November 19, 2022 (both attached) by : 1. Providing an explanation of how the project is consistent with San Francisco Bay Plan Policy 1 regarding maximum feasible public access; 2. Addressing whether and how staff's December 9, 2021, guidance has been considered; 3. Providing additional public access details and dimensions on the project plans, including relocating portions of the unauthorized fence and solar panels away from the edge of the decomposed granite trail shoulder so that the public can use the full width of the shoreline pathway; 4. Providing a revised total project cost to assess the appropriate application fee; and 5. Providing a copy of the environmental documentation required by CEQA.

Sincerely,

Adrienne Klein  
415-352-3609

---

**From:** Robert Herbst <[rherbst@jhsproperties.net](mailto:rherbst@jhsproperties.net)>

**Date:** Wednesday, February 14, 2024 at 4:59 PM



# RED Exhibit B2

**To:** Pan, Katharine@BCDC <[katharine.pan@bcdc.ca.gov](mailto:katharine.pan@bcdc.ca.gov)>  
**Cc:** Klein, Adrienne@BCDC <[adrienne.klein@bcdc.ca.gov](mailto:adrienne.klein@bcdc.ca.gov)>, Joe Shekou <[jshekou@jhsproperties.net](mailto:jshekou@jhsproperties.net)>  
**Subject:** RE: BCDC/ Solar Farm - Bay Trail

Hi Katherine,

Adrienne Klein sent over the below email from you to me. I'm not really sure what happened, but we're eager to get the permit application back on track now and get the trail built.

In answer to your comments/questions, we'll revisit with the designer whether we can squeeze out any extra space between the trail and the solar farm fence.

Regarding Powerplant Park, we are using the same designer as them (Vallier Design Associates), and our trail segment is specifically designed to mate with their trail segment.

The eastern end of the trail returns to Elmar Court because there is a wide and deep tidal drainage ditch that separates the solar farm from Goodrick Avenue. The only crossing of that ditch is located at Elmar Court. The existing Bay Trail segment is actually located on the opposite side of Goodrick Avenue from the solar farm. Therefore the safest Goodrick crossing point (and the natural location for a crosswalk) is at the Elmar Court/Goodrick Avenue intersection. Elmar Court is paved and maintained by the City of Richmond. There is no curb and gutter along Elmar Court, so the new paved trail will meet the existing Elmar Court pavement section at grade. We will add a Bay Trail sign at this junction.

I'll reach back out to Vallier Design Associates to make the changes discussed above and finalize and resubmit our permit application. Please let me know if you have any further questions/comments on the information provided above.

Best,  
Bob Herbst  
JHS Properties  
415-472-7700

---

**From:** Klein, Adrienne@BCDC <[adrienne.klein@bcdc.ca.gov](mailto:adrienne.klein@bcdc.ca.gov)>  
**Sent:** Wednesday, February 14, 2024 12:30 PM  
**To:** Robert Herbst <[rherbst@jhsproperties.net](mailto:rherbst@jhsproperties.net)>; [sapidrood@yahoo.com](mailto:sapidrood@yahoo.com); Joe Shekou <[jshekou@jhsproperties.net](mailto:jshekou@jhsproperties.net)>  
**Cc:** [shasa\\_curl@ci.richmond.ca.us](mailto:shasa_curl@ci.richmond.ca.us); [irene\\_lozano@ci.richmond.ca.us](mailto:irene_lozano@ci.richmond.ca.us); Malan, Margie@BCDC <[margie.malan@bcdc.ca.gov](mailto:margie.malan@bcdc.ca.gov)>  
**Subject:** 2024.02.14\_ER2017.004.00Includes2022.11.19PanEmail

Dear Bob,

# RED Exhibit B2

Many thanks for communicating Joe's preference to receive BCDC communication by email AND US post. We can and will oblige. Is this the address he prefers or is there another: Joe and Heidi Shekou, 2165 Francisco Boulevard, San Rafael, CA 94901

I have copy and pasted the email content that you have requested and were unable to read as an attachment.

Sincerely,

Adrienne

## **BEGINNING OF PASTED EMAIL COMMUNICATION YOU REQUESTED**

### **From:**

**Sent on:** Saturday, November 19, 2022 1:00:49 AM

**To:** Robert Herbst [rherbst@jhsproperties.net](mailto:rherbst@jhsproperties.net)

**CC:** Gaffney, Andrea@BCDC [andrea.gaffney@bcdcc.ca.gov](mailto:andrea.gaffney@bcdcc.ca.gov); Plater, Brent@BCDC [brent.plater@bcdcc.ca.gov](mailto:brent.plater@bcdcc.ca.gov)

**Subject:** RE: BCDC/ Solar Farm - Bay Trail

Hi Bob,

Thanks for your patience. Our only major comment after reviewing the design is that it would be better if there were 18-24 inches of space between the fence and the edge of the trail so that the full width of the trail could be used. We also have a few questions about the trail connections, below. You can either address these now or as part of your application materials, we just want to make sure we understand what's happening around the trail connections and may have additional questions or comments about the details.

1. Have you communicated with the Powerplant Park project proponents about how this will connect to their segment? I think you mentioned you were in contact, so it would be great to hear a little about that planning if you've discussed it.
2. For the eastern end of the trail, how does the segment eventually connect to the shared path on Goodrick? Would it be more effective to connect the trail to Goodrick rather than Elmar, or is there reason you're proposing Elmar? Can you tell us a little more about the end of the trail, how it's graded/stripped/signed to be a smooth connection?

### **Katharine Pan**

Principal Shoreline Development Analyst

Direct: (415) 352-3650 | [katharine.pan@bcdcc.ca.gov](mailto:katharine.pan@bcdcc.ca.gov)

San Francisco Bay Conservation and Development Commission

Bay Area Metro Center

375 Beale Street, Ste. 510

San Francisco, CA 94105

Main: (415) 352-3600

[www.bcdcc.ca.gov](http://www.bcdcc.ca.gov) | [@SFBCDC](https://twitter.com/SFBCDC)

# RED Exhibit B2

**From:** Robert Herbst [rherbst@jhsproperties.net](mailto:rherbst@jhsproperties.net)  
**Sent:** Monday, October 17, 2022 3:20 PM  
**To:** Plater, Brent@BCDC [brent.plater@bcdcc.ca.gov](mailto:brent.plater@bcdcc.ca.gov); Pan, Katharine@BCDC [katharine.pan@bcdcc.ca.gov](mailto:katharine.pan@bcdcc.ca.gov)  
**Subject:** FW: BCDC/ Solar Farm - Bay Trail

Hi Brent & Katharine,  
Just following up on the email below. Any comments or should we proceed with a revised application?  
Thanks,  
Bob

**From:** Robert Herbst  
**Sent:** Monday, September 19, 2022 11:06 AM  
**To:** Plater, Brent@BCDC <[brent.plater@bcdcc.ca.gov](mailto:brent.plater@bcdcc.ca.gov)>; Pan, Katharine@BCDC <[katharine.pan@bcdcc.ca.gov](mailto:katharine.pan@bcdcc.ca.gov)>  
**Subject:** FW: BCDC/ Solar Farm - Bay Trail

Hi Brent & Katherine,

Vallier Design has completed their plan showing the trail looping around the solar farm back to Goodrick Avenue, as you requested in our last discussions. To do a full 12 foot paved trail plus 3 foot shoulders on each side will require moving the existing fence and removing some solar panels at the ends of the panel rows. That's what we show on the attached plan, but ideally we'd like to reduce the paved trail section in this area (Section B) to 10 feet to avoid the need to remove solar panels. Please let us know if that might be a possibility, and provide any other feedback you have on the drawing. We're ready to resubmit for BCDC review and approval.

Best,  
Bob Herbst  
JHS Properties  
415-472-7700

It's going to require moving the perimeter fence and some solar panels at the ends of the

We've managed to fit it in without removing any solar panels, but it did require us to move the existing perimeter fence right up against the back of the solar panels.

This creates a bunch of dead ends in the panel rows, which makes maintenance more difficult and time consuming, but we'll deal with it.

It requires us to move the existing perimeter fence along the gun club property boundary

**From:** Ashwin Gulati <[ashwingulati@gmail.com](mailto:ashwingulati@gmail.com)>

# RED Exhibit B2

**Sent:** Thursday, September 15, 2022 3:39 PM  
**To:** Robert Herbst <[rherbst@jhsproperties.net](mailto:rherbst@jhsproperties.net)>  
**Cc:** Joe Shekou <[Sapidrood@yahoo.com](mailto:Sapidrood@yahoo.com)>  
**Subject:** BCDC/ Solar Farm - Bay Trail

Bob,

Attached are the updated plans with rails removed....Vallier recommends having some sort of barrier at the edge of the trail if there is a drop off of more than 2"

Let's see what BCDC says and take it from there.

Ashwin

**END OF PASTED EMAIL COMMUNICATION YOU REQUESTED**

---

**From:** Robert Herbst <[rherbst@jhsproperties.net](mailto:rherbst@jhsproperties.net)>  
**Date:** Tuesday, February 13, 2024 at 4:23 PM  
**To:** Klein, Adrienne@BCDC <[adrienne.klein@bcdc.ca.gov](mailto:adrienne.klein@bcdc.ca.gov)>, [sapidrood@yahoo.com](mailto:sapidrood@yahoo.com) <[sapidrood@yahoo.com](mailto:sapidrood@yahoo.com)>, Joe Shekou <[jshskou@jhsproperties.net](mailto:jshskou@jhsproperties.net)>  
**Cc:** [shasa\\_curl@ci.richmond.ca.us](mailto:shasa_curl@ci.richmond.ca.us) <[shasa\\_curl@ci.richmond.ca.us](mailto:shasa_curl@ci.richmond.ca.us)>, [irene\\_lozano@ci.richmond.ca.us](mailto:irene_lozano@ci.richmond.ca.us) <[irene\\_lozano@ci.richmond.ca.us](mailto:irene_lozano@ci.richmond.ca.us)>, Malan, Margie@BCDC <[margie.malan@bcdc.ca.gov](mailto:margie.malan@bcdc.ca.gov)>  
**Subject:** RE: 2024.02.12\_ER2017.004.00NoticeOfRecission and Request for Permission to Communicate by Electronic Mail

Hi Adrienne,

Joe asked if you could continue to send postal communications along with email copies. We've had some recent hacking of our email accounts here so we prefer not to trust it as our sole means of communication given the nature of the correspondence.

Also could you please try resending the Nov. 2022 BCDC communication, I believe you said from Katherine Pan? We weren't able to open the file format in which it was sent. You could try simply forwarding the original email over to us if that works for you. As I said yesterday, we'd like to respond back to Katherine ASAP and get the permit application back on track.

Best,  
Bob Herbst  
JHS Properties  
415-472-7700

---

**From:** Klein, Adrienne@BCDC <[adrienne.klein@bcdc.ca.gov](mailto:adrienne.klein@bcdc.ca.gov)>  
**Sent:** Monday, February 12, 2024 4:03 PM  
**To:** [sapidrood@yahoo.com](mailto:sapidrood@yahoo.com); Joe Shekou <[jshskou@jhsproperties.net](mailto:jshskou@jhsproperties.net)>

# RED Exhibit B2

**Cc:** [shasa\\_curl@ci.richmond.ca.us](mailto:shasa_curl@ci.richmond.ca.us); [irene\\_lozano@ci.richmond.ca.us](mailto:irene_lozano@ci.richmond.ca.us); Robert Herbst  
<[rherbst@jhsproperties.net](mailto:rherbst@jhsproperties.net)>; Malan, Margie@BCDC <[margie.malan@bcdca.gov](mailto:margie.malan@bcdca.gov)>

**Subject:** 2024.02.12\_ER2017.004.00NoticeOfRecission and Request for Permission to Communicate by Electronic Mail

024.02.12\_ER2017.004.00

Notice Of Recission

Request for Permission to Communicate by Electronic Mail

Dear Joe Shekou,

Please see:

1. The attached letter, being resent to include Bob Herbst at his correct email address (our apologies for the typo this morning), which rescinds your opportunity to resolve the enforcement case involving an unauthorized solar farm, using standardized fines. BCDC plans to issue a Violation Report and Complaint this week, which will lead to two public hearings and likely a cease and desist and civil penalty order; and
2. BCDC's last communication to you, care of Mr. Herbst, sent in November 2022, a copy of which Mr. Herbst asked me to reshare during a telephone conversation we completed 15 minutes ago.

Please advise if you'd prefer to receive the Violation Report and Complaint, and its attachments, and all subsequent communications from BCDC, by email or by US postal service?

As Mr. Herbst noted during our call, you may certainly proceed with filing your BCDC application concurrently with the enforcement proceeding. Katharine Pan is still the BCDC contact for the application process and I would welcome to be copied.

Sincerely,

Adrienne Klein  
415-352-3609

---

**From:** Malan, Margie@BCDC <[margie.malan@bcdca.gov](mailto:margie.malan@bcdca.gov)>

**Date:** Monday, February 12, 2024 at 9:57 AM

**To:** [sapidrood@yahoo.com](mailto:sapidrood@yahoo.com) <[sapidrood@yahoo.com](mailto:sapidrood@yahoo.com)>

**Cc:** [rherbst@jhsproperties.com](mailto:rherbst@jhsproperties.com) <[rherbst@jhsproperties.com](mailto:rherbst@jhsproperties.com)>, [ashwingulati@gmail.com](mailto:ashwingulati@gmail.com) <[ashwingulati@gmail.com](mailto:ashwingulati@gmail.com)>, [shasa\\_curl@ci.richmond.ca.us](mailto:shasa_curl@ci.richmond.ca.us) <[shasa\\_curl@ci.richmond.ca.us](mailto:shasa_curl@ci.richmond.ca.us)>, [irene\\_lozano@ci.richmond.ca.us](mailto:irene_lozano@ci.richmond.ca.us) <[irene\\_lozano@ci.richmond.ca.us](mailto:irene_lozano@ci.richmond.ca.us)>, Klein, Adrienne@BCDC <[adrienne.klein@bcdca.gov](mailto:adrienne.klein@bcdca.gov)>

**Subject:** 2024.02.1\_ER2017.004.00NoticeOfRecission



# RED Exhibit B2

Dear Joe and Heidi Shekou:

Please see attached letter on behalf of Adrienne Klein. If you have any questions, please contact Adrienne by phone at 415-352-3609 or by email at [adrienne.klein@bcdc.ca.gov](mailto:adrienne.klein@bcdc.ca.gov).

Sincerely,

Margie F. Malan, Legal Secretary

San Francisco Bay Conservation and Development Commission (BCDC)

Bay Area Metro Center

375 Beale St, Suite 510, San Francisco, CA 94105

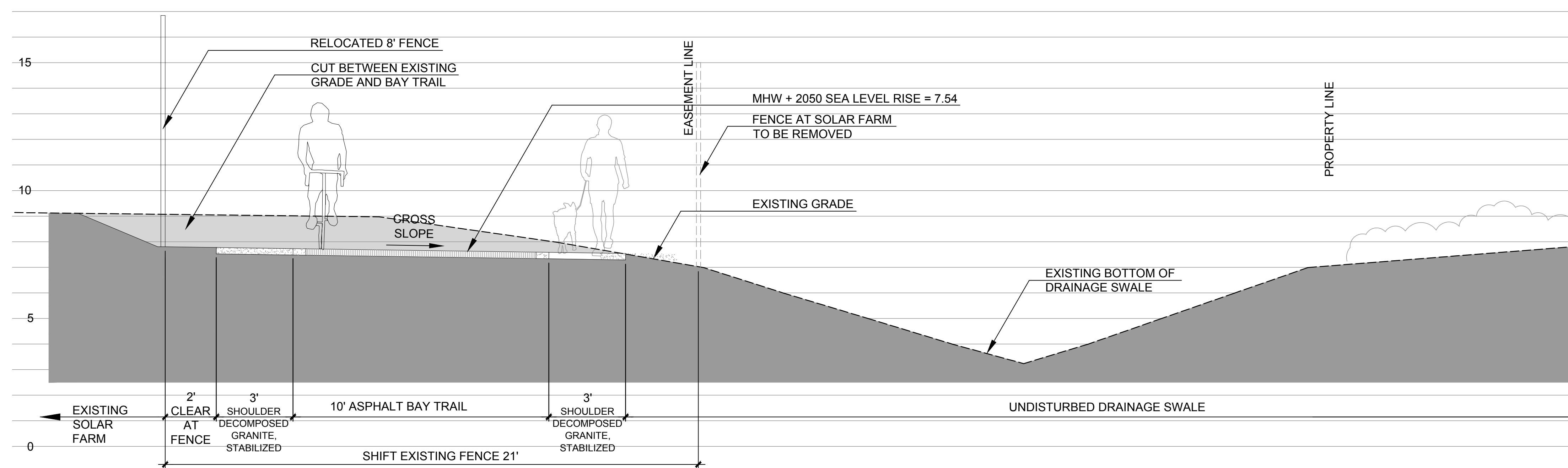
Direct: (415) 352-3675

Main: (415) 352-3600

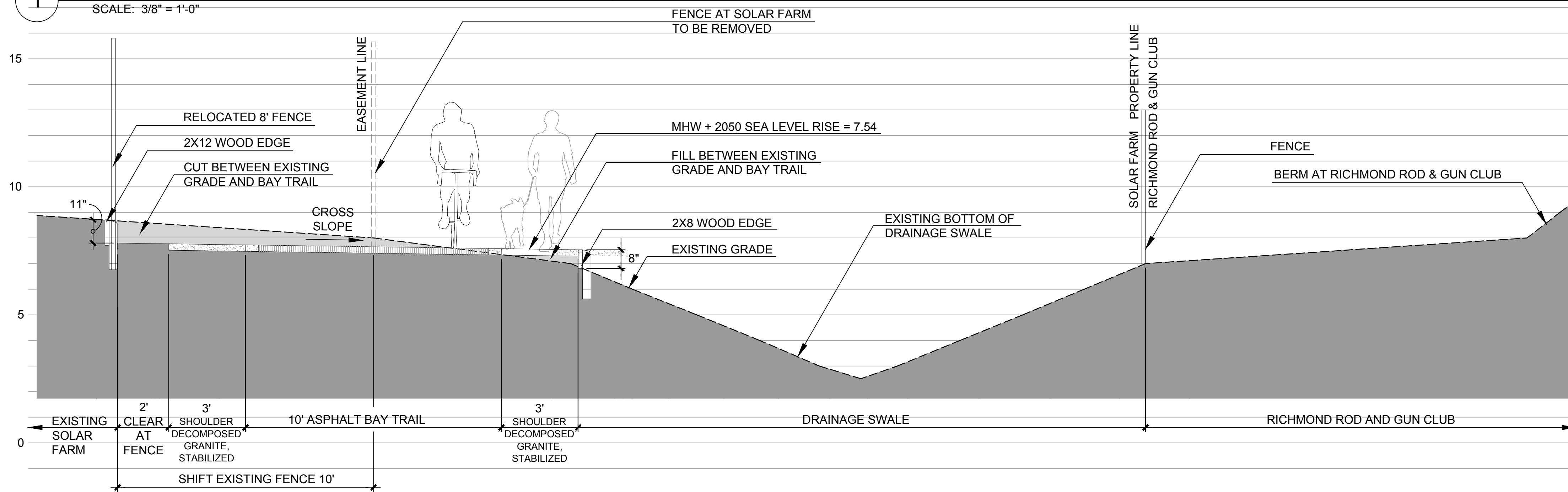
Email: [margie.malan@bcdc.ca.gov](mailto:margie.malan@bcdc.ca.gov)

Website: [www.bcdc.ca.gov](http://www.bcdc.ca.gov)

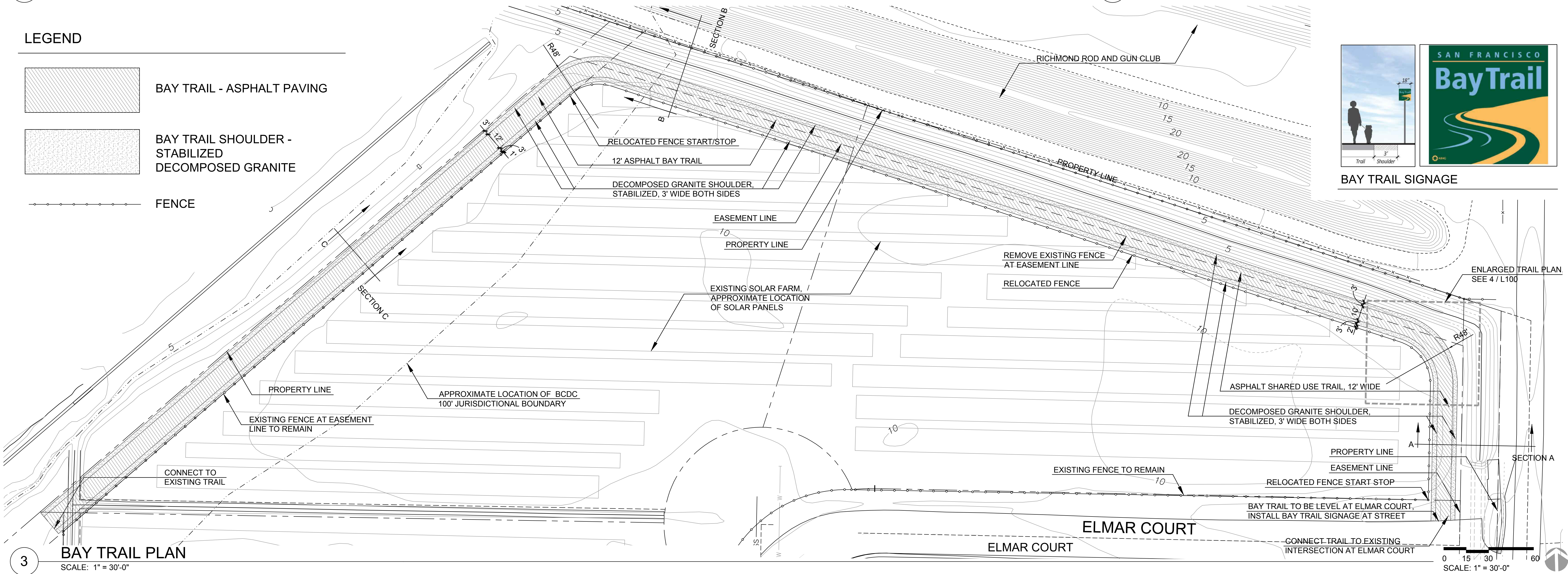
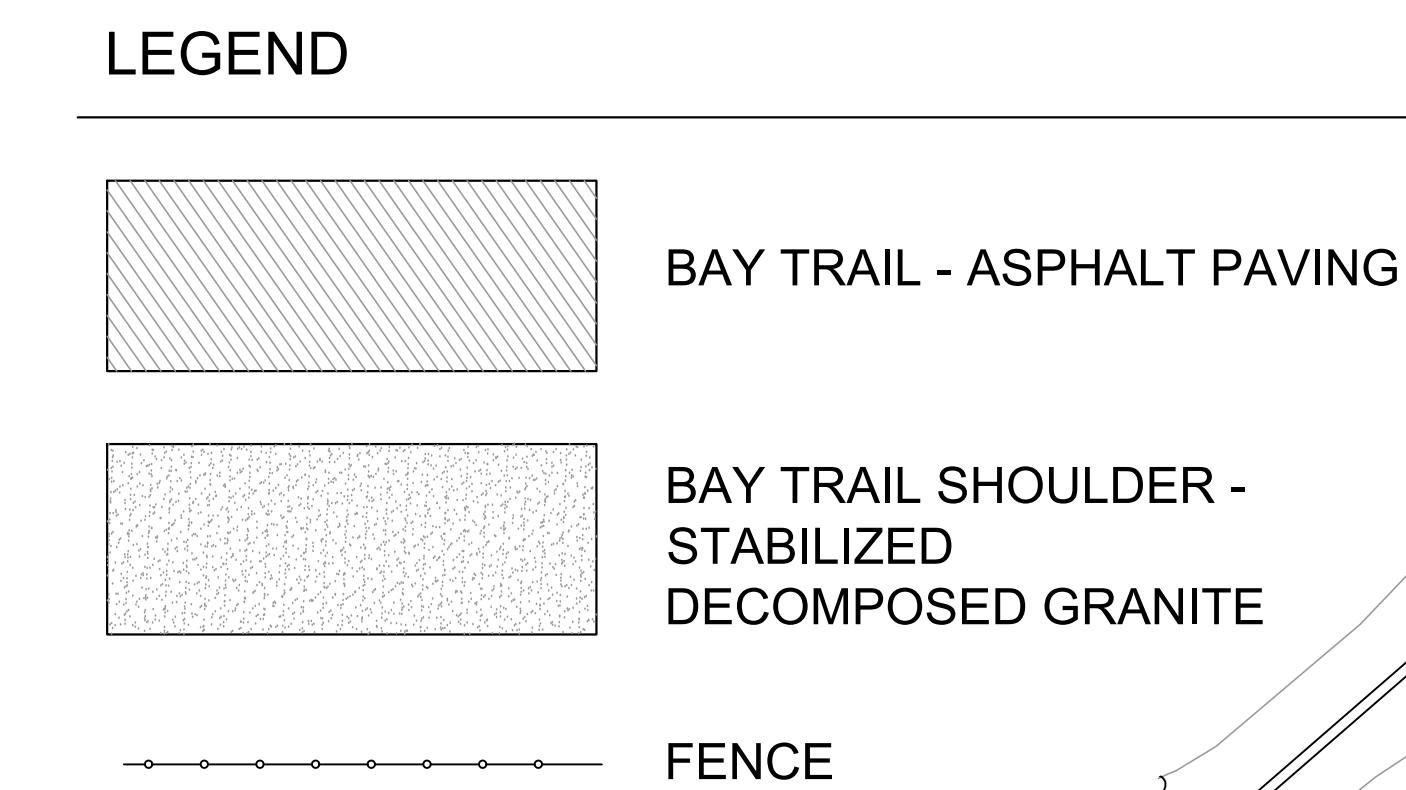




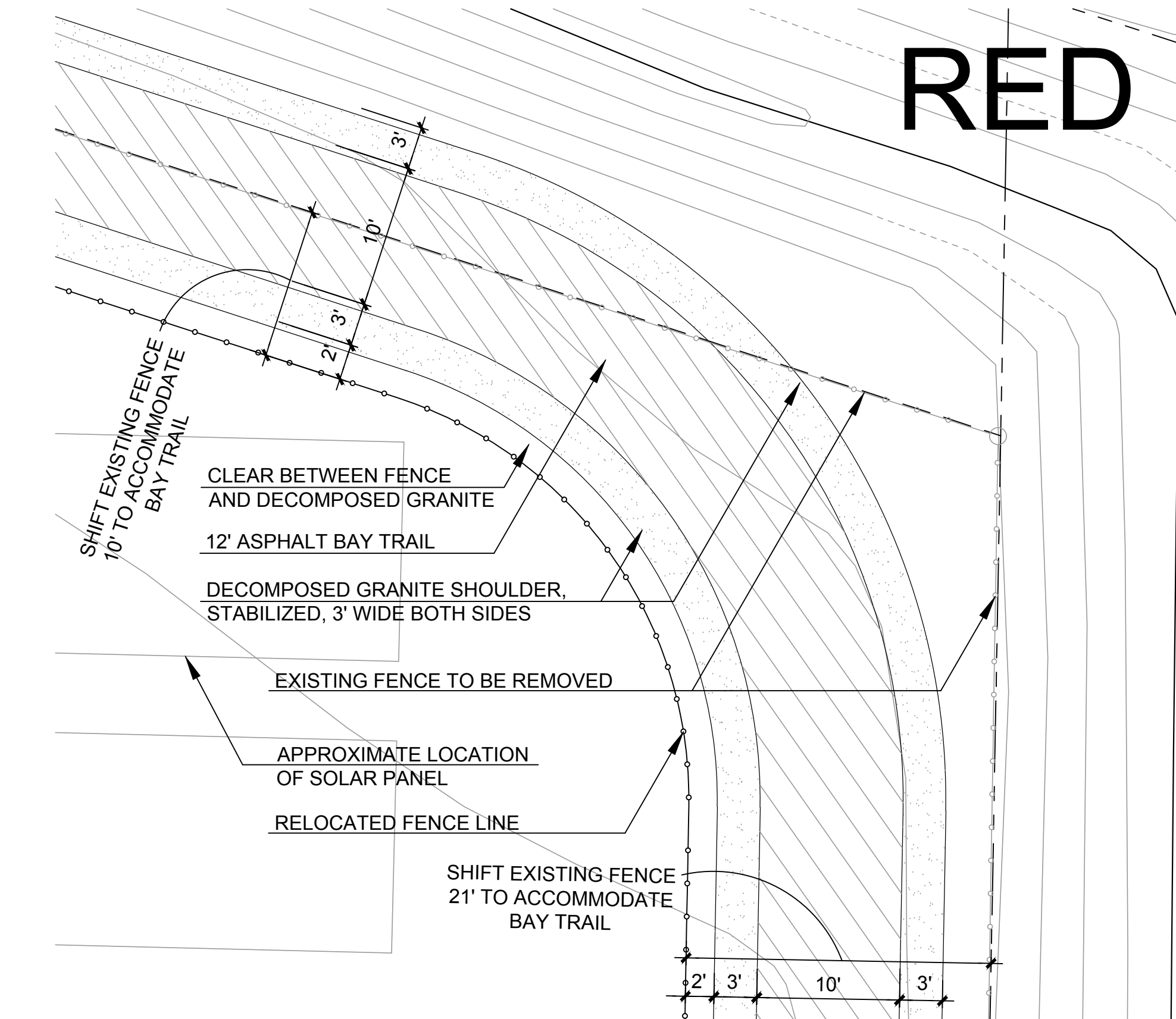
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SCALE: 3/8" = 1'-0"



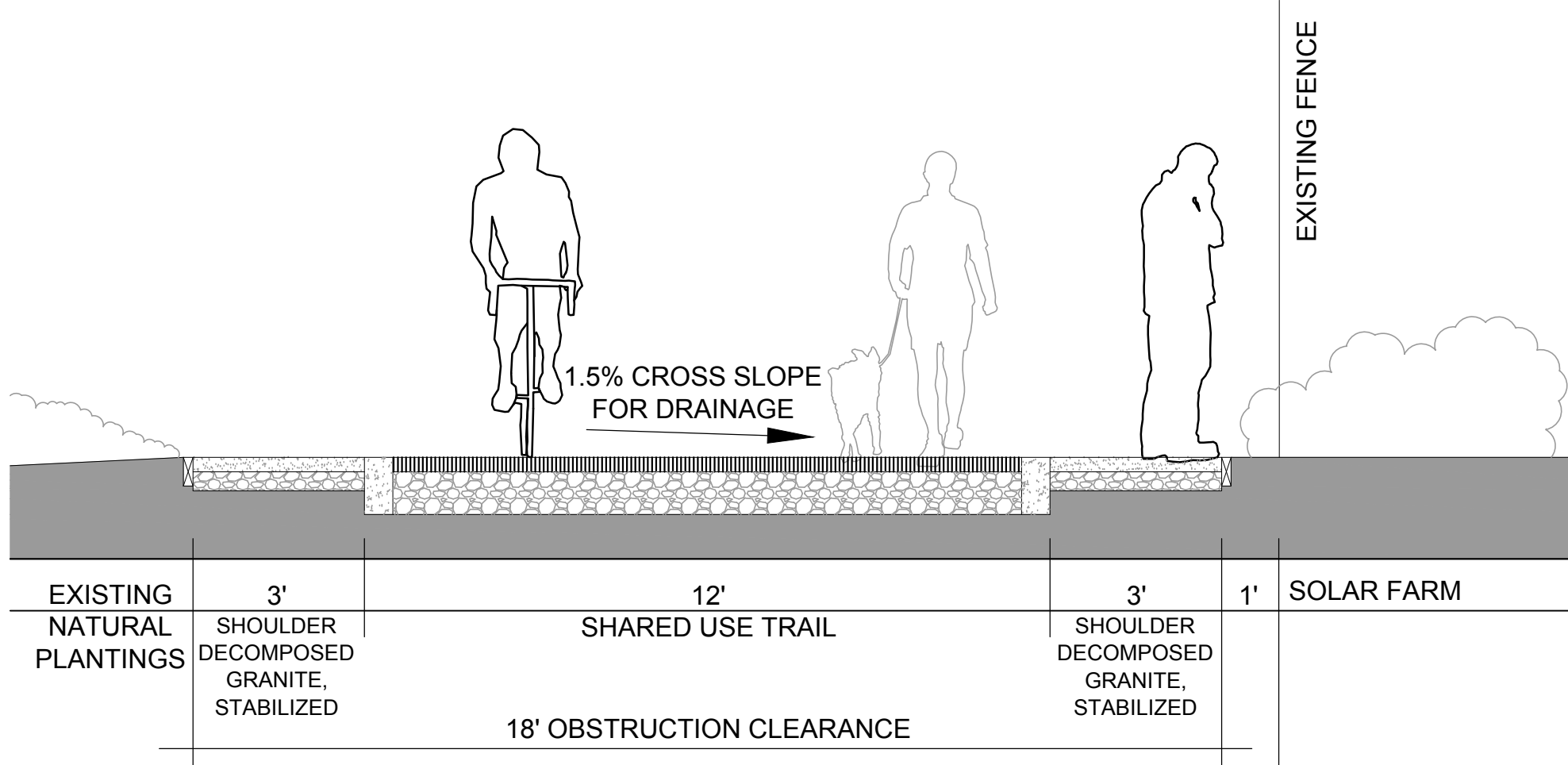
2 BAY TRAIL SECTION B  
SCALE: 3/8" = 1'-0"



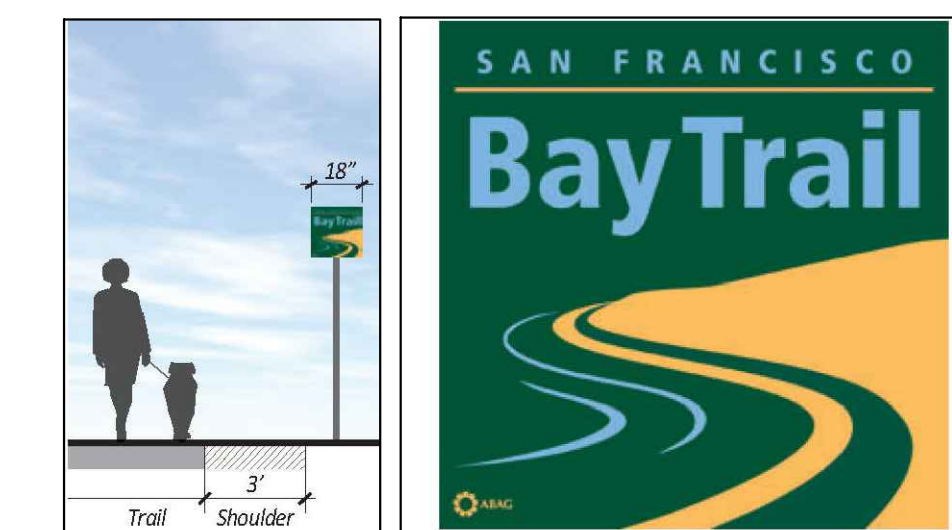
3 BAY TRAIL PLAN  
SCALE: 1" = 30'-0"



4 ENLARGED BAY TRAIL PLAN  
SCALE: 1/8" = 1'-0"



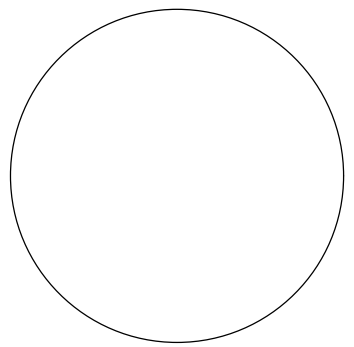
5 BAY TRAIL SECTION C  
SCALE: 3/8" = 1'-0"



## BAY TRAIL SIGNAGE

[illegible]

BCDC SUBMITTAL	3/19/2024
ISSUED FOR PLAN CHECK	
ISSUED FOR PERMIT	
ISSUED FOR BID	
ISSUED FOR CONSTRUCTION	
SEAL:	



CONSULTANT:



**CSW/Stuber-Stroch  
Engineering Group, Inc.**

121 Park Place  
Richmond, CA 94801

## Civil Engineers

PROJECT:

Bay Trail  
Solar Farm

3153 Goodrick Ave,  
Richmond, CA 94801

SHEET TITLE:

# BAY TRAIL PLAN

PROJ. NO.	-
PREPARATION AND REVIEW	
DRAWN BY:	-
DESIGNER:	-
PROJ MGR:	
PEER REVIEW	Checker
SHEET NUMBER:	

# L100



## San Francisco Bay Conservation and Development Commission

375 Beale Street, Suite 510 San Francisco, California 94105 tel 415 352 3600 fax 415 352 3606

State of California | Gavin Newsom – Governor | [info@bcdc.ca.gov](mailto:info@bcdc.ca.gov) | [www.bcdc.ca.gov](http://www.bcdc.ca.gov)

### ***Via E-mail***

Mailing Date: February 16, 2024

Joe and Heidi Shekou  
2165 Francisco Boulevard  
San Rafael, CA 94901  
Email: Sapidrood@yahoo.com and jshekou@jhsproperties.net

**SUBJECT: BCDC Enforcement Case ER2017.004.00: Commencement of Formal Enforcement Proceeding for an Unauthorized Solar Farm, constructed in 2016 and located at Freethy Boulevard/Elmar Court and Goodrick Avenue, City of Richmond, Contra Costa County**

Dear Joe and Heidi Shekou:

The Executive Director is commencing Commission enforcement proceedings in accordance with sections 11321 through 11334 of the Commission's regulations to correct a violation consisting of unauthorized construction of a solar farm in the Commission's jurisdiction on property located in the City of Richmond as described above, in violation of section 66632 of the McAteer-Petris Act.

Please review the enclosed Violation Report and Complaint for Administrative Civil Penalties and its attachments, the statement of defense form, and the Commission's enforcement regulations (Chapter 13). Pursuant to regulations section 11322, within thirty-five (35) days of the mailing date of this notice you shall submit either (1) a certified cashier's check in the amount of the proposed civil penalty or (2) the completed statement of defense form, copies of all documents that you want to be made part of the record of the enforcement proceeding, and any request to allow cross-examination in accordance with subsection (b) section 11322.

We look forward to assisting you in resolving this enforcement matter. You can reach me by phone by calling 415-352-3609 or by email at [adrienne.klein@bcdc.ca.gov](mailto:adrienne.klein@bcdc.ca.gov).

Respectfully,

DocuSigned by:  
  
7A7D306B8570A3E

ADRIENNE KLEIN

Principal Enforcement Analyst

San Francisco Bay Conservation and Development Commission  
375 Beale Street, Suite 510



JHS Properties and Robert Herbst  
Enforcement Case No. ER2017.004.00

February 16, 2024  
Page 2

San Francisco, California 94105  
Tel: 415-352-3609  
Email: [adrienne.klein@bcdca.gov](mailto:adrienne.klein@bcdca.gov)  
Website: [www.bcdca.gov](http://www.bcdca.gov)

AK/mm

Encl(s).

cc: Robert Herbst, JHS Properties, [rherbst@jhsproperties.net](mailto:rherbst@jhsproperties.net)  
Shasa Curl, City Manager, Richmond, [shasa\\_curl@ci.richmond.ca.us](mailto:shasa_curl@ci.richmond.ca.us)  
Irene Lozano, Executive Assistant to the City Manager, Richmond,  
[irene\\_lozano@ci.richmond.ca.us](mailto:irene_lozano@ci.richmond.ca.us)

## San Francisco Bay Conservation and Development Commission

375 Beale Street, Suite 510 San Francisco, California 94105 tel 415 352 3600 fax 415 352 3606

State of California | Gavin Newsom – Governor | [info@bcdc.ca.gov](mailto:info@bcdc.ca.gov) | [www.bcdc.ca.gov](http://www.bcdc.ca.gov)

**Number: ER2017.004.00**

**Permit Application Number: M2019.004.00**

**Date Mailed: February 16, 2024**

**35<sup>th</sup> Day after Mailing: March 22, 2024**

**60<sup>th</sup> Day after Mailing: April 16, 2024**

**Enforcement Committee Hearing Date: April 11, 2024**

### **VIOLATION REPORT/COMPLAINT FOR THE IMPOSITION OF ADMINISTRATIVE CIVIL PENALTIES: JOE AND HEIDI SHEKOU**

**FAILURE TO RESPOND TO THIS VIOLATION REPORT/COMPLAINT FOR THE ADMINISTRATIVE IMPOSITION OF CIVIL PENALTIES BY COMPLETING THE ENCLOSED STATEMENT OF DEFENSE FORM AND ENCLOSING ALL PERTINENT DECLARATIONS UNDER PENALTY OF PERJURY, PHOTOGRAPHS, LETTERS AND OTHER WRITTEN DOCUMENTS COULD RESULT IN A CEASE AND DESIST ORDER, A PERMIT REVOCATION ORDER, OR A CIVIL PENALTY ORDER BEING ISSUED TO YOU OR IN A SUBSTANTIAL ADMINISTRATIVE CIVIL PENALTY BEING IMPOSED ON YOU WITHOUT YOUR HAVING AN OPPORTUNITY TO CONTEST THEM OR TO INTRODUCE ANY EVIDENCE.**

The San Francisco Bay Conservation and Development Commission is issuing this violation report/complaint for the administrative imposition of civil penalties and the enclosed statement of defense form because the Commission's staff believes that you may be responsible for or involved with a possible violation of either the Commission's laws or a Commission permit. The report contains a brief summary of all the pertinent information that staff currently has concerning the possible violation and references to all pertinent evidence that the staff currently relies on. All the evidence that this report refers to is available in the enforcement file for this matter located at the Commission's office or to have copies made at your expense or both contacting Adrienne Klein of the Commission's staff at telephone number 415-352-3609. The staff also intends that the report inform you of the nature of the possible violation so that you can fill out the enclosed statement of defense form and otherwise be prepared for the Commission enforcement proceedings.

Receipt of the report and the enclosed statement of defense form is the first step in formal Commission enforcement proceedings. Subsequently, either the Commission or its enforcement committee may hold an enforcement hearing and the Commission will determine what, if any, enforcement action to take.

Careful reading and a timely response to these materials is essential to allow you to present your side of the case to the Commission. A copy of the Commission's enforcement regulations





is also included so that you can fully understand the Commission's enforcement procedures. If you have any questions concerning either the violation report, the enclosed statement of defense form, the procedures that the Commission and its enforcement committee follow, or anything else pertinent to this matter, you should contact as quickly as possible Adrienne Klein of the Commission's staff at telephone number 415-352-3609. Thank you for your cooperation.

### Violation Report and Complaint for Administrative Civil Liability

#### 1. Person or persons believed responsible for illegal activity:

Joe and Heidi Shekou (property owners of record)

#### 2. Brief description of the nature of the illegal activity:

Unauthorized installation and use of a two-megawatt, photovoltaic solar farm and wire mesh security fence, partially located within the Commission's jurisdiction. At least a single unauthorized placement of crushed asphalt to raise the site elevation around the solar panel. (Exhibit 1)

#### 3. Description of and location of property on which illegal activity occurred:

The solar farm is located on four parcels (APNs 408-220-006, -007, -035, and -048) comprising approximately eight acres located north and west of Elmar Court that commences at Goodrick Avenue in Richmond, Contra Costa County. San Francisco Bay bounds the property to its west, east, and to its north via a tidal marsh and a tidally influenced channel located on two of Respondent's parcels, placing the solar farm partially within BCDC's 100-foot shoreline band jurisdiction. (Exhibits 2)

#### 4. Name of owner, lessee (if any), and other person(s) (if any) who controls property on which illegal activity occurred:

Joe and Heidi Shekou (Exhibit 2)

#### 5. Approximate date (and time if pertinent and known) illegal activity occurred:

January 2016, when solar farm construction commenced, and May 2018, when crushed asphalt was placed onsite to elevate the grade to allow for solar panel maintenance. These violations persist to the present. (Exhibits 19)

#### 6. Summary of all pertinent information currently known to the staff in the form of proposed findings with references to all pertinent supporting evidence contained in the staff's enforcement file (The file is available at the Commission's offices for you to review. You should call the above listed staff enforcement officer to arrange to review or copy the file.):

- A. On August 15, 1977, BCDC issued Claim of Exemption No. CE 74-15 to Elmer J. Freethy, a former owner of the property that is the subject of this VR&C. The Commission's



resolution on this matter occurred on May 5, 1977. Specifically, CE 74-15 was for the following project:

- a. To complete a road system that had been under construction since 1963, including the placement of fill on tidal areas running from the easterly line of the property to the westerly line of the property.
  - b. To place fill behind the completed roadway system to raise the approximately 84.34 acres of land to grade according to Freethy's development plan that he finalized in 1964.
  - c. To use the 84.3- acre area for light industrial facilities and purposes. (Exhibit 3)
- B. On December 17, 1979, in response to receiving a copy of a tentative subdivision map for the Freethy Industrial Park Subdivision No. 5794 that proposed several smaller parcels, a new road, two cul-de-sacs, and an office park that were not included in the granted claim of exemption, BCDC informed the City of Richmond that:
- a. Without a site plan, it could not be sure whether or not CE 74-15 "would apply to the project Mr. Freethy now intend[ed] to build."
  - b. "[i]f a change of use was to occur, as determined by BCDC, a permit for all construction within 100 feet of the line of highest tidal action would be required."
  - c. "[t]he Commission could not approve a project if maximum feasible public access consistent with the project were not provided."
  - d. "[i]f uses, which the Commission believes are heavy industrial uses, are placed on the site, and if the streets are constructed as shown on the tentative map, it is possible that construction would be exempt from BCDC permit authority."

Therefore, beginning in 1979, BCDC made it clear that project changes may result in CE 74-15 becoming inapplicable and that a project other than the one described in CE 74-15 would need a BCDC permit and would need to provide maximum feasible public access consistent with the project. (Exhibit 4)

- C. On February 6, 1980, in response to receiving and reviewing the initial study for the then proposed Freethy Industrial Subdivision, in relevant part, staff informed the Richmond Planning Director that, as the project applicant was Hahn Real Estate and not Mr. Freethy, and, if equity were to pass from Mr. Freethy to a third party, it was staff's opinion that the exemption would not apply. Therefore, beginning in 1980, BCDC made it clear that a transfer of interest in property title would render CE 74-15 inapplicable to the site. (Exhibit 5)
- D. On November 10, 1981, former BCDC Staff Counsel Jonathan Smith informed former owner Elmer Freethy and then current owner Ainsley Corporation, who was in the process of applying for regulatory project approvals from the City and the State, that:



- a. A claim of exemption issued by the Commission is personal to the applicant and cannot be transferred when the holder of the exemption conveys the property.
- b. The Ainsley Corporation would need a permit from the Commission for any filling, dredging, or substantial change in use within the Commission's jurisdiction.
- c. The Commission has, but as of yet had not implemented, authority to require a permit for a subdivision.
- d. The work described in the notice of application makes it appear that actual development will involve work for which a Commission permit is required, thus, prior to the commencement of any work, owner should contact BCDC staff to determine what type of permit, if any, would be required.

Therefore, in 1981, BCDC reiterated its position that CE 74-15 could not be transferred and that a BCDC permit would be required for a project pursued by a new owner, including for a subdivision. (Exhibit 6)

- E. On October 23, 1989, BCDC informed Ross Kersey, a presumed former owner of Respondents' property, that any activity in this area could be considered the placement of fill, extraction of materials or a substantial change in use, requiring Commission authorization. (Exhibit 7)

Therefore, in 1989, BCDC again reiterated its position that CE 74-15 could not be transferred and that a BCDC permit would be required for a project pursued by a new owner.

- F. On May 31, 2000, Respondents purchased the four parcels on which the unauthorized solar farm is constructed and operating. (Exhibits 2)
- G. On February 24, 2014, Kister, Savio & Rei, Inc., Land Surveyors and Civil Engineers, prepared site plans that incompletely demarcate BCDC's 100-foot-shoreline jurisdiction along only the western property boundary and depict a conceptual shoreline path. (Exhibit 8)
- H. On April 28, 2014, CJC Trucking, a contractor working for Respondents, applied for City of Richmond Grading Permit #EN14-05203 at Freethy Boulevard/Elmar Court. The application states "Applicant is hereby made to perform grading work in accordance with requirements of Grading Ordinance No. 4-80 N.S., as specified," which includes Condition 8, which states "Issuance of this permit by the City of Richmond does not necessarily constitute full approval by all Government Agencies. Applicant shall contact all other concerned agencies, agencies, specifically but not necessarily limited to....Bay Conservation and Development Commission..." (Exhibit 9)

Therefore, Respondents received notice through a City permit that they must contact other agencies, including BCDC, to inquire about needed permits to conduct grading work.



- I. On May 2, 2014, Mr. Herbst, JHS Properties, submitted a planning application to the City of Richmond for the Solar Farm at Freethy Industrial Park. (Exhibit 10)
- J. On May 20, 2014, LSA Associates, Inc. acting on behalf of Respondents, requested a preliminary jurisdictional determination of the extent of navigable waters of the US and waters of the US occurring Respondents' property. Therefore, Respondents pursued regulatory approval from the United States Army Corps of Engineers, but did not pursue regulatory approval from BCDC. (Exhibit 11)
- K. On June 17, 2014, the City of Richmond adopted Resolution No. 56-14, Resolution of the City of Richmond City Council Interpreting and Implementing the Richmond General Plan 2030 and State of California Policy Regarding Solar Energy Systems, to guide its governance of solar farms. In relevant part, this resolution states that solar energy systems shall be permitted ministerially under CEQA and shall not encroach on BCDC 100-foot jurisdiction without a BCDC permit. Therefore, Respondents received notice through City Resolution No. 56-14 that they should not conduct solar farm construction within the BCDC's jurisdiction without a BCDC permit. (Exhibit 12)
- L. On September 29, 2014, Respondents submitted an electric commercial application to the City of Richmond to install a ground mount solar system, but they did not submit an application to BCDC for the same. (Exhibit 13)
- M. On October 9, 2014, Robert Herbst, Project Manager, on behalf of Respondents, submitted an application for a Notice of Exemption #2014108139 under CEQA with the City of Richmond, Department of Planning and Building, to install a 2-megawatt ground mount photovoltaic solar system on approximately eight acres of level land at Freethy Industrial Park. On October 10, 2014, the application was stamped filed by Contra Costa County and stamped received by the State Clearing House. (Exhibit 14)
- N. Between January and October 2016, Respondents constructed a fenced, two-megawatt solar farm at the site without a BCDC permit. (Exhibits 19 and 20)
- O. On January 18, 2017, Bruce Bayaert, a representative of Trails for Richmond Action (TRAC), reported to BCDC that Respondents had apparently undertaken unauthorized construction of a solar farm adjacent to Elmar Court/Freethy Boulevard without a BCDC permit. (Exhibit 15)
- P. On April 25, 2017, BCDC staff contacted Heidi Shekou, who referred staff to Respondents' employee, Len Nibby. (Exhibit 17)
- Q. On April 25, 2017, Respondents' Project Manager, Robert Herbst, informed BCDC staff that Respondents had not obtained a BCDC permit prior to installing the solar farm and security fence because they believed it was exempt from the requirement pursuant to CE 74-15. (Exhibit 18)
- R. On October 25, 2017, BCDC staff sent a notice of violations to Respondents informing them that while staff did not dispute that CE 74-15 applies to the former placement of



fill and grading to construct the roadway and raise the site elevation located within a former tidal marsh, BCDC staff did not agree that CE 74-15 applies to the solar farm constructed without a permit by subsequent property owners because:

- a. The solar farm is not within the scope of the project for which Freethy was issued CE 74-15 because it was not constructed in accordance with the plans incorporated with the Claim of Exemption;
- b. CE 74-15 has been abandoned pursuant to BCDC Regulation Section 10921 and no longer applies to the property, for reasons addressed in detail in the letter; and
- c. The project was not constructed in accordance with the plans incorporated with CE 74-15. (Exhibit 18)

As such, BCDC informed Respondents that because CE 74-15 did not apply to the solar farm project, they must apply to BCDC for an after-the-fact permit to install the solar panels and fence and must include a public access proposal. This notice initiated the accrual of standardized fines. (Exhibit 18)

- S. On June 22, 2017, BCDC staff established Enforcement Case ER2017.004.00, noting the existence of CE 74-15. (Exhibit 16)
- T. On December 7, 2017, a meeting occurred with the following attendees: Joe Shekou, owner, Bob Herbst, son-in-law to Respondents, Ivo Keller, lawyer for Respondents, John Bowers, BCDC staff counsel, and BCDC staff Adrienne Klein and Matthew Trujillo.
  - a. Respondents described the solar farm project and their position with regard to CE 74-15.
  - b. BCDC Staff stated that they did not believe that CE 74-15 applied to the solar farm; a BCDC permit is necessary; the property is located within the 100-foot shoreline band; the Respondents must provide maximum feasible public access consistent with the project. (Exhibit 19)
- U. On February 5, 2018, Mr. Keller submitted a letter titled "Confidential Settlement Communication" to BCDC staff. The majority of the letter provides Respondents' support for its interpretation that CE 74-15 applies to the property/project. The letter also contains a settlement offer, later rejected by staff. (This letter is not attached due to the portion of its content related to the settlement offer but, as noted in Finding W, the legal arguments presented by Respondent are summarized and rebutted by staff and many of its attachments, all public records, are included in this VR&C.)
- V. On May 16, 2018, Len Nibby, representing Respondents, escorted BCDC staff on a site visit. Staff took measurements from the edge of tidal marsh toward the fence both to establish the approximate location of the shoreline band jurisdiction at the property and





to assess whether there would be room for a shoreline public access trail adjacent to the existing, unauthorized fence. Staff made the following observations:

- a. At the southwest fence corner, staff measured a distance of 54.6 feet between the fence and the inland extent of tidal marsh vegetation.
  - b. At the northwest fence corner, staff measured a distance of 13.8 feet between the fence and the inland extent of tidal marsh vegetation, concluding that at this end, there appeared to be inadequate room for shoreline access with the existing fence location.
  - c. The jurisdiction along the tidal marsh is delineated by the location where the historic fill was placed. The elevation of the land slopes up from the tidal marsh plain.
  - d. The jurisdiction along the northern project boundary, also adjacent to the Rod and Gun Club, appears to extend inland to Goodrick Avenue, and even around the corner to the location of a culvert, located 83.4 feet from the 90' turn. The tide influences this entire area and marsh vegetation is also present, with the species transitioning to brackish halfway up the channel (bulrush, alterniflora, salt grass, pickleweed). The approximate distance from the fence to the bottom of the slope was approximately 30 feet.
  - e. New fill was being imported within the area of the solar farm, which Len described as crushed asphalt that is being laid down to raise the grade elevation so that maintenance workers can reach the solar panels to clean them. While staff did not observe this fill being placed within the 100-foot shoreline band, it seemed evident that this material would be placed throughout the site including within the 100-foot shoreline band. This raised water quality impacts concerns from runoff following rain events. (Exhibit 19)
- W. On September 13, 2018, in response to Mr. Keller's February 5<sup>th</sup> letter, staff affirmed its position that BCDC has jurisdiction over the portion of the solar farm built within BCDC's 100-foot shoreline band jurisdiction without authorization and stated that Respondents must seek and obtain an after-the-fact permit to authorize the project, pay an appropriate penalty and provide maximum feasible public access, consistent with the project.
- a. Staff refuted Mr. Keller's position that the project is covered by CE 74-15 and exempt from BCDC permit requirements by reporting the results of its re-evaluation of the extent to which the exemption remains in effect or has been abandoned.
  - b. Staff provided a 2018 Google Earth image of the entire area covered by the exemption and noted that:

- i. Portions of the area, particularly to the west and northwest were never filled and remain subject to tidal action or influence as open water or tidal marsh.
  - ii. Portions of the area were or may have been filled pursuant to the exemption but were never developed and have become subject to tidal action through reversion to open water or tidal marsh.
  - iii. Portions of the area were filled and developed and, as a result of such filling and development are neither presently subject to tidal action as either open water or tidal marsh, nor are they located within 100 feet of any such tidally influenced area.
- c. Staff clarifies that the fact that the exemption mentions light industrial use and the solar farm may be a light industrial use does not render it automatically applicable and, in fact, it is not because there was a detailed specific plan for the development of a light industrial park on certain exhibits to CD1974.15 and they do not include a solar farm as conceived and constructed approximately 50 years later.
- d. Staff states that Respondents' assertion that CE 74-15 applies to the solar farm fails to address either: (1) California Super Court determination, in *San Francisco Bay v. Emeryville* (1968) 69 Cal.2d 533, 545, that the Legislature used the word "project" as a term of limitation in a grandfather clause permitting exempting in the MPA (Section 66632.1); or (2) the Commission's reservation of jurisdiction, codified at 14 C.C.R. section 10918, to require a permit when a substantial change is made to a project for which a claim of exemption was previously granted. Staff states that Respondents' counsel failed to address evidence of abandonment of CE 74-15 provided by BCDL in its October 25, 2017, letter and affirms that it has repeatedly asserted jurisdiction over the property.
- e. Staff states there is no evidence in its records that Respondents conducted due diligence in connection with its purchase of the property.
- f. Staff states that the site is subject to the Commission's Bay jurisdiction along the entire northern side of the solar farm and a portion of the eastern side up to the northern edge of the culvert under eastern end of Elmar Court and, therefore, that there exists a 100-foot shoreline band jurisdiction adjacent to the Bay jurisdiction that encompasses the northwestern and northern sides of the solar farm facility, its northeastern side, and approximately 50 feet of its southeastern side, estimating that approximately 73,400 square feet of the solar farm are located in the 100-foot shoreline band, meaning that all structures built and fill placed and uses made within this area (e.g., solar panels, fencing, asphalt ground cover, maintenance, etc.) constitute unpermitted "fill," as that term is defined by MPA Section 66632(a).

- g. Staff states that Respondents' identified location of the edge of the Bay is incorrectly identified as the MHHW line depicted in the March 1982 Subdivision Map 5754 and in the February 2014 plans by Kister Savio and Rei. Staff informs Respondents that the limit of the bay jurisdiction includes all marshlands on the Bay lying between mean high tide and five feet above mean sea level and that during its site visit on May 16, 2018, staff had identified tidal marshland along three sides of the property.
  - h. Staff cites letters dated December 17, 1979, February 6, 1980, November 10, 1981, October 23, 1989, and May 22, 2014, as evidence of its continued assertion of jurisdiction over the site.
  - i. Staff rejects Respondents' claim that it developed the property under a good faith belief" that it was not located within BCDC's jurisdiction, stating that it is a matter of public record that BCDC's jurisdiction over portions of the property has been scrutinized in the past and this is not the first instance where BCDC has declared its jurisdiction over the site. They note that Respondents have a long history of developing properties around the Bay shoreline and are well aware of BCDC's jurisdiction and, as a result, should have approached BCDC to request a site assessment prior to commencing with any development that may have been subject to its jurisdiction, rather than making assumptions based on the interpretation of a thirty-year-old letter and a set of equally outdated site plans. Staff then states that as a result, the solar farm could have been constructed outside of Commission's jurisdiction to avoid having to apply for and obtain the Commission's approval for the project.
  - j. Staff concluded this communication by requesting that Respondents submit a filed application by December 31, 2018, for the portion of the solar farm that is within the Commission jurisdiction including a public access proposal and stated that Respondents' failure to meet this deadline may result in the commencement of a formal enforcement proceeding, two public hearings and possible issuance of a Cease and Desist and Civil Penalty Order by the Commission. (Exhibit 20 with only its first attachment as all of its other attachments are previously attached as Exhibits 4, 5, 6, 7, and 8 )
- X. On February 13, 2019, Respondents' representative, Mr. Herbst, submitted a cover letter and BCDC application. The cover letter states that, as the adjacent Richmond Development Company's PowerPlant project is delayed, and pursuant to direction from BCDC enforcement staff, Respondents are independently pursuing an application and intend to build and maintain their section of the Bay Trail.
- a. Mr. Herbst states that the proposed Bay Trail will terminate 200 feet from the Richmond Rod and Gun Club property line in recognition of potential public safety hazards related to existing gun club operations.

- b. Mr. Herbst states that Respondents reserve the right to contest BCDC's jurisdiction over, and authority to require a permit for development of, the lands owned by Respondents, that their submission of the application shall not be construed as an admission the BCDC has jurisdiction over any portion of the property nor shall it be construed as a waiver of Respondents' right to contest BCDC's jurisdiction on any basis, including, without limitation, the issuance of a letter of exemption to Respondents' predecessor owner, the previous grading and partial development of the property, and/or the elevation of the property and its distance from any areas that may be within BCDC's jurisdiction.
- c. Mr. Herbst states that Respondents are proceeding with application submission in reliance upon their understanding that BDC has agreed not to construct the submission as a waiver or admission of any kind, and that the reservation shall remain in effect even if BCDC should issue a permit for any portion of the property and shall expire only if and when Respondents give BCDC written notice of permit acceptance and Respondents have realized the benefits of the permit.
- d. The application includes the following information in relevant part:
  - i. Box 2, Total Project and Site Information, states that the project name is "JHS Properties – Solar Farm" and lists the project street address as Elmar Court, Current no street number."
  - ii. Box 2, Brief Project Description, states "An approximately 8-acre installation of solar power generation panels (built in 2014). Construction of a 200-foot extension of bay Trail (10-foot-wide asphalt paved trail, with (2) two-foot-wide decomposed granite shoulder to commence concurrent with similar project on adjacent property in 2020."
  - iii. Box 4, Shoreline Band Information states that the type of activity to be undertaken or fill, materials or structures to be placed within the shoreline band are "Approximately 200 linear feet of 12-foot-wide asphalt trail with (3) three -foot-wide decomposed granite shoulder on the side with areas of native planting. Extension of Bay Trail will require compacted Class II aggregate base (Cal Trans standard), wood headers, asphalt paving, and decomposed granite paving."
  - iv. Box 5, Public Access, states that the average trail width will be 15 feet. (Exhibits 21 and 22)

So, while Respondents failed to meet a December 2017 application submittal deadline, they submitted an application in February 2018 in which they request permission to construct a solar farm and to provide shoreline public access along the western edge of the solar farm site.

- Y. On March 18, 2019, BCDC staff informed Respondent that the application (Application M2019.004.00) was incomplete pending submittal of additional information such as



project jurisdiction, project description and public access and open space exhibit, Bay Trail project details, a Bay Trail maintenance plans, a sea level rise risk assessment, site photographs, property interest documentation, other government approvals, environmental documentation, local government approval, a processing fee and confirmation of posting a public notice. Respondents did not respond to this letter for more than three years, until May 4, 2022. (Exhibit 23)

- Z. During the period between March 2019 and November 2021, Respondents were working with Richmond Development Company, the City of Richmond and BCDC staff to jointly develop a public access proposal for the solar farm project and a proposed, adjacent marijuana processing facility project. (Exhibit 23)
- AA. On November 8, 2021, Robert Herbst informed BCDC Enforcement Attorney Brent Plater that Respondent was prepared to proceed with a permit application for the solar farm. (Exhibit 24)
- BB. On November 16, 2021, Mr. Plater informed Mr. Herbst that Respondent should proceed with filing its pending incomplete application or start with a new application and that in both cases maximum feasible public access would be required at the site. (Exhibit 24)
- CC. On November 19, 2021, Ashwin Gulati, Respondents' representative, requested a meeting to discuss the solar farm permit application. On December 9, 2021, BCDC staff met with Mr. Gulati and stated that now that it was apparent that a joint application for the solar farm and adjacent proposed marijuana production facility would not be forthcoming, Respondent would need to complete their pending incomplete application for the solar form. Staff provided some guidance as to what might constitute maximum feasible public access for this project. (Exhibits 25 & 26)
- DD. On January 26, 2022, Mr. Plater provided Mr. Gulati and Mr. Herbst with a summary of the December 9, 2021, discussion. (Exhibit 25)
- EE. On January 27, 2022, Mr. Gulati thanked Mr. Plater for reaching out and stated that they were assembling a new team to address the BCDC matter and that he would reach back out in several weeks. On April 5 and 13, 2022, Mr. Gulati informed Mr. Plater that Respondents had retained WRA consultants to assist them with the BCDC requirements and that they would respond to BDC within a few weeks. On April 6, 2022, Mr. Plater informed Respondents' representatives that BCDC would be escalating the case but to continue with the permitting process (Exhibit 25)
- FF. On May 4, 2022, Respondents responded to staff's application filing letter, dated March 18, 2019, by submitting a letter and updated project description. Respondents proposed to:
  - a. Construct, use, and maintain in-kind an extension of the Bay Trail along the northwest easement portion of the property. The proposed length of the trail extension is approximately 200 feet. The proposed width of the trail is 18 feet,





which includes a 12-foot-wide asphalt path, a three-foot soft edge condition of decomposed granite, and a three-foot soft edge condition of gravel.

- b. Construct, use, and maintain in-kind 800 square feet of low-maintenance and drought tolerant planting along a portion of the proposed trail extension.
  - c. The letter included the following six attachments:
    - i. Site Plan from Original Permit Application
    - ii. Site Photographs
    - iii. Property Report
    - iv. Notice of Exemption, Building Permit and Permit Plans
    - v. JHS Letter Dated February 13, 2019
    - vi. Form Verifying Posting of Public Notice (Exhibit 27)
- GG. On May 27, 2022, Mr. Gulati requested coordination with BCDC on development of the Bay Trail segment in light of the City's approval of the Power Plant project to the south of the solar power farm. (Exhibit 28)
- HH. On June 3, 2022, BCDC staff responded to Respondents' application submittal, dated May 4, 2022, by:
- a. Requesting additional information explaining how the project is consistent with San Francisco Bay Plan Public Access Policy 1, which states that "[a] proposed project should increase public access to the maximum extent feasible...."
  - b. Asking Respondents to address whether and how staff's guidance provided on December 9, 2021, was considered in the response.
  - c. Stating that the site plan does not provide a sufficient level of detail regarding the design of the proposed trail and requesting: a set of project plans showing and labeling the locations and extents all proposed improvements, including the components of the trail and the proposed landscaping; one full set of project plans, which must include, at minimum, a vicinity map, site plan, property lines, existing and proposed structures or improvements (including elevations and sections if necessary), the shoreline [MHW or 5' ABOVE MSL], any marshes, wetlands or mudflats, the corresponding 100-foot shoreline band line, scale, north arrow, date and the name of the person who prepared the plans; and stating that additional information may be needed on the plans depending upon the scope of the proposed project.
  - d. Noting that in the letter from BCDC staff John Bowers and Matthew Trujillo to Ivo Keller, dated September 13, 2018, staff had provided a description of BCDC's jurisdiction at the property, requesting that Respondents refer to this description for the depiction of BCDC's Bay and shoreline band jurisdictions in their project plans.

- e. Requesting a revised total project cost to assess the appropriate application fee.
  - f. Requesting a copy of the environmental documentation as required by CEQA. (Exhibit 26)
- II. On June 21, 2022, Mr. Gulati stated that he had met with the owners and requested a meeting with BCDC staff to discuss next steps, which was scheduled for June 29, 2022. (Exhibit 29)
- JJ. On June 29, 2022, Mr. Plater informed Mr. Gulati in relevant part that:
  - a. Staff would request its Enforcement Committee to recommend to the Commission to adopt an order that requires Respondent to implement a maximum feasible public access plan at the solar farm, including removal of structures that interfere with said plan.
  - b. Staff would pursue administrative civil penalties.
  - c. Respondents should reach out to permit analyst Katharine Pan with permitting questions. (Exhibit 30)
- KK. On June 30, 2022, Mr. Herbst requested a meeting with BCDC staff to discuss a, “best path forward to achieve maximum safe public access to the property.” (Exhibit 31)
- LL. On July 1, 2022, Mr. Plater noted that over the past five years, creative solutions to the enforcement matter were reviewed by staff and had to-date failed to resolve the enforcement matter. He made himself available to answer enforcement questions. (Exhibit 32)
- MM. On July 1, 2022, Mr. Herbst stated that they had recently made a resubmittal to BCDC and received the staff’s response. Mr. Herbst stated Respondents wanted to meet with staff to better understand staff’s expectations of maximum feasible public access. On July 2, 2022, Mr. Plater referred Mr. Herbst to Ms. Pan for permitting questions. (Exhibit 32)
- NN. On September 19, 2022, Mr. Herbst provided BCDC with an updated public access plan, dated September 15, 2022, prepared by Vallier Design, showing a public access trail that loops around the solar farm and back to Goodrick Avenue. The proposal includes a 12-foot-wide paved trail flanked by three-foot-wide shoulders. Mr. Herbst states that this would require relocating the existing fence and removing some solar panels at the ends of the panel rows; that while that is the public access configuration shown in the plan, they would like to reduce the paved trail section in Area B to 10 feet to avoid the need to remove solar panels. (Exhibits 34 and 35)
- OO. On November 19, 2022, Ms. Pan responded to the updated plan submittal dating from September 19, 2022, by stating that it would be better if there were 18-24 inches of space between the fence and the edge of the trail so that the full width of the trail could be used. (Exhibit 34)



PP. On February 13, 2024, BCDC enforcement staff notified Respondents that the Executive Director had rescinded the opportunity to resolve this case using the standardized fine process, pursuant to BCDC Regulation 11390. (Exhibit 36)

**7. Provisions of Commission law or permit that the staff alleges has been violated:**

Section 66632(a) of the McAteer-Petris Act

**8. If the staff is proposing that the Commission impose an administrative civil penalty as part of this enforcement proceeding the amount of the proposed penalty:**

\$30,000 (See Section 9 for more information.)

**9. Any other statement or information that the staff believes is either pertinent to the alleged violation or important to a full understanding of the alleged violation:**

For the purpose of proposing an administrative civil penalty amount for the violation in this violation report and complaint for administrative civil liability, and as provided by the Commission's Administrative Civil Penalty Policy found in Appendix J, Part I, of the BCDC's Regulations (14 CCR), the initial base penalty amount has been calculated by determining the gravity of harm caused by this permit violation (moderate) and the extent of deviation from the permit requirement to provide the public restroom (major), Respondent will be assessed a \$1,200 per day penalty for 2965 days. The initial total penalty is \$30,000, the administrative maximum.

Based on Respondent's degree of culpability, the initial total penalty has been adjusted upward by 5%. Based on Respondent's voluntary efforts to resolve, or lack thereof, the initial total penalty has been adjusted upward by 5%. However, because the initial total base penalty is at the administrative maximum, the upward adjustments do not result in an elevated penalty.

Administrative Record Number	Date	Description
1	2023.04.25	Google Earth Aerial Image of four solar farm parcels, with SF Bay to the west, gun club to the north, Goodrick Avenue to the east and Freethy Boulevard/Elmar Court, vacant parcels and the Richmond Parkway to the south
2	2000.05.31	RealQuest Property Detail Reports for APNs 408-220-006, -007, -035, -048 and Grant Deed
3	1977.08.15	Claim of Exemption CE 74-15
4	1979.12.17	BCDC to City of Richmond regarding CE 74-15 applicability
5	1980.02.06	BCDC to City of Richmond regarding CE 74-15 applicability



6	1981.11.10	BCDC to Freethy and Ainsley Corporation regarding CE 74-15 applicability
7	1989.10.23	BCDC to Buzz Oates Real Estate regarding CE 74-15 applicability
8	2014.02.24	Site Plans by Kister Savio and Rei Surveyors and Civil Engineers
9	2016.05.13	Letter from USACE to LSA Associates, responding to a May 20, 2014, request for a jurisdictional determination
10	2014.05.02	JHS Properties applies to the City of Richmond for solar farm planning approval
11	2016.05.13	USACE to Respondents' representative about jurisdiction
12	2014.06.17	City of Richmond adopted Resolution No. 56-14
13	2014.09.29	Respondents apply to the City of Richmond for an electric commercial permit
14	2014.10.09	Respondents apply to the City of Richmond for a Notice of Exemption under CEQA
15	2017.01.18	Bruce Bayaert, TRAC, notifies BCDC about the solar farm
16	2017.06.22	BCDC completes an enforcement report and opens ER2017.004
17	2017.04.25	BCDC contacts Heidi Shekou and speaks with Robert Herbst
18	2017.10.25	BCDC issues enforcement letter to Respondents commencing administrative penalty clock and providing application filing guidance
19	2017.12.07 and 2018.05.16	Two sets of staff site visit notes
20	2018.09.13	BCDC Letter to Respondents' Counsel refuting applicability of CE 74-15 with Ex A only b/c all other exhibits are previously provided herein
21	2019.02.13	Respondents' representative submits an application cover letter
22	2019.02.13	Respondents' representative submits a BCDC permit application for the solar farm
23	2019.03.18	BCDC issues an application filing letter to Respondents (1 <sup>st</sup> one)
24	2021.11.08 - 2021.08.16	Email communications between Respondents' representative/s and staff

25	2021.11.19 - 2022.04.13	Email communications between Respondents' representative/s and staff
26	2022.06.03	BCDC issues an application filing letter to Respondents (2nd one)
27	2022.05.04	Respondents' representative submits an updated BCDC permit application for the solar farm
28	2022.05.27	Email communications between Respondents' representative/s and staff
29	2022.06.03 - 2022.06.22	Email communications between Respondents' representative/s and staff
30	2022.06.28 - 2022.06.29	Email communications between Respondents' representative/s and staff
31	2022.06.30	Email communications between Respondents' representative/s and staff
32	2022.07.01 - 2022.07.02	Email communications between Respondents' representative/s and staff
33	2022.07.11	Email communications between Respondents' representative/s and staff
34	2022.09.19 - 2022.11.19	Respondent's Representative submit revised public access plan and staff provides comments
35	2022.09.15	Vallier Design public access plan, which depicts public access on the west, north and a portion of the east side of the project site
36	2024.02.13	BCDC Notice of Rescission of Opportunity to Resolve the case using standardized administrative fines.
-	-	BCDC Permit File 1993.002.01
-	-	BCDC Application File M2019.004.00
-	-	BCDC Enforcement Case File ER2017.004.00



# Exhibit 1



Property Detail Report

For Property Located At :  
FREETHY BLVD, RICHMOND, CA 94801

Exhibit 2



Owner Information

Owner Name: SHEKOU JOE/SHEKOU HEIDI

Mailing Address: 2167 FRANCISCO BLVD E #A, SAN RAFAEL CA 94901-5509 C200

Vesting Codes: / / CP

Location Information

Legal Description: T05754AL0006 B

County: CONTRA COSTA, CA

Census Tract / Block: 3780.00 /

Township-Range-Sect:

Legal Book/Page:

Legal Lot: 6

Legal Block:

Market Area:

Neighbor Code:

APN: 408-220-006-6

Alternate APN:

Subdivision:

Map Reference: /

Tract #: 5754AL00

School District: W CONTRA COSTA

School District Name: W CONTRA COSTA

Munic/Township:

Owner Transfer Information

Recording/Sale Date: /

Sale Price:

Document #:

Deed Type:

1st Mtg Document #:

Last Market Sale Information

Recording/Sale Date: 05/31/2000 /

Sale Price: \$3,488,000

Sale Type: FULL

Document #: 110331

Deed Type: GRANT DEED

Transfer Document #:

New Construction:

Title Company: CHICAGO TITLE CO

Lender:

Seller Name: CRADER GWEN BOWEN TRE

1st Mtg Amount/Type: /

1st Mtg Int. Rate/Type: /

1st Mtg Document #:

2nd Mtg Amount/Type: /

2nd Mtg Int. Rate/Type: /

Price Per SqFt:

Multi/Split Sale: MULTIPLE

Prior Sale Information

Prior Rec/Sale Date: 05/31/2000 /

Prior Sale Price:

Prior Doc Number: 110323

Prior Deed Type: AGREEMENT OF SALE

Prior Lender:

Prior 1st Mtg Amt/Type: /

Prior 1st Mtg Rate/Type: /

Property Characteristics

Year Built / Eff: /

Gross Area:

Building Area:

Tot Adj Area:

Above Grade:

# of Stories:

Other Improvements:

Total Rooms/Offices

Total Restrooms:

Roof Type:

Roof Material:

Construction:

Foundation:

Exterior wall:

Basement Area:

Garage Area:

Garage Capacity:

Parking Spaces:

Heat Type:

Air Cond:

Pool:

Quality:

Condition:

Site Information

Zoning:

Lot Area: 101,190

Land Use: INDUSTRIAL ACREAGE

Acres: 2.32

Lot Width/Depth: x

Res/Comm Units: /

County Use: VACANT INDUSTRIAL (50)

State Use:

Water Type:

Site Influence:

Sewer Type:

Tax Information

Total Value: \$883,946

Land Value: \$883,946

Improvement Value:

Total Taxable Value: \$883,946

Assessed Year: 2023

Improved %:

Tax Year: 2023

Property Tax: \$13,134.56

Tax Area: 08120

Tax Exemption:

Parcel Map Report

For Property Located At

FREETHY BLVD, RICHMOND, CA 94801



[View map - 408-22 , sheet 1](#)

If you have any problems displaying a parcel map after clicking on a map link above, please contact our Customer Service Department at 800-345-7334.

Feedback



Property Detail Report

For Property Located At :  
FREETHY BLVD, RICHMOND, CA 94801

Exhibit 2



Owner Information

Owner Name: SHEKOU JOE/SHEKOU HEIDI

Mailing Address: 2167A FRANCISCO BLVD E, SAN RAFAEL CA 94901-5509 C200

Vesting Codes: / /

Location Information

Legal Description: T05754AL0007 B

County: CONTRA COSTA, CA

Census Tract / Block: 3780.00 /

Township-Range-Sect:

Legal Book/Page:

Legal Lot: 7

Legal Block:

Market Area:

Neighbor Code:

APN: 408-220-007-4

Alternate APN:

Subdivision:

Map Reference: /

Tract #: 5754AL00

School District: W CONTRA COSTA

School District Name: W CONTRA COSTA

Munic/Township:

Owner Transfer Information

Recording/Sale Date: /

Sale Price:

Document #:

Deed Type:

1st Mtg Document #:

Last Market Sale Information

Recording/Sale Date: 04/12/2016 /

Sale Price: \$600,000

Sale Type: FULL

Document #: 65963

Deed Type: GRANT DEED

Transfer Document #:

New Construction: Y

Title Company: CHICAGO TITLE CO

Lender:

Seller Name: RICHMOND DEV CO LLC

1st Mtg Amount/Type: /

1st Mtg Int. Rate/Type: /

1st Mtg Document #:

2nd Mtg Amount/Type: /

2nd Mtg Int. Rate/Type: /

Price Per SqFt:

Multi/Split Sale: MULTI

Prior Sale Information

Prior Rec/Sale Date: 05/31/2000 / 04/25/2000

Prior Sale Price: \$2,512,500

Prior Doc Number: 110332

Prior Deed Type: GRANT DEED

Prior Lender:

Prior 1st Mtg Amt/Type: /

Prior 1st Mtg Rate/Type: /

Property Characteristics

Year Built / Eff: /

Gross Area:

Building Area:

Tot Adj Area:

Above Grade:

# of Stories:

Other Improvements:

Total Rooms/Offices

Total Restrooms:

Roof Type:

Roof Material:

Construction:

Foundation:

Exterior wall:

Basement Area:

Garage Area:

Garage Capacity:

Parking Spaces:

Heat Type:

Air Cond:

Pool:

Quality:

Condition:

Site Information

Zoning:

Lot Area: 85,726

Land Use: INDUSTRIAL ACREAGE

Acres: 1.97

Lot Width/Depth: x

Res/Comm Units: /

County Use: VACANT INDUSTRIAL (50)

State Use:

Water Type:

Site Influence:

Sewer Type:

Tax Information

Total Value: \$381,170

Land Value: \$381,170

Improvement Value:

Total Taxable Value: \$381,170

Assessed Year: 2023

Improved %:

Tax Year: 2023

Property Tax: \$5,994.64

Tax Area: 08120

Tax Exemption:

Parcel Map Report

For Property Located At

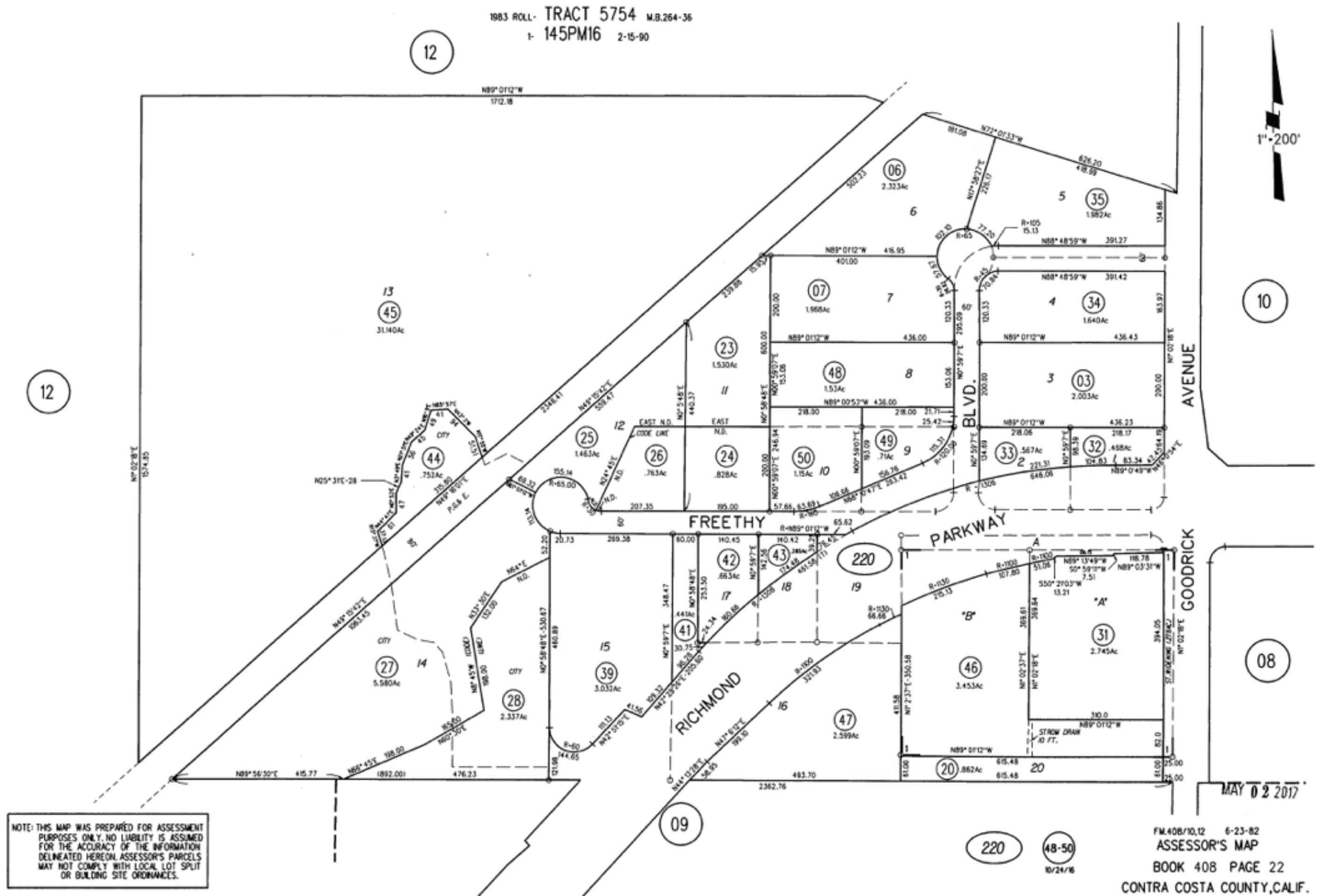
FREETHY BLVD, RICHMOND, CA 94801



[View map - 408-22 , sheet 1](#)

If you have any problems displaying a parcel map after clicking on a map link above, please contact our Customer Service Department at 800-345-7334.

Feedback



Property Detail Report

For Property Located At :  
FREETHY BLVD, RICHMOND, CA 94801

Exhibit 2



Owner Information

Owner Name: SHEKOU JOE/SHEKOU HEIDI

Mailing Address: 2167A FRANCISCO BLVD E, SAN RAFAEL CA 94901-5509 C200

Vesting Codes: / /

Location Information

Legal Description: T5754 POR LOT 8

County: CONTRA COSTA, CA

Census Tract / Block: 3780.00 /

Township-Range-Sect:

Legal Book/Page:

Legal Lot: 8

Legal Block:

Market Area:

Neighbor Code:

APN: 408-220-048-8

Alternate APN:

Subdivision:

Map Reference: /

Tract #:

School District: W CONTRA COSTA

School District Name: W CONTRA COSTA

Munic/Township:

Owner Transfer Information

Recording/Sale Date: /

Sale Price:

Document #:

Deed Type:

1st Mtg Document #:

Last Market Sale Information

Recording/Sale Date: /

Sale Price:

Sale Type:

Document #:

Deed Type:

Transfer Document #:

New Construction:

Title Company:

Lender:

Seller Name:

1st Mtg Amount/Type: /

1st Mtg Int. Rate/Type: /

1st Mtg Document #:

2nd Mtg Amount/Type: /

2nd Mtg Int. Rate/Type: /

Price Per SqFt:

Multi/Split Sale:

Prior Sale Information

Prior Rec/Sale Date: /

Prior Sale Price:

Prior Doc Number:

Prior Deed Type:

Prior Lender:

Prior 1st Mtg Amt/Type: /

Prior 1st Mtg Rate/Type: /

Property Characteristics

Year Built / Eff: /

Gross Area:

Building Area:

Tot Adj Area:

Above Grade:

# of Stories:

Other Improvements:

Total Rooms/Offices

Total Restrooms:

Roof Type:

Roof Material:

Construction:

Foundation:

Exterior wall:

Basement Area:

Garage Area:

Garage Capacity:

Parking Spaces:

Heat Type:

Air Cond:

Pool:

Quality:

Condition:

Site Information

Zoning:

Lot Area: 66,647

Land Use: INDUSTRIAL ACREAGE

Acres: 1.53

Lot Width/Depth: x

Res/Comm Units: /

County Use: VACANT INDUSTRIAL (50)

State Use:

Water Type:

Site Influence:

Sewer Type:

Tax Information

Total Value: \$301,523

Land Value: \$301,523

Improvement Value:

Total Taxable Value: \$301,523

Assessed Year: 2023

Improved %:

Tax Year: 2023

Property Tax: \$4,863.58

Tax Area: 08120

Tax Exemption:

Parcel Map Report

For Property Located At

FREETHY BLVD, RICHMOND, CA 94801



[View map - 408-22 , sheet 1](#)

If you have any problems displaying a parcel map after clicking on a map link above, please contact our Customer Service Department at 800-345-7334.

Feedback



RECORDING REQUESTED BY  
CHICAGO TITLE COMPANY  
AND WHEN RECORDED MAIL TO

JOE AND HEIDI SHEKOU  
C/O R H REAL ESTATE  
2173 "D" FRANCISCO BLVD.  
SAN RAFAEL, CA 94901

CONTRA COSTA Co Recorder Office  
STEPHEN L. WEIR, Clerk-Recorder  
DOC- 2000-0110331-00  
Acct 2- Chicago Title  
W, MAY 31, 2000 00:00:00  
CCC\$3,836.00 RIC\$24,416.00 NIC \$1.00  
MOD \$14.00 REC \$18.00 TCF \$13.00  
Ttl Pd\$28,286.00 Nbr-0000004688  
rrc/R2/1-14

Escrow No. 911342 - LE - OAK  
Order No. 911342

SPACE ABOVE THIS LINE FOR RECORDER'S USE

## GRANT DEED

THE UNDERSIGNED GRANTOR(S) DECLARE(S)

DOCUMENTARY TRANSFER TAX IS \$ 3,836.80 City of Richmond \$24,416.00

☐ unincorporated area ☒ City of Richmond

☒ computed on the full value of the interest or property conveyed, or is

☐ computed on the full value less the value of liens or encumbrances remaining at time of sale, and

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,  
SEE GRANTOR EXHIBIT ATTACHED HERETO AND MADE A PART HEREOF BY REFERENCE

hereby GRANT(S) to  
JOE SHEKOU AND HEIDI SHEKOU, HUSBAND AND WIFE, AS COMMUNITY PROPERTY

the following described real property in the City of Richmond  
County of Contra Costa, State of California:

LEGAL DESCRIPTION ATTACHED HERETO AND MADE A PART HEREOF BY REFERENCE

Dated April 25, 2000

SEE ATTACHED SIGNATURE PAGE EXHIBIT

STATE OF CALIFORNIA

COUNTY OF \_\_\_\_\_ ) SS.

On \_\_\_\_\_ before me,

a Notary Public in and for said County and State, personally appeared

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.

Signature of Notary

Date My Commission Expires

FOR NOTARY SEAL OR STAMP

MAIL TAX STATEMENTS TO PARTY SHOWN ON FOLLOWING LINE: IF NO PARTY SO SHOWN, MAIL AS DIRECTED ABOVE  
JOE AND HEIDI SHEKOU c/o 2173 "D" FRANCISCO BLVD., SAN RAFAEL, CA 94901

Name

Street Address

City, State & Zip

Order No. 911342 - MEW

## LEGAL DESCRIPTION

110331

CITY OF RICHMOND

LOTS 1, 2, 3, 4, 5, 6, 11 AND 12, MAP OF SUBDIVISION 5754, FILED JUNE 18, 1982, MAP BOOK 264, PAGE 36, CONTRA COSTA COUNTY RECORDS.

EXCEPTING THEREFROM, THOSE PORTIONS OF LOTS 1, 2, 3, 4 AND 5, SUBDIVISION 5754, DESCRIBED IN THE FINAL ORDER OF CONDEMNATION ENTERED OCTOBER 21, 1977, IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF CONTRA COSTA, CASE NO. C95-01074, A CERTIFIED COPY OF WHICH RECORDED JANUARY 29, 1998, SERIES NO. 98-017835, OFFICIAL RECORDS.

ASSESSOR'S PARCEL NOS. 408-220-032 (LOT 1)  
408-220-033 (LOT 2)  
408-220-003 (LOT 3)  
408-220-034 (LOT 4)  
408-220-035 (LOT 5)  
408-220-006 (LOT 6)  
408-220-023 (LOT 11)  
408-220-024 (LOT 11)  
408-220-025 (LOT 12)  
408-220-026 (LOT 12)

Signature Page Exhibit

110331

Bowen Family Living Trust dated 6/1/89

By: \_\_\_\_\_  
David E. Bowen, Trustee

By: \_\_\_\_\_  
Georgene L. Bowen, Trustee

Gwen Bowen Crader 1993 Revocable  
Trust Dated March 4, 1993.

By: \_\_\_\_\_  
Gwen Bowen Crader, Trustee

\_\_\_\_\_  
Gayle Bowen Nolasco

\_\_\_\_\_  
Bruce David Bowen

*Geraldine Lloyd Hicks by Robert B. Hicks as Attorney in Fact*  
Geraldine Lloyd Hicks

*Robin Jeffrey Hicks by Robert B. Hicks as Attorney in Fact*  
Robin Jeffrey Hicks

*Alan Ainsley Hicks by Robert B. Hicks as Attorney in Fact*  
Alan Ainsley Hicks

*Alcinda Hicks by Robert B. Hicks as Attorney in Fact*  
Alcinda Hicks

*Alcinda Hicks Pearlman by Robert B. Hicks as Attorney in Fact*  
Alcinda Hicks Pearlman

Signature Page Exhibit

110331

Bowen Family Living Trust dated 6/1/89

By: \_\_\_\_\_  
David E. Bowen, Trustee

By: \_\_\_\_\_  
Georgene L. Bowen, Trustee

Gwen Bowen Crader 1993 Revocable  
Trust Dated March 4, 1993.

By: \_\_\_\_\_  
Gwen Bowen Crader, Trustee

\_\_\_\_\_  
Gayle Bowen Nolasco

  
Bruce David Bowen

\_\_\_\_\_  
Geraldine Lloyd Hicks

\_\_\_\_\_  
Robin Jeffrey Hicks

\_\_\_\_\_  
Alan Ainsley Hicks

\_\_\_\_\_  
Alcinda Hicks

\_\_\_\_\_  
Alcinda Hicks Pearlman

110331

ILLEGIBLE NOTARY SEAL DECLARATION (GOVERNMENT CODE 27361.7)

I CERTIFY UNDER PENALTY OF PERJURY THAT THE NOTARY SEAL ON THE DOCUMENT  
TO WHICH THIS STATEMENT IS ATTACHED READS AS FOLLOWS:

NAME OF NOTARY: STACY E BALL

DATE COMMISSION EXPIRES: 9-18-00

STATE: California

COUNTY: SACRAMENTO

PLACE OF EXECUTION OF THIS DECLARATION: Contra Costa County

DATE: 5/30/2000

SIGNATURE: [Signature]

AGENT FOR: CHICAGO TITLE COMPANY



## CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

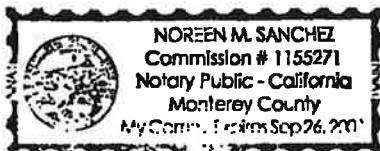
NC 590

State of CALIFORNIA

110331

County of MONTEREYOn MAY 18, 2000 before me, NOREEN M. SANCHEZ, NOTARY PUBLIC  
DATE NAME, TITLE OF OFFICER - E.G., "JANE DOE, NOTARY PUBLIC"personally appeared ROBERT B. HICKS  
NAME(S) OF SIGNER(S)

☐ 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.

Noreen M. Sanchez  
SIGNATURE OF NOTARY

## OPTIONAL

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

## CAPACITY CLAIMED BY SIGNER

- ☐ INDIVIDUAL  
☐ CORPORATE OFFICER

TITLE(S)

- ☐ PARTNER(S) ☐ LIMITED  
☒ ATTORNEY-IN-FACT ☐ GENERAL  
☐ TRUSTEE(S)  
☐ GUARDIAN/CONSERVATOR  
☐ OTHER: \_\_\_\_\_

## DESCRIPTION OF ATTACHED DOCUMENT

Grant Deed  
 TITLE OR TYPE OF DOCUMENT

NUMBER OF PAGES

DATE OF DOCUMENT

## SIGNER IS REPRESENTING:

NAME OF PERSON(S) OR ENTITY(IES)

Geraldine Lloyd Hicks, Robin Jeffrey Hicks,  
Alan Ainsky Hicks, Alcinda Hicks aka  
Alcinda Hicks Pearlman

SIGNER(S) OTHER THAN NAMED ABOVE

## CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

110331

State of California

County of Monterey }

SS.

On 5/26/00

Date

before me, Tammy Consoli, Monterey Public

Notary Public

personally appeared David & Bowen

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.

WITNESS my hand and official seal.

Tammy Consoli  
Signature of Notary Public

Place Notary Seal Above

## 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: 425100 Grant DeedDocument Date: 4/25/00Number of Pages: 4Signer(s) Other Than Named Above: Yes

## Capacity(ies) Claimed by Signer

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

STATE OF CALIFORNIA

EDMUND G. BROWN JR., Governor

## SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION

30 VAN NESS AVENUE  
SAN FRANCISCO, CALIFORNIA 94102  
PHONE: 557-3686



August 15, 1977

Mr. Elmer J. Freethy  
1432 Kearney  
El Cerrito, California 94530

Dear Mr. Freethy:

Enclosed is a copy of the Commission's determination of your claim of exemption. We would appreciate your acknowledgment of receipt of the determination so that our file can be brought up to date on this matter. Of course, acknowledgment of receipt does not mean that you agree or disagree with the determination itself.

Thank you for your cooperation.

Very truly yours,

ALAN R. PENDLETON  
Staff Counsel

Enclosure

ARP/lr

cc: Mr. Arthur M. Shelton

PAGE 7

STATE OF CALIFORNIA

EDMUND G. BROWN JR., Governor

## SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION

30 VAN NESS AVENUE  
SAN FRANCISCO, CALIFORNIA 94102  
PHONE: 557-3686



CLAIM OF EXEMPTION NO. CE 74-15

August 15, 1977

Mr. Elmer J. Freethy  
1432 Kearney  
El Cerrito, California 94530

Dear Mr. Freethy:

On May 5, 1977, the San Francisco Bay Conservation and Development Commission, by a vote of 19 affirmative, 0 negative, and 2 abstentions, approved the following resolution:

I. Determination

The claim of exemption is granted for the industrial development and uses on approximately 84.34 acres within Assessor's Parcels 408-100-019, 408-100-018, and 408-120-016, as shown on a drawing entitled "Land Development Plan for Freethy Land and Investment, Richmond, California" dated December, 1964, including future work involving (1) completion of a road system that was under construction since 1963, including placing fill on tidal areas running from the easterly line of the property to the westerly line; (2) placing fill behind the completed roadway system to bring all of the approximately 84.34 acres of land to grade according to the plan finalized in 1964; and (3) using the 84.34-acre area for light industrial facilities and purposes.

The claim of exemption is denied for any work or uses on approximately 5 acres (known as Parcel 4) within Assessor's Parcel 408-090-018 included in the claim.

II. Findings and Declarations

This determination is made on the basis of the Commission's findings and declarations that the work and uses claimed to be exempt from the Commission's normal permit requirements satisfy the requirements of Section 66632.1, 66655, or 66656 of the McAtteer-Petris Act for the following reasons:

A. Exempt Portions of the Claim

1. There is a "Project" at Claimant's Development Site Within the Meaning of Sections 66632.1 and 66656 of the McAtteer-Petris Act. Under Sections 66632.1 and 66656

Mr. Elmer J. Freethy  
CLAIM OF EXEMPTION NO. CE 74-3  
Page 2

of the BCDC law, a claimant must meet three tests in order to have an exempt "project": (a) there must have been a "project" as of September 17, 1965; (b) prior to September 17, 1965, the claimant must have obtained all necessary permits to allow commencement of the diking or filling for that "project"; and (c) the claimant must have actually commenced the diking and filling process prior to September 17, 1965.

- a. A "Detailed and Specific Plan" Exists. In BCDC v. Emeryville, 69 Cal. 2d 533 (1968), the California Supreme Court defined "project" for the purpose of the "grandfather" clause contained in Government Code Section 66632.1 (substantially re-enacted in 1969 as Section 66656), as follows:

"In view of the manifest intent of the Legislature 'to protect the present shoreline and body of the San Francisco Bay to the maximum extent possible'...we are convinced the Legislature used the term 'project' as a term of limitation.

"The dominant theme underlying all generally accepted definitions of the word 'project' is that of a detailed and specific plan prepared in furtherance of a determination to accomplish a certain objective." (Emphasis added.)

The Commission finds that, as of September 17, 1965, the claimant had prepared and adopted a detailed and specific plan for the development of a light industrial park. This specific and detailed plan is shown and described on Exhibits 3 through 10 (CT, pp. 7 through 10) and consists of drawings showing an industrial park layout with sufficient utilities, road and rail services to accommodate full development of the property then controlled by the claimant. The first, preliminary plan was prepared in April of 1962 and revised on March 15, 1963. Further modifications were made in December of 1964. The 1964 development plan (Exhibit 5, CT p. 8) covers approximately 84.34 acres of land consisting of three parcels then owned by Freethy which are Contra Costa County Assessor's Parcels 408-100-019, 408-100-018,



Mr. Elmer J. Freethy  
 CLAIM OF EXEMPTION NO. CE 74-3  
 Page 3

and 408-120-016. Since the claimant acquired Parcel 4 after September 17, 1965, the 1964 development plan does not establish a specific and detailed plan for that parcel. Evidence also indicates that utility services had been designed and located to serve the three parcels (CT, p. 24). The drawings, letters and description of the industrial project indicate that the claimant had prepared a plan for an industrial park development on approximately 84.34 acres (Parcels 1, 2 and 3) and that this plan was sufficiently detailed to satisfy that aspect of a "project" as defined by the Supreme Court in the Emeryville case.

- b. A "Determination to Accomplish a Certain Objective" Exists. Besides requiring a "specific" and "concrete plan," Emeryville sets forth an additional requirement for determining whether or not a "project" exists:

"...A determination without a concrete plan is not a 'project' because the means of achieving the ultimate objective are not delineated sufficiently to permit prudent commencement of the enterprise. A plan without a determination is not a 'project' because the objective has not been made. (Emphasis added.) Only when that decision has been made and a plan has been conceived in the detail necessary for the prudent commencement of physical efforts to achieve the objective does a 'project' come into being." Id. pp. 545-6.

The Commission finds that, as of September 17, 1965, the claimant had the necessary determination to commence construction of the project pursuant to its specific plan. The claimant's intent in this regard (see Staff Summary dated February 4, 1977, Exhibits 3 through 10, and CT pp. 7 through 10 and pp. 12, 24, 27, 30, 31, 34, and 35) is evidenced by:

- (1) An agreement in February, 1963, between claimant and Southern Pacific Company regarding the construction of the drill track on the property, and a letter dated February 14, 1963 from the

Mr. Elmer J. Freethy  
 CLAIM OF EXEMPTION NO. CE 74-3  
 Page 4

Southern Pacific Company showing the commencement of the first stage of construction in April, 1963;

- (2) An agreement between claimant and Pacific Gas and Electric Company in November, 1964, to secure the right to fill and use the surface land under Pacific Gas and Electric's transmission line which traverses the property from southwest to northeast;
- (3) City of Richmond Permit No. 60352 issued to claimant on March 11, 1963 for the construction of the Bustin Steel Products industrial building on the property;
- (4) Hugh M. O'Neil Company plans dated September 10, 1964 for the construction of the Freethy buildings shown on the development plan;
- (5) Utility improvements consisting of the drill track extension with Southern Pacific Railway in 1963, and the installation of sewer, electrical, and gas systems in 1963;
- (6) Road work construction commencing in 1963;
- (7) Completed construction of Bustin Steel Products building in 1963, and Freethy Company warehouse building in 1964;
- (8) As of September 17, 1964, the placement of several hundred thousand cubic yards of fill on the property at a cost of \$45,000; and
- (9) As of September 17, 1965, expenditures in excess of 50,000 incurred for the development.

The Commission thus finds that the claimant had the requisite "concrete plan" and the "determination" for the industrial development and thus had a "project" under Sections 66632.1 and 66656 of the McAteer-Petris Act, as amplified by the Emeryville case.

Mr. Elmer J. Freethy  
CLAIM OF EXEMPTION NO. CE 74-3  
Page 5

2. As of September 17, 1965, the Claimant did not Need Local or Corps Approvals to Allow Commencement of the Filling Process
  - a. Local Approval by the City of Richmond not Required for Filling. The Commission finds that on September 17, 1965 the claimant did not need a City permit to commence filling operations on the site pursuant to Section 12.44.060 of the City of Richmond Zoning Ordinance (CT, pp. 32 and 33). At that time, the subject property was zoned "M-3 Heavy Industrial District." Section 12.44.080 of the Richmond Zoning Code exempts industrial areas and marshland areas where industrial use is permitted from a City permit requirement for fill operations. Accordingly, the claimant was advised by the City of Richmond that no permit was required by the City to commence the fill work. With respect to building construction, the claimant applied for and was issued building permits by the City of Richmond on March 3, 1963, February 9, 1966, and on July 11, 1966 for three industrial buildings on the property (CT, p. 33).
  - b. As of September 17, 1965, an Army Corps of Engineers Permit was not Required. The Commission finds that, as of September 17, 1965, no Corps of Engineers permit was required to commence filling and diking on claimant's property. At that time, the Corps did not require persons doing work in marshland areas to obtain Corps permits (letter dated August 1, 1972 from Col. Lammie of the Corps of Engineers to Alan Pendleton at BCDC). While a Corps permit is now required to place fill below the plane of Mean Higher High Water (MHHW), the claimant was not required to obtain a permit from the Corps as of September 17, 1965, by which time filling and diking had been well begun.

On June 11, 1971, the San Francisco office of the Army Corps of Engineers issued Public Notice No. 71-22 which extended the Corps' permit jurisdiction to the line of the shore reached by the plane of Mean Higher High Water. In September, 1972, the Army Corps of Engineers promulgated a regulation which specified for the first time that the plane of MHHW would be the shoreward limit of jurisdiction (33 C.F.R. Section 209.260).

Mr. Elmer J. Freethy  
CLAIM OF EXEMPTION NO. CE 74-3  
Page 6

The westerly portion of claimant's property, approximately 23 acres, consists of marshlands and mudflats, and the claimant had filled portions of those areas pursuant to his development plan. On August 10, 1971, the Corps issued a "cease and desist" order prohibiting the claimant from placing future fill without a permit over the marshland and mudflat areas that fell within the Corps' jurisdiction following its issuance of Public Notice No. 71-22. After apparent non-compliance by claimant, a lawsuit was filed in U. S. District Court in August, 1973 at the request of the Army Corps of Engineers, asking for a Court order requiring the claimant to remove all existing fill in those areas over which the Corps had jurisdiction, and to enjoin him from placing further fill without the required Corps permit. A court decision was rendered on February 24, 1975. It held, basically, that the claimant was not required to remove existing fill since he had justifiably relied on the Corps' pre-1971 policy and expended substantial funds on the development and that the Corps was equitably estopped now from demanding fill removal based on a distinct change of policy. The court also held that any future filling would require the necessary Corps permit, and the claimant was enjoined from future filling on portions of his property bayward of the plane of MHHW, as shown on the Corps topographical survey made after placement of the fill, without prior Corps of Engineers approval.

3. No Substantial Changes. The evidence shows that there were minor changes made to the development plan after September 17, 1965. One was the construction of an additional industrial building. Another was the acquisition of a fourth parcel of land in 1968 consisting of 5 acres to the south of the development. The exemption determination does not apply to Parcel 4 and the change in locations and design of the industrial building does not significantly change the nature or extent of the project as originally envisioned.

B. Non-Exempt Portions of the Claim

1. Filling on Assessor's Parcel 408-090-018. The Commission concludes that any fill on Assessor's Parcel 408-090-018 which is not included within the Industrial Development Plan of 1964 is not exempt from BCDC permit requirements.

park in 1962, three years before the state gave BCDC the right to require permits for shoreline fill.

Along with about 30 others, Freethy filed for an exemption to the requirement under a "grandfather" clause which allows fill without permits if the developer already has begun the project and has detailed plans.

Most of the claims have been denied, a handful are waiting on title disputes, and only Freethy's and two others have been accepted.

BCDC's exemption was influenced by a U.S. District Court decision handed down in a suit between the Freethy Land and Investment Co.

action) in a 23-acre marsh area at the site. Freethy has not filled on that area since the Corps began its action in 1971.

This means that even though the developer does not need any BCDC permits, he does need a Corps permit for that 23 acres, part of the 90 acres in dispute.

When BCDC granted the exemption it noted: "The commission advises the claimant that it intends to comment on any public notice received from the Corps for such filing and to indicate whether the proposed project is consistent or inconsistent

plans, the commission said. Freethy claims that BCDC is not involved with the five-acre site although the commission said he would need a BCDC permit for any work there within 100 feet of the highest tidal action line.

Besides Freethy's own corporation yard, there are two other companies at the site, Bustin Steel Products, and Colloids of California. Freethy said he has plans for more development when he has worked out his permit application with the Corps, but he did not want to reveal what these are.

He added that his fight with government agencies over the development has cost him "half a century of lawyers."

Exhibit 3

The evidence shows that this parcel was acquired in 1968 to enlarge the development site. It is now shown on the Development Plan of 1964 which claimant has submitted to establish a specific and detailed plan for the development. As title to this 5-acre parcel was not acquired until 1968, it cannot be considered to be part of the "project" as it existed on September 17, 1965, and thus is not exempt under Sections 66632.1 and 66656 of the McAtteer-Petris Act.

2. Parcel 4 is not an integral part of the "project". Claimant has stated that this parcel is an integral part of the development project. Yet he also states that Parcel 3, Assessor's Parcel 408-120-016, which was purchased on December 14, 1964, was acquired to complete the land acquisition required for completion of the central part of the project. It appears, therefore, that, as of September 17, 1965, claimant had contemplated completion of the development on only three parcels of land consisting of approximately 84.34 acres. Also, claimant has submitted no evidence of any specific plan to be carried out with respect to Parcel 4, other than placing fill on it. The Commission finds that Parcel 4 is not an integral part of the overall "project" as conceived prior to September 17, 1965 and is therefore not exempt from BCDC permit requirements.
3. Section 66655 is inapplicable. As an alternative basis for the claim, the claimant relies on Government Code Section 66655. The Commission finds that Section 66655 is inapplicable here because the subject area is within the Commission's "bay" jurisdiction as defined in Section 66610(a). Section 66655 is available only for vested rights perfected within the areas defined in subdivisions (b), (c) and (d) of Section 66610 (shoreline band, salt ponds, and managed wetlands).

### III. Conclusions

The determination made herein represents a determination only that, because of Sections 66632.1 and 66656 of the McAtteer-Petris Act, a permit from the Commission is not required at this time for the placement of fill or the development of light industrial uses on Parcels 1, 2, and 3, consisting of approximately 84.34 acres and including approximately 23 acres of marsh and tideland. It does not represent, and should not be construed to represent, a determination by the Commission that the proposed project is consistent or inconsistent with any other provision of the McAtteer-Petris Act or the San Francisco Bay Plan.



Elmer J. Freethy  
 AIM OF EXEMPTION NO. CE 74-3  
 Page 8

The Commission has also noted herein that the federal court has decided that a Corps permit is required for filling below the plane of Mean Higher High Water within the approximately 23-acre area of marsh and tideland at the site. The Commission advises the claimant that it intends to comment on any public notice received from the Corps for such filling and to indicate whether the proposed project is consistent or inconsistent with the fill and use policies of the San Francisco Bay Plan, the McAteer-Petris Act, the California Environmental Quality Act of 1970 and the Commission's Management Program for San Francisco Bay.

The Commission has also hereby determined that work and uses on Parcel 4, approximately 5 acres, acquired after September 17, 1965, are not exempt from BCDC permit requirements. Thus any work or uses either below the line of highest tidal action or within 100 feet inland of the line of highest tidal action on Parcel 4 requires a BCDC permit. The Commission also notes that it appears that most of Parcel 4 is not within the Commission's jurisdiction because it is above the line of highest tidal action; however, no survey information has been submitted sufficient to determine the Commission's jurisdiction at Parcel 4 precisely.

The Attorney-General's Office concurs in this conclusion.

\_\_\_\_\_  
 CHARLES R. ROBERTS  
 Executive Director

CRR/lrs

cc: U. S. Army Corps of Engineers, Attn: Regulatory Functions Branch  
 S. F. Bay Regional Water Quality Control Board, Attn: Certification Section  
 Environmental Protection Agency, Attn: Chris Vais, E-4-2  
 San Francisco Department of City Planning  
 City of Richmond, Attn: City Manager

\* \* \* \* \*

Receipt acknowledged, contents understood and agreed to:

Executed at \_\_\_\_\_

\_\_\_\_\_  
 Applicant

On \_\_\_\_\_ By: \_\_\_\_\_

\_\_\_\_\_  
 Title

STATE OF CALIFORNIA

EDMUND G. BROWN JR., Governor

## SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION

30 VAN NESS AVENUE  
SAN FRANCISCO, CALIFORNIA 94102  
PHONE: 557-3686



December 17, 1979

City of Richmond  
City Planning Department  
City Hall, Civic Center  
Richmond, California 94804

SUBJECT: Preliminary Tentative Subdivision Map 754 Freethy Industrial  
Park Claim of Exemption No. CE 74-15 and BCDC Inquiry File No.  
CC.NR.6619.1

Gentlemen:

Thank you for sending us the tentative subdivision map for the Freethy Industrial Park Subdivision No. 5754. We have reviewed the map and find that the present development contains several new smaller parcels, a new road and two cul-de-sacs which were not included in the BCDC Exemption No. CE 74-15. We do not know whether the small size of these parcels would be consistent with the M-3 Heavy Industrial zoning ordinance as it existed at the time of the exemption, or whether the project that will eventually be built would more likely be an office park. Since we do not have a site plan, we do not know at this time whether or not the exemption would apply to the project Mr. Freethy now intends to build.

If a change of use were to occur, as determined by the BCDC, a permit for all construction within 100 feet of the line of highest tidal action would be required. The Commission could not approve a project if maximum feasible public access consistent with the project were not provided. Access along the marsh edge along the PG & E right-of-way would most likely be required. If uses, which the Commission believes are heavy industrial uses, are placed on the site, and if the streets are constructed as shown on the tentative map, it is possible that construction would be exempt from BCDC permit authority.

If you have any further questions, do not hesitate to contact me.

Very truly yours,

A handwritten signature in cursive script that reads 'Nancy Twiss'.

NANCY TWISS  
Permit Analyst

NT/st

STATE OF CALIFORNIA

EDMUND G. BROWN JR., Governor

## SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION

30 VAN NESS AVENUE  
SAN FRANCISCO, CALIFORNIA 94102  
PHONE: 557-3686



February 6, 1980

Mr. C. E. Woodward  
Planning Director  
City of Richmond  
City Hall  
Richmond, California 94804

SUBJECT: Freethy Property - ~~CE77-15~~ and BCDC Inquiry File No. CC.MR.6619.1

Gentlemen:

We have reviewed the initial study for the proposed Freethy Industrial Subdivision and believe that the Richmond Planning Department has correctly determined that an Environmental Impact Report is required for this project. The Planning Department staff has correctly identified five significant impacts. After reading the initial study, we believe that location of this project in the 100-year flood plain should also be identified as a significant impact. In addition, several environmental factors have been checked "unknown" on the initial study.

It is likely that some of these would result in significant impacts. For example, the fiscal and economic impact is checked as beneficial. However, the services required for the project have not been determined at this time. Development on low lying bay muds is often costly because differential settlement causes sewers and water lines to rupture. Police and fire services will be required, but until more is known about the development, the costs of these services cannot be determined. It is possible that the costs of services would exceed revenues generated, especially since the passage of the Jarvis-Gann Initiative.

Exemption

In our previous correspondence we stated we did not know at this time whether or not the Commission has jurisdiction over the project. We have not received any additional information that would allow such a determination to be made. However, we note that the applicant for the project is Hahn Real Estate rather than Mr. Freethy. If this parcel is subdivided and equity passes to a third party, it is our opinion that the exemption would not apply. Since the Commission cannot file a permit application until an environmental determination is made, and since significant impacts have been identified, we believe that the City should prepare an EIR at this time. If the exemption were not to apply, preparation of an environmental document by the City would also save the developer a good deal of time, since the Commission would have to prepare an EIR. The Commission does not have any staff assigned to EIR preparation and all consultant contracts must be approved by the Commission and three separate state offices.

Mr. C. E. Woodward  
February 6, 1980  
Page Two

If you have any further questions, please contact Nancy Twiss of our staff who is most familiar with the project.

Very truly yours,

FRANK BROADHEAD  
Staff Counsel

FB/pm

STATE OF CALIFORNIA

EDMUND G. BROWN JR., Governor

## SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION

30 VAN NESS AVENUE  
SAN FRANCISCO, CALIFORNIA 94102  
PHONE: 557-3686



November 10, 1981

Mr. Elmer J. Freethy  
1432 Kearney Street  
El Cerrito, California 94530

AND

Ainsley Corporation  
43 North Harrison  
Campbell, California 95008

SUBJECT: Development of San Pablo Bay Industrial Park  
(BCDC File No. CE 74-15)

Gentlemen:

The Commission has received a notice from the City of Richmond that the Ainsley Corporation, through Elmer J. Freethy acting as its agent, has applied for a tentative subdivision map for the subdivision of the San Pablo Bay Industrial Park. A review of the Commission's files indicates that the Commission issued Claim of Exemption No. CE 74-15 to Elmer J. Freethy for the development of the property. However, the notice of the application for a tentative subdivision map states that the owner is now the Ainsley Corporation.

A claim of exemption issued by the Commission is personal to the applicant and cannot be transferred when the holder of the exemption conveys the property. Therefore, the Ainsley Corporation as the new owner of the property will need a permit from the Commission for any filling, dredging, or substantial change of use within the Commission's jurisdiction. Although the Commission has the authority to require a permit for the act of subdividing property, it has not yet implemented its authority. However, the development of the property as described in the notice of application makes it appear that the actual development will involve work for which a Commission permit is required. Thus, prior to the commencement of any work, you should contact the Commission staff to determine what type of permit, if any, will be required.



Mr. Elmer J. Freethy  
and The Ainsley Corporation  
November 10, 1981  
Page Two

If you have any questions about the non-transferability of the claim of exemption, please contact me. If you need information about applying for BCDC permits please contact Robert Hickman.

Thank you very much for your cooperation.

Very truly yours,

JONATHAN T. SMITH  
Staff Counsel

JTS/mm

cc: Kathy Mikkelson, Attorney General's Office

## SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION

THIRTY VAN NESS AVENUE, SUITE 2011

SAN FRANCISCO, CA 94102-6080

PHONE: (415) 557-3686



October 23, 1989

Mr. Ross Kersey  
Buzz Oates Real Estate  
8515 Elder Creek Road  
Sacramento, California 95828

SUBJECT: BCDC Jurisdiction Over Portions of Richmond Subdivision 5754  
(Freethy Property); CE 74-15.

Dear Mr. Kersey:

This letter is in response to our phone conversation of October 13, 1989 in which you requested a jurisdictional determination and letter regarding Richmond Subdivision 5754, Freethy Boulevard, Richmond, California. As I indicated, the Commission has jurisdiction over all areas of the Bay below the line of highest tidal action and all areas within 100 feet inland of the line of highest tidal action. The jurisdiction over the tidal area is referred to as "Bay" jurisdiction. In the vicinity of Subdivision 5754, the line of highest tidal action is 5.9 feet above mean sea level (NGVD). Jurisdiction over the inland area is referred to as "shoreline band" jurisdiction.

Since you do not have an elevation survey map of the 5.9-foot MSL contour at the site, we cannot define the Commission's jurisdiction over the site. However, the November 5, 1979 survey map of the site, prepared by Charles Savio, provides sufficient spot elevation data that we can determine that all of lots one, two, three, four, eight, nine, and ten are outside of the Commission's jurisdiction. A copy of this map is attached. Estimates of the line of highest tidal action and the Commission's shoreline band jurisdiction, are marked on the map. This estimate is based on the survey points which are above the 5.9-foot MSL elevation.

However, portions of lot five, six, seven, eleven, twelve, fourteen, and possibly the other remaining lots, are within the Commission's jurisdiction. Any activity in these areas that could be considered placement of fill, extraction of materials, or a substantial change of use, requires Commission authorization.

Mr. Ross Kersey  
October 20, 1989  
Page 2

Pursuant to Calif. Administrative Code Title 14, Division 5, Chapter 9, Article 2, Section 10920, Claim of Exemption 74-15 which was issued to Mr. Elmer J. Freethy on August 15, 1977 for the site is "ineffective". That section states:

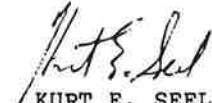
"An exemption that the Commission grants shall be personal to the claimant and shall not be transferable. A transfer of the property...on which the exempted activity exists...shall render the claim ineffective as it applies to any...substantial change in use that would occur after the date of the transfer."

As of the date of the property transfer to Ainsley Corporation, the Claim of Exemption 74-15 became ineffective.

I assume this letter provides sufficient description of the Commission's jurisdiction over the site for your present needs. A final and binding jurisdictional determination can only be provided when a survey of the line of highest tidal action is provided to our staff.

If you have any additional questions please contact me or Chris Parry at (415) 557-3686.

Very truly yours,

  
KURT E. SEEL  
Legal Intern

KES/qjg

Enclosure

5394B



# Exhibit 8



## LEGEND

Gr	—	GROUND ELEVATION
HP	—	HIGH POINT
11	—	CONTOUR ELEVATION
	—	HIGH POINT/GRADE BREAK
3:1	—	3:1 SLOPE OR FLATTER

## LOT OWNERSHIP & FILL AMOUNTS

LOT #	OWNERSHIP	FILL AMOUNT
1 THRU 4	JOE & HEIDI SHEKOU	0 CUBIC YARDS
5 & 6	JOE & HEIDI SHEKOU	8,610 CUBIC YARDS
7 & 8	RICHMOND DEVELOPMENT CO.	10,080 CUBIC YARDS
9	RICHMOND DEVELOPMENT CO.	1,050 CUBIC YARDS
10	RICHMOND DEVELOPMENT CO.	2,550 CUBIC YARDS
11	JOE & HEIDI SHEKOU	6,460 CUBIC YARDS
12	JOE & HEIDI SHEKOU	5,470 CUBIC YARDS
15	RICHMOND DEVELOPMENT CO.	6,830 CUBIC YARDS
16 THRU 18	RICHMOND DEVELOPMENT CO.	2,720 CUBIC YARDS
		TOTAL = 43,770 CUBIC YARDS

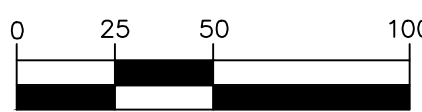
## GRADING NOTES

- 1) LOTS 1 THRU 4 NOT TO BE FILLED.
- 2) LOT 15 NOT TO BE FILLED UNLESS EXISTING CONCRETE FOUNDATION IS REMOVED.
- 3) STRIP 2" OF MATERIAL OFF ALL AREAS TO BE FILLED AND STOCKPILE ON-SITE.
- 4) REFER TO NOTE #14, SHEET C3, FOR STRIPPING VOLUMES.
- 5) CONTRACTOR TO COMPACT FILL IN 8" LIFTS, MAX, COMPACTED TO 90% REL. COMPACTION.
- 6) CONTRACTOR TO BE AWARE OF AND PROTECT ALL CONCRETE "V-DITCHES" DURING GRADING OPERATIONS. REPLACE IN-KIND ANY "V-DITCHES" THAT ARE DAMAGED.

## OWNER INFORMATION

JOE & HEIDI SHEKOU 2167 FRANCISCO BLVD SAN RAFAEL, CA 94901 415-472-7700	RICHMOND DEVELOPMENT COMPANY 125 PARK PLACE, SUITE 210 RICHMOND, CA 94801 510-237-6916
---	---

## GRAPHIC SCALE



## LEGEND

NOTE: CONTOURS BY INTERPOLATION.  
APPROXIMATE ONLY.

## REFERENCES

FIELD BOOK NO.  
FILE MAP: R-1092  
TITLE CO:  
POLICY NO:  
DATE: NOV 29  
MISC. REF: B-9010, X-3280,  
17643 FILE, X-3247-1  
9642, 17643, 18636, 0-1017

## REVISIONS

4/11/14 - MISC. REV.  
4/18/14 - ADD BCDC  
LINE

KISTER, SAVIO & REI, INC.  
LAND SURVEYORS - CIVIL ENGINEERS  
3095 RICHMOND PARKWAY, SUITE 214  
RICHMOND, CALIFORNIA 94806  
PHONE (510) 222-4020 FAX (510) 222-3718  
E-MAIL info@ksrinc.net

FOR: CJC TRUCKING, INC.  
SCALE: 1" = 50'  
DATE: FEBRUARY 24, 2014

JOB NO. 19327  
DWG NO. 0-1267

RICHMOND,

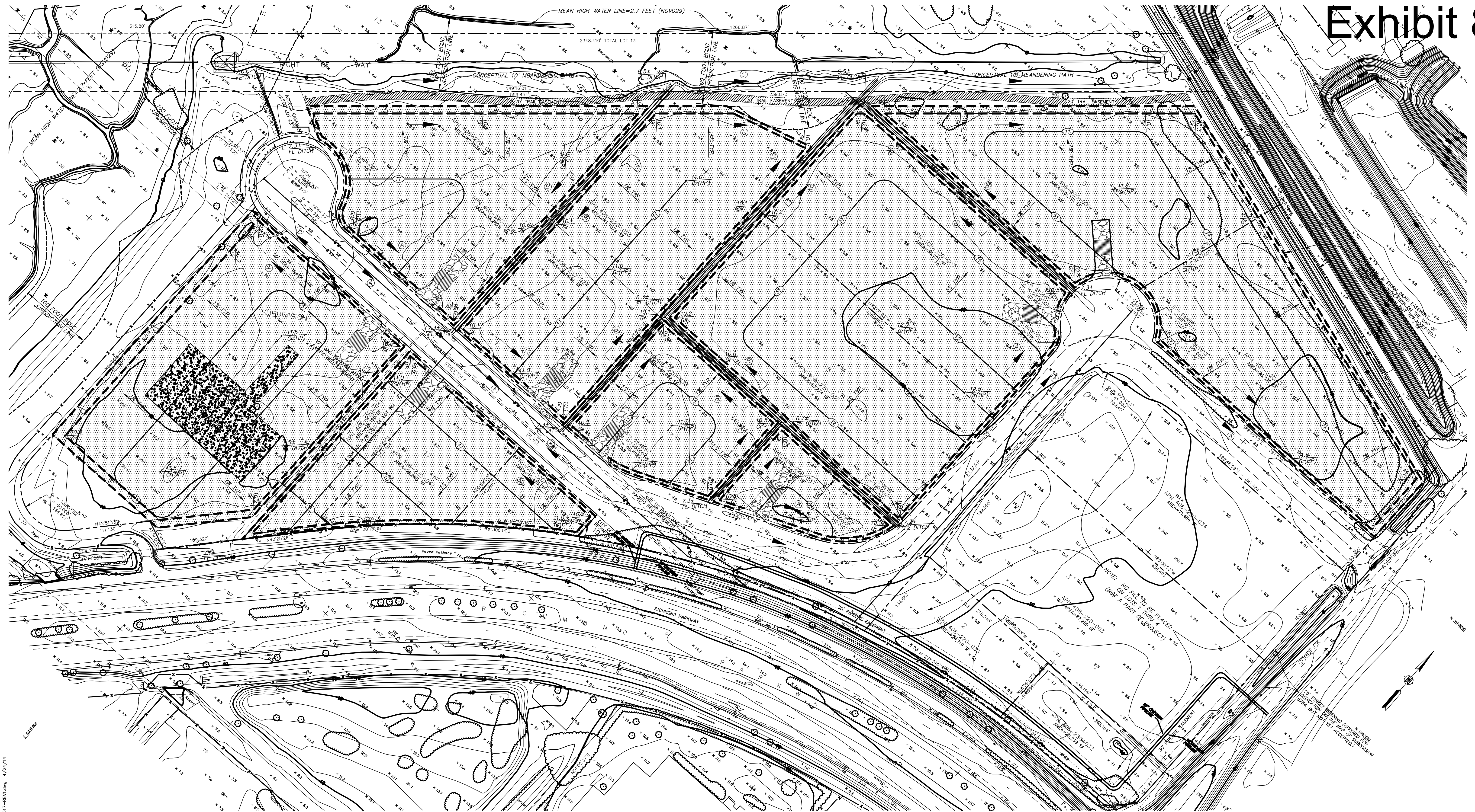
CALIFORNIA

## DESCRIPTION

GRADING PLAN  
SUBDIVISION 5754

C1

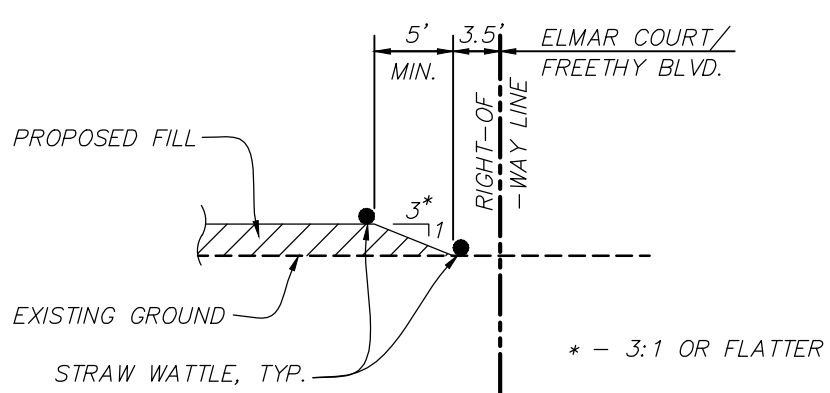




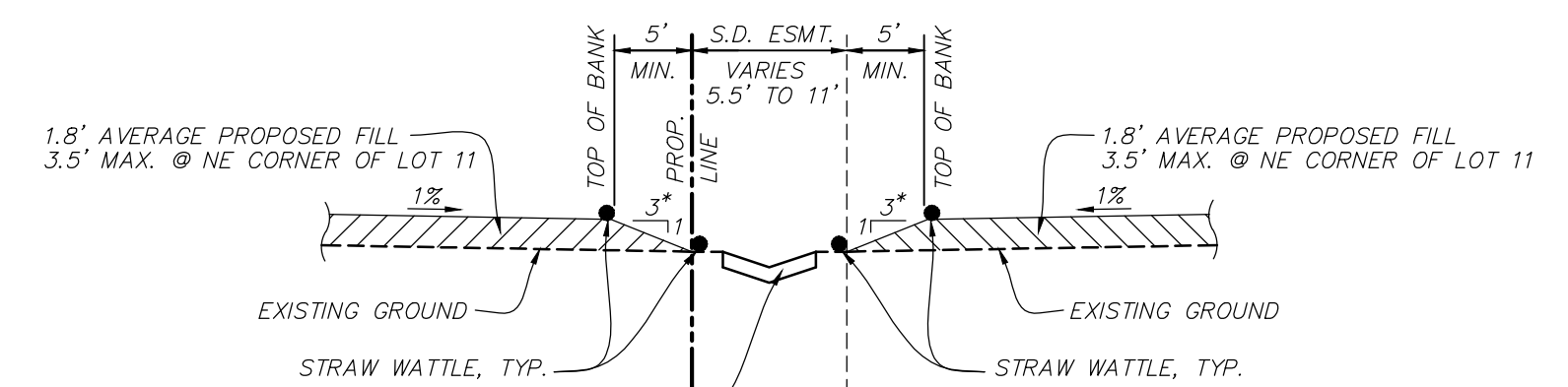
EROSION CONTROL LEGEND

- INDICATES FIBER ROLL/STRAW WATTLE MATERIAL TO BE INSTALLED PER SE-5 OF CASQA HANDBOOK
- INDICATES STABILIZED CONSTRUCTION ENTRANCE WITH CORRUGATED STEEL PANELS TO BE INSTALLED PER TC-1 OF CASQA HANDBOOK. CONTRACTOR TO INSTALL AS MANY AS REQUIRED. PROTECT EXISTING CONCRETE "V" DITCHES DURING GRADING OPERATIONS.
- HYDROSEED GRADED AREAS WITH TACKIFIED STRAW MULCH LAYER PER EC-4 & EC-6 OF CASQA HANDBOOK. REFER TO SWPPP FOR HYDROSEED MIX

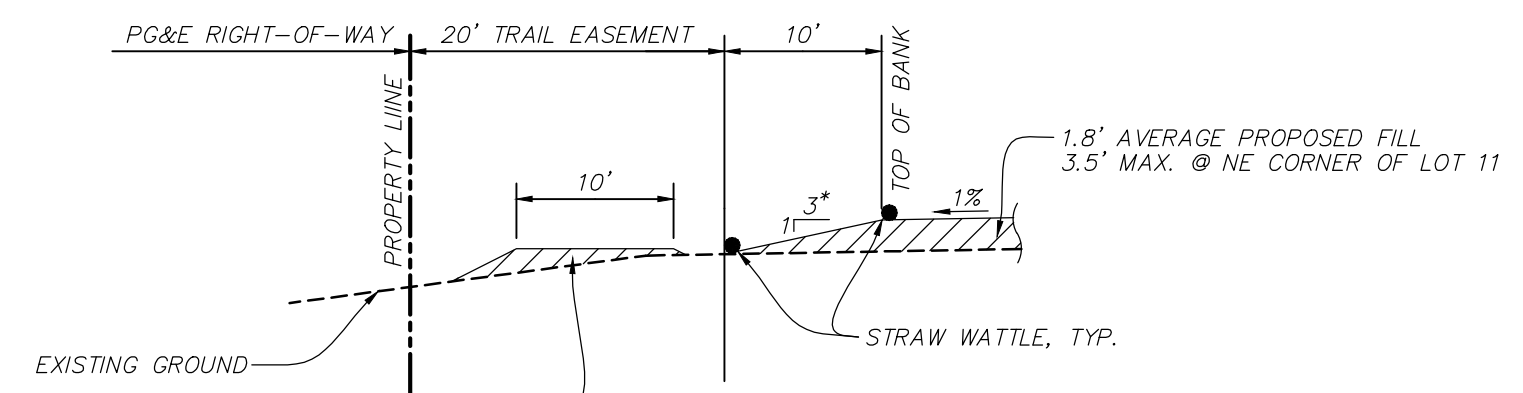
NOTE: REFER TO SHEET C3 FOR EROSION CONTROL NOTES & DETAILS



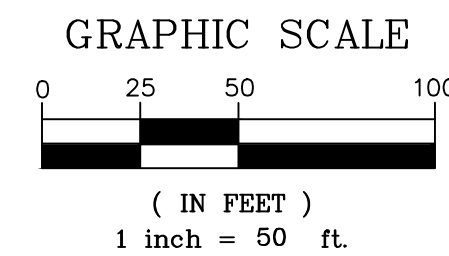
SECTION A-A  
NTS



SECTION B-B  
NTS



SECTION C-C  
NTS



LEGEND		REFERENCES		REVISIONS		KISTER, SAVO & REI, INC. LAND SURVEYORS - CIVIL ENGINEERS		DESCRIPTION	
		FILE BOOK No. FILE MAP: R-1092		4/11/14 - MISC. REV. 4/18/14 - ADD BODC LINE		3095 RICHMOND PARKWAY, SUITE 214 RICHMOND, CALIFORNIA 94806 PHONE (510) 222-4020 FAX (510) 222-3718 E-MAIL info@ksrinc.net		EROSION CONTROL PLAN	
		POLICY No. DATE: NOV 29						SUBDIVISION 5754	
		MISC. REF: B-9010, X-3280, 17643.F1E, X-3247-1 9642, 17643, 18636, O-1017							
		NOTE: CONTOURS BY INTERPOLATION, APPROXIMATE ONLY				FOR: CJC TRUCKING, INC. SCALE 1" = 50'		RICHMOND, CALIFORNIA	
						DATE: FEBRUARY 24, 2014			
						JOB No. 19327			
						DWG No. O-1267			



CITY OF RICHMOND GRADING SECTION GENERAL NOTES

- "BY ACCEPTING THIS PERMIT, THE PERMITEE, FOR HIMSELF, HIS CONTRACTORS, AND EMPLOYEES, PROMISES TO SAVE, INDEMNIFY AND HOLD HARMLESS THE CITY OF RICHMOND AND ITS EMPLOYEES, AGENTS AND REPRESENTATIVES FROM ALL LIABILITIES AND CLAIMS FOR DAMAGES BY REASON OF INJURY OR DEATH TO ANY PERSON(S), OR DAMAGE TO PROPERTY, FROM ANY CAUSE WHATSOEVER WHILE IN, UPON OR IN ANY WAY CONNECTED WITH THE WORK COVERED BY THIS GRADING PERMIT, AND DOES FURTHER PROMISE TO DEFEND THESE INDEMNITEE IN ANY CLAIM OR ACTION ARISING OUT OF OR AS A RESULT OF THE WORK DONE UNDER THIS PERMIT".
- ALL GRADING, SITE PREPARATION, PLACING AND COMPACTION OF FILL TO BE DONE IN ACCORDANCE WITH CITY OF RICHMOND CHAPTER 12.44 OF THE RICHMOND MUNICIPAL CODE – EXCAVATION, GRADING AND EARTHWORK CONSTRUCTION; ALSO UNDER THE DIRECT SUPERVISION OF A GEOTECHNICAL ENGINEER. SUBSEQUENT TO COMPLETION OF THE WORK, THE GEOTECHNICAL ENGINEER SHALL SUBMIT TO THE COUNTY BUILDING INSPECTION DEPARTMENT A REPORT STATING THAT ALL WORK HAS BEEN DONE TO ITS SATISFACTION.
- CONTRACTOR TO NOTIFY CITY OF RICHMOND PUBLIC WORKS DEPARTMENT 48 HOURS PRIOR TO START OF WORK.
- ALL CUT SLOPES SHALL BE ROUNDED TO MEET EXISTING GRADES AND BLEND WITH SURROUNDING TOPOGRAPHY. ALL GRADED SLOPES SHALL BE PLANTED WITH SUITABLE GROUND COVER.
- ANY DEVIATION FROM APPROVED PLAN REQUIRES APPROVAL OF THE CONTRA COSTA CTY SENIOR GRADING INSPECTOR.
- ALL SLIDE REPAIR WORK, KEYWAYS, SUBDRAIN INSTALLATION, AND LINED DITCH WORK SHALL BE INSPECTED BY THE CITY OF RICHMOND. REPORT FROM THE GEOTECHNICAL ENGINEER SHALL BE SUBMITTED TO THE CITY OF RICHMOND REGARDING THE SLIDE REPAIR AND/OR SUBDRAIN INSTALLATION, IF ANY..
- DURING GRADING OPERATIONS, CONTRACTOR SHALL IMPLEMENT DUST CONTROL MEASURES ON SITE AND HAUL ROUTES.
- A FINAL REPORT BY THE CIVIL ENGINEER CERTIFYING THAT ALL GRADING, LOT DRAINAGE AND DRAINAGE FACILITIES HAVE BEEN COMPLETED AND THE SLOPE PLANTING INSTALLED IN CONFORMANCE WITH THE APPROVED PLANS, SHALL BE SUBMITTED TO THE CITY OF RICHMOND PRIOR TO ISSUANCE OF BUILDING PERMITS/COMPLETION OF PROJECT.
- SILT AND EROSION CONTROL PLANS REQUIRED FOR WORK DURING RAINY SEASON. (OCTOBER 1 THROUGH APRIL 15). SILT AND EROSION CONTROL METHODS WILL BE EMPLOYED YEAR-ROUND.
- GRADING WORK HOURS ARE 7:30 AM TO 5:30 PM, MONDAY THRU FRIDAY. NO GRADING WORK WILL BE PERFORMED ON OBSERVED NATIONAL HOLIDAYS.

PROJECT GENERAL NOTES

- TOPOGRAPHIC SURVEY BY KISTER, SAVIO & REI, INC. AERIAL PHOTOGRAMMETRY AND SUPPLEMENTAL FIELD SURVEYING DATED AUGUST, 2006. DATUM: NGVD 1929.
- WORK SHALL NOT BEGIN UNTIL ADEQUATE TEMPORARY BARRICADES, BARRIERS, FENCES, SIGNS, LIGHTS, OR OTHER SUCH TRAFFIC AND PEDESTRIAN WARNING AND CONTROL DEVICES ARE IN PLACE.
- ALL KNOWN EXISTING UNDERGROUND UTILITIES ARE SHOWN ON THE PLAN AS BEST AS CAN BE ESTABLISHED FROM AVAILABLE INFORMATION. THE CONTRACTOR SHALL PROCEED WITH DUE CAUTION DURING UNDERGROUND OPERATIONS AND SHALL REPAIR OR REPLACE ALL UTILITIES AND SERVICES, EITHER MARKED IN THE FIELD OR INDICATED ON THE PLANS, WHICH ARE DAMAGED DURING CONSTRUCTION AT HIS OWN EXPENSE.
- CONTRACTOR IS ENCOURAGED TO CONTACT AN UNDERGROUND UTILITY LOCATING SERVICE PRIOR TO BEGINNING ANY EXCAVATION WORK FOR ASSISTANCE IN LOCATING UNDERGROUND UTILITIES.
- ELEVATIONS AND LOCATIONS OF ALL EXISTING UTILITIES WHICH CROSS THE LINE OF CONSTRUCTION SHALL BE VERIFIED BY THE CONTRACTOR PRIOR TO THE START OF ANY CONSTRUCTION AFFECTING SAID LINES.
- CONTRACTOR IS TO VERIFY WORK IN THE FIELD AND SHALL SATISFY HIMSELF AS TO THE ACCURACY BETWEEN THE WORK SET FORTH ON THESE PLANS AND THE WORK IN THE FIELD. ANY DISCREPANCIES SHALL BE BROUGHT TO THE ATTENTION OF THE ENGINEER PRIOR TO THE START OF CONSTRUCTION.
- CONTRACTOR SHALL REPLACE OR REPAIR, AT HIS OWN EXPENSE, ALL DAMAGED, REMOVED OR OTHERWISE DISTURBED WALLS, FENCES, CURBS, ABOVE-GRADE IMPROVEMENTS OR PHYSICAL FEATURES OF WHATEVER NATURE TO THEIR ORIGINAL CONDITIONS, WHETHER SPECIFICALLY INDICATED ON THE PLANS OR NOT. THIS NOTE APPLIES TO DAMAGE BY THE CONTRACTOR OUTSIDE THE IMMEDIATE AREA OF THE WORK.
- ALL TRENCHING OPERATIONS SHALL BE IN ACCORDANCE WITH THE REQUIREMENTS OF TITLE 8 (CAL/OSHA).
- HAND TUNNELING/DIGGING WILL BE REQUIRED FOR EXCAVATION WORK IN WHICH EXISTING UTILITIES ARE WITHIN 24" OR LESS VERTICALLY OR HORIZONTALLY OF THE TRENCH LINE.
- UPON COMPLETION OF THE WORK, THE CONTRACTOR SHALL CERTIFY THAT ALL WORK WAS PERFORMED IN ACCORDANCE WITH THE REQUIREMENTS OF THE CONTRACT DOCUMENTS. VARIATIONS SHALL BE DECLARED AND PRESENTED TO THE OWNERS REPRESENTATIVE IN WRITING UPON COMPLETION OF CONSTRUCTION.
- IT SHALL BE THE CONTRACTOR'S RESPONSIBILITY TO MAINTAIN CONTROL OF THE ENTIRE CONSTRUCTION OPERATION AND TO THIS END KEEP THE ENTIRE SITE FREE FROM EROSION.
- THE OWNER'S REPRESENTATIVE WILL NOT DIRECTLY CONTROL THE PHYSICAL ACTIVITIES OF THE CONTRACTOR OR ANY SUBCONTRACTORS. CONTRACTOR WILL BE SOLELY AND COMPLETELY RESPONSIBLE FOR WORKING CONDITIONS ON THE JOB SITE, INCLUDING SAFETY OF ALL PERSONS AND PROPERTY DURING PERFORMANCE OF THE WORK. THIS REQUIREMENT WILL APPLY CONTINUOUSLY AND NOT BE LIMITED TO NORMAL WORKING HOURS.
- EARTHWORK QUANTITIES (UNADJUSTED FOR SHRINK OR SWELL):
- 2" STRIPPING OVER 811,706 SF (INCLUDING LOT 15): 5,000 CY±  
2" STRIPPING OVER 680,230 SF (NOT INCLUDING LOT 15): 4,200 CY±  
STRIPPINGS TO BE STOCKPILED AND UTILIZED TO CAP ALL PROPOSED FILL.  
  
SOIL IMPORTATION: 44,720 CY± (INCLUDING LOT 15)  
SOIL IMPORTATION: 37,890 CY± (NOT INCLUDING LOT 15)  
  
SOIL EXCAVATION AND OFFHAUL: 0 CY±
- THE ESTIMATED EARTHWORK QUANTITIES ARE DETERMINED BY STANDARD ENGINEERING METHODS UTILIZING THE BEST INFORMATION AVAILABLE. IT IS THE CONTRACTOR'S RESPONSIBILITY TO PERFORM AN INDEPENDENT QUANTITY ESTIMATE FOR BIDDING PURPOSES AND TO VERIFY THE ENGINEER'S ESTIMATE OF GRADING QUANTITIES. ESTIMATED EARTHWORK QUANTITIES MAY VARY DEPENDING UPON THE ACTUAL DEPTH OF STRIPPING AND DEMOLITION ACTIVITIES.

TEMPORARY STABILIZED CONSTRUCTION ENTRANCE DESIGN AND CONSTRUCTION SPECIFICATIONS

- THE MATERIAL FOR CONSTRUCTION OF THE PAD SHALL BE 2" TO 3" STONE.
- THE THICKNESS OF THE PAD SHALL NOT BE LESS THAN 8".
- THE WIDTH OF THE PAD SHALL NOT BE LESS THAN THE FULL WIDTH OF ALL POINTS OF INGRESS OR EGRESS.
- THE LENGTH OF THE PAD SHALL BE AS REQUIRED, BUT NOT LESS THAN 25 FEET.
- THE ENTRANCE SHALL BE MAINTAINED IN A CONDITION THAT WILL PREVENT TRACKING OR FLOWING OF SEDIMENT ONTO PUBLIC RIGHT-OF-WAY. THIS MAY REQUIRE PERIODIC TOP DRESSING WITH ADDITIONAL STONE AS CONDITIONS DEMAND, AND REPAIR AND/OR CLEANING OF ANY MEASURES USED TO TRAP SEDIMENT. ALL SEDIMENT SPILLED, DROPPED, WASHED OR TRACKED ONTO PUBLIC RIGHT-OF-WAY SHALL BE REMOVED IMMEDIATELY.
- WHEN NECESSARY, WHEELS SHALL BE CLEANED TO REMOVE SEDIMENT PRIOR TO ENTRANCE ONTO PUBLIC RIGHT-OF-WAY. WHEN WASHING IS REQUIRED, IT SHALL BE DONE ON AN AREA STABILIZED WITH CRUSHED STONE THAT DRAINS INTO AN APPROVED SEDIMENT TRAP OR SEDIMENT BASIN. ALL SEDIMENT SHALL BE PREVENTED FROM ENTERING ANY STORM DRAIN, DITCH, OR WATERCOURSE THROUGH THE USE OF SAND BAGS, GRAVEL, BOARDS OR OTHER APPROVED METHODS.

SILT FENCE/FILTER BARRIER MAINTENANCE NOTES:

- SILT FENCES AND FILTER BARRIERS SHALL BE INSPECTED IMMEDIATELY AFTER EACH RAINFALL AND AT LEAST DAILY DURING PROLONGED RAINFALL. ANY REQUIRED REPAIRS SHALL BE MADE IMMEDIATELY.
- SHOULD THE FABRIC ON A SILT FENCE OR FILTER BARRIER DECOMPOSE OR BECOME INEFFECTIVE PRIOR TO THE END OF THE BARRIER'S EXPECTED USABLE LIFE AND THE BARRIER STILL IS NECESSARY, THE FABRIC SHALL BE REPLACED PROMPTLY.
- SEDIMENT DEPOSITS SHOULD BE REMOVED WHEN DEPOSITS REACH APPROXIMATELY ONE-HALF THE HEIGHT OF THE BARRIER.
- ANY SEDIMENT DEPOSITS REMAINING IN PLACE AFTER THE SILT FENCE OR FILTER BARRIER IS NO LONGER REQUIRED SHALL BE DRESSED TO CONFORM WITH THE EXISTING GRADE, PREPARED AND SEEDED.

FIBER ROLL/STRAW WATTLE NOTES CONSTRUCTION AND MAINTENANCE:

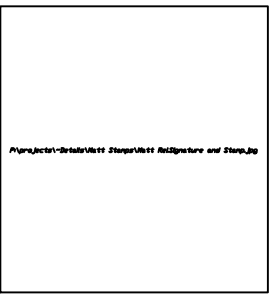
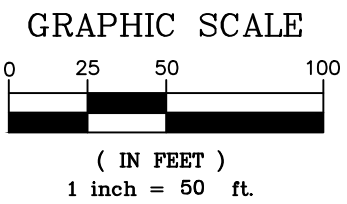
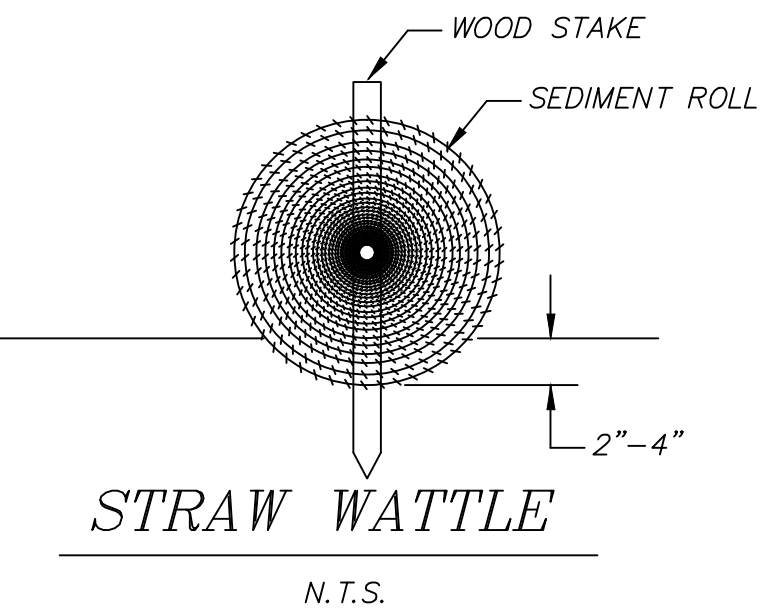
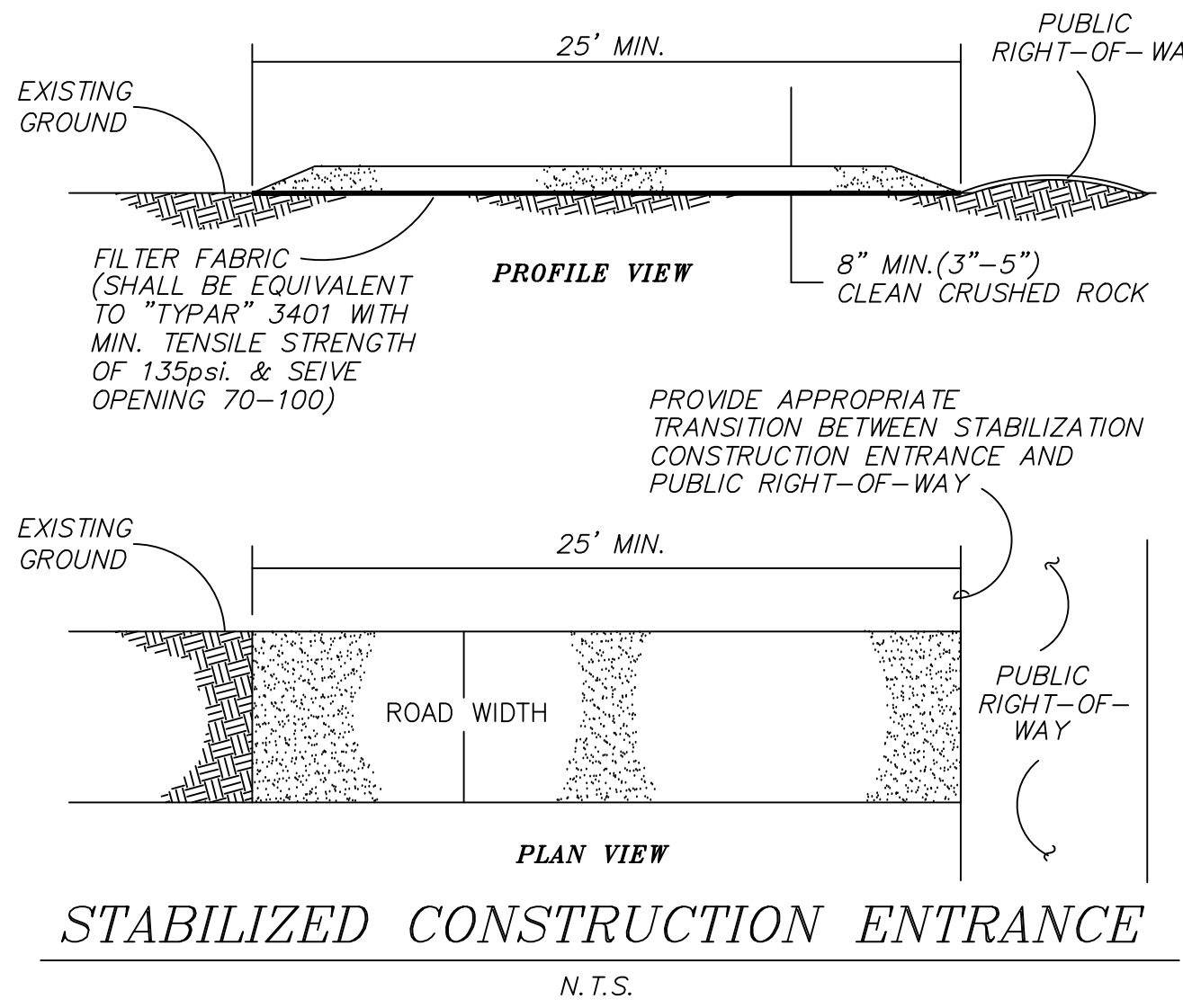
- FOLLOW MANUFACTURER'S RECOMMENDATIONS FOR INSTALLATION. IN GENERAL, WILL BE AS FOLLOWS:
- FINE GRADE THE SUBGRADE BY HAND, DRESSING WHERE NECESSARY TO REMOVE LOCAL DEVIATIONS AND TO REMOVE LARGER STONES OR DEBRIS THAT WILL INHIBIT INTIMATE CONTACT OF THE FIBER ROLL WITH THE SUBGRADE.
- PRIOR TO ROLL INSTALLATION, CONTOUR A CONCAVE KEY TRENCH 50 TO 100 mm (2 TO 4 INCHES) DEEP ALONG THE PROPOSED INSTALLATION ROUTE.
- SOIL EXCAVATED IN TRENCHING SHOULD BE PLACED ON THE UPHILL OR FLOW SIDE OF THE ROLL TO PREVENT WATER FROM UNDERCUTTING THE ROLL.
- PLACE FIBER ROLLS INTO THE KEY TRENCH AND STAKE IN THE CENTER OF THE ROLL WITHIN 6 FEET OF EACH END AND THEN EVERY SIX FEET WITH 1" X 2" X 23" STAKES.
- STAKES ARE TYPICALLY DRIVEN INTO THE CENTER OF THE ROLL, WHEN MORE THAN ONE FIBER ROLL IS PLACED IN A ROW, THE ROLLS SHOULD BE ABUTTED SECURELY TO ONE ANOTHER TO PROVIDE A TIGHT JOINT, NOT OVERLAPPED.
- DESIGNED FOR LOW SURFACE FLOWS NOT TO EXCEED 1 CFS FOR SMALL AREAS.
- DESIGNED FOR SHORT SLOPES OR SLOPES FLATTER THAN 3:1. PRIMARY PURPOSE IS NOT SEDIMENT CONTROL, ALTHOUGH DO PROVIDE SOME SEDIMENT REMOVAL.
- REPAIR OT REPLACE SPLIT, TORN, UNRAVELING, OR SLUMPING FIBER ROLLS.
- INSPECT FIBER ROLLS WHEN RAIN IS FORECAST, FOLLOWING RAIN EVENTS, AND AT LEAST DAILY DURING PROLONGED RAINFALL. PERFORM REQUIRED MAINTENANCE.
- IN MOST CASES, FIBER ROLLS DO NOT REQUIRE REMOVAL AND CAN BE ABANDONED IN PLACE. IF NOT EXCESSIVELY SOILED, ROLLS MAY BE REMOVED, REPLACED, AND REUSED.

GRADING AND EROSION CONTROL NOTES:

- MATERIALS FROM EXCAVATION IN THE PREMISES THAT ARE NOT NEEDED FOR BACKFILL SHALL BE TRANSPORTED AWAY FROM THE WORK SITE. IF NEEDED FOR FUTURE BACKFILL, THE EXCAVATED MATERIALS MUST BE DEPOSITED IN A SUITABLE AREA AND MUST BE COVERED WITH FIBER MAT, PLASTIC SHEETS, OR OTHER EQUIVALENT PROTECTION FROM WEATHER TO PREVENT EROSION.
- WHEN RAINING OR WHEN WORK IS NOT BEING DONE, EXPOSED SLOPES OR GROUNDS SHALL BE COVERED WITH WATERPROOF COVERING OR WITH FIBER MAT.
- ALL SOIL STOCKPILES MUST BE PROTECTED WITH PLASTIC COVER AFTER EVERY WORKDAY.
- THE STREET AREA MUST BE SWEEPED AND CLEANED TO ELIMINATE TRACK OF DIRT DURING THE DAY AND AT THE END OF WORKDAY.
- CONSTRUCTION PARKING MUST BE LIMITED TO WITHIN THE STABILIZED CONSTRUCTION ENTRANCE OR INSIDE THE OWNER'S PROPERTY.
- CONSTRUCTION SIGN MUST BE POSTED IN FRONT OF THE PROPERTY AND INSTALLED FIVE FEET FROM THE EDGE OF PAVEMENT OR BACK OF SIDEWALK. THE SIGN MUST CONTAIN THE NAME AND PHONE NUMBER OF THE CONTRACTOR WHERE HE CAN BE CONTACTED TWENTY-FOUR HOURS A DAY, SEVEN DAYS A WEEK (24/7) AND MUST BE VISIBLE AND LEGIBLE FROM THE STREET OR ROAD FRONTING THE PROPERTY. THE SIZE OF THE LETTERING FOR THE NAME AND PHONE NUMBER OF THE CONTRACTOR SHALL BE NOT LESS THAN THREE INCHES IN HEIGHT.
- TWENTY FOUR HOURS PRIOR TO START OF GRADING, THE APPLICANT MUST NOTIFY IN WRITING THE IMMEDIATE OR ADJACENT NEIGHBORS ABOUT THE IMPENDING GRADING WORK.
- THE GRADING CONTRACTOR HAS TO OBSERVE STRICTLY THE WORKING HOURS STIPULATED IN THE CONDITIONS OF APPROVAL BY THE CASE PLANNER.
- EVERY TIME A VEHICLE GETS OUT OF THE WORK AREA AND INTO THE STREET, IT MUST HAVE ITS TIRES WASHED AT A LOCATION INSIDE THE PROPERTY DESIGNATED AS "VEHICLE TIRE WASHING AREA".

ADDITIONAL EROSION CONTROL NOTES

- EROSION CONTROL MEASURES PER: 1) "MANUAL OF STANDARDS FOR EROSION & SEDIMENT CONTROL MEASURES," PUBLISHED BY ABAG AND 2) "EROSION AND SEDIMENT CONTROL BMPs", PUBLISHED BY CALIFORNIA STORM WATER QUALITY ASSOCIATION.
- NOTWITHSTANDING EROSION CONTROL MEASURES SHOWN ON THIS PLAN, SEDIMENT AND EROSION CONTROL IS REQUIRED FOR ALL AREAS WITH DISTURBED OR GRADED SOIL. AFTER EACH STORM EVENT, ALL SEDIMENT AND EROSION CONTROL MEASURES SHALL BE INSPECTED, MAINTAINED, AND MODIFIED AS REQUIRED.
- THE DOWNSTREAM STORM SYSTEM(S) SHOULD BE INSPECTED TO VERIFY FREEDOM FROM OBSTRUCTIONS AND PROPER FUNCTION.
- THIS PLAN MAY NOT COVER ALL THE SITUATIONS THAT ARISE DURING CONSTRUCTION DUE TO UNANTICIPATED FIELD CONDITIONS. VARIATIONS MAY BE MADE TO THESE PLANS IN THE FIELD, SUBJECT TO APPROVAL OF THE GRADING INSPECTOR.
- ALL EROSION CONTROL MEASURES SHALL BE MAINTAINED UNTIL DISTURBED AREAS ARE STABILIZED AND CHANGES TO THIS EROSION AND SEDIMENT CONTROL PLAN SHALL BE MADE TO MEET FIELD CONDITIONS ONLY WITH THE APPROVAL OF OR AT THE DIRECTION OF THE GRADING INSPECTOR.



LEGEND

REFERENCES
FIELD BOOK No.
FILE MAP: R-1092
POLICY No.:
DATE: NGVD 29
MISC. REF: B-9010, X-3280, 17643 FILE, X-3247-1
9642, 17643, 18636, 0-1017

REVISIONS
4/11/14 - MISC. REV.

KISTER, SAVIO & REI, INC. LAND SURVEYORS – CIVIL ENGINEERS 3095 RICHMOND PARKWAY, SUITE 214 RICHMOND, CALIFORNIA 94806 PHONE: (510) 222-4020 FAX: (510) 222-3718 E-MAIL: info@srinc.net	
FOR: CJC TRUCKING, INC.	JOB No. 19327
SCALE: 1" = 50'	
DATE: FEBRUARY 24, 2014	DWG No. 0-1267

DESCRIPTION
GRADING & EROSION CONTROL NOTES
SUBDIVISION 5754
RICHMOND, CALIFORNIA

**ENGINEERING SERVICES DEPARTMENT****CITY OF RICHMOND**450 Civic Center Plaza, Suite 400, CA 94804  
Phone: (415) 779-2100 Fax: (415) 779-2101**GRADING PERMIT**CJC TRUCKING  
180 BROADWAY #G  
RICHMOND, CA 94804
 Permit Number: **EN14-05203**  
 Address: FREETHY BLVD  
 Invoice Date: April 23, 2014  
 Permit Tech: GD

<b>Fee Description</b>	<b>Account</b>	<b>Units</b>	<b>Amount</b>
STRM - Swpp Monthly Insp	40623431320239	1	\$630.00
<b>ENG - Grading Inspection Fees</b>			
<b>Fee Description</b>	<b>Account</b>	<b>Units</b>	<b>Amount</b>
Grading Inspection > 10,000 Cubic Yards	15121131341506	0	\$920.00
	<b>Subtotal for ENG - Grading Inspection Fees</b>		<b>920.00</b>
<b>Engineering Services Fee</b>			
<b>Fee Description</b>	<b>Account</b>	<b>Units</b>	<b>Amount</b>
Administrative Processing Fee	15121131340418	0	\$108.00
Consultant Services	151 206624	0	\$1,080.00
	<b>Subtotal for Engineering Services Fee</b>		<b>1,188.00</b>
<b>Engineering Services Hourly Rates</b>			
<b>Fee Description</b>	<b>Account</b>	<b>Units</b>	<b>Amount</b>
Senior Civil Engineer	15121131341506	6	\$1,260.00
	<b>Subtotal for Engineering Services Hourly Rates</b>		<b>1,260.00</b>
<b>Stormwater Hourly Rates</b>			
<b>Fee Description</b>	<b>Account</b>	<b>Units</b>	<b>Amount</b>
STRM - Source Control Inspector II	40623431320239	16	\$2,336.00
	<b>Subtotal for Stormwater Hourly Rates</b>		<b>2,336.00</b>
<b>TOTAL:</b>			<b>\$6,334.00</b>
<b>AMOUNT PAID:</b>			<b>6,334.00</b>
<b>TOTAL AMOUNT DUE:</b>			<b>\$0.00</b>

SEE BACK SIDE

**GRADING PERMIT #EN14-05203**

"The Permittee, for himself, his contractors and employees, agrees to save, indemnify and hold harmless the City of Richmond or it's representative from all liabilities and claims for damages by reason of injury or death to any person or persons, or damage to property from any cause whatsoever while in, upon or in any way connected with the work covered by this Grading Permit, and does further agree to defend the City in any claim arising out of or as a result of the work done under this permit."

I hereby acknowledge that I have read this application and state that the information is correct and agree to comply with all City Ordinances and State laws, and the regulations of the State Department of Industrial Relations and Industrial Accident Commission, relating to the character of work, equipment and labor personnel involved in the project.

Owner/Representative (Print): Connexis Garden

Signature: [Signature]

Date: 4-28-14

***Applicant is hereby made to perform grading work in accordance with requirements of Grading Ordinance No. 4-80 N.S., as specified.***

1. All work performed under the authority of this permit shall be limited to the hours of 8:00 a.m. to 5:00 p.m. Monday through Friday, exclusive.
2. All equipment and supplies used in conjunctions with work performed under this permit, including equipment used in the transportation of the equipment or supplies, must be stored off of public right-of-way.
3. Applicant is responsible to keep all public rights-of-way and off-site areas clean from all dirt, mud, dust and debris at all times. Water trucks(s) are required on the job site.
4. All exposed slopes shall be re-vegetated for erosion and sediment control, refer to A.B.A.G. "Manual of Standards for Erosion and Sediment Control Measures."
5. Any graded areas that will be left incomplete or unlandscaped by September 1 will require an erosion control plan which must be submitted for approval.
6. Applicant shall indemnify and save the City, its agents, officers and employees harmless from and against any and all liability, claims, suits, actions, damages, penalties and/or causes of action arising during the term of this Grading Permit out of any personal injury, bodily injury, loss of life or damage to property, violation of any Federal, State or municipal law or ordinance or other cause in connection with the activities of Applicant, contractors, subcontractors, agents and employees under this Grading Permit or on account of the performance or character of the work; unforeseen difficulties, accidents, occurrences or other causes and from and against all costs, counsel fees, expenses incurred in obtaining expert testimony and the attendance of witnesses, expenses and liability incurred in and about any such claim, the investigation thereof or the defense of any action or proceedings brought thereon; and from and against any orders judgments or decrees which may be entered therein unless arising out of the sole negligence or willful misconduct of the City.
7. In authorizing activities under this Permit, the City has relied on the information and data which permittee has provided in connection with this permit application. If such information and data provide to be false, incomplete or inaccurate the activity may be disqualified from this permit and City may, in addition, institute appropriate legal proceedings.
8. Issuance of this permit by the City of Richmond does not necessarily constitute full approval by all Government Agencies. Applicant shall contact all other concerned agencies, agencies, specifically but not necessarily limited to Contra Costa County Flood Control District, Environmental Protection Agency, County Health Department, Bay Conservation and Development Commission, State of California Department of Fish & Game and United States Army Corps of Engineers before this permit can be considered valid.

Engineering Services Department 04/14

BACK SIDE

**JHS  
Properties**

2165 Francisco Boulevard East • Suite A  
San Rafael, CA 94901  
(415) 453-0212  
fax (415) 453-0421

May 2, 2014

Richard Mitchell  
Planning Director  
City of Richmond  
hand delivered

**Re: Planning Application For Solar Farm at Freethy Industrial Park**

Dear Richard,

Attached please find our application for planning approval for the 2 megawatt ground mount solar farm to be built on 6 acres of land at Freethy Industrial Park.

As we discussed, the power will be sold to Marin Clean Energy (MCE) pursuant to their Feed-In-Tariff program. It is a competitive program, and we currently are in a race with at least two other projects in Marin County to qualify for top tier pricing for our project. Without top tier pricing, our project will not pencil economically. To beat the other projects, we need to demonstrate planning approval for our project. For that purpose we are applying for a Zoning Determination Letter. With that in hand, we can sign a contract with MCE and proceed to a full Building Permit application including all required electrical and structural engineering.

You had asked us to review the setback, fencing, and landscaping requirements to ensure consistency with the North Richmond Shoreline Specific Plan (NRSSP). We have done so and can report the following:

**Street Right of Way:**

The solar project fronts on Elmar Court, which is a City owned street. Existing pavement width ranges from 30-44 feet, within an overall 60 feet public right-of-way. There are no sidewalks or landscaping along the existing street front. The street has been blocked off from public access since at least the mid-1990's, and the City has not maintained the streets. As a result they are in dis-repair with weeds growing though the pavement in places. For security reasons, we prefer that the street continue to be blocked off from public access until such time as future development in the area provides 'eyes-on' daily activity to help prevent vandalism and theft.

**Building Setback:**

Freethy Industrial Park is designated Office/Industrial Flex in the NRSSP. Table 2 on page 54, titled 'Development Standards' (copy attached), shows a setback requirement of zero for front, side, street side, and rear yards. Our security fencing for the project has therefore been placed on the property line, leaving a distance of 9-15 feet to the edge of existing pavement on Elmar Court. This complies with the "Typical Street" diagram contained on page 66 of the NSRRP (copy attached).



**Landscaping:**

Theoretically the 9-15 feet area between the fencing and existing street pavement could be landscaped with shrubs and groundcover, as outlined in Table 5 page 94 of the NRSSP (copy attached). However, it seems to make little sense to maintain and water a landscaped street front when the street itself has weeds growing through it. Rather, for security and screening reasons, we propose to plant thorn bushes on 10 feet centers around the entire perimeter of the security fence. We have chosen *Colletia paradoxa* (Anchor Plant) for its formidable thorns and attractive appearance. It grows 6-8 feet tall and 8-12 feet wide, which is perfect for screening our proposed fencing. While not native, *Colletia paradoxa* loves sun and is highly drought and deer tolerant. As such, it is extremely well suited to thrive in this setting. A drip irrigation system will be installed, though the plant reportedly needs little water once established. A cut sheet and photos are included in the project plans.

**Fencing:**

Far and away the largest challenge we face at this location will be to prevent vandalism and theft of the solar panels and copper wiring. This area, and this site in particular, has had wires stripped out of street lights, including on the Richmond Parkway itself. There is very little 'eyes on' human activity in this area, so it is absolutely critical that the project include a robust security fencing system. We have chosen to use a carbon steel welded wire mesh fencing system, which is highly impervious to cutting or climbing. Unlike chain link fencing, the welded mesh openings are too small (1/2 inch tall by 3 inches) for bolt cutters or fingers and toes to reach into. Green thorn bushes planted along the fence will provide attractive landscape screening. As the NRSSP does not contain any design standards for fencing, we feel this provides an acceptable aesthetic approach. Photos of the fencing with solar panels in the background are included in the plan set.

Please let me know if you have questions on any of the above. I may be reached at 415-472-7700, or by email at [rherbst@jhsproperties.com](mailto:rherbst@jhsproperties.com).

Best regards,



Bob Herbst  
JHS Properties



CITY OF RICHMOND  
**PLANNING DIVISION**  
 Phone: (510) 620-6706  
 Fax: (510) 620-6858



450 Civic Center Plaza  
 Richmond, California 94804-1630  
 P.O. Box 4046  
 www.ci.richmond.ca.us/planning

## PLANNING APPLICATION FORM

### IMPORTANT NOTICE TO APPLICANT!

Applicants are strongly encouraged to contact their neighborhood council prior to submitting an application to be reviewed or heard by the Design Review Board or the Planning Commission. Neighborhood council contact information is available at the Planning Division information counter.

#### APPLICATION TYPE(S)

- |   |  |   |  |
|---|--|---|--|
| <input type="checkbox"/> Plan Amendment/Rezone      | <input type="checkbox"/> Variance                    | <input type="checkbox"/> Certificate of Compliance    | <input checked="" type="checkbox"/> Zoning Verification Letter |
| <input type="checkbox"/> Zoning Ordinance Amendment | <input type="checkbox"/> Design Review Permit        | <input type="checkbox"/> Lot Line Adjustment          | <input type="checkbox"/> Over-the-Counter Plan Check           |
| <input type="checkbox"/> Conditional Use Permit     | <input type="checkbox"/> Zoning Administrator Permit | <input type="checkbox"/> Historic Preservation Permit | <input type="checkbox"/> Other:                                |
| <input type="checkbox"/> Administrative Use Permit  | <input type="checkbox"/> Tentative Parcel Map        | <input type="checkbox"/> Sign Permit                  |  |
| <input type="checkbox"/> Temporary Use Permit       | <input type="checkbox"/> Tentative Tract Map         | <input type="checkbox"/> Fence Permit                 |  |

#### PROJECT INFORMATION

Site Address: Northwest Corner Goodrick Ave / Richmond Pkwy, <sup>Freeport</sup> ~~Industrial~~ Park  
 APN(s): 408-220 - 06, 07, 35, 36, 37, 38  
 Project Description: 2 megawatt ground mount solar farm

#### PROPERTY OWNER ACKNOWLEDGEMENT & AUTHORIZATION

Property Owner's Name: Joe & Heidi Shekoy, Richmond Development Co, LLC  
 Mailing Address: (Street, City, State, Zip) 400 F Smith Ranch Rd, San Rafael, CA 94903  
 Phone: 415 472 7700 Fax: 415 507 0299 Email: rherbst@jhsproperties.net

I recognize that this application is subject to the California Environmental Quality Act (CEQA). The City, in granting this application, may attach any conditions necessary to insure that the proposal will not be detrimental to the welfare of property or persons residing or working in the neighborhood or in the City. I further certify that the information and exhibits submitted for this proposal are true and correct. In signing this application, I, as property owner, have full legal capacity to, and hereby do, authorize the filing of this application. I understand that conditions of approval are binding. I agree to be bound by those conditions, subject only to the right to object at the hearing on this application or during the appeal period.

X Joe Shekoy 5/2/14  
 Signature Date

#### APPLICANT ACKNOWLEDGEMENT & AUTHORIZATION

Applicant's Name: Robert Herbst  
 Mailing Address: (Street, City, State, Zip) 400 F Smith Ranch Rd  
 Phone: 415 472 7700 Fax: 415 507 0299 Email: rherbst@jhsproperties.net

In signing this application, I, as applicant, represent to have obtained authorization of the property owner to file this application. I agree to be bound by conditions of approval, subject only to the right to object at the hearing on this application or during the appeal period. If this application has not been signed by the property owner, I have attached separate documentation of full legal capacity to file this application and agreement to conditions of approval, subject only to the right to object at the hearings or during the appeal period.

X Robert Herbst 5/2/14  
 Signature Date

#### PLANNING DIVISION USE ONLY

File No.:	Intake Staff:	Applied Date:
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DEPARTMENT OF THE ARMY  
SAN FRANCISCO DISTRICT, U.S. ARMY CORPS OF ENGINEERS  
1455 MARKET STREET, 16<sup>TH</sup> FLOOR  
SAN FRANCISCO, CALIFORNIA 94103-1398

MAY 13 2016

Regulatory Division

Subject: File No. 2006-303600S

Mr. Chip Bouril  
LSA Associates, Inc.  
157 Park Place  
Point Richmond, California 94801

Dear Mr. Bouril:

This correspondence is in reference to your submittal of May 20, 2014, on behalf of JHS Properties, requesting a preliminary jurisdictional determination of the extent of navigable waters of the United States (U.S.) and waters of the U.S. occurring on a roughly rectangular property of approximately 28 acres, known as the Bayside Village project site, located on the north side of the Richmond Parkway, west of Goodrick Avenue, east of San Pablo Bay, in the City of Richmond, Contra Costa County, California (APNs 408-220-003, 408-220-0006, 408-220-007, 408-220-023, 408-220-024, 408-220-025, 408-220-026, 408-220-032, 408-220-033, 408-220-034, 408-220-035, 408-220-036, 408-220-037, 408-220-038, 408-220-039, 408-220-041, 408-220-042, and 408-220-043, Lat: 37.9769° N, Lon: 122.3685° W).

All proposed discharges of dredged or fill material occurring below the plane of ordinary high water in non-tidal waters of the U.S.; or below the high tide line in tidal waters of the U.S.; and within the lateral extent of wetlands adjacent to these waters, typically require Department of the Army authorization and the issuance of a permit under Section 404 of the Clean Water Act of 1972, as amended (33 U.S.C. § 1344 *et seq.*). Waters of the U.S. generally include the territorial seas; all traditional navigable waters which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including waters subject to the ebb and flow of the tide; wetlands adjacent to traditional navigable waters; non-navigable tributaries of traditional navigable waters that are relatively permanent, where the tributaries typically flow year-round or have continuous flow at least seasonally; and wetlands directly abutting such tributaries. Where a case-specific analysis determines the existence of a "significant nexus" effect with a traditional navigable water, waters of the U.S. may also include non-navigable tributaries that are not relatively permanent; wetlands adjacent to non-navigable tributaries that are not relatively permanent; wetlands adjacent to but not directly abutting a relatively permanent non-navigable tributary; and certain ephemeral streams in the arid West.

All proposed structures and work, including excavation, dredging, and discharges of dredged or fill material, occurring below the plane of mean high water in tidal waters of the U.S.; in former diked baylands currently below mean high water; outside the limits of mean high water but affecting the navigable capacity of tidal waters; or below the plane of ordinary high water in

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non-tidal waters designated as navigable waters of the U.S., typically require Department of the Army authorization and the issuance of a permit under Section 10 of the Rivers and Harbors Act of 1899, as amended (33 U.S.C. § 403 *et seq.*). Navigable waters of the U.S. generally include all waters subject to the ebb and flow of the tide; and/or all waters presently used, or have been used in the past, or may be susceptible for future use to transport interstate or foreign commerce.

The enclosed delineation map entitled, "Preliminary Jurisdictional Determination: Bayside Village, File 2006-303600S," in one sheet and date certified May 12, 2016, depicts the extent and location of wetlands and other waters of the U.S. within the boundary area of the site that **may be** subject to U.S. Army Corps of Engineers' regulatory authority under Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act. This preliminary jurisdictional determination is based on the current conditions of the site, as previously verified during a field investigation of November 13, 2006, and June 20, 2007, a review of available digital photographic imagery, and a review of other data included in your submittal. While this preliminary jurisdictional determination was conducted pursuant to Regulatory Guidance Letter No. 08-02, *Jurisdictional Determinations*, it may be subject to future revision if new information or a change in field conditions becomes subsequently apparent. The basis for this preliminary jurisdictional determination is fully explained in the enclosed *Preliminary Jurisdictional Determination Form*, which has been signed and dated by this office. You are requested to sign and date this form and return it to this office within two weeks of receipt.

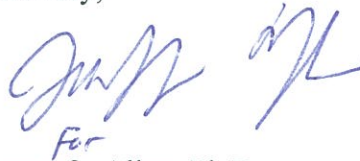
You are advised that the preliminary jurisdictional determination may **not** be appealed through the U.S. Army Corps of Engineers' *Administrative Appeal Process*, as described in 33 C.F.R. Part 331 (65 Fed. Reg. 16,486; Mar. 28, 2000). Under the provisions of 33 C.F.R. § 331.5(b)(9), non-appealable actions include preliminary jurisdictional determinations since they are considered to be only advisory in nature and make no definitive conclusions on the jurisdictional status of the water bodies in question. However, you may request this office to provide an approved jurisdictional determination that precisely identifies the scope of jurisdictional waters on the site; an approved jurisdictional determination may be appealed through the *Administrative Appeal Process*. If you anticipate requesting an approved jurisdictional determination at some future date, you are advised not to engage in any on-site grading or other construction activity in the interim to avoid potential violations and penalties under Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act. Finally, you may provide this office new information for further consideration and request a reevaluation of this preliminary jurisdictional determination.

You may refer any questions on this matter to Justin Yee of my Regulatory staff by telephone at (415) 503-6788 or by e-mail at Justin.J.Yee@usace.army.mil. All correspondence should be addressed to the Regulatory Division, South Branch, referencing the file number at the head of this letter.

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The San Francisco District is committed to improving service to our customers. My Regulatory staff seeks to achieve the goals of the Regulatory Program in an efficient and cooperative manner, while preserving and protecting our nation's aquatic resources. If you would like to provide comments on our Regulatory Program, please complete the Customer Service Survey Form available on our website:  
<http://www.spn.usace.army.mil/Missions/Regulatory.aspx>.

Sincerely,

A handwritten signature in blue ink, appearing to read "A. Allen", with a small "For" written below it.

Aaron O. Allen, Ph.D.  
Acting Chief, Regulatory Division

Enclosures

Copy Furnished (w/o encls):

CA RWQCB, Oakland, CA  
CA SWRCB, Sacramento, CA



## PRELIMINARY JURISDICTIONAL DETERMINATION FORM

## San Francisco District

**This Preliminary Jurisdictional Determination finds that there “*may be*” waters of the United States in the subject review area and identifies all such aquatic features, based on the following information:**

Regulatory Division: South Branch

File Number: 2006-303600S

PJD Completion Date: 05-12-2016

**Review Area Location**

City/County: Richmond/Contra Costa County State: California

Nearest Named Waterbody: San Pablo Bay

Approximate Center Coordinates of Review Area

Latitude (degree decimal format): 37.9769°N

Longitude (degree decimal format): -122.3685°W

Approximate Total Acreage of Review Area: 28 Select

File Name: Bayside Village

**Applicant or Requestor Information**

Name: Chip Bouril

Company Name: LSA Associates, Inc.

Street/P.O. Box: 157 Park Place

City/State/Zip Code: Point Richmond, CA

**Estimated Total Amount of Waters in Review Area**Non-Wetland Waters: 160 lineal feet 4 feet wide and/or  
0.019 acre(s) Flow Regime: IntermittentWetlands: lineal feet feet wide and/or  
0.242 acre(s) Cowardin Class: Palustrine- emergent**Name of Section 10 Waters Occurring in Review Area**

Tidal: Brackish Tidal Ditch

Non-Tidal: N/A

☒ Office (Desk) Determination☐ Field Determination:

Date(s) of Site Visit(s):

**SUPPORTING DATA: Data reviewed for Preliminary JD (check all that apply – checked items should be included in case file and, where checked and requested, appropriately reference sources below)**

☒ Maps. Plans, plots or plat submitted by or on behalf of applicant/requestor (specify): LSA, 2014☒ Data sheets submitted by or on behalf of applicant/requestor (specify): LSA, 2007, and 2014 references☒ Corps concurs with data sheets/delineation report.☐ Corps does not concur with data sheets/delineation report.☐ Data sheets prepared by the Corps.☐ Corps navigable waters' study (specify):☐ U.S. Geological Survey Hydrologic Atlas:☐ USGS NHD data.☐ USGS HUC maps.☒ U.S. Geological Survey map(s) (cite quad name/scale): CA-RICHMOND☐ USDA Natural Resources Conservation Service Soil Survey.☐ National wetlands inventory map(s) (specify):☐ State/Local wetland inventory map(s) (specify):☐ FEMA/FIRM maps.☐ 100-year Floodplain Elevation (specify, if known):☐ Photographs: ☐ Aerial (specify name and date):☐ Other (specify name and date):☐ Previous JD determination(s) (specify File No. and date of response letter):☒ Other information (specify): This is a re-verification of an approved JD that was verified by site visits by the prior project manager in 2007. The re-verification request includes the results of a 2014 field investigation that confirms there are no changes.

**IMPORTANT NOTE: If the information recorded on this form has not been verified by the Corps, the form should not be relied upon for later jurisdictional determinations.**

Signature and Date of Regulatory Project Manager  
(REQUIRED)

Signature and Date of Person Requesting Preliminary JD  
(REQUIRED, unless obtaining the signature is impracticable)



## Exhibit 11

**EXPLANATION OF PRELIMINARY AND APPROVED JURISDICTIONAL DETERMINATIONS:**

1. The Corps of Engineers believes that there may be jurisdictional waters of the United States on the subject site, and the permit applicant or other affected party who requested this preliminary JD is hereby advised of his or her option to request and obtain an approved jurisdictional determination (JD) for that site. Nevertheless, the permit applicant or other person who requested this preliminary JD has declined to exercise the option to obtain an approved JD in this instance and at this time.

2. In any circumstance where a permit applicant obtains an individual permit, or a Nationwide General Permit (NWP) or other general permit verification requiring "preconstruction notification" (PCN), or requests verification for a non-reporting NWP or other general permit, and the permit applicant has not requested an approved JD for the activity, the permit applicant is hereby made aware of the following: (1) the permit applicant has elected to seek a permit authorization based on a preliminary JD, which does not make an official determination of jurisdictional waters; (2) that the applicant has the option to request an approved JD before accepting the terms and conditions of the permit authorization, and that basing a permit authorization on an approved JD could possibly result in less compensatory mitigation being required or different special conditions; (3) that the applicant has the right to request an individual permit rather than accepting the terms and conditions of the NWP or other general permit authorization; (4) that the applicant can accept a permit authorization and thereby agree to comply with all the terms and conditions of that permit, including whatever mitigation requirements the Corps has determined to be necessary; (5) that undertaking any activity in reliance upon the subject permit authorization without requesting an approved JD constitutes the applicant's acceptance of the use of the preliminary JD, but that either form of JD will be processed as soon as is practicable; (6) accepting a permit authorization (e.g., signing a proffered individual permit) or undertaking any activity in reliance on any form of Corps permit authorization based on a preliminary JD constitutes agreement that all wetlands and other water bodies on the site affected in any way by that activity are jurisdictional waters of the United States, and precludes any challenge to such jurisdiction in any administrative or judicial compliance or enforcement action, or in any administrative appeal or in any Federal court; and (7) whether the applicant elects to use either an approved JD or a preliminary JD, that JD will be processed as soon as is practicable. Further, an approved JD, a proffered individual permit (and all terms and conditions contained therein), or individual permit denial can be administratively appealed pursuant to 33 C.F.R. Part 331, and that in any administrative appeal, jurisdictional issues can be raised (see 33 C.F.R. 331.5(a)(2)). If, during that administrative appeal, it becomes necessary to make an official determination whether CWA jurisdiction exists over a site, or to provide an official delineation of jurisdictional waters on the site, the Corps will provide an approved JD to accomplish that result, as soon as is practicable.

[illegible]

## RESOLUTION NO. 56-14

**RESOLUTION OF THE CITY OF RICHMOND CITY COUNCIL INTERPRETING AND IMPLEMENTING THE RICHMOND GENERAL PLAN 2030 AND STATE OF CALIFORNIA POLICY REGARDING SOLAR ENERGY SYSTEMS**

---

WHEREAS, The California Solar Rights Act<sup>1</sup> includes Civil Code Sections 714, 714.1, 801 and 801.5; Government Code Sections 65850.5, 66475.3 and 66473.1 and California Health and Safety Code Section 17959.1; and,

WHEREAS, California is a world leader in renewable energy generation. Solar and wind power, as well as emerging technologies such as biomass and fuel cells, are transforming California. Renewable energy is helping to power the state's economy, reducing our state's reliance on imported energy sources, and decreasing air pollution. California's state and local governments have set aggressive goals to expand renewable energy. Small-scale renewable energy benefits California communities. It increases energy reliability for residents and businesses by generating electricity near where it is consumed. This type of energy can also provide stable electricity prices for consumers and creates thousands of jobs across California.

WHEREAS, the State of California has adopted multiple public policy positions that support renewable energy sources, particularly solar energy, including The California Solar Initiative, a 2006 initiative to install 3,000 megawatts (M) of additional solar power by 2016.<sup>2</sup> Included in it is the Million Solar Roof Initiative. In 2011, this goal was expanded to 12,000 MW by 2020;<sup>3</sup> and,

WHEREAS, Richmond General Plan 2030 includes multiple policies, including Energy and Climate Change Policies EC1.1, EC1.2, EC3.1, EC3.A and EC3.B, that encourage the use of solar generated energy in Richmond; and,

WHEREAS, the City of Richmond is a member of Marin Clean Energy (MCE), whose mission includes "local economic and workforce benefits" by encouraging local generation projects as sources of its purchased renewable energy portfolio; and,

WHEREAS, the California Legislature has passed into law numerous provisions that encourage the installation of solar energy generating systems and removal of barriers to the installation of solar energy systems, including:

- Civil Code Section 714(a): "...it is the policy of the state to promote and encourage the use of solar energy systems and to remove obstacles thereto. Accordingly, reasonable restrictions on a solar energy system are those restrictions that do not significantly increase the cost of the system or significantly decrease its efficiency or specified performance, or that allow for an alternative system of comparable cost, efficiency, and energy conservation benefits. :
- Government Code Section 65850.5 (a): The implementation of consistent statewide standards to achieve the timely and cost effective installation of solar energy systems is not a municipal affair, as that term is used in Section 5 of Article XI of the California Constitution, but is instead a matter of statewide concern. It is the intent of the Legislature that local agencies not adopt ordinances that create unreasonable barriers to the installation of solar energy systems, including, but not limited to, design review for aesthetic purposes, and not unreasonably restrict the ability of homeowners and agricultural and business concerns to install solar energy systems. It is the policy of the state to promote and encourage the use of solar energy systems and to limit obstacles to their use. It is the intent of the Legislature that local agencies comply not only with the language of this section, but also the legislative intent to encourage the installation of

<sup>1</sup> [http://solar-rights.com/files/THE\\_CALIFORNIA\\_SOLAR\\_RIGHTS\\_ACT2.pdf](http://solar-rights.com/files/THE_CALIFORNIA_SOLAR_RIGHTS_ACT2.pdf)

<sup>2</sup> <http://www.gosolarcalifornia.ca.gov/about/csi.php>

<sup>3</sup> <http://www.energy.ca.gov/renewables/>

solar energy systems by removing obstacles to, and minimizing costs of, permitting for such systems.

- Health & Safety Code Section 17591.1(a): A city or county shall administratively approve applications to install solar energy systems through the issuance of a building permit or similar nondiscretionary permit. However, if the building official of the city or county has a good faith belief that the solar energy system could have a specific, adverse impact upon the public health and safety, the city or county may require the applicant to apply for a use permit.
- Health & Safety Code Section 17591.1(b) A city or county may not deny an application for a use permit to install a solar energy system unless it makes written findings based upon substantial evidence in the record that the proposed installation would have a specific, adverse impact upon the public health or safety, and there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact. This finding shall include the basis for the rejection of potential feasible alternatives of preventing the adverse impact.
- California Health & Safety Code Section 17591.1(c): Any conditions imposed on an application to install a solar energy system must be designed to mitigate the specific, adverse impact upon the public health and safety at the lowest cost possible.
- Government Code Section 65850.5 (b): A city or county shall administratively approve applications to install solar energy systems through the issuance of a building permit or similar nondiscretionary permit. Review of the application to install a solar energy system shall be limited to the building official's review of whether it meets all health and safety requirements of local, state, and federal law. The requirements of local law shall be limited to those standards and regulations necessary to ensure that the solar energy system will not have a specific, adverse impact upon the public health or safety. However, if the building official of the city or county has a good faith belief that the solar energy system could have a specific, adverse impact upon the public health and safety, the city or county may require the applicant to apply for a use permit.
- Government Code Section 65850.5 (c): A city or county may not deny an application for a use permit to install a solar energy system unless it makes written findings based upon substantial evidence in the record that the proposed installation would have a specific, adverse impact upon the public health or safety, and there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact. The findings shall include the basis for the rejection of potential feasible alternatives of preventing the adverse impact; and,

WHEREAS, the California Legislature passed into law the following definition of a “solar energy system:

- California Civil Code Section 801.5(a)(1): Any solar collector or other solar energy device whose primary purpose is to provide for the collection, storage, and distribution of solar energy for space heating, space cooling, electric generation, or water heating.
- California Civil Code Section 801.5(a)((2) Any structural design feature of a building, whose primary purpose is to provide for the collection, storage, and distribution of solar energy for electricity generation, space heating or cooling, or for water heating; and,

WHEREAS, the California Legislature adopted the following definitions:

- California Health and Safety Code Section 17591 (e): The following definitions apply to this section:
  - (1) "A feasible method to satisfactorily mitigate or avoid the specific, adverse impact" includes, but is not limited to, any cost effective method, condition, or mitigation imposed by a city or county on another similarly situated application in a prior successful application for a permit. A city or county shall use its best efforts to ensure that the selected method, condition, or mitigation meets the conditions of subparagraphs (A) and (B) of paragraph (1) of subdivision (d) of Section 714 of the Civil Code
  - (3) A "specific, adverse impact" means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified, and written public health or

safety standards, policies, or conditions as they existed on the date the application was deemed complete.

WHEREAS the California Legislature has also passed into law provisions to ensure that solar energy systems do not adversely impact health and safety, including:

- California Civil Code Section 714(c)(1): A solar energy system shall meet applicable health and safety standards and requirements imposed by state and local permitting authorities.
- California Civil Code Section 714(c)(3): A solar energy system for producing electricity shall also meet all applicable safety and performance standards established by the National Electrical Code, the Institute of Electrical and Electronics Engineers, and accredited testing laboratories such as Underwriters Laboratories and, where applicable, rules of the Public Utilities Commission regarding safety and reliability.
- California Government Code Section 65850.5 (d): The decision of the building official pursuant to subdivisions (b) and (c) may be appealed to the planning commission of the city or county.
- California Government Code Section 65850.5 (e): Any conditions imposed on an application to install a solar energy system shall be designed to mitigate the specific, adverse impact upon the public health and safety at the lowest cost possible; and,

WHEREAS, CEQA generally applies to discretionary projects, including those undertaken by private parties. A discretionary project is one that requires the exercise of judgment or deliberation by a public agency in determining whether the project will be approved, or if a permit will be issued; and.

- WHEREAS, CEQA does not apply to ministerial projects. A ministerial project is one that requires only conformance with a fixed standard or objective measurement and requires little or no personal judgment by a public official as to the wisdom or manner of carrying out the project.
- CEQA Guidelines 15268.state: “(a) Ministerial projects are exempt from the requirements of CEQA. The determination of what is “ministerial” can most appropriately be made by the particular public agency involved based upon its analysis of its own laws, and each public agency should make such determination either as a part of its implementing regulations or on a case by-case basis. (b) In the absence of any discretionary provision contained in the local ordinance or other law establishing the requirements for the permit, license, or other entitlement for use, the following actions shall be presumed to be ministerial : (1) Issuance of building permits....”
- WHEREAS, Section 21080.35 of the Public Resources Code establishes a statutory exemption from CEQA for certain solar energy systems:

21080.35. (a) Except as provided in subdivision (d), this division does not apply to the installation of a solar energy system on the roof of an existing building or at an existing parking lot.

(b) For the purposes of this section, the following terms mean the following: (1) "Existing parking lot" means an area designated and used for parking of vehicles as of the time of the application for the solar energy system and for at least the previous two years. (2) "Solar energy system" includes all associated equipment. Associated equipment consists of parts and materials that enable the generation and use of solar electricity or solar-heated water, including any monitoring and control, safety, conversion, and emergency responder equipment necessary to connect to the customer's electrical service or plumbing and any equipment, as well as any equipment necessary to connect the energy generated to the electrical grid, whether that connection is onsite or on an adjacent parcel of the building and separated only by an improved right-of-way. "Associated equipment" does not include a substation.

(c) (1) Associated equipment shall be located on the same parcel of the building, except that associated equipment necessary to connect the energy generated to the electrical grid may be located immediately adjacent to the parcel of the building or immediately adjacent to the parcel of the building

and separated only by an improved right-of-way. (2) Associated equipment shall not occupy more than 500 square feet of ground surface and the site of the associated equipment shall not contain plants protected by the Native Plant Protection Act (Chapter 10 (commencing with Section 1900) of Division 2 of the Fish and Game Code).

(d) This section does not apply if the associated equipment would otherwise require one of the following: (1) An individual federal permit pursuant to Section 401 or 404 of the federal Clean Water Act (33 U.S.C. Sec. 1341 or 1344) or waste discharge requirements pursuant to the Porter-Cologne Water Quality Control Act (Division 7 (commencing with Section 13000) of the Water Code).

(2) An individual take permit for species protected under the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.) or the California Endangered Species Act (Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code).

(3) A streambed alteration permit pursuant to Chapter 6 (commencing with Section 1600) of Division 2 of the Fish and Game Code. (e) This section does not apply if the installation of a solar energy system at an existing parking lot involves either of the following:

(1) The removal of a tree required to be planted, maintained, or protected pursuant to local, state, or federal requirements, unless the tree dies and there is no requirement to replace the tree.

(2) The removal of a native tree over 25 years old.

(f) This section does not apply to any transmission or distribution facility or connection.

THEREFORE BE IT RESOLVED that the City Council of the City of Richmond finds that the Department of Planning and Building Services shall implement California State law as strictly defined by the Legislature in the statutes and in the CEQA Guidelines as follows:

- A “solar energy system” shall mean any solar collector or other solar energy device whose primary purpose is to provide for the collection, storage, and distribution of solar energy for space heating, space cooling, electric generation, or water heating and shall not be limited to residential systems or systems mounted on buildings and may include ground-mount systems.
- A “solar energy system” shall be allowed in any zoning district or General Plan designated area.
- A solar energy system shall be permitted ministerially, and any permit conditions shall be limited to those reasonably protecting the health and safety of the public and persons involved in the construction and operation of the system.
- An application for a solar energy system shall be subject to ministerial review by the City building official. The building official’s review of the solar energy system application shall be limited to whether the solar energy system meets all health and safety requirements of local, state, and federal law. Any permit conditions shall be limited to those reasonably protecting the health and safety of the public and persons involved in the construction and operation of the system in accordance with building and other code requirements.
- The building official shall ministerially approve applications for solar energy systems unless the building official makes written findings based upon substantial evidence in the record that the proposed installation would have a specific, adverse impact upon the public health or safety. The building official’s findings are appealable to the Planning Commission pursuant to Government Code Section 65850.5 (d).
- Ministerial application requirements and conditions may include those customarily used for other ministerial permits, including submission of drawings and specifications, structural calculations when appropriate and surveys to confirm property rights and boundaries. Solar Energy systems shall conform to setbacks and height limits otherwise defined in the General Plan and Zoning Ordinance, shall not encroach on BCDC 100-foot jurisdiction without a



BCDC permit and shall not encroach on streams or wetlands<sup>4</sup> or destroy critical habitat of endangered species<sup>5</sup>.. For more information, see *California Solar Permitting Guidebook*, Governor’s Office of Planning and Research ([http://opr.ca.gov/docs/California\\_Solar\\_Permitting\\_Guidebook.pdf](http://opr.ca.gov/docs/California_Solar_Permitting_Guidebook.pdf)).

- CEQA review shall not be required for any solar energy system application that is subject to ministerial review by the building official.
- CEQA shall not apply to any solar energy system on an existing roof or parking lot unless one of the conditions in 21080.35(d) applies.

.....

<sup>4</sup> Requiring an individual federal permit pursuant to Section 401 or 404 of the federal Clean Water Act (33 U.S.C. Sec. 1341 or 1344) or waste discharge requirements pursuant to the Porter-Cologne Water Quality Control Act (Division 7 (commencing with Section 13000) of the Water Code) streambed alteration permit pursuant to Chapter 6 (commencing with Section 1600) of Division 2 of the Fish and Game Code

<sup>5</sup> Contain plants protected by the Native Plant Protection Act (Chapter 10 (commencing with Section 1900) of Division 2 of the Fish and Game Code)

I certify that the foregoing resolution was passed and adopted by the Council of the City of Richmond at a regular meeting thereof held on **June 17, 2014**, by the following vote:

AYES: Councilmembers Bates, Boozé, Butt, Myrick, Rogers, Vice Mayor Beckles, and Mayor McLaughlin.

NOES: None.

ABSENT: None.

ABSTENTION: None.

DIANE HOLMES  
CLERK OF THE CITY OF RICHMOND

(SEAL)

Approved:

GAYLE MCLAUGHLIN  
Mayor

Approved as to form:

BRUCE GOODMILLER  
City Attorney

State of California     }  
County of Contra Costa     : ss.  
City of Richmond     }

I certify that the foregoing is a true copy of **Resolution No. 56-14**, finally passed and adopted by the City Council of the City of Richmond at a regular meeting held on June 17, 2014.

**BUILDING REGULATIONS****CITY OF RICHMOND**

450 Civic Center Plaza  
 Richmond, CA 94804  
 Phone : (510) 620-6868  
 Fax : (510) 621-1239

**PERMIT # B14-08040**

Job Site Address:

Permit Technician: AA

**FREETHY BLVD**

Parcel APN: 408220006	Today's Date: 09/29/2014
Permit: <b>B14-08040</b>	Date Applied: 08/29/2014
Type of Permit: <b>ELC COMMERCIAL</b>	Date Issued: 09/29/2014

PROPERTY OWNER: SHEKOU JOE & HEIDI  
 Street Address: 2167 E FRANCISCO BLVD #A  
 City/St/Zip: SAN RAFAEL, CA 94901  
 Owner Phone: (415) 472-7700

CONTRACTOR: TBD

Street Address:

City/St/Zip: .

Daytime Phone:

Business License:

Exp:

Description of Work: INSTALL GROUND MOUNT SOLAR PV SYSTEM-

Permit Fee Details:

TOTAL VALUATION: \$ 1,500,000.00

TOTAL FEES: \$ 1,820.00

**Owner Builder Declaration:**

I hereby affirm under penalty of perjury that I am exempt from the Contractors' License Law for the following reason (Section 7031.5, Business and Profession Code states that any City or County which requires a permit to construct, alter, improve, demolish, or repair any structure prior to its issuance also requires the applicant for such permit to file a signed statement that he or she is a license pursuant to the provisions of the Contractor's License Law (Chapter 9 commencing with section 7000 of Division 3 of the Business and Profession Code) or that he or she is exempt from licensure and the basis for the alleged exemption. Any violation of section 7031.5 by any applicant for a permit subjects the applicant to a civil penalty of not more than (\$500).)

I, as owner of the property, or my employees with wages as their sole compensation, will do the work, and the structure is not intended or offered for sale. (Section 7044 Business and Professions Code: The Contractors' State License Law does not apply to the owner of the property who builds or improves their own, and who does such work himself or herself or through his or her own employees, provided that such improvements are not intended or offered for sale. If, however, the building or improvement is sold within one year of completion, the Owner Builder will have the burden of proving that he she did not build or improve for the purpose of sale.)

I, as owner of the property, and exclusively contracting with licensed contractors to construct the project (Section 7044, Business and Professions and Codes states that the current Contractors' State License Law does not apply to an owner of property who builds or improves as thereon, and who contracts for such projects with a licensed Contractor pursuant to the Contractors' License Law).

I am exempt under section \_\_\_\_\_ Business and Professions Code for this reason \_\_\_\_\_

Applicant \_\_\_\_\_ Date: \_\_\_\_\_

**Workers Compensation Declaration:**

I hereby affirm under penalty of perjury one of the following declarations: I have and will maintain a certificate of consent to self insure for workers compensation, as provided for by (Section 3700) of the Labor Code, for the performance of the work for which this permit is issued.

I have and will maintain Workers Compensation insurance, as required by Section 3700 of the Labor Code, for the performance of the work for which this permit is issued, my workers compensation carrier and policy numbers are:

Carrier: \_\_\_\_\_ Policy# \_\_\_\_\_ Expires \_\_\_\_\_

I certify that in the performance of the work for which this permit is issued, I shall not employ any person in a manner so as to become subject to the workers compensation laws of California, and agree that if I should become subject to the workers compensation provisions of section 3700 of the labor code, and I shall forthwith comply with these provisions.

Date: \_\_\_\_\_ Applicant: \_\_\_\_\_

Warning: Failure to secure workers compensation coverage is unlawful, and shall subject an employer to criminal penalties and civil fines of up to \$1000 in addition to the cost of compensation, damages as provided for in section 3706 of the labor code, interest and attorneys fees.

I certify that I have read this application and state that the above information is correct. I agree to comply with all City ordinances and other laws relating to this permit and hereby authorize representatives of the City of Richmond to enter upon the above mentioned property for inspection purposes. This permit will expire on **3/28/2015 12:00:00AM** unless revoked, renewed or extended by the Building Official.

Customer No:

Signature of applicant or agent

Date 9/29/14

Building Dept. by

Date 9/29/14

**PAID**

SEP 29 2014

CITY OF RICHMOND  
FINANCE DEPARTMENT

SnapRack™  
PV Mounting Systems

MANUFACTURER

SNAPNRACK, INC.

775 FIERO LANE, SUITE 200  
SAN LUIS OBISPO, CA 93401  
PH (877) 732-2860

THE INFORMATION IN THIS DRAWING IS CONFIDENTIAL  
AND PROPRIETARY. ANY REPRODUCTION, DISCLOSURE,  
OR USE THEREOF IS PROHIBITED WITHOUT THE  
WRITTEN CONSENT OF SNAPNRACK, INC.

STRUCTURAL/CIVIL ENGINEER

ENGINEERED POWER  
SOLUTIONS

1405 SPRING STREET, SUITE 204  
PASO ROBLES, CA 93446  
CONTACT: MATTHEW B. GILLIS, P.E.  
PH: (805) 423-1326



FOR STRUCTURAL  
ELEMENTS ONLY  
See "Structural Documentation  
Packet" for Additional Info.

CLIENT

RUSSELL PACIFIC

320 SUNSET WAY  
MUIR BEACH, CA 94965

PROJECT

FREETHY  
INDUSTRIAL PARK

NORTHWEST CORNER  
GOODRICK AVE  
RICHMOND PARKWAY, CA 94801  
APN 408-220-06, 07, 35, 36, 37, 38

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REV	DATE	DESCRIPTION
DATE	08/20/2014	
PROJECT NUMBER	RUS1-RUSP4801	
APPLICATIONS ENGINEER	DEON TODD	
STRUCTURAL ENGINEER	STRUCTURAL ENGINEER	
PROJECT MANAGER	PM	
DESIGN ENGINEER	DESIGN ENGINEER	
CHECKED BY		

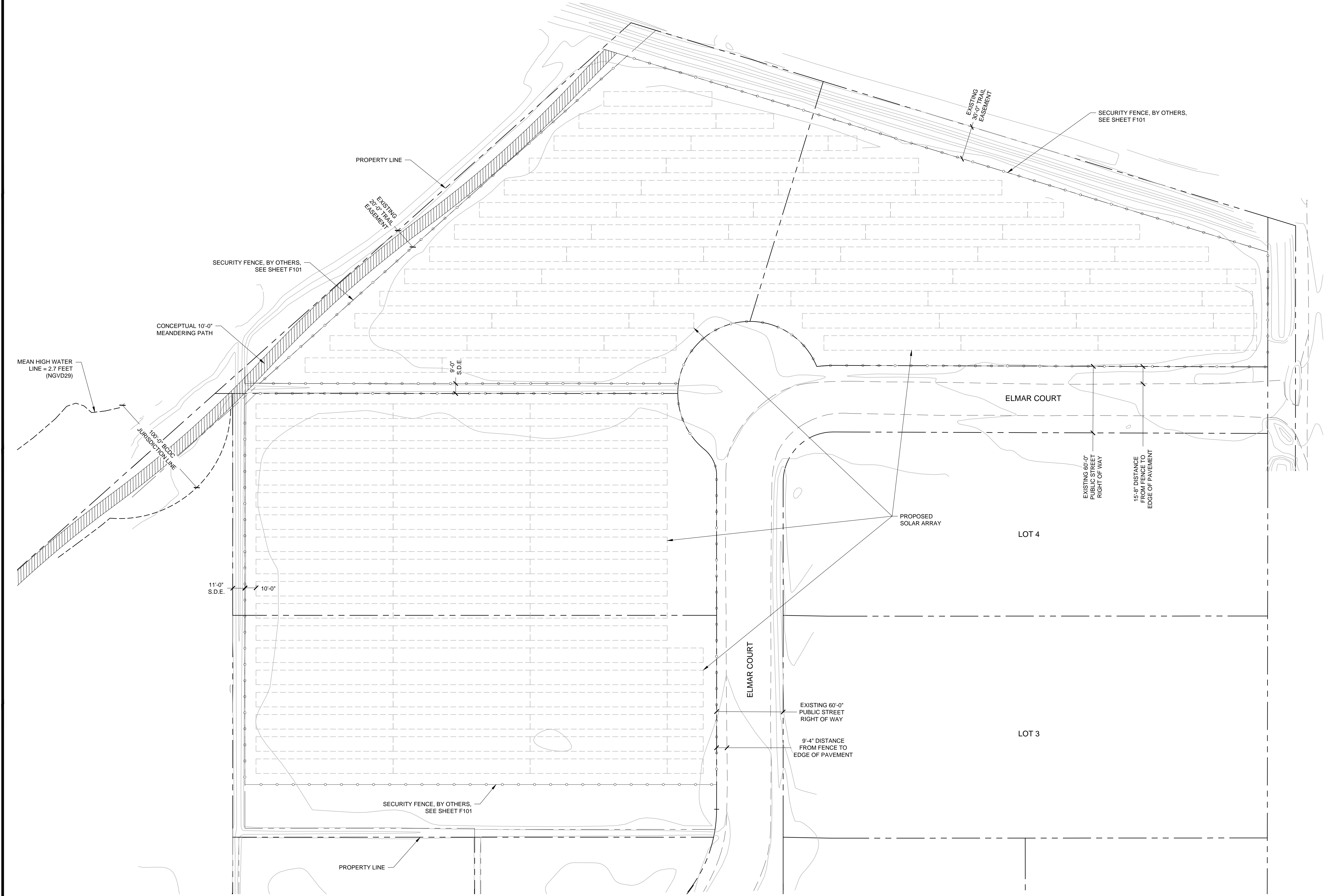
PERMIT SET

SHEET TITLE

SITE PLAN

SHEET NUMBER

S001



SITE PLAN  
1" = 40'-0"



SNAPNRACK, INC.

775 FIERO LANE, SUITE 200  
SAN LUIS OBISPO, CA 93401  
PH (877) 732-2860

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PH: (805) 423-1326



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CLIENT

RUSSELL PACIFIC

320 SUNSET WAY  
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STRUCTURAL ENGINEER	STRUCTURAL ENGINEER	
PROJECT MANAGER	PM	
DESIGN ENGINEER	DESIGN ENGINEER	
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PERMIT SET

SHEET TITLE

STRUCTURAL LAYOUT

SHEET NUMBER

S101

NOTES

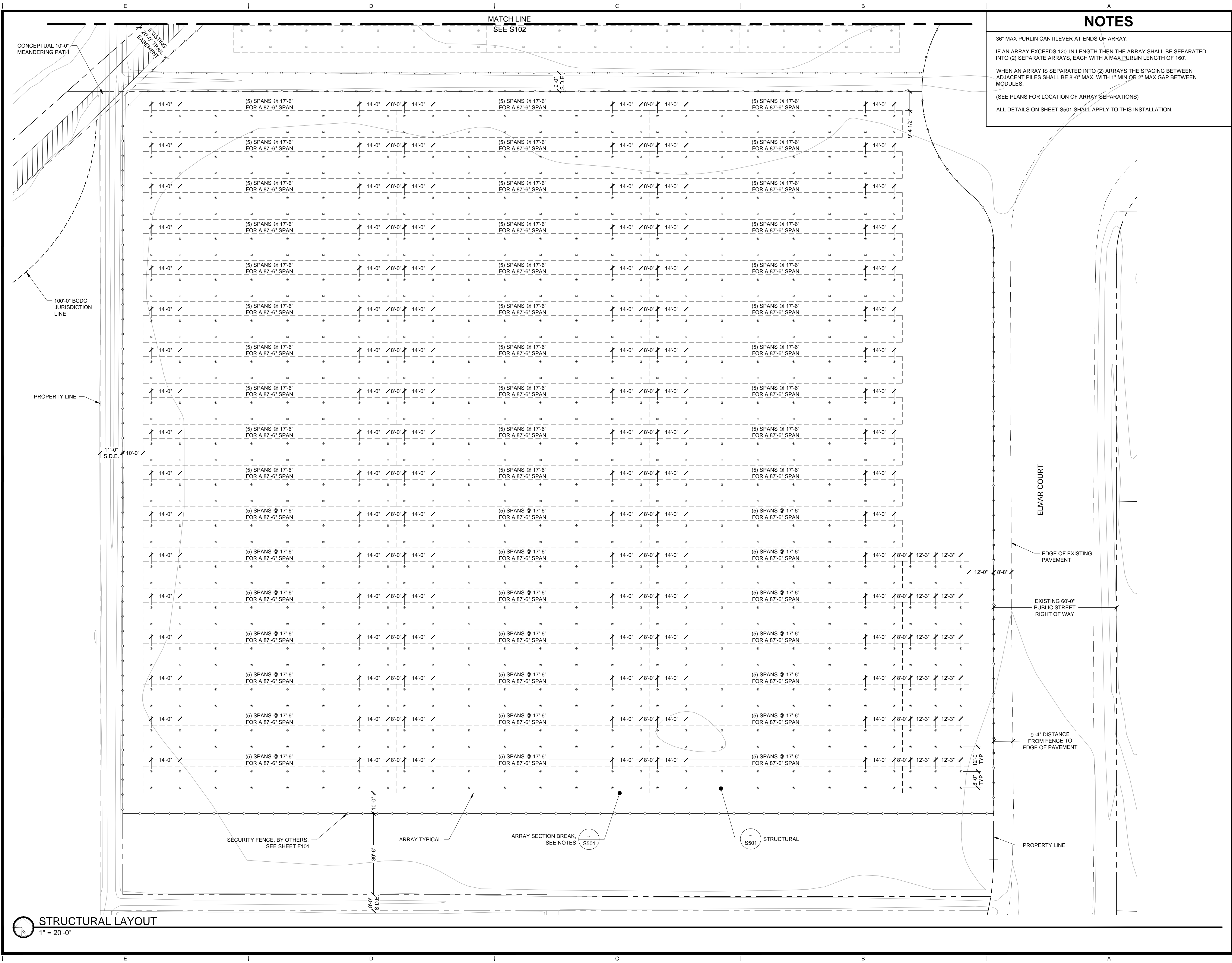
36" MAX PURLIN CANTILEVER AT ENDS OF ARRAY.

IF AN ARRAY EXCEEDS 120' IN LENGTH THEN THE ARRAY SHALL BE SEPARATED  
INTO (2) SEPARATE ARRAYS, EACH WITH A MAX PURLIN LENGTH OF 160'.

WHEN AN ARRAY IS SEPARATED INTO (2) ARRAYS THE SPACING BETWEEN  
ADJACENT PILES SHALL BE 8'-0" MAX, WITH 1" MIN OR 2" MAX GAP BETWEEN  
MODULES.

(SEE PLANS FOR LOCATION OF ARRAY SEPARATIONS)

ALL DETAILS ON SHEET S501 SHALL APPLY TO THIS INSTALLATION.





SNAPNRACK, INC.

775 FIERO LANE, SUITE 200  
SAN LUIS OBISPO, CA 93401  
PH (877) 732-2860

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STRUCTURAL/CIVIL ENGINEER

ENGINEERED POWER  
SOLUTIONS

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PASO ROBLES, CA 93446  
CONTACT: MATTHEW B. GILLIS, P.E.  
PH: (805) 423-1326



FOR STRUCTURAL  
ELEMENTS ONLY  
See "Structural Documentation  
Packet" for Additional Info.

CLIENT

RUSSELL PACIFIC

320 SUNSET WAY  
MUIR BEACH, CA 94965

PROJECT

FREETHY  
INDUSTRIAL PARK

NORTHWEST CORNER  
GOODRICK AVE  
RICHMOND PARKWAY, CA 94801

APN 408-220-06, 07, 35, 36, 37, 38

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REV	DATE	DESCRIPTION
DATE	08/20/2014	
PROJECT NUMBER	RUS1-RUP4801	
APPLICATIONS ENGINEER	DEON TODD	
STRUCTURAL ENGINEER	STRUCTURAL ENGINEER	
PROJECT MANAGER	PM	
DESIGN ENGINEER	DESIGN ENGINEER	
CHECKED BY		

PERMIT SET

SHEET TITLE

STRUCTURAL LAYOUT

SHEET NUMBER

S102

NOTES

36" MAX PURLIN CANTILEVER AT ENDS OF ARRAY.

IF AN ARRAY EXCEEDS 120' IN LENGTH THEN THE ARRAY SHALL BE SEPARATED  
INTO (2) SEPARATE ARRAYS, EACH WITH A MAX PURLIN LENGTH OF 160'.

WHEN AN ARRAY IS SEPARATED INTO (2) ARRAYS THE SPACING BETWEEN  
ADJACENT PILES SHALL BE 8'-0" MAX, WITH 1" MIN OR 2" MAX GAP BETWEEN  
MODULES.

(SEE PLANS FOR LOCATION OF ARRAY SEPARATIONS)

ALL DETAILS ON SHEET S501 SHALL APPLY TO THIS INSTALLATION.





SNAPNRACK, INC.

775 FIERO LANE, SUITE 200  
SAN LUIS OBISPO, CA 93401  
PH (877) 732-2860

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STRUCTURAL/CIVIL ENGINEER

ENGINEERED POWER  
SOLUTIONS

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PASO ROBLES, CA 93446  
CONTACT: MATTHEW B. GILLIS, P.E.  
PH: (805) 423-1326



FOR STRUCTURAL  
ELEMENTS ONLY  
See "Structural Documentation  
Packet" for Additional Info.

CLIENT

RUSSELL PACIFIC

320 SUNSET WAY  
MUIR BEACH, CA 94965

PROJECT

FREETHY  
INDUSTRIAL PARK

NORTHWEST CORNER  
GOODRICK AVE  
RICHMOND PARKWAY, CA 94801

APN 408-220-06, 07, 35, 36, 37, 38

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REV	DATE	DESCRIPTION
DATE	08/20/2014	
PROJECT NUMBER	RUS1-RUP4801	
APPLICATIONS ENGINEER	DEON TODD	
STRUCTURAL ENGINEER	STRUCTURAL ENGINEER	
PROJECT MANAGER	PM	
DESIGN ENGINEER	DESIGN ENGINEER	
CHECKED BY		

PERMIT SET

SHEET TITLE

STRUCTURAL LAYOUT

SHEET NUMBER

S103

NOTES

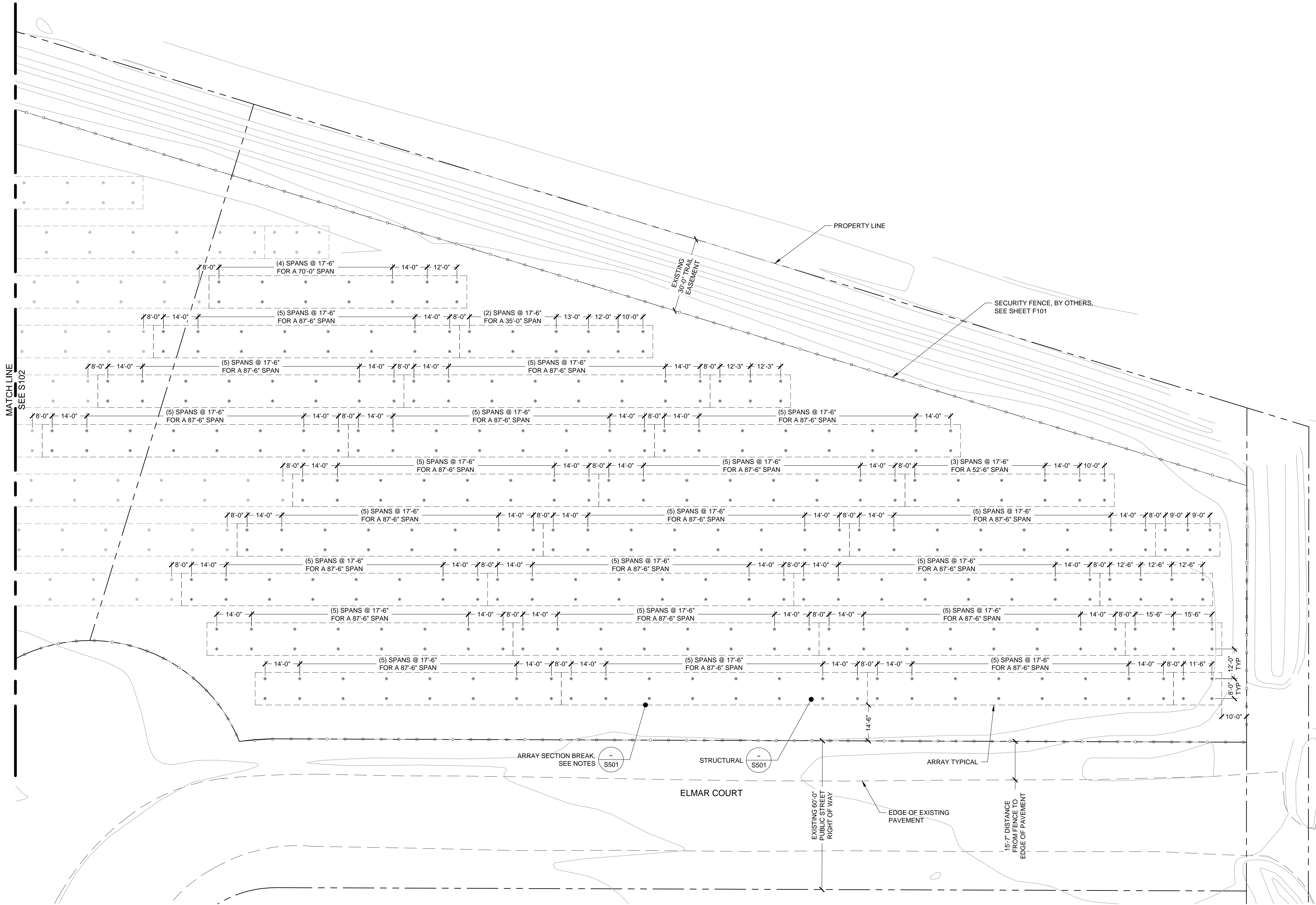
36" MAX PURLIN CANTILEVER AT ENDS OF ARRAY.

IF AN ARRAY EXCEEDS 120' IN LENGTH THEN THE ARRAY SHALL BE SEPARATED INTO (2) SEPARATE ARRAYS, EACH WITH A MAX PURLIN LENGTH OF 160'.

WHEN AN ARRAY IS SEPARATED INTO (2) ARRAYS THE SPACING BETWEEN ADJACENT PILES SHALL BE 8'-0" MAX, WITH 1" MIN OR 2" MAX GAP BETWEEN MODULES.

(SEE PLANS FOR LOCATION OF ARRAY SEPARATIONS)

ALL DETAILS ON SHEET S501 SHALL APPLY TO THIS INSTALLATION.





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REV	DATE	DESCRIPTION
DATE	08/20/2014	
PROJECT NUMBER	RUS1-RUP4801	
APPLICATIONS ENGINEER	DEON TODD	
STRUCTURAL ENGINEER	STRUCTURAL ENGINEER	
PROJECT MANAGER	PM	
DESIGN ENGINEER	DESIGN ENGINEER	
CHECKED BY		

PERMIT SET

NOTES

**SERIES 350: 18 DEGREE TILT**  
DEVELOPED AS AN EFFICIENT MOUNTING STRUCTURE FOR LARGE SCALE GROUND MOUNT INSTALLATIONS. THE SYSTEM IS BASED ON A STEEL SUB-STRUCTURE MANUFACTURED FROM READILY AVAILABLE STEEL ROLL FORMS AND MODULE MOUNTING RAILS TO ACCOMMODATE 0-35 DEGREE TILT SYSTEMS. DETAILED SPECIFICATIONS FOR PURLIN SPANS AND PIER DEPTHS ARE AVAILABLE IN THE STRUCTURAL ENGINEERING PACKET FOR THE SYSTEM. MULTIPLE FOUNDATION OPTIONS MAKE SERIES 350 ADAPTABLE TO VIRTUALLY ANY INSTALLATION SITE AND CONFIGURATION. ARRAYS FOLLOW CONTOURS OF THE SITE (NORTH TO SOUTH & EAST TO WEST)

**POST TOLERANCES:**  
EAST/WEST DIRECTION IS 3" OR ±2" AT TOP OF POST. NORTH/SOUTH DIRECTION IS 1" OR ±1" AT TOP OF POST. TWISTING IS 1" OR ±1/8" AT TOP OF POST.

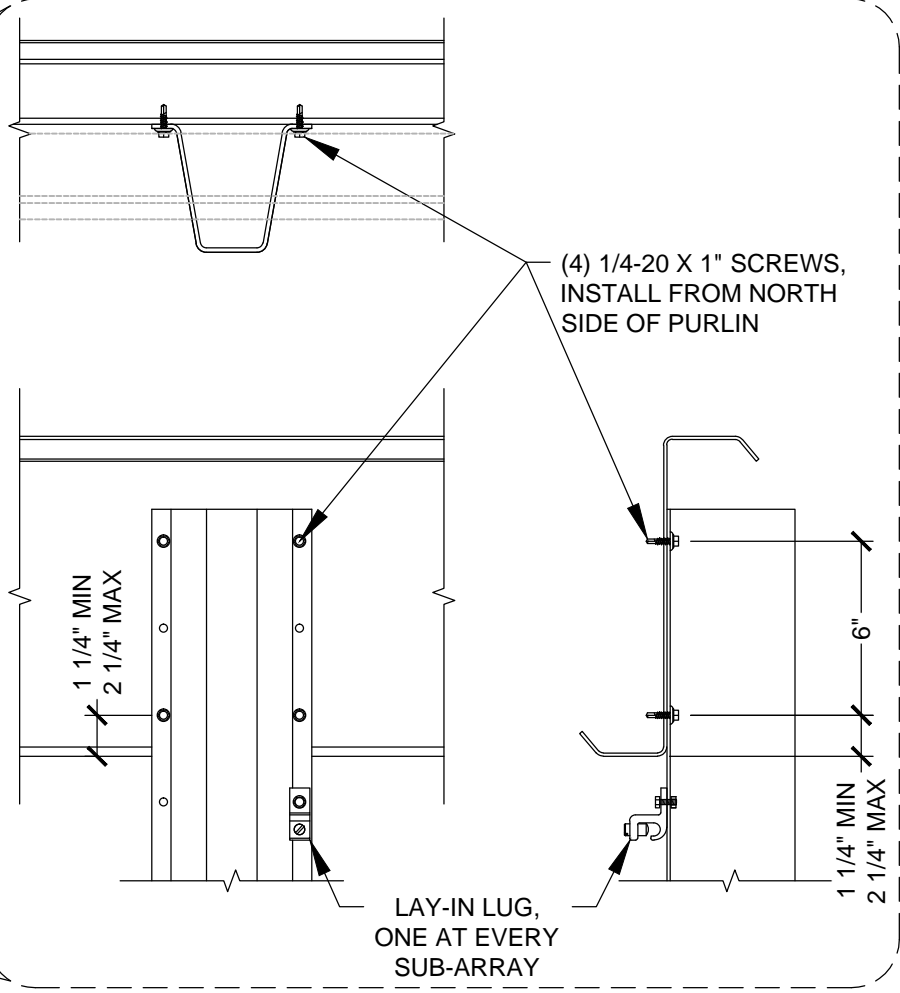
**PURLIN TO POST:**  
(4) 1/4-20 X 1" BI-METAL W/ CARBON STEEL TIP, SS SELF-DRILLING SCREWS SHALL BE USED AT PURLIN TO POST. TORQUE SCREW TO 5 FT-LBS. SCREWS SHALL ALIGN AND BE INSTALLED THRU PRE-PUNCHED HOLES IN POST.

**PURLIN SPLICE:**  
(6) 1/4-20 X 1" BI-METAL W/ CARBON STEEL TIP, SS SELF-DRILLING SCREWS SHALL BE USED AT PURLIN SPLICE. CENTER SCREWS IN FLANGE USING PRE-DRILLED HOLES. TORQUE SCREWS TO 5 FT-LBS. ZEE PURLIN MAY BE SPICED AT ANY POINT ALONG THEIR LENGTH. ZEE PURLIN HAS ONE FLANGE THAT IS 0.2" LONGER THAN THE OTHER TO FACILITATE NESTING AS SHOWN IN SECTION 'B'. EVERY OTHER ZEE PURLIN IS FLIPPED 180°, THE WIDER FLANGE IS PRE-PUNCHED TO FACILITATE THIS. AFTER ALL SCREWS ARE INSTALLED, SPRAY BOTH SIDES WITH "BRITC COLD GALVANIZED PAINT".

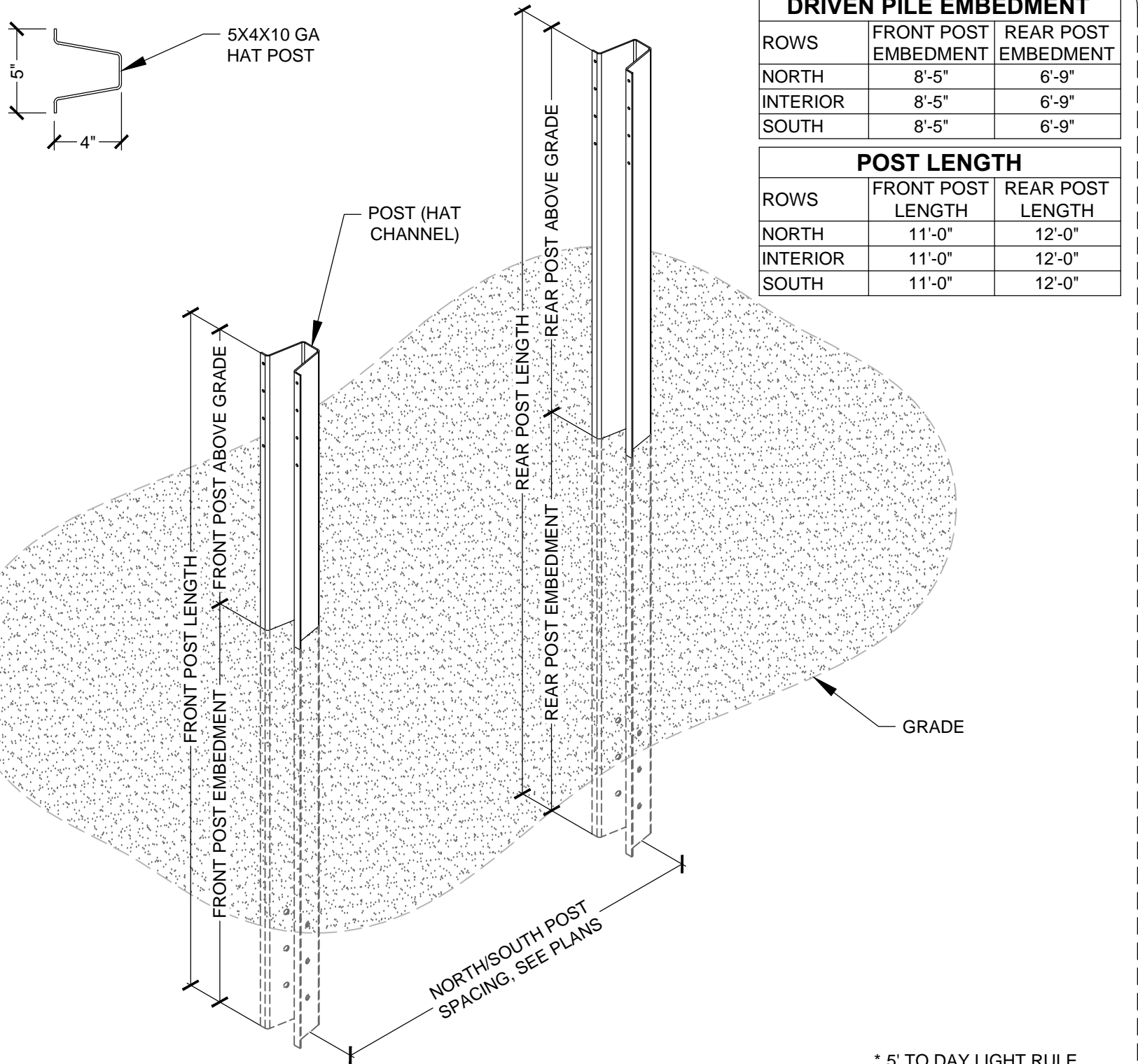
**PURLIN CLAMP:**  
INSTALL ONE PURLIN CLAMP AT EVERY PURLIN/RAIL CONNECTION, WITH 5/16" X 1 1/4" HOT DIPPED BOLT, SPLIT LOCK WASHER, TORQUE TO 12-16 FT LBS.

**PURLIN BRACE:**  
INSTALL TWO PURLIN BRACE AT EACH PURLIN 1/3 & 2/3 SPAN BETWEEN POSTS. ATTACH PURLIN BRACE TO RAIL CLOSEST TO 1/3 & 2/3 OF SPAN. (1) 1/4-20 X 1" BI-METAL W/ CARBON STEEL TIP, SS SELF-DRILLING SCREWS SHALL BE USED AT BRACE TO PURLIN, TORQUE TO 5 FT-LBS. (2) 1/4-20 X 1" BI-METAL W/ CARBON STEEL TIP, SS SELF-DRILLING SCREWS SHALL BE USED AT BRACE TO RAIL, TORQUE TO 1 FT-LBS.

**GROUNDING:**  
RACKING AND PV SYSTEM IS FULLY GROUNDING DOWN TO POST(S). INSTALL (1) LAY-IN LUG PER SUB-ARRAY AT PRE-DRILLED HOLE OF POST(S) TO (EGC). USE 1/4" X 20 X 1 1/4" HOT DIPPED NUT AND BOLT, TORQUE TO 6 FT-LBS.



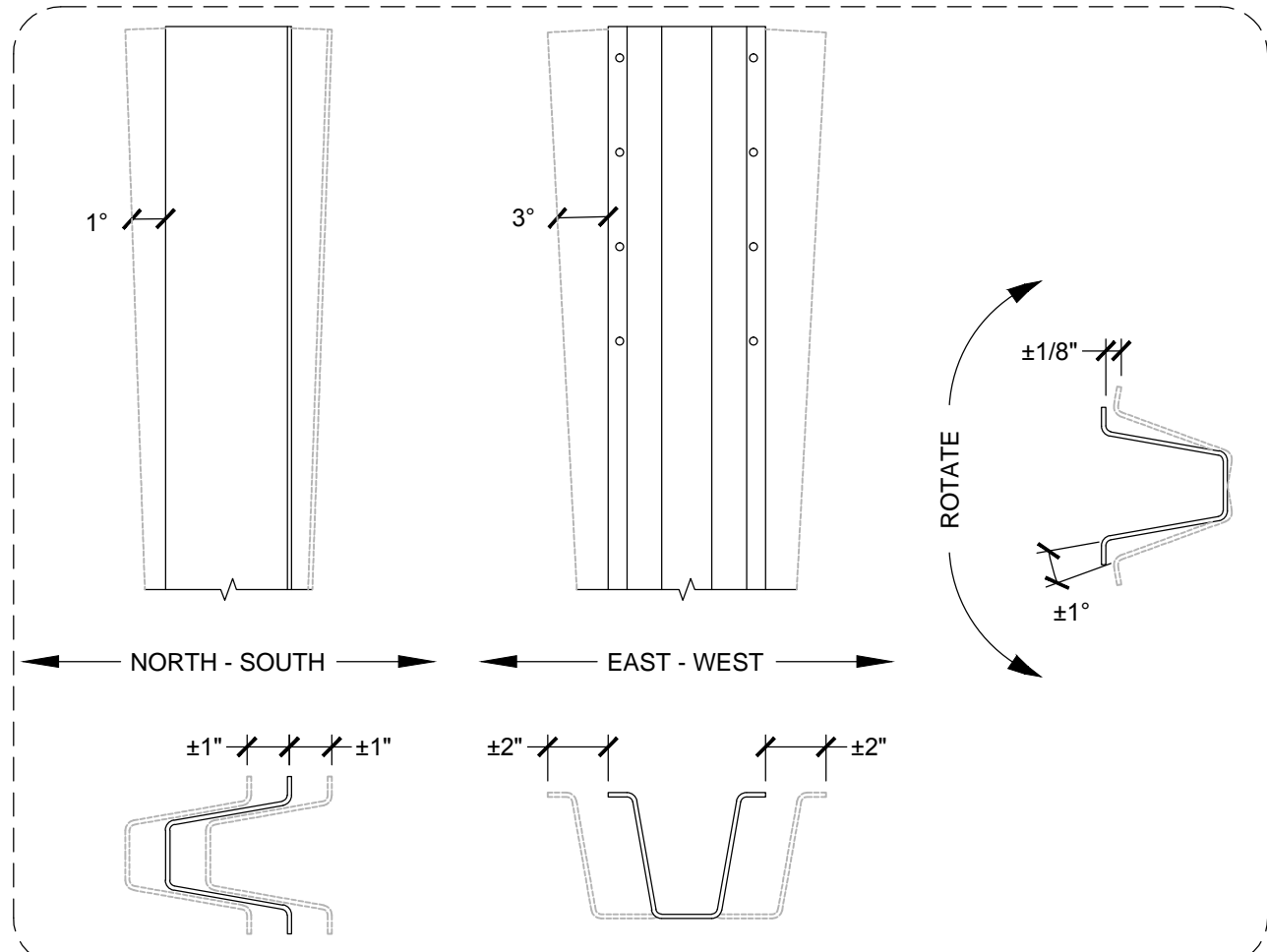
PURLIN TO POST



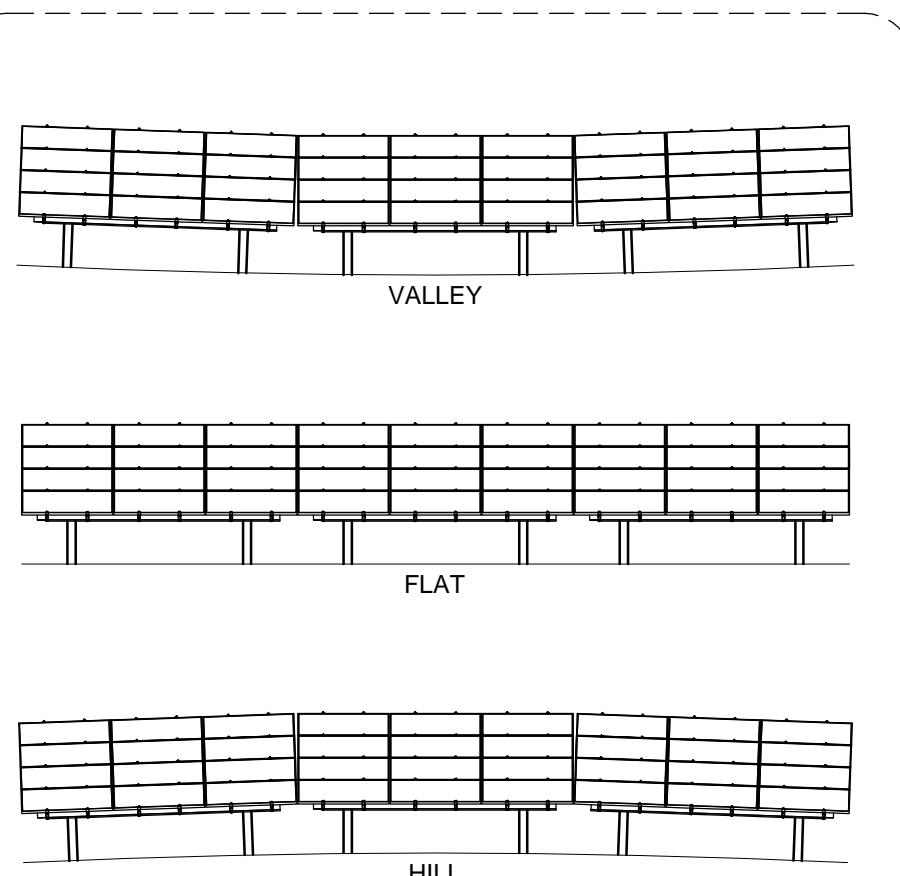
DRIVEN PILE EMBEDMENT		
ROWS	FRONT POST EMBEDMENT	REAR POST EMBEDMENT
NORTH	8'-5"	6'-9"
INTERIOR	8'-5"	6'-9"
SOUTH	8'-5"	6'-9"

POST LENGTH		
ROWS	FRONT POST LENGTH	REAR POST LENGTH
NORTH	11'-0"	12'-0"
INTERIOR	11'-0"	12'-0"
SOUTH	11'-0"	12'-0"

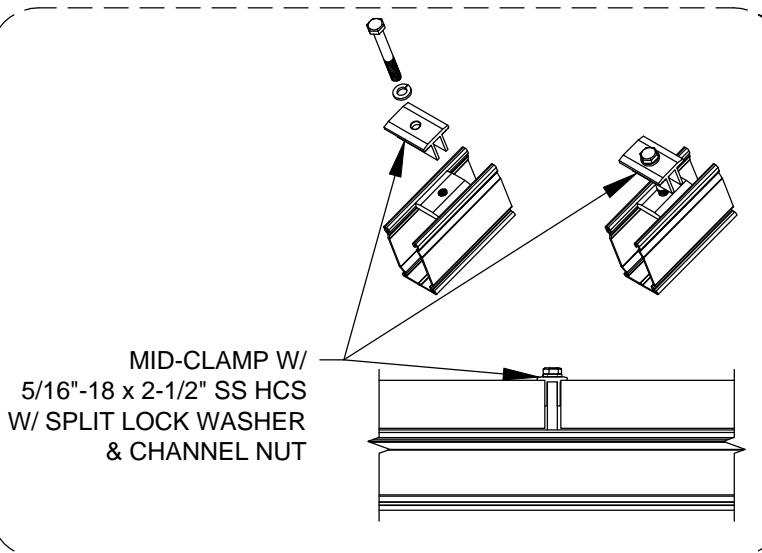
\* 5' TO DAY LIGHT RULE  
SHALL APPLY ON SITES  
WITH SLOPED CONDITIONS



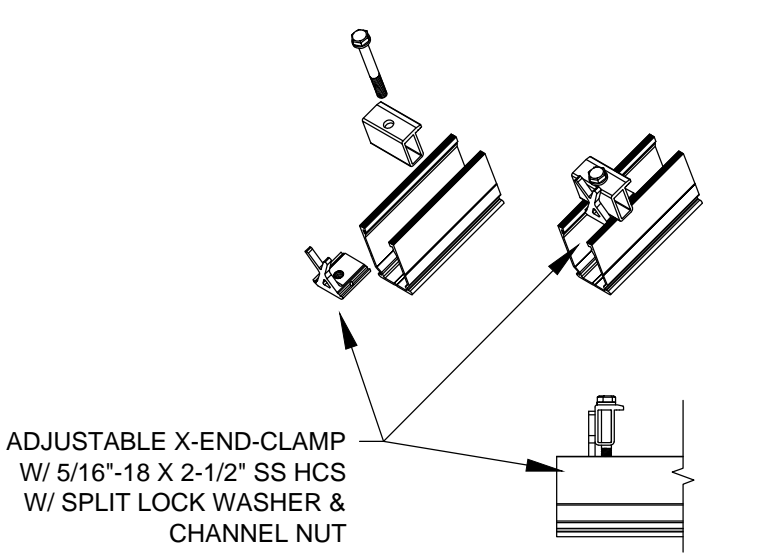
POST TOLERANCES



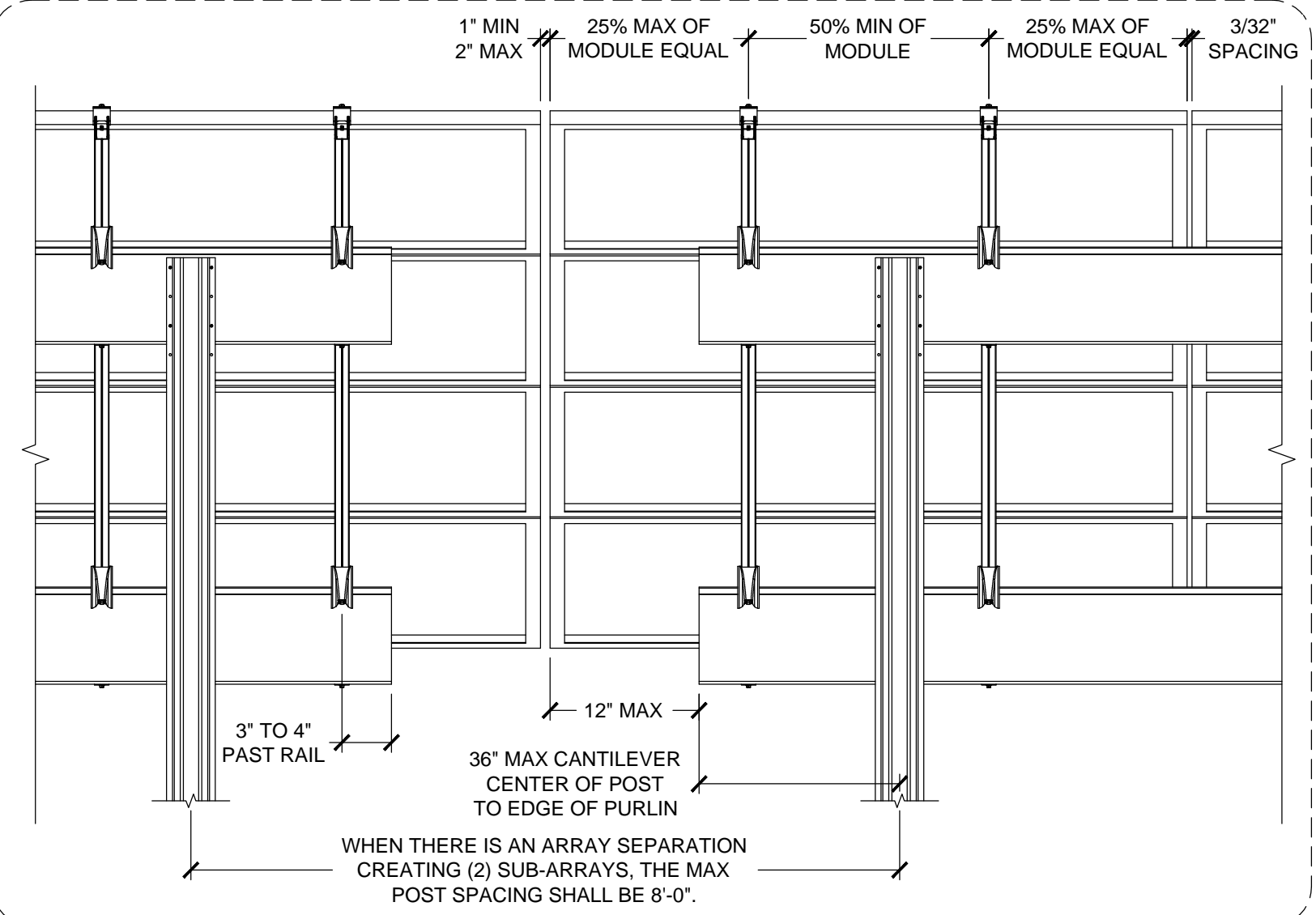
EXAMPLE OF ARRAY FOLLOWING CONTOURS



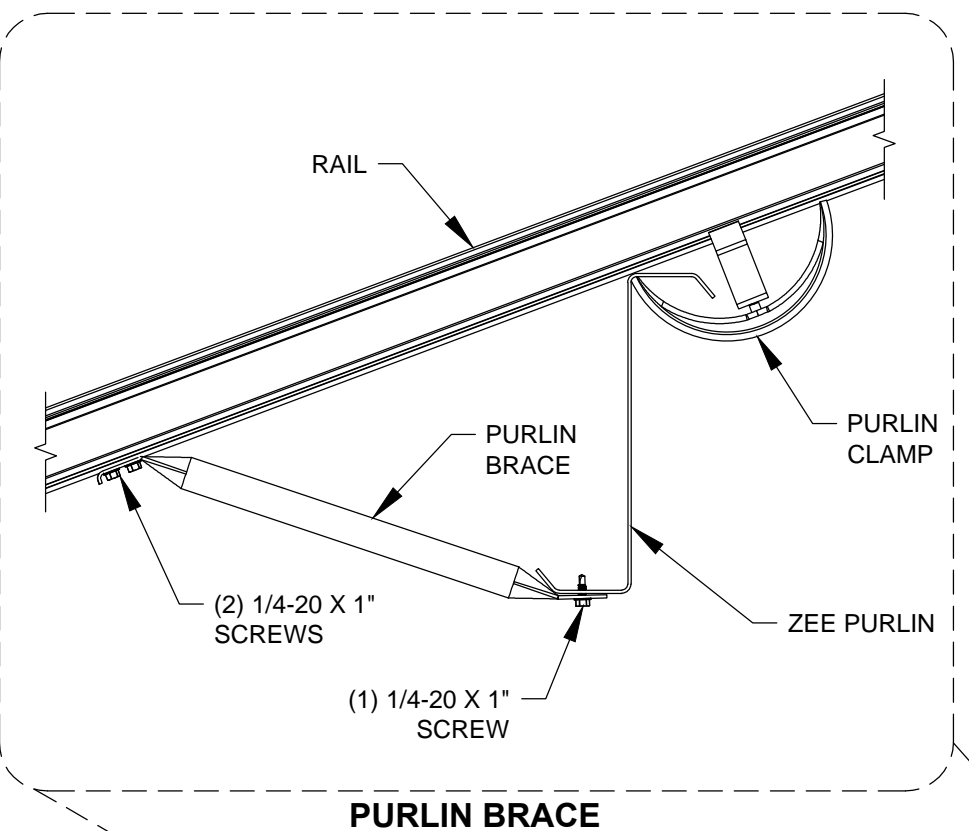
MID-CLAMP



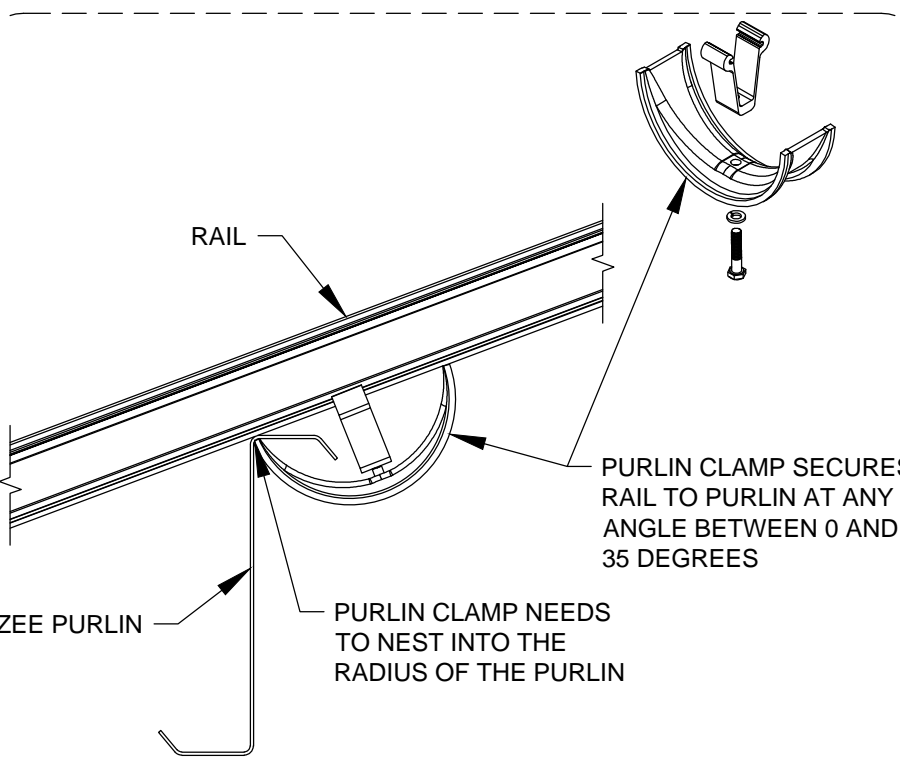
END-CLAMP



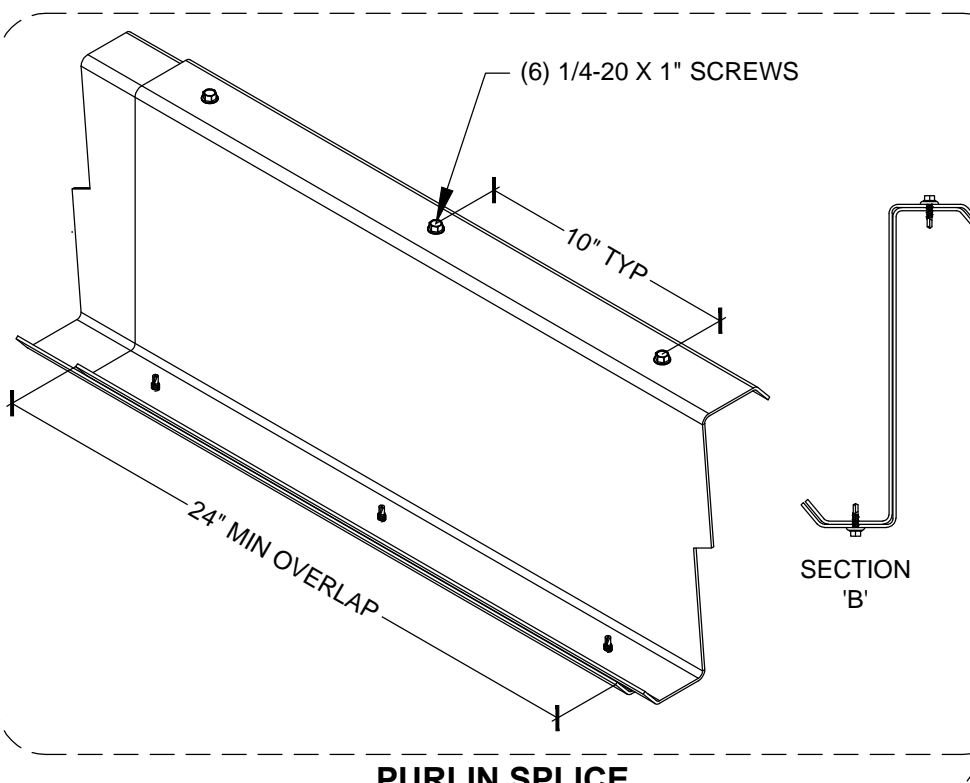
ARRAY SECTION BREAK



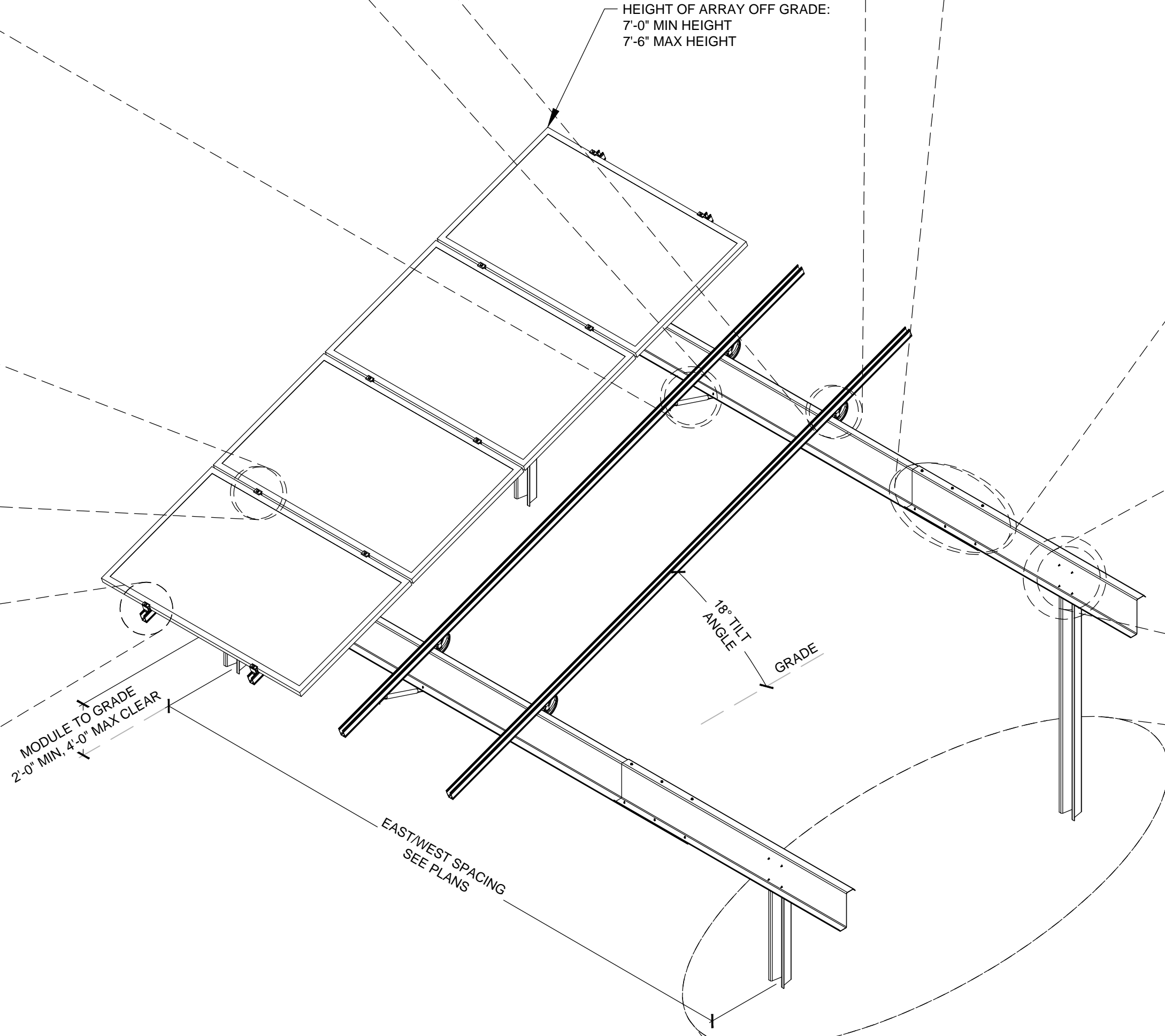
PURLIN BRACE



PURLIN CLAMP



PURLIN SPLICE



EAST/WEST SPACING  
SEE PLANS

MODULE TO GRADE  
2'-0" MIN 4'-0" MAX CLEAR

HEIGHT OF ARRAY OFF GRADE:  
7'-0" MIN HEIGHT  
7'-6" MAX HEIGHT

18° TILT  
ANGLE

GRADE

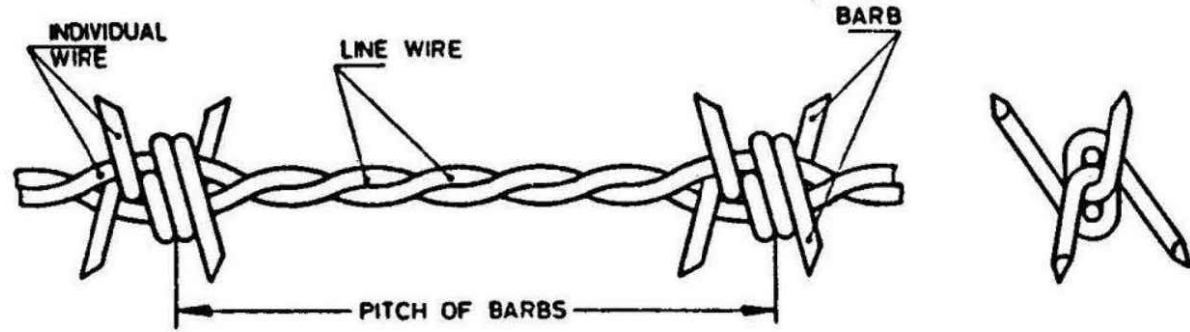




2221 Canada Dry Street  
Houston TX 77023 USA  
TEL: 713.924.4300  
FAX: 713.928.2324  
[www.ceshepherd.com](http://www.ceshepherd.com)

C.E. SHEPHERD High Tensile Barbed Wire

Certificate of Quality



C.E. Shepherd Barbed wire is offered in Class 3 galvanized, coating, Class 3 Galvanized coating lasts three times longer than Class 1.

Detailed specifications as below:

Double Strand: 4 Point

Barbed type: round

Finish: Class 3

Line wire: 0.067" (1.70 MM) or 15.5 GA

Distance between barb : 3"

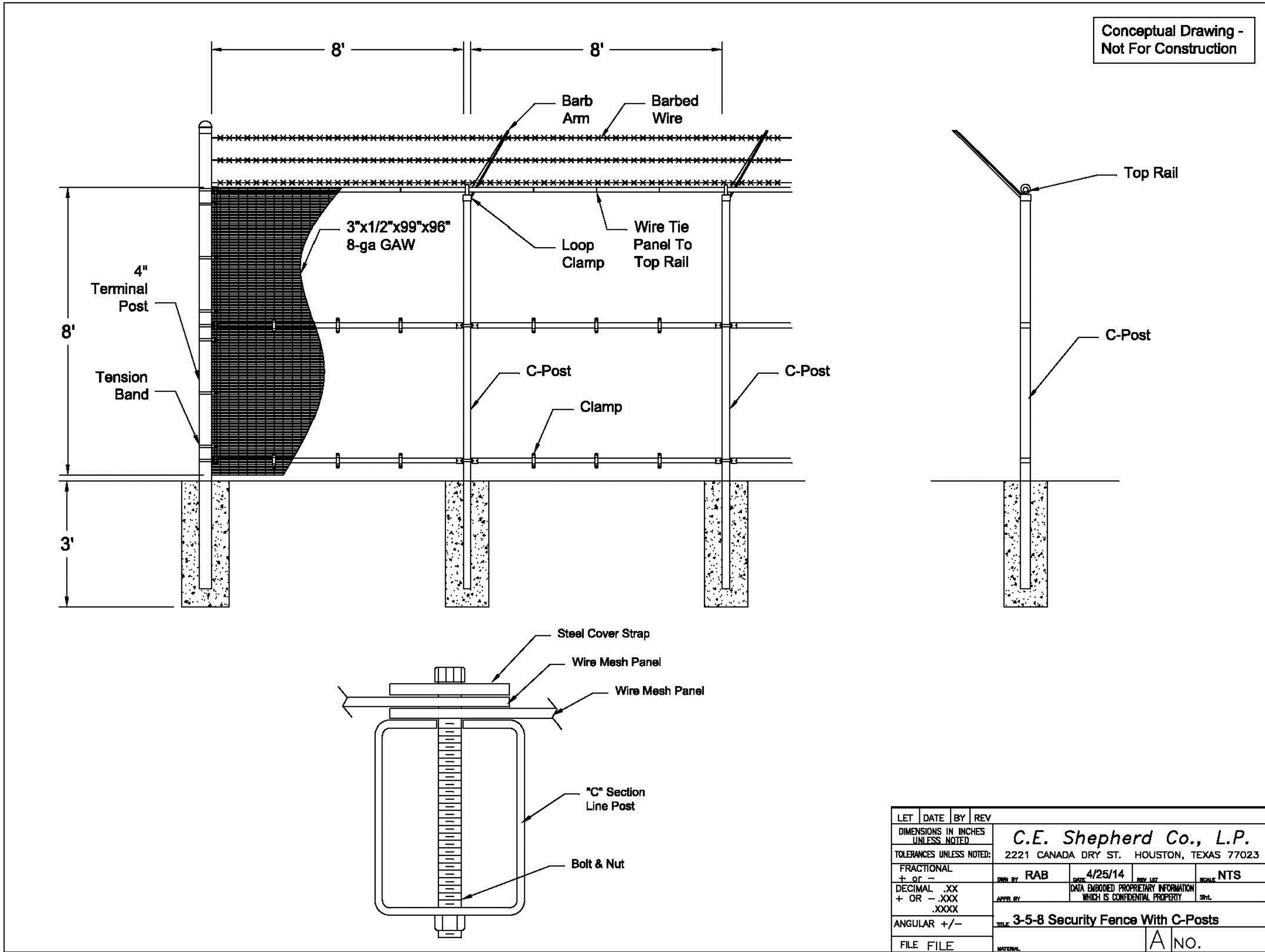
Length per Reel 1320 Ft (includes inner spool for easy assembly)

Weight: Approx. 51 Lbs. /Reel

Packed on Inner Spool

C.E. SHEPHERD L.P. MAXTOP Products certifies that the above material meets or exceeds specified

ASTM A 121 standards



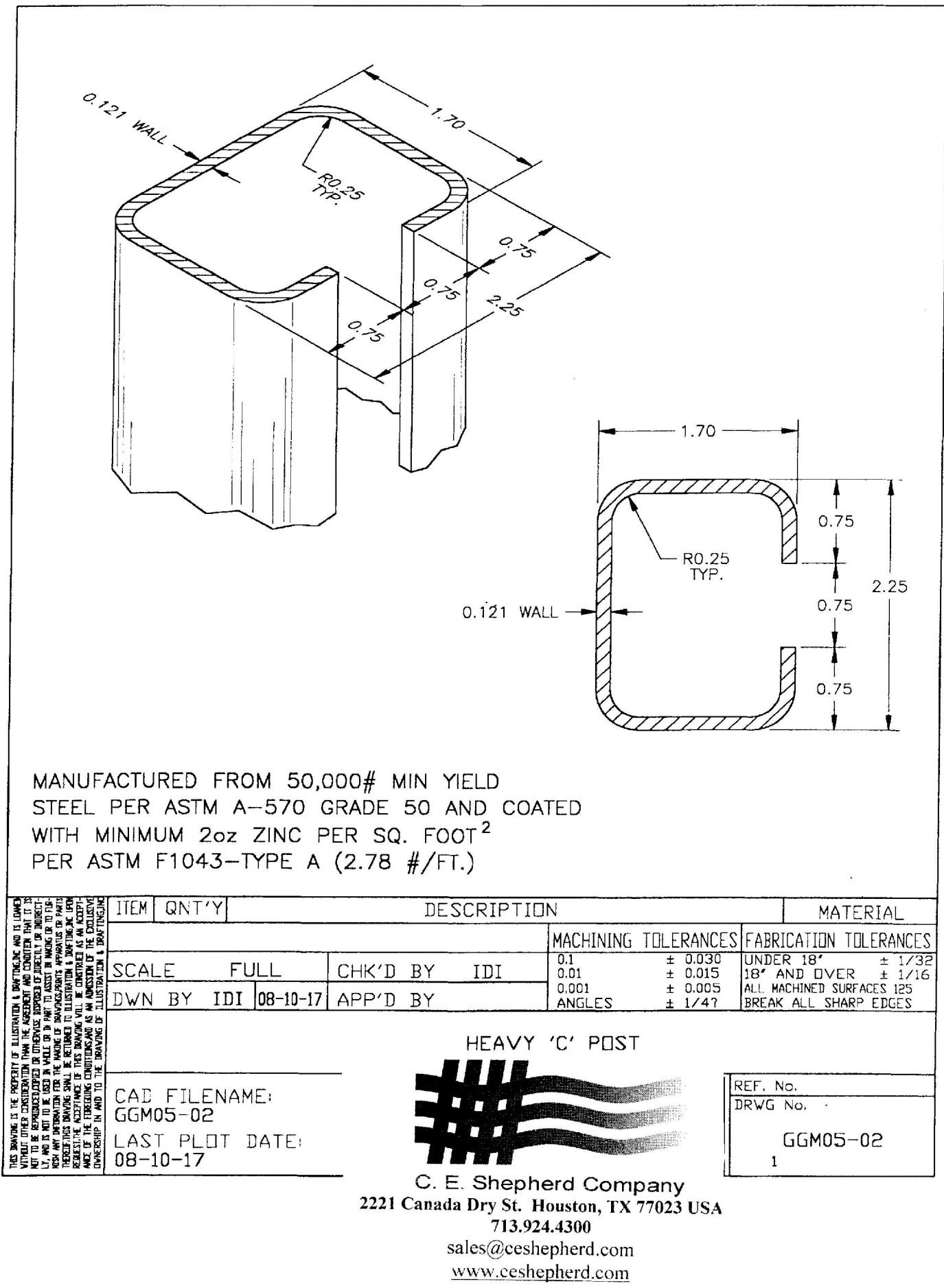
LET	DATE	BY	REV
DIMENSIONS IN INCHES			
TOLERANCES UNLESS NOTED:			
FRACTIONAL	± 1/8"	± 1/16"	± 1/32"
DECIMAL	± .005"	± .002"	± .001"
ANGULAR	± 1/2°	± 1/4°	± 1/8°
FILE	FILE	FILE	FILE

C.E. Shepherd Co., L.P.  
2221 CANADA DRY ST. HOUSTON, TEXAS 77023

DATE: 4/25/14  
BY: RAB  
CHECKED: NTS  
DESIGNED: NTS  
WELDING INFORMATION: WELD IS CONFORMANT TO SPECIFICATION

3-5-8 Security Fence With C-Posts

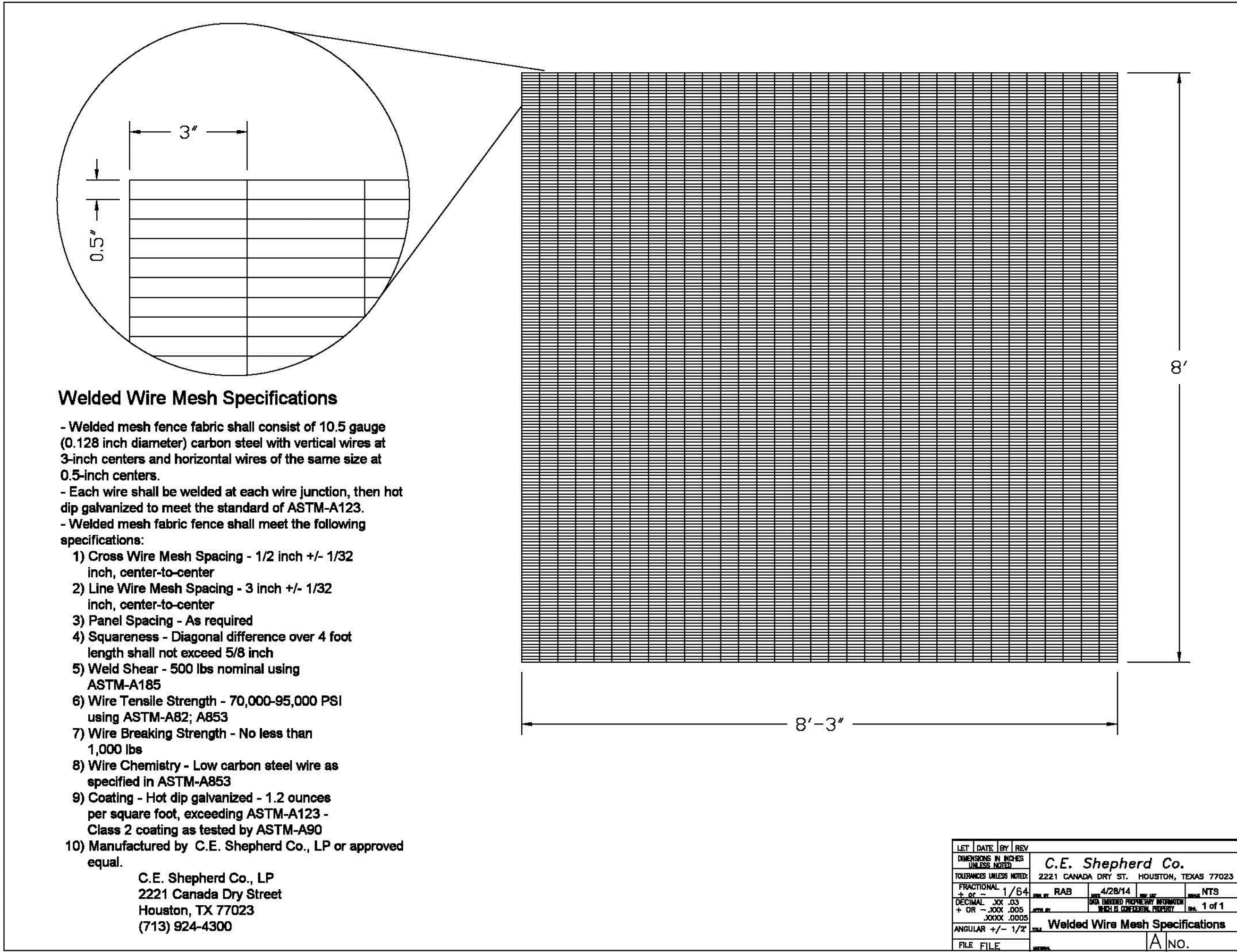
NO.



ITEM	QNTY	DESCRIPTION	MATERIAL
SCALE	FULL	CHK'D BY IDI	MACHINING TOLERANCES: UNDER 18" ± 1/32"
OWN BY	IDI	APP'D BY	18" AND OVER ± 1/16"
C.E. Shepherd Company			ALL MACHINED SURFACES 125
2221 Canada Dry St. Houston, TX 77023 USA			± 1/47 BREAK ALL SHARP EDGES
713.924.4300			
sales@ceshepherd.com			
www.ceshepherd.com			

CAD FILENAME: GGM05-02  
LAST PLOT DATE: 08-10-17

REF. No. GGM05-02  
BRWG No. 1



Welded Wire Mesh Specifications

- Welded mesh fence fabric shall consist of 10.5 gauge (0.128 inch diameter) carbon steel with vertical wires at 3-inch centers and horizontal wires of the same size at 0.5-inch centers.
- Each wire shall be welded at each wire junction, then hot dip galvanized to meet the standard of ASTM-A123.
- Welded mesh fabric fence shall meet the following specifications:
- 1) Cross Wire Mesh Spacing - 1/2 inch +/- 1/32 inch, center-to-center
- 2) Line Wire Mesh Spacing - 3 inch +/- 1/32 inch, center-to-center
- 3) Panel Spacing - As required
- 4) Squariness - Diagonal difference over 4 foot length shall not exceed 5/8 inch
- 5) Weld Shear - 500 lbs nominal using ASTM-A185
- 6) Wire Tensile Strength - 70,000-95,000 PSI using ASTM-A82; A853
- 7) Wire Breaking Strength - No less than 1,000 lbs
- 8) Wire Chemistry - Low carbon steel wire as specified in ASTM-A853
- 9) Coating - Hot dip galvanized - 1.2 ounces per square foot, exceeding ASTM-A123 - Class 2 coating as tested by ASTM-A90
- 10) Manufactured by C.E. Shepherd Co., LP or approved equal.

LET	DATE	BY	REV
DIMENSIONS IN INCHES			
TOLERANCES UNLESS NOTED:			
FRACTIONAL	± 1/8"	± 1/16"	± 1/32"
DECIMAL	± .005"	± .002"	± .001"
ANGULAR	± 1/2°	± 1/4°	± 1/8°
FILE	FILE	FILE	FILE

C.E. Shepherd Co.  
2221 CANADA DRY ST. HOUSTON, TEXAS 77023

DATE: 4/25/14  
BY: RAB  
CHECKED: NTS  
DESIGNED: NTS  
WELDING INFORMATION: WELD IS CONFORMANT TO SPECIFICATION

Welded Wire Mesh Specifications

NO.

C.E. SHEPHERD  
COMPANY, L.P.  
2221 CANADA DRY STREET  
HOUSTON, TX 77023  
PH (713) 924-4300

RUSSELL PACIFIC  
320 SUNSET WAY  
MUIR BEACH, CA 94965

FREETHY  
INDUSTRIAL PARK  
NORTHWEST CORNER  
GOODRICK AVE  
RICHMOND PARKWAY, CA 94801  
APN 408-220-06, 07, 35, 36, 37, 38

REV	DATE	DESCRIPTION
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PROJECT NUMBER	RUS1-RUSP4801	
APPLICATIONS ENGINEER	DEON TODD	
STRUCTURAL ENGINEER	STRUCTURAL ENGINEER	
PROJECT MANAGER	PM	
DESIGN ENGINEER	DESIGN ENGINEER	
CHECKED BY		

PERMIT SET

FENCE AND PLANT DETAILS

SHEET NUMBER  
F101



## Notice of Exemption

2014108139

Appendix E

To: Office of Planning and Research  
P.O. Box 3044, Room 113  
Sacramento, CA 95812-3044

County Clerk

County of: Contra Costa  
P.O. Box 950

Martinez, CA 94553

From: (Public Agency): City of Richmond  
Planning and Building, 450 Civic Center Plaza  
Richmond, CA 94804

(Address)

Project Title: Freethy Industrial Park Solar Photovoltaic System (Freethy Solar Project)

Project Applicant: Joe & Heidi Shekou and Richmond Development Company LLC

Project Location - Specific:

The northwest corner of Richmond Parkway and Goodrick Avenue in the City of Richmond, CA.

Project Location - City: RichmondProject Location - County: Contra Costa

Description of Nature, Purpose and Beneficiaries of Project:

Install 2 megawatt ground mount photovoltaic solar system on approximately 6 acres of level land at Freethy Industrial Park. The electricity generated by the project will be sold to Marin Clean Energy, pursuant to a long term power purchase agreement.

Name of Public Agency Approving Project: City of Richmond, Department of Planning and Building

Name of Person or Agency Carrying Out Project: Joe & Heidi Shekou, Richmond Development Co. LLC

Exempt Status: (check one):

- ☒ Ministerial (Sec. 21060(b)(1); 15266);  
☐ Declared Emergency (Sec. 21060(b)(3); 15269(a));  
☐ Emergency Project (Sec. 21060(b)(4); 15269(b)(c));  
☐ Categorical Exemption. State type and section number: \_\_\_\_\_  
☐ Statutory Exemptions. State code number: \_\_\_\_\_

Reasons why project is exempt:

The Freethy Solar Project qualifies for ministerial and non-discretionary review and approval pursuant to Health and Safety Code 17501.1(a), Government Code 65850.5(b) and City Resolution 56-14 (adopted June 17, 2014). The only approval required for the Freethy Solar Project is a building permit which is ministerial decision and pursuant to the above laws, is exempt from CEQA review.

Lead Agency Contact Person: Angelina AlmarinezArea Code/Telephone/Extension: 510-621-1285

If filed by applicant:

1. Attach certified document of exemption finding.  
 2. Has a Notice of Exemption been filed by the public agency approving the project? ☐ Yes ☐ No

Signature: Robert A. Albert Date: 10/9/14 Title: Project Manager

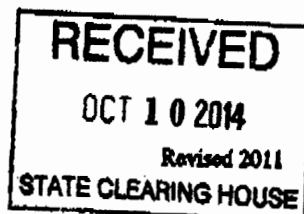
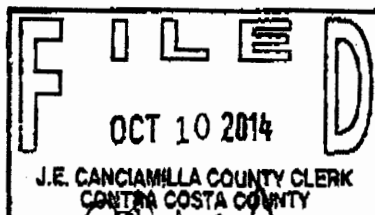
☐ Signed by Lead Agency ☒ Signed by Applicant

Authority cited: Sections 21060 and 21110, Public Resources Code.

Reference: Sections 21106, 21152, and 21152.1, Public Resources Code.

Date Received for filing at OPRE:

OCT 10 2014





**Subject:** Freethy Industrial Park Solar Electric Installation

**Date:** Wednesday, January 18, 2017 at 4:37:01 PM Pacific Standard Time

**From:** TRAC <tracbaytrail@earthlink.net>

**To:** McCrea, Brad@BCDC <brad.mccrea@bcdc.ca.gov>

**CC:** Nancy Strauch <nancystrauch@sbcglobal.net>, Bruce Brubaker <bbrubaker@placeworks.com>

Brad,

Following up on sat image, photos and plan drawing I sent, attached is the application package filed by JHS Properties for a solar electric array on the two northern parcels of the former Freethy Industrial Park. Note that the package includes an email from Michelle Levenson.

Unfortunately, the Richmond City Council adopted a resolution in June 2014 (since rescinded) interpreting the State Solar Rights Act to go beyond rooftop solar installations and exempt any kind of solar project from CEQA and all discretionary project reviews entailing conditional approvals. Thus, the project was built as shown in the sat image I sent without CEQA compliance and without a design review permit, which normally would require the applicant to build and operate the planned Bay Trail section on the property in accordance with Richmond General Plan 2030.

The site plan sent you shows trail easements along the two northern sides of the project; however, there is a wide drainage ditch in the middle of the easement on the northern side of the project, and the solar array fencing is very close to the edge of this tidal ditch making it economically infeasible to construct a trail.

This raises several questions, including:

1. Did JHS Properties apply for and obtain a solar facility permit or an exemption from BCDC?
2. Believing that the trail easements may go back to an agreement between BCDC and Elmer Freethy dating circa 1970, how could a ditch have been built in the middle of a trail easement?

BCDC's help in unraveling this would be appreciated greatly. Many thanks!

Bruce

-----  
Bruce Beyaert, TRAC Chair

[tracbaytrail@earthlink.net](mailto:tracbaytrail@earthlink.net)

tel./fax 510-235-2835

<http://www.pointrichmond.com/baytrail/>

<http://www.ci.richmond.ca.us/109/TRAC>

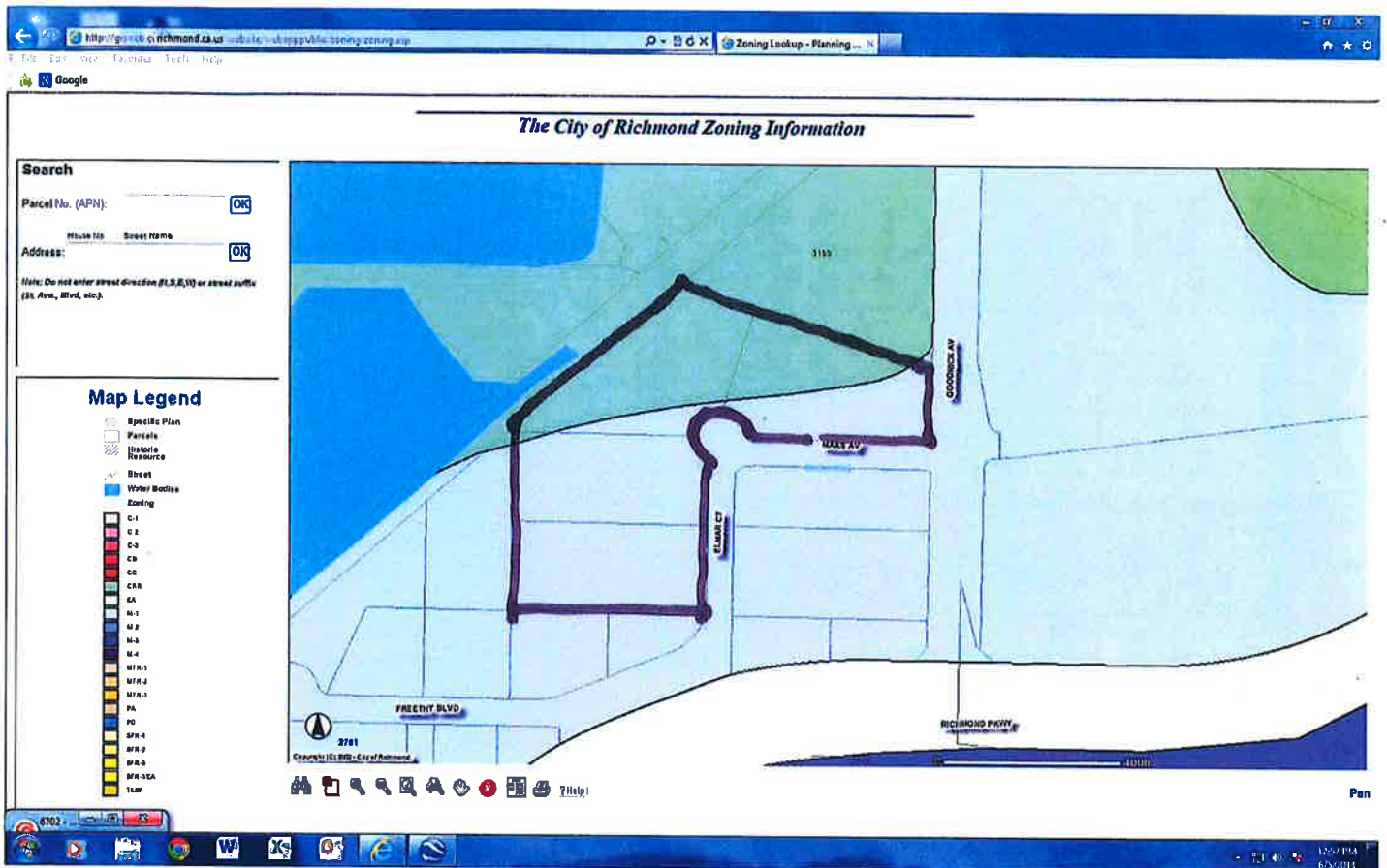
Photos: <https://sfbaytrailinrichmond.shutterfly.com/pictures/5>

# SAN FRANCISCO BAY TRAIL PROJECT

## Richmond







ZONING : CRR AND M-1

**SAN FRANCISCO BAY CONSERVATION  
AND DEVELOPMENT COMMISSION**

**Violation Investigation Report Form**

Report Taken By <b>BRAD McCREA</b>	Date <b>1/18/17</b>	Time
Reported By <b>TRAC/Bruce Bayne</b>	Mailing Address	Telephone No. <b>510.235.2835</b>
Description of Alleged Violation <b>Construction w/out a permit.</b>		
Location, City, County <b>Freethy Blvd. Richmond. CA</b>	APN(S)	
Name of Accused <b>Be + Heidi Sherry?</b>	Mailing Address <b>Richmond Dev. Co, LLC</b>	Telephone No.(s) <b>97277</b>
Name of Contractor/Agent	Mailing Address	Telephone No.(s)

Investigated By	Date Undertaken
Date ER File Established <b>6/22/17</b>	Number Given <b>EP2017-004</b>
Related File(s)	

**Details of Facts and Contacts to Prove or Further Explain the Violation(s)**

This site has a claim of exemption.  
It is unclear whether or not the exemption  
still applies and, if so, whether the  
Solar Farm is consistent w/ the agreement.  
#CE-74-15

How Resolved and When	Dollar Amount of Fine (if any)	Date Paid
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4/25/17

Exhibit 17

Bob Herbst - called back

→ exemption letter

↳ he says this applies  
so NO BCDC permit  
necessary

→ follow up with Bob

Hey Erik,  
I started making  
some calls, but  
Adrienne wants you  
to write that  
exemption  
memo so  
→

JHS Properties (415) 453-0212  
4/25/17

Heidi Shekou

Maggie spoke with owner,  
Heidi Shekou, and she said  
that her employee Len  
Niby <sup>(ex.#1)</sup> deals with the  
property and will be available  
to show after May 10 when  
returns from vacation. Heidi  
says she got all the  
proper permits from City  
of Richmond.

5/1/17

Maggie and Matthew visited  
site 4/28. File in Maggie's  
office. Scored this case as  
SLB and the score is





## 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

October 25, 2017

Joe and Heidi Shekou, Owners  
JHS Properties  
400F Smith Ranch Road  
San Rafael, CA 94903

SUBJECT: Enforcement Action—Failure to obtain authorization prior to constructing a solar farm in violation of the McAteer-Petris Act, located on Freethy Road in Richmond, Contra Costa County (BCDC Enforcement Case No. ER2017.004)

Dear Mr. and Mrs. Shekou:

This letter serves as a follow up to my conversations with Mrs. Shekou, Owner, and your business associate, Bob Herbst, in April 2017 regarding the unauthorized two-megawatt ground mount solar farm and associated carbon steel welded wire mesh security fence constructed without a BCDC permit on your eight-acre property, located on Freethy Road in Richmond, partially within BCDC's shoreline band jurisdiction. This action is in violation of the McAteer-Petris Act and may be subject to standardized fines. This letter describes the basis for BCDC staff's position that the solar farm project is not exempt from the requirement to secure the Commission's approval through the permit application process, describes the permit application process, and the standardized fines to which you will likely be subject during the time it will take to resolve this violation.

### **I. Claim of Exemption History and Determination That It Does Not Apply**

In April 2017, Mr. Herbst informed me that JHS Properties did not obtain a BCDC permit prior to constructing the solar farm and security fence because he believed the project was exempt from the McAteer-Petris Act pursuant to the "Freethy Property" Claim of Exemption No. CE 74-15 (CE 1974.15) issued by BCDC on August 15, 1977, to Elmer J. Freethy, a former owner of the property, for light industrial facilities and purposes. Mr. Freethy was granted the Claim of Exemption for a specific project that did not include a solar farm. Freethy's Claim of Exemption was for the following project: (1) To complete a road system that had been under construction since 1963, including the placement of fill on tidal areas running from the easterly line of the property to the westerly line of the property; (2) To place fill behind the completed roadway system to raise the approximately 84.34 acres of land to grade according to Freethy's development plan he finalized in 1964; and (3) To use the 84.34 acre area for light industrial facilities and purposes.

BCDC staff does not dispute that the Claim of Exemption applies to the placement of fill and grading to construct the roadway and raise the site elevation (partially/entirely) within a former tidal marsh. However, BCDC staff does not agree with Mr. Herbst's interpretation that the Claim of Exemption applies to the solar farm constructed without a permit by subsequent property owners because: (1) the solar farm is not within the scope of the project for which Freethy was issued a Claim of Exemption because it was not constructed in accordance with the plans incorporated with the Claim of Exemption; and (2) the Claim of Exemption has been abandoned pursuant to BCDC Regulation Section 10921 and no longer applies to the property, both of which reasons are explained below; and (3) the project was not constructed in accordance with the plans incorporated with the Claim of Exemption.

1. **Scope of Project.** In *BCDC v. City of Emeryville* (1968) 69 Cal 2d 533, the California Supreme Court determined that a claim of exemption must be narrowly construed for a specific project, and cannot authorize a general activity or use such as "industrial use". The proceedings that concluded with the issuance of the Claim of Exemption focused on the fill plans Freethy had developed in the 1960s and did not focus on the planned industrial uses for the property. The general provision in the Claim of Exemption for "light industrial facilities and purposes" should not be interpreted as a broad exemption from the McAteer-Petris Act permitting requirements but rather, for the specific project that Freethy was engaged in at the time of the Exemption based on the plans provided as part of the Claim. The specific plans that were submitted as part of the Claim were to complete the fill and the roads and construct buildings similar to those already constructed that would have been leased to industrial tenants. There is no discussion of a solar farm or power generation at the site, which, although they could be considered industrial activities, are simply not of the same nature as the development Mr. Freethy had already constructed and, therefore, cannot be part of the Claim of Exemption.
2. **Abandonment.** BCDC Regulation Section 10921 states that, "Failure to put any land, water, or structure to use for which the Commission issued a claim of exemption for a period of two years shall create a presumption that the structure or the use of the land, water, or structure has been abandoned so that the exemption no longer applies." Google Earth images<sup>1</sup> demonstrate that there was no development activity and the project was not in use for more than a two-year consecutive period from 1977 to 2013 and, therefore, the Claim of Exemption was abandoned. It appears that the solar farm construction did not begin until 2014, over thirty years after the Claim of Exemption was issued.

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<sup>1</sup> Dated July 1993, July 2002, and June 2013.

3. **Inconsistent with Plans.** BCDC Regulation Section 10918 states, in part, "...no substantial change may be made in any such project [provided a claim of exemption] without a permit from the Commission and provided that the claim shall not cover any subsequent maintenance work on the project." Freethy's Claim included a specific plan with a specific road design that showed straight roads terminating at Goodrick Avenue. However, sometime in the intervening years a new curved road (Elmer Court) was constructed inconsistent with this plan. Taken together with the removal of the existing Freethy Building, it appears the project was substantially changed from the previous specific plan submitted with the Claim.
4. **Conclusion.** The Exemption does not apply to the solar farm and associated fence. The City of Richmond contacted BCDC by email on May 20, 2014, and inquired whether a permit was needed to develop the property for a solar farm. On May 22, 2014, BCDC staff informed the City that, based on reviewing aerial images of the property, it appears that the project is located within BCDC's 100-foot shoreline band jurisdiction and that the proposed solar farm use could be authorized so long as the development provides maximum feasible public access to the Bay and that any potential impacts to Bay resources are minimized.

## II. How to Resolve the Violation and Permit Application Process

The violation of unauthorized development in the shoreline band can likely be resolved through obtaining a BCDC permit to authorize the solar farm and fence after-the-fact and require maximum feasible public access on site or removal of all unauthorized fill and uses and restoration of the site to its condition prior to commencing the solar farm project.

**Applying for a Permit.** In order to retain the solar farm and the fence, you must submit a complete filable permit application to BCDC that requests after-the-fact authorization. The application must include a public access proposal that provides maximum feasible public access consistent with the project already constructed on your property. The application process will require you to obtain local approval from the City of Richmond for your public access proposal before BCDC can authorize it. I have attached a clean permit application with instructions to this letter. An electronic copy can be found on BCDC's website at [www.bcdc.ca.gov/forms/forms.html](http://www.bcdc.ca.gov/forms/forms.html).

In order to complete the permit application, you must complete the CEQA process, obtain local discretionary approval, and satisfy the policies and requirements of the McAteer-Petris Act and San Francisco Bay Plan, including providing maximum feasible public access as part of your project. Your property is the site of a planned Bay Trail section and in order to obtain a permit to authorize the solar farm and fence, a proposal for maximum feasible public access will likely require that you build, operate, and maintain this much-desired section of trail.

### III. Enforcement Process

1. **Standardized Fines.** If the solar farm and associated security fence is removed and the area is restored to its prior status within 35 days of the date of this letter, no civil penalty will apply. If you chose to apply for after-the-fact authorization for the solar farm and fence, one of the two standardized fine schedules provided below will apply depending on whether or not the Commission determines that the project is consistent with its laws and policies.

- a. **Regulation Section 11386(e)(4): For the failure to obtain a Commission permit prior to undertaking any activity that can be authorized after-the-fact by an administrative permit,** if either a filable application is submitted between thirty-six (36) and sixty-five (65) days and a permit is obtained within one hundred and fifty-five (155) days after the date of the mailing of this notice, or the unauthorized activity is completely corrected between thirty-six (36) and sixty-five (65) days after the mailing of this notice: \$2,000 in standardized fines.

If either a filable application is submitted between sixty-six (66) and ninety-five (95) days and a permit is obtained within one hundred and eighty-five (185) days after the date of the mailing of this notice, or the unauthorized activity is completely corrected between sixty-six (66) and ninety-five (95) days after the mailing of this notice: \$5,000 in standardized fines.

If a filable application is submitted more than ninety-five (95) days after the date of the mailing of this notice or the unauthorized activity is completely corrected within the same time limits: \$5,000 in standardized fines plus \$100 per day from the ninety-sixth (96<sup>th</sup>) day to the date a permit is obtained or the activity is completely corrected.

- b. **Regulation Section 11386(e)(6): For the placement of fill, the extraction of materials, or a change in use that could not be authorized under the Commission's laws and policies but is an activity similar in size and scope to the activities listed in Sections 10601(a) through 10601(e),** if the violation is corrected and the area is restored to its prior status between thirty-six (36) and sixty-five (65) days after the date of the mailing of this notice: \$3,000 in standardized fines.

If the violation is corrected and the area is restored to its prior status between sixty-six (66) and ninety-five (95) days after the date of the mailing of this notice: \$8,000 in standardized fines.

If the violation is corrected and the area returned to its prior status more than 95 days after the mailing of this notice: \$8,000 in standardized fines plus \$100 per day to the date the violation is completely corrected.

JHS Properties  
October 25, 2017  
ER2017.004  
Page 5

2. **Enforcement Options.** Pursuant to section 11386 of BCDC's administrative regulations, you may resolve the penalty portion of the alleged violations by paying the standardized fines described above or you have the option to seek resolution through a formal enforcement proceeding that would involve a public hearing.
3. If you have not corrected the violation within 125 days of the date of this letter, you may no longer have the option to settle this matter with standardized fines and staff may, pursuant to sections 66638 and 66641.5(e) of the McAteer-Petris Act, commence a formal enforcement proceeding that could lead to the issuance of a cease and desist and civil penalty order with an administratively imposed civil penalty of between \$10 and \$2,000 per day up to a maximum of \$30,000 for the violation.
4. If any of your actions are determined to be knowing and intentional violations or violate a term of a cease and desist order, the law (sections 66641.5(c) and 66641 of the McAteer-Petris Act, respectively) provides that we may refer this matter to the Office of the Attorney General, which could subject you to court imposed penalties.

**Conclusion.** Please contact me either by phone at (415) 352-3633 or email at [Matthew.Trujillo@bcdc.ca.gov](mailto:Matthew.Trujillo@bcdc.ca.gov) as soon as you receive this letter to schedule a meeting to discuss the steps necessary to resolve the violation. Thank you in advance for your cooperation.

Sincerely,

  
MATTHEW TRUJILLO  
Enforcement Analyst

Enc.

MW/gg

cc: Hector Lopez, Senior Planner, City of Richmond  
Bob Herbst, JHS Properties



Meeting with Joe Shekou, owner, JHS Properties; Bob Herbst, son in law; and Ivo Keller, Counsel, SSL Law Firm, arranged in response to BCDC's letter dated October 25, 2017. BCDC staff present: John Bowers, Matthew Trujillo, Adrienne Klein

Enforcement Case No. ER2017.004

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Bob Herbst provided the site history - Site is 24 acres; Back in the day Freethy conducted fill. City prepared an EIR.

Solar Farm is operating on seven parcels owned by Shekou: APNs 408-220-03, 06, 07, 33, 34, 35, and 48.

1984: Construction of the fill placement, road, concrete lined ditches and lightpoles and utilities occurred pursuant to the COE. Also, 3 warehouse buildings were constructed which have since been removed. At this time, the City and Freethy negotiated a 30-foot-wide public access easement along the east and north sides of the property.

1995: Condemnation of portions of the property occurred by the City of Richmond to allow for construction of the Richmond Parkway.

2000: The Shekou's purchased the property and have since had trouble securing permission from the City to implement their three project proposals. There is bad blood between the Shekous and City as a result. The site was zoned light industrial and they had developed a plan for a live-work project but could not obtain City approval. The City councils have changed from pro- to anti-development and rezoned property to cultural/open space. They also imposed a building moratorium in 2016 which is due to expire in February 2018.

2006: Shekous met with Bob Batha and showed him a public access plan. Unclear whether Bob was aware of the COE and how he advised them? If Bob indicated that a BCDC permit was necessary, then their action to proceed absent a permit is not negligent.

2013: Nevertheless, the Shekous secured approval for the solar farm project, which is allowed in any zoning district. They can connect to the power grid along Goodrich Boulevard; this proximity makes the economic investment feasible. Solar is an off-peak power generator. Economically, it is not a good use of the land but it was the only use they could get approval for. They need to keep the site in solar for 20 years to secure a tax incentive. They have spent \$5 million on the project. Marin Energy buys the power.

2016: Construction of the solar farm began in January and was completed in October. It is a 2MW system, which provides power for 2,400 homes (online press release says 600 homes?). There is an onsite resident named Jerry to secure the facility from vandalism.

The fence that bounds the north and east sides of the property is set back to allow for future implementation of the public access in the pre-established 1984 public access easement.

They are willing to build the pre-existing public access trail easement when the rest of the site builds out. Currently, the site is used for dumping and the PA would lead to a dead end. There is lots of vandalism. All the wiring from the light poles has been stolen. The Rod and Gun Club to the north has damaged 10 solar panels so far. Access along the east side would be very loud and potentially dangerous in Bob's opinion.

Shekou/Herbst Position Regarding Claim of Exemption (COE): They believe their project is fully covered by the COE issued by BCDC and do not want to apply for a BCDC permit. John suggested that they consider applying for a permit under a "reservation of rights" jurisdiction so that if the outcome isn't favorable, they would not have forfeited their right to make a legal claim against BCDC regarding the difference of opinion regarding the scope/limits of the COE.

Future Use of Adjacent Parcels: Shekou owns two additional parcels (APN 408-220-25 and 26). The Richmond Development Company owns APN 48-220-23, 24, 49 and 50. On these six parcels, they are working together to secure approval to construct two, 4,000 sf warehouses to cultivate marijuana. The project is called "Power Plant."

Dumas Sliding Doors is/will be located south of Freethy Boulevard on APNs 48-220-39, 41, 42 and 43.

Matthew Trujillo: Asked if they had installed the concrete barriers limiting vehicular and pedestrian access on Freethy Boulevard at its juncture with Goodrich. They said they had because of the vandalism. Matthew correctly is concerned that this adversely impacts the public's ability to make use of the public access required by BCDC Permit No. 1993. 002, issued to the City of Richmond. Made a copy of a letter from BCDC, dated December 7, 1971, to which they referred to establish their position.

Adrienne Klein: Explained that the BCDC staff does not believe that the COE applies to solar farm and that we believe a BCDC permit is necessary, that the property is considered shoreline band, that the policy consideration is that the project provide must maximum feasible public access consistent with the project, that public access is typically required prior to occupancy, that public shore parking, view corridors, signage and other benefits are often part of a public access proposal along with an ADA accessible shoreline trail. Explained the difference between and administrative and a major permit, mentioned the DRB. Said that they are a step ahead since they have their local approval and CEQA exemption. (Did I explain the enforcement process or not?). Mentioned the Plains' consultant who was very successful at addressing a similar vandalism issue and offered up the name if they were interested.

Ivo Keller: They believe property is subject to exemption and that it is valid on entire property including the future planned developments. They filed a lawsuit against the City of Richmond on December 1<sup>st</sup> regarding the rezoning matter. They would be willing to enter into a settlement agreement to accommodate our position but not to apply for a permit.

John Bowers: A settlement agreement would not satisfy the requirements of the McAteer-Petris Act for a permit.

Questions:

Should we look at original EIR to see what project it authorized?

Should we find out what Bob Batha advised the Shekous?

Review Permit No. 1993.002 and ensure that public access and habitat improvements have been fully installed as required.

Next Steps:

Matthew is preparing a second letter for JHS Properties outlining the BCDC position

Adrienne advised Larry and Steve that a public hearing may be necessary to air the difference of opinion regarding the extent and status of the COE.

## **Site Visit to JHS Properties at Mean High Tide on Wednesday, May 16, 2018**

Len Nibby, representing Shekou Family

Matthew Trujillo, Schuyler Olsson, John Bowers and Adreinne Klein representing BCDC.

### **Jurisdiction and Public Access**

We were able to walk around two full sides of the property at the edges adjacent to tidal influence. We measured the distance from the fence to the inland extent of tidal marsh vegetation at two locations. At the southwest fence corner, the distance measured 54.6 feet. At the northwest fence corner, facing the Rod and Gun Club, the distance measured 13.8 feet. Therefore, at the narrow end of this area, there appears to be inadequate room for a public access trail along the shoreline with the current configuration of the fence protecting the panels.

The jurisdiction along the tidal marsh is delineated by the location where the historic fill was placed. The elevation of the land slopes up from the tidal marsh plain.

The jurisdiction adjacent to the Rod and Gun Club appears to extend inland to the roadway, and even around the corner to the location of a culvert, which is 83.4 feet from the 90' turn.

The tide definitely influences this entire area and marsh vegetation is also present, though the species transition to brackish about half way up the channel (bulrush, alterniflora, saltgrass, pickleweed). The approximate distance from the fence to the bottom of the slope was approximately 30 feet, though we neglected to write this measurement down and are not all in agreement.

### **Adjacent Marsh**

Pursuant to signs in the marsh, the EBRPD owns this property. There was some minor amount of debris near the base of the manmade slope that may be worth removing if the opportunity for mitigation presents.

### **Crushed Asphalt**

We observed new fill importation within the area of the solar farm, which Len described as crushed asphalt that is being laid down to raise the grade elevation so that maintenance workers can reach the solar panels to clean them. While we did not observe this fill being placed within the 100-foot shoreline band, it seems evident that this material will be placed throughout the site so that some of it will eventually be located in the SB. I am concerned about water quality impacts from the runoff.

### **Gated Road**

John asked Len if JHS had installed the gate at the entrance to the public road and he said that they had with the City's cooperation to preclude ongoing vandalism of public infrastructure.

**Existing Public Access**

We also walked the existing public access required by Permit No. 1993.002, which is in a state of disrepair. The trail surface has cracks and bulges and the adjacent feral vegetation is overgrown.



## 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

Via Email &amp; US Mail

September 13, 2018

Ivo Keller  
SSL Law Firm LLP  
575 Market Street, Suite 2700  
San Francisco, California 94105

SUBJECT: BCDC Staff's Findings Regarding the Applicability of BCDC's Jurisdiction Over the JHS Solar Farm Site in Richmond, Contra Costa County  
(BCDC Enforcement File No. ER2017.004, BCDC Claim of Exemption File No. CE 74-15)

Dear Mr. Keller:

Thank you for your February 5, 2018 letter entitled, "BCDC Enforcement Case No. ER2017.004." In preparation for our response, BCDC staff carefully considered your arguments in comparison to the records in BCDC Claim of Exemption File No. CE 74-15. We also conducted a visit to site of the JHS Solar Farm facility ("solar farm" or "Property") on May 16, 2018 to examine the as-built conditions and assess the extent of tidal action. As discussed below, staff affirms that BCDC has jurisdiction over portions of the solar farm that were built within BCDC's 100-foot shoreline band jurisdiction without authorization, and that your clients must seek and obtain an after-the-fact permit to authorize the project, must pay an appropriate penalty, and must provide maximum feasible public access, consistent with the project.

**I. Continued Applicability of Claim of Exemption Granted by the Commission**

In my October 25, 2017 letter, I stated that the claim of exemption granted by the Commission on August 15, 1977 does not apply to the solar farm project because: (1) the solar farm is not within the scope of the "project" for which Mr. Freethy's claim of exemption was granted because the solar farm was not constructed in accordance with the plans referenced in the claim of exemption; (2) the claim of exemption was abandoned pursuant to 14 C.C.R. § 10921 and no longer applies to the property on which the solar farm is located; and (3) no substantial change may be made in any exempt project without a permit from the Commission pursuant to 14 C.C.R. § 10918.

In your response letter, dated February 5, 2018, you simply assert, with no citation to authority, that the solar farm project is exempt from BCDC permit requirements under the claim of exemption granted by the Commission in 1977, regardless of whether or not the project site falls within the 100-foot shoreline band as that area is defined in section 66610(b) of the McAteer-Petris Act (MPA). This assertion appears to be based on the Commission's statement, in the "conclusions" section of its letter granting the claim of exemption, that no permit was required at that time for the development of "light industrial uses" on the subject parcels and your clients' professed belief that the solar farm constitutes a "light industrial" facility or use. However, the Commission's reference to "light industrial uses" in the

Ivo Keller  
September 13, 2018  
Page 2

"conclusions" section of its letter must be read in the context of its earlier reference to Mr. Freethy's "detailed and specific plan for the development of a light industrial park," as shown on certain exhibits to the claim of exemption. Commission Determination on Claim of Exemption (Aug. 15, 1977), at 2. Those plans do not include the solar farm conceived and constructed approximately 50 years later.

Your assertion that the exemption granted by the Commission applies to the solar farm fails to address either: (1) the California Supreme Court's determination, in *San Francisco BCDC v. Emeryville* (1968) 69 Cal. 2d 533, 545, that the Legislature used the word "project" as a term of limitation in a grandfather clause permitting exemption in the MPA (Section 66632.1); or (2) the Commission's reservation of jurisdiction, codified at 14 C.C.R. section 10918, to require a permit when a substantial change is made to a project for which a claim of exemption was previously granted. Similarly, on the issue of whether the exemption was abandoned, your response fails to address the evidence of abandonment cited in my October 25, 2017 letter and simply asserts that BCDC has previously taken the opposite position. However, as discussed below, BCDC has repeatedly asserted jurisdiction over the property. Moreover, there is no documentation in our files supporting your claim that at the time JHS conducted due diligence in connection with its purchase of the property, Bob Batha, BCDC's former Chief of Permits, informed JHS that the exemption remained valid.

Notwithstanding the above, and without waiving any of our arguments regarding the inapplicability of the exemption granted by the Commission to Mr. Freethy for improvements described in plans Mr. Freethy submitted to the Commission in 1974, we have reevaluated the extent to which the exemption remains in effect or has been abandoned. In doing so, we have considered current on-site conditions in the entire geographic area covered by the exemption granted by the Commission. As you know, the Commission granted the claim of exemption for specific planned development and uses on approximately 84.34 acres within identified Assessor's parcels, as shown on a drawing entitled "Land Development Plan for Freethy Land and Investment, Richmond, California," dated December 1964. Determination on Claim of Exemption, at 1. A staff-annotated 2018 Google Earth image of the entire area covered by the exemption granted by the Commission, attached hereto as Exhibit A, shows that: (1) portions of the area, particularly to the west and northwest, were never filled and remain subject to tidal action or influence as open water or tidal marsh; (2) portions of the area were or may have been filled pursuant to the exemption but were never developed and have become subject to tidal action through reversion to open water or tidal marsh; and (3) portions of the area were filled and developed and, as a result of such filling and development, are neither presently subject to tidal action as either open water or tidal marsh, nor are they located within 100 feet of any such tidally influenced area.

Considering the geographic area for which the Commission granted an exemption in its entirety, we have determined that it would be reasonable and appropriate to interpret the potential continued applicability or not of the exemption as follows:

1. The exemption has been abandoned and is no longer in effect in those areas that either: (a) were never filled or developed; (b) may have been filled in the past but were not developed and have reverted to open water, tidal marsh, or are otherwise subject to tidal action; or (c) are located within 100 feet of areas described by (a) or (b); and
2. The exemption remains in effect in those areas that were filled and developed in the past and that, as a result of such filling, are not presently either subject to tidal action as either open water or tidal marsh or located within 100 feet of any such areas.

In other words, whether the exemption granted by the Commission remains in effect or has been abandoned as to any particular location within the area covered by the exemption when it was granted by the Commission in 1977 is to be determined based on existing conditions at that particular location.

Thus, the exemption remains in effect and a permit from the Commission is not required for any location that has been filled and developed and, as a result of such activity, fails under existing conditions to exhibit the physical characteristics (specifically, tidal action or influence or location within 100 feet of such action or influence) required for such a location to be within the Commission's jurisdiction; and the exemption has been abandoned and such a permit is required for any location that, under existing conditions, exhibits such physical characteristics and consequently falls within the Commission's SF Bay or shoreline band jurisdiction, as defined in MPA §§ 66610(a) and (b), respectively,<sup>1</sup>

## II. BCDC Jurisdiction at the Property

As you know, on May 16, 2018, BCDC staff, accompanied by JHS representative Len Nibby, visited the Freethy Industrial Park (FIP) to observe the extent of tidal action at the site, take measurements, and examine the as-built condition of the solar farm. Our observations revealed that: (1) there exists a tidal channel on the northern and northeastern perimeters of the solar farm that, as a physical feature that satisfies the definition of the term "slough" in the Commission's regulations,<sup>2</sup> is subject to the Commission's Bay jurisdiction along the entire

<sup>1</sup> Even where an exemption remains in effect, a permit from the Commission is required pursuant to 14 C.C.R. section 10918 for a substantial change to the project for which an exemption was granted. Thus, under section 10918, a permit from the Commission certainly would be required in a situation analogous to that presented in the *Emeryville* case, where the proposed project described the exempted development plans was changed prior to the commencement of filling that removed an area from the Commission's jurisdiction. See *San Francisco BCDC v. Emeryville*, 69 Cal. 2d at 542 (subsequent events required town to make fundamental changes in its development proposal). In contrast, and once again without waiving our prior arguments, it may be appropriate to interpret the "no substantial change" provisions of section 10918 as not applying in a situation where: (1) an area was removed from the Commission's jurisdiction by the placement of fill and developed in accordance with a claim of exemption granted by the Commission; (2) the filled and developed area continuously failed to exhibit the physical characteristics (specifically, tidal action or influence or location within 100 feet of any area where such action or influence is present) required for an area to fall within the Commission's area of jurisdiction; and (3) the area is subsequently redeveloped, decades after the initial exempted development, after the uses described in the plans referenced in the claim of exemption terminate or otherwise cease to exist.

<sup>2</sup> 14 C.C.R. § 10122.

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northern side of the solar farm and a portion of the eastern side up to the northern edge of the culvert under eastern end of Elmer Court; (2) there exists a 100-foot shoreline band jurisdiction adjacent to the Bay jurisdiction that encompasses the northwestern and northern sides of the solar farm facility, its northeastern side, and approximately 50 feet of its southeastern side; therefore; and (3) approximately 73,400 square feet of the solar farm are located in the 100-foot shoreline band, which means that all structures built and fill placed and uses made within this area (e.g., solar panels fencing, asphalt groundcover, maintenance etc.) constitute unpermitted "fill," as that term is defined by MPA § 66632(a) .

In your February 5, 2018 letter you contend that: (1) the solar farm is located outside of the Commission's shoreline band jurisdiction, as depicted in an unnamed set of proposed grading and erosion control plans prepared by Kister, Savio and Rei, Inc. (KSI), dated February 24, 2014, included as Exhibit 1 to your letter; (2) the Mean Higher High Water (MHHW) line depicted in a set of proposed site plans entitled, "Subdivision 5754," prepared by KSI, dated March 1982, included as Exhibit 2 to your letter, exists approximately 200 feet away from the Property; and (3) a letter dated November 12, 1981 from the Elmer J. Freethy Company to BCDC staff entitled, "BCDC Letter November 10, 1981 Development of San Pablo Bay Industrial Park BCDC File No. CE 74-15," included as Exhibit 3 to your letter, confirmed that BCDC would not require a permit for municipal improvements at the Property and that the proposed improvements for the San Pablo Bay Industrial Park would not be located within 100 feet of the San Francisco Bay.

Staff has reviewed each of the pieces of evidence you presented in comparison to the records in BCDC Claim of Exemption File No. CE 1974-15, the relevant provisions of the McAteer-Petris Act, and BCDC Regulations (14 CCR) Sections 10910 – 10921. Our conclusions are as follows:

1. **BCDC Jurisdiction at the Property.** You assert that the MHHW line depicted in the March 1982 Subdivision Map No. 5754 by KSI and the February 2014 plans by KSI demonstrated that the solar farm is located outside of BCDC's jurisdiction. This conclusion is incorrect, because the MHHW line is not the limit of the Bay jurisdiction at this site. Pursuant to Section 66610(a) of the MPA, the San Francisco Bay jurisdiction includes all marshlands of the Bay lying between mean high tide and five feet above mean sea level. On May 16, 2018, BCDC staff identified tidal marshland along the western side the Property that extends to a distance ranging from approximately 39 feet to 67 feet from the fence of the solar farm. Furthermore, staff observed that the channel along the northern and eastern edges of the Property is tidally influenced, which means that, as a "slough" that satisfies the definition of that term in the Commission's regulations, the channel is subject to the Commission's Bay jurisdiction.

## 2. BCDC Has Historically Asserted Its Jurisdiction Over the Property

- a. To support your claim that BCDC has historically affirmed that it had no jurisdiction over the Property until this case arose in 2016, you included Exhibit 3 to your May 2<sup>nd</sup> letter from Francis Mansell, Operations Manager for the Elmer J. Freethy Company, to BCDC staff, dated November 12, 1981. You contend this letter confirms that the Property is located outside of the Commission's jurisdiction; however, when read in its proper context Mr. Mansell's letter is a follow-up to a conversation that took place with BCDC staff between November 10, 1981 and November 12, 1981. It is clear that Mr. Mansell's letter was intended to encapsulate the understanding by BCDC Staff and Mr. Mansell that if a proposed development project at the Property by the Ainsley Corporation, the Freethy Company's successor in interest, would not occur "within 100 feet of the San Francisco Bay," as asserted by Mr. Mansell, the project would not be within the Commission's 100-foot shoreline band jurisdiction and thus would not require a permit from the Commission. The letter also contains Mr. Mansell's "understanding" that a BCDC permit would be required for any further development of the Property that would involve any "additional filling, dredging, or substantial change in usage of the property."

You also assert that BCDC did not make any attempt to assert its jurisdiction over the site in 1981 or at any other time, and that our present assertion of jurisdiction is inconsistent with past practice. However, the record clearly demonstrates that between 1979 and 1989 BCDC staff repeatedly asserted jurisdiction and permitting authority over the Property as follows:

- (1) **December 17, 1979.** In a letter from BCDC permit analyst Nancy Twiss to the City of Richmond Planning Department entitled, "Preliminary Tentative Subdivision Map 754 Freethy Industrial Park Claim of Exemption No. CE 74-15 and BCDC Inquiry File No. CC.NR.6619.1," in response to the submission of a tentative subdivision map of the original Property by the City to BCDC staff for review, Ms. Twiss asserted that the Commission would have 100-foot shoreline band jurisdiction over the Property where further development constituted a change in the use of the Property (e.g., the construction of an office park). Ms. Twiss' conclusion is consistent with BCDC Regulation (14 CCR) Section 10918, "Effect of Grant of Exemption." See Exhibit B, attached hereto, a copy of Ms. Twiss' letter.
- (2) **February 6, 1980.** In a letter from BCDC staff counsel Frank Broadhead to the City of Richmond Planning Director entitled, "Freethy Property - CE74-15 and BCDC Inquiry File No. CC.MR.6619.1," Mr. Broadhead noted that since it appeared that Elmer Freethy was no longer the owner of the Property, pursuant to BCDC Regulation Section 10920, "Effect of Transfer of Property on Claim of Exemption," the granted exemption no longer applied.<sup>3</sup> See Exhibit C, attached hereto, a copy of Mr. Broadhead's letter.

<sup>3</sup> Section 10920 was amended in 1998 to allow the transfer of grants of exemptions to successors in fee ownership.



- (3) **November 10, 1981.** In a letter from BCDC staff counsel Jonathan Smith to Elmer Freethy and the new owner of the site, the Ainsley Corporation, entitled, "Development of San Pablo Bay Industrial Park," Mr. Smith emphatically asserts that the claim of exemption was issued exclusively to Mr. Freethy and was not transferrable to the Ainsley Corporation, and he directed the new owner of the Property to seek and obtain a Commission permit for any new filling, dredging or substantial change of use at the Property. See Exhibit D, attached hereto, a copy of Mr. Smith's letter.
  - (4) **October 23, 1989.** In a letter from BCDC Legal Intern Kurt Seel to the Buzz Oates Real Estate Agency, entitled, "BCDC Jurisdiction Over Portions of Richmond Subdivision 5754," Mr. Seel informed the agent that lots 5, 6, 7, 11, 12, and 14--all lots on which the solar farm was built--are located within the Commission's shoreline band jurisdiction. He also asserted that the property transfer from Elmer Freethy to Ainsley Corporation nullified the granted exemption. See Exhibit E, attached hereto, a copy of Mr. Seel's letter.
  - (5) **May 22, 2014.** In an e-mail from BCDC permit analyst Michelle Levenson to Richmond City Planner Hector Lopez, entitled, "Proposed Solar Farm in the City of Richmond," Ms. Levenson stated that the proposed project appeared to be located with BCDC's jurisdiction, and, thus, a BCDC permit and the provision of public access would be required. See Exhibit F, attached hereto, a copy of Ms. Levenson's e-mail.
3. **Failure of the Property Owners to Conduct Their Due Diligence Prior to Constructing the Solar Farm.** In your letter, you state that the solar farm was developed under "a good faith belief" that the Property is not located within BCDC's jurisdiction. However, as documented above, it is a matter of public record that BCDC's jurisdiction over portions of the Property has been scrutinized in the past and this is not the first instance where BCDC has declared its jurisdiction over this site. Staff rejects the assertion that this project was developed "under a good faith belief that the Property is not located within BCDC's jurisdiction." The Shekous have a long history of developing properties around the Bay shoreline and are well aware of BCDC's jurisdiction. As such, they should have approached BCDC to request an assessment of the site prior to commencing with any development that may have been subject to its jurisdiction, rather than making assumptions based on the interpretation of a thirty-year-old letter and a set of equally outdated site plans. As a result, the solar farm could possibly have been constructed outside of the Commission's jurisdiction to avoid having to apply for and obtain the Commission's approval for the project.

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### III. Public Access

You assert that public access at the site is infeasible and inconsistent with the project. However, as you yourself acknowledge in your February 5 letter is shown on the "KSR Plans" attached as Ex. 1 to your letter, the property on which the Shekous constructed their solar farm project as well as other property owned by the Shekous in the Freethy Industrial Park is encumbered by the dedication to the City of Richmond of 1) a public access easement that consists of a 20-foot-wide, and approximately 1,000-foot-long trail along the western perimeter of such property, and 2) a 30-ft.-wide "trail and storm drain easement" along the northern boundary of the solar farm property. Thus, the Shekous constructed the solar farm project with at least constructive notice of the existence of both of these trail dedications. Therefore, if public access was contemplated at the time the Shekous constructed the solar farm project, it is illogical to argue, as you do, that public access is infeasible or otherwise precluded today.<sup>4</sup>

BCDC staff acknowledges the current challenges to the public's ability to access the shoreline, particularly as stated in your assertion that public access is "inconsistent with the nature of the Solar Farm Project." However, we do not believe these challenges to be insurmountable. It is common for BCDC staff to work closely with permit applicants and their contractors in the pre-application and application stages of a project to design suitable public access amenities to address relevant safety and related concerns. Your clients are encouraged to meet and consult with BCDC's staff for advice on the most suitable public access improvements for the Property prior to submitting their application.

### IV. Conflict of Interest

You assert that Commissioner Tom Butt, Mayor of Richmond, has a conflict of interest in this enforcement case. As far as we are aware, Commissioner Butt has no knowledge of this enforcement investigation. We hope to process the permit application for the solar farm project including onsite public access as an administrative permit, which can be issued by the Executive Director, rather than as a major permit application, which would bring this matter before the full Commission. If this matter goes before the Commission in the future, we will consider your concerns in more depth at that time. Such consideration will include but may not be limited to an evaluation of the outcome of the judicial and administrative proceedings concerning Commissioner Butt's alleged conflict of interest with respect to your clients' development plans.

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<sup>4</sup> Your infeasibility argument is based in part on the activities of a neighboring property owner, the Richmond Rod & Gun Club, in the form of "numerous incidents of bullets and other projectiles from the rifle range ...striking the Solar Farm Project's photovoltaic panels or [otherwise] landing on the property." The Commission does not believe it is appropriate for an otherwise feasible public access plan to be rendered infeasible by the tortious conduct of a neighboring landowner.

You also base your infeasibility argument on the fact that a portion of the western shoreline of the FIP is owned by "an independent third party," the Richmond Development Co., LLC (RCD). However, when the RCD acquired title to its property along the western shoreline of the FIP it did so subject to the same, above-described 20-foot-wide and approximately 1,000-foot-long public access trail as shown on the KSR Plans for the FIP.

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## V. Conclusion

We hope that the presentation of these facts will clear the way to move forward with retroactively permitting the solar farm and providing public access at the site in a timely manner without further delay. To that end, we request that by December 31, 2018, your clients file a complete application with the BCDC staff that requests after-the-fact authorization for construction of that portion of the solar farm that is within the Commission's jurisdiction. A "complete" application is one in which all of the filing requirements have been met. To ensure that you have enough time to complete the application process, we encourage you to submit the application early so that the BCDC staff can review the application and provide you with a list of outstanding items, should there be any.

The application should include a proposal for a suite of improvements at the Property that will provide maximum feasible public access to the shoreline for walking, bicycling, sitting, viewing, picnicking, and related purposes. The public access improvements should include a multi-use, accessible pathway that provides at least one connection to an existing spur of the Bay Trail, BCDC public access trail, and/or public street to enable ease of access for cyclists and pedestrians. The public access proposal should, at a minimum, comport with any existing public access easements of dedications in force at the property that the City of Richmond may have required in connection with its previous development approvals. Please encourage your clients to meet with BCDC staff as soon as possible (prior to submitting a permit application) to discuss the possible options for public access at the site.<sup>5</sup>

If your clients fail to file a complete application December 31, 2018, BCDC Enforcement Staff may commence a formal enforcement proceeding which, under the provisions of Sections 66637 – 66642 of the MPA and Chapter 13 of the Commission's administrative regulations, will likely result in at least two public hearings before the BCDC Enforcement Committee and the full Commission, respectively, and the possible issuance of a Commission Cease and Desist and Civil Penalty Order.

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<sup>5</sup> In this connection we acknowledge your "offer of compromise" on page five of your February 5, 2018, letter which, among other elements, includes your offer to facilitate discussions with other property owners in the FIP, including most notably the RDC, with the goal of formulating and implementing a public access plan for this overall site that is in the best interests of all interested parties. Such a plan will include, but not necessarily be limited to, the 20-ft.-wide approximately 1,000-ft.-long public access trail along the western boundary of the FIP. We agree that cooperation by RDC in a comprehensive public access plan for this site may well be desirable in order to achieve such an outcome. However, we hasten to emphasize the essentiality of formulating and implementing such a global, comprehensive solution to the public access issues raised by your clients' development activities in the context of the permit proceeding we are directing your clients to initiate, as opposed to having such a solution be contingent upon "construction of any project for further developing the remainder of FIP...within the next 10 years."

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Please feel free to contact us with any further questions or concerned at the phone numbers or e-mail addresses provided below.

Best Regards,

A handwritten signature in black ink, appearing to read "John Bowers", with a large, sweeping initial "J".

JOHN BOWERS  
Staff Counsel  
jbowers@bcdcc.ca.gov  
(415) 352-3610

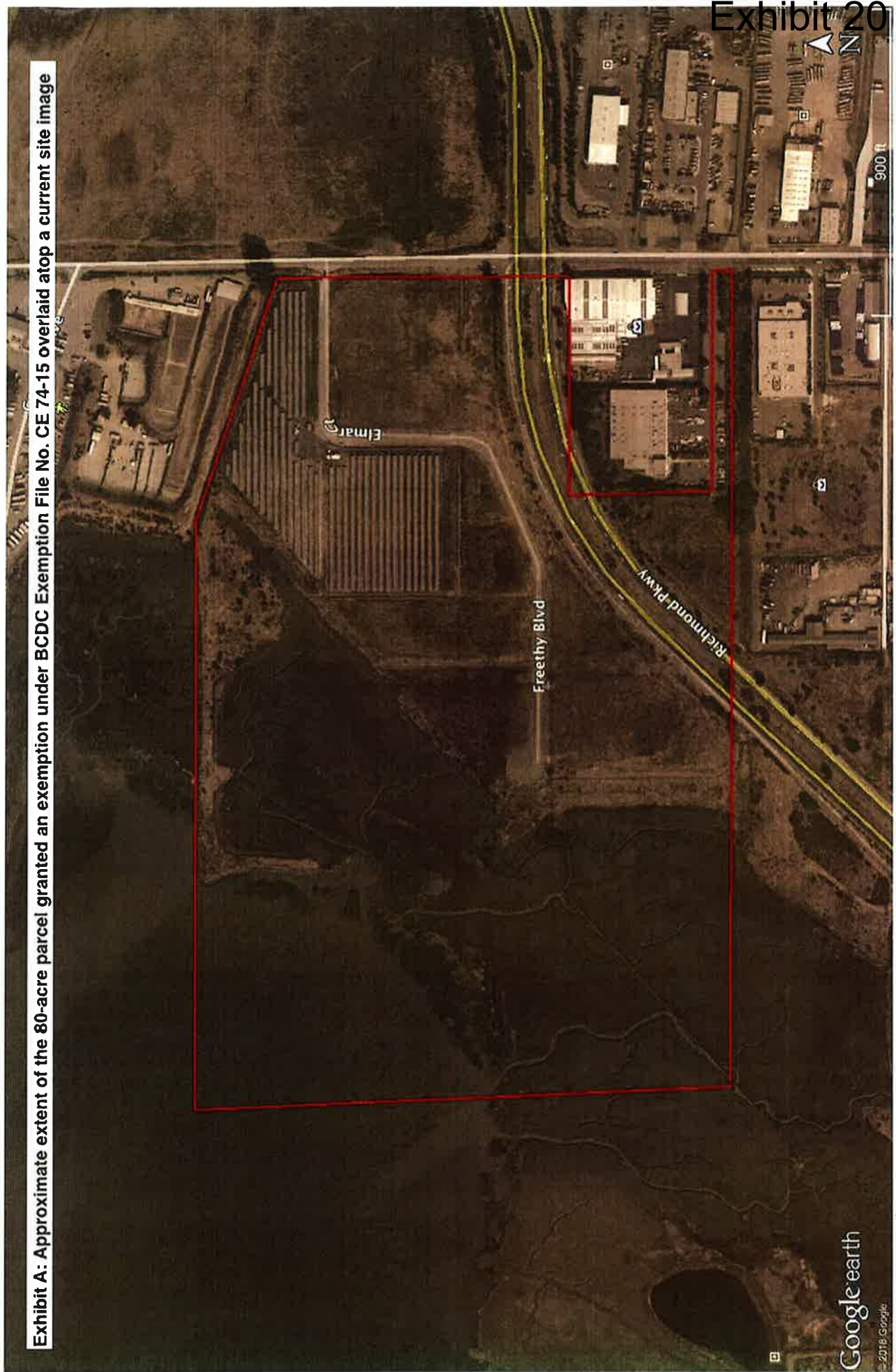
A handwritten signature in blue ink, appearing to read "Matthew A. Trujillo", with a stylized, cursive script.

MATTHEW TRUJILLO  
Coastal Program Analyst  
mtrujillo@bcdcc.ca.gov  
(415) 352-3633

Attached: Exhibits A – F

cc: JHS Properties, c/o Joe Shekou and Bob Herbst  
Marc Zeppetello, Chief Counsel  
Brad McCrea, Regulatory Program Director

Exhibit A: Approximate extent of the 80-acre parcel granted an exemption under BCDC Exemption File No. CE 74-15 overlaid atop a current site image





February 13, 2019

Mr. Ethan Lavine  
Chief of Bay Resources and Permits  
Bay Conservation and Development Corporation  
455 Golden Gate Avenue  
San Francisco, CA 94102

Dear Ethan,

Thanks for your help over the past several months in helping us plan the design of a new public shoreline trail at Freethy industrial Park. We had hoped to submit our application at the same time as PowerPlant Park, but we understand their application has been delayed over issues related to the City of Richmond's existing BCDC permit conditions for Freethy Boulevard. We therefore must submit our application separately per the request of Matthew Trujillo, but please know that we do intend to build and maintain our trail section in conjunction with PowerPlant's planned shoreline improvements with which you are familiar.

As discussed at our two meetings together in the last several months, we have terminated the trail about 200 feet from the Richmond Gun Club property line, in recognition of potential public safety hazards related to existing gun club operations.

In submitting this application, Joe and Heidi Shekou (JHS) expressly reserve the right to contest the San Francisco Bay Conservation and Development Commission's (BCDC) jurisdiction over, and authority to require a permit for development of, the land owned by JHS in Freethy Subdivision in Richmond, California (the Property). JHS's submission of the application shall not be construed as an admission that BCDC has jurisdiction over any portion of the Property; nor shall it be construed as a waiver of JHS's right to contest BCDC's jurisdiction on any basis, including, without limitation, the issuance of a letter of exemption to JHS's predecessor-in-interest as owner of the Property, the previous grading and partial development of the Property, and/or the elevation of the Property and its distance from any areas that may be within BCDC's jurisdiction.

JHS is proceeding with submission of the application in reliance upon its understanding that BCDC has agreed not to construe the submission as a waiver or admission of any kind. Further, this reservation shall remain in effect even if BCDC should issue a permit for any portion of the Property, and shall expire only if and when (i) JHS gives BCDC written notice of JHS's acceptance of a permit issued by BCDC for the Property, in JHS's sole discretion, and (ii) JHS has realized the benefits of that permit.

Please feel free to call me with any questions regarding our application.

Best regards,

Bob Herbst  
JHS Properties  
415-472-7700

# SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION

455 Golden Gate Avenue • Suite 10600 • San Francisco, California 94102 • (415) 352-3600 • Fax: (415) 352-3606 • www.bcdc.ca.gov

## Exhibit 22 BCDC Application Form

### For BCDC Use Only

Application number: \_\_\_\_\_

Fee: \_\_\_\_\_

### Checklist of Application Requirements (For Applicant's Use)

	Major Permit	Administrative Permit	Regionwide Permit
<input checked="" type="checkbox"/> Application Form	One fully completed and signed original and seven copies	One fully completed and signed original	One fully completed and signed original
<input checked="" type="checkbox"/> Large Scale Project Site Plan	One copy	One copy	One copy
<input checked="" type="checkbox"/> 8.5"x11" Project Site Plan	Seven copies	One copy	One copy
<input checked="" type="checkbox"/> 8.5"x11" Public Access and Open Space Plan	Seven copies	One copy	None
<input checked="" type="checkbox"/> 8.5"x11" Vicinity Map	Seven copies	One copy	One copy
<input checked="" type="checkbox"/> Proof of Legal Property Interest	One copy	One copy	One copy
<input checked="" type="checkbox"/> Local Government Discretionary Approval	One copy	One copy	None
<input checked="" type="checkbox"/> Environmental Documentation	One copy of environmental determination and EIR or EIS Summary	One copy of environmental determination	None
<input checked="" type="checkbox"/> Water Quality Certification/Waiver	One copy, if applicable	One copy, if applicable	One copy, if applicable
<input type="checkbox"/> Dept. of Toxic Substances Control Approval	One copy, if applicable	One copy, if applicable N/A See Email memo from DTSC 1-3-19	One copy, if applicable
<input type="checkbox"/> Biological Opinion/Take Authorization from state and federal agencies	One copy, if applicable	One copy, if applicable N/A - See pages 40&41 of Draft MND	Not applicable
<input type="checkbox"/> Application Processing Fee	As specified in Commission regulations, Appendix M	As specified in Commission regulations, Appendix M	As specified in Commission regulations, Appendix M
<input type="checkbox"/> Notice of Application*	Posted at project site	Posted at project site	Posted at project site
<input type="checkbox"/> Certification of Posting the Notice of Application*	One signed original returned to BCDC	One signed original returned to BCDC	One signed original returned to BCDC

\*BCDC staff will provide the forms for posting the Notice of application and the Certification.

Authority: Sections 66632, Government Code; and Section 29201(e), Public Resources Code.

Reference: Sections 65940-65942, 66605, 66632(b) and (f) and 84308, Government Code; Sections 2770, 2774, 21080.5, 21082, 21160 and 29520, Public Resources Code; and the San Francisco Bay Plan.

**Box 1**

**Property Ownership and Application** **Exhibit 22**  
(must be completed by all applicants)

**a. APPLICANT:**



Owns  
project  
site



Leases  
project  
site



Homeowner  
Association  
owns/will own



Other Property Rights: \_\_\_\_\_

Name/Title: Joe Shekou

Address: 2165 Francisco Blvd.

City, State, Zip: San Rafael, CA 94901

Telephone: (415) 453-0212 Fax: (415) 453-0212

Email: sapidrood@yahoo.com

I hereby authorize Robert Herbst

to act as my representative and bind me in all matters concerning this application.

[Signature]

Signature of Applicant

JOE SHEKOU

Print Name

2/13/19

Date (mm/dd/yyyy)

**APPLICANT'S REPRESENTATIVE:** ☒ None

Name/Title: Robert Herbst

Address: 400F Smith Ranch Road

City, State, Zip: San Rafael, CA 94903

Telephone: (415) 472-7700 Fax: (415) 507-0299

Email: rherbst@jhsproperties.net

**b. CO-APPLICANT:**



Owns  
project  
site



Leases  
project  
site



Homeowner  
Association  
owns/will own



Other Property Rights: \_\_\_\_\_

Name/Title: \_\_\_\_\_

Address: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_

Email: \_\_\_\_\_

I hereby authorize \_\_\_\_\_

to act as my representative and bind me in all matters concerning this application.

Signature of Co-Applicant

Print Name

Date (mm/dd/yyyy)

**CO-APPLICANT'S REPRESENTATIVE:** ☐ None

Name/ Title: \_\_\_\_\_

Address: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_

Email: \_\_\_\_\_

**c. PROPERTY OWNER:** ☒ Same As Applicant or Co-Applicant

Name/Title: \_\_\_\_\_

Address: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_

Email: \_\_\_\_\_

I hereby authorize \_\_\_\_\_

to act as my representative and bind me in all matters concerning this application.

Signature of Owner

Print Name

Date ( mm/dd/yyyy)

**OWNER'S REPRESENTATIVE:** ☐ None

Name/Title: \_\_\_\_\_

Address: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_

Email: \_\_\_\_\_

- d. Provide documentation of property interests, such as a copy of a grant deed, lease or easement, and Conditions Covenants and Restrictions, for a homeowner's association, that demonstrates that the owner or applicant has adequate legal interest in the property to undertake the proposed project. See Commission regulations Appendix F for complete details.

**e. DISCLOSURE OF CAMPAIGN CONTRIBUTIONS:**

The following contributions of more than \$250 were made by the applicant or applicant's representative to a BCDC commissioner or commissioner's alternate in the preceding twelve months to support the commissioner's or alternate's campaign for election to a local, state or federal office.

Contribution Made To:

Contribution Made By:

Date of Contribution:

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

☒ No such contributions have been made.

**f. CERTIFICATION OF ACCURACY OF INFORMATION AND AUTHORIZATION TO INSPECT:**

*I hereby certify under penalty of perjury that to the best of my knowledge the information in this application and all attached exhibits is full, complete, and correct, and I understand that any misstatement or omission of the requested information or of any information subsequently requested shall be grounds for denying the permit, for suspending or revoking a permit issued on the basis of these or subsequent representations, or for the seeking of such other and further relief as may seem proper to the Commission. I further agree that the Commission staff may, with 24 hours notice, inspect the project site while this application is pending.*

■



Signature of Applicant or Applicant's Representative

2/13/19

Date ( mm/dd/yyyy)

■

Signature of Co-applicant or Co-applicant's Representative

Date ( mm/dd/yyyy)

■

Signature of Co-applicant or Co-applicant's Representative

Date( mm/dd/yyyy)

■

Signature of Co-applicant or Co-applicant's Representative

Date ( mm/dd/yyyy)

# Box 2

## Total Project and Site Information (must be completed by all applicants)

Exhibit 22

- a. Project Street Address: Elmar Court - currently no street number-see attached diagrams
- b. City, County, Zip: Richmond, Contra Costa, 94801
- c. Assessor's Parcel Number(s): 408-220-006 +007 408-220-035+036
- d. Latitude: 37.58.30.8north Longitude: 122.22.03.2west
- e. Previous BCDC permit number(s) for work at this site: N/A
- f. Project Name: JHS Properties - Solar Farm
- g. Brief Project Description: An approximately 8 acre installation of solar power generation panels (built 2014). Construction of a 200' extension of Bay Trail (10' wide asphalt paved trail w/ 2' DG shoulder) to commence concurrent with similar project on adjacent property in 2020.
- h. Date work is expected to begin: 07/01/2020  
Date work is expected to be completed: 09/30/2020
- i. Total Project Cost: \$ \$45,000.00 Estimated construction cost for new Bay Trail Extension
- j. Length of shoreline on the project site: No shoreline - see attached feet
- k. Length of shoreline at adjacent property owned or controlled by the applicant: N/A see attached Wetland Delineation Map dated 5-12-2016 feet
- l. Approximate size of project site within BCDC's "shoreline band" jurisdiction: 3,800 square feet
- m. Approximate size of project site within BCDC's "Bay" or "certain waterway" jurisdiction: N/A square feet
- n. Approximate size of project site within BCDC's managed wetland or salt pond jurisdiction: N/A square feet
- o. Approximate size of project site within the Suisun Marsh: N/A square feet
- p. Approximate size of project site outside of BCDC's jurisdiction: 320,330 square feet
- q. Approximate total size of project site (including areas outside BCDC's jurisdiction): 360,400 square feet
- r. Area of total project site reserved for non-public access uses: 356,600 square feet
- s. Area of total project site reserved for public access: 3,800 square feet
- t. Does the project involve development within the primary management area of the Suisun Marsh?  
☐ Yes ☒ No

If "Yes," provide any relevant duck club number(s): \_\_\_\_\_



# Exhibit 22

## (Box 2, Total Project and Site Information, continued)

u. Project Details. Complete all that apply.

Proposed Elements of the Project	In BCDC's Bay, Certain Waterway, Managed Wetlands or Suisun Marsh Jurisdiction*	In BCDC's Shoreline Band jurisdiction	Outside BCDC's jurisdiction	Totals
1. Structures	0 sq.ft.	26,000 sq.ft.	270,500 sq.ft.	296,500 sq.ft.
2. All Roads, Parking, Pathways, Sidewalks	0 sq.ft.	3,000 sq.ft.	0 sq.ft.	3,000 sq.ft.
3. Number of Parking Spaces:	0	0	0	0
4. All Landscaping	0 sq.ft.	800 sq.ft.	0 sq.ft.	0 sq.ft.
5. Left undeveloped	0 sq.ft.	0 sq.ft.	0 sq.ft.	0 sq.ft.
6. Shoreline Protection	0 sq.ft.	0 sq.ft.	0 sq.ft.	0 sq.ft.
7. Piers, docks and other marine-related purposes	0 sq.ft.	0 sq. ft.	0 sq.ft.	0 sq.ft.
8. Areas used for other purposes (specify)	0 sq.ft.	10,300 sq.ft.	49,800 sq.ft.	61,500 sq.ft.
Totals:	0 sq.ft.	40,100 sq.ft.	320,300 sq.ft.	360,400 sq.ft.

\* If project will occur in more than one of these jurisdictions, provide the requested information for each area separately.

(Box 2, Total Project and Site Information, continued) **Exhibit 22**

v. **INFORMATION ABOUT THE TOTAL PROJECT AND SITE (PROVIDE IN AN ATTACHMENT):**

1. Provide a detailed project description.
2. Describe the existing condition of the site, including the elevations, underwater topography, vegetation, structures and uses. Provide one or more photographs of existing site conditions.
3. Identify bathymetric features, tidal hydrology and sediment movement at the project site and describe how the project may influence these factors.
4. Endangered or Threatened Species.
  - a. Identify any known threatened or endangered species, or any species that the California Department of Fish and Game or a federal wildlife agency has determined are candidates for listing as threatened or endangered species, or any species that provide substantial public benefits that may be found at the project site.
  - b. Provide any "biological opinion" issued by a state or federal agency as the result of an endangered species consultation.
  - c. Provide any "take" authorizations issued by the state or federal resource agencies.
5. Identify any subtidal areas that are scarce or that have an abundance and diversity of fish, other aquatic organisms and wildlife (e.g., eel grass beds, sandy deep water or underwater pinnacles) at the site. Add the identified areas to the project site plan (see below).
6. Indicate whether the project would involve the release of pollutants or have the potential for accidental pollutant discharge into the Bay. If so, describe how the proposed project has been designed and would be constructed and maintained to prevent or minimize the discharge of pollutants into the Bay, including non-point source pollution (storm water runoff). Provide any storm water pollution prevention plans, when available, storm water management plans, or other water pollution or erosion and sediment control plans showing proposed best management practices developed for the project and the project site.
7. Identify any suspected or known sites of toxic contamination on or in proximity to the project site, and provide the following information: (a) the types of pollutants present; (b) the location of the pollutants (show on the site plan); (c) the extent to which the pollutants are accessible to humans, fish, wildlife or vegetation, or are moving offsite; and (d) steps being taken (including government actions) to control or clean up the pollutants.
8. Provide a copy of any water quality certification or waste discharge requirements that are required by the San Francisco Bay Regional Water Quality Control Board, and any approvals that are required by the State Department of Toxic Substances Control.
9. You must provide information to show that your project would be consistent with the Commission's laws and policies. This application addresses the most common policies raised by most projects. The Commission staff will assist you in identifying additional policies, if any, that apply to your project. Once they are identified, please explain how they offer support for your project and how the project would be consistent with them. The Commission's laws and policies may be found in the digital library at [www.bcdc.ca.gov](http://www.bcdc.ca.gov).
10. **PROJECT PLANS:** Provide the following types of plans: (a) vicinity map sized 8.5"x11"; (b) public access and open space exhibit; (c) project site plan reduced to 8.5"x11"; and (d) full-sized project site plan.

**PLAN REQUIREMENTS:** The public access and open space exhibit must include property boundaries, proposed structures, and an accurate depiction of areas to be provided as public access, open space and view corridors. At a minimum, the project site plan must include property boundaries, all existing and proposed structures and improvements (with cross sections and elevations if necessary), and any tidal marshes and tidal flats. All plans must include a graphic scale, a north arrow, the date and name of the person who prepared the plans, and a depiction of the edge of the Commission's jurisdiction over the Bay or certain waterway (mean high water or, in tidal marshlands, the inland edge of marsh vegetation up to five feet above Mean Sea Level), and the edge of the Commission's shoreline band jurisdiction (100 feet wide measured from the edge of the Bay). See also **Appendix F** for details.

(“Fill” means earth or any other substance or material, including pilings or structures placed on pilings, and structures floating at some or all times and moored for extended periods, such as houseboats and floating docks. Gov. Code Section 66632(a))

- ☐ San Francisco Bay      ☐ Salt pond      ☐ Managed wetland      ☐ "Certain waterway"
- ☐ Primary management area of the Suisun Marsh      ☒ Other: 100' Shoreline Band

Public access: \_\_\_\_\_ square feet

## Exhibit 22

**g. INFORMATION REGARDING FILL (PROVIDE IN AN ATTACHMENT):**

1. Provide dimensions of portions of all structures to be built on new fill, including length, width, area, height and number of stories.
2. Provide one or more photographs of existing shoreline conditions.
3. Explain the purpose of fill in the Bay, salt pond, managed wetland, certain waterway, or Suisun Marsh considering that the Commission can approve new fill for only five purposes: (a) accommodating a water-oriented use; (b) minor fill for improving shoreline appearance; (c) minor fill for providing new public access to the Bay; (d) accommodating a project that is necessary to the health, safety, or welfare of the public in the entire Bay Area; and (e) accommodating a project in the Suisun Marsh that is consistent with either: (1) the Suisun Marsh Preservation Act and the Suisun Marsh Protection Plan; or (2) the Suisun Marsh Local Protection Program.
4. Explain:
  - (a) what possible impacts the fill would have on the Bay Area, including impacts on: (1) the volume of Bay waters, on Bay surface area, or on the circulation of Bay water; (2) water quality; (3) the fertility of marshes or fish or wildlife resources; and (4) other physical conditions that exist within the area, including land, air, water, minerals, flora, fauna, noise, or objects of historic or aesthetic significance; and
  - (b) how the nature, location, and extent of the fill would minimize possible harmful conditions or effects to the Bay.
5. For projects in subtidal areas that have an abundance and diversity of fish, other aquatic organisms and wildlife, or are scarce such as eelgrass beds and sandy deep water, identify feasible alternatives and public benefits associated with the project.
6. Explain: (a) why the fill would be the minimum amount necessary; and (b) why there is no alternative upland location for the project that would avoid the need for Bay fill.
7. If the fill is to be used for improving shoreline appearance or providing new public access to the Bay, explain why it is physically impossible or economically infeasible to accomplish these goals without filling the Bay.
8. Explain how the fill would result in a stable and permanent shoreline.
9. Explain the steps that would be taken to assure that the project will provide reasonable protection to persons and property against hazards of unstable geologic or soil conditions, of sea level rise, or of flood or storm waters.
10. Provide the names, addresses, and telephone numbers of any licensed geologists, engineers, or architects involved in the project design who can provide technical information and certify the safety of the project.
11. Describe in detail the anticipated impacts of the fill on the tidal and subtidal environment, and describe how these impacts would be addressed or mitigated, and explain how the public benefits of the project would clearly exceed the public detriment from the loss of water area, tidal marsh or tidal flats.
12. For marina projects, indicate how many berths, if any, are to be made available for live-aboard boats and explain how these live-aboard boats would contribute to public trust purposes.
13. For tidal, subtidal and other wetland restoration projects, including mitigation projects: (a) identify specific long-term and short-term biological and physical goals; (b) identify success criteria; (c) provide a monitoring program intended to assess the success and sustainability of the project; (d) include an adaptive management plan with corrective measures, if needed, to achieve success and sustainability; and (e) identify the provisions for long-term maintenance, as required by the Bay Plan policies on Mitigation, Tidal and Subtidal Areas. The Commission's laws and policies may be found at [www.bcdc.ca.gov](http://www.bcdc.ca.gov) in the digital library.

## Box 4

### Shoreline Band Information

("Shoreline band" means the land area lying between the Bay shoreline and a line drawn parallel to and 100 feet from the Bay shoreline. The Bay shoreline is the Mean High Water Line, or five feet above Mean Sea Level in marshlands.)

- a. Does the project involve development within the 100-foot shoreline band around San Francisco Bay?

☒ Yes ☐ No

If "Yes," complete this box.

- b. Types of activities to be undertaken or fill, materials or structures to be placed within the shoreline band:

Approximately 200 LF of 12' wide asphalt trail with 3' wide decomposed granite shoulder on one side with areas of native planting.

Extension of Bay Trail will require compacted Class II aggregate base (Cal Trans standard), wood headers, asphalt paving, and decomposed granite paving.

- c. Would the project be located within a priority use area designated in the San Francisco Bay Plan?

☐ Yes ☒ No

The Bay Plan and Maps that depict priority use areas can be viewed in the digital library at [www.bcdc.ca.gov](http://www.bcdc.ca.gov).

If "No," go to section (d). If "Yes," please indicate which priority use the area is reserved for: \_\_\_\_\_

Would the project use be consistent with the priority use for which the site is reserved?

☐ Yes ☐ No

If "Yes," go to section (d). If "No," attach an explanation of how the project can be approved despite this inconsistency.

- d. Total shoreline band area: Within project site: Approx 40,100 square feet
- To be reserved for private, non-public access uses: 320,300 square feet
- To be reserved for public access: 30,000 square feet
- Public access trail plus open space beyond private property fence line.

- e. INFORMATION ABOUT WORK PROPOSED IN THE SHORELINE BAND (PROVIDE IN AN ATTACHMENT):

1. Provide dimensions of portions of all structures to be built within the shoreline band, including length, width, area, height, and number of stories.
2. Provide one or more photographs of existing conditions within the 100-foot shoreline band.



## Public Access Information

(must be completed by all applicants)

### a. PUBLIC ACCESS DETAILS:

1. Does public access to the shoreline or do views to the Bay presently exist at the project site, at a contiguous property, or from nearby roads or public access areas?

☒ Yes ☐ No

If "Yes" attach a description of the existing public access and views at these areas.

If "No," explain what is preventing public access to, or views of, the shoreline.

2. Describe how the project would or would not adversely impact present and future public access and views to the Bay. If so, describe how the proposed public access would offset the impact.
3. For most large projects, identify: (1) the existing number of people or employees using the site; and (2) the existing number of cars, bicycles, and pedestrians visiting the site and the level of service of all nearby roads leading to the site. Describe how the project would change these factors.
4. Identify the public's use of existing nearby parks, public access, public parking and other recreational areas on the shoreline and the roads leading to the site and describe the impact the project is expected to have on that use.
5. Do public safety considerations or significant use conflicts make it infeasible to provide new public access to the shoreline on the project site?

☐ Yes ☒ No

If "Yes," describe the public safety considerations or significant use conflicts that make it infeasible to provide public access at the project site and either: (1) identify an offsite area where public access to the shoreline is proposed as part of the project and describe the proposed public access area and improvements at that location; or (2) explain why no offsite public access is proposed as part of the project.

# Exhibit 22

## (Box 5, Public Access, continued)

6. Dimensions of the public access areas: ☐ None Proposed

	Existing		Proposed	
Total public access area including areas outside the Commission's jurisdiction:	<u>0</u>	square feet	<u>30,000</u>	square feet
<small>Public access trail plus open space beyond private property fence line.</small>				
Public access within Commission's shoreline band jurisdiction:	<u>0</u>	square feet	<u>30,000</u>	square feet
	<u>0</u>	linear feet	<u>200</u>	linear feet
	<u>0</u>	average width	<u>15'</u>	average width
Public access pathways, sidewalks in the shoreline band:	<u>0</u>	square feet	<u>3000</u>	square feet
	<u>0</u>	linear feet	<u>200</u>	linear feet
	<u>0</u>	average width	<u>15'</u>	average width
Public access area, landscaping in the shoreline band:	<u>0</u>	square feet	<u>800</u>	square feet
Public access on fill within Commission's Bay, certain waterway, and managed wetlands jurisdiction:	<u>0</u>	square feet	<u>0</u>	square feet
	<u>0</u>	linear feet	<u>0</u>	linear feet
	<u>0</u>	average width	<u>0</u>	average width
Public access on piers or decks over water/wetlands:	<u>0</u>	square feet	<u>0</u>	square feet
	<u>0</u>	linear feet	<u>0</u>	linear feet
	<u>0</u>	average width	<u>0</u>	average width
View Corridor(s):	<u>0</u>	square feet	<u>30,000</u>	square feet
	<u>0</u>	linear feet	<u>200</u>	linear feet
	<u>0</u>	average width	<u>15'</u>	average width
Public Access Parking:	<u>0</u>	stalls	<u>0</u>	stalls

Public access parking is provided by similar Bay Trail extension project currently by adjacent property owner.

### b. ADDITIONAL PUBLIC ACCESS INFORMATION (PROVIDE IN AN ATTACHMENT):

- Describe the existing and proposed public access improvements, both on-site and off-site, including decks, piers, pathways, sidewalks, signs, benches, landscaping, parking, and any other proposed public improvements.
- Describe how the public access area and facilities would be accessible to disabled persons.
- Describe the proposed connections to existing public streets or offsite public pathways.
- Specify how the public access areas would be permanently guaranteed (e.g., dedication, deed restriction, etc.) and how the areas and improvements would be maintained.
- Describe the species present, wildlife use, and habitat conditions in and adjacent to the proposed public access areas and the likely type and degree of human use of the site (i.e., bicycling, dog walking, birding, frequency of use, etc.). Describe how any potential adverse effects on wildlife from public access would be avoided or minimized through the siting, design and management of the public access being proposed at the site.

## Box 6

## Dredging and Mining Information

- a. Complete this box if the project involves mining, dredging or the disposal of dredged material in any of the following areas.

☐ San Francisco Bay
 ☐ Salt pond
 ☐ Managed wetland
 ☐ "Certain waterway"
 ☐ Primary management area of the Suisun Marsh
 ☐ Other: \_\_\_\_\_

- b. Are you submitting a separate application to the Dredged Material Management Office (DMMO)?

☐ Yes
 ☐ No

If "Yes," attach a copy of that application; it is not necessary to complete this Box. If "No," complete this box.

- c. Type of activity: ☐ Maintenance Dredging ☐ New Dredging ☐ Mining

- d. Method of dredging or mining: \_\_\_\_\_

- e. Total volume and area of material to be dredged or mined from:

Open waters: \_\_\_\_\_ cubic yards \_\_\_\_\_ square feet

Tidal marshes: \_\_\_\_\_ cubic yards \_\_\_\_\_ square feet

Tidal flats: \_\_\_\_\_ cubic yards \_\_\_\_\_ square feet

Salt ponds: \_\_\_\_\_ cubic yards \_\_\_\_\_ square feet

Managed wetlands in the primary management area of the Suisun Marsh:

\_\_\_\_\_ cubic yards \_\_\_\_\_ square feet

Other managed wetlands: \_\_\_\_\_ cubic yards \_\_\_\_\_ square feet

Subtidal areas that are scarce or have an abundance and diversity of fish, other aquatic organisms and wildlife, such as eelgrass beds and sandy deep water:

\_\_\_\_\_ cubic yards \_\_\_\_\_ square feet

Other (specify): \_\_\_\_\_ cubic yards \_\_\_\_\_ square feet

- f. Are knockdowns proposed as part of the dredging project?

☐ Yes
 ☐ No

Number of knockdowns: \_\_\_\_\_

Volume per knockdown event: \_\_\_\_\_ cubic yards

# Exhibit 22

## (Box 6,Dredging and Mining Information, continued)

g. Location(s) where dredged or mined material will be deposited: \_\_\_\_\_  
\_\_\_\_\_

h. Total volume of dredged material to be disposed:  cubic yards

Beneficially re-used:  cubic yards

i. Estimated future maintenance dredging required annually: \_\_\_\_\_ cubic yards

j. For dredging projects:

Proposed design depths (MLLW): (1) \_\_\_\_\_ (2) \_\_\_\_\_ (3) \_\_\_\_\_

Proposed over-depth dredging (+ feet): (1) \_\_\_\_\_ (2) \_\_\_\_\_ (3) \_\_\_\_\_

Number of dredging episodes: \_\_\_\_\_

k. Does this project have an annual average dredging average of 50,000 cubic yards or less?

☐ Yes ☐ No

### I. ADDITIONAL INFORMATION (PROVIDE IN AN ATTACHMENT):

1. If the dredged material is to be disposed of in the Bay, explain why the material cannot feasibly be beneficially re-used or disposed of in the ocean, upland, or inland outside of the Commission's jurisdiction.
2. Provide the results of testing for biological, chemical or physical properties of the material to be dredged.
3. Provide a copy of a water quality certification or waste discharge requirements for the dredging or disposal of dredged material from the San Francisco Bay Regional Water Quality Control Board.
4. Identify local and Bay-wide effects of the project on: (a) the possible introduction or spread of invasive species; (b) tidal hydrology and sediment movement; (c) fish, other aquatic organisms and wildlife; (d) aquatic vegetation; and (e) the Bay's bathymetry.
5. For projects in subtidal areas that have an abundance and diversity of fish, other aquatic organisms and wildlife, or are scarce such as eelgrass beds and sandy deep water, identify feasible alternatives and public benefits associated with the project.

# Box 7

## Information on Government Approvals (must be completed by all applicants)

Exhibit 22

	Required YES NO	Type of Approval	Date Approval Expected/Received	Agency Contact and Phone Number
<b>Local Government</b>				
<b>Discretionary Approval(s):</b>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<u>Bldg. Permit</u>	<u>9/29/2014</u>	<u>Bldg. Official_(510)620-6868</u>
<b>State Lands</b>				
<b>Commission:</b>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			
<b>Regional Water Quality</b>				
<b>Control Board:</b>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			
			Regional Board Number:	
<b>California Dept. of Toxic</b>				
<b>Substances Control:</b>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			
<b>California Department</b>				
<b>of Fish and Game</b>				
<b>Streambed Alteration</b>				
<b>Permit:</b>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			
<b>DF&amp;G Take Authorization:</b>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			
<b>Other DF&amp;G Permit:</b>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			
<b>U.S. Army Corps</b>				
<b>Of Engineers:</b>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			
			Public Notice Number:	
<b>U.S. Fish and</b>				
<b>Wildlife Service:</b>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			
<b>Take Authorization</b>				
<b>Biological Opinion:</b>	<input type="checkbox"/> Yes <input type="checkbox"/> No			
<b>NOAA Fisheries Service:</b>				
<b>Take Authorization</b>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			
<b>Biological Opinion</b>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			
<b>U.S. Coast Guard:</b>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			
<b>Federal Funding:</b>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			
<b>Other Approval (Specify):</b>				



## Box 8

## Environmental Impact Documentation Exhibit 22 (must be completed by all applicants)

- a. Is the project statutorily or categorically exempt from the need to prepare any environmental documentation?



Yes



No

If "Yes," please attach a statement that identifies and supports this statutory or categorical exemption.

- b. Has a government agency other than BCDC, serving as the lead agency, adopted a negative declaration or certified an environmental impact report or environmental impact statement on the project?



Yes



No

If "Yes," attach a copy of the document. If the environmental impact report or statement is longer than ten pages, also provide a summary of up to ten pages. If "No," provide sufficient information to allow the Commission to make the necessary findings regarding all applicable policies. The certified document must be submitted prior to action on the permit.

## Box 9

## Public Notice Information (must be completed by all applicants)

- a. Owners and residents of all properties located within 100 feet of the project site (if more than four, provide the information electronically):

### North:

Name: Richmond Rod & Gun Club

Address: 3155 Goodrick Avenue

City, State, Zip: Richmond, CA 94801

Telephone: (415) 333-3333

### East:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

Telephone: (415) 333-3333

### South:

Name: PowerPlant LLC

Address: 116 Washington Ave.

City, State, Zip: Richmond, CA 94804

Telephone: (510) 459-5566  
(415) 333-3333

### West:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

Telephone: (415) 333-3333

- b. Other persons known to be interested in this project:  
(if more than two, provide the information electronically).



None

Name: \_\_\_\_\_

Address: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

Telephone: (415) 333-3333

Name: \_\_\_\_\_

Address: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

Telephone: (415) 333-3333

## **Narrative Response to Box 2, U. 1-8**

1. The structures described in Box 2 U.1 are above ground solar power generation panels.
8. Open space for access and maintenance of solar power generation panels

## **Narrative Response to Box 2, V. Information about project and site**

1. This project consists of an approximately 8-acre solar power generation facility with an approximately 200' long extension of the Richmond Bay Trail on its western edge. The solar generation facility is entirely fenced with an access gate from Elmar Court. Note, the solar power generation facility was permitted by the City of Richmond and constructed in 2014. Prior to construction of the solar power generation facility, the City of Richmond authorized the placement of fill on the property. Historic permits and plans for both of these earlier projects are included in this application. Bay trail extension related to this property to be constructed concurrent with a similar project to be undertaken by adjacent property owner. Likely start date of that work is spring 2020.

## **Narrative Response to Box 5, 6.a. Public Access Details**

1. This project consists of an approximately 8-acre solar power generation facility with an approximately 200' long extension of the Richmond Bay Trail on its western edge. The solar generation facility is entirely fenced with an access gate from Elmar Court. Note, the solar power generation facility was permitted by the City of Richmond and constructed in 2014. Bay trail extension related to this property to be constructed concurrent with a similar project to be undertaken by adjacent property owner. Likely start date of that work is spring 2020.

## **Narrative Response to Box 5, 6.a. Public Access Details**

2. This project does not create adverse impacts to present or future public access. Construction of the trail provides public access to an area that is currently inaccessible.
3. There are no employees on site at the solar power generation facilities. Site visits by employees to repair and maintain equipment are made using a light truck or van. These trips are infrequent. Impacts to the level of service to nearby roads leading to the sites is negligible.
4. The only publicly accessible amenity in the vicinity of the projects is a length of Bay Trail located on the western side of the Richmond Parkway. That existing length of trail includes a trail head and designated parking at the terminus of Freethy Blvd. The trail extension project proposed as a part of this project would enhance this existing public access point by providing additional length of trail. Note, the property owner to the south of this project is in the planning stages for a similar trail extension project. That project is necessary to provide connection between the trail extension proposed for this project and the existing trailhead. See illustrative plan included with this application.

## **Narrative Response to Box 5, 6.b. Additional Public Access Information**

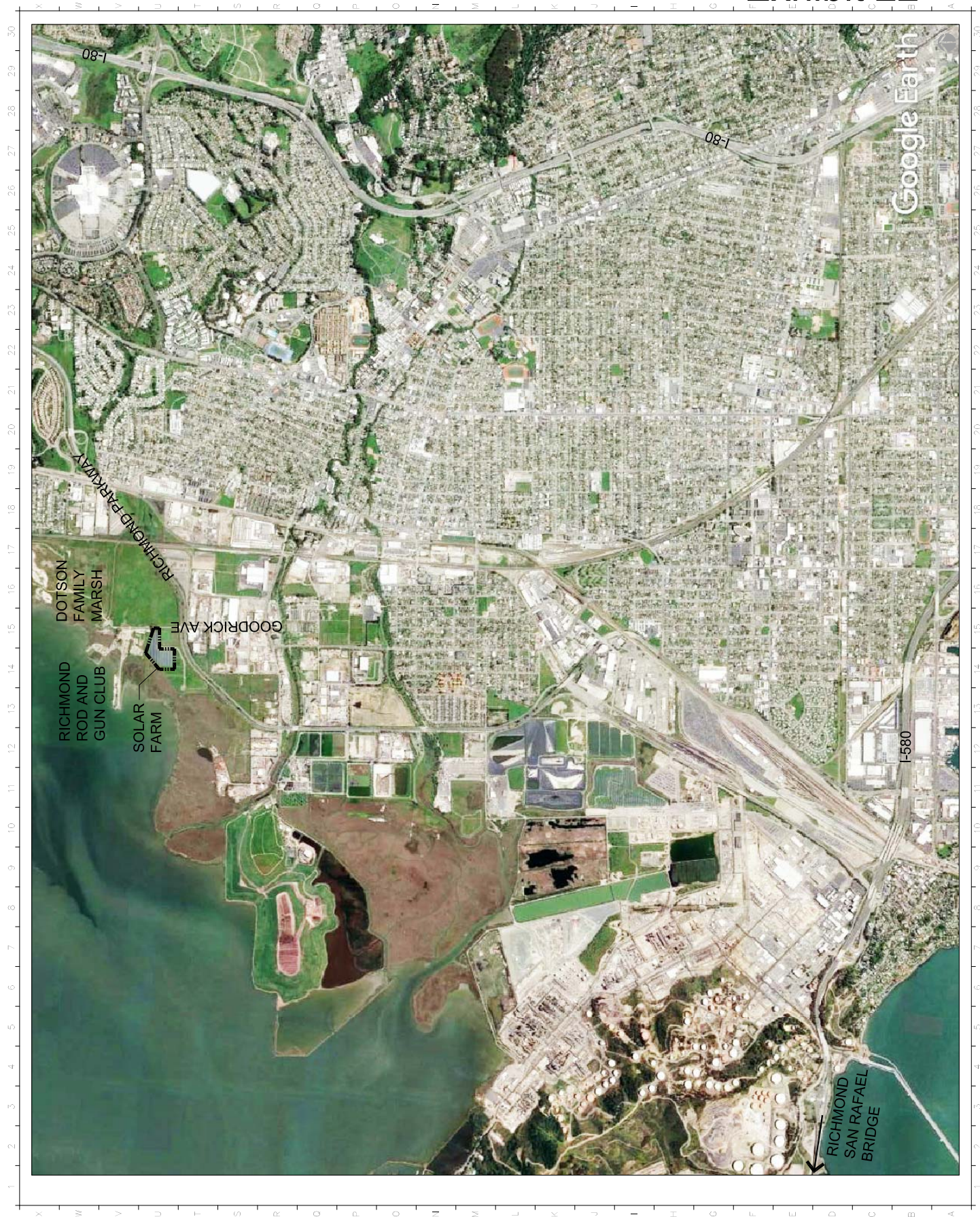
1. The proposed project includes an approximately 200' long extension of an existing spur of the Bay Trail in Richmond, California. This section of Bay Trail will provide public access to an area with views to the west of San Francisco and San Pablo Bays. The trail extension is a 10' wide asphalt paved path with a 2' wide decomposed granite shoulder. Planting areas totaling

## Exhibit 22

approximately 400 square feet will be located at intervals along the path. These to be planted with native species consistent with Bay Trail design guidelines.

2. This section of trail extension is dependent on construction of a similar length of trail to be built in the future by adjacent property owner to the south. That section of trail is currently in the planning stages. When completed, both sections of trail will be universally accessible from parking located at the terminus of Freethy Blvd. See illustrative plan included with this application.
3. The path will connect to an existing trailhead for the Bay Trail. See illustrative plan included with this application.
4. This section of trail to be maintained under separate agreement with the City of Richmond.
5. The Initial Study/Mitigated Negative Declaration recently prepared for the proposed adjacent project to the south did not identify significant wildlife use of the site or habitat of significance. With this information in mind, the new section of trail proposed as a part of this project was located as far as possible from the shoreline where wildlife and/or habitat might be found at some point in the future. Trail alignment is at farthest inland edge of BCDC 100' shoreline band. See illustrative plan included with this application.



[illegible]

# Exhibit 22

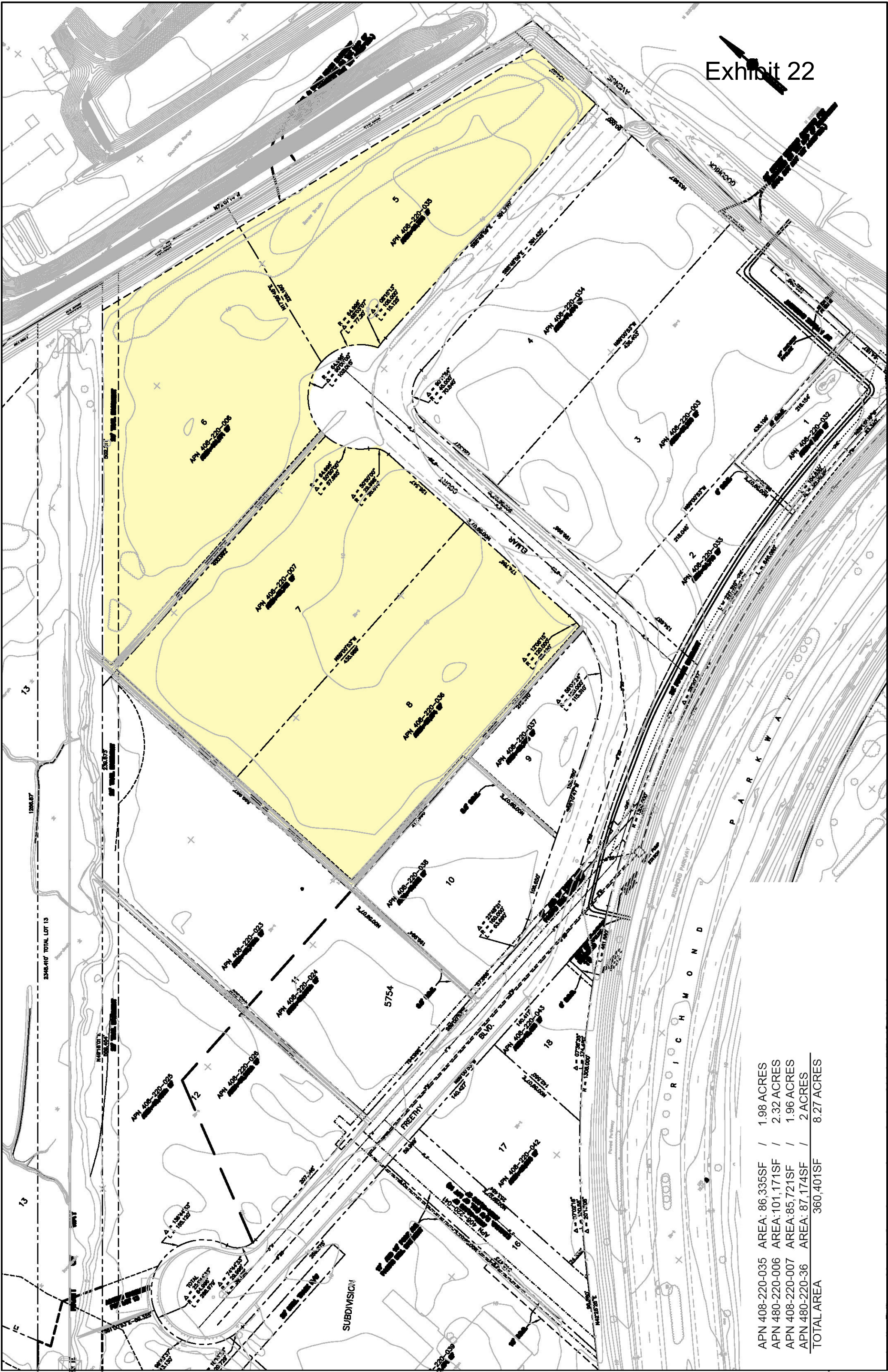












APN 408-220-035	AREA: 86,335SF	/	1.98 ACRES
APN 480-220-006	AREA: 101,171SF	/	2.32 ACRES
APN 408-220-007	AREA: 85,721SF	/	1.96 ACRES
APN 480-220-36	AREA: 87,174SF	/	2 ACRES
TOTAL AREA	360,401SF		8.27 ACRES



# BUILDING REGULATION Exhibit

## CITY OF RICHMOND

450 Civic Center Plaza  
Richmond, CA 94804  
Phone : (510) 620-6868  
Fax : (510) 621-1239

## PERMIT # B14-08040

Job Site Address:

Permit Technician: AA

**FREETHY BLVD**

Parcel APN: 408220006	Today's Date: 09/29/2014
Permit: <b>B14-08040</b>	Date Applied: 08/29/2014
Type of Permit: <b>ELC COMMERCIAL</b>	Date Issued: 09/29/2014

PROPERTY OWNER: SHEKOU JOE & HEIDI  
Street Address: 2167 E FRANCISCO BLVD #A  
City/St/Zip: SAN RAFAEL, CA 94901  
Owner Phone: (415) 472-7700

CONTRACTOR: TBD  
Street Address:  
City/St/Zip: Business License:  
Daytime Phone: Exp:

Description of Work: INSTALL GROUND MOUNT SOLAR PV SYSTEM-

Permit Fee Details:

TOTAL VALUATION: \$ 1,500,000.00

TOTAL FEES: \$ 1,820.00

### Owner Builder Declaration:

I hereby affirm under penalty of perjury that I am exempt from the Contractors' License Law for the following reason (Section 7031.5, Business and Profession Code states that any City or County which requires a permit to construct, alter, improve, demolish, or repair any structure prior to its issuance also requires the applicant for such permit to file a signed statement that he or she is a license pursuant to the provisions of the Contractor's License Law (Chapter 9 commencing with section 7000 of Division 3 of the Business and Profession Code) or that he or she is exempt from licensure and the basis for the alleged exemption. Any violation of section 7031.5 by any applicant for a permit subjects the applicant to a civil penalty of not more than (\$500).)

I, as owner of the property, or my employees with wages as their sole compensation, will do the work, and the structure is not intended or offered for sale. (Section 7044 Business and Professions Code: The Contractors' State License Law does not apply to the owner of the property who builds or improves their own, and who does such work himself or herself or through his or her own employees, provided that such improvements are not intended or offered for sale. If, however, the building or improvement is sold within one year of completion, the Owner Builder will have the burden of proving that he she did not build or improve for the purpose of sale.)

I, as owner of the property, and exclusively contracting with licensed contractors to construct the project (Section 7044, Business and Professions and Codes states that the current Contractors' State License Law does not apply to an owner of property who builds or improves as thereon, and who contracts for such projects with a licensed Contractor pursuant to the Contractors' License Law).

I am exempt under section Business and Professions Code for this reason

Applicant Date:

### Workers Compensation Declaration:

I hereby affirm under penalty of perjury one of the following declarations: I have and will maintain a certificate of consent to self insure for workers compensation, as provided for by (Section 3700) of the Labor Code, for the performance of the work for which this permit is issued.

I have and will maintain Workers Compensation insurance, as required by Section 3700 of the Labor Code, for the performance of the work for which this permit is issued, my workers compensation carrier and policy numbers are:

Carrier: Policy# Expires

I certify that in the performance of the work for which this permit is issued, I shall not employ any person in a manner so as to become subject to the workers compensation laws of California, and agree that if I should become subject to the workers compensation provisions of section 3700 of the labor code, and I shall forthwith comply with these provisions.

Date: Applicant:

Warning: Failure to secure workers compensation coverage is unlawful, and shall subject an employer to criminal penalties and civil fines of up to \$1000 in addition to the cost of compensation, damages as provided for in section 3706 of the labor code, interest and attorneys fees.

I certify that I have read this application and state that the above information is correct. I agree to comply with all City ordinances and other laws relating to this permit and hereby authorize representatives of the City of Richmond to enter upon the above mentioned property for inspection purposes. This permit will expire on **3/28/2015 12:00:00AM** unless revoked, renewed or extended by the Building Official.

Customer No:

Signature of applicant or agent

Date 9/29/14

Building Dept. by

Date 9/29/14

**PAID**

SEP 29 2014

CITY OF RICHMOND  
FINANCE DEPARTMENT



DEPARTMENT OF THE ARMY  
SAN FRANCISCO DISTRICT, U.S. ARMY CORPS OF ENGINEERS  
1455 MARKET STREET, 16<sup>TH</sup> FLOOR  
SAN FRANCISCO, CALIFORNIA 94103-1398

Exhibit 22

MAY 13 2016

Regulatory Division

Subject: File No. 2006-303600S

Mr. Chip Bouril  
LSA Associates, Inc.  
157 Park Place  
Point Richmond, California 94801

Dear Mr. Bouril:

This correspondence is in reference to your submittal of May 20, 2014, on behalf of JHS Properties, requesting a preliminary jurisdictional determination of the extent of navigable waters of the United States (U.S.) and waters of the U.S. occurring on a roughly rectangular property of approximately 28 acres, known as the Bayside Village project site, located on the north side of the Richmond Parkway, west of Goodrick Avenue, east of San Pablo Bay, in the City of Richmond, Contra Costa County, California (APNs 408-220-003, 408-220-0006, 408-220-007, 408-220-023, 408-220-024, 408-220-025, 408-220-026, 408-220-032, 408-220-033, 408-220-034, 408-220-035, 408-220-036, 408-220-037, 408-220-038, 408-220-039, 408-220-041, 408-220-042, and 408-220-043, Lat: 37.9769° N, Lon: 122.3685° W).

All proposed discharges of dredged or fill material occurring below the plane of ordinary high water in non-tidal waters of the U.S.; or below the high tide line in tidal waters of the U.S.; and within the lateral extent of wetlands adjacent to these waters, typically require Department of the Army authorization and the issuance of a permit under Section 404 of the Clean Water Act of 1972, as amended (33 U.S.C. § 1344 *et seq.*). Waters of the U.S. generally include the territorial seas; all traditional navigable waters which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including waters subject to the ebb and flow of the tide; wetlands adjacent to traditional navigable waters; non-navigable tributaries of traditional navigable waters that are relatively permanent, where the tributaries typically flow year-round or have continuous flow at least seasonally; and wetlands directly abutting such tributaries. Where a case-specific analysis determines the existence of a "significant nexus" effect with a traditional navigable water, waters of the U.S. may also include non-navigable tributaries that are not relatively permanent; wetlands adjacent to non-navigable tributaries that are not relatively permanent; wetlands adjacent to but not directly abutting a relatively permanent non-navigable tributary; and certain ephemeral streams in the arid West.

All proposed structures and work, including excavation, dredging, and discharges of dredged or fill material, occurring below the plane of mean high water in tidal waters of the U.S.; in former diked baylands currently below mean high water; outside the limits of mean high water but affecting the navigable capacity of tidal waters; or below the plane of ordinary high water in

non-tidal waters designated as navigable waters of the U.S., typically require Department of the Army authorization and the issuance of a permit under Section 10 of the Rivers and Harbors Act of 1899, as amended (33 U.S.C. § 403 *et seq.*). Navigable waters of the U.S. generally include all waters subject to the ebb and flow of the tide; and/or all waters presently used, or have been used in the past, or may be susceptible for future use to transport interstate or foreign commerce.

The enclosed delineation map entitled, "Preliminary Jurisdictional Determination: Bayside Village, File 2006-303600S," in one sheet and date certified May 12, 2016, depicts the extent and location of wetlands and other waters of the U.S. within the boundary area of the site that **may be** subject to U.S. Army Corps of Engineers' regulatory authority under Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act. This preliminary jurisdictional determination is based on the current conditions of the site, as previously verified during a field investigation of November 13, 2006, and June 20, 2007, a review of available digital photographic imagery, and a review of other data included in your submittal. While this preliminary jurisdictional determination was conducted pursuant to Regulatory Guidance Letter No. 08-02, *Jurisdictional Determinations*, it may be subject to future revision if new information or a change in field conditions becomes subsequently apparent. The basis for this preliminary jurisdictional determination is fully explained in the enclosed *Preliminary Jurisdictional Determination Form*, which has been signed and dated by this office. You are requested to sign and date this form and return it to this office within two weeks of receipt.

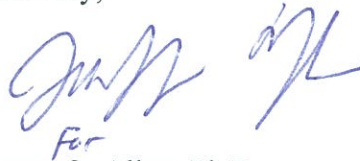
You are advised that the preliminary jurisdictional determination may **not** be appealed through the U.S. Army Corps of Engineers' *Administrative Appeal Process*, as described in 33 C.F.R. Part 331 (65 Fed. Reg. 16,486; Mar. 28, 2000). Under the provisions of 33 C.F.R. § 331.5(b)(9), non-appealable actions include preliminary jurisdictional determinations since they are considered to be only advisory in nature and make no definitive conclusions on the jurisdictional status of the water bodies in question. However, you may request this office to provide an approved jurisdictional determination that precisely identifies the scope of jurisdictional waters on the site; an approved jurisdictional determination may be appealed through the *Administrative Appeal Process*. If you anticipate requesting an approved jurisdictional determination at some future date, you are advised not to engage in any on-site grading or other construction activity in the interim to avoid potential violations and penalties under Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act. Finally, you may provide this office new information for further consideration and request a reevaluation of this preliminary jurisdictional determination.

You may refer any questions on this matter to Justin Yee of my Regulatory staff by telephone at (415) 503-6788 or by e-mail at Justin.J.Yee@usace.army.mil. All correspondence should be addressed to the Regulatory Division, South Branch, referencing the file number at the head of this letter.



The San Francisco District is committed to improving service to our customers. My Regulatory staff seeks to achieve the goals of the Regulatory Program in an efficient and cooperative manner, while preserving and protecting our nation's aquatic resources. If you would like to provide comments on our Regulatory Program, please complete the Customer Service Survey Form available on our website:  
<http://www.spn.usace.army.mil/Missions/Regulatory.aspx>.

Sincerely,

A handwritten signature in blue ink, appearing to read "A. Allen", with a small "For" written below it.

Aaron O. Allen, Ph.D.  
Acting Chief, Regulatory Division

Enclosures

Copy Furnished (w/o encls):

CA RWQCB, Oakland, CA  
CA SWRCB, Sacramento, CA

# PRELIMINARY JURISDICTIONAL DETERMINATION FORM

## San Francisco District

This Preliminary Jurisdictional Determination finds that there *"may be"* waters of the United States in the subject review area and identifies all such aquatic features, based on the following information:

Exhibit 22

Regulatory Division: South Branch

File Number: 2006-303600S

PJD Completion Date: 05-12-2016

### Review Area Location

City/County: Richmond/Contra Costa County State: California

Nearest Named Waterbody: San Pablo Bay

Approximate Center Coordinates of Review Area

Latitude (degree decimal format): 37.9769°N

Longitude (degree decimal format): -122.3685°W

Approximate Total Acreage of Review Area: 28 Select

File Name: Bayside Village

### Applicant or Requestor Information

Name: Chip Bouril

Company Name: LSA Associates, Inc.

Street/P.O. Box: 157 Park Place

City/State/Zip Code: Point Richmond, CA

### Estimated Total Amount of Waters in Review Area

Non-Wetland Waters: 160 lineal feet 4 feet wide and/or  
0.019 acre(s) Flow Regime: Intermittent

Wetlands: lineal feet feet wide and/or  
0.242 acre(s) Cowardin Class: Palustrine- emergent

### Name of Section 10 Waters Occurring in Review Area

Tidal: Brackish Tidal Ditch

Non-Tidal: N/A

☒ Office (Desk) Determination

☐ Field Determination:

Date(s) of Site Visit(s):

**SUPPORTING DATA:** Data reviewed for Preliminary JD (check all that apply – checked items should be included in case file and, where checked and requested, appropriately reference sources below)

☒ Maps. Plans, plots or plat submitted by or on behalf of applicant/requestor (specify): LSA, 2014

☒ Data sheets submitted by or on behalf of applicant/requestor (specify): LSA, 2007, and 2014 references

☒ Corps concurs with data sheets/delineation report.

☐ Corps does not concur with data sheets/delineation report.

☐ Data sheets prepared by the Corps.

☐ Corps navigable waters' study (specify):

☐ U.S. Geological Survey Hydrologic Atlas:

☐ USGS NHD data.

☐ USGS HUC maps.

☒ U.S. Geological Survey map(s) (cite quad name/scale): CA-RICHMOND

☐ USDA Natural Resources Conservation Service Soil Survey.

☐ National wetlands inventory map(s) (specify):

☐ State/Local wetland inventory map(s) (specify):

☐ FEMA/FIRM maps.

☐ 100-year Floodplain Elevation (specify, if known):

☐ Photographs: ☐ Aerial (specify name and date):

☐ Other (specify name and date):

☐ Previous JD determination(s) (specify File No. and date of response letter):

☒ Other information (specify): This is a re-verification of an approved JD that was verified by site visits by the prior project manager in 2007. The re-verification request includes the results of a 2014 field investigation that confirms there are no changes.

**IMPORTANT NOTE:** If the information recorded on this form has not been verified by the Corps, the form should not be relied upon for later jurisdictional determinations.

Signature and Date of Regulatory Project Manager  
(REQUIRED)

Signature and Date of Person Requesting Preliminary JD  
(REQUIRED, unless obtaining the signature is impracticable)

# Exhibit 22

1. The Corps of Engineers believes that there may be jurisdictional waters of the United States on the subject site, and the permit applicant or other affected party who requested this preliminary JD is hereby advised of his or her option to request and obtain an approved jurisdictional determination (JD) for that site. Nevertheless, the permit applicant or other person who requested this preliminary JD has declined to exercise the option to obtain an approved JD in this instance and at this time.

2. In any circumstance where a permit applicant obtains an individual permit, or a Nationwide General Permit (NWP) or other general permit verification, or a permit verification, or a permit notification (PCN), or requests verification for a non-reporting NWP or other general permit, and the permit applicant has not requested an approved JD for the activity, the permit applicant is hereby made aware of the following: (1) the permit applicant has elected to seek a permit authorization based on a preliminary JD, which does not make an official determination of jurisdictional waters; (2) that the applicant has the option to request an approved JD before accepting the terms and conditions of the permit authorization, and that basing a permit authorization on an approved JD could possibly result in less compensatory mitigation being required or different special conditions; (3) that the applicant has the right to request an individual permit rather than accepting the terms and conditions of the NWP or other general permit authorization; (4) that the applicant can accept a permit authorization and thereby agree to comply with all the terms and conditions of that permit, including whatever mitigation requirements the Corps has determined to be necessary; (5) that undertaking any activity in reliance upon the subject permit authorization without requesting an approved JD constitutes the applicant's acceptance of the use of the preliminary JD, but that either form of JD will be processed as soon as is practicable; (6) accepting a permit authorization (e.g., signing a proffered individual permit) or undertaking any activity in reliance on any form of Corps permit authorization based on a preliminary JD constitutes agreement that all wetlands and other water bodies on the site affected in any way by that activity are jurisdictional waters of the United States, and precludes any challenge to such jurisdiction in any administrative or judicial compliance or enforcement action, or in any administrative appeal or in any Federal court; and (7) whether the applicant elects to use either an approved JD or a preliminary JD, that JD will be processed as soon as is practicable. Further, an approved JD, a proffered individual permit (and all terms and conditions contained therein), or individual permit denial can be administratively appealed pursuant to 33 C.F.R. Part 331, and that in any administrative appeal, jurisdictional issues can be raised (see 33 C.F.R. 331.5(a)(2)). If, during that administrative appeal, it becomes necessary to make an official determination whether CWA jurisdiction exists over a site, or to provide an official delineation of jurisdictional waters on the site, the Corps will provide an approved JD to accomplish that result, as soon as is practicable.

[illegible]

**GRADING PERMIT #EN14-05203**

**Exhibit 22**

"The Permittee, for himself, his contractors and employees, agrees to save, indemnify and hold harmless the City of Richmond or it's representative from all liabilities and claims for damages by reason of injury or death to any person or persons, or damage to property from any cause whatsoever while in, upon or in any way connected with the work covered by this Grading Permit, and does further agree to defend the City in any claim arising out of or as a result of the work done under this permit."

I hereby acknowledge that I have read this application and state that the information is correct and agree to comply with all City Ordinances and State laws, and the regulations of the State Department of Industrial Relations and Industrial Accident Commission, relating to the character of work, equipment and labor personnel involved in the project.

Owner/Representative (Print): Connexis Garden

Signature: [Signature]

Date: 4-28-14

***Applicant is hereby made to perform grading work in accordance with requirements of Grading Ordinance No. 4-80 N.S., as specified.***

1. All work performed under the authority of this permit shall be limited to the hours of 8:00 a.m. to 5:00 p.m. Monday through Friday, exclusive.
2. All equipment and supplies used in conjunctions with work performed under this permit, including equipment used in the transportation of the equipment or supplies, must be stored off of public right-of-way.
3. Applicant is responsible to keep all public rights-of-way and off-site areas clean from all dirt, mud, dust and debris at all times. Water trucks(s) are required on the job site.
4. All exposed slopes shall be re-vegetated for erosion and sediment control, refer to A.B.A.G. "Manual of Standards for Erosion and Sediment Control Measures."
5. Any graded areas that will be left incomplete or unlandscaped by September 1 will require an erosion control plan which must be submitted for approval.
6. Applicant shall indemnify and save the City, its agents, officers and employees harmless from and against any and all liability, claims, suits, actions, damages, penalties and/or causes of action arising during the term of this Grading Permit out of any personal injury, bodily injury, loss of life or damage to property, violation of any Federal, State or municipal law or ordinance or other cause in connection with the activities of Applicant, contractors, subcontractors, agents and employees under this Grading Permit or on account of the performance or character of the work; unforeseen difficulties, accidents, occurrences or other causes and from and against all costs, counsel fees, expenses incurred in obtaining expert testimony and the attendance of witnesses, expenses and liability incurred in and about any such claim, the investigation thereof or the defense of any action or proceedings brought thereon; and from and against any orders judgments or decrees which may be entered therein unless arising out of the sole negligence or willful misconduct of the City.
7. In authorizing activities under this Permit, the City has relied on the information and data which permittee has provided in connection with this permit application. If such information and data provide to be false, incomplete or inaccurate the activity may be disqualified from this permit and City may, in addition, institute appropriate legal proceedings.
8. Issuance of this permit by the City of Richmond does not necessarily constitute full approval by all Government Agencies. Applicant shall contact all other concerned agencies, agencies, specifically but not necessarily limited to Contra Costa County Flood Control District, Environmental Protection Agency, County Health Department, Bay Conservation and Development Commission, State of California Department of Fish & Game and United States Army Corps of Engineers before this permit can be considered valid.

Engineering Services Department 04/14

BACK SIDE

**ENGINEERING SERVICES DEPARTMENT****CITY OF RICHMOND**450 Civic Center Plaza, Suite 200, CA 94804  
Phone: (415) 771-2200 Fax: (415) 771-2201**GRADING PERMIT****EN14-05203**CJC TRUCKING  
180 BROADWAY #G  
RICHMOND, CA 94804Permit Number:  
Address: FREETHY BLVD  
Invoice Date: April 23, 2014  
Permit Tech: GD

<u>Fee Description</u>	<u>Account</u>	<u>Units</u>	<u>Amount</u>
STRM - Swpp Monthly Insp	40623431320239	1	\$630.00
<b>ENG - Grading Inspection Fees</b>			
<u>Fee Description</u>	<u>Account</u>	<u>Units</u>	<u>Amount</u>
Grading Inspection > 10,000 Cubic Yards	15121131341506	0	\$920.00
	<b>Subtotal for ENG - Grading Inspection Fees</b>		<b>920.00</b>
<b>Engineering Services Fee</b>			
<u>Fee Description</u>	<u>Account</u>	<u>Units</u>	<u>Amount</u>
Administrative Processing Fee	15121131340418	0	\$108.00
Consultant Services	151 206624	0	\$1,080.00
	<b>Subtotal for Engineering Services Fee</b>		<b>1,188.00</b>
<b>Engineering Services Hourly Rates</b>			
<u>Fee Description</u>	<u>Account</u>	<u>Units</u>	<u>Amount</u>
Senior Civil Engineer	15121131341506	6	\$1,260.00
	<b>Subtotal for Engineering Services Hourly Rates</b>		<b>1,260.00</b>
<b>Stormwater Hourly Rates</b>			
<u>Fee Description</u>	<u>Account</u>	<u>Units</u>	<u>Amount</u>
STRM - Source Control Inspector II	40623431320239	16	\$2,336.00
	<b>Subtotal for Stormwater Hourly Rates</b>		<b>2,336.00</b>
<b>TOTAL:</b>			<b>\$6,334.00</b>
<b>AMOUNT PAID:</b>			<b>6,334.00</b>
<b>TOTAL AMOUNT DUE:</b>			<b>\$0.00</b>

SEE BACK SIDE



**Notice of Exemption****2014108139 Exhibit 2**

To: Office of Planning and Research  
P.O. Box 3044, Room 113  
Sacramento, CA 95812-3044

County Clerk  
County of: Contra Costa  
P.O. Box 350  
Martinez, CA 94553

From: (Public Agency): City of Richmond  
Planning and Building, 450 Civic Center Plaza  
Richmond, CA 94804

(Address)

Project Title: Freethy Industrial Park Solar Photovoltaic System (Freethy Solar Project)

Project Applicant: Joe & Heidi Shekou and Richmond Development Company LLC

Project Location - Specific:  
The northwest corner of Richmond Parkway and Goodrick Avenue in the City of Richmond, CA.

Project Location - City: Richmond

Project Location - County: Contra Costa

## Description of Nature, Purpose and Beneficiaries of Project:

Install 2 megawatt ground mount photovoltaic solar system on approximately 6 acres of level land at Freethy Industrial Park. The electricity generated by the project will be sold to Marin Clean Energy, pursuant to a long term power purchase agreement.

Name of Public Agency Approving Project: City of Richmond, Department of Planning and Building

Name of Person or Agency Carrying Out Project: Joe & Heidi Shekou, Richmond Development Co. LLC

## Exempt Status: (check one):

- ☒ Ministerial (Sec. 21080(b)(1); 15266);  
☐ Declared Emergency (Sec. 21080(b)(3); 15269(a));  
☐ Emergency Project (Sec. 21080(b)(4); 15269(b)(c));  
☐ Categorical Exemption. State type and section number: \_\_\_\_\_  
☐ Statutory Exemptions. State code number: \_\_\_\_\_

## Reasons why project is exempt:

The Freethy Solar Project qualifies for ministerial and non-discretionary review and approval pursuant to Health and Safety Code 17501.1(a), Government Code 65850.5(b) and City Resolution 56-14 (adopted June 17, 2014). The only approval required for the Freethy Solar Project is a building permit which is ministerial decision and pursuant to the above laws, is exempt from CEQA review.

Lead Agency  
Contact Person: Angelina Almarinez

Area Code/Telephone/Extension: 510-621-1285

## If filed by applicant:

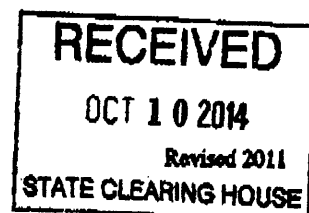
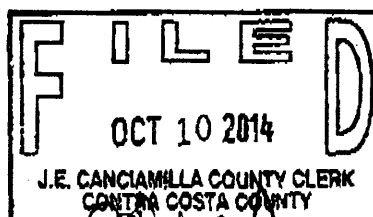
1. Attach certified document of exemption finding.  
 2. Has a Notice of Exemption been filed by the public agency approving the project? ☐ Yes ☐ No

Signature: Robert A. Albert Date: 10/9/14 Title: Project Manager

☐ Signed by Lead Agency ☒ Signed by Applicant

Authority cited: Sections 21080 and 21110, Public Resources Code.  
 Reference: Sections 21108, 21152, and 21152.1, Public Resources Code.

Date Received for filing at CPR: OCT 10 2014



**RESOLUTION OF THE CITY OF RICHMOND CITY COUNCIL INTERPRETING AND IMPLEMENTING THE RICHMOND GENERAL PLAN 2030 AND STATE OF CALIFORNIA POLICY REGARDING SOLAR ENERGY SYSTEMS**

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WHEREAS, The California Solar Rights Act<sup>1</sup> includes Civil Code Sections 714, 714.1, 801 and 801.5; Government Code Sections 65850.5, 66475.3 and 66473.1 and California Health and Safety Code Section 17959.1; and,

WHEREAS, California is a world leader in renewable energy generation. Solar and wind power, as well as emerging technologies such as biomass and fuel cells, are transforming California. Renewable energy is helping to power the state's economy, reducing our state's reliance on imported energy sources, and decreasing air pollution. California's state and local governments have set aggressive goals to expand renewable energy. Small-scale renewable energy benefits California communities. It increases energy reliability for residents and businesses by generating electricity near where it is consumed. This type of energy can also provide stable electricity prices for consumers and creates thousands of jobs across California.

WHEREAS, the State of California has adopted multiple public policy positions that support renewable energy sources, particularly solar energy, including The California Solar Initiative, a 2006 initiative to install 3,000 megawatts (M) of additional solar power by 2016.<sup>2</sup> Included in it is the Million Solar Roof Initiative. In 2011, this goal was expanded to 12,000 MW by 2020;<sup>3</sup> and,

WHEREAS, Richmond General Plan 2030 includes multiple policies, including Energy and Climate Change Policies EC1.1, EC1.2, EC3.1, EC3.A and EC3.B, that encourage the use of solar generated energy in Richmond; and,

WHEREAS, the City of Richmond is a member of Marin Clean Energy (MCE), whose mission includes "local economic and workforce benefits" by encouraging local generation projects as sources of its purchased renewable energy portfolio; and,

WHEREAS, the California Legislature has passed into law numerous provisions that encourage the installation of solar energy generating systems and removal of barriers to the installation of solar energy systems, including:

- Civil Code Section 714(a): "...it is the policy of the state to promote and encourage the use of solar energy systems and to remove obstacles thereto. Accordingly, reasonable restrictions on a solar energy system are those restrictions that do not significantly increase the cost of the system or significantly decrease its efficiency or specified performance, or that allow for an alternative system of comparable cost, efficiency, and energy conservation benefits. :
- Government Code Section 65850.5 (a): The implementation of consistent statewide standards to achieve the timely and cost effective installation of solar energy systems is not a municipal affair, as that term is used in Section 5 of Article XI of the California Constitution, but is instead a matter of statewide concern. It is the intent of the Legislature that local agencies not adopt ordinances that create unreasonable barriers to the installation of solar energy systems, including, but not limited to, design review for aesthetic purposes, and not unreasonably restrict the ability of homeowners and agricultural and business concerns to install solar energy systems. It is the policy of the state to promote and encourage the use of solar energy systems and to limit obstacles to their use. It is the intent of the Legislature that local agencies comply not only with the language of this section, but also the legislative intent to encourage the installation of

<sup>1</sup> [http://solar-rights.com/files/THE\\_CALIFORNIA\\_SOLAR\\_RIGHTS\\_ACT2.pdf](http://solar-rights.com/files/THE_CALIFORNIA_SOLAR_RIGHTS_ACT2.pdf)

<sup>2</sup> <http://www.gosolarcalifornia.ca.gov/about/csi.php>

<sup>3</sup> <http://www.energy.ca.gov/renewables/>

solar energy systems by removing obstacles to, and minimizing costs of permitting for such systems.

- Health & Safety Code Section 17591.1(a): A city or county shall administratively approve applications to install solar energy systems through the issuance of a building permit or similar nondiscretionary permit. However, if the building official of the city or county has a good faith belief that the solar energy system could have a specific, adverse impact upon the public health and safety, the city or county may require the applicant to apply for a use permit.
- Health & Safety Code Section 17591.1(b) A city or county may not deny an application for a use permit to install a solar energy system unless it makes written findings based upon substantial evidence in the record that the proposed installation would have a specific, adverse impact upon the public health or safety, and there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact. This finding shall include the basis for the rejection of potential feasible alternatives of preventing the adverse impact.
- California Health & Safety Code Section 17591.1(c): Any conditions imposed on an application to install a solar energy system must be designed to mitigate the specific, adverse impact upon the public health and safety at the lowest cost possible.
- Government Code Section 65850.5 (b): A city or county shall administratively approve applications to install solar energy systems through the issuance of a building permit or similar nondiscretionary permit. Review of the application to install a solar energy system shall be limited to the building official's review of whether it meets all health and safety requirements of local, state, and federal law. The requirements of local law shall be limited to those standards and regulations necessary to ensure that the solar energy system will not have a specific, adverse impact upon the public health or safety. However, if the building official of the city or county has a good faith belief that the solar energy system could have a specific, adverse impact upon the public health and safety, the city or county may require the applicant to apply for a use permit.
- Government Code Section 65850.5 (c): A city or county may not deny an application for a use permit to install a solar energy system unless it makes written findings based upon substantial evidence in the record that the proposed installation would have a specific, adverse impact upon the public health or safety, and there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact. The findings shall include the basis for the rejection of potential feasible alternatives of preventing the adverse impact; and,

WHEREAS, the California Legislature passed into law the following definition of a “solar energy system:

- California Civil Code Section 801.5(a)(1): Any solar collector or other solar energy device whose primary purpose is to provide for the collection, storage, and distribution of solar energy for space heating, space cooling, electric generation, or water heating.
- California Civil Code Section 801.5(a)((2) Any structural design feature of a building, whose primary purpose is to provide for the collection, storage, and distribution of solar energy for electricity generation, space heating or cooling, or for water heating; and,

WHEREAS, the California Legislature adopted the following definitions:

- California Health and Safety Code Section 17591 (e): The following definitions apply to this section:
  - (1) "A feasible method to satisfactorily mitigate or avoid the specific, adverse impact" includes, but is not limited to, any cost effective method, condition, or mitigation imposed by a city or county on another similarly situated application in a prior successful application for a permit. A city or county shall use its best efforts to ensure that the selected method, condition, or mitigation meets the conditions of subparagraphs (A) and (B) of paragraph (1) of subdivision (d) of Section 714 of the Civil Code
  - (3) A "specific, adverse impact" means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified, and written public health or

safety standards, policies, or conditions as they existed on the date the application was deemed complete.

WHEREAS the California Legislature has also passed into law provisions to ensure that solar energy systems do not adversely impact health and safety, including:

- California Civil Code Section 714(c)(1): A solar energy system shall meet applicable health and safety standards and requirements imposed by state and local permitting authorities.
- California Civil Code Section 714(c)(3): A solar energy system for producing electricity shall also meet all applicable safety and performance standards established by the National Electrical Code, the Institute of Electrical and Electronics Engineers, and accredited testing laboratories such as Underwriters Laboratories and, where applicable, rules of the Public Utilities Commission regarding safety and reliability.
- California Government Code Section 65850.5 (d): The decision of the building official pursuant to subdivisions (b) and (c) may be appealed to the planning commission of the city or county.
- California Government Code Section 65850.5 (e): Any conditions imposed on an application to install a solar energy system shall be designed to mitigate the specific, adverse impact upon the public health and safety at the lowest cost possible; and,

WHEREAS, CEQA generally applies to discretionary projects, including those undertaken by private parties. A discretionary project is one that requires the exercise of judgment or deliberation by a public agency in determining whether the project will be approved, or if a permit will be issued; and.

- WHEREAS, CEQA does not apply to ministerial projects. A ministerial project is one that requires only conformance with a fixed standard or objective measurement and requires little or no personal judgment by a public official as to the wisdom or manner of carrying out the project.
- CEQA Guidelines 15268.state: “(a) Ministerial projects are exempt from the requirements of CEQA. The determination of what is “ministerial” can most appropriately be made by the particular public agency involved based upon its analysis of its own laws, and each public agency should make such determination either as a part of its implementing regulations or on a case by-case basis. (b) In the absence of any discretionary provision contained in the local ordinance or other law establishing the requirements for the permit, license, or other entitlement for use, the following actions shall be presumed to be ministerial : (1) Issuance of building permits....”
- WHEREAS, Section 21080.35 of the Public Resources Code establishes a statutory exemption from CEQA for certain solar energy systems:

21080.35. (a) Except as provided in subdivision (d), this division does not apply to the installation of a solar energy system on the roof of an existing building or at an existing parking lot.

(b) For the purposes of this section, the following terms mean the following: (1) "Existing parking lot" means an area designated and used for parking of vehicles as of the time of the application for the solar energy system and for at least the previous two years. (2) "Solar energy system" includes all associated equipment. Associated equipment consists of parts and materials that enable the generation and use of solar electricity or solar-heated water, including any monitoring and control, safety, conversion, and emergency responder equipment necessary to connect to the customer's electrical service or plumbing and any equipment, as well as any equipment necessary to connect the energy generated to the electrical grid, whether that connection is onsite or on an adjacent parcel of the building and separated only by an improved right-of-way. "Associated equipment" does not include a substation.

(c) (1) Associated equipment shall be located on the same parcel of the building, except that associated equipment necessary to connect the energy generated to the electrical grid may be located immediately adjacent to the parcel of the building or immediately adjacent to the parcel of the building

and separated only by an improved right-of-way. (2) Associated equipment shall not occupy more than 500 square feet of ground surface and the site of the associated equipment shall not contain plants protected by the Native Plant Protection Act (Chapter 10 (commencing with Section 1900) of Division 2 of the Fish and Game Code).

(d) This section does not apply if the associated equipment would otherwise require one of the following: (1) An individual federal permit pursuant to Section 401 or 404 of the federal Clean Water Act (33 U.S.C. Sec. 1341 or 1344) or waste discharge requirements pursuant to the Porter-Cologne Water Quality Control Act (Division 7 (commencing with Section 13000) of the Water Code).

(2) An individual take permit for species protected under the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.) or the California Endangered Species Act (Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code).

(3) A streambed alteration permit pursuant to Chapter 6 (commencing with Section 1600) of Division 2 of the Fish and Game Code. (e) This section does not apply if the installation of a solar energy system at an existing parking lot involves either of the following:

(1) The removal of a tree required to be planted, maintained, or protected pursuant to local, state, or federal requirements, unless the tree dies and there is no requirement to replace the tree.

(2) The removal of a native tree over 25 years old.

(f) This section does not apply to any transmission or distribution facility or connection.

THEREFORE BE IT RESOLVED that the City Council of the City of Richmond finds that the Department of Planning and Building Services shall implement California State law as strictly defined by the Legislature in the statutes and in the CEQA Guidelines as follows:

- A “solar energy system” shall mean any solar collector or other solar energy device whose primary purpose is to provide for the collection, storage, and distribution of solar energy for space heating, space cooling, electric generation, or water heating and shall not be limited to residential systems or systems mounted on buildings and may include ground-mount systems.
- A “solar energy system” shall be allowed in any zoning district or General Plan designated area.
- A solar energy system shall be permitted ministerially, and any permit conditions shall be limited to those reasonably protecting the health and safety of the public and persons involved in the construction and operation of the system.
- An application for a solar energy system shall be subject to ministerial review by the City building official. The building official’s review of the solar energy system application shall be limited to whether the solar energy system meets all health and safety requirements of local, state, and federal law. Any permit conditions shall be limited to those reasonably protecting the health and safety of the public and persons involved in the construction and operation of the system in accordance with building and other code requirements.
- The building official shall ministerially approve applications for solar energy systems unless the building official makes written findings based upon substantial evidence in the record that the proposed installation would have a specific, adverse impact upon the public health or safety. The building official’s findings are appealable to the Planning Commission pursuant to Government Code Section 65850.5 (d).
- Ministerial application requirements and conditions may include those customarily used for other ministerial permits, including submission of drawings and specifications, structural calculations when appropriate and surveys to confirm property rights and boundaries. Solar Energy systems shall conform to setbacks and height limits otherwise defined in the General Plan and Zoning Ordinance, shall not encroach on BCDC 100-foot jurisdiction without a



BCDC permit and shall not encroach on streams or wetlands<sup>4</sup> or destroy critical habitat of endangered species<sup>5</sup>.. For more information, see *California Solar Permitting Guidebook*, Governor’s Office of Planning and Research ([http://opr.ca.gov/docs/California\\_Solar\\_Permitting\\_Guidebook.pdf](http://opr.ca.gov/docs/California_Solar_Permitting_Guidebook.pdf)).

- CEQA review shall not be required for any solar energy system application that is subject to ministerial review by the building official.
- CEQA shall not apply to any solar energy system on an existing roof or parking lot unless one of the conditions in 21080.35(d) applies.

.....

<sup>4</sup> Requiring an individual federal permit pursuant to Section 401 or 404 of the federal Clean Water Act (33 U.S.C. Sec. 1341 or 1344) or waste discharge requirements pursuant to the Porter-Cologne Water Quality Control Act (Division 7 (commencing with Section 13000) of the Water Code) streambed alteration permit pursuant to Chapter 6 (commencing with Section 1600) of Division 2 of the Fish and Game Code

<sup>5</sup> Contain plants protected by the Native Plant Protection Act (Chapter 10 (commencing with Section 1900) of Division 2 of the Fish and Game Code)

I certify that the foregoing resolution was passed and adopted by the Council of the City of Richmond at a regular meeting thereof held on **June 17, 2014**, by the following vote:

- AYES: Councilmembers Bates, Boozé, Butt, Myrick, Rogers, Vice Mayor Beckles, and Mayor McLaughlin.
- NOES: None.
- ABSENT: None.
- ABSTENTION: None.

DIANE HOLMES  
CLERK OF THE CITY OF RICHMOND

(SEAL)

Approved:

GAYLE MCLAUGHLIN  
Mayor

Approved as to form:

BRUCE GOODMILLER  
City Attorney

State of California     }  
County of Contra Costa     : ss.  
City of Richmond     }

I certify that the foregoing is a true copy of **Resolution No. 56-14**, finally passed and adopted by the City Council of the City of Richmond at a regular meeting held on June 17, 2014.

## Exhibit 22

FW: POWERPLANT PARK PROJECT  
Lina Velasco [Lina\_Velasco@ci.richmond.ca.us]  
Sent: Wednesday, February 06, 2019 5:12 PM  
To: [JC](#)  
JC,

This is the email I received from DTSC.

Thanks,

Lina

**From:** Murphy, Daniel@DTSC [mailto:Daniel.Murphy@dtsc.ca.gov]  
**Sent:** Thursday, January 03, 2019 10:29 AM  
**To:** Lina Velasco  
**Subject:** POWERPLANT PARK PROJECT

Hi Lina. I am lazy and do not want to write a letter. I just want to let you know that the Hazards section does not mention that DTSC did a site screen on the 2781 Goodrick Avenue site. This DTSC evaluation site is the eastern end of your project site. Although there was a determination that no action was required, for completeness' sake you may want to have the consultant include note of that. Cheers.

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

From: JC [mailto:[JC@vallierdesign.com](mailto:JC@vallierdesign.com)]  
Sent: Wednesday, February 06, 2019 10:15 AM  
To: Lina Velasco  
Subject: Bay Trail Extnsion BCDC Permit Application for PowerPlant Park and JHS Properties- Information Needed

Good Morning Lina,

We are in the process of preparing BCDC permit applications for the Bay Trail extensions associated with the PowerPlant Park and JHS projects.

I realize that there are ongoing discussions between the City, BCDC, and the property

## Exhibit 22

owners that affect the trail extension and will likely draw out any permit approval from BCDC. Apart from this we are working on the application, largely in response to the February 15, 2019 deadline that the BCDC has given for the permit application from JHS.

First Carbon Solutions has provided us with much of the information needed to support the permit application - information developed for the Draft MND, but there are a couple of pieces that they did not have.

One of these was the Department of Toxic Substances Control Approval. They advised me that the site received a clearance on this item in 2001 and told me that this was confirmed to you in an email from Daniel Murphy at the EPA on January 3, 2019. Further, they told me that a copy of that email would be sufficient to satisfy the BCDC for the application. Is it possible for you to provide me with a copy of the relevant section of that email? I realize this is a somewhat odd request and appreciate any help that you could give on this.

Thanks, I know that you are busy and I appreciate your time.

Best Regards,

JC Miller, ASLA  
Principal, Landscape Architect License #CA5107

VALLIER DESIGN ASSOCIATES, INC.  
210 WASHINGTON AVENUE, SUITE G  
POINT RICHMOND, CA 94801

EMAIL [jc@vallierdesign.com](mailto:jc@vallierdesign.com)  
OFFICE PHONE 510.237.7745 / CELL 415.518.1710



## 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

March 18, 2019

Mr. Robert Herbst  
JHS Properties  
400F Smith Ranch Road  
San Rafael, California 94903

**SUBJECT:** JHS Properties Solar Farm Bay Trail Extension;  
BCDC Permit Application No. M20019.004.00

Dear Mr. Hearst,

Thank you for your application dated February 13, 2019, received in this office on February 15, 2019 for a proposed Bay Trail extension located at Elmar Court (exact address to be determined), in the City of Richmond, Contra Costa County. Our review of the application 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 the proposed project occurs within the Commission's 100-foot shoreline band jurisdiction:

**Within 100-foot shoreline band:**

- A. **Proposed Bay Trail Extension.** Construct, use, and maintain in-kind an extension of the Bay Trail along the northwest easement portion of the property. The proposed length of the trail extension is approximately 200 feet. The proposed width of the trail is 18 feet, which includes a 12 foot-wide asphalt path; a three-foot soft edge condition of decomposed granite; and a three-foot soft edge condition of gravel; and
- B. **Landscaping Improvements.** Construct, use, and maintain in-kind 800 square feet of low-maintenance and drought tolerant planting along a portion of the proposed trail extension.

Please verify whether the proposed project has been described accurately and in full; if not, please provide any missing or corrected details.

2. **Public Access and Open Space Exhibit.** Please submit a revised public access and open space exhibit that accurately describes areas to be provided as public access, open space, and view corridors. If the Commission approves this project, the exhibit would be used to illustrate the public access areas required by the permit. Therefore, we may



Mr. Robert Hearst  
JHS Properties  
March 18, 2019  
Page 2

have additional comments on the design and presentation of the exhibit to ensure that it clearly and accurately depicts the public access areas and improvements provided as part of the project. Please consider the following in preparing your revised exhibit:

- A. The exhibit should clearly depict property boundaries in relation to the edge of the Commission's shoreline band jurisdiction;
  - B. Labels, hatching, a legend, or call-out boxes are often helpful to depict important dimensions of public access facilities (e.g., the width of the Bay Trail, or the area of a lawn) and the location and/or quantity of particular improvements (e.g., site furnishings); and
  - C. Please also ensure that if the exhibit is in color that it is legible when reproduced in black and white.
3. **Bay Trail Project Details:** Please clarify how the San Francisco Bay Trail Design Guidelines and Toolkit were used in refining the design for the proposed Bay Trail extension.
4. **Bay Trail Maintenance Plan.** Please provide a maintenance plan that clarifies the roles and responsibilities with this proposed Bay Trail extension in relation to the adjacent property owners scope of work.
5. **Sea Level Rise.** The Bay Plan requires that any public access provided as a condition of development for a BCDC permit should either be required to remain viable in the event of future sea level rise or flooding, or equivalent access consistent with the project should be provided nearby. Please indicate if any areas within the project site are now, or will be in the future given anticipated sea level rise, at risk of flooding. This discussion should be based on the results of a sea level rise risk assessment if one has been prepared for the proposed project. The Bay Plan's Climate Change policies state that a risk assessment should be based on the estimated 100-year flood elevation that takes into account the best estimates of future sea level rise and current flood projection and planned flood protection that will be funded and constructed when needed to provide protection for the proposed project. A range of sea level rise for mid-century and end of century based on the best scientific data available, found in the State of California's Sea Level Rise Guidance (updated 2018), should be used in the risk assessment. The risk assessment would identify all types of potential flooding, degrees of uncertainty, consequences of defense failure, and risks to existing habitat from proposed flood protection devices, if applicable.
6. **Photographs.** Please submit photographs of the project site that illustrate views to the Bay from: (1) the project site and (2) nearby roads or public access areas.

Mr. Robert Hearst  
JHS Properties  
March 18, 2019  
Page 3

7. **Proof of Adequate Property Interest.** Please submit documentation, such as a copy of a grant deed or lease which demonstrates that the applicant has adequate legal interest in the property, or a letter which authorizes the applicant to act on behalf of the property owner for all matters pertaining to this permit.
8. **Other Governmental Approvals.** Please provide a copy of the water quality certification or waiver thereof from the San Francisco Bay Regional Water Quality Control Board when it is available. If applicable to the proposed project, we will also need to receive project approval(s) from the Department of Toxic Substances Control, and all "take" authorizations from the state and federal resource agencies. Our regulations prohibit us from filing an application prior to receiving this documentation.
9. **Environmental Documentation.** Please clarify that the environmental documentation under this scope of work, 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 has been provided.
10. **Local Government Approval.** Please verify that the relevant submitted documentation under this scope of work clearly indicates that all the local government discretionary approvals have been received for the project.
11. **Processing Fee.** Per Appendix M of BCDC Regulations, "total project cost" is defined as: "all expenditures, including the cost for planning, engineering, architectural and other services, made or to be made for designing the project plus the estimated cost of construction of all aspects of the project both inside and outside the Comissions's jurisdiction". The fee for this permit will be calculated using a percentage of the total project cost of the unpermitted work completed in 2014, combined with the total project cost of the proposed Bay Trail extension proposed in this application. Please clarify the total project cost for both projects. Once the fee for the permit has been established, per Appendix M (i) of BCDC Regulation, the fee will be doubled due to an active BCDC enforcement case (ER2017.014).
12. **Public Notice.** Please find enclosed the completed "Notice of Application" which the Commission's regulations require to be posted at or near the project site in a prominent location before a permit application can be filed. 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.

Mr. Robert Hearst  
JHS Properties  
March 18, 2019  
Page 4

Until the above-mentioned information is submitted and reviewed for adequacy, your application will be held as incomplete.

If you have any questions, please do not hesitate to contact me at 415-352-3616 or [yuriko.jewett@bcdca.gov](mailto:yuriko.jewett@bcdca.gov).

Sincerely,



YURIKO JEWETT  
Shoreline Development Analyst

YJ/cj  
Enc.  
Cc:  
Joe Shekou

BCDC PERMIT APPLICATION NO. M2019.04.00

Joe Shekou

## CERTIFICATION OF POSTING OF NOTICE

**Yuriko Jewett**

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

RE:

Construct a new Bay Trail extension at JHS Solar Farm

*(brief description of project)*

I,

*(name of applicant or agent)*

hereby certify that on

*(date)*

I or my agent or employee posted in a prominent location at or near the project site the Notice of Application provided by the San Francisco Bay Conservation and Development Commission.

Date:

By:

*(Signature)*

Title:

*(Title)*

DATE POSTED: \_\_\_\_\_

# NOTICE OF PERMIT APPLICATION

NOTICE is hereby given that:

Joe Shekou has applied for a permit to the **SAN FRANCISCO BAY CONSERVATION & DEVELOPMENT COMMISSION** to:

Construct a new Bay Trail extension at JHS Solar Farm

at a **PROPERTY** known as:

Elmar Court (exact address TBD) in the City of Richmond, Contra Costa County

Comments or questions on the proposed project should be submitted immediately in writing  
or by contacting the Commission,

Attn: Yuriko Jewett at 415-352-3616 or [yuriko.jewett@bcdca.gov](mailto:yuriko.jewett@bcdca.gov)

Permit application, any supplementary materials and notice of any hearings related to the  
above project, are available for review upon request.



**From:** [Plater, Brent@BCDC](mailto:Plater, Brent@BCDC)  
**To:** ["Robert Herbst"](#)  
**Cc:** [Ashwin Gulati](#)  
**Subject:** RE: ER2017.004  
**Date:** Tuesday, November 16, 2021 3:16:00 PM

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Hi Bob,

I'm checking-in on the permit requirement for your property. Richard has informed us that he will not be seeking a BCDC permit with you. If that is your understanding, than you will need to obtain a BCDC permit directly.

I understand you previously submitted a permit application. You may choose to restart that application process, or initiate a new application. In either case, we will be required to ensure that maximum feasible public access is provided at the site. I understand that you believe there are some conditions on the site that make some bay trail extension proposals challenging. I would like to schedule a time to discuss those with you, so I can more clearly understand how we can address our basic permitting requirements.

Let me know when you have some time to discuss.

Thank you,

bp

---

Brent Plater | Lead Enforcement Attorney  
SF Bay Conservation & Development Commission  
375 Beale St., Suite 510  
San Francisco, CA 94105  
Phone: (415) 352-3628  
Email: [brent.plater@bcdcc.ca.gov](mailto:brent.plater@bcdcc.ca.gov)

---

**From:** Robert Herbst <[rherbst@jhsproperties.net](mailto:rherbst@jhsproperties.net)>  
**Sent:** Monday, November 8, 2021 2:43 PM  
**To:** Plater, Brent@BCDC <[brent.plater@bcdcc.ca.gov](mailto:brent.plater@bcdcc.ca.gov)>  
**Cc:** Ashwin Gulati <[ashwingulati@gmail.com](mailto:ashwingulati@gmail.com)>  
**Subject:** RE: ER2017.004

Hi Brent,

Nice speaking with you as well. I have an email in to Richard Treiber at Power Plant Park to see how we should handle this. Pre-Covid we had joint discussions and meetings with BCDC staff, and I believe the conclusion was that we would be co-permittees with Richard on a single application that included our solar farm. I believe subsequently Richard decided to build his project in phases, and modified his BCDC application to include only Phase 1, which had very limited intrusion into the 100

foot shoreline band (some small bio-swale facilities I believe). To my knowledge we were not included as a co-permittee on that.

We're prepared to proceed with our own separate BCDC application for the solar farm if necessary. Please let me get back to you after speaking with Richard.

Best,  
Bob Herbst  
JHS Properties  
415-472-7700

---

**From:** Plater, Brent@BCDC <[brent.plater@bcdcc.ca.gov](mailto:brent.plater@bcdcc.ca.gov)>

**Sent:** Monday, November 8, 2021 2:13 PM

**To:** Robert Herbst <[rherbst@jhsproperties.net](mailto:rherbst@jhsproperties.net)>

**Subject:** ER2017.004

Hi Bob,

It was good to talk to you today. As I mentioned, Power Plant Park has submitted an application for Phase 1 of its project, but did not indicate that you (or the solar facility generally) would be a co-permittee, perhaps under the assumption that a subsequent permit could address the solar facility's permitting requirements.

If that's the case, there are two potential issues: first, we need to resolve your permit issue sooner rather than later, and second, generally we require public access elements to be constructed before or simultaneous with the uses we authorize, because our experience has been that the public access often does not get constructed otherwise. This would be true even if the project is, in the mind of the project proponent, a phased project.

Thanks for checking-in with Power Plant Park to confirm that your preferred plan is still to submit a joint permit application to BCDC. Let me know how you intend to proceed once you've had a chance to speak. I look forward to working with you.

Sincerely,

bp

-----  
Brent Plater | Lead Enforcement Attorney  
SF Bay Conservation & Development Commission  
375 Beale St., Suite 510  
San Francisco, CA 94105  
Phone: (415) 352-3628

Email: [brent.plater@bccdc.ca.gov](mailto:brent.plater@bccdc.ca.gov)



Scanned by [McAfee](#) and confirmed virus-free.

**From:** [Ashwin Gulati](#)  
**To:** [Plater, Brent@BCDC](#)  
**Cc:** [Pan, Katharine@BCDC](#); [rherbst@jhsproperties.net](#)  
**Subject:** Re: BCDC/Solar Farm Richmond  
**Date:** Wednesday, April 13, 2022 1:21:26 PM

---

Brent / Katherine,

I wanted to provide you with a quick update.

We met with WRA today to discuss your letter and we will respond in the coming weeks, so hopefully we can reduce the number of issues presented to the enforcement committee.

Regards

Ashwin

On Apr 6, 2022, at 11:35 AM, Plater, Brent@BCDC <[brent.plater@bcdcc.ca.gov](mailto:brent.plater@bcdcc.ca.gov)> wrote:

Dear Mr. Gulati and Mr. Herbst,

We have tentatively scheduled a formal enforcement hearing to resolve ER2017.004 on June 22, 2022, before BCDC's Enforcement Committee. You will receive a Violation Report and Complaint on or before May 8, 2022, presuming the case schedule is not delayed.

Anything you resolve through permitting in advance of the hearing will reduce the number of issues presented to the Enforcement Committee.

If you have any questions about BCDC's administrative enforcement process feel free to contact me at any time.

Sincerely,

bp

---

Brent Plater | Lead Enforcement Attorney  
SF Bay Conservation & Development Commission  
375 Beale St., Suite 510  
San Francisco, CA 94105  
Phone: (415) 352-3628  
Email: [brent.plater@bcdcc.ca.gov](mailto:brent.plater@bcdcc.ca.gov)

---

**From:** Ashwin Gulati <[ashwingulati@gmail.com](mailto:ashwingulati@gmail.com)>  
**Sent:** Tuesday, April 5, 2022 8:47 PM  
**To:** Pan, Katharine@BCDC <[katharine.pan@bcdc.ca.gov](mailto:katharine.pan@bcdc.ca.gov)>  
**Cc:** Plater, Brent@BCDC <[brent.plater@bcdc.ca.gov](mailto:brent.plater@bcdc.ca.gov)>; Robert Herbst <[rherbst@jhsproperties.net](mailto:rherbst@jhsproperties.net)>  
**Subject:** Re: BCDC/Solar Farm Richmond

Brent/Pan

Hope you are well.

I wanted to let you know that we have retained WRA Environmental Consultants to assist us with the BCDC requirements at the Solar Farm. I will circle back with you shortly with a response to your letter

Thanks

Ashwin

On Dec 9, 2021, at 2:08 PM, Pan, Katharine@BCDC <[katharine.pan@bcdc.ca.gov](mailto:katharine.pan@bcdc.ca.gov)> wrote:

Hi Ashwin,  
Here is the letter submitted by Yuriko Jewett in March 2019 in response to the original application.

**Katharine Pan**

Principal Shoreline Development Analyst  
Direct: (415) 352-3650 | [katharine.pan@bcdc.ca.gov](mailto:katharine.pan@bcdc.ca.gov)

San Francisco Bay Conservation and Development Commission  
Bay Area Metro Center  
375 Beale Street, Ste. 510  
San Francisco, CA 94105  
Main: (415) 352-3600  
[www.bcdc.ca.gov](http://www.bcdc.ca.gov) | [@SFBCDC](https://twitter.com/SFBCDC)

---

**From:** Ashwin Gulati <[ashwingulati@gmail.com](mailto:ashwingulati@gmail.com)>  
**Date:** Monday, November 29, 2021 at 10:37 AM  
**To:** Pan, Katharine@BCDC <[katharine.pan@bcdc.ca.gov](mailto:katharine.pan@bcdc.ca.gov)>



**Cc:** Plater, Brent@BCDC <[brent.plater@bcdc.ca.gov](mailto:brent.plater@bcdc.ca.gov)>, [rherbst@jhsproperties.net](mailto:rherbst@jhsproperties.net)<[rherbst@jhsproperties.net](mailto:rherbst@jhsproperties.net)>  
**Subject:** Re: BCDC/Solar Farm Richmond

Hi Katharine/Brent,

12/9 2 pm works well with Bob Herbst as well. I've sent you a calendar invite. Here's the zoom link.

Topic: BCDC/Richmond Solar Farm  
Time: Dec 9, 2021 02:00 PM Pacific Time (US and Canada)

Join Zoom Meeting  
<https://us02web.zoom.us/j/85097640462>

Meeting ID: 850 9764 0462  
One tap mobile  
+16699009128,,85097640462# US (San Jose)  
+12532158782,,85097640462# US (Tacoma)

Cheers

Ashwin

On Nov 24, 2021, at 6:35 PM, Pan, Katharine@BCDC  
<[katharine.pan@bcdc.ca.gov](mailto:katharine.pan@bcdc.ca.gov)> wrote:

Hi Ashwin, I'm going to be out of the office next week, so the Friday I had suggested is actually the 19<sup>th</sup>. When you settle on a time, please do send out a zoom invite. Thanks, looking forward to talking soon.

**Katharine Pan**

Principal Shoreline Development Analyst  
Direct: (415) 352-3650 | [katharine.pan@bcdc.ca.gov](mailto:katharine.pan@bcdc.ca.gov)

San Francisco Bay Conservation and Development  
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---

**From:** Ashwin Gulati <[ashwingulati@gmail.com](mailto:ashwingulati@gmail.com)>  
**Date:** Wednesday, November 24, 2021 at 6:27 PM  
**To:** Pan, Katharine@BCDC <[katharine.pan@bcdc.ca.gov](mailto:katharine.pan@bcdc.ca.gov)>  
**Cc:** Plater, Brent@BCDC <[brent.plater@bcdc.ca.gov](mailto:brent.plater@bcdc.ca.gov)>, [rherbst@jhsproperties.net](mailto:rherbst@jhsproperties.net) <[rherbst@jhsproperties.net](mailto:rherbst@jhsproperties.net)>  
**Subject:** Re: BCDC/Solar Farm Richmond

Hi Katharine,

How about 9 am on Friday 12/3.

Bob, does that work for you?

I can send out a zoom link.

Have a great Thanksgiving!

Cheers

Ashwin

On Nov 24, 2021, at 6:08 PM, Pan,  
Katharine@BCDC  
<[katharine.pan@bcdc.ca.gov](mailto:katharine.pan@bcdc.ca.gov)> wrote:

Hi Ashwin,  
It's nice to meet you. It looks like Brent and I  
can be available on Thursday, 12/9 after 1pm  
and Friday, 12/19 anytime. Let us know what  
works for you.

**Katharine Pan**

Principal Shoreline Development Analyst  
Direct: (415) 352-3650 |  
[katharine.pan@bcdc.ca.gov](mailto:katharine.pan@bcdc.ca.gov)

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---

**From:** Ashwin Gulati

<[ashwingulati@gmail.com](mailto:ashwingulati@gmail.com)>

**Date:** Friday, November 19, 2021 at 8:37 AM

**To:** Pan, Katharine@BCDC

<[katharine.pan@bcdc.ca.gov](mailto:katharine.pan@bcdc.ca.gov)>

**Cc:** Plater, Brent@BCDC

<[brent.plater@bcdc.ca.gov](mailto:brent.plater@bcdc.ca.gov)>, [rherbst@jhsproperties.net](mailto:rherbst@jhsproperties.net)<[rherbst@jhsproperties.net](mailto:rherbst@jhsproperties.net)>

**Subject:** BCDC/Solar Farm Richmond

Hi Katharine

I've been referred to you by Wayne Leach of CSW/Stuber-Stroeh Engineering who has been working with you on the BCDC application for Powerplant project in Richmond, CA.

I'm working with the Bob Herbst who is the owner of the Solar Farm above Powerplant project and I believe we had a pre-existing BCDC Application (see attached docs) that was paused due to Powerplant's discussions with BCDC and the City of Richmond.

It's our understanding from communications with Brent that we would need a separate application and we would like to take steps towards re-instituting the application.

As a next step, I would like to suggest we get on a zoom call to make sure we are all on the same page on the process and requirements.

Pease suggest some days/times that work for you and I'll pick one. I'm cc'ing both Bob and Brent to join us if they can.

Best Regards

Ashwin

**From:** [Ashwin Gulati](#)  
**To:** [Plater, Brent@BCDC](#)  
**Cc:** [Pan, Katharine@BCDC](#); [rherbst@jhsproperties.net](#); [Trujillo, Matthew@BCDC](#)  
**Subject:** Re: BCDC/Solar Farm Richmond  
**Date:** Thursday, January 27, 2022 7:16:11 AM

---

Hi Brent,

Thanks for reaching out.

We have been assembling a new team for addressing the BCDC matter and will need a few weeks to respond to your letter.

I will reach out to you in the coming weeks.

thanks much

Ashwin

On Jan 26, 2022, at 11:13 AM, Plater, Brent@BCDC  
<[brent.plater@bcdcc.ca.gov](mailto:brent.plater@bcdcc.ca.gov)> wrote:

Ashwin and Bob,

I'm following up on our December 9, 2021 Zoom meeting where we discussed BCDC's enforcement case ER2017.004 and the public access requirements that must be satisfied to resolve it.

At this meeting we described the Bay Trail access plans that have been in place for this property, and the need to remove the gate that currently prevents the public from accessing the dedicated public access parking spaces at Freethy Blvd.'s cul-de-sac.

BCDC's previous decision to delay enforcement proceedings was based on an expectation of a joint permit application from you and Power Plant Park that included the requisite public access requirements for both projects. Because this joint application is no longer a possibility, we have resumed the enforcement process.

We have tentatively scheduled an enforcement hearing before BCDC's enforcement committee in this matter for June 23, 2022. You can expect to receive a Violation Report detailing the alleged violations of the McAteer Petris Act no later than 60-days prior to the hearing. The Violation Report will also provide instructions for responding to the allegations and presenting your case at the June 23, 2022 hearing.

Feel free to contact me if you have any questions about this process.

Sincerely,

bp

-----  
Brent Plater | Lead Enforcement Attorney  
SF Bay Conservation & Development Commission  
375 Beale St., Suite 510  
San Francisco, CA 94105  
Phone: (415) 352-3628  
Email: [brent.plater@bcdcc.ca.gov](mailto:brent.plater@bcdcc.ca.gov)

---

**From:** Ashwin Gulati <[ashwingulati@gmail.com](mailto:ashwingulati@gmail.com)>  
**Sent:** Monday, November 29, 2021 10:37 AM  
**To:** Pan, Katharine@BCDC <[katharine.pan@bcdcc.ca.gov](mailto:katharine.pan@bcdcc.ca.gov)>  
**Cc:** Plater, Brent@BCDC <[brent.plater@bcdcc.ca.gov](mailto:brent.plater@bcdcc.ca.gov)>; [rherbst@jhsproperties.net](mailto:rherbst@jhsproperties.net)  
**Subject:** Re: BCDC/Solar Farm Richmond

Hi Katharine/Brent,

12/9 2 pm works well with Bob Herbst as well. I've sent you a calendar invite. Here's the zoom link.

Topic: BCDC/Richmond Solar Farm  
Time: Dec 9, 2021 02:00 PM Pacific Time (US and Canada)

Join Zoom Meeting  
<https://us02web.zoom.us/j/85097640462>

Meeting ID: 850 9764 0462  
One tap mobile  
+16699009128,,85097640462# US (San Jose)  
+12532158782,,85097640462# US (Tacoma)

Cheers

Ashwin



On Nov 24, 2021, at 6:35 PM, Pan, Katharine@BCDC  
<[katharine.pan@bcdcc.ca.gov](mailto:katharine.pan@bcdcc.ca.gov)> wrote:

Hi Ashwin, I'm going to be out of the office next week, so the Friday I had suggested is actually the 19<sup>th</sup>. When you settle on a time, please do send out a zoom invite. Thanks, looking forward to talking soon.

**Katharine Pan**

Principal Shoreline Development Analyst

Direct: (415) 352-3650 | [katharine.pan@bcdcc.ca.gov](mailto:katharine.pan@bcdcc.ca.gov)

San Francisco Bay Conservation and Development Commission  
Bay Area Metro Center  
375 Beale Street, Ste. 510  
San Francisco, CA 94105  
Main: (415) 352-3600  
[www.bcdcc.ca.gov](http://www.bcdcc.ca.gov) | [@SFBCDC](https://twitter.com/SFBCDC)

---

**From:** Ashwin Gulati <[ashwingulati@gmail.com](mailto:ashwingulati@gmail.com)>  
**Date:** Wednesday, November 24, 2021 at 6:27 PM  
**To:** Pan, Katharine@BCDC <[katharine.pan@bcdcc.ca.gov](mailto:katharine.pan@bcdcc.ca.gov)>  
**Cc:** Plater, Brent@BCDC <[brent.plater@bcdcc.ca.gov](mailto:brent.plater@bcdcc.ca.gov)>, [rherbst@jhsproperties.net](mailto:rherbst@jhsproperties.net) <[rherbst@jhsproperties.net](mailto:rherbst@jhsproperties.net)>  
**Subject:** Re: BCDC/Solar Farm Richmond

Hi Katharine,

How about 9 am on Friday 12/3.

Bob, does that work for you?

I can send out a zoom link.

Have a great Thanksgiving!

Cheers

Ashwin

On Nov 24, 2021, at 6:08 PM, Pan, Katharine@BCDC  
<[katharine.pan@bcdcc.ca.gov](mailto:katharine.pan@bcdcc.ca.gov)> wrote:

Hi Ashwin,

It's nice to meet you. It looks like Brent and I can be available on Thursday, 12/9 after 1pm and Friday, 12/19 anytime. Let us know what works for you.

**Katharine Pan**

Principal Shoreline Development Analyst

Direct: (415) 352-3650 | [katharine.pan@bcdc.ca.gov](mailto:katharine.pan@bcdc.ca.gov)

San Francisco Bay Conservation and Development

Commission

Bay Area Metro Center

375 Beale Street, Ste. 510

San Francisco, CA 94105

Main: (415) 352-3600

[www.bcdc.ca.gov](http://www.bcdc.ca.gov) | [@SFBCDC](https://twitter.com/SFBCDC)

---

**From:** Ashwin Gulati <[ashwingulati@gmail.com](mailto:ashwingulati@gmail.com)>

**Date:** Friday, November 19, 2021 at 8:37 AM

**To:** Pan, Katharine@BCDC <[katharine.pan@bcdc.ca.gov](mailto:katharine.pan@bcdc.ca.gov)>

**Cc:** Plater, Brent@BCDC <[brent.plater@bcdc.ca.gov](mailto:brent.plater@bcdc.ca.gov)>, [rherbst@jhsproperties.net](mailto:rherbst@jhsproperties.net)<[rherbst@jhsproperties.net](mailto:rherbst@jhsproperties.net)>

**Subject:** BCDC/Solar Farm Richmond

Hi Katharine

I've been referred to you by Wayne Leach of CSW/Stuber-Stroeh Engineering who has been working with you on the BCDC application for Powerplant project in Richmond, CA.

I'm working with the Bob Herbst who is the owner of the Solar Farm above Powerplant project and I believe we had a pre-existing BCDC Application (see attached docs) that was paused due to Powerplant's discussions with BCDC and the City of Richmond.

It's our understanding from communications with Brent that we would need a separate application and we would like to take steps towards re-instituting the application.

As a next step, I would like to suggest we get on a zoom call to make sure we are all on the same page on the process and requirements.

# Exhibit 25

Pease suggest some days/times that work for you and I'll pick one. I'm cc'ing both Bob and Brent to join us if they can.

Best Regards

Ashwin

375 Beale Street, Suite 510, San Francisco, California 94105 tel 415 352 3600 fax 888 348 5190

State of California | Gavin Newsom – Governor | [info@bcdc.ca.gov](mailto:info@bcdc.ca.gov) | [www.bcdc.ca.gov](http://www.bcdc.ca.gov)

June 3, 2022

JHS Properties

Via Email: <[ashwingulati@gmail.com](mailto:ashwingulati@gmail.com)>

ATTN: Ashwin Gulati

WRA

2169-G East Francisco Boulevard

San Rafael, CA 94901

Via Email: <[knecht@wra-ca.com](mailto:knecht@wra-ca.com)>

ATTN: Ellie Knecht

**SUBJECT: JHS Properties Solar Farm Bay Trail Extension; (BCDC Permit Application No. M2019.004.00)**

Dear Ashwin and Ellie:

Thank you for your submission dated May 4, 2022, received in this office on May 4, 2022, of additional information to support the application for a Bay Trail segment at Elmar Court (exact address to be determined), in the City of Richmond, Contra Costa County. Our review of the application has determined that the application is incomplete pending the submittal of the following items:

## 1. Total Project and Site Information

Thank you for confirming that your project would involve the following activities:

### Within the 100-foot shoreline band:

- A. **Proposed Bay Trail Extension.** Construct, use, and maintain in-kind an extension of the Bay Trail along the northwest easement portion of the property. The proposed length of the trail extension is approximately 200 feet. The proposed width of the trail is 18 feet, which includes a 12 foot-wide asphalt path, a three-foot soft edge condition of decomposed granite, and a three-foot soft edge condition of gravel; and
- B. **Landscaping Improvements.** Construct, use, and maintain in-kind 800 square feet of low-maintenance and drought tolerant planting along a portion of the proposed trail extension.

In addition, please provide the street address for the property where the project is proposed.



## 2. Authorization of Representative

In the original application, Joe Shekou, the applicant, authorized Robert Herbst to act as the project representative and bind the applicant in all matters concerning the application. If Ashwin Gulati and/or Ellie Knecht are to replace Robert Herbst as project representatives, please provide a signed acknowledgement from the applicant. This may be in the form of a letter, or a new signed Box 1.a from the BCDC permit application (attached).

## 3. Project Clarifications

Please provide additional information explaining how the project is consistent with San Francisco Bay Plan Public Access Policy 1: "A proposed project should increase public access to the maximum extent feasible...." Note that in a meeting with Ashwin Gulati on December 9, 2021, BCDC staff provided some guidance as to what might constitute maximum feasible public access for this project, considering its location and its relationship to the unpermitted solar farm project and Enforcement Case ER2017.014. Staff's guidance included providing a connection to the proposed trail at the adjacent Power Plant Park property, an extension of the proposed trail along the northwest edge of the property, and a connection to Goodrick Avenue. Please address whether and how this guidance was considered in your response.

## 4. Project Plans

Thank you for providing the site plan in Attachment 1 of your response. However, this site plan does not provide a sufficient level of detail regarding the design of the proposed trail. Please provide a set of project plans showing and labeling the locations and extents all proposed improvements, including the components of the trail and the proposed landscaping. Please provide one full set of project plans, which must include, at minimum, a vicinity map, site plan, property lines, existing and proposed structures or improvements (including elevations and sections if necessary), the shoreline [MHW or 5' ABOVE MSL], any marshes, wetlands or mudflats, the corresponding 100-foot shoreline band line, scale, north arrow, date and the name of the person who prepared the plans. Additional information may be needed on the plans depending upon the scope of the proposed project.

Additionally, note that in the attached letter from BCDC staff John Bowers and Matthew Trujillo to Ivo Keller, dated September 13, 2018, staff provided a description of BCDC's jurisdiction at the property. Please refer to this description for the depiction of BCDC's Bay and shoreline band jurisdictions in your project plans.

## 5. Processing Fee

Per Appendix M of BCDC's Regulations, "total project cost" is defined as: "all expenditures, including the cost for planning, engineering, architectural and other services, made or to be made for designing the project plus the estimated cost of construction of all aspects of the project both inside and outside the Comissions's



jurisdiction." The fee for this permit will be calculated using a percentage of the total project cost of the unpermitted work completed at the project site for development of the solar farm, combined with the total project cost of the proposed Bay Trail extension proposed in this application. Please clarify the total project cost for both projects. Once the fee for the permit has been established, per Appendix M (i) of BCDC Regulation, the fee will be doubled due to an active BCDC enforcement case (ER2017.014).

## 6. Environmental Documentation

Please state whether the project is statutorily or categorically exempt from the need to prepare any environmental documentation, as required under the California Environmental Quality Act (CEQA). If the project is exempt, provide a statement that identifies and supports this statutory or categorical exemption.

Additionally, note that in the original application, the applicant indicated that a government agency other than BCDC, serving as the lead agency, had adopted a negative declaration or certified an environmental impact report or environmental impact statement for the project. Please provide the document referenced.

Until the above-mentioned information is submitted and reviewed for adequacy, your application will be held as incomplete. If you have any questions, please do not hesitate to contact me at 415-352-3650 or [katharine.pan@bcdc.ca.gov](mailto:katharine.pan@bcdc.ca.gov).

Sincerely,

*Katharine Pan*

KATHARINE PAN

Principal Shoreline Development Analyst

Enclosures:

1. BCDC Application Box 1
2. Letter from BCDC to Ivo Keller, "BCDC Staff's Findings Regarding the Applicability of BCDC's Jurisdiction over the JHS Solar Farm Site in Richmond, Contra Costa County," September 13, 2018.

KP/ra

cc: Joe Shekou, <[sapidrood@yahoo.com](mailto:sapidrood@yahoo.com)>

**From:** [Ashwin Gulati](#)  
**To:** [Plater, Brent@BCDC](#)  
**Cc:** [Pan, Katharine@BCDC](#); [rherbst@jhsproperties.net](#); [Ellie Knecht](#); [Geoff Smick](#); [Joe Shekou](#)  
**Subject:** BCDC/Solar Farm Richmond  
**Date:** Wednesday, May 4, 2022 11:09:23 AM  
**Attachments:** [Response to BCDC 050422.pdf](#)

---

Hi Brent

Please find attached response to BCDC's enforcement case ER2017.004.

We look forward to working with your team in bringing this matter to a successful completion.

Best Regards

Ashwin



May 4, 2022

Katharine Pan and Brent Plater  
San Francisco Bay Conservation and Development Commission  
375 Beale Street, Suite 510  
San Francisco CA 94105

**RE: JHS Properties Solar Farm Bay Trail Extension (BCDC Permit Application No. 20019.004.00 and Enforcement Case ER2017.004); Response to Request for Additional Information**

Dear Katharine and Brent:

This letter responds to BCDC's request for more information dated March 18, 2019 regarding a pending BCDC application for a proposed Bay Trail extension located at Elmar Court, in the City of Richmond, Contra Costa County (20019.004.00 and ER2017.004). The application process has been on hold based on the expectation that a joint permit application would be submitted with the adjacent development. Because a joint application is no longer possible, JHS Properties (the applicant) is seeking BCDC authorization for the portion of the Bay Trail extension in front of their existing solar facility.

This letter provides the additional information requested by BCDC in the 2019 letter (Items 1 – 12). This letter also addresses BCDC's request made by email on January 26, 2022 to remove the gate at the entrance to Elmar Court.

### **Gate at Elmar Court**

The applicant has informed the City of Richmond that they will open the gate at the entrance to Elmar Court upon the City's written request (which hasn't been received yet). The applicant proposes to open the gate from sunrise to sunset. However, please note that the applicant has severe concerns over illegal dumping, homeless encampments, vandalism, and theft affecting the solar farm and ongoing cannabis construction. Furthermore, the City of Richmond has not maintained Elmar Court and Freethy Boulevard for over 25 years, so the roadway does not comply with current City safety standards for usability. For these reasons, the applicant proposes keeping the gate closed after sunset.

### **Item #1. Total Project and Site Information**

BCDC Item 1: From reviewing your application, it appears that the proposed project occurs within the Commission's 100-foot shoreline band jurisdiction:

Within 100-foot shoreline band:

- A. Proposed Bay Trail Extension. Construct, use, and maintain in-kind an extension of the Bay Trail along the northwest easement portion of the property. The proposed length of the trail extension is approximately 200 feet. The proposed width of the trail is 18 feet, which includes a 12 foot-wide asphalt path; a three-foot soft edge condition of decomposed granite; and a three-foot soft edge condition of gravel; and
- B. Landscaping Improvements. Construct, use, and maintain in-kind 800 square feet of low-maintenance and drought tolerant planting along a portion of the proposed trail extension.

Please verify whether the proposed project has been described accurately and in full; if not, please provide any missing or corrected details.

Response to Item #1: Yes, the project as described above is accurate. Please note that if the trail elevation is raised for sea level rise considerations, some grading beyond the trail footprint may be required (see Item 5 for additional discussion regarding sea level rise).

## **Item #2. Public Access and Open Space Exhibit**

BCDC Item #2: Please submit a revised public access and open space exhibit that accurately describes areas to be provided as public access, open space, and view corridors. If the Commission approves this project, the exhibit would be used to illustrate the public access areas required by the permit. Therefore, we may have additional comments on the design and presentation of the exhibit to ensure that it clearly and accurately depicts the public access areas and improvements provided as part of the project. Please consider the following in preparing your revised exhibit:

- A. The exhibit should clearly depict property boundaries in relation to the edge of the Commission's shoreline band jurisdiction;
- B. Labels, hatching, a legend, or call-out boxes are often helpful to depict important dimensions of public access facilities (e.g., the width of the Bay Trail, or the area of a lawn) and the location and/or quantity of particular improvements (e.g., site furnishings); and
- C. Please also ensure that if the exhibit is in color that it is legible when reproduced in black and white.

Response to Item #2: The applicant proposes to provide the area containing the 200-foot long trail extension and extending between the northwestern JHS property line and the existing fence for public access. This area is shown on the site plan provided in the original application, and attached here for reference with additional notations (Attachment 1). A separate exhibit will be provided under a separate cover that shows this area, including acreage, in more detail. No dedicated view corridors are proposed.

## **Item #3. Bay Trail Project Details**

BCDC Item #3: Please clarify how the San Francisco Bay Trail Design Guidelines and Toolkit were used in refining the design for the proposed Bay Trail extension.

Response to Item #3: The Bay Trail Design Guidelines and Toolkit recommend that the Bay Trail and its clear space should consist of a minimum 18-foot width. The proposed design for the Bay Trail extension at this location adheres to this standard.

## Item #4. Bay Trail Maintenance Plan

BCDC Item #4: Please provide a maintenance plan that clarifies the roles and responsibilities with this proposed Bay Trail extension in relation to the adjacent property owners scope of work.

Response to Item #4: JHS properties will maintain long-term ownership and maintenance responsibility over the portion of the Bay Trail extension proposed in front of the solar facility.

## Item #5. Sea Level rise

BCDC Item #5: The Bay Plan requires that any public access provided as a condition of development for a BCDC permit should either be required to remain viable in the event of future sea level rise or flooding, or equivalent access consistent with the project should be provided nearby. Please indicate if any areas within the project site are now, or will be in the future given anticipated sea level rise, at risk of flooding. This discussion should be based on the results of a sea level rise risk assessment if one has been prepared for the proposed project. The Bay Plan's Climate Change policies state that a risk assessment should be based on the estimated 100-year flood elevation that takes into account the best estimates of future sea level rise and current flood projection and planned flood protection that will be funded and constructed when needed to provide protection for the proposed project. A range of sea level rise for mid-century and end of century based on the best scientific data available, found in the State of California's Sea Level Rise Guidance (updated 2018), should be used in the risk assessment. The risk assessment would identify all types of potential flooding, degrees of uncertainty, consequences of defense failure, and risks to existing habitat from proposed flood protection devices, if applicable.

Response to Item #5: The applicant understands that the current ground elevations at the proposed trail location are around 10 feet NAVD88, which are generally above present-day 100-year tide elevations (9.57 feet NAVD88) and the location may be subject to flooding by mid-century during extreme tides (see Table 1). The 100-year tide plus 2050 sea level rise (1.9 feet) may be up to 11.47 feet NAVD88. This does not take into account other effects on the future still water elevations at the site including wave runup or land subsidence. Given the portion of Bay Trail extension in front of the solar facility will only be accessed via the Bay Trail that will be provided on the adjacent development, the applicant proposes that the portion of Bay Trail in front of the solar facility be built to the same elevation as the adjacent development. If a design elevation has been identified and approved for the adjacent development, please let us know what that is so the applicant can determine if it could be applied to this property.

Table 1. Tidal and Sea Level Rise Elevations

	Approximate Elevation (feet NAVD88)
Typical current ground elevation where trail is proposed <sup>1</sup>	10
MHW <sup>2</sup>	5.64
100-year tide elevation <sup>2</sup>	9.57
MHW + 2050 sea level rise (1.9 feet) <sup>3</sup>	7.54
100-year flood elevation + 2050 sea level rise (1.9 feet) <sup>3</sup>	11.47

<sup>1</sup>Elevation is approximate based on available LIDAR.

<sup>2</sup>Point ID 445, Source: AECOM. 2016. San Francisco Bay Tidal Datums and Extreme Tides Study. FEMA and BCDC.

<sup>3</sup>Medium - High Risk Aversion / High Emissions Scenario, Source: California Ocean Protection Council. 2018. "State of California Sea-Level Rise Guidance 2018 Update."



## **Item #6. Photographs**

BCDC Item #6: Please submit photographs of the project site that illustrate views to the Bay from: (1) the project site and (2) nearby roads or public access areas.

Response to Item #6: Photographs are provided in Attachment 2.

## **Item #7. Proof of Adequate Property Interest**

BCDC Item #7: Please submit documentation, such as a copy of a grant deed or lease which demonstrates that the applicant has adequate legal interest in the property, or a letter which authorizes the applicant to act on behalf of the property owner for all matters pertaining to this permit.

Response to Item #7: Property reports are provided in Attachment 3.

## **Item #8. Other Government Approvals**

BCDC Item #8: Please provide a copy of the water quality certification or waiver thereof from the San Francisco Bay Regional Water Quality Control Board when it is available. If applicable to the proposed project, we will also need to receive project approval(s) from the Department of Toxic Substances Control, and all "take" authorizations from the state and federal resource agencies. Our regulations prohibit us from filing an application prior to receiving this documentation.

Response to Item #8: The project will be constructed in uplands, thus avoiding areas potentially subject to RWQCB jurisdiction. No approvals from DTSC are required. The project will be implemented in a manner that minimizes effects to state and federally protected wildlife species, and no "take" is anticipated.

## **Item #9. Environmental Documentation**

BCDC Item #9: Please clarify that the environmental documentation under this scope of work, 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 has been provided.

Response to Item #9: The City of Richmond issued a building permit for the solar facility and shoreline trail on September 29, 2014. Issuance of the building permit relied on a Notice of Exemption for the solar facility under CEQA. The Notice of Exemption was prepared by the City of Richmond and filed with the State Clearinghouse on October 10, 2014. The Notice of Exemption, building permit, and permit plans (showing the shoreline trail) are included in Attachment 4.

## **Item #10. Local Government Approval**

BCDC Item #10: Please verify that the relevant submitted documentation under this scope of work clearly indicates that all the local government discretionary approvals have been received for the project.

Response to Item #10: No local discretionary approvals are required for the Bay Trail extension in front of the solar facility.

## **Item #11. Processing Fee**

BCDC Item #11: Per Appendix M of BCDC Regulations, "total project cost" is defined as: "all expenditures, including the cost for planning, engineering, architectural and other services, made or to be made for designing the project plus the estimated cost of construction of all aspects of the project both inside and outside the Commission's jurisdiction". The fee for this permit will be calculated using a percentage of the total project cost of the unpermitted work completed in 2014, combined with the total project cost of the proposed Bay Trail extension proposed in this application. Please clarify the total project cost for both projects. Once the fee for the permit has been established, per Appendix M (i) of BCDC Regulation, the fee will be doubled due to an active BCDC enforcement case (ER2017.014).

Response to Item #11: The applicant disagrees that unpermitted work has been performed on the property. The applicant states that the City of Richmond issued a building permit for the work, in reliance upon the BCDC Claim of Exemption issued in 1977 for the property, and the solar portion of the project was constructed in 2017. The City allowed the trail portion to be deferred pending further development of Freethy Industrial Park, for reasons of safety and security (there have been major historical vandalism and homeless problems at the property, which is remote). BCDC subsequently has contested the validity of the 1977 Claim of Exemption for the solar farm project, a position with which applicant disagrees. To resolve the matter, the applicant agreed to seek BCDC approval for the trail, which the applicant did on Feb. 13, 2019. With that application, the applicant reserved the right to contest BCDC's jurisdiction over the property (Attachment 5). The applicant has not agreed to pay any penalty fees or fees for the solar work, but is willing to pay fees for the trail work based on the provided estimated cost of \$45,000.

## **Item #12. Public Notice**

BCDC Item #12: Please find enclosed the completed "Notice of Application" which the Commission's regulations require to be posted at or near the project site in a prominent location before a permit application can be filed. 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.

Response to Item 12: The public notice has been posted at the project site in a prominent location. The form verifying posting is enclosed (Attachment 6).

Should you have any questions or need additional information, please let us know.

Sincerely,

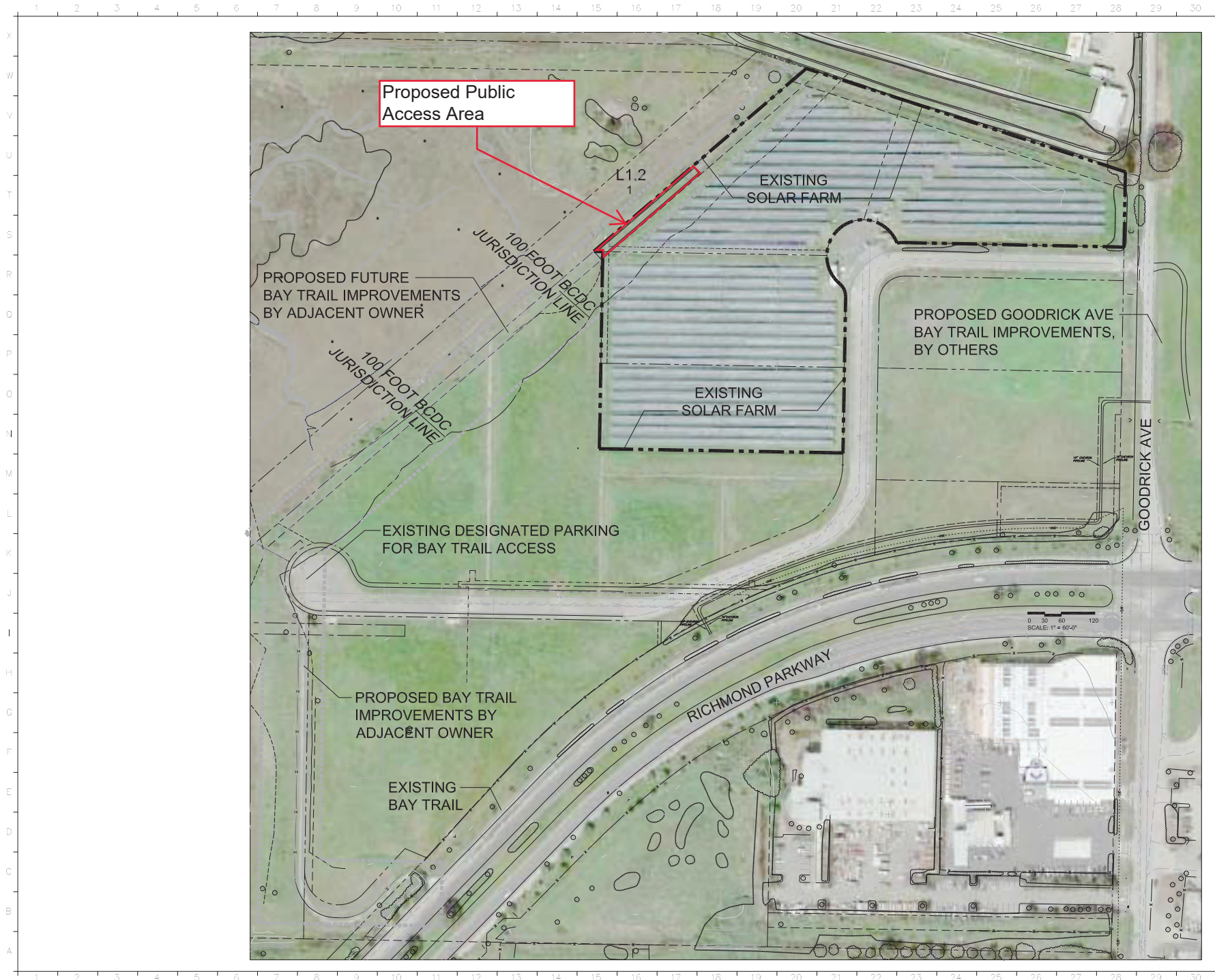
Ashwin Gulati, JHS Properties  
ashwingulati@gmail.com

Ellie Knecht, WRA  
knecht@wra-ca.com

**Attachments:**

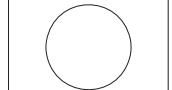
1. Site Plan from Original Permit Application
2. Site Photographs
3. Property Report
4. Notice of Exemption, Building Permit, and Permit Plans
5. JHS Letter Dated February 13, 2019
6. Form Verifying Posting of Public Notice

## **Attachment 1. Site Plan From Original Permit Application**



REVISION	DESCRIPTION	DATE

ISSUED FOR PROGRESS REVIEW	2/8/2019
ISSUED FOR PLANNING REVIEW	
ISSUED FOR PERMIT	
ISSUED FOR BID	
ISSUED FOR CONSTRUCTION	



PROJECT:	SHEKOU PROPERTY BAY TRAIL IMPROVEMENTS
----------	--

PROJECT TITLE:	8.5" x 11" PROJECT SITE PLAN
----------------	------------------------------

PREPARED BY:	
DESIGNED BY:	
PROJECT MANAGER:	
PEER REVIEW:	
SHEET NUMBER:	

L2.1



## **Attachment 2. Site Photographs**



Photo 1. View of the proposed Bay Trail location. Photo taken April 24, 2022.



Photo 2. View of the Bay from the proposed Bay Trail location. Photo taken April 24, 2022.



Photo 3. View from the proposed Bay Trail location from the Freethy Blvd cul-de-sac. Photo taken April 24, 2022.

## **Attachment 3. Property Report**



PARCELQUEST LITE

County - Gus Kramer, Assessor

# FULL PROPERTY DETAIL REPORT

Property Address:**FREETHY BLVD RICHMOND CA 94801**Parcel # (APN):**408-220-006-6**

## General Information

Parcel # (APN): **408-220-006-6**Owner: **SHEKOU JOE & HEIDI**Mailing Address: **2167 FRANCISCO BLVD E #A  
SAN RAFAEL CA 94901-5509**Legal Description: **T05754AL0006 B**

## Assessment

Total Value: **\$849,622**Land: **\$849,622**

Structures:

Other:

% Improved: **0%**

Exempt Amt:

HO Exempt: **N**Tax Rate Area: **008-120**

Census Tract:

Price/SqFt:

Year Assd: **2021**

Zoning:

Use Code: **50**Use Type: **VACANT**

## Sale History

	Sale 1	Sale 2	Sale 3	Transfer
Document Date:	<b>05/31/2000</b>			<b>05/31/2000</b>
Document Number:	<b>110331</b>			<b>110331</b>
Document Type:				
Transfer Amount:	<b>\$3,488,000</b>			
Seller (Grantor):				

## Property Characteristics

Bedrooms:	Fireplace:	Units:
Baths (Full):	A/C:	Stories:
Baths (Half):	Heating:	Quality:
Total Rooms:	Pool:	Building Class:
Bldg/Liv Area:	Park Type:	Condition:
Lot Acres: <b>2.323</b>	Spaces:	Site Influence:
Lot SqFt: <b>101,190</b>	Garage SqFt:	Timber Preserve:
Year Built:		Ag Preserve:
Effective Year:		





PARCELQUEST LITE

County - Gus Kramer, Assessor

# FULL PROPERTY DETAIL REPORT

Property Address:**FREETHY BLVD RICHMOND CA 94801**Parcel # (APN):**408-220-007-4**

## General Information

Parcel # (APN): **408-220-007-4**Owner: **SHEKOU JOE & HEIDI**Mailing Address: **2167A FRANCISCO BLVD E  
SAN RAFAEL CA 94901-5509**Legal Description: **T05754AL0007 B**

## Assessment

Total Value: **\$656,186**Land: **\$656,186**

Structures:

Other:

% Improved: **0%**

Exempt Amt:

HO Exempt: **N**Tax Rate Area: **008-120**

Census Tract:

Price/SqFt:

Year Assd: **2021**

Zoning:

Use Code: **50**Use Type: **VACANT**

## Sale History

	<b>Sale 1</b>	<b>Sale 2</b>	<b>Sale 3</b>	<b>Transfer</b>
Document Date:	<b>04/12/2016</b>	<b>05/31/2000</b>		<b>04/12/2016</b>
Document Number:	<b>65963</b>	<b>110332</b>		<b>65963</b>
Document Type:				
Transfer Amount:	<b>\$600,000</b>	<b>\$2,512,500</b>		
Seller (Grantor):				

## Property Characteristics

Bedrooms:	Fireplace:	Units:
Baths (Full):	A/C:	Stories:
Baths (Half):	Heating:	Quality:
Total Rooms:	Pool:	Building Class:
Bldg/Liv Area:	Park Type:	Condition:
Lot Acres: <b>1.968</b>	Spaces:	Site Influence:
Lot SqFt: <b>85,726</b>	Garage SqFt:	Timber Preserve:
Year Built:		Ag Preserve:
Effective Year:		

## **Attachment 4. Notice of Exemption, Building Permit, and Permit Plans**

## Notice of Exemption

2014108139

Appendix E

To: Office of Planning and Research  
P.O. Box 3044, Room 113  
Sacramento, CA 95812-3044

County Clerk  
County of: Contra Costa  
P.O. Box 350  
Martinez, CA 94553

From: (Public Agency): City of Richmond  
Planning and Building, 450 Civic Center Plaza  
Richmond, CA 94804

(Address)

Project Title: Freethy Industrial Park Solar Photovoltaic System (Freethy Solar Project)

Project Applicant: Joe & Heidi Shekou and Richmond Development Company LLC

Project Location - Specific:  
The northwest corner of Richmond Parkway and Goodrick Avenue in the City of Richmond, CA.

Project Location - City: Richmond

Project Location - County: Contra Costa

## Description of Nature, Purpose and Beneficiaries of Project:

Install 2 megawatt ground mount photovoltaic solar system on approximately 6 acres of level land at Freethy Industrial Park. The electricity generated by the project will be sold to Marin Clean Energy, pursuant to a long term power purchase agreement.

Name of Public Agency Approving Project: City of Richmond, Department of Planning and Building

Name of Person or Agency Carrying Out Project: Joe & Heidi Shekou, Richmond Development Co. LLC

## Exempt Status: (check one):

- ☒ Ministerial (Sec. 21080(b)(1); 15266);  
☐ Declared Emergency (Sec. 21080(b)(3); 15269(a));  
☐ Emergency Project (Sec. 21080(b)(4); 15269(b)(c));  
☐ Categorical Exemption. State type and section number: \_\_\_\_\_  
☐ Statutory Exemptions. State code number: \_\_\_\_\_

## Reasons why project is exempt:

The Freethy Solar Project qualifies for ministerial and non-discretionary review and approval pursuant to Health and Safety Code 17501.1(a), Government Code 65850.5(b) and City Resolution 56-14 (adopted June 17, 2014). The only approval required for the Freethy Solar Project is a building permit which is ministerial decision and pursuant to the above laws, is exempt from CEQA review.

Lead Agency  
Contact Person: Angelina Almarinez

Area Code/Telephone/Extension: 510-621-1285

## If filed by applicant:

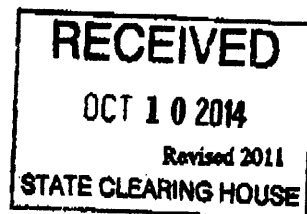
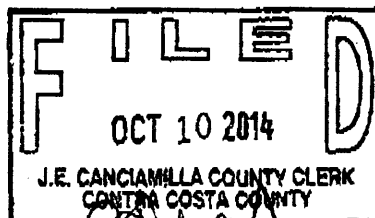
1. Attach certified document of exemption finding.  
2. Has a Notice of Exemption been filed by the public agency approving the project? ☐ Yes ☐ No

Signature: Robert A. Albert Date: 10/9/14 Title: Project Manager

☐ Signed by Lead Agency ☒ Signed by Applicant

Authority cited: Sections 21080 and 21110, Public Resources Code.  
Reference: Sections 21108, 21152, and 21152.1, Public Resources Code.

Date Received for filing at CPR: OCT 10 2014



**BUILDING REGULATIONS****CITY OF RICHMOND**

450 Civic Center Plaza  
 Richmond, CA 94804  
 Phone : (510) 620-6868  
 Fax : (510) 621-1239

**PERMIT # B14-08040**

Job Site Address:

Permit Technician: AA

**FREETHY BLVD**

Parcel APN: 408220006	Today's Date: 09/29/2014
Permit: <b>B14-08040</b>	Date Applied: 08/29/2014
Type of Permit: <b>ELC COMMERCIAL</b>	Date Issued: 09/29/2014

PROPERTY OWNER: SHEKOU JOE & HEIDI  
 Street Address: 2167 E FRANCISCO BLVD #A  
 City/St/Zip: SAN RAFAEL, CA 94901  
 Owner Phone: (415) 472-7700

CONTRACTOR: TBD

Street Address:

City/St/Zip:

Daytime Phone:

Business License:

Exp:

Description of Work: INSTALL GROUND MOUNT SOLAR PV SYSTEM-

Permit Fee Details:

TOTAL VALUATION: \$ 1,500,000.00

TOTAL FEES: \$ 1,820.00

**Owner Builder Declaration:**

I hereby affirm under penalty of perjury that I am exempt from the Contractors' License Law for the following reason (Section 7031.5, Business and Profession Code states that any City or County which requires a permit to construct, alter, improve, demolish, or repair any structure prior to its issuance also requires the applicant for such permit to file a signed statement that he or she is a license pursuant to the provisions of the Contractor's License Law (Chapter 9 commencing with section 7000 of Division 3 of the Business and Profession Code) or that he or she is exempt from licensure and the basis for the alleged exemption. Any violation of section 7031.5 by any applicant for a permit subjects the applicant to a civil penalty of not more than (\$500).)

I, as owner of the property, or my employees with wages as their sole compensation, will do the work, and the structure is not intended or offered for sale. (Section 7044 Business and Professions Code: The Contractors' State License Law does not apply to the owner of the property who builds or improves their own, and who does such work himself or herself or through his or her own employees, provided that such improvements are not intended or offered for sale. If, however, the building or improvement is sold within one year of completion, the Owner Builder will have the burden of proving that he she did not build or improve for the purpose of sale.)

I, as owner of the property, and exclusively contracting with licensed contractors to construct the project (Section 7044, Business and Professions and Codes states that the current Contractors' State License Law does not apply to an owner of property who builds or improves as thereon, and who contracts for such projects with a licensed Contractor pursuant to the Contractors' License Law).

I am exempt under section \_\_\_\_\_ Business and Professions Code for this reason \_\_\_\_\_

Applicant \_\_\_\_\_ Date: \_\_\_\_\_

**Workers Compensation Declaration:**

I hereby affirm under penalty of perjury one of the following declarations: I have and will maintain a certificate of consent to self insure for workers compensation, as provided for by (Section 3700) of the Labor Code, for the performance of the work for which this permit is issued.

I have and will maintain Workers Compensation insurance, as required by Section 3700 of the Labor Code, for the performance of the work for which this permit is issued, my workers compensation carrier and policy numbers are:

Carrier: \_\_\_\_\_ Policy# \_\_\_\_\_ Expires \_\_\_\_\_

I certify that in the performance of the work for which this permit is issued, I shall not employ any person in a manner so as to become subject to the workers compensation laws of California, and agree that if I should become subject to the workers compensation provisions of section 3700 of the labor code, and I shall forthwith comply with these provisions.

Date: \_\_\_\_\_ Applicant: \_\_\_\_\_

Warning: Failure to secure workers compensation coverage is unlawful, and shall subject an employer to criminal penalties and civil fines of up to \$1000 in addition to the cost of compensation, damages as provided for in section 3706 of the labor code, interest and attorneys fees.

I certify that I have read this application and state that the above information is correct. I agree to comply with all City ordinances and other laws relating to this permit and hereby authorize representatives of the City of Richmond to enter upon the above mentioned property for inspection purposes. This permit will expire on **3/28/2015 12:00:00AM** unless revoked, renewed or extended by the Building Official.

Customer No:

Signature of applicant or agent

Date 9/29/14

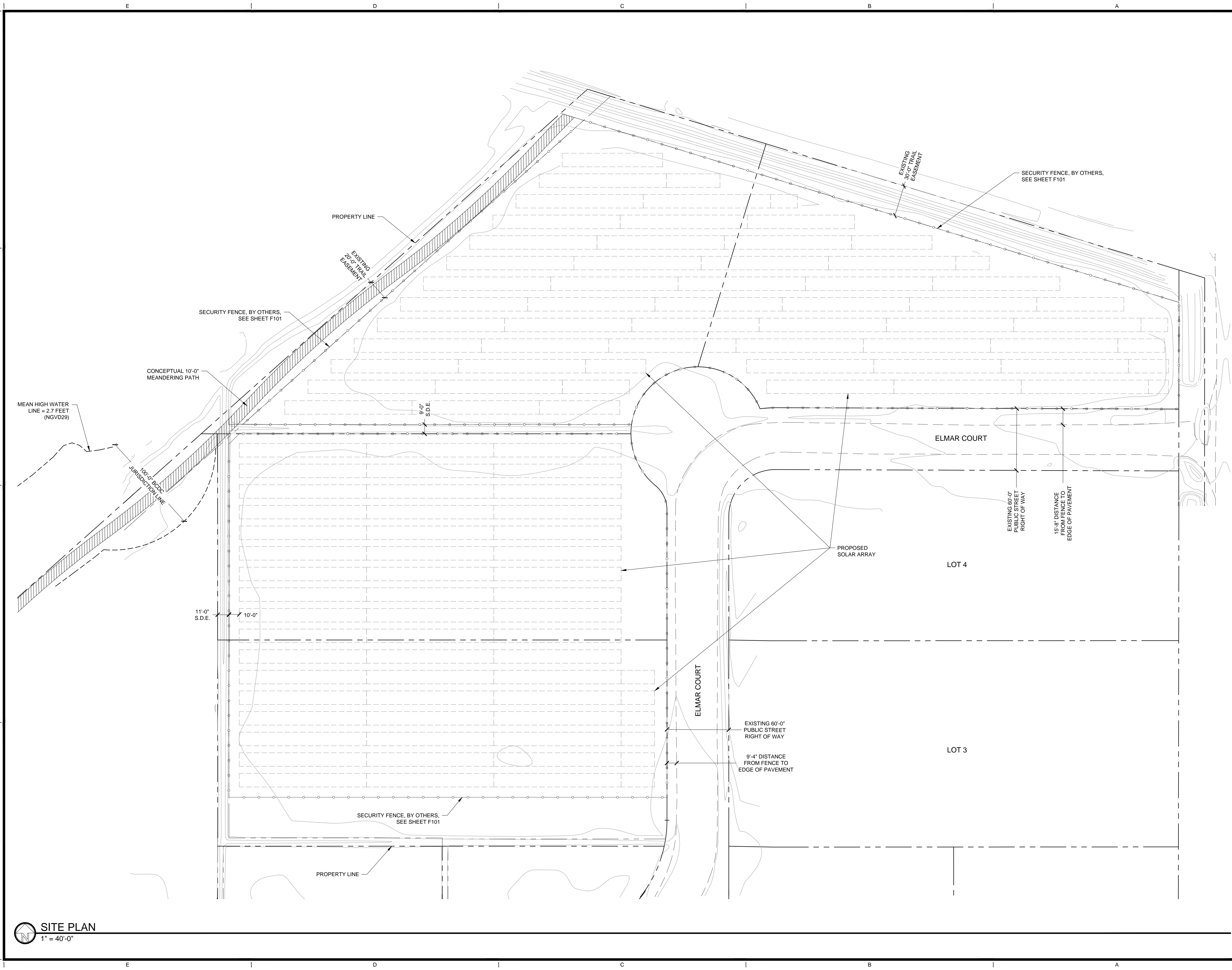
Building Dept. by

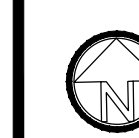
Date 9/29/14

**PAID**

SEP 29 2014

CITY OF RICHMOND  
FINANCE DEPARTMENT



 **SITE PLAN**  
1" = 40'-0"

# SnapRack™

**PV Mounting Systems**

MANUFACTURER

**SNAPNRACK, INC.**  
775 FIERO LANE, SUITE 200  
SAN LUIS OBISPO, CA 93401  
PH (877) 732-2860

THE INFORMATION IN THIS DRAWING IS CONFIDENTIAL AND PROPRIETARY. ANY REPRODUCTION, DISCLOSURE, OR USE THEREOF IS PROHIBITED WITHOUT THE WRITTEN CONSENT OF SNAPNRACK, INC.

STRUCTURAL/CIVIL ENGINEER  
**ENGINEERED POWER SOLUTIONS**  
1405 SPRING STREET, SUITE 204  
PASO ROBLES, CA 93446  
CONTACT: MATTHEW B. GILLIS, P.E.  
PH: (805) 423-1326



FOR STRUCTURAL ELEMENTS ONLY  
See "Structural Documentation Packet" for Additional Info.

CLIENT

**RUSSELL PACIFIC**  
320 SUNSET WAY  
MUIR BEACH, CA 94965

PROJECT

**FREETHY INDUSTRIAL PARK**  
NORTHWEST CORNER  
GOODRICK AVE  
RICHMOND PARKWAY, CA 94801  
APN 408-220-06, 07, 35, 36, 37, 38

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REV	DATE	DESCRIPTION
DATE	08/20/2014	
PROJECT NUMBER	RUS1-RUSP4801	
APPLICATIONS ENGINEER	DEON TODD	
STRUCTURAL ENGINEER	STRUCTURAL ENGINEER	
PROJECT MANAGER	PM	
DESIGN ENGINEER	DESIGN ENGINEER	
CHECKED BY		

## PERMIT SET

SHEET TITLE

SITE PLAN

SHEET NUMBER

S001



SNAPNRACK, INC.

775 FIERO LANE, SUITE 200  
SAN LUIS OBISPO, CA 93401  
PH (877) 732-2860

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STRUCTURAL/CIVIL ENGINEER

ENGINEERED POWER  
SOLUTIONS

1405 SPRING STREET, SUITE 204  
PASO ROBLES, CA 93446  
CONTACT: MATTHEW B. GILLIS, P.E.  
PH: (805) 423-1326



FOR STRUCTURAL  
ELEMENTS ONLY  
See "Structural Documentation  
Packet" for Additional Info.

CLIENT

RUSSELL PACIFIC

320 SUNSET WAY  
MUIR BEACH, CA 94965

PROJECT

FREETHY  
INDUSTRIAL PARK

NORTHWEST CORNER  
GOODRICK AVE  
RICHMOND PARKWAY, CA 94801

APN 408-220-06, 07, 35, 36, 37, 38

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REV	DATE	DESCRIPTION
DATE	08/20/2014	
PROJECT NUMBER	RUS1-RUSP4801	
APPLICATIONS ENGINEER	DEON TODD	
STRUCTURAL ENGINEER	STRUCTURAL ENGINEER	
PROJECT MANAGER	PM	
DESIGN ENGINEER	DESIGN ENGINEER	
CHECKED BY		

PERMIT SET

SHEET TITLE

STRUCTURAL LAYOUT

SHEET NUMBER

S101

NOTES

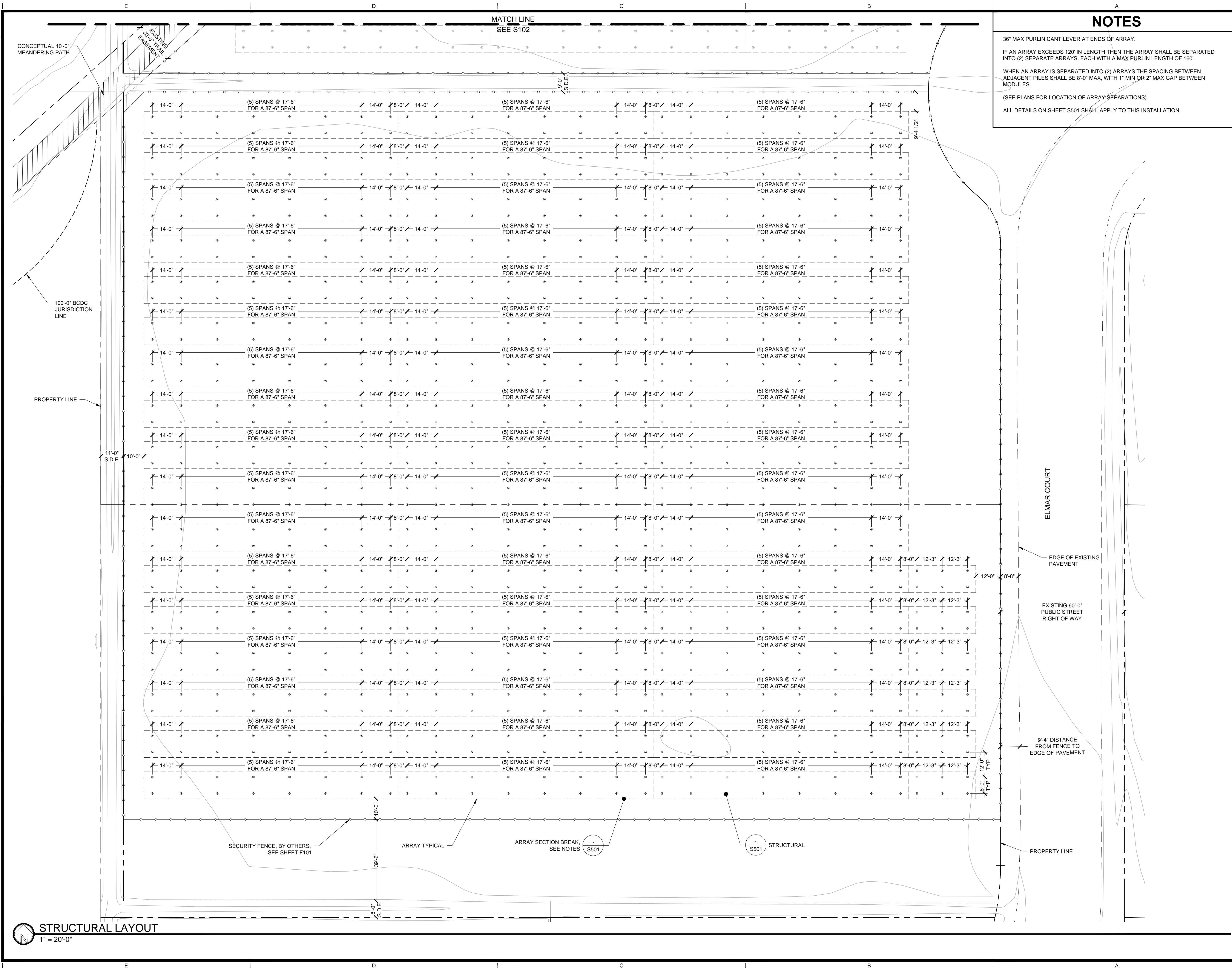
36" MAX PURLIN CANTILEVER AT ENDS OF ARRAY.

IF AN ARRAY EXCEEDS 120' IN LENGTH THEN THE ARRAY SHALL BE SEPARATED  
INTO (2) SEPARATE ARRAYS, EACH WITH A MAX PURLIN LENGTH OF 160'.

WHEN AN ARRAY IS SEPARATED INTO (2) ARRAYS THE SPACING BETWEEN  
ADJACENT PILES SHALL BE 8'-0" MAX, WITH 1" MIN OR 2" MAX GAP BETWEEN  
MODULES.

(SEE PLANS FOR LOCATION OF ARRAY SEPARATIONS)

ALL DETAILS ON SHEET S501 SHALL APPLY TO THIS INSTALLATION.





SNAPNRACK, INC.

775 FIERO LANE, SUITE 200  
SAN LUIS OBISPO, CA 93401  
PH (877) 732-2860

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STRUCTURAL/CIVIL ENGINEER

ENGINEERED POWER  
SOLUTIONS

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PASO ROBLES, CA 93446  
CONTACT: MATTHEW B. GILLIS, P.E.  
PH: (805) 423-1326



FOR STRUCTURAL  
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See "Structural Documentation  
Packet" for Additional Info.

CLIENT

RUSSELL PACIFIC

320 SUNSET WAY  
MUIR BEACH, CA 94965

PROJECT

FREETHY  
INDUSTRIAL PARK

NORTHWEST CORNER  
GOODRICK AVE  
RICHMOND PARKWAY, CA 94801

APN 408-220-06, 07, 35, 36, 37, 38

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PROJECT NUMBER	RUS1-RUP4801	
APPLICATIONS ENGINEER	DEON TODD	
STRUCTURAL ENGINEER	STRUCTURAL ENGINEER	
PROJECT MANAGER	PM	
DESIGN ENGINEER	DESIGN ENGINEER	
CHECKED BY		

PERMIT SET

SHEET TITLE

STRUCTURAL LAYOUT

SHEET NUMBER

S102

NOTES

36" MAX PURLIN CANTILEVER AT ENDS OF ARRAY.

IF AN ARRAY EXCEEDS 120' IN LENGTH THEN THE ARRAY SHALL BE SEPARATED  
INTO (2) SEPARATE ARRAYS, EACH WITH A MAX PURLIN LENGTH OF 160'.

WHEN AN ARRAY IS SEPARATED INTO (2) ARRAYS THE SPACING BETWEEN  
ADJACENT PILES SHALL BE 8'-0" MAX, WITH 1" MIN OR 2" MAX GAP BETWEEN  
MODULES.

(SEE PLANS FOR LOCATION OF ARRAY SEPARATIONS)

ALL DETAILS ON SHEET S501 SHALL APPLY TO THIS INSTALLATION.





SNAPNRACK, INC.

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SAN LUIS OBISPO, CA 93401  
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STRUCTURAL/CIVIL ENGINEER

ENGINEERED POWER  
SOLUTIONS

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PASO ROBLES, CA 93446  
CONTACT: MATTHEW B. GILLIS, P.E.  
PH: (805) 423-1326



FOR STRUCTURAL  
ELEMENTS ONLY  
See "Structural Documentation  
Packet" for Additional Info.

CLIENT

RUSSELL PACIFIC

320 SUNSET WAY  
MUIR BEACH, CA 94965

PROJECT

FREETHY  
INDUSTRIAL PARK

NORTHWEST CORNER  
GOODRICK AVE  
RICHMOND PARKWAY, CA 94801  
APN 408-220-06, 07, 35, 36, 37, 38

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REV	DATE	DESCRIPTION
DATE	08/20/2014	
PROJECT NUMBER	RUS1-RUSP4801	
APPLICATIONS ENGINEER	DEON TODD	
STRUCTURAL ENGINEER	STRUCTURAL ENGINEER	
PROJECT MANAGER	PM	
DESIGN ENGINEER	DESIGN ENGINEER	
CHECKED BY		

PERMIT SET

SHEET TITLE

STRUCTURAL LAYOUT

SHEET NUMBER

S103

NOTES

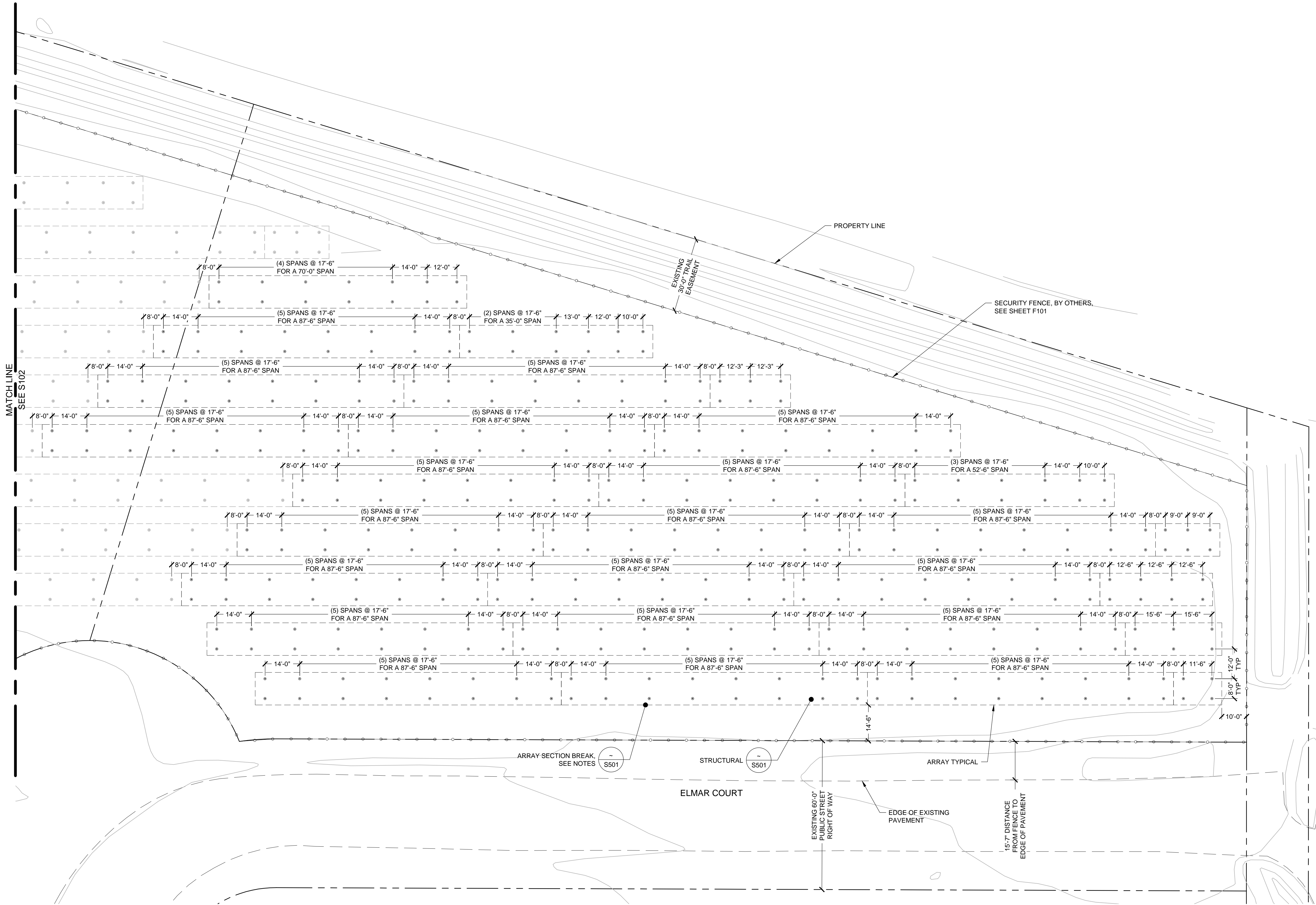
36" MAX PURLIN CANTILEVER AT ENDS OF ARRAY.

IF AN ARRAY EXCEEDS 120' IN LENGTH THEN THE ARRAY SHALL BE SEPARATED  
INTO (2) SEPARATE ARRAYS, EACH WITH A MAX PURLIN LENGTH OF 160'.

WHEN AN ARRAY IS SEPARATED INTO (2) ARRAYS THE SPACING BETWEEN  
ADJACENT PILES SHALL BE 8'-0" MAX, WITH 1" MIN OR 2" MAX GAP BETWEEN  
MODULES.

(SEE PLANS FOR LOCATION OF ARRAY SEPARATIONS)

ALL DETAILS ON SHEET S501 SHALL APPLY TO THIS INSTALLATION.





NOTES

**SERIES 350: 18 DEGREE TILT**  
DEVELOPED AS AN EFFICIENT MOUNTING STRUCTURE FOR LARGE SCALE GROUND MOUNT INSTALLATIONS. THE SYSTEM IS BASED ON A STEEL SUB-STRUCTURE MANUFACTURED FROM READILY AVAILABLE STEEL ROLL FORMS AND MODULE MOUNTING RAILS TO ACCOMMODATE 0-35 DEGREE TILT SYSTEMS. DETAILED SPECIFICATIONS FOR PURLIN SPANS AND PIER DEPTHS ARE AVAILABLE IN THE STRUCTURAL ENGINEERING PACKET FOR THE SYSTEM. MULTIPLE FOUNDATION OPTIONS MAKE SERIES 350 ADAPTABLE TO VIRTUALLY ANY INSTALLATION SITE AND CONFIGURATION. ARRAYS FOLLOW CONTOURS OF THE SITE (NORTH TO SOUTH & EAST TO WEST)

**POST TOLERANCES:**  
EAST/WEST DIRECTION IS 3" OR ±2" AT TOP OF POST. NORTH/SOUTH DIRECTION IS 1" OR ±1" AT TOP OF POST. TWISTING IS 1" OR ±1/8" AT TOP OF POST.

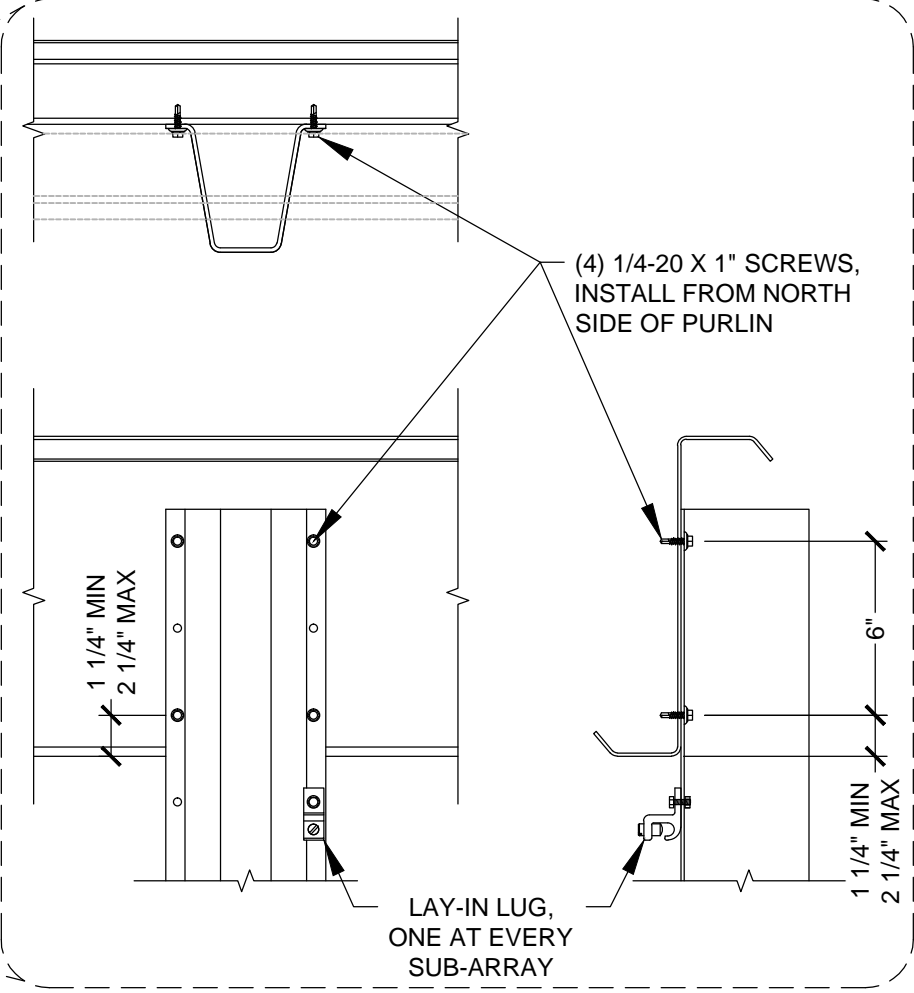
**PURLIN TO POST:**  
(4) 1/4-20 X 1" BI-METAL W/ CARBON STEEL TIP, SS SELF-DRILLING SCREWS SHALL BE USED AT PURLIN TO POST. TORQUE SCREW TO 5 FT-LBS. SCREWS SHALL ALIGN AND BE INSTALLED THRU PRE-PUNCHED HOLES IN POST.

**PURLIN SPLICE:**  
(6) 1/4-20 X 1" BI-METAL W/ CARBON STEEL TIP, SS SELF-DRILLING SCREWS SHALL BE USED AT PURLIN SPLICE. CENTER SCREWS IN FLANGE USING PRE-DRILLED HOLES. TORQUE SCREWS TO 5 FT-LBS. ZEE PURLIN MAY BE SPICED AT ANY POINT ALONG THEIR LENGTH. ZEE PURLIN HAS ONE FLANGE THAT IS 0.2" LONGER THAN THE OTHER TO FACILITATE NESTING AS SHOWN IN SECTION 'B'. EVERY OTHER ZEE PURLIN IS FLIPPED 180°, THE WIDER FLANGE IS PRE-PUNCHED TO FACILITATE THIS. AFTER ALL SCREWS ARE INSTALLED, SPRAY BOTH SIDES WITH "BRITE COLD GALVANIZED PAINT".

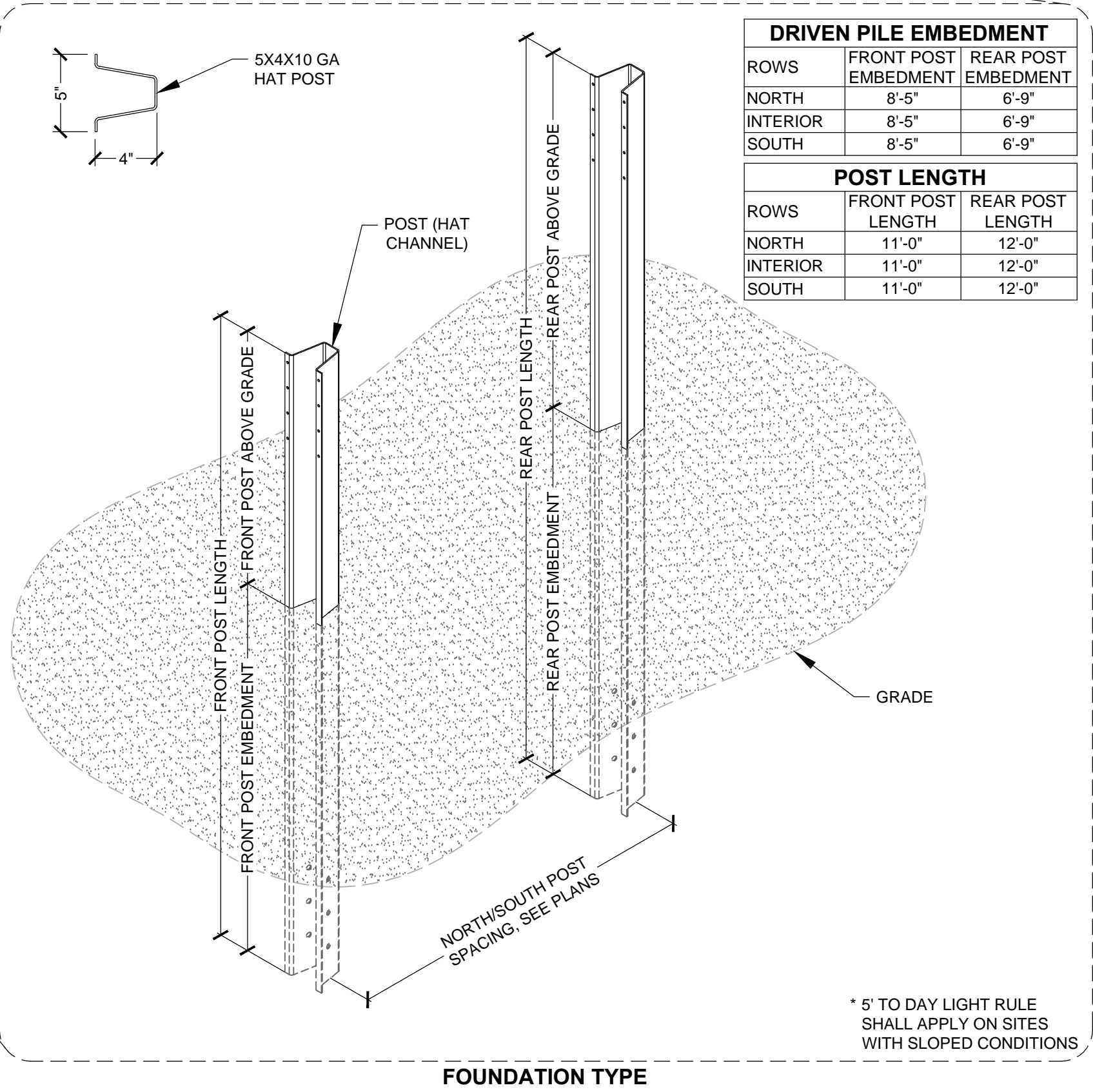
**PURLIN CLAMP:**  
INSTALL ONE PURLIN CLAMP AT EVERY PURLIN/RAIL CONNECTION, WITH 5/16" X 1 1/4" HOT DIPPED BOLT, SPLIT LOCK WASHER, TORQUE TO 12-16 FT LBS.

**PURLIN BRACE:**  
INSTALL TWO PURLIN BRACE AT EACH PURLIN 1/3 & 2/3 SPAN BETWEEN POSTS. ATTACH PURLIN BRACE TO RAIL CLOSEST TO 1/3 & 2/3 OF SPAN. (1) 1/4-20 X 1" BI-METAL W/ CARBON STEEL TIP, SS SELF-DRILLING SCREWS SHALL BE USED AT BRACE TO PURLIN, TORQUE TO 5 FT-LBS. (2) 1/4-20 X 1" BI-METAL W/ CARBON STEEL TIP, SS SELF-DRILLING SCREWS SHALL BE USED AT BRACE TO RAIL, TORQUE TO 1 FT-LBS.

**GROUNDING:**  
RACKING AND PV SYSTEM IS FULLY GROUNDING DOWN TO POST(S). INSTALL (1) LAY-IN LUG PER SUB-ARRAY AT PRE-DRILLED HOLE OF POST(S) TO (EGC). USE 1/4" X 20 X 1 1/4" HOT DIPPED NUT AND BOLT, TORQUE TO 6 FT-LBS.

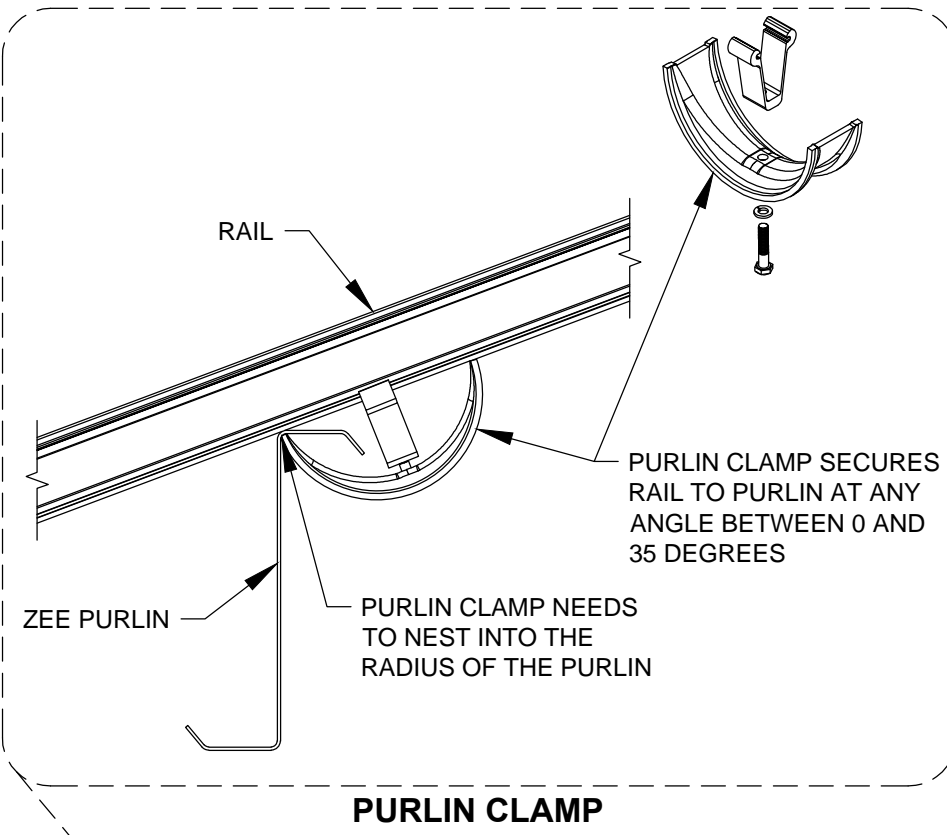


PURLIN TO POST

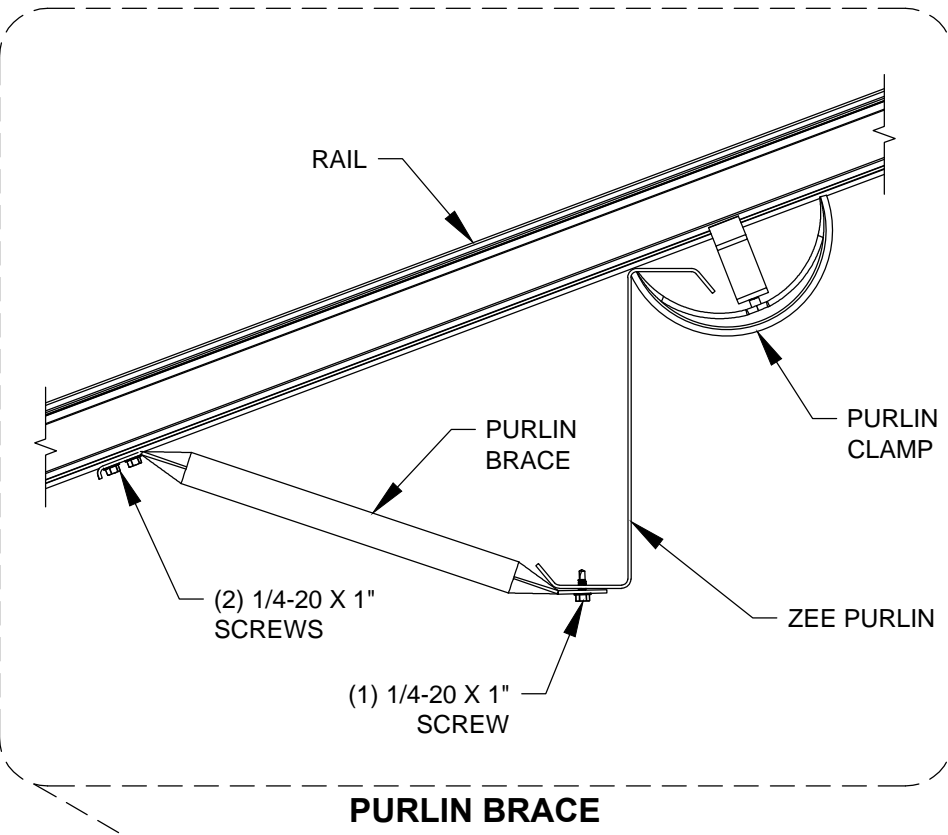


DRIVEN PILE EMBEDMENT		
ROWS	FRONT POST EMBEDMENT	REAR POST EMBEDMENT
NORTH	8'-5"	6'-9"
INTERIOR	8'-5"	6'-9"
SOUTH	8'-5"	6'-9"

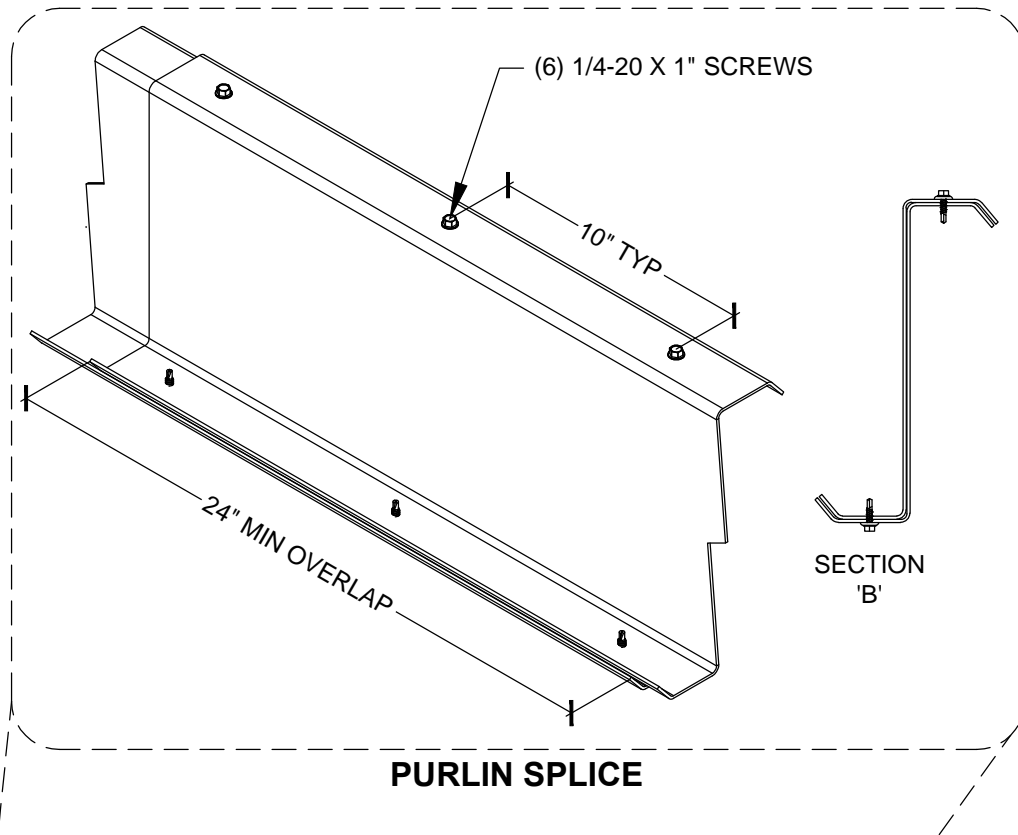
POST LENGTH		
ROWS	FRONT POST LENGTH	REAR POST LENGTH
NORTH	11'-0"	12'-0"
INTERIOR	11'-0"	12'-0"
SOUTH	11'-0"	12'-0"



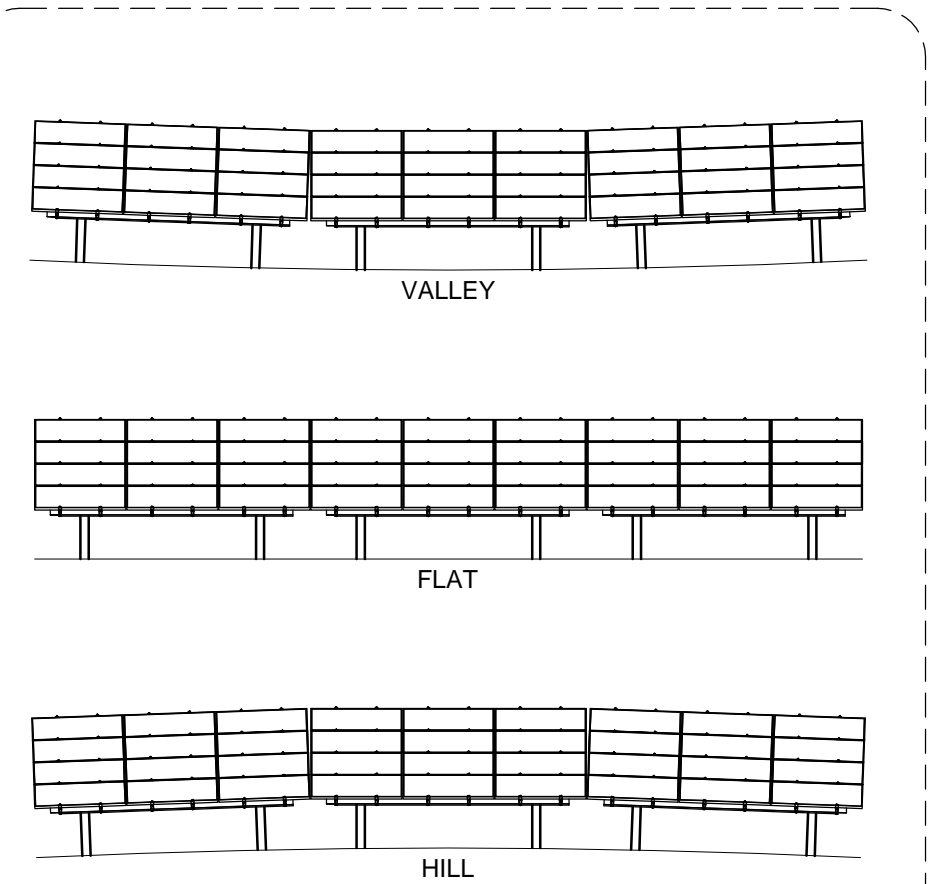
PURLIN CLAMP



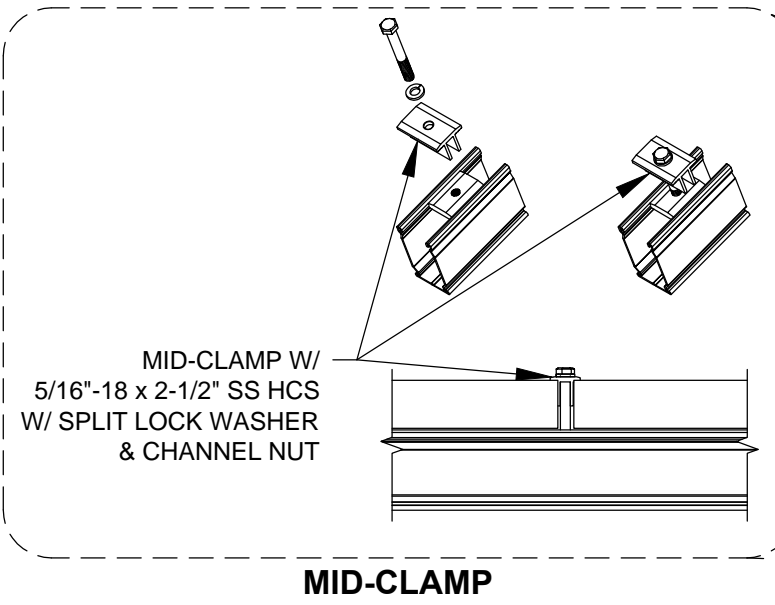
PURLIN BRACE



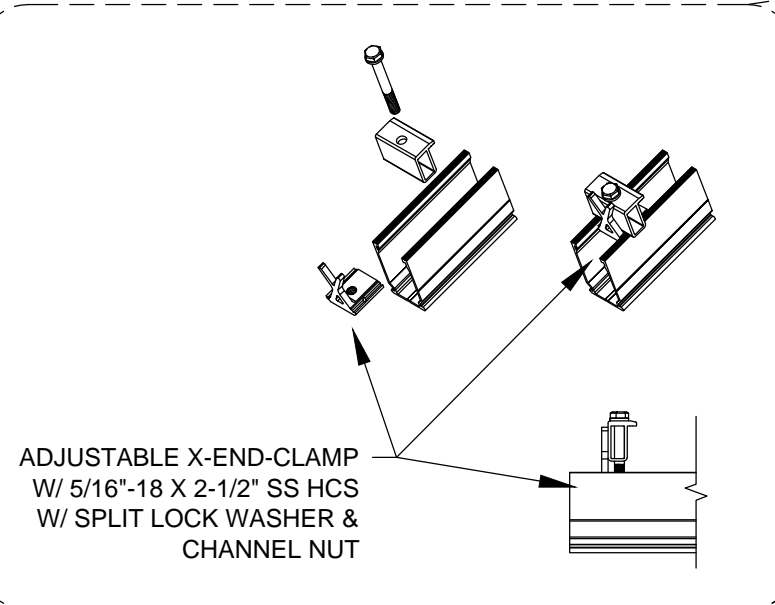
PURLIN SPLICE



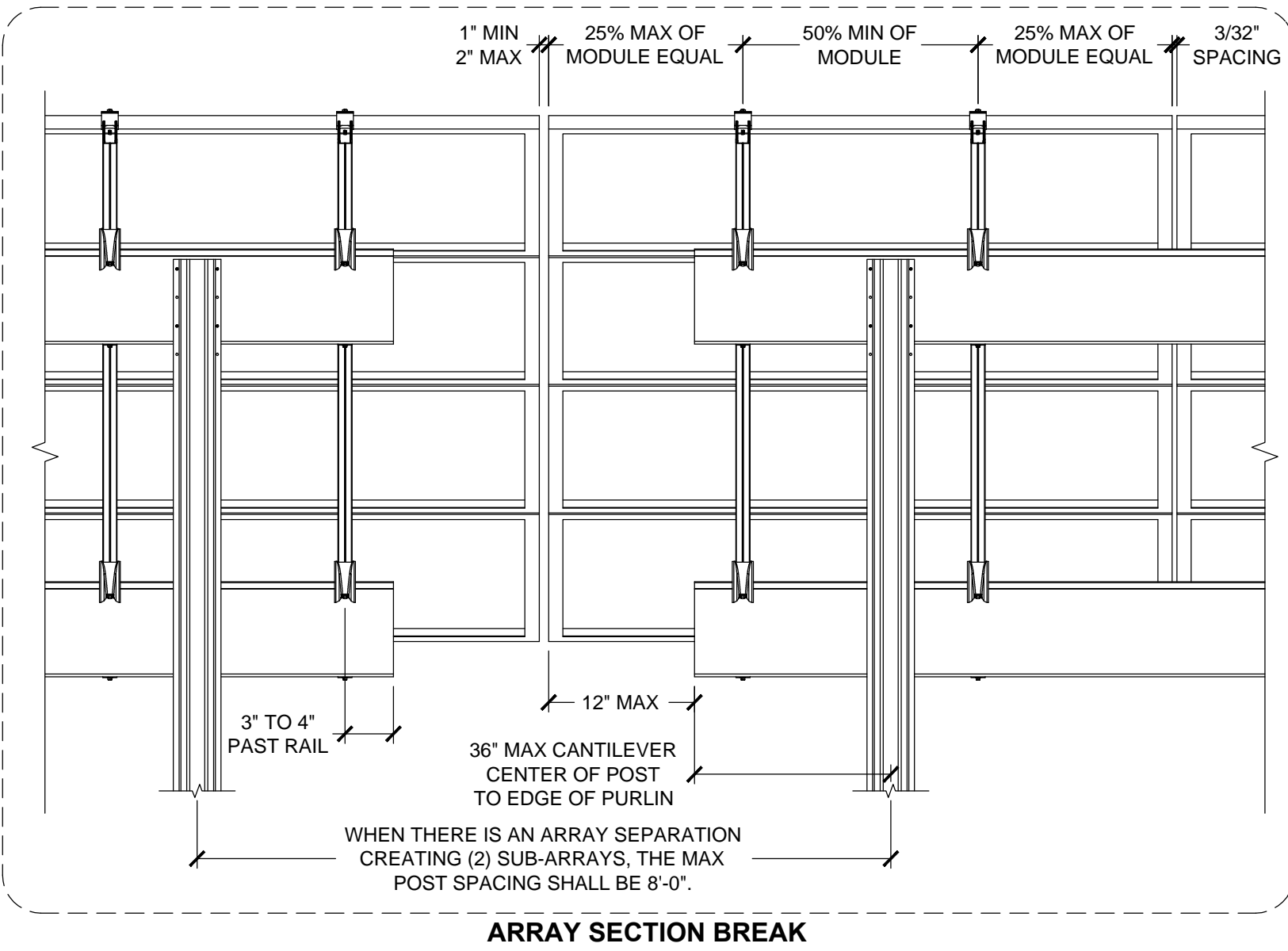
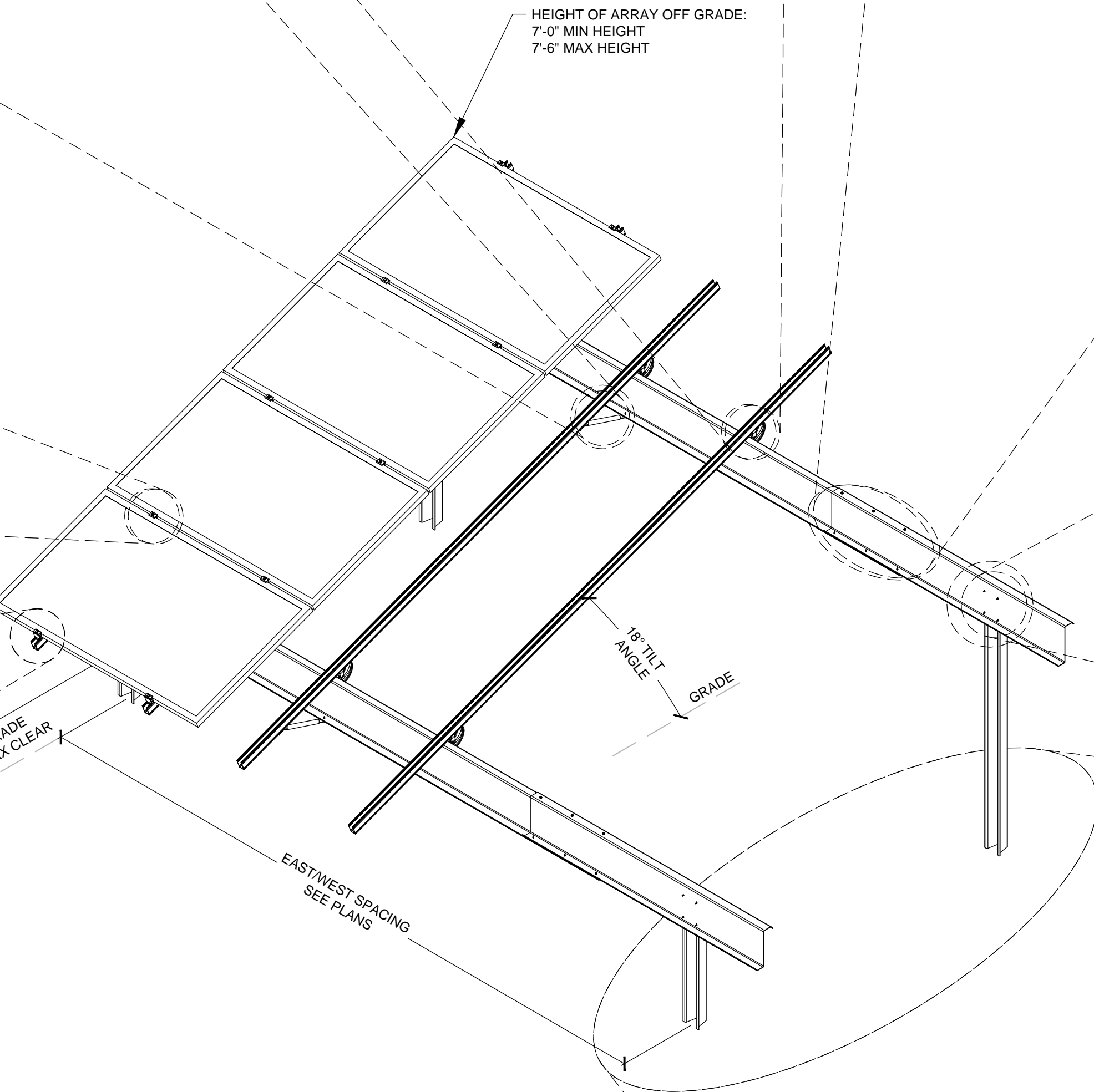
EXAMPLE OF ARRAY FOLLOWING CONTOURS



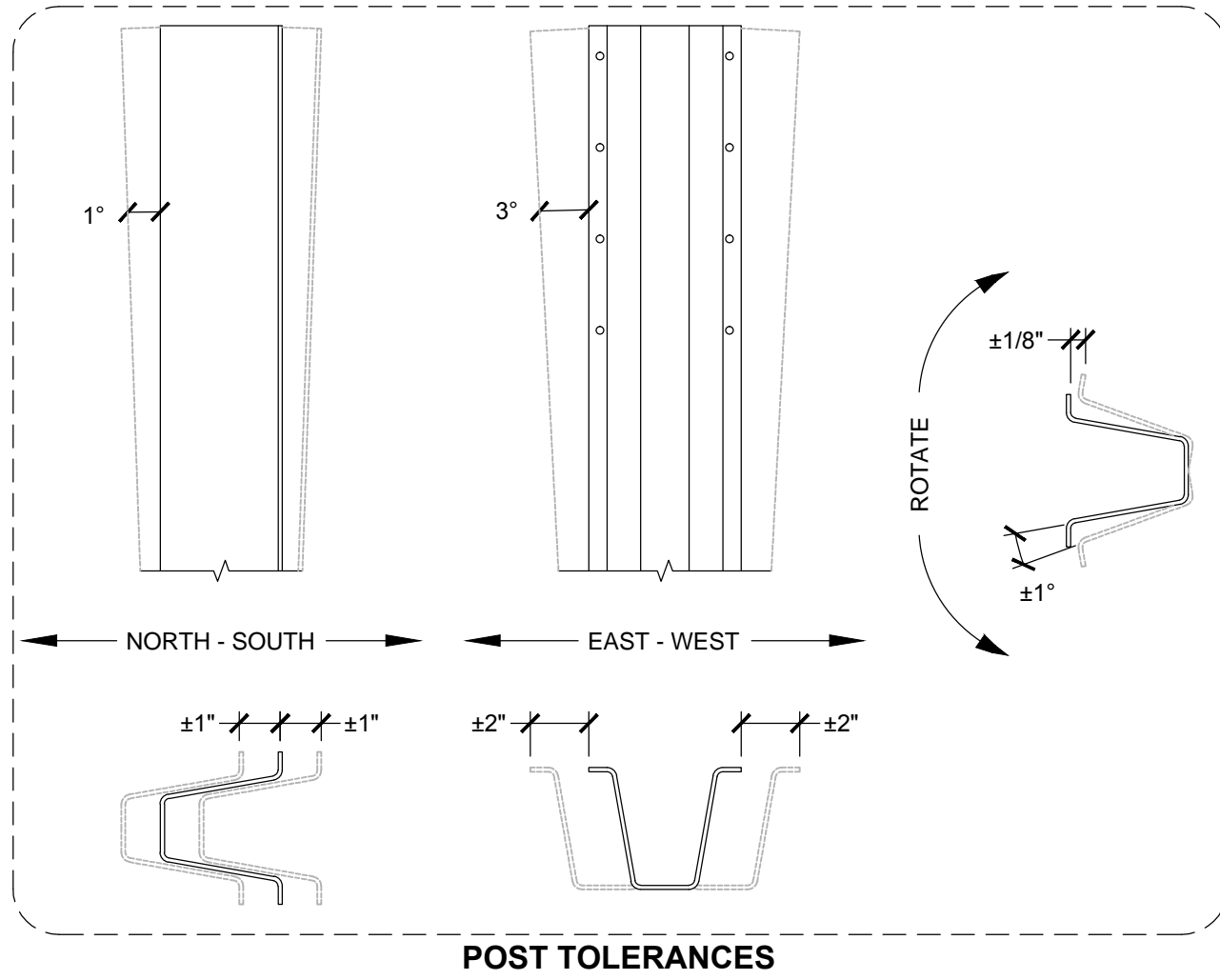
MID-CLAMP



END-CLAMP



ARRAY SECTION BREAK



POST TOLERANCES





MANUFACTURER  
**C.E. SHEPHERD  
COMPANY, L.P.**  
2221 CANADA DRY STREET  
HOUSTON, TX 77023  
PH (713) 924-4300

**RUSSELL PACIFIC**  
320 SUNSET WAY  
MUIR BEACH, CA 94965

**FREETHY  
INDUSTRIAL PARK**  
NORTHWEST CORNER  
GOODRICK AVE  
RICHMOND PARKWAY, CA 94801  
APN 408-220-06, 07, 35, 36, 37, 38

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REV	DATE	DESCRIPTION
DATE	08/20/2014	
PROJECT NUMBER	RUS1-RUSP4801	
APPLICATIONS ENGINEER	DEON TODD	
STRUCTURAL ENGINEER	STRUCTURAL ENGINEER	
PROJECT MANAGER	PM	
DESIGN ENGINEER	DESIGN ENGINEER	
CHECKED BY		

**PERMIT SET**

SHEET TITLE  
FENCE AND PLANT DETAILS

SHEET NUMBER  
F101

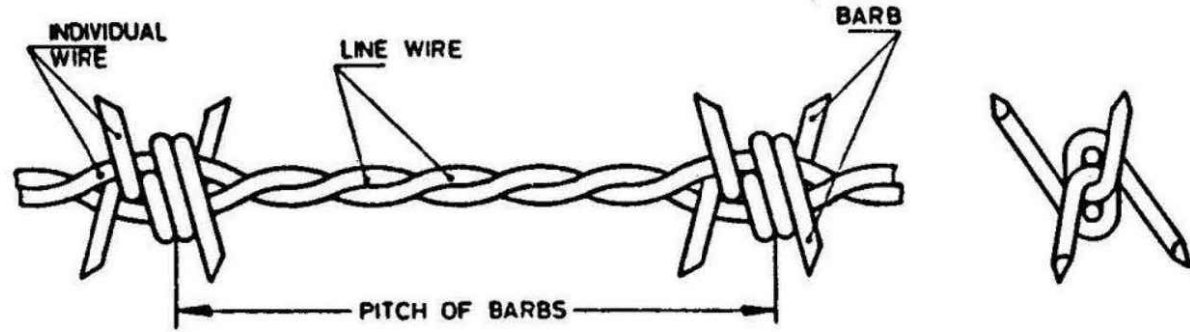


C. E. Shepherd Company, L. P.

2221 Canada Dry Street  
Houston TX 77023 USA  
TEL: 713.924.4300  
FAX: 713.928.2324  
[www.ceshepherd.com](http://www.ceshepherd.com)

C.E. SHEPHERD High Tensile Barbed Wire

**Certificate of Quality**



TYPE A

C.E. Shepherd Barbed wire is offered in Class 3 galvanized, coating, Class 3 Galvanized coating lasts three times longer than Class 1.

Detailed specifications as below:

Double Strand: 4 Point

Barbed type: round

Finish: Class 3

Line wire: 0.067" (1.70 MM) or 15.5 GA

Distance between barb : 3"

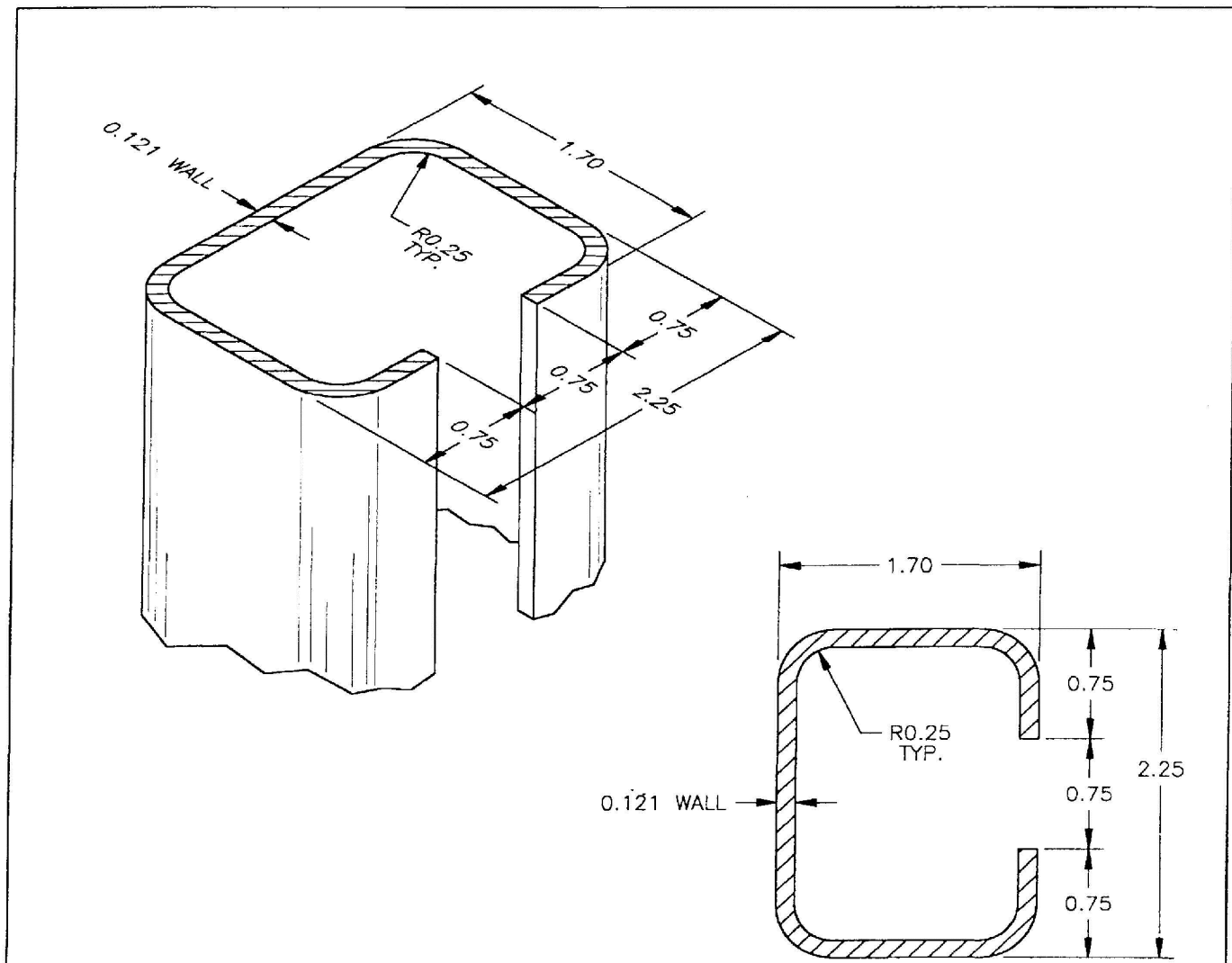
Length per Reel 1320 Ft (includes inner spool for easy assembly)

Weight: Approx. 51 Lbs. /Reel

Packed on Inner Spool

C.E. SHEPHERD L.P. MAXTOP Products certifies that the above material meets or exceeds specified

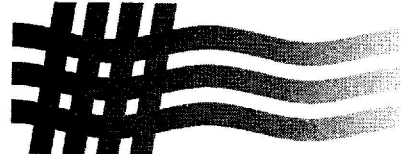
ASTM A 121 standards



MANUFACTURED FROM 50,000# MIN YIELD  
STEEL PER ASTM A-570 GRADE 50 AND COATED  
WITH MINIMUM 2oz ZINC PER SQ. FOOT<sup>2</sup>  
PER ASTM F1043-TYPE A (2.78 #/FT.)

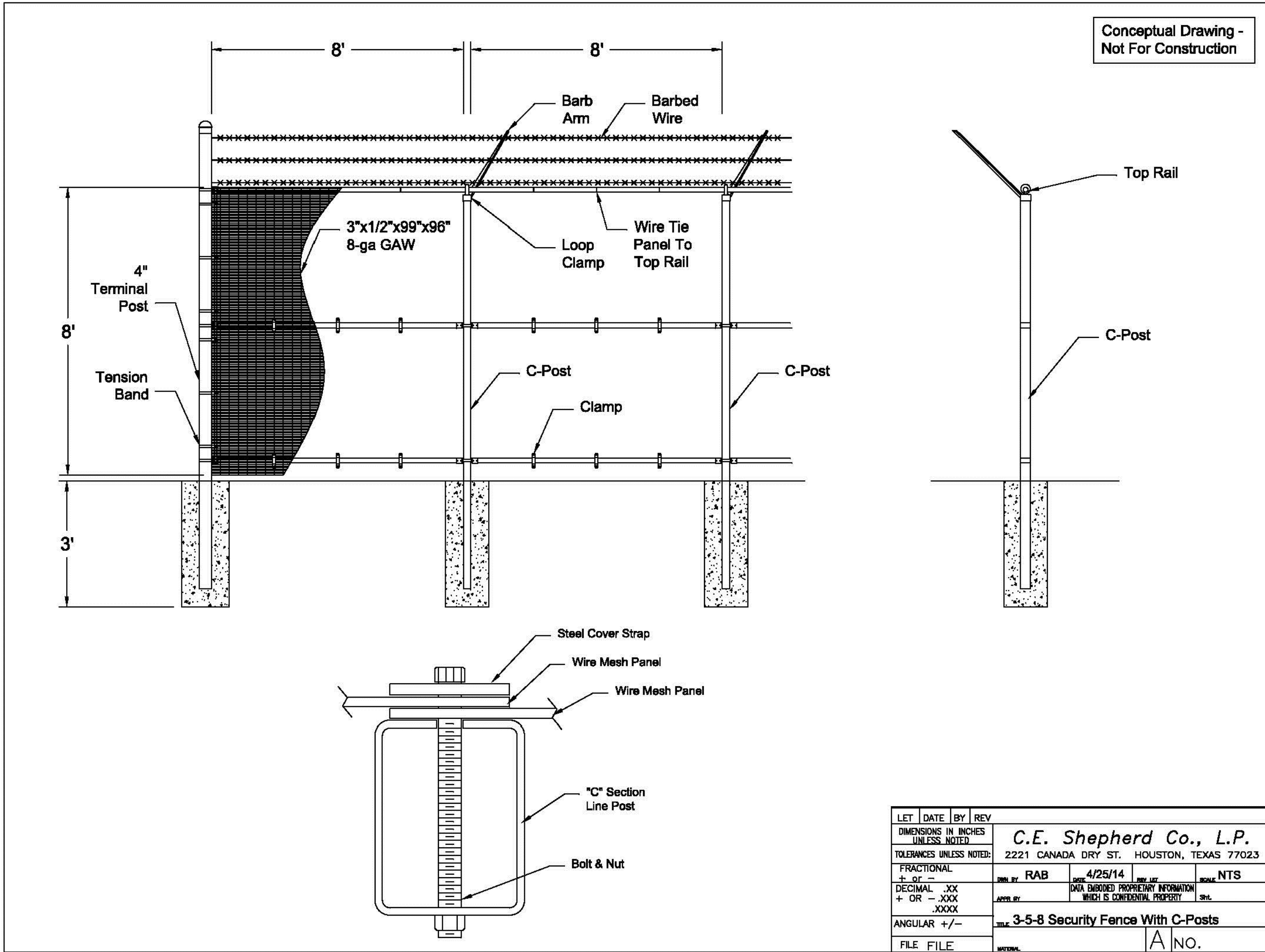
ITEM	QNTY	DESCRIPTION	MATERIAL
SCALE	FULL	CHK'D BY IDI	MACHINING TOLERANCES: UNDER 18" ± 1/32 18" AND OVER ± 1/16 ALL MACHINED SURFACES 125 ANGLES ± 1/47 BREAK ALL SHARP EDGES
OWN BY	IDI	APP'D BY	
CAD FILENAME:	GGM05-02		
LAST PLOT DATE:	08-10-17		

HEAVY 'C' POST



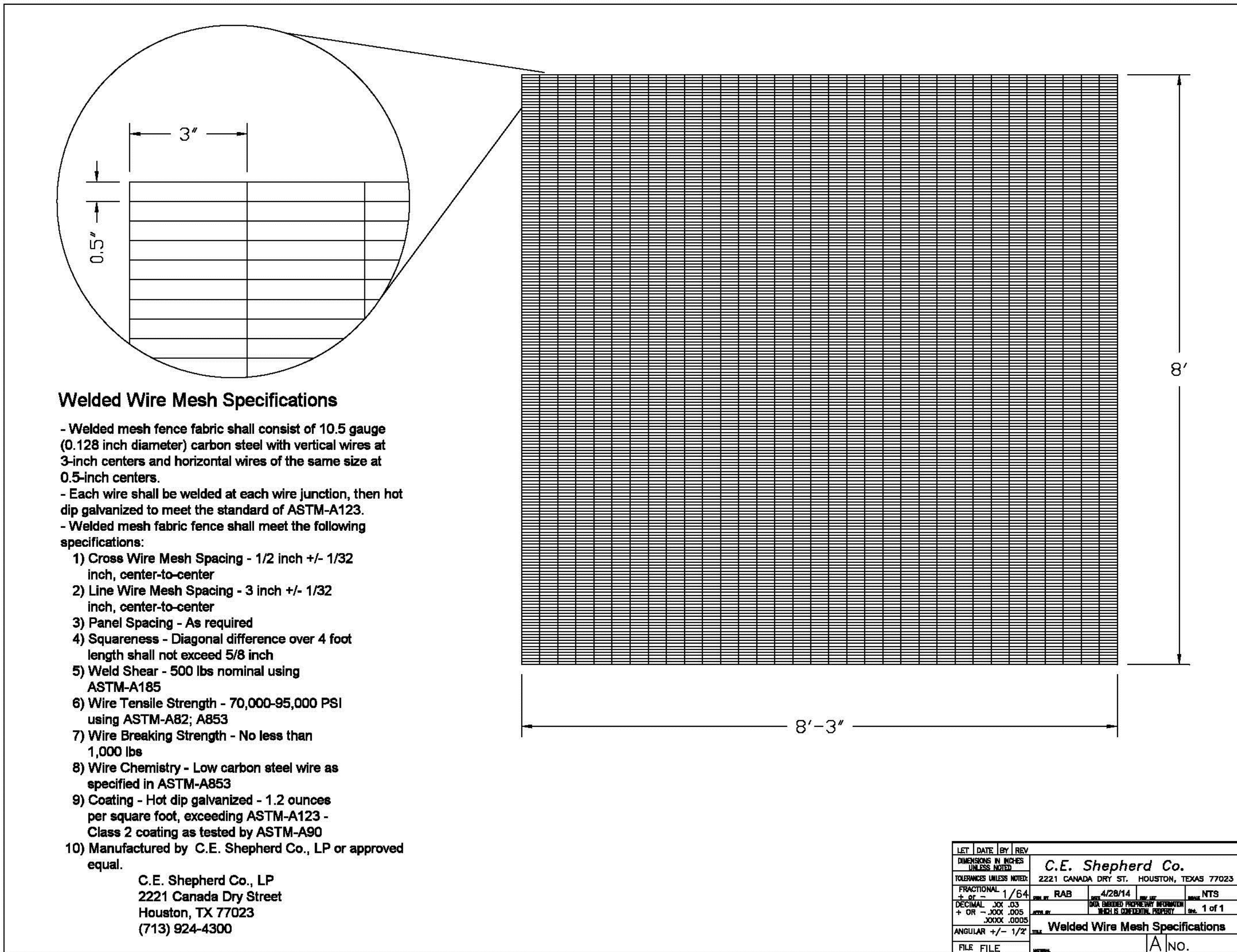
C. E. Shepherd Company  
2221 Canada Dry St. Houston, TX 77023 USA  
713.924.4300  
[sales@ceshepherd.com](mailto:sales@ceshepherd.com)  
[www.ceshepherd.com](http://www.ceshepherd.com)

REF. No.	
BRWG No.	
	GGM05-02
	1



LET	DATE	BY	REV
DIMENSIONS IN INCHES TOLERANCES UNLESS NOTED:			
FRACTIONAL	± 1/8"	± 1/16"	± 1/32"
DECIMAL	± .005"	± .003"	± .001"
ANGULAR	± 1/2°	± 1/4°	± 1/8°
FILE	FILE		

C.E. Shepherd Co., L.P.			
2221 CANADA DRY ST. HOUSTON, TEXAS 77023			
DESIGNED BY	RAB	DATE	4/25/14
CHECKED BY		DATE	
APPROVED BY		DATE	
3-5-8 Security Fence With C-Posts			
A NO.			



**Welded Wire Mesh Specifications**

- Welded mesh fence fabric shall consist of 10.5 gauge (0.128 inch diameter) carbon steel with vertical wires at 3-inch centers and horizontal wires of the same size at 0.5-inch centers.
- Each wire shall be welded at each wire junction, then hot dip galvanized to meet the standard of ASTM-A123.
- Welded mesh fabric fence shall meet the following specifications:
  - 1) Cross Wire Mesh Spacing - 1/2 inch +/- 1/32 inch, center-to-center
  - 2) Line Wire Mesh Spacing - 3 inch +/- 1/32 inch, center-to-center
  - 3) Panel Spacing - As required
  - 4) Squariness - Diagonal difference over 4 foot length shall not exceed 5/8 inch
  - 5) Weld Shear - 500 lbs nominal using ASTM-A185
  - 6) Wire Tensile Strength - 70,000-95,000 PSI using ASTM-A82; A853
  - 7) Wire Breaking Strength - No less than 1,000 lbs
  - 8) Wire Chemistry - Low carbon steel wire as specified in ASTM-A853
  - 9) Coating - Hot dip galvanized - 1.2 ounces per square foot, exceeding ASTM-A123 - Class 2 coating as tested by ASTM-A90
  - 10) Manufactured by C.E. Shepherd Co., LP or approved equal.

C. E. Shepherd Co., LP  
2221 Canada Dry Street  
Houston, TX 77023  
(713) 924-4300

LET	DATE	BY	REV
DIMENSIONS IN INCHES TOLERANCES UNLESS NOTED:			
FRACTIONAL	± 1/8"	± 1/16"	± 1/32"
DECIMAL	± .005"	± .003"	± .001"
ANGULAR	± 1/2°	± 1/4°	± 1/8°
FILE	FILE		

C.E. Shepherd Co.			
2221 CANADA DRY ST. HOUSTON, TEXAS 77023			
DESIGNED BY	RAB	DATE	4/25/14
CHECKED BY		DATE	
APPROVED BY		DATE	
Welded Wire Mesh Specifications			
A NO.			



## **Attachment 5. JHS Letter Dated February 13, 2019**

**Exhibit 27**  
**JHS**  
**Properties**

2173 Francisco Boulevard East • Suite D  
San Rafael, CA 94901  
(415) 453-0212  
fax (415) 453-0421

**February 13, 2019**

**Mr. Ethan Lavine**  
**Chief of Bay Resources and Permits**  
**Bay Conservation and Development Corporation**  
**455 Golden Gate Avenue**  
**San Francisco, CA 94102**

**Dear Ethan,**

**Thanks for your help over the past several months in helping us plan the design of a new public shoreline trail at Freethy industrial Park. We had hoped to submit our application at the same time as PowerPlant Park, but we understand their application has been delayed over issues related to the City of Richmond's existing BCDC permit conditions for Freethy Boulevard. We therefore must submit our application separately per the request of Matthew Trujillo, but please know that we do intend to build and maintain our trail section in conjunction with PowerPlant's planned shoreline improvements with which you are familiar.**

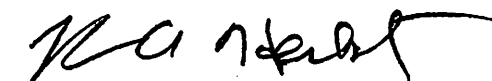
**As discussed at our two meetings together in the last several months, we have terminated the trail about 200 feet from the Richmond Gun Club property line, in recognition of potential public safety hazards related to existing gun club operations.**

**In submitting this application, Joe and Heidi Shekou (JHS) expressly reserve the right to contest the San Francisco Bay Conservation and Development Commission's (BCDC) jurisdiction over, and authority to require a permit for development of, the land owned by JHS in Freethy Subdivision in Richmond, California (the Property). JHS's submission of the application shall not be construed as an admission that BCDC has jurisdiction over any portion of the Property; nor shall it be construed as a waiver of JHS's right to contest BCDC's jurisdiction on any basis, including, without limitation, the issuance of a letter of exemption to JHS's predecessor-in-interest as owner of the Property, the previous grading and partial development of the Property, and/or the elevation of the Property and its distance from any areas that may be within BCDC's jurisdiction.**

**JHS is proceeding with submission of the application in reliance upon its understanding that BCDC has agreed not to construe the submission as a waiver or admission of any kind. Further, this reservation shall remain in effect even if BCDC should issue a permit for any portion of the Property, and shall expire only if and when (i) JHS gives BCDC written notice of JHS's acceptance of a permit issued by BCDC for the Property, in JHS's sole discretion, and (ii) JHS has realized the benefits of that permit.**

**Please feel free to call me with any questions regarding our application.**

**Best regards,**



**Bob Herbst**  
**JHS Properties**  
**415-472-7700**

## **Attachment 6. Form Verifying Posting of Public Notice**

# Exhibit 27 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

BCDC PERMIT APPLICATION NO. M2019.04.00  
Joe Shekou

## CERTIFICATION OF POSTING OF NOTICE

**Yuriko Jewett**

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

RE:

Construct a new Bay Trail extension at JHS Solar Farm

*(brief description of project)*

I,

Ashwin Gulati

*(name of applicant or agent)*

hereby certify that on

4/21/22

*(date)*

I or my agent or employee posted in a prominent location at or near the project site the Notice of Application provided by the San Francisco Bay Conservation and Development Commission.

Date: 4/21/22

By:

*(Signature)*

Title:

*(Title)*

**From:** [Ashwin Gulati](#)  
**To:** [Plater, Brent@BCDC](#); [Pan, Katharine@BCDC](#)  
**Cc:** [Robert Herbst](#); [Joeshekou](#)  
**Subject:** Fwd: BCDC/Solar Farm Richmond Thursday,  
**Date:** May 26, 2022 5:28:23 PM

---

Hi Brent,

Hope all is well.

I wanted to follow up as per my email below.

Since Richmond Planning and DRB have now approved the Powerplant project, we believe we should coordinate the Bay Trail development and work closely with your staff that is working on the Powerplant trail.

Can you please suggest some days/times that work best for you to for us all to get on a call and align next steps?

Thanks much

Ashwin

Begin forwarded message:

**From:** Ashwin Gulati <ashwingulati@gmail.com>  
**Subject:** BCDC/Solar Farm Richmond  
**Date:** May 4, 2022 at 11:09:01 AM PDT  
**To:** "Plater, Brent@BCDC" <brent.plater@bcdca.gov>  
**Cc:** "Pan, Katharine@BCDC" <katharine.pan@bcdca.gov>, "rherbst@jhsproperties.net" <rherbst@jhsproperties.net>, Ellie Knecht <knecht@wra-ca.com>, Geoff Smick <smick@wra-ca.com>, Joe Shekou <Sapidrood@yahoo.com>

Hi Brent

Please find attached response to BCDC's enforcement case ER2017.004.

We look forward to working with your team in bringing this matter to a successful completion.

Best Regards

Ashwin



**From:** [Ashwin Gulati](#)  
**To:** [Plater, Brent@BCDC](#)  
**Cc:** [Ellie Knecht](#); [Pan, Katharine@BCDC](#); [rherbst@jhsproperties.net](#); [Joeshekou](#)  
**Subject:** Re: Response Letter to Application No. M2019.004.00\_JHS Properties Solar Farm Bay Trail Extension  
**Date:** Wednesday, June 22, 2022 1:47:13 PM

---

Brent... Actually, let's move to Wednesday 1 pm via zoom.

Just sent out zoom invite.

Ashwin

On Jun 22, 2022, at 12:33 PM, Plater, Brent@BCDC <[brent.plater@bcdca.gov](mailto:brent.plater@bcdca.gov)> wrote:

Ashwin,

Katharine and I are available at 1pm on Tuesday, Wednesday, and Friday of next week. Let us know which one of those slots works for you.

Thanks,

bp

-----  
Brent Plater | Lead Enforcement Attorney  
SF Bay Conservation & Development Commission  
375 Beale St., Suite 510  
San Francisco, CA 94105  
Phone: (415) 352-3628  
Email: [brent.plater@bcdca.gov](mailto:brent.plater@bcdca.gov)

---

**From:** Ashwin Gulati <[ashwingulati@gmail.com](mailto:ashwingulati@gmail.com)>  
**Sent:** Tuesday, June 21, 2022 11:05 AM  
**To:** Ellie Knecht <[knecht@wra-ca.com](mailto:knecht@wra-ca.com)>  
**Cc:** Plater, Brent@BCDC <[brent.plater@bcdca.gov](mailto:brent.plater@bcdca.gov)>; Pan, Katharine@BCDC <[katharine.pan@bcdca.gov](mailto:katharine.pan@bcdca.gov)>; Robert Herbst <[rherbst@jhsproperties.net](mailto:rherbst@jhsproperties.net)>; Joeshekou <[Sapidrood@yahoo.com](mailto:Sapidrood@yahoo.com)>  
**Subject:** Re: Response Letter to Application No. M2019.004.00\_JHS Properties Solar Farm Bay Trail Extension

Ellie,

Thanks much for the response. I've met with the owners and we would like to set up a meeting with BCDC to discuss next steps together.

Brent, can you please suggest some days/times that work for you and your team in the coming weeks?

Thanks much

Ashwin

On Jun 14, 2022, at 4:34 PM, Ellie Knecht <[knecht@wra-ca.com](mailto:knecht@wra-ca.com)> wrote:

Hi Ashwin, I think the items in this BCDC letter are largely decision points for the applicant. WRA is not currently scoped to assist with further BCDC coordination, although we do have some funds remaining in our contract if you'd like to talk through any of these items.

Thank you,  
Ellie

----- Forwarded message -----

From: **Amezcu, Reyna@BCDC** <[reyna.amezcua@bcdca.gov](mailto:reyna.amezcua@bcdca.gov)>  
Date: Fri, Jun 3, 2022 at 3:34 PM  
Subject: Response Letter to Application No. M2019.004.00\_JHS Properties  
Solar Farm Bay Trail Extension  
To: [ashwingulati@gmail.com](mailto:ashwingulati@gmail.com) <[ashwingulati@gmail.com](mailto:ashwingulati@gmail.com)>, [knecht@wra-ca.com](mailto:knecht@wra-ca.com) <[knecht@wra-ca.com](mailto:knecht@wra-ca.com)>  
Cc: [sapidrood@yahoo.com](mailto:sapidrood@yahoo.com) <[sapidrood@yahoo.com](mailto:sapidrood@yahoo.com)>, Pan, Katharine@BCDC <[katharine.pan@bcdca.gov](mailto:katharine.pan@bcdca.gov)>

Dear Ashwin and Ellie,

On behalf of Katharine Pan, please find the attached response letter for the above-referenced permit application. Should you have any questions, please contact Ms. Pan, project manager, at 415-352-3650 or [katharine.pan@bcdca.gov](mailto:katharine.pan@bcdca.gov).

Thank you.

Reyna Amezcua  
Secretary | Regulatory Division  
San Francisco Bay Conservation and Development Commission  
Bay Area Metro Center

375 Beale St., Suite 510  
San Francisco, CA 94105  
[reyna.amezcua@bcdcc.ca.gov](mailto:reyna.amezcua@bcdcc.ca.gov)  
[info@bcdcc.ca.gov](mailto:info@bcdcc.ca.gov)  
Main Office Number: (415) 352-3600

--

ELLIE KNECHT | Associate | d: 510.296.0537 | o: 415.454.8868 x 1910 | c:  
510.207.0623 | [knecht@wra-ca.com](mailto:knecht@wra-ca.com)  
WRA, Inc. | [www.wra-ca.com](http://www.wra-ca.com) | 4225 Hollis St., Emeryville, CA 94608 | San  
Rafael | San Diego | Fort Bragg | Denver  
\*Please note that I am out of the office on Fridays.

<Response Letter to Application No. M2019.004.00\_JHS Properties Solar  
Farm Bay Trail Extension.pdf><M2019.004.00\_30DL2\_Box1.pdf>  
<2018.09.13 ER2017.004JHSProperties\_IvoKellerResponseLetter.pdf>

**From:** [Plater, Brent@BCDC](mailto:Plater, Brent@BCDC)  
**To:** [Ashwin Gulati](mailto:Ashwin.Gulati)  
**Cc:** [Pan, Katharine@BCDC](mailto:Pan, Katharine@BCDC); [rherbst@jhsproperties.net](mailto:rherbst@jhsproperties.net); [Matthew Trujillo \(Matthew.Trujillo@bcdca.gov\)](mailto:Matthew.Trujillo@bcdca.gov)  
**Subject:** RE: Tomorrow's meeting / reschedule..  
**Date:** Wednesday, June 29, 2022 10:13:00 AM

---

Dear Mr. Gulati:

As I've stated before, BCDC intends to present ER2017.004 to BCDC's enforcement committee. However, it is now more likely to be heard this fall rather than this summer.

At that hearing staff will request that the committee recommend that the Commission adopt a cease and desist order requiring you to implement a maximum feasible public access plan as determined by BCDC. "Maximum feasible public access" will be assessed based on the legal condition of the site, i.e., before your unauthorized project was constructed. You will be required to remove any structures that interfere with this maximum feasible public access plan, and allow the rest to remain. Staff will also request issuance of a civil penalty order, which given the length of time your project has been out of compliance, will likely equal the maximum administrative civil liability allowed under law.

If you wish to pursue a permit that reduces the enforcement issues presented to the Commission you are free to do so. However, I have reviewed the permit application you have submitted and do not see how it is consistent with a properly conducted maximum feasible public access analysis. As I understand it, such an analysis would require a trail that offers connectivity to existing and proposed future Bay Trail segments, and provides a public access loop around the parcel for members of the public accessing the shoreline along Freethy Blvd. What you have submitted to date does not demonstrate any intention to provide this required amount of public access, and therefore fails to reduce the number of issues that will be presented to the Commission through the enforcement committee.

From BCDC's enforcement perspective it does not matter if the requisite public access is achieved through an enforcement order or through a permit. However, you may prefer the permitting process because it will likely provide you with additional opportunities to provide input on precisely where the public access will be aligned, and it may be viewed by the Commission as a factor for reducing your exposure to civil administrative liability. See Cal. Gov't Code § 66641.9(a).

This is everything I intended to tell you today, So I believe it is unnecessary for me to attend a rescheduled meeting. If you have questions about BCDC's permitting process, feel free to contact Katharine directly. If you have questions about BCDC's enforcement process you may contact me at any time.

Sincerely,

bp

-----  
Brent Plater | Lead Enforcement Attorney  
SF Bay Conservation & Development Commission  
375 Beale St., Suite 510  
San Francisco, CA 94105  
Phone: (415) 352-3628  
Email: [brent.plater@bcdca.gov](mailto:brent.plater@bcdca.gov)

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

From: Ashwin Gulati <[ashwingulati@gmail.com](mailto:ashwingulati@gmail.com)>  
Sent: Tuesday, June 28, 2022 5:36 PM  
To: Plater, Brent@BCDC <[brent.plater@bcdca.gov](mailto:brent.plater@bcdca.gov)>  
Cc: Pan, Katharine@BCDC <[katharine.pan@bcdca.gov](mailto:katharine.pan@bcdca.gov)>; [rherbst@jhsproperties.net](mailto:rherbst@jhsproperties.net)  
Subject: Tomorrow's meeting / reschedule..

Hi Brent / Katharine,

Our sincere apologies but something has come up on our end and we are unable to make tomorrow's meeting, and need to reschedule.

Can you please suggest some additional days/times that you are available and we'll pick one.

Thanks much for your understanding.

Cheers

Ashwin



**From:** [Robert Herbst](#)  
**To:** [Plater, Brent@BCDC](#); [Ashwin Gulati](#)  
**Cc:** [Pan, Katharine@BCDC](#); [Trujillo, Matthew@BCDC](#)  
**Subject:** RE: Tomorrow's meeting / reschedule..  
**Date:** Thursday, June 30, 2022 3:33:11 PM

---

Hi Brent,

I apologize for needing to postpone yesterday's meeting on such short notice. My wife scheduled me for an angiogram without my knowledge, which created the conflict. We've been waiting over 2 months to get an appointment, so I really couldn't miss it. Again, I apologize.

Our hope in meeting with staff is to gain a better understanding of the following:

1. What exactly would staff like to see and support?
2. What is status of adjacent trail project, submitted by Richard Treiber for his cannabis development, and how will it relate in time and scope to our project?

When we initially met with BCDC staff regarding the enforcement action, we and staff mutually agreed to work collaboratively on a comprehensive trail project that included Richard Treiber's trail section, and which preserved the solar farm in its existing form. BCDC staff members present were John Bowers, Matthew Trujillo, Andrea Gaffney, and Yuriko Jewett. We were told then by BCDC staff that they supported green energy, and would be satisfied with a 30 foot trail alignment adjacent to the solar farm, contingent on staff satisfaction with a full 100 foot public access build-out on the adjacent Treiber shoreline parcels. Staff did express then a desire to loop the trail around the solar farm and back to Goodrick Avenue. We provided evidence at that time of public safety hazards related to such a loop, given it's immediate proximity to the adjacent high power shooting range at Richmond Gun Club. The noise is horrendous and to date over 25 of our solar panels have been broken by airborne bullet fragments, including full copper jacketed slugs (photos and maps attached). Staff at that time instructed us to end the path short of the gun club property line, which is what is contained in our current application.

As staff is no doubt aware, Richard Treiber's cannabis project has experienced a winding and ever-changing path over the last several years, with prolonged Covid shutdowns thrown in to boot. We are no longer affiliated with his project, other than he has a purchase contract option with us for our 2 remaining shoreline parcels (where much of his public access improvements are planned for his project). It remains unclear to us even now whether he will close escrow on those parcels, and indeed whether any part of his project will actually get built (including of course the promised shoreline improvements). We were therefore hopeful to receive an update from BCDC on his project.

When Richmond Mayor Tom Butt (and current BCDC Commissioner) spearheaded the City approvals of our solar farm (including leading the passage of a new City ordinance exempting solar projects from CEQA review), the City agreed that the shoreline path component of the project (shown in our approved solar project plans) could be built once there was other development at Freethy Industrial Park, such that there would be "eyes on" daily presence to prevent theft, vandalism, and dumping (all of which have been endemic historical problems throughout our ownership at Freethy Industrial Park).

As I'm sure you can appreciate, this is not an easy site nor a straightforward project, which is why we would respectfully request a meeting with BCDC staff to discuss the above issues in order to reach consensus on the best path forward to achieve maximum safe public access to the property.

Sincerely,  
Bob Herbst  
JHS Properties

**From:** [Plater, Brent@BCDC](mailto:Plater,Brent@BCDC)  
**To:** [Robert Herbst](#); [Ashwin Gulati](#)  
**Cc:** [Pan, Katharine@BCDC](mailto:Pan,Katharine@BCDC); [Trujillo, Matthew@BCDC](mailto:Trujillo,Matthew@BCDC)  
**Subject:** RE: Tomorrow's meeting / reschedule..  
**Date:** Friday, July 1, 2022 6:39:00 PM

---

Mr. Herbst,

Please do put me in touch with Mr. Jason or anyone else at the Gun Club that can discuss the concrete steps it will take to abate this nuisance permanently.

As I said in my message to you on June 29, if you have questions about BCDC's permitting process feel free to contact Katharine directly. If you have questions about BCDC's enforcement process you may contact me at any time.

Sincerely,

bp

-----  
Brent Plater | Lead Enforcement Attorney  
SF Bay Conservation & Development Commission  
375 Beale St., Suite 510  
San Francisco, CA 94105  
Phone: (415) 352-3628  
Email: [brent.plater@bcdca.gov](mailto:brent.plater@bcdca.gov)

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

From: Robert Herbst <[rherbst@jhsproperties.net](mailto:rherbst@jhsproperties.net)>  
Sent: Friday, July 1, 2022 5:38 PM  
To: Plater, Brent@BCDC <[brent.plater@bcdca.gov](mailto:brent.plater@bcdca.gov)>; Ashwin Gulati <[ashwingulati@gmail.com](mailto:ashwingulati@gmail.com)>  
Cc: Pan, Katharine@BCDC <[katharine.pan@bcdca.gov](mailto:katharine.pan@bcdca.gov)>; Trujillo, Matthew@BCDC <[Matthew.Trujillo@bcdca.gov](mailto:Matthew.Trujillo@bcdca.gov)>  
Subject: RE: Tomorrow's meeting / reschedule..

Hi Brent,

Richmond Rod & Gun Club actually has a professional forensic ballistics investigator as a member. I'm happy to put you in touch with him. His name is Alex Jason, and he prepared and signed the attached report dated Jan. 5, 2018. After Jason's report and testimony to the club board, they accepted responsibility for the damaged panels and compensated us for replacement. We are happy to provide any additional documentation you require to prove to your satisfaction and that of the BCDC Commission that bullet shrapnel has, and continues, to fall on our property and damage our solar panels. Obviously we feel this should be of equal if not more important concern to BCDC, since solar panels are easily replaced, whereas someone's eye (or even worse) are not. For our part, we have instructed our on-site caretaker and 3rd party contractors that they should wear hard hats and eye protection any time they are outside on property. Thankfully a solar farm needs very little maintenance so there is little outside activity needed. Not so for a public path running immediately adjacent to a high powered shooting range.

We have in fact demanded that the gun club eliminate shrapnel from entering our property. They have taken measures, but as you can see from the Nov. 2020 panel washing report, we had 5 new broken panels so they have not succeeded in eliminating the problem. We are washing the panels again over the next two weeks, and we will be happy to report to you then how many additional new broken panels we discover. We simply do not have the funds to engage in an expensive lawsuit against the gun club, so we do our best to engage them cooperatively to minimize the economic impact of the damage. Previous BCDC staff recognized the limitations of our situation, and sought to work cooperatively with us to provide maximum safe public access, while also recognizing the public value of green

energy. You may not be aware, but the power we produce on site is sold to MCE, which is the state's 1st community power cooperative whose goal is 100% renewable energy supplies for their customers, which now includes over 25 towns and counties in the Bay Area: <https://www.mcecleanenergy.org/faq-items/where-does-mce-offer-service/>. It would seem that the Bay Conservation and Development Commission would be supportive of a green energy project promulgated by another Bay area wide governmental organization focused on improving the environment. Certainly in previous discussions with BCDC staff, that has been the case, so we're frankly confused by the current situation and unsure of what to do.

At significant expense we recently completed a permit re-submittal that had been in abeyance due to a variety of factors out of our control, including obviously Covid, but also changing plans of Richard Treiber along with negotiations between BCDC and the City of Richmond regarding unmet trail and parking obligations related to the Richmond Parkway construction. We had no influence over or responsibility for any of that, nor were we asked by BCDC, the City, or Treiber to participate in any of it. So we completed our re-submittal, and we received a response back from BCDC staff asking for more information. We have requested a meeting with staff so that we can gain a better understanding of what they are looking for, especially related to maximum feasible public access. I believe it's customary for staff to meet with applicants for this purpose, so I'm unclear why our request is being denied.

To be clear, we are asking to pursue option 1 you list below, and are in the middle of a permit process to achieve that. We simply want to meet with staff to discuss their recent request for more information, so that we know how best to respond. What do you recommend that we do?

Best regards & Happy 4th,  
Bob Herbst  
JHS Properties  
415-472-7700

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

From: Plater, Brent@BCDC <brent.plater@bcdca.gov>  
Sent: Friday, July 1, 2022 3:55 PM  
To: Robert Herbst <rherbst@jhsproperties.net>; Ashwin Gulati <ashwingulati@gmail.com>  
Cc: Pan, Katharine@BCDC <katharine.pan@bcdca.gov>; Trujillo, Matthew@BCDC <Matthew.Trujillo@bcdca.gov>  
Subject: RE: Tomorrow's meeting / reschedule..

Dear Mr. Herbst,

I've spent some time at shooting ranges (although never at Richmond Rod & Gun Club). From those experiences I can say that those do not look like bullet fragments to me, but I'm no expert in ballistics. If they are bullet fragments there is simply no excuse for any bullet fragment to ever leave the grounds of a shooting range for any reason. If it is the case that your neighbor shot 25 of your solar panels I recommend you take action to end that ultra-hazardous nuisance immediately, if only for your safety and the safety of your employees.

I understand that over the past five years creative solutions to this enforcement matter were previously reviewed by BCDC staff. As you note, they have all failed to resolve this matter. Only two paths forward remain: (1) provide maximum feasible public access through a permitting process for your project, or (2) have MFPA established for your project by Commission order. We could meet weekly and this would not change.

Again, If you have questions about BCDC's enforcement process you may contact me at any time.

Sincerely,

bp

-----  
Brent Plater | Lead Enforcement Attorney SF Bay Conservation & Development Commission  
375 Beale St., Suite 510  
San Francisco, CA 94105  
Phone: (415) 352-3628  
Email: [brent.plater@bcdc.ca.gov](mailto:brent.plater@bcdc.ca.gov)

**From:** [Plater, Brent@BCDC](mailto:Plater,Brent@BCDC)  
**To:** [Alexander Jason](mailto:Alexander Jason)  
**Subject:** RE: Fwd: introduction to BCDC  
**Date:** Monday, July 11, 2022 9:33:00 AM

---

Mr. Alexander,

I am not available for another site visit at this time: a Zoom or Teams call should suffice.

I can virtually meet with you and any other members of the Gun Club to discuss this matter in the afternoon on Monday July 18; I am free all day Tuesday July 19. Let me know what works for you within my windows of availability.

Sincerely,

bp

-----  
Brent Plater | Lead Enforcement Attorney  
SF Bay Conservation & Development Commission  
375 Beale St., Suite 510  
San Francisco, CA 94105  
Phone: (415) 352-3628  
Email: [brent.plater@bcdcc.ca.gov](mailto:brent.plater@bcdcc.ca.gov)

---

**From:** Alexander Jason <[ajasonaj@gmail.com](mailto:ajasonaj@gmail.com)>  
**Sent:** Sunday, July 10, 2022 9:44 PM  
**To:** Plater, Brent@BCDC <[brent.plater@bcdcc.ca.gov](mailto:brent.plater@bcdcc.ca.gov)>; Robert Herbst <[rherbst@jhsproperties.net](mailto:rherbst@jhsproperties.net)>; Edward Tung <[edward.o.tung@gmail.com](mailto:edward.o.tung@gmail.com)>  
**Subject:** Re: Fwd: introduction to BCDC

You don't often get email from [ajasonaj@gmail.com](mailto:ajasonaj@gmail.com). [Learn why this is important](#)

Hello Mr. Plater,

Yes, we can meet on Sunday, July 17 at 11AM at the solar field.

Alex Jason

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

From "Plater, Brent@BCDC" <[brent.plater@bcdcc.ca.gov](mailto:brent.plater@bcdcc.ca.gov)>  
To "[ajason@alexanderjason.com](mailto:ajason@alexanderjason.com)" <[ajason@alexanderjason.com](mailto:ajason@alexanderjason.com)>  
Date 7/8/2022 10:51:00 PM  
Subject Fwd: introduction to BCDC

| Dear Mr. Alexander,



I would like to speak to you, and any other representatives from the Club if they wish to participate, to discuss Mr. Herbst's allegations that projectiles fired from within the Richmond Gun Club's property have damaged property at Mr. Herbst's solar farm. Please let me know when you are available next week.

Thank you,

bp

-----  
Brent Plater | Lead Enforcement Attorney  
SF Bay Conservation & Development Commission  
375 Beale St., Suite 510  
San Francisco, CA 94105  
Phone: (415) 352-3628  
Email: [brent.plater@bcdcc.ca.gov](mailto:brent.plater@bcdcc.ca.gov)

---

**From:** Robert Herbst <[rherbst@jhsproperties.net](mailto:rherbst@jhsproperties.net)>  
**Sent:** Wednesday, July 6, 2022 4:11 PM  
**To:** Alexander Jason <[ajason@alexanderjason.com](mailto:ajason@alexanderjason.com)>  
**Cc:** Plater, Brent@BCDC <[brent.plater@bcdcc.ca.gov](mailto:brent.plater@bcdcc.ca.gov)>  
**Subject:** introduction to BCDC

Hi Jason,

Bob Herbst here from the solar farm next door to Richmond Gun Club.

Brent Plater from BCDC has asked me to provide your contact info in relation to the gun fragment damage to our solar panels. I explained that you are a gun club member and a forensic ballistics investigator, and that you reviewed the damaged solar panels on behalf of the gun club. I provided Brent with photos of the damaged panels, including the attached report you put together.

BCDC as you may know governs land use within 100 feet of the SF Bay shoreline, and seeks to provide public access including trails and other amenities. We are currently working with BCDC to provide walking trails along our solar farm. They have asked us to provide a public walking trail at our property boundary directly adjacent to the gun club's high powered shooting range. We explained we thought this was a bad idea, both because of the bullet fragments, and also because of how loud it is at that location when the high power range is in use. Neither is conducive in our estimation to a safe or pleasant public experience.

I did explain to Brent that the gun club has taken voluntary measures to eliminate the bullet fragments, however last year we did have 5 more broken panels so the measures have apparently only been partially successful thus far. We will be washing

the panels again in the next 2 weeks, so we'll know then whether additional panels have been broken in the last 12 months. 5 broken panels/year is a relatively minor nuisance for a solar farm with 6000 panels, but It's a quite different risk I believe to expose members of the public to this potential hazard. I also explained to Brent that we have enjoyed a cooperative relationship with the gun club during our 20+ years as a club neighbor, and we have chosen to work collaboratively with the club to ameliorate negative impacts.

I highly recommend that you invite Brent to walk the site with you when your high powered range is in use. It's scary loud which is no big deal for a passive solar farm, but something quite different for the public expecting a peaceful shoreline experience. I have not explained to Brent the state law protections afforded to gun clubs, but that's an important consideration for him to understand as well, and I believe best comes from gun club representatives.

Best,  
Bob Herbst  
JHS Properties  
415-472-7700

**To:** [Robert Herbst](#)  
**Cc:** [Gaffney, Andrea@BCDC](#); [Plater, Brent@BCDC](#)  
**Subject:** RE: BCDC/ Solar Farm - Bay Trail  
**Date:** Friday, November 18, 2022 5:00:49 PM

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Hi Bob,

Thanks for your patience. Our only major comment after reviewing the design is that it would be better if there were 18-24 inches of space between the fence and the edge of the trail so that the full width of the trail could be used. We also have a few questions about the trail connections, below. You can either address these now or as part of your application materials, we just want to make sure we understand what's happening around the trail connections and may have additional questions or comments about the details.

1. Have you communicated with the Powerplant Park project proponents about how this will connect to their segment? I think you mentioned you were in contact, so it would be great to hear a little about that planning if you've discussed it.
2. For the eastern end of the trail, how does the segment eventually connect to the shared path on Goodrick? Would it be more effective to connect the trail to Goodrick rather than Elmar, or is there reason you're proposing Elmar? Can you tell us a little more about the end of the trail, how it's graded/stripped/signed to be a smooth connection?

**Katharine Pan**

Principal Shoreline Development Analyst

Direct: (415) 352-3650 | [katharine.pan@bcdcc.ca.gov](mailto:katharine.pan@bcdcc.ca.gov)

San Francisco Bay Conservation and Development Commission

Bay Area Metro Center

375 Beale Street, Ste. 510

San Francisco, CA 94105

Main: (415) 352-3600

[www.bcdcc.ca.gov](http://www.bcdcc.ca.gov) | [@SFB CDC](#)

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**From:** Robert Herbst <rherbst@jhsproperties.net>

**Sent:** Monday, October 17, 2022 3:20 PM

**To:** Plater, Brent@BCDC <brent.plater@bcdcc.ca.gov>; Pan, Katharine@BCDC <katharine.pan@bcdcc.ca.gov>

**Subject:** FW: BCDC/ Solar Farm - Bay Trail

Hi Brent & Katharine,

Just following up on the email below. Any comments or should we proceed with a revised application?

Thanks,

Bob

---

**From:** Robert Herbst

**Sent:** Monday, September 19, 2022 11:06 AM

**To:** Plater, Brent@BCDC <[brent.plater@bcdcc.ca.gov](mailto:brent.plater@bcdcc.ca.gov)>; Pan, Katharine@BCDC <[katharine.pan@bcdcc.ca.gov](mailto:katharine.pan@bcdcc.ca.gov)>  
**Subject:** FW: BCDC/ Solar Farm - Bay Trail

Hi Brent & Katherine,

Vallier Design has completed their plan showing the trail looping around the solar farm back to Goodrick Avenue, as you requested in our last discussions. To do a full 12 foot paved trail plus 3 foot shoulders on each side will require moving the existing fence and removing some solar panels at the ends of the panel rows. That's what we show on the attached plan, but ideally we'd like to reduce the paved trail section in this area (Section B) to 10 feet to avoid the need to remove solar panels. Please let us know if that might be a possibility, and provide any other feedback you have on the drawing. We're ready to resubmit for BCDC review and approval.

Best,  
Bob Herbst  
JHS Properties  
415-472-7700

It's going to require moving the perimeter fence and some solar panels at the ends of the

We've managed to fit it in without removing any solar panels, but it did require us to move the existing perimeter fence right up against the back of the solar panels.

This creates a bunch of dead ends in the panel rows, which makes maintenance more difficult and time consuming, but we'll deal with it.

It requires us to move the existing perimeter fence along the gun club property boundary

---


**From:** Ashwin Gulati <[ashwingulati@gmail.com](mailto:ashwingulati@gmail.com)>  
**Sent:** Thursday, September 15, 2022 3:39 PM  
**To:** Robert Herbst <[rherbst@jhsproperties.net](mailto:rherbst@jhsproperties.net)>  
**Cc:** Joe Shekou <[Sapidrood@yahoo.com](mailto:Sapidrood@yahoo.com)>  
**Subject:** BCDC/ Solar Farm - Bay Trail

Bob,

Attached are the updated plans with rails removed....Vallier recommends having some sort of barrier at the edge of the trail if there is a drop off of more than 2"

Let's see what BCDC says and take it from there.

Ashwin

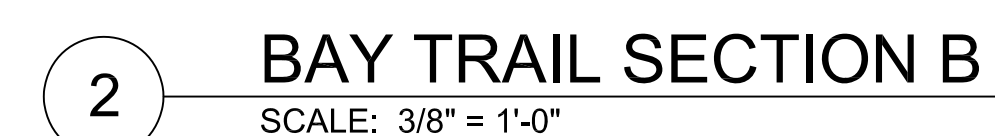
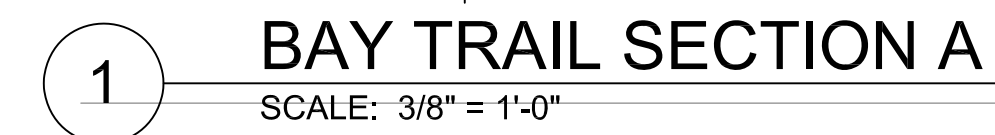


**VALLIER DESIGN ASSOCIATES, INC.**  
 LANDSCAPE ARCHITECTURE • PLANNING • DESIGN  
 121 PARK PLACE, P.O. BOX 10000, SAN JOSE, CA 95191  
 TELEPHONE 510.237.5745

## Bay Trail Solar Farm

# BAY TRAIL PLAN

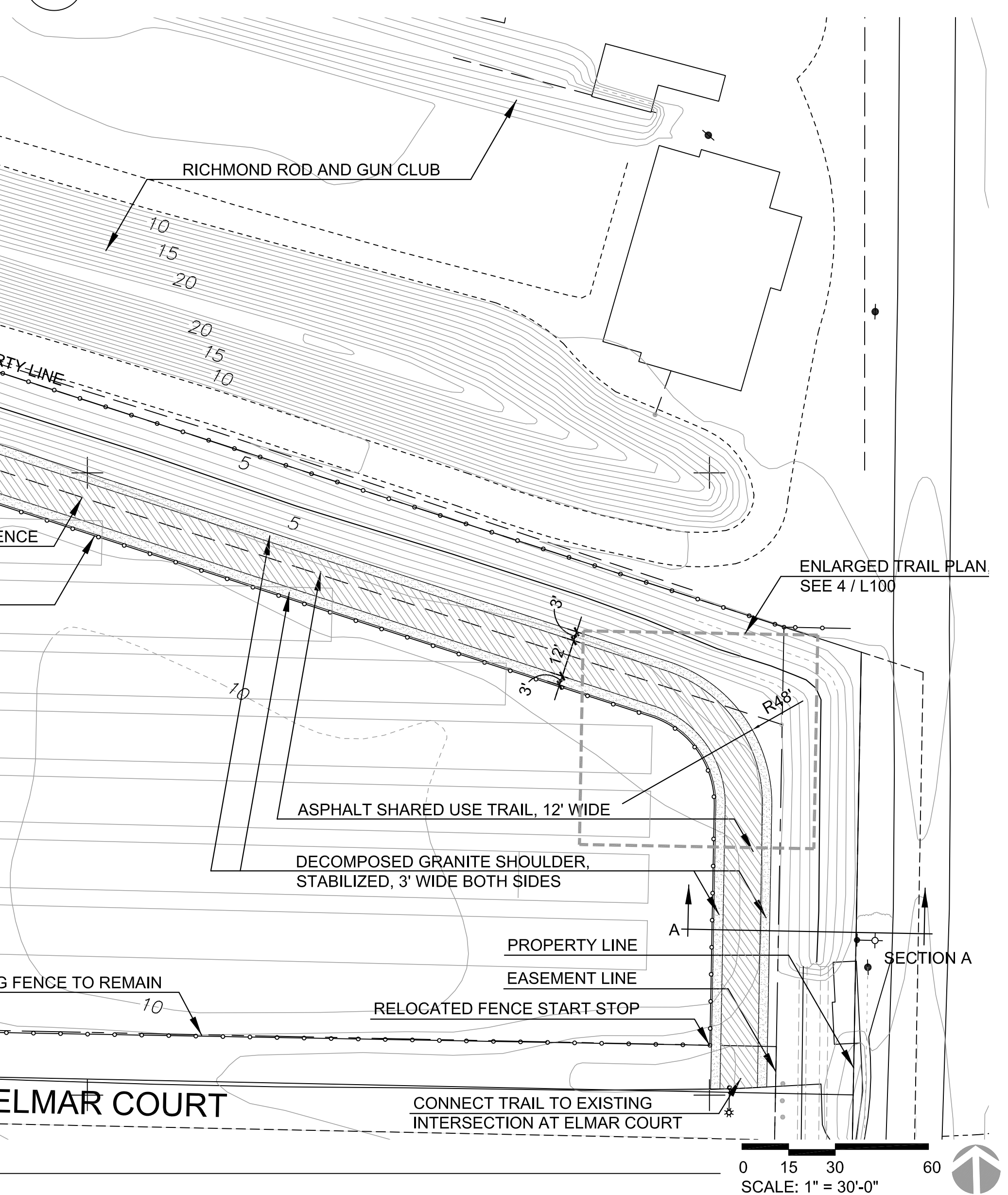
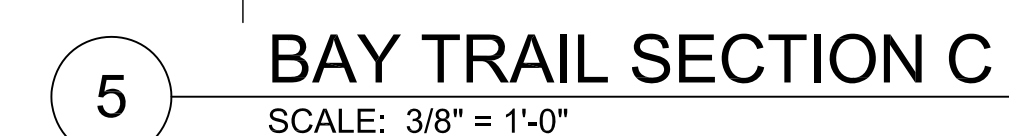
L100



BAY TRAIL - ASPHALT PAVING

BAY TRAIL SHOULDER -  
STABILIZED  
DECOMPOSED GRANITE

FENCE





**From:** [Bruce Beyaert](#)  
**To:** [Matthew Trujillo](#)  
**Cc:** [John Gioia](#); [Harriet Lai Ross](#); [Katherine Pan](#); [Ethan Lavine](#); [Greg Scharff](#); [Bruce Brubaker](#); [Klein, Adrienne@BCDC](#)  
**Subject:** Re: JHS Solar After-the-fact permit  
**Date:** Friday, February 2, 2024 1:04:18 PM  
**Attachments:** [Outlook-signature\\_.png](#)

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Matthew,

Thanks for letting TRAC know about BCDC's lack of progress on the JHS solar enforcement case. It has been a long time since Adrienne and I collaborated on a BCDC enforcement action, and it will be a pleasure to work with her again.

We know from prior experience that JHS Properties management are recalcitrant and uncooperative with regard to the Bay Trail and public amenities, the worst that TRAC has encountered during its 25 years of working with the private sector to complete the Bay Trail in Richmond. Why did BCDC allow them to evade submittal of a complete permit application for more than six years following the October 2017 35-day letter?

Bruce

Bruce Beyaert, TRAC Chair  
[baytrailtrac@gmail.com](mailto:baytrailtrac@gmail.com)  
tel. 510-235-2835  
<http://www.pointrichmond.com/baytrail/>  
<http://www.ci.richmond.ca.us/109/TRAC>

On Feb 2, 2024, at 9:47 AM, Trujillo, Matthew@BCDC <[Matthew.Trujillo@bcdc.ca.gov](mailto:Matthew.Trujillo@bcdc.ca.gov)> wrote:

Hi Bruce,

For your awareness, I have assigned the enforcement case on the solar farm (ER2017.004.00) to Adrienne Klein to pursue a formal enforcement action against the landowner. She will ensure that your name as well as Mr. Brubaker's are added to the interest parties list to receive updates on potential hearing dates as appropriate. In the meantime, please correspond with Adrienne on all matters pertaining to this case.

As for Powerplant Park, we are actively monitoring their actions as well.

Best Regards,

MATTHEW TRUJILLO  
Enforcement Policy Manager  
(415) 352-3633  
[Matthew.Trujillo@bcdc.ca.gov](mailto:Matthew.Trujillo@bcdc.ca.gov)  
<http://bcdc.ca.gov/enforcement>

San Francisco Bay Conservation and Development Commission  
375 Beale St., Suite 510  
San Francisco, CA 94105  
FAX: (415) 352-3606  
Main Number: (415) 352-3600  
Business Days & Hours:  
M-F 8:30a – 5:00p



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**From:** Bruce Beyaert <[baytrailtrac@gmail.com](mailto:baytrailtrac@gmail.com)>  
**Sent:** Friday, February 2, 2024 9:41 AM

**To:** Pan, Katharine@BCDC <[katharine.pan@bcdc.ca.gov](mailto:katharine.pan@bcdc.ca.gov)>

**Cc:** Lavine, Ethan@BCDC <[ethan.lavine@bcdc.ca.gov](mailto:ethan.lavine@bcdc.ca.gov)>; Trujillo, Matthew@BCDC <[Matthew.Trujillo@bcdc.ca.gov](mailto:Matthew.Trujillo@bcdc.ca.gov)>; Scharff, Greg@BCDC <[greg.scharff@bcdc.ca.gov](mailto:greg.scharff@bcdc.ca.gov)>; Bruce Brubaker <[bbrubaker@placeworks.com](mailto:bbrubaker@placeworks.com)>

**Subject:** Re: Powerplant Park and JHS Solar After-the-fact permit

Katherine,

Following up, did you receive TRAC's Jan. 23 email below asking when the JHS solar Bay Trail section will be open pursuant to BCDC's October, 2017 35-day order?

Bruce

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Bruce Beyaert, TRAC Chair

[baytrailtrac@gmail.com](mailto:baytrailtrac@gmail.com)

tel. 510-235-2835

<http://www.pointrichmond.com/baytrail/>

<http://www.ci.richmond.ca.us/109/TRAC>

On Jan 23, 2024, at 4:31 PM, Bruce Beyaert <[baytrailtrac@gmail.com](mailto:baytrailtrac@gmail.com)> wrote:

Katherine,

I'm sharing with you the good news that construction finally has started on the Powerplant Park medical cannabis project, which will extend the Bay Trail NE toward the JHS solar facility, leaving a gap along the northern side of the JHS property in order to complete the loop to the Bay Trail along Goodrick Avenue per attached project plan and Bay Trail map.

I assume that BCDC issued JHS a permit per the attached 35-day letter sent 10/25/17. If so, what Bay Trail alignment will be constructed and when will it be completed and open to public access?

Bruce

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Bruce Beyaert, TRAC Chair

[baytrailtrac@gmail.com](mailto:baytrailtrac@gmail.com)

tel. 510-235-2835

<http://www.pointrichmond.com/baytrail/>

<http://www.ci.richmond.ca.us/109/TRAC>

<PPP BT PlansSummary.pdf>

<RichmondBayTrailMap\_042423.pdf>

<EWR2017.10.25\_35dayletterER2017.004F.pdf>

# Exhibit D

**From:** [Robert Herbst](#)  
**To:** [Castrodale, Bella@BCDC](#)  
**Cc:** [Joe Shekou](#); [Sally Shekou](#); [Nicholas P. Honkamp](#)  
**Subject:** FW: Enforcement Case ER2017.004.00  
**Date:** Wednesday, December 4, 2024 9:57:49 AM  
**Attachments:** [2024.12.03 RED Exhibit A - Order Final.docx](#)  
[2024.12.03 RED Final.docx](#)

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**WARNING:** This message is from an external source. Verify the sender and exercise caution when clicking links or opening attachments.

Hi Bella,  
The attached documents are hereby accepted.  
Best,  
Bob Herbst  
JHS Properties  
415-472-7700

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**From:** Nicholas P. Honkamp <[nick@sslfirm.com](mailto:nick@sslfirm.com)>  
**Sent:** Tuesday, December 3, 2024 6:09 PM  
**To:** 'Castrodale, Bella@BCDC' <[bella.castrodale@bcdc.ca.gov](mailto:bella.castrodale@bcdc.ca.gov)>  
**Cc:** Joe Shekou <[jshekou@jhsproperties.net](mailto:jshekou@jhsproperties.net)>; Robert Herbst <[rherbst@jhsproperties.net](mailto:rherbst@jhsproperties.net)>; Sally Shekou <[sally@SSLFIRM.COM](mailto:sally@SSLFIRM.COM)>  
**Subject:** Enforcement Case ER2017.004.00

Hi Bella-

I've copied Joe Shekou and Robert Herbst, who are authorized to accept the attached Recommended Enforcement Decision on behalf of Respondents. Joe or Robert will respond to this email to confirm acceptance of the attached Recommended Enforcement Decision by Respondents.

Thanks,  
Nick

NICHOLAS P. HONKAMP | ATTORNEY  
SSL LAW FIRM LLP | Direct: 415.243.2668