



# SAN FRANCISCO PLANNING DEPARTMENT

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## Memo to the Planning Commission

Fee Waiver for Rincon Hill Impact Fee

HEARING DATE: FEBRUARY 3, 2011

*Date:* January 27, 2011  
*Case No.:* 2007.1250U  
*Project Address:* **333 Harrison Street**  
*Plan Area:* Rincon Hill  
*Block/Lot:* Block 3766, Lot 009  
*Project Sponsor:* Emerald Fund  
San Francisco, CA  
*Staff Contact:* Kearstin Dischinger (558-6284)  
*Kearstin@sfgov.org*

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### BACKGROUND

The Rincon Hill Area Plan contains objectives and policies for creating a complete mixed-use neighborhood, including City acquiring and developing a public park on all or a portion of the parcel.

In order to mitigate the impacts from the new residential development permitted under the Rincon Hill Area Plan, new development is subject to the Rincon Hill Community Improvement Impact Fee. As an alternative to payment of the Fee, the City may reduce the Fee obligation if the project sponsor agrees to provide specified community improvements pursuant to an "In-Kind Agreement" with the City.

The Planning Commission approved the Project Sponsor's application to develop approximately 330 residential units on approximately two-thirds of the parcel on March 19, 2009, in its Motion No. 17844. The project sponsor also proposed the allocation of approximately one-third of the parcel for possible acquisition by the City for development of a public park – Rincon Hill Park. The Planning Commission urged the project sponsor to also pursue the establishment of the proposed Rincon Hill Park through an in-kind agreement.

### PROPOSAL

The Project Sponsor has requested that the City enter into an In-Kind Agreement relating to 333 Harrison Street for the provision of Rincon Hill Park. Specifically the Project Sponsor seeks a \$1,568,176 waiver for acquisition and or development of Rincon Hill Park. The balance of \$572,295 will be collected when the first construction permit is issued for 333 Harrison Street and transferred to the SoMa Stabilization Fund.

The City appraised the Park Land on October 26, 2010 (the "Appraisal") at a value of Six Million Dollars (\$6,000,000). Open space improvements proposed by the Project Sponsor to develop the

parcel as a public park are described in Exhibit C, and have an estimated cost in 2010 dollars of approximately One Million Nine Hundred Thousand Dollars (\$1,900,000).

Approval of this agreement will enable a portion of the project sponsor's impact fees to contribute to the acquisition or development of the 'the Rincon Hill Park'. Previous to the issuance of the first certificate of occupancy the Project Sponsor and the City must accomplish the following tasks:

- The Board of Supervisors must have approved an Option Agreement with Project Sponsor providing the City with options to purchase the Park Land from Project Sponsor.
- The San Francisco Recreation and Park Commission must have approved:
  - the proposed design plans for Rincon Hill Park;
  - the Option Agreement provisions for Recreation and Park Commission acceptance of Rincon Hill Park as public park land; and
  - an Operations Plan Agreement with the Project Sponsor providing maintenance services and funding mechanisms for the life of Rincon Hill Park, including, but not limited to, gardening, maintenance, and security services for Rincon Hill Park; the Operations Plan Agreement must ensure that Rincon Hill Park functions as a public park including equal access to the park facilities for all members of the public with operating hours similar to similar publicly owned and operated parks, other rules of operation similar to other publicly owned and operated public parks including allowable activities.
- The Board of Supervisors have approved an Infrastructure Finance District ("IFD") for development of Rincon Hill Park, or the Board have endorsed other funding sources to cover the entire City cost of acquiring and developing Rincon Hill Park.

Failure to complete any of these steps prior to issuance of first certificate of occupancy will void the in-kind agreement and require the project sponsor to contribute \$1,568,176 plus interest to the Rincon Hill Community Improvements Fund.

## **PLANNING COMMISSION IN-KIND WAIVER POLICY FINDINGS**

The Planning Commission adopted a policy on in-kind agreements, which clarified the expectations around the appropriate considerations and procedures for pursuing an in-kind agreement for development impact fees. This section discusses the proposed in-kind agreement relative to this policy.

### **In-Kind Improvement Eligibility Determined**

The proposed public park at 333 Harrison Street fulfills the purposes of the Rincon Hill Community Improvements program; it was identified in the Planning process and called out in the impact fee ordinance.

**Determine Whether Proposed Improvement Is a Priority**

Rincon Hill Park is a priority project for the Rincon Hill Plan Area. The acquisition and development of Rincon Hill Park will be coordinated with the construction of housing units on the adjacent lot. Acquisition of land appropriate for a new park or open space is a unique opportunity for the City. The Rincon Hill Area Plan identified the Rincon Hill Park as a priority project. The project sponsor conducted four community meetings and reported community support for the park.

**Determine Whether Proposed Improvement Is Recommended**

The Planning Department recommends that the Planning Commission approve the proposed in-kind agreement to facilitate the development of the Rincon Hill Park.

A schematic design, draft maintenance plan, and draft option to purchase agreement for 'the Rincon Hill Park' was developed by the project sponsor with input from four community meetings. The Planning Department and the Department of Parks and Recreation have provided preliminary comments to the project sponsor and intend to continue to work with project sponsors on the completion of these components.

The Department of Real Estate appraised the land at \$6 Million. Construction of the park is estimated to cost roughly \$1.9 Million. As the design is finalized the City will determine the total value of the park improvements. Should the project sponsor or the city be unable to identify the balance of funding necessary to complete the park, the in-kind agreement shall be void and the project sponsor will revert to contributing fees owed plus interest into the Rincon Hill Infrastructure Fund.

**ISSUES AND OTHER CONSIDERATIONS**

**Establishing A Rincon Hill Infrastructure Finance District**

One potential funding strategy for the Rincon Hill Park is the establishment of an Infrastructure Finance District (IFD). This financing tool enables the City to dedicate future property tax revenue generated from new development in the plan area to the construction of community infrastructure, including the proposed Rincon Hill Park. The Board of Supervisors is currently deliberating on the establishment of the Rincon Hill IFD.

**Funding Plan For The Rincon Hill Park**

This in-kind agreement provides less than 20% of the necessary funding to acquire and build the park. Should the Board of Supervisors disapprove the proposal to establish the Rincon Hill IFD, additional funds for the project must be allocated in order for the City to maintain an interest in the park. Additional potential funding sources include General Fund allocations, competitive state or regional grants, additional development impact fees, or other public funds.

**REQUIRED COMMISSION ACTION**

The Project Sponsor has submitted a request for a partial fee waiver for 333 Harrison Street based on the draft In-Kind Agreement detailing contributions towards acquisition or development of

'the Rincon Hill Park'. Approval of an impact fee waiver by the Planning Commission is required.

#### **BASIS FOR RECOMMENDATION**

- **Identified Plan Need.** The Rincon Hill Plan identified the Rincon Hill Park as a community improvement to provide open space to new residents. The Rincon Hill Impact fee identifies the Rincon Hill Park as an eligible expenditure for development impact fees.
- **Interagency Support.** The Department of Park and Recreation has reviewed and commented on the draft Rincon Hill Park design and maintenance plan. The Department of Park and Recreation is committed to continue to work with the Project Sponsor on refining these components and accepting the park as a public park.

#### **Attachments:**

1. Draft Planning Commission Motion
2. Draft In-kind Agreement for 333 Harrison Street
3. Summary of Outreach Materials, submitted by Isabel Wade
4. Letter from Department of Recreation and Parks
5. Planning Commission In-kind Agreement Policy

**Attachment 1. Draft Planning Commission Motion**  
**Hearing Date: February 3, 2011**

**CASE NO. 2007.1250U**  
**333 Harrison Street**  
**In-Kind Agreement**

**Attachment 1. Draft Planning Commission Motion**

## Planning Commission Motion No. \_\_\_\_\_

HEARING DATE: FEBRUARY 3, 2011

*Date:* January 27, 2011  
*Case No.:* 2007.1250U  
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*Block/Lot:* Block 3766, Lot 009  
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San Francisco, CA

*Staff Contact:* Kearstin Dischinger (558-6284)  
*Kearstin@sfgov.org*

**APPROVING AN IMPACT FEE WAIVER FOR 333 HARRISON STREET IN THE AMOUNT OF \$1,568,176 TO CONTRIBUTE TO THE ACQUISITION OR CONSTRUCTION OF THE RINCON HILL PARK AT 333 HARRISON STREET AS A PUBLIC PARK.**

### **PREAMBLE**

The Rincon Hill Area Plan contains objectives and policies for creating a complete mixed-use neighborhood, including City acquiring and developing a public park on all or a portion of the Land.

In order to mitigate the impacts from the new residential development permitted under the Rincon Hill Area Plan, new development is subject to the Rincon Hill Community Improvement Impact Fee. As an alternative to payment of the Fee, the City may reduce the Fee obligation if the project sponsor agrees to provide specified community improvements pursuant to an "In-Kind Agreement" with the City.

The Planning Commission approved the Project Sponsor's application to develop approximately 330 residential units on approximately two-thirds of the Land on March 19, 2009, in its Motion No. 17844. The project sponsor also proposed the allocation of approximately one-third of the land for possible acquisition by the City for development of a public park – 'the Rincon Hill Park'. The Planning Commission urged the project sponsor to also pursue the establishment of the proposed Rincon Hill Park through an in-kind agreement.

The Project Sponsor will enter into an In-Kind Agreements relating to 333 Harrison Street for the provision of 'the Rincon Hill Park'. Specifically the Project Sponsor seeks a \$1,568,176 waiver for acquisition and or development of 'the Rincon Hill Park.' A balance of \$572,295 will be collected when the first construction permit is issued for 333 Harrison Street and transferred to the Soma Stabilization Fund.

The City appraised the Park Land on October 26, 2010 (the "Appraisal") at a value of Six Million Dollars (\$6,000,000). Open space improvements proposed by the Project Sponsor to develop the

Park Land as a public park are described in Exhibit C, and have an estimated cost in 2010 of approximately One Million Nine Hundred Thousand Dollars (\$1,900,000).

Approval of this agreement will enable a portion of the project sponsors impact fees to contribute to the acquisition or development of the 'the Rincon Hill Park'. Previous to the issuance of the first certificate of occupancy the Project Sponsor and the City must accomplish the following tasks:

- The Board of Supervisors has approved an Option Agreement with Project Sponsor providing the City with options to purchase the Park Land from Project Sponsor.
- The San Francisco Recreation and Park Commission has approved:
  - the proposed design plans for Rincon Hill Park;
  - the Option Agreement provisions for Recreation and Park Commission acceptance of Rincon Hill Park as public park land; and
  - an Operations Plan Agreement with the Project Sponsor providing maintenance services and funding mechanisms for the life of Rincon Hill Park, including, but not limited to, gardening, maintenance, and security services for Rincon Hill Park; the Operations Plan Agreement must ensure that Rincon Hill Park functions as a public park including equal access to the park facilities for all members of the public with operating hours similar to similar publicly owned and operated parks, other rules of operation similar to other publicly owned and operated public parks including allowable activities.
- The Board of Supervisors has approved an Infrastructure Finance District ("IFD") for development of Rincon Hill Park, or the Board has endorsed other funding sources to cover the entire City cost of acquiring and developing the Rincon Hill Park.

Failure to complete any of these steps prior to issuance of first certificate of occupancy will void the in-kind agreement and require the project sponsor to contribute \$1,568,176 plus interest to the Rincon Hill Community Improvements Fund.

**MOVED**, that the Commission hereby authorizes the Rincon Hill Impact Fee Waiver for 333 Harrison Street based on the following findings:

#### **FINDINGS**

Having reviewed the materials identified in the preamble above, and having heard all testimony and arguments, this Commission finds, concludes, and determines as follows:

- The above recitals are accurate and constitute findings of this Commission.
- **Identified Plan Need.** The Rincon Hill Plan identified the Rincon Hill Park as a community improvement to provide open space to new residents. The Rincon Hill Impact fee identifies the Rincon Hill Park as an eligible expenditure for development impact fees.

- **Interagency Support.** The Department of Park and Recreation has reviewed and commented on the draft Rincon Hill Park design and maintenance plan. The Department of Park and Recreation is committed to continue to work with the Project Sponsor on refining these components and accepting the park as a public park.
- **In-Kind Improvement Valuation.** The total costs for the Rincon Hill Park include acquisition of the park site and development of the park, which is estimated to total roughly \$7.9 Million dollars. The waived development impact fees would cover only a portion of the total costs.

## **DECISION**

The Commission, after carefully balancing the competing public and private interests, and based upon the Recitals and Findings set forth above, in accordance with the standards specified in the Code, hereby approves an impact fee waiver .

The Commission approves an in-kind agreement that substantially conforms to the attached drafts and authorizes the Director and City Attorneys' office to make changes as necessary to finalize the agreement.

I hereby certify that the foregoing Motion was adopted by the Planning Commission on \_\_\_\_\_2011.

Linda Avery  
Commission Secretary

AYES:

NAYS:

ABSENT:

ADOPTED:



**Attachment 2. Draft In-Kind Agreement**  
**Hearing Date: February 3, 2011**

**CASE NO. 2007.1250U**  
**333 Harrison Street**  
**In-Kind Agreement**

**Attachment 2. Draft In-Kind Agreement**

333 HARRISON STREET IN-KIND IMPROVEMENTS AGREEMENT  
(PER PLANNING CODE SECTION 418)

**THIS IN-KIND AGREEMENT** (the "Agreement") is entered into as of \_\_\_\_\_, 2011 by and between the City and County of San Francisco, a municipal corporation, acting by and through the Planning Commission (the "City") and Harrison Fremont LLC, a California limited liability company (the "Project Sponsor") with respect to the project approved for 333 Harrison Street, San Francisco, California 94105 (the "Project"). City and Project Sponsor are referred to herein as the "Parties."

**RECITALS**

A. On August 19, 2005, the San Francisco Board of Supervisors enacted Ordinance No. 217-08 (File No. 050865) (the "Ordinance"), adding Section 318 (now Section 418) to the San Francisco Planning Code. Any undefined term used herein shall have the meaning given to such term in the Ordinance, and all references to Section 418 shall mean Section 418 of the San Francisco Planning Code.

B. In order to mitigate the impacts from the new residential development permitted under the Rincon Hill Area Plan, the Ordinance imposed a Community Improvement Impact Fee of \$8.60 per net new gross square foot of residential space on new residential development (the "Fee"). Under Section 418.3(e), the Fee is required to be paid to the City before issuance of the first construction document for a development project is issued. As an alternative to payment of the Fee, the Ordinance provides that the City may reduce the Fee obligation at that time if the project sponsor agrees to provide specified community improvements. In order for the project sponsor to satisfy its Fee obligation by providing such in-kind improvements, the Ordinance requires the City and the Project Sponsor to enter into an "In-Kind Agreement" described in Section 418.3(c).

C. The property described in Exhibit A attached hereto (the "Land") is Assessor's Block 3766, Lot 009 and is generally known as 333 Harrison Street. The Land is currently owned in fee by the California Department of Transportation ("Caltrans"). Project Sponsor has the right to purchase the Property pursuant to that certain Right of Way Contract – State Highway, dated July 17, 1998, as amended, between Caltrans and Project Sponsor, pursuant to which Project Sponsor contemplates purchasing the Land from Caltrans prior to commencement of construction of the Project.

D. The Rincon Hill Area Plan contains objectives and policies for creating a complete mixed-use neighborhood, including City acquiring and developing a public park on all or a portion of the Land.

E. The Project Sponsor submitted an application to the Planning Department for the development of a residential development on approximately two-thirds of the Land and allocation of approximately one-third of the land for possible acquisition by the City for development of a public park, while reserving for the Project a vehicular access tunnel to the Project's below-grade parking garage and easements for pedestrian access to the Project's

pedestrian entries and exits, utilities, and emergency vehicle access to the Project, as shown on the draft tentative subdivision map attached hereto as Exhibit B (the "Subdivision Map"). The land allocated for a public park, referred to as Parcel B on the Subdivision Map and encumbered with the above-described easements, shall be referred to as the "Park Land". The Parties contemplate potential construction of open space improvements on the Park Land in general conformance with the plans attached hereto as Exhibit C and possible acceptance of the improved Park Land as a City public park ("Rincon Hill Park").

F. The Planning Commission approved the Project on March 19, 2009, in its Motion No. 17844, and in Condition of Approval 23 stated that "the Commission urges the Project Sponsor to pursue the execution of an In-Kind Agreement pursuant to Planning Code Section 318[.3](e) to require the project sponsor to provide in-kind improvements in the form of development of Rincon Hill Park on the portion of the project site fronting Harrison Street, up the full amount of the Rincon Hill Community Infrastructure Impact Fee."

G. The City appraised the Park Land on October 26, 2010 (the "Appraisal") at a value of Six Million Dollars (\$6,000,000). Open space improvements proposed by the Project Sponsor to develop the Park Land as a public park are described in Exhibit C, and have an estimated cost in 2010 of approximately One Million Nine Hundred Thousand Dollars (\$1,900,000), and are referred to herein as the "Park Improvements."

H. The Project Sponsor has requested that the City enter into an In-Kind Agreement crediting the Project Sponsor's Fee toward acquisition and/or development of Rincon Hill Park (the "In-Kind Improvements"). Under the terms of the Ordinance, the City may accept the In-Kind Improvements in lieu of Project Sponsor's Fee obligation. The City is willing to enter into an In-Kind Agreement, on the terms and conditions set forth below.

I. The Parties intend that implementation of this Agreement will lead to satisfaction of Project Sponsor's Fee obligations under the Ordinance by establishing conditions for City acceptance of In-Kind Improvements in lieu of Fee payment.

J. The Parties intend that this Agreement provide a mechanism for payment of in-kind development fees. This Agreement shall not be construed as committing the City in any way to negotiate, pursue, promote, implement or approve future agreements with regard to the development or acceptance of the Park Land.

#### **AGREEMENT**

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

**ARTICLE 1**  
**PROJECT SPONSOR REPRESENTATIONS AND COVENANTS**

The Project Sponsor hereby represents, warrants, agrees and covenants to the City as follows:

1.1 The above recitals relating to the Project are true and correct.

1.2 Project Sponsor: (1) is a limited liability company duly organized and existing under the laws of the State of California, (2) has the power and authority to own its properties and assets and to carry on its business as now being conducted and as now contemplated to be conducted, (3) has the power to execute and perform all the undertakings of this Agreement, and (4) prior to commencement of construction, will be the fee owner of the real property on which the Project is located.

1.3 The execution and delivery of this Agreement and other instruments required to be executed and delivered by the Project Sponsor pursuant to this Agreement: (1) have not violated and will not violate any provision of law, rule or regulation, any order of court or other agency or government, and (2) have not violated and will not violate any provision of any agreement or instrument to which the Project Sponsor is bound, or result in the creation or imposition of any prohibited lien, charge or encumbrance of any nature.

1.4 No document furnished or to be furnished by the Project Sponsor to the City in connection with this Agreement contains or will contain any untrue statement of material fact, or omits or will omit a material fact necessary to make the statements contained therein not misleading, under the circumstances under which any such statement shall have been made.

1.5 Neither the Project Sponsor, nor any of its principles or members, have been suspended, disciplined or debarred by, or prohibited from contracting with, the U.S. General Services Administration or any federal, state or local governmental agency during the past five (5) years.

**ARTICLE 2**  
**CALCULATION OF FEE AND IN-KIND CREDIT**

2.1 The Project Sponsor Fee shall be calculated in accordance with Section 418.3(b) of the Ordinance. Accordingly, the Project Sponsor Fee shall be the net addition of occupiable square feet of residential use times the Impact Fee in place at the time of payment. In this instance, based upon the existing plans submitted by the Project Sponsor to the City:

Impact Fee for residential uses: \$8.60 (or such increased amount as may be charged by the City at the time of payment of the Fee, as set forth in Section 418.9) x 248,892 gross new occupiable sq. ft. = \$2,140,471.

2.2 Pursuant to Planning Code Section 418.5(b)(2), an amount equal to \$2.30 of the \$8.60 per net addition of gross square feet of residential use must be transferred to the SOMA Stabilization Fund. Accordingly, \$572,295 of the Fee shall be payable by the Project Sponsor to the SOMA Stabilization Fund in accordance with the provisions of the Planning Code (the "Initial Payment").

The remainder of the Fee equivalent to \$6.40 per net addition of gross square feet of residential use, totaling \$1,568,176, is available to support acquisition of the Park Land and construction of the Park Improvements and is referred to as the "Project Sponsor Fee". Upon satisfaction of the conditions set forth in Article 4, City shall accept the In-Kind Improvement in lieu of Project Sponsor's Fee obligation, pursuant to Section 418.3(c) of the Planning Code.

2.3 The Department of Real Estate has appraised the Park Land at a fair market value of Six Million Dollars (\$6,000,000).

### **ARTICLE 3**

#### **TERMS AND CONDITIONS**

3.1 The City shall accept In-Kind Improvements in lieu of the Project Sponsor Fee under this Agreement if this Agreement is still in effect and each of the following conditions (Sections 3.1.1 through 3.1.5) are met:

3.1.1 Prior to issuance of the first certificate of occupancy for the Project, the Board of Supervisors has approved an Option Agreement with Project Sponsor ("Option Agreement") providing the City with options to purchase the Park Land from Project Sponsor, with a credit to the City in the amount of the Project Sponsor Fee.

3.1.2 Prior to issuance of the first certificate of occupancy for the Project, the San Francisco Recreation and Park Commission has approved a resolution including the following actions:

- (a) Endorsement of proposed design plans for Rincon Hill Park;
- (b) Endorsement of the Option Agreement provisions for Recreation and Park Commission acceptance of Rincon Hill Park as public park land and any additional Option Agreement provisions related to Recreation and Park Commission jurisdiction;
- (c) Endorsement of an Operations Plan Agreement with the Project Sponsor providing maintenance services and funding mechanisms for the life of Rincon Hill Park, including, but not limited to, gardening, maintenance, and security services for Rincon Hill Park; the Operations Plan Agreement must ensure that Rincon Hill Park functions as a public park including equal access to the park facilities for all members of the public with operating hours similar to similar publicly owned and operated parks, other rules of operation similar to other publicly owned and operated public parks including allowable activities.

3.1.3 Prior to issuance of the first certificate of occupancy for the Project, the Board of Supervisors has approved an Infrastructure Finance District ("IFD") for development of Rincon Hill Park, or the Board has endorsed other funding sources determined by the Budget Analyst to be capable (singularly or in combination) of covering the entire City cost of acquiring the In-Kind Improvements and developing Rincon Hill Park.

3.1.4 Prior to issuance of the first certificate of occupancy, the Project Sponsor has obtained a letter of credit, or equivalent security acceptable to the City ("Letter of Credit"), that guarantees full payment of the Project Sponsor Fee plus interest if the City does not exercise the Option Agreement. Project Sponsor shall maintain the Letter of Credit for the period between issuance of the Project's first certificate of occupancy and the first of either (a) the expiration of the Option Agreement or (b) termination of the Option Agreement. Full payment of the Project Sponsor Fee under this Agreement shall include the Project Sponsor Fee and

interest accrued from the date of issuance of the first temporary certificate of occupancy at the rate identified by the capital planning committee and identified in the Building Code as the impact fee index rate.

3.1.5 The City has exercised its option to purchase the Park Land under the Option Agreement described in Section 3.1.1. and the City has accepted the Park Land as public property.

3.2 In the event that the conditions set forth in Section 3.1 are not fulfilled, the Project Sponsor shall: (1) provide the City with full payment of the Project Sponsor Fee with interest, as described in Section 3.1.4; (2) reimburse the City for costs incurred in pursuing the in-kind payment option, including staff and attorney time related to development of the Option Agreement, the Operations Plan Agreement and related matters.

#### **ARTICLE 4**

#### **EFFECTIVE DATE AND PAYMENT OF COSTS**

4.1 This Agreement shall not be effective until (a) this Agreement is signed by both the Project Sponsor and the City and is approved by the Planning Commission, and (b) Project Sponsor is the fee owner of the Land. The date upon which the foregoing requirements have been satisfied shall be the "Effective Date".

4.2 As required by Section 418.3(c), Project Sponsor shall reimburse the City for time and materials for administrative costs that the Department or any other City agency, including, but not limited to, the City Attorney's Office, incurs in developing and implementing this Agreement, irrespective of whether the City exercises its rights under the option agreement. Such costs shall be payable prior to issuance of first construction document, and again prior to issuance of first certificate of occupancy, and otherwise on an invoice basis and, upon failure of Project Sponsor to remit payment within 30 days of invoice, shall be subject to the City's debt collection processes. Costs for time and materials shall be separate from and in addition to the Project Sponsor Fee payable under this Agreement.

4.3 The City's issuance of a permit to occupy or certificate of final completion or any other permit or approval for the Project shall not release the Project Sponsor of its obligation to invest the Project Sponsor Fee in the acquisition cost of the Park Land, if such payment has not been made at the time the City issues such certificate of final completion, unless the term of the Option, as it may be extended, extends beyond the date that the City issues such certificate of final completion.

4.4 The Project Sponsor understands and agrees that any payments to be credited against the Project Sponsor Fee shall be subject to the provisions set forth in San Francisco Administrative Code Sections 6.80-6.83 relating to false claims. Pursuant to San Francisco Administrative Code Sections 6.80-6.83, a party who submits a false claim shall be liable to the City for three times the amount of damages which the City sustains because of the false claim. A party who submits a false claim shall also be liable to the City for the cost, including attorney's fees, of a civil action brought to recover any of those penalties or damages and may be liable to the City for a civil penalty of up to \$10,000 for each false claim. A party will be deemed to have submitted a false claim to the City if the party: (a) knowingly presents or causes to be presented to any officer or employee of the City a false claim; (b) knowingly makes, uses or causes to be made or used a false record or statement to get a false claim approved by the City; (c) conspires to defraud the City by getting a false claim allowed by the City;

(d) knowingly makes, uses or causes to be made or used a false record or statement to conceal, avoid or decrease an obligation to pay or transmit money or property to the City; or (e) is beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim. The Project Sponsor shall include this provision in all contracts and subcontracts relating to the In-Kind Improvements, and shall take all necessary and appropriate steps to verify the accuracy of all payments made to any such contractors and subcontractors.

**ARTICLE 5**  
**NOTICES**

5.1 Any notice given under this Agreement shall be effective only if in writing and given by delivering the notice in person or by sending it first-class mail or certified mail with a return receipt requested or by overnight courier, return receipt requested, addressed as follows:

CITY:

Director of Planning  
City and County of San Francisco  
1660 Mission St.  
San Francisco, CA 94103

with a copy to:

Deputy City Attorney  
Office of the City Attorney  
City Hall, Room 234  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102  
Attn: Richard Handel

PROJECT SPONSOR:

Harrison Fremont LLC  
c/o Emerald Fund, Inc.  
532 Folsom Street  
San Francisco, CA 94105  
Attn: S. Osborn Erickson

with a copy to:

Farella Braun + Martel LLP  
235 Montgomery Street, 17<sup>th</sup> Floor  
San Francisco, CA 94104  
Attn: Steven L. Vettel

or to such other address as either party may from time to time specify in writing to the other party. Any notice shall be deemed given when actually delivered if such delivery is in person, two (2) days after deposit with the U.S. Postal Service if such delivery is by certified or registered mail, and the next business day after deposit with the U.S. Postal Service or with the commercial overnight courier service if such delivery is by overnight mail.

**ARTICLE 6  
ADDITIONAL TERMS**

6.1 This Agreement contemplates the acquisition of In-Kind Improvements as authorized under the Ordinance and is not a public works contract. The City and the Project Sponsor agree that the In-Kind Improvements are of local and not state-wide concern, and that the provisions of the California Public Contracts Code shall not apply to the construction of the In-Kind Improvements.

6.2 This instrument (including the exhibit(s) hereto) contains the entire agreement between the parties and all prior written or oral negotiations, discussions, understandings and agreements are merged herein. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

6.3 This Agreement may be effectively amended, changed, modified, altered or terminated only by written instrument executed by the parties hereto except that the Project Sponsor may terminate this Agreement by written notice to the City at any time prior to issuance of the Project's first temporary certificate of occupancy, in which event the Project Sponsor shall have no obligations or liabilities under this Agreement except for reimbursement of costs under Article 4, above, and the City would have no obligation to issue the first temporary certificate of occupancy unless and until this Agreement is reinstated, another agreement is executed by the parties, or the Project Sponsor's obligations under the Ordinance are satisfied in another manner. Any material amendment shall require the approval of the City's Planning Commission, in its sole discretion.

6.4 No failure by the City to insist upon the strict performance of any obligation of Project Sponsor under this Agreement or to exercise any right, power or remedy arising out of a breach thereof, irrespective of the length of time for which such failure continues, and no acceptance of payments during the continuance of any such breach, shall constitute a waiver of such breach or of the City's right to demand strict compliance with such term, covenant or condition. Any waiver must be in writing, and shall be limited to the terms or matters contained in such writing. No express written waiver of any default or the performance of any provision hereof shall affect any other default or performance, or cover any other period of time, other than the default, performance or period of time specified in such express waiver. One or more written waivers of a default or the performance of any provision hereof shall not be deemed to be a waiver of a subsequent default or performance. In the event of any breach of this Agreement by the Project Sponsor, the City shall have all rights and remedies available at law or in equity.

6.5 The Planning Commission, or its designee, and Project Sponsor shall have the option, in their sole discretion, to terminate this Agreement, at any time prior to the earlier of (i) issuance of the first temporary certificate of occupancy or (ii) City's exercise of the Option, for convenience and without cause. The termination option shall be exercised by giving written notice of termination. The notice shall specify the date on which termination shall become effective.

6.6 This Agreement shall be governed exclusively by and construed in accordance with the applicable laws of the State of California.

6.7 The section and other headings of this Agreement are for convenience of reference only and shall be disregarded in the interpretation of this Agreement. Time is of the essence in all matters relating to this Agreement.



6.8 This Agreement does not create a partnership or joint venture between the City and the Project Sponsor as to any activity conducted by the Project Sponsor relating to this Agreement or otherwise. The Project Sponsor is not a state or governmental actor with respect to any activity conducted by the Project Sponsor hereunder. This Agreement does not constitute authorization or approval by the City of any activity conducted by the Project Sponsor. This Agreement does not create any rights in or for any member of the public, and there are no third party beneficiaries.

6.9 Notwithstanding anything to the contrary contained in this Agreement, the Project Sponsor acknowledges and agrees that no officer or employee of the City has authority to commit the City to this Agreement unless and until the Planning Commission adopts a resolution approving this Agreement, and it has been duly executed by the Director of Planning and approved as to form by City Attorney.

6.10 The environmental effects of the Project and the development of Rincon Hill Park were reviewed under the Rincon Hill Plan Environmental Impact Report (hereinafter "Rincon EIR"). The Rincon EIR was prepared, circulated for public review and comment, and, by Motion No. 17007 certified by the Planning Commission as complying with the California Environmental Quality Act (Cal. Pub. Res. Code Section 21000 et seq., hereinafter "CEQA"). The Planning Commission adopted CEQA Findings in its Motion No. 17007. Notwithstanding the above, this Agreement does not commit the City to any specific course of action with regard to the proposed Rincon Hill Park development. Any future decision by the City to approve or implement the Rincon Hill Park proposal would be subject to the exercise of City decision-making discretion, at which time the Planning Department would determine whether CEQA requires additional environmental review.

## **ARTICLE 7**

### **CITY CONTRACTING PROVISIONS**

7.1 The Project Sponsor understands and agrees that under the City's Sunshine Ordinance (San Francisco Administrative Code, Chapter 67) and the State Public Records Law (Gov't Code Section 6250 et seq.), this Agreement and any and all records, information, and materials submitted to the City hereunder are public records subject to public disclosure. The Project Sponsor hereby acknowledges that the City may disclose any records, information and materials submitted to the City in connection with this Agreement.

7.2 In the performance of this Agreement, the Project Sponsor covenants and agrees not to discriminate on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability, weight, height or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status) against any employee or any City employee working with or applicant for employment with the Project Sponsor, in any of the Project Sponsor's operations within the United States, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by the Project Sponsor.

7.3 Through execution of this Agreement, the Project Sponsor acknowledges that it is familiar with the provisions of Section 15.103 of the City's Charter, Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Sections 87100 et seq. and Sections 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which constitute a violation of said provision and agrees that if it becomes aware of any such fact during the term, the Project Sponsor shall immediately notify the City.

7.4 Through execution of this Agreement, the Project Sponsor acknowledges that it is familiar with Section 1.126 of City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City, whenever such transaction would require approval by a City elective officer or the board on which that City elective officer serves, from making any campaign contribution to the officer at any time from the commencement of negotiations for the contract until three (3) months after the date the contract is approved by the City elective officer or the board on which that City elective officer serves. San Francisco Ethics Commission Regulation 1.126-1 provides that negotiations are commenced when a prospective contractor first communicates with a City officer or employee about the possibility of obtaining a specific contract. This communication may occur in person, by telephone or in writing, and may be initiated by the prospective contractor or a City officer or employee. Negotiations are completed when a contract is finalized and signed by the City and the contractor. Negotiations are terminated when the City and/or the prospective contractor end the negotiation process before a final decision is made to award the contract.

7.5 The City urges companies doing business in Northern Ireland to move toward resolving employment inequities and encourages them to abide by the MacBride Principles as expressed in San Francisco Administrative Code Section 12F.1 et seq. The City also urges San Francisco companies to do business with corporations that abide by the MacBride Principles. The Project Sponsor acknowledges that it has read and understands the above statement of the City concerning doing business in Northern Ireland.

7.6 The City urges companies not to import, purchase, obtain or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood, or virgin redwood wood product.

NOW THEREFORE, the parties hereto have executed this In-Kind Agreement as of the date set forth above.

CITY AND COUNTY OF SAN FRANCISCO, acting  
by and through its Planning Commission

HARRISON FREMONT LLC,  
a California limited liability company

By: \_\_\_\_\_  
Director of Planning

By: Harrison Fremont Holdings LLC,  
a California limited liability company,  
its sole member

By: Emerald Fund, Inc.,  
a California corporation,  
its manager

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

APPROVED:

APPROVED AS TO FORM:

DENNIS J. HERRERA  
City Attorney

Farella Braun & Martel, LLP

By: \_\_\_\_\_  
Steven L. Vettel

By: \_\_\_\_\_  
Deputy City Attorney

**Exhibit A**

Legal Description of the Land

LEGAL DESCRIPTION

"PARK PARCEL"

ALL THAT REAL PROPERTY SITUATED IN THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

PARCEL B, AS SAID PARCEL IS SHOWN ON THAT CERTAIN MAP ENTITLED "FINAL MAP NO. \_\_\_\_\_, AN AIRSPACE SUBDIVISION AND A 326 RESIDENTIAL UNIT CONDOMINIUM PROJECT" FILED ON \_\_\_\_\_, IN BOOK \_\_\_\_\_ OF MAPS, AT PAGE \_\_\_\_\_, OFFICIAL RECORDS OF THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA.

CONTAINING 22,932± SQ. FT.

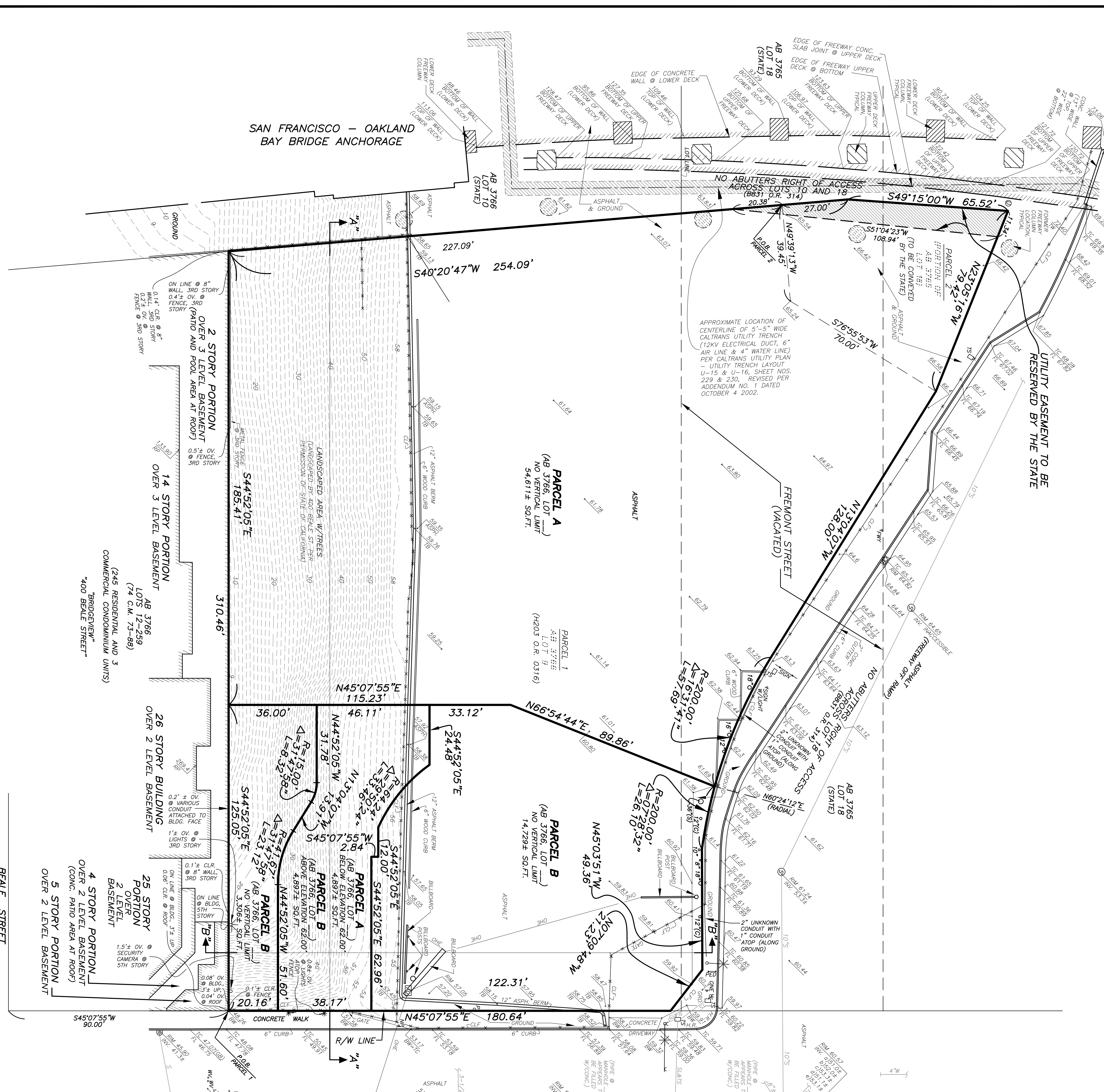
APN: LOT \_\_\_\_\_; BLOCK 3766 (FORMERLY PORTION OF LOT 009; BLOCK 3766)



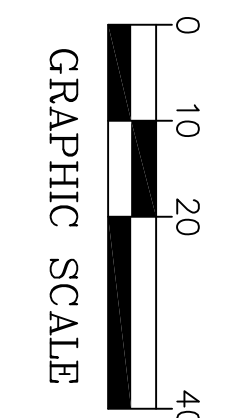
**Exhibit B**

Tentative Subdivision Map

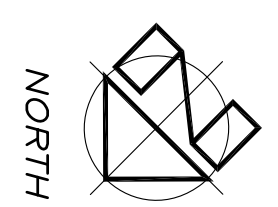
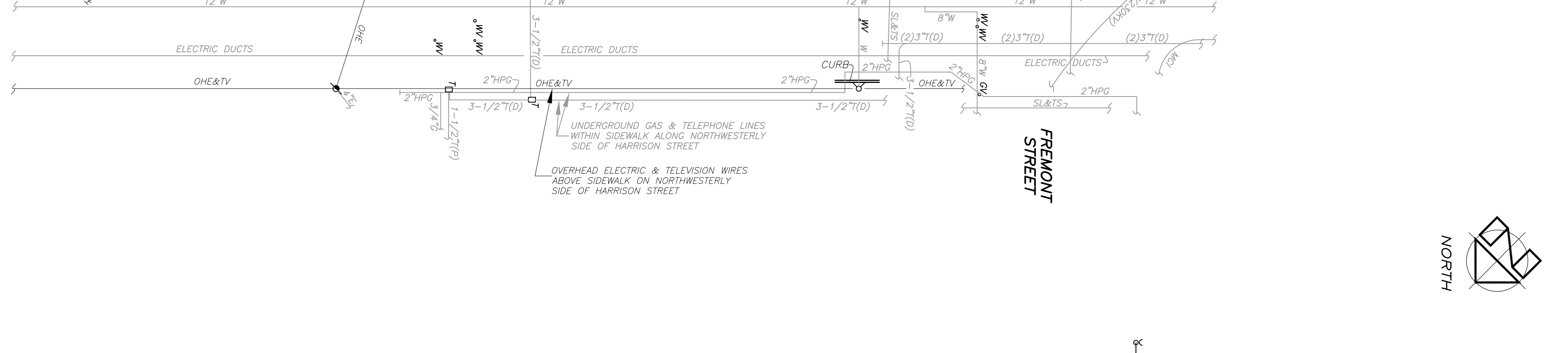
SAN FRANCISCO - OAKLAND  
BAY BRIDGE ANCHORAGE



AREAS:  
PARCEL A = 59,508± SQ.FT.  
PARCEL B = 22,932± SQ.FT.



HARRISON STREET (82.50' R/W)



LEGEND

□	CLEAR OF PROPERTY LINE	□	TELECOMMUNICATION LINE (AND RECORDS NOT AVAILABLE)
○	DRAIN INLET	○	WATER MAIN/POLE
○	TOP OF PROPERTY LINE	○	SEWER MAIN/POLE
○	TOP OF CURB	○	STREET SIGNAL LINE
○	FLOW LINE	○	TRAFFIC SIGNAL
○	CATCH BASIN	○	PRESTRESS SIGNAL
○	BACK OF WALK	○	TRAFFIC SIGNAL PULBOOX
○	MENT OF BERM	○	NO PARKING SIGN
○	CONCRETE BRICK	○	POWER POLE
○	ASPHALT	○	ONE WAY SIGN
○	CONC.	○	TREE CLUSTER
○	CHAIN LINK FENCE	○	TREE STUMP
○	ROOF PARAPET	○	PRESTRESS PROHIBITED SIGN
○	BUILDING RAMP	○	STOP SIGN
○	POINT OF BEGINNING	○	JOINT POLE
○	ASSESSOR'S BLOCK & LOT NO. FOR TAXATION PURPOSES ONLY	○	TELEPHONE PULLBOX
○		○	FIRE HYDRANT
○		○	STREET SIGN
○		○	FREEMAN SIGN
○		○	UNKNOWN MANHOLE

**SURVEY REFERENCE**  
OLD REPUBLIC TITLE COMPANY, PRELIMINARY REPORT NO. 0227005799-DP DATED JUNE 9, 2010  
THE FOLLOWING IS AN EXCEPTION TO TITLE WITHIN THE ABOVE REFERENCED PRELIMINARY REPORT:  
RELEASE AND RELINQUISHMENT OF ABUTTERS' OR ACCESS RIGHTS TO AND FROM A STATE HIGHWAY AS DESCRIBED IN THAT CERTAIN DIRECTOR'S DEED RECORDED DECEMBER 3, 1923, IN BOOK 8801, PAGE 514, OFFICIAL RECORDS.

**BASIS OF SURVEY**  
CITY OF SAN FRANCISCO MONUMENT MAP NO. 318 ON FILE IN THE OFFICE OF THE CITY ENGINEER.

**GENERAL NOTES**  
1. ELEVATIONS ARE ON SAN FRANCISCO CITY DATUM.  
2. DIMENSIONS ARE IN FEET AND DECIMALS THEREOF.

**UTILITY NOTE**  
THE UTILITIES EXISTING ON THE SURFACE AND SHOWN ON THIS DRAWING HAVE BEEN LOCATED BY FIELD SURVEY. ALL UNDERGROUND UTILITIES SHOWN ON THIS DRAWING ARE FROM RECORDS. THE SURVEYOR HAS BEEN ADVISED BY THE INDICATED LOCATION OR SIZE RECORD UTILITY LOCATION SHOULD BE COMPARED BY EXPOSING THE UTILITY. DUE TO THE PROLIFERATION OF TELECOMMUNICATION COMPANIES, NOT ALL UNDERGROUND RECORDS ARE AVAILABLE. THEREFORE, THERE MAY BE TELECOMMUNICATION LINES NOT SHOWN HEREON.

**CURRENT OWNER**  
STATE OF CALIFORNIA  
FUTURE OWNER/DEVELOPER  
HARRISON FREMONT LLC

**SURVEYOR'S STATEMENT**  
THIS MAP WAS PREPARED BY ME OR UNDER MY DIRECTION AND IS BASED UPON A FIELD SURVEY.

BY: BENJAMIN B. RON  
PLS. NO. 5015  
LICENSE EXPIRES DECEMBER 31, 2011

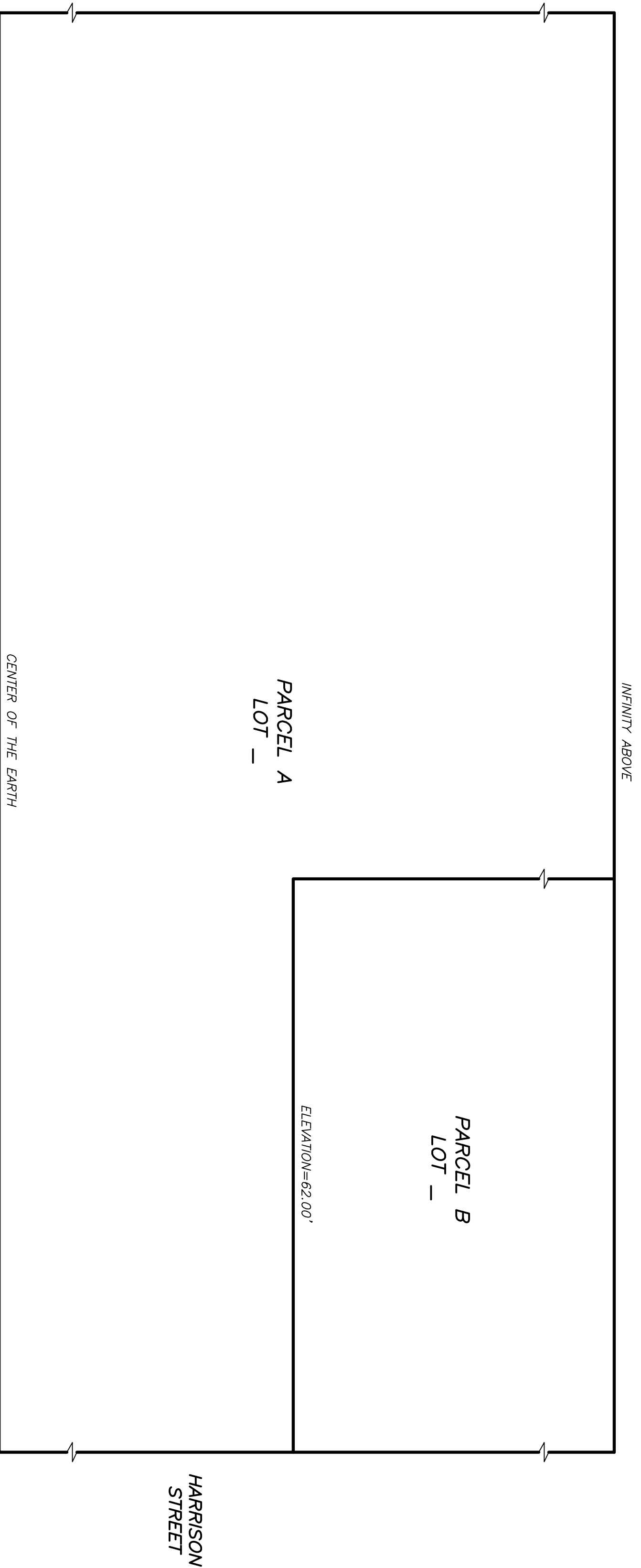
**TENTATIVE  
FINAL MAP NO.**

AN AIRSPACE SUBDIVISION AND A SUBDIVISION OF THAT REAL PROPERTY A SUBDIVISION OF THOSE CERTAIN DEEDS, JAMES 0316 PARCEL 1, RECORD 1, AND JAMES 0316 AND PARCEL 2 (TO BE CONVERTED BY THE STATE OF CALIFORNIA) CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA

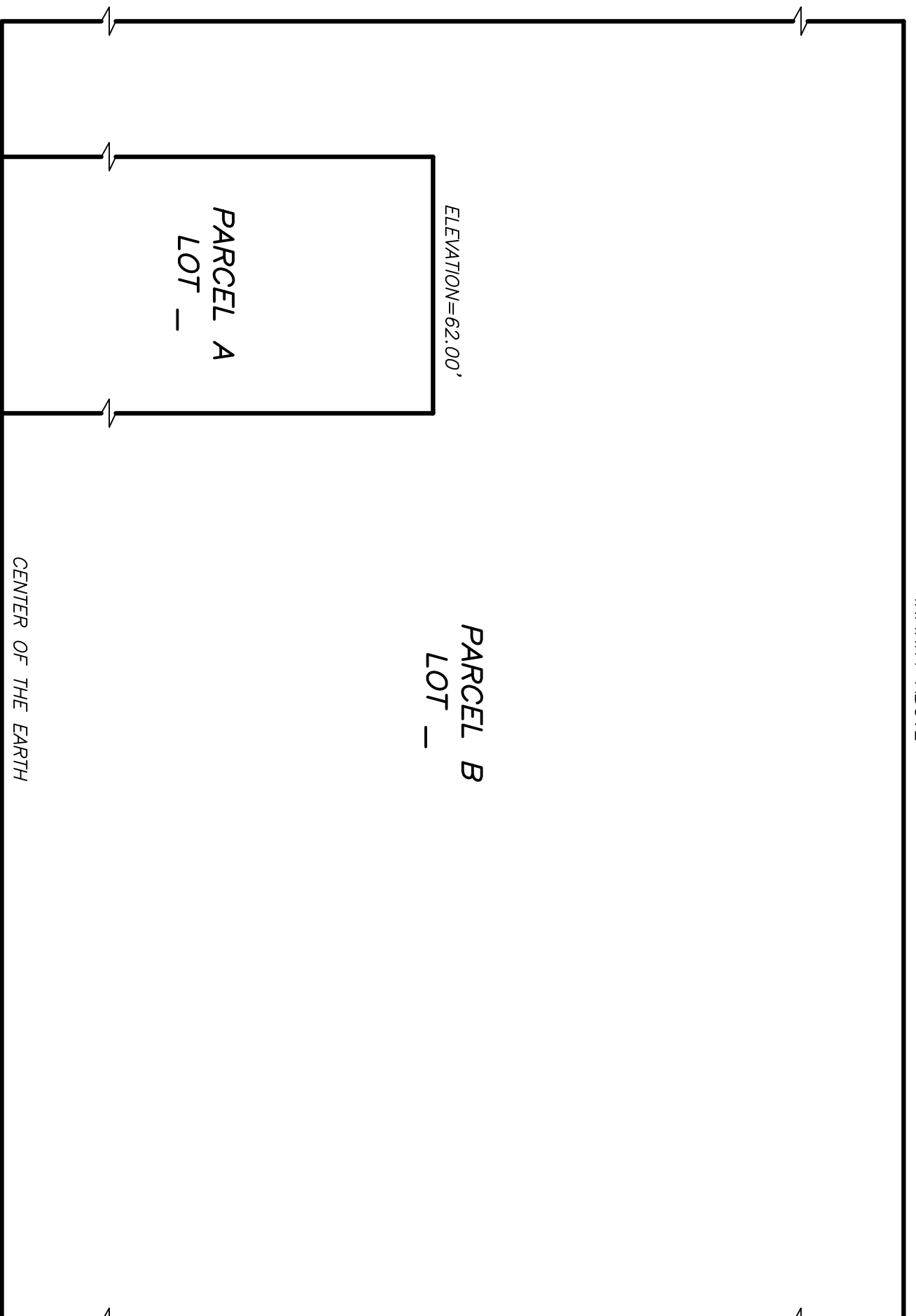
**MARTIN M. LAND SURVEYORS, INC.**  
859 Harrison Street, Suite 200  
San Francisco, California

JULY 2010 SCALE: 1"=20'  
SHEET 1 OF 2

ASSESSOR'S BLOCK 3766, PARTION OF LOT 18  
ASSESSOR'S BLOCK 3766, LOT 9 333 HARRISON STREET



**SECTION "A"**



**SECTION "B"**

**CONDOMINIUM NOTES:**

- a) THIS MAP IS THE SURVEY MAP PORTION OF THE CONDOMINIUM PLAN OF SAID LOT \_\_\_\_\_ AS DENIED IN SECTION 13316(f) OF THE CIVIL CODE OF THE STATE OF CALIFORNIA, AND THE SUBDIVISION DEPICTED HEREON IS SUBJECT TO THE PROVISIONS OF THE DAVIS-STREIBER COMMON INTEREST DEVELOPMENT ACT, TITLE 6, PART 4, DIVISION SECOND OF SAID CIVIL CODE. THE PROPOSED DEVELOPMENT WILL BE LIMITED TO 326 RESIDENTIAL UNITS IN LOT \_\_\_\_\_.
- b) ALL INGRESS(ES), EGRESS(ES), PATH(S) OF TRAVEL, FIRE/EMERGENCY EXIT(S) AND EXITING COMPONENTS, EXIT PATHWAY(S) AND PASSAGEWAY(S), STAIRWAY(S), CORRIDOR(S), ELEVATOR(S), ESCAPEWAY(S), AND COMMON USE AREAS SHALL BE CONSTRUCTED AND MAINTAINED IN ACCORDANCE WITH THE BUILDING CODE REQUIREMENTS FOR COMMON USE SHALL BE HELD IN COMMON UNDIVIDED INTEREST.
- c) UNLESS SPECIFIC OTHERWISE IN THE GOVERNING DOCUMENTS OF A CONDOMINIUM HOMEOWNERS ASSOCIATION INCLUDING ITS CONDITIONS, COVENANTS AND RESTRICTIONS, THE HOMEOWNERS ASSOCIATION SHALL BE RESPONSIBLE, IN PERPETUITY, FOR THE MAINTENANCE, REPAIR, AND REPLACEMENT OF:
  - (i) ALL GENERAL USE COMMON AREA IMPROVEMENTS; AND
  - (ii) ALL FRONTING SIDEWALKS, ALL PERMITTED OR UNPERMITTED PRIVATE ENCROACHMENTS AND PRIVATELY MAINTAINED SIDEWALKS, AND ALL OTHER OBLIGATION IMPOSED ON PROPERTY OWNERS FRONTING A PUBLIC RIGHT-OF-WAY PURSUANT TO THE PUBLIC WORKS CODE OR OTHER APPLICABLE MUNICIPAL CODES.
- d) IN THE EVENT THE AREAS IDENTIFIED IN (c) (i) ARE NOT PROPERLY MAINTAINED, REPAIRED, AND REPLACED ACCORDING TO THE CITY REQUIREMENTS, EACH HOMEOWNER SHALL BE RESPONSIBLE TO THE EXTENT OF HIS/HER PROPORTIONATE OBLIGATION TO THE HOA. FAILURE TO UNDERTAKE SUCH MAINTENANCE, REPAIR, AND REPLACEMENT MAY RESULT IN CITY ENFORCEMENT AND ABATEMENT ACTIONS AGAINST THE HOMEOWNERS' ASSOCIATION AND/OR THE INDIVIDUAL HOMEOWNERS, WHICH MAY INCLUDE, BUT NOT BE LIMITED TO IMPOSITION OF A LITIGATION AGAINST THE HOMEOWNERS' PROPERTY.
- e) APPROVAL OF THIS MAP SHALL NOT BE DENIED APPROVAL OF THE DESIGN, LOCATION, SIZE, DENSITY OR USE OF ANY STRUCTURE(S) OR ANCILLARY AREAS OF THE PROPERTY ASSOCIATED WITH STRUCTURES, NEW OR EXISTING, WHICH HAVE NOT BEEN REVIEWED OR APPROVED BY APPROPRIATE CITY AGENCIES NOR SHALL SUCH APPROVAL CONSTITUTE A WARRANTY OF FITNESS FOR ANY PARTICULAR PURPOSE OR GUARANTEE OF ACCURACY. THIS PARCEL/SUALL MAP SHALL COMPLY WITH ALL RELEVANT MUNICIPAL CODES, INCLUDING BUT NOT LIMITED TO THE PLANNING, HOUSING AND BUILDING CODES, IN EFFECT AT THE TIME OF ANY APPLICATION FOR REQUIRED PERMITS.
- f) BAY WINDOWS, FIRE ESCAPES AND OTHER ENCROACHMENTS (IF ANY SHOWN HEREON, THAT EXIST, OR THAT MAY BE CONSTRUCTED) ONTO OR OVER MESSON STREET ARE PERMITTED THROUGH AND ARE SUBJECT TO THE RESTRICTIONS SET FORTH IN THE BUILDING CODE AND CITY ORDINANCES. THE HOMEOWNERS ASSOCIATION SHALL BE RESPONSIBLE TO MAINTAIN AND CONVEY ANY OWNERSHIP INTEREST IN SUCH ENCROACHMENT AREAS TO THE CONDOMINIUM UNIT OWNERS(S).
- g) ENCROACHMENT REPAIR/OTHER ADJOINING PROPERTIES THAT MAY EXIST OR MAY BE CONSTRUCTED HEREBY KNOWN AND SHALL BE THE RESPONSIBILITY EXCLUSIVELY OF THE PROPERTY OWNERS INVOLVED TO RESOLVE ANY ISSUES THAT MAY ARISE THEREFROM. THIS MAP DOES NOT CONVEY ANY OWNERSHIP INTEREST IN SUCH ENCROACHMENT AREAS TO THE PROPERTY OWNERS.
- h) CONVEYANCE OR TRANSFER OF ANY PORTION OF COMMON UNDIVIDED INTEREST IN USABLE OPEN SPACE TO PRIVATE USE THAT WILL BE HELD AS SEVERE INTEREST IN REAL PROPERTY OR RESERVED OR OTHERWISE SET ASIDE FOR EXCLUSIVE USE FOR ONE OR MORE PERSONS SHALL BE HELD AS SEVERE INTEREST IN REAL PROPERTY. THE HOMEOWNERS ASSOCIATION SHALL BE RESPONSIBLE FOR MAINTAINING THE PARKING SPACE SIZE MAY RESULT IN A VIOLATION OF THE PLANNING CODE.

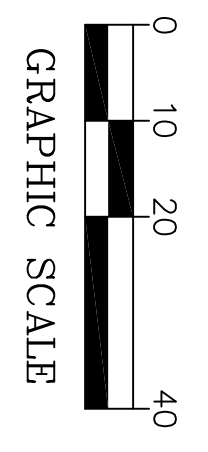
**TENTATIVE  
FINAL MAP NO. \_\_\_\_\_**

AN AIRSPACE SUBDIVISION AND  
A SUBDIVISION OF THAT REAL PROPERTY

PARCEL 1, RECORDS NO. 1770508, JAMES 0316  
AND PARCEL 2 (TO BE CONVEYED BY THE STATE OF CALIFORNIA  
CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA)

**MARTIN M. RON ASSOCIATES, INC.**  
Land Surveyors  
859 Harrison Street, Suite 200  
San Francisco, California

JULY 2010 SCALE: 1"=20'  
SHEET 2 OF 2





**Exhibit C**

Plans and Specifications for Rincon Hill Park

**PARK FEATURES**

- 1 FORMAL PARK ENTRY
- 2 TRELLIS GATEWAY
- 3 POUCH PAD
- 4 BEAM WITH PLANTING TO SCREEN TRAFFIC
- 5 BENCH SEATING
- 6 BIO-SWALE
- 7 NATIVE PLANT GARDEN
- 8 INTERACTIVE SCULPTURE
- 9 WATER WALL
- 10 RUNNEL
- 11 ACCENT PAVING
- 12 FIRE LANE WITH GRASS PAVE CELLS
- 13 THE GRAND STEPS
- 14 SEAT WALL
- 15 LAWN / INFORMAL RECREATION AREA
- 16 GARAGE ENTRY
- 17 CHILDREN'S 'BRIDGES AND TUNNELS' PLAY AREA
- 18 BOCCIE BALL COURT
- 19 COMMUNITY GARDEN
- 20 COMPOSTING CENTER
- 21 PRIVATE PATIO
- 22 TERRACE WITH MOVABLE FURNITURE
- 23 ARTISTIC FENCE



**HARRISON-FREMONT PARK**  
**FINAL PLAN CONCEPT**  
**FEB. 18, 2010**

**Attachment 3. Summary of Outreach Materials, submitted by Isabel Wade**  
**Hearing Date: February 3, 2011**

**CASE NO. 2007.1250U**  
**333 Harrison Street**  
**In-Kind Agreement**

Attachment 3. Summary of Outreach Materials, submitted by Isabel Wade

**MINUTES December 8<sup>th</sup>, 2009**

**Rincon Hill New Park Meeting, #1 Rincon; 6-8 pm**

Attendance: 26 neighbors signed in (approx 5 others were present); 3 interpreters (Chinese, Tagalog, Spanish)

Materials handed out: Meeting Agenda, Survey, and next meeting announcement

1. Welcome: Isabel Wade, consultant to Emerald Fund, introduced the meeting host team. In addition to herself, others include Corrine Woods and Cliff Lowe and Katy Taylor of CLA (Cliff Lowe Associates). In addition, volunteer Topher Delaney attended to serve as a 'Table Host' for one group in the breakout discussions. Isabel asked if anyone needed translation, and as none did, the interpreters were sent home.

2. Isabel explained the meeting purpose – to solicit neighbors' ideas regarding the uses and features of the new park planned at Harrison and Fremont. She indicated that there is a pot of State Park funds for acquisition of new parks in highly open-space deficient neighborhoods, and that Rincon Hill qualified as a park-needy neighborhood. She pointed out on a slide all of the existing open space in the neighborhood; the ½ mile circle around the park site only has another 3 acres of park land, including a portion of the waterfront as a pedestrian trail, and the total planned acreage for the area at this point is only 8.2 acres. This includes a 5-acre above-ground park planned for the TransBay terminal project, a site right on the edge of the neighborhood. Consequently, the Harrison St. Park is quite important as an addition to available open space in the neighborhood. A question was asked if there would be a Dog Park in the neighborhood and Isabel asked Marty Corressel to discuss the plans for the Dog Park on the other side of the bridge since he had been intimately involved in its design and dedication as a park site. Isabel stated that there would be a total of 5 meetings to plan the park and that she wanted their help in spreading the word in the neighborhood about the subsequent meetings. One would include a design and orientation session, pending permission of CalTrans.

3. Possibilities Presentation:

a. Existing site: Cliff Lowe was introduced to present a power point indicating the existing site conditions, including constraints. The main constraints are the required fire lane and the area over the entryway to the garage. The fire lane does not have to be a hard surface or material such as asphalt. The top of the garage area can become part of usable area of the park, only limited as a landscape area. A question was asked about the decibel level given the proximity to the bridge, and Cliff indicated that the park would be at 60 decibels of sound once the project residence behind the park was completed since it serves as a sound barrier. A question was asked about shadows and Cliff indicated that the studies would be presented at the next meeting; however, the park location is the sunniest spot of the site.

b. Recreation Opportunity: Katy Taylor of CLA then presented some images of many types of recreation features and park elements to spark discussion in the work groups. Her photos were grouped in sections of Play, Other Elements, X and X

#### 4. Break Out and Brain Storm Sessions

a. Participants were divided into 3 groups to brain storm their ideas for the park (see meeting notes from each group). Table Hosts to facilitate the discussions included: Cliff Lowe & Katy Taylor, Table #3, Topher Delaney, Table #2, and Corrine Woods Table #1). Each group was given a satellite photo of the site, and a large site plan to draw upon. Colored markers were available, as well as colored paper and small images of park features for pasting on the plan.

b. Notes from each group with their suggestions and ideas are located on the project website. Each group presented their ideas and summarized their discussion regarding park purposes, ideas for key features and elements including circulation, and their thoughts on possible security concerns.

5. Wrap Up: Isabel invited everyone to attend the 2<sup>nd</sup> meeting on January 5<sup>th</sup> at the Infinity Tower with the Rincon Hill Neighborhood Association. In the interim, a project website would be going up and they could review the minutes from tonight's meeting, including the power point, and find links to other open space plans such as those for Trans Bay, Guy Place Mini Park, etc. The Jan 5<sup>th</sup> meeting announcement would be available electronically for them to help with the distribution. She urged everyone to fill out the survey if they had not already done so and to help send the link to the survey as well.

### **MINUTES January 5, 2010**

#### **New Park Meeting, Infinity Tower; 6-8 pm**

In Attendance: 36 neighbors signed in (approx 5 others were present who did not

Materials: Meeting Agenda, Survey, and next meeting announcement for 1/23/10

Workshop Hosts: Sunya Ojure (NPC), Cliff Lowe, Katy Taylor, Corinne Woods, Isabel Wade

1. Welcome: Isabel Wade, consultant to Emerald Fund, welcomed the attendees and introduced the meeting host team. In addition to herself, others included Corrine Woods and Cliff Lowe and Katy Taylor of CLA

2. Isabel explained the meeting purpose – to solicit neighbors' ideas regarding the uses and features of the new park planned at Harrison and Fremont. She discussed the history of the park that is now officially part of the Rincon Hill Plan, adopted by the Board of Supervisors in 2005. The original funds for purchase of the site from CalTrans were to come from developers fees, but now that construction in the area is at a standstill, we are looking for a new source of funds so that the park can be completed as soon as the adjacent building is completed. She indicated that there is a pot of State Park funds (Proposition 84) for acquisition of new parks in highly open-space deficient neighborhoods, and that Rincon Hill qualified as a park-needy neighborhood. She pointed out on a slide all of the existing open space in the neighborhood; the ½ mile circle around the park site only has another 3 acres of park land, including a portion of the waterfront as a pedestrian trail, and the total planned acreage for the area at this point is only 8.2 acres. This includes a 5-acre above-ground park

planned for the TransBay terminal project, a site right on the edge of the neighborhood. Consequently, the Harrison St. Park is quite important as an addition to available open space in the neighborhood. Isabel stated that this was the 2<sup>nd</sup> of 5 community meetings to help design the park and that the next one on January 23<sup>rd</sup> would actually be at the site.

3. Community Ideas Presentation: Isabel introduced 3 community members who had participated in the December 8<sup>th</sup> meeting to present a summary of their Work Groups ideas about the park. She indicated that it was hoped that the work of the first meeting would help jump start the brainstorm session of this second group. Presenters were: Joan Eichler, Marty Corsell, and Corinne Woods

4. Possibilities Presentation:

a. Existing site: Cliff Lowe was introduced to present a power point indicating the existing site conditions, including constraints. The main constraints are the required fire lane and the area over the entryway to the garage. The fire lane does not have to be a hard surface or material such as asphalt. The top of the garage area can become part of usable area of the park, only limited as a landscape area. Cliff showed the previously-prepared shadow studies for the site indicating that most of the park is in sunshine most of the day.

b. Recreation Opportunity

Katy Taylor of CLA then presented some additional images of various types of recreation features and park elements that might be of interest to the group to spark discussion in the work groups.

4. Break Out and Brain Storm Sessions

a. Participants were divided into 3 groups to brain storm their ideas for the park (see meeting notes from each group). Table Hosts to facilitate the discussions included: Cliff Lowe, Katy Taylor, Isabel Wade, and Sunya Ojure. Each group was given a satellite photo of the site, and a large site plan to draw upon. Colored markers were available, as well as colored paper and to-scale images of some park features for pasting on the plan.

b. Notes from each group with their suggestions and ideas are located on the project website. Each group presented their ideas and summarized their discussion regarding park purposes, ideas for key features and elements including circulation, and their thoughts on possible security concerns.

5. Wrap Up

a. Cliff Lowe and Isabel Wade used a Preferences Matrix to poll the reconvened group regarding their priorities for different features (see website).

b. Isabel invited everyone to attend January 23<sup>rd</sup> meeting on site at 10:30 AM, Harrison and Fremont.

c. She further urged everyone to fill out the survey on line and to send around the link to the survey to their neighbors who might not have been attending the meetings.

**MINUTES - February 2<sup>nd</sup>, 2010**

**New Park Meeting, Sailor's Union; 6-8 pm**

In Attendance: 22 neighbors + Project team (Isabel Wade, Corinne Woods, Cliff Lowe, Katy Taylor) Video Taping: meeting video taped (with audience permission) by LiveSOMA

Hosts: Emerald Fund (Peter Bosma and Alistair McTaggart)

Materials: 3 Design Concept drawings, Poster with Sustainability Ideas for the Project

1. Welcome: Isabel Wade, consultant to Emerald Fund, welcomed the attendees and introduced the team.

2. Isabel reviewed the project history to date and the current effort to secure funding from Proposition 84 (State of California) to acquire the park from CalTrans if our proposal is accepted. The original funds for purchase of the were to come from developers fees, but now that construction in the area is at a standstill, we are looking for a new source of funds so that the park can be completed as soon as the adjacent building is finished (estimated to be in 2012). Isabel thanked those who came to the site meeting (January 23<sup>rd</sup>) and stated that this was the 4th of 5 community meetings to help design the park. She then introduced Katy Taylor to bring the group up to date (based on more than 115 surveys and feedback from the meetings to date) regarding community preferences for the park elements.

3. Community Ideas Presentation: Katy reviewed the key elements that were popular based on the surveys and in previous community meetings (not in order):

Children's play area; Dog area; Bocce Court; Large Lawn area; shade trees; flowers; bermed landscaping on the west side to block freeway off ramp noise; Community Garden; Seating Area; Art element; Water feature

She also reviewed some built project examples for the park section over the tunnel to the garage to show what can be done that is attractive, including for those looking down on the site. Features that could go here, for example, might be the children's play area with Site Design Presentation: Cliff then described in detail each of 3 park design concepts based on the collective community input. Each featured the central 'required' features that would be part of any park design: the emergency fire lane, the garage entrance and tunnel, and the apartment building edge.

4. Site Design Presentation: Cliff then described in detail each of 3 park design concepts based on the collective community input. Each featured the central 'required' features that would be part of any park design: the emergency fire lane, the garage entrance and tunnel, and the apartment building edge

5. Katy then led the group in discussing their preferences for some key elements and what type of design they would like to see for these features: A fence, The dog area, Children's area, Picnic tables and seating elements

It was generally agreed that a fence was desirable for security – a common concern on many surveys and in the public meetings. A sculptural fence, with art elements or that is artistic in form, would be best. Ideally, participants thought that the fence probably needed to be locked at night (building tenants would enter with a

special key/fob). People were enthusiastic about the most open type of fence design (one example shown by Katy) and also the idea of a trellis fence in whole or part where vines could grow and make the edge especially inviting and green. One suggestion was to make the Harrison side of the park contain the water feature that would look inviting from the street and help to block the traffic noise from the busy street. (see resident Notes)

A pet owner from One Rincon provided 'best practices' from their building in regards to dogs that seemed sensible for the new park. First, the new park is not large enough to be an exercise park so there was not much point in putting in a 'play area' for dogs, he believes. The real need, given the pending development of a larger dog park where dogs could exercise on the other side of the bridge, is for a strip where dogs can 'do their business' BEFORE they enter the park. He suggested that a strip of gravel around the edge of the park would be practical and preserve the plant materials and lawn in the interior of the park.

The Children's area would be well used given the increase in young children in the neighborhood (30 children live in Bridgeview now). Because most of the children are 0-5 and the available housing units are not sized for larger families, it was felt that the elements needed for children in the park should be suitable for toddlers and did not have to be extensive, but memorable and fun. For example, sculptures that little children could sit or crawl on are very popular in some parks and some are famous (i.e. the family of bronze ducks in the Boston Common). One creative idea is to have a miniature Bay Bridge for kids to climb on. Some other small 'exercise' element could be included, and of course the little ones could have a bed in the community garden.

Finally, Katy reviewed the poster with some design ideas for sustainability and invited further ideas. Participants were very enthusiastic about making the park as sustainable as possible, with recycled materials for benches, sculptures etc. and LED lighting and other features that would become both a signature of the park and a city standard.

4. Site Design Presentation: Cliff then described in detail each of 3 park design concepts based on the collective community input. Each featured the central 'required' features that would be part of any park design: the emergency fire lane, the garage entrance and tunnel, and the apartment building edge.

5. Participants were then invited to take colored stickers and sticky notes and go up to the concept drawings and indicate their 4 favorite elements with the stickers and then to add notes as needed to explain their preference for one design or another, or to suggest moving an element to another design.

**NEXT MEETING (and LAST): February 18<sup>th</sup>, 6-8 pm, South Beach Community Center at Pier 40.**

We will review the final design plan that will be based on the feedback of the first 4 meetings & all surveys.

**NOTE: Opportunity for completing the survey will be closed on February 10<sup>th</sup>**



**Attachment 4. Letter from Department of Recreation and Parks**  
**Hearing Date: February 3, 2011**

**CASE NO. 2007.1250U**  
**333 Harrison Street**  
**In-Kind Agreement**

Attachment 4. Letter from Department of Recreation and Parks



Edwin M. Lee, Mayor  
Philip A. Ginsburg, General Manager

January 27, 2011

Mr. John Rahaim  
Planning Director  
1650 Mission St., Suite 400  
San Francisco, CA 94110

Dear Mr. Rahaim,

Over the past year and a half, Recreation and Park Department planning staff have worked with City Planning staff to explore and refine the proposal for the creation of a new neighborhood park located at 333 Harrison.

SFRPD staff will continue to work with City Planning staff -- and the project sponsor -- to evaluate this site as a potential park acquisition. In particular, staff will:

- **Provide final feedback on the proposed concept design.** Staff have reviewed the existing concept design and provided initial feedback on the design's appropriateness for the park's proposed uses.
- **Evaluate proposed maintenance and operations plans.** The Recreation and Park Department has limited resources to care for and maintain its existing 220 parks; SFRPD wants to ensure that any new parks added to the city's open space system can be maintained effectively for years into the future.
- **Make a recommendation to the Recreation and Park Commission that evaluates the property for acquisition.** SFRPD, in collaboration with community stakeholders and the Parks Recreation Open Space Advisory Committee (PROSAC), is actively considering several properties for potential acquisition as open space. The 333 Harrison project will be evaluated along with these other properties within the context of this community process.

We look forward to working with staff and the project sponsor to further define the parameters of a potential partnership to deliver a new park for the Rincon Hill neighborhood.

Best regards,

A handwritten signature in blue ink, appearing to read "Dawn Kamalanathan". The signature is fluid and cursive, with a large loop at the end.

Dawn Kamalanathan  
Director of Planning and Capital Management





Attachment 5. Planning Commission In-Kind Agreement Policy

## **Planning Commission Policy: *Procedures for In-Kind Agreements***

### **INITIATE IN-KIND PROCESS**

The Planning Department will inform the project sponsor of the option to pursue an in-kind agreement and the related procedures outlined in this policy, in the first formal communication after the sponsor files for entitlement (See Appendix A). The project sponsor will coordinate with the Planning Department and CACs (as relevant) and refer to the area plan and any related infrastructure or community plans to explore opportunities for in-kind improvements.

Once the project sponsor will indicates interest in pursuing an in-kind agreement the Planning Department will provide a courtesy notification at the next CAC meeting.

The project sponsor will be responsible for all city staff time and materials associated with an in-kind agreement, regardless of whether the in-kind agreement is approved.

### **STEP 1: IN-KIND IMPROVEMENT ELIGIBILITY DETERMINED**

The Planning Department will determine eligibility at the onset of the process based on the language in the Planning Code describing the circumstances under which an In-Kind Agreement is warranted. The Planning Commission policy is that three eligibility criteria should be met before being deemed *eligible* for a fee waiver and in-kind agreement. If any of the criteria are not met, the proposal is deemed ineligible for an in-kind provision and the project sponsor can not make a request to the Commission for a fee waiver.

#### **1. The Improvement Fulfills the Purpose of Community Improvements**

The Planning Code provisions related to In-Kind agreements generally provide that the improvements provided in-kind must be public infrastructure or facilities. (See, for example, Planning Code Sections 418.3(e), 421.3(d), 422.3(d), and 423.3(d)). In order to implement this requirement, the Planning Commission will require that all improvements provided in-kind must be *available to the public* to the same extent they would be if the City provided the infrastructure. In-kind parks must be publicly owned and accessible at hours consistent with similar City owned parks, streetscapes must be publicly owned and childcare facilities must meet the same standards of access as childcare facilities that receive public funding from

Department of Children Youth and their Families (DCYF).<sup>1</sup> If the proposed improvement will be publicly accessible and available, then it is eligible for an in-kind provision.

## **2. The Infrastructure Type is Identified in the Fee Ordinance**

If a category of infrastructure, such as open space, was identified in the planning process and included as an expenditure category in the fee ordinance, then a new park is eligible for an in-kind provision. Infrastructure types not identified in the relevant fee ordinance, such as fire stations, are ineligible.

## **3. The Expenditure Category for Infrastructure Type is Not Exhausted**

The Planning Code provisions related to Area Plan impact fees generally require that the City spend the impact fees in proportion to impacts identified in each Area Plan. Accordingly, each impact fee ordinance designates a certain percentage of revenue to each infrastructure type. Thus, it is the Planning Commission's policy that community improvements funded by impact fees, or provided through in-kind agreements, must be expended consistent with these proportions every five years. If the expenditure category for a proposed improvement is exhausted for the 5 year period, the proposed improvement is not eligible for an in-kind agreement.

*If a proposed improvement is deemed ineligible, a project sponsor may propose an alternative improvement or pay required fees.*

## **STEP 2: DETERMINE WHETHER PROPOSED IMPROVEMENT IS A PRIORITY**

Once deemed eligible for in-kind provision, the Department and CAC determine whether it is a priority. The criteria for a prioritization and recommendation noted below are more flexible than the eligibility criteria described above; therefore the priority and recommendation criteria below should be considered in balance. Meeting one criteria or failure to meet another does not determine the Department's recommendation.

In instances where a project sponsor proposes an improvement that is identified in the IPIC and CAC endorsed five year capital plan as a priority project – the Planning Department should recommend the in-kind agreement.

If a proposed in-kind project competes for revenue with an IPIC and CAC prioritized project, especially if the City has invested resources in developing that project, the Planning Department should *not* recommend the proposed in-kind improvement.

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<sup>1</sup> Should a particular fee ordinance specifically call out provisions for privately owned but publicly accessible infrastructure the code would supersede this policy's requirement for public infrastructure.

Capital planning efforts by the IPIC and CAC should accommodate smaller in-kind proposals when developing a capital plan, by not programming 100% of expected impact fee revenue in appropriate expenditure categories.

The Eastern Neighborhoods plan includes legislated priority capital improvements including Townsend Street, Victoria Manalo Draves Park - Pedestrian Improvements, Folsom Street - Streetscape Improvements, 16th Street - Streetscape Improvements, 16th Street - Transit Improvements, New 17th & Folsom Park, and Showplace Square Open Space Plan (including implementation of one open space project). Project sponsors are encouraged to seek fee waivers and in-kind agreements for these priority improvements in Eastern Neighborhoods. The Department should not recommend projects that compete with these improvements for revenue.

In some cases the established capital plan or other improvement prioritization processes do not provide clarity on whether a proposed improvement is a priority. In those cases the relevant CAC should evaluate the proposal to determine whether it is a priority. This could occur when priority projects are not identified for an expenditure category, or when the development projects offers a unique opportunity for a community improvement. For consistency, the CACs should use established evaluation criteria to review in-kind projects not already identified as a CAC priority (see Appendix B).

When an in-kind approval leverages efficiencies for the community improvements program this should impact prioritization. The Department should recommend proposed in-kind improvements that offer major efficiencies.

*Projects which are not determined to be a priority may still elect to pursue Planning Commission approval, they must still complete the review process as described below.*

### **STEP 3: DETERMINE WHETHER PROPOSED IMPROVEMENT IS RECOMMENDED TO THE PLANNING COMMISSION**

Once an improvement is determined as a priority, the Planning Department and the CAC shall determine whether to recommend the specific in-kind improvement to the Planning Commission. To allow this evaluation, the proposed improvement must be defined including conceptual design, project maintenance, and cost/value. The project sponsors must also provide information regarding neighborhood support and proposed terms of agreement. These details, as described below, should inform the Department and CAC recommendations.

The relevant CAC should pass a resolution or recommendation on the proposed improvement the Commission will consider for an in-kind agreement. The CACs are encouraged to draft detailed resolutions on specific components of the proposed improvement, rather than general "up or down" resolutions.

A conceptual design of the proposed improvement is adequate at the initial phase of discussions with the Department and CAC. The schematic design must be complete (30% designed) before a formal recommendation from the Department and other City agencies is finalized. The

Commission will not hear requests for in kind provision of improvements until the schematic design is complete.

Relevant City agencies must review the proposed schematic design and provide formal comments to the Planning Department. The Department should base its recommendation on the feasibility of the project and City agency support.

Proposed in-kind improvements must include maintenance plans. Possible maintenance strategies include: development of an assessment district to fund maintenance, commitment from the project sponsor or related home owners association to fund maintenance, commitment from a public agency to fund maintenance, or any other committed source. Project sponsors cannot get credit for funding maintenance plans, as impact fee revenue is limited to capital expenditures. At a minimum new parks and other property that will become City responsibility require three years maintenance funding in hand or similar arrangement that insures appropriate maintenance of the park. The Department should only recommend in-kind projects that have developed maintenance plans that satisfy relevant City agencies.

The project sponsor is required to provide two cost estimates for the proposed improvement. The project sponsor is encouraged to include known hard and soft costs, including City permits for the improvement (DPW or MTA). Project sponsors may not be credited with an in-kind fee waiver for any improvements which are required as part of project entitlements or any city codes. This includes but is not limited to the requirements listed in Appendix C. Project sponsors cannot get credit for funding maintenance plans, as impact fee revenue is limited to capital expenditures. The Planning Department will work the Department of Public Works and the Department of Real Estate to as appropriate to evaluate these cost estimates and determine final value.

The value of a proposed improvement determines the total amount of a fee waiver. The Department is not required to base the final valuation of the project on cost estimates provided by the project sponsor, but must provide an explanation for the final value. In recommending a project, the Department should consider value provided by private delivery of the project as compared to the costs for the City to deliver the good as an outer limit.

In most cases a project sponsor will receive in-kind fee waiver credit for 100% of the improvement cost. In cases where the costs exceed the amount of fees due or expenditures available for the infrastructure type, the project sponsor must identify additional funding sources, or gift the balance to the City.

Once the improvement is completed the Planning Department, or other City Agencies may review actual costs.

Project sponsors are encouraged to coordinate with neighbors and the local community in the design and development process of the proposed improvements. A project that is well



coordinated with neighbors and supported should receive Planning Department recommendation.

In negotiation with the Department, the project sponsor is required to develop terms of agreement to govern provision of the improvement. At a minimum, each in-kind agreement should include the following components:

- *Timing of Project Completion* – In most cases the improvement should be completed before the issuance of the first certificate of occupancy.
- *Process for Validating Completion of Work* – In most cases the relevant City agency, DPW, Park/Rec, MTA will inspect the work and verify previous to the Planning Department validating completion.
- *Process for Validating Costs* – In most cases the project sponsor will be required to submit invoices for expenditures related to the improvement, the Department will reconcile these costs with the original fee waiver. Cost overruns are the responsibility of the developer, however if the project is completed for less money than the amount of fees waived, the balance must be contributed to the relevant infrastructure fund with no penalty.
- *Expiration Date* – In most cases the project sponsor will be required to complete the proposed in-kind improvement within in a certain time from approval of the in-kind agreement.
- *Failure to fulfill Agreement* – in most cases the project sponsor's failure to fulfill the agreement will cause them to owe all fees plus interest before issuance of the first Certificate of Occupancy.
- *Approvals of Improvement by relevant City Agencies before first Construction document* - Before new public infrastructure is built, City agencies must approve the final design. In-kind agreements shall include a term that requires all necessary City approvals for an in-kind agreement are achieved prior to first construction document.

In kind agreements for specific infrastructure types should also include the following terms:

- Open Space - Three years of maintenance funding, or equivalent.
- Childcare - Required affordability for a portion of the spaces consistent with requirements to receive other City childcare funding, 55 year term with free rent, competitive process to identify program operator.
- Streetscape - Maintenance plan.

*Projects which are not recommended may still elect to pursue Planning Commission approval, they must still complete the review process as described below.*

#### **STEP 4: APPROVAL BY THE PLANNING COMMISSION**

Fee waivers and in-kind agreements require Planning Commission approval. As noted above, before the Planning Commission considers the request the following must be completed:

- The Commission requests staff to seek input from the relevant CAC and to present the proposed fee waiver and in-kind agreement to the CAC for their review and

- consideration. The Commission strongly prefers that the CAC pass a resolution or recommendation on the proposed improvement the Commission will consider for an in-kind agreement.
- The Commission directs staff to seek input from the relevant City agencies, including requesting that those agencies make a formal recommendation on the improvement to the Planning Department in regards to the overall feasibility and desirability of the proposed improvements.
  - The Planning Department determines the value of the in-kind improvement.
  - A final in-kind agreement is drafted, including all relevant terms.

If the improvement is well defined, supported, and will be completed within a defined period from entitlement , the project sponsor should seek project entitlement and approval of the in-kind agreement at the same hearing. This option is most efficient and preferred by the Planning Commission.

If the final design, cost, or terms of the in-kind agreement are not completed, the project sponsor may elect for two Commission hearings, one for the project entitlement and a second for the in-kind agreement. The project sponsor must declare their *intent to pursue an in-kind agreement* and submit a conceptual design of the improvement and initial feedback from the CAC and/or neighbors and local community before the entitlement hearing. At the entitlement hearing The Planning Commission may make a non-binding statement of intent to approve the in-kind agreement. The Commission's intent to approve is non-binding as additional considerations may arise as the proposal develops. Once the agreement is finalized, the Commission will take action at a separate hearing. The CAC will be given an opportunity to provide a second resolution for the second hearing. This option allows project sponsors to receive entitlements and initiate DBI review of projects while finalizing the design, costs, and terms of the in-kind agreement.

At the time of project approval, all project sponsors must declare whether they intend to fulfill their community improvement/public benefit obligations by paying the fee or pursuing an in-kind agreement. Should a project sponsor declare their intent to pay impact fees at entitlement, yet later decide to pursue an in-kind agreement, the project sponsor must still abide by the process outlined in this policy, including review by the relevant CAC, coordination with City agencies, demonstrated support by the local community and formal approval hearing at the Planning Commission.

If the in kind provision of an improvement is approved by the Planning Commission, the project sponsor must have final design completed and approved by the appropriate city agencies before the first construction permit for the development project is issued by the Department of Building Inspection.

#### Partial Fee Waivers

Should a project sponsor proposes to waive a *portion* of their fee obligation based on an in-kind agreement, the balance of fees are due before the first construction permit for the development project is issued by the Department of Building Inspection. If the project sponsor chooses to participate in the fee deferral program, they must contribute the first 20% of impact fees owed before the first construction permit is issued, the in-kind waiver amount should be considered 'collected' at first certificate of occupancy.

For example if a project sponsor's total fee amount is \$1 Million, and they are granted an in-kind agreement for \$300K, they must contribute \$700K in cash at or before the first construction permit is issued. Should they elect to defer a portion of their fees (as permitted by the Planning Code), they must contribute the first 20%, or \$200K before the first construction permit is issued.