

**BEFORE THE CITY COUNCIL OF THE CITY OF LAFAYETTE**

**IN THE MATTER OF:**

An ordinance of the City Council of the City of )  
Lafayette approving an amendment to the Planned )  
Unit Development to allow a land use change from )  
office to residential to construct an up to 72-unit )  
multi-family residential condominium project )  
known as Town Center Phase III located north of )  
Mr. Diablo Boulevard at Dewing Avenue )  
(Assessor's Parcel Number 243-040-035) )

**Ordinance No. 615**

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**WHEREAS**, in September 2010, KB Home (Applicant) and Lafayette Residential Partners, LLC (Owner) filed applications to amend the BART Block Specific Plan for a building over three stories in height and amend the Planned Unit Development/Preliminary Development Plan to allow a land use change from office to residential to construct a 81-unit, multi-family residential condominium project known as Town Center Phase III on 1.47 acres located north of Mt. Diablo Boulevard at Dewing Avenue (Assessor's Parcel Number 243-040-035) which was subsequently modified as specifically described below, (hereafter the "Project"):

SPA01-10, RZ01-11, & DR10-11 KB Home Northern California (Applicant), Lafayette Residential Partners, LLC (Owners) P-1 Zoning: Request for:

- (1) An amendment to the BART Block Specific Plan for a building over three stories and thirty five feet;
- (2) A zoning amendment to the Planned Unit Development/Preliminary Development Plan for Town Center for a land use change from office to residential;
- (3) Design review for 72 residential dwelling units in a four story, 55'3" high, 162,798 square foot building with parking for 148 vehicles in a 2-level garage;
- (4) A subdivision for condominiums; and
- (5) A Mitigated Negative Declaration of Environmental Impacts and Mitigation Monitoring and Reporting Program.

**WHEREAS**, on April 9 and June 25, 2012, the Design Review Commission, following notification to the public in the prescribed manner, conducted public hearings where it received written and oral testimony. On June 25, 2012, the Design Review Commission made the motion that as currently designed, it could not make the findings to support the Project or forward a recommendation of approval to the Planning Commission. In making and adopting the motion by a unanimous vote, the Design Review Commission recommended that the applicant consider a number of its recommendations for project changes which may lead to an approval by a future hearing body based on the ability to make the required findings; and

**WHEREAS**, on August 6 and September 17, 2012, the Planning Commission of the City of Lafayette ("Planning Commission") following notification to the public in the prescribed manner, conducted public hearings where it received written and oral testimony.

**WHEREAS**, on September 17, 2012, the Planning Commission voted 4-2 to adopt Planning Commission Resolution 2012-23 recommending to the City Council the denial of applications SPA01-10: Specific Plan amendment, tentative map and design review, RZ01-11: amendment to the planned unit development and DR10-11: design review; and

**WHEREAS**, on October 22, November 13 and November 20, 2012, the City Council ("City Council") conducted duly noticed public hearings on the subject applications, at which time all persons wishing to testify in connection with the Project were heard and the Project was fully studied.

**WHEREAS**, on November 26, 2012, the City Council conducted a duly noticed public hearing on the subject applications, adopted Resolution 2012-50 approving the amendment to the BART Block Specific Plan for a building over three stories and thirty five feet high, the tentative map for up to 72 residential units and design review, re-introduced Ordinance 615 and continued the matter to an adjourned regular meeting on December 4, 2012 for adoption of the ordinance.

**NOW THEREFORE BE IT RESOLVED THAT:**

**SECTION 1 Rezoning** Based on the entire record before the City Council, all written and oral evidence presented to the City Council, and the findings made in this Ordinance, the Planned Unit Development/Preliminary Development Plan for Town Center for 1.47 acres of real property located north of Mt. Diablo Boulevard and Dewing Avenue, in the City of Lafayette, California ("Property"), described in the legal description set forth in Exhibit "A," is hereby amended to allow a land use change from office to residential to allow for an up to 72-unit multi-family residential condominium project based on plans dated November 5, 2012 and further revised on November 20, 2012 as shown in Exhibit "C" subject to the conditions of approval attached hereto and incorporated herein by reference as Exhibit "B".

**SECTION 2 Rezoning Findings** Pursuant to Lafayette Municipal Code §6-1108, findings required for amendment of the P-1 Designation/Preliminary Development Plan and based on the entire record before the City Council and all written and oral evidence presented to the City Council, the City Council hereby makes and adopts the following findings:

- A. That the applicant intends to start construction within two and one-half years from the effective date of zoning change.

*The applicant intends to start construction within two and one-half years from the effective date of the zoning change pursuant to the Development Agreement and as required by the conditions of approval.*

- B. That the proposed planned unit development substantially conforms to the general plan.

*The Project is the subject of a Development Agreement and therefore, the 1974 General Plan is applicable to the Project. The Project substantially conforms to the 1974 General Plan goals and policies for the Central Area as follows:*

1. Create an attractive, high-quality commercial area as a complement to the surrounding residential community.

*Although not specific to this final phase of the Town Center project, Phase I of the approved 1997 Town Center planned development included a commercial component which now includes restaurant, personal service, and retail uses.*

2. Make the Central Area economically as strong as possible, consistent with the environmental goals of the community.

*In order to be economically strong, downtowns need the synergy that a mix of commercial and residential uses provides. In addition to providing needed housing, the Project could add 210 residents to the Downtown/Central Area providing a close-in customer base for the numerous and varied uses and services Downtown Lafayette has to offer.*

3. Lafayette should seek to take advantage of the location of the BART station and the freeway off-ramps, to maximize the integration of both transportation and development of a well-organized and well-designed Central Area nucleus.

*As the final phase of the mixed use Town Center Planned Development, the Project conforms to this goal because the Town Center Planned Development maximizes both the integration of transportation by its proximity to the BART station and the development of a well-organized and cohesive mixed residential and commercial project within the Central Area.*

4. The Central Area should be the prime area serving the shopping needs of Lafayette's residents.

*This goal is not applicable to the Phase III component of the Town Center Planned Development; however, the Phase I retail component helps serve the shopping needs of Lafayette's residents.*

5. Lafayette should strengthen the selective regional role of the Central Area by attracting appropriate shops, restaurants, offices, and similar businesses which serve local and nearby needs.

*This goal is not applicable to the Project.*

6. Upgrade the present image of the developed portions of Mt. Diablo Boulevard by careful attention to uses, development standards and aesthetic standards.

*This goal is not applicable to Project because it is not adjacent to Mt. Diablo Boulevard.*

- C. That, in the case of residential development, such development will constitute a residential environment of sustained desirability and stability, and that it will be in harmony with the character of the surrounding neighborhood and community.

*The site is adjacent to BART and within walking distance to stores, parks and services. A residential project at this location will provide affordable housing units and an improved linkage to the BART station. As the costs of land, construction and single-family residences rise, there is a need for smaller, owner-occupied multiple-family residential units within the city. Condominiums can serve as starter homes for young couples or as smaller homes for "empty nesters" who wish to downsize while remaining in Lafayette. The Project will also increase the affordable housing stock by reserving seven units for moderate income households.*

*The Project is already in an area containing residential uses including the 75-unit, multi-story Town Center Phase II apartments. At 55± average feet in height, the Project is approximately 18 feet lower than the Phase II apartment building. In this instance, where the Project proposes a building higher than 35 feet and three stories, the City Council finds that the Project's sense of height is mitigated by its proximity to the elevated portions of State Highway 24 and the Lafayette BART station and by local topography and mature vegetation*

- D. That, in the case of commercial development, such development is needed at the proposed location to provide adequate commercial facilities of the type proposed; that traffic congestion will not likely be created by the proposed use, or will be obviated by presently projected improvements and by demonstrable provisions in the plan for proper entrances and exits, and by internal provisions for traffic and parking; that said development will be attractive and efficient and will fit harmoniously into and will have no adverse effects upon the adjacent or surrounding development.

*This finding is not applicable to the Project.*

- E. That, in the case of proposed industrial development, such development is fully in conformity with the applicable performance standards, and will constitute an efficient and well-organized development, with adequate provisions for truck access service and necessary storage; and that such development will have no adverse effect upon adjacent or surrounding development.

*This finding is not applicable to the Project.*

- F. That the development of a harmonious, integrated plan justifies exceptions from the normal application of this title.

*The Project is the final phase of the mixed use retail and residential Town Center planned unit development approved by the City Council on May 27, 1997. In rezoning the Property to P-1, Planned Development, and approving the original site plan, the City Council found that the development plan provided a harmonious, integrated project which justified exceptions from the normal application of zoning regulations. As proposed and conditioned in Exhibit B: Conditions of Approval, the Project is in substantial conformance with the preliminary development plan approved by the City Council in 1997.*

**SECTION 3 BART Block Specific Plan Amendment Findings** Subject to the Town Center Development Agreement, the developer has filed an application for amendment to the BART Block Specific Plan ("BBSP") with respect to permissible building height. Regarding building height for development not along Mt. Diablo Boulevard, the BBSP states:

*Remainder of the block; subject to view, solar access requirements and the desire for height variations. The 3 story height limit will apply. Some 3 story buildings, higher than 35 feet, of small bulk may be approved in areas where the sense of height is not present or the background or topographic circumstances mitigate the sense of height. Greater height shall be considered a privilege and should be compensated for by provision of greater open space and provision for pedestrian oriented amenities.*

The City Council has evaluated and can make the required findings to amend the BART Block Specific Plan:

1. The change proposed is consistent with the General Plan and each of its elements.
2. Community need is demonstrated for the change proposed.

*See General Plan consistency findings above.*

*The Project will provide up to seventy two multifamily units close to BART, shopping and other services, off which seven will be available to households of moderate income. These units will be available to segments of the population not otherwise served by the community.*

*Based on comments received from the Design Review Commission, Planning Commission and City Council, the applicant has removed the top floor of the project and reduced the overall building height. The plans dated November 5, 2012 show a three and four story building over podium parking and a maximum height of 55'3". The proposed building is lower in height than the existing Town Center apartments. The apparent height of the building is also mitigated by its proximity to the elevated portions of State Highway 24 and the Lafayette BART station and by local topography and mature vegetation.*

*The increase in height is compensated by the provision of three public outdoor spaces: a landscaped area between the building and Happy Valley Creek, a new pedestrian corridor along the south building façade, and a community park where these two spaces meet. The proposed open spaces would feature a variety of amenities, including a perched seating area overlooking the creek, seat walls, water features, a climbing boulder, meandering paths, and sculptures, trees, and art panels throughout the site. In total, over 21,500 square feet or 45 percent of the total project site would be provided as public open space, including more than 11,000 square feet of space dedicated to enhancing the pedestrian connection between the BART station and Mount Diablo Boulevard. The City Council therefore finds that the greater height is compensated for by provision of greater open space and pedestrian oriented amenities.*

**SECTION 4 CEQA** The City Council hereby finds and determines that in compliance with the California Environmental Quality Act ("CEQA") and the State CEQA Guidelines 19 (California Code of Regulations Title 14 sections 15000 et seq.), the Planning Department issued a Final Mitigated Negative Declaration for the Amendment to the BART Block Specific Plan and Design Review, which encompassed the Project. The City Council adopted the Final Mitigation Negative Declaration on November 20, 2012 and a Mitigated Monitoring and Reporting Program via Resolution No. 2012-47, adopting findings related to a

determination of compliance with CEQA for the Project, and this City Council hereby affirms and adopts said findings based on the reasons set forth therein, and incorporates such reasons by reference.

**SECTION 5 Effective Date** This Ordinance becomes effective thirty (30) days after its adoption.

**SECTION 6 Severability** If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance, or any part thereof is for any reason held to be unconstitutional, invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Ordinance or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance irrespective of the fact that one or more sections, subsections, subdivision, paragraphs, sentences, clauses or phrases be declared unconstitutional, invalid or ineffective. To this end the provisions of this Ordinance are declared to be severable.

**SECTION 7 Publication** The City Clerk shall either (a) have this ordinance published in a newspaper of general circulation once within fifteen (15) days after its adoption, or (b) have a summary of this ordinance published twice in a newspaper of general circulation, once five (5) days before its adoption and again within fifteen (15) days after adoption.

The foregoing ordinance was re-introduced at a meeting of the City Council of the City of Lafayette held on November 26, 2012, and was adopted and ordered published at the adjourned regular meeting of the City Council held on December 4, 2012.

**PASSED AND ADOPTED** by the City Council of the City of Lafayette at the adjourned regular meeting of said Council on December 4, 2012, by the following vote:

**AYES:** Federighi, M. Anderson, Anduri


**NOES:** Tatzin

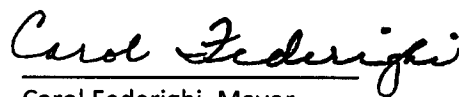
**ABSENT:** B. Andersson

**ABSTAIN:** None

**ATTEST:**

**APPROVED:**

  
Joanne Robbins, City Clerk

  
Carol Federighi, Mayor

**ATTACHED**

Exhibit A: Legal Description of the Property

Exhibit B: Conditions of approval

Exhibit C: Project plans dated November 5, 2012 and November 20, 2012

EXHIBIT "A"

LEGAL DESCRIPTION

Real property in the City of Lafayette , County of Contra Costa, State of California, described as follows:

PORTION OF THE RANCHO ACALANES, BEING THE PARCEL OF LAND DESCRIBED AS "PARCEL TWO" IN THE CERTIFICATE OF COMPLIANCE FOR LOT LINE ADJUSTMENT, RECORDED JANUARY 11, 1999, SN 99-6822, OFFICIAL RECORDS, DESCRIBED AS FOLLOWS: BEGIN A PORTION OF THAT CERTAIN PARCEL OF LAND DESCRIBED IN DEED RECORDED JANUARY 4, 1989 IN BOOK 14813 OF OFFICIAL RECORDS AT PAGE 752 IN THE OFFICE OF THE COUNTY RECORDER OF CONTRA COSTA COUNTY, MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT THE NORTHWESTERN CORNER OF SAID PARCEL OF LAND (14813 OR 752); THENCE FROM SAID POINT OF BEGINNING, ALONG THE NORTHERN LINE OF SAID PARCEL OF LAND (14813 OR 752), NORTH 72° 16' 00" EAST, 198.43 FEET; THENCE LEAVING SAID NORTHERN LINE SOUTH 17° 44' 00" EAST, 30.00 FEET; THENCE SOUTH 41° 03' 30" EAST, 196.60 FEET; THENCE SOUTH 48° 56' 30" WEST, 14.05 FEET; THENCE SOUTH 41° 03' 30" EAST, 5.00 FEET; THENCE SOUTH 18° 42' 39" WEST, 17.34 FEET; THENCE SOUTH 46° 54' 35" WEST, 18.32 FEET; THENCE SOUTH 86° 38' 26" WEST, 17.00 FEET; THENCE SOUTH 09° 36' 30" EAST, 9.23 FEET; THENCE SOUTH 80° 23' 30" WEST, 308.75 FEET TO A POINT ON THE WESTERN LINE OF SAID PARCEL OF LAND (14813 OR 752); THENCE ALONG SAID WESTERN LINE, NORTH 04° 53' 30" EAST, 220.74 FEET TO SAID POINT OF BEGINNING.

APN: 243-040-035-4

**EXHIBIT "B"**  
**OF CITY COUNCIL ORDINANCE 615**

**CONDITIONS OF APPROVAL**

**GENERAL AND ONGOING CONDITIONS**

1. Development shall conform to the plans for an up to 72 unit residential condominium project, on file at the City Offices, dated November 5, 2012, and elevations presented at the November 20, 2012 City Council meeting, as modified by these conditions.
  
2. In compliance with the attached schedule (Exhibit 1), the applicant shall submit a set of plans to the Design Review Commission for the remaining building elevations that are consistent with the southern and south east elevations submitted at the November 20, 2012 City Council meeting, which the Commission can strongly support and approve and that will be compatible with and complement the character of adjacent buildings. These plans shall respond to all of the directives provided by the Planning Commission and Design Review Commission at the joint meeting on November 5, by the Design Review Commission on November 13, and other building features that the Design Review Commission believes are needed in order to make its findings. This process may result in the loss of building square footage but not to result in a loss of more than three units or a building less than four stories over podium parking. The directives are listed below; for more details see the minutes of the November 5 joint meeting and the November 13 Design Review Commission meeting:
  1. Incorporate a grand gesture or organizing element
  2. Simplify the building articulation, reduce the repetitive elements, make the building less busy
  3. Incorporate/replicate design elements from the case study (Woodmark Condominiums in Palo Alto) provided by the developer as an example of the design and quality that the developer seeks to achieve
  4. Reduce the verticality by using design techniques that emphasize the horizontal base
  5. Simplify the materials
  6. Organize the façade across unit boundaries to mask the appearance of an apartment building (see case study elevations: Exhibit 2)

After Design Review Commission approval, these plans shall be reviewed by the Planning Commission and the City Council. Changes or amendments to the plans may be made by majority vote of the City Council. A building permit shall not be issued for the project until these plans are approved by the Design Review Commission and reviewed, which may include amendments, by the majority of the City Council.

3. The project arborist shall be on-site for any excavation within 10-ft of an existing tree slated for preservation. The developer shall notify planning staff at least 24-hours prior to said excavation and the project arborist shall submit certification and photographic evidence that he was on site for the work, within 7 days of the work occurring.



4. Pursuant to the Fourth Amendment to the Town Center Development Agreement, the property owner shall provide on-site, seven (7) dwelling units affordable to moderate income households. The number of bedrooms in the affordable units shall proportionate to the number of bedrooms in the market rate units. The property owner shall execute all paperwork with the City necessary to ensure the affordability for the maximum time frame permitted under state law.
5. This approval shall expire two years and six months from the approval date unless a building permit has been issued for the project. However, if no building permit is obtained for the office Component or alternative to the office Component by May 27, 2013, Developer shall pay the City annually One Hundred Thousand Dollars (\$100,000) within five (5) business days of May 27, 2013 and on this anniversary date thereafter until a building permit is issued and so long as Project approvals as defined below for one or the other Project remain in force. In the event that Developer shall fail to make an annual payment as required hereunder and in the ongoing absence of a building permit, than all Project approvals, including but not limited the specific plan amendment, final planned unit development, design review, grading permit, and any and all other approvals and permits issued shall be deemed to have lapsed and may be revoked by the City and Developer shall not challenge such revocations by instituting litigation, mediation, and/or arbitration.
6. No changes shall be made to the approved plans or color and materials board without review and approval by the Planning Services Division and/or appropriate commissions as determined by the Planning & Building Services Manager. If changes are approved by the City, the property owner shall prepare three sets of revised plans for review and approval by the Planning Services Division. Once the revised plans are stamped "approved", the property owner shall submit the revised plans to the Lamorinda Building Inspection Office for their review and approval.
7. Construction plans shall conform to the approved design drawings. The property owner shall indicate to staff at the time of submittal for building permit plan check, any and all modifications, clarifications, or changes on the construction drawings from the approved design drawings.
8. Storage of construction materials, portable toilets and debris must be stored and staged on the subject property for this project. Temporary storage of construction boxes or construction materials must be kept on the property and out of any private easement or public right-of-way to permit emergency vehicle access during the construction project.
9. The developer shall be responsible for the prompt clean-up of any materials spilled or dropped on any abutting streets during construction. The developer shall also repair any damage caused to these streets by construction vehicles associated with such construction and shall clean the street as determined to be needed by the City Engineer. The procedure for street clean up and repair shall be determined prior to final development plan approval for each phase. [G13]<sup>1</sup>
10. Move-ins shall be scheduled and coordinated by the applicant. To the maximum extent practicable, the applicant shall schedule new residents to move-in during non-peak traffic volumes in the retail parking lot, i.e., before noon and/or after 7PM.

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<sup>1</sup> Bracketed text at the end of a condition indicates a Lafayette Town Center condition of approval imposed by City Council Resolution 13-98, adopted April 13, 1998.

11. Restraints upon location of construction equipment and noise shall be as follows:
  - Stationary equipment (e.g. compressors) shall not be located closer than 40 feet to any property line or exceed 70 dBA at 50 ft.
  - Non-stationary mobile equipment shall not exceed 83 dBA at 50 ft.
  - Notwithstanding the above conditions, the noise level at the nearest affected property line shall not exceed 80 dBA. [G10]
12. Temporary trailers are to be used only during the construction period and shall be removed upon completion of the building. [G15]
13. Any amplified exterior loud speaker system shall conform to the City's noise ordinance. [G11]
14. Mitigation Measure AQ-2: The construction contractor shall reduce construction related air pollutant emissions by implementing BAAQMD's proposed basic control measures. The Project shall include the following requirements in the construction contracts:
  - a. All exposed surfaces (e.g. parking areas, staging areas, soil piles, graded areas, and unpaved access roads) shall be watered two times per day;
  - b. All haul trucks transporting soil, sand, or other loose material off-site shall be covered;
  - c. All visible mud or dirt track-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day;
  - d. All vehicle speeds on unpaved roads shall be limited to 15 mph;
  - e. All roadways, driveways, and sidewalks to be paved shall be completed as soon as possible after grading unless seeding or soil binders are used;
  - f. Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to five minutes (as required by the California airborne toxics control measure title 13, Section 2485 of California Code of Regulations [CCR]). Clear signage shall be provided for construction workers at all access points;
  - g. All construction equipment shall be maintained and properly tuned in accordance with manufacturer's specifications. All equipment shall be checked by a certified mechanic and determined to be running in proper condition prior to operation; and
  - h. Post a publicly visible sign with the telephone number and person to contact at the City regarding dust complaints. This person shall respond and take corrective action within 48 hours. The Air District's phone number shall also be visible to ensure compliance with applicable regulations.
15. Mitigation Measure CULT-1: If prehistoric or historical archaeological deposits are discovered during Project activities, all work within 25 feet of the discovery shall be redirected, the Planning Services Division shall be contacted directly, and a qualified archaeologist shall be contacted to assess the situation, consult with agencies as appropriate, and make recommendations regarding the treatment of the discovery. Preservation in place shall be implemented if feasible. Excavation as mitigation shall be limited to those parts of resources that would be damaged or destroyed by the Project. Possible mitigation under CEQA emphasizes preservation in place measures, including planning construction to avoid archaeological sites, incorporating sites into open spaces, covering sites with stable soils, and deeding the site into a permanent conservation easement. Project personnel should not collect or move any archaeological materials or human remains and associated materials. Archaeological resources can include flaked-stone tools (e.g. projectile points, knives, choppers) or obsidian, chert, basalt, or quartzite toolmaking debris; bone tools; culturally darkened soil (i.e. midden soil often containing heat-affected rock, ash and charcoal, shellfish remains, faunal

bones, and cultural materials); and stone-milling equipment (e.g. mortars, pestles, handstones). Prehistoric archaeological sites often contain human remains. Historical materials can include wood, stone, concrete, or adobe footings, walls, and other structural remains; debris-filled wells or privies; and deposits of wood, glass, ceramics, metal, and other refuse.

16. Mitigation Measure CULT-2: If paleontological resources are encountered during grading or excavation, all construction activities within 50 feet must stop and the City shall be notified. A qualified archeologist shall inspect the findings within 24 hours of discovery. Cultural resources shall be recorded on California Department of Parks and Recreation (DPR) Form 523 (Historic Resource Recordation form). If it is determined that the proposed development could damage unique paleontological resources, mitigation shall be implemented in accordance with Public Resources Code Section 21083.2 and Section 15126.4 of the CEQA Guidelines. Possible mitigation under Public Resources Code Section 21083.2 requires that reasonable efforts be made for resources to be preserved in place or left undisturbed. Preservation in place shall be implemented if feasible. Excavation as mitigation shall be limited to those parts of resources that would be damaged or destroyed by a project. Possible mitigation under CEQA emphasizes preservation in place measures, including planning construction avoid archaeological sites, incorporating sites into parks and other open spaces, covering sites with stable soil, and deeding the site into a permanent conservation easement. Under CEQA Guidelines, when preservation in place is not feasible, data recovery through excavation shall be conducted with a data recovery plan in place. Therefore, when considering these possible mitigations, the City shall have a preference for preservation in place.
17. Mitigation Measures NOISE-3: The construction contractor shall adhere to the following measures during construction activities:
  - a. Use of construction equipment shall be restricted to the hours of 8:00 a.m. to 6:00 p.m. Monday through Friday.
  - b. Material deliveries shall be restricted to the hours of 7:00 a.m. to 10:00 p.m. Monday through Friday.
  - c. Prior to the start of and for the duration of construction, the contractor shall properly maintain and tune all construction equipment in accordance with the manufacturer's recommendations to minimize noise emissions.
  - d. Prior to use of any construction equipment, the contractor shall fit all equipment with properly operating mufflers, air intake silencers, and engine shrouds no less effective than as originally equipped by the manufacturer.
  - e. During construction, the construction contractor shall place stationary construction equipment and material delivery (loading/unloading) areas so as to maintain the greatest distance from the residences to the nearest residences.
  - f. The construction contractor shall post a sign at the work site that is clearly visible to the public, providing a contact name and telephone number for lodging a noise complaint.
18. No noise-generating construction work shall be performed on Saturdays, Sundays or national holidays. Violation of this condition may result in issuance of a Stop Work Order or administrative citations.
19. Mitigation Measure TRANS-1: To provide adequate driver visibility, maintain landscaping and other vertical design features near the subject intersection corners such that they are not higher than 30 inches above the roadway grade at mature height, with the exception of trees, which should be maintained so that the bottom of their foliage canopy is no lower than 7 feet above the roadway

grade. The existing conditions at the subject intersection, including landscaping and trees, provide adequate visibility. This Mitigation Measure shall also be included in the Project conditions, covenants, restrictions.

20. The property owner shall defend, indemnify and hold harmless the City of Lafayette, its agents, officers, officials, and employees from all claims, demands, law suits, writs of mandamus, and other actions or proceedings (collectively "Actions") brought against the City or its agents, officers, officials, or employees to challenge, attack seek to modify, set aside, void or annul this approval. In the event the City becomes aware of any such action the City shall promptly notify the property owner and shall cooperate fully in the defense. It is expressly agreed that the City shall have the right to approve, which approval shall not be unreasonable withheld, the legal counsel providing the City's defense, and the property owner shall reimburse City for any costs and expenses directly and incurred by the City in the Course of the defense.
21. These conditions of Project Approval include certain fees, dedication requirements, reservation requirements, and other exactions. Under Government Code Section 66020(d)(1), these conditions constitute written notice of a statement of the amount of such fees and a description of the dedication, reservations, and other exactions which are imposed upon you. Under Government Code Sections 66020(a) & (d)(1), there is a 90-day period within which you may file and administrative protest of these fees, dedications, reservations, and other exactions. This 90-day period begins with the approval of the project. If you fail to file a protest with the City Clerk within this 90-day period complying with all of the requirements of Section 66020, you will be legally barred from later challenging such exaction.
22. If the Planning Services Division, either independently or as a result of complaints from the public, becomes aware that these conditions of approval are being violated, and Planning Services Division staff is unable to obtain compliance or abatement, the City may issue a Stop Work Order and/or pursue administrative remedies pursuant to chapters 1-3 and 1-9 of the Lafayette Municipal Code. Administrative citations and fines may be issued for each day a violation occurs.

**PRIOR TO ISSUANCE OF A GRADING, BUILDING, OR DEMOLITION PERMIT, WHICHEVER IS FIRST**

23. Pursuant to Section 4 of the Fourth Amendment to the Town Center Development Agreement, Lafayette's building ordinances in existence as of February 25, 1998 shall be applicable.
24. The property owner shall duplicate these conditions of approval in the construction drawing plan sets for the benefit of the contractor(s), subcontractor(s), and inspector(s). All sheets in the construction drawings shall be the same size (e.g. 24" by 36").
25. The Phase 1 Environmental Site Assessment prepared for the Project in September 2008, recommends that a subsurface soil and groundwater assessment be conducted within the former remediation zone in order to confirm the previous work performed and allow for comparison to current regulatory standards for the future usage of the property as residential housing units.
26. For projects subject to C.3 provisions, construction plans and/or improvement plans consistent with the approved Stormwater Control Plan shall be submitted to the Engineering Services Division for review and approval. The plans shall include drawings and specifications necessary to implement all measures in the approved Plan and include a completed "Construction Plan C.3 Checklist" as

described in Step 10 of the *Stormwater C.3 Guidebook* available at [www.cccleanwater.org/construction/nd.php](http://www.cccleanwater.org/construction/nd.php)

27. The applicant shall submit revised Stormwater Control Plan for review and approval by the City Engineer. The revised plans shall address the following:
  - a. Drainage Management Areas (DMAs) are shown on the plans however the areas of each facility and planter are not shown. Revise to comply with the Contra Costa Clean Water Program Stormwater C.3 Guidebook, 5<sup>th</sup> edition, page 47 (or current edition), "More than one drainage management area can drain to the same IMP. However, because the minimum IMP sizes are determined by ratio to drainage area size, one drainage area may not drain to more than one IMP. See Figures 4-4 and 4-5."
  - b. The elevations in the additional drawings provided show that the building roof, labeled "Area 1" on the Preliminary Storm Water Treatment Plan, will be a pitched roof sloped in different directions. The roof should be divided into DMAs following roof ridges, as described in the *Guidebook 5th Edition*, page 44 (or current edition).
  - c. The report and drawings shall reference *Guidebook* Appendix B, "Soils, Plantings, and Irrigation for Bioretention Facilities" for the required soil mix for the bioretention facilities and flow-through planters. Appropriate soil is available from suppliers listed on the Contra Costa Clean Water Program website.
  - d. In accordance with the *Guidebook 5th Edition*, the submittal should include an analysis, including calculations, of the feasibility of stormwater harvesting for later use. See the instructions on pages 40 and 41.
  - e. Table 2 in the report identifies permanent BMPs required for loading docks; however, no loading dock is shown in the exhibit (Storm Water Treatment Plan) or on the additional drawings provided.
28. If permanent stormwater and/or treatment control measures are being installed, the property owner shall submit a Storm Water Operation and Maintenance Plan consistent with Chapter 6 of the Clean Water Program's Storm Water C.3 Guidebook to the Engineering Services Division for review and approval.
29. Mechanical equipment, including but not limited to HVAC units, water meters, gas meters, electrical boxes, transformers, etc. shall be interior to the buildings or below ground so as to not be visible. Where infeasible, the equipment shall be located and screened so as to not be visible from the public right-of-way. Review and approval of above ground equipment is required by the Planning & Building Services Manager prior to installation.
30. Mitigation Measure AQ-1: The construction contractor shall reduce architectural coatings-related air pollutant emissions by complying with BAAQMD Regulation 8, Rule 3 and implementing the use of low VOC content (100 to 150 g/L) coatings. Construction plans shall include this specification.
31. Mitigation Measure AQ-4: The following measures shall be utilized in building design to reduce air toxics and PM<sub>2.5</sub> exposure:
  - a. Install, operate, and maintain in good working order an indoor air filtration system, which meets or exceeds an efficiency standard of Minimum Efficiency Reporting Value (MERV) 11 or a filter efficiency of approximately 65 to 85 percent of particulates in the range of 1.0 to 3.0

micrometers. The indoor air filtration system shall include installation of a high efficiency filter and/or carbon filter to filter particulates and other chemical matter from entering the building. American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) 85 percent supply filters shall be used. These filters shall be maintained and replaced according to manufacture specifications. Residences shall be equipped with low-air infiltration windows and sealed doors to prevent air contamination.

- b. The indoor air filtration system shall be maintained (e.g. filters changed on a prescribed basis) and repaired and/or replaced when necessary. An operation and maintenance manual shall be prepared for the system and the filters. The manual shall include the operating instructions and the maintenance and replacement schedule. This mitigation measure shall be included in the Project CC&Rs.
  - c. Retain a qualified City approved consultant during the design phase of the Project to locate the indoor air filtration system based on exposure modeling from the pollutant sources. Locate the air intakes at the farthest feasible point from emission sources to provide the cleanest ventilation to residences.
  - d. New residents shall be informed of the health effects from exposure to DPM and PM2.5 from SR 24 traffic through rental agreements or real property disclosures statements prepared by the applicant. This would inform residents of the need to reduce exposures by closing windows and doors and maintaining filtration systems. This mitigation measure shall be included in the Project CC&Rs.
32. Mitigation Measure NOISE-1: Balconies and patios in Noise Zone A, defined as the northernmost units facing Highway 24, shall include a 4.5-foot-high barrier. The noise barrier shall have a surface density of 2 pounds per square foot and have no gaps or openings. The barriers may be constructed of concrete, stud and stucco, plate glass, Plexiglas, or a combination of these materials.
33. Mitigation Measure NOISE-2: Residential units in Zone A shall be constructed with Sound Transmission Class (STC) 30 glazing assemblies (windows) and sliding glass doors to achieve the Title 24 interior noise standard of 45 dBA Ldn. Residential units in Zone B shall be constructed with STC 28 glazing assemblies and sliding glass doors to achieve the Title 24 interior noise standard of 45 dBA Ldn. A mechanical ventilation system shall be installed for all residential units to provide sufficient fresh air exchange pursuant to the Uniform Building Code. STC-rated materials shall be shown on all building plans and verified during construction.
34. Project plans shall provide two charging stations for electric cars.
35. Project plans shall include designation of space for delivery/service vehicles in the same area as the retail and guest parking spaces. Prior to issuance of a permit, the applicant shall submit a plan for the City Engineer's approval indicating (1) the location of delivery/service vehicles in the garage and (2) where the delivery/service vehicles will park if they cannot access the garage. As part of this assessment, the applicant shall provide an assessment of the average number of delivery/service vehicles and utility vehicles servicing the Town Center Phase II apartments and show proof that he has the authorization to park delivery vehicles in the existing retail parking lot.
36. The applicant shall submit revised plans to the City Engineer showing the location of designated spaces in the garage for guests of the residential units.

37. Improvement plans shall be submitted to the Engineering Services Division for review and approval. Plans shall include but not be limited to the following.
- a. Improvement plans shall include the recommendations and design features contained in the Hexagon Transportation Consultants, Inc. Memorandum dated June 21, 2012.
  - b. Mitigation Measure TRANS-2: Create a raised intersection of approximately 3 inches at the Project entrance to slow vehicles entering the Project area.
  - c. Mitigation Measure TRANS-3: Minimize congestion at the front of the building by designating parking stalls adjacent to building entrance as visitor parking, to allow for drop off and pick up.
  - d. Mitigation Measure TRANS-4: Revise the design of the garage access driveway to provide at least a 24-foot width between raised curbs at its mouth; the width between raised curbs can taper down as they approach the garage portal to match its 20-foot width.
  - e. Mitigation Measure TRANS-5: Parking space #1 should be eliminated, or strictly designated for emergency use only.
  - f. Perform spot repairs and provide a surface seal on the entire path pavement as part of the project site improvements.
  - g. If needed, provide a paved apron where the meandering path approaches and intersects the BART path to prevent tracking of debris onto the BART path.
  - h. BART pathway dimensions shall be no less than eight feet wide. Provide details for how new improvements will conform to the existing edge of path. Adjacent to the BART pathway, maintain a two-foot horizontal and eight-foot vertical clearance to obstructions per Caltrans' standards (Highway Design Manual, page 1000-4).
38. Pedestrian access from Mt. Diablo Blvd. to the BART lot shall remain open throughout all phases of development, including construction. The interim walkway design shall be submitted to the City Engineer for approval prior to the issuance of building permits for each phase. Lighting acceptable to the City Engineer shall also be provided for the walkway. **[G18]**
39. Prior to the issuance of building permits for each phase, the developer shall provide to the Planning Services Manager a parking plan for construction worker parking and equipment storage. For Phases 1 and 2, construction parking and storage shall be restricted to the site, for Phase 3, an off-site location acceptable to the City may be used. **[G26]**

As part of the final development plan review, the applicant may request the use of the on-street parking spaces in front of the subject property for parking construction-related equipment and/or vehicles. The applicant shall pay the applicable encroachment permit fees for this privilege.

40. Where a condition does not specify whose responsibility it is to implement an improvement, the responsibility of constructing the improvement is the applicant's, subject to the City exercising its discretion to contribute to the cost of the improvement to be contained in a development agreement or otherwise by resolution of the Council. **[G32]**
41. The project sponsor must comply with the City Flood Damage Prevention Ordinance City flood hazard reduction requirements, and the requirements of the Federal Insurance Program. In order to obtain an exception, prior to the approval of the Final Development Plan for Phase 1, the project sponsor must submit: a topographical survey of the lot precisely showing the creek bottom, sides, top of bank, and proposed and existing structures; a soils report prepared by a licensed civil engineer specializing in soils analysis which describes the soils condition for the proposed structure

and analyzes and makes recommendations as to the creek bank stability and erosion hazard; and certification signed by the engineer who prepares the soils report that in the professional opinion of the engineer there is no likelihood of a hazard to persons or property resulting from the proposed construction. **[DR1]**

42. Prior to approval of improvement plans to obtain a Grading Permit or the first building permit, the project sponsor shall file a Notice of Intent for a construction permit with California Water Resources Control Board. The notice shall include an erosion and pollutant control plan for construction activities. **[DR5]**
43. Grading operations shall be scheduled only between April 15 and October 1 to avoid the Fall and Winter rains. At the project sponsor's risk, grading may begin as early as March 15 and continue past October 1, only if the erosion control measures have been installed and certified as operational by the Project Engineer and the Contra Costa County Grading Inspector. **[DR6]**
44. If applicable, the project sponsor shall apply for a stream bed protection agreement with the California Department of Fish and Game under the terms of Sections 1601 and 1602 of the Fish and Game Code, for protection of the Happy Valley Creek during the construction period. **[DR8]**
45. If applicable, the project sponsor will obtain a Section 404 (Clean Water Act) permit for work in the creek. **[DR9]**
46. A soils report shall be submitted to the Engineering Services Division for review and comment prior to submission of the grading permit for each phase. The report shall be based on borings of the site, and shall contain recommendations for foundation design as well as repair/stabilization of the site as needed. The number and location of borings shall be acceptable to the City Engineer. Leakage from the EBMUD aqueduct shall be specifically addressed in the soils report and incorporated in the project design. If the recommendations of the soils report require any change to the buildings' location, height, or mass, these changes shall be reviewed and approved by the Planning Commission prior to the issuance of a building permit. **[GR1]**
47. All erosion and pollution control measures shall be in place prior to start of construction. **[GR3]**
48. All turning radii shall be designed to accommodate vehicles with 40-foot wheelbase. **[T2]**
49. Racks for bicycle parking near the principal entrance to each use shall be provided. **[T10]**
50. Signs, as well as pavement markings, to identify parking for the disabled in accordance with State and ADA requirements shall be provided with development of each phase. **[T11]**
51. In conjunction with the final development plan for each phase, a detailed site plan with the finished grading shown shall be submitted to the City Traffic Engineer for review and approval. The purpose of the review is to impose final conditions for handicapped parking requirements, including signs and ramps, traffic control signs, pavement marking, striping, and similar traffic control conditioning. **[T12]**
52. Prior to street improvement work or other work within the right-of-way or on-site work that could have off-site impacts, the applicant shall obtain an Encroachment Permit and satisfy permit conditions. **[T13]**



53. Prior to the issuance of a grading permit, the developer shall submit haul routes to the City Engineer for review and approval. [T17]
54. Prior to the issuance of the first building permit for new construction, evidence shall be provided to the City that there are in place cross access easements between each recorded parcel assuring common access and shared parking, as well as joint maintenance of any shared facilities including driveways, parking, landscaping and drainage ways. In addition, the applicant shall enter into a cross access agreement with the owner of the property to the west of the subject site. If this cannot be achieved, the applicants shall provide the City with written evidence of their efforts and the response from the adjacent property owner. [G21]
55. All utility distribution services serving development within the project shall be installed underground. Conduit for cable television shall also be installed underground at the developer's expense. [G5]
56. Mitigation Measure BIO-1: No removal of trees shall occur during breeding season (January to July). If removal of trees during this time is necessary or if grading would occur within 100-feet of a known nesting tree then a pre-construction survey for nesting raptors shall be performed by a City-selected qualified biologist. Construction activities shall remain outside the 250-foot buffer area required for nesting raptors. If eggs have been laid, a buffer identified by the qualified biologist must be established around the nest tree until August 15<sup>th</sup> or until the young have fledged.
57. The property owner shall submit CC&Rs for the project to the Planning Services Division for review and approval. The CC&Rs shall include the following:
- a. Require that assigned residential and guest parking spaces in the garage remain free of storage and available for automobile parking at all times. Storage in the garage can be provided in front of and above the parking spaces in the form of a suspended rack system or other method at the discretion of the developer.
  - b. Mitigation Measure TRANS-1: To provide adequate driver visibility, maintain landscaping and other vertical design features near the subject intersection corners such that they are not higher than 30 inches above the roadway grade at mature height, with the exception of trees, which should be maintained so that the bottom of their foliage canopy is no lower than 7 feet above the roadway grade. The existing conditions at the subject intersection, including landscaping and trees, provide adequate visibility.
  - c. A trash collection service shall be hired by the Homeowners' Association to wheel the trash bins out of the parking garage on collection day for the trash collection truck to pick up. The trash bin shall be wheeled back to the central trash room by the service provider.
58. Submit final landscaping and irrigation plans to the Planning Services Division for review and approval. The Plans shall:
- a. Include a signage program that identifies the area as public open space and for travel to BART;
  - b. Shall show compliance with the California Model Water Efficient Landscape Ordinance (Division 2, Title 23, California Code of Regulations, Chapter 2.7, Sections 490 through 495)<sup>2</sup>; and

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<sup>2</sup> This condition replaces [G8] which stated, "Development shall be in accordance with any City and EDMUD water conservation guidelines in effect at the time of building permit issuance."

- c. Shall be designed to minimize irrigation and runoff, promote surface infiltration where appropriate, and minimize the use of fertilizers and pesticides that can contribute to stormwater pollution.
59. Submit an updated arborist report to the Planning Services Division for review and approval.
  60. Prior to the issuance of a building permit for each phase the developer shall submit a Landscape Documentation Package prepared by a licensed landscape Architect or Certified Irrigation Consultant or other authorized professional demonstrating that the proposed landscaping is in conformance with the Water Conservation in Landscaping Act, Model Ordinance (G.C.65591 et.seq.). [L3]
  61. Subject to the approval of EBMUD or BART if applicable, and in conjunction with the final creek improvements, a landscaped entryway shall be installed at the northern terminus of the walkway at the BART Kiss & Ride lot. The cost of this improvement shall be borne equally by the applicant and the City. The total cost shall not exceed \$25,000 unless mutually acceptable to both parties. [L6]
  62. The property owner shall enter into a standard landscape maintenance agreement with the City to install new and maintain existing landscaping, and preserve and protect the trees on the property as indicated on the plans. The project planner will prepare a standard landscape maintenance agreement and send it to the property owner(s). The agreement shall be signed and notarized and submitted to the Planning Services Division to be recorded against the property. The agreement shall run with the property to ensure that future property owner(s) are aware of the requirement for ongoing maintenance of the existing and approved landscaping.
  63. The property owner shall show tree protection measures on the site plan and grading plan in the construction drawing plan sets, per the City standard tree fencing detail. A copy of this detail is available from Planning Services Division staff or by visiting [www.lovelafayette.org](http://www.lovelafayette.org) > City Departments > Planning > Planning Handouts > Tree Protection Guidelines.
  64. The property owner shall install tree protection fencing around all trees to remain on the property in the vicinity of construction activity, as shown in the City's Tree Protection Guidelines. The property owner shall notify Planning Services Division staff who will inspect the tree protection fencing to ensure they are installed in conformance with the Guidelines, and are substantial enough to protect the trees.

The property owner is responsible for ensuring that tree protection measures remain intact throughout the construction process. Staff will conduct site inspections throughout the construction process without prior notice to the property owner or property owner. If the protection measures are damaged or otherwise removed, the project shall be subject to a stop work order until such time as corrective measures have been taken to the satisfaction of Planning Services Division staff. Any trees identified on the plans to remain that are damaged or destroyed as a result of construction activities shall be replaced at a ratio and size deemed appropriate by the Planning & Building Services Manager.

65. The property owner shall comply with Chapter 5-6, Construction and Demolition Debris Recycling if the project is determined to be a covered project as defined in Section 5-602, LMC. A covered project is defined as any construction, demolition, and/or renovation project, the costs of which are

\$50,000 or more, or that involve the construction, demolition, and/or renovation of 5,000 square feet or more.

The property owner shall submit to the Planning Services Division a Waste Management Plan (WMP) for review and approval, which identifies how at least 50 percent of waste materials will be diverted from landfill through recycling and salvage. The approved waste management plan shall be duplicated in the construction documents. The WMP packet, including instructions and application form, may be downloaded from the City of Lafayette website [www.lovelafayette.org](http://www.lovelafayette.org) > City Departments > Planning > Planning Application Forms > Waste Management Plan.

66. Pursuant to the Town Center Residential Project Alternative Process Agreement, the fees and exactions set forth in Section 3.09 of the Fourth Amendment to the Development Agreement shall be paid as therein set forth.
- a. The fees payable to the City shall be at the rate in existence at the time a project application is actually filed. Fees in effect when the application was filed on September 29, 2010 include but may not be limited to:
    - 1) Parkland Fee (Chapter 6-16 LMC)
    - 2) Park Facilities Fee (Chapter 6-16 LMC)
    - 3) Park Fees Program Administration Fee (Chapter 6-16 LMC)
    - 4) Drainage Impact Fee (Chapter 8-17 LMC)
    - 5) Drainage Impact Fee Program Administration Fee (§8-1711 LMC)
    - 6) Walkway Fee (§8-113(d) LMC)
    - 7) Walkway Fee Program Administration Fee (§8-138 LMC)
    - 8) Lamorinda Sub-Regional Transportation Fee (§1-624 LMC)
  - b. The City may charge the following specific fees, which shall be paid concurrently with the issuance of building permits:
    - 1) Such "art fee" as Lafayette may impose as of February 25, 2008, the date of the Amended and Restated Settlement Agreement on projects of the sort and scale of proposed residential development on the Phase III site. [The project shall be subject to the provisions of Ordinance No. 546, Adding Chapter 6-17, Public Art, to the Lafayette Municipal Code, effective November 25, 2004.]
    - 2) A contribution to off-site improvements earmarked for the BART pathway/project intersection in a sum not to exceed \$100,000; provided, however, any monies so paid shall in fact be allocated to and expended for such purpose in accordance with plans and specifications reasonably approved by Developer. Additionally, the City shall make good faith application for grant monies with which to complete the subject off-site improvements and any monies obtained in such fashion shall reduce Developer's contribution in an amount equal to five (5) percent of the total grant amount. Developer shall not receive any monies in excess of its contribution, in the event five (5) percent of the total grant amount exceeds Developer's contribution.
    - 3) A contribution in a sum not to exceed \$50,000 for a traffic signal at the intersection of Dewing and Mt. Diablo Boulevard. (The amount of contribution, if any, shall be based strictly on the incremental increase of traffic, if any, generated by the proposed residential project alternative over that related to the office component.)

67. The property owner shall pay any outstanding balance on the project Planning Account.

68. The property owner shall obtain review and approval by the Contra Costa County Fire Protection District, which is located at 2010 Geary Road in Pleasant Hill. Construction plans shall be stamped with the department's approval. Listed below are the District's preliminary review comments which shall not be construed to encompass the complete project. Additional plans and specifications may be required after further review.
- a. The developer shall provide an adequate and reliable water supply for fire protection with a minimum fire flow of 4,000 GPM. Required flow must be delivered from not more than four (4) hydrants flowing simultaneously for a durations of 240 minutes while maintaining 20-pounds residual pressure in the main. (507.1), (B105) CFC
  - b. The developer shall provide three (3) hydrants of the East Bay type. (C103.1) CFC
  - c. The developer shall submit three (3) copies of site improvement plans indicating proposed hydrant locations and fire apparatus access for review and approval prior to obtaining a building permit. Final placement of hydrants shall be determined by this office. (501.3) CFC
  - d. Emergency apparatus access and hydrants shall be installed, in service, and inspected by the Fire District prior to construction or combustible storage on site. (501.4) CFC
  - e. The building as proposed shall be protected with an approved automatic fire sprinkler system. Submit three (3) sets of plans to this office for review and approval prior to installation. (903.2) CFC
  - f. The developer shall submit three (3) complete sets of building plans and specifications of the subject project, including plans for the following deferred submittals, to the Fire District for review and approval *prior to* construction to ensure compliance with minimum requirements related to fire and life safety. Plan review and inspection fees shall be submitted at the time of plan review submittal. (105.4.1), (901.2) CFC, (107) CBC
    - Private underground fire service water mains
    - Fire sprinklers
    - Standpipe
    - Fire alarm
69. The property owner shall obtain review and approval from the Central Contra Costa Sanitary District. Construction plans shall be stamped with the department's approval. The Central Sanitary District is located at 5019 Imhoff Place, in Martinez, and can be reached at (925) 228-9500 for requirements and permits.
70. The applicant shall comply with the requirements of the East Bay Municipal Utility District (EBMUD) for building construction. Including but not limited to:
- a. Any proposed construction activity in EBMUD right-of-ways would be subject to the terms and conditions determined by EBMUD including relocation of the water main and/or right-of-ways, at the project sponsor's expense;
  - b. When the development plans are finalized, the project sponsor should contact EBMUD's New Business Office and request a water service estimate to determine costs and conditions for providing water service to the proposed development. Engineering and installation of water mains and services requires substantial lead-time, which should be provided for in the project sponsor's development schedule; and
  - c. The project sponsor should be aware that Section 31 of EBMUD's Water Service Regulations requires that water service shall not be furnished for new or expanded service unless all the

applicable water-efficiency measures described in the regulation are installed at the project sponsor's expense. No water meters are allowed to be located in driveways.

71. If permanent stormwater and/or treatment control measures are being installed, the property owner shall enter into a standard City of Lafayette Stormwater Management Facilities Operations and Maintenance and Right of Entry Agreement. The project planner will prepare the standard agreement and send it to the property owner(s). The agreement shall be signed and notarized and submitted with a \$5,000 bond to the Planning Services Division to be recorded against the property. The agreement shall run with the property to ensure that future property owner(s) are aware of the requirement for ongoing maintenance of the permanent stormwater facilities. After satisfying three years of inspections and documentation, the City will return the bond.
72. Prior to issuance of a grading or demolition permit, whichever occurs first, the property owner shall submit to the Lafayette Engineering Services Division a copy of the Notice of Intent (NOI) sent to the State Water Resources Control Board and the Stormwater Pollution Prevention Plan (SWPPP) prepared for the project, as required by the State's General Construction Activity Permit. The SWPPP shall contain and the property owner shall implement, at a minimum, the measures contained in the City of Lafayette "Minimum Construction Site Management Practices". Additional information on the NOI process and application forms can be obtained through the State website: <http://www.swrcb.ca.gov/stormwtr/docs/finalconstpermit120602.doc>.

#### **PRIOR TO RELEASE OF "HOLD-ON-FRAMING" STATUS**

73. The property owner shall:
  - Review the project file and obtain copies as needed of the following:
    - Approved external residential and landscape light fixtures and locations
    - Approved colors and materials
    - Approved landscape plans
    - Conditions of approval
  - Submit photo documentation verifying that the tree protection measures are intact in accordance to the plans (photos shall reflect current conditions)
  - Sign the approved plans indicating that the above items were completed and that the property owner understands that the project will be completed in accordance to the approved plans.
74. The project arborist shall certify that all recommendations in the arborist report related to tree preservation have been abided by and executed by the developer.
75. The property owner shall submit a certification letter from a California certified land surveyor or registered civil engineer, which verifies that development complies with the approved construction drawings. At the time of form inspection, the property owner shall submit the certification letter to Contra Costa County Building Inspection Department ("CCCBID") inspector. A separate copy shall also be submitted to the Lafayette Planning Services Division. For questions about this requirement, contact CCCBID for clarification.
76. Caltrans recommends the inclusion of a transit incentive program for the Project to minimize any additional vehicular trips on the state highway system. Such a program could include a transit

discount program or Clipper Cards for residents. The applicant shall work with City staff to determine the feasibility and implementation of such a program.

**PRIOR TO RELEASE OF "HOLD-ON-FINAL" STATUS AND FINAL BUILDING INSPECTION**

77. The property owner shall submit certification that each of the mitigation measures outlined in the Mitigated Negative Declaration, and reiterated in these conditions of approval have been fulfilled.
78. The property owner shall submit evidence that the project has met the requirements of the Public Art Ordinance.
79. The project arborist shall certify that all recommendations in the arborist report related to tree preservation have been abided by and executed by the developer.
80. The property owner shall certify or otherwise demonstrate that the project has complied with the requirement to provide seven (7) dwelling units affordable to moderate income households.
81. The property owner shall install the required landscaping according to the approved landscape plans prior to contacting the Lafayette Planning Services Division to schedule an inspection. The applicant shall submit a certification letter from the Landscape Architect, or the representative that prepared the approved landscape plan(s), which verifies that installed landscaping complies with the approved landscape plan(s), prior to contacting Lafayette Planning to schedule an inspection. The certification letter shall verify that the species, size, quantity, and location of approved trees, shrubs, and groundcover comply with the approved landscape plan(s). The certification letter shall also verify landscape lighting, fencing, irrigation, and other details as applicable. Once the certification letter has been submitted, the project planner will also confirm the installation of the landscaping during the scheduled final inspection.
82. The applicant shall install the public art in accordance to the approved plans prior to contacting the Lafayette Planning Services Division to schedule an inspection.
83. The property owner shall comply with Chapter 5-6, Construction and Demolition Debris Recycling if this project was determined to be a covered project as defined in Section 5-602, LMC. Compliance shall include submittal of a Waste Assessment Summary Report to the Planning Services Division. All construction and demolition debris generated by the project must be accounted for by submission of recycling and landfill receipts.
84. The property owner shall execute any agreements identified in the Stormwater Control Plan that pertain to the transfer of ownership and/or long-term maintenance of stormwater treatment or hydrograph modification BMPs. Post construction stormwater pollution prevention guidelines, approved by the City, shall be given to new owners prior to the transfer of any property.
85. All stormwater management facilities, including but not limited to, treatment BMPs, permanent source control BMPs, detention basins, drop structures, and "No dumping drains to the Bay" markings, shall be installed per the approved drainage plan. Improvement shall be inspected and certified by the project design engineer and the results forwarded to the Contra Costa County Grading Inspector.

86. The developer shall provide reproducible Mylar copies of the as-built condition of public improvement plans to the City Engineer. **[G25]**
87. Prior to final inspection or occupancy, the developer shall submit a Certificate of Substantial Completion prepared by a qualified professional in conformance with the Water Conservation in Landscaping Act, Model Ordinance (G.C.65591 et.seq). **[L4]**
88. The property owner shall contact the Lafayette Planning Services Division at least 72 hours prior to requesting a final building inspection from the Contra Costa County Building Inspection Department. The property owner shall request an inspection of the project by Planning Services Division staff to confirm that all conditions of approval have been met and that the project was constructed in accordance with approved plans. Planning Services Division staff will release the "Hold" on the final building inspection when all conditions of approval have been met and a site inspection finds that the project was constructed in accordance with approved plans, including but not limited to siting, grading, retaining walls, tree protection measures, location of windows & doors, and building color.

#### **SUBDIVISION CONDITIONS OF APPROVAL**

89. The City approves the subdivision for up to 72 condominiums and associated parking, landscaping, and public and private open space and common areas as modified by these conditions.
90. This approval will terminate two years after the date of approval of this application unless a final map is accepted by the City for recording with the County Recorder's Office within that time period. Upon application, filed before the expiration of the approval, an extension of time may be granted by the Planning Commission.
91. This subdivision shall conform to the provisions of the County Subdivision Ordinance (Title 9) as adopted by the City of Lafayette.
92. The Final Map shall be recorded before sale of any condominiums.
93. Prior to filing the Parcel/Final Map, developer shall provide City with proof that an agreement has been executed with each utility company and that all appropriate fees and/or bonds have been paid as required by the agreement.
94. Prior to filing the Parcel/Final Map, improvement plans shall be submitted to the City Engineer showing all improvements including road, drainage, and utility improvements required by this approval. Plans shall be prepared by a registered civil engineer and shall be subject to review and approval by the City Engineer. All improvements shall be installed by or at the expense of the developer.
95. The subdivider shall execute a subdivision agreement with the City prior to filing the Parcel /Final Map, agreeing to install all required improvements within one year of the map being filed. The agreement shall be backed by a bond or other security acceptable to the City.
96. Any cost of relocating utilities due to subdivision improvements shall be the responsibility of the subdivider.

97. Prior to filing the Parcel/Final Map, developer shall provide City with (a) a reproducible Mylar copy, (b) a scanned electronic file in TIFF format, and (c) an electronic file in AutoCAD or Microstation compatible format, of the approved Improvement Plans.
98. Within 30 days after recording the Parcel/Final Map, the subdivider shall provide the City with (a) a reproducible Mylar copy and (b) a scanned electronic file in TIFF format, of the recorded Parcel/Final Map.

Exhibit 1: Schedule for Design Review Commission's review of project plans

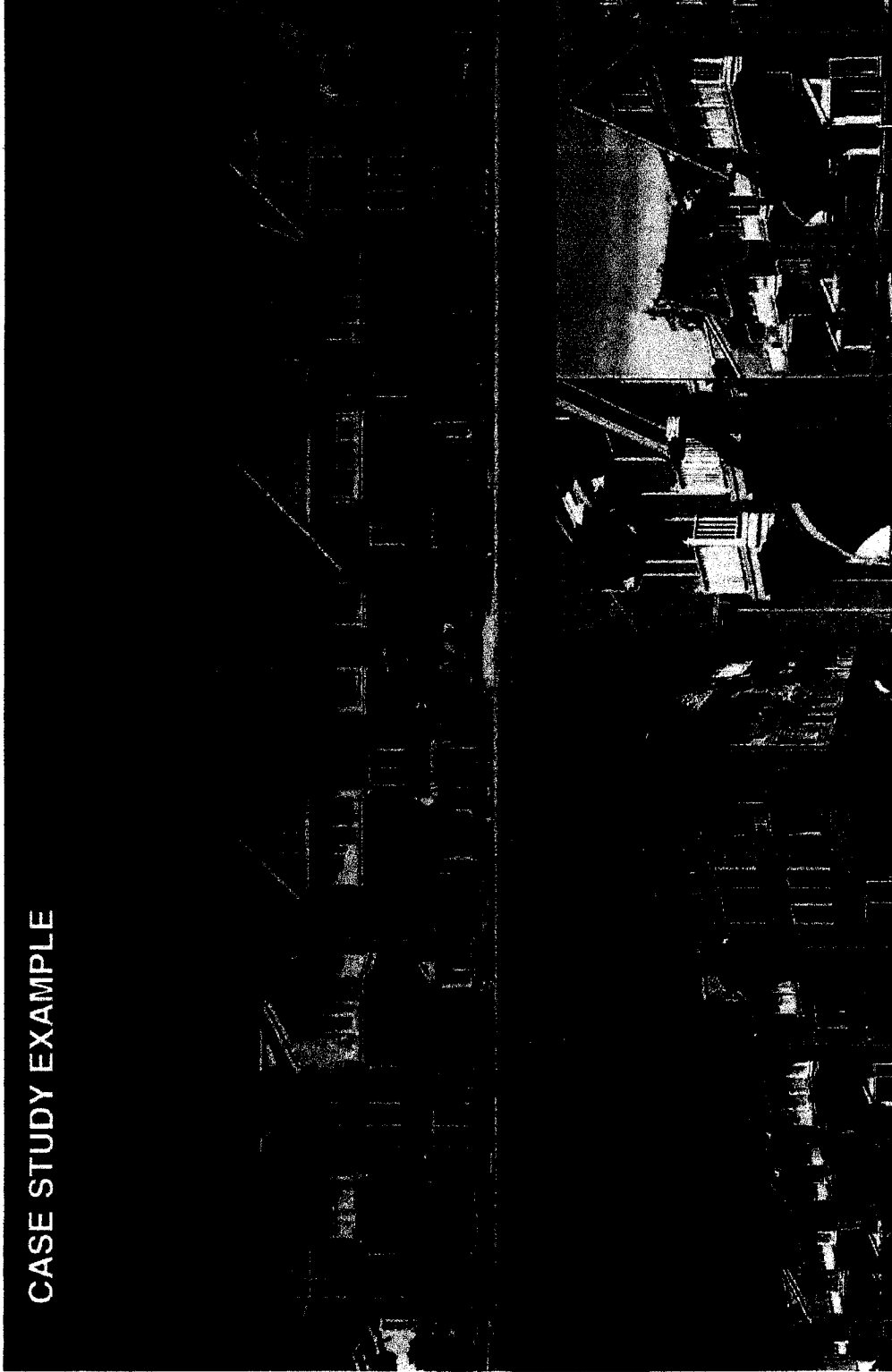
Exhibit 2: Case study elevations of the Woodmark condominium project in Palo Alto



**EXHIBIT 1: Schedule for Design Review Commission's review of project plans**

|                       |   |
|-----------------------|---|
| December 2012         | Applicant gathers case study materials in response to 5 Nov. 12, Joint Hearing  |
| January/February 2013 | <p>Applicant holds study session with the DRC to review case studies that focus the intent of the final design details.</p> <p>Applicant prepares schematics and vignettes of portions of the building for DRC's review to ensure that plans are headed in the right direction and are consistent with the City's directives</p>  |
| March/April 2013      | <p>Applicant develops design development plans which include:</p> <ul style="list-style-type: none"> <li>Elevations <ul style="list-style-type: none"> <li>▪ Balconies</li> <li>▪ Railings</li> <li>▪ Fenestration</li> <li>▪ Etc.</li> </ul> </li> <li>Floor Plans</li> <li>Color Schemes</li> <li>Materials Boards</li> </ul> <p>Applicant presents design development plans to DRC</p> <ul style="list-style-type: none"> <li>▪ DRC provides feedback that may result in minor revisions and detailing</li> <li>▪ Applicant revises plans</li> </ul> |
| May 2013              | <p>Applicant presents final plans to DRC</p> <ul style="list-style-type: none"> <li>▪ DRC approves plans or asks for final revisions</li> <li>▪ Applicant makes final revisions and submits plans for approval</li> </ul> <p>DRC acts on final plans</p>  |

Exhibit 2: Case study elevations of the Woodmark condominium project in Palo Alto



**CASE STUDY EXAMPLE**

CASE STUDY EXAMPLE

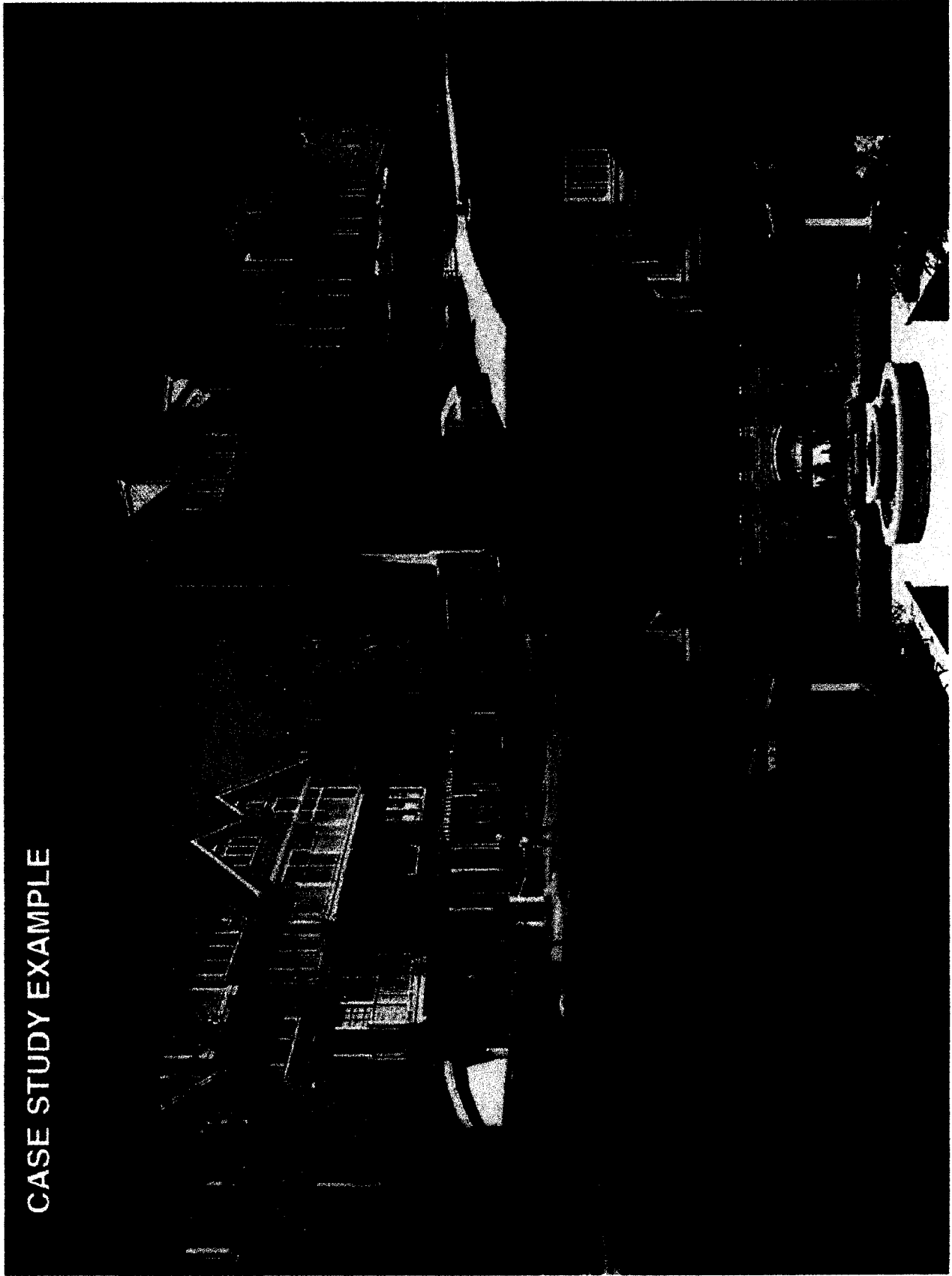
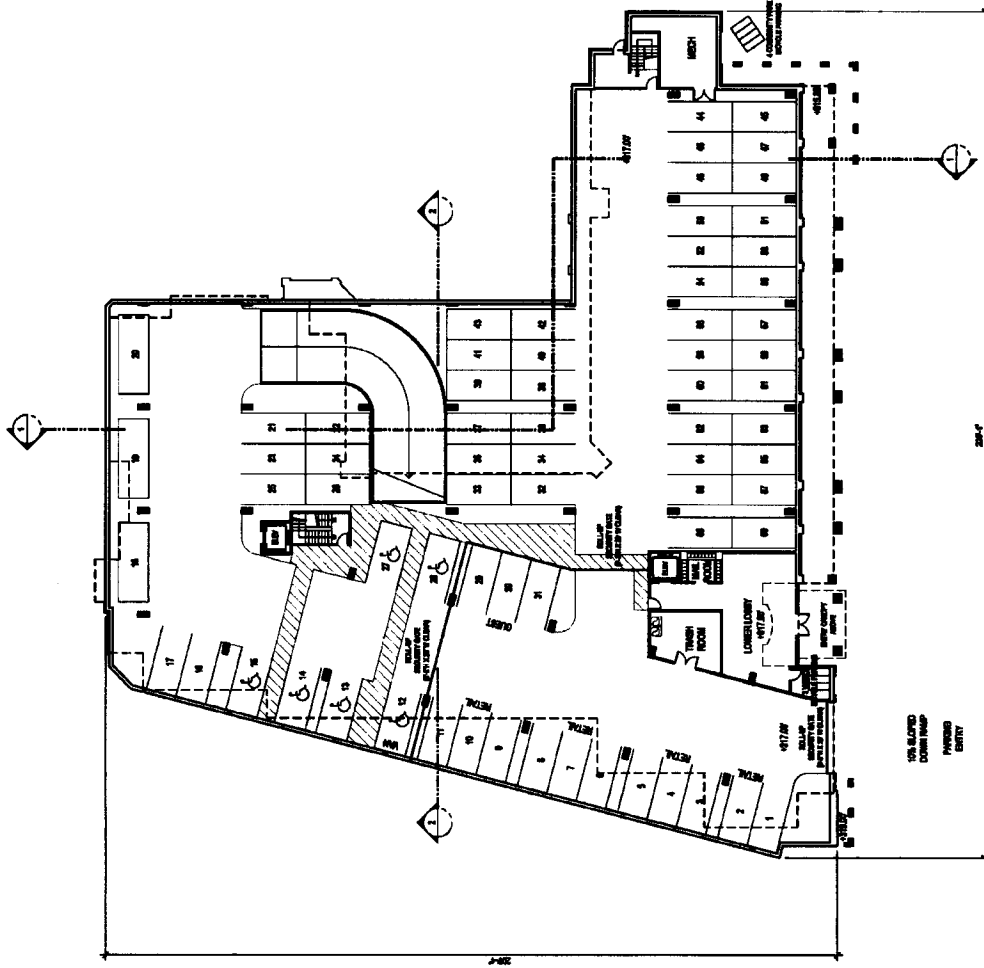


EXHIBIT C



FLOOR PLAN LEVEL P1

LAFAYETTE TOWN CENTER PHASE III

HELLER MANUS ARCHITECTS

LAFAYETTE, CA

KB LAFAYETTE RESIDENTIAL PARTNERS, LLC

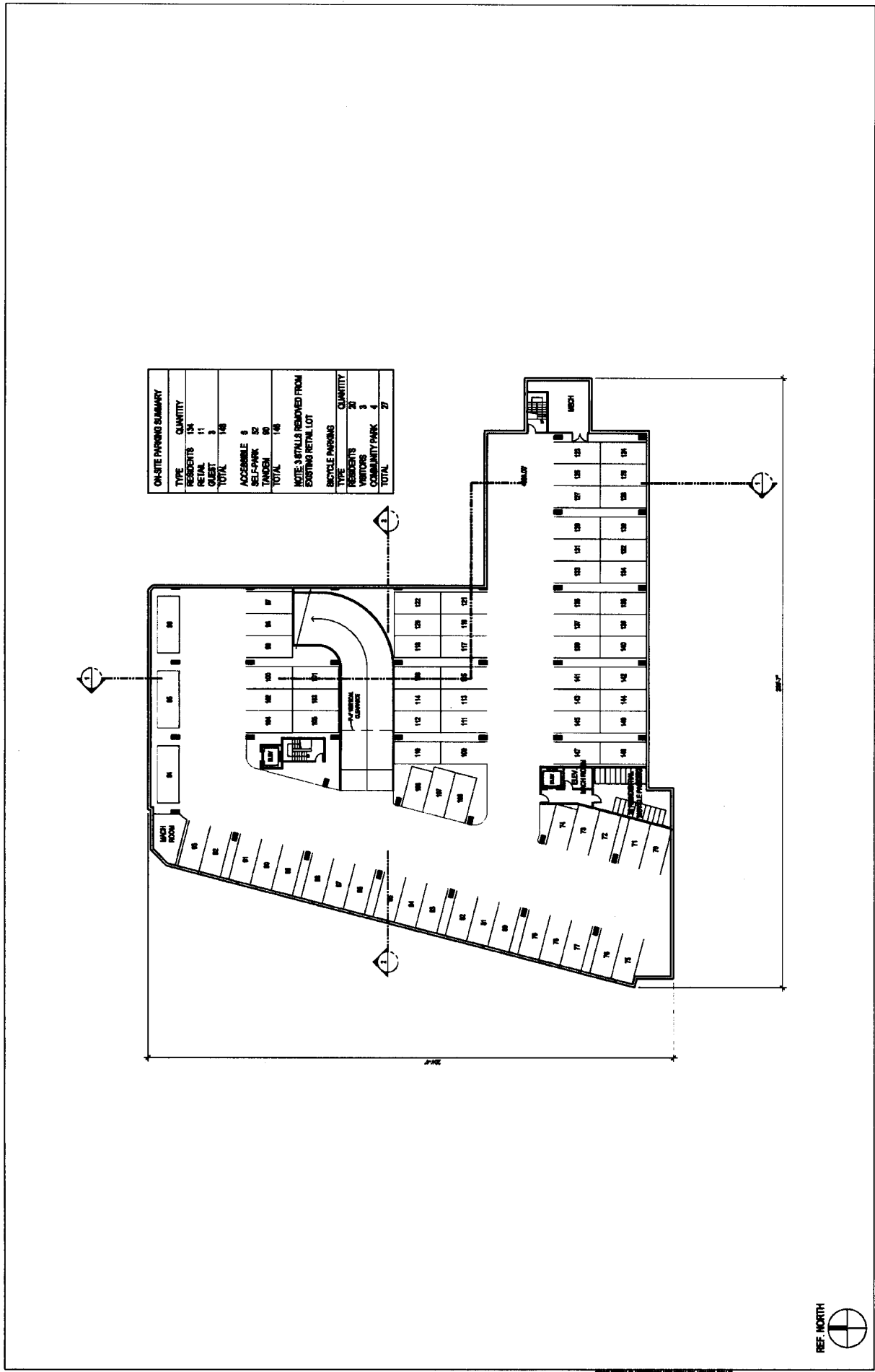


REF NORTH

NOVEMBER 5, 2012

SCALE 1/8"=1'-0"

1"=10'



| ON-SITE PARKING SUMMARY |          |
|-------------------------|----------|
| TYPE                    | QUANTITY |
| RESIDENTS               | 134      |
| RETAIL                  | 11       |
| GUEST                   | 3        |
| TOTAL                   | 148      |
| ACCESSIBLE              | 6        |
| SELF-PARK               | 32       |
| TRUCKS                  | 30       |
| TOTAL                   | 148      |

| NOTE: 3 SPALLS REMOVED FROM EXISTING RETAIL LOT |          |
|---|----------|
| TYPE  | QUANTITY |
| RESIDENTS                                       | 20       |
| VISITORS  | 3        |
| COMMUNITY PARK                                  | 4        |
| TOTAL   | 27       |

FLOOR PLAN LEVEL P2  
**H**ELLER MANUS **HA**  
 ARCHITECTS

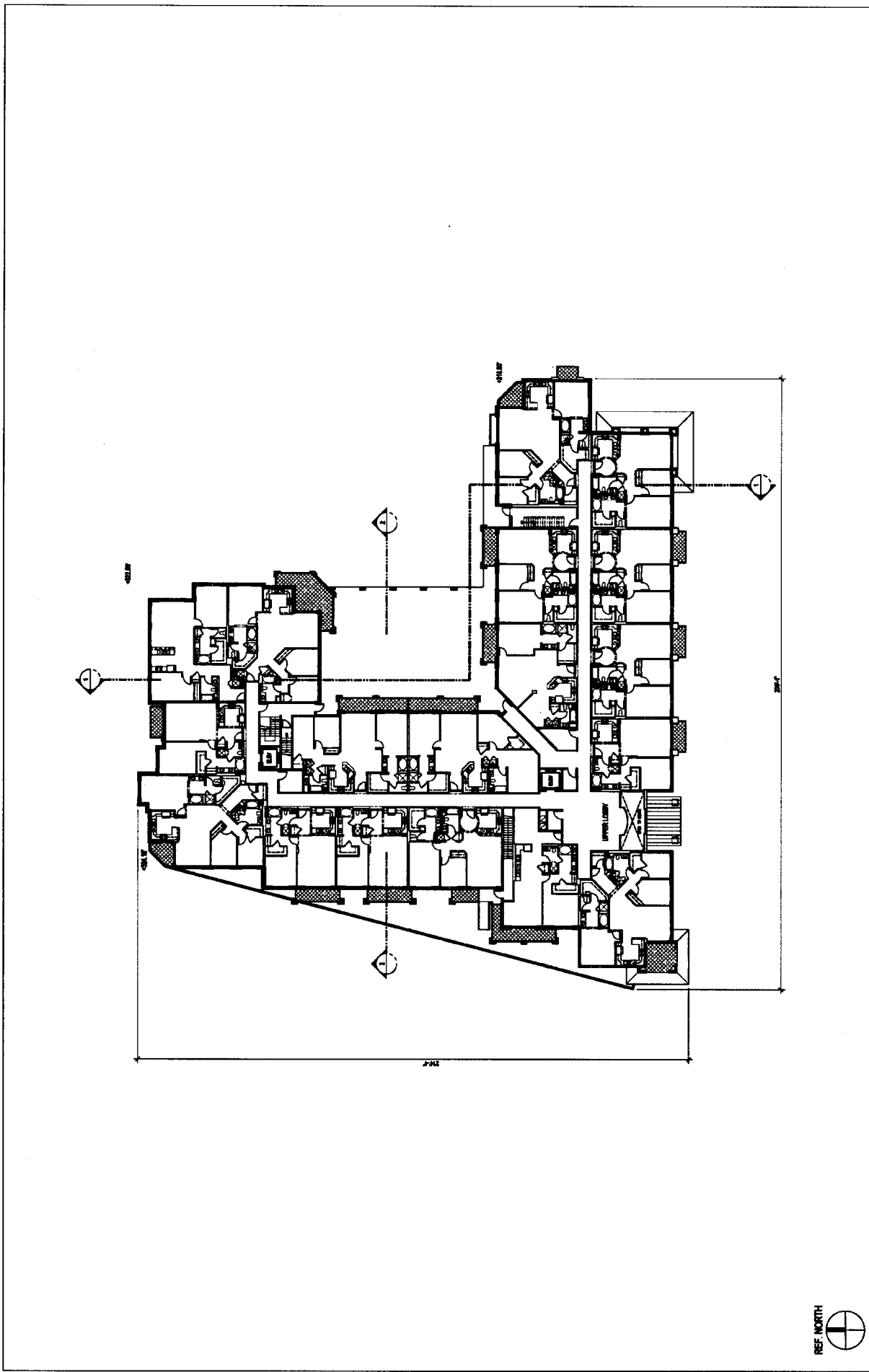
LAFAYETTE TOWN CENTER PHASE III  
 LAFAYETTE, CA

KB LAFAYETTE RESIDENTIAL PARTNERS, LLC



REF. NORTH

NOVEMBER 5, 2012  
 SCALE 1/8"=1'-0"

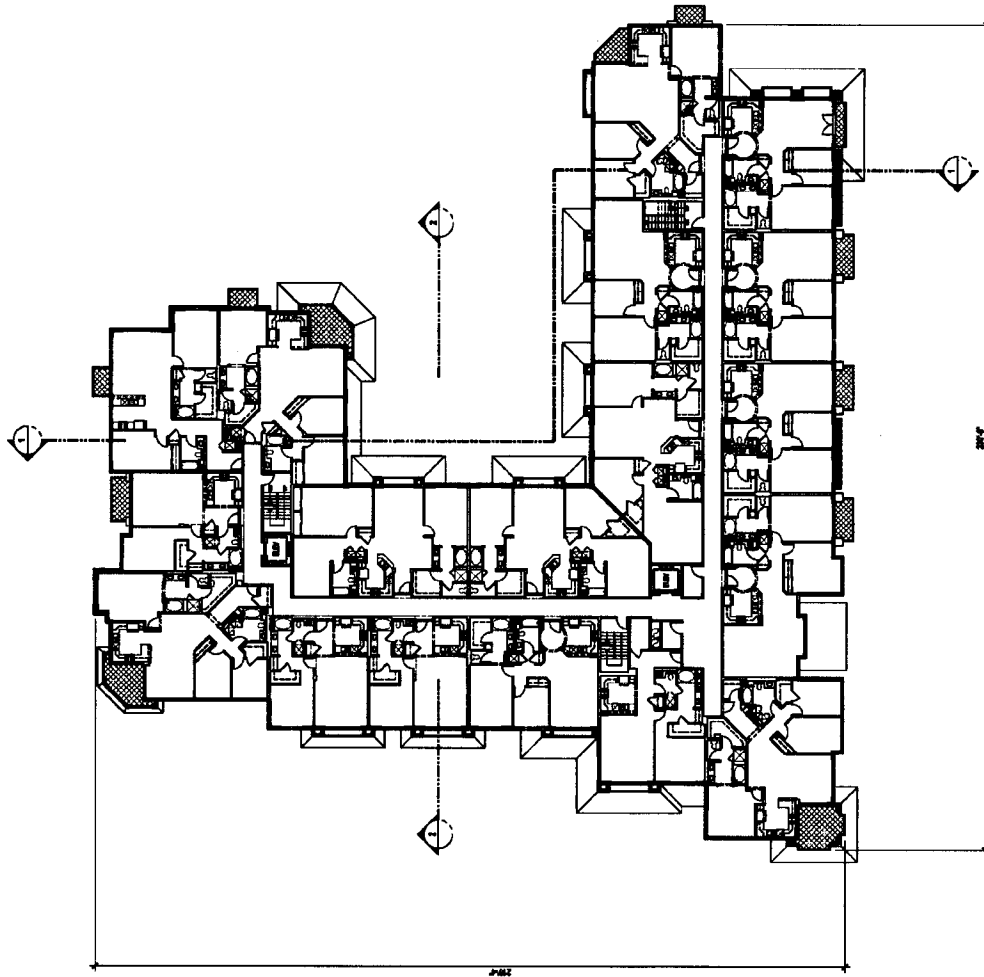


FLOOR PLAN LEVEL 1  
**H**ELLER MANNUS  
 ARCHITECTS

LAFAYETTE TOWN CENTER PHASE III  
 LAFAYETTE, CA

NOVEMBER 5, 2012  
 SCALE 1/8"=1'-0"  
**KB** LAFAYETTE RESIDENTIAL PARTNERS, LLC





REF NORTH



NOVEMBER 5, 2012  
 SCALE 1/8"=1'-0"



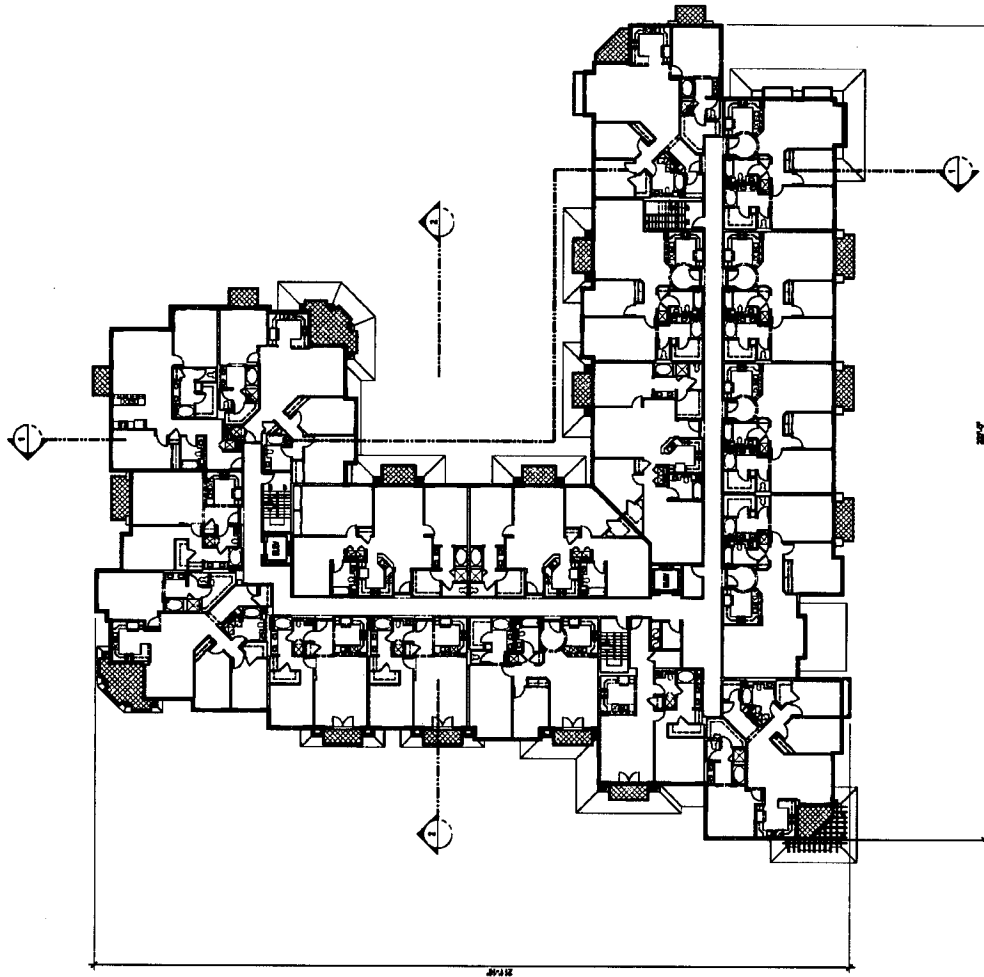
**KB** LAFAYETTE RESIDENTIAL PARTNERS, LLC

LAFAYETTE TOWN CENTER PHASE III

LAFAYETTE, CA

FLOOR PLAN LEVEL 2

HELLER MANUS ARCHITECTS **HM**



REF. NORTH

NOVEMBER 5, 2012  
 SCALE 1/8" = 1'-0"

**KB** LAFAYETTE RESIDENTIAL PARTNERS, LLC

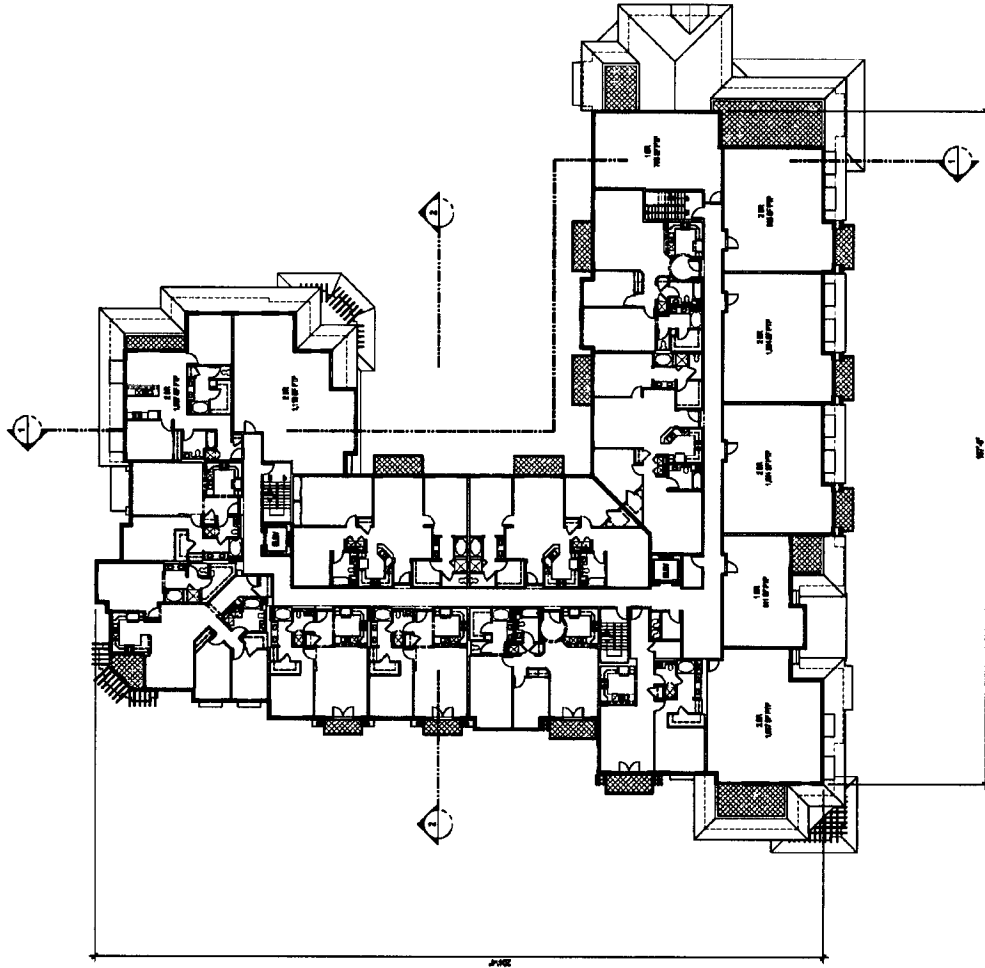
LAFAYETTE TOWN CENTER PHASE III

LAFAYETTE, CA

FLOOR PLAN LEVEL 3

HELLER MANUS ARCHITECTS **HM**





REF NORTH



NOVEMBER 5, 2012  
 SCALE 1/8"=1'-0"

1"=10'-0"

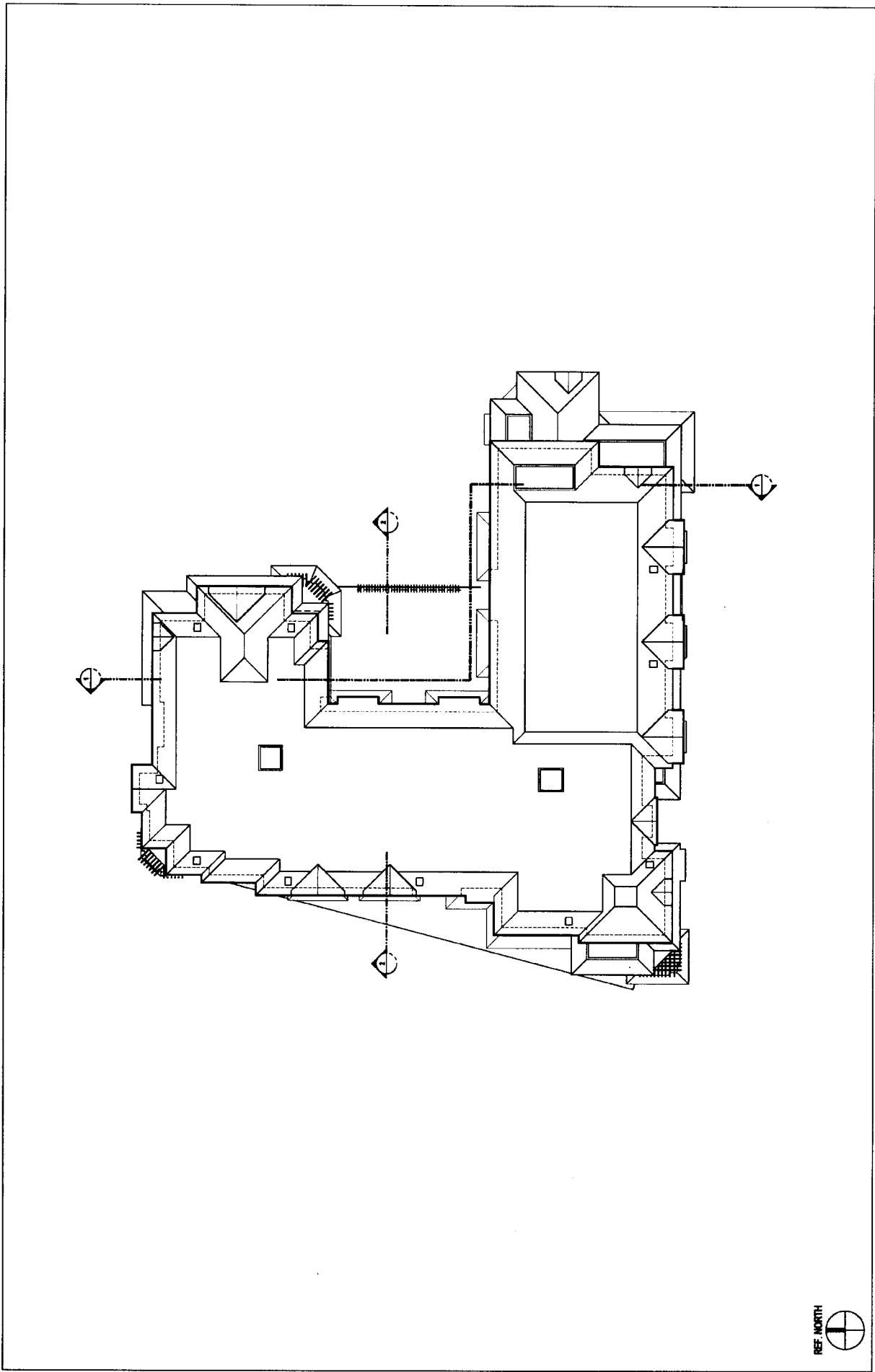
**KB** LAFAYETTE RESIDENTIAL PARTNERS, LLC

**LAFAYETTE TOWN CENTER PHASE III**

LAFAYETTE, CA

**FLOOR PLAN LEVEL 4**

**H**  
 HELLER MANUS  
 ARCHITECTS



ROOF PLAN  
HELLER MANUS ARCHITECTS

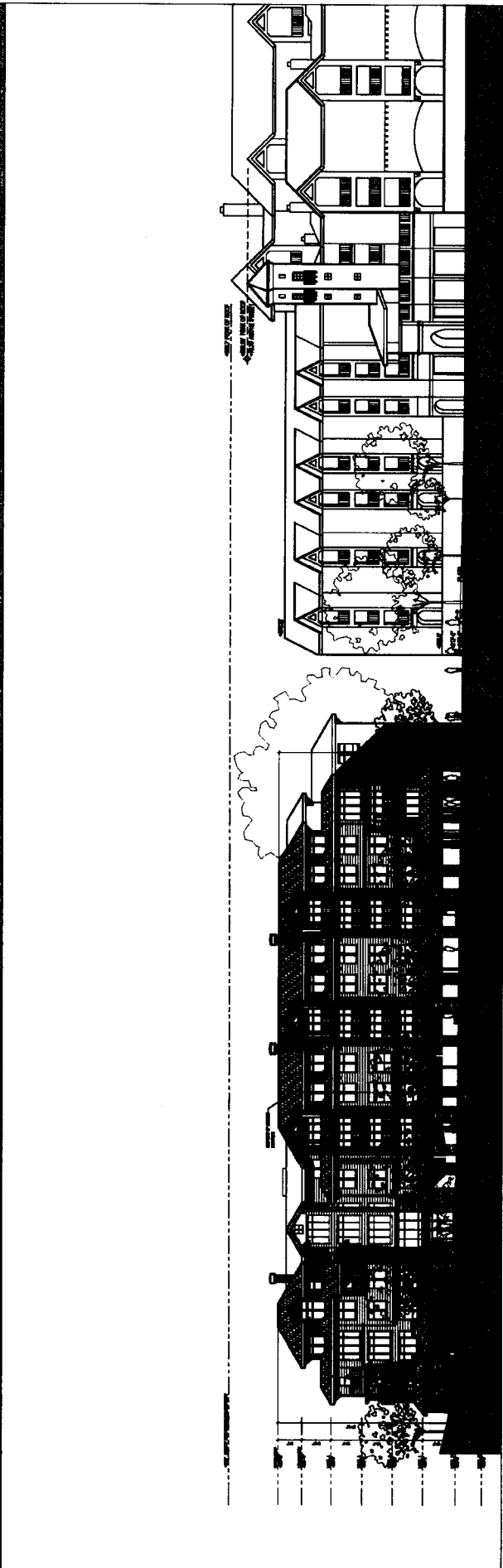
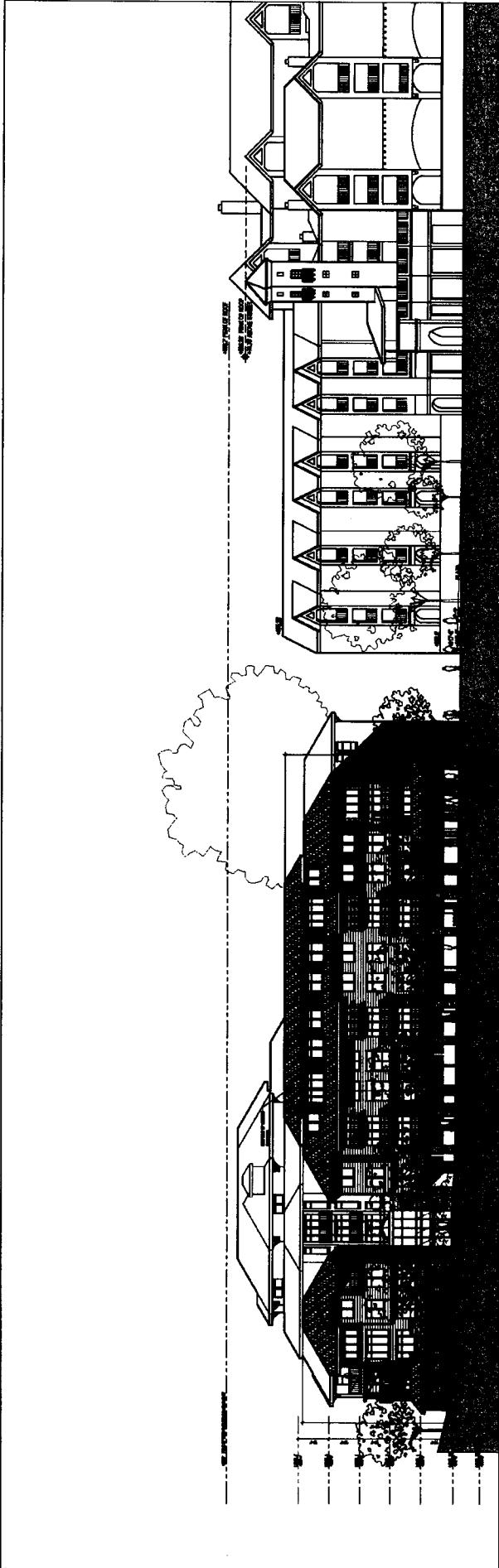
LAFAYETTE TOWN CENTER PHASE III  
LAFAYETTE, CA

KB LAFAYETTE RESIDENTIAL PARTNERS, LLC



NOVEMBER 5, 2012  
SCALE 1/8"=1'-0"





NOVEMBER 5, 2012  
 SCALE 1/4"=1'-0"  
 1"=12'-0"

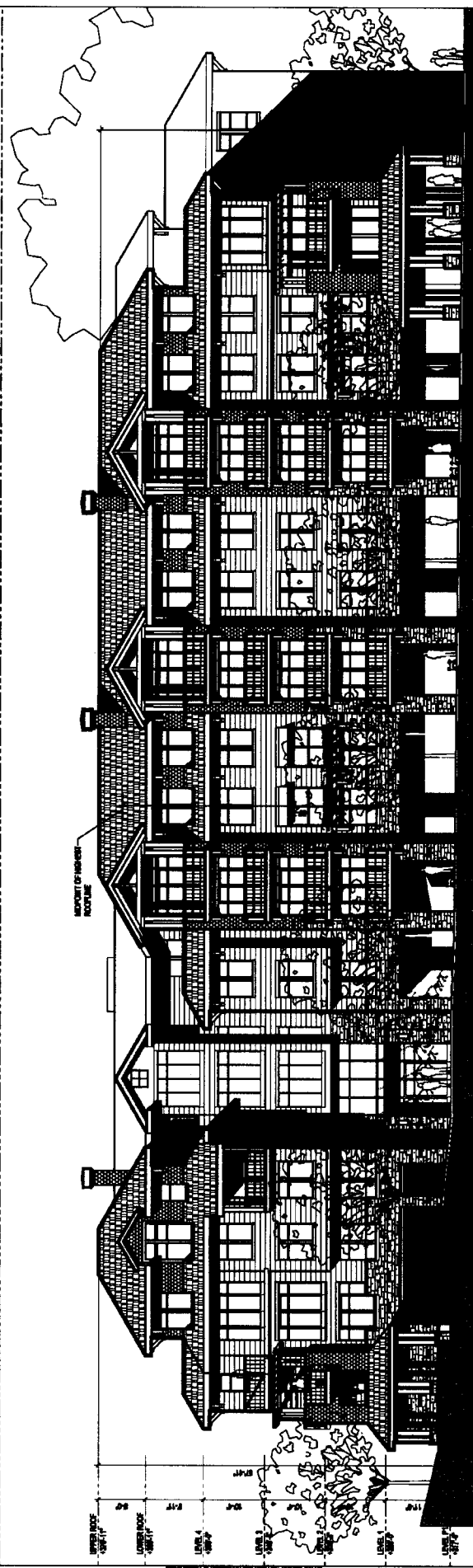
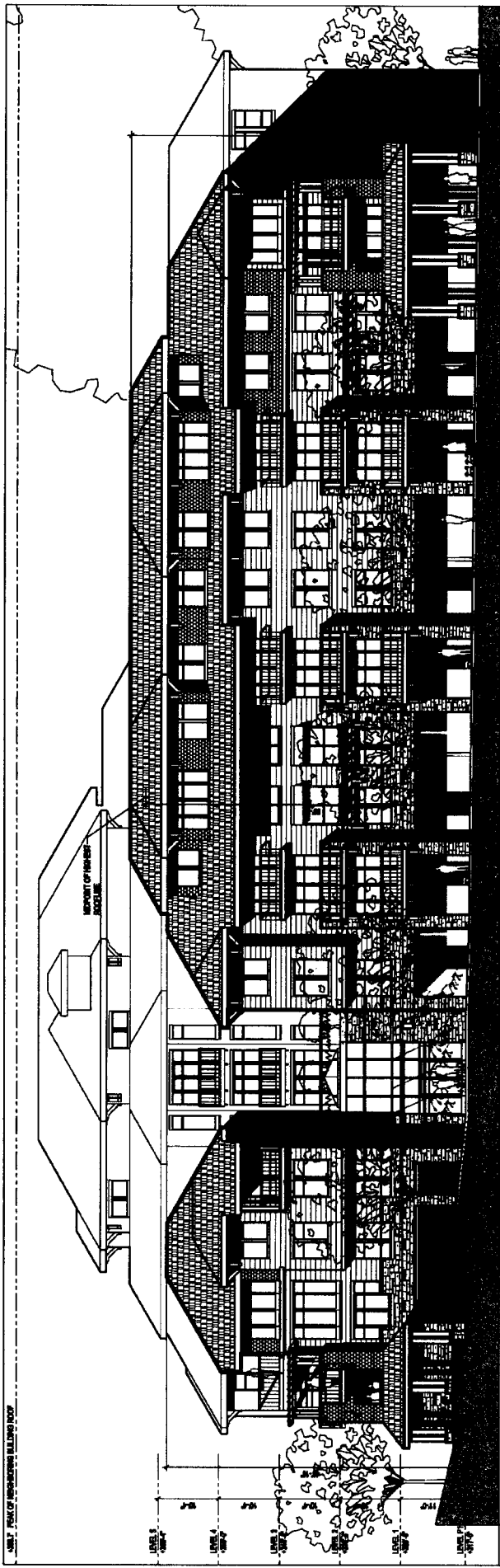
LAFAYETTE TOWN CENTER PHASE III

CONTEXT SOUTH ELEVATION

**KB** LAFAYETTE RESIDENTIAL PARTNERS, LLC

LAFAYETTE, CA

HELLER MANUS **HM**  
 ARCHITECTS

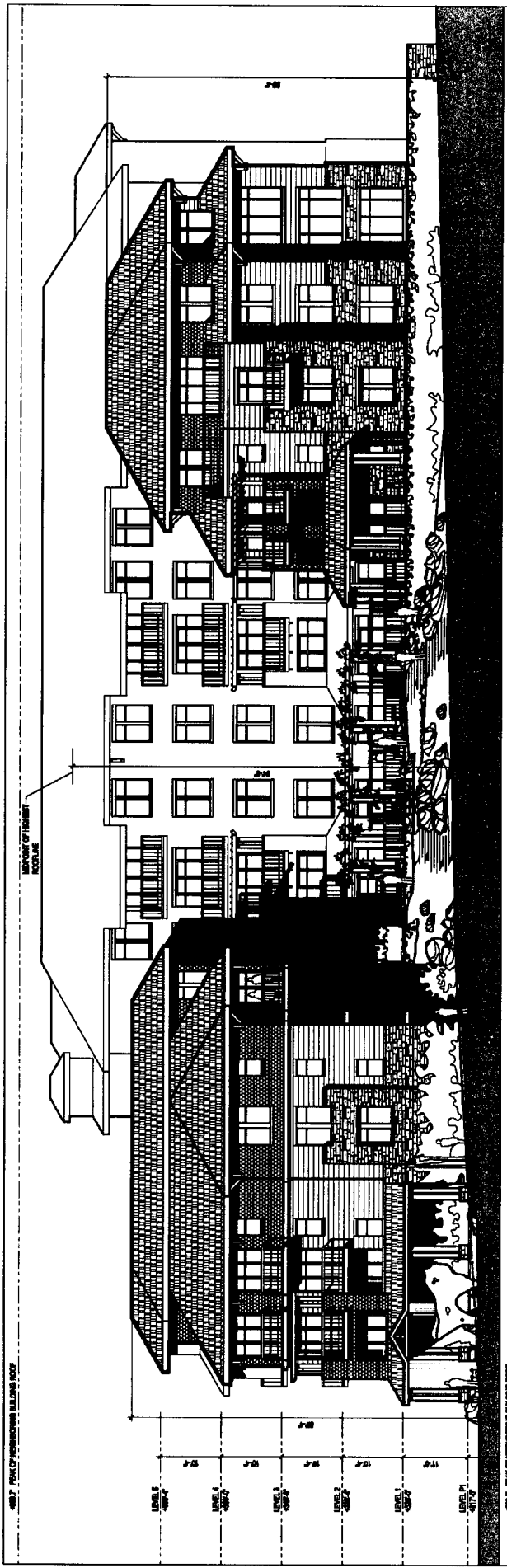


NOVEMBER 5, 2012  
 SCALE 1/8"=1'-0"  
 © 2012 HELLER MANUS

**KB** LAFAYETTE RESIDENTIAL PARTNERS, LLC

LAFAYETTE TOWN CENTER PHASE III  
 LAFAYETTE, CA

SOUTH ELEVATION  
 HELLER MANUS **HM**  
 ARCHITECTS



NOVEMBER 6, 2012  
SCALE 1/8"=1'-0"

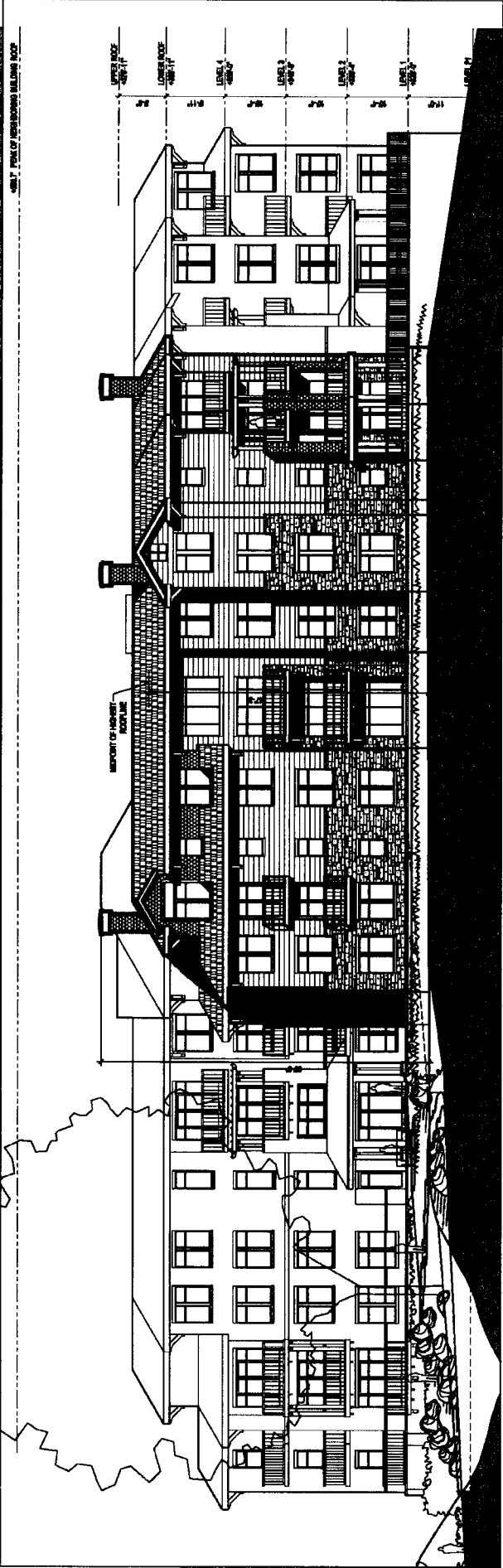
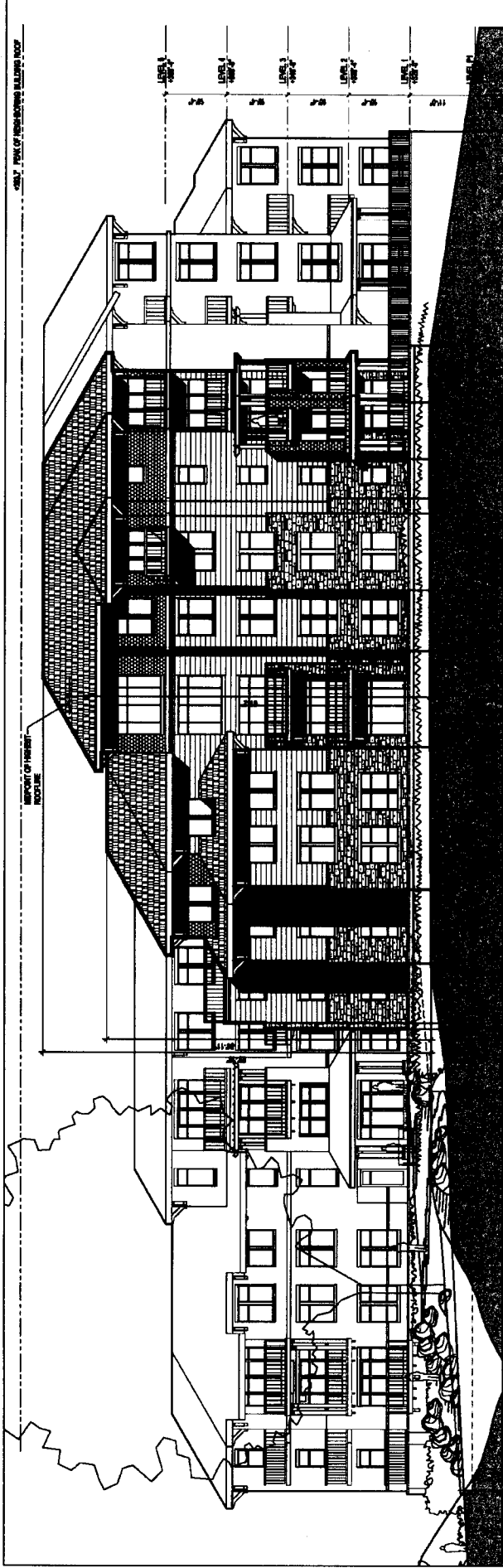
LAFAYETTE TOWN CENTER PHASE III

EAST ELEVATION

**KB** LAFAYETTE RESIDENTIAL PARTNERS, LLC

LAFAYETTE, CA

HELLER MANUS ARCHITECTS **HM**

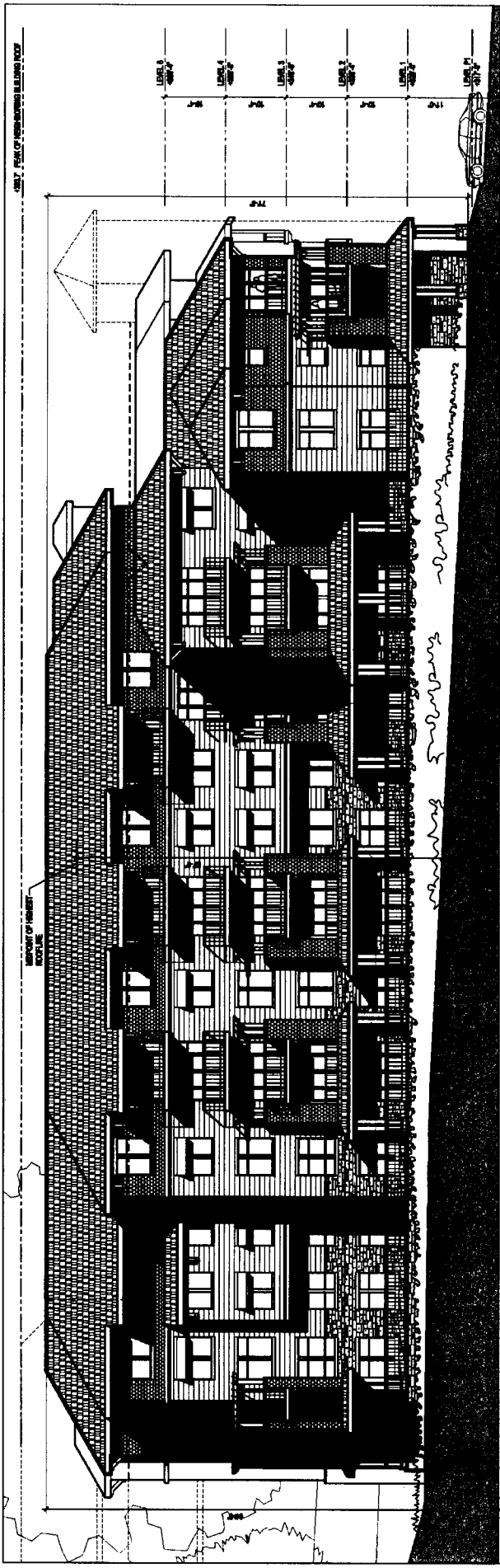


NOVEMBER 6, 2012  
 SCALE 1/8"=1'-0"  
 © 2012 HELLER MANUS

**KB** LAFAYETTE RESIDENTIAL PARTNERS, LLC

LAFAYETTE TOWN CENTER PHASE III  
 LAFAYETTE, CA

NORTH ELEVATION  
 HELLER MANUS **HM**  
 ARCHITECTS



NOVEMBER 5, 2012  
 SCALE 1/8"=1'-0"  
 © 2012 HELLER MANUS

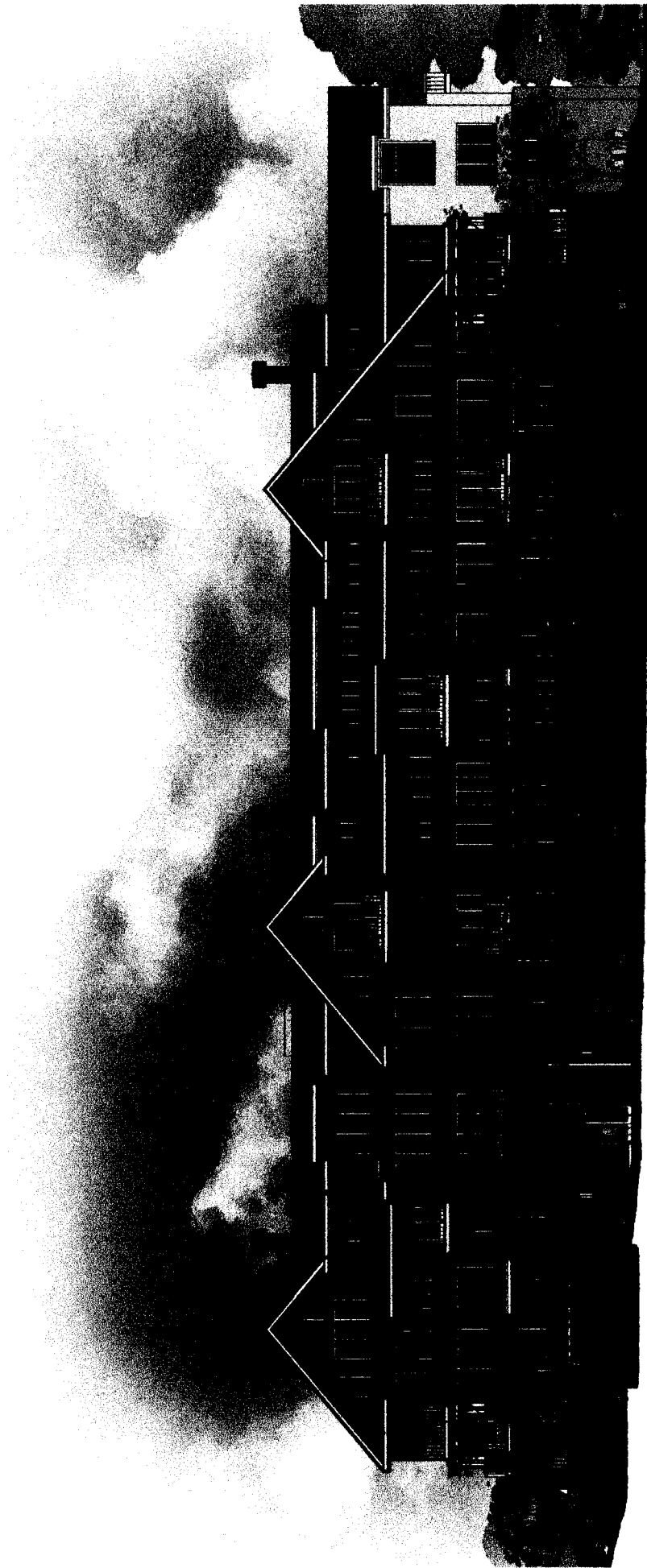
**KB** LAFAYETTE RESIDENTIAL PARTNERS, LLC

**LAFAYETTE TOWN CENTER PHASE III**

**WEST ELEVATION**

LAFAYETTE, CA

HELLER MANUS ARCHITECTS **HM**



NOVEMBER 20, 2012

LAFAYETTE RESIDENTIAL PARTNERS, LLC

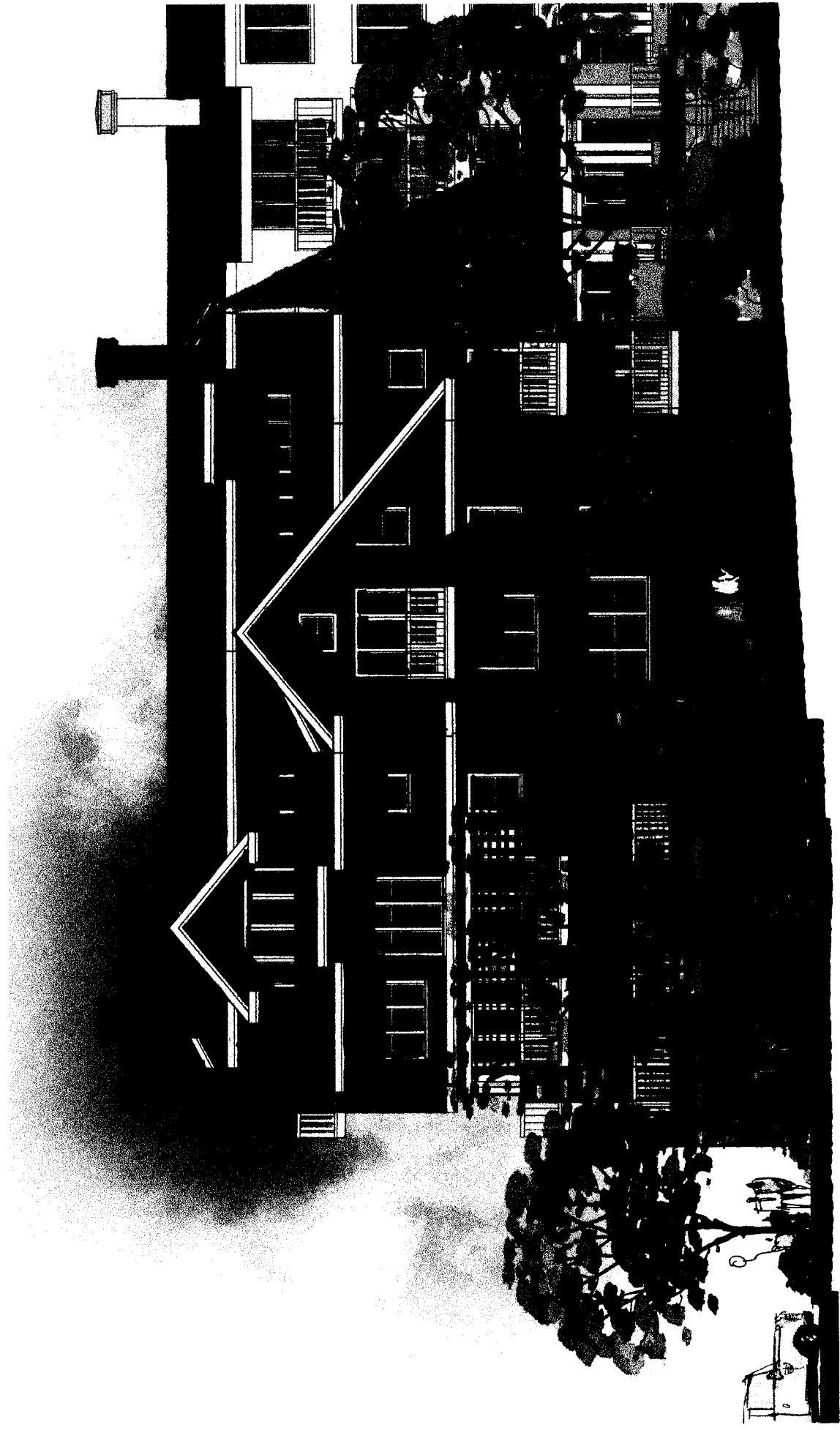
# LAFAYETTE TOWN CENTER PHASE III

LAFAYETTE, CA

SOUTH ELEVATION

HELLER MANUS  
ARCHITECTS **HM**





NOVEMBER 20, 2012

LAFAYETTE RESIDENTIAL PARTNERS, LLC

# LAFAYETTE TOWN CENTER PHASE III

LAFAYETTE, CA

SOUTHEAST ELEVATION

HELLER MANUS  
ARCHITECTS **HM**

# Contra Costa Times

PO Box 4147  
Walnut Creek, CA 94596  
(925) 935-2525

Legal No. 0004713922

LAFAYETTE, CITY OF  
ATTN: ACCOUNTS PAYABLE, 3675 MT. DIABLO BLVD.,  
#210  
LAFAYETTE CA 94549-3793

## PROOF OF PUBLICATION

FILE NO. ord 615

In the matter of

Contra Costa Times

I am a citizen of the United States and a resident of the County aforesaid; I am over the age of eighteen years, and not a party to or interested in the above-entitled matter.

I am the Principal Legal Clerk of the Contra Costa Times, a newspaper of general circulation, printed and published at 2640 Shadelands Drive in the City of Walnut Creek, County of Contra Costa, 94598

And which newspaper has been adjudged a newspaper of general circulation by the Superior Court of the County of Contra Costa, State of California, under the date of October 22, 1934. Case Number 19764.

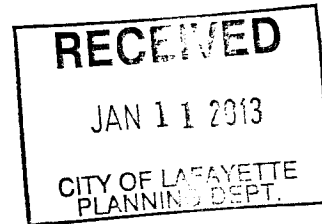
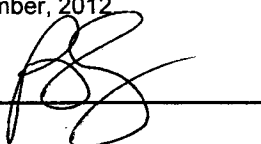
The notice, of which the annexed is a printed copy (set in type not smaller than nonpareil), has been published in each regular and entire issue of said newspaper and not in any supplement thereof on the following dates, to-wit:

12/14/2012

I certify (or declare) under the penalty of perjury that the foregoing is true and correct.

Executed at Walnut Creek, California.  
On this 20th day of December, 2012

Signature



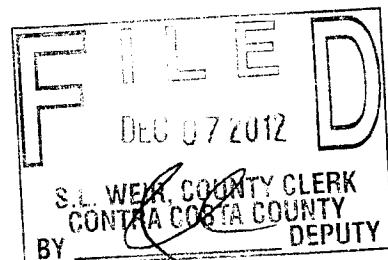
**NOTICE OF DETERMINATION**

|            |  |              |  |
|------------|--|--------------|--|
| <b>TO:</b> | <input type="checkbox"/> Clerk of the Board of Supervisors | <b>FROM:</b> | Lead Agency: City of Lafayette                             |
|            | or   |              | Address: 3675 Mt. Diablo Blvd. #210<br>Lafayette, CA 94549 |
|            | <input checked="" type="checkbox"/> County Clerk           |              | Contact: Niroop K. Srivatsa                                |
|            | County of: Contra Costa                                    |              | Phone: (925) 299-3206                                      |
|            | Address: 822 Main Street<br>Martinez, CA 94553             |              |  |

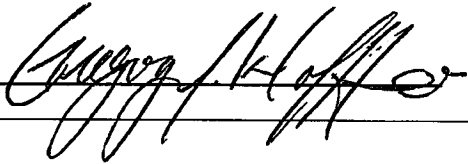
|            |   |
|------------|---|
| <b>TO:</b> | <input type="checkbox"/> Office of Planning and Research<br>P. O. Box 3044, Sacramento, CA 95812-3044   |
|            | <input type="checkbox"/> 1400 Tenth Street (overnight or hand delivery)<br>Sacramento, California 95814 |

**SUBJECT:** Filing of Notice of Determination in Compliance with Section 21108 or 21152 of the Public Resources Code.

|  |                     |                       |
|--|---------------------|-----------------------|
| <b>Project Title:</b> SPA01-10, RZ01-11, DR10-11: Town Center Phase III  |                     |                       |
| State Clearinghouse Number<br>(If submitted to SCH): n/a   | Contact Person: n/a | Telephone Number: n/a |
| <b>Specific Project Location:</b> Mt. Diablo Boulevard and Dewing Avenue. APN 243-040-035.   |                     |                       |
| <b>General Project Location (City and/or County):</b> Lafayette; Contra Costa County. The 1.47 acre property is located north of Mt. Diablo Boulevard at Dewing Avenue.  |                     |                       |
| <b>Project Description:</b> The applicant KB Home South Bay has requested (1) an amendment to the BART Block Specific Plan for a building over 35 feet and three stories high, (2) an amendment to the Planned Unit Development/Preliminary Development Plan for Town Center for a land use change from office to multifamily residential, (3) design review for up to 72 residential dwelling, and (4) a subdivision for condominiums on a 1.47 acre property located north of Mt. Diablo Boulevard and Dewing Avenue. A resolution adopting the mitigated negative declaration and Mitigation Monitoring and Reporting Program was adopted on November 20, 2012. |                     |                       |



This is to advise that the  Lead Agency or  Responsible Agency) approved the above described project on: November 26 and December 4, 2012 and made the following determinations:

|                           |  |            |   |
|---------------------------|--|------------|---|
| 1.                        | <input type="checkbox"/> The project will have a significant effect on the environment.  |            |   |
|                           | <input checked="" type="checkbox"/> The project will NOT have a significant effect on the environment  |            |   |
| 2.                        | <input type="checkbox"/> An Environmental Impact Report was prepared and certified for this project pursuant to the provisions of CEQA and reflects the independent judgment of the Lead Agency.   |            |   |
|                           | <input type="checkbox"/> A Negative Declaration was prepared for this project pursuant to the provisions of CEQA and reflects the independent judgment of the Lead Agency.   |            |   |
|                           | <input checked="" type="checkbox"/> A Mitigated Negative Declaration was prepared for this project pursuant to the provisions of CEQA and reflects the independent judgment of the Lead Agency.  |            |   |
| 3.                        | <input checked="" type="checkbox"/> Mitigation measures were made a condition of the approval of the project.  |            |   |
|                           | <input type="checkbox"/> Mitigation measures were NOT made a condition of the approval of the project.   |            |   |
| 4.                        | <input checked="" type="checkbox"/> A Mitigation Monitoring or Reporting Plan was adopted for this project.  |            |   |
|                           | <input type="checkbox"/> A Mitigation Monitoring or Reporting Plan was NOT adopted for this project.   |            |   |
| 5.                        | <input type="checkbox"/> A Statement of Overriding Considerations was adopted for this project.  |            |   |
|                           | <input checked="" type="checkbox"/> A Statement of Overriding Considerations was NOT adopted for this project  |            |   |
| 6.                        | <input checked="" type="checkbox"/> Findings were made pursuant to the provisions of CEQA.   |            |   |
|                           | <input type="checkbox"/> Findings were NOT made pursuant to the provisions of CEQA.  |            |   |
| 7.                        | <input checked="" type="checkbox"/> This certifies that the location and custodian of the documents which comprise the record of proceedings for the Final EIR (with comments and responses) or Negative Declaration are available to the general public at the following location(s): |            |   |
|                           | <table border="0"> <tr> <td style="vertical-align: top;">Custodian:</td> <td style="vertical-align: top;">Location:<br/>City of Lafayette<br/>Planning Services Division<br/>3675 Mt. Diablo Blvd. #210<br/>Lafayette, CA 94549</td> </tr> </table>                                    | Custodian: | Location:<br>City of Lafayette<br>Planning Services Division<br>3675 Mt. Diablo Blvd. #210<br>Lafayette, CA 94549 |
| Custodian:                | Location:<br>City of Lafayette<br>Planning Services Division<br>3675 Mt. Diablo Blvd. #210<br>Lafayette, CA 94549  |            |   |
| Date:                     | <u>December 7, 2012</u>  |            |   |
| Signature:                |    |            |   |
| Date Received for Filing: | Title: <u>SENIOR PLANNER</u><br><u>for APPROV. &amp; SIGNATURE</u>   |            |   |

**California Department of Fish and Game**  
**No Effect Determination Request Form**

**To:** DEPARTMENT OF FISH AND GAME  
 Bay Delta Regional Office  
 7329 Silverado Trail  
 Napa, CA 94558  
 Information: (707) 944-5500  
 FAX: (707) 944-5563  
<http://www.dfg.ca.gov>  
 Environmental Review and Permitting  
 1416 Ninth Street, Suite 1260  
 Sacramento, California 95814

|  |  |
|--|--|
| <b>Date Submitted:</b>   | December 7, 2012   |
| <b>CEQA Lead Agency:</b>   | City of Lafayette  |
| <b>Lead Agency Contact Phone Number:</b>   | Niroop K. Srivatsa (925) 299-3206  |
| <b>Lead Agency Address:</b>  | 3675 Mt. Diablo Blvd. #210, Lafayette, CA 94549  |
| <b>SCH Number or County Filing Number<br/>Local agency project/case number:</b>  | n/a<br>SPA01-10, RZ01-11, DR10-11: Town Center Phase III   |
| <b>CEQA Document Type</b> (the type of document prepared for your project by the CEQA Lead Agency):  | Mitigated Negative Declaration   |
| <b>Applicant Name and Contact Phone Number</b> (if applicable):  | As above   |
| <b>Applicant Address</b> (if applicable):  | As above   |
| <b>Project Title:</b>  | SPA01-10, RZ01-11, DR10-11: Town Center Phase III: KB Home South Bay   |
| <b>Project Location</b> (include the street address, lat/long, range/township/section, or other description that clearly indicates the location of the project site. Include an aerial or topographic map of the project site):  | The 1.47 acre property is located north of Mt. Diablo Boulevard at Dewing Avenue. APN 243-040-035.   |
| <b>Project Description</b> (include details such as new construction [with square footage], demolition of existing buildings, adaptive reuse of existing buildings, zoning amendments, general plan amendments, conditional use for sale of alcoholic beverages, etc.) Use additional sheets if necessary: | The applicant KB Home South Bay has requested (1) an amendment to the BART Block Specific Plan for a building over 35 feet and three stories high, (2) an amendment to the Planned Unit Development/Preliminary Development Plan for Town Center for a land use change from office to multifamily residential, (3) design review for up to 72 residential dwelling, and (4) a subdivision for condominiums on a 1.47 acre property located north of Mt. Diablo Boulevard and Dewing Avenue. A resolution adopting the mitigated negative declaration and Mitigation Monitoring and Reporting Program was adopted on November 20, 2012. |
| <b>Justification for No Effect Determination</b> (explain how the proposed project is consistent with Title 14 Section 753.5(d) CCR):  | The Project calls for the construction of up to 72 condominium units on a site occupied by paved parking lot. All work would be required to incorporate best management practices as set forth in the C.3 Guidelines and the Lafayette Stormwater Pollution Prevention Ordinance which will reduce potential for stormwater pollution to a less than significant level,  |

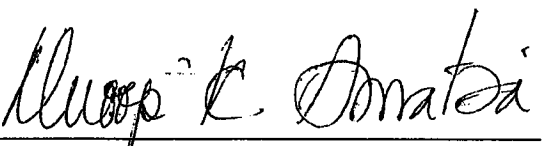
|  |  |
|--|--|
|  | <p>as well as ensure that waste is properly stored. (Source: Standard Conditions of Approval with Stormwater Conditions; Stormwater Pollution Prevention Ordinance). The Project is located in an existing urbanized area, designated in the General Plan as Downtown Core, and not within mapped critical habitat by the CA Department of Fish and Game or the US Fish and Wildlife Service. The Project is also not in the Hillside Overlay District which is the general location of environmentally sensitive land according to General Plan Policy OS-4.5. The Project area is also not within an identified scenic easement.</p> <p>The City of Lafayette declares that, considering the record as a whole, including the the Mitigated Negative Declaration prepared for this project, there is no evidence before the City that the proposed project, as conditioned, will have the potential for an adverse effect on wildlife resources or the habitat on which the wildlife depends. The record of the City's action, including findings, are available for public review at the City of Lafayette.</p> |
|--|--|

**Facts Supporting Fee Exemption:**

1. An Initial Study has been prepared by the Lead Agency to evaluate the project's effects on fish and wildlife resources, if any.
2. The Lead Agency hereby finds that there is substantial evidence that the project will have no effect on fish or wildlife.
3. The project will have NO EFFECT on the following resources:
  - (A) Riparian land, rivers, streams, watercourses and wetlands;
  - (B) Native and non-native plant life and the soil required to sustain habitat for fish and wildlife;
  - (C) Rare and unique plant life and ecological communities dependant on plant life;
  - (D) Listed threatened and endangered plants and animals and the habitat in which they are believed to reside;
  - (E) All species listed as protected or identified for special management in the Fish and Game Code, the Public Resources Code, the Water Code or regulations adopted thereunder;
  - (F) All marine and terrestrial species subject to the jurisdiction of the Department of Fish and Game and the ecological communities in which they reside; and
  - (G) All air and water resources, the degradation of which will individually or cumulatively result in a loss of biological diversity among the plants and animals residing in that air and water.

**DECLARATION:**

Based on the Lead Agency's evaluation of potential adverse effects on fish and wildlife resources, the Lead Agency believes the project will have no effect on fish or wildlife resources, as defined in Section 711.2 of the Fish and Game Code.

  
 \_\_\_\_\_  
 Signature - Lead Agency Representative

**Name:** Nirop K. Srivatsa  
**Title:** Planning and Building Services Manager  
**Lead Agency:** City of Lafayette  
**Date:** November 28, 2012



State of California—The Resources Agency  
 DEPARTMENT OF FISH AND GAME  
**2012 ENVIRONMENTAL FILING FEE CASH RECEIPT**

|  |        |
|--|--------|
| RECEIPT#                               | 431033 |
| STATE CLEARING HOUSE # (if applicable) |        |

SEE INSTRUCTIONS ON REVERSE. TYPE OR PRINT CLEARLY

|   |  |   |                                       |
|---|--|---|---------------------------------------|
| LEAD AGENCY   | Lafayette City                                   | DATE  | 12/7/12                               |
| COUNTY/STATE AGENCY OF FILING                           | cc Clerks Office                                 | DOCUMENT NUMBER                                 | 12-407                                |
| PROJECT TITLE   | SPA 01-19 R201-11 DR10-11: Town Center Phase III |   |                                       |
| PROJECT APPLICANT NAME                                  | 3675 Mt Diablo Blvd #210                         | PHONE NUMBER                                    | (925) 279-3206                        |
| PROJECT APPLICANT ADDRESS                               | Lafayette City                                   | CITY  | Lafayette                             |
|   |  | STATE   | CA                                    |
|   |  | ZIP CODE  | 94549                                 |
| PROJECT APPLICANT (Check appropriate box):              |  |   |                                       |
| <input checked="" type="checkbox"/> Local Public Agency | <input type="checkbox"/> School District         | <input type="checkbox"/> Other Special District | <input type="checkbox"/> State Agency |
| <input type="checkbox"/> Private Entity                 |  |   |                                       |

CHECK APPLICABLE FEES:

- Environmental Impact Report (EIR) \$2,919.00 \$ \_\_\_\_\_
- Mitigated/Negative Declaration (ND)(MND) \$2,101.50 \$ 2101.50
- Application Fee Water Diversion (State Water Resources Control Board Only) \$850.00 \$ \_\_\_\_\_
- Projects Subject to Certified Regulatory Programs (CRP) \$992.50 \$ \_\_\_\_\_
- County Administrative Fee \$50.00 \$ 50.00
- Project that is exempt from fees
- Notice of Exemption
- DFG No Effect Determination (Form Attached)
- Other \$ \_\_\_\_\_

rec# 1498800

PAYMENT METHOD:

- Cash
- Credit
- Check
- Other

514614  
51462

TOTAL RECEIVED \$ 2151.50

|           |                     |
|-----------|---------------------|
| SIGNATURE | TITLE               |
| X         | DEPUTY COUNTY CLERK |

**California Department of Fish and Game**  
**No Effect Determination Request Form**

**To:** DEPARTMENT OF FISH AND GAME  
 Bay Delta Regional Office  
 7329 Silverado Trail  
 Napa, CA 94558  
 Information: (707) 944-5500  
 FAX: (707) 944-5563  
<http://www.dfg.ca.gov>  
 Environmental Review and Permitting  
 1416 Ninth Street, Suite 1260  
 Sacramento, California 95814

|  |  |
|--|--|
| <b>Date Submitted:</b>   | December 7, 2012   |
| <b>CEQA Lead Agency:</b>   | City of Lafayette  |
| <b>Lead Agency Contact Phone Number:</b>   | Niroop K. Srivatsa (925) 299-3206  |
| <b>Lead Agency Address:</b>  | 3675 Mt. Diablo Blvd. #210, Lafayette, CA 94549  |
| <b>SCH Number or County Filing Number</b><br><b>Local agency project/case number:</b>  | n/a<br>SPA01-10, RZ01-11, DR10-11: Town Center Phase III   |
| <b>CEQA Document Type</b> (the type of document prepared for your project by the CEQA Lead Agency):  | Mitigated Negative Declaration   |
| <b>Applicant Name and Contact Phone Number</b> (if applicable):  | As above   |
| <b>Applicant Address</b> (if applicable):  | As above   |
| <b>Project Title:</b>  | SPA01-10, RZ01-11, DR10-11: Town Center Phase III: KB Home South Bay   |
| <b>Project Location</b> (include the street address, lat/long, range/township/section, or other description that clearly indicates the location of the project site. Include an aerial or topographic map of the project site):  | The 1.47 acre property is located north of Mt. Diablo Boulevard at Dewing Avenue. APN 243-040-035.   |
| <b>Project Description</b> (include details such as new construction [with square footage], demolition of existing buildings, adaptive reuse of existing buildings, zoning amendments, general plan amendments, conditional use for sale of alcoholic beverages, etc.) Use additional sheets if necessary: | The applicant KB Home South Bay has requested (1) an amendment to the BART Block Specific Plan for a building over 35 feet and three stories high, (2) an amendment to the Planned Unit Development/Preliminary Development Plan for Town Center for a land use change from office to multifamily residential, (3) design review for up to 72 residential dwelling, and (4) a subdivision for condominiums on a 1.47 acre property located north of Mt. Diablo Boulevard and Dewing Avenue. A resolution adopting the mitigated negative declaration and Mitigation Monitoring and Reporting Program was adopted on November 20, 2012. |
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State of California—The Resources Agency  
 DEPARTMENT OF FISH AND GAME  
**2012 ENVIRONMENTAL FILING FEE CASH RECEIPT**

|  |        |
|--|--------|
| RECEIPT#                               | 431033 |
| STATE CLEARING HOUSE # (if applicable) |        |

SEE INSTRUCTIONS ON REVERSE. TYPE OR PRINT CLEARLY

|   |  |   |                                       |   |
|---|--|---|---------------------------------------|---|
| LEAD AGENCY   | Lafayette City                                   |   | DATE                                  | 12/7/12                                 |
| COUNTY/STATE AGENCY OF FILING                           | CC Clerks Office                                 |   | DOCUMENT NUMBER                       | 12-407                                  |
| PROJECT TITLE   | SPA 01-19 R201-11 DR10-11: Town Center Phase III |   |                                       |   |
| PROJECT APPLICANT NAME                                  | 3675 Mt Diablo Blvd #210                         |   | PHONE NUMBER                          | (925) 279-3206                          |
| PROJECT APPLICANT ADDRESS                               | CITY   | STATE   | ZIP CODE                              |   |
| Lafayette City  | Lafayette  | CA  | 94549                                 |   |
| PROJECT APPLICANT (Check appropriate box):              |  |   |                                       |   |
| <input checked="" type="checkbox"/> Local Public Agency | <input type="checkbox"/> School District         | <input type="checkbox"/> Other Special District | <input type="checkbox"/> State Agency | <input type="checkbox"/> Private Entity |

CHECK APPLICABLE FEES:

- Environmental Impact Report (EIR) \$2,919.00 \$ \_\_\_\_\_
- Mitigated/Negative Declaration (ND)(MND) \$2,101.50 \$ 2101.50
- Application Fee Water Diversion (State Water Resources Control Board Only) \$850.00 \$ \_\_\_\_\_
- Projects Subject to Certified Regulatory Programs (CRP) \$992.50 \$ \_\_\_\_\_
- County Administrative Fee \$50.00 \$ 50.00
- Project that is exempt from fees
- Notice of Exemption
- DFG No Effect Determination (Form Attached)
- Other \$ \_\_\_\_\_

rec# 1498800

PAYMENT METHOD:

- Cash
- Credit
- Check
- Other

51461 +  
51462

TOTAL RECEIVED \$ 2151.50

|           |                     |
|-----------|---------------------|
| SIGNATURE | TITLE               |
| X         | DEPUTY COUNTY CLERK |