



CITY of BRISBANE

City Council Meeting Agenda

Thursday, November 5, 2020 at 7:30 PM • Virtual Meeting

This meeting is compliant with the Governors Executive Order N-29-20 issued on March 17, 2020 allowing for deviation of teleconference rules required by the Brown Act. The purpose of this is to provide the safest environment for staff, Councilmembers and the public while allowing for public participation. The public may address the council using exclusively remote public comment options.

PUBLIC MEETING VIDEOS

Members of the public may view the City Council Meeting by logging into the Zoom Meeting listed below. City Council Meetings can also be viewed live and/or on-demand via the City's YouTube Channel, www.youtube.com/brisbaneca, or on Comcast Channel 27. Archived videos can be replayed on the City's website, <http://brisbaneca.org/meetings>.

TO ADDRESS THE COUNCIL

The City Council Meeting will be an exclusively virtual meeting. The City Council agenda materials may be viewed online at www.brisbaneca.org at least 24 hours prior to a Special Meeting, and at least 72 hours prior to a Regular Meeting.

Remote Public Comments:

Meeting participants are encouraged to submit public comments in writing in advance of the meeting. Aside from commenting while in the Zoom meeting, the following email and text line will be also monitored during the meeting and public comments received will be read into the record during Oral Communications 1 and 2 or during an Item.

Email: ipadilla@brisbaneca.org

Text: 628-219-2922

Join Zoom Meeting:

<https://zoom.us/j/97995927541?pwd=R2NDd3FsUk4wUU43dzJpZmRtajZQUT09>

Meeting ID: 979 9592 7541

Passcode: 123456

Call In Number: 1 (669) 900 9128

SPECIAL ASSISTANCE

If you need special assistance to participate in this meeting, please contact the City Clerk at (415) 508-2113. Notification in advance of the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting.

1. 7:30 P.M. CALL TO ORDER – PLEDGE OF ALLEGIANCE

2. ROLL CALL

3. ADOPTION OF AGENDA

4. ORAL COMMUNICATIONS NO. 1

5. CONSENT CALENDAR

- A. Approve Minutes of City Council Closed Session Meeting of October 1, 2020
- B. Approve Minutes of City Council Closed Session Meeting of October 15, 2020
- C. Accept Investment Report as of September 2020
- D. Adopt Resolution No. 2020-60 authorizing the City Manager to enter into a collaboration agreement with the County to receive consultant services from Baird + Driskell for the update of the City's Housing Element
- E. Adopt Resolution No. 2020-61 Approving the Levy of a Special Assessment on Property at 788 Humboldt Road for the City's Cost to Remove Grass and Weeds
- F. Adopt Resolution No. 2020-62 Confirming and Ratifying the Proclamation Declaring the Continued Existence of a Local Emergency in the City of Brisbane in Response to the COVID-19 Pandemic

6. PUBLIC HEARING

- G. Consider Introduction of Ordinance 579- Proposed Amendment of Titles 15 and 17 of the Brisbane Municipal Code Pertaining to the Regulation of Grading

(This item was continued and not heard on the City Council Meeting of September 17, 2020).

7. OLD BUSINESS

- H. Dog Park Resurfacing

(This item was first discussed at the City Council Meeting of October 1st, 2020)

8. NEW BUSINESS

- I. Consider Adoption of Resolution No. 2020-63 Approving Amendment of Employment Agreement with the City Manager
- J. Interim Improvements at “Parcel R” Sierra Point

(Council will consider whether to approve the working proposal discussed herein, and establish a budget of \$100,000 for the work and whether they wish to provide direction to staff for a future business item regarding the development of an ultimate shoreline master plan for the publicly owned portion of Sierra Point.)

9. PRESENTATIONS

- K. UPC presentation on Baylands Operable Unit 2 (OU-2) Remedial Action Plan review process

10. STAFF REPORTS

- L. City Manager’s Report on upcoming activities

11. MAYOR/COUNCIL MATTERS

- M. Term Expiration of City Representative to the Board of Trustees of the San Mateo County Mosquito and Vector Control District
- N. Countywide Assignments and/Subcommittee Reports
- O. City Council Meeting Schedule
- P. Written Communications

12. ORAL COMMUNICATIONS NO. 2

13. ADJOURNMENT



BRISBANE CITY COUNCIL**ACTION MINUTES**

CITY OF BRISBANE CITY COUNCIL CLOSED SESSION MEETING AGENDA**THURSDAY, OCTOBER 1, 2020*****VIRTUAL MEETING*****1. 7:00 P.M. CLOSED SESSION**

- A. Approval of the Closed Session Agenda
- B. Public Comment. Members of the public may address the Councilmembers on any item on the closed session agenda
- C. Adjournment into Closed Session
- D. Employee Performance Evaluation under Government Code, Section 54957 (b)(1)

Title: City Manager

2. ADJOURNMENT**ADJOURNMENT**

Mayor O'Connell called the Closed Session Meeting to order at 7:09 p.m.

No member of the public wished to speak during public comment. Mayor O'Connell adjourned the meeting into Closed Session.

REPORT OUT OF CLOSED SESSION

Interim City Attorney McMorrow reported that direction was provided to staff on Item D and that no formal action was taken.

Ingrid Padilla
City Clerk



BRISBANE CITY COUNCIL**ACTION MINUTES**

CITY OF BRISBANE CITY COUNCIL CLOSED SESSION MEETING AGENDA**THURSDAY, OCTOBER 15, 2020****VIRTUAL MEETING****1. 7:00 P.M. CLOSED SESSION**

- A. Approval of the Closed Session Agenda
- B. Public Comment. Members of the public may address the Councilmembers on any item on the closed session agenda
- C. Adjournment into Closed Session
- D. Employee Performance Evaluation under Government Code, Section 54957 (b)(1)
Title: City Manager
- E. Conference With Labor Negotiator Under Government Code Section 54957.6
Designated representative: Clay Holstine, City Manager
Employee organization: Confidential Management

2. ADJOURNMENT**ADJOURNMENT**

Mayor O'Connell called the Closed Session Meeting to order at 7:00 p.m.

No member of the public wished to speak during public comment. Mayor O'Connell adjourned the meeting into Closed Session.

REPORT OUT OF CLOSED SESSION

Interim City Attorney McMorro reported that direction was provided to staff on Item D & E and that no formal action was taken.

Ingrid Padilla
City Clerk

CITY OF BRISBANE
CASH BALANCES & INVESTMENTS
SOURCE OF FUNDING
September 30, 2020

NAME OF DEPOSITORY	INVESTMENT TYPE	DATE OF INVESTMENT	FACE VALUE OF INVESTMENT	CARRY VALUE OF INVESTMENT	MARKET VALUE OF INVESTMENT	COUPON INTEREST RATE %	MATURITY DATE	RATING/ COLLATERAL
WELLS FARGO	Checking A/C		\$ 1,383,370	\$ 1,383,370	\$ 1,383,370	0.000		
STATE FUND (LAIF)	Deposit on call	continuous	\$ 14,970,803	\$ 14,970,803	\$ 14,970,803	0.810	on call	no rating
Other Investments								
	Capital One Bank CD	10/15/2015	\$ 250,000	\$ 250,000	\$ 250,300	2.200	10/21/2020	
	Discover Bank CD	10/15/2015	\$ 250,000	\$ 250,000	\$ 250,300	2.200	10/21/2020	
	Capital One National Association	11/23/2016	\$ 250,000	\$ 250,000	\$ 254,792	2.000	11/23/2021	
	Wells Fargo	11/30/2016	\$ 250,000	\$ 250,000	\$ 254,912	2.000	11/30/2021	
	Sallie Mae Bank	5/9/2019	\$ 245,000	\$ 245,000	\$ 254,038	2.550	5/9/2022	
	Morgan Stanley	6/6/2019	\$ 245,000	\$ 245,000	\$ 254,520	2.560	6/6/2022	
	Comenity Capital Bank	4/28/2019	\$ 248,000	\$ 248,000	\$ 263,642	2.650	4/28/2023	
	Morgan Stanley	5/2/2019	\$ 245,000	\$ 245,000	\$ 260,498	2.650	5/2/2023	
	Goldman Sachs	5/1/2019	\$ 246,000	\$ 246,000	\$ 268,143	2.650	5/1/2024	
	FFCB	11/27/2019	\$ 1,000,000	\$ 1,000,000	\$ 1,002,040	1.890	11/27/2024	
BNY Mellon	Treasury Obligations	continuous	\$ 6,349,800	\$ 6,349,800	\$ 6,349,800	0.010	on call	110% collateral
Sub-total			\$ 9,578,800	\$ 9,578,800	\$ 9,662,986			
U.S. Bank	2014 BGPGA Bond (330)	Improvements	Fed Treas Obl		10031			
		Reserve Fund	Fed Treas Obl	\$ 1	10032			
		Revenue Fund	Fed Treas Obl	\$ -	10034			
		Expense Fund	Fed Treas Obl		10035			
		Principal	Fed Treas Obl	\$ 3	10036			
		Interest Fund	Fed Treas Obl	\$ 76,290	10037			
BNY Mellon	2006 Pension Bonds (340)	Expense Fund	Fed Treas Obl	\$ -	10035			
U.S. Bank	2015 Utility Capital (545)	Improvements	Fed Treas Obl	\$ 1,103,907	10031			
		Reserve	Fed Treas Obl	\$ 1	10032			
		Expense Fund	Fed Treas Obl	\$ 0	10035			
BNY Mellon	2013 NER Refinance (796)		Fed Treas Obl		10030			
		Improvements	Fed Treas Obl		10031			
		Reserve	Fed Treas Obl	\$ 260,418	10032			
		Redemption	Fed Treas Obl		10035			
		Debt Service	Fed Treas Obl	\$ -	10036			
PARS	OPEB Trust	Trust Cash	Investments	\$ 3,007,178	13050			
PARS	Retirement Trust	Trust Cash	Investments	\$ 1,213,505	13050			
Sub-total	Cash with Fiscal Agents			\$ 5,661,302				
Total other investments			\$ 9,578,800	\$ 15,240,101	\$ 9,662,986			
TOTAL INVESTMENTS & CASH BALANCES			\$ 25,932,973	\$ 31,594,274	\$ 26,017,159			

Outstanding Loans to Department Heads

	Date of loan	Amount	Amount Remaining	Interest Rate
Stuart Schillinger	4/1/2002	318,750	\$ 318,750	Based on Sales Price
Clay Holstine (1)	7/8/2008	300,000	\$ -	Paid off 12/28/2016
Clay Holstine (2)	9/10/2008	200,000	\$ 200,000	Secured by other funds
Randy Breault	10/22/2001	320,000	\$ 49,672	3.34%

FFCB - Federal Farm Credit Bank
FHLB - Federal Home Loan Bank
FHLM - Federal Home Loan Mortgage Corporation
FNMA -Federal National Mortgage Association

Two year Treasury	0.13%	
Weighted Interest	0.75%	
Weighted maturity	0.41	Years

TREASURER'S CERTIFICATE

These are all the securities in which the city funds including all trust funds and oversight agencies funds are invested and that (excluding approved deferred compensation plans) and that all these investments are in securities as permitted by adopted city policy.

It is also certified that enough liquid resources (including maturities and anticipated revenues) are available to meet the next six months' cash flow.

Stuart Schillinger
CITY TREASURER



CITY COUNCIL AGENDA REPORT

Meeting Date: November 5, 2020

From: John Swiecki, Community Development Director

Subject: Adoption of Resolution 2020-60, Collaboration Agreement with San Mateo County for Consultant Services Related to Housing Element Preparation

COMMUNITY GOAL/RESULT

Community Building

PURPOSE

For the City to enter into a collaboration agreement with the San Mateo County to administer consultant services for preparation of the City's Housing Element update.

RECOMMENDATION

That the City Council adopt Resolution 2020-60 (Attachment 1) and authorize the City Manager to execute the attached Collaboration Agreement (Attachment 2).

BACKGROUND

California State Law mandates that all California cities update their General Plan Housing Elements every 8-years. The next update of the City's Housing Element must be completed and submitted to the State of California by January 2023.

The City of Brisbane is a member of 21 Elements, a consortium of San Mateo County and all the cities within the county. 21 Elements focuses housing-related planning issues and utilizes professional consulting services provided by Baird + Driskell Community Planning. Brisbane and most jurisdictions within the County used Baird + Driskell's services to assist in preparation of the 2015 Housing Elements. The County of San Mateo administers the professional services agreement with Baird+Driskell on behalf of all jurisdictions within 21 Elements, as opposed to each jurisdiction administering its own consultant agreement.

DISCUSSION

For preparation of the upcoming Housing Element, the City is proposing to utilize a similar arrangement as was used for the 2015 Housing Element, whereby the Baird+ Driskell provides consultant services to the City and the consultant agreement is administered by San Mateo

County. The attached Collaboration Agreement defines the obligations and responsibilities of all parties.

You will note that the costs vary between the participating jurisdictions. This is based on the scope of consultant services to be provided and jurisdiction size. The consultant offers several different packages of services. A city might choose a limited package and rely more heavily on staff to prepare their Housing Element, or a city might select a more comprehensive package of consultant services, thereby reducing staff resources required for this effort. In regard to jurisdiction size, the cities within the county are categorized as small, medium or large, and the cost for any service package is based on jurisdiction size, with small jurisdictions paying less than medium or large cities for the same services.

It is recommended that the city utilize the full consultant service package at a cost of \$48,500. Services to be provided as outlined in Attachment 3 include:

1. Assist staff in the development of the Housing Element site inventory summary and assist with Housing Element goals, policies, programs and quantified objectives to respond to local housing needs and meet state requirements.
2. Make presentations at public workshops, Planning Commission, and City Council as needed regarding local housing needs, key opportunities and proposed policy strategies.
3. Assist with rezoning, General Plan and/or other required land use changes.
4. Work with staff to prepare a draft and final Housing Element and attend public hearings.
5. Facilitate consultation and review with HCD.
6. Provide support on special issues analysis and CEQA documentation.

Staff believes the recommended level of consultant support is appropriate for several reasons. Recent change in state law will make completion of the upcoming Housing Element more complex, and Brisbane will face its own unique challenges which will need to be addressed. Additionally, Housing Element preparation is extremely time consuming, and the use of consultant services will enable staff to direct and administer this program while also devoting time and resources to other projects and programs.

In regard to funding, the City earlier this year applied for and received approval of a Local Early Action Planning (LEAP) grant application from the state Department of Housing and Community (HCD). The grant, in the amount of \$65,000, is intended for the adoption of planning documents and/or process improvements that would accelerate housing production and facilitate compliance with the sixth cycle of the regional housing needs allocation (RHNA).

Consultant services to prepare the Housing Element are an eligible activity under the grant, and this activity was identified as a use of grant funding when the City filed the grant application.

FISCAL IMPACT

The consultant work scope would total \$48,500 over the next two years, the cost of which will be fully covered through the LEAP grant.

MEASURE OF SUCCESS

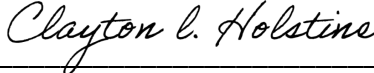
Completion of an updated Housing Element that meets the state's requirements and addresses local housing needs.

ATTACHMENTS

1. Draft City Council Resolution 2020-06
2. Collaboration Agreement with San Mateo County
3. Agreement Between County of San Mateo and Baird + Driskell



John Swiecki, Community Development Director



Clay Holstine, City Manager

ATTACHMENT 1**-DRAFT-****CITY COUNCIL RESOLUTION NO. 2020-60****A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BRISBANE
AUTHORIZING ENTRY INTO A COLLABORATION AGREEMENT AMONG
SAN MATEO COUNTY AND VARIOUS CITIES WITHIN THE COUNTY FOR
THE 6TH CYCLE OF THE REGIONAL HOUSING NEEDS ALLOCATION**

WHEREAS, California State law mandates that all California cities, towns and counties plan for housing needs of their residents; and

WHEREAS, the California Department of Housing and Community Development (HCD) determines the total number of new homes that need to be built, and level of affordability of the new homes, in order to meet the housing needs in each region of California, which is called the Regional Housing Needs Determination (RHND); and

WHEREAS, the Association of Bay Area Governments (ABAG) receives the RHND from HCD for the Bay Area region, including San Mateo County, and further distributes the Regional Housing Needs Allocation (RHNA) to each city and county in the Bay Area and that distribution of the RHNA is now in process; and

WHEREAS, each jurisdiction plans for its housing needs through its Housing Element, which is required to be updated on approximately 7-year cycles; and

WHEREAS, the individual jurisdictions' Housing Elements for the Bay Area region must be submitted to HCD before January 2023; and

WHEREAS, Baird + Driskell Community Planning (Baird + Driskell) has offered planning services to support the County and cities within the County in the preparation and submittal of their respective Housing Elements; and

WHEREAS, the County has agreed to provide for contract administration for cities entering into a collaboration agreement to receive these services.

WHEREAS, on April 16, 2020 City Council authorized staff, via Resolution No. 2020-21, to submit an application for Local Early Action Planning (LEAP) grant funding, including reimbursement of \$48,500 for Housing Element consulting services, as offered by Baird + Driskell, and that application is pending final approval by the HCD.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BRISBANE RESOLVES AS FOLLOWS:

In connection with the Housing Element planning services offered by Baird + Driskell, the City Manager Clayton Holstine is hereby authorized and directed to sign on to the Collaboration Agreement provided by the County, which includes authorization for payments totaling \$48,500, as detailed in the Collaboration Agreement;

Terry O'Connell, Mayor

I hereby certify that the foregoing Resolution No. 2020-60 was duly and regularly adopted at a regular meeting of the Brisbane City Council on November 5, 2020, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Attest:

Ingrid Padilla, City Clerk

ATTACHMENT 2

COLLABORATION AGREEMENT

AMONG

COUNTY OF SAN MATEO

AND

VARIOUS CITIES LOCATED IN SAN MATEO COUNTY

FOR

THE 6TH CYCLE OF THE REGIONAL HOUSING NEEDS ALLOCATION

THIS AGREEMENT, entered this [] day of [], 2020 by and among the County of San Mateo (herein called the “County”), and the following cities located within San Mateo County:

Town of Atherton, (herein called “Atherton”);
 City of Belmont, (herein called “Belmont”);
 City of Brisbane, (herein called “Brisbane”);
 City of Burlingame, (herein called “Burlingame”);
 Town of Colma, (herein called “Colma”);
 City of Daly City, (herein called “Daly City”);
 City of East Palo Alto, (herein called “East Palo Alto”);
 City of Foster City, (herein called “Foster City”);
 City of Half Moon Bay, (herein called “Half Moon Bay”);
 Town of Hillsborough, (herein called “Hillsborough”);
 City of Menlo Park, (herein called “Menlo Park”);
 City of Millbrae, (herein called “Millbrae”);
 City of Pacifica, (herein called “Pacifica”);
 Town of Portola Valley, (herein called “Portola Valley”);
 City of Redwood City, (herein called “Redwood City”);
 City of San Bruno, (herein called “San Bruno”);
 City of San Carlos, (herein called “San Carlos”);
 City of San Mateo City, (herein called “San Mateo”);
 City of South San Francisco, (herein called “South San Francisco”); and
 Town of Woodside, (herein called “Woodside”)
 (collectively referred as “Participants”).

WHEREAS, California State law mandates that all California cities, towns, and counties plan for the housing needs of their residents;

WHEREAS, the California Department of Housing and Community Development (HCD) determines the total number of new homes that need to be built, and level of affordability of the new homes, in order to meet the housing needs in each region of California, which is called the Regional Housing Needs Determination (RHND);

WHEREAS, the Association of Bay Area Governments (ABAG) receives the RHND from HCD for the Bay Area region, including San Mateo County, and further distributes the Regional Housing Needs Allocation (RHNA) to each city and county in the Bay Area;

WHEREAS, ABAG will soon assign each of the Participants its respective portion of the Bay Area region RHND;

WHEREAS, each jurisdiction plans for its housing needs through its Housing Element, a part of their General Plan;

WHEREAS, Participants must submit to HCD their Housing Elements before January 2023;

WHEREAS, Baird + Driskell Community Planning (“Baird + Driskell”) has offered a package of planning services to support cities and the County in their preparation and submittal of their Housing Elements;

WHEREAS, each of the Participants wish to contract with Baird + Driskell for such services;

WHEREAS, concurrently with this Agreement, County will enter into an agreement with Baird + Driskell “Agreement Between The County of San Mateo and Baird + Driskell Community Planning” (“Baird + Driskell Agreement”) for these services to Participants and Participants have elected to receive varied levels of service under the Baird + Driskell Agreement; and

WHEREAS, Participants are entering into this Agreement in order to set forth the Participants’ respective obligations for payment to Baird + Driskell and for contract administration and management under the Baird and Driskell Agreement.

NOW, THEREFORE, the Participants agree as follows:

1. Services and Activities.

The services under the Baird + Driskell Agreement will be performed by Baird + Driskell under contract with, and under the supervision of, County. The scope of RHNA-related services under the Baird + Driskell Agreement (“RHNA Services”) for each Participant shall be as set forth in Exhibit A of the Baird + Driskell Agreement.

2. Payments.

A. Each Participant agrees to provide payment to County for the direct costs of the RHNA Services as set forth in Exhibit A (Distribution of Payment) of this Agreement within one month of receipt of fully-executed copy of this Collaboration Agreement. Such direct costs shall include the costs incurred by County as payments to Baird + Driskell for RHNA Services provided to the Participant. Total payment to County by Participants shall not exceed \$770,500, which amount is , comprised of the following not to exceed amounts

from each Participant: \$48,500 from Atherton; \$11,500 from Belmont; \$48,500 from Brisbane; \$15,500 from Burlingame; \$18,500 from Colma; \$61,500 from Daly City; \$54,500 from East Palo Alto; \$54,500 from Foster City; \$54,500 from Half Moon Bay; \$11,500 from Hillsborough; \$54,500 from Menlo Park; \$54,500 from Millbrae; \$54,500 from Pacifica; \$48,500 from Portola Valley; \$21,500 from Redwood City; \$54,500 from San Bruno; \$2,500 from San Carlos; \$12,500 from San Mateo; \$15,500 from County (for RHNA Services for the unincorporated areas of San Mateo County; \$61,500 from South San Francisco, and; \$11,500 from Woodside.

B. Participants shall send payments to the following address:

San Mateo County Department of Housing
264 Harbor Blvd. Bldg. A
Belmont, CA 94002
Attn: Babs Deffenderfer

C. Baird + Driskell will supply invoices in a format necessary to meet requirements set forth in S.B. 2, Chapter 364, Part 2 of Division 31 of the Health and Safety Code (Ca. 2017).

D. County will submit quarterly expense summaries to Participants detailing RHNA Services expenditures.

3. Relationship of the Participants.

The parties will cooperate and undertake activities in their mutual interest, but it is understood and agreed that this Collaboration Agreement is by and among Independent Contractor(s) and is not intended to, and shall not be construed to, create the relationship of agent, servant, employee, partnership, joint venture or association, or any other relationship whatsoever other than that of Independent Contractors.

4. Contract Term.

This Collaboration Agreement shall be in effect as of August 1, 2020 and shall terminate on January 31, 2023, unless terminated earlier by the Participants. The parties may extend, renew or amend the terms hereof, by mutual agreement in writing and signed by the parties.

THIS CONTRACT IS NOT VALID UNTIL SIGNED BY ALL PARTIES

REST OF PAGE DELIBERATELY LEFT BLANK

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have affixed their hands.

COUNTY OF SAN MATEO

By:

Raymond Hodges, Director, Department of Housing, County of San Mateo

Date:

Exhibit A

Distribution of Payment

The budget for each service package, tiered by city size, is summarized below.

	<i>Small City</i>	<i>Mid-Size City</i>	<i>Large City</i>
Base Package	\$ 2,500	\$ 2,500	\$ 2,500
Getting Started Package	\$ 9,000	\$ 13,000	\$ 19,000
Foundations Package	\$ 7,000	\$ 9,000	\$ 10,000
Full Package	\$ 30,000	\$ 30,000	\$ 30,000
“All In”	\$ 48,500	\$ 54,500	\$ 61,500

The table below indicates which cities are in each tier:

Small Cities	Mid-Size Cities	Large Cities
Atherton	Belmont	Daly City
Brisbane	Burlingame	Redwood City
Colma	East Palo Alto	San Mateo City
Hillsborough	Foster City	South San Francisco
Portola Valley	Half Moon Bay	
Woodside	Menlo Park	
	Millbrae	
	Pacifica	
	San Bruno	
	San Carlos	
	San Mateo County	

The table below indicates the packages selected by participating cities:

<i>Jurisdiction</i>	<i>Size</i>	<i>Base</i>	<i>Get Started</i>	<i>Foundations</i>	<i>Full</i>	<i>Cost</i>
Atherton	Small	Yes	Yes	Yes	Yes	\$48,500
Belmont	Mid	Yes	No	Yes	No	\$11,500
Brisbane	Small	Yes	Yes	Yes	Yes	\$48,500
Burlingame	Mid	Yes	Yes	No	No	\$15,500
Colma	Small	Yes	Yes	Yes	No	\$18,500
Daly City	Large	Yes	Yes	Yes	Yes	\$61,500
East Palo Alto	Mid	Yes	Yes	Yes	Yes	\$54,500
Foster City	Mid	Yes	Yes	Yes	Yes	\$54,500

Half Moon Bay	Mid	Yes	Yes	Yes	Yes	\$54,500
Hillsborough	Small	Yes	Yes	No	No	\$11,500
Menlo Park	Mid	Yes	Yes	Yes	Yes	\$54,500
Millbrae	Mid	Yes	Yes	Yes	Yes	\$54,500
Pacifica	Mid	Yes	Yes	Yes	Yes	\$54,500
Portola Valley	Small	Yes	Yes	Yes	Yes	\$48,500
Redwood City	Large	Yes	Yes	No	No	\$21,500
San Bruno	Mid	Yes	Yes	Yes	Yes	\$54,500
San Carlos	Mid	Yes	No	No	No	\$2,500
San Mateo City	Large	Yes	No	Yes	No	\$12,500
San Mateo County	County	Yes	Yes	No	No	\$15,500
South San Francisco	Large	Yes	Yes	Yes	Yes	\$61,500
Woodside	Small	Yes	Yes	No	No	\$11,500

AGREEMENT BETWEEN THE COUNTY OF SAN MATEO AND BAIRD + DRISKELL COMMUNITY PLANNING

This Agreement is entered into this ____ day of ____ 2020, by and between the County of San Mateo, a political subdivision of the state of California, hereinafter called "County," and Baird + Driskell Community Planning, hereinafter called "Contractor."

* * *

Whereas, pursuant to Section 31000 of the California Government Code, County may contract with independent contractors for the furnishing of such services to or for County or any Department thereof; and

Whereas, the County and various cities located within the jurisdictional boundaries of San Mateo County have entered into a Collaboration Agreement related to securing planning services to support cities and towns within the County and the County in preparation and submittal of their Housing Elements and addressing payment for such services ("Collaboration Agreement"); and

Whereas, it is necessary and desirable that Contractor be retained for the purpose of providing such planning services to support cities and towns within the County and the County in their preparation and submittal of their respective Housing Elements.

Now, therefore, it is agreed by the parties to this Agreement as follows:

1. Exhibits and Attachments

The following exhibits and attachments are attached to this Agreement and incorporated into this Agreement by this reference:

Exhibit A—Services
Exhibit B—Payments and Rates
Attachment—IP

2. Services to be performed by Contractor

In consideration of the payments set forth in this Agreement and in Exhibit B, Contractor shall perform services for County in accordance with the terms, conditions, and specifications set forth in this Agreement and in Exhibit A.

3. Payments

In consideration of the services provided by Contractor in accordance with all terms, conditions, and specifications set forth in this Agreement and in Exhibit A, County shall make payment to Contractor based on the rates and in the manner specified in Exhibit B. County reserves the right to withhold payment if County determines that the quantity or quality of the work performed is unacceptable. In no event shall County's total fiscal obligation under this Agreement exceed Seven Hundred Seventy Thousand Five Hundred (\$770,500). In the event that the County makes any advance payments, Contractor agrees to refund any amounts in excess of the amount owed by the County at the time of contract termination or expiration.

4. **Term**

Subject to compliance with all terms and conditions, the term of this Agreement shall be from August 1, 2020, through January 31, 2023.

5. **Termination; Availability of Funds**

This Agreement may be terminated by Contractor or by the Director of San Mateo County Department of Housing or his/her designee at any time without a requirement of good cause upon thirty (30) days' advance written notice to the other party. Subject to availability of funding, Contractor shall be entitled to receive payment for work/services provided prior to termination of the Agreement. Such payment shall be that prorated portion of the full payment determined by comparing the work/services actually completed to the work/services required by the Agreement.

County may terminate this Agreement, or a portion of the services referenced in the Attachments and Exhibits based upon the unavailability of Federal, State, County, or local funds by providing written notice to Contractor as soon as is reasonably possible after County learns of said unavailability of outside funding.

6. **Contract Materials**

At the end of this Agreement, or in the event of termination, all finished or unfinished documents, data, studies, maps, photographs, reports, and other written materials (collectively referred to as "contract materials") prepared by Contractor under this Agreement shall become the property of County and shall be promptly delivered to County. Upon termination, Contractor may make and retain a copy of such contract materials if permitted by law.

7. **Relationship of Parties**

Contractor agrees and understands that the work/services performed under this Agreement are performed as an independent contractor and not as an employee of County and that neither Contractor nor its employees acquire any of the rights, privileges, powers, or advantages of County employees.

8. **Hold Harmless**

a. **General Hold Harmless**

Contractor shall indemnify and save harmless County and its officers, agents, employees, and servants from all claims, suits, or actions of every name, kind, and description resulting from this Agreement, the performance of any work or services required of Contractor under this Agreement, or payments made pursuant to this Agreement brought for, or on account of, any of the following:

- (A) injuries to or death of any person, including Contractor or its employees/officers/agents;
- (B) damage to any property of any kind whatsoever and to whomsoever belonging;
- (C) any sanctions, penalties, or claims of damages resulting from Contractor's failure to comply, if applicable, with the requirements set forth in the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and all Federal regulations promulgated thereunder, as amended; or

(D) any other loss or cost, including but not limited to that caused by the concurrent active or passive negligence of County and/or its officers, agents, employees, or servants. However, Contractor's duty to indemnify and save harmless under this Section shall not apply to injuries or damage for which County has been found in a court of competent jurisdiction to be solely liable by reason of its own negligence or willful misconduct.

The duty of Contractor to indemnify and save harmless as set forth by this Section shall include the duty to defend as set forth in Section 2778 of the California Civil Code.

9. Assignability and Subcontracting

Contractor shall not assign this Agreement or any portion of it to a third party or subcontract with a third party to provide services required by Contractor under this Agreement without the prior written consent of County. Any such assignment or subcontract without County's prior written consent shall give County the right to automatically and immediately terminate this Agreement without penalty or advance notice.

10. Insurance

a. General Requirements

Contractor shall not commence work or be required to commence work under this Agreement unless and until all insurance required under this Section has been obtained and such insurance has been approved by County's Risk Management, and Contractor shall use diligence to obtain such insurance and to obtain such approval. Contractor shall furnish County with certificates of insurance evidencing the required coverage, and there shall be a specific contractual liability endorsement extending Contractor's coverage to include the contractual liability assumed by Contractor pursuant to this Agreement. These certificates shall specify or be endorsed to provide that thirty (30) days' notice must be given, in writing, to County of any pending change in the limits of liability or of any cancellation or modification of the policy.

b. Workers' Compensation and Employer's Liability Insurance

Contractor shall have in effect during the entire term of this Agreement workers' compensation and employer's liability insurance providing full statutory coverage. In signing this Agreement, Contractor certifies, as required by Section 1861 of the California Labor Code, that (a) it is aware of the provisions of Section 3700 of the California Labor Code, which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of the Labor Code, and (b) it will comply with such provisions before commencing the performance of work under this Agreement.

c. Liability Insurance

Contractor shall take out and maintain during the term of this Agreement such bodily injury liability and property damage liability insurance as shall protect Contractor and all of its employees/officers/agents while performing work covered by this Agreement from any and all claims for damages for bodily injury, including accidental death, as well as any and all claims for property damage which may arise from Contractor's operations under this Agreement, whether such operations be by Contractor, any subcontractor, anyone directly or indirectly employed by either of them, or an agent of either of them.

Such insurance shall be combined single limit bodily injury and property damage for each occurrence and shall not be less than the amounts specified below:

☒ Comprehensive General Liability... \$1,000,000

(Applies to all agreements)

☐ Motor Vehicle Liability Insurance... \$1,000,000

(To be checked if motor vehicle used in performing services)

☐ Professional Liability..... \$1,000,000

(To be checked if Contractor is a licensed professional)

County and its officers, agents, employees, and servants shall be named as additional insured on any such policies of insurance, which shall also contain a provision that (a) the insurance afforded thereby to County and its officers, agents, employees, and servants shall be primary insurance to the full limits of liability of the policy and (b) if the County or its officers, agents, employees, and servants have other insurance against the loss covered by such a policy, such other insurance shall be excess insurance only.

In the event of the breach of any provision of this Section, or in the event any notice is received which indicates any required insurance coverage will be diminished or canceled, County, at its option, may, notwithstanding any other provision of this Agreement to the contrary, immediately declare a material breach of this Agreement and suspend all further work and payment pursuant to this Agreement.

11. Compliance With Laws

All services to be performed by Contractor pursuant to this Agreement shall be performed in accordance with all applicable Federal, State, County, and municipal laws, ordinances, and regulations, including but not limited to the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the Federal Regulations promulgated thereunder, as amended (if applicable), the Business Associate requirements set forth in Attachment H (if attached), the Americans with Disabilities Act of 1990, as amended, and Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination on the basis of disability in programs and activities receiving any Federal or County financial assistance. Such services shall also be performed in accordance with all applicable ordinances and regulations, including but not limited to appropriate licensure, certification regulations, provisions pertaining to confidentiality of records, and applicable quality assurance regulations. In the event of a conflict between the terms of this Agreement and any applicable State, Federal, County, or municipal law or regulation, the requirements of the applicable law or regulation will take precedence over the requirements set forth in this Agreement.

Contractor will timely and accurately complete, sign, and submit all necessary documentation of compliance.

12. Non-Discrimination and Other Requirements

a. General Non-discrimination

No person shall be denied any services provided pursuant to this Agreement (except as limited by the scope of services) on the grounds of race, color, national origin, ancestry, age, disability (physical or mental), sex, sexual orientation, gender identity, marital or domestic partner status, religion, political

AGREEMENT BETWEEN THE COUNTY OF SAN MATEO AND BAIRD + DRISKELL COMMUNITY PLANNING

beliefs or affiliation, familial or parental status (including pregnancy), medical condition (cancer-related), military service, or genetic information.

b. Equal Employment Opportunity

Contractor shall ensure equal employment opportunity based on objective standards of recruitment, classification, selection, promotion, compensation, performance evaluation, and management relations for all employees under this Agreement. Contractor's equal employment policies shall be made available to County upon request.

c. Section 504 of the Rehabilitation Act of 1973

Contractor shall comply with Section 504 of the Rehabilitation Act of 1973, as amended, which provides that no otherwise qualified individual with a disability shall, solely by reason of a disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination in the performance of any services this Agreement. This Section applies only to contractors who are providing services to members of the public under this Agreement.

d. Compliance with County's Equal Benefits Ordinance

With respect to the provision of benefits to its employees, Contractor shall comply with Chapter 2.84 of the County Ordinance Code, which prohibits contractors from discriminating in the provision of employee benefits between an employee with a domestic partner and an employee with a spouse. In order to meet the requirements of Chapter 2.84, Contractor must certify which of the following statements is/are accurate:

- ☐ Contractor complies with Chapter 2.84 by offering the same benefits to its employees with spouses and its employees with domestic partners.
- ☐ Contractor complies with Chapter 2.84 by offering, in the case where the same benefits are not offered to its employees with spouses and its employees with domestic partners, a cash payment to an employee with a domestic partner that is equal to Contractor's cost of providing the benefit to an employee with a spouse.
- ☒ Contractor is exempt from having to comply with Chapter 2.84 because it has no employees or does not provide benefits to employees' spouses.
- ☐ Contractor does not comply with Chapter 2.84, and a waiver must be sought.

e. Discrimination Against Individuals with Disabilities

The nondiscrimination requirements of 41 C.F.R. 60-741.5(a) are incorporated into this Agreement as if fully set forth here, and Contractor and any subcontractor shall abide by the requirements of 41 C.F.R. 60-741.5(a). This regulation prohibits discrimination against qualified individuals on the basis of disability and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities.

f. History of Discrimination

Contractor must check one of the two following options, and by executing this Agreement, Contractor certifies that the option selected is accurate:

- ☒ No finding of discrimination has been issued in the past 365 days against Contractor by the Equal Employment Opportunity Commission, Fair Employment and Housing Commission, or any other investigative entity.
- ☐ Finding(s) of discrimination have been issued against Contractor within the past 365 days by the Equal Employment Opportunity Commission, Fair Employment and Housing Commission, or other investigative entity. If this box is checked, Contractor shall provide County with a written explanation of the outcome(s) or remedy for the discrimination.

g. Reporting; Violation of Non-discrimination Provisions

Contractor shall report to the County Manager the filing in any court or with any administrative agency of any complaint or allegation of discrimination on any of the bases prohibited by this Section of the Agreement or Section 11, above. Such duty shall include reporting of the filing of any and all charges with the Equal Employment Opportunity Commission, the Fair Employment and Housing Commission, or any other entity charged with the investigation or adjudication of allegations covered by this subsection within 30 days of such filing, provided that within such 30 days such entity has not notified Contractor that such charges are dismissed or otherwise unfounded. Such notification shall include a general description of the circumstances involved and a general description of the kind of discrimination alleged (for example, gender-, sexual orientation-, religion-, or race-based discrimination).

Violation of the non-discrimination provisions of this Agreement shall be considered a breach of this Agreement and subject the Contractor to penalties, to be determined by the County Manager, including but not limited to the following:

- i. termination of this Agreement;
- ii. disqualification of the Contractor from being considered for or being awarded a County contract for a period of up to 3 years;
- iii. liquidated damages of \$2,500 per violation; and/or
- iv. imposition of other appropriate contractual and civil remedies and sanctions, as determined by the County Manager.

To effectuate the provisions of this Section, the County Manager shall have the authority to offset all or any portion of the amount described in this Section against amounts due to Contractor under this Agreement or any other agreement between Contractor and County.

13. Compliance with County Employee Jury Service Ordinance

Contractor shall comply with Chapter 2.85 of the County's Ordinance Code, which states that Contractor shall have and adhere to a written policy providing that its employees, to the extent they are full-time employees and live in San Mateo County, shall receive from the Contractor, on an annual basis, no fewer than five days of regular pay for jury service in San Mateo County, with jury pay being provided only for each day of actual jury service. The policy may provide that such employees deposit any fees received for such jury service with Contractor or that the Contractor may deduct from an employee's regular pay the fees received for jury service in San Mateo County. By signing this Agreement, Contractor certifies

that it has and adheres to a policy consistent with Chapter 2.85. For purposes of this Section, if Contractor has no employees in San Mateo County, it is sufficient for Contractor to provide the following written statement to County: "For purposes of San Mateo County's jury service ordinance, Contractor certifies that it has no full-time employees who live in San Mateo County. To the extent that it hires any such employees during the term of its Agreement with San Mateo County, Contractor shall adopt a policy that complies with Chapter 2.85 of the County's Ordinance Code." The requirements of Chapter 2.85 do not apply if this Agreement's total value listed Section 3, above, is less than one-hundred thousand dollars (\$100,000), but Contractor acknowledges that Chapter 2.85's requirements will apply if this Agreement is amended such that its total value meets or exceeds that threshold amount.

14. Retention of Records; Right to Monitor and Audit

(a) Contractor shall maintain all required records relating to services provided under this Agreement for three (3) years after County makes final payment and all other pending matters are closed, and Contractor shall be subject to the examination and/or audit by County, a Federal grantor agency, and the State of California.

(b) Contractor shall comply with all program and fiscal reporting requirements set forth by applicable Federal, State, and local agencies and as required by County.

(c) Contractor agrees upon reasonable notice to provide to County, to any Federal or State department having monitoring or review authority, to County's authorized representative, and/or to any of their respective audit agencies access to and the right to examine all records and documents necessary to determine compliance with relevant Federal, State, and local statutes, rules, and regulations, to determine compliance with this Agreement, and to evaluate the quality, appropriateness, and timeliness of services performed.

15. Merger Clause; Amendments

This Agreement, including the Exhibits and Attachments attached to this Agreement and incorporated by reference, constitutes the sole Agreement of the parties to this Agreement and correctly states the rights, duties, and obligations of each party as of this document's date. In the event that any term, condition, provision, requirement, or specification set forth in the body of this Agreement conflicts with or is inconsistent with any term, condition, provision, requirement, or specification in any Exhibit and/or Attachment to this Agreement, the provisions of the body of the Agreement shall prevail. Any prior agreement, promises, negotiations, or representations between the parties not expressly stated in this document are not binding. All subsequent modifications or amendments shall be in writing and signed by the parties.

16. Controlling Law; Venue

The validity of this Agreement and of its terms, the rights and duties of the parties under this Agreement, the interpretation of this Agreement, the performance of this Agreement, and any other dispute of any nature arising out of this Agreement shall be governed by the laws of the State of California without regard to its choice of law or conflict of law rules. Any dispute arising out of this Agreement shall be venued either in the San Mateo County Superior Court or in the United States District Court for the Northern District of California.

17. Notices

Any notice, request, demand, or other communication required or permitted under this Agreement shall be deemed to be properly given when both: (1) transmitted via facsimile to the telephone number listed below or transmitted via email to the email address listed below; and (2) sent to the physical address listed below by either being deposited in the United States mail, postage prepaid, or deposited for overnight delivery, charges prepaid, with an established overnight courier that provides a tracking number showing confirmation of receipt.

In the case of County, to:

Name/Title: Raymond Hodges, Director of Department of Housing
 Address: 264 Harbor Blvd. Bldg. A, Belmont, CA 4002
 Telephone: (650) 802-3389
 Email: rhodges@smchousing.org

In the case of Contractor, to:

Name/Title: Joshua Abrams, Principal
 Address: 2635 Benvenue Ave., Berkeley, CA 94704
 Telephone: (510) 761-6001
 Email: abrams@bdplanning.ocm

18. Electronic Signature

If both County and Contractor wish to permit this Agreement and future documents relating to this Agreement to be digitally signed in accordance with California law and County's Electronic Signature Administrative Memo, both boxes below must be checked. Any party that agrees to allow digital signature of this Agreement may revoke such agreement at any time in relation to all future documents by providing notice pursuant to this Agreement.

For County: ☒ If this box is checked by County, County consents to the use of electronic signatures in relation to this Agreement.

For Contractor: ☒ If this box is checked by Contractor, Contractor consents to the use of electronic signatures in relation to this Agreement.

* * *

THIS CONTRACT IS NOT VALID UNTIL SIGNED BY ALL PARTIES. NO WORK WILL COMMENCE UNTIL THIS DOCUMENT HAS BEEN SIGNED BY THE COUNTY PURCHASING AGENT OR AUTHORIZED DESIGNEE.

For Contractor:

Contractor Signature

Date

Joshua Abrams

For County:

Raymond Hodges
Director
Department of Housing
County of San Mateo

Date

Purchasing Agent Name (please print)
(Department Head or **Authorized** Designee)
County of San Mateo

Purchasing Agent or **Authorized** Designee
Job Title (please print)
County of San Mateo

Exhibit A

Scope of Services

1. BASE Package - General Support for RHNA 6 and Housing Element Updates

Overview	Support cross-jurisdictional learning, coordination, collaboration and problem-solving for the duration of the housing element update process through regular meetings, countywide analyses, best practice research, and shared data and communications tools.
Timing	<i>June 2020 through January 2023 (32 months)</i>
Core Tasks	<ul style="list-style-type: none"> a Facilitate sharing and collaboration, including special work sessions and regular meetings b Focused research and dialogue on issues of special concern, including strategies to affirmatively further fair housing c Provide educational materials and outreach support d Engage with HCD on overall process, tours, and technical assistance e Develop countywide analyses with jurisdiction-level data for housing needs, etc. f Create templates and best practice tools, including support for property owner surveys g Conduct ADU affordability survey h Educate California State legislators about experiences of San Mateo County jurisdictions' experiences in the Housing Element Update process
Products	<ul style="list-style-type: none"> ✓ 21 Elements website updates, including tools, outreach materials, etc. ✓ Regular meetings and discussion summaries ✓ Countywide and jurisdiction-specific need tables ✓ Countywide analyses, data templates, best practice reports and similar based on group needs ✓ ADU affordability survey ✓ Shared educational tools for the general public and decision-makers
City Roles	<ul style="list-style-type: none"> ▶ Fully participate in regular meetings and special work sessions. ▶ Review and provide feedback on draft work products, including data tools, research papers, educational materials, etc. ▶ Serve as a conduit to others in your city organization and community on issues of shared concern. ▶ Actively share local challenges, best practices, relevant resources and housing knowledge.

City Time Average of 6 – 10 hours per city each month over the course of the RHNA 6 process.

BASE PACKAGE - Task Descriptions

- 1a Facilitate Sharing and Collaboration.** Schedule, facilitate and document regular cross-jurisdictional meetings to engage city staff and directors in discussions of issues, opportunities, approaches, strategies and ideas pertinent to the housing element updates. Meetings may include guest participants to discuss technical topics, “how to” sessions, and focused work sessions to collaboratively problem-solve. We anticipate one meeting per month, with others added as needed, supplemented by ongoing project coordination and communications.
- 1b Conduct Focused Research.** To support shared learning about best practices, and dialogue on issues of special concern, Baird and Driskell Community Planning (“Baird and Driskell” or “21 Elements team”) will conduct research on topics of special interest based on input and requests from member jurisdictions. Work products may take the form of white papers, fact sheets, PowerPoint presentations and/or webinars depending on the type, extent and format of information. This work will include exploration of best practices and strategies to affirmatively further fair housing.
- 1c Create Shared Outreach Materials.** The 21 Elements team will develop materials to support education and outreach efforts by member jurisdictions and county partners. The purpose of these materials will be to support community understanding and dialog about housing needs, the role and purpose of the housing element, and strategies being used locally and elsewhere to create and sustain diverse housing choices, affordability and healthy communities. Production of materials will be coordinated with key steps in the update process, with most being produced in the first year when community discussions are getting underway. To the extent possible, materials will be designed so that they can be easily customized by each jurisdiction to tailor them to localized information and circumstances.
- 1d Engage with HCD.** The 21 Elements team will help ensure early and ongoing engagement with HCD staff in order to help them understand the unique challenges and opportunities of San Mateo County jurisdictions, and to help all member jurisdictions better understand HCD’s expectations, perspectives and priorities. By building and maintaining a collaborative and respectful working relationship, 21 Elements will help ensure that the update process goes as smoothly as possible—highlighting and addressing issues *before* updated elements get submitted to HCD—and bringing situational awareness and technical assistance to bear in a timely manner, facilitating more efficient reviews by HCD with fewer surprises, and helping ensure higher quality housing elements.
- 1e Conduct Countywide Analyses of Housing Needs and Market Conditions.** Develop countywide analyses of housing needs, including population, employment and household characteristics; general housing stock characteristics; the incidence of overpayment and overcrowding; and special housing needs (e.g., people experiencing homelessness, people with

disabilities, seniors, etc.). Data will be reported at the County level and in comparative tables and graphics detailing each jurisdiction's data as well. Analysis will also be provided related to the countywide and regional housing market conditions and trends.

1f Create Templates and Other Tools. Data templates, methodologies and related tools will be developed to support each jurisdiction's work. These include but are not limited to: template and instructions for evaluating existing elements; tools for assessing and comparing governmental and non-governmental constraints; and tools for evaluating and improving fair housing practices. This work will also support development of a property owner survey for substantiating properties included in site inventories.

1g Conduct ADU Affordability Survey. The 21 Elements team will develop and implement a survey of ADU property owners (using lists provided by participating jurisdictions) to better understand how they are being used, who is being served by them, and the levels of affordability being met. This will help inform how jurisdictions incorporate ADUs within their overall housing strategy, including how to apply them to RHNA targets, and support development of more effective ADU policies and programs in the housing element update.

1h Educate Lawmakers. Much of the housing element process is driven by State legislation. To help support a more responsive and effective legislative framework for future updates, it is important to communicate back to lawmakers about the experience of local jurisdictions working to translate State law into local action. Working as a group, 21 Elements is able to speak effectively to multiple experiences from the perspective of jurisdictions with proven commitment to pro-housing policies to help lawmakers understand what's working, what isn't and how things could be improved.

Jurisdiction staff will be expected to participate fully in all Task 1 activities, including in particular the regular sharing and collaboration meetings, review and feedback of draft work products, and discussions with HCD and lawmakers, as needed. Experience has shown that the more staff engage in and contribute to the collaboration and its activities, the more they get out of it.

2. GETTING STARTED Package – Site Inventories and Strategies

Overview	Assess potential sites and strategies for creating additional housing capacity, taking into account anticipated need allocations and recent changes in state laws that affect site eligibility. The outcome will be early identification of the most viable strategies to ensure adequate sites so that rezoning and other actions can be completed in conjunction with the update process.
Timing	<i>June 2020 through June 2021 (13 months)</i>
Core Tasks	<ul style="list-style-type: none"> a Prepare jurisdiction-specific inventory baselines (based on current inventory of zoned and planned sites) and compare to anticipated RHNA need numbers. How much additional capacity will need to be found? b Conduct development feasibility analyses based on defined site inventory gaps to identify market-supportive capacity increases that could be achieved through alternative planning and policy strategies (including rezoning and other regulatory changes). c Estimate high-level tax revenue implications of the alternatives. d Study market absorption rates for missing middle housing. e Review analysis methodology and results with HCD. f Identify the most promising site capacity strategies for each jurisdiction to meet RHNA needs and help ensure that rezoning and other actions can be completed in conjunction with the update process.
Products	<ul style="list-style-type: none"> ✓ Site inventory baselines and anticipated gaps by jurisdiction ✓ Data on potential market-supportive site capacity increases (mapped and quantified) through alternative policy strategies (e.g., rezoning based on defined criteria; changes to development standards; etc.) with summary of tax impacts. ✓ Report on market data for “missing middle” housing and implications for RHNA 6. ✓ Recommendations on policy and program strategies for each jurisdiction (developed in conjunction with jurisdiction staff) to meet RHNA
City Roles	<ul style="list-style-type: none"> ► Provide data on current sites using template and engage in discussions. ► Participate in working group to inform and guide the analysis and “missing middle” study, providing feedback on methodology, strategy alternatives and draft findings. ► Work with 21E team to define recommendations on strategy priorities.

City Time 16 to 32 hours a month per city over the course of 13 months

GETTING STARTED PACKAGE - Task Descriptions

2a Document and Confirm Existing Inventory; Quantify the Gap. The 21 Elements team will work with jurisdiction staff to document, update, review and confirm jurisdiction-specific baselines of eligible sites based on current inventory of zoned and planned sites, updated to reflect State requirements related to site eligibility and entering into the State's new inventory tool. The team will then compare the baseline inventory to the anticipated RHNA need numbers by income category, and quantify the additional capacity that will need to be created in each income category to meet the anticipated need targets. *Jurisdiction staff will need to be highly engaged in this task to provide and carefully review baseline data and site-specific information.*

2b Conduct Feasibility Analysis of Potential Site Strategies. The 21 Elements team will engage an economic analysis firm to conduct development feasibility analyses of market-supportive strategies that could respond to the defined site inventory gaps. Examples of alternative planning and policy strategies including rezoning of sites and sub-areas based on defined criteria (e.g., in proximity to transit or retail centers, etc.); changes to development standards that could increase site capacity (e.g., units per acre, height, etc.); and changes to existing zoning districts (e.g., changes to expand potential for multiplexes in lower density zones or to allow housing in commercial zones, etc.). A working group of jurisdiction staff will be formed to help guide the analysis work. *Jurisdiction staff will need to participate fully in the working group, methodology review, choice of policy options for analysis, and review and refinement of results.*

The analysis process will include:

- Compiling parcel-level base data from the site inventories and exiting County GIS into a MapCraft database.
- Engaging the work group to define policy options for initial countywide analysis, with subsequent refinement to determine both the increase in site capacity and realistic market response that could be expected from implementation of each option, with results mapped and quantified both countywide and by jurisdiction. This will be a first-tier analysis to inform policy deliberations and identification of the most promising strategies for each jurisdiction which will then require more detailed review and refinement in subsequent steps of the update process in each jurisdiction.
- Draft results will be reviewed with the working group and with staff from each jurisdiction, with subsequent refinement based on feedback. While several iterations of analysis will be

possible, the number of iterations will be limited by the time budget for this sub-task.

- The analysis will illustrate the increased gross site capacity that would result from each policy strategy and realistic market response in delivering housing outcomes in each RHNA income category.

2c Summarize Fiscal Impacts. To further inform the consideration of policy alternatives that could expand site capacity in response to RHNA requirements, the results from Task 2b will be supplemented by a high-level evaluation and quantification of potential tax revenue impacts. *Jurisdiction staff involved in the working group will participate in reviewing and providing feedback on the fiscal analysis methodology and results.*

2d Analyze “Missing Middle” Housing Performance. Related to the analysis of potential policy alternatives that could expand site capacity, the 21 Elements team will study the market performance and absorption rates for “missing middle” housing types (e.g., duplexes, triplexes, townhomes, small multiplexes) in San Mateo County. The purpose of this analysis will be to understand cost and price ranges of these housing products (both historic and recently built), where they are located, marketability and who they are serving. This data will be helpful to jurisdictions as they explore policy and program strategies to expand these housing types during the update process. *Jurisdiction staff involved in the working group will participate in reviewing and providing feedback on the “missing middle” study’s methodology and results.*

2e Facilitate HCD Review and Feedback. To ensure that the analysis process and results meet State expectations for the site inventories and substantiation of market readiness, the 21 Elements team will confer regularly with key HCD staff during the Getting Started process, including to review the approach and methodology; provide input on the policy options being explored; and provide review and feedback on the draft and final results.

2f Provide Jurisdiction-specific Recommendations. The 21 Elements team and economic consultant will summarize the “Getting Started” analysis results and make recommendations to each jurisdiction—in close consultation with staff—regarding the most promising and relevant site strategies to pursue in the update, including recommendations for further analysis or refinement and next steps to complete the site inventory section of the housing element as well as recommended rezoning and other regulatory change actions to implement the priority strategies. *Jurisdiction staff will need to participate fully in the development and vetting of recommendations, including engagement of other city staff and leaders, as needed, to confirm general support for the direction(s) being recommended.*

3. FOUNDATIONS Package – Housing Needs and Constraints; Focused Support

Overview	Begin updating the housing element: evaluate the existing element in relation to recent state law requirements; develop the key foundational sections of the housing element; and refine the update's work program and schedule, including engagement strategy, rezoning and other actions, as needed, to achieve a certified element.
Timing	<i>June 2020 through June 2021 (13 months)</i>
Core Tasks	<ul style="list-style-type: none"> a Work with jurisdiction staff to evaluate existing element and define update needs. b Prepare jurisdiction-specific Housing Needs Analysis and Background text, drawing on countywide and local data. c Prepare jurisdiction-specific Governmental and Non-Governmental Constraints Analysis sections in collaboration with jurisdiction staff. d Develop jurisdiction-specific scope and schedule for completing the housing element update, including needed regulatory changes. e Facilitate informal consultation with HCD on jurisdiction-specific issues. f Provide tailored outreach materials regarding housing needs and opportunities.
Products	<ul style="list-style-type: none"> ✓ Evaluation of existing housing element ✓ Drafts of key sections: background, housing needs, governmental constraints and non-governmental constraints ✓ Refined work plan and schedule for remainder of the housing element update ✓ Tailored educational and outreach materials
City Roles	<ul style="list-style-type: none"> ► Provide data relevant to the existing housing element, local housing conditions, and both governmental and non-governmental constraints using provided templates. Write some jurisdiction-specific context. ► Edit material provided by 21 Elements. ► Collaborate on developing and refining the work program and schedule to complete the update. ► Participate in jurisdiction-specific consultations with HCD. ► Review and provide feedback on draft work products. ► Engage other jurisdictional staff and departments as needed to provide relevant data and reviews. ► Schedule and lead local engagement activities with 21E support.

City Time 30 - 50 hours a month over the course of 13 months

FOUNDATIONS PACKAGE - Task Descriptions

3a Evaluate Existing Elements; Define Update Needs. The 21 Elements team will provide a HCD-reviewed template, methodology and outline for jurisdictions to use in assessing their current housing element per State law requirements. The review will document the effectiveness of the element, including actual results or outcomes (quantified where possible, and qualitative where necessary), progress in implementation and any significant differences between what was projected or planned and what was actually received, and key lessons learned that can be applied during the update process to strengthen the element's effectiveness. The review will also highlight where updates are needed to bring each jurisdiction's element into compliance with recent State law changes. *Jurisdictions will be asked to provide an annotated copy of their current housing element along with responses to a tag-along comment sheet, and to provide copies of Annual Progress Reports and other documents relevant to the evaluation. Jurisdiction staff will also provide brief evaluation write-ups using the provided the template and methodology covering policies, programs, quantified objectives (where applicable), barriers to implementation and recommendations for the housing element update (carry forward as is, carry forward with specific modifications, or delete).* The 21 Elements team will provide the needed templates, technical assistance, and review/summary of results, and will compile an overview of jurisdiction "best practices" based on the compilation of evaluation results from across the participating jurisdictions.

3b Analyze and Summarize Housing Needs, including Special Housing Needs and Projected Needs. Building on the results of the Countywide Housing Needs Analysis, the 21 Elements team will summarize jurisdiction-specific data needed for the housing element update, including population, employment and housing characteristics; overpayment and overcrowding; extremely-low income housing needs; housing stock characteristics; assisted housing "at risk" of conversion; opportunities for energy conservation; persons with disabilities; elderly; large families and female-headed households; farmworkers; and families and persons in need of emergency shelter. An overview of the RHNA 6 housing need projections will also be provided, including explanatory narrative, along with template and methodology for counting units built, under construction and/or approved during the planning period. Summary tables and narratives will be provided for all of the listed topics, which can then be tailored to each jurisdiction's needs, working in partnership with jurisdiction staff. Key findings will also be summarized and with potential policy and program strategies identified. *Jurisdiction staff will be responsible for providing materials on housing construction and any locally generated data of significance as well as information on locally assisted housing, energy conservation and rehab programs, green building, and related programs covering housing needs. They will also need to provide their own housing conditions analysis, including quantification of substandard units, using sample survey instruments, templates and methodology provided by the 21 Elements team.*

3c Analyze and Summarize Governmental and Non-Governmental Constraints. The 21 Elements team will provide HCD-reviewed templates, methodologies and outlines to assess jurisdiction-specific governmental constraints on housing production and related impacts on housing costs. This analysis is intended to provide a periodic reexamination of local ordinances, policies, standards and practices that may, under current conditions, constitute a barrier to the maintenance, improvement or development of housing for all income levels. In particular, governmental constraints that may exclude housing affordable to low- and moderate-income households may constitute a violation of State and federal fair housing laws, and will need to be addressed through the update, to be replaced with policies, standards and practices that affirmatively further fair housing. Worksheets and questionnaires will be provided to facilitate jurisdiction review and input, covering issues relevant to the site inventory, including but not limited to development standards and land use controls, special housing types (second units, manufactured homes, etc.), local processing and permitting procedures, affordable housing incentives, design review and historic preservation, codes and enforcement, and more. An analysis of non-governmental constraints on housing production will also be completed, including the cost of land, construction costs, availability of financing, and issues such as short-term rentals. *Jurisdiction staff will be responsible for compiling information on the covered governmental constraints topics using the templates, worksheets and methodology provided; and for reviewing and providing feedback on comparative tables to ensure accuracy in summarizing jurisdiction-specific standards. Staff will also work closely with the 21 Elements team to develop jurisdiction-specific conclusions regarding the constraints analysis and priority policies or programs for inclusion in the updated housing element to address key issues and ensure a pro-housing regulatory environment.*

3d Refine Housing Element Work Plan and Schedule (as needed). The 21 Elements team will partner with jurisdiction staff to review key issues from the sites analysis, housing needs analysis and constraints analysis to define the work effort needed to address the identified issues and achieve a certified element, including confirmation of any rezoning, changes to development standards or other implementing actions that may need to be undertaken in conjunction with the update. A process graphic and schedule will be produced to illustrate the needed steps and coordination across tasks, including community engagement, to meet the overall element schedule and State deadline. *Jurisdiction staff will need to participate in the review and confirmation of update needs and work program refinement.*

3e Facilitate HCD Consultations. Building off the previous work with HCD, the 21 Elements team will engage HCD staff during this phase of work, as initial analyses are being completed and sections of the updated elements are being developed. The approach is intended to help ensure “no surprises,” making sure that HCD staff are familiar with and supportive of the analyses and draft work products, addressing issues as they arise to ensure that they will meet expectations when submitted for eventual certification. *Jurisdiction staff will be expected to participate in direct conversations with HCD staff, facilitated by the 21 Elements team, on an as-needed basis.*

3f Provide Tailored Outreach Materials. Building off the work shared outreach material referenced above (1c), the 21 Elements team will develop tailored jurisdiction-specific outreach and education materials to present summaries of each city's housing needs and opportunities, commitment to a pro-housing agenda, and specific action alternatives and priorities for the update. Materials will include both web- and print-format fact sheets and FAQs as well as a tailored PowerPoint presentation for use by staff and partners. *Jurisdiction staff will be expected to review and provide feedback on draft materials, and oversee distribution (including any print production).*

4. FULL Package – Housing Element Development, Review and Approval

Overview	Develop the complete housing element draft; provide support for needed regulatory changes to support the updated element as well as continued public engagement; and help facilitate timely review by HCD in order to achieve final adoption by January 2023.
Timing	<i>July 2021 through January 2023 (19 months)</i>
Core Tasks	<ul style="list-style-type: none"> a Develop the site inventory summary, and assist with Housing Element goals, policies, programs and quantified objectives to respond to local housing needs and meet state requirements. b Present at a community workshop, Planning Commission session and City Council meeting on local housing needs, key opportunities, and proposed policy strategies (assumes 60 hours of outreach support). c Assist with rezoning, General Plan and other land use changes (assumes 60 hours of support; can be reallocated to other tasks if not needed). d Work with staff to prepare Draft and Final Housing Elements and attend public hearings. e Continue to facilitate consultation and review with HCD. f Provide support on special issues analyses and CEQA documentation.
Products	<ul style="list-style-type: none"> ✓ Draft Housing Element goals, policies, programs and quantified objectives ✓ Presentation on local housing needs, opportunities and proposed policy strategies ✓ Draft and Final Housing Elements
City Roles	<ul style="list-style-type: none"> ▶ Collaborate in development of the housing element goals, policies, programs and quantified objectives. This includes writing and/or editing sections. ▶ Continue to schedule and lead local engagement activities with 21E support. ▶ Lead rezoning efforts and other regulatory changes (ordinance revisions, etc.) with 21E support. ▶ Participate in jurisdiction-specific consultations with HCD. ▶ Collaborate on special issues analyses and CEQA documentation, as needed. ▶ Review and provide feedback on draft and final work products. ▶ Engage other staff and departments to provide relevant data and reviews. ▶ Organize and attend public hearings.

D.

City Time 60+ hours a month over the course of 19 months

FULL PACKAGE - Task Descriptions

- 4a Assist with Site Inventory Write-up; Develop Goals, Policies, Programs and Quantified Objectives.** The 21 Elements team will partner with jurisdiction staff to summarize and present their site inventory, using the HCD-provided tool. The team will also assist in staff in identifying and developing the goals, policies, programs and quantified objectives of the housing element, drawing upon and responding to the results of the previous analyses to ensure a comprehensive pro-housing approach that facilitates the creation of new units consistent with established RHNA targets and affirmatively furthers fair housing. *Jurisdiction staff will be responsible for working in partnership to enter the site inventory data and summarize the data in table and narrative format using provided templates; and assist in prioritizing and developing the draft element's goals, policies, programs and quantified objectives.*
- 4b Present at Community Workshop, Planning Commission and City Council.** The 21 Elements team will work with jurisdiction staff to develop a presentation that summarizes the draft housing element's context, analysis and priority actions. 21 Elements will also participate in making the presentation at one community workshop, one planning commission meeting and one City Council session and support staff in responding to questions. The presentation will also be accompanied by presentation notes to support use by staff and partners in other settings. *Jurisdiction staff will be responsible for reviewing draft and final presentation materials; participating in the three core presentations; and helping with distribution of the presentation to others or making the presentation to other audiences, as needed.*
- 4c Assist with Rezoning, General Plan and Other Land Use Changes.** The 21 Elements team will support jurisdiction staff in evaluating and prioritizing implementation work tasks for enacting needed changes to zoning, development standards and/or other changes needed to ensure certification of the housing element and accomplishment of its goals and objectives. This task will also include identification of other general plan policies that may need to be modified to ensure consistency with the updated housing element. The budget for this task does not provide the necessary support to undertake rezoning work or to rewrite standards (and related environmental analyses), but is intended to provide needed support for decision making, scoping and development of the implementation work program. *Jurisdiction staff will be responsible for taking the lead on implementation task planning, decision making and action, supported by the 21 Elements team.*
- 4d Assist in Preparation of Draft and Final Elements; Attend Public Hearings.** The 21 Elements team will work with jurisdiction staff to compile the complete Draft Housing Element for public review and submittal to HCD. The formatted document will be made available as a web-based pdf as well as in hard copy to facilitate community review and input. Staff from 21 Elements will also be available to attend up to two public hearings on the draft element to provide an overview of the document and help answer questions. *Jurisdiction staff will help develop the draft element and provide review and feedback on portions developed by the 21*

Elements team. Staff will take the lead on public hearings related to review and input on the draft document, supported by 21 Elements as described above.

4d Facilitate HCD Consultations. Building off the work of Task 3e, the 21 Elements team will engage HCD staff during the final phase of the update, including but not limited to supporting staff in making the official submittal for review and certification by HCD and participating in review phone calls, as needed. As in 3e, the approach is intended to help ensure “no surprises” and to facilitate HCD staff’s familiarity with the key issues being addressed as well as the policy strategies being pursued prior to submittal to ensure they will meet the bar for certification. *Jurisdiction staff will be expected to participate in direct conversations with HCD staff, facilitated by the 21 Elements team; make the formal submittal to HCD; participate in review discussions; and be responsive to information requests as needed.*

4e Provide Support on Special Issues and CEQA Documentation. The 21 Elements team will support jurisdiction staff in addressing other issues of special concern that may arise, contributing to staff reports and other meeting materials as needed, and determining the necessary CEQA documentation for the final draft housing element. The budget for this task does not include the time needed to develop the actual CEQA documentation, but will likely rely substantially on CEQA analysis and documentation developed in relation to task 4c. *Jurisdiction staff will take the lead on these task areas, with support from the 21 Elements team.*

5. DISTRIBUTION OF PAYMENT - Summary Budget

The budget for each service package, tiered by city size, is summarized below.

	<i>Small City</i>	<i>Mid-Size City</i>	<i>Large City</i>
Base Package	\$ 2,500	\$ 2,500	\$ 2,500
Getting Started Package	\$ 9,000	\$ 13,000	\$ 19,000
Foundations Package	\$ 7,000	\$ 9,000	\$ 10,000
Full Package	\$ 30,000	\$ 30,000	\$ 30,000
“All In”	\$ 48,500	\$ 54,500	\$ 61,500

The table below indicates which cities are in each tier:

Small Cities	Mid-Size Cities	Large Cities
Atherton	Belmont	Daly City
Brisbane	Burlingame	Redwood City
Colma	East Palo Alto	San Mateo City
Hillsborough	Foster City	South San Francisco
Portola Valley	Half Moon Bay	
Woodside	Menlo Park	
	Millbrae	
	Pacifica	
	San Bruno	
	San Carlos	
	San Mateo County	

The table below indicates the packages selected by participating cities:

<i>Jurisdiction</i>	<i>Size</i>	<i>Base</i>	<i>Get Started</i>	<i>Foundations</i>	<i>Full</i>	<i>Cost</i>
Atherton	Small	Yes	Yes	Yes	Yes	\$48,500
Belmont	Mid	Yes	No	Yes	No	\$11,500
Brisbane	Small	Yes	Yes	Yes	Yes	\$48,500
Burlingame	Mid	Yes	Yes	No	No	\$15,500
Colma	Small	Yes	Yes	Yes	No	\$18,500
Daly City	Large	Yes	Yes	Yes	Yes	\$61,500
East Palo Alto	Mid	Yes	Yes	Yes	Yes	\$54,500
Foster City	Mid	Yes	Yes	Yes	Yes	\$54,500
Half Moon Bay	Mid	Yes	Yes	Yes	Yes	\$54,500
Hillsborough	Small	Yes	Yes	No	No	\$11,500

Menlo Park	Mid	Yes	Yes	Yes	Yes	\$54,500
Millbrae	Mid	Yes	Yes	Yes	Yes	\$54,500
Pacifica	Mid	Yes	Yes	Yes	Yes	\$54,500
Portola Valley	Small	Yes	Yes	Yes	Yes	\$48,500
Redwood City	Large	Yes	Yes	No	No	\$21,500
San Bruno	Mid	Yes	Yes	Yes	Yes	\$54,500
San Carlos	Mid	Yes	No	No	No	\$2,500
San Mateo City	Large	Yes	No	Yes	No	\$12,500
San Mateo County	County	Yes	Yes	No	No	\$15,500
South San Francisco	Large	Yes	Yes	Yes	Yes	\$61,500
Woodside	Small	Yes	Yes	No	No	\$11,500

Exhibit B
Disbursement and Rates

In consideration of the services provided by Contractor described in Exhibit A and subject to the terms of the Agreement, County shall pay Contractor based on the terms as set forth in this Exhibit B.

Amount and Method of Payment

In no event shall County reimburse Contractor for any payments exceeding the total amount stated in Paragraph 3 "Payment" of this Agreement.

Funding shall be used by County to reimburse Contractor for performing program service activities and program delivery costs enumerated in Exhibit A. None of the funding shall be used to support Contractor's general administration costs.

County will reimburse Contractor for actual costs incurred for services rendered/incurred, provided Contractor provides DOH with documentation and assurances described below that the costs were appropriate to the request for reimbursement and consistent with the budget described in Exhibit A of the Collaboration Agreement.

Specifically, with respect to services for "Small Cities," as identified in the Collaboration Agreement, Contractor shall charge \$2,500 for Base Package Services; \$9,000 for Getting Started Package Services; \$7,000 for Foundations Package Services; and \$30,000 for Full Package Services.

With respect to services for Mid-Size Cities, as identified in the Collaboration Agreement, Contractor shall charge \$2,500 for Base Package Services; \$13,000 for Getting Started Package Services; \$9,000 for Foundations Package Services; and \$30,000 for Full Package Services.

With respect to services for Large Cities, as identified in the Collaboration Agreement, Contractor shall charge \$2,500 for Base Package Services; \$19,000 for Getting Started Package Services; \$10,000 for Foundations Package Services; and \$30,000 for Full Package Services.

With respect to services related to the County unincorporated area, Contractor shall charge \$2,500 for Base Package Services; \$19,000 for Getting Started Package Services; and \$3,000 for Foundations Package Services.

Contractor may invoice the County for services provided pursuant to this Agreement at reasonable intervals as determined by the County, as such services are performed.

Contractor will supply invoices in a format necessary to meet requirements set forth in S.B. 2, Chapter 364, Part 2 of Division 31 of the Health and Safety Code (Ca. 2017).

All back-up invoice documentation should be submitted electronically via email. DOH reserves the right to request hard copies of invoice documentation or a summary of documentation plus scanned/emailed support materials as a condition of County review and approval. In all cases, Contractor shall make documentation records available for DOH review upon request.

Contractor's requests for reimbursement/payment must be from an authorized representative of Contractor. By submitting request for reimbursement/payment, Contractor certifies that the specific services for which reimbursement or payment is being requested have been satisfactorily completed, that the payments are proper and that all funds to be expended are exclusively for the activity or services described in Exhibit A. County reserves the right to verify such completion either prior to or after reimbursement/payment has been made to Contractor.

Questionable Reimbursement Request: In the event of a questionable payment request, County will state in writing the specific nature of its objections to Contractor's work. County will also specify what actions or changes are necessary to make the work acceptable. Contractor shall respond to County within 15 calendar days of receipt of such objections. The parties shall meet to discuss such objections at the request of either party. County will not be obligated to make a payment of any billing until any and all objections to the adequacy of the services rendered or the amount of the billing have been resolved.

Attachment IP**Intellectual Property Rights**

The County of San Mateo ("County") and each city and town in the County receiving services from Contractor pursuant to this agreement including the Town of Atherton, City of Belmont, City of Brisbane, City of Burlingame, Town of Colma, City of Daly City, City of East Palo Alto, City of Foster City, City of Half Moon Bay, Town of Hillsborough, City of Menlo Park, City of Millbrae, City of Pacifica, Town of Portola Valley, City of Redwood City, City of San Bruno, City of San Carlos, City of San Mateo, City of South San Francisco, and Town of Woodside (collectively referred to with County as "Local Jurisdictions") shall and does own all titles, rights and interests in all Work Products created by Contractor and its subcontractors (collectively "Vendors") for that respective Local Jurisdiction under this Agreement. Contractor may not sell, transfer, or permit the use of any Work Products without the express written consent of the Local Jurisdiction(s) to which the Work Products belong.

1. "Work Products" are defined as all materials, tangible or not, created in whatever medium pursuant to this Agreement, including without limitation publications, promotional or educational materials, reports, manuals, specifications, drawings and sketches, computer programs, software and databases, schematics, marks, logos, graphic designs, notes, matters and combinations thereof, and all forms of intellectual property.
2. Contractor shall not dispute or contest, directly or indirectly, a Local Jurisdiction's exclusive right and title to the Work Products belonging to that Local Jurisdiction nor the validity of the intellectual property embodied therein. Contractor hereby assigns, and if later required by the Local Jurisdiction, shall assign to the Local Jurisdiction all titles, rights and interests in all Work Products belonging to that Local Jurisdiction. Contractor shall cooperate and cause subcontractors to cooperate in perfecting the Local Jurisdiction's titles, rights or interests in any Work Product belonging to that Local Jurisdiction, including prompt execution of documents as presented by that Local Jurisdiction.
3. To the extent any of the Work Products of a Local Jurisdiction may be protected by U.S. Copyright laws, Parties agree that the particular Local Jurisdiction commissions Vendors to create the copyrightable Work Products, which are intended to be work-made-for-hire for the sole benefit of the that Local Jurisdiction and the copyright of which is vested in that Local Jurisdiction .
4. In the event that the title, rights, and/or interests in any Work Products are deemed not to be "work-made-for-hire" or not owned by a Local Jurisdiction, Contractor hereby assigns and shall require all persons performing work pursuant to this Agreement, including its subcontractors, to assign to that Local Jurisdiction all titles, rights, interests, and/or copyrights in such Work Product. Should such assignment and/or transfer become necessary or if at any time the Local Jurisdiction requests cooperation of Contractor to perfect that Local Jurisdiction's titles, rights or interests in any Work Product, Contractor agrees to promptly execute and to obtain execution of any documents (including assignments) required to perfect the titles, rights, and interests of that Local Jurisdiction in the Work Products with no additional charges to that Local Jurisdiction beyond that identified in this Agreement or subsequent change orders. The Local Jurisdiction, however, shall pay all filing fees required for the assignment, transfer, recording, and/or application.

5. Contractor agrees that before commencement of any subcontract work it will incorporate this **ATTACHMENT IP** to contractually bind or otherwise oblige its subcontractors and personnel performing work under this Agreement such that each Local Jurisdiction's titles, rights, and interests in its respective Work Products are preserved and protected as intended herein.



CITY COUNCIL AGENDA REPORT

Meeting Date: November 5, 2020

From: Clay Holstine, City Manager

Subject: Resolution 2020-61 Approving the Levy of a Special Assessment On Property At 788 Humboldt Road For the City's Cost to Remove Grass and Weeds

Community Goal/Result

Safe Community - Residents and visitors will experience a sense of safety

Background

Section 15.44.120 of the Brisbane Municipal Code added Section 304.1.4 of the Uniform Fire Code to the Brisbane Municipal Code concerning the removal of waste materials and combustible vegetation on properties within the City of Brisbane. Section 304.1.4 (a) provides the Bureau of Fire Prevention is authorized to notify the owner of property within the City of Brisbane to properly remove and dispose of grass, weeds, combustible or flammable waste, or other growth of any kind on the owner's property that is dangerous to public safety, health or welfare, or is deemed a fire hazard by the Bureau. Such notice shall inform the owner that should such materials not be removed as required, then it will be removed by the City and cost of the removal shall be assessed as a lien on the property to be collected with the next regular tax bill.

If, after such notice, the owner fails, neglects or refuses to properly remove and dispose of such materials within 15 days, the Fire Prevention Bureau is authorized to have the City pay for removing and disposing such material and then invoice the owner. If the owner fails to pay, the Code provides the actual cost of removal, plus an administrative fee, is to be charged to the owner and placed on the next regular tax bill.

Earlier this year, the Fire Prevention Bureau notified the owners of property at 788 Humboldt Road that there were grass and weeds on the property that were deemed a fire hazard and that the grass and weeds must be removed. When the owners failed to have the grass and weeds removed, the City paid for the grass and weeds to be removed. Thereafter the owners were

sent an invoice for the cost of removal (\$395) and an administrative fee (\$252). The owners were given 30 days (to October 1) to pay but have not.

Discussion

The owners (who live out of state) has been notified that the City Council will consider, at its regular meeting on November 5, 2020, approving the levy of a special assessment on the property in the amount of \$647 as a result of the City's removing the grass and weeds. They have the right to protest or object to the levy. The owners have not submitted any written protest or objection at the time this agenda report has been published (October 30). Staff therefore recommends Council approve the levy of the special assessment and direct the City Clerk to file a certified copy of the attached resolution to the San Mateo County Tax Collector so that the assessment may be placed on property tax bill for fiscal year 2021/2022. (The assessment is too late for the tax bill for fiscal year 2020/2021.)

Of course, the City may receive such objection or protest before the meeting on November 5 or the owners may appear (remotely) at the Council meeting to voice their objection. A representative of the Fire Prevention Bureau will be available to respond. Assuming there is an objection or protest, staff recommends the objection or protest be overruled and the levy of the special assessment be approved.

Financial Impact

Through this levy and assessment process, the City will be made whole for the cost of remove this fire hazard from the City.

Attachment:

Resolution approving the levy of an assessment on property located at 788 Humboldt Drive for the City's cost to remove grass and weeds

Letter sent to the property owners



Clay Holstine, City Manager

RESOLUTION NO. 2020-61**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BRISBANE, CALIFORNIA, APPROVING THE LEVY OF A SPECIAL ASSESSMENT ON PROPERTY IN THE CITY OF BRISBANE, COUNTY OF SAN MATEO, STATE OF CALIFORNIA, DESCRIBED IN EXHIBIT A FOR REMOVAL OF WASTE MATERIAL AND COMBUSTIBLE VEGETATION**

WHEREAS, Section 15.44.120 of the Brisbane Municipal Code added Section 304.1.4 of the Uniform Fire Code to the Brisbane Municipal Code concerning the removal of waste materials and combustible vegetation of properties within the City of Brisbane; and

WHEREAS, Section 304.1.4 (a) provides the Bureau of Fire Prevention is authorized to notify the owner of property within the City of Brisbane to properly remove and dispose of grass, weeds, combustible or flammable waste, or other growth of any kind on the owner's property that is dangerous to public safety, health or welfare, or is deemed a fire hazard by the Bureau and that such notice shall inform the owner that should such materials not be removed as required, then it will be removed by the City and cost of the removal shall be assessed as a lien on the property to be collected with the next regular tax bill; and

WHEREAS, if, after such notice, the owner fails, neglects or refuses to properly remove and dispose of such materials within 15 days, the Fire Prevention Bureau is authorized to have the City pay for removing and disposing such material; and

WHEREAS, when the City has paid for the removal of such materials, the actual cost thereof, plus an administrative fee, if not paid by the owner, shall be charged to the owner on the next regular tax bill for such property; and

WHEREAS, the Fire Prevention Bureau notified the owner of property at 788 Humboldt Road, Brisbane, CA (APN 007432380) that there were grass and weeds on the property that were deemed a fire hazard and that the grass and weeds must be removed; and

WHEREAS, the owner of the property did not in the time provided by the Fire Prevention Bureau remove the grass and weeds from the property; and

WHEREAS, the City paid for the removal of the grass and weeds on the property and notified the owner of the cost the City incurred to do so; and

WHEREAS, the owner has not paid the City for the cost the City incurred; and

WHEREAS, the owner has been notified that the City Council will consider, at its regular meeting on November 5, 2020, approving the levy of a special assessment on the property in the amount of \$647 as a result of the City's removing the grass and weeds; and

WHEREAS, the owner has not filed any written protest or objection to the levy of a special assessment on the property.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BRISBANE AS FOLLOWS:

Section 1. Under Section 15.44.120 of the Brisbane Municipal Code and Section 304.1.4 of the Uniform Fire Code, the City Council of the City of Brisbane does hereby levy a special assessment against the property set forth on Exhibit A and in the amount set forth on Exhibit A.

Section 2. The City Clerk is authorized to file a certified copy of this Resolution with the San Mateo County Tax Collector's Office and request that the special assessment in the amount of \$647 be placed on the next regular tax bill for the property at 788 Humboldt Road Brisbane, CA (APN 007432380).

Section 3. This Resolution shall become effective immediately upon its adoption.

Terry O'Connell, Mayor

I hereby certify that the foregoing Resolution No. 2020-61 was duly and regularly adopted at a regular meeting of the City Council of the City of Brisbane on November 5, 2020 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Ingrid Padilla, City Clerk

EXHIBIT

A PROPERTY: 788 Humboldt Road, Brisbane, CA

APN: 007432380

PROPERTY OWNERS: Yulan Li and Qing Liu



CITY OF BRISBANE

50 Park Place
Brisbane, California 94005-1310
(415) 508-2100
Fax (415) 467-4989

Attachment 2

October 19, 2020

Yulan Li
Qing Liu
25 Wellington Drive
Long Valley, NJ 07853

Re: Notice of Hearing Concerning a Special Assessment on Your Property in Brisbane, CA

PLEASE TAKE NOTICE that on Thursday, November 5, 2020, the City Council of the City of Brisbane will consider at its regular meeting, beginning at 7:30 p.m. PST, a resolution to levy a special assessment on your property located 788 Humboldt Drive in Brisbane.

The reason for this special assessment is as follows: The Fire Prevention Bureau determined that the grass and weeds on your property was a fire hazard, notified you that the grass and weeds must be removed, and notified you that if you did not remove the grass and weeds, the City would do so. You did not remove the grass and weeds as directed by the Fire Prevention Bureau and the City has removed the materials. You were then advised that if you did not pay the costs--\$647—that a special assessment would be placed on your property and collected through the property tax bill. You have not paid the costs.

You may file a protest or objection to these costs prior to and/or at the meeting. If prior to the meeting, email the protest or objection to IPadilla@brisbaneca.org. Include the grounds upon which you protest or object. At the meeting you may address the City Council exclusively through remote means, either by entering the meeting identification number via www.zoom.us (Meeting ID: 979 9592 7541 Passcode: 123456), or dialing 1-(669) 900-9128 (Meeting ID: 979 9592 7541 Passcode: 123456).

If you do not file a written protest or objection prior to the meeting, the item will remain on the Council's "consent" calendar and will not be considered separately unless a Council member removes the item from the consent calendar. You must, therefore, let me know prior to the meeting if you want the item to be removed from the consent calendar.

If you choose to pay these costs, the City must receive the payment by November 4, 2020.

If you have questions concerning this matter or the procedure, please email me at IPadilla@brisbaneca.org or call me at (415) 508-2113.

Ingrid Padilla
City Clerk
City of Brisbane





CITY COUNCIL AGENDA REPORT

Meeting Date: November 5, 2020

From: Clay Holstine, City Manager

Subject: Resolution Confirming and Ratifying the Proclamation
Declaring the Continued Existence of a Local Emergency in the City of Brisbane in
Response to the COVID-19 Pandemic

Community Goal/Result

Safe Community - Residents and visitors will experience a sense of safety

Recommendation: Adopt the attached resolution.

Background

The COVID-19 Coronavirus has been declared a pandemic by the World Health Organization and has prompted various government agencies to take action in response. The President has declared a national State of Emergency, the Governor has declared a Statewide Emergency, the County Board of Supervisors has declared a County wide State of Emergency and the City Manager, as Emergency Services Director, proclaimed a local emergency on March 16, 2020, and on March 19, 2020, the City Council ratified and confirmed the Director of Emergency Service's proclamation of a local emergency which allowed staff to expeditiously respond to the emergency circumstances caused by the pandemic.

On June 18, 2020, and on September 3, 2020, the City Council extended the local emergency. Since March 2020, staff has regularly informed the City Council about items related to the City's response to the COVID-19 pandemic. In addition, the Health Officer of the County of San Mateo has issued several directives and orders to address efforts to curb the spread of the disease. Although such efforts show signs of promise, the COVID-19 pandemic continues to impact communities around the world, including Brisbane.

Discussion

Government Code Section 8630(c) requires that, "the governing body shall review the need for continuing the local emergency at least once every 60 days until the governing body terminates the local emergency." Because the City Council will not meet in regular session until November 5, 2020 and the declaration of local emergency would otherwise expire on November 3, 2020, the City Manager, in his role as Director of Emergency Services, proclaimed on November 2, 2020 the continued existence of the local emergency as a result of the COVID-19 pandemic.

At this time, staff is recommending that the City Council adopt a resolution ratifying the Director of Emergency Services' proclamation continuing the existence of a local emergency in

response to the COVID-19 pandemic, and directing staff to continue to respond appropriately to the local emergency.

Financial Impact

There is no direct financial impact from City Council taking this action. The attached resolution, however, will put the City in a better position to recover funds that are expended in response to the COVID-19 pandemic.

Attachment:

1. Proclamation Declaring the Continued Existence of a Local Emergency
2. Resolution Confirming and Ratifying Proclamation of the Continued Existence of a Local Emergency in the City of Brisbane in Response to the COVID-19 Pandemic

Clayton L. Holstine

Clay Holstine, City Manager

Proclamation of Continuation of Local Emergency by Director of Emergency Services

WHEREAS, Section 2.28.060 of the City of Brisbane Municipal Code empowers the Director of Emergency Services to proclaim the existence or threatened existence of a local emergency, or to proclaim the continued existence of a local emergency, when said City is affected or likely to be affected by a public calamity and the City Council is not in session, and;

WHEREAS, the Director of Emergency Services of the City of Brisbane does hereby find;

Conditions of extreme peril to the safety of persons and property have arisen within the City, caused by the COVID-19 pandemic which began on about March 16, 2020; and

These conditions were, and are likely to continue to be, beyond the control of the services, personnel, equipment, and facilities of the City; and

The Brisbane City Council ratified the earlier proclamation of Local Emergency by the Director of Emergency Services and also declared a Local Emergency, which declaration has not been rescinded; and

Government Code, Section 8630 requires local agencies that have declared local emergencies to review the existence of such emergencies every 60 days to determine whether the local emergency continues to exist; and

The City Council of the City of Brisbane most recently extended the local emergency on September 3, 2020; and

The City Council of the City of Brisbane is not scheduled to meet in regular session until November 5, 2020 and cannot immediately be called into session; and

Conditions of extreme peril to the safety of persons and property continue to exist within the City, caused by the COVID-19 pandemic.

NOW, THEREFORE, IT IS HEREBY PROCLAIMED that a local emergency due to the COVID 19 pandemic continues to exist throughout the City; and

IT IS FURTHER PROCLAIMED AND ORDERED that during the existence of the local emergency the powers, functions, and duties of the emergency organization of this City shall be those prescribed by state law, by ordinances, and resolutions of this City, and by the City of Brisbane Emergency Operations Plan, as approved by the City Council.

This emergency proclamation shall expire on November 6, 2020 unless confirmed and ratified by the governing body of the City of Brisbane on or before November 5, 2020.

Dated: November 2, 2020

Clayton Holstine, Director of Emergency Services

RESOLUTION NO. 2020-62**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BRISBANE CONFIRMING AND RATIFYING THE CITY MANAGER'S/DIRECTOR OF EMERGENCY SERVICES' PROCLAMATION OF THE CONTINUED EXISTENCE OF A LOCAL EMERGENCY**

WHEREAS, Section 2.28.060 of the Brisbane Municipal Code empowers the City Manager/Director of Emergency Services to proclaim a local emergency if the City Council is not in session and requires the City Council to take action to ratify the proclamation thereafter; and

WHEREAS, conditions of extreme peril to the health, safety and welfare of persons have arisen in the world, the nation, the State, the County of San Mateo and the City of Brisbane due to the following:

A novel coronavirus (named COVID-19 by the World Health Organization) was first detected in December 2019. The Center for Disease Control and Prevention (CDC) has stated that COVID-19 is a serious public health threat, based on current information. Cases of COVID-19 have been diagnosed throughout the world, the United States, the State of California, the County of San Mateo and the City of Brisbane.

The exact modes of transmission of COVID-19, the factors facilitating human to human transmission, the extent of asymptomatic viral shedding, the groups most at risk of serious illness, the attack rate, and the case fatality rate all remain active areas of investigation. The CDC believes, at this time, the symptoms appear two to fourteen days after exposure. Currently, there are no vaccine or specific anti-viral treatment for COVID-19.

Actions are being taken to protect public health and limit the spread of COVID-19 but the whether those actions will be successful is unknown at this time.

Due to COVID-19 pandemic, the President of the United States has declared a national emergency, the Governor of the State of California has declared a State of Emergency for the State and for all the Counties in the State; and the City of Brisbane's Director of Emergency Services declared a Local Emergency on March 16, 2020 and the City Council of the City of Brisbane ratified the Proclamation of a Local Emergency on March 19, 2020; and

WHEREAS, the City Council of the City of Brisbane extended the Local Emergency on June 18, 2020; and

WHEREAS, the City Council on September 3, 2020, ratified the proclamation of the

Director of Emergency Services to extend the Local Emergency and extended the declaration of Local Emergency for 60 days; and

WHEREAS, for the reasons expressed above, conditions of extreme peril and a serious threat to the public health, safety and welfare have arisen, and continue to exist, in the City of Brisbane; and

WHEREAS, the City Manager, acting as the Director of Emergency Services, did proclaim on November 2, 2020, the continued existence of a Local Emergency because the City Council would not be in regular session until November 5, 2020; and

WHEREAS, the City Council does hereby find that the above described conditions of extreme peril and serious threat to the public health, safety, and welfare did warrant and necessitate the proclamation of the existence of a local emergency in the City of Brisbane and those conditions continue at this time..

NOW, THEREFORE, BE IT RESOLVED THAT THE CITY COUNCIL OF THE CITY OF BRISBANE DOES RESOLVE, DECLARE, DETERMINE, AND ORDER THE FOLLOWING:

Section 1. That the “Proclamation of the Continued Existence of a Local Emergency”, as issued by the Director of Emergency Services/City Manager on November 2, 2020, is hereby ratified and confirmed.

Section 2. During the existence of the local emergency, the powers, functions, and duties of the Director of Emergency Services and the Emergency Organization of the City shall be those prescribed by State law, ordinances and resolutions of the City of Brisbane, and by the City of Brisbane Emergency Operation Plan.

Section 3. The local emergency shall continue to exist until the City Council proclaims its termination.

Section 4. This resolution is effective immediately upon its passage and adoption.

PASSED, APPROVED AND ADOPTED by the Brisbane City Council at a regular meeting on November 5, 2020.

Terry O’Connell, Mayor

I hereby certify that the foregoing resolution was adopted by the City Council at a regular meeting held on November 5, 2020 by the following vote:

AYES

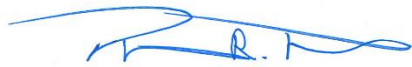
NOES

ABSENT

ABSTAIN

Ingrid Padilla, City Clerk

Approved as to form:



Thomas McMorrow, Interim City Attorney



CITY COUNCIL AGENDA REPORT

Meeting Date: November 5, 2020, 2020

From: John Swiecki, Community Development Director

Subject: Proposed Ordinance No. 579 Amending Titles 15 and 17 of the Municipal Code to Comprehensively Update the City's Grading Ordinance

Community Goal/Result

Safe Community - Residents and visitors will experience a sense of safety

Purpose

To update the City's grading ordinance.

Recommendation

That the City Council introduce Ordinance 579.

Background

In 2012/2013 the City initiated a comprehensive update of the grading ordinance, partially in response to a lawsuit settlement regarding approval of the Ng condominium project on Bayshore Boulevard in 2007. Based on the settlement, specific provisions were recommended to be incorporated into the grading ordinance including (a) enhancing existing fines and penalties for violations of the grading ordinance; (b) prohibiting removal of existing vegetation having habitat value without providing mitigation; and (c) requiring habitat restoration of graded areas within the jurisdiction of the Habitat Conservation Plan (HCP) that would decrease the presence of exotic / non-native plant species, as well as prevent erosion. A number of other revisions were proposed to reflect best technical practices and provide procedural clarity.

The draft ordinance was recommended for approval by the Planning Commission and went through multiple hearings by the City Council in 2013. It was tabled in 2013 as City efforts were focused on other issues, such as Brisbane Soil Processing and the Baylands. In order to finalize the ordinance it was reviewed and recommended for approval by the City Council Infrastructure Subcommittee in July, 2020 and has been scheduled for tonight's City Council hearing.

Discussion

While the draft ordinance is substantively the same as was last presented in 2013, there were a few revisions that were presented to the Infrastructure Subcommittee. These are described in detail in the attached subcommittee report.

The most notable relates to the Planning Commission's role in grading. The current ordinance requiring the Planning Commission to "approve a permit" is legally problematic as outlined in the memorandum from City Legal Counsel in the attached Infrastructure Subcommittee report. The solution proposed in 2013 was to make the Commission's review advisory to the City Engineer, limit the Commission's review to grading for projects with a related discretionary permit, and establish defined criteria to focus the

Commission's review. While the proposed revisions eliminate the overarching legal problem, procedural and perception issues remain.

For example it creates the unusual situation where a public-appointed body is advisory to city staff. Additionally, the review criteria are problematic for a variety of reasons, including lack of objective standards and inconsistency with other provisions of the Municipal Code. As such it is recommended that formal Planning Commission review of grading permit applications be eliminated from the grading ordinance. Note that if a project otherwise under the Commission's jurisdiction (design permit, use permit, etc) involves grading, the Commission retains the authority to consider grading in making a decision on the discretionary permit under their purview.

One proposed revision that was not discussed at the Infrastructure Subcommittee relates to the appeal process. Under the current ordinance all grading permits are appealable to the Planning Commission and subsequently to the City Council. The proposed 2013 ordinance revisions modified this cumbersome process by making permits appealable to the City Manager and subsequently to the City Council. The proposed revision still leaves the City Council in the untenable position of making decisions on technical (not public policy) matters that pursuant to state law are within the purview of licensed professionals. Given the technical nature of grading, it is recommended that the final decision on grading permit appeals rest with the City Manager. There are other precedents in the Municipal Code (Massage Permits, Tree Removal Permits) where this is the case.

Lastly, in recognition of the fact that grading permits are ministerial and the applicant will be the party affected by/aware of the City Engineer's decision, the ordinance clarifies the appeal procedures are applicable to the applicant.

The Planning Commission reviewed the draft ordinance at its meeting of September 10, 2020. In its correspondence (Attachment 3), the Commission expressed opposition to the proposed revisions concerning its role in the grading permit review process.

A summary of these concerns and staff's responses are provided below:

The Planning Commission's major objection to the proposed revisions stems from eliminating the Commission's role in oversight of grading permit applications. That oversight is embedded in a 2013 guideline that reserves to the Commission the right to consider alternative grading plans for certain grading permits and empowers the Commission to reject projects proposing "unnecessary amounts of excavation" when in the opinion of the Commission such grading is contrary to the General Plan.

The 2013 Guideline Conflicts with State Law.

Regrettably, the referenced guidelines conflict with State Law, the Professional Engineers Act (Business and Professions Code, Sections 6700 and following). That law was enacted in order to safeguard life, health, property and the public welfare and requires any person who practices professional engineering to be qualified and licensed by the State. B & P Code, section 6730. A professional engineer refers to a person engaged in the professional practice of rendering service or creative work requiring education, training and experience in the engineering services and the application of special knowledge of the mathematical, physical and engineering sciences in such professional work as investigation, evaluation, or design of public or private projects. B & P Code, section 6701. Such engineering embraces grading specifically and therefore requires only licensed engineers to submit, and other licensed engineers to

evaluate, designs, plans and specifications and engineering reports for grading projects. B & P Code, section 6731. Without putting too fine a point on it, any person who engages in professional engineering without the required license to do so violates the law. B & P Code, section 6787 (a).

There is no conflict between the Commission's review of grading in the context of its review of certain land use entitlement applications and eliminating its review of all grading permit applications.

The Commission also sees a conflict between the State law set forth above and other State law provisions that permits the Commission the authority to consider grading in context of its review of certain land use entitlement applications, such as a conditional use permit or a subdivision map.

There is a substantial body of procedural as well as substantive law that provides guidance to Planning Commissions when it is acting in a quasi-judicial capacity. Quasi-judicial actions are those that involve application of preexisting laws or standards to a specific project, such as the Commission's consideration of a conditional use permit or a subdivision map. In those cases, certain procedural and due process requirements, such as notice and an opportunity to be heard--apply. Decision makers must be neutral and unbiased. Importantly, when these types of matters are before the Commission, it must make written findings to support its decision; the record must contain substantial evidence to support the findings, and the findings must in turn support the decision and be sufficiently detailed so as to bridge the analytical gap between the evidence and the final decision. Typically, such entitlements will be granted if the general welfare standards are not implicated, for example, the proposed use would not create noise, dust, odors, or other undesirable effects.

It is, therefore, in this much broader context that the Commission may properly consider proposed grading as part of its overall review of a particular project, including imposing conditions to mitigate any adverse impacts. Such review, however, does not entail the Commission's technical review of the grading permit application, which review currently is set forth in the guideline discussed above and comes into play as to any grading that exceeds 50 cubic yards. Accordingly, there is no conflict between the Commission's role when it is looking at the grading when it is acting in a quasi-judicial capacity and the State law provisions that prohibit the Commission from serving as a reviewer of the City's professional engineer's judgment.

City law grants decision making authority to remove City trees to the City Engineer.

As to trees in the public right of way, the Commission contends its general land use authority grants it the authority to review the City Engineer's determination as to whether a street tree must be removed. The ordinance, however, that the City Council has adopted makes clear that whether such trees should be removed is solely in the determination of the City Engineer, based on concerns of public safety. Section 12.12.030, Brisbane Municipal Code. The Commission's position as to why it should be involved in that decision is contrary to the ordinance.

Appeals to the Planning Commission concerning grading permit applications is also contrary to State law.

Finally, the Commission contends that appeals concerning the City Engineer's decision on grading permit applications should be heard by the Planning Commission/City Council. That contention, however, likewise places the Commission and Council in the same role as acting as professional engineers that, for the reasons set forth above, neither is authorized to do. Moreover, outside the land use context, the

Municipal Code routinely has appeals directed to the City Manager. See, for example, Section 8.10.160, BMC (revocation of massage establishment registration); Section 12.12.060, BMC (denial of tree removal permit on private property). This is fundamentally no different.

Staff recognizes the valuable role that the Planning Commission plays for the community and the City in evaluating land use projects. Removing the Commission's review of grading permit applications does not diminish that role and indeed the Commission will continue to have purview concerning grading when it is context of an overall land use entitlement application. For the reasons expressed above, staff continues to recommend the revisions to the grading ordinance concerning the Commission's role in reviewing grading permit applications.

Fiscal Impact

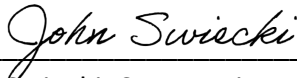
None

Measure of Success

Adoption of an updated grading ordinance

Attachments

1. Draft Ordinance 579
2. Infrastructure Subcommittee Report 7/29/20



John Swiecki, Community Development Director



Clay Holstine, City Manager

DRAFT ORDINANCE NO. 579

AN ORDINANCE OF THE CITY OF BRISBANE AMENDING CHAPTER 15.01 AND SECTION 17.32.220 OF THE MUNICIPAL CODE PERTAINING TO GRADING

The City Council of the City of Brisbane hereby ordains as follows:

SECTION 1: Chapter 15.01 of the Municipal Code, entitled "Grading," is amended in its entirety to read as follows:

Chapter 15.01 GRADING

Sections:

15.01.010	Title
15.01.020	Purpose and objectives
15.01.030	Scope
15.01.040	Definitions
15.01.050	Precautions imposed by City Engineer
15.01.060	Discovery of prehistoric, historic, or unique archaeological resources, or human remains
15.01.070	Other laws
15.01.080	Severability and validity
15.01.090	Permit required
15.01.100	HCP Permission required
15.01.110	Quarry operations
15.01.120	Application to annexed territory
15.01.130	Exemptions
15.01.140	Application for grading permit
15.01.150	Application form
15.01.160	Site map and grading plan
15.01.170	Interim erosion and sediment control plan (interim plan)
15.01.180	Final erosion and sediment control plan (final plan)
15.01.190	Soils engineering report (soils report)
15.01.200	Engineering geology report
15.01.210	Work schedule and transport routes
15.01.220	Security
15.01.230	Fees
15.01.240	Grading permit fee exemption
15.01.250	Action on application
15.01.260	Permit duration
15.01.270	Appeals

15.01.300	Revised plans
15.01.310	Cessation of operations
15.01.320	Assignment of permit
15.01.330	No improvements planned
15.01.340	Grading permit, paving
15.01.350	Grading permit, drainageway alteration
15.01.360	Excavation blasting permit
15.01.370	Truck haul permit
15.01.380	Issuance of grading permits
15.01.390	Time and noise limitations on grading operations
15.01.400	Implementation of permits - permittee's duties
15.01.410	Implementation of permits – requirements of City Engineer
15.01.420	Grading inspection
15.01.430	Completion of work
15.01.440	Removal of ground cover
15.01.450	Wet season grading
15.01.460	Cuts
15.01.470	Fills
15.01.480	Setbacks
15.01.490	Drainage and terracing
15.01.500	Import and export of earth material
15.01.510	Dust control
15.01.520	Protection of adjoining property
15.01.530	Removal of hazards
15.01.540	Post-grading procedures
15.01.550	Revocation or suspension of permits
15.01.560	Violation – penalties
15.01.570	Action against the security
15.01.580	Public nuisance abatement
15.01.590	Release of security
15.01.600	Cumulative enforcement procedures

§15.01.010 Title

This Chapter shall be known as the "City of Brisbane Grading Ordinance" and may be so cited.

§15.01.020 Purpose and objectives

A. The purpose of this Chapter is to provide for grading operations; to safeguard life, limb, health, property and public welfare; and to preserve and enhance the natural environment, including but not limited to water quality, by regulating and controlling clearing and grading of property within the City.

B. This Chapter is intended to achieve the following objectives:

- (1) Grading plans shall be designed so that grading operations do not create or contribute to landslides, accelerated soil creep, settlement, subsidence, or hazards associated with strong ground motion and soil liquefaction.
- (2) Grading plans shall contain reasonable provisions for the preservation of natural land and water features, vegetation, drainage, and other indigenous features of the site.
- (3) Grading plans shall be designed to preserve and enhance the city's aesthetic character.
- (4) Grading plans shall require compliance with all applicable laws, rules and regulations pertaining to air and water pollution, noise control, and preservation of archaeological remains.
- (5) Grading operations shall be conducted so as to expose the smallest practical area of soil to erosion for the least possible time, consistent with an anticipated build-out schedule.

§15.01.030 Scope.

A. This Chapter amends the regulations pertaining to grading as set forth in the California Building Standards Code, as adopted in Chapter 15.04 of this Code. In the event of any conflict or inconsistency between the provisions of this Chapter and the provisions of Chapter 15.04 or any of the codes adopted by reference therein, the provisions of this Chapter shall be controlling.

B. This Chapter sets forth rules and regulations to control excavation, land disturbances, land fill, soil storage, and erosion and sedimentation resulting from such activities. This Chapter provides that all excavation or landfilling activities or soil storage shall be undertaken in a manner designed to minimize surface runoff, erosion, and sedimentation and to avoid or mitigate damage caused by grading activities to areas having habitat value. This Chapter also establishes procedures for the issuance, administration and enforcement of grading permits.

§15.01.040 Definitions

When used in this Chapter, the following words shall have the meanings ascribed to them in this Section:

- (1) **Applicant** means any person, corporation, partnership, association of any type, public agency or any other legal entity that submits an application to the City Engineer for a permit pursuant to this chapter.
- (2) **As-graded** means the surface conditions extant on completion of grading.

- (3). **BAAQMD CEQA Guidelines** means the recommended measures detailed in Table 8-1 of the Bay Area Air Quality Management District's "California Environmental Quality Act-Air Quality Guidelines, Updated May 2011", or any amendment, revision ,or reissuance thereof and any additional measures, including those recommended in Table 8-2 of the reference, as determined necessary and appropriate by the City Engineer.
- (4) **Bedrock** means in-place solid rock.
- (5) **Bench** means a relatively level step excavated into earth material. Bench also includes terraces.
- (6) **Best management practices (BMPs)** means a technique or series of techniques which, when used in an erosion control plan, is proven to be effective in controlling construction-related runoff, erosion and sedimentation. Approved BMPs can be found in the California Stormwater Quality Association "Construction BMP Handbook/Portal", the State of California Department of Transportation March 2003 "Construction Site Best Management Practices (BMPs) Manual", the San Mateo Countywide Water Pollution Prevention Program Construction Best Management Practices" plan sheet, *Erosion & Sediment Control Handbook*, by Goldman, Jackson and Bursztynsky, and any amendment, revision or reissuance thereof.
- (7) **Borrow** means earth material acquired from an off-site location for use in grading on a site.
- (8) **City** means the City of Brisbane.
- (9) **City Engineer** means the Director of Public Works/City Engineer of the City of Brisbane and his/her duly authorized designees. The City Engineer may delegate any of his or her duties under this Chapter to his or her authorized agents or representatives.
- (10) **City street** means any public or private street in the city of Brisbane.
- (11) **Civil engineer** means a professional engineer registered in the state of California to practice in the field of civil engineering.
- (12) **Civil engineering** means the application of the knowledge of the forces of nature, principles of mechanics and the properties of materials to the evaluation, design and construction of civil works for the beneficial uses of humankind.
- (13) **Clearing and grubbing** means the removal of trees, shrubs, bushes, windfalls and all other materials from above and below the natural ground surface. This activity removes vegetative ground cover, removes top soil, and removes/disturbs root mat. Except in those cases where specifically approved

by a grading permit , “grubbing” for the removal of stumps and roots shall not exceed 18” below the original surface of the ground.

- (14) **Community Development Director** means the director of planning of the City of Brisbane.
- (15) **Compaction** means the densification of a fill by mechanical means.
- (16) **Contour rounding** means the rounding of cut and fill slopes in the horizontal and/or vertical planes to blend with existing contours or to provide horizontal variation to eliminate the artificial appearance of slopes. (See Figure 1)
- (17) **Drainageway** means natural or manmade channel that collects and intermittently or continuously conveys stormwater runoff.
- (18) **Dry season** means the period from April 15th to October 15th.
- (19) **Earth material** means any rock, natural soil, fill or combination thereof.
- (20) **Engineering geologist** means a geologist experienced and knowledgeable in engineering geology and qualified to practice engineering geology in the State of California.
- (21) **Engineering geology** means the application of geologic knowledge and principles in the investigation and evaluation of naturally occurring rock and soil for use in the design of civil works.
- (22) **Erosion** means the wearing away of the ground surface as a result of the movement of wind or water.
- (23) **Excavation** means any act by which earth, sand, gravel, rock or any other similar material is cut into, dug, quarried, uncovered, removed, displaced, relocated, or bulldozed, including the conditions resulting therefrom.
- (24) **Fill/land fill** means any act by which earth, sand, gravel, rock or any other similar material is deposited, placed, pushed, pulled or transported to a place other than the place from which it was excavated, including the conditions resulting therefrom.
- (25) **Final erosion and sediment control plan (final plan)** means a set of best management practices or equivalent measures designed to control surface runoff and erosion and to retain sediment on a particular site after all other planned final structures and permanent improvements have been erected or installed.
- (26) **General Plan** means the General Plan adopted by the City of Brisbane and all amendments thereto.

- (27) **Grade** means the vertical location of the ground surface.
- (a) **Existing grade** means the grade prior to grading.
 - (b) **Rough grade** means the stage at which the grade approximately conforms to the approved plan.
 - (c) **Finish grade** means the final grade of the site which conforms to the approved plan.
- (28) **Grading** means any land disturbance or excavation or fill or any combination thereof and shall include the conditions resulting from any land disturbance, excavation or fill. Grading shall include trenching on public or private property including within public streets.
- (29) **Grading permit** means the formal approval required by this Chapter for any grading, filling, excavating, storage or disposal of soil or earth materials or any other excavation or land filling activity. Application to the City Engineer and the City Engineer's approval is required under the process of this Chapter.
- (30) **HCP** means the San Bruno Mountain Area Habitat Conservation Plan, as approved and adopted by the U.S. Fish and Wildlife Service in 1983, including subsequent amendments and updates.
- (31). **Interim erosion and sediment control plan (interim plan)** means a set of best management practices or equivalent measures designed to control surface runoff and erosion and to retain sediment on a particular site during the period in which construction-related excavations, fills and soil storage occur, and before the final plan is completed.
- (32) **Key** means a designed compacted fill placed in a trench excavated in earth material beneath the toe of a proposed fill slope.
- (33) **Permittee** means the applicant in whose name a valid permit is duly issued pursuant to this Chapter and his/her agents, employees and others acting under his/her direction.
- (34) **Plan Operator** is the Habitat Conservation Plan Manager, presently the San Mateo County Department of Parks, and also means any successor agency.
- (35) **Revegetation** means the replanting of disturbed natural ground surfaces.
- (36) **Sediment** means earth material deposited by water or wind.

- (37) **Site** means a parcel or parcels of real property owned by one or more than one person that is being or is capable of being developed as a single project, including phased construction. Site also includes any public or private property or rights-of-way on which excavation, fill or land disturbance occurs.
- (38) **Slope** means an inclined ground surface the inclination of which is expressed as a ratio of horizontal distance to vertical distance.
- (39) **Soil** means naturally occurring superficial deposits overlying bedrock.
- (40) **Soils engineer** means a civil engineer experienced and knowledgeable in the practice of soils engineering. Soils engineer and geotechnical engineer are synonymous.
- (41) **Soils engineering** means the application of the principles of soil mechanics in the investigation, evaluation and design of improvements involving the use of earth materials and the inspection and testing of the construction thereof. Soils engineering and geotechnical engineering are synonymous.
- (42) **Structure** means anything built or constructed including pavement and pipelines.
- (43) **Temporary erosion control** consists of, but is not limited to, constructing such facilities and taking such measures as are necessary to prevent, control, and abate water, mud and wind erosion damage to public and private property during grading operations.
- (44) **Terrace** means a relatively level step constructed in the face of a graded slope surface for drainage and maintenance purposes. Terrace also includes benches.
- (45) **Truck haul** means the movement over public streets of any excavated material.
- (45) **Vertical slope rounding** means the rounding of the top and toes of cut and fill slopes.
- (47) **Weeding** means the removal of noxious, dangerous, or invasive plants. This activity also includes the removal of vegetation which attains such a large growth as to become a fire menace when dry, and further includes the removal of dry grass, grass cuttings, tree trimmings, vines, stubble or other growth material which endangers the public by creating a fire hazard, including any such hazard determination made by the fire department pursuant to the City's weed abatement ordinance. Any activity that disturbs more than 15% of the natural ground surface shall be classified as "clearing and grubbing."
- (48) **Wet season** means the period from October 15th to April 15th.

§15.01.050 Precautions imposed by City Engineer

A. If, at any stage of grading, the City Engineer determines by inspection that conditions are such that further work as authorized by an existing grading permit is likely to endanger any property or public way, the City Engineer may require, as a condition to allowing the work to be continued, that reasonable safety precautions be formulated by the permittee and submitted to the City Engineer for his/her consideration and the grading permit be amended to avoid such danger. "Safety precautions" may include but shall not be limited to specifying a flatter exposed slope, construction of additional drainage facilities, berms, terracing, compaction, cribbing, or retaining walls, or planting of slopes.

B. The sole and primary responsibility for meeting the requirements of this Section and of this Chapter for any civil or criminal liability as a result of the performance of grading work pursuant to a grading permit shall be upon the permittee. Neither the City, the City Engineer, or any employees or agents of the City shall be responsible for any liability for issuance of a grading permit or the conduct of any inspections thereunder.

§15.01.060 Discovery of prehistoric, historic, or unique archaeological resources, or human remains.

A. In the event of the accidental discovery of prehistoric, historic, or unique archaeological resources, the permittee shall immediately cease work and follow the protocol established in the Guidelines for Implementation of the California Environmental Quality Act, as contained in California Code of Regulations, Title 14, Division 6, Chapter 3 ("CEQA Guidelines"), specifically, Section 15064.5(f) and any amendments thereto. This includes obtaining an evaluation from a qualified archaeologist to be forwarded to the Community Development Director for review/approval, and will include a finding as to the categorization of the discovery, any recommended avoidance measures or appropriate mitigation, and a statement as to what portions of the site, if any, are cleared for resumption of work while the recommended mitigation is being performed. If the find is determined to be significant, contingency funding and a time allotment sufficient to allow for implementation of appropriate mitigation or avoidance measures shall be provided.

B. In the event of the accidental discovery or recognition of any human remains, the permittee shall immediately cease work and implement the protocol established in the CEQA Guidelines, specifically, Section 15064.5(e)(1) et. seq. and any amendment thereto.

§15.01.070 Other laws

Neither this Chapter nor any administrative decision made under it:

A. Exempts the permittee from complying with other applicable laws or from procuring other required permits or complying with the requirements and conditions of such a permit; or

B. Limits the right of any person to maintain, at any time, any appropriate action, at law or in equity, for relief or damages against the permittee arising from the permitted activity; or

C. Exempts any person from complying with any applicable laws or allows any person to perform any grading without complying with such other applicable laws.

§15.01.080 Severability and validity

If any part of this Chapter is found not valid, the remainder shall remain in effect.

§15.01.090 Permit required

Except as exempted under Section 15.01.140, it shall be unlawful for any person to clear and grub, grade, fill, excavate, store or dispose of soil and earth materials or perform any other excavation or land-filling activity without first obtaining a grading permit as set forth in this Chapter. A separate grading permit shall be required for each site. With respect to subdivisions, a separate permit will be required for each phase of development. The grading permit issued for each site may also cover the utility construction associated with the site provided the required information for the utilities is included with the application. A building permit shall not be issued prior to the issuance of a grading permit, when required.

§15.01.100 HCP Permission required

No owner of property within the boundaries of the HCP shall weed, clear and grub, grade, fill, excavate, store, or dispose of soil and earth materials or perform any other excavation or land filling activity and no grading permit shall be issued by the City, without first complying with the requirements of the Plan Operator.

§15.01.110 Quarry operations

No grading permit for an excavation shall be issued if the excavation for which a grading permit is required shall ~~involve~~ allow for the operation of a quarry, where quarrying is otherwise prohibited by the provisions of the Zoning Ordinance of the City.

§15.01.120 Application to annexed territory

Activities regulated by this Chapter, whether operative or nonoperative, which are located in territory hereafter annexed to the City shall not operate from and after thirty (30) days following annexation to the City, unless, in the case of operative activities, or

before recommencement of operations in the case of inoperative activities, a grading permit shall have been granted as provided herein.

§15.01.130 Exemptions

A grading permit shall not be required in the following instances:

A. Exploratory excavations and trenches under the direction of a soils engineer or engineering geologist, provided that these excavations and trenches comply with all of the following:

- (1) All earth material removed from the trenches or excavations that is not completely removed from the project site must be stored in a manner that prevents erosion, sedimentation, off-site migration, and smothering of natural vegetative ground cover;
- (2) All trenches and excavations are properly backfilled;
- (3) All excavations and trenches are subject to the applicable sections of Title 8 of the State Safety Order, Division of Industrial Safety.

B. An excavation which does not exceed five (5) cubic yards on any one site and is less than two (2) feet in vertical depth and which does not create a cut slope steeper than two feet horizontal to one vertical (2:1). Such excavation, however, is not exempt from the requirements of Sections 15.01.340 and 15.01.350.

C. A fill less than one foot in depth placed on natural grade with a slope flatter than five horizontal to one vertical (5:1), which does not exceed five (5) cubic yards on any one site and does not obstruct a drainageway. Such fill, however, is not exempt from the requirements of Section 15.01.340.

D. Grading in connection with dredging operations in San Francisco Bay for which approval for such grading has been granted by the City under other permits or agreements.

E. Grading in connection with the operation of salvage, garbage and disposal dumps for which approval for such grading has been granted by the City under other permits or agreements.

F. Emergencies posing an immediate danger to life or property, or substantial flood or fire hazards, or interruption of utility services to the public, in which case a permit shall be obtained as soon as possible.

G. Excavation by public utilities in connection with the placement of facilities, including repair and maintenance of local utility distribution and service utilities, if such excavation is authorized by a valid street encroachment permit.

§15.01.140 Application for grading permit

The application for a grading permit shall be in writing and filed with the City Engineer in duplicate and must include all of the following items, unless otherwise waived by the City Engineer:

- A. Application form;
- B. Site map and grading plan;
- C. Interim erosion and sediment control plan;
- D. Final erosion and sediment control plan;
- E. Soils engineering report;
- F. Engineering geology report;
- G. Work schedule and transportation routes;
- H. Security;
- I. Fees;
- J. Confirmation of compliance with Chapter 15.75 (Recycling and Diversion of Debris) of this Code.
- K. Any other material required by the City Engineer.

§15.01.150 Application form

The following information is required on the application form unless waived or modified by the City Engineer:

- A. Name, address and telephone number of the applicant;
- B. Names, addresses and telephone numbers of any and all contractors, subcontractors or persons actually doing the excavating and land-filling activities and their respective tasks;
- C. Name(s), address(es) and telephone number(s) of the person(s) responsible for the preparation of the site map and grading plan;
- D. Names(s), address(es) and telephone number(s) of the person(s) responsible for the preparation of the interim and/or final erosion and sediment control plan, and the revegetation plan;

E. Name, address and telephone number of the soils engineer and/or the engineering geologist responsible for the preparation of the soils and engineering geology reports;

F. A vicinity map showing the location of the site in relationship to the surrounding area's watercourses, water bodies and other significant geographic features, and roads and other significant structures;

G. Date of the application;

H. Title report confirming ownership;

I. Signature(s) of the owner(s) of the site or of an authorized representative.

§15.01.160 Site map and grading plan

The site map and grading plan shall contain all the following information unless waived or modified by the City Engineer:

A. Plan views and cross sections showing the existing and proposed topography of the site. The plan view shall show contours at an interval sufficiently detailed to define the topography over the entire site. The minimum contour interval shall be two feet where ground slope is less than fifteen (15) percent and five (5) feet where ground slope exceeds fifteen (15) percent;

B. Two contour intervals off-site and extension of the on-site contours a minimum of one hundred (100) feet off-site, and sufficient to show on and off-site drainage;

C. An accurate plat plan drawn by a registered civil engineer or licensed land surveyor showing the site's exterior boundaries in true location with respect to the plan's topographic information, all easements, boundaries of the "Habitat Conservation Plan" area, special districts, and any other pertinent information;

D. Location and graphic representation of all existing and proposed natural and manmade drainage facilities;

E. Detailed plans of all surface and subsurface drainage devices, walls, cribbing, dams and other protective devices to be constructed with, or as a part of the proposed work, together with a map showing the drainage area and the estimated runoff of the area served by any drain;

F. Location and graphic representation of proposed excavation and fills, of on-site storage of soil and other earthen material, and of on-site disposal of soil and other earthen material;

G. Location of existing vegetation types and the location and type of vegetation to be left undisturbed;

H. Location of proposed final surface runoff, and of erosion and sediment control measures;

I. Quantity of soil or earthen materials in cubic yards to be excavated, filled, stored or otherwise removed from or utilized on-site;

J. Location of any buildings or structures on the property where the work is to be performed and the location of any buildings or structures on land of adjacent owners which are within fifteen (15) feet of the property or which may be affected by the proposed grading operations;

K. Location and slope of proposed streets and driveways. Driveways shall not exceed a centerline slope of twenty (20) percent and, unless specifically approved by the City Engineer, streets shall not exceed a centerline slope of fifteen (15) percent.

§15.01.170 Interim erosion and sediment control plan (interim plan)

A. An interim plan containing all of the following information shall be provided with respect to conditions existing on the site during excavation or filling activities or soil storage and before the final plan is completed; furthermore, the plan submitted shall demonstrate compliance with the requirements of the Municipal Regional Permit, as defined in Section 13.06.040:

- (1) The location and amount of runoff discharging from the site, calculated using a method approved by the City Engineer;
- (2) A delineation and brief description of the measures to be undertaken to control erosion caused by surface runoff and by wind and to retain sediment on the site including, but not limited to, the design and specifications for berms and sediment detention basins, types and method of applying mulches, the design and specifications for diverters, dikes and drains, seeding methods, the type, location and extent of pre-existing and undisturbed vegetation types, and a schedule for maintenance and upkeep.

B. The location of all the measures listed by the applicant under subsection A(2) above shall be depicted on the site map and grading plan, or on a separate plan, at the discretion of the City Engineer.

C. An estimate of the cost of implementing and maintaining all interim erosion and sediment control measures shall be submitted in a form acceptable to the City Engineer.

D. The applicant may propose the use of any erosion and sediment control techniques in the interim plan provided such techniques are proven to be as or more effective than the equivalent best management practices contained in the manual of standards.

§15.01.180 Final erosion and sediment control plan (final plan)

A. A final plan containing all of the following information shall be provided with respect to conditions existing on the site after final structures and improvements (except those required under this section) have been completed; furthermore, the plan submitted shall demonstrate compliance with the requirements of the Municipal Regional Permit, as defined in Section 13.06.040:

- (1) The location and amount of runoff discharging from the site, calculated using a method approved by the City Engineer;
- (2) A description of and specifications for sediment retention devices;
- (3) A description of and specifications for surface runoff and wind erosion control devices;
- (4) A revegetation plan;
- (5) A graphic representation of the location of all items in subsections B through D above, and items A through K in 15.01.170 above.

B. An estimate of the costs of implementing all final erosion and sediment control measures must be submitted in a form acceptable to the City Engineer.

C. The applicant may propose the use of any erosion and sediment control techniques in the final plan provided such techniques are proven to be as or more effective than the equivalent best management practices contained in the manual of standards.

§15.01.190 Soils engineering report (soils report)

A. A soils report, when required by the City Engineer, is to be prepared by an approved soils engineer and shall be based on adequate and necessary test borings, and shall contain all the following information, in addition to the minimum applicable requirements of the latest edition of the California Building Code adopted by the City:

- (1) Data regarding the nature, distribution, strength, and erodibility of existing soils;
- (2) Data regarding the nature, distribution, strength and erodibility of soil to be placed on the site, if any;
- (3) Conclusions and recommendations for grading procedures;
- (4) Conclusions and recommended designs for soil stabilization for interim conditions and after construction is completed;
- (5) Design criteria for corrective measures when necessary;

- (6) Foundation and pavement design criteria when necessary;
- (7) Opinions and recommendations covering suitability of the site for the proposed uses;
- (8) Other recommendations, as necessary, commensurate with the project grading and development.

B. Recommendations included in the report and approved by the City Engineer shall be incorporated in the grading plan.

C. Whenever a soils engineering report is required, the final submitted grading plans shall include a review letter from the soils engineer confirming that his/her recommendations have been incorporated into the plans.

§15.01.200 Engineering geology report

A. An engineering geology report, when required by the City Engineer, is to be prepared by a qualified engineering geologist and shall be based on adequate and necessary test borings and shall contain the following information, in addition to the minimum applicable requirements of the latest edition of the California Building Code adopted by the City:

- (1) An adequate description of the geology of the site, including identification of actual and potential geologic hazards;
- (2) Conclusions and recommendations regarding the effect of geologic conditions on the proposed development;
- (3) Recommendations for mitigation of identified hazards wherever appropriate;
- (4) An opinion as to the extent that instability on adjacent properties may adversely affect the project;
- (5) Opinions and recommendations covering suitability of the site for the proposed uses;
- (6) Other recommendations, as necessary, commensurate with the project grading and development.

B. Recommendations included in the report and approved by the City Engineer shall be incorporated in the grading plan.

C. Whenever an engineering geology report is required, the final submitted grading plans shall include a review letter from the engineering geologist confirming that his/her recommendations have been incorporated into the plans.

§15.01.210 Work schedule and transport routes

A. The applicant shall submit a master work schedule showing the following information:

- (1) Proposed grading schedule;
- (2) Proposed conditions of the site on each July 15th, August 15th, September 15th, October 1st, and October 15th during which the permit is in effect;
- (3) Proposed schedule for installation of all interim erosion and sediment control measures including, but not limited to, the stage of completion of erosion and sediment control devices and vegetative measures on each of the dates set forth in subsection A(2);
- (4) Schedule for construction of the proposed improvements on the site;
- (5) Schedule for installation of permanent erosion and sediment control devices where required.

B. The applicant shall also submit a description of the routes of travel to be used for access to and from the site for removing excavated material and bringing in fill or other materials.

§15.01.220 Security

A. The applicant shall provide a performance bond or other acceptable security for the performance of the work described and delineated on the approved grading plan and the approved revegetation plan prior to the issuance of the grading permit, in an amount to be set by the City Engineer but not less than one hundred ~~(100)~~ percent **(100%)** of the approved estimated cost of performing said work. The form of security shall be one or a combination of the following to be determined and approved by the City Engineer:

- (1) Bond or bonds issued by one or more duly authorized corporate sureties. The form of the bond or bonds shall be subject to the approval of the City Attorney;
- (2) Deposit, either with the City or a responsible escrow agent or trust company at the option of the City, of money, negotiable bonds of the kind approved for securing deposits of public moneys, or an unconditional irrevocable letter of credit other instrument of credit from one or more financial institutions subject to regulation by the state or federal government wherein said financial institution pledges funds are on deposit and guaranteed for payment;
- (3) Cash in U.S. currency.

B. The applicant shall provide security for the performance of the work described and delineated in the interim plan in an amount to be determined by the City Engineer, but not less than one hundred ~~(100)~~ percent (100%) of the approved estimated cost of performing said work. The form of the security shall be as set forth in subsection A of this section.

C. The applicant shall provide security for the performance of the work described and delineated in the final plan in an amount to be determined by the City Engineer but not less than one hundred percent (100%) of the approved estimated cost of performing said work. The form of the security shall be as set forth in subsection A of this section.

D. The applicant shall provide a cash deposit in an amount established by resolution of the City Council to insure the repair of damage to public property or cleaning of public streets. In the event of failure by the applicant, after written notification if time permits, to maintain public property or right-of-way in a manner satisfactory to the City Engineer, the City Engineer may order repairs made or cleaning performed and deduct the cost from the deposit. Any unused balance shall be returned to the applicant upon completion of the grading.

§15.01.230 Fees

A. Before accepting a grading permit application and plans for checking, the City Engineer shall collect all applicable plan checking fees as established by resolution of the City Council and as provided in this Chapter.

B. Unless exempted under Section 15.01.260 of this Chapter, a fee for each grading permit shall be paid to the City prior to issuance of a grading permit, in such amount as established from time to time by resolution of the City Council.

C. Failure to pay fees and obtain a permit before commencing work shall be deemed a violation of this Chapter, except when it can be proven to the City Engineer's satisfaction that an emergency existed that made it impractical to first obtain the permit. A violation shall result in an assessment of double permit fees for work done prior to permit issuance. Payment of a double fee shall not relieve any person from complying with the requirements of this Chapter nor from any other penalties prescribed herein.

D. Additional fees approved by resolution of the City Council and contained in this Chapter shall be paid as required.

E.. If after written notification (if time allows) the City Engineer performs emergency work on private property, he shall charge the property owner all direct and indirect costs which are necessary to complete the work to his satisfaction. In addition, the City Engineer may charge a mobilization cost equal to ten percent (10%) of the cost for performing the work. Fees or deposits required for special purposes, e.g., cleanup, dust control, etc., collected but not expended for the purpose for which they are collected, will be refunded.

§15.01.240 Grading permit fee exemption

A. A fee for a grading permit shall not be required in the following instances: grading for the foundation, basement, and other features (e.g., walkways, patios, terracing) of a building or structure for which a building permit has been issued, provided that all grading, drainage, retaining wall, and ground cover work will be started and completed within a single dry season. A soils report and other information relating to such grading, and a performance bond or other acceptable security for the performance of the work, and a cash deposit to insure the repair of damage to public property or cleaning of public streets, may be required in connection with the issuance of the grading permit. The amount and form of such security and cash deposit shall be as set forth in Section 15.01.240.

B. Notwithstanding the provisions of paragraph A above, a grading permit fee will be required where the grading to be performed, other than that solely for the building and its foundation and driveway.

§15.01.250 Action on application

A. No grading permit shall be issued by the City Engineer unless the applicant provides sufficient information for the City Engineer to find that the work, as proposed by the applicant, is likely not to endanger any person, property, public resource, or public way or detrimentally affect water quality. Factors to be considered by the City Engineer in making his finding shall include, but shall not be limited to, the soils engineering report, the engineering geology report, possible saturation by rains, earth movements, run-off of surface waters, and subsurface conditions such as the stratification and faulting of rock, and the nature and type of soil or rock.

B. Applications shall be reviewed by the City Engineer in the order that they are received.

§15.01.260 Permit duration

Permits issued under this Chapter shall be valid for the period during which the proposed excavation or filling activities and soil storage take place or are scheduled to take place per Section 15.01.230. Permittee shall commence permitted activities within sixty (60) days of the scheduled commencement date for grading or the permittee shall resubmit all required application forms, fees, maps, plans, schedules and security to the City Engineer, except where an item to be resubmitted is waived by the City Engineer.

§15.01.270 Appeals

A. The applicant for a grading permit may appeal to the City Manager (1) the denial of the application or the conditions of a grading permit, (2) the suspension of a grading permit after a hearing by the City Engineer, or (3) the revocation of a grading

permit after a hearing by the City Engineer. The applicant must file the appeal in writing with the City Clerk within 15 calendar days of the written notice to the applicant of items (1), (2), or (3) in the prior sentence.

B. The City Manager shall consider the appeal and may conduct an informal hearing to receive documentary or oral evidence from the applicant/appellant and the City Engineer. The City Manager may affirm, reverse, or modify the action of the City Engineer and shall provide a written decision on the appeal to the applicant/appellant and the City Engineer. The decision of the City Manager shall be final.

§15.01.300 Revised plans

If the City Engineer finds the soil or other conditions to be different from those stated in the application for a grading permit, he or she may immediately suspend the grading permit, and permittee shall cease all work on the work site, excepting work to make the site safe, until approval is obtained from the City Engineer for revised plans which conform to the existing conditions.

§15.01.310 Cessation of operations

If the operation of any activity regulated by this Chapter is voluntarily ceased for a continuous period of more than ninety (90) days (which period is not stated in the approved work schedule per Section 15.01.230) then the grading permit shall be null and void and the operation of said activity shall not be recommenced until a new grading permit is obtained as provided herein.

§15.01.320 Assignment of permit

A permit issued pursuant to this Chapter may be assigned, provided all of the following conditions are satisfied:

- A. The permittee notifies the City Engineer of the proposed assignment;
- B. The proposed assignee:
 - (1) Submits an application form pursuant to Section 15.01.160; and
 - (2) Agrees in writing to all the conditions and duties imposed by the permit; and
 - (3) Agrees in writing to assume responsibility for all work performed prior to the assignment; and
 - (4) Provides security pursuant to Section 15.01.240; and
 - (5) Agrees to pay all applicable fees.

C. The City Engineer approves the assignment. The City Engineer may disapprove an assignment for cause and shall not unreasonably withhold approval.

§15.01.330 No improvements planned

Where an applicant does not plan to construct permanent improvements on the site, or plans to leave portions of the site graded but unimproved, applicant must meet all the requirements of this Chapter.

15.01.340 Grading permit, paving

No person shall construct pavement surfacing on natural or existing grade for the purpose of a private road, parking lot or travelway without a valid grading permit, unless waived by the City Engineer. Resurfacing or maintenance of existing paved surfaces shall be exempt from this requirement.

§15.01.350 Grading permit, drainageway alteration

No person shall alter an existing watercourse, channel, or revetment by excavating, or placing fill, rock protection or structural improvements without a valid grading permit, unless waived by the City Engineer, or unless the work is performed as interim protection under an emergency situation (Section 15.01.140.F).

§15.01.360 Excavation blasting permit

No person shall possess, store, sell, transport or use explosives and/or blasting agents in violation of any existing laws or ordinances or do any excavation by explosives or blasting without a grading permit and without a separate blasting permit issued by the City Fire Department.

§15.01.370 Truck haul permit

A truck haul permit shall be obtained from the City Engineer for the movement over a City street of any excavated or fill material to or from any property in the City or to or from any property outside the City which has direct access to a City street. This requirement shall not be applicable, however, to any quarrying operations nor to any transportation of materials not exceeding fifty (50) cubic yards from any one site. Before issuing a truck haul permit for moving excavated material over a City street, the City Engineer shall collect a fee as approved by resolution of the City Council.

§15.01.380 Issuance of grading permits

The City Engineer may issue a grading permit upon receipt and approval of the items listed in Section 15.01.150. Permits shall be issued subject to the following conditions:

A. The permittee shall maintain a copy of the permit and all approved plans and reports required under Sections 15.01.150 and 15.01.400.B, on the work site, and the permit, plans and reports shall be available for public inspection during all working hours;

B. The permittee shall, at all times, conduct operations in conformity with approved site map, grading plan, and other required plans and reports.

C. The permittee shall comply with other conditions imposed by the City Engineer as are reasonably necessary to prevent the proposed operations from being conducted in such a manner as to constitute or create a nuisance or a hazard to life, property, or the environment. Such conditions may include but are not limited to:

- (1) The route and time of travel over public streets so as to cause the least interference with general traffic and to cause the least damage to public streets;
- (2) The removal of rock, earth or other material that may be deposited on public streets by reason of said grading operations;
- (3) The payment to City of the cost of repairing damage to public streets caused by trucking operations in connection with said grading operations;
- (4) The installation of suitable fencing, barricades, signage, and lighting surrounding the grading operations.

D. The permittee shall implement temporary erosion control as necessary to protect public and private property, and as required in Section 15.01.180. Temporary erosion control shall be continuous throughout the work.

E. Permittee shall be knowledgeable of the conditions and/ or restrictions of the grading permit as outlined in applicable sections of this Chapter, and as contained on the approved site map, grading plan, and other required plans and reports.

§15.01.390 Time and noise limitations on grading operations

A. The time and noise limitations on all grading operations shall be those set forth for construction activities in Chapter 8.28, Noise Control, of this Code.

B. No grading work shall be performed during hours other than the normal working hours of the City Public Works Department's inspection and maintenance personnel without approval of the City Engineer and without first obtaining a special permit for such work from the City Engineer. Before issuing a special permit for such work, the City Engineer shall collect a fee as approved by resolution of the City Council.

Permitted hours of operation may be shortened by the City Engineer's finding of a previously unforeseen effect on the health, safety or welfare of the surrounding community.

§15.01.400 Implementation of permits; permittee's duties

In addition to performing as required under Section 15.01.380:

A. The permittee shall request an inspection of the site by the City Engineer at each of the stages of the grading operation listed below. The City Engineer shall approve the work inspected or notify, in writing, the permittee or owner wherein it fails to comply with the approved grading plans or any other applicable requirement. Any portion of the work that does not comply with the grading plans or other applicable requirement shall be corrected. The stages of work at which inspections shall be requested are:

- (1) Initial: when the permittee is ready to begin grading work;
- (2) Rough grading: when all rough grading has been completed;
- (3) Interim erosion control: the installation of all interim erosion control devices and the completion of planting revegetation requirements;
- (4) Final: readiness of the site for final inspection, including, but not limited to, finished grading, installation of drainage devices and final erosion control measures.

B. Permittee shall submit status reports to the City Engineer with revised work schedules required by Section 15.01.230, or other reports as required by City Engineer, for the City Engineer's approval if:

- (1) There are delays in obtaining materials, machinery, services, or manpower necessary to the implementation of the grading, interim, or final plans as scheduled;
- (2) There are any delays in excavation, land-disturbing, filling activities, or soil storage;
- (3) The work is not being done in conformance with any approved grading plans;
- (4) There are any delays in the implementation of the interim or final plans.

C. Permittee shall submit recommendations for corrective measures, if necessary and appropriate, with the reports made under Subsection B of this Section, unless the City Engineer waives the requirement.

§15.01.410 Implementation of permits – requirements of City Engineer

A. The permittee shall submit all reports as may be required in this Section and in Sections 15.01.380 and 15.01.400 to the City Engineer for review. The City Engineer may require permittee to modify the site map and grading plan, interim or final plans, and maintenance methods and schedules. The City Engineer shall notify the permittee in writing of the requirement to modify and may specify a specific period of time within which permittee must comply. All modifications are subject to the City Engineer's approval.

B. The City Engineer may inspect the site:

- (1) Upon receipt of any report by permittee under provisions of Section 15.01.400.B;
- (2) To verify completion of modifications required under Subsection A of this Section;
- (3) During and following any rainfall;
- (4) At any other time, at the City Engineer's discretion.

C. Upon completion of the rough grading work and at the final completion of the work, the City Engineer may require the following reports and drawings and supplements thereto:

- (1) An as-graded grading plan prepared by the civil engineer who prepared the approved grading plan, including original ground surface elevations, as-graded ground surface elevations, lot drainage patterns and locations and elevations of all surface and subsurface drainage facilities. The civil engineer shall provide a statement that the work was done in general conformance with the final approved grading plan;
- (2) A soil grading report prepared by the soils engineer including locations and elevations of field density tests, summaries of field and laboratory tests, and other substantiating data and comments on any changes made during grading and their effect on the recommendations made in the soil engineering investigation report. The soils engineer shall provide a statement as to compliance of the work with his/her recommendations and as to the adequacy of the site for the intended use;
- (3) An engineering geology report prepared by the geologist containing a final description of the geology of the site including any new information disclosed during the grading and the effect of same on recommendations incorporated in the approved grading plan. The geologist shall provide a statement as to compliance of the work with his/her recommendations and as to the adequacy of the site for the intended use as affected by geologic factors.

D. No person shall in any way hinder or prevent the City Engineer or any of his/her authorized representatives from entering and inspecting any property on which grading has been or is being done.

§15.01.420 Grading inspection

A. All grading operations for which a permit is required shall be subject to inspection by the City Engineer. When required by the City Engineer, special inspection of grading operations and special testing shall be performed according to the provisions of Subsection B of this Section.

B. In addition to complying with all requirements of the California Building Code, as amended by this Chapter, "regular grading" and "engineered grading" applicants/permittees shall be subject to and comply with the following:

- (1) Engineered and Regular Grading Designation. Grading in excess of one thousand (1000) cubic yards and/or ten (10) feet vertical depth of cut and/or fill shall be performed according to approved grading plan prepared by a civil engineer, and shall be designated as "engineered grading." Grading involving less than one thousand (1000) cubic yards and/or less than ten (10) feet vertical depth of cut and/or fill shall be designated "regular grading" unless the applicant/permittee, with the City Engineer's approval, or the City Engineer, independently, chooses to have the grading performed as "engineered grading."
- (2) Engineered Grading Requirements. For engineered grading, it shall be the responsibility of the civil engineer who prepares the approved grading plan to incorporate all recommendations from the soil engineering and engineering geology reports into the grading plan. He/she shall also be responsible for the professional inspection and approval of the grading within his area of technical specialty. This responsibility shall include, but need not be limited to, inspection and approval as to the establishment of line, grade, and drainage of the development area. The civil engineer shall act as the coordinating agent if the need arises for liaison between the other professionals, the contractor and the City Engineer. The civil engineer shall also be responsible for the preparation of revised plans and the submission of as-graded grading plans and compliance statements upon completion of the work.
- (3) Soils Engineering and Engineering Geology Requirements. Soils engineering and engineering geology reports shall be required at the discretion of the City Engineer. During grading, all necessary reports, compaction data, soils engineering and engineering geology recommendations shall be submitted to the owner, the geologist, the civil engineer, and the City Engineer by the soils engineer and the engineering geologist. Areas of responsibility shall be as follows:
 - (a) The soils engineer's area of responsibility shall include, but need not be limited to, the professional inspection and approval concerning the preparation of ground to receive fills, testing for required compaction, stability of all finish slopes, and the design of buttress fills, where required, incorporating data supplied by the engineering geologist.

- (b) The engineering geologist's area of responsibility shall include, but need not be limited to, professional inspection and approval of the adequacy of natural ground for receiving fills and the stability of cut slopes with respect to geological matters and the need for subdrains or other groundwater drainage devices. He/she shall report the findings to the owner, the soils engineer, the City Engineer and the civil engineer.
- (c) The City Engineer shall inspect the project as required under Section 15.01.410 and at any more frequent interval necessary to determine that the professional consultants are exercising adequate control.
- (4) Regular Grading Requirements. The City Engineer may require the permittee to provide inspection and testing by a professional testing company acceptable to the City Engineer. The testing agency's responsibility shall include, but need not be limited to, approval concerning the inspection of cleared areas and benches to receive fill, and the compaction of fills. When the City Engineer has reasonable cause to believe that geologic factors may be involved, the grading operation will be required to conform to "engineered grading" requirements.
- (5) Notification of Noncompliance. If, in the course of fulfilling their responsibility under this Section, the civil engineer, the soils engineer, the engineering geologist, or the testing agency finds that the work is not being done in conformance with this Section or the approved grading plans, the discrepancies shall be reported immediately in writing to the person in charge of the grading work and to the City Engineer (see Section 15.01.400). Recommendations for corrective action measures, if necessary, shall be submitted.
- (6) Transfer of Responsibility for Approval. If the civil engineer, the soils engineer, the engineering geologist, or the testing agency of record is changed during the course of the work, the work shall be stopped until the replacement has agreed to accept the responsibility within the area of their technical competence for approval upon completion of the work.

§15.01.430 Completion of work

A. Final Reports. Upon the completion of the rough grading work and at the final completion of the work, the City Engineer may require the following reports and drawings and supplements thereto:

- (1) An as-graded grading plan prepared by the civil engineer who prepared the approved grading plan, including original ground surface elevations, as-graded ground surface elevations, lot drainage patterns and locations and elevations of all surface drainage facilities. The civil engineer shall state that

to the best of his/her knowledge the work was done according to the final approved grading plan;

- (2) A soil grading report prepared by the soils engineer, including locations and elevations of field density tests, summaries of field and laboratory tests, and other substantiating data and comments on any changes made during grading and their effect on the recommendations made in the soils engineering investigation report. The civil engineer shall render a finding as to the adequacy of the site for the intended use as affected by geologic factors;
- (3) A geologic grading report prepared by the engineering geologist, including a final description of the geology of the site and any new information disclosed during the grading and the effect of same on recommendations incorporated in the approved grading plan. The engineering geologist shall render a finding as to the adequacy of the site for the intended use as affected by geologic factors.

B. Notification of Completion. The permittee or his/her agent shall notify the City Engineer when the grading operation is ready for final inspection. Final approval shall not be given until all work, including installation of drainage facilities and their protective devices and all erosion control measures have been completed according to the final approved grading plan and the required reports have been submitted.

§15.01.440 Removal of ground cover

A. All debris from clearing and grubbing shall be removed from the site within three (3) months from the completion of that activity.

B. During the dry season, the natural vegetative ground cover of any watershed shall not be destroyed or removed more than thirty (30) days prior to grading. During the wet season, such ground cover shall not be destroyed or removed more than five (5) days prior to such grading. The City Engineer may grant an extension of time when justified by the circumstances.

§15.01.450 Wet season grading

A. Commencement or continuation of any grading during the wet season is prohibited unless the City Engineer grants permission as provided in this Section.

B. The City Engineer may, at his or her discretion, grant permission to commence or continue grading during the wet season, on the basis of the information submitted by the applicant or permittee, weather forecasts, experience or any other factors which he or she may consider pertinent, so long as such grading will not cause a hazardous condition, erosion, or sedimentation to occur or continue.

C. For continuance of wet season grading activities other than installation, maintenance or repair of measures in the interim or final erosion control plan,

applicant/permittee shall submit evidence to the City Engineer, as often as the City Engineer requires, demonstrating that erosion and sedimentation are being effectively controlled.

D. Applicant/permittee's failure to submit the required information to obtain permission for wet season grading activity shall result in suspension or revocation of the grading permit, action against the security, filing a lien on the property to recover City's costs, and/or prosecution as provided in Sections 15.01.550 through 15.01.580 of this Chapter.

§15.01.460 Cuts

A. General. Unless otherwise recommended in the approved soil engineering and/or engineering geology report, and specifically waived by the City Engineer, cuts shall conform to the provisions of this Section and in accordance with Figures 1 and Figure 2 of this Chapter.

B. Cut slopes. Cut slopes shall be no steeper than two to one (2:1 - two horizontal to one vertical) unless otherwise justified in the soil engineering or engineering geology report. Justification shall consist of a geotechnical slope stability analysis acceptable to the City Engineer, with factors of safety in proportion to the affected structures and type of loading (e.g. earthquake). The factors of safety to be analyzed shall be those determined at the discretion of the City Engineer.

C. Slope adjustments. The City Engineer may require that the excavation be made with cut face flatter in slope than two (2) horizontal and one (1) vertical if he/she finds the material in which the excavation is to be made is unusually subject to erosion, or if other conditions make such flatter slope necessary for stability and safety.

D. Drainage and Terracing. Drainage and terracing shall be provided as required by Section 15.01.490.

§15.01.470 Fills

A. General. Unless otherwise recommended in the approved soil engineering report and/or engineering geology report, and specifically waived by the City Engineer, fills shall conform to the provisions of this Section and Figure 1 and Figure 2 of this Chapter. In the absence of an approved soils engineering report, these provisions may be waived for minor fills not intended to support structures.

B. Fill Location. Fill slopes shall not be constructed on natural slopes steeper than two to one (2:1), or where the fill slope terminates above a planned or existing cut slope, within a horizontal distance equal to one-third (1/3) of the vertical height of the fill, unless specifically addressed in the soils engineering report or the engineering geology report and approved by the City Engineer.

C. Preparation of Ground. The ground surface shall be prepared to receive fill by removing vegetation, noncomplying fill, top-soil and other unsuitable materials scarifying to provide a bond with the new fill and, where slopes are steeper than five to one (5:1), and the height is greater than five (5) feet, by benching into sound bedrock or other competent material as determined by the soils engineer. The bench under the toe of a fill on a slope steeper than five to one (5:1) shall be at least ten (10) feet wide. The area beyond the toe of fill shall be sloped for sheet overflow, or a paved drain shall be provided. Where fill is to be placed over a cut, the bench under the toe of fill shall be at least ten (10) feet wide, but the cut must be made before placing fill and shall be approved by the soils engineer and engineering geologist as suitable foundation for fill. Unsuitable soil is soil that, in the opinion of the building official or the civil engineer or the soils engineer or the geologist, is not competent to support other soil or fill, to support structures or to satisfactorily perform the other functions for which the soil is intended.

D. Fill Material. Detrimental amounts of organic material shall not be permitted in fills. Except as permitted by the City Engineer, no rock or similar irreducible material with a maximum dimension greater than eight (8) inches shall be buried or placed in fills.

Exception: the City Engineer may permit placement of larger rock when the soils engineer properly devises a method of placement, continuously inspects its placement, and approves the fill stability. The following conditions shall also apply:

- (1) Prior to issuance of the grading permit, potential rock disposal areas shall be delineated on the grading plan.
- (2) Rock sizes greater than eight (8) inches in maximum dimension shall be ten (10) feet or more below grade, measured vertically.
- (3) Rocks shall be placed so as to assure filling of all voids with fines.

E. Compaction. All fills shall be compacted to a minimum of ninety (90) percent of maximum density as determined by Appendix J of the 2010 California Building Standards Code or equivalent, as approved by the City Engineer. Field density shall be determined according to Appendix J of the 2010 California Building Standards Code or equivalent, as approved by the City Engineer.

In addition to the inspections of fills, the City Engineer may require a statement from an approved soils engineer based on tests of the fill at selected stages. If favorable conditions exist, the City Engineer may, by prior approval, waive requirements for inspection of or soils tests by an approved soils engineer. The requirements of the City Engineer for the compaction of fills may include but shall not be limited to the following:

- (1) Preparation of the natural ground surface by removing top soil and vegetation and by compacting the fill upon a series of terraces;
- (2) Control of moisture content of the material used for the fill;
- (3) Limitation of the use of various kinds of materials;

- (4) Maximum thickness of the layers of the fill to be compacted;
- (5) Method of compaction;
- (6) Density requirements of the completed fill depending upon the location and use of the fill;
- (7) Compaction tests required during the process of filling.

F. Slope. The slope of fill surfaces shall be no steeper than is safe for the intended use. Fill slopes shall be no steeper than two (2) horizontal to one (1) vertical (2:1). The City Engineer may require that the fill be made with a slope face flatter in slope than two to one (2:1) if he or she finds the material of which the fill is to be made is unusually subject to erosion, or if other conditions make such flatter slope necessary for stability and safety.

G. Drainage and Terracing. Drainage and terracing shall be provided and the area above fill slopes and the surfaces of terraces shall be graded and paved as required by Section 15.01.490.

§15.01.480 Setbacks

A. General. The setbacks and other restrictions specified by this Section are minimum and may be increased by the City Engineer or by the recommendations of a civil engineer, soils engineer, or engineering geologist, if necessary for safety and stability or to prevent damage of adjacent properties from deposition or erosion or to provide access for slope maintenance and drainage. Retaining walls may be used to reduce the required setbacks when approved by the City Engineer.

B. Setbacks from Property Lines. The tops of cuts and toes of fill slopes shall be set back from the outer boundaries of the permit area, including slope-right areas and easements, in accordance with Figure 2 of this Chapter. The tops and toes of cut and fill slopes shall be set back from property lines and structures as far as necessary to provide for safety of adjacent property, safety of pedestrians and vehicular traffic, required slope rounding, adequate foundation support, required swales, berms, and drainage facilities, and applicable zoning requirements. Except for pier-type foundations or other special foundation design, setbacks shall not be less than as shown on Figure 2 of this Chapter.

§15.01.490 Drainage and terracing

A. General. Unless otherwise indicated on the approved grading plan, drainage facilities and terracing shall conform to the provisions of this Section.

B. Terrace. Terraces at least six (6) feet in width shall be established at not more than thirty (30) feet vertical intervals on all cut or fill slopes to control surface drainage and debris, except that where only one terrace is required, it shall be at mid-

height. For cut or fill slopes greater than sixty (60) feet and up to one hundred twenty (120) feet in vertical height, one terrace at approximately mid-height shall be twelve (12) feet in width. Terrace width and spacing for cut and fill slopes greater than one hundred twenty (120) feet in height shall be designed by the civil engineer who prepares the approved grading plan and approved by the City Engineer. Suitable access shall be provided to permit proper cleaning and maintenance. Swales and ditches shall comply with the following requirements:

- (1) Swales or ditches on terraces shall have a minimum gradient along and towards the ditch of five (5) percent unless approved by the City Engineer and must be paved with reinforced concrete not less than three (3) inches in thickness or an approved equal paving. They shall have a minimum depth at the deepest point of one (1) foot and a minimum, paved width of three (3) feet or as required by the City Engineer.
- (2) A single run of swale or ditch shall not exceed a length of one hundred fifty (150) feet or collect runoff from a tributary area exceeding thirteen thousand five hundred (13,500) square feet (projected) without discharging into a down drain, unless approved by the City Engineer.

C. Subsurface Drainage. Cut and fill slopes shall be provided with subsurface drainage as necessary for stability.

D. Disposal. All drainage facilities shall be designed to carry waters to the nearest practicable drainage way approved by the City Engineer and/or other appropriate jurisdiction as a safe place to deposit such waters. Erosion of ground in the area of discharge shall be prevented by installation of nonerosive down drains or other devices. Building pads shall have a drainage gradient of two (2) percent toward approved drainage facilities, unless waived by the City Engineer.

Exception: the gradient from the building pad may be one (1) percent if all the following conditions exist throughout the permit area:

- (1) No proposed fills are greater than ten (10) feet in maximum depth;
- (2) No proposed finish cut or fill slope faces have a vertical height in excess of ten (10) feet;
- (3) No existing slope faces, which have a slope face steeper than ten (10) horizontally to one (1) vertically, have a vertical height in excess of ten (10) feet;
- (4) A two (2) percent gradient is provided for the first five (5) feet adjacent to the structure.

E. Interceptor Drains. Adequate provision shall be made to prevent any surface waters from damaging the cut face of an excavation or the sloping surface of a fill. At the discretion of the City Engineer, paved interceptor drains shall be installed along the top of all cut slopes where the tributary drainage area above slopes towards the cut and has a

drainage path greater than forty (40) feet measured horizontally. Interceptor drains shall be paved with a minimum of three (3) inches of concrete or gunite and reinforced. They shall have a minimum depth of twelve (12) inches and minimum paved width of thirty (30) inches measured horizontally across the drain or as required by the City Engineer. The slope of drain shall be subject to the City Engineer's approval.

§15.01.500 Import and export of earth material

On project sites where earth materials are moved on public roadways from or to the site, the following requirements shall apply:

A. Dust control shall be implemented as specified in Section 15.01.510 below. The permittee shall be responsible for maintaining public rights-of-way used for hauling purposes in a condition free of dust, earth, or debris attributable to the grading operation.

B. Loading and hauling of earth from or to the site must be accomplished within the limitations established in Section 15.01.390 of this Chapter.

C. Access roads to the premises shall be only at points designated on the approved grading plan. Access roads shall include stabilized construction entrances and/or other BMPs as required by the City Engineer.

D. The last fifty (50) feet of the access road, as it approaches the intersection with the public roadway, shall have a grade not to exceed three (3) percent. There shall be a clear, unobstructed sight distance of three hundred (300) feet to the intersection from both the public roadway and the access road. If the three hundred (300) feet sight distance cannot be obtained, flagmen and/or signs shall be posted.

E. A stop sign conforming to the requirements of the California Vehicle Code shall be posted at the entrance of the access road to the public roadway.

F. An advance warning sign, conforming to the requirements of the current California Manual for Uniform Traffic Control Devices, shall be posted on both sides of the access intersection. The advance warning sign shall be covered or removed when the access intersection is not in use.

§15.01.510 Dust control

The movement of earth materials either within, to, or from a site shall require the implementation of dust control measures in accordance with the BAAQMD CEQA Guidelines and any additional measures that the City Engineer deems to be necessary and appropriate. As determined by the City Engineer, a water truck shall be continuously present on-site to assure maximum control.

§15.01.520 Protection of adjoining property

In accordance with California Civil Code Section 832, each adjacent owner is entitled to the lateral and subjacent support that his/her land receives from the adjoining land, subject to the right of the owner of the adjoining land to make proper and usual excavations on the same for purposes of construction or improvement as provided by law.

§15.01.530 Removal of hazards

Whenever the City Engineer determines that any existing excavation, embankment, or fill on private property has become a hazard to any person, endangers property, or adversely affects the safety, use, or stability of a public way or drainage channel, the owner of the property upon which the excavation or fill is located, or other person or agent in control of such property, upon receipt of notice from the City Engineer, shall immediately repair or eliminate such excavation or embankment so as to remove the hazard and to conform with the requirements of this Chapter. Notice from the City Engineer to remove a hazard may be verbal if the hazard presents an immediate threat of injury or damage, and as soon as reasonably possible thereafter, the verbal notice shall be followed by a written notice from the City Engineer.

§15.01.540 Post-grading procedures

Upon completion of final grading and permanent improvements, where such permanent improvements are planned at the time grading is performed, permittee shall notify the City Engineer that the grading is completed. The City Engineer shall review the grading performed, and the final reports required in Section 15.01.430, and, if found in substantial conformance to the permit conditions, the City Engineer may release the unexpended and unencumbered amount of the cash deposit and initiate the release of the security bonds posted by the permittee in accordance with Section 15.01.590.

§15.01.550 Revocation or suspension of permits

A. The City Engineer may suspend any grading permit for the violation of any condition of the permit, the violation of any provision hereof or any other applicable law or ordinance, or the existence of any condition or the doing of any act constituting or creating a nuisance, threatening water quality, or endangering life, property, or the environment. Upon written notification of suspension of a permit, the permittee shall cease all work on the work site, except work necessary to remedy the cause of the suspension.

B. Following the suspension, the permittee shall be granted a hearing by the City Engineer within five (5) days of the written notice of suspension. The notice shall state, generally, the grounds of complaint and the time and place where such hearing will be held.

C. At the conclusion of said hearing, and within thirty (30) days thereafter, the City Engineer shall make his/her findings and notify, in writing, the permittee of the action taken.

D. If the permittee, after written notice of suspension, fails or refuses to cease work, as required under Subsection A of this Section, the City Engineer may revoke the permit.

E. The City Engineer may reinstate a suspended permit upon the permittee's correction of the cause of the suspension.

F. The City Engineer shall not reinstate a revoked permit.

§15.01.560 Violation - penalties

A. The violation of any of the provisions of this Chapter shall constitute a misdemeanor, punishable by the fines, penalties and enforcement provisions set forth in Chapters 1.14, 1.16 and 1.18 of this Code.

B. Where the City has issued a grading permit and there has been a violation of any of the provisions of this Chapter that the City has determined to have been willful, reckless, or grossly negligent, then in addition to the fines, penalties and enforcement provisions referenced in subsection A of this Section or set forth elsewhere in this Code, the City may impose a supplemental fine not to exceed the amounts listed below for each violation:

Grading Quantity	Supplemental Fine
6-50 cubic yards	\$1,500.00
51-100 cubic yards	\$2,500.00
101-1,000 cubic yards	\$5,000.00
1,001-10,000 cubic yards	\$10,000.00
10,001-100,000 cubic yards	\$25,000.00
100,001-200,000 cubic yards	\$50,000.00
Greater than 200,000 cubic yards	\$55,000.00

C. Where the City has not issued a grading permit and there has been a violation of any of the provisions of this Chapter, then in addition to the fines, penalties and enforcement provisions referenced in subsection A of this Section or set forth elsewhere in this Code, the City may impose a supplemental fine not to exceed the amounts listed below for each violation.

Grading Quantity	Supplemental Fine
6-50 cubic yards	\$7850
51-100 cubic yards	\$9200
101-1000 cubic yards	\$25,000
1001-10,000 cubic yards	\$43,000
10,001-100,000 cubic yards	\$108,000
100,001-200,000 cubic yards	\$188,000
Greater than 200,000 cubic yards	\$195,000

§15.01.570 Action against the security

The City Engineer may retain and/or execute security required by Section 15.01.240 if one of the conditions listed in Subsections A through D below exists. The City Engineer shall use funds from the appropriate security to finance remedial work undertaken by the City or private contractor under contract to the City, and to reimburse the City for all direct costs incurred in the process of the remedial work, including but not limited to the following conditions:

A. The permittee ceases land-disturbing activities and/or filling and abandons the work site prior to the completion of the work shown on the site map, grading plan and revegetation plan (if applicable) ;

B. The permittee fails to conform to the conditions of the grading permit as approved or as modified under Section 15.01.380 and has had his/her permit revoked under Section 15.01.550;

C. The techniques utilized under the interim or final erosion control plan fail within one (1) year of installation, or before a final erosion control plan is implemented for the site or portions of the site, whichever is later;

D. The City Engineer determines that action by the City is necessary to prevent excessive erosion from occurring on the site.

§15.01.580 Public nuisance abatement

A. The City Council finds and declares that any work site on which grading has been started and has been abandoned or is not completed according to the site plan, grading plan, and grading permit, or on which the interim or final erosion control facilities have failed, or where on-site grading and erosion control facilities either are not working properly or are inadequate or incomplete, creates a danger to public health, safety and welfare, and constitutes a public nuisance. All duties of the City Manager under this Chapter may be delegated to other officers, agents or employees of the City.

B. The public nuisance abatement procedures provided in this Section are, at the City's option, alternative or additional to the procedures provided in Sections 15.01.570 and 15.01.530 of this Chapter, or to any applicable procedures provided by this Code, including Chapters 1.14, 1.16, 1.18, 8.38, or any other City ordinance, or provided by state law.

C. The City Manager is authorized to abate each and every such nuisance or cause the same to be abated in the manner provided by the provisions of this Section.

D. Before abating any condition which is declared to be a public nuisance, the City Manager shall post upon or in front of the property on which such nuisance exists, a notice which shall be substantially in the following form:

NOTICE TO ABATE NUISANCE OR REMOVE HAZARD

Notice is hereby given that the following activity/condition on the property located at _____, in the City of Brisbane, County of San Mateo, State of California, identified as Assessors Parcel Number _____ constitutes a violation of the City of Brisbane Grading Ordinance or a violation of a permit or approval issued pursuant to such Ordinance:

Such condition creates a danger to the public health, safety, and welfare and is a public nuisance which must be abated by immediately by taking the following corrective action:

If said nuisance is not abated or said hazard is not removed within _____ days from and after the date of posting of this notice, or if good cause is not shown to the undersigned within said time why such corrective action should not be taken, the City will abate such nuisance by removing or causing to be removed said hazard and completing or causing to be completed the corrective action described above, and in such event, the cost and expense of such removal and abatement will be specifically assessed upon or against the parcel of land from which the hazard is removed and on which the corrective action is completed, and such assessment will constitute a lien upon the property until paid.

All interested persons having any objection to the above shall present such objections to the undersigned City Manager at City Hall, 50 Park Place, Brisbane, California 94005, within _____ days from and after the posting, herein specified, of this notice.

Posted/Mailed this _____ day of _____, 20____

CITY MANAGER OF THE
CITY OF BRISBANE

By: _____

E. Before abating any condition which is declared to be a public nuisance in this Section, the City Manager, in addition to posting of notice or notices as provided by Subsection (D) of this Section, may mail, or cause to be mailed, to the person or persons who are designated on the last equalized assessment roll of the county of San Mateo, as owner or owners of the parcel of land on which such nuisance exists, at their address or addresses as shown on the last equalized assessment roll, a written notice or notices which shall be substantially in the same form shown in Subsection (D) above.

F. The owner or owners of any private parcel of land within or upon which a public nuisance, as described in this Section, exists, have a duty to abate such nuisance at

his, her or their own cost and expense by removing any hazard and completing any planned permitted grading within the time prescribed in the notice which is posted upon such property, or if notice is given by mail within the time prescribed in the mailed notice. If such owner or owners fail to abate such nuisance within said time, and if, in addition, they fail to show cause to the satisfaction of the City Manager why said nuisance should not be abated, then in that event the City may abate said nuisance or cause same to be abated.

G. In order to abate said nuisance, the City may cause the removal of said nuisance and complete the planned permitted work, or perform such other work as may be necessary or appropriate to abate the nuisance or may cause a licensed contractor to abate the nuisance in such manner for reasonable rates not in excess of prevailing rates for similar work within the City.

H. In the event the City Manager finds that any public nuisance, above described in this Section, within or upon any parcel of land is so serious and presents such an immediate menace or danger to the public health, safety and welfare that such nuisance should be immediately abated without first posting or mailing notices, as above provided, and without first giving the owner or owners of said parcel further time to abate the same, then in that event the City Manager may immediately abate said nuisance or cause the same to be abated in the manner provided in subsection (G) of this Section without first posting or mailing any notices and without giving the owner or owners of the parcel further time to abate the same. However, the City Manager, if he or she abates such nuisance, shall prepare and file in his or her office a written report describing the location, nature and extent of the public nuisance and setting forth the reasons why he or she had to abate it immediately, as aforesaid, and he or she shall cause a copy of said report to be mailed within ten (10) days from and after completion of such abatement, to the owner or owners of the parcel within or upon which nuisance existed, as such owner or owners are shown on the last equalized assessment roll of the county of San Mateo, at their addresses as shown on said roll.

I. The City Manager shall keep a record of the cost and expense incurred by him or her in abating or causing to be abated, pursuant to this Section, each public nuisance within or upon each separate parcel of land. To said costs and expenses, the City Manager shall add an amount for overhead and administration and incidental expenses and shall submit them to the City Council for confirmation of an itemized written report showing all costs and expenses incurred by the City in abating each public nuisance.

J. A copy of City Manager's report to the City Council shall be posted for at least ten (10) days prior to its submission to the City Council at the usual place where City notices are posted, together with a notice of the time and place when and where it will be submitted to the City Council for a hearing. The notice shall state a time and place when and where property owners may appear and object to any matter contained in the report.

K. At the time fixed for receiving and considering the report, the City Council shall hear it with any objections of the property owners liable to be assessed for the abatement. It may modify the report if it is deemed necessary. If the City Council finds the report to be acceptable, it shall confirm the report by resolution.

L. After confirmation of the report, a certified copy of the same shall be filed with the County of San Mateo. The description of the parcels reported shall be those used for the same parcels on the county's assessor's map books for the current year.

M. The cost of abatement within or upon each parcel of land, as confirmed, constitutes a special assessment against that parcel, and upon such confirmation it is a lien on the parcel. Laws relating to the levy, collection and enforcement of county taxes apply to such special assessment taxes. The appropriate county official shall enter each assessment on the county tax roll opposite the parcel of land. The amount of the assessment shall be collected at the time and in the manner of ordinary municipal taxes. If delinquent, the amount is subject to the same penalties and procedures of foreclosure and sale provided for ordinary municipal taxes.

N. As an alternate method, the county tax collector, in his or her discretion, may collect the assessments without reference to the general taxes by issuing separate bills and receipts for the assessments.

O. The City Finance Director may receive the amount due on the abatement cost and issue receipts at any time after confirmation of the report and until July 1st of the calendar year in which the report is confirmed. If the cost is paid in full, no report shall be filed with the County of San Mateo to levy a special assessment for such cost.

P. The City Council may order refunded all or part of a special assessment paid pursuant to this Section if it finds that all or part of the special assessment has been erroneously levied. A special assessment or part shall not be refunded unless a claim is filed on or before March 1st next following the date the tax became due and payable. The claim shall be verified by the person who paid the tax, or his or her duly authorized representative.

§15.01.590 Release of security

Security deposited with the City for faithful performance of the grading, revegetation (if applicable), and erosion control work, and to finance necessary remedial work shall be released according to the following schedule:

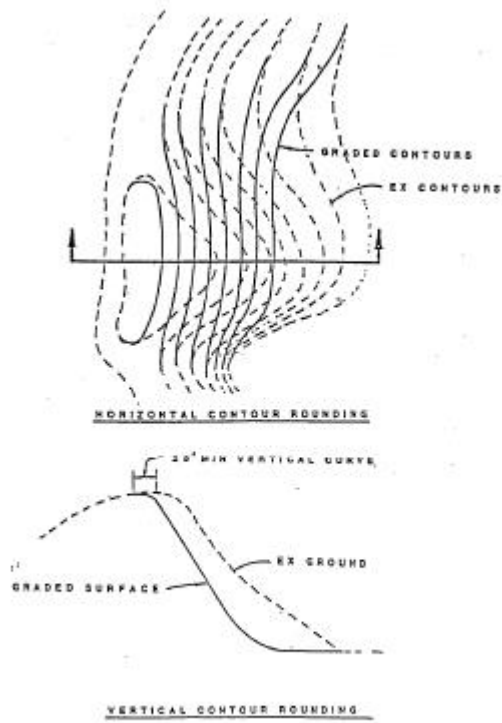
A. Securities held against the successful completion of the work shown on the site map, grading plan and the interim plan, shall be released to the permittee at the termination of the permit, or the satisfactory completion of the grading operations, provided no action against such security is filed prior to that date;

B. Securities held against the successful completion of the work shown on the final plan shall be released to the permittee either one (1) year after termination of the permit or when the final plan is approved as completed, or when the City Planning Department approves a final revegetation monitoring report, whichever is later, provided no action against such security has been filed prior to that date.

§15.01.600 Cumulative enforcement procedures

The procedures for enforcement of a permit, as set forth in this Chapter, are cumulative and not exclusive.

FIGURE 1



NOTE: No rounding at terraces.

FIGURE 2

Table A

Min. Setback From Adjacent Slope					
H (hgt) Feet	a	b	c	d	e
0 < 5	3'	7'	3'	5'	1'
6-14	5'	7'	H/2	H/2	H/5
14-30	5'	H/2 10' Max	H/2	H/2 10' Max	H/5
+30	5'	10'	15'	10'	6'

Table B

H (hgt) Feet	Max. Hw.	Min. Setback
0-5	3'	3' Min.
6-12	H/2	H/2
12-30	6'	H/2
+30	6'	15'

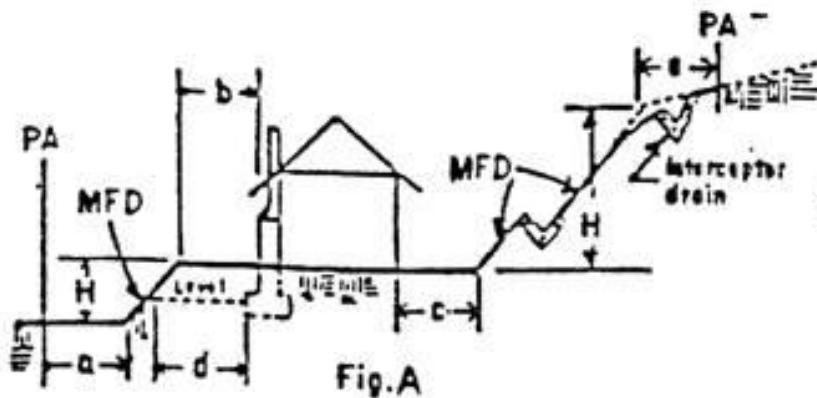


Fig. A

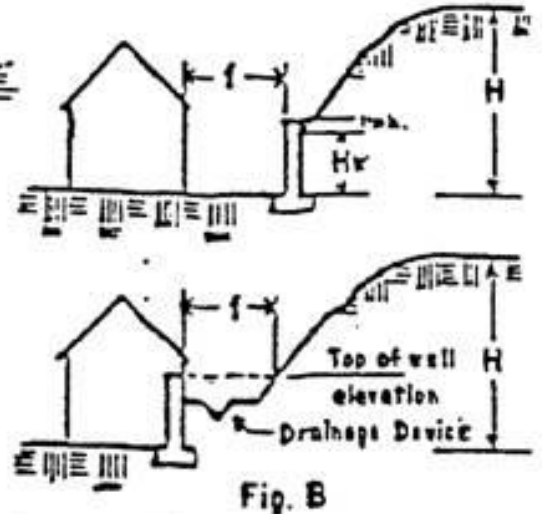


Fig. B

NOTES:

PA means permit area boundary and/or property line; 1. MFD means manufactured surface.

Setbacks shall also comply with applicable zoning 2. regulations.

Table A applies to manufactured slopes and 2:1 or 3. steeper natural slopes. Setbacks from natural slopes flatter than 2:1 shall meet the approval of the City Engineer.

"b" may be reduced to 5' minimum if an approved 4. drainage device is used; roof gutters and downspouts may be required.

"b" may be reduced to less than 5' if no drainage is 5. carried on this side and if roof gutters are included.

If the slope between "a" and "b" levels is replaced 6. by a retaining wall, "a" may be reduced to zero and "b" remains as shown in Table A. The height of the retaining wall shall be controlled by zoning regulations.

"b" is measured from the face of the structure to the 7. top of the slope.

"d" is measured from the lower outside edge of the 8. footing along a horizontal line to the face of the slope. Under special circumstances "d" may be reduced or recommended in the approved soil report and approved by the City Engineer.

The use of retaining walls to reduce setbacks (Fig. 9. B) must be approved by the City Engineer.

"f" may be reduced if the slope is composed of sound 10. rock that is not likely to produce detritus and is recommended by the soil engineer or engineering geologist and approved by the City Engineer.

"a" and "e" shall be 2' when PA coincides with 11. Arterial or local street right-of-way and when improved sidewalk is adjacent to right-of-way.

"e" shall be increased as necessary for interceptor 12. drains.

SECTION 2 Section 17.32.220 in Chapter 17.32 of the Municipal Code is deleted.

SECTION 3: If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held by a court of competent jurisdiction to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council of the City of Brisbane hereby declares that it would have passed this Ordinance and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that one or more sections, subsections, sentences, clauses or phrases may be held invalid or unconstitutional.

SECTION 4: This Ordinance shall be in full force and effect thirty days after its passage and adoption.

* * * *

The above and foregoing Ordinance was regularly introduced and after the waiting time required by law, was thereafter passed and adopted at a regular meeting of the City Council of the City of Brisbane held on the _____ day of _____, 2020, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Terry O'Connell, Mayor

ATTEST:

Ingrid Padilla, City Clerk

APPROVED AS TO FORM:



Thomas McMorrow, Interim City Attorney



MEMORANDUM

DATE: 29 July 2020

TO: Infrastructure Subcommittee

FROM: Clay Holstine, City Manager

SUBJECT: **Grading Ordinance Update**

BACKGROUND

In 2012-2013 the City undertook a comprehensive update of the grading ordinance, partially in response to a lawsuit settlement regarding approval of the Ng condominium project on Bayshore Boulevard in 2007. Based on the settlement, specific provisions were recommended to be incorporated into the grading ordinance including (a) enhancing existing fines and penalties for violations of the grading ordinance; (b) prohibiting removal of existing vegetation having habitat value without providing mitigation; and (c) requiring habitat restoration of graded areas within the jurisdiction of the Habitat Conservation Plan (HCP) that would decrease the presence of exotic / non-native plant species, as well as prevent erosion. A number of other revisions were proposed to reflect best technical practices and provide procedural clarity.

The draft ordinance was recommended for approval by the Planning Commission and went through multiple reviews by the City Council in 2013. It was tabled in 2013 as City efforts were focused on other issues, such as Brisbane Soil Processing and the Baylands.

Staff believes it is now timely to complete the process and adopt a revised ordinance. While staff remains supportive of the draft ordinance from 2013, there are several recommended revisions which are discussed below. Most of these are based on changes to procedures and regulations that have taken effect since 2013, or a second look at the statutory authority for the Planning Commission to review grading plans. Attached for reference are the ordinance last presented to the City Council in 2013 and a clean copy of the draft ordinance now proposed for adoption.

DISCUSSION

Planning Commission Review

The current ordinance requiring the Planning Commission to approve a permit is legally questionable for reasons outlined in the attached memo from City Legal Counsel. Experience also has shown practical difficulties as well as frequent confusion among the public and Planning Commissioners in understanding the scope of the Commission's review authority when grading permits are subject to Planning Commission review. The draft 2013 ordinance changed the procedure to limit the Planning Commission's role to making a recommendation to the City Engineer and establishing defined criteria to focus its review. While the proposed revisions eliminate the overarching legal problem, procedural and perception issues remain. Additionally,

as pointed out in the attached memo from legal counsel, the proposed review criteria are problematic for a variety of reasons, such as the lack of objective criteria. As such staff recommends that Planning Commission review of grading permit applications be eliminated from the grading ordinance. Note that if a project under the Commission's jurisdiction (design permit, use permit, etc) involves grading, the Commission retains the authority to consider grading in making a decision on the overall project.

HCP Compliance

The draft 2013 ordinance specifies that Site Activity Review be obtained from the HCP Plan Operator prior to vegetation clearing within the HCP. In practice, the Plan Operator may authorize vegetative removal through various means, not limited to a Site Activity Review. It is recommended that Section 15.01.100 be revised to require Plan Operator approval without specifying the means by which such approval may be obtained.

On a related note the 2013 version of the ordinance included a series of prescriptive requirements for revegetation plans intended to minimize impacts on habitat values. While well-intended, there are some practical difficulties with the language as proposed. It is likely that most areas with habitat value will lie with the HCP area which means that approval from the Plan Operator will be required. The prescriptive requirements set forth in the ordinance may not have any relationship to the requirements imposed by the Plan Operator. It is unclear what legal or technical basis the City would have to impose requirements that differ from what is required under the HCP. For example, while the draft ordinance specifies that on-site mitigation is preferred, the Plan Operator does not generally support the creation of isolated habitat islands that lack connectivity; the Plan Operator prefers the enhancement and creation of meaningful habitat that is contiguous to existing resources. It is therefore recommended that the prescriptive revegetation requirements be deleted.

Enforcement

The City Council's policy direction has been that the fines for illegal grading provide a substantial financial incentive to encourage compliance, as opposed to representing a nominal penalty that constitutes the cost of doing business. City legal counsel is reviewing the penalty provisions set forth in the draft ordinance and will report back if revisions are recommended.

Attachments

City Legal Counsel Memo

2013 Redlined Ordinance

2020 Proposed Draft Ordinance **NIC**

MEMORANDUM

Date: July 23, 2020

To: Members of the City Council Infrastructure Committee

From: Michael Roush, Legal Counsel

Subject: **Amendments to the Grading Ordinance Concerning the Planning Commission's Review of Grading Permit Applications**

Under the City's Grading Ordinance, the Planning Commission is to review and must approve certain grading permit applications. Staff is recommending that this provision of the Grading Ordinance be deleted because it conflicts with State law concerning who is authorized to review these types of applications. In addition, various revisions to the Grading Ordinance have been under discussion for several years now, including imbedding into the Ordinance the review criteria that the Planning Commission has (by policy) been applying and therefore in the future would apply when called upon to review a grading permit. Staff is recommending that these criteria not be included because the standards are vague, conflict with recent State legislation that require objective design standards relative to the City's review of residential projects, and/or are dealt with more comprehensively in other parts of the Municipal Code

The relevant section of the Grading Ordinance provides as follows:

"Where a grading permit is required by the provisions of this Chapter, it shall be obtained from the city engineer, except that grading permit approval by the planning commission shall be required in the event:

A. More than two hundred fifty (250) cubic yards of material is to be moved or planned to be moved in any single grading or excavation operation or if more than fifty (50) cubic yards of materials is to be exported from any single parcel of land."

Conflict with State Law

California law, (Business and Professions Code, sections 6700 – 6799; "Professional Engineers Act"), enacted in order to safeguard life, health, property and public welfare, ensures and requires any person practicing engineering to be qualified and licensed to practice engineering. A professional engineer includes a wide category of engineers including civil, electrical and mechanical. Only a professional engineer may, under law, evaluate public or private utilities and structures, as well as engineering submittals concerning grading permit applications.

Under the Brisbane Municipal Code, certain submittals are to be included with a grading permit application and those submittals must be prepared by a professional engineer licensed by the State. Those submittals include: a grading plan; soils engineering report (including hydrology reports), engineering geology reports (also including hydrology reports) and interim and final erosion control plans, including the calculation of pre- and post-development runoff. Section 15.01.090, BMC.

As set forth above, the Municipal Code also requires a grading permit from the planning commission under certain circumstances. The Code creates a very real situation where the Commission is called upon to evaluate or make decisions on the submittals prepared by a professional engineer. By requiring the Commission to make that type of evaluation and decision, it compels the Commission to engage in an activity that the Business and Professions Code expressly makes unlawful. Bus. & Prof. Code, sections 6785-6787 (a). The Code should not require the Commission to act in an unlawful manner and therefore this section of the Grading Ordinance must be deleted.

Grading permit submittals will continue to be thoroughly and carefully reviewed by the City Engineer to ensure that any significant amount of grading will be in compliance with sound engineering principles. That review, however, will properly be performed by someone who has the requisite training, skill, and license to do so.

Lack of Standards in the Proposed Amendments to the Grading Ordinance

The proposed amendments set forth certain review criteria that the Planning Commission is to apply when it reviews grading permit applications. Those standards are currently being applied by a policy that the Commission adopted some years ago. Those criteria, however, are vague and lack objective standards and therefore run contrary to the objective design standards that state law now requires when local agencies review residential development projects. For example, one criterion is that the grading must “fit comfortably” into the natural topography. Clearly, this is a highly subjective determination that would apply only in hillside residential areas and would certainly lead to claims that decisions were arbitrary and capricious.

Similarly, another design review criterion that the amendment would imbed in the Ordinance is the Planning Commission’s design review of retaining wall appearances and visual impacts. Leaving aside that no objective design standards are set forth for how the Commission is to make such determination, requiring the Commission to make that determination on a stand alone basis when the actual construction project is not before it is counter intuitive and, again, leads inexorably to decisions that are arbitrary and capricious.

Conflicting Authority

The proposed amendments also provide that in the Commission’s review of a grading permit application, it will consider retention and/or removal of trees on private property and street trees. Those matters, however, have been thoroughly vetted by the City Council in its earlier, comprehensive adoption of a separate ordinance concerning the preservation of trees in the community. Adding another layer of review is unnecessary, redundant and could lead to conflicting results. Moreover, the Commission has no authority over trees in the public right of way and therefore could create an unrealistic expectation of the Commission’s authority to retain (or remove) a street tree.

Retention of Planning Commission Authority

It should be noted that the proposed revisions address grading permits for projects that are otherwise not subject to Planning Commission review. For projects otherwise subject to Planning Commission review (design permits, use permits, variances, etc) that involve grading, the Commission retains the ability to consider grading in the context of the broader approval and required findings. This reflects a holistic and logical review process, as opposed to piecemeal review of grading on a stand alone basis.

Conclusion

Involving the Planning Commission in the review process of grading permit applications conflicts with State law and to eliminate that conflict, the section of the Grading Ordinance that provides for the Commission's review of such applications should be deleted. In addition, the proposed review criteria fail to meet the objective standards now required for review of residential development projects and/or are more comprehensively addressed elsewhere in the Code.

If the Committee has any questions or concerns on these matters before the Committee's meeting, please let me know.

REDLINE VERSION OF DRAFT GRADING ORDINANCE

Changes in the current Municipal Code recommended by staff and the Planning Commission are indicated by ~~red strike-through~~ (deletions) and **red text** (additions). Recommendations from the Council Subcommittee are shown in **blue**. Recommendations from 9/16/13 Council Meeting are shown in **green**.

ORDINANCE NO. ~~_____~~ **579**

AN ORDINANCE OF THE CITY OF BRISBANE AMENDING CHAPTER 15.01 AND SECTION 17.32.220 OF THE MUNICIPAL CODE PERTAINING TO GRADING

The City Council of the City of Brisbane hereby ordains as follows:

SECTION 1: Chapter 15.01 of the Municipal Code, entitled "Grading," is amended in its entirety to read as follows:

Chapter 15.01 GRADING

Sections:

15.01.010	Title
15.01.020	Purpose and objectives
15.01.030	Scope
15.01.040	Definitions
15.01.050	Precautions imposed by City Engineer
15.01.060	<u>Discovery of prehistoric, historic, or unique archaeological resources, or human remains</u>
15.01.0 7 60	Other laws
15.01.0 8 70	Severability and validity
15.01.0 9 80	Permit required
15.01.100	HCP Permission required
15.01. 11 08 4	Planning Commission approval review of application for grading permit
15.01. 12 08 2	Quarry operations
15.01. 13 08 3	Application to annexed territory
15.01. 14 08 4	Exemptions
15.01. 15 09 0	Application for grading permit
15.01. 16 09 1	Application form
15.01. 17 09 2	Site map and grading plan
15.01. 18 09 3	Interim erosion and sediment control plan (interim plan)

15.01.19094	Final erosion and sediment control plan (final plan)
15.01.200	<u>Revegetation plan</u>
15.01.21095	Soils engineering report (soils report)
15.01.22096	Engineering geology report
15.01.23097	Work schedule and transport routes
15.01.24098	Security
15.01.12500	Fees
15.01.12605	Grading permit fee exemption
15.01.11270	Action on application
15.01.1280	Permit duration
15.01.13290	Appeals
15.01.14300	Revised plans
15.01.15310	Cessation of operations
15.01.16320	Assignment of permit
15.01.17330	No improvements planned
15.01.18340	Grading permit, paving
15.01.19350	Grading permit, drainageway alteration
15.01.20360	Excavation blasting permit
15.01.23705	Truck haul permit
15.01.21380	Issuance of grading permits
15.01.22390	Time and noise limitations on grading operations
15.01.23400	Implementation of permits - permittee's duties
15.01.2410	Implementation of permits – <u>requirements of City Engineer</u>
15.01.4250	Grading inspection
15.01.255430	Completion of work
15.01.26440	Removal of ground cover
15.01.27450	Wet season grading
15.01.28460	Cuts
15.01.29470	Fills
15.01.30480	Setbacks
15.01.31490	Drainage and terracing
15.01.32500	Import and export of earth material
15.01.33510	Site-d Dust control
15.01.34520	Protection of adjoining property
15.01.3530	Removal of hazards
15.01.36540	Post-grading procedures
15.01.37550	Revocation or suspension of permits
15.01.38560	Violation – penalties
15.01.39570	Action against the security
15.01.39580	Public nuisance abatement
15.01.45900	Release of security
15.01.41600	Cumulative enforcement procedures

§15.01.010 Title

This Chapter shall be known as the "City of Brisbane Grading Ordinance" and may be so cited.

§15.01.020 Purpose and objectives

A. The purpose of this Chapter is to provide for grading operations; to safeguard life, limb, health, property and public welfare; and to preserve and enhance the natural environment, including but not limited to water quality, by regulating and controlling clearing and grading of property within the City.

B. This Chapter is intended to achieve the following objectives:

- (1) Grading plans shall be designed so that grading operations do not create or contribute to landslides, accelerated soil creep, settlement, subsidence, or hazards associated with strong ground motion and soil liquefaction.
- (2) Grading plans shall contain reasonable provisions for the preservation of natural land and water features, vegetation, drainage, and other indigenous features of the site.
- (3) Grading plans shall be designed to preserve and enhance the city's aesthetic character.
- (4) Grading plans shall require compliance with all applicable laws, rules and regulations pertaining to air and water pollution, noise control, and preservation of archaeological remains.
- (5) Grading operations shall be conducted so as to expose the smallest practical area of soil to erosion for the least possible time, consistent with an anticipated build-out schedule.

§15.01.030 Scope.

A. This Chapter amends ~~Chapter 70 of the Uniform Building Code by the addition thereto of the regulations pertaining to grading as set forth in the California Building Standards Code, as adopted in Chapter 15.04 of this Code. In the event of any conflict or inconsistency between the provisions of this Chapter and the provisions of Chapter 15.04 or any of the codes adopted by reference therein, the provisions of this Chapter shall be controlling.~~

B. ~~†~~This Chapter ~~and~~ sets forth rules and regulations to control excavation, land disturbances, land fill, ~~and~~ soil storage, and erosion and sedimentation resulting from such activities. This Chapter provides that all excavation or landfilling activities or soil storage shall be undertaken in a manner designed to minimize surface runoff, erosion, and sedimentation and to avoid or mitigate damage caused by grading activities to areas having habitat value. This Chapter also establishes procedures for the issuance, administration and enforcement of grading permits.

§15.01.040 Definitions

When used in this Chapter, the following words shall have the meanings ascribed to them in this ~~chapter~~ Section:

- (1)- **"Applicant"** means any person, corporation, partnership, association of any type, public agency or any other legal entity that submits an application to the City Engineer for a permit pursuant to this chapter.
- (2)- **"As-graded"** means the surface conditions extant on completion of grading.
- (3). **"BAAQMD CEQA Guidelines"** means the recommended measures detailed in Table 8-1 of the Bay Area Air Quality Management District's "California Environmental Quality Act-Air Quality Guidelines, Updated May 2011", or any amendment, revision, or reissuance thereof and any additional measures, including those recommended in Table 8-2 of the reference, as determined necessary and appropriate by the City Engineer.
- (4)3. **"Bedrock"** means in-place solid rock.
- (5)4. **"Bench"** means a relatively level step excavated into earth material. Bench also includes terraces.
- (6)5. **"Best management practices" (BMPs)** means a technique or series of techniques which, when used in an erosion control plan, is proven to be effective in controlling construction-related runoff, erosion and sedimentation. Approved BMPs can be found in the California Stormwater Quality Association "Construction BMP Handbook/Portal", the State of California Department of Transportation March 2003 "Construction Site Best Management Practices (BMPs) Manual", the San Mateo Countywide Water Pollution Prevention Program Construction Best Management Practices" plan sheet, Erosion & Sediment Control Handbook, by Goldman, Jackson and Bursztynsky, and any amendment, revision or reissuance thereof.
- (7)6. **"Borrow"** means earth material acquired from an off-site location for use in grading on a site.
- (8)7. **"City"** means the city of Brisbane.
- (9)8. **"City Engineer"** means the Director of Public Works/City Engineer of the City of Brisbane and his/her duly authorized designees. The City Engineer may delegate any of his or her duties under this Chapter to his or her authorized agents or representatives.
- (10)9. **"City street"** means any public or private street in the city of Brisbane.
- (11)10. **"Civil engineer"** means a professional engineer registered in the state of California to practice in the field of civil engineering.

- ~~(124)~~: **"Civil engineering"** means the application of the knowledge of the forces of nature, principles of mechanics and the properties of materials to the evaluation, design and construction of civil works for the beneficial uses of humankind.
- ~~(13)~~: **"Clearing and grubbing"** means the removal of trees, shrubs, bushes, windfalls and all other materials from above and below the natural ground surface. This activity removes vegetative ground cover, removes top soil, and removes/disturbs root mat. Except in those cases where specifically approved by a grading permit, "grubbing" for the removal of stumps and roots shall not exceed 18" below the original surface of the ground.
- ~~(14)~~: **"Community Development Director"** means the director of planning of the City of Brisbane.
- ~~(152)~~: **"Compaction"** means the densification of a fill by mechanical means.
- ~~(163)~~: **"Contour rounding"** means the rounding of cut and fill slopes in the horizontal and/or vertical planes to blend with existing contours or to provide horizontal variation, to eliminate the artificial appearance of slopes. (See Figure 1)
- ~~(174)~~: **"Drainageway"** means natural or manmade channel ~~which that~~ collects and intermittently or continuously conveys stormwater runoff.
- ~~(185)~~: **"Dry season"** means the period from April 15th to October 15th.
- ~~(196)~~: **"Earth material"** means any rock, natural soil, fill or combination thereof.
- ~~(2047)~~: **"Engineering geologist"** means a geologist experienced and knowledgeable in engineering geology and qualified to practice engineering geology in the State of California.
- ~~(2148)~~: **"Engineering geology"** means the application of geologic knowledge and principles in the investigation and evaluation of naturally occurring rock and soil for use in the design of civil works.
- ~~(2249)~~: **"Erosion"** means the wearing away of the ground surface as a result of the movement of wind or water.
- ~~(230)~~: **"Excavation"** means any act by which earth, sand, gravel, rock or any other similar material is cut into, dug, quarried, uncovered, removed, displaced, relocated, or bulldozed, including the conditions resulting therefrom.
- ~~(241)~~: **"Fill/land fill"** means any act by which earth, sand, gravel, rock or any other similar material is deposited, placed, pushed, pulled or transported to a place other than the place from which it was excavated, including the conditions resulting therefrom.

~~(252)~~ **"Final erosion and sediment control plan (final plan)"** means a set of best management practices or equivalent measures designed to control surface runoff and erosion and to retain sediment on a particular site after all other planned final structures and permanent improvements have been erected or installed.

~~(26)~~ **General Plan** means the General Plan adopted by the City of Brisbane and all amendments thereto.

~~(273)~~ **"Grade"** means the vertical location of the ground surface.

~~(a)~~ **"Existing grade"** means the grade prior to grading.

~~(b)~~ **"Rough grade"** means the stage at which the grade approximately conforms to the approved plan.

~~(c)~~ **"Finish grade"** means the final grade of the site which conforms to the approved plan.

~~(284)~~ **"Grading"** means any land disturbance or excavation or fill or any combination thereof and shall include the conditions resulting from any land disturbance, excavation or fill. Grading shall include trenching on public or private property including within public streets.

~~(295)~~ **"Grading permit"** means the formal approval required by this Chapter for any grading, filling, excavating, storage or disposal of soil or earth materials or any other excavation or land filling activity. Application to the City Engineer and the City Engineer's approval is required under the process of this Chapter.

~~(30)~~ **HCP** means the San Bruno Mountain Area Habitat Conservation Plan, as approved and adopted by the U.S. Fish and Wildlife Service in 1983, including subsequent amendments and updates.

~~(31)26.~~ **"Interim erosion and sediment control plan (interim plan)"** means a set of best management practices or equivalent measures designed to control surface runoff and erosion and to retain sediment on a particular site during the period in which construction-related excavations, fills and soil storage occur, and before the final plan is completed.

~~(32)27.~~ **"Key"** means a designed compacted fill placed in a trench excavated in earth material beneath the toe of a proposed fill slope.

~~(33)28.~~ **"Manual of standards"** means ABAG Manual of Standards for Surface Runoff Control Measures (Latest Revision).

~~(334)29.~~ **"Permittee"** means the applicant in whose name a valid permit is duly issued pursuant to this Chapter and his/her agents, employees and others acting under his/her direction.

~~(345)~~ **Plan Operator** is the Habitat Conservation Plan Manager, presently the San Mateo County Department of Parks, and also means any successor agency.

~~(356)~~ **Revegetation** means the replanting of disturbed natural ground surfaces on properties within the HCP and on properties that the Community Development Director has determined requires mitigation to restore habitat value.

~~(367)30.~~ **"Sediment"** means earth material deposited by water or wind.

~~(378)31.~~ **"Site"** means a parcel or parcels of real property owned by one or more than one person ~~which-that~~ is being or is capable of being developed as a single project, including phased construction. Site also includes any public or private property or rights-of-way on which excavation, fill or land disturbance ~~is provided occurs.~~

~~(389)32.~~ **"Slope"** means an inclined ground surface the inclination of which is expressed as a ratio of horizontal distance to vertical distance.

~~(4039)33.~~ **"Soil"** means naturally occurring superficial deposits overlying bedrock.

~~(404)34.~~ **"Soils engineer"** means a civil engineer experienced and knowledgeable in the practice of soils engineering. Soils engineer and geotechnical engineer are synonymous.

~~(412)35.~~ **"Soils engineering"** means the application of the principles of soil mechanics in the investigation, evaluation and design of improvements involving the use of earth materials and the inspection and testing of the construction thereof. Soils engineering and geotechnical engineering are synonymous.

~~(423)36.~~ **"Structure"** means anything built or constructed including pavement and pipelines.

~~(434)37.~~ **"Temporary erosion control"** consists of, but is not limited to, constructing such facilities and taking such measures as are necessary to prevent, control, and abate water, mud and wind erosion damage to public and private property during grading operations.

~~(445)38.~~ **"Terrace"** means a relatively level step constructed in the face of a graded slope surface for drainage and maintenance purposes. Terrace also includes benches.

~~(456)39.~~ **"Truck haul"** means the movement over public streets of any excavated material.

~~(457)40.~~ **"Vertical slope rounding"** means the rounding of the top and toes of cut and ~~fi~~ull slopes.

~~(478)~~ **Weeding** means the removal of noxious, dangerous, or invasive plants. This activity also includes the removal of vegetation which attains such a large growth as to become a fire menace when dry, and further includes the removal of dry grass, grass cuttings, tree trimmings, vines, stubble or other growth material which endangers the public by creating a fire hazard, including any such hazard determination made by the fire department pursuant to the City's weed abatement ordinance. Any activity that disturbs more than 15% of the natural ground surface shall be classified as "clearing and grubbing."

~~(489)41.~~ **"Wet season"** means the period from October 15th to April 15th.

§15.01.050 Precautions imposed by City Engineer

A. If, at any stage of grading, the City Engineer determines by inspection that conditions are such that further work as authorized by an existing grading permit is likely to endanger any property or public way, the City Engineer may require, as a condition to allowing the work to be continued, that reasonable safety precautions be formulated by the permittee and submitted to the City Engineer for his/her consideration and the grading permit be amended to avoid such danger. "Safety precautions" may include but shall not be limited to specifying a flatter exposed slope, construction of additional drainage facilities, berms, terracing, compaction, cribbing, or retaining walls, or planting of slopes.

B. The sole and primary responsibility ~~of for~~ meeting the requirements of this Section and of this Chapter for any civil or criminal liability as a result of the ~~exercise of this performance of grading work pursuant to a grading~~ permit shall be upon the permittee. ~~Neither T~~he City, ~~the~~ City Engineer, ~~its or any~~ employees or agents ~~of the City~~ shall ~~in no way~~ be responsible for ~~said any~~ liability ~~for issuance of a grading permit or the conduct of any inspections thereunder.~~

§15.01.060 Discovery of prehistoric, historic, or unique archaeological resources, or human remains.

A. In the event of the accidental discovery of prehistoric, historic, or unique archaeological resources, the permittee shall immediately cease work and follow the protocol established in the Guidelines for Implementation of the California Environmental Quality Act, as contained in California Code of Regulations, Title 14, Division 6, Chapter 3 ("CEQA Guidelines"), specifically, Section 15064.5(f) and any amendments thereto. This includes obtaining an evaluation from a qualified archaeologist to be forwarded to the Community Development Director for review/approval, and will include a finding as to the

categorization of the discovery, any recommended avoidance measures or appropriate mitigation, and a statement as to what portions of the site, if any, are cleared for resumption of work while the recommended mitigation is being performed. If the find is determined to be significant, contingency funding and a time allotment sufficient to allow for implementation of appropriate mitigation or avoidance measures shall be provided.

B. In the event of the accidental discovery or recognition of any human remains, the permittee shall immediately cease work and implement the protocol established in the CEQA Guidelines, specifically, Section 15064.5(e)(1) et. seq. and any amendment thereto.

§15.01.0760 Other laws

Neither this Chapter nor any administrative decision made under it:

A. Exempts the permittee from complying with other applicable laws or from procuring other required permits or complying with the requirements and conditions of such a permit; or

B. Limits the right of any person to maintain, at any time, any appropriate action, at law or in equity, for relief or damages against the permittee arising from the permitted activity; or

C. Exempts any person from complying with any applicable laws or allows any person to perform any grading without complying with such other applicable laws.

§15.01.0870 Severability and validity

If any part of this Chapter is found not valid, the remainder shall remain in effect.

§15.01.0980 Permit required

Except as exempted under Section 15.01.084140, it shall be unlawful for any person to clear and grub, grade, fill, excavate, store or dispose of soil and earth materials or perform any other excavation or land-filling activity without first obtaining a grading permit as set forth in this Chapter. A separate grading permit shall be required for each site. With respect to subdivisions, a separate permit will be required for each phase of development. The grading permit issued for each site may also cover the utility construction associated with the site provided the required information for the utilities is included with the application. A building permit shall not be issued prior to the issuance of a grading permit, when required.

§15.01.100 HCP Permission required

No owner of property within the boundaries of the HCP shall weed, clear and grub, grade, fill, excavate, store, or dispose of soil and earth materials or perform any other excavation or land filling activity without first obtaining permission from the Plan Operator. Permission for the listed activities is presently obtained through submittal of a Site Activity Review Application; no grading permit will be issued by the City for any property within the HCP until the property owner has first complied with the requirements of the Plan Operator.

§15.01.11081 Planning Commission ~~approval-review of~~ application for grading permit

A. Where a grading permit is required by the provisions of this Chapter, it shall be ~~obtained from~~ issued by the City Engineer following his/her approval of the permit application, ~~except that grading permit approval by the Planning Commission shall be required in the event~~ The permit application shall also be reviewed by the Planning Commission where:

(1) All of the following circumstances are applicable:

(a) More than two hundred fifty (250) cubic yards of material is to be moved or planned to be moved in any single grading or excavation operation; and

(b) The parcel or parcels of land on which the grading will be performed is located within any of the following zoning districts as defined by the City's most current Zoning Map: or if more than fifty (50) cubic yards of materials is to be exported from any single parcel of land; or Brisbane Acres, Southwest Bayshore, Central Brisbane, Northeast Ridge, Northwest Bayshore or the Quarry; and

(b) The parcel or parcels of land on which the grading shall be performed is located within any zoning district as defined by the City's most current Zoning Map

(c) The grading is being performed as part of a project for which an application for a permit, approval, or other land use entitlement is being considered by the Planning Commission as the approving authority for such application.

(2) Benches or terraces are required in cut and/or fill slopes, in which case landscaping for screening may be required by the City, to soften the visual impact. (See Section 17.32.220.) Grading is to be performed on any parcel of land within the boundaries of the HCP; provided, however, review by the Planning Commission shall not be required if the only grading operation to be conducted is weeding, or clearing and grubbing, where such work is performed pursuant to an HCP site activity approval issued by the Plan Operator.

B. Where Planning Commission review of an application for a grading permit is required by Subsection 15.01.110.A above, the review shall be based upon a consideration of the following potential impacts of the proposed grading:

- (1) Will the proposed grading be ~~minimized~~ and designed to reflect or fit comfortably with the site context and natural topography?
- (2) Will the proposed grading be designed to ~~avoid large exposed retaining walls~~ ensure that retaining walls visible to the public are designed to be as visually unobtrusive as possible by means including but not limited to:
 - (i) ensuring walls are architecturally integrated with proposed or existing structures on the site;
 - (ii) ensuring wall faces are decorative and treated with color, texture, architectural features, trelliswork or other means to visually break up the wall expanses;
 - (iii) screening with water conserving, non-invasive landscaping that at maturity will soften and reduce the visible expanse of walls?
- (3) Will the proposed grading be designed to minimize removal of:
 - (i) existing street trees, (see Section 12.12.020);
 - (ii) any California Bay Laurel, Coast live Oak or California Buckeye trees;
 - (iii) three or more trees of any species on the same site having a circumference of at least 30 inches measured 24 inches above grade?

Where removal of existing trees is necessary, do the landscape plans for the project include the planting of appropriate replacement trees?

C. The Planning Commission may provide comments and recommendations to the City Engineer concerning mitigation or avoidance of any potential adverse impacts of the proposed grading considered by the Commission pursuant to this Section.

§15.01.12082 Quarry operations

No grading permit for an excavation shall be issued if the excavation for which a grading permit is required shall ~~involve~~ allow for the operation of a quarry ~~as defined in the zoning ordinance, which quarry~~ where quarrying is otherwise prohibited ~~until a use permit therefor has first been granted pursuant to by~~ the provisions of the Zoning Ordinance of the City.

§15.01.13083 Application to annexed territory

Activities regulated by this Chapter, whether operative or nonoperative, which are located in territory hereafter annexed to the City shall not operate from and after thirty (30) days following annexation to the City, unless, in the case of operative activities, or before recommencement of operations in the case of inoperative activities, a grading permit shall have been granted as provided herein.

§15.01.14084 Exemptions

A grading permit shall not be required in the following instances:

A. Exploratory excavations and trenches under the direction of a soils engineer or engineering geologist, provided ~~all that these~~ excavations and trenches comply with all of the following:

(1) All earth material removed from the trenches or excavations that is not completely removed from the project site must be stored in a manner that prevents erosion, sedimentation, off-site migration, and smothering of natural vegetative ground cover;

(2) All trenches and excavations are properly backfilled;

(3) All ~~such~~ excavations and trenches are subject to the applicable sections of Title 8 of the State Safety Order, Division of Industrial Safety.

B. An excavation which does not exceed five (5) cubic yards on any one site and is less than two (2) feet in vertical depth and which does not create a cut slope steeper than two feet horizontal to one vertical (2:1). Such excavation, however, is not exempt from the requirements of Sections 15.01.340180 and 15.01.350190.

C. A fill less than one foot in depth placed on natural grade with a slope flatter than five horizontal to one vertical (5:1), which does not exceed five (5) cubic yards on any one site and does not obstruct a drainageway. Such fill, however, is not exempt from the requirements of Section 15.01.340180.

D. Grading in connection with dredging operations in San Francisco Bay for which approval for such grading has been granted by the City under other permits or agreements.

E. Grading in connection with the operation of salvage, garbage and disposal dumps for which approval for such grading has been granted by the City under other permits or agreements.

F. Emergencies posing an immediate danger to life or property, or substantial flood or fire hazards, or interruption of utility services to the public, in which case a permit shall be obtained as soon as possible.

G. Excavation by public utilities in connection with the placement of facilities, including repair and maintenance of local utility distribution and service utilities, if such excavation is authorized by a valid street encroachment permit.

§15.01.150~~90~~ Application for grading permit

The application for a grading permit shall be in writing and filed with the City Engineer in duplicate and must include all of the following items, unless otherwise waived by the eCity eEngineer:

- A. Application form;
- B. Site map and grading plan;
- C. Interim erosion and sediment control plan;
- D. Final erosion and sediment control plan;
- E. Revegetation plan;
- FE. Soils engineering report;
- GF. Engineering geology report;
- HG. Work schedule and transportation routes;
- IH. Security;
- J. Fees;
- K. Confirmation of the proposed recycling or reuse of all rocks, soils, tree remains, trees and other vegetative matter resulting from the grading operations, which shall be satisfied by providing a copy of the Recycling and Diversion of Debris permit issued by the Building Department pursuant to Chapter 15.75 of this Code.
- LJ. Any other material required by the City Engineer.

§15.01.160~~91~~ Application form

The following information is required on the application form unless waived or modified by the City Engineer:

- A. Name, address and telephone number of the applicant;
- B. Names, addresses and telephone numbers of any and all contractors, subcontractors or persons actually doing the excavating and land-filling activities and their respective tasks;

C. Name(s), address(es) and telephone number(s) of the person(s) responsible for the preparation of the site map and grading plan;

D. Names(s), address(es) and telephone number(s) of the person(s) responsible for the preparation of the interim and/or final erosion and sediment control plan, and the revegetation plan;

E. Name, address and telephone number of the soils engineer and/or the engineering geologist responsible for the preparation of the soils and engineering geology reports;

F. A vicinity map showing the location of the site in relationship to the surrounding area's watercourses, water bodies and other significant geographic features, and roads and other significant structures;

G. Date of the application;

H. Title report confirming ownership;

I. Signature(s) of the owner(s) of the site or of an authorized representative.

§15.01.170~~92~~ Site map and grading plan

The site map and grading plan shall contain all the following information unless waived or modified by the City eEngineer:

A. Plan views and cross sections showing the existing and proposed topography of the site. The plan view shall show contours at an interval sufficiently detailed to define the topography over the entire site. The minimum contour interval shall be two feet where ground slope is less than fifteen (15) percent and five (5) feet where ground slope exceeds fifteen (15) percent;

B. Two contour intervals off-site and extension of the on-site contours a minimum of one hundred (100) feet off-site, and sufficient to show on and off-site drainage;

C. An accurate plat plan drawn by a registered civil engineer or licensed land surveyor showing the site's exterior boundaries in true location with respect to the plan's topographic information, all easements, boundaries of the "Habitat Conservation Plan" area, special districts, and any other pertinent information;

D. Location and graphic representation of all existing and proposed natural and manmade drainage facilities;

E. Detailed plans of all surface and subsurface drainage devices, walls, cribbing, dams and other protective devices to be constructed with, or as a part of the proposed work, together with a map showing the drainage area and the estimated runoff of the area served by any drain;

F. Location and graphic representation of proposed excavation and fills, of on-site storage of soil and other earthen material, and of on-site disposal of soil and other earthen material;

G. Location of existing vegetation types and the location and type of vegetation to be left undisturbed;

H. Location of proposed final surface runoff, and of erosion and sediment control measures;

I. Quantity of soil or earthen materials in cubic yards to be excavated, filled, stored or otherwise removed from or utilized on-site;

J. Location of any buildings or structures on the property where the work is to be performed and the location of any buildings or structures on land of adjacent owners which are within fifteen (15) feet of the property or which may be affected by the proposed grading operations;

K. Location and slope of proposed streets and driveways. Driveways shall not exceed a centerline slope of twenty (20) percent and, unless specifically approved by the City Engineer, streets shall not exceed a centerline slope of fifteen (15) percent.

§15.01.18093 Interim erosion and sediment control plan (interim plan)

A. An interim plan containing all of the following information shall be provided with respect to conditions existing on the site during excavation or filling activities or soil storage and before the final plan is completed; furthermore, the plan submitted shall demonstrate compliance with the requirements of the Municipal Regional Permit, as defined in Section 13.06.040:

(1)A. The location and amount of runoff discharging from the site, calculated using a method approved by the City eEngineer;

(2)B. A delineation and brief description of the measures to be undertaken to control erosion caused by surface runoff and by wind and to retain sediment on the site including, but not limited to, the design and specifications for berms and sediment detention basins, types and method of applying mulches, the design and specifications for diverters, dikes and drains, seeding methods, the type, location and extent of pre-existing and undisturbed vegetation types, and a schedule for maintenance and upkeep.

B. The location of all the measures listed by the applicant under subsection A(2)(B) above shall be depicted on the site map and grading plan, or on a separate plan, at the discretion of the City Engineer.

C. An estimate of the cost of implementing and maintaining all interim erosion and sediment control measures shall be submitted in a form acceptable to the City Engineer.

D. The applicant may propose the use of any erosion and sediment control techniques in the interim plan provided such techniques are proven to be as or more effective than the equivalent best management practices contained in the manual of standards.

§15.01.19094 Final erosion and sediment control plan (final plan)

A. A final plan containing all of the following information shall be provided with respect to conditions existing on the site after final structures and improvements (except those required under this section) have been completed; furthermore, the plan submitted shall demonstrate compliance with the requirements of the Municipal Regional Permit, as defined in Section 13.06.040:

(1)A. The location and amount of runoff discharging from the site, calculated using a method approved by the City Engineer;

(2)B. A description of and specifications for sediment retention devices;

(3)C. A description of and specifications for surface runoff and wind erosion control devices;

(4)D. A description of vegetative measures;

(5)E. A graphic representation of the location of all items in subsections B through D above, and items A through K in 15.01.17092 above.

B. An estimate of the costs of implementing all final erosion and sediment control measures must be submitted in a form acceptable to the City Engineer.

C. The applicant may propose the use of any erosion and sediment control techniques in the final plan provided such techniques are proven to be as or more effective than the equivalent best management practices contained in the manual of standards.

§15.01.200 Revegetation plan

A revegetation plan is designed to effectively mitigate impacts to the site's habitat values by restoring or replacing native vegetation to the maximum extent practical and reasonable to achieve. Sites subject to revegetation requirements shall submit a plan to replant and maintain disturbed surfaces for review and approval by the City Engineer and Community Development Director in accordance with the following:

A. Topsoil removed from the surface shall be stored on or near the site and protected from soil loss while the work is underway. Such storage shall not cause damage to root systems of onsite trees intended to be preserved.

B. Mulching, seeding, planting of groundcover, shrubs or trees, or other suitable stabilization measures shall be used to protect exposed soil, to minimize soil loss, and to maximize slope stability. Use of drought tolerant native plant species that are fire resistant is encouraged. Use of plant species identified as invasive in the most current HCP Vegetation Management Activities Report is prohibited, whether or not the project site is within the boundaries of the HCP.

C. The City Engineer may require the permittee to monitor revegetation for a period up to five years, to provide reports of such monitoring to the City Planning Department, to allow for third-party assessment of the success of the revegetation at the applicant's expense, and to provide security to correct, complete, or remediate the approved revegetation plan. The City Engineer and the Community Development Director shall each retain discretion as to whether the approved revegetation plan has been successfully implemented.

D. Onsite mitigation is preferred. In the event that the Community Development Director determines that adequate mitigation can not be reasonably achieved onsite, the City may approve an offsite revegetation plan to achieve the goals of restoring habitat value. Such offsite mitigation shall comply with the provisions of this Chapter that govern onsite mitigation.

E. For sites located within the HCP, the City may impose restoration/revegetation requirements in addition to those required by the Plan Operator, so long as a reasonable rationale is provided for the additional requirements. A decision to require more stringent measures may be based upon the biological features of the site, for example, if the site is an existing or potential wildlife corridor or part of a buffer zone between developed areas and existing habitat, or if the site has particular geological features, such as potential for erosion or susceptibility to seismic hazards.

§15.01.21095 Soils engineering report (soils report)

A. A soils report, when required by the City Engineer, is to be prepared by an approved soils engineer and shall be based on adequate and necessary test borings, and shall contain all the following information, in addition to the minimum applicable requirements ~~of Chapter 70~~ of the latest edition of the California Building Code adopted by the City ~~of the Uniform Building Code~~:

- (1)A. Data regarding the nature, distribution, strength, and erodibility of existing soils;
- (2)B. Data regarding the nature, distribution, strength and erodibility of soil to be placed on the site, if any;
- (3)C. Conclusions and recommendations for grading procedures;

~~(4)D.~~ Conclusions and recommended designs for soil stabilization for interim conditions and after construction is completed;

~~(5)E.~~ Design criteria for corrective measures when necessary;

~~(6)F.~~ Foundation and pavement design criteria when necessary;

~~(7)G.~~ Opinions and recommendations covering suitability of the site for the proposed uses;

~~(8)H.~~ Other recommendations, as necessary, commensurate with the project grading and development.

B. Recommendations included in the report and approved by the City Engineer shall be incorporated in the grading plan.

C. Whenever a soils engineering report is required, the final submitted grading plans shall include a review letter from the soils engineer confirming that his/her recommendations have been incorporated into the plans.

§15.01.22096 Engineering geology report

A. An engineering geology report, when required by the ~~e~~City ~~e~~Engineer, is to be prepared by a qualified engineering geologist and shall be based on adequate and necessary test borings and shall contain the following information, in addition to the minimum applicable requirements ~~of Chapter 70~~ of the latest edition of the California Building Code adopted by the City ~~of the Uniform Building Code~~:

~~(1)A.~~ An adequate description of the geology of the site, including identification of actual and potential geologic hazards;

~~(2)B.~~ Conclusions and recommendations regarding the effect of geologic conditions on the proposed development;

~~(3)C.~~ Recommendations for mitigation of identified hazards wherever appropriate;

~~(4)D.~~ An opinion as to the extent that instability on adjacent properties may adversely affect the project;

~~(5)E.~~ Opinions and recommendations covering suitability of the site for the proposed uses;

~~(6)F.~~ Other recommendations, as necessary, commensurate with the project grading and development.

B. Recommendations included in the report and approved by the City Engineer shall be incorporated in the grading plan.

C. Whenever an engineering geology report is required, the final submitted grading plans shall include a review letter from the engineering geologist confirming that his/her recommendations have been incorporated into the plans.

§15.01.23097 Work schedule and transport routes

A. The applicant shall submit a master work schedule showing the following information:

(1)A. Proposed grading schedule;

(2)B. Proposed conditions of the site on each July 15th, August 15th, September 15th, October 1st, and October 15th during which the permit is in effect;

(3)C. Proposed schedule for installation of all interim erosion and sediment control measures including, but not limited to, the stage of completion of erosion and sediment control devices and vegetative measures on each of the dates set forth in subsection BA(2);

(4)D. Schedule for construction of the proposed improvements on the site;

(5)E. Schedule for installation of permanent erosion and sediment control devices where required.

B. The applicant shall also submit a description of the routes of travel to be used for access to and from the site for removing excavated material and bringing in fill or other materials.

§15.01.24098 Security

A. The applicant shall provide a performance bond or other acceptable security for the performance of the work described and delineated on the approved grading plan and the approved revegetation plan prior to the issuance of the grading permit, in an amount to be set by the City Engineer but not less than one hundred (100) percent of the approved estimated cost of performing said work. The form of security shall be one or a combination of the following to be determined and approved by the City Engineer:

(1)F. Bond or bonds issued by one or more duly authorized corporate sureties. The form of the bond or bonds shall be subject to the approval of the City Attorney;

(2)F. Deposit, either with the City or a responsible escrow agent or trust company at the option of the City, of money, negotiable bonds of the kind approved for securing deposits of public moneys, or an unconditional irrevocable letter of credit other instrument of credit from one or more financial institutions subject to regulation by the state or federal government wherein said

financial institution pledges funds are on deposit and guaranteed for payment;

(3). Cash in U.S. currency.

B. The applicant shall provide security for the performance of the work described and delineated in the interim plan in an amount to be determined by the City Engineer, but not less than one hundred (100) percent of the approved estimated cost of performing said work. The form of the security shall be as set forth in subsection A of this section.

C. The applicant shall provide security for the performance of the work described and delineated in the final plan in an amount to be determined by the City Engineer but not less than one hundred percent (100%) of the approved estimated cost of performing said work. The form of the security shall be as set forth in subsection A of this section.

D. The applicant shall provide a cash deposit in an amount established by resolution of the City Council to insure the repair of damage to public property or cleaning of public streets. In the event of failure by the applicant, after written notification if time permits, to maintain public property or right-of-way in a manner satisfactory to the City Engineer, the City Engineer may order repairs made or cleaning performed and deduct the cost from the deposit. Any unused balance shall be returned to the applicant upon completion of the grading.

§15.01.12500 Fees

A. Before accepting a grading permit application and plans for checking, the City Engineer shall collect ~~a-all applicable~~ plan checking fees as ~~approved-established~~ by resolution of the City Council and as provided in this Chapter.

B. Unless exempted under Section 15.01.260405 of this Chapter, a fee for each grading permit shall be paid to the City prior to issuance of a grading permit, in such amount as established from time to time by resolution of the City Council.

C. Failure to pay fees and obtain a permit before commencing work shall be deemed a violation of this ~~code Chapter~~, except when it can be proven to the ~~City Engineer's~~ satisfaction ~~of the City Engineer~~ that an emergency existed ~~which-that~~ made it impractical to first obtain the permit. A violation shall result in an assessment of double permit fees for work done prior to permit issuance. Payment of a double fee shall not relieve any person from complying with the requirements of this ~~code-Chapter~~ nor from any other penalties prescribed herein.

~~DC.~~ Additional fees approved by resolution of the City Council and contained in this Chapter shall be paid as required ~~to the City Engineer~~.

~~E.D.~~ If after written notification (if time allows) the City Engineer performs emergency work on private property, he shall charge the property owner all direct and

indirect costs which are necessary to complete the work to his satisfaction ~~as provided in Section 15.01.098(D)~~. In addition, the City Engineer may charge a mobilization cost equal to ten ~~(10)~~ percent (10%) of the cost for performing the work. Fees or deposits required for special purposes, ~~i.e.g.,~~ cleanup, dust control, etc., collected but not expended for the purpose for which they are collected, will be refunded.

§15.01.~~12605~~ Grading permit fee exemption

A. A fee for a grading permit shall not be required in the following instances: grading for the foundation, basement, and other features (e.g., walkways, patios, terracing) of a building or structure for which a building permit has been issued, provided that all grading, drainage, retaining wall, and ground cover work will be started and completed within a single dry season. A soils report and other information relating to such grading, and a performance bond or other acceptable security for the performance of the work, and a cash deposit to insure the repair of damage to public property or cleaning of public streets, may be required in connection with the issuance of the grading permit. The amount and form of such security and cash deposit shall be as set forth in Section 15.01.~~24098~~.

B. Notwithstanding the provisions of paragraph A above, a grading permit fee will be required where the grading to be performed, other than that solely for the building and its foundation and driveway, is such as to require grading permit approval by the Planning Commission under Section 15.01.~~11081~~.

§15.01.~~11270~~ Action on application

A. No grading permit shall be issued by the City Engineer unless the applicant provides sufficient information for the City Engineer to find that the work, as proposed by the applicant, is likely not to endanger any person, property, public resource, or public way or detrimentally affect water quality. Factors to be considered by the City Engineer in making his finding shall include, but shall not be limited to, the soils engineering report, the engineering geology report, possible saturation by rains, earth movements, run-off of surface waters, and subsurface conditions such as the stratification and faulting of rock, and the nature and type of soil or rock.

B. Applications shall be reviewed by the City Engineer in the order that they are received.

§15.01.~~1280~~ Permit duration

Permits issued under this Chapter shall be valid for the period during which the proposed excavation or filling activities and soil storage takes place or ~~is-are~~ scheduled to take place per Section 15.01.~~23097~~. Permittee shall commence permitted activities within sixty (60) days of the scheduled commencement date for grading or the permittee shall resubmit all required application forms, fees, maps, plans, schedules and security to the City Engineer, except where an item to be resubmitted is waived by the City Engineer.

§15.01.13290 Appeals

A. Any person may appeal to the ~~Planning Commission~~ City Manager the issuance, denial, or conditions of a grading permit, the suspension after a hearing by the City Engineer, or the revocation of a grading permit, or the failure to suspend or revoke a grading permit. Any such appeal shall be in writing and shall be filed with the ~~Planning Department~~ City Clerk within fifteen (15) days after the action complained of. ~~The appeal shall be accompanied by a fee, as set by the City Council, and shall clearly state the reason for appeal.~~

B. ~~Upon receipt of such an appeal, the planning department, acting under the direction of the Planning Director, shall bring the appeal before the Planning Commission within thirty (30) days and shall notify the appellant and (if different) the applicant of the date and time of the Planning Commission meeting at which the appeal will be heard. No other notice need be given, except such additional notice as may be required by state or other law. The Planning Commission shall proceed to hear and determine the appeal at the same meeting or at such later meeting as it shall determine, and in connection therewith may continue the same from time to time. The City Manager shall consider the appeal and may conduct an informal hearing to receive oral and documentary evidence from the appellant and the City Engineer. The City Manager may affirm, reverse or modify the action of the City Engineer and shall provide a written decision on the appeal to the appellant, with a copy to the City Engineer, City Council, and to the applicant if a different party has appealed.~~

C. The ~~action~~ City Manager's decision of the Planning Commission may be appealed to the City Council in the same manner as an appeal from a decision of the Planning Commission, as set forth in ~~Chapter 17.52 Sections 17.52.020 and 17.52.040~~ of this Code.

§15.01.14300 Revised plans

If the City Engineer finds the soil or other conditions to ~~not be as be different from~~ those stated in the application for a grading permit, he or she may immediately suspend the grading permit, and permittee shall cease all work on the work site, excepting work to make the site safe, until approval is obtained from the City Engineer for revised plans which conform to the existing conditions.

§15.01.15310 Cessation of operations

~~In the event~~ If the operation of any activity regulated by this Chapter is voluntarily ceased ds for a continuous period of more than ninety (90) days (which period is not stated in the approved work schedule per Section 15.01.23097) then, ~~in that event~~, the grading permit shall be null and void and the operation of said activity shall not be recommenced until a new grading permit is obtained as provided herein.

§15.01.16320 Assignment of permit

A permit issued pursuant to this Chapter may be assigned, provided all of the following conditions are satisfied:

- A. The permittee notifies the ~~e~~City ~~e~~Engineer of the proposed assignment;
- B. The proposed assignee:
 - (1)- Submits an application form pursuant to Section 15.01.09160; and
 - (2)- Agrees in writing to all the conditions and duties imposed by the permit; and
 - (3)- Agrees in writing to assume responsibility for all work performed prior to the assignment; and
 - (4)- Provides security pursuant to Section 15.01.24098; and
 - (5)- Agrees to pay all applicable fees.

C. The City Engineer approves the assignment. The City Engineer may disapprove an assignment for cause and shall not unreasonably withhold approval.

§15.01.17330 No improvements planned

Where an applicant does not plan to construct permanent improvements on the site, or plans to leave portions of the site graded but unimproved, applicant must meet all the requirements of this Chapter.

15.01.18340 Grading permit, paving

No person shall construct pavement surfacing on natural or existing grade for the purpose of a private road, parking lot or travelway without a valid grading permit, unless waived by the City Engineer. Resurfacing or maintenance of existing paved surfaces shall be exempt from this requirement. ~~Refer to Section 15.01.100(B) and (C) for fees.~~

§15.01.19350 Grading permit, drainageway alteration

No person shall alter an existing watercourse, channel, or revetment by excavating, or placing fill, rock protection or structural improvements without a valid grading permit, unless waived by the City Engineer, or unless the work is performed as interim protection under an emergency situation (Section 15.01.14084.(HF)). ~~Refer to Section 15.01.100(B) and (C) for fees.~~

§15.01.20360 Excavation blasting permit

No person shall possess, store, sell, transport or use explosives and/or blasting agents in violation of any existing laws or ordinances or do any excavation by explosives or blasting without a grading permit and without a separate blasting permit issued by the City ~~Fire~~ Department.

§15.01.23705 Truck haul permit

A truck haul permit shall be obtained from the City Engineer for the movement over a City street of any excavated or fill material to or from any property in the City or to or from any property outside the City which has direct access to a City street. This requirement shall not be applicable, however, to any quarrying operations nor to any transportation of materials not exceeding fifty (50) cubic yards from any one site. Before issuing a truck haul permit for moving excavated material over a City street, the City Engineer shall collect a fee as approved by resolution of the City Council ~~and as provided in this chapter.~~

§15.01.21380 Issuance of grading permits

The City Engineer may issue a grading permit upon receipt and approval of the items listed in Section 15.01.09150. Permits shall be issued subject to the following conditions:

A. The permittee shall maintain a copy of the permit and all approved plans and reports ~~required~~ under Sections 15.01.09150 and 15.01.23400 ~~(B)~~, on the work site, and the permit, plans and reports shall be available for public inspection during all working hours;

B. The permittee shall, at all times, conduct operations in conformity with approved site map, grading plan, and other required plans and reports.

C. The permittee shall comply with other conditions imposed by the City Engineer as are reasonably necessary to prevent the proposed operations from being conducted in such a manner as to constitute or create a nuisance or a hazard to life, ~~or~~ property, or the environment. Such conditions may include but are not limited to:

- (1)- The route and time of travel over public streets so as to cause the least interference with general traffic and to cause the least damage to public streets;
- (2)- The removal of rock, earth or other material that may be deposited on public streets by reason of said grading operations;
- (3)- The payment to City of the cost of repairing damage to public streets caused by trucking operations in connection with said grading operations;

- (4)- The installation of suitable fencing, barricades, signage, and lighting surrounding the grading operations.

D. The permittee shall implement temporary erosion control as necessary to protect public and private property, and as required in Section 15.01.180. Temporary erosion control shall be continuous throughout the work.

E. Permittee shall be knowledgeable of the conditions and/ or restrictions of the grading permit as outlined in applicable sections of this ~~code~~ Chapter, and as contained on the approved site map, grading plan, and other required plans and reports.

§15.01.~~223~~90 Time and noise limitations on grading operations

A. The time and noise limitations on all grading operations shall be those set forth for construction activities in Chapter 8.28, ~~n~~Noise eControl, of this Code.

B. ~~In addition, n~~No grading work shall be performed during hours other than the normal working hours of the City ~~p~~Public w~~Works~~ ~~d~~Department's inspection and maintenance personnel without approval of the City Engineer and without first obtaining a special permit for such work from the City Engineer. Before issuing a special permit for such work, the City Engineer shall collect a fee as approved by resolution of the City Council ~~and as provided in this chapter~~. Permitted hours of operation may be shortened by the City Engineer's finding of a previously unforeseen effect on the health, safety or welfare of the surrounding community.

§15.01.~~234~~00 Implementation of permits; permittee's duties

In addition to performing as required under Section 15.01.~~213~~80:

A. The permittee shall request an inspection of the site by the City Engineer at each of the following stages of the grading operation listed below. The City Engineer shall approve the work inspected or notify, in writing, the permittee or owner wherein it fails to comply with the law any approved grading plans or any other applicable requirement. Any portion of the work ~~which-that~~ does not comply with the law-grading plans or other applicable requirement shall be corrected. The stages of work at which inspections shall be requested are:

- (1)- Initial: when the permittee is ready to begin grading work;
- (2)- Rough grading: when all rough grading has been completed;
- (3)- Interim erosion control: the installation of all interim erosion control devices and the completion of planting revegetation requirements;
- (4)- Final: readiness of the site for final inspection, including, but not limited to, finished grading, installation of drainage devices and final erosion control measures.

B. Permittee shall submit status reports to the City Engineer, ~~status reports~~ with revised work schedules ~~which are~~ required by Section 15.01.23097, or other reports as required by City Engineer, for the City Engineer's approval if:

- (1)- There are delays in obtaining materials, machinery, services, or manpower necessary to the implementation of the grading, interim, or final plans as scheduled;
- (2)- There are any delays in excavation, land-disturbing, filling activities, or soil storage;
- (3)- The work is not being done in conformance with ~~the any~~ approved grading ~~plan, interim or final~~ plans;
- (4)- There are any delays in the implementation of the interim or final plans.

C. Permittee shall submit recommendations for corrective measures, if necessary and appropriate, with the reports made under Subsection B of this Section, unless the City Engineer waives the requirement ~~is waived by the City Engineer~~.

§15.01.2410 Implementation of permits – requirements of City Engineer

A. The permittee shall submit all reports as may be required in this Section and in Sections 15.01.21380 and 15.01.23400 to the City Engineer for review. The City Engineer may require permittee to modify the site map and grading plan, interim or final plans, and maintenance methods and schedules. The City Engineer shall notify the permittee in writing ~~within a reasonable period of time~~ of the requirement to modify and may specify a reasonable specific period of time within which permittee must comply. All modifications are subject to the City Engineer's approval.

B. The City Engineer may inspect the site:

- (1)- Upon receipt of any report by permittee under provisions of Section 15.01.23400.(B);
- (2)- To verify completion of modifications required under Subsection A of this Section ~~15.01.240(A)~~;
- (3)- During and following any rainfall;
- (4)- At any other time, at the City Engineer's discretion.

C. Upon completion of the rough grading work and at the final completion of the work, the City Engineer may require the following reports and drawings and supplements thereto:

- (1)- An as-graded grading plan prepared by the civil engineer who prepared the approved grading plan, including original ground surface elevations, as-graded ground surface elevations, lot drainage patterns and locations and elevations of all surface and subsurface drainage facilities. The civil engineer shall provide a statement that the work was done in general conformance with the final approved grading plan;
- (2)- A soil grading report prepared by the soils engineer including locations and elevations of field density tests, summaries of field and laboratory tests, and other substantiating data and comments on any changes made during grading and their effect on the recommendations made in the soil engineering investigation report. The soils engineer shall provide a statement as to compliance of the work with his/her recommendations and as to the adequacy of the site for the intended use;
- (3)- An engineering geology report prepared by the geologist containing a final description of the geology of the site including any new information disclosed during the grading and the effect of same on recommendations incorporated in the approved grading plan. The geologist shall provide a statement as to compliance of the work with his/her recommendations and as to the adequacy of the site for the intended use as affected by geologic factors.

D. No person shall in any way hinder or prevent the City Engineer or any of his/her authorized representatives from entering and inspecting any property on which grading has been or is being done.

§15.01.4250 Grading inspection

A. All grading operations for which a permit is required shall be subject to inspection by the City Engineer. When required by the City Engineer, special inspection of grading operations and special testing shall be performed ~~in accordance with~~ according to the provisions of Subsection B of this Section.

B. In addition to complying with all requirements of ~~Chapter 70 of the Uniform the California~~ Building Code, as amended by this Chapter, "regular grading" and "engineered grading" applicants/permittees shall be subject to and comply with the following:

- (1)~~A.~~ Engineered and Regular Grading Designation. Grading in excess of one thousand (1000) cubic yards and/or ten (10) feet vertical depth of cut and/or fill shall be performed ~~in accordance with the~~ according to approved grading plan prepared by a civil engineer, and shall be designated as "engineered grading." Grading involving less than one thousand (1000) cubic yards and/or less than ten (10) feet vertical depth of cut and/or fill shall be designated "regular grading" unless the applicant/permittee, with the City Engineer's approval ~~of the City Engineer~~, or the City Engineer, independently, chooses to have the grading performed as "engineered grading."

~~(2)B.~~ Engineered Grading Requirements. For engineered grading, it shall be the responsibility of the civil engineer who prepares the approved grading plan to incorporate all recommendations from the soil engineering and engineering geology reports into the grading plan. He/she shall also be responsible for the professional inspection and approval of the grading within his area of technical specialty. This responsibility shall include, but need not be limited to, inspection and approval as to the establishment of line, grade, and drainage of the development area. The civil engineer shall act as the coordinating agent ~~in the event if~~ the need arises for liaison between the other professionals, the contractor and the City Engineer. The civil engineer shall also be responsible for the preparation of revised plans and the submission of as-graded grading plans and compliance statements upon completion of the work.

~~(3)~~ Soils Engineering and Engineering Geology Requirements. Soils engineering and engineering geology reports shall be required at the discretion of the City Engineer. During grading, all necessary reports, compaction data, soils engineering and engineering geology recommendations shall be submitted to the owner, the geologist, the civil engineer, and the City Engineer by the soils engineer and the engineering geologist. Areas of responsibility shall be as follows:

~~(a)~~ The soils engineer's area of responsibility shall include, but need not be limited to, the professional inspection and approval concerning the preparation of ground to receive fills, testing for required compaction, stability of all finish slopes, and the design of buttress fills, where required, incorporating data supplied by the engineering geologist.

~~(b)~~ The engineering geologist's area of responsibility shall include, but need not be limited to, professional inspection and approval of the adequacy of natural ground for receiving fills and the stability of cut slopes with respect to geological matters and the need for subdrains or other groundwater drainage devices. He/she shall report ~~his-the~~ findings to the owner, the soils engineer, the City Engineer and the civil engineer.

~~(c)~~ The City Engineer shall inspect the project as required under Section 15.01.~~24~~10 and at any more frequent interval necessary to determine that the professional consultants are exercising adequate control, ~~is being exercised by the professional consultants.~~

~~(4)C.~~ Regular Grading Requirements. The City Engineer may require the permittee to provide inspection and testing by a professional testing company acceptable to the City Engineer. The testing agency's responsibility shall include, but need not be limited to, approval concerning the inspection of cleared areas and benches to receive fill, and the compaction of fills. When the City Engineer has reasonable cause to believe that geologic factors may be involved, the grading operation will be required to conform to "engineered grading" requirements.

~~(5)D.~~ Notification of Noncompliance. If, in the course of fulfilling their responsibility under this Section, the civil engineer, the soils engineer, the engineering geologist, or the testing agency finds that the work is not being done in conformance with this Section or the approved grading plans, the discrepancies shall be reported immediately in writing to the person in charge of the grading work and to the City Engineer (see Section 15.01.~~2340~~0). Recommendations for corrective action measures, if necessary, shall be submitted.

~~(6)E.~~ Transfer of Responsibility for Approval. If the civil engineer, the soils engineer, the engineering geologist, or the testing agency of record is changed during the course of the work, the work shall be stopped until the replacement has agreed to accept the responsibility within the area of their technical competence for approval upon completion of the work.

§15.01.~~2554~~30 Completion of work

A. Final Reports. Upon the completion of the rough grading work and at the final completion of the work, the City Engineer may require the following reports and drawings and supplements thereto:

- ~~(1).~~ An as-graded grading plan prepared by the civil engineer who prepared the approved grading plan, including original ground surface elevations, as-graded ground surface elevations, lot drainage patterns and locations and elevations of all surface drainage facilities. The civil engineer shall state that to the best of his/her knowledge the work was done ~~in accordance with~~ according to the final approved grading plan;
- ~~(2).~~ A soil grading report prepared by the soils engineer, including locations and elevations of field density tests, summaries of field and laboratory tests, and other substantiating data and comments on any changes made during grading and their effect on the recommendations made in the soils engineering investigation report. The civil engineer shall render a finding as to the adequacy of the site for the intended use as affected by geologic factors;
- ~~(3).~~ A geologic grading report prepared by the engineering geologist, including a final description of the geology of the site and any new information disclosed during the grading and the effect of same on recommendations incorporated in the approved grading plan. The engineering geologist shall render a finding as to the adequacy of the site for the intended use as affected by geologic factors.

B. Notification of Completion. The permittee or his/her agent shall notify the City Engineer when the grading operation is ready for final inspection. Final approval shall not be given until all work, including installation of drainage facilities and their protective devices, and all erosion control measures have been completed ~~in accordance~~

~~with-according to~~ the final approved grading plan and the required reports have been submitted.

§15.01.~~26440~~ Removal of ground cover

A. All debris from clearing and grubbing shall be removed from the site within three (3) months from the completion of that activity.

B. During the dry season, the natural vegetative ground cover of any watershed shall not be destroyed or removed more than thirty (30) days prior to grading. During the wet season, such ground cover shall not be destroyed or removed more than five (5) days prior to such grading. The City Engineer may grant an extension of time when justified by the circumstances.

§15.01.~~27450~~ Wet season grading

A. Commencement or continuation of any grading during the wet season is prohibited unless the City Engineer grants permission ~~is granted by the City manager~~ as provided in this Section.

B. The City ~~Engineer manager~~ may, at his or her discretion, grant permission to commence or continue grading during the wet season, on the basis of the information submitted by the applicant or permittee, weather forecasts, experience or any other factors which he or she may consider pertinent, so long as such grading will not cause a hazardous condition, erosion, or sedimentation to occur or continue.

C. For continuance of wet season grading activities, other than installation, maintenance or repair of measures in the interim or final erosion control plan, ~~during the wet season~~, applicant/permittee shall submit evidence to the City ~~Engineer manager~~, as often as ~~said the~~ City ~~Engineer manager~~ requires, demonstrating that erosion and sedimentation are being effectively controlled.

D. Applicant/permittee's failure to submit the required information to obtain permission for wet season grading activity shall result in suspension or revocation of the grading permit, action against the security, filing a lien on the property to recover City's costs, and/or prosecution as provided in Sections 15.01.~~37550~~ through 15.01.~~395580~~ of this Chapter.

§15.01.~~28460~~ Cuts

A. General. Unless otherwise recommended in the approved soil engineering and/or engineering geology report, and specifically waived by the City Engineer, cuts shall conform to the provisions of this Section and in accordance with Figures 1 and Figure 2 of this Chapter.

B. Cut slopes. Cut slopes shall be no steeper than two ~~to one (2:1 - (2)-two~~ horizontal to one ~~(1)-vertical~~ ~~(2:1)~~ unless otherwise justified in the soil engineering or engineering geology report. Justification shall consist of an ~~accepted~~ geotechnical slope stability analysis acceptable to the City Engineer, with factors of safety in proportion to the affected structures and type of loading (e.g. earthquake). ~~Aeepted-The factors of safety to be analyzed analysis~~ shall be those determined ~~by-at the discretion of~~ the City Engineer.

C. Slope adjustments. The City Engineer may require that the excavation be made with cut face flatter in slope than two (2) horizontal and one (1) vertical if he/she finds the material in which the excavation is to be made is unusually subject to erosion, or if other conditions make such flatter slope necessary for stability and safety.

D. Drainage and Terracing. Drainage and terracing shall be provided as required by Section 15.01.~~37-190~~.

§15.01.~~29-470~~ Fills

A. General. Unless otherwise recommended in the approved soil engineering report and/or engineering geology report, and specifically waived by the City Engineer, fills shall conform to the provisions of this Section and Figure 1 and Figure 2 of this Chapter. In the absence of an approved soils engineering report, these provisions may be waived for minor fills not intended to support structures.

B. Fill Location. Fill slopes shall not be constructed on natural slopes steeper than two to one (2:1), or where the fill slope terminates above a planned or existing cut slope, within a horizontal distance equal to one-third (1/3) of the vertical height of the fill, unless specifically addressed in the soils engineering report or the engineering geology report and approved by the City Engineer.

C. Preparation of Ground. The ground surface shall be prepared to receive fill by removing vegetation, noncomplying fill, top-soil and other unsuitable materials scarifying to provide a bond with the new fill, and, where slopes are steeper than five to one (5:1), and the height is greater than five (5) feet, by benching into sound bedrock or other competent material as determined by the soils engineer. The bench under the toe of a fill on a slope steeper than five to one (5:1) shall be at least ten (10) feet wide. The area beyond the toe of fill shall be sloped for sheet overflow, or a paved drain shall be provided. Where fill is to be placed over a cut, the bench under the toe of fill shall be at least ten (10) feet wide, but the cut must be made before placing fill and shall be approved by the soils engineer and engineering geologist as suitable foundation for fill. Unsuitable soil is soil ~~which that~~, in the opinion of the building official or the civil engineer or the soils engineer or the geologist, is not competent to support other soil or fill, to support structures or to satisfactorily perform the other functions for which the soil ~~isn~~ intended.

D. Fill Material. Detrimental amounts of organic material shall not be permitted in fills. Except as permitted by the City Engineer, no rock or similar irreducible material with a maximum dimension greater than eight (8) inches shall be buried or placed in fills.

Exception: the City Engineer may permit placement of larger rock when the soils engineer properly devises a method of placement, continuously inspects its placement, and approves the fill stability. The following conditions shall also apply:

- (1)- Prior to issuance of the grading permit, potential rock disposal areas shall be delineated on the grading plan.
- (2)- Rock sizes greater than eight (8) inches in maximum dimension shall be ten (10) feet or more below grade, measured vertically.
- (3)- Rocks shall be placed so as to assure filling of all voids with fines.

E. Compaction. All fills shall be compacted to a minimum of ninety (90) percent of maximum density as determined by ~~Building Code Standard No. 70-1~~ Appendix J of the 2010 California Building Standards Code or equivalent, as approved by the City Engineer. Field density shall be determined ~~in accordance with~~ according to Appendix J of the 2010 California Building Standards Code ~~Building Code Standard No. 70-2~~ or equivalent, as approved by the City Engineer.

In addition to the inspections of fills, the City Engineer may require a statement from an approved soils engineer based on tests of the fill at selected stages. If favorable conditions exist, the City Engineer may, by prior approval, waive requirements for inspection of or soils tests by an approved soils engineer. The requirements of the City Engineer for the compaction of fills may include but shall not be limited to the following:

- (1)- Preparation of the natural ground surface by removing top soil and vegetation and by compacting the fill upon a series of terraces;
- (2)- Control of moisture content of the material used for the fill;
- (3)- Limitation of the use of various kinds of materials;
- (4)- Maximum thickness of the layers of the fill to be compacted;
- (5)- Method of compaction;
- (6)- Density requirements of the completed fill depending upon the location and use of the fill;
- (7)- Compaction tests required during the process of filling.

F. Slope. The slope of fill surfaces shall be no steeper than is safe for the intended use. Fill slopes shall be no steeper than two (2) horizontal to one (1) vertical (2:1). The City Engineer may require that the fill be made with a slope face flatter in slope than two ~~(2) horizontal~~ to one ~~(1) vertical~~ (2:1) if he or she finds the material of which the fill is to be made is unusually subject to erosion, or if other conditions make such flatter slope necessary for stability and safety.

G. Drainage and Terracing. Drainage and terracing shall be provided and the area above fill slopes and the surfaces of terraces shall be graded and paved as required by Section 15.01.~~31490~~.

§15.01.~~30480~~ Setbacks

A. General. The setbacks and other restrictions specified by this Section are minimum and may be increased by the City Engineer or by the recommendations of a civil engineer, soils engineer, or engineering geologist, if necessary for safety and stability or to prevent damage of adjacent properties from deposition or erosion or to provide access for slope maintenance and drainage. Retaining walls may be used to reduce the required setbacks when approved by the City Engineer.

B. Setbacks from Property Lines. The tops of cuts and toes of fill slopes shall be set back from the outer boundaries of the permit area, including slope-right areas and easements, in accordance with Figure 2 of this Chapter. The tops and toes of cut and fill slopes shall be set back from property lines and structures as far as necessary to provide for safety of adjacent property, safety of pedestrians and vehicular traffic, required slope rounding, adequate foundation support, required swales, berms, and drainage facilities, and applicable zoning requirements. Except for pier-type foundations or other special foundation design, setbacks shall not be less than as shown on Figure 2 of this Chapter.

§15.01.~~31490~~ Drainage and terracing

A. General. Unless otherwise indicated on the approved grading plan, drainage facilities and terracing shall conform to the provisions of this Section.

B. Terrace. Terraces at least six (6) feet in width shall be established at not more than thirty (30) feet vertical intervals on all cut or fill slopes to control surface drainage and debris, except that where only one terrace is required, it shall be at mid-height. For cut or fill slopes greater than sixty (60) feet and up to one hundred twenty (120) feet in vertical height, one terrace at approximately mid-height shall be twelve (12) feet in width. Terrace width and spacing for cut and fill slopes greater than one hundred twenty (120) feet in height shall be designed by the civil engineer who prepares the approved grading plan and approved by the City Engineer. Suitable access shall be provided to permit proper cleaning and maintenance. Swales and ditches shall comply with the following requirements:

(1) Swales or ditches on terraces shall have a minimum gradient along and towards the ditch of five (5) percent unless approved by the City Engineer and must be paved with reinforced concrete not less than three (3) inches in thickness or an approved equal paving. They shall have a minimum depth at the deepest point of one (1) foot and a minimum, paved width of three (3) feet or as required by the City Engineer.

(2) A single run of swale or ditch shall not exceed a length of one hundred fifty (150) feet or collect runoff from a tributary area exceeding thirteen thousand

five hundred (13,500) square feet (projected) without discharging into a down drain, unless approved by the City Engineer.

C. Subsurface Drainage. Cut and fill slopes shall be provided with subsurface drainage as necessary for stability.

D. Disposal. All drainage facilities shall be designed to carry waters to the nearest practicable drainage way approved by the City Engineer and/or other appropriate jurisdiction as a safe place to deposit such waters. Erosion of ground in the area of discharge shall be prevented by installation of nonerosive down drains or other devices. Building pads shall have a drainage gradient of two (2) percent toward approved drainage facilities, unless waived by the City Engineer.

Exception: the gradient from the building pad may be one (1) percent if all the following conditions exist throughout the permit area:

- (1)- No proposed fills are greater than ten (10) feet in maximum depth;
- (2)- No proposed finish cut or fill slope faces have a vertical height in excess of ten (10) feet;
- (3)- No existing slope faces, which have a slope face steeper than ten (10) horizontally to one (1) vertically, have a vertical height in excess of ten (10) feet;
- (4)- A two (2) percent gradient is provided for the first five (5) feet adjacent to the structure.

E. Interceptor Drains. Adequate provision shall be made to prevent any surface waters from damaging the cut face of an excavation or the sloping surface of a fill. At the discretion of the City Engineer, paved interceptor drains shall be installed along the top of all cut slopes where the tributary drainage area above slopes towards the cut and has a drainage path greater than forty (40) feet measured horizontally. Interceptor drains shall be paved with a minimum of three (3) inches of concrete or gunite and reinforced. They shall have a minimum depth of twelve (12) inches and minimum paved width of thirty (30) inches measured horizontally across the drain or as required by the City Engineer. The slope of drain shall be subject to approved by the City Engineer's approval.

§15.01.32500 Import and export of earth material

On project sites where earth materials are moved on public roadways from or to the site, the following requirements shall apply:

A. ~~Either water or dust palliative or both must be applied for the alleviation or prevention of excessive dust resulting from the loading or transportation of earth from or to the project site on public roadways. Dust control shall be implemented as specified in Section 15.01.510 below.~~ The permittee shall be responsible for maintaining public rights-

of-way used for hauling purposes in a condition free of dust, earth, or debris attributable to the grading operation.

B. Loading and hauling of earth from or to the site must be accomplished within the limitations established in Section 15.01.22390 of this ~~grading code~~ Chapter.

C. Access roads to the premises shall be only at points designated on the approved grading plan. Access roads shall include stabilized construction entrances and/or other BMPs as required by the City Engineer.

D. The last fifty (50) feet of the access road, as it approaches the intersection with the public roadway, shall have a grade not to exceed three (3) percent. There ~~must~~ shall be ~~three hundred (300) feet a~~ clear, unobstructed sight distance of three hundred (300) feet to the intersection from both the public roadway and the access road. If the three hundred (300) feet sight distance cannot be obtained, flagmen and/or signs shall be posted.

E. A stop sign conforming to the requirements of the California Vehicle Code shall be posted at the entrance of the access road to the public roadway.

F. An advance warning sign, conforming to the requirements of the current California Manual for Uniform Traffic Control Devices, shall be posted on both sides of the access intersection ~~must be posted on the public roadway four hundred (400) feet on either side of the access intersection, carrying the words "Truck Crossing."~~ The sign shall be diamond shape, each side being thirty (30) inches in length, shall have a yellow background, and the letters thereon shall be five (5) inches in height. The sign shall be placed six (6) feet from the edge of the pavement and the base of the sign shall be five (5) feet above the pavement level. The advance warning sign shall be covered or removed when the access intersection is not in use.

§15.01.33510 Site ~~d~~Dust control

The movement of earth materials either within, to, or from a site shall require the ~~periodic~~ implementation of dust control measures in accordance with the BAAQMD CEQA Guidelines, and any additional measures that the City Engineer deems to be necessary and appropriate. ~~On projects as~~ determined by the ~~e~~City ~~e~~Engineer, a water truck shall be continuously present on-site to assure maximum control.

§15.01.34520 Protection of adjoining property

In accordance with California Civil Code Section 832. Each adjacent owner is entitled to the lateral and subjacent support ~~which that~~ his/her land receives from the adjoining land, subject to the right of the owner of the adjoining land to make proper and usual excavations on the same for purposes of construction or improvement as provided by law.

§15.01.3530 Removal of hazards

Whenever the City Engineer determines that any existing excavation, ~~or~~ embankment, or fill on private property has become a hazard to any person, endangers property, or adversely affects the safety, use, or stability of a public way or drainage channel, the owner of the property upon which the excavation or fill is located, or other person or agent in control of such property, upon receipt of notice ~~in writing~~ from the City Engineer, shall immediately repair or eliminate such excavation or embankment so as to remove the hazard and ~~be in conformance to conform~~ with the requirements of this Chapter. Notice from the City Engineer to remove a hazard may be verbal if the hazard presents an immediate threat of injury or damage, and as soon as reasonably possible thereafter, the verbal notice shall be followed by a written notice from the City Engineer.

§15.01.36540 Post-grading procedures

Upon completion of final grading and permanent improvements, where such permanent improvements are planned at the time grading is performed, permittee shall notify the City Engineer that the grading is completed. The City Engineer shall review the grading performed, and the final reports required in Section 15.01.430, and, if found in substantial conformance to the permit conditions, the City Engineer may release the unexpended and unencumbered amount of the cash deposit and initiate the release of the security bonds posted by the permittee in accordance with Section 15.01.40590.

§15.01.37550 Revocation or suspension of permits

A. The City Engineer may suspend ~~A~~any grading permit ~~may be suspended by the City Engineer~~ for the violation of any condition of the permit, the violation of any provision hereof or any other applicable law or ordinance, or the existence of any condition or the doing of any act constituting or creating a nuisance, threatening water quality, or endangering life, property, or the environment, ~~the lives or property of others~~. Upon written notification of suspension of a permit, the permittee shall cease all work on the work site, except work necessary to remedy the cause of the suspension.

B. Following the suspension, the permittee shall be granted a hearing by ~~said~~ the City Engineer within five (5) days of the written notice of suspension. The ~~written~~ notice shall state, generally, the grounds of complaint and the time and place where such hearing will be held.

C. At the conclusion of said hearing, and within thirty (30) days thereafter, the City Engineer shall make his/her findings and notify, in writing, the permittee of the action taken.

D. If the permittee, after written notice of suspension, fails or refuses to cease work, as required under Subsection A of this Section, the City Engineer may revoke the permit.

E. The City Engineer ~~shall may~~ reinstate a suspended permit upon the permittee's correction of the cause of the suspension.

F. The ~~e~~City ~~e~~Engineer shall not reinstate a revoked permit.

§15.01.~~385~~60 Violation - penalties

A. The violation of any of the provisions of this Chapter shall constitute a misdemeanor, punishable by the fines, penalties and enforcement provisions set forth in Chapters 1.14, 1.16 and 1.18 of this Code.

B. Where a violation of any of the provisions of this Chapter is determined by the City to have been willful, reckless, or grossly negligent, then in addition to the fines, penalties and enforcement provisions referenced in Paragraph A above or set forth elsewhere in this Code, the City may impose a supplemental fine not to exceed the amounts listed below for each violation:

Grading Quantity	Supplemental Fine
6-50 cubic yards	\$1,500.00
51-100 cubic yards	\$2,500.00
101-1,000 cubic yards	\$5,000.00
1,001-10,000 cubic yards	\$10,000.00
10,001-100,000 cubic yards	\$25,000.00
100,001-200,000 cubic yards	\$50,000.00
Greater than 200,000 cubic yards	\$????????

§15.01.~~395~~70 Action against the security

The City Engineer may retain and/or execute security required by Section 15.01.~~240~~98 if one of the conditions listed in Subsections A through D below exists. The City Engineer shall use funds from the appropriate security to finance remedial work undertaken by the City or private contractor under contract to the City, and to reimburse the City for all direct costs incurred in the process of the remedial work, including but not limited to the following conditions:

A. The permittee ceases ~~land-disturbing~~ activities and/or filling and abandons the work site prior to the completion of the work shown on the site map, ~~and~~ grading plan and revegetation plan (if applicable);

B. The permittee fails to conform to the conditions of the grading permit as approved or as modified under Section 15.01.~~24~~380 and has had his/her permit revoked under Section 15.01.~~235~~50;

C. The techniques utilized under the interim or final erosion control plan fail within one (1) year of installation, or before a final erosion control plan is implemented for the site or portions of the site, whichever is later;

D. The City Engineer determines that action by the City is necessary to prevent excessive erosion from occurring on the site.

§15.01.39580 Public nuisance abatement

A. The City Council of the city of Brisbane finds and declares that any work site on which grading has been started, and has been abandoned or is not completed ~~in accordance with~~ according to the site plan, grading plan, and grading permit, or on which the interim or final erosion control facilities have failed, or where on-site grading and erosion control facilities either are not working properly, or are ~~considered~~ inadequate or incomplete, creates a danger to public health, safety and welfare, and constitutes a public nuisance. All duties of the City Manager under this Chapter may be delegated to other officers, agents or employees of the City.

BA. The public nuisance abatement procedures provided in this Section are, at the City's option, ~~an alternative~~ or additional to the procedures provided in Sections 15.01.39570 and 15.01.3530 of this Chapter, or to any applicable procedures provided by this Code, including Chapters 1.14, 1.16, 1.18, 8.38, or any other City ordinance, or provided by state law or any other ordinance of the City.

CB. The City Manager is authorized to abate each and every such nuisance or cause the same to be abated in the manner provided by the provisions of this Section.

DC. Before abating any condition which is declared to be a public nuisance, the City Manager shall post upon or in front of the property on which such nuisance exists, a notice which shall be substantially in the following form:

NOTICE TO ABATE NUISANCE OR REMOVE HAZARD

Notice is hereby given that ~~grading the following activity/condition on the property located at _____, in the City of Brisbane, County of San Mateo, State of California, identified as Assessors Parcel Number _____ has been started and, (has been abandoned, (not in conformance with the site plan, grading plan and grading permit,) the) on-site grading and interim or final erosion control facilities have failed, (erosion control facilities are not complete, and that constitutes a violation of the City of Brisbane Grading Ordinance or a violation of a permit or approval issued pursuant to such Ordinance:~~

~~s~~Such condition creates a danger to the public health, safety, and welfare and is a public nuisance which must be abated by immediately removing the hazard and/or by completing the planned permitted work, by taking the following corrective action:

If said nuisance is not abated or said hazard is not removed within ~~three~~ _____ days from and after the date of posting of this notice, or if good cause is not shown to

the undersigned within said ~~three days time~~ why such corrective action should not be ~~done taken~~, the City will abate such nuisance by removing or causing to be removed said hazard and completing or causing to be completed the ~~planned permitted work~~ corrective action described above, and in such event, the cost and expense of such removal and abatement will be specifically assessed upon or against the parcel of land from which the hazard is removed and on which the ~~planned permitted work~~ corrective action is completed, and such assessment will constitute a lien upon the property until paid.

~~The above mentioned parcel of land on which said public nuisance exists is situated in the City of Brisbane, County of San Mateo, State of California which is described in the last equalized assessment roll of the county of San Mateo as:~~

APN _____

All interested persons having any objection to the above shall present such objections to the undersigned City Manager at City ~~offices~~ Hall, 50 Park Place, Brisbane, California 94005, within ~~three~~ _____ days from and after the posting, herein specified, of this notice.

Posted/Mailed this _____ day of _____, 1920

CITY MANAGER OF THE
CITY OF BRISBANE

By: _____

ED. Before abating any condition which is declared to be a public nuisance in this Section, the City Manager, in addition to posting of notice or notices as provided by Subsection (DE) of this Section, may mail, or cause to be mailed, to the person or persons who are designated on the last equalized assessment roll of the county of San Mateo, as owner or owners of the parcel of land on which such nuisance exists, at their address or addresses as shown on the last equalized assessment roll, a written notice or notices which shall be substantially in the same form shown in Subsection (DE) above.

FE. ~~1~~ The owner or owners of any private parcel of land within or upon which a public nuisance, as described in this Section, exists, have a duty to abate such nuisance at his, her or their own cost and expense by removing any hazard and completing any planned permitted grading within the time prescribed in the notice which is posted upon such property, or if notice is given by mail within the time prescribed in the mailed notice. ~~2~~ If such owner or owners fail to abate such nuisance ~~as above prescribed~~ within said time, and if, in addition, they fail to show cause to the satisfaction of the City ~~engineer~~ Manager why said nuisance should not be abated, then in that event the City may abate said nuisance or cause same to be abated.

GF. In order to abate said nuisance, the City may cause the removal of said nuisance and complete the planned permitted work, or perform such other work as may be necessary or appropriate to abate the nuisance or may cause a licensed contractor to abate

the nuisance in such manner for reasonable rates not in excess of prevailing rates for similar work within the City.

HG. In the event the City Manager finds that any public nuisance, above described in this Section, within or upon any parcel of land is so serious and presents such an immediate menace or danger to the public health, safety and welfare that such nuisance should be immediately abated without first posting or mailing notices, as above provided, and without first giving the owner or owners of said parcel further time to abate the same, then in that event the City Manager may immediately abate said nuisance or cause the same to be abated in the manner provided in subsection (~~GF~~) of this Section without first posting or mailing any notices and without giving the owner or owners of the parcel further time to abate the same. However, the City Manager, if he or she abates such nuisance, shall prepare and file in his or her office a written report describing the location, nature and extent of the public nuisance and setting forth the reasons why he or she had to abate it immediately, as aforesaid, and he or she shall cause a copy of said report to be ~~transmitted to the city manager and to be~~ mailed within ten (10) days from and after completion of such abatement, to the owner or owners of the parcel within or upon which nuisance existed, as such owner or owners are shown on the last equalized assessment roll of the county of San Mateo, at their addresses as shown on said roll.

IH. The City Manager shall keep a record of the cost and expense incurred by him or her in abating or causing to be abated, pursuant to this Section, each public nuisance within or upon each separate parcel of land. To said costs and expenses, the City Manager shall add an amount for overhead and administration and incidental expenses and shall submit them to the City Council for confirmation of an itemized written report showing all costs and expenses incurred by the City in abating each public nuisance.

JH. A copy of City Manager's report to the City Council shall be posted for at least ten (10) days prior to its submission to the City Council at the usual place where City notices are posted, together with a notice of the time and place when and where it will be submitted to the City Council for a hearing. The notice shall state a time and place when and where property owners may appear and object to any matter contained in the report.

KJ. At the time fixed for receiving and considering the report, the City Council shall hear it with any objections of the property owners liable to be assessed for the abatement. It may modify the report if it is deemed necessary. ~~If T~~the City Council finds the report to be acceptable, it shall ~~then~~ confirm the report by ~~motion or~~ resolution.

LK. After confirmation of the report, a certified copy of the same shall be filed with the County of San Mateo. The description of the parcels reported shall be those used for the same parcels on the county's assessor's map books for the current year.

ML. The cost of abatement within or upon each parcel of land, as confirmed, constitutes a special assessment against that parcel, and upon such confirmation it is a lien on the parcel. ~~M~~Laws relating to the levy, collection and enforcement of county taxes apply to such special assessment taxes. ~~N~~The appropriate county official shall enter each assessment on the county tax roll opposite the parcel of land. ~~O~~The amount of the assessment shall be collected at the time and in the manner of ordinary municipal taxes. If

delinquent, the amount is subject to the same penalties and procedures of foreclosure and sale provided for ordinary municipal taxes.

NP. As an alternate method, the county tax collector, in his or her discretion, may collect the assessments without reference to the general taxes by issuing separate bills and receipts for the assessments.

QQ. The City Finance Director may receive the amount due on the abatement cost and issue receipts at any time after confirmation of the report and until ~~August-July~~ 1st of the calendar year in which the report is confirmed. If the cost is paid in full, no report shall be filed with the County of San Mateo to levy a special assessment for such cost.

PR. The City Council may order refunded all or part of a special assessment paid pursuant to this Section if it finds that all or part of the special assessment has been erroneously levied. A special assessment or part shall not be refunded unless a claim is filed on or before March 1st next following the date the tax became due and payable. The claim shall be verified by the person who paid the tax, or his or her ~~guardian, executor or administrator~~ duly authorized representative.

§15.01.45900 Release of security

Security deposited with the City for faithful performance of the grading, ~~and revegetation (if applicable), and~~ erosion control work, and to finance necessary remedial work shall be released according to the following schedule:

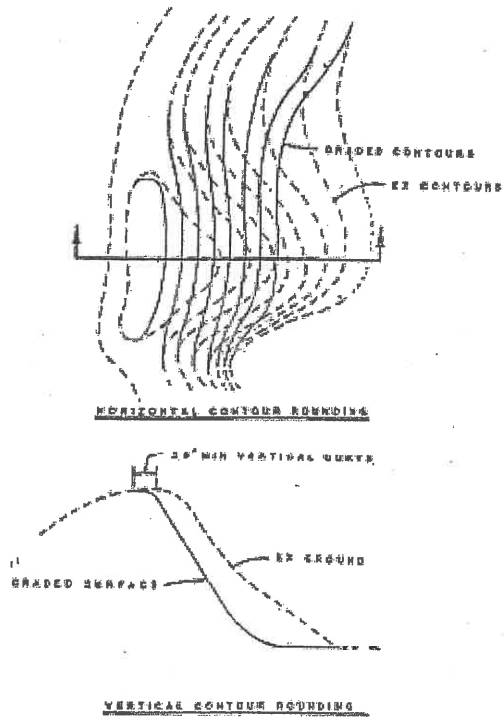
A. Securities held against the successful completion of the work shown on the site map, grading plan and the interim plan, shall be released to the permittee at the termination of the permit, or the satisfactory completion of the grading operations, provided no action against such security is filed prior to that date;

B. Securities held against the successful completion of the work shown on the final plan shall be released to the permittee either one (1) year after termination of the permit or when the final plan is approved as completed, or when the City Planning Department approves a final revegetation monitoring report, whichever is later, provided no action against such security has been filed prior to that date.

§15.01.41600 Cumulative enforcement procedures

The procedures for enforcement of a permit, as set forth in this Chapter, are cumulative and not exclusive.

FIGURE 1



NOTE: No rounding at DEPRESSIONS.

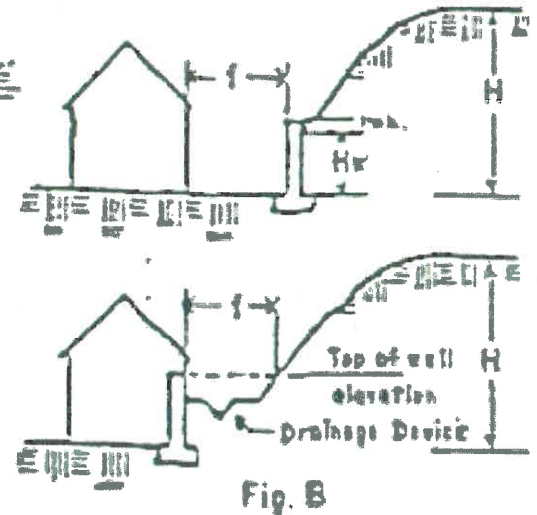
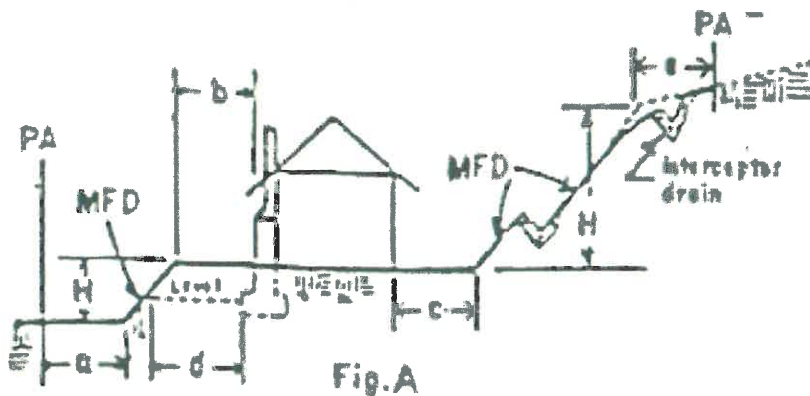
FIGURE 2

Table A

Min. Setback From Adjacent Slope					
H(hgt) Feet	a	b	c	d	e
0 < 5	3'	7'	3'	5'	1'
6-14	5'	7'	H/2	H/2	H/5
14-30	5'	H/2 10' Max	H/2	H/2 10' Max	H/5
+30	5'	10'	15'	10'	6'

Table B

H(hgt) Feet	Max. Hw.	Min. Setback
0-5	3'	3' Min.
6-12	H/2	H/2
12-30	6'	H/2
+30	6'	15'

**NOTES:**

PA means permit area boundary and/or property line; 1. MFD means manufactured surface.

Setbacks shall also comply with applicable zoning 2. regulations.

Table A applies to manufactured slopes and 2:1 or 3. steeper natural slopes. Setbacks from natural slopes flatter than 2:1 shall meet the approval of the eCity eEngineer.

"b" may be reduced to 5' minimum if an approved 4. drainage device is used; roof gutters and downspouts may be required.

"b" may be reduced to less than 5' if no drainage is 5. carried on this side and if roof gutters are included.

If the slope between "a" and "b" levels is replaced 6. by a retaining wall, "a" may be reduced to zero and "b" remains as shown in Table A. The height of the retaining wall shall be controlled by zoning regulations.

"b" is measured from the face of the structure to the 7. top of the slope.

"d" is measured from the lower outside edge of the 8. footing along a horizontal line to the face of the slope. Under special circumstances "d" may be reduced or recommended in the approved soil report and approved by the eCity eEngineer.

The use of retaining walls to reduce setbacks (Fig. 9. B) must be approved by the eCity eEngineer.

"f" may be reduced if the slope is composed of sound 10. rock that is not likely to produce detritus and is recommended by the soil engineer or engineering geologist and approved by the eCity eEngineer.

"a" and "e" shall be 2' when PA coincides with 11. Arterial or local street right-of-way and when improved sidewalk is adjacent to right-of-way.

"e" shall be increased as necessary for interceptor 12. drains.

SECTION 2 Section 17.32.220 in Chapter 17.32 of the Municipal Code is amended to read as follows:

§17.32.220 Grading permit: When review by Planning Commission is required.

A. Any grading, as defined in Section 12.08.020, shall require a permit from the Planning Commission when more than two hundred fifty (250) cubic yards of material are involved in any single operation, or if more than fifty (50) cubic yards of material is to be removed from any single parcel of land, or when grading is not otherwise approved in connection with issuance of a building permit. (Reference: Section 12.08.120.) Grading permits to be issued by the Director of Public Works/City Engineer pursuant to Chapter 15.01 of this Code shall be subject to review by the Planning Commission when required by the provisions of Subsection 15.01.110.A of this Code. The review shall be based upon a consideration of the following potential impacts of the proposed grading:

- (1) Will the proposed grading be minimized and designed to reflect or fit comfortably with the site context and natural topography?
- (2) Will the proposed grading be designed to avoid large exposed retaining walls? ensure that retaining walls visible to the public are designed to be as visually unobtrusive as possible by means including but not limited to:
 - (i) ensuring walls are architecturally integrated with proposed or existing structures on the site;
 - (ii) ensuring wall faces are decorative and treated with color, texture, architectural features, trelliswork or other means to visually break up the wall expanses;
 - (iii) screening with water conserving, non-invasive landscaping that at maturity will soften and reduce the visible expanse of walls?
- (3) Will the proposed grading be designed to minimize removal of:
 - (i) existing street trees, (see Section 12.12.020);
 - (ii) any California Bay Laurel, Coast live Oak or California Buckeye trees;
 - (iii) three or more trees of any species on the same site having a circumference of at least 30 inches measured 24 inches above grade?

Where removal of existing trees is necessary, do the landscape plans for the project include the planting of appropriate replacement trees?

B. The Planning Commission may provide comments and recommendations to the City Engineer concerning mitigation or avoidance of any potential adverse impacts of the proposed grading considered by the Commission pursuant to this Section.

SECTION 3: If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held by a court of competent jurisdiction to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council of the City of Brisbane hereby declares that it would have passed this Ordinance and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that one or more sections, subsections, sentences, clauses or phrases may be held invalid or unconstitutional.

SECTION 4: This Ordinance shall be in full force and effect thirty days after its passage and adoption.

* * * *

The above and foregoing Ordinance was regularly introduced and after the waiting time required by law, was thereafter passed and adopted at a regular meeting of the City Council of the City of Brisbane held on the _____ day of _____, 2013, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Ray Miller, Mayor

ATTEST:

Sheri Marie Spediacci, City Clerk

APPROVED AS TO FORM:

September 15, 2020

To: Hon. Mayor O'Connell and City Council
 From: Planning Commission Chairperson Sayasane
 Re: Planning Commission Comments on Draft Grading Ordinance Revisions

Dear Hon. Mayor and Council:

The changes in procedure outlined in the draft Grading Ordinance represent such a significant departure from present procedure that the Planning Commission feels compelled to bring specific items to your attention.

The City Engineer's Role

At present, grading projects exceeding a certain threshold require Planning Commission review.

This would be eliminated.

The draft ordinance proposes **all** grading permits, *no matter how large the project*, would be reviewed **only** by the City Engineer.

Accepting the draft ordinance, you will be removing the important oversight role of the Planning Commission that the 2013 guidelines explained: *The Planning Commission reserves the right to consider alternative grading plans for any Grading permit subject to its review and may reject projects proposing unnecessary amounts of excavation contrary to the policies and programs in the City's General Plan.*

You will also be eliminating public hearings that were required on large grading projects.

Those hearings put the public on notice about large grading projects, allowed for public input, and provided an opportunity for other professional testimony to be heard. We believe those hearings should be retained.

The Planning Commission's Role

While grading permits would be the purview of the City Engineer, grading permits **would** come before the Commission but **only** on projects requiring Planning Commission review where there is a Design Permit, Use Permit, Variance etc.

This doesn't make sense, especially when . . .

A memo from the City Manager: . . . *the Commission will have the opportunity to review grading as part of the overall project. No unique findings for grading are required, rather the Commission may consider grading in making the findings for the requested permit.*

And the City Attorney wrote: *Staff is recommending that this provision of the Grading Ordinance be deleted because it conflicts with State law concerning who is authorized to review these types of applications.*

This is confusing and needs to be reconciled.

Engineering reviews should be performed by our City Engineer. The Planning Commission does *not* conflict with State law because we do not practice engineering.

We *do* perform analysis using all the information made available to us to determine compatibility with the General Plan and suitability of a project. This includes the evaluation of the City Engineer, staff reports, and public testimony.

Engineering studies required by the City Engineer should be completed and reviewed, with an opinion rendered, **before** a public hearing is scheduled for the Planning Commission. The public could then review reports and comment or bring forth their own credentialed experts to testify at the public hearing.

The 2013 draft ordinance also had this provision: *The Planning Commission may provide comments and recommendations to the City Engineer concerning mitigation or avoidance of any potential adverse impacts of the proposed grading considered by the commission pursuant to this section.*

This provision should be retained. During public hearings, valuable facts previously unavailable to the City Engineer may be brought to light.

The City Attorney has written: . . . *the section of the Grading Ordinance that provides for the Commission's review of such applications should be deleted. In addition, the proposed review criteria fail to meet the objective standards now required for review of residential development projects . . .*

If new requisite standards are required, then simply draw up new guidelines for the Planning Commission.

Finally, regarding trees, the City Attorney stated: . . . *the Commission has no authority over trees in the public right of way . . .*

Naturally, trees on public land fall under the General Plan considerations the Planning Commission utilizes to review the entire project. This is consistent with the City Attorney's recommendation that the Planning Commission adopt a holistic and logical review process.

Appeals

The draft ordinance makes a procedural change with appeals of the City Engineer's action on a grading permit going to the City Manager. We suggest appeals *continue* to go before the Commission (see BMC Section 15.01.130) and be further appealable to the City Council to ensure appeals are heard at a public hearing.

Conclusion

The Institute of Local Government treatise "Land Use and Local Planning: Guide to Local Planning" asserts that the Planning Commission, "Through public hearings and other means, provides a key venue for residents and other community stakeholders to learn about planning issues and project proposals and provide their views." And further, "Public participation in local decision-making is fundamental to democracy. The public often evaluates the service of local officials based not only on the wisdom of their decisions, but also on their commitment to involving the public in decision making."

Thank you for considering our comments.

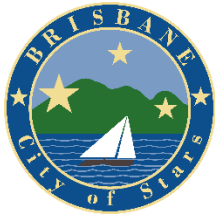
Respectfully submitted,



Pamala Sayasane

Chairperson

Brisbane Planning Commission



CITY COUNCIL AGENDA REPORT

Meeting Date: November 5th, 2020

From: Noreen Leek, Recreation Manager

Subject: Dog Park Resurfacing

Community Goal/Result

Community Building

Purpose

Maintain high-quality recreation facilities for community interaction.

Recommendation

Review the three variations (*Attachment 1*) for resurfacing of the dog park using artificial turf and decomposed granite based on the recommendation from the Parks & Recreation Commission. Approve funding for the desired option.

Background

On September 25th, 2019, the Recreation Facilities Subcommittee along with the City Council Parks & Recreation Liaisons met with stakeholders at the dog park. The purpose of this meeting was to engage the stakeholders and gather input regarding their overall preferences at the park. Although the majority of the meeting was spent discussing park amenities such as seating, water, shade, etc., several residents initiated conversations about park resurfacing.

In the past, dog park users have expressed a preference for grass, and have been vocal about their dissatisfaction regarding the overall condition of the grass. Given the nature of use on the grass at the dog park and that it is a highly concentrated area, it is important to note that the City's approach towards maintenance of the dog park will not result in the turf condition mirroring that of the Community Park. In recent years, there seems to be a shift towards support for alternate surfacing options such as artificial turf, gravel, or decomposed granite.

P&R staff reviewed 24 local dog parks and found only 3 facilities to have any real grass (*Attachment 2*). In all 3 cases, the grass areas were significantly larger than that of Brisbane's (which means less concentrated use) and the condition of the grass at these locations was either similar to or worse than the condition of Brisbane's.

On January 8th, 2020 the Parks & Recreation Commission addressed this item, reviewed various alternative surfacing options and estimated costs, and discussed the pros and cons to each. They discussed the use of alternate materials including pea gravel, wood chips, artificial turf, and hardscape options including decomposed granite. After reviewing the surfacing at other dog parks and assessing the best fit for the Brisbane Dog Park, the Commission voted unanimously to recommend to Council to proceed with resurfacing of the park including a

majority of hardscape surface (i.e. decomposed granite) and some smaller patches of artificial turf.

K9Grass is specially designed for dogs and is installed in dog parks throughout the country. The features that make it superior for this type of installation include: a natural design that is gentle on paws, permeability to allow liquid waste to pass through, antimicrobial protection and non-toxic materials. Lastly, the design eliminates the need for traditional infill which lends itself to a cleaner and safer design that is easier to maintain.

Discussion

After presenting this item to Council on September 17th, staff was directed to return with a couple of variations for Council to consider along with their estimated costs. The three options for review are outlined in Attachment 1.

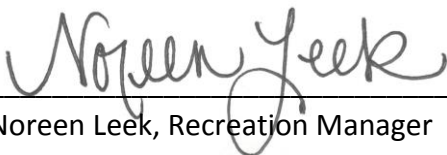
Fiscal Impact

The existing grass area of the dog park is approximately 4,200 square feet. The scope of work will include excavation/sub grading, and installation of base plus surfacing. The budget-level estimate for the initial proposal which includes approximately 1,000 square feet of turf area, (shared in Attachment 1 as Option 1) is \$60,000. The estimated cost for Option 2, a larger single-strip of turf area approximately 2,000 square feet is \$80,000. And finally, the estimated cost for Option 3 covering the full existing grass area with artificial K9 turf is \$120,000.

Research conducted by the City's Public Works team suggests that the lifespan of this surfacing is 15-20 years and ongoing maintenance costs would be significantly reduced given that mowing, frequent watering, annual reseeding, and new sod would not be required. Ongoing maintenance would include minor watering of the artificial turf for sanitation purposes, treatment with bacterial enzymes for odor management, occasional vacuuming of the turf, and top coating of the hardscape surfacing as needed. The City's Public Works team estimates that ongoing maintenance of the dog park would be reduced by about half of what it is today.

Attachments

1. Conceptual designs and resurfacing notations
2. Dog Park comparison
3. K9 grass spec sheet

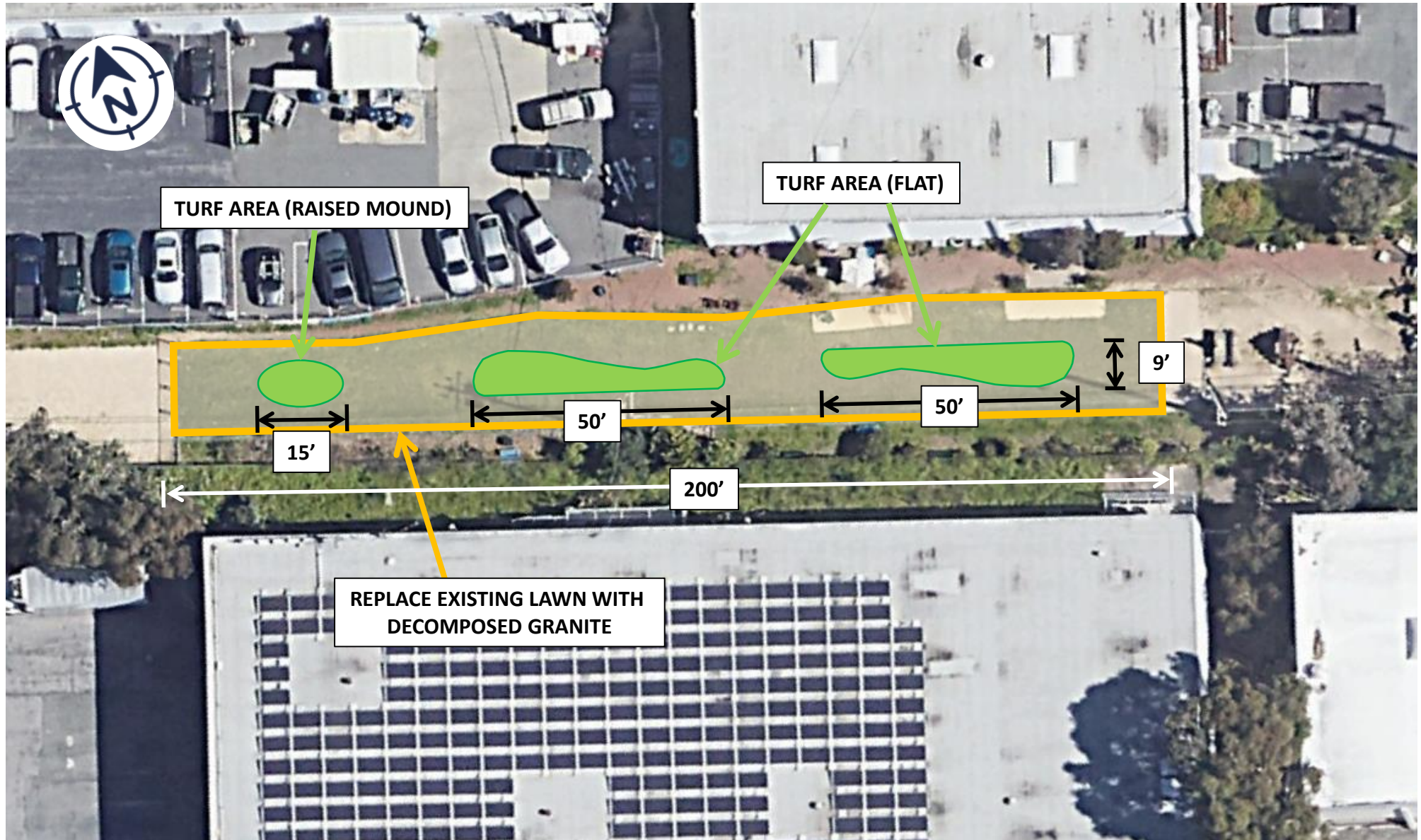


Noreen Leek, Recreation Manager



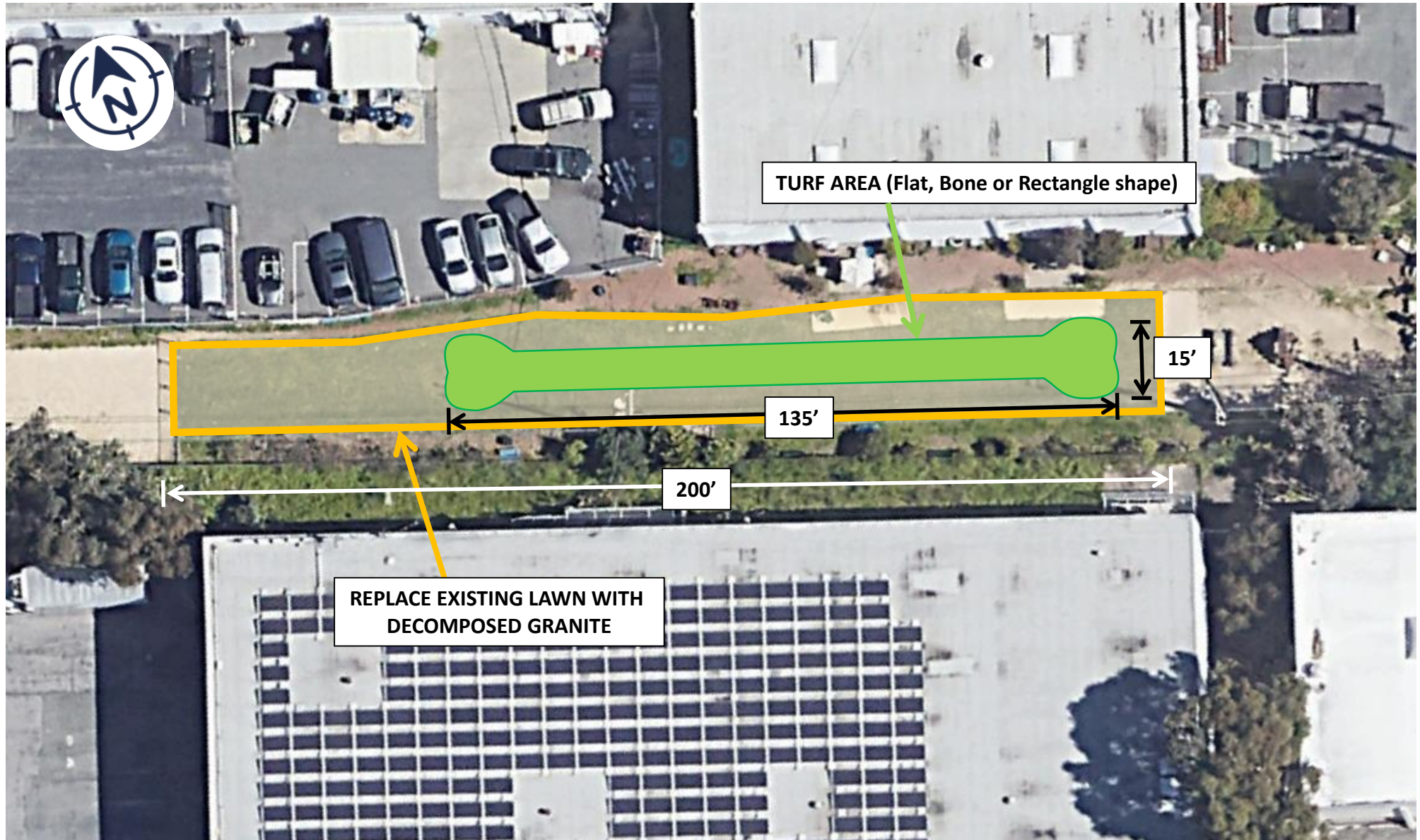
Clay Holstine, City Manager

**TURF AREA
APPROX. 1,000 SQ FT**



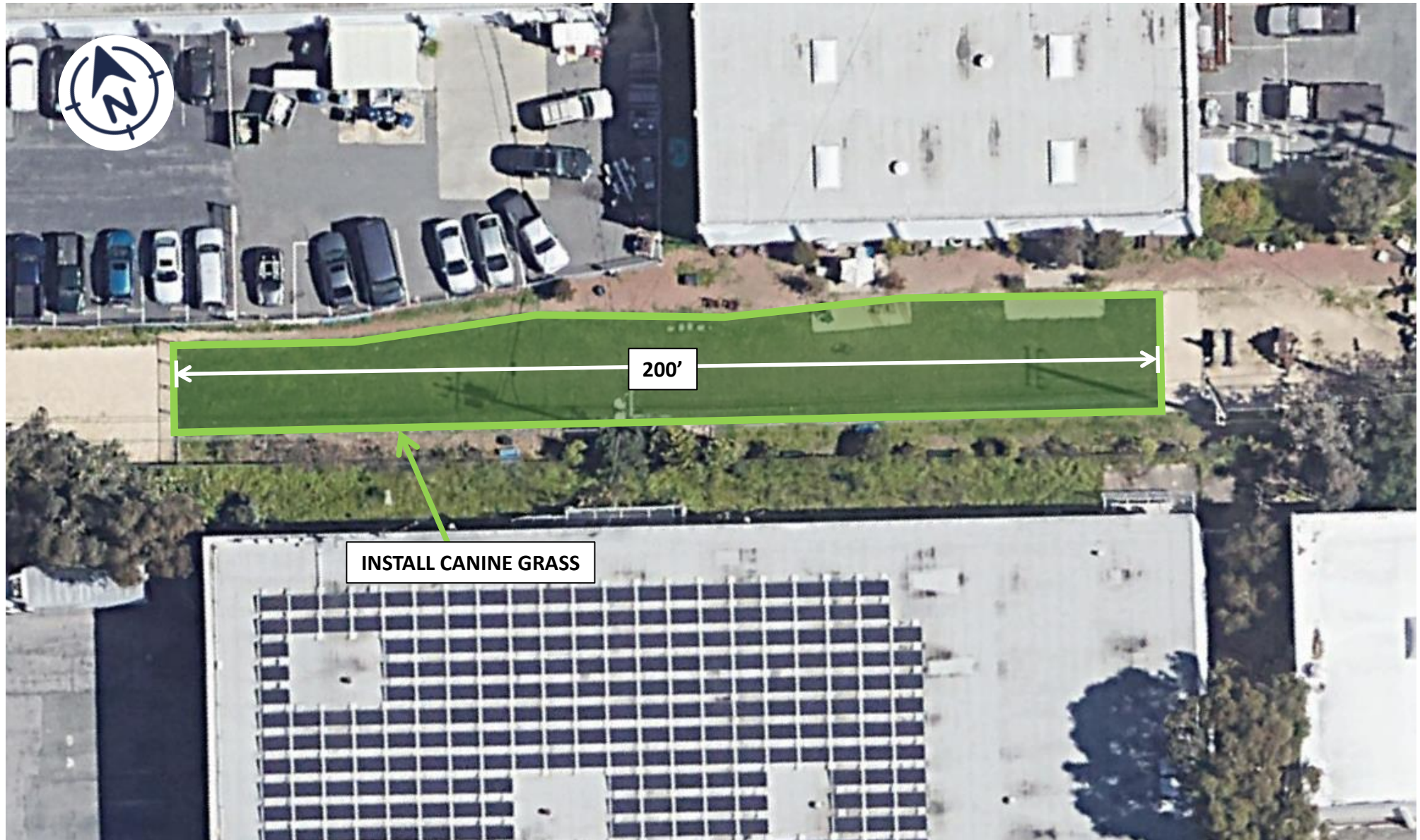
H. Option 2

TURF AREA
APPROX. 2,000 SQ FT






H. Option 3






TURF AREA
APPROX. 4200 SQ FT












Dog Park Comparison

Park Name	Location	Surfacing	
Centennial Way Dog Park	South San Francisco	DG + Artificial Turf	
Commodore Park	San Bruno	Mixed, mostly dirt & weeds (not maintained grass)	
Seal Point	San Mateo	Dirt/DG	
Burlingame Dog Exercise Park	Burlingame	Dirt/DG	
St. Mary's Dog Play Area	San Francisco (R&P)	Grass + Asphalt (comparable grass condition to Brisbane's however a much larger area and less concentrated use)	

San Carlos Dog Park	San Carlos	Dirt/DG	
Foster City Dog Park	Foster City	Artificial Turf + DG	
Cipriani Dog Park	Belmont	Dirt/DG	
Sanchez Dog Park	Pacifica	Dirt/DG	
Upper Douglas Dog Park	San Francisco	Grass + Dirt (comparable grass condition to Brisbane's however a much larger area and less concentrated use)	

Alemaný Dog Park	San Francisco	Dirt/DG	
Main Street Dog Agility Park	Redwood City	Dirt/DG	
Smith Field Coastsíde Dog Park	Half Moon Bay	Wood Chips	
Mitchell Park Dog Park	Palo Alto	Dirt/DG	
Bair Island Dog Park	Redwood City	Artificial Turf	

Village Green Dog Park	Mountain View	Artificial Turf	
Willow Oaks Dog Park	Menlo Park	Grass + Dirt (grass is not maintained – worse condition)	
Golden Gate Park Dog Training Area	San Francisco	Dirt	
Rincon Hill Dog Park	San Francisco	DG	
Mission Bay Dog Park	San Francisco	DG + Artificial Turf	

Lafayette Park	San Francisco	Artificial Turf			
SoMa West Dog Park	San Francisco	Artificial Turf			
Moscone Dog Park	San Francisco	Artificial Turf			
Brotherhood Way Dog Park	San Francisco	DG			

TOTAL NUMBER OF PARKS ASSESSED: 24

TOTAL NUMBER OF PARKS WITH ANY GRASS: 3

K9Grass is the artificial grass designed specifically for dogs. With its exclusive flow-through backing, short dense blade structure, and antimicrobial protection, K9Grass offers a cleaner, safer, better environment for pets.



K9Grass Lite

Lighter version of K9Grass Classic. Great for indoors or large areas.



K9Grass Classic

The original pet-friendly grass. Durable, drainable, cleanable, and antimicrobial.



No More Mud!

BACKYARDS AND DOG RUNS

Say goodbye to cold concrete, gravel, mulch, muddy yards, and dirty paws—K9Grass is the solution you have been looking for.

KENNELS, BOARDING FACILITIES AND DOG PARKS

Pet facilities benefit from the long-term savings, added cleanliness, and increased revenues they see after installing K9Grass. Clean, safe, beautiful and easy to maintain—K9Grass is everything you want and need from a surfacing product.

About ForeverLawn

ForeverLawn provides innovative synthetic grass products to create better landscapes worldwide. In areas where real grass is difficult to grow or maintain—due to high traffic or poor conditions—ForeverLawn offers a natural-looking alternative that is beautiful, functional, and durable. ForeverLawn—Grass without limits.®



The synthetic grass designed specifically for dogs!

M0060 Rev. 02/19



PRODUCT SPECIFICATIONS

K9Grass is the synthetic grass designed specifically for dogs. Its unique features help promote a cleaner, safer, better environment for pets.



With its exclusive flow-through backing, short dense blade structure, and antimicrobial protection, K9Grass is the ideal surface for both residential and commercial pet areas.



COMPONENTS	K9Grass Lite	K9Grass Classic
YARN TYPE	<ul style="list-style-type: none">Primary: Polyethylene monofilamentSecondary: Heat set textured nylon monofilament	<ul style="list-style-type: none">Primary: Polyethylene monofilamentSecondary: Heat set textured nylon monofilament
YARN COLOR	<ul style="list-style-type: none">Primary: Summer greenSecondary: Turf green	<ul style="list-style-type: none">Primary: Summer greenSecondary: Turf green
YARN COUNT	<ul style="list-style-type: none">Primary: 5,000/4Secondary: 4,200/8	<ul style="list-style-type: none">Primary: 5,000/4Secondary: 4,200/8
CONSTRUCTION	<ul style="list-style-type: none">Knitted	<ul style="list-style-type: none">Knitted
BLADE HEIGHT	<ul style="list-style-type: none">7/8"	<ul style="list-style-type: none">7/8"
FACE WEIGHT	<ul style="list-style-type: none">56 ounces*	<ul style="list-style-type: none">72 ounces*
TOTAL PRODUCT WEIGHT	<ul style="list-style-type: none">71 ounces*	<ul style="list-style-type: none">87 ounces*
BACKING	<ul style="list-style-type: none">Flow-through backing	<ul style="list-style-type: none">Flow-through backing
ANTIMICROBIAL PROTECTION	<ul style="list-style-type: none">AlphaSan®	<ul style="list-style-type: none">AlphaSan®
SEAMING	<ul style="list-style-type: none">Turf adhesive	<ul style="list-style-type: none">Turf adhesive
INFILL	<ul style="list-style-type: none">NONE	<ul style="list-style-type: none">NONE

*Product heights shown may have a variance of 1/8" and product weights shown may have a variance of 2%.

WHAT MAKES K9GRASS UNIQUE?	
Durable	Dense interlocking construction of high-grade materials
Drainable	Unique knitted flow-through backing
Cleanable	Short, dense blade construction requiring no infill greatly enhances cleanability
Safe	Integral AlphaSan® antimicrobial protection built-in

M0070 Rev. 02/19



866.992.7876 • foreverlawn.com • K9Grass.com

ForeverLawn®



Meeting Date: 11/5/2020

From: Thomas McMorrow, Interim City Attorney

Subject: Revise City Manager Employment Agreement

Community Goal/Result

Stabilize City management in the wake of the Covid-19 pandemic and limit City exposure to volatile individual mortgage investments by converting investments to secured debt.

Purpose

Extend City Manager's retirement date in light of Covid-19 and conform the City's prior housing assistance to the City Manager with City policy favoring conservative investments.

Recommendation

It is recommended that the City Council adopt Resolution 2020-63 approving amendments to the attached City Manager Employment Agreement consistent with the City Council's action and authorizing the Mayor to sign the Amendment.

Background

The City Manager is currently scheduled to retire in July 2021. He has offered to extend his retirement date to help with the City's recovery from the Covid-19 pandemic.

The City has faced significant difficulties in recruiting candidates for senior leadership positions. Recruiting from outside the region has been particularly difficult due to the high cost of housing in the City and region.

The City has responded by offering the prospect of housing assistance to out-of-area candidates for management positions to help them purchase a home in the City, generally by extending a loan and in a few instances by making an equity investment in the property. This approach is consistent with housing assistance other cities in the region have offered (*e.g.*, offering housing stipends, extending credit or investing in a property), but is inconsistent with current City policy of investing City funds in conservative investments with predictable returns.

In 2008, the City and a manager agreed to housing assistance in the form of a loan at the Local Agency Investment Fund (LAIF) rate, plus one percent for administrative expenses. (LAIF is the statewide fund at which local agencies invest funds that they do not need for immediate expenses.) The loan is secured by a deed of trust on the property, meaning that if the loan were to default the City could foreclose on the property. (There has not been a default.)

Also in 2008, the City provided assistance to the City Manager by extending \$200,000 to him as an equity investment in a home he purchased in the City. The City's interest is to be paid from the sale of the home, net of to be agreed expenses, and is estimated to be worth roughly \$269,000 currently, with housing at near record highs. Had the City lent the \$200,000 at LAIF + 1% in 2008, the City Manager would owe the City about \$251,500 at the end of 2020.

In 12 years, the at risk investment in the City Manager's home has marginally outperformed a LAIF + 1% fully secured loan similar to the one given to another City official the same year. This modest return does not appear to justify the risk inherent in investing in an individual home.

Conclusion

The City should continue to be open to providing housing assistance for candidates for senior positions that do not already live in the area, but should favor assistance that adheres to its policy of investing City funds in conservative investments with predictable returns.

The City Council is considering the City Manager's offer to extend his retirement date to at least 2022 to help the City recover from the COVID-19 pandemic. The City Attorney recommends, and the City Manager has agreed, that the City Council should also consider amending the City Manager's Employment Agreement to require that the City's \$200,000 interest in the City Manager's home be converted to a secured mortgage loan, consistent with the City's investment policy and past practice, and direct the City Attorney to effectuate this change.

Fiscal Impact

There is no current fiscal impact to the City from converting the City's equity position in the City Manager's home to a secured loan. The loan will continue to be reported on the City's balance sheet, and the risk of fluctuations in home prices will be shifted to the homeowner.

Measure of Success

Remove City risk of investments in individual homes in favor of conservative investments with predictable returns such as secured mortgage loans.

Thomas R. McMorrow

Thomas R. McMorrow, Interim City Attorney

RESOLUTION NO. 2020-63**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BRISBANE APPROVING THE FIRST AMENDMENT TO THE JULY 18, 2019 EMPLOYMENT AGREEMENT WITH THE CITY MANAGER**

WHEREAS, Clayton Holstine is the appointed City Manager of the City of Brisbane and currently serves under an Employment Agreement between the City and Mr. Holstine dated July 18, 2019; and

WHEREAS, the City and Mr. Holstine wish to amend the Employment Agreement concerning Mr. Holstine's estimated date of retirement from the City and to revise the terms of the housing assistance the City extended to Mr. Holstine for his residence in Brisbane, as set forth in the agenda report to the City Council from the City Attorney dated November 5, 2020.

NOW, THEREFORE, the City Council of the City of Brisbane resolves as follows:

Section 1. The First Amendment to the July 18, 2019 Employment Agreement between the City and Clayton Holstine is approved, subject to the City Attorney approving the final form of the amendment, and the Mayor is authorized to sign such Amendment, once in final form.

Section 2. The City Clerk is directed to post the First Amendment, once fully executed, on the City's website under "City Manager's Contract".

Section 3. This Resolution shall take effect immediately upon adoption.

Terry O'Connell, Mayor

I hereby certify that the foregoing Resolution was adopted as a regular agenda item at a regularly scheduled meeting of the Brisbane City Council on November 5, 2020 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN

Ingrid Padilla, City Clerk



CITY COUNCIL AGENDA REPORT

Meeting Date: November 5, 2020

From: Director of Public Works/City Engineer

Subject: Interim Improvements at “Parcel R” Sierra Point

Community Goal/Result Community Building

Purpose

To discuss proposed short-term improvements at this location, and to obtain funding for same.

Recommendation

Approve the working proposal discussed herein, and establish a budget of \$100,000 for the work.

Council may also wish to provide direction to staff for a future business item regarding the development of an ultimate shoreline master plan for the publicly owned portion of Sierra Point.

Background

Staff met with the Sierra Point Ad Hoc Subcommittee and City Manager on 9/29/20. The report for that meeting and its description of the working proposal is attached.

Discussion

The proposed work has two main components; the regrading of an area that presently does not permit sheetflow of rainwater to an existing catch basin, and the creation of an easterly facing seating area that is protected from the typical westerly winds.

The subcommittee supported the work plan, and also asked that the “upper” portion of Parcel R visible from Sierra Point Parkway be cleaned up. Subsequently, the scotch broom that had taken over this area has been removed (see attached photos of current condition). Staff suggests that monthly maintenance/mowing of this area will be adequate for aesthetics.

If approved, the bench/table area will be graded as discussed in the attachment. Staff believes that the best way to gauge interest in the use of this area is to initially place a small number of benches, tables and trash cans, and then monitor the frequency and number of users before deciding on the final mix of public seating.

Staff has consulted with the San Francisco Bay Regional Water Quality Control Board and San Mateo County Environmental Health (SMCEH) on whether the project is subject to permitting.

SMCEH in their role as the Local Enforcement Agency for CalRecycle has advised that the project is not subject to permitting, but they do wish to be notified when the work commences.

Fiscal Impact

Funds will be obligated from developer fees imposed on commercial development at Sierra Point.

Measure of Success

A well-used peaceful seating area for the public to enjoy views of the Brisbane Marina and San Francisco Bay.

Attachments

1. 9/21/20 memo to Sierra Point Ad Hoc Subcommittee
2. Photos, Parcel R current condition

RL Breault

Randy Breault, Public Works Director*Clayton L. Holstine*

Clay Holstine, City Manager



CITY OF BRISBANE

Department of Public Works - 50 Park Place
Brisbane, California 94005-1310
(415) 508-2130
Fax (415) 467-5547

M E M O R A N D U M

To: Sierra Point Ad Hoc Subcommittee and City Manager
From: Randy Breault, Director of Public Works/City Engineer
Subject: Working Proposal for Interim Improvements at "Parcel R"
Date: 9/21/20 (for meeting of 9/29/20)

As the city now has full control over zoning and improvements at Parcel R, staff has been directed to develop a proposal for pedestrian improvements in this area. As the future plans for development immediately to the west of this parcel, and for development of the hotel zoned for the northeast portion of Sierra Point are presently unknown, staff is recommending that we not develop a final plan, but rather that we implement an interim plan that allows the public to better enjoy the area now, but which can be revised at a later date to integrate with anticipated development.

This working proposal recommends we take advantage of the existing overburden on Parcel R, and develop the leeward (eastern) bench area of the parcel, so as to take advantage of this manmade windbreak. The area proposed for improvement is shown in satellite view on the attached, and in sectional view in the photos below.



View from street near Harbormaster's Office



The “bench”

To avoid extensive permitting requirements from SFB RWQCB and SMCEH, the proposal is to clear & grub the area to a depth of 6”-12”, to slightly modify the slope to take advantage of the existing drain in the center of the “bench” area, and to then place compacted decomposed granite.

We would then place a mix of tables and benches to allow for a wind protected area from which to enjoy views over the Marina and into SFB Bay.





"Top" of Parcel R – Current Condition





**SAN MATEO COUNTY
MOSQUITO & VECTOR
CONTROL DISTRICT**

Protecting public health since 1916

1351 Rollins Road
Burlingame, CA 94010

phone (650) 344-8592
fax (650) 344-3843

www.smcmvcd.org

October 19, 2020

City of Brisbane
Attn: Ingrid Padilla, City Clerk
50 Park Place
Brisbane, CA 94005

Dear Ingrid Padilla,

The current term of office for Carolyn Parker, representative to the Board of Trustees of this District from the City of Brisbane, will expire on December 31, 2020.

It is kindly requested that the City Council make an appointment or reappointment for the ensuing term of January 1, 2021 through December 31, 2022 or through December 31, 2024. According to the California Health and Safety Code, Section 2020-2030, which dictates appointments to Vector Control District Boards:

- The city council of each city or town may appoint one person to the board of trustees.
- The term of office for a member of the board of trustees shall be for a term of two or four years, at the discretion of the appointing authority.
- Terms of office begin at noon on the first Monday in January.

The common law incompatibility of office doctrine was addressed in SB 1588, (2002) and now a City Council member may be appointed to the Board of Trustees.

Once an appointment has been made, please forward a letter to that fact indicating the term length (two or four years).

Thank you for your attention to this request,

Brian Weber, District Manager