

MEMORANDUM

DATE: February 1, 2017

To:
CATHERINE PAYNE, PLANNER IV
CITY OF OAKLAND, BUREAU OF PLANNING

FROM:
LYNETTE DIAS, AICP
HAYLEY COX

Subject: MacArthur Station Modified 2016 Project – Response to Comment Letter from Lozeau Drury LLP

The City of Oakland published the California Environmental Quality Act (CEQA) Analysis for the MacArthur Station Modified 2016 Project (Project) (PUD06058-R01 and related) on December 30, 2016. Lozeau Drury submitted comments on the above Project on January 31, 2017, accompanied by technical comments prepared by ecologist Shawn Smallwood, Ph.D., (hereafter referred to collectively as the “letter”). This memorandum provides responses to the letter, which are organized into the following topics corresponding to the topics in the letter:

- I. Bird Collisions
- II. Wind Analysis
- III. General Plan Consistency

Section I below addresses the comments listed in the Lozeau Drury letter under Section I.A., “An SEIR is Required Because the Project’s Impacts on Birds were not Considered in the 2008 EIR” (p.7). Section II below addresses the comments listed in the letter under Section I.B., “An SEIR is Required Because the Project will Create Significant New Wind Impacts.” Section III below addresses the comments listed in the letter under Section I.C. “An SEIR is Required Because the Project Violates Oakland’s Land Use Policies.”

As outlined herein, substantial evidence in accordance with CEQA supports the assumptions and conclusions in the Project’s CEQA Analysis, while the assertions presented by Lozeau Drury do not provide evidence that the Project would result in a new, peculiar, significant environmental impact or a substantial increase in the severity of a significant environmental impact than determined in the 2008 EIR or other previous CEQA documents [these previous documents—

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herein referred to as “the Program EIRs” or “Previous CEQA Documents.”—include the City of Oakland Land Use and Transportation Element (LUTE) EIR (1998), the General Plan 2007-2014 Housing Element and EIR (2010) and the 2015-2023 Housing Element and Addendum (2014), and the Broadway/MacArthur/San Pablo Redevelopment Plan EIR (200) and Proposed Amendments Supplemental EIR (2011)].

Section I. Bird Collisions

The Lozeau Drury letter states that the City failed to adequately analyze the impacts of the Project on birds and mitigate significant impacts to the extent feasible. The letter cites comments provided by Dr. Shawn Smallwood regarding potential bird collisions with implementation of the proposed Project.

Response:

As described in the CEQA Analysis, p. 19, the City of Oakland’s established Standard Conditions of Approval and Uniformly Applied Development Standards (SCAs) were applied to the Project. The City’s SCAs generally are incorporated into and applied to new and changed projects as conditions of approval, regardless of a project’s environmental determination. The SCAs incorporate policies and standards from various adopted plans, policies, and ordinances (i.e., the Oakland Planning Code and Municipal Code, Housing Element-related mitigation measures, California Building Code and Uniform Fire Code, among others). These policies and standards have been found to substantially mitigate environmental effects. The SCAs are adopted as requirements of an individual project when it is approved by the City and are designed to, and will, substantially mitigate environmental effects.

The City has an established SCA that addresses bird collisions, “Bird Collision Reduction Measures,” which is included in the project conditions of approval list in the February 2, 2017, Staff Report (see Staff Report Attachment B, p.7) and will be a requirement of the project. The Bird Collision Reduction Measures SCA was inadvertently not specifically discussed in the CEQA Analysis, but the project will have to comply with this SCA.

Revisions to the text of the CEQA Analysis are incorporated herein in accordance with the inclusion of the Bird Collision Reduction Measures SCA in the project conditions of approval. The text of the CEQA Analysis, p. 93, is revised (shown in underline for added text and ~~strikeout~~ for deleted text) as follows:

Several SCAs would be applicable including: SCA-BIO-1: Tree Removal During Bird Breeding Season (#26); ~~and SCA-BIO-2: Tree Permit (#27); and SCA-BIO-3: Bird Collision Reduction~~

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Measures (#25). Implementation of these SCAs would additionally ensure impacts related to biological resources would be less than significant.

The SCA includes many of the provisions recommended in Dr. Smallwood's letter under "Solutions" (p.7): provision v. of the SCA is responsive to mitigation option (1B) Managing outdoor landscape vegetation and (2F) Landscaping to increase distances between windows and trees and shrubs; provision vi. of the SCA is responsive to mitigation option (1A) Marking windows, (1C) Managing indoor landscape vegetation, (2C) Selecting type and sizes of windows, (2D) Designing to minimize views of transparency through two parallel facades, and (2E) Designing to minimize views of interior plants; and provision vii. is responsive to mitigation option (1D) Managing nocturnal lighting.

Implementation of this SCA will ensure that no additional or more severe environmental impacts than identified in the 2008 EIR or other Previous CEQA Documents. The conclusions in the CEQA Analysis are valid and preparation of an EIR is not warranted. The City of Oakland Planning staff can appropriately rely on the CEQA Analysis to support its approval of the Project.

Section II. Wind Analysis

The Lozeau Drury letter states that Project will have significant wind impacts that must be fully analyzed and mitigated in a Supplemental Environmental Impact Report (SEIR).

Response:

As described in the CEQA Analysis (p.72), a wind analysis was prepared for this project in order to provide maximum information and analysis to the public and decision-makers regarding changes in wind conditions that would be caused by the proposed project. Given that this project is not subject to the City's threshold of significance that would require a project to prepare a wind analysis (based on its location), the findings of the analysis were not used to determine whether significant CEQA wind impacts would occur and associated mitigations would be required. Nevertheless, the CEQA Analysis included a non-CEQA condition of approval that would require implementation of landscaping measures to address wind speed exceedances identified in the study and to ensure the quality of pedestrian experience is preserved around the site.

Landscaping measures were included at points 3 and 15 in the public plaza area on the northwest side of the proposed project as to reduce wind speeds below the CEQA threshold of significance. At point 7 on the southwest corner, wind speeds remained above the threshold because the implemented wind reduction measures were not incorporated near this location. As described in the CEQA Analysis (p.73) Point 7 is located in the loading accessway at the south

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end of the site, a location where few if any pedestrians are expected to travel and where similar wind reduction measures would be difficult to implement due to the limited size of the area and the necessity for vehicular access at this location. For these reasons, it was determined that installation of landscaping to reduce wind speeds in this area is not feasible or necessary.

Minimal pedestrian activity is expected at the southwest corner of the building. Most pedestrians entering and exiting the BART Garage would use the raised crosswalk adjacent to the Garage to cross Walter Miles Way and use the west sidewalk on Walter Miles Way to walk between the Garage and the BART Station. The vehicular street on the south side of the building between Turquoise Street and Walter Miles Way would experience minimal pedestrian activity because it would not provide any direct pedestrian access to any destinations and would not reduce the walking distance for any destinations. For example, pedestrians traveling between the Mural Housing Development on the east side of Turquoise Street and the BART Station would have the same walking distance using Turquoise and 39th Streets (east and north sides of Parcel B) over the vehicular street and Walter Miles Way (south and west sides of Parcel B). See Attachments A and B, which show the ground floor site plans for Parcel B and the BART Garage, respectively.

The conclusions in the CEQA Analysis are valid and preparation of an SEIR is not warranted. The City of Oakland Planning staff can appropriately rely on the CEQA Analysis to support its approval of the Project.

Section C. General Plan Consistency

The Lozeau Drury letter states that the project conflicts with the City's zoning laws and is inconsistent with a number of provisions from the General Plan.

Response:

As described in the February 1, 2017, Staff Report, the Project is a change from what was approved in the 2008 rezone to the S-15 Transit Oriented Development Zone (S-15 Zone) and the PUD. The Project includes changes to approved project, including increased height, residential density, and commercial intensity. In line with these changes, a revision to the PUD has been proposed for consideration with approval of the Project. Further, as described in the Staff Report, the project has been found to be consistent with the General Plan.

Even assuming there were conflicts with the general plan, which there are not, conflicts with a General Plan do not inherently result in a significant effect on the environment within the context of CEQA. As stated in section 15358(b) of the CEQA Guidelines, “[e]ffects analyzed under

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CEQA must be related to a physical change.” Section 15125(d) of the Guidelines states that EIRs shall discuss any inconsistencies between the proposed project and applicable General Plans.

Further, Appendix G of the CEQA Guidelines (Environmental Checklist Form) makes explicit the focus on environmental policies and plans, asking if the project would “conflict with any applicable land use plan, policy, or regulation...*adopted for the purpose of avoiding or mitigating an environmental effect*” (emphasis added). Even a response in the affirmative, however, does not necessarily indicate the project would have a significant effect, unless a physical change would occur. To the extent that physical impacts may result from such conflicts, such physical impacts are analyzed elsewhere in this document.

Regarding a project’s consistency with the General Plan in the context of CEQA, the Oakland General Plan states the following:

The General Plan contains many policies which may in some cases address different goals, policies and objectives and thus some policies may compete with each other. The Planning Commission and City Council, in deciding whether to approve a proposed project, must decide whether, on balance, the project is consistent (i.e., in general harmony) with the General Plan. The fact that a specific project does not meet all General Plan goals, policies and objectives does not inherently result in a significant effect on the environment within the context of the California Environmental Quality Act (CEQA). (City Council Resolution No. 79312 C.M.S.; adopted June 2005)

The project would not conflict with any land use policies adopted for the purpose of avoiding or mitigating an environmental effect. As a result, no significant land use impacts related to the project’s consistency with land use policies would occur. The conclusions in the CEQA Analysis are valid and preparation of an SEIR is not warranted. The City of Oakland Planning staff can appropriately rely on the CEQA Analysis to support its approval of the Project.

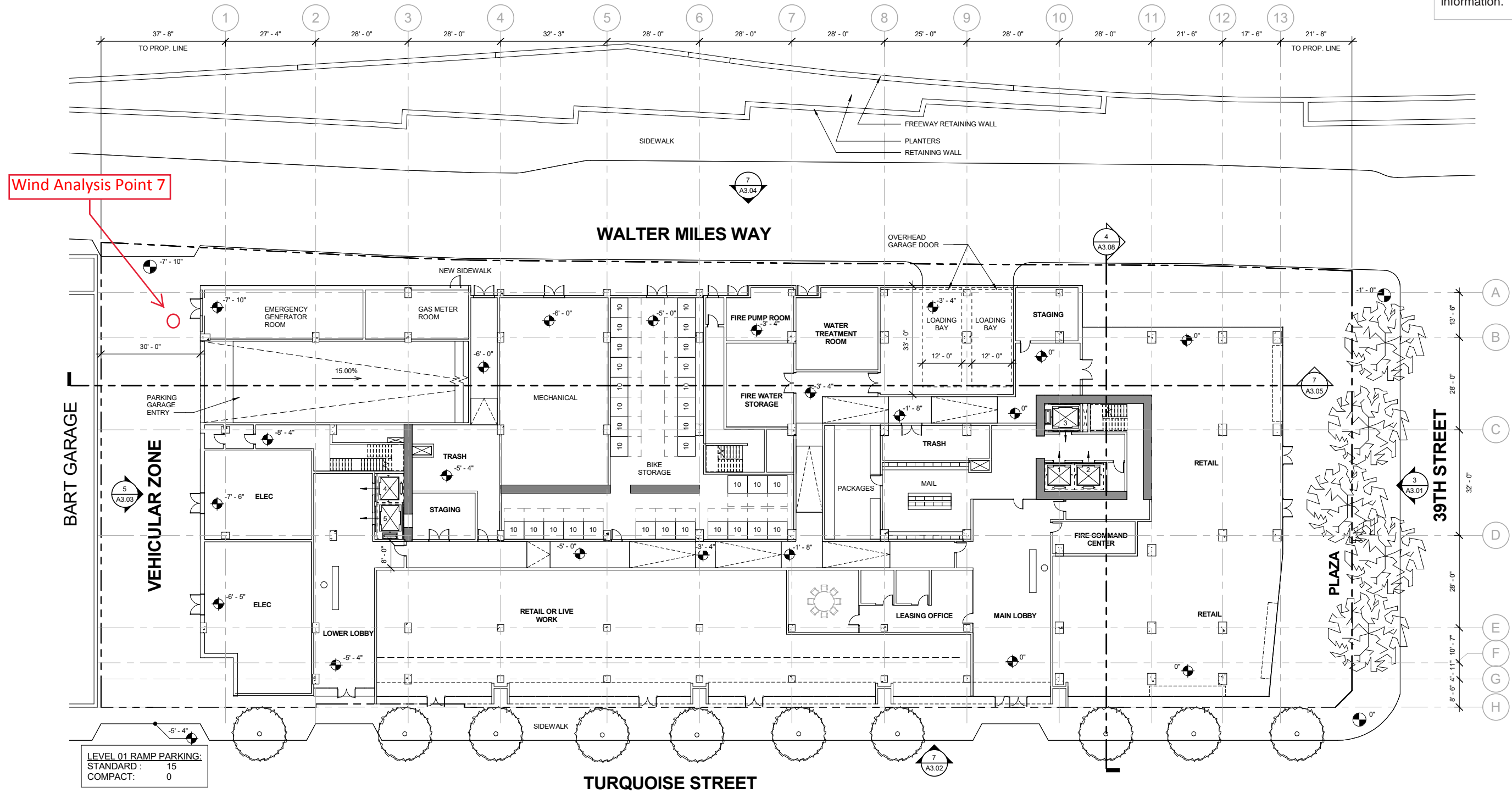
Attachments:

Attachment A – Parcel B Ground Floor Site Plan

Attachment B – BART Garage Ground Floor Site Plan

1. Project Zero is 75.56. Refer to Civil C1-00 for more detailed information.

2. Refer to Landscape Architect & Civil Drawings for additional information.



LEVEL 01 RAMP PARKING:	
STANDARD:	15
COMPACT:	0

Attachment B - BART GARAGE Ground Floor Plan

Walter Miles Way

Pedestrian Crosswalk

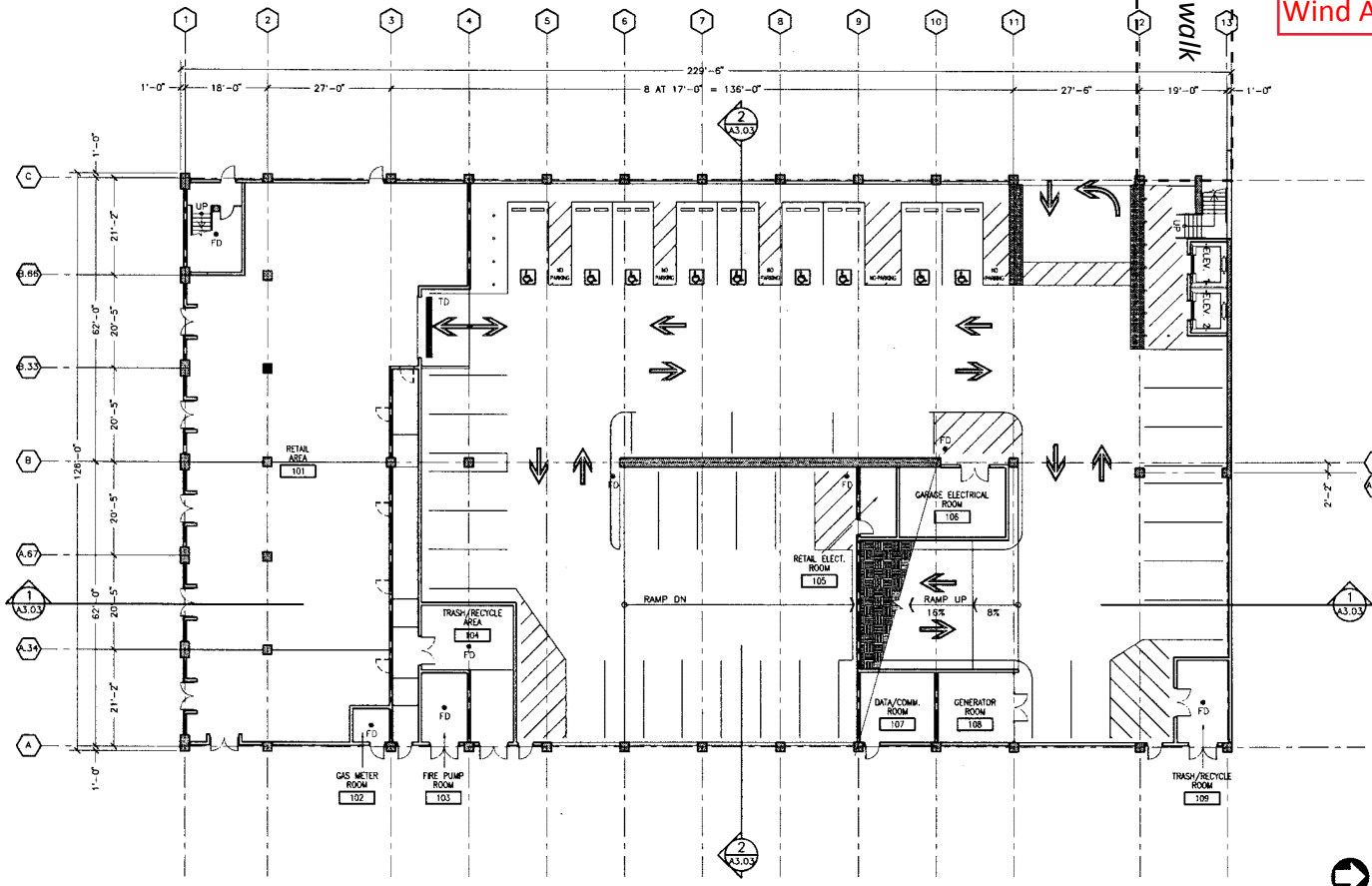
Wind Analysis Point 7

VEHICULAR ZONE

Parcel B

West MacArthur Boulevard

Turquoise Street



GROUND LEVEL PLAN
SCALE: 3/32" = 1'-0"



MACARTHUR
TRANSIT VILLAGE -
STAGE I FINAL
DEVELOPMENT PLAN

Oakland,
California
94609



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CONSULTANTS

NOT FOR CONSTRUCTION

NO.	DATE	ISSUES AND REVISIONS	BY
1.	04.16.2010	PLANNING SUBMITTAL	EPD
2.	06.10.2010	PLANNING RE SUBMITTAL	EP
3.	10.20.2010	PLANNING RE SUBMITTAL	EP

DATE: _____
DRAWN BY: _____ EPD
PROJECT NUMBER: 10-544
SHEET TITLE: _____

GROUND LEVEL PLAN
SHEET NUMBER: **A2.01**

ALL DIMENSIONS ARE UNLESS OTHERWISE SPECIFIED.
CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE U.S. ARCHITECTURAL PRACTICE CODE AND THE CALIFORNIA BUILDING CODE.
NO PART OF THIS DRAWING IS TO BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, WITHOUT THE WRITTEN PERMISSION OF LOWNEY ARCHITECTURE.