



AGENDA REPORT

TO: Edward D. Reiskin
City Administrator

FROM: Alexa Jeffress
Director, Economic &
Workforce Development
Department

SUBJECT: Exclusive Negotiating Agreement for
73rd Avenue and Foothill Boulevard

DATE: October 5, 2021

City Administrator Approval 

Date: Oct 6, 2021

RECOMMENDATION

Staff Recommends That The City Council Adopt A Resolution Authorizing The City Administrator To Enter Into An Exclusive Negotiation Agreement (ENA) With The Black Cultural Zone Community Development Corporation (BCZ) In Partnership With Community Arts Stabilization Trust, Curtis Development, And/Or Their Affiliated Entities For Eighteen (18) Months, With One Additional Six (6) Month Administrative Extension, For The Future Disposition Of The City-Owned 73rd Avenue And Foothill Boulevard Property (APN 039-3291-020), Subject To The Completion Of A California Environmental Quality Act (CEQA) Determination.

EXECUTIVE SUMMARY

Staff seeks authorization to negotiate and execute an Exclusive Negotiation Agreement (ENA) with the Black Cultural Zone (BCZ), in partnership with Community Arts Stabilization, and Curtis Development (collectively, Developer) for a long-term ground lease of the City-owned vacant parcel at the corner of 73rd Avenue and Foothill Boulevard (Property). The proposed ENA will have a term of 18 months, with an optional six-month administrative extension to develop the terms of a potential lease disposition and development agreement to develop a mixed-use affordable housing and commercial development on the site, following appropriate California Environmental Quality Act (CEQA) review.

The City Council declared the Property as surplus land under the California Surplus Lands Act, Government Code Sections 54220-54234 (SLA) via City Council Resolution No. 88233 C.M.S. on July 21, 2020. To address the State's ongoing housing shortage, the SLA prioritizes affordable housing development over other land uses on surplus public land. On October 26,

City Council
October 19, 2021

2020, the City issued a 60-day Notice of Availability (NOA) to solicit developer interest in the site. After review, negotiation, and cross-analysis of all responses, staff concluded that the Developer's proposal most effectively addresses the community's current needs and offers the most benefits in terms of affordable housing and economic development opportunities to the surrounding neighborhood. Pursuant to Government Code section 54230.5(b)(2)(C) of the SLA, the California Housing and Community Development Department (State HCD) determined in writing that the City met the requirements under the SLA for the purposes of disposing of the Property (**Attachment A**).

BACKGROUND/ LEGISLATIVE HISTORY

73rd Avenue and Foothill Boulevard Property

The Property is located within the Eastmont neighborhood in Council District 6 on the northwest corner of 73rd Avenue and Foothill Boulevard (**Attachment B**) with assessor parcel number (APN) 039-3291-020. The triangular lot is approximately 1.22 acres and sits at the intersection of three major arterials: MacArthur Boulevard, Foothill Boulevard, and 73rd Avenue. The Property abuts at the Eastmont Town Center and is adjacent to AC Transit's Eastmont Transit Center.

The Property was originally part of an old Chevrolet auto assembly plant from 1916 to 1963. In 2008, the former Oakland Redevelopment Agency purchased the vacant and underutilized lot for just over \$2.2 million from the owners of the Eastmont Town Center. In 2010, the City demolished the Firestone tire center that was on the site.

Over the next decade, the City explored several mixed use and commercial development proposals for the Property. Some of these proposals included an education center shared with a new public library branch, a Peralta Community College District satellite campus for Merritt College, and a retail center anchored by a Starbucks community store with dedicated classrooms for local nonprofits to conduct job-skills training classes for youth. Due to financial infeasibility or restrictions related to food operations on the Property, none of the prior development proposals advanced.

In April 2020, the City activated the Property through a license agreement with the Black Cultural Zone Collaborative (an affiliate of the Developer). The Black Cultural Zone Collaborative is a partnership of more than 20 local nonprofits that together established and manage what is currently known as Liberation Park. For over one year, Liberation Park has brought a variety of services to the Eastmont neighborhood including the Akoma Outdoor Market, free meals distributed by the World Central Kitchen, COVID-19 testing by Umoja in Health, local entertainment and food trucks, and over 75 small businesses selling food and other goods in an outdoor setting.

California Surplus Lands Act Notice

The State Surplus Land Act, or California Government Code Sections 54220-54234, requires 60-day noticing and a 90-day negotiation period for the disposition of public land for affordable housing, open space, or school purposes. The City must send an NOA to public agencies and entities that have expressed interest in developing affordable housing to State HCD. Proposals

for residential development must reserve at least 25% of the total units for lower income households. Under the SLA process, if qualifying proposals are received within the initial 60-day NOA period, jurisdictions are required to negotiate in good faith for a minimum period of 90-days. During this period, staff meet with each applicant, analyze the feasibility of each proposal, and determine which development proposal best suits the community's needs, and meets State requirements and the City's reasonable local conditions for the Property.

California Government Code Section 54222(a) requires that the City prioritize low- and moderate-income housing development proposals over other land uses, and that priority shall be given to development applications submitted in response to NOA issuances that offer the highest number of affordable units and deepest average level of affordability. The local government agency that issues the NOA must provide a written explanation to State HCD in the event it prefers to select a proposed project that does not offer the highest number of affordable units and deepest average level of affordability amongst all of the viable proposals received during the NOA period.

On July 21, 2020, the City Council adopted Resolution No. 88233 C.M.S., which declared the Property, along with fifteen other City-owned sites, as surplus under the SLA. This legislation authorized staff to issue an NOA for the Property to eligible entities. The 60-day noticing period ran from October 26, 2020, to December 26, 2020 and resulted in a total of four responses.

Two of the responses to the NOA contained only general letters of interest and statements of respondent qualifications and did not provide any further details of what might be developed on the Property. The two remaining proposals, including the Developer's proposal, included a scope, budget, timeline, and developer history sections that were detailed enough for staff to analyze and cross-compare during the 90-day negotiating period, the next step in the SLA process.

ANALYSIS / POLICY ALTERNATIVES

As a result of its analysis, City staff has determined that the Developer's proposal is the most suitable proposed project for the site and advances both State HCD's goals and the City's reasonable local conditions. The proposed project would house the highest number of residents within its multi-family affordable housing development, offer a robust range of services and economic development opportunities to the local community, and will offer the City fair market value for the property. As such, the recommendation advances the Citywide Priority of advancing **housing, economic and cultural security**. The other competitive proposal required a land subsidy in addition to other financial assistance. State HCD concurred with staff's conclusion and determined in writing that the City fully met all the requirements under the SLA for the purposes of disposing of the Property. The proposal would need to undergo review under CEQA and would require further discretionary approvals from the City Planning Commission and the City Council.

Black Cultural Zone Proposal

The Developer proposes to develop a mixed-use, affordable housing and commercial development under a fair market value long-term ground lease, called Liberation Park Market

Hall and Residences. The proposal includes two separate buildings: one commercial and one residential.

The proposed commercial building would be approximately 15,000 square feet in size, including two floors and rooftop space. The 10,000 square-foot ground floor of the commercial building would include a Swan's Market-style food hall, a community food pantry, co-working space anticipated to be operated by Oakstop, indoor and outdoor dining and event spaces, a theatre and cultural performance space, an indoor and outdoor retail pavilion showcasing local artists and entrepreneurs, and kiosks that provide health and wellness service stations, farm stands, and food carts. The second floor of the commercial building would house more co-working spaces, a one-stop financial and technical assistance hub, and classroom, office, and event space. Finally, the top floor of the commercial building would contain a courtyard and rooftop garden, outdoor event and flex space, as well as a performance, rehearsal, and additional event space within 25 percent of the total roof area.

The proposed residential building would include a total of 120 affordable units that would be made available to households with incomes ranging from 30 percent to 110 percent of Area Median Income (AMI). It is anticipated that the 100 percent affordable housing development could accommodate over 340 new residents across all age groups.

The residential building is proposed to be five stories tall and could include community gathering space as well as visual arts and gallery spaces on the ground floor. The second floor would contain 20 live-work apartments, and the upper three floors would include 100 affordable units consisting of even distribution of studios and one-, two- and three-bedroom units. More detail about the affordable housing units and the proposed project is included in **Table 1** below.

A proposed parking structure would be shared between the residents and businesses and would be constructed under the live-work lofts in the residential building. The total estimated cost of the Developer's proposed project is \$100 million: approximately \$12 million to construct the commercial component and approximately \$88 million to develop the residential building, as noted in the table below.

Table 1
Black Cultural Zone
Proposed Project Details

| Item | Black Cultural Zone Project |
|--|--------------------------------|
| Housing Unit Types | |
| Studios | 30 |
| 1 Bedroom | 18 |
| 2 Bedroom | 34 |
| 3 Bedroom | 18 |
| Live-Work Lofts | 20 |
| Total Housing Units | 120 |
| Total Estimated Residents [1] | 341 |
| <hr/> | |
| Total Estimated Permanent Jobs | 45 |
| Target Area Median Income (AMI) | 30%-110% |
| <hr/> | |
| Estimated Construction Cost | |
| Commercial Component | \$11,932,724 |
| Residential Component | \$87,578,387 |
| Total Estimated Construction Cost | \$99,511,111 |
| <hr/> | |
| Payment-Type Offered For Property | Fair Market Value |

[1] Assumes 1 resident per studio, 1.5 residents per 1-BR, 4 residents per 2-BR, 6 residents per 3-BR, and 2 residents per live-work loft.

In addition to spurring employment and creating affordable housing, the indoor-outdoor design of the Developer’s proposal would create a social and incubator hub for the neighborhood. If approved, the project would create economic opportunities for local small businesses and arts organizations, building on efforts already underway at Liberation Park. Finally, the emphasis on the cultural and arts component in the BCZ proposal would add another valuable addition to both the Eastmont neighborhood and general Oakland community.

Black Cultural Zone Team Members

The Developer is a Black- and women-led team consisting of a partnership between the Black Cultural Zone Community Development Corporation (CDC), Curtis Development, and the Community Arts Stabilization Trust.

The Black Cultural Zone CDC is an East Oakland-based, California nonprofit corporation founded in 2019 by the East Oakland Black Cultural Zone Collaborative. Its mission is to center Black arts, culture, economics in its work, and resource, transform, and build collective power for local communities. The CDC is led by Carolyn Johnson, an Oakland resident from the Eastmont neighborhood with deep experience activating public and private properties that have been vacant, underutilized, and blighted. Under Carolyn's leadership, the CDC successfully created Liberation Park and all the neighborhood-serving programming in the park. Carolyn was previously the Director of Commercial Real Estate at the East Bay Asian Local Development Corporation (EBALDC).

Curtis Development was founded in 2009 by Charmaine Curtis, who has more than thirty years of real estate development experience. Her projects include a diverse range of multi-family, mixed-use, urban infill projects in Oakland and San Francisco. She has overseen or otherwise participated in the development of over 8,000 units of new housing. She was previously the President of A.F. Evans Development and Director of Development at Mercy Housing.

The Community Arts Stabilization Trust is a non-profit arts and real estate organization that creates permanently affordable spaces for culturally-rooted businesses and small and mid-sized arts organizations. It was founded in 2013 on the belief that the arts drive strong, vibrant, and diverse communities.

The Developer is also supported by a large number of community organizations including the East Oakland Neighborhood Initiative (EONI), which is an equity-based coalition of community organizations focused on six neighborhoods in East Oakland. The coalition successfully secured a \$28.2 million grant from the California Strategic Growth Council's Transformative Climate Communities Program to support five transformative projects in East Oakland. The Developer's proposal is largely inspired by the community knowledge and grassroots guidance that has emerged from EONI.

Major Terms of the Exclusive Negotiating Agreement

The proposed ENA would include the following major terms:

- \$25,000 non-refundable ENA fee paid to City within one week proceeding execution of the ENA
- An initial term of 18-months
- One 6-month administrative extension (at the City Administrator's discretion)
- A schedule of performance for the Developer that will identify milestones such as environmental review, receiving project entitlements, submitting a financial plan, and a community outreach plan to be completed within the ENA timeframe

FISCAL IMPACT

Aside from standard administrative costs, there are no fiscal impacts to the City for entering into an ENA with the Developer as described in this report. However, in order to cover staff and third-party expenses related to this project, the City will require a non-refundable Exclusive Negotiating Payment (ENP) of \$25,000. The ENP will be accepted and deposited into Entity (1), Central City East Projects Fund (5640), CIP Central City East Organization (94899), Other Income/Other Revenue Account (48727), 73rd and Foothill Development Project (1003727), and Central City East Program (SC18), and appropriated for the administration and management of the ENA.

PUBLIC OUTREACH / INTEREST

In addition to the extensive outreach that the Developer has already conducted to inform the public about their current proposal, staff also presented all four responses received during the SLA noticing period at a town hall community meeting sponsored by the District 6 Council Office on May 19, 2021. Staff solicited general feedback and answered questions put forth by meeting attendees. Should Council authorize the ENA, the City would require the Developer to hold a series of additional community meetings inviting community organizations, residents, and stakeholders to solicit feedback, input, and comments regarding the proposed development. In addition, the Developer would be required to participate in public hearings as part of the project entitlement and environmental review process through the Bureau of Planning.

COORDINATION

Staff has coordinated with the Real Estate Division regarding the current lease terms for Liberation Park, the Finance Department, the Office of the City Attorney in preparation of the staff report and legislation, and State HCD regarding the City's compliance with the SLA requirements.

SUSTAINABLE OPPORTUNITIES

Economic: There are no direct economic impacts connected to the request for an ENA with the Developer for the proposal described in this report. However, should the proposed development be built, approximately 45 permanent jobs would be created, and approximately 341 residents would be housed in brand new affordable housing built within a dynamic, mixed-use, transit-oriented development. Overall, the proposed project would improve the Eastmont neighborhood by making it more attractive to current and prospective residents and businesses. According to the Oakland Department of Transportation's (OakDOT) *Geographic Equity Toolbox*¹, an estimated 65 percent of total Eastmont residents have lower than average incomes, and 42 percent of the neighborhood's residents are rent-burdened. In addition, the 2019 Oakland Point In Time count showed that 4,071 people were experiencing homelessness in Oakland, an unprecedented 47 percent increase over 2017 levels. The development of

¹ <https://www.oaklandca.gov/resources/oakdot-geographic-equity-toolbox>

Liberation Park Market Hall and Residences will have a direct effect towards reducing homelessness in Oakland.

Environmental: There are no direct environmental impacts connected to the request for an ENA with the Developer for the proposal described in this report. The Developer will use its good faith efforts to design, develop and construct a Leadership in Energy and Environmental Design (LEED)-accredited building and/or an environmentally sustainable project with minimum conformance with the Oakland's "Build It Green" commercial checklist. In addition, the property is well-served by transit, abutting AC Transit's Eastmont Transit Center.

Race & Equity: The proposed Development Team is Black, female-led and racially diverse, demographics often underrepresented in real estate development. Many of the team members were born and raised in Oakland. Furthermore, should the proposed development be built, approximately 120 residential affordable units that house just over 340 residents, and 45 permanent jobs would positively stimulate the Eastmont neighborhood, one of Oakland's lower-income neighborhoods. Eastmont is home to just over 3,300 people. According to the City's OakDOT Geographic Equity Toolbox, an estimated 85 percent of the neighborhood's residents are people of color. In Oakland, the drivers of homelessness fall most squarely on the backs of the African-American community, who due to long-standing structurally racist practices such as red lining and employment discrimination, are most vulnerable to losing their homes. The development of Liberation Market Hall and Residences will help alleviate the affordable housing shortage in the Eastmont neighborhood and may act as a catalyst for other similar development projects in Oakland.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

Nothing in this action to authorize the entrance into an ENA should be interpreted as an approval or a pre-commitment to approve, now or in the future, of the disposition of the City's interest in the Property, to any particular party, on any particular terms, or for any particular purpose. Any proposed disposition of the Property and any development project on the Property, whether made pursuant to the ENA or otherwise, will require further discretionary actions of the City Planning Commission and City Council, and the City retains full discretion, following conclusion of the response and negotiation periods set forth in ENA to proceed with disposition of its interest in the Property in compliance with CEQA. As such, this action will not result in a direct or indirect physical change in the environment and does not in-and-of-itself constitute a "project" pursuant to CEQA Guidelines Section 15378.

ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends that the City Council adopt a resolution authorizing the City Administrator to enter into an Exclusive Negotiation Agreement (ENA) with The Black Cultural Zone Community Development Corporation (BCZ) in partnership with Community Arts Stabilization Trust, Curtis Development, and/or their affiliated entities for eighteen (18) months, with one additional six (6) month administrative extension, for the future disposition of the City-owned 73rd Avenue and Foothill Boulevard Property (APN 039-3291-020) subject to the completion of a California Environmental Quality Act (CEQA) determination.

For questions regarding this report, please contact Rupa Parikh, Urban Economic Analyst III at (510) 238-2970.

Respectfully submitted,



ALEXA JEFRESS
Director, Economic & Workforce Development

Reviewed by:
Kelley Kahn, Special Projects Director
Larry Gallegos, Development Area Manager

Prepared by:
Rupa Parikh, UEA III
Public/Private Development

Attachments (2):

- A: State HCD Compliance Letter
- B: Assessor's Parcel Site Map

**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
DIVISION OF HOUSING POLICY DEVELOPMENT**

2020 W. El Camino Avenue, Suite 500
Sacramento, CA 95833
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www.hcd.ca.gov



August 25, 2021

Larry Gallegos
City of Oakland
Development/Redevelopment Program Manager
Economic & Workforce Development Department
250 Frank H. Ogawa Plaza, Suite 5313
Oakland, CA 94612-2034

Dear Larry Gallegos:

**RE: Written Comments Regarding the City of Oakland's Surplus Land Disposition
Documentation for the Property at 73rd Avenue and Foothill Boulevard
(APN 039-3291-020).**

Thank you for submitting your surplus land documentation for review by the Department of Housing and Community Development (HCD). We received your documentation on July 26, 2021. This letter constitutes HCD's initial written comments, pursuant to Government Code section 54230.5(b)(2)(C) of the Surplus Land Act (SLA), for the property located at 73rd Avenue and Foothill Boulevard in the City of Oakland (City). HCD determines that you have met all the requirements under the SLA for the purposes of disposing of the surplus land located at 73rd Avenue and Foothill Boulevard. The City is permitted to proceed with the sale of the property."

According to your letter and included documents, a Resolution declaring the property to be surplus was issued on July 21, 2020 and a Notice of Availability (NOA) was sent to the required agency and affordable housing entities on October 26, 2020. During the required 60-day period, four affordable housing entities expressed interest in purchasing the property. Following the 90-day negotiation period, the City would like to proceed with sale of the property to Black Cultural Zone in partnership with CAST and Curtis Development (BCZ). You have included a draft affordability covenant to be filed when the property is sold.

According to your documents, of the four housing providers that expressed interest in purchasing the surplus property for the purposes of developing affordable, for-sale housing, only two submitted detailed proposals. Your documents further establish that,

while both housing providers propose to build a development with 100% affordable units, the City plans to sell the property to BCZ, which is not the developer offering the “deepest average level of affordability.” If the City chooses not to sell to the entity offering the deepest average level of affordability, they must provide a written explanation detailing their decision to HCD per Section 400(b)(3) of the Surplus Land Act Guidelines:

If a local agency proposes to dispose of surplus land to an entity that does not have first priority and/or priority pursuant to Government Code Section 54227, the local agency is required to provide HCD an adequate written explanation.

In your cover letter dated July 26, 2021, you provide HCD with a rationale for selecting BZM’s proposal rather than the alternative proposal. In this regard, you note that, although the other proposal is proposing to build more units than BZM, due to BZM’s proposal to develop larger units, BZM will actually house more individuals. HCD accepts this rationale as an adequate written explanation.

The City or its representatives may send any questions to publiclands@hcd.ca.gov.

Sincerely,



Megan Kirkeby
Deputy Director
Housing Policy Development

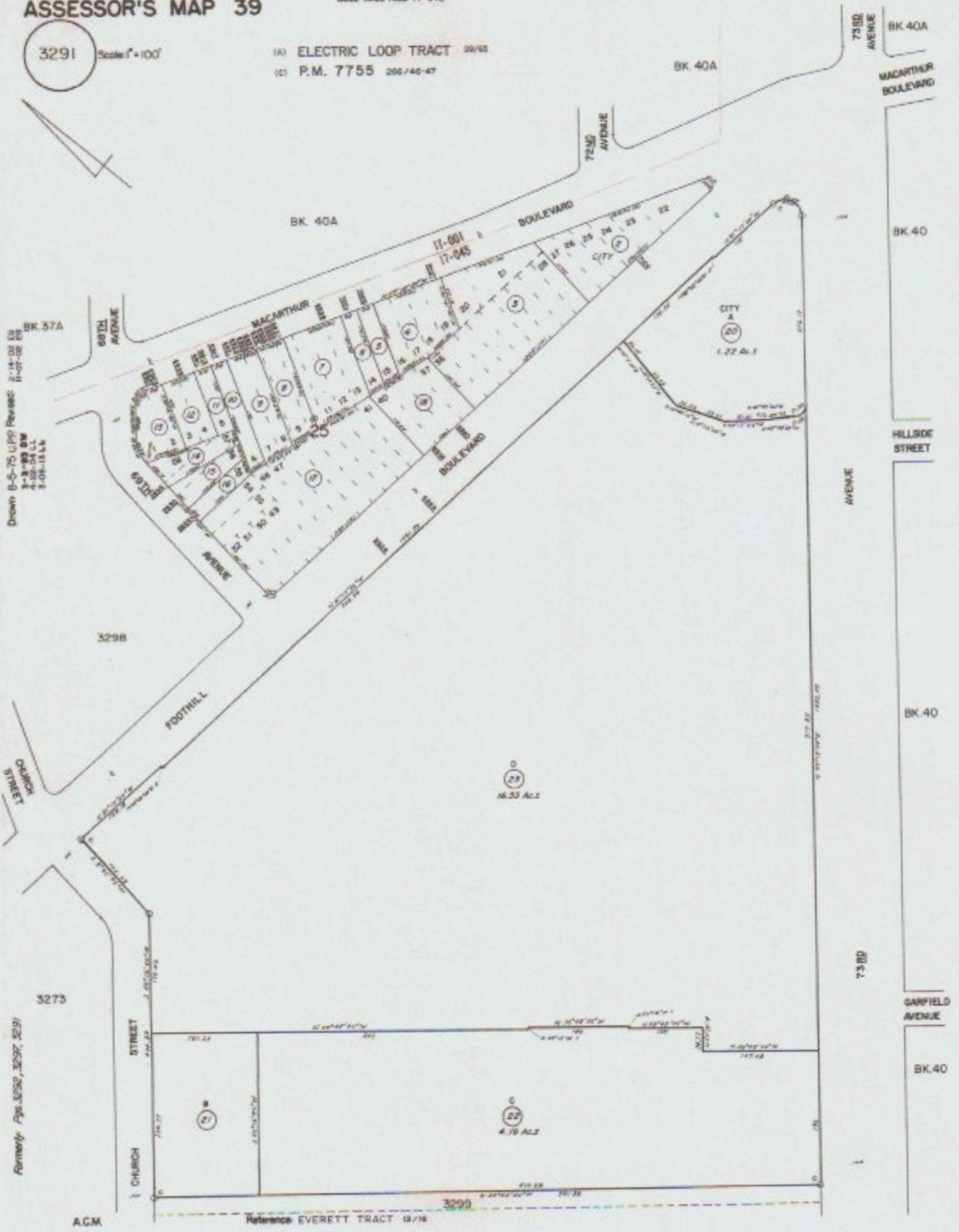
ATTACHMENT B

ASSESSOR'S MAP 39

Code Area Nos. 17-045

3291 Scale: 1" = 100'

(A) ELECTRIC LOOP TRACT 20/03
(C) P.M. 7755 206/46-47



Drawn B-5-75 LUPP Revised: 2-14-02 DS
3-2-03 BW
3-05-04 LL

Formerly: Pgs. 3252, 3257, 3259

AGM

Reference EVERETT TRACT 03/18

LEGAL DESCRIPTION

Real property in the City of Oakland, County of Alameda, State of California, described as follows:

PARCEL ONE:

PARCEL A, PARCEL MAP 7755, FILED JULY 19, 2002, BOOK 266 OF PARCEL MAPS, PAGES 46 AND 47, ALAMEDA COUNTY RECORDS.

PARCEL TWO:

NON-EXCLUSIVE RECIPROCAL EASEMENTS APPURTENANT TO PARCEL ONE FOR THE PURPOSES OF PARKING, ACCESS, DRAINAGE, ENCROACHMENTS AND UTILITIES AS CONTAINED IN AND UPON THE TERMS AND CONDITIONS SET FORTH IN THAT CERTAIN "AMENDED AND RESTATED AGREEMENT FOR GRANT OF RECIPROCAL EASEMENTS" RECORDED MARCH 13, 2007 AS INSTRUMENT NO. 2007-103162 OF ALAMEDA COUNTY OFFICIAL RECORDS SAID PURPOSES BEING MORE PARTICULARLY STATED THEREIN IN SECTION 2 THEREOF.

APN: 039-3291-020