



## MEMORANDUM

**DATE:** February 20, 2013

**TO:** Housing Commission

**FROM:** Rachel Grossman, Associate Planner

**RE:** **Review of Below Market Rate Housing Agreement with Giant Properties, LLC for commercial linkage fees for the Facebook West Campus Project located at 312 and 313 Constitution Drive**

### **SITE LOCATION**

The project site is approximately 22.12 acres, more particularly described as Assessor's Parcel Numbers 055-260-210 and 055-260-220, and more commonly known as 312 and 313 Constitution Drive.

### **PROJECT DESCRIPTION**

The proposed project includes the demolition of all existing structures on the project site inclusive of 127,246 square feet of office space, and the subsequent redevelopment of the site inclusive of an approximately 433,656 square foot office building on top of surface parking that would include approximately 1,499 parking spaces. The project would contain a net increase of approximately 306,410 square feet of gross floor area for office and/or research and development uses. As part of the land use entitlement process, the developer is requesting a site rezoning and conditional development permit to allow for height and lot coverage increases, heritage tree removal permits, a lot line adjustment, and a development agreement.

The developer is required to comply with Chapter 16.96 of City's Municipal Code, Below Market Rate (BMR) Housing Program ("BMR Ordinance"), and with the BMR Housing Program Guidelines adopted by the City Council to implement the BMR Ordinance ("Guidelines"). In order to obtain land use entitlements, the BMR Ordinance requires the applicant to submit a Below Market Rate Housing Agreement. This Agreement is intended to satisfy that requirement and must be

approved by the City Council prior to or concurrently with the issuance of land use entitlements.

### **RESIDENTIAL DEVELOPMENT OPTION**

Residential use of the property is not allowed by the applicable zoning regulations. The developer does not own any sites in the city that are available and feasible for construction of sufficient below market rate units to satisfy the requirements of the BMR Ordinance. However, the developer is presently exploring opportunities to deliver off-site units but has not been able to negotiate an agreement for the delivery of any off-site units. Based on these facts, staff has found that development of such units off-site in accordance with the requirements of the BMR Ordinance and Guidelines also is not presently feasible, but may be feasible in the near future. The developer, is therefore required to pay an in lieu fee as provided for in this Agreement and/or deliver off-site units as provided for in this Agreement.

### **BMR HOUSING PROGRAM REQUIREMENT**

The developer intends to satisfy its obligations under the BMR Ordinance and Guidelines by one of the following methods:

- a. Paying the in lieu fee;
- b. Delivering off-site units; or
- c. Paying a portion of the in lieu fee and delivering off-site units.

The in lieu fee paid by the developer and off-site units delivered by the developer must, collectively, include fees and units that satisfy the developer's obligation to offset the net, new demand for affordable housing created by the Project. Each off-site unit provided by the developer shall be credited towards the net, new demand for affordable housing created by 20,427 square feet of the gross floor area of the Project. The below table illustrates the in lieu fees that would be payable assuming that the gross floor area of the Project is 433,656 square feet, the in lieu fee is \$14.71 per square foot at the time the developer makes the in lieu fee payment and the developer satisfies its obligations under the BMR Ordinance and Guidelines by paying the in lieu fee and not delivering any off-site units.

	<b>Use Group</b>	<b>Fee/ SF</b>	<b>SF</b>	<b>Fee</b>
Existing Office Portion	A-Office/R&D	\$14.71	127,246	(\$1,871,789)
Proposed Office Building	A-Office/R&D	\$14.71	433,656	\$6,379,080
<b>Total Fee</b>				<b>\$4,507,291</b>

If the developer were to achieve compliance with the BMR Ordinance solely through the provision of residential units, based upon the currently proposed building square footage, the developer would be required to provide 15 residential units.

The Developer is willing to pay the in lieu fee and/or deliver off-site units on the terms set forth in this Agreement, which the City has found are consistent with the BMR Ordinance and Guidelines. It should be noted that since publication of the staff report for the February 6, 2013 Housing Commission meeting, Section 3 of the Agreement has been updated, specific to the delivery of off-site residential units. To ensure timely compliance with the requirements of the Agreement, Section 3 now requires the Developer to make reasonable progress towards delivering the offsite units within two years of the issuance date of the building permit for the demolition of the two existing structures on the Project Site. If the City determines that reasonable progress has not been made towards delivery of off-site units within two years, then the City may require the Developer to satisfy the requirements of the Agreement solely through the payment of in lieu fees.

### **RECOMMENDATION**

Staff recommends that the Housing Commission recommend approval of the proposed BMR agreement.

### **ATTACHMENTS**

- A. 312 and 313 Constitution Drive Proposed BMR Housing Agreement
- B. Project Plans (Select Sheets)

This document is recorded for the benefit of the City of Menlo Park and is entitled to be recorded free of charge in accordance with Sections 6103 and 27383 of the Government Code

**RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:  
City of Menlo Park  
Attn: City Clerk  
701 Laurel Street  
Menlo Park, CA 94025**

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**DRAFT  
BELOW MARKET RATE HOUSING AGREEMENT**

This Below Market Rate Housing Agreement (this "Agreement") is made as of this \_\_\_\_ day of \_\_\_\_\_, 2013 by and between the City of Menlo Park, a California municipality ("City") and Giant Properties, LLC, a Delaware limited liability company ("Developer"), with respect to the following:

**RECITALS**

- A. Developer owns certain real property in the City of Menlo Park, County of San Mateo, State of California, consisting of approximately 22.12 acres or 963,682 square feet, more particularly described as Assessor's Parcel Numbers: 055-260-210 and 055-260-220 (the "Property") and more commonly known as 312 and 313 Constitution Drive.
- B. Developer proposes to demolish all existing structures on the Property inclusive of 127,246 square feet of office space, and subsequently construct an approximately 433,656 square foot office building on top of surface parking that would include approximately 1,499 parking spaces above at-grade parking. The demolition and construction are collectively referred to as the "Project." The Project would contain a net increase of approximately 306,410 square feet of gross floor area. The use of the new building would be for office and/or R&D uses. Developer has applied to the City for site rezoning to allow for height and lot coverage increases, a conditional development permit, heritage tree removal permits, a lot line adjustment and a development agreement for the Project.
- C. Developer is required to comply with Chapter 16.96 of City's Municipal Code ("BMR Ordinance") and with the Below Market Rate Housing Program Guidelines ("Guidelines") adopted by the City Council to implement the BMR Ordinance. In order to process its application, the BMR Ordinance requires Developer to submit a Below Market Rate Housing Agreement. This Agreement is intended to satisfy that requirement. Approval of a Below Market Rate Housing Agreement is a condition precedent to the approval of the applications and the issuance of a building permit for the Project.

- D. Residential use of the Property is not allowed by the applicable zoning regulations. Developer does not presently own or have any rights with respect to any sites in the City that are available and feasible for construction of sufficient below market rate residential housing units to satisfy the requirements of the BMR Ordinance. Developer is presently exploring opportunities to deliver off-site units but has not been able to negotiate an agreement for the delivery of any off-site units. Based on these facts, the City has found that development of such units off-site in accordance with the requirements of the BMR Ordinance and Guidelines also is not presently feasible.
- E. Developer, therefore, is required to pay an in lieu fee as provided for in this Agreement and/or deliver off-site units as provided for in this Agreement. Developer is willing to pay the in lieu fee and/or deliver off-site units on the terms set forth in this Agreement, which the City has found are consistent with the BMR Ordinance and Guidelines.

NOW, THEREFORE, the parties agree as follows:

1. Developer shall satisfy its obligations under the BMR Ordinance and Guidelines (“Developer’s BMR Obligations”) by either (a) paying the in lieu fee as provided for in the BMR Ordinance and Guidelines, (b) delivering off-site units as provided for in the BMR Ordinance and Guidelines, or (c) paying a portion of the in lieu fee as provided for in the BMR Ordinance and Guidelines and delivering off-site units as provided for in the BMR Ordinance and Guidelines; in any case as set forth in this Agreement. The in lieu fee paid by Developer and off-site units delivered by Developer must, collectively, include fees and units that satisfy Developer’s obligation to mitigate the net, new demand for affordable housing created by the Project which is determined by figuring for the difference between (x) the maximum gross floor area of the Project and (y) the gross floor area of the existing structures located on the site as of the date of this Agreement (i.e. 127,246 gross square feet of gross floor area) (such difference, the “Net New Gross Floor Area of the Project”). The applicable in lieu fee is that which is in effect on the date the payment is made (provided, however, that the in lieu fee in effect as of the date of this Agreement may only be increased to reflect changes in the consumer price index (or another comparable and commercially accepted inflation index)). Each off-site unit provided by Developer shall be credited with mitigating the net, new demand for affordable housing created by 20,427 gross square feet of the gross floor area of the Project. The below table illustrates the in lieu fees that would be payable assuming that the gross floor area of the Project is 433,656, the in lieu fee is \$14.71 per square foot at the time Developer makes the in lieu fee payment and Developer satisfies its obligations under the BMR Ordinance and Guidelines by paying the in lieu fee and not delivering any off-site units.

	<b>Use Group</b>	<b>Fee/ SF</b>	<b>SF</b>	<b>Fee</b>
Existing Office Portion	A-Office/R&D	\$14.71	127,246	(\$1,871,789)
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<b>Total Fee</b>				<b>\$4,507,291</b>

2. Developer will not be obligated to pay the in lieu fee or deliver off-site units before the City issues a building permit for the Project. Instead, Developer will satisfy its obligations under the Ordinance and Guidelines as set forth in Paragraph 3 below.
  
3. Within four (4) years of the date the City issues a building permit for demolition of the existing structures (the "Outside Delivery Date"), Developer shall have the right (but not the obligation) to deliver off-site units that meet the requirements of the Ordinance and Guidelines to satisfy, in whole or in part, Developer's BMR Obligations. Notwithstanding the preceding, if the City, in its sole and absolute discretion, determines that Developer has not made reasonable progress towards delivering off-site units that meet the requirements of the Ordinance and Guidelines within two (2) years after the date the City issues a building permit for demolition of the existing structures (the "Two Year Anniversary"), then at any time after the Two Year Anniversary the City may elect to accelerate the Outside Delivery Date by giving Developer written notice thereof to Developer (the "Acceleration Notice") in which case the Outside Delivery Date will be not less than thirty (30) days after the City's delivery of the Acceleration Notice. Each off-site unit delivered by Developer will be credited against Developer's BMR Obligations (i.e. each unit will satisfy Developer's BMR Obligations with respect to 20,427 gross square feet of gross floor area of the Project). If Developer delivers off-site units that satisfy Developer's BMR Obligations prior to the Outside Delivery Date, it will have no further payment or delivery obligations under this Agreement. If Developer does not deliver off-site units that satisfy Developer's BMR Obligations prior to the Outside Delivery Date, then, within thirty (30) days of the Outside Delivery Date, Developer must pay the City an amount equal to the product of (x) the applicable in lieu fee which is in effect on the date such payment is made multiplied by (y) the difference between (1) the Net New Gross Floor Area of the Project and (2) the credit allocable to Developer for off-site units that Developer delivers before the Outside Delivery Date (i.e. the number of off-site units multiplied by 20,427 gross square feet). For purposes of clarification, (a) rental units that are maintained as BMR units in accordance with the City's BMR Guidelines for at least fifty-five (55) years satisfy the BMR Ordinance and Guidelines and (b) Developer may deliver off-site units by directly developing a residential project or having a third party deliver or agree to deliver BMR units to the City on Developer's behalf, provided any units delivered by a third party on Developer's behalf shall be additional BMR units for such project and shall not count toward the BMR requirement and/or any density bonus calculation for such project where the BMR units are provided.

4. This Agreement shall be binding on and inure to the benefit of the parties hereto and their successors and assigns. Each party may assign this Agreement, subject to the reasonable consent of the other, and the assignment must be in writing.
5. If any legal action is commenced to interpret or enforce this Agreement or to collect damages as a result of any breach of this Agreement, the prevailing party shall be entitled to recover all reasonable attorney's fees and costs incurred in such action from the other party.
6. This Agreement shall be governed by and construed in accordance with the laws of the State of California and the venue for any action shall be the County of San Mateo.
7. The terms of this Agreement may not be modified or amended except by an instrument in writing executed by each of the parties hereto.
8. This Agreement supersedes any prior agreements, negotiations, and communications, oral or written, and contains the entire agreement between the parties as to the subject matter hereof.
9. Any and all obligations or responsibilities of Developer under this Agreement shall terminate upon the payment of the required fee and/or the delivery of off-site BMR units in accordance with the terms and provisions of this Agreement.
10. To the extent there is any conflict between the terms and provisions of the Guidelines and the terms and provisions of this Agreement, the terms and provisions of this Agreement shall prevail.
11. This Agreement or a memorandum setting forth the essential terms and provisions of this Agreement shall be recorded following approval and execution of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first written above.

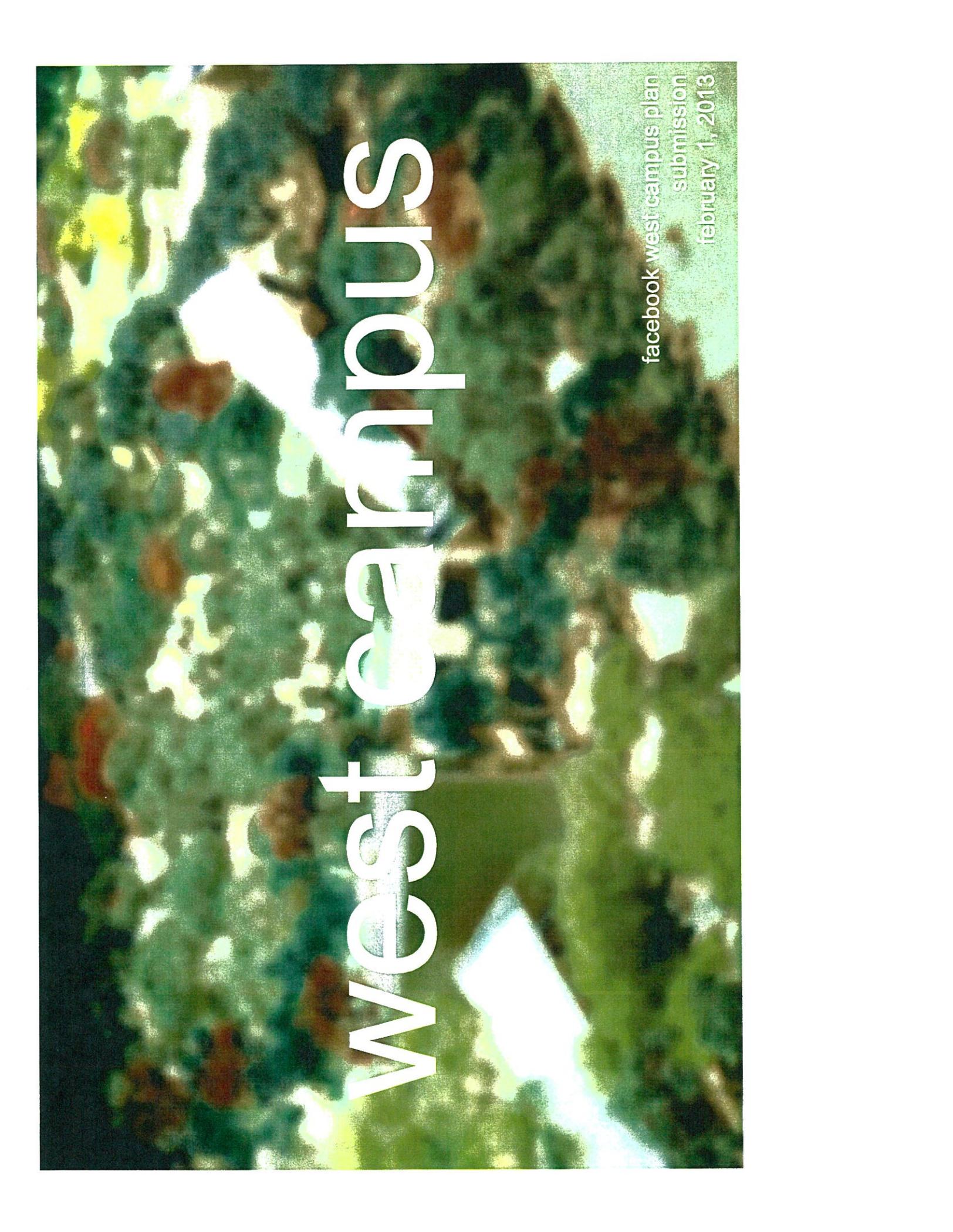
Developer:  
Giant Properties, LLC,  
a Delaware limited liability company

City:  
City of Menlo Park,  
a California municipal corporation

By: \_\_\_\_\_  
John Tenanes  
Global Facilities and Real  
Estate Director

By: \_\_\_\_\_  
Alex D. McIntyre  
City Manager  
City of Menlo Park

[Notarial Acknowledgements to be added for recording purposes]



# west campus

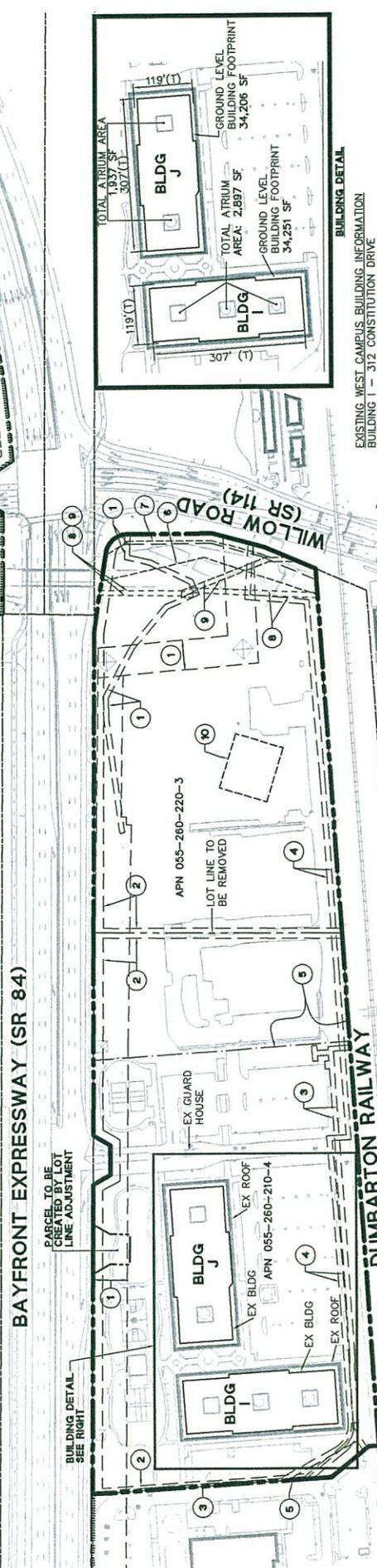
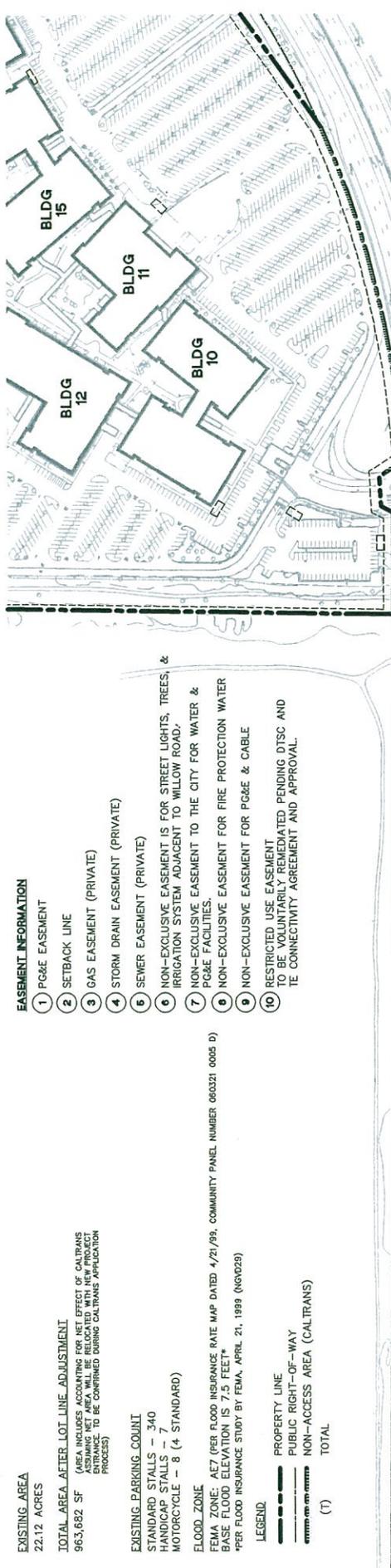
facebook west campus plan  
submission  
february 1, 2013



**A.0.2: AREA PLAN**  
 SCALE: 1"=200'  
 11X17 SCALE IS 1"=400'  
 FEBRUARY 1, 2013

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 MENLO PARK, CALIFORNIA





**BUILDING DETAIL**

EXISTING WEST CAMPUS BUILDING INFORMATION

BUILDING #	BLDG FOOTPRINT	ATRIUM GFA/FLOOR	# OF FLOORS	TOTAL GSF
BUILDING I	34,251 SF	2,897 SF	2	62,708 SF
BUILDING J	34,206 SF	1,937 SF	2	64,538 SF
<b>TOTAL GSF</b>				<b>127,246 SF</b>



# WA.1: EXISTING SITE PLAN

SCALE: 1"=100'  
11X17 SCALE IS 1"=200'  
FEBRUARY 1, 2013

- EASEMENT INFORMATION**
- PG&E EASEMENT
  - SETBACK LINE
  - GAS EASEMENT (PRIVATE)
  - STORM DRAIN EASEMENT (PRIVATE)
  - SEWER EASEMENT (PRIVATE)
  - NON-EXCLUSIVE EASEMENT IS FOR STREET LIGHTS, TREES, & IRRIGATION SYSTEM ADJACENT TO WILLOW ROAD.
  - NON-EXCLUSIVE EASEMENT TO THE CITY FOR WATER & PG&E FACILITIES.
  - NON-EXCLUSIVE EASEMENT FOR FIRE PROTECTION WATER
  - NON-EXCLUSIVE EASEMENT FOR PG&E & CABLE
  - RESTRICTED USE EASEMENT TO BE VOLUNTARILY REMEDIATED PENDING DTSC AND TE CONNECTIVITY AGREEMENT AND APPROVAL.

**EXISTING AREA**  
22.12 ACRES

**TOTAL AREA AFTER LOT LINE ADJUSTMENT**  
963,682 SF  
(AREA INCLUDES ACCORDING FOR NET EFFECT OF CALTRANS ASSUMING NET AREA WILL BE RELOCATED WITH NEW PROJECT ENTRANCE TO BE CONFIRMED DURING CALTRANS APPLICATION PROCESS)

**EXISTING PARKING COUNT**  
STANDARD STALLS - 340  
HANDICAP STALLS - 7  
MOTORCYCLE - 8 (4 STANDARD)

**FLOOD ZONE**  
FEMA ZONE: AE7 (PER FLOOD INSURANCE RATE MAP DATED 4/21/99, COMMUNITY PANEL NUMBER 060321 0005 D)  
BASE FLOOD ELEVATION IS 7.5 FEET  
\*PER FLOOD INSURANCE STUDY BY FEMA, APRIL 21, 1999 (N61029)

**LEGEND**

- PROPERTY LINE
- PUBLIC RIGHT-OF-WAY
- NON-ACCESS AREA (CALTRANS)
- TOTAL

**BAYFRONT EXPRESSWAY (SR 84)**

**WILLOW ROAD (SR 114)**

**DUMBARTON RAILWAY**

APN 055-260-220-3  
LOT LINE TO BE REMOVED

EX GUARD HOUSE

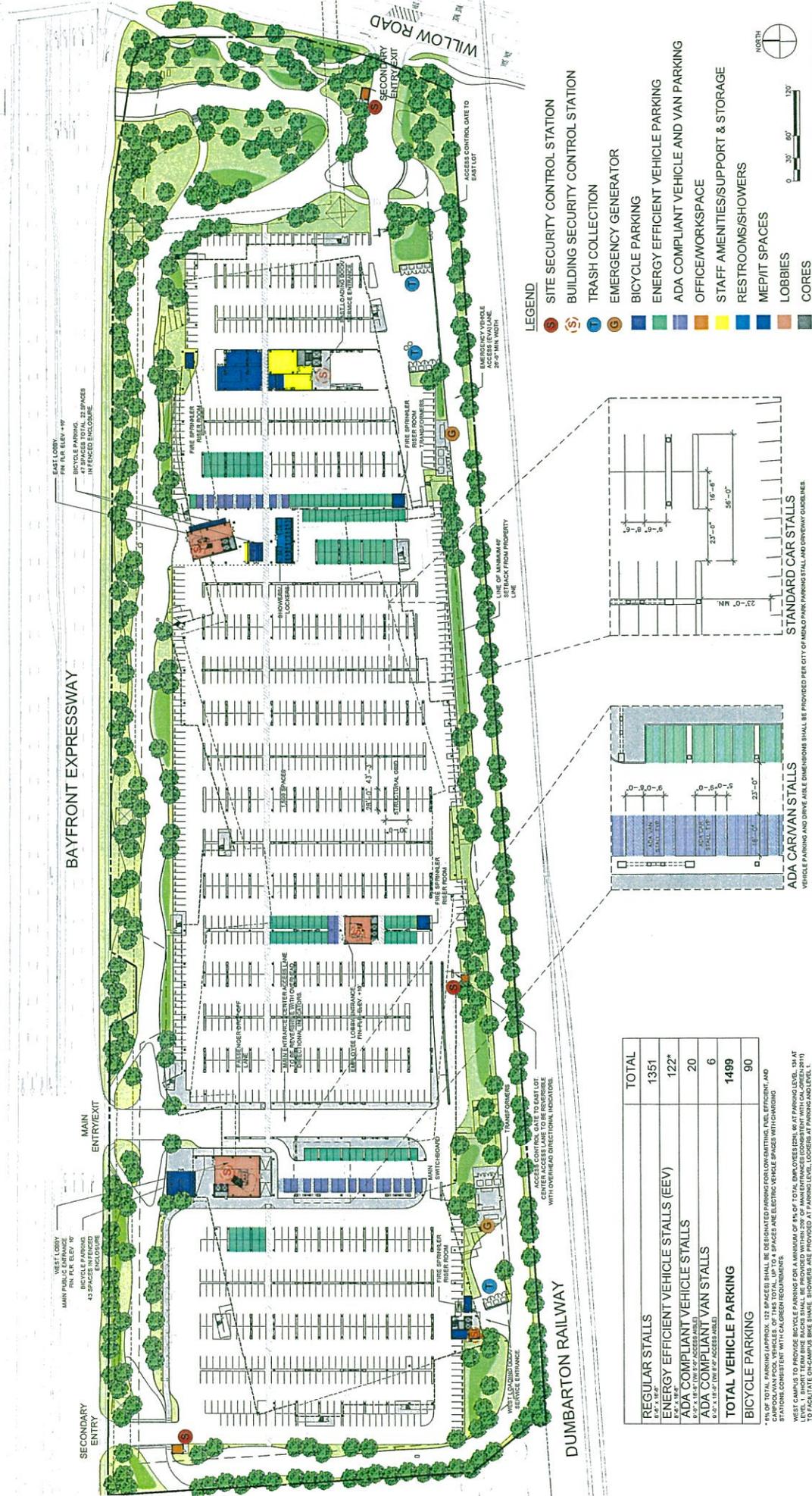
EX BLDG APN 055-260-210-4

EX BLDG EX ROOF

EX BLDG EX ROOF

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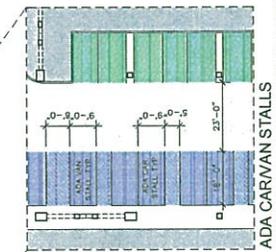
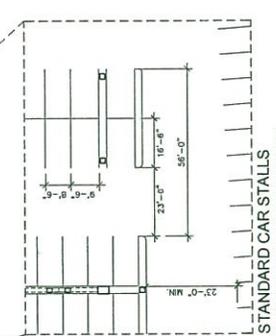


- LEGEND**
- SITE SECURITY CONTROL STATION
  - BUILDING SECURITY CONTROL STATION
  - TRASH COLLECTION
  - EMERGENCY GENERATOR
  - BICYCLE PARKING
  - ENERGY EFFICIENT VEHICLE PARKING
  - ADA COMPLIANT VEHICLE AND VAN PARKING
  - OFFICE/WORKSPACE
  - STAFF AMENITIES/SUPPORT & STORAGE
  - RESTROOMS/SHOWERS
  - MEP/IT SPACES
  - LOBBIES
  - CORES



# WA.3.1: PARKING PLAN

SCALE: 1"=60'  
11X17 SCALE IS 1"=120'  
FEBRUARY 1, 2013

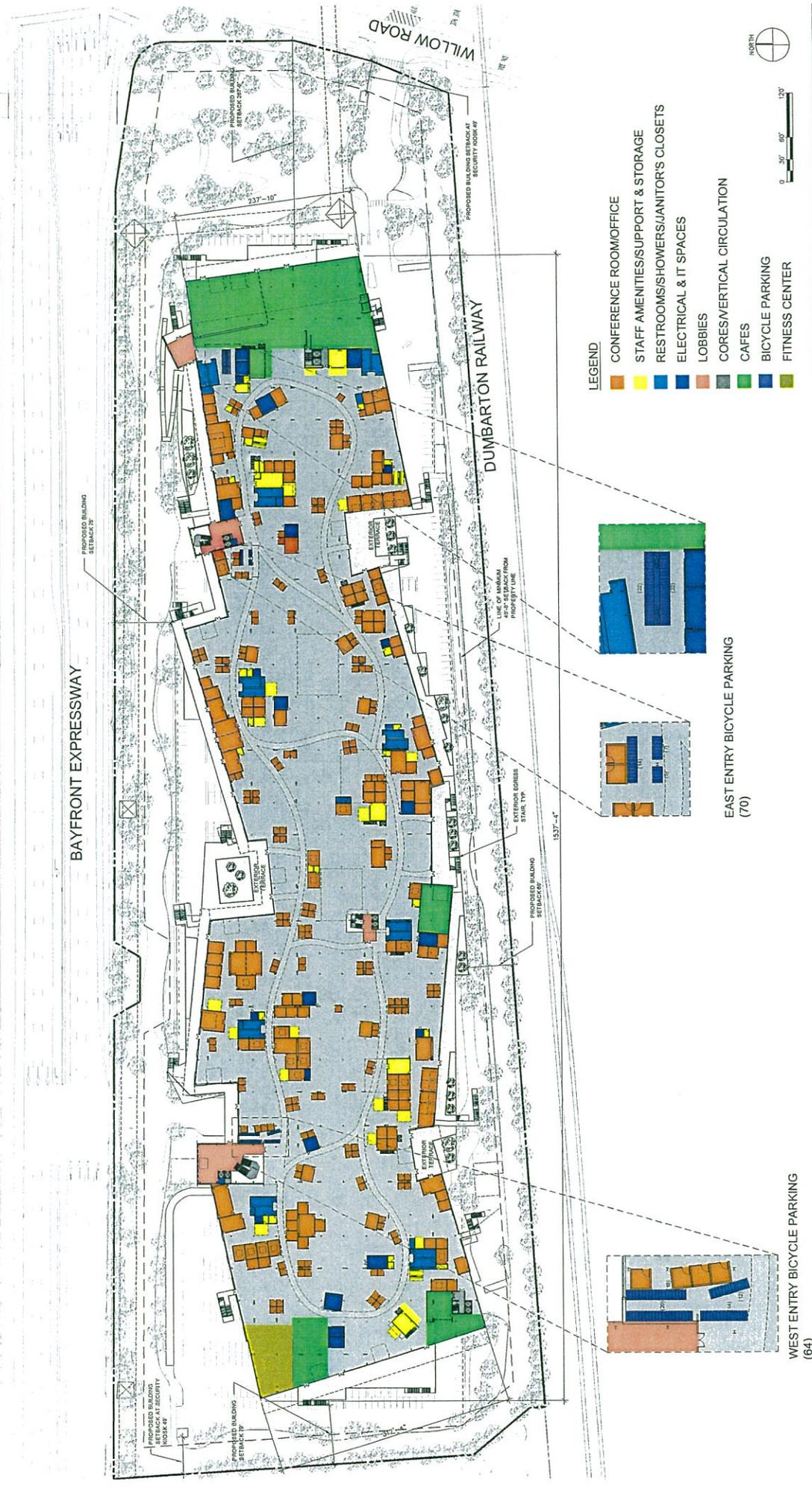


	TOTAL
REGULAR STALLS 8'-0" x 16'-0"	1351
ENERGY EFFICIENT VEHICLE STALLS (EEV)	122*
ADA COMPLIANT VEHICLE STALLS 8'-0" x 16'-0" (10'-0" ACCESS AISLE)	20
ADA COMPLIANT VAN STALLS 8'-0" x 18'-0" (10'-0" ACCESS AISLE)	6
<b>TOTAL VEHICLE PARKING</b>	<b>1499</b>
BICYCLE PARKING	90

\* 1% OF TOTAL PARKING (APPROX. 152 SPACES) SHALL BE DESIGNATED PARKING FOR LOW-COMPACTING, FUEL EFFICIENT, AND HYBRID VEHICLES. THESE SPACES SHALL BE PROVIDED WITH 20% OF MAINTENANCE SPACES AND ELECTRIC VEHICLE SPACES WITH CHARGING STATIONS CONSISTENT WITH CALIFORNIA REQUIREMENTS.

WEST CAMPUS TO PROVIDE BICYCLE PARKING FOR A MINIMUM OF 90% OF TOTAL EMPLOYEES (20% OF TOTAL PARKING LEVEL, 13% AT LEVEL 1, 7% AT LEVEL 2) AND 10% OF TOTAL EMPLOYEES (20% OF TOTAL PARKING LEVEL, 13% AT LEVEL 1, 7% AT LEVEL 2) TO FACILITATE ON-CAMPUS BIKE SHARE. SHOWERS ARE PROVIDED AT PARKING LEVEL, LOBBIES AT PARKING AND LEVEL 1.

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- LEGEND**
- CONFERENCE ROOM/OFFICE
  - STAFF AMENITIES/SUPPORT & STORAGE
  - RESTROOMS/SHOWERS/JANITOR'S CLOSETS
  - ELECTRICAL & IT SPACES
  - LOBBIES
  - CORES/VERTICAL CIRCULATION
  - CAFES
  - BICYCLE PARKING
  - FITNESS CENTER

**WA.3.2: FIRST FLOOR PLAN**  
 SCALE: 1"=60'  
 11X17 SCALE IS 1"=120'  
 FEBRUARY 1, 2013

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WEST ENTRY BICYCLE PARKING  
(64)

EAST ENTRY BICYCLE PARKING  
(70)

BAYFRONT EXPRESSWAY

WILLOW ROAD

DUMBARTON RAILWAY

LINE OF MINIMUM 80%  
PROPERTY LINE

LEGEND

- CONFERENCE ROOM/OFFICE
- STAFF AMENITIES/SUPPORT & STORAGE
- RESTROOMS/SHOWERS/JANITOR'S CLOSETS
- MECHANICAL SPACES
- LOBBIES
- CORES/VERTICAL CIRCULATION
- CAFES



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# WA.3.2.1: MEZZANINE PLAN

SCALE: 1"=60'  
11X17 SCALE IS 1"=120'  
FEBRUARY 1, 2013



BAYFRONT EXPRESSWAY



- LEGEND**
- STORAGE
  - RESTROOMS
  - MEP SPACES - SCREENED
  - MEP SPACES - COVERED
  - LOBBIES
  - CORES/VERTICAL CIRCULATION

**NOTE:** THE ROOF IS INTENDED AS A SOCIAL SPACE FOR WALKING AND ASSEMBLY FUNCTIONS. A TEMPORARY SPECIAL EVENT TENT (SEE DESCRIPTION BELOW) MAY BE ERRECTED FOR SINGLE DAY EVENTS SUCH AS PRODUCT LAUNCHES, ALL-HANDS MEETINGS, AND COMPANY SOCIAL GATHERINGS THAT COULD OCCUR DURING BOTH DAY AND EVENING HOURS. WALKING PATHS, WITH ADJACENT FOOD SERVICE CART LOCATIONS, EITHER A FABRIC TENT AND/OR A CANOPY STRUCTURE WITH A SERVING COUNTER MAY BE PROVIDED TO AUGMENT THE FOOD SERVICE CARTS FOR SHADE AND INCLEMENT WEATHER PROTECTION.

THE HORIZONTAL DIMENSIONS OF THE TEMPORARY SPECIAL EVENT TENT WOULD BE APPROXIMATELY 80'x180', WITH A MAXIMUM VERTICAL PEAK APPROXIMATELY 28' ABOVE THE LAWN (SEE WA-7.1B & WA-7.5B). THE MAXIMUM TENT PEAK HEIGHT WOULD BE LIMITED BY THE MAXIMUM BUILDING HEIGHT OF 75' ABOVE AVERAGE NATURAL GRADE. NOISE AND LIGHTING IMPACTS FROM THE SPECIAL EVENT SHALL BE WITHIN THE CURRENT APPLICABLE ZONING ORDINANCES.

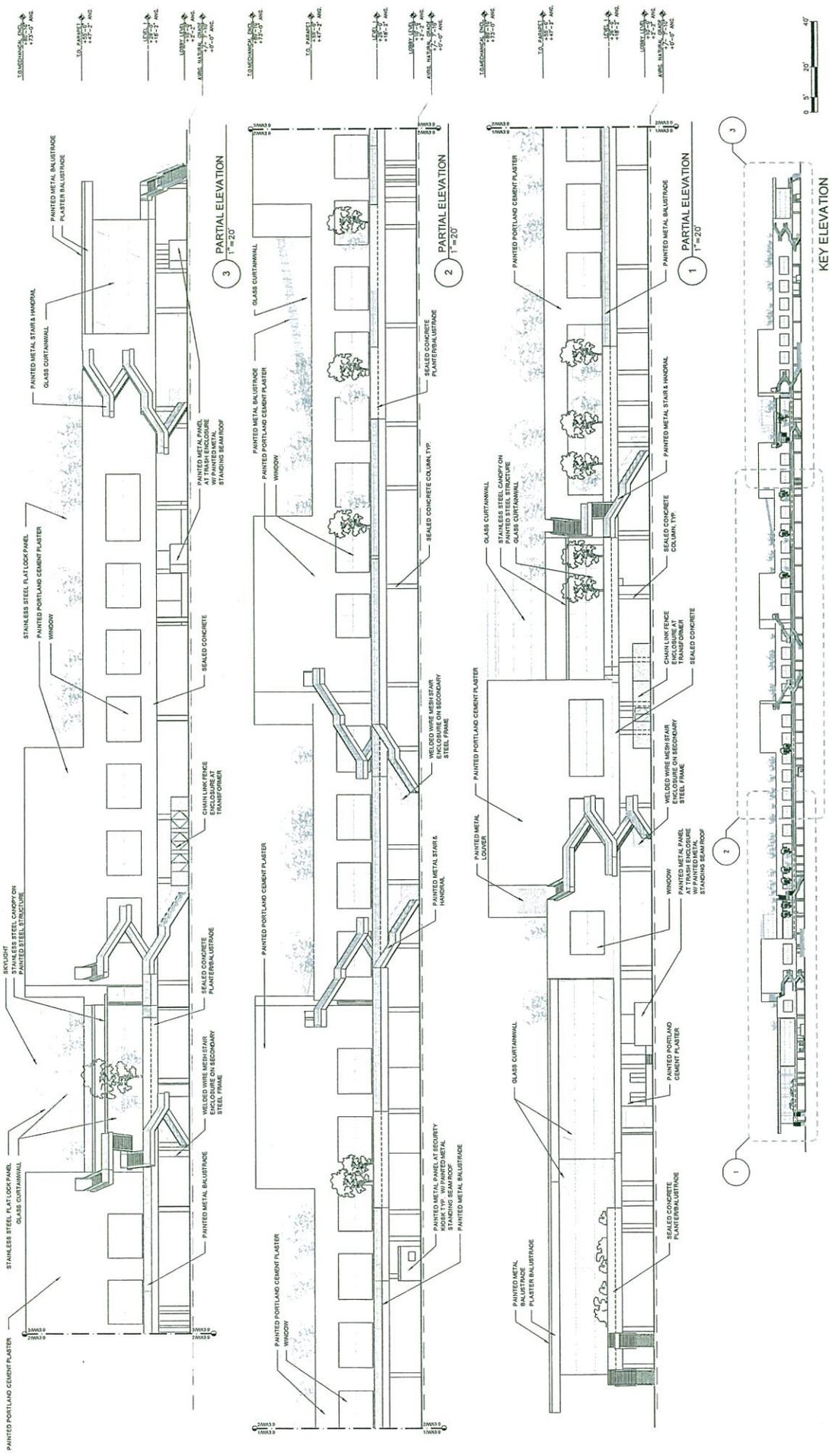
SEE SHEET WA 2.0 PROPOSED SITE PLAN FOR ROOF PLAN & MINIMUM LIGHTING STANDARDS.



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**WA.3.3: ROOF LEVEL PLAN**  
 SCALE: 1"=60'  
 11'X17' SCALE IS 1"=120'  
 FEBRUARY 1, 2013

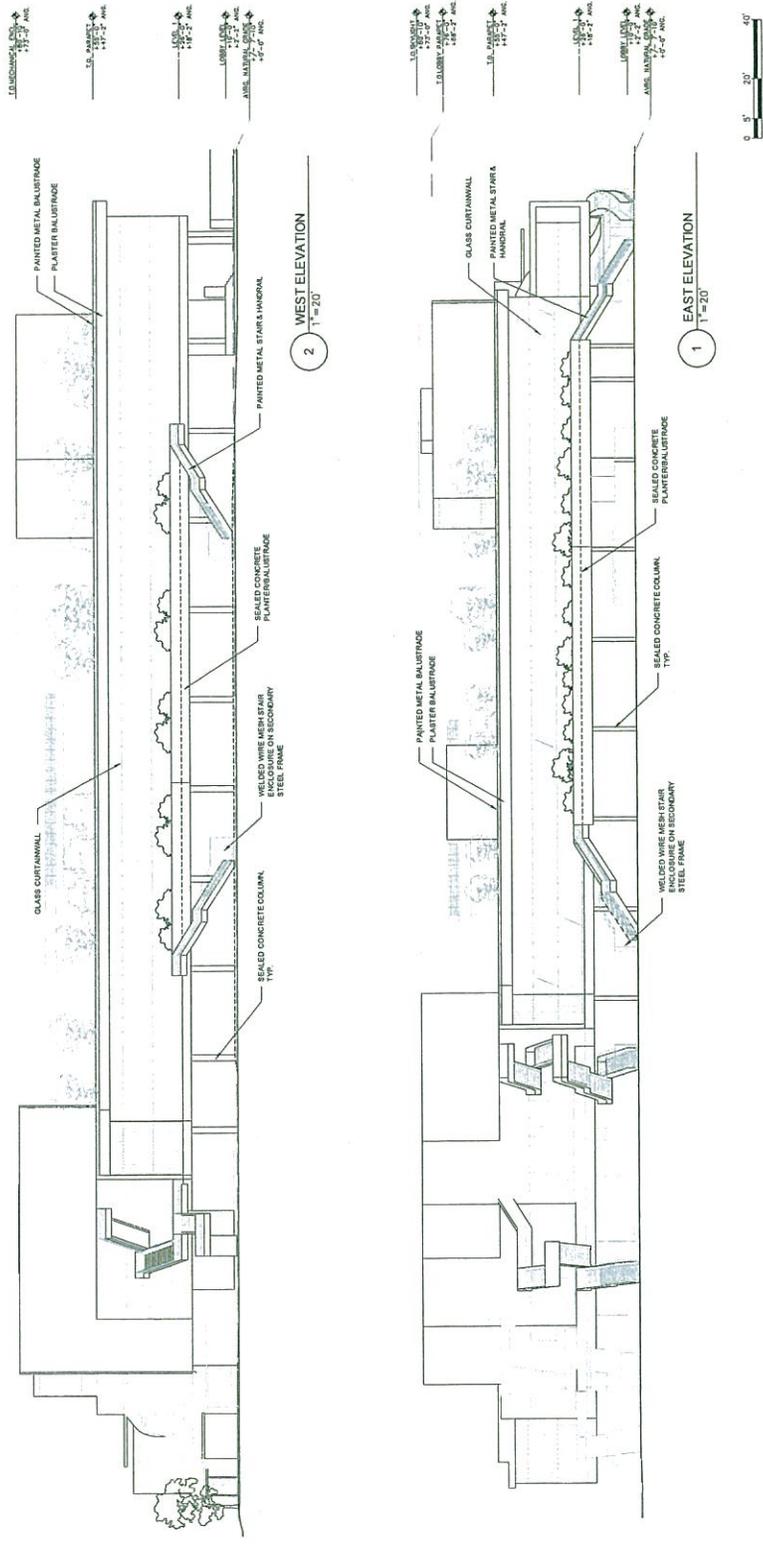




WA.3.9: SOUTH ELEVATION  
 SCALE: 1"=20'  
 11X17 SCALE IS 1"=40'  
 FEBRUARY 1, 2013

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**WA.3.10: EAST & WEST ELEVATIONS**  
 SCALE: 1"=20'  
 11X17 SCALE IS 1"=40'  
 FEBRUARY 1, 2013

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