



Filed: June 16, 2015
Staff: Trever Parker
Staff Report: July 8, 2015
Commission Hearing Date: July 15, 2015
Commission Action:

STAFF REPORT: CITY OF TRINIDAD

APPLICATION NO: 2015-06

APPLICANT (S): Pat Jefferis

AGENT: Keith Stearns

PROJECT LOCATION: 543 Ocean Ave.

PROJECT DESCRIPTION: Design Review and Coastal Development Permit remove an existing 800 s.f. detached accessory structure containing storage and an unpermitted studio and replace it with a 600 s.f. detached accessory structure containing 120 s.f. of storage space and 480 s.f. of additional living space, including a bedroom but no kitchen, not to be used or rented separately from the main dwelling

ASSESSOR'S PARCEL NUMBER: 042-102-54 (previously -16 & -17)

ZONING: UR – Urban Residential

GENERAL PLAN DESIGNATION: UR – Urban Residential

ENVIRONMENTAL REVIEW: Categorically Exempt from CEQA per § 15303 of the CEQA Guidelines exempting new construction or conversion of small structures.

APPEAL STATUS:

Planning Commission action on a coastal development permit, a variance or a conditional use permit, and Design Assistance Committee approval of a design review application will become final 10 working days after the date that the Coastal Commission receives a "Notice of Action Taken" from the City unless an appeal to the City Council is filed in the office of the City Clerk at that time. Furthermore, this project is ~~is~~ / **is not X** appealable to the Coastal Commission per the City's certified LCP, but **may be** appealable per Section 30603 of the Coastal Act.

SITE CHARACTERISTICS:

The property is located on the east side of Ocean Avenue, between East and Wagner Streets. Access to the property is from Ocean Avenue, and the lot is zoned UR - Urban Residential. Surrounding parcels are also zoned UR –and are mostly developed with single-family residences. At present, the approximately 5,500 sq. ft. lot contains a 760 sq. ft. 1-bedroom primary residence on the front (west) half of the property. The lot also contains an 800 sq. ft. detached accessory structure in the rear containing both storage and a partial accessory dwelling unit (ADU) of unknown status. One parking space is provided in the driveway to the south of the residence; there is also room for a parking space to the north of the residence. The lot is generally flat. There is an existing septic system in the center of the property that is connected to both structures.

STAFF COMMENTS:

As you are likely aware, there are several garages and other accessory structures in this area that have been converted into ADUs both legally (prior to current zoning requirements) and illegally. The statuses of many, including this one, are unknown. Note that the structure itself appears in a 1974 aerial photo, but the existing driveway on the south side of the property leads all the way to it, so it was likely a garage at that time. In response to the recent sale of this property, I assessed the status and condition of the property and septic system. Very little file information exists regarding this property. The only information in the County Health Dept. file was a notice of failed system in 1994, but there was no follow-up to that. A recent septic inspection revealed that the system consisted of a very small, 300 gallon tank with an unknown leachfield. The City's OWTS Management Program requires septic systems to be evaluated and upgraded at the time of property sales or improvements depending on the circumstances.

There are several factors that lead me to believe that the back unit was not constructed prior to 1980 and therefore would not have legal, nonconforming status. Although the property owner pays two water base fees, there are not actually two separate water hook-ups. In addition, the assessor data lists the property as only being a single unit, so it probably has not been sold as multiple units in the past. In addition, the existing back unit does not actually have a full kitchen anyway.

The previous owners were utilizing the property as two separate VDU rentals, even though the accessory unit did not have a full kitchen. In addition, the main structure contained two bedrooms, so there were a total of three bedrooms on the property. In this case, the sellers were required to install a new septic tank, and they also decided to install new leachlines as well. The property consisted of two small parcels at that time (3,840 sq. ft. and 1,600 sq. ft.). Because the new septic system had to cross the property line, merger of the parcels was required. Also, there was not enough room on the lot to accommodate a septic system sized for 3 bedrooms. The new owner immediately applied for a building permit to remodel the primary residence, and as part of that, converted one of the bedrooms to an office by removing the closet. As part of that process, the new owner was required to record a deed restriction limiting the property to a single unit and no more than two bedrooms.

The primary residence is very small, and the new owner wanted to be able to utilize the living space of the detached accessory structure. Due to the unknown status of the structure and use, I said that as long as there was only a single unit and no more than two bedrooms on the property, they could continue to utilize the space, but not as a separate unit. The detached accessory structure was poorly constructed though, and so the owner has proposed to rebuild a similar, but smaller, structure for the same use as the existing structure. The applicant has requested a caretaker unit in the accessory structure. The current owner is older, and tentatively plans to have her daughter eventually live in the back structure and help take care of her. Current City regulations do not allow creation of a separate living unit on this property however. And therefore, staff has altered the project description to be additional living space in a detached structure rather than a separate residential unit.

Referrals were sent to the Building Inspector, City Engineer and the County Health Department for this project. Current policies of the Health Department do not require further review of this project since the project will not encroach on the new system, nor is it adding a bedroom to the property. The Building Inspector noted that the proposed plans do not match City staff's description of the project. The project application, including the plot plan and floor plans, describe a proposed caretaker's unit. City ordinances do not allow a full second unit, even if it is a caretaker unit. Therefore, as noted above, I have described the project as additional living space not to be rented separately from the main residence. The detached living space may eventually be used by a caretaker, but it can not have a kitchen or be rented separately from the main unit. The Building Inspector also noted that the project would require a building permit, and the project has been conditioned to ensure that the building plans will meet City codes. Finally, the City Engineer noted that an encroachment permit would be needed for any work within the City right-of-way, such as for any driveway improvements. In addition, there is a City fire hydrant near the paved driveway, and if any changes are proposed, they would need to be reviewed by TVFD.

Potential Conflicts of Interest

There are three Commissioners that live within 300 feet of the subject property: Commissioners Vanderpool, Stockness and Lake. Commissioner Vanderpool lives the closest, at approximately 100 ft. away, but not on the same street as the project. However, he is not the owner of the property, so there would not be an assumed conflict of interest in accordance with the Fair Political Practices Act. However, Commissioner Vanderpool should consider whether his residence may be affected by noise or traffic from the project in order to avoid even the appearance of a conflict of interest. It is up to each individual to make the determination as to the need to recuse oneself.

In addition, Commissioners Stockness and Lake own property approximately 250 ft. from the proposed project. Recall that 500 ft. is the cut off for an assumed conflict of interest, but in small towns, that distance can be cut to 300 ft. if certain conditions apply. Since the distance is less than 300 ft., there is still a potential conflict of interest. The proximity issue is only a conflict based on a presumed monetary change in property values due to the project. According to then City Attorney Paul Hagen's November 2008 memo, when this *presumption* of a direct financial interest is the case, one of two things must occur: (1) the official makes a rebuttal of the presumption of a direct financial interest and proceeds to

vote; or (2) if no rebuttal is made, then the official must recuse themselves and can not vote. Therefore it is an individual decision whether to recuse oneself based upon whether the Commissioner feels they will have any financial gain or loss from the project. In this case, little change is proposed, and therefore changes in nearby property values are unlikely. Part VI of the memo referenced above provides a series of questions that can be used to help officials determine whether they need to recuse themselves. I have included that memo in the packet for your convenience.

Commissioners Lake and Johnson will not be in attendance at the meeting. For Commissioner Vanderpool, there is not a presumed conflict of interest, but the possible appearance of one. For Commissioner Stockness, there is a presumed financial conflict of interest, but it can be rebutted. Note that due to the absence of two Commissioners, if any other Commissioner recuses themselves, action can not be taken at this meeting. However, the property owner wants to move forward on this project, and I thought it would at least be worth having the discussion regarding conflicts. The following are some possible scenarios:

- What if both Commissioner Vanderpool and Stockness decide they need to recuse themselves? Since Commissioner Lake is in the same situation, there could never be a quorum of 3 to take action on this permit. In such a case, the “Rule of Necessity” must be invoked (see section III of Hagen’s memo). This rule is based on the fact that government bodies must be able to act. The Planning Commission’s decision can not be deferred to the City Council because of a lack of quorum. Generally one of the recused members (or the number needed for a quorum) is chosen at random to join the vote. In this case, I would suggest that it be Commissioner Vanderpool since he does not have a presumed conflict of interest. In this case though, the Planning Commission will not be able to take action until both Commissioners Pinske and Johnson can be in attendance.
- What if Commissioner Stockness recuses herself, but Commissioner Vanderpool does not? In this case, the “Rule of Necessity” can not be invoked because there would be a quorum if all of the non-conflicted Commissioners were in attendance. If this happens, then the application would have to be continued to a future hearing.
- Clearly, if neither Commissioner Vanderpool nor Commissioner Stockness find the need to recuse themselves, then the three Commissioners in attendance compose a quorum and can take action on the permit.

ZONING ORDINANCE / GENERAL PLAN CONSISTENCY

The property where the project is located is zoned UR – Urban Residential. The purpose of this zone is to allow relatively dense residential development; single-family residences are a principally permitted use. The minimum lot size allowed in the UR zone is 8,000 s.f. and the maximum density is one dwelling per 8,000 s.f. (§17.32.050). This density restriction also applies to ‘guest houses’ and ‘servant’s quarters.’

The proposal includes reconstructing a detached accessory structure to use for essentially the same uses as it has now, whether or not those uses were properly permitted. The proposal is for a 600 sq. ft. structure, 120 sq. ft. of which would be storage, and the remaining 480 sq. ft. living space. The existing accessory structure is 800 sq. ft., so the

proposed one would be 200 sq. ft. less, though the residential portion will be 160 sq. ft. larger. In addition, and approximately 9' x 13' (120 s.f.) will be removed and a 4' x 6' covered entry added. The square footages are summarized below.

TABLE 1 - AREAS

	EXISTING	PROPOSED
LOT AREA	5,440 s.f.	5,440 s.f.
FLOOR AREA		
Primary Residence	757 s.f.	757 s.f.
Detached Bedroom / Living Space	320 s.f.	480 s.f.
Total Living Area	1,077 s.f.	1,237 s.f.
Detached Storage	480 s.f.	120 s.f.
FOOTPRINT (w/ garage/storage)		
	1,557 s.f.	1,357 s.f.
FLOOR TO LOT AREA RATIO		
Total Living Area	19.8%	22.7%
Total Footprint	28.6%	24.9%

Residential Living Space Inside of an Accessory Structure

The Planning Commission has previously approved several types of living spaces inside detached accessory structures such as garages, including bedrooms, offices, workshops, art studios and even a temporary caretaker unit, so this request is not inconsistent with past precedence. The City has allowed a variety of garage conversions for workshops, studios, office space and bedrooms. (Files reviewed include, but are not limited to: Sterling 92-9, APN 042-062-14; Jones 98-15, APN 515-350-17; Preller 2000-02, APN 04-062-23; Fleschner 2003-04, APN 042-061-11; Rheinschmidt 2005-02, APN 515-331-47; Reinman 2013-11, APN: 042-062-12) The projects that are the most similar to the current proposal are Sterling 92-9 (and 2007-03) and Reinman 2013-11, which are both located on Ocean Ave.

For Sterling, the conversion of an existing, 600 s.f. detached garage located at the rear of the property on the alley was approved by the Planning Commission in 1992. At that time, a new 2-bedroom septic system was also installed on the property. Several conditions of approval were included with that project to ensure that the structure would not be used as a second dwelling unit. These included: (1) the proposed kitchen facilities are not allowed...; (2) the doorway facing the alley be eliminated; (5) use of the garage structure as a bedroom is not to be used or rented separately from the main structure; and (6) the applicant and subsequent owners are responsible for disclosing these conditions prior to property transfer. Note that (5) and (6) were precursors to our current deed restriction requirement. In the Reinman project, a 1,080 sq. ft. detached garage (with storage) was converted into 650 sq. ft. of living space with remainder as storage. In that project, the City approval was 'after-the-fact' in that the conversion had previously occurred without City approvals and there was documentation that the conversion had been recent. That project was conditioned

on removing the stove / oven, kitchen sink, kitchen cabinets and 220V outlets. A deed restriction limiting the property to a single unit and 3-bedrooms was also required. I believe that part of the reason for the strict requirements in this case was the fact that it was known the conversion had been done illegally and the City had some trouble with enforcement.

The applicant has proposed a caretaker unit that appears to include a full kitchen. Staff feels that the submitted floor plan too closely resembles an ADU. As proposed, this is not only inconsistent with past precedent, it would be too easy to quietly convert to an ADU by the current or a future property owner. The Building Inspector has stated that jurisdictions he is familiar with generally do not allow a stove, a shower or a separate room with a closet (= a bedroom) in this type of accessory structure conversion in order to ensure it does not become a separate living unit. However, sinks and wet bars are commonly allowed.

For this proposal (and the Reinman project) the closet is necessary for the bedroom, and the shower also makes sense in that context. In looking at past projects where some type of living space was allowed in a garage or accessory structure, the Planning Commission has fairly consistently not allowed a shower or a kitchen sink / wet bar; there was also an approval that specifically did not allow any 220V electrical power, in order to preclude large appliances. For the Sterling project, a doorway facing the alley was proposed that was not allowed. In other jurisdictions I have also seen limitations on counters and cabinets to minimize the chance of a kitchen being created.

Consistent with past approvals, staff recommends that, a stove / oven and kitchen sink not be allowed. In this case it may also make sense to disallow any 220V electrical connections and / or the kitchen cabinets in the living space if the closet and shower remain. The property should already have a deed restriction in place that limits development to a single unit and 2 bedrooms without further City approval. That was required as a condition on a building permit to remodel the main residence late last year. The City did not receive documentation that it was recorded and so has been included as a condition of this project as well. It is notable that the proposed use, even as a caretaker unit, is substantially less intense than the pervious owners' use as two separate VDUs. A family caretaker does seem like a reasonable request, and the Commission can allow some flexibility to accommodate the property owner, but care must be taken to ensure that any allowances made now can not be abused by future owners.

Setbacks and Nonconformance

The Urban Residential zone requires minimum yards of front 20', rear 15', and side 5' (§ 17.36.060). The parcel faces Ocean Avenue to the west. Section 17.56.110 allows eaves and overhangs to extend 2.5' into side yards and 4' into front, street-side and rear yards. Decks and stairways, landings, balconies and uncovered porches are allowed to extend up to eight feet into front, rear or street-side yards and three feet into side yards. The existing residence does not meet the required front setback. However, no changes to that building footprint are proposed. The existing accessory structure does not meet the required rear setback. However, according to zoning ordinance §17.56.090, accessory structures are only subject to the front and street side setbacks.

That would make the existing structure conforming as to setbacks, since accessory structures do not have any required side or rear setbacks. Converting the building to living space does not change the detached, subordinate nature of the structure, and so it would still meet the definition of an accessory structure. Therefore the project would not create any zoning ordinance conflicts or nonconformance in terms of setbacks. However, even if the Planning Commission feels that accessory living space should be regulated as primary structures, then the pre-existing garage would have been nonconforming as to setbacks (it was constructed prior to the Zoning Ordinance being adopted). Conversion of the garage space to living space would not alter or increase the degree of nonconformity and so would be allowable under §17.64.010 (nonconforming uses and structures). Therefore, this is probably a moot point for this project.

Other LCP Issues

The maximum height allowed in the UR zone, by Zoning Ordinance § 17.36.06 (average ground level elevation covered by the structure to the highest point of the roof), is 25 feet, except that the Commission may require a lesser height in order to protect views. The maximum allowable height for accessory structures in the UR zone (§17.56.090) is 15 ft. As shown on the plans, the maximum height of the proposed structure is 14 ft.

The Trinidad General Plan and Zoning Ordinance protect important public coastal views from roads, trails and vista points and private views from inside residences located uphill from a proposed project from significant obstruction. Because of the location of the new building, within, and smaller than, the existing profile of the existing structure, there is minimal potential for view impacts.

The Zoning Ordinance (§ 17.56.180) requires 2 off-street parking spaces other than any garage spaces for single-family dwellings. There are two parking spaces shown on the plot plan, one in the paved driveway to the south and one in an undefined driveway to the north. Other than the size requirement of 8.5' wide by 18' long, individual parking spaces do not have paving or other requirements, so they are okay as is.

Only minimal grading is required for the project. This site is already connected to services and utilities and these will not change. Exterior materials will be cement board lap siding and asphalt shingle roof consistent with existing and surrounding residential development.

SLOPE STABILITY:

The project site is not mapped as being unstable or of questionable stability on Plate 3 of the General Plan. The project is located outside of the City's slope stability map for areas mapped "unstable" or "questionable stability" and is also located outside of the Alquist-Priolo Fault Zone. Therefore, the finding can be made that no geologic study is required by the Zoning Ordinance.

SEWAGE DISPOSAL:

The City required upgrades to the septic system as part of the sale of the property late in 2014. A new 2-bedroom system was installed, consisting of a 1500 gallon septic tank and two 35 ft. leachlines. The new system meets current standards and is a big improvement over the previous substandard situation. The proposed project does not require further upgrades to the septic system.

LANDSCAPING AND FENCING:

This project does not involve any changes in landscaping or fencing.

DESIGN REVIEW / VIEW PROTECTION FINDINGS:

The project will reconstruct an accessory structure that will alter the external profile of the building. Therefore Design Review must be approved. Recommended Design Review / View Preservation Findings are written in a manner to allow approval, without endorsing the project. However, if public hearing information is submitted or public comment received indicating that views, for instance, may be significantly impacted, or the structure proposed is obtrusive, the findings should be reworded accordingly.

Design Review Criteria

- A. *The alteration of natural landforms caused by cutting, filling, and grading shall be minimal. Structures should be designed to fit the site rather than altering the landform to accommodate the structure.* Response: The new structure will be built within the footprint of an existing structure and only minimal, if any, grading will be required.
- B. *Structures in, or adjacent to, open space areas should be constructed of materials that reproduce natural colors and textures as closely as possible.* Response: The project site is not adjacent to any open space areas.
- C. *Materials and colors used in construction shall be selected for the compatibility both with the structural system of the building and with the appearance of the building's natural and man-made surroundings. Preset architectural styles (e.g. standard fast food restaurant designs) shall be avoided.* Response: Exterior materials and colors of the new structure will be consistent with the existing residence.
- D. *Plant materials should be used to integrate the manmade and natural environments to screen or soften the visual impact of new development, and to provide diversity in developed areas. Attractive vegetation common to the area shall be used.* Response: The proposed development is consistent with the existing and surrounding residential neighborhood. Vegetative screening can be found to be unnecessary.

- E. *On-premise signs should be designed as an integral part of the structure and should complement or enhance the appearance of new development.* Response: No signs are proposed as part of this project.
- F. *New development should include underground utility service connections. When above ground facilities are the only alternative, they should follow the least visible route, be well designed, simple and unobtrusive in appearance, have a minimum of bulk and make use of compatible colors and materials.* Response: The site is already connected to utilities and no changes are proposed.
- G. *Off-premise signs needed to direct visitors to commercial establishments, as allowed herein, should be well designed and be clustered at appropriate locations. Sign clusters should be a single design theme.* Response: No off-premise signs are proposed as part of this project.
- H. *When reviewing the design of commercial or residential buildings, the committee shall ensure that the scale, bulk, orientation, architectural character of the structure and related improvements are compatible with the rural, uncrowded, rustic, unsophisticated, small, casual open character of the community. In particular:*
1. *Residences of more than two thousand square feet in floor area and multiple family dwellings or commercial buildings of more than four thousand square feet in floor area shall be considered out of scale with the community unless they are designed and situated in such a way that their bulk is not obtrusive.* Response: The existing residence is 760 sq. ft. in size, and the proposed additional space would bring the entire residential square footage to 1,240, well under the 2,000 sq. ft. guideline. The floor-to-area ratio will be approximately 23% because the lot is small at 5,440 sq. ft.
 2. *Residential and commercial developments involving multiple dwelling or business units should utilize clusters of smaller structures with sufficient open space between them instead of a consolidated structure.* Response: NA

View Protection

- A. *Structures visible from the beach or a public trail in an open space area should be made as visually unobtrusive as possible.* Response: This project is not visible from open space areas.
- B. *Structures, including fences over three feet high and signs, and landscaping of new development, shall not be allowed to significantly block views of the harbor, Little Trinidad Head, Trinidad Head or the ocean from public roads, trails, and vista points, except as provided in subdivision 3 of this subsection.* Response: The project, due to its location and minimal change in building profile, does not have the potential to block views. The proposed building is 200 sq. ft. smaller and 6 inches shorter than the proposed building.
- C. *The committee shall recognize that owners of vacant lots in the SR and UR zones, which are otherwise suitable for construction of a residence, are entitled to construct a residence of at least fifteen feet in height and one thousand five hundred square feet in*

floor area, residences of greater height as permitted in the applicable zone, or greater floor area shall not be allowed if such residence would significantly block views identified in subdivision 2 of this subsection. Regardless of the height or floor area of the residence, the committee, in order to avoid significant obstruction of the important views, may require, where feasible, that the residence be limited to one story; be located anywhere on the lot even if this involves the reduction or elimination of required yards or the pumping of septic tank wastewater to an uphill leach field, or the use of some other type of wastewater treatment facility; and adjust the length-width-height relationship and orientation of the structure so that it prevents the least possible view obstruction.

Response: The project does not involve a vacant lot.

- D. *If a residence is removed or destroyed by fire or other means on a lot that is otherwise usable, the owner shall be entitled to construct a residence in the same location with an exterior profile not exceeding that of the previous residence even if such a structure would again significantly obstruct public views of important scenes, provided any other nonconforming conditions are corrected.* Response: There was no residence that was destroyed by fire associated with this project.
- E. *The Tsurai Village site, the Trinidad Cemetery, the Holy Trinity Church and the Memorial Lighthouse are important historic resources. Any landform alterations or structural construction within one hundred feet of the Tsurai Study Area, as defined in the Trinidad general plan, or within one hundred feet of the lots on which identified historical resources are located shall be reviewed to ensure that public views are not obstructed and that development does not crowd them and thereby reduce their distinctiveness or subject them to abuse or hazards.* Response: The proposed project is not within 100 feet of the Tsurai Study Area, Holy Trinity Church, the Memorial Lighthouse or the Cemetery.

STAFF RECOMMENDATION

Based on the above analysis, the project can be found to be consistent with the City's Zoning Ordinance, General Plan, Coastal Act, and other applicable policies and regulations. Therefore the necessary findings for granting approval of the project can be made. If the Planning Commission agrees with staff's analysis, a proposed motion might be similar to the following:

Based on application materials, information and findings included in this Staff Report, and based on public testimony, I move to adopt the information and required Design Review and View Protection findings in this staff report and approve the project as described in this staff report and as conditioned herein.

PLANNING COMMISSION ALTERNATIVES

If the Planning Commission does not agree with staff's analysis, or if information is presented during the hearing that conflicts with the information contained in the staff report, the Planning Commission has several alternatives.

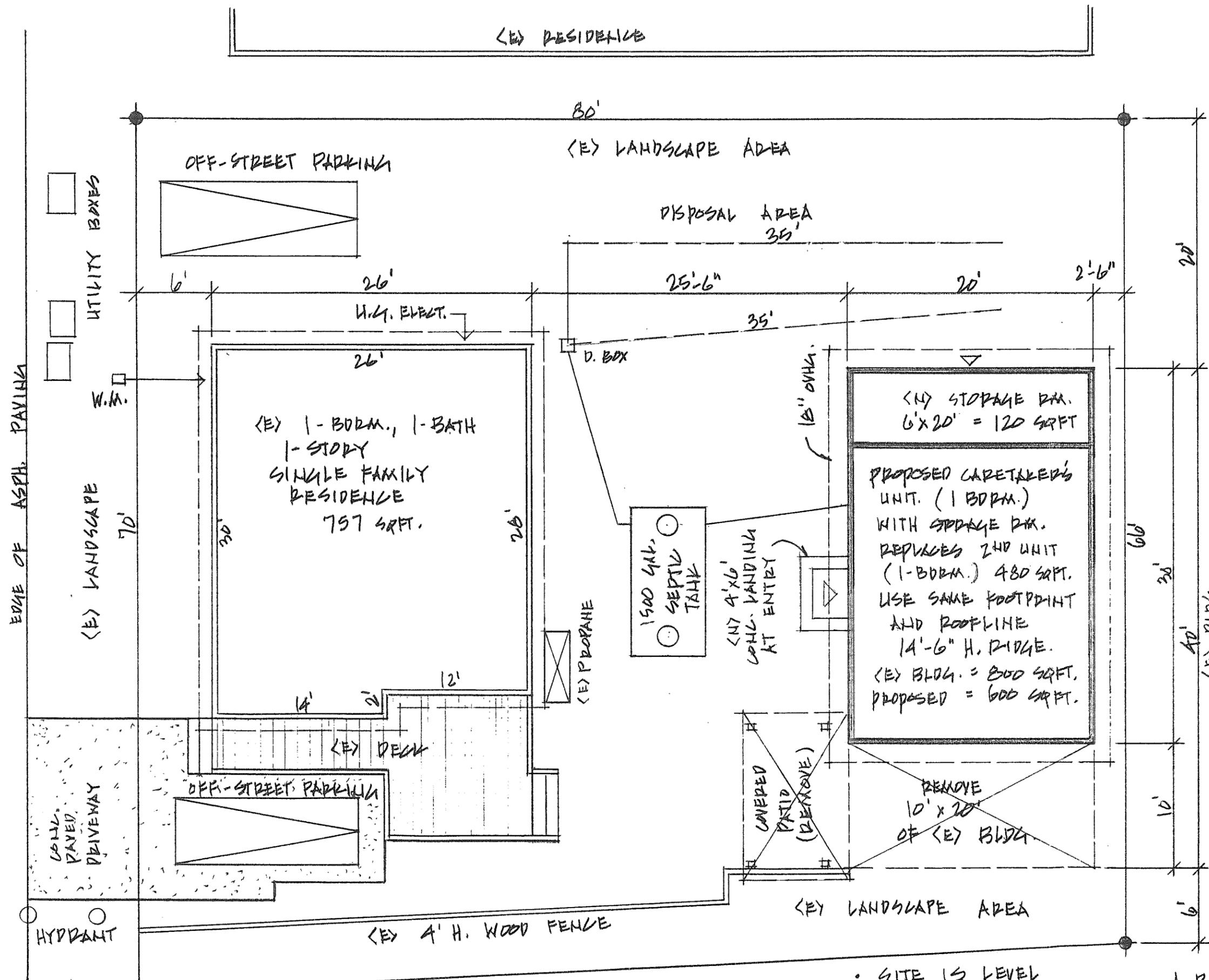
- A. Add conditions of approval to address any specific concerns on the part of the Commission or the public.
- B. Delay action / continue the hearing to obtain further information.
 - In this case, the Planning Commission should specify any additional information required from staff or the applicant and / or suggestions on how to modify the project and / or conditions of approval.
- C. Denial of the project.
 - The Planning Commission should provide a motion that identifies the Finding(s) that can not be made and giving the reasons for the inability to make said Finding(s).

CONDITIONS OF APPROVAL

1. The applicant is responsible for reimbursing the City for all costs associated with processing the application. *Responsibility: City Clerk / Building Inspector prior to building permits being issued.*
2. Based on the findings that community values may change in a year's time, approval of this Design Review is for a one-year period starting at the effective date and expiring thereafter unless building permits have been issued or an extension is requested from the Planning Commission prior to that time. *Responsibility: Building Inspector prior to building permits being issued.*
3. Recommended conditions of the City Building Inspector shall be required to be met as part of the building permit application submittal. *Responsibility: Building Inspector prior to building permits being issued.*
4. If any improvements are proposed for the existing driveway then the Public Works director will review the proposal for any impacts to the adjacent fire hydrant, and the applicant shall obtain an Encroachment Permit for any work within the City right-of-way. *Responsibility: Building Inspector prior to building permits being issued.*
5. The following improvements will not be allowed within the living portion of the garage: Stove / oven, kitchen sink, 220V outlets. *Responsibility: Building Inspector prior to building permits being issued.*
5. The applicant is responsible for submitting proof that a statement on the deed, in a form approved by the City Attorney, has been recorded indicating that any increase in the number of bedrooms above a total of two bedrooms, or number of dwelling units above one, will require City approval of adequate sewage disposal capabilities and other applicable standards. *Responsibility: Building Official to verify prior to building permits being issued.*
6. The detached living space is not to be used or rented separately from the primary structure; any tenant must have full access to the common areas of the primary structure. *Responsibility: Property owner to ensure on an ongoing basis.*

4' OCEAN AVE. 4' D/W

RECEIVED JUN 8 2015



PROJECT: REMODEL EXISTING DETACHED 2ND UNIT INTO A CARETAKER'S UNIT AND STORAGE ROOM.

OWNER: PAT JEFFERIS 677-2014

543 OCEAN AVE. TORRIDAD, CA. 95570

DESIGNER: KETH H. STEARNS 599-8422

1085 I ST. SUITE 210 AKOTA, CA. 95521

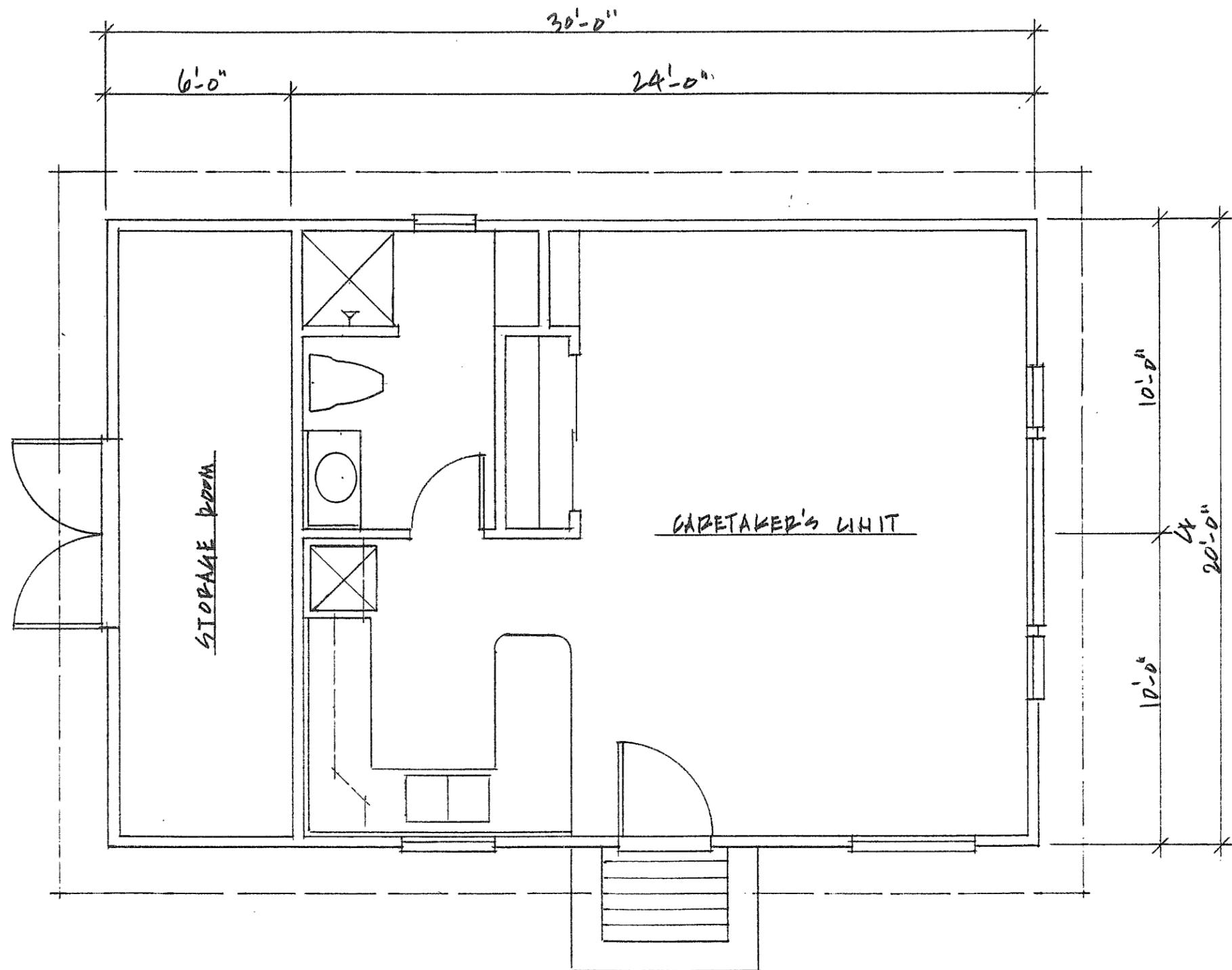


1/8" = 1' 6-15-15

- MIND SITE GRADING
- D. SPOUTS TO DRYWELLS
- U.G. UTILITIES
- SITE IS LEVEL
- CEMENT BD. LAP SIDING
- ASPH. SHINGLE ROOF

A.P.N. 042-102-054

PAGE 1 OF 5



CARETAKER'S UNIT = 420 SQFT.
 STORAGE ROOM = 120 SQFT
 TOTAL = 600 SQFT.

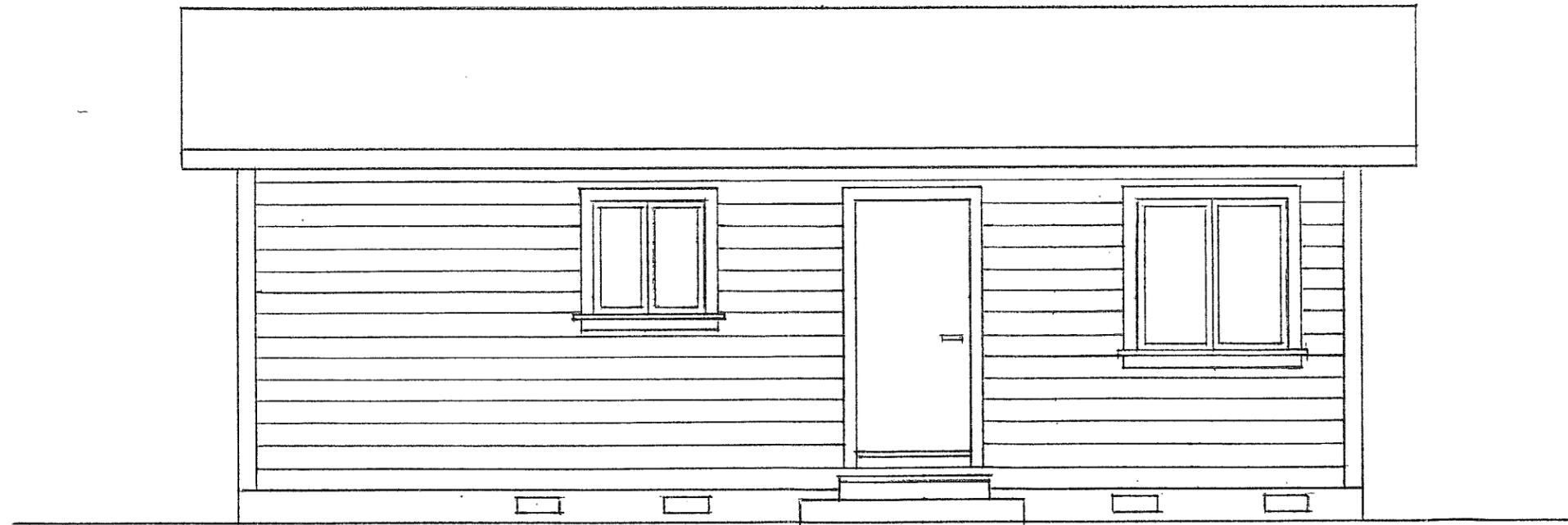
FLOOR PLAN
 1/4" = 1' 6-15-15

A.P.H. 042-102-054
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PROJECT: REMODEL EXISTING DETACHED 2ND UNIT INTO A CARETAKER'S UNIT WITH STORAGE ROOM.
OWNER: PAT JEFFERIS 677-2014
 545 OCEAN AVE. TRINIDAD, CA. 95570
DESIGNER: KEITH M. STEADPHS 599-8422
 1085 I ST, SUITE 210 AKATA, CA. 95521



EAST ELEVATION
1/4" = 1'

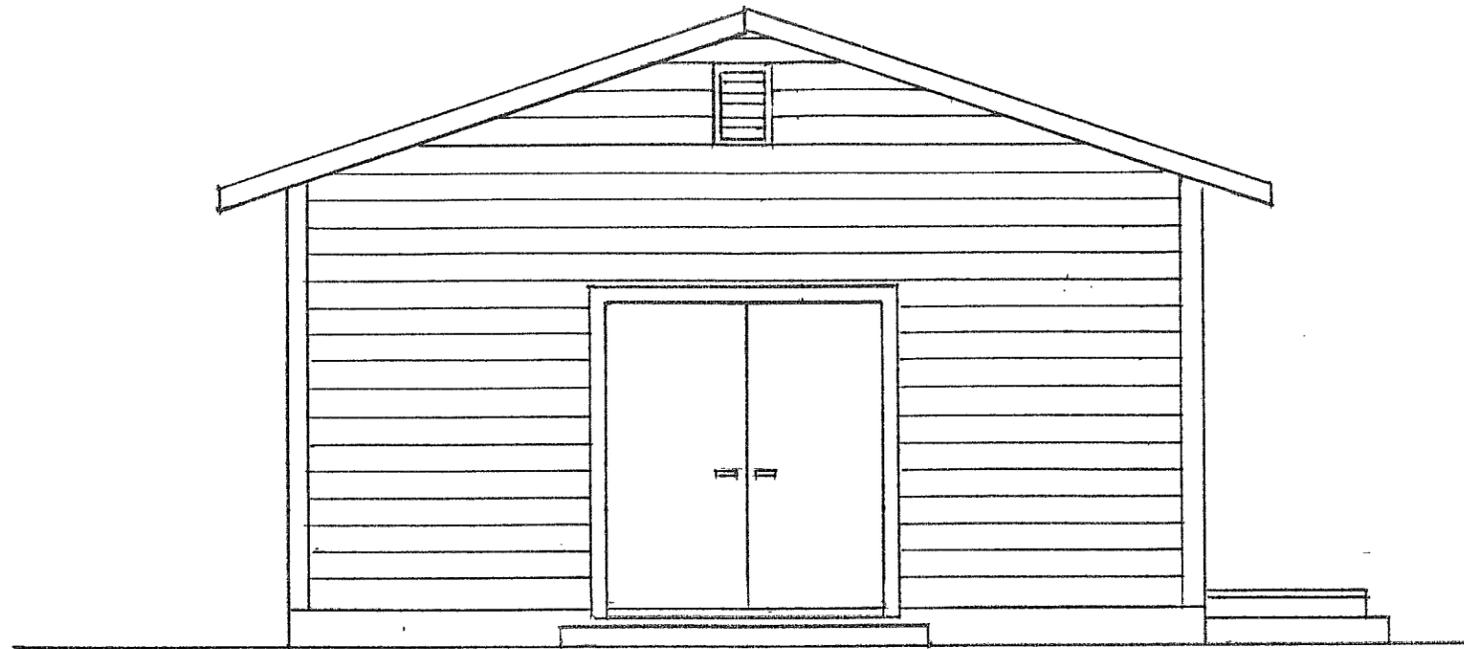


WEST ELEVATION
1/4" = 1'

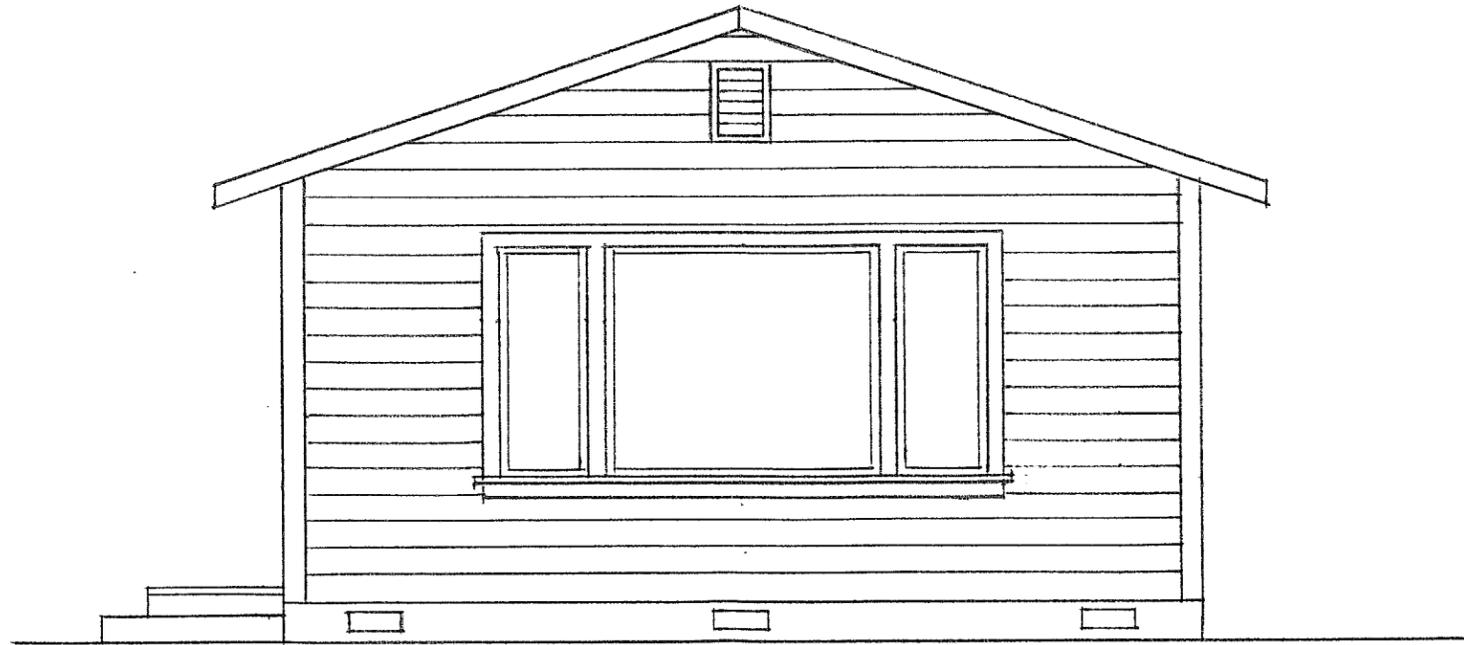
PROJECT: REMODEL EXISTING DETACHED 2ND UNIT
 INTO A CARPENTER'S UNIT WITH STORAGE ROOM.
 OWNER: PAT JEFFERS 677-2014
 543 OCEAN AVE. TRINIDAD, CA. 95970
 DESIGNER: KEITH M. STEADMS 597-8472
 1085 I ST. SUITE 210 AUBURN, CA. 95621

6-15-15

A.P.N. 042-102-054



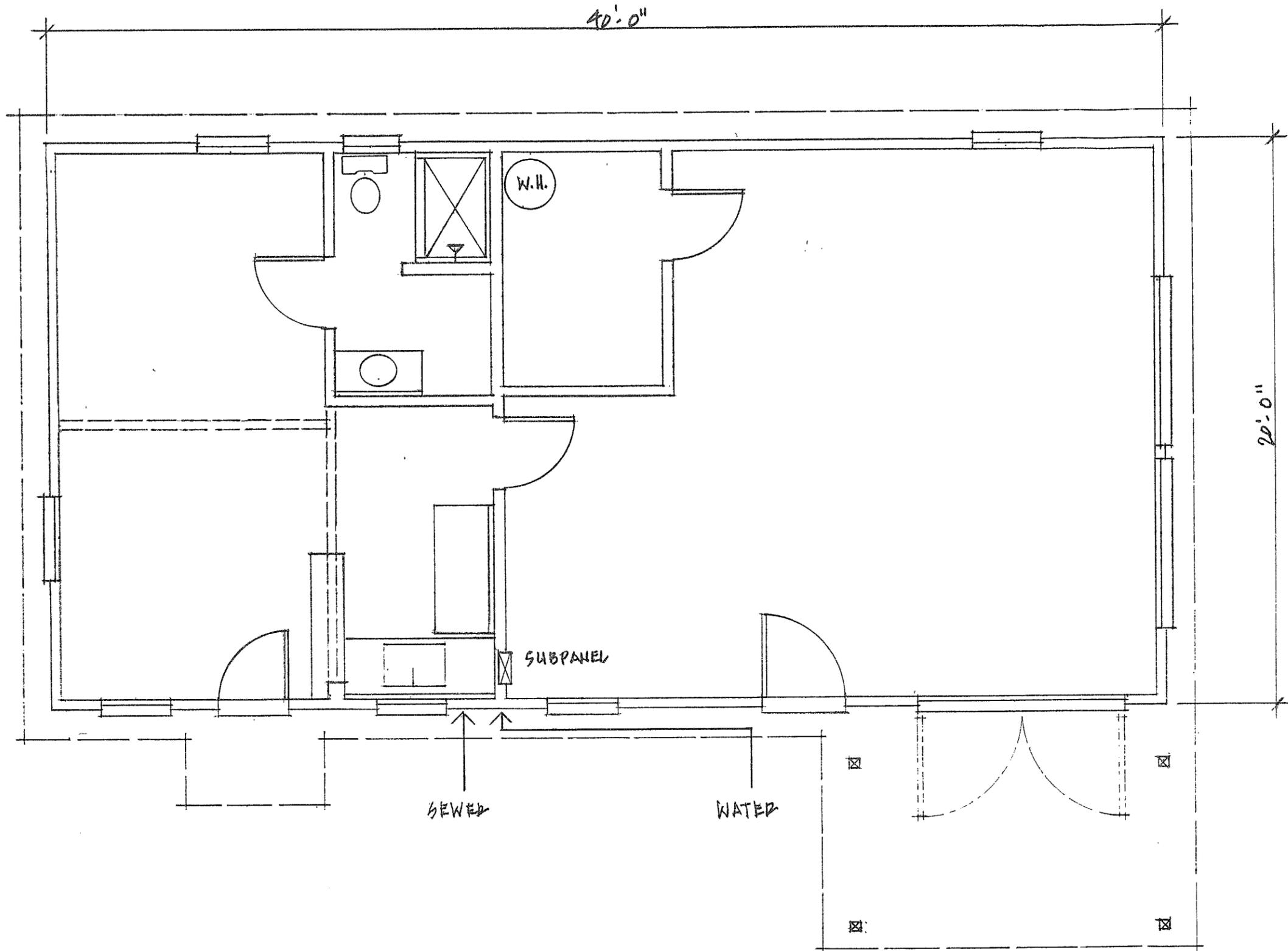
NORTH ELEVATION
1/4" = 1'



SOUTH ELEVATION
1/4" = 1'

PROJECT: REMODEL EXISTING, DETACHED 2ND UNIT
INTO A GARAGE/STORAGE UNIT WITH STORAGE ROOM.
OWNER: PAT JEFFERIS 677-2014
543 OCEAN AVE. TRINIDAD, CA. 95570
DESIGNER: KEITH W. STEADNS 599-8422
1085 I ST. SUITE 210 ARCOLA, CA. 95521

6-15-15

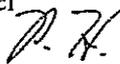


PROJECT: REMODEL EXISTING, DETACHED 2ND UNIT INTO A CARETAKERS UNIT WITH STORAGE ROOM.
 OWNER: PAT JEFFERIS 677-2014
 543 OCEAN AVE. TRINIDAD, CA. 95570
 DESIGNED: KEITH W. STEPHENS 599-8422
 1055 I ST. SUITE 210, ARCATTA, CA. 95521

EXISTING
FLOOR PLAN
 1/4" = 1' 6-15-15
 543 OCEAN AVE. TRINIDAD.

300 SQFT.
 A.P.H. 042-102-054

MEMORANDUM

TO: Steve Albright, Trinidad City Manager
FROM: Paul Hagen, Trinidad City Attorney 
DATE: November 14, 2008
Re: *Residential Locale of City Councilmembers and Planning Commissioners, Conflicts of Interest, and Requirements of Recusal*

I. Introduction

The Request

The City of Trinidad has recently been confronted with conflict of interest issues that must be addressed. You have asked me to provide a memorandum which will address two things:

- 1) Assist the Trinidad City Councilmembers and the Planning Commissioners in recognizing and properly responding to potential conflicts of interest on matters before them which involve the issue of real property located within a certain distance (“proximity”) of their respective homes (or other property the public official may own); and
- 2) Provide a series of questions and responses which an official may use in this exercise.

The Purpose of This Memorandum

The purpose of this memorandum is limited to the proximity question, and is twofold:

- 1) The memo explains only the area of conflicts of interest law addressing the proximity of a public official’s domicile to a parcel of real estate which is part of an matter upon which the official is called to vote. Stated differently, given the distance between an official’s home and the project being voted on, when must the official recuse (*i.e.*, disqualify) him or herself?
 - a) There is an extension of this issue when a majority of a public body may be faced with recusal--the “rule of necessity” addresses this;
- 2) The memo provides a list of steps which an official may take when facing a situation involving proximity of real property.

II. The Proximity Conflicts of Interest Issue

Conflicts of Interest Generally

The issue is one of a potential conflict of interest in such situations; the challenge is how to address such a situation when extant. More specifically, the question is when must a member either (a) make an ‘absence of conflict’ determination prior to voting, or (b) recuse him or herself from voting altogether?

Conflicts of interest for public officials are governed by the Political Reform Act (Gov’t Code section 81000 *et seq.*; conflicts of interest situations are addressed at sections 87100 *et seq.*). The purpose of the act is to ensure that “Public officials, whether elected or appointed, should perform their duties in an impartial manner, free from bias caused by their own financial

interests or the financial interests of persons who have supported them.” (GC §81001(b).) The basic idea is that public officials are disqualified from participating in governmental decisions in which they have a financial interest. Defining such a financial interest is rather complicated, consisting of a series of steps with multiple layers.

We begin with the initial inquiry which each official must make.

The Initial Inquiry for Each Official to Make

The beginning of the inquiry is whether the official has one of six qualifying types of economic interest at stake. One of these six types is an “interest in real property,” which is a premise of the question addressed herein. Suffice it to say that if the official or a spouse or dependent has an interest of \$2,000 or more in a parcel of property which lies within the city’s jurisdiction, an interest is deemed to exist.

The Proximity Inquiry

The next step in this inquiry would be whether or not the official’s financial interest in real property is “directly” or “indirectly” involved in a decision before the official. If the official’s property is located within 500 feet of the property which is the subject of the decision, the official’s interest is typically presumed to be “direct.” At this stage of inquiry, there is an exception to the 500-foot rule.

The ‘Small Jurisdiction Exception’ (Possibly) Available to Trinidad

The regulations for the Political Reform Act are found at Title 2 of the California Code of Regulations (section 18700 *et seq.*). Section 18707.10 contains an exception for the domicile of public officials in ‘small jurisdictions.’ The effect of a governmental decision on the residential real property of a public official is deemed “not distinguishable from the effect on the public generally” if all of the following are met:

- 1) The jurisdiction (City of Trinidad):
 - a) Has a population of 30,000 or less, and
 - b) Covers less than 10 square miles;
- 2) The public official is required to live within the jurisdiction;
- 3) The public official, if elected, is elected in an at-large jurisdiction; this would mean not from a ward or precinct, etc., but rather from the city as a whole;
- 4) The official’s property is more than 300 feet from the boundaries of the property at issue in the decision;
- 5) The official’s property is located on a lot which is either:
 - a) Not more than one-quarter acre in size, or
 - b) Not larger than 125 percent of the median residential lot size in the jurisdiction;
- 6) There are at least 20 other properties under separate ownership within a 500 foot radius of the boundaries of the property at issue in the decision that are similar in value. (2 CCR 18707.10.)

It would appear that Trinidad meets all of the requirements for the exception *as to the city*, which are 1 through 3.¹ *That leaves requirements 4 through 6, which are peculiar to each public official.* Assuming that numbers 5 and 6 are met, the analysis once again focuses on the distance between the properties of the official and the matter before the official.

The short version of this exercise is that the ‘small jurisdiction exception’ whittles the distance between a public official’s property and that of the property at issue from 500 feet down to 300 feet. This assumes requirements 1-3, 5 and 6 are met.

The Result as to a Single Member’s Need to Recuse

As to matters before either the Planning Commission or the City Council, which involve real property within the city’s jurisdiction (“the property at issue”), the question of conflict of interest due to proximity as to any given member’s property is analyzed as follows:

1) If a given public official lives more than 500 feet from the property at issue, there is no conflict as to proximity; no recusal is necessary.

2) If a given public official lives

a) Less than 500 feet from the property, but

b) More than 300 feet from the property at issue, and

c) The city can establish that items 5 and 6 in the ‘Small Jurisdiction Exception’ above,

then there is no conflict as to proximity; no recusal is necessary.

3) If a given public official lives less than 300 feet from the property, then:

a) There is a *presumption* by law of a direct financial interest, and therefore

b) One of two things must occur: Either

i) The official makes a *rebuttal of the presumption* of a direct financial interest and proceeds to vote; or

ii) The official does not make a *rebuttal of the presumption* of a direct financial interest, and therefore must recuse him or herself, and therefore cannot and does not vote.

The Result as to a Majority of the Body’s Members Need to Recuse

What do we do if a *majority* of members of one of the bodies falls within the 500/300 foot situation, requiring recusal of that majority? That is, what happens when the body has a quorum to do business, but due to a conflict of proximity as discussed herein, less than a majority of the quorum exists due to such conflicts? Stated differently, what happens when at least three of the five members live within 500 or 300 feet of a property at issue in a decision and none of them can rebut the presumption of a direct financial interest? How is government to take action?

This situation pits two very strong public policies against each other. One is the “duty to vote,” and the other is the duty to avoid conflicts of interest. The Political Reform Act and its implementing regulations anticipate this and case law provides a solution to it.

¹ The city staff needs to make this determination. This memo does not assume the 300’ situation obtains.

There are two bodies in Trinidad which may find themselves in this situation--the Planning Commission and the City Council.

III. The “Rule of Necessity”

Governmental Bodies Must Be Able to Take Action; Inability to Act is Not an Option

The “rule of necessity” is recognized as an exception to the conflict of interest statutes, and its effect is found in the Political Reform Act at section 87101, and its regulations at 2 CCR 18701(a). This rule “permits a public officer to carry out the essential duties of his office despite a conflict of interest where he is the only one who may legally act. It ensures that essential governmental functions are performed even where a conflict of interest exists.” (65 Ops.Cal.Atty.Gen. 305.)

In so doing, the Rule balances the competing policies of the duty to avoid a conflict with the duty to vote:

“The common law developed the rule of necessity to prevent the vital processes of government from being halted or impeded by officials who have conflicts of interest in the matters before them. (*Gonsalves v. City of Dairy Valley* (1968) 265 Cal.App.2d 400, 404 [...; applying rule of necessity to situation where all public officials had financial stake in decision].) There is a strong public policy “that members of public legislative bodies take a position, and vote, on issues brought before them. This policy has been expressed as ‘the duty of members of a city council to vote and that they ought not’ by inaction, prevent action by the board. “ ’ ” [citations omitted]” (*Kunec v. Brea Redevelopment Agency* (1997) 55 Cal.App.4th 511, 520.)

The “Rule of Necessity” Allows A Vote Despite a Majority with a Conflict

Since the 15th century, English common law has recognized that situations exist in which a governmental body may be required to act even when all of its members have some conflict. Although the so-called “rule of necessity” began with the courts’ necessity to hear a case even if the judge had a personal interest in the matter, the Rule has long since been applied to administrative bodies and their officials, whether acting in the quasi-judicial or the administrative function. That is, it applies to the city council as well as its subordinate body, the planning commission, and it applies to administrative decisions (*e.g.*, voting on contracts, budgets, etc.) as well as quasi-judicial decisions (*e.g.*, involving permits).

““There is an exception, based upon necessity, to the rule of disqualification of an administrative officer. An officer, otherwise disqualified, may still act, if his failure to act would necessarily result in a failure of justice.” The rule of necessity has been applied in this state to members of municipal bodies [citations omitted] The rule is not confined to officers exercising quasi-judicial functions.” (*Caminetti v. Pacific Mut. Life Ins. Co. of Cal.* (1943) 22 Cal.2d 344, 366.)

“The rule is well settled that where an administrative body has a duty to act upon a matter which is before it and is the only entity capable to act in the matter, the fact that the members may have a personal interest in the result of the action taken does not disqualify them to perform their duty. It is a rule of necessity which has been followed consistently.” (*Gonsalves v. City of Dairy Valley* (1968) 265 Cal.App.2d 400, 404.)

How the Rule of Necessity Works

Two-Phase Analysis:

Invocation of the Rule only comes into effect after a two-phase analysis, asking:

- 1) Whether the participation of one or more of the conflicted members is legally required? If so,
- 2) Whether there is any alternative to the body as a source of decision which does not present a conflict of interest situation?

1) Is the Participation of One or More Members Legally Required?

Where a governmental body lacks a majority simply because one or more of its members were not actually present at the time of disqualification the Rule would *not* apply. Stated differently, if a sufficient number of non-conflicted members exist to form a quorum, their mere absence does not make participation by a conflicted member required.

However, if a *majority* of a governmental body *were* present and *must* recuse themselves due to a potential conflict, then the body would be unable to act, and then the Rule comes into play because the body is legally required to take action. Stated differently, if the conflicts leave *less than a quorum* of the body available to act, the legally-required-participation exception comes into play.

As to how many members may act, it is *only the number needed to form a quorum*; no other members may be brought back to voting status and participate.

2) Is There Any Alternative to the Body as a Source of Decision Which Does Not Present a Conflict of Interest Situation?

The Rule can only be invoked when “there exists no alternative source of decision consistent with the purposes and terms of the statute authorizing the decision.” (2 CCR 18708(a).) This means that the body must make a determination as to whether there is any alternative to the body as a source of decision which does not present a conflict of interest situation. (Simply put, can someone else do this?)

Application to Planning Commission vs. to City Council

In our case, the question becomes whether or not the Commission must treat the Council as “alternative source of decision consistent with the purposes and terms of the statute authorizing the decision.” The answer is No. The reason is that to do so would automatically deprive the Commission of its obligation to act. The Commission is charged with legal authority to address certain matters *before* the Council does, and some of those matters may be appealed to the Council.

Thus, where the facts of a matter place a majority of the Planning Commission in a conflict of interest situation, the Commission must invoke the rule of necessity and choose enough of its members to constitute a quorum and vote. Having done this, the citizen parties involved in the decision are free to appeal that decision to the Council if they will.

Application to the City Council

If the Council is confronted with any situation in which a majority of its members are conflicted and therefore may not vote, there is no alternative source of decision to the Council and the Council must invoke the Rule.

Caveat to Invoking the Rule of Necessity

The Rule is not invoked to either:

- a) Break a tie; or
- b) Allow a member to vote if there is any other way to convene a quorum (*i.e.*, it cannot be used to convene a quorum when there is another way to do so, such as waiting until someone who can vote without a conflict shows up and does so).

Mechanics of Invoking the Rule of Necessity

When such a majority of the members of either body are conflicted out and cannot vote, one of the members will be chosen by a random method and then be allowed to vote on the matter despite the conflict. Those remaining members not necessary to comprise a quorum will not be allowed to vote at all. The vote must be accompanied by an explanation of why, given the existence of a conflict of interest, it was taken. That is, a record must be made when invoking the Rule.

Requirements of Making a Record When Invoking the Rule of Necessity

Should invocation of the rule of necessity arise, the public official(s) who proceed to vote despite a conflict must make a public record of the following, containing the language in “Appendix A” to this memorandum (specifically section (b)(1-4)).

The disclosure in Appendix A above must be in the minutes, for purposes of public disclosure and judicial review:

“Such conflicts should be disclosed in the minutes to make them easily accessible to the public at large. [citations omitted] “The rationale behind requiring the reasons to be set forth in the minutes as contrasted with allowing them to be ... transcribed from a reporter’s notes is to ensure that the reasons are readily ascertainable and available to the public and the reviewing court.”” (*Kunec, supra* at 522-523.)

Care in Invoking the Rule of Necessity

Care must be taken in proceeding when the Rule is invoked, as the Rule is an exception to the very strong public policy of public officials not voting when they have a conflict of interest. Several points here:

- 1) The official is prohibited from using his or her influence on any other member of the body on the matter in question;
- 2) The official must state exactly why there is no alternative route by which action can be taken; and
- 3) The official must limit his or her participation to action that is legally required.

All of these steps must be closely adhered to in order for the action to be valid. (*Kunec, supra.*)

IV. A Series of Questions and Responses Which an Official May Ask and Answer When Facing a Proximity Conflicts of Interest Issue

Introduction

This portion of the memorandum provides a series of questions and responses which an official may use when confronted with addressing only the proximity issue discussed. The first questions are more general, applicable to more situations. However, overall the questions address only the situation where a public official has an interest in real property within the City of Trinidad which may cause a conflict of interest requiring a recusal.

The memo assumes the 500 feet situation obtains. If an official has an interest in property situated between 500 and 300 feet from real property at issues before the public body, it is up to the city and that official to make a determination as to items 1-3, 5 and 6 noted above in 2 CCR 18707.10 and ascertain the applicability of the 300 feet exception.

Questions

1) Am I Making a Governmental Decision?

Obviously, if the matter has proceeded to the point where the public official must vote on it, it is a governmental decision. There are many situations short of this may also require recusal. However, if you vote on it as a public official, you are making a governmental decision. Proceed.

2) Do I Have an Economic Interest in the Decision?

Economic interests may lie in any of five or six different categories². Here, we are looking only at real property interests.

An interest in real property is considered an economic interest if the interest is worth \$2,000 or more in fair market value. "Interest" here includes not only ownership, but also mortgages, options to buy, equity (direct or indirect) and leasehold interests. It does not include month-to-month tenancies (this means monthly tenants do not have an interest, while landlords do).

So the question here is better phrased:

Do I have an interest in real property which is both:

- a) Within either**
 - i) The City of Trinidad, or**
 - ii) Two miles of the geographical boundaries of the City; and**
- b) Worth more than \$2,000 in fair market value?**

If the answer is Yes, you must proceed to the next question.

² Categories of Interests: Business entity investments (holding any business position in a business entity constitutes another, sixth, category); Real property; Income; Gifts; Personal finances of official or their immediate family. (2 CCR 18703-18703.5.)

3) **Is My Interest in Real Property Directly or Indirectly Involved in the Decision?**

Actually, for these purposes, it doesn't matter much. This is because economic interests which are not directly involved (*i.e.*, which are *indirectly* involved) must still be analyzed under the rules for economic interest involvement. So either way you have to pay close attention. This is the tricky part of the analysis.

The underlying issue here is one of the *materiality* of the impact of the decision on you. The short version here is that economic interests which are directly involved are presumed to be material, whereas such interests which are indirectly involved are presumed to be non-material. Either of these presumptions may be rebutted (see "Appendix B").

There is a basic distinction here between leasehold interests and non-leasehold interests. Since for most people the interest will be *non-leasehold*, we will start with that first and move to leaseholds:

3a) **Is my *non-leasehold* interest directly involved?**

- If the real property at issue in the decision lies within a 500 foot-radius of your real property, your interest is *presumed* to be direct and therefore material.
- If the decision involves the zoning, annexation, sale, lease or permitted use of, or taxes or fees imposed on the official's property, it has a direct involvement.
- **Caveat:** A material financial effect is *presumed* here, and *recusal required*, unless the official can show that the decision will have no financial effect on his or her economic interests.
- **Rebuttal of presumption of materiality:** The official may *rebut* this presumption "by proof that it is not reasonably foreseeable that the governmental decision will have any financial effect on the [official's] real property." (2 CCR 18705.2(a)(1).)

3b) **Is my *non-leasehold* interest indirectly involved?**

- When the real property at issue in the decision is more than 500 feet from the official's real property, the official's interest is only indirectly involved. This interest is *presumed not to be material*.
- The presumption of *non-materiality* may be overturned if it can be shown that the official's property will be materially affected by the decision.
- The law provides specific language for rebuttal of *non-materiality* here; see 2 CCR 18705.2(b)(1).

3c) **Is my leasehold interest directly involved?**

- Again, the presumption of materiality applies. The "rebuttal" and "caveat" sections above apply here as well.
- The law provides specific language for rebuttal of materiality here; see 2 CCR 18705.2(a)(2).

3d) **Is my leasehold interest indirectly involved?**

- A presumption of *non-materiality* applies here.

- The law provides specific language for rebuttal of *non*-materiality here; see 2 CCR 18705.2(b)(2).

4) Is it Reasonably Foreseeable That My Economic Interest Will Be Materially Affected?

The catch-alls to every possible economic conflict of interest (of which there are two; this section and the next) comes at the end: Is it reasonably foreseeable that your economic interests will be materially affected? For this you must look at all of the circumstances at the time the decision is made, with the concept of foreseeability hinging on the specific facts of each individual case.

For the effect of a decision to be foreseeable, it need not be either certain or direct. However, it must be more than merely conceivable.

For the effect of a decision to be foreseeable, *it must appear that there is a substantial likelihood*, based on all facts available to you at the time you make the decision, *that the effects that would bring about the conflict of interest will occur*. If the conflict is reasonably foreseeable, you must recuse yourself; if the conflict is not reasonably foreseeable, you may vote. For help with this, see “Appendix C”.

5) Is the Effect of the Decision on My Economic Interest Distinguishable from Its Effect on the General Public?

Even if the decision has a reasonably foreseeable material effect which cannot be rebutted (and thus would otherwise require recusal), there is one last variable which may avoid disqualification here: Whether the decision will affect your economic interest differently than it does of the “public generally.”

If the decision affects the general public’s financial interests in the same manner as it does your own, the fact that affects your interest materially does not create a conflict of interest. The idea here is that when your interests are in harmony with those of the public in general *or a significant segment of it*, there is no conflict in your making that decision:

“A public official has a financial interest in a decision within the meaning of Section 87100 [disallowing decisions by public officials where a financial interest exists] if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the official, a member of his or her immediate family, or on any of the following [categories discussed above follow here]:” (Gov’t Code § 87103.)

For help (so to speak) on this, see “Appendix D” for the regulation written for that purpose.

V. Close

This memorandum is but a *beginning* tool for your analysis in determining the existence of a conflict requiring your recusal. There are many regulations and other laws not mentioned herein. If you are in any doubt as to whether or not you have a conflict, please do not hesitate to contact the city attorney for advice.

Appendix A
2 CCR 18708; Legally Required Participation

“§ 18705.2. Legally Required Participation

(a) A public official who has a financial interest in a decision may establish that he or she is legally required to make or to participate in the making of a governmental decision within the meaning of Government Code section 87101 only if there exists no alternative source of decision consistent with the purposes and terms of the statute authorizing the decision.

(b) Whenever a public official who has a financial interest in a decision is legally required to make or to participate in making such a decision, he or she shall state the existence of the potential conflict as follows:

- (1) The public official shall *disclose the existence of the conflict and describe with particularity the nature of the economic interest.* “Particularity” as used in this regulation shall be satisfied if the official discloses:
 - (A) Whether the conflict involves an investment, business position, interest in real property, or the receipt of income, loans or gifts;
 - (B) If the interest is an investment, the name of the business entity in which each investment is held; if the interest is a business position, a general description of the business activity in which the business entity is engaged; if the interest is real property, the address or another indication of the location of the property, unless the property is the official's principal or personal residence, in which case the official shall disclose this fact. For income, loans or gifts, the official shall disclose the person or entity that is the source.
- (2) The public official or another officer or employee of the agency shall give a *summary description of the circumstances under which he or she believes the conflict may arise.*
- (3) Either the public official or another officer or employee of the agency shall *disclose the legal basis for concluding that there is no alternative source of decision.*
- (4) *The disclosures required by this regulation shall be made in the following manner:*
 - (A) If the governmental decision is made during an open session of a public meeting, the disclosures shall be made orally before the decision is made, by either the public official or by another officer or employee of the agency. The information contained in the disclosures shall be made part of the official public record either as a part of the minutes of the meeting or as a writing filed with the agency. The writing shall be prepared by the public official and/or any officer or employee and shall be placed in a public file of the agency within 30 days after the meeting; or
 - (B) If the governmental decision is made during a closed session of a public meeting, the disclosures shall be made orally during the open session either before the body goes into closed session or immediately after the closed session. The information contained in the disclosures shall be made part of the official public record either as a part of the minutes of the meeting or as a writing filed with the agency. The writing shall be prepared by the public official and/or any officer or employee and shall be placed in a public file of the agency within 30 days after the meeting; or

Appendix A
2 CCR 18708; Legally Required Participation

- (C) If the government decision is made or participated in other than during the open or closed session of a public meeting, the disclosures shall be made in writing and made part of the official public record, either by the public official and/or by another officer or employee of the agency. The writing shall be filed with the public official's appointing authority or supervisor and shall be placed in a public file within 30 days after the public official makes or participates in the decision. Where the public official has no appointing authority or supervisor, the disclosure(s) shall be made in writing and filed with the agency official who maintains the records of the agency's statements of economic interests, or other designated office for the maintenance of such disclosures, within 30 days of the making of or participating in the decision." (2 CCR 18708; emphasis added.)

Appendix B

2 CCR 18705.2.; Materiality Standard: Economic Interests in Real Property

“§ 18705.2. Materiality Standard: Economic Interests in Real Property.

(a) Directly involved real property.

- (1) Real property, other than leaseholds. The financial effect of a governmental decision on the real property is presumed to be material. This presumption may be rebutted by proof that it is not reasonably foreseeable that the governmental decision will have any financial effect on the real property.
- (2) Real property, leaseholds. The financial effect of a governmental decision on the real property in which an official holds a leasehold interest is presumed to be material. This presumption may be rebutted by proof that it is not reasonably foreseeable that the governmental decision will have any effect on any of the following:
 - (A) The termination date of the lease;
 - (B) The amount of rent paid by the lessee for the leased real property, either positively or negatively;
 - (C) The value of the lessee's right to sublease the real property, either positively or negatively;
 - (D) The legally allowable use or the current use of the real property by the lessee; or
 - (E) The use or enjoyment of the leased real property by the lessee.

(b) Indirectly involved real property interests.

- (1) Real property, other than leaseholds. The financial effect of a governmental decision on real property which is indirectly involved in the governmental decision is presumed not to be material. This presumption may be rebutted by proof that there are specific circumstances regarding the governmental decision, its financial effect, and the nature of the real property in which the public official has an economic interest, which make it reasonably foreseeable that the decision will have a material financial effect on the real property in which the public official has an interest. Examples of specific circumstances that will be considered include, but are not limited to, circumstances where the decision affects:
 - (A) The development potential or income producing potential of the real property in which the official has an economic interest;
 - (B) The use of the real property in which the official has an economic interest;
 - (C) The character of the neighborhood including, but not limited to, substantial effects on: traffic, view, privacy, intensity of use, noise levels, air emissions, or similar traits of the neighborhood.
- (2) Real property, leaseholds. The financial effect of a governmental decision on real property in which a public official has a leasehold interest and which is indirectly involved in the governmental decision is presumed not to be material. This presumption may be rebutted by proof that there are specific circumstances regarding the governmental decision, its financial effect, and the nature of the real property in which the public official has an economic interest, which make it reasonably foreseeable that the governmental decision will:

Appendix B

2 CCR 18705.2.; Materiality Standard: Economic Interests in Real Property

- (A) Change the legally allowable use of the leased real property, and the lessee has a right to sublease the real property;
- (B) Change the lessee's actual use of the real property;
- (C) Substantially enhance or significantly decrease the lessee's use or enjoyment of the leased real property;
- (D) Increase or decrease the amount of rent for the leased real property by 5+percent during any 12-month period following the decision; or
- (E) Result in a change in the termination date of the lease.

Appendix C

2 CCR 18706. Determining Whether a Material Financial Effect Is Reasonably Foreseeable

“§ 18706. Determining Whether a Material Financial Effect Is Reasonably Foreseeable.

- (a) A material financial effect on an economic interest is reasonably foreseeable, within the meaning of Government Code section 87103, if it is substantially likely that one or more of the materiality standards (see Cal. Code Regs., tit. 2, ss 18704 18705) applicable to that economic interest will be met as a result of the governmental decision.
- (b) In determining whether a governmental decision will have a reasonably foreseeable material financial effect on an economic interest as defined in subdivision (a) above, the following factors should be considered. These factors are not intended to be an exclusive list of the relevant facts that may be considered in determining whether a financial effect is reasonably foreseeable, but are included as general guidelines:
- (1) The extent to which the official or the official's source of income has engaged, is engaged, or plans on engaging in business activity in the jurisdiction;
 - (2) The market share held by the official or the official's source of income in the jurisdiction;
 - (3) The extent to which the official or the official's source of income has competition for business in the jurisdiction;
 - (4) The scope of the governmental decision in question; and
 - (5) The extent to which the occurrence of the material financial effect is contingent upon intervening events, not including future governmental decisions by the official's agency, or any other agency appointed by or subject to the budgetary control of the official's agency.
- (c) Possession of a real estate sales or brokerage license, or any other professional license, without regard to the official's business activity or likely business activity, does not in itself make a material financial effect on the official's economic interest reasonably foreseeable.”

Appendix D
2 CCR 18707, Public Generally

“§ 18707. Public Generally.

(a) Introduction.

Notwithstanding a determination that the reasonably foreseeable financial effect of a governmental decision on a public official's economic interests is material, a public official does not have a disqualifying conflict of interest in the governmental decision if the official can establish that the governmental decision will affect the public official's economic interests in a manner which is indistinguishable from the manner in which the decision will affect the public generally as set forth in 2 Cal. Code Regs. sections 18707.1-18707.9.

(b) Steps to Determine Application of Public Generally.

To determine if the effect of a decision is not distinguishable from the effect on the public generally as set forth in subdivision (a) of this regulation, apply Steps One through Four:

- (1) Step One: Identify each specific person or real property (economic interest) that is materially affected by the governmental decision.
- (2) Step Two: For each person or real property identified in Step One, determine the applicable "significant segment" rule according to the provisions of 2 Cal. Code Regs. section 18707.1(b).
- (3) Step Three: Determine if the significant segment is affected by the governmental decision as set forth in the applicable "significant segment" rule. If the answer is "no," then the analysis ends because the first prong of a two-part test set forth in 2 Cal. Code Regs. section 18707.1(b) is not met, and the public official cannot participate in the governmental decision. If the answer is "yes," proceed to Step Four.
- (4) Step Four: Following the provisions of 2 Cal. Code Regs. section 18707.1(b)(2), determine if the person or real property identified in Step One is affected by the governmental decision in "substantially the same manner" as other persons or real property in the applicable significant segment. If the answer is "yes" as to each person or real property identified in Step One, then the effect of the decision is not distinguishable from the effect on the public generally and the public official may participate in the decision. If the answer is "no" as to any person or real property identified in Step One, the public official may not participate in the governmental decision unless one of the special rules set forth in 2 Cal. Code Regs. sections 18707.2 through 18707.9 applies to each person or real property triggering the conflict of interest.”

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