

FILED IN FORMA PAUPERIS (CRC 985)
PER ORDER DATED 7/22/2013
AMOUNT RECOVERABLE PURSUANT
TO 68511.3 GC \$ 00
PLUS A ONE TIME ADMINISTRATIVE FEE UPON JUDGEMENT
IF THE PARTY BECOMES A JUDGEMENT CREDITOR

1 Brenda Barnes
2 2461 Santa Monica Blvd., Ste. 507
3 Santa Monica, CA 90404
4 (310) 795-3762

5 Plaintiff in pro per

6 *D85 James Chalfant*

7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE
9 COUNTY OF LOS ANGELES, CENTRAL DISTRICT
10

11 BRENDA BARNES, an Individual, For)
12 Herself and For Nature,)

13 Plaintiff,)

14 v.)

15 MARC L. LUZZATTO, an Individual;)
16 JAMES MURAMATSU, an Individual;)
17 VILLAGE TRAILER PARK, L.L.C.,)
18 Limited Liability Company; VILLAGE)
19 TRAILER PARK, INC., a California)
20 Corporation; J & H ASSET PROPERTY)
21 MGMT.CO., INC. a California Corpora-)
22 tion; JAMES GEORGE JOFFE, an)
23 Individual; and DOES 1 through 20,)
24 Inclusive,)

25 Defendants.)

Case No.

BC515812

**EX PARTE APPLICATION FOR
TEMPORARY RESTRAINING ORDER
AND OSC AGAINST DEMOLISHING
ANY PART OF THE EXISTING ECO-
SYSTEM OF WHICH HUMAN PLAINTIFF
AND OTHER ASPECTS OF NATURE
ARE PART; MEMORANDUM OF
POINTS AND AUTHORITIES;
DECLARATION OF BRENDA BARNES
IN SUPPORT THEREOF; DECLARA-
TION OF EX PARTE NOTICE**

Santa Monica Municipal Code ¶ 4.75
(Attached as Exhibit 1)

Ex Parte Hearing

DATE: July 22, 2013

TIME: 8:30 a.m.

DEPT.: 82, 85, or 86, As Assigned

1 TO THE HONORABLE ABOVE-ENTITLED COURT AND TO DEFENDANTS MARC L.
2 LUZZATTO, JAMES MURAMATSU, VILLAGE TRAILER PARK, LLC, AND VILLAGE TRAILER
3 PARK, INC., AND THEIR ATTORNEYS OF RECORD:

4 At the place, date and time heretofore stated, or as soon thereafter as the
5 matter may be heard, Plaintiff BRENDA BARNES will appear ex parte to request and
6 does hereby request that the Court enter a Temporary Restraining Order ("TRO") on
7 her behalf and on behalf of Nature, whom she represents under the Santa Monica
8 Sustainability Ordinance attached hereto as Exhibit 1, as well as an Order to Show
9 Cause ("OSC") re: Preliminary Injunction, commanding the following:

10 1) That Defendants, and each of them, and their employees, agents,
11 successors, and assigns, be restrained and enjoined, as to the TRO pending hearing on
12 the OSC, and as to the OSC, pending trial of this action, from taking any action toward
13 demolishing or removing trailers at or taken from the subject property, at 2930
14 Colorado Avenue, Santa Monica, CA 90403, or taking any other action a reasonable
15 person would be aware would disturb the existing ecosystem at the subject property;
16
17

18 2) If Defendants wish to take any action that might possibly, under any
19 remote set of circumstances, disturb the existing ecosystem at the subject property,
20 Defendants are ordered to request permission from this Court before taking that action,
21 or they will be held in contempt of court for undertaking any action which does in fact
22 disturb the ecosystem and which the Court determines was at the time it was
23 undertaken remotely or more likely to disturb the existing ecosystem, as any
24 reasonable person in the exercise of reasonable care would and should have known
25 under the circumstances existing at the time.
26
27
28

1 Plaintiff seeks the TRO and OSC on the following grounds: (1) The life at the
2 subject property—human, animal, plant, and insect—cannot have any of the rights
3 listed in Santa Monica Municipal Code §4.75.020(c) if Defendants are allowed to remove
4 landscaping from 16 spaces at the subject property, and their rights to those qualities
5 of life will be disturbed by Defendants' removal of ANY of the landscaping at the
6 property; which is particularly true because Defendants have shown by putting toxic
7 weedkiller onto the soil, which pollutes the air and may pollute the water, and by
8 leaving no landscaping for wildlife such as migratory and resident birds, squirrels,
9 possums, and cats, that they cannot be trusted to protect the existing ecosystem at the
10 property without the Court's intervention; (2) Plaintiff on her own behalf and on behalf
11 of Nature is likely to prevail at trial herein because SMMC § 4.75.040 recognizes the
12 fundamental right of natural communities and ecosystems to exist and gives residents
13 the right to sue on behalf of those ecosystems, and § 4.75.070, Section 3 automatically
14 repeals any ordinance not in compliance with Chapter 4, any other permits granted by
15 the City to Defendants such as a development agreement do comprise permission to
16 Defendants to disturb the ecosystem at the subject property, so they are automatically
17 repealed, but without preliminary injunctive relief that prevailing will be ineffectual; (3)
18 Plaintiff and all life at the subject property will be far more harmed if the preliminary
19 injunctive relief is not issued than will Defendants be if it is.
20
21
22
23
24

25 Plaintiff seeks said relief on said grounds based on the facts stated in the
26 Verified Complaint herein:

- 27 1. Demolishing trailers built before 1979, as most of these trailers were,
28 when using asbestos, lead-based paint, and formaldehyde in building materials was

1 legal and common, poses a danger of polluting the air, water, and soil as to
2 Plaintiff and all other natural beings on the subject property, which Defendants
3 threaten to do again as to 16 more trailers as they have to approximately 40 in the
4 past, unless the Court enjoins them from doing so, as alleged in the First Cause of
5 Action of the Verified Complaint herein;
6

7 2. Doing so without prior inspection and permits, as Defendants did with the
8 "first batch of 16" trailers that were on the subject property site in December 2006
9 and were not there on September 29, 2011 when Defendants began to demolish
10 the "second batch of 10 trailers" without prior inspection and permits—which
11 Defendants allegedly obtained thereafter regarding asbestos only—is a violation of
12 the Santa Monica requirements for a Construction and Demolition Plan attached to
13 the moving papers here as Exhibit 2 as well as an obvious danger to Plaintiff's and
14 all life at the property's health and safety, which Defendants threaten to violate
15 again as to 16 more trailers and appear determined to continue to do unless the
16 Court enjoins them from doing so, as alleged in the Second Cause of Action of the
17 Verified Complaint herein;
18
19

20 3. Doing so as to unregistered trailers, as Defendants did with many or all the
21 trailers they have purchased at the subject property, violates B & P Code §
22 10131.6(a), a statute passed for Plaintiff and all life at the subject property's
23 protection, the violation of which by Defendants has resulted in removal and
24 destruction of mobilehomes almost certainly containing asbestos, lead-based paint,
25 formaldehyde, and/or mold, and without permits, notice to affected persons such as
26 Plaintiff and all life at the subject property, or a Construction and Demolition Plan.
27
28

1 Defendants also did these wrongful acts in violation of claims they made in the Final
2 EIR for Defendants' proposed development project at the subject property, which
3 claims no trailers will be demolished until excavation permits are obtained for the
4 project, and taking described mitigation steps to protect all life's health and safety.
5 Defendants threaten to repeat said wrongful acts again as to 16 more trailers and
6 appear determined to continue to do unless the Court enjoins them from doing so,
7 all as alleged in the Third Cause of Action of the Verified Complaint herein;
8

9 4. Doing so as to unregistered trailers, as Defendants did with many or all the
10 trailers they have purchased at the subject property, violates B & P Code §
11 10131.6(a), a statute passed for Plaintiff and all life at the subject property's
12 protection, the violation of which by Defendants has resulted in removal and
13 destruction of mobilehomes almost certainly containing asbestos, lead-based paint,
14 formaldehyde, and/or mold, and without permits, notice to affected persons such as
15 Plaintiff and all life at the subject property, or a Construction and Demolition Plan.
16 Defendants also did these wrongful acts in violation of claims they made in the Final
17 EIR for Defendants' proposed development project at the subject property, which
18 claims no trailers will be demolished until excavation permits are obtained for the
19 project, and taking described mitigation steps to protect all life's health and safety.
20 Defendants threaten to repeat said wrongful acts again as to 16 more trailers and
21 appear determined to continue to do unless the Court enjoins them from doing so,
22 which would violate Plaintiff's rights not to be subjected to Elder Abuse by her
23 landlords, as alleged in the Fourth Cause of Action of the Verified Complaint herein;
24
25
26
27
28

1 5. Doing so as to unregistered trailers, as Defendants did with many or all
2 the trailers they have purchased at the subject property, violates B & P Code §
3 10131.6(a), a statute passed for Plaintiff and all life at the subject property's
4 protection, the violation of which by Defendants has resulted in removal and
5 destruction of mobilehomes almost certainly containing asbestos, lead-based paint,
6 formaldehyde, and/or mold, and without permits, notice to affected persons such
7 as Plaintiff and all life at the subject property, or a Construction and Demolition
8 Plan. Defendants also did these wrongful acts in violation of claims they made in
9 the Final EIR for Defendants' proposed development project at the subject
10 property, which claims no trailers will be demolished until excavation permits are
11 obtained for the project, and taking described mitigation steps to protect all life's
12 health and safety. Defendants threaten to repeat said wrongful acts again as to 16
13 more trailers and appear determined to continue to do unless the Court enjoins
14 them from doing so, is being done for the purpose of intentionally inflicting
15 emotional distress on Plaintiff, which Defendants threaten to do again as to four
16 more trailers and appear determined to continue to do unless the Court enjoins
17 them from doing so, as alleged in the Fifth Cause of Action of the Verified
18 Complaint herein;
19
20
21
22

23 6. Defendants have engaged in fraudulent unfair competition in doing the
24 above acts, so Plaintiff needs the intervention of the Court to protect her and all life
25 at the subject property from further acts of fraudulent unfair competition by
26 Defendants, which Defendants have continued to engage in unabated since a prior
27 Complaint was served on them, threaten to so engage in again, and appear
28

1 determined to continue to do so unless the Court enjoins them from doing so, as
2 alleged in the Sixth Cause of Action of the Verified Complaint herein; and

3 7. Defendants have engaged in doing the above acts in conspiracy with
4 others including governmental employees, which Defendants have continued to do
5 unabated since the prior Complaint was served on them, threaten to do again, and
6 appear determined to continue to do so unless the Court enjoins them from doing
7 so, so Plaintiff needs the intervention of the Court to protect her and all life at the
8 subject property from further acts in furtherance of said conspiracy, as alleged in
9 the Seventh Cause of Action of the Verified Complaint herein.
10

11
12 This ex parte Application will be and is based on the attached Memorandum of
13 Points and Authorities, and Declaration of BRENDA BARNES, the verified Complaint
14 herein, and such other and further argument and/or evidence as shall be permitted by
15 the Court at said hearing.
16

17 DATED: July 21, 2013

Respectfully submitted,

18 

19 BRENDA BARNES
20 Plaintiff in pro per
21
22
23
24
25
26
27
28

1 Memorandum of Points and Authorities in Support of Ex Parte Application for TRO and
2 OSC re: Preliminary Injunction

3 Introduction and Summary of Facts and Issues

4 This case is about Defendants removing trailers from a property they wish to
5 develop, where Plaintiff, an elder according to the Elder Abuse statute, lives and has
6 lived for 25 years. Defendants removed 16 trailers from the subject property in
7 November 2011 without notice to Plaintiff or any other residents. Plaintiff learned of
8 planned demolition of 10 more trailers and in November 2011 began preparing an ex
9 parte Application for a Temporary Restraining Order to be brought against Defendants'
10 demolishing the 10 more trailers after Plaintiff noticed they were demolishing trailers
11 and required them to get a permit for demolishing trailers containing asbestos.
12

13 Plaintiff then learned other hazardous materials are in old trailers such as the
14 ones Defendants were set to demolish, so she was asking the Court to require those
15 hazardous materials also be inspected for, protocols for their disposal be followed if
16 they were found to be present, and their disposal be permitted and tracked as required
17 by each.
18

19 Santa Monica passed a Sustainability Ordinance effective May 9, 2013, which
20 gives legal standing to Nature, and gives a resident the right to sue on Nature's behalf
21 when an existing ecosystem's clean water, clean air, and clean soil, among other
22 things, is threatened.
23

24 Accordingly, this Memorandum shows entitlement to injunctive relief uses a two-
25 prong test. These are balancing of hardships, and, if that is not determinative,
26 likelihood of trial success. Entitlement to an injunction is submitted to the Court's wise
27 discretion. However, if the balancing hardships prong is strong enough, it is an abuse
28

1 of discretion not to grant. In this case, each prong is unassailable in favor of Plaintiff,
2 so the Court must enter the TRO, and after hearing on the OSC, the preliminary
3 injunction.

4 I

5 ENTITLEMENT TO ANY PRELIMINARY INJUNCTIVE RELIEF IS SUBJECT TO THE COURT'S
6 DISCRETION ON A TWO-PRONG TEST: WHO WILL SUFFER GREATER INJURY, AND IF
7 THAT IS NOT DETERMINATIVE, THE PROBABLE OUTCOME AT TRIAL; HERE, BOTH
8 PRONGS REQUIRE DENYING THE INJUNCTION

9 In Robbins v. Superior Court (1985) 38 Cal.3d 199, 206, the Supreme Court
10 states:

11 The trial courts consider two interrelated questions in deciding whether to
12 issue a preliminary injunction: 1) are the plaintiffs likely to suffer greater injury
13 from a denial of the injunction than the defendants are likely to suffer from its
14 grant; and 2) is there a reasonable probability that the plaintiffs will prevail on
15 the merits. . . . "[By] balancing the respective equities. . . , [the court] concludes
16 that, pending a trial . . . , the defendant should or . . . should not be restrained
17 from exercising the right. . . ."

18 A. PLAINTIFF WILL SUFFER FAR GREATER INJURY IF THE INJUNCTION IS
19 DENIED THAN DEFENDANTS WILL SUFFER IF IT IS GRANTED.

20 In this case, as the Declaration of Plaintiff attached fully reflects, on who will
21 suffer greater injury if denied relief sought, if the trailers contained or contain the
22 hazardous materials, Plaintiff's health and safety and that of all life at the subject
23 property are jeopardized. On the other hand, if the injunction is granted, defendants
24 will lose only the short time it will take to determine the truth of the matter. Since they
25 have been proposing this development project for six years already, that short time
26 cannot be a great hardship.
27
28

1 If the first prong is not determinative, as to the second, whether plaintiff is likely
2 to prevail at trial, if the hazardous materials are present Plaintiff would definitely
3 prevail at trial.

4 B. DEFENDANTS CANNOT PREVAIL AT TRIAL IF THE HAZARDOUS MATERIALS
5 ARE OR WERE PRESENT IN THE TRAILERS AND DEFENDANTS DID NOT GET
6 INSPECTIONS AN PERMITS

7 Plaintiff clearly will prevail at trial. There is no doubt from documents and
8 corroborating evidence from the government officials mentioned, that Defendants
9 acted with complete disregard for the residents' health and safety, both human and
10 other. At all points they did the bare minimum they were forced by others to do, to
11 satisfy ineffective governmental procedures.

12 More than that is required from landlords who have a "special relationship"
13 under the law with tenants. More is also required when the tenants are known to be
14 old and weak, and when the state law recognizes that mobilehome tenants are in a
15 sense hostages to the owners of the land where their homes sit, landlords like
16 Defendants, because mobilehome owners cannot move their homes easily if at all. It
17 also is required by SMMC Chapter 4.75, to protect the existing ecosystem from
18 contamination of air, water, and soil.

19 2. PLAINTIFF ESPECIALLY CAN PREVAIL AT TRIAL ON THE CLAIM FOR
20 DECLARATORY RELIEF

21 C.C.P. § 1060 reads in relevant part as follows:

22 Any person . . . who desires a declaration of his or her rights or duties
23 with respect to another, or in respect to, in, over or upon property, . . . may, in
24 cases of actual controversy relating to the legal rights and duties of the
25 respective parties, bring an original action or cross-complaint in the superior
26 court for a declaration of his or her rights and duties in the premises,. . . He
27
28

1 or she may ask for a declaration of rights or duties, either alone or with other
2 relief; and the court may make a binding declaration of these rights or duties,
3 whether or not further relief is or could be claimed at the time. The declaration
4 may be either affirmative or negative in form and effect, and the declaration
5 shall have the force of a final judgment. The declaration may be had before
6 there has been any breach of the obligation in respect to which said
7 declaration is sought.

8 SMMC Chapter 4.75 is a new law, so it is appropriate to ask for declaratory relief.

9 There certainly is a current controversy, since Defendants have given notice they
10 intend to violate that new law.

11 3. PLAINTIFF ALSO HAS A CLEAR CASE FOR INJUNCTIVE RELIEF

12 Finally, Plaintiff's declaration clearly supports the claim in every Complaint Cause
13 of Action for an injunction.¹ Each Cause of Action alleges in the Complaint alleges facts
14 to show threat of future acts or irreparable harm and incorporates allegations that
15 Plaintiff "will suffer irreparable harm."
16

17 Code of Civil Procedure § 526 provides in relevant part as follows:

18 (a) An injunction may be granted in the following cases:

19 (1) When it appears by the complaint that the plaintiff is entitled to the relief
20 demanded, and the relief, or any part thereof, consists in restraining the
21 commission or continuance of the act complained of, either for a limited period
22 or perpetually.
23
24
25

26 ¹ Actually, neither declaratory nor injunctive relief states a separate cause of action.

27 California subscribes to the primary rights theory. Thus, the invasion of one primary right gives rise
28 to but a single cause of action [with various types of relief]. Coachella Valley Unif. Sch. Dist. v. State
of Calif. (1st Dist. 2009) 176 Cal.App.4th 93, 126.

Declaratory and injunctive relief, like damages, are types of relief sought within causes of action. Therefore, each
cause of action in the Complaint includes a claim for declaratory and injunctive relief, each of those types of relief being
a type of remedy for the wrong alleged in each cause of action.

1 (2) When it appears by the complaint or affidavits that the commission or
2 continuance of some act during the litigation would produce waste, or great or
3 irreparable injury, to a party to the action.

4 (3) When it appears, during the litigation, that a party to the action is doing, or
5 threatens, or is about to do, or is procuring or suffering to be done, some act in
6 violation of the rights of another party to the action respecting the subject of the
7 action, and tending to render the judgment ineffectual.

8 (4) When pecuniary compensation would not afford adequate relief.

9 (5) Where it would be extremely difficult to ascertain the amount of
10 compensation which would afford adequate relief. (Emphasis added.)

11 Plaintiff alleges she does not yet know if she or other life at the property has suffered
12 injury that would support claims for damages, but she alleges not having a preliminary
13 injunction would render a permanent one ineffectual. Moreover, she alleges evidence
14 of Defendants' past wrongs in each cause of action, and also how they threaten to
15 continue and/or repeat the harms in the future, and facts showing irreparable harm if
16 he had they do so as threatened. There clearly are strong bases for injunctive relief.

17
18 II

19 IT IS AN ABUSE OF DISCRETION NOT TO GRANT PRELIMINARY INJUNCTIVE RELIEF
20 WHERE THE HARM PRONG IN THE TWO-PRONG TEST CLEARLY FAVORS THE PLAINTIFF,
21 SO HERE BOTH THE TRO AND LATER THE PRELIMINARY INJUNCTION MUST BE GRANTED

22 The Supreme Court goes on to say in Robbins v. Superior Court (1985) 38 Cal.3d
23 199, 205-6, that the two prongs are not equal, although they are related:

24 Although the trial court has broad discretionary powers to grant or deny a
25 request for a preliminary injunction, it has "no discretion to act capriciously."
26 (Gosney v. State of California ([2d Dist.], 1970) 10 Cal.App. 3d 921, 924, . . .) It
27 must exercise its discretion "in favor of the party most likely to be injured."
28 (Ibid.; . . .) (Emphasis added.)

1 As indicated above in § I, A, the potential harm to Plaintiff and all life at the
2 property if the injunction is not granted is substantial, endangering health and safety
3 and violating public policy expressed in a special statute to protect the health and
4 safety of a group, elders, of which she is a member, and of Nature, which she has a
5 right to sue on behalf of, while the harm to defendants if it is granted is so de minimis
6 as to make consideration of it downright foolish. Defendants will merely be delayed a
7 few weeks or months, however long they take to get a Construction and Demolition
8 Plan approved. Since this is a project that has already taken six (6) years with not one
9 permit being obtained, a few months here or there makes no difference at all.
10 Particularly is this so since on the other prong as well, Defendants lose, as they cannot
11 win at trial missing evidence of that same thing.
12

13
14 CONCLUSION

15
16 For all the reasons stated herein, the Court must grant the TRO and then the
17 Preliminary Injunction requested against Defendants, and thereby uphold the rights of
18 Plaintiff and all life at the subject property as stated in the Complaint and attached
19 Declaration.
20

21 DATED: July 21, 2013

22 Respectfully submitted,

23 

24 Brenda Barnes
25 Plaintiff in pro per

1 DECLARATION OF BRENDA BARNES IN SUPPORT OF HER EX PARTE APPLICATION FOR
2 TEMPORARY RESTRAINING ORDER AND OSC RE: PRELIMINARY INJUNCTION, ON BEHALF
3 OF HERSELF AND AS A REPRESENTATIVE OF NATURE

4 BRENDA BARNES declares and says:

5 I am the Plaintiff in this action, I competently make this Declaration on the basis
6 of my own personal knowledge, and if called as a witness I could and would
7 competently testify as stated herein:

8 Prior Applications, November 22, 2011 and March 28, 2012:

- 9 1. On November 22, 2011, I appeared in a prior case I later dismissed
10 without prejudice because it had become moot, on the same issue
11 involved in this case but different bases for relief, in front of the Honorable
12 James C. Chalfant in Department 85 of the Superior Court at 111 N. Hill
13 Street, Los Angeles, CA, to request a temporary restraining order and OSC
14 re: preliminary injunction against the destruction of 10 trailers at the
15 Village Trailer Park, where I then lived and now live.
- 16 2. The matter was heard and argued, and then the Defendants stipulated to
17 give me five (5) days' actual notice before any further demolition of
18 trailers at the subject property where I live, which stipulation was made a
19 Court order.
- 20 3. On March 1, 2012, I returned from being out of town and found a notice
21 on my gate of demolition of four (4) more trailers would begin on March 5,
22 2012. Although Defendants have at all relevant times had my telephone
23 number, and it was given in the lawsuit I was then pursuing against
24 demolition of trailers, they had not called me to tell me they wished to
25 serve me personally as they had stipulated to do, nor had they called to
26 tell me they had put the notice on my gate.
- 27 4. Nonetheless, Judge Chalfant heard the matter and again denied the TRO
28 on the same grounds as before, that I had not shown irreparable harm or
any legal reason Defendants could not demolish the trailers they owned.

1 Notice of Defendants' Intent to Demolish Inadequate for Third Time and Violating Court
2 Order

- 3 5. On July 18, 2013, at 3:30 p.m., I found a notice that Defendants intended
4 to begin removing and/or demolishing 16 trailers stuck next to my
5 mailbox. Although it was dated July 16, 2013 and stated VIA HAND
6 DELIVERY, I had been in and out since July 16, 2013, including taking mail
7 out of the mailbox, and the notice was not there until sometime between
8 when I last passed the mailbox, which was at about noon on July 18, 2013,
9 and 3:30 that day when I saw it. Moreover, I was in my house all day and
10 no one had attempted to personally deliver the notice to me by knocking.
11 Neither had anyone called me to tell me they wanted to serve the notice
12 as they had been ordered to do by the Court, as I had pointed out to the
13 Court they had failed to do in March 2012. There is no excuse for failing
14 to give me actual notice as the Court required.
- 15 6. By 5 p.m. four (4) other residents of the Park had come to my house to tell
16 me the notice was posted in the laundry room or on the office window and
17 that they knew though it was dated July 16, 2013, it had not been there
18 until that afternoon. Therefore, it is obvious the letter was first delivered
19 and posted in the afternoon of July 18, 2013, close to 3:30 p.m., and
20 Defendants, knowing the Court ordered them to give five days' notice,
21 attempted to deceive by claiming they had delivered notice two days
22 earlier than they did.
- 23 7. Every time Defendants have had a crew come to do anything regarding
24 trailers the crew have begun working at 8 a.m. or earlier. Delivery of a
25 notice at 3:30, or even noon if it had been that early, is not five days'
26 notice of beginning to work five days later at 8:00 a.m. Defendants
27 consistently attempt to make it impossible for any court action against
28 them to be completed by a group of pro per plaintiffs, many of whom are

1 indigent and cannot afford to hire a lawyer. This is abusive, and Legal
2 Abuse Syndrome is a recognized form of Post Traumatic Stress Disorder
3 under the Americans with Disabilities Act, so no matter what happens in
4 this hearing, I request the Court—as a ministerial duty as a matter of
5 federal civil rights—to order Defendants if they are ever allowed to
6 demolish or remove trailers again, to give me actual notice of five (5) days
7 so that I may have at least that long to prepare papers to request relief.

8. As it is, they always give notice of work beginning on a Tuesday so I have
9 to work over the weekend, which is also abusive. Therefore, I ask the
10 Court if it allows them to ever demolish or remove trailers again to require
11 five (5) court days' notice, as well as actual notice indicated by personal
12 delivery to me, or if that is not possible, telephoning me (there are, after
13 all, records on all of our cell phones of who we called and when, so they
14 can prove to the Court that they did), and informing me of the notice.

15 The Merits of This Application for TRO and OSC

16 9. I am a homeowner and resident at Village Trailer Park at 2930 Colorado
17 Avenue, Santa Monica 90404. This is approximately four (4) acres with a
18 mobilehome park built in 1950 containing 109 home sites with trailers that
19 have been here mostly since the late 60s and early 70s when permanent
20 residency rather than travelers' use became the use of the Park. Many of
21 the trailers have add-on structures, some of which are patio rooms but
22 others of which have totally enclosed walls and have become part of the
23 original home. I have been informed and believe that it is necessary to get a
24 building permit to add on those rooms, which means that they are
25 “buildings” that cannot be demolished—as they could not be built—without a
26 permit from the City.

27 10. When Defendants demolished the trailers in 2012, they removed absolutely
28 everything from each space they touched. This included every single blade

1 or limb of landscaping, whereas a City consultant who did a report on the
2 Park in early 2012 said much of the landscaping “enmeshed” many of the
3 homes.. Exhibit 7 hereto shows the trailers Defendants said they would
4 remove or demolish, and how much landscaping is around them.

5 11. The other day a neighbor and I were sitting talking in a garden that has
6 grown from birds bringing seeds to mulch we had put on a vacant plot next
7 to our house to prevent weeds. Defendants had taken out a mobilehome
8 and profuse landscaping that used to be there, and other spaces where they
9 did that are overgrown with weeds or have had toxic weedkiller put on them,
10 resulting in dead yellow weeds rather than profuse green weeds.

11 12. My neighbor and I both saw a monarch butterfly land on a passion fruit vine
12 growing there and then head over toward a guava tree, or maybe to the
13 nasturtium flowers below it. A small brown bird swooped down from an
14 overhead wire and attempted to eat it, but the butterfly flew quickly away.

15 13. There are many birds in the garden all day long—up to five (5) blue jays at
16 a time, hummingbirds, and those brown birds mostly. We have also in the
17 past year seen small owls, a family of hawks who had babies here and then
18 all left, many crows and seagulls, and a pair of ducks who swam in the
19 swimming pool overnight last Spring. Something ate a cat, people said they
20 had seen a coyote, but no one actually saw it eat the cat. There is so much
21 life here in this functioning ecosystem, we experience life and death, the
22 Circle of Life.

23 14. This ecosystem includes, besides all the birds (and an endangered species
24 of 40 human homeowner families with low-cost homes), also possums,
25 squirrels, honeybees, insects, and about 10 remaining somewhat
26 domesticated outdoor cats.

27 15. As far as plants, the ecosystem includes many fruit trees other than the two
28 guavas growing next door to me: three lemon trees, one loquat, one

1 kumquat, one orange, at least three date palms, an apricot, two figs, an
2 avocado, several bananas, a Tahitian lime, a peach of some amazingly
3 wonderful variety of cling type that luckily sometimes falls into a vacant lot,
4 and perhaps others I have not noticed. There also are prickly pear cacti and
5 another very large passion fruit vine wandering over several spaces and up
6 the iconic 1950 mid-Century community building next to the pool in front off
7 Colorado Avenue (from which the seeds for "ours" next door might have
8 come). In the last week I have seen a large mango tree ready for planting
9 by another neighbor, and I myself have two fruit trees that died when I did
10 not plant them out last fall, which I am going to exchange at OSH for
11 gobifruit and kaffir lime trees.

12 16. The purely decorative plants include all you would expect in such a large
13 California coastal place that has had hundreds of owners planting in
14 individual plots for over 63 years when native species were not valued and
15 when the gardeners were not rich. From ficus to camellias, geraniums
16 (about five different colors), roses, decorative palms, potato vines, trumpet
17 vines, lipstick plants, lilies, irises, and no telling what else I cannot identify.
18 Before Defendants took all the landscaping out of 40 spaces, we had a truly
19 irreplaceable park here, a jumble, but a lush, beautiful one. We still have
20 two-thirds of it, and it still functions.

21 17. The few jacaranda trees we have left are all that remain of over 20 mature
22 ones we know were planted in 1950 because they were seedlings in the first
23 ad for the Park found by the City's consultant, published in the Los Angeles
24 Times in 1951. All but three of those were growing in a median space
25 Defendants took out and replaced with an asphalt parking lot (I hate to
26 mention a cliché of paving paradise, but that explains why I am filing suit).

27 18. Many of the decorative trees are 50 or 60 feet tall, and even with only three
28 jacarandas, the blue jays returned this year after being absent other than a

1 straggling few for a few days each year, during the over 10 years since
2 Defendants took out most of the jacarandas.

3 19. The other day we found mushrooms (or perhaps toadstools—we are not
4 eating them to find out) of a variety we have never seen before, growing out
5 of a tree and out of the ground next to it. That and the fact that two kinds of
6 squash or melon are growing all over the back of the lot next door—planted
7 by birds, so we will have to wait until the squashes or melons mature to
8 discover what they are—in addition to freesias and azalea volunteers, are
9 truly an incredible gift and delight to behold.

10 20. Every day when I wake up and look out at the bees—which I know are
11 dying across the Earth, but are alive and well next door to me—and the
12 birds, especially the hummingbirds, flitting about from plant to plant, I think,
13 there is God's staff, restoring Nature, indomitable and free.

14 21. I am asking the Court on behalf of an existing ecosystem to enter a
15 temporary restraining order against destruction of any of it. Once it is gone
16 Nature may produce something good someday in its place as it has next
17 door to me, but what is lost is irreparably lost, part of a history of 63 years,
18 never to be regained. Moreover, in the meantime while Nature tries to
19 recover, the Earth suffers, as do we as a people, particularly but not only
20 those of us who are part of the existing ecosystem. As a matter of fact,
21 passage of the Sustainability Ordinance acknowledges that as far as the
22 environment goes, “no man is an island...ask not for whom the bell tolls, it
23 tolls for thee.”

24 22. I am also asking the Court to require Defendants to show cause why a
25 preliminary injunction should not be entered prohibiting them from ever
26 violating the integrity of the existing ecosystem any more than they already
27 have (and as indicated above, I asked the Court to enter a TRO against that
28 too, unsuccessfully, but only on behalf of the people at the site, since the

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Sustainability Ordinance giving Nature legal standing was not yet in effect).
The basis for both requests is Santa Monica's Sustainability Ordinance
reproduced in Exhibit 1, which ironically enough became effective a month
after the City Council approved the development agreement under which
Defendants claim a right to destroy the ecosystem.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on July 21, 2013 , at Santa Monica, California.


BREND A BARNES

1 DECLARATION OF BRENDA BARNES RE: NOTICE OF EX PARTE HEARING ON
2 APPLICATION FOR TEMPORARY RESTRAINING ORDER AND OSC RE: PRELIMINARY
3 INJUNCTION

4 BRENDA BARNES declares and says:

5 I am the Plaintiff in this action, I competently make this Declaration on the basis
6 of my own personal knowledge, and if called as a witness I could and would
7 competently testify as stated herein:

8 1. On July 19, 2013, at 9:30 a.m., I called the office of Defendant Marc
9 L. Luzzatto, who acts as spokesperson for all the named Defendants, and told
10 the person answering, who told me her name was Elizabeth, that I wished to
11 speak to Mr. Luzzatto. She told me he was tied up in a meeting and she would
12 take a message..

13 2. I told her I was giving a detailed ex parte notice, so I preferred to
14 give it on voicemail. She said Luzzatto's voicemail was full so she would transfer
15 me to her own voicemail box to leave the message. She did, and I left the
16 message my name was Brenda Barnes, I was calling about a new case like
17 Barnes v. Luzzatto, regarding demolition of trailers, and I was giving notice I
18 would be appearing at an ex parte TRO and OSC hearing to prohibit adversely
19 affecting any natural life at the subject property, on Monday, July 22, 2013 at
20 8:30 a.m. in Department 82, 85, or 86 depending on what the case number
21 assigned to the case was and what judge(s) were affidavited by the parties, of
22 the Los Angeles Superior Court at 111 N. Hill Street, Los Angeles, CA. I left my
23 telephone number in case there were any questions. No one called me about
24 the matter.

25 I declare under penalty of perjury that the foregoing is true and correct.

26 Executed on July 21, 2013, at Santa Monica, California.

27 
28 _____
BRENDA BARNES

EXHIBIT 1

ORDINANCE NUMBER 2421 (CCS)

(City Council Series)

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SANTA MONICA
ESTABLISHING SUSTAINABILITY RIGHTS

WHEREAS, as declared in Santa Monica's Sustainable City Plan, a healthy environment is integral to the City's long-term economic and societal interests and, accordingly, the City's decision-making is guided by the mandate to maximize environmental benefits and reduce or eliminate negative environmental impacts; and

WHEREAS, as further declared in the Sustainable City Plan, local environmental issues cannot be separated from their broader context; and therefore the City's programs and policies should be developed as models that can be emulated by other communities; and

WHEREAS, in furtherance of these commitments and goals, the City must regularly evaluate whether its plans, laws, and programs are sufficient to meet the growing environmental crisis and must explore all means of addressing the growing environmental crisis; and

WHEREAS, in the last fifty years, national and state governments have attempted to address the crisis by adopting specific environmental protection laws, such

as the Clean Water Act, Clean Air Act, National Environmental Policy Act and California Environmental Quality Act, that limit pollution and resource consumption; but those laws also have proven inadequate to provide long-term protection of our rights to clean air, water, and soil, and sustainable food systems, and the rights of natural ecosystems; and

WHEREAS, the inadequacy of these laws results, in part, from the underlying legal assumption that the natural world is "property", which may be used by its owners -- be they individuals, corporations, or other entities -- for their own, private, short-term economic benefit, generally with minimal regard for the health of the environment; and

WHEREAS, numerous specific examples show that this underlying assumption has proven destructive to the environment upon which all living things ultimately depend; and

WHEREAS, in response to the evils of treating the natural world as mere property, the world-wide, national and local environmental communities are urging governments to adopt a new paradigm based upon recognition that both individual human beings and natural communities or ecosystems have fundamental environmental rights which should be recognized by the law, that the health of the world's populations and ecosystems depends on the full protection of these rights, and that asserted corporate rights can no longer be allowed to take precedence over these rights to human and environmental health and well-being; and

WHEREAS, there are numerous examples of policy statements and laws based on this new paradigm that recognize the rights of the natural world to exist, thrive and evolve; and

WHEREAS, Ecuador amended its constitution to include the rights of nature in 2008, with the first successful case applying that right concluding in March 2011; and

WHEREAS, in December 2010, the City of Pittsburgh became the first major city in the United States to adopt a Community Bill of Rights that bans corporations from drilling natural gas within its city limits and elevates the rights of people, the community, and nature over corporate rights; and

WHEREAS, other municipalities in Pennsylvania, Virginia, Maine, Maryland, New Hampshire, New Mexico, Ohio, and New York have adopted similar measures recognizing the rights of people and natural communities and including language that would subordinate the rights of corporations to local sustainability efforts; and

WHEREAS, Santa Monica's own Task Force on the Environment has studied this growing movement and recommended that the City support it as a means of effectuating the commitments and goals already established by the Sustainable City Plan, and of recognizing the inherent rights of the people and natural communities of the City of Santa Monica; and

WHEREAS, on January 24, 2012 the Santa Monica City Council adopted a resolution declaring the City's Commitment to Sustainable Rights; and

WHEREAS, the City is committed to fully implementing its Sustainable City Plan to further effectuate inherent rights of the people and natural communities of the City of Santa Monica.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SANTA MONICA DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. Chapter 4.75 of the Santa Monica Municipal Code is hereby created to read as follows:

Chapter 4.75 GENERAL PROVISIONS

4.75.010 Title

This chapter shall be known as the City of Santa Monica Sustainability Rights Ordinance.

4.75.020 Findings

The City Council finds and declares:

(a) With the exponential growth in human population and its increasing per capita resource consumption, the planet cannot sustain our current way of life, which is destructive to the natural elements upon which all species depend -- the air, water, climate, soil and other fundamental elements of the world;

(b) Like all other communities, Santa Monica's welfare is inextricably bound to the welfare of the natural environment; and the City has therefore long been committed to protecting, preserving and restoring the natural environment and providing a model of environmental sustainability for other communities to utilize; and

(c) The City Council of Santa Monica has expressed this commitment through a multitude of enactments and actions, including recognizing both the rights of natural communities and ecosystems within Santa Monica to exist, thrive and evolve and the rights of the individual human beings that make up the City of Santa Monica to a clean, healthy and sustainable environment. The peoples' rights include, but are not limited to: the right to affordable and accessible water from sustainable water sources for human consumption, cooking, and sanitary purposes, as referenced in Calif. AB 685 (2012); the right to a sustainable energy future based on sustainable renewable energy sources; the right to a sustainable natural climate unaltered by fossil fuel emissions; the right to sustainable, comprehensive waste disposal systems that do not degrade the environment; the right to clean indoor and outdoor air, clean water and clean soil that pose a negligible health risk to the public; and the right to a sustainable food system that provides healthy, locally grown food to the community; and

(d) These rights are not sufficiently safeguarded by the existing body of local, national and international environmental policies and laws, which are grossly inadequate to avert the mounting environmental crisis; and

(e) The inadequacy of the current framework of state, national and international policies and laws necessitates re-examination of the underlying societal and legal assumptions about our relationships with the environment and a renewed focus on effectuating these rights.

4.75.030 Purpose

This Chapter is created and exists for the purpose of codifying Santa Monica's commitment to achieving sustainability by among other things: (1) restoring, protecting and preserving our natural environment and all of its components and communities including, but not limited to the air, water, soil, and climate upon which all living things depend; (2) creating and promoting sustainable systems of food production and distribution, energy production and distribution, transportation, waste disposal, and water supply; and (3) to the full extent legally possible, subordinating the short term, private, financial interests of corporations and others to the common, long-term interest of achieving environmental and economic sustainability.

4.75.040 Rights of Santa Monica Residents and The Natural Environment

(a) All residents of Santa Monica possess fundamental and inalienable rights to: clean water from sustainable sources; marine waters safe for active and passive recreation; clean indoor and outdoor air; a sustainable food system that provides healthy, locally grown food; a sustainable climate that supports thriving human life and a flourishing biodiverse environment; comprehensive waste disposal systems that do not degrade the environment; and a sustainable energy future based on renewable energy sources.

(b) Natural communities and ecosystems possess fundamental and inalienable rights to exist and flourish in the City Of Santa Monica. To effectuate those rights on behalf of the environment, residents of the City may bring actions to protect these natural communities and ecosystems, defined as: groundwater aquifers,

atmospheric systems, marine waters, and native species within the boundaries of the City.

(c) All residents of Santa Monica possess the right to self-governance and to a municipal government which recognizes that all power is inherent in the people, that all free governments are founded on the people's authority and consent, and that corporate entities, and their directors and managers, do not enjoy special privileges or powers under the law that subordinate the community's rights to their private interests.

4.75.050 Biennial Report

At least once during every 24 month period, City staff shall prepare a written report to the community on the state of the local environment, the realization of the rights recognized in Chapter 4.75, and the City's progress in effectuating and enforcing the Sustainable City Plan and the policies and provisions of this Chapter. The report shall include recommendations for advancing and ensuring compliance with the Sustainable City Plan.

4.75.060 Biennial Hearing

The City Council will bi-annually review the report, conduct a public hearing, assess the City's progress in effectuating and enforcing both the Sustainable City Plan and the policies and provisions of this Chapter, and provide direction to staff to ensure compliance with the Plan's provisions and with the inherent rights of the people and natural communities of the City of Santa Monica described herein.

4.75.070 Compliance Assurance

The City or any City resident may bring an action to enforce any provision of the Santa Monica Municipal Code that advances the goals identified as enforceable in the Sustainable City Plan.

Section 2. Any provision of the Santa Monica Municipal Code or appendices thereto inconsistent with the provisions of this Ordinance, to the extent of such inconsistencies and no further, is hereby repealed or modified to that extent necessary to effect the provisions of this Ordinance.


Section 3. If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed this Ordinance and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional without regard to whether any portion of the ordinance would be subsequently declared invalid or unconstitutional.

Section 4. The Mayor shall sign and the City Clerk shall attest to the passage of this Ordinance. The City Clerk shall cause the same to be published once in the official newspaper within 15 days after its adoption. This Ordinance shall become effective 30 days from its adoption.

APPROVED AS TO FORM:


MARSHA JONES MOUTRIE
City Attorney

Approved and adopted this 9th day of April, 2013.


Pam O'Connor, Mayor

State of California)
County of Los Angeles) ss.
City of Santa Monica)

I, Sarah P. Gorman, City Clerk of the City of Santa Monica, do hereby certify that the foregoing Ordinance No. 2421 (CCS) had its introduction on March 12, 2013, and was adopted at the Santa Monica City Council meeting held on April 9, 2013, by the following vote:

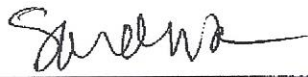
Ayes: Councilmembers: Davis, Holbrook, McKeown, Vazquez, Winterer
Mayor Pro Tem O'Day, Mayor O'Connor

Noes: Councilmembers: None

Absent: Councilmembers: None

A summary of Ordinance No. 2421 (CCS) was duly published pursuant to California Government Code Section 40806.

ATTEST:



Sarah P. Gorman, City Clerk

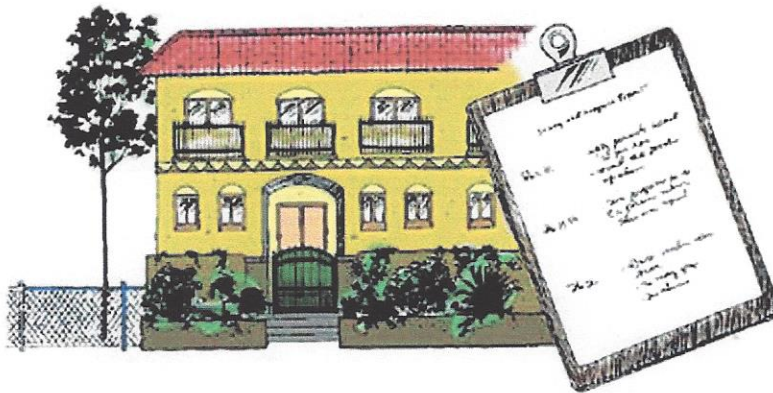
EXHIBIT 2

Construction Management : Demolition Plan

Construction Management Intro.
Demolition Plan
Salvage and Recycle in Demolition
Protect Topsoil and Vegetation
Stormwater Control
Site Waste-Management
Safety Procedures
Concrete and Masonry Reuse
Material Conservation
Safe Materials
Pesticides
Efficient, Low Pollution
Equipment
Protect Occupants

Prepare a demolition plan that maximizes salvage and recycling of building and landscape materials. Specify the expected recovery rate for each material type in the demolition contract.

Where an environmental audit for hazardous materials and contaminated soil is required, this stage must be done first. Next audit the building and site with a person experienced in materials recovery to identify salvageable and recyclable materials that can be removed without exposure to asbestos, lead and other hazardous materials.



Schedule the removal of reusable and recyclable materials prior to demolition to maximize the recovery rate. Often insufficient time is allowed, resulting in wasted materials and higher landfill fees.

Plan to protect soils, vegetation and watersheds during demolition and excavation.

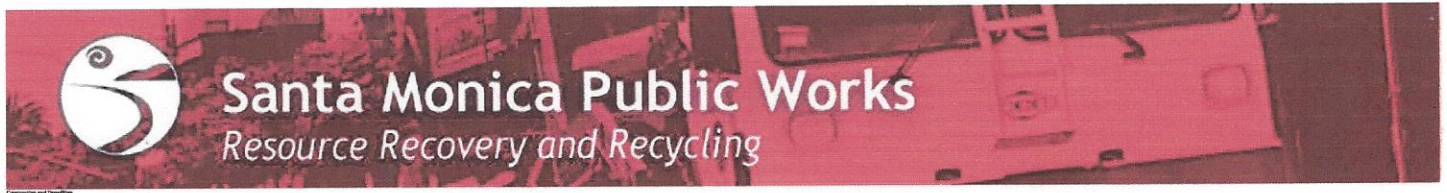
See Appendix A for solid waste recovery specifications.

Cautions

- Asbestos, lead, contaminated soils or other environmental hazards of older buildings may severely restrict feasibility of salvage.
- All equipment which may contain mercury, lead, PCBs, radioactive or other hazardous

substances should be properly disposed by a licensed hazardous waste contractor. This includes fluorescent lamps and ballasts, thermostats, pipe flashings, transformers and smoke alarms.

- Economics and scheduling of construction may restrict time allowed for salvage.
- Liability on site typically restricts salvage to insured contractors.



Construction and Demolition (C&D) refuse should be sent to an approved recycling facility. All C&D projects bound by the requirements of a Waste Management Plan (WMP) must use the approved haulers and/or recycling facilities chosen in the WMP.

Construction material such as concrete, bricks, drywall, lumber, etc., must be removed by the contractor or you may rent temporary construction containers by authorized private haulers. Please refer to list of approved haulers.

[C&D FAQs](#)

[Waste Management Plan Form](#)

[Waste Plan Instructions](#)

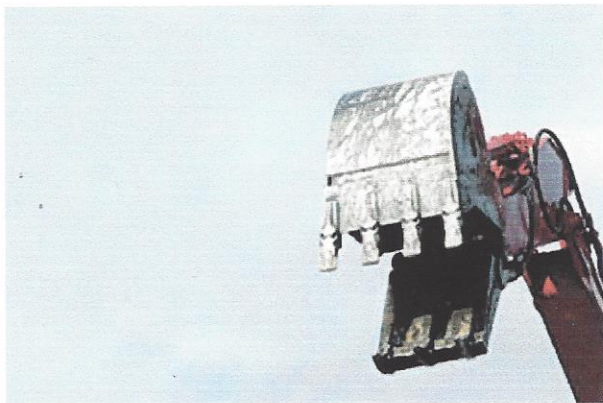
[Compliance Report](#)

[Compliance Report Instru](#)

[Approved Haulers](#)

[Approved Recycling Faci](#)

[C&D Ordinance](#)



DIRT, BRICKS, BLOCKS AND CONCRETE: Refuse produced by a construction contractor will not be collected. Items such as dirt, brick, block, and concrete should not be mixed with your regular refuse. This is a special collection requiring a special truck other than the normal refuse collection truck. The fee-based bulky waste collection service is available for items excluded from routine collections, such as furniture, moving debris, old appliances, etc. These items are collected from city residents only. Requests for special collections should be made by Tuesday for collection that week by calling (310) 458-2223. Please be sure to let us know what type of material you have when you call.

Construction and Demolition Waste FAQs

Q. My construction (addition, alteration, demolition, etc.) project will have very small amounts of waste generated. Do I still have to complete a Waste Management Plan?

A. Yes. If it is determined that the valuation of your project is at least \$50,000 or if the total square feet of your project is equal to or greater than 1,000 sq. ft., then you must complete a Waste Management Plan. In addition, ALL demolition projects require a Waste Management Plan.

Q. If I want to make changes to the original Waste Management Plan, when should I inform the Resource Recovery & Recycling Division of these changes?

A. Any changes that are made to the original Waste Management Plan must be reported to the Solid Waste Management division before work commences, or you run the risk of forfeiting some or all of your deposit.

Q. When do I file for refund of my performance deposit?

A. You must file for refund of your performance deposit within 30 days of Final Inspection sign-off by a City of Santa Monica building inspector. If you wait until after 30 days, you may forfeit some or all of your performance deposit.

Q. Do you require all tonnage receipts from the project to have the project address on them?

A. Yes, all weight tickets must have the project address to be accepted for Final Compliance.

Q. How do I file for refund of my performance deposit?

A. To file for a refund you must submit:

1. All documentation to show where you recycled/disposed of the construction and/or demolition (C&D) debris (e.g. disposal receipts showing weights, material type and project address, any dispatch tickets showing private hauler used to haul debris and project address, any photos of salvaged or reused items at the project site).
2. A copy of the building and/or demolition permits sign-off by a City of Santa Monica employee.
3. A completed Final Compliance Form must be submitted.

Q. How do I ensure that I reach the minimum requirement of recycling 65% of all the debris that is hauled from my project?

A. You should bring all of your C&D debris to one of the Mixed C&D Recycling Facilities to ensure that you meet the minimum recycling requirements. See Approved Facilities List.

Q. If I plan to salvage materials from my project prior to or during

Resource Recovery &
Recycling Division
2500 Michigan Ave.
Santa Monica, CA 90404

[Map](#)

Phone: 310-458-2223

Fax: 310-264-7750

email:

recycling@smgov.net

Office Hours:

Mon. - Fri.: 8:00 am -
5:00 pm

[Holiday Schedule](#)

project prior to or during construction and/or demolition activities do I need to document this material and how would I do this?

A. Yes, you will need to document these salvaged items by taking photos and submitting them with all other necessary paperwork for return of deposit.

Q. What constitutes inerts and do they have to be delivered to an inert landfill?

A. Inerts are source-separated or mixed loads of dirt, concrete or asphalt and must be taken to an approved inert landfill. Reference the Approved Facilities List for details.

Q. Should any of the material that is coming out of my project be taken to a landfill?

A. We do not suggest any material from a project being conducted in the City of Santa Monica be taken to a landfill because it will reduce the 65 % recycle rate required by the city and reduce the amount of performance deposit returned to the applicant.

Q. What constitutes self-hauling by a contractor in the City of Santa Monica?

A. Self-hauling is when the contractor uses his/her own trucks to haul C&D debris from a construction and/or demolition project in the City of Santa Monica. A self-hauler CAN NOT own refuse bins. If they do, then they do not qualify as a Self-Hauler and must apply for an Enterprise Permit at the Resource Recovery & Recycling Division located at 2500 Michigan Avenue.

Q. What are examples of Educational Strategies (Section II, Question #7) in regards to reaching my diversion goals and ensuring participation by all workers of the Waste Reduction and Recycling Plan activities?

A. Regular tailgate meetings are suggested to inform employees about our diversion requirements. Along with this method you could also post the Recycling Plan activities at the jobsite.

Q. How do you determine the amount of mixed C&D material (in tons) that you must estimate in Section II – Page 4?

A. If your project concerns an alteration or new construction you can take your projected square footage and multiply it by 5 and divide it by 2000 to come up with an estimated "Total Quantities" in tons column. If your project concerns a demolition within the City of Santa Monica you can take your projected square footage and multiply it by 50 and divide it by 2000 to come up with your estimated "Total quantities" in tons.

Q. How do you determine your estimated recycling rate in Section II – Page 4?

A. Use the recycling rate listed for the C&D facility that you have chosen. This can be found on the Approved Facilities list online at the city's website. If you have NOT chosen a city approved C&D facility, then you run the risk of forfeiting some or all of your deposit by not meeting the recycling requirements.

Q. What is the normal estimated time allowed for the applicant to receive his/her deposit after they have submitted final compliance?

A. Normally, 4 to 6 weeks.

Q. To whom is the deposit made out to/returned to?

A. According to city policy, the deposit must be made payable to the original applicant stated on the C&D Debris Receipt. In order to process the refund to another person and/or company, we need a letter from the original applicant releasing the funds to the new payee.

EXHIBIT 3

EXHIBIT 3

Exhibit D to the Development Agreement-
MITIGATION MEASURES AND CONDITIONS OF APPROVAL

19. **GS4** An erosion control plan that identifies BMPs shall be implemented to the satisfaction of the City of Santa Monica Building and Safety Department to minimize potential erosion during construction. The erosion control plan shall be a condition prior to issuance of any grading permit.
20. **GS5** Provisions shall be made for adequate surface drainage away from the areas of excavation as well as protection of excavated areas from flooding. The grading contractor shall control surface water runoff and the transport of silt and sediment.
21. **HM1** Prior to issuance of a demolition permit, for the permanent structures on the project site a Licensed Asbestos Inspector shall be retained to determine the presence of asbestos and asbestos containing materials (ACM) within structures to be demolished that are present on the project site. If asbestos is discovered, a Licensed Asbestos Abatement Contractor shall be retained to safely remove all asbestos from the development site.
22. **HM2** Prior to issuance of a demolition permit, lead-based paint testing shall be conducted for existing structures and trailers to be demolished. All materials identified as containing lead shall be removed by a licensed lead-based paint/materials abatement contractor.
23. **HM3** An operations and maintenance program shall be implemented in order to safely manage the suspect ACMs and LBP located at the project site.
24. **HW1** If temporary and/or permanent dewatering on the project site is required, the Applicant shall obtain a dewatering permit from the City of Santa Monica Water Resources Protection Program prior to the issuance of a grading permit. Soil and groundwater testing to a minimum depth of 50 feet shall be conducted to the satisfaction of the Water Resources Protection Program staff. If contaminated groundwater is discovered on-site, treatment and discharge of the contaminated groundwater shall be conducted in compliance with applicable regulatory requirements including the Los Angeles Regional Water Quality Control Board standards.
25. **T1 23rd Street/Ocean Park Boulevard.** Add an exclusive right-turn lane on the eastbound approach of Ocean Park Boulevard. The mitigation measure was proposed due to the heavy existing eastbound through movement volumes. The proposed mitigation would require shifting the existing eastbound through lane approach approximately two feet to the north to provide room for a functional right-turn lane. The proposed mitigation would require implementation of peak period parking restrictions for the first 75 feet of parking (approximately three parking spaces) closest to the intersection (eastbound on Ocean Park Boulevard, west of 23rd Street) so vehicles can make eastbound right-turns onto 23rd Street from Ocean Park Boulevard during the peak periods or when there is available space outside of peak periods. The proposed mitigation measure would require

27. Any construction related activity in the public right-of-way will be required to acquire the approvals by the City of Santa Monica, including but not limited to: Use of Public Property Permits, Sewer Permits, Excavation Permits, Alley Closure Permits, Street Closure Permits, and Temporary Traffic Control Plans.
28. Immediately after demolition and during construction, a security fence, the height of which shall be the maximum permitted by the Zoning Ordinance, shall be maintained around the perimeter of the lot. The lot shall be kept clear of all trash, weeds, etc.
29. Vehicles hauling dirt or other construction debris from the site shall cover any open load with a tarpaulin or other secure covering to minimize dust emissions. Immediately after commencing dirt removal from the site, the general contractor shall provide the City of Santa Monica with written certification that all trucks leaving the site are covered in accordance with this condition of approval.
30. During demolition, excavation, and construction, this project shall comply with SCAQMD Rule 403 to minimize fugitive dust and associated particulate emission, including but not limited to the following:
 31. All material excavated or graded shall be sufficiently watered to prevent excessive amounts of dust. Watering shall occur at least three times daily with complete coverage, preferably at the start of the day, in the late morning, and after work is done for the day.
 32. All grading, earth moving, or excavation activities shall cease during periods of high winds (i.e., greater than 20 mph measured as instantaneous wind gusts) so as to prevent excessive amounts of dust.
 33. Soils stockpiles shall be covered.
 34. Onsite vehicle speeds shall be limited to 15 mph.
 35. Wheel washers shall be installed where vehicles enter and exit the construction site onto paved roads or wash off trucks and any equipment leaving the site each trip.
 36. An appointed construction relations officer shall act as a community liaison concerning onsite construction activity including resolution of issues related to PM10 generation.
 37. Streets shall be swept at the end of the day using SCAQMD Rule 1186 certified street sweepers or roadway washing trucks if visible soil is carried onto adjacent public paved roads (recommend water sweepers with reclaimed water).
 38. All active portions the construction site shall be sufficiently watered three times a day to prevent excessive amounts of dust.
 39. Developer shall prepare a notice, subject to the review by the Director of Planning and Community Development, that lists all construction mitigation requirements,

demolition waste diversion requirements specified in Section 8.108 of the Santa Monica Municipal Code.

RENT CONTROL

55. Pursuant to SMMC Section 4.24.030, prior to receipt of the final permit necessary to demolish, convert, or otherwise remove a controlled rental unit(s) from the housing market, the owner of the property shall first secure a removal permit under Section 1803(t), an exemption determination, an approval of a vested rights claim from the Rent Control board, or have withdrawn the controlled rental unit(s) pursuant to the provisions of the Ellis Act.

HOUSING AND ECONOMIC DEVELOPMENT

56. To ensure AHPP compliance, a monitoring fee will be applied to each affordable unit produced. A separate fee has been established for a new unit start-up, subsequent re-occupancy/resale and an annual monitoring fee.

The Administrative Guidelines for the AHPP (fee structures, costs, and affordability limits) are updated annually and available on the Santa Monica House and Economic Development website.

PUBLIC WORKS

General Conditions

57. Developer shall be responsible for the payment of the following Public Works Department (PWD) permit fees prior to issuance of a building permit:

- a. Water Services
- b. Wastewater Capital Facility
- c. Water Demand Mitigation
- d. Fire Service Connection
- e. Tieback Encroachment
- f. Encroachment of on-site improvements into public right-of-way
- g. Construction and Demolition Waste Management – If the valuation of a project is at least \$50,000 or if the total square feet of the project is equal to or greater than 1000 square feet, then the owner or contractor is required to complete and submit a Waste Management Plan. All demolition projects are required to submit a Waste Management Plan. A performance deposit is collected for all Waste Management Plans equal to 3% of the project value, not to exceed \$30,000. All demolition only permits require a \$1,000 deposit or \$1.00 per square foot, whichever is the greater of the two.

Some of these fees shall be reimbursed to developer in accordance with the City's standard practice should Developer not proceed with development of the Project. In order to receive a refund of the Construction and Demolition performance deposit, the

owner or contractor must provide receipts of recycling 70% of all materials listed on the Waste Management Plan.

58. Any work or use of the public right-of-way including any proposed encroachments of on-site improvements into the public right-of-way will require a permit from the Public Works Department (PWD) - Administrative Services Division.
59. Plans and specifications for all offsite improvements shall be prepared by a Registered Civil Engineer licensed in the State of California for approval by the City Engineer prior to issuance of a building permit.
60. Immediately after demolition and during construction, a security fence, the height of which shall be the maximum permitted by the Zoning Ordinance, shall be maintained around the perimeter of the lot. The lot shall be kept clear of all trash, weeds, etc.
61. A sign shall be posted on the property in a manner consistent with the public hearing sign requirements, which shall identify the address and phone number of the owner, developer and contractor for the purposes of responding to questions and complaints during the construction period. Said sign shall also indicate the hours of permissible construction work.
62. Prior to the demolition of any existing structure, the applicant shall submit a report from an industrial hygienist to be reviewed and approved as to content and form by the Office of Sustainability and Environment Division. The report shall consist of a hazardous materials survey for the structure proposed for demolition. The report shall include a section on asbestos and in accordance with the South Coast AQMD Rule 1403, the asbestos survey shall be performed by a state Certified Asbestos Consultant (CAC). The report shall include a section on lead, which shall be performed by a state Certified Lead Inspector/Assessor. Additional hazardous materials to be considered by the industrial hygienist shall include: mercury (in thermostats, switches, fluorescent light), polychlorinated biphenyls (PCBs) (including light Ballast), and fuels, pesticides, and batteries.

Water Resources

63. Connections to the sewer or storm drains require a sewer permit from the PWD - Civil Engineering Division. Connections to storm drains owned by Los Angeles County require a permit from the L.A. County Department of Public Works.
64. Parking areas and structures and other facilities generating wastewater with potential oil and grease content are required to pretreat the wastewater before discharging to the City storm drain or sewer system. Pretreatment will require that a clarifier or oil/water separator be installed and maintained on site.
65. If the project involves dewatering, developer/contractor shall contact the LA Regional Water Quality Control Board (RWQCB) to obtain an NPDES Permit for discharge of groundwater from construction dewatering to surface water. For more information

EXHIBIT 4

From SMCC Resolution on Nov 13, 2012 adopting a statement of overriding considerations

HM2 Prior to issuance of a demolition permit, lead-based paint testing shall be conducted for existing structures and trailers to be demolished. All materials identified as containing lead shall be removed by a licensed lead-based paint/materials abatement contractor.

HM3 An operations and maintenance program shall be implemented in order to safely manage the suspect ACMs and LBP located at the project site.

(e) The Revised Final EIR determined that without mitigation the proposed project could result in significant adverse impacts related to hydrology/water quality. Consistent with Article VI, Section 12 of the City CEQA Guidelines and Section 15091 and 15092 of the State of California CEQA Guidelines and as detailed in the Revised Final EIR, the City Council finds that the following mitigation measures have been required for the project that will avoid or reduce most of the project's impacts related to hydrology/water quality to below levels of significance:

HW1 If temporary and/or permanent dewatering on the project site is required, the Applicant shall obtain a dewatering permit from the City of Santa Monica Water Resources Protection Program prior to the issuance of a grading permit. Soil and groundwater testing to a minimum depth of 50 feet shall be conducted to the satisfaction of the Water Resources Protection Program staff. If contaminated groundwater is discovered on-site, treatment and discharge of the contaminated groundwater shall be conducted in compliance with applicable regulatory requirements including the Los Angeles Regional Water Quality Control Board standards.

EXHIBIT 5

EXHIBIT "I"

CONSTRUCTION MITIGATION PLAN

CON-1 Construction Impact Mitigation Plan.

The applicant shall prepare, implement and maintain a Construction Impact Mitigation Plan that shall be designed to:

- Prevent material traffic impacts on the surrounding roadway network.
- Minimize parking impacts both to public parking and access to private parking to the greatest extent practicable.
- Ensure safety for both those constructing the project and the surrounding community.
- Prevent substantial truck traffic through residential neighborhoods.

The Construction Impact Mitigation Plan shall be subject to review and approval by the following City departments: Department of Public Works; Fire; Planning and Community Development; and Police. This review will ensure that the Plan has been designed in accordance with this mitigation measure. This review shall occur prior to commencement of any construction staging for the project. The Mitigation Plan shall, at a minimum, include the following:

Ongoing Requirements Throughout the Duration of Construction

- A detailed traffic control plan for work zones shall be maintained which includes at a minimum accurate existing and proposed: parking and travel lane configurations; warning, regulatory, guide and directional signage; and area sidewalks, bicycle lanes and parking lanes. The plan shall include specific information regarding the project's construction activities that may disrupt normal pedestrian and traffic flow and the measures to address these disruptions. Such plans must be reviewed and approved by the Transportation Management Division prior to commencement of construction and implemented in accordance with this approval.
- Work within the public right-of-way shall be performed between 9:00 AM and 4:00 PM, including: dirt and demolition material hauling and construction material delivery. Work within the public right-of-way outside of these hours shall only be allowed after the issuance of an after-hours construction permit.
- Streets and equipment shall be cleaned in accordance with established PW requirements.

EXHIBIT 6

Due to the commercial and industrial uses that this area has been subject to over many decades, releases of hazardous materials have occurred within the project area.⁴ The Southern California Gas Company utility yard is listed on the Resource Recovery Act Small Quantity Generator (RCRA-SQG) and the Emergency Response Notification System (ERNS) site databases. According to the ERNS listing, this site reported a release of 30 gallons hydraulic fluid on December 2, 1992. The release reportedly impacted soil only, and no groundwater was affected. This site is currently listed as a fixed facility.⁵ Based on the nature of the medium impacted (soil only) and the regulatory status, this site would not represent a significant environmental concern to the project site. In addition, the Phase I Environmental Site Assessment (Phase I ESA) prepared for the adjacent project site at 2834 Colorado Boulevard indicated that no items of environmental concern were identified on the adjacent properties, including the project site. Several properties located within ½ mile of the project site are listed as hazardous materials site.⁶ However, based on the relative distance, the regulatory status, and/or the inferred direction of groundwater flow, these sites are not expected to represent a significant environmental concern for the proposed project. Therefore, impacts relating to the accidental release of hazardous materials from soil and/or groundwater contamination at nearby surrounding land uses would be less than significant.

Construction activities would include demolition of the existing ~~one-story building-office permanent buildings~~ on the project site (~~no trailers are proposed to be demolished~~), excavation, building construction, utilities/infrastructure improvements, paving and landscaping. ~~The proposed project would include the demolition of the existing one-story office building on-site (no trailers are proposed to be demolished).~~ In addition, any trailers that have not been relocated and/or moved from the site prior to the issuance of a demolition permit for the permanent buildings would be demolished on-site. It is likely that asbestos and lead-based paint are present in buildings and trailers constructed prior to 1978. According to the Los Angeles County Assessor's Office, the office structure on-site was built in 1950. In addition, the trailers on the property were manufactured prior to 1978. Given that the project site includes a building and trailers ~~one building~~ predating 1978, it is reasonable to assume that these materials are present and could be encountered during demolition. Therefore, without mitigation, the proposed project would potentially result in significant impacts related to the accidental release of hazardous materials.

Mitigation Measures

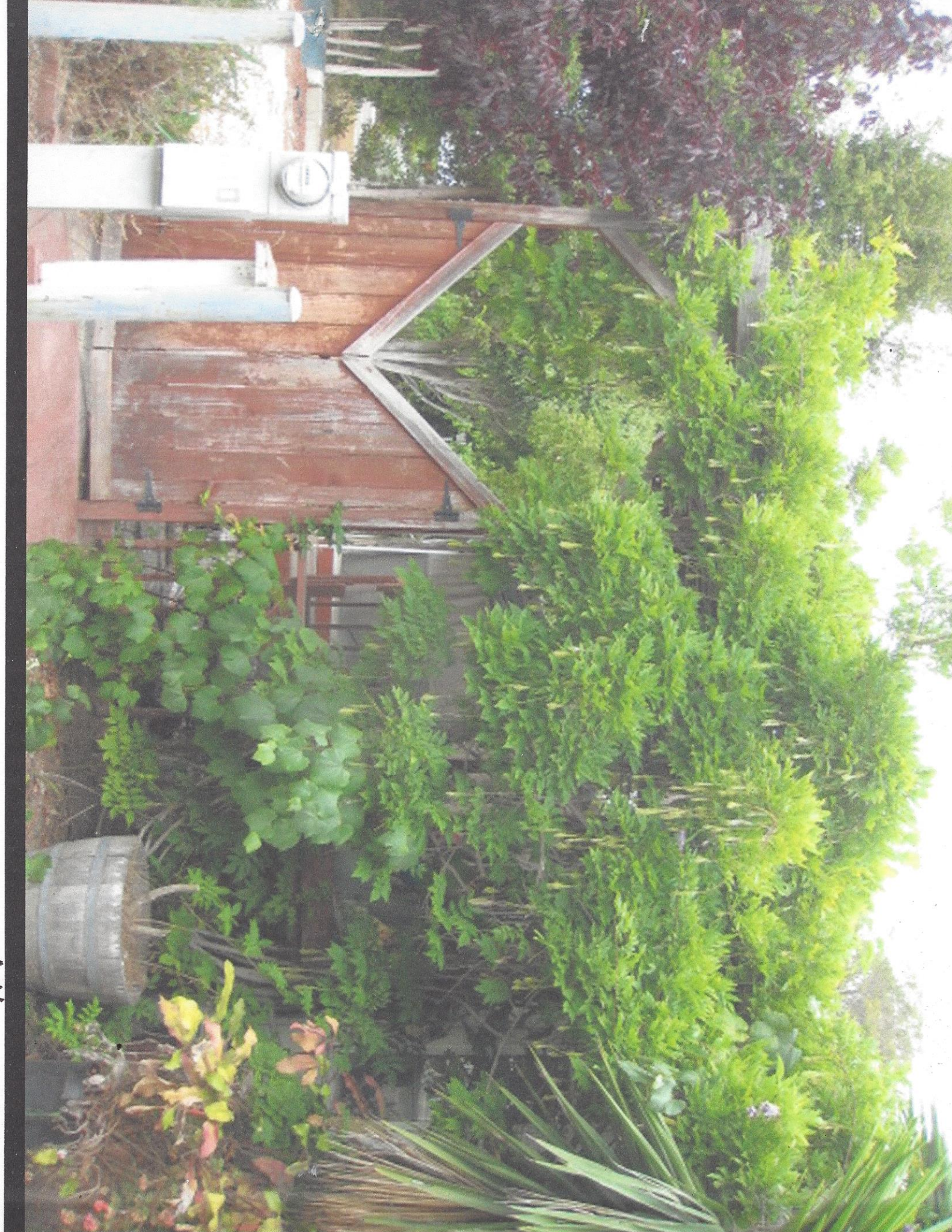
- HM1** Prior to issuance of a demolition permit for the permanent structures on the project site, a Licensed Asbestos Inspector shall be retained to determine the presence of asbestos and asbestos containing materials (ACM) within structures and trailers to be demolished that are present on the project site. If asbestos is discovered, a Licensed Asbestos Abatement Contractor shall be retained to safely remove all asbestos from the project site.
- HM2** Prior to issuance of a demolition permit for the permanent structures on the project site, lead-based paint testing shall be conducted for existing permanent structures and trailers to be demolished. All materials identified as containing lead shall be removed by a licensed lead-based paint/materials abatement contractor.
- HM3** An operations and maintenance program shall be implemented in order to safely manage the suspect ACMs and LBP located at the project site.

⁴The direction of groundwater in the project vicinity is inferred to flow toward the southeast based on the topographic map interpretation.

⁵Phase I Environmental Site Assessment, 2834 Colorado Boulevard, prepared by Asbestos, Environment, and Safety, dated March 4, 2004.

⁶Phase I Environmental Site Assessment, 2834 Colorado Boulevard, prepared by Asbestos, Environment, and Safety, dated March 4, 2004.

EXHIBIT 7



ALL



A17





B12

EXHIBIT 8 .



EXHIBIT 9





