



Board of Directors  
Kensington Police Protection  
and  
Community Services District

**Meeting Agenda**  
**Thursday, November 12, 2020**  
**Via Teleconference**

<https://www.kppcsd.org/2020-11-12-kppcsd-board-meeting>

**The page at the URL above will have instructions on how to join the online meeting.**

*In response to the County and State "shelter in place" orders, the Governor issued an order expanding his prior waiver of normal Brown Act requirements. Executive Order N-29-20, issued March 17, 2020, authorizes all-electronic meetings without a physical location for agency officials or members of the public. The published agenda must advise the public of the means by which it may participate in the meeting and of a procedure by which disabled persons may submit requests for accommodation or modification. The order does not suspend notice requirements.*

*Executive Order N-29-20 is effective while state and/or local public health officials have imposed or recommended social distancing measure. The District must prioritize public health and containing the spread of the Covid-19 virus, which precludes holding physical public meetings. The District will comply with the usual Brown Act requirements to the extent compatible with the directives and recommendations of state and local health officials. We appreciate your understanding.*

**Special Meeting (7:00 p.m.)**

**CALL TO ORDER**

**PUBLIC COMMENT ON CLOSED SESSION AGENDA** (Members of the public may address the Board for up to three minutes on items listed on the Closed Session.)

**CLOSED SESSION** The Board of Directors will meet in Closed Session pursuant to California Government Code Section 54957(b) to consider matters related to the appointment of the District General Manager, including the discussion of individual candidates.

**Regular Meeting (7:30 p.m.)**

**CALL TO ORDER**

**GENERAL PUBLIC COMMENT** (Members of the public may address the Board for up to three minutes on items not listed on the agenda that are within the jurisdiction of the District.)

### **BOARD/STAFF COMMUNICATION**

- General Manager's Report
- Police Chief Report
- Board of Directors Communication

### **CONSENT CALENDAR**

1. Consider Approval of Minutes for the Regular Board Meeting of October 22, 2020 and the Special Meeting of November 6, 2020.

### **BOARD DISCUSSION AND DETERMINATION**

2. Receive a status report by the General Manager on Public Safety Building project and consider directing staff to schedule a joint meeting of the KPPCSD and Kensington Fire Protection District Boards. (Discussion/direction to staff)
3. Receive a presentation from Board President Deppe and Board Vice-President Sherris-Watt regarding Kensington pathways and consider possible Board action and/or direction to staff. (Presentation/discussion/action)

### **ADJOURNMENT**

The next regular meeting will be held on December 10, 2020.

### **Rules of Decorum at Meetings**

- Please observe the three-minute per person limit (once per item) and twenty-minute total limit, per Board Policy 4120.4.1.
- Members of the public may address the Board on items not listed on the agenda but that are within the jurisdiction of the District during the General Public Comments section.
- Members of the Public may address the Board on items agendaized for discussion and/or action after any report has been presented by appropriate staff or director and the Board has raised its questions regarding that report.
- If there are several speakers, please be concise to give others the opportunity to speak.
- If any meeting is willfully interrupted so as to render the orderly conduct of the meeting infeasible, the Board President may order the person or group of persons causing the disruption removed. If removal of the person or group of persons causing the disruption of the meeting does not restore order, the Board President may order the meeting cleared of all members of the public except members of the media and proceed to address the remaining items on the agenda.

### **General Information**

- All proceedings of the Open Session will be audio and video recorded if possible.
- The District has devices for hearing assistance. Please contact Interim General Manager Bill Lindsay for information about the equipment.
- Upon request, the Kensington Police Protection and Community Services District will provide written agenda materials in appropriate alternative formats or disability-related modification of disabilities to participate in public meeting. Please send written request, including your name, mailing address,

phone number, and a brief description of the requested materials and preferred alternative format or auxiliary aid or service at least two days before the meeting. Requests should be sent to Kensington Police Protection & Community Services District, 217 Arlington Ave, Kensington, CA 94707.

- To be added to the Board Agenda Mailing List, complete and submit the form at <https://www.kppcsd.org/agenda-mailing-list> or by notifying the Clerk of the Board at [llewis@kppcsd.org](mailto:llewis@kppcsd.org).

**POSTED:** Public Safety Building – Colusa Food – Arlington Kiosk and at [www.kppcsd.org](http://www.kppcsd.org). Complete agenda packets are available at the Public Safety Building.

All public records that relate to an open session item of a meeting of the Kensington Police Protection & Community Services District that are distributed to a majority of the Board less than 72 hours before the meeting, excluding records that are exempt from disclosure pursuant to the California Public Records Act, will be available for inspection at the **District offices, 217 Arlington Ave, Kensington, CA 94707** at the same time that those records are distributed or made available to a majority of the Board.

**BOARD OF DIRECTORS MEETING MINUTES**

**Thursday, October 22, 2020**

**Via Teleconference**

**Special Meeting (7:00 p.m.)**

**CALL TO ORDER**

[TS .03] President Chris Deppe called to order the Special Closed Session Meeting of the Board of Directors at 7:00 p.m. Directors Cyrus Modavi, Eileen Nottoli, Rachelle Sherris-Watt, and Sylvia Hacaj were present at roll call.

Staff present included Interim General Manager Bill Lindsay and General Counsel Ann Danforth.

**PUBLIC COMMENT ON CLOSED SESSION AGENDA**

None.

**CLOSED SESSION**

The Board of Directors met in Closed Session pursuant to California Government Code section 54957(b) to consider matters related to the appointment of the District General Manager, including the discussion of individual candidates.

**Regular Meeting (7:30 p.m.)**

**ANNOUNCEMENT FROM CLOSED SESSION**

[TS 0.16] President Deppe announced that the Closed Session Meeting would be continued after the Regular Meeting.

**CALL TO ORDER**

[TS .50] President Deppe called to order the Regular Meeting of the Board of Directors at 7:39 p.m. Directors Sylvia Hacaj, Rachelle Sherris-Watt, Cyrus Modavi, and Eileen Nottoli were present at roll call.

Staff present included Interim General Manager Bill Lindsay, Interim Police Chief Walt Schuld, General Counsel Ann Danforth, and Clerk of the Board Lynelle M. Lewis.

**GENERAL PUBLIC COMMENT**

[TS 1.06] The following persons provided public comment: 1) Julian Jenson proposed off leash time for dogs at Kensington Park after school hours and considering a feasibility study on this issue; 2) Justin supported having off leash times in the park and urged consideration of a feasibility study; 3) Betty Lee supported off leash time for dogs at the park and encouraged a feasibility study; 4) Kelly McDonald supported the study of allowing dogs off leash at the park; and 5) Andy Wilbert supported a feasibility study for allowing dogs off leash at the park.

## **BOARD/STAFF COMMUNICATION**

[TS 10:42] General Manager's Report. Interim General Manager Bill Lindsay reported that the Kensington Park restrooms will open on Monday, October 26<sup>th</sup>. He said the restrooms will be disinfected each morning according to Center for Disease Control health standards. Signage will also be posted both inside and outside of the restrooms reminding park users of safe park and restroom usage. The Board recommended that staff look into installing lids on the toilets and including on the signage a reminder about wearing masks. Mr. Lindsay said he would follow on these recommendations.

[TS 14:54] The following persons provided public comment: 1) Kelly McDonald asked if there would be extra cleaning of the park; and 2) Danielle Verdugo thanked the Board for opening the restrooms and asked about the cleaning schedule for the bathroom. Mr. Lindsay addressed the commenters and said he would follow up on overall park cleaning efforts.

[TS 17:45] Police Chief Report. Interim Police Chief Schuld said the Police Department responded to complaints about dogs off leash in the park. There was discussion about the Contra Costa County "leash law" ordinance and KPPCSD's authority to override this. General Counsel Danforth will research exemptions to the "leash law" ordinance and report back to the Board.

[TS 20:50] Board of Directors Communication. Director Modavi requested having a discussion about temporary housing for the police relocation. Director Sherris-Watt mentioned that there was discussion in 2015 about creating a dog park and suggested revisiting this topic in the coming months. She offered condolences to the family and friends of former KPPCSD Attorney Randy Riddle who recently passed away.

## **CONSENT CALENDAR**

### **1. [TS 24:28] Consider Approval of Minutes for the Regular Board Meeting of October 8, 2020.**

Director Modavi pulled the Minutes to express concern that the minutes do not include sufficient Board discussion on issues. Mr. Lindsay said that the minutes followed current District policy. Following board discussion, President Deppe said minute preparation can be considered at future meeting as part of the Policies & Procedures review.

- President Deppe made a motion to approve the October 8<sup>th</sup> Minutes as presented on the Consent Calendar and Director Hacaj seconded the motion. The motion carried (4-1) by the following roll call vote: AYES (Directors Sherris-Watt, Nottoli, Hacaj, and Watt) and NOES (Modavi).

## **BOARD DISCUSSION AND DETERMINATION**

### **2. [TS 35:27] Review Final Financial Report for the Community Center Renovation Project.**

Director Sherris-Watt presented an overview of the Community Center renovation project scope, expenses and donations from 2015-2020. The District's costs for the renovation project was \$1,209,563.94. She noted that while the Center has been completed, due to Covid-19 there has

been limited use and no events or tours have been scheduled.

3. [TS 52:47] **Review Financial Statements for the Quarter Ending September 30, 2020.**

Interim General Manager Lindsay presented financial statements (expense report, balance sheet, and income statement) from July 1 through September 30, 2020. He said the Finance Committee reviewed these statements on October 20<sup>th</sup>, and staff will be providing responses to questions that were raised. Mr. Lindsay and Interim Police Chief Schuld responded to questions raised by Director Nottoli on line item increases in insurance, communications, workers' compensation, overtime, and general liability expenses. They pointed out that that some expenses were paid in a lump sum (i.e. annually) versus on a monthly billing. Director Nottoli also asked about budget projections for category 527 (CalPERS District portion). Mr. Lindsay said staff would follow up on this. Additionally, Director Nottoli asked about the funding for a 115 trust for CalPERS payments and one for retiree medical. Mr. Lindsay said this will be discussed at the December Finance Committee meeting.

Director Sherris-Watt reported that the CalPERS report has come out and will be presented at the December Finance Committee meeting along with exploration of the 115 pension trust. She pointed out that the Police Specialist's salary should be shown in Category 508 (Non-Sworn Personnel) rather than in police salaries (Category 502). Mr. Lindsay said that this will be corrected. Director Hacaj commented that the high costs for Category 506 (Police Salaries overtime) is a concern. Interim Chief Schuld explained the extenuating circumstance at the Police Department such as vacations, new officer training, two officers impacted by Covid-19, paternity leave, a special project of downloading criminal records, cash out of accrued comp time, and sick time. He said that after meeting with the officers in September, 100% of them agreed to flex their time and change shifts to save overtime. Director Modavi pointed out that the union also was instrumental in this concession.

4. [TS 1.12.21] **Report by General Manager on Public Safety Building (PSB) Design and Construction Schedule.**

Interim General Manager Lindsay summarized the architect's draft work plan that described the activities and projected timetable for the PSB. He reported that the design phase is projected to be 11-12 months from the notice to proceed, followed by a bid/construction phase of 14-16 months, and a total project duration of 28-30 months. Director Modavi asked several questions regarding the architect's work plan, and if the plan had been shared with the Kensington Fire Protection District (KFPD). Director Modavi suggested scheduling a 2x2 meeting to discuss the plans with KFPD. Mr. Lindsay responded to the questions and said the work plan was obtained in the context of KPPCSD's contract with the architect.

- The following person provided public comment: 1) Julie Stein, KFPD board member, commented that there are some communication disconnects between the agencies, that KFPD received different estimates for developing construction drawings, that roles and responsibilities for sharing information should be defined, KFPD had not seen the architect's work plan, and clarified the KFPD Interim General's actions on putting out the financial analysis and finance options for the project.

Mr. Lindsay said that in the future he would share information obtained on the project with the KFPD Interim General Manager.

**ADJOURNMENT**

[TS 1:29:40] President Deppe announced at 9:10 p.m. that the Regular Meeting would be adjourned to the Special Closed Session Meeting.

**ANNOUNCEMENT FROM CLOSED SESSION**

President Deppe announced that in Closed Session, the Board gave direction to staff.

SUBMITTED BY:

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Lynelle M. Lewis, District Clerk of the Board

APPROVED: November 12, 2020

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Bill Lindsay, Interim General Manager

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Chris Deppe, President of the Board

KENSINGTON POLICE PROTECTION AND COMMUNITY SERVICES DISTRICT

**BOARD OF DIRECTORS MEETING MINUTES**

**Tuesday, November 6, 2020**

**Via Teleconference**

**Special Closed Session (2:30 p.m.)**

**CALL TO ORDER**

President Chris Deppe called to order the Special Closed Session Meeting of the Board of Directors at 2:36 p.m. Directors Eileen Nottoli, Sylvia Hacaj, Rachelle Sherris-Watt, and Cyrus Modavi were present at roll call.

Staff present included Interim General Manager Bill Lindsay, General Counsel Ann Danforth, and Consultant Frank Rojas.

**GENERAL PUBLIC COMMENT**

None.

**CLOSED SESSION**

The Board of Directors met in Closed Session pursuant to California Government Code section 54957(b) to consider matters related to the appointment of the District General Manager, including the discussion and interview of individual candidates.

**ANNOUNCEMENT FROM CLOSED SESSION**

No announcements were reported from Closed Session.

**ADJOURNMENT**

President Deppe adjourned the meeting at 5:08 p.m.

SUBMITTED BY:

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Lynelle M. Lewis, District Clerk of the Board

APPROVED: October 22, 2020

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Bill Lindsay, Interim General Manager

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Chris Deppe, President of the Board



**BOARD OF DIRECTORS MEETING**

**November 12, 2020**

**ITEM 2**

**STATUS REPORT ON PUBLIC SAFETY BUILDING AND CONSIDERATION TO SCHEDULE A JOINT MEETING OF THE KPPCSD AND KENSINGTON FIRE PROTECTION DISTRICT BOARDS**

**SUMMARY OF RECOMMENDATION**

Receive a status report by the interim general manager on the Public Safety Building project, and consider directing staff to schedule a joint meeting of the KPPCSD and Kensington Fire Protection District (KFPD) boards.

**BACKGROUND**

The architectural firm of RossDrulisCusenbery (RDC) was initially engaged by the Kensington Fire Protection District (KFPD) to design a necessary renovation of the KFPD Public Safety Building (PSB). On September 11, 2019, RDC presented a design for the PSB that housed only the KFPD. Subsequently, the KPPCSD pursued the idea of having RDC develop a design that would house both departments in the current PSB, and subsequently worked with both the Fire District and RDC for permission to engage RDC.

At its meeting of January 23, 2020, the KPPCSD Board, with the concurrence of the KFPD, approved an agreement with RDC in the amount of \$15,673 for their firm to develop a design for the renovation of the Public Safety Building that could accommodate space needs of both KFPD and the KPPCSD Police Department. It was understood that there was no guarantee that this work by RDC would result in a feasible design, but the Board majority felt that it was worthwhile to fund this important additional attempt at a solution.

During the course of the work by RDC, several technical design issues arose that required additional analysis and meeting(s) with the Contra Costa County Building Official. These issues involved accessibility and seismic requirements for the renovated Public Safety Building, and were outside of the original scope of work contracted for by KPPCSD. To continue this architectural analysis, the KPPCSD provided additional funding for an Extra Service Request (ESR 001), with the cost of that ESR split evenly with the Fire District. The cost to each agency was approximately \$13,000.

On September 17, 2020, KPPCSD staff received from the architect draft conceptual plans for a new Option D for the renovated Public Safety Building. This conceptual plan incorporates an elevator and a wheelchair lift, and has a redesigned space on the ground floor to improve the layout of the Kensington Police Department based on prior comments from the department. The ground floor also incorporates the Kensington Fire Department's preferred layout for the apparatus bays and support spaces. The conceptual design encloses the outdoor deck area, and includes modifications to meet accessibility codes.

Since receiving this Option D, both KPPCSD staff and Fire District staff have participated in discussions with the architect regarding the conceptual design. It is important to note that the Option D design has not been approved by either the fire department or the police department. In particular, KPPCSD Police

Chief Schuld has provided comments on the design, and the architect is still working to incorporate these comments into a conceptual design for the building that can meet the needs of both agencies.

In response to a request by KPPCSD staff, the architects provided a schedule (attached) for general planning purposes that describes the activities and timetable from now through project completion, assuming that there are no unforeseen obstacles. In providing this schedule, the architect noted that, "This draft schedule is based on durations, not dates, and should be calculated from the formal date we receive Notice to Proceed (with detailed facility design)."

As noted in the draft schedule, the duration of the design phase is approximately 11-12 months from the notice to proceed with this phase, followed by a bid/construction phase of 14-16 months, and a total project duration of 28-30 months.

### **RECOMMENDATION FOR A JOINT MEETING OF THE BOARDS OF DIRECTORS FOR KPPCSD AND KFPD**

Following recent discussions, KFPD Interim General Manager Mary Morris-Mayorga and the KPPCSD interim general manager believe that the two agencies are at a point where a joint meeting of the two Boards of Directors would be helpful. While the agenda and format need to be more fully developed, the concept that has been discussed is as follows:

- No decisions would be made at the meeting; it would involve a workshop-style presentation and discussion by members of both Boards to gather information needed for future decision-making by each of the respective boards;
- The meeting would be jointly facilitated by the interim general managers from both agencies;
- The workshop would include presentations by RDC Architecture, Mack 5, and the interim general managers that would provide information on issues that are common to both agencies:
  - Overview and history of the project;
  - Current status, including conceptual designs;
  - Recommended process for closure on a final conceptual design;
  - Preliminary project schedule; and
  - Project budget estimate.
- Financing options.

The above is meant only to be a tentative listing of topics to be addressed.

### **RECOMMENDATION**

Receive a status report by the interim general manager on the Public Safety Building project and consider directing staff to schedule a joint meeting of the KPPCSD and Kensington Fire Protection District boards.

### **FISCAL IMPACT**

The initial contract between KPPCSD and RDC was for the amount of \$15,673; the ESR approved by the KPPCSD Board was for an additional \$13,000; and the General Manager authorized a \$3,000 increase to

the amount of the ESR. The total cost to date, then, for architectural services by RDC based on these authorized expenditures to date is approximately \$32,000. Funding is from budgeted capital funds.

**ATTACHMENTS**

“Option D” design for the renovated Kensington Public Safety Building  
Draft Workplan/Schedule

**SUBMITTED BY:**

Bill Lindsay  
Interim General Manager

NO.	DESCRIPTION PHASE / TASK	WEEKS	COMMENTS
<b>KENSINGTON PUBLIC SFAETY BUILDING RENOVATION</b>			
1	<b>PREDESIGN / DISCOVERY</b> Building scan & as-built drawings Property Survey Geotechnical / Soils Report	6	
2	<b>SCHEMATIC DESIGN (SD)</b>	6	
3	<b>Schematic Design Cost Estimate</b>	2	
4	<b>Owner Review of Schematic Design Documents</b>	2	
5	<b>DESIGN DEVELOPMENT (DD)</b>	10	
6	<b>Design Development Cost Estimate</b>	2	
7	<b>Owner Review of Design Development Documents</b>	2	
8	<b>CONSTRUCTION DOCUMENTS (CD) 75%</b>	10	
9	<b>75% Construction Documents Cost Estimate</b>		2 wks - Concurrent with County Plan Check
10	<b>Owner Review of 75% CD documents</b>		2 weeks - Concurrent with County Plan Check
11	<b>Utility Approvals</b>		Concurrent with CD tasks
12	<b>County Plan Check Process</b>	12	
13	<b>Construction Documents 100% / Bid Documents</b>	2	
	<b>TOTAL DESIGN PHASE</b>	<b>54</b>	11 - 12 months
14	<b>BID PHASE</b> Bidding Contract Award Notice to Proceed	10	2.5 months
15	<b>CONSTRUCTION PHASE</b>	52	12 months
	<b>TOTAL PROJECT DURATION</b>	<b>116</b>	28 - 30 months

NO.	DESCRIPTION PHASE / TASK	WEEKS	COMMENTS
	<b>TEMPORARY PUBLIC SAFETY BUILDING FACILITY</b>		
			Concurrent with Design Phase of main project. Assumes use of modular structures.
16	<b>SITE IDENTIFICATION &amp; ACQUISITION</b>	8	
17	<b>DESIGN</b>	6	
18	<b>PLAN CHECK &amp; PERMIT PROCESS</b>	4	
19	<b>PROCUREMENT OF MODULAR STRUCTURES</b>	12	
20	<b>CONSTRUCTION AND MODULAR INSTALL</b>	4	
21	<b>MOVE KPSB TO TEMPORARY FACILITY</b>	2	
	<b>TOTAL TEMPORARY FACILITY</b>	<b>36</b>	9 months

**GENERAL CONCEPT PLAN ASSUMPTIONS:**

THE ATTACHED DRAWINGS ARE CONCEPTUAL IN NATURE AND ARE BASED ON PRELIMINARY FACTORS/ASSUMPTIONS THAT INCLUDE:

1. THE EXISTING BUILDING DOCUMENTATION IS INCOMPLETE. THE CURRENT LAYOUTS ARE BASED ON PAPER-DRAWINGS PROVIDED BY THE DISTRICT, BUT HAVE NOT BEEN CROSS-REFERENCED BY CONDITIONS IN THE FIELD. DETAILED AS-BUILT DRAWINGS ARE REQUIRED TO VALIDATE CURRENT CONDITIONS.

2. THE MAJORITY OF THE MECHANICAL EQUIPMENT IS ASSUMED TO BE RELOCATED TO THE ROOF OR OTHER AREA EXTERIOR TO THE MAIN BUILDING.

3. THE ELEVATOR ASSUMES A MACHINE ROOM-LESS (MRL) CONFIGURATION. THIS FEASIBILITY IS TO BE VERIFIED.

4. FURTHER VERIFICATION REQUIRED TO VALIDATE REDUCING THE SIZE OF THE ELECT/COMM/IT SPACE. A DETAILED AS-BUILT ASSESSMENT IS REQUIRED.

5. FURTHER ENGINEERING—INCLUDING STRUCTURAL DESIGN AND SHEAR WALL REQUIREMENTS—MAY IMPACT THESE SPACE LAYOUTS

**AREA CALCULATIONS**

FIRST FLOOR GROSS: 3,092sf

FIRST FLOOR F.D. NET: 1547sf

-includes elevator, stair, app. bays & support spaces

FIRST FLOOR P.D. NET: 859 sf

FIRST FLOOR SHARED NET: 297 sf

-includes lobby, secure hallway, restroom

SECOND FLOOR GROSS: 2,932sf

-excludes existing 327sf outdoor terrace

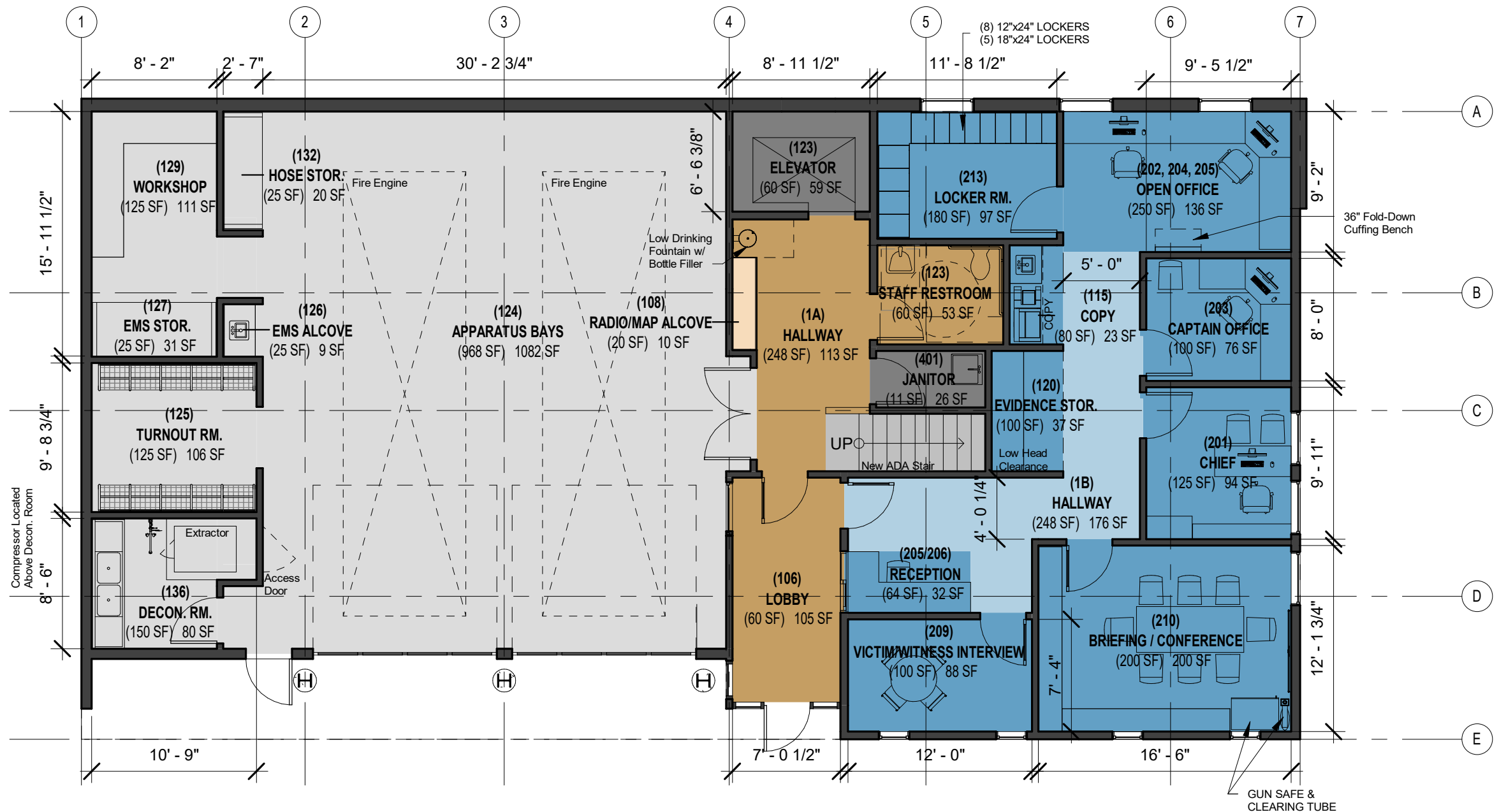
SECOND FLOOR F.D. NET: 2,796sf

SECOND FLOOR SHARED NET: 163 sf

-includes elec., mech & gen rooms

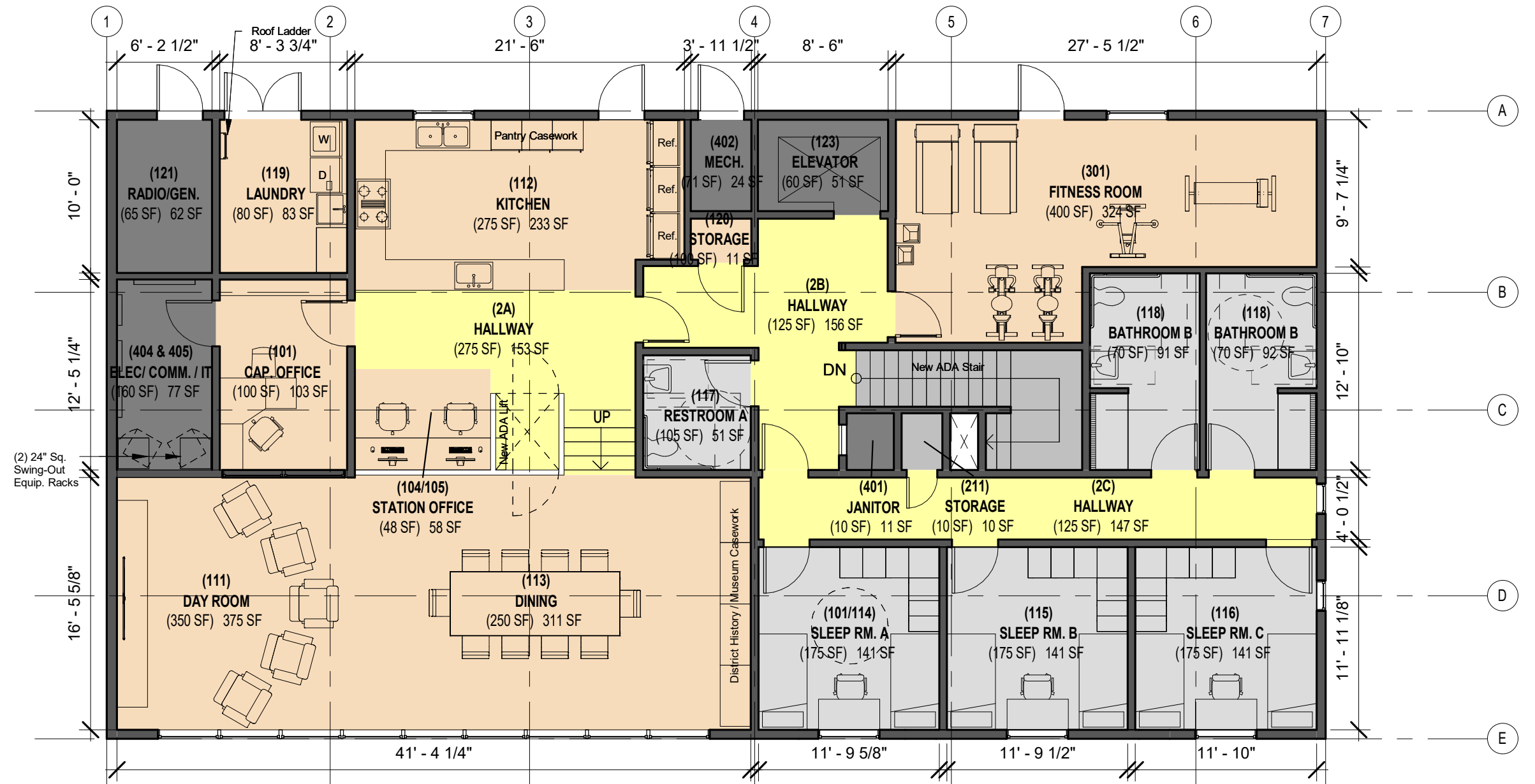
Net areas do not include interior partitions or exterior walls.

**RossDrulisCusenbery Architecture, Inc.**



**FIRST FLOOR OPTION D  
With Elevator & Enclosed Deck**

CONCEPTUAL FIRST FLOOR PLAN - RENOVATION



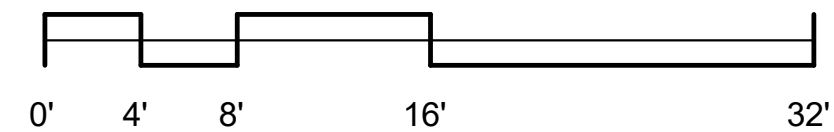
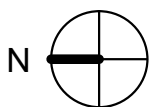
**AREA CALCULATIONS**

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 SECOND FLOOR F.D. NET: 2,796sf  
 SECOND FLOOR SHARED NET: 163 sf  
 -includes elec., mech & gen rooms

Net areas do not include interior partitions or exterior walls.

**RossDrulisCusenbery Architecture, Inc.**



# SECOND FLOOR OPTION D With Elevator & Enclosed Deck

CONCEPTUAL SECOND FLOOR PLAN - RENOVATION

## KENSINGTON POLICE PROTECTION AND COMMUNITY SERVICES DISTRICT

### **BOARD OF DIRECTORS MEETING**

**November 12, 2020**

#### **Item 3**

### **PATHS PRESENTATION**

#### **BACKGROUND**

At the January 12th 2012 meeting of the KPPCSD Board the Paths Committee delivered a report on the paths. At that same meeting the KPPCSD Board passed a motion to acquire the Highland Path, and expressed the desire to eventually acquire all the paths. At the October 16, 2013 meeting the committee reported that acquiring the Highland path was not easy and the board should consider starting with another path. Since that meeting no KPPCSD board has taken up the issue of path ownership.

Over the years citizens have been coming to KPPCSD board meetings expressing their desire that some solution is found to having public ownership of the paths. Recently there has been suggestions that the paths could be used as evacuation routes. This kind of usage goes above and beyond simple recreation, and so it seems like a good time to revisit the paths issue and provide an updated report. Directors Deppe and Sherris-Watt will present the report at the meeting.

#### **RECOMMENDATION**

Listen to and accept the report, discuss, and decide what if any additional steps should be taken.

#### **ATTACHMENTS**

Kensington Paths Presentation  
Original Paths Committee Report  
Legal opinion from our legal counsel



# **Kensington Paths**

**Christopher Deppe and Rachelle Sherris-Watt**

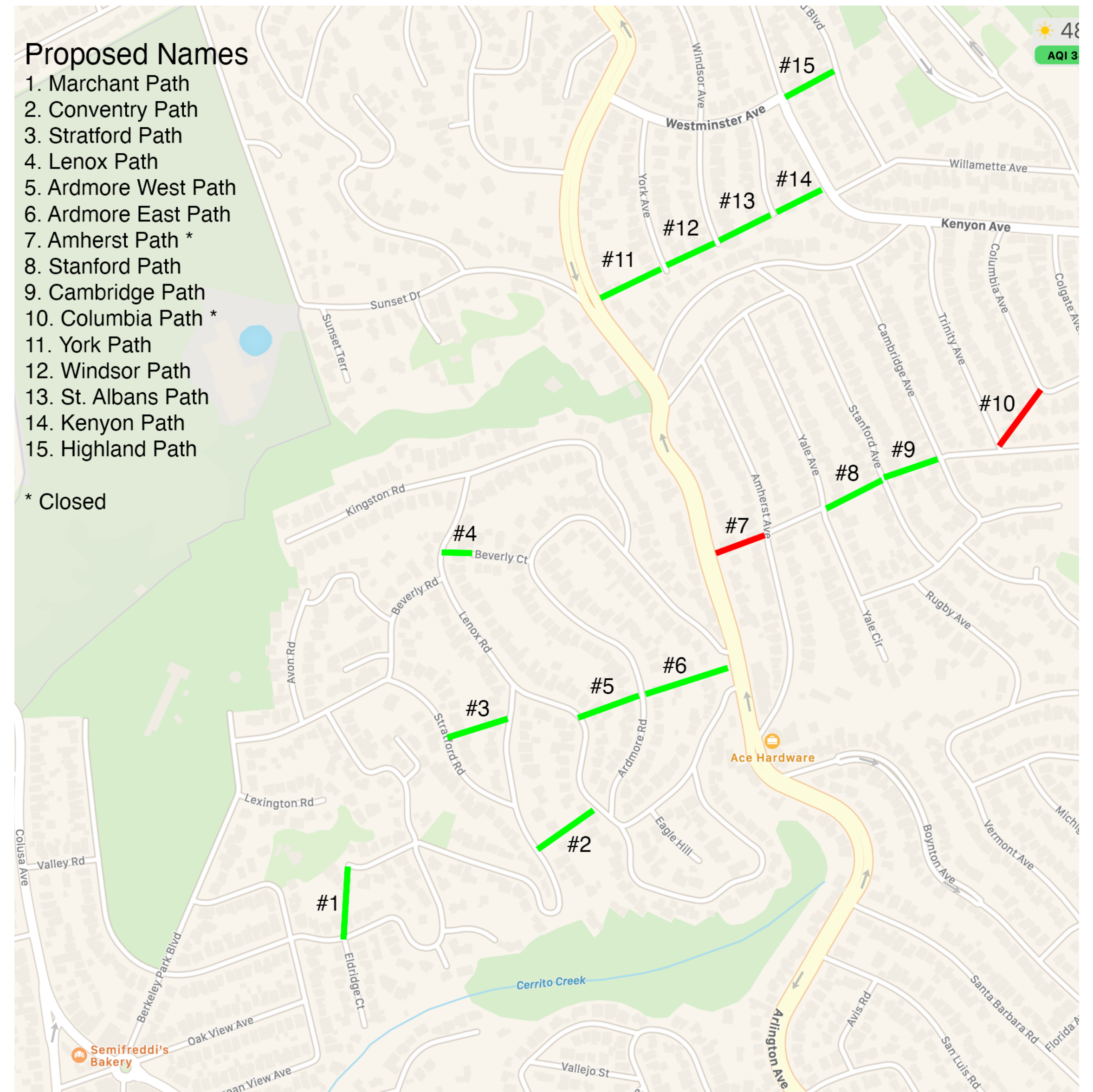
# Kensington Paths

## Definition

- For this purposes of this presentation Paths will mean a set of walkways in Kensington that that have no clear owner and connect various streets
- This set of paths was identified by the Path Ad-Hoc committee

# Path Maps

- Updated from original Path Ad-Hoc Committee Report



# Kensington Paths

## History / Ownership

- The paths were originally part of the development of Kensington
- The paths were offered to the county, but the county never accepted the offer
- The developer no longer exists as an entity
- In 1989 Contra Costa County annexed parts of Kensington and created Zone 21, adding that to an existing Landscape and Lighting District (LL-2)
- Kensington property owners are assessed a yearly fee for paying for maintenance of this district
- This district included the Kensington Pathways, as well as median landscaping along Arlington and Colusa.

# Kensington Paths

## History / Ownership

- According to county correspondence the maintenance of the paths was to be directed by the Kensington Improvement Club (KIC)
- In 1995 the county wrote to the KIC to express a legal opinion that the county never intended to own the paths and does not own the paths
- They also wrote that they intend to delete the maintenance of the paths from Zone 21
- Since then the paths have been maintained by volunteers

# Kensington Paths

## History / Ownership

- The KPPCSD board created an Ad-Hoc committee in 2011 to look into the paths
- The committee presented the report at the January 12th 2012 meeting
- At that meeting the board passed a motion to acquire the Highland path, along with the desire to eventually acquire all the paths
- At the October 16, 2013 KPPCSD meeting the paths committee reported that acquiring the Highland path was not easy and the board should consider acquiring an alternate path. They also reported that issue of the paths is complicated. No action was taken and since then no KPPCSD board as taken up the issue.

# Kensington Paths

## Current Owner(s)

- No one seems to want to admit they own they paths
- In the past efforts have been made to convince the county to accept ownership, given the language in the Zone 21 creation (annexation)
- The county has been clear they do not own the paths and they do not want to own the paths
- There may be valid claims to partial ownership by some property owners who have built on the paths

# Kensington Paths

## Past liability issues

- On December 3, 2014 someone injured themselves on the Ardmore path and sued a number of entities
- A settlement agreement was executed on June 20, 2017
- The KPPCSD paid \$4,000
- The KIC paid \$18,500
- A private homeowner paid \$2,500



# Kensington Paths

## Past liability issues

- In 2006 a drainage pipe underneath the Highland path appeared to cause drainage issues with an adjoining property
- An examination of the pipe showed that it was failing
- The property owner contacted the county to try and get them to accept responsibility for the problem and repair the pipe
- The county eventually accepted responsibility and repaired the pipe

# Kensington Paths

## Current Liability Issues

- Since there is no clear owner, liability is what the outcome of any lawsuit would be
- Anyone currently maintaining the paths exposes themselves to liability

# Kensington Paths

## Potential liability issues for the KPPCSD as Paths owner

- One important concept for any potential owner is “Dangerous Condition on Public Property”
- There are some exclusions to liability (Government Code 831.4)
  - Different requirements for paved and unpaved
- According to the SDRMA ADA requirements to not apply to recreational foot paths
- If the paths are designated as evacuation routes then they would need to comply with the ADA
- From the SDRMA: Paths should be inspected seasonally, especially after big storms and periodically during the year. If someone complains to the District about the path being damaged or a dangerous condition, the District must repair it timely.

# Kensington Paths

## Options for the paths

- Keep the status quo
- Add them to the Landscape and Maintenance Zone 21
- Some entity acquires ownership
- ???

# Kensington Paths

## Keeping the status quo

- Liability is unclear
- Blocked paths indicate unresolved issues
- Funding for maintenance and improvements are not consistent
- If the paths are just to be used as occasional recreation then the status quo is probably acceptable to some residents
- If the paths are intended to be used as evacuation routes then they will need to be upgraded and maintained as such

# Kensington Paths

## Adding paths back to Zone 21

- Should be simple as they were originally a part of Zone 21
- No need to change ownership (although the issue of ownership would still exist)
- Yearly Assessment may need to increase
- Agreement would be needed on who is responsible for maintaining the paths
- If they are to be used as evacuation routes then additional factors need to be taken into consideration (this was not the original intent of the Paths inclusion in Zone 21)
- Since the County was the one who removed the paths from Zone 21 not likely they would be immediately agreeable to this

# Kensington Paths

## Possibilities for new ownership

- The county accepts ownership
- The KPPCSD takes ownership
- The Kensington Fire Protection District takes ownership
- A private entity takes ownership (KIC, KCC, ?)

# Kensington Paths

## Steps needed to acquire the paths for any potential owner

- Verification of original offer of dedication
- New survey of all the paths
- Appraisal of paths
- Comprehensive title reports (easements, ownership, etc.)
- CEQA reports
- Resolution of property owner claims



# Kensington Paths

## Steps needed to acquire the paths for KPPCSD

- Board buy in
- Public buy in
- Estimation of acquisition costs as well as yearly costs
  - No extra cost for our SDRMA coverage
  - \$25K deductible applies for each liability claim
- Revision of District Charter
  - LAFCO
  - Public Vote?

# Kensington Paths

## Next steps for the KPPCSD

- First we should consider a couple of questions
  - What problem(s) are we trying to solve
  - What would the public expectations be for the KPPCSD

# **Executive Summary & Board Presentation**

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## **Kensington Path Ad-hoc Committee Findings for the January 12th, 2012 KPPCSD Board Meeting**

Presenters : Chris Schelling (Path Committee Member)  
Tony Lloyd (Committee Chair & KPPCSD Director)  
John Gioia ( Contract Costa County District 1 Supervisor)  
Kensington Path Committee Members – (Nesbitt, Gillfilan,  
Barraza, Martin, Kaiser, & Harman)

# Agenda

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- **Committee Charter**
- **Key Acquisition Questions**
  1. Acquisition of the Paths
  2. Path Maintenance
  3. Construction (on or of) the Paths
  4. Liability and Risk of Acquisition
  5. Neighboring Property Owners
  6. Financial (Grants)
- **Conclusions**

# Committee Charter

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- **“To determine whether it is legally and economically sustainable, reasonable and feasible for the District to exert any form of ownership and control over the existing Kensington paths.”**
- **Additionally, the Board has expressed its support of efforts to:**
  - i) legally establish title to the paths with the County of Contra Costa and/or such other agency as may be legally empowered and economically able to retain ownership, dominion and control over them;
  - ii) to legally work to restore all of the paths and bring them into compliance with the legal requirements of Contra Costa County regarding their construction and renovation, taking into account the legitimate concerns of adjacent land owners and any other stakeholders for protection of their property during such renovation and future use;
  - and iii) to support the legal efforts of KIC to establish a sustainable source of future funding to augment any sums that are available from the County for such maintenance, repair and improvement as will find public support in Kensington.

# Key Acquisition Questions

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## 1. Acquisition of the Paths

1. Regarding the legality of acquiring the paths, included in the findings matrix section is are comments from Hansen Bridgett the Board's outside counsel.
  - It appears that there is a way to acquire the land from the County, and it is the recommendation of this committee that the Board enter into discussions with their counsel to determine what is required to achieve these goals.

# Key Acquisition Questions

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## 1. Acquisition of the Paths (cont.)

- Regarding the economic feasibility of acquiring the paths, there are multiple acquisition strategies that can be considered, any of which should meet the needs of the Board, the County and the Community.
  - Option 1 (Committee Choice): Acquire All Paths
    - This scenario provides that the Board seeks to acquire all paths, so that ownership is transferred free and clear to the KPPCSD.
      - Pros: Access to grant money to fund acquisition, maintenance and/or construction;
      - Cons: Costs (TBD), Liability (TBD)
  - Option 2: Endorse Paths
    - This scenario provides that the Board do nothing, so that ownership remains outside the KPPCSD.
      - Pros: Status Quo (no costs, liability);
      - Cons: No access to grant money
  - Option 3: Acquire Individual Paths
    - This scenario provides that the Board seeks to acquire individual paths, so that ownership is transferred to the KPPCSD on a segment-by-segment basis.
      - Pros: liabilities/costs can be managed as funds become available – serves as template for future acquisitions;
      - Cons: grant money available only to paths where ownership is free and clear, costs to acquire may be substantially higher (i.e. lawyer fees, etc).

# Key Acquisition Questions

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## 2. Path Maintenance

- **Assuming that all the paths are acquired and transferred free and clear to the KPPCSD, the committee agrees that there are two options regarding costs associated with the maintenance of all paths.**
  - **Option 1: All Volunteer Services**
    - **If volunteers (i.e. KIC) agree to perform annual maintenance on all paths, costs should not exceed \$1,000 per year.**
  - **Option 2: All Professional Services**
    - **If the KPPCSD determines that professional maintenance is required on all paths, then the existing contract with services rendered in the parks should be amended, and should not exceed \$5,000 per year.**
- **In addition to maintenance fees, a Reserve Fund is recommended to account for any non-standard maintenance costs that may occur unexpectedly (i.e. a downed tree). The committee suggests that this fund include both a seed amount (i.e. \$5,000) and an annual accrual amount (i.e. \$100 per path, per year)**



# Key Acquisition Questions

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## 3. Construction (on or of) the Paths

- **The committee completed a thorough evaluation of all paths currently in the Kensington system. A matrix of each path with details is included in the Appendix provided.**
- **Given the various conditions – ranging from very good to impassable – the committee recommends segmenting the paths into three categories based on condition and costs:**
  - Paths Requiring Little / No Construction:
    - Path #s: 1, 3, 4a, 4b, 6b, 6c, 6d, 8, 9
  - Paths Requiring Repair:
    - Path #s: 2, 5, 6a
  - Paths with Major Capital Requirements
    - Path #s: 7, 10
    - These paths will require significant funding sources

# Key Acquisition Questions

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## 4. Liability and Risk of Acquisition

- **The committee had multiple discussions regarding potential liability associated with ownership of the paths.**
  - While risk liability authority and management is principally the responsibility of KPPCSD Board and its professional advisory resources, California Government code 830. through 831.9 does provide some litigation protection and immunities from prosecution under certain criteria and conditions.
- **According to neighboring communities (i.e. Berkeley, El Cerrito), insurance claims on the paths over the past 10 years have been negligible.**
- **When the committee reached out to the District's Insurance Company, they provided feedback consistent with that which we received from Berkeley, et al – that costs would likely be negligible and that the District's deductible would not likely change (this information was not formal, and therefore, it is the Board's imperative to verify this information).**

# Key Acquisition Questions

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## 5. Neighboring Property Owners

- The committee also had many discussions regarding the rights of the neighboring property owners over the path governance.
- The committee finds that the Service District needs to discuss their views and understanding as to the property owner's rights to influence path acquisition board decisions.
- It is suggested that participating with the community in a "town hall" on the topic, may be an option of serious consideration for the board.
- The committee finds that this is particularly true where financial support of the path acquisition and ownership may require voter approved financing.

# Key Acquisition Questions

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## 6. Financial Support (Grants)

- **A list of potential sources for grant money to fund development activities on the paths is included in the “findings” attachment to this document.**
- **A good example of how a community should apply for, and is awarded, grant money to fund construction and maintenance of paths is Mill Valley’s Steps, Lanes and Paths Program.**

## Conclusions

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- **In conclusion, the committee believes there are a number of options that need to be considered and properly evaluated to determine the best path forward in the interest of the community.**
- **It is our hope that we have provided the Board a solid foundation on which to continue building a case to acquire the paths, and have outlined the key considerations regarding the feasibility and sustainability of a viable path system for Kensington.**

# **Next Steps For Board Consideration**

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- **KPPCSD Board deliberation on findings presentation and reach a decision.**
- **Determine the value of holding community town hall on the subject.**
- **If ownership transfer approved by board identify an implementation team and resources.**
- **Address governance issues of asset management going forward.**
- **Present a “Straw” time line.**

# Kensington Ad-Hoc Path Committee Ownership Findings Matrix

As of January 6, 2012

Index Number	Project Critical Success Factor	Committee Finds a/o 9/1/11	Committee Final Findings (Consensus) <sup>1</sup>	Action Required
1	<p><b>What charter changes, if any, are required for the KPPCSD to acquire additional land?</b>  <b>The district has broad authority.</b></p>	<p><i>Government Code §61060  A district shall have and may exercise all rights and powers... ..(d) To acquire any real or personal property within or outside the district, by contract or otherwise, to hold, manage, occupy, dispose of, convey, and encumber the property, and to create a leasehold interest in the property for the benefit of the district....</i></p>	<p>On 6/1/11 Hanson Bridgett (CSD Council) provided a legal opinion to question # 1, in which they indicate “while it is not prohibited from the district to acquire the path real estate” the district may be open to legal challenge if they do not seek a modification of their authority to do so. That ownership of the paths in their opinion does not specifically come under parks and recreation as defined in the district charter. The process to modify that charter would be to receive authority to do so from LAFCO.</p>	<p>Secure LAFCO consent prior to public comment phase to remove any remaining potential restraints.</p>
2	<p><b>What uses can KPPCSD acquired land be put to?</b></p>	<p>The KPPCSD has the same powers as other parks agencies such as the EBRPD:</p> <p><i>Government Code §61060 ... (e)  Acquire, construct, improve, maintain, and operate recreation facilities, including, but not limited to, parks and open space, in the same manner as a recreation and park district formed pursuant to the Recreation</i></p>	<p>Adopt committee findings as presented.</p>	<p>Present to KPPCSD board for final decision.</p>

<sup>1</sup> The committee goal was to achieve consensus on each critical success factor wherever possible.

		<p><i>and Park District Law, Chapter 4.</i></p> <p><i>Recreation Code §5780.1</i>  <i>"Recreation" means any voluntary activity which contributes to the education, entertainment, or cultural, mental, moral, or physical development of the Individual, group, or community that attends, observes, or participates.</i></p>		
3	<p><b>What rules can KPPCSD set for use of acquired land?</b></p>	<p><i>Recreation Code § 5786.1 (j) To adopt and enforce rules and regulations for the administration, operation, use, and maintenance of the recreation facilities, programs, and services listed...</i></p> <p>Such power includes the ability to close the paths, a power the district presently does not hold.</p>	<p>Committee recommends that the board adopt guidelines provided in the recreation code.</p>	<p>Present to KPPCSD board for final decision.</p>
4	<p><b>How would KPPCSD's insurance rates change with acquisition of path parcels?</b></p>	<p>The final answer to that question will become clear when a decision is made to determine what land will be entered into the inventory. The district is insured by SDRMA which has issued a statement estimating the cost to be very minimal if any increase is merited at all.</p> <p>Wendy Tucker is the SDRMA Representative, feels SDRMA will not insure the paths if CSD does not own them.</p> <p>Indicates that adding the new parcels as paths would not have an effect on our liability cost of existing CSD recreation space.</p>	<p>The Board should use this statement by SDRMA as a guideline for potential insurance cost impact. They will need to acknowledge that there will be a need to identify what future increases the district might expect due to general rising cost and or claims against the property.</p>	<p>Present to KPPCSD board for final decision.</p>



5	<b>What taxes would apply?</b>	The path land is presently not taxed at all. If the district acquires ownership, our best information is that the tax on assessed value would not apply. Certain minor parcel taxes, such as the Landscape & Lighting district may apply.	It was agreed that the authority here is the tax assessor and that it is still necessary to understand what events could trigger a re-assessment. Also whether a transfer of property to KPPCSD would result in a larger tax assessment.	Tony Lloyd continuing to research with assistance from County. Sent question to Kate Rauch for resource contact information on 1/2/12. Ms. Rauch is assisting in providing the county resources to address questions in this area.
6	<b>What might it cost to complete acquisition?</b>	We believe the minimum cost approach is for the County to deed the land over to the service district using County powers. The County has indicated a willingness to work with the KPPCSD on the transfer. It is difficult for the sub-committee to estimate exact acquisition costs as the amount of legal staff time required will vary depending on the exact nature of the transfer. <sup>2 3</sup>	See financial impact Appendix # 1 to this document.	The cost of acquisition and ownership from a board financial budgetary perspective can be found in budget attachment to this document. This committee has provided cost estimates based on its limited abilities. A complete economic business analysis by the district financial committee or other subject matter experts may still be warranted by the service district before arriving at its decision on this finding.
7.	<b>What is community sentiment on the paths, and to what extent does it extend to shifting budget or increased assessment?</b>	The Paths Sub-Committee suggests that a Town Hall meeting on the Topic of Kensington Paths be held to help formally gauge community support for owning and maintaining the paths.	Committee recommends adoption of the language as proposed.	The KPPCSD board of directors may want to consider additional community input prior to reaching its final decision. Included in this document to the best of our ability are the findings and recommendations of the committee views as well as those community members

<sup>2</sup> Legal cost of LAFCO intervention or position

<sup>3</sup> As a separate issue, beyond the 10 studied paths there are a dozen additional designated path parcels in Kensington which dead end or are otherwise undevelopable.

				who attended meetings and offered their input.
8.	<b>What conditions exist on the ground for each path?</b>	See appendix # 2 & #3 matrix attached. Also misc. path photographs and review data in Attachment A	Committee recommends adopting the path condition findings described in the appendix.	Present to the KPPCSD board for final decision.
9.	<b>What are the most significant known issues on the paths?</b>	<p>Of the 10 primary pathways, 7 are in a condition that appears satisfactory to the public.<sup>4</sup></p> <p>The paths with special conditions are:</p> <ul style="list-style-type: none"> <li>● Path #8 has two notable problems: a failed drainage pipe, and a tree which re-routes path users onto the private steps of #59 Kenyon.</li> <li>● Path #7 has significant vegetation growth and has been partially fenced by a resident to form a dog run. The path right of way and neighboring properties are infested by bamboo, a plant which is difficult to remove, and can buckle or crack concrete.</li> <li>● Path #10 is blocked by a fence, and has a steep drop off. This is estimated to be the most expensive path to develop.</li> <li>● Inspection of Path # 6 has identified drainage pipe existence as a result of community maintenance effort on the paths.</li> </ul>	Committee recommends adopting the findings for item nine as presented.	Present to the KPPCSD board for final decision.
10.	<b>Would any County or Federal requirements mandate a construction</b>	No, the CSD could choose to hold the land in an unimproved state. The parks code only specifies the land be	Committee recommends adoption of the findings as stated.	Present to the KPPCSD board for final decision.

<sup>4</sup> Paths 1,7,8,10 could benefit from installing steps. Specifically required for path# 8

	<b>project be undertaken on newly acquired land?</b>	used for a "lawful purpose" Because the paths provide exclusive access only to private homes, no Fed access requirements apply. County public works has indicated that they would not require construction on the paths.		
11.	<b>What laws or standards apply to construction of pathways?</b>	With recreational trails the best practice is to provide a variety of challenge levels within a park system. Rough dirt trails, wooden steps, pavers and concrete steps are all legitimate and recognized trail types. The current range of trail types and improvements fit within the recognized types of recreational trails currently existing in Kensington.	Committee recommends adoption of the findings as presented.	Present to the KPPCSD board for final decision. The board will need to reply upon its legal counsel as acquisition efforts move forward to help insure path future construction and maintenance complies with statutory requirements.
12.	<b>If the KPPCSD acquires a path parcel, what maintenance requirements apply?</b>	There appears to be one single mandated requirement which is for the service district to be responsible for meeting the fire district vegetation maintenance requirements.	Committee recommends adopting findings language as proposed.	PRESENT TO THE KPPCSD Board for decision.
13.	<b>How do neighboring governmental owners hold or treat paths?</b>	<ul style="list-style-type: none"> <li>● City of Oakland owns 450 paths. The city reconstructs paths that have become hazardous, but does not aggressively develop unimproved paths.</li> <li>● City of Berkeley owns 140 paths. The city essentially outsources path development to a volunteer group. That said the paths prominently feature in the City's pedestrian plan.</li> </ul> <p>The city sends out AmeriCorps crews each summer for path work, and on</p>	Committee recommends acceptance of the findings language as presented.	Present to the KPPCSD board for final decision

		<p>occasion city crews help also. The city sponsors grant funding, and occasionally donates money to path development. The city master plan anticipates spending \$11,000 per year over the next 20 years to complete new construction on the path system. New paths are built with wooden stairs, with small concrete sections where the grade is steep.</p> <ul style="list-style-type: none"> <li>● City of El Cerrito has ignored their 40 or so paths. A volunteer group is engaging with the city on a change to that practice.</li> <li>● Unincorporated East Richmond Heights has paths in the similar condition to those in Kensington.</li> <li>● City of Albany maintains their paths with city funds.</li> <li>● City of Mill Valley has a strong path program, integrated into public safety goals for recreation, transportation, and hillside evacuation. The City has applied for and won significant grants to construct first quality stairways. A volunteer group has worked hard on easement and land use issues.</li> </ul>		
14.	<b>What unexpected costs have neighboring</b>	A survey of public records Oakland, Berkeley, El Cerrito and Kensington	Committee recommends adopting findings language as	Present to the KPPCSD board for final decision

	<b>governments incurred with paths?</b>	revealed no significant path related liability events for any owning agency, and no records of significant crime events due to paths.	presented.	
15.	<b>What funding sources may applicable to paths?</b>	<p>1. East Bay Regional Parks District Measure WW: For 2011 the district was allocated approx. \$258,358 of which \$150K has been spent on the Kensington Park restroom from this source. Eligible categories are: * Acquisition (including Plans, Appraisal/Title/Escrow Fees, Legal Fees &amp; Permits) * Renovation of recreational facilities</p> <p>2. Diablo Fire Safe Council Provides block grants of \$5000 to facilitate fuel hazard reduction. This is the only mentioned grant which will fund a project on non-public land.</p> <p>3. Safe Routes to School (SR2S) / Safe Routes to Transit (SR2T) These programs are meant to improve the safety of walking and cycling to school and transit, through identification of existing and new routes and construction of pedestrian and bicycle safety and traffic calming projects.</p> <p>4. Transportation Enhancement Program The Transportation Enhancement Program provides funds for the construction of projects, beyond the scope of typical</p>	All of the examples are legitimate sources of funding however not every grant applies to every path aspect or necessary improvement.	Present findings to KPPCSD Board for review.

	<p>transportation projects, which enhance the transportation system. Transportation Enhancement Projects may include landscaping, bicycle facilities and streetscape improvements.</p> <p><b>5. Regional Bicycle and Pedestrian Program (RBPP)</b>  The RBPP was created in 2003 as part of the long range Transportation 2030 Plan developed by the Bay Area Metropolitan Transportation Commission. The program — currently funded with Congestion Mitigation and Air Quality funds — funds regionally significant pedestrian and bicycle projects, and bicycle and pedestrian projects serving schools or transit.</p> <p><b>6. Transportation, Community and System Preservation Program</b>  The Transportation, Community and System Preservation (TCSP) Program provides federal funding for transit oriented development, traffic calming and other projects that improve the efficiency of the transportation system, reduce the impact on the environment, and provide efficient access to jobs, services and trade centers. The program is intended to provide communities with the resources to explore the integration of their transportation system with community preservation and environmental activities. TCSP Program funds require a 20% match.</p>		
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		<p>7. Recreational Trails Program  The Recreational Trails Program provides funds to states to develop and maintain recreational trails and trail-related facilities for both non-motorized and motorized recreational trail uses. Examples of trail uses include hiking, bicycling, in-line skating, equestrian use and other non-motorized as well as motorized uses. Purchase and lease of trail construction and maintenance equipment; Construction of new trails including unpaved trails; Acquisition of easements or property for trails; State administrative costs related to this program; Operation of educational programs to promote safety...The district can also raise money through extensions of existing assessments or introduction of a new path related assessment. The majority of the funding sources are only available once the ownership is settled.</p> <p>8. Financial Sponsorship From K-Groups</p> <p>Solicit funds from various K-Groups interested in path sponsorship.</p> <p>9. KPPCSD Parks and Recreation Operating Budget</p> <p>10. Special Tax assessment or available funds from existing tax assessments.</p>		
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16.	<b>If the KPPCSD Board decides not to adopt the paths, what are the likely results?</b>	<ol style="list-style-type: none"> <li>1. Many sources of grant funding would continue to be unavailable to be applied to the upkeep and maintenance of the paths.</li> <li>2. Without ownership of the paths their maintenance will continue to be an issue for some percent of the community. Lack of ownership will likely have a negative impact on maintenance funding.</li> </ol>	Committee recommends adoption of findings language.	Present findings to KPPCSD Board for review.
17.	<b>What issues are not a consideration for KPPCSD decision?</b>	Eight of the 10 paths are currently open and used for transit. Under the public easement law it is believed they cannot be closed and therefore the current liabilities are the responsibility of the current asset owner.	Requires further legal opinion to authenticate.	Because Kensington currently does not own the paths, the district's liability is limited or non-existent. With ownership the governances most likely fall under California Code 830 through 831.9 which speaks specifically to liability aspects of path ownership.
18.	<b>A list of legal liabilities the district would be subject to if they take ownership of the paths?</b>	KPPCSD legal comment.	<ol style="list-style-type: none"> <li>1. Legal costs to establish ownership rights;</li> <li>2. Maintenance costs;</li> <li>3. Liability for possible tort injuries; and</li> <li>4. Potential property boundary disputes with residents adjacent to the paths.</li> </ol>	Present findings to KPPCSD Board for review. Source of comment is Hansen Bridgett.
19.	<b>Has there been an investigation of all utility right of ways and presence of their assets on all of the paths?</b>	While maps of the sewer and storm drainage facilities have been procured for the paths, utility ROW has not been ascertained. Underground utility ROW is normally well marked and static in their presence meaning they		Utility coterminous existence with the Kensington Paths is the most prevalent relationships to be concerned with.

10



		<p>do not transport material that would structurally undermine the geography. The utilities will provide exact locations of buried underground transport should there be a requirement to excavate in that area. Also utility underground transport is in their own right of way and so path construction over these rights of way could be considered encroachment. In any case the utilities have committed to working with the community to identify the potential of disturbing any underground transport.</p>		<p>Telephone and electrical (which the most likely) to have ROW issues (both underground and aerial) are both very aware of the need to work with local municipalities to prevent service interruptions to their customer. Both PG&amp;E, AT&amp;T and other communications providers in the community have active programs to that allow for ROW coordination. EastBay Mud, Stege Sanitary , and the County has been equally committed to partner with Kensington where the paths are coterminous with their facilities and ROW. The board should consider seeking an MOU with the County that would outline responsibilities of each entity in the event of a transfer of ownership of these properties.</p>
20.	<p><b>Financial considerations of path ownership?</b></p>	<p>1. Acquisition</p> <ul style="list-style-type: none"> <li>a. Legal consultation fees</li> <li>b. Legal description</li> <li>c. Other Consultation fees</li> <li>d. Title transfer</li> <li>e. Taxes</li> <li>f. Insurance</li> <li>g. Code compliance</li> <li>h. Registration and permit</li> </ul>	<p>Note: budget estimates are based on best estimates and sourced examples. The ad-hoc committee has not performed any type of econometric financial analysis. The committee finds the inclusion of such detail beyond the scope of our charter and one which should be performed by</p>	<p>See budget appendix # 1</p>

		<ul style="list-style-type: none"> <li>costs <ul style="list-style-type: none"> <li>i. Survey cost</li> <li>j. Environmental cost</li> <li>k. Communications cost.</li> <li>l. Filing Fees</li> </ul> </li> <li>2. Capital expenditures <ul style="list-style-type: none"> <li>a. Repair and construction</li> <li>b. Code compliance</li> <li>c. Transition overhead</li> </ul> </li> <li>3. Taxes and Insurance <ul style="list-style-type: none"> <li>a. Property assessment</li> <li>b. SDRMA premiums</li> </ul> </li> <li>4. Operational cost <ul style="list-style-type: none"> <li>a. Periodic inspection</li> <li>b. Public safety budget upward pressure</li> <li>c. Grounds maintenance</li> <li>d. Administrative and governance.</li> </ul> </li> <li>5. Reserve Funds</li> </ul>	<p>credentialed business advisor(s).</p>	
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**Appendix**

- 1. Path acquisition budget
- 2. Path map.
- 3. Path conditions assessment
- 4. KPPCSD charter documents.

**Attachments**

- KPPCSD Board Charter
- Stege sewer runs in Kensington.
- County drain locations relative to paths in Kensington
- KIC work party assessment of path construction requirements.
- Citizen petitions and community communications re the paths.
- Public Tort Liability in California

## Path Study Budget Analysis

1. The cost to own and maintain the Kensington paths falls in three basic categories:
  - a. Acquisition – Those onetime costs associated with acquiring the paths.
  - b. Capital Expenditures – Those hard assets if any that have depreciation value i.e. Construction materials and for which long term amortization might be appropriate as well as funding i.e. bonds, warrants, etc.
  - c. Ongoing operational cost – annually expense able cost associated with maintain business operations.
2. How the Service District manages its budget responsibilities.

KPPCSD 2011 /2012 Line Item	Budget	Path Upward Pressure	Percent Increase
Police Salaries & Benefits	1,897,139	None	N/a
Police Expense	316,936	None	N/A
Recreation (Salaries & Benefits) Plus Expense	105,323	\$5,000	Recurring est. 2%
General District Expense	207,815	None	N/A
Capital Outlay	120,000	None	N/A
<b>Total</b>	<b>2,647,213</b>		

Critical communications on the budget aspect of the path ownership:

1. That all of the potential cost elements of the path ownership have been identified.
2. Determine from a budget perspective which ledger lines items those cost will impact.
3. Identify cost that can be potentially absorbed by alternate financing sources i.e. grants, donations, and sweat equity.
4. Identify those items most likely having operating budget impact.
5. Identify % of upward pressure on district operating budget

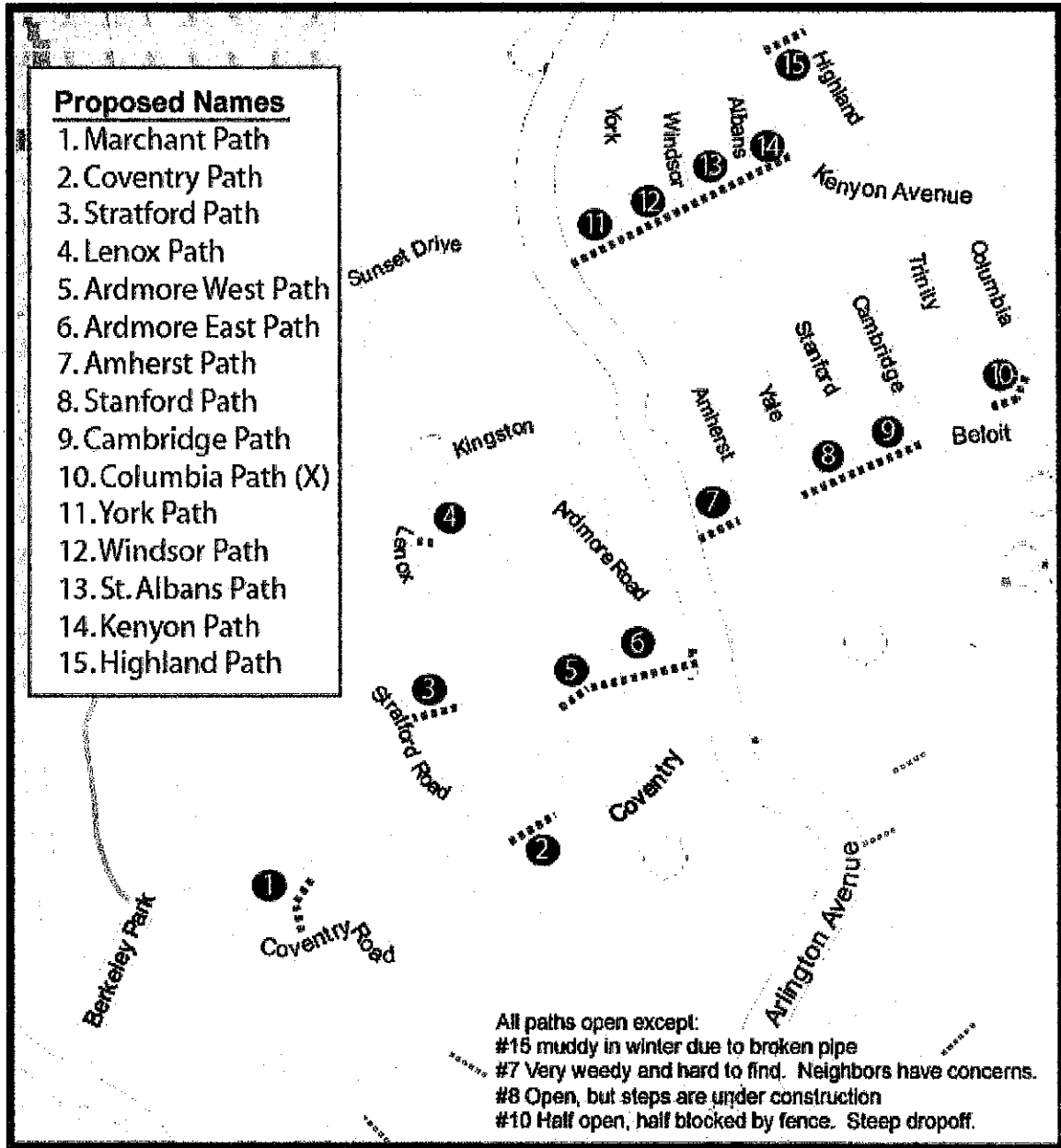
Assuming these assumptions are accurate then this paints an acceptable risk factor for the board to vote favorably for the path adoption from a budget point of view. Assuming buy-in to this methodology it is recommended that the Finance Committee work with the path committee to review our assumptions and cost assessments to vet the final numbers. "Consultancy doesn't have to be paid it just needs to represent "the advice of trusted advisors"

# Appendix #2

path number	from to	signage	surface	stairs handrails	fences	apparent utilities	underground drainage	graffiti	width: parcel	width: unobstructed	width: surface	Possible encroachments	maintenance	issues
1	Marchant Coventry		grass, dirt, tree roots	1 RR tie at top. No handrails.	Low fences or building edges border path, lots of visibility.	Stege sewer. No drainage pipe.	no	clear	5'	5' but narrows to 3'3" at top.	N/A	Fence at Marchant end encroaches. Discharge pipe from apparent subdrain empties onto property (from back of 429 Coventry??)	Neighbors cut grass and keep path clear. According to 425 Coventry Realtor, former owner was a path fan and worked on it prior to his death.	Steep and unsurfaced. Wild Grass, mud & leaves could be hazardous under wet conditions (Reported 2011-Apr Ray Barazza). Land may be on tax roles.
2	Stratford Coventry	PUBLIC PATH #2	paved	4 steps, 9 steps. No handrails.	High fences with little visual contact to neighboring homes.	Stege sewer	no	clear	10'	7-9 feet (7' at stairs)	2'	none (other than bamboo escaping a yard and impacting stairs)	No apparent maintenance. Cleared spring 2011 by KIC.	Heavily cracked concrete.
3	Coventry Coventry	PUBLIC PATH #3	paved	14 steps. Upper section w/handrail.	Open fencing, with strong visual contact.	none	no	clear	10'	8-10'	5'	A plastic utility shed is placed immediately at edge of pavement.	Well cared for by adjacent owners. Bench supplied for users to sit on. Neighbor added handrail to upper steps.	Lower path leads directly into ditch. Many path users divert to nearby driveway.
4 a	Coventry Ardmore	ARDMORE PATH	paved	none	Strong visual connection to neighboring homes.	Stege Sewer, EBMUD, PG&E Overhead, PG&E Gas	no	clear	10'	10'	5'	Picket fence leans into ROW.	Neighbors keep path clear.	Cracked concrete especially near Stege manhole. Stege wrote a letter about this in the mid 1980's.
4 b	Ardmore Arlington	ARDMORE PATH	paved	Steep steps with a center handrail.	Fences generally seclude homes, but way is punctuated by multiple home entrances with visual connections to houses.	Stege Sewer, EBMUD, PG&E Overhead, PG&E Gas	no	History of tagging on concrete surfaces.	20'	20'	Dual 3'	none	Neighboring gardeners regularly trim back hedges. Site of KIC work party. Past evidence of major concrete repair.	Straddles Hayward fault trace.
5	Lenox Beverley	PUBLIC PATH #5	paved	8 steps, no handrails. Ramp provides alternative to steps.	No fence on one side. 6' wooden on the other.	Stege Sewer, EBMUD, Overhead PG&E, Others Probable. Overhead power and communication. USA marking for gas line.	no	clear	12'	Minimum clear between fences is 8'10".	6 feet	Front steps of both adjacent houses (9 and 15 Lenox) are built on this strip of land. Backyard fence of 15 Lenox encroaches about 3-1/2' at upper end of walk.	Appears well trimmed and maintained.	Probably built by original subdivider. Ramp bypasses the steps at the lower end. Walk is generally in good condition and usable in all weather. Needs handrails for the steps. About 12' of length needs repair/replacement due to cracking.
6 a	Arlington York	PUBLIC PATH #6, street name stamped in concrete.	paved	about 50 concrete steps, no handrails	wooden fences and some wire fences the entire length	Stege sewer. Storm drain.	no	on southern wood fence; quite a bit (long history of tagging)	10'	9-10'	4 feet	Neighbor's failed retaining wall may have caused some slippage. Some encroaching wire fence and greenery about 1/2 way down	Spotty community trimming. Volunteers replaced two missing concrete steps.	Several cracks; dirt cut-away (4x4). path in decent shape; overgrown in some areas; no handrails; crooked and chipped steps; poison oak clump.
6 b	York Windsor		dirt, wooden steps, mulch.	24 narrow steps, no handrails.	High wooden, wire mesh.	Probable sewer.	yes, confirmed	clear	10'	10 feet	6-9 feet wide. Steps 2 feet wide.	none	Steps installed by resident of 161 York. Dirt path maintained primarily by resident at 136 Windsor.	
6 c	Windsor St. Albans		dirt, trimmed grass.	none	Open, wire mesh.	Probable sewer.	no	clear	10'	10 feet	4-6 feet	"Joint use", stepping stones used as path to house and yard. Rock planter wall may encroach.	Wider at Windsor due to vegetation clearing by resident at 136 Windsor.	
6 d	St. Albans Kenyon	PUBLIC PATH #6	dirt, flagstones.	none	Open, wooden.	Probable sewer.	no	clear	10'	10 feet	2-6 feet	Pine tree planted very close to path at Kenyon Avenue. Rocks divide path into private and public halves, but private half encroaches.	Kept passable by neighbors, but just barely. June 2011 work party cleared it out.	Dirt gullies not easy to walk on when very wet. (Report 2011-Apr Gloria)
7	Arlington Amherst		overgrown	possible buried concrete stairs at Arlington (unverified)	Open, wire mesh	PG&E Overhead, 3 Inch PG&E gas, Communications (AT&T + Comcast). Stege manholes top & bottom but lines do not reach corridor.	no	none	10'			Trees planted in upper half, South West neighbor attempting to prevent public access, previously encroaching porch removed from South West half, flammable dead brush piled across Arlington entrance, trash cans placed across Arlington entrance	Landscaped as part of private yards on East/ upper half. In the middle large thicket of bamboo and Himalayan blackberry (some dead and flammable).	wood retaining wall built across Western (Arlington) entrance
8	Kenyon Highland		dirt	none	High walls on one side, low fences looking into homes on the other.	PG&E Overhead, Stege Sewer, 12" Drainage Pipe.	yes (failed)	none	10'	10 feet	n/a	Private gardening activity in several spots. Tree blocks lower path.	History of neighborhood antagonism, with some blocking and some clearing the path.	Tree was planted on path, diverting foot traffic up a private set of stairs at 59 Kenyon. Significant failed drainage pipe & washout pit.
9 a	Yale Stanford	PUBLIC PATH #9	steep dirt, wooden steps.	Lower: 50 steps no handrails. Upper: 43 steps no handrails	None, hedge, open wire mesh, hedge.	PG&E 3" Gas, AT&T Phone, Comcast Cable, Stege Sewer, EBMUD Water Lateral.	no	Marker graffiti on one step.	10'	10 feet	3 feet	Significant "joint use" of corridor: #245 Yale integrated path into their front yard and for access to back yard.	Neighboring gardeners trim corridor. Corridor is clear of weeds.	
9 b	Stanford Cambridge		Concrete steps, stepping stones, mulch.	Lower: 36 steps, no handrail, uneven cadence. Upper: 32 steps, handrail.	Building edge, high wooden, low wooden, open.	PG&E 3" Gas, AT&T Phone, Comcast Cable, Stege Sewer, EBMUD Water Lateral.	no	clear	10'	10 feet	2-4 feet	"Joint use", as path provides primary access to homes. 4' gate encroachment. One fence line encroaches by 2'. Trash cans and utility meter encroach.	Neighbors keep corridor clear, maintained. Motion sensor light.	Lower flight of steps were built poorly, and have not improved with age.
10	Trinity Columbia		overgrown	partial steps with wood timbers/ dirt path	6' high fences.	Stege Sewer.	no	clear	10'	10 feet / 0 feet	n/a	Upper half is used as private backyard entrance. Lower half is indistinguishable from adjoining property.	None.	Very steep, would require significant investment to open.

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Appendix #3



# KENSINGTON POLICE PROTECTION AND COMMUNITY SERVICES DISTRICT

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Kensington Police Protection and Community Services District

Resolution of the Board of Directors Regarding Community Paths

Resolution # 2011-04

WHEREAS, the Kensington Improvement Club (KIC) and other community volunteers have undertaken a significant volunteer effort to maintain and improve several pedestrian paths in the community of Kensington.

WHEREAS walking paths in Kensington serve as valuable community resources.

WHEREAS, the Board of Directors of the KPPCSD (the "Board") wishes to determine the correct legal ownership of these paths, and to establish a process for their maintenance, repair and improvement that complies with fundamental notions of legal due process and which is economically and financially sustainable.

NOW THEREFORE BE IT RESOLVED, that the Board do the following: (i) take appropriate steps as may be necessary, including but not limited to formation of an ad hoc committee of the Board and community volunteers to determine whether it is legally and economically sustainable and feasible for the District to exert any form of ownership and control over the paths; and (ii) ask the Real Property Division of the County of Contra Costa to notify the District and KIC should any private party or landowner file papers to vacate any County rights to all or part of any path.

BE IT FURTHER RESOLVED, that the Board hereby support the efforts of the KIC community volunteers and others in the community to do the following: (i) to legally establish title to the paths with the County of Contra Costa and/ or such other agency as may be legally empowered and economically able to retain ownership, dominion and control over them; (ii) to legally work to restore all of the paths and bring them into compliance with the legal requirements of Contra Costa County regarding their construction and renovation, taking into account the legitimate concerns of adjacent land owners and any other stakeholders for protection of their property during such renovation and future use ; and (iii) to support the legal efforts of KIC to establish a sustainable source of future funding to augment any sums that are available from the County for such maintenance, repair and improvement as will find public support in Kensington.

BE IT FURTHER RESOLVED, that the Board urges the County to cooperate with KIC in its efforts as outlined herein.

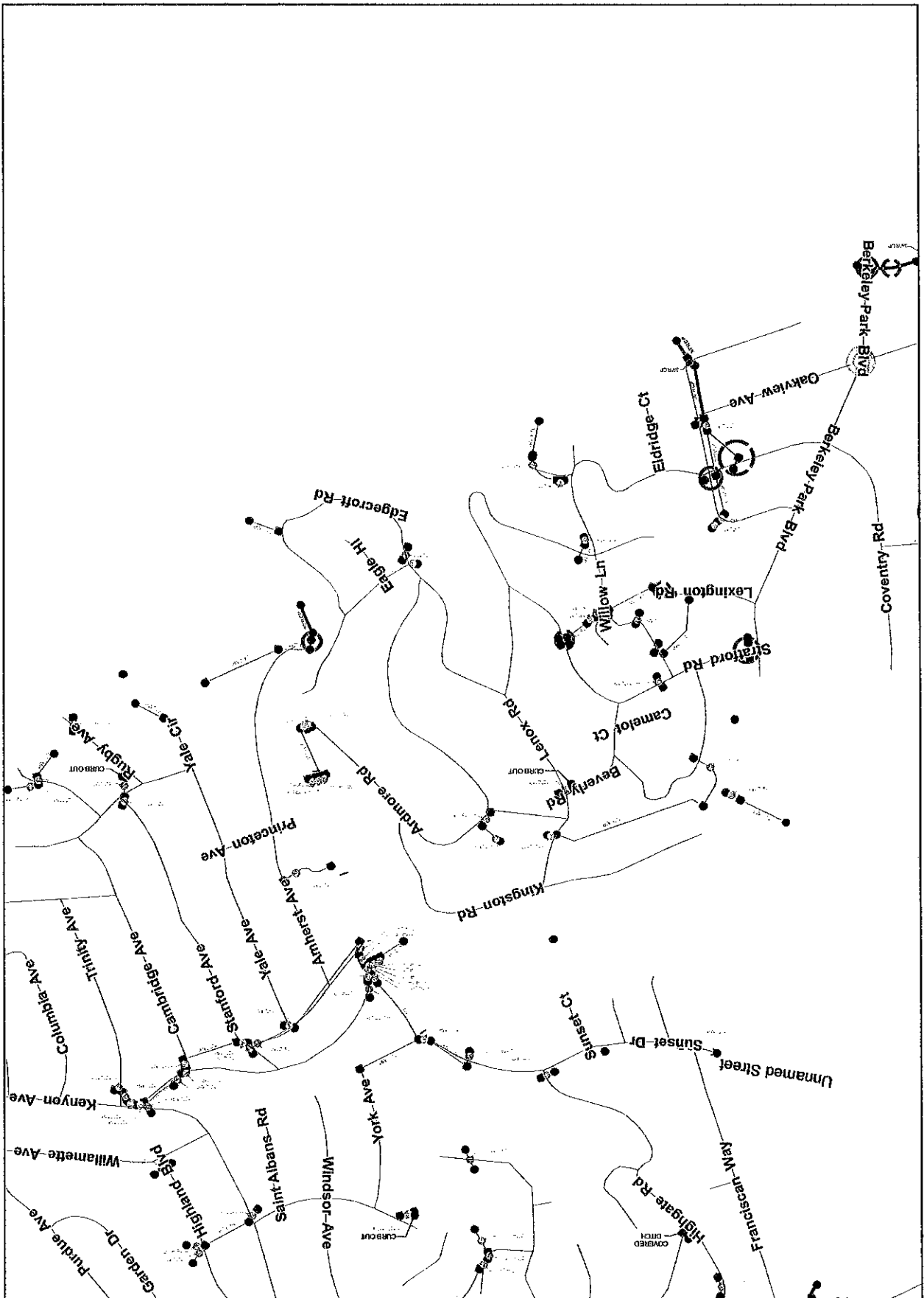
BE IT FURTHER RESOLVED, that this Board directs the general manager of the District to take such action as may be deemed necessary or proper to affect these resolutions.  
KPPCSD Path Resolution 02022011

CEToombs

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217 Arlington Avenue • Kensington, California 94707-1401 • (510) 526-4141

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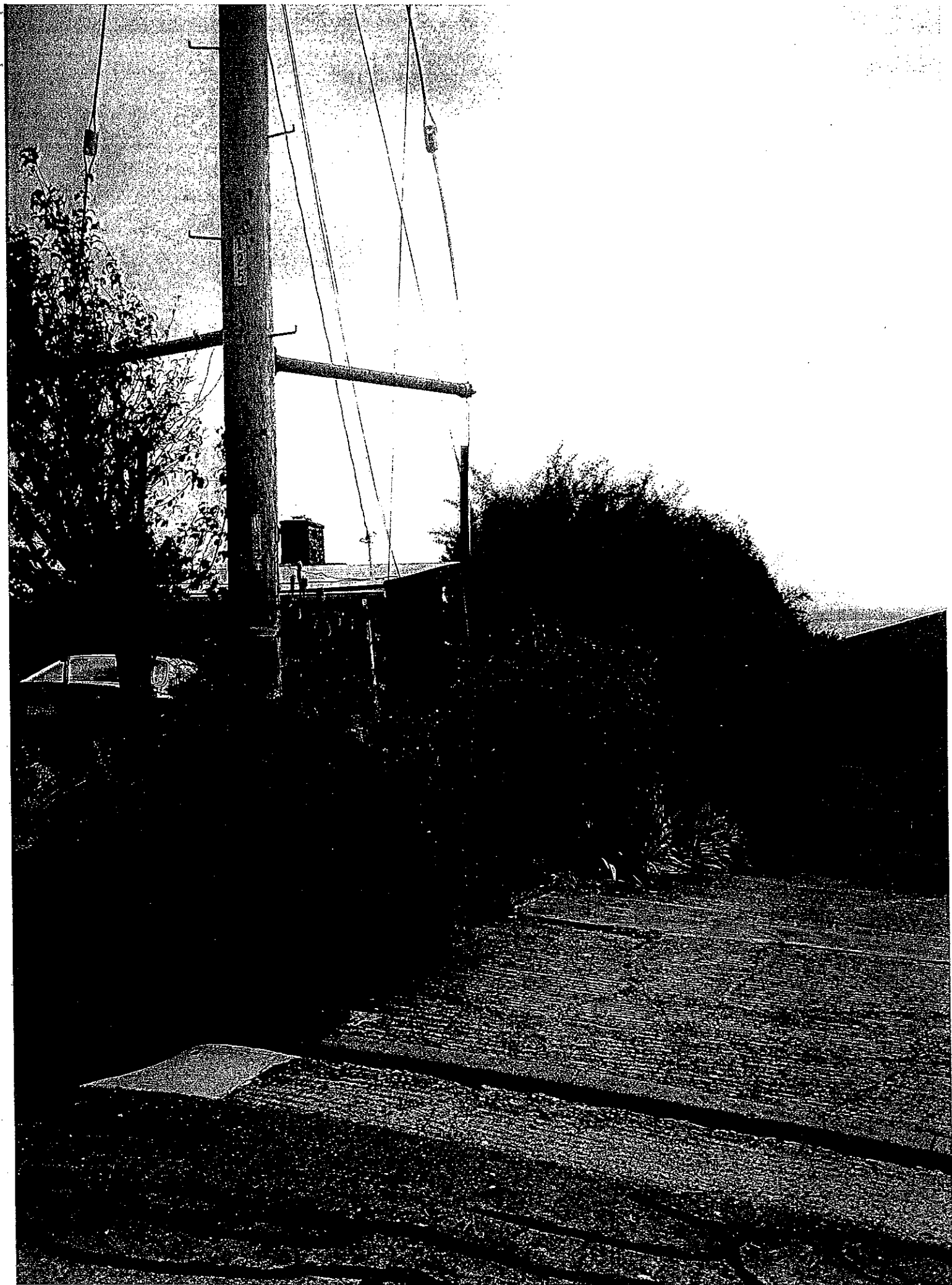


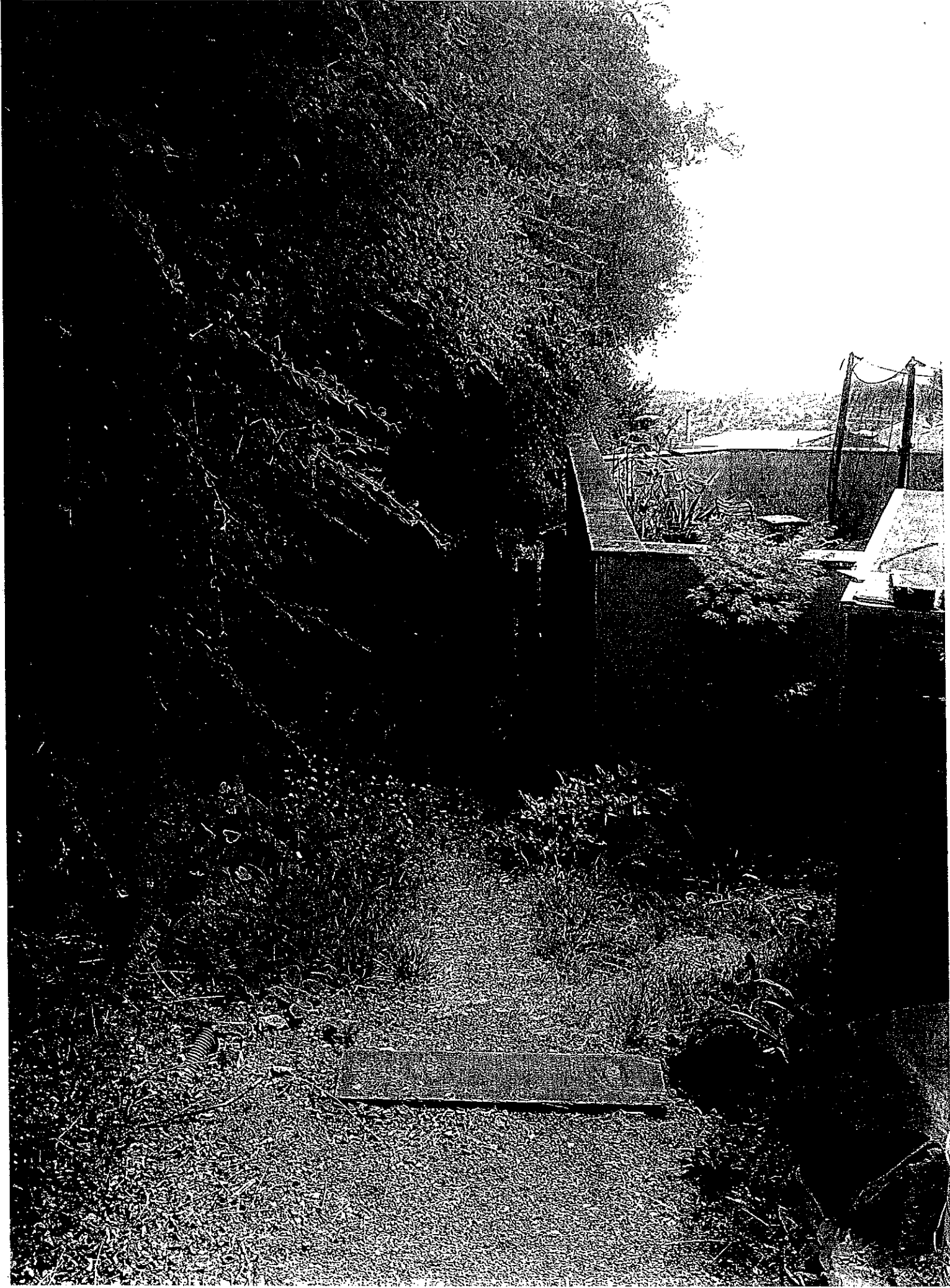


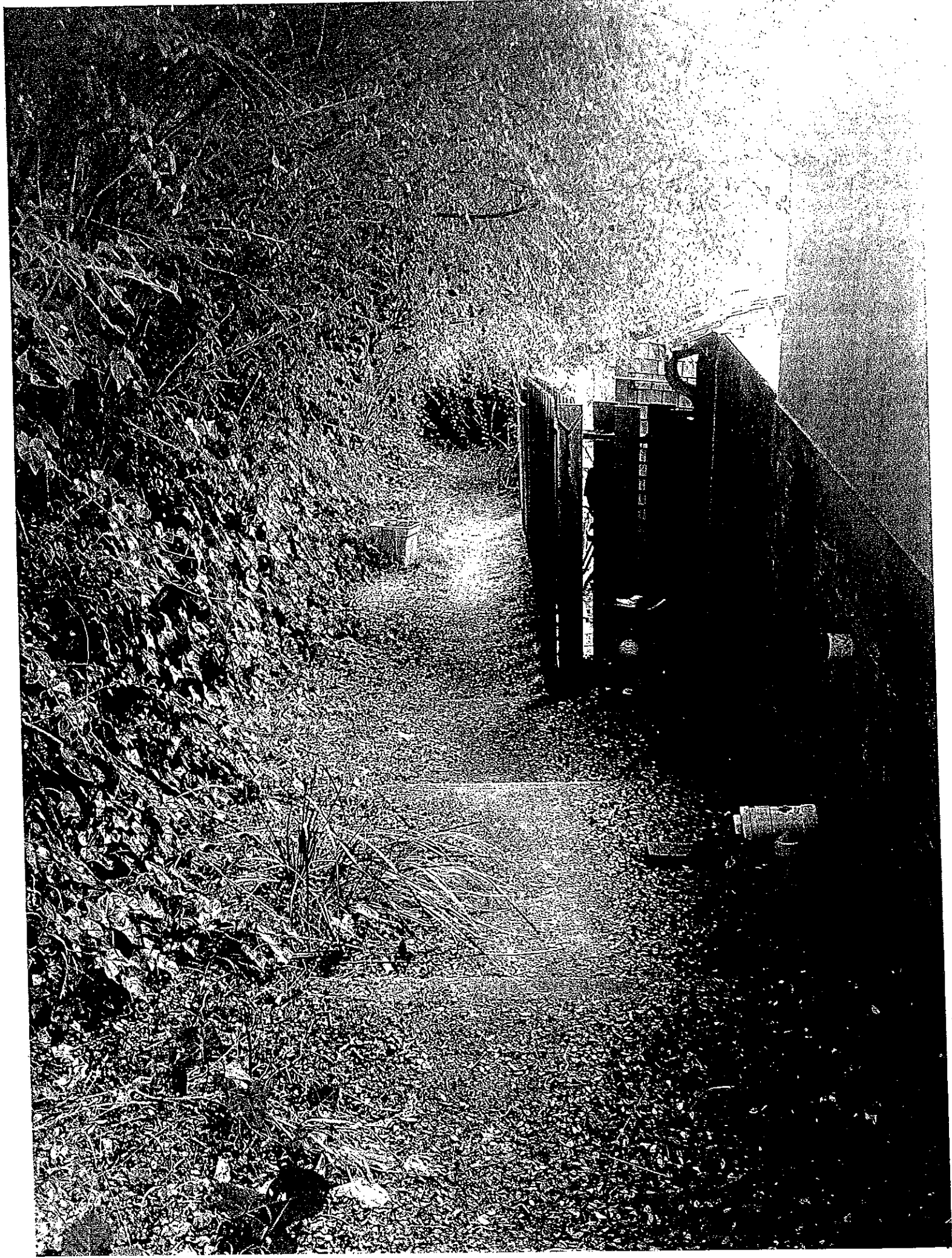






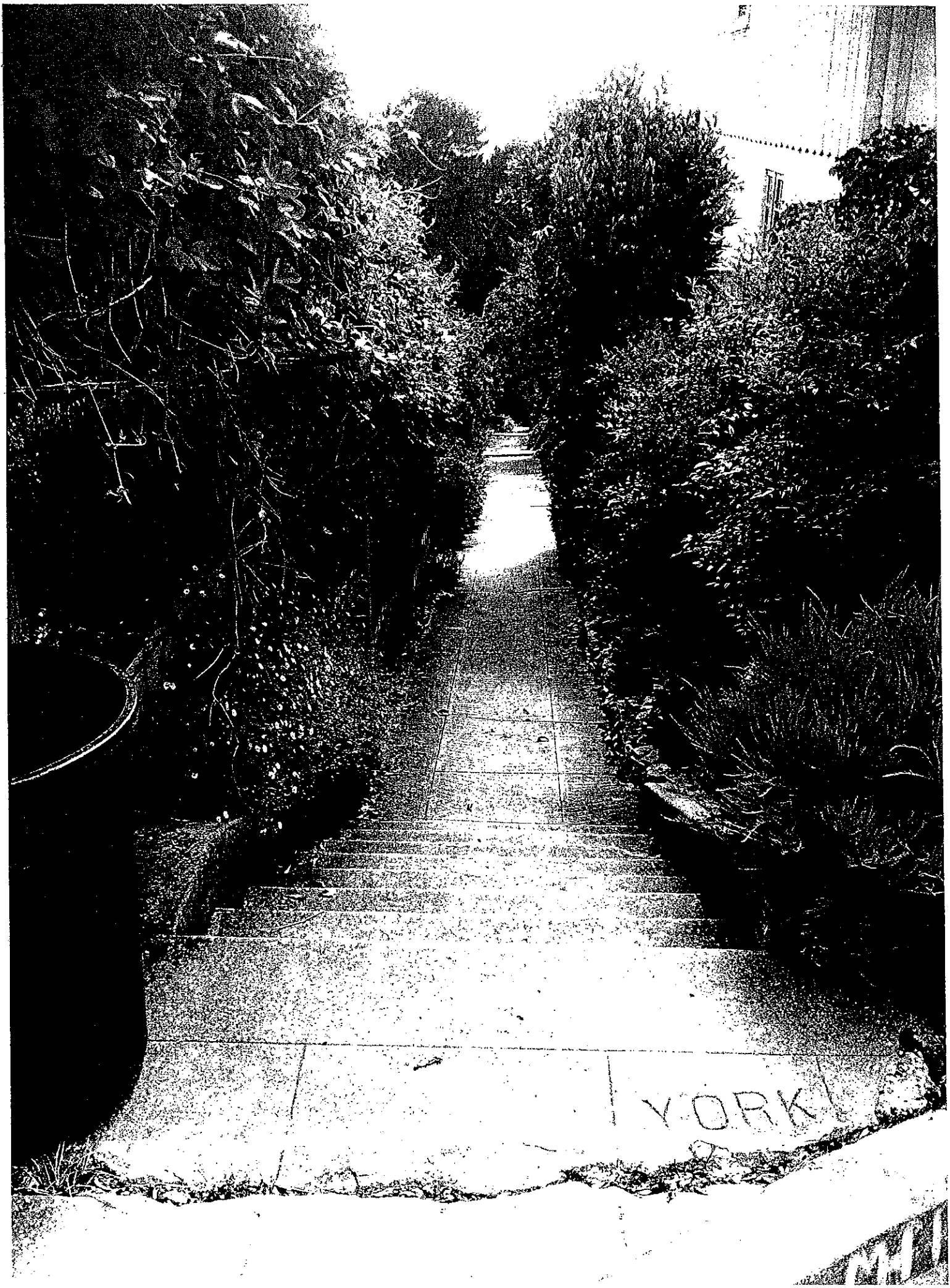












YORK



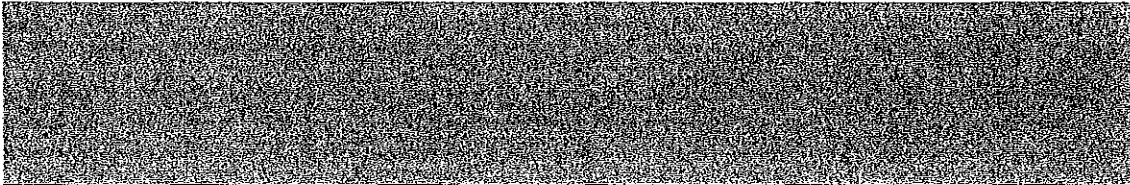


path number	segment letter	connections	signage	surface	stairs handrails
1		Marchant Coventry	none	grass, dirt	1 RR tie at top. No handrails.
2		Stratford Coventry	PUBLIC PATH #2	concrete	4 steps, 9 steps
3		Coventry Coventry Coventry	PUBLIC PATH #3	concrete	2 rails, 14 steps
4 a		Ardmore	ARDMORE PATH		
4 b		Ardmore Arlington	ARDMORE PATH		
5		Lenox Beverley	PUBLIC PATH #5	concrete	8 steps, no handrails. Ramp provides alternative to steps.
6 a		Arlington York	PUBLIC PATH #6	concrete with gap	many steps, no handrails.
6 b		York Windsor	none	Dirt, wooden steps, mulch.	24 narrow steps, no handrails.
6 c		Windsor St. Albains	none	Dirt, trimmed grass.	none
6 d		St. Albans Kenyon	PUBLIC PATH #6	Dirt, flagstones.	none
7		Arlington Amherst	none		
8		Kenyon Highland	none		

9 a	Yale Stanford	PUBLIC PATH #9	Steep dirt, wooden steps.	Lower: 50 steps no handrails. Upper: 43 steps no handrails
9 b	Stanford Cambridge	none	Uneven concrete steps, stepping stones, mulch.	Lower: 36 steps, no handrail, uneven cadence. Upper: 32 steps, handrail.
10	Trinity Columbia	by 268 Columbia/have to walk along driveway to get to path	overgrown w/ivy; steep grade; fence blocking path about 50 steps in all; concrete paved path; several cracks; dirt cut-away (4'x4')	partial steps with wood timbers/ dirt path
11	York Arlington	none; street name stamped in concrete		about 50 concrete steps, no handrails
99 X	Gore Parcel	none	various	18 wooden steps, no handrail
99 X	Kensington park	none	various	various wooden & concrete steps with and without handrails

fences	utilities	graffiti	width: parcel	width: unobstructed
Open mesh, low wood, building edge, medium wood.	Stege sewer. No drainage pipe.	clear	5'	5' but narrows to 3'3" at top.
brick, wood	Stege Sewer	clear	10'	7-9 feet (7' at stairs)
medium wood, open mesh	none?	clear	10'	8-10'
	Stege Sewer, EBMUD, PG&E Overhead, PG&E Gas		10'	10'
	Stege Sewer, EBMUD, PG&E Overhead, PG&E Gas	History of tagging on retaining wall and top of steps.	20'	20'
No fence on one side. 6' wooden on the other.	Stege Sewer, EMBUD, Overhead PG&E, Others Probable. Overhead power and communication. USA marking for gas in Lenox is "aimed" at this walkway.	clear	12'	Minimum clear between fences is 8'10".
Mix of open mesh, building edge, high wooden fence.	Stege sewer. Probable storm drain (not for sure).	History of tagging on wooden fence.	10'	9-10'
High wooden, wire mesh.	Probable sewer.	clear		10 feet
Open, wire mesh.	Probable sewer.	clear		10 feet
Open, wooden.	Probable sewer.	clear		10 feet
	PG&E Overhead, Stege Sewer manholes align with top & bottom of path. Possible PG&E gas inline with #9a and #9b.			
	PG&E Overhead, Stege Sewer, 12" Drainage Pipe.			10 feet

None, hedge, open wire mesh, hedge.	PG&E 3" Gas, AT&T Phone, Comcast Cable, Stege Sewer, EBMUD Water Lateral.	Marker graffiti on one step.	10 feet
Building edge, high wooden, low wooden, open.	PG&E 3" Gas, AT&T Phone, Comcast Cable, Stege Sewer, EBMUD Water Lateral.	clear	10 feet
6' wooden closed	Stege Sewer.	clear	10 feet (eastern half) / completely obstructed (western half)
wooden fences and some wire fences the entire length	Manhole cover 1/4 down (north side of path)	on southern wood fence; quite a bit	10 feet

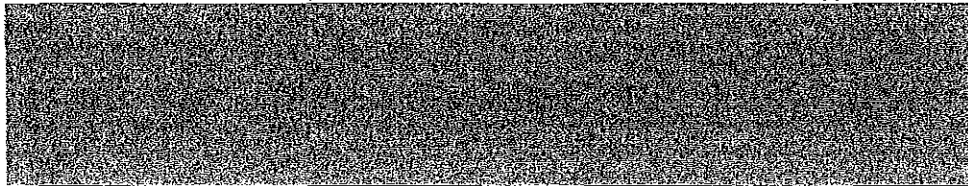


width: surface	encroachments	maintenance
N/A	Yard at Marchant Ct. end. Discharge pipe from apparent subdrain empties onto property (from back of 429 Coventry??)	According to 425 Coventry Realtor: former owner kept path clear. That owner is now deceased.
2'	bamboo, trees	No apparent maintenance. Cleared spring 2011 by KIC. gardens, lower half needs some weed whacking and trimming
5'	small plastic shed	
5'		Neighbors keep path clear. Neighboring gardeners regularly trim back hedges. Site of KIC work party.
Dual 4'	none. "Joint use" at #2 Ardmore Path (front entrance is off path).	
5 feet	Front steps of both adjacent houses (9 and 15 Lenox) are built on this strip of land. Backyard fence of 15 Lenox encroaches about 3-1/2' at upper end of walk. Neighbor's backyard excavation may have undermined the path, causing some slippage.	Appears well trimmed and maintained.
5'		Spotty community trimming. Steps installed by resident of 161 York. Dirt path maintained primarily by resident at 136 Windsor.
6-9 feet for majority. Steps 2 feet wide.	none	Wider at Windsor due to vegetation clearing by resident at 136 Windsor.
4-6 feet	"Joint use", stepping stones used as path to house and yard. Rock planter wall may encroach. Pine tree planted very close to path at Kenyon Avenue. Rocks divide path into private and public halves, but private half encroaches.	
2-6 feet		No apparent maintenance.



3 feet	Significant "joint use" of corridor; #245 Yale integrated path into their front yard and for access to back yard.	Neighboring gardeners trim corridor. Corridor is clear of weeds.
2-4 feet	"Joint use", as path provides primary access to homes. 4' gate encroachment. One fenceline encroaches by 2'. Trash cans and utility meter encroach.	Neighbors keep corridor clear, maintained. Motion sensor light.

4 feet	some wire fence and greenery about 1/2 way down	not maintained path in decent shape; overgrown in some areas; cracked; no handrails; crooked and chipped steps
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**notes**

**issues**

Steep to very steep. Passage under dry conditions was with great caution. Had to hold onto a tree at one point. Most likely unsafe when wet. (Baeraza)

Unsurfaced. Wild Grass, mud & leaves could be hazardous under wet conditions (Reported 2011-Apr Ray Barazza). Land may be on tax roles.

Per Phillip at 673 Coventry: sign reading "Stratford Path" fell down years ago. Steps at top were rebuilt c1980 by a neighbor who was a bricklayer.

Heavily cracked concrete.  
Lower path leads directly into ditch.  
Many path users divert to nearby driveway.

Probably built by original subdivider. A ramp bypasses the steps at the lower end. Walk is generally in good condition and usable in all weather. (It was raining lightly while I was there.) Needs handrails for the steps and about 12' of repair in an area that would probably not pass County standards for sidewalk maintenance.

About 12' of length needs repair/replacement due to cracking (Reported 2011-Apr Ray)  
Clump of poison oak, 2nd flight of stairs on the right (Reported by Bryce 2011-Apr)

Dirt gullies not easy to walk on when very wet. (Report 2011-Apr Gloria)

Tree was planted on path, diverting foot traffic up a private set of stairs at 59 Kenyon.



none

Lower flight of steps were built poorly,  
and have not improved with age.

path extends probably length of one lot  
and then it's blocked.

length of 2 parcels

dirt cut-away; cracked steps; no  
handrail

Tree growth obscures STOP sign as  
you approach. (Report by neighbor  
2010-Nov)

Owned by KPPCSD

Owned by KPPCSD

## Memorandum

**Date:** November 9, 2020

**To:** Board of Directors  
KPPCSD

**From:** Ann Danforth, General Counsel

**Re: Preliminary Steps for Acquiring Pedestrian Paths**

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### BACKGROUND

According to Contra Costa County officials, early Kensington developers created the pedestrian paths located within the District and offered those paths to the County. The County did not accept them. The County is willing to accept the dedicated paths if the District will agree to acquire them in turn from the County.

### PROCEDURE

In preparing this memorandum, I have assumed that the dedications arose from a subdivision process similar to the one currently stipulated by California law. I have not seen the documents that created the dedications and would need to review them to confirm the governing law.

Before the Board decides whether to pursue acquisition of the paths, I recommend that it consider the following:

- The proposed use of the paths
- The current condition of the paths and the cost of improving them for safe use.
- The recurring maintenance costs
- The need to improve the paths to comply with applicable accessibility laws (this will largely depend on the proposed use of the paths) and the cost of such improvements
- The potential liability associated with acquiring the paths; State law provides for “recreational use” immunity, which does not apply to non-recreational paths.
- The cost involved in removing any encroachments from the path

Memo to: KPPCSD

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If the Board decides to pursue acquisition of some or all of the paths, I recommend the following steps:

1. Obtain copies of the documents that contain the offers of dedication. If the dedications were over land that ultimately became part of a lot that was sold to a third party, and the lot owner has been using the dedicated area as part of their private property, the dedication could be found to be abandoned, thus no longer available for acceptance.
2. If the offers of dedication were for fee interests (i.e., for the land itself rather than an easement over otherwise private property), the current owners would likely be difficult to locate. However, it would be less likely that an adjoining property owner has acquired any rights to them.
3. The District should verify that the existing paths are located within the areas offered to the County by the original developer. This would require a survey. The surveyor could also provide the District with legal descriptions of the property to be acquired.
4. If the paths are located with the dedicated right of way, and assuming that the paths remain available for dedication, the County could adopt a resolution authorizing the execution and recordation of a quitclaim deed conveying the property.
5. The Board would then adopt a resolution accepting the property and directing staff to record it. After this occurs, the District would own the paths.
6. District staff would record the deed in the Office of Official Records of Contra Costa County.

## **FISCAL IMPACT**

Unknown