

CITY OF RANCHO CORDOVA



CITY COUNCIL MEETING

Monday, April 17, 2023

4:00 PM – Special Meeting/Closed Session

5:30 PM – Regular Meeting

David B. Roberts Council Chambers

City Hall

2729 Prospect Park Drive, Rancho Cordova

DoubleTree Hotel - Lobby

St. Louis Forest Park

4550 Forest Park Ave

St. Louis, MO 63108

Join the Meeting Via Zoom Link:

<https://cityofranhocordova.zoom.us/j/86200639861?pwd=c1EydkN2N00zb1VHUmk4WFZGejZEUT09>

Join the Meeting via the Zoom Phone Number

Zoom Phone Number: +1 669 900 6833, +1 253 215 8782, or +1 312 626 6799

Webinar ID: 862 0063 9861

Password: 578969

Instructions to Make Public Comment

Submitting Public Comment via Email

Members of the public who wish to provide public comment via email will need to submit written comments to CityClerk@cityofranhocordova.org no later than 2:00 p.m. on Monday, April 17, 2023. Written comments received no later than 2:00 p.m. will be distributed to the Council, filed in the record, and will not be read aloud. All comments submitted later than 2:00 p.m. will be distributed to the Council.

Listening to a Zoom Meeting by Zoom Video Conference

To make a public comment using the Zoom platform, please use the “raise hand” feature at the

bottom center of the screen. Please make sure to enable audio controls once access has been given by the City Clerk's office to speak. Please wait to be called upon by the City Clerk.

Listening to a Zoom Meeting by Phone Only

You can join a Zoom meeting via teleconferencing/audio conferencing using a cell phone or traditional landline phone. To request to make a public comment by phone press *9 to raise your hand. Please wait to be called upon by the City Clerk.

All public comments will be limited to three minutes.

If you have questions related to the City Council Meeting or the use of Zoom, please contact the City Clerk's Office at (916) 851-8720 before Monday, April 17, 2023, at 2:00 p.m.

AGENDA

1. SPECIAL MEETING - CALL TO ORDER/ROLL CALL

Council Member Garrett Gatewood, Siri Pulipati, David Sander, Donald Terry, and Mayor Linda Budge

2. PUBLIC COMMENT

At a special meeting, citizens wishing to address the Council for any matter on the agenda may do so at the time the matter is discussed. Under the provisions of the California Government Code, the City Council is prohibited from discussing or taking action on any item not on the agenda.

3. ADJOURN TO CLOSED SESSION

Mayor Budge will adjourn the meeting to closed session.

4. CLOSED SESSION - CALL TO ORDER/ROLL CALL

Council Members Garrett Gatewood, Siri Pulipati, David Sander, Donald Terry, and Mayor Linda Budge

5. CLOSED SESSION

Council will meet in closed session to discuss the following item:

- 5.1. CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION: Significant Exposure to Litigation Pursuant to Government Code Section 54956.9(d)(2) (Four cases, one relating to "Notice and Alleged Default Under Development Agreement and 60-Day Period to Cure; Logisticenter Project" at Corner of N. Mather Blvd. and Bear Hollow Drive from Arthur Coon, January 25, 2023; a second relating to a "Notice of City of Rancho Cordova's Breach of and Default Under Development Agreement and 60-Day Period to Cure; Stone Creek Industrial Center" at Corner of Zinfandel Blvd. and Baroque Drive from Arthur Coon, March 13, 2023; a third relating to an oral threat of litigation from representatives of Elliott Homes relating to its Stone Creek properties APN 072-2360-028, APN 072-2360-029, APN 072-2360-030, APN 072-2860-024, APN 072-2860-015, APN 072-2860-016, APN 072-2860-017, APN 072-2860-018 and an April 12, 2023 "Request to Process Application and 60-Day Notice of Default"; and a fourth relating to the written threat by Gloria Smith on behalf of Stone Creek Residents for

Smart Growth, March 30, 2023.

6. OPEN SESSION - REPORT FROM CLOSED SESSION

The City Attorney will report on action taken in closed session.

7. ADJOURN TO REGULAR MEETING

Mayor Budge will adjourn closed session to the Regular meeting.

8. REGULAR MEETING - CALL TO ORDER/ROLL CALL

Council Members Garrett Gatewood, Siri Pulipati, David Sander, Donald Terry, and Mayor Linda Budge

9. METRO CABLE TV TELEVISION ANNOUNCEMENT

The Clerk will announce the meetings video recording and playback schedules.

10. PLEDGE OF ALLEGIANCE

The Mayor will call on someone in attendance to lead the Pledge.

11. INVOCATION

Mark Shelter with River City Christian will give the invocation.

12. PRESENTATIONS

- 12.1. New Employee Introductions: Lydia Thung, Economic Development Analyst II by Amanda Norton, Economic Development Manager.

13. PUBLIC COMMENT

Citizens wishing to address the Council for any matter not on the agenda may do so at this time via teleconference or by completing and submitting a Speaker Card to the City Clerk.

If you want to make a public comment via teleconference, please use the “raise hand” feature at the bottom center of the screen. If you are participating by telephone and you want to make a public comment, please press *9 to raise your hand. For those participating by Zoom or telephone, please wait to be called upon by the City Clerk.

For items on the agenda, speakers will be called by the Mayor at the point on the agenda when the item will be heard. Speakers are encouraged to keep comments to three minutes or less and to state name and community of residence.

Under the provisions of the California Government Code, the City Council is prohibited from discussing or taking immediate action on any item not on the agenda unless it can be demonstrated to be of an emergency nature or the need to take immediate action arose after the posting of the agenda.

14. COUNCIL REPORTS

15. CITY MANAGER'S REPORT

16. CONSENT CALENDAR ITEMS - ROLL CALL VOTE

- 16.1. **Subject:** Meeting Minutes from the Special Meeting of March 30, 2023, the Special and Regular City Council Meeting of April 3, 2023.
Recommendation: Adopt the Minutes.
- 16.2. **Subject:** A Resolution Authorizing the City Manager to Execute Contract Amendment No. 58-2019-2 with Coastline Water Resources, Inc. to Extend the Contract Term from June 30, 2023, to June 30, 2024, which Results in an Increase to the Contract Amount from \$1,835,000 to an Amount not to Exceed \$2,335,000 for Citywide Storm Drain Maintenance Services.
Recommendation: Adopt the Resolution.
- 16.3. **Subject:** A Resolution Authorizing the City Manager to Execute Space Rent Stabilization Memorandums of Understanding with the Eight Mobile Home Parks within the City of Rancho Cordova.
Recommendation: Adopt the Resolution.
- 16.4. **Subject:** A Resolution Approving the Final Map of Grantline 220 Unit 5, Subdivision No. FM-2021-004-05, and Authorizing the City Manager to Execute Subdivision Improvement Agreement Contract No. 2023-39 with Lennar Homes of California, LLC, and Finding the Action Exempt Under CEQA Guideline 15268(b)(3).
Recommendation: Adopt the Resolution.
- 16.5. **Subject:** A Resolution Approving the Final Map of Grantline 220 Unit 6, Subdivision No. FM-2021-004-06, and Authorizing the City Manager to Execute the Subdivision Improvement Agreement Contract No. 2023-40 with Lennar Homes of California, LLC and Finding the Action Exempt Under CEQA Guideline 15268(b)(3).
Recommendation: Adopt the Resolution.
- 16.6. **Subject:** A Resolution Declaring the City's Intention to Impose an Annual Stormwater Utility Fee for the Maintenance of Storm Drainage and Flood Protection Systems for the North Point Project.
Recommendation: Adopt the Resolution designating a time and place for hearing protests in connection with the annual Stormwater Utility Fee for the North Point project.
- 16.7. **Subject:** A Resolution Authorizing the City Manager to Execute Contract Amendment 2022-207-1 with Bio-One to Increase the Contract Amount from \$100,000.00 to an Amount not to Exceed \$225,000.00 for Biohazard and Non-Biohazard Clean-up Throughout the City.
Recommendation: Adopt the Resolution.
17. **CONSENT PUBLIC HEARING ITEMS - ROLL CALL VOTE**
- 17.1. **Subject:** A Resolution Vacating a No Ingress or Egress Rights Line Pursuant to the Provisions of Chapter 3, Part 3 of Public Streets, Highways, and Service Easements Vacation Law Commencing at Section 8320 of the California Streets and Highways Code (3115 Gold Valley Drive).
Recommendation: Adopt the Resolution.
18. **PUBLIC HEARING ITEMS**
- 18.1. **Subject:** Logisticenter at Rancho Cordova Major Design Review - Project No. PLND-1021-0015.
Recommendation: There is no Staff recommendation at this time. On April 3, 2023 City Council made a motion and directed Staff to bring back the Logisticenter project for

reconsideration of their March 6, 2023 motion directing staff to prepare a Resolution with findings for denial. Staff will be seeking additional direction from Council regarding the reconsideration, including a decision on the requested motion to reconsider. If the motion to reconsider is approved by the City Council, additional direction on the Project could be made, including possible direction to Staff prepare a Resolution with findings of approval for consideration at the May 15, 2023 Council meeting. Staff also requests direction on a March 20, 2023 demand to cure or correct under government Code 54960.1. Staff requests that the Council receive additional testimony, potentially close the public hearing, ask any questions, deliberate, and provide staff sufficiently detailed direction to prepare documents for final action at the May 15, 2023 Council Meeting based upon Council's direction.

- 18.2. **Subject:** Stonecreek Industrial Center Major Design Review Amendment; Project No. PLND-1121-0020.

Recommendation: There is no staff recommendation at this time. Staff will be seeking additional direction from Council for this project. Staff requests that the Council receive testimony, continue the public hearing to May 15, 2023, potentially appoint an ad hoc City Council subcommittee (two members), ask any questions, deliberate, and provide staff sufficiently detailed direction to return with final hearing documents and plan revisions at the May 15, 2023 City Council meeting.

19. REGULAR CALENDAR ITEMS

- 19.1. **Subject:** A Resolution of the City Council of the City of Rancho Cordova Approving a Purchase and Sale Agreement by and Between the City of Rancho Cordova and Elliott Homes for the Purchase of Properties within the Stone Creek Specific Plan Area (Assessor's parcel numbers 072-2360-028, 029 and 030, and 072-2860-024, 015, 016, 017 and 018), Pursuant to CEQA Guideline 15061(b)(3).

Recommendation: Adopt the Resolution.

20. COUNCIL REQUESTS FOR FUTURE AGENDA ITEMS

21. ADJOURNMENT

ADDITIONAL INFORMATION

Special Meetings listed below are subject to change/cancellation without further notice.

Unless the Council adopts a motion to extend the meeting, any item that is not initiated before 11:00 p.m. will be continued to the next day at 5:30 p.m. or scheduled on the next regular meeting agenda of the Council.

Public documents related to items on the open session portion of this agenda, which are distributed to the City Council less than 72 hours prior to the meeting, shall be available for public inspection at the time the documents are distributed to the Council. Documents are available for inspection at the City Clerk's office located in Rancho Cordova City Hall.

The agenda items are accessible on the City's website at www.cityofranhocordova.org on Thursdays or Fridays prior to the Regular City Council Meeting.

UPCOMING MEETINGS

May 1, 2023	4:00 PM Special Meeting/Regular Meeting
May 15, 2023	5:30 PM Regular Meeting
May 23, 2023	5:30 PM Special Meeting/Work Session
June 5, 2023	4:00 PM Special Meeting/Regular Meeting
June 19, 2023	5:30 PM Regular Meeting
June 27, 2023	5:30 PM Special Meeting/Work Session
July 3, 2023	4:00 PM Special Meeting/Regular Meeting
July 25, 2023	5:30 PM Special Meeting/Work Session

If you have any technical questions related to the agenda items, please contact City Hall at (916) 851-8700.

The Rancho Cordova City Council meeting will be videotaped in its entirety and will be cablecast without interruption on Metro Cable 14, the Government Affairs Channel on the Comcast, Consolidated Communications and AT&T U-Verse Systems. Closed Captioning will be available on the playback cablecast. A DVD copy is available from the City Clerk's Department and a webcast of this meeting will be available for viewing via video streaming from the City's website within 48 hours of adjournment of this meeting.

In compliance with the Americans with Disabilities Act, if you need a disability-related modification or accommodation, including auxiliary aids or services, to participate in this meeting, please contact the City Clerk's Office at (916) 851-8720 at least 48 hours prior to the meeting.

CERTIFICATION OF POSTING OF AGENDA

I, Stacy Leitner, City Clerk for the City of Rancho Cordova, declare that the foregoing agenda for the April 17, 2023 Regular Meeting of the Rancho Cordova City Council was posted and available for review on April 14, 2023 at City Hall of the City of Rancho Cordova, 2729 Prospect Park Drive, Rancho Cordova, California, 95670. The agenda is also available on the city website at www.cityofranhocordova.org.

Signed April 14, 2023 at Rancho Cordova, California.



Stacy Leitner, CMC
City Clerk

ITEM 16.1.

CITY OF RANCHO CORDOVA



CITY COUNCIL MEETING

Thursday, March 30, 2023

**5:30 PM – Special Meeting/Closed Session
David B. Roberts Council Chambers**

**City Hall
2729 Prospect Park Drive, Rancho Cordova**

**The Padre Hotel - Lobby
1702 18th Street
Bakersfield, CA 93301**

DRAFT MINUTES

1. SPECIAL MEETING - CALL TO ORDER/ROLL CALL

Mayor Budge called the Special meeting to order in the David B. Roberts Council Chambers at 5:39 p.m.

Council Members Present: Garrett Gatewood, David Sander, Donald Terry, and Mayor Linda Budge

Council Members Absent: Siri Pulipati

Staff Members Present: Haley Arata, Stacy Leitner, Adam Lindgren, Persephonie Riley, and Micah Runner

2. PUBLIC COMMENT

Mayor Budge opened the public comment period. The following individuals addressed the Council:

1. Pilar Magana
2. Cherrie Wheeler
3. Heeyoun Cho
4. Jenica Williams
5. Donald Weidman
6. Rose Ferrer
7. Kim Herlache

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Rancho Cordova City Council – DRAFT MINUTES
Meeting of Thursday, March 30, 2023

8. John Dyte
9. Lisa Burns
10. David Burns
11. Vera Ferguson
12. Jonathan Lacoss
13. Nancy Lacoss
14. Valerie Knippschild
15. Troy Fennel
16. Katherine Whitcome
17. Pete Philips
18. Skip Bradlee
19. Pio Enriquez
20. Michelle Nelson
21. Steve Elliott
22. Gene and Daneece Adair
23. William Workman
24. Pamela and Darrell Fuller
25. Cyndi Sills
26. Yuriy Chernioglo
27. Holles Sommers Ahlstrom
28. Galina Gavrilov
29. Andrey Gavrilov
30. Maria Gavrilov
31. Jennifer Garcia
32. Schott Ahlstrom Sr.
33. Timothy Johnson
34. Elaine Rice
35. Paul Carroll
36. Andrey Shvrdchenko
37. Alan Vosper
38. Marilyn Metzger
39. Gloria Smith
40. Eileen and Stan Sedilko
41. Mary and Phil Miller
42. Katie Uyeyama
43. Ben and Rowena Ramirez
44. Amir Mohammadiadl
45. Mehrnoosh Ansari
46. Shahnaz Mohammadiald
47. Paridokht Aghajoni
48. Ehson Rostami
49. Mary Kinyua
50. Stanley Nderi
51. Jim Rohwer
52. Pat Becker
53. Jon Decoteau
54. Alina Skye
55. Barbara Korpacak
56. Stanley Sedilko
57. Lynn Keay
58. Janet Tegtmeyer
59. Michael Phalen
60. Dilip Nayak

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61. MJ Tournay
62. John McLaughlin
63. Minh Hoang
64. Jeanette and John Cluff
65. Nancy and Dennis Scovill
66. Nikki Sowunmi
67. Mark Berry
68. Elaina Natividad
69. Elisha Abbott
70. David and Barbara Williams
71. Sara Malone
72. James Garcia
73. Valeria Knippschild
74. Eric Winegar

Mayor Budge closed the public comment period.

3. ADJOURN TO CLOSED SESSION

Mayor Budge adjourned the meeting to closed session at 5:25 p.m.

4. CLOSED SESSION - CALL TO ORDER/ROLL CALL

Mayor Budge called closed session to order at 5:25 p.m.

Council Members Present: Garrett Gatewood, David Sander, Donald Terry, and Maor Linda Budge

Council Members Absent: Siri Pulipati

Staff Members Present: Adam Lindgren and Micah Runner

5. CLOSED SESSION

Council met in closed session to discuss the following items:

- 5.1. CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION: Pursuant to Government Code Section 54956.9(d)(4) (one case): Potential Litigation Related to National Opioid Cases and Settlement. (IN RE: NATIONAL PRESCRIPTION OPIATE LITIGATION, U.S.D.C., Eastern District of California, Case No. 2:18-cv-01135 and U.S.D.C., Northern District of Ohio, MDL No. 2804, Case No. 17-MD-2804.)
- 5.2. CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION: Significant Exposure to Litigation Pursuant to Government Code Section 54956.9(d)(2) (Three cases, one relating to "Notice and Alleged Default Under Development Agreement and 60-Day Period to Cure; Logisticenter Project" at Corner of N. Mather Blvd. and Bear Hollow Drive from Arthur Coon, January 25, 2023; a second relating to a Notice of City of Rancho Cordova's Breach of and Default Under Development Agreement and 60-Day Period to Cure; Stone Creek Industrial Center" at Corner of Zinfandel Blvd. and Baroque Drive from Arthur Coon, March 13, 2023; and a third relating to an oral threat of litigation from representatives of Elliott Homes that the potential City action on the Logisticenter Project will result in litigation by Elliott Homes against the City relating to certain of its Stone Creek properties).

6. OPEN SESSION - REPORT FROM CLOSED SESSION

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Rancho Cordova City Council – DRAFT MINUTES
Meeting of Thursday, March 30, 2023

The City Attorney will report on action taken in closed session.

Adam Lindgren, City Attorney:

“Thank you, Mayor, Council, and members of the community.

This evening the City Council met in closed session on one item of anticipated litigation, the national prescription opioid litigation. The City Council gave direction to the City Manager and the City Attorney to take the necessary steps to participate in the next round of the national prescription opioid litigation settlements that will allow additional funds to come to the City in exchange for participating in that matter.

The second item of business in closed session, the Council took up a conference with legal counsel on anticipated litigation on three identified cases relating to warehouses proposed in the City and the City Attorney provided information and received additional direction from the Council.”

7. ADJOURNMENT

Mayor Budge adjourned the meeting in memory of Steve Miller at 7:02 p.m.

Stacy Leitner, CMC
City Clerk

ITEM 16.1.

CITY OF RANCHO CORDOVA



CITY COUNCIL MEETING

Monday, April 3, 2023

**5:00 PM – Special Meeting/Closed Session
David B. Roberts Council Chambers**

**City Hall
2729 Prospect Park Drive, Rancho Cordova**

DRAFT MINUTES

1. SPECIAL MEETING - CALL TO ORDER/ROLL CALL

Mayor Budge called the Special meeting to order in the David B. Roberts Council Chambers at 5:14 p.m.

Council Members Present: David Sander, Donald Terry, and Mayor Linda Budge

Council Members Absent: Garrett Gatewood and Siri Pulipati

Staff Members Present: Haley Arata, Stacy Leitner, Adam Lindgren, Persephonie Riley, and Micah Runner

2. PUBLIC COMMENT

Mayor Budge opened the public comment period. The following individuals addressed the Council or submitted public comment via email:

1. Ken Cooley
2. Diann Rogers
3. Carrie Ann Griffin

Mayor Budge closed the public comment period.

3. ADJOURN TO CLOSED SESSION

Mayor Budge adjourned the meeting to closed session at 5:25 p.m.

4. CLOSED SESSION

Council met in closed session to discuss the following item:

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Rancho Cordova City Council - DRAFT MINUTES
Meeting of Monday, April 3, 2023

- 4.1. **CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION:** Significant Exposure to Litigation Pursuant to Government Code Section 54956.9(d)(2) (Four cases, one relating to "Notice and Alleged Default Under Development Agreement and 60-Day Period to Cure; Logisticenter Project" at Corner of N. Mather Blvd. and Bear Hollow Drive from Arthur Coon, January 25, 2023; a second relating to a Notice of City of Rancho Cordova's Breach of and Default Under Development Agreement and 60-Day Period to Cure; Stone Creek Industrial Center" at Corner of Zinfandel Blvd. and Baroque Drive from Arthur Coon, March 13, 2023; a third relating to an oral threat of litigation from representatives of Elliott Homes that the potential City action on the Logisticenter Project will result in litigation by Elliott Homes against the City relating to its Stone Creek properties APN 072-2360-028, APN 072-2360-029, APN 072-2360-030, APN 072-2860-024, APN 072-2860-015, APN 072-2860-016, APN 072-2860-017, APN 072-2860-018; and a fourth relating to the written threat by Gloria Smith on behalf of Stone Creek Residents for Smart Growth, March 30, 2023.

5. **CLOSED SESSION - CALL TO ORDER/ROLL CALL**

Mayor Budge called closed session to order at 5:25 p.m.

Council Members Present: David Sander, Donald Terry, and Mayor Linda Budge

Council Members Absent: Garrett Gatewood and Siri Pulipati

Staff Members Present: Adam Lindgren and Micah Runner

6. **OPEN SESSION - REPORT FROM CLOSED SESSION**

City Attorney Adam Lindgren gave the following report:

Tonight we can report that the City has been working with Elliott Homes on a framework for potential resolution of their claims relating to ware houses proposed on property they own in Stone Creek. The settlement and release will include a proposed purchase by the City of property owned by Elliott and proposed for approximately 600,000 square feet of ware house development immediately across the street from the Dermody Logisticenter Project and parcels on the north side of North Mather. The City Manager will have additional comments on this matter under his report this evening.

7. **ADJOURNMENT**

Mayor Budge adjourned to the Regular Meeting at 5:50 p.m.

Stacy Leitner, CMC
City Clerk

ITEM 16.1.

CITY OF RANCHO CORDOVA



CITY COUNCIL MEETING

Monday, April 3, 2023

5:30 PM – Regular Meeting

David B. Roberts Council Chambers

City Hall

2729 Prospect Park Drive, Rancho Cordova

DRAFT MINUTES

1. REGULAR MEETING - CALL TO ORDER/ROLL CALL

Mayor Budge called the Regular meeting to order in the David B. Roberts Council Chambers at 5:50 p.m.

Council Members Present: David Sander, Donald Terry, and Mayor Linda Budge

Council Members Absent: Garrett Gatewood and Siri Pulipati

Staff Members Present: Haley Arata, Stacy Leitner, Adam Lindgren, Persephonie Riley, and Micah Runner

2. METRO CABLE TV TELEVISION ANNOUNCEMENT

The City Clerk read the meetings recordings and playback schedule.

3. PLEDGE OF ALLEGIANCE

Tera Kolvenbach led the pledge.

4. INVOCATION

There was a moment of silence in lieu of the invocation.

5. PRESENTATIONS

5.1. Presentation by the Rancho Cordova Food Locker.

5.2. Mayor Linda Budge's Birthday on April 10, 2023.

6. PUBLIC COMMENT

Mayor Budge opened the public comment period. The following individuals addressed

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Meeting of Monday, April 3, 2023

the Council or submitted public comment via email:

1. Greg Muilenberg
2. Helen Whelan-Bashaw
3. Marilyn Metzger
4. Paul Carroll
5. Eric Winegar
6. Katherine Fuentes
7. Marilyn Metzger
8. Brenda Gustin
9. Valerie Knippschild

Mayor Budge closed the public comment period.

7. COUNCIL REPORTS

Council reported on events since the last meeting.

8. CITY MANAGER'S REPORT

City Manager Micah Runner gave his report.

9. CONSENT CALENDAR ITEMS - ROLL CALL VOTE

Mayor Budge opened the public comment period. Seeing no speakers, Mayor Budge closed the public comment period.

ACTION: Motion to approve items 9.1 through 9.5 by Sander second by Terry;
Motion passed with a 3:0 vote.

AYES: Sander, Terry, and Budge

NOES: None

ABSENT: Gatewood and Pulipati

ABSTAIN: None

- 9.1. **Subject:** Meeting Minutes from the Regular City Council Meeting of March 20, 2023.

Recommendation: Adopt the Minutes.

- 9.2. **Subject:** A Resolution Authorizing the City Manager to Execute Contract No. 2023-47 with Anvil Builders Inc. in an Amount not to Exceed \$3,647,999 for the Stormwater Pump Stations Improvement Project and Finding the Project Exempt from Further California Environmental Quality Act (CEQA) Analysis as it is Consistent with the Initial Study with Mitigated Negative Declaration Prepared for Routine Maintenance of the City's Stream Channels and Drainage Facilities.

Recommendation: Adopt the Resolution.

- 9.3. **Subject:** A Resolution Authorizing the City Manager to Execute Contract Amendment No. 61-2017-3 with Davey Resource Group Inc. to Extend the Contract Term from June 30, 2023, to June 30, 2025, which would Result in an Increase to the Contract Amount from \$460,000 to \$732,500 for On-Call Arborist Consulting Services.

Recommendation: Adopt the Resolution.

- 9.4. **Subject:** A Resolution Authorizing the City Manager to Execute Contract Amendment No. 179-2018-03 to Increase the Contract Amount by \$13,856.00 to an Amount not to Exceed \$213,856.00 with Psomas, Inc. for On-Call Construction Management Services for the White Rock Road - Sunrise Boulevard to Fitzgerald Road Project and Finding the Project Exempt from Further California Environmental Quality Act Analysis as an Initial

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Study with Mitigated Negative Declaration/Environmental Assessment with Finding of No Significant Impact and Section 4(f) Evaluation Has Previously Been Prepared.

Recommendation: Adopt the Resolution.

- 9.5. **Subject:** A Resolution to Approve the Execution of a Memorandum of Understanding with the Sacramento Area Council of Governments to Receive Green Means Go Grant Funds in the Amount of \$486,000.00 for the Mills Crossing Civic Center Project.

Recommendation: Adopt the Resolution.

10. CONSENT PUBLIC HEARING ITEMS - ROLL CALL VOTE

Mayor Budge opened the public comment period. Seeing no speakers. Mayor Budge closed the public comment period.

ACTION: Motion to approve item 10.1 and 10.2 by Sander second by Terry;
Motion passed with a 3:0 vote

AYES: Sander, Terry, and Budge

NOES: None

ABSENT: Gatewood and Pulipati

ABSTAIN: None

- 10.1. **Subject:** Amendment to the Community Development Block Grant Program 2020 Annual Action Plan and 2020-2024 Consolidated Plan.

Recommendation: Adopt the Resolution.

- 10.2. **Subject:** Second Reading of an Ordinance Amending Title 4 Business Regulation, Chapter 4.07 Tobacco Retailer License and Chapter 4.50 Other Businesses; Title 8 Animals, Chapter 8.03 General Provisions and Chapter 8.09 Procedures; Title 16 Buildings and Construction, Chapter 16.05 Historical Building Code, Chapter 16.10 Existing Building Code, Chapter 16.20 Housing Code and Chapter 16.26 Energy Code; Title 22 Land Development, Chapter 22.40 Park and Recreation Dedication and Fees and Chapter 22.170 Local Parks and Recreational Facilities; Title 23 Zoning Code, Chapter 23.310 Residential Zoning Districts and the Folsom Boulevard Specific Plan Table 2-2 Use Table for Mixed Use Classifications and Finding the Adoption of this Ordinance as Exempt Under California Environmental Quality Act (CEQA) Section 15061(b)(3), 15301 and 15324.

Recommendation: Waive the second reading and adopt the Ordinances.

11. PUBLIC HEARING ITEMS

None.

12. REGULAR CALENDAR ITEMS

- 12.1. **Subject:** Update on Fiscal Year 2023/24 Community Enhancement & Investment Fund Applications Received for Council Consideration.

Recommendation: Staff to introduce and provide an update on the Fiscal Year 2023/24 Community Enhancement & Investment Fund grant applications received for Council consideration.

Mayor Budge opened the public comment period. The following individuals addressed the Council or submitted public comment via email:

1. Derald Langwell
2. Andy Berchielli

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Meeting of Monday, April 3, 2023

3. Tom Nance
4. Anil Reddy
5. Dr. Kevin Cameron

Mayor Budge closed the public comment period.

ACTION: Input was received regarding Fiscal Year 2023/24 Community Enhancement & Investment Fund Applications Received for Council Considerations.

13. COUNCIL REQUESTS FOR FUTURE AGENDA ITEMS

ACTION: Motion to Place the Logisticenter Item on the April 17, 2023 Council Meeting Agenda for Reconsideration by Sander second by Budge;
Motion passed with a 3:0 vote.

AYES: Sander, Terry, and Budge

NOES: None

ABSENT: Gatewood and Pulipati

ABSTAIN: None

14. ADJOURN TO CLOSED SESSION

Mayor Budge adjourned the meeting to closed session at 7:00 p.m.

15. CLOSED SESSION - CALL TO ORDER/ROLL CALL

Mayor Budge called closed session to order at 7:01 p.m.

Council Members Present: David Sander, Donald Terry, and Mayor Linda Budge

Council Members Absent: Garrett Gatewood and Siri Pulipati

Staff Members Present: Adam Lindgren and Micah Runner

16. CLOSED SESSION

Public Comment for this item was taken during the general public comment section of the agenda. The following public comments were submitted via email:

1. Diann H. Rogers
2. Paul Carroll

Council met in closed session to discuss the following items:

- 16.1. CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION: Significant Exposure to Litigation Pursuant to Government Code Section 54956.9(d)(2)
(Four cases, one relating to "Notice and Alleged Default Under Development Agreement and 60-Day Period to Cure; Logisticenter Project" at Corner of N. Mather Blvd. and Bear Hollow Drive from Arthur Coon, January 25, 2023; a second relating to a Notice of City of Rancho Cordova's Breach of and Default Under Development Agreement and 60-Day Period to Cure; Stone Creek Industrial Center" at Corner of Zinfandel Blvd. and Baroque Drive from Arthur Coon, March 13, 2023; a third relating to an oral threat of litigation from representatives of Elliott Homes that the potential City action on the Logisticenter Project will result in litigation by Elliott Homes against the City relating to its Stone Creek properties APN 072-2360-028, APN 072-2360-029, APN 072-2360-030, APN 072-2860-024, APN 072-2860-015, APN 072-2860-016, APN 072-2860-017, APN 072-2860-018; and a fourth relating to the written threat by Gloria Smith on behalf of Stone Creek Residents for Smart Growth, March 30, 2023.

ITEM 16.1.

Rancho Cordova City Council - DRAFT MINUTES
Meeting of Monday, April 3, 2023

17. OPEN SESSION - REPORT FROM CLOSED SESSION

City Attorney Adam Lindgren reported that staff was given direction and no reportable action was taken in closed session.

18. ADJOURNMENT

Mayor Budge adjourned the meeting at 8:08 p.m.

Stacy Leitner, CMC
City Clerk

MEMORANDUM



ITEM 16.2.

DATE: April 17, 2023
TO: Honorable Mayor and Council Members
FROM: Albert Stricker, Public Works Director
Dalia Fadl, Principal Engineer
SUBJECT: **A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE CONTRACT AMENDMENT NO. 58-2019-2 WITH COASTLINE WATER RESOURCES, INC. TO EXTEND THE CONTRACT TERM FROM JUNE 30, 2023, TO JUNE 30, 2024, WHICH RESULTS IN AN INCREASE TO THE CONTRACT AMOUNT FROM \$1,835,000 TO AN AMOUNT NOT TO EXCEED \$2,335,000 FOR CITYWIDE STORM DRAIN MAINTENANCE SERVICES**

RECOMMENDATION

Adopt the Resolution.

RESULT OF RECOMMENDED ACTION

Adoption of the Resolution would authorize the City Manager to execute Contract Amendment No. 58-2019-2 to extend the contract term from June 30, 2023, to June 30, 2024, which results in an increase to the contract amount from \$1,835,000 to an amount not to exceed \$2,335,000 for the provision of storm drain maintenance services by Coastline Water Resources, Inc. to promote the safety and livability in the City.

BACKGROUND

The City of Rancho Cordova's storm drain system includes more than 250 miles of underground pipes, six pump stations, six regional flood control basins, and more than 70 acres of creek channels or tributaries to the American River. Water flows to the river through the channels without additional treatment or filtration, so effective maintenance of the system is essential for preventing trash, debris, or pollutants from eventually reaching the American River.

The work conducted under this contract includes furnishing all labor, materials, tools, and equipment to perform services comprised of routine cleaning of structures and pipes, closed-circuit television inspection, miscellaneous repairs, and emergency response within City-maintained stormwater facilities, including but not limited to pipes, inlets, culverts, bridges, and manholes as well as other items as designated by the City engineer.

On October 7, 2019, City Council approved Contract No. 58-2019 in an amount not to exceed \$1,285,710 with Coastline Water Resources, Inc for storm drain maintenance services over a three-year contract term. Coastline Water Resources, Inc has provided an excellent

performance record and an effective understanding of the City's desired level of service. The City is seeking to execute Contract Amendment No. 58-2019-2 with Coastline Water Resources, Inc. to extend the contract term from June 30, 2023, to June 30, 2024, which results in an increase to the contract amount from \$1,835,000 to an amount not to exceed \$2,335,000. The time extension and cost increase are necessary to provide ongoing storm drain maintenance services.

FISCAL IMPACT AND FUNDING SOURCE

Funding for the contract will be from the City's Stormwater Utility Fund. There is no impact to the City's general fund.

ATTACHMENT(S)

1. Resolution
2. Contract Amendment No. 58-2019-2

CITY OF RANCHO CORDOVA

RESOLUTION NO. XX-2023

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RANCHO CORDOVA, STATE OF CALIFORNIA, AUTHORIZING THE CITY MANAGER TO EXECUTE CONTRACT AMENDMENT NO. 58-2019-2 WITH COASTLINE WATER RESOURCES, INC. TO EXTEND THE CONTRACT TERM FROM JUNE 30, 2023, TO JUNE 30, 2024, WHICH RESULTS IN AN INCREASE TO THE CONTRACT AMOUNT FROM \$1,835,000 TO AN AMOUNT NOT TO EXCEED \$2,335,000 FOR CITYWIDE STORM DRAIN MAINTENANCE SERVICES

WHEREAS, the City entered into Contract No. 58-2019 with Coastline Water Resources, Inc. on October 7, 2019, in the amount of \$1,285,710 to provide citywide storm drain maintenance services; and

WHEREAS, the scope of work includes all labor, materials, tools, and equipment to perform services consisting of routine cleaning of structures and pipes, closed-circuit television inspection, miscellaneous repairs, and emergency response within city-maintained stormwater facilities; and

WHEREAS, Coastline Water Resources, Inc. has provided an excellent performance record and an effective understanding of the city's desired level of services; and

WHEREAS, Amendment No. 1 increased the contract amount from \$1,285,710 to \$1,835,000 and extended the contract term to June 30, 2023; and

WHEREAS, Amendment No. 2 will increase the contract amount from \$1,835,000 to an amount not to exceed \$2,335,000 and extend the contract term from June 30, 2023 to June 30, 2024; and

WHEREAS, the amount exceeds the maximum amount that the City Manager has authorization to approve; and

WHEREAS, the contract will be funded through the City's Stormwater Utility Fund and there are sufficient funds budgeted to cover the cost of the contract amendment.

NOW, THEREFORE, BE IT HEREBY RESOLVED THE CITY COUNCIL OF THE CITY OF RANCHO CORDOVA does authorize the City Manager to execute Contract Amendment No. 58-2019-2 with Coastline Water Resources, Inc. in a form approved by the City Attorney to extend the contract term from June 30, 2023, to June 30, 2024, which results in an increase to the contract amount from \$1,835,000 to an amount not to exceed \$2,335,000 for storm drain maintenance services.

PASSED AND ADOPTED by the City Council of the City of Rancho Cordova on the 17th day of April 2023 by the following vote:

AYES:

NOES:

ITEM 16.2.

ATTACHMENT 1

ABSENT:

ABSTAIN:

ATTEST:

Stacy Leitner, CMC
City Clerk

Linda Budge, Mayor

**SECOND AMENDMENT TO THE GENERAL SERVICES AGREEMENT
BETWEEN THE CITY OF RANCHO CORDOVA AND COASTLINE WATER RESOURCES, INC.
FOR STORM DRAIN MAINTENANCE SERVICES**

This Second Amendment to the General Services Agreement ("Amendment") is made by and between the City of Rancho Cordova ("City") and **Coastline Water Resources, Inc.** ("Contractor") as of _____. City and Contractor are hereinafter collectively referred to as the "Parties."

RECITALS

WHEREAS, the Parties entered into a General Services Agreement ("GSA") No. 58-2019 dated October 7, 2019 to provide storm drainage system maintenance services; and

WHEREAS, the scope of work includes routine cleaning of structures and pipe, closed-circuit television inspection, miscellaneous repairs, and emergency response within the City-maintained storm drainage system; and

WHEREAS, Coastline Water Resources, Inc. has provided an excellent performance record and an effective understanding of the city's desired level of services; and

WHEREAS, Amendment No.1 increased the contract amount from \$1,285,710 to \$1,835,000 and extended the contract term to June 30, 2023; and

WHEREAS, the City wishes to extend the contract term from June 30, 2023 to June 30, 2024; and

WHEREAS, the City wishes to increase the maximum compensation amount from \$1,835,000 to an amount not to exceed \$2,335,000; and

WHEREAS, the Parties agree that changes to the term and services provided for in the GSA are necessary in order for the City to continue receiving services by Contractor.

NOW, THEREFORE, the Parties hereto agree as follows:

AGREEMENT

1. The Parties agree to modify the end date of the GSA from **June 30, 2023**, to **June 30, 2024**. The first sentence of Section 2 of the GSA, "Term," is amended to read as follows:

"The term of this Agreement shall begin on the date first noted above and shall end on **June 30, 2024**, unless the term of the Agreement is otherwise terminated at provided for in Section 10."

2. Section 4 of the GSA, "Compensation of Contractor," provides for the City to pay Contractor **One Million Eight Hundred Thirty-Five Thousand Dollars (\$1,835,000)**. The Parties agree to amend

ITEM 16.2.

**ATTACHMENT 2
Contract No. 58-2019-2**

Section 2 of the GSA in order to increase the compensation amount to pay Contractor for additional services. The first sentence of Section 4 of the GSA is amended to read as follows:

"The Contractor shall be paid **Two Million, Three Hundred Thirty-Five Thousand Dollars (\$2,335,000)** for performance of the Services pursuant to this Agreement."

3. All other terms and conditions in the GSA shall remain in full force and effect to the extent they are not in conflict with this Amendment.
4. The signatures of the Parties to this Amendment may be executed and acknowledged on separate pages or in counterparts which, when attached to this Amendment, shall constitute one complete Amendment.

IN WITNESS WHEREOF, the Parties have executed this Amendment on the day and year first above written.

CITY OF RANCHO CORDOVA

CONTRACTOR

Micah Runner, City Manager

Jeremy Jaeger, President

Date: _____

Date: _____

Attest:

Stacy Leitner, CMC, City Clerk

Date: _____

Approved as to Form:

Adam U. Lindgren, City Attorney

Date: _____

MEMORANDUM



ITEM 16.3.

DATE: April 17, 2023
TO: Honorable Mayor and Council Members
FROM: Stefan Heisler, Housing Manager
SUBJECT: **A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE SPACE RENT STABILIZATION MEMORANDUMS OF UNDERSTANDING WITH THE EIGHT MOBILE HOME PARKS WITHIN THE CITY OF RANCHO CORDOVA**

RECOMMENDATION

Adopt the Resolution.

RESULT OF RECOMMENDED ACTION

Adoption of the Resolution would allow the City Manager to proceed with the execution of Memorandums of Understanding (MOUs) with the eight (8) mobile home parks within the City of Rancho Cordova to avoid excessive space rent increases, provide park owners an opportunity to receive a reasonable return on their investment, and increase communication between park owners, residents, and the city.

BACKGROUND

In 2021 the City Council directed staff to research space rent and other mobile home park issues within Rancho Cordova. In 2022 the City Council created an Ad Hoc Committee to continue negotiations between park residents, park owners, and the city. The Ad Hoc Committee recommended moving forward with a 10-year memorandum of understanding (MOU) to address space rent issues rather than adopting a new city ordinance. A draft MOU was presented to the City Council on March 20, 2023 and the City Council directed staff to finalize the MOU for execution.

Staff has finalized the MOU; it will continue for a period of 10 years, and is primarily intended to (1) operate as an alternative to a rent stabilization ordinance; (2) avoid excessive rent increases for the spaces in the mobile home parks; (3) provide the park owners with the opportunity to receive a reasonable return on their investment in the parks; (4) increase communication between park owners, residents, and the city. In finalizing the draft MOU only minor clerical edits have been made, no substantive changes. The Resolution would provide authorization to proceed with execution of the final draft MOU with each of the eight mobile home parks within the City of Rancho Cordova for a term of ten (10) years.

For reference, there are eight (8) manufactured home parks in the City of Rancho Cordova

comprising 1,345 spaces. One park, Mobil Country Club, is restricted to people ages 55 and above. The terms manufactured home and mobile home are used interchangeably.

FISCAL IMPACT AND FUNDING SOURCE

Adoption of the MOU would have a modest fiscal impact in additional staff and consultant time to monitor adherence to the MOU terms and receive and review annual reports. Fiscal impacts will largely depend on the volume of disputes to be resolved.

ATTACHMENT(S)

1. Resolution
2. Space Rent Stabilization Memorandum of Understanding

CITY OF RANCHO CORDOVA

RESOLUTION NO. XX-2023

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RANCHO CORDOVA, STATE OF CALIFORNIA, AUTHORIZING THE CITY MANAGER TO EXECUTE SPACE RENT STABILIZATION MEMORANDUMS OF UNDERSTANDING WITH THE EIGHT MOBILE HOME PARKS WITHIN THE CITY OF RANCHO CORDOVA

WHEREAS, the City Council is concerned with the rapid increase in mobile home space rents in Rancho Cordova impacting lower-income and fixed-income mobile home owners; and

WHEREAS, in 2021 the City Council directed staff to research space rent and other mobile home park issues within Rancho Cordova; and

WHEREAS, in 2022 the City Council created an Ad Hoc Committee to continue negotiations between park residents, park owners, and the city; and

WHEREAS, the Ad Hoc Committee recommended moving forward with a 10-year memorandum of understanding (MOU) to address space rent issues rather than adopting a new city ordinance; and

WHEREAS, a draft MOU was presented to the City Council on March 20, 2023 and the City Council directed staff to finalize the MOU for execution; and

WHEREAS, staff has finalized the MOU; it will continue for a period of 10 years, and is primarily intended to (1) operate as an alternative to a rent stabilization ordinance; (2) avoid excessive rent increases for the spaces in the mobile home parks; (3) provide the park owners with the opportunity to receive a reasonable return on their investment in the parks; (4) increase communication between park owners, residents, and the city; and

WHEREAS, the owners of all eight mobile home parks within the City of Rancho Cordova are willing to enter into the MOU; and

WHEREAS, the execution of these memorandums of understanding is not subject to the California Environmental Quality Act (CEQA) pursuant to Section 15060(c)(2) – the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment, and Section 15060(c)(3) – the activity is not a project as defined in Section 15378 of the CEQA Guidelines because it has no potential for resulting in physical change to the environment, directly or indirectly.

NOW, THEREFORE, BE IT HEREBY RESOLVED THE CITY COUNCIL OF THE CITY OF RANCHO CORDOVA authorizes the City Manager and/or his designee to execute a MOU with each of the eight mobile home parks within the City of Rancho Cordova, the MOU shall be in a form approved by the City Attorney, and to execute such other documents and to take such other actions as necessary to consummate the agreements contemplated by this Resolution.

PASSED AND ADOPTED by the City Council of the City of Rancho Cordova on the 17th day of April 2023 by the following vote:

ITEM 16.3.

ATTACHMENT 1

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

Stacy Leitner, CMC
City Clerk

Linda Budge, Mayor

[RECORDERS SPACE]

MOBILE HOME PARK MEMORANDUM OF UNDERSTANDING

THIS MOBILE HOME PARK MEMORANDUM OF UNDERSTANDING (the "MOU ") is entered into as of _____, 2023 ("Effective Date") by and among the CITY OF RANCHO CORDOVA (the "City"), a California municipal corporation, and the owners ("Owners") of the mobile home parks ("Parks") identified on Exhibit A. Each individual Owner of a park will execute a substantively identical version of the MOU. This copy of the MOU is executed by the Owner of that Park commonly known as: _____("Park")

RECITALS

This Agreement will be between the City and each park within the City of Rancho Cordova and shall contain substantively identical terms for each park.

This Agreement shall only be effective if all park owners within the City of Rancho Cordova enter into an agreement with the City; the Effective Date of this Agreement shall be when the last park owner in the City signs an Agreement with the City.

In order to avoid the negative consequences of a rent stabilization ordinance, including potential costly litigation and to maintain cordial relationships with their tenants, the Owners have agreed to attempt to negotiate a memorandum of understanding with the City that will (1) apply the provisions of this MOU to all existing tenants including good faith efforts to offer to amend the CPI formula rent increase provisions in any existing long term lease to conform to the terms of this MOU; and (2) waive during the term of this MOU any right an Owner would have had under a rent stabilization ordinance to apply for a Vega adjustment or an individual rent increase to maintain a fair return. In the event the Park becomes subject to a rent stabilization law or ordinance at some point after the Effective Date of this MOU, nothing in this MOU shall prevent Owner from applying for any rent increase Owner may be entitled to, including a Vega adjustment and/or a fair return adjustment.

This MOU: (1) is intended to operate as an alternative to a rent stabilization ordinance; (2) avoid excessive rent increases for the spaces in the Parks; (3) is intended by the City to provide the Owners with the opportunity to receive a reasonable return on their investment in the parks; and (4) to increase communication between Park Owners, residents, and the City.

The City and Owners intend that this MOU will govern the Parks and the rights of the Owners and Homeowners in those Parks (who are third party beneficiaries) during the Term and provide protections and benefits to the Owners and Homeowners of those Parks. The real property comprising the above-named Park is set forth in Exhibit A and this MOU shall be recorded against that real property until such time as this Agreement expires or terminates.

RANCHO CORDOVA MOU April 17, 2023 P.1

The Owner or Owners and the City acknowledge that the parties may discuss potential amendments to this MOU at any time during the term of this MOU, provided such amendments will be subject to approval by the City Council and the applicable Owner or Owners.

AGREEMENT

NOW, THEREFORE, for the consideration of the mutual benefits, promises, and other valuable consideration identified herein, the receipt of which is hereby acknowledged, City and Owner agree as follows:

1. DEFINITIONS

A. "Anniversary Date" means the calendar date of the last Base Rent increase for a Space at the Park prior to the Effective Date of this MOU. For example, if the Base Rent for a Space at the Park was last increased on December 1, 2022, the Anniversary Date for that Space during the term of this MOU will be December 1.

B. "Base Rent" shall be the monthly rent for each Space in the Park occupied by a Homeowner pursuant to any lease or rental agreement between the Homeowner and the Owner as of the Effective Date of this MOU, as adjusted by any Annual Base Rent Increase and/or any Rent Increase When Existing Homeowners Vacate the Premises allowed under this MOU during the term of this MOU.

Base rent does not include any rent credits or other reductions in rent provided by Owner to Homeowner on or after the Effective Date of this MOU. For example, in the event a Homeowner with a Base a Rent of \$1,000 per month receives a \$50 Annual Base Rent Increase, but also qualifies for a \$50 per month rent credit under the Rent Subsidy Program For Low Income Tenants, the Homeowner's Base Rent would be \$1,050, even though the qualifying Homeowner would pay only \$1,000.

Base Rent shall not include utilities, fees, or incidental reasonable charges for services actually rendered that are specifically allowed by law, including the MRL.

C. "Capital Improvement" means the installation of new improvements and facilities that do not currently exist at the Park, but does not include ordinary maintenance or repairs or Capital Replacement Costs. Capital Improvements are required to be amortized over the useful life of the improvements pursuant to the provisions of this Chapter and the United States Internal Revenue Code.

D. "Capital Replacement" means an improvement required to maintain the common facilities and areas of the Park in a decent, safe and sanitary condition or to maintain the existing level of park amenities and services. If the expenditure qualifies for treatment as a capital expenditure which must be depreciated under the Internal Revenue Code, it is a Capital Replacement. If it can be fully deducted in one year as a business expense, it does not qualify as a Capital Replacement.

E. "Capital Replacement Costs" means all costs reasonably and necessarily related to the planning, engineering and construction of a Capital Replacement and shall include reasonable debt service costs, if any, incurred as a direct result of the Capital Replacement.

F. "Consumer Price Index" or "CPI" means the annual percentage change in the prices paid by urban consumers for a representative basket of goods and services. For purposes of this Ordinance, the consumer price index is defined as follows: All Urban Consumers, West Region, All Items, as published by the United States Bureau of Labor Statistics of the United States Department of Labor as measured. Should the All Urban Consumers, West Region Consumer Price Index be discontinued, the parties will use the most comparable Consumer Price Index that includes the City of Rancho Cordova, Sacramento County, or the State of California, in that order.

G. "Government Fees and Assessments" refers to all monetary cost a park owner is required to pay, imposed by any government or quasi-governmental entities, including all fees, bonds, districts, assessments, licenses, curbs and gutters, permits, exactions, costs, and charges, however invoiced, charged, demanded, imposed or levied.

H. "Homeowner" shall have the meaning set forth in Civil Code Section 798.9.

I. "Mobile Home Residency Law" or "MRL" means the California Mobile Home Residency Law codified in California Civil Code Section 798 *et seq.* as now enacted and hereafter amended.

J. "Mobile Home" means a vehicle designed or used for human habitation, including those vehicles within the meaning of Mobile Home as set forth in Civil Code Section 798.3, when used as the principal place of habitation for the occupants thereof.

K. "Mobile Home Park" or "Park" means any area of land within the City of Rancho Cordova where two (2) or more mobile home spaces are rented, or held out for rent, for periods of thirty (30) days or longer to accommodate mobile homes used for human habitation.

L. "Mobile Home Space" or "Space" is the site within a Mobile Home Park intended, designed or used for the location or accommodation of a Mobile Home and any accessory structures or appurtenances attached thereto or used in conjunction therewith.

M. "Mobile Home Park Owner" or "Park Owner" or "Owner" means the owner or operator of a Mobile Home Park, or its agent, representative, or designee.

N. "Party" means any Affected Homeowner and/or Park Owner involved in proceedings under this Chapter.

O. "Prospective Mobile Home Owner and/or Prospective Homeowner" means a person who is in the process of applying for a Space tenancy in a Mobile Home Park, but has not yet been approved for tenancy and/or entered into a rental agreement with Owner as required by Civil Code Section 798.75.

RANCHO CORDOVA MOU April 17, 2023 P.3

P. “Rent” means any consideration, whether monetary or non-monetary, including the fair-market value of labor performed or services rendered and specifically agreed to by Owner and Homeowner for, or in connection with, the use or occupancy of a Mobile Home Space. For example, if the Base Rent is \$1,000 per month, Owner and Homeowner may agree that the Base Rent may be paid with \$700 in monetary consideration and \$300 per month in non-monetary consideration, if Homeowner cleans the clubhouse once each week.

Rent shall not include:

1. Utility charges, including but not limited to sub-metered charges for gas, electricity and water.
2. Charges for water, refuse disposal, sewer service, cable television, telephone, internet and/or other services, which are either provided and charged to Homeowners solely on a cost pass-through basis and/or are regulated by state or local law.
3. Any amount paid for the use and occupancy of a Mobile Home unit (as opposed to amounts paid for the use and occupancy of a Mobile Home Space).
4. Charges for laundry services, vending machines and private functions at the clubhouse or other common area facilities of the Park.
5. Storage charges, including RV storage charges.
6. Government fees and charges that may be passed through to Homeowners pursuant to Civil Code Sections 798.49, or any other applicable provision of law.
7. Fees and charges specifically allowed under the Mobilehome Residency Law, including but not limited to fees and charges allowed under Civil Code Sections 798.15(g), 798.31, 798.32, 798.33(b), 798.39.5(a)(2), 798.72(a) and 798.74(f).
8. Labor, services or materials provided by the Homeowner pursuant to the Park’s rental agreement and/or rules and regulations, including labor, services or materials supplied by the Homeowner to maintain his or her Mobile Home and/or his or her Space.

Q. “Rent Increase” means any increase in Base Rent charged by a Mobile Home Park Owner to a Homeowner.

R. “Rent Review Officer” means the City Manager or designee who shall serve as the Rent Review Officer to administer and enforce the provisions of this MOU .

S. “Transfer” means any transfer of legal title or ownership to a Mobile Home except for the following:

1. The transfer of a Mobile Home to the surviving joint tenant by devise, descent, or operations of law on the death of the joint tenant;

2. A transfer of the Mobile Home to, or the addition of, the spouse or domestic partner of the Homeowner;

3. A transfer of the Mobile Home resulting from a decree of dissolution of marriage, legal separation or from an incidental property settlement agreement by which the spouse becomes the owner of the Mobile Home;

4. A transfer to an inter vivos trust in which Homeowner is and remains the trustee or beneficiary and occupant of the Mobile Home; and

5. A transfer to a person other than a dealer, broker or other person authorized to sell Mobile Homes from the Park who does not qualify as a "homeowner" for purposes of the MRL and who does not have, and/or will not receive a "tenancy" in the Park for purposes of the MRL.

2. TERM.

The term of this MOU ("Term") shall commence on the Effective Date and continue for a period of ten (10) years.

Mobile Home Park Owners agree to not close their parks during the Term of this MOU, however, nothing in this MOU shall preclude any Owner from closing and/or going out of business if the Park is destroyed, or substantially destroyed, which shall mean for the purposes of this Agreement substantial loss of income and/or destruction of the Park infrastructure, by factors beyond Mobile Home Park Owner's control, including war, terrorist attack, earthquake, fire, or other acts of nature.

Nothing in this MOU shall preclude any Owner from applying for a "Vega adjustment," which allows park owners to start rent calculations with a base date rent similar to other comparable properties" and/or a rent increase based on fair return on investment, following the termination of this MOU and/or the enactment of any rent stabilization law that supersedes this MOU or is otherwise applicable to its Park.

3. APPLICABILITY

A. The provisions of this Agreement shall apply to all Mobile Home Parks and all Mobile Home Spaces owned by Owner within the City, except as provided in subparagraph B.

B. This Agreement shall not apply to Mobile Home Spaces covered by leases at the Effective Date of this Agreement, which provide for more than month-to-month tenancy, including adjustments and Pass Throughs within such leases, but only for the stated duration of any such lease. Upon the expiration or other termination of any such lease, all provisions of this Agreement shall immediately be applicable to the Mobile Home Space.

C. This Agreement shall not be effective for any purpose until it has been executed by the City Manager of the City of Rancho Cordova and the duly authorized representatives of the Owners of all Mobile Home Parks which are situated in the City.

D. Nothing in this Agreement shall be deemed to impose any obligation upon any owner with respect to a Mobile Home Park not subject to such Owner's control. This Agreement only imposes obligations on the Owner with respect to the Park.

4. ANNUAL BASE RENT INCREASE.

On the first Anniversary Date during the term of this Agreement, and on each and every Anniversary Date thereafter, the Owner may increase the then existing Base Rent by one hundred percent (100%) of the increase in the CPI, using the most recently published CPI data for the twelve-month period prior to the notice of rent increase, with a minimum rent increase of three percent (3%), and a maximum of six percent (6%) ("Annual Base Rent Increase").

5. RENT INCREASE WHEN EXISTING HOMEOWNERS VACATE THE PREMISES.

The Owners may increase the rent to the market rate when a current or existing Homeowner no longer resides at the Space **and** either (a) there is a Transfer of legal title or ownership of the existing Mobile Home to a new Homeowner, or (b) the existing Mobile Home is removed and a different Mobile Home is located on the Space.

6. PASS THROUGH ADJUSTMENTS.

In addition to the increases in Base Rent authorized in Sections 4 and 5, Owner may pass through to the Homeowner the following costs ("Pass Throughs").

a. Government Fees and Assessments. If the cost of Government Fees and Assessments exceeds the cost for Government Fees and Assessments from the prior fiscal tax year by more than the annual CPI increase, the Owner may pass through such increase to the Homeowners unless the Government Fee or Assessment has increased by less than the CPI in any of the prior five (5) years. The amount of any Government Fees and Assessments Pass Through shall be the total annual amount of such increase in the Government Fees and Assessments divided by twelve (12) and then divided by the total number of spaces in the Park.

b. Capital Improvements. The Owner may pass through to the Homeowners, the amortized cost of any Capital Improvement, provided that such Capital Improvement has been approved by a majority of the residents of the Park by a written ballot with each Space having one (1) vote. The Owner shall provide the residents of the Park with at least thirty (30) days to consider the approval of the Capital Improvement. Any written ballot shall include the estimated cost of the Capital Improvement Pass Through for each resident. The amount of any Capital Improvement Pass Through shall be determined by amortizing the actual cost of the Capital Improvement plus interest at the actual rate of interest paid by the Owner for any financing associated with the Capital Improvement over the applicable amortization schedule of the U.S. Internal Revenue Code, or the Prime Rate in the event Owner does not borrow funds for the Capital Improvement.

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The annual amortized amount determined in accordance with this subsection shall be divided by twelve (12) and then divided equally among all spaces in the Park. Any Capital Improvement Pass Through shall be eliminated as a rent obligation at the conclusion of the amortization period. In the event the amortization schedules used by the U.S. Internal Revenue Service are repealed or no longer exist, Owner may use the amortization schedules in place on the Effective Date of this MOU.

c. Capital Replacements. The Owner may pass through to the Homeowners the amortized cost of any Capital Replacement in accordance with the following.

(1) Prior to implementing any Capital Replacement Pass Through, except a Capital Replacement necessitated by an emergency, the Owner must provide the Homeowners with advance notice of the proposed Capital Replacement and an opportunity to comment on the need, design, and conduct of the work. The Mobile Home Park Owners will limit rent increases based on capital expenditures to the “replacement of existing improvements,” which cost in excess of \$10,000.

(2) The amount of any Capital Replacement Pass Through, including a Capital Replacement necessitated by an emergency, shall be determined by subtracting from the actual cost of the Capital Replacement any insurance proceeds, rebates, tax credits or warranty payments received by the Owner defraying the costs of the Capital Replacement and amortizing the remaining cost of the Capital Replacement plus interest at the actual rate of interest paid by the Owner for any financing associated with the Capital Replacement or if the Owner does not borrow funds for the Capital Replacement, at the Prime Rate over a minimum of ten (10) years. The annual amortized amount determined in accordance with this subsection shall be divided by twelve (12) and then divided equally among all spaces in the Park.

(3) Any Capital Replacement Pass Through shall be listed separately from the base rent on monthly rent billings and shall be eliminated as a rent obligation at the conclusion of the amortization period.

(4) Notwithstanding anything set forth above in this subsection (c), Owner shall be allowed a Capital Replacement Pass Through for Capital Replacements that were commenced and completed prior to the Effective Date, as long as (i) the Capital Replacement was completed no earlier than six (6) months prior to the Effective Date; (ii) the cost of the Capital Replacement has not already been passed through to the Homeowners; and (iii) the Capital Replacement Pass Through amount conforms to the requirements of subsection (c)(2) above. Owner shall list in Exhibit B any Capital Replacements that were completed prior to the Effective Date that meet the criteria of this Section.

d. Property Tax Increases. The Owner may pass through to the Homeowners the amount by which Property Taxes increase in any given fiscal tax year by more than two percent (2%) over and above the prior fiscal tax year Property Taxes, subject to the following.

(1) A Property Tax Pass Through may be imposed in the amount of any Property Tax increase that exceeds two percent (2%) in a given fiscal tax year that is caused by an involuntary Property Tax reassessment including but not limited to a death of a person holding an ownership interest

in the Park or as the result of any new general or special real estate property tax imposed by the City of Rancho Cordova, the County of Sacramento, or the State of California.

(2) If the Park is sold to a third party pursuant to an arms-length transaction, the Owner may pass through to the Homeowners the increase in Property Taxes resulting from a reassessment of the Park upon such sale to the extent that such increase exceeds two percent (2%) in a given fiscal tax year, provided, however, the total amount of any Property Tax Pass Through resulting from a sale shall be phased in over five (5) years with equal increases each year until the full amount of the Property Tax Pass Through has been implemented, and shall thereafter continue at one hundred percent (100%).

(3) Owner shall not be entitled to any Property Tax Pass Through due to an increase in Property Taxes if triggered solely by an internal reorganization resulting in an event of "Change of ownership" unless such event occurs one year or more after the Effective Date of the MOU. Property tax pass throughs memorialized in a long-term lease covenant shall remain inapplicable to the MOU and protected and in effect.

(4) All Property Tax Pass Throughs shall be divided by twelve (12) and then shall be allocated equally among all spaces in the Park.

e. Emergency or Disaster Related Costs. Owner may pass through to the Homeowners any costs to repair damage to the Park arising from any Disaster Related Event in excess of the initial fifty thousand dollars (\$50,000) of such costs, provided such costs are amortized in accordance with the procedure for amortizing Capital Replacements above and such costs are divided equally among all Spaces in the Park. Any Disaster Related Event costs passed through to the Homeowners shall be net of any insurance proceeds or disaster grants or assistance received by the Owner for such costs. Owner shall not be entitled to pass through to the Homeowners any Disaster Related Event costs unless the Owner has continued to maintain throughout the term of this MOU the types and amounts of property insurance in effect on the Effective Date, if those types and amounts of property insurance are commercially available throughout the term of this MOU, at the same price in effect on the Effective Date, adjusted each year by the increase in the CPI. If those types and amounts of property insurance are not commercially available throughout the term of this MOU, at the above-described price, Owner reserves the right, in its sole and absolute discretion, to purchase whatever property insurance it deems reasonable for the Park. Owner shall disclose Owner's property insurance coverage to any Homeowner so requesting, provided however, no Homeowner shall be entitled to such disclosure more than once in any twelve-month period.

f. Requirements applicable to all Pass Throughs.

(1) No Pass Through shall be implemented unless Owner gives the Homeowners at least ninety (90) days written notice of the Pass Through including the calculations that serve as the basis for the Pass Through. The Owner shall also make available for the Homeowners' review at least one set of all documents related to the Pass Through, including bids, contracts, plans and other related documents either at the on-site manager's office and/or the park's clubhouse or community center during normal business hours during the ninety (90) day period following the

RANCHO CORDOVA MOU April 17, 2023 P.8

notice of the Pass Through.

(2) Pass Throughs shall be separately itemized in the monthly space rent bills.

(3) Pass Throughs are additional Rent and shall be considered rent for purposes of the MRL, including Civil Code Sections 798.30 and 798.31.

7. RENT SUBSIDY PROGRAM FOR LOW INCOME TENANTS.

Owner agrees to implement a safety net program within the Park designed to provide relief from Annual Base Rent Increases and Pass Throughs to Homeowners that, due to financial circumstances, are unable to pay the increased Base Rent or Pass Throughs. The safety net program shall at a minimum provide relief from Annual Base Rent Increases and Pass Throughs to Homeowners pursuant to all of the following terms and conditions:

a. Any Homeowners with (i) a household income equal to or less than twice their monthly rent per month and (ii) less than \$60,000 in assets, not including their mobile home or vehicles, shall be eligible to apply for the safety net program.

b. Subject to subsection c. below, qualifying Homeowners may receive a minimum rent credit for the amount of any rent increase that causes their monthly rent, including all Pass Throughs, to exceed one half (1/2) of their household income. For example, if a qualifying Homeowner's rent is \$1,000 per month, and the Annual Base Rent Increase is \$50 per month, but the Homeowner's income is only \$1,800 per month, the Homeowner's Base Rent would be increased to \$1,050, but the Homeowner would receive a \$50 rent credit, meaning the Homeowner would only pay \$1,000.

c. This program is limited to five percent (5%) of all Homeowners in each Park. In the event that more than five percent (5%) of Homeowners qualify in a given Park, then the Mobile Home Park Owner shall have option of providing priority to either (a) those households with the lowest income, or (b) those households who most recently qualified for the rent credit program. Parkowners may choose to participate in an independent program in which a third party (e.g., MHET) is used to determine household eligibility to the program, and to process program applications.

d. Each individual household must submit an application verifying (a) income and (b) assets of less than \$60,000, not including their mobile home or vehicles on a form given out by Mobile Home Park Owners. Each individual household that is accepted for the safety net program shall be required to reapply once every twelve months, such that the Owner can determine whether that household continues to qualify for the program. Participation in the safety net program shall terminate if the qualifying household no longer qualifies, or no longer resides at the Park.

e. Items a. through d. are minimum requirements, to assist the neediest Homeowners at each park. Owner is free to establish more generous guidelines but cannot be required to do so. Owner shall provide the City with information on the Owner's safety net program at the City's request. Nothing herein shall prevent Owner from offering a safety net program that serves

RANCHO CORDOVA MOU April 17, 2023 P.9

Homeowners not meeting the qualifications stated herein or provides greater protections to Homeowners.

8. OWNER'S BUSINESS PRACTICES.

Each Owner hereby covenants with the City that the Owner will act in good faith in all the Owner's dealings with the Homeowners in the Park under this MOU. No Owner shall declare a Homeowner's Space abandoned or seek to terminate a Homeowner's tenancy for purposes of obtaining a Base Rent increase or a Pass Through in contravention of this MOU.

9. CONTINUED COMMUNICATION AND UPDATES.

Once each year Owners shall provide the City with a written report calculating any (a) Annual CPI Increases, (b) Capital Improvement Pass Throughs, and/or (c) Tax Property Pass Throughs at their park. The written report shall be detailed enough to determine appropriate rents on each individual space within the Park. That written report shall also address the number of residents participating in the Rent Subsidy Program for Low Income Tenants, including the percentage of spaces participating in the rent subsidy program. The City shall provide the Parkowners with the name, address or other contact information for submission of that written report. An Owner's failure to comply with this reporting requirement shall be subject to the Resolution of Disputes procedures in paragraph 13 of this MOU.

10. CITY AS ENFORCEMENT AGENCY.

If any Owner fails to comply with the terms of this MOU, the City may initiate an action on behalf of the affected Homeowner or Homeowners to enforce the terms of this MOU. An affected Homeowner may provide written notice of any alleged breach of this Agreement to the Park Owner and copy the City; alternatively, an affected Homeowner may also contact the City directly to seek assistance in enforcing this Agreement.

11. EXCEPTION FROM RENT CONTROL ORDINANCES.

Provided that the Owner is not in material breach of this MOU, and during the period in which this MOU remains in effect, the City shall not enforce or impose the provisions of any City ordinance or regulation, with respect to the amount of rent charged by Owner for occupancy of any mobile home spaces or any City adopted rent stabilization ordinance, within the Park.

The City reserves the right to pass a mobile home rent control ordinance if any Park Owner is not in compliance with this Agreement.

12. COVENANTS RUNNING WITH THE LAND.

The obligations of the Owner contained within this MOU with respect to the Park are covenants running with the land to the benefit of the City and to each present or future Homeowner leasing any Space within the Park during the term of this MOU as an intended third-party beneficiary to this MOU. The parties intend that these covenants touch and concern the Park, and that they

RANCHO CORDOVA MOU April 17, 2023 P.10

shall be binding upon the Owner and all successors, heirs, and assigns of the Owner with respect to the Park during the term of this MOU. This executed and notarized MOU shall be recorded in the Official Records of the Sacramento County Recorder's Office with respect to that real property legally described in Exhibit A. The obligations under this MOU and the covenants contained in this MOU shall terminate and cease to exist simultaneously with the termination of this MOU, at which time Owner may take any action allowed by law to remove or otherwise extinguish those covenants. The City shall cooperate in good faith to assist Owner in removing or otherwise extinguishing said covenants, including executing any documents that may be required by the Sacramento County Recorder's Office to effectuate such a removal and/or extinguishment.

13. RESOLUTION OF DISPUTES.

a. Mediation. In the event any dispute arises between the Owner and City with respect to the enforcement of any provisions of this MOU, or between the Owner and any Homeowner who is an intended third party beneficiary with respect to the interpretation or enforcement of any provisions of this MOU, the party claiming a violation of the MOU shall give written notice to the other party specifying the nature of the dispute, and if the party claiming a violation of the MOU is a Homeowner, the Homeowner shall give written notice to both the Owner and the City. If the issue raised in the written notice is not corrected within thirty (30) days of such notice, then the Owner and City agree that the parties will first try to resolve the dispute through mediation using a third-party City-provided mediator or neutral hearing officer. The parties shall resolve such dispute through mediation prior to filing any action or lawsuit or seeking judicial relief, unless doing so would cause any action or lawsuit to be barred by any applicable statute of limitations, in which case a protective action may be filed, without prejudice to the continuation of the mediation.

b. Resolution of Disputes Not a Waiver of Rights or Benefits. None of the rights, liabilities, or obligations of the Owner, City, Homeowner, or prospective Homeowner to one another shall be waived, suspended, or delayed pending the recommendations of a mediator, or other person designated to administer and make recommendations under any dispute resolution proceeding of this MOU. For example, the Homeowner remains obligated to pay the amount of any rents due, including the amount in dispute, during any dispute resolution proceeding.

14. GENERAL PROVISIONS.

a. Notices. All notices and other communications required or permitted under this MOU, unless otherwise expressly stated, shall be made in writing and shall be delivered to the party whom addressed by personal service or by deposit in any U.S. mail depository, first class postage paid, and shall be deemed received: (1) if personally delivered, upon the date of actual receipt by the person to receive such notice, or (2) if mailed, two business days after the date of any proof of deposit in the United States mail. Notices to any Owner shall be given to the address for such Owner listed on Exhibit A. Notices to the City shall be given to the City of Rancho Cordova, 2729 Prospect Park Dr, Rancho Cordova, CA 95670, Attention: City Manager, with a copy of such notice sent to such address to the attention of the City Attorney. The address for delivery of notices may be changed by either party by giving notice to such change to the other party in

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accordance with this paragraph.

b. Complete Agreement. This MOU shall: (1) constitute the parties' entire agreement, (2) merge all prior discussions and negotiations between the parties, and (3) supersede and replace all prior agreements and understandings, whether oral or written, with respect to the subject matter hereof.

c. Amendments. This MOU may not be amended, altered, or modified except by a writing signed by the City and the Owners, unless the amendment, alteration or modification impacts less than all of the Owners, in which case only the impacted Owner or Owners and the City must sign.

d. Successors and Assigns. Except as provided in paragraph h below, this MOU shall be binding upon and inure to the benefit of the parties and their prospective successors and assigns.

e. Severability. If any portion of this MOU shall be held by a court of competent jurisdiction to be invalid, void, or otherwise unenforceable, the remaining portions of this MOU shall remain in effect and enforceable to the fullest extent permitted by law, if such enforcement would not frustrate the overall intent of the parties as such intent is manifested by all provisions of this MOU. If the MOU or any portion of this MOU is held by a court of competent jurisdiction to be invalid, void, contrary to public policy, ultra-vires, or otherwise unenforceable (collectively, "**Impairment**") the City shall not be liable to the any Owner, any Homeowner, or any other party in law, equity, or in an action for damages for such Impairment.

f. Extension Not a Waiver. The failure by any party or intended third party beneficiary to require strict performance of the obligations of another party to this MOU, or the failure to exercise or delay in the exercise of any power, remedy, or right provided in this MOU or otherwise available to any party or intended third party beneficiary, upon any failure of another party to perform the other party's obligations under this MOU, shall not be deemed a waiver and shall not impair or affect the right of such party or intended third party beneficiary to require strict performance and to exercise the power, remedy, or right on any other or subsequent occasion for the same or any other failure of the other party to perform its obligations under this MOU.

g. Applicable Law. This MOU shall be construed in accordance with, and governed by, the law of the State of California. Nothing herein shall preclude any party from challenging any law, on its face, or as applied, on the ground that it violates the state or federal constitution.

h. MOU Not Applicable to Resident-owned Parks. The MOU shall not apply to any resident-owned park. In the event the ownership of the Park to which this MOU applies is transferred to the residents of the Park, this MOU shall immediately and finally terminate with respect to the Park upon the Effective Date of the transfer of ownership. A "resident-owned" park shall mean a park in which fifty percent (50%) or more of the Spaces are owned by the residents of the park, directly or indirectly, through any means of devices.

i. Exhibits. Exhibits A and B are attached hereto and are incorporated herein by this reference.

j. Execution in Multiple Counterparts. This MOU may be executed in multiple counterparts and

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becomes binding with respect to the City of Rancho Cordova and each Owner when originally signed by the City Manager of the City of Rancho Cordova and an authorized representative of the Owner and delivered to the City Manager of the City.

k. Enforcement of Rules and Regulations. Nothing in this MOU shall preclude Owner from enforcing the Park's rules and regulations that are not in conflict with this MOU.

Signatures on the following page

5275826.2

EXHIBIT A
LEGAL DESCRIPTION OF REAL PROPERTY

EXHIBIT B
CAPITAL REPLACEMENTS

MEMORANDUM



ITEM 16.4.

DATE: April 17, 2023
TO: Honorable Mayor and Council Members
FROM: Albert Stricker, Public Works Director
Quoc Nham, Senior Civil Engineer
SUBJECT: **A RESOLUTION APPROVING THE FINAL MAP OF GRANTLINE 220 UNIT 5, SUBDIVISION NO. FM-2021-004-05, AND AUTHORIZING THE CITY MANAGER TO EXECUTE SUBDIVISION IMPROVEMENT AGREEMENT CONTRACT NO. 2023-39 WITH LENNAR HOMES OF CALIFORNIA, LLC, AND FINDING THE ACTION EXEMPT UNDER CEQA GUIDELINE 15268(B)(3)**

RECOMMENDATION

Adopt the Resolution.

RESULT OF RECOMMENDED ACTION

Adoption of the Resolution would approve the Final Map of Grantline 220 Unit 5 Subdivision No. FM-2021-004-05 and Authorize the City Manager to Execute Subdivision Improvement Agreement Contract No. 2023-39 with Lennar Homes of California, LLC.

BACKGROUND

The map has been examined and checked for compliance with Title 22 of the City of Rancho Cordova Municipal Code and the California Subdivision Map Act. The City Council approved the Tentative Subdivision Map on June 7, 2021. A copy of the final map, Attachment 3, and copy of the vicinity map, Attachment 4, are included with this report.

Roads are offered for dedication with this subdivision. Lennar Homes of California, LLC has provided a performance and labor and material bond guaranteeing the construction of the public improvements. Wood Rodgers has waived the requirement for a bond to guarantee payment for setting the survey monuments with the subdivision. The soil report requirement has been satisfied by Wallace Kuhl & Associates dated August 4, 2021.

There are no delinquent taxes against the property and the Tax Collector has so certified. The 2022/2023 estimated taxes have been secured with the Sacramento County Tax Collector.

FISCAL IMPACT AND FUNDING SOURCE

There is no fiscal impact to the City.

ATTACHMENT(S)

1. Resolution
2. Contract No. 2023-39
3. Final Map
4. Vicinity Map

CITY OF RANCHO CORDOVA

RESOLUTION NO. XX-2023

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RANCHO CORDOVA, STATE OF CALIFORNIA, APPROVING THE FINAL MAP OF GRANTLINE 220 UNIT 5 SUBDIVISION NO. FM-2021-004-05, AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE SUBDIVISION IMPROVEMENT AGREEMENT CONTRACT NO. 2023-39 WITH LENNAR HOMES OF CALIFORNIA, LLC AND FINDING THE APPROVAL EXEMPT UNDER CEQA GUIDELINE 15268(B)(3)

WHEREAS, the City Council approved the Tentative Subdivision Map on June 7, 2021, by Resolution No. 91-2021; and

WHEREAS, the map is in substantial compliance with the approved tentative map; and

WHEREAS, the conditions of approval have been complied with; and

WHEREAS, the map complies with Title 22 of the City of Rancho Cordova municipal code and the California Subdivision Map Act; and

WHEREAS, the approval of final maps is exempt from review under the California Environmental Quality Act (CEQA) pursuant to CEQA Guideline Section 15268(b)(3) as a ministerial approval; and

WHEREAS, the City desires to enter into a subdivision improvement agreement with the developer to ensure necessary public improvements are completed and secured with a bond.

NOW, THEREFORE, BE IT HEREBY RESOLVED BY THE CITY COUNCIL OF THE CITY OF RANCHO CORDOVA does approve the Final Map of Grantline 220 Unit 5 Subdivision No. FM-2021-004-05 and does authorize the City Manager to execute Subdivision Improvement Agreement Contract No. 2023-39 with Lennar Homes of California, LLC in a form approved by the City Attorney.

PASSED AND ADOPTED by the City Council of the City of Rancho Cordova on the 17th day of April 2023 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

Linda Budge, Mayor

ITEM 16.4.

ATTACHMENT 1

Stacy Leitner, CMC
City Clerk

SUBDIVISION IMPROVEMENT AGREEMENT**GRANTLINE 220 UNIT 5 FM-2021-004-05**

THIS SUBDIVISION IMPROVEMENT AGREEMENT (hereinafter, "Agreement") entered into this _____ day of _____, 20____, by and between the City of Rancho Cordova, (hereinafter "City"), a California municipal corporation, and Lennar Homes of California, LLC, a California limited liability company (hereinafter "Principal").

RECITALS

WHEREAS, Section 66462 of the Government Code provides that if the work of improvement required therein is not completed prior to the acceptance of a final subdivision map, the owner of the subdivision may enter into an agreement with the City to perform the work of improvement as required by said sections in consideration of the acceptance of said final subdivision map by the City; and

WHEREAS, Section 66499 of the Government Code requires that said agreement be secured by a surety bond or by an instrument of credit issued by a financial institution subject to regulation by the State or federal governments or by a cash deposit; and

WHEREAS, Section 66499.3 establishes the types and amount of security to guarantee the performance of any such improvement agreement; and

WHEREAS, City and Principal desire to enter into an improvement agreement as authorized by the Subdivision Map Act under the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual promises, conditions and covenants hereinafter set forth, City and Principal agree as follows:

1. **Incorporation of Recitals.** The foregoing recitals are hereby incorporated by reference.
2. **Findings and Conditions of Subdivision Map.** Principal recognizes that approval of its subdivision was subject to the findings and conditions attached to such approval and hereby acknowledges and agrees to be bound by such findings and conditions.
3. **City Approval of Subdivision Map.** City agrees to approve the final map of the subdivision presented to it by Principal and designated Grantline 220 Unit 5, FM-2021-004-05 and to accept on behalf of the public all lands, rights of way and easements therein offered in dedication, in accordance with the conditions hereinafter set forth.
4. **Completion of Improvements.** In consideration of such approval, Principal

ITEM 16.4.

agrees to complete the work of improvement required for said subdivision in accordance with the requirements of the Rancho Cordova Municipal Code and such standard specifications created by applicable City ordinances or resolutions which are in effect at the time of the installation of said improvements. The work required may lie within or outside the subdivision and must be completed within **24** months of the date of this Agreement.

5. **Payment For Services.** Principal further agrees to promptly pay, when due, all costs for plan checking, inspection services and material testing performed by City pursuant to the requirements of Sections 12.03.210 et. seq. of the Rancho Cordova Municipal Code.

6. **Community Facilities Renovation Fee.** Principal acknowledges that under the terms of the Development Agreement by and between The City of Rancho Cordova and Grantline & Chrystanthy 220 Investors, LLC Relative to the Sun creek Project Recorded as Sacramento County Recorder # **20140121** page **1146**. Principal is obligated to pay the City a fee in Section 6 of the above Development Agreement per single family lot within the Final Map ("Community Facilities Renovation Fee"). Principal acknowledges and agrees that such fee will be paid prior to the issuance of a building permit for the respective lot.

7. **Acceptance of Improvements.** Upon satisfactory completion of all public improvements in accordance with standard specifications created by City ordinances or resolutions which are in effect at the time of the installation of said improvements, City agrees to accept for maintenance the work of improvement within the dedicated parcels shown on said final subdivision map, and any off site easements granted, subject to the provisions of paragraph 9 hereof. Acceptance will be postponed until such time the City determines a public purpose exists. Public Purpose is defined as existence of habitable structures within the subdivision.

8. **Notice of Commencement of Work.** Principal shall notify the City Engineer in writing of the commencement of the work of improvements.

9. **Correction of Defects.** Principal agrees to remedy any defects in the improvement arising from faulty or defective construction of said improvements occurring within twelve months after acceptance thereof by City.

10. **Indemnity.** Principal shall indemnify and hold harmless with counsel selected by the City, the City of Rancho Cordova, its agents, officers, consultants, and employees ("City") from any and all loss, damage or liability arising out of or resulting from Principal's performance or non-performance of his duties and obligations under this Agreement, or from the negligent act or omission of himself, his agents, servants and employees. Principal shall, at his own cost and expense, defend any and all actions, suits, or legal proceedings arising out of or resulting

ITEM 16.4.

from the performance or nonperformance of this Agreement, that may be brought or instituted against the City, its officers and employees, on any such claim or demand, and pay or satisfy any judgment that may be rendered against the City in any such action, suit or legal proceedings, or result thereof, regardless whether caused in part by a party indemnified hereunder.

11. Extension of Completion Date. If the construction of the work or improvement should be delayed without fault of Principal, the time for completion thereof may be extended by City for such period of time as City may deem reasonable.

12. Improvement Security. (a) Principal shall obtain and furnish to City an improvement security consisting of a surety bond in favor of City, issued by a corporate surety authorized to do business in the State of California, and in form approved by City, securing the faithful performance by Principal of the work of improvement required, and also securing the payment of the costs and interest, if any, due under Sections 12.030.210 et seq. of the Rancho Cordova Municipal Code, as provided in Paragraph 5 herein and an additional bond issued by a corporate surety authorized to do business in the State of California, in the amount of not less than 50 percent of the total estimated cost of the improvement, securing payment to contractor, his subcontractors, and to persons renting equipment or furnishing labor or materials for the improvement.

(b) In lieu of said corporate surety bonds, Principal may furnish an improvement security consisting of a letter of credit, certificate of deposit, or similar instrument of credit, in form satisfactory to City, issued by a financial institution subject to regulation by the State or Federal government, pledging that the funds necessary to meet the performance required herein are on deposit, and guaranteed for payment on demand. Said letter of credit, certificate of deposit, or similar instrument of credit shall provide that the funds designated therein shall become trust funds for the purposes set forth in said instrument.

(c) The failure of Principal to commence the required work of improvements, or to complete the same within the time required after commencement thereof, shall entitle City to the full payment of the security, or so much thereof as may be necessary to complete the required work of improvement. The amount of the surety bond for faithful performance shall be in the sum of \$3,042,000.00. The amount of the surety bond for the payment of the claims of the contractor, his subcontractors, and to persons renting equipment or furnishing labor or materials for the improvement shall be at least 50 percent of the above amount. The letter of credit, certificate of deposit or similar instrument of credit, or cash deposit for faithful performance, shall be in the above amount plus an additional 50 percent for the purposes set forth herein.

ITEM 16.4.

13. Improvement Security As Condition Precedent. The furnishing of the improvement security by Principal as required by paragraph 12 hereof shall be a condition precedent to acceptance by City of the above described real property and the performance by the City of the covenants herein on its part to be performed.

14. Inspection of Work In Progress. (a) Principal may request The City Engineer to inspect the work as it progresses. If the work performed is found to be in accordance with the requirements of City, it may be accepted as it progresses and a partial refund of the cash deposit, or a release pro tanto of the faithful performance bond, letter of credit, certificate of deposit or similar instrument of credit shall be made in a sum in the same ratio to the total deposit as the work accepted bears to the total work to be done. No refund in excess of 85 percent of the total amount of the improvement security for faithful performance shall be made until all the work has been completed and accepted.

(b) The determination of the Administrator of Public Works of City as to the amount of work done, and the amount of refund or partial release pro tanto, shall be final and conclusive. When the work of improvement is accepted, 10 percent of the improvement security shall be retained to guarantee faithful performance of the provisions of paragraph 9 of this Agreement.

(c) Improvement security given to secure payment to contractor, his subcontractors and to persons renting equipment or furnishing labor or materials for the work of improvement may, six months after completion and acceptance of the work, be reduced to an amount not less than the total of all claims on which an action has been filed, and notice thereof given in writing to City, and if there are no actions filed, such improvement security may be released in full.

15. Execution By Real Party In Interest. Where title to the subdivision property is held by the record owner thereof under a holding Agreement, this Agreement and the bond given pursuant thereto must be executed by the real party or parties in interest.

16. Waiver of Civil Code Section 2819. Any extension of time hereunder shall not operate to release the surety on the bond filed pursuant to this Agreement. In this connection the surety waives the provisions of Section 2819 of the Civil Code of the State of California.

17. City Construction of Improvements. In the event that all or any portion of the works of improvement contemplated herein are proposed to be constructed by street improvement proceedings under the control of City, the undertaking of such proceedings shall in no way relieve Principal of any duties under this Agreement, except where all of the works of improvement that are required under this Agreement have in fact been constructed and accepted by City.

18. **Interest.** Interest shall accrue at the highest rate permitted by law on all sums from the date payment is due under the terms of this Agreement and the sum due is certain or reasonably capable of being made certain.

19. **Attorneys' Fees.** In the event that it is necessary for the City to enforce the obligations secured by the improvement security furnished pursuant to Paragraph 12 hereof, the City shall be entitled to recover its costs and reasonable expenses and fees, including reasonable attorneys' fees, as provided for in Government Code Section 66499.4.

20. **Amendments.** This Agreement may be modified or amended, or any of its provisions waived, only by a subsequent written agreement executed by the parties hereto.

21. **Entire Agreement.** This Agreement and any attachments hereto constitute the sole, final, complete, exclusive and integrated expression and statement of the terms and conditions of this Agreement among the parties hereto concerning the subject matter addressed herein, and supercedes all prior negotiations, representations or agreements, oral or written, that may be related to the subject matter of this Agreement.

22. **Construction and Interpretation.** It is agreed and acknowledged by the Principal that the provisions of this Agreement have been arrived at through negotiation, and that the Principal has had a full and fair opportunity to revise the provisions of this Agreement and to have such provisions reviewed by legal counsel. Therefore, the normal rule of construction that any ambiguities are to be resolved against the drafting party shall not apply in construing or interpreting this Agreement.

23. **Successors and Assigns.** This Agreement shall bind and inure to the benefit of the respective successors and assigns of the parties hereto.

24. **Time.** Time is of the essence in the performance of each and every term of this Agreement.

SIGNATURE PAGE FOLLOWING

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first set forth above, which date shall be considered by the Parties to be the effective date of this Agreement.

CITY OF RANCHO CORDOVA,
California Municipal Corporation

Micah Runner, City Manager

LENNAR HOMES OF CALIFORNIA, LLC.,
a California limited liability company
(as successor-in-interest by conversion to
Lennar Homes of California, Inc., a California
corporation)



Larry Gualco, Sr Vice President

Date: _____

Date: March 14, 2023

ATTEST:

Stacy Leitner, CMC, City Clerk

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of Placer)

On March 14, 2023 before me, Jessica D. Granzella, Notary Public,
(Insert name and title of the officer)

personally appeared Larry Gualco,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/~~she~~/they executed the same in his/~~her~~/their authorized capacity(ies), and that by his/~~her~~/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature



(Seal)



ENGINEER'S PRELIMINARY OPINION OF COST***Grantline 220 - Phase 5 Intract***

City of Rancho Cordova

#	QUANTITY	UNIT	DESCRIPTION	UNIT PRICE	AMOUNT
A. MISCELLANEOUS					
1.	2	EA	Stabilized Construction Access	\$ 5,000.00	\$ 10,000
TOTAL MISCELLANEOUS					\$ 10,000
B. ROUGH GRADING					
2.	59	EA	Finish Lot Grading	\$ 500.00	\$ 29,500
TOTAL ROUGH GRADING					\$ 29,500
C. EROSION CONTROL					
3.	11	AC	In-tract Erosion Control	\$ 1,000.00	\$ 11,000
TOTAL EROSION CONTROL					\$ 11,000
D. STREET WORK					
4.	71887	SF	3" Asphalt Concrete Pavement	\$ 2.75	\$ 197,689
5.	71887	SF	9" Aggregate Base Rock	\$ 3.25	\$ 233,633
6.	15122	SF	3.5" Asphalt Concrete Pavement	\$ 3.00	\$ 45,366
7.	15122	SF	11" Aggregate Base Rock	\$ 3.60	\$ 54,439
8.	3	EA	Street Name Signs	\$ 775.00	\$ 2,325
9.	3	EA	Stop Sign (Signage & Striping)	\$ 675.00	\$ 2,025
10.	1	EA	Street Barricade	\$ 1,425.00	\$ 1,425
11.	2	EA	Remove Street and Sidewalk Barricades	\$ 500.00	\$ 1,000
TOTAL STREET WORK					\$ 537,902
E. SANITARY SEWER					
12.	1011	LF	Sewer Pipe - 8"	\$ 75.00	\$ 75,825
13.	3	EA	Sewer Manhole - 48" Regular	\$ 10,500.00	\$ 31,500
14.	11	EA	Adjust Manhole to Grade	\$ 1,200.00	\$ 13,200
15.	59	EA	Residential Sewer Service	\$ 1,650.00	\$ 97,350
16.	2	EA	Connect to Existing Sewer	\$ 2,300.00	\$ 4,600
TOTAL SANITARY SEWER					\$ 222,475
F. STORM DRAINAGE					
17.	3	EA	Storm Drain Drop Inlet - Type B	\$ 4,650.00	\$ 13,950
18.	12	EA	Storm Drain Drop Inlet - Type F	\$ 3,950.00	\$ 47,400
19.	5	EA	Storm Drain Manhole - 48"	\$ 6,750.00	\$ 33,750
20.	133	LF	Drain Pipe - 12"	\$ 85.00	\$ 11,305
21.	454	LF	Drain Pipe - 15"	\$ 90.00	\$ 40,860
22.	26	LF	Drain Pipe - 18"	\$ 95.00	\$ 2,470
23.	3	EA	Connect to Existing Drain	\$ 2,300.00	\$ 6,900
TOTAL STORM DRAINAGE					\$ 156,635
G. WATER SYSTEM					
24.	999	LF	Water Pipe - 8"	\$ 100.00	\$ 99,900
25.	1	EA	8" Water Valve	\$ 2,300.00	\$ 2,300
26.	2	EA	Fire Hydrant Assembly	\$ 10,500.00	\$ 21,000
27.	59	EA	Residential Water service	\$ 4,000.00	\$ 236,000
28.	2	EA	Connect to Existing (remove blow off)	\$ 4,500.00	\$ 9,000
TOTAL WATER SYSTEM					\$ 368,200

ITEM 16.4.

ATTACHMENT 2

Contract No. 2023-39

Wood Rodgers, Inc.
A. Fischlin
1/26/2023

#	QUANTITY	UNIT	DESCRIPTION	UNIT PRICE	AMOUNT
H. CONCRETE					
29.	3356	LF	Type 1 Curb & Gutter	\$ 35.00	\$ 117,460
30.	2135	LF	Type 2 Vertical Curb & Gutter	\$ 42.00	\$ 89,670
31.	769	LF	Type 3 Barrier Curb	\$ 20.00	\$ 15,380
32.	582	LF	Type 5 Median Curb	\$ 20.00	\$ 11,640
33.	11	EA	Curb Ramp	\$ 3,450.00	\$ 37,950
34.	27416	SF	Attached Sidewalk	\$ 7.00	\$ 191,912
35.	5090	SF	Detached Sidewalk	\$ 7.50	\$ 38,175
TOTAL CONCRETE					\$ 502,187
I. WALLS & FENCES					
36.	176	LF	Open View Fencing	\$ 15.00	\$ 2,640
37.	874	LF	Retaining Wall	\$ 150.00	\$ 131,100
38.	664	LF	Sound Wall - CMU	\$ 100.00	\$ 66,400
39.	4	EA	Pilaster	\$ 2,000.00	\$ 8,000
TOTAL WALLS & FENCES					\$ 208,140
J. ELECTRICAL					
40.	1	EA	Service Can	\$ 7,400.00	\$ 7,400
41.	2805	LF	Streetlight Conduit (trench / conduit / boxes)	\$ 15.00	\$ 42,075
42.	16	EA	Residential Streetlights (with base installed)	\$ 10,500.00	\$ 168,000
TOTAL ELECTRICAL					\$ 217,475
K. JOINT TRENCH					
43.	59	LOT	Joint Trench	\$ 8,500.00	\$ 501,500
TOTAL JOINT TRENCH					\$ 501,500
A. MISCELLANEOUS					\$ 10,000
B. ROUGH GRADING					\$ 29,500
C. EROSION CONTROL					\$ 11,000
D. STREET WORK					\$ 537,902
E. SANITARY SEWER					\$ 222,475
F. STORM DRAINAGE					\$ 156,635
G. WATER SYSTEM					\$ 368,200
H. CONCRETE					\$ 502,187
I. WALLS & FENCES					\$ 208,140
J. ELECTRICAL					\$ 217,475
K. JOINT TRENCH					\$ 501,500
SUBTOTAL PRELIMINARY OPINION OF COST					\$ 2,765,014
CONTINGENCY				10%	\$ 276,501.40
TOTAL OPINION OF COST					\$ 3,042,000

ESTIMATE FOOTNOTES:

[1] Based on preliminary improvement plans dated 12/15/2022

OWNER'S STATEMENT

THE UNDERSIGNED HEREBY CONSENT TO THE PREPARATION AND RECORDING OF THIS FINAL MAP OF GRANTLINE 220 UNIT 5.

THE REAL PROPERTY DESCRIBED BELOW IS DEDICATED AS AN EASEMENT FOR PUBLIC PURPOSES:

THE UNDERSIGNED HEREBY OFFERS FOR DEDICATION AND DOES HEREBY DEDICATE TO ANY AND ALL PUBLIC USES, THE PUBLIC ROADS DESIGNATED HEREON AS GREENSHANK WAY, GREENSHANK CIRCLE, SPOTTED WREN WAY AND CYPRESS GROVE DRIVE AS SHOWN HEREON, AND DOES HEREBY DEDICATE TO SPECIFIC PURPOSES THE FOLLOWING:

1. EASEMENTS FOR PLANTING AND MAINTAINING TREES, ELECTROLIERS, TRAFFIC CONTROL DEVICES, WATER AND GAS PIPES, AND UNDERGROUND WIRES AND CONDUITS FOR ELECTRIC, TELEVISION AND TELEPHONE SERVICES, TOGETHER WITH ANY AND ALL APPURTENANCES PERTAINING THERETO, ON, OVER, UNDER AND ACROSS LOT N, LOT O AND THOSE STRIPS OF LAND 12.50' IN WIDTH, LYING CONTIGUOUS TO THE PUBLIC STREETS SHOWN HEREON AND DESIGNATED "PUBLIC UTILITY EASEMENT" (PUE).
2. EASEMENTS FOR LANDSCAPING AND ALL APPURTENANCES PERTAINING THERETO LYING ON, OVER AND ACROSS LOTS N, O AND Q, AND THOSE STRIPS OF LAND SHOWN HEREON AND DESIGNATED "LANDSCAPING EASEMENT" (LE). SAID STRIPS TO BE KEPT OPEN AND FREE FROM BUILDINGS. THE MAINTENANCE AND REPLANTING OF THE LANDSCAPE STRIP SHALL BE THE RESPONSIBILITY OF THE PROPERTY OWNER.
3. RIGHTS OF WAY AND EASEMENTS FOR THE INSTALLATION AND MAINTENANCE OF A PEDESTRIAN WALKWAY, TOGETHER WITH ANY AND ALL APPURTENANCES PERTAINING THERETO ON, OVER, UNDER AND ACROSS LOTS N, O AND Q, AND THOSE STRIPS OF LAND SHOWN HEREON AND DESIGNATED "PEDESTRIAN EASEMENT" (PE). THE MAINTENANCE AND REPAIR OF THE WALKWAY SHALL BE THE RESPONSIBILITY OF THE PROPERTY OWNER.
4. AN EASEMENT FOR CONSTRUCTING AND MAINTAINING CENTRALIZED MAIL DELIVERY BOXES, PEDESTALS, AND SLABS, TOGETHER WITH ANY AND ALL APPURTENANCES PERTAINING THERETO INCLUDING PEDESTRIAN ACCESS FOR DELIVERY AND RECEIPT OF MAIL ON, OVER, UNDER AND ACROSS STRIPS OF LAND FIVE FEET IN WIDTH LYING CONTIGUOUS TO THE PUBLIC STREETS SHOWN HEREON.

LENNAR HOMES OF CALIFORNIA, INC
A CALIFORNIA CORPORATION

BY: *Timmy Shaker*
NAME: *Larry Gualco*
TITLE: *VP*

NOTARY'S ACKNOWLEDGMENT

A NOTARY PUBLIC OR OTHER OFFICER COMPLETING THIS CERTIFICATE VERIFIES ONLY THE IDENTITY OF THE INDIVIDUAL WHO SIGNED THE DOCUMENT TO WHICH THIS CERTIFICATE IS ATTACHED, AND NOT THE TRUTHFULNESS, ACCURACY, OR VALIDITY OF THAT DOCUMENT.

STATE OF CALIFORNIA }
COUNTY OF Placer } SS

ON 8 DAY OF March, 2023 BEFORE ME, Jessica D. Granzella, A NOTARY PUBLIC IN AND FOR SAID COUNTY AND STATE, PERSONALLY APPEARED Larry Gualco

WHO PROVED TO ME ON THE BASIS OF SATISFACTORY EVIDENCE TO BE THE PERSON(S) WHOSE NAME(S) IS/ARE SUBSCRIBED TO THE WITHIN INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE/SHE/THEY EXECUTED THE SAME IN HIS/HER/THEIR AUTHORIZED CAPACITY(IES), AND THAT BY HIS/HER/THEIR SIGNATURE(S) ON THE INSTRUMENT THE PERSON(S), OR THE ENTITY UPON BEHALF OF WHICH THE PERSON(S) ACTED, EXECUTED THE INSTRUMENT.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF CALIFORNIA THAT THE FOREGOING PARAGRAPH IS TRUE AND CORRECT.

WITNESS MY HAND AND OFFICIAL SEAL: *Jessica D. Granzella*

PRINTED NAME: Jessica D. Granzella

MY PRINCIPAL PLACE OF BUSINESS IS IN THE
COUNTY OF: Placer

MY COMMISSION EXPIRES: October 24, 2026

MY COMMISSION No.: 2423365

SURVEYOR'S STATEMENT

THIS FINAL MAP OF GRANTLINE 220 UNIT 5 WAS PREPARED BY ME OR UNDER MY DIRECTION AND IS BASED UPON A FIELD SURVEY IN CONFORMANCE WITH THE REQUIREMENTS OF THE SUBDIVISION MAP ACT AND LOCAL ORDINANCE AT THE REQUEST OF LENNAR HOMES OF CALIFORNIA, LLC, IN OCTOBER, 2021. I HEREBY STATE THAT ALL THE MONUMENTS SHOWN HEREON ARE OF THE CHARACTER AND OCCUPY THE POSITIONS INDICATED OR THAT THEY WILL BE SET IN THOSE POSITIONS BEFORE APRIL 30, 2025 AND THAT THE MONUMENTS ARE, OR WILL BE, SUFFICIENT TO ENABLE THE SURVEY TO BE RETRACED.

WOOD RODGERS, INC.



Andrew P. Tapley
ANDREW P. TAPLEY
P.L.S. 9554

2/27/2023
DATE

CITY ENGINEER'S STATEMENT

I HEREBY STATE THAT I HAVE EXAMINED THIS FINAL MAP OF GRANTLINE 220 UNIT 5 AND FIND IT TO BE SUBSTANTIALLY THE SAME AS THE TENTATIVE MAP APPROVED BY THE CITY OF RANCHO CORDOVA, AND ANY APPROVED ALTERATIONS THEREOF; THAT ALL PROVISIONS OF THE SUBDIVISION MAP ACT AND ALL APPLICABLE CITY ORDINANCES HAVE BEEN COMPLIED WITH.

CITY ENGINEER, ALBERT STRICKER, R.C.E. 64057

DATED: _____



CITY SURVEYOR'S STATEMENT

I HEREBY STATE THAT I HAVE EXAMINED THIS FINAL MAP - SUBDIVISION NO. 2021-004-05, GRANTLINE 220 UNIT 5 - AND FIND IT TO BE TECHNICALLY CORRECT.



JOCELYN L. LIMAS
PLS 9596
EXPIRATION: 3/31/2023

DATE _____

CITY CLERK'S STATEMENT

I HEREBY STATE THAT THE CITY COUNCIL OF THE CITY OF RANCHO CORDOVA HAS APPROVED THIS FINAL MAP OF GRANTLINE 220 UNIT 5 AND HAS ACCEPTED ON BEHALF OF THE PUBLIC ALL EASEMENTS AND RIGHTS-OF-WAY SHOWN HEREON SUBJECT TO COMPLETION OF THE IMPROVEMENTS.

BY: _____
CITY CLERK
CITY OF RANCHO CORDOVA

DATED: _____

RECORDER'S STATEMENT

FILED THIS _____ DAY OF _____, 2023, AT _____ M. IN
BOOK _____ OF MAPS, AT PAGE _____ AT THE REQUEST OF WOOD
RODGERS, INC. TITLE TO THE LAND INCLUDED IN THIS FINAL MAP BEING VESTED
AS PER CERTIFICATE NO. _____ ON FILE IN THIS OFFICE.

DONNA ALLRED, COUNTY RECORDER
COUNTY OF SACRAMENTO

DOCUMENT NO.: _____

BY: _____
DEPUTY RECORDER

FEE: \$ _____

FINAL MAP OF
GRANTLINE 220 UNIT 5
SUBDIVISION NO. FM-2021-004-05
BEING ALL OF LOT 5 OF THAT CERTAIN
LARGE LOT FINAL MAP OF GRANTLINE 220
FILED FOR RECORD IN BOOK 442 OF MAPS, AT PAGE 13
CITY OF RANCHO CORDOVA,
COUNTY OF SACRAMENTO, STATE OF CALIFORNIA



WOOD RODGERS
BUILDING RELATIONSHIPS ONE PROJECT AT A TIME
3301 O ST, BLDG. 100-B TEL 916.341.7760
SACRAMENTO, CA 95816 FAX 916.341.7767

APRIL 2023

Sheet 1 of 5

1258.019

BOUNDARY SHEET

NOTES

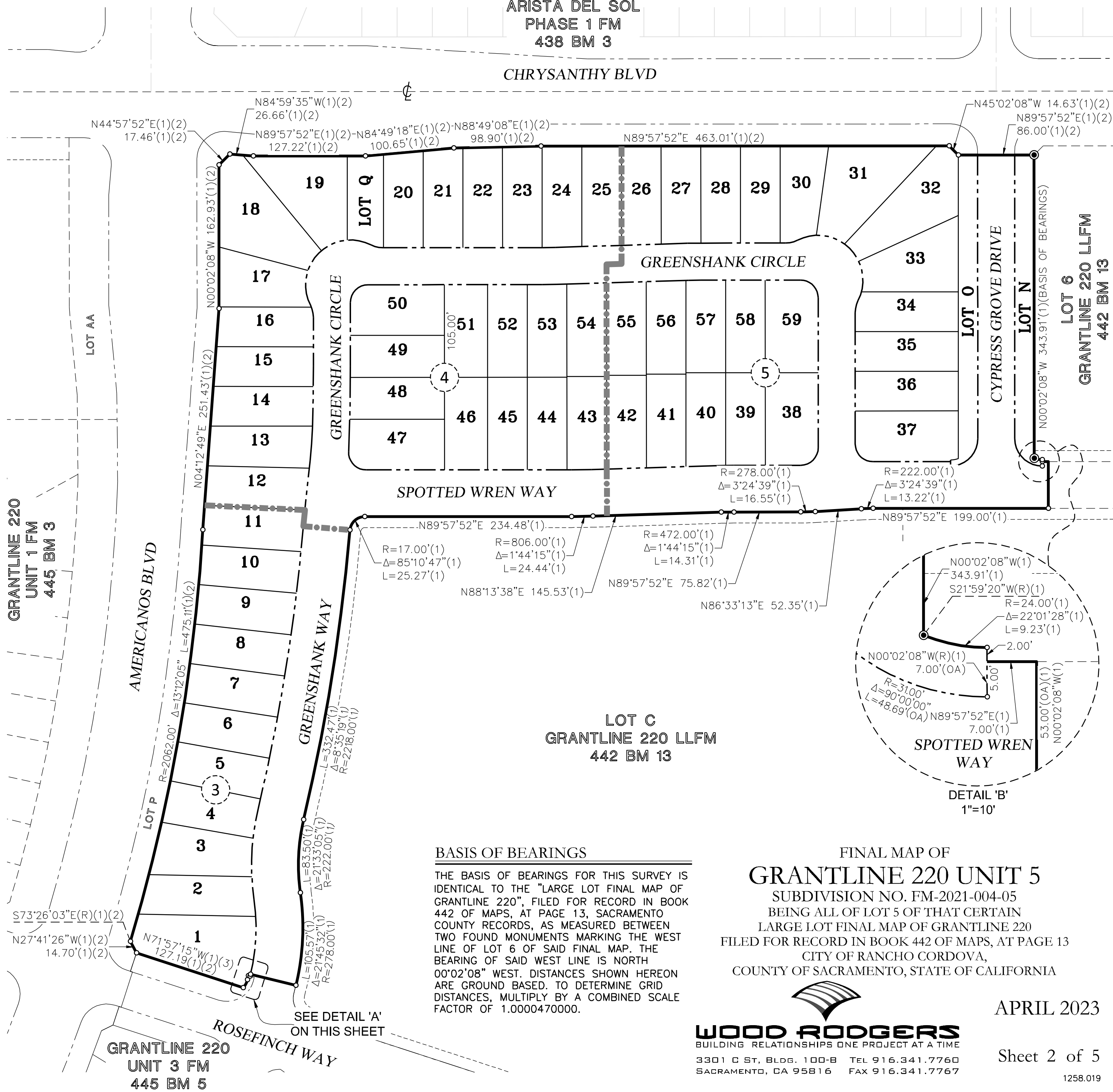
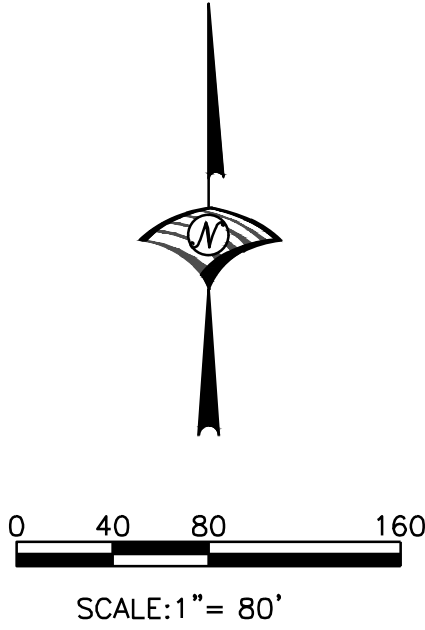
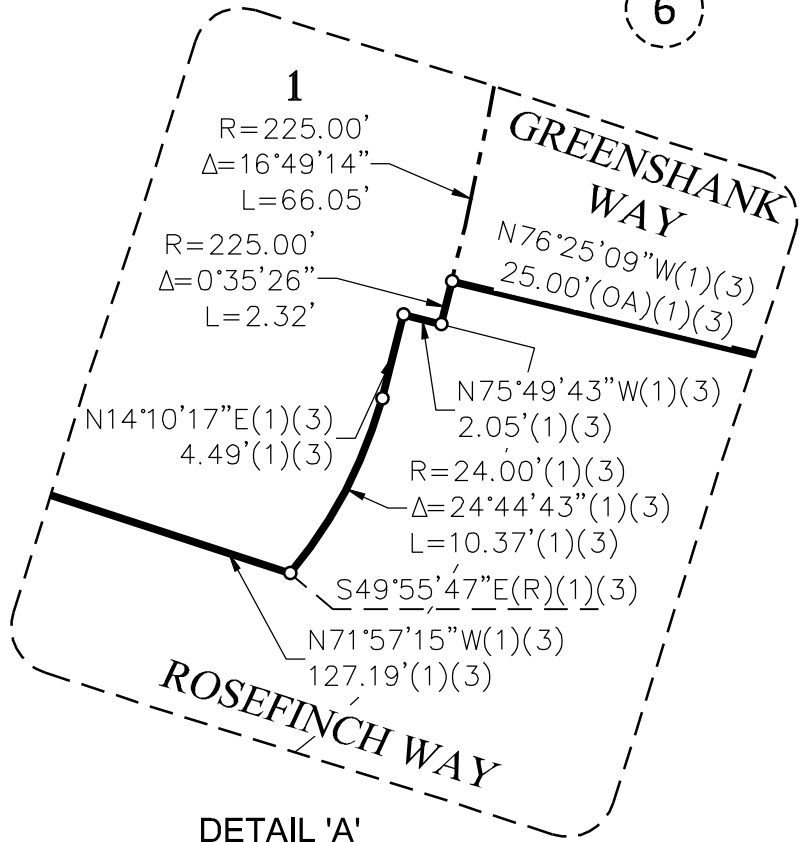
1. ALL CURVES DIMENSIONED WITH RADIUS, DELTA, AND ARC LENGTH.
2. ALL DISTANCES SHOWN HEREON ARE GROUND BASED AND ARE EXPRESSED IN FEET AND DECIMALS THEREOF.
3. DUE TO ROUNDING, THE SUM OF THE INDIVIDUAL DIMENSIONS MAY NOT EQUAL THE OVERALL DIMENSION.
4. TOTAL AREA FOR THIS "GRANTLINE 220 UNIT 5" FINAL MAP IS 10.83± ACRES, CONSISTING OF 59 RESIDENTIAL LOTS, 2 LANDSCAPE LOTS AND 1 LANDSCAPE/PEDESTRIAN ACCESS LOT.
5. A 5/8" REBAR CAPPED "LS 9554" WILL BE SET AT ALL REAR LOT CORNERS, ALONG WITH ALL LOT LINE ANGLE POINTS OR AT A 2.00 FOOT PROJECTION ALONG LOT LINES ADJACENT TO WALLS (2.00 FOOT BY 2.00 FOOT OFFSETS FOR ANGLE POINTS ADJACENT TO WALLS). FRONT CORNERS WILL BE SET WITH A 1" BRASS DISK STAMPED "LS 9554" AT A 1.00 FOOT PROJECTION OF THE PROPERTY LINE ONTO THE SIDEWALK.
6. ALL LOTS BEING CREATED BY THIS MAP INCLUDE FEE TITLE TO THE CENTERLINE OF THE DRIVE, WAYS AND CIRCLE SHOWN HEREON, EXCEPT WHERE THE PUBLIC ROAD EASEMENT LINE IS ALSO THE COMMON LINE OF THE SUBDIVISION BOUNDARY, THEN THE FEE TITLE IS TO THE SUBDIVISION BOUNDARY.
7. LOT Q SHALL BE GRANTED TO THE CITY OF RANCHO CORDOVA FOR PEDESTRIAN AND LANDSCAPE PURPOSES.
8. LOTS N AND O SHALL BE GRANTED TO THE CITY OF RANCHO CORDOVA FOR LANDSCAPE PURPOSES.
9. A SOILS REPORT DATED AUGUST 4, 2021, WAS PREPARED FOR THIS SUBDIVISION BY WALLACE KUHLMAN & ASSOCIATES. A COPY OF THIS REPORT ENTITLED "GEOTECHNICAL ENGINEERING REPORT, GRANTLINE 220, RANCHO CORDOVA, CALIFORNIA, WKA NO. 12590.03", IS AVAILABLE FOR PUBLIC INSPECTION AT THE OFFICE OF THE CITY OF RANCHO CORDOVA BUILDING INSPECTOR.

REFERENCES:

- (1) 442 MAPS 13 LARGE LOT FINAL MAP OF GRANTLINE 220
- (2) 445 MAPS 3 GRANTLINE 220 UNIT 1 FINAL MAP
- (3) 445 MAPS 5 GRANTLINE 220 UNIT 3 FINAL MAP

LEGEND

○	DIMENSION POINT	LLFM	LARGE LOT FINAL MAP
⊙	FOUND 3/4" IRON PIPE WITH CAP STAMPED "LS 9554"	NTS	NOT TO SCALE
⊙	FOUND 3/4" IRON PIPE WITH CAP STAMPED "LS 8067"	(OA)	OVERALL
⊙	FOUND 3/4" IRON PIPE WITH CAP STAMPED "LS 9554"	OR COUNTY	OFFICIAL RECORDS OF SACRAMENTO
⊙	SET 3/4" IRON PIPE WITH CAP STAMPED "LS 9554"	PUE	PUBLIC UTILITY EASEMENT
⊙	CENTERLINE	(R)	RADIAL BEARING
BM	BOOK OF MAPS	SF	SQUARE FEET
L=	ARC LENGTH	PE	PEDESTRIAN EASEMENT
		(6)	SHEET NUMBER REFERENCE



BASIS OF BEARINGS

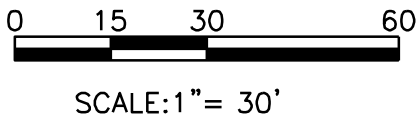
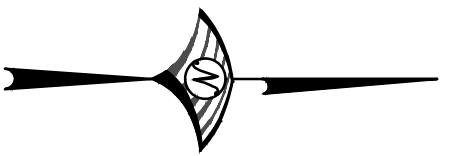
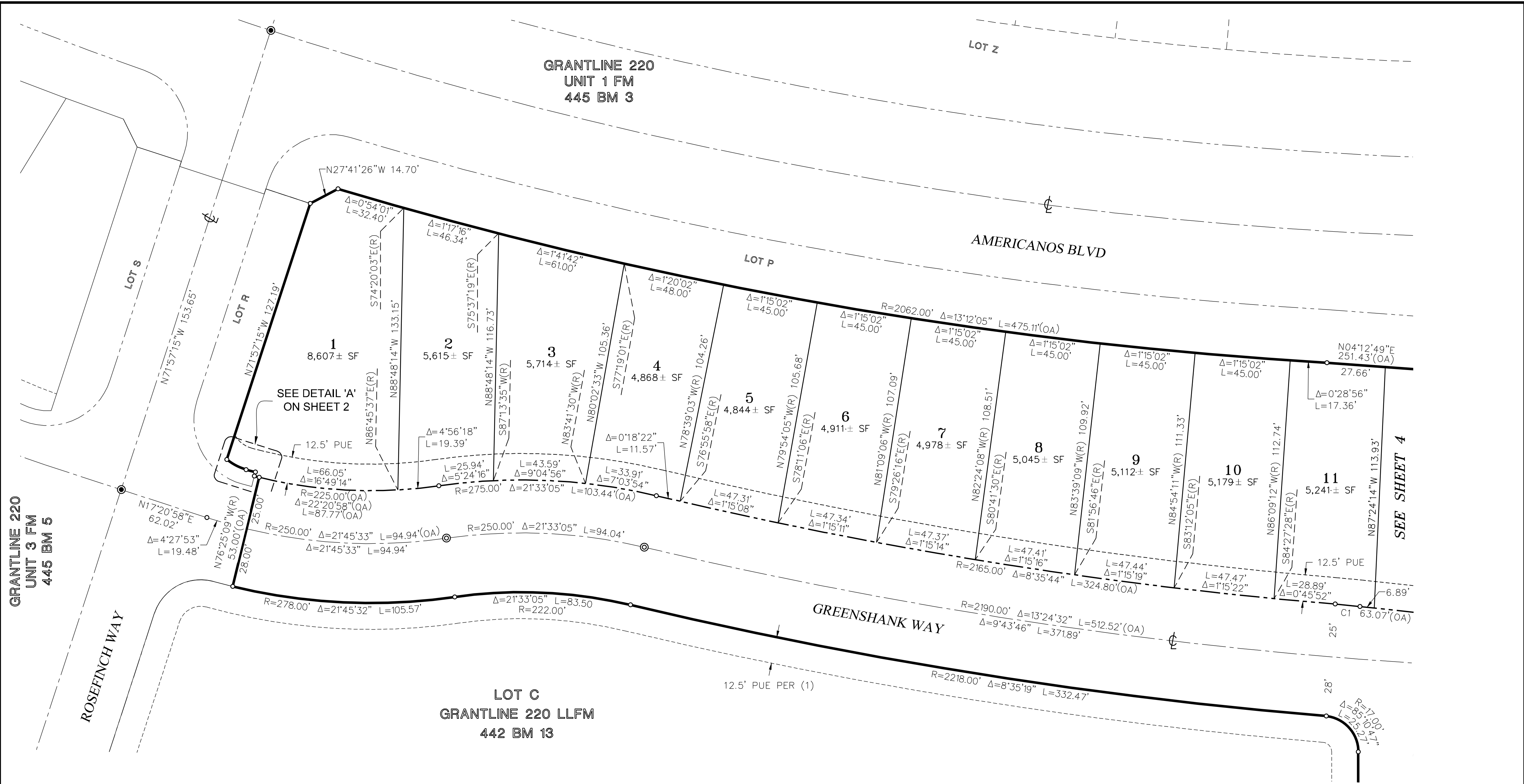
THE BASIS OF BEARINGS FOR THIS SURVEY IS IDENTICAL TO THE "LARGE LOT FINAL MAP OF GRANTLINE 220", FILED FOR RECORD IN BOOK 442 OF MAPS, AT PAGE 13, SACRAMENTO COUNTY RECORDS, AS MEASURED BETWEEN TWO FOUND MONUMENTS MARKING THE WEST LINE OF LOT 6 OF SAID FINAL MAP. THE BEARING OF SAID WEST LINE IS NORTH 00°02'08" WEST. DISTANCES SHOWN HEREON ARE GROUND BASED. TO DETERMINE GRID DISTANCES, MULTIPLY BY A COMBINED SCALE FACTOR OF 1.0000470000.

FINAL MAP OF
GRANTLINE 220 UNIT 5
SUBDIVISION NO. FM-2021-004-05
BEING ALL OF LOT 5 OF THAT CERTAIN
LARGE LOT FINAL MAP OF GRANTLINE 220
FILED FOR RECORD IN BOOK 442 OF MAPS, AT PAGE 13
CITY OF RANCHO CORDOVA,
COUNTY OF SACRAMENTO, STATE OF CALIFORNIA

**WOOD RODGERS**
BUILDING RELATIONSHIPS ONE PROJECT AT A TIME
3301 G ST, BLDG. 100-B TEL 916.341.7760
SACRAMENTO, CA 95816 FAX 916.341.7767

APRIL 2023

Sheet 2 of 5
1258.019



CURVE TABLE - THIS SHEET ONLY			
NO.	RADIUS	DELTA	LENGTH
C1	500.00'	1°20'42"	11.74'

SEE SHEET 2 FOR BASIS OF BEARINGS,
NOTES, REFERENCES & LEGEND.

FINAL MAP OF
GRANTLINE 220 UNIT 5
 SUBDIVISION NO. FM-2021-004-05
 BEING ALL OF LOT 5 OF THAT CERTAIN
 LARGE LOT FINAL MAP OF GRANTLINE 220
 FILED FOR RECORD IN BOOK 442 OF MAPS, AT PAGE 13
 CITY OF RANCHO CORDOVA,
 COUNTY OF SACRAMENTO, STATE OF CALIFORNIA

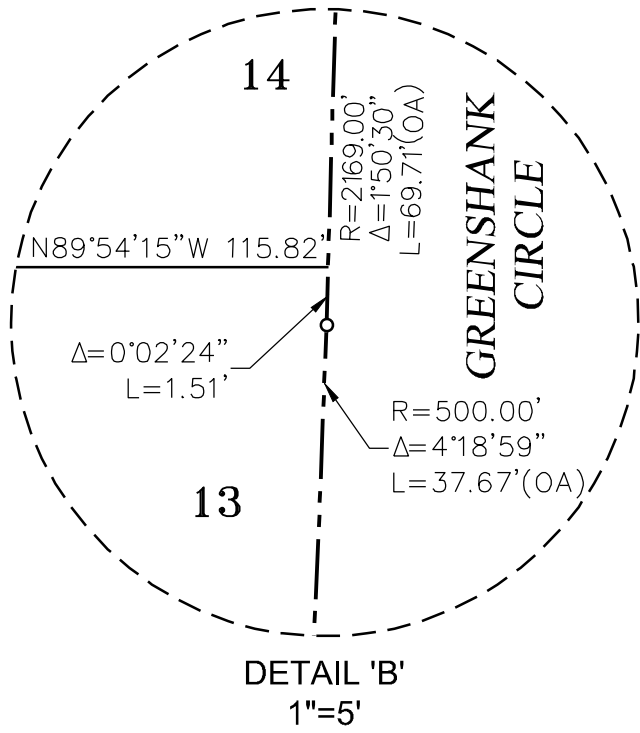
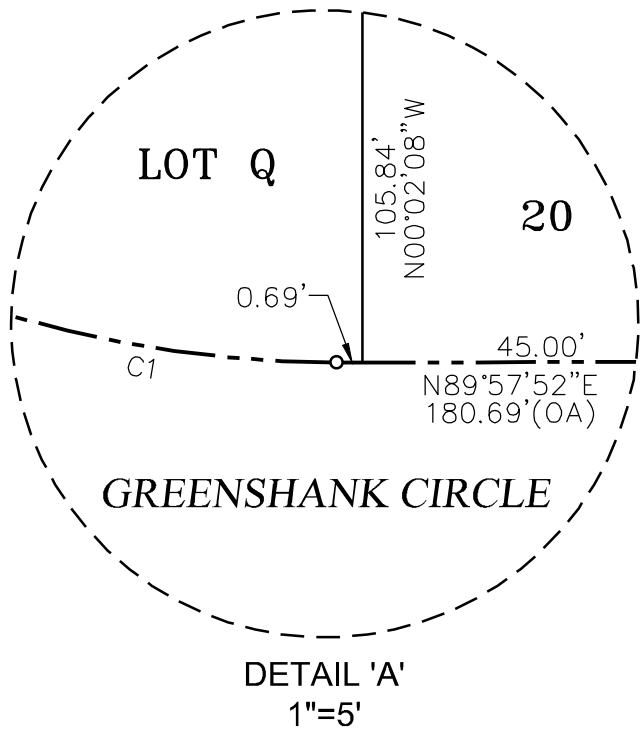
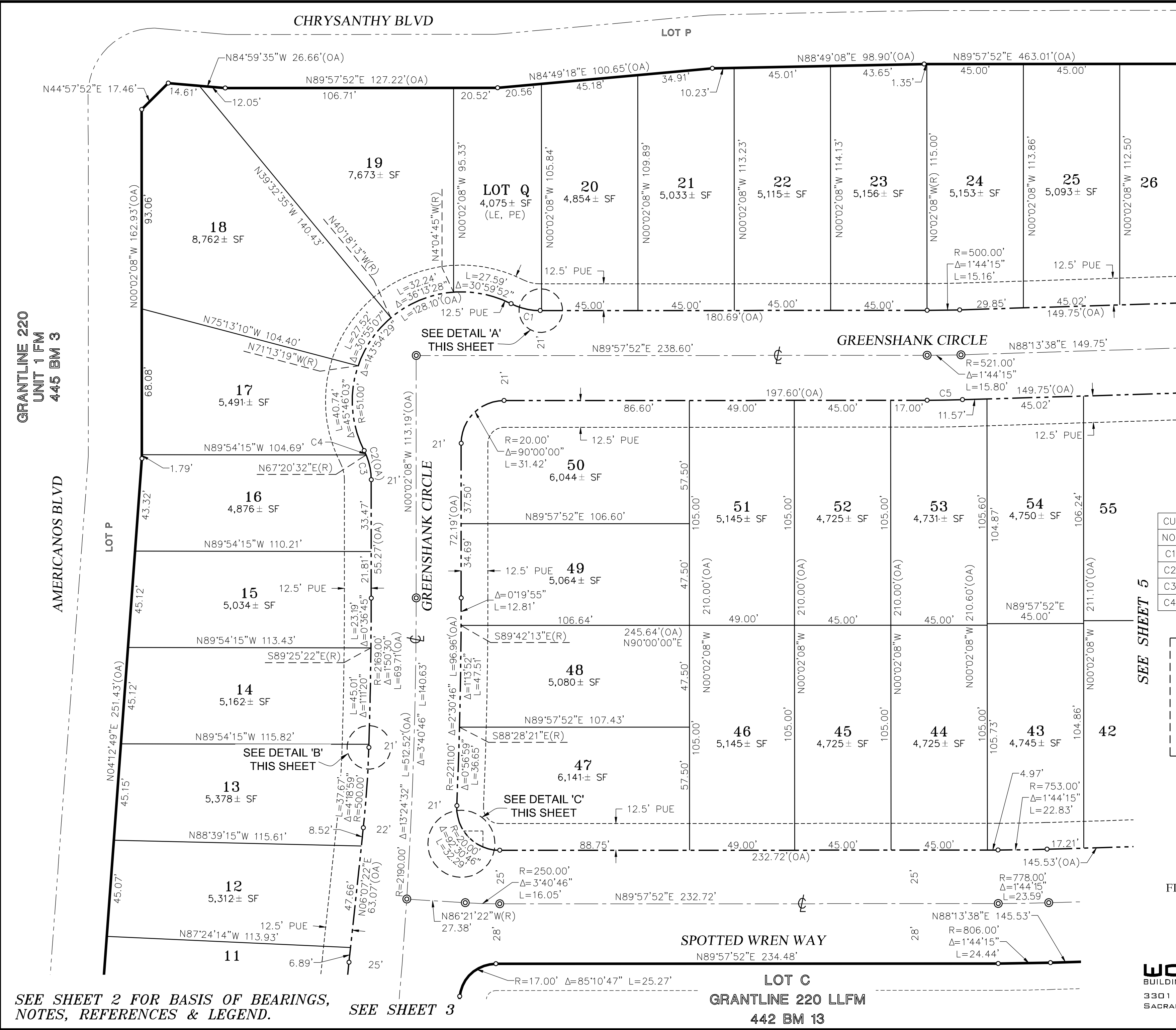


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APRIL 2023

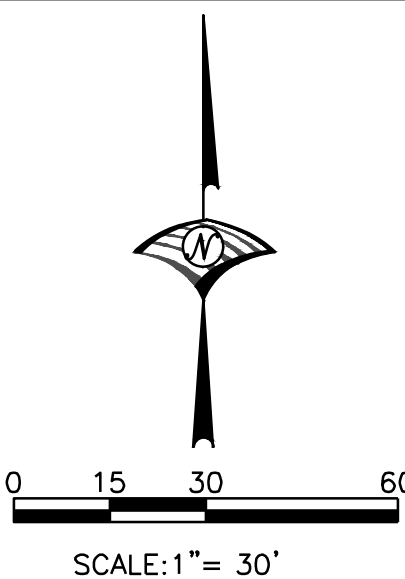
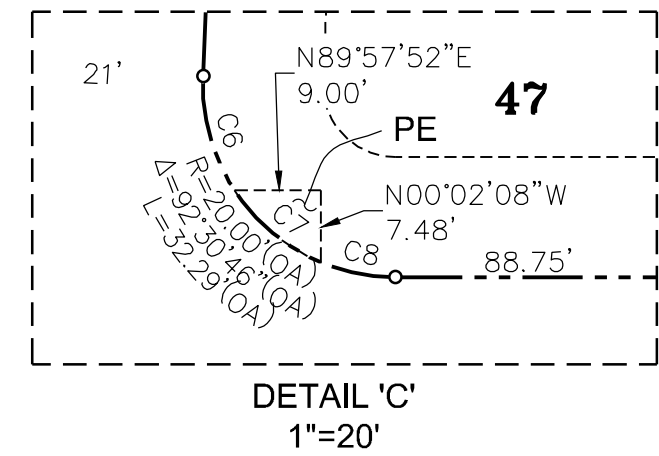
Sheet 3 of 5

1258.019



CURVE TABLE - THIS SHEET ONLY			
NO.	RADIUS	DELTA	LENGTH
C1	30.00'	26°57'15"	14.11'
C2	30.00'	26°57'15"	14.11'
C3	30.00'	22°37'21"	11.85'
C4	30.00'	4°19'54"	2.27'

CURVE TABLE - THIS SHEET ONLY			
NO.	RADIUS	DELTA	LENGTH
C5	542.00'	1°44'15"	16.44'
C6	20.00'	35°46'37"	12.49'
C7	20.00'	34°02'06"	11.88'
C8	20.00'	22°42'03"	7.92'



FINAL MAP OF
GRANTLINE 220 UNIT 5
SUBDIVISION NO. FM-2021-004-05
BEING ALL OF LOT 5 OF THAT CERTAIN
LARGE LOT FINAL MAP OF GRANTLINE 220
FILED FOR RECORD IN BOOK 442 OF MAPS, AT PAGE 13
CITY OF RANCHO CORDOVA,
COUNTY OF SACRAMENTO, STATE OF CALIFORNIA



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APRIL 2023

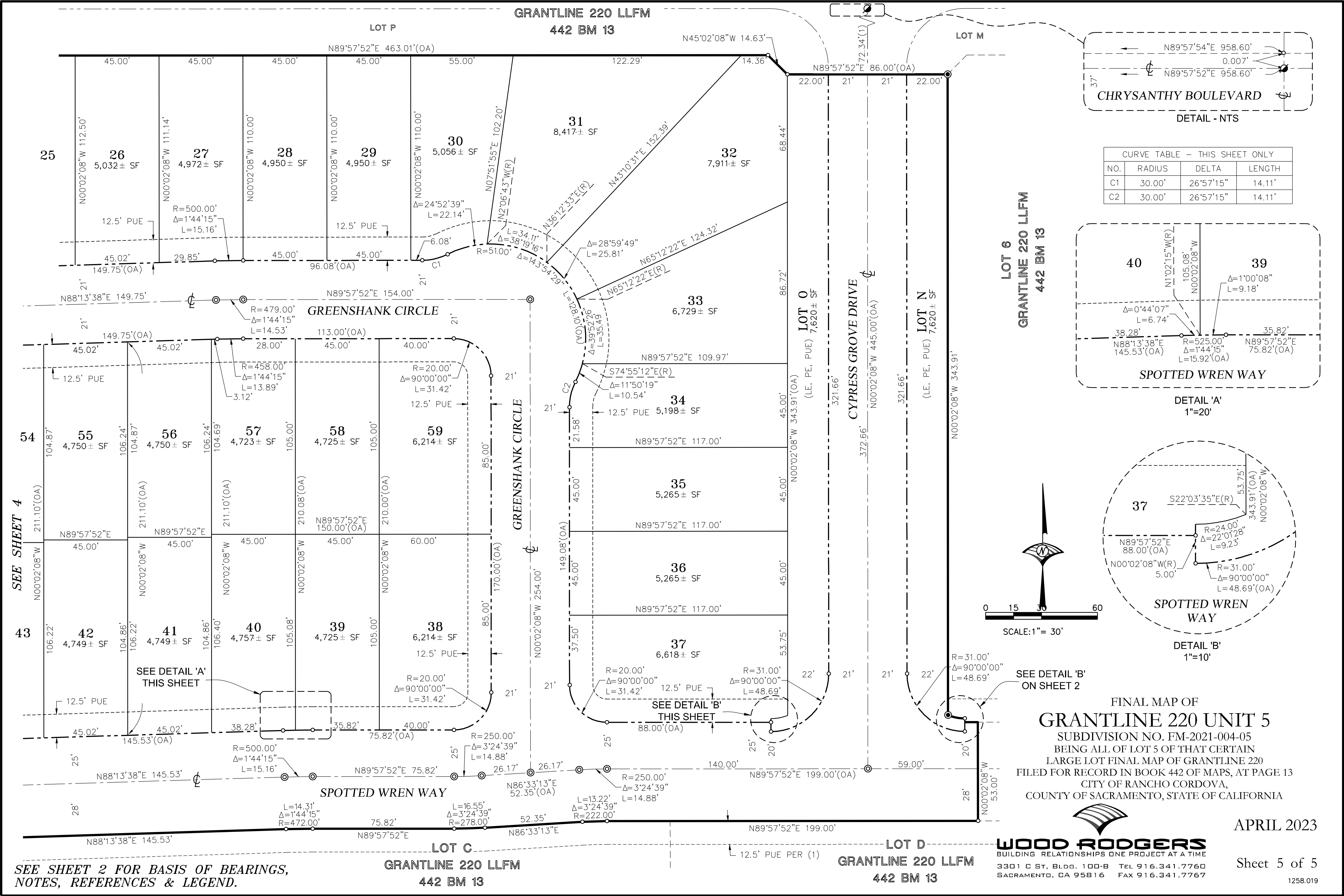
Sheet 4 of 5

1258.019

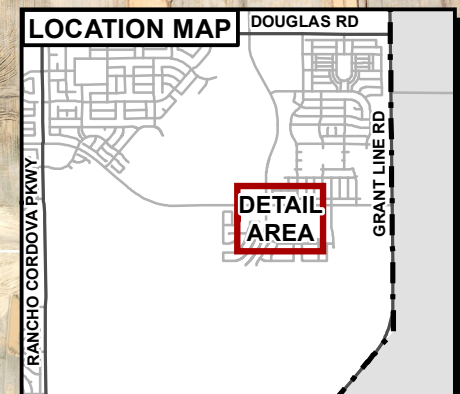
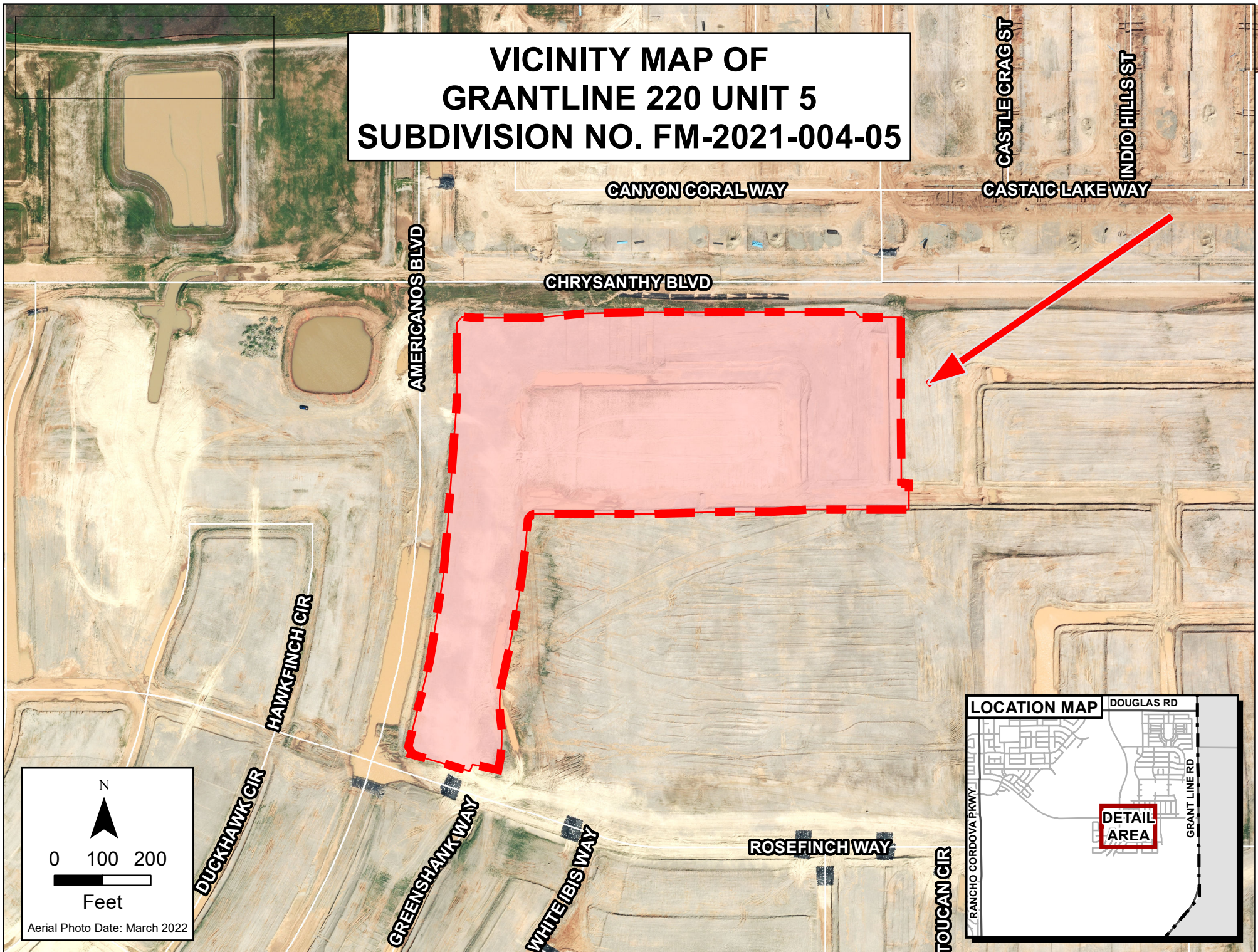
SEE SHEET 2 FOR BASIS OF BEARINGS,
NOTES, REFERENCES & LEGEND.

SEE SHEET 3

LOT C
GRANTLINE 220 LLFM
442 BM 13



**VICINITY MAP OF
GRANTLINE 220 UNIT 5
SUBDIVISION NO. FM-2021-004-05**



MEMORANDUM



ITEM 16.5.

DATE: April 17, 2023
TO: Honorable Mayor and Council Members
FROM: Albert Stricker, Public Works Director
Quoc Nham, Senior Civil Engineer
SUBJECT: **A RESOLUTION APPROVING THE FINAL MAP OF GRANTLINE 220 UNIT 6, SUBDIVISION NO. FM-2021-004-06, AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE SUBDIVISION IMPROVEMENT AGREEMENT CONTRACT NO. 2023-40 WITH LENNAR HOMES OF CALIFORNIA, LLC AND FINDING THE ACTION EXEMPT UNDER CEQA GUIDELINE 15268(B)(3)**

RECOMMENDATION

Adopt the Resolution.

RESULT OF RECOMMENDED ACTION

Adoption of the Resolution would approve the Final Map of Grantline 220 Unit 6 Subdivision No. FM-2021-004-06 and authorize the City Manager to execute Subdivision Improvement Agreement Contract No. 2023-40 with Lennar Homes of California, LLC.

BACKGROUND

The map has been examined and checked for compliance with Title 22 of the City of Rancho Cordova Municipal Code and the California Subdivision Map Act. The City Council approved the Tentative Subdivision Map on June 7, 2021. A copy of the final map, Attachment 3, and copy of the vicinity map, Attachment 4, are included with this report.

Roads are offered for dedication with this subdivision. Lennar Homes of California, LLC has provided a performance and labor and material bond guaranteeing the construction of the public improvements. Wood Rodgers has waived the requirement for a bond to guarantee payment for setting the survey monuments with the subdivision. The soil report requirement has been satisfied by Wallace Kuhl & Associates dated August 4, 2021.

There are no delinquent taxes against the property and the Tax Collector has so certified. The 2022/2023 estimated taxes have been secured with the Sacramento County Tax Collector.

FISCAL IMPACT AND FUNDING SOURCE

There is no fiscal impact to the City.

ATTACHMENT(S)

1. Resolution
2. Contract No. 2023-40
3. Final Map
4. Vicinity Map

CITY OF RANCHO CORDOVA

RESOLUTION NO. XX-2023

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RANCHO CORDOVA, STATE OF CALIFORNIA, APPROVING THE FINAL MAP OF GRANTLINE 220 UNIT 6 SUBDIVISION NO. FM-2021-004-06, AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE SUBDIVISION IMPROVEMENT AGREEMENT CONTRACT NO. 2023-40 WITH LENNAR HOMES OF CALIFORNIA, LLC AND FINDING THE APPROVAL EXEMPT FROM CEQA UNDER GUIDELINE 15268(B)(3)

WHEREAS, the City Council approved the Tentative Subdivision Map on June 7, 2021, per Resolution No. 91-2021; and

WHEREAS, the map is in substantial compliance with the approved tentative map; and

WHEREAS, the conditions of approval have been complied with; and

WHEREAS, the map complies with Title 22 of the City of Rancho Cordova municipal code and the California Subdivision Map Act; and

WHEREAS, the approval of final maps is exempt from review under the California Environmental Quality Act (CEQA) pursuant to CEQA Regulation Section 15268(b)(3) as a ministerial approval; and

WHEREAS, the City desires to enter into a subdivision improvement agreement with the developer to ensure necessary public improvements are completed and secured with a bond.

NOW, THEREFORE, BE IT HEREBY RESOLVED BY THE CITY COUNCIL OF THE CITY OF RANCHO CORDOVA does approve the Final Map of Grantline 220 Unit 6 Subdivision No. FM-2021-004-06 and does authorize the City Manager to execute Subdivision Improvement Agreement Contract No. 2023-40 with Lennar Homes of California, LLC., in a form approved by the City Attorney.

PASSED AND ADOPTED by the City Council of the City of Rancho Cordova on the 17th day of April 2023 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ITEM 16.5.

ATTACHMENT 1

ATTEST:

Stacy Leitner, CMC
City Clerk

Linda Budge, Mayor

SUBDIVISION IMPROVEMENT AGREEMENT**GRANTLINE 220 UNIT 6 FM-2021-004-06**

THIS SUBDIVISION IMPROVEMENT AGREEMENT (hereinafter, "Agreement") entered into this _____ day of _____, 20__, by and between the City of Rancho Cordova, (hereinafter "City"), a California municipal corporation, and Lennar Homes of California, LLC, a California limited liability company (hereinafter "Principal").

RECITALS

WHEREAS, Section 66462 of the Government Code provides that if the work of improvement required therein is not completed prior to the acceptance of a final subdivision map, the owner of the subdivision may enter into an agreement with the City to perform the work of improvement as required by said sections in consideration of the acceptance of said final subdivision map by the City; and

WHEREAS, Section 66499 of the Government Code requires that said agreement be secured by a surety bond or by an instrument of credit issued by a financial institution subject to regulation by the State or federal governments or by a cash deposit; and

WHEREAS, Section 66499.3 establishes the types and amount of security to guarantee the performance of any such improvement agreement; and

WHEREAS, City and Principal desire to enter into an improvement agreement as authorized by the Subdivision Map Act under the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual promises, conditions and covenants hereinafter set forth, City and Principal agree as follows:

1. **Incorporation of Recitals.** The foregoing recitals are hereby incorporated by reference.
2. **Findings and Conditions of Subdivision Map.** Principal recognizes that approval of its subdivision was subject to the findings and conditions attached to such approval and hereby acknowledges and agrees to be bound by such findings and conditions.
3. **City Approval of Subdivision Map.** City agrees to approve the final map of the subdivision presented to it by Principal and designated Grantline 220 Unit 6, FM-2021-004-06 and to accept on behalf of the public all lands, rights of way and easements therein offered in dedication, in accordance with the conditions hereinafter set forth.
4. **Completion of Improvements.** In consideration of such approval, Principal

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agrees to complete the work of improvement required for said subdivision in accordance with the requirements of the Rancho Cordova Municipal Code and such standard specifications created by applicable City ordinances or resolutions which are in effect at the time of the installation of said improvements. The work required may lie within or outside the subdivision and must be completed within **24** months of the date of this Agreement.

5. Payment For Services. Principal further agrees to promptly pay, when due, all costs for plan checking, inspection services and material testing performed by City pursuant to the requirements of Sections 12.03.210 et. seq. of the Rancho Cordova Municipal Code.

6. Community Facilities Renovation Fee. Principal acknowledges that under the terms of the Development Agreement by and between The City of Rancho Cordova and Grantline & Chrystanthy 220 Investors, LLC Relative to the Sun creek Project Recorded as Sacramento County Recorder # **20140121** page **1146**. Principal is obligated to pay the City a fee in Section 6 of the above Development Agreement per single family lot within the Final Map ("Community Facilities Renovation Fee"). Principal acknowledges and agrees that such fee will be paid prior to the issuance of a building permit for the respective lot.

7. Acceptance of Improvements. Upon satisfactory completion of all public improvements in accordance with standard specifications created by City ordinances or resolutions which are in effect at the time of the installation of said improvements, City agrees to accept for maintenance the work of improvement within the dedicated parcels shown on said final subdivision map, and any off site easements granted, subject to the provisions of paragraph 9 hereof. Acceptance will be postponed until such time the City determines a public purpose exists. Public Purpose is defined as existence of habitable structures within the subdivision.

8. Notice of Commencement of Work. Principal shall notify the City Engineer in writing of the commencement of the work of improvements.

9. Correction of Defects. Principal agrees to remedy any defects in the improvement arising from faulty or defective construction of said improvements occurring within twelve months after acceptance thereof by City.

10. Indemnity. Principal shall indemnify and hold harmless with counsel selected by the City, the City of Rancho Cordova, its agents, officers, consultants, and employees ("City") from any and all loss, damage or liability arising out of or resulting from Principal's performance or non-performance of his duties and obligations under this Agreement, or from the negligent act or omission of himself, his agents, servants and employees. Principal shall, at his own cost and expense, defend any and all actions, suits, or legal proceedings arising out of or resulting

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from the performance or nonperformance of this Agreement, that may be brought or instituted against the City, its officers and employees, on any such claim or demand, and pay or satisfy any judgment that may be rendered against the City in any such action, suit or legal proceedings, or result thereof, regardless whether caused in part by a party indemnified hereunder.

11. ~~Extension of Completion Date.~~ If the construction of the work or improvement should be delayed without fault of Principal, the time for completion thereof may be extended by City for such period of time as City may deem reasonable.

12. Improvement Security. (a) Principal shall obtain and furnish to City an improvement security consisting of a surety bond in favor of City, issued by a corporate surety authorized to do business in the State of California, and in form approved by City, securing the faithful performance by Principal of the work of improvement required, and also securing the payment of the costs and interest, if any, due under Sections 12.030.210 et seq. of the Rancho Cordova Municipal Code, as provided in Paragraph 5 herein and an additional bond issued by a corporate surety authorized to do business in the State of California, in the amount of not less than 50 percent of the total estimated cost of the improvement, securing payment to contractor, his subcontractors, and to persons renting equipment or furnishing labor or materials for the improvement.

(b) In lieu of said corporate surety bonds, Principal may furnish an improvement security consisting of a letter of credit, certificate of deposit, or similar instrument of credit, in form satisfactory to City, issued by a financial institution subject to regulation by the State or Federal government, pledging that the funds necessary to meet the performance required herein are on deposit, and guaranteed for payment on demand. Said letter of credit, certificate of deposit, or similar instrument of credit shall provide that the funds designated therein shall become trust funds for the purposes set forth in said instrument.

(c) The failure of Principal to commence the required work of improvements, or to complete the same within the time required after commencement thereof, shall entitle City to the full payment of the security, or so much thereof as may be necessary to complete the required work of improvement. The amount of the surety bond for faithful performance shall be in the sum of **\$5,258,000.00**. The amount of the surety bond for the payment of the claims of the contractor, his subcontractors, and to persons renting equipment or furnishing labor or materials for the improvement shall be at least 50 percent of the above amount. The letter of credit, certificate of deposit or similar instrument of credit, or cash deposit for faithful performance, shall be in the above amount plus an additional 50 percent for the purposes set forth herein.

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13. Improvement Security As Condition Precedent. The furnishing of the improvement security by Principal as required by paragraph 12 hereof shall be a condition precedent to acceptance by City of the above described real property and the performance by the City of the covenants herein on its part to be performed.

14. Inspection of Work In Progress. (a) Principal may request The City Engineer to inspect the work as it progresses. If the work performed is found to be in accordance with the requirements of City, it may be accepted as it progresses and a partial refund of the cash deposit, or a release pro tanto of the faithful performance bond, letter of credit, certificate of deposit or similar instrument of credit shall be made in a sum in the same ratio to the total deposit as the work accepted bears to the total work to be done. No refund in excess of 85 percent of the total amount of the improvement security for faithful performance shall be made until all the work has been completed and accepted.

(b) The determination of the Administrator of Public Works of City as to the amount of work done, and the amount of refund or partial release pro tanto, shall be final and conclusive. When the work of improvement is accepted, 10 percent of the improvement security shall be retained to guarantee faithful performance of the provisions of paragraph 9 of this Agreement.

(c) Improvement security given to secure payment to contractor, his subcontractors and to persons renting equipment or furnishing labor or materials for the work of improvement may, six months after completion and acceptance of the work, be reduced to an amount not less than the total of all claims on which an action has been filed, and notice thereof given in writing to City, and if there are no actions filed, such improvement security may be released in full.

15. Execution By Real Party In Interest. Where title to the subdivision property is held by the record owner thereof under a holding Agreement, this Agreement and the bond given pursuant thereto must be executed by the real party or parties in interest.

16. Waiver of Civil Code Section 2819. Any extension of time hereunder shall not operate to release the surety on the bond filed pursuant to this Agreement. In this connection the surety waives the provisions of Section 2819 of the Civil Code of the State of California.

17. City Construction of Improvements. In the event that all or any portion of the works of improvement contemplated herein are proposed to be constructed by street improvement proceedings under the control of City, the undertaking of such proceedings shall in no way relieve Principal of any duties under this Agreement, except where all of the works of improvement that are required under this Agreement have in fact been constructed and accepted by City.

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18. Interest. Interest shall accrue at the highest rate permitted by law on all sums from the date payment is due under the terms of this Agreement and the sum due is certain or reasonably capable of being made certain.

19. Attorneys' Fees. In the event that it is necessary for the City to enforce the obligations secured by the improvement security furnished pursuant to Paragraph 12 hereof, the City shall be entitled to recover its costs and reasonable expenses and fees, including reasonable attorneys' fees, as provided for in Government Code Section 66499.4.

20. Amendments. This Agreement may be modified or amended, or any of its provisions waived, only by a subsequent written agreement executed by the parties hereto.

21. Entire Agreement. This Agreement and any attachments hereto constitute the sole, final, complete, exclusive and integrated expression and statement of the terms and conditions of this Agreement among the parties hereto concerning the subject matter addressed herein, and supercedes all prior negotiations, representations or agreements, oral or written, that may be related to the subject matter of this Agreement.

22. Construction and Interpretation. It is agreed and acknowledged by the Principal that the provisions of this Agreement have been arrived at through negotiation, and that the Principal has had a full and fair opportunity to revise the provisions of this Agreement and to have such provisions reviewed by legal counsel. Therefore, the normal rule of construction that any ambiguities are to be resolved against the drafting party shall not apply in construing or interpreting this Agreement.

23. Successors and Assigns. This Agreement shall bind and inure to the benefit of the respective successors and assigns of the parties hereto.

24. Time. Time is of the essence in the performance of each and every term of this Agreement.

SIGNATURE PAGE FOLLOWING

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first set forth above, which date shall be considered by the Parties to be the effective date of this Agreement.

CITY OF RANCHO CORDOVA,
California Municipal Corporation

Micah Runner, City Manager

LENNAR HOMES OF CALIFORNIA, LLC.,
a California limited liability company
(as successor-in-interest by conversion to
Lennar Homes of California, Inc., a California
corporation)



Larry Gualco, Sr. Vice President

Date: _____

Date: March 14, 2023

ATTEST:

Stacy Leitner, CMC, City Clerk

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of Placer)

On March 14, 2023 before me, Jessica D. Granzella, Notary Public,
(Insert name and title of the officer)

personally appeared Larry Gualco,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/~~she~~/they executed the same in
his/~~her~~/their authorized capacity(ies), and that by his/~~her~~/their signature(s) on the instrument the
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing
paragraph is true and correct.

WITNESS my hand and official seal.

Signature  (Seal)



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ATTACHMENT 2
Contract No. 2023-40Wood Rodgers & Inc.
A. Fischlin
1/26/2023**ENGINEER'S PRELIMINARY OPINION OF COST****Grantline 220 - Phase 6 Intract**

City of Rancho Cordova

#	QUANTITY	UNIT	DESCRIPTION	UNIT PRICE	AMOUNT
A. MISCELLANEOUS					
1.	4	EA	Stabilized Construction Access	\$ 5,000.00	\$ 20,000
			TOTAL MISCELLANEOUS		\$ 20,000
B. ROUGH GRADING					
2.	116	EA	Finish Lot Grading	\$ 500.00	\$ 58,000
			TOTAL ROUGH GRADING		\$ 58,000
C. EROSION CONTROL					
3.	20	AC	In-tract Erosion Control	\$ 1,000.00	\$ 20,000
			TOTAL EROSION CONTROL		\$ 20,000
D. STREET WORK					
4.	103,545	SF	3" Asphalt Concrete Pavement	\$ 2.75	\$ 284,749
5.	103,545	SF	9" Aggregate Base Rock	\$ 3.25	\$ 336,521
6.	4	EA	Street Name Signs	\$ 775.00	\$ 3,100
7.	4	EA	Stop Sign (Signage & Striping)	\$ 675.00	\$ 2,700
8.	4	EA	Remove Street and Sidewalk Barricades	\$ 500.00	\$ 2,000
			TOTAL STREET WORK		\$ 629,070
E. SANITARY SEWER					
9.	3,339	LF	Sewer Pipe - 8"	\$ 75.00	\$ 250,425
10.	14	EA	Sewer Manhole - 48" Regular	\$ 10,500.00	\$ 147,000
11.	116	EA	Residential Sewer Service	\$ 1,650.00	\$ 191,400
12.	4	EA	Connect to Existing Sewer	\$ 2,300.00	\$ 9,200
			TOTAL SANITARY SEWER		\$ 598,025
F. STORM DRAINAGE					
13.	14	EA	Storm Drain Drop Inlet - Type B	\$ 4,650.00	\$ 65,100
14.	10	EA	Storm Drain Manhole - 48"	\$ 6,750.00	\$ 67,500
15.	912	LF	Drain Pipe - 12"	\$ 85.00	\$ 77,520
16.	246	LF	Drain Pipe - 15"	\$ 90.00	\$ 22,140
17.	448	LF	Drain Pipe - 18"	\$ 95.00	\$ 42,560
18.	3	EA	Connect to Existing Drain	\$ 2,300.00	\$ 6,900
			TOTAL STORM DRAINAGE		\$ 281,720
G. WATER SYSTEM					
19.	2,934	LF	Water Pipe - 8"	\$ 100.00	\$ 293,400
20.	778	LF	Water Pipe - 12"	\$ 130.00	\$ 101,140
21.	12	EA	8" Water Valve	\$ 2,300.00	\$ 27,600
22.	6	EA	Fire Hydrant Assembly	\$ 10,500.00	\$ 63,000
23.	116	EA	Residential Water service	\$ 4,000.00	\$ 464,000
24.	4	EA	Connect to Existing (remove blow off)	\$ 4,500.00	\$ 18,000
			TOTAL WATER SYSTEM		\$ 967,140
H. CONCRETE					
25.	7,101	LF	Type 1 Curb & Gutter	\$ 35.00	\$ 248,535
26.	192	LF	Type 2 Vertical Curb & Gutter	\$ 42.00	\$ 8,064
27.	11	EA	Curb Ramp	\$ 3,450.00	\$ 37,950
28.	36,546	SF	Attached Sidewalk	\$ 7.00	\$ 255,822
			TOTAL CONCRETE		\$ 550,371

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#	QUANTITY	UNIT	DESCRIPTION	UNIT PRICE	AMOUNT
I. WALLS & FENCES					
29.	180	LF	Open View Fencing	\$ 15.00	\$ 2,700
30.	2,042	LF	Retaining Wall	\$ 150.00	\$ 306,300
31.	643	LF	Sound Wall - CMU	\$ 100.00	\$ 64,300
32.	4	EA	Pilaster	\$ 2,000.00	\$ 8,000
TOTAL WALLS & FENCES					\$ 381,300
J. ELECTRICAL					
33.	3,838	LF	Streetlight Conduit (trench / conduit / boxes)	\$ 15.00	\$ 57,570
34.	22	EA	Residential Streetlights (with base installed)	\$ 10,500.00	\$ 231,000
TOTAL ELECTRICAL					\$ 288,570
K. JOINT TRENCH					
35.	116	LOT	Joint Trench	\$ 8,500.00	\$ 986,000
TOTAL JOINT TRENCH					\$ 986,000
A. MISCELLANEOUS					\$ 20,000
B. ROUGH GRADING					\$ 58,000
C. EROSION CONTROL					\$ 20,000
D. STREET WORK					\$ 629,070
E. SANITARY SEWER					\$ 598,025
F. STORM DRAINAGE					\$ 281,720
G. WATER SYSTEM					\$ 967,140
H. CONCRETE					\$ 550,371
I. WALLS & FENCES					\$ 381,300
J. ELECTRICAL					\$ 288,570
K. JOINT TRENCH					\$ 986,000
SUBTOTAL PRELIMINARY OPINION OF COST					\$ 4,780,196
CONTINGENCY				10%	\$ 478,019.60
TOTAL OPINION OF COST					\$ 5,258,000

ESTIMATE FOOTNOTES:

[1] Based on preliminary improvement plans dated 12/15/2022

Doug Veerkamp Gen. Eng. (LSC) 42979447
Order No

Ord Suf 000	Order Co	Account Number	Or Ty	Line # Number	Supplier Number	Description Line 2	UM	Quantity Ordered	Unit Cost	Extended Cost	Amount Relieved
01987		198740.1300.2655	OL	0.001	198740	8276677 clear & grub	AC	18	12,580.00	226,440.00	226,440.00
01987		198740.1300.3330	OL	0.002	198740	8276677 Construction area signs	SF	222	52.50	11,655.00	11,655.00
01987		198740.1300.3330	OL	0.003	198740	8276677 Type K Temporary Railing	LF	4982	11.95	59,534.90	59,534.90
01987		198740.1300.3330	OL	0.004	198740	8276677 Temp Crash Cushion Module	EA	33	104.00	3,432.00	3,432.00
01987		198740.1300.3330	OL	0.005	198740	8276677 Temp Pavemnt Stripe-paint	LF	13800	0.79	10,902.00	9,345.70
01987		198740.1300.3330	OL	0.006	198740	8276677 Temp Pavemnt Mrking-Paint	SF	192	4.20	806.40	806.40
01987		198740.1300.3330	OL	0.007	198740	8276677 Ptbl Chngeable Msg Sign (PCMS)	EA	3	9,610.00	28,830.00	28,830.00
01987		198740.1300.3330	OL	0.008	198740	8276677 Detour	LS	1	277,000.00	277,000.00	277,000.00
01987		198740.1300.3330	OL	0.009	198740	8276677 Traffic Control System	LS	1	177,000.00	177,000.00	161,987.39
01987		198740.1300.2660	OL	0.011	198740	8276677 Obliterate (E) Pavement	SY	1515	7.17	10,862.55	10,862.55
01987		198740.1300.3279	OL	0.012	198740	8276677 2" Grind & Overlay	SY	2521	39.70	100,083.70	100,083.70
01987		198740.1300.2660	OL	0.013	198740	8276677 Remove (E) Signs	EA	16	287.00	4,592.00	4,592.00
01987		198740.1300.2660	OL	0.014	198740	8276677 Remove (E) AC Dike	LF	390	13.90	5,421.00	5,421.00
01987		198740.1300.2660	OL	0.015	198740	8276677 Remove (E) Culvert	LF	238	34.80	8,282.40	5,916.00
01987		198740.1300.2660	OL	0.016	198740	8276677 Remove (E) Barricade	EA	1	287.00	287.00	287.00
01987		198740.1300.3330	OL	0.017	198740	8276677 Reset (E) Mailbox	EA	1	283.00	283.00	283.00
01987		198740.1300.2651	OL	0.018	198740	8276677 Roadway Excavation (F)	CY	73720	11.81	870,633.20	870,633.20
01987		198740.1300.2651	OL	0.019	198740	8276677 Trench and Excavation Safety	LS	1	7,580.00	7,580.00	7,580.00
01987		198740.1300.3279	OL	0.020	198740	8276677 2.5" A.C.	SF	1467	1.59	2,332.53	2,332.53
01987		198740.1300.3279	OL	0.022	198740	8276677 4.5" A.C.	SF	297414	2.70	803,017.80	803,017.80
01987		198740.1300.3279	OL	0.023	198740	8276677 6" A.B.	SF	1467	1.48	2,171.16	2,171.16
01987		198740.1300.3279	OL	0.024	198740	8276677 8" A.B.	SF	20772	1.77	36,766.44	36,766.44
01987		198740.1300.3279	OL	0.025	198740	8276677 10" A.B.	SF	163761	2.08	340,622.88	340,622.88
01987		198740.1300.3279	OL	0.026	198740	8276677 13" A.B.	SF	133653	2.55	340,815.15	340,815.15
01987		198740.1300.3201	OL	0.027	198740	8276677 Type 2 Curb & Gutter	LF	342	49.50	16,929.00	16,929.00
01987		198740.1300.3201	OL	0.028	198740	8276677 Sidewalk Ramp	SF	1542	12.51	19,290.42	19,290.42
01987		198740.1300.3201	OL	0.029	198740	8276677 Sidewalk Ramp	EA	4	3,420.00	13,680.00	13,680.00
01987		198740.1300.3279	OL	0.030	198740	8276677 Caltrans Type E Dike	LF	4878	6.61	32,243.58	32,243.58
01987		198740.1300.3279	OL	0.031	198740	8276677 Caltrans Type A Dike	LF	314	6.95	2,182.30	2,182.30
01987		198740.1300.3001	OL	0.032	198740	8276677 18" HDPE	LF	2283	100.60	229,669.80	229,669.80
01987		198740.1300.3001	OL	0.033	198740	8276677 24" HDPE	LF	118	122.00	14,396.00	14,396.00
01987		198740.1300.3001	OL	0.035	198740	8276677 Caltrans OMP1	EA	9	2,810.00	25,290.00	25,290.00
01987		198740.1300.3001	OL	0.036	198740	8276677 48" SDMH	EA	7	6,090.00	42,630.00	42,630.00
01987		198740.1300.3001	OL	0.037	198740	8276677 4' x 7' Box Culvert	LS	1	300,000.00	300,000.00	300,000.00
01987		198740.1300.3515	OL	0.038	198740	8276677 Retaining Wall Type 5 RW#1	LS	1	36,600.00	36,600.00	36,600.00
01987		198740.1300.3515	OL	0.039	198740	8276677 Retaining Wall Type 5 RW#2	LS	1	36,900.00	36,900.00	36,900.00
01987		198740.1300.3515	OL	0.040	198740	8276677 Retaining Wall Type 5 RW#3	LS	1	184,300.00	184,300.00	184,300.00
01987		198740.1300.3330	OL	0.041	198740	8276677 Metal Beam Guard Rail	LF	418	62.00	25,916.00	-
01987		198740.1300.3001	OL	0.043	198740	8276677 Fabric Lined Roadside Ditch	LF	2118	11.11	23,530.98	23,530.98
01987		198740.1300.3001	OL	0.044	198740	8276677 Pipe Outlet Protection (T504)	SF	760	32.10	24,396.00	24,396.00
01987		198740.1300.3001	OL	0.045	198740	8276677 1/4 Ton Rip Rap	CY	205	171.00	35,055.00	35,055.00
01987		198740.1300.3001	OL	0.046	198740	8276677 Interceptor Ditch - Type 1	LF	2209	83.30	184,009.70	184,009.70
01987		198740.1300.3001	OL	0.047	198740	8276677 Interceptor Ditch - Type 2	LF	387	91.20	35,294.40	35,294.40
01987		198740.1300.3001	OL	0.048	198740	8276677 Rock Down Drain	SF	309	16.91	5,225.19	5,225.19
01987		198740.1300.3001	OL	0.049	198740	8276677 Rock Lined Ditch	SF	814	17.98	14,635.72	14,635.72
01987		198740.1300.3552	OL	0.050	198740	8276677 4" Irrigation Sleeves	LF	283	11.65	3,296.95	3,296.95

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Ord Suf	Order Co	Account Number	Or Ty	Line # Job Number	Supplier	Number	Description Line 2	UM	Quantity Ordered	Unit Cost	Extended Cost	Amount Relieved
	01987	198740.1300.2660	OL	0.051	198740	8276677	Remove (E) AC Pavement	SY	11732	3.90	45,754.80	45,754.80
	01987	198740.1300.3001	OL	0.053	198740	8276677	Drain Inlet Type 'GO'	EA	6	5,610.00	33,660.00	28,050.00
	01987	198740.1300.3001	OL	0.054	198740	8276677	Fabric Lined Ditch	LF	2459	8.42	20,704.78	20,704.78
	01987	198740.1300.3552	OL	0.055	198740	8276677	6" Irrigation Sleeves	LF	970	12.28	11,911.60	11,911.60
	01987	198740.1300.3330	OL	0.056	198740	8276677	Roadside Sign Metal Post	EA	16	446.00	7,136.00	7,136.00
	01987	198740.1300.3330	OL	0.057	198740	8276677	Stop Sign/Bar	EA	6	131.00	786.00	786.00
	01987	198740.1300.3330	OL	0.058	198740	8276677	Striping Detail #22	LF	2773	1.05	2,911.65	2,911.65
	01987	198740.1300.3330	OL	0.059	198740	8276677	Striping Detail #25	LF	4382	0.63	2,760.66	2,760.66
	01987	198740.1300.3330	OL	0.060	198740	8276677	Striping Detail #27B	LF	1311	0.63	825.93	825.93
	01987	198740.1300.3330	OL	0.061	198740	8276677	Striping Detail #29	LF	1704	1.05	1,789.20	1,789.20
	01987	198740.1300.3330	OL	0.062	198740	8276677	Striping Detail #37B	LF	432	1.05	453.60	453.60
	01987	198740.1300.3330	OL	0.063	198740	8276677	Striping Detail #38	LF	2620	1.05	2,751.00	2,751.00
	01987	198740.1300.3330	OL	0.064	198740	8276677	Striping Detail #39	LF	14304	0.79	11,300.16	11,300.16
	01987	198740.1300.3330	OL	0.065	198740	8276677	Thermoplastic 12" Solid Ln Stripe	LF	1026	0.79	810.54	810.54
	01987	198740.1300.3330	OL	0.066	198740	8276677	Pavement Markers	SF	710	3.15	2,236.50	2,236.50
	01987	198740.1300.3330	OL	0.067	198740	8276677	Tupe K Markers	EA	804	4.20	3,376.80	3,376.80
	01987	198740.1300.3330	OL	0.068	198740	8276677	Tupe F Delineators	EA	2	52.00	104.00	-
	01987	198740.1300.3279	OL	0.069	198740	8276677	Slurry Seal	EA	12	200.00	2,400.00	2,400.00
	01987	198740.1300.3545	OL	0.070	198740	8276677	Tree Protection Fencing	SF	6082	3.93	23,902.26	23,902.26
	01987	198740.1300.3545	OL	0.072	198740	8276677	Tupe BW, 5 Strand Fence	LF	324	7.28	2,358.72	2,358.72
	01987	198740.1300.2851	OL	0.073	198740	8276677	Adjust (E) Water Vavle to Grid	EA	10135	16.00	162,160.00	162,160.00
	01987	198740.1300.3330	OL	0.074	198740	8276677	Sidewalk Barricade	EA	3	523.00	1,569.00	1,569.00
	01987	198740.1300.2751	OL	0.075	198740	8276677	Adjust(E) Sanitary Sewer MH-to-GRD	EA	8	370.00	2,960.00	2,960.00
	01987	198740.1300.3441	OL	0.076	198740	8276677	Street Light	EA	2	1,360.00	2,720.00	2,720.00
	01987	198740.1300.3325	OL	0.077	198740	8276677	Traffic Signal	EA	9	14,220.00	127,980.00	127,980.00
	01987	198740.1300.2651	OL	0.078	198740	8276677	Blasting	LS	1	484,700.00	484,700.00	484,700.00
	01987	198740.1300.3330	OL	0.079	198740	8276677	Temp Detour Repair	LS	1	100,000.00	100,000.00	100,000.00
	01987	198740.1300.3353	OL	0.080	198740	8276677	Temp Utility Relocation	LS	1	30,000.00	30,000.00	1,500.00
	01987	198740.1300.3353	OL	0.081	198740	8276677	Permanent Utility Relocation	LS	1	84,000.00	84,000.00	84,000.00
	01987	198740.1300.3353	OL	0.082	198740	8276677	Temp Utility Relocation	LS	1	420,000.00	420,000.00	134,400.00
	01987	198740.1300.3601	OL	0.083	198740	8276677	Temp Erosion Control	LS	1	115,000.00	115,000.00	115,000.00
	01987	198740.1300.3601	OL	0.084	198740	8276677	SWPPP Compliance dir by the CM	LS	1	100,000.00	100,000.00	100,000.00
	01987	198740.1300.3279	OL	0.085	198740	8276677	3' AC	SF	20772	1.80	37,389.60	37,389.60
Total - 000	001			3.425							6,481,234.95	6,116,569.64
Total - 001	002			0.001							324,103.04	324,103.04
Total - 002				0.001							107,601.41	107,601.41
Grand Total											6,912,939.40	6,548,274.09

Paid to Date
Completed as is.Note: This Doug Veerkamp Contract was completed at \$364,665.31 less that initial contract.
There will be no more work to be performed on this contract and is closed as is.

OWNER'S STATEMENT

THE UNDERSIGNED HEREBY CONSENT TO THE PREPARATION AND RECORDING OF THIS FINAL MAP OF GRANTLINE 220 UNIT 6.

THE REAL PROPERTY DESCRIBED BELOW IS DEDICATED AS AN EASEMENT FOR PUBLIC PURPOSES:

THE UNDERSIGNED HEREBY OFFERS FOR DEDICATION AND DOES HEREBY DEDICATE TO ANY AND ALL PUBLIC USES, THE PUBLIC ROADS DESIGNATED HEREON AS SPOTTED WREN WAY, SPOTTED WREN CIRCLE, LORIKEET WAY, AND CROSSBILL WAY AS SHOWN HEREON, AND DOES HEREBY DEDICATE TO SPECIFIC PURPOSES THE FOLLOWING:

- EASEMENTS FOR PLANTING AND MAINTAINING TREES, ELECTROLIERS, TRAFFIC CONTROL DEVICES, WATER AND GAS PIPES, AND UNDERGROUND WIRES AND CONDUITS FOR ELECTRIC, TELEVISION AND TELEPHONE SERVICES, TOGETHER WITH ANY AND ALL APPURTENANCES PERTAINING THERETO, ON, OVER, UNDER AND ACROSS THOSE STRIPS OF LAND 12.50' IN WIDTH, LYING CONTIGUOUS TO THE PUBLIC STREETS SHOWN HEREON AND DESIGNATED "PUBLIC UTILITY EASEMENT" (PUE).
- EASEMENTS FOR LANDSCAPING AND ALL APPURTENANCES PERTAINING THERETO LYING ON, OVER AND ACROSS LOT L SHOWN HEREON AND DESIGNATED "LANDSCAPING EASEMENT" (LE).
- RIGHTS OF WAY AND EASEMENTS FOR INSTALLATION AND MAINTENANCE OF A PEDESTRIAN WALKWAY, TOGETHER WITH ANY AND ALL APPURTENANCES PERTAINING THERETO LYING ON, OVER AND ACROSS LOT L AND THOSE STRIPS OF LAND SHOWN HEREON AND DESIGNATED "PEDESTRIAN EASEMENT" (PE).
- AN EASEMENT FOR CONSTRUCTING AND MAINTAINING CENTRALIZED MAIL DELIVERY BOXES, PEDESTALS, AND SLABS, TOGETHER WITH ANY AND ALL APPURTENANCES PERTAINING THERETO INCLUDING PEDESTRIAN ACCESS FOR DELIVERY AND RECEIPT OF MAIL ON, OVER, UNDER AND ACROSS STRIPS OF LAND FIVE FEET IN WIDTH LYING CONTIGUOUS TO THE PUBLIC STREETS SHOWN HEREON.

LENNAR HOMES OF CALIFORNIA, INC
A CALIFORNIA CORPORATION

BY: *Larry Gualco*
NAME: *Larry Gualco*
TITLE: *VP*

NOTARY'S ACKNOWLEDGMENT

A NOTARY PUBLIC OR OTHER OFFICER COMPLETING THIS CERTIFICATE VERIFIES ONLY THE IDENTITY OF THE INDIVIDUAL WHO SIGNED THE DOCUMENT TO WHICH THIS CERTIFICATE IS ATTACHED, AND NOT THE TRUTHFULNESS, ACCURACY, OR VALIDITY OF THAT DOCUMENT.

STATE OF CALIFORNIA
COUNTY OF Placer) SS

ON 8 DAY OF March, 2023 BEFORE ME, Jessica D. Granzella, A NOTARY PUBLIC IN AND FOR SAID COUNTY AND STATE, PERSONALLY APPEARED Larry Gualco

WHO PROVED TO ME ON THE BASIS OF SATISFACTORY EVIDENCE TO BE THE PERSON(S) WHOSE NAME(S) IS/ARE SUBSCRIBED TO THE WITHIN INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE/SHE/THEY EXECUTED THE SAME IN HIS/HER/THEIR AUTHORIZED CAPACITY(IES), AND THAT BY HIS/HER/THEIR SIGNATURE(S) ON THE INSTRUMENT THE PERSON(S), OR THE ENTITY UPON BEHALF OF WHICH THE PERSON(S) ACTED, EXECUTED THE INSTRUMENT.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF CALIFORNIA THAT THE FOREGOING PARAGRAPH IS TRUE AND CORRECT.

WITNESS MY HAND AND OFFICIAL SEAL: *Jessica D. Granzella*

PRINTED NAME: Jessica D. Granzella

MY PRINCIPAL PLACE OF BUSINESS IS IN THE
COUNTY OF: Placer

MY COMMISSION EXPIRES: October 24, 2026

MY COMMISSION No.: 2423365

SURVEYOR'S STATEMENT

THIS FINAL MAP OF GRANTLINE 220 UNIT 6 WAS PREPARED BY ME OR UNDER MY DIRECTION AND IS BASED UPON A FIELD SURVEY IN CONFORMANCE WITH THE REQUIREMENTS OF THE SUBDIVISION MAP ACT AND LOCAL ORDINANCE AT THE REQUEST OF LENNAR HOMES OF CALIFORNIA, LLC. IN OCTOBER, 2021. I HEREBY STATE THAT ALL THE MONUMENTS SHOWN HEREON ARE OF THE CHARACTER AND OCCUPY THE POSITIONS INDICATED OR THAT THEY WILL BE SET IN THOSE POSITIONS BEFORE APRIL 30, 2025 AND THAT THE MONUMENTS ARE, OR WILL BE, SUFFICIENT TO ENABLE THE SURVEY TO BE RETRACED.

WOOD RODGERS, INC.



Andrew P. Tapley
ANDREW P. TAPLEY
P.L.S. 9554
2/27/2023
DATE

CITY ENGINEER'S STATEMENT

I HEREBY STATE THAT I HAVE EXAMINED THIS FINAL MAP OF GRANTLINE 220 UNIT 6 AND FIND IT TO BE SUBSTANTIALLY THE SAME AS THE TENTATIVE MAP APPROVED BY THE CITY OF RANCHO CORDOVA, AND ANY APPROVED ALTERATIONS THEREOF; THAT ALL PROVISIONS OF THE SUBDIVISION MAP ACT AND ALL APPLICABLE CITY ORDINANCES HAVE BEEN COMPLIED WITH.

CITY ENGINEER, ALBERT STRICKER, R.C.E. 64057

DATED: _____



CITY SURVEYOR'S STATEMENT

I HEREBY STATE THAT I HAVE EXAMINED THIS FINAL MAP - SUBDIVISION NO. 2021-004-06, GRANTLINE 220 UNIT 6 - AND FIND IT TO BE TECHNICALLY CORRECT.

JOCELYN L. LIMAS
PLS 9596
EXPIRATION: 3/31/2023



DATE _____

CITY CLERK'S STATEMENT

I HEREBY STATE THAT THE CITY COUNCIL OF THE CITY OF RANCHO CORDOVA HAS APPROVED THIS FINAL MAP OF GRANTLINE 220 UNIT 6 AND HAS ACCEPTED ON BEHALF OF THE PUBLIC ALL EASEMENTS AND RIGHTS-OF-WAY SHOWN HEREON SUBJECT TO COMPLETION OF THE IMPROVEMENTS.

BY: _____
CITY CLERK
CITY OF RANCHO CORDOVA

DATED: _____

RECORDER'S STATEMENT

FILED THIS _____ DAY OF _____, 2023, AT _____ M. IN BOOK _____ OF MAPS, AT PAGE _____ AT THE REQUEST OF WOOD RODGERS, INC. TITLE TO THE LAND INCLUDED IN THIS FINAL MAP BEING VESTED AS PER CERTIFICATE NO. _____ ON FILE IN THIS OFFICE.

DONNA ALLRED, COUNTY RECORDER
COUNTY OF SACRAMENTO

DOCUMENT NO.: _____

BY: _____
DEPUTY RECORDER

FEE: \$ _____

FINAL MAP OF
GRANTLINE 220 UNIT 6
SUBDIVISION NO. FM-2021-004-06
BEING ALL OF LOT 6 OF THAT CERTAIN
LARGE LOT FINAL MAP OF GRANTLINE 220
FILED FOR RECORD IN BOOK 442 OF MAPS, AT PAGE 13
CITY OF RANCHO CORDOVA,
COUNTY OF SACRAMENTO, STATE OF CALIFORNIA

WOOD RODGERS
BUILDING RELATIONSHIPS ONE PROJECT AT A TIME
3301 C ST., BLDG. 100-B TEL 916.341.7760
SACRAMENTO, CA 95816 FAX 916.341.7767

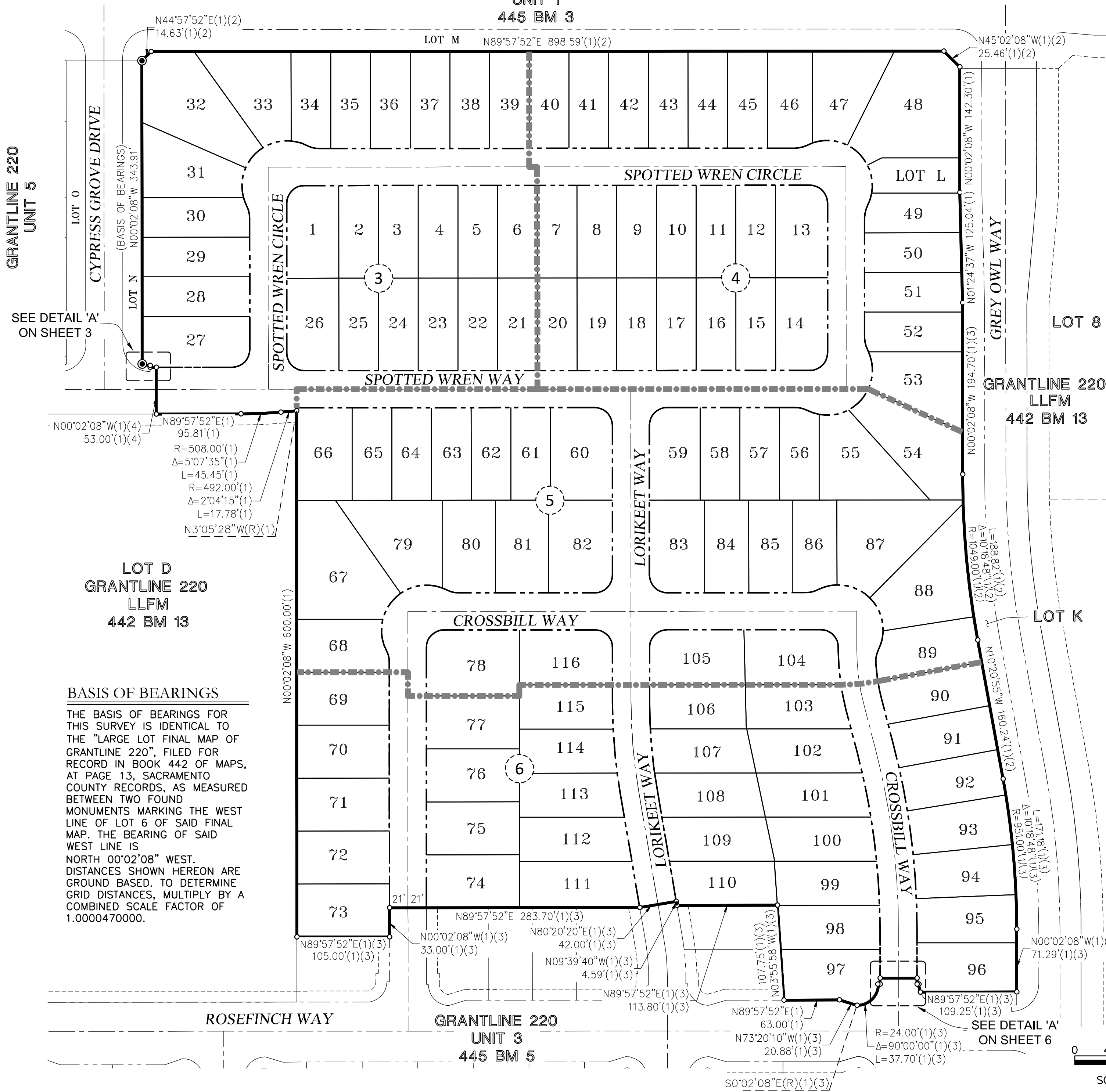
APRIL 2023

Sheet 1 of 6

1258.019

BOUNDARY SHEET

GRANTLINE 220
UNIT 1
445 BM 3



NOTES

1. ALL CURVES DIMENSIONED WITH RADIUS, DELTA, AND ARC LENGTH.
2. ALL DISTANCES SHOWN HEREON ARE EXPRESSED IN FEET AND DECIMALS THEREOF.
3. DUE TO ROUNDING, THE SUM OF THE INDIVIDUAL DIMENSIONS MAY NOT EQUAL THE OVERALL DIMENSION.
4. TOTAL AREA FOR THIS "GRANTLINE 220 UNIT 6" FINAL MAP IS 19.43± ACRES, CONSISTING OF 116 RESIDENTIAL LOTS.
5. LOT L IS RESERVED FOR LANDSCAPE AND PEDESTRIAN PURPOSES AND SHALL BE GRANTED TO THE CITY OF RANCHO CORDOVA.
6. A 5/8" REBAR CAPPED "LS 9554" WILL BE SET AT ALL REAR LOT CORNERS, ALONG WITH ALL LOT LINE ANGLE POINTS OR AT A 2.00 FOOT PROJECTION ALONG LOT LINES ADJACENT TO WALLS (2.00 FOOT BY 2.00 FOOT OFFSETS FOR ANGLE POINTS ADJACENT TO WALLS). FRONT CORNERS WILL BE SET WITH A 1" BRASS DISK STAMPED "LS 9554" AT A 1.00 FOOT PROJECTION OF THE PROPERTY LINE ONTO THE SIDEWALK.
7. ALL LOTS BEING CREATED BY THIS MAP INCLUDE FEE TITLE TO THE CENTERLINE OF THE CIRCLE AND WAYS SHOWN HEREON, EXCEPT WHERE THE PUBLIC ROAD EASEMENT LINE IS ALSO THE COMMON LINE OF THE SUBDIVISION BOUNDARY, THEN THE FEE TITLE IS TO THE SUBDIVISION BOUNDARY.
8. A SOILS REPORT DATED AUGUST 4, 2021, WAS PREPARED FOR THIS SUBDIVISION BY WALLACE KUHLMANN & ASSOCIATES. A COPY OF THIS REPORT ENTITLED "GEOTECHNICAL ENGINEERING REPORT, GRANTLINE 220, RANCHO CORDOVA, CALIFORNIA, WKA NO. 12590.03", IS AVAILABLE FOR PUBLIC INSPECTION AT THE OFFICE OF THE CITY OF RANCHO CORDOVA BUILDING INSPECTOR.
9. PURSUANT TO SECTION 66434(g) OF THE GOVERNMENT CODE, THE FOLLOWING EASEMENTS, NOT SHOWN HEREON ARE HEREBY ABANDONED:
 - 9.1. THAT PORTION OF THE IRREVOCABLE OFFERS FOR DEDICATION OF ROAD RIGHT-OF-WAY (IOD) OFFERED TO THE CITY OF RANCHO CORDOVA ON THAT CERTAIN FINAL MAP ENTITLED "LARGE LOT FINAL MAP OF GRANTLINE 220", FILED FOR RECORD IN BOOK 442 OF MAPS, AT PAGE 13, SACRAMENTO COUNTY RECORDS, LYING WITHIN THE BOUNDARY SHOWN HEREON.
 - 9.2. THAT PORTION OF THE PUBLIC UTILITY EASEMENTS (PUE) DEDICATED TO THE CITY OF RANCHO CORDOVA ON THAT CERTAIN FINAL MAP ENTITLED "LARGE LOT FINAL MAP OF GRANTLINE 220", FILED FOR RECORD IN BOOK 442 OF MAPS, AT PAGE 13, SACRAMENTO COUNTY RECORDS, LYING WITHIN THE BOUNDARY SHOWN HEREON.

REFERENCES:

- | | | |
|-----|------------|--------------------------------------|
| (1) | 442 BM 13 | LARGE LOT FINAL MAP OF GRANTLINE 220 |
| (2) | 445 BM 3 | GRANTLINE 220 UNIT 1 FINAL MAP |
| (3) | 445 BM 5 | GRANTLINE 220 UNIT 3 FINAL MAP |
| (4) | --- BM --- | GRANTLINE 220 UNIT 5 FINAL MAP |

LEGEND

- | | | | |
|------|--|------|------------------------|
| o | DIMENSION POINT | | |
| ⊙ | FOUND 3/4" IRON PIPE WITH PLUG STAMPED "LS 9554" | | |
| ⊙ | SET 3/4" IRON PIPE WITH PLUG STAMPED "LS 9554" | | |
| ⊙ | CENTERLINE | BM | BOOK OF MAPS |
| L= | ARC LENGTH | (OA) | OVERALL |
| LLFM | LARGE LOT FINAL MAP | (R) | RADIAL BEARING |
| SF | SQUARE FEET | | |
| PE | PEDESTRIAN EASEMENT | 6 | SHEET NUMBER REFERENCE |

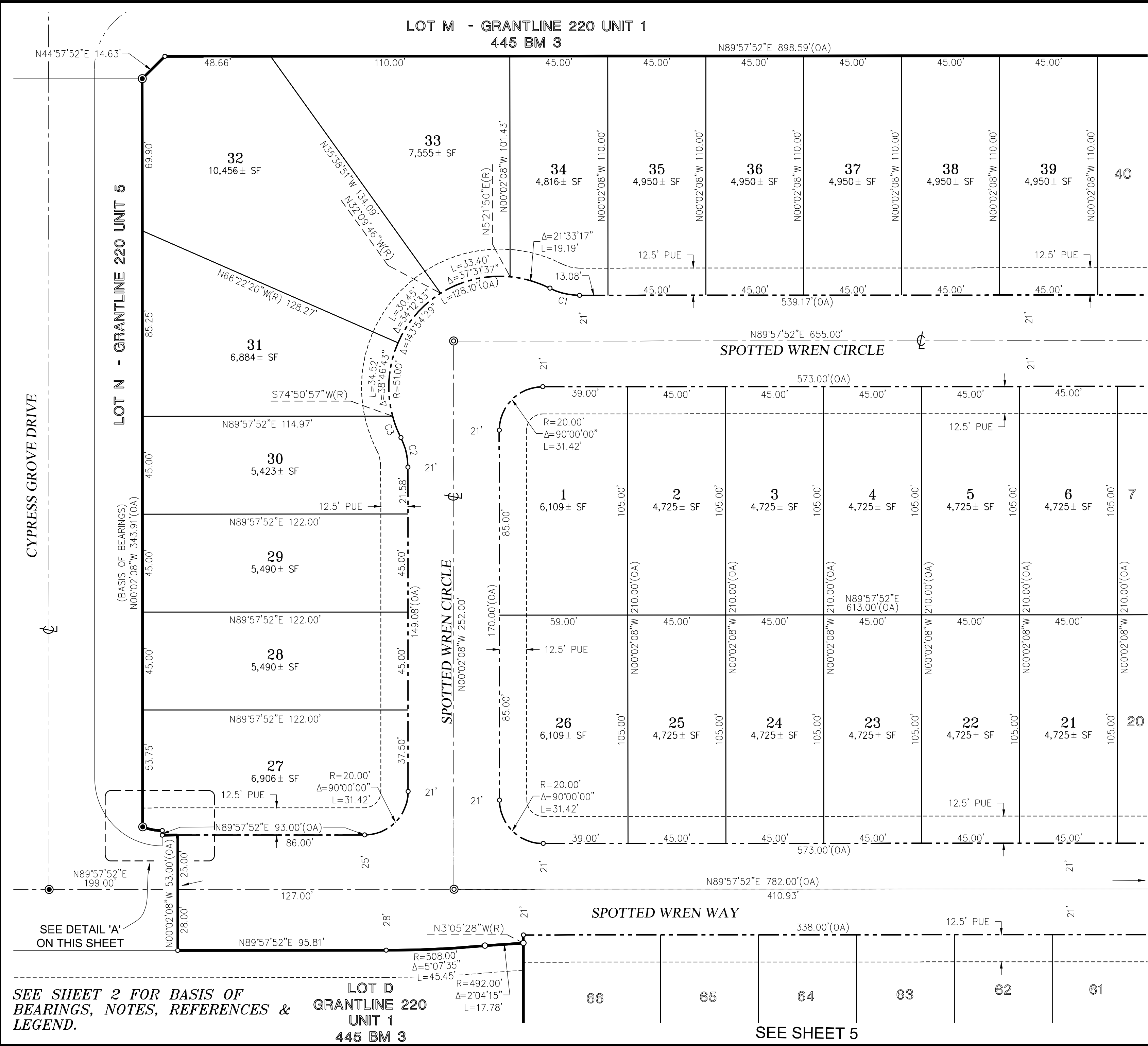
FINAL MAP OF
GRANTLINE 220 UNIT 6
SUBDIVISION NO. FM-2021-004-06
BEING ALL OF LOT 6 OF THAT CERTAIN
LARGE LOT FINAL MAP OF GRANTLINE 220
FILED FOR RECORD IN BOOK 442 OF MAPS, AT PAGE 13
CITY OF RANCHO CORDOVA,
COUNTY OF SACRAMENTO, STATE OF CALIFORNIA

WOOD RODGERS
BUILDING RELATIONSHIPS ONE PROJECT AT A TIME
3301 C ST, BLDG. 100-B TEL 916.341.7760
SACRAMENTO, CA 95816 FAX 916.341.7767

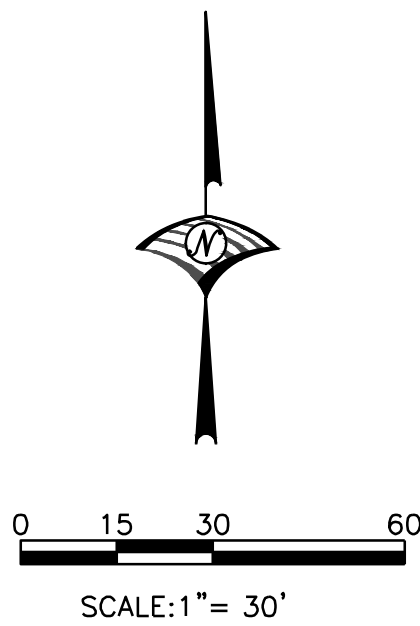
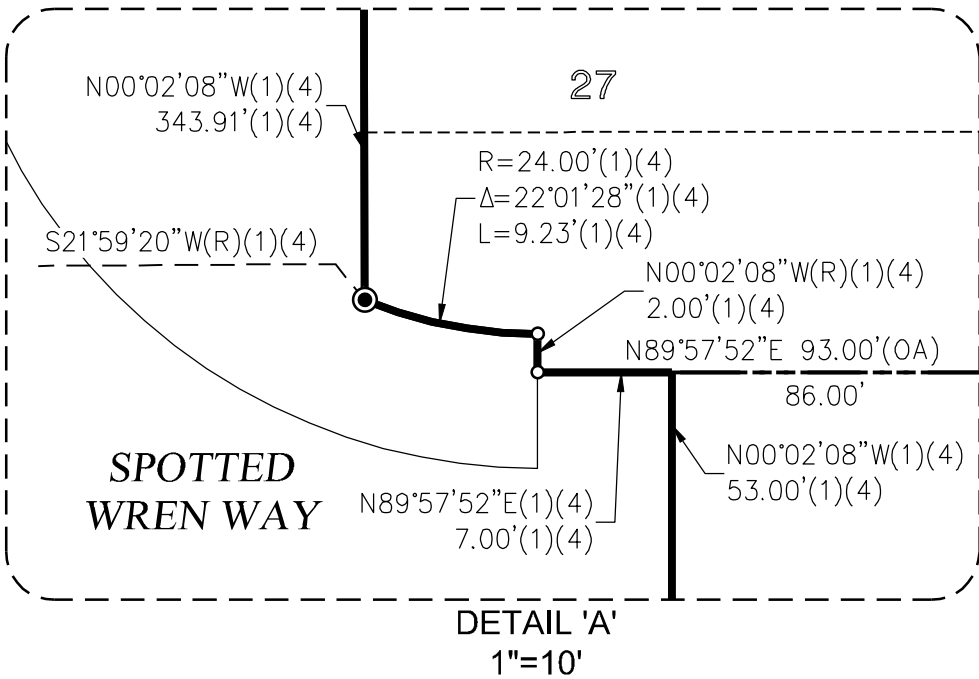
APRIL 2023

Sheet 2 of 6

1258.019



CURVE TABLE - THIS SHEET ONLY			
NO.	RADIUS	DELTA	LENGTH
C1	30.00'	26°57'15"	14.11'
C2	30.00'	26°57'15"	14.11'
C3	51.00'	11°50'19"	10.54'



FINAL MAP OF
GRANTLINE 220 UNIT 6
SUBDIVISION NO. FM-2021-004-06
BEING ALL OF LOT 6 OF THAT CERTAIN
LARGE LOT FINAL MAP OF GRANTLINE 220
FILED FOR RECORD IN BOOK 442 OF MAPS, AT PAGE 13
CITY OF RANCHO CORDOVA,
COUNTY OF SACRAMENTO, STATE OF CALIFORNIA

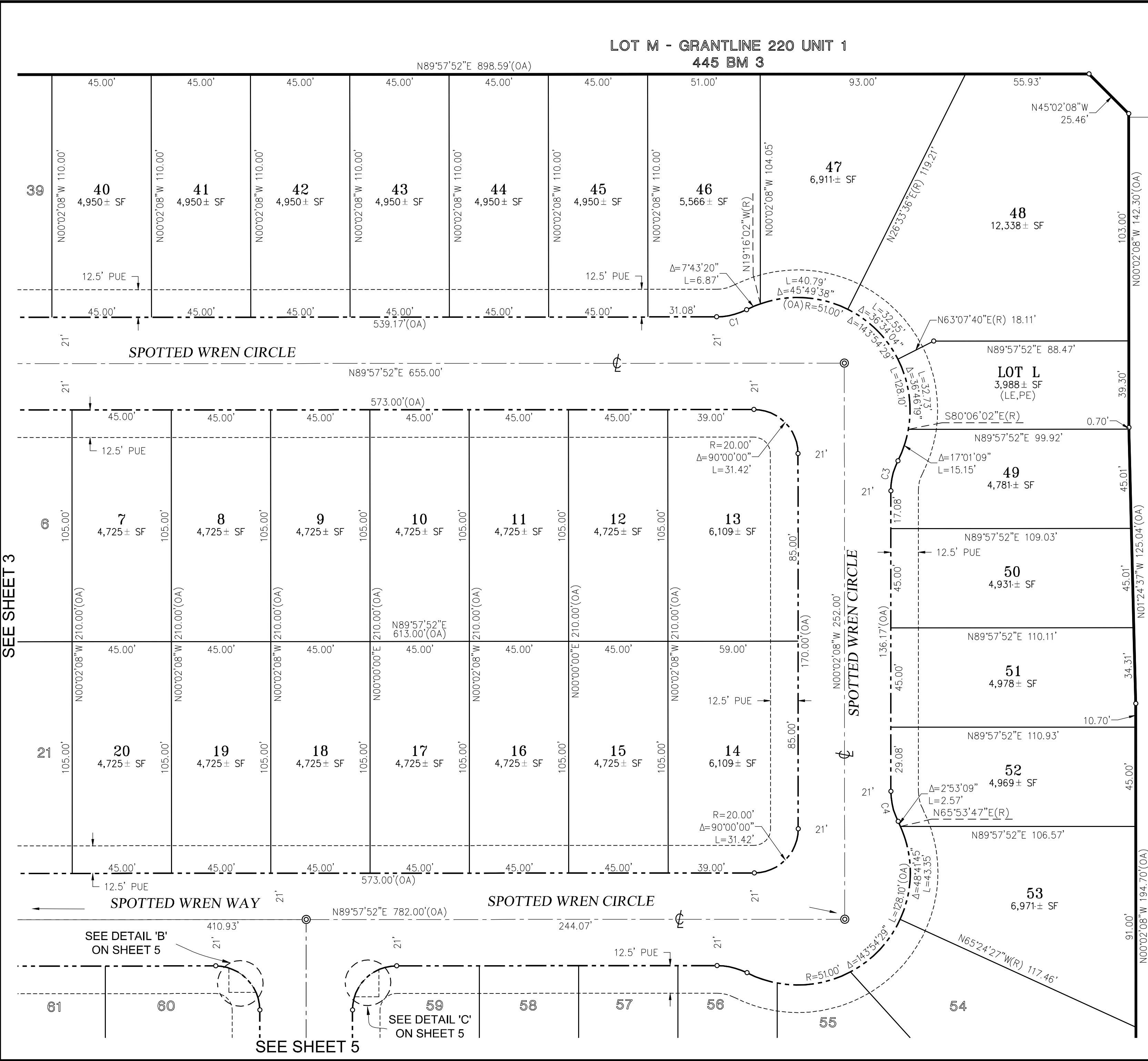


WOOD RODGERS
BUILDING RELATIONSHIPS ONE PROJECT AT A TIME
3301 C ST, BLDG. 100-B TEL 916.341.7760
SACRAMENTO, CA 95816 FAX 916.341.7767

APRIL 2023

Sheet 3 of 6

1258.019



CURVE TABLE - THIS SHEET ONLY			
NO.	RADIUS	DELTA	LENGTH
C1	30.00'	26°57'15"	14.11'
C2	51.00'	7°43'20"	6.87'
C3	30.00'	26°57'15"	14.11'
C4	30.00'	26°57'15"	14.11'

LOT K
GRANTLINE 220
UNIT 3
445 BM 5

*SEE SHEET 2 FOR BASIS OF BEARINGS,
NOTES, REFERENCES & LEGEND.*

FINAL MAP OF
GRANTLINE 220 UNIT 6
SUBDIVISION NO. FM-2021-004-06
BEING ALL OF LOT 6 OF THAT CERTAIN
LARGE LOT FINAL MAP OF GRANTLINE 220
FILED FOR RECORD IN BOOK 442 OF MAPS, AT PAGE 13
CITY OF RANCHO CORDOVA,
COUNTY OF SACRAMENTO, STATE OF CALIFORNIA

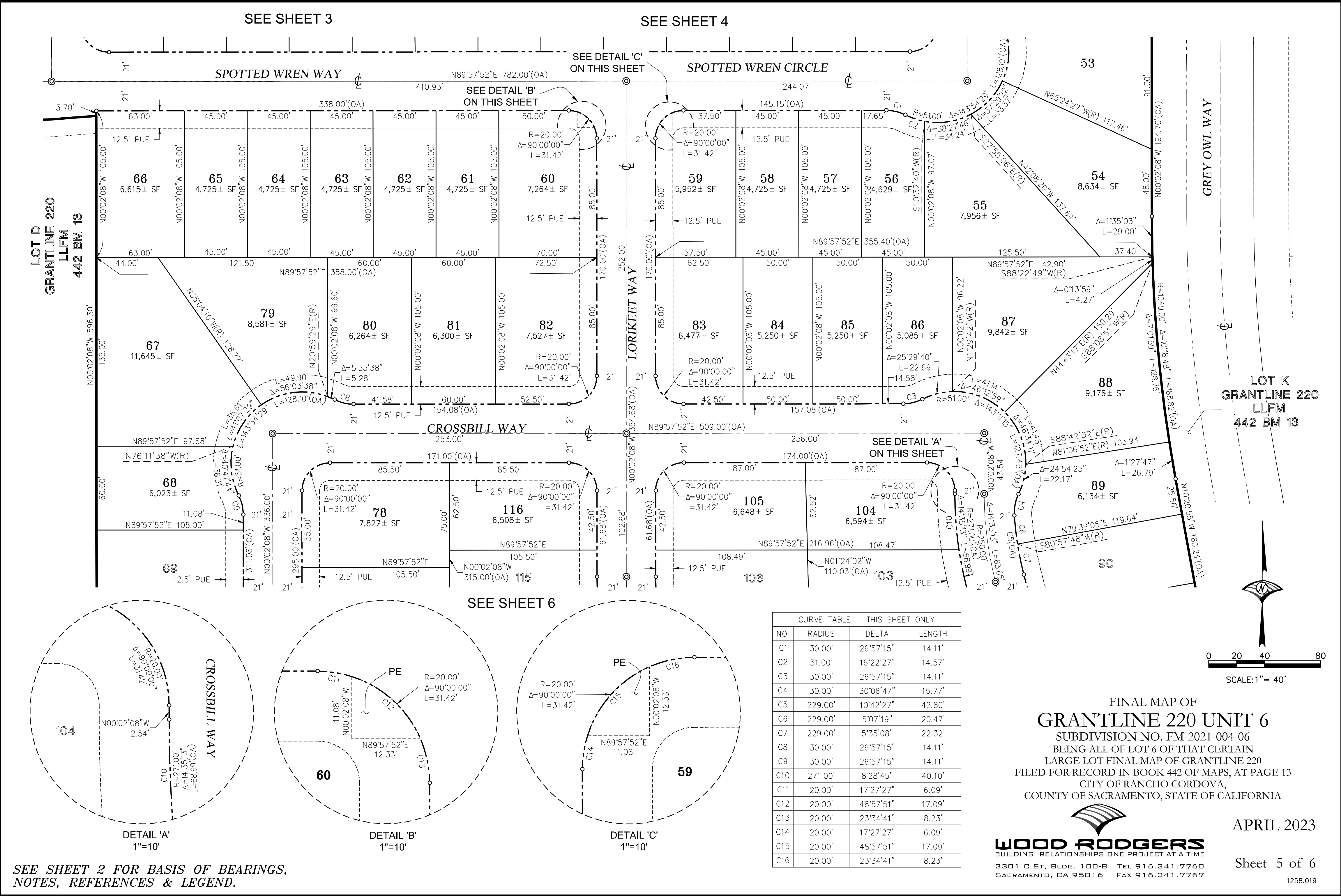


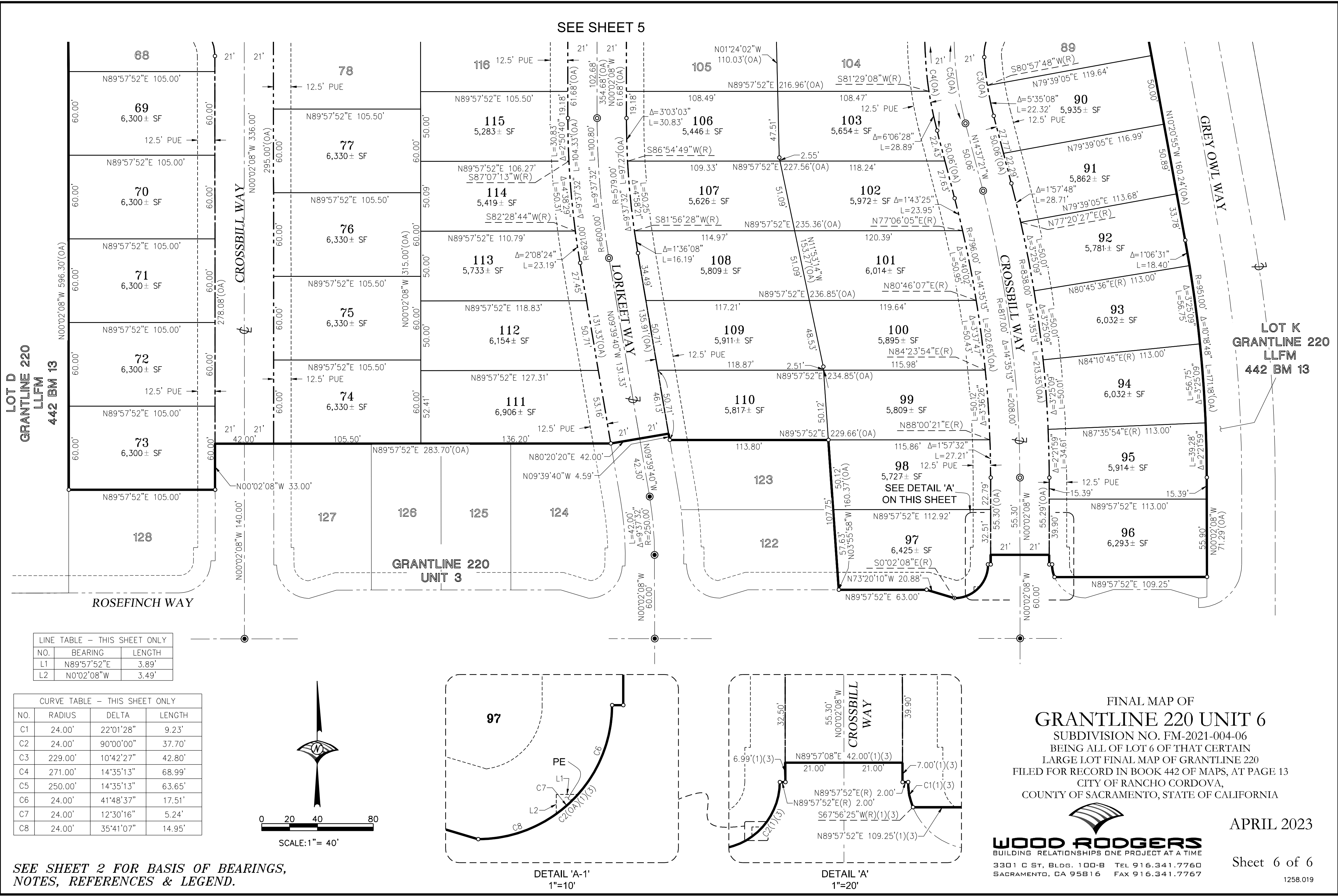
WOOD RODGERS
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SACRAMENTO, CA 95816 FAX 916.341.7767

APRIL 2023

Sheet 4 of 6

1258.019





ITEM 16.5.

ATTACHMENT 4

**VICINITY MAP OF
GRANTLINE 220 UNIT 6
SUBDIVISION NO. FM-2021-004-06**

CANYON CORAL WAY

CASTAIC LAKE WAY

SILVER MOSS ST

CHRYSANTHY BLVD

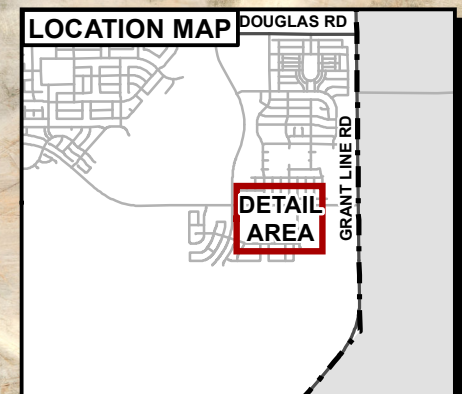
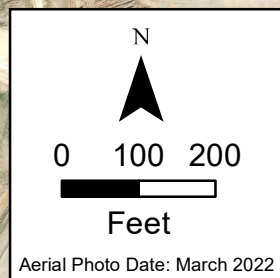
GREY OWL WAY

TOUCAN CIR

ROSEFINCH WAY

LORIKEET WAY

TOUCAN CIR



MEMORANDUM



ITEM 16.6.

DATE: April 17, 2023
TO: Honorable Mayor and Council Members
FROM: Dalia Fadl, Principal Engineer
SUBJECT: **A RESOLUTION DECLARING THE CITY'S INTENTION TO IMPOSE AN ANNUAL STORMWATER UTILITY FEE FOR THE MAINTENANCE OF STORM DRAINAGE AND FLOOD PROTECTION SYSTEMS FOR THE NORTH POINT PROJECT**

RECOMMENDATION

Adopt the Resolution designating a time and place for hearing protests in connection with the annual Stormwater Utility Fee for the North Point project.

RESULT OF RECOMMENDED ACTION

Adoption of the Resolution would declare the Council's intention to impose an annual Stormwater Utility Fee for the maintenance of the storm drainage and flood protection system in the North Point project.

BACKGROUND

The Council previously approved the North Point light industrial project with a condition of approval which requires that the property owner fund operation and maintenance of the storm drainage system. This condition will be satisfied by participation in the City's Stormwater Utility Fee for storm drainage and flood protection services, which is the subject of this action.

Previously, projects were required to annex to the County's Stormwater Utility. Since the City has taken over drainage maintenance and operations services from the County, it was necessary to establish the Stormwater Utility District to fund drainage services to ensure compliance with new state and federal laws and regulations. The Stormwater Utility Fee was established on September 2, 2014, by Ordinance No. 7-2014.

DISCUSSION

The property owners have submitted a petition and waiver for the City to institute the proceedings to impose the Stormwater Utility Fee ([Attachment 5](#)). The North Point project is being annexed into the Stormwater Utility Fee ([Attachment 3](#)). The maintenance services to be funded include the furnishing of services and materials for the ordinary and usual operation, maintenance, and servicing of the storm drain and flood protection improvements.

A "Rate Analysis Report" was adopted on August 7, 2014, by Resolution No. 103-2014. The

report calculated the Fiscal Year 2014/2015 maximum annual Stormwater Utility Fee amount for each parcel proportionate to the estimated stormwater runoff for each parcel. The maximum annual fee increases each subsequent Fiscal Year by the annual change in the Consumer Price Index (CPI), during the preceding year, for All Urban Consumers, for the San Francisco-Oakland-San Jose areas, published by the United States Department of Labor, Bureau of Labor Statistics. A sample of the Stormwater Utility Fees for Fiscal Year 2022-2023 is provided in Attachment 4.

In accordance with Article XIII D, the “Procedures for the Conduct of a Protest Hearing and Balloting Relating to a Proposed Stormwater Utility Fee” as set forth in Attachment 2 and incorporated herein by reference (the “Procedures”).

The Resolution (Attachment 1) sets the public hearing at 5:30 p.m., or as soon thereafter as possible, on May 1, 2023, as the time and date for a hearing on the matters set forth therein and directs the City Clerk to give notice of the public hearing. Notice of the Public Hearing will be published in the Grapevine Independent as required by law.

FISCAL IMPACT AND FUNDING SOURCE

There is no fiscal impact to the general fund. The annual stormwater utility fees collected are deposited into an enterprise fund specifically for the maintenance of the storm drainage and flood protection system.

ATTACHMENT(S)

1. Resolution
2. Exhibit A to the Resolution
3. Annexation Bounday Map
4. Stormwater Utility Fee- Rate Sheet FY22-23
5. Petition with Waivers

CITY OF RANCHO CORDOVA

RESOLUTION NO. XX-2023

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RANCHO CORDOVA, STATE OF CALIFORNIA DESIGNATING A TIME AND PLACE FOR HEARING PROTESTS IN CONNECTION WITH THE ANNUAL STORMWATER UTILITY FEE FOR THE NORTH POINT PROJECT

WHEREAS, the Stormwater Utility Fee was established on September 2, 2014 by Ordinance No. 7-2014 to fund services and facilities furnished by the City in connection with its storm drain system. The Proposed Stormwater Utility Fee may be billed through the County Utility Billing Service (CUBS) as part of the consolidated utility bill or may be collected on the County of Sacramento tax roll, commencing in Fiscal Year 2022-2023, in the same manner, by the same persons, and at the same time as, together with and not separately from, the general taxes of the City in the manner prescribed by Sections 5471 et seq. of the California Health and Safety Code; and

WHEREAS, this Council has caused a written report entitled, "Rate Analysis Report", dated August 7, 2014, (the "Written Report") prepared by Harris & Associates and filed with the City Clerk containing a description of each parcel of real property within the City to which the Proposed Stormwater Utility Fee is applicable collectively, the "Identified Parcels") and the amount of the Proposed Stormwater Utility Fee for each such Identified Parcel for Fiscal Year 2014-15. The Written Report is on file in the office of the City Clerk and is available for public inspection; and

WHEREAS, Article XIII D of the California Constitution and the Proposition 218 Omnibus Implementation Act (Government Code Section 53750, et seq.) (the "Implementation Act") imposes certain procedural and substantive requirements relating to the imposition of property-related fees and charges (as defined in Article XIII D), such as the Proposed Stormwater Utility Fee, including the requirement to conduct a protest hearing and balloting for consideration of the Proposed Stormwater Utility Fee. In accordance with Article XIII D and the Implementation Act, the City Council hereby approves the "Procedures for the Conduct of a Protest Hearing and Balloting Relating to a Proposed Stormwater Utility Fee" as set forth in Exhibit A and incorporated herein by reference (the "Procedures"); and

WHEREAS, this Council has received petitions and waivers from the owners of 100% of the area of land proposed to be included in the Proposed Stormwater Utility Fee in which the Petitioner has waived all notices of hearings and all published notices regarding the establishment of the stormwater utility fee, notices of election, and applicable waiting periods.

NOW, THEREFORE, BE IT HEREBY RESOLVED THE CITY COUNCIL OF THE CITY OF RANCHO CORDOVA

1. The foregoing recitals are true and correct and incorporated herein.
2. Notice is hereby given that the City Council designates Monday May 1, 2023, at the hour of 5:30 p.m., in the Council Chambers, City Hall, 2729 Prospect Park Drive, Rancho Cordova, California, as the time and place for a public hearing on the above-described written report and protests or objections to the imposition of the proposed Stormwater Utility Fee. At the above-described public hearing, all interested persons shall be afforded the opportunity to hear and be

heard, and the City Council shall consider all protests against the Proposed Stormwater Utility Fee. If written protests against the Stormwater Utility Fee are presented by a majority of owners of the Identified Parcels, the City shall not impose the Proposed Stormwater Utility Fee. In the absence of a majority protest, the City Council may submit the Proposed Stormwater Utility Fee to a vote of the property owners in accordance with Article XIII D of the California Constitution.

3. The City Clerk is hereby authorized and directed to give notice of the above-described public hearing in accordance with law and the Procedures.

4. Reference is hereby made to the Written Report described in Section 2 hereof, which is on file in the office of the City Clerk, for a full and detailed description of the Proposed Stormwater Utility Fee upon parcels of land within the City.

5. The City Council hereby designates Dalia Fadl, Principal Engineer, telephone number, (916) 851-8718 to answer inquiries regarding the public hearing, protest proceedings and procedural or technical matters.

PASSED AND ADOPTED by the City Council of the City of Rancho Cordova on the 17th day of April 2023 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

Linda Budge, Mayor

Stacy Leitner, CMC
City Clerk

EXHIBIT "A"

PROCEDURES FOR THE CONDUCT OF A
PROTEST HEARING AND VOTE RELATING TO A PROPOSED
STORMWATER UTILITY FEE

The following Procedures have been adopted by the City Council of the City of Rancho Cordova for the purpose of conducting a protest hearing required by Article XIII D of the California Constitution for consideration of the imposition of a proposed Stormwater Utility Fee (the "Proposed Stormwater Utility Fee").

TABLE OF CONTENTS

A. Written Report	Page 1
B. Notice of the Public Hearing on the Proposed Stormwater Utility Fee	Page 1
C. Eligibility to File a Protest	Page 2
D. Submission of Written Protests	Page 3
E. Conduct of the Public Hearing; Determination of A Majority Protest	Page 3
F. Conduct Property Owner Vote; Determination of a Majority Protest	Page 4

A. Written Report

The City shall cause to be prepared a written report ("Written Report"), which shall contain a list of all parcels to which the Proposed Stormwater Utility Fee will apply (the "Identified Parcels") and the amount of the Proposed Stormwater Utility Fee for each Identified Parcel for Fiscal Year 2020-2021.

The Written Report shall be placed on file in the office of the City Clerk prior to the mailing of the Notice of Public Hearing on the Proposed Stormwater Utility Fee and shall remain available for public inspection.

B. Notice of the Public Hearing on the Proposed Stormwater Utility Fee

Notice of the public hearing on the Proposed Stormwater Utility Fee shall be sent, postage prepaid, by first class mail at least forty-five (45) days prior to the date set for the public hearing to the Record Owner of each Identified Parcel. The forty-five (45) day requirement may be waived with the unanimous consent of the property owners.

"Record Owner" means the owner of an Identified Parcel whose name and address appears on the last Sacramento County equalized secured property tax assessment roll (the "Assessment Roll"), or in the case of any public entity, the State of California, or the United States, means the representative of that public entity at the address of that entity known to the City.

Notices shall be mailed to the Record Owners of the Identified Parcels, addressed to the names and addresses as they appear on the Assessment Roll, and, in the case of any public entity, the State of California, or the United States, addressed to the public entity at the address of that entity known to the City. In addition, notices shall be mailed to owners of the Identified Parcels, addressed to the names and addresses known to the City Clerk, if different than shown on the Assessment Roll.

Each mailed notice shall contain all of the following:

- A reference to filing of the Written Report;
- A reference to the proposed ordinance imposing the Proposed Stormwater Utility Fee and providing for the collection of the Fee on the County tax roll;
- The amount of the Proposed Stormwater Utility Fee to be imposed upon the Identified Parcel covered by the notice;
- The basis upon which the amount of the Proposed Stormwater Utility Fee was calculated;
- The reason for the Proposed Stormwater Utility Fee;
- A statement that the Proposed Stormwater Utility Fee may be collected as part of a consolidated utility bill via CUBS or on the County of Sacramento tax roll each year, commencing with Fiscal Year 2021-2022.
- The effect of a majority protest; and
- The date, time and location of a public hearing on the Proposed Stormwater Utility Fee.

The City Clerk, or the designee of the City Clerk, may certify the proper mailing of notices by an affidavit, which shall constitute conclusive proof of mailing in the absence of fraud.

Failure of any person to receive notice shall not invalidate the proceedings.

Notice of the filing of the Written Report and the public hearing shall be published once a week for two successive weeks in the Grapevine Independent, with the first publication at least fourteen (14) days prior to the date of the public hearing, and with at least five (5) days intervening between the first and second publications. The published notice may be waived by unanimous consent of the property owners.

C. Eligibility to File a Protest

The Assessment Roll shall be presumptive evidence of ownership of an Identified Parcel for protest purposes.

If the owner of any Identified Parcel is not shown on the Assessment Roll, such owner may file a protest for such parcel by filing with the City Clerk a proxy from the Record Owner in a form satisfactory to the City Attorney or evidence of ownership satisfactory to the City Attorney. Any such proxy or evidence must be received by the City Clerk prior to the conclusion of the public hearing.

When an Identified Parcel is held by a partnership, as community property, in joint tenancy, or as a tenancy in common, any partner, spouse, joint tenant, or tenant in common, as the case may be, may file a protest for such parcel.

An executor, administrator, or guardian may file a protest for an Identified Parcel on behalf of the estate it represents. If such representative is shown on the Assessment Roll as paying taxes and assessments levied against the parcel, that fact shall establish the right of such representative to file the protest. If such representative is not shown on the Assessment Roll, the representative must file with the City Clerk written documentation satisfactory to the City Attorney establishing the legal representation. Any such documentation must be filed with the City Clerk prior to the conclusion of the public hearing.

When an Identified Parcel is held by a corporation or unincorporated association, a protest may be filed by any person authorized in writing by the board of directors or trustees or other managing body thereof to take such actions. The corporation or unincorporated association must file with the City Clerk written authorization satisfactory to the City Attorney. Any such written authorization must be filed with the City Clerk prior to the conclusion of the public hearing.

D. Submission of Written Protests

Written protests may be mailed (via U.S. mail) to the City Clerk at City Hall or delivered in person to the City Clerk at City Hall or at the public hearing.

No protests delivered via e-mail will be counted for purposes of determining whether a majority protest exists, but the City Council may, in its discretion, consider such protests in making determinations regarding the Proposed Stormwater Utility Fee

Each written protest must identify the property covered by the protest and be signed.

No protest received after the close of the public hearing shall be counted in determining the existence of a majority protest. The last pick up by the City Clerk of protests mailed or delivered to City Hall will occur at 5:30 p.m. on the date scheduled for the public hearing. To ensure that protests which are mailed or delivered to City Hall are received by the City Clerk prior to the close of the public hearing, such protests must be received by the City Clerk at City Hall prior to 5:30 p.m. on the date scheduled for the public hearing. The City Clerk shall endorse on each written protest the date it is filed with the City. The City Clerk shall identify any protests which are received after the close of the public hearing.

Written protests may be withdrawn in writing at any time before the conclusion of the public hearing by the person who submitted the written protest.

For purposes of determining whether a majority protest exists, only one protest for each Identified Parcel will be counted.

All written protests shall be considered public records.

E. Conduct of the Public Hearing: Determination of a Majority Protest

1. At the time, date and place fixed for the public hearing, the City Council shall:
 - (i) Conduct a public hearing pertaining to the Proposed Stormwater Utility Fee;
 - (ii) Hear all persons interested in the matter of the Proposed Stormwater Utility Fee; and
 - (iii) Receive all written communications regarding the Proposed Stormwater Utility Fee.
2. The public hearing may be continued from time to time, as the City Council determines is necessary to complete its consideration of the Proposed Stormwater Utility Fee.
3. If the City Council determines at the close of the public hearing that written protests have been presented, and not withdrawn, by a majority of owners of the Identified Parcels (i.e., there is a majority protest), the Proposed Stormwater Utility Fee shall not be approved.
4. If the City Council determines at the close of the public hearing that there is not a majority protest, the City Council may:
 - (i) Remedy and correct any clerical error in the Written Report or otherwise modify the Written Report; provided that any such modification or correction shall not result in a Proposed Stormwater Utility Fee for any Identified Parcel which is greater than the amount shown in the notice of the public hearing that was mailed to the Record Owner of the Identified Parcel;
 - (ii) Confirm the Written Report, as originally filed or as amended in accordance with subparagraph (i), above;
 - (iii) Adopt a resolution calling for a property owner vote regarding the Proposed Stormwater Utility Fee.

F. Conduct Property Owner Vote: Determination of a Majority Consent

Pursuant to Government Code Section 53755.S(c), the proceedings described in this section shall not constitute an election or voting for purposes of Article II of the California Constitution or of the Elections Code.

An election on the Proposed Stormwater Utility Fee shall be sent, postage prepaid, by first class mail at least forty-five (45) days prior to the date set for the election to the Record Owner of each Identified Parcel. The forty-five (45) day requirement may be waived with the unanimous consent of the property owners.

Each mailed ballot shall contain all of the following:

- On the face of the envelope in which the notice of election and ballot are mailed, there shall appear in substantially the following form in no smaller than 16-point bold type: "OFFICIALBALLOT ENCLOSED."

ITEM 16.6.

ATTACHMENT 2 Exhibit A to the Resolution

- The ballot shall include the agency's address for return of the ballot, the date and location where the ballots will be tabulated, and a place where the person returning it may indicate his or her name, a reasonable identification of the parcel, and his or her support or opposition to the proposed fee. The ballots shall be tabulated in a location accessible to the public. The ballot shall be in a form that conceals its content once it is sealed by the person submitting it. The ballot shall remain sealed until the ballot tabulation commences.

No ballot received after the time of the ballot tabulation shall be counted in determining the existence of majority consent. The last pick up by the City Clerk of ballots mailed or delivered to City Hall will occur at 1:30 p.m. on the date scheduled for the election. To ensure that ballots which are mailed or delivered to City Hall are received by the City Clerk prior to the commencement of the ballot tabulation, such ballots must be received by the City Clerk at City Hall prior to 5:30 p.m. on the date scheduled for the ballot tabulation. The City Clerk shall endorse on each ballot the date it is filed with the City. The City Clerk shall identify any ballots which are received after the commencement of the ballot tabulation.

An impartial person designated by the City who does not have a vested interest in the outcome of the proposed fee shall tabulate the ballots submitted in support of or opposition to the proposed fee. An impartial person includes, but is not limited to, the City Clerk. If the City uses City personnel for the ballot tabulation, or if the City contracts with a vendor for the ballot tabulation and the vendor or its affiliates participated in the research, design, engineering, public education, or promotion of the fee, the ballots shall be unsealed and tabulated in public view to permit all interested persons to meaningfully monitor the accuracy of the tabulation process.

The ballot tabulation may be continued to a different time or different location accessible to the public, provided that the time and location are announced at the location at which the tabulation commenced and posted by the City in a location accessible to the public. The impartial person may use technological methods to tabulate the ballots, including, but not limited to, punchcard or optically readable (bar-coded) ballots. During and after the tabulation, the ballots and, if applicable, the information used to determine the weight of each ballot, shall be treated as public records, subject to public disclosure and made available for inspection by any interested person. The ballots shall be preserved for a minimum of two years, after which they may be destroyed.

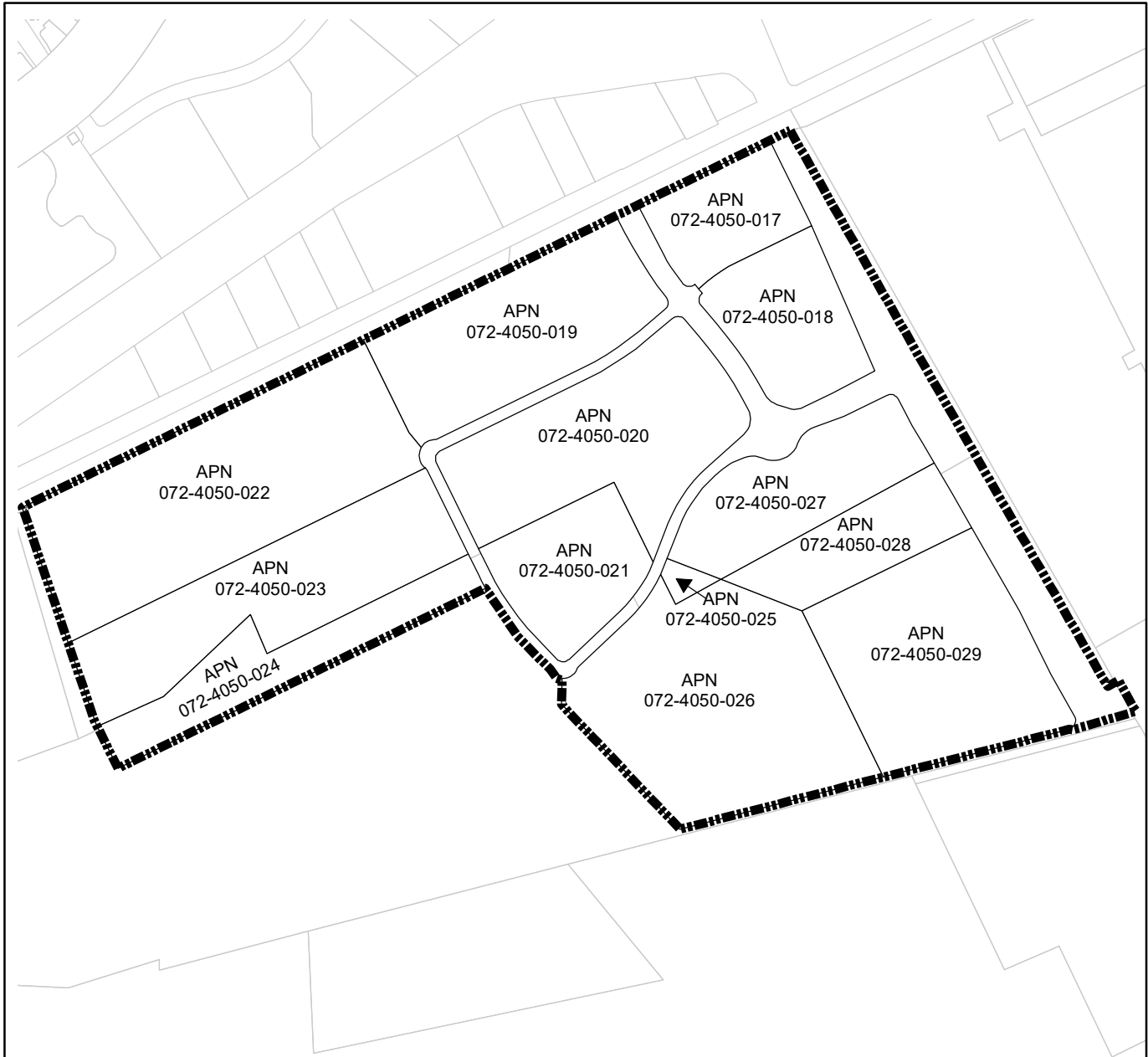
Majority approval of the Record Owners shall exist if the number of valid ballots in favor of the fee exceeds the number of valid ballots in opposition to the fee.

At the time, date and place fixed for the ballot tabulation, the City Council shall direct the City Clerk to commence the ballot tabulation.

If there is no majority approval, the Stormwater Utility Fee shall not be imposed.

If majority approval exists, the City Council may impose the Stormwater Utility Fee pursuant to the Ordinance.

CITY OF RANCHO CORDOVA
STORMWATER UTILITY FEE AREA
ANNEXATION 38
RANCHO CORDOVA LOGISTICS
CENTER PROJECT

**Legend**

Annexation Boundary

Stormwater Utility Fee

Sample of the Stormwater Utility Fees for Fiscal Year **2022-2023**:

Table 1

Land Use Description	Total Area (acres)	Sample Fee
Single Family Residential (SFR1)	0.16	\$143.40
Single Family Residential (SFR2)	0.22	\$157.73
Single Family Residential (SFR3)	0.30	\$168.51
Single Family Residential (SFR4)	0.40	\$179.24
Single Family Residential (SFR5)	1.00	\$179.24
Multi-Family Residential (MFR1)	5.00	\$1,254.93
Commercial	1.00	\$1,344.58
Industrial	1.00	\$1,434.24
Schools	5.00	\$896.39
Private Recreation	1.00	\$448.17
Parks/Greenbelts	2.00	\$179.24
Public Property (with structures)	2.00	\$537.81

**CITY OF RANCHO CORDOVA
PETITION
(With Waivers)
Related to the Imposition of a Stormwater Utility Fee
and Other Related Matters**

This is a petition to impose a stormwater utility fee and related matters under the Health and Safety Code and Article XIID of the California State Constitution and it states as follows:

1. Petitioner. This Petition is submitted by the person (the "Petitioner") (whether one or more) identified below as or for the record owner(s) of the parcels of land identified below (the "Property"). The Petitioner warrants to the City that the Petitioner is such owner or is legally authorized to execute this Petition for and on behalf of such owner(s).

2. Proceedings Requested. This Petition asks that the City Council undertake proceedings under the Health and Safety Code and Article XIID of the California State Constitution to impose a stormwater utility fee.

3. Boundaries. This Petition asks that the territory to be included consist of that shown on a map of the proposed area of the stormwater utility fee described in Exhibit "A" and attached hereto and made a part hereof and which map includes the Property.

4. Purpose. This Petition asks that the stormwater utility fee be created, and the fee be levied to finance all or a part of the storm and flood protection services.

5. Waivers. To expedite the completion of the proceedings, the Petitioner waives all notices of hearing and all published notices regarding the establishment of the stormwater utility fee, notices of election, applicable waiting periods for the holding of any public hearing and for election and all ballot arguments and analysis for the election, it being acknowledged by the Petitioner that all such notices are for the benefit of the Petitioner and may be waived.

The Property that is subject to this petition is identified as:

County of Sacramento Assessor's Parcel Numbers:

072-4050-022-0000, 072-4050-023-0000, 072-4050-024-0000, 072-4050-019-0000, 072-4050-020-0000, 072-4050-021-0000, 072-4050-017-0000, 072-4050-018-0000, 072-4050-027-0000, 072-4050-028-0000, 072-4050-029-0000, 072-4050-025-0000, 072-4050-026-0000: The property consists of a total of 130 acres.

The Petitioner (record owner) of the Property is:

NP BGO Rancho Cordova Logistics Center, LLC, a Delaware limited liability company

By: NP BGO Rancho Cordova Logistics Center JV, LLC, its Sole Member

By: NPD Management, LLC, its Manager

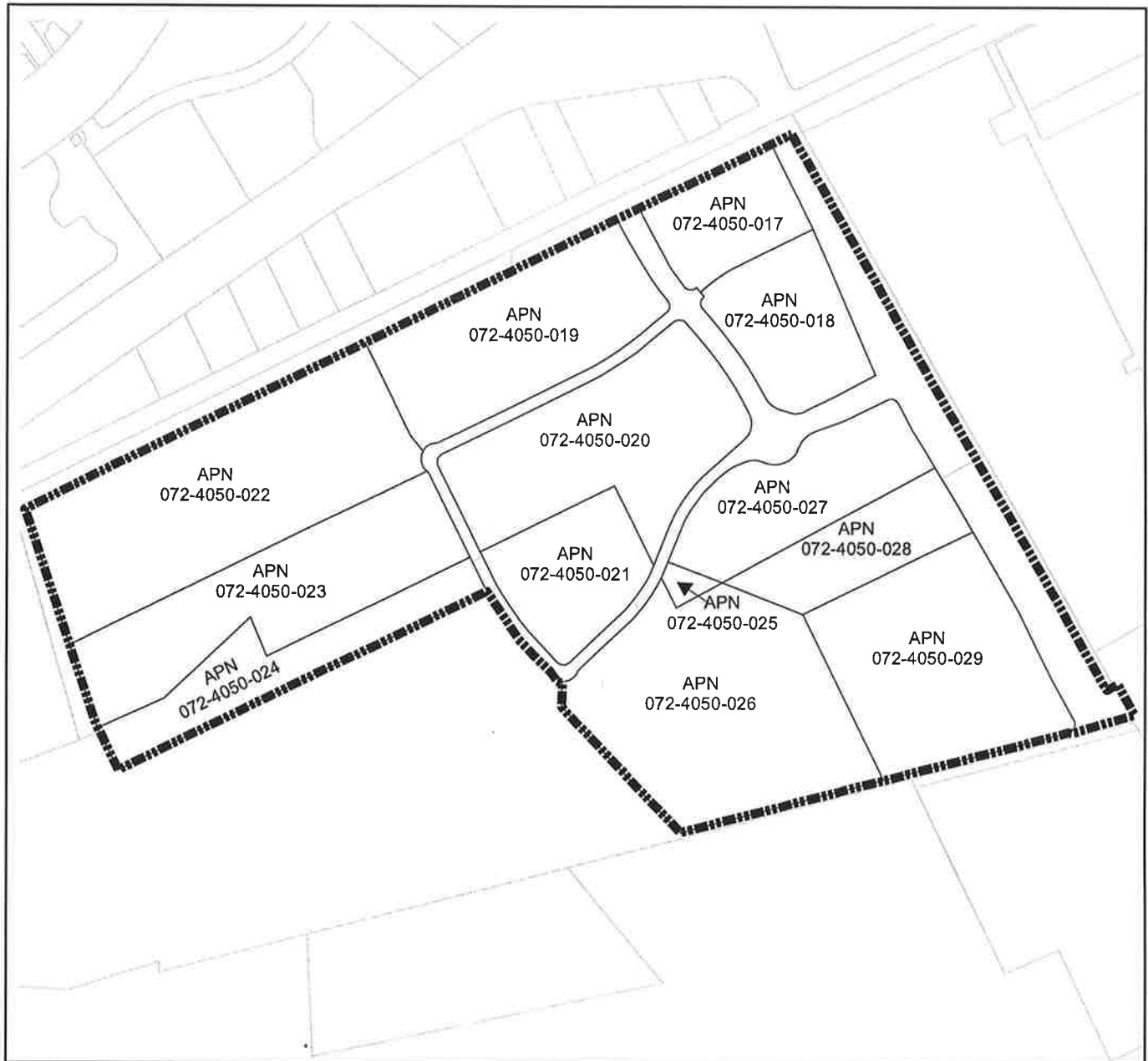
By: _____
Nathaniel Hagedorn, Manager

Date: 3-21-23

The address to which the ballots for the CFD elections are to be sent:

Andrew Burrer
Vice President of Development
SACRAMENTO OFFICE
1410 Rocky Ridge Dr. Suite 110 | Roseville, CA 95661

CITY OF RANCHO CORDOVA
STORMWATER UTILITY FEE AREA
ANNEXATION 38
RANCHO CORDOVA LOGISTICS
CENTER PROJECT

**Legend**

Annexation Boundary

MEMORANDUM



ITEM 16.7.

DATE: April 17, 2023
TO: Honorable Mayor and Council Members
FROM: Russell Ducharme, Neighborhood Services Manager
SUBJECT: **A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE CONTRACT AMENDMENT 2022-207-1 WITH BIO-ONE TO INCREASE THE CONTRACT AMOUNT FROM \$100,000.00 TO AN AMOUNT NOT TO EXCEED \$225,000.00 FOR BIOHAZARD AND NON-BIOHAZARD CLEAN-UP THROUGHOUT THE CITY**

RECOMMENDATION

Adopt the Resolution.

RESULT OF RECOMMENDED ACTION

Adoption of the Resolution would amend Contract No. 2022-207-1.

BACKGROUND

Bio-One of Sacramento provides the City of Rancho Cordova with scheduled and on-call biohazard and non-biohazard cleanup. Other duties performed include shopping cart retrieval, trash and debris removal, abatement of illegal dumping, as well as clearing of brush and vegetation. The City originally entered into a General Services Agreement on October 1, 2022 for an amount not to exceed \$100,000.00. In January, the city requested Bio-One to expand their services to include Saturday and Sunday coverage. With the increase in services provided, an amendment of \$125,000.00 to the original agreement is required. The total amount of the General Services Agreement will be an amount not to exceed \$225,000.00 with an expiration date of September 30, 2023.

FISCAL IMPACT AND FUNDING SOURCE

Measure H funds will be used to fund the contract amendment.

ATTACHMENT(S)

1. Resolution
2. First Amendment to the Bio-One Contract
3. Executed Bio-One Contract

CITY OF RANCHO CORDOVA

RESOLUTION NO. XX-2023

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RANCHO CORDOVA,
STATE OF CALIFORNIA, AUTHORIZING THE CITY MANAGER TO EXECUTE A FIRST
AMENDMENT TO THE CONTRACT WITH BIO-ONE**

WHEREAS, the Parties entered into a General Services Agreement (“GSA”) dated October 1, 2022 for the purpose of biohazard and non-biohazard clean-up throughout the City; and

WHEREAS, the GSA provided for a payment to Bio-One in an amount not to exceed \$100,000; and

WHEREAS, this Amendment will increase the compensation by \$125,000.00 for a total amount not to exceed \$225,000; and

WHEREAS, the Parties agree that changes to the term and services provided for in the GSA are necessary in order for the City to continue receiving services by contractor.

NOW, THEREFORE, BE IT HEREBY RESOLVED THE CITY COUNCIL OF THE CITY OF RANCHO CORDOVA authorizes the City Manager to execute the First Amendment to the Contract with Bio-One in a form approved by the City Attorney.

PASSED AND ADOPTED by the City Council of the City of Rancho Cordova on the 17th day of April 2023 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

Linda Budge, Mayor

Stacy Leitner, CMC
City Clerk

**FIRST AMENDMENT TO THE GENERAL SERVICES AGREEMENT
BETWEEN THE CITY OF RANCHO CORDOVA AND
BIO-ONE**

This First Amendment to the General Services Agreement ("Amendment") is made by and between the City of Rancho Cordova ("City") and Bio-One ("Contractor") as of April 17, 2023. City and Contractor are hereinafter collectively referred to as the "Parties."

RECITALS

WHEREAS, the Parties entered into a General Services Agreement ("GSA") dated October 1, 2022 for the purpose of biohazard and non-biohazard clean-up throughout the City; and

WHEREAS, this Amendment will increase the compensation by \$125,000.00; and

WHEREAS, the Parties agree that changes to the term and services provided for in the GSA are necessary in order for the City to continue receiving services by Contractor.

NOW, THEREFORE, the Parties hereto agree as follows:

AGREEMENT

1. Section 4 of the GSA, "Compensation of Contractor," provides for the City to pay Contractor \$100,000.00. The Parties agree to amend Section 4 of the GSA in order to increase the compensation amount to pay Contractor for additional services. The first sentence of Section 4 of the GSA is amended to read as follows:

"The Contractor shall be paid not to exceed Two Hundred Twenty-Five Thousand Dollars (\$225,000.00) for performance of the Services pursuant to this Agreement."

2. All other terms and conditions in the GSA shall remain in full force and effect to the extent they are not in conflict with this Amendment.
3. The signatures of the Parties to this Amendment may be executed and acknowledged on separate pages or in counterparts which, when attached to this Amendment, shall constitute one complete Amendment.

ITEM 16.7.

**ATTACHMENT 2
CONTRACT NO. 2022-207-1**

IN WITNESS WHEREOF, the Parties have executed this Amendment on the day and year first above written.

CITY OF RANCHO CORDOVA

CONTRACTOR

Micah Runner, City Manager

Seth Ramey, Bio-One

Date: _____

Date: _____

Attest:

Stacy Leitner, CMC, City Clerk

Date: _____

Approved as to Form:

Adam U. Lindgren, City Attorney

Date: _____

Updated December 14, 2021

1948568.1

**ON-CALL GENERAL SERVICES AGREEMENT BETWEEN
THE CITY OF RANCHO CORDOVA AND BIO-ONE**

THIS AGREEMENT (hereinafter referred to as "Agreement") is made by and between the City of Rancho Cordova, a California municipal corporation, (herein "City") and Bio-One, (herein "Contractor"), as of October 1, 2022.

Section 1. SERVICES. Subject to the terms and conditions set forth in this Agreement, Contractor shall provide to City the services described in the Scope of Work attached as Exhibit A ("Services") at the time and place and in the manner as specified therein. In the event of a conflict or inconsistency between the terms of this Agreement and Exhibit A, the Agreement shall prevail.

Section 2. TERM. The term of this Agreement shall begin on the date first noted above and shall end on September 30, 2023, unless the term of this Agreement is otherwise terminated as provided for in Section 10. The time provided to Contractor to complete the services required by this Agreement shall not affect the City's right to terminate the Agreement, as provided for in Section 10.

Section 3. CONTRACT ADMINISTRATOR. This Agreement shall be administered by Russ Ducharme ("Contract Administrator"). All correspondence shall be directed to or through the Contract Administrator or his or her designee.

Section 4. COMPENSATION OF CONTRACTOR. The Contractor shall be paid not to exceed One Hundred Thousand Dollars (\$100,000) for performance of the Services pursuant to this Agreement. The Contractor shall submit invoices to the City Finance Director on a monthly basis detailing the Services performed. In the event of a conflict between this Agreement and Contractor's Exhibit A regarding the amount of compensation, the Agreement shall prevail. Upon receipt and approval of the Contractor's invoices, the City shall remit payment to the Contractor for Services provided within thirty (30) days. Payment to Contractor shall be considered as full compensation for performing the Services.

City's failure to discover or object to any unsatisfactory work or billing prior to payment will not constitute a waiver of City's right to request Contractor to correct such work or billings or seek any other legal remedy.

Section 5. PERFORMANCE STANDARDS.

A. Contractor shall comply with all applicable laws now in force or which may hereafter be in force with regard to the provision of Services and this Agreement.

B. Contractor represents that it has the skills, expertise, licenses and permits necessary to perform the Services. Contractor shall perform all such Services in the manner and according to the standards observed by a competent practitioner of the same profession in which Contractor is engaged and in accordance with applicable industry standards. Permits and/or licenses shall be obtained and maintained by Contractor without additional compensation throughout the term of this Agreement.

Section 6. STATUS OF CONTRACTOR

6.1 INDEPENDENT CONTRACTOR. At all times during the term of this Agreement, Contractor shall be an independent contractor as defined in Labor Code Section 3353, and shall not be an employee of City. Nothing contained in this Agreement shall be construed

to be inconsistent with the foregoing relationship or status. City shall have the right to control Contractor only insofar as the results of Contractor's services rendered pursuant to this Agreement and assignment of personnel; however, otherwise City shall not have the right to control the means and methods by which Contractor accomplishes services rendered pursuant to this Agreement. Contractor shall have no power or authority by this Agreement to bind the City in any respect. All employees and agents hired or retained by Contractor are employees and agents of Contractor and not of the City. The City shall not be obligated in any way to pay any wage claims or other claims made against Contractor by any such employees or agents, or any other person resulting from performance of this Agreement.

Notwithstanding any other City, state, or federal policy, rule, regulation, law, or ordinance to the contrary, Contractor and any of its employees, agents, and subcontractors providing services under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any and all claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in PERS as an employee of City and entitlement to any contribution to be paid by City for employer contributions and/or employee contributions for PERS benefits. Contractor shall not allow any employee, agent or subcontractor to become eligible for a claim for PERS benefits.

- 6.2 Contractor Not an Agent.** Except as City may specify in writing, Contractor shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent. Contractor shall have no authority, express or implied, pursuant to this Agreement to bind City to any obligation whatsoever.

Section 7. INSURANCE REQUIREMENTS. Prior to beginning any Service under this Agreement, Contractor, at its own cost and expense, shall procure insurance coverage at such levels of coverage, scope, limits, and/or forms as set forth in Exhibit B ("Insurance Requirements") hereto. Contractor shall provide proof satisfactory to City of such insurance and maintain the insurance throughout the term of this Agreement.

Section 8. INDEMNIFICATION AND CONTRACTOR'S RESPONSIBILITIES.

- 8.1 General Requirement.** Contractor shall indemnify, defend with counsel selected by the City, and hold harmless City, its officers, agents, employees and representatives from and against any and all claims, losses, liabilities or damages, demands and actions, including payment of reasonable attorney's fees, arising out of or resulting from Services performed pursuant to this Agreement caused in whole or in part by any negligent or willful act or omission of Contractor, its officers, agents, employees, or anyone directly or indirectly acting on behalf of Contractor. The foregoing obligation of Contractor shall not apply when (1) the injury, loss of life, damage to property, or violation of law arises wholly from the negligence or willful misconduct of the City or its officers, employees, agents, or volunteers and (2) the actions of Contractor or its employees, subcontractor, or agents have contributed in no part to the injury, loss of life, damage to property, or violation of law. It is understood that the duty of Contractor to indemnify and hold harmless includes the duty to

defend as set forth in Section 2778 of the California Civil Code. Acceptance by City of insurance certificates and endorsements required under this Agreement does not relieve Contractor from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Contractor acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

- 8.2 PERS Indemnification.** In the event that Contractor or any employee, agent, or subcontractor of Contractor providing Services under this Agreement is determined by a court of competent jurisdiction of the California Public Employees Retirement System ("PERS") to be eligible for enrollment in PERS as an employee of City, Contractor shall indemnify, defend, and hold harmless City for the payment of any and all employee and/or employer contributions for PERS benefits on behalf of Contractor or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City, and any attorneys' fees and costs incurred by the City to enforce this Section.

Section 9. NONDISCRIMINATION AND EQUAL OPPORTUNITY. Contractor shall not discriminate, on the basis of a person's race, religion, color, national origin, age, physical or mental handicap or disability, medical condition, marital status, sex, or sexual orientation, against any employee, applicant for employment, subcontractor, bidder for a subcontract, or participant in, recipient of, or applicant for any services or programs provided by Contractor under this Agreement. Contractor shall comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in employment, contracting, and the provision of any services that are the subject of this Agreement, including but not limited to the satisfaction of any positive obligations required of Contractor thereby. Contractor shall include the provisions of this section in any subcontract approved by the City.

Section 10. AMENDMENTS. No modification or amendment of this Agreement is effective unless made in writing and signed by both the City and Contractor.

Section 11. ASSIGNMENT AND SUBCONTRACTING. Contractor shall not assign or transfer any interest in this Agreement without the prior written consent of the City.

Section 12. TERMINATION. Either party may terminate this Agreement without cause, upon 60 days written notice to the other party. In the event of termination, Contractor shall be entitled to payment for Services then satisfactorily completed. Contractor shall not be entitled to any claim against City for any additional compensation or damages in the event of such termination.

Section 13. NOTICES. All notices that are regarding this Agreement shall be in writing and shall be deemed to have been given if delivered personally or enclosed in a properly addressed envelope and deposited in a United States Post Office for delivery by registered or certified mail addressed to the parties at the following addresses:

City: City of Rancho Cordova
2729 Prospect Park Drive
Rancho Cordova, CA 95670
ATTN: Finance Director

Contractor: seth@bioonesacramentoca.com

Section 14. GOVERNING LAW AND VENUE. The laws of the State of California shall govern this Agreement. Venue for any action regarding this Agreement shall be in the Superior Court of the County of Sacramento or in the United States District Court for the Eastern District of California.

Section 15. ATTORNEYS' FEES. If a Party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provisions of this Agreement, the prevailing Party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that Party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.

Section 16. SEVERABILITY. If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.

Section 17. NO IMPLIED WAIVER OF BREACH. The waiver of any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.

Section 18. SURVIVAL. The obligations of this Agreement, which by their nature would continue beyond the term or expiration of the Agreement, including without limitation obligations regarding indemnification shall survive the term or expiration of this Agreement.

Section 19. IRS Form W-9. Contractor shall complete and submit Internal Revenue Service Form W-9 to the City before execution of this Agreement. The City's Finance Director shall have authority to waive this requirement.

Section 20. ENTIRE AGREEMENT. This Agreement, including the scope of work attached hereto and incorporated herein as Exhibit A, and the insurance requirements attached hereto and incorporated herein as Exhibit B, represents the entire and integrated Agreement between City and Contractor and supersedes all prior negotiations, representations, and Agreements regarding the subject matter of this Agreement, either written or oral.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year set forth above, which date shall be considered the effective date of this Agreement.

ITEM 16.7.

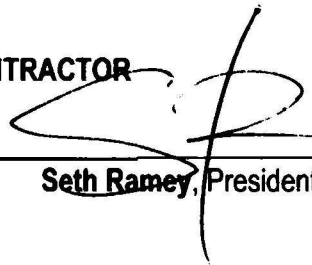
ATTACHMENT 3
CONTRACT NO.: 2022-207

CITY OF RANCHO CORDVA

By: 
Cyrus Abhar, City Manager

Date: 10/12/22

CONTRACTOR

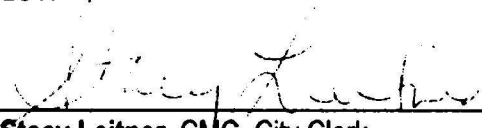
By: 
Seth Ramey, President

Date: 10/3/22

APPROVED AS TO FORM:

By:  for
Adam U. Lindgren, City Attorney

ATTEST:

By: 
Stacy Leitner, CMC, City Clerk

Last Revised January 4, 2022

Scope of Work

Bio-One of Sacramento will provide the City of Rancho Cordova with the following services:

- scheduled and on call services
- biohazard and non-biohazard cleanup
- cleanup of trash and debris throughout the city
- clearing of brush and vegetation
- any other duties assigned to our team by the Neighborhood Services Manager or a representative of the city.



Bio-One of Sacramento

2121 Natomas Crossing Dr., Suite 200-421, Sacramento, CA 95834

916-833-2461 / info@bioonesacramentoca.com / bioonesacramentoca.com

Pricing Guide for Rancho Cordova Neighborhood Services & Public Works

- Monday Through Friday, 7:00am-3:30pm, 52 weeks/yr:
 - 2 Dedicated Employees, \$50/hr per employee
 - Pickup truck
 - Gas
 - All associated insurance such as liability, workers compensation, etc.

- Saturday and Sunday, 7:00am-3:30pm, 52 weeks/yr:
 - 2 Dedicated Employees, \$50/hr per employee
 - Pickup truck
 - Gas
 - All associated insurance such as liability, workers compensation, etc.

*For both prices above, the following days would be recognized holidays that our employees would be on a paid day off: New Year's Day, Memorial Day Weekend and Memorial Day, Independence Day, Labor Day Weekend and Labor Day, Thanksgiving Day, Christmas Eve, Christmas Day

ON CALL SERVICES:

- Biohazard Service, billed on a time and material basis:
 - One hour of roundtrip travel: \$150
 - First hour onsite: \$300/hr
 - Each additional hour: \$250/hr
 - Most common material costs:
 - Bio-One proprietary chemicals: \$50/gal billed in ¼ gal increments
 - Biohazard suit: \$40/ea, each lasts approximately 3 hours
 - Respirator filters: \$50/job
 - Gloves: \$5/job
 - HEPA vacuum usage (if indoors for odor): \$100/job
 - Air scrubber (if indoors for odor): \$100/job
 - Dump fees: \$300/dump trailer, approximately 12 cubic yards, billed as full trailer
 - *If we can use your account, we would bill \$75/hr for travel to and from + unload time
 - Biohazard disposal: \$175/bag

- **Non-Biohazard Service, billed on a time and material basis:**
 - One hour of roundtrip travel: \$150
 - First hour onsite: \$200/hr
 - Each additional hour: \$150/hr
 - Most common material costs:
 - Bio-One proprietary chemicals: \$50/gal billed in ¼ gal increments
 - Respirator filters: \$50/job
 - Non-respirator masks: \$10/job
 - Gloves: \$5.00/job
 - Dump fees: \$300/dump trailer, approximately 12 cubic yards, billed as full trailer
- *If we can use your account, we would bill \$75/hr for travel to and from + unload time

- **Patrol Vehicles:**
 - Non-biohazard: \$150/each, \$125/each if you have 2 or more onsite
 - Biohazard: \$200/each, \$150/each if you have 2 or more onsite

**EXHIBIT B
INSURANCE REQUIREMENTS**

Before beginning any work under this Agreement, Contractor, at its own cost and expense, shall procure "occurrence coverage" insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the Professional and its agents, representatives, employees, and subcontractors. Contractor shall provide proof satisfactory to City of such insurance that meets the requirements of this section and under forms of insurance satisfactory in all respects to the City. Professional shall maintain the insurance policies required by this section throughout the term of this Agreement. The cost of such insurance shall be included in the Contractor's bid. Contractor shall not allow any subcontractor to commence work on any subcontract until Contractor has obtained all insurance required herein for the subcontractor(s) and provided evidence thereof to City. Verification of the required insurance shall be submitted and made part of this Agreement prior to execution. Contractor shall maintain all required insurance listed herein for the duration of this Agreement.

1. **Workers' Compensation.** Contractor shall, at its sole cost and expense, maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Contractor. The Statutory Workers' Compensation Insurance and Employer's Liability Insurance shall be provided with limits of not less than ONE MILLION DOLLARS (\$1,000,000.00) per accident. In the alternative, Contractor may rely on a self-insurance program to meet those requirements, but only if the program of self-insurance complies fully with the provisions of the California Labor Code. Determination of whether a self-insurance program meets the standards of the Labor Code shall be solely in the discretion of the Contract Administrator. The insurer, if insurance is provided, or the Contractor, if a program of self-insurance is provided, shall waive all rights of subrogation against the City and its officers, officials, employees, and volunteers for loss arising from work performed under this Agreement.

An endorsement shall state that coverage shall not be canceled except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City. Contractor shall notify City within fourteen (14) days of notification from Contractor's insurer if such coverage is suspended, voided or reduced in coverage or in limits.

The requirement to maintain Statutory Worker's Compensation and Employer's Liability Insurance insurance may be waived by the City upon written verification that Contractor does not have any employees.

2. **Commercial General and Automobile Liability Insurance.**

- 2.1 **General requirements.** Contractor, at its own cost and expense, shall maintain commercial general liability insurance for the term of this Agreement in an amount not less than TWO MILLION DOLLARS (\$2,000,000.00) and automobile liability insurance for the term of this Agreement in an amount not less than ONE MILLION DOLLARS (\$1,000,000.00). The commercial general liability and automobile liability insurance shall be per occurrence, combined single limit coverage for risks associated with the work contemplated by this Agreement. If a commercial general liability insurance or an automobile liability form or other form with a general

aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall include but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from activities contemplated under this Agreement, including the use of owned and non-owned automobiles.

2.2 Minimum scope of coverage. Commercial general liability coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001 (most recent edition) covering comprehensive General Liability on an "occurrence" basis. Automobile coverage shall be at least as broad as Insurance Services Office Automobile Liability form CA 0001 (most recent edition), Code 1 (any auto). No endorsement shall be attached limiting the coverage.

2.3 Additional requirements. Each of the following shall be included in the insurance coverage or added as an endorsement to the policy:

- a. City and its officers, employees, agents, and volunteers shall be covered as additional insureds with respect to each of the following: liability arising out of activities performed by or on behalf of Contractor, including the insured's general supervision of Contractor; products and completed operations of Contractor; premises owned, occupied, or used by Contractor; and automobiles owned, leased, or used by the Contractor. The coverage shall contain no special limitations on the scope of protection afforded to City or its officers, employees, agents, or volunteers.
- b. The insurance shall cover on an occurrence or an accident basis, and not on a claims-made basis.
- c. An endorsement must state that coverage is primary insurance with respect to the City and its officers, officials, employees and volunteers, and that no insurance or self-insurance maintained by the City shall be called upon to contribute to a loss under the coverage.
- d. Any failure of Contractor to comply with reporting provisions of the policy shall not affect coverage provided to City and its officers, employees, agents, and volunteers.
- e. An endorsement shall state that coverage shall not be canceled except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City. Contractor shall notify City within fourteen (14) days of notification from Contractor's insurer if such coverage is suspended, voided or reduced in coverage or in limits.

3. All Policies Requirements.

3.1 Acceptability of insurers. All insurance required by this section is to be placed with insurers with a Bests' rating of no less than A:VII.

3.2 Verification of coverage. Prior to beginning any work under this Agreement, Contractor shall furnish City with certificates of insurance and with original endorsements effecting coverage required herein. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The City reserves the right to require complete, certified copies of all required insurance policies, at any time.

3.3 Subcontractors. Contractor shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

3.4 Deductibles and Self-Insured Retentions. Contractor shall disclose to and obtain the approval of City for the self-insured retentions and deductibles before beginning any of the services or work called for by any term of this Agreement.

During the period covered by this Agreement, only upon the prior express written authorization of Contract Administrator, Contractor may increase such deductibles or self-insured retentions with respect to City, its officers, employees, agents, and volunteers. The Contract Administrator may condition approval of an increase in deductible or self-insured retention levels with a requirement that Contractor procure a bond, guaranteeing payment of losses and related investigations, claim administration, and defense expenses that is satisfactory in all respects to each of them.

3.5 Waiver of Subrogation. Contractor hereby agrees to waive subrogation which any insurer or contractor may require from vendor by virtue of the payment of any loss. Consultant agrees to obtain any endorsements that may be necessary to effect this waiver of subrogation. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the entity for all work performed by the Contractor, its employees, agents, and subcontractors.

3.6 Notice of Reduction in Coverage. In the event that any coverage required by this section is reduced, limited, or materially affected in any other manner, Contractor shall provide written notice to City at Contractor's earliest possible opportunity and in no case later than five (5) days after Contractor is notified of the change in coverage.

4. **Remedies.** In addition to any other remedies City may have if Contractor fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, City may, at its sole option exercise any of the following remedies, which are alternatives to other remedies City may have and are not the exclusive remedy for Contractor's breach:

- Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement;
- Order Contractor to stop work under this Agreement or withhold any payment that becomes due to Contractor hereunder, or both stop work and withhold any payment, until Contractor demonstrates compliance with the requirements hereof; and/or
- Terminate this Agreement.

W-9**Request for Taxpayer
Identification Number and Certification**Give Form to the
requester. Do not
send to the IRS.Go to www.irs.gov/FormW9 for instructions and the latest information.

Sally Ramsey

2010 Enterprise LLC dba Bio One of Sacramento

1. Name of the individual or entity (do not check this box unless you are an individual who is not a U.S. citizen or resident alien)

2. Complete if you are an individual who is not a U.S. citizen or resident alien. If you are a U.S. citizen or resident alien, do not check this box.

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45. Complete if you are an individual who is not a U.S. citizen or resident alien. If you are a U.S. citizen or resident alien, do not check this box.

Print or type
Specific instructions**Part I Taxpayer Identification Number (TIN)**Enter your TIN in the appropriate box. The TIN provided must match the name shown on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a corporation, sole proprietor, or other required entity, see the instructions for Part I later. For other entities, see the employer identification number (EIN). If you do not have a number, see *How to get a TIN*.**Note.** If the name of an entity has more than one name, see the instructions for line 1. Also see *What Name and Number to Give the Requester* for guidelines on whose number to enter.

Social security number

8 7 - 2 8 9 7 0 6 1

OR

Employer identification number

8 7 - 2 8 9 7 0 6 1

Part II Certification

Under penalties of perjury, I certify that:

- 1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
- 2. I am a U.S. citizen or other U.S. person (defined below), and
- 3. The FATCA check entered on this form (if any), indicating that I am exempt from FATCA reporting is correct.

Certification instructions. You must check out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest or dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid and other itemizable interest-related property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest-related, you are not required to sign the certification, but you must provide your correct TIN. See the instructions for Part II later.**Sign
Here**Signature of
U.S. person

Date

9/2-100

General Instructions

Use this form to request a taxpayer identification number (TIN) for the individual or entity (other than a partnership) that is the requester.

Future developments. For information on future developments, see the instructions for Form W-9, which are available at www.irs.gov/formw9.**Purpose of Form**

This form is used to request a TIN for the individual or entity (other than a partnership) that is the requester. The TIN is used by the requester to identify the individual or entity on the requester's tax return. The TIN is also used by the requester to identify the individual or entity on the requester's Form 1041, 1042, 1043, 1044, 1045, 1046, 1047, 1048, 1049, 1050, 1051, 1052, 1053, 1054, 1055, 1056, 1057, 1058, 1059, 1060, 1061, 1062, 1063, 1064, 1065, 1066, 1067, 1068, 1069, 1070, 1071, 1072, 1073, 1074, 1075, 1076, 1077, 1078, 1079, 1080, 1081, 1082, 1083, 1084, 1085, 1086, 1087, 1088, 1089, 1090, 1091, 1092, 1093, 1094, 1095, 1096, 1097, 1098, 1099, 1100, 1101, 1102, 1103, 1104, 1105, 1106, 1107, 1108, 1109, 1110, 1111, 1112, 1113, 1114, 1115, 1116, 1117, 1118, 1119, 1120, 1121, 1122, 1123, 1124, 1125, 1126, 1127, 1128, 1129, 1130, 1131, 1132, 1133, 1134, 1135, 1136, 1137, 1138, 1139, 1140, 1141, 1142, 1143, 1144, 1145, 1146, 1147, 1148, 1149, 1150, 1151, 1152, 1153, 1154, 1155, 1156, 1157, 1158, 1159, 1160, 1161, 1162, 1163, 1164, 1165, 1166, 1167, 1168, 1169, 1170, 1171, 1172, 1173, 1174, 1175, 1176, 1177, 1178, 1179, 1180, 1181, 1182, 1183, 1184, 1185, 1186, 1187, 1188, 1189, 1190, 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2187, 2188, 2189, 2190, 2191, 2192, 2193, 2194, 2195, 2196, 2197, 2198, 2199, 2200, 2201, 2202, 2203, 2204, 2205, 2206, 2207, 2208, 2209, 2210, 2211, 2212, 2213, 2214, 2215, 2216, 2217, 2218, 2219, 2220, 2221, 2222, 2223, 2224, 2225, 2226, 2227, 2228, 2229, 2230, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2238, 2239, 2240, 2241, 2242, 2243, 2244, 2245, 2246, 2247, 2248, 2249, 2250, 2251, 2252, 2253, 2254, 2255, 2256, 2257, 2258, 2259, 2260, 2261, 2262, 2263, 2264, 2265, 2266, 2267, 2268, 2269, 2270, 2271, 2272, 2273, 2274, 2275, 2276, 2277, 2278, 2279, 2280, 2281, 2282, 2283, 2284, 2285, 2286, 2287, 2288, 2289, 2290, 2291, 2292, 2293, 2294, 2295, 2296, 2297, 2298, 2299, 2300, 2301, 2302, 2303, 2304, 2305, 2306, 2307, 2308, 2309, 2310, 2311, 2312, 2313, 2314, 2315, 2316, 2317

ITEM 16.7.
City of Rancho Cordova
2729 Prospect Park Drive
Rancho Cordova CA 95670

ATTACHMENT 3 Purchase Order	
Purchase Order No.	PO2023-00100
Date	10/13/2022

Vendor: BIOO0001

Bio-One of Sacramento
 2121 Natomas Crossing Drive, Suite 200-421
 Sacramento CA 95834

Contract Number: 2022-207 EXP 9/23

^ Changed Since the Previous Revisor

L/N	Item Number	Description	Req. Date	U/M	Ordered	Unit Price	Ext. Price
Shipping Method		Reference Number	FOB				
1	CONSULTING SERVICES		10/1/2022	Each	100,000.00	\$1.00	\$100,000.00
		PROVIDE BIOHAZARDS, DEBRIS, MISC CLEAN UP SERVICES					
	PC23-3051.1100						
	1100-9000-54107						

Subtotal	\$100,000.00
Trade Discount	\$0.00
Freight	\$0.00
Miscellaneous	\$0.00
Tax	\$0.00
Order Total	\$100,000.00


 Authorized Signature

City of Sacramento Cordova Contract and Agreement Routing and Approval Form

CONTRACTOR/COMPANY INFORMATION

Contractor Name	Bio-One	Email	seth@bioonesacramentoca.com
Contact Person	Seth Ramey	Phone	916-833-2461
Address	2121 Natomas Crossing Dr. Suite 200-421, Sacramento, CA 95834		

REQUESTING CITY DEPARTMENT

Department Name	Neighborhood Services	Phone	916-851-8777
City Contact	Russ Ducharme		

CONTRACT DESCRIPTION/INFORMATION

	Contract #	Amount	Expiration	Cumulative Amount
Original	2022-207	\$100,000	9/30/2023	\$100,000
Amendment 3				

Resolution # (attach Resolution)	n/a	Bid information	Not required
Purpose of Contract: (brief description)	Provide biohazards, debris, misc. clean up services		
Contract Template Used (use dropdown)	General Service		
Budget Expense Acct No.	1100-9000-54107	Project/Grant No.	PC23-3051-1100

INSURANCE REQUIREMENTS

All Insurance Certificates must include the corresponding Contract No.

Is Endorsement included? ☒	Is Waiver of Subrogation attached? ☒
Any modifications/waivers to insurance requirements? Select one.	
If yes, what was modified/waived? _____	
<i>In the section below, please provide insurance amounts as required in the contract.</i>	
☒ General ___ 2 mil _____ ☒ Professional ___ 2 mil _____ ☒ Workers' Compensation ___ 1 mil _____	☒ Auto ___ 1 mil _____ ☐ Sexual Molestation Abuse ___ n/a _____ ☐ Other _____

NOTES/SPECIAL INSTRUCTIONS

On call services to provide clean up services for homeless, debris, biohazards, and garbage within the city.

To Be Completed By Finance Department

PO Number

Vendor ID

CONTRACT CERTIFICATION & APPROVALS

Department Head	<i>ES</i>	Date	10/5/22	City Attorney	<i>AA</i>	Date	10/12
Risk Manager	<i>Kf</i>	Date	10/5	City Clerk	<i>[Signature]</i>	Date	10/11/22

MEMORANDUM



ITEM 17.1.

DATE: April 17, 2023
TO: Honorable Mayor and Council Members
FROM: Albert Stricker, Public Works Director
Quoc Nham, Senior Civil Engineer
SUBJECT: **A RESOLUTION VACATING A NO INGRESS OR EGRESS RIGHTS LINE PURSUANT TO THE PROVISIONS OF CHAPTER 3, PART 3 OF PUBLIC STREETS, HIGHWAYS, AND SERVICE EASEMENTS VACATION LAW COMMENCING AT SECTION 8320 OF THE CALIFORNIA STREETS AND HIGHWAYS CODE (3115 GOLD VALLEY DRIVE)**

RECOMMENDATION

Adopt the Resolution.

RESULT OF RECOMMENDED ACTION

Adoption of the Resolution would vacate a 42 foot portion of the no ingress or egress rights line located at 3115 Gold Valley Drive.

BACKGROUND

The Rancho Cordova Public Works Department has identified that the new traffic signal to be constructed by the City at Gold Valley Drive and White Rock Road modifies the way the owner uses their frontage and accesses their property at 3115 Gold Valley Drive. The owner requested additional driveway access on White Rock Road to improve overall access to the site which staff agrees to in concept. Staff recommends vacating a 42-foot no ingress or egress rights line which will accommodate the requested driveway, at the appraised value of \$2,500.00 paid by the property owner.

FISCAL IMPACT AND FUNDING SOURCE

There is no fiscal impact to the City.

ATTACHMENT(S)

1. Resolution
2. Exhibit A to the Resolution
3. Exhibit B to the Resolution

CITY OF RANCHO CORDOVA

RESOLUTION NO. XX-2023

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RANCHO CORDOVA, STATE OF CALIFORNIA, VACATING NO INGRESS OR EGRESS RIGHTS LINE PURSUANT TO THE PROVISIONS OF CHAPTER 3, PART 3 OF PUBLIC STREETS, HIGHWAYS, AND SERVICE EASEMENTS VACATION LAW COMMENCING AT SECTION 8320 OF THE CALIFORNIA STREETS AND HIGHWAYS CODE

WHEREAS, a hearing date was scheduled for a proposed resolution to vacate a portion of a no ingress or egress rights line located at 3115 Gold Valley Drive; and

WHEREAS, a notice of the hearing has been posted at City Hall at least two weeks in advance of the hearing; and

WHEREAS, notice of the date, hour and place of hearing of the proposed vacation was published for at least two successive weeks prior to the hearing; and

WHEREAS, at least two weeks before the day set for the hearing at least three notices of vacation were conspicuously posted along the easements to be vacated, not more than 300 feet apart; and

WHEREAS, the hearing described above has been conducted, and this Council, having heard and considered all oral, documentary and other evidence presented, hereby finds, determines and orders as follows:

NOW, THEREFORE, BE IT HEREBY RESOLVED BY THE CITY COUNCIL OF RANCHO CORDOVA that the Council hereby finds as follows:

Pursuant to the provisions of Chapter 4, Part 4 of Public Streets, Highways, and Service Easements Vacation Law commencing at Section 8355 of the California Streets and Highways Code, the no ingress or egress rights line is no longer needed by the public. The legislative body will sell the property in the manner, and upon the terms and conditions, approved by the legislative body. The City of Rancho Cordova Department of Public Works has no objection to this vacation.

BE IT FURTHER RESOLVED AND ORDERED THAT:

1. The no ingress or egress rights line located at 3115 Gold Valley Drive and as described in Exhibit A and shown on Exhibit B is hereby vacated.
2. The terms and conditions, approved by the legislative body, is in the form of a purchase/sale agreement. The sale price of the no ingress or egress rights line shall match the appraised value. Per an Appraisal Report prepared by Bender Rosenthal Incorporated dated March 3, 2023, the no ingress or egress rights line is valued at \$2,500.
3. Pursuant to Section 8357 of the California Streets and Highways Code, the purchase price for any property sold by the legislative body of a local agency pursuant to this article shall be paid into the treasury of the local agency to the credit of any fund, available for the same

purposes for which the property was used, that the legislative body designates.

4. The City Clerk of the City of Rancho Cordova shall cause a certified copy of this Resolution of Vacation, attested by the clerk under seal, to be recorded without acknowledgment, certificate of acknowledgment, or further proof in the office of the Recorder of the County of Sacramento.

PASSED AND ADOPTED by the City Council of the City of Rancho Cordova on the 17th day of April 2023 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

Linda Budge, Mayor

Stacy Leitner, CMC
City Clerk

EXHIBIT "A"
ABANDONMENT OF
NO INGRESS OR EGRESS RIGHTS LINE

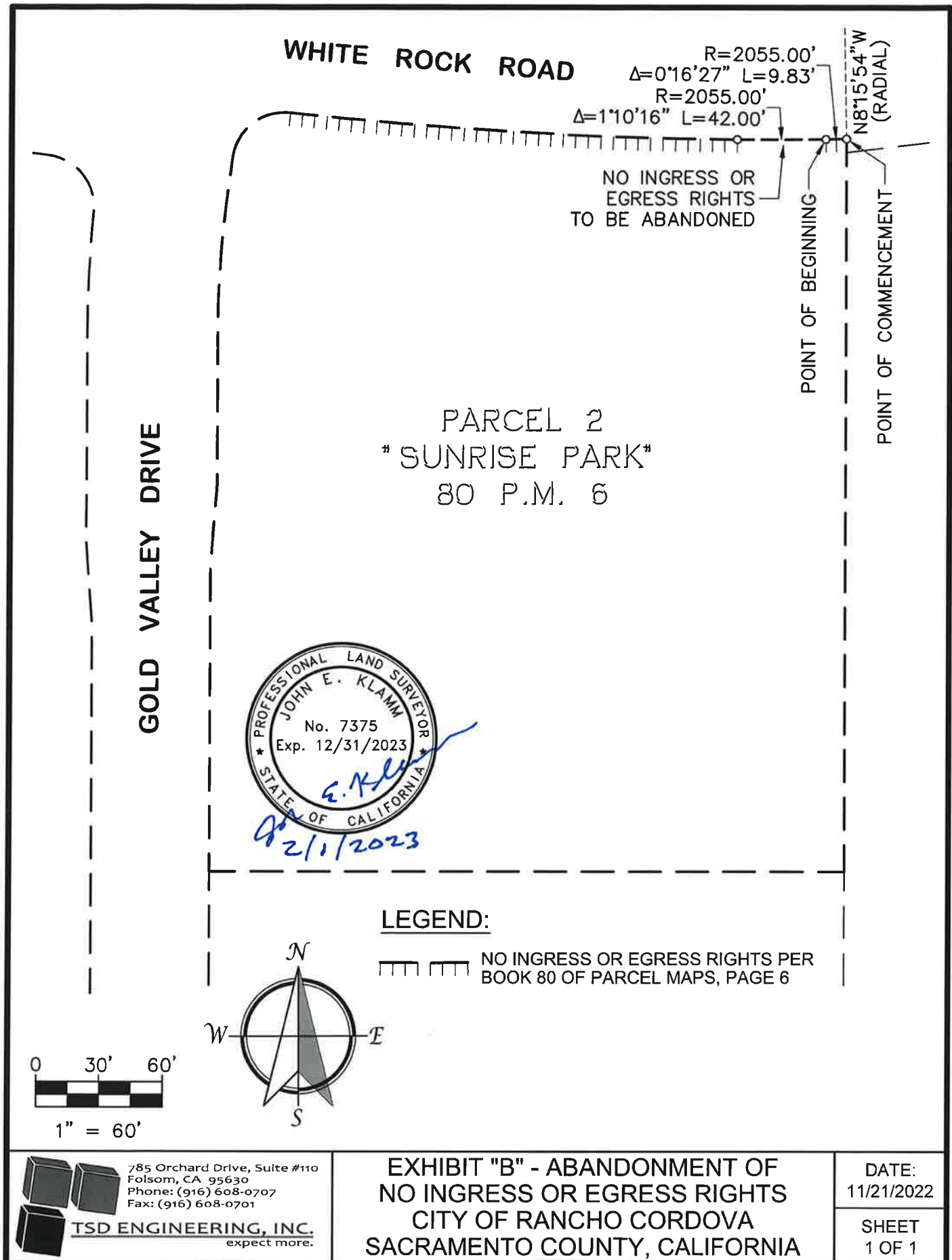
All that real property situated in the State of California, County of Sacramento, City of Rancho Cordova, being a portion of Parcel 2, as shown on the Parcel Map of "Sunrise Park", filed on February 24, 1984, in Book 80 of Parcel Maps, at Page 6, Sacramento County Records, being more particularly described as follows:

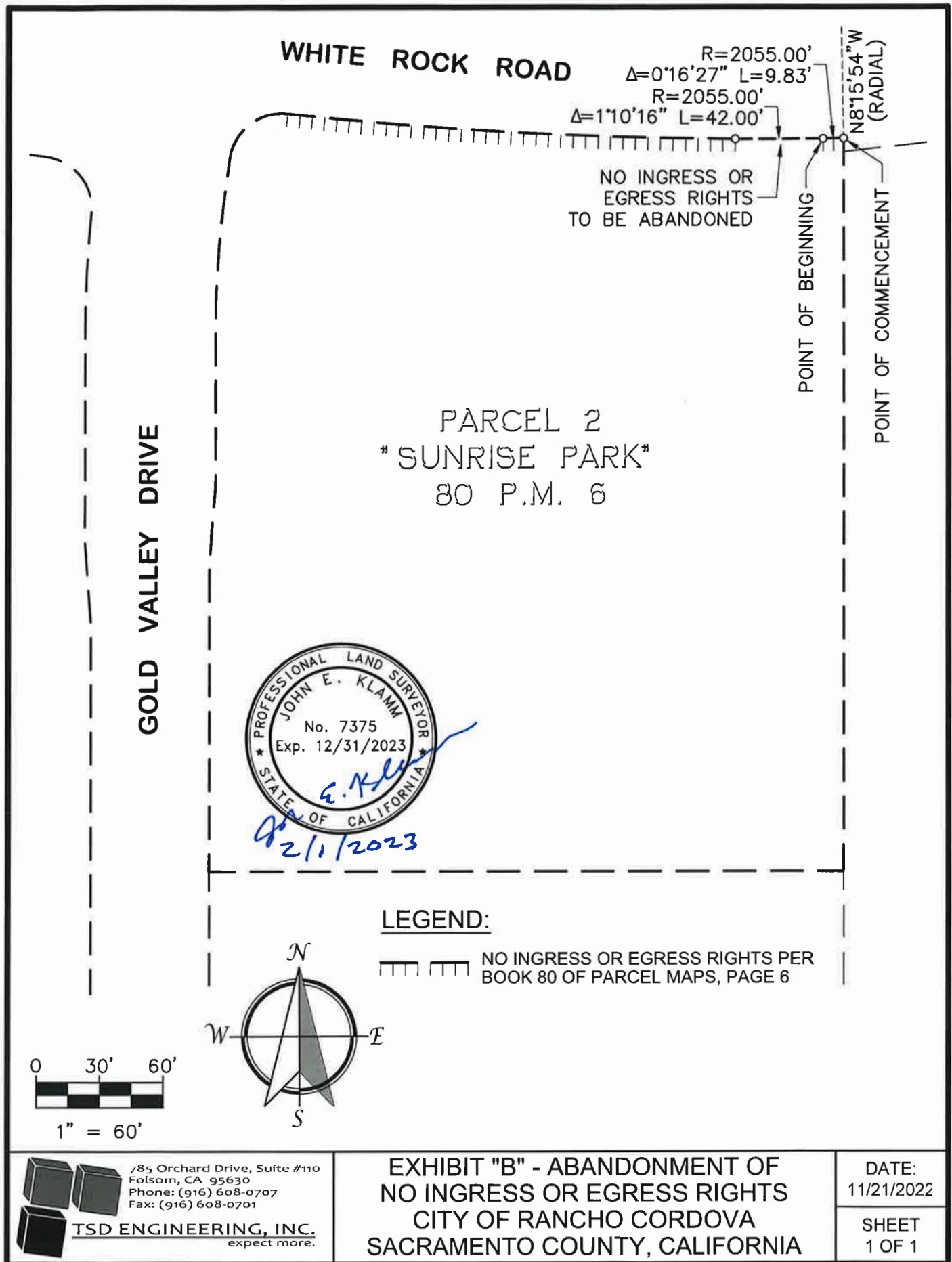
The exclusive right of vehicular ingress and/or egress, as granted to the County of Sacramento on said parcel map, along the following described line:

Commencing at the Northeast corner of said Parcel 2; thence, along the northerly boundary of said Parcel 2, along a curve to the right, having a radius of 2055.00 feet, the radius point of which bears North 08°15'54" West, through a central angle of 00°16'27", with an arc length of 9.83 feet to the **POINT OF BEGINNING**; thence from said point of beginning, continuing along said northerly boundary and said curve to the right having a radius of 2055.00 feet, through a central angle of 01°10'16", with an arc length of 42.00 feet to the **POINT OF ENDING**.

END OF DESCRIPTION







MEMORANDUM

ITEM 18.1.



DATE: April 17, 2023

TO: Honorable Mayor and Council Members

FROM: Nicholas Sosa, Associate Planner

SUBJECT: **LOGISTICENTER AT RANCHO CORDOVA MAJOR DESIGN REVIEW – PROJECT NO. PLND-1021-0015**

PROPERTY OWNER:
DPML Bear Hollow, LLC
5500 Equity Avenue
Reno, NV 89502

APPLICANT/DEVELOPER:
Dermody Properties
George Condon
5500 Equity Avenue
Reno, NV 89502

PROJECT: Logisticenter at Rancho Cordova – Major Design Review
FILE: PLND-1021-0015
LOCATION: Corner of Bear Hollow Drive and N. Mather Boulevard
APN: 072-2360-036-0000
PLANNER: Nicholas Sosa, Associate Planner

RECOMMENDATION

There is no Staff recommendation at this time.

On April 3, 2023 City Council made a motion and directed Staff to bring back the Logisticenter project for reconsideration of their March 6, 2023 motion directing staff to prepare a Resolution with findings for denial. Staff will be seeking additional direction from Council regarding the reconsideration, including a decision on the requested motion to reconsider. If the motion to reconsider is approved by the City Council, additional direction on the Project could be made, including possible direction to Staff prepare a Resolution with findings of approval for consideration at the May 15, 2023 Council meeting. Staff also requests direction on a March 20, 2023 demand to cure or correct under government Code 54960.1.

Staff requests that the Council receive additional testimony, potentially close the public hearing, ask any questions, deliberate, and provide staff sufficiently detailed direction to prepare documents for final action at the May 15, 2023 Council Meeting based upon Council's direction.

FISCAL IMPACT OF POTENTIAL LITIGATION

The impact of potential litigation and an adverse judgement against the City in the magnitude of \$100 million from threatened Stone Creek warehouse litigation would significantly alter the City's financial position and future opportunities for the next 10-20 years. In the near term, the cost of litigation is estimated to be up to \$2 million annually. Funding litigation costs of this

magnitude will hinder the City's ability to grow and expand services to the community in next two-year budget, currently under development.

In order for the City to be able to pay judgements in the range of \$100 million, a significant portion of the City's General Fund budget would have to be redirected to the payment of this obligation over a ten to twenty year period. The magnitude of such payments could exceed \$10 million annually depending on payment duration and potential interest costs. This level of General Fund commitment would significantly impact the City's ability to not only expand, but maintain basic services including:

- Police services, including increasing patrol to meet community growth needs or maintaining the status quo with cost increases
- Technology enhancements for virtual city services resulting in better access and transparency
- Sustaining current levels of service that ensure health and life safety in the community including building services, code enforcement, and animal services
- Public Works maintenance efforts, such as street, sidewalk and pothole repair, resulting in potential failing infrastructure
- Maintaining overall staffing levels to meet current service level needs, resulting in reduced service levels

Further, the City's ability to deliver projects approved or envisioned by the City Council would be severely impacted by the potential cost of litigation and adverse judgement. Specifically, the city would need to prioritize available resources to active projects such as the Mills Crossing Civic Center, which could be delayed by this fiscal impact, slowing revitalization of Folsom Blvd. The city would also be immediately be unable to fund current, historically high priority, projects and requests:

- Rancho Cordova Parkway Interchange and Infrastructure, which will construct a new interchange at U.S. Highway 50 and a connection to White Rock Road to provide access to Anatolia, Rio Del Oro, Westborough, and provide traffic relief to Sunrise Blvd. No flexibility or bonding capacity (including rating impacts) available to expedite the new interchange or other major street projects, creating increasingly worse traffic on Sunrise Boulevard and other main arterial roads.
- Rancho Cordova Little League, the proposed project would overhaul and expand the City's existing little league complex at Ahlstrom Park with the ability to include a Junior Field co-located at Ahlstrom Park. The potential fiscal impact will limit the amount of funding available and timing of delivery of this \$18+ million project.
- Mine Shaft Proposal, which is the proposed expansion of this community-focused facility, losing a new community amenity that could provide event and performance space that is not currently available in Rancho Cordova.
- Rise Up Theater Company, a proposed capital and operating investment to construct a 99 seat live theatre by a grassroots theatre company in Rancho Cordova that would provide the community access to ongoing live theatre.
- Jobs & Talent Program (CHIPs Act), funding that would attract new corporate investment and take advantage of Solidigm and other companies using CHIPs Act funding resulting in less high wage jobs in Rancho Cordova.

The city would also be unable to move forward with potential short-term community investment projects (3-5 Years), including:

- The MACC, Phase II, which would include facility improvements to expand the art/culture opportunities in Rancho Cordova.
- Youth Center, Phase II, would build capacity on property adjacent to current Youth Center to provide additional activities and serve more youth in the community.
- Food Locker project, which would assist in the relocation and expansion of the Food Locker, limiting the number of residents that can be served who need food.
- Sacramento Children's Museum Improvements which include facility modifications to enhance the existing facility and expand programming.
- Veterans' Hall/Museum/Resource Center at the former Mather Air Force base, which would build a new facility to serve the Veteran community.
- New City Library, which would not have any local funding available to expedite the construction of a new library in Rancho Cordova.

The city would not have the financial capacity to pursue or support opportunity projects, such as:

- Hospital
- Entertainment Center/District
- Indoor Track Facility
- Professional Sports Team
- Data Center Acquisition
- New Children's Museum

BROWN ACT CURE

During the direction on the Project on March 6, 2023 the Mayor clarified that the effect was to provide Staff direction to prepare findings of denial for consideration at a future City Council meeting, not to take any final action on the Project. The City received an email on March 20, 2023 claiming that this violated the Brown Act. The City believes that there was no Brown Act violation. Without any admission, this agenda item, including the scheduled motion to reconsider would correct and cure the alleged violation consistent with the Brown Act and the email of March 20, 2023. The City Attorney will provide additional assistance on this matter immediately following the reconsideration.

MAJOR DESIGN REVIEW

Project Description

The Applicant submitted an application on October 25, 2021, for a 155,040 square foot shell building called Logisticcenter at Rancho Cordova which includes a loading dock area, commercial parking, and additional site improvements located at the intersection of Bear Hollow Drive and N. Mather Boulevard. The project site is zoned Business and Professional Office (BP) within the Zinfandel Special Planning Area (VOZSPA) and is surrounded by other office and industrial zones as shown in **Figure 1** and listed in **Table 1** below.

Figure 1: Project Location



Table 1: Surrounding Designations and Existing Uses

Location	Existing Use	General Plan Designation	Zoning Designation
Subject Site	Undeveloped lot	Office Mixed Use (OMU)	Business Professional Zinfandel Special Planning Area (BP VOZSPA)
Northwest	California Military Department Consolidated Headquarters	Office Mixed Use (OMU)	Business Professional Zinfandel Special Planning Area (BP VOZSPA)
Northeast	Undeveloped Lot	Office Mixed Use (OMU)	Business Professional Zinfandel Special Planning Area (BP VOZSPA)
South	Mather Air Force Base (County) / Detention Basin	Airport (County) / Open Space	Mather Airport (County) and Open Space Zinfandel Special Planning Area (O VOZSPA)

General Plan Consistency

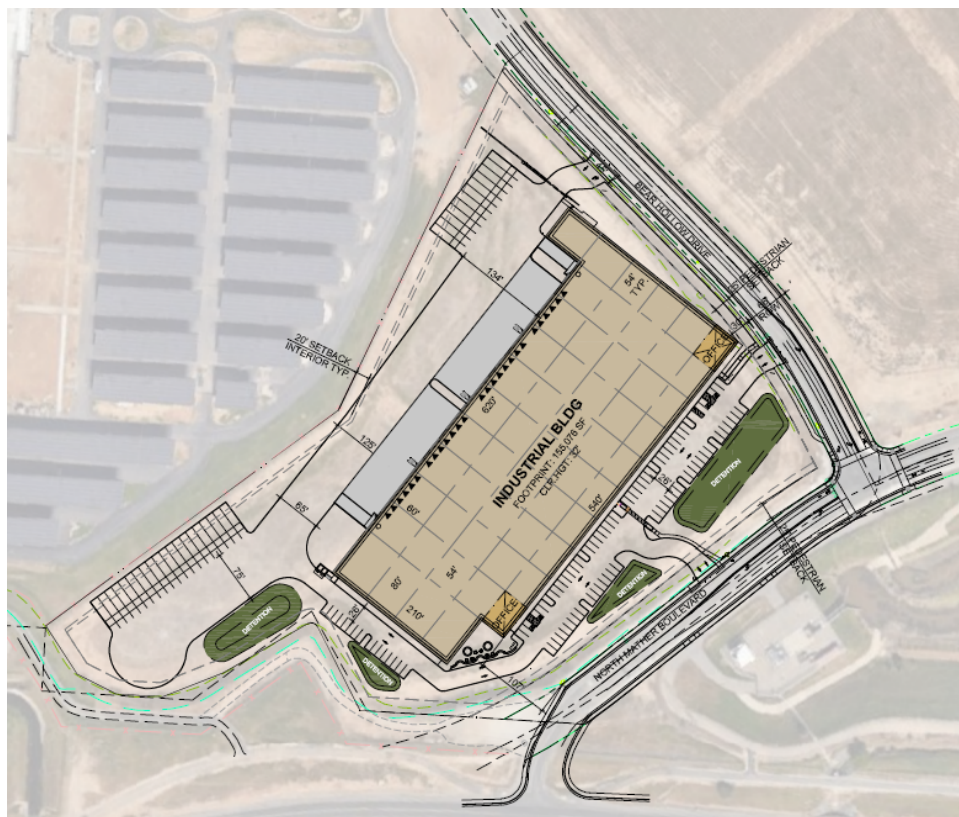
The project site is located within the Office Mixed Use (OMU) designation of the City's General Plan. The General Plan compares the OMU designation to zoning designations such as Office Professional Mixed Use (OPMU) and Office Industrial Mixed Use (OIMU) within the City's Municipal Code. The proposed shell industrial building would be consistent with structures and uses allowed within the OIMU and compatible with future buildings within the same General Plan designation.

Zoning Consistency

The project is located within the Villages of Zinfandel Special Planning Area (VOZSPA) and is zoned Business and Professional Office (BP) which is consistent with the above OMU General

Site Design

Figure 2: Proposed Site Plan



City Council Staff Report – Page 5 of 14

entrance to the north which also includes a 12-foot screening wall and gate that will be closed outside of business hours.

Building Design

The project proposes a flat roof concrete building built at a 40-foot maximum height. The design includes two main entrances with tower features and storefront facades, highlighted by additional second story glass windows, canopies and variation in color and materials. The front and side elevations also provide an accent gray color with highlights of blue and windows to help create visual interest along such a large expansive façade. The rear elevation is less visible from the public right of way as it includes the loading dock area complete with 29 roll up doors, however this façade continues to provide an accent gray color as well as additional highlights of blue (**See Figure 3 to Figure 6 for building elevations**). All elevations provide parapet variations ranging from 40 feet to 37 feet through the façade to relieve the façade of long linear rooflines and the help break up large blank walls.

Figure 3: Propose Building Elevations



The applicant has provided elevations and renderings that portray the design elevations that are detailed in the above section as well as a detailed image of the proposed landscaping at time of installation and 6-10 years from now. These renderings can be seen in **Figures 4-6** below.

Figure 4: Visibility from N. Mather Blvd & Bear Hollow Drive



Figure 5: Visibility at Southeast Corner Close Up





Figure 6: Visibility from Bear Hollow Drive





Site Landscaping

The project already includes a 12-foot screen wall at this location, however, rather than increase the height of the wall even higher and creating additional massing, the project proposed a more natural landscape screening of trees and shrubs that would minimize visibility of the truck area in the rear at approximately 10 years in the future. Concerns were raised in regard to the size of the landscaping and the time that would be required for the landscaping to complete its intended purpose of screening the loading dock area and commercial truck parking area at the north end of the property. To prioritize the screening effect of the landscaping and ensure the screening takes place as soon as possible, the Applicant has modified the proposed species of the trees and has also increased the initial proposed sizes of the trees and density of the plantings to speed up the screening ability of the landscaping. See **Figure 7** for tree sizing and location and **Figure 8** for colored landscape plan.

Figure 7: Landscape Tree Size Map

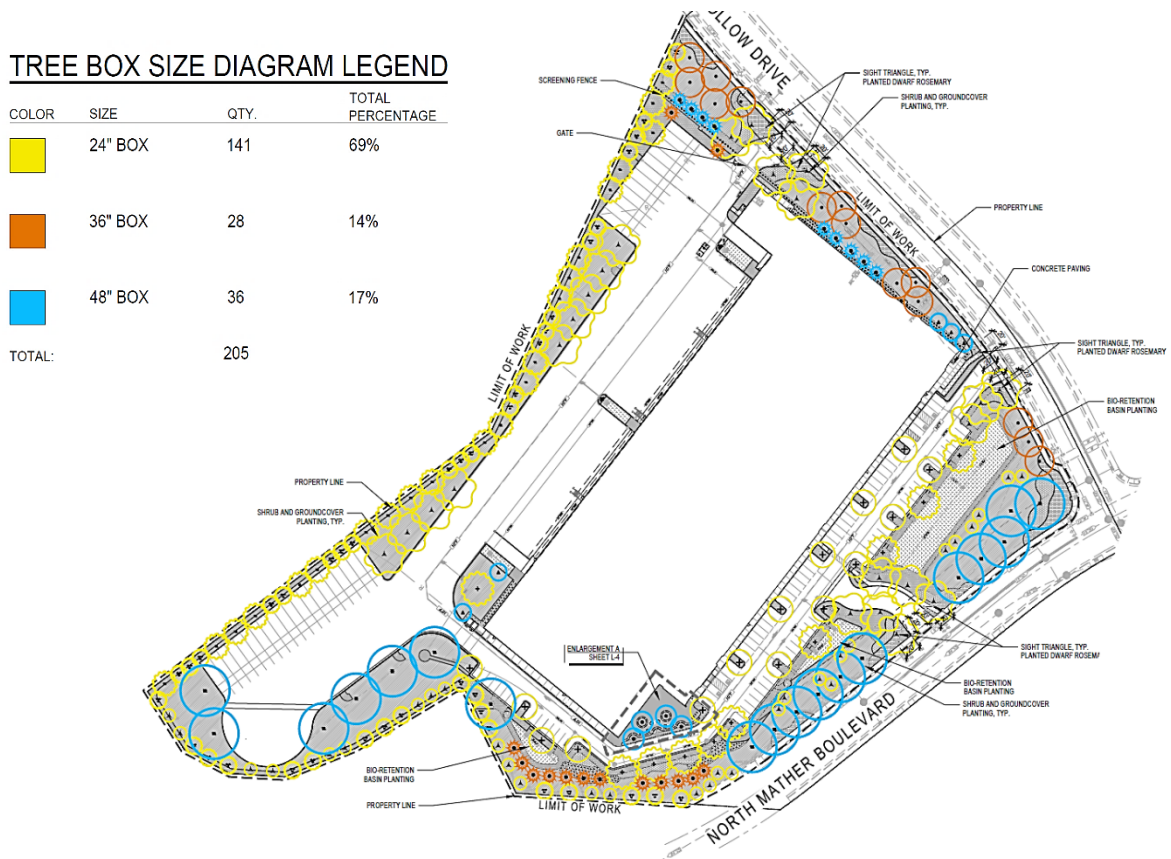


Figure 8: Colored Landscape Plan



The Applicant has worked with the City's Arborist to determine the best species of trees as well as the most appropriate number of trees throughout the site that would result with the desired outcome while still maintaining the necessary growth spacing and separation.

There is a total of thirty-six, 48-inch box trees placed strategically in areas that would require the most screening such as along public rights of way and the existing bike trail to the southwest of the site. Other proposed trees include twenty-eight, 36-inch box trees and one-hundred forty-one, 24-inch box trees. These trees have been added in areas that are unable to accommodate a 48-inch box tree and areas that would increase the overall density of the landscaping to provide a thorough screening. In speaking with the City Arborist, the proposed density of trees shown in **Figure 7** would be the maximum that the site would be able to accommodate with minimal overcrowding of canopies. Overcrowding can lead to several future concerns that could hinder the performance of the tree. The City's Arborist has listed a few of those potential issues below.

- Trees planted too close together can result in narrow misshapen canopies with weak branching and poorly tapered trunks as the trees are not receiving enough sunlight. Long-term survival is much less likely for weakened trees
- There is more competition for available water and nutrients and many of the trees are likely to grow slower and possibly fail to thrive.
- Overcrowded trees are more prone to pests and diseases. Poor air circulation from crowded canopies favors fungal diseases such as powdery mildew. Aphid and mite infestations are also common in crowded conditions. The 23 proposed London Plane trees are very susceptible to all of these pests and diseases. During the building permit process, staff will work with the landscape architect to replace London Plane tree with a comparable tree less susceptible to pests and disease.

The diagram shown in **Figure 7** portrays the largest possible trees on-site as well as the largest number of trees possible (a total of 205, most of which are evergreen) without overcrowding the site. The Applicant has also provided updated renderings showing what the proposed landscaping would look like at installation as well as 10 years into the future (**See Figures 4 through 6**)

Traffic Improvements

Trip generation for this site is estimated by KD Anderson & Associates to be 217 to 755 trips per day depending on the ultimate use of the site. Peak hours are estimated to be up to 115 trips in the morning hour and 101 trips in the afternoon hour. Of the daily trips, it is estimated that 34 to 93 will be trucks.

The site is conditioned and designed to direct truck trips to US-50 via two routes:

- North Mather to Zinfandel Drive then US-50.
- North Mather to Mather, Femoyer, International, Mather Field Road then US-50.

In their existing state, traffic on these routes is generally free flowing except during peak hours in the vicinity of interchanges (approaching freeway 50 north of White Rock on Zinfandel, and north of Rockingham on Mather Field). Congestion in the vicinity of urban interchanges is common in the region and state.

Light industrial uses generate less trips than office/residential/retail use and their trips are spread throughout the day (trip generation from light industrial is about 50% of that generated by office). Therefore, warehouse/light industrial uses contribute less to congestion than other uses. Additional traffic from the proposed project is not projected to significantly change the level of service on these roads in the short or long term. And the estimated trip generations are consistent with assumptions of the Villages of Zinfandel Special Planning Area.

Truck traffic results in greater wear on roads compared to passenger vehicle traffic. The project is conditioned to annex into the City's community facilities district for street and lighting maintenance, including a load factor to account for truck trips. The estimated tax for fair-share street and lighting maintenance at this site is approximately \$10,500 per year.

Design elements incorporated into the project include an angled driveway that directs trucks south on Bear Hollow directly to North Mather. And the project is conditioned to construct bulb-outs at the intersection of Bear Hollow with Air Park, Robola and Auvernat. The proposed bulb-outs will narrow the road resulting in further deterrent to trucks driving this corridor, reduced speeds for all vehicles, and greater protection for pedestrians.

In addition to the site-specific analysis, staff analyzed the assumptions of the 2002 environmental impact report relative to current traffic models and development that has occurred through 2022. Staff findings are that the actual development being realized for existing, proposed, and planned developments in the SPA is lower than what was identified in 2002 planning documents. Roadways were planned and built to accommodate traffic based on the projections in 2002. With the lower regional, area, and project specific trip generations, it is expected that there will be sufficient roadway capacity. The interchanges with US 50 have existing peak hour congestion which is expected to continue into the future. These changes in realized development are lessening the expected future deficiencies at interchanges relative to projections in the 2002 environmental impact report.

General Plan Consistency

The project site is located within the Office Mixed Use (OMU) designation of the City's General Plan. The General Plan compares the OMU designation to zoning designations such as Office Professional Mixed Use (OPMU) and Office Industrial Mixed Use (OIMU) within the City's Municipal Code. The proposed shell industrial building would be consistent with structures and uses allowed within the OIMU and compatible with future buildings within the same General Plan designation.

Zoning Consistency

The project is located within the Villages of Zinfandel Special Planning Area (VOZSPA) and is zoned Business and Professional Office (BP) which is consistent with the above OMU General Plan designation. The BP zone refers to the allowable uses and standards provided within the commercial land use table within the Sacramento County Zoning Code and includes uses allowed within the BP designation as well as the MP land use designation. The proposed project has been submitted as a shell industrial building and therefore has been considered to be "wholesaling and warehousing" at this time which is allowed by right at this location. Future tenants outside of wholesaling and warehousing will require additional review to determine if the use is allowable by right or if an additional use permit is required.

ENVIRONMENTAL

The Logisticcenter at Rancho Cordova Major Design Review is exempt from CEQA review under CEQA State Guidelines Section 15183. This exempts from CEQA projects that are consistent with the development density established by existing zoning, community plan, or general plan policies for which an Environmental Impact Report (EIR) was certified, except as might be necessary to examine whether there are project-specific significant effects which are peculiar to the project or its site and which were not addressed as significant effects in the prior EIR, or which substantial new information shows will be more significant than described in the prior EIR. The project is located within the Villages of Zinfandel Special Planning Area (VOZSPA). An EIR was certified by the Sacramento County Board of Supervisors in 1998 for the VOZSPA. Additionally, a Supplemental EIR was prepared and certified by the Sacramento County Board of Supervisors in 2002 for the plan area.

The Logisticcenter at Rancho Cordova Major Design Review involves development of a 155,040 square foot industrial shell building with parking and loading docks. The development also includes landscaping, drainage, and required screening/fencing for a loading dock area. The business and professional park (BP) site was identified in the Villages of Zinfandel Special Planning Area EIR and uses contemplated within the BP designation include those uses listed in the Sacramento County Zoning Code under the BP and MP (Industrial Office Park) use tables located in Chapter 25 and Chapter 30. Warehousing is a permitted by right use as listed in Table IV I.3.

Additional supplemental technical studies were prepared to further support that no additional project related impacts would occur as a result of the proposed project. These technical studies include additional traffic analysis, as well as a noise study. The traffic analysis results were summarized under the Traffic Improvements section of the December 5, 2022 staff report. The noise study that was completed concluded that noise levels associated with the project generated on-site operations would satisfy the General Plan noise criteria at the nearest existing residential uses. This is due in part to existing solid noise barriers in the vicinity, as well as overall on-site operational practices.

As this Major Design Review is consistent with the Special Planning Area and the environmental documentation prepared for the Special Planning Area, it is exempt from CEQA review. So long as the project does not have any project-specific significant effects peculiar to the Major Design Review and not identified in the previous environmental documentation, the project is exempt and no additional environmental document pursuant to CEQA is required.

The project applicant is requesting approval of a Major Design Review for the proposed project. Additionally, under CEQA, the City lacks the discretion under the Major Design Review approval process to consider environmental effects not related to the design of the Project, including, but not limited to human health impacts from toxic air contaminants, greenhouse gas emissions, and impacts of biological resources.

RECOMMENDED MOTIONS

Upon conclusion of the presentation and public testimony, City Council could do one of the following:

1. Motion to reconsider March 6, 2023 direction and alleged action.
2. Direct staff to return at a later City Council meeting with final action documents.

3. Direct the applicant to make additional modifications to the proposed project.

ATTACHMENT(S)

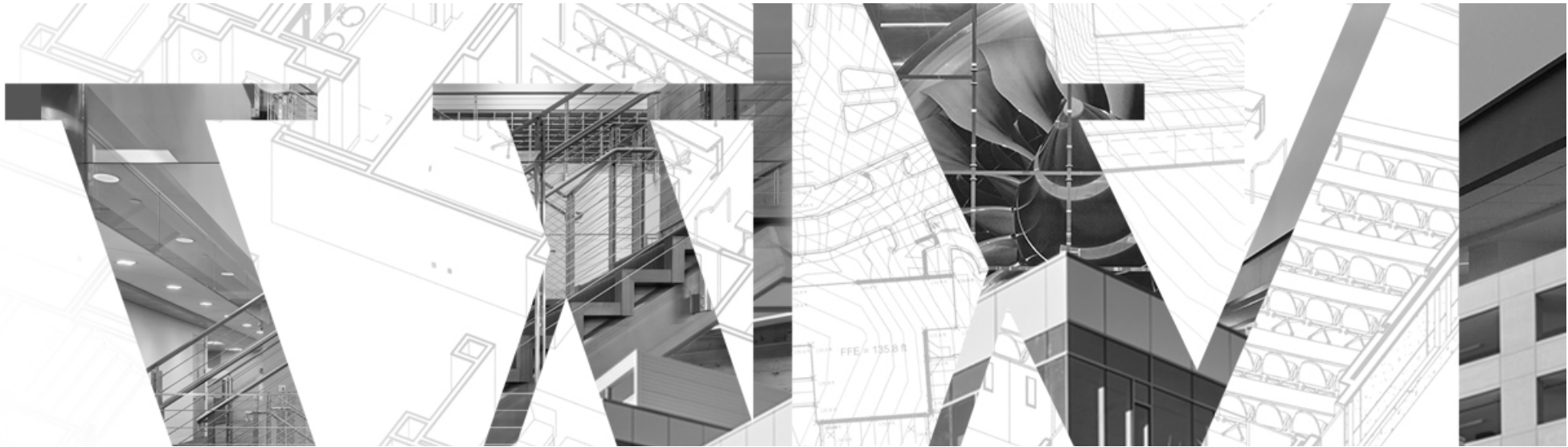
1. Project Plans
2. Presentation
3. Miller Starr Regalia Letter dated March 20, 2023
4. Law offices of Gloria D. Smith letter dated March 30, 2023



**LOGISTIC CENTER AT
RANCHO CORDOVA**

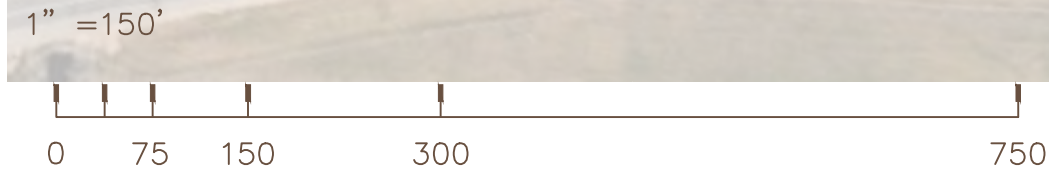
RANCHO CORDOVA, CA

CONCEPTUAL DESIGN
SNR21-0064-00
10.03.2022





PROJECT DATA:			DEVELOPMENT STANDARDS:	
SITE AREA:			ZONING:	
GROSS:			BP(ZSPA)	
			MAX. BLDG. HT.:	
			40 FT	
DETENTION:			BUILDING SETBACKS:	
NET:			FRONT:	
			25 FT	
			SIDE:	
			20 FT	
			REAR:	
			25 FT	
BUILDING FOOTPRINT:			LANDSCAPE SETBACKS:	
BUILDING USE:			FRONT:	
WAREHOUSE			10 FT	
OFFICE				
COVERAGE:			LANDSCAPE REQ.:	
GROSS:				
NET:				
PARKING REQUIRED:			OFF-STREET PARKING:	
WAREHOUSE			STANDARD:	
OFFICE			9X19	
TOTAL			COMPACT:	
			8X16	
PARKING PROVIDED:			COMPACT %:	
AUTO:			25%	
			DRIVE AISLE:	
			25 FT	
			OVERHANG:	
			2 FT	
			TREE WELL:	
			5 FT	
TRUCK DOCKS:			REQ. PARKING RATIO BY USE:	
▲ DOCK-HIGH DOORS			27	
○ GRADE-LEVEL DOORS			2	
			WAREHOUSE:	
			0.5/1000	
			MANUF.:	
			1.6/1000	
			OFFICE:	
			3/1000 SF	



This conceptual design is based upon a preliminary review of entitlement requirements and on unverified and possibly incomplete site and/or building information, and is intended merely to assist in exploring how the project might be developed. Signage shown is for illustrative purposes only and does not necessarily reflect municipal code compliance. All colors shown are for representative purposes only. Refer to material samples for actual color verification.

CONCEPTUAL SITE PLAN

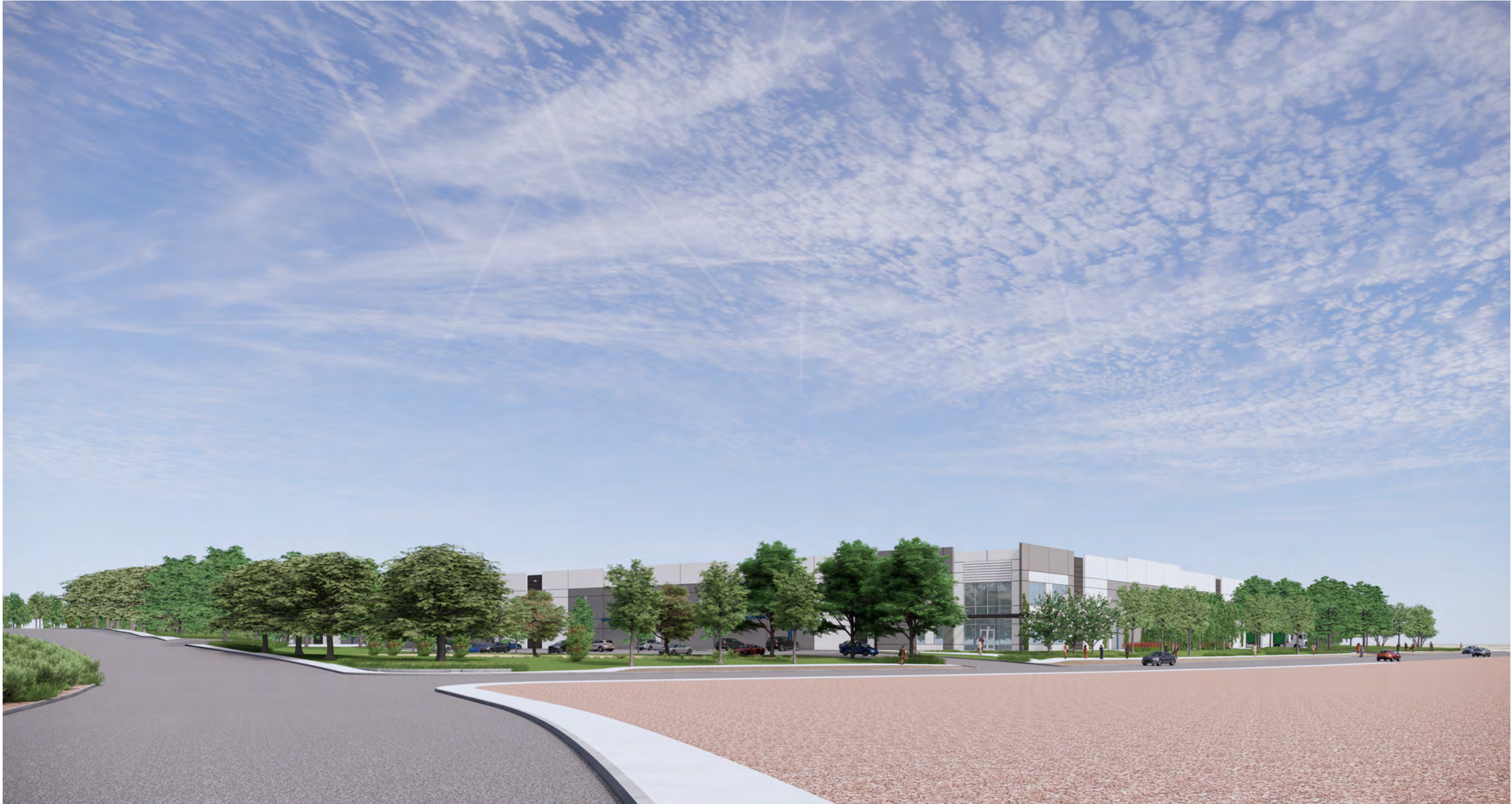
LOGISTIC CENTER AT RANCHO CORDOVA
RANCHO CORDOVA, CA- SNR21-0064-00

WARE MALCOMB

10.03.2022

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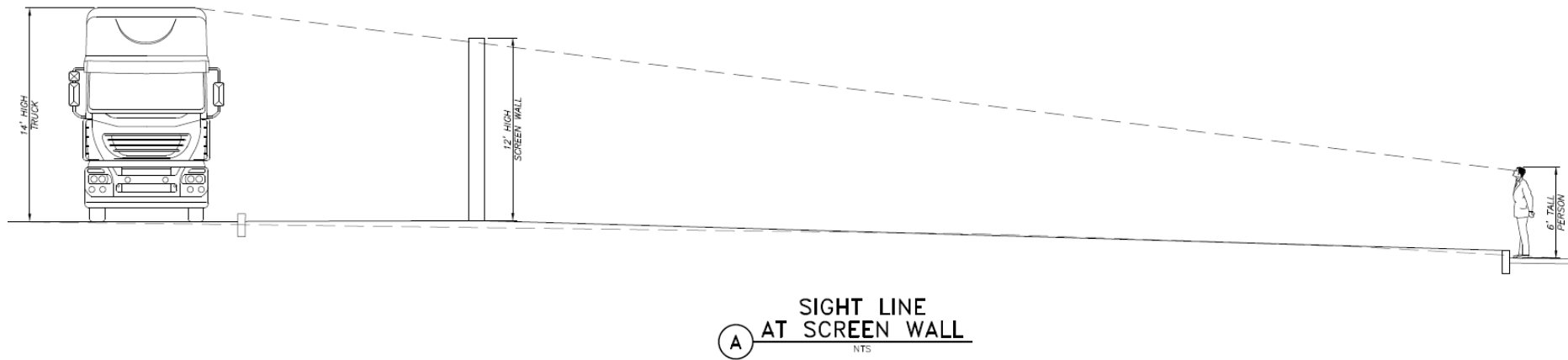
Revised Bear Hollow Rendering



Final Bear Hollow Drive Rendering



Bear Hollow Drive





EAST ELEVATION



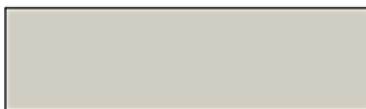
NORTH ELEVATION



WEST ELEVATION



SOUTH ELEVATION



1 SHERWIN WILLIAMS SW 7009
PEARLY WHITE



2 SHERWIN WILLIAMS SW 2849
WESTCHESTER GRAY



3 SHERWIN WILLIAMS SW 7069
IRON ORE



4 SHERWIN WILLIAMS SW 6804
DIGNITY BLUE

WARE MALCOMB

ITEM 18.1.



ATTACHMENT 1

View from Queens Arbor at elementary school



ITEM 18.1.



View from Portico Circle along vacant site

ATTACHMENT 1



TREE LEGEND - SUNSET ZONE 14

SYMBOLS	BOTANIC NAME	COMMON NAME	SIZE	SPACING	QTY.	WUCOLS	MATURE SIZE	REMARKS
	CALOCEDRUS DECURRENS	CALIFORNIA INCENSE CEDAR	36" BOX 48" BOX	PER PLAN	14 9	MODERATE	15' W X 50' H	EVERGREEN, STANDARD
	LAGERSTROEMIA INDICA 'NATCHEZ'	NATCHEZ CRAPE MYRTLE	48" BOX	PER PLAN	5	LOW	20' W X 25' H	DECIDUOUS, MULTI-TRUNK
	LAURUS NOBILIS	SWEET BAY	24" BOX	PER PLAN	41	LOW	20' W X 12' H	EVERGREEN, LOW BRANCHING
	OLEA EUROPAEA 'SWAN HILL'	SWAN HILL OLIVE	48" BOX	PER PLAN	4	VERY LOW	25' W X 40' H	EVERGREEN, STANDARD
	CEDRUS DEODARA	DEODAR CEDAR	36" BOX	PER PLAN	14	LOW	35' W X 50' H	EVERGREEN, STANDARD
	QUERCUS VIRGINIANA	SOUTHERN LIVE OAK	48" BOX	PER PLAN	18	LOW	60' W X 70' H	EVERGREEN, STANDARD
	ULMUS PARVIFOLIA 'TRUE GREEN'	TRUE GREEN CHINESE ELM	24" BOX	PER PLAN	10	MODERATE	40' W X 50' H	DECIDUOUS, STANDARD
	PLATANUS ACERIFOLIA	LONDON PLANE	24" BOX	PER PLAN	23	MODERATE	50' W X 80' H	DECIDUOUS, STANDARD
	ARBUTUS 'MARINA'	MARINA STRAWBERRY TREE	24" BOX	PER PLAN	22	LOW	35' W X 40' H	EVERGREEN, LOW BRANCHING
	PISTACIA CHINENSIS	CHINESE PISTACHE	24" BOX	PER PLAN	15	LOW	30' W X 35' H	DECIDUOUS, STANDARD
	HETEROMELES ARBUTIFOLIA	TOYON	24" BOX	PER PLAN	30	VERY LOW	15' W X 20' H	EVERGREEN, STANDARD

SHRUB LEGEND - SUNSET ZONE 14

SYMBOLS	BOTANIC NAME	COMMON NAME	SIZE	SPACING	QTY.	WUCOLS	MATURE SIZE
	RHAMNUS CALIFORNICA	CALIFORNIA COFFEEBERRY	5 GAL.	PER PLAN	168	MODERATE	6' W X 10' H
	DIETES IRIDIODES	FORTNIGHT LILY	5 GAL.	30" O.C.	1201	LOW	2' W X 2' H
	MYRTUS COMMUNIS 'COMPACTA'	DWARF MYRTLE	5 GAL.	36" O.C.	3482	LOW	3' W X 3' H
	PRUNUS CAROLINIANA 'BRIGHT N TIGHT'	CAROLINA LAUREL CHERRY	5 GAL.	6' O.C.	8	LOW	6' W X 10' H
	RHAMNUS CALIFORNICA	CALIFORNIA COFFEEBERRY	15 GAL.	PER PLAN	183	MODERATE	6' W X 10' H

GROUNDCOVER LEGEND - SUNSET ZONE 14

SYMBOLS	BOTANIC NAME	COMMON NAME	SIZE	SPACING	QTY.	WUCOLS	MATURE SIZE
	ACACIA REDOLENS 'DESERT CARPET'	DESERT CARPET ACACIA	1 GAL.	5' O.C.	3946	LOW	6' W X 1' H
	ROSMARINUS OFFICINALIS 'HUNTINGTON CARPET'	HUNTINGTON CARPET ROSEMARY	1 GAL.	6' O.C.	233	LOW	6' W X 2' H

BIO-RETENTION BASINS LEGEND - SUNSET ZONE 14

SYMBOLS	BOTANIC NAME	COMMON NAME	SIZE	SPACING	QTY.	WUCOLS	MATURE SIZE
	ACACIA REDOLENS 'DESERT CARPET'	DESERT CARPET ACACIA	1 GAL.	5' O.C.	247	LOW	6' W X 1' H
	ARCTOSTAPHYLOS DENSIFLORA 'HOWARD MCMINN'	MCMINN MANZANITA	5 GAL.	6' O.C.	42	LOW	6' W X 6' H
	BACCHARIS PILULARIS	COYOTE BUSH	1 GAL.	6' O.C.	107	LOW	6' W X 2' H
	CAREX DIVULSA	EUROPEAN GREY SEDGE	1 GAL.	24" O.C.	974	LOW	2' W X 2' H

SUMMARY DATA

LANDSCAPE AREA: 148,193 S.F.

PROJECT TYPE: PRIVATE

WATER SOURCE: POTABLE

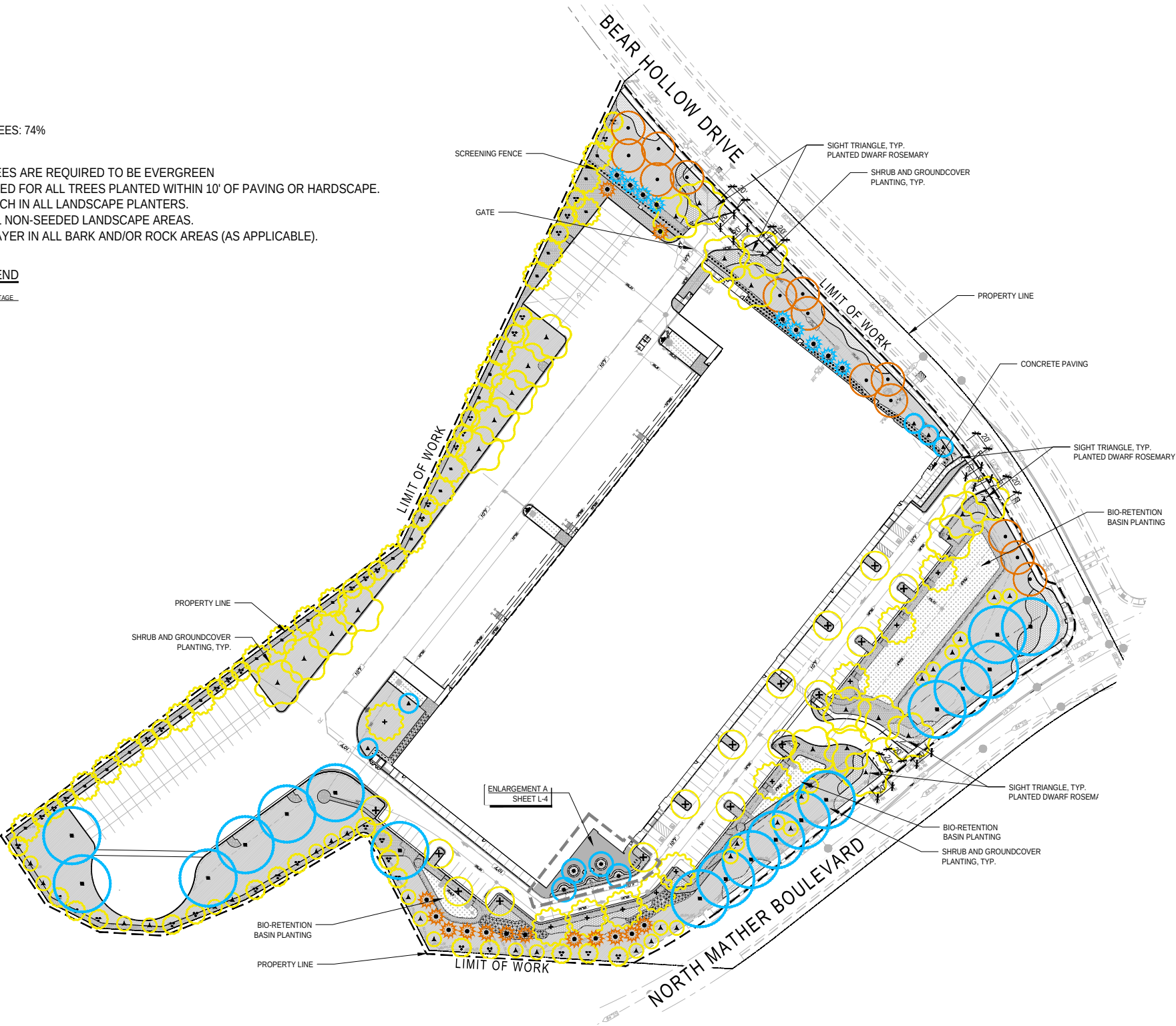
PERCENTAGE OF EVERGREEN TREES: 74%

NOTES:

- OVER 30% OF PROPOSED TREES ARE REQUIRED TO BE EVERGREEN
- ROOT BARRIERS ARE REQUIRED FOR ALL TREES PLANTED WITHIN 10' OF PAVING OR HARDSCAPE.
- MINIMUM 3" DEPTH BARK MULCH IN ALL LANDSCAPE PLANTERS.
- APPLY PRE-EMERGENT IN ALL NON-SEEDED LANDSCAPE AREAS.
- INSTALL A WEED CONTROL LAYER IN ALL BARK AND/OR ROCK AREAS (AS APPLICABLE).

TREE BOX SIZE DIAGRAM LEGEND

COLOR	SIZE	QTY.	TOTAL PERCENTAGE
	24" BOX	141	69%
	36" BOX	28	14%
	48" BOX	36	17%
TOTAL:		205	



SCALE: NTS



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ENHANCED LANDSCAPE SCREENING @N.MATHER & BEAR HOLLOW

LOGISTIC CENTER AT RANCHO CORDOVA
RANCHO CORDOVA, CA- SNR21-0064-00

WARE MALCOMB

10.03.2022

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RSX1 LED
Area Luminaire



Specifications

EPA (lm/ft²): 0.57 ft (0.05 m²)

Length: 21.8" (55.4 cm)

Width: 13.3" (33.8 cm)

Height: 3.0" (7.6 cm) Main Body
7.2" (18.4 cm) Arm

Weight (SPA mount): 22.0 lbs (10.0 kg)

Introduction

The new RSX LED Area family delivers maximum value by providing significant energy savings, long life and outstanding photometric performance at an affordable price. The RSX1 delivers 7,000 to 17,000 lumens allowing it to replace 70W to 400W HID luminaires.

The RSX1 features an integral universal mounting mechanism that allows the luminaire to be mounted on most existing drill hole patterns. This "no-drill" solution provides significant labor savings. An easy-access door on the bottom of mounting arm allows for wiring without opening the electrical compartment. A mast arm adaptor, adjustable integral slitter and other mounting configurations are available.

Ordering Information

EXAMPLE: RSX1 LED P4 40K R3 MVOLT SPA DOBBD

Option	Description	Option	Description	Option	Description
RSX1 LED	P1	RM	3000K	R2	100" (2540mm)
	P2	RM	4000K	R3	100" (2540mm)
	P3	RM	5000K	R4	100" (2540mm)
	P4	RM	5000K	R5	100" (2540mm)
		RM	5000K	R6	100" (2540mm)
		RM	5000K	R7	100" (2540mm)
		RM	5000K	R8	100" (2540mm)
		RM	5000K	R9	100" (2540mm)
		RM	5000K	R10	100" (2540mm)
		RM	5000K	R11	100" (2540mm)
		RM	5000K	R12	100" (2540mm)
		RM	5000K	R13	100" (2540mm)
		RM	5000K	R14	100" (2540mm)
		RM	5000K	R15	100" (2540mm)
		RM	5000K	R16	100" (2540mm)
		RM	5000K	R17	100" (2540mm)
		RM	5000K	R18	100" (2540mm)
		RM	5000K	R19	100" (2540mm)
		RM	5000K	R20	100" (2540mm)
		RM	5000K	R21	100" (2540mm)
		RM	5000K	R22	100" (2540mm)
		RM	5000K	R23	100" (2540mm)
		RM	5000K	R24	100" (2540mm)
		RM	5000K	R25	100" (2540mm)
		RM	5000K	R26	100" (2540mm)
		RM	5000K	R27	100" (2540mm)
		RM	5000K	R28	100" (2540mm)
		RM	5000K	R29	100" (2540mm)
		RM	5000K	R30	100" (2540mm)
		RM	5000K	R31	100" (2540mm)
		RM	5000K	R32	100" (2540mm)
		RM	5000K	R33	100" (2540mm)
		RM	5000K	R34	100" (2540mm)
		RM	5000K	R35	100" (2540mm)
		RM	5000K	R36	100" (2540mm)
		RM	5000K	R37	100" (2540mm)
		RM	5000K	R38	100" (2540mm)
		RM	5000K	R39	100" (2540mm)
		RM	5000K	R40	100" (2540mm)
		RM	5000K	R41	100" (2540mm)
		RM	5000K	R42	100" (2540mm)
		RM	5000K	R43	100" (2540mm)
		RM	5000K	R44	100" (2540mm)
		RM	5000K	R45	100" (2540mm)
		RM	5000K	R46	100" (2540mm)
		RM	5000K	R47	100" (2540mm)
		RM	5000K	R48	100" (2540mm)
		RM	5000K	R49	100" (2540mm)
		RM	5000K	R50	100" (2540mm)
		RM	5000K	R51	100" (2540mm)
		RM	5000K	R52	100" (2540mm)
		RM	5000K	R53	100" (2540mm)
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		RM	5000K	R73	100" (2540mm)
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		RM	5000K	R75	100" (2540mm)
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		RM	5000K	R98	100" (2540mm)
		RM	5000K	R99	100" (2540mm)
		RM	5000K	R100	100" (2540mm)

Shipping Information

EXAMPLE: RSX1 LED P4 40K R3 MVOLT SPA DOBBD

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		RM	5000K	R92	100" (2540mm)
		RM	5000K	R93	100" (2540mm)
		RM	5000K	R94	100" (2540mm)
		RM	5000K	R95	100" (2540mm)
		RM	5000K	R96	100" (2540mm)
		RM	5000K	R97	100" (2540mm)
		RM	5000K	R98	100" (2540mm)
		RM	5000K	R99	100" (2540mm)
		RM	5000K	R100	100" (2540mm)

Shipping Information

EXAMPLE: RSX1 LED P4 40K R3 MVOLT SPA DOBBD

Option	Description	Option	Description	Option	Description
RSX1 LED	P1	RM	3000K	R2	100" (2540mm)
	P2	RM	4000K	R3	100" (2540mm)
	P3	RM	5000K	R4	100" (2540mm)
	P4	RM	5000K	R5	100" (2540mm)
		RM	5000K	R6	100" (2540mm)
		RM	5000K	R7	100" (2540mm)
		RM	5000K	R8	100" (2540mm)
		RM	5000K	R9	100" (2540mm)
		RM	5000K	R10	100" (2540mm)
		RM	5000K	R11	100" (2540mm)
		RM	5000K	R12	100" (2540mm)
		RM	5000K	R13	100" (2540mm)
		RM	5000K	R14	100" (2540mm)
		RM	5000K	R15	100" (2540mm)
		RM	5000K	R16	100" (2540mm)
		RM	5000K	R17	100" (2540mm)
		RM	5000K	R18	100" (2540mm)
		RM	5000K	R19	100" (2540mm)
		RM	5000K	R20	100" (2540mm)
		RM	5000K	R21	100" (2540mm)
		RM	5000K	R22	100" (2540mm)
		RM	5000K	R23	100" (2540mm)
		RM	5000K	R24	100" (2540mm)
		RM	5000K	R25	100" (2540mm)
		RM	5000K	R26	100" (2540mm)
		RM	5000K	R27	100" (2540mm)
		RM	5000K	R28	100" (2540mm)
		RM	5000K	R29	100" (2540mm)
		RM	5000K	R30	100" (2540mm)
		RM	5000K	R31	100" (2540mm)
		RM	5000K	R32	100" (2540mm)
		RM	5000K	R33	100" (2540mm)
		RM	5000K	R34	100" (2540mm)

Updated Site Plan



ITEM 18.1. Previous Landscaping Plan

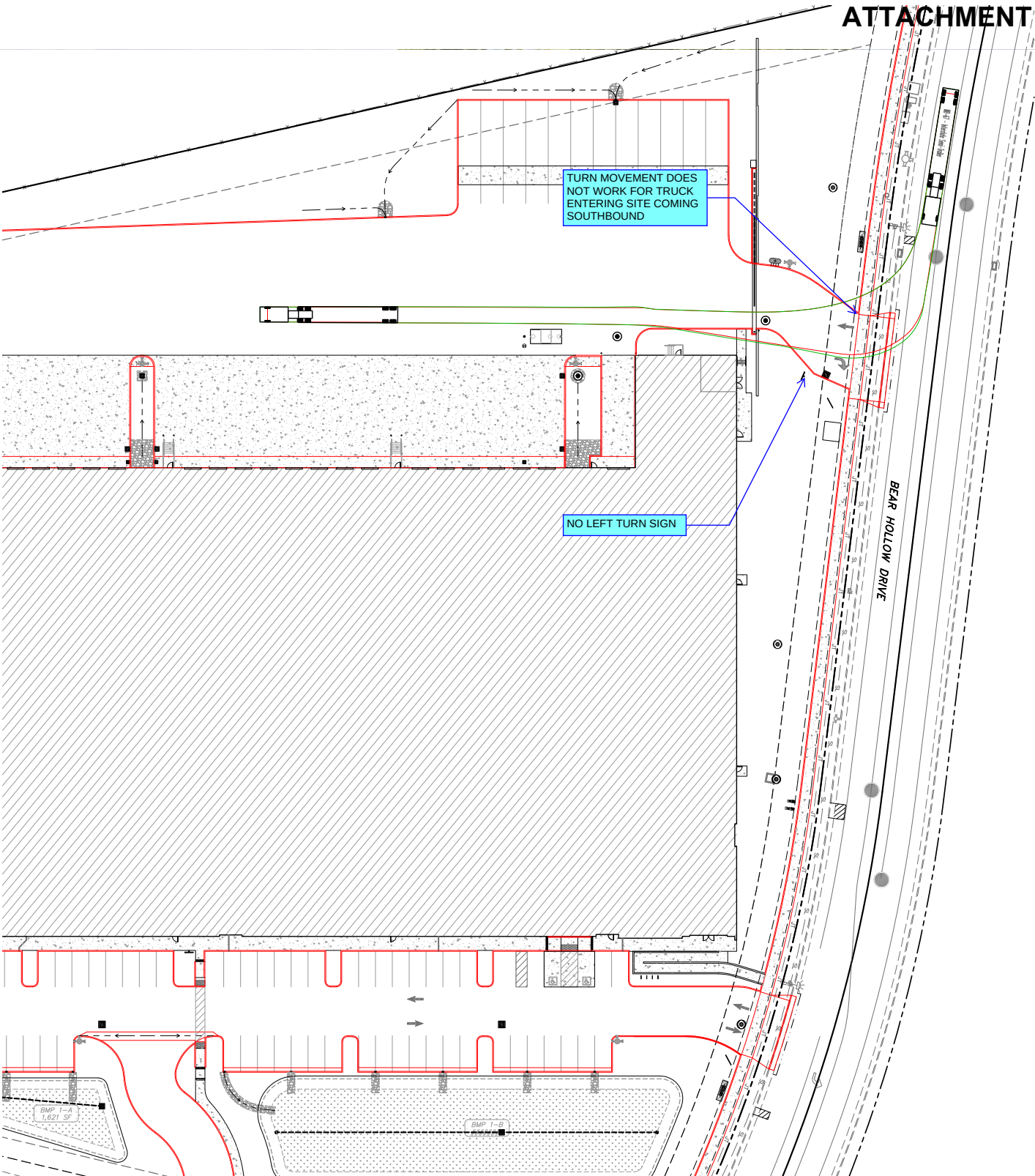
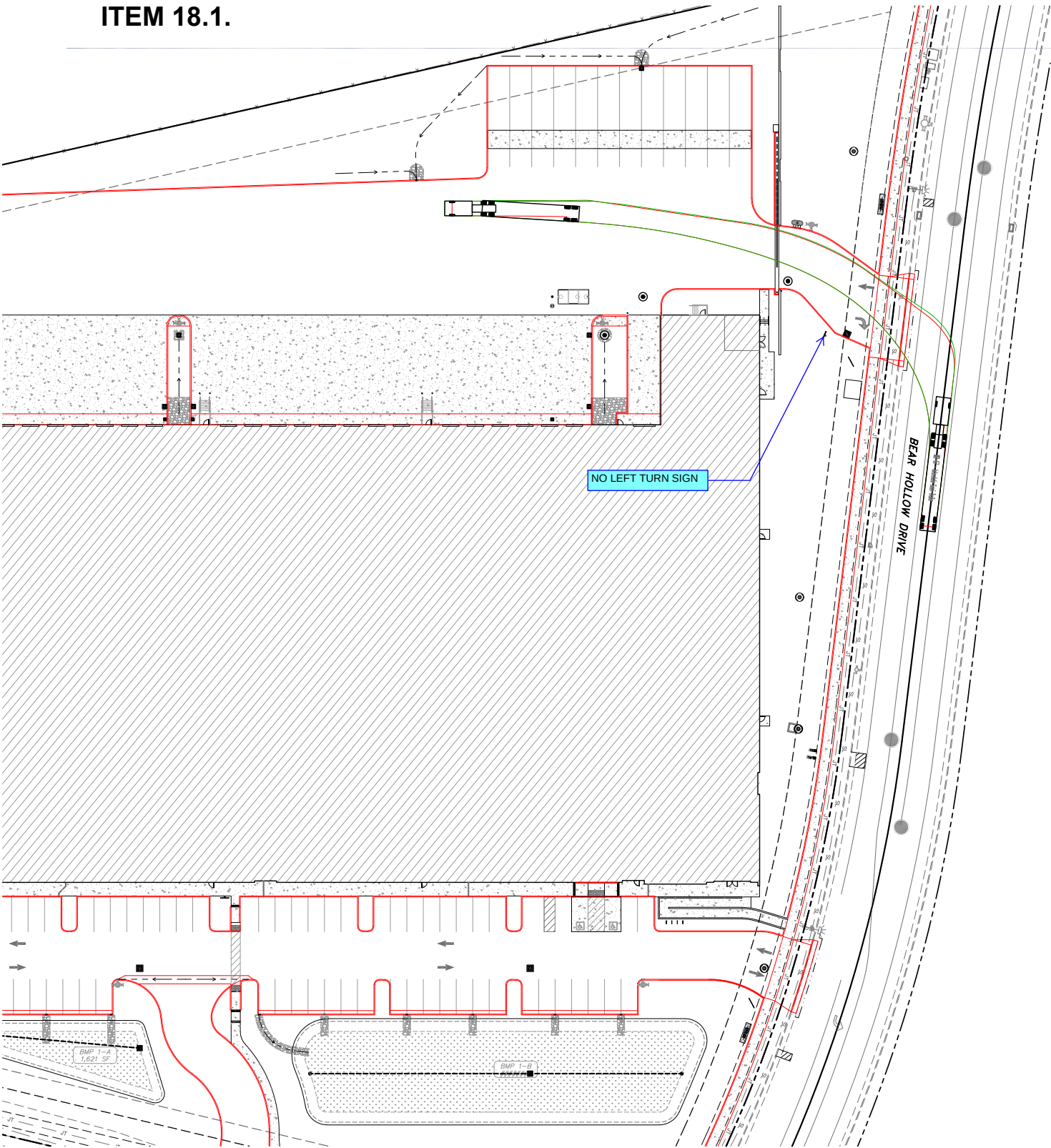


First Submittal		
Box Size	Number of trees	Diameter of all trees combined
24	157	3768
36	0	0
48	30	1440
	187	5208

ATTACHMENT 1 Current Landscaping Plan



Final Submittal			
Box Size	Number of trees	Diameter of all trees combined	% Increase
24	141	3384	-10%
36	28	1008	
48	36	1728	20%
	205	6120	18%



TRUCK TURN MOVEMENT - NORTHBOUND INGRESS

TRUCK TURN MOVEMENT - SOUTHBOUND INGRESS



This conceptual design is based upon a preliminary review of entitlement requirements and on unverified and possibly incomplete site and/or building information, and is intended merely to assist in exploring how the project might be developed. Signage shown is for illustrative purposes only and does not necessarily reflect municipal code compliance. All colors shown are for representative purposes only. Refer to material samples for actual color verification.

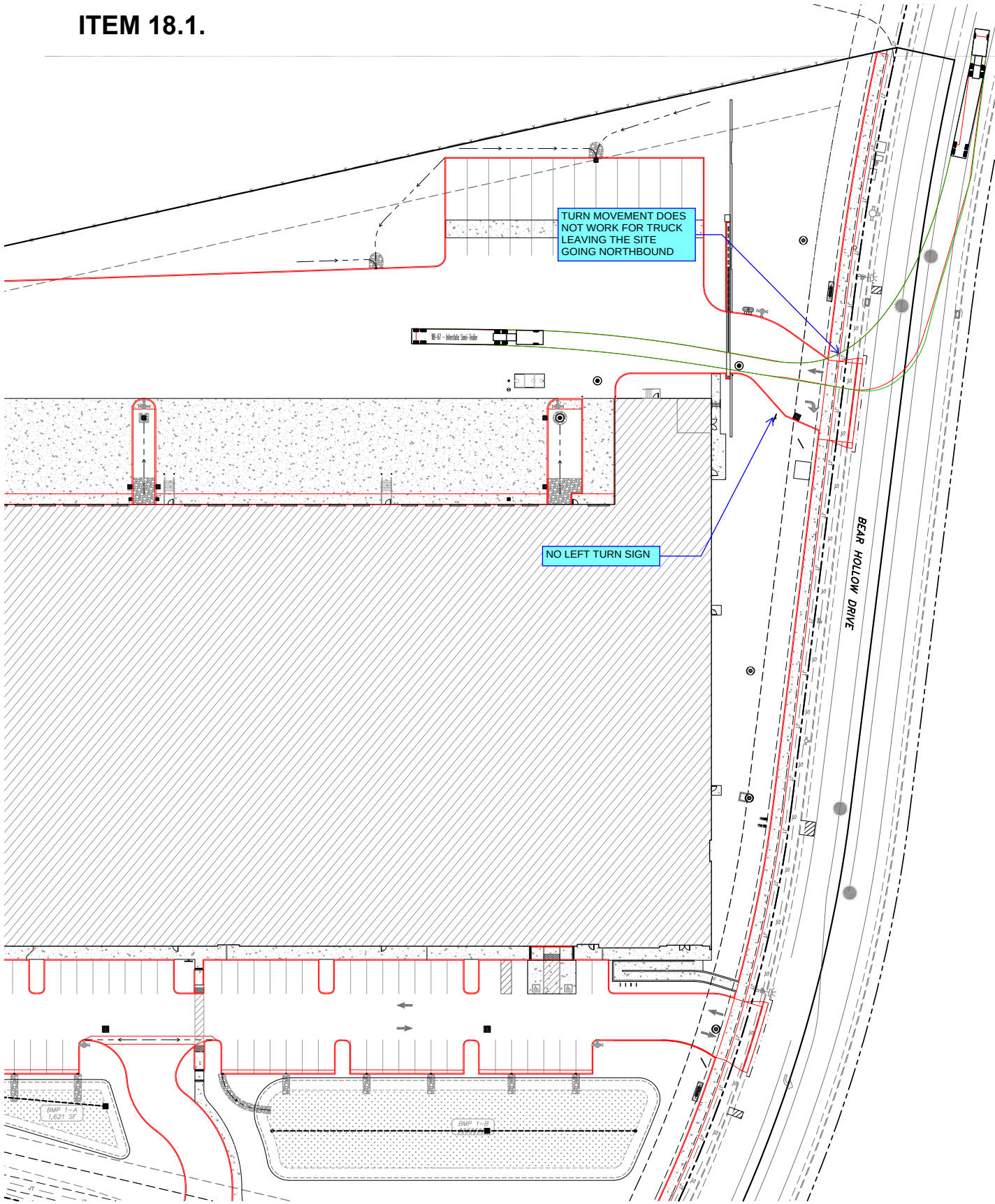
TRUCK TURNING DIAGRAMS - BEAR HOLLOW TRUCK COURT ENTRANCE

LOGISTIC CENTER AT RANCHO CORDOVA
RANCHO CORDOVA, CA- SNR21-0064-00

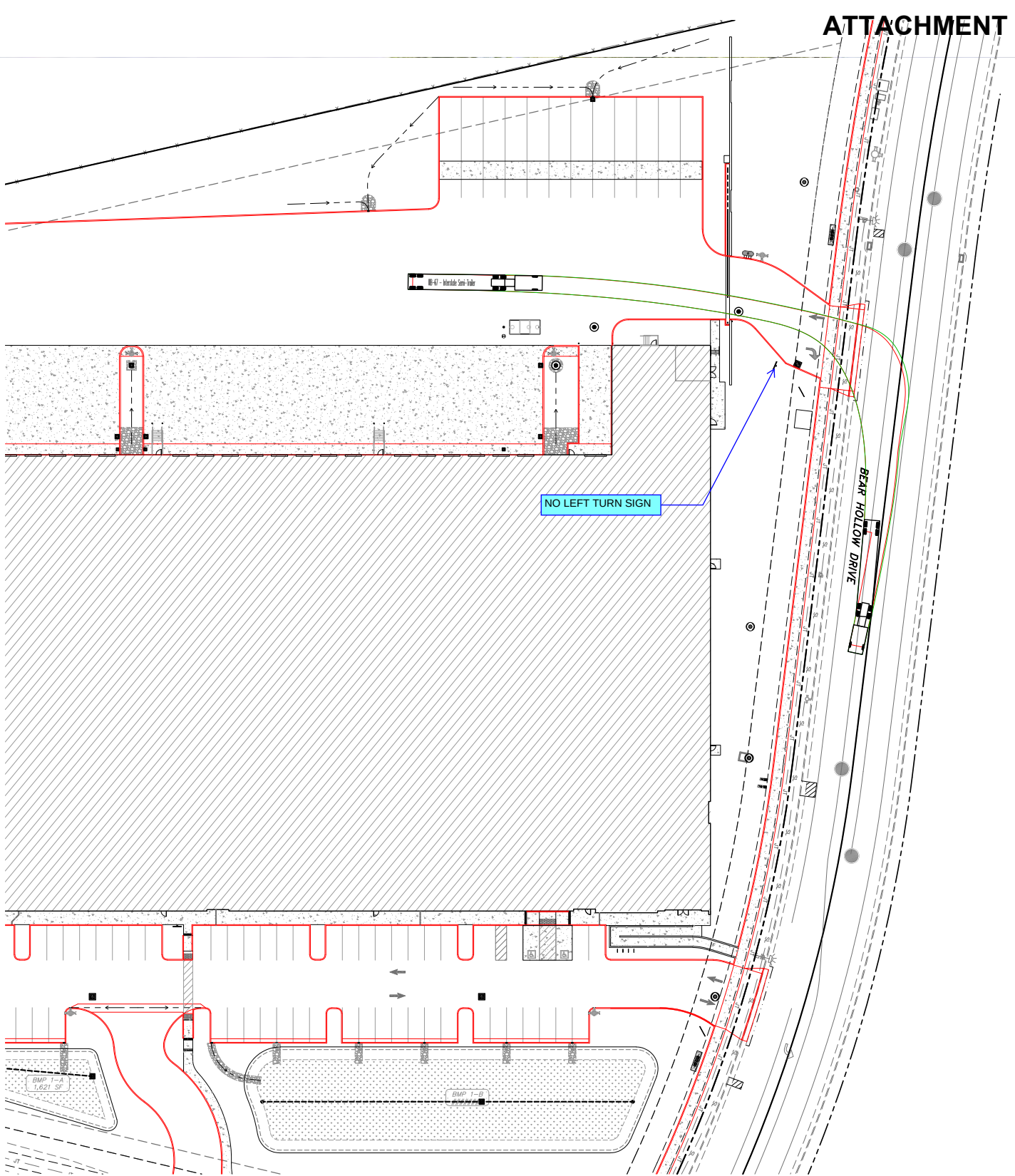
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13



TRUCK TURN MOVEMENT - NORTHBOUND EGRESS



TRUCK TURN MOVEMENT - SOUTHBOUND EGRESS

Environmental Noise Assessment

Logistic Center

Rancho Cordova, California

BAC Job # 2021-192

Prepared For:

DPML Bear Hollow, LLC.

Attn: Shelagh Danna
5500 Equity Avenue
Reno, NV 89502

Prepared By:

Bollard Acoustical Consultants, Inc.



Dario Gotchet, Principal Consultant

January 26, 2022



Introduction

The Logistic Center is located north of Mather Boulevard and west of Bear Hollow Drive in the City of Rancho Cordova, California. The project consists of the development of an industrial building (approximately 155,000 ft²) containing warehouse and office uses, and associated parking. The location of the project site with aerial imagery is shown in Figure 1. The project conceptual site plan is presented as Figure 2.

Due to the potential for elevated project-generated on-site operations noise levels at nearby residential uses, Bollard Acoustical Consultants, Inc. (BAC) was retained to prepare this noise assessment. Specifically, the purposes of this assessment are to quantify noise levels associated with project on-site industrial operations, to assess the state of compliance of those noise levels with applicable City of Rancho Cordova noise standards, and if necessary, to recommend measures to reduce those noise levels to acceptable limits.

Noise Fundamentals and Terminology

Noise is often described as unwanted sound. Sound is defined as any pressure variation in air that the human ear can detect. If the pressure variations occur frequently enough (at least 20 times per second), they can be heard, and thus are called sound. Measuring sound directly in terms of pressure would require a very large and awkward range of numbers. To avoid this, the decibel scale was devised. The decibel scale allows a million-fold increase in pressure to be expressed as 120 dB. Another useful aspect of the decibel scale is that changes in levels (dB) correspond closely to human perception of relative loudness. Appendix A contains definitions of Acoustical Terminology. Figure 3 shows common noise levels associated with various sources.

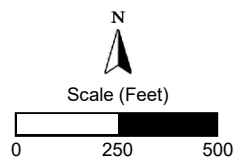
The perceived loudness of sounds is dependent upon many factors, including sound pressure level and frequency content. However, within the usual range of environmental noise levels, perception of loudness is relatively predictable, and can be approximated by weighing the frequency response of a sound level meter by means of the standardized A-weighting network. There is a strong correlation between A-weighted sound levels (expressed as dBA) and community response to noise. For this reason, the A-weighted sound level has become the standard tool of environmental noise assessment. All noise levels reported in this section are in terms of A-weighted levels in decibels.

Community noise is commonly described in terms of the “ambient” noise level, which is defined as the all-encompassing noise level associated with a given noise environment. A common statistical tool to measure the ambient noise level is the average, or equivalent, sound level (L_{eq}) over a given time period (usually one hour). The L_{eq} is the foundation of the Day-Night Average Level noise descriptor, L_{dn} or DNL, and shows very good correlation with community response to noise.



Legend

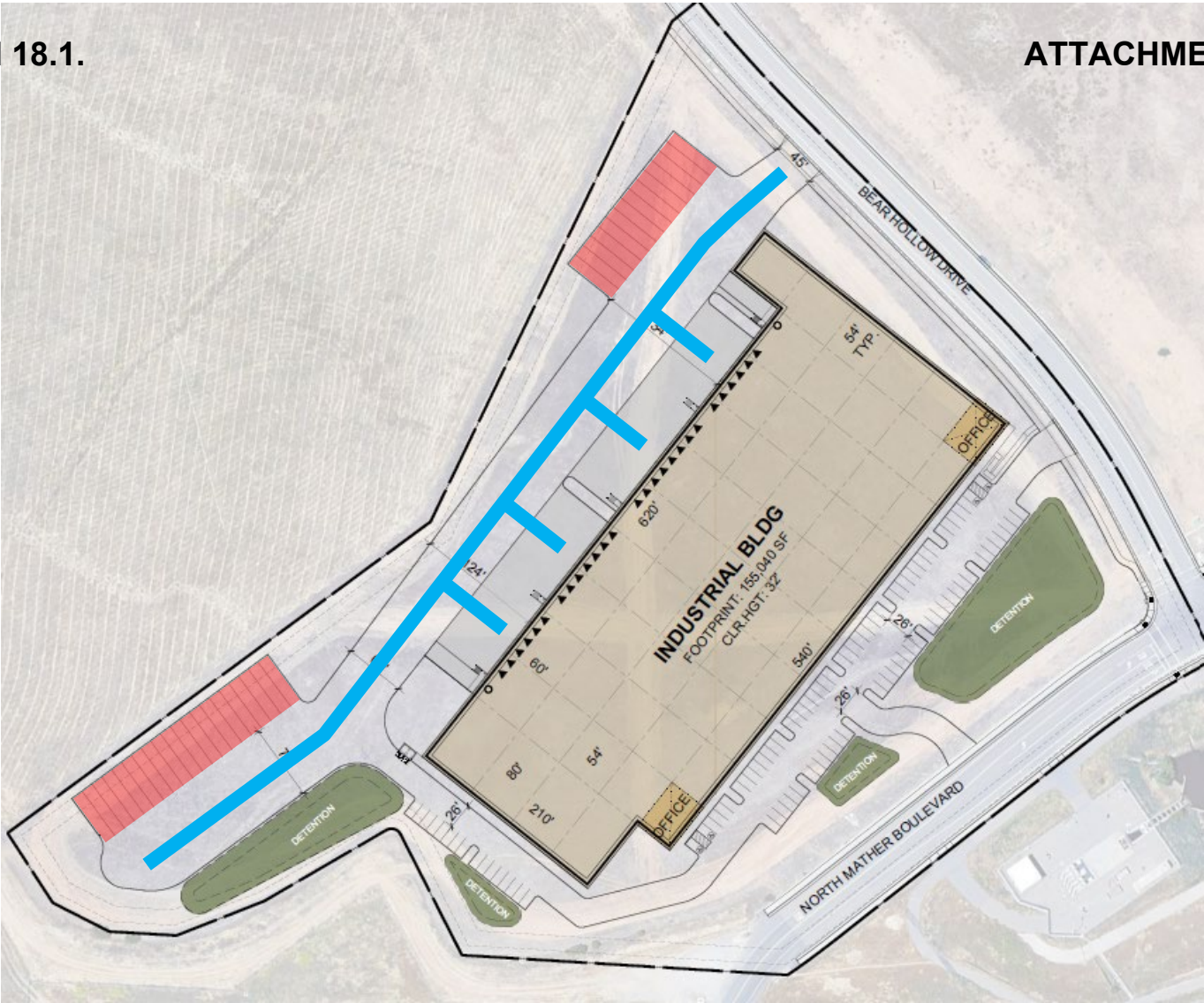
- Project Boundary (Approximate)
- Existing Solid Noise Barriers
- ▲ Long-term Noise Measurement Location
- # Existing Residential Uses



Logistic Center
Rancho Cordova, California

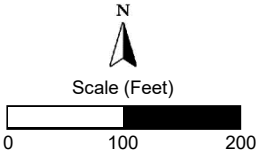
Project Area

Figure 1



Legend

-  On-Site Truck Circulation Route
-  Truck Trailer Parking Areas
-  Truck Loading Docks

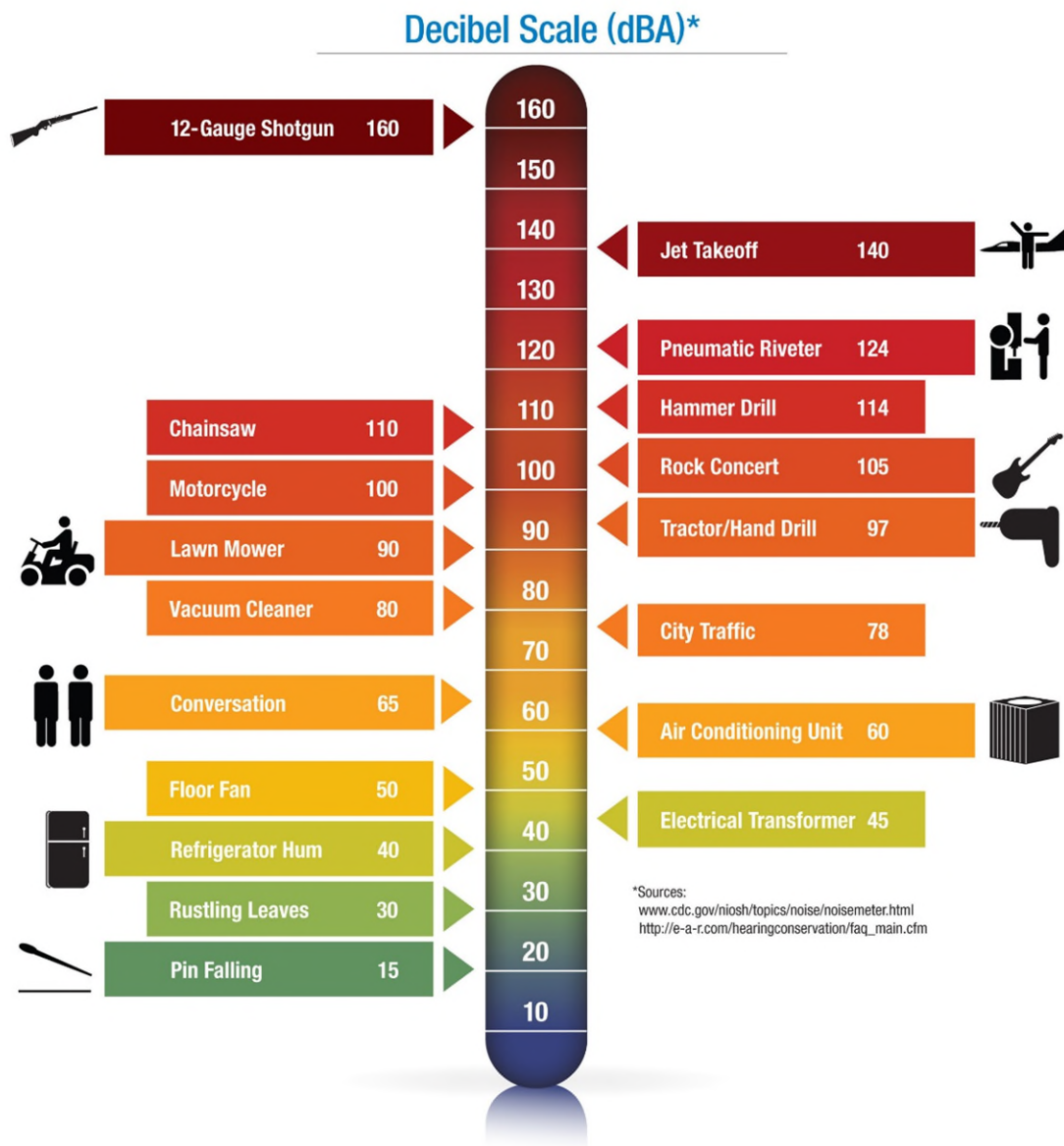


Logistic Center
Rancho Cordova, California

Conceptual Site Plan

Figure 2

Figure 3
Noise Levels Associated with Common Noise Sources



DNL is based upon the average noise level over a 24-hour day, with a +10-decibel weighting applied to noise occurring during nighttime (10:00 p.m. to 7:00 a.m.) hours. The nighttime penalty is based upon the assumption that people react to nighttime noise exposures as though they were twice as loud as daytime exposures. Because DNL represents a 24-hour average, it tends to disguise short-term variations in the noise environment. DNL-based noise standards are commonly used to assess noise impacts associated with traffic, railroad, and aircraft noise sources.

Criteria for Acceptable Noise Exposure

Rancho Cordova General Plan

Policies N.1.1 through N.1.4 of the Rancho Cordova Noise Element specifically pertain to noise generated by non-transportation noise sources, such as those associated with project on-site operations. Those policies, and the corresponding actions which are applied to those policies, are provided below:

Policy N.1.1 Establish standards and policies consistent with those in Tables N-1 and N-2 to govern maximum sound levels in new development.

Action N.1.2.1 – Adopt a Noise Ordinance with noise level performance standards, including maximum allowable noise exposure, ambient versus nuisance noise, method of measuring noise, and enforcement procedures.

Policy N.1.2 Ensure that the indoor and outdoor areas of new projects will be located, constructed, and shielded from noise sources in compliance with the City's noise standards to the maximum extent feasible.

Action N.1.2.1 – Require new development of noise-creating uses to conform with the City's maximum noise levels.

Action N.1.2.2 – Require an acoustical analysis as part of the environmental review process when noise-sensitive land uses are proposed in areas where current or projected exterior noise levels exceed the City's standards.

Action N.1.2.3 – Require any potential noise impacts identified during the acoustical analysis to be mitigated in the project design to the maximum extent feasible.

Policy N.1.3 Ensure that proposed non-residential land uses likely to exceed the City's standards do not create noise disturbances in existing noise-sensitive areas.

Action N.1.3.1 - Require an acoustical analysis as part of the environmental review process when proposed non-residential land uses are likely to produce noise levels that exceed the City's noise standards. The acoustical analysis must be prepared by a qualified person experienced in environmental noise assessment and architectural acoustics and must estimate existing and projected cumulative noise levels and compare those levels to the policies within this Element.

Action N.1.3.2 - Require any noise impacts identified in the acoustical analysis to be mitigated in conjunction with the project design.

Policy N.1.4 Mitigate noise created by proposed non-transportation noise sources to comply with the City's noise standards to the maximum extent feasible.

Action N.1.4.2 – Consider restricting the hours of operation of loading docks, trash compactors, and other noise-producing uses in commercial areas that are adjacent to residential uses.

The City's non-transportation noise level performance standards referenced in these policies are provided in Table N-1 of the Noise Element. That table is reproduced in this report below as Table 1.

Table 1
Noise Level Performance Standards For New Projects Affected by or Including
Non-Transportation Noise Sources¹

Stationary Noise Source	Noise Level Descriptor	Daytime 7 a.m. to 10 p.m.	Nighttime 10 p.m. to 7 a.m.
Typical	Hourly L_{eq} , dB	55	45
Tonal, Impulsive, Repetitive, or Consist Primarily of Speech or Music	Hourly L_{eq} , dB	50	40
¹ The City may impose noise level standards which are more or less restrictive than those specified above based upon determination of existing low or high ambient noise levels. Source: <i>Rancho Cordova General Plan Noise Element, Table N-1.</i>			

Existing Ambient Noise Environment within the Project Vicinity

The existing ambient noise environment within the project vicinity is defined primarily by traffic on N. Mather Boulevard, Bear Hollow Drive and Airpark Drive, and by aircraft operations associated with Mather Airport to the south. To generally quantify the existing ambient noise environment within the project vicinity, BAC conducted a long-term (48-hour) noise level survey from December 8-9, 2021. Photographs of the noise survey location are provided as Appendix B.

A Larson-Davis Laboratories (LDL) Model 820 precision integrating sound level meter was used to complete the noise level measurement survey. The meter was calibrated immediately before use with an LDL Model CAL200 acoustical calibrator to ensure the accuracy of the measurements. The equipment used meets all pertinent specifications of the American National Standards Institute for Type 1 sound level meters (ANSI S1.4).

The long-term ambient noise level survey results are summarized in Table 2. The detailed results of the ambient noise survey are contained in Appendix C in tabular format and graphically in Appendix D.

Table 2
Summary of Long-Term Noise Survey Measurement Results¹

Site Description ²	Date	DNL	Average Measured Hourly Noise Levels (dBA)			
			Daytime ³		Nighttime ⁴	
			L _{eq}	L _{max}	L _{eq}	L _{max}
North of the project site at	12/8/21	60	59	78	52	73
residential uses and Airpark Drive	12/9/21	61	59	79	54	74
¹ Detailed summaries of the noise monitoring results are provided in Appendices C and D. ² Long-term noise survey location is identified on Figure 1. ³ Daytime hours: 7:00 a.m. to 10:00 p.m. ⁴ Nighttime hours: 10:00 p.m. to 7:00 a.m. Source: Bollard Acoustical Consultants, Inc. (2021)						

The BAC noise measurement site was selected to be representative of the ambient noise level environment at the nearest residential uses to the project area, located to the north along Airpark Drive. As indicated in Table 2, average measured noise levels (L_{eq}) at the survey location exceeded Rancho Cordova General Plan daytime and nighttime noise level standards applicable to noise-sensitive uses.

Noise Impacts from Project-Generated On-Site Operations

According to the provided site drawings (dated October 1, 2021), the project proposes the construction of an industrial building (approximately 155,000 ft²) containing warehouse and office uses with associated parking. The location of the proposed industrial building is shown in Figure 2.

Noise generated by heavy trucks arriving and departing the site, backing into the loading docks, and coupling/decoupling, will be one of the primary noise sources associated with this project. Once the heavy trucks are docked at the loading bays, they will be loaded and unloaded from within the building, so no outside loading/unloading activities would occur, and noise generated by such activities would be contained within the building. Another primary noise source associated with the project has been identified as mechanical equipment (HVAC). However, it is the experience of BAC in similar industrial projects that mechanical equipment would either be housed in an equipment room or located on the roof of the buildings and shielded by screen walls (parapets).

Noise generated by project-related activities were quantified through a combination of reference noise level measurements and application of accepted noise modeling techniques. Separate discussions of noise generated by on-site heavy truck circulation and trailer coupling/decoupling are provided in the following sections.

The Rancho Cordova General Plan daytime and nighttime performance standards of 55 and 45 dB L_{eq} (respectively) were applied to project on-site operations noise generation and assessed at

the nearest existing residential uses. The nearest existing residential uses are represented by numeric values on Figure 1 – identified as Residential 1-3. For the purposes of this assessment, it was assumed that on-site operations would occur during both daytime and nighttime hours. However, satisfaction of the General Plan's nighttime noise level standard would ensure for compliance with the General Plan's less restrictive daytime noise level limit. As a result, the following analyses focus on compliance with the General Plan's nighttime noise level standard of 45 dB L_{eq} at the nearest residential uses.

On-Site Heavy Truck Circulation

Based on a review of the site drawings, the heavy truck access point will be on the north end of the development off Bear Hollow Drive. The truck access point and on-site truck circulation route and are shown on Figure 2.

The project site plan indicates that the industrial building will have 27 truck loading docks. To assess project on-site truck circulation noise exposure relative to the General Plan's hourly average (L_{eq}) noise level descriptor, it is necessary to identify the number of truck movements occurring during a typical busy hour of operations. For the purposes of this analysis, it was assumed that the project could have up to 50 on-site heavy truck trips during a worst-case busy hour (believed to be conservative).

Heavy truck arrivals and departures, and on-site truck circulation, will occur at low speeds. To quantify the noise generation of slow moving trucks, BAC utilized single-event passby noise test results for slow-moving heavy trucks conducted at the West El Camino truck stop in Sacramento, California. The passby measurements were conducted at a reference distance of 50 feet at a location suitable for isolation of individual passby events. During the truck passbys, Larson-Davis Laboratories Model 820 and 2900 sound level meters and frequency analyzers were used to quantify noise levels and event frequency content for each event. The results of the heavy truck measurements indicated that maximum noise levels ranged from 69 to 77 dB L_{max} , with a mean of 74 dB L_{max} . Truck passby levels measured in terms of Sound Exposure Levels (SEL) ranged from 77 to 85 dB, with a mean 83 dB. Based on the conservative estimate of 50 trips per hour, and an SEL of 83 dB per passby, the hourly average noise level generated by on-site heavy truck circulation computes to 64 dB L_{eq} at a reference distance of 50 feet from the passby route.

Assuming standard sound wave spreading loss (-4.5 dB per doubling of distance from a moving point source), and a calculated reference noise level of 64 dB L_{eq} at a distance of 50 feet, worst-case on-site heavy truck circulation noise exposure was predicted at the nearest existing residential uses. The results of those predictions relative to the City's nighttime noise level standard are provided in Table 3.

It should be noted that existing solid noise barriers ranging from 6 to 7 feet-in-height are constructed along the property boundaries of the nearest existing residential uses. The locations of the existing noise barriers are illustrated on Figure 1. To account for the attenuation that would be provided by the existing noise barriers, the predicted noise levels in Table 3 have been conservatively reduced by 5 dB.

Table 3
Predicted On-Site Truck Circulation Noise Exposure vs. City Nighttime Noise Standard

Receiver ¹	Distance (ft) ²	Predicted Noise Level, L _{eq} (dB) ³	City Nighttime Noise Standard, L _{eq} (dB)
Residential 1	1,000	40	45
Residential 2	1,200	39	
Residential 3	1,000	40	
¹ Locations of nearest residential uses are shown on Figure 1.			
² Distances scaled from on-site truck circulation route to nearest residential uses using the provided site plan and City of Rancho Cordova online viewer.			
³ Predicted noise levels include an offset of -5 dB to account for shielding that would be provided by existing solid noise barriers. The locations of the existing noise barriers are shown on Figure 1.			
Source: <i>Bollard Acoustical Consultants, Inc. (2022)</i>			

As indicated in Table 3, worst-case on-site truck circulation noise levels are predicted to satisfy the Rancho Cordova General Plan nighttime noise level standard of 45 dB L_{eq} at the nearest residential uses. The predicted compliance includes consideration of shielding that would be provided by existing solid noise barriers at the locations illustrated on Figure 1. In addition, the predicted noise levels in Table 3 are below or within the range of measured ambient daytime and nighttime noise levels at the nearest residential uses to the project area (near Residential 1). Based on the analysis and results provided above, no further consideration of noise mitigation measures would be warranted for this aspect of the project.

It should be noted that screening provided by existing and future intervening structures constructed on adjacent parcels to the north and east of the project would likely reduce project-generated on-site operations noise levels at the nearest existing residential uses (Residential 1-3). However, without having finalized site plans indicating building location and orientation on those properties, the degree in which project operations noise levels would be attenuated is difficult to determine with a high level of accuracy. Nonetheless, excluding any consideration of shielding that may be provided existing or future structures on adjacent properties, the predicted noise levels in Table 3 would satisfy the applicable General Plan noise level criteria at the closest residential uses.

On-Site Heavy Truck Backing and Trailing Activities

Noise would be generated during brief periods by trucks backing into warehouse building loading docks and trailer parking areas during trailer coupling/decoupling activities (including backup beepers). It was assumed that heavy trucks would not be permitted to idle while on-site, and that refrigerator trucks (if applicable), would be plugged into loading bay power. The locations of the truck loading docks and trailer parking areas are shown on Figure 2.

To quantify the noise generated by truck backup warning devices and trailer coupling/decoupling activities, BAC conducted noise level measurements of a similar sized warehouse distribution facility in Patterson, California over a 48-hour period in August of 2015. The noise level results from the Patterson facility indicate that the measured average noise levels for the entire monitoring period were 54 dB L_{eq} and 71 dB L_{max} at a distance of 100 feet from the effective noise

center of the truck backing, coupling and decoupling area. Based on the reference noise level data provided above, and assuming standard sound wave spreading loss (-4.5 dB per doubling of distance from a moving point source), truck backing and trailering noise associated with the loading docks and trailer parking areas was predicted at the nearest existing residential uses. The results of those predictions relative to the City's nighttime noise level standard are provided below in Table 4.

As mentioned previously, existing solid noise barriers ranging from 6 to 7-feet-in-height are constructed along the property boundaries of the nearest existing residential uses (illustrated on Figure 1). To account for the attenuation that would be provided by the existing noise barriers, the predicted noise levels in Table 4 have been conservatively reduced by 5 dB.

Table 4
Predicted Truck Backing and Trailering Noise Exposure vs. City Nighttime Noise Standard

Receiver ¹	Distance (ft) ²		Predicted Noise Level, L _{eq} (dB) ³		City Nighttime Noise Standard, L _{eq} (dB)
	Loading Docks	Trailer Parking	Loading Docks	Trailer Parking	
Residential 1	1,100	1,000	33	34	45
Residential 2	1,300	1,300	32	32	
Residential 3	1,100	1,100	33	33	
¹ Locations of nearest residential uses are shown on Figure 1. ² Distances scaled from closest loading dock and trailer parking areas to residential uses using provided site plan and City of Rancho Cordova online viewer. ³ Predicted noise levels include an offset of -5 dB to account for shielding that would be provided by existing solid noise barriers. The locations of the existing noise barriers are shown on Figure 1. Source: <i>Bollard Acoustical Consultants, Inc. (2022)</i>					

The Table 4 data indicate that truck backing and trailering noise levels are predicted to satisfy the Rancho Cordova General Plan nighttime noise level standard of 45 dB L_{eq} at the nearest residential uses. The predicted compliance includes consideration of shielding that would be provided by existing solid noise barriers at the locations illustrated on Figure 1. Further, the predicted noise levels in Table 4 are below the range of measured ambient daytime and nighttime noise levels at the nearest residential uses to the project area (near Residential 1). Based on the analysis and results provided above, no further consideration of noise mitigation measures would be warranted for this aspect of the project.

As discussed previously, the screening provided by existing and future intervening structures constructed on adjacent parcels to the north and east of the project would likely reduce project-generated on-site operations noise levels at the nearest existing residential uses (Residential 1-3). Nonetheless, excluding any consideration of shielding that may be provided by those structures, the predicted noise levels in Table 4 would satisfy the applicable General Plan noise level criteria at the closest residential uses.

Conclusions

Based on the analysis and results presented in this report, noise levels associated with project-generated on-site operations at the proposed Logistic Center are predicted to satisfy the applicable Rancho Cordova General Plan noise criteria at the nearest existing residential uses. The predicted compliance includes consideration of shielding that would be provided by existing solid noise barriers at the locations illustrated on Figure 1. In addition, predicted on-site operations noise levels are expected to be below or within the range of measured ambient daytime and nighttime noise levels at the nearest residential uses to the project area. As a result, no further consideration of noise mitigation measures would be warranted for the project.

It should be noted that screening provided by existing and future intervening structures constructed on adjacent parcels to the north and east of the project would likely reduce project-generated on-site operations noise levels at the nearest existing residential uses. However, without having finalized site plans indicating building location and orientation on those properties, the degree in which project operations noise levels would be attenuated is difficult to determine with a high level of accuracy. Nonetheless, excluding any consideration of shielding that may be provided existing or future structures on adjacent properties, the predicted on-site operations noise levels presented in this report would satisfy the applicable Rancho Cordova General Plan noise level criteria at the closest residential uses.

These conclusions are based on the operations assumptions cited herein, BAC file data, and the studied site design presented in Figure 2 (dated October 1, 2021). Deviations from the resources cited herein could cause noise levels to differ from those predicted in this assessment. It should be noted that, although noise levels associated with operations at the proposed industrial center are predicted to comply with applicable Rancho Cordova General Plan noise level limits at the nearest residential uses, it is ultimately up to the future individual businesses/tenants of the development to comply with said noise standards.

This concludes our environmental noise assessment for the Logistic Center in Rancho Cordova, California. Please contact BAC at (530) 537-2328 or dariog@bacnoise.com with comments or questions regarding this assessment.

Appendix A Acoustical Terminology

Acoustics	The science of sound.
Ambient Noise	The distinctive acoustical characteristics of a given space consisting of all noise sources audible at that location. In many cases, the term ambient is used to describe an existing or pre-project condition such as the setting in an environmental noise study.
Attenuation	The reduction of an acoustic signal.
A-Weighting	A frequency-response adjustment of a sound level meter that conditions the output signal to approximate human response.
Decibel or dB	Fundamental unit of sound. A Bell is defined as the logarithm of the ratio of the sound pressure squared over the reference pressure squared. A Decibel is one-tenth of a Bell.
CNEL	Community Noise Equivalent Level. Defined as the 24-hour average noise level with noise occurring during evening hours (7 - 10 p.m.) weighted by a factor of three and nighttime hours weighted by a factor of 10 prior to averaging.
Frequency	The measure of the rapidity of alterations of a periodic signal, expressed in cycles per second or hertz.
IIC	Impact Insulation Class (IIC): A single-number representation of a floor/ceiling partition's impact generated noise insulation performance. The field-measured version of this number is the FIIC.
Ldn	Day/Night Average Sound Level. Similar to CNEL but with no evening weighting.
Leq	Equivalent or energy-averaged sound level.
Lmax	The highest root-mean-square (RMS) sound level measured over a given period of time.
Loudness	A subjective term for the sensation of the magnitude of sound.
Masking	The amount (or the process) by which the threshold of audibility is for one sound is raised by the presence of another (masking) sound.
Noise	Unwanted sound.
Peak Noise	The level corresponding to the highest (not RMS) sound pressure measured over a given period of time. This term is often confused with the "Maximum" level, which is the highest RMS level.
RT₆₀	The time it takes reverberant sound to decay by 60 dB once the source has been removed.
STC	Sound Transmission Class (STC): A single-number representation of a partition's noise insulation performance. This number is based on laboratory-measured, 16-band (1/3-octave) transmission loss (TL) data of the subject partition. The field-measured version of this number is the FSTC.



ITEM 18.1.



ATTACHMENT 1



Legend

A

Site 1: Facing east along residential boundaries and Airpark Drive

B

Site 1: Facing west along residential boundaries and Airpark Drive

C

Site 1: Facing northeast looking at noise monitoring equipment

Logistic Center
Rancho Cordova, California
Photographs of Noise Survey Location

Appendix C-1
Long-Term Ambient Noise Monitoring Results - Site 1
Logistic Center - Rancho Cordova, California
Wednesday, December 08, 2021

Hour	Leq	Lmax	L50	L90
12:00 AM	45	72	34	30
1:00 AM	36	64	30	28
2:00 AM	43	68	34	31
3:00 AM	46	71	34	31
4:00 AM	52	81	37	34
5:00 AM	51	72	39	34
6:00 AM	58	86	46	43
7:00 AM	60	75	50	46
8:00 AM	61	77	53	48
9:00 AM	60	86	49	46
10:00 AM	62	87	55	46
11:00 AM	58	78	49	46
12:00 PM	56	73	48	46
1:00 PM	56	76	50	46
2:00 PM	61	90	52	47
3:00 PM	60	78	51	44
4:00 PM	59	80	48	44
5:00 PM	58	79	47	43
6:00 PM	56	73	45	40
7:00 PM	55	74	44	39
8:00 PM	51	71	41	37
9:00 PM	53	72	39	35
10:00 PM	52	72	39	36
11:00 PM	48	72	38	35

	Statistical Summary					
	Daytime (7 a.m. - 10 p.m.)			Nighttime (10 p.m. - 7 a.m.)		
	High	Low	Average	High	Low	Average
Leq (Average)	62	51	59	58	36	52
Lmax (Maximum)	90	71	78	86	64	73
L50 (Median)	55	39	48	46	30	37
L90 (Background)	48	35	43	43	28	33

Computed DNL, dB	60
% Daytime Energy	90%
% Nighttime Energy	10%

GPS Coordinates	38°34'18.02" N
	121°17'11.77" W

Appendix C-2
Long-Term Ambient Noise Monitoring Results - Site 1
Logistic Center - Rancho Cordova, California
Thursday, December 09, 2021

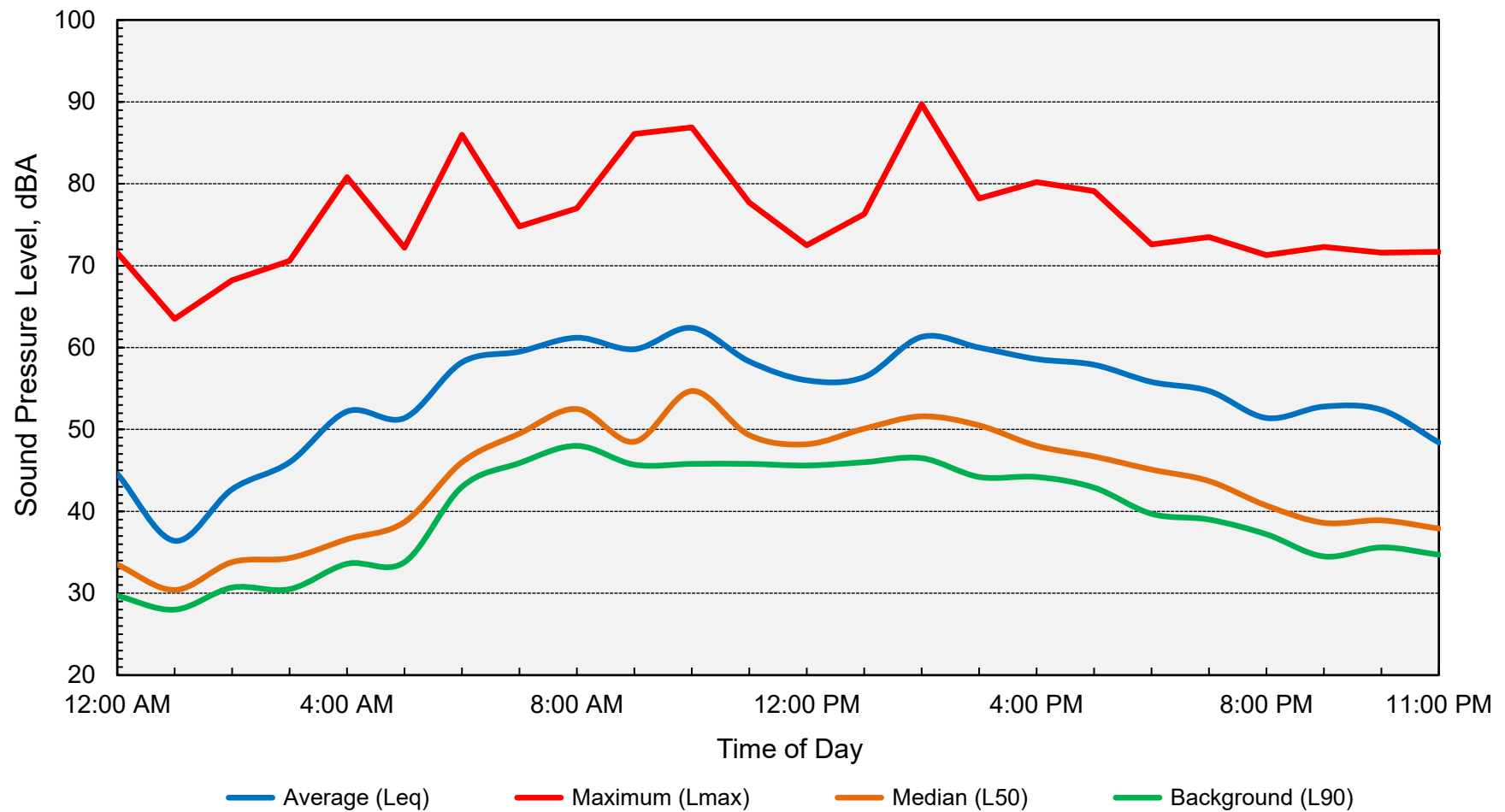
Hour	Leq	Lmax	L50	L90
12:00 AM	48	69	36	33
1:00 AM	45	69	43	37
2:00 AM	50	72	43	41
3:00 AM	54	80	41	38
4:00 AM	55	83	42	38
5:00 AM	54	74	46	42
6:00 AM	59	76	54	50
7:00 AM	62	84	53	48
8:00 AM	62	82	52	48
9:00 AM	59	80	50	48
10:00 AM	57	79	50	47
11:00 AM	59	84	49	47
12:00 PM	58	83	50	46
1:00 PM	57	83	49	46
2:00 PM	59	76	51	46
3:00 PM	57	74	48	44
4:00 PM	59	77	50	42
5:00 PM	61	84	52	46
6:00 PM	56	75	48	44
7:00 PM	56	75	48	43
8:00 PM	56	74	46	43
9:00 PM	52	71	45	42
10:00 PM	52	70	46	44
11:00 PM	51	71	45	44

	Statistical Summary					
	Daytime (7 a.m. - 10 p.m.)			Nighttime (10 p.m. - 7 a.m.)		
	High	Low	Average	High	Low	Average
Leq (Average)	62	52	59	59	45	54
Lmax (Maximum)	84	71	79	83	69	74
L50 (Median)	53	45	49	54	36	44
L90 (Background)	48	42	45	50	33	41

Computed DNL, dB	61
% Daytime Energy	84%
% Nighttime Energy	16%

GPS Coordinates	38°34'18.02" N
	121°17'11.77" W

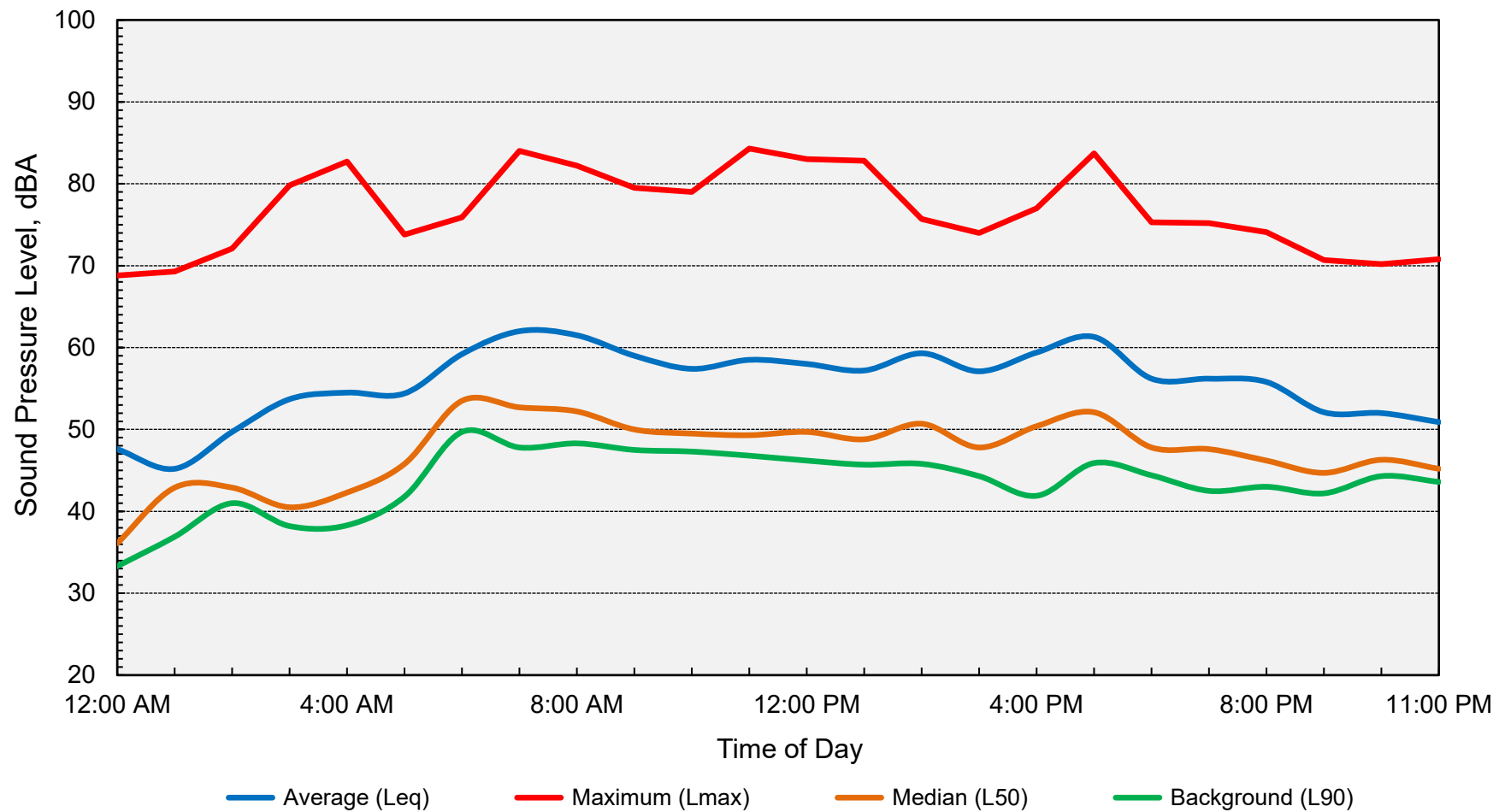
Appendix D-1
Long-Term Ambient Noise Monitoring Results - Site 1
Logistic Center - Rancho Cordova, California
Wednesday, December 08, 2021



Computed DNL = 60 dB

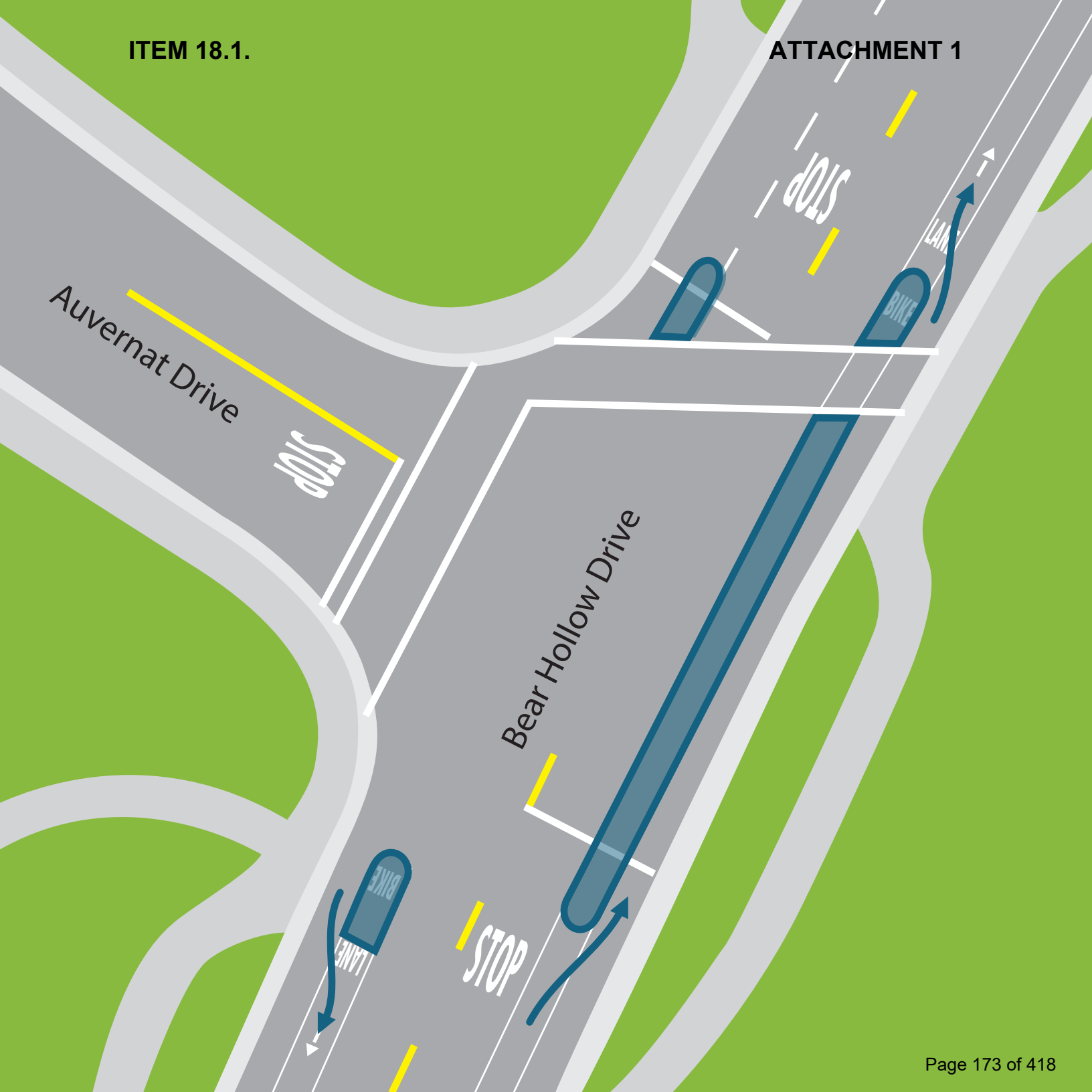


Appendix D-2
Long-Term Ambient Noise Monitoring Results - Site 1
Logistic Center - Rancho Cordova, California
Thursday, December 09, 2021



Computed DNL = 61 dB







International Dr

Bear Hollow Dr

ATTACHMENT 1

Zinfandel Dr

Auvernat Dr

Robola Way

Queens Arbor Dr

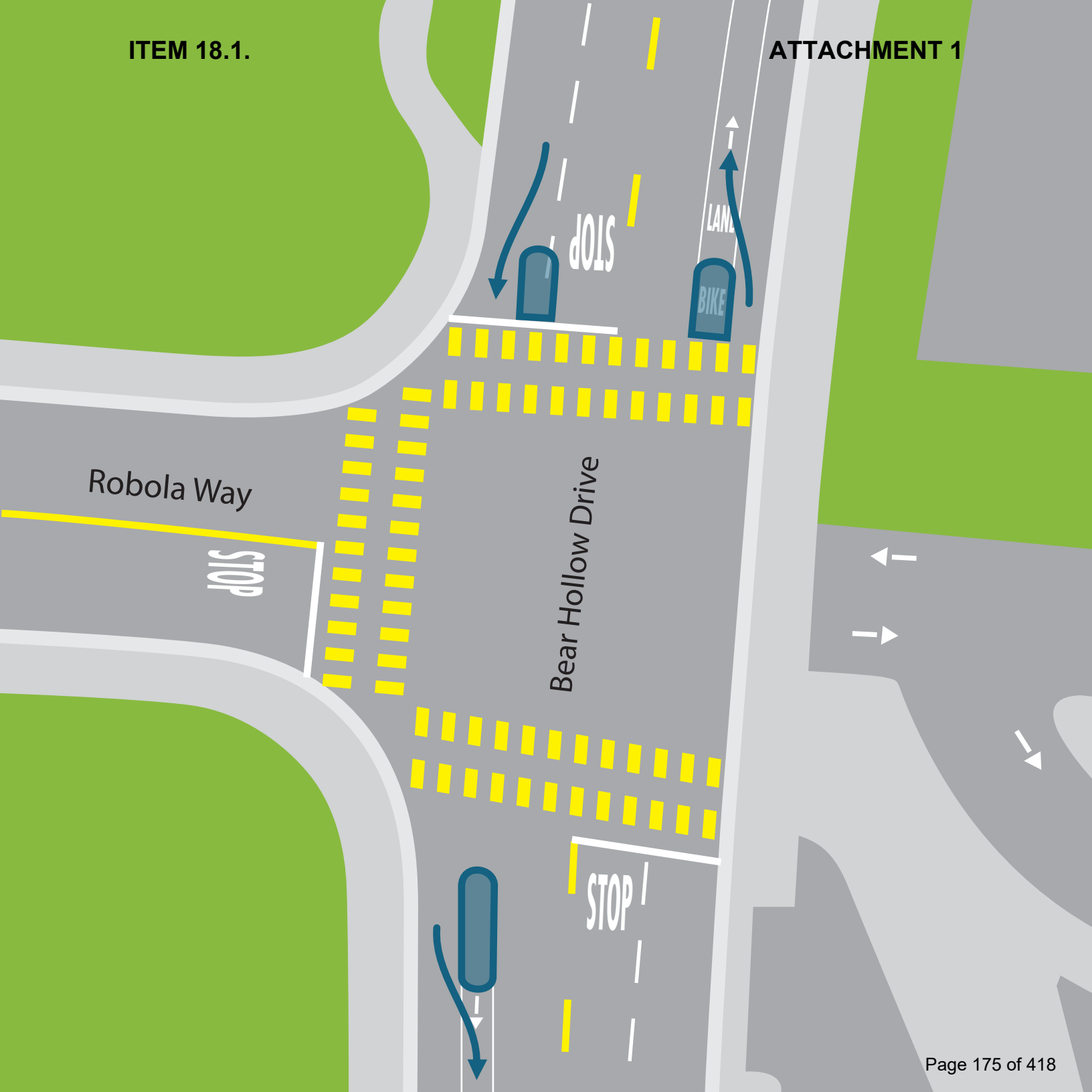
Femoyer St

Airpark Dr

Bear Hollow Dr

**PROJECT
AREA**

N Mather Blvd



Transportation Engineers

March 9, 2022

Mr. George Condon, Partner, West Region
DERMODY
5500 Equity Avenue
Reno, CA 89502

**RE: TRIP GENERATION ESTIMATE AND TRUCK / AUTOMOBILE CIRCULATION
ASSESSMENT FOR BEAR HOLLOW DRIVE BUSINESS/ PROFESSIONAL SITE,
RANCHO CORDOVA, CA**

Dear Mr. Condon:

As requested, KD Anderson & Associates has completed this assessment of the probable trip generation associated with the uses on the Bear Hollow Drive Business/Professional (BP) site proposed in Rancho Cordova. The project involves construction of a 155,040 sf building in the BP (Business Park) zone at the intersection of Mather Blvd & Bear Hollow Drive. The building would be configured with 147,290 sf of warehouse space and 7,750 sf of supporting office space. The building would be accompanied by 27 truck loading docks, 32 trailer stalls and 98 automobile parking stalls.

Our work has involved review of the characteristics of the proposed project, consideration of potential trip generation rates presented in the *ITE Trip Generation Manual, 11th Edition*, selection of applicable trip generation rates and calculation of the project's overall and truck trip generation forecasts. In turn, that information will be used by the City of Rancho Cordova to determine whether the potential traffic impacts associated with the project are inherently less than significant based on the number of trips generated or if subsequent analysis is needed to confirm a finding of no significant impact.

Our work also included identification of the most likely truck route to the site and quantification of the automobile trip distribution on the streets leading to the site.

Trip Generation Rates. The *ITE Trip Generation Manual, 11th Edition* offers trip generation rates that are appropriate for most land uses, and we reviewed this reference as well as other available published materials. As noted in Table 1, trip generation rates are available for a variety of uses that might occupy a BP site. In general, the rates are dependent on employee density and the extent of travel to and from the site throughout the day. The buildings used for industrial / warehouse uses typically contain a small area of office space used to support the business operation, and that activity is included in the overall trip generation rates. Each land use category was also supported by truck trip generation rates.

The nature of the occupants of the buildings is unknown. Trip generation rates are available for **General Light Industrial Uses (Code 110)**, and these rates are presented in Table 1 below. Based on the project description, the site could also be developed with Warehouse uses, and the ITE rate for **Warehousing (Code 150)** has been identified. Finally, specialized warehousing has been a common type of development in the Rancho Cordova area, and ITE identifies **High Cube Warehousing (Code 154)** as follows:

A high-cube warehouse (HCW) is a building that typically has at least 200,000 gross square feet of floor area, has a ceiling height of 24 feet or more, and is used primarily for the storage and/or consolidation of manufactured goods (and to a lesser extent, raw materials) prior to their distribution to retail locations or other warehouses. A typical HCW has a high level of on-site automation and logistics management. The automation and logistics enable highly-efficient processing of goods through the HCW. The HCWs included in this land use include transload and short-term facilities. Transload facilities have a primary function of consolidation and distribution of pallet loads (or larger) for manufacturers, wholesalers, or retailers. They typically have little storage duration, high throughput, and are high-efficiency facilities. Short-term HCWs are high-efficiency distribution facilities often with custom/special features built into structure for movement of large volumes of freight with only short-term storage of products.

Trip Generation Forecast. The number of peak hour trips associated with the project has been estimated for each land use category, and the results are also presented in Table 1. As shown, as a “worst case”, applying the Light Industrial rate could generate 755 trips over the course of the day (i.e., ½ inbound and ½ outbound) and would suggest 115 trips in the weekday a.m. peak hour and 101 trips in the p.m. peak hour. Alternatively, warehouse space as envisioned in the site plan, would generate 265 daily trips and 26 trips in the a.m. peak hour and 28 p.m. peak hour trips. The forecast associated with High Cube warehousing is even lower (i.e., 217 daily trips with 12 a.m. peak hour and 16 p.m. peak hour trips).

TABLE 1 TRIP GENERATION RATES FORECAST									
ITE Code	Description	Average Trips per Unit							
		Unit	Daily	AM Peak Hour			PM Peak Hour		
				% in	% out	Total	% in	% out	Total
110	General Light Industrial	ksf	4.87	88%	12%	0.74	14%	86%	0.65
150	Warehousing	ksf	1.71	77%	23%	0.17	28%	72%	0.18
154	High Cube warehouse	ksf	1.40	77%	23%	0.08	28%	72%	0.10
<i>Bear Hollow Drive Project</i>									
110	General Light Industrial	155.04	755	101	14	115	14	87	101
150	Warehousing		265	20	6	26	8	20	28
154	High Cube Warehouse		217	9	3	12	4	12	16

Trip Generation Conclusions. The City of Rancho Cordova’s traffic study guidelines typically determine the need for additional traffic impact analysis based on consideration of a project’s overall trip generation estimate. Those projects generating fewer than 1,000 daily or 100 peak hour trips do not typically require traffic impact analysis. If the Bear Hollow Drive BP site is developed with “General Light Industrial” uses (i.e., “worst case”) then the project’s trip generation estimates fall above those thresholds in the a.m. and p.m. peak hours.

Truck Traffic. Because the overall volume of traffic created by the project is low, a key issue may be the amount of truck traffic caused by the project and the routes followed by trucks traveling to and from the site. Table 2 presents estimates for the truck trips accompanying site development under the three alternative ITE land use trip generation categories. As indicated total daily truck trip generation (i.e., inbound and outbound total) ranges from 34 to 91 daily trips. The land use category generating the most total vehicle trips (i.e., warehouse) generates fewer truck trips..

TABLE 2 TRUCK TRIP GENERATION RATES FORECAST									
ITE Code	Description	Average Trips per Unit							
		Unit	Daily	AM Peak Hour			PM Peak Hour		
				% in	% out	Total	% in	% out	Total
110	General Light Industrial	ksf	0.25	60%	40%	0.01	50%	50%	0.01
150	Warehousing	ksf	0.60	52%	48%	0.02	52%	48%	0.03
154	High Cube warehouse	ksf	0.22	49%	51%	0.02	47%	53%	0.01
<i>Bear Hollow Drive Project</i>									
110	General Light Industrial	155.04	39	1	1	2	1	1	2
150	Warehousing		93	2	1	3	2	3	5
154	High Cube Warehouse		34	1	2	3	2	1	2

Truck Routes. Most truck traffic to and from uses along the Zinfandel Drive corridor is oriented to and from US 50. While routes selected by automobile drives often reflect the shortest or most direct routes, truck drivers focus on routes that feature few stops that can most easily accommodate the turning requirements of large trucks. Those routes may not necessarily represent the shortest straight-line distance.

In this case, five possible routes have been identified in Table 3. Most truck traffic is expected to be oriented to the west on US 50, and in that direction routes using the Mather Field Road interchange, rather than the Zinfandel Drive interchange, are shorter, avoid most residential areas and have fewer stops. Based on this information, it is likely that truckers would choose Route 2, which avoids all residential areas for travel to the west.

ITEM 18.1.

Mr. George Condon, Partner, West Region

DERMODY

March 9, 2022

Page 4

ATTACHMENT 1

**TABLE 3
COMPARATIVE ROUTES TO US 50 FOR TRUCKS**

Route	Path	Adjoining Land Use Besides Industrial / Commercial?	Stops			Distance ² (miles)
			Signals ¹	Stop Signs	Total	
1	US 50 to Mather Field Rd to International Dr to Femoyer St to Airpark Dr to Bear Hollows Dr to site	0.15 mi Residential but no fronting homes.	5	3	8	14.1
2	US 50 to Mather Field Rd to International Dr to Femoyer St to Mather Blvd to No. Mather Blvd to Bear Hollow Dr to site	No Residential, no school, no park	5	5	10	14.7
3	US 50 to Zinfandel Dr to Bear Hollow Dr to site	0.5 mi Residential but no fronting homes. School, park	6	3	9	15.2
4	US 50 to Zinfandel Dr to Spoto Dr to N. Mather Blvd to Bear Hollow Dr to site	0.5 mi Residential but no fronting homes. Park	8	2	10	15.6
5	US 50 to Zinfandel Dr to N. Mather Blvd to Bear Hollow Dr to site	No residential, no school or Park	9	2	11	15.6
¹ including US 50 off-ramps ² distance from "Sacramento" using Google Earth Pro						

KDA

Automobile Trip Distribution. The proposed project would add automobile trips to streets surrounding the project, primarily as a result of travel by commuting employees. The distribution of those trips would primarily reflect the location of residences within the greater Rancho Cordova – Sacramento County / Folsom area, as well as the travel time along alternative local routes that connect the site with the regional circulation network.

Table 4 presents preliminary assumptions relating to trip distribution as well as a tabulation of daily and peak hour trips on each facility.

**TABLE 4
PRELIMINARY PROJECT TRIP DISTRIBUTION AND ASSIGNMENT**

Direction	Destination	Route	Share of Total	Local Street	Share	Trips with Light Industrial Rate		
						AM	PM	Daily
East	Folsom / El Dorado Co	Zinfandel Dr to US 50	20%	Bear Hollow Dr	15%	17	15	111
				Spoto Drive	5%	6	5	38
North	Citrus Heights / Sac Co	Zinfandel Dr to US 50 to Sunrise Blvd	35%	Bear Hollow Dr	28%	32	28	210
				Spoto Drive	7%	8	7	52
South	South Rancho Cordova	Mather Blvd to Douglas Rd	10%	Mather Blvd	5%	6	5	38
		N. Mather Blvd to Zinfandel Dr		N. Mather Blvd	5%	6	5	38
West	Sacramento County	International Dr to Mather Field Rd to US 50	30%	Bear Hollow Dr	30%	35	31	228
Northeast	Stonecreek Neighborhoods	Bear Hollow Dr	5%	Bear Hollow Dr	2%	2	2	16
		Spoto Drive		Spoto Drive	1%	1	1	8
		N. Mather Blvd		N. Mather Blvd	2%	2	2	16
						115	101	755
		Index #			% of Total			
Bear Hollow Drive		1	Zinfandel Dr to Airpark Dr		45%	52	45	340
		2	Airpark Dr to access		75%	86	76	566
		3	Access to N. Mather Blvd		25%	29	25	189
Spoto Drive		4	N. Mather Blvd to Zinfandel Drive		8%	9	8	98
N. Mather Blvd		5	Mather Blvd to Bear Hollow Dr		13%	15	13	38
		6	Bear Hollow Drive to Spoto Dr		20%	23	20	151
		7	Spoto Drive to Zinfandel Drive		7%	8	7	53
Airpark Drive		8	Femoyer Street to Bear Hollow Dr		30%	35	30	227

ITEM 18.1.

Mr. George Condon, Partner, West Region

DERMODY

March 9, 2022

Page 7

ATTACHMENT 1

Please feel free to contact me if you have any questions or need additional information.

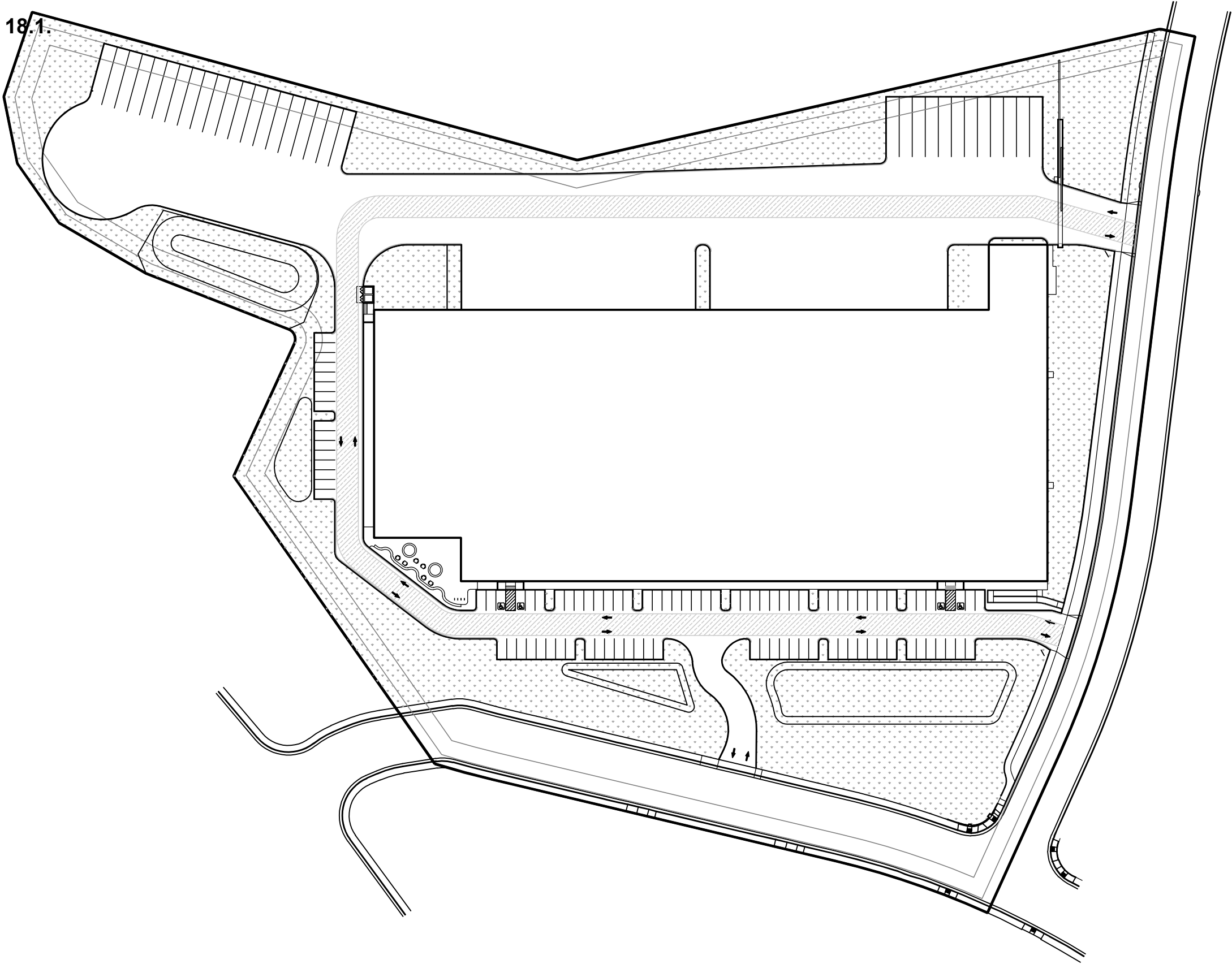
Sincerely yours,

KD Anderson & Associates, Inc.

A handwritten signature in black ink, appearing to read 'K. Anderson', with a long horizontal flourish extending to the right.

Kenneth D. Anderson, P.E.
President

Attachment: site plan, index map, ITE code 110, 150 and 154 worksheets



SCHEME:

Site Plan

Logisticcenter at Rancho Cordova
Rancho Cordova, CA

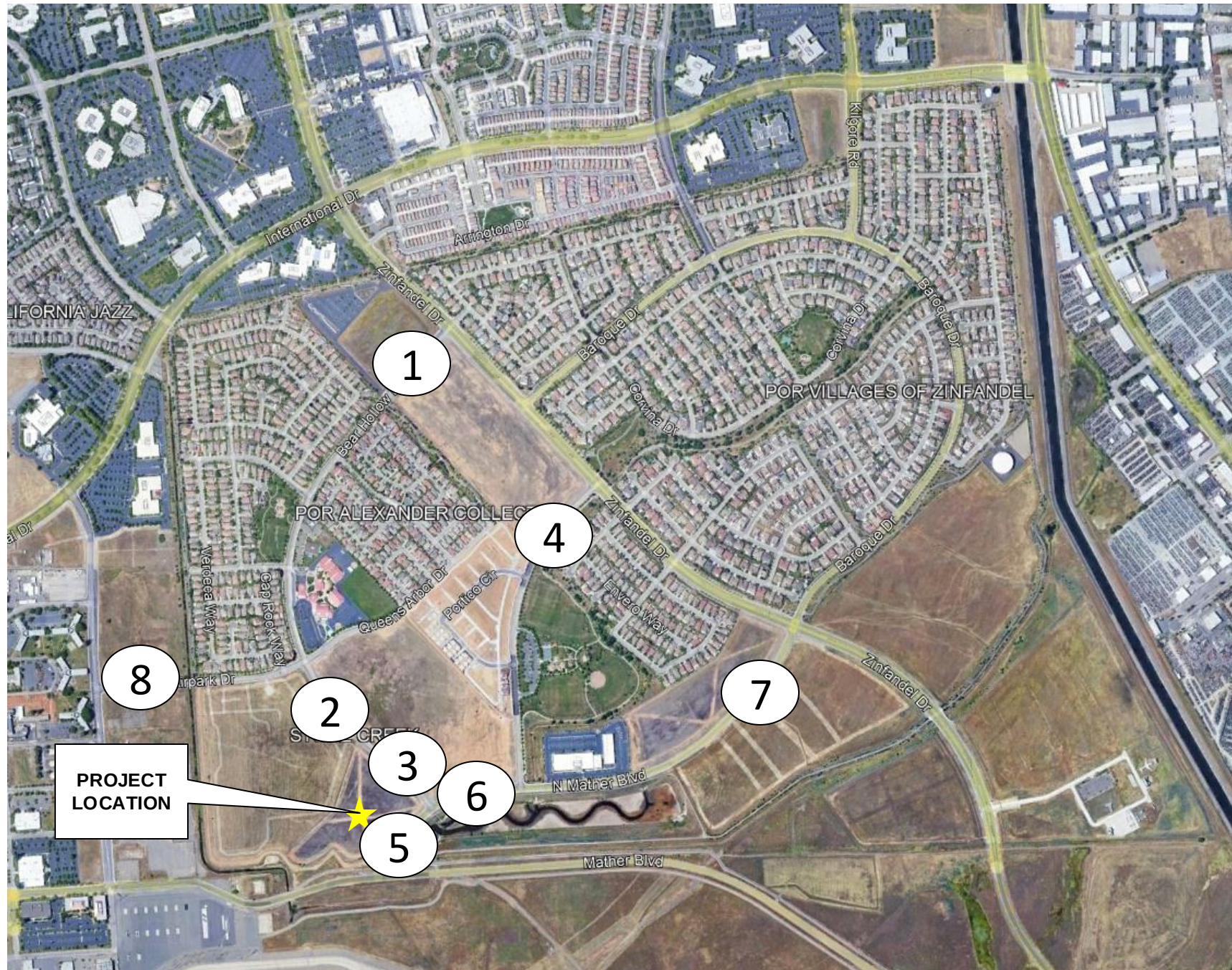
This conceptual design is based upon a preliminary review of
entitlement requirements and on unverified and possibly
incomplete site and/or building information, and is intended
merely to assist in exploring how the project might be developed.



WARE MALCOMB

SNR21-0064-00
01.21.2022

SHEET
1



TRIP ASSIGNMENT INDEX MAP

General Light Industrial (110)

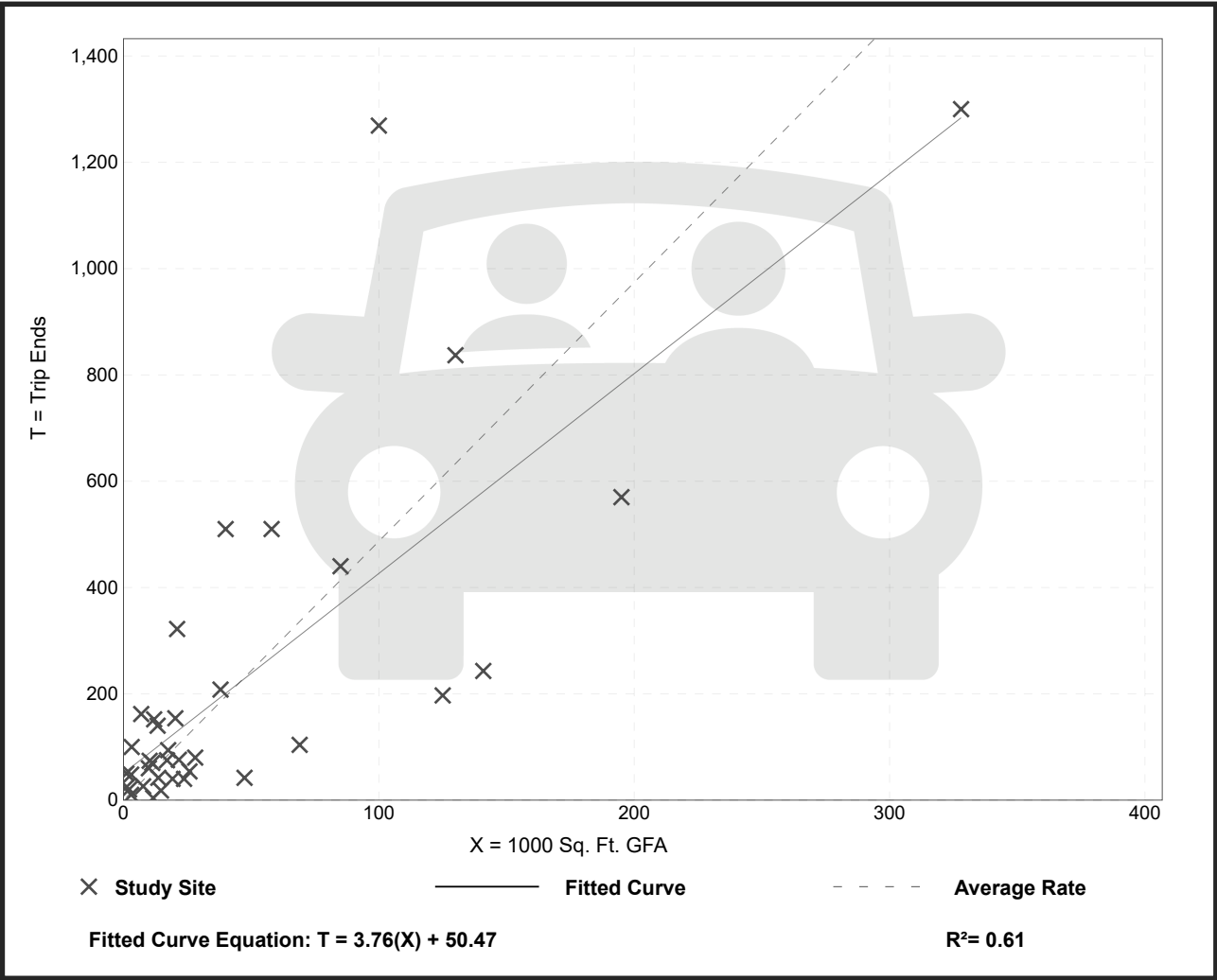
Vehicle Trip Ends vs: 1000 Sq. Ft. GFA
On a: Weekday

Setting/Location: General Urban/Suburban
Number of Studies: 37
Avg. 1000 Sq. Ft. GFA: 45
Directional Distribution: 50% entering, 50% exiting

Vehicle Trip Generation per 1000 Sq. Ft. GFA

Average Rate	Range of Rates	Standard Deviation
4.87	0.34 - 43.86	4.08

Data Plot and Equation



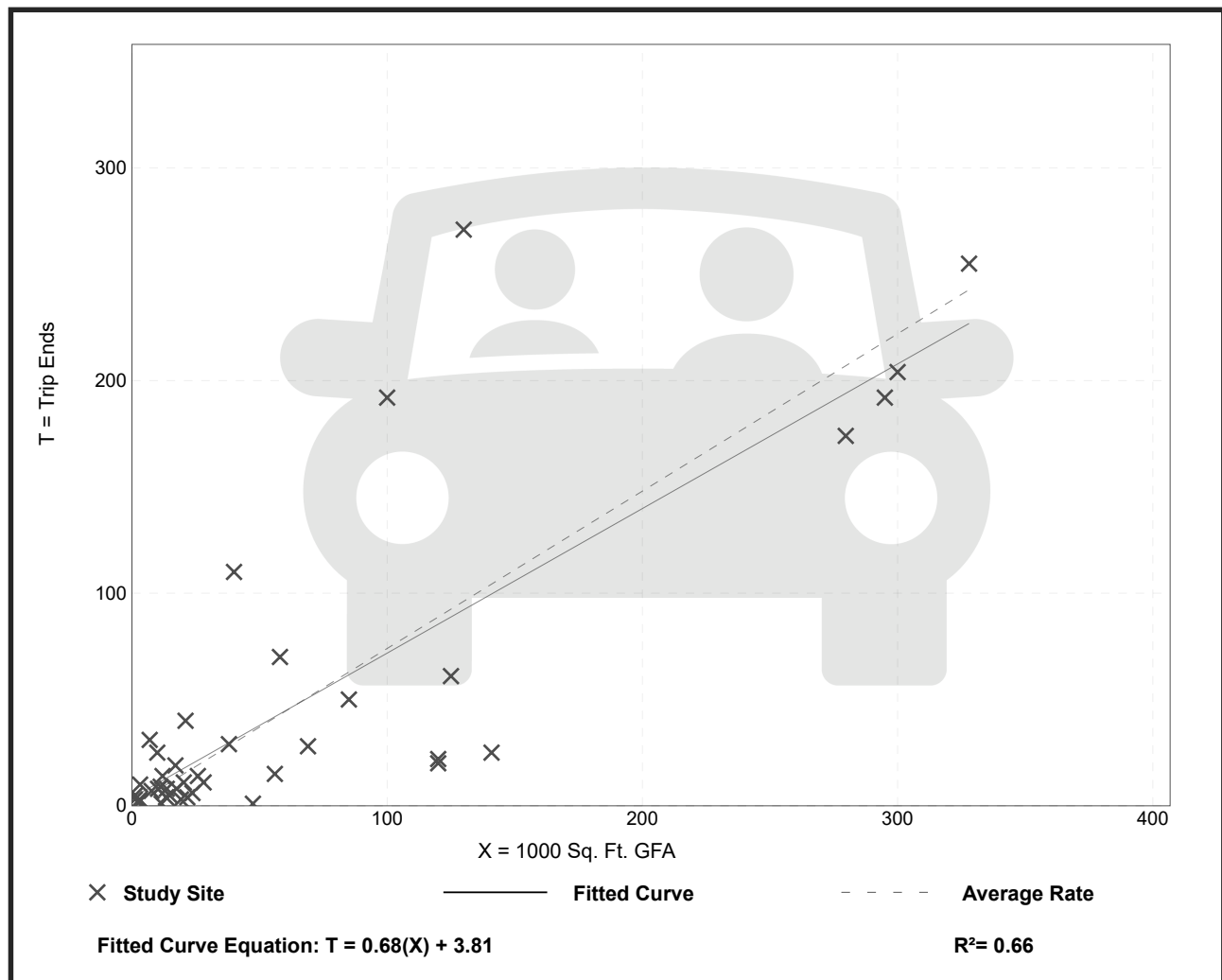
General Light Industrial (110)

Vehicle Trip Ends vs: 1000 Sq. Ft. GFA
On a: Weekday,
 Peak Hour of Adjacent Street Traffic,
 One Hour Between 7 and 9 a.m.
Setting/Location: General Urban/Suburban
 Number of Studies: 41
 Avg. 1000 Sq. Ft. GFA: 65
 Directional Distribution: 88% entering, 12% exiting

Vehicle Trip Generation per 1000 Sq. Ft. GFA

Average Rate	Range of Rates	Standard Deviation
0.74	0.02 - 4.46	0.61

Data Plot and Equation



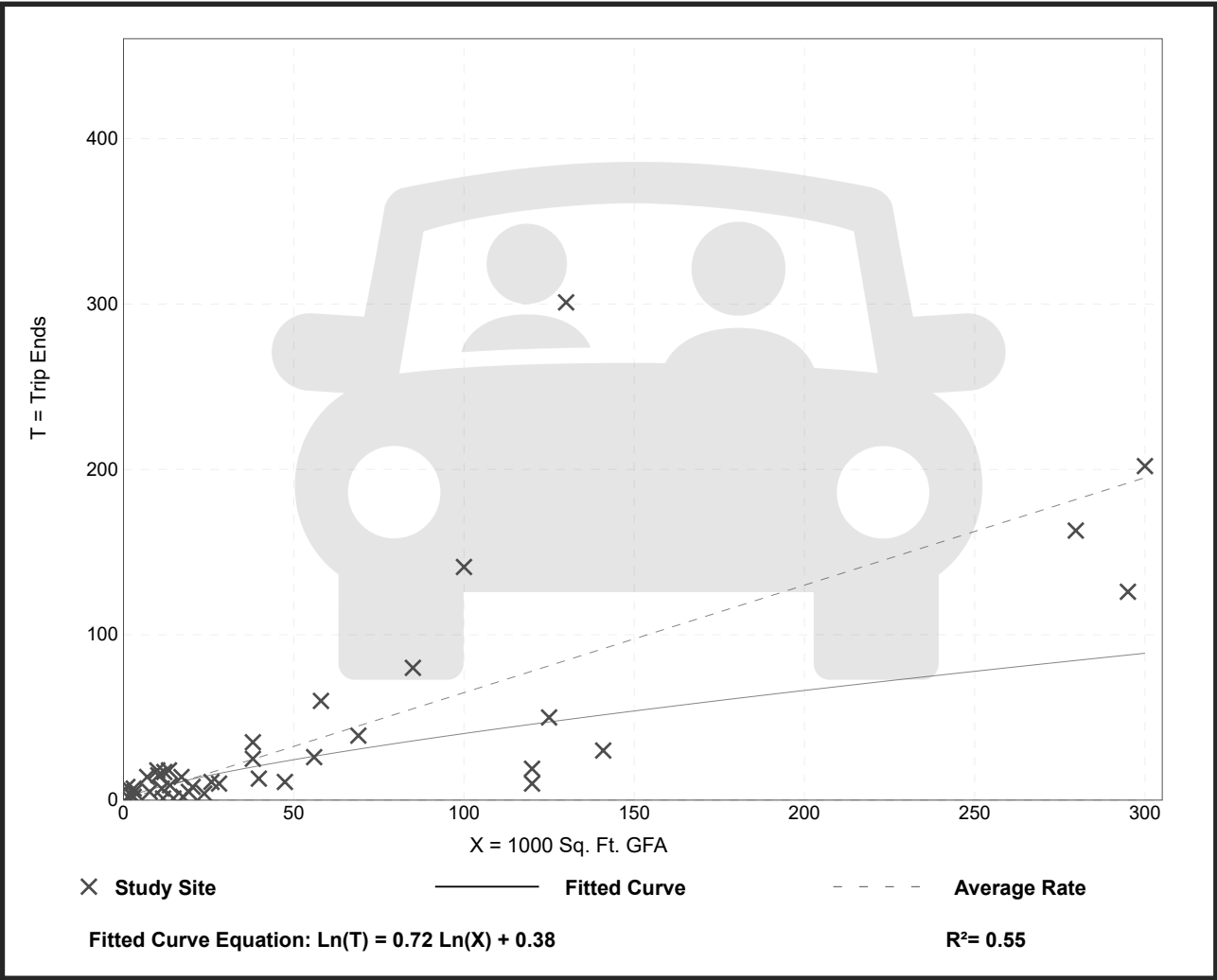
General Light Industrial (110)

Vehicle Trip Ends vs: 1000 Sq. Ft. GFA
On a: Weekday,
Peak Hour of Adjacent Street Traffic,
One Hour Between 4 and 6 p.m.
Setting/Location: General Urban/Suburban
Number of Studies: 40
Avg. 1000 Sq. Ft. GFA: 58
Directional Distribution: 14% entering, 86% exiting

Vehicle Trip Generation per 1000 Sq. Ft. GFA

Average Rate	Range of Rates	Standard Deviation
0.65	0.07 - 7.02	0.56

Data Plot and Equation



Warehousing (150)

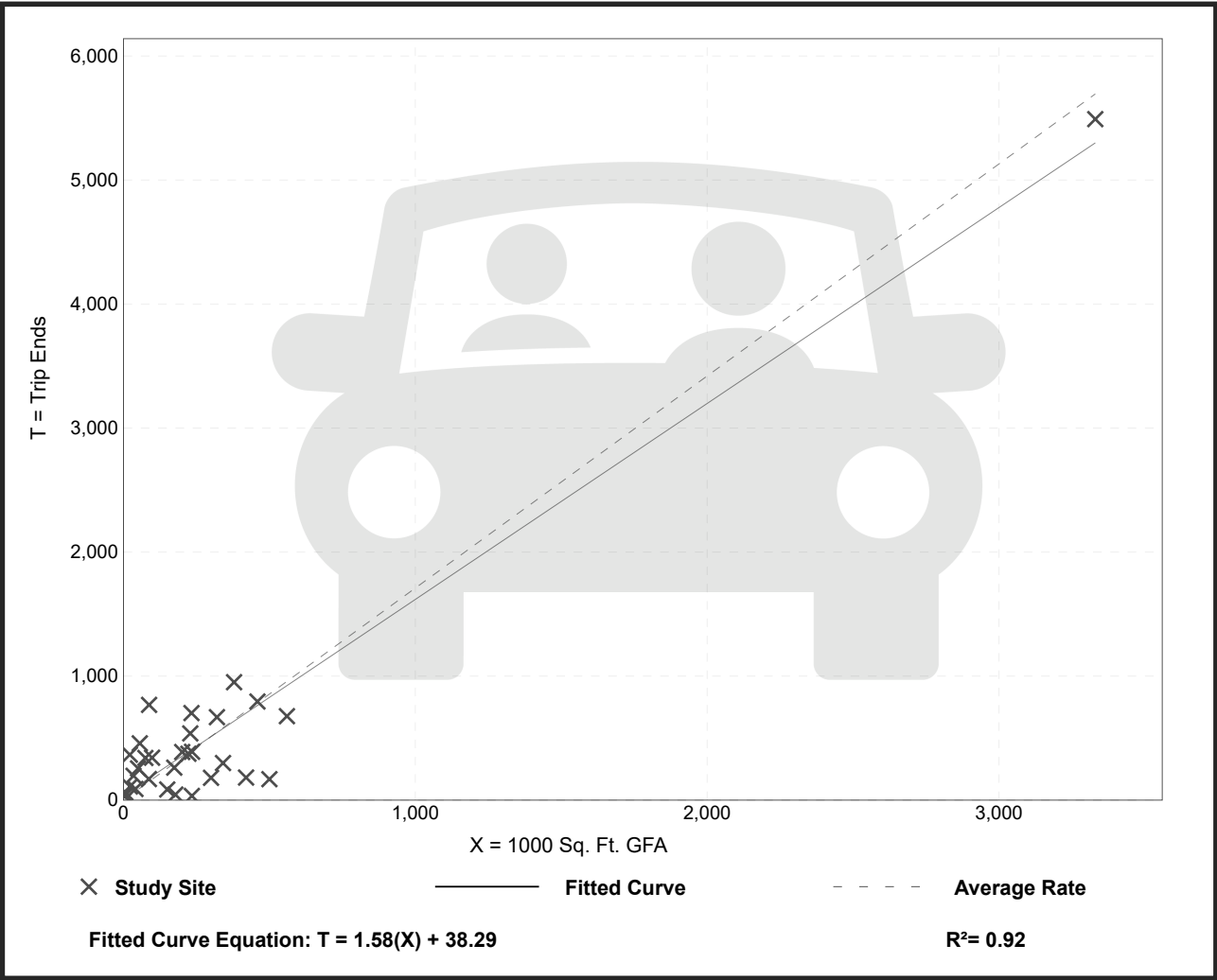
Vehicle Trip Ends vs: 1000 Sq. Ft. GFA
On a: Weekday

Setting/Location: General Urban/Suburban
Number of Studies: 31
Avg. 1000 Sq. Ft. GFA: 292
Directional Distribution: 50% entering, 50% exiting

Vehicle Trip Generation per 1000 Sq. Ft. GFA

Average Rate	Range of Rates	Standard Deviation
1.71	0.15 - 16.93	1.48

Data Plot and Equation



Warehousing (150)

Vehicle Trip Ends vs:

1000 Sq. Ft. GFA

On a:

Weekday,
Peak Hour of Adjacent Street Traffic,
One Hour Between 7 and 9 a.m.

Setting/Location:

General Urban/Suburban

Number of Studies:

36

Avg. 1000 Sq. Ft. GFA:

448

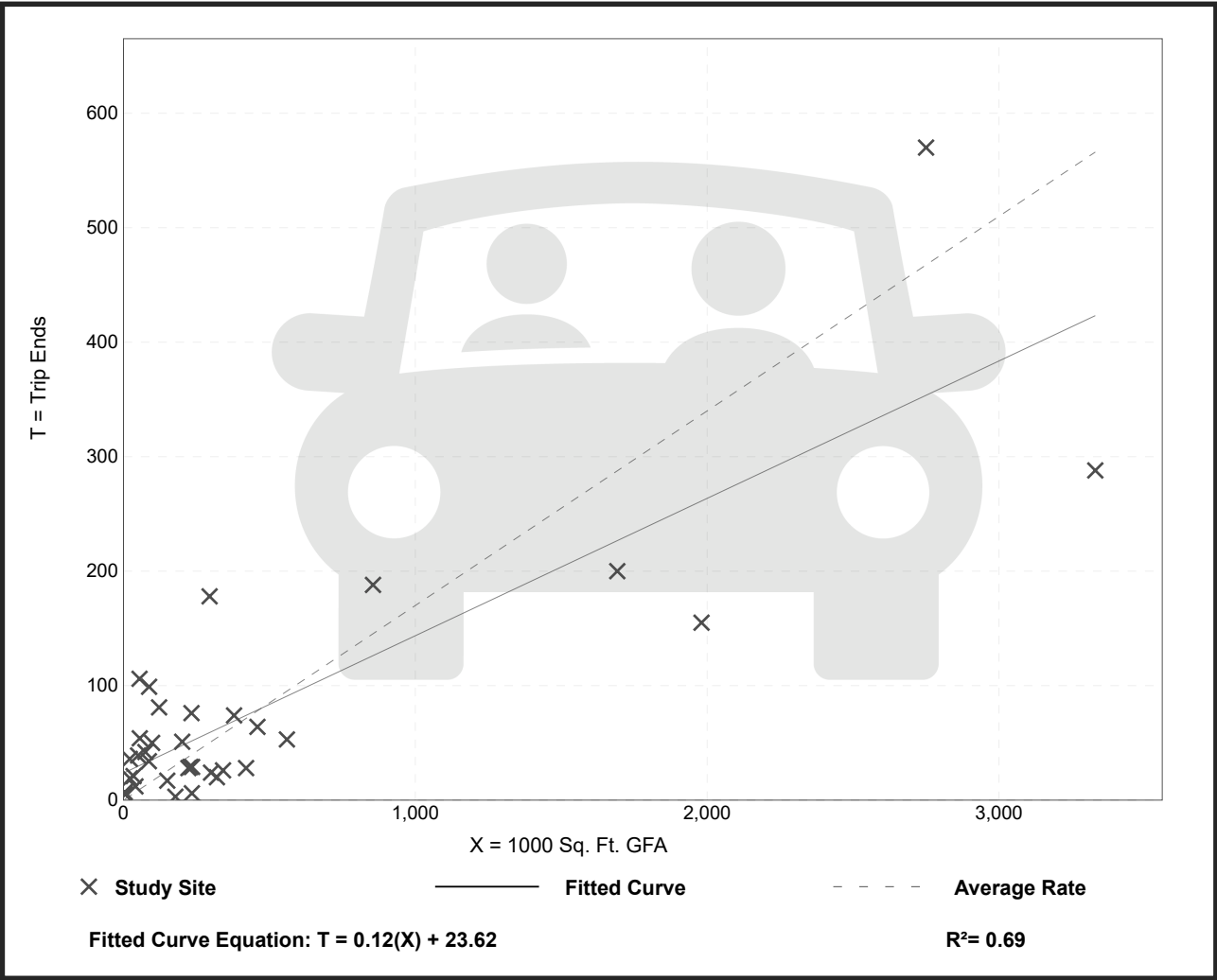
Directional Distribution:

77% entering, 23% exiting

Vehicle Trip Generation per 1000 Sq. Ft. GFA

Average Rate	Range of Rates	Standard Deviation
0.17	0.02 - 1.93	0.19

Data Plot and Equation



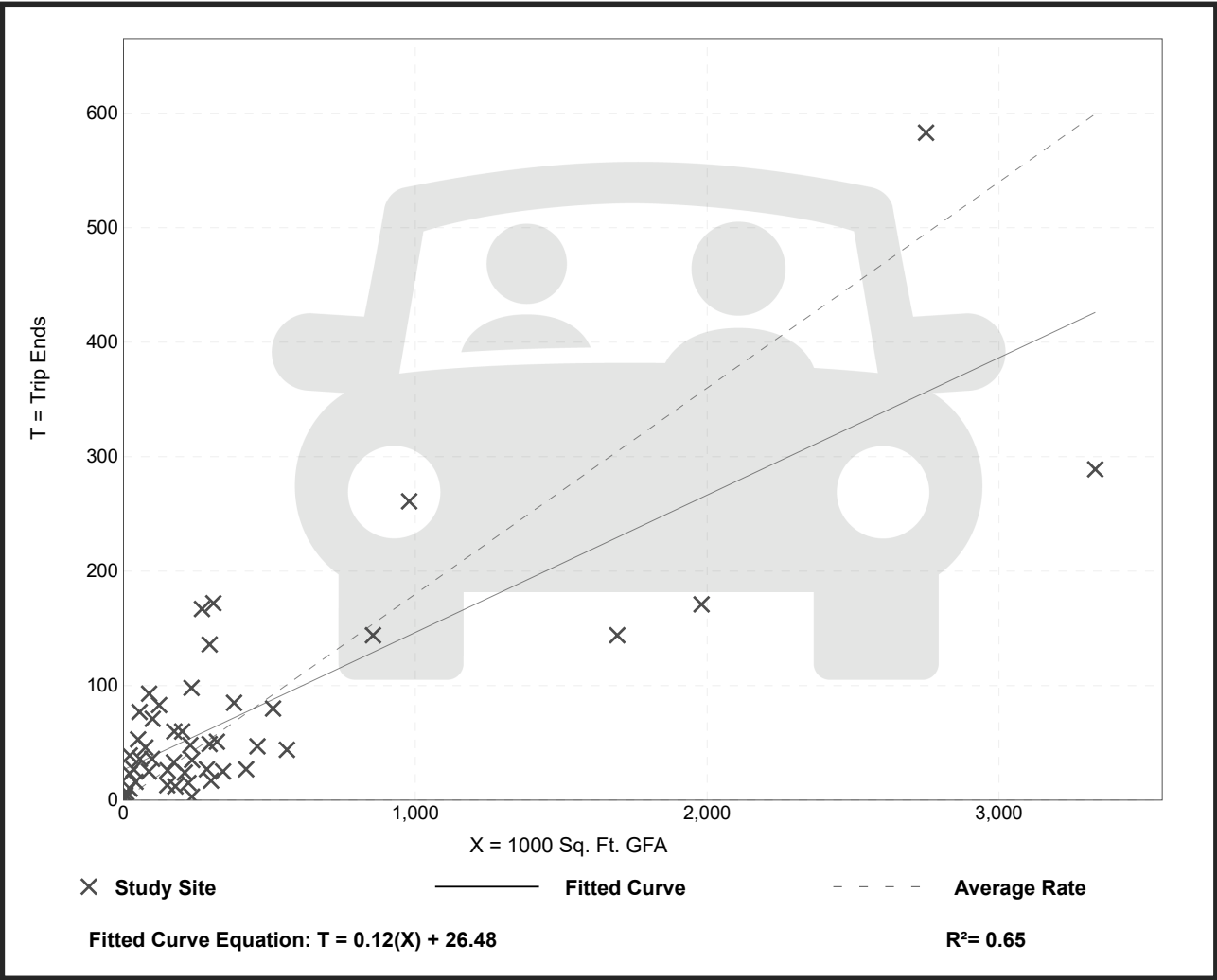
Warehousing (150)

Vehicle Trip Ends vs: 1000 Sq. Ft. GFA
On a: Weekday,
Peak Hour of Adjacent Street Traffic,
One Hour Between 4 and 6 p.m.
Setting/Location: General Urban/Suburban
Number of Studies: 49
Avg. 1000 Sq. Ft. GFA: 400
Directional Distribution: 28% entering, 72% exiting

Vehicle Trip Generation per 1000 Sq. Ft. GFA

Average Rate	Range of Rates	Standard Deviation
0.18	0.01 - 1.80	0.18

Data Plot and Equation



High-Cube Transload and Short-Term Storage Warehouse (154)

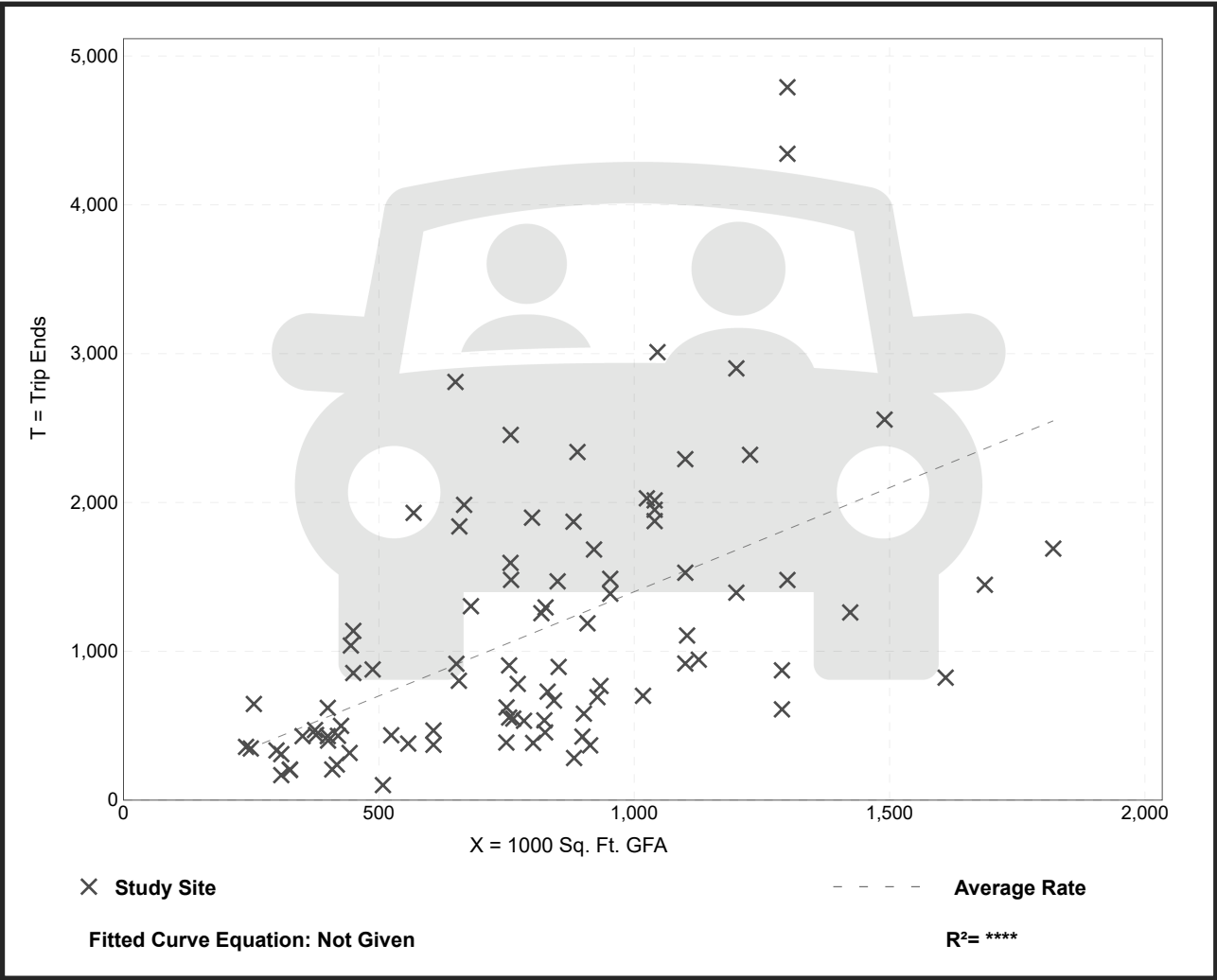
Vehicle Trip Ends vs: 1000 Sq. Ft. GFA
On a: Weekday

Setting/Location: General Urban/Suburban
Number of Studies: 91
Avg. 1000 Sq. Ft. GFA: 798
Directional Distribution: 50% entering, 50% exiting

Vehicle Trip Generation per 1000 Sq. Ft. GFA

Average Rate	Range of Rates	Standard Deviation
1.40	0.20 - 4.32	0.86

Data Plot and Equation



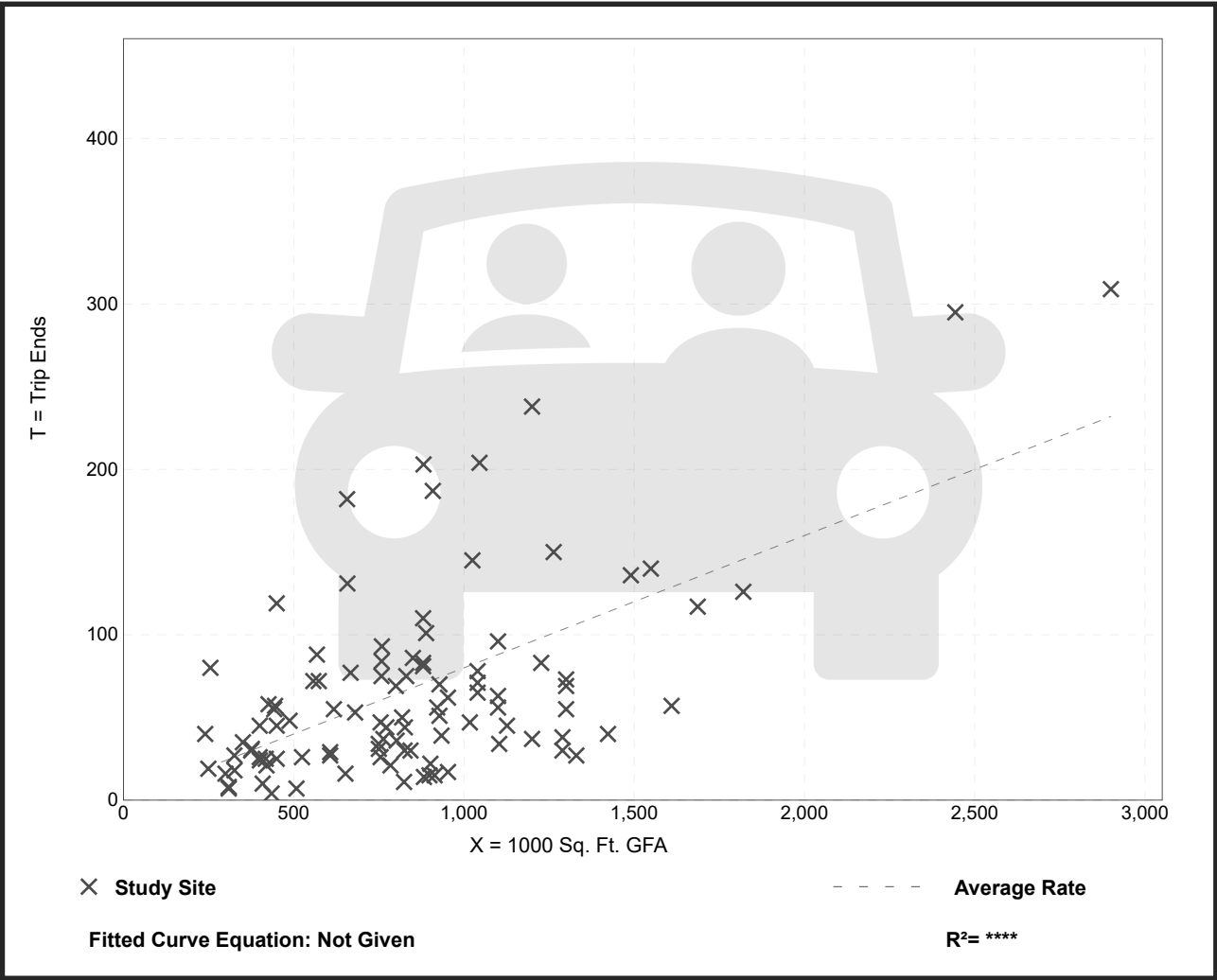
High-Cube Transload and Short-Term Storage Warehouse (154)

Vehicle Trip Ends vs: 1000 Sq. Ft. GFA
On a: Weekday,
Peak Hour of Adjacent Street Traffic,
One Hour Between 7 and 9 a.m.
Setting/Location: General Urban/Suburban
Number of Studies: 102
Avg. 1000 Sq. Ft. GFA: 846
Directional Distribution: 77% entering, 23% exiting

Vehicle Trip Generation per 1000 Sq. Ft. GFA

Average Rate	Range of Rates	Standard Deviation
0.08	0.01 - 0.31	0.05

Data Plot and Equation



High-Cube Transload and Short-Term Storage Warehouse (154)

Vehicle Trip Ends vs: 1000 Sq. Ft. GFA

On a: Weekday,
Peak Hour of Adjacent Street Traffic,
One Hour Between 4 and 6 p.m.

Setting/Location: General Urban/Suburban

Number of Studies: 103

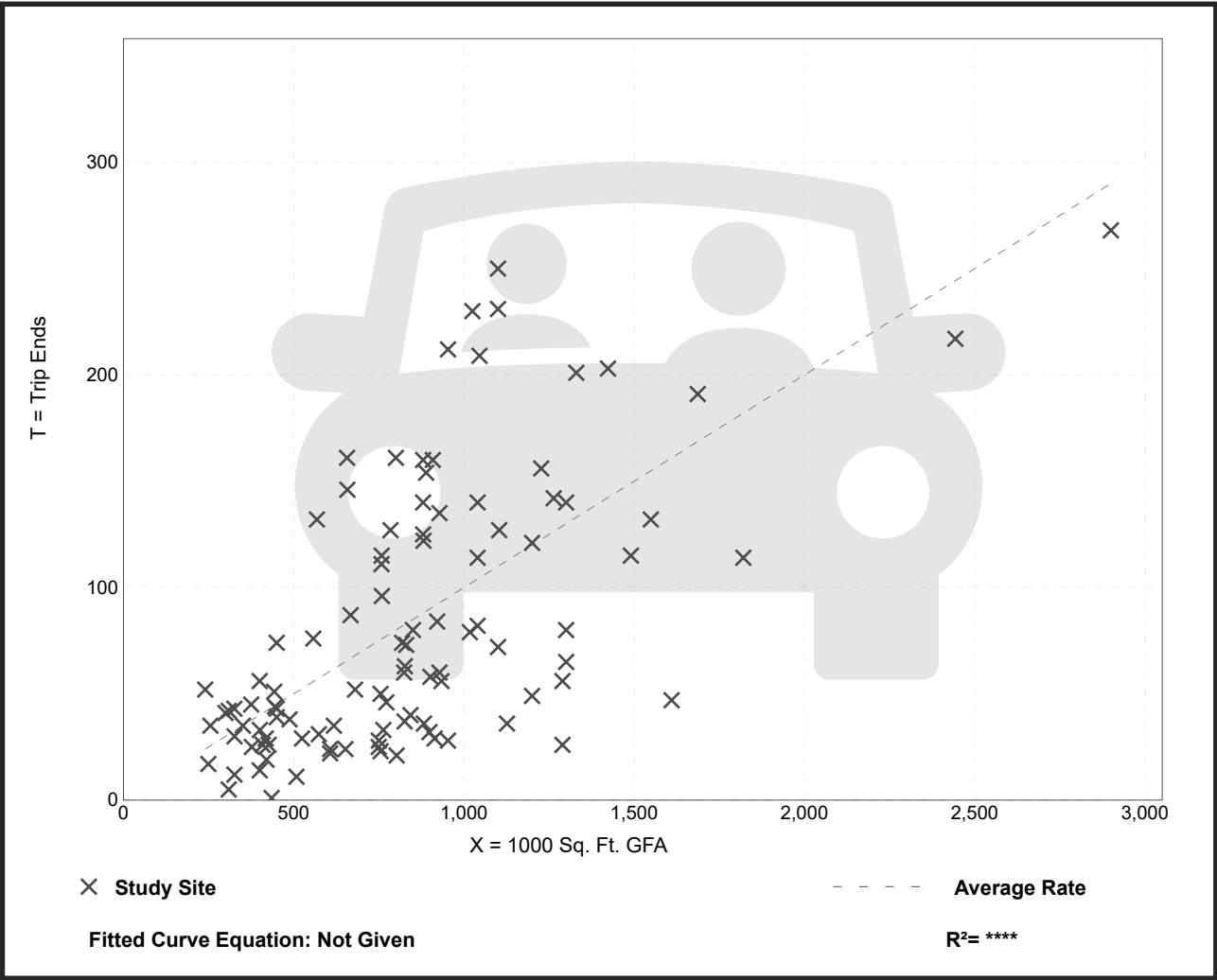
Avg. 1000 Sq. Ft. GFA: 840

Directional Distribution: 28% entering, 72% exiting

Vehicle Trip Generation per 1000 Sq. Ft. GFA

Average Rate	Range of Rates	Standard Deviation
0.10	0.00 - 0.25	0.06

Data Plot and Equation



View from Queens Arbor at elementary school



ITEM 18.1.



ATTACHMENT 1

View from Portico Circle along vacant site



Logisticcenter at Rancho Cordova

PLND-1021-0015 Major Design Review

Nicholas Sosa, Associate Planner
Darcy Goulart, Planning Manager
April 17, 2023

RANCHO CORDOVA
CALIFORNIA

CityOfRanchoCordova.org

Purpose of Tonight's Meeting

- Discuss the potential impacts of litigation in the magnitude of \$100 million dollars
- Request direction for Staff on demand to cure.
- Provide brief summary of the project and additional conditions agreed upon by the Applicant.
- Potentially close the public hearing, ask any questions, deliberate, and provide staff sufficiently detailed direction to prepare documents for final action at the May 15th Council Meeting based upon Council's direction.

Fiscal Impact of Potential Litigation & Adverse Judgement

- Cost of litigation is estimated to be approximately \$2 Million annually
 - Will hinder the City's ability to grow and expand services to the community in the next two-year budget, currently under development.
- \$100 Million judgement would significantly alter the City's financial position and future opportunities for the next 10-20 years .
 - Substantial portion of the City's General Fund would have to be redirected to the payment of this obligation over a 10-20 year window.
 - Magnitude of payments could exceed \$10 million annually depending on payment duration and potential interest costs and would significantly impact the City's ability to not only expand, but maintain basic services.

Fiscal Impact of Potential Litigation & Adverse Judgement

Active Projects

Mills Crossing Civic Center

Current Requests/ Identified Needs

Cordova Community Council
Mine Shaft

Rise Up Theatre Company

Little League Enhancements

Jobs & Talent Program
(CHIPS Act)

Deferred Maintenance

Interchange & Backbone
Infrastructure

Potential Short- Term Projects

MACC Phase II

Youth Center Phase II

Food Locker

Children's Museum
Improvements

Veteran's Hall/Resource
Center/Hall/Museum

Library

Other Ideas

Aspirational/ Opportunity Driven Projects

Hospital

Entertainment
Center/District

Indoor Track Facility

Professional Sports Team

Data Center Acquisition/ISP
Provider

New Children's Museum

Other Ideas

Brown Act Cure

- During direction on the Project during March 6th hearing, the Mayor clarified that the effect was to provide Staff direction to prepare findings of denial for consideration at a future City Council meeting, not to take any final action on the Project.
- The City received an email on March 20, 2023, claiming that this violated the Brown Act.
- Without any admission, this agenda item, including the scheduled motion to reconsider would correct and cure the alleged violation consistent with the Brown Act and the email of March 20, 2023.
- The City Attorney will provide additional assistance on this matter immediately following the reconsideration.

Project Request

- The Applicant is requesting a Major Design Review Entitlement to construct a 155,040 square foot shell industrial building with an accessory office area, loading dock area and commercial vehicle parking.
- The property is zoned Business Professional (BP), and warehousing is listed as a permitted use under Table IV (I.3) of the 2003 Sacramento County Zoning Code.
- Council's discretion is limited to the design of the building and not the use of the site.





Final Submittal			
Box Size	Number of trees	Diameter of all trees combined	% Increase
24	141	3384	-10%
36	28	1008	
48	36	1728	20%
	205	6120	18%

Current Elevations



EAST ELEVATION



NORTH ELEVATION



WEST ELEVATION



SOUTH ELEVATION



1 SHERWIN WILLIAMS SW 7009
PEARLY WHITE



2 SHERWIN WILLIAMS SW 2849
WESTCHESTER GRAY



3 SHERWIN WILLIAMS SW 7069
IRON ORE



4 SHERWIN WILLIAMS SW 6804
DIGNITY BLUE

Final Corner Rendering



Final Bear Hollow Rendering



Additional Conditions of Approval

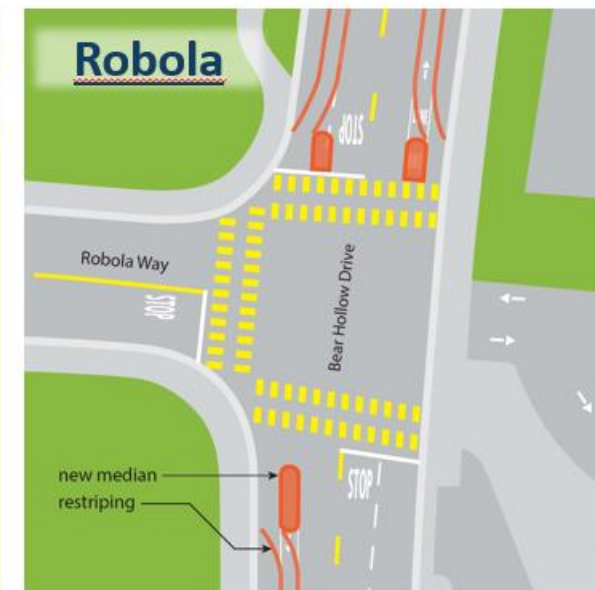
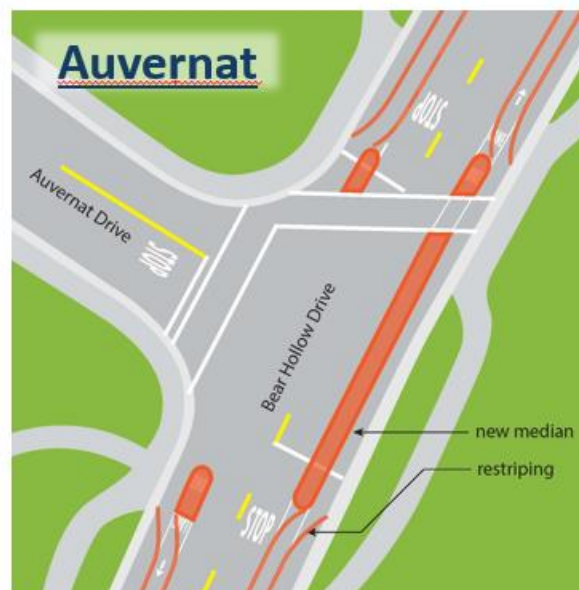
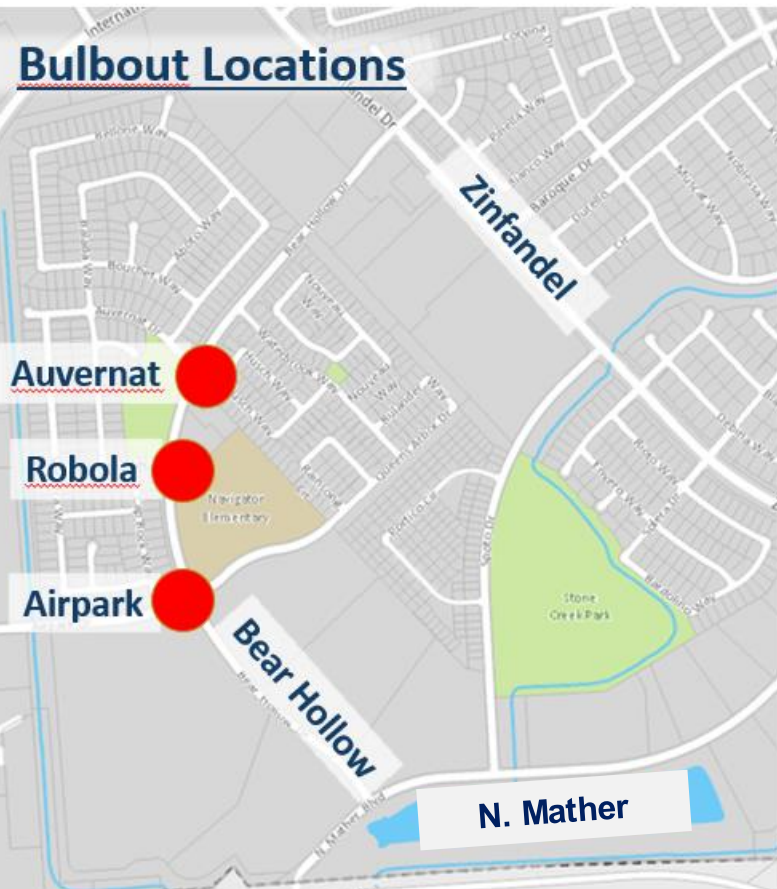
- Truck movements into, out of, and around the truck court of the project site, shall be prohibited between 10:00PM and 6:00AM.
- A new sound/screen wall will be installed at the end of Debina Court and applicant will pay fair share contribution.
- Project will include skylights as well as a roof that is designed to carry solar panels.
- Short and long term bicycle parking on-site.
- EV charging infrastructure upon construction and be EV ready as required by the California Building Code.
- Should the building, or a portion of the building, be leased to a use that requires refrigerated trucks, loading dock plugs shall be installed to minimize truck idling.

Additional Traffic Associated COA

- Non-passenger and commercial vehicles utilize N. Mather (ingress and egress).
- Non-passenger and commercial vehicles shall not be permitted to use Bear Hollow north of the project site, Airpark Dr., Spoto Dr., Baroque Dr., or other residential neighborhood roads.
- Right turn only signage to be added at the truck exits onto Bear Hollow.

Bulbouts COA

Bulbout Locations



***Similar treatment recommended at Airpark/Bear Hollow Intersection**

Additional Conditions of Approval

- Provide adequate parking for trucks on stand-by outside of loading and unloading at the loading docks.
- To provide adequate infrastructure and electrical capacity to prepare for future zero-emission future goods movement including EV charging for future zero-emission vehicles as well as electrical plugs at every dock station for refrigerated trucks.
- Provide amenities for truck drivers with restrooms, vending machines, and air conditioning.
- Provide EV chargers for employee vehicles as well as enlist the Hwy 50 TMA in designing a rideshare and public transportation programs for on-site employees.
- Ensure on-site public address systems are located and controlled so that noise levels do not exceed 45 dba at property line.
- Project is required to utilize the use of electric tools to the extent feasible including heavy equipment tools and vehicles.
- Heavy equipment tools and vehicles not powered by electricity are limited in the amount of time they are able to idle.
- Daily sweeping required of streets during construction along with the enforcement of CA fugitive dust requirements for construction sites.
- Adopt a formal truck routing plan designed to ensure safe routes to school
- Designate specific spots for on-site employee pick up and drop off.

Additional Conditions After March 6th

- Provide adequate parking for trucks on stand-by outside of loading and unloading at the loading docks.
- To provide adequate infrastructure and electrical capacity to prepare for future zero-emission future goods movement including EV charging for future zero-emission vehicles as well as electrical plugs at every dock station for refrigerated trucks.
- Provide amenities for truck drivers with restrooms, vending machines, and air conditioning.
- Provide EV chargers for employee vehicles as well as design rideshare and public transportation programs for on-site employees.
- Ensure on-site public address systems are located and controlled so that noise levels do not exceed 45 dba at property line.
- Project is required to utilize the use of electric tools to the extent feasible including heavy equipment tools and vehicles.
- Heavy equipment tools and vehicles not powered by electricity are limited in the amount of time they are able to idle.
- Daily sweeping required of streets during construction along with the enforcement of CA fugitive dust requirements for construction sites.
- Adopt a formal truck routing plan designed to ensure safe routes to school
- Designate specific spots for on-site employee pick up and drop off.

- The project is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15183, Projects Consistent with a Community Plan, General Plan, or Zoning.
- The proposed project has been reviewed and determined to be in conformity with what was reviewed in the original EIR for the Zinfandel Special Planning Area and no further CEQA review is required.

City Council could do one of the following:

1. Motion to reconsider March 6th direction and alleged action.
2. Direct staff to return at a later City Council meeting with final action documents.
3. Direct the Applicant to make additional modifications to the proposed project.

Thank You

Questions?



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March 20, 2023

VIA E-MAIL

Honorable Mayor Budge, Vice Mayor Sander,
and City Councilmembers
City of Rancho Cordova
2729 Prospect Park Drive
Rancho Cordova, CA 95670
E-Mail: CityClerk@cityofranchocordova.org

Re: Potential Litigation/Damages Regarding Bear Hollow
and Stone Creek Projects

Dear Mayor Budge, Vice Mayor Sander and City Councilmembers:

This office represents Dermody Properties ("Dermody") with respect to its Major Design Review applications for two projects: (1) "Bear Hollow," an approximately 155,077-square foot logistics center located northwest of the intersection of North Mather Boulevard and Bear Hollow Drive; and (2) "Stone Creek," consisting of four light industrial warehouse buildings with accessory office space totaling approximately 602,004 square feet. Following the events that unfolded at the City Council meeting of March 6, 2023, specifically with regard to the Bear Hollow project but having obvious impact and implications for both projects, my client has requested that I clearly convey to you the likely legal ramifications of the course of action that the City Council has now made clear it will be pursuing.

As you have been advised in multiple communications by me, your staff, your City Attorney, and your "second opinion" outside counsel Hansen Bridgett, both in written documents and in in-person communications made at and outside of public meetings, the City lacks lawful discretion to reject either the Development Agreement (which remains valid and binding) or the projects. They are fully compliant with the Development Agreement, under which my client has fully vested rights. My client has, in good faith, engaged with the City at all levels—residents, staff, the City Manager, the City Attorney, and the City Council—to consider and respond to meaningful comments and feedback as to the projects' designs, the only area under which the City has any legal authority over the projects. My client has made every reasonable effort to accommodate the stated concerns, while still maintaining its vested rights to proceed with the projects. Its efforts have, unfortunately, been met with delay, obfuscation, and now a patently illegal "outright denial" vote with respect to Bear Hollow, which can only be construed as a rejection

Honorable Mayor Budge, Vice Mayor Sander, and City Councilmembers
March 20, 2023
Page 2

of the Stone Creek project – which proposes the same by-right use – as well, as explained in our recently sent Development Agreement default notice with respect to that project.

As you have certainly been advised by your own legal counsel, the City Council's continued unlawful treatment of Dermody's projects inexorably leads to but one destination: a lawsuit, and one that will be far more expensive than the Council appears to understand. Accordingly, the purpose of this letter is to provide the Council with an admittedly rough, but realistic estimate of just how much taxpayer money it is proposing to spend by virtue of its unlawful rejection of projects that any rational person, including the City Attorney and the City's specially-retained outside counsel, knows it must approve.

Before discussing specific numbers, however, I urge you all, again, to carefully read the very instructive appellate court opinion in *Mammoth Lakes Land Acquisition, LLC v. Town of Mammoth Lakes* (2010) 191 Cal.App.4th 435, which I have previously cited to you; a full copy of the decision is attached hereto for your convenient reference. Should you read it, you will note that the case bears striking and material similarities to the facts of the instant matter. Both entail a municipality intentionally and illegally thwarting the vested rights of a developer under a development agreement. In the *Mammoth Lakes* case, the Court of Appeal upheld a \$30 million verdict against the Town of Mammoth Lakes based on its violation of the development agreement, and over \$2 million in attorneys' fees (which would not include the fees incurred in the appeal itself, likely pushing the total fee award north of \$3 million). Thus, the decision resulted in some \$33 million in liability for the Town, a judgment that unsurprisingly drove it into bankruptcy. (I have also attached a copy of the Town's bankruptcy filing for your convenient reference.) And, of course, those dollar figures date from 2010; the dollar has been subject to approximately 37% inflation since 2010, making the *Mammoth Lakes* liability equivalent to over \$45 million in today's (2023) dollars.

Thus, while the high emotion, drama, and adrenalin of a contentious City Council meeting, driven by hyperbolic comments made in opposition to the Bear Hollow project, may have pushed the Council's slim majority over the edge of rationality and irreversibly down the chosen path of an illegal rejection, it remains my faint hope that, in the cold, hard light of day, with the City's potential liability for Dermody's damages more pellucidly spelled out, the Council might reconsider its rash decision and instead approve the Projects as it is legally obligated to do.

Based on Dermody's preliminary analysis of its damages, and without including attorneys' fees, they would be approximately \$59,900,000 in a scenario where five years of litigation are required to vindicate Dermody's vested rights under the Development Agreement.

As noted, however, the above figure does not include attorneys' fees, and in addition to such damages, Dermody would also be entitled to recover its attorneys'

Honorable Mayor Budge, Vice Mayor Sander, and City Councilmembers
March 20, 2023
Page 3

fees under section 8.13 of the Development Agreement. That figure appears likely to total somewhere in the vicinity of \$1 million per year of litigation; assuming roughly five years to litigate the case through judgment and appeal, that would total some \$5 million. Of course, the City will have additional expense in that it will have to pay its own outside counsel to defend the lawsuit, which would lead to another approximately \$5 million in unrecoverable expense to the City.

All told, then, the City would be facing an ultimate liability of approximately \$69.9 million in this case. Its fiscal year 2022-2023 general fund proposed budget totals \$66 million; its fiscal year 2021-2022 general fund revenues totaled \$65 million.¹ The fact that the City is blithely courting an enormous litigation liability that significantly exceeds its annual budget, in a matter that its own legal counsel have undoubtedly advised it that it will most likely lose, is nothing short of astonishing and recklessly irresponsible – so much so that it is quite unprecedented in my more than thirty-five years of litigation experience.

As I'm sure you are also aware, the law also is clear that each member of the City Council owes the City and its citizens the duties of a fiduciary. (*Lexin v. Superior Court* (2010) 47 Cal.4th 1050, 1073; *People v. Rizzo* (2013) 214 Cal.App.4th 921, 950-951; *City of Palm Springs v. Living Desert Reserve* (1999) 70 Cal.App.4th 613, 630; *Hobbs, Wall & Co. v. Moran* (1930) 109 Cal.App. 316, 319.) It is axiomatic that the councilmembers thus have a duty to avoid wasting or squandering the City's funds, many of which are paid in taxes by their constituents, who undoubtedly will expect that their tax monies will be spent on matters benefitting the entire City and its citizens. By refusing to approve the projects, as they are legally required to under the Development Agreement and Dermody's vested rights thereunder, it appears to us that the City Council majority is purposely choosing to enmesh the City in years of litigation to no practical end, wasting tens of millions of dollars of taxpayer money in the process. As I have consistently done, I once again urge you to avoid this pointless and perilous (for the City) exercise, and to approve the projects, as you have been correctly advised that the law clearly requires.

While it may well turn out to be, this letter is not intended to be a vain effort; rather, it is our sincere hope that cooler heads will ultimately prevail and that litigation may be avoided while there is still a chance of that. Should that not occur, however, please be advised that it is absolutely certain that my client has ample means to and will vigorously defend and pursue its legal rights in litigation for as long as it takes to vindicate them. Nothing set forth in this letter is intended to, nor should it be construed to, limit or waive my client's rights, all of which are hereby expressly reserved. The damages figures cited herein are at this point necessarily preliminary estimates and are not intended to cap or otherwise limit the damages to be sought in litigation or at trial, again, should the same become necessary.

¹ <https://stories.opengov.com/ranchocordovaca/published/T-yvgzL3u>

Honorable Mayor Budge, Vice Mayor Sander, and City Councilmembers
March 20, 2023
Page 4

Thank you for your anticipated attention to these matters.

Very truly yours,

MILLER STARR REGALIA



Arthur F. Coon

AFC/mch:klw
w/encls.

cc: Micah Runner, City Manager (w/encls., mrunner@cityofranchocordova.org)
Elizabeth Sparkman, Community Development Director,
(w/encls., esparkman@cityofranchocordova.org)
Adam Lindgren, City Attorney (w/encls., alindgren@cityofranchocordova.org)
City Clerk, City of Rancho Cordova (w/encls.,
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KeyCite Yellow Flag - Negative Treatment

Distinguished by [Redondo Beach Waterfront, LLC v. City of Redondo Beach](#), Cal.App. 2 Dist., December 21, 2022

191 Cal.App.4th 435

Court of Appeal, Third District, California.

MAMMOTH LAKES LAND ACQUISITION,

LLC, Plaintiff and Respondent,

v.

TOWN OF MAMMOTH LAKES,

Defendant and Appellant.

No. C059239

|

Dec. 30, 2010.

|

Review Denied March 23, 2011.

Synopsis

Background: Developer brought action for damages against town for anticipatory breach of development agreement after town refused to move forward with hotel/condominium project unless Federal Aviation Administration's (FAA) objections to project could be resolved. The Superior Court, Mono County, No. 15954, [Roger D. Randall, J.](#), entered judgment on jury verdict for developer and awarded it \$30 million in damages in the form of lost profits. Town appealed.

Holdings: The Court of Appeal, [Nicholson, J.](#), held that:

[1] developer was not required to exhaust administrative remedies;

[2] FAA's objections to hotel/condominium project did not excuse town's performance of the agreement;

[3] town manager had authority to act on town's behalf when he refused to cooperate with developer; and

[4] evidence supported the lost profits damages award.

Affirmed.

West Headnotes (39)

[1] **Zoning and Planning** 🔑 Conditions and Agreements

Zoning and Planning 🔑 Vested or property rights

While, as a legislative act, a development agreement can be disapproved by referendum, an unchallenged development agreement is an enforceable contract between the municipality and the developer; depending on its terms, it may create vested rights in the developer with respect to land use. [West's Ann.Cal.Gov.Code § 65865](#).

10 Cases that cite this headnote

[2] **Zoning and Planning** 🔑 Conditions and Agreements

The scope of development agreements need not be limited to freezing land use rules, regulations, and policies but can include other promises between the municipality and the developer. [West's Ann.Cal.Gov.Code § 65864](#).

6 Cases that cite this headnote

[3] **Administrative Law and Procedure** 🔑 Exhaustion of Administrative Remedies

Under doctrine of "exhaustion of administrative remedies," where an administrative remedy is provided by statute, relief must be sought from the administrative body and this remedy exhausted before the courts will act; exhaustion of the administrative remedy is a jurisdictional prerequisite to resort to the courts.

1 Case that cites this headnote

[4] **Municipal Corporations** 🔑 Rights and Remedies of Contractors and Sureties Against Municipality

Public Contracts 🔑 Breach of contract by government entity, rights on

Developer could elect action for breach of development agreement as its judicial remedy, rather than having to proceed with an administrative mandamus action, after town refused to proceed with hotel/condominium project due to Federal Aviation Administration's (FAA) objections, which were not conditions of agreement; determination of damages was not available in administrative mandamus action, and once developer gave notice of default and town failed to cure the default, there was no longer a proposed land use to adjudicate in the town's quasi-judicial administrative process, such that all that remained was factual determination of whether town breached the agreement and, if it did, what was the remedy.

 West's Ann.Cal.C.C.P. § 1094.5.

[5] **Trial** Construction of writings

The interpretation of a written instrument, even though it involves what might properly be called questions of fact, is essentially a judicial function to be exercised according to the generally accepted canons of interpretation so that the purposes of the instrument may be given effect.

[6] **Evidence** Construction, Interpretation, or Application of Writings; Ambiguity

Extrinsic evidence is admissible to interpret a written instrument, but not to give it meaning to which it is not reasonably susceptible, and it is the instrument itself that must be given effect.

1 Case that cites this headnote

[7] **Trial** Construction of writings

It is solely a judicial function to interpret a written instrument unless the interpretation turns upon the credibility of extrinsic evidence.

[8] **Zoning and Planning** Other particular conditions or agreements

Federal Aviation Administration's (FAA) objections to airport hotel/condominium project

did not excuse town's performance of development agreement under provision in agreement excusing default for delays in or failures of performance due to governmental restrictions imposed or mandated by other governmental entities, given that town, by making assurances to the FAA in exchange for grant funding for its airport, caused the FAA to express reservations concerning the project, such that the FAA's restrictions were within the reasonable control of the town.

1 Case that cites this headnote

[9] **Zoning and Planning** Hearing and trial in general

Question of whether parties intended to include town's grant assurances to Federal Aviation Administration (FAA) when they agreed to comply with FAA rules and regulations was for jury in developer's action for anticipatory breach of development agreement, even if FAA assurances fell within broad definition of a "rule" under the federal Administrative Procedures Act.

 5 U.S.C.A. § 551(4).

[10] **Zoning and Planning** Other particular conditions or agreements

In action against town for anticipatory breach of development agreement, rules of contract interpretation, rather than canons of statutory interpretation, applied to interpret parties' intent as to provision in agreement requiring parties to comply with Federal Aviation Administration's (FAA) rules; question concerning development agreement did not concern validity of the agreement as a legislative act of the town, but instead presented question concerning the interpretation of the agreement, and to that question, the agreement was a contract between the parties. West's Ann.Cal.Gov.Code § 65867.5.

6 Cases that cite this headnote

[11] **Zoning and Planning** Other particular conditions or agreements

Developer's acknowledgement of Federal Aviation Administration's (FAA) funding and participation in matching funding pursuant to development agreement did not amount to consent to FAA's restrictions or reservations that town accepted in exchange for obtaining federal funds under a grant for improvements to airport, given that the town withheld from developer knowledge of the FAA's reservations concerning the agreement.

[12 Cases that cite this headnote](#)

- [12] **Appeal and Error** 🔑 Entire record
Appeal and Error 🔑 Jury as factfinder
[below in general](#)

When considering whether the evidence was sufficient to support the jury's verdict, the Court of Appeal reviews the entire record in the light most favorable to the judgment to determine whether there are sufficient facts, contradicted or uncontradicted, to support the judgment.

[14 Cases that cite this headnote](#)

- [13] **Evidence** 🔑 Substantial Evidence
Substantial evidence is evidence that is reasonable and credible.

[9 Cases that cite this headnote](#)

- [14] **Appeal and Error** 🔑 Jury as factfinder
[below in general](#)

In evaluating the sufficiency of the evidence to support the jury's verdict, the Court of Appeal accepts reasonable inferences in support of the judgment and does not consider whether contrary inferences may be made from the evidence.

[12 Cases that cite this headnote](#)

- [15] **Contracts** 🔑 Grounds of action

To recover on a cause of action for breach of contract, the plaintiff must establish: (1) the existence of a contract, (2) plaintiff's performance or excuse for nonperformance, (3) defendant's breach, and (4) damage to plaintiff as a result of defendant's breach.

- [16] **Contracts** 🔑 Acts constituting renunciation and liabilities therefor

Anticipatory breach occurs when one of the parties to a bilateral contract repudiates the contract.

[7 Cases that cite this headnote](#)

- [17] **Contracts** 🔑 Acts constituting renunciation and liabilities therefor

Repudiation of a bilateral contract based on anticipatory breach may be express or implied; an "express repudiation" is a clear, positive, unequivocal refusal to perform, whereas an "implied repudiation" results from conduct where the promisor puts it out of his power to perform so as to make substantial performance of his promise impossible.

[10 Cases that cite this headnote](#)

- [18] **Contracts** 🔑 Renunciation

When a promisor repudiates a contract, the injured party faces an election of remedies: he can treat the repudiation as an anticipatory breach and immediately seek damages for breach of contract, thereby terminating the contractual relation between the parties, or he can treat the repudiation as an empty threat, wait until the time for performance arrives and exercise his remedies for actual breach if a breach does in fact occur at such time; however, if the injured party disregards the repudiation and treats the contract as still in force, and the repudiation is retracted prior to the time of performance, then the repudiation is nullified and the injured party is left with his remedies, if any, invocable at the time of performance.

[4 Cases that cite this headnote](#)

- [19] **Contracts** 🔑 Acts constituting renunciation and liabilities therefor

A party can breach, or break, a contract before performance is required by clearly and positively

indicating, by words or conduct, that they will not or cannot meet a requirement of the contract, or that they will not perform until additional conditions not in the contract are met.

[20] **Municipal Corporations** 🔑 Authority and Powers

States 🔑 Authority and Powers of Officers and Agents, and Exercise Thereof

No government, whether state or local, is bound to any extent by officer's acts in excess of his authority.

[21] **Public Employment** 🔑 Authority and Powers

One who deals with public officers stands presumptively charged with full amount of that officer's powers, and is bound at his peril to ascertain extent of his powers to bind government for which he is an officer, and any act of officer to be valid must find express authority in the law or be necessarily incidental to power expressly granted.

[22] **Municipal Corporations** 🔑 Mayor or other chief executive

Town manager did not act in excess of official authority when he refused to cooperate with developer in moving along hotel/condominium project, even though he failed to obtain vote of town council; municipal code charged town manager, as an executive officer, with the duty to see that all franchises, contracts, permits and privileges granted by the town council were faithfully observed.

[23] **Contracts** 🔑 Acts constituting renunciation and liabilities therefor

If a party to a contract expressly or by implication repudiates the contract before the time for his or her performance has arrived, an anticipatory breach is said to have occurred; the promisor has engaged not only to perform under the contract, but also not to repudiate his or her promise.

5 Cases that cite this headnote

[24] **Contracts** 🔑 Acts constituting renunciation and liabilities therefor

An express repudiation of a contract is a clear, positive, unequivocal refusal to perform.

9 Cases that cite this headnote

[25] **Contracts** 🔑 Acts constituting renunciation and liabilities therefor

Annexing an unwarranted condition to an offer of performance is a refusal to perform the contract.

2 Cases that cite this headnote

[26] **Appeal and Error** 🔑 Actions on building contracts and to enforce mechanics' liens

Town could not raise good-faith theory of defense on appeal to claim that it repudiated development agreement because town did not proffer theory to jury.

[27] **Municipal Corporations** 🔑 Evidence
Public Contracts 🔑 Breach of contract

Evidence did not support town's claim that it desired to comply with development agreement in good faith as required to show that it did not repudiate agreement for development of hotel/condominium project such that an anticipatory breach had occurred, where, at time that town asserted it was acting in good faith by being willing to abide by terms of agreement, it was also actively working with Federal Aviation Administration (FAA) to terminate the developer's rights under agreement.

1 Case that cites this headnote

[28] **Municipal Corporations** 🔑 Rights and Remedies of Contractors and Sureties Against Municipality

Public Contracts 🔑 Cancellation or termination of contract in general, rights of contractors

Town demonstrated its intention not to be bound by the development agreement, as required to support finding that it repudiated agreement, by actively refusing to cooperate and seeking to have the developer's rights terminated.

[29] **Municipal Corporations** 🔑 Trial, judgment, and review

Public Contracts 🔑 Instructions

Instruction in anticipatory breach of contract action, that “it is not an excuse to performance of one contract that the party chose to perform the other contract,” did not allow jury to base a finding of contract repudiation on town's formation of inconsistent contracts; instead, the instruction merely informed the jury that a party could not rely on its assent to one contract to justify breach of another, inconsistent contract.

[30] **Municipal Corporations** 🔑 Rights and Remedies of Contractors and Sureties Against Municipality

Public Contracts 🔑 Breach of contract by government entity, rights on

Letter professing town's willingness to work with developer on Federal Aviation Administration's (FAA) compliance assurances for federal grant did not constitute a retraction of its earlier repudiation of development agreement, such that it was not in anticipatory breach of the agreement; while town professed its willingness to work with the developer on FAA compliance issues, it did not offer to move forward with the hotel/condominium project without first resolving the FAA compliance issues.

1 Case that cites this headnote

[31] **Appeal and Error** 🔑 Defects, objections, and amendments

Issue of whether trial court erred by not instructing jury on retraction of town's repudiation of contract in anticipatory breach of contract action was not required to be considered on appeal, where argument was appended to another argument.

2 Cases that cite this headnote

[32] **Appeal and Error** 🔑 Evidence and Trial

Town forfeited review of issue of whether trial court erred in anticipatory breach of contract action by not instructing the jury on retraction of town's repudiation of contract, given town's failure to provide a citation to record to show where town requested what it contended would have been a proper instruction on retraction.

1 Case that cites this headnote

[33] **Damages** 🔑 Breach of contract

Where prospective profits are the natural and direct consequences of a breach of contract, they may be recovered.

1 Case that cites this headnote

[34] **Damages** 🔑 Loss of profits

Damages consisting of the loss of anticipated profits need not be established with certainty; it is sufficient that it be shown as a reasonable probability that the profits would have been earned except for the breach of the contract.

2 Cases that cite this headnote

[35] **Appeal and Error** 🔑 Deference given to lower court in general

Appeal and Error 🔑 Setting aside verdict; new trial

The Court of Appeal defers to the trial court's factual determination when the court grants a motion for new trial, not when the court denies such a motion; when the court denies the motion, the Court of Appeal will presume the jury's verdict is correct.

3 Cases that cite this headnote

[36] **Damages** 🔑 Loss of profits

Lost profits may be proved by means other than the value given by a willing buyer; expert testimony, alone, may be sufficient if it is

supported by substantial evidence and is not speculative.

[37] **Damages** 🔑 Particular cases

Evidence 🔑 Damages

Jury verdict awarding developer \$30 million in damages for lost profits as result of town's anticipatory breach of development agreement for hotel/condominium project was sufficiently supported by expert testimony of certified appraiser, as well as developer's part-owner; using intentionally conservative assumptions and accepted valuation principles, appraiser gave project a current value of \$37 million to \$48 million, and part-owner, who was experienced in developing, managing, and owning real estate and had developed and redeveloped hotels, estimated that the completed project could be sold for \$30 million to \$40 million.

[38] **Evidence** 🔑 Examination of Witness

In stating an opinion as to market value of his property, landowner is bound by the same rules of admissibility as is any other witness. [West's Ann.Cal.Evid.Code § 813](#).

1 Case that cites this headnote

[39] **Appeal and Error** 🔑 Reply briefs

Town's argument that \$30 million lost profits damage award in developer's anticipatory breach of contract action amounted to an invalid forfeiture of taxpayer funds was forfeited on appeal where issue was raised for first time in its reply brief.

****802** APPEAL from a judgment of the Superior Court of Mono County, [Roger D. Randall](#), Judge. * Affirmed.

Attorneys and Law Firms

Law Office of Peter E. Tracy and [Peter E. Tracy](#), Bishop; Morrison & Foerster, [Edgar B. Washburn](#), [Maria Chedid](#),

Shaye Diveley, and [Anton A. Ware](#), San Francisco, for Defendant and Appellant.

Meyers, Nave, Riback, Silver & Wilson, [Steven R. Meyers](#), [Julia L. Bond](#), and [Peter S. Hayes](#), Oakland, for League of California Cities and California State Association of Counties as Amici Curiae on behalf of Defendant and Appellant.

Quinn Emanuel Urquhart & Sullivan, [Daniel L. Brockett](#), John M. Pierce, Los Angeles, and Daniel H. Bromberg for Plaintiff and Respondent.

[NICHOLSON, J.](#)

***440** Defendant Town of Mammoth Lakes (the Town) entered into a development agreement with Terrence Ballas to make improvements at the Town's airport and to build a hotel or condominium project at the airport. Ballas would initially lease the land for the hotel/condominium project but would later have the option to purchase it. Plaintiff Mammoth Lakes Land Acquisition, LLC (Developer), later acquired from Ballas the right to build the hotel or condominium project.

The Town eventually changed its priorities and no longer wanted the hotel/condominium project. The Town sought help from the Federal Aviation Administration (FAA) to eliminate the Developer's ability to build the hotel/condominium project. The FAA objected to the hotel/condominium project and threatened to cut off federal funding for the airport. However, the Developer demanded that the Town move forward with the hotel/condominium project as contemplated in the development agreement. Despite the demand, the Town refused to move forward unless the parties could resolve the FAA's objections.

Claiming the Town repudiated the development agreement, the Developer sued the Town for anticipatory breach of contract. A jury found that the Town breached the development agreement and awarded \$30 million in damages to the Developer. Later, the trial court awarded \$2,361,130 in attorney fees to the Developer.

On appeal, the Town contends that the judgment must be reversed because (1) the Developer could not recover in a breach of contract cause of action because it failed to exhaust its administrative remedies, (2) even if contract remedies are available, three clauses of the development agreement give the ***441** Town a complete defense, (3) the Developer failed to establish a repudiation of the development agreement, (4)

the evidence of damages was too speculative to support the verdict, and (5) the attorney fees award must be reversed along with the judgment. None of the Town's contentions has merit.

The Developer was not restricted to pursuing the administrative remedies available through the Town's land use application process because the Town violated the development agreement by refusing to move forward with the hotel/condominium project unless the FAA's objections were resolved. Therefore, the judicial remedy is a breach of contract action based on the Town's executive decision not ****803** to move forward as required by a contract, not an administrative mandamus action to review a quasi-judicial decision of the Town concerning a land use application. Also, a breach of contract action is appropriate because damages for anticipatory breach of the development agreement are not available in an administrative mandamus action.

With respect to the defenses asserted by the Town based on the language of the development agreement, none requires reversal of the judgment. A clause excusing performance of the development agreement because of governmental restrictions is unhelpful to the Town because those restrictions were under the Town's control. Another clause requiring the parties to comply with the rules and regulations of the FAA did not excuse the Town from performing on the development agreement because the FAA's objections were based on grant assurances made by the Town to obtain FAA funding, not on FAA rules or regulations. And the third clause is likewise unhelpful to the Town. It required the Developer to provide funds matching the FAA's funding. Contrary to the Town's assertion, providing matching funds did not signal the Developer's consent to the FAA restrictions because the evidence established that the Developer neither knew nor ought to have known about the restrictions when providing the matching funds.

The Town asserts that the Developer failed to establish a breach of the development agreement because (A) the Developer failed to establish a breach attributable to the Town; (B) the evidence was insufficient to establish repudiation; (C) the purchase option for the land under the hotel/condominium project was a unilateral contract not yet ripe for breach; and (D) the Town retracted any repudiation. The Developer established a breach attributable to the Town by evidence of the actions of town officials, acting within their authority. Those actions constituted repudiation of the development agreement because they insisted on resolution

of the FAA's objections before moving forward with the development agreement, which resolution was not a condition for performance in the development agreement. Although the development agreement included a purchase option for the land under the hotel/condominium project, the breach was of the development agreement, ***442** which was not a unilateral contract. And, despite the claims of town officials that they were willing to move forward with the hotel/condominium project, their actions established that they did not retract the repudiation of the development agreement.

The evidence of damages in the form of lost profits came from three sources: an experienced appraiser of hotel and resort projects, one of the investors in the Developer, and the town manager. Considering the evidence in the light most favorable to the verdict, the evidence of damages was not too speculative to support the \$30 million damages award.

And finally, the Town's contention that the award of attorney fees must be reversed is without merit because the Town's sole argument for reversal of the attorney fees award is that it was based on the Developer's status as the prevailing party. The award of attorney fees is valid because we do not reverse the judgment and the Developer remains the prevailing party.

We affirm the judgment and the award of attorney fees.

HISTORY OF DEVELOPMENT AGREEMENTS

A development agreement is a statutorily-authorized agreement between a municipal government (here, the Town) and a ****804** property owner for the development of the property. ([Gov.Code](#), § 65865, subd. (a).) One of the main components of a development agreement is a provision freezing the municipality's rules, regulations, and policies governing permitted uses of land and density of the land use, as well as standards and specifications for design, improvement, and construction. ([Gov.Code](#), § 65866.) This provision allows a developer to make long-term plans for development without risking future changes in the municipality's land use rules, regulations, and policies.

 *Santa Margarita Area Residents Together v. San Luis Obispo County Bd. of Supervisors* (2000) 84 Cal.App.4th 221, 227, 100 Cal.Rptr.2d 740 (SMART).)

[1] The development agreement must be approved by ordinance and is, therefore, a "legislative act." ([Gov.Code](#), § 65867.5, subd. (a).) Because the development agreement

is approved by ordinance, it is subject to referendum, which allows the electorate to overturn approval of the agreement. (*Ibid.*) While, as a legislative act, a development agreement can be disapproved by referendum, an unchallenged development agreement is an enforceable contract between the municipality and the developer. Depending on its terms, it may create vested rights in the Developer with respect to land use. (See *SMART*,  *supra*, 84 Cal.App.4th at p. 230, 100 Cal.Rptr.2d 740 [development agreement creates commitments to developers].)

***443** After approval by ordinance, the development agreement is enforceable despite subsequent changes in the municipality's land use laws. (Gov.Code, § 65865.4.) The development agreement may be amended or cancelled only by mutual consent of the parties to the agreement. (Gov.Code, § 65868.)

The Legislature enacted the development agreement statutes in response to the California Supreme Court's jurisprudence on vested rights.

Before 1976, developers in California faced changes in land use laws and policies during the course of long-term development of property. When a change in the land use laws and policies interfered with development already initiated, some developers argued that they had a “vested right” to complete the development despite the changes in the land use laws and policies. It was “the rule in this state and in other jurisdictions that if a property owner has performed substantial work and incurred substantial liabilities in good faith reliance upon a permit issued by the government, he acquires a vested right to complete construction in accordance with the terms of the permit.

[Citations.]” ( *Avco Community Developers, Inc. v. South Coast Regional Com.* (1976) 17 Cal.3d 785, 791, 132 Cal.Rptr. 386, 553 P.2d 546 (*Avco*).)

In 1976, the California Supreme Court, in *Avco*, decided that no right to complete the work vested until the developer obtained a building permit, even if the developer had already performed substantial work and incurred substantial liabilities on the project. ( *Avco*, *supra*, 17 Cal.3d at p. 793, 132 Cal.Rptr. 386, 553 P.2d 546.) The court noted that any change in this common law principle would have to come from the Legislature. ( *Id.* at p. 796, 132 Cal.Rptr. 386, 553 P.2d 546.)

In 1979, the Legislature's enactment of the development agreement statutes provided a way for the municipality and developer to depart from the common law rule of vested rights. The Legislature declared that “[t]he lack of certainty in the approval of development projects can result in a waste of resources, escalate the cost of housing and other development to the consumer, and discourage investment in and commitment to comprehensive planning ****805** which would make maximum efficient utilization of resources at the least economic cost to the public.” (Gov.Code, § 65864, subd. (a).)

[2] The Legislature recognized that the newly-authorized development agreements would provide benefits for both municipality and developer. The agreements allowed the developer to proceed with a project with the assurance that the project would be approved based on rules, regulations, and policies existing at the time the development agreement was approved, even if those rules, regulations, and policies changed over the course of the development project. (Gov.Code, § 65864, subd. (b).) In 1984, the Legislature added a declaration that development agreements would also allow ***444** municipalities to extract promises from the developers concerning financing and construction of necessary infrastructure. (Gov.Code, § 65864, subd. (c); Stats.1984, ch. 143, § 1, p. 431.) This declaration makes it clear that the scope of development agreements need not be limited to freezing land use rules, regulations, and policies but can include other promises between the municipality and the developer. Thus, a legislatively-approved development agreement gives both parties vested contractual rights.

FACTS¹

The Town's Acquisition of Airport and FAA Funding

The Town took over operation of the Mammoth Lakes Airport (later known as the Mammoth–Yosemite Airport) in 1991 and annexed the property in 1995. The Town desired to improve the airport to host commercial air service to enhance the Town's appeal as a destination for visitors.

Beginning in 1992, the Town received grants from the FAA under the Airport Improvement Program. As a condition for receiving these federal funds, the Town made assurances to the FAA that it would meet any conditions placed on the funding by the FAA. These grant assurances were made part of the funding agreements. One of the assurances made by the Town to the FAA was that the Town would not sell or

lease any part of the airport property without approval from the FAA.

Proposed Development Agreement

In 1997, the Town proposed to enter into a Development Agreement with Terrence Ballas, who had experience in airport development.

The recitals at the beginning of the proposed Development Agreement stated the Town's purposes and goals: “[The] Town has determined that a first-class Airport operation, including an efficient fixed base operation, increased hangar space, modern fuel facilities, a hotel or condominium or residential condominium and related amenities, and space for recreational ***445** vehicles, will benefit the economy of the Mammoth Lakes area and promote the goals set ****806** forth in the applicable vision statements, adopted by the Town, including the goal of becoming a year around [*sic*] destination resort.” The recitals also stated: “[The] Town has further determined that the interests of its tax paying [*sic*] citizenry can best be served by providing for the funding of Airport operations and development through private capital rather than taxpayer funds, where reasonably possible, and through the privatization of certain services provided at or in connection with the Airport.”

The Development Agreement addressed the procedure upon default of one of the parties. It stated: “Failure by either party to perform any material term or provision of this Agreement for a period of thirty (30) days after delivery of written notice of default from the other party shall constitute a default under this Agreement.” Upon the offending party's failure to cure the default, the Development Agreement allowed the offended party to “institute legal action against the party in default....”

Under the Development Agreement, Ballas agreed to make improvements to the airport at his own expense, including construction of hangars, a gas storage building, and a terminal, as well as remodeling of an existing terminal. These improvements were designated as Phase I. In Phase II of the airport development, Ballas would, again at his own expense, build a restaurant building, a gasoline station, and a recreational vehicle park.

As part of Phase I, the Development Agreement allowed Ballas to build a hotel or condominium project (which came to be known as the Hot Creek Project), described in the Development Agreement as “time share or similar units,

hotel or residential condominium, or a commercial lodging facility for transient guests of a minimum stay of sixty (60) units to be constructed by Developer.” In later phases of the development, Ballas would be allowed to build additional hotel or condominium facilities to a maximum of 250 total hotel or condominium units. The hotel/condominium project was to be built on a 26-acre parcel, adjacent to the aeronautical services. In 2027, Ballas would have an option to purchase that parcel. The construction and operation of the hotel/condominium project was a material part of the consideration for the Development Agreement.

The option to purchase the parcel made the Development Agreement economically feasible for Ballas. He would make the improvements and build the hotel or condominiums, initially leasing the land from the Town, then exercising the option to purchase the land.

The Development Agreement required the Town to act reasonably in moving the project along. It stated: “Town and its agents, employees and ***446** contractors shall exercise any discretionary approvals applicable to the Project reasonably, in good faith, and in a timely manner.”

The Development Agreement incorporated other documents, such as a commercial development plan and leases. In the lease of the land for the hotel/condominium project, the Town warranted that “it has title to the premises free and clear of liens and encumbrances, that it has the right and power to enter into this lease, and that this lease is made pursuant to the powers vested in [the Town] by laws of the State of California.”

Events Leading to Signing of Development Agreement

Before the Town entered into the Development Agreement with Ballas, it sought approval from the FAA for the agreement. William Manning, the Town's airport director, ****807** sent correspondence to the FAA with details of the Development Agreement and the accompanying leases. The FAA responded by fax: “We need to review ‘options’; 55 yr lease creates problems with FAA policy....” The response also stated: “Under current FAA policy and procedure guidance a release of all federal obligations which encumber the property must be obtained from the FAA prior to the notice to sell/purchase the property. The FAA should be given a copy of the option contract for review and comment prior to recording the document.”

The town council approved the Development Agreement by ordinance. After the town council's approval, Ballas and the Town's mayor pro tem signed the Development Agreement on August 21, 1997, just nine days after the FAA made known to the Town its reservations concerning the Development Agreement.

While the Town claimed that the Town's airport director discussed the FAA's concerns with Ballas, Ballas testified that the Town did not disclose to him the FAA's concerns about the Development Agreement until seven years later. On appeal, the jury is deemed to have credited Ballas's testimony in this regard. ( *Garlock Sealing Technologies, LLC v. NAK Sealing Technologies Corp.* (2007) 148 Cal.App.4th 937, 951, 56 Cal.Rptr.3d 177.)

The Town also did not contact the FAA to discuss its concerns. The Town's airport manager testified: "I believed that [the FAA representative's] form of correspondence was ridiculous. If he had issues or comments that he wanted me to deal with, I believe he would have sent me a formal FAA letter. We correspond regularly with the FAA. This—the fax notes were highly irregular. I just felt like it wasn't an official correspondence and I wasn't obligated to respond to it."

After signing the Development Agreement, Ballas assigned his interest in the Development Agreement to various other entities. He assigned his right to *447 develop, market, and sell the hotel/condominium project to Mammoth Lakes Land Acquisition, LLC, the plaintiff in this case. Ballas retained a substantial interest in the limited liability company.

The plaintiff, Mammoth Lakes Land Acquisition, LLC, is also known as the Hot Creek Developer. We refer to the plaintiff in this opinion as the Developer.

Phase I Improvements

As part of Phase I of the Development Agreement and within three years of signing the Development Agreement, the Developer spent \$15 million to \$17 million on improvements to the airport. It built hangars, renovated an existing terminal, and installed a new fueling system and water supply system. The Developer also took over the airport's general aviation operations.

Hotel/Condominium Complex

In 2000, after the airport improvements had been made and were in operation, the Developer formulated and submitted to the Town an application with a plan for the hotel/condominium project. The plan included residential condominiums. In 2002, Town staff raised objections to the plan because it reflected a residential orientation instead of one promoting services to visitors. Town staff urged the Developer to withdraw the application, which the Developer refused to do.

The Developer's application was placed on the agenda for a Town planning commission meeting with a recommendation from staff to deny the application. Even though the Development Agreement allowed residential condominiums, Town **808 staff stated that the plan was "inconsisten[t] with entitlements that have been granted to the applicant under the terms of a Development Agreement, and with zoning regulations applicable to the property." In light of the negative recommendation from Town staff and an assurance from staff that they would negotiate with the Developer concerning the hotel/condominium project, the Developer agreed to withdraw the application from consideration at the planning commission meeting.

After the Developer's application had been withdrawn from consideration at the planning commission meeting, the Town's community development director sent Ballas a letter on April 1, 2002, about five years after the signing of the Development Agreement, apologizing for the delay in processing the application and recognizing the Developer's right to construct a residential condominium project under the Development Agreement. The letter continued: "Since signing the Development Agreement in 1997, major changes in *448 the Town's economic climate have occurred; commercial air service is on the horizon, housing prices have increased significantly, and the village is under construction with commercial tenants selected. With these factors in mind, the Town believes that an opportunity exists in a modified plan for a centralized hotel or condominium facility for transient guests surrounded by uses such as residential condominiums which are designed and located to conveniently utilize the resorts [*sic*] amenities and to participate in a visitor rental program at the individual owner's desire. We believe that this type of project will be beneficial financially to both the Town and the developer."

At the suggestion of Town staff, the Developer worked with Town staff to revamp the plan to have multiple owners of each condominium with a hospitality company to manage the joint

ownership and rent out the units when the owners were not occupying them. In 2004, the Developer submitted a revised plan to Town staff for informal review. The plan, however, was never submitted formally to the Town for approval.

FAA Objections and Town's Change of Priorities

In 1999, the Town began working to get commercial air service into the airport. The FAA approved an environmental assessment in 2000, which concluded that the commercial air service, and the associated improvements to the airport, would not have significant environmental impacts. However, this assessment was overturned by a federal court. (*California v. U.S. Dept. of Transp.* (N.D.Cal.2003) 260 F.Supp.2d 969.) In response to this loss in federal court, the FAA reevaluated the hotel/condominium project and concluded that it had not been adequately subjected to environmental review.

In 2004, the FAA took the position that the grant assurances given by the Town required the Town to obtain the consent of the FAA before executing a lease to use airport property for anything other than an aeronautical use. The FAA asserted that it had not given consent for the nonaeronautical use of the airport property to build a hotel/condominium project. The Town resisted this position, stating that the FAA had approved the entire project, including the nonaeronautical uses, in 1998. Nonetheless, the FAA informed the Town that it could either have expanded air service or the hotel/condominium project, but not both.

Soon after this exchange between the FAA and the Town, the Town changed its position with respect to the hotel/condominium project. In early May 2004, deputy town manager Charles Long told the ****809** Developer that the hotel/condominium project was the Town's top priority. However, later the same month, Long stated that expanded air service had become the Town's top priority. Robert Clark, who was hired as town manager in June 2004, ***449** testified that the town council "shared [the] sentiment" that expanded air service was a higher priority than the hotel/condominium project.

In light of the change in the Town's position, the Developer began to feel less secure in its relationship with the Town. The Developer informed the Town that it was taking a "time-out" from the discussion of issues arising from the Development Agreement and would not be attending any meetings concerning the issues. The proposed length of the "time-out" was not stated.

On June 28, 2004, Town officials, including deputy town manager Long, met with officials of the FAA. Long told the FAA officials that the Developer's option to purchase the hotel/condominium project was inconsistent with the Town's goals. Long said that the hotel/condominium project might never be built. He asked the FAA to help the Town "get rid of Hot Creek," referring to the hotel/condominium project, because it interfered with expanded air service. To obtain the FAA's assistance in stopping the hotel/condominium project, Long asked the FAA to put in writing its objections based upon the grant assurances given to the FAA by the Town.

On June 29, 2004, the day after the meeting with the FAA, deputy town manager Long sent an e-mail to the Developer. Because the Developer relies heavily on the e-mail to support its repudiation argument, we quote the pertinent part of the e-mail here:

"The FAA is primarily concerned about two issues for your project: First, the compliance issues remain paramount. They are concerned that the airport will run out of land for aeronautical purposes as a result of the land used by the non-aeronautical uses your project represents. They are also concerned about the purchase option. And finally they are concerned about whether the airport has enough land to accommodate competing FBOs [fixed base operators].... The FAA intends to send us a specific itemization of these compliance concerns in the next few weeks. Until these issues are resolved, we will be unable to move forward with your project.

"Second, the FAA is concerned that your currently proposed development plan differs significantly from the specifications in the [Development Agreement] and needs NEPA [National Environmental Policy Act] review since it occurs coterminously with the EIS [environmental impact statement] on the airport expansion. This difference in project scope applies to CEQA [California Environmental Quality Act], as the attached CEQA analysis makes clear. For the Town to move forward with your project we will need to conduct an Initial Study and to work with you to bring your project within the parameters of a possible Mitigated Negative Declaration.

"On both issues we are ready to work with you when you re-enter the process."

***450** The Developer, through Ray Johnson, one of the principals, responded on July 1, 2004, with a letter to

Robert Clark, the town manager, seeking clarification of Long's e-mail and requesting assurances that the Town would proceed with the Development Agreement. Clark responded that the Town and the Developer "need to resolve the FAA compliance issues as a pre-requisite to ... knowing whether [the hotel/condominium project] complies with FAA regulations. The need for the project **810 to comply with FAA review requirements is specifically noted in Section 26 of the lease. The Town is ready to proceed working with you and the FAA to resolve the compliance concerns that exist at FAA on your project."

Through counsel, the Developer replied to Clark's letter on August 10, 2004. Counsel stated that "Clark and Long as authorized agents of the Town, now appear to believe that the Town may freely disregard the express terms of the Development Agreement and withhold approvals and other cooperation required by that Agreement to enable Hot Creek to proceed with its entitled development. As is more fully discussed hereafter, it is also apparent that the Town has affirmatively taken actions which threaten to directly undermine Hot Creek's prior contractual and statutory rights and promote other, more recent interests, such as the proposed expansion of commercial air service operations at the Airport."

On October 4, 2004, the FAA sent the Town a letter stating its concerns about grant assurances and raising objections to the residential nature of the hotel/condominium project. The letter stated: "We are concerned that the Town may be in violation of various [Airport Improvement Program] Grant Assurances, a situation that resulted from the Town executing a Development Agreement with Hot Creek Aviation. This situation will further aggravate if the Town proceeds to execute leases with Hot Creek Aviation for certain planned nonaeronautical development [at the airport]." (Internal fn. omitted.) The FAA informed the Town: "The Town has an obligation to act in accordance with the Airport Improvement Program (AIP) Grant Assurances. The Town needs to determine whether the proposed Hot Creek development is consistent with the Town initiative to extend the runway and expand the airfield infrastructure to accommodate commercial service by Boeing 757 type aircraft." (Internal fn. omitted.) The FAA informed the Town that its federal funding was in jeopardy.

In correspondence with the Developer, Town officials professed willingness to work with the Developer to resolve the FAA issues. However, in private, the mood was not

cooperative. Taking notes in a meeting of town officials discussing the October 4 FAA letter, an assistant town manager wrote: "Hammer Hot Creek—we will not approve an inconsistent project and we will renegotiate land disposal."

***451 Town's Default**

On February 7, 2005, the Developer served the Town with a notice of default under the Development Agreement. The notice demanded that the Town terminate its efforts to obtain federal funding for expansion inconsistent with the Development Agreement. The Town and Developer agreed to toll the notice of default while further negotiations were held. Although some progress was made, the FAA continued to insist that (1) the hotel/condominium project could not be used for permanent residences and (2) the purchase option was unacceptable because it might hinder future airport use of the land.

Town manager Clark said to the FAA in a September 2005 e-mail: "Our lease contains an option for Hot Creek to purchase land under their condo hotel. I have advised them of the FAA's objection to the clause and asked to renegotiate. They indicate a very reluctant willingness to do so, but only when they have certainty as to their development rights and timing (which neither you nor I can deliver at this stage). I believe that the FAA and Town need to jointly investigate (with our respective legal counsels) what means we **811 have to *unilaterally* eliminate this clause, along with the legal and financial implications of doing so." (Underscoring in original.)

Also in September 2005, town manager Clark sent an e-mail to other town staff discussing "alternatives to eliminate the Hot Creek option." Two of the alternatives presented were to (1) seek declaratory relief in state or federal court or (2) condemn the purchase option and compensate the Developer. Concerning the value of the hotel/condominium purchase option, Clark stated: "Hot Creek estimates the market value of their project at \$400 million, which is \$1.6 million per unit based on fractional ownership, and the value of the option at 5% of sales price [\$20 million]. Even if the value is half that amount it would cost \$10 million to acquire the option through negotiation. They offered to have a mutually agreeable expert determine the value. [¶] Since we don't have \$10 to \$20 million in spare change I am trying to come up with some other way to compensate Hot Creek." The Town did not pursue the eminent domain option.

In August 2006, town manager Clark informed the Developer that the town council's position was that the hotel/condominium project could not move forward until the FAA issues were resolved. The Developer's representative suggested that the Town could go forward with the hotel/condominium project under the Development Agreement and deal later with any FAA fallout, such as termination of funding from the FAA. Clark responded that the town council would not do that because it might derail approval of the expanded air service, which was very important to the council.

***452** From the time Clark became the town manager in 2004, through 2006, Clark met in closed sessions many times with the town council concerning the issues arising from the Development Agreement. No councilmember ever told Clark that his actions or Long's actions were not authorized by the town council. Clark believed that all actions he took concerning the issues arising from the Development Agreement were either within his authority as town manager or with the authorization of the town council.

PROCEDURE

The Developer filed a civil claim with the Town on September 1, 2006, for breach of the Development Agreement, asserting it had been damaged "in an amount not less than \$150 million." After the Town rejected the claim, the Developer sued the Town, alleging a breach of contract cause of action. As remedies, the Developer sought damages, specific performance, and injunctive relief. Later, the Developer added a prayer for declaratory relief.

The Town demurred to the Developer's complaint. It asserted that, among other things, the Developer failed to exhaust administrative and judicial remedies pursuant to  [Code of Civil Procedure section 1094.5](#). The trial court overruled the demurrer.

The Town filed a motion for summary judgment. It argued, among other things, that the grant assurances made by the Town to the FAA were rules and regulations of the FAA as a matter of law and, therefore, the Development Agreement required compliance with the grant assurances. The trial court rejected this reasoning and concluded that whether the grant assurances were rules and regulations of the FAA was a factual matter to be submitted to the jury.

The Developer abandoned its prayers for specific performance and declaratory relief, so the action went to a jury trial on the Developer's claim for damages as a ****812** result of the Town's anticipatory breach of the Development Agreement.

The trial court instructed the jury concerning the breach of contract cause of action as follows:

"This case involves a dispute between the Town and the Hot Creek Developers. This is a breach of contract case arising out of a Development Agreement and a series of leases between the Town and the Hot Creek Developers that were executed in August of 1997. Generally speaking, the contract required the Hot Creek Developers to construct a series of improvements at the Mammoth–Yosemite Airport. In return, the Hot Creek ***453** Developers received among other things the right to build and operate a hotel and residential condominium project on approximately 25 acres of land at the Airport and an option to purchase those 25 acres.

"The dispute in this case centers around whether the Town has breached the contract by refusing to allow the Hot Creek Developers to actually construct the hotel and residential condominium project. The Town denies that it has breached the agreement and maintains it stands ready to perform the contract. Your job as the jury is to resolve various factual disputes between the Hot Creek Developers and the Town as to what the parties intended when they agreed to certain contractual provisions, and various factual disputes as to whether a breach of contract has in fact occurred. In doing so, you will reach a conclusion as to whether or not the Town has breached the contract."

By special verdict, the jury found that (1) the Town and the Developer entered into a contract, (2) the Developer met all, or substantially all, its obligations under the contract, (3) the Town failed to perform under the contract or added extra-contractual conditions to its performance, (4) the Developer did not waive the Town's failure to perform, and (5) the Town's failure to perform damaged the Developer. The jury set the amount of damages at \$30 million.

On the Developer's motion, the trial court awarded the Developer \$2,361,130 in attorney fees.

DISCUSSION

I

Availability of Contract Action

The Town contends that the trial court erred by allowing the Developer to proceed with a contract action. The Town argues that the Developer was required to engage and exhaust the Town's administrative process before seeking judicial remedies. Based on this argument, the Town asserts that (1) the Developer's action is unripe because the Developer has not engaged and exhausted the available administrative process and (2), when the claim ripens, a petition for writ of administrative mandamus will be the exclusive judicial remedy.

The Town attempts to narrow the issue in its favor. Quoting selectively from the complaint, it states that the Developer's allegation is that "the Town 'failed and refused to ... approve' the Developer's application for a *454 conditional use permit and subdivision map for the hotel/condominium project." If the dispute is simply about the failure to approve a conditional use permit and subdivision map, then it would appear that administrative mandamus is the remedy. However, the very paragraph of the complaint from which the quote is taken also contains six other allegations supporting the breach of contract **813 cause of action.² As the Developer notes in response to the Town's argument, the theory presented to the jury was whether the Town breached the Development Agreement by refusing to proceed with the hotel/condominium project despite the FAA's objections to the project. Accordingly, we consider whether the anticipatory breach of the Development Agreement by the Town's refusal to proceed with the hotel/condominium project is unripe for judicial review because the Developer failed to exhaust administrative remedies.

The Town contends that the Developer could not file a complaint in court and thereby avoid the Town's administrative process for approving or rejecting land use applications. The contention is without merit because there was nothing for the Town's administrative process to adjudicate.

[3] "This is the doctrine of 'exhaustion of administrative remedies.' In brief, the rule is that where an administrative remedy is provided by statute, relief must be sought from the administrative body and this remedy exhausted

before the courts will act." (¶ *Abelleira v. District Court of Appeal* (1941) 17 Cal.2d 280, 292, 109 P.2d 942.) "[E]xhaustion of the administrative remedy is a jurisdictional prerequisite to resort to the courts." (¶ *Id.* at p. 293, 109 P.2d 942.) However, "[t]he exhaustion of administrative remedies doctrine has never applied where there is no available administrative remedy. [Citations.]" (¶ *Tahoe Vista Concerned Citizens v. County of Placer* (2000) 81 Cal.App.4th 577, 590, 96 Cal.Rptr.2d 880.)

[4] *455 Here, there was no remedy available to the Developer in the administrative process. The Town concedes that relief pursuant to administrative mandamus would have been limited to a writ vacating a final decision by the town council on a land use application and that damages would not be available in such an action. However, once the Developer gave notice of default and the Town failed to cure the default, there was no longer a proposed land use to adjudicate in the Town's quasi-judicial administrative process. At that point, all that remained was to determine whether the Town breached the Development Agreement and, if it did, what was the remedy. No administrative remedy would have sufficed.

(¶ *Tahoe Vista Concerned Citizens v. County of Placer*, *supra*, 81 Cal.App.4th at p. 590, 96 Cal.Rptr.2d 880.)

The Town cites two cases in support of its contention that the Developer failed to **814 exhaust administrative remedies. Both are distinguishable.

The first case cited by the Town is ¶ *Legacy Group v. City of Wasco* (2003) 106 Cal.App.4th 1305, 131 Cal.Rptr.2d 460 (*Legacy Group*). In *Legacy Group*, a developer and a municipality entered into development agreements, as well as an agreement for the municipality to purchase infrastructure constructed by the developer. When the municipality stopped purchasing the infrastructure, the developer sued, asserting breach of contract, among other causes of action. The trial court entered judgment in favor of the municipality, finding that the action was barred by the statute of limitations applicable to actions implicating the Subdivision Map Act. (¶ *Id.* at pp. 1307–1310, 131 Cal.Rptr.2d 460.) In the published portion of the opinion on appeal, the court concluded that most of the allegations in the complaint did not implicate the Subdivision Map Act; therefore, the longer statute of limitations for contracts was applicable. The court stated: "[W]e are reluctant to extend [the Subdivision Map Act statute of limitations] to breach of contract claims unless

the gravamen of the claim concerns acts that could have been challenged as a violation of the [Subdivision Map Act].” (Id. at p. 1313, 131 Cal.Rptr.2d 460.) Applying this holding, the court found that only one of the developer's breach of contract claims was subject to the shorter limitations period because the acts complained of “could have been challenged under the [Subdivision Map Act]....” (Id. at p. 1314, 131 Cal.Rptr.2d 460.)

Citing *Legacy Group*, the Town states: “The Developer's challenge to the Town's alleged failure and refusal to grant such discretionary approvals, even though pled as breach of contract, remained subject to the administrative exhaustion requirement and other restrictions on judicial relief applicable to such challenges.”

The Town's argument relying on *Legacy Group* is unavailing for two reasons. First, it is premised upon the suggestion that the Developer's action *456 is all about the Town's failure to approve the Developer's land use application. We have already rejected that suggestion; therefore, attacking it does not show error as to the actual breach of contract allegations tried to the jury. And second, the Town's argument does not explain how the Developer, through the administrative process, could obtain the damages sought for the Town's breach of contract. Instead, as noted, the Town argues that those damages are unavailable.

The second case cited by the Town is Subriar v. City of Bakersfield (1976) 59 Cal.App.3d 175, 130 Cal.Rptr. 853 (Subriar). In *Subriar*, the plaintiff claimed that the municipality's requirements for obtaining a permit to operate an ambulance business were unconstitutional. The trial court agreed and granted a permanent injunction against enforcement of the ordinance. (Id. at pp. 180–181, 130 Cal.Rptr. 853.) The appellate court, however, concluded that the plaintiff failed to exhaust his administrative remedies because, after the city manager failed to act on the permit, the plaintiff did not appeal to the city council to overturn the city manager's action. (Id. at p. 191, 130 Cal.Rptr. 853.)

Subriar is distinguishable because an appeal to the town council could have resulted in issuance of the permit that the plaintiff sought. Here, engaging and exhausting the administrative process promised no prospect of obtaining damages for the Town's breach of the Development Agreement.

As tried to the jury, the Developer's complaint is not that the Town denied an application to build the hotel/condominium **815 project. Instead, the complaint is that the Town refused to move forward on the hotel/condominium project, refused to cooperate, until the FAA's concerns were resolved, which was not a condition in the Development Agreement. The administrative process for approving or rejecting land use applications was not designed to address this breach by the Town. Furthermore, having given the Town a notice of default, as allowed by the Development Agreement, the Developer elected not to pursue an application but instead to pursue damages for anticipatory breach. The administrative process could not give these damages. (See Tahoe Vista Concerned Citizens v. County of Placer, supra, 81 Cal.App.4th at p. 590, 96 Cal.Rptr.2d 880 [exhaustion not required when process cannot provide requested relief].) Under these circumstances, the Developer was not required to submit a land use application to the Town and pursue the application through to denial by the town council.³

*457 Availability of Contract Remedies

The Town contends that, if the trial court had required the Developer to pursue administrative remedies, the Developer's exclusive judicial remedy would have been a petition for administrative mandamus under Code of Civil Procedure section 1094.5. While this contention is theoretically correct, it is inapt and unhelpful to the Town because the Developer was legally entitled to go forward with a breach of contract action, as the trial court found.

Quasi-judicial determinations of a town council are reviewed judicially by administrative mandamus proceedings.

(Code Civ. Proc., § 1094.5; Mola Development Corp. v. City of Seal Beach (1997) 57 Cal.App.4th 405, 410, 67 Cal.Rptr.2d 103.) Although, as the Town asserts, the Development Agreement preserved the Town's discretion to make quasi-judicial determinations with respect to applications submitted by the Developer as part of the development plan, the Town's refusal to move forward with the hotel/condominium aspect of the Development Agreement was not a quasi-judicial determination. Instead, it was an executive decision on the part of the Town to refuse to comply with the terms of the Development Agreement, ostensibly in order to preserve its funding from the FAA. Since the Developer did not challenge a quasi-

judicial determination, administrative mandamus is not the exclusive remedy.

This is not to say that an action for contract damages is the only remedy for a municipality's breach of a development agreement. We are not faced, in this case, with an administrative mandamus challenge to a quasi-judicial determination of the town council. Instead, we conclude only that administrative mandamus is not the exclusive remedy, under the circumstances of this case, where there has been an anticipatory breach of the Development Agreement not involving a quasi-judicial determination.⁴

****816 II**

Contract Defenses

The Town contends that three clauses of the Development Agreement, each independently, provide a complete defense to the Developer's breach of ***458** contract action. We conclude that the three clauses do not provide a defense to the Town's breach of the Development Agreement.

Before we consider the three clauses, we summarize the law regarding interpretation of contracts.

“The fundamental goal of contractual interpretation is to give effect to the mutual intention of the parties.” (Bank of the West v. Superior Court (1992) 2 Cal.4th 1254, 1264, 10 Cal.Rptr.2d 538, 833 P.2d 545.) “A contract must be so interpreted as to give effect to the mutual intention of the parties as it existed at the time of contracting, so far as the same is ascertainable and lawful.” (Civ.Code, § 1636.) “The words of a contract are to be understood in their ordinary and popular sense, rather than according to their strict legal meaning; unless used by the parties in a technical sense, or unless a special meaning is given to them by usage, in which case the latter must be followed.” (Civ.Code, § 1644.)

[5] [6] [7] “The interpretation of a written instrument, even though it involves what might properly be called questions of fact [citation], is essentially a judicial function to be exercised according to the generally accepted canons of interpretation so that the purposes of the instrument may be given effect. [Citations.] Extrinsic evidence is ‘admissible to interpret the instrument, but not to give it meaning to which it is not reasonably susceptible’ [citations], and it is

the instrument itself that must be given effect. [Citations.] It is therefore solely a judicial function to interpret a written instrument unless the interpretation turns upon the credibility of extrinsic evidence.” (Parsons v. Bristol Development Co. (1965) 62 Cal.2d 861, 865, 44 Cal.Rptr. 767, 402 P.2d 839.)

A. Excuse Provision (Clause E)

[8] Section XVII(e) of the Development Agreement (clause E) stated that neither party would be in default for a cause beyond the reasonable control of the parties. It stated: “Neither party shall be in default of this Agreement for delays in or failures of performance due to war, insurrection, strikes, floods, earthquakes, fires, casualties, acts of God, *governmental restrictions imposed or mandated by governmental entities other than Town*, enactment of conflicting State or Federal laws or regulations, judicial decisions, or similar bases beyond the reasonable control of the party excused.” (Italics added.)

The Town asserts that, as a matter of law, the emphasized portion of clause E excused it from performing on the Development Agreement because both ***459** the Town and the Developer were required to comply with the FAA restrictions. This assertion is without merit because the FAA's restrictions were within the control of the Town.

The Town made grant assurances to the FAA in exchange for funding for the airport. And the FAA cited the grant assurances in insisting that the hotel/condominium project, with its residential character and option to purchase, was inconsistent with preserving the airport property for aeronautical purposes. If the Town had not made grant assurances in the first place and later encouraged the FAA to ****817** help the Town “get rid of” the hotel/condominium project, there would have been no impediment to the Town's performance of the Development Agreement with the Developer. The Town's own actions caused the FAA to express reservations concerning the hotel/condominium project. In other words, the FAA's restrictions were within the reasonable control of the Town. Therefore, the Town cannot rely on clause E to justify its nonperformance.

B. Rules and Regulations of the FAA (Clause N)

Section XVIII(n) of the Development Agreement (clause N) required the parties to comply with FAA rules and regulations. It stated: “In carrying out this Agreement and otherwise

operating the Airport in accordance with the terms of the leases, the parties shall comply with all applicable rules and regulations of the FAA.”

[9] In the trial court, the Town asserted that the grant assurances given to the FAA were FAA “rules” and, therefore, the Town’s compliance with the grant assurances could not constitute a breach of the Development Agreement because the Development Agreement required compliance with FAA rules. The trial court rejected this assertion, concluding that there was a question of fact concerning the parties’ intent with regard to clause N. It therefore submitted the question to the jury with the following instruction:

“The Court has found, as a matter of law, that the grant assurances made by the Town to the FAA are not rules or regulations of the FAA. They are contractual promises made by the Town to the United States government in exchange for the federal funds the Town has received. However, a question of fact remains as to whether the parties intended the provision to include the Town’s grant assurances.”

On appeal, the Town contends that the grant assurances were FAA rules for the purpose of interpreting the Development Agreement and, therefore, the trial court improperly found otherwise, as a matter of law. We conclude that, *460 while grant assurances made by the Town to the FAA may be considered “rules” of the FAA by reference to federal statutes, the parties did not consider that definition when entering into the Development Agreement. The trial court properly instructed the jury to determine the parties’ intent concerning the definition of FAA “rules.”

Instead of focusing on the parties’ intent as to the interpretation of clause N, the Town focuses solely on federal law with respect to whether grant assurances, in a technical sense, are “rules” of the FAA. The Town cites the broad definition of a “rule” in the federal Administrative Procedures Act, which includes “an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy....” (5 U.S.C. § 551(4).) The Town then notes that grant assurances (1) are “ ‘agency statements of general or particular applicability,’ ” (2) have “ ‘future effect,’ ” and (3) “ ‘implement, interpret [and] prescribe law.’ ” The Town also notes that federal law requires that, before the FAA can modify assurances or require compliance with additional assurances, it must give notice in the Federal Register and

provide an opportunity for comment on the proposed change. (49 U.S.C. § 47107(h).)

Even if the grant assurances fall within the broad definition of a “rule” under the federal Administrative Procedures Act, the task of interpretation requires inquiry into the parties’ intent, not into a proposed technical interpretation of the term. (Civ.Code, §§ 1636, 1644.) Because the court’s task in interpreting a contract is to ascertain the intent of the parties, federal law **818 concerning whether a grant assurance is technically a rule of the FAA is relevant only if the parties considered such federal law when they entered into the contract. There is no evidence that this was the case. Instead, the only evidence concerning the parties’ intent in this regard came from the testimony of Terrence Ballas. He stated that the Town inserted the provision concerning FAA rules and regulations into the Development Agreement. When Ballas asked town officials what the provision meant, they stated that it was boilerplate applicable only to the “air-side operations of the airport.” Ballas was hesitant to agree to clause N because he did not know what it included, so the parties went through the specific FAA rules applicable and included references to those rules in the various leases executed along with the Development Agreement. The Town never mentioned its grant assurances in this discussion. Thus, there is no evidence the parties intended to include the Town’s grant assurances in the term “rules” in clause N of the contract.

Arguing against this interpretation, the Town states that (1) the FAA expressed the opinion that the grant assurances were FAA “rules” and the FAA’s opinion is entitled to deference and (2) we should apply canons of *461 statutory interpretation, not contract interpretation, because the Development Agreement was a legislative act. The Town is wrong on both points.

In one of the letters to the Town concerning the Town’s compliance with the grant assurances, an FAA official stated: “We view the Town’s ability to take corrective action to be fully within the scope of paragraph N of Section XVIII of the Development Agreement, which clarifies the Town’s obligation to comply with FAA rules and regulations.” Citing authority that courts give deference to an agency’s interpretation of a statute if that statute governs the agency’s powers and responsibilities (*Ste. Marie v. Riverside County Regional Park & Open-Space Dist.* (2009) 46 Cal.4th 282, 292, 93 Cal.Rptr.3d 369, 206 P.3d 739), the Town claims that we should give deference to this opinion. To the contrary, the

FAA has no authority over development agreements and no special expertise in contract interpretation.

[10] The Town also argues that, because adoption of the Development Agreement was a legislative act ([Gov.Code, § 65867.5, subd. \(a\)](#)), we are required to apply canons of statutory interpretation. This argument misconstrues the “legislative act” language of the development agreement statutes, which applies to the authority of the municipality to enter into the agreement and the power of the electorate to challenge the agreement by referendum.

“A development agreement is a legislative act that shall be approved by ordinance and is subject to referendum.” ([Gov.Code, § 65867.5, subd. \(a\)](#).) A development agreement is treated as a legislative act for the purpose of a challenge to the agreement either (1) by referendum or (2) an action concerning the municipality's authority to enter into the agreement. In *SMART*,  [supra](#), 84 Cal.App.4th at pages 227 and 228, 100 Cal.Rptr.2d 740, the court summarized the effect of the “legislative act” language. It said: “A development agreement is a legislative act ([\[Gov.Code,\] § 65867.5](#)) and the County's board of supervisors has the discretion to determine what legislation is necessary and appropriate. A reviewing court will not set aside a legislative act unless it is arbitrary, capricious, or unlawful.”

Here, the question does not concern the validity of the Development Agreement as a legislative act of the Town. Instead, this is an action between the parties of the Development Agreement concerning the ****819** interpretation of the agreement. As to that question, the Development Agreement is a contract between the parties. Therefore, canons of statutory interpretation do not apply.

C. Acknowledgement of FAA Funding (Clause B)

Section XVI(b) of the Development Agreement (clause B) required the Developer to match FAA funding. It stated: “[The] Town has received tentative ***462** commitments from the FAA for grant funds ... for the purpose of constructing improvements at the Airport.... The terms of the grant require that matching funds in the approximate amount of ten percent (10%) of the grant funds be put up by [the] Town. As further consideration for this Agreement, Developer agrees to and shall provide such matching funds....” Within one month after adoption of the Development Agreement, the Developer supplied \$80,000 in matching funds.

[11] “A voluntary acceptance of the benefit of a transaction is equivalent to a consent to all the obligations arising from it, so far as the facts are known, or ought to be known, to the person accepting.” ([Civ.Code, § 1589](#).) The Town argues that the Developer's acknowledgement of FAA funding and participation in matching the funding amounted to a consent to the FAA's restrictions. This argument fails because there is no evidence that, when entering into the Development Agreement, or even when supplying the matching funds, the Developer knew or ought to have known of the grant assurances. Instead, the evidence showed that the Town withheld from the Developer knowledge of the FAA's reservations concerning the Development Agreement. Under these facts, the Developer did not consent to the grant assurances.

III

Proof of Breach

The Town contends that the Developer failed, as a matter of law, to establish that the Town breached the Development Agreement. Stated differently, the Town contends that there is no substantial evidence to sustain the jury's verdict. The Town asserts: (A) the Developer failed to establish a breach attributable to the Town; (B) the evidence was insufficient to establish repudiation; (C) the option was a unilateral contract not yet ripe for breach; and (D) the Town retracted any repudiation. After summarizing the law regarding substantial evidence to sustain the verdict finding anticipatory breach of contract, we discuss the Town's four arguments and conclude that each is without merit.

[12] [13] [14] When we consider whether the evidence was sufficient to support the jury's verdict, we review the entire record in the light most favorable to the judgment to determine whether there are sufficient facts, contradicted or uncontradicted, to support the judgment. ( [Campbell v. Southern Pacific Co.](#) (1978) 22 Cal.3d 51, 60, 148 Cal.Rptr. 596, 583 P.2d 121.) Substantial evidence is evidence that is reasonable and credible. In evaluating the ***463** evidence, we accept reasonable inferences in support of the judgment and do not consider whether contrary inferences may be made from the evidence. ( [Kuhn v. Department of General Servs.](#) (1994) 22 Cal.App.4th 1627, 1632–1633, 29 Cal.Rptr.2d 191.)

[15] To recover on a cause of action for breach of contract, the plaintiff must establish: (1) the existence of a contract, (2) plaintiff's performance or excuse for nonperformance, (3) defendant's breach, and (4) damage to plaintiff as a result of defendant's breach. (¶ **820 *Regan Roofing Co. v. Superior Court* (1994) 24 Cal.App.4th 425, 434–435, 29 Cal.Rptr.2d 413, disapproved on another ground in ¶ *Crawford v. Weather Shield Mfg., Inc.* (2008) 44 Cal.4th 541, 565, 79 Cal.Rptr.3d 721, 187 P.3d 424.)

[16] [17] “Anticipatory breach occurs when one of the parties to a bilateral contract repudiates the contract. The repudiation may be express or implied. An express repudiation is a clear, positive, unequivocal refusal to perform [citations]; an implied repudiation results from conduct where the promisor puts it out of his power to perform so as to make substantial performance of his promise impossible [citations].

[18] “When a promisor repudiates a contract, the injured party faces an election of remedies: he can treat the repudiation as an anticipatory breach and immediately seek damages for breach of contract, thereby terminating the contractual relation between the parties, or he can treat the repudiation as an empty threat, wait until the time for performance arrives and exercise his remedies for actual breach if a breach does in fact occur at such time. [Citation.] However, if the injured party disregards the repudiation and treats the contract as still in force, and the repudiation is retracted prior to the time of performance, then the repudiation is nullified and the injured party is left with his remedies, if any, invocable at the time of performance. [Citations.]” (¶ *Taylor v. Johnston* (1975) 15 Cal.3d 130, 137–138, 123 Cal.Rptr. 641, 539 P.2d 425.)

[19] As the jury was instructed in this case, “[a] party can breach, or break, a contract before performance is required by clearly and positively indicating, by words or conduct, that they [*sic*] will not or cannot meet a requirement of the contract, or that they [*sic*] will not perform until additional conditions not in the contract are met. [¶] If the Hot Creek Developers prove that they would have been able to fulfill the terms of the contract and that the Town clearly and positively indicated, by words or conduct, that it would not or could not meet a requirement in the contract, then the Town breached the contract.”

*464 The Developer's theory of breach, upon which it prevailed at trial, was that the Town expressly repudiated the

Development Agreement by refusing to move forward on the contract without resolving the FAA's objections to the Hot Creek project.⁵

A. Breach Attributable to Town

A 1989 resolution of the Mammoth Lakes town council states that “no oral or written communications or comments ... by any member of the Town Council or any other person constitutes an action of the Town Council or an act legally attributable to the Town.”⁶ Based on this resolution, **821 the Town claims that the actions of town officials in repudiating the Development Agreement cannot be attributed to the Town. To the contrary, the actions of town officials were an actionable repudiation of the Development Agreement.

The Developer presented evidence that deputy town manager Long and, later, town manager Clark stated, unequivocally, that the Town would not proceed with the hotel/condominium project until the FAA's objections to the project were resolved. Long informed the Developer that, until the FAA's objections were resolved, “we will be unable to move forward with your project.” Later, Clark again informed the Developer that the project would not move forward without resolution of the FAA's objections. When the Developer requested that the Town proceed under the Development Agreement and deal with the FAA's objections later, Clark said that the town council would not agree to proceeding that way because it might derail FAA approval of expanded air service. The Town offered no evidence to counter the Developer's evidence that the town council authorized the position taken by Long and Clark.

Despite this evidence, the Town maintains that any repudiation by town officials was without force because the town council did not vote on it. We disagree. Neither the Town's resolution nor case law concerning the authority *465 of municipal officials absolves the Town of liability for its repudiation, even if accomplished through its officials rather than by a vote of the town council.

[20] [21] “No government, whether state or local, is bound to any extent by an officer's acts in excess of his authority. [Citation.] [¶] One who deals with the public officer stands presumptively charged with a full knowledge of that officer's powers, and is bound at his peril to ascertain the extent of his powers to bind the government for which he is an officer, and any act of an officer to be valid must find express authority in the law or be necessarily incidental to a power expressly

granted. [Citation.]” (*Horsemen's Benevolent & Protective Assn. v. Valley Racing Assn.* (1992) 4 Cal.App.4th 1538, 1563–1564, 6 Cal.Rptr.2d 698.)

[22] Citing the town council's 1989 resolution, the Town asserts that the town officials had no authority to act on behalf of the Town. The Town states: “This Resolution could not be more plain: Individual town officials, including then-Deputy Town Manager Long, have no authority to take final action on behalf of the Town, and their written communications, including Mr. Long's June 29 Email, are not legally attributable to the Town.” This assertion reads too much into the resolution. Taken to its logical extreme, this assertion would mean that town officials cannot buy paper clips on behalf of the Town without a vote of the town council.

We must presume the town council did not intend an absurd result. (*California School Employees Assn. v. Governing Board* (1994) 8 Cal.4th 333, 340, 33 Cal.Rptr.2d 109, 878 P.2d 1321 [legislation interpreted to avoid absurd results].) A more reasonable interpretation of the resolution is that consistent with case law, which holds that the legislative and quasi-judicial powers of a municipality's governing council cannot be undermined by statements of municipal officials. (See, e.g., *Katsura v. City of San Buenaventura* (2007) 155 Cal.App.4th 104, 109, 65 Cal.Rptr.3d 762 [oral contract made by city employee not binding on city]; *Burchett v. City of Newport Beach* (1995) 33 Cal.App.4th 1472, 1479, 40 Cal.Rptr.2d 1 [statement of city official that owners could obtain permit not binding on city].) The town council adopted the Development Agreement by ordinance. Logically and legally, the fulfillment of the Town's duties under the Development Agreement was left, for the most part, to town officials. Any other conclusion would allow a municipality to repudiate any contract by the actions of its officials and suffer no consequences unless the governing council voted to repudiate.

In any event, the Town's municipal code gives further guidance concerning the authority of town officials and supports a finding here that the town officials acted within their authority. The executive functions of the **466* Town, including cooperation with parties that have contracted with the Town, are within the authority of the town manager. According to the Town's municipal code, the town manager is an executive officer, charged with the duty to “see that all franchises, contracts, permits and privileges granted by the town council are faithfully observed.” (Mammoth

Lakes Municipal Code, § 2.08.060, subd. (A).) Therefore, compliance with the Town's duty to cooperate under the Development Agreement was within the explicit authority of the town manager. And the refusal of the town manager and deputy town manager to cooperate without resolution of the FAA's objections was a repudiation of the contract.

Again raising the argument that this was a land use decision instead of a matter of complying with the terms of the Development Agreement, the Town asserts that a town official cannot bind the Town by representations concerning land use applications. While the proposition may be true as a theoretical statement of law (see *Burchett v. City of Newport Beach*, *supra*, 33 Cal.App.4th at p. 1479, 40 Cal.Rptr.2d 1), it is inapplicable here. The repudiation of the contract did not result from a quasi-judicial decision on a land use application. As noted above, the repudiation occurred when the Town refused to comply with the terms of the Development Agreement to cooperate with the Developer to achieve the ends of the Development Agreement. While it is true that quasi-judicial decisions on land use applications remained to be made before the hotel/condominium project could be completed, the Town's position, related through town officials, was that the Town would not cooperate with the Developer in moving along the hotel/condominium project without resolution of the FAA's objections. That refusal constituted the breach, not the exercise of any quasi-judicial decisionmaking power. ⁷

B. Evidence of Repudiation

The Town contends that the Town's actions did not constitute a repudiation of the Development Agreement. To the contrary, when viewed in the light most favorable to the judgment, the evidence was sufficient to establish an express repudiation. While claiming a willingness to move **467* forward with the hotel/condominium project, town officials actually refused to move forward and actively sought to undermine ***823* the Developer's rights under the contract.

[23] [24] [25] “[I]f a party to a contract expressly or by implication repudiates the contract before the time for his or her performance has arrived, an anticipatory breach is said to have occurred. [Citations.] The rationale for this rule is that the promisor has engaged not only to perform under the contract, but also not to repudiate his or her promise.

[Citation.]” (*Romano v. Rockwell Internat., Inc.* (1996) 14 Cal.4th 479, 489, 59 Cal.Rptr.2d 20, 926 P.2d 1114.) “An

express repudiation is a clear, positive, unequivocal refusal to perform. [Citations.]” (*Taylor v. Johnston*, *supra*, 15 Cal.3d at p. 137, 123 Cal.Rptr. 641, 539 P.2d 425.) “Annexing an unwarranted condition to an offer of performance is a refusal to perform. [Citation.]” (*Steelduct Co. v. Henger–Seltzer Co.* (1945) 26 Cal.2d 634, 646, 160 P.2d 804.)

Here, the Town refused to perform the Development Agreement without prior satisfaction of an unwarranted condition. But the Town asserts that the way it responded to the Developer's demands to perform the Development Agreement did not amount to a repudiation for three reasons: (1) compliance with FAA rules and regulations was mandated by the Development Agreement in clause N, (2) the Town offered to perform the Development Agreement according to its own good faith interpretation of the agreement, and (3) the Town demonstrated its intention to be bound by the Development Agreement. In connection with this argument, the Town also claims that (4) the trial court erred by allowing the jury to find that the Town repudiated the Development Agreement by entering into inconsistent contracts.

1. Compliance with FAA Rules and Regulations

We have already rejected the Town's first argument. Clause N, relating to FAA rules and regulations, was inapplicable to the grant assurances the Town made to the FAA.

2. Good Faith Interpretation of Contract

The Town's second argument fails because the theory was not proffered to the jury and the evidence, properly viewed on appeal, does not support it. The Town cites a federal court opinion for the proposition that, as long as a party to a contract offers to perform a contract according to its own good-faith understanding of the contract, there is no repudiation, even if the party's understanding is incorrect. (*Pacific Coast Engineering Co. v. Merritt–Chapman & Scott Corp.* (9th Cir.1969) 411 F.2d 889, 894.) Citing other federal authority, the federal court stated: “Generally, when there is a *468 disagreement as to the meaning of terms in a contract, one party's offer to perform in accordance with his interpretation is not itself an anticipatory breach. (*Lowenstein v. Federal Rubber Co.*, 85 F.2d 129 (8 Cir.1936). If the offer appears to be made in the good faith belief that the offeror's interpretation

is correct, that will be evidence of his continued adherence to the agreement. (*Mobley v. New York Life Insurance Co.*, 295 U.S. 632, 638, 55 S.Ct. 876, 79 L.Ed. 1621 (1935); *Kimel v. Missouri State Life Insurance Co.*, 71 F.2d 921, 923 (10 Cir.1934); *Milton v. H.C. Stone Lumber Co.*, 36 F.2d 583, 588 (S.D.Ill.1928), affirmed 36 F.2d 589 (7 Cir.1929).” (*Pacific Coast Engineering Co. v. Merritt–Chapman & Scott Corp.*, *supra*, 411 F.2d at p. 894.)

[26] [27] We reject the Town's reliance on this defense of good-faith contract interpretation because the Town did not proffer this theory to the jury. (See *Panopoulos v. Maderis* (1956) 47 Cal.2d 337, 340–341, 303 P.2d 738 [party may not raise **824 new theory on appeal]; *Durkee v. Chino Land & Water Co.* (1907) 151 Cal. 561, 569, 91 P. 389 [defendant cannot raise new theory of defense on appeal].) In any event, the evidence does not support the Town's claim that it desired to comply with the Development Agreement in good faith. While asserting that the Town was willing to abide by the terms of the Development Agreement, town officials were actively working with the FAA to terminate the Developer's right under the Development Agreement to build the hotel/condominium project.

3. Intent to be Bound by Contract

[28] Likewise, the Town's third argument also fails because it is not supported by the evidence, properly viewed. The Town demonstrated its intention not to be bound by the Development Agreement. It actively refused to cooperate and sought to have the Developer's rights terminated.

4. Repudiation Based on Inconsistent Contracts

The related argument that the trial court erred by allowing the jury to find that the Town repudiated the Development Agreement by entering into inconsistent contracts finds no support in the record.

The Town states: “The trial court committed prejudicial error for a number of reasons when it directed the jury to make a finding on an inapposite theory of ‘inconsistent contracts,’ under which the Town could be found liable for repudiating the [Development Agreement] by virtue of having accepted

federal airport funding and thereby subjected itself to FAA's grant assurance requirements.”

[29] *469 A more careful reading of the jury instruction at issue reveals that the court did not allow the jury to base a finding of repudiation on the Town's formation of inconsistent contracts. Instead, the instruction merely informed the jury that a party cannot rely on its assent to one contract to justify breach of another, inconsistent contract.⁸ That is not a theory of liability; instead, it is a limitation on a defense. Therefore, contrary to the Town's assertion, the jury was not directed to base a finding of repudiation on a theory of inconsistent contracts.

C. Breach of Unilateral Contract

The Town contends that the Developer's argument that the Town repudiated the purchase option for the land on which the hotel/condominium project would be built fails as a matter of law because a purchase option is a unilateral contract to which the theory of anticipatory breach does not apply. (See  *Diamond v. University of So. California* (1970) 11 Cal.App.3d 49, 53, 89 Cal.Rptr. 302 [anticipatory repudiation does not apply to unilateral contracts.]) This is simply an attempt by the Town to recharacterize the action as one for breach of the purchase option rather than breach of the Development Agreement—a red herring designed to divert attention away from the applicable theory of recovery. The attempt is unsuccessful. The theory proffered to the jury was that the Town repudiated the Development Agreement, not just the purchase option. And the Town makes no attempt to establish that the Development Agreement was a unilateral contract.

**825 D. Evidence of Retraction of Repudiation

[30] The Town argues that, even if deputy town manager Long's June 29, 2004 e-mail can be considered a repudiation of the Development Agreement, town manager Clark's letter two weeks later retracted the repudiation. (See *Sackett v. Spindler* (1967) 248 Cal.App.2d 220, 231–232, 56 Cal.Rptr. 435 [repudiation nullified if timely retracted].) However, Clark's letter is not a clear retraction. While it professes the Town's willingness to work with the Developer on FAA compliance issues, it does not offer to move forward with the hotel/condominium project without first resolving FAA compliance issues.

[31] [32] Halfway through the single paragraph in the Town's opening brief arguing that it retracted any repudiation of the Development Agreement, the *470 Town claims that the trial court also erred by not instructing the jury on retraction. We need not consider this separate argument appended as it is to another argument. (Cal. Rules of Court, rule 8.204(a)(1)(B).) In any event, the Town fails to provide a citation to the record where the Town requested what it contends would have been a proper instruction on retraction.

 *Null v. City of Los Angeles* (1988) 206 Cal.App.3d 1528, 1535, 254 Cal.Rptr. 492 [to complain of failure to instruct, party must have requested proper instruction].) Therefore, the Town forfeited review of this issue on appeal.

IV

Damages Award

After obtaining many benefits from the Development Agreement, including the Developer's airport improvements, the Town repudiated the Development Agreement. The jury awarded the Developer \$30 million for the breach. On appeal, the Town contends that evidence of damages was too speculative to support the jury's award. We conclude that the evidence was not too speculative to support the jury's award.

[33] [34] “ ‘Where the prospective profits are the natural and direct consequences of the breach of the contract they may be recovered. Profits are part and parcel of the contract itself, entering into and constituting a portion of its very element; something stipulated for, the right to the enjoyment of which is just as clear and plain as to the fulfillment of any other stipulation. They are presumed to have been taken into consideration and deliberated upon before the contract was made, and formed, perhaps, the only inducement to the arrangement. [Citation.] Damages consisting of the loss of anticipated profits need not be established with certainty. It is sufficient that it be shown as a reasonable probability that the profits would have been earned except for the breach of the contract. [Citations.]’ ”  *Nelson v. Reisner* (1958) 51 Cal.2d 161, 171–172, 331 P.2d 17, quoting  *James v. Herbert* (1957) 149 Cal.App.2d 741, 749, 309 P.2d 91.)

Under this standard, we must determine whether the Developer presented evidence sufficient to establish a reasonable probability that it would have realized a \$30

million profit on the hotel/condominium project if the Town had not breached the Development Agreement. In this inquiry, we construe the evidence in the light most favorable to the judgment. We draw every reasonable inference and resolve every conflict in support of the judgment. (Campbell v. Southern Pacific Co., supra, 22 Cal.3d at p. 60, 148 Cal.Rptr. 596, 583 P.2d 121.)

***471** A. Evidence of Damages

1. Town Manager's Estimate of Value of Purchase Option

As noted in the facts above, town manager Clark wrote an e-mail to town staff in ****826** which he noted that the Developer valued the purchase option at about \$20 million. Even with the prospect of litigation over the Town's breach of the Development Agreement, Clark appears to have rejected the alternatives of eminent domain proceedings or negotiations with the Developer because the Town, in Clark's words, didn't have "\$10 to \$20 million in spare change." In testimony at trial, Clark said that town officials "didn't know how much it would cost, but we speculated it would be in that range."

2. Part-owner's Estimate of Value

During the trial, Mark Rosenthal, one of the investors in the Developer, testified. Rosenthal was president of a company that participated in various real estate ventures, including as developer, manager, and owner. His experience included development or redevelopment of several hotels. When determining whether to purchase an interest in the hotel/condominium project, Rosenthal considered strategies to eventually exit the investment. He believed that the hotel/condominium project could be sold for \$30 million to \$40 million if the uncertainties with the Town and the Development Agreement were cleared up.

3. Expert Evidence Concerning Value of the Hotel/Condominium Project in 2004

The bulk of the evidence concerning damages came from Richard Maurice Robinson, an expert retained by the Developer. Robinson is a certified general real estate appraiser and has 20 years of experience in appraising hotels and resorts. He consults with municipalities to bring in high-

end hotels. In this process, he customarily makes projections concerning the cost and profit of such hotels. He teaches complex valuation techniques at the University of California, Berkeley.

Based on the plans for the hotel/condominium project and the bids from architectural and construction companies, Robinson assumed that it would cost about \$168 million to build the hotel/condominium project. In addition to the architectural and construction costs, Robinson estimated that the Developer would incur costs of about \$45 million for sales and about \$9 million for financing. Thus, his estimate for the total cost of the project was about \$220 million.

***472** Robinson also estimated the amount of income to be generated by the project. After studying other similar projects, he calculated a likely price at which the individual units would sell if marketed, as the Developer intended, as a residential development. He added a premium to the price for the advantages of this particular property, but then he discounted the price by 30 percent because of its location at the airport. After taking into account other characteristics of the project, such as the fractional (timeshare) nature of the sales, the intent to associate with a major brand, and the pace at which the units would sell, Robinson estimated a total selling price of \$350 million for the entire project.

Subtracting the cost of the project from the income to be generated from the sale of the condominium units, Robinson projected a total of about \$130 million in profit over the life of the project.

In addition to this projected net profit from the sale of the condominium units, Robinson estimated that, once the project was fully built and stabilized, it would generate \$2.2 million net income per year from the Developer's management of the property, including renting units out when the owners were not occupying them. He arrived at this number using industry standards and guidelines for this type of valuation and rental conditions specific to the Mammoth area.

****827** Robinson concluded that, over the life of the project, the hotel/condominium would result in about \$160 million in total profits for the Developer. To arrive at a current ("current" meaning 2004, when the Town breached the Development Agreement) value of the hotel/condominium project, Robinson factored in the risks of eventually realizing that profit from a project that had not yet been built. Having

done so, Robinson estimated that the 2004 value of the hotel/condominium project was \$37 million to \$48 million.

4. Order Denying Motion for New Trial

After the jury's verdict awarding \$30 million to the Developer, the Town moved for a new trial, asserting, among other things, that the evidence did not support the damages award. The trial court denied the motion. However, in doing so, the court stated: "[W]ere the question of damages predicated solely on the testimony of Mr. Robinson, I would grant a motion for new trial based on the issue of damages, not only for the issues outlined by [counsel for the Town] but also other concerns I had at the time as the testimony came in. However, as is pointed out by [counsel for the Developer], an owner of the property can opine a value of property, and although Mr. Rosenthal did insert a caveat in his discussion of the sale on the order of \$30 [million] to *473 \$40 million, there was enough basis with that and the various and sundry assessments made by the Town itself as to a condemnation value to justify a jury verdict. So although I would have reached a different verdict, that is not the standard I use, and I do not find there was a basis, therefore, for setting aside the damages award. So the motion for new trial will be denied."

B. Analysis

1. Sufficiency of Evidence

[35] Before we consider the Town's contention that the evidence of lost profits was too speculative, we must address an argument by the Town concerning the presumption that the verdict is correct. The Town asserts that the trial court's comments on the evidence of damages made during the hearing on the motion for new trial are significant on appeal. The court stated that it would have granted the motion for new trial had Robinson's testimony been the only evidence of damages. The Town claims that the court's comments are entitled to "substantial deference." That is incorrect. We defer to the trial court's factual determination when the court grants a motion for new trial, not when the court denies such a motion. When the court denies the motion, we presume the jury's verdict is correct. (See  *Lane v. Hughes Aircraft Co.* (2000) 22 Cal.4th 405, 412, 93 Cal.Rptr.2d 60, 993 P.2d 388 [presumption of verdict's correctness replaced by deference to trial court's factual determinations when court grants motion for new trial].)

The Town asserts that the evidence does not support a \$30 million damages award.⁹ Concerning the expert testimony from Robinson, the Town contends that his opinion of the 2004 value of the hotel/condominium project was too speculative and fails to support the jury's \$30 million damages verdict because Robinson's calculations involved too many assumptions and contingencies. To the contrary, despite the assumptions and contingencies stated in Robinson's testimony, the evidence was **828 sufficient to show a reasonable probability that the profits would have been realized except for the breach of the Development Agreement.

(See  *Nelson v. Reisner*, *supra*, 51 Cal.2d at pp. 171–172, 331 P.2d 17.)

The Town argues that Robinson made the following assumptions: (1) all necessary permits would be obtained, (2) environmental review would be completed, (3) estimated construction costs provided by the Developer were accurate, (4) the project would be built within the estimates, (5) the *474 Developer would successfully obtain financing, (6) the Developer would successfully associate with a major brand, and (7) the mix of project units could be sold within the time frame and at projected prices.

The assumptions used by Robinson were intentionally conservative. They were reasonable, based on Robinson's knowledge of the industry and experience in valuing hotel projects. (1 & 2) The necessary permits and environmental review were simply a matter of forging onward with the project. There is no evidence that the Developer could not obtain the permits and review. (3 & 4) The estimated costs of construction were based on actual bids submitted to the Developer. (5) There was evidence that the Developer was in the process of successfully obtaining the required financing. (6) Robinson testified that associating with a major brand would not be hard, saying "[b]rands love these projects." And (7), concerning the time frame for selling all the units, Robinson looked at the rate at which similar properties sold and then reduced it to give a conservative estimate of seven years. This evidence, though predictive, was not speculative.

The Town attacks the discounting of the total estimated profits (\$160 million) to determine a current (2004) value of the project (\$37 million to \$48 million). It contends that this process merely "applied *additional* speculative assumptions on top of Robinson's flawed lost profits projections." (Original italics, fn. omitted.) The Town cites

 *Parlour Enterprises, Inc. v. Kirin Group, Inc.* (2007) 152 Cal.App.4th 281, 61 Cal.Rptr.3d 243 (*Parlour Enterprises*) to support this contention. Neither the contention nor the citation to *Parlour Enterprises* is persuasive.

Robinson applied accepted valuation principles, factoring in the risks associated with a project yet to be undertaken and reducing the profits projected to be earned over the life of the project to arrive at a current value. The Town's labeling of the accepted practice as including "speculative assumptions" is insufficient to establish that Robinson's estimate of current value was unreasonable.

In *Parlour Enterprises*, the appellate court reversed the bulk of damages awarded in favor of a franchisor who sued a franchisee for failure to open ice cream parlors as required by their agreement. ( 152 Cal.App.4th at pp. 283–284, 61 Cal.Rptr.3d 243.) The court's opinion does not reveal the extent of the experience and expertise of the franchisor's damages expert. In any event, the appellate court noted that the franchisor's profit projections formed the basis for the expert's analysis. ( *Id.* at p. 285, 61 Cal.Rptr.3d 243.) Those projections, however, were unsupported by the evidence. There was no evidence that whoever made the projections had experience or expertise in predicting income, expenses, or profits. ( *Id.* at pp. 289–290, 61 Cal.Rptr.3d 243.)

475** Here, unlike in *Parlour Enterprises*, there was evidence to support the projections given to and the assumptions made by Robinson. The costs to build the project were based on bids and standard costs. And the potential sales were based on comparable developments, with the *829** sales adjusted down because of the specific characteristics of this project. Therefore, *Parlour Enterprises* is distinguishable because Robinson's testimony was based on professional expertise developed over two decades of hotel and resort valuation, as well as reliable evidence and assumptions.

[36] The Town also argues that Robinson's testimony concerning the current value of the project is insufficient to support the verdict because there was no evidence that a willing buyer existed. Such evidence, however, is unnecessary to support a damages award in this context. Lost profits may be proved by means other than the value given by a willing buyer. Expert testimony, alone, may be sufficient if it is supported by substantial evidence and is not speculative.

 *Kids' Universe v. In2Labs* (2002) 95 Cal.App.4th 870, 885, 116 Cal.Rptr.2d 158.)

Robinson testified at length concerning the discount of the lost profits to estimate a current value. In order to induce a buyer to take on the risks of an unfinished project—risks such as cost overruns, slow sales, or a drop in prices—it would be necessary to set a current value well below the amount of lost profits over the life of the project. Robinson testified concerning the risks and discounts associated with those risks. While he did not testify that there was a ready and willing buyer, he confirmed that the discounted price was a price, in his experience, that "somebody would pay."

[37] Therefore, Robinson's testimony, giving the project a current value of \$37 million to \$48 million, was sufficient to sustain the \$30 million damages award. But his was not the only testimony concerning damages.

As did the trial court, we recognize that evidence concerning the amount of damages came from the town manager and one of the Developer's investors. However, the Town asserts that the evidence from those sources also does not support the \$30 million damages award. We disagree. The testimony from the investor supports the award, and the evidence of the town manager's statement supports the award to the extent of the statement (\$20 million).

[38] An owner of property is generally considered competent to estimate or offer a lay opinion of the property's value. (Evid.Code, § 813, subd. (a)(2);  *Sacramento & San Joaquin Drainage Dist. v. Goehring* (1970) 13 Cal.App.3d 58, 64, 91 Cal.Rptr. 375.) "In stating an opinion as to the value of his property, an owner is bound by the same rules of admissibility as is any ***476** other witness. [Citation.]" ( *Sacramento & San Joaquin Drainage Dist., supra*, at p. 65, 91 Cal.Rptr. 375.)

Rosenthal was experienced in developing, managing, and owning real estate and had developed and redeveloped hotels. As a part-owner of the Developer, he expressed his opinion that, based on his experience and his review of the hotel/condominium project, the project could be sold for \$30 million to \$40 million. This evidence supported the jury's verdict.

Finally, the town manager apparently agreed with a statement that the purchase option, alone, was worth \$10 million to

\$20 million. This was also evidence that had a tendency to prove the value of the project. Although it may not have been sufficient by itself to support the damages award, it helped to establish the reasonableness of the rest of the evidence concerning the value of the project.

Accordingly, we conclude that there was substantial, nonspeculative evidence that the Developer sustained \$30 million in damages as a result of the Town's breach of the Development Agreement.

****830 2. Forfeiture of Taxpayer Funds**

[39] In an argument raised for the first time in its reply brief, the Town claims that the damage award amounts to an invalid forfeiture of taxpayer funds. The Town forfeited this argument by failing to raise it in a timely manner. (*Murray Co. v. Occupational Safety & Health Appeals Bd.* (2009) 180 Cal.App.4th 43, 54, fn. 54, 102 Cal.Rptr.3d 513.)

V

Attorney Fees

After judgment was entered, the trial court ordered the Town to pay the Developer \$2,361,130 in attorney fees based on

a provision of the Development Agreement providing for attorney fees to the prevailing party in a legal action. The Town separately appealed the attorney fees award.

The Town states that, if we reverse the judgment in favor of the Developer, we must also reverse the attorney fee award, which was based on the Developer's status as the prevailing party. Because we affirm the judgment, and the Town makes no argument for reversing the attorney fees award other than reliance on reversal of the judgment, we also affirm the award of attorney fees.

***477 DISPOSITION**

The judgment and the order awarding attorney fees are affirmed. The Developer (plaintiff) is awarded its costs on appeal. (*Cal. Rules of Court, rule 8.278(a)(1).*)

We concur: [RAYE](#), P.J., and [SCOTLAND](#), J. ^{**}

Opinion

All Citations

191 Cal.App.4th 435, 120 Cal.Rptr.3d 797, 10 Cal. Daily Op. Serv. 56, 2011 Daily Journal D.A.R. 92

Footnotes

- * Retired judge of the Kern County Superior Court, assigned by the Chief Justice pursuant to [article VI, section 6 of the California Constitution](#).
- 1 The Town cites to documents in the appellant's appendix to support many of its statements of fact in its briefs. However, the Town does not indicate whether and when the documents in the appellant's appendix were admitted as evidence at trial. This presents a problem on appellate review because some of the Town's contentions of error, such as the contention that the Developer failed to establish a breach of the Development Agreement, challenge the effect of evidence introduced at trial. Although the Town fails to identify properly the evidence introduced at trial, we conclude that we may ignore this defect in the briefing because (1) there is no serious dispute concerning the facts and (2) the Town's contentions are without merit, even when viewing them in the light of the facts stated in the Town's briefing. (See [Cal. Rules of Court, rule 8.204\(e\)](#) [allowing court to disregard defects in briefing].)
- 2 The paragraph states: "The Town has breached the [Development Agreement] and Hotel/Condo Lease[] by[,] among other things, (1) failing and refusing to act on, or approve, the Hot Creek Developers [*sic*]

development plans submitted to the Town in October 2000 and again in 2004; (2) taking actions to pursue other Airport expansion projects that could have the effect of depriving the Hot Creek Developers of the benefits of the [Development Agreement] and Hotel/Condo Lease; (3) misrepresenting and failing to disclose material facts to the Hot Creek Developers concerning FAA approval of the Hot Creek Project; (4) seeking the assistance of the FAA to create a pretext for the Town not to approve the Hot Creek Project; (5) breaching the [Development Agreement]'s express and implied covenants of good faith and fair dealing; (6) writing to the Hot Creek Developers on June 29, 2004, stating that the Town 'will be unable to move forward with your project,' and insisting on the performance of conditions by the Hot Creek Developers that are inconsistent with the [Development Agreement] and Hotel/Condo Lease; and (7) telling the Hot Creek Developers in 2005 and 2006 that the Town would not allow the project to move forward without conditions and continuing to require the Hot Creek Developers to give up valuable contract rights (including their purchase option) as a condition of moving forward with the project."

- 3 The Town also contends that the Developer failed, as a matter of law, to establish futility of administrative review. Because we conclude that a breach of contract action was proper and administrative review could not provide an appropriate remedy, we need not consider further the contention that the Developer failed to establish futility.
- 4 In a footnote, the Town states as an alternative argument that the Developer was required to file a petition for traditional mandate because town officials refused to perform their ministerial duties under the contract. This argument was not raised below and is barely noted and undeveloped here. We need not consider this newly-conceived footnote contention. (See  *People v. Freeman* (1994) 8 Cal.4th 450, 482, fn. 2, 34 Cal.Rptr.2d 558, 882 P.2d 249 [issues mentioned but not developed as discrete contentions of error not properly raised]; Cal. Rules of Court, rule 8.204(a)(1)(B) [requiring appellant to state each point under a separate heading or subheading].)
- 5 The Developer asserts that the Town breached the contract when it failed to provide requested assurances that it would meet its obligations under the contract. The Developer claims it is "hornbook law that the failure to provide reasonably requested assurances is a repudiation. [Citations.]" This assertion fails on appeal, however, because this theory was not presented to the jury by instructions at trial. ( *Daniels v. San Francisco* (1953) 40 Cal.2d 614, 623, 255 P.2d 785 [appellate court cannot affirm based on theory not presented to jury].)
- 6 Section four of Resolution 89–41 of the town council of Mammoth Lakes states: "The Town Council acts on behalf of the Town of Mammoth Lakes only by motion, resolution or ordinance duly adopted at a duly noticed meeting of the Town Council. Except for such a motion, resolution or ordinance, no oral or written communication or comments during the course of any Town Council meeting or at any other time by any member of the Town Council or any other person constitutes an action of the Town Council or an act legally attributable to the Town of Mammoth Lakes."
- 7 At the end of its opening brief argument that the Developer failed to establish a breach attributable to the Town, the Town appends a two-sentence assertion that the trial court "compounded its prejudicial error" by not instructing the jury using a Town-proposed jury instruction modeled after Resolution 89–41. This assertion makes no sense because the error of which the Town complains is lack of sufficient evidence, not some prejudicially erroneous action of the trial court. Because the Town makes no separate contention, supported by authority and analysis, that the jury was misinstructed, we need not consider further this statement in the opening brief. (See  *People v. Freeman, supra*, 8 Cal.4th at p. 482, fn. 2, 34 Cal.Rptr.2d 558, 882 P.2d 249; Cal. Rules of Court, rule 8.204(a)(1)(B).)

- 8 The court instructed: “There are times when a party enters into two inconsistent or mutually exclusive contracts. This occurs when performance of one contract will by necessity require a breach of the other contract. In those circumstances, it is not an excuse to performance of one contract that the party chose to perform the other contract.”
- 9 The Town attacks the Developer for mentioning that the Developer spent \$15 million to \$17 million on airport improvements. The Town asserts that the Developer has been able to profit from those improvements. To be clear, the Developer is not claiming the \$15 million to \$17 million expended on airport improvements as damages in this case.
- ** Retired Presiding Justice of the Court of Appeal, Third Appellate District, assigned by the Chief Justice pursuant to [article VI, section 6 of the California Constitution](#).

End of Document

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ITEM 18.1.

ATTACHMENT 3

3

B 1 (Official Form 1) (12/11)

UNITED STATES BANKRUPTCY COURT Eastern District of California				VOLUNTARY PETITION	
Name of Debtor (If individual, enter Last, First, Middle): Town of Mammoth Lakes, California			Name of Joint Debtor (Spouse) (Last, First, Middle):		
All Other Names used by the Debtor in the last 8 years (include married, maiden, and trade names):			All Other Names used by the Joint Debtor in the last 8 years (include married, maiden and trade names):		
Last four digits of Soc. Sec. or Individual-Taxpayer I.D. (ITIN)/Complete EIN (if more than one, state all): 77-0043067			Last four digits of Soc. Sec. or Individual-Taxpayer I.D. (ITIN)/Complete EIN (if more than one, state all):		
Street Address of Debtor (No. and Street, City, and State): 437 Old Mammoth Rd., Suite R, Mammoth Lakes, CA ZIP CODE: 93546			Street Address of Joint Debtor (No. and Street, City, and State): ZIP CODE		
County of Residence or of the Principal Place Of Business: Mono County			County of Residence or of the Principal Place of Business:		
Mailing Address of Debtor (if different from street address): P.O. Box 1609, Mammoth Lakes, CA ZIP CODE: 93456			Mailing Address of Joint Debtor (if different from street address): ZIP CODE		
Location of Principal Assets of Business Debtor (if different from street address above):			ZIP CODE		
Type of Debtor (Form of Organization) (Check one box.) ☐ Individual (Includes Joint Debtor) <i>See Exhibit D on page 2 of this form</i> ☐ Corporation (includes LLC and LLP) ☐ Partnership ☒ Other (if debtor is not one of the above entities, check this box and state type of entity below.) <u>Municipal Corporation</u>		Nature of Business (Check one box.) ☐ Health Care Business ☐ Single Asset Real Estate as defined in 11 U.S.C. § 101(51B) ☐ Railroad ☐ Stockbroker ☐ Commodity Broker ☐ Clearing Bank ☒ Other <u>Municipal Corporation</u>		Chapter of the Bankruptcy Code Under Which the Petition is Filed (Check one box.) ☐ Chapter 7 ☐ Chapter 15 Petition for Recognition of a Foreign ☒ Chapter 9 Main Proceeding ☐ Chapter 11 ☐ Chapter 15 Petition for Chapter 12 Recognition of a Foreign ☐ Chapter 13 Nonmain Proceeding	
Chapter 15 Debtors Country of debtor's center of main interest: Each country in which a foreign proceeding by, regarding, or against debtor is pending:		Tax-Exempt Entity (Check box, if applicable.) ☐ Debtor is a tax-exempt organization under title 26 of the United States Code (the Internal Revenue Code).		Nature of Debts (Check one box) ☐ Debts are primarily consumer debts, defined in 11 U.S.C. § 101(8) as "incurred by an individual primarily for a personal, family, or household purpose." ☒ Debts are primarily business debts.	
Filing Fee (Check one box.) ☒ Full Filing Fee attached ☐ Filing Fee to be paid in installments (applicable to individuals only). Must attach signed application for the court's consideration certifying that the debtor is unable to pay fee except in installments. Rule 1006(b). See Official Form 3A. ☐ Filing Fee waiver requested (applicable to chapter 7 individuals only). Must attach signed application for the court's consideration. See Official Form 3B.			Chapter 11 Debtors Check one box: ☐ Debtor is a small business debtor as defined in 11 U.S.C. § 101(51D). ☐ Debtor is not a small business debtor as defined in 11 U.S.C. § 101(51D). Check if: ☐ Debtor's aggregate noncontingent liquidated debts (excluding debts owed to insiders or affiliates) are less than \$2,343,300. (amount subject to adjustment on 4/01/13 and every three years thereafter). Check all applicable boxes: ☐ A plan is being filed with this petition. ☐ Acceptances of the plan were solicited prepetition from one or more classes of creditors, in accordance with 11 U.S.C. § 1126(b).		
Statistical/Administrative Information ☒ Debtor estimates that funds will be available for distribution to unsecured creditors. ☐ Debtor estimates that, after any exempt property is excluded and administrative expenses paid, there will be no funds available for distribution to unsecured creditors.					THIS SPACE IS FOR COURT USE ONLY
Estimated Number of Creditors ☐ 1-49 ☐ 50-99 ☐ 100-199 ☒ 200-999 ☐ 1,000- 5,000 ☐ 5,001- 10,000 ☐ 10,001- 25,000 ☐ 25,001- 50,000 ☐ 50,001- 100,000 ☐ Over 100,000					
Estimated Assets ☐ \$0 to \$50,000 ☐ \$50,001 to \$100,000 ☐ \$100,001 to \$500,000 ☐ \$500,001 to \$1 million ☐ \$1,000,001 to \$10 million ☐ \$10,000,001 to \$50 million ☐ \$50,000,001 to \$100 million ☒ \$100,000,001 to \$500 million ☐ \$500,000,001 to \$1 billion ☐ More than \$1 billion					
Estimated Liabilities ☐ \$0 to \$50,000 ☐ \$50,001 to \$100,000 ☐ \$100,001 to \$500,000 ☐ \$500,001 to \$1 million ☐ \$1,000,001 to \$10 million ☐ \$10,000,001 to \$50 million ☒ \$50,000,001 to \$100 million ☐ \$100,000,001 to \$500 million ☐ \$500,000,001 to \$1 billion					

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July 03, 2012
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CLERK, U.S. BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA
0004321651

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ITEM 18.1.

B 1 (Official Form 1) (12/11)

Page 2

Voluntary Petitioner <i>(This page must be completed and filed in every case.)</i>		Name of Debtor(s): Mammoth Lakes, California	
All Prior Bankruptcy Cases Filed Within Last 8 Years (If more than two, attach additional sheet.)			
Location Where Filed:	Case Number:	Date Filed:	
Location Where Filed:	Case Number:	Date Filed:	
Pending Bankruptcy Case Filed by any Spouse, Partner, or Affiliate of this Debtor (If more than one, attach additional sheet.)			
Name of Debtor:	Case Number:	Date Filed:	
District:	Relationship:	Judge:	
Exhibit A (To be completed if debtor is required to file periodic reports (e.g., forms 10K and 10Q) with the Securities and Exchange Commission pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 and is requesting relief under chapter 11.) ☐ Exhibit A is attached and made a part of this petition.		Exhibit B (To be completed if debtor is an individual whose debts are primarily consumer debts.) I, the attorney for the petitioner named in the foregoing petition, declare that I have informed the petitioner that [he or she] may proceed under chapter 7, 11, 12, or 13 of title 11, United States Code, and have explained the relief available under each such chapter. I further certify that I have delivered to the debtor the notice required by 11 U.S.C. § 342(b). X _____ Signature of Attorney for Debtor(s) (Date)	
Exhibit C Does the debtor own or have possession of any property that poses or is alleged to pose a threat of imminent and identifiable harm to public health or safety? ☐ Yes, and Exhibit C is attached and made a part of this petition. ☒ No.			
Exhibit D (To be completed by every individual debtor. If a joint petition is filed, each spouse must complete and attach a separate Exhibit D.) ☐ Exhibit D, completed and signed by the debtor, is attached and made a part of this petition. If this is a joint petition: ☐ Exhibit D, also completed and signed by the joint debtor, is attached and made a part of this petition.			
Information Regarding the Debtor - Venue (Check any applicable box.) ☒ Debtor has been domiciled or has had a residence, principal place of business, or principal assets in this District for 180 days immediately preceding the date of this petition or for a longer part of such 180 days than in any other District. ☐ There is a bankruptcy case concerning debtor's affiliate, general partner, or partnership pending in this District. ☐ Debtor is a debtor in a foreign proceeding and has its principal place of business or principal assets in the United States in this District, or has no principal place of business or assets in the United States but is a defendant in an action or proceeding [in a federal or state court] in this District, or the interests of the parties will be served in regard to the relief sought in this District.			
Certification by a Debtor Who Resides as a Tenant of Residential Property (Check all applicable boxes.) ☐ Landlord has a judgment against the debtor for possession of debtor's residence. (If box checked, complete the following.) _____ (Name of landlord that obtained judgment) _____ (Address of landlord) ☐ Debtor claims that under applicable nonbankruptcy law, there are circumstances under which the debtor would be permitted to cure the entire monetary default that gave rise to the judgment for possession, after the judgment for possession was entered, and ☐ Debtor has included with this petition the deposit with the court of any rent that would become due during the 30-day period after the filing of the petition. ☐ Debtor certifies that he/she has served the Landlord with this certification. (11 U.S.C. § 362(l)).			

52131768.3

ITEM 18.1.

ATTACHMENT 3

B I (Official Form I) (12/11)

Page 3

Voluntary Petition <i>(This page must be completed and filed in every case.)</i>	Name of Debtor(s):
Signatures	
Signature(s) of Debtor(s) (Individual/Joint) I declare under penalty of perjury that the information provided in this petition is true and correct. [If petitioner is an individual whose debts are primarily consumer debts and has chosen to file under chapter 7] I am aware that I may proceed under chapter 7, 11, 12 or 13 of title 11, United States Code, understand the relief available under each such chapter, and choose to proceed under chapter 7. [If no attorney represents me and no bankruptcy petition preparer signs the petition] I have obtained and read the notice required by 11 U.S.C. § 342(b). I request relief in accordance with the chapter of title 11, United States Code, specified in the petition. X _____ Signature of Debtor X _____ Signature of Joint Debtor _____ Telephone Number (if not represented by attorney) _____ Date	Signature of a Foreign Representative I declare under penalty of perjury that the information provided in this petition is true and correct, that I am the foreign representative of a debtor in a foreign proceeding, and that I am authorized to file this petition. (Check only one box.) ☐ I request relief in accordance with chapter 15 of title 11, United States Code. Certified copies of the documents required by 11 U.S.C. § 1515 are attached. ☐ Pursuant to 11 U.S.C. § 1511, I request relief in accordance with the chapter of title 11 specified in this petition. A certified copy of the order granting recognition of the foreign main proceeding is attached. X _____ (Signature of Foreign Representative) _____ (Printed Name of Foreign Representative) _____ Date
Signature of Attorney* X _____ Signature of Attorney for Debtor(s) <u>Michael L. Tuchin</u> Printed Name of Attorney for Debtor(s) <u>Klee, Tuchin, Bogdanoff & Stern LLP</u> Firm Name Klee, Tuchin, Bogdanoff & Stern LLP 1999 Avenue of the Stars, 39th Floor Los Angeles, CA 90067-6049 _____ Address <u>(310) 407-4000</u> Telephone Number <u>July 3, 2012</u> Date *In a case in which § 707(b)(4)(D) applies, this signature also constitutes a certification that the attorney has no knowledge after an inquiry that the information in the schedules is incorrect.	Signatures of Non-Attorney Bankruptcy Petition Preparer I declare under penalty of perjury that: (1) I am a bankruptcy petition preparer as defined in 11 U.S.C. § 110; (2) I prepared this document for compensation and have provided the debtor with a copy of this document and the notices and information required under 11 U.S.C. §§ 110(b), 110(h), and 342(b); and, (3) if rules or guidelines have been promulgated pursuant to 11 U.S.C. § 110(h) setting a maximum fee for services chargeable by bankruptcy petition preparers, I have given the debtor notice of the maximum amount before preparing any document for filing for a debtor or accepting any fee from the debtor, as required in that section. Official Form 19 is attached. _____ Printed Name and title, if any, of Bankruptcy Petition Preparer _____ Social-Security number (If the bankruptcy petition preparer is not an individual, state the Social-Security number of the officer, principal, responsible person or partner of the bankruptcy petition preparer.) (Required by 11 U.S.C. § 110.) _____ Address X _____ Signature _____ Date Signature of bankruptcy petition preparer or officer, principal, responsible person, or partner whose Social-Security number is provided above. Names and Social-Security numbers of all other individuals who prepared or assisted in preparing this document unless the bankruptcy petition preparer is not an individual. If more than one person prepared this document, attach additional sheets conforming to the appropriate official form for each person. A bankruptcy petition preparer's failure to comply with the provisions of title 11 and the Federal Rules of Bankruptcy Procedure may result in fines or imprisonment of both. 11 U.S.C. § 110; 18 U.S.C. § 136.
Signature of Debtor (Corporation Partnership) I declare under penalty of perjury that the information provided in this petition is true and correct, and that I have been authorized to file this petition on behalf of the debtor. The debtor requests the relief in accordance with the chapter of title 11, United States Code, specified in this petition. X _____ Signature of Authorized Individual <u>Dave Wilbrecht</u> Printed Name of Authorized Individual <u>Town Manager</u> Title of Authorized Individual <u>July 3, 2012</u> Date	

The Law Offices of Gloria D. Smith

48 Rosemont Place
San Francisco, CA 94103
(415) 308-9124
gloria@gsmithlaw.com

March 30, 2023

By E-mail

Mayor Linda Budge
Vice Mayor David M. Sander, Ph.D.
Councilmember Donald Terry
Councilmember Siri Pulipati
Councilmember Garrett Gatewood

Stacy Leitner, City Clerk
sleitner@cityofranchocordova.org
City of Rancho Cordova
Rancho Cordova City Council
2729 Prospect Park Drive
Rancho Cordova, CA 95670

RE: LogistiCenter at Rancho Cordova (PLND-1021-0015): Threat of Litigation

Dear Mayor Budge, Honorable Council Members:

On behalf of Stone Creek Residents for Smart Growth, I have reviewed the City Council's notice regarding a closed conference on March 30 with legal counsel to discuss threats of litigation from two developers over the approval process for the LogistiCenter application. The notice enumerated three potential lawsuits concerning the City's obligations under a 2003 development agreement between the County of Sacramento and Elliott Homes. We ask that you add a fourth potential case to that list.

In letters dated January 27, February 13 and March 6, 2023, Stone Creek Residents have shown conclusively that the development agreement was never properly adopted in the first instance; but even if it had been operative for 15 years, the DA has expired and is no longer binding on the City. Neither Dermody's counsel nor the firm Hanson Bridgett have mounted a colorable defense of the development agreement. At best, both appear to argue that because the City and other agencies assumed the DA was valid for prior project

approvals, and no one pointed out its deficiencies then, the City should simply ignore the law and continue as if the development agreement *remains* operative. The problem is the City now knows the DA is not in effect. As such, Stone Creek Residents are fully prepared to seek judicial review on the interpretation of Government Code section 65865.3 should the City ignore the plain reading of the law and approve the project under the expired development agreement. Please add to your list Stone Creek Residents' intentions to sue should you approve the project under the 2003 DA.

THE LAW OFFICES OF GLORIA D. SMITH

A handwritten signature in black ink, appearing to read "Gloria D. Smith", with a stylized, cursive script.

Gloria D. Smith

MEMORANDUM

ITEM 18.2.



DATE: April 17, 2023
TO: Honorable Mayor and Council Members
FROM: Darcy Goulart, Planning Manager
**SUBJECT: STONECREEK INDUSTRIAL CENTER MAJOR DESIGN REVIEW
AMENDMENT; PROJECT NO. PLND-1121-0020**

PROPERTY OWNER:	APPLICANT/DEVELOPER:
Dermody Properties	Dermody Properties
5500 Equity Avenue	5500 Equity Avenue
Reno, Nevada 89502	Reno, Nevada 89502

PROJECT:	The applicant requests a Major Design Review Amendment for development of four light industrial warehouse with office accessory buildings totaling 602,004 square-feet that includes parking, lighting, and landscaping located within the Villages of Zinfandel Special Planning Area.
FILE:	PLND-1021-0020
LOCATION:	Southeast corner of Zinfandel Drive and Baroque Drive
APN:	072-380-001 thru 018-0000
PLANNER:	Darcy Goulart, Planning Manager

RECOMMENDATION

There is no staff recommendation at this time.

Staff will be seeking additional direction from Council for this project. Staff requests that the Council receive testimony, continue the public hearing to May 15, 2023, potentially appoint an ad hoc City Council subcommittee (two members), ask any questions, deliberate, and provide staff sufficiently detailed direction to return with final hearing documents and plan revisions at the May 15, 2023 City Council meeting.

RESULT OF RECOMMENDED ACTION

No final action. Continue the public hearing for possible action on May 15, 2023.

VILLAGES OF ZINFANDEL SPECIAL PLANNING AREA BACKGROUND

The Project, Stonecreek Industrial Center, is located within the Villages of Zinfandel Special Planning Area (ZSPA). The Special Planning Area was approved in 2002 by Sacramento County. The ZSPA includes residential, commercial, business professional, light industrial, parks, bike trails, and open space uses. An Environmental Impact Report (EIR) was prepared,

which took into consideration full build out impacts of the ZSPA, including biological, noise, traffic, and utilities. The EIR was certified for the Special Planning Area in 1998 by Sacramento County and a Mitigation Monitoring Reporting Program was adopted.

When the ZSPA was adopted, the property owners entered into a Development Agreement with Sacramento County, which had jurisdiction over the planning area at the time. This Development Agreement created vested rights for the property owner which effectively solidified all regulations and developments standards at that time (2003) to be applicable within the ZSPA for the life of the Development Agreement. At the time that these vested rights were created between the property owners and the County, the 2003 Sacramento County Zoning Code was the applicable document and therefore continues to be the regulatory document utilized for permitted and conditionally permitted uses and development standards such as building size, setbacks, landscaping, and parking for projects under review today.

In addition to the vested rights of the property established by the Development Agreement, the Villages of Zinfandel's allowed uses and development standards are further limited by the Mather Field Airport's overflight zone which is "governed" by the Sacramento Area of Council of Governments and the Mather Airport Land Use Plan. The Land Use Plan (LUP) includes limitations based upon a property's proximity to the airport. Areas that are most restrictive are those within the flight safety zones which are within the direct approach/departure flight paths of the runway. These areas are limited in both use and construction to minimize potential destruction if an accident should occur. The Land Use Plan also includes "Sound Contours" which are areas of excessive noise from the approach and departure of planes on the runway. The noise levels in these areas range from 75-60 decibel's which further dictates allowed uses within the area as these noise levels would not be comfortable or appropriate for certain uses such as office space or residential housing which has a limitation of a maximum of 55 decibels. The Land Use Plan of the airport in conjunction with the vested rights of property owners in the Villages of Zinfandel SPA are both utilized in reviewing projects to determine which uses are allowed within certain areas of the ZSPA and which development standards are applicable to each project.

PROJECT BACKGROUND

The project was originally presented on April 18, 2022, at the regularly scheduled City Council Meeting. After the City Council was presented the project and took public testimony, there were concerns raised by both the Council and the public and the meeting was continued to a date uncertain. Since that time, additional community outreach meetings have been held. Staff has continued to work with the Applicant to address the concerns raised and has provided the revised project plans. The overall square footage and site layout have not changed since April 2022. However, the design has changed. The staff report includes the elevations presented in April 2022, as well as the proposed elevations for the Stonecreek Industrial Center project.

Previous Entitlement Approval:

The project site had previous entitlements that were approved as follows:

April 2006: Tentative Parcel Map that included the light industrial zoned area to the west and south. Divided 3 parcels into 93 parcels.

Feb 2009: Tentative Subdivision Map Amendment and Design Review that included amending the project site into 10 parcels to accommodate 10 industrial buildings.

2017: The 2009 Tentative Subdivision Map expired in 2017.

June 2019: Tentative Parcel Map for 18 parcels and a Major Design Review for 603,830 square foot light industrial buildings to include parking, lighting, and landscaping.

Below is the site plan, elevations and landscape plan for the June 2019 approval. A final map was recorded in 2020 to create the 18 lots. In order to build this project, a developer would need to submit the required plans to obtain all the necessary permits, such as improvement plans and building permits. No additional discretionary entitlements are needed. Further down in this staff report, a comparison of the two projects will be summarized.

Figure 1: 2019 Stonecreek Industrial Site Plan

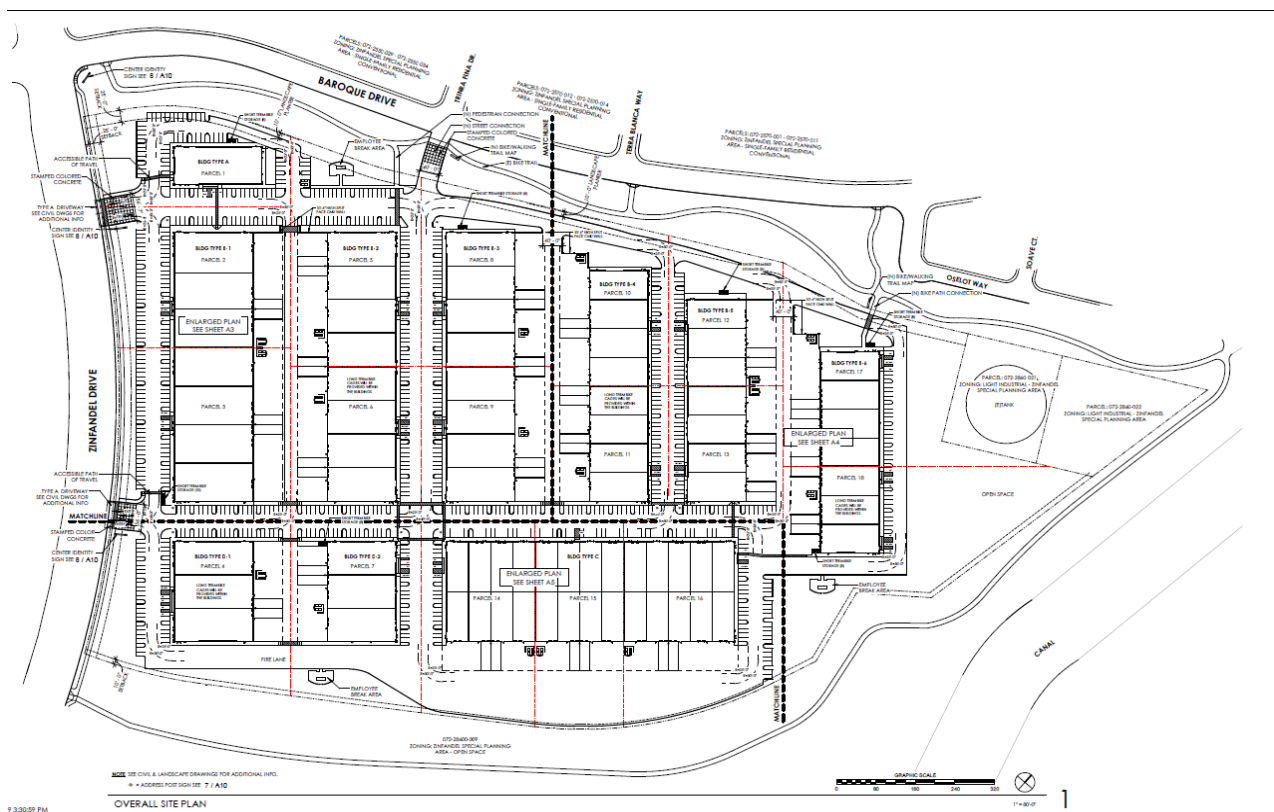


Figure 2: 2019 Stonecreek Industrial Elevations



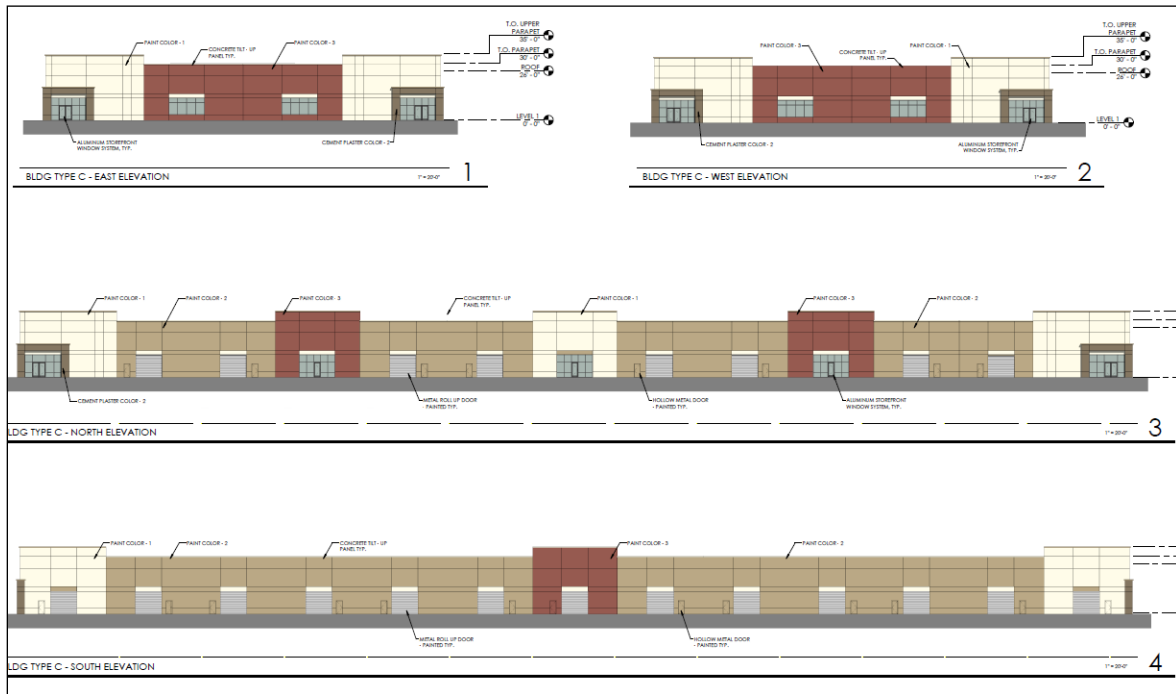


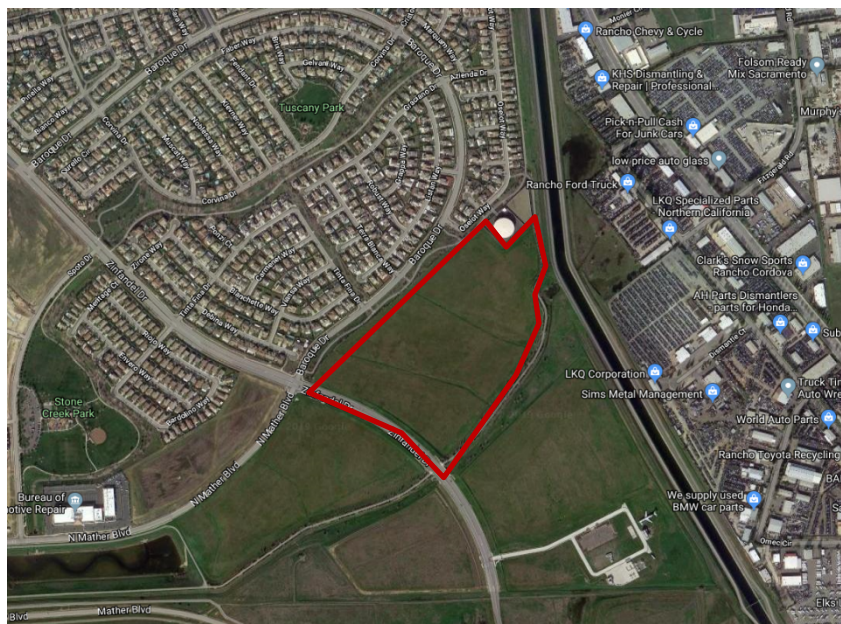
Figure 3: 2019 Stonecreek Industrial Landscape Plan



PROJECT ANALYSIS

The Project, Stonecreek Industrial Center, is located at the Southeast corner of Zinfandel Drive and Baroque Drive.

Figure 4: Site Location

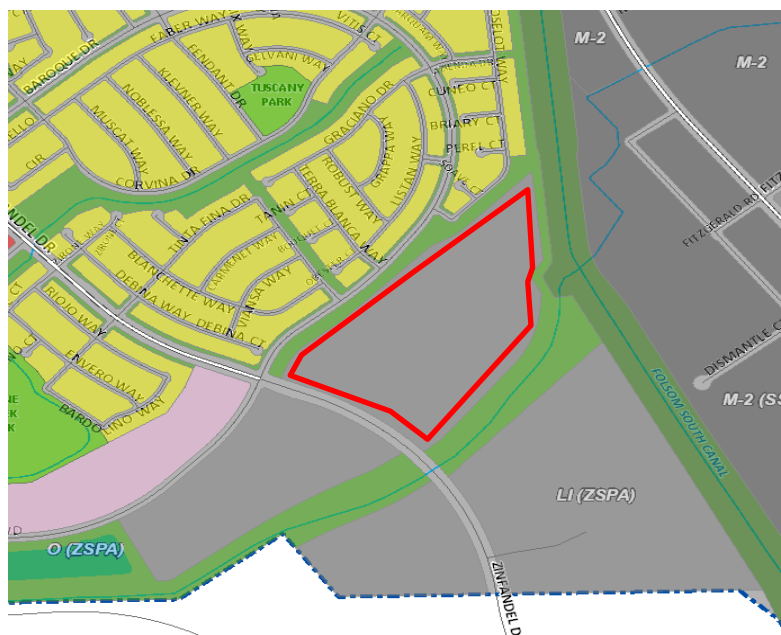


The following Table provides the current use, General Plan/Community Plan, and zoning.

Table 1: Surrounding Designations and Existing Uses

	General Plan	Zoning	Land Use
Subject Property	Light Industrial	ZSPA Light Industrial	Proposed Light Industrial buildings
North	Light Industrial and Low Density Residential	Open Space and ZSPA Low Density Residential	Bike Path and Single Family residential subdivision
South	Open Space and Light Industrial	Open Space and (ZSPA) Light Industrial	Bike Path and Undeveloped land
East	Light Industrial, Open Space and Public Quasi	ZSPA Light Industrial, Open Space, and Parks Open Space Habitat	Water Tank, Bike Path, and Folsom Canal
West	Light Industrial	ZSPA Light Industrial	Industrial Warehouse building

Figure 5: Adjacent Zoning and Land Uses:



MAJOR DESIGN REVIEW AMENDMENT:

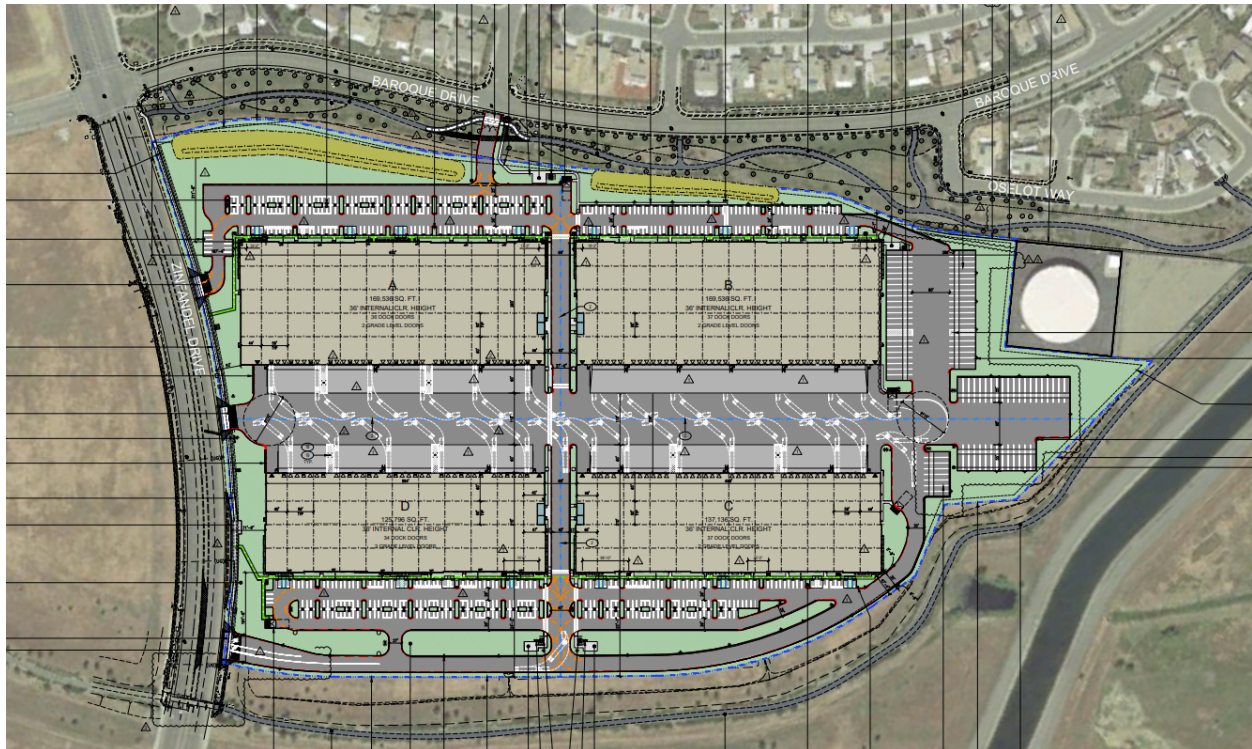
Site Design

The applicant, Dermody Properties, is proposing the following:

- Four (4) warehouse/office buildings totaling 602,004 square feet that will be built in 2 phases.
- 605 vehicle parking spaces and 75 short and long term bicycle parking spaces
- 144 building truck bays
- 85 trailer parking spaces
- 3 driveways and a new traffic signal on Zinfandel Drive
- An emergency vehicle access driveway on Baroque Drive

The proposed Stonecreek Industrial Center site plan layout includes building front elevations facing the north (along Baroque Drive) and the south (along the bike path) with the rear elevations that include truck dock doors facing interior to the site. The proposed uses for the four buildings are Warehouse use: 511,703 sq. ft. and Office use 90,301 sq. ft. The map will be consistent with the site plan development as 4 lots or less as a condition of approval.

Figure 6: Proposed Site Plan



Architectural Design

The proposed project includes buildings that are designed for warehouse and office accessory uses. The proposed buildings have a consistent architectural style and theme building design. The buildings include a variety of materials and colors (light and dark tones with an accent color, different texture paneling to include wood texture). The loading dock areas are internal to the site.

The minimum setbacks for the LI designated parcels in the VOZSPA are 25 ft. in the front, 25 ft. on the street side/corner, 0 ft. interior if adjacent to non residential zones and 10 ft. in the rear if adjacent to non residential zones.

For purposes of setbacks, adjacent to means it shares a boundary line. As can be seen in Figure 5, the project site does not share a boundary line with a non residential zone. All proposed buildings meet the minimum setback requirements. Based upon the shape of the parcel and building placement, proposed Building A is the closest to Zinfandel and Baroque. The closest distance of this building to various locations are as follows:

Street Name	Bldg. A to the Property Line	Bldg. A to closest edge of the Open Space/Ped. trail	Bldg. A to the opposite side of the Street
Baroque Dr.	168 ft.	260 ft.	306 ft.
Zinfandel Dr.	106 ft.	No open space/ped. trail along Zinfandel	219 ft.

The height limitations of buildings located in the VOZSPA default to the 2003 Sacramento County Zoning Code. Pursuant to Section 325-04(a) of the 2003 Sacramento County Code, buildings within industrial zones are limited to 24 feet in height if located within 100 feet of or adjacent to a residential zone. Buildings that are not within 100 feet of or contiguous to a residential zone are limited to 100 feet. The proposed buildings range in height from 42 ft. up to 45 ft. As shown in Figure 5 the site is not contiguous to a residential zone. Additionally, as discussed above, the closest building to a residential zone, is Building A which is over 300 feet away from the residential homes to the north of Baroque. The proposed height thus complies with Section 325-04.

Figure 7: Proposed Architectural Elevations – Bldg. A and B

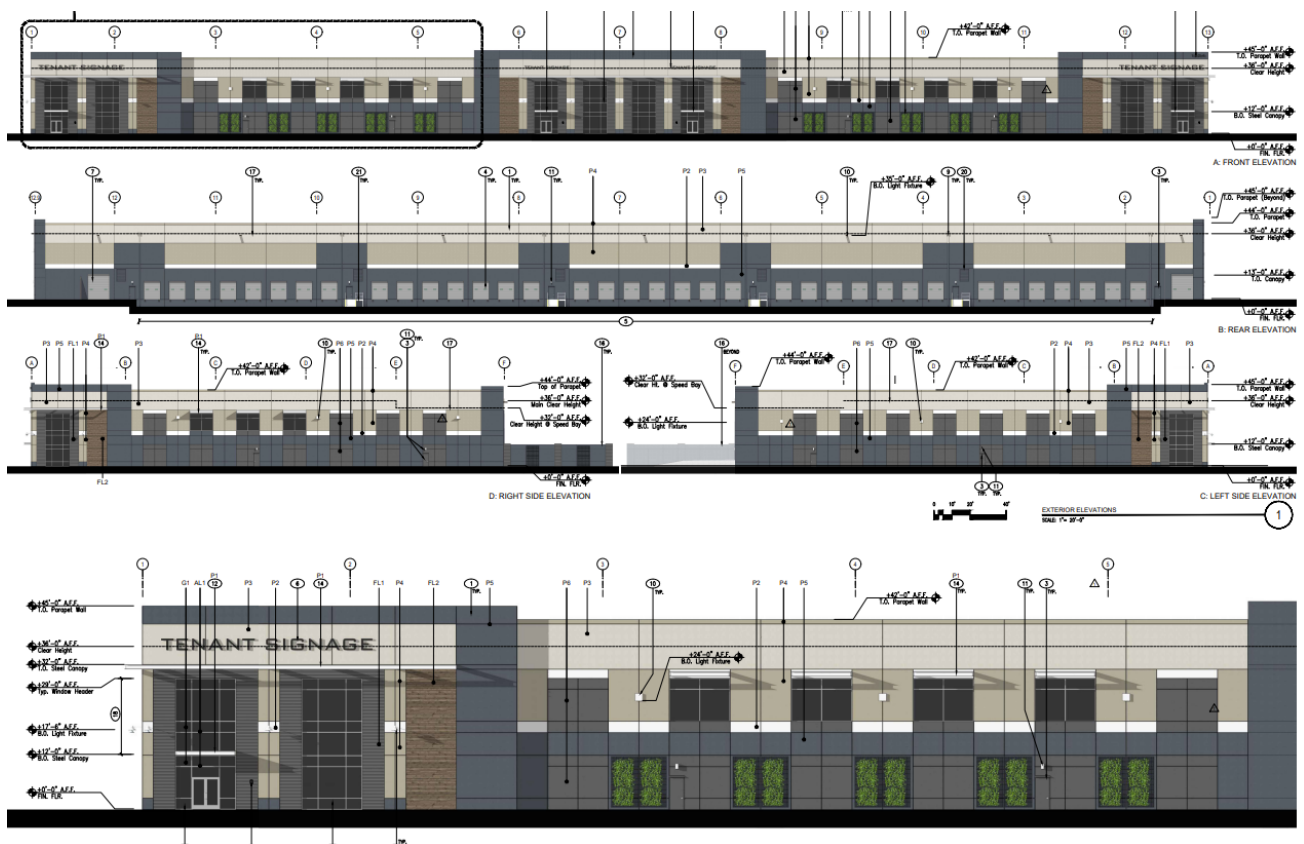


Figure 8: Proposed Architectural Elevations – Bldg. C

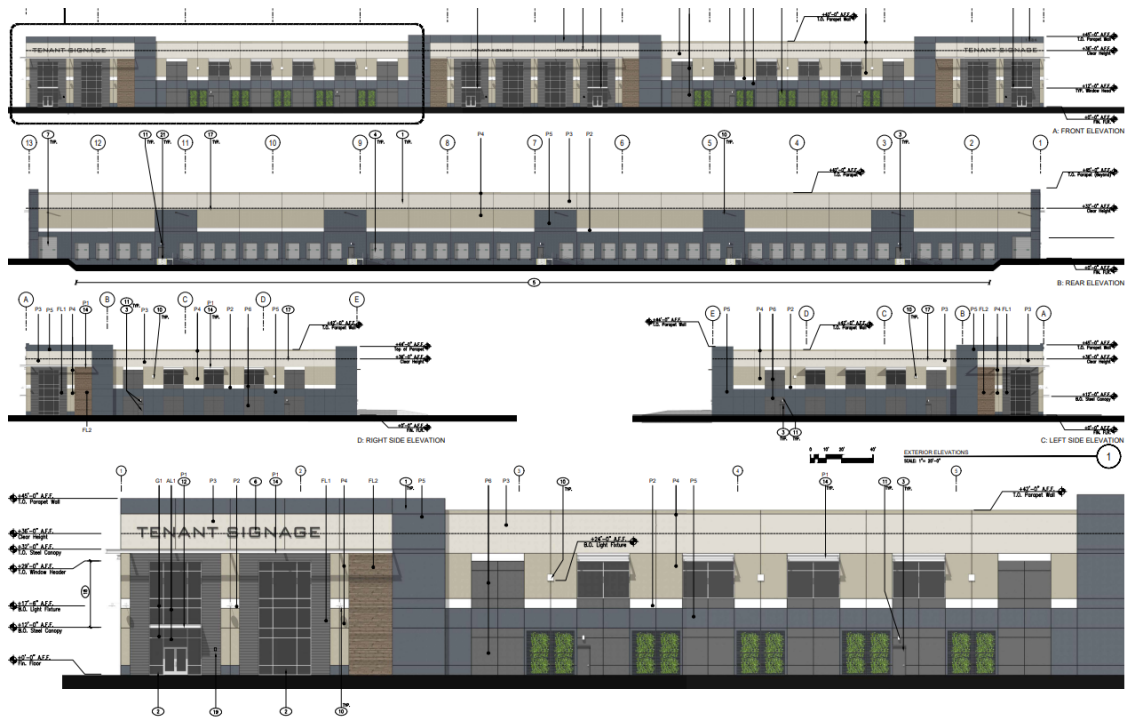


Figure 9: Proposed Architectural Elevations – Bldg. D

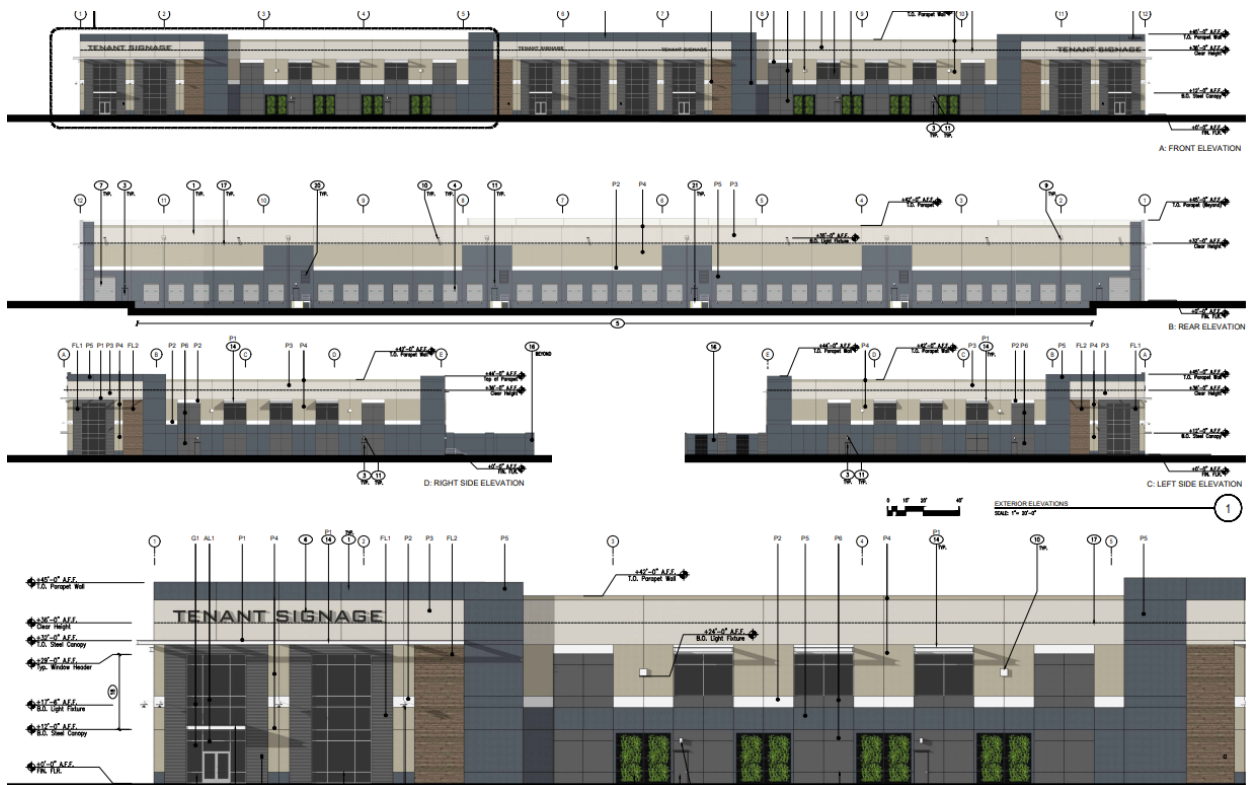


Figure 10: Proposed Architectural Elevations – Renderings



D: VIEW OF MONUMENT SIGN



A: VIEW OF TYPICAL BUILDING MAIN CORNER ENTRY



E: VIEW OF PROPOSED BUILDING ALONG ZINFANDEL



B: VIEW OF TYPICAL BUILDING FRONT ELEVATION



F: VIEW FROM SOUTHERN BIKE PATH LOOKING NORTH



C: VIEW OF TYPICAL BUILDING SECONDARY ENTRY

Landscape Plan

The proposed landscape plan includes a variety of trees, shrubs, and ground cover that provides the required shade area and enhances the appearance of the site. Accent landscaping has been provided at key project entries. Additional landscaping is provided along the area between the parking and bike trail on Baroque Drive to provide a natural buffer between the open space/bike trail and residential subdivision. This existing open space/bike trail is around 85 feet at the narrowest point and around 200 feet wide as you travel east on Baroque.

The project also includes various layers of evergreen trees planted on top of an 8 foot tall berm that runs along a span of Baroque near the northwestern portion of the site and ends at the EVA driveway. Due to the shape of the site, there is not adequate room to extend the berm from the east side of the EVA entrance to the eastern boundary of the site. The sound screen wing walls, front and side elevations of the buildings include trellises with vines for a vertical landscape element. A line of trees is provided along the southern property that is adjacent to the bike trail.

Figure 11: Landscape Plan



Figure 12: Loading Dock Screen Wall Location

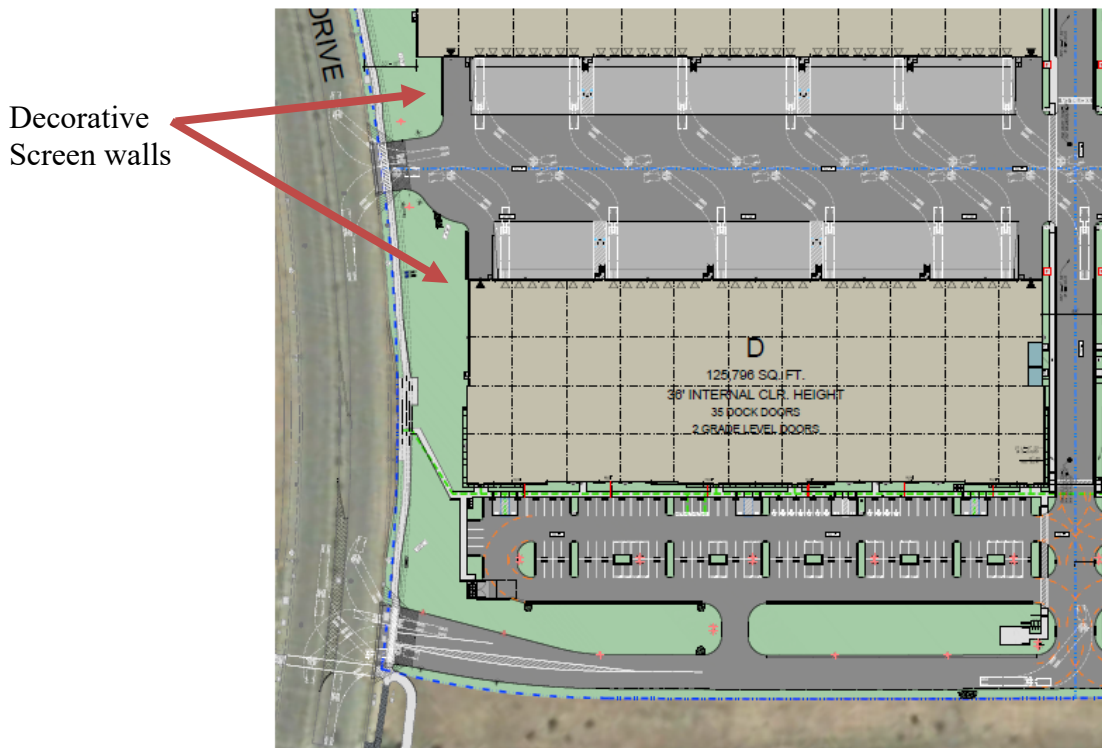


Figure 13: Loading Dock Screen Wall Detail



Parking

Consistent with the 2003 Sacramento County Zoning Code and the VOZSPA the proposed project parking complies with the required parking for a light industrial warehouse use. The parking requirement for the proposed use is 500 parking stalls. The site plan includes 605 parking stalls. The parking spaces are evenly distributed throughout the site. A site can accommodate 75 bicycles, between 50 short term and 25 long term space.

Figure 14: Truck Trailer Parking Location

Screening: Solid Fence and Landscaping



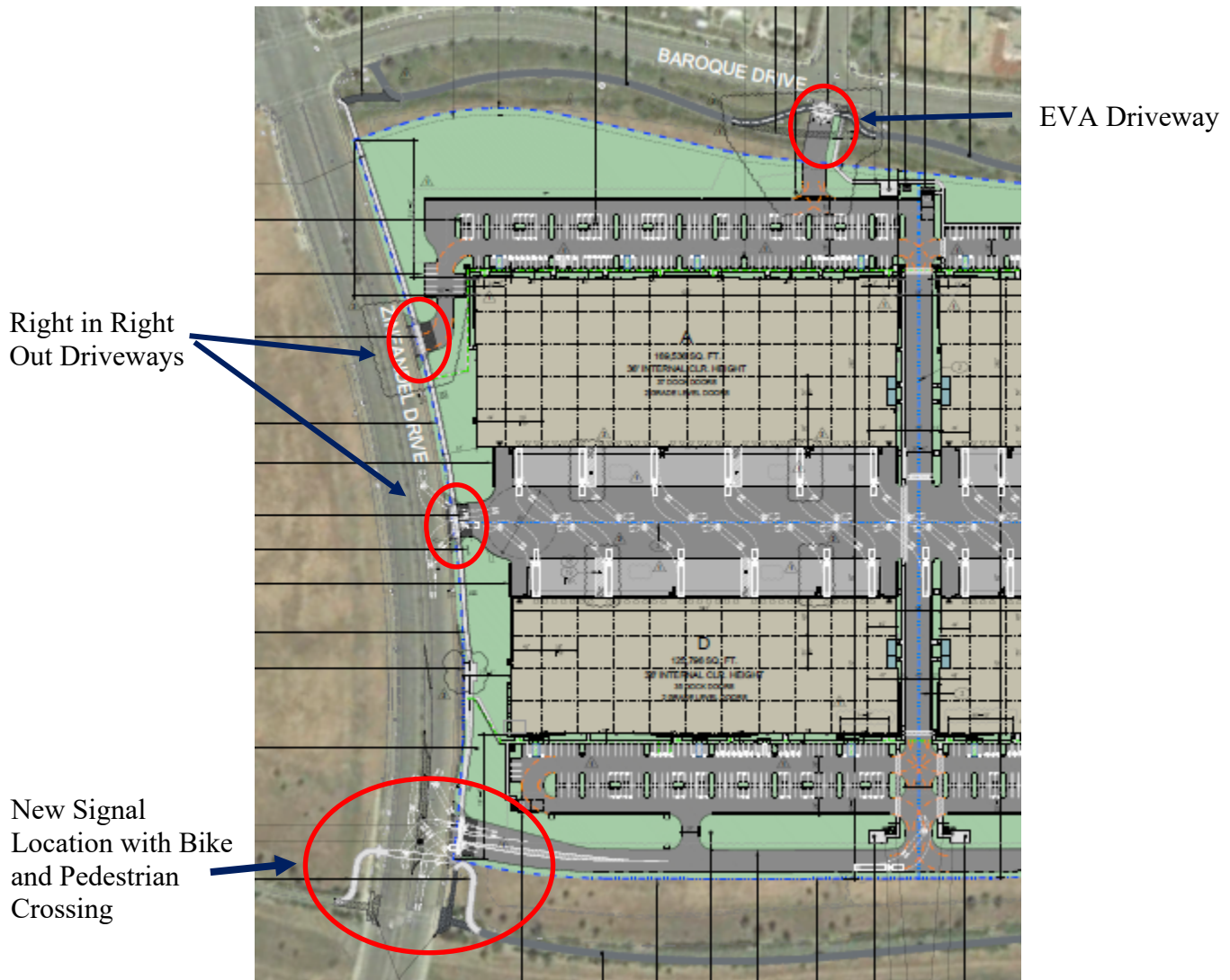
The Applicant provided a Traffic Signal Feasibility Study, Attachment 4, for the proposed new traffic signal on Zinfandel Drive.

- The Zinfandel Drive northern driveway and middle driveway will be right-in and right-out driveways.
- The Zinfandel southern driveway includes a new traffic signal that will provide an all access driveway (left turns and right turns).
- Truck access into and out of the site will be via the south and middle driveway.
- The existing bike trail will be relocated to the south side of the new driveway. The existing pedestrian signal will be removed and the pedestrian and bike crossing will be combined with the new signal.
- The Emergency Vehicle Access driveway on Baroque Drive will include an electronic gate and will be utilized by emergency vehicles only. The California Fire Code requires that access to the site is provided at several site specific locations.

- Non-passenger and commercial vehicles shall not be permitted to use Baroque Drive or other residential neighborhood roads.
- Sidewalk along Zinfandel Drive will be constructed along with pedestrian connections to the existing bike trail on Baroque Drive.

As part of an effort separate from this project, staff have begun the design process for traffic calming on Baroque Drive. The process will include design and public outreach leading to construction.

Figure 15: Access Driveway Locations



Traffic Signal Feasibility Study

The Traffic Signal Feasibility Study for the new signal on Zinfandel Drive included the following conclusions:

1. Under existing plus project with signalized access condition, all study intersections are projected to satisfy the City's LOS D minimum standard.

2. The addition of a signalized access reduces the volume of traffic using the southbound left turn lane at the Zinfandel Drive / Baroque Drive / Mather Blvd intersection. The morning peak hour queue in that lane which is projected to exceed the available storage without the signal would be contained in the available lane with the signaled access.
3. Adding a new signalized access would reduce the overall travel speed on Zinfandel Drive from Douglas Road to the new access, but the difference in the overall average speed from Douglas Road to International Drive is only one mph.
4. The new crossing would increase the distance traveled by pedestrians and cyclists along the trail by about 200 feet.
 - a. Note that staff are collaborating with the applicant to evaluate possible alternatives.
5. The new crossing could introduce the possibility of conflicts between pedestrian – cyclists and automobiles – trucks that do not exist today. This issue can be addressed in the final design of the intersection, however, by designing the signal to separate pedestrians from vehicles turning left out of the site and by widening the intersection as necessary to ensure that truck turning requirements do not encroach into opposing driveway lanes or into the Class II bike lanes along Zinfandel Drive. Wide landings, consistent with the current crossing layout would also be needed at the new intersection corners.
6. Limiting Baroque Drive access to “emergency vehicles only” would divert roughly 1,865 daily project trips from Baroque Drive to access locations on Zinfandel Drive.
7. The new signalized access will allow the site to be designed to focus truck traffic (i.e., 152 to 362 daily trips) to driveways on Zinfandel Drive and away from Baroque Drive.

Trip Generation Analysis:

The Villages of Zinfandel Specific Plan Area Environmental Impact Report (EIR) included a traffic study that assumed the transportation impacts of the plan area including the subject light industrial site on the City roadway network. To ensure conformance with the plan area EIR, a trip generation analysis was completed by KD Anderson & Associates for the approved Stonecreek Industrial Center. Trips were differentiated between passenger cars and large delivery trucks and the analysis demonstrated that the proposed project will generate less trips than assumed in the original specific plan EIR.

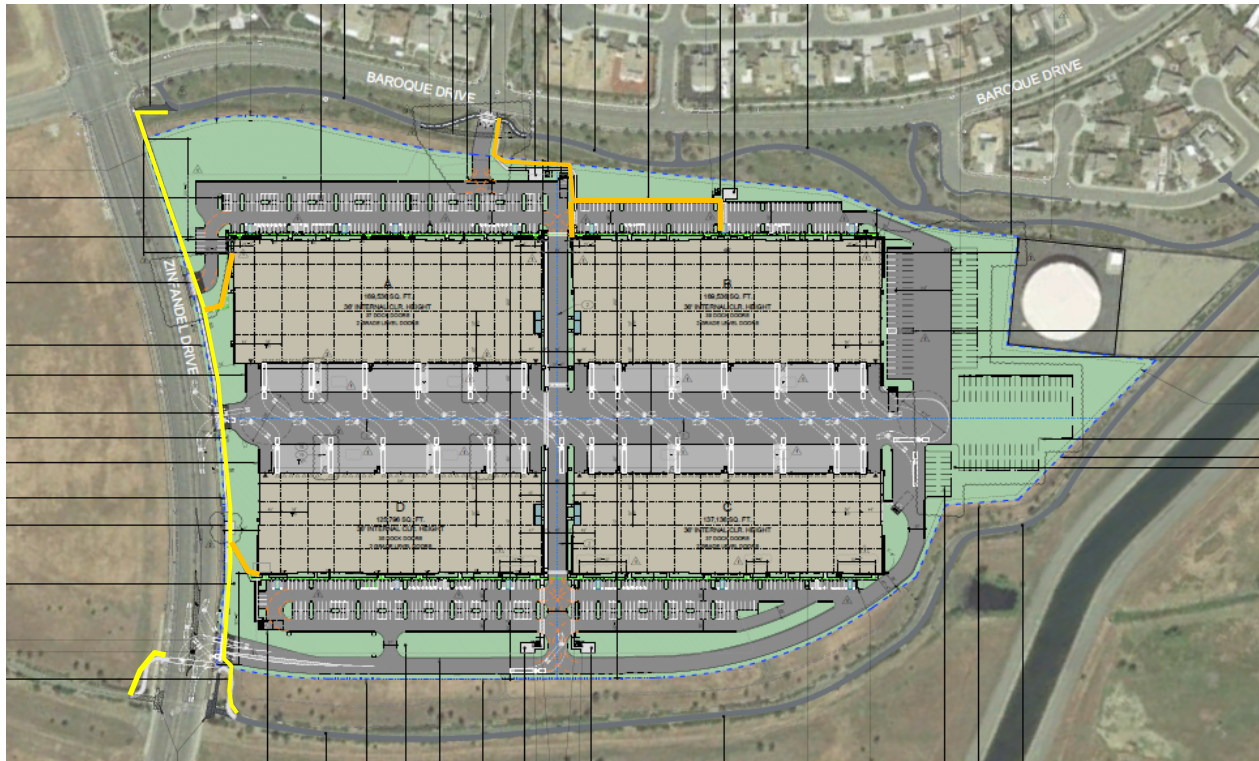
The proposed Stonecreek Industrial Center is projected to generate 2,986 daily trips with 421 trips in the a.m. peak hour and 409 trips in the p.m. peak hour. Of those trips, trucks are estimated to comprise about 152 to 362 daily trips. Trucks would comprise generally lower shares of the project’s traffic during the a.m. and p.m. peak hour commute hours as employee commute trips would be the primary component at that time.

Bike and Pedestrian Trail Connections

The proposed project provides the following pedestrian and bike trail connections.

- Yellow Line: New sidewalk built along Zinfandel Drive that will provide connection from the existing northern and southern pedestrian and bike trail.
- Orange Line: Several connections from the site to the existing pedestrian and bike trail.

Figure 16: New Pedestrian and Bike Trail Connections



The immediate area to the project site includes existing Class I and Class II Bike Trails. The addition of the sidewalk with connections will complete a loop around the project site of approximately 1.22 miles.

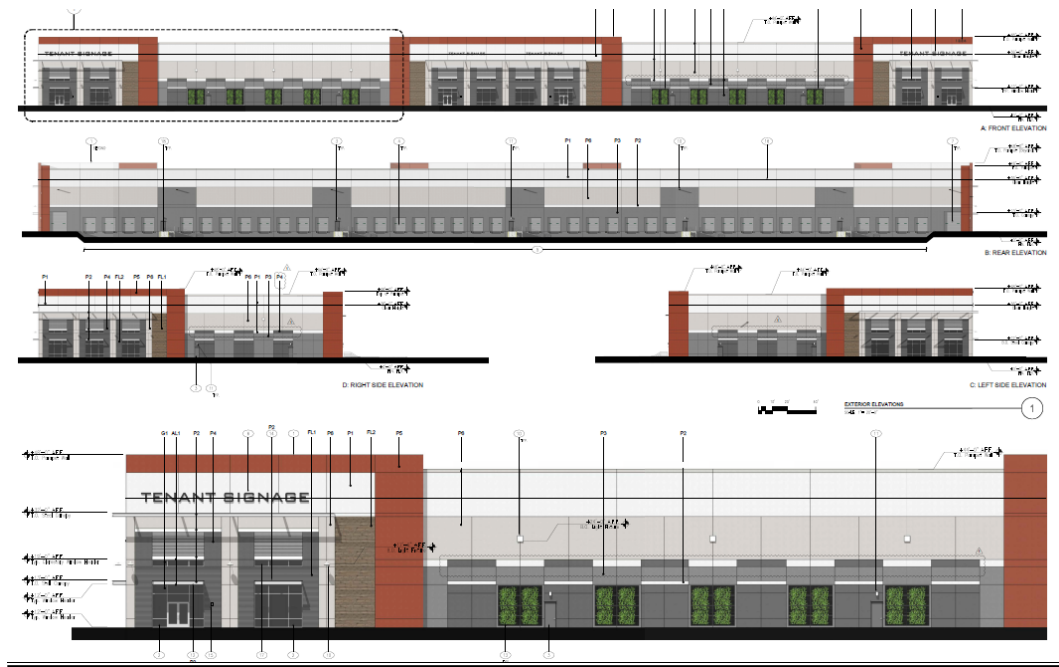
Figure 17: Vicinity Bike Trail Map



April 2022 Elevations & Landscape Plan

As stated above, the project was initially heard at the April 18, 2022 City Council meeting and continued to a date uncertain. The plans below were presented at that meeting for consideration. Notable differences between the April 2022 proposal and the current proposal are as follows:

- The building height was between 44 ft. – 48 ft. The revised height is between 42 ft. and 45 ft.
- Change in color pallet.
- Increased use of windows, as well as increasing the height of end cap entrance windows.
- Increased landscape screening and density of landscaping.
- Incorporation of a landscape berm along Baroque.



B: VIEW OF TYPICAL BUILDING FRONT ELEVATION



E: VIEW OF PROPOSED BUILDING ALONG ZINFANDEL



F: VIEW FROM SOUTHERN BIKE PATH LOOKING NORTH



PROJECT COMPARISONS – APPROVED 2019 VS. PROPOSED

	2019 Approved Project	Proposed Project
# of Parcels	18	4
# of Buildings	10 (18 lease or for sale spaces)	4
Square Footage	603,830 sq. ft.	602,004 sq. ft.
Height	30 ft. – 35 ft.	42 ft. – 45 ft.
Loading Docks	152	144
Parking Spaces	716 stalls	605 stalls
Truck Parking Spaces	No designated trucks stalls	85 stalls
Distance of closest building to residential neighborhood.	188 ft.	306 ft.

Along with what is included in the table above, a few other differences between the two projects include access, landscaping and noise. The 2019 approval included two access points onto Zinfandel and one onto Baroque. The proposed project has three driveways off of Zinfandel, with the southern entrance proposed as a signalized entrance. The access off of Baroque is now proposed as only an emergency vehicle access (EVA) and can only be utilized by emergency vehicles. This access will be gated. The landscaping on the proposed project is considerably more dense and includes some berming to help screen the project site.

Regarding noise impacts, the layout and design of the 2019 approved project warranted the incorporation of a 7 ft. sound wall adjacent to the loading docks facing Baroque Drive. Additionally, 6 of the 18 tenant spaces were restricted to limited evening hours due to potential noise and the impact it could have on the nearby residences. The proposed project has been designed to utilize the buildings as a noise barrier and the loading docks have been placed internal to the project. The findings of the noise study for the proposed project do not require the use of sound walls or restrictions on hours to achieve the General Plan noise criteria.

ENVIRONMENTAL

The Stonecreek Industrial Center Major Design Review Amendment is exempt from CEQA review under CEQA State Guidelines Section 15183. This exempts from CEQA projects that are consistent with the development density established by existing zoning, community plan, or general plan policies for which an Environmental Impact Report (EIR) was certified, except as

might be necessary to examine whether there are project-specific significant effects which are peculiar to the project or its site and which were not addressed as significant effects in the prior EIR, or which substantial new information shows will be more significant than described in the prior EIR. The project is located within the Villages of Zinfandel Special Planning Area (VOZSPA). An EIR was certified by the Sacramento County Board of Supervisors in 1998 for the VOZSPA. Additionally, a Supplemental EIR was prepared and certified by the Sacramento County Board of Supervisors in 2002 for the plan area.

The Stonecreek Industrial Center Major Design Review Amendment involves development of a 602,004 square foot industrial shell building with parking and loading docks. The development also includes landscaping, drainage, and required screening/fencing for a loading dock area. The Light Industrial (LI) site was identified in the Villages of Zinfandel Special Planning Area EIR and uses contemplated within the LI designation include those uses listed in the Sacramento County Zoning Code under the M-1 (Light Industrial) and MP (Industrial Office Park) use tables located in Chapter 25 and Chapter 30. Warehousing is permitted by right uses as listed in Table IV I.3.

Additional supplemental technical studies were prepared to further support that no additional project related impacts would occur as a result of the proposed project. These technical studies include additional traffic analysis, as well as a noise study. The traffic analysis results were summarized above in this staff report. The noise study included the site plan, potential uses for the site, and the traffic analysis, completed by KD Anderson & Associates to complete the study. The study concluded that based on the analysis and results, noise levels associated with project generated off-site traffic and on-site operations at the proposed Stonecreek Industrial Center are expected to satisfy the applicable Rancho Cordova General Plan noise criteria at the nearest existing residential uses. As a result, no further consideration of noise mitigation measures would be warranted for the project.

As this Major Design Review Amendment is consistent with the Special Planning Area and the environmental documentation prepared for the Special Planning Area, it is exempt from CEQA review. So long as the project does not have any project-specific significant effects peculiar to the Major Design Review Amendment and not identified in the previous environmental documentation, the project is exempt and no additional environmental document pursuant to CEQA is required.

The project applicant is requesting approval of a Major Design Review Amendment for the proposed project. Additionally, under CEQA, the City lacks the discretion under the Major Design Review approval process to consider environmental effects not related to the design of the Project, including, but not limited to human health impacts from toxic air contaminants, greenhouse gas emissions, and impacts of biological resources.

RECOMMENDATION

Staff will be seeking additional direction from Council for this project. Staff requests that the Council receive testimony, continue the public hearing to May 15, 2023, potentially appoint an ad hoc City Council subcommittee (two members), ask any questions, deliberate, and provide staff sufficiently detailed direction to return with final hearing documents and plan revisions at the May 15, 2023 City Council meeting.

ATTACHMENT(S)

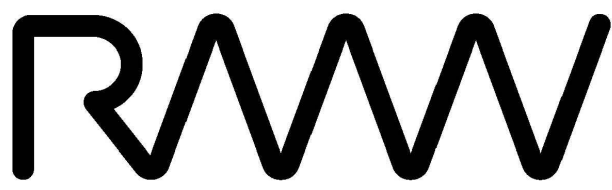
1. Project Plans
2. Noise Study
3. Miller Starr Regalia Letter_3.20.23
4. Presentation

PLANNING SUBMITTAL DRAWINGS FOR:

DERMODY PROPERTIES

STONECREEK INDUSTRIAL PARK

SOUTH EAST CORNER OF BAROQUE DRIVE & ZINFANDEL DRIVE
RANCHO CORDOVA, CA



RMW
Architecture
Interiors

1718 Third Street
Suite 101
Sacramento
California 95811

Office
916 449-1400

rmw.com

OWNER / DEVELOPER:



500 Equity Avenue
Reno, NV 89502

GEORGE CONDON
Partner, West Region

PRELIMINARY DESIGN DOCUMENTS FOR:

STONECREEK INDUSTRIAL PARK

SOUTH EAST CORNER OF
BAROQUE DRIVE & ZINFANDEL DRIVE
CITY OF RANCHO CORDOVA, CALIFORNIA

approved for the owner by :

approved for the architect by :

issue :	description :	date :
A	INITIAL PLAN REVIEW SUBMITTAL	11-10-2021
	PLND-1121-0020 PC COMMENTS	01-21-2022
	PLND-1121-0020 PC COMMENTS 3RD SUBMITTAL	03-07-2022
	RE-SUBMITTAL TO PLANNING 4TH SUBMITTAL	02-13-2023



PERSPECTIVE IMAGE OF PROPOSED BUILDINGS

PROJECT NARRATIVE:

Site: The project site is located on the north east side of Zinfandel Drive and North Baroque, in the City of Rancho Cordova, California. The 41± acre site is currently undeveloped.

Building: The project plan proposes four industrial buildings totaling 602,004 square feet. The industrial buildings will be of Type VB construction, site cast, tilted concrete panels with a variety of architectural enhancements. The typical wall panels are to be enhanced with reveals and a textured elastomeric, multicolored coating system. The areas around the building entries are also enhanced with fluted and wood textured formliner, tinted glazing in aluminum frames and overhead steel-framed painted canopies. The placement of these enhancements is focused at those locations most visible from the public roadways.

Site Access and Parking: There are three site entrance driveways proposed along Zinfandel Drive. The southernmost entrance proposes relocating the existing traffic light to serve this entry / exit. The center driveway will primarily serve semi traffic. The northernmost driveway will be for vehicle parking only. The site plan proposes a total of 832 vehicle parking stalls for employees and or customers.

Signage: The proposed signage in this submittal includes is for reference only. Criteria for future tenant signage will be provided at a later and under a separate permit as required.

Landscaping: The project will be fully landscaped using plants appropriate for and indigenous to the City of Rancho Cordova. Low water use plants will be used extensively, while moderate water use plants will be concentrated at accent points, such as driveways and building entries. For further landscaping design information, see "Design Notes" on the LP Preliminary Landscape Plan.

Sustainable Materials & Construction Practices: The project will incorporate a variety of sustainable materials and construction practices to include the following: 1) A storm water pollution prevention plan to minimize contamination, erosion, and dust pollution during construction. 2) Storage and collection of recyclable materials. 3) Construction waste management. 4) Environmental tobacco smoke control. 5) Heat reflecting roof membranes. 6) Light pollution reduction. 7) Water efficient landscaping. 8) Water use reduction methods. 9) Low VOC emitting sealants, adhesives, coatings, floorings, and wood materials. 10) Roof structures designed to accommodate additional weight for roof-top photovoltaic electricity generation panel arrays. 11) California Green Building Code compliant electric vehicle charging stations at seven locations. 12) The project architect is a LEED accredited professional and will apply his knowledge of LEED techniques and practices to the project design and construction.

VICINITY MAP:



PROJECT TEAM:

OWNER
DERMODY PROPERTIES
500 EQUITY AVENUE
RENO, NEVADA 89502
P: 916-956-0033

GEORGE CONDON
gcondon@dermody.com

ARCHITECT:
RMW ARCHITECTURE & INTERIORS
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SACRAMENTO, CA 95811
P:916-449-1400 x405

JEFF LEONHARDT,
PROJECT ARCHITECT &
PROJECT DESIGNER
jleonhardt@rmw.com

CIVIL ENGINEER:
LAUGENOUR and MEIKLE
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BRYAN BONINO
bbp@lmce.net

LANDSCAPE DESIGNER
YAMASAKI LANDSCAPE ARCHITECTURE
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AUBURN, CA 95603
P: 530-885-0040

JEFF AMBROSIA
ASLA, CLIA, LEED AP
jeff@yamasaki-la.com

SHEET INDEX:

A00.1 * COVER SHEET
A00.2 * PROJECT RENDERINGS
A00.3 * PHASING PLAN
A01.0 * PRELIMINARY MASTER SITE PLAN
A01.1 * ENLARGED SITE PLAN - A
A01.2 * ENLARGED SITE PLAN - B
A01.3 * ENLARGED SITE PLAN - C
A01.4 * ENLARGED SITE PLAN - D
A01.5 * SITE DETAILS
A01.6 * SITE DETAILS
A03.1 * EXTERIOR ELEVATIONS - A & B
A03.2 * EXTERIOR ELEVATIONS - C
A03.3 * EXTERIOR ELEVATIONS - D
A04.1 * LINE OF SIGHT DIAGRAM

C201 CIVIL SITE PLAN
C301 GRADING AND DRAINAGE PLAN
C302 GRADING AND DRAINAGE PLAN
C303 GRADING AND DRAINAGE PLAN
C304 GRADING AND DRAINAGE PLAN
C401 UTILITIES PLAN
C402 UTILITIES PLAN
C403 UTILITIES PLAN
C404 UTILITIES PLAN
C801 CROSS SECTIONS
C802 CROSS SECTIONS
C901 FIRE PLAN

L1 * LANDSCAPE PLAN
L1.1 PLANTING PLAN A
L1.2 PLANTING PLAN B
L1.3 PLANTING PLAN C
L1.4 PLANTING PLAN D
L1.5 PLANT SCHEDULE AND NOTES

E1.1 OVERALL PHOTOMETRIC PLAN
E1.2 BUILDING A PHOTOMETRIC PLAN
E1.3 BUILDING B PHOTOMETRIC PLAN
E1.4 BUILDING C PHOTOMETRIC PLAN
E1.5 BUILDING D PHOTOMETRIC PLAN
E1.6 LIGHTING CUT SHEETS

PLEASE CLICK ON THE FOLLOWING LINK TO VIEW
AN ANIMATION OF THE PROPOSED PROJECT :
<https://youtu.be/2xkZ35uU0UM>

* DENOTES A SHEET TO BE PRINTED IN FULL COLOR

TENANT'S DEVELOPMENT MANAGER:

drawn by : RDG plot date : 11-10-2021

checked by : JDJL

stamp

scale : AS NOTED

project number : 2214068.00

COVER SHEET

sheet no. :

A00.1



D: VIEW OF MONUMENT SIGN



A: VIEW OF TYPICAL BUILDING MAIN CORNER ENTRY



E: VIEW OF PROPOSED BUILDING ALONG ZINFANDEL



B: VIEW OF TYPICAL BUILDING FRONT ELEVATION



F: VIEW FROM SOUTHERN BIKE PATH LOOKING NORTH



C: VIEW OF TYPICAL BUILDING SECONDARY ENTRY

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OWNER / DEVELOPER:



500 Equity Avenue
Reno, NV 89502

GEORGE CONDON
Partner, West Region

PRELIMINARY DESIGN DOCUMENTS FOR:

STONECREEK
INDUSTRIAL PARK

SOUTH EAST CORNER OF
BAROQUE DRIVE & ZINFANDEL DRIVE
CITY OF RANCHO CORDOVA, CALIFORNIA

approved for the owner by :

approved for the architect by :

issue :	description :	date :
A	INITIAL PLAN REVIEW SUBMITTAL	11-10-2021
	PLND-1121-0020 PC COMMENTS	01-21-2022
	RE-SUBMITTAL TO PLANNING 4TH SUBMITTAL	02-13-2023

TENANT'S DEVELOPMENT MANAGER:

drawn by : RDG plot date : 11-10-2021

checked by : JDIL

stamp

scale : AS NOTED
project number : 2214068.00

TYPICAL
BUILDING
RENDERINGS

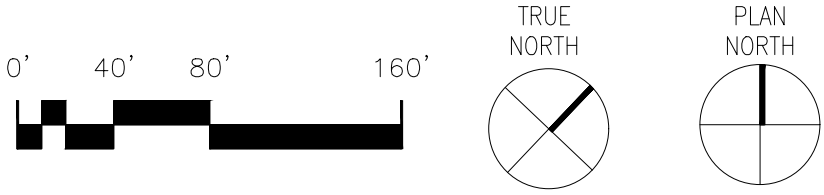
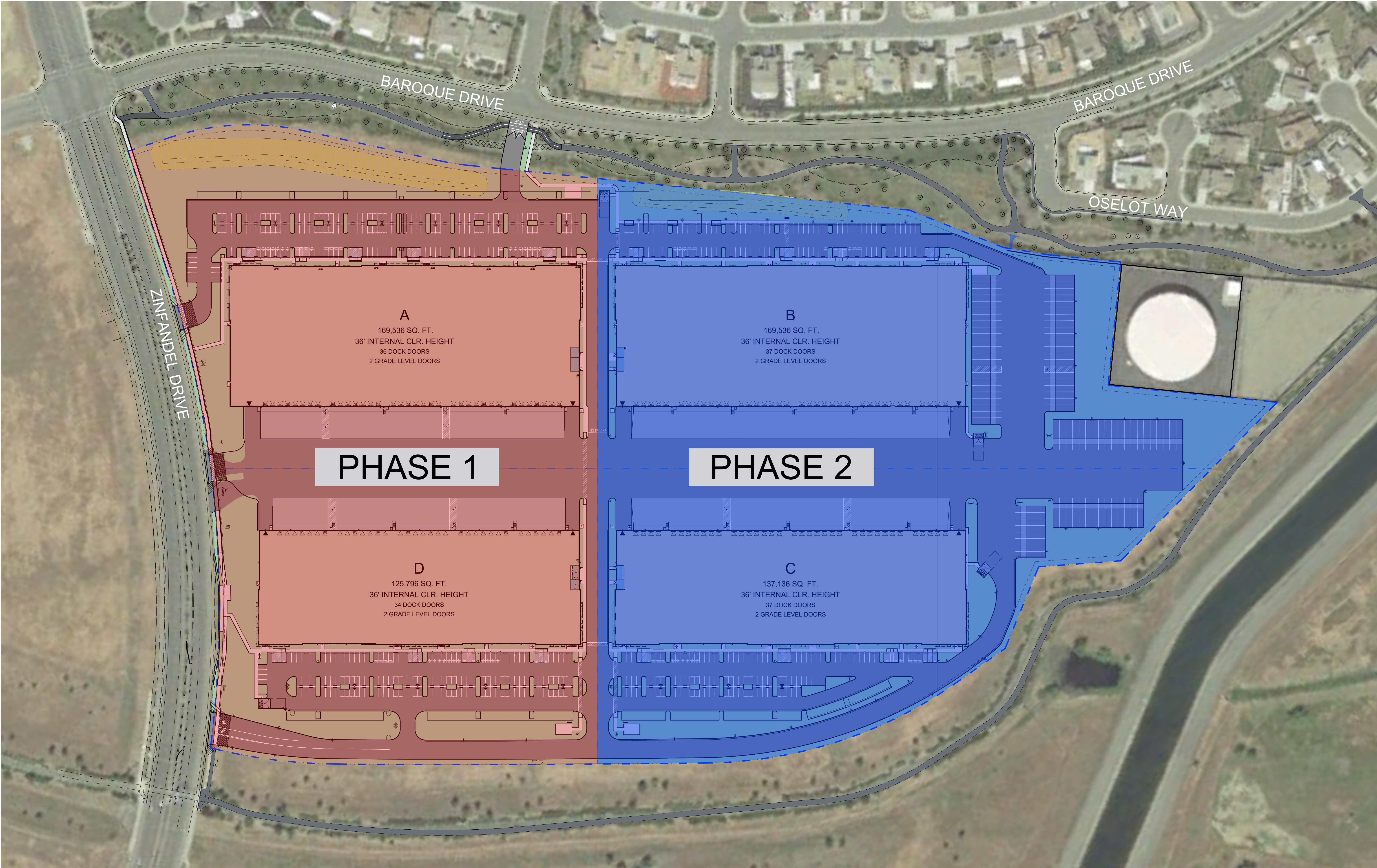
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A00.2

PROJECT RENDERINGS

SCALE: NO SCALE



PRELIMINARY SITE PLAN

SCALE: 1" = 80'-0"

1

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project number : 2214068.00

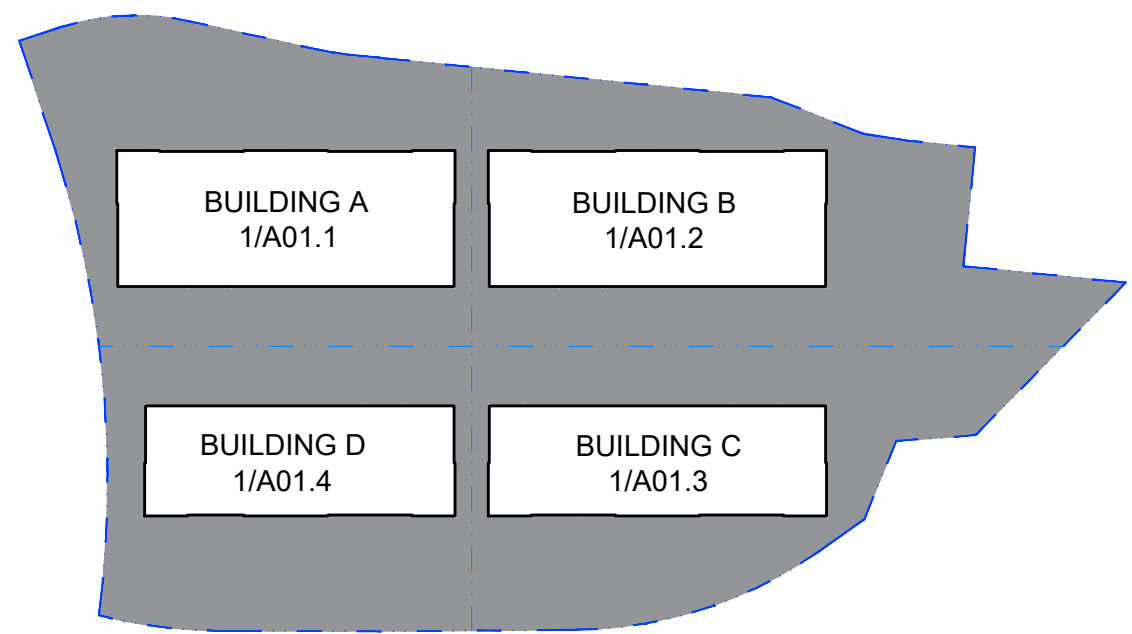
CONSTRUCTION
PHASING PLAN

sheet no. :

A00.3



KEY PLAN



SITE LEGEND

- BUILDING AREA
- SITE CONCRETE
- ASPHALT AREA
- LANDSCAPE AREA
- EXISTING PROPERTY LINE
- NEW PARCEL LINE
- 9' X 10' OVERHEAD DOCK LEVEL DOOR
- 12' X 14' OVERHEAD GRADE LEVEL DOOR
- FIRE DEPARTMENT TURN RADIUS:

KEYNOTES

- EXISTING PROPERTY LINES.
- PROPOSED PROPERTY LINES, SEE CIVIL DRAWINGS.
- EXISTING SITE EASEMENTS, SEE CIVIL DRAWINGS FOR MORE INFORMATION.
- TYPICAL LANDSCAPE PLANTER AREAS, SEE LANDSCAPE DRAWINGS.
- NEW MONUMENT SIGN, SEE SHEET A01.5 FOR MORE INFORMATION.
- NEW CURB CUTS, SEE CIVIL DRAWINGS.
- TRASH ENCLOSURES W/ 40FT. APPROACH
- TYPICAL CONC. TILT OR CMU SOUND WALLS, SEE 3/A01.6, FINAL CONSTRUCTION TBD PRIOR TO IMPROVEMENT DRAWINGS.
- PROPOSED LOCATION OF BIKE TRAIL/PATH SIGN UNDER SEPARATE PERMIT
- EXISTING BIKE PATH TRAIL
- PROPOSED BIKE PATH TO BE CONNECTED TO EXISTING
- SITE LIGHTING, SEE PHOTOMETRIC PLANS
- PROPOSED LOCATION OF BREAK / AMENITY AREA.
- PROPOSED LOCATION OF POTENTIAL, FUTURE EXTERIOR LONG TERM BIKE PARKING. LONG TERM BIKE PARKING T.B.D. AT TIME OF FUTURE TENANT. BIKE LOCKERS ARE SHOWN ON THE SITE PLAN TO DEMONSTRATE THERE IS ADEQUATE SPACE ON SITE TO PROVIDE LOCKERS FOR FUTURE TENANT REQUIREMENT. CITY OF RANCHO CORDOVA ENCOURAGES FUTURE TENANT TO PROVIDE SPACE WITHIN WAREHOUSE. FINAL NUMBER AND LOCATIONS WILL BE DETERMINED ON FUTURE TENANT NEEDS AND REQUIREMENTS.
- CROSS HATCH PATTERN INDICATES PORTION OF EXISTING BIKE PATH TO BE REMOVED. SEE CIVIL DRAWINGS.
- CROSS HATCH PATTERN INDICATES PORTION OF THE EXISTING MEDIAN TO BE REMOVED. SEE CIVIL DRAWINGS.
- EXISTING FIRE HYDRANT. SEE CIVIL DRAWINGS.
- PROPOSED FIRE HYDRANT. SEE CIVIL DRAWINGS.
- PROTECTIVE BOLLARDS WHERE OCCURS
- EXISTING WALL SURROUNDING WATER TANK
- PROPOSED EMERGENCY ACCESS ROAD, SEE CIVIL DRAWINGS.
- PROPOSED TRAILER PARKING AREA.
- PROPOSED LOCATION OF BUS STOP PER PUBLIC WORKS COA REQ. SEE CIVIL DRAWINGS FOR MORE INFORMATION.

OVERALL SITE STATISTICS

BLDG	BLDG. AREA (S.F.)	SITE (S.F.)	SITE (ACRES)	F.A.R. %	VEHICLE PARKING	RATIO / 1000	DOCK STALLS	GRADE LEVEL O.H.	TRAILER PARKING
A	169,536	465,092.69	10.68	36.45	204	1.20	36	2	0
B	169,536	487,313.19	11.19	34.79	113	0.67	37	2	0
C	137,136	432,037.76	9.92	31.74	127	0.93	37	2	0
D	125,796	386,180.47	8.87	32.57	161	1.28	34	2	0
TOTAL	602,004	1,770,624	40.65	34.00	605	1.00	144	8	0

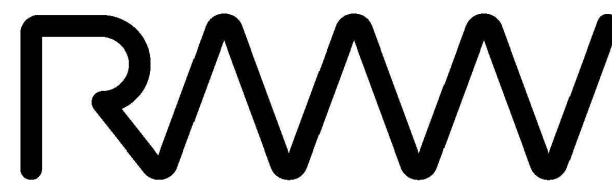
TOTAL SITE AREA: 1,770,624 G.S.F.

TOTAL BUILDING AREA: 602,004 G.S.F.
WAREHOUSE (85% ASSUMED): 511,703 G.S.F.
OFFICE (15% ASSUMED): 90,301 G.S.F.

OVERALL SITE F.A.R.: 34.00%

TOTAL PARKING REQUIRED:
WAREHOUSE: (5/1,000 S.F.) = 256
OFFICE (2/1,000 S.F.) = 244

BIKE PARKING REQUIRED:
SHORT TERM (10% OF REQ'D) = 50
LONG TERM (5% OF REQ'D) = 25



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3	RE-SUBMITTAL TO PLANNING 4TH SUBMITTAL	02-13-2023

TENANT'S DEVELOPMENT MANAGER:

drawn by : RDG plot date : 11-10-2021

checked by : JDL

stamp

scale : AS NOTED

project number : 2214068.00

PRELIMINARY
OVERALL
SITE PLAN

sheet no. :

A01.0



SITE INFORMATION / STATISTICS:

BUILDING A

APN:	072-380-001 TO 18	LI LIGHT INDUSTRIAL (ZSPA)
ZONING:	465,092.69 G.S.F.	= 10.88 ACRES
SITE AREA:	169,536 G.S.F.	
BUILDING AREA:	36.45%	
F.A.R.:	36.45%	
CONSTRUCTION TYPE:	III	
BUILDING HEIGHT:	48'-0"	
NUMBER OF STORIES:	1	
TOTAL PARKING REQUIRED:		
WAREHOUSE: (85% ASSUMED)	81 (169,536 * 85% = 161,059 @ 0.5 / 1,000 S.F.)	
OFFICE: (15% ASSUMED)	69 (169,536 * 15% = 25,430 S.F. @ 271 / 1,000)	
BICYCLE PARKING PER CITY OF RANCHO CORDOVA ZONING 23.719.110:		
SHORT TERM BICYCLE PARKING STALLS:	15 (10% OF REQUIRED VEHICLE STALLS)	
LONG TERM BICYCLE STALLS:	8 (5% OF REQUIRED VEHICLE STALLS)	
TOTAL STALLS REQUIRED:	150	

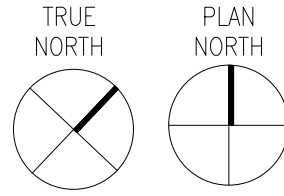
TOTAL VEHICLE PARKING PROVIDED:		
STANDARD STALLS: 9'X19' (17' W/ 2'-0" OVERHANG)	126	(25% MAX OF TOTAL PARKING ALLOWABLE = 53)
COMPACT STALLS: 8'X16' (14' W/ 2'-0" OVERHANG)	48	(7 TOTAL ADA STALLS REQ'D PER 2019 CBC 11B.208.2)
ADA ACCESSIBLE STALLS:	8	
REQUIRED PARKING FOR CLEAN AIR VEHICLES PER 2019 CGBC TABLE 5.106.5.2 AND TABLE 5.106.5.3.3:		
EV CHARGING STALLS:	21	(10% OF TOTAL PARKING SPACES = 204 * 0.10 = 21)
STANDARD EV STALLS:	11	
VAN ACCESSIBLE EV STALLS:	1	
STANDARD ACCESSIBLE STALLS:	1	
CLEAN AIR VEHICLES (CLEAN AIR /VAN/POOL/EV):	4	(25 TOTAL CLEAN AIR - 21 REQ'D EV = 4)
TOTAL CLEAN AIR VEHICLES:	25	(12% OF TOTAL PARKING SPACES = 204 * 0.12 = 25)
SHORT TERM BICYCLE PARKING STALLS:	16 (8 RACKS PROVIDED, 2 BIKES EACH)	
LONG TERM BICYCLE STALLS:	8 (FINAL AMOUNT TBD @ TIME OF TENANT IMPROVEMENT)	
TOTAL PARKING PROVIDED:	204	

KEYNOTES:

- EXISTING PROPERTY LINES.
- PROPOSED PROPERTY LINES, SEE CIVIL DRAWINGS.
- CONCRETE WHEEL STOPS, SEE CIVIL DRAWINGS.
- PARKING AND DRIVE ISLES TO BE ASPHALTIC CONCRETE.
- TYPICAL 6" TALL X 6" WIDE CONCRETE CURBS, SEE CIVIL DRAWINGS.
- TYPICAL 4" WIDE TRAFFIC STRIPING.
- TYPICAL PARKING:
 - A. STANDARD STALLS: 9' X 19' OR 9' X 17' WITH 2' PARKING OVERHANG
 - B. COMPACT STALLS: 8' X 16' OR 8' X 14' WITH 2' PARKING OVERHANG
 - C. ACCESSIBLE PARKING STALLS: 9' X 18' MIN. WITH 2' PARKING OVERHANG WITH 5' OR 8' WIDE LOADING ZONE AS SHOWN SEE DETAIL 12/A01.5
 - D. DESIGNATED PARKING PER CAL-GREEN REQUIREMENTS FOR CAR/VAN POOL, FUEL EFFICIENT, EV & LOW-EMITTING VEHICLES.
 - E. ELECTRIC VEHICLE CHARGING SPACES (STALLS LABELED "EV CHARGING ONLY"). PER CGBC 5.106.5.2, TO FACILITATE FUTURE INSTALLATION CONDUIT, RING AND STRING SHALL BE INSTALLED AT THIS TIME AS PART OF THE SHELL CONSTRUCTION.
 - F. ACCESSIBLE ELECTRIC VEHICLE CHARGING STALL, 1 VAN, 1 STANDARD. (RING AND STRING ONLY)
- TYPICAL DRIVE ISLE, 26'-0" WIDE MINIMUM
- CURB RAMP, SEE DETAIL 9/A01.5
- PROPOSED LOCATION OF NEW SITE ACCESS DRIVE CURB CUT, SEE CIVIL DRAWINGS
- NEW CONCRETE PEDESTRIAN WALKS, ASSUME ALL SIDEWALKS TO BE ACCESSIBLE PATH OF TRAVEL, SLOPE NOT TO EXCEED 1:20 (5%) IN DIRECTION OF TRAVEL. CROSS SLOPE NOT TO EXCEED 1:50 (2%) WHERE PARKING OVERHANG OCCURS, INCREASE WIDTH OF SIDEWALK TO 6'-0" MIN.
- PROPOSED BUILDING EXTERIOR WALLS TO BE SITE CAST TILTED CONCRETE WALLS WITH REVEALS, A TEXTURED ELASTOMERIC COATING AND A MULTI-COLOR PAINT PALETTE. SEE EXTERIOR ELEVATIONS, SHEETS A03.1 THRU A03.3
- TRASH ENCLOSURE W/ 40FT. APPROACH, SEE DETAILS 1 & 2/A01.5
- TYPICAL LANDSCAPE PLANTER AREA, SEE LANDSCAPE DRAWINGS
- SEMI TRACTOR TRAILER TEMPLATE SHOWN FOR REFERENCE ONLY
- 60" DEPRESSIONED CONCRETE TRUCK DOCK
- LOADING DOCK ROLL UP DOOR, TYPICAL
- GRADE LEVEL ROLL UP DOOR, TYPICAL
- DASHED GREEN LINE INDICATES ACCESSIBLE PATH OF TRAVEL AT PUBLIC SIDEWALK
- LOCATION OF SITE ENTRY SIGN REGARDING PARKING IN ACCESSIBLE PARKING STALLS. SEE DETAIL 15/A01.5
- 8" CURB WITH GUARDRAIL AT EACH SIDE OF DEPRESSIONED LOADING DOCKS, TYP. SEE DETAIL 18/A01.5
- NEW MONUMENT SIGN. SEE 1/A01.6 FOR MORE INFORMATION.
- BICYCLE RACKS, SEE DETAIL 14/A01.5
- EXISTING SIDEWALK TO REMAIN
- PROPOSED SOUND WALLS W/TRELLIS. SEE 3/A01.6 FOR MORE INFORMATION.
- PROPOSED EMPLOYEE BREAK / AMENITY AREA.
- DASHDOT LINE INDICATES FIRE DEPARTMENT TURNING RADIUS. SEE FIRE TURN RADIUS DIAGRAM THIS SHEET.
- SITE LIGHTING, SEE PHOTOMETRIC PLANS
- DASHED LINE INDICATED 2'-0" PARKING OVERHANG.
- STRIPED PEDESTRIAN PATH OF TRAVEL
- DASHED LINE INDICATES "POTENTIAL FUTURE" TRAILER PARKING TO BE INSTALLED IF REQUIRED AT TIME OF TENANT APPROVAL.
- DASH-DOT INDICATES AREA OF ASSISTED RESCUE
- SITE EASEMENT, SEE CIVIL DRAWINGS FOR MORE INFORMATION.
- PRE-FABRICATED STEEL DOCK STAIRS.
- LOCATION OF FIRE DEPARTMENT APPROVED "KNOX BOX" AT BUILDING PRIMARY ENTRY, MOUNT AT 4'-6" - 6" AFF. CONFIRM LOCATION, MOUNTING HEIGHT AND ALL OTHER CRITERIA WITH THE CITY OF AMERICAN CANYON FIRE DEPARTMENT
- EXISTING BIKE PATH TRAIL
- PROPOSED BIKE PATH TO BE CONNECTED TO EXISTING
- POTENTIAL FUTURE LOCATION OF BIKE LOCKER. LOCATIONS SHOWN ARE TO DEMONSTRATE THE SITE HAS ADEQUATE SPACE FOR LONG TERM BICYCLE STORAGE. FINAL LOCATIONS TBD AT TIME OF TENANT IMPROVEMENT.
- NEW STAMPED AND COLORED CONCRETE AT DRIVE ENTRIES, SEE DETAIL 20/A01.5
- NEW BIKE/WALKING TRAIL MAP UNDER SEPARATE PERMIT
- CROSS HATCH PATTERN INDICATES PORTION OF EXISTING BIKE TRAIL TO BE REMOVED / REALIGNED WITH NEW BIKE TRAIL
- ANGLED HATCH PATTERN REPRESENTS THE LINE OF SIGHT TRIANGLE. SEE CIVIL DRAWINGS FOR MORE INFORMATION.
- 110' TRUCK TURNAROUND AREA
- EXISTING FIRE HYDRANT, SEE CIVIL DRAWINGS
- PROPOSED FIRE HYDRANT, SEE CIVIL DRAWINGS
- PROTECTIVE BOLLARDS WHERE OCCURS, SEE 10/A01.5
- EXISTING WATER TOWER WALL
- PROPOSED LOCATION OF EMERGENCY VEHICLE DRIVEWAY W/PAINTED "EMERGENCY VEHICLE ACCESS ONLY" INDICATOR, SEE CIVIL DRAWINGS
- PROPOSED LOCATION OF WALL-MOUNTED TRELLIS. SEE EXTERIOR ELEVATIONS.
- DRIVEWAY ENTRY SIGN STATING "SEMI-TRUCK ENTRANCE ONLY"
- SECURITY GATE W/KNOX BOX FOR EMERGENCY VEHICLE ACCESS
- PROPOSED LOCATION OF TRANSFORMER, SEE ELECTRICAL DRAWINGS.
- POTENTIAL FUTURE SCREEN WALLS TO BE INSTALLED AT THE TIME "FUTURE" TRAILER PARKING IS INSTALLED.
- PROPOSED BUS STOP PER PUBLIC WORKS COA #6E. SEE CIVIL DRAWINGS FOR MORE INFORMATION.

SITE LEGEND

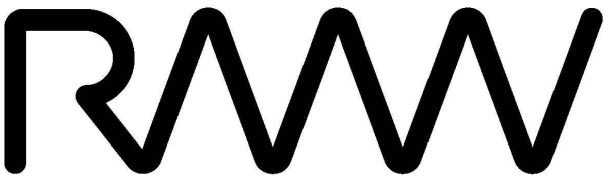
BUILDING AREA	ASPHALT AREA	FIRE DEPARTMENT TURN RADIUS:
SITE CONCRETE	LANDSCAPE AREA	
EXISTING PROPERTY LINE	9' X 10' OVERHEAD DOCK LEVEL DOOR	ELEVATION REFERENCE:
NEW PARCEL LINE	12' X 14' OVERHEAD GRADE LEVEL DOOR	DETAIL NUMBER
		SHEET NUMBER



PRELIMINARY SITE PLAN

SCALE: 1" = 40'-0"

1



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GEORGE CONDON Partner, West Region

PRELIMINARY DESIGN DOCUMENTS FOR:

STONECREEK INDUSTRIAL PARK

SOUTH EAST CORNER OF BAROQUE DRIVE & ZINFANDEL DRIVE CITY OF RANCHO CORDOVA, CALIFORNIA

approved for the owner by :

approved for the architect by :

issue :	description :	date :
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PLND-1121-0020 PC COMMENTS 3RD SUBMITTAL		03-07-2022

TENANT'S DEVELOPMENT MANAGER:

drawn by : RDG plot date : 11-10-2021

checked by : JDL

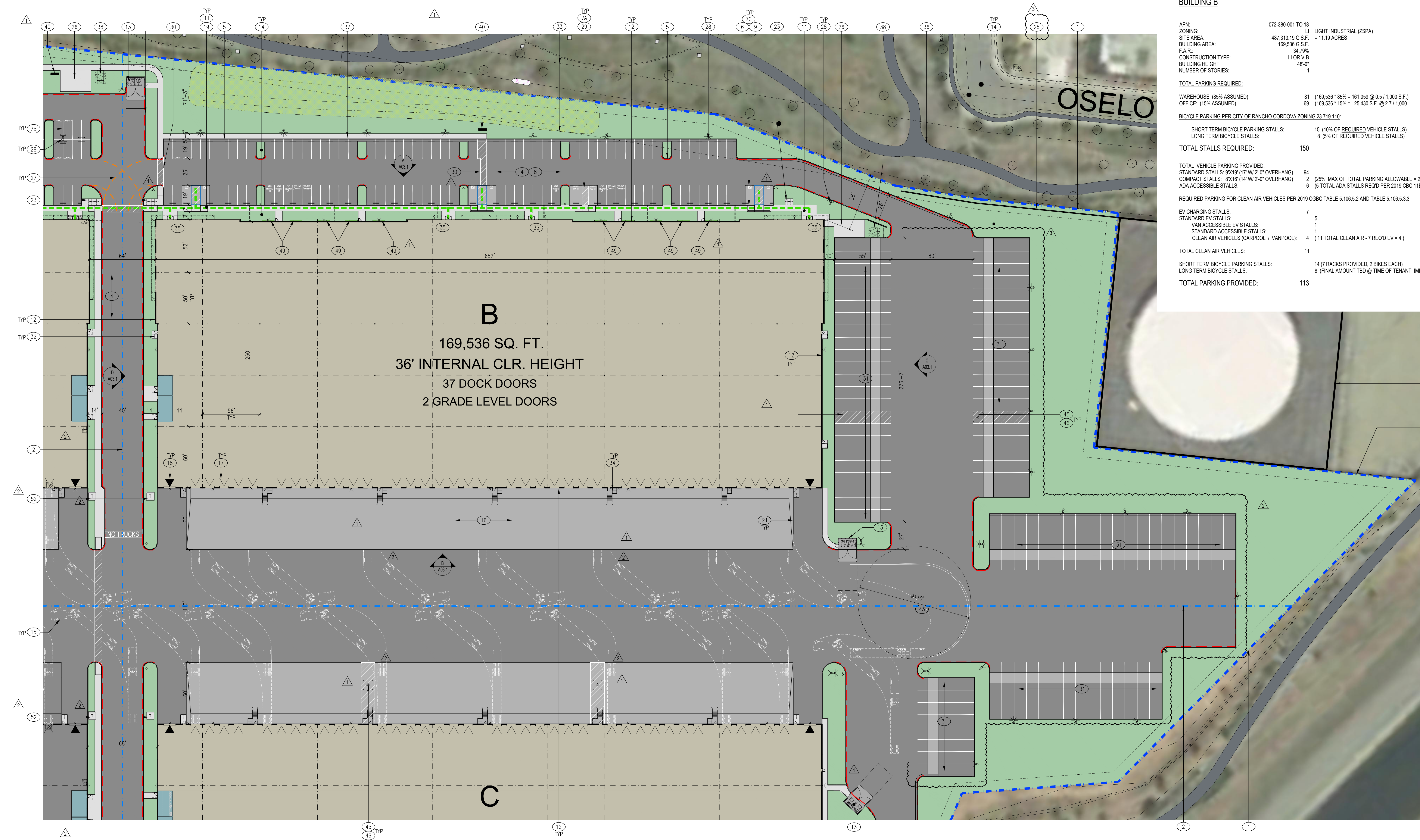
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scale : AS NOTED project number : 2214068.00

ENLARGED SITE PLAN BUILDING A

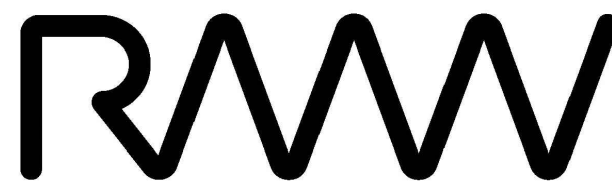
sheet no. :

A01.1



SITE INFORMATION / STATISTICS:

BUILDING B	
APN:	072-380-001 TO 18
ZONING:	LI LIGHT INDUSTRIAL (2SPA)
SITE AREA:	487,313.19 G.S.F. = 11.19 ACRES
BUILDING AREA:	169,536 G.S.F.
F.A.R.:	34.79%
CONSTRUCTION TYPE:	III OR V-B
BUILDING HEIGHT:	48'-0"
NUMBER OF STORIES:	1
TOTAL PARKING REQUIRED:	
WAREHOUSE: (65% ASSUMED)	81 (169,536 * 65% = 161,059 @ 0.5 / 1,000 S.F.)
OFFICE: (15% ASSUMED)	69 (169,536 * 15% = 25,430 S.F. @ 2.7 / 1,000)
BICYCLE PARKING PER CITY OF RANCHO CORDOVA ZONING 23.719.110:	
SHORT TERM BICYCLE PARKING STALLS:	15 (10% OF REQUIRED VEHICLE STALLS)
LONG TERM BICYCLE STALLS:	8 (5% OF REQUIRED VEHICLE STALLS)
TOTAL STALLS REQUIRED:	
150	
TOTAL VEHICLE PARKING PROVIDED:	
STANDARD STALLS: 9'X19' (17' W/ 2'-0" OVERHANG)	94
COMPACT STALLS: 8'X16' (14' W/ 2'-0" OVERHANG)	2 (25% MAX OF TOTAL PARKING ALLOWANCE = 28)
ADA ACCESSIBLE STALLS:	6 (5 TOTAL ADA STALLS REQ'D PER 2019 CBC 11B.208.2)
REQUIRED PARKING FOR CLEAN AIR VEHICLES PER 2019 CGBC TABLE 5.106.5.2 AND TABLE 5.106.5.3.3:	
EV CHARGING STALLS:	7
STANDARD EV STALLS:	5
VAN ACCESSIBLE EV STALLS:	1
STANDARD ACCESSIBLE STALLS:	1
CLEAN AIR VEHICLES (CARPOOL / VANPOOL):	4 (11 TOTAL CLEAN AIR - 7 REQ'D EV = 4)
TOTAL CLEAN AIR VEHICLES:	
11	
SHORT TERM BICYCLE PARKING STALLS:	14 (7 RACKS PROVIDED, 2 BIKES EACH)
LONG TERM BICYCLE STALLS:	8 (FINAL AMOUNT TBD @ TIME OF TENANT IMPROVEMENT)
TOTAL PARKING PROVIDED:	
113	



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approved for the owner by :

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TENANT'S DEVELOPMENT MANAGER:

SITE LEGEND

	BUILDING AREA		ASPHALT AREA		EXISTING PROPERTY LINE		9' X 10' OVERHEAD DOCK LEVEL DOOR		FIRE DEPARTMENT TURN RADIUS:
	SITE CONCRETE		LANDSCAPE AREA		NEW PARCEL LINE		12' X 14' OVERHEAD GRADE LEVEL DOOR		

KEYNOTES:

- 1 EXISTING PROPERTY LINES.

2 PROPOSED PROPERTY LINES, SEE CIVIL DRAWINGS.

3 CONCRETE WHEEL STOPS, SEE CIVIL DRAWINGS.

4 PARKING AND DRIVE ISLES TO BE ASPHALTIC CONCRETE.

5 TYPICAL 6" TALL X 6" WIDE CONCRETE CURBS, SEE CIVIL DRAWINGS.

6 TYPICAL 4" WIDE TRAFFIC STRIPING.

7 TYPICAL PARKING:

A. STANDARD STALLS: 9' X 19' OR 9' X 17' WITH 2' PARKING OVERHANG

B. COMPACT STALLS: 8' X 16' OR 8' X 14' WITH 2' PARKING OVERHANG

C. ACCESSIBLE PARKING STALLS: 9' X 18' MIN. WITH 2' PARKING OVERHANG WITH 5' OR 8' WIDE LOADING ZONE AS SHOWN SEE DETAIL 12/A01.5

D. DESIGNATED PARKING PER CAL-GREEN REQUIREMENTS FOR CAR/VAN POOL, FUEL EFFICIENT, EV & LOW-EMITTING VEHICLES.

E. ELECTRIC VEHICLE CHARGING SPACES (STALLS LABELED "EV CHARGING ONLY"), PER CGBC 5.106.5.2, TO FACILITATE FUTURE INSTALLATION CONDUIT, RING AND STRING SHALL BE INSTALLED AT THIS TIME AS PART OF THE SHELL CONSTRUCTION.

F. ACCESSIBLE ELECTRIC VEHICLE CHARGING STALL, 1 VAN, 1 STANDARD. (RING AND STRING ONLY)
- 8 TYPICAL DRIVE ISLE, 26'-0" WIDE MINIMUM

9 CURB RAMP, SEE DETAIL 9/A01.5

10 PROPOSED LOCATION OF NEW SITE ACCESS DRIVE CURB CUT, SEE CIVIL DRAWINGS

11 NEW CONCRETE PEDESTRIAN WALKS. ASSUME ALL SIDEWALKS TO BE ACCESSIBLE PATH OF TRAVEL. SLOPE NOT TO EXCEED 1:20 (5%) IN DIRECTION OF TRAVEL. CROSS SLOPE NOT TO EXCEED 1:50 (2%) WHERE PARKING OVERHANG OCCURS, INCREASE WIDTH OF SIDEWALK TO 6'-0" MIN.

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13 TRASH ENCLOSURE W/ 40FT. APPROACH, SEE DETAILS 1 & 2/A01.5

14 TYPICAL LANDSCAPE PLANTER AREA, SEE LANDSCAPE DRAWINGS

15 SEMI TRACTOR TRAILER TEMPLATE SHOWN FOR REFERENCE ONLY

16 60" DEPRESSED CONCRETE TRUCK DOCK

17 LOADING DOCK ROLL UP DOOR, TYPICAL

18 GRADE LEVEL ROLL UP DOOR, TYPICAL

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23 BICYCLE RACKS, SEE DETAIL 14/A01.5

24 EXISTING SIDEWALK TO REMAIN

25 PROPOSED SOUND WALLS W/TRELLIS. SEE 3/A01.6 FOR MORE INFORMATION.

26 PROPOSED EMPLOYEE BREAK / AMENITY AREA.

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28 SITE LIGHTING, SEE PHOTOMETRIC PLANS

29 DASHED LINE INDICATED 2'-0" PARKING OVERHANG.

30 STRIPED PEDESTRIAN PATH OF TRAVEL

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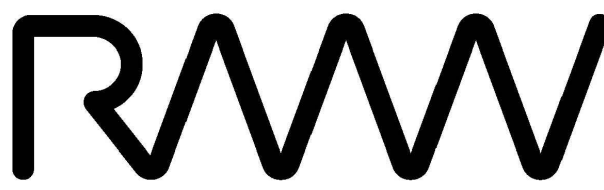
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PRELIMINARY DESIGN DOCUMENTS FOR:

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SOUTH EAST CORNER OF
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issue :	description :	date :
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TENANT'S DEVELOPMENT MANAGER:

drawn by : RDG plot date : 11-10-2021

checked by : JDL

stamp

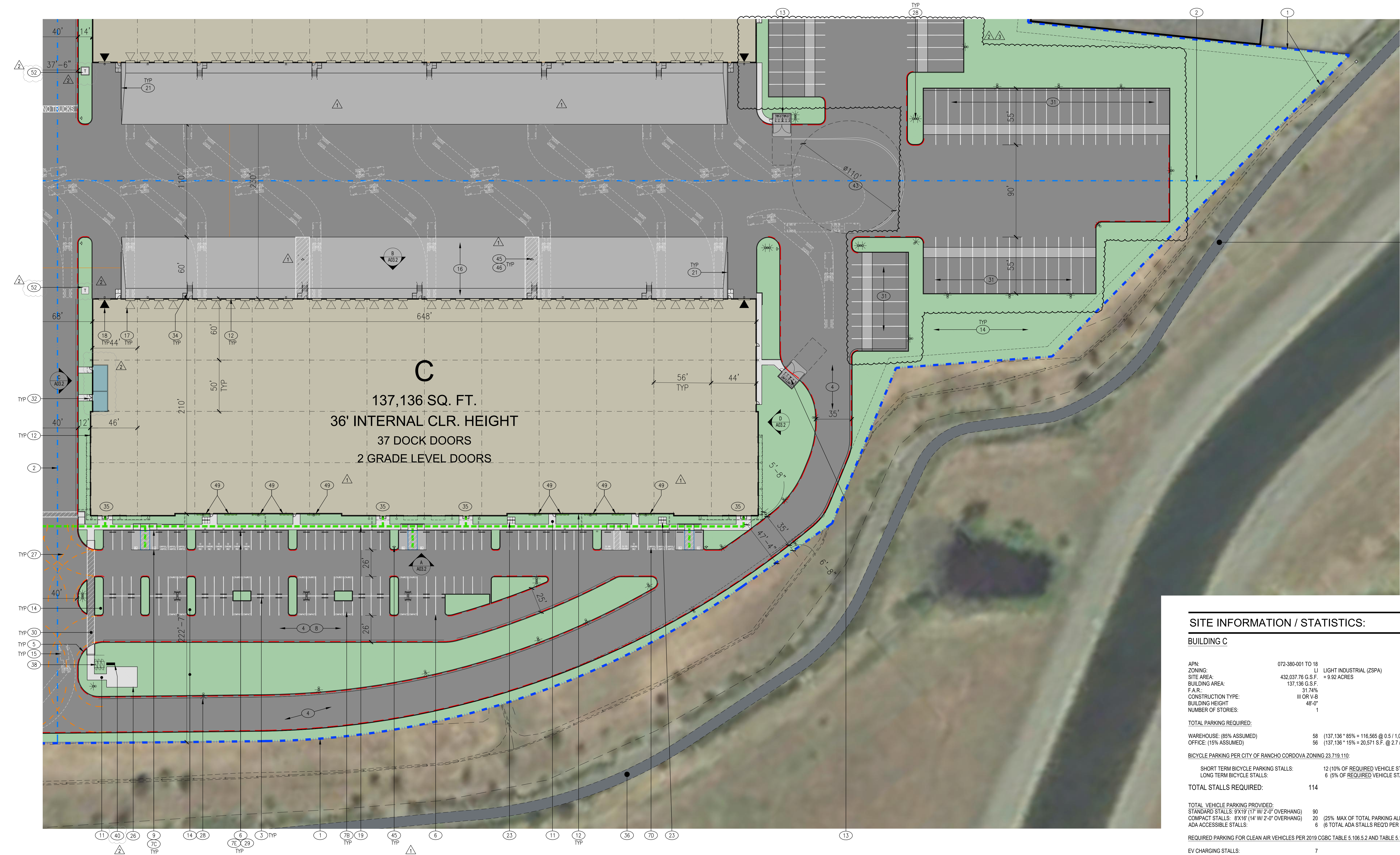
scale : AS NOTED

project number : 2214068.00

ENLARGED SITE PLAN BUILDING C

sheet no. :

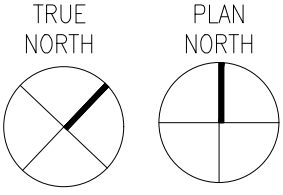
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SITE LEGEND

	BUILDING AREA		ASPHALT AREA		EXISTING PROPERTY LINE		9' X 10' OVERHEAD DOCK LEVEL DOOR		FIRE DEPARTMENT TURN RADIUS:
	SITE CONCRETE		LANDSCAPE AREA		NEW PARCEL LINE		12' X 14' OVERHEAD GRADE LEVEL DOOR		ELEVATION REFERENCE:

1-ABS1
DETAIL NUMBER
SHEET NUMBER



PRELIMINARY SITE PLAN

SCALE: 1" = 40'-0"

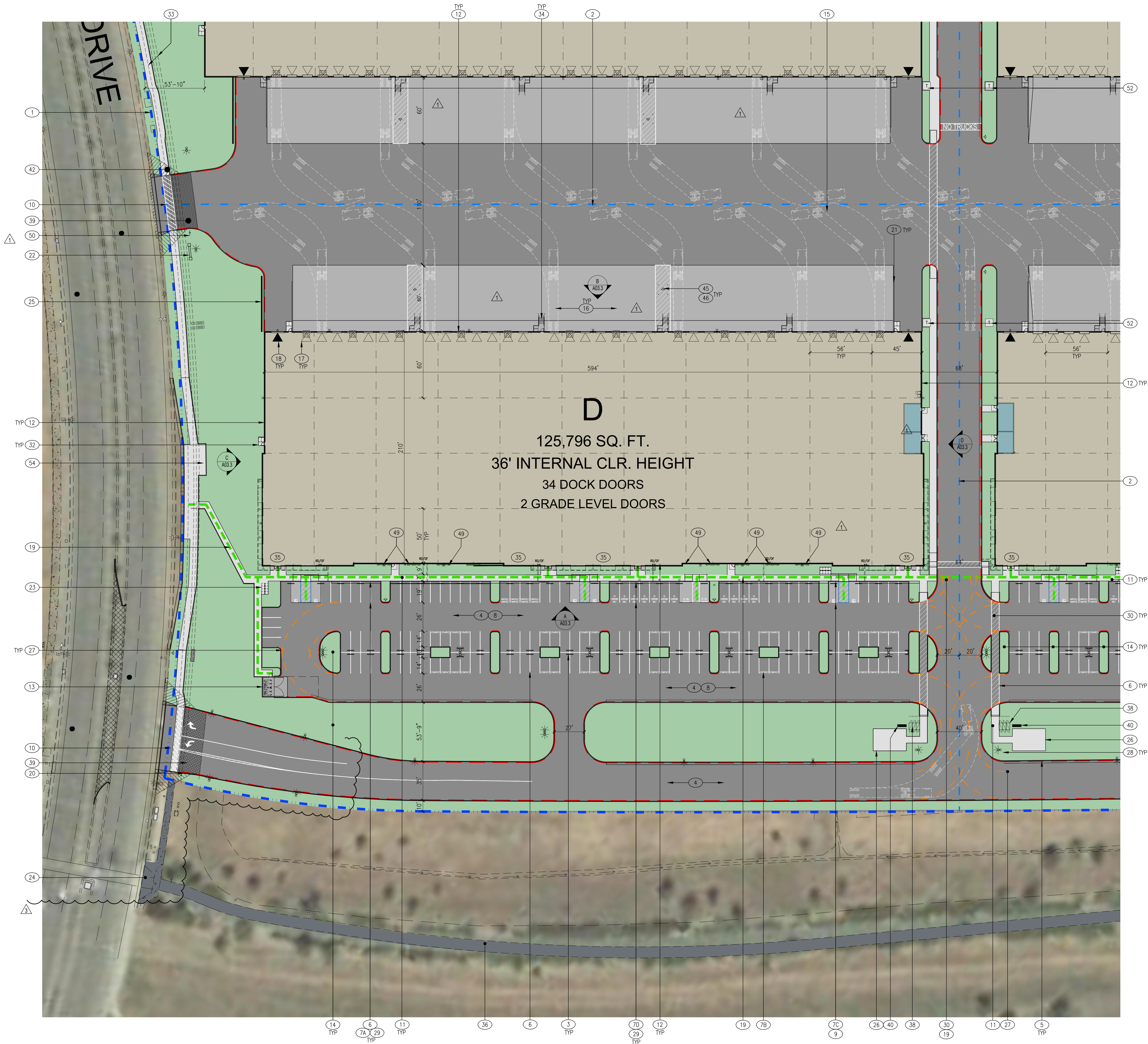
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- CONCRETE WHEEL STOPS, SEE CIVIL DRAWINGS.
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- TYPICAL 4" WIDE TRAFFIC STRIPING.
- TYPICAL PARKING:
 - STANDARD STALLS: 9' X 19' OR 9' X 17' WITH 2' PARKING OVERHANG
 - COMPACT STALLS: 8' X 16' OR 8' X 14' WITH 2' PARKING OVERHANG
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 - ACCESSIBLE ELECTRIC VEHICLE CHARGING STALL, 1 VAN, 1 STANDARD. (RING AND STRING ONLY)

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EXISTING PROPERTY LINE

NEW PARCEL LINE

BUILDING AREA

SITE CONCRETE

ASPHALT AREA

LANDSCAPE AREA

▽ 9' X 10' OVERHEAD DOCK LEVEL DOOR

▼ 12' X 14' OVERHEAD GRADE LEVEL DOOR

FIRE DEPARTMENT TURN RADIUS:

ELEVATION REFERENCE:

DETAIL NUMBER

SHEET NUMBER

PRELIMINARY SITE PLAN
SCALE: 1" = 40'-0"

1

SITE INFORMATION / STATISTICS:

BUILDING D

APN:	072-380-001 TO 18	LI	LIGHT INDUSTRIAL (ZSPA)
ZONING:	386,180.47 G.S.F.		= 8.87 ACRES
SITE AREA:	125,796 G.S.F.		
BUILDING AREA:	125,796 G.S.F.		
F.A.R.:	32.57%		
CONSTRUCTION TYPE:	III OR V-B		
BUILDING HEIGHT:	48'-0"		
NUMBER OF STORIES:	1		
TOTAL PARKING REQUIRED:			
WAREHOUSE: (85% ASSUMED)	54	(125,796 * 85% = 106,927 @ 0.5 / 1,000 S.F.)	
OFFICE: (15% ASSUMED)	51	(125,796 * 15% = 18,869 S.F. @ 2.7 / 1,000)	
BICYCLE PARKING PER CITY OF RANCHO CORDOVA ZONING 23.719.110:			
SHORT TERM BICYCLE PARKING STALLS	11	(10% OF REQUIRED VEHICLE STALLS)	
LONG TERM BICYCLE STALLS:	5	(5% OF REQUIRED VEHICLE STALLS)	
TOTAL STALLS REQUIRED:			
105			
TOTAL VEHICLE PARKING PROVIDED:			
STANDARD STALLS: 9'X19' (17' W/ 2'-0" OVERHANG)	102	(25% MAX OF TOTAL PARKING ALLOWABLE = 40)	
COMPACT STALLS: 8'X16' (14' W/ 2'-0" OVERHANG)	36	(6 TOTAL ADA STALLS REQ'D PER 2019 CBC 11B.208.2)	
ADA ACCESSIBLE STALLS:	6		
REQUIRED PARKING FOR CLEAN AIR VEHICLES PER 2019 CGBC TABLE 5.106.5.2 AND TABLE 5.106.5.3.3:			
EV CHARGING STALLS:	13	(10% OF TOTAL PARKING SPACES = 162 * 0.10 = 17)	
STANDARD EV STALLS:	16		
VAN ACCESSIBLE EV STALLS:	1		
STANDARD ACCESSIBLE STALLS:	1		
CLEAN AIR VEHICLES (CARPOOL / VANPOOL):	4	(19 TOTAL CLEAN AIR - 14 REQ'D EV = 5)	
TOTAL CLEAN AIR VEHICLES:			
17 (12% OF TOTAL PARKING SPACES = 162 * 0.12 = 20)			
SHORT TERM BICYCLE PARKING STALLS:	12	(6 RACKS PROVIDED, 2 BIKES EACH)	
LONG TERM BICYCLE STALLS:	8	(FINAL AMOUNT TBD @ TIME OF TENANT IMPROVEMENT)	
TOTAL PARKING PROVIDED:			
161			

KEYNOTES:

1

EXISTING PROPERTY LINES.

2

PROPOSED PROPERTY LINES, SEE CIVIL DRAWINGS.

3

CONCRETE WHEEL STOPS, SEE CIVIL DRAWINGS.

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approved for the owner by :

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issue :	description :	date :
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△	4TH SUBMITTAL	

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drawn by : RDG plot date : 11-10-2021

checked by : JDL

stamp

scale : AS NOTED
project number : 2214068.00

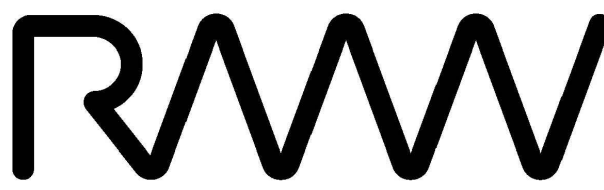
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SITE PLAN
BUILDING D

sheet no. :

A01.4

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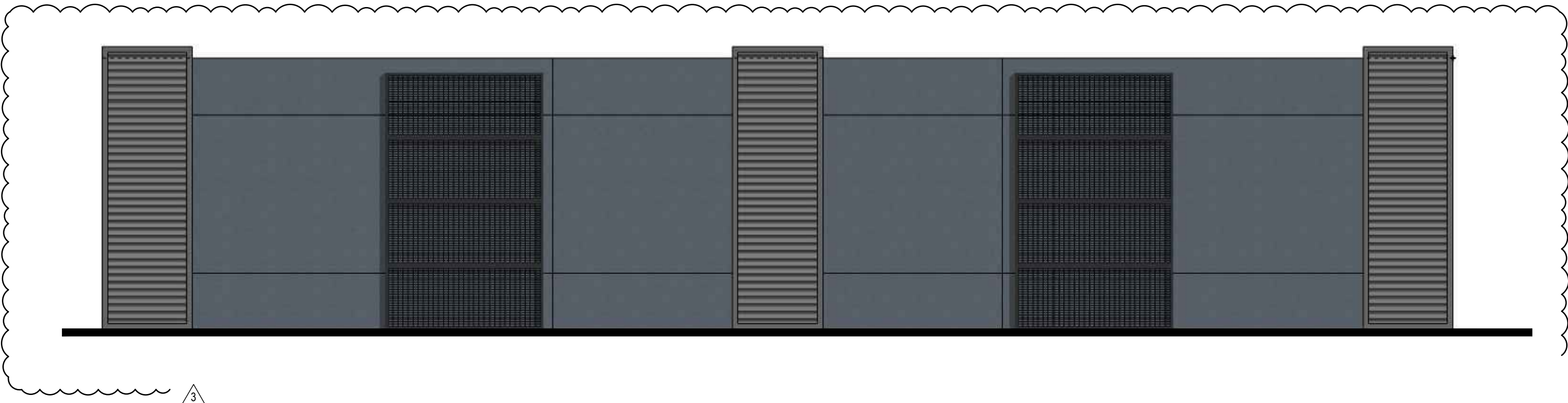
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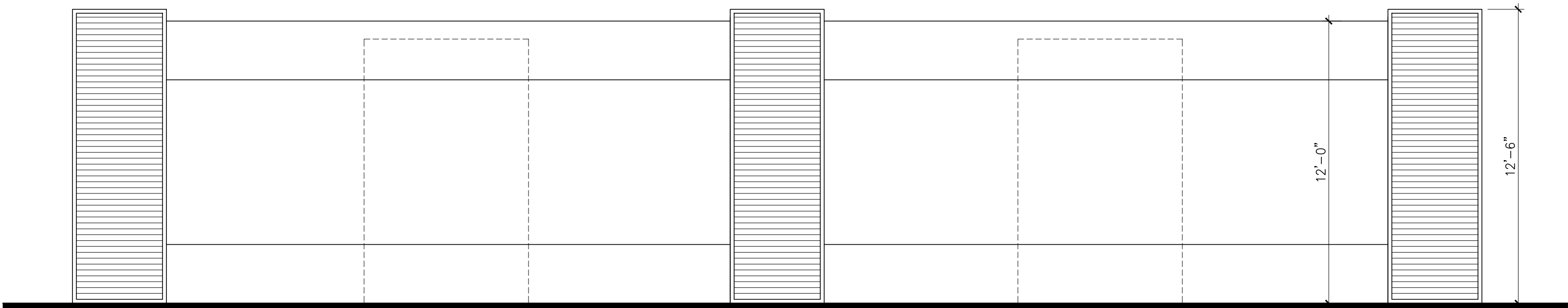
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sheet no. :

A01.6



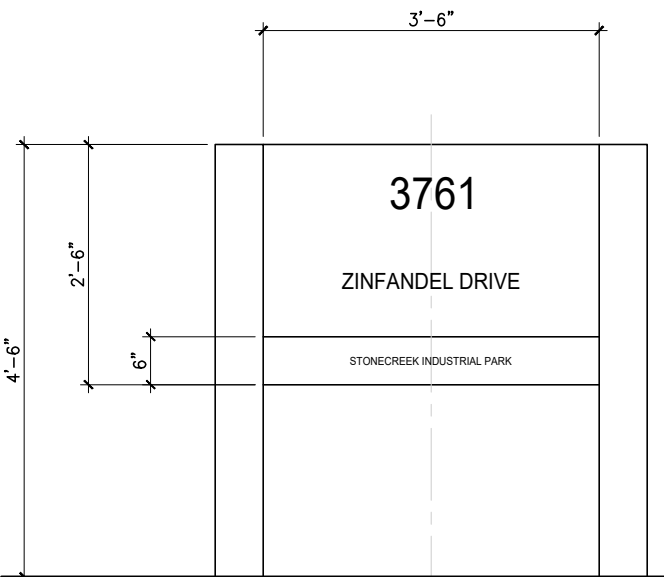
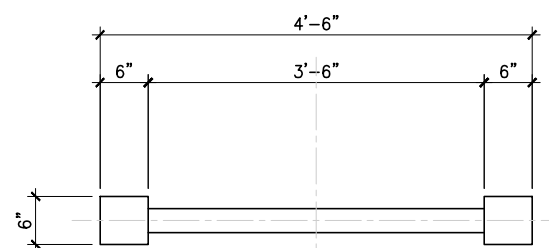
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SOUND WALL DETAIL

SCALE: 1/2" = 1'-0"

3



ADDRESS POST SIGN

SCALE: 1/2"=1'-0"

2

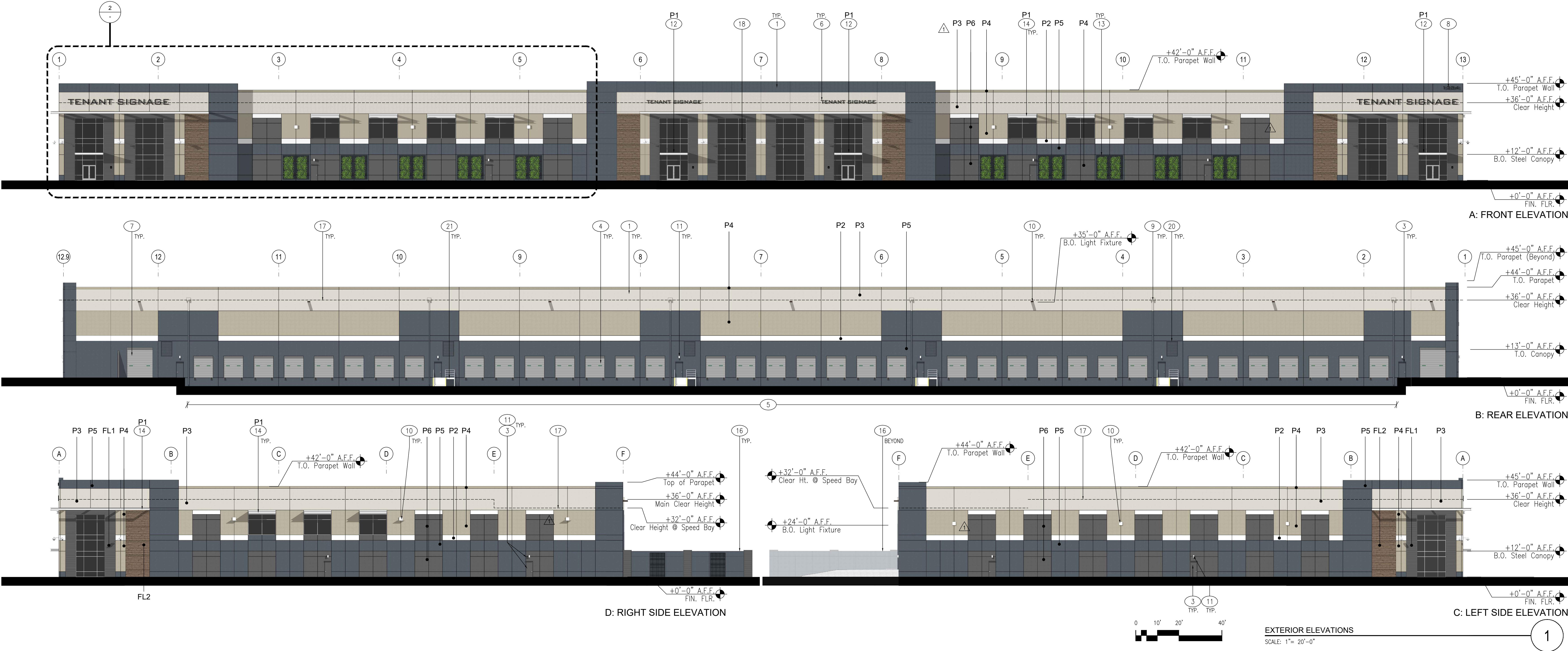


△

MONUMENT SIGN DETAIL AND RENDERING (FOR REFERENCE ONLY)

SCALE: 1/2" = 1'-0"

1



P1: PAINT 1
SHERWIN WILLIAMS
SW7757 HIGH REFLECTIVE
WHITE

P2: PAINT 2
SHERWIN WILLIAMS
SW7006 EXTRA WHITE

P3: PAINT 3
SHERWIN WILLIAMS
SW7631 CITY LOFT

P4: PAINT 4
SHERWIN WILLIAMS
SW7543 AVENUE TAN

P5: PAINT 5
SHERWIN WILLIAMS
SW7615 SEA SERPENT

P6: PAINT 6
SHERWIN WILLIAMS
SW7674 PEPPERCORN

GL1: DARK GRAY VISION GLAZ.
VITRO GRAYLITE II GLASS
1/4" DUAL PANE GLAZING
IN THERMALLY BROKEN
ALUMINUM FRAMES

AL1: ALUMINUM
STOREFRONT
FRAMES CLEAR
ANODIZED ALUMINUM

FL1: CONCRETE TILT-UP
PANEL WITH "FITZGERALD
FORMLINERS" #14329
(3/4" DEEP WITH 4" RIBS)
PAINT TO MATCH P4

FL2: CONCRETE TILT-UP
PANEL WITH "FITZGERALD
FORMLINERS" #10020
(WOOD PLANK TEXTURE)
PAINT AS SPECIFIED

1

EXTERIOR WALLS TO BE SITE CAST TILT-UP CONCRETE PANELS WITH 3/4" X 3/4" DOUBLE CHAMFER REVEALS AND A TEXTURED MULTICOLOR EXTERIOR COATING SYSTEM

2

TYPICAL WINDOW SYSTEM: DUAL PANE GLAZING IN 2" X 4" (NOMINAL) THERMALLY BROKEN, CLEAN ANODIZED ALUMINUM FRAMES. OUTER GLAZING PANE TO BE TINTED WITH LOW-E COATING ON INTERIOR SURFACE. INNER PANE CLEAR FLOAT. STOREFRONT DOORS WHERE SHOWN.

3

3' X 7' STEEL MAN DOOR, PAINT TO MATCH ADJACENT WALL COLOR.

4

9' X 10' DOCK LEVEL SECTIONAL STEEL DOOR WITH VISION LITE BOTH SIDES

5

DEPRESSED TRUCK DOCK

6

BUILDING SIGNAGE UNDER SEPARATE PERMIT. SIGNAGE AREA TO COMPLY WITH CITY OF RANCHO CORDOVA REQUIREMENTS.

7

12' X 14' GRADE LEVEL SECTIONAL STEEL DOOR

8

PROPOSED LOCATION OF BUILDING ADDRESS SIGNAGE TO BE PLACED ON THE BUILDING IN SUCH A POSITION AS TO BE EASILY READ FROM THE STREET OR ROAD FRONTING THE PROPERTY. THE MINIMUM SIZE OF THE NUMBERS SHALL NOT BE LESS THAN SIX (6) INCHES AND SHALL ALSO CONTRAST WITH THEIR BACKGROUND. SIGNAGE UNDER SEPARATE PERMIT.

9

WALL MOUNTED SCUPPER AND DOWNSPOUT, PAINT TO MATCH ADJACENT WALL COLOR. SEE DETAIL 13/A09.3 FOR MORE INFORMATION.

10

INDICATES LOCATION OF SURFACE MOUNTED EXTERIOR SITE LIGHT FIXTURE, SEE PHOTOMETRIC DRAWINGS

11

INDICATES LOCATION OF SURFACE MOUNTED EMERGENCY LIGHT FIXTURE CENTERED ABOVE DOOR, TYPICAL AT ALL EXTERIOR DOORS, SEE PHOTOMETRIC DRAWINGS

12

STEEL C CHANNEL STOREFRONT CANOPY. PAINT AS SCHEDULED. SEE SHEET A02.3 FOR MORE INFORMATION.

13

WALL MOUNTED GREENSCREEN VINE SYSTEM OR EQUAL

14

STEEL C-CHANNEL "OPEN" CANOPY. PAINT AS SPECIFIED. SEE SHEET A02.3 FOR MORE INFORMATION.

15

REVEAL AREAS TO BE PAINTED TO MATCH GLAZING COLOR. SEE FINISH LEGEND THIS SHEET.

16

TILT-UP CONCRETE SCREEN WALL WITH REVEALS AND A MULTICOLORED TEXTURED ELASTOMERIC FINISH SYSTEM. SEE SHEET A01.3 FOR MORE INFORMATION.

17

DASHED LINE INDICATES INTERNAL CLEAR HEIGHT. SEE ELEVATIONS FOR HEIGHT.

18

SPANDREL GLAZING FROM 12'-0" A.F.F. TO T.O. WINDOW HEAD. SEE EXTERIOR ELEVATIONS FOR HEIGHTS.

19

POTENTIAL LOCATION OF FUTURE KNOX BOX. FINAL LOCATION TO BE DETERMINED AT TIME OF TENANT IMPROVEMENT.

20

MECHANICAL AIR VENTILATION LOUVERS. PAINT TO MATCH ADJACENT WALL COLOR. SEE MECHANICAL DRAWINGS FOR MORE INFORMATION.

21

DELEGATED DESIGN ITEM: PRE-FABRICATED STEEL STAIR. AREA OF ASSISTED RESCUE SHOWN AS NEEDED SEE 11/A09.3 FOR STAIR DETAIL.

RMW

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1718 Third Street
Suite 101
Sacramento
California 95811

Office
916 449-1400

rmw.com

OWNER / DEVELOPER:

DP
DERMODY
PROPERTIES

500 Equity Avenue
Reno, NV 89502

GEORGE CONDON
Partner, West Region

PRELIMINARY DESIGN DOCUMENTS FOR:

STONECREEK INDUSTRIAL PARK

SOUTH EAST CORNER OF
BAROQUE DRIVE & ZINFANDEL DRIVE
CITY OF RANCHO CORDOVA, CALIFORNIA

approved for the owner by :

approved for the architect by :

issue :	description :	date :
A	INITIAL PLAN REVIEW SUBMITTAL	11-10-2021

RE-SUBMITTAL TO PLANNING 4TH SUBMITTAL	02-13-2023
---	------------

TENANT'S DEVELOPMENT MANAGER:

drawn by : RDG plot date : 11-10-2021

checked by : JDL

stamp

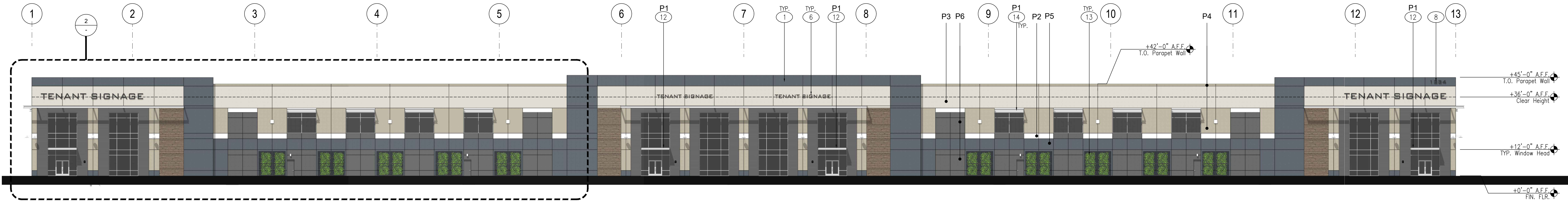
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project number : 2214068.00

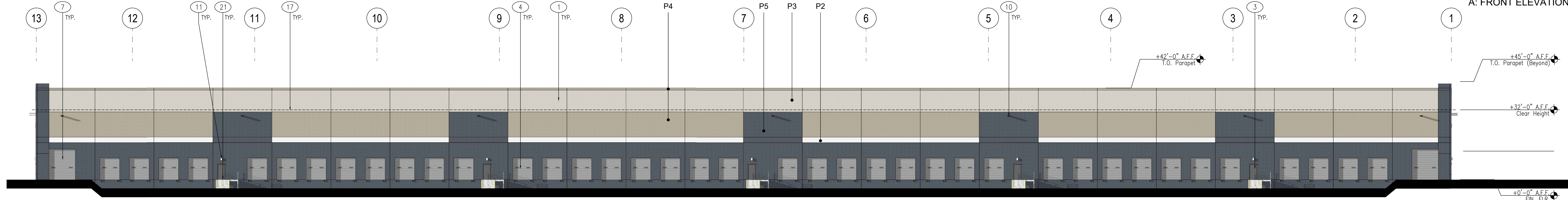
EXTERIOR ELEVATIONS - BUILDINGS A & B

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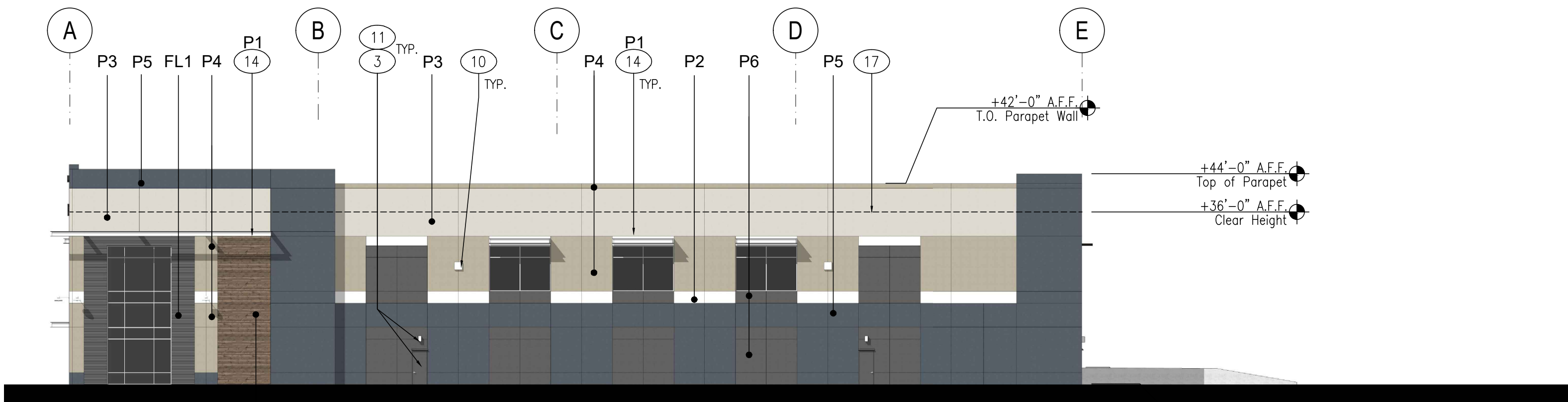
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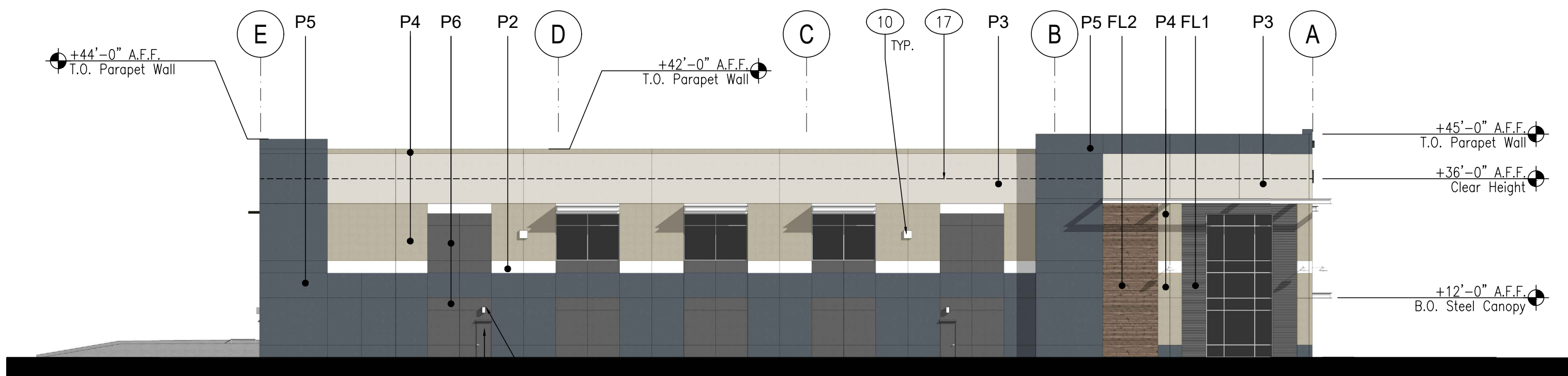
A: FRONT ELEVATION



B: REAR ELEVATION



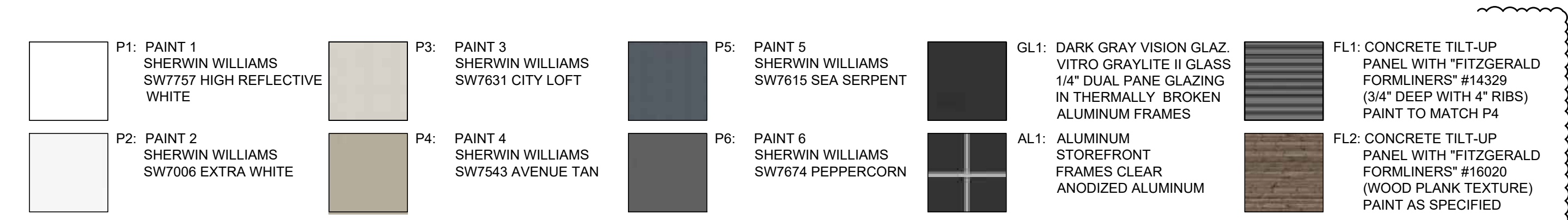
D: RIGHT SIDE ELEVATION



C: LEFT SIDE ELEVATION

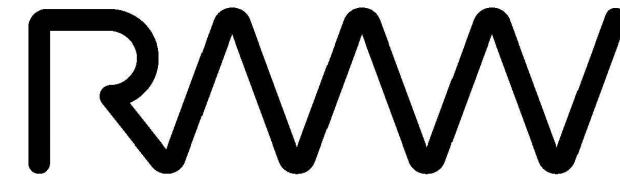


FINISH LEGEND:



KEYNOTES:

- EXTERIOR WALLS TO BE SITE CAST TILT-UP CONCRETE PANELS WITH 3/4" X 3/4" DOUBLE CHAMFER REVEALS AND A TEXTURED MULTICOLOR EXTERIOR COATING SYSTEM
- TYPICAL WINDOW SYSTEM: DUAL PANE GLAZING IN 2" X 4" (NOMINAL) THERMALLY BROKEN, CLEAN ANODIZED ALUMINUM FRAMES. OUTER GLAZING PANE TO BE TINTED WITH LOW-E COATING ON INTERIOR SURFACE. INNER PANE CLEAR FLOAT. STOREFRONT DOORS WHERE SHOWN.
- 3' X 7' STEEL MAN DOOR, PAINT TO MATCH ADJACENT WALL COLOR.
- 9' X 10' DOCK LEVEL SECTIONAL STEEL DOOR WITH VISION LITE BOTH SIDES
- DEPRESSED TRUCK DOCK
- BUILDING SIGNAGE UNDER SEPARATE PERMIT. SIGNAGE AREA TO COMPLY WITH CITY OF RANCHO CORDOVA REQUIREMENTS.
- 12' X 14' GRADE LEVEL SECTIONAL STEEL DOOR
- PROPOSED LOCATION OF BUILDING ADDRESS SIGNAGE TO BE PLACED ON THE BUILDING IN SUCH A POSITION AS TO BE EASILY READ FROM THE STREET OR ROAD FRONTING THE PROPERTY. THE MINIMUM SIZE OF THE NUMBERS SHALL NOT BE LESS THAN SIX (6) INCHES AND SHALL ALSO CONTRAST WITH THEIR BACKGROUND. SIGNAGE UNDER SEPARATE PERMIT
- WALL MOUNTED SCUPPER AND DOWNSPOUT, PAINT TO MATCH ADJACENT WALL COLOR. SEE DETAIL 13/A09.3 FOR MORE INFORMATION.
- INDICATES LOCATION OF SURFACE MOUNTED EXTERIOR SITE LIGHT FIXTURE. SEE PHOTOMETRIC DRAWINGS
- INDICATES LOCATION OF SURFACE MOUNTED EMERGENCY LIGHT FIXTURE CENTERED ABOVE DOOR, TYPICAL AT ALL EXTERIOR DOORS. SEE PHOTOMETRIC DRAWINGS
- STEEL C CHANNEL STOREFRONT CANOPY. PAINT AS SCHEDULED. SEE SHEET A02.3 FOR MORE INFORMATION.
- WALL MOUNTED GREENSCREEN VINE SYSTEM OR EQUAL
- STEEL C-CHANNEL "OPEN" CANOPY. PAINT AS SPECIFIED. SEE SHEET A02.3 FOR MORE INFORMATION.
- REVEAL AREAS TO BE PAINTED TO MATCH GLAZING COLOR. SEE FINISH LEGEND THIS SHEET.
- TILT-UP CONCRETE SCREEN WALL WITH REVEALS AND A MULTICOLORED TEXTURED ELASTOMERIC FINISH SYSTEM. SEE SHEET A01.3 FOR MORE INFORMATION.
- DASHED LINE INDICATES INTERNAL CLEAR HEIGHT. SEE ELEVATIONS FOR HEIGHT.
- SPANDREL GLAZING FROM 12'-0" A.F.F. TO T.O. WINDOW HEAD. SEE EXTERIOR ELEVATIONS FOR HEIGHTS.
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- MECHANICAL AIR VENTILATION LOUVERS. PAINT TO MATCH ADJACENT WALL COLOR. SEE MECHANICAL DRAWINGS FOR MORE INFORMATION.
- DELEGATED DESIGN ITEM: PRE-FABRICATED STEEL STAIR. AREA OF ASSISTED RESCUE SHOWN AS NEEDED SEE 11/A09.3 FOR STAIR DETAIL.



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rmw.com

OWNER / DEVELOPER:



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Reno, NV 89502

GEORGE CONDON
Partner, West Region

PRELIMINARY DESIGN DOCUMENTS FOR:

STONECREEK INDUSTRIAL PARK

SOUTH EAST CORNER OF
BAROQUE DRIVE & ZINFANDEL DRIVE
CITY OF RANCHO CORDOVA, CALIFORNIA

approved for the owner by :

approved for the architect by :

issue :	description :	date :
A	INITIAL PLAN REVIEW SUBMITTAL	11-10-2021
△	PLND-1121-0020 PC COMMENTS	01-21-2022
△	RE-SUBMITTAL TO PLANNING 4TH SUBMITTAL	02-13-2023

TENANT'S DEVELOPMENT MANAGER:

drawn by : RDG plot date : 11-10-2021

checked by : JDL

stamp

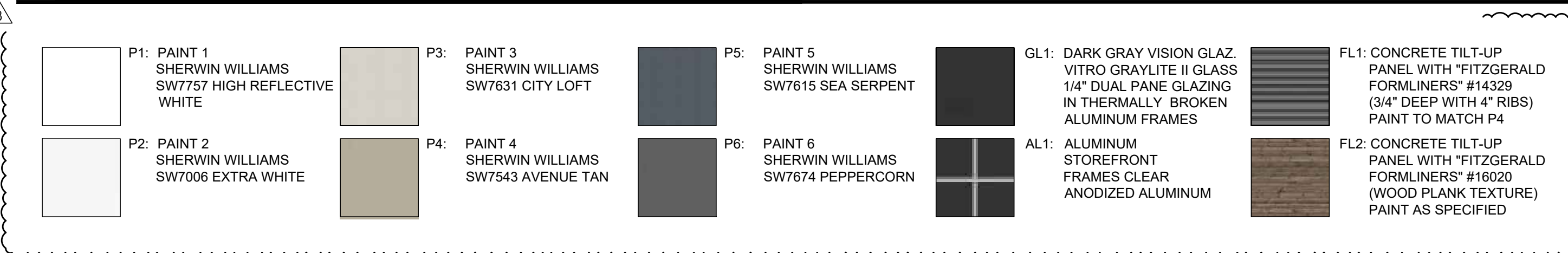
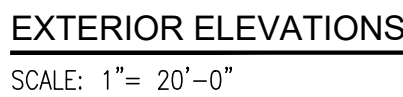
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project number : 2214068.00

EXTERIOR ELEVATIONS - BUILDING C

sheet no. :

A03.2



- 1 EXTERIOR WALLS TO BE SITE CAST TILT-UP CONCRETE PANELS WITH 3/4" x 3/4" DOUBLE CHAMFER REINFOR AND A TEXTURED MULTIGRANULAR EXTERIOR COATING SYSTEM
- 2 TYPICAL WINDOW SYSTEM: DUAL PANEL GLAZING IN 2' x 4" (NOMINAL) THERMALLY BROKEN, ANODIZED ALUMINUM FRAMES. OUTSIDE GLAZING PANEL TO BE TINTED WITH LOW-E COATING ON INTERIOR SURFACE. INNER PANEL CLEAR GLASS. STOREFRONTS DOORS WHERE SHOWN.
- 3 3' x 7' STEEL MAIN DOOR, PAINT TO MATCH ADJACENT WALL COLOR.
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- 5 DEPRESSIONED TRUCK DOCK
- 6 BUILDING SIGNAGE UNDER SEPARATE PERMIT. SIGNAGE AREA TO COMPLY WITH CITY OF RANCHO CORDOVA REQUIREMENTS.
- 7 12' x 14' GRADE LEVEL SECTIONAL STEEL DOOR

- | | |
|----|--|
| 8 | PROPOSED LOCATION OF BUILDING ADDRESS SIGMADE TO BE PLACED ON THE BUILDING IN SUCH A POSITION AS TO BE EASILY READ FROM THE STREET OR ROAD FRONTING THE PROPERTY. THE MINIMUM SIZE OF THE NUMBERS SHALL NOT BE LESS THAN SIX (6) INCHES AND SHALL ALSO CONTRAST WITH THEIR BACKGROUND. SIGMADE UNDER SEPARATE PERMIT |
| 9 | CONTINUED GUTTER AND SURFACE MOUNTED DOWNSPOUTS. PAINT AS SPECIFIED |
| 10 | INDICATES LOCATION OF SURFACE MOUNTED EXTERIOR SITE LIGHT FIXTURE, SEE PHOTOGRAPHIC DRAWINGS FOR FIXTURE TYPE AND COLOR. |
| 11 | INDICATES LOCATION OF SURFACE MOUNTED EMERGENCY LIGHT FIXTURE CENTER ABOVE DOOR, TYPICAL. AT ALL EXTERIOR DOORS. SEE PHOTOGRAPHIC DRAWINGS |
| 12 | STEEL C CHANNEL STOREFRONT CANOPY. PAINT AS SPECIFIED. |
| 13 | WALL MOUNTED GREENSCREEN VINE SYSTEM OR EQUAL |

- 14 STEEL C-CHANNEL "OPEN" CANOPY. PAINT AS SPECIFIED.
- 15 POTENTIAL LOCATION OF FUTURE KNOX BOX. FINAL LOCATION TO BE DETERMINED AT TIME OF TENANT IMPROVEMENT.
- 16 DASHED LINE INDICATES INTERNAL CLEAR HEIGHT. SEE ELEVATIONS FOR HEIGHT.
- 17 CLERESTORY WINDOWS - SEE EXTERIOR ELEVATIONS.
- 18 PRE-FABRICATED STEEL DOCK STAIRS.

TENANT'S DEVELOPMENT MANAGER:

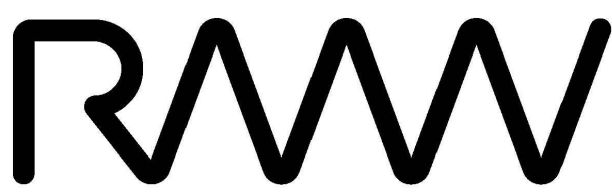
checked by : JDL

stamp

project number : 2214068.00

sheet no.

Page 285



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916 449-1400

rmw.com

OWNER / DEVELOPER:



500 Equity Avenue
Reno, NV 89502

GEORGE CONDON
Partner, West Region

PRELIMINARY DESIGN DOCUMENTS FOR:

STONECREEK
INDUSTRIAL PARK

SOUTH EAST CORNER OF
BAROQUE DRIVE & ZINFANDEL DRIVE
CITY OF RANCHO CORDOVA, CALIFORNIA

approved for the owner by :

approved for the architect by :

issue :	description :	date :
A	INITIAL PLAN REVIEW SUBMITTAL	11-10-2021
△	PLND-1121-0020 PC COMMENTS	01-21-2022

TENANT'S DEVELOPMENT MANAGER:

drawn by : RDG plot date : 11-10-2021

checked by : JDJL

stamp

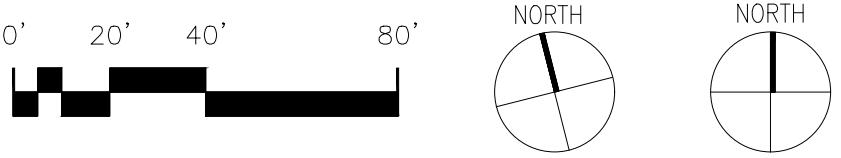
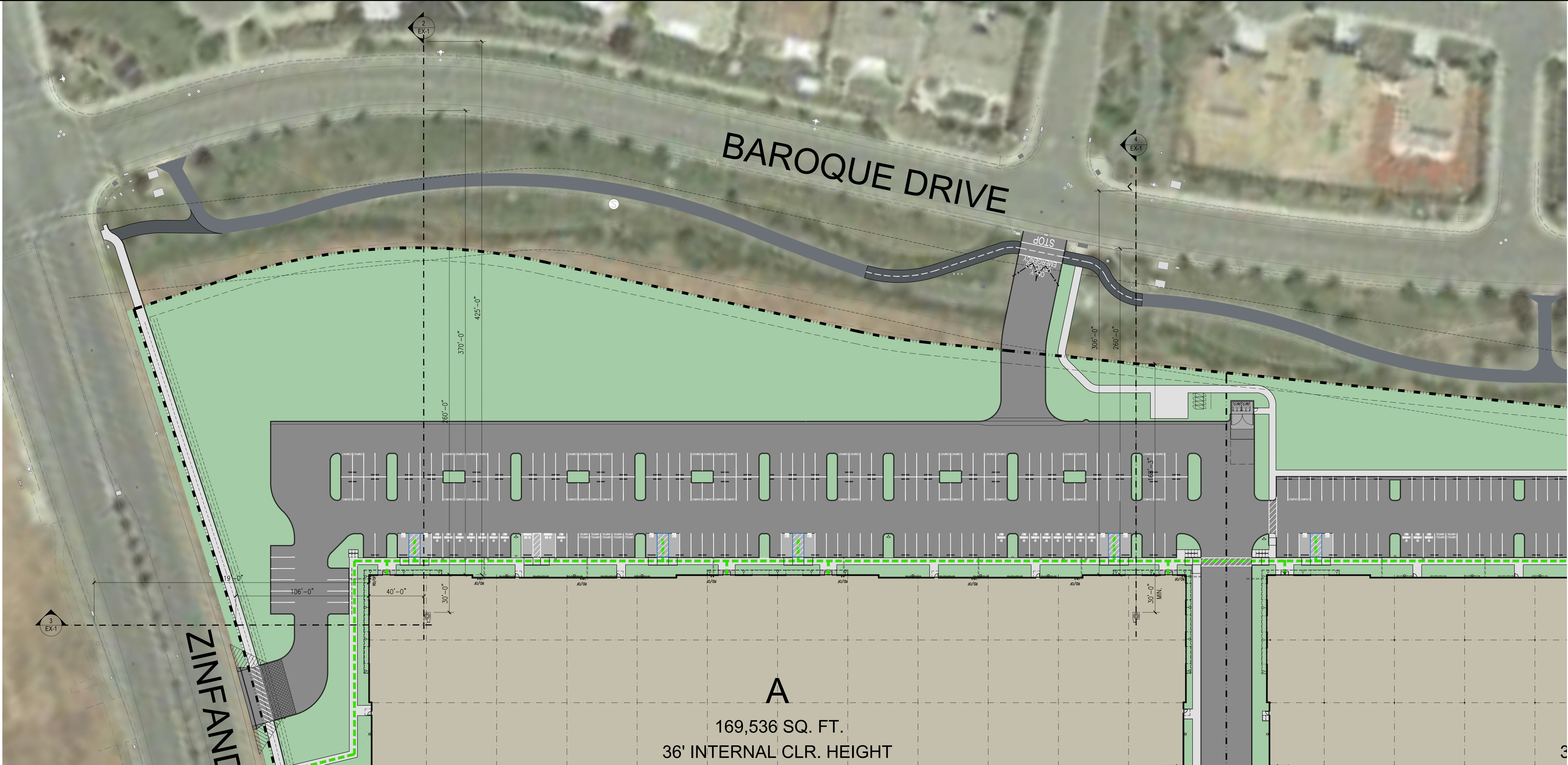
scale : AS NOTED

project number : 2214068.00

LINE OF SIGHT
EXHIBIT

sheet no. :

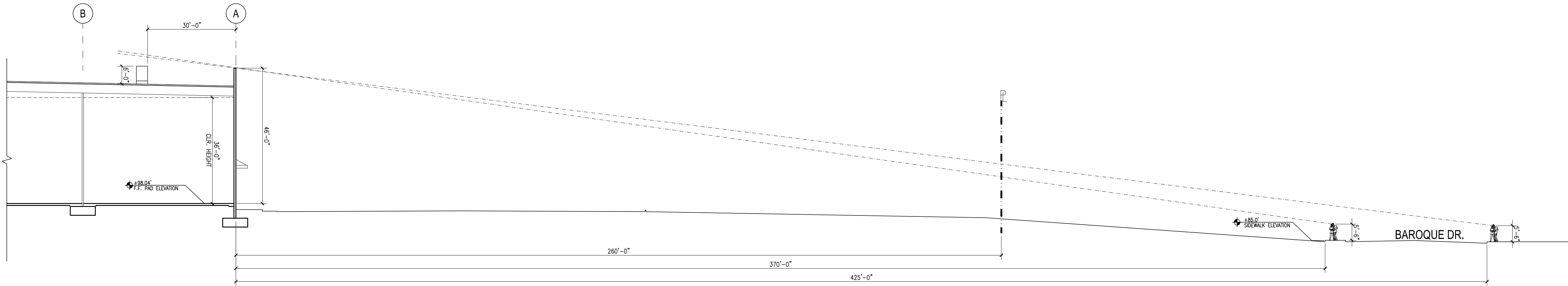
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PRELIMINARY SITE PLAN

SCALE: 1" = 40'-0"

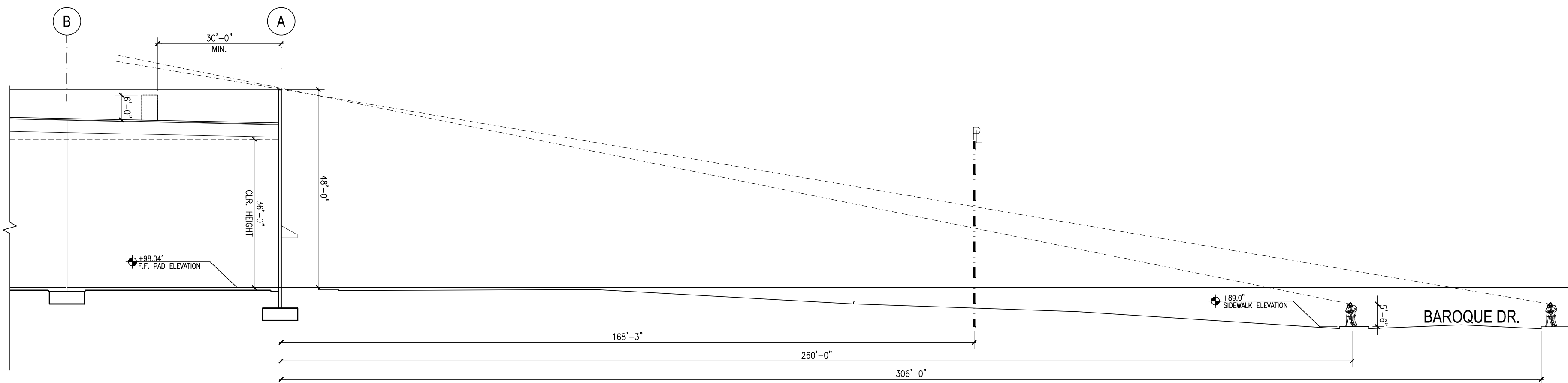
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LINE OF SIGHT DETAIL @ BAROQUE DR.

SCALE: 1" = 20'-0"

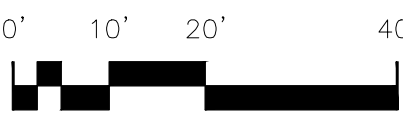
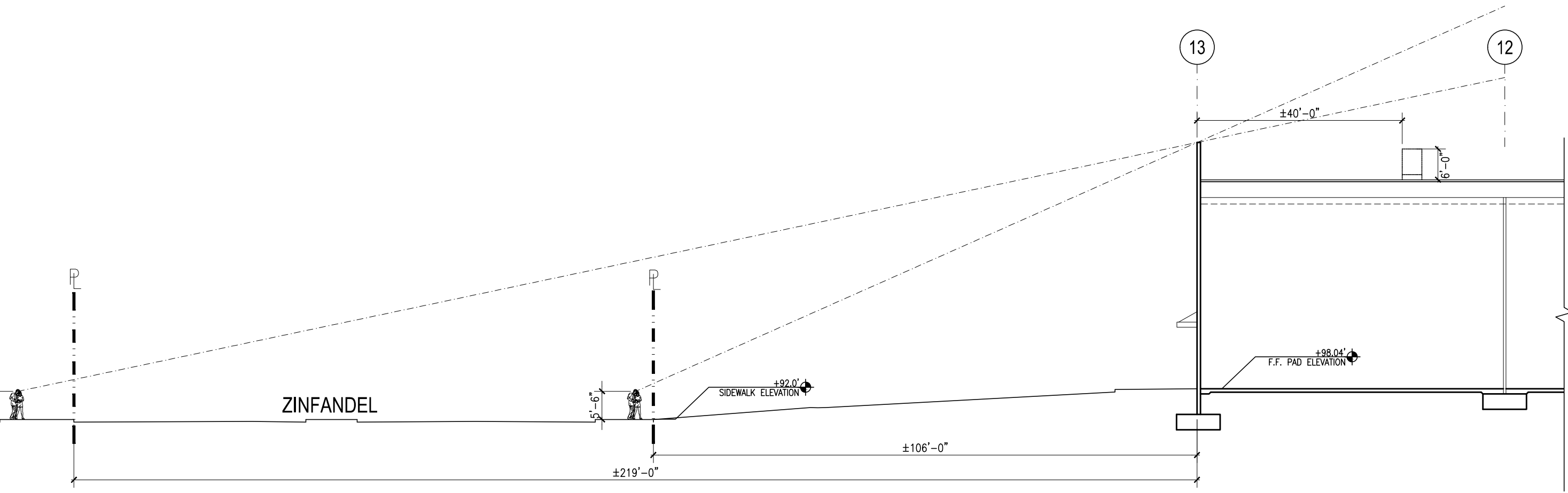
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LINE OF SIGHT DETAIL @ BAROQUE DR.

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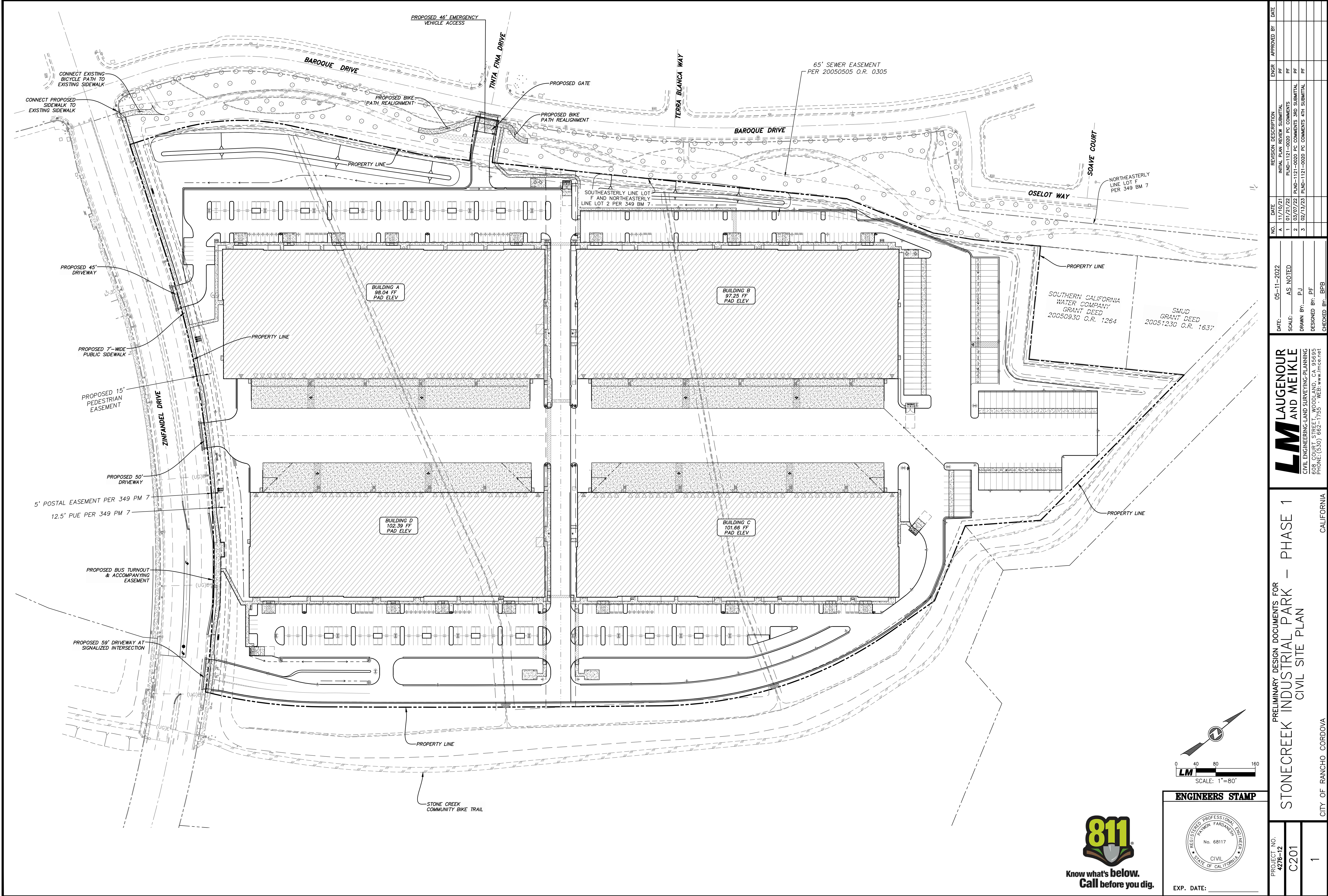
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LINE OF SIGHT DETAIL @ ZINFANDEL DR.

SCALE: 1" = 20'-0"

3



LM LAUGENOUR
AND MEIKLE
CIVIL ENGINEERING/LAND SURVEYING/PLANNING
538 COURT STREET WOODLAND, CA 95694
PHONE (530) 662-1755 - WEB www.lmnet.net

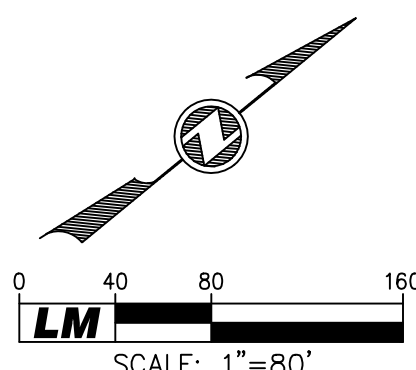
PRELIMINARY DESIGN DOCUMENTS FOR
STONECREEK INDUSTRIAL PARK – PHASE 1
CIVIL SITE PLAN

PROJECT NO.
4276-12
C201

1

NO.	DATE	REVISION DESCRIPTION	ENGR	APPROVED BY	DATE
A	11/10/21	INITIAL PLAN REVIEW SUBMITTAL	PF		
1	01/31/22	PLND-1121-0020 PC COMMENTS	PF		
2	03/07/22	PLND-1121-0020 PC COMMENTS 3RD SUBMITTAL	PF		
3	02/13/23	PLND-1121-0020 PC COMMENTS 4TH SUBMITTAL	PF		

DATE: 05-11-2022
SCALE: AS NOTED
DRAWN BY: PJ
DESIGNED BY: PF
CHECKED BY: BPB

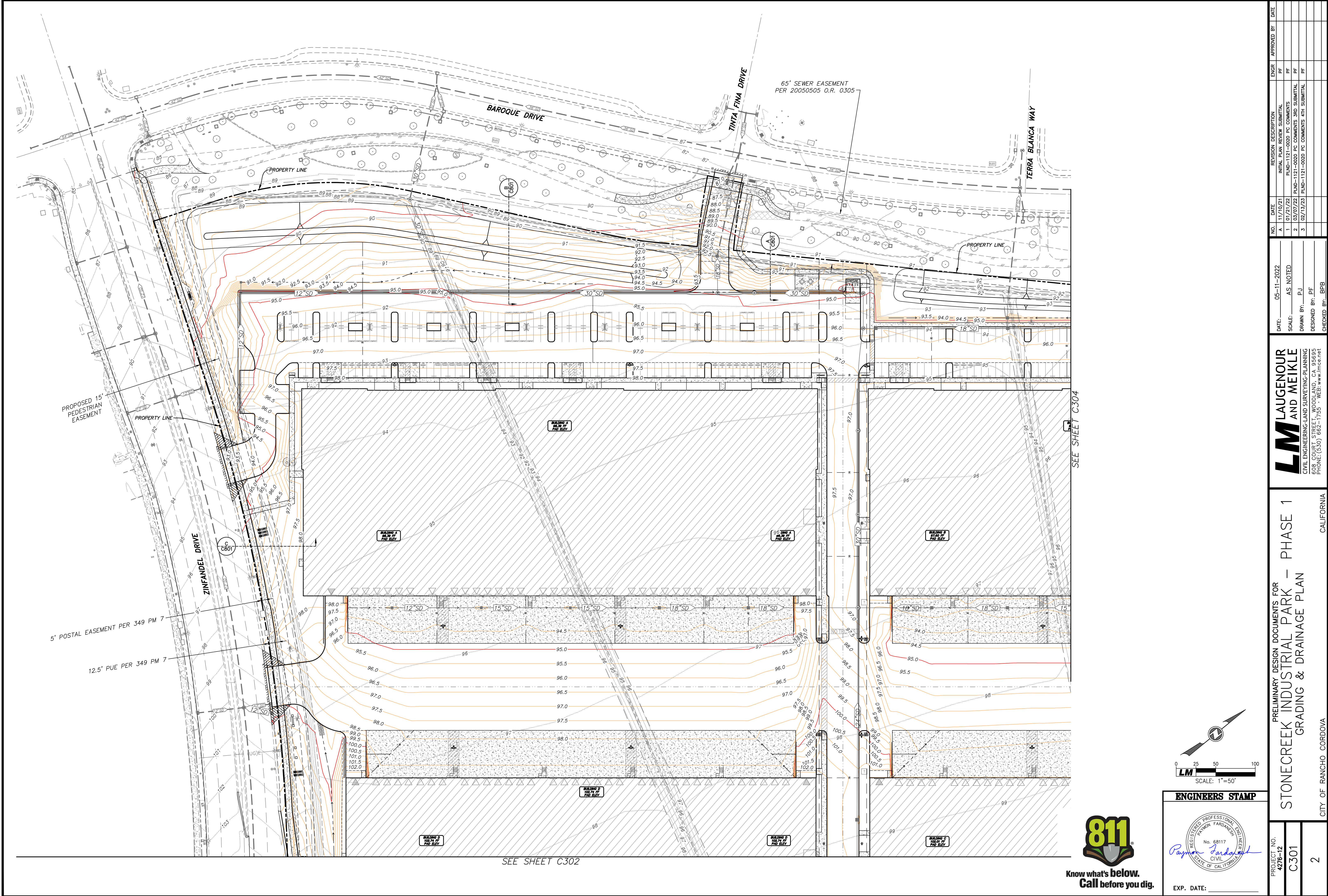


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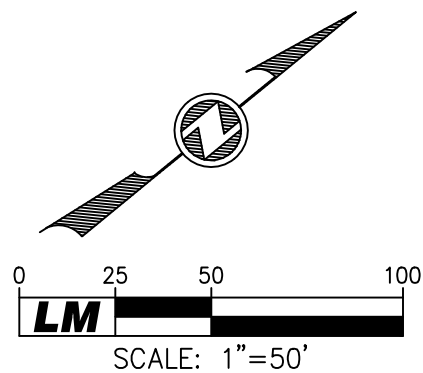
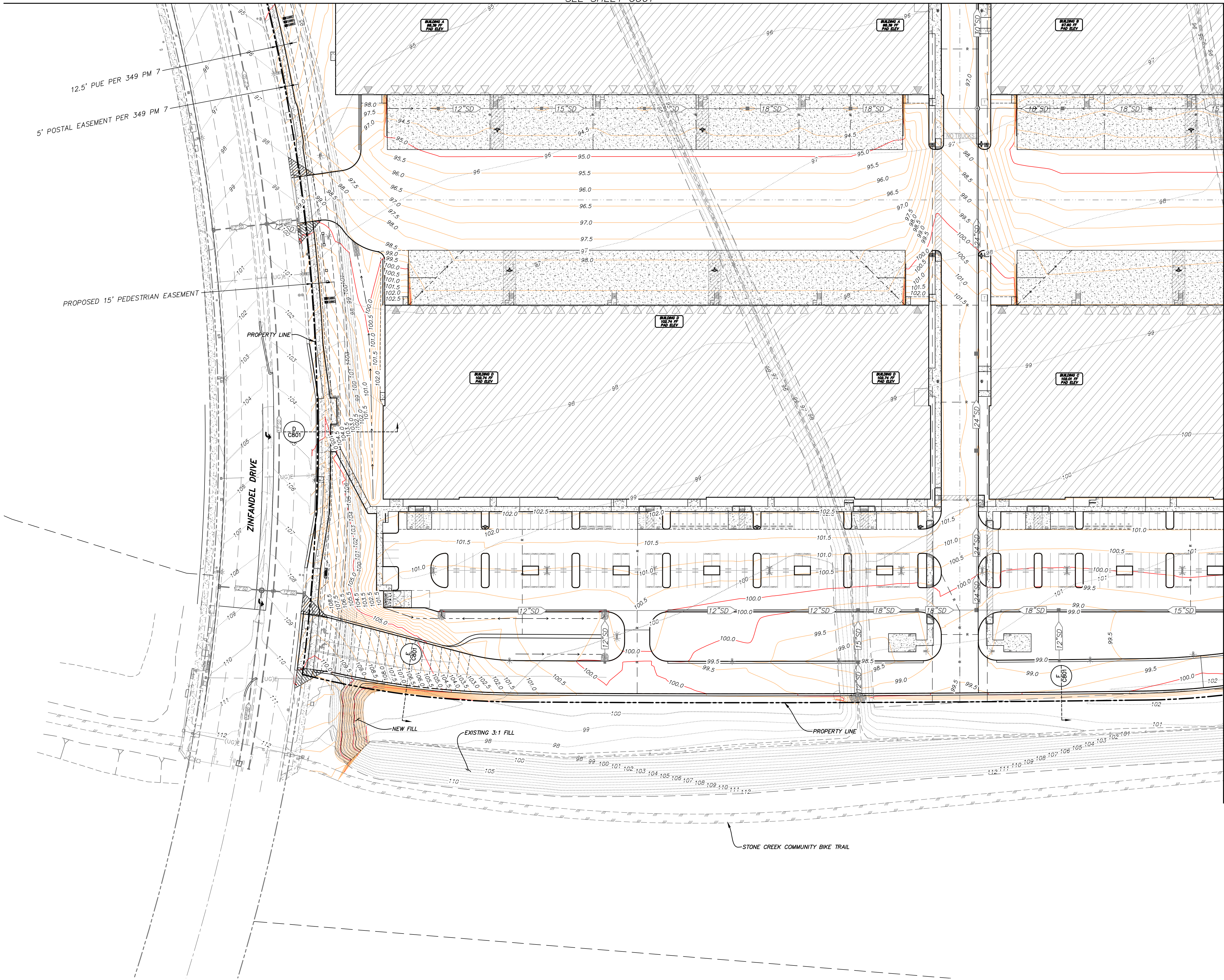
EXP. DATE:





SEE SHEET C301

SEE SHEET C303



ENGINEERS STAMP

PROJECT NO. 4276-12
C302

EXP. DATE: _____

Professional Engineer Seal: Registered Professional Engineer, Paymon Fardouni, No. 68117, Civil, State of California.

PRELIMINARY DESIGN DOCUMENTS FOR
STONECREEK INDUSTRIAL PARK – PHASE 1
 GRADING & DRAINAGE PLAN

LM LAUGENOUR AND MEIKLE
 CIVIL ENGINEERING, LAND SURVEYING, PLANNING
 538 COUNTRY STREET, WOODLAND, CA 95693
 PHONE (530) 662-1755 • WEB: www.lmme.net

DATE: 05-11-2022
 SCALE: AS NOTED
 DRAWN BY: PJ
 DESIGNED BY: PF
 CHECKED BY: BPB

NO.	DATE	REVISION DESCRIPTION	ENGR	APPROVED BY	DATE
A	11/10/21	INITIAL PLAN REVIEW SUBMITTAL	PF		
1	01/31/22	PLND-1121-0020 PC COMMENTS	PF		
2	03/07/22	PLND-1121-0020 PC COMMENTS 3RD SUBMITTAL	PF		
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PROJECT NO. 4276-12	C302	3
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SEE SHEET C304

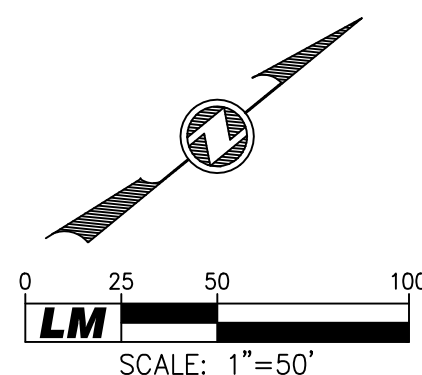
PROPERTY LINE

WATER

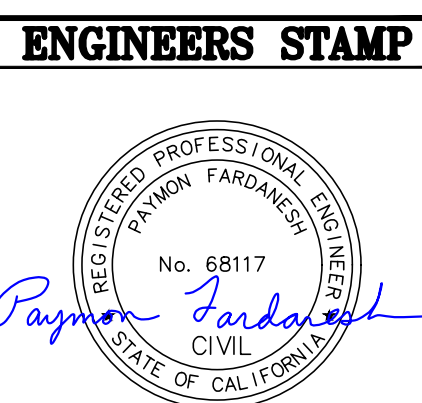
-PROPERTY LINE

STONE CREEK COMMUNITY BIKE TRAIL

PROPERTY LINE

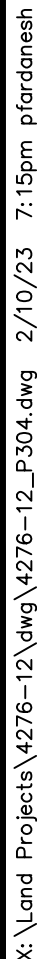


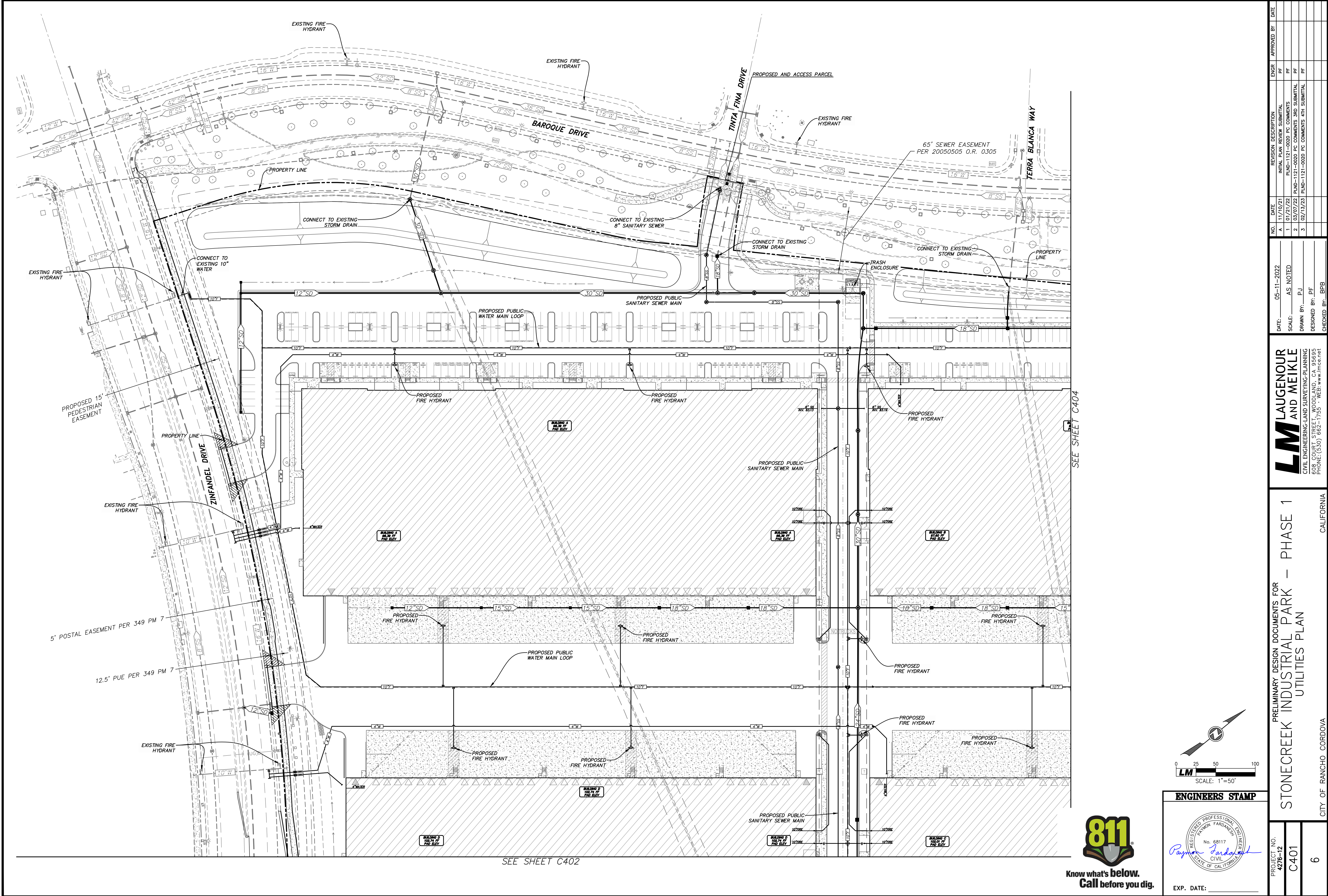
**Know what's below.
Call before you dig.**



EXP. DATE:

PROJECT NO. 4278-12		PRELIMINARY DESIGN DOCUMENTS FOR STONECREEK INDUSTRIAL PARK – PHASE 1 GRADING & DRAINAGE PLAN		LM LAUGENOUR AND MEIKLE CIVIL ENGINEERING-LAND SURVEYING-PLANNING 608 COURT STREET, WOODLAND, CA. 95695 PHONE: (330) 682-1735 • WEB: www.lm-inc.net		<table><tr><th>NO.</th><th>DATE</th><th>REVISION DESCRIPTION</th><th>ENGR</th><th>APPROVED BY</th><th>DATE</th></tr><tr><td>1</td><td>11/02/21</td><td>INITIAL PLAN REVIEW</td><td>PF</td><td></td><td></td></tr><tr><td>2</td><td>01/21/22</td><td>PUND-1121-0020 PC COMMENTS</td><td>PF</td><td></td><td></td></tr><tr><td>3</td><td>02/07/22</td><td>PUND-1121-0020 PC COMMENTS 3RD SUBMITTAL</td><td>PF</td><td></td><td></td></tr><tr><td>4</td><td>02/13/23</td><td>PUND-1121-0020 PC COMMENTS 4TH SUBMITTAL</td><td>PF</td><td></td><td></td></tr></table>		NO.	DATE	REVISION DESCRIPTION	ENGR	APPROVED BY	DATE	1	11/02/21	INITIAL PLAN REVIEW	PF			2	01/21/22	PUND-1121-0020 PC COMMENTS	PF			3	02/07/22	PUND-1121-0020 PC COMMENTS 3RD SUBMITTAL	PF			4	02/13/23	PUND-1121-0020 PC COMMENTS 4TH SUBMITTAL	PF		
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CITY OF RANCHO CORDOVA		DATE: 05-11-2022 SCALE: AS NOTED DRAWN BY: PJ DESIGNED BY: PF CHECKED BY: BPB		CALIFORNIA																																	





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CIVIL ENGINEERING, LAND SURVEYING, PLANNING
538 COUNTRY STREET, WOODLAND, CA 95693
PHONE (530) 662-1735 • WEB: www.lmaen.net

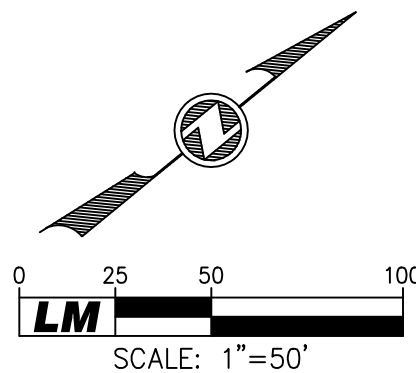
PRELIMINARY DESIGN DOCUMENTS FOR
STONECREEK INDUSTRIAL PARK – PHASE 1
UTILITIES PLAN

PROJECT NO. 4276-12	C401	6
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CITY OF RANCHO CORDOVA
X:\Land Projects\4276-12.dwg 4276-12.P401.dwg 2/10/23 7:21pm p.fardesh

NO.	DATE	REVISION DESCRIPTION	ENGR	APPROVED BY	DATE
A	11/10/21	INITIAL PLAN REVIEW SUBMITTAL	PF		
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3	02/13/23	PLND-1121-0020 PC COMMENTS 4TH SUBMITTAL	PF		

DATE: 05-11-2022
SCALE: AS NOTED
DRAWN BY: PJ
DESIGNED BY: PF
CHECKED BY: BPB



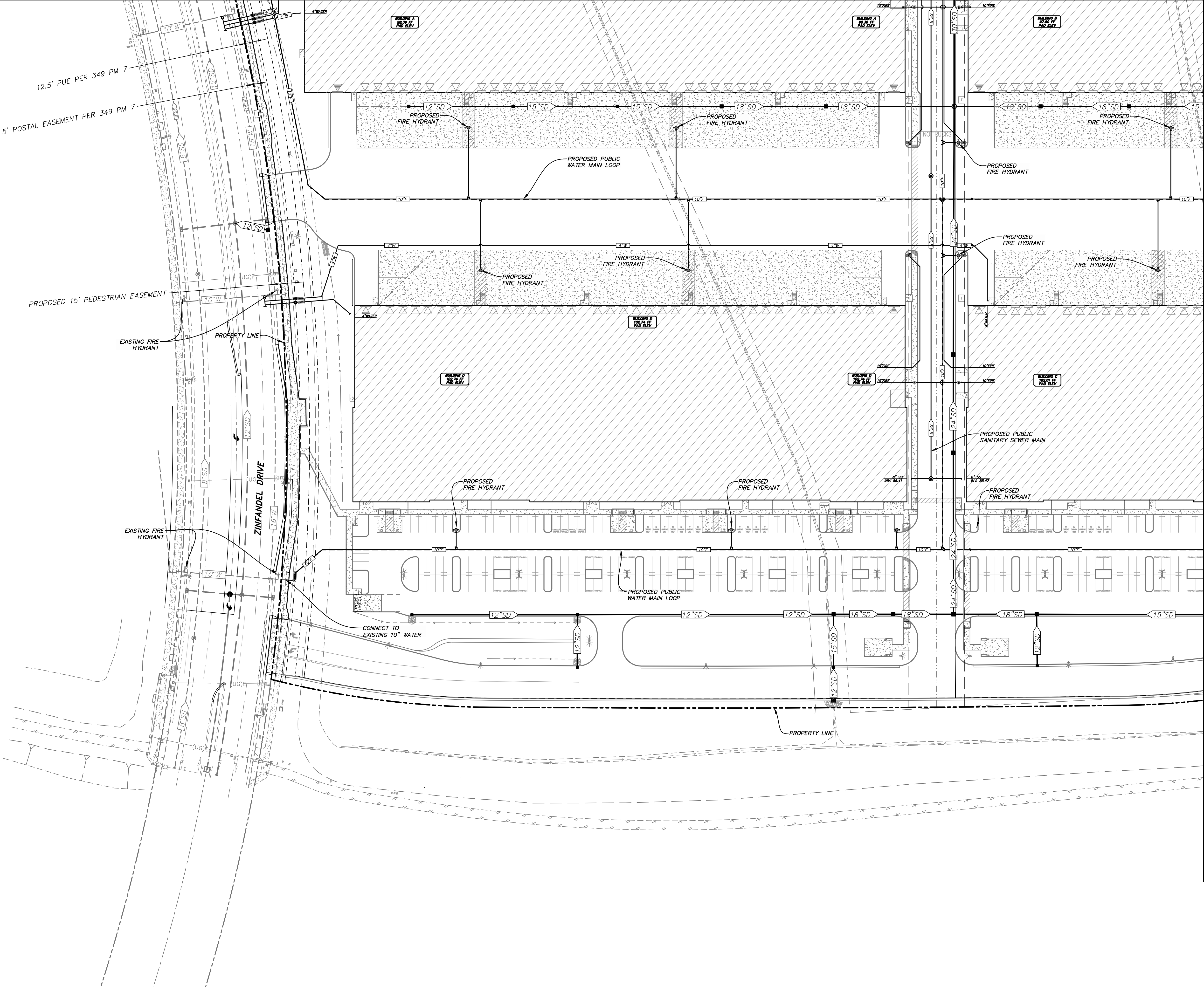
ENGINEERS STAMP

REGISTERED PROFESSIONAL ENGINEER
PAYMON FARDESH
No. 68117
CIVIL
STATE OF CALIFORNIA

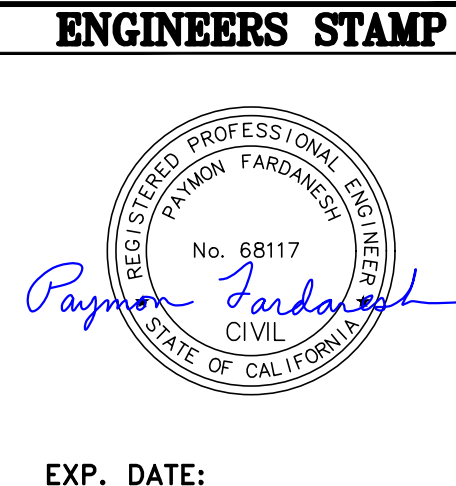
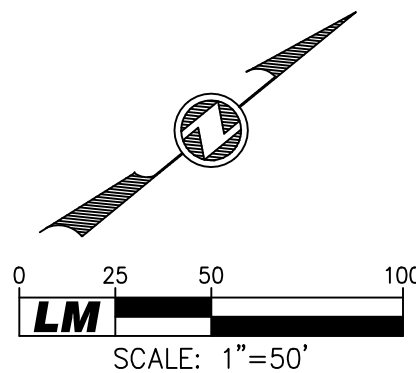
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SEE SHEET C401



SEE SHEET C403



PRELIMINARY DESIGN DOCUMENTS FOR
STONECREEK INDUSTRIAL PARK – PHASE 1
UTILITIES PLAN



DATE: 05-11-2022
SCALE: AS NOTED
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DESIGNED BY: PF
CHECKED BY: BPB

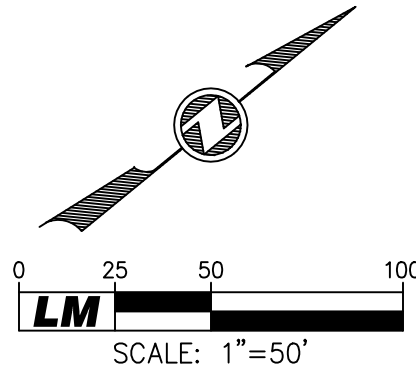
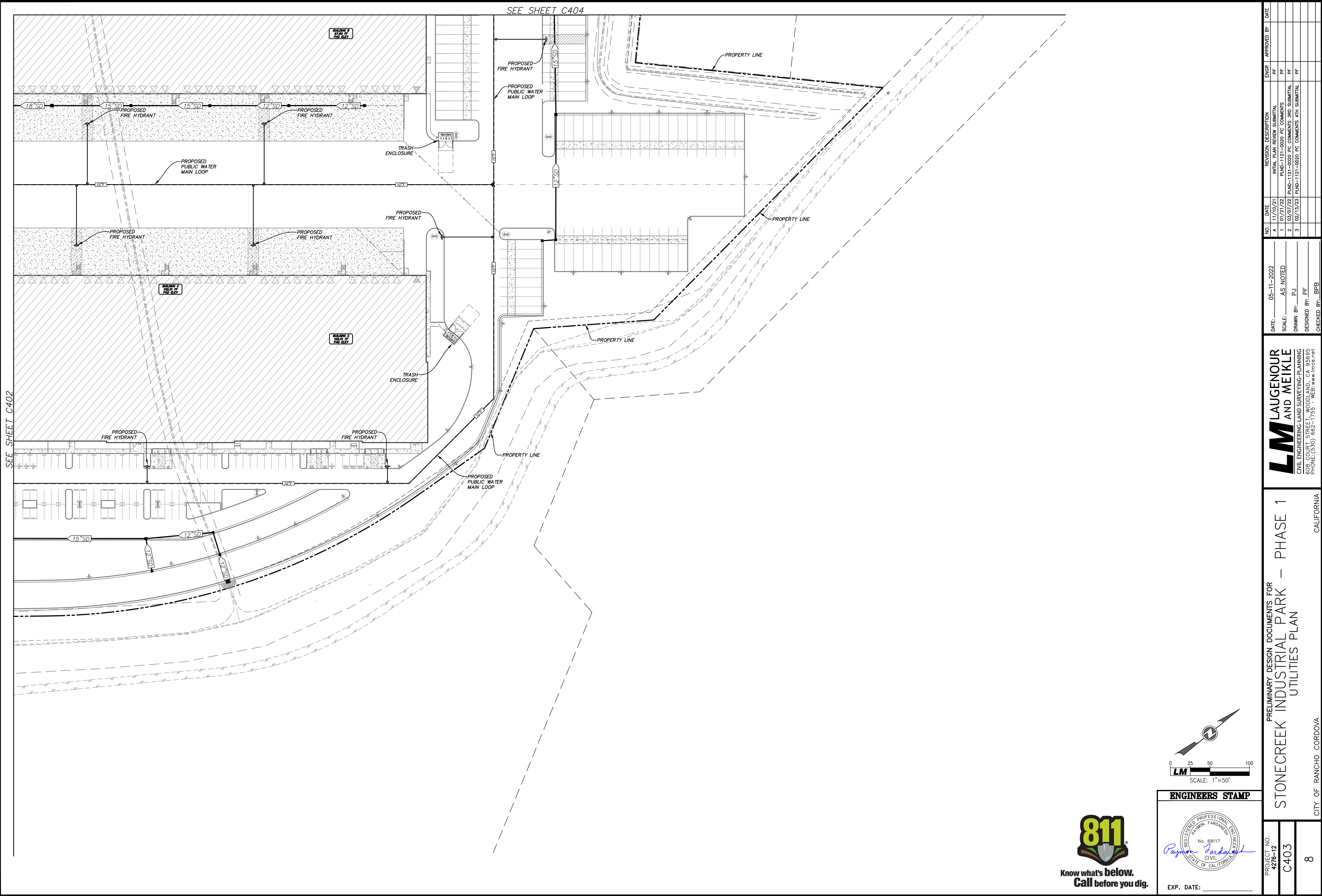
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2	03/07/22	PLND-1121-0020 PC COMMENTS 3RD SUBMITTAL	PF		
3	02/13/23	PLND-1121-0020 PC COMMENTS 4TH SUBMITTAL	PF		

PROJECT NO.
4276-12
C402

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CITY OF RANCHO CORDOVA

CALIFORNIA



ENGINEERS STAMP

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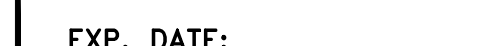
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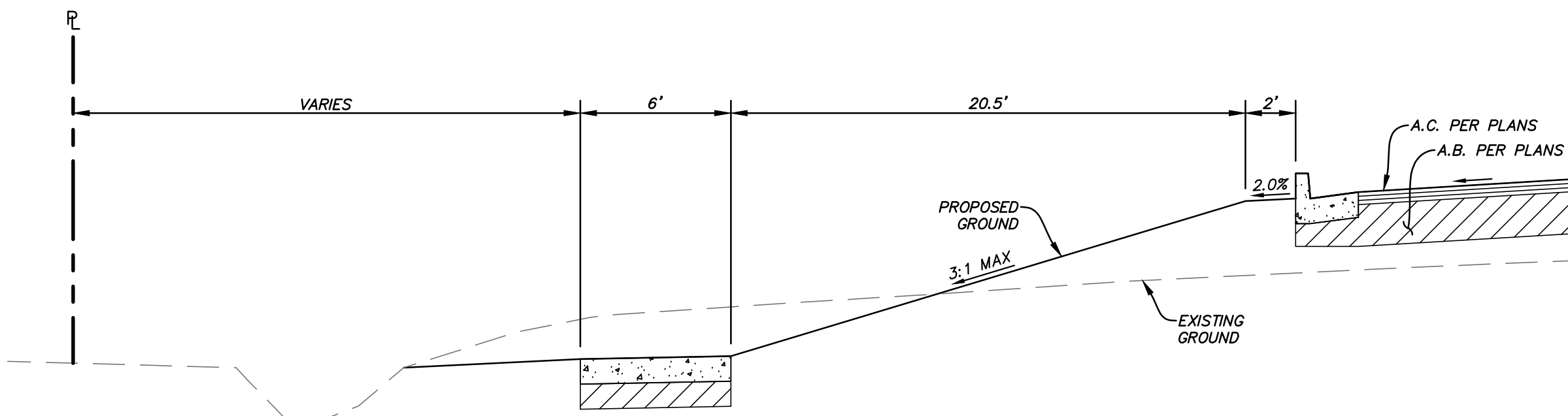
CIVIL ENGINEERING, LAND SURVEYING, PLANNING
508 COUNTRY STREET, WOODLAND, CA 95694
PHONE (530) 662-1725 • WEB: www.lmae.net

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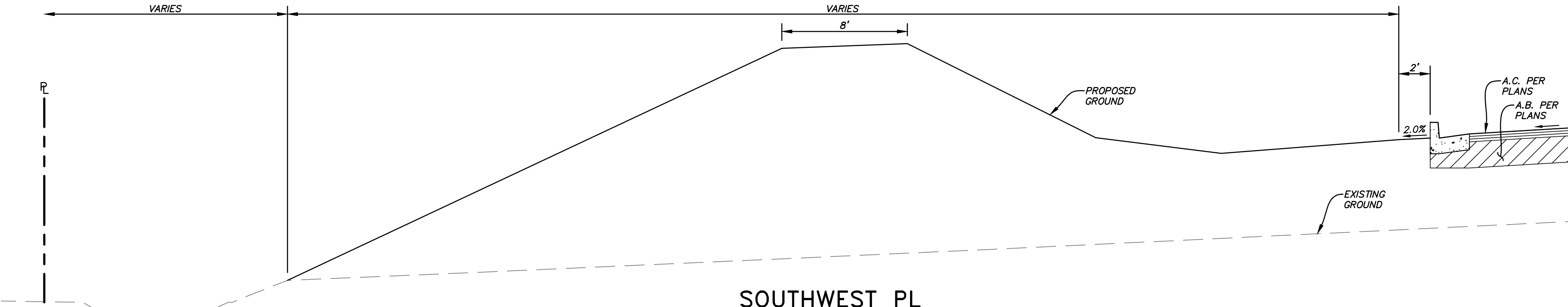
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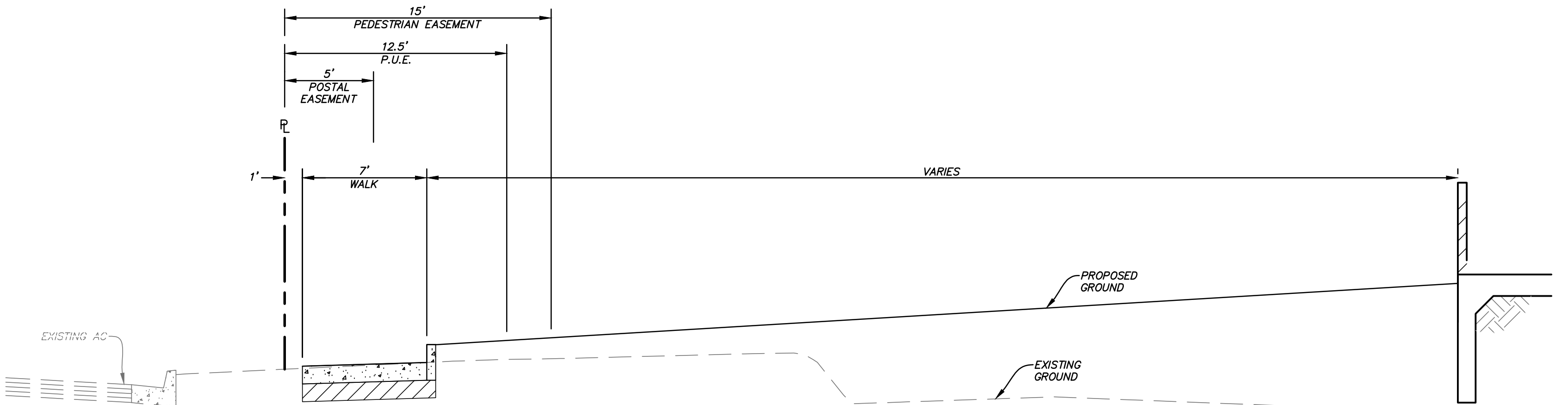
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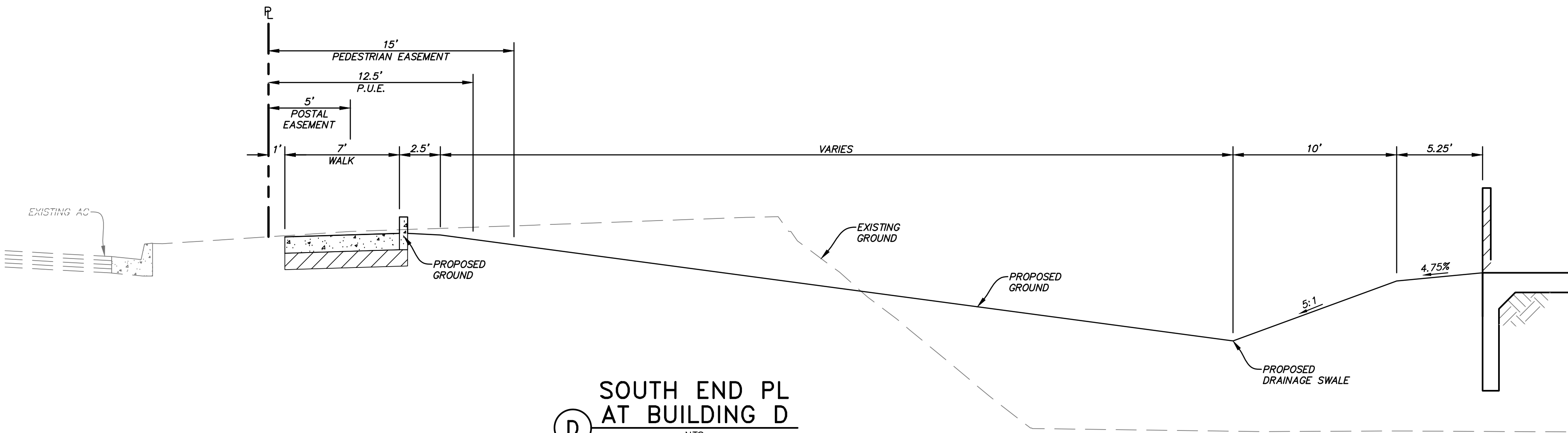
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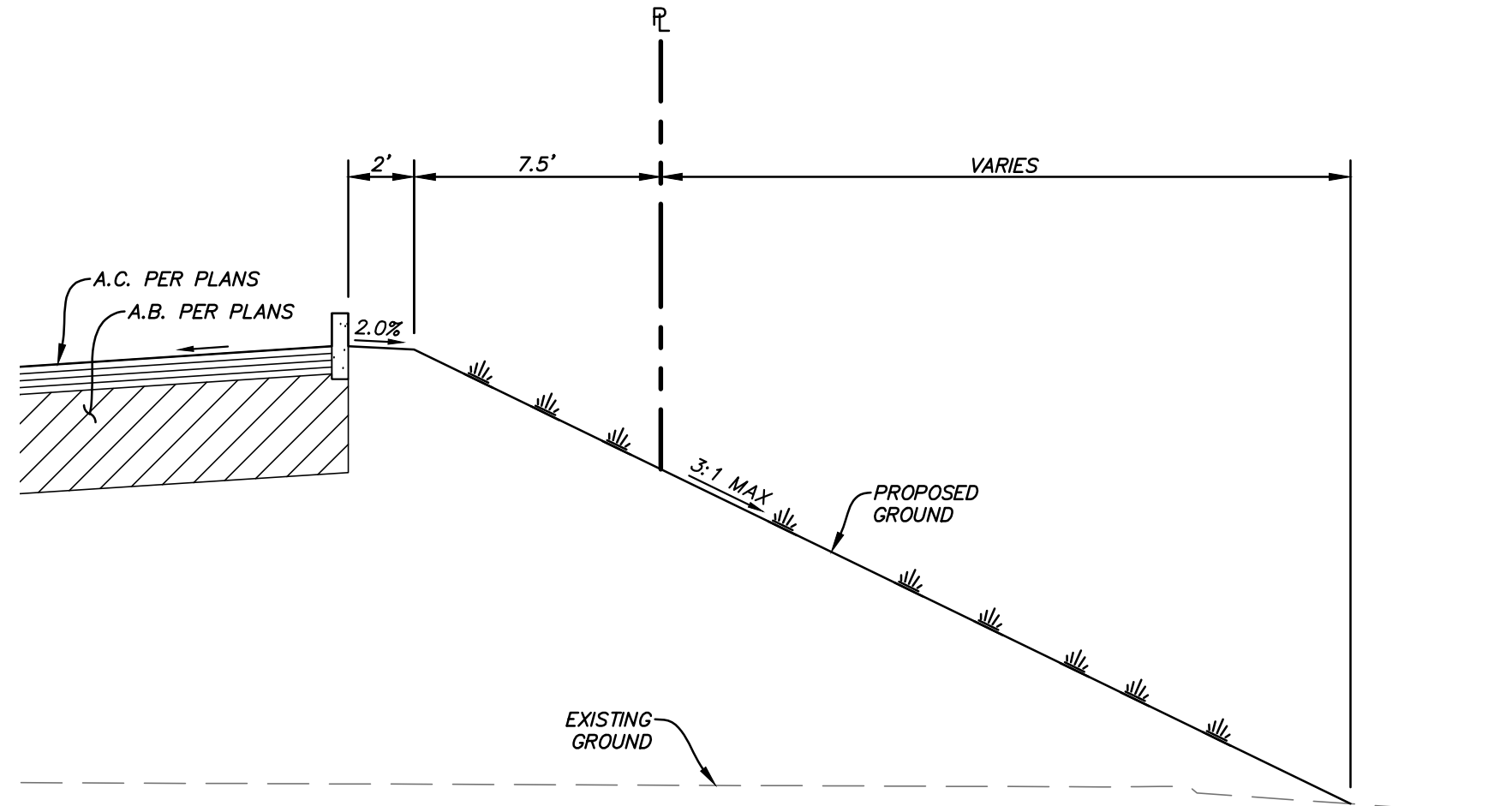
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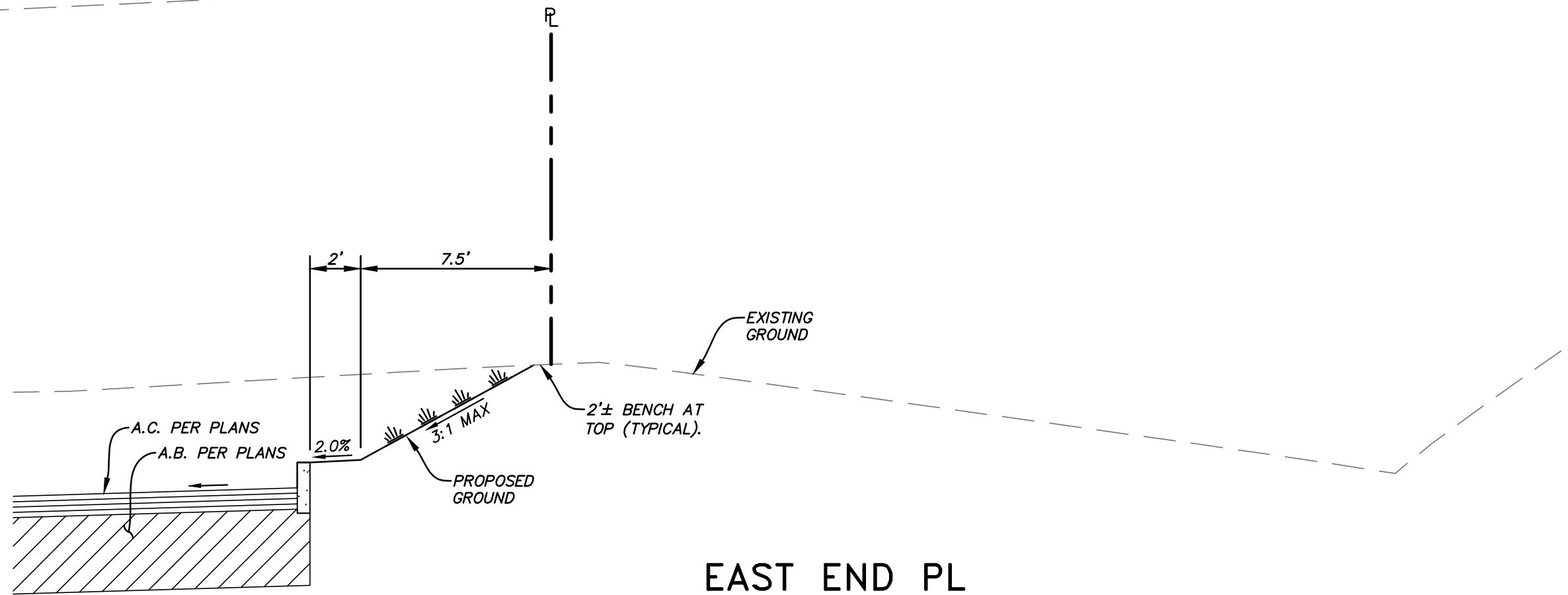
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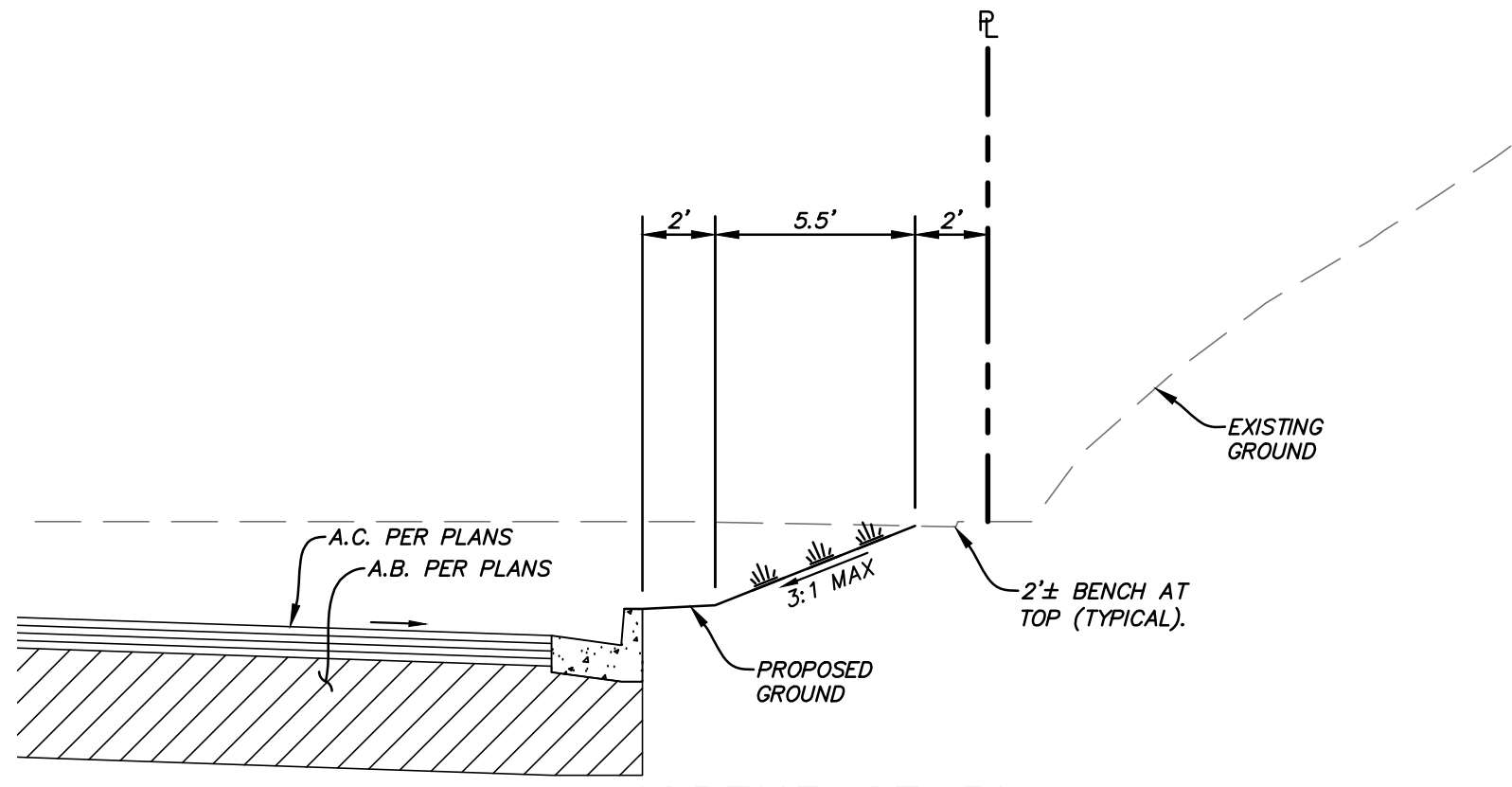
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SOUTHEAST PL
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EAST END PL
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NORTHEAST PL
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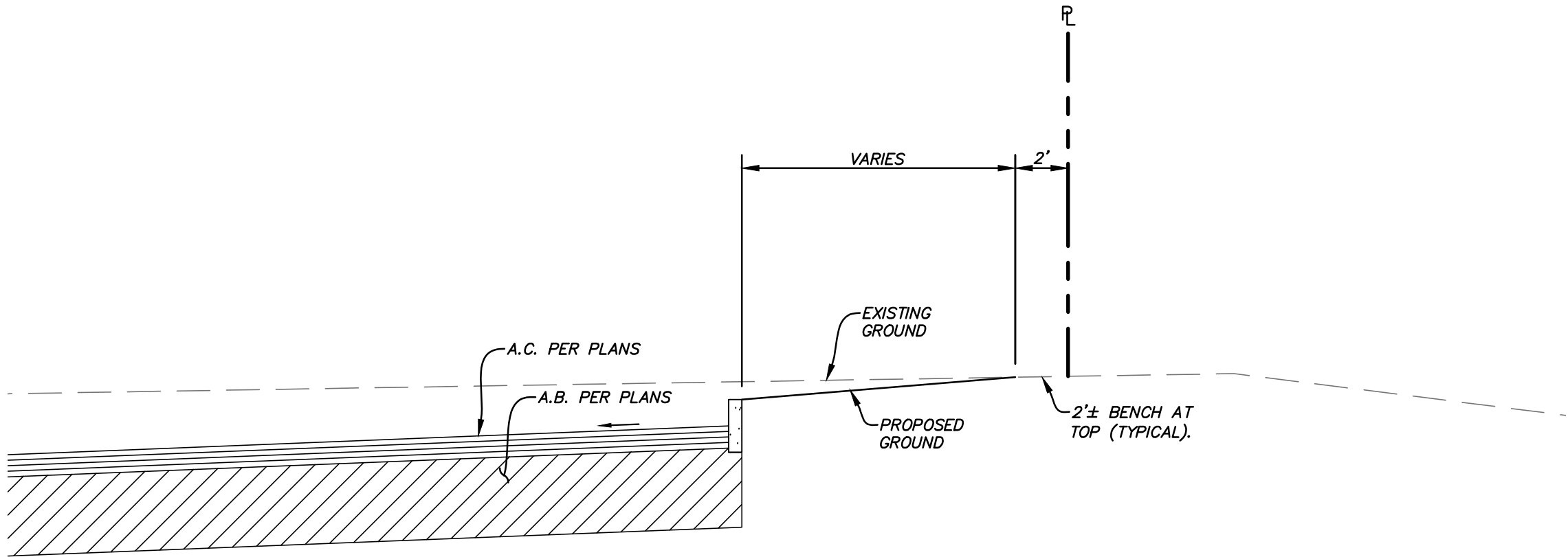
**LAUGENOUR
AND MEIKLE**

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538 COURT STREET, WOODLAND, CA 95694
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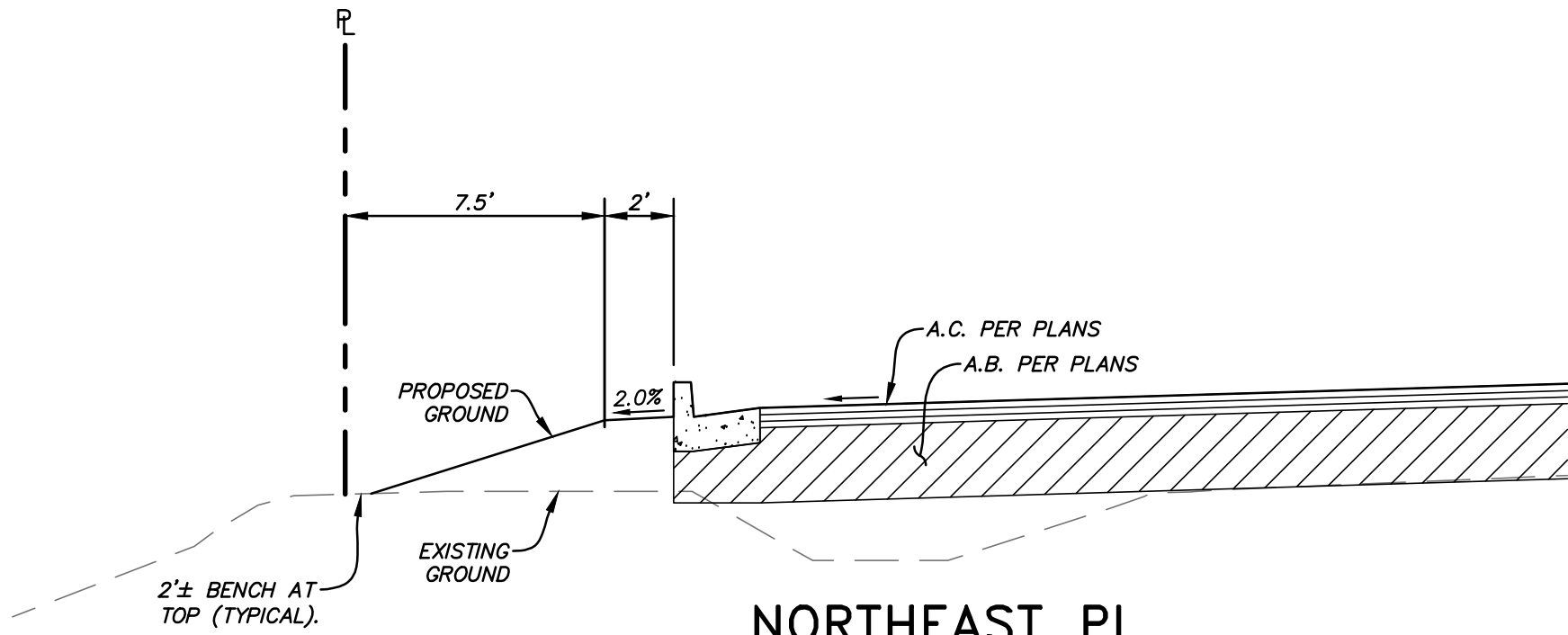
PRELIMINARY DESIGN DOCUMENTS FOR
STONECREEK INDUSTRIAL PARK – PHASE 1
CROSS SECTIONS

CITY OF RANCHO CORDOVA

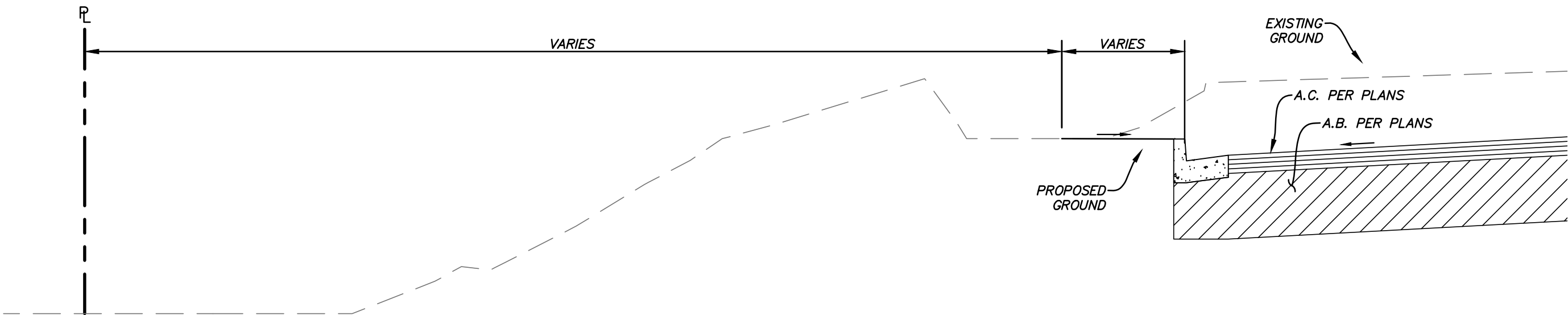
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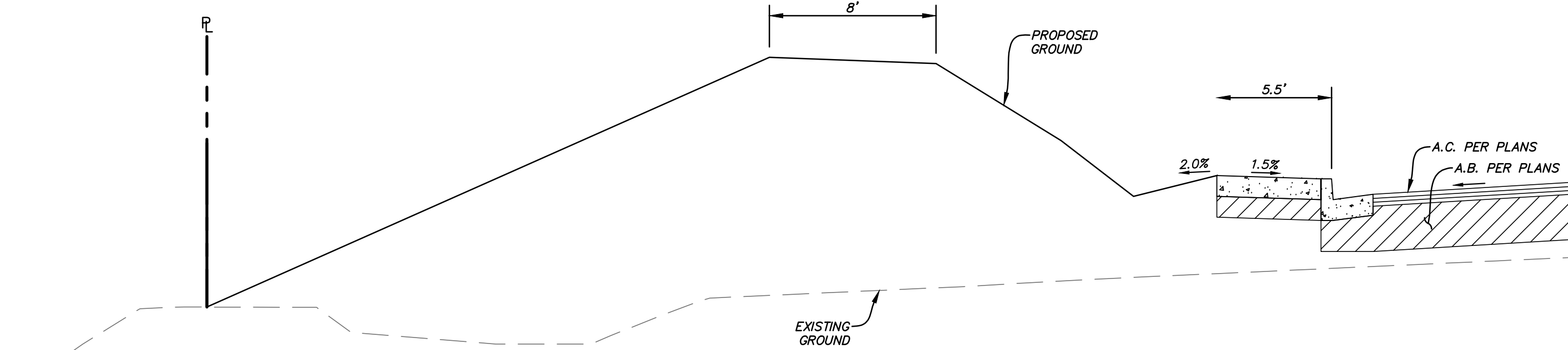
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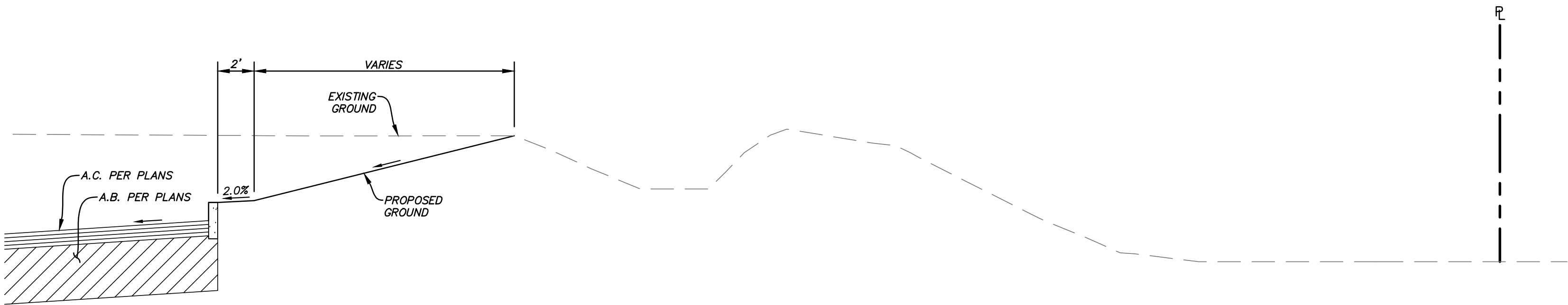
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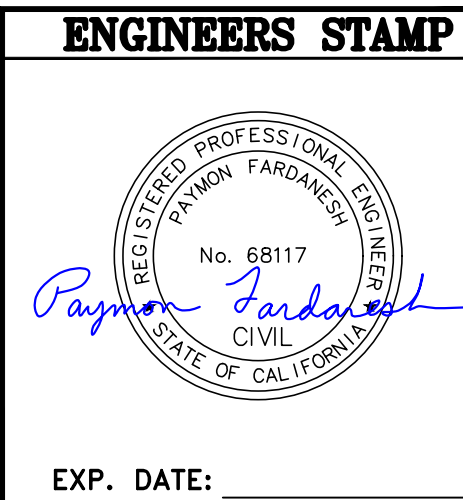
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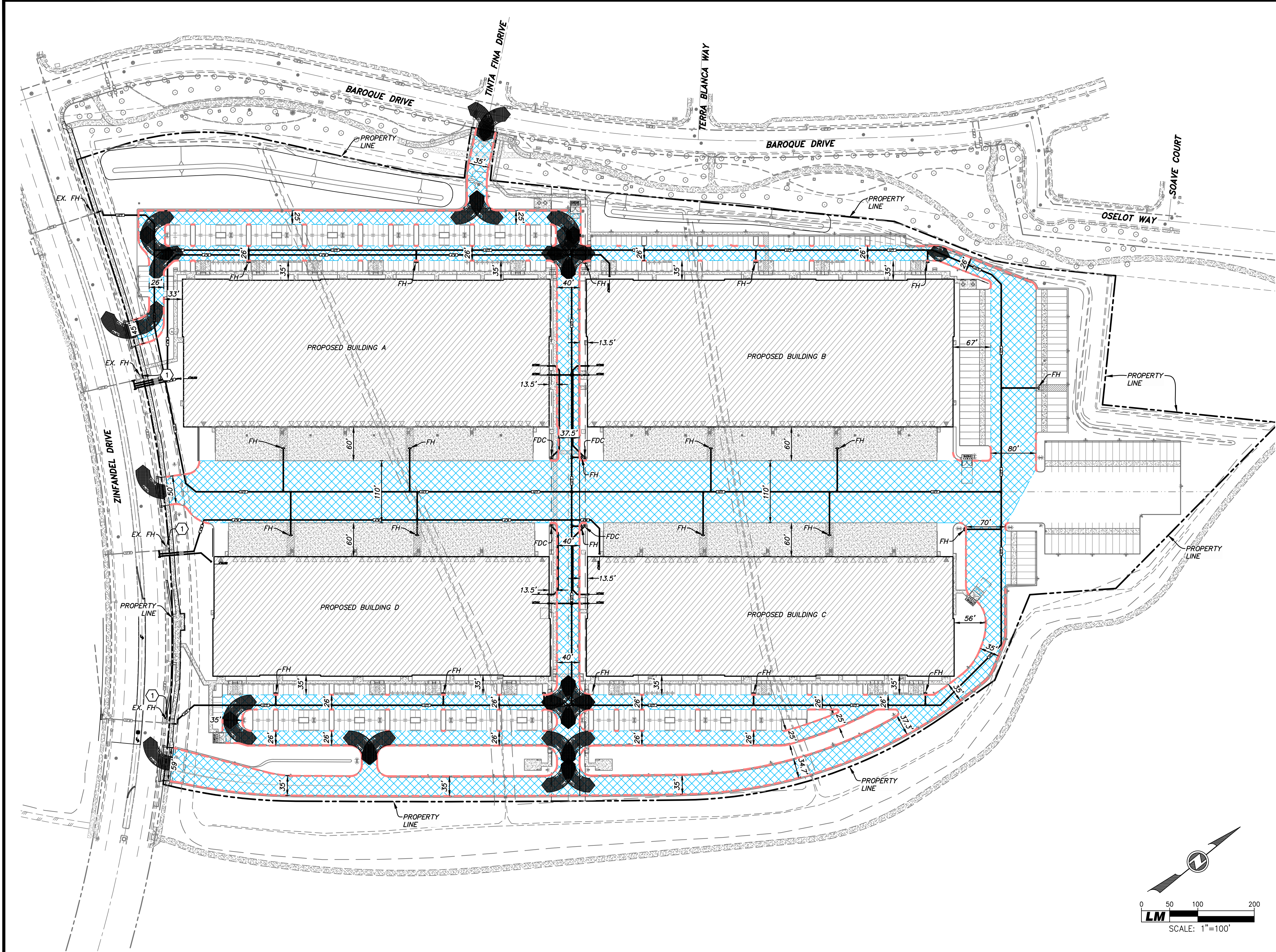
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STONECREEK INDUSTRIAL PARK – PHASE 1
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LM LAUGENOUR
AND MEIKLE
CIVIL ENGINEERING, LAND SURVEYING, PLANNING
308 COURT STREET, WOODLAND, CA 95694
PHONE (530) 662-1725 - WEB: www.lm-enr.net

DATE: 05-11-2022
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CHECKED BY: BPB

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GENERAL NOTES:

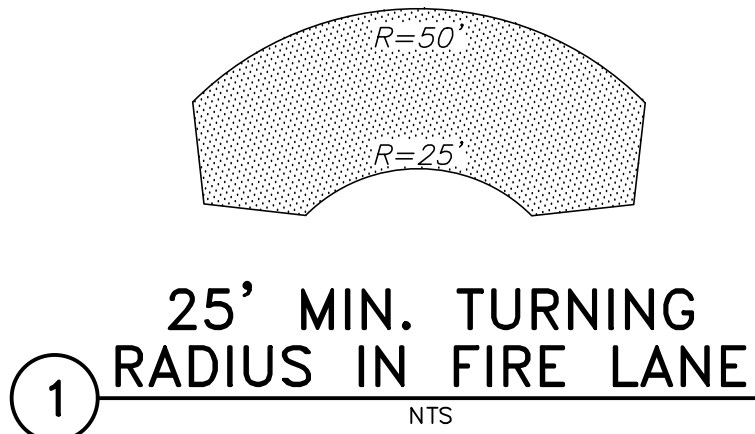
- A. FIRE LANES SHALL BE A MINIMUM OF 20 FEET CLEAR WIDTH AND 13 1/2 FEET CLEAR HEIGHT.
- B. SEE SHEETS C401-C404 FOR WATER MAIN, FIRE MAIN, APPURTENANCES, WATER CONNECTIONS, AND CONSTRUCTION SPECIFICATIONS.
- C. FINAL FIRE ACCESS LANE AFTER CONSTRUCTION.
- D. NO GATES SHALL BE INSTALLED ACROSS THE PROPOSED FIRE ACCESS LANES WITHIN THE LIMITS OF PROJECT IMPROVEMENTS.
- E. CURBS ALONG FIRE LANE SHALL BE PAINTED RED, TYPICAL.

CONSTRUCTION NOTES:

- 1. EXISTING FIRE HYDRANTS SHALL PROVIDE FIRE FIGHTING WATER DURING CONSTRUCTION.

FIRE PROTECTION NOTES:

- A. ALL UNDERGROUND FIRE PROTECTION SHALL BE INSTALLED, TESTED, AND MAINTAINED PER NFPA 24, 2019 EDITION.
- B. ALL FIRE HYDRANTS, PIV/FDC'S SHALL BE INSTALLED SO AS NOT TO BE BLOCKED BY PARKING STALLS, LOADING ZONES, LANDSCAPING, ETC.
- C. ALL FIRE HYDRANTS SHALL HAVE AN 18-INCH CLEARANCE FROM THE CENTER OF THE 4-1/2" DISCHARGE TO FINISHED GRADE LEVEL.
- D. ALL FIRE HYDRANTS SHALL HAVE A BLUE DOT REFLECTOR INSTALLED 12-INCHES OFF CENTERLINE IN FRONT OF ALL FIRE HYDRANTS ON THE HYDRANT SIDE.
- E. ALL FIRE HYDRANTS SHALL BE INSTALLED WITH BREAK-OFF BOLTS AND/OR BREAK-OFF SPOOLS.
- F. ALL FIRE HYDRANTS SHALL BE EQUIPPED WITH A 3'X3' MINIMUM CONCRETE PAD AROUND THEM PER NFPA 24, 2019 EDITION. EXTEND PAD AS SHOWN ON PLANS TO BACK OF CURB.
- G. INSTALL THRUST BLOCK AT ALL WATER FITTINGS PER THE GOLDEN STATE WATER COMPANY STANDARD CONSTRUCTION SPECIFICATION DETAIL P-18 (TYPICAL).
- H. INSTALL WATER VALVES PER THE GOLDEN STATE WATER COMPANY STANDARD CONSTRUCTION SPECIFICATION DETAIL P-32.



APPROVED BY:

SACRAMENTO METRO FIRE

DATE

APPENDIX B

REQUIRED FIRE FLOW FOR ONE- AND TWO-FAMILY DWELLINGS, GROUP R-3 AND R-4 BUILDINGS AND TOWNHOUSES

FIRE-FLOW CALCULATION AREA (square feet)	AUTOMATIC SPRINKLER SYSTEM (Design Standard)	MINIMUM FIRE FLOW (gallons per minute)	FLOW DURATION (hours)
0-3,600	No automatic sprinkler system	1,000	1
3,601 and greater	No automatic sprinkler system	Value in Table B105.1(2)	Duration in Table B105.1(2) at the required fire-flow rate
0-3,600	Section 903.3.1.3 of the California Fire Code or Section 313.3 of the California Residential Code	500	1/2
3,601 and greater	Section 903.3.1.3 of the California Fire Code or Section 313.3 of the California Residential Code	1/2 value in Table B105.1(2)	1

APPENDIX C

REQUIRED NUMBER AND SPACING OF FIRE HYDRANTS

FIRE-FLOW REQUIREMENT (gpm)	MINIMUM NUMBER OF HYDRANTS	AVERAGE SPACING BETWEEN HYDRANTS (feet)	MAXIMUM DISTANCE FROM ANY POINT ON STREET OR ROAD FRONTAGE TO A HYDRANT (feet)
1,750 or less	1	300	250
1,751-2,250	2	450	225
2,251-2,750	3	450	225
2,751-3,250	3	400	225
3,251-4,000	4	350	210
4,001-5,000	5	300	180
5,001-5,500	6	300	180
5,501-6,000	6	250	150
6,001-7,000	7	250	150
7,001 or more	8 or more	200	120

2019 CALIFORNIA FIRE CODE

NATIONAL CODE COUNCIL

Copyright © 2019 by ICC. ALL RIGHTS RESERVED. According to International Building Code®, (1) Other products or services are not intended to be used in conjunction with the International Building Code®, (2) The International Building Code®, (3) The International Fire Code®, (4) The International Mechanical Code®, (5) The International Plumbing Code®, (6) The International Electrical Code®, (7) The International Fire Code®, (8) The International Fire Code®, (9) The International Fire Code®, (10) The International Fire Code®, (11) The International Fire Code®, (12) The International Fire Code®, (13) The International Fire Code®, (14) The International Fire Code®, (15) The International Fire Code®, (16) The International Fire Code®, (17) The International Fire Code®, (18) The International Fire Code®, (19) The International Fire Code®, (20) The International Fire Code®, (21) The International Fire Code®, (22) The International Fire Code®, (23) The International Fire Code®, (24) The International Fire Code®, (25) The International Fire 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- 200' x 1.5 = 300' AVG. SPACING

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508 COURT STREET, WOODLAND, CA 95694
PHONE (530) 662-1765 • WEB www.lm-engineer.net

PRELIMINARY DESIGN DOCUMENTS FOR
STONECREEK INDUSTRIAL PARK – PHASE 1
FIRE PLAN

PROJECT NO.
4276-12
C901
SHEET 12 OF 12

EVERGREEN SCREEN TREES



 *Cedrus deodara* - Deodar Cedar



 *Quercus wislizenii* - Interior Live Oak

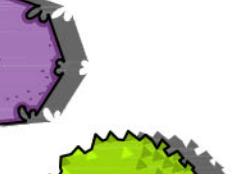
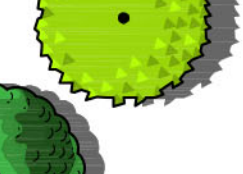
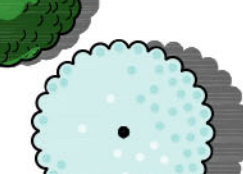
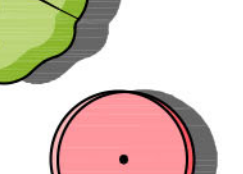
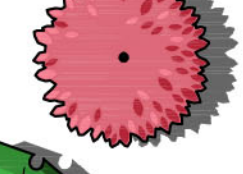


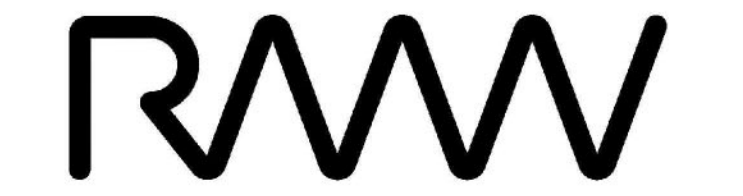
 *Eucalyptus nicholii* - Nichol's Willow-leaved Pepermint



 *Raphiolepis x 'Montic'* - Majestic Beauty Indian Hawthorn

PLANT SCHEDULE

TREES	COMMON NAME
	Deodar Cedar
	Forest Pansy Eastern Redbud
	Cherokee Chief Dogwood
	Nichol's Willow-leaved Peppermint
	Natchez Grape Myrtle
	Columbia London Plane Tree
	Red Oak
	Interior Live Oak
	Majestic Beauty Indian Hawthorn
	Drake Lacebark Elm
	Emerald Sunshine Elm
	Village Green Sawleaf Zelkova

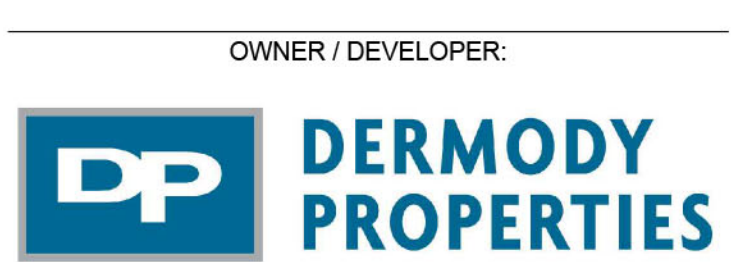


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Partner, West Region

PRELIMINARY DESIGN DOCUMENTS FOR:

STONECREEK
INDUSTRIAL PARK

SOUTH EAST CORNER OF
BAROQUE DRIVE & ZINFANDEL DRIVE
CITY OF RANCHO CORDOVA, CALIFORNIA

approved for the owner by :

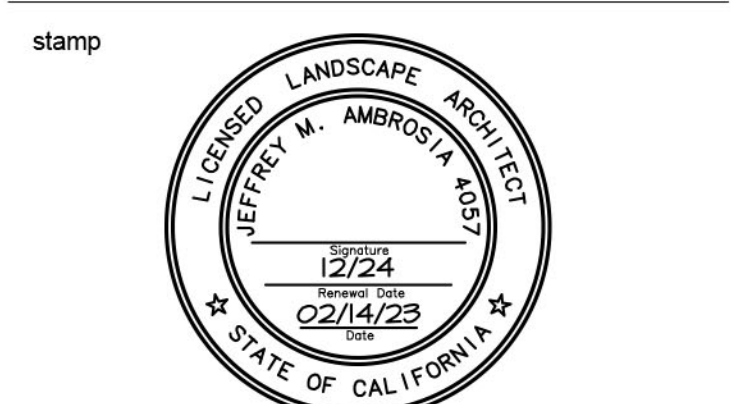
approved for the architect by :

issue :	description :	date :
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	PLND-1121-0000 PC COMMENTS 3RD SUBMITTAL	03-07-2022
	RE-SUBMITTAL TO PLANNING 4TH SUBMITTAL	02-13-2023

TENANT'S DEVELOPMENT MANAGER:

drawn by : RDG plot date : 11-10-2021

checked by : JDL



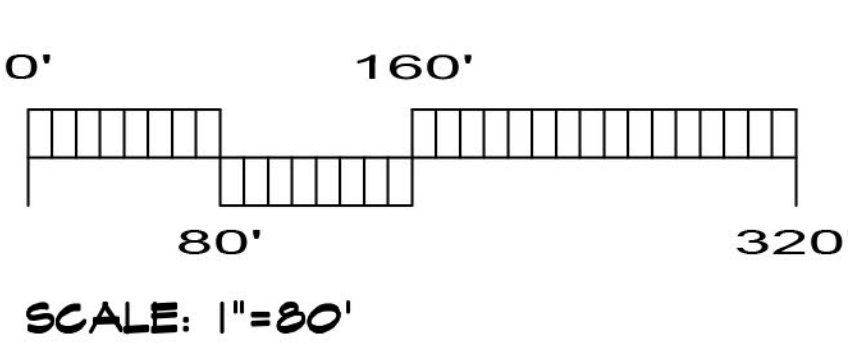
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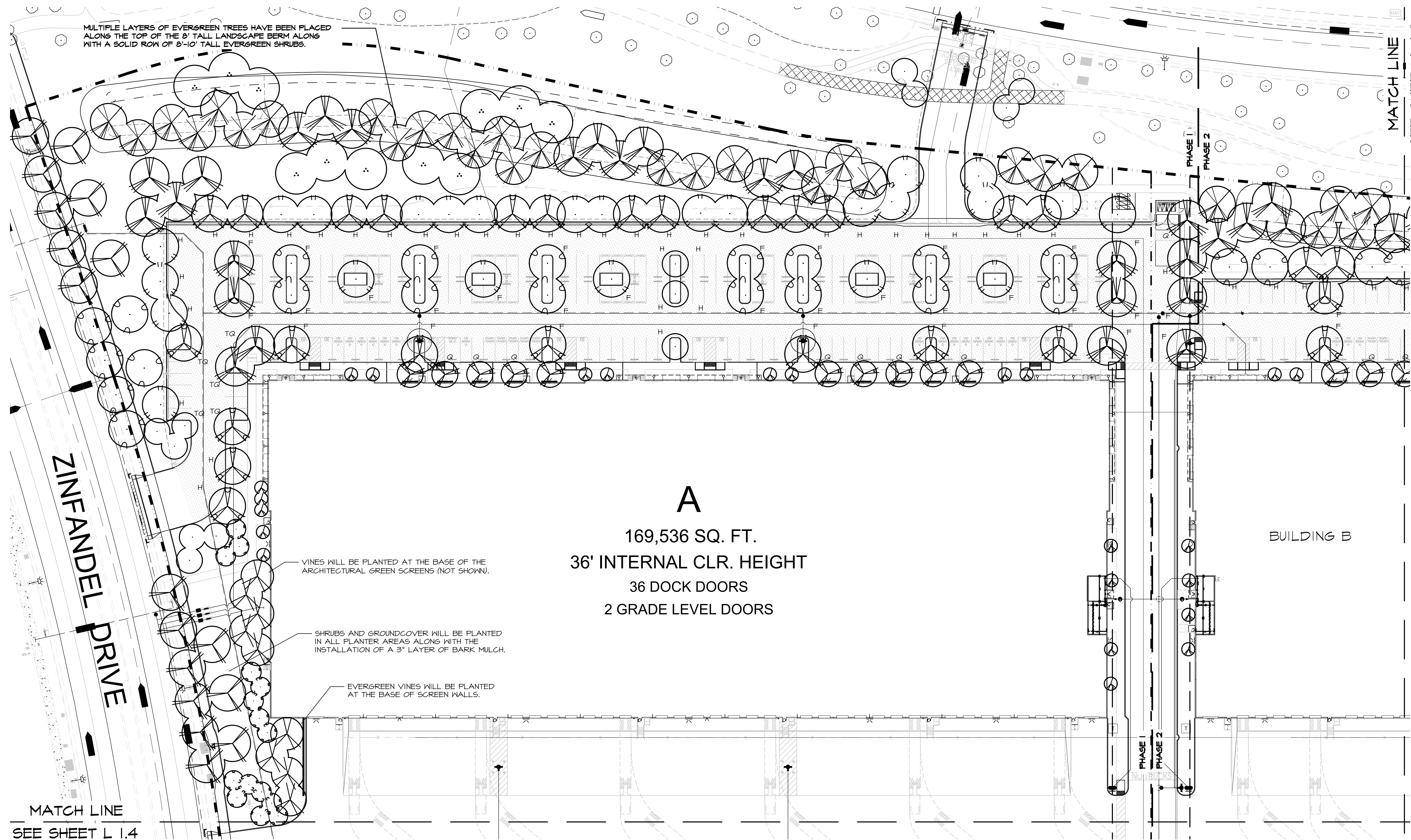
project number : 2214068.00

COLORED
LANDSCAPE PLAN

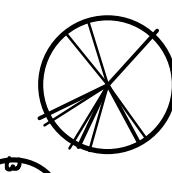
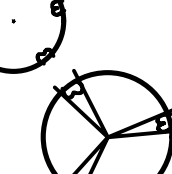
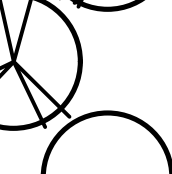
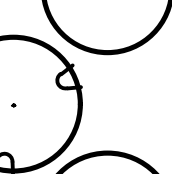
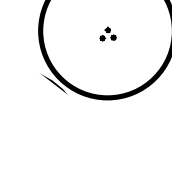
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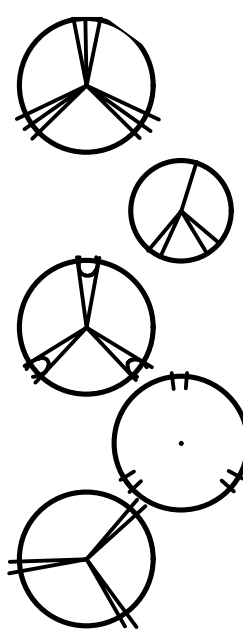
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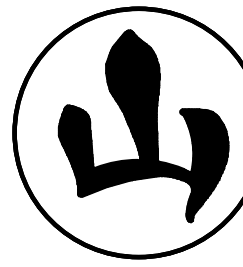
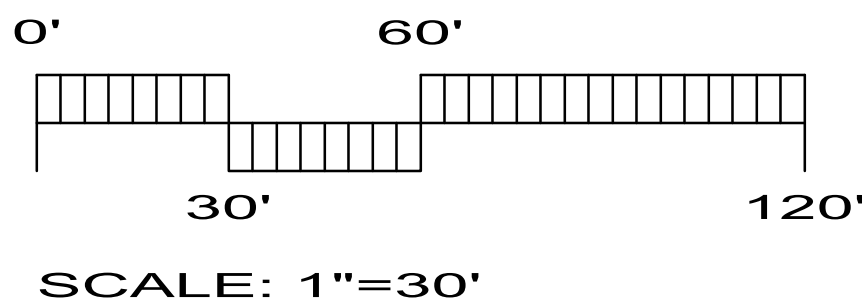


PLANT SCHEDULE

TREES	CODE	QTY	BOTANICAL / COMMON NAME	SIZE
	CED DEO	66	Cedrus deodara / Deodar Cedar	24" box
	CER FOR	48	Cercis canadensis 'Forest Pansy' / Forest Pansy Eastern Redbud	15 gal
	COR CHI	38	Cornus florida 'Cherokee Chief' / Cherokee Chief Dogwood	15 gal
	EUC NIC	72	Eucalyptus nicholii / Nichol's Willow-leaved Peppermint	24" box
	LAG NAT	32	Lagerstroemia indica x fauriei 'Natchez' / Natchez Grape Myrtle	24" box
	PLA COL	56	Platanus x acerifolia 'Columbia' / Columbia London Plane Tree	15 gal
	QUE RUB	11	Quercus rubra / Red Oak	15 gal



QUE WIS	72	Quercus wislizenii / Interior Live Oak	24" box
RHA MAJ	55	Rhaphiolepis x 'Montic' TM / Majestic Beauty Indian Hawthorn	15 gal
ULM DRA	57	Ulmus parvifolia 'Drake' / Drake Lacebark Elm	15 gal
ULM EME	77	Ulmus propinqua 'JFS-Bieberich' TM / Emerald Sunshine Elm	15 gal
ZEL VIL	32	Zelkova serrata 'Village Green' / Village Green Sawleaf Zelkova	15 gal



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GEORGE CONDON
Partner, West Region

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STONECREEK INDUSTRIAL PARK
SOUTH EAST CORNER OF
BAROQUE DRIVE & ZINFANDEL DRIVE
CITY OF RANCHO CORDOVA, CALIFORNIA

approved for the owner by :
approved for the architect by :
issue : description : date :
A INITIAL PLAN REVIEW SUBMITTAL 03-09-2022

L1.1	L1.2
L1.4	L1.3

KEY MAP

TENANT'S DEVELOPMENT MANAGER:

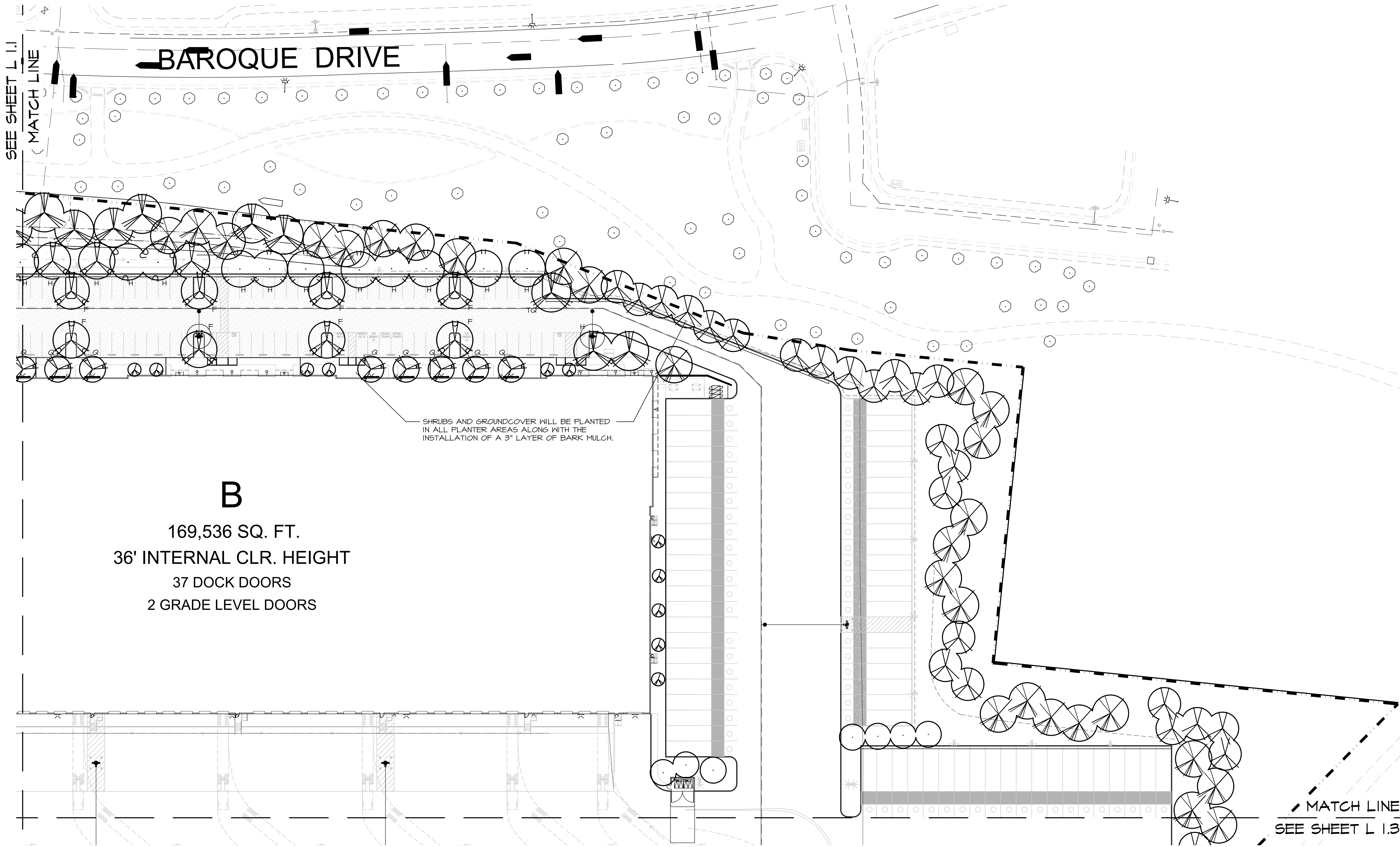
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checked by :
stamp



scale : AS NOTED
project number : 2214068.00

PLANTING PLAN A

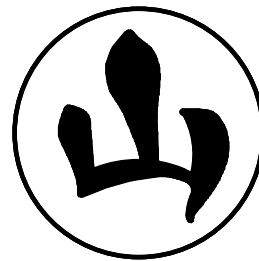
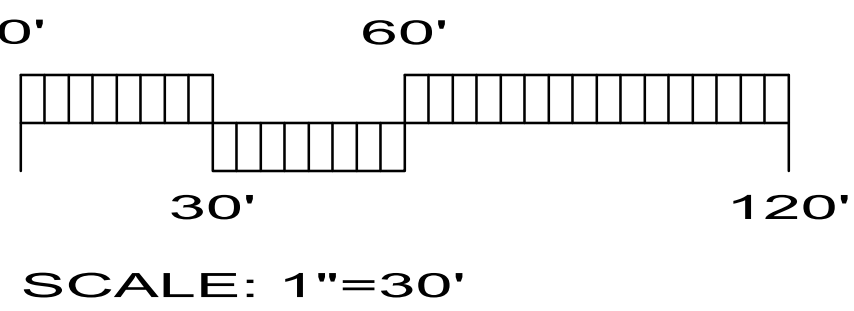
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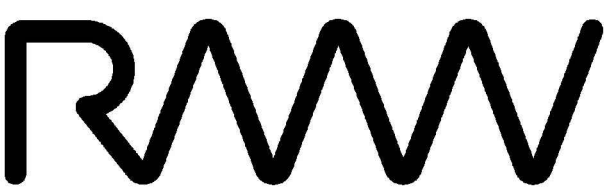
PLANT SCHEDULE

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	CER FOR	48	Cercis canadensis 'Forest Pansy' / Forest Pansy Eastern Redbud	15 gal
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	EUC NIC	72	Eucalyptus nicholii / Nichol's Willow-leaved Peppermint	24" box
	LAG NAT	32	Lagerstroemia indica x fauriei 'Natchez' / Natchez Crape Myrtle	24" box
	PLA COL	56	Platanus x acerifolia 'Columbia' / Columbia London Plane Tree	15 gal
	QUE RUB	11	Quercus rubra / Red Oak	15 gal

	QUE WIS	72	Quercus wislizenii / Interior Live Oak	24" box
	RHA MAJ	55	Raphiolepis x 'Montic' TM / Majestic Beauty Indian Hawthorn	15 gal
	ULM DRA	57	Ulmus parvifolia 'Drake' / Drake Lacebark Elm	15 gal
	ULM EME	77	Ulmus propinqua 'JFS-Bieberich' TM / Emerald Sunshine Elm	15 gal
	ZEL VIL	32	Zelkova serrata 'Village Green' / Village Green Sawleaf Zelkova	15 gal



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L1.1	L1.2
L1.4	L1.3

KEY MAP

TENANT'S DEVELOPMENT MANAGER:

drawn by : plot date :

checked by :

stamp



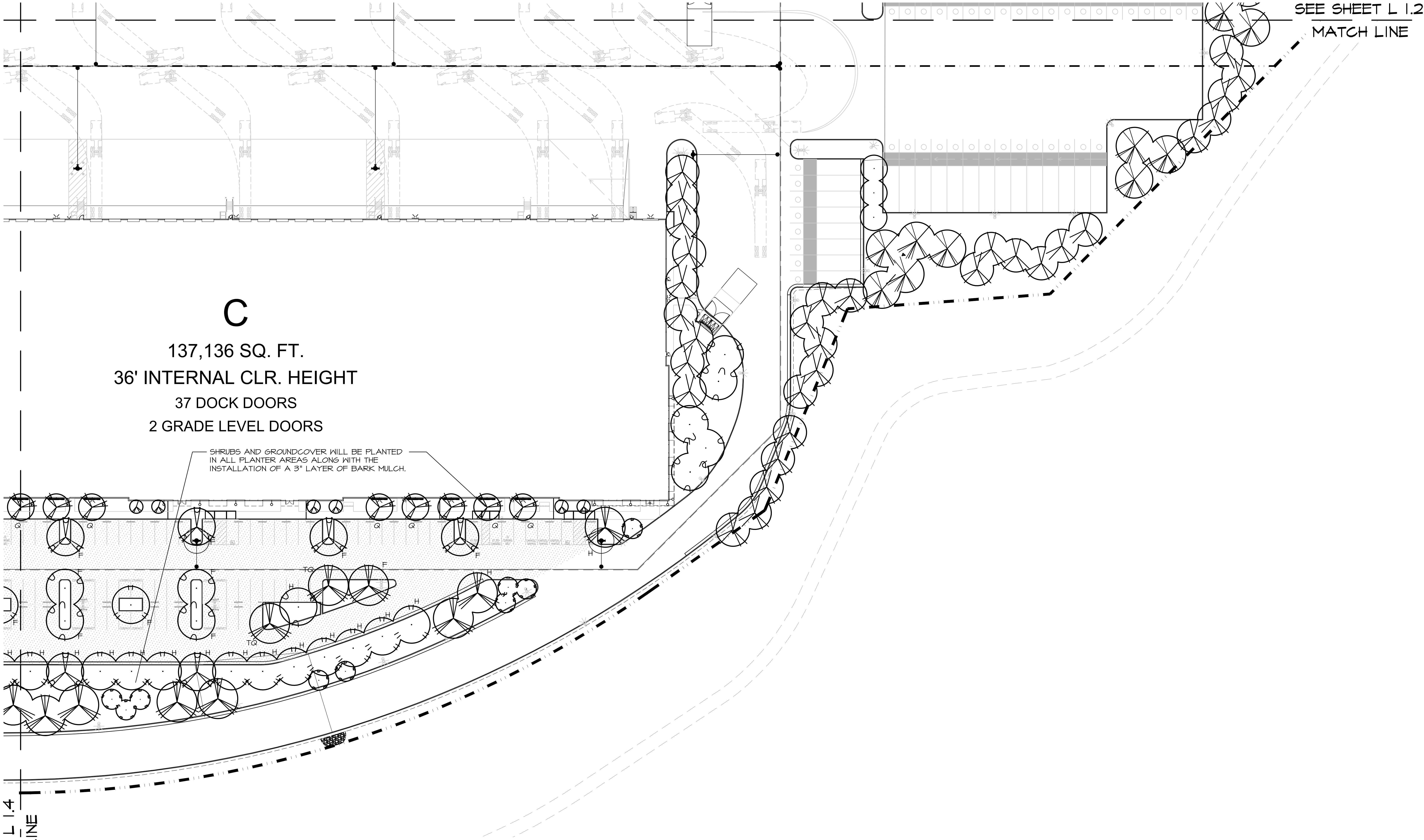
scale : AS NOTED

project number : 2214068.00

PLANTING PLAN B

sheet no. :

L1.2



C
137,136 SQ. FT.
36' INTERNAL CLR. HEIGHT
37 DOCK DOORS
2 GRADE LEVEL DOORS

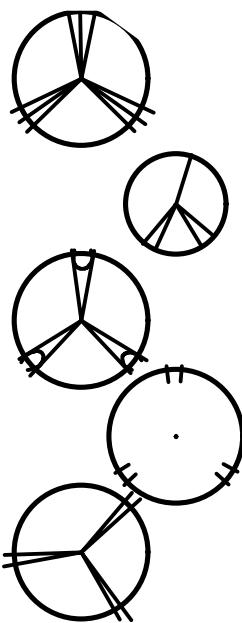
SHRUBS AND GROUNDCOVER WILL BE PLANTED
IN ALL PLANTER AREAS ALONG WITH THE
INSTALLATION OF A 3" LAYER OF BARK MULCH.

SEE SHEET L 1.4
MATCH LINE

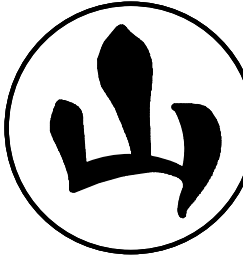
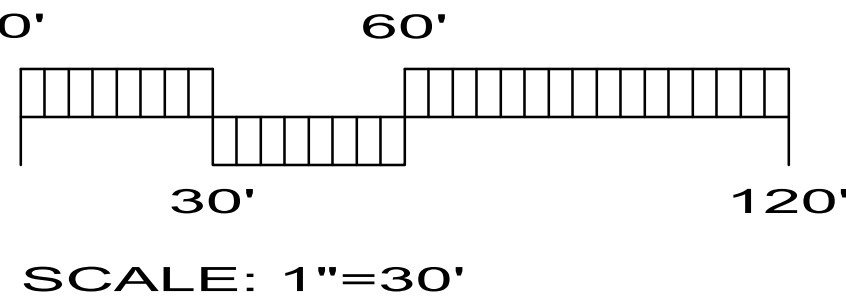
SEE SHEET L 1.2
MATCH LINE

PLANT SCHEDULE

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date :	
A	INITIAL PLAN REVIEW SUBMITTAL
	03-09-2022

L1.1	L1.2
L1.4	L1.3

KEY MAP

TENANT'S DEVELOPMENT MANAGER:

drawn by :

checked by :

stamp

plot date :

scale :

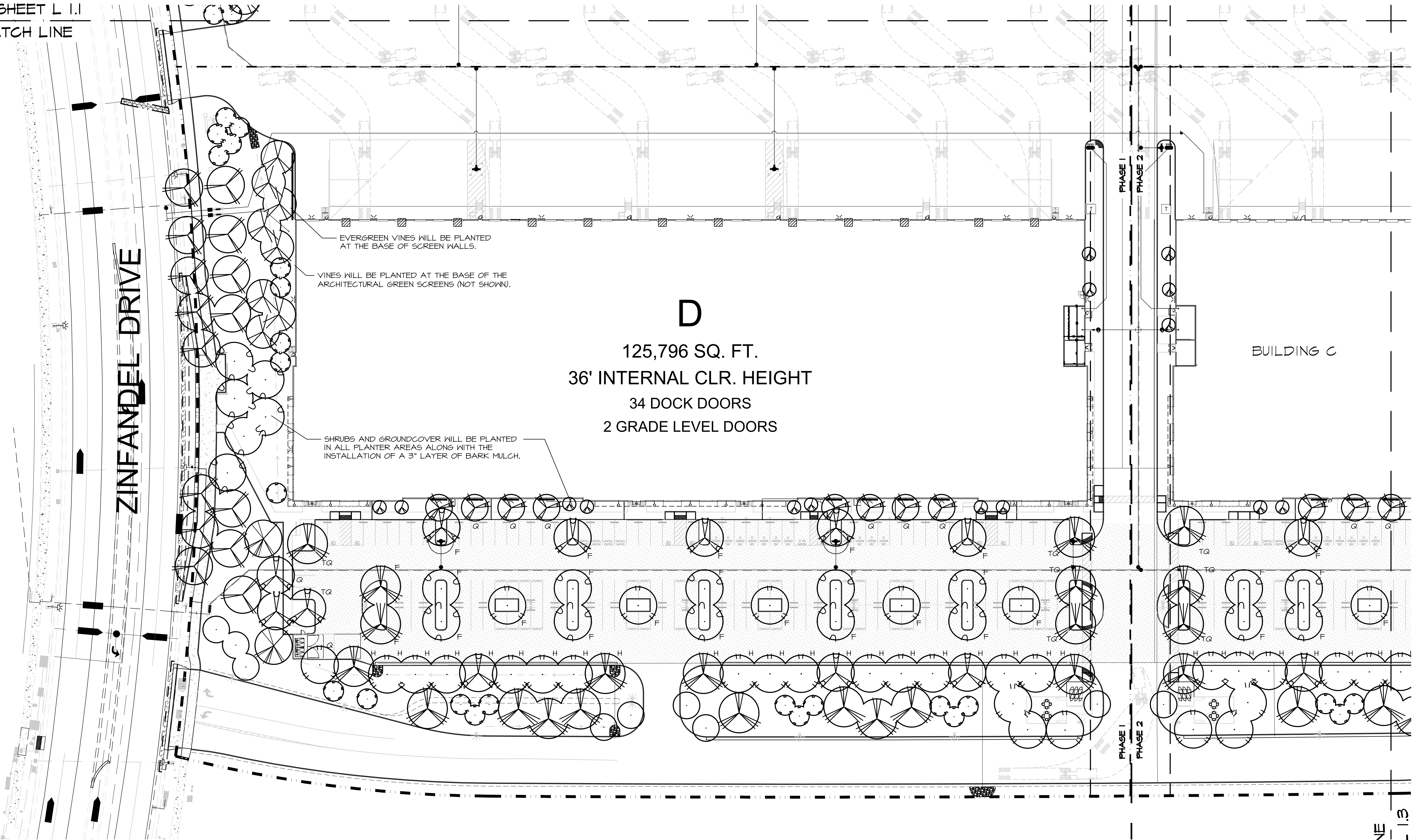
project number :

AS NOTED

2214068.00

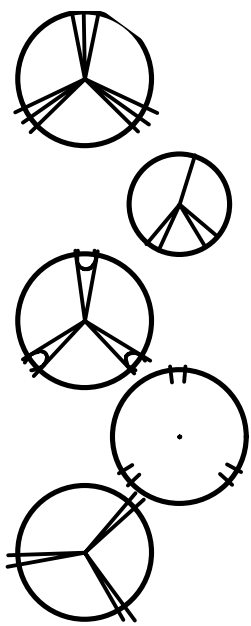
PLANTING PLAN C

SEE SHEET L 1.1
MATCH LINE

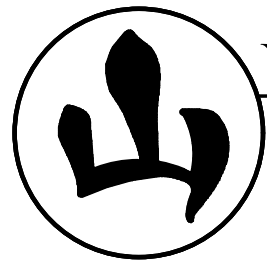
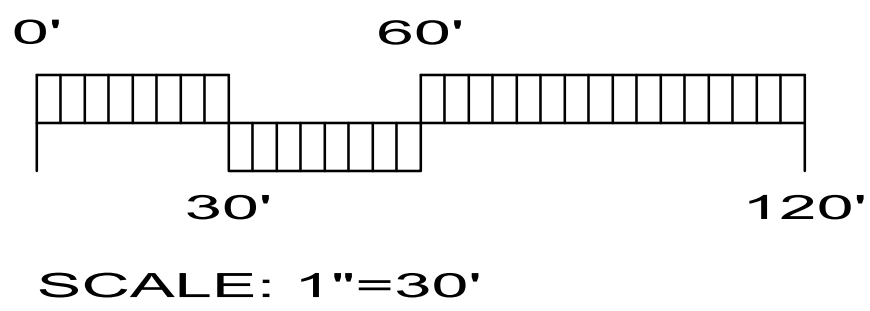


PLANT SCHEDULE

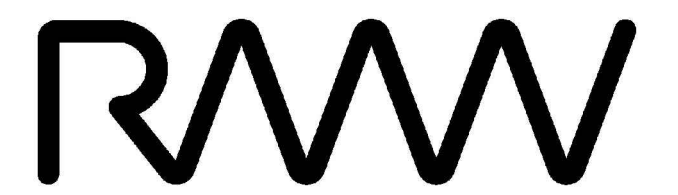
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issue :	description :	date :
A	INITIAL PLAN REVIEW SUBMITTAL	03-09-2022

L1.1	L1.2
L1.4	L1.3

KEY MAP

TENANT'S DEVELOPMENT MANAGER:

MATCH LINE
SEE SHEET L 1.3

drawn by : plot date :

checked by :

stamp



scale : AS NOTED

project number : 2214068.00

PLANTING PLAN D

sheet no. :

L1.4

PLANT SCHEDULE

TREES	CODE	BOTANICAL / COMMON NAME	SIZE	WUGOLS	H x W
	CED DEO	Cedrus deodara / Deodar Cedar	24" box	L	75'x30'
	GER FOR	Cercis canadensis 'Forest Pansy' / Forest Pansy Eastern Redbud	15 gal	L	20'x25'
	COR CHI	Cornus florida 'Cherokee Chief' / Cherokee Chief Dogwood	15 gal	L	20'x20'
	EUC NIC	Eucalyptus nicholii / Nichol's Willow-leaved Peppermint	24" box	L	20'x25'
	LAG NAT	Lagerstroemia indica x fauriei 'Natchez' / Natchez Crape Myrtle	24" box	L	30'x20'
	PLA COL	Platanus x acerifolia 'Columbia' / Columbia London Plane Tree	15 gal	L	75'x30'
	QUE RUB	Quercus rubra / Red Oak	15 gal	L	80'x30'
	QUE WIS	Quercus wislizenii / Interior Live Oak	24" box	L	80'x30'
	RHA MAJ	Raphiolepis x 'Montic' TM / Majestic Beauty Indian Hawthorn	15 gal	L	12'x10'
	ULM DRA	Ulmus parvifolia 'Drake' / Drake Lacebark Elm	15 gal	L	45'x30'
	ULM EME	Ulmus propinqua 'JF5-Bleberich' TM / Emerald Sunshine Elm	15 gal	M	35'x25'
	ZEL VIL	Zelkova serrata 'Village Green' / Village Green Sawleaf Zelkova	15 gal	L	50'x30'
	CODE	BOTANICAL / COMMON NAME	SIZE	WUGOLS	
	GAL DNA	Callistemon viminalis 'Little John' / Dwarf Weeping Bottlebrush	5 gal	L	
	CAM ETY	Camellia s. 'Shishi Gashira' / Shishi Gashira Camellia	5 gal	M	
	CIS GRI	Cistus crispatus 'Warley Rose' / Rockrose	5 gal	L	
	CIS PR2	Cistus salvifolius 'Prostratus' / Sageleaf Rockrose	5 gal	L	
	CIS PUR	Cistus x purpureus / Orchid Rockrose	5 gal	L	
	COL SUN	Coleonema pulchrum 'Sunset Gold' / Golden Breath Of Heaven	5 gal	L	
	DIE VEG	Dietes vegeta / African Iris	1 gal	L	
	ELA MAC	Elaeagnus pungens 'Maculata' / Eleagnus	5 gal	L	
	GRE NOE	Grevillea x 'Noelliii' / Grevillea	5 gal	L	
	LAU LIT	Laurus nobilis 'Little Ragu' / Emerald Wave Sweet Bay	5 gal	L	
	MAH AQU	Mahonia aquifolium / Oregon Grape	5 gal	L	
	MAH SOF	Mahonia eurybracteata 'Soft Caress' / Soft Caress Mahonia	5 gal	L	
	NAN GUL	Nandina domestica 'Gulf Stream' TM / Heavenly Bamboo	5 gal	L	
	PIT VAR	Pittosporum tobira 'Variegata' / Variegated Mock Orange	5 gal	L	
	PRU COM	Prunus caroliniana 'Compacta' / Compact Carolina Laurel Cherry	5 gal	L	
	RHA EVE	Rhamnus californica 'Eve Case' / California Coffeeberry	5 gal	L	
	RHA BAL	Raphiolepis indica 'Ballerina' / Ballerina Indian Hawthorn	1 gal	M	
	RHA DNA	Raphiolepis umbellata 'Minor' / Dwarf Yedda Hawthorn Standard	5 gal	L	
	ROS COL	Rosmarinus o. 'Collingwood Ingram' / Collingwood Ingram Rosemary	5 gal	L	
	VIB DAV	Viburnum davidii / David Viburnum	5 gal	L	
	XYL CON	Xylosma congestum / Shiny Xylosma	5 gal	M	
	CODE	BOTANICAL / COMMON NAME	SIZE	WUGOLS	
	MUH RIG	Muhlenbergia rigens / Deer Grass	1 gal	L	
	PEN ORI	Pennisetum orientale / Oriental Fountain Grass	1 gal	L	
	GEL CAR	Gelsemium sempervirens / Carolina Jessamine - Espalier	5 gal	L	
	MAC UNG	Macfadyena unguis-cati / Cat's Claw Creeper	5 gal	L	

POTENTIAL GROUND COVERS	CODE	BOTANICAL / COMMON NAME	SIZE	SPACING	WUGOLS
	ACA LOW	Acacia redolens 'Low Boy' / Low Boy Bank Catclaw	1 gal	72" o.c.	L
	ARG ECP	Arctostaphylos x 'Emerald Carpet' / Emerald Carpet Manzanita	1 gal	48" o.c.	L
	CIS PRO	Cistus salvifolius 'Prostratus' / Sageleaf Rockrose	1 gal	60" o.c.	L
	COT LOW	Cotoneaster dammeri 'Lowfast' / Lowfast Bearberry Cotoneaster	1 gal	60" o.c.	L
	MUH CAP	Muhlenbergia capillaris 'Regal Mist' TM / Muhly	1 gal	48" o.c.	L
	SAL BEE	Salvia x 'Bee's Bliss' / Bee's Bliss Sage	1 gal	48" o.c.	L
	TRA JAS	Trachelospermum jasminoides / Star Jasmine	1 gal	36" o.c.	M
	VIN CO2	Vinca minor / Common Periwinkle	1 gal	24" o.c.	M
	HYD-SEE	Non Irrigated Hydroseed / Grass Wildflower Blend	Hydroseed		
HYDROSEED	CODE	BOTANICAL / COMMON NAME	SIZE	SPACING	
	HYD-SEE	Non Irrigated Hydroseed / Grass Wildflower Blend	Hydroseed		

PLANTING STATEMENT

The landscape plant palette consists of low water use shrubs, ground covers, trees, and ornamental grasses that are considered low maintenance and hardy. Choice of plants is guided by considerations of solar exposure and climate conditions of the site. Plant selection aims for longevity by selecting plants that are long lived varieties of trees, shrubs, ground covers, and grasses.

Plant design varies in form, texture and color. Informal planting patterns are preferred over uniform symmetrical planting patterns. Use of flowering trees and colorful plantings have been located at pedestrian and driveway entries. Planting design takes ease of maintenance into consideration by minimizing some of the following: plant material that may attract or harbor pests/disease; trees that drop extreme amounts of litter (e.g. Liquidambar, fruit trees, etc.); plant material with a mature size larger than the space provided for growth; perennial plants that die back in winter months.

All planted areas shall be properly amended, compacted and finish graded prior to planting. A pre-emergent herbicide will be installed in all shrub and groundcover planting areas to control weeds. All landscape areas will be top dressed with a 3-inch depth of shredded bark mulch (no shredded Redwood).

Shrubs and ground covers will be no less than #1 size. 25% of the trees must be planted from 24" box containers with the balance of the trees to be minimum #15 containers. 30% of the trees must be evergreen. Plant materials shall be spaced to provide substantial cover, but also to allow adequate room to mature into their natural form and ultimate size without required pruning.

Root barriers are required for all trees planted within 10'-0" of paving or hardscape.

IRRIGATION STATEMENT

The Irrigation system will be serviced by a new point of connection. The Irrigation design will consist of low volume point source drip Irrigation. Proposed trees shall utilize bubbler Irrigation to encourage deep root watering. The overall Irrigation system will be designed with a smart Irrigation controller. A weather sensor will be used to automatically adjust duration of application in accordance with recent weather conditions based on evapotranspiration. Maximum water allowance will be determined by State code. To also be consistent with the planting design, the Irrigation design will create separate Irrigation stations by hydrozone, locating plants of different water and solar needs into groups.

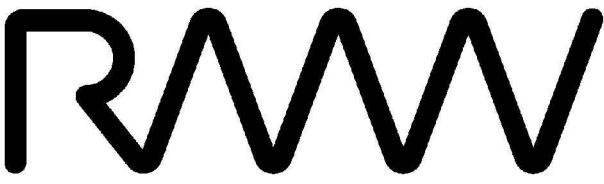
PARKING LOT SHADE CALCULATIONS

TREE SYMBOL	100%	75%	50%	25%
COR CHI				41 (79) = 3,239
LAG NAT		1 (236) = 236	5 (157) = 785	
PLA COL	28 (962) = 26,936		11 (481) = 5,291	
QUE WIS	11 (962) = 10,582	12 (722) = 8,664	9 (481) = 4,329	1 (240) = 240
ULM DRA	25 (962) = 24,050	3 (722) = 2,166	23 (481) = 11,063	1 (240) = 240
ULM EME	12 (962) = 11,544		54 (481) = 25,974	1 (240) = 240
PARKING LOT AREA	229,184 s.f.			
SHADE REQUIRED (50%)	114,542 s.f.			
TOTAL SHADE	135,579 s.f.			
PERCENT SHADE	59%			

TREE REQUIREMENTS

25% OF ALL PROPOSED TREES ARE REQUIRED TO BE 24" BOX CONTAINERS
30% OF ALL TREES ARE REQUIRED TO BE EVERGREEN

TOTAL NUMBER OF TREES	616
24" BOX REQUIREMENT - 25%	156
TOTAL 24" BOX TREES - 34%	242
EVERGREEN TREES REQ. - 30%	187
TOTAL EVERGREEN TREES - 45%	265



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rmw.com

OWNER / DEVELOPER:



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Reno, NV 89502

GEORGE CONDON
Partner, West Region

PRELIMINARY DESIGN DOCUMENTS FOR:

STONECREEK
INDUSTRIAL PARK

SOUTH EAST CORNER OF
BAROQUE DRIVE & ZINFANDEL DRIVE
CITY OF RANCHO CORDOVA, CALIFORNIA

approved for the owner by :

approved for the architect by :

issue :	description :	date :
A	INITIAL PLAN REVIEW SUBMITTAL	03-09-2022

L1.1	L1.2
L1.4	L1.3

KEY MAP

TENANT'S DEVELOPMENT MANAGER:

drawn by :

plot date :

checked by :

stamp



scale :

AS NOTED

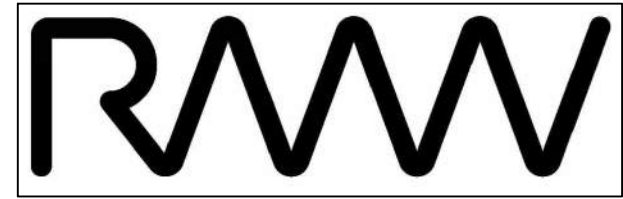
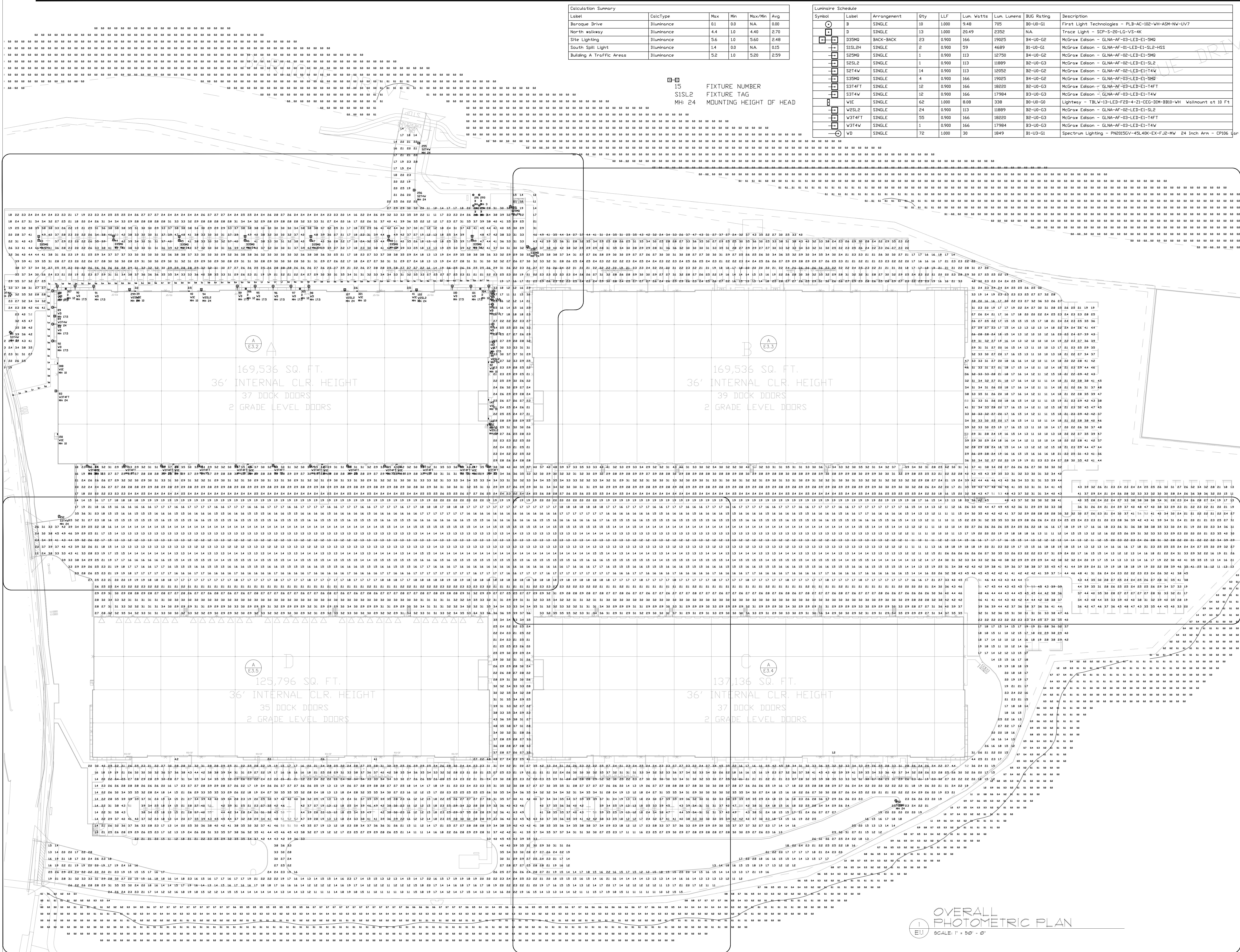
project number :

2214068.00

PLANT SCHEDULE
AND NOTES

sheet no. :

L1.5



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approved for the architect by:

Issue : description :
A

date :
03-09-2022

TENANT'S DEVELOPMENT MANAGER:

drawn by : WVN plot date : XX-XX-XXXX

checked by : WVN

stamp



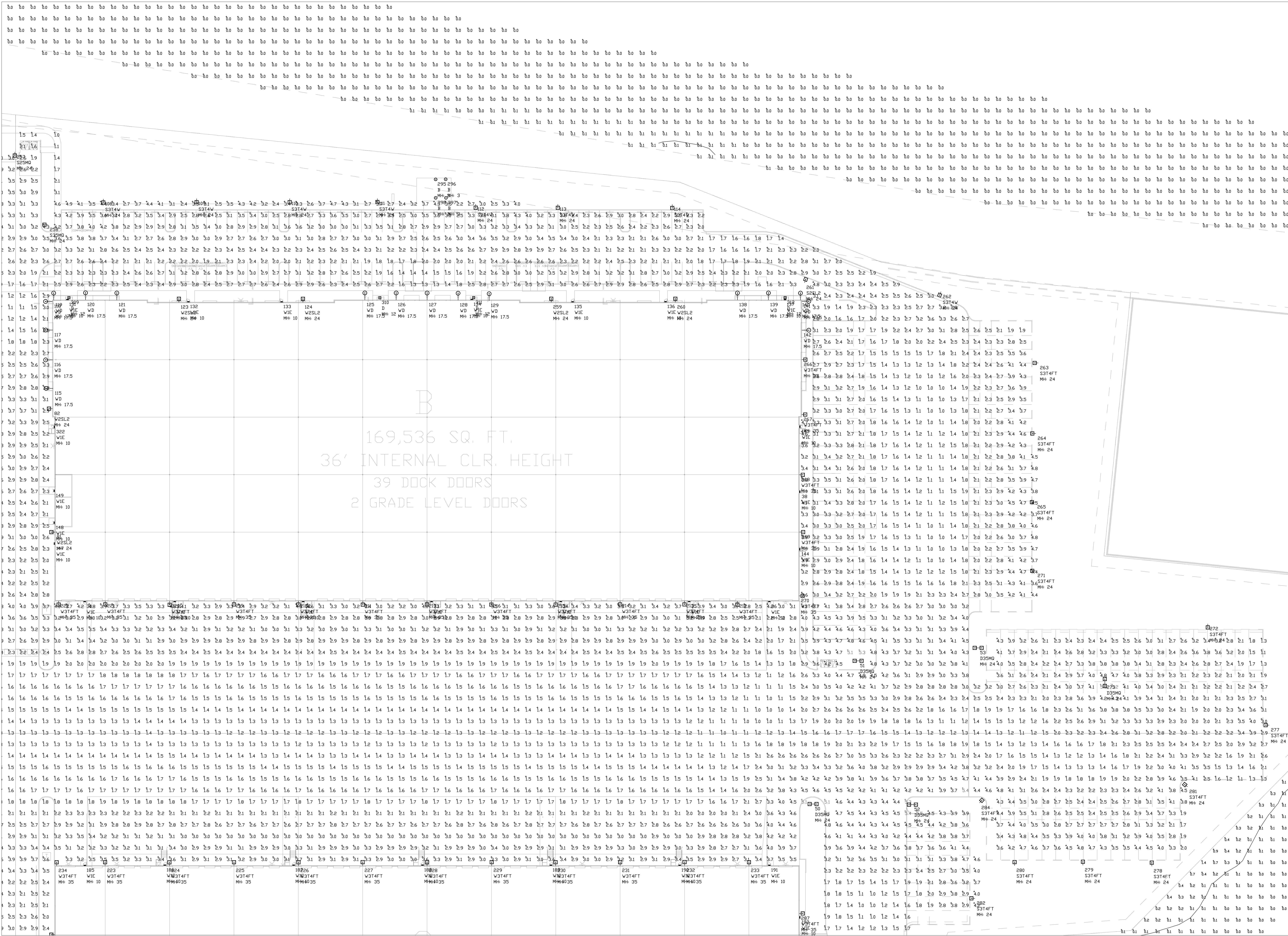
scale : AS NOTED

project number : 22011

OVERALL PHOTOMETRIC PLAN

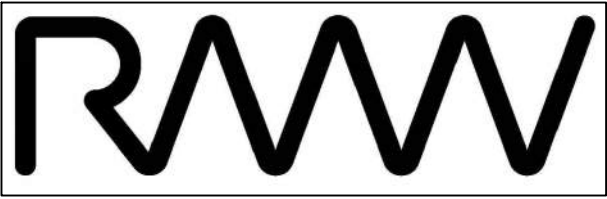
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E.1



BUILDING B
PHOTOMETRIC PLAN

SCALE: 1" = 30' - 0"



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PRELIMINARY DESIGN DOCUMENTS FOR:

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approved for the owner by :

approved for the architect by :

Issue : description :

date :

A

03-09-2022

TENANT'S DEVELOPMENT MANAGER:

drawn by :

WVN

plot date : XX-XX-XXXX

checked by :

WVN

stamp



scale :

AS NOTED

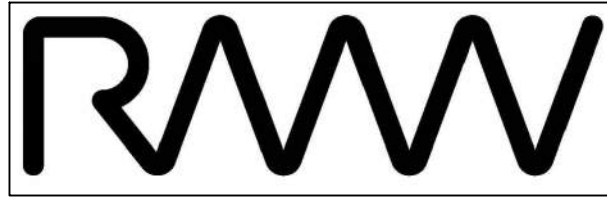
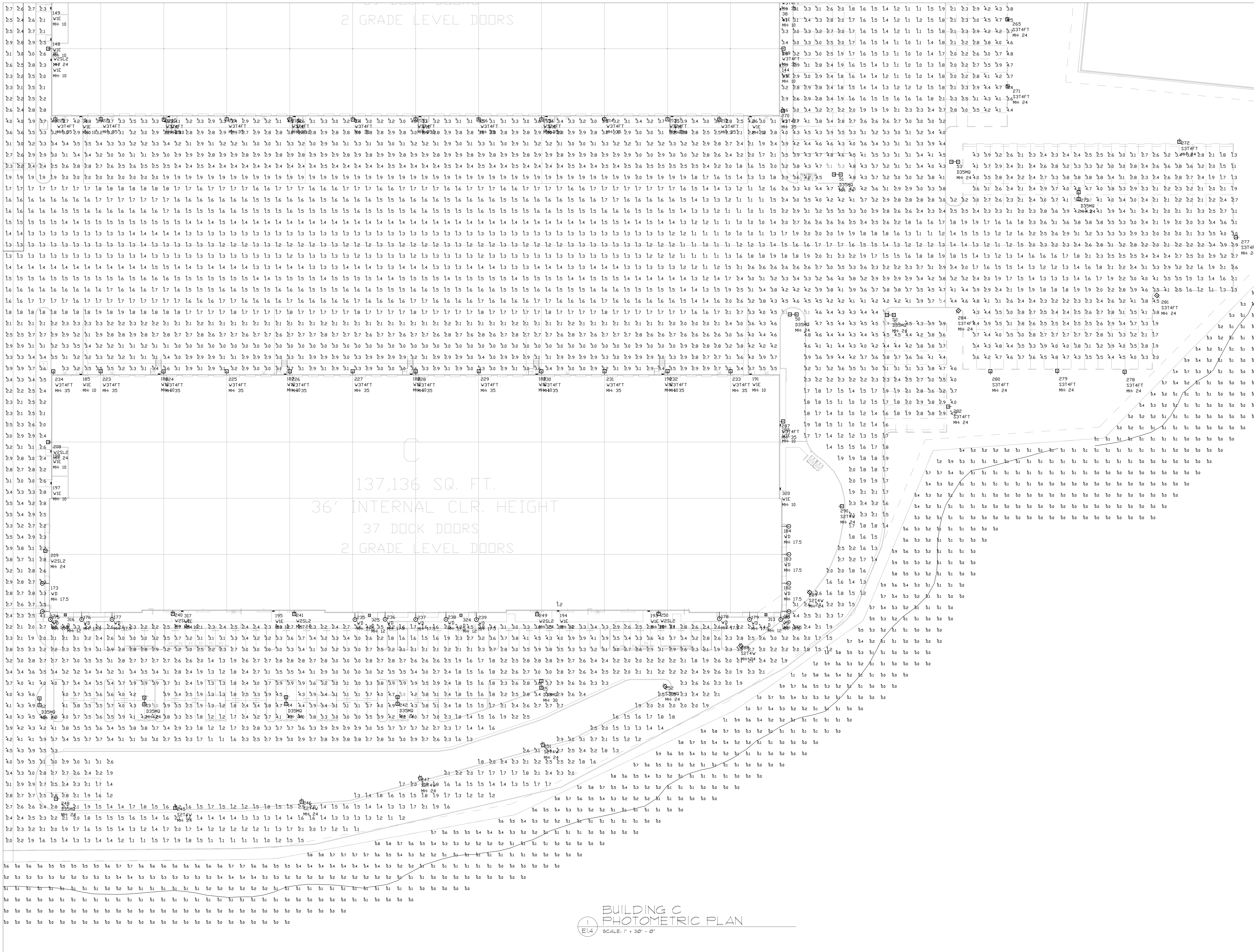
project number :

22011

BUILDING B PHOTOMETRIC PLAN

sheet no. :

E1.3



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PRELIMINARY DESIGN DOCUMENTS FOR:

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BAROQUE DRIVE & ZINFANDEL DRIVE
CITY OF RANCHO CORDOVA, CALIFORNIA

approved for the owner by :

approved for the architect by :

Issue : description :

A

date :

03-09-2022

TENANT'S DEVELOPMENT MANAGER:

drawn by : WVN plot date : XX-XX-XXXX

checked by : WVN

stamp



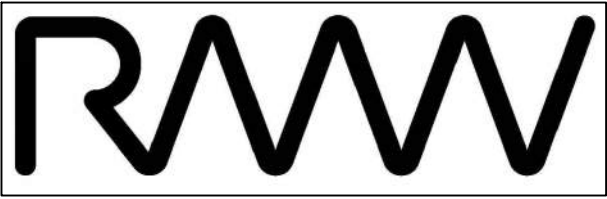
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project number : 22011

BUILDING C PHOTOMETRIC PLAN

sheet no. :

E1.4



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PRELIMINARY DESIGN DOCUMENTS FOR:

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BAROQUE DRIVE & ZINFANDEL DRIVE
CITY OF RANCHO CORDOVA, CALIFORNIA

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approved for the architect by :

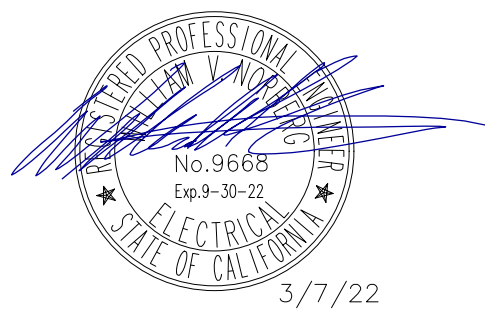
issue :	description :	date :
A		03-09-2022

TENANT'S DEVELOPMENT MANAGER:

drawn by : WVN plot date : XX-XX-XXXX

checked by : WVN

stamp

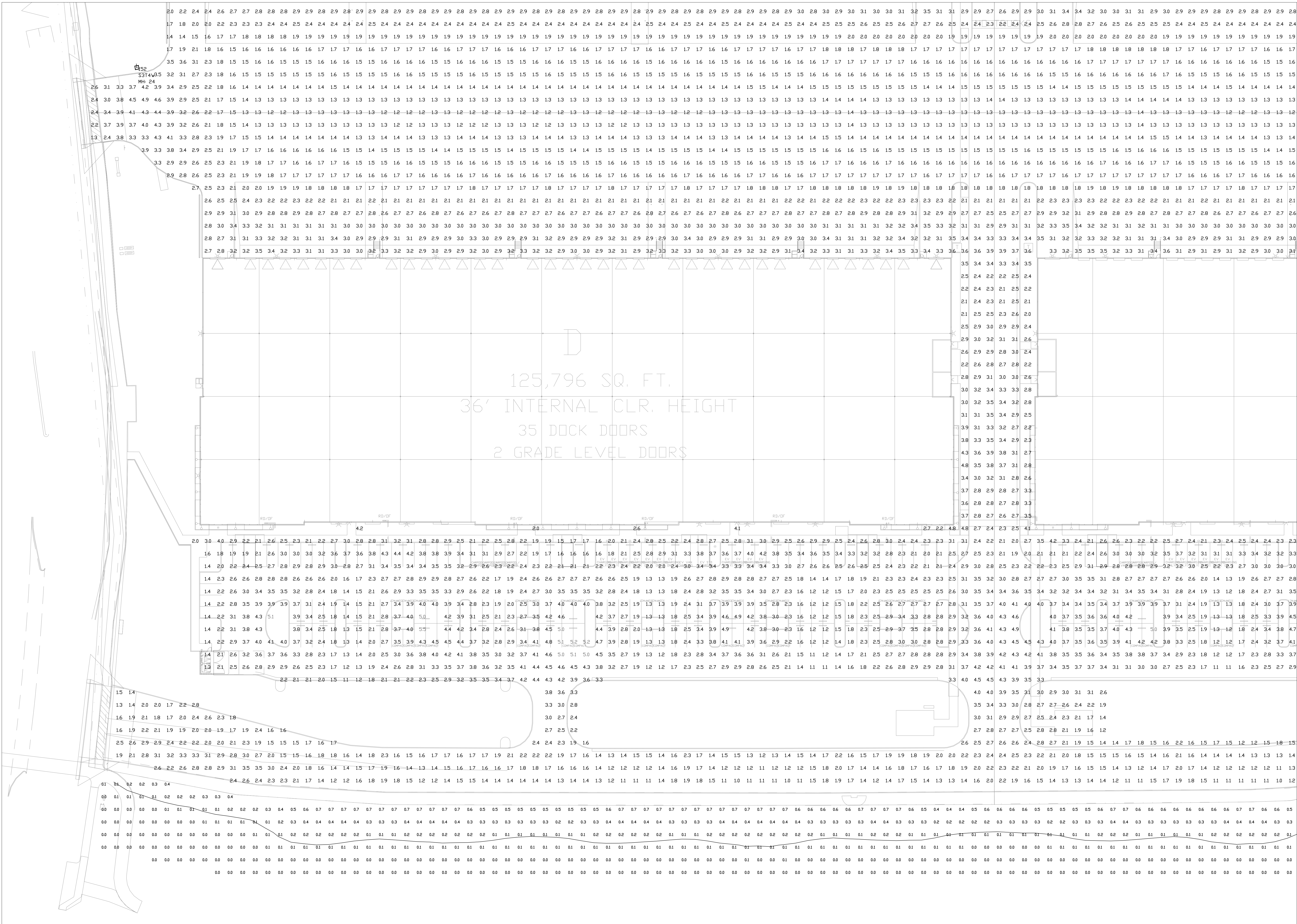


scale : AS NOTED
project number : 22011

BUILDING D PHOTOMETRIC PLAN

sheet no. :

E1.5



BUILDING D
PHOTOMETRIC PLAN
SCALE: 1" = 30' - 0"

[illegible]

ORDERING INFORMATION

Example: SCP-20-PV-46-W14B

Series	Wattage	Optic	Input Voltage	CCT	Finish	Options
SCP-S	30 – 50 Watts	Optic 1: Storage Optic 2: Low Glare Optic 3: Performance	VS = 120/277V LG = Low Glare PL = Performance	4K = 4000K 5K = 5000K	WH = White CC = Custom Color	Optic 3: Battery Back-up
67° = 67° Width 67° = 67° Height						

Accessories* (Flat Installed)

MC TR12 = 12" Transition Pole, White Finish

MC TR24 = 24" Transition Pole, White Finish

Notes

* See page 10 for details. Always head three angles, connect factory for details.

* White supplies lead.

* Connect factory for details.

* 120V and 277V operation, 5/0V dimming not available, not ETL Listed, available on SCP-S-20-PV-S-46-W14B model only

* Order as separate line item

PERFORMANCE DATA

MODEL	STOCK/MTD	WATTAGE (W)	DCCT	LUMENS	EFFICACY	CRI	DLC
SCP-S-30-LG-VS-4K	STOCK	30	4000K	2352	115	72	DLC PREMIUM
SCP-S-30-VS-4K	MTD	20	4000K	2543	124	72	DLC PREMIUM
SCP-S-30-PV-S-4K	STOCK	20	4000K	2870	130	72	DLC PREMIUM
SCP-S-30-LG-VS-5K	MTD	20	5000K	2350	114	73	DLC PREMIUM
SCP-S-30-VS-5K	MTD	20	5000K	2533	123	72	DLC PREMIUM
SCP-S-30-PV-S-5K	MTD	20	5000K	2670	129	72	DLC PREMIUM
SCP-S-30-LG-VS-4K	STOCK	36	4000K	4227	117	72	DLC PREMIUM
SCP-S-30-VS-4K	MTD	36	4000K	4582	126	72	DLC PREMIUM
SCP-S-36-PV-S-4K	STOCK	36	4000K	4815	133	72	DLC PREMIUM
SCP-S-36-LG-VS-5K	MTD	36	5000K	4282	116	73	DLC PREMIUM
SCP-S-36-VS-5K	MTD	36	5000K	4601	126	73	DLC PREMIUM
SCP-S-36-PV-S-5K	MTD	36	5000K	4839	133	73	DLC PREMIUM
SCP-S-30-LG-VS-4K	MTD	50	4000K	5702	114	72	DLC
SCP-S-30-VS-4K	MTD	50	4000K	6306	125	72	DLC PREMIUM
SCP-S-30-PV-S-4K	MTD	50	4000K	6598	131	72	DLC PREMIUM
SCP-S-30-LG-VS-5K	MTD	50	5000K	5590	112	72	DLC
SCP-S-30-VS-5K	MTD	50	5000K	6168	123	72	DLC PREMIUM
SCP-S-30-PV-S-5K	MTD	50	5000K	6472	128	72	DLC PREMIUM
SCP-S-47-LG-VS-4K	MTD	67	4000K	7829	117	72	DLC PREMIUM
SCP-S-47-VS-4K	MTD	67	4000K	8466	126	72	DLC PREMIUM
SCP-S-47-PV-S-4K	MTD	67	4000K	8940	133	72	DLC PREMIUM
SCP-S-47-LG-VS-5K	MTD	67	5000K	7887	116	72	DLC PREMIUM
SCP-S-47-VS-5K	MTD	67	5000K	8509	128	71	DLC PREMIUM
SCP-S-47-PV-S-5K	MTD	67	5000K	9016	134	72	DLC PREMIUM

* MTD = Made to order (subject change, connect factory for lead time)

Specifications are subject to change without notice. Product availability and pricing may be performed on alternative basis. Please contact your nearest distributor for details.

06/20/2024 Rev 5

Page 2 of 3

BARRON
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LIGHTING SOLUTIONS

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HOUSING DIMENSIONS

Dimensioned with PNL1413GV			
MODEL	A	B	
PNL1413GV	14.0	12.4	
PNL1413GV	14.0	12.4	
PNL1413GV	14.0	12.4	

APPLICATION

The contemporary Pier Light is both a beacon and an architectural element.

FEATURES

Each PNL1413GV Pier Light is crafted from heavy-duty extruded clear polycarbonate housing with integrated system LED light fixtures and lens. The wide range of options for customization, mounting, and features allow for creative design, landscape and interior LED lighting and allow for possibilities for future expansion.

ELECTRICAL

INPUT

PNL1413GV Pier Lights feature color-coded process openings for our dedicated color line. Variety of mounting and custom features are available. Various painted color finish is available.

OUTPUT

24V system: Includes high light output with integrated LED's. 5-amp location: Includes wiring terminal block (25, 30, 35, 40, 45, 50, 55, 60, 65, 70, 75, 80, 85, 90, 95, 100, 110, 120, 130, 140, 150, 160, 170, 180, 190, 200, 210, 220, 230, 240, 250, 260, 270, 280, 290, 300, 310, 320, 330, 340, 350, 360, 370, 380, 390, 400, 410, 420, 430, 440, 450, 460, 470, 480, 490, 500, 510, 520, 530, 540, 550, 560, 570, 580, 590, 600, 610, 620, 630, 640, 650, 660, 670, 680, 690, 700, 710, 720, 730, 740, 750, 760, 770, 780, 790, 800, 810, 820, 830, 840, 850, 860, 870, 880, 890, 900, 910, 920, 930, 940, 950, 960, 970, 980, 990, 1000, 1010, 1020, 1030, 1040, 1050, 1060, 1070, 1080, 1090, 1100, 1110, 1120, 1130, 1140, 1150, 1160, 1170, 1180, 1190, 1200, 1210, 1220, 1230, 1240, 1250, 1260, 1270, 1280, 1290, 1300, 1310, 1320, 1330, 1340, 1350, 1360, 1370, 1380, 1390, 1400, 1410, 1420, 1430, 1440, 1450, 1460, 1470, 1480, 1490, 1500, 1510, 1520, 1530, 1540, 1550, 1560, 1570, 1580, 1590, 1600, 1610, 1620, 1630, 1640, 1650, 1660, 1670, 1680, 1690, 1700, 1710, 1720, 1730, 1740, 1750, 1760, 1770, 1780, 1790, 1800, 1810, 1820, 1830, 1840, 1850, 1860, 1870, 1880, 1890, 1900, 1910, 1920, 1930, 1940, 1950, 1960, 1970, 1980, 1990, 2000, 2010, 2020, 2030, 2040, 2050, 2060, 2070, 2080, 2090, 2100, 2110, 2120, 2130, 2140, 2150, 2160, 2170, 2180, 2190, 2200, 2210, 2220, 2230, 2240, 2250, 2260, 2270, 2280, 2290, 2300, 2310, 2320, 2330, 2340, 2350, 2360, 2370, 2380, 2390, 2400, 2410, 2420, 2430, 2440, 2450, 2460, 2470, 2480, 2490, 2500, 2510, 2520, 2530, 2540, 2550, 2560, 2570, 2580, 2590, 2600, 2610, 2620, 2630, 2640, 2650, 2660, 2670, 2680, 2690, 2700, 2710, 2720, 2730, 2740, 2750, 2760, 2770, 2780, 2790, 2800, 2810, 2820, 2830, 2840, 2850, 2860, 2870, 2880, 2890, 2900, 2910, 2920, 2930, 2940, 2950, 2960, 2970, 2980, 2990, 3000, 3010, 3020, 3030, 3040, 3050, 3060, 3070, 3080, 3090, 3100, 3110, 3120, 3130, 3140, 3150, 3160, 3170, 3180, 3190, 3200, 3210, 3220, 3230, 3240, 3250, 3260, 3270, 3280, 3290, 3300, 3310, 3320, 3330, 3340, 3350, 3360, 3370, 3380, 3390, 3400, 3410, 3420, 3430, 3440, 3450, 3460, 3470, 3480, 3490, 3500, 3510, 3520, 3530, 3540, 3550, 3560, 3570, 3580, 3590, 3600, 3610, 3620, 3630, 3640, 3650, 3660, 3670, 3680, 3690, 3700, 3710, 3720, 3730, 3740, 3750, 3760, 3770, 3780, 3790, 3800, 3810, 3820, 3830, 3840, 3850, 3860, 3870, 3880, 3890, 3900, 3910, 3920, 3930, 3940, 3950, 3960, 3970, 3980, 3990, 4000, 4010, 4020, 4030, 4040, 4050, 4060, 4070, 4080, 4090, 4100, 4110, 4120, 4130, 4140, 4150, 4160, 4170, 4180, 4190, 4200, 4210, 4220, 4230, 4240, 4250, 4260, 4270, 4280, 4290, 4300, 4310, 4320, 4330, 4340, 4350, 4360, 4370, 4380, 4390, 4400, 4410, 4420, 4430, 4440, 4450, 4460, 4470, 4480, 4490, 4500, 4510, 4520, 4530, 4540, 4550, 4560, 4570, 4580, 4590, 4600, 4610, 4620, 4630, 4640, 4650, 4660, 4670, 4680, 4690, 4700, 4710, 4720, 4730, 4740, 4750, 4760, 4770, 4780, 4790, 4800, 4810, 4820, 4830, 4840, 4850, 4860, 4870, 4880, 4890, 4900, 4910, 4920, 4930, 4940, 4950, 4960, 4970, 4980, 4990, 5000, 5010, 5020, 5030, 5040, 5050, 5060, 5070, 5080, 5090, 5100, 5110, 5120, 5130, 5140, 5150, 5160, 5170, 5180, 5190, 5200, 5210, 5220, 5230, 5240, 5250, 5260, 5270, 5280, 5290, 5300, 5310, 5320, 5330, 5340, 5350, 5360, 5370, 5380, 5390, 5400, 5410, 5420, 5430, 5440, 5450, 5460, 5470, 5480, 5490, 5500, 5510, 5

TBLW

Construction:

- Steel housing and chassis
- Bottom lens is clear tempered glass
- Lamps:
- Lamps **INCLUDED**

Notes:

- Integral mounting plate
- Electronic HID increases fixture depth 1/4"
- Magnetic HID ballast increases fixture depth 1 1/4"
- Pulse start magnetic ballast and lamp with MH4
- All aluminum construction (painted finish only)
- PhotoCell - (21) specify voltage 120v or 277v
- Battery backup available in 13" only-increases fixture depth by 3/4"
- Optional knockouts centered on all four sides / increases fixture depth by 1/2"
- UL and CUL listed **WET** location

Type:

Job Name:

TBLW-9

Height - 9"
 Width - 5 1/8"
 Depth - 5 1/4"

TBLW-11

Height - 11 1/4"
 Width - 6 1/4"
 Depth - 5 1/4"

TBLW-13

Height - 13 3/4"
 Width - 7 3/4"
 Depth - 5 1/4"

ORDERING INFORMATION

Example: TBLW-13-U-2T32-3-23-CEG-BB-01-06

Model	Cage	Voltage	Lamping	Kelvin	Finish	Diffuser	Options
TBLW-9	A 120/180 (Elec)	1013 (1) 013w	2.700w	3150K	21 Satin Black	CEG Clear Tempered Glass	21 PhotoCell - Specify voltage
		1018 (1) 018w	3.150w	3150K	W2 Coated White		01 - 277valt
	B 027/180 (Elec)	1021 (1) 021w	4.100w	21 Satin Black	21 Satin Bronze		02 - 277valt
		1T32 (1) 012w			Optional See Price List		39 Knockouts located 4 sides
TBLW-11		1024 (1) 024w				42 All Aluminum Construction	
		1T32 (1) 012w					
TBLW-13		2T32 (2) 12w				WY Ink WY Text White B2 Text Black T4 Obscure Gray W13 Anod Silver W4 Powder W13 Pearl Forge P2 Brushed Alum PP Brushed Nickel M16 Antique Brass	BB option - 13" only
		1M70 (1) 070w Mkt Elec	T 100H				B8 - Battery Backup
		1M70 (1) 070w Mkt Mag					C18 - Cold Weather BB
	7 Quad-sq (Mag)						BB 1200 02 277v 06 650 Lumen (nominal) 12 1250 Lumen (nominal)

28053 Industry Drive, Dallas, California 91355

West Coast Sales 800-338-4482 ext. 222 828-0886 or Fax 828-334-9631 222-0203

East Coast Sales 800-338-9991 or Fax 800-490-2754

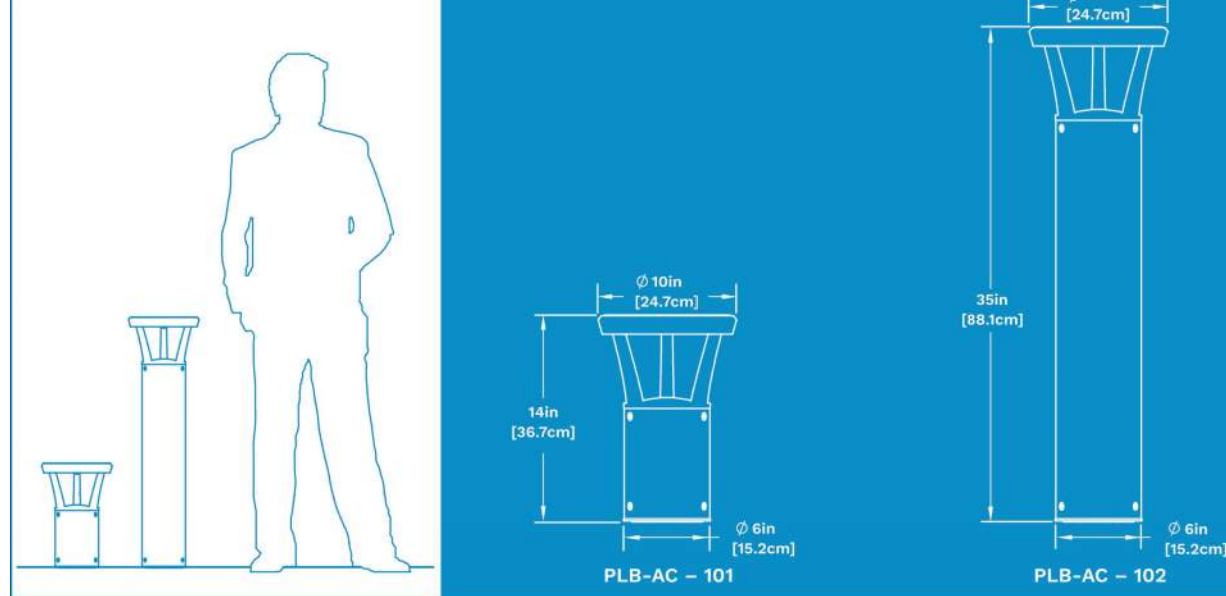
www.lightway.com or sales@lightway.com

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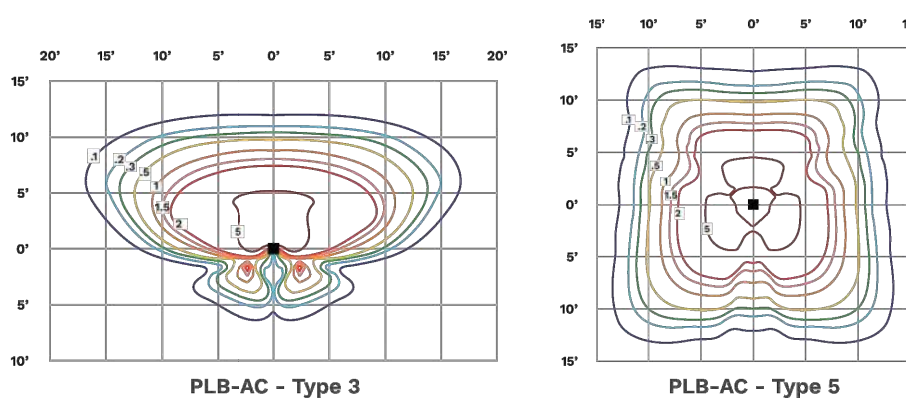


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TECHNOLOGIES

HIGH EFFICIENCY LED BOLLARD



PHOTOMETRICS (IES files available on website)



Notes:

- Photometrics based on PLB 102 model height
- All light levels in foot candles (Fc) w/ 4000K color temperature
- No concern to low multiple light level lighting distribution
- Contact us for help in choosing the right lighting distribution
- Specifications subject to change without notice

ORDER MATRIX

Series	Height	Finish	Distribution	LED	Voltage	Options
PLBAC	101 - 14"	BL - Black	ASM - Type 3	VW - 3000K	UV7 - Universal Voltage (700ma)	SEC - Security Fasteners
	102 - 36"	BZ - Bronze	SYM - Type 5	NW - 4000K		PA - Pre-Drill Anchor Bolt
		SV - Silver		AMB - Amber		RLS - Backlight Shield
		WH - White				
		CC - Custom				



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E1.6

Environmental Noise Assessment

Stonecreek Industrial Center

Rancho Cordova, California

BAC Job # 2021-083

Prepared For:

DPML Stonecreek, LLC

Attn: Shelagh Danna
5500 Equity Avenue
Reno, NV 89502

Prepared By:

Bollard Acoustical Consultants, Inc.



Dario Gotchet, Principal Consultant

January 5, 2022



Introduction

The Stonecreek Industrial Center is located at the southeast corner of Zinfandel Drive and Baroque Drive in the City of Rancho Cordova, California. The project consists of the development of four warehouse buildings and associated parking areas on property zoned for industrial uses. The project site plan is shown on Figure 1.

A noise report for the development was previously prepared by j.c. brennan & associates, Inc. dated April 30, 2019. On June 10, 2021, Bollard Acoustical Consultants, Inc. (BAC) prepared a revision to the 2019 noise report based on a revised site design dated February 22, 2021. However, since the preparation of the 2021 BAC noise study, the project site design has been revised once more. In response to a revised site design, BAC was retained by the project applicant (DPML Stonecreek, LLC) to prepare this noise assessment. This report contains the analysis methodology and results. The studied site design is dated October 29, 2021.

Noise Fundamentals and Terminology

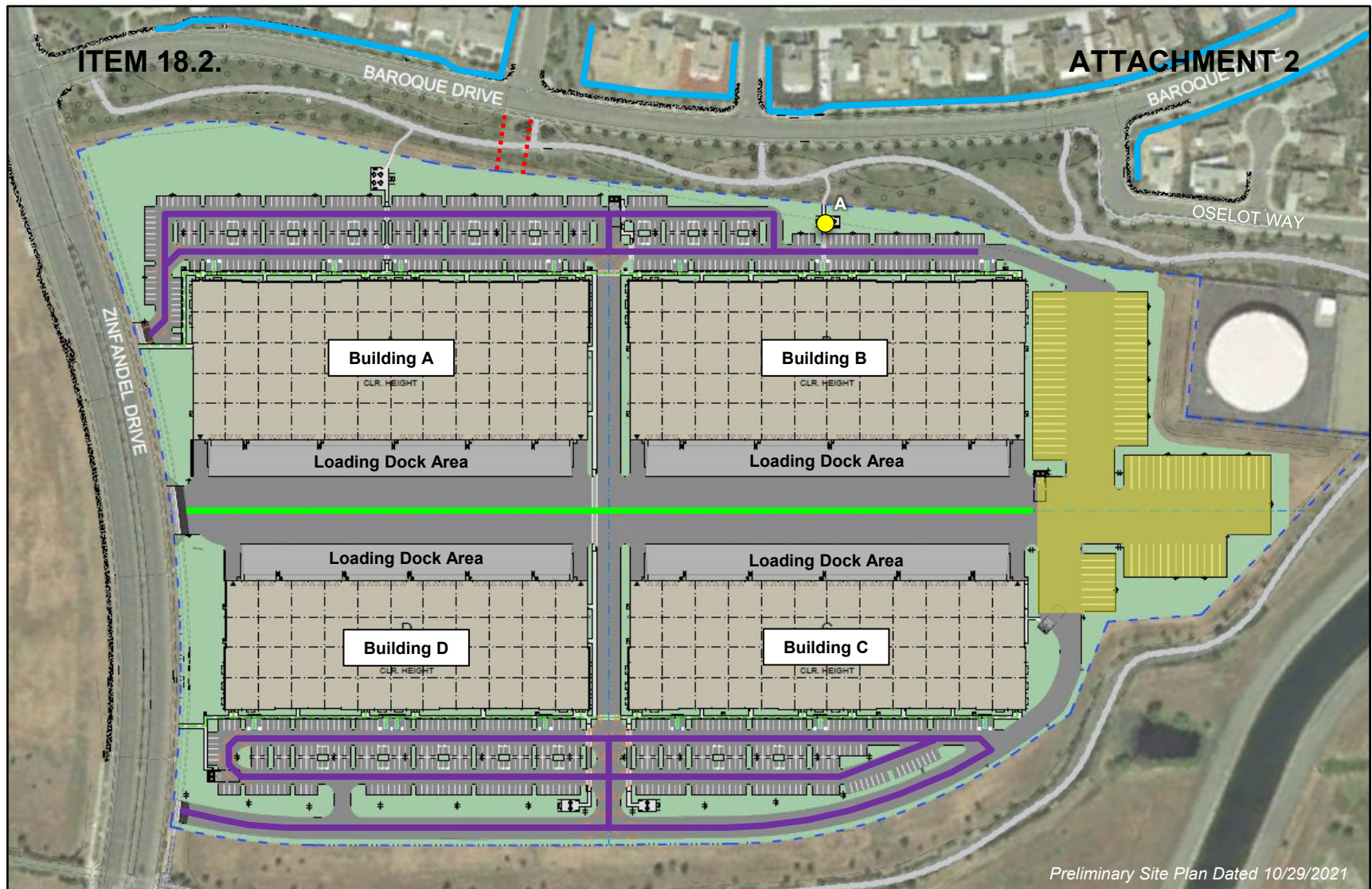
Noise is often described as unwanted sound. Sound is defined as any pressure variation in air that the human ear can detect. If the pressure variations occur frequently enough (at least 20 times per second), they can be heard, and thus are called sound. Measuring sound directly in terms of pressure would require a very large and awkward range of numbers. To avoid this, the decibel scale was devised. The decibel scale allows a million-fold increase in pressure to be expressed as 120 dB. Another useful aspect of the decibel scale is that changes in levels (dB) correspond closely to human perception of relative loudness. Appendix A contains definitions of Acoustical Terminology. Figure 2 shows common noise levels associated with various sources.

The perceived loudness of sounds is dependent upon many factors, including sound pressure level and frequency content. However, within the usual range of environmental noise levels, perception of loudness is relatively predictable, and can be approximated by weighing the frequency response of a sound level meter by means of the standardized A-weighting network. There is a strong correlation between A-weighted sound levels (expressed as dBA) and community response to noise. For this reason, the A-weighted sound level has become the standard tool of environmental noise assessment. All noise levels reported in this section are in terms of A-weighted levels in decibels.

Community noise is commonly described in terms of the “ambient” noise level, which is defined as the all-encompassing noise level associated with a given noise environment. A common statistical tool to measure the ambient noise level is the average, or equivalent, sound level (L_{eq}) over a given time period (usually one hour). The L_{eq} is the foundation of the Day-Night Average Level noise descriptor, L_{dn} or DNL, and shows very good correlation with community response to noise.

ITEM 18.2.

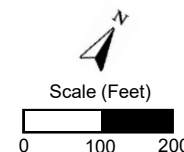
ATTACHMENT 2



Preliminary Site Plan Dated 10/29/2021

Legend

- 2018 Ambient Noise Survey Location
- Existing 6' Solid Noise Barriers
- On-Site Circulation Route – Passenger Vehicles
- On-Site Circulation Route – Trucks
- Truck Trailer Parking Area
- ... EV Route Access Only

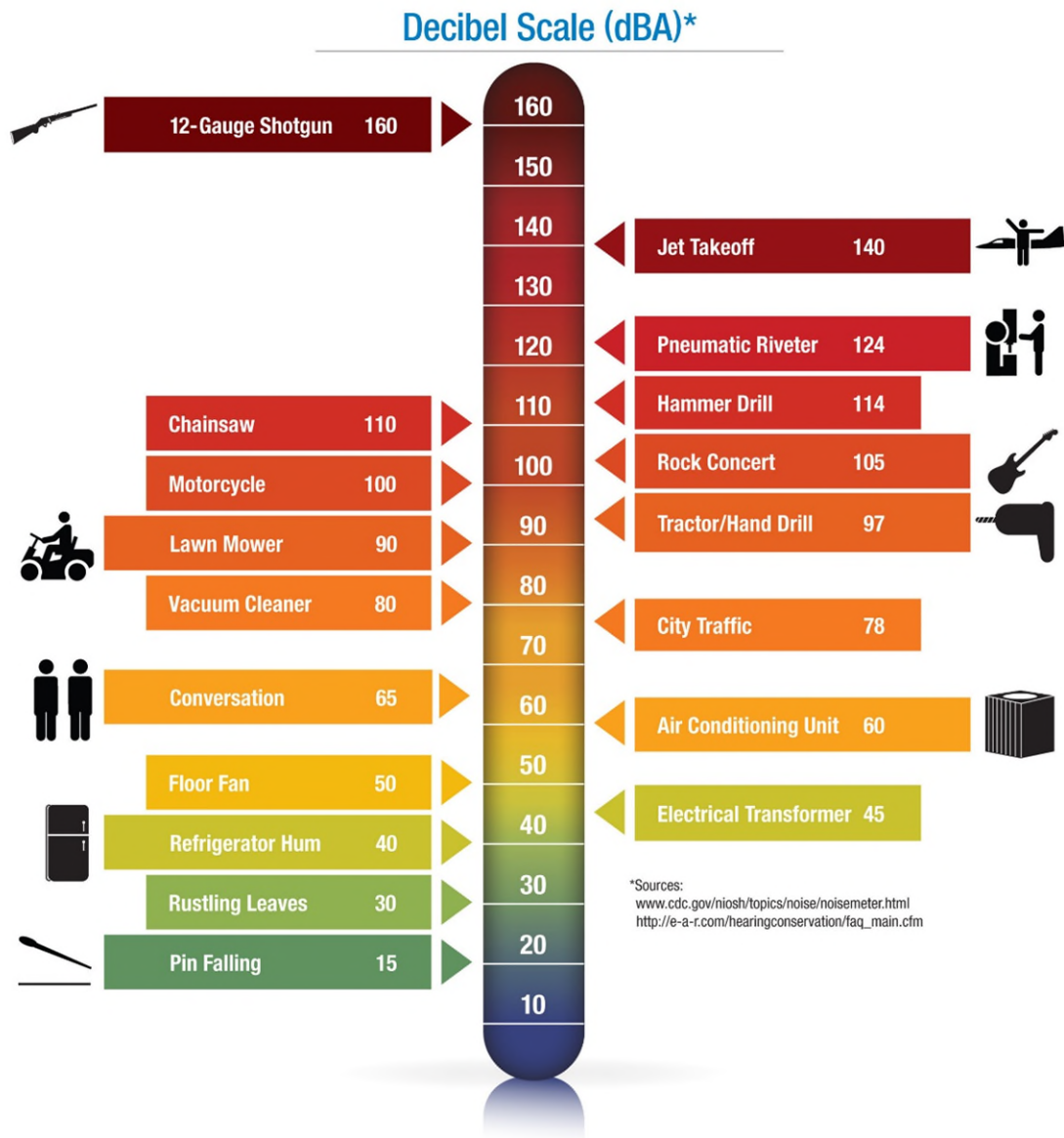


Stonecreek Industrial Park
Rancho Cordova, California

Preliminary Site Plan

Figure 1

Figure 2
Noise Levels Associated with Common Noise Sources



DNL is based upon the average noise level over a 24-hour day, with a +10-decibel weighting applied to noise occurring during nighttime (10:00 p.m. to 7:00 a.m.) hours. The nighttime penalty is based upon the assumption that people react to nighttime noise exposures as though they were twice as loud as daytime exposures. Because DNL represents a 24-hour average, it tends to disguise short-term variations in the noise environment. DNL-based noise standards are commonly used to assess noise impacts associated with traffic, railroad, and aircraft noise sources.

Criteria for Acceptable Noise Exposure

Rancho Cordova General Plan

The Noise Element of the Rancho Cordova General Plan establishes noise level criteria for both transportation and non-transportation noise sources.

Noise level criteria pertaining to project generated traffic noise levels are contained within the City of Rancho Cordova General Plan Noise Element. The following is a summary of the Noise Element Policies and Criteria, which are relevant to this project.

The General Plan establishes a normally acceptable exterior noise level standard of 60 dB DNL for residential uses. The standard is generally applied at the outdoor activity areas such as patios or designated areas such as play areas. A conditionally acceptable exterior noise level standard of 65 dB DNL is allowed provided that available exterior noise level reduction measures have been implemented and interior noise levels are in compliance with the 45 dB DNL interior noise level criterion. Where it is not practical to mitigate exterior noise levels at patio or balconies of apartment complexes, a common area such as a pool or recreation area may be designated as the outdoor activity area.

Policy N.1.2 Ensure that the indoor and outdoor areas of new projects will be located, constructed, and shielded from noise sources in compliance with the City's noise standards to the maximum extent feasible.

Action N.1.2.1 – Require new development of noise-creating uses to conform with the City's maximum noise levels.

Action N.1.2.2 – Require an acoustical analysis as part of the environmental review process when noise-sensitive land uses are proposed in areas where current or projected exterior noise levels exceed the City's standards.

Action N.1.2.3 – Require any potential noise impacts identified during the acoustical analysis to be mitigated in the project design to the maximum extent feasible.

Policy N.1.3 Ensure that proposed non-residential land uses likely to exceed the City's standards do not create noise disturbances in existing noise-sensitive areas.

Action N.1.3.1 - Require an acoustical analysis as part of the environmental review process when proposed non-residential land uses are likely to produce noise levels that exceed the City's noise standards. The acoustical analysis must be prepared by a qualified person experienced in environmental noise assessment and architectural acoustics and must estimate existing and projected cumulative noise levels and compare those levels to the policies within this Element.

Action N.1.3.2 - Require any noise impacts identified in the acoustical analysis to be mitigated in conjunction with the project design.

Policy N.1.4 Mitigate noise created by proposed non-transportation noise sources to comply with the City's noise standards to the maximum extent feasible.

Action N.1.4.2 – Consider restricting the hours of operation of loading docks, trash compactors, and other noise-producing uses in commercial areas that are adjacent to residential uses.

Policy N.2.2 Ensure that operational noise levels of new roadway projects will not result in significant noise impacts.

Action N.2.2.1 – Assess the significance of the noise increase of all roadway improvement projects in existing areas according to the following criteria:

- Where existing traffic noise levels are less than 60 dB DNL at the outdoor activity areas of noise-sensitive uses, a +5 dB DNL increase in noise levels due to roadway improvement projects will be considered significant; and
- Where existing traffic noise levels range between 60 and 65 dB DNL at the outdoor activity areas of noise-sensitive uses, a +3 dB DNL increase in noise levels due to roadway improvement projects will be considered significant; and
- Where existing traffic noise levels are greater than 65 dB DNL at the outdoor activity areas of noise-sensitive uses, a +1.5 dB DNL increase in noise levels due to roadway improvement projects will be considered significant.

The City's non-transportation noise level performance standards referenced in these policies are provided in Table N-1 of the Noise Element. That table is reproduced in this report below as Table 1.

Table 1
Noise Level Performance Standards For New Projects Affected by or Including
Non-Transportation Noise Sources¹

Stationary Noise Source	Noise Level Descriptor	Daytime 7 a.m. to 10 p.m.	Nighttime 10 p.m. to 7 a.m.
Typical	Hourly L_{eq} , dB	55	45
Tonal, Impulsive, Repetitive, or Consist Primarily of Speech or Music	Hourly L_{eq} , dB	50	40
¹ The City may impose noise level standards which are more or less restrictive than those specified above based upon determination of existing low or high ambient noise levels. Source: <i>Rancho Cordova General Plan Noise Element, Table N-1.</i>			

Existing Ambient Noise Environment in the Project Vicinity

The existing ambient noise environment in the project vicinity is defined primarily by traffic on the local roadways (including Zinfandel Drive), and by operations associated with Mather Airport to the southwest. To generally quantify the existing ambient noise environment within the project vicinity, BAC utilized long-term (24-hour) noise level data from a survey conducted by j.c. brennan & associates, Inc. from October 30-31, 2018 (2019 noise report). The 2018 noise survey location is identified as site A on Figure 1.

A Larson-Davis Laboratories (LDL) Model 820 precision integrating sound level meter was used to complete the noise level measurement survey. The meter was calibrated immediately before use with an LDL Model CAL200 acoustical calibrator to ensure the accuracy off the measurements. The equipment used meets all pertinent specifications of the American National Standards Institute for Type 1 sound level meters (ANSI S1.4). The long-term ambient noise level survey results are summarized in Table 2. The detailed results from the 2018 ambient noise survey are contained in both tabulator and graphic formats in Appendix B.

Table 2
Summary of Long-Term Noise Survey Measurement Results¹

Site Description ²	Date	DNL	Average Measured Hourly Noise Levels (dBA)			
			Daytime ³		Nighttime ⁴	
			L _{eq}	L _{max}	L _{eq}	L _{max}
Site A: Northern portion of project site	October 30-31, 2018	58	58	73	49	65
¹ Detailed summaries of the noise monitoring results are provided in Appendix B. ² Long-term noise survey location is shown on Figure 1. ³ Daytime hours: 7:00 a.m. to 10:00 p.m. ⁴ Nighttime hours: 10:00 p.m. to 7:00 a.m. <i>Source: j.c. brennan & associates, Inc. (2018)</i>						

As indicated in Table 2, the measured day-night average noise level at site A was satisfactory relative to the Rancho Cordova General Plan 60 dB DNL exterior noise level standard applicable to single-family residential uses. The Table 2 data also indicate that measured hourly noise levels at the monitoring site exceeded the General Plan's daytime and nighttime noise standards for non-transportation noise sources.

Noise Impacts from Project-Generated Increases in Off-Site Traffic

With development of the project, traffic volumes on the local roadway network will increase. Those increases in daily traffic volumes will result in a corresponding increase in traffic noise levels at existing uses located along those roadways. The FHWA Model was used with traffic input data from the project transportation consultant, KD Anderson & Associates, Inc. (KDA), to predict project traffic noise level increases relative to existing project and no project conditions.

Traffic data in the form of AM and PM peak hour movements for Existing and Existing Plus Project conditions in the project area roadway network were obtained from the project transportation consultant, KDA. Average daily traffic (ADT) volumes were conservatively estimated by applying a factor of 5 to the sum of AM and PM peak hour conditions.

Existing versus Existing Plus Project traffic noise levels on the local roadway network are shown in Table 3. The following section includes an assessment of predicted traffic noise levels relative to the noise level increase significance criteria identified in Policy N.2.2 of the Rancho Cordova General Plan. The Table 3 data are provided in terms of DNL at a standard distance of 100 feet from the centerlines of the project-area roadways. Appendix C contains the FHWA Model inputs.

It should be noted that the FHWA Model predictions presented in Table 3 are based on inputs that include weekday peak hour traffic volumes, day/night and truck type percentages (e.g., medium and heavy trucks), vehicle speed, and distance from roadway centerlines. The FHWA Model does not account for non-traffic ambient noise sources such as nearby wildlife (e.g., birds chipping) or other anthropogenic noise sources within an area (e.g., distant traffic from other roadways, recreational activities, commercial or industrial operations, etc.).

Table 3
Traffic Noise Modeling Results and Project-Related Traffic Noise Increases
Existing vs. Existing Plus Project Conditions

Segment	Intersection	Direction	Traffic Noise Level at 100 Feet, DNL (dB)			Substantial Increase?
			E	E+P	Increase	
1	(1) Zinfandel Dr / Bear Hollow Dr	North	65.6	66.2	0.6	No
2		South	64.9	65.7	0.8	No
3		East	45.5	45.5	0.0	No
4		West	55.6	55.6	0.0	No
5	(2) Zinfandel Dr / Spoto Dr	North	64.7	65.5	0.8	No
6		South	64.4	65.2	0.8	No
7		East	31.5	31.5	0.0	No
8		West	51.2	51.2	0.0	No
9	(3) Zinfandel Dr / Baroque Dr	North	64.2	65.0	0.8	No
10		South	64.2	65.2	1.0	No
11		East	52.5	52.5	0.0	No
12		West	50.3	52.3	2.0	No
13	(4) Zinfandel Dr / First Driveway	North	64.2	65.2	1.0	No
14		South	64.2	65.1	0.9	No
15		East	--	44.1	44.1	Yes
16		West	--	--	--	--
17	(5) Zinfandel Dr / Second Driveway	North	64.2	65.1	0.9	No
18		South	64.2	65.0	0.8	No
19		East	--	47.1	47.1	Yes
20		West	--	--	--	--
21	(6) Zinfandel Dr / Third Driveway	North	64.2	65.0	0.8	No
22		South	64.2	64.4	0.2	No
23		East	--	52.2	52.2	Yes
24		West	--	--	--	--
25	(7) Tina Fina Dr / Baroque Dr	North	44.5	44.5	0.0	No
26		South	--	--	--	--
27		East	50.6	50.6	0.0	No
28		West	52.2	52.2	0.0	No
Blank cell = no data was provided in traffic impact analysis						
Source: FHWA-RD-77-108 with inputs from KDA. Appendix C contains the FHWA Model inputs.						

As stated previously, the FHWA Model does not account for non-traffic ambient noise sources such as nearby wildlife or other anthropogenic noise sources within an area. Consideration of such sources typically results in higher ambient noise levels (i.e., existing no project) than those predicted by the FHWA Model alone.

As indicated in Table 3, the proposed project's contribution to traffic noise level increases is predicted to exceed the General Plan Policy N.2.2 increase significance criteria along three roadway segments evaluated in the existing conditions analysis – segments 15, 19 and 23. However upon further analysis, it was determined that the roadway segments are the primary access points to the project site located on the project parcel. The traffic noise level increases along the identified roadway segments is calculated to range from 44.1 dB DNL to 52.2 dB DNL.

As discussed above, baseline ambient conditions are considerably higher than baseline traffic noise levels alone. When project traffic noise generation is compared to the measured ambient day-night average (DNL) level at site A, located on the project site, no substantial increases in project-generated traffic noise levels are calculated to occur along roadway segments 15, 19 and 23. Rather, the project-generated traffic noise levels along the roadway segments are calculated to be less than the measured ambient noise level at site A (58 dB DNL) and would result in project-generated noise level increases ranging from 0.2 dB DNL to 1.0 dB DNL along those roadway segments. This is a more accurate representation of actual project-related noise level increases than the “traffic-only” noise increases shown in Table 3. Thus, project-related increases in traffic noise levels would not substantially exceed measured ambient noise conditions in the project area relative to the General Plan Policy N.2.2 criteria.

Finally, although existing residential uses were not identified within 100 feet from the centerlines of roadway segments 15, 19 and 23 (all located on the project parcel), it should be noted that the predicted Existing Plus Project traffic noise levels of approximately 44 dB DNL to 52 dB DNL at 100 feet along those segments are well below the Rancho Cordova General Plan exterior noise level standard of 60 dB DNL applicable to traffic noise affecting residential uses.

Based on the analysis and results provided above, including consideration of measured ambient noise conditions within the project area, no further consideration of noise mitigation measures would be warranted for this aspect of the project.

Noise Impacts from Project-Generated On-Site Operations

According to the project site plan (dated October 29, 2021), the project proposes the construction of four (4) buildings of various sizes for office and warehouse uses. The site plans further indicate that loading docks associated with each building will be faced inwards towards the center of the project site. Figure 1 shows the locations of the proposed buildings and loading docks.

Noise generated by heavy trucks arriving and departing the site, backing into the loading docks, and coupling/decoupling, will be one of the primary noise sources associated with this project. Once the heavy trucks are docked at the loading bays, they will be loaded and unloaded from within the building, so no outside loading/unloading activities would occur, and noise generated by such activities would be contained within the building. Other primary noise sources associated with the project have been identified as on-site vehicle circulation and mechanical equipment (HVAC). However, it is the experience of BAC in similar industrial projects that mechanical equipment would either be housed in an equipment room or located on the roof of the buildings and shielded by screen walls (parapets).

Noise generated by project-related activities were quantified through a combination of reference noise level measurements and application of accepted noise modeling techniques. Separate discussions of noise generated by on-site heavy truck circulation, trailer coupling/decoupling, and on-site vehicle circulation are provided in the following sections.

The Rancho Cordova General Plan daytime and nighttime performance standards of 55 and 45 dB L_{eq} (respectively) were applied to project on-site operations noise generation and assessed at

the nearest existing residential uses – located north of Baroque Drive and Oselot Way. For this analysis, it was assumed that on-site operations would occur during both daytime and nighttime hours. However, satisfaction of the General Plan's nighttime noise level standard would ensure for compliance with the General Plan's less restrictive daytime noise level limit. As a result, the following analyses focus on compliance with the General Plan's nighttime noise level standard of 45 dB L_{eq} at the nearest residential uses.

Passenger Vehicle Circulation

It is the understanding of BAC that the project proposes passenger vehicle access points to the industrial park via Zinfandel Drive only. The project also proposes an access point on Baroque Drive, but would it be restricted to emergency vehicles only. The assumed on-site vehicle circulation route and site access points are shown on Figure 1.

To quantify on-site vehicle circulation noise exposure at the nearest residential uses, BAC utilized daily trip generation information from the project traffic impact analysis prepared by KDA and the Federal Highway Administration Highway Traffic Noise Prediction Model (FHWA RD-77-108). According to the KDA trip generation data, the industrial park is estimated to generate 2,986 total trips per day, with approximately 421 trips in the a.m. peak hour and 409 trips in the p.m. hour. Assuming an on-site vehicle speed of less than 25 mph (through the parking aisles), and 421 trips during a worst-case busy hour, project on-site vehicle circulation noise exposure was calculated at the nearest existing residential uses. The results of the calculations are summarized below in Table 4.

Table 4
Predicted On-Site Vehicle Circulation Noise Exposure vs. City Nighttime Noise Standard

Receiver ¹	Distance (ft) ²	Predicted Noise Level, L _{eq} (dB) ³	City Nighttime Noise Standard, L _{eq} (dB)
Baroque Drive Residences	200	35	45
Oselot Way Residences	400	30	
¹ Residential uses are shown on Figure 1.			
² Distances scaled from northernmost vehicle circulation route to residential uses using the provided site plan.			
³ Predicted noise levels at nearest Baroque Drive and Oselot Way residences include consideration of shielding that would be provided by existing 6-foot-tall solid noise barriers and have been adjusted by -5 dB. The locations of the existing noise barriers are illustrated on Figure 1.			
Source: Bollard Acoustical Consultants, Inc. (2022)			

As indicated in Table 4, worst-case on-site vehicle circulation noise levels are predicted to satisfy the applicable Rancho Cordova General Plan nighttime noise level standard of 45 dB L_{eq} at the nearest residential uses located off Baroque Drive and Oselot Way. The predicted compliance includes consideration of shielding that would be provided by existing 6-foot-tall noise barriers, as illustrated on Figure 1. In addition, the predicted noise levels presented in Table 4 are below the range of existing (2018) ambient noise levels measured within the vicinity of the nearest residences. Based on the analysis and results provided above, no further consideration of noise mitigation measures would be warranted for this aspect of the project.

Heavy Truck Circulation

The heavy truck access point for the proposed industrial park will be off Zinfandel Drive, centrally located on the project site. The on-site truck circulation route and site access point is shown on Figure 1.

Based on review of the project site plan, the each of the four proposed warehouse buildings will have approximately 35 to 39 truck loading bays. To assess project on-site truck circulation noise exposure relative to the General Plan's hourly average (L_{eq}) noise level descriptor, it is necessary to identify the number of truck movements occurring during a typical busy hour of operations. According to the traffic impact analysis prepared by KDA, the project could generate up to 362 daily truck trips. For the purpose of this analysis, it was assumed that the project could have 50 on-site heavy truck trips during a worst-case busy hour (believed to be conservative).

Heavy truck arrivals and departures, and on-site truck circulation, will occur at low speeds. To quantify the noise generation of slow moving trucks, BAC utilized single-event passby noise test results for slow-moving heavy trucks conducted at the West El Camino truck stop in Sacramento, California. The passby measurements were conducted at a reference distance of 50 feet at a location suitable for isolation of individual passby events. During the truck passbys, Larson-Davis Laboratories Model 820 and 2900 sound level meters and frequency analyzers were used to quantify noise levels and event frequency content for each event. The results of the heavy truck measurements indicated that maximum noise levels ranged from 69 to 77 dB L_{max} , with a mean of 74 dB. Truck passby levels measured in terms of Sound Exposure Levels (SEL) ranged from 77 to 85 dB, with a mean of 83 dB SEL. Based on the conservative estimate of 50 trips per hour, and an SEL of 83 dB per passby, the hourly average noise level generated by on-site heavy truck circulation computes to 64 dB L_{eq} at a reference distance of 50 feet from the passby route.

Assuming standard sound wave spreading loss (-4.5 dB per doubling of distance from a moving point source), and a calculated reference noise level of 64 dB L_{eq} at a distance of 50 feet from the passby route, worst-case on-site heavy truck circulation noise exposure was predicted at the nearest existing residential uses. The results of the predictions are summarized below in Table 5.

Table 5
Predicted On-Site Truck Circulation Noise Exposure vs. City Nighttime Noise Standard

Receiver ¹	Distance (ft) ²	Predicted Noise Level, L _{eq} (dB) ³	City Nighttime Noise Standard, L _{eq} (dB)
Baroque Drive Residences	640	36	45
Oselot Way Residences	650	36	
¹ Residential uses are shown on Figure 1.			
² Distances scaled from on-site truck circulation route to nearest residential uses using the provided site plan.			
³ Predicted noise levels at nearest Baroque Drive and Oselot Way residences include consideration of shielding that would be provided by existing 6-foot-tall solid noise barriers (-5 dB) and proposed intervening warehouse buildings (-7 dB). The locations of the existing noise barriers and buildings are shown on Figure 1.			
Source: Bollard Acoustical Consultants, Inc. (2022)			

The Table 5 data indicate that worst-case on-site truck circulation noise levels are predicted to satisfy the applicable Rancho Cordova General Plan nighttime noise level standard of 45 dB L_{eq} at the nearest residential uses located off Baroque Drive and Oselot Way. The predicted compliance includes consideration of shielding that would be provided by existing 6-foot-tall noise barriers and proposed intervening warehouse buildings. In addition, the predicted noise levels shown in Table 5 are below the range of existing (2018) ambient noise levels measured within the vicinity of the nearest residences. Based on the analysis and results provided above, no further consideration of noise mitigation measures would be warranted for this aspect of the project.

Heavy Truck Backing and Trailing Activities

Noise would be generated during brief periods by trucks backing into warehouse building loading bays and trailer parking areas during trailer coupling/decoupling activities (including backup beepers). It was assumed that heavy trucks would not be permitted to idle while on-site, and that refrigerator trucks (if applicable), would be plugged into loading bay power. The locations of the loading docks and trailer parking areas are shown on Figure 1.

To quantify the noise generated by backup warning devices and trailer coupling/decoupling, BAC conducted noise level measurements of a similar sized warehouse distribution facility in Patterson, California over a 48-hour period in August of 2015. The noise level results from the Patterson facility indicated that the measured average noise levels for the entire monitoring period were 54 dB L_{eq} and 71 dB L_{max} at a distance of 100 feet from the effective noise center of the truck backing, coupling and decoupling area. Based on the reference noise level data provided above, and assuming standard sound wave spreading loss (-4.5 dB per doubling of distance from a moving point source), truck backing and trailing noise associated with the warehouse building loading docks and trailer parking areas was predicted at the nearest existing residential uses. The results of those predictions are provided below in Table 6.

Table 6
Predicted Truck Backing and Trailing Noise Exposure vs. City Nighttime Noise Standard

Receiver ¹	Predicted Noise Level,				City Nighttime Noise Standard, L _{eq} (dB)
	Distance (ft) ²		L _{eq} (dB) ³		
	Loading Docks	Trailer Parking	Loading Docks	Trailer Parking	
Baroque Drive Residences	600	400	30	40	45
Oselot Way Residences	600	350	37	41	
¹ Residential uses are shown on Figure 1.					
² Distances scaled from closest loading dock and trailer parking areas to residential uses using provided site plan.					
³ Predicted noise levels at nearest Baroque Drive and Oselot Way residences include consideration of shielding that would be provided by existing 6-foot-tall solid noise barriers (-5 dB) and proposed intervening warehouse buildings (-7 dB), where applicable. The locations of existing noise barriers and buildings are shown on Figure 1.					
Source: Bollard Acoustical Consultants, Inc. (2022)					

As indicated in Table 6, truck backing and trailing noise levels are predicted to satisfy the applicable Rancho Cordova General Plan nighttime noise level standard of 45 dB L_{eq} at the

nearest residential uses located off Baroque Drive and Oselot Way. The predicted compliance includes consideration of shielding that would be provided by existing 6-foot-tall noise barriers and proposed intervening warehouse buildings (where applicable). In addition, the predicted noise levels presented in Table 6 are below the range of existing (2018) ambient noise levels measured within the vicinity of the nearest residences. Based on the analysis and results provided above, no further consideration of noise mitigation measures would be warranted for this aspect of the project.

Conclusions

Based on the analysis and results presented in this report, noise levels associated with project-generated off-site traffic and on-site operations at the proposed Stonecreek Industrial Park are expected to satisfy the applicable Rancho Cordova General Plan noise criteria at the nearest existing residential uses. As a result, no further consideration of noise mitigation measures would be warranted for the project.

These conclusions are based on the project trip generation data prepared by KD Anderson & Associates, Inc. (*Stonecreek Industrial Center Traffic Signal Feasibility, Rancho Cordova, California* [dated November 4, 2021]), the operations assumptions cited herein, BAC file data, and the studied site design presented in Figure 1 (dated October 29, 2021). Deviations from the resources cited herein could cause noise levels to differ from those predicted in this assessment. It should be noted that, although noise levels associated with operations at the proposed industrial park are predicted to comply with applicable Rancho Cordova General Plan noise level limits at the nearest residential uses, it is ultimately up to the future individual businesses/tenants of the development to comply with said noise standards.

This concludes our environmental noise assessment for the Stonecreek Industrial Park in Rancho Cordova, California. Please contact BAC at (530) 537-2328 or dariog@bacnoise.com with comments or questions regarding this assessment.

Appendix A Acoustical Terminology

Acoustics	The science of sound.
Ambient Noise	The distinctive acoustical characteristics of a given space consisting of all noise sources audible at that location. In many cases, the term ambient is used to describe an existing or pre-project condition such as the setting in an environmental noise study.
Attenuation	The reduction of an acoustic signal.
A-Weighting	A frequency-response adjustment of a sound level meter that conditions the output signal to approximate human response.
Decibel or dB	Fundamental unit of sound. A Bell is defined as the logarithm of the ratio of the sound pressure squared over the reference pressure squared. A Decibel is one-tenth of a Bell.
CNEL	Community Noise Equivalent Level. Defined as the 24-hour average noise level with noise occurring during evening hours (7 - 10 p.m.) weighted by a factor of three and nighttime hours weighted by a factor of 10 prior to averaging.
Frequency	The measure of the rapidity of alterations of a periodic signal, expressed in cycles per second or hertz.
IIC	Impact Insulation Class (IIC): A single-number representation of a floor/ceiling partition's impact generated noise insulation performance. The field-measured version of this number is the FIIC.
L_{dn}	Day/Night Average Sound Level. Similar to CNEL but with no evening weighting.
Leq	Equivalent or energy-averaged sound level.
L_{max}	The highest root-mean-square (RMS) sound level measured over a given period of time.
Loudness	A subjective term for the sensation of the magnitude of sound.
Masking	The amount (or the process) by which the threshold of audibility is for one sound is raised by the presence of another (masking) sound.
Noise	Unwanted sound.
Peak Noise	The level corresponding to the highest (not RMS) sound pressure measured over a given period of time. This term is often confused with the "Maximum" level, which is the highest RMS level.
RT₆₀	The time it takes reverberant sound to decay by 60 dB once the source has been removed.
STC	Sound Transmission Class (STC): A single-number representation of a partition's noise insulation performance. This number is based on laboratory-measured, 16-band (1/3-octave) transmission loss (TL) data of the subject partition. The field-measured version of this number is the FSTC.



Appendix B-1

Appendix B

2018-163 Stone Creek Industrial

24hr Continuous Noise Monitoring - Site A

10/30/2018 - 10/31/2018

Hour	Leq	Lmax	L50	L90
12:00	50	64	48	45
13:00	51	71	48	44
14:00	53	78	48	45
15:00	55	74	50	46
16:00	54	75	51	46
17:00	55	80	51	47
18:00	54	78	49	46
19:00	48	59	47	45
20:00	53	77	46	45
21:00	45	55	44	42
22:00	44	56	42	40
23:00	45	67	41	39
0:00	44	60	41	38
1:00	47	69	39	37
2:00	40	55	39	37
3:00	51	73	43	40
4:00	51	71	44	41
5:00	49	62	47	43
6:00	54	70	52	49
7:00	56	72	55	51
8:00	58	73	56	53
9:00	63	87	48	41
10:00	67	84	44	39
11:00	52	75	42	37

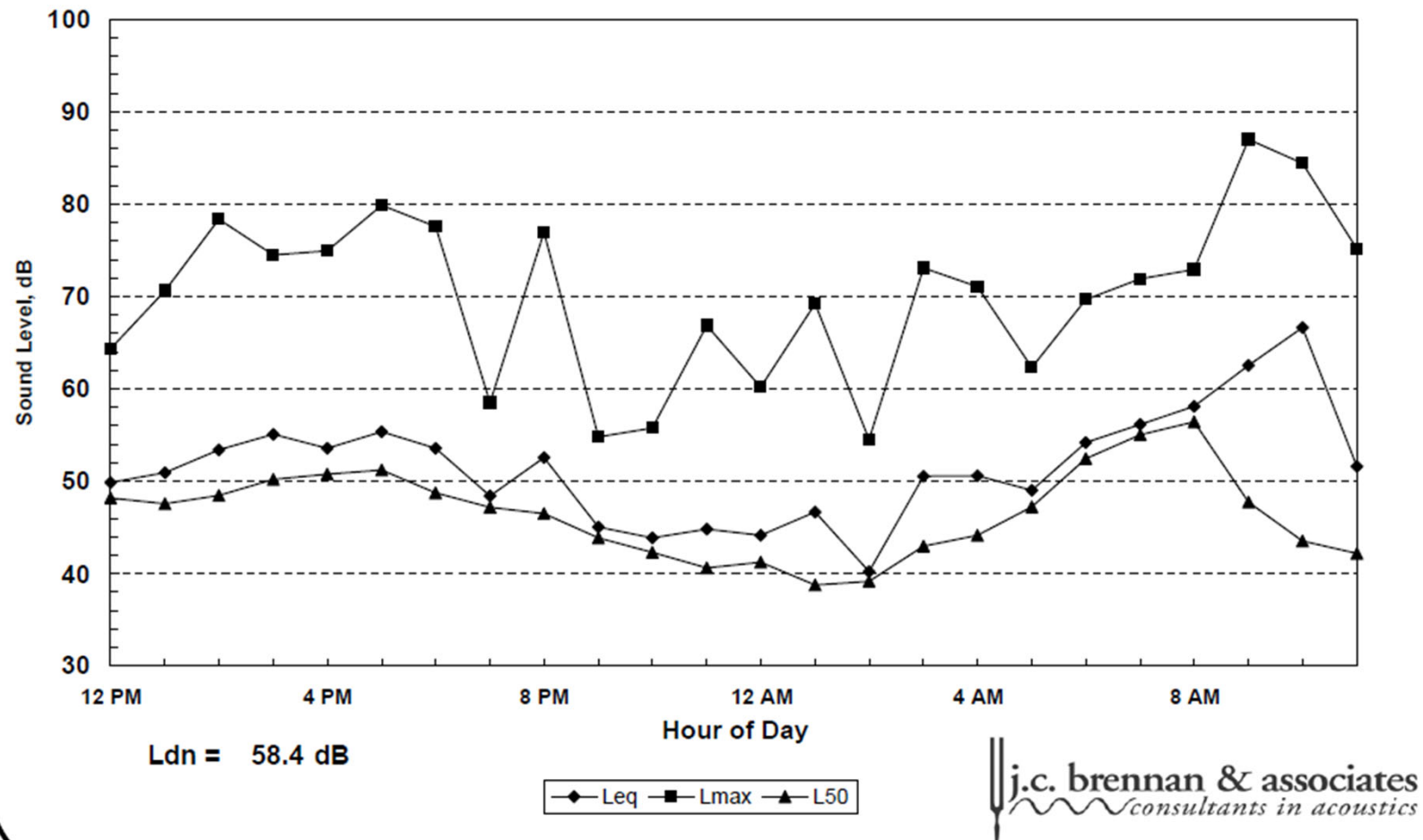
Statistical Summary						
Daytime (7 a.m. - 10 p.m.)				Nighttime (10 p.m. - 7 a.m.)		
	High	Low	Average	High	Low	Average
Leq (Average)	66.6	45.0	58.0	54.2	40.2	48.9
Lmax (Maximum)	87.0	54.8	73.4	73.1	54.5	64.7
L50 (Median)	56.4	42.2	48.5	52.4	38.7	43.2
L90 (Background)	52.6	37.2	44.8	49.1	36.8	40.5

Computed Ldn, dB	58.4
% Daytime Energy	93%
% Nighttime Energy	7%

j.c. brennan & associates
consultants in acoustics

Appendix B-2

Appendix B
2018-163 Stone Creek Industrial
24hr Continuous Noise Monitoring - Site A
10/30/2018 - 10/31/2018



ITEM 18.2.

Appendix C-1

FHWA Highway Traffic Noise Prediction Model Data Inputs

Stonecreek Industrial Park

File Name: 01 Existing

Model Run Date: 1/5/2022



Segment	Intersection	Direction	ADT	Day %	Night %	% Med. Trucks	% Hvy. Trucks	Speed	Distance
1	Zinfandel Dr / Bear Hollow Dr	North	17,900	83	17	2	1	45	100
2		South	15,475	83	17	2	1	45	100
3		East	630	83	17	1	1	25	100
4		West	3,505	83	17	1	1	35	100
5	Zinfandel Dr / Spoto Dr	North	14,625	83	17	2	1	45	100
6		South	13,675	83	17	2	1	45	100
7		East	25	83	17	1	1	25	100
8		West	1,275	83	17	1	1	35	100
9	Zinfandel Dr / Baroque Dr	North	13,050	83	17	2	1	45	100
10		South	13,025	83	17	2	1	45	100
11		East	1,700	83	17	1	1	35	100
12		West	1,025	83	17	1	1	35	100
13	Zinfandel Dr / First Driveway	North	13,050	83	17	2	1	45	100
14		South	13,050	83	17	2	1	45	100
15		East							
16		West							
17	Zinfandel Dr / Second Driveway	North	13,050	83	17	2	1	45	100
18		South	13,050	83	17	2	1	45	100
19		East							
20		West							
21	Zinfandel Dr / Third Driveway	North	13,050	83	17	2	1	45	100
22		South	13,050	83	17	2	1	45	100
23		East							
24		West							
25	Tina Fina Dr / Baroque Dr	North	500	83	17	1	1	25	100
26		South							
27		East	1,100	83	17	1	1	35	100
28		West	1,600	83	17	1	1	35	100

ITEM 18.2.

Appendix C-2

FHWA Highway Traffic Noise Prediction Model Data Inputs

Stonecreek Industrial Park

File Name: 02 Existing+Project

Model Run Date: 1/5/2022



Segment	Intersection	Direction	ADT	Day %	Night %	% Med. Trucks	% Hvy. Trucks	Speed	Distance
1	Zinfandel Dr / Bear Hollow Dr	North	20,705	83	17	2	1	45	100
2		South	18,280	83	17	2	1	45	100
3		East	630	83	17	1	1	25	100
4		West	3,505	83	17	1	1	35	100
5	Zinfandel Dr / Spoto Dr	North	17,430	83	17	2	1	45	100
6		South	16,480	83	17	2	1	45	100
7		East	25	83	17	1	1	25	100
8		West	1,275	83	17	1	1	35	100
9	Zinfandel Dr / Baroque Dr	North	15,855	83	17	2	1	45	100
10		South	16,430	83	17	2	1	45	100
11		East	1,700	83	17	1	1	35	100
12		West	1,625	83	17	1	1	35	100
13	Zinfandel Dr / First Driveway	North	16,450	83	17	2	1	45	100
14		South	16,110	83	17	2	1	45	100
15		East	430	83	17	2	1	25	100
16		West							
17	Zinfandel Dr / Second Driveway	North	16,120	83	17	2	1	45	100
18		South	15,625	83	17	2	1	45	100
19		East	845	83	17	2	1	25	100
20		West							
21	Zinfandel Dr / Third Driveway	North	15,620	83	17	2	1	45	100
22		South	13,650	83	17	2	1	45	100
23		East	2,730	83	17	2	1	25	100
24		West							
25	Tina Fina Dr / Baroque Dr	North	500	83	17	1	1	25	100
26		South							
27		East	1,100	83	17	1	1	35	100
28		West	1,600	83	17	1	1	35	100



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March 20, 2023

VIA E-MAIL

Honorable Mayor Budge, Vice Mayor Sander,
and City Councilmembers
City of Rancho Cordova
2729 Prospect Park Drive
Rancho Cordova, CA 95670
E-Mail: CityClerk@cityofranchocordova.org

Re: Potential Litigation/Damages Regarding Bear Hollow
and Stone Creek Projects

Dear Mayor Budge, Vice Mayor Sander and City Councilmembers:

This office represents Dermody Properties ("Dermody") with respect to its Major Design Review applications for two projects: (1) "Bear Hollow," an approximately 155,077-square foot logistics center located northwest of the intersection of North Mather Boulevard and Bear Hollow Drive; and (2) "Stone Creek," consisting of four light industrial warehouse buildings with accessory office space totaling approximately 602,004 square feet. Following the events that unfolded at the City Council meeting of March 6, 2023, specifically with regard to the Bear Hollow project but having obvious impact and implications for both projects, my client has requested that I clearly convey to you the likely legal ramifications of the course of action that the City Council has now made clear it will be pursuing.

As you have been advised in multiple communications by me, your staff, your City Attorney, and your "second opinion" outside counsel Hansen Bridgett, both in written documents and in in-person communications made at and outside of public meetings, the City lacks lawful discretion to reject either the Development Agreement (which remains valid and binding) or the projects. They are fully compliant with the Development Agreement, under which my client has fully vested rights. My client has, in good faith, engaged with the City at all levels—residents, staff, the City Manager, the City Attorney, and the City Council—to consider and respond to meaningful comments and feedback as to the projects' designs, the only area under which the City has any legal authority over the projects. My client has made every reasonable effort to accommodate the stated concerns, while still maintaining its vested rights to proceed with the projects. Its efforts have, unfortunately, been met with delay, obfuscation, and now a patently illegal "outright denial" vote with respect to Bear Hollow, which can only be construed as a rejection

Honorable Mayor Budge, Vice Mayor Sander, and City Councilmembers
March 20, 2023
Page 2

of the Stone Creek project – which proposes the same by-right use – as well, as explained in our recently sent Development Agreement default notice with respect to that project.

As you have certainly been advised by your own legal counsel, the City Council's continued unlawful treatment of Dermody's projects inexorably leads to but one destination: a lawsuit, and one that will be far more expensive than the Council appears to understand. Accordingly, the purpose of this letter is to provide the Council with an admittedly rough, but realistic estimate of just how much taxpayer money it is proposing to spend by virtue of its unlawful rejection of projects that any rational person, including the City Attorney and the City's specially-retained outside counsel, knows it must approve.

Before discussing specific numbers, however, I urge you all, again, to carefully read the very instructive appellate court opinion in *Mammoth Lakes Land Acquisition, LLC v. Town of Mammoth Lakes* (2010) 191 Cal.App.4th 435, which I have previously cited to you; a full copy of the decision is attached hereto for your convenient reference. Should you read it, you will note that the case bears striking and material similarities to the facts of the instant matter. Both entail a municipality intentionally and illegally thwarting the vested rights of a developer under a development agreement. In the *Mammoth Lakes* case, the Court of Appeal upheld a \$30 million verdict against the Town of Mammoth Lakes based on its violation of the development agreement, and over \$2 million in attorneys' fees (which would not include the fees incurred in the appeal itself, likely pushing the total fee award north of \$3 million). Thus, the decision resulted in some \$33 million in liability for the Town, a judgment that unsurprisingly drove it into bankruptcy. (I have also attached a copy of the Town's bankruptcy filing for your convenient reference.) And, of course, those dollar figures date from 2010; the dollar has been subject to approximately 37% inflation since 2010, making the *Mammoth Lakes* liability equivalent to over \$45 million in today's (2023) dollars.

Thus, while the high emotion, drama, and adrenalin of a contentious City Council meeting, driven by hyperbolic comments made in opposition to the Bear Hollow project, may have pushed the Council's slim majority over the edge of rationality and irreversibly down the chosen path of an illegal rejection, it remains my faint hope that, in the cold, hard light of day, with the City's potential liability for Dermody's damages more pellucidly spelled out, the Council might reconsider its rash decision and instead approve the Projects as it is legally obligated to do.

Based on Dermody's preliminary analysis of its damages, and without including attorneys' fees, they would be approximately \$59,900,000 in a scenario where five years of litigation are required to vindicate Dermody's vested rights under the Development Agreement.

As noted, however, the above figure does not include attorneys' fees, and in addition to such damages, Dermody would also be entitled to recover its attorneys'

Honorable Mayor Budge, Vice Mayor Sander, and City Councilmembers
March 20, 2023
Page 3

fees under section 8.13 of the Development Agreement. That figure appears likely to total somewhere in the vicinity of \$1 million per year of litigation; assuming roughly five years to litigate the case through judgment and appeal, that would total some \$5 million. Of course, the City will have additional expense in that it will have to pay its own outside counsel to defend the lawsuit, which would lead to another approximately \$5 million in unrecoverable expense to the City.

All told, then, the City would be facing an ultimate liability of approximately \$69.9 million in this case. Its fiscal year 2022-2023 general fund proposed budget totals \$66 million; its fiscal year 2021-2022 general fund revenues totaled \$65 million.¹ The fact that the City is blithely courting an enormous litigation liability that significantly exceeds its annual budget, in a matter that its own legal counsel have undoubtedly advised it that it will most likely lose, is nothing short of astonishing and recklessly irresponsible – so much so that it is quite unprecedented in my more than thirty-five years of litigation experience.

As I'm sure you are also aware, the law also is clear that each member of the City Council owes the City and its citizens the duties of a fiduciary. (*Lexin v. Superior Court* (2010) 47 Cal.4th 1050, 1073; *People v. Rizzo* (2013) 214 Cal.App.4th 921, 950-951; *City of Palm Springs v. Living Desert Reserve* (1999) 70 Cal.App.4th 613, 630; *Hobbs, Wall & Co. v. Moran* (1930) 109 Cal.App. 316, 319.) It is axiomatic that the councilmembers thus have a duty to avoid wasting or squandering the City's funds, many of which are paid in taxes by their constituents, who undoubtedly will expect that their tax monies will be spent on matters benefitting the entire City and its citizens. By refusing to approve the projects, as they are legally required to under the Development Agreement and Dermody's vested rights thereunder, it appears to us that the City Council majority is purposely choosing to enmesh the City in years of litigation to no practical end, wasting tens of millions of dollars of taxpayer money in the process. As I have consistently done, I once again urge you to avoid this pointless and perilous (for the City) exercise, and to approve the projects, as you have been correctly advised that the law clearly requires.

While it may well turn out to be, this letter is not intended to be a vain effort; rather, it is our sincere hope that cooler heads will ultimately prevail and that litigation may be avoided while there is still a chance of that. Should that not occur, however, please be advised that it is absolutely certain that my client has ample means to and will vigorously defend and pursue its legal rights in litigation for as long as it takes to vindicate them. Nothing set forth in this letter is intended to, nor should it be construed to, limit or waive my client's rights, all of which are hereby expressly reserved. The damages figures cited herein are at this point necessarily preliminary estimates and are not intended to cap or otherwise limit the damages to be sought in litigation or at trial, again, should the same become necessary.

¹ <https://stories.opengov.com/ranchocordovaca/published/T-yvgzL3u>

Honorable Mayor Budge, Vice Mayor Sander, and City Councilmembers
March 20, 2023
Page 4

Thank you for your anticipated attention to these matters.

Very truly yours,

MILLER STARR REGALIA



Arthur F. Coon

AFC/mch:klw
w/encls.

cc: Micah Runner, City Manager (w/encls., mrunner@cityofranchocordova.org)
Elizabeth Sparkman, Community Development Director,
(w/encls., esparkman@cityofranchocordova.org)
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KeyCite Yellow Flag - Negative Treatment

Distinguished by [Redondo Beach Waterfront, LLC v. City of Redondo Beach](#), Cal.App. 2 Dist., December 21, 2022

191 Cal.App.4th 435

Court of Appeal, Third District, California.

MAMMOTH LAKES LAND ACQUISITION,

LLC, Plaintiff and Respondent,

v.

TOWN OF MAMMOTH LAKES,

Defendant and Appellant.

No. C059239

|

Dec. 30, 2010.

|

Review Denied March 23, 2011.

Synopsis

Background: Developer brought action for damages against town for anticipatory breach of development agreement after town refused to move forward with hotel/condominium project unless Federal Aviation Administration's (FAA) objections to project could be resolved. The Superior Court, Mono County, No. 15954, [Roger D. Randall, J.](#), entered judgment on jury verdict for developer and awarded it \$30 million in damages in the form of lost profits. Town appealed.

Holdings: The Court of Appeal, [Nicholson, J.](#), held that:

[1] developer was not required to exhaust administrative remedies;

[2] FAA's objections to hotel/condominium project did not excuse town's performance of the agreement;

[3] town manager had authority to act on town's behalf when he refused to cooperate with developer; and

[4] evidence supported the lost profits damages award.

Affirmed.

West Headnotes (39)

[1] **Zoning and Planning** 🔑 Conditions and Agreements

Zoning and Planning 🔑 Vested or property rights

While, as a legislative act, a development agreement can be disapproved by referendum, an unchallenged development agreement is an enforceable contract between the municipality and the developer; depending on its terms, it may create vested rights in the developer with respect to land use. [West's Ann.Cal.Gov.Code § 65865](#).

10 Cases that cite this headnote

[2] **Zoning and Planning** 🔑 Conditions and Agreements

The scope of development agreements need not be limited to freezing land use rules, regulations, and policies but can include other promises between the municipality and the developer. [West's Ann.Cal.Gov.Code § 65864](#).

6 Cases that cite this headnote

[3] **Administrative Law and Procedure** 🔑 Exhaustion of Administrative Remedies

Under doctrine of "exhaustion of administrative remedies," where an administrative remedy is provided by statute, relief must be sought from the administrative body and this remedy exhausted before the courts will act; exhaustion of the administrative remedy is a jurisdictional prerequisite to resort to the courts.

1 Case that cites this headnote

[4] **Municipal Corporations** 🔑 Rights and Remedies of Contractors and Sureties Against Municipality

Public Contracts 🔑 Breach of contract by government entity, rights on

Developer could elect action for breach of development agreement as its judicial remedy, rather than having to proceed with an administrative mandamus action, after town refused to proceed with hotel/condominium project due to Federal Aviation Administration's (FAA) objections, which were not conditions of agreement; determination of damages was not available in administrative mandamus action, and once developer gave notice of default and town failed to cure the default, there was no longer a proposed land use to adjudicate in the town's quasi-judicial administrative process, such that all that remained was factual determination of whether town breached the agreement and, if it did, what was the remedy.

 West's Ann.Cal.C.C.P. § 1094.5.

[5] **Trial** Construction of writings

The interpretation of a written instrument, even though it involves what might properly be called questions of fact, is essentially a judicial function to be exercised according to the generally accepted canons of interpretation so that the purposes of the instrument may be given effect.

[6] **Evidence** Construction, Interpretation, or Application of Writings; Ambiguity

Extrinsic evidence is admissible to interpret a written instrument, but not to give it meaning to which it is not reasonably susceptible, and it is the instrument itself that must be given effect.

1 Case that cites this headnote

[7] **Trial** Construction of writings

It is solely a judicial function to interpret a written instrument unless the interpretation turns upon the credibility of extrinsic evidence.

[8] **Zoning and Planning** Other particular conditions or agreements

Federal Aviation Administration's (FAA) objections to airport hotel/condominium project

did not excuse town's performance of development agreement under provision in agreement excusing default for delays in or failures of performance due to governmental restrictions imposed or mandated by other governmental entities, given that town, by making assurances to the FAA in exchange for grant funding for its airport, caused the FAA to express reservations concerning the project, such that the FAA's restrictions were within the reasonable control of the town.

1 Case that cites this headnote

[9] **Zoning and Planning** Hearing and trial in general

Question of whether parties intended to include town's grant assurances to Federal Aviation Administration (FAA) when they agreed to comply with FAA rules and regulations was for jury in developer's action for anticipatory breach of development agreement, even if FAA assurances fell within broad definition of a "rule" under the federal Administrative Procedures Act.

 5 U.S.C.A. § 551(4).

[10] **Zoning and Planning** Other particular conditions or agreements

In action against town for anticipatory breach of development agreement, rules of contract interpretation, rather than canons of statutory interpretation, applied to interpret parties' intent as to provision in agreement requiring parties to comply with Federal Aviation Administration's (FAA) rules; question concerning development agreement did not concern validity of the agreement as a legislative act of the town, but instead presented question concerning the interpretation of the agreement, and to that question, the agreement was a contract between the parties. West's Ann.Cal.Gov.Code § 65867.5.

6 Cases that cite this headnote

[11] **Zoning and Planning** Other particular conditions or agreements

Developer's acknowledgement of Federal Aviation Administration's (FAA) funding and participation in matching funding pursuant to development agreement did not amount to consent to FAA's restrictions or reservations that town accepted in exchange for obtaining federal funds under a grant for improvements to airport, given that the town withheld from developer knowledge of the FAA's reservations concerning the agreement.

[12 Cases that cite this headnote](#)

- [12] **Appeal and Error** 🔑 Entire record
Appeal and Error 🔑 Jury as factfinder
[below in general](#)

When considering whether the evidence was sufficient to support the jury's verdict, the Court of Appeal reviews the entire record in the light most favorable to the judgment to determine whether there are sufficient facts, contradicted or uncontradicted, to support the judgment.

[14 Cases that cite this headnote](#)

- [13] **Evidence** 🔑 Substantial Evidence
Substantial evidence is evidence that is reasonable and credible.

[9 Cases that cite this headnote](#)

- [14] **Appeal and Error** 🔑 Jury as factfinder
[below in general](#)

In evaluating the sufficiency of the evidence to support the jury's verdict, the Court of Appeal accepts reasonable inferences in support of the judgment and does not consider whether contrary inferences may be made from the evidence.

[12 Cases that cite this headnote](#)

- [15] **Contracts** 🔑 Grounds of action

To recover on a cause of action for breach of contract, the plaintiff must establish: (1) the existence of a contract, (2) plaintiff's performance or excuse for nonperformance, (3) defendant's breach, and (4) damage to plaintiff as a result of defendant's breach.

- [16] **Contracts** 🔑 Acts constituting renunciation and liabilities therefor

Anticipatory breach occurs when one of the parties to a bilateral contract repudiates the contract.

[7 Cases that cite this headnote](#)

- [17] **Contracts** 🔑 Acts constituting renunciation and liabilities therefor

Repudiation of a bilateral contract based on anticipatory breach may be express or implied; an "express repudiation" is a clear, positive, unequivocal refusal to perform, whereas an "implied repudiation" results from conduct where the promisor puts it out of his power to perform so as to make substantial performance of his promise impossible.

[10 Cases that cite this headnote](#)

- [18] **Contracts** 🔑 Renunciation

When a promisor repudiates a contract, the injured party faces an election of remedies: he can treat the repudiation as an anticipatory breach and immediately seek damages for breach of contract, thereby terminating the contractual relation between the parties, or he can treat the repudiation as an empty threat, wait until the time for performance arrives and exercise his remedies for actual breach if a breach does in fact occur at such time; however, if the injured party disregards the repudiation and treats the contract as still in force, and the repudiation is retracted prior to the time of performance, then the repudiation is nullified and the injured party is left with his remedies, if any, invocable at the time of performance.

[4 Cases that cite this headnote](#)

- [19] **Contracts** 🔑 Acts constituting renunciation and liabilities therefor

A party can breach, or break, a contract before performance is required by clearly and positively

indicating, by words or conduct, that they will not or cannot meet a requirement of the contract, or that they will not perform until additional conditions not in the contract are met.

[20] **Municipal Corporations** 🔑 Authority and Powers

States 🔑 Authority and Powers of Officers and Agents, and Exercise Thereof

No government, whether state or local, is bound to any extent by officer's acts in excess of his authority.

[21] **Public Employment** 🔑 Authority and Powers

One who deals with public officers stands presumptively charged with full amount of that officer's powers, and is bound at his peril to ascertain extent of his powers to bind government for which he is an officer, and any act of officer to be valid must find express authority in the law or be necessarily incidental to power expressly granted.

[22] **Municipal Corporations** 🔑 Mayor or other chief executive

Town manager did not act in excess of official authority when he refused to cooperate with developer in moving along hotel/condominium project, even though he failed to obtain vote of town council; municipal code charged town manager, as an executive officer, with the duty to see that all franchises, contracts, permits and privileges granted by the town council were faithfully observed.

[23] **Contracts** 🔑 Acts constituting renunciation and liabilities therefor

If a party to a contract expressly or by implication repudiates the contract before the time for his or her performance has arrived, an anticipatory breach is said to have occurred; the promisor has engaged not only to perform under the contract, but also not to repudiate his or her promise.

5 Cases that cite this headnote

[24] **Contracts** 🔑 Acts constituting renunciation and liabilities therefor

An express repudiation of a contract is a clear, positive, unequivocal refusal to perform.

9 Cases that cite this headnote

[25] **Contracts** 🔑 Acts constituting renunciation and liabilities therefor

Annexing an unwarranted condition to an offer of performance is a refusal to perform the contract.

2 Cases that cite this headnote

[26] **Appeal and Error** 🔑 Actions on building contracts and to enforce mechanics' liens

Town could not raise good-faith theory of defense on appeal to claim that it repudiated development agreement because town did not proffer theory to jury.

[27] **Municipal Corporations** 🔑 Evidence

Public Contracts 🔑 Breach of contract

Evidence did not support town's claim that it desired to comply with development agreement in good faith as required to show that it did not repudiate agreement for development of hotel/condominium project such that an anticipatory breach had occurred, where, at time that town asserted it was acting in good faith by being willing to abide by terms of agreement, it was also actively working with Federal Aviation Administration (FAA) to terminate the developer's rights under agreement.

1 Case that cites this headnote

[28] **Municipal Corporations** 🔑 Rights and Remedies of Contractors and Sureties Against Municipality

Public Contracts 🔑 Cancellation or termination of contract in general, rights of contractors

Town demonstrated its intention not to be bound by the development agreement, as required to support finding that it repudiated agreement, by actively refusing to cooperate and seeking to have the developer's rights terminated.

[29] **Municipal Corporations** 🔑 Trial, judgment, and review

Public Contracts 🔑 Instructions

Instruction in anticipatory breach of contract action, that “it is not an excuse to performance of one contract that the party chose to perform the other contract,” did not allow jury to base a finding of contract repudiation on town's formation of inconsistent contracts; instead, the instruction merely informed the jury that a party could not rely on its assent to one contract to justify breach of another, inconsistent contract.

[30] **Municipal Corporations** 🔑 Rights and Remedies of Contractors and Sureties Against Municipality

Public Contracts 🔑 Breach of contract by government entity, rights on

Letter professing town's willingness to work with developer on Federal Aviation Administration's (FAA) compliance assurances for federal grant did not constitute a retraction of its earlier repudiation of development agreement, such that it was not in anticipatory breach of the agreement; while town professed its willingness to work with the developer on FAA compliance issues, it did not offer to move forward with the hotel/condominium project without first resolving the FAA compliance issues.

1 Case that cites this headnote

[31] **Appeal and Error** 🔑 Defects, objections, and amendments

Issue of whether trial court erred by not instructing jury on retraction of town's repudiation of contract in anticipatory breach of contract action was not required to be considered on appeal, where argument was appended to another argument.

2 Cases that cite this headnote

[32] **Appeal and Error** 🔑 Evidence and Trial

Town forfeited review of issue of whether trial court erred in anticipatory breach of contract action by not instructing the jury on retraction of town's repudiation of contract, given town's failure to provide a citation to record to show where town requested what it contended would have been a proper instruction on retraction.

1 Case that cites this headnote

[33] **Damages** 🔑 Breach of contract

Where prospective profits are the natural and direct consequences of a breach of contract, they may be recovered.

1 Case that cites this headnote

[34] **Damages** 🔑 Loss of profits

Damages consisting of the loss of anticipated profits need not be established with certainty; it is sufficient that it be shown as a reasonable probability that the profits would have been earned except for the breach of the contract.

2 Cases that cite this headnote

[35] **Appeal and Error** 🔑 Deference given to lower court in general

Appeal and Error 🔑 Setting aside verdict; new trial

The Court of Appeal defers to the trial court's factual determination when the court grants a motion for new trial, not when the court denies such a motion; when the court denies the motion, the Court of Appeal will presume the jury's verdict is correct.

3 Cases that cite this headnote

[36] **Damages** 🔑 Loss of profits

Lost profits may be proved by means other than the value given by a willing buyer; expert testimony, alone, may be sufficient if it is

supported by substantial evidence and is not speculative.

[37] **Damages** 🔑 Particular cases

Evidence 🔑 Damages

Jury verdict awarding developer \$30 million in damages for lost profits as result of town's anticipatory breach of development agreement for hotel/condominium project was sufficiently supported by expert testimony of certified appraiser, as well as developer's part-owner; using intentionally conservative assumptions and accepted valuation principles, appraiser gave project a current value of \$37 million to \$48 million, and part-owner, who was experienced in developing, managing, and owning real estate and had developed and redeveloped hotels, estimated that the completed project could be sold for \$30 million to \$40 million.

[38] **Evidence** 🔑 Examination of Witness

In stating an opinion as to market value of his property, landowner is bound by the same rules of admissibility as is any other witness. [West's Ann.Cal.Evid.Code § 813](#).

1 Case that cites this headnote

[39] **Appeal and Error** 🔑 Reply briefs

Town's argument that \$30 million lost profits damage award in developer's anticipatory breach of contract action amounted to an invalid forfeiture of taxpayer funds was forfeited on appeal where issue was raised for first time in its reply brief.

****802** APPEAL from a judgment of the Superior Court of Mono County, [Roger D. Randall](#), Judge. * Affirmed.

Attorneys and Law Firms

Law Office of Peter E. Tracy and [Peter E. Tracy](#), Bishop; Morrison & Foerster, [Edgar B. Washburn](#), [Maria Chedid](#),

Shaye Diveley, and [Anton A. Ware](#), San Francisco, for Defendant and Appellant.

Meyers, Nave, Riback, Silver & Wilson, [Steven R. Meyers](#), [Julia L. Bond](#), and [Peter S. Hayes](#), Oakland, for League of California Cities and California State Association of Counties as Amici Curiae on behalf of Defendant and Appellant.

Quinn Emanuel Urquhart & Sullivan, [Daniel L. Brockett](#), John M. Pierce, Los Angeles, and Daniel H. Bromberg for Plaintiff and Respondent.

NICHOLSON, J.

***440** Defendant Town of Mammoth Lakes (the Town) entered into a development agreement with Terrence Ballas to make improvements at the Town's airport and to build a hotel or condominium project at the airport. Ballas would initially lease the land for the hotel/condominium project but would later have the option to purchase it. Plaintiff Mammoth Lakes Land Acquisition, LLC (Developer), later acquired from Ballas the right to build the hotel or condominium project.

The Town eventually changed its priorities and no longer wanted the hotel/condominium project. The Town sought help from the Federal Aviation Administration (FAA) to eliminate the Developer's ability to build the hotel/condominium project. The FAA objected to the hotel/condominium project and threatened to cut off federal funding for the airport. However, the Developer demanded that the Town move forward with the hotel/condominium project as contemplated in the development agreement. Despite the demand, the Town refused to move forward unless the parties could resolve the FAA's objections.

Claiming the Town repudiated the development agreement, the Developer sued the Town for anticipatory breach of contract. A jury found that the Town breached the development agreement and awarded \$30 million in damages to the Developer. Later, the trial court awarded \$2,361,130 in attorney fees to the Developer.

On appeal, the Town contends that the judgment must be reversed because (1) the Developer could not recover in a breach of contract cause of action because it failed to exhaust its administrative remedies, (2) even if contract remedies are available, three clauses of the development agreement give the ***441** Town a complete defense, (3) the Developer failed to establish a repudiation of the development agreement, (4)

the evidence of damages was too speculative to support the verdict, and (5) the attorney fees award must be reversed along with the judgment. None of the Town's contentions has merit.

The Developer was not restricted to pursuing the administrative remedies available through the Town's land use application process because the Town violated the development agreement by refusing to move forward with the hotel/condominium project unless the FAA's objections were resolved. Therefore, the judicial remedy is a breach of contract action based on the Town's executive decision not ****803** to move forward as required by a contract, not an administrative mandamus action to review a quasi-judicial decision of the Town concerning a land use application. Also, a breach of contract action is appropriate because damages for anticipatory breach of the development agreement are not available in an administrative mandamus action.

With respect to the defenses asserted by the Town based on the language of the development agreement, none requires reversal of the judgment. A clause excusing performance of the development agreement because of governmental restrictions is unhelpful to the Town because those restrictions were under the Town's control. Another clause requiring the parties to comply with the rules and regulations of the FAA did not excuse the Town from performing on the development agreement because the FAA's objections were based on grant assurances made by the Town to obtain FAA funding, not on FAA rules or regulations. And the third clause is likewise unhelpful to the Town. It required the Developer to provide funds matching the FAA's funding. Contrary to the Town's assertion, providing matching funds did not signal the Developer's consent to the FAA restrictions because the evidence established that the Developer neither knew nor ought to have known about the restrictions when providing the matching funds.

The Town asserts that the Developer failed to establish a breach of the development agreement because (A) the Developer failed to establish a breach attributable to the Town; (B) the evidence was insufficient to establish repudiation; (C) the purchase option for the land under the hotel/condominium project was a unilateral contract not yet ripe for breach; and (D) the Town retracted any repudiation. The Developer established a breach attributable to the Town by evidence of the actions of town officials, acting within their authority. Those actions constituted repudiation of the development agreement because they insisted on resolution

of the FAA's objections before moving forward with the development agreement, which resolution was not a condition for performance in the development agreement. Although the development agreement included a purchase option for the land under the hotel/condominium project, the breach was of the development agreement, ***442** which was not a unilateral contract. And, despite the claims of town officials that they were willing to move forward with the hotel/condominium project, their actions established that they did not retract the repudiation of the development agreement.

The evidence of damages in the form of lost profits came from three sources: an experienced appraiser of hotel and resort projects, one of the investors in the Developer, and the town manager. Considering the evidence in the light most favorable to the verdict, the evidence of damages was not too speculative to support the \$30 million damages award.

And finally, the Town's contention that the award of attorney fees must be reversed is without merit because the Town's sole argument for reversal of the attorney fees award is that it was based on the Developer's status as the prevailing party. The award of attorney fees is valid because we do not reverse the judgment and the Developer remains the prevailing party.

We affirm the judgment and the award of attorney fees.

HISTORY OF DEVELOPMENT AGREEMENTS

A development agreement is a statutorily-authorized agreement between a municipal government (here, the Town) and a ****804** property owner for the development of the property. ([Gov.Code](#), § 65865, subd. (a).) One of the main components of a development agreement is a provision freezing the municipality's rules, regulations, and policies governing permitted uses of land and density of the land use, as well as standards and specifications for design, improvement, and construction. ([Gov.Code](#), § 65866.) This provision allows a developer to make long-term plans for development without risking future changes in the municipality's land use rules, regulations, and policies.

 *Santa Margarita Area Residents Together v. San Luis Obispo County Bd. of Supervisors* (2000) 84 Cal.App.4th 221, 227, 100 Cal.Rptr.2d 740 (SMART).)

[1] The development agreement must be approved by ordinance and is, therefore, a "legislative act." ([Gov.Code](#), § 65867.5, subd. (a).) Because the development agreement

is approved by ordinance, it is subject to referendum, which allows the electorate to overturn approval of the agreement. (*Ibid.*) While, as a legislative act, a development agreement can be disapproved by referendum, an unchallenged development agreement is an enforceable contract between the municipality and the developer. Depending on its terms, it may create vested rights in the Developer with respect to land use. (See *SMART*,  *supra*, 84 Cal.App.4th at p. 230, 100 Cal.Rptr.2d 740 [development agreement creates commitments to developers].)

***443** After approval by ordinance, the development agreement is enforceable despite subsequent changes in the municipality's land use laws. (Gov.Code, § 65865.4.) The development agreement may be amended or cancelled only by mutual consent of the parties to the agreement. (Gov.Code, § 65868.)

The Legislature enacted the development agreement statutes in response to the California Supreme Court's jurisprudence on vested rights.

Before 1976, developers in California faced changes in land use laws and policies during the course of long-term development of property. When a change in the land use laws and policies interfered with development already initiated, some developers argued that they had a “vested right” to complete the development despite the changes in the land use laws and policies. It was “the rule in this state and in other jurisdictions that if a property owner has performed substantial work and incurred substantial liabilities in good faith reliance upon a permit issued by the government, he acquires a vested right to complete construction in accordance with the terms of the permit.

[Citations.]” ( *Avco Community Developers, Inc. v. South Coast Regional Com.* (1976) 17 Cal.3d 785, 791, 132 Cal.Rptr. 386, 553 P.2d 546 (*Avco*).)

In 1976, the California Supreme Court, in *Avco*, decided that no right to complete the work vested until the developer obtained a building permit, even if the developer had already performed substantial work and incurred substantial liabilities on the project. ( *Avco*, *supra*, 17 Cal.3d at p. 793, 132 Cal.Rptr. 386, 553 P.2d 546.) The court noted that any change in this common law principle would have to come from the Legislature. ( *Id.* at p. 796, 132 Cal.Rptr. 386, 553 P.2d 546.)

In 1979, the Legislature's enactment of the development agreement statutes provided a way for the municipality and developer to depart from the common law rule of vested rights. The Legislature declared that “[t]he lack of certainty in the approval of development projects can result in a waste of resources, escalate the cost of housing and other development to the consumer, and discourage investment in and commitment to comprehensive planning ****805** which would make maximum efficient utilization of resources at the least economic cost to the public.” (Gov.Code, § 65864, subd. (a).)

[2] The Legislature recognized that the newly-authorized development agreements would provide benefits for both municipality and developer. The agreements allowed the developer to proceed with a project with the assurance that the project would be approved based on rules, regulations, and policies existing at the time the development agreement was approved, even if those rules, regulations, and policies changed over the course of the development project. (Gov.Code, § 65864, subd. (b).) In 1984, the Legislature added a declaration that development agreements would also allow ***444** municipalities to extract promises from the developers concerning financing and construction of necessary infrastructure. (Gov.Code, § 65864, subd. (c); Stats.1984, ch. 143, § 1, p. 431.) This declaration makes it clear that the scope of development agreements need not be limited to freezing land use rules, regulations, and policies but can include other promises between the municipality and the developer. Thus, a legislatively-approved development agreement gives both parties vested contractual rights.

FACTS¹

The Town's Acquisition of Airport and FAA Funding

The Town took over operation of the Mammoth Lakes Airport (later known as the Mammoth–Yosemite Airport) in 1991 and annexed the property in 1995. The Town desired to improve the airport to host commercial air service to enhance the Town's appeal as a destination for visitors.

Beginning in 1992, the Town received grants from the FAA under the Airport Improvement Program. As a condition for receiving these federal funds, the Town made assurances to the FAA that it would meet any conditions placed on the funding by the FAA. These grant assurances were made part of the funding agreements. One of the assurances made by the Town to the FAA was that the Town would not sell or

lease any part of the airport property without approval from the FAA.

Proposed Development Agreement

In 1997, the Town proposed to enter into a Development Agreement with Terrence Ballas, who had experience in airport development.

The recitals at the beginning of the proposed Development Agreement stated the Town's purposes and goals: "[The] Town has determined that a first-class Airport operation, including an efficient fixed base operation, increased hangar space, modern fuel facilities, a hotel or condominium or residential condominium and related amenities, and space for recreational *445 vehicles, will benefit the economy of the Mammoth Lakes area and promote the goals set **806 forth in the applicable vision statements, adopted by the Town, including the goal of becoming a year around [*sic*] destination resort." The recitals also stated: "[The] Town has further determined that the interests of its tax paying [*sic*] citizenry can best be served by providing for the funding of Airport operations and development through private capital rather than taxpayer funds, where reasonably possible, and through the privatization of certain services provided at or in connection with the Airport."

The Development Agreement addressed the procedure upon default of one of the parties. It stated: "Failure by either party to perform any material term or provision of this Agreement for a period of thirty (30) days after delivery of written notice of default from the other party shall constitute a default under this Agreement." Upon the offending party's failure to cure the default, the Development Agreement allowed the offended party to "institute legal action against the party in default...."

Under the Development Agreement, Ballas agreed to make improvements to the airport at his own expense, including construction of hangars, a gas storage building, and a terminal, as well as remodeling of an existing terminal. These improvements were designated as Phase I. In Phase II of the airport development, Ballas would, again at his own expense, build a restaurant building, a gasoline station, and a recreational vehicle park.

As part of Phase I, the Development Agreement allowed Ballas to build a hotel or condominium project (which came to be known as the Hot Creek Project), described in the Development Agreement as "time share or similar units,

hotel or residential condominium, or a commercial lodging facility for transient guests of a minimum stay of sixty (60) units to be constructed by Developer." In later phases of the development, Ballas would be allowed to build additional hotel or condominium facilities to a maximum of 250 total hotel or condominium units. The hotel/condominium project was to be built on a 26-acre parcel, adjacent to the aeronautical services. In 2027, Ballas would have an option to purchase that parcel. The construction and operation of the hotel/condominium project was a material part of the consideration for the Development Agreement.

The option to purchase the parcel made the Development Agreement economically feasible for Ballas. He would make the improvements and build the hotel or condominiums, initially leasing the land from the Town, then exercising the option to purchase the land.

The Development Agreement required the Town to act reasonably in moving the project along. It stated: "Town and its agents, employees and *446 contractors shall exercise any discretionary approvals applicable to the Project reasonably, in good faith, and in a timely manner."

The Development Agreement incorporated other documents, such as a commercial development plan and leases. In the lease of the land for the hotel/condominium project, the Town warranted that "it has title to the premises free and clear of liens and encumbrances, that it has the right and power to enter into this lease, and that this lease is made pursuant to the powers vested in [the Town] by laws of the State of California."

Events Leading to Signing of Development Agreement

Before the Town entered into the Development Agreement with Ballas, it sought approval from the FAA for the agreement. William Manning, the Town's airport director, **807 sent correspondence to the FAA with details of the Development Agreement and the accompanying leases. The FAA responded by fax: "We need to review 'options'; 55 yr lease creates problems with FAA policy...." The response also stated: "Under current FAA policy and procedure guidance a release of all federal obligations which encumber the property must be obtained from the FAA prior to the notice to sell/purchase the property. The FAA should be given a copy of the option contract for review and comment prior to recording the document."

The town council approved the Development Agreement by ordinance. After the town council's approval, Ballas and the Town's mayor pro tem signed the Development Agreement on August 21, 1997, just nine days after the FAA made known to the Town its reservations concerning the Development Agreement.

While the Town claimed that the Town's airport director discussed the FAA's concerns with Ballas, Ballas testified that the Town did not disclose to him the FAA's concerns about the Development Agreement until seven years later. On appeal, the jury is deemed to have credited Ballas's testimony in this regard. ( *Garlock Sealing Technologies, LLC v. NAK Sealing Technologies Corp.* (2007) 148 Cal.App.4th 937, 951, 56 Cal.Rptr.3d 177.)

The Town also did not contact the FAA to discuss its concerns. The Town's airport manager testified: "I believed that [the FAA representative's] form of correspondence was ridiculous. If he had issues or comments that he wanted me to deal with, I believe he would have sent me a formal FAA letter. We correspond regularly with the FAA. This—the fax notes were highly irregular. I just felt like it wasn't an official correspondence and I wasn't obligated to respond to it."

After signing the Development Agreement, Ballas assigned his interest in the Development Agreement to various other entities. He assigned his right to *447 develop, market, and sell the hotel/condominium project to Mammoth Lakes Land Acquisition, LLC, the plaintiff in this case. Ballas retained a substantial interest in the limited liability company.

The plaintiff, Mammoth Lakes Land Acquisition, LLC, is also known as the Hot Creek Developer. We refer to the plaintiff in this opinion as the Developer.

Phase I Improvements

As part of Phase I of the Development Agreement and within three years of signing the Development Agreement, the Developer spent \$15 million to \$17 million on improvements to the airport. It built hangars, renovated an existing terminal, and installed a new fueling system and water supply system. The Developer also took over the airport's general aviation operations.

Hotel/Condominium Complex

In 2000, after the airport improvements had been made and were in operation, the Developer formulated and submitted to the Town an application with a plan for the hotel/condominium project. The plan included residential condominiums. In 2002, Town staff raised objections to the plan because it reflected a residential orientation instead of one promoting services to visitors. Town staff urged the Developer to withdraw the application, which the Developer refused to do.

The Developer's application was placed on the agenda for a Town planning commission meeting with a recommendation from staff to deny the application. Even though the Development Agreement allowed residential condominiums, Town **808 staff stated that the plan was "inconsisten[t] with entitlements that have been granted to the applicant under the terms of a Development Agreement, and with zoning regulations applicable to the property." In light of the negative recommendation from Town staff and an assurance from staff that they would negotiate with the Developer concerning the hotel/condominium project, the Developer agreed to withdraw the application from consideration at the planning commission meeting.

After the Developer's application had been withdrawn from consideration at the planning commission meeting, the Town's community development director sent Ballas a letter on April 1, 2002, about five years after the signing of the Development Agreement, apologizing for the delay in processing the application and recognizing the Developer's right to construct a residential condominium project under the Development Agreement. The letter continued: "Since signing the Development Agreement in 1997, major changes in *448 the Town's economic climate have occurred; commercial air service is on the horizon, housing prices have increased significantly, and the village is under construction with commercial tenants selected. With these factors in mind, the Town believes that an opportunity exists in a modified plan for a centralized hotel or condominium facility for transient guests surrounded by uses such as residential condominiums which are designed and located to conveniently utilize the resorts [*sic*] amenities and to participate in a visitor rental program at the individual owner's desire. We believe that this type of project will be beneficial financially to both the Town and the developer."

At the suggestion of Town staff, the Developer worked with Town staff to revamp the plan to have multiple owners of each condominium with a hospitality company to manage the joint

ownership and rent out the units when the owners were not occupying them. In 2004, the Developer submitted a revised plan to Town staff for informal review. The plan, however, was never submitted formally to the Town for approval.

FAA Objections and Town's Change of Priorities

In 1999, the Town began working to get commercial air service into the airport. The FAA approved an environmental assessment in 2000, which concluded that the commercial air service, and the associated improvements to the airport, would not have significant environmental impacts. However, this assessment was overturned by a federal court. (*California v. U.S. Dept. of Transp.* (N.D.Cal.2003) 260 F.Supp.2d 969.) In response to this loss in federal court, the FAA reevaluated the hotel/condominium project and concluded that it had not been adequately subjected to environmental review.

In 2004, the FAA took the position that the grant assurances given by the Town required the Town to obtain the consent of the FAA before executing a lease to use airport property for anything other than an aeronautical use. The FAA asserted that it had not given consent for the nonaeronautical use of the airport property to build a hotel/condominium project. The Town resisted this position, stating that the FAA had approved the entire project, including the nonaeronautical uses, in 1998. Nonetheless, the FAA informed the Town that it could either have expanded air service or the hotel/condominium project, but not both.

Soon after this exchange between the FAA and the Town, the Town changed its position with respect to the hotel/condominium project. In early May 2004, deputy town manager Charles Long told the ****809** Developer that the hotel/condominium project was the Town's top priority. However, later the same month, Long stated that expanded air service had become the Town's top priority. Robert Clark, who was hired as town manager in June 2004, ***449** testified that the town council "shared [the] sentiment" that expanded air service was a higher priority than the hotel/condominium project.

In light of the change in the Town's position, the Developer began to feel less secure in its relationship with the Town. The Developer informed the Town that it was taking a "time-out" from the discussion of issues arising from the Development Agreement and would not be attending any meetings concerning the issues. The proposed length of the "time-out" was not stated.

On June 28, 2004, Town officials, including deputy town manager Long, met with officials of the FAA. Long told the FAA officials that the Developer's option to purchase the hotel/condominium project was inconsistent with the Town's goals. Long said that the hotel/condominium project might never be built. He asked the FAA to help the Town "get rid of Hot Creek," referring to the hotel/condominium project, because it interfered with expanded air service. To obtain the FAA's assistance in stopping the hotel/condominium project, Long asked the FAA to put in writing its objections based upon the grant assurances given to the FAA by the Town.

On June 29, 2004, the day after the meeting with the FAA, deputy town manager Long sent an e-mail to the Developer. Because the Developer relies heavily on the e-mail to support its repudiation argument, we quote the pertinent part of the e-mail here:

"The FAA is primarily concerned about two issues for your project: First, the compliance issues remain paramount. They are concerned that the airport will run out of land for aeronautical purposes as a result of the land used by the non-aeronautical uses your project represents. They are also concerned about the purchase option. And finally they are concerned about whether the airport has enough land to accommodate competing FBOs [fixed base operators].... The FAA intends to send us a specific itemization of these compliance concerns in the next few weeks. Until these issues are resolved, we will be unable to move forward with your project.

"Second, the FAA is concerned that your currently proposed development plan differs significantly from the specifications in the [Development Agreement] and needs NEPA [National Environmental Policy Act] review since it occurs coterminously with the EIS [environmental impact statement] on the airport expansion. This difference in project scope applies to CEQA [California Environmental Quality Act], as the attached CEQA analysis makes clear. For the Town to move forward with your project we will need to conduct an Initial Study and to work with you to bring your project within the parameters of a possible Mitigated Negative Declaration.

"On both issues we are ready to work with you when you re-enter the process."

***450** The Developer, through Ray Johnson, one of the principals, responded on July 1, 2004, with a letter to

Robert Clark, the town manager, seeking clarification of Long's e-mail and requesting assurances that the Town would proceed with the Development Agreement. Clark responded that the Town and the Developer "need to resolve the FAA compliance issues as a pre-requisite to ... knowing whether [the hotel/condominium project] complies with FAA regulations. The need for the project **810 to comply with FAA review requirements is specifically noted in Section 26 of the lease. The Town is ready to proceed working with you and the FAA to resolve the compliance concerns that exist at FAA on your project."

Through counsel, the Developer replied to Clark's letter on August 10, 2004. Counsel stated that "Clark and Long as authorized agents of the Town, now appear to believe that the Town may freely disregard the express terms of the Development Agreement and withhold approvals and other cooperation required by that Agreement to enable Hot Creek to proceed with its entitled development. As is more fully discussed hereafter, it is also apparent that the Town has affirmatively taken actions which threaten to directly undermine Hot Creek's prior contractual and statutory rights and promote other, more recent interests, such as the proposed expansion of commercial air service operations at the Airport."

On October 4, 2004, the FAA sent the Town a letter stating its concerns about grant assurances and raising objections to the residential nature of the hotel/condominium project. The letter stated: "We are concerned that the Town may be in violation of various [Airport Improvement Program] Grant Assurances, a situation that resulted from the Town executing a Development Agreement with Hot Creek Aviation. This situation will further aggravate if the Town proceeds to execute leases with Hot Creek Aviation for certain planned nonaeronautical development [at the airport]." (Internal fn. omitted.) The FAA informed the Town: "The Town has an obligation to act in accordance with the Airport Improvement Program (AIP) Grant Assurances. The Town needs to determine whether the proposed Hot Creek development is consistent with the Town initiative to extend the runway and expand the airfield infrastructure to accommodate commercial service by Boeing 757 type aircraft." (Internal fn. omitted.) The FAA informed the Town that its federal funding was in jeopardy.

In correspondence with the Developer, Town officials professed willingness to work with the Developer to resolve the FAA issues. However, in private, the mood was not

cooperative. Taking notes in a meeting of town officials discussing the October 4 FAA letter, an assistant town manager wrote: "Hammer Hot Creek—we will not approve an inconsistent project and we will renegotiate land disposal."

*451 *Town's Default*

On February 7, 2005, the Developer served the Town with a notice of default under the Development Agreement. The notice demanded that the Town terminate its efforts to obtain federal funding for expansion inconsistent with the Development Agreement. The Town and Developer agreed to toll the notice of default while further negotiations were held. Although some progress was made, the FAA continued to insist that (1) the hotel/condominium project could not be used for permanent residences and (2) the purchase option was unacceptable because it might hinder future airport use of the land.

Town manager Clark said to the FAA in a September 2005 e-mail: "Our lease contains an option for Hot Creek to purchase land under their condo hotel. I have advised them of the FAA's objection to the clause and asked to renegotiate. They indicate a very reluctant willingness to do so, but only when they have certainty as to their development rights and timing (which neither you nor I can deliver at this stage). I believe that the FAA and Town need to jointly investigate (with our respective legal counsels) what means we **811 have to *unilaterally* eliminate this clause, along with the legal and financial implications of doing so." (Underscoring in original.)

Also in September 2005, town manager Clark sent an e-mail to other town staff discussing "alternatives to eliminate the Hot Creek option." Two of the alternatives presented were to (1) seek declaratory relief in state or federal court or (2) condemn the purchase option and compensate the Developer. Concerning the value of the hotel/condominium purchase option, Clark stated: "Hot Creek estimates the market value of their project at \$400 million, which is \$1.6 million per unit based on fractional ownership, and the value of the option at 5% of sales price [\$20 million]. Even if the value is half that amount it would cost \$10 million to acquire the option through negotiation. They offered to have a mutually agreeable expert determine the value. [¶] Since we don't have \$10 to \$20 million in spare change I am trying to come up with some other way to compensate Hot Creek." The Town did not pursue the eminent domain option.

In August 2006, town manager Clark informed the Developer that the town council's position was that the hotel/condominium project could not move forward until the FAA issues were resolved. The Developer's representative suggested that the Town could go forward with the hotel/condominium project under the Development Agreement and deal later with any FAA fallout, such as termination of funding from the FAA. Clark responded that the town council would not do that because it might derail approval of the expanded air service, which was very important to the council.

***452** From the time Clark became the town manager in 2004, through 2006, Clark met in closed sessions many times with the town council concerning the issues arising from the Development Agreement. No councilmember ever told Clark that his actions or Long's actions were not authorized by the town council. Clark believed that all actions he took concerning the issues arising from the Development Agreement were either within his authority as town manager or with the authorization of the town council.

PROCEDURE

The Developer filed a civil claim with the Town on September 1, 2006, for breach of the Development Agreement, asserting it had been damaged "in an amount not less than \$150 million." After the Town rejected the claim, the Developer sued the Town, alleging a breach of contract cause of action. As remedies, the Developer sought damages, specific performance, and injunctive relief. Later, the Developer added a prayer for declaratory relief.

The Town demurred to the Developer's complaint. It asserted that, among other things, the Developer failed to exhaust administrative and judicial remedies pursuant to  [Code of Civil Procedure section 1094.5](#). The trial court overruled the demurrer.

The Town filed a motion for summary judgment. It argued, among other things, that the grant assurances made by the Town to the FAA were rules and regulations of the FAA as a matter of law and, therefore, the Development Agreement required compliance with the grant assurances. The trial court rejected this reasoning and concluded that whether the grant assurances were rules and regulations of the FAA was a factual matter to be submitted to the jury.

The Developer abandoned its prayers for specific performance and declaratory relief, so the action went to a jury trial on the Developer's claim for damages as a ****812** result of the Town's anticipatory breach of the Development Agreement.

The trial court instructed the jury concerning the breach of contract cause of action as follows:

"This case involves a dispute between the Town and the Hot Creek Developers. This is a breach of contract case arising out of a Development Agreement and a series of leases between the Town and the Hot Creek Developers that were executed in August of 1997. Generally speaking, the contract required the Hot Creek Developers to construct a series of improvements at the Mammoth–Yosemite Airport. In return, the Hot Creek ***453** Developers received among other things the right to build and operate a hotel and residential condominium project on approximately 25 acres of land at the Airport and an option to purchase those 25 acres.

"The dispute in this case centers around whether the Town has breached the contract by refusing to allow the Hot Creek Developers to actually construct the hotel and residential condominium project. The Town denies that it has breached the agreement and maintains it stands ready to perform the contract. Your job as the jury is to resolve various factual disputes between the Hot Creek Developers and the Town as to what the parties intended when they agreed to certain contractual provisions, and various factual disputes as to whether a breach of contract has in fact occurred. In doing so, you will reach a conclusion as to whether or not the Town has breached the contract."

By special verdict, the jury found that (1) the Town and the Developer entered into a contract, (2) the Developer met all, or substantially all, its obligations under the contract, (3) the Town failed to perform under the contract or added extra-contractual conditions to its performance, (4) the Developer did not waive the Town's failure to perform, and (5) the Town's failure to perform damaged the Developer. The jury set the amount of damages at \$30 million.

On the Developer's motion, the trial court awarded the Developer \$2,361,130 in attorney fees.

DISCUSSION

I

Availability of Contract Action

The Town contends that the trial court erred by allowing the Developer to proceed with a contract action. The Town argues that the Developer was required to engage and exhaust the Town's administrative process before seeking judicial remedies. Based on this argument, the Town asserts that (1) the Developer's action is unripe because the Developer has not engaged and exhausted the available administrative process and (2), when the claim ripens, a petition for writ of administrative mandamus will be the exclusive judicial remedy.

The Town attempts to narrow the issue in its favor. Quoting selectively from the complaint, it states that the Developer's allegation is that "the Town 'failed and refused to ... approve' the Developer's application for a *454 conditional use permit and subdivision map for the hotel/condominium project." If the dispute is simply about the failure to approve a conditional use permit and subdivision map, then it would appear that administrative mandamus is the remedy. However, the very paragraph of the complaint from which the quote is taken also contains six other allegations supporting the breach of contract **813 cause of action.² As the Developer notes in response to the Town's argument, the theory presented to the jury was whether the Town breached the Development Agreement by refusing to proceed with the hotel/condominium project despite the FAA's objections to the project. Accordingly, we consider whether the anticipatory breach of the Development Agreement by the Town's refusal to proceed with the hotel/condominium project is unripe for judicial review because the Developer failed to exhaust administrative remedies.

The Town contends that the Developer could not file a complaint in court and thereby avoid the Town's administrative process for approving or rejecting land use applications. The contention is without merit because there was nothing for the Town's administrative process to adjudicate.

[3] "This is the doctrine of 'exhaustion of administrative remedies.' In brief, the rule is that where an administrative remedy is provided by statute, relief must be sought from the administrative body and this remedy exhausted

before the courts will act." (¶ *Abelleira v. District Court of Appeal* (1941) 17 Cal.2d 280, 292, 109 P.2d 942.) "[E]xhaustion of the administrative remedy is a jurisdictional prerequisite to resort to the courts." (¶ *Id.* at p. 293, 109 P.2d 942.) However, "[t]he exhaustion of administrative remedies doctrine has never applied where there is no available administrative remedy. [Citations.]" (¶ *Tahoe Vista Concerned Citizens v. County of Placer* (2000) 81 Cal.App.4th 577, 590, 96 Cal.Rptr.2d 880.)

[4] *455 Here, there was no remedy available to the Developer in the administrative process. The Town concedes that relief pursuant to administrative mandamus would have been limited to a writ vacating a final decision by the town council on a land use application and that damages would not be available in such an action. However, once the Developer gave notice of default and the Town failed to cure the default, there was no longer a proposed land use to adjudicate in the Town's quasi-judicial administrative process. At that point, all that remained was to determine whether the Town breached the Development Agreement and, if it did, what was the remedy. No administrative remedy would have sufficed.

(¶ *Tahoe Vista Concerned Citizens v. County of Placer*, *supra*, 81 Cal.App.4th at p. 590, 96 Cal.Rptr.2d 880.)

The Town cites two cases in support of its contention that the Developer failed to **814 exhaust administrative remedies. Both are distinguishable.

The first case cited by the Town is ¶ *Legacy Group v. City of Wasco* (2003) 106 Cal.App.4th 1305, 131 Cal.Rptr.2d 460 (*Legacy Group*). In *Legacy Group*, a developer and a municipality entered into development agreements, as well as an agreement for the municipality to purchase infrastructure constructed by the developer. When the municipality stopped purchasing the infrastructure, the developer sued, asserting breach of contract, among other causes of action. The trial court entered judgment in favor of the municipality, finding that the action was barred by the statute of limitations applicable to actions implicating the Subdivision Map Act. (¶ *Id.* at pp. 1307–1310, 131 Cal.Rptr.2d 460.) In the published portion of the opinion on appeal, the court concluded that most of the allegations in the complaint did not implicate the Subdivision Map Act; therefore, the longer statute of limitations for contracts was applicable. The court stated: "[W]e are reluctant to extend [the Subdivision Map Act statute of limitations] to breach of contract claims unless

the gravamen of the claim concerns acts that could have been challenged as a violation of the [Subdivision Map Act].” (¶ *Id.* at p. 1313, 131 Cal.Rptr.2d 460.) Applying this holding, the court found that only one of the developer's breach of contract claims was subject to the shorter limitations period because the acts complained of “could have been challenged under the [Subdivision Map Act]....” (¶ *Id.* at p. 1314, 131 Cal.Rptr.2d 460.)

Citing *Legacy Group*, the Town states: “The Developer's challenge to the Town's alleged failure and refusal to grant such discretionary approvals, even though pled as breach of contract, remained subject to the administrative exhaustion requirement and other restrictions on judicial relief applicable to such challenges.”

The Town's argument relying on *Legacy Group* is unavailing for two reasons. First, it is premised upon the suggestion that the Developer's action *456 is all about the Town's failure to approve the Developer's land use application. We have already rejected that suggestion; therefore, attacking it does not show error as to the actual breach of contract allegations tried to the jury. And second, the Town's argument does not explain how the Developer, through the administrative process, could obtain the damages sought for the Town's breach of contract. Instead, as noted, the Town argues that those damages are unavailable.

The second case cited by the Town is ¶ *Subriar v. City of Bakersfield* (1976) 59 Cal.App.3d 175, 130 Cal.Rptr. 853 (*Subriar*). In *Subriar*, the plaintiff claimed that the municipality's requirements for obtaining a permit to operate an ambulance business were unconstitutional. The trial court agreed and granted a permanent injunction against enforcement of the ordinance. (¶ *Id.* at pp. 180–181, 130 Cal.Rptr. 853.) The appellate court, however, concluded that the plaintiff failed to exhaust his administrative remedies because, after the city manager failed to act on the permit, the plaintiff did not appeal to the city council to overturn the city manager's action. (¶ *Id.* at p. 191, 130 Cal.Rptr. 853.)

Subriar is distinguishable because an appeal to the town council could have resulted in issuance of the permit that the plaintiff sought. Here, engaging and exhausting the administrative process promised no prospect of obtaining damages for the Town's breach of the Development Agreement.

As tried to the jury, the Developer's complaint is not that the Town denied an application to build the hotel/condominium **815 project. Instead, the complaint is that the Town refused to move forward on the hotel/condominium project, refused to cooperate, until the FAA's concerns were resolved, which was not a condition in the Development Agreement. The administrative process for approving or rejecting land use applications was not designed to address this breach by the Town. Furthermore, having given the Town a notice of default, as allowed by the Development Agreement, the Developer elected not to pursue an application but instead to pursue damages for anticipatory breach. The administrative process could not give these damages. (See ¶ *Tahoe Vista Concerned Citizens v. County of Placer*, *supra*, 81 Cal.App.4th at p. 590, 96 Cal.Rptr.2d 880 [exhaustion not required when process cannot provide requested relief].) Under these circumstances, the Developer was not required to submit a land use application to the Town and pursue the application through to denial by the town council.³

*457 Availability of Contract Remedies

The Town contends that, if the trial court had required the Developer to pursue administrative remedies, the Developer's exclusive judicial remedy would have been a petition for administrative mandamus under ¶ *Code of Civil Procedure section 1094.5*. While this contention is theoretically correct, it is inapt and unhelpful to the Town because the Developer was legally entitled to go forward with a breach of contract action, as the trial court found.

Quasi-judicial determinations of a town council are reviewed judicially by administrative mandamus proceedings.

(¶ *Code Civ. Proc.*, § 1094.5; ¶ *Mola Development Corp. v. City of Seal Beach* (1997) 57 Cal.App.4th 405, 410, 67 Cal.Rptr.2d 103.) Although, as the Town asserts, the Development Agreement preserved the Town's discretion to make quasi-judicial determinations with respect to applications submitted by the Developer as part of the development plan, the Town's refusal to move forward with the hotel/condominium aspect of the Development Agreement was not a quasi-judicial determination. Instead, it was an executive decision on the part of the Town to refuse to comply with the terms of the Development Agreement, ostensibly in order to preserve its funding from the FAA. Since the Developer did not challenge a quasi-

judicial determination, administrative mandamus is not the exclusive remedy.

This is not to say that an action for contract damages is the only remedy for a municipality's breach of a development agreement. We are not faced, in this case, with an administrative mandamus challenge to a quasi-judicial determination of the town council. Instead, we conclude only that administrative mandamus is not the exclusive remedy, under the circumstances of this case, where there has been an anticipatory breach of the Development Agreement not involving a quasi-judicial determination.⁴

****816 II**

Contract Defenses

The Town contends that three clauses of the Development Agreement, each independently, provide a complete defense to the Developer's breach of ***458** contract action. We conclude that the three clauses do not provide a defense to the Town's breach of the Development Agreement.

Before we consider the three clauses, we summarize the law regarding interpretation of contracts.

“The fundamental goal of contractual interpretation is to give effect to the mutual intention of the parties.” (Bank of the West v. Superior Court (1992) 2 Cal.4th 1254, 1264, 10 Cal.Rptr.2d 538, 833 P.2d 545.) “A contract must be so interpreted as to give effect to the mutual intention of the parties as it existed at the time of contracting, so far as the same is ascertainable and lawful.” (Civ.Code, § 1636.) “The words of a contract are to be understood in their ordinary and popular sense, rather than according to their strict legal meaning; unless used by the parties in a technical sense, or unless a special meaning is given to them by usage, in which case the latter must be followed.” (Civ.Code, § 1644.)

[5] [6] [7] “The interpretation of a written instrument, even though it involves what might properly be called questions of fact [citation], is essentially a judicial function to be exercised according to the generally accepted canons of interpretation so that the purposes of the instrument may be given effect. [Citations.] Extrinsic evidence is ‘admissible to interpret the instrument, but not to give it meaning to which it is not reasonably susceptible’ [citations], and it is

the instrument itself that must be given effect. [Citations.] It is therefore solely a judicial function to interpret a written instrument unless the interpretation turns upon the credibility of extrinsic evidence.” (Parsons v. Bristol Development Co. (1965) 62 Cal.2d 861, 865, 44 Cal.Rptr. 767, 402 P.2d 839.)

A. Excuse Provision (Clause E)

[8] Section XVII(e) of the Development Agreement (clause E) stated that neither party would be in default for a cause beyond the reasonable control of the parties. It stated: “Neither party shall be in default of this Agreement for delays in or failures of performance due to war, insurrection, strikes, floods, earthquakes, fires, casualties, acts of God, *governmental restrictions imposed or mandated by governmental entities other than Town*, enactment of conflicting State or Federal laws or regulations, judicial decisions, or similar bases beyond the reasonable control of the party excused.” (Italics added.)

The Town asserts that, as a matter of law, the emphasized portion of clause E excused it from performing on the Development Agreement because both ***459** the Town and the Developer were required to comply with the FAA restrictions. This assertion is without merit because the FAA's restrictions were within the control of the Town.

The Town made grant assurances to the FAA in exchange for funding for the airport. And the FAA cited the grant assurances in insisting that the hotel/condominium project, with its residential character and option to purchase, was inconsistent with preserving the airport property for aeronautical purposes. If the Town had not made grant assurances in the first place and later encouraged the FAA to ****817** help the Town “get rid of” the hotel/condominium project, there would have been no impediment to the Town's performance of the Development Agreement with the Developer. The Town's own actions caused the FAA to express reservations concerning the hotel/condominium project. In other words, the FAA's restrictions were within the reasonable control of the Town. Therefore, the Town cannot rely on clause E to justify its nonperformance.

B. Rules and Regulations of the FAA (Clause N)

Section XVIII(n) of the Development Agreement (clause N) required the parties to comply with FAA rules and regulations. It stated: “In carrying out this Agreement and otherwise

operating the Airport in accordance with the terms of the leases, the parties shall comply with all applicable rules and regulations of the FAA.”

[9] In the trial court, the Town asserted that the grant assurances given to the FAA were FAA “rules” and, therefore, the Town’s compliance with the grant assurances could not constitute a breach of the Development Agreement because the Development Agreement required compliance with FAA rules. The trial court rejected this assertion, concluding that there was a question of fact concerning the parties’ intent with regard to clause N. It therefore submitted the question to the jury with the following instruction:

“The Court has found, as a matter of law, that the grant assurances made by the Town to the FAA are not rules or regulations of the FAA. They are contractual promises made by the Town to the United States government in exchange for the federal funds the Town has received. However, a question of fact remains as to whether the parties intended the provision to include the Town’s grant assurances.”

On appeal, the Town contends that the grant assurances were FAA rules for the purpose of interpreting the Development Agreement and, therefore, the trial court improperly found otherwise, as a matter of law. We conclude that, *460 while grant assurances made by the Town to the FAA may be considered “rules” of the FAA by reference to federal statutes, the parties did not consider that definition when entering into the Development Agreement. The trial court properly instructed the jury to determine the parties’ intent concerning the definition of FAA “rules.”

Instead of focusing on the parties’ intent as to the interpretation of clause N, the Town focuses solely on federal law with respect to whether grant assurances, in a technical sense, are “rules” of the FAA. The Town cites the broad definition of a “rule” in the federal Administrative Procedures Act, which includes “an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy....” (5 U.S.C. § 551(4).) The Town then notes that grant assurances (1) are “ ‘agency statements of general or particular applicability,’ ” (2) have “ ‘future effect,’ ” and (3) “ ‘implement, interpret [and] prescribe law.’ ” The Town also notes that federal law requires that, before the FAA can modify assurances or require compliance with additional assurances, it must give notice in the Federal Register and

provide an opportunity for comment on the proposed change. (49 U.S.C. § 47107(h).)

Even if the grant assurances fall within the broad definition of a “rule” under the federal Administrative Procedures Act, the task of interpretation requires inquiry into the parties’ intent, not into a proposed technical interpretation of the term. (Civ.Code, §§ 1636, 1644.) Because the court’s task in interpreting a contract is to ascertain the intent of the parties, federal law **818 concerning whether a grant assurance is technically a rule of the FAA is relevant only if the parties considered such federal law when they entered into the contract. There is no evidence that this was the case. Instead, the only evidence concerning the parties’ intent in this regard came from the testimony of Terrence Ballas. He stated that the Town inserted the provision concerning FAA rules and regulations into the Development Agreement. When Ballas asked town officials what the provision meant, they stated that it was boilerplate applicable only to the “air-side operations of the airport.” Ballas was hesitant to agree to clause N because he did not know what it included, so the parties went through the specific FAA rules applicable and included references to those rules in the various leases executed along with the Development Agreement. The Town never mentioned its grant assurances in this discussion. Thus, there is no evidence the parties intended to include the Town’s grant assurances in the term “rules” in clause N of the contract.

Arguing against this interpretation, the Town states that (1) the FAA expressed the opinion that the grant assurances were FAA “rules” and the FAA’s opinion is entitled to deference and (2) we should apply canons of *461 statutory interpretation, not contract interpretation, because the Development Agreement was a legislative act. The Town is wrong on both points.

In one of the letters to the Town concerning the Town’s compliance with the grant assurances, an FAA official stated: “We view the Town’s ability to take corrective action to be fully within the scope of paragraph N of Section XVIII of the Development Agreement, which clarifies the Town’s obligation to comply with FAA rules and regulations.” Citing authority that courts give deference to an agency’s interpretation of a statute if that statute governs the agency’s powers and responsibilities (*Ste. Marie v. Riverside County Regional Park & Open-Space Dist.* (2009) 46 Cal.4th 282, 292, 93 Cal.Rptr.3d 369, 206 P.3d 739), the Town claims that we should give deference to this opinion. To the contrary, the

FAA has no authority over development agreements and no special expertise in contract interpretation.

[10] The Town also argues that, because adoption of the Development Agreement was a legislative act ([Gov.Code, § 65867.5, subd. \(a\)](#)), we are required to apply canons of statutory interpretation. This argument misconstrues the “legislative act” language of the development agreement statutes, which applies to the authority of the municipality to enter into the agreement and the power of the electorate to challenge the agreement by referendum.

“A development agreement is a legislative act that shall be approved by ordinance and is subject to referendum.” ([Gov.Code, § 65867.5, subd. \(a\)](#).) A development agreement is treated as a legislative act for the purpose of a challenge to the agreement either (1) by referendum or (2) an action concerning the municipality's authority to enter into the agreement. In *SMART*,  [supra](#), 84 Cal.App.4th at pages 227 and 228, 100 Cal.Rptr.2d 740, the court summarized the effect of the “legislative act” language. It said: “A development agreement is a legislative act ([\[Gov.Code,\] § 65867.5](#)) and the County's board of supervisors has the discretion to determine what legislation is necessary and appropriate. A reviewing court will not set aside a legislative act unless it is arbitrary, capricious, or unlawful.”

Here, the question does not concern the validity of the Development Agreement as a legislative act of the Town. Instead, this is an action between the parties of the Development Agreement concerning the ****819** interpretation of the agreement. As to that question, the Development Agreement is a contract between the parties. Therefore, canons of statutory interpretation do not apply.

C. Acknowledgement of FAA Funding (Clause B)

Section XVI(b) of the Development Agreement (clause B) required the Developer to match FAA funding. It stated: “[The] Town has received tentative ***462** commitments from the FAA for grant funds ... for the purpose of constructing improvements at the Airport.... The terms of the grant require that matching funds in the approximate amount of ten percent (10%) of the grant funds be put up by [the] Town. As further consideration for this Agreement, Developer agrees to and shall provide such matching funds....” Within one month after adoption of the Development Agreement, the Developer supplied \$80,000 in matching funds.

[11] “A voluntary acceptance of the benefit of a transaction is equivalent to a consent to all the obligations arising from it, so far as the facts are known, or ought to be known, to the person accepting.” ([Civ.Code, § 1589](#).) The Town argues that the Developer's acknowledgement of FAA funding and participation in matching the funding amounted to a consent to the FAA's restrictions. This argument fails because there is no evidence that, when entering into the Development Agreement, or even when supplying the matching funds, the Developer knew or ought to have known of the grant assurances. Instead, the evidence showed that the Town withheld from the Developer knowledge of the FAA's reservations concerning the Development Agreement. Under these facts, the Developer did not consent to the grant assurances.

III

Proof of Breach

The Town contends that the Developer failed, as a matter of law, to establish that the Town breached the Development Agreement. Stated differently, the Town contends that there is no substantial evidence to sustain the jury's verdict. The Town asserts: (A) the Developer failed to establish a breach attributable to the Town; (B) the evidence was insufficient to establish repudiation; (C) the option was a unilateral contract not yet ripe for breach; and (D) the Town retracted any repudiation. After summarizing the law regarding substantial evidence to sustain the verdict finding anticipatory breach of contract, we discuss the Town's four arguments and conclude that each is without merit.

[12] [13] [14] When we consider whether the evidence was sufficient to support the jury's verdict, we review the entire record in the light most favorable to the judgment to determine whether there are sufficient facts, contradicted or uncontradicted, to support the judgment. ( [Campbell v. Southern Pacific Co.](#) (1978) 22 Cal.3d 51, 60, 148 Cal.Rptr. 596, 583 P.2d 121.) Substantial evidence is evidence that is reasonable and credible. In evaluating the ***463** evidence, we accept reasonable inferences in support of the judgment and do not consider whether contrary inferences may be made from the evidence. ( [Kuhn v. Department of General Servs.](#) (1994) 22 Cal.App.4th 1627, 1632–1633, 29 Cal.Rptr.2d 191.)

[15] To recover on a cause of action for breach of contract, the plaintiff must establish: (1) the existence of a contract, (2) plaintiff's performance or excuse for nonperformance, (3) defendant's breach, and (4) damage to plaintiff as a result of defendant's breach. (¶ **820 *Regan Roofing Co. v. Superior Court* (1994) 24 Cal.App.4th 425, 434–435, 29 Cal.Rptr.2d 413, disapproved on another ground in ¶ *Crawford v. Weather Shield Mfg., Inc.* (2008) 44 Cal.4th 541, 565, 79 Cal.Rptr.3d 721, 187 P.3d 424.)

[16] [17] “Anticipatory breach occurs when one of the parties to a bilateral contract repudiates the contract. The repudiation may be express or implied. An express repudiation is a clear, positive, unequivocal refusal to perform [citations]; an implied repudiation results from conduct where the promisor puts it out of his power to perform so as to make substantial performance of his promise impossible [citations].

[18] “When a promisor repudiates a contract, the injured party faces an election of remedies: he can treat the repudiation as an anticipatory breach and immediately seek damages for breach of contract, thereby terminating the contractual relation between the parties, or he can treat the repudiation as an empty threat, wait until the time for performance arrives and exercise his remedies for actual breach if a breach does in fact occur at such time. [Citation.] However, if the injured party disregards the repudiation and treats the contract as still in force, and the repudiation is retracted prior to the time of performance, then the repudiation is nullified and the injured party is left with his remedies, if any, invocable at the time of performance. [Citations.]” (¶ *Taylor v. Johnston* (1975) 15 Cal.3d 130, 137–138, 123 Cal.Rptr. 641, 539 P.2d 425.)

[19] As the jury was instructed in this case, “[a] party can breach, or break, a contract before performance is required by clearly and positively indicating, by words or conduct, that they [*sic*] will not or cannot meet a requirement of the contract, or that they [*sic*] will not perform until additional conditions not in the contract are met. [¶] If the Hot Creek Developers prove that they would have been able to fulfill the terms of the contract and that the Town clearly and positively indicated, by words or conduct, that it would not or could not meet a requirement in the contract, then the Town breached the contract.”

*464 The Developer's theory of breach, upon which it prevailed at trial, was that the Town expressly repudiated the

Development Agreement by refusing to move forward on the contract without resolving the FAA's objections to the Hot Creek project.⁵

A. Breach Attributable to Town

A 1989 resolution of the Mammoth Lakes town council states that “no oral or written communications or comments ... by any member of the Town Council or any other person constitutes an action of the Town Council or an act legally attributable to the Town.”⁶ Based on this resolution, **821 the Town claims that the actions of town officials in repudiating the Development Agreement cannot be attributed to the Town. To the contrary, the actions of town officials were an actionable repudiation of the Development Agreement.

The Developer presented evidence that deputy town manager Long and, later, town manager Clark stated, unequivocally, that the Town would not proceed with the hotel/condominium project until the FAA's objections to the project were resolved. Long informed the Developer that, until the FAA's objections were resolved, “we will be unable to move forward with your project.” Later, Clark again informed the Developer that the project would not move forward without resolution of the FAA's objections. When the Developer requested that the Town proceed under the Development Agreement and deal with the FAA's objections later, Clark said that the town council would not agree to proceeding that way because it might derail FAA approval of expanded air service. The Town offered no evidence to counter the Developer's evidence that the town council authorized the position taken by Long and Clark.

Despite this evidence, the Town maintains that any repudiation by town officials was without force because the town council did not vote on it. We disagree. Neither the Town's resolution nor case law concerning the authority *465 of municipal officials absolves the Town of liability for its repudiation, even if accomplished through its officials rather than by a vote of the town council.

[20] [21] “No government, whether state or local, is bound to any extent by an officer's acts in excess of his authority. [Citation.] [¶] One who deals with the public officer stands presumptively charged with a full knowledge of that officer's powers, and is bound at his peril to ascertain the extent of his powers to bind the government for which he is an officer, and any act of an officer to be valid must find express authority in the law or be necessarily incidental to a power expressly

granted. [Citation.]” (*Horsemen's Benevolent & Protective Assn. v. Valley Racing Assn.* (1992) 4 Cal.App.4th 1538, 1563–1564, 6 Cal.Rptr.2d 698.)

[22] Citing the town council's 1989 resolution, the Town asserts that the town officials had no authority to act on behalf of the Town. The Town states: “This Resolution could not be more plain: Individual town officials, including then-Deputy Town Manager Long, have no authority to take final action on behalf of the Town, and their written communications, including Mr. Long's June 29 Email, are not legally attributable to the Town.” This assertion reads too much into the resolution. Taken to its logical extreme, this assertion would mean that town officials cannot buy paper clips on behalf of the Town without a vote of the town council.

We must presume the town council did not intend an absurd result. (*California School Employees Assn. v. Governing Board* (1994) 8 Cal.4th 333, 340, 33 Cal.Rptr.2d 109, 878 P.2d 1321 [legislation interpreted to avoid absurd results].) A more reasonable interpretation of the resolution is that consistent with case law, which holds that the legislative and quasi-judicial powers of a municipality's governing council cannot be undermined by statements of municipal officials. (See, e.g., *Katsura v. City of San Buenaventura* (2007) 155 Cal.App.4th 104, 109, 65 Cal.Rptr.3d 762 [oral contract made by city employee not binding on city]; *Burchett v. City of Newport Beach* (1995) 33 Cal.App.4th 1472, 1479, 40 Cal.Rptr.2d 1 [statement of city official that owners could obtain permit not binding on city].) The town council adopted the Development Agreement by ordinance. Logically and legally, the fulfillment of the Town's duties under the Development Agreement was left, for the most part, to town officials. Any other conclusion would allow a municipality to repudiate any contract by the actions of its officials and suffer no consequences unless the governing council voted to repudiate.

In any event, the Town's municipal code gives further guidance concerning the authority of town officials and supports a finding here that the town officials acted within their authority. The executive functions of the **466* Town, including cooperation with parties that have contracted with the Town, are within the authority of the town manager. According to the Town's municipal code, the town manager is an executive officer, charged with the duty to “see that all franchises, contracts, permits and privileges granted by the town council are faithfully observed.” (Mammoth

Lakes Municipal Code, § 2.08.060, subd. (A).) Therefore, compliance with the Town's duty to cooperate under the Development Agreement was within the explicit authority of the town manager. And the refusal of the town manager and deputy town manager to cooperate without resolution of the FAA's objections was a repudiation of the contract.

Again raising the argument that this was a land use decision instead of a matter of complying with the terms of the Development Agreement, the Town asserts that a town official cannot bind the Town by representations concerning land use applications. While the proposition may be true as a theoretical statement of law (see *Burchett v. City of Newport Beach*, *supra*, 33 Cal.App.4th at p. 1479, 40 Cal.Rptr.2d 1), it is inapplicable here. The repudiation of the contract did not result from a quasi-judicial decision on a land use application. As noted above, the repudiation occurred when the Town refused to comply with the terms of the Development Agreement to cooperate with the Developer to achieve the ends of the Development Agreement. While it is true that quasi-judicial decisions on land use applications remained to be made before the hotel/condominium project could be completed, the Town's position, related through town officials, was that the Town would not cooperate with the Developer in moving along the hotel/condominium project without resolution of the FAA's objections. That refusal constituted the breach, not the exercise of any quasi-judicial decisionmaking power. ⁷

B. Evidence of Repudiation

The Town contends that the Town's actions did not constitute a repudiation of the Development Agreement. To the contrary, when viewed in the light most favorable to the judgment, the evidence was sufficient to establish an express repudiation. While claiming a willingness to move **467* forward with the hotel/condominium project, town officials actually refused to move forward and actively sought to undermine ***823* the Developer's rights under the contract.

[23] [24] [25] “[I]f a party to a contract expressly or by implication repudiates the contract before the time for his or her performance has arrived, an anticipatory breach is said to have occurred. [Citations.] The rationale for this rule is that the promisor has engaged not only to perform under the contract, but also not to repudiate his or her promise.

[Citation.]” (*Romano v. Rockwell Internat., Inc.* (1996) 14 Cal.4th 479, 489, 59 Cal.Rptr.2d 20, 926 P.2d 1114.) “An

express repudiation is a clear, positive, unequivocal refusal to perform. [Citations.]” (*Taylor v. Johnston*, *supra*, 15 Cal.3d at p. 137, 123 Cal.Rptr. 641, 539 P.2d 425.) “Annexing an unwarranted condition to an offer of performance is a refusal to perform. [Citation.]” (*Steelduct Co. v. Henger–Seltzer Co.* (1945) 26 Cal.2d 634, 646, 160 P.2d 804.)

Here, the Town refused to perform the Development Agreement without prior satisfaction of an unwarranted condition. But the Town asserts that the way it responded to the Developer's demands to perform the Development Agreement did not amount to a repudiation for three reasons: (1) compliance with FAA rules and regulations was mandated by the Development Agreement in clause N, (2) the Town offered to perform the Development Agreement according to its own good faith interpretation of the agreement, and (3) the Town demonstrated its intention to be bound by the Development Agreement. In connection with this argument, the Town also claims that (4) the trial court erred by allowing the jury to find that the Town repudiated the Development Agreement by entering into inconsistent contracts.

1. Compliance with FAA Rules and Regulations

We have already rejected the Town's first argument. Clause N, relating to FAA rules and regulations, was inapplicable to the grant assurances the Town made to the FAA.

2. Good Faith Interpretation of Contract

The Town's second argument fails because the theory was not proffered to the jury and the evidence, properly viewed on appeal, does not support it. The Town cites a federal court opinion for the proposition that, as long as a party to a contract offers to perform a contract according to its own good-faith understanding of the contract, there is no repudiation, even if the party's understanding is incorrect. (*Pacific Coast Engineering Co. v. Merritt–Chapman & Scott Corp.* (9th Cir.1969) 411 F.2d 889, 894.) Citing other federal authority, the federal court stated: “Generally, when there is a *468 disagreement as to the meaning of terms in a contract, one party's offer to perform in accordance with his interpretation is not itself an anticipatory breach. (*Lowenstein v. Federal Rubber Co.*, 85 F.2d 129 (8 Cir.1936). If the offer appears to be made in the good faith belief that the offeror's interpretation

is correct, that will be evidence of his continued adherence to the agreement. (*Mobley v. New York Life Insurance Co.*, 295 U.S. 632, 638, 55 S.Ct. 876, 79 L.Ed. 1621 (1935); *Kimel v. Missouri State Life Insurance Co.*, 71 F.2d 921, 923 (10 Cir.1934); *Milton v. H.C. Stone Lumber Co.*, 36 F.2d 583, 588 (S.D.Ill.1928), affirmed 36 F.2d 589 (7 Cir.1929).” (*Pacific Coast Engineering Co. v. Merritt–Chapman & Scott Corp.*, *supra*, 411 F.2d at p. 894.)

[26] [27] We reject the Town's reliance on this defense of good-faith contract interpretation because the Town did not proffer this theory to the jury. (See *Panopoulos v. Maderis* (1956) 47 Cal.2d 337, 340–341, 303 P.2d 738 [party may not raise **824 new theory on appeal]; *Durkee v. Chino Land & Water Co.* (1907) 151 Cal. 561, 569, 91 P. 389 [defendant cannot raise new theory of defense on appeal].) In any event, the evidence does not support the Town's claim that it desired to comply with the Development Agreement in good faith. While asserting that the Town was willing to abide by the terms of the Development Agreement, town officials were actively working with the FAA to terminate the Developer's right under the Development Agreement to build the hotel/condominium project.

3. Intent to be Bound by Contract

[28] Likewise, the Town's third argument also fails because it is not supported by the evidence, properly viewed. The Town demonstrated its intention not to be bound by the Development Agreement. It actively refused to cooperate and sought to have the Developer's rights terminated.

4. Repudiation Based on Inconsistent Contracts

The related argument that the trial court erred by allowing the jury to find that the Town repudiated the Development Agreement by entering into inconsistent contracts finds no support in the record.

The Town states: “The trial court committed prejudicial error for a number of reasons when it directed the jury to make a finding on an inapposite theory of ‘inconsistent contracts,’ under which the Town could be found liable for repudiating the [Development Agreement] by virtue of having accepted

federal airport funding and thereby subjected itself to FAA's grant assurance requirements.”

[29] *469 A more careful reading of the jury instruction at issue reveals that the court did not allow the jury to base a finding of repudiation on the Town's formation of inconsistent contracts. Instead, the instruction merely informed the jury that a party cannot rely on its assent to one contract to justify breach of another, inconsistent contract.⁸ That is not a theory of liability; instead, it is a limitation on a defense. Therefore, contrary to the Town's assertion, the jury was not directed to base a finding of repudiation on a theory of inconsistent contracts.

C. Breach of Unilateral Contract

The Town contends that the Developer's argument that the Town repudiated the purchase option for the land on which the hotel/condominium project would be built fails as a matter of law because a purchase option is a unilateral contract to which the theory of anticipatory breach does not apply. (See  *Diamond v. University of So. California* (1970) 11 Cal.App.3d 49, 53, 89 Cal.Rptr. 302 [anticipatory repudiation does not apply to unilateral contracts.]) This is simply an attempt by the Town to recharacterize the action as one for breach of the purchase option rather than breach of the Development Agreement—a red herring designed to divert attention away from the applicable theory of recovery. The attempt is unsuccessful. The theory proffered to the jury was that the Town repudiated the Development Agreement, not just the purchase option. And the Town makes no attempt to establish that the Development Agreement was a unilateral contract.

**825 D. Evidence of Retraction of Repudiation

[30] The Town argues that, even if deputy town manager Long's June 29, 2004 e-mail can be considered a repudiation of the Development Agreement, town manager Clark's letter two weeks later retracted the repudiation. (See *Sackett v. Spindler* (1967) 248 Cal.App.2d 220, 231–232, 56 Cal.Rptr. 435 [repudiation nullified if timely retracted].) However, Clark's letter is not a clear retraction. While it professes the Town's willingness to work with the Developer on FAA compliance issues, it does not offer to move forward with the hotel/condominium project without first resolving FAA compliance issues.

[31] [32] Halfway through the single paragraph in the Town's opening brief arguing that it retracted any repudiation of the Development Agreement, the *470 Town claims that the trial court also erred by not instructing the jury on retraction. We need not consider this separate argument appended as it is to another argument. (Cal. Rules of Court, rule 8.204(a)(1)(B).) In any event, the Town fails to provide a citation to the record where the Town requested what it contends would have been a proper instruction on retraction.

 *Null v. City of Los Angeles* (1988) 206 Cal.App.3d 1528, 1535, 254 Cal.Rptr. 492 [to complain of failure to instruct, party must have requested proper instruction].) Therefore, the Town forfeited review of this issue on appeal.

IV

Damages Award

After obtaining many benefits from the Development Agreement, including the Developer's airport improvements, the Town repudiated the Development Agreement. The jury awarded the Developer \$30 million for the breach. On appeal, the Town contends that evidence of damages was too speculative to support the jury's award. We conclude that the evidence was not too speculative to support the jury's award.

[33] [34] “ ‘Where the prospective profits are the natural and direct consequences of the breach of the contract they may be recovered. Profits are part and parcel of the contract itself, entering into and constituting a portion of its very element; something stipulated for, the right to the enjoyment of which is just as clear and plain as to the fulfillment of any other stipulation. They are presumed to have been taken into consideration and deliberated upon before the contract was made, and formed, perhaps, the only inducement to the arrangement. [Citation.] Damages consisting of the loss of anticipated profits need not be established with certainty. It is sufficient that it be shown as a reasonable probability that the profits would have been earned except for the breach of the contract. [Citations.]’ ”  *Nelson v. Reisner* (1958) 51 Cal.2d 161, 171–172, 331 P.2d 17, quoting  *James v. Herbert* (1957) 149 Cal.App.2d 741, 749, 309 P.2d 91.)

Under this standard, we must determine whether the Developer presented evidence sufficient to establish a reasonable probability that it would have realized a \$30

million profit on the hotel/condominium project if the Town had not breached the Development Agreement. In this inquiry, we construe the evidence in the light most favorable to the judgment. We draw every reasonable inference and resolve every conflict in support of the judgment. (Campbell v. Southern Pacific Co., supra, 22 Cal.3d at p. 60, 148 Cal.Rptr. 596, 583 P.2d 121.)

***471** A. Evidence of Damages

1. Town Manager's Estimate of Value of Purchase Option

As noted in the facts above, town manager Clark wrote an e-mail to town staff in ****826** which he noted that the Developer valued the purchase option at about \$20 million. Even with the prospect of litigation over the Town's breach of the Development Agreement, Clark appears to have rejected the alternatives of eminent domain proceedings or negotiations with the Developer because the Town, in Clark's words, didn't have "\$10 to \$20 million in spare change." In testimony at trial, Clark said that town officials "didn't know how much it would cost, but we speculated it would be in that range."

2. Part-owner's Estimate of Value

During the trial, Mark Rosenthal, one of the investors in the Developer, testified. Rosenthal was president of a company that participated in various real estate ventures, including as developer, manager, and owner. His experience included development or redevelopment of several hotels. When determining whether to purchase an interest in the hotel/condominium project, Rosenthal considered strategies to eventually exit the investment. He believed that the hotel/condominium project could be sold for \$30 million to \$40 million if the uncertainties with the Town and the Development Agreement were cleared up.

3. Expert Evidence Concerning Value of the Hotel/Condominium Project in 2004

The bulk of the evidence concerning damages came from Richard Maurice Robinson, an expert retained by the Developer. Robinson is a certified general real estate appraiser and has 20 years of experience in appraising hotels and resorts. He consults with municipalities to bring in high-

end hotels. In this process, he customarily makes projections concerning the cost and profit of such hotels. He teaches complex valuation techniques at the University of California, Berkeley.

Based on the plans for the hotel/condominium project and the bids from architectural and construction companies, Robinson assumed that it would cost about \$168 million to build the hotel/condominium project. In addition to the architectural and construction costs, Robinson estimated that the Developer would incur costs of about \$45 million for sales and about \$9 million for financing. Thus, his estimate for the total cost of the project was about \$220 million.

***472** Robinson also estimated the amount of income to be generated by the project. After studying other similar projects, he calculated a likely price at which the individual units would sell if marketed, as the Developer intended, as a residential development. He added a premium to the price for the advantages of this particular property, but then he discounted the price by 30 percent because of its location at the airport. After taking into account other characteristics of the project, such as the fractional (timeshare) nature of the sales, the intent to associate with a major brand, and the pace at which the units would sell, Robinson estimated a total selling price of \$350 million for the entire project.

Subtracting the cost of the project from the income to be generated from the sale of the condominium units, Robinson projected a total of about \$130 million in profit over the life of the project.

In addition to this projected net profit from the sale of the condominium units, Robinson estimated that, once the project was fully built and stabilized, it would generate \$2.2 million net income per year from the Developer's management of the property, including renting units out when the owners were not occupying them. He arrived at this number using industry standards and guidelines for this type of valuation and rental conditions specific to the Mammoth area.

****827** Robinson concluded that, over the life of the project, the hotel/condominium would result in about \$160 million in total profits for the Developer. To arrive at a current ("current" meaning 2004, when the Town breached the Development Agreement) value of the hotel/condominium project, Robinson factored in the risks of eventually realizing that profit from a project that had not yet been built. Having

done so, Robinson estimated that the 2004 value of the hotel/condominium project was \$37 million to \$48 million.

4. Order Denying Motion for New Trial

After the jury's verdict awarding \$30 million to the Developer, the Town moved for a new trial, asserting, among other things, that the evidence did not support the damages award. The trial court denied the motion. However, in doing so, the court stated: "[W]ere the question of damages predicated solely on the testimony of Mr. Robinson, I would grant a motion for new trial based on the issue of damages, not only for the issues outlined by [counsel for the Town] but also other concerns I had at the time as the testimony came in. However, as is pointed out by [counsel for the Developer], an owner of the property can opine a value of property, and although Mr. Rosenthal did insert a caveat in his discussion of the sale on the order of \$30 [million] to *473 \$40 million, there was enough basis with that and the various and sundry assessments made by the Town itself as to a condemnation value to justify a jury verdict. So although I would have reached a different verdict, that is not the standard I use, and I do not find there was a basis, therefore, for setting aside the damages award. So the motion for new trial will be denied."

B. Analysis

1. Sufficiency of Evidence

[35] Before we consider the Town's contention that the evidence of lost profits was too speculative, we must address an argument by the Town concerning the presumption that the verdict is correct. The Town asserts that the trial court's comments on the evidence of damages made during the hearing on the motion for new trial are significant on appeal. The court stated that it would have granted the motion for new trial had Robinson's testimony been the only evidence of damages. The Town claims that the court's comments are entitled to "substantial deference." That is incorrect. We defer to the trial court's factual determination when the court grants a motion for new trial, not when the court denies such a motion. When the court denies the motion, we presume the jury's verdict is correct. (See  *Lane v. Hughes Aircraft Co.* (2000) 22 Cal.4th 405, 412, 93 Cal.Rptr.2d 60, 993 P.2d 388 [presumption of verdict's correctness replaced by deference to trial court's factual determinations when court grants motion for new trial].)

The Town asserts that the evidence does not support a \$30 million damages award.⁹ Concerning the expert testimony from Robinson, the Town contends that his opinion of the 2004 value of the hotel/condominium project was too speculative and fails to support the jury's \$30 million damages verdict because Robinson's calculations involved too many assumptions and contingencies. To the contrary, despite the assumptions and contingencies stated in Robinson's testimony, the evidence was **828 sufficient to show a reasonable probability that the profits would have been realized except for the breach of the Development Agreement.

(See  *Nelson v. Reisner*, *supra*, 51 Cal.2d at pp. 171–172, 331 P.2d 17.)

The Town argues that Robinson made the following assumptions: (1) all necessary permits would be obtained, (2) environmental review would be completed, (3) estimated construction costs provided by the Developer were accurate, (4) the project would be built within the estimates, (5) the *474 Developer would successfully obtain financing, (6) the Developer would successfully associate with a major brand, and (7) the mix of project units could be sold within the time frame and at projected prices.

The assumptions used by Robinson were intentionally conservative. They were reasonable, based on Robinson's knowledge of the industry and experience in valuing hotel projects. (1 & 2) The necessary permits and environmental review were simply a matter of forging onward with the project. There is no evidence that the Developer could not obtain the permits and review. (3 & 4) The estimated costs of construction were based on actual bids submitted to the Developer. (5) There was evidence that the Developer was in the process of successfully obtaining the required financing. (6) Robinson testified that associating with a major brand would not be hard, saying "[b]rands love these projects." And (7), concerning the time frame for selling all the units, Robinson looked at the rate at which similar properties sold and then reduced it to give a conservative estimate of seven years. This evidence, though predictive, was not speculative.

The Town attacks the discounting of the total estimated profits (\$160 million) to determine a current (2004) value of the project (\$37 million to \$48 million). It contends that this process merely "applied *additional* speculative assumptions on top of Robinson's flawed lost profits projections." (Original italics, fn. omitted.) The Town cites

 *Parlour Enterprises, Inc. v. Kirin Group, Inc.* (2007) 152 Cal.App.4th 281, 61 Cal.Rptr.3d 243 (*Parlour Enterprises*) to support this contention. Neither the contention nor the citation to *Parlour Enterprises* is persuasive.

Robinson applied accepted valuation principles, factoring in the risks associated with a project yet to be undertaken and reducing the profits projected to be earned over the life of the project to arrive at a current value. The Town's labeling of the accepted practice as including "speculative assumptions" is insufficient to establish that Robinson's estimate of current value was unreasonable.

In *Parlour Enterprises*, the appellate court reversed the bulk of damages awarded in favor of a franchisor who sued a franchisee for failure to open ice cream parlors as required by their agreement. ( 152 Cal.App.4th at pp. 283–284, 61 Cal.Rptr.3d 243.) The court's opinion does not reveal the extent of the experience and expertise of the franchisor's damages expert. In any event, the appellate court noted that the franchisor's profit projections formed the basis for the expert's analysis. ( *Id.* at p. 285, 61 Cal.Rptr.3d 243.) Those projections, however, were unsupported by the evidence. There was no evidence that whoever made the projections had experience or expertise in predicting income, expenses, or profits. ( *Id.* at pp. 289–290, 61 Cal.Rptr.3d 243.)

475** Here, unlike in *Parlour Enterprises*, there was evidence to support the projections given to and the assumptions made by Robinson. The costs to build the project were based on bids and standard costs. And the potential sales were based on comparable developments, with the *829** sales adjusted down because of the specific characteristics of this project. Therefore, *Parlour Enterprises* is distinguishable because Robinson's testimony was based on professional expertise developed over two decades of hotel and resort valuation, as well as reliable evidence and assumptions.

[36] The Town also argues that Robinson's testimony concerning the current value of the project is insufficient to support the verdict because there was no evidence that a willing buyer existed. Such evidence, however, is unnecessary to support a damages award in this context. Lost profits may be proved by means other than the value given by a willing buyer. Expert testimony, alone, may be sufficient if it is supported by substantial evidence and is not speculative.

 *Kids' Universe v. In2Labs* (2002) 95 Cal.App.4th 870, 885, 116 Cal.Rptr.2d 158.)

Robinson testified at length concerning the discount of the lost profits to estimate a current value. In order to induce a buyer to take on the risks of an unfinished project—risks such as cost overruns, slow sales, or a drop in prices—it would be necessary to set a current value well below the amount of lost profits over the life of the project. Robinson testified concerning the risks and discounts associated with those risks. While he did not testify that there was a ready and willing buyer, he confirmed that the discounted price was a price, in his experience, that "somebody would pay."

[37] Therefore, Robinson's testimony, giving the project a current value of \$37 million to \$48 million, was sufficient to sustain the \$30 million damages award. But his was not the only testimony concerning damages.

As did the trial court, we recognize that evidence concerning the amount of damages came from the town manager and one of the Developer's investors. However, the Town asserts that the evidence from those sources also does not support the \$30 million damages award. We disagree. The testimony from the investor supports the award, and the evidence of the town manager's statement supports the award to the extent of the statement (\$20 million).

[38] An owner of property is generally considered competent to estimate or offer a lay opinion of the property's value. (Evid.Code, § 813, subd. (a)(2);  *Sacramento & San Joaquin Drainage Dist. v. Goehring* (1970) 13 Cal.App.3d 58, 64, 91 Cal.Rptr. 375.) "In stating an opinion as to the value of his property, an owner is bound by the same rules of admissibility as is any ***476** other witness. [Citation.]" ( *Sacramento & San Joaquin Drainage Dist., supra*, at p. 65, 91 Cal.Rptr. 375.)

Rosenthal was experienced in developing, managing, and owning real estate and had developed and redeveloped hotels. As a part-owner of the Developer, he expressed his opinion that, based on his experience and his review of the hotel/condominium project, the project could be sold for \$30 million to \$40 million. This evidence supported the jury's verdict.

Finally, the town manager apparently agreed with a statement that the purchase option, alone, was worth \$10 million to

\$20 million. This was also evidence that had a tendency to prove the value of the project. Although it may not have been sufficient by itself to support the damages award, it helped to establish the reasonableness of the rest of the evidence concerning the value of the project.

Accordingly, we conclude that there was substantial, nonspeculative evidence that the Developer sustained \$30 million in damages as a result of the Town's breach of the Development Agreement.

****830 2. Forfeiture of Taxpayer Funds**

[39] In an argument raised for the first time in its reply brief, the Town claims that the damage award amounts to an invalid forfeiture of taxpayer funds. The Town forfeited this argument by failing to raise it in a timely manner. (*Murray Co. v. Occupational Safety & Health Appeals Bd.* (2009) 180 Cal.App.4th 43, 54, fn. 54, 102 Cal.Rptr.3d 513.)

V

Attorney Fees

After judgment was entered, the trial court ordered the Town to pay the Developer \$2,361,130 in attorney fees based on

a provision of the Development Agreement providing for attorney fees to the prevailing party in a legal action. The Town separately appealed the attorney fees award.

The Town states that, if we reverse the judgment in favor of the Developer, we must also reverse the attorney fee award, which was based on the Developer's status as the prevailing party. Because we affirm the judgment, and the Town makes no argument for reversing the attorney fees award other than reliance on reversal of the judgment, we also affirm the award of attorney fees.

***477 DISPOSITION**

The judgment and the order awarding attorney fees are affirmed. The Developer (plaintiff) is awarded its costs on appeal. (*Cal. Rules of Court, rule 8.278(a)(1).*)

We concur: [RAYE](#), P.J., and [SCOTLAND](#), J. ******

Opinion

All Citations

191 Cal.App.4th 435, 120 Cal.Rptr.3d 797, 10 Cal. Daily Op. Serv. 56, 2011 Daily Journal D.A.R. 92

Footnotes

- * Retired judge of the Kern County Superior Court, assigned by the Chief Justice pursuant to [article VI, section 6 of the California Constitution](#).
- 1 The Town cites to documents in the appellant's appendix to support many of its statements of fact in its briefs. However, the Town does not indicate whether and when the documents in the appellant's appendix were admitted as evidence at trial. This presents a problem on appellate review because some of the Town's contentions of error, such as the contention that the Developer failed to establish a breach of the Development Agreement, challenge the effect of evidence introduced at trial. Although the Town fails to identify properly the evidence introduced at trial, we conclude that we may ignore this defect in the briefing because (1) there is no serious dispute concerning the facts and (2) the Town's contentions are without merit, even when viewing them in the light of the facts stated in the Town's briefing. (See [Cal. Rules of Court, rule 8.204\(e\)](#) [allowing court to disregard defects in briefing].)
- 2 The paragraph states: "The Town has breached the [Development Agreement] and Hotel/Condo Lease[] by[,] among other things, (1) failing and refusing to act on, or approve, the Hot Creek Developers [*sic*]

development plans submitted to the Town in October 2000 and again in 2004; (2) taking actions to pursue other Airport expansion projects that could have the effect of depriving the Hot Creek Developers of the benefits of the [Development Agreement] and Hotel/Condo Lease; (3) misrepresenting and failing to disclose material facts to the Hot Creek Developers concerning FAA approval of the Hot Creek Project; (4) seeking the assistance of the FAA to create a pretext for the Town not to approve the Hot Creek Project; (5) breaching the [Development Agreement]'s express and implied covenants of good faith and fair dealing; (6) writing to the Hot Creek Developers on June 29, 2004, stating that the Town 'will be unable to move forward with your project,' and insisting on the performance of conditions by the Hot Creek Developers that are inconsistent with the [Development Agreement] and Hotel/Condo Lease; and (7) telling the Hot Creek Developers in 2005 and 2006 that the Town would not allow the project to move forward without conditions and continuing to require the Hot Creek Developers to give up valuable contract rights (including their purchase option) as a condition of moving forward with the project."

- 3 The Town also contends that the Developer failed, as a matter of law, to establish futility of administrative review. Because we conclude that a breach of contract action was proper and administrative review could not provide an appropriate remedy, we need not consider further the contention that the Developer failed to establish futility.
- 4 In a footnote, the Town states as an alternative argument that the Developer was required to file a petition for traditional mandate because town officials refused to perform their ministerial duties under the contract. This argument was not raised below and is barely noted and undeveloped here. We need not consider this newly-conceived footnote contention. (See  [People v. Freeman](#) (1994) 8 Cal.4th 450, 482, fn. 2, 34 Cal.Rptr.2d 558, 882 P.2d 249 [issues mentioned but not developed as discrete contentions of error not properly raised]; Cal. Rules of Court, rule 8.204(a)(1)(B) [requiring appellant to state each point under a separate heading or subheading].)
- 5 The Developer asserts that the Town breached the contract when it failed to provide requested assurances that it would meet its obligations under the contract. The Developer claims it is "hornbook law that the failure to provide reasonably requested assurances is a repudiation. [Citations.]" This assertion fails on appeal, however, because this theory was not presented to the jury by instructions at trial. ( [Daniels v. San Francisco](#) (1953) 40 Cal.2d 614, 623, 255 P.2d 785 [appellate court cannot affirm based on theory not presented to jury].)
- 6 Section four of Resolution 89–41 of the town council of Mammoth Lakes states: "The Town Council acts on behalf of the Town of Mammoth Lakes only by motion, resolution or ordinance duly adopted at a duly noticed meeting of the Town Council. Except for such a motion, resolution or ordinance, no oral or written communication or comments during the course of any Town Council meeting or at any other time by any member of the Town Council or any other person constitutes an action of the Town Council or an act legally attributable to the Town of Mammoth Lakes."
- 7 At the end of its opening brief argument that the Developer failed to establish a breach attributable to the Town, the Town appends a two-sentence assertion that the trial court "compounded its prejudicial error" by not instructing the jury using a Town-proposed jury instruction modeled after Resolution 89–41. This assertion makes no sense because the error of which the Town complains is lack of sufficient evidence, not some prejudicially erroneous action of the trial court. Because the Town makes no separate contention, supported by authority and analysis, that the jury was misinstructed, we need not consider further this statement in the opening brief. (See  [People v. Freeman, supra](#), 8 Cal.4th at p. 482, fn. 2, 34 Cal.Rptr.2d 558, 882 P.2d 249; Cal. Rules of Court, rule 8.204(a)(1)(B).)

- 8 The court instructed: "There are times when a party enters into two inconsistent or mutually exclusive contracts. This occurs when performance of one contract will by necessity require a breach of the other contract. In those circumstances, it is not an excuse to performance of one contract that the party chose to perform the other contract."
- 9 The Town attacks the Developer for mentioning that the Developer spent \$15 million to \$17 million on airport improvements. The Town asserts that the Developer has been able to profit from those improvements. To be clear, the Developer is not claiming the \$15 million to \$17 million expended on airport improvements as damages in this case.
- ** Retired Presiding Justice of the Court of Appeal, Third Appellate District, assigned by the Chief Justice pursuant to [article VI, section 6 of the California Constitution](#).

End of Document

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ITEM 18.2.

ATTACHMENT 3

3

B 1 (Official Form 1) (12/11)

UNITED STATES BANKRUPTCY COURT Eastern District of California				VOLUNTARY PETITION	
Name of Debtor (If individual, enter Last, First, Middle): Town of Mammoth Lakes, California			Name of Joint Debtor (Spouse) (Last, First, Middle):		
All Other Names used by the Debtor in the last 8 years (include married, maiden, and trade names):			All Other Names used by the Joint Debtor in the last 8 years (include married, maiden and trade names):		
Last four digits of Soc. Sec. or Individual-Taxpayer I.D. (ITIN)/Complete EIN (if more than one, state all): 77-0043067			Last four digits of Soc. Sec. or Individual-Taxpayer I.D. (ITIN)/Complete EIN (if more than one, state all):		
Street Address of Debtor (No. and Street, City, and State): 437 Old Mammoth Rd., Suite R, Mammoth Lakes, CA ZIP CODE: 93546			Street Address of Joint Debtor (No. and Street, City, and State): ZIP CODE		
County of Residence or of the Principal Place Of Business: Mono County			County of Residence or of the Principal Place of Business:		
Mailing Address of Debtor (if different from street address): P.O. Box 1609, Mammoth Lakes, CA ZIP CODE: 93456			Mailing Address of Joint Debtor (if different from street address): ZIP CODE		
Location of Principal Assets of Business Debtor (if different from street address above):			ZIP CODE		
Type of Debtor (Form of Organization) (Check one box.) ☐ Individual (Includes Joint Debtor) <i>See Exhibit D on page 2 of this form</i> ☐ Corporation (includes LLC and LLP) ☐ Partnership ☒ Other (if debtor is not one of the above entities, check this box and state type of entity below.) <u>Municipal Corporation</u>		Nature of Business (Check one box.) ☐ Health Care Business ☐ Single Asset Real Estate as defined in 11 U.S.C. § 101(51B) ☐ Railroad ☐ Stockbroker ☐ Commodity Broker ☐ Clearing Bank ☒ Other <u>Municipal Corporation</u>		Chapter of the Bankruptcy Code Under Which the Petition is Filed (Check one box). ☐ Chapter 7 ☐ Chapter 15 Petition for Recognition of a Foreign ☒ Chapter 9 Main Proceeding ☐ Chapter 11 ☐ Chapter 15 Petition for Chapter 12 Recognition of a Foreign ☐ Chapter 13 Nonmain Proceeding	
Chapter 15 Debtors Country of debtor's center of main interest: Each country in which a foreign proceeding by, regarding, or against debtor is pending:		Tax-Exempt Entity (Check box, if applicable.) ☐ Debtor is a tax-exempt organization under title 26 of the United States Code (the Internal Revenue Code).		Nature of Debts (Check one box) ☐ Debts are primarily consumer debts, defined in 11 U.S.C. § 101(8) as "incurred by an individual primarily for a personal, family, or household purpose." ☒ Debts are primarily business debts.	
Filing Fee (Check one box.) ☒ Full Filing Fee attached ☐ Filing Fee to be paid in installments (applicable to individuals only). Must attach signed application for the court's consideration certifying that the debtor is unable to pay fee except in installments. Rule 1006(b). See Official Form 3A. ☐ Filing Fee waiver requested (applicable to chapter 7 individuals only). Must attach signed application for the court's consideration. See Official Form 3B.			Chapter 11 Debtors Check one box: ☐ Debtor is a small business debtor as defined in 11 U.S.C. § 101(51D). ☐ Debtor is not a small business debtor as defined in 11 U.S.C. § 101(51D). Check if: ☐ Debtor's aggregate noncontingent liquidated debts (excluding debts owed to insiders or affiliates) are less than \$2,343,300. (amount subject to adjustment on 4/01/13 and every three years thereafter). Check all applicable boxes: ☐ A plan is being filed with this petition. ☐ Acceptances of the plan were solicited prepetition from one or more classes of creditors, in accordance with 11 U.S.C. § 1126(b).		
Statistical/Administrative Information ☒ Debtor estimates that funds will be available for distribution to unsecured creditors. ☐ Debtor estimates that, after any exempt property is excluded and administrative expenses paid, there will be no funds available for distribution to unsecured creditors.					THIS SPACE IS FOR COURT USE ONLY
Estimated Number of Creditors ☐ 1-49 ☐ 50-99 ☐ 100-199 ☒ 200-999 ☐ 1,000- 5,000 ☐ 5,001- 10,000 ☐ 10,001- 25,000 ☐ 25,001- 50,000 ☐ 50,001- 100,000 ☐ Over 100,000					
Estimated Assets ☐ \$0 to \$50,000 ☐ \$50,001 to \$100,000 ☐ \$100,001 to \$500,000 ☐ \$500,001 to \$1 million ☐ \$1,000,001 to \$10 million ☐ \$10,000,001 to \$50 million ☐ \$50,000,001 to \$100 million ☒ \$100,000,001 to \$500 million ☐ \$500,000,001 to \$1 billion ☐ More than \$1 billion					
Estimated Liabilities ☐ \$0 to \$50,000 ☐ \$50,001 to \$100,000 ☐ \$100,001 to \$500,000 ☐ \$500,001 to \$1 million ☐ \$1,000,001 to \$10 million ☐ \$10,000,001 to \$50 million ☒ \$50,000,001 to \$100 million ☐ \$100,000,001 to \$500 million ☐ \$500,000,001 to \$1 billion					

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July 03, 2012
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CLERK, U.S. BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA
0004321651

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ITEM 18.2.

B 1 (Official Form 1) (12/11)

Page 2

Voluntary Petitioner <i>(This page must be completed and filed in every case.)</i>		Name of Debtor(s): Mammoth Lakes, California	
All Prior Bankruptcy Cases Filed Within Last 8 Years (If more than two, attach additional sheet.)			
Location Where Filed:	Case Number:	Date Filed:	
Location Where Filed:	Case Number:	Date Filed:	
Pending Bankruptcy Case Filed by any Spouse, Partner, or Affiliate of this Debtor (If more than one, attach additional sheet.)			
Name of Debtor:	Case Number:	Date Filed:	
District:	Relationship:	Judge:	
Exhibit A (To be completed if debtor is required to file periodic reports (e.g., forms 10K and 10Q) with the Securities and Exchange Commission pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 and is requesting relief under chapter 11.) ☐ Exhibit A is attached and made a part of this petition.		Exhibit B (To be completed if debtor is an individual whose debts are primarily consumer debts.) I, the attorney for the petitioner named in the foregoing petition, declare that I have informed the petitioner that [he or she] may proceed under chapter 7, 11, 12, or 13 of title 11, United States Code, and have explained the relief available under each such chapter. I further certify that I have delivered to the debtor the notice required by 11 U.S.C. § 342(b). X _____ Signature of Attorney for Debtor(s) (Date)	
Exhibit C Does the debtor own or have possession of any property that poses or is alleged to pose a threat of imminent and identifiable harm to public health or safety? ☐ Yes, and Exhibit C is attached and made a part of this petition. ☒ No.			
Exhibit D (To be completed by every individual debtor. If a joint petition is filed, each spouse must complete and attach a separate Exhibit D.) ☐ Exhibit D, completed and signed by the debtor, is attached and made a part of this petition. If this is a joint petition: ☐ Exhibit D, also completed and signed by the joint debtor, is attached and made a part of this petition.			
Information Regarding the Debtor - Venue (Check any applicable box.) ☒ Debtor has been domiciled or has had a residence, principal place of business, or principal assets in this District for 180 days immediately preceding the date of this petition or for a longer part of such 180 days than in any other District. ☐ There is a bankruptcy case concerning debtor's affiliate, general partner, or partnership pending in this District. ☐ Debtor is a debtor in a foreign proceeding and has its principal place of business or principal assets in the United States in this District, or has no principal place of business or assets in the United States but is a defendant in an action or proceeding [in a federal or state court] in this District, or the interests of the parties will be served in regard to the relief sought in this District.			
Certification by a Debtor Who Resides as a Tenant of Residential Property (Check all applicable boxes.) ☐ Landlord has a judgment against the debtor for possession of debtor's residence. (If box checked, complete the following.) _____ (Name of landlord that obtained judgment) _____ (Address of landlord) ☐ Debtor claims that under applicable nonbankruptcy law, there are circumstances under which the debtor would be permitted to cure the entire monetary default that gave rise to the judgment for possession, after the judgment for possession was entered, and ☐ Debtor has included with this petition the deposit with the court of any rent that would become due during the 30-day period after the filing of the petition. ☐ Debtor certifies that he/she has served the Landlord with this certification. (11 U.S.C. § 362(l)).			

52131768.3

ITEM 18.2.

ATTACHMENT 3

B I (Official Form I) (12/11)

Page 3

Voluntary Petition <i>(This page must be completed and filed in every case.)</i>	Name of Debtor(s):
Signatures	
Signature(s) of Debtor(s) (Individual/Joint) I declare under penalty of perjury that the information provided in this petition is true and correct. [If petitioner is an individual whose debts are primarily consumer debts and has chosen to file under chapter 7] I am aware that I may proceed under chapter 7, 11, 12 or 13 of title 11, United States Code, understand the relief available under each such chapter, and choose to proceed under chapter 7. [If no attorney represents me and no bankruptcy petition preparer signs the petition] I have obtained and read the notice required by 11 U.S.C. § 342(b). I request relief in accordance with the chapter of title 11, United States Code, specified in the petition. X _____ Signature of Debtor X _____ Signature of Joint Debtor _____ Telephone Number (if not represented by attorney) _____ Date	Signature of a Foreign Representative I declare under penalty of perjury that the information provided in this petition is true and correct, that I am the foreign representative of a debtor in a foreign proceeding, and that I am authorized to file this petition. (Check only one box.) ☐ I request relief in accordance with chapter 15 of title 11, United States Code. Certified copies of the documents required by 11 U.S.C. § 1515 are attached. ☐ Pursuant to 11 U.S.C. § 1511, I request relief in accordance with the chapter of title 11 specified in this petition. A certified copy of the order granting recognition of the foreign main proceeding is attached. X _____ (Signature of Foreign Representative) _____ (Printed Name of Foreign Representative) _____ Date
Signature of Attorney* X _____ Signature of Attorney for Debtor(s) <u>Michael L. Tuchin</u> Printed Name of Attorney for Debtor(s) <u>Klee, Tuchin, Bogdanoff & Stern LLP</u> Firm Name Klee, Tuchin, Bogdanoff & Stern LLP 1999 Avenue of the Stars, 39th Floor Los Angeles, CA 90067-6049 _____ Address <u>(310) 407-4000</u> Telephone Number <u>July 3, 2012</u> Date *In a case in which § 707(b)(4)(D) applies, this signature also constitutes a certification that the attorney has no knowledge after an inquiry that the information in the schedules is incorrect.	Signatures of Non-Attorney Bankruptcy Petition Preparer I declare under penalty of perjury that: (1) I am a bankruptcy petition preparer as defined in 11 U.S.C. § 110; (2) I prepared this document for compensation and have provided the debtor with a copy of this document and the notices and information required under 11 U.S.C. §§ 110(b), 110(h), and 342(b); and, (3) if rules or guidelines have been promulgated pursuant to 11 U.S.C. § 110(h) setting a maximum fee for services chargeable by bankruptcy petition preparers, I have given the debtor notice of the maximum amount before preparing any document for filing for a debtor or accepting any fee from the debtor, as required in that section. Official Form 19 is attached. _____ Printed Name and title, if any, of Bankruptcy Petition Preparer _____ Social-Security number (If the bankruptcy petition preparer is not an individual, state the Social-Security number of the officer, principal, responsible person or partner of the bankruptcy petition preparer.) (Required by 11 U.S.C. § 110.) _____ Address X _____ Signature _____ Date Signature of bankruptcy petition preparer or officer, principal, responsible person, or partner whose Social-Security number is provided above. Names and Social-Security numbers of all other individuals who prepared or assisted in preparing this document unless the bankruptcy petition preparer is not an individual. If more than one person prepared this document, attach additional sheets conforming to the appropriate official form for each person. A bankruptcy petition preparer's failure to comply with the provisions of title 11 and the Federal Rules of Bankruptcy Procedure may result in fines or imprisonment of both. 11 U.S.C. § 110; 18 U.S.C. § 136.
Signature of Debtor (Corporation Partnership) I declare under penalty of perjury that the information provided in this petition is true and correct, and that I have been authorized to file this petition on behalf of the debtor. The debtor requests the relief in accordance with the chapter of title 11, United States Code, specified in this petition. X _____ Signature of Authorized Individual <u>Dave Wilbrecht</u> Printed Name of Authorized Individual <u>Town Manager</u> Title of Authorized Individual <u>July 3, 2012</u> Date	

Stonecreek Industrial Center Major Design Review Amendment

Darcy Goulart, Planning Manager
April 17, 2023



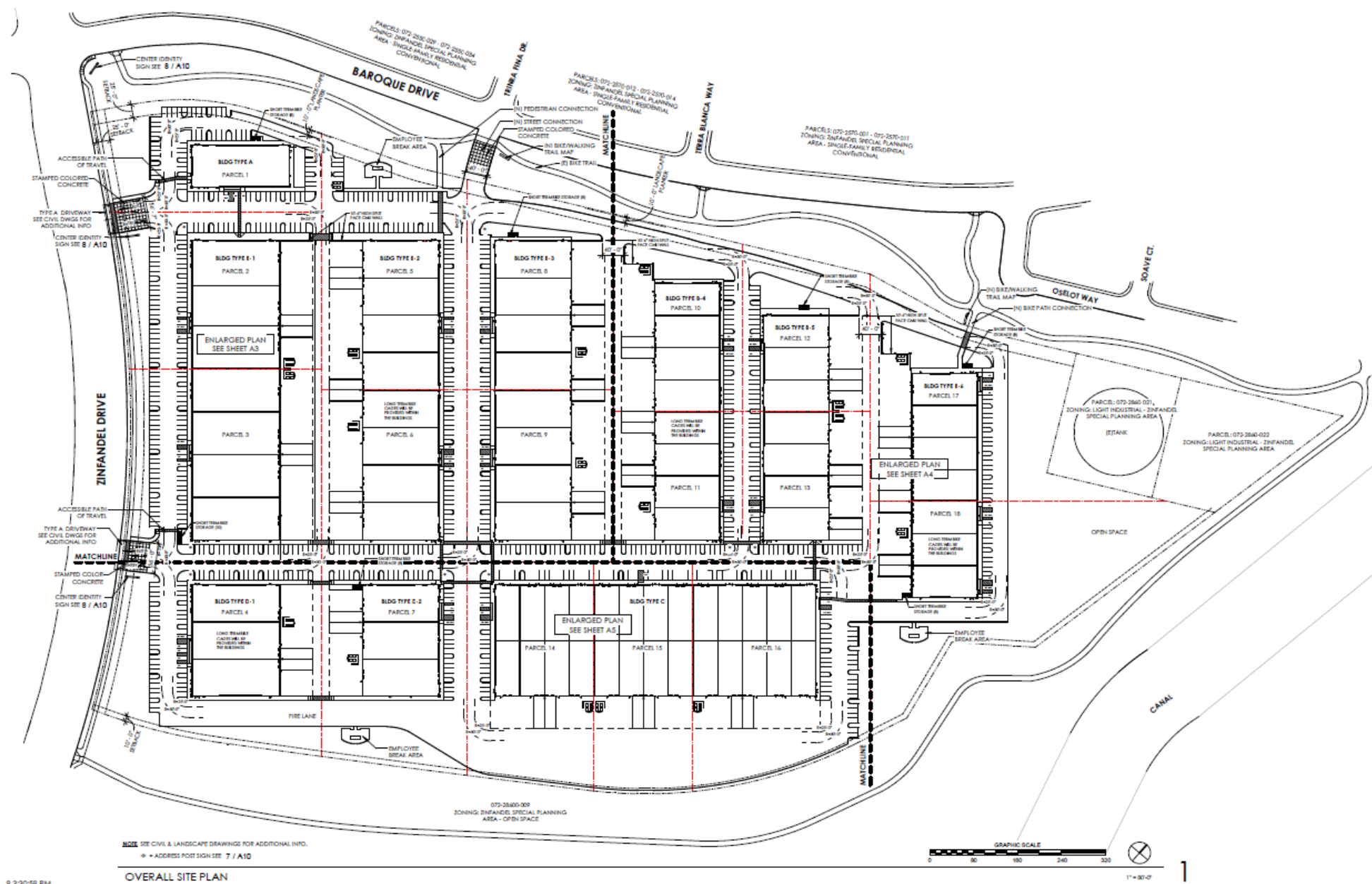
- Present project changes since the April 18, 2022 City Council meeting.
- Receive testimony, continue the public hearing to May 15th, potentially appoint an ad hoc City Council subcommittee (two members), ask any questions, deliberate, and provide staff sufficiently detailed direction to return with final hearing documents and/or plan revisions at the May 15th City Council meeting.

The applicant is requesting the following:

- A Major Design Review Amendment for development of four light industrial warehouse with office accessory buildings totaling 602,004 square feet that includes parking, lighting, and landscaping located within the Villages of Zinfandel Special Planning Area.



- | | |
|------------|--|
| April 2006 | Tentative Parcel Map that included the light industrial zoned area to the west and south. Divided 3 parcels into 93 parcels. |
| Feb 2009 | Tentative Parcel Map Amendment and Design Review for the project site into 10 parcels with 10 buildings. |
| 2017 | The 2006 Tentative Map expired |
| June 2019 | Tentative Parcel Map and Major Design Approved for 603,830 sq ft light industrial buildings |





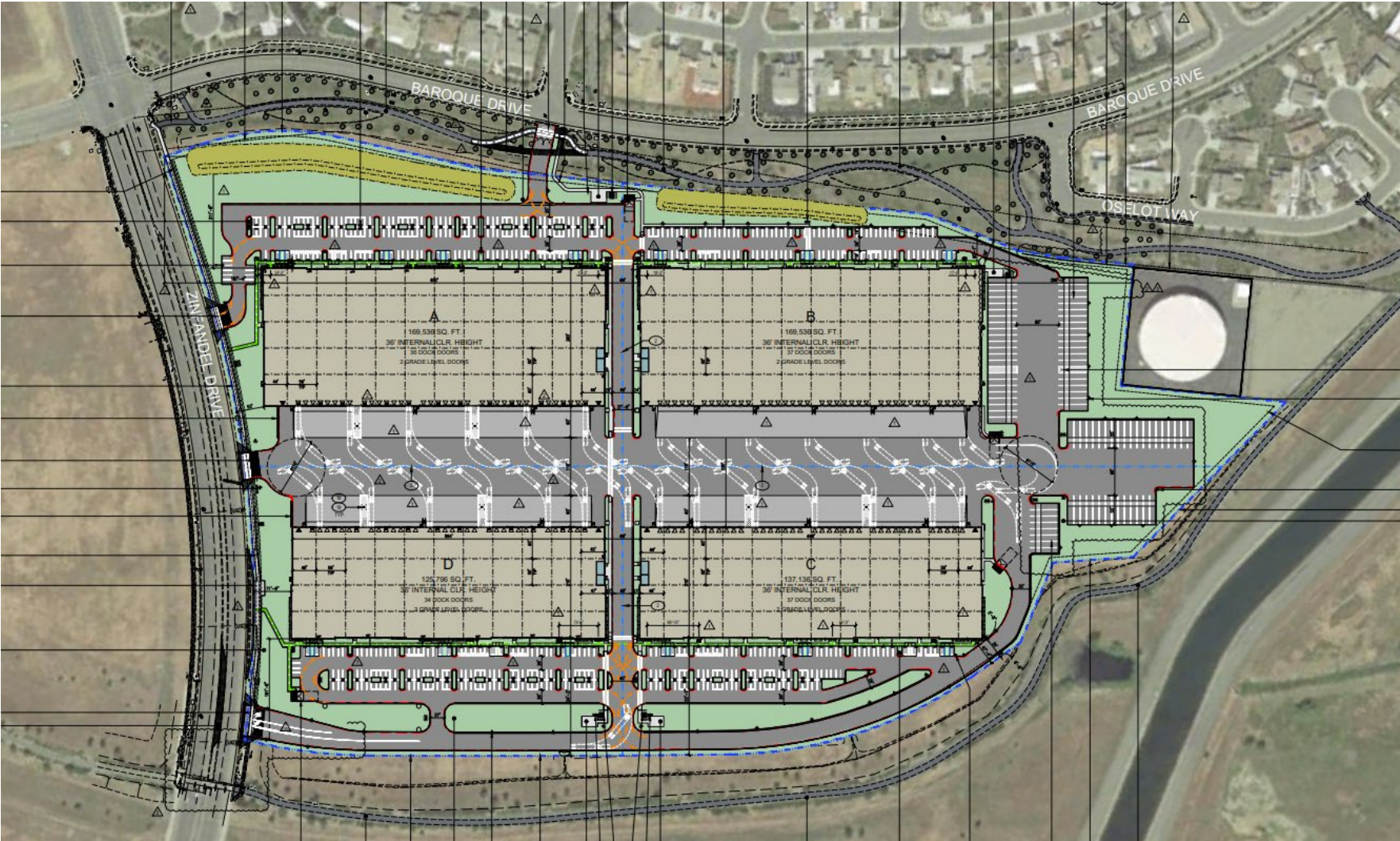
BAROQUE DRIVE ELEVATION NB 3

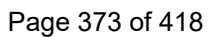


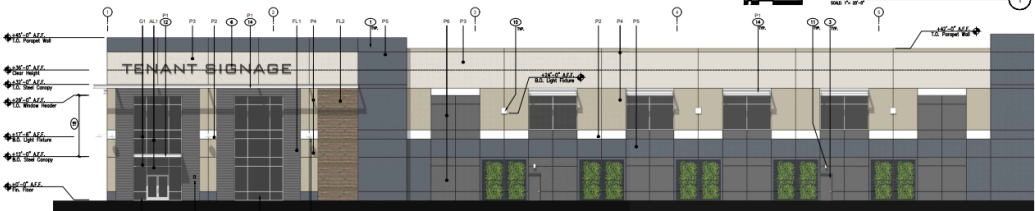
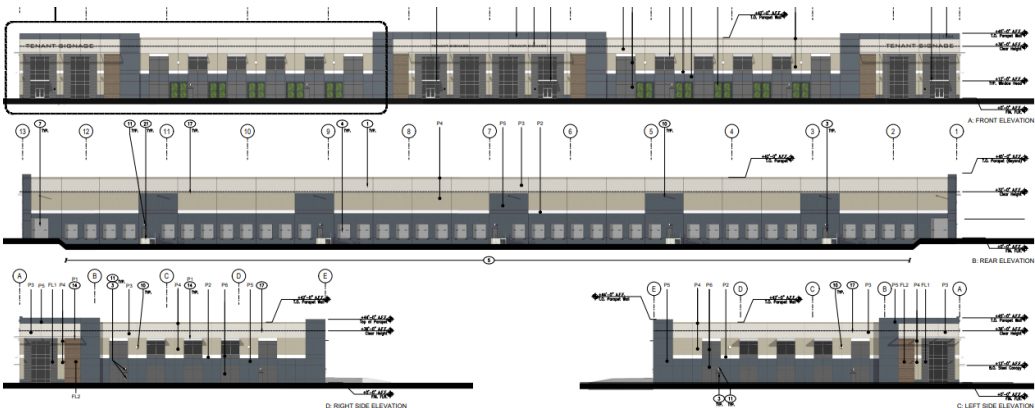
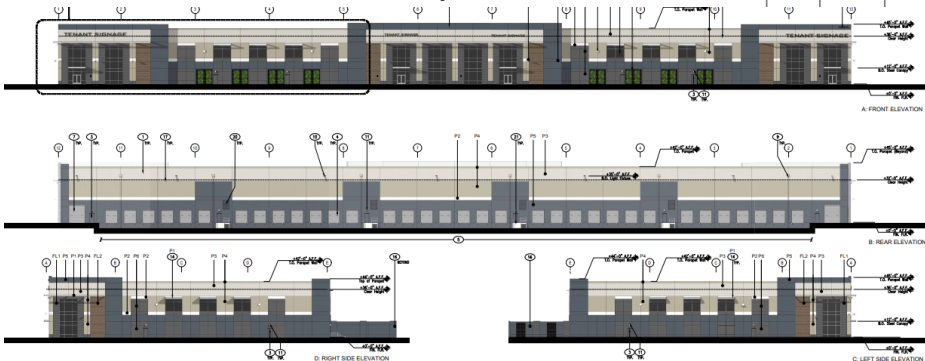
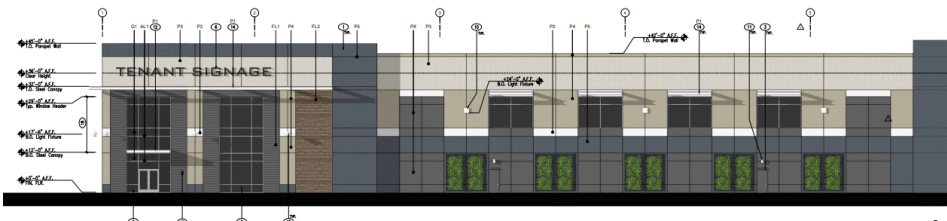
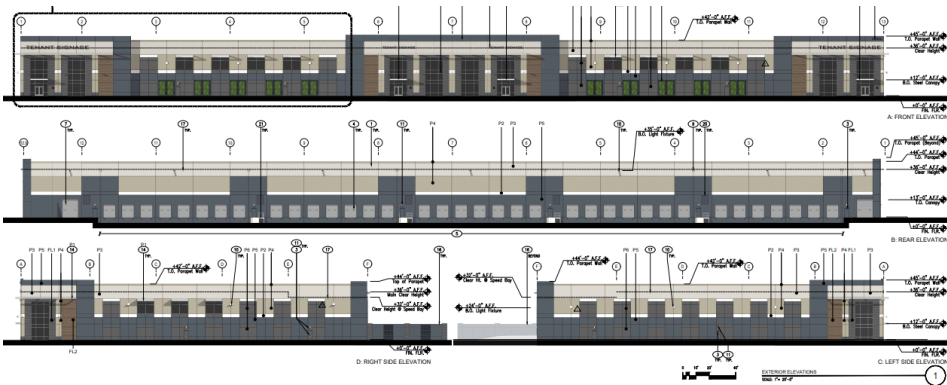
ZINFANDEL DRIVE ELEVATION NB 4

3/20/2019 3:48:49 PM

17102









D: VIEW OF MONUMENT SIGN



A: VIEW OF TYPICAL BUILDING MAIN CORNER ENTRY



E: VIEW OF PROPOSED BUILDING ALONG ZINFANDEL



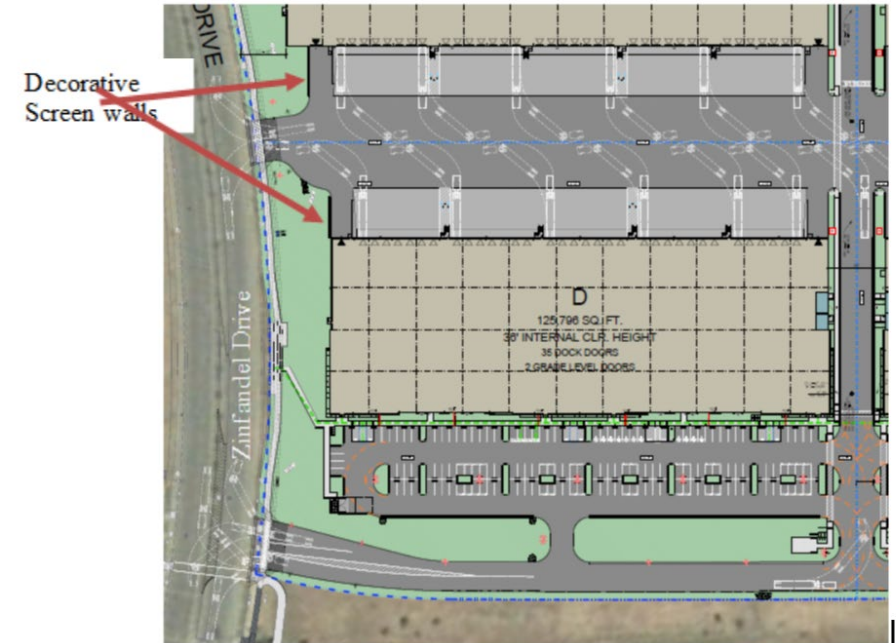
B: VIEW OF TYPICAL BUILDING FRONT ELEVATION

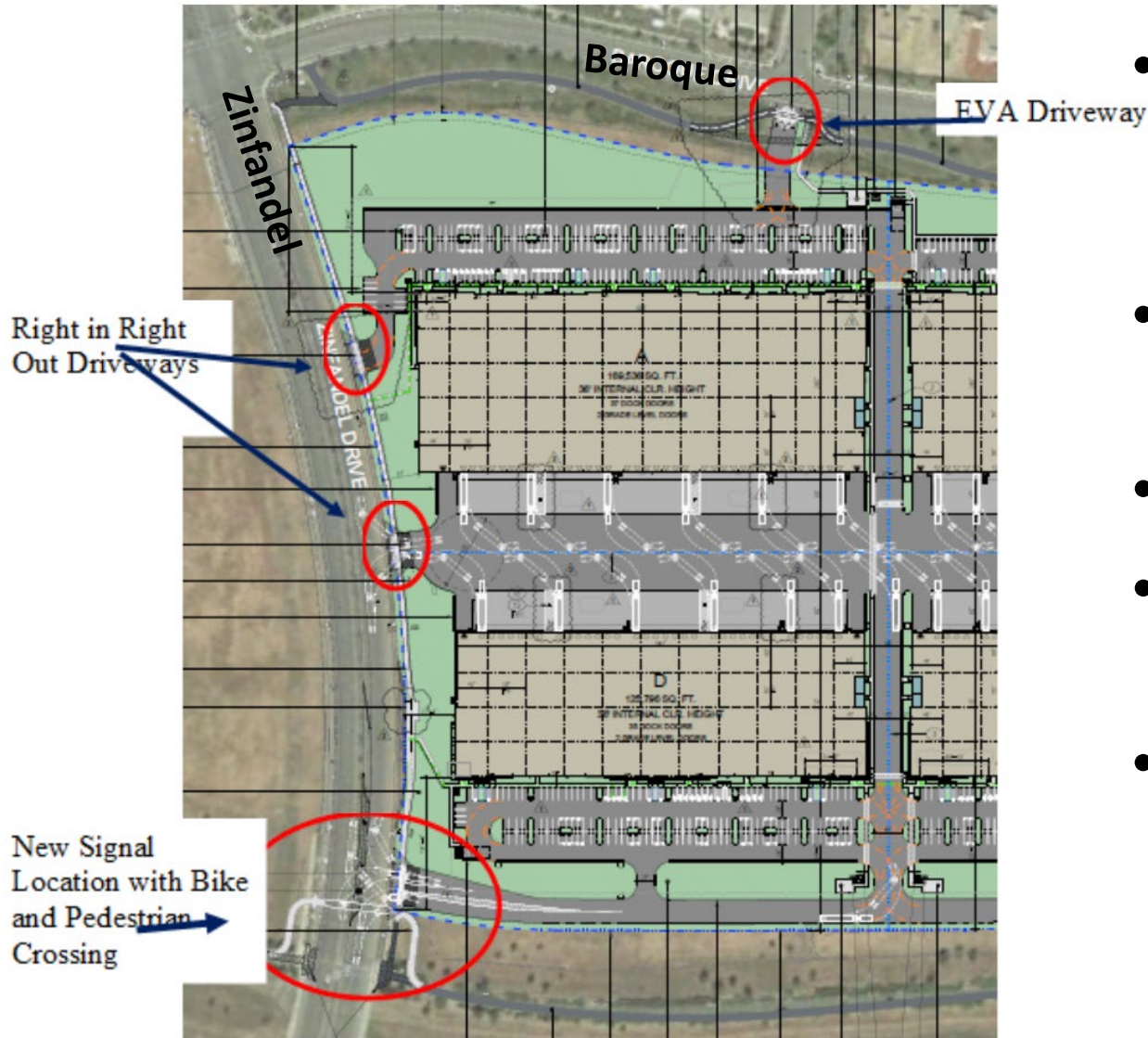


F: VIEW FROM SOUTHERN BIKE PATH LOOKING NORTH



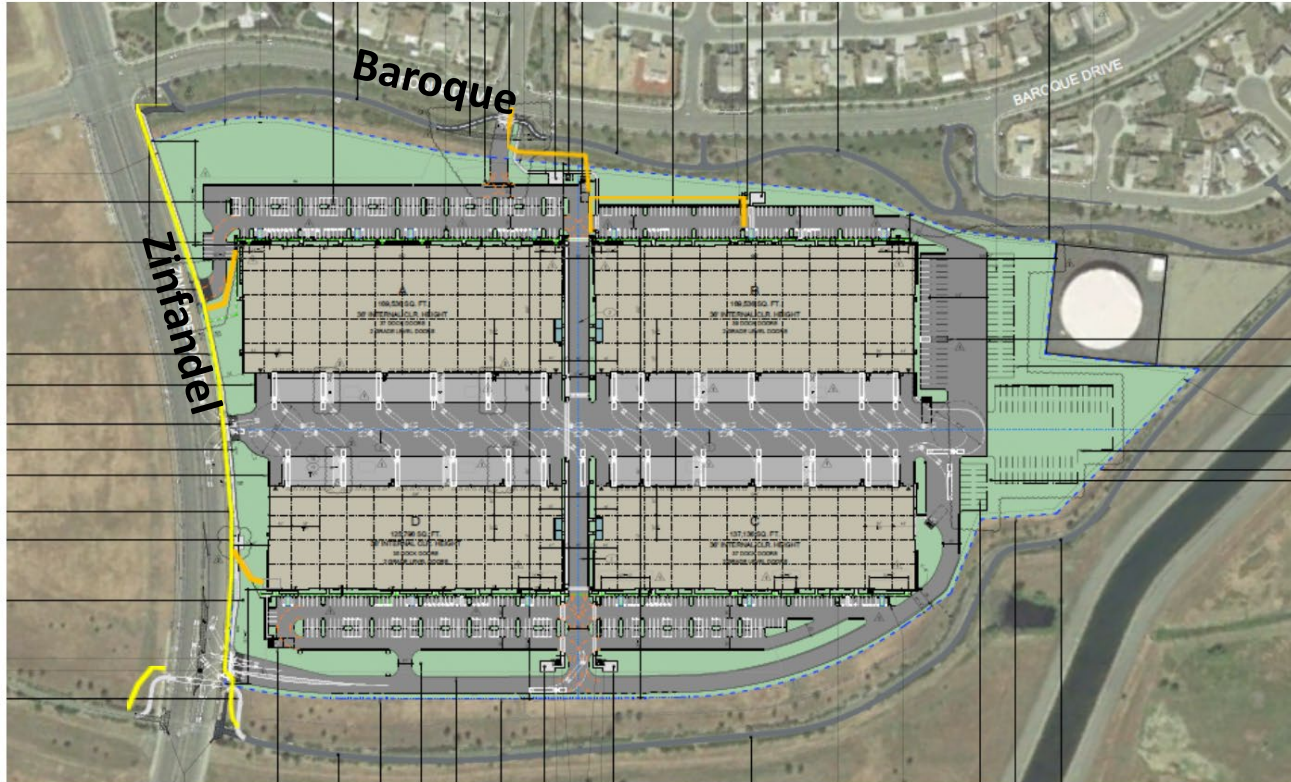
C: VIEW OF TYPICAL BUILDING SECONDARY ENTRY





- Access on Baroque is gated - Emergency services only (eg Fire or Police)
- North and middle driveway right in/out only.
- South driveway proposed signal.
- Rerouted trail – 200 feet. Staff/applicant evaluating options.
- Trucks will use middle and south access

Frontage Improvements

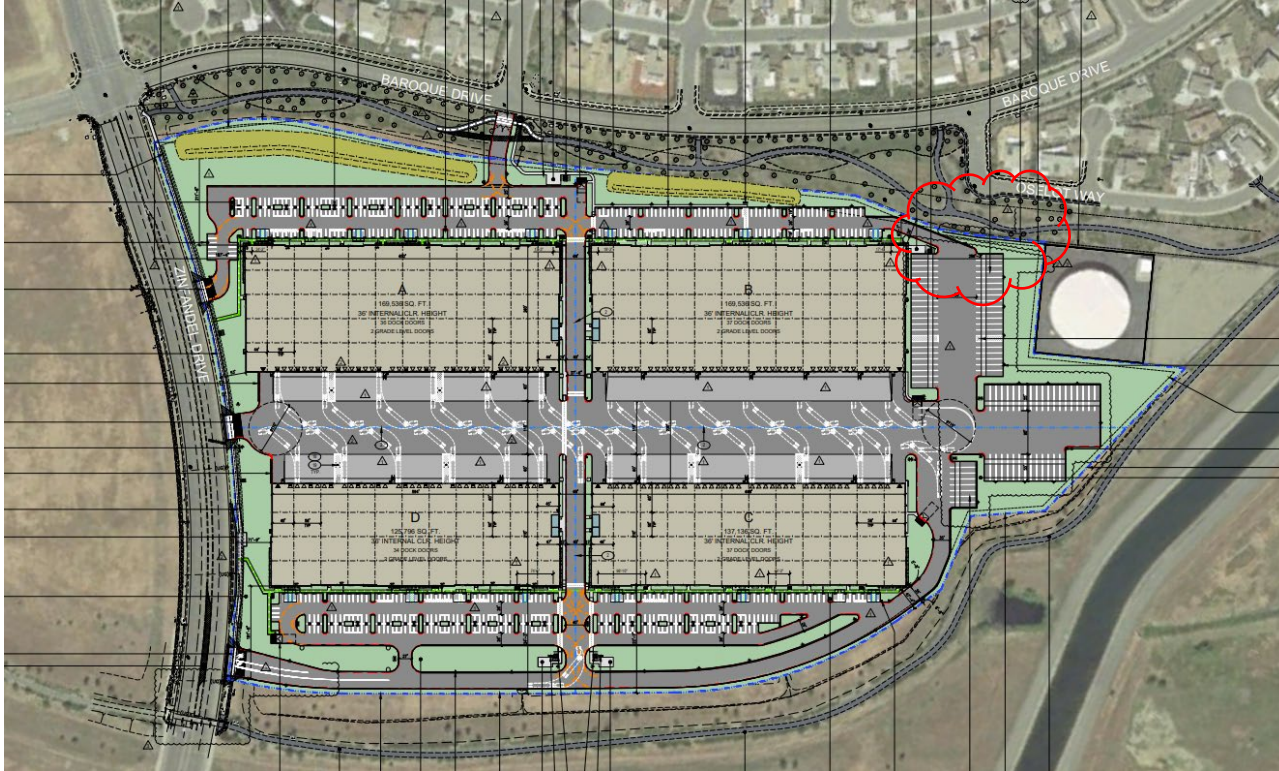


- New 7-foot sidewalk on Zinfandel frontage
- Ped connections to Baroque
- Rerouted Zinfandel trail crossing

Area Connections



- Class I Bike Trail
- Class II Bike Lane

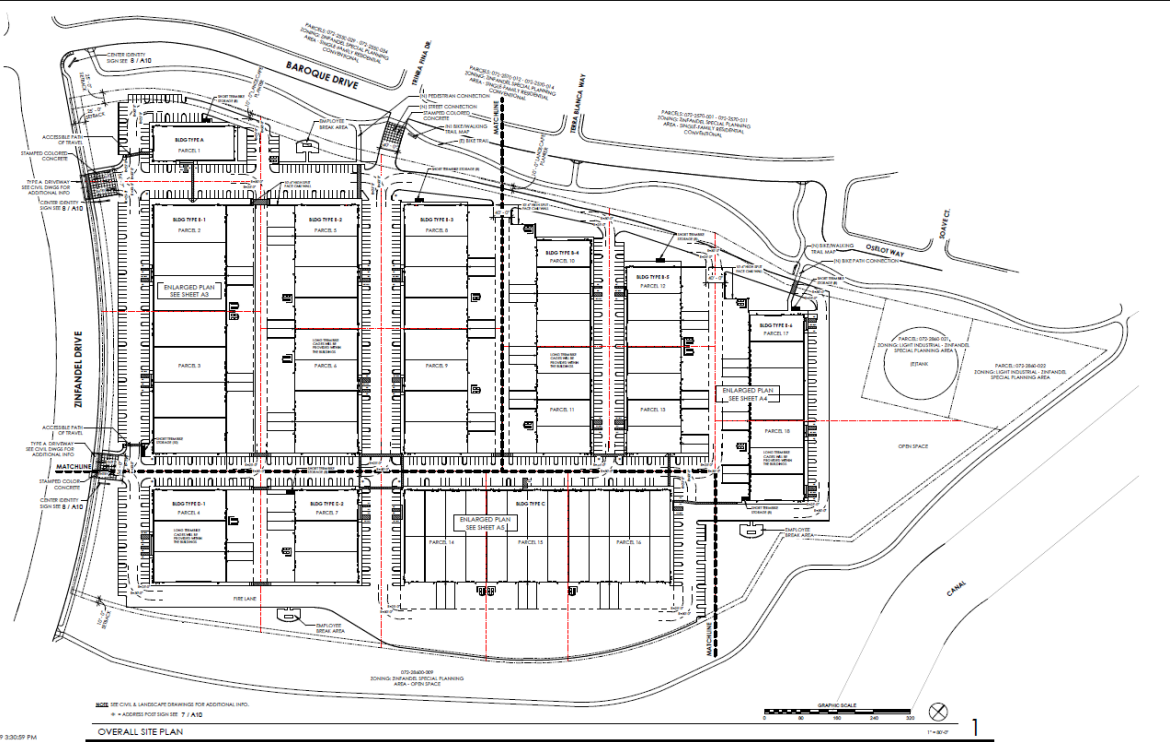


Screening: Solid
Fence and
Landscaping

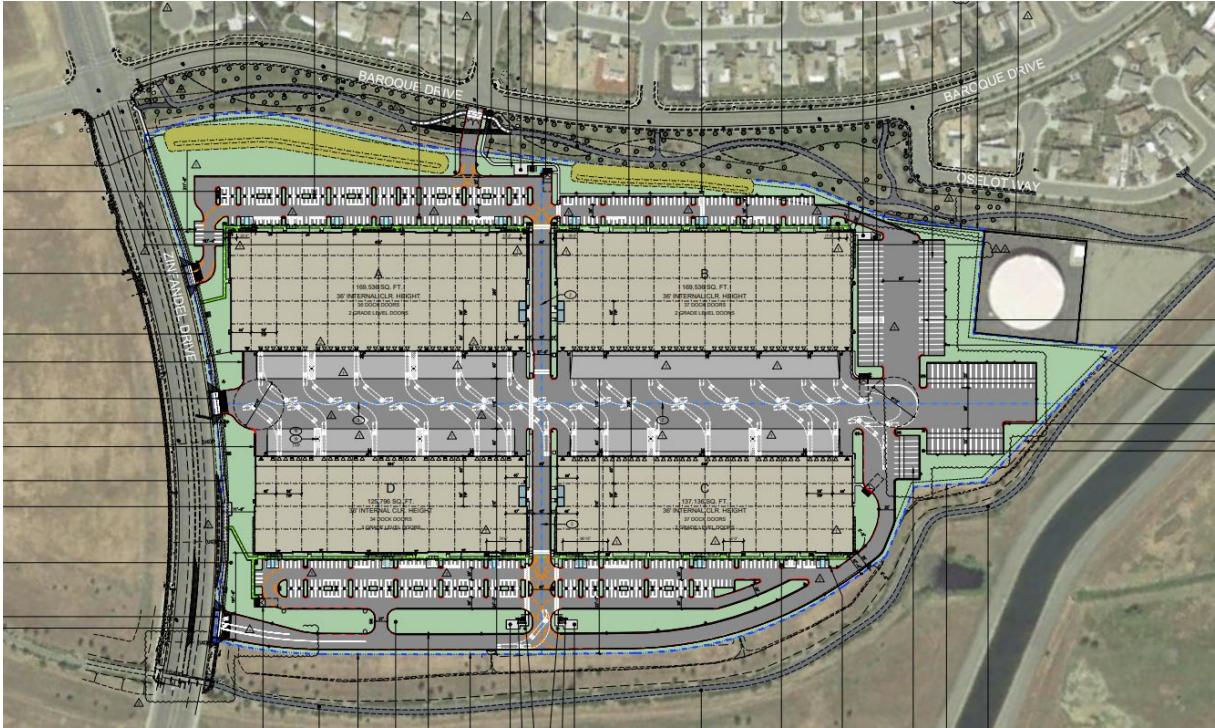


Existing Masonry Wall

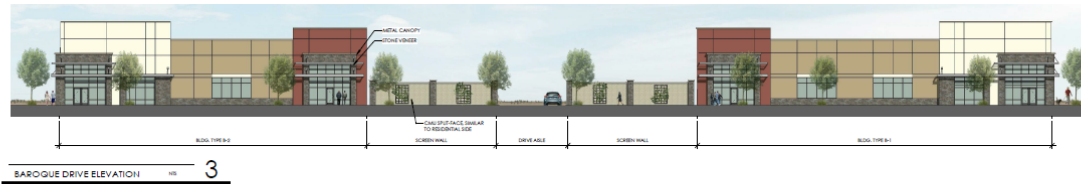
2019 Approved



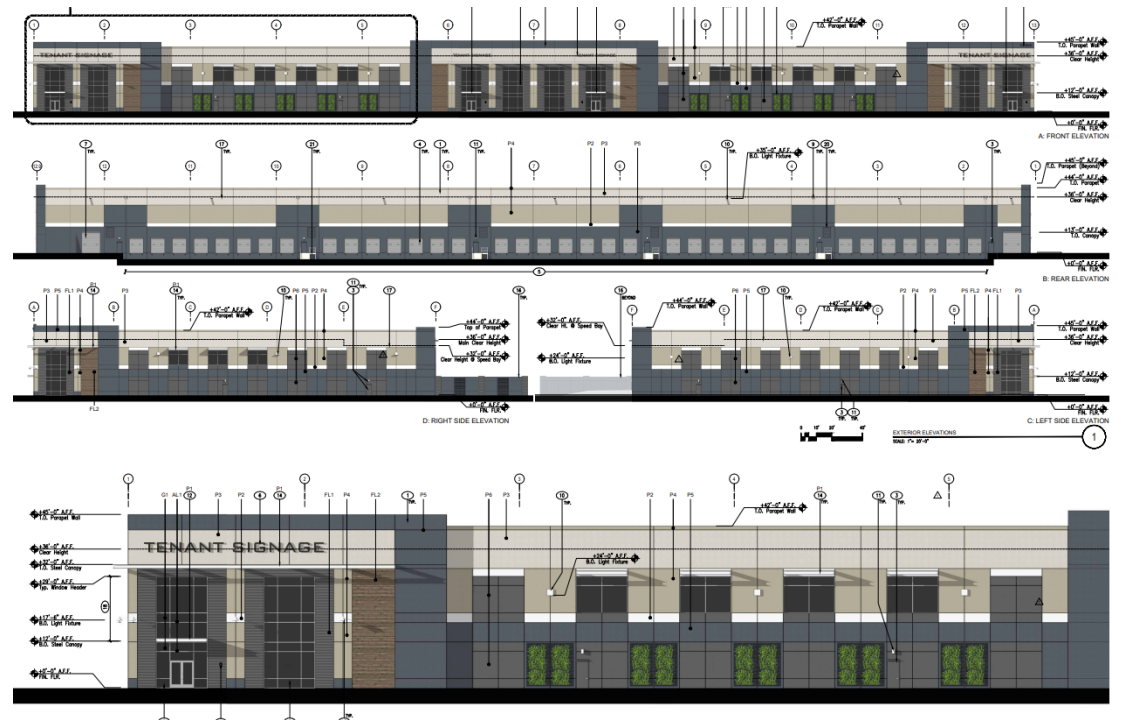
Proposed



2019 Approved



Proposed



2019 Approved



Proposed



	2019 Approved Project	Proposed Project
# of Parcels	18	4
# of Buildings	10 (18 lease or for sale spaces)	4
Square Footage	603,830 sq. ft.	602,004 sq. ft.
Height	30 ft. – 35 ft.	42 ft. – 45 ft.
Loading Docks	152	144
Parking Spaces	716 stalls	605 stalls
Truck Parking Spaces	No designated trucks stalls	85 stalls
Distance of closest building to residential neighborhood	188 ft	306 ft.

- Truck movements into, out of, and around the loading docks and truck parking area of the project site, shall be prohibited between 10:00PM and 6:00AM.
- A new sound/screen wall will be installed at the end of Debina Court and applicant will pay fair share contribution.
- Project will include skylights as well as a roof that is designed to carry solar panels.
- Short and long term bicycle parking on-site.
- EV charging infrastructure upon construction and be EV ready as required by the California Building Code.
- Should the building, or a portion of the building, be leased to a use that requires refrigerated trucks, loading dock plugs shall be installed to minimize truck idling.

- Provide adequate parking for trucks on stand-by outside of loading and unloading at the loading docks.
- To provide adequate infrastructure and electrical capacity to prepare for future zero-emission future goods movement including EV charging for future zero-emission vehicles as well as electrical plugs at every dock station for refrigerated trucks.
- Provide amenities for truck drivers with restrooms, vending machines, and air conditioning.
- Provide EV chargers for employee vehicles as well as design rideshare and public transportation programs for on-site employees.
- Ensure on-site public address systems are located and controlled so that noise levels do not exceed 45 dba at property line.
- Project is required to utilize the use of electric tools to the extent feasible including heavy equipment tools and vehicles.
- Heavy equipment tools and vehicles not powered by electricity are limited in the amount of time they are able to idle.
- Daily sweeping required of streets during construction along with the enforcement of CA fugitive dust requirements for construction sites.
- Adopt a formal truck routing plan designed to ensure safe routes to school
- Designate specific spots for on-site employee pick up and drop off.

- Install sidewalk on Zinfandel project frontage.
- Install new signal at south entrance.
- Stripe Zinfandel Drive to six lanes from Spoto Drive to south City limit including transitions.
- Non-passenger and commercial vehicles shall not be permitted to use Baroque Drive or other residential neighborhood roads.
- Truck right-out movements to Zinfandel shall be contained in outside lane.
- Separate from this application, staff have begun the design process for traffic calming on Baroque.

The project is exempt from the California Environmental Quality Act (CEQA) pursuant the Guidelines Section 15183, consistent with Community Plan, General Plan and Zoning. In addition, the project will comply with the Villages of Zinfandel mitigation monitoring plan.

Staff requests that the Council receive testimony, continue the public hearing to May 15th, potentially appoint an ad hoc City Council subcommittee (two members), ask any questions, deliberate, and provide staff sufficiently detailed direction to return with final hearing documents and plan revisions at the May 15th City Council meeting.

Thank you!
Questions?

MEMORANDUM



ITEM 19.1.

DATE: April 17, 2023
TO: Honorable Mayor and Council Members
FROM: Micah Runner, City Manager
SUBJECT: **A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RANCHO CORDOVA APPROVING A PURCHASE AND SALE AGREEMENT BY AND BETWEEN THE CITY OF RANCHO CORDOVA AND ELLIOTT HOMES FOR THE PURCHASE OF PROPERTIES WITHIN THE STONE CREEK SPECIFIC PLAN AREA (ASSESSOR'S PARCEL NUMBERS 072-2360-028, 029 AND 030, AND 072-2860-024, 015, 016, 017 AND 018), PURSUANT TO CEQA GUIDELINE 15061(B)(3)**

RECOMMENDATION

Adopt the Resolution.

RESULT OF RECOMMENDED ACTION

Adoption of the Resolution would allow the City Manager to proceed with the execution of documents necessary to purchase and take possession of eight parcels in the Stone Creek Specific Plan Area for a future determined use for an amount not to exceed \$14,953,276.

BACKGROUND

The subject properties, consisting of approximately 42.91 acres, are within the Villages of Zinfandel Specific Plan Area Business Professional zone (BP ZSPA) near the Stone Creek Community Park. Although no specified use is projected for the site at this time, the BP ZSPA zone is primarily intended to provide an area of business and professional office uses, and compatible related uses, with adjacent commercial or residential development.

The City and Elliott Homes have been negotiating to resolve issues and disputes concerning the potential development of portions of the property. The issues are detailed in a letter dated April 12, 2023 from Elliott's attorney Chad Roberts notifying the City of alleged default of the Development Agreement. This Purchase and Sale Agreement is part of the City's effort to resolve those disputes.

FISCAL IMPACT AND FUNDING SOURCE

The purchase price for the land is \$14,953,276.00. It is anticipated that additional funds, not exceeding \$50,000, will be needed for closing costs, including legal and environmental review. The City's General Fund reserves will be used to pay for the acquisition costs; specifically, the City's \$20 Million General Fund Assigned Fund Balance for Mills Crossing project. Any proceeds from the future disposition of this property will be used to replenish the Mills Crossing

set-aside or other reserve funds.

If purchased, this property will require annual property maintenance and security costs not expected to exceed \$65,000 per year (\$1,500 per acre per year) until it is developed or disposed of in some other way. A funding source for future improvements to this property has not been identified at this time.

ATTACHMENT(S)

1. Resolution
2. Exhibit A to the Resolution - Rancho Cordova -Purchase and Sale Agreement with Elliott Homes
3. Draft Elliott Notice of Exemption 4.5.23
4. Site Diagram - Elliott Properties

CITY OF RANCHO CORDOVA

RESOLUTION NO. XX-2023

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RANCHO CORDOVA
APPROVING A PURCHASE AND SALE AGREEMENT BY AND BETWEEN THE CITY OF
RANCHO CORDOVA AND ELLIOTT HOMES, INC., FOR THE PURCHASE OF PROPERTY
WITHIN STONE CREEK SPECIFIC PLAN AREA IN THE CITY OF RANCHO CORDOVA
(ASSESSOR'S PARCEL NUMBERS: 072-2360-028, 029, 030 AND 072-2860-15, 16, 17, 18,
24), PURSUANT TO CEQA GUIDELINE 15061(b)(3)**

WHEREAS, Elliott Homes, Inc. ("Elliott") owns that certain real property in the City of Rancho Cordova known as Assessor's Parcel Numbers 072-2360-028, 029, 030, and 072-2860-15, 16, 17, 18, 24 ("Elliott Property"); and

WHEREAS, the City and Elliott are entering into a Purchase and Sale Agreement ("Purchase and Sale Agreement") substantially in the form attached as Exhibit A, setting forth the terms and conditions under which the City agrees to purchase the Elliott Property as a condition to that certain Settlement Agreement approved by the City Council on April 17, 2023 to resolve disputes between the City and Elliott concerning the Elliott Property; and

WHEREAS, the City has agreed to pay Elliott Fourteen Million Nine Hundred Fifty-Three Thousand Two Hundred Seventy-Six Dollars (\$14,953,276) to purchase the Elliott Property; and

WHEREAS, the General Plan land use designations, Villages of Zinfandel Specific Plan requirements and zoning on the Elliott Property, both prior to and after expiration of the Villages of Zinfandel Development Agreement, will provide for a variety of different potential land uses for the Elliott Property; and

WHEREAS, the City has deemed it necessary to unassign the \$20 Million Assigned Fund Balance for Mills Crossing to make funds available to purchase the Elliott Property; and

WHEREAS, the City has not yet determined how it will use the Elliott Property; and

WHEREAS, the City Council finds that the purchase of the Elliott Property is consistent with the City's current adopted General Plan, Villages of Zinfandel Specific Plan and zoning, irrespective of the expiration or continuation of rights associated with the Villages of Zinfandel Development Agreement and the 2003 Sacramento County Zoning Code; and

WHEREAS, the Purchase and Sale Agreement is not a project subject to the California Environmental Quality Act (CEQA) because there is no possibility that the transfer in ownership of the Property may have a significant effect on the environment. (CEQA Guidelines sec. 15061(b)(3).) There are no particular development plans by the City known at this time that would allow for meaningful CEQA review. Any future development plans for the Property will be subject to CEQA review as applicable; and

WHEREAS, the City Council hereby finds that entering into this Purchase and Sale Agreement will benefit the community and is in the best interest of the health, welfare, and

safety of the City and its residents due to the facts, among other things, that it will avoid litigation with Elliott Homes, allow for a variety of different potential uses of the property, and increase the ability of the City to approve a mix of more desirable or acceptable uses and development on the property.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF RANCHO CORDOVA DOES RESOLVE AS FOLLOWS:

SECTION 1. The City Council finds and determines that the recitals are true and correct and incorporated herein by this reference.

SECTION 2. The City Council hereby approves the Purchase and Sale Agreement, substantially in the form on file with the City Clerk and attached hereto as Exhibit A.

SECTION 3. The City Manager (or his designee) is hereby authorized to make revisions to the Purchase and Sale Agreement, in consultation with the City Attorney, that do not materially or substantially increase the City obligations thereunder, to execute the Purchase and Sale Agreement, to record a grant deed and to make all approvals, take all actions, and execute all other documents that may be necessary to carry out the intent of this Resolution.

PASSED AND ADOPTED by the City Council of the City of Rancho Cordova on the 17th day of April 2023 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

Linda Budge, Mayor

Stacy Leitner, CMC
City Clerk

REAL ESTATE PURCHASE AND SALE AGREEMENT

This Real Estate Purchase and Sale Agreement (this “**Agreement**”) is entered into as of April 18, 2023, by and between Elliott Homes, Inc., an Arizona corporation (“**Seller**”), and the City of Rancho Cordova, a California municipal corporation (the “**City**”). The City and the Seller are collectively referred to herein as the “**Parties**.”

Recitals

A. Seller owns that certain real property known as Assessors Parcel Numbers 072-2360-028, 029, 030 and 072-2860-15, 16, 17, 18, 24 in Rancho Cordova, Sacramento County (the “**County**”), California, as more particularly described and depicted Exhibit A attached hereto and incorporated herein by this reference (the “**Real Property**”);

B. The City and Seller are entering into this Agreement pursuant to that certain Settlement Agreement entered into between the Parties as of April ___, 2023 (the “**Settlement Agreement**”); and

C. The City has agreed to pay Seller Fourteen Million Nine Hundred Fifty-Three Thousand Two Hundred Seventy-Six Dollars (\$14,953,276) to purchase the Property (defined below) representing Eight Dollars (\$8) per square foot of land (the “**Purchase Price**”); and

D. The City Council hereby finds that entering into this Agreement will benefit the community and is in the best interest of the health, welfare and safety of the City.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, City and Seller hereby agree as follows:

Agreement

1. Purchase and Sale. Subject to the terms and conditions set forth in this Agreement, Seller agrees to sell to City, and City agrees to purchase from Seller, the following (collectively, the “**Property**”):

(a) The Real Property, including all easements, rights (air, water, etc.) and appurtenances thereto, mineral, oil gas and other hydrocarbon substances on or under the Real Property;

(b) Any existing improvements on the Real Property (the “**Improvements**”);

(c) The interest of Seller in and to any and all of the following: governmental licenses, permits, approvals, applications, subdivision maps, entitlements, certificates, rights under development agreements, school fee mitigation agreements, utility and other reimbursement rights, building permit and development allocations, and any other development rights or entitlements relating to the Real Property, and all utility permits (including “will serve” letters) relating to the Real Property (collectively, the “**Licenses and Permits**”); and

(d) The right to use in connection with its development of the Real Property all

surveys, plans, specifications, engineering, geotechnical, soil and other tests, studies and reports, environmental studies, title policies, and all other intangible rights pertaining to the ownership and/or operation of the Real Property, relating to the Real Property and the Improvements (collectively the “**Documents**”).

2. Purchase Price. The purchase price for the Property (the “**Purchase Price**”) is Fourteen Million Nine Hundred Fifty-Three Thousand Two Hundred Seventy-Six Dollars (\$14,953,276).

3. Term of Agreement. This Agreement will commence and be effective upon the parties’ execution hereof (the “**Effective Date**”). This Agreement will remain in full force and effect until the earlier to occur of the following: (i) City, pursuant to Section 5(a) notifies Seller before the Feasibility Period expires, that City will not purchase the Property; (ii) the deadline for Close of Escrow set forth in Section 7(b), or (iii) termination prior to Close of Escrow in accordance with the terms hereof (the “**Agreement Term**”).

4. Payment of Purchase Price. City shall pay the Purchase Price for the Property as follows:

(a) Within three (3) business days after the Effective Date, City shall deposit into the Escrow established pursuant to Section 6(a) Two Hundred Thousand Dollars (\$200,000) (the “**Deposit**”), plus the full amount of Independent Consideration (as defined in Section 4(b) below). The Escrow Agent shall release to Seller the Independent Consideration in accordance with Section 4(b) below and, upon City’s request, hold the Deposit for City’s benefit in a market-rate interest bearing account. The Deposit shall be fully refundable to City during the Feasibility Period as set forth in Section 5(a).

(b) Along with the Deposit, City shall deposit into Escrow the amount of One Hundred Dollars (\$100) (the “**Independent Consideration**”) as independent consideration for Seller’s performance during the Feasibility Period under this Agreement and which shall be retained by Seller in all instances. The Independent Consideration shall be non-refundable to City as independent consideration for the right and option to conduct due diligence extended to City under this Agreement, including, without limitation, the right and option to terminate the Agreement before the Feasibility Period expires. The Independent Consideration shall be released to Seller immediately following City’s deposit of such funds into Escrow. In all instances under this Agreement in which City elects to terminate or is deemed to have terminated the Agreement and any portion of the Deposit is returned to City, Seller shall retain the Independent Consideration when the Deposit or any portion thereof is returned to City. The Independent Consideration shall not be applicable towards the Purchase Price or treated as consideration given by City for any purpose other than stated in this Section 4(b).

(c) The full amount of the Deposit shall be applicable to the Purchase Price at Closing. City shall pay the full remaining amount of the Purchase Price in immediately available funds at Close of Escrow.

(d) LIQUIDATED DAMAGES. FROM AND AFTER THE EFFECTIVE DATE, IF THE SALE OF THE PROPERTY UNDER THE TERMS OF THIS AGREEMENT IS NOT CONSUMMATED DUE TO A DEFAULT OF BUYER (SUBJECT TO ANY

APPLICABLE NOTICE AND CURE RIGHTS UNDER SECTION 13(a)), SELLER MAY INSTRUCT ESCROW AGENT TO CANCEL THE ESCROW AND SELLER WILL THEREUPON BE RELEASED FROM SELLER'S OBLIGATIONS HEREUNDER WITH RESPECT TO THE PROPERTY (EXCEPT FOR THOSE OBLIGATIONS THAT THIS AGREEMENT STATES SURVIVE TERMINATION) AND THE DEPOSITS, INCLUDING ALL DEPOSITS RELEASED TO SELLER AS WELL AS ANY PORTION OF THE DEPOSITS IN ESCROW AT THE TIME OF THE DEFAULT (INCLUDING ANY INTEREST EARNED FROM THE INVESTMENT OF THE DEPOSITS) SHALL BE PAID TO AND RETAINED BY SELLER AS LIQUIDATED DAMAGES. BUYER AND SELLER AGREE THAT, BASED UPON THE CIRCUMSTANCES NOW EXISTING, KNOWN AND UNKNOWN, IT WOULD BE IMPRACTICAL OR EXTREMELY DIFFICULT TO ESTABLISH SELLER'S DAMAGES IN THE EVENT THE SALE IS NOT CONSUMMATED BY REASON OF BUYER'S DEFAULT. ACCORDINGLY, BUYER AND SELLER AGREE THAT, IN THE EVENT THE SALE OF THE PROPERTY DOES NOT OCCUR DUE TO A DEFAULT OF BUYER UNDER THIS AGREEMENT (SUBJECT TO ANY APPLICABLE NOTICE AND CURE RIGHTS UNDER SECTION 13(a)), IT WOULD BE REASONABLE AT SUCH TIME TO AWARD SELLER LIQUIDATED DAMAGES EQUAL TO THE AMOUNT OF THE DEPOSITS MADE BY BUYER AS OF THE DATE OF BUYER'S DEFAULT, INCLUDING ALL DEPOSITS RELEASED TO SELLER AS WELL AS ANY PORTION OF THE DEPOSITS IN ESCROW AT THE TIME OF THE DEFAULT. SUCH RECOVERY OF THE DEPOSITS BY SELLER IS INTENDED TO CONSTITUTE LIQUIDATED DAMAGES TO SELLER PURSUANT TO SECTIONS 1671, 1676 AND 1677 OF THE CALIFORNIA CIVIL CODE, AND SHALL NOT BE DEEMED TO CONSTITUTE A FORFEITURE OR PENALTY WITHIN THE MEANING OF SECTION 3275 OR SECTION 3369 OF THE CALIFORNIA CIVIL CODE OR ANY SIMILAR PROVISION. IN ADDITION, BUYER SHALL PAY ALL TITLE AND ESCROW CANCELLATION CHARGES. SELLER'S RETENTION OF THE DEPOSITS IS NOT INTENDED AS A FORFEITURE OR PENALTY UNDER CALIFORNIA LAW, BUT INSTEAD IS INTENDED TO CONSTITUTE LIQUIDATED DAMAGES TO SELLER PURSUANT TO THE CALIFORNIA CIVIL CODE. SELLER HEREBY WAIVES THE PROVISIONS OF CALIFORNIA CIVIL CODE SECTION 3389. SELLER AGREES THAT THESE LIQUIDATED DAMAGES ARE IN LIEU OF ANY OTHER MONETARY RELIEF OR OTHER REMEDY, INCLUDING WITHOUT LIMITATION SPECIFIC PERFORMANCE, TO WHICH SELLER OTHERWISE MIGHT BE ENTITLED UNDER THIS AGREEMENT, AT LAW OR IN EQUITY, RELATING TO BUYER'S BREACH OF THIS AGREEMENT. NOTWITHSTANDING THE FOREGOING, IN NO EVENT SHALL THIS SECTION 4(d) LIMIT THE DAMAGES RECOVERABLE BY EITHER PARTY AGAINST THE OTHER PARTY DUE TO (A) THE OTHER PARTY'S OBLIGATION TO INDEMNIFY SUCH PARTY IN ACCORDANCE WITH THIS AGREEMENT, OR (B) THIRD PARTY CLAIMS. BY THEIR SEPARATELY EXECUTING THIS SECTION 4(d) BELOW, BUYER AND SELLER ACKNOWLEDGE THAT THEY HAVE READ AND UNDERSTOOD THE ABOVE PROVISION COVERING LIQUIDATED DAMAGES, AND THAT EACH PARTY WAS REPRESENTED BY COUNSEL WHO EXPLAINED THE CONSEQUENCES OF THIS LIQUIDATED DAMAGES PROVISION AT THE TIME THIS AGREEMENT WAS EXECUTED. BOTH PARTIES ACKNOWLEDGE AND AGREE THAT SAID AMOUNT IS PRESENTLY A REASONABLE SUM CONSIDERING ALL OF THE CIRCUMSTANCES EXISTING ON THE DATE OF THIS AGREEMENT, INCLUDING THE RELATIONSHIP OF THE SUM TO THE RANGE OF HARM TO SELLER THAT REASONABLY COULD BE

ANTICIPATED, AND THAT PROOF OF ACTUAL DAMAGES WOULD BE COSTLY AND EXTREMELY DIFFICULT OR IMPRACTICABLE.

Seller's Initials _____

City's Initials _____

5. City's Decision to Purchase or Not Purchase the Property.

(a) City may, in its sole and absolute discretion, without any reason or cause, at any time before the Feasibility Period expires, decide that City will not purchase the Property. If City notifies Seller at any time before the Feasibility Period expires that City will not purchase the Property or if City fails to give Seller a Notice to Proceed (as defined in Section 5(b) below) prior to the expiration of the Feasibility Period, then (i) the Escrow Agent shall promptly return to City the full amount of the Deposit and any interest accrued thereon, (ii) this Agreement shall immediately terminate, and (iii) the parties hereto will have no further obligations to each other (except for those obligations that this Agreement states shall survive termination).

(b) If City, before the Feasibility Period expires, elects to proceed with the transaction hereunder, then City shall issue to Seller a written notice specifying that City elects to proceed with the transaction contemplated by this Agreement (the "**Notice to Proceed**"). The Notice to Proceed will specifically state (i) that it is "a Notice to Proceed pursuant to Section 5(b) of the Real Estate Purchase and Sale Agreement dated April 18, 2023 between City and Seller." City's failure to deliver the Notice to Proceed in accordance with the preceding provisions of this subsection on or before the date the Feasibility Period expires is not a default by City under this Agreement, but such failure will be deemed City's determination not to proceed with the purchase of the Property and will terminate this Agreement (other than the obligations of City and Seller that expressly survive termination pursuant to another provision hereof).

(c) If City gives the Notice to Proceed at any time prior to the expiration of the Feasibility Period, and if (i) City then fails to timely make, or to instruct Escrow Agent to release to Seller, the Deposit as provided herein, or (ii) for any reason other than Seller's default or breach of its obligations under this Agreement, Escrow does not close, then, except in the event of Seller's default or breach, or any other event that entitles City to a refund of the Deposit as specifically set forth in this Agreement, Seller may retain the amount of the Deposit, including the Deposit that has been released from Escrow to Seller, if any, and any portion of the Deposit in Escrow, as of the date of termination. In such event, the parties hereto will have no further obligations to each other, except for those obligations that this Agreement states survive termination.

6. City's Feasibility/Title Review.

(a) City, without incurring any obligation to purchase the Property, may conduct due diligence regarding the Property for a period beginning on the Effective Date and continuing through 5:00 PM Pacific Time on the date that is ten (10) days after the Effective Date (the "**Feasibility Period**"). City may extend the Feasibility Period by an additional five

(5) days with 2 days written notice to Seller. Seller has delivered, or shall within five (5) days after the Effective Date deliver to City or provide City with access to, either through hard copies or through addresses to websites (for publicly available documents), complete copies of all of the following documents and materials to the extent they exist and are in Seller's possession or control concerning the Real Property, the Improvements, and the improvement, development, remediation, and operation thereof (collectively, the "**Reports**"): surveys, including boundary, topographic and tree surveys; subdivision reports; covenants, conditions and restrictions; correspondence or other materials; existing title policies; maps; soils reports; environmental, natural resource and biological studies and reports; engineering and architectural studies; tentative subdivision map application and materials, including designs and improvement plans; government zoning letters; specific plans and conditions of approval; "will-serve" letters; development agreements; grading, improvement and landscape plans and similar data; all material relating to earthquake faults and flood zones; any leases and subleases; all service, maintenance, management, brokerage, consulting, advertising and other agreements; all licenses, permits, certificates, entitlements and approvals; property tax bills, utility bills and similar records; any other existing contractual obligations; and all feasibility studies; provided, however, that Seller shall have no obligation hereunder to provide City with any of the following which are collectively referred to herein as "**Proprietary Information**": budgets or financial projections, any materials related to the Property that are proprietary to Seller, and any attorney/client communications, except to the extent that the foregoing would reveal a material adverse fact regarding the condition of the Real Property or the Improvements, or the ability to redevelop the Real Property that was not otherwise revealed by the Reports. City shall have the right to contact any governmental and public entities, and any of Seller's consultants (at City's cost), regarding the Property. At all times after the Effective Date and throughout the Agreement Term, City, and its employees, representatives, consultants, and agents, will have the right to enter the Real Property during reasonable business hours for all purposes in connection with its due diligence; provided, however, that City shall give Seller at least forty eight (48) hours prior notice of any entry onto the Real Property or any of the Improvements by City or its employees, representatives, consultants, and agents and Seller shall have the right to have a representative present during City's due diligence activities on the Real Property. City shall keep the Real Property free and clear of any mechanic's or other liens arising out of City's entry of the Real Property for due diligence purposes. City may undertake any testing, surveying, drilling, or other analysis of the Real Property that City deems necessary during the Feasibility Period and throughout the Agreement Term, including the right to conduct any subsurface testing of the Real Property; provided that, for any subsurface testing, City shall provide Seller with at least three (3) business days prior written notice, which notice shall include a proposal from the engineer who will perform the invasive testing, outlining the scope of such tests and studies. Upon the completion or abandonment of any inspection or test, City shall restore the Property to its condition prior to such inspection or test. Seller shall have the right to have a representative present during any such testing; provided, however, that Seller's inability or failure to have a representative present shall not require City to re-schedule or postpone the testing. City shall not disclose to any third party any results or reports regarding environmental testing performed by City on the Real Property, except as required by applicable law and except for City's disclosure to its employees, representatives, consultants, agents, and source of capital. Any and all inspections and testing will be at City's sole cost and expense.

If Escrow does not close as provided in this Agreement or this Agreement is terminated prior to Closing for any reason other than Seller's breach that Seller does not timely cure, then City

shall promptly return the Reports to Seller.

(b) Within five (5) business days after the Effective Date, City and Seller shall cause Stewart Title Company (the “**Title Company**”) to issue and deliver to City a preliminary American Land Title Association title report (“**Title Report**”) and legible copies of all exceptions to title referred to in the Title Report. By no later than two (2) days before the expiration of the Feasibility Period, City shall notify Seller in writing of any objection to any exception therein (other than current non-delinquent taxes or assessments) or as disclosed in a current ALTA-ACSM Urban Survey of the Real Property (the “**Survey**”), which Survey City, at City’s sole cost and expense, may cause to be prepared in connection with City’s review of title to the Real Property (collectively, “**Title Defects**”). City’s failure to provide notice of the Title Defects to Seller on or before such date shall constitute City’s approval of the Title Report. If City timely notifies Seller of its Title Defects, then Seller may notify City in writing within fifteen (15) days thereafter that: (i) Seller will remove the Title Defects on or before the Close of Escrow, or (ii) Seller will not remove any or certain specified Title Defects. Seller’s failure to address any Title Defects in any notice, or failure to give a timely notice as to any Title Defects, shall constitute Seller’s election not to remove such Title Defects. If Seller elects to cure any of the Title Defects, they shall be removed from record title by Seller at Seller’s expense (or otherwise rendered acceptable to City) prior to or at Closing and such Title Defects will not appear on the title insurance policy issued to City by Title Company. If Seller does not provide City with timely written notice that Seller shall remove all Title Defects, then City may, as its sole and exclusive remedy, decline to deliver a Notice to Proceed and this Agreement shall terminate in accordance with Section 5(a) above. If City waives (or is deemed to have waived) any Title Defect, Seller shall have no obligation to remove or otherwise address such Title Defect, and such Title Defect shall be deemed approved. Except for Title Defects Seller removes or is obligated to remove, the exceptions shown on the preliminary title report, and any encumbrances arising from the acts of City or City’s Agents, will be deemed “**Permitted Exceptions**.” Notwithstanding any of the above, Seller shall remove at or before Closing all monetary liens and monetary encumbrances on the Real Property (that were not caused by City or City’s Agents and except those expressly assumed by City), other than current, non-delinquent taxes or assessments, and City has no obligation hereunder to object to such items in order to obligate Seller to remove such items. Seller shall not after the Effective Date cause or consent to any new encumbrance or exception to title, including any easement, mortgage, or lien, that will remain in effect after the Closing, to be placed on the Real Property without City’s prior written consent.

(i) After the expiration of the Feasibility Period, but prior to the Close of Escrow, City may, at or prior to Close of Escrow, notify Seller in writing (the “**Subsequent Title Defects Notice**”) of any objection(s) to title exceptions (i) raised by the Title Company after the expiration of the Feasibility Period and prior to the Close of Escrow and (ii) not otherwise known to or caused City prior to the expiration of the Feasibility Period, provided that City must notify Seller of such objection(s) to title within five (5) business days of being made aware of the existence of such exception (each, a “**Title Report Update Review Period**”). Should City fail to provide a Subsequent Title Defects Notice to Seller prior to the expiration of the Title Report Update Review Period, City shall be deemed to have approved such matters which shall then be considered Permitted Exceptions as defined above. If, however, City timely objects to such new exception, then Seller shall have until 5:00 p.m. Pacific Time on the next business day after Seller’s receipt of City’s objection in which to

notify City, in Seller's sole discretion, either that Seller will remove or will not remove the disapproved exception(s) prior to the Close of Escrow. Seller failure to timely respond to the Subsequent Title Defects Notice means Seller will not remove any exception(s) disapproved by City. If Seller elects not to remove any disapproved exception(s), then City may elect (I) to terminate this Agreement by written notice to Seller or (II) to waive in writing City's previous disapproval of (and thereby accept) any items that Seller does not elect to remove, in which case such exceptions shall be Permitted Exceptions. If City fails to timely respond to Seller's election not to remove such items, City shall have waived its objection thereto. If City gives Seller timely written notice of termination, then this Agreement shall thereupon terminate without further action by the parties. If this Agreement is terminated in accordance with this subsection, then, notwithstanding anything to the contrary contained in this Agreement, the Reports shall be returned to Seller, the Termination (defined in Section 14 below) may be recorded, all of the Deposit shall be returned promptly to City and the parties shall have no further obligation to one another hereunder except to the extent any such obligation expressly survives the termination of this Agreement; provided, however, if the termination is due to Seller's breach, then, in addition to matters set forth in the foregoing sentence, Seller shall reimburse City for all of City's Costs (as defined in Section 8(c) below) incurred by City through the date of termination. Notwithstanding any of the foregoing, Seller must remove any new exception that violates Seller's obligations in the last sentence of Section 7(b) above.

(c) City shall defend, indemnify and hold harmless Seller from and against any and all losses, expenses, claims, damages and injuries to person or property to the extent caused by the acts or omissions of City, its employees, consultants, contractors and subcontractors on the Real Property in connection with such entry on the Real Property as contemplated herein, including against any mechanic's, workers' or other liens on the Property, by reason of the work or activities conducted on the Real Property by or for City; provided, however, City shall not be responsible or liable for any act or omission of Seller or any of Seller's, agents, representatives, employees, contractors, subcontractors, invitees, or consultants, or for any adverse condition or defect on or affecting the Property not caused by City, its employees, consultants, contractors or subcontractors, but discovered during such inspections.

7. Escrow/Closing.

(a) Immediately upon the parties' execution of this Agreement, the parties shall open an escrow (the "**Escrow**") with Stewart Title Company, 555 Capital Mall Suite 545, Sacramento, CA 95814 (Attn.: Antigone Vaccaro) telephone (916) 441-4950, Antigone.Vaccaro@stewart.com ("**Escrow Agent**") for the purpose of facilitating City's purchase of the Property.

(b) The Escrow will close ("**Closing**" or "**Close of Escrow**") on the date (the "**Closing Date**") that is the date that is twenty (20) days after City delivers the Notice to Proceed.

(c) Notwithstanding any provision herein to the contrary, the Close of Escrow, and City's obligations under this Agreement, shall be subject to the satisfaction of the following conditions at or prior to the time prescribed herein (collectively, "**City's Closing Conditions**"). Except as specifically set forth below, City has the right to waive any of City's Closing Conditions in City's sole discretion.

(i) At Close of Escrow, the Title Company shall issue and deliver to City a policy of title insurance (the “**Title Policy**”) for the Real Property, together with the endorsements requested by City, insuring City’s fee simple title to the Real Property in the amount of the Purchase Price, subject only to the Permitted Exceptions, or the Title Company shall have irrevocably committed in writing to issue such Title Policy. City shall have the right to obtain an ALTA extended coverage owner’s Title Policy, provided that (a) City shall bear all costs associated with the issuance of the Title Policy in excess of the cost of a standard coverage owner’s title policy with the endorsements referred to herein, and (b) the Closing shall not be delayed by reason of the issuance of the Title Policy in the extended coverage form rather than in the standard coverage form. At the Closing, Seller shall execute and deliver an owner’s affidavit in the Title Company’s standard form if and to the extent required by the Title Company as a condition to the issuance of the Title Policy in the extended coverage form;

(ii) Seller shall have performed, observed and complied with all covenants, agreements, and conditions required by this Agreement to be performed, observed, and complied with on its part, in sufficient time to permit the Close of Escrow;

(iii) All representations and warranties of Seller shall be true and correct as of the date hereof and as of the Close of Escrow;

(iv) There shall have occurred no material adverse change affecting the physical condition of the Real Property since the end of the Feasibility Period (unless such material adverse change arose from any action or omission of City or its employees, consultants, contractors and subcontractors); and

(v) Seller shall have delivered into the Escrow all of the executed documents required under Section 8(e) below. Each of the foregoing conditions is for City’s sole benefit. If any conditions precedent to City’s obligations set forth above are not satisfied or waived in writing by City at or prior to the times prescribed therein, then, City may delay the Close of Escrow, at no cost to City, for a period of up to thirty (30) days, to allow the parties to cooperate to satisfy the unsatisfied condition, which the parties covenant to cooperate in good faith to accomplish. If such condition(s) remain unsatisfied after such delay, or if City declines to exercise its delay right, the City may either (i) decline to proceed with Close of Escrow and terminate this Agreement, or (ii) if the failed condition is due to a breach or default by Seller, City shall have the rights and remedies set forth below. If City declines to proceed with Close of Escrow, then all rights, obligations and liabilities of Seller and City under this Agreement will terminate (except for any obligations or liabilities under this Agreement which specifically set forth that such obligations or liabilities survive the termination of this Agreement) and Seller shall promptly return all of the Deposit (except the Independent Consideration) to City. If due to Seller’s default under or breach of this Agreement that Seller does not timely cure in accordance with Section 13(a) below, the Close of Escrow does not timely occur or this Agreement is terminated prior to the Closing, then City shall have the right to elect to: (A) terminate this Agreement upon written notice to Seller and Escrow Agent, in which event, (I) Escrow Agent shall automatically return all sums deposited by City and then held by Escrow Agent, (II) Seller shall promptly return to City the full amount of the Deposit previously released to Seller (except the Independent Consideration).

(d) Notwithstanding any provision herein to the contrary, the Close of

Escrow, and Seller's obligations under this Agreement, shall be subject to the satisfaction of the following conditions at or prior to the time prescribed herein. Except as specifically set forth below, Seller has the right to waive any of the following conditions in Seller's sole discretion.

(i) City shall have performed, observed and complied with all covenants, agreements, and conditions required by this Agreement to be performed, observed, and complied with on its part, in sufficient time to permit the Close of Escrow;

(ii) All representations and warranties of City shall be true and correct as of the date hereof and as of the Close of Escrow; and

(iii) City shall have delivered into the Escrow all of the executed documents required under Section 7(f) below.

Each of the foregoing conditions is for Seller's sole benefit. If any conditions precedent to Seller's obligations set forth above are not satisfied or waived in writing by Seller at or prior to the times prescribed therein (subject to City's notice and cure rights under Section 13(a) below), then Seller may decline to proceed with Close of Escrow and terminate this Agreement. If Seller declines to proceed with Close of Escrow, then all rights, obligations and liabilities of Seller and City under this Agreement will terminate (except for any obligations or liabilities under this Agreement which specifically set forth that such obligations or liabilities survive the termination of this Agreement) and, if the failure to satisfy any condition is due to a breach by City that City does not timely cure in accordance with Section 13(a) below, then Seller shall be entitled to the release of and to retain all of the Deposit as liquidated damages in accordance with Section 4(d).

(e) At or before Closing, Seller shall execute and deliver to the Escrow Agent the following:

(i) A grant deed (the "**Deed**") in the form attached hereto as Exhibit C;

(ii) If required by the Title Company, an appropriate mechanic's lien affidavit;

(iii) A certification as to the non-foreign status of Seller in the form reasonably required by Escrow Agent and City, and a Withholding Exemption Certificate on California Franchise Tax Board Form 593W, both duly executed by Seller;

(iv) As applicable, appropriate evidence of Seller's formation, existence and authority to sell and convey the Property; and

(v) Such other documents that the Title Company may reasonably require in connection with issuance of the owner's policy to City.

(f) At or before Closing, City shall execute and deliver to the Escrow Agent the following:

(i) The balance of the Purchase Price and any additional sums necessary to pay City's share of the closing costs (subject to probations and adjustments, and a credit for the Deposit);

(ii) City's authorizing Resolution to purchase the Property.

(g) At or before Closing, Seller and City shall each execute counterpart closing statements in a customary form, and such other documents that are reasonably necessary to consummate Closing.

8. Closing Costs/Prorations.

(a) At Closing, personal property taxes, real property taxes and any other assessments against the Property, assessments, and any other items of income and expense with respect to the Real Property, shall be prorated between the parties as of the Closing by the Escrow Agent on the basis of 30-day months.

(b) City shall pay all City and County transfer taxes and recording fees. City shall pay the full premium for the Title Policy, any endorsements thereto, and all Escrow fees and charges. Seller shall pay any delinquent property taxes and other charges/fees collected with the delinquent property taxes. Each party shall be responsible for its own attorneys' fees and consulting costs.

9. Seller's Representations and Warranties. Seller makes the following representations and warranties, each of which shall be continuing and shall survive the Closing for a period of six (6) months after the Closing (the "**Survival Period**"). Whenever a representation or warranty is being made "to Seller's knowledge," such qualification indicates that the warranty is being made to the current actual knowledge of _____, without any implied, imputed or constructive knowledge and without any independent investigation having been made or any implied duty to investigate. No claim for a breach of any representation or warranty of Seller shall be actionable or payable if the breach in question results from or is based on a condition, state of facts or other matter of which City has actual knowledge prior to Closing and City closed Escrow despite such knowledge. Nothing in the foregoing sentence shall preclude City from its remedies for termination of this Agreement before the Closing due to a Seller breach or default that Seller does not timely cure. Seller shall have no liability to City for a breach of any representation or warranty unless written notice containing a description of the specific nature of such breach shall have been given by City to Seller prior to the expiration of the Survival Period and any court action or other legal proceeding shall have been commenced by City against Seller within the Survival Period. Except as expressly set forth in this Agreement, Seller has not made any warranty or representation, express or implied, written or oral, concerning the Real Property or the Property.

(a) Seller has the full right and authority and has obtained any and all consents required to enter into this Agreement and to consummate or cause to be consummated the transactions contemplated hereby. This Agreement has been, and all of the documents to be delivered by Seller at the Closing will be, authorized and properly executed and constitutes, or will constitute, as appropriate, the valid and binding obligation of Seller. Except as disclosed in

the Title Report, Seller has not entered into any contracts, agreements or understandings, verbal or written, for the sale, transfer or lease of any portion of the Property and no party has a right or option to purchase the Property.

(b) Except to the extent disclosed in any reports or information provided by Seller to City, or otherwise disclosed to City, Seller has no knowledge of, nor has Seller, to Seller's knowledge, received written notice of any lawsuits, condemnation or eminent domain proceedings, or litigation pending, threatened or which have been filed against Seller that would materially affect the Property or use thereof, or Seller's ability to perform hereunder. Except to the extent disclosed in any reports or information provided to City, and except for this Agreement, and other documents related to this Agreement, Seller has not entered, and throughout the Agreement Term will not enter, into any agreements that will affect City or the Property after the Closing unless City provides consent to Seller to do so, which consent City may withhold, condition or delay in its sole discretion.

(c) Except to the extent disclosed in any reports or information provided by Seller to City or disclosed to City through any physical testing or inspection of the Property, to Seller's knowledge, (i) there are no Hazardous Substances on, in or under the Real Property in violation of any applicable Environmental Laws relating thereto, (ii) neither Seller nor any prior tenants of Seller have generated, produced, used, reused, sold, stored, transported or disposed of Hazardous Substances on, in or under the Real Property in violation of any applicable Environmental Laws relating thereto, and (iii) there are not currently and have not been in the past any underground or other above-ground storage tanks situated on the Real Property. All capitalized terms used in this Section 9(c) are defined in Exhibit C.

(d) Except to the extent disclosed in any reports or information provided by Seller to City or disclosed to City through any physical testing or inspection of the Property, to Seller's knowledge, Seller is not aware of, nor has Seller received, any notice from any governmental authority that any condition at the Property violates any material provision of applicable building codes, zoning or land use laws, other local, state or federal laws and regulations, or restrictive easements or covenants affecting the Property.

(e) Seller is not a "foreign person" within the meaning of Section 1445(f) of the Internal Revenue Code and Seller is not, nor is any person who owns a controlling interest in or otherwise controls Seller, (a) listed on the Specially Designated Nationals and Blocked Persons List maintained by the Office of Foreign Assets Control ("OFAC"), Department of the Treasury, and/or on any other similar list maintained by the OFAC pursuant to any authorizing statute, Executive Order or regulation (collectively, "**OFAC Laws and Regulations**"); or (b) a person either (i) included within the term "designated national" as defined in the Cuban Assets Control Regulations, 31 C.F.R. Part 515, or (ii) designated under Sections 1(a), 1(b), 1(c) or 1(d) of Executive Order No. 13224, 66 Fed. Reg. 49079 (published September 25, 2001) or similarly designated under any related enabling legislation or any other similar Executive Orders (collectively, the "**Executive Orders**"). Neither Seller nor any of its principals is (x) a person or entity with which City is prohibited from dealing or otherwise engaging in any transaction by any Anti-Terrorism Law, or that commits, threatens or conspires to commit or supports "terrorism" as defined in the Executive Orders, or (y) is affiliated or associated with a person or entity listed in the preceding clause (x). To Seller's knowledge, neither Seller nor any of its principals or affiliates, (I) deals in, or otherwise engages in any transaction relating to,

any property or interests in property blocked pursuant to the Executive Orders or (II) engages in or conspires to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any Anti-Terrorism Law. As used in this Agreement, “**Anti-Terrorism Law**” means the OFAC Laws and Regulations, the Executive Orders and the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Pub. L. No. 107-56, 115 Stat. 272 (2001), as amended.

(g) The entering into this Agreement and the sale of the Property to City does not constitute a violation or breach by Seller of: (i) any contract, agreement, understanding or instrument to which it is a party by which Seller or the Property is subject or bound; or (ii) any judgment, order, writ, injunction or decree issued against or imposed upon them. **Seller’s Initials**

(h) There are no real property leases affecting the Real Property. Except to the extent disclosed in the Preliminary Title Report or any other reports or information provided by Seller to City, to Seller’s knowledge there are no parties in possession or occupancy of any of the Property or any parts thereof other than Seller, nor are there any parties who have any leasehold or other possessory rights with respect to any of the Property or any part thereof other than Seller.

(i) Seller has provided to City all materials and Reports set forth in Section 6(a) in Seller’s possession or control or Seller has made such materials and Reports available to City through either hard copies or website addresses and to Seller’s knowledge all such Reports are complete and do not contain any materially false or misleading information. Seller shall promptly deliver to City any new versions of the Reports and other documents or materials prepared by third parties and provided to Seller (excluding Proprietary Information) that come into Seller’s possession following the date of this Agreement that Seller would have provided to City initially as part of the production from Section 6(a).

10. City’s Purchase “As-Is”. As of the date of the expiration of the Feasibility Period, City will have examined and inspected the Property and will know and be satisfied with the physical condition, quality, quantity, and state of repair of the Real Property in all respects and shall have determined that the same is acceptable to City “AS-IS.” City acknowledges that, except for Seller’s representations, warranties and covenants set forth in this Agreement, City is acquiring the Property in “AS-IS” condition solely in reliance on its own inspections and examination and its own evaluation of the Property. City agrees that, other than as set forth in this Agreement or in any document provided to City by Seller, no representations, statements or warranties have at any time been made by Seller or Seller’s agents as to the physical condition, quality, quantity, or state of repair of the Real Property or related to the operation or prospects for the Real Property. City acknowledges and agrees that during the Feasibility Period: (i) City will review all instruments, records, and documents which City deems appropriate and advisable to review in connection with this transaction, including but not limited to any of the entitlements, architectural drawings, plans, specifications, surveys, building and occupancy permits, and any licenses, contracts, warranties and guarantees relating to the Real Property, and City, by proceeding with this transaction following the expiration of the Feasibility Period, will be deemed to have determined that the same and information and data contained therein and evidenced thereby are satisfactory to City; (ii) City will review all

applicable laws, ordinances, and governmental regulations (including but not limited to those relative to building, zoning, and land use) affecting the development use, occupancy, or enjoyment of the Real Property; (iii) City will, at its own cost and expense, make its own independent investigation respecting the Real Property and is relying thereon and on the advice of its consultants in entering into this Agreement and, by proceeding with this transaction following the expiration of the Feasibility Period, will be deemed to have determined that the same are satisfactory to City; and (iv) except for Seller's representations, warranties and covenants herein, City expressly waives and relinquishes any rights it may have under, and specifically releases Seller from any liability with respect to, any laws or regulations requiring disclosure of natural hazards affecting the Real Property except as expressly provided herein.

11. Risk of Loss. Seller shall bear all risk of loss related to the Property prior to Closing. If, at any time prior to Closing, the Property or any substantial and material portion thereof is destroyed or damaged (a "**Damage**"), or if any governmental entity or agency takes, attempts to take, or commences any proceeding or procedure to take the Real Property, or any substantial and material portion thereof, by eminent domain (a "**Taking**"), Seller shall promptly notify City. Within fifteen (15) days of receipt of Seller's notice, City may either (i) terminate this Agreement by delivery of written notice to Seller, whereupon both parties will be relieved of all further obligations under this Agreement (except for those that this Agreement states shall survive termination), the entire amount of the Deposit (except for the Independent Consideration) shall be returned promptly to City, whether or not previously released to Seller; or (ii) continue this Agreement in full force and effect, in which event there shall be no adjustment to the Purchase Price and no return of the Deposit due to such Damage or Taking, but Seller shall assign to City all of Seller's rights, if any, to any condemnation award and/or insurance proceeds with respect to such Taking or Damage.

12. Brokers/Commissions. City and Seller each represent and warrant to the other that, there are no other real estate brokers, salesman or finders involved in this transaction. If a claim for brokerage fees or commissions in connection with this transaction is made by any broker, salesman or finder claiming to have dealt by, through or on behalf of one of the parties hereto, such party (the "**Indemnitor**") shall indemnify, defend and hold harmless the other party hereto (the "**Indemnitee**"), and Indemnitee's officers, directors, agents and representatives, from and against any and all liabilities, damages, claims, costs, fees, and expenses whatsoever, including reasonable attorneys' fees and court costs through all trial and all appellate levels, with respect to said claim for brokerage.

13. Default/Remedies.

(a) Notwithstanding any other provision of this Agreement, a Party shall not be in default or breach of this Agreement or have waived any right hereunder unless (i) as to a failure to timely perform an obligation, such party fails to cure any failure to timely perform such obligation within ten (10) business days after such party receives written notice of same from the other party; provided, however, that with respect to any obligation of either party to timely pay money (including timely making Deposit) or to either party's obligations to timely deposit into Escrow the documents and other items required for the Close of Escrow, the cure period shall be five (5) business days; and (ii) with respect to any party's right to exercise or give notice of exercise of any right hereunder, the cure period shall be three (3) business days.

(b) For any Seller breach of Seller's representations or warranties first occurring or discovered by City after the Close of Escrow, City shall have the right to pursue recovery from Seller of City's damages as a result of such breach but only if City files any such claim prior to the expiration of the Survival Period.

14. Miscellaneous.

(a) Assignment. City, without Seller's prior consent, may assign this Agreement and its rights and obligations hereunder to an entity of which City, or a combination of City and any of City's owners or shareholders, own an equity interest, or of which City, or any combination of City and any of City's owners or shareholders, control the management and operations. City shall give Seller written notice of any such assignment and any such assignee shall assume all obligations of City under this Agreement. Neither party may otherwise assign this Agreement, unless such party first obtains the written consent of the other party, which consent such other party shall not unreasonably withhold, condition, or delay. Any assignment of this Agreement by City with Seller's consent shall release City from the obligations of the City hereunder.

(b) Notices. All notices or other communication provided for under this Agreement shall be in writing, shall be effective upon receipt or refusal to accept delivery (provided that if any such notice is delivered on a Saturday, Sunday or state or national holiday, then such notice shall not be deemed received until the next business day), and shall be (i) delivered personally, (ii) sent by registered or certified mail, return receipt requested, postage prepaid, or by private overnight courier service, addressed to the person to receive such notice or communication at the following address, or (iii) sent via email to the email address set forth below, with a copy of such notice concurrently sent by either of the methods set forth in the preceding clauses (i) or (ii). The address of any party for purposes of notices shall be the address set forth below; provided that any party may change its address by giving notice to the other parties hereto in accordance herewith.

Notice to Seller must be addressed as follows:

Elliott Homes, Inc.

Attn.: Price Walker
Elliott Homes, Inc.
2390 East Bidwell Street
Folsom, CA 95630

Attn.: Chad E. Roberts
HEFNER LAW
2150 River Plaza Drive, #450
Sacramento, CA 95833-4136
T: 916-925-6620
F: 916-925-1127
croberts@hsmlaw.com

Notices to Escrow Officer shall be addressed as follows:

_____, CA 9 ____

Email: _____

Notice to City must be addressed as follows:

City of Rancho Cordova
2729 Prospect Park Drive
Rancho Cordova 95670
Attn: City Manager
Phone: _____

(c) Entire Agreement/Binding Effect. This instrument and the attached Exhibits constitute the entire agreement between the parties relating to the Agreement. Any prior agreements, promises, negotiations, or representations not expressly set forth in this Agreement are of no force and effect. Any amendment to this Agreement will be of no force and effect unless it is in writing and signed by all parties. This Agreement shall bind and inure to the benefit of the parties to this Agreement and their employees, agents, representatives, heirs, personal representatives, successors, and assigns, except as otherwise provided in this Agreement.

(d) Governing Law/Venue and Jurisdiction/Interpretation. Any litigation arising under this Agreement will be prosecuted in the Superior Court of California, County of Sacramento. The laws of the State of California govern all matters arising out of this Agreement. All of the parties to this Agreement have participated fully in negotiating and drafting this Agreement, so if any ambiguity or a question of intent or interpretation arises, this Agreement is to be construed as if the parties had drafted it jointly, as opposed to being construed against a party because it was responsible for drafting one or more provisions of this Agreement. In construing this Agreement, the singular forms of nouns and pronouns include the plural, and vice versa and the use of any gender shall include every other gender and all captions and Section headings are to be discarded.

(e) Severability. In the event any interpretation of a provision of this Agreement is determined by appropriate judicial authority to be illegal or otherwise invalid, such provision will be given its nearest legal meaning or reconstrued as deleted as such authority determines and the remainder of this Agreement will continue in full force and effect.

(f) Exhibits. All of the Exhibits to this Agreement are incorporated in and made a part of this Agreement.

(g) Time of Essence. The parties hereby agree that time is of the essence with respect to performance of each of the parties' obligations under this Agreement. Except as expressly provided otherwise herein, the expiration of any period of time prescribed in this Agreement shall occur at 11:59 p.m. Pacific Time of the last day of the period. The parties agree that in the event that any date on which performance is to occur falls on a Saturday, Sunday or state or national holiday, then the time for such performance will be extended to 11:59 p.m. on the next business day thereafter occurring.

(h) Execution. This Agreement may be executed in any number of counterparts, each of which, when executed, will be deemed to be an original, and all of which will be deemed to be one and the same instrument. Seller and City each (i) has agreed to permit the use from time to time, where appropriate, of emailed pdf signatures in order to expedite the transaction contemplated by this Agreement, (ii) intends to be bound by its respective emailed pdf signature, (iii) is aware that the other will rely on the emailed pdf signature, and (iv) acknowledges such reliance and waives any defenses to the enforcement of this Agreement and the documents affecting the transaction contemplated by this Agreement based on the fact that a signature was sent by emailed pdf only.

(i) Confidentiality. The parties agree that the terms set forth in this Agreement, and all information exchanged with respect to the Property, are to remain confidential and are not to be revealed or disclosed to any person or party whatsoever, except: (i) with the consent of the other parties; (ii) as may be disclosed to a party's attorneys, accountants, and other representatives that are involved in connection with the consummation of this transaction; (iii) each party's investors and/or lenders; (iv) in accordance with the provisions of this Agreement; (v) as may be required by applicable law or court order; (vi) as may be necessary for City to obtain Final Approval of any of the Entitlements or any other necessary or appropriate governmental approvals; (vii) in connection with any litigation between the parties; and (viii) with respect to the information exchanged about the Property, City may disclose same in its sole discretion after the Closing.

(j) Exclusivity. At no time during the Agreement Term shall Seller or any agent or representative of Seller accept any other offer for the purchase and sale of the Property, or any part thereof, nor will they show the Property to any third party for such purposes and at no time after City provides Seller with a Notice to Proceed shall Seller or any agent or representative of Seller solicit, negotiate, encourage, or accept any other offer for the purchase and sale of the Property, or any part thereof.

(k) 1031 Exchange. Notwithstanding anything to the contrary set forth in this Agreement, City acknowledges and agrees that Seller may assign its interest in this Agreement to an exchange facilitator for the purpose of accomplishing an exchange of the Property in a transaction which will qualify for treatment as a tax deferred exchange pursuant to the provisions of Section 1031 of the Internal Revenue Code of 1986 and applicable state revenue and taxation code sections (a "1031 Exchange"). City agrees to cooperate reasonably with Seller in implementing any such assignment and 1031 Exchange, including the execution of any necessary documentation in connection therewith, provided that such cooperation shall not entail any additional expense or liability to City beyond its existing obligations under this Agreement, nor shall City be required to take title to any other property. No such assignment by Seller shall relieve Seller from any of its obligations hereunder, nor shall Seller's ability to consummate a tax

deferred exchange be a condition to the performance of Seller's obligations under this Agreement. The Closing is not predicated or conditioned upon the completion of any 1031 Exchange

(l) No Waiver. Except as otherwise expressly provided in this Agreement, no waiver by any party of the performance or satisfaction of any covenant or condition shall be valid unless in writing and shall not be considered to be a waiver by such party of any other covenant or condition hereunder.

(m) Survival. The provisions of this Agreement shall not merge with the delivery of the Deed but shall, except as otherwise provided in this Agreement, survive the Closing. The Settlement Agreement survives the Closing and the termination of this Agreement.

(n) Captions. Section titles or captions contained in this Agreement are inserted as a matter of convenience only and for reference, and in no way define, limit, extend or describe the scope of this Agreement.

(o) Force Majeure. If either City or Seller cannot perform any of its obligations under this Agreement due to events beyond its control, the time provided for performing such obligations shall be extended by a period of time equal to the duration of such events. Events beyond City's or Seller's control include acts of God, pandemics and epidemics, war, civil commotion, terrorism, labor disputes, strikes, earthquakes, fire, flood or other casualty, shortages of labor or material, government regulation or restriction, and weather conditions, but do not include financial inability to perform.

Executed on the date first indicated above.

SELLER:

Elliott Homes, Inc.
an Arizona corporation

By: _____
Name: _____
Its: _____

BUYER:

City of Rancho Cordova,
a California municipal
corporation

By: _____

ITEM 19.1.

ATTACHMENT 2
Exhibit A to the Resolution

Name: _____
Its: _____

LIST OF EXHIBITS

- | | |
|-----------|--|
| Exhibit A | Legal Description/Depiction of Real Property |
| Exhibit B | Form of Deed |
| Exhibit C | Environmental Definitions |

EXHIBIT A

Legal Description/Depiction of the Real Property

[to be inserted]

EXHIBIT B

Form of Deed

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

GRANT DEED

The undersigned Grantor declares:

Documentary transfer tax is Exempt under Rev. & Tax Code Section 11922 – Transfer to public entity

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, Elliott Homes, an Arizona corporation (“Grantor”) hereby grants to the City of Rancho Cordova, that certain property (the “Property”) located in the City of Rancho Cordova, County of Sacramento, State of California, as more particularly described on Schedule 1 attached hereto. Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining.

IN WITNESS WHEREOF, the undersigned have executed this Grant Deed dated as of _____, 20_.

GRANTOR:

Elliott Homes
an Arizona corporation

By: _____
Name: _____
Its: _____

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
)
COUNTY OF _____)

On _____ before me, _____,
Notary Public, personally appeared _____,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same
in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument
the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the
foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

Exhibit 1 to Grant Deed

[insert legal description]

EXHIBIT C

Environmental Definitions

As used in Section 10(c) of this Agreement, the following terms have the meanings set forth below:

“Contamination” – the Release or presence of Hazardous Substances in, on, underlying or surrounding the Property (including soils and groundwater), including migration of or depositing of Hazardous Substances onto or under adjoining or neighboring properties or the release or presence of Hazardous Substances from or associated with the Property at any other offsite location.

“Environmental Laws” – any and all federal, state, or local laws (including common law), rules, regulations, orders, ordinances, permits, authorizations, writs, judgments, injunctions, decrees or determinations, whether issued by a court or government agency, in effect during the period of this Agreement relating to the protection of the environment, the Release of any Hazardous Substances into the environment, the generation, management, transportation, storage, treatment and disposal of Hazardous Substances, or the pollution of air, soil, groundwater or surface water (including, without limitation, the Clean Air Act, the Toxic Substance Control Act, the Clean Water Act, the Comprehensive Environmental Response Compensation and Liability Act, and the Resource Conservation and Recovery Act, all as amended, including similar state or local laws).

“Hazardous Substance” – any toxic or hazardous substance, material or waste, pollutant, hazardous substance or wastes, petroleum or petroleum derived substance or waste, radioactive substance, material or waste, asbestos containing materials, or any constituent of any such substance or waste regulated under or defined by or pursuant to any Environmental Law.

“Release” – any release, spill, emission, leaking, pumping, injection, deposit, disposal, discharge, dispersal, leaching or migration into the environment or into or out of the Property, including the movement of Hazardous Substances through or in the air, soil, surface water or groundwater of the Property or adjoining properties.

5340662.5

NOTICE OF EXEMPTION

To: ☐ Office of Planning and Research
1400 Tenth Street
Sacramento, CA 95814

From: City of Rancho Cordova
Community Development Department
2729 Prospect Park Drive
Rancho Cordova, CA 95670

☒ County Clerk-Recorder
Sacramento County
600 8th Street
Sacramento, CA 95814

Project Title: **ACQUISITION OF PROPERTY LOCATED WITHIN THE ZINFANDEL SPECIFIC PLAN AREA**

Project Location: Bear Hollow Dr. and North Mather Blvd.

Assessor's Parcel Number(s): 072-2360-028-0000, 072-2360-029-0000 and 072-2360-030-0000, 072-2860-024-0000, 072-2860-015-0000, 072-2860-016-0000, 072-2860-017-0000 and 072-2860-018-0000.

Project Description: The City of Rancho Cordova proposes to purchase a vacant, approximately 42.91-acre property located along Bear Hollow Dr. and North Mather Blvd. No construction is proposed for the site and a specific use has not been identified for the site at this time.

Lead Agency: City of Rancho Cordova

Applicant: City of Rancho Cordova
2729 Prospect Park Drive
Rancho Cordova, CA 95670

Exemption Status: ☐ Ministerial [Section 21080(b); 15268];
☐ Declared Emergency [Section 21080(b)(3); 15269(a)];
☐ Emergency Project [Section 21080(b)(4); 15269(b)(c)];
☒ **General Rule [Section 15061(b)(3)];**
☐ Categorical Exemption [Section 15301(a), Existing Facilities];
☐ Approval of Rates, Tolls, Fares, and Charges [Section 21080(b)(8)(D)];
☐ Statutory Exemption [Section 15273(a)(4)].

REASONS WHY THIS PROJECT IS EXEMPT OR DOES NOT REQUIRE FURTHER ENVIRONMENTAL DOCUMENTATION:

The project is exempt under State CEQA Guidelines [Section 15061(b)(3)], which states:

(b) A project is exempt from CEQA if:

(3) The activity is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.

ITEM 19.1.

ATTACHMENT 3

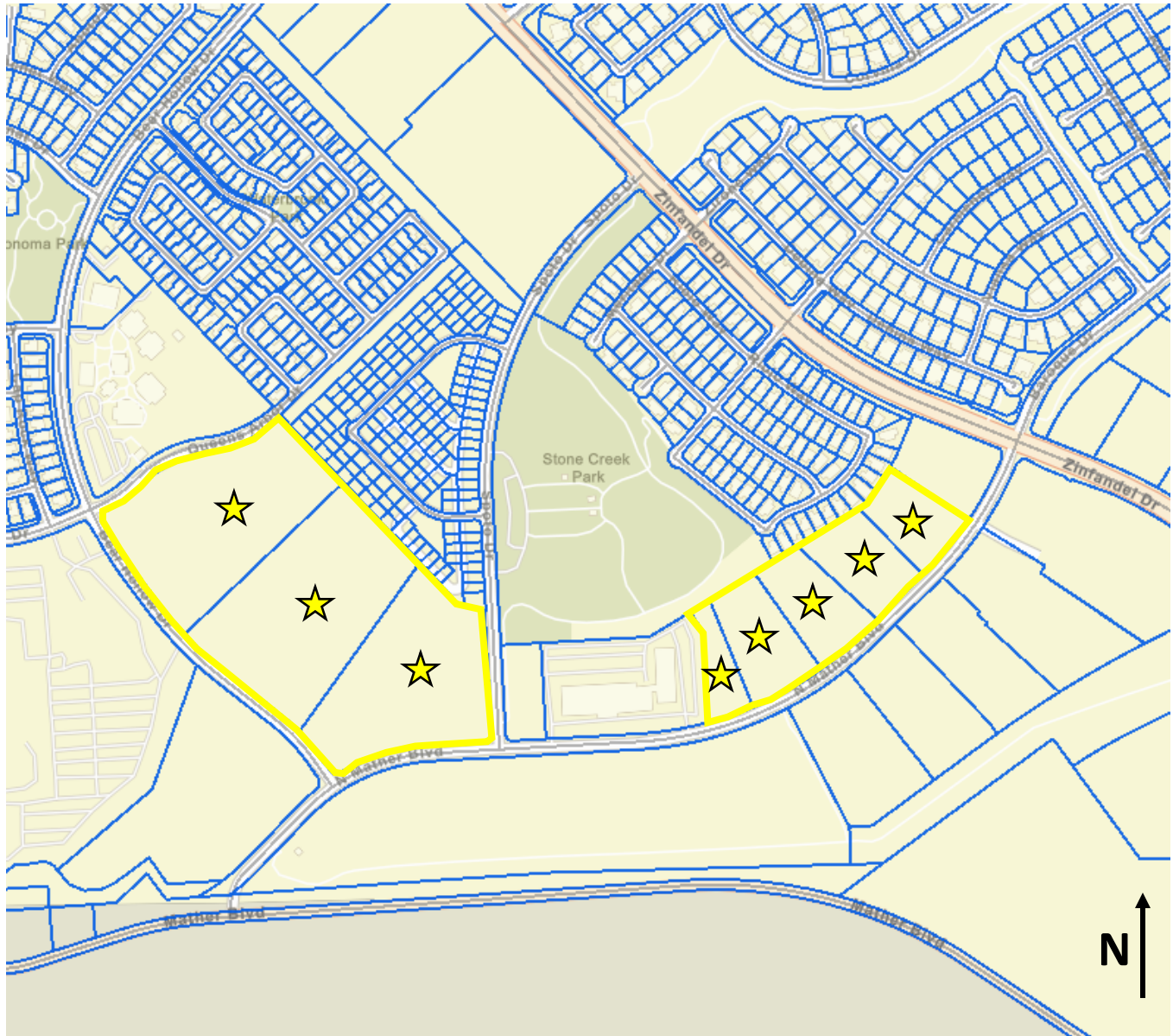
The California Environmental Quality Act (Section 21000, et. seq. of the California Public Resources Code, hereafter CEQA) requires analysis of agency approvals of discretionary “projects.” A “project,” under CEQA, is defined as “the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.” The acquisition of property by a public agency is a project as defined by CEQA. Pursuant to CEQA Guidelines Section 15061(b)(3), an activity is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. The activity is not subject to CEQA where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.

The City is currently purchasing the property. While future development of the property is assumed, the type and intensity of development cannot be determined, and it would be speculative to identify the type and level of development that would ultimately be constructed on site and the potential effects of that development. Pursuant to CEQA Guidelines Section 15145, if an impact is too speculative for evaluation the agency not required to, nor should it, engage in speculation and should terminate the discussion. It should be noted that, at such time as development is proposed for the site, a project-level analysis can and will be prepared to disclose potential environmental impacts of that development. However, because the current action would only result in the change of ownership of the property and no physical changes would occur on the site that could result in physical environmental effects, the activity is not subject to CEQA pursuant to CEQA Guidelines section 15061(b)(3).

By _____
Stefan Heisler, Environmental Coordinator
City of Rancho Cordova
(916) 851-8757
April 5, 2023

Site Diagram

Zinfandel Specific Plan Area Parcels Under Consideration



Parcels under consideration