

## **Attachment No. CC 4**

Resolution approving the Master Development Plan, Tentative Tract Map, Affordable Housing Implementation Plan, and Traffic Study



**RESOLUTION NO. 2012-\_\_\_\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH APPROVING MASTER DEVELOPMENT PLAN NO. MP2008-001, TENTATIVE TRACT MAP NO. NT2008-003, AFFORDABLE HOUSING IMPLEMENTATION PLAN NO. AH2008-001, AND TRAFFIC STUDY NO. TS2008-002 FOR A 401-GROSS-ACRE PLANNED COMMUNITY LOCATED AT BANNING RANCH (PA2008-114)**

THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH HEREBY FINDS AS FOLLOWS:

**SECTION 1. STATEMENT OF FACTS.**

1. An application was filed by Newport Banning Ranch, LLC, with respect to a 401-gross-acre property generally located north of West Coast Highway, south of 19th Street, and east of the Santa Ana River, requesting approval of a planned community for development of 1,375 residential dwelling units, a 75-room resort inn and ancillary resort uses, 75,000 square feet of commercial uses, approximately 51.4 gross acres of parklands, and the preservation of approximately gross 252.3 gross acres of permanent open space ("Project"). In addition to a General Plan Amendment, Zoning Code Amendment, and Development Agreement, the application included the following requests:
  - a. A Master Development Plan to establish detailed design criteria for each land use component to guide the review of subsequent development approvals;
  - b. A Tentative Tract Map to establish lots for public dedication or conveyance, lots for residential development and conveyance to homebuyers, and lots for financing and conveyance;
  - c. An Affordable Housing Implementation Plan specifying how the Project would meet the City's affordable housing requirements; and
  - d. A Traffic Study Approval pursuant to Chapter 15.40 (Traffic Phasing Ordinance).
2. The subject property is located within the City of Newport Beach Planned Community (PC-25) Zoning District and the County of Orange Zoning Suburban Multi-family Residential (R-4), Local Business Commercial (C-1), Light Industrial (M-1) with Oil Production (O), Sign Restriction (SR), and Floodplain Zone (FP-2) Overlays. The City intends to annex that portion of the subject property currently within the County of Orange.
3. The City of Newport Beach General Plan Land Use Element category is Open Space/Residential Village (OS/RV).

4. The subject property is located within the coastal zone. The City's Coastal Land Use Plan (CLUP) designates this property as a Deferred Certification Area; therefore, the policies of the City's CLUP do not govern the development of the project site.
5. Study sessions were held on January 19, 2012, February 9, 2012, February 23, 2012, and March 8, 2012, in the City Hall Council Chambers, 3300 Newport Boulevard, Newport Beach, California.
6. Public hearings were held on March 22, 2012, April 19, 2012, and June 21, 2012, in the City Hall Council Chambers, 3300 Newport Boulevard, Newport Beach, California. A notice of time, place and purpose of these meetings was given in accordance with the Newport Beach Municipal Code. Evidence, both written and oral, was presented to, and considered by, the Planning Commission at this meeting.
7. On March 22, 2012, the Planning Commission adopted Resolution No. 1873 recommending to the City Council of the City of Newport Beach certification of the Newport Banning Ranch Final Environmental Impact Report (SCH No. 2009031061).
8. On June 21, 2012, the Planning Commission adopted Resolution No. 1879 reaffirming their March 22, 2012 recommendation to the City Council of the City of Newport Beach for the certification of the Newport Banning Ranch Draft Environmental Impact Report (SCH No. 2009031061).
9. At the June 21, 2012, public hearing with a vote of 6-0, the Planning Commission adopted Resolution No. 2012-1880, recommending to the City Council approval of Master Development Plan No. MP2008-001, Tentative Tract Map No. NT2008-003, Affordable Housing Implementation Plan No. AH2008-001, and Traffic Study No. TS2008-002.

## SECTION 2. FINDINGS.

1. The Project is consistent with the goals and policies of the General Plan. The City's finding is based, in part, on the reasons set forth in the consistency analysis of the proposed project with the City's General Plan goals and policies provided in the Final Environmental Impact Report (FEIR).
2. City General Plan Land Use Policy LU 6.4.1 provides that "If not acquired for open space within a time period and pursuant to terms agreed to by the City and property owner, the site may be developed as a residential village, containing a mix of housing types, limited supporting retail, visitor accommodations, school, and active community parklands with a majority of the property preserved as open space."
3. On January 27, 2009, the Council authorized the City to request Measure M funding and the request was submitted to the Orange County Transportation Authority (OCTA) on April 15, 2009. On June 15, 2009, OCTA responded that a "prioritization process" was under preparation.

4. The City hereby finds and determines that the Property has not been acquired for open space and that a reasonable amount of time has elapsed within the time periods established by the City, based on the following facts"
  - a. On January 12, 2008, the City Council adopted as a priority to "conduct an appraisal of the Banning Ranch property and assess funding available for the purchase of the property for open space."
  - b. On December 23, 2008, an appraisal report was completed that estimated the acquisition costs for the property to be between \$138,000,000 and \$158,000,000. The report also concluded that State or private funding was unlikely at that time; although, some funding from Measure M may be possible.
  - c. On August 11, 2009, the City Council acted to continue the exploration of open space acquisition possibilities and monitor funding opportunities and directed City staff to move forward with review of the Newport Banning Ranch application.
  - d. On March 30, 2010, Orange County Transportation Authority's Environmental Oversight Committee removed Banning Ranch from list of potential acquisitions for funding.
5. The City finds that approval of the Project is consistent with LU 6.3.1 and LU 6.3.2, in that acquisition for open space has not occurred, and that the land uses described in LU 6.4.1 shall be approved.
6. The City finds that the Project is consistent with the General Plan, and although the FEIR identified a land use incompatibility environmental impact associated with vehicular noise from Bluff Road on those Newport Crest residences immediately contiguous to the project site, the City finds the Project consistent with the General Plan because the proposed alignment is consistent with the Circulation Element and the landform and biological resource protection policies of the General Plan.
7. The City finds that the Project is consistent with the General Plan, and although the FEIR identified a land use incompatibility impact associated with nighttime lighting from the North Community Park on those Newport Crest residences immediately contiguous to the project site. the City finds the Project consistent with the General Plan because it would allow the development of active community park pursuant to the Land Use Element and Recreation Element, and would provide the ability to use the park at night which is consistent with the General Plan of the City in development of new active parks, while furthering biological resource protection policies of the General Plan.
8. The certified CLUP designates the Banning Ranch as a Deferred Certification Area due to unresolved issues relating to land use, public access, and the protection of coastal resources. Therefore, no other CLUP policies are directly applicable to the Banning Ranch property.

9. Pursuant to City Council Policy D-2, a fiscal impact analysis of the proposed annexation on City finances and related City services and facilities was prepared. The fiscal impact analysis concludes that based on the revenue and cost projections, the proposed project would have a net fiscal benefit of nearly \$2.0 million per year at full build-out.
10. Findings and facts in support of such findings for the approval of Tentative Tract Map No. NT2008-003 in accordance with the Subdivision Map Act and Section 19.12.070 of the Newport Beach Municipal Code are provided in Exhibit A.
11. Findings and facts in support of such findings for the approval of Traffic Study No. TS2008-002 in accordance with Section 15.40.030 of the Newport Beach Municipal Code are provided in Exhibit B.
12. Findings and facts in support of such findings for the approval of Affordable Housing Implementation Plan No. AH2008-001 in accordance with Section 19.54.070.D of the Newport Beach Municipal Code are provided in Exhibit C.
13. The Newport Banning Ranch Final Environmental Impact Report (SCH No. 2009031061) was prepared for the Project in compliance with the California Environmental Quality Act (CEQA), the State CEQA Guidelines, and City Council Policy K-3. By Resolution No. 2012-xxxx, the City Council, having final approval authority over the Project, adopted and certified as complete and adequate the Newport Banning Ranch Final Environmental Impact Report (SCH No. 2009031061), and adopted "Findings and Facts in Support of Findings for the Newport Banning Ranch Project Final Environmental Impact Report, Newport Beach, California" ("CEQA Findings") and a Statement of Overriding Considerations, which CEQA Findings and Statement of Overriding Considerations are hereby adopted and incorporated herein by reference.

### SECTION 3. DECISION.

THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH DOES HEREBY RESOLVE AS FOLLOWS:

1. Master Development Plan No. MP2008-001 is hereby approved, attached hereto as Exhibit D and incorporated herein by reference;
2. Tentative Tract Map No. NT2008-003, attached hereto as Exhibit E and incorporated herein by reference, is hereby approved and subject to the conditions set forth in Exhibit F, which is attached hereto and incorporated by reference, including compliance with Government Code Section 66454 authorizing approval of pre-annexation tentative maps;
3. Affordable Housing Implementation Plan No. AH2008-001, attached hereto as Exhibit G and incorporated herein by reference is hereby approved; and

4. Traffic Study No. TS2008-002 is hereby approved.

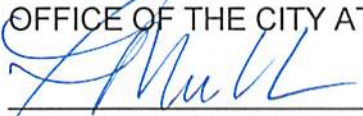
**PASSED, APPROVED, AND ADOPTED** this 23rd day of July 2012.

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
CITY CLERK

APPROVED AS TO FORM,  
OFFICE OF THE CITY ATTORNEY

  
\_\_\_\_\_  
Aaron Harp, City Attorney  
for the City of Newport Beach

*hw 7/18/12*

## **CC 4 Exhibit A**

Tentative Tract Map Findings



Exhibit A  
Required Findings  
Tentative Tract Map No. NT2008-003

In accordance with Section 19.12.070 (Required Findings for Action on Tentative Maps) of the Newport Beach Municipal Code, the following findings and facts in support of such findings are set forth:

Finding:

- A. *That the proposed map and the design or improvements of the subdivision are consistent with the General Plan and any applicable specific plan, and with applicable provisions of the Subdivision Map Act and this Subdivision Code.*

Facts in Support of Finding:

- A-1. The proposed tentative tract map provides lot configurations consistent with the land uses, densities, and intensities of the Open Space/Residential Village (OS/RV) land use designation established by the General Plan.
- A-2. The proposed tentative tract map allows the development of a residential village, containing a mix of housing types, limited supporting retail, visitor accommodations, and active community parklands, with a majority of the property preserved as open space.
- A-3. The proposed tentative tract map provides for the development of a cohesive planned community with a connective street system, pedestrian walkways and trails.
- A-4. The proposed tentative tract map provides public bluff top parks, which sets development back from bluff faces and provides public views of the ocean, wetlands, and surrounding open spaces.
- A-5. The arterials and streets on the proposed tentative tract map are consistent with the roadway specifications of the Master Plan of Streets and Highways of the Circulation Element of the General Plan.
- A-6. The proposed tentative tract map provides for the dedication of 21.8 gross acres (18 net acres) of community parkland, which exceeds the project's obligation under the Park Dedication Fee Ordinance and contributes towards the 20 to 30-acre community park specified by the Land Use Element and Recreation Element of the General Plan.

Finding:

- B. *That the site is physically suitable for the type and density of development.*

Exhibit A  
Required Findings  
Tentative Tract Map No. NT2008-003

Facts in Support of Finding:

- B-1. The project site contains topographic and natural habitat constraints. However, the proposed tentative tract map provides for development that is sited away or buffered from the arroyos and bluffs and wetlands and other habitat areas.
- B-2. There are no designated Alquist-Priolo Fault Zones within the project site and the proposed tentative map provides of all habitable structures to be excluded from fault setback zones.
- B-3. The project site is a producing oil field. However, the project site would be remediated and all the existing oil operations will be consolidated into two locations.
- B-4. There are no geologic or physical constraints that would prevent the development of the site at the density proposed, or require variances or deviations from the applicable City development standards.

Finding:

- C. *That the design of the subdivision or the proposed improvements are not likely to cause substantial environmental damage nor substantially and avoidably injure fish or wildlife or their habitat. However, notwithstanding the foregoing, the decision making body may nevertheless approve such a subdivision if an environmental impact report was prepared for the project and a finding was made pursuant to Section 21081 of the California Environmental Quality Act that specific economic, social or other considerations make infeasible the mitigation measures or project alternatives identified in the environmental impact report.*

Facts in Support of Finding:

- C-1. The design of the subdivision locates the majority of the development in the eastern portion of the project site and adjacent to the developed areas, which preserves larger, intact areas of high value habitat.
- C-2. The proposed project would have direct and indirect impacts on habitat that supports special status species. However, the draft environmental impact report prepared for the project concluded that significant impacts to these habitats can be mitigated to a less than significant level through mitigation measures. Even though the project has no significant impacts to biological resources, the City has identified specific project benefits and will adopt a statement of overriding considerations if it decides to approve the project.

Exhibit A  
Required Findings  
Tentative Tract Map No. NT2008-003

Finding:

- D. That the design of the subdivision or the type of improvements is not likely to cause serious public health problems*

Facts in Support of Finding:

- D-1. There are no designated Alquist-Priolo Fault Zones within the project site and the proposed tentative map provides of all habitable structures to be excluded from fault setback zones.
- D-2. While the project site is currently impacted primarily by petroleum hydrocarbons, following testing, no contaminant levels were found to exceed the hazardous concentration levels defined by State and federal guidelines.
- D-3. The project site will be remediated and all the existing oil operations will be consolidated into two locations.
- D-4. The project is conditioned to comply with all Building, Public Works, and Fire Codes, which are in place to prevent serious public health problems. Public improvements will be required of the developer per Section 19.28.010 of the Municipal Code and Section 66411 of the Subdivision Map Act.

Finding:

- E. That the design of the subdivision or the type of improvements will not conflict with easements, acquired by the public at large, for access through or use of property within the proposed subdivision. In this connection, the decision making body may approve a map if it finds that alternate easements, for access or for use, will be provided and that these easements will be substantially equivalent to ones previously acquired by the public. This finding shall apply only to easements of record or to easements established by judgment of a court of competent jurisdiction and no authority is hereby granted to the City Council to determine that the public at large has acquired easements for access through or use of property within a subdivision.*

Facts in Support of Finding:

- E-1. The project site contains existing public utilities easements. However, the design of the subdivision and the type of improvements proposed present no conflict with these easements. Existing easements will remain in their current designated locations or will be modified to be substantially equivalent to ones previously acquired by the public.

Exhibit A  
Required Findings  
Tentative Tract Map No. NT2008-003

Finding:

- F. That, subject to the detailed provisions of Section 66474.4 of the Subdivision Map Act, if the land is subject to a contract entered into pursuant to the California Land Conservation Act of 1965 (Williamson Act), the resulting parcels following a subdivision of the land would not be too small to sustain their agricultural use or the subdivision will result in residential development incidental to the commercial agricultural use of the land.*

Facts in Support of Finding:

- F-1. The project site does not contain prime farmland, unique farmland, or farmland of statewide importance and no portion of the project site is covered by a Williamson Act contract.

Finding:

- G. That, in the case of a "land project" as defined in Section 11000.5 of the California Business and Professions Code: (1) There is an adopted specific plan for the area to be included within the land project; and (2) the decision making body finds that the proposed land project is consistent with the specific plan for the area.*

Facts in Support of Finding:

- G-1. The project is not located in a specific plan area.

Finding:

- H. That solar access and passive heating and cooling design requirements have been satisfied in accordance with Sections 66473.1 and 66475.3 of the Subdivision Map Act.*

Facts in Support of Finding:

- H-1. The proposed tentative tract map and improvements are subject to Title 24 of the California Building Code that requires new construction to meet minimum heating and cooling efficiency standards depending on location and climate. The Newport Beach Building Department enforces Title 24 compliance through the plan check and inspection process.
- H-2. Single-family detached residential roofs, commercial building roofs, and homeowners association-owned public building roofs, which have adequate solar orientation shall be designed to be compatible with the installation of photovoltaic panels or other current solar power technology.

Exhibit A  
Required Findings  
Tentative Tract Map No. NT2008-003

Finding:

- I. That the subdivision is consistent with Section 66412.3 of the Subdivision Map Act and Section 65584 of the California Government Code regarding the City's share of the regional housing need and that it balances the housing needs of the region against the public service needs of the City's residents and available fiscal and environmental resources.*

Facts in Support of Finding:

- I-1 The Affordable Housing Implementation Plan (AHIP) for the proposed project proposes the construction of a minimum of 50 percent of the required affordable housing on the project site. The remaining affordable housing obligation may be met through the payment of in-lieu fees; the construction of off-site affordable housing including the rehabilitation of existing off-site housing that would contribute to meeting the City's Regional Housing Needs Assessment (RHNA) requirements; land dedication for affordable housing; or a combination thereof.

Finding:

- J. That the discharge of waste from the proposed subdivision into the existing sewer system will not result in a violation of existing requirements prescribed by the Regional Water Quality Control Board.*

Facts in Support of Finding:

- J-1. The City has adequate sewer system capacity to serve the requirements of the proposed project. The proposed project would be able to tie into the existing sewer system without adversely affecting the system or causing any water quality affects or violating existing requirements prescribed by the Regional Water Quality Control Board.

Finding:

- K. For subdivisions lying partly or wholly within the Coastal Zone, that the subdivision conforms with the certified Local Coastal Program and, where applicable, with public access and recreation policies of Chapter Three of the Coastal Act.*

Facts in Support of Finding:

- K-1. The project site is entirely within the Coastal Zone, but is not located within a certified Local Coastal Program. The City has a certified Coastal Land Use Plan

Exhibit A  
Required Findings  
Tentative Tract Map No. NT2008-003

(CLUP), but not a certified Implementation Plan. The CLUP designates the project site as a Deferred Certification Area; therefore, the policies of the CLUP area not applicable to the project site.

- K-2. The proposed subdivision design conforms with the public access and recreation policies of the Chapter Three of the Coastal Act.
- a. The proposed project would provide several miles of off-street multi-use public trails, on-street public bike trails, and pedestrian paths for pedestrians and bicyclists.
  - b. The trails would provide connections to on-site land uses and habitat areas and would connect to the existing regional trail system, other parks, and open space areas.
  - c. The proposed pedestrian and bicycle bridge over West Coast Highway would provide access to bike lanes and pedestrian sidewalks on the south side of West Coast Highway and to the beach.
  - d. The public parks, trails, and interpretive areas would be available for active and passive recreation uses by residents and visitors.
  - e. To facilitate public access, public parking areas will be provided at park and recreational areas and along most streets within the project site.
- L. Pursuant to Section 66454 of the Subdivision Map Act, the approval of the Tentative Tract Map is condition upon annexation of the project site to the City and the approval is not effective until the annexation is completed.
- M. Pursuant to Section 66473.7 of the Subdivision Map Act, on October 12, 2010, the City Council approved a Water Supply Assessment for Newport Banning Ranch, which concluded that adequate water supply is available to meet the needs of the Project along with the demands of future development within the City.

## **CC 4 Exhibit B**

Traffic Study Findings

Exhibit B  
Required Findings  
Traffic Study No. TS2008-002

In accordance with Section 15.40.030 (Traffic Phasing Ordinance) of the Newport Beach Municipal Code (NBMC), the following findings and facts in support of such findings are set forth:

Finding:

- A. *That a traffic study for the project has been prepared in compliance with this chapter and Appendix A [Chapter 15.30 NBMC].*

Facts in Support of Finding:

- A-1. A traffic study, entitled Traffic Impact Analysis for Newport Banning Ranch in the City of Newport Beach, prepared by Kimley-Horn and Associates, Inc., 2011(traffic study), was prepared for the project in compliance with Municipal Code Chapter 15.40 (Traffic Phasing Ordinance and Appendix A).

Finding:

- B. *That, based on the weight of the evidence in the administrative record, including the traffic study, one of the findings for approval in subsection (B) [Section 15.40.030.B NBMC] can be made.*

Facts in Support of Finding:

- B-1. Based on the weight of the evidence in the administrative record, including the traffic study, mitigation measures, and the conditions of approval, all of the findings for approval in Section 15.40.030.B.2 can be made. Section 15.40.030.B.2 NBMC states:
2. *The project is a Comprehensive Phased Land Use Development and Circulation System Improvement Plan with construction of all phases not anticipated to be complete within sixty (60) months of project approval; and*
- a. *The project is subject to a development agreement which requires the construction of, or contributions to, circulation improvements early in the development phasing program, and*
- b. *The traffic study contains sufficient data and analysis to determine if that portion of the project reasonably expected to be constructed and ready for occupancy within sixty (60) months of project approval satisfies the provisions of subsections (B)(1)(a) or (B)(1)(b), and*
- c. *The Land Use and Circulation Elements of the General Plan are not made inconsistent by the impact of project trips (including circulation improvements designed to mitigate the impacts of project trips) when*



Exhibit B  
Required Findings  
Traffic Study No. TS2008-002

*added to the trips resulting from development anticipated to occur within the City based on the Land Use Element of the General Plan and Zoning Ordinance, and*

d. *The project is required, during the sixty (60) month period immediately after approval, to construct circulation improvement(s) such that:*

(1) *Project trips will not cause or make worse an unsatisfactory level of traffic service at any impacted primary intersection for which there is a feasible improvement,*

(2) *The benefits resulting from circulation improvements constructed or funded by, or contributions to the preparation or implementation of a traffic mitigation study made by, the project proponent outweigh the adverse impact of project trips at any impacted primary intersection for which there is (are) no feasible improvement(s) that would, if implemented, fully satisfy the provisions of Section 15.40.030 (B)(1)(b). In balancing the adverse impacts and benefits, only the following improvements and/or contributions shall be considered with the greatest weight accorded to the improvements and/or contributions described in subparagraphs (a) or (b):*

(a) *Contributions to the preparation of, and/or implementation of some or all of the recommendations in, a traffic mitigation study related to an impacted primary intersection that is initiated or approved by the City Council,*

(b) *Improvements, if any, that mitigate the impact of project trips at any impacted primary intersection for which there is (are) no feasible improvement(s) that, if implemented, would fully satisfy the provisions of Section 15.40.030 (B)(1)(b),*

(c) *Improvements that mitigate the impacts of project trips on any impacted primary intersection in the vicinity of the project,*

(d) *Improvements that mitigate the impacts of project trips on any impacted primary intersection operating, or projected to operate, at or above 0.80 ICU.*

B-2. The proposed project meets the requirements for a Comprehensive Phased Land Use Development and Circulation System Improvement Plan as the project is subject to conditions of approval that require the construction of, or contributions to, circulation improvements early in the development phasing program.

Exhibit B  
Required Findings  
Traffic Study No. TS2008-002

- B-3. The traffic study analyzed the worst-case scenario where the proposed project would be completed within 60 months, which was considered in the study as being 2016.
- B-4. The traffic study found that the following intersection is projected to exceed the Level of Service (LOS) "D" standard in the City of Newport Beach:
- Newport Boulevard at West Coast Highway (AM LOS E: project Impact 0.024)

and the following intersections are projected to exceed the LOS D standard in the City of Costa Mesa:

- Newport Boulevard at Victoria Street/22<sup>nd</sup> Street (AM: LOS F; no project impact)
  - Monrovia Avenue at 19<sup>th</sup> Street (AM: LOS E; project impact to unsignalized intersection)
  - Newport Boulevard at 19<sup>th</sup> Street (AM: LOS E; project impact: 0.051)
  - Newport Boulevard at Harbor Boulevard (PM: LOS F; project impact: 0.079)
  - Newport Boulevard at 18<sup>th</sup> Street/Rochester Street (PM: LOS F; project impact: 0.080)
  - Pomona Avenue at 17<sup>th</sup> Street (PM: LOS E; project impact to unsignalized intersection)
  - Superior Avenue at 17<sup>th</sup> Street (PM: LOS E; project impact: 0.165)
  - Newport Boulevard at 17<sup>th</sup> Street (PM: LOS E; project impact: 0.036)
- B-5. The traffic study found the following improvements to the intersection of Newport Boulevard at West Coast Highway would result in the project not causing or making worse an unsatisfactory level of service at this intersection:
- Restripe southbound approach to provide one exclusive right-turn lane, shared right/left-turn lane, and one exclusive left-turn lane on Newport Boulevard.
- B-6. The traffic study found the following improvements to the intersections identified as being significantly impacted by the proposed project in Costa Mesa would

Exhibit B  
Required Findings  
Traffic Study No. TS2008-002

result in the project not causing or making worse an unsatisfactory level of service at these intersections:

- Monrovia Avenue/19th Street: Install signal
- Newport Boulevard/19th Street: Add a second southbound left-turn lane on Newport Boulevard
- Newport Boulevard/Harbor Boulevard: Add fourth southbound through lane on Newport Boulevard
- Newport Boulevard/18th Street (Rochester St): Convert southbound right-turn lane to a shared through/right lane on Newport Boulevard
- Pomona Avenue/17th Street: Install signal
- Superior Avenue/17th Avenue: Convert westbound approach to provide one left, one shared/left, one through, and one dedicated right-turn lane
- Newport Boulevard/17th Street: Add fourth southbound through lane and one dedicated northbound right-turn lane

B-7. Mitigation Measure MM 4.9-2 of the Mitigation, Monitoring, and Reporting Program requires the applicant to make best efforts to negotiate in good faith to arrive at fair and responsible arrangements to either pay fees and/or construct the required improvements for the seven intersections within Costa Mesa that were identified as being significantly impacted by the proposed project. Furthermore, Mitigated Measure MM4.9-2 is intended to require the applicant to either pay fees and/or construct the required improvements during the 60 months immediately following final approval of the proposed project. However, because the City cannot impose improvements to the Costa Mesa intersections, for purposes of the City's Traffic Phasing Ordinance, the subject intersections are being treated as though there are not feasible improvements.

B-8. The proposed restriping the southbound approach of Newport Boulevard at West Coast Highway to provide a right-turn lane, shared right/left turn lane and left-turn lane is an improvement identified in the Circulation Element of the General Plan, and therefore a feasible improvement under the Traffic Phasing Ordinance. The conditions of approval require the restriping occur in the early phase of development, upon issuance of a certificate of occupancy for the first building constructed in the South Family Village or Resort Colony areas of the project. The traffic study determined, based on sufficient data and analysis, that the proposed project under a worst-case scenario of full build-out by 2016, when taken together with the circulation improvement, will not cause nor make worse

Exhibit B  
Required Findings  
Traffic Study No. TS2008-002

an unsatisfactory level of traffic service at Newport Boulevard and West Coast Highway.

- B-9. The proposed project does not result in an inconsistency between the Land Use Element and the Circulation Element of the General Plan by the impact of project trips (including circulation improvements designed to mitigate the impacts of project trips) when added to the trips resulting from development anticipated to occur within the City based on the Land Use Element of the General Plan and Zoning Code. The development included in the proposed project is consistent with the General Plan. Off-site mitigation improvements proposed within the City of Newport Beach are also included in the Circulation Element.
- B-10. Based on the public benefits outlined in the Statement of Overriding Considerations, the proposed project will result in benefits that outweigh the project's impact on the City's circulation system

Finding:

- C. *That the project proponent has agreed to make or fund the improvements, or make the contributions, that are necessary to make the findings for approval and to comply with all conditions of approval.*

Facts in Support of Finding:

- C-1. Concept plans depicting the recommended on-site arterial improvements are included in the resolution of approval and conditions of approval for the Tentative Tract Map for the proposed project.
- C-2. Mitigation Measure MM 4.9-1 the Mitigation, Monitoring, and Reporting Program requires the applicant to implement the City transportation improvement mitigation program for the project and identifies the applicant's fair-share responsibility for the improvements.
- C-3. Mitigation Measure MM 4.9-2 of the Mitigation, Monitoring, and Reporting Program require that the applicant make best efforts to negotiate in good faith to arrive at fair and responsible arrangements to either pay fees and/or construct the required improvements in lieu of the payment of fees to be negotiated with the City of Costa Mesa.

## **CC 4 Exhibit C**

Affordable Housing Implementation Plan  
Findings

Exhibit C  
Required Findings  
Affordable Housing Implementation Plan No. AH2008-001

In accordance with Section 19.54.070.D (Alternatives to On-Site Construction) of the Newport Beach Municipal Code (NBMC), the following findings and facts in support of such findings are set forth:

Finding:

- A. *The purpose of this chapter (Chapter 19.54) would be served by the implementation of the proposed alternative.*

Facts in Support of Finding:

- A-1. The applicant has submitted an Affordable Housing Implementation plan (AHIP) that contains alternative methods to on-site construction of affordable units.
- A-2. The AHIP proposes the construction of a minimum of 50 percent of the required affordable units on the project site. The remaining affordable housing obligation may be met through the payment of in-lieu fees; the construction of off-site affordable housing including the rehabilitation of existing off-site housing that would contribute to meeting the City's Regional Housing Needs Assessment (RHNA) requirements; land dedication for affordable housing; or any combination these methods.
- A-3. The AHIP serves the purpose of the City's Inclusionary Housing Ordinance by providing a range of strategies, including on-site new construction, off-site new construction, rehabilitation of existing units, payment of in-lieu fees, and/or land dedication to provide a variety of housing types and opportunities for all social and economic segments, including very low-, low-, and moderate-income households.

Finding:

- B. *The units provided are located within the City and are consistent with the requirements of this chapter [Chapter 19.54 NBMC].*

Facts in Support of Finding:

- B-1. The project site is proposed to be annexed to the City and the project will not be implemented unless the annexation occurs.
- B-2. The AHIP requires any affordable units provided off-site, either through new construction or through renovation and restriction of existing housing units, to be located within the boundaries of the City of Newport Beach.
- B-3. The AHIP complies with the affordability requirement of Section 19.54.040.A NBMC by providing that 15 percent of all new housing units constructed by the

Exhibit C  
Required Findings  
Affordable Housing Implementation Plan No. AH2008-001

project be affordable to moderate income households. Section 19.54.040.A.1 provides that a lower percent of affordable units may be approved as part of an AHIP, if the project includes units for very low-income households. The AHIP provides that the affordable units be comprised of either 5 percent Very Low Income or 10 percent Low Income or 15 percent Moderate Income or a combination of all of these income levels.

- B-4. The AHIP requires all affordable units provided will be restricted, as enforced through a Affordable Housing Implementation Agreement with the City, to ensure that the unit remains affordable to very low-, low-, or moderate-income households for a 30-year period.
- B-5. Affordable Housing Implementation Agreements will be executed and recorded at each phase of development for affordable units to be constructed within that phase, or for land proposed to be dedicated, or for any in-lieu fees to be paid.
- B-6. The AHIP requires that renovation of existing off-site units to affordable units to comply with the requirements of Section 19.54.070.B NBMC.
- B-7. The AHIP requires that any land dedications for affordable housing to comply with requirements of Section 19.54.070.C NBMC.

Finding:

- C. *It would not be feasible or practical to construct the units on site.*

Facts in Support of Finding:

- C-1. The AHIP requires that a minimum of 50 percent of the required affordable units be construction on site.
- C-2. The project site is constrained by the topography and sensitive habitat areas. Furthermore, policies of the General Plan require that a majority of the project site be preserved as open space. Therefore, the project site has limited area for residential development.
- C-3. Implementation of the AHIP will be evaluated at each development phase which will include consideration of off-site affordable units, dedication of land or the payment of in-lieu fees. The conclusion of this evaluation will be subject to an Affordable Housing Implementation Agreement between the applicant and the City of Newport Beach.

## **CC 4 Exhibit D**

Newport Banning Ranch Master  
Development Plan (under separate  
cover) and Revisions and Errata



Exhibit D

Newport Banning Ranch  
Master Development Plan

Exhibit D is available for review at the offices of the Office of the City Clerk or at [www.newportbeachca.gov](http://www.newportbeachca.gov).

## Exhibit D

### NBR Master Development Plan Revisions and Errata

Page 3-3

Revise Section 3.2.2 as follows:

#### 3.2.2. Parklands

1. **Public Community Park comprising approximately ~~26.8~~ 21.8 gross/~~24.7~~ 18.0 net acres in SPAs ~~7a~~, 7b, and 7c**, which shall be developed for public active and passive recreation as part of the Project and offered for dedication to the City and Public Community Park comprising approximately 5.0 gross/3.7 net acres in SPA 7a, which shall be developed for public park purposes, privately maintained, and made permanently available for public use through deed restriction and/or recorded easement.

Page 3-29

Change Section 3.5.2 as follows:

#### 3.5.2 Public Community Park Development Plans

As part of the Project, a ~~26.8~~ 21.8 gross-/~~24.7~~ 18.0 net-acre Community Park (North Community Park and Central Community Park) will be developed and offered for dedication to the City of Newport Beach. The development plan for the Community Park (SPAs ~~7a~~, 7b, and 7c) is a Project Development Plan providing a sufficient level of design detail for Coastal Commission approval of a Coastal Permit for this park. The Public Community Park site to be offered for dedication to the City is comprised of the ~~three~~ two subareas as described below:

- **The North Community Park Project Development Plan, illustrated in Exhibit 3-6a**, contains 15.9 gross/13.5 net acres and will be improved as an active park to include lighted turf sports fields, lighted hard courts, picnic facilities, age-specific playground, restrooms, off-street public parking, and may include synthetic turf.

- **The Central Community Park Project Development Plan, illustrated in Exhibit 3-6b**, contains 5.9 gross/4.5 net acres and will be improved as a passive recreational area, including picnic areas, informal open play turf areas, and off-street public parking. The Development Plan for the Central Community Park includes a trail connection through the park to the intersection of 15<sup>th</sup> Street/Bluff Road to provide pedestrian access through the park from the boundary of the Newport Crest residential community. The trail connection will be constructed subject to the approval by the Newport Crest Homeowners Associate of the provision of a gate at the boundary of Newport Crest at the terminus of Ticonderoga to provide secure pedestrian movement to and from Newport Crest.

Exhibit 3-6b, Central Community Park Development Plan – Replace with new park plan exhibit included as Attachment 1.

As part of the Project, a 5.0 gross/ 3.7 net acre Community Park (South Community Park) will be developed, privately maintained, and made permanently available for public use. The development plan for the Community Park (SPA 7a) is a Project Development Plan providing a sufficient level of design detail for Coastal Commission approval of a Coastal Permit for this park. The South Community Park is described below.

- **The South Community Park Project Development Plan, illustrated in Exhibit 3-6c,** contains 5.0 gross/3.7 net acres and will be improved as a passive natural recreation area to complement the City's Sunset Ridge Park site to the east and will include park access, native habitat, and interpretive opportunities.

Section 3.5

Page 10-3

Revise Section 10.6.2 as follows:

#### **10.6.2 Activities Requiring Subsequent Site Development Review Approval**

Following approval by the City of the NBR-MDP the following development activities are permitted within the Project Site subject to recordation of Final Map No. 17308 and any subsequent subdivision map(s), approval by the City of Site Development Review pursuant to NBR-PC Section 4.5, "Site Development Review," any additional local required permits, and any permits from State (including Coastal Commission), and Federal agencies with permitting jurisdiction over the activity:

1. Construction of residential, commercial, and visitor serving resort uses in all Villages and Colonies;
2. Construction of Bluff Parks and Interpretive Parks; and
3. Construction of South Community Park

Page 10-3

Add new Section 10.6.3 as follows:

#### 10.6.3 Activities Requiring Community Park Improvement Plan

Following approval by the City of the NBR-MDP the following development activities are permitted within the Project Site subject to recordation of Final Map No. 17308 and any subsequent subdivision map(s), approval by the City of a Community Park Improvement Plan, pursuant to NBR-PC Section 4.4.6.1 “ Activities Subject to Community Park Improvement Plan Approval,” any additional local required permits, and any permits from State (including Coastal Commission), and Federal agencies with permitting jurisdiction over the activity:

1. Construction of the public Community Park (North and Central Community Park).

Page 10-5

Revise Section 10.7.3 as follows:

### **10.7.3 Authorization for City to Issue Construction-Level Permits as part of MCDP**

The MCDP shall authorize the City to be the final review authority for any subsequent planning development permits and construction level permits, as required by the NBR-PC, for implementation of those activities described in Section 10.6 of the NBR-MDP and within the areas illustrated on Exhibit 10-1, without additional Coastal Development Permits, provided the subsequent permits are consistent with the NBR-MDP Project Development Plans. Subsequent required planning development permits and construction level permits shall include, but are not limited to, Site Development Review, Community Park Improvement Plan Approval, Use Permits, Final Tract Maps, final grading permits, model home permits, building permits, and other required permits.

Page 10-10

Add new Section 10.12, “Community Park Improvement Plan,” as follows:

### 10.12 Community Park Improvement Plan

Approval by the Director of Recreation and Senior Services of a Community Park Improvement Plan, in accordance with the provisions of NBR-PC Section 4.6, “Community Park Improvement Plan,” shall be required prior to construction of the public Community Park.

Page 10-10

Renumber Section 10.12 and revise text as follows:

### **~~10.12 Minor Modifications~~**

### **10.13 Substantial Conformance**

The following ~~are considered minor modifications to~~ constitute substantial conformance with the NBR-MDP including Exhibit 1-4, “Site Planning Areas Map,” Exhibit 3-1, “Master Development Plan,” and Exhibit 3-2, “Master Development Table.”

#### Land Use Acreage Refinements

A change in the Site Planning boundary lines as illustrated on Exhibit 1-4 “Site Planning Areas Map,” and corresponding change in the Gross Acres for the respective Site Planning

Area as described on Exhibit 1-5, "Site Planning Areas Table," of up to fifteen percent (15%) ~~are as approved~~ permitted as part ~~the approval~~ of either a Site Development Review, or subdivision map application submitted for the Site Planning Area, provided the refinement(s) to Gross Acres does not result in:

- ~~1. A reduction in the total area allocated to the Lowland Open Space/Public Trails and Facilities District to less than 115 gross acres;~~
- ~~2. A reduction in the total area allocated to the Upland Open Space/Public Trails and Facilities District to less than 85 gross acres;~~
- ~~3. A reduction in the total area allocated to the Public Parks/Recreation District to less than 28 gross acres;~~
1. A reduction in the total acreage allocated to Open Space;
2. A reduction in the total area allocated to the Parklands;
3. The total area within the Project Site boundaries exceeding 401.1 gross acres;
4. Less than two roadway access points from North Bluff Road into the North Family Village; and/or
5. Less than two roadway access points into both the South and North Family Village.

Page 10-10

Renumber and Revise Section 10.12.2 as follows:

#### **~~10.12.2~~ 10.14 Transfer of Residential Dwelling Units**

A change in the number of residential dwelling units for any Site Planning Area as described on Exhibit 1-5, "Site Planning Areas Table," resulting from a transfer of residential dwelling units from one Site Planning Area to another, and as approved pursuant to the provisions of NBR-PC Section 4.18, "Transfer of Residential Dwelling Units," is permitted as part of the approval of a Site Development Review provided:....

Page 10-11

Renumber and Revise Section 10.12.14 as follows:

#### **~~10.12.14~~ Additional Minor Modifications**

##### 10.15 Modifications to Approved Project Development Plans

The following constitute ~~additional allowable minor~~ modifications to the NBR-MDP Project Development Plans which may be approved as part of Site Development Review or subdivision review, and not requiring an amendment to the NBR MDP:

1. Change in utility or public service provider as described in NBR-MDP Chapter 8, "Master Roadway and Infrastructure Plans;"

2. Change in roadway alignment of any roadway illustrated on the “Master Roadway Plan” of the NBR-MDP when the change results in a centerline shift of 150 feet or less;
3. Change to roadway sections as described in NBR-MDP Chapter 8, "Master Roadway and Infrastructure Plans as approved by the Director of Public Works;
4. Refinements to the Architectural Design Guidelines pursuant to Section 10.10;
5. Refinements to the mix, distribution, and design of architectural products ~~with as a part of subsequent Site Development Review and construction drawings~~ provided that:
  - a. The character and style of the architecture remains consistent with the intent of the Project’s architectural style;
  - b. The nominal lot size dimensions and nominal building square footages do not exceed 20% of the original architecture proposed within the Site Planning Area; and
  - c. All applicable development regulations and standards set forth in the NBR-PC are complied with.

Page 10-12

Delete the following text:

#### ~~10.12.4 Applications for Minor Modifications~~

~~1. Applications for minor modifications to the NBR-MDP shall include the following information:~~

- ~~a. Text revisions to the NBR-MDP submitted to the City in a “track changes” format to note the insertion(s) and/or deletion(s) of text for each changed page;~~
- ~~b. Revised applicable NBR-MDP exhibit(s) reflecting the proposed change(s) and in the case of land use acreage refinements or transfer of residential dwelling unit, a revised Site Planning Areas Table;~~
- ~~c. A summary of: (1) the number of dwelling units, commercial square footage, and overnight accommodations previously approved on all Tentative and all recorded Final Tract Maps; and (2) the number of dwelling units, commercial square footage, and overnight accommodations under construction or completed/occupied at the time of the proposed minor modification;~~
- ~~d. Identification of the ownership of the Site Planning Area(s) to be affected by the minor modification;~~
- ~~e. Analysis of consistency with the NBR-PC; and~~
- ~~f. Any additional background and/or supporting information which the Director deems necessary.~~

#### ~~10.12.5 Review of Applications for Minor Modifications~~

~~Applications for minor modifications shall be reviewed in conjunction with a development application for a Site Development Review and/or a subdivision map approval. The review authority for a minor modification to the NBR-MDP shall be the same review authority as established in the NBR-PC with authority to approve or conditionally approve the development application being considered in conjunction with a request for a minor modification.~~

Page 10-13

Renumber and revise Section 10.13 as follows:

#### ~~10.13~~ 10.16 Amendments to the NBR-MDP

All proposed changes to the NBR-MDP other than those identified in Section ~~10.12~~, “~~Minor Modifications~~,” 10.14 Transfer of Residential Dwelling Units and Section 10.15 “Modifications to Approved Project Development Plans.” shall be considered amendments to the NBR-MDP and shall be reviewed in accordance with the provisions of NBR-PC Section 4.4 “Master Development Plan.” When any CDP(s) or MCDP is approved by the Coastal Commission that varies from the approval granted by the City for the NBR-MDP or any approved amendment, the applicant shall submit a request for determination of substantial conformance to the Director or Community Development. The Director of Community Development has the authority to refer any request for substantial conformance to the City Council for consideration and final action on the request.

Page 10-13

Renumber and revise Section 10.14 as follows:

#### ~~10.14~~ 10.17 Amendments to the Master CDP

Amendments to the MCDP are considered to be those changes considered as amendments to the NBR-MDP pursuant to NBR-MDP Section ~~10.13~~ 10.16. Following City approval of any amendment to the NBR-MDP a corresponding application for an amendment to the MCDP shall be submitted for approval to the California Coastal Commission.

Exhibit 10-1, Master Entitlements and Subsequent Approvals Map

Add the following text to the notations:

Land Use Development per City-approved Master Development Plan and CCC-approved Master Coastal Development Permit. Additional Site Development Review, and/or Community Park Improvement Plan Approval, by City is required, but additional Coastal Development Permit is not required, prior to Land use Development and construction permits.

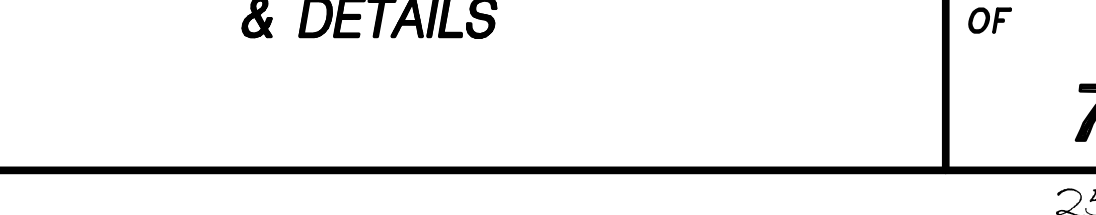
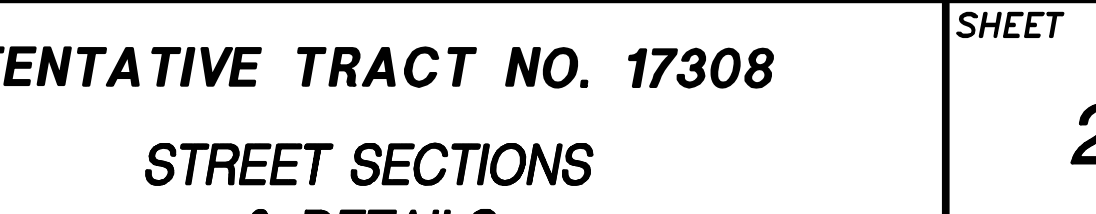
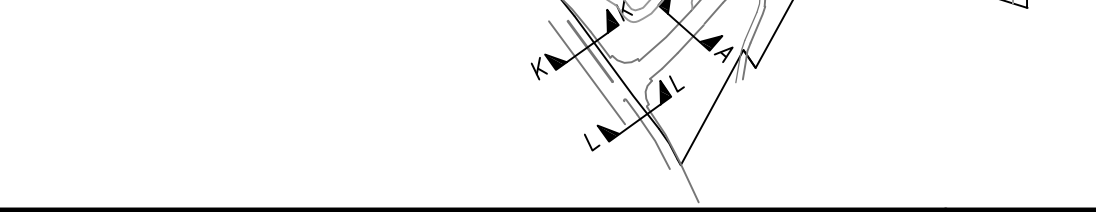
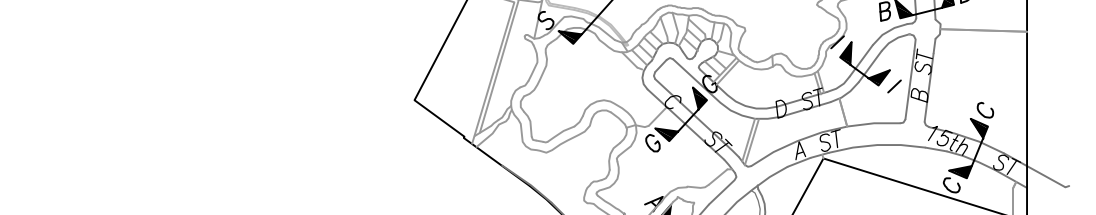
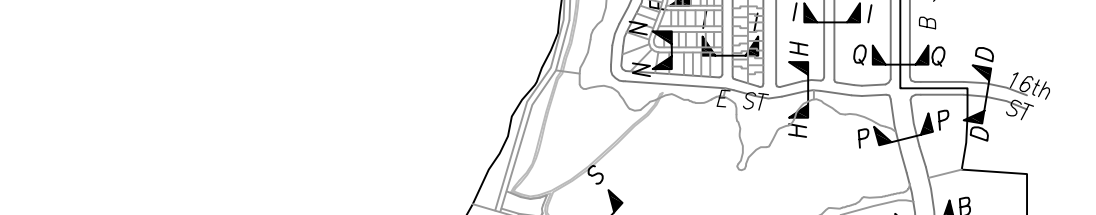
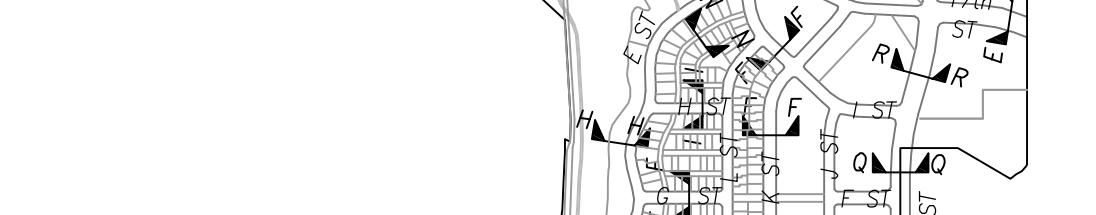
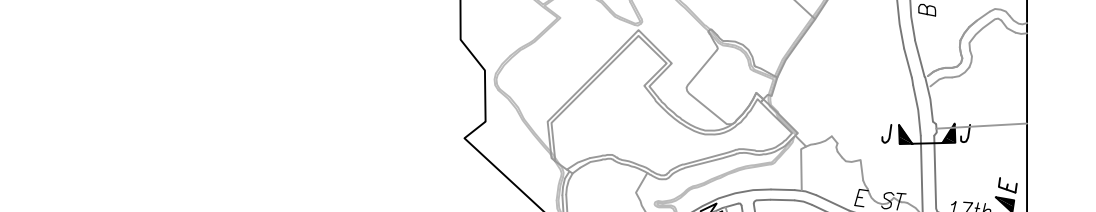
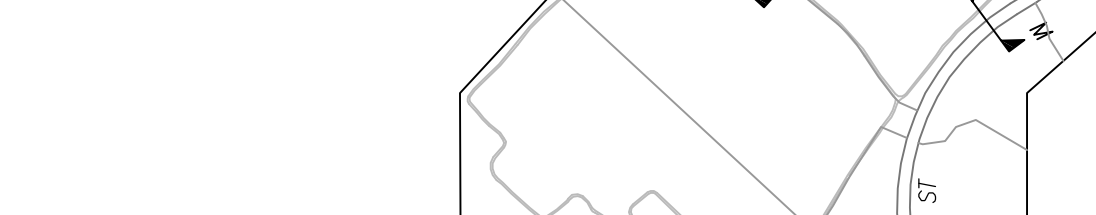
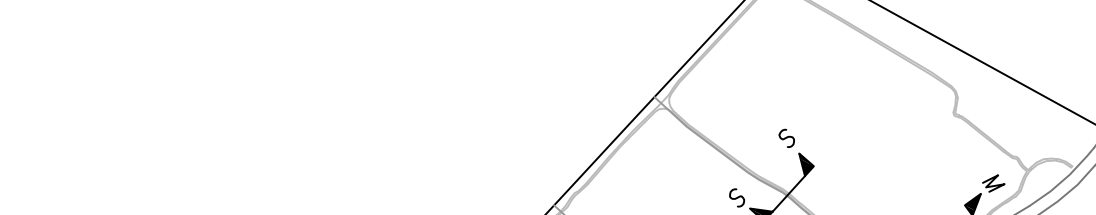
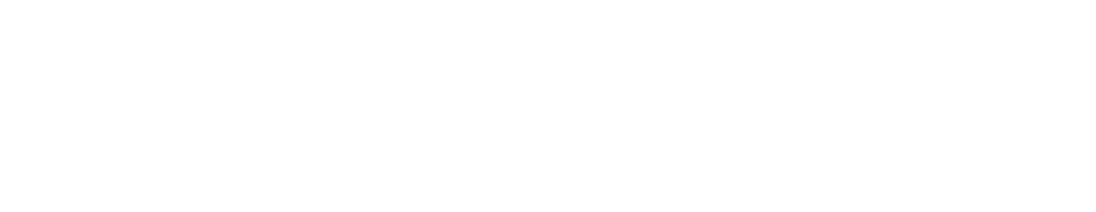
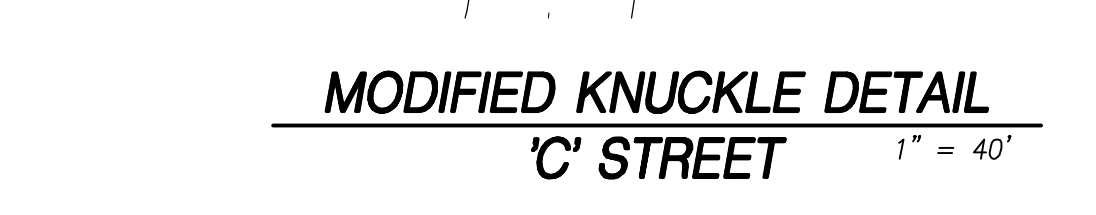
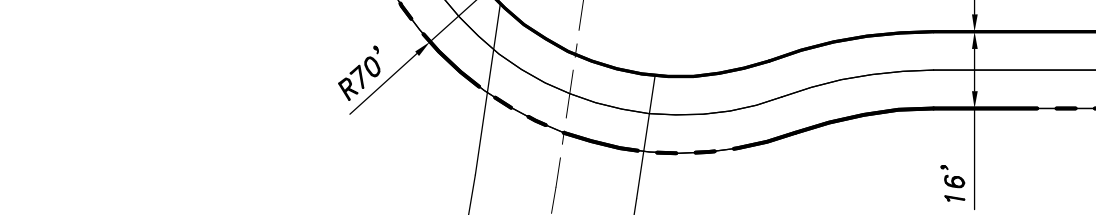
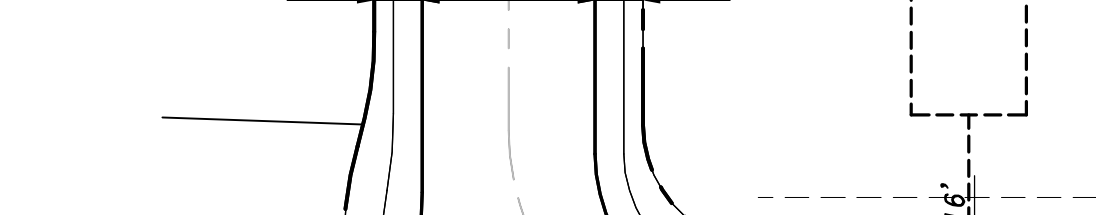
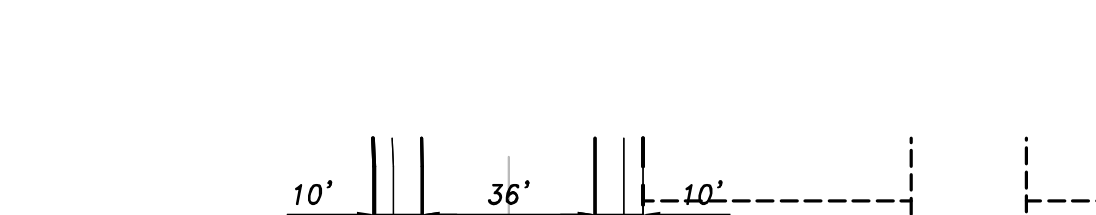
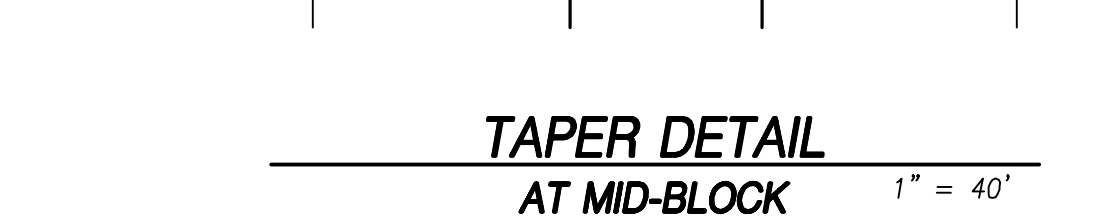
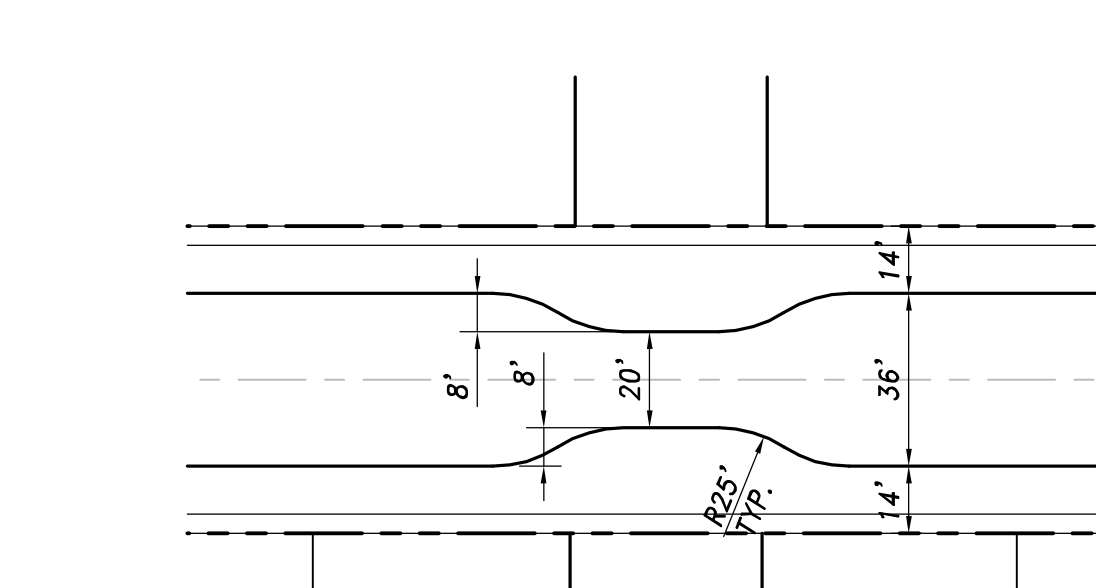
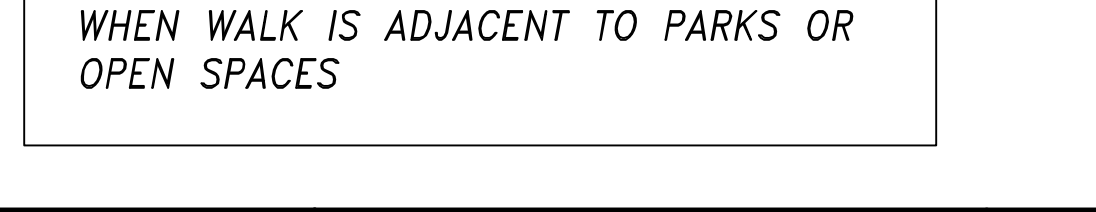
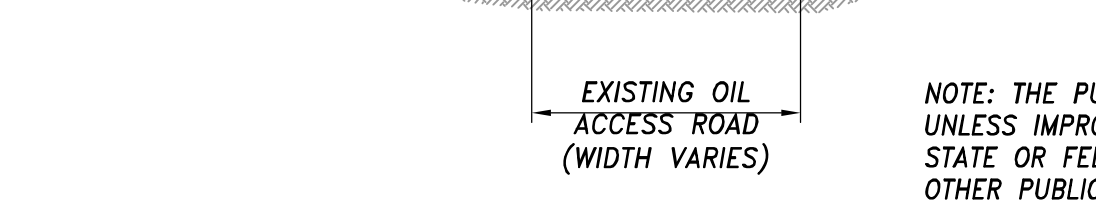
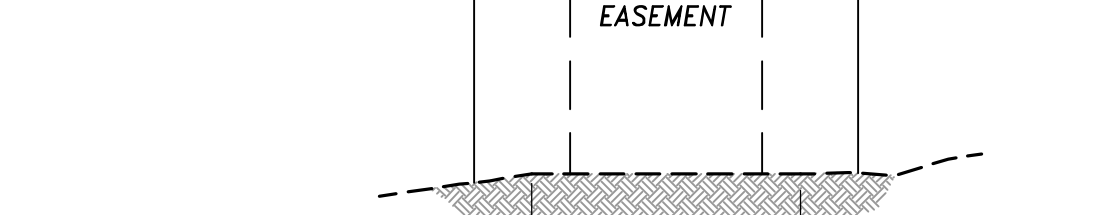
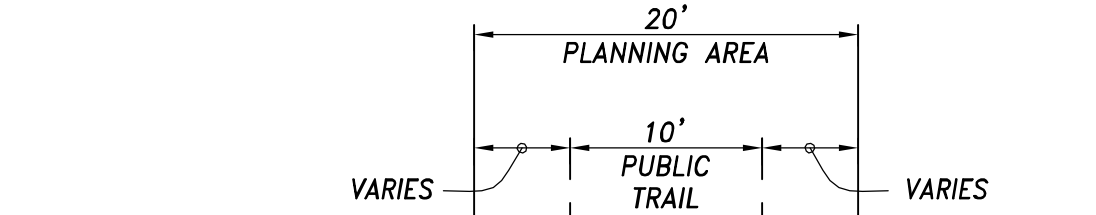
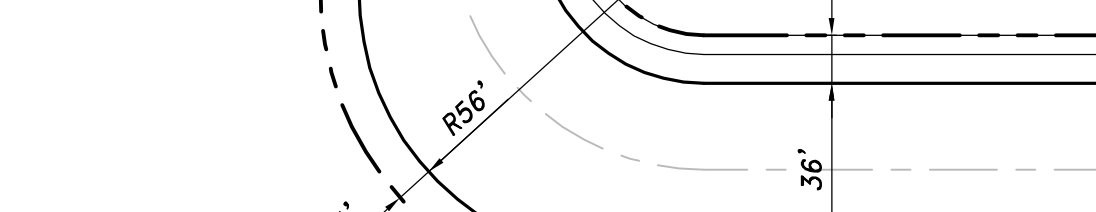
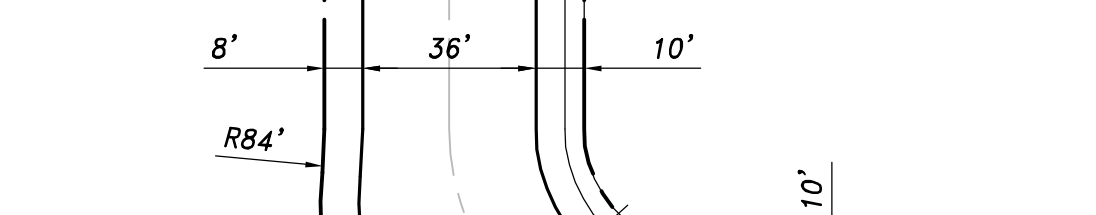
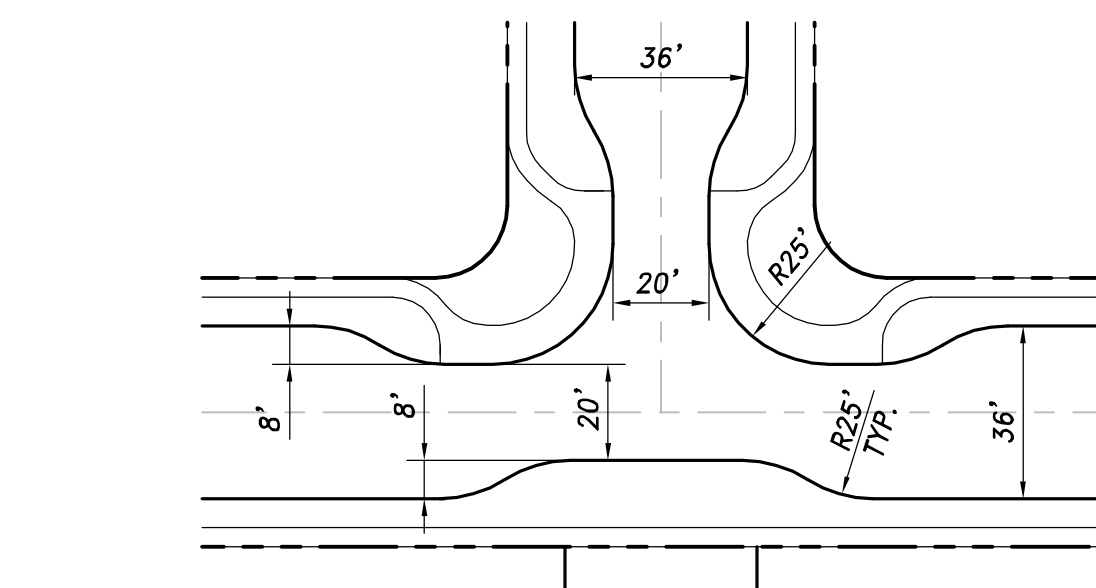
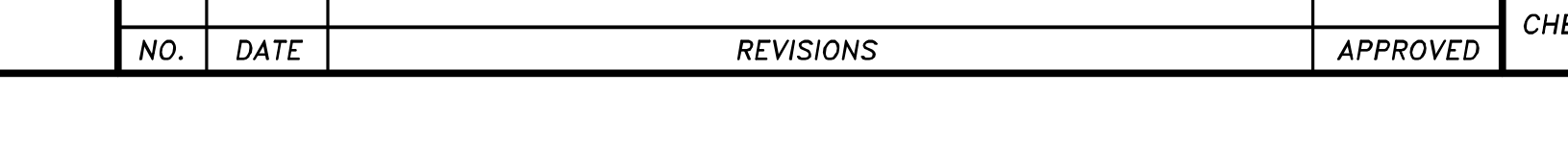
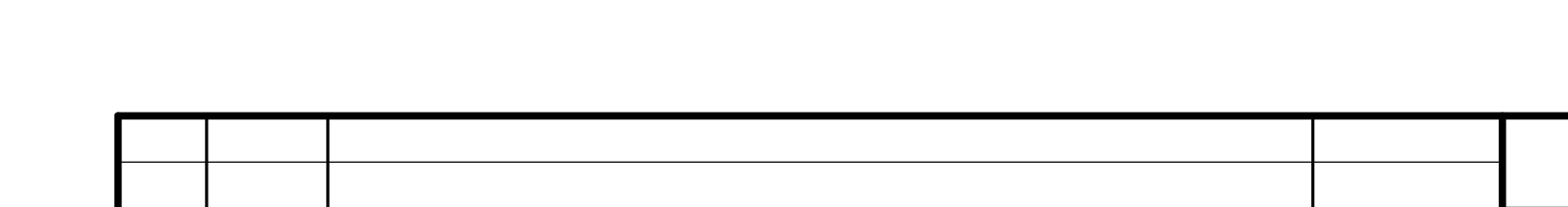
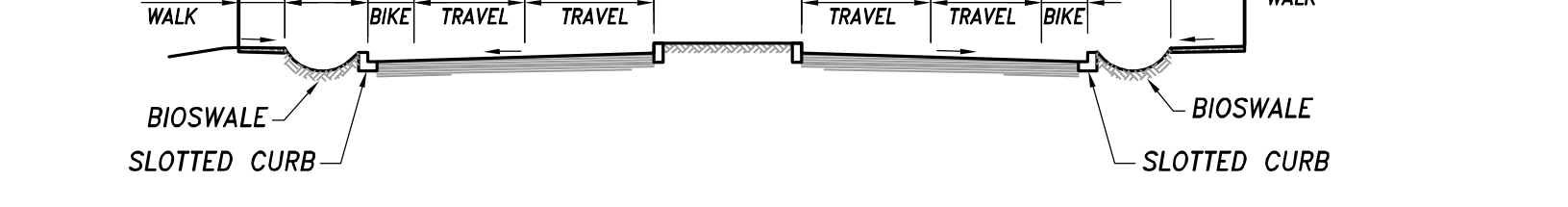
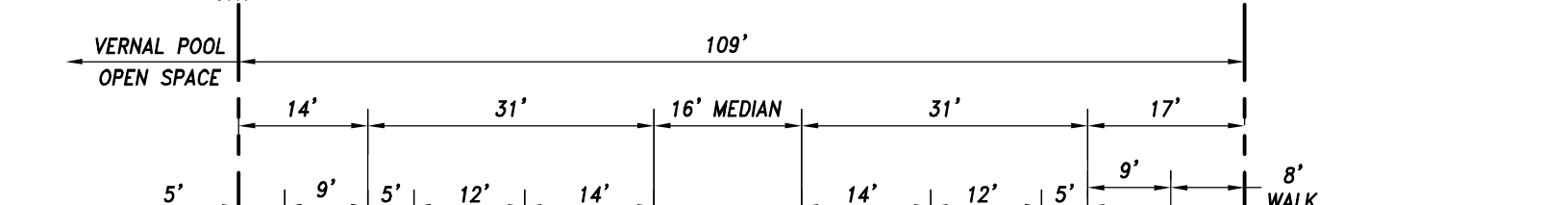
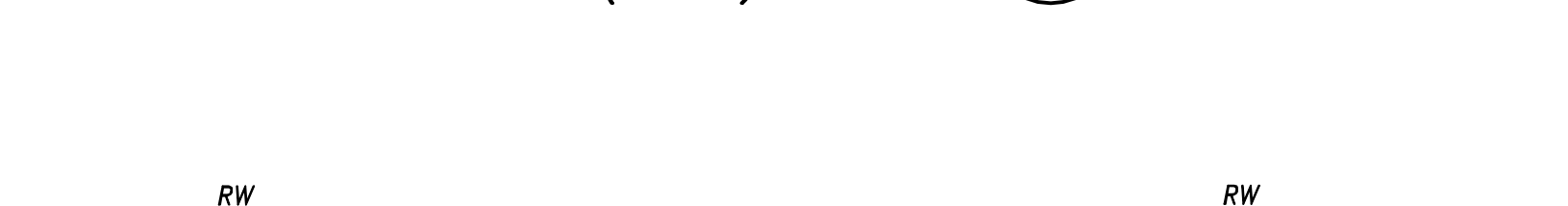
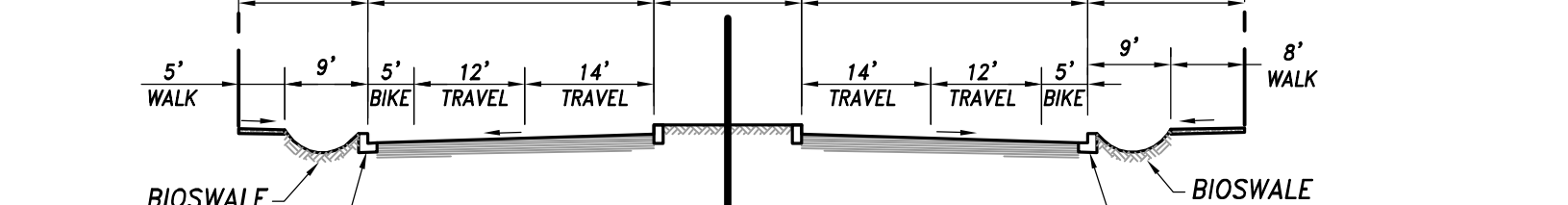
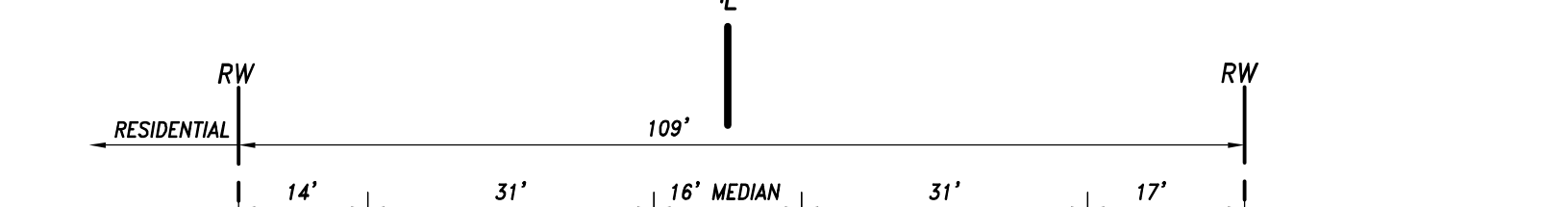
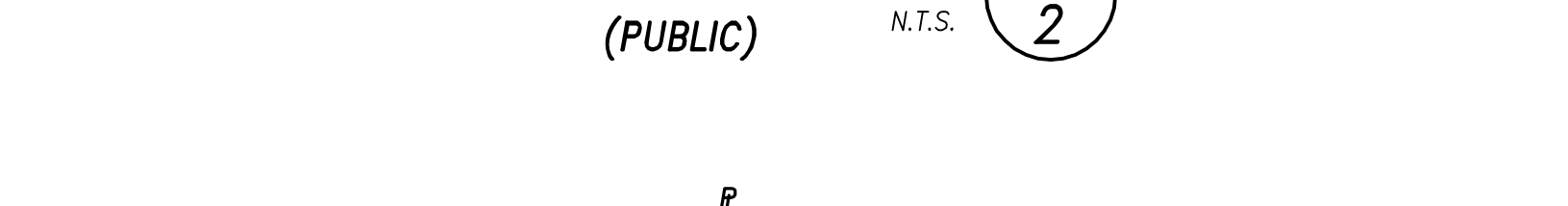
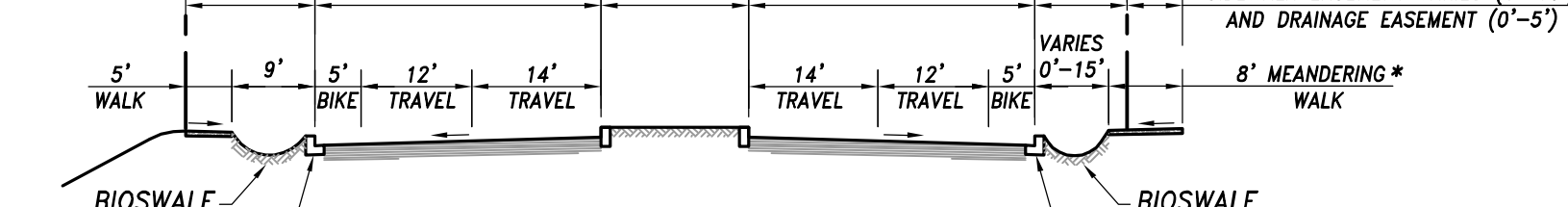
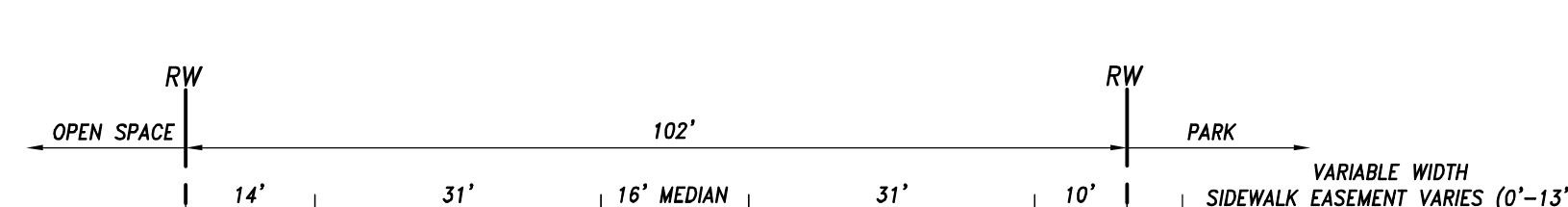
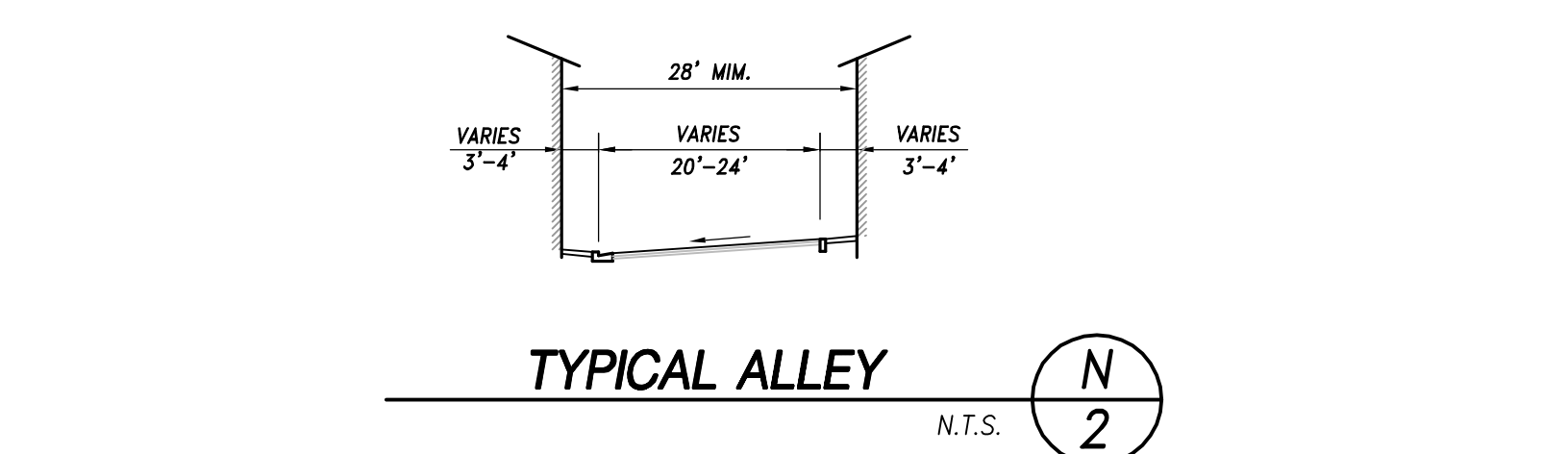
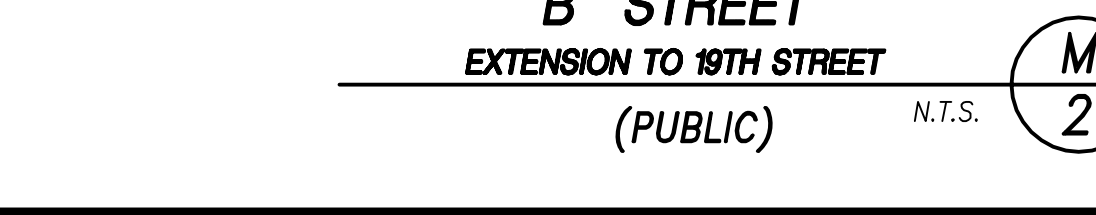
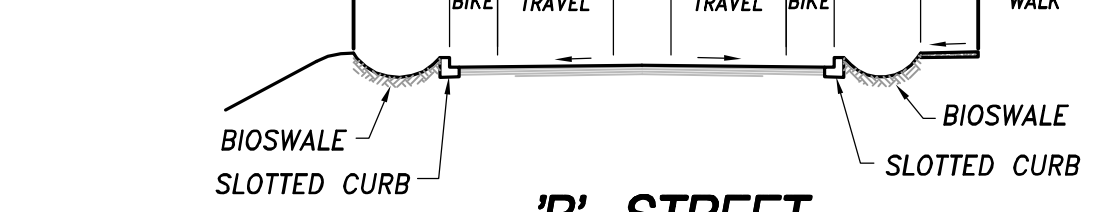
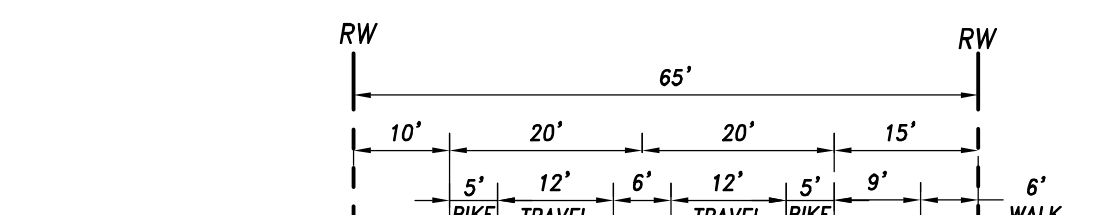
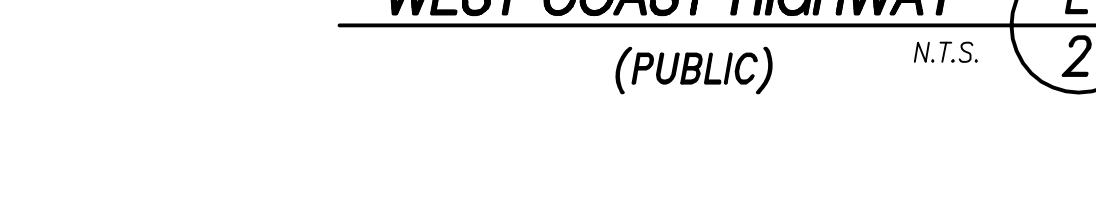
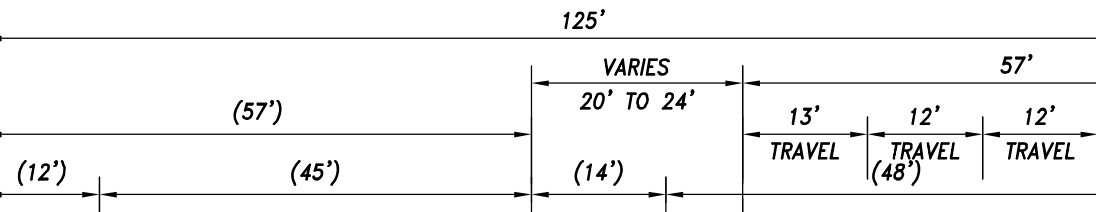
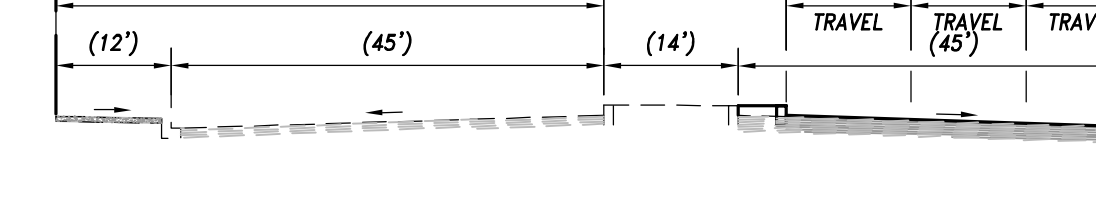
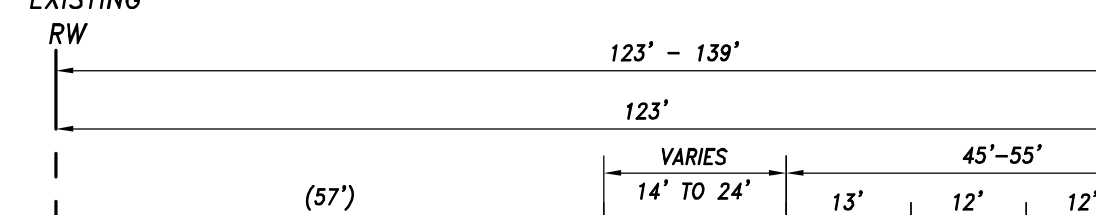
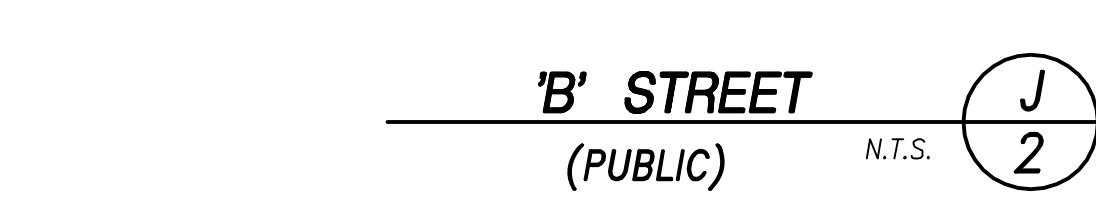
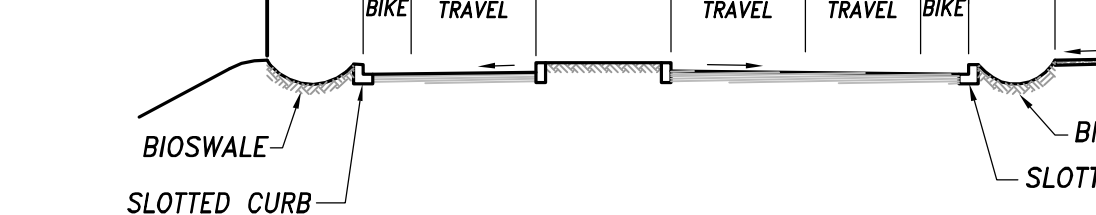
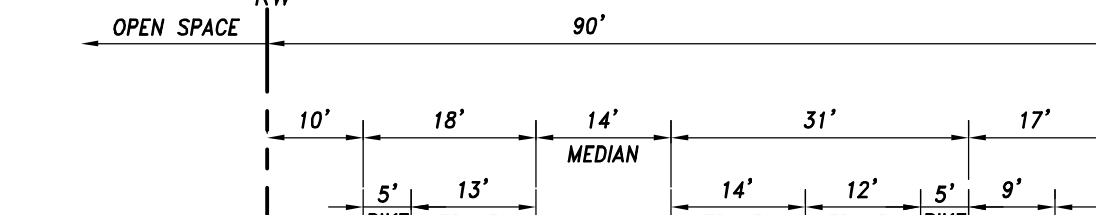
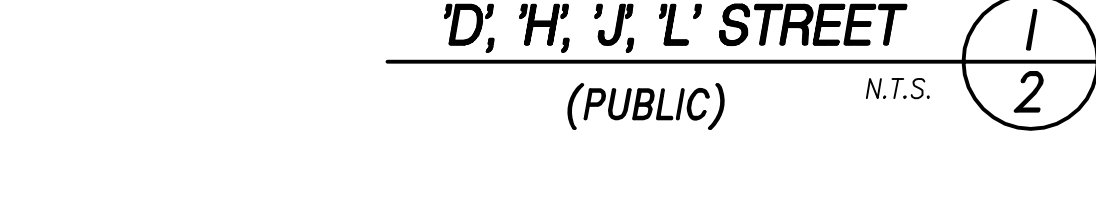
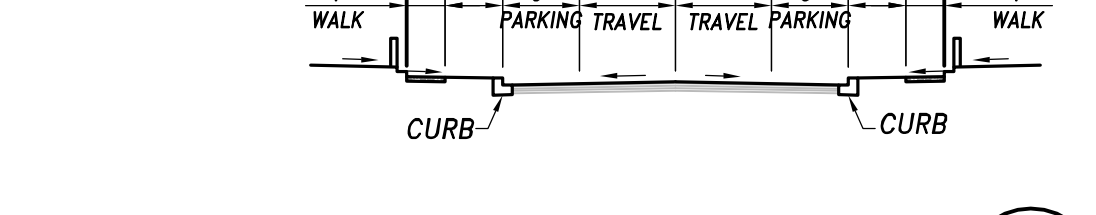
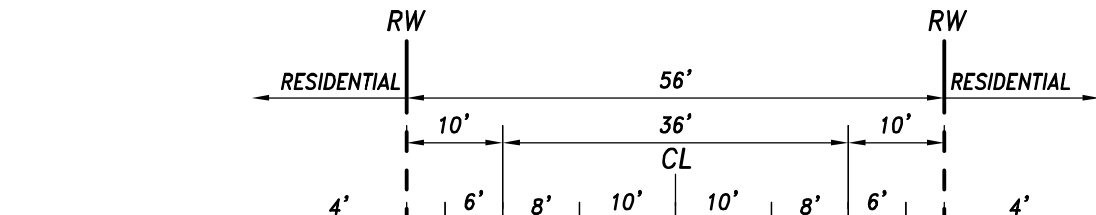
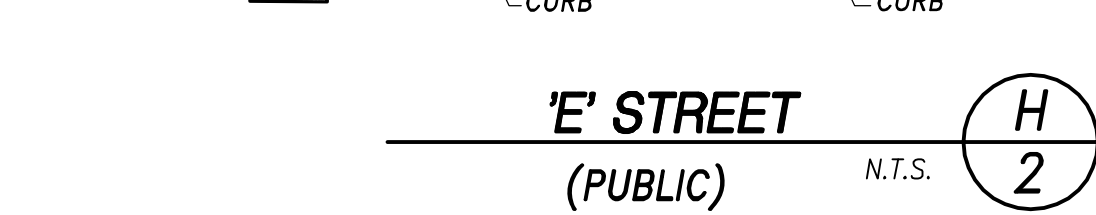
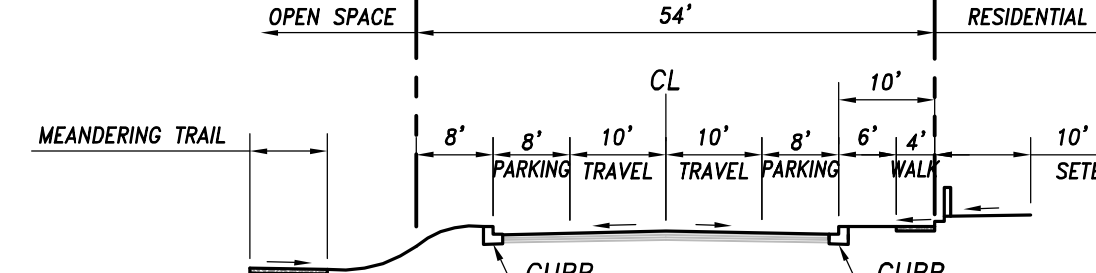
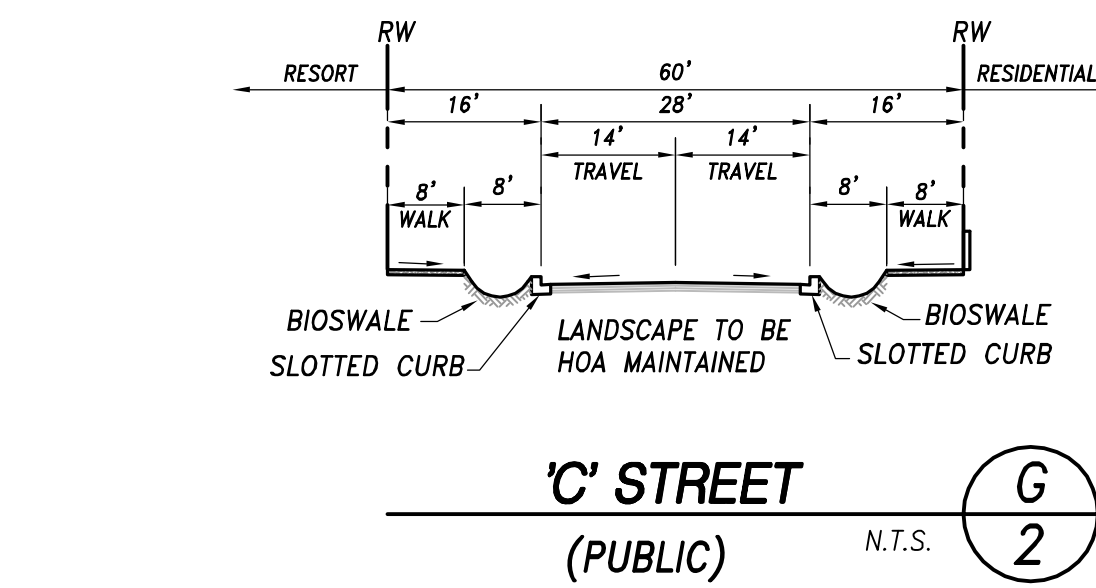
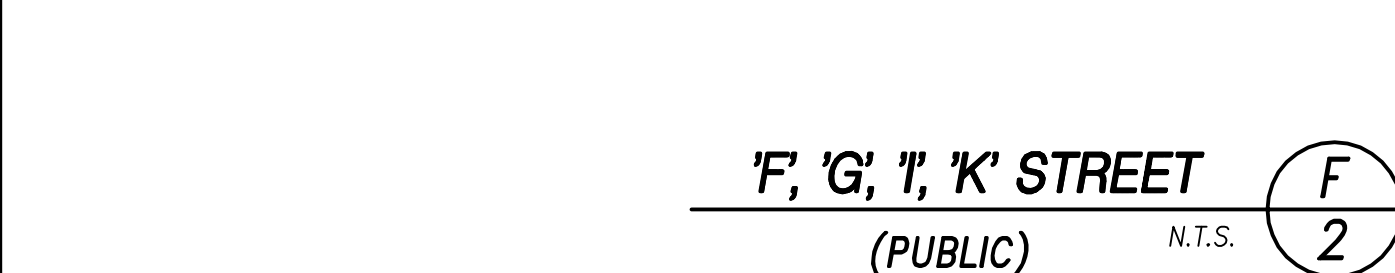
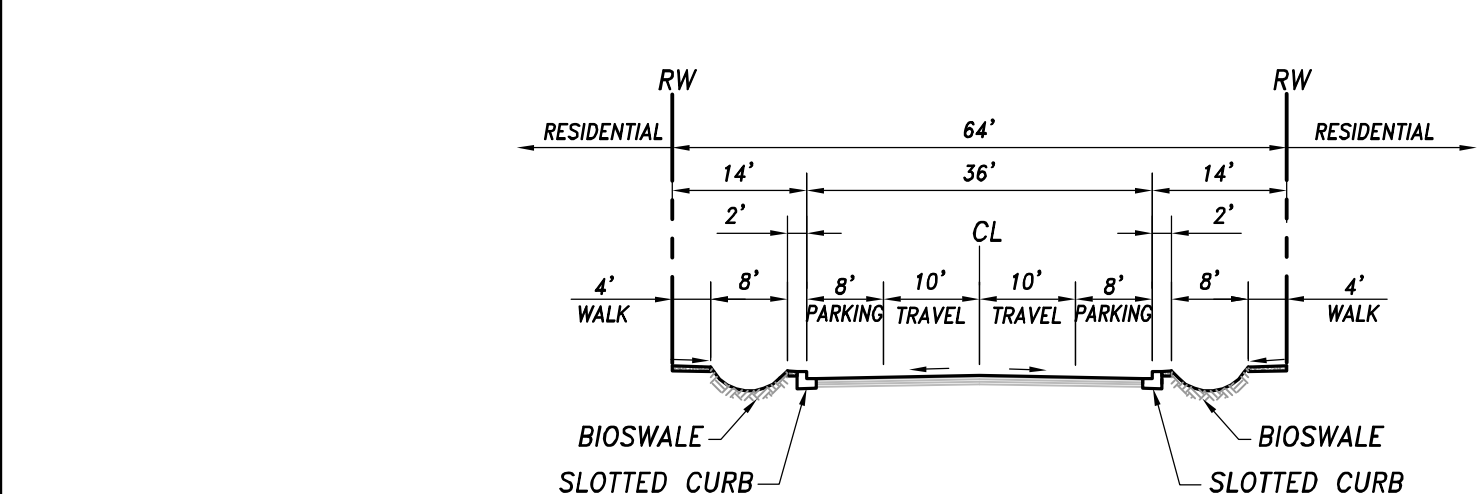
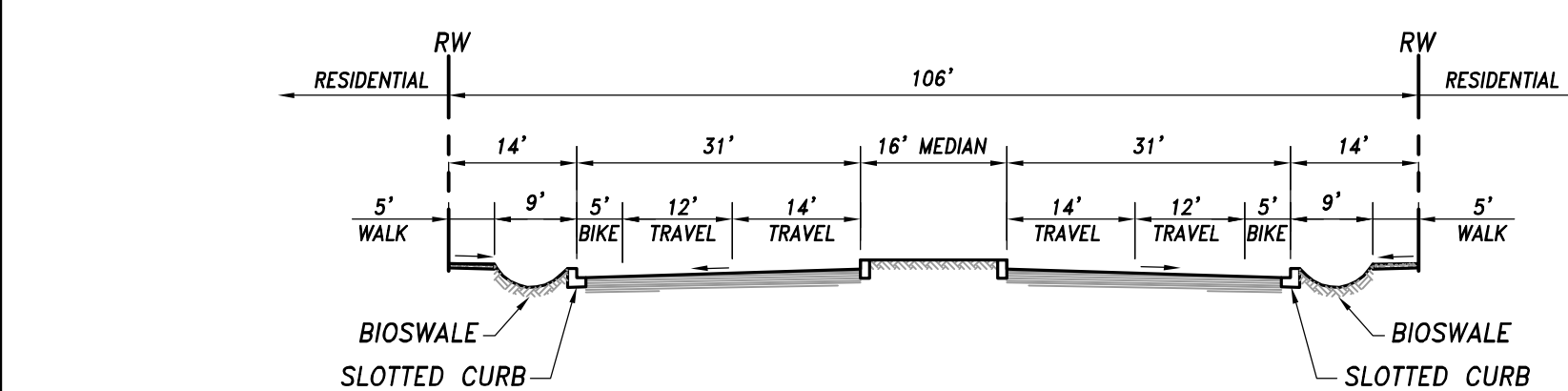
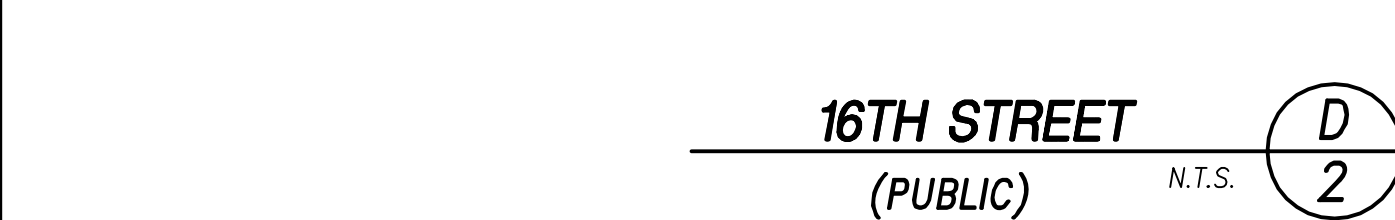
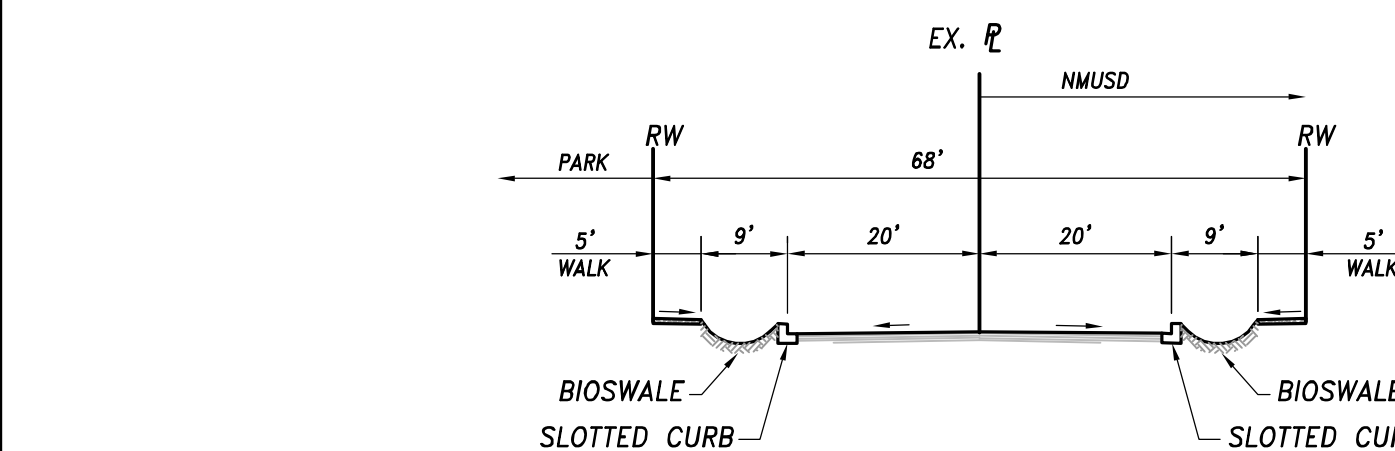
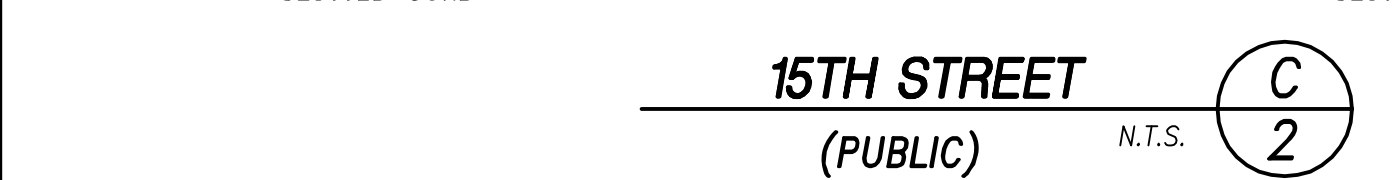
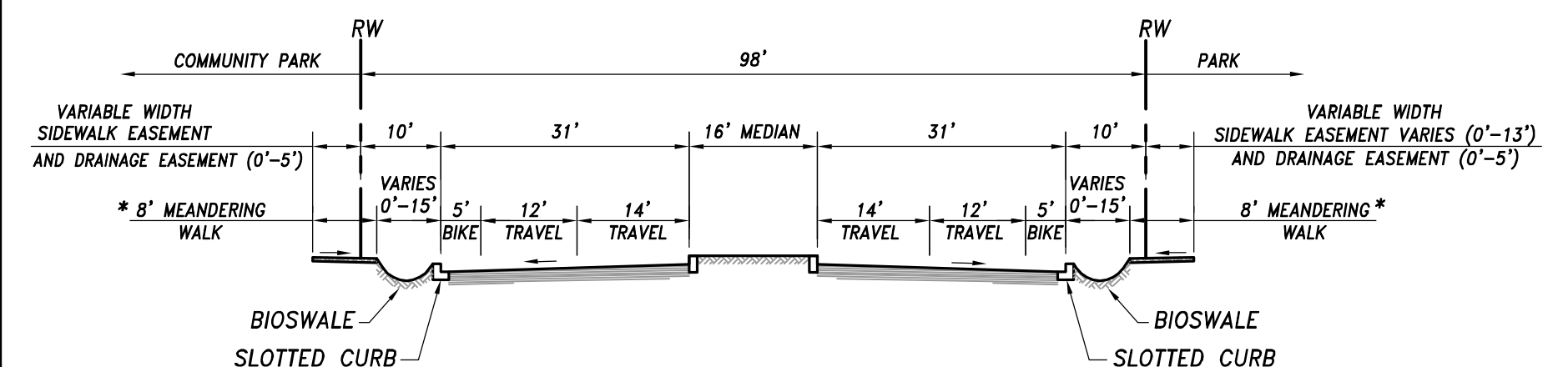
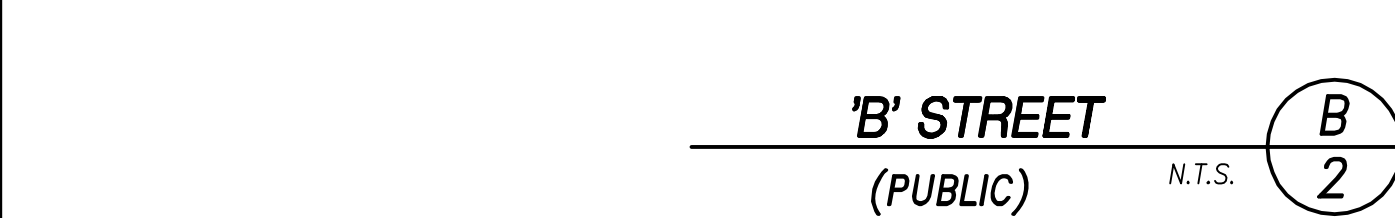
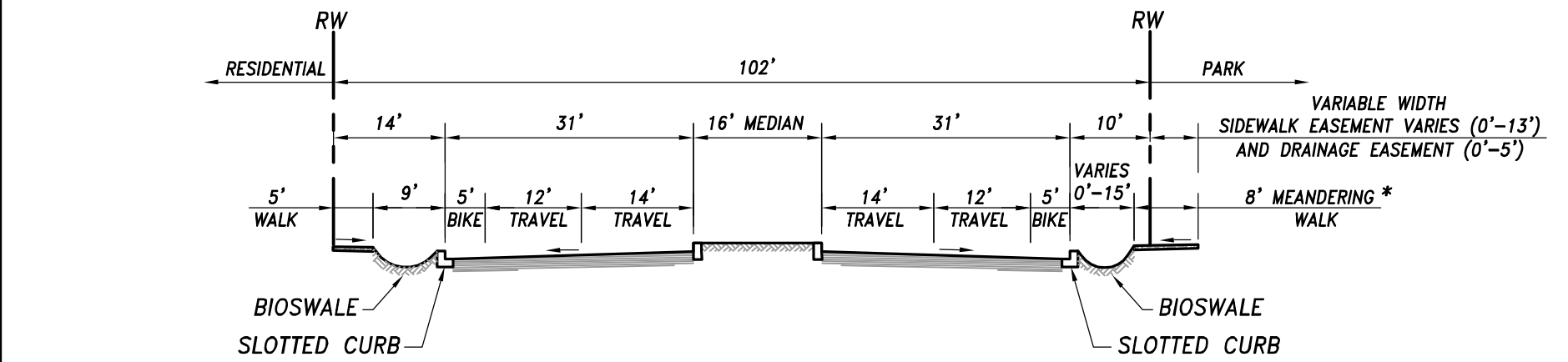
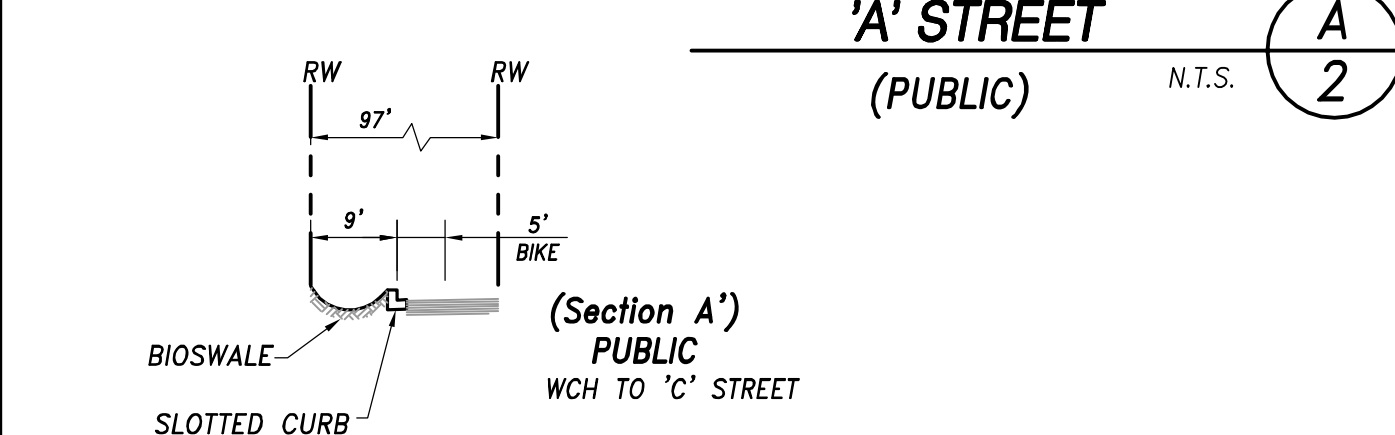
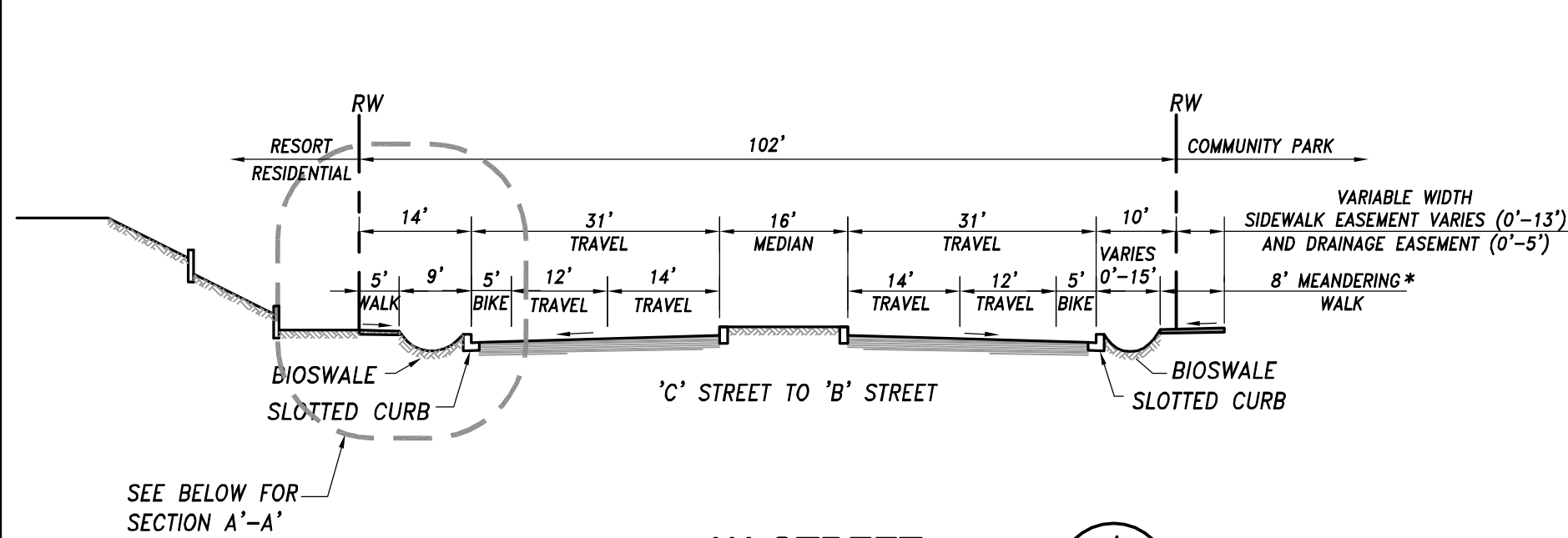
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Tentative Tract Map



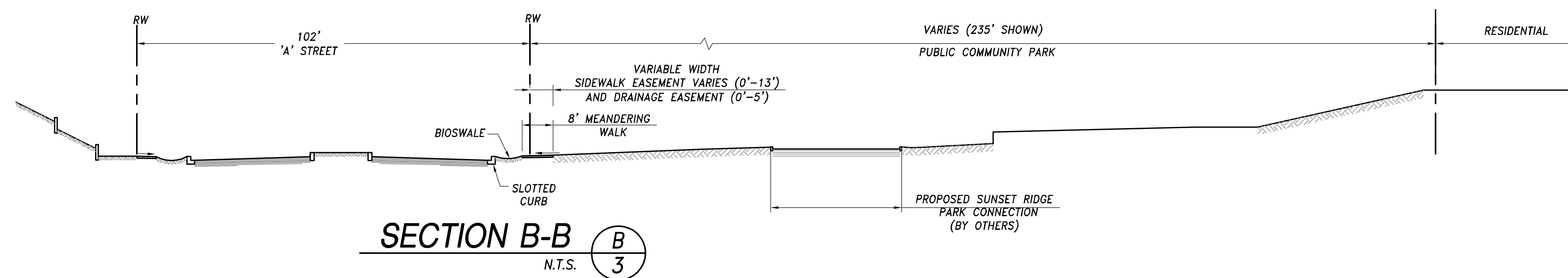
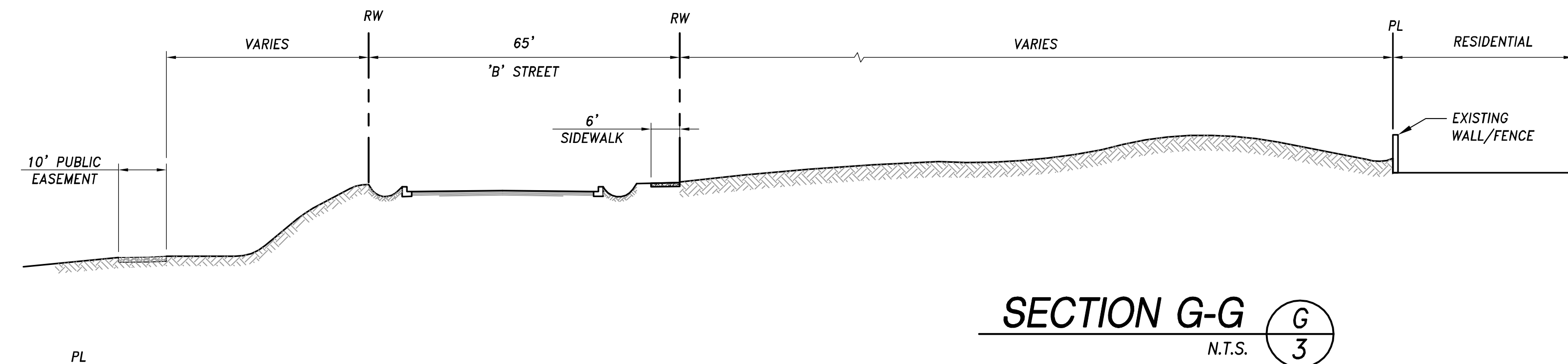
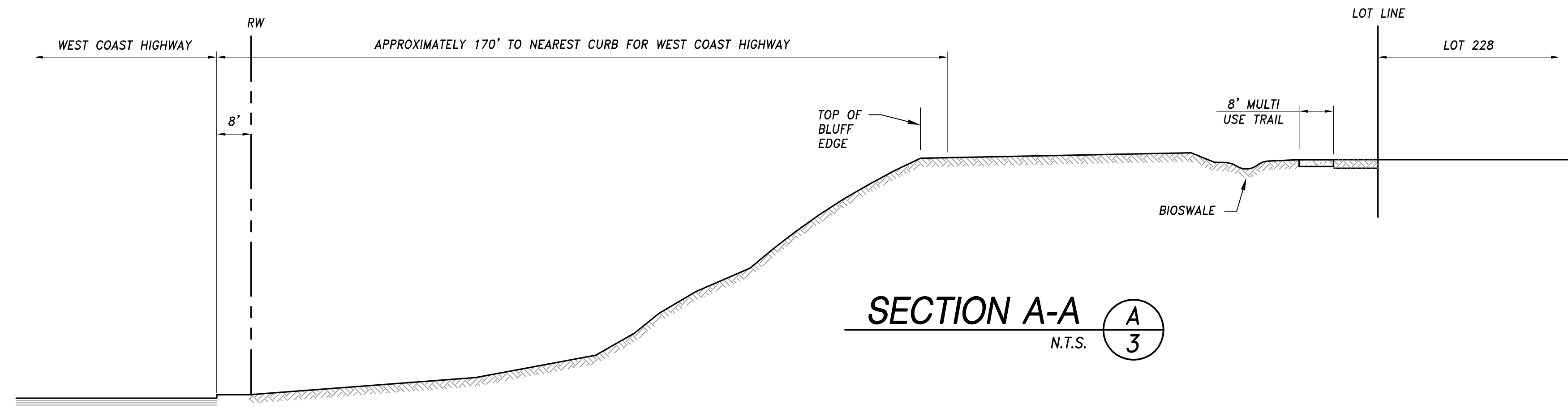




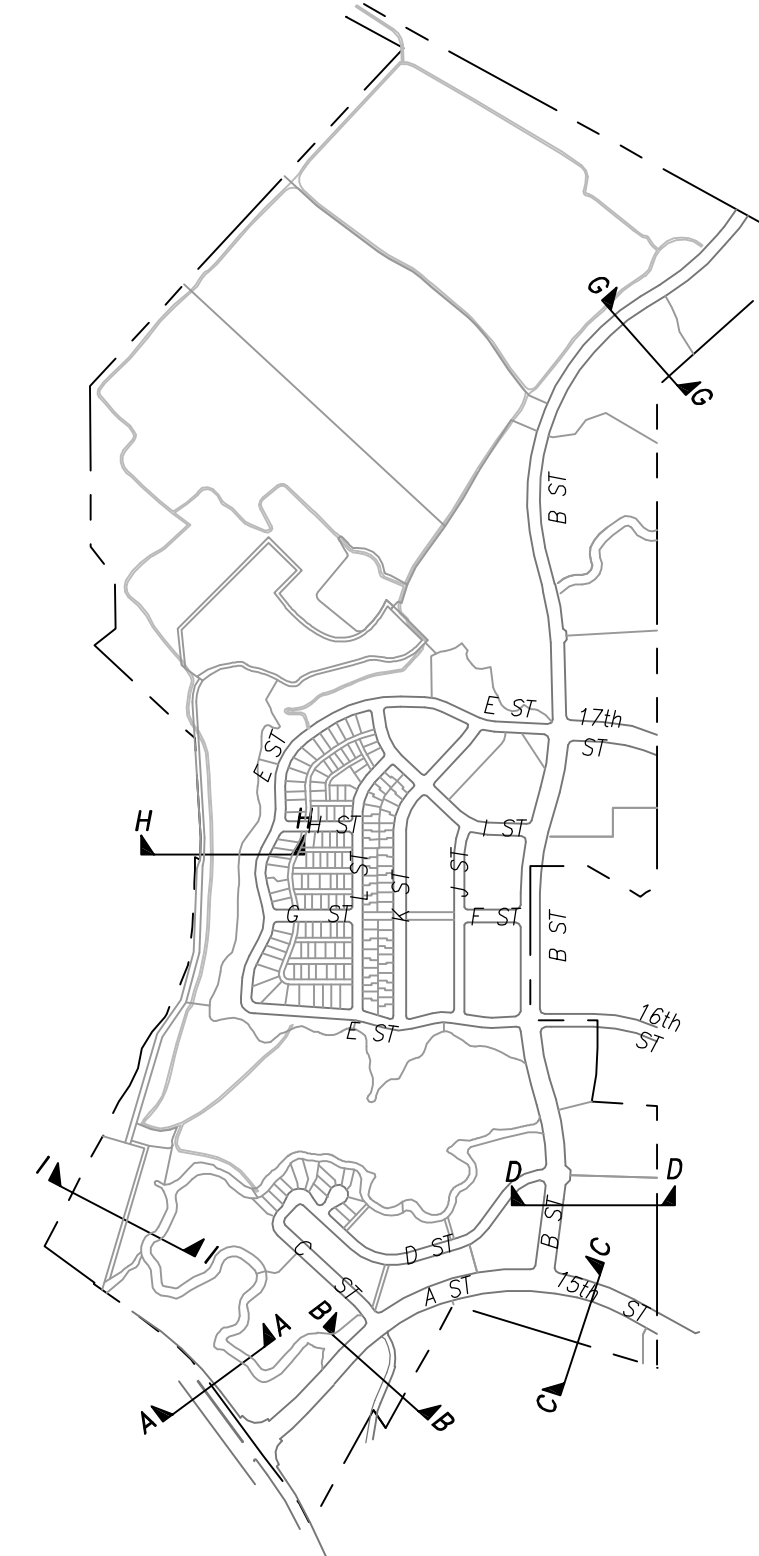
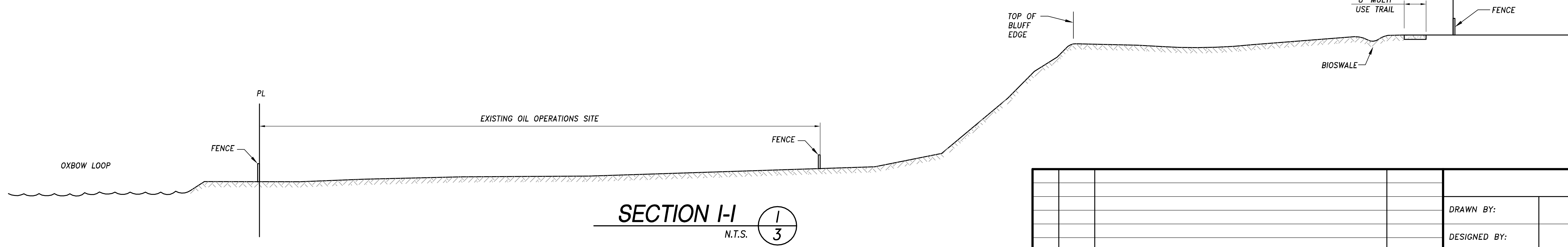
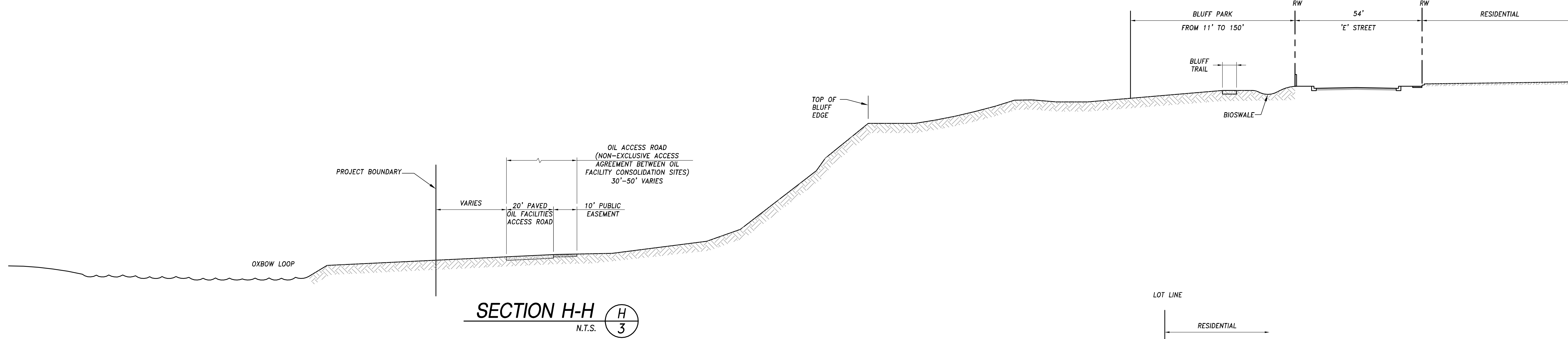
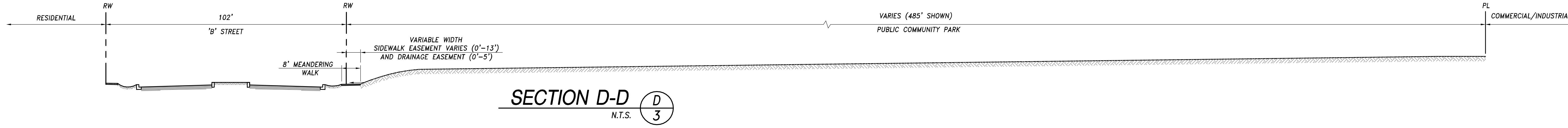
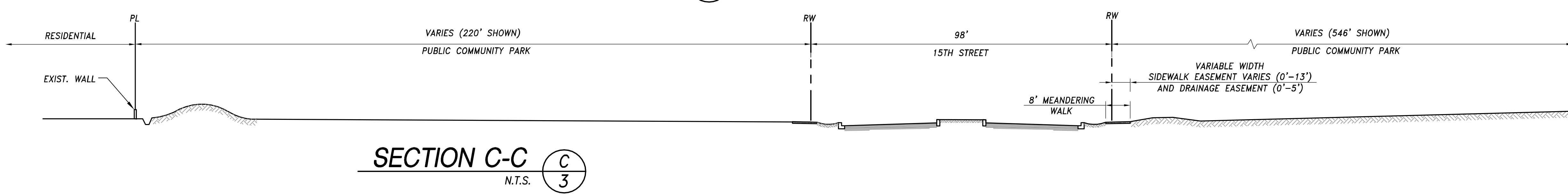


\* MATERIAL TO BE DETERMINED PRIOR TO FINAL DESIGN. DG TO BE CONSIDERED WHEN WALK IS ADJACENT TO PARKS OR OPEN SPACES

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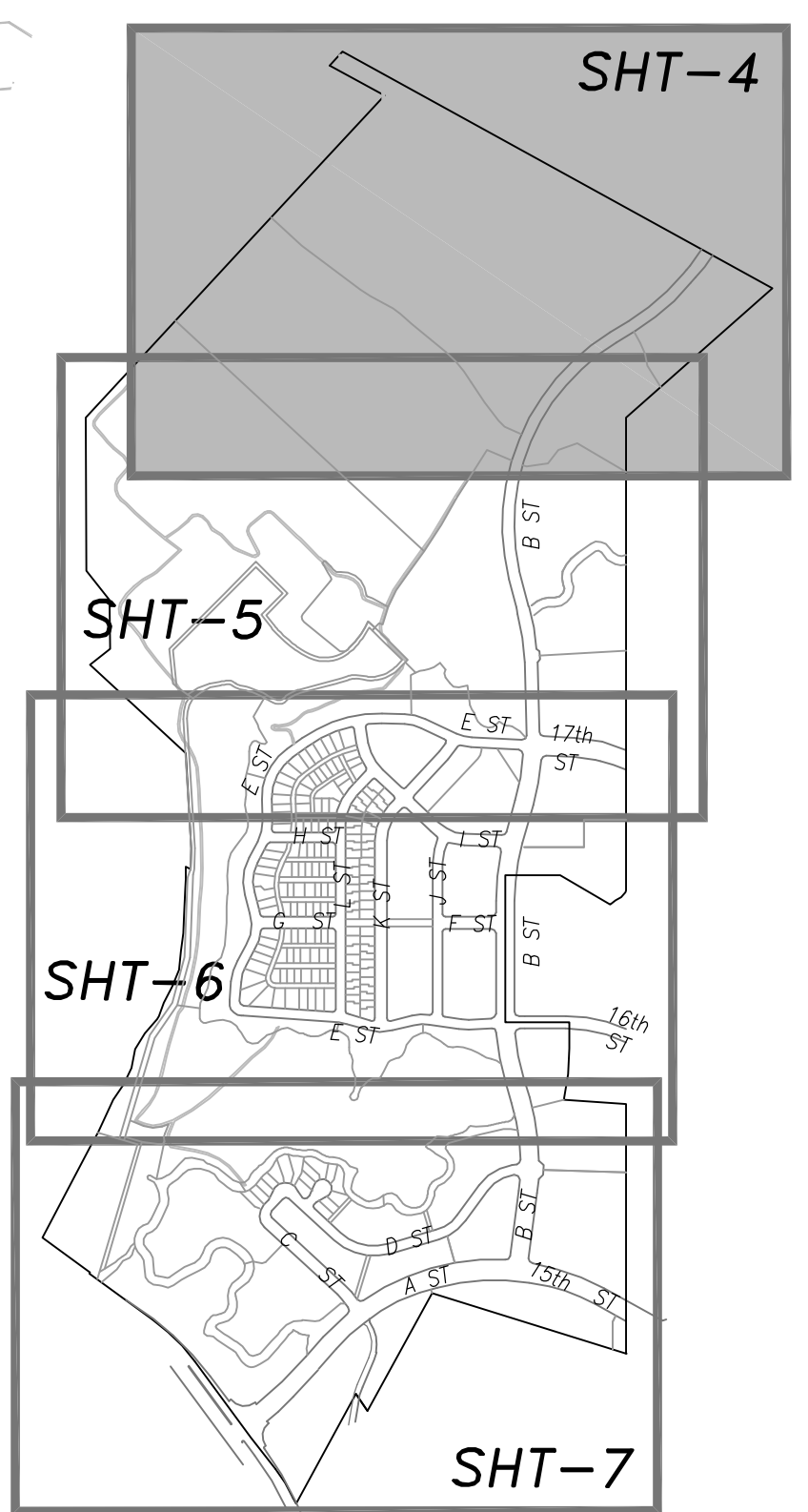
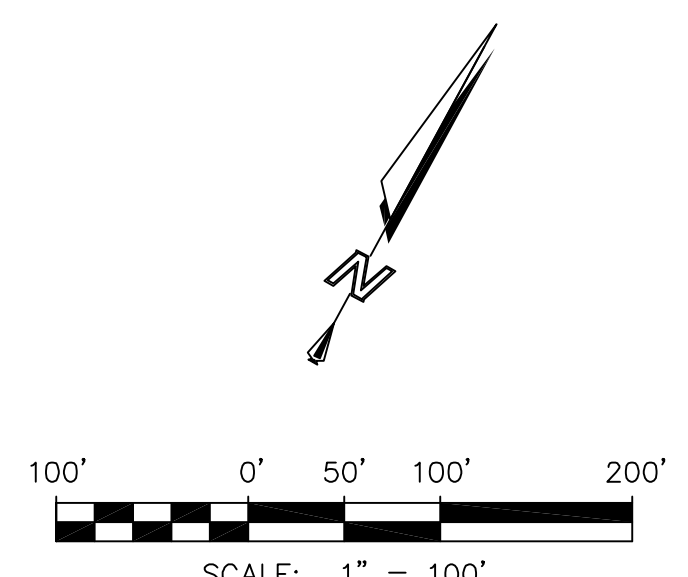
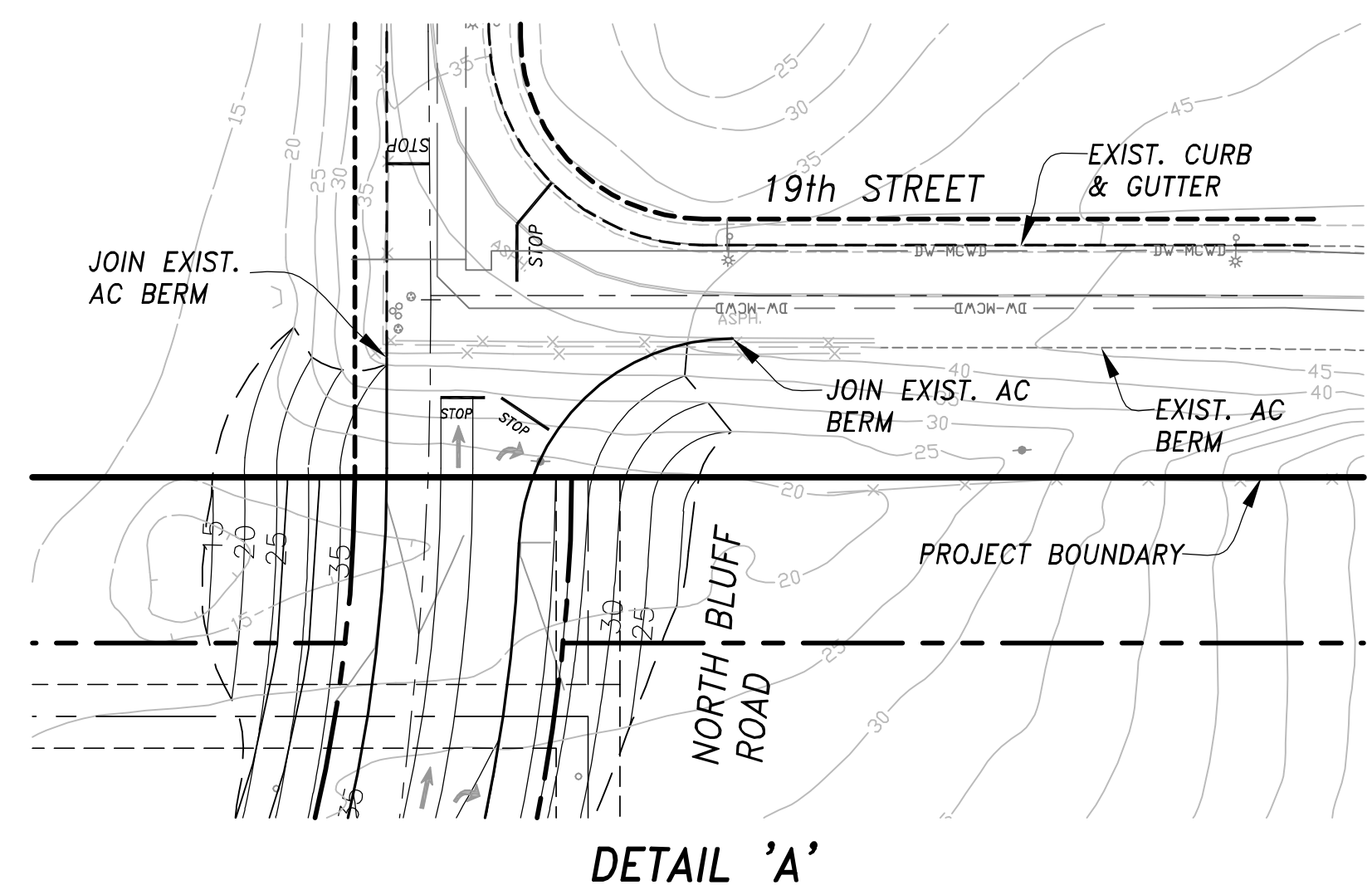
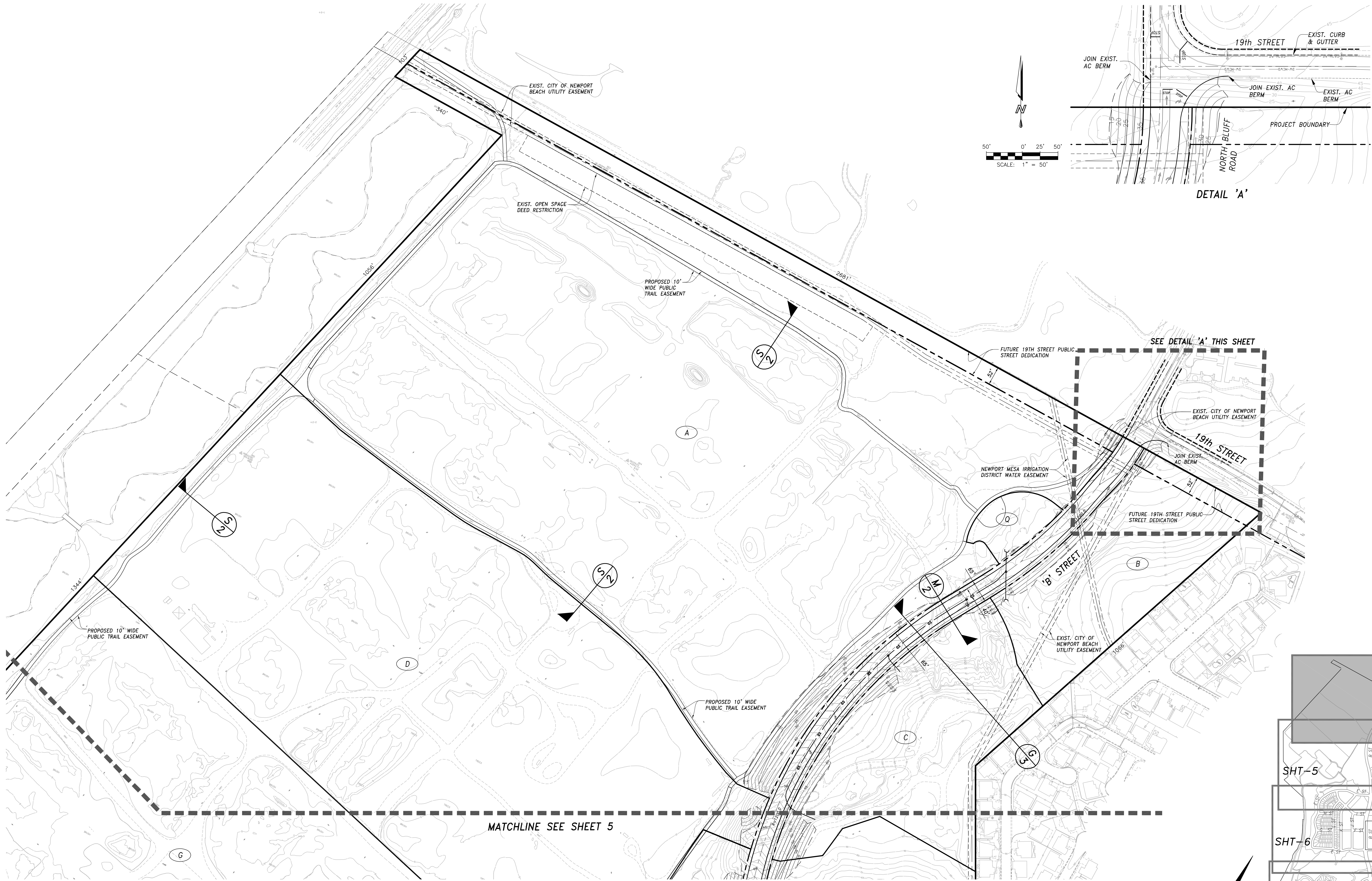


NOTE: REFER TO FIRE AND  
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FUEL MANAGEMENT ZONES  
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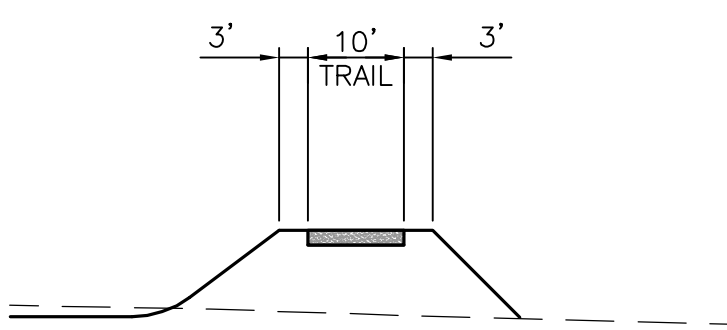
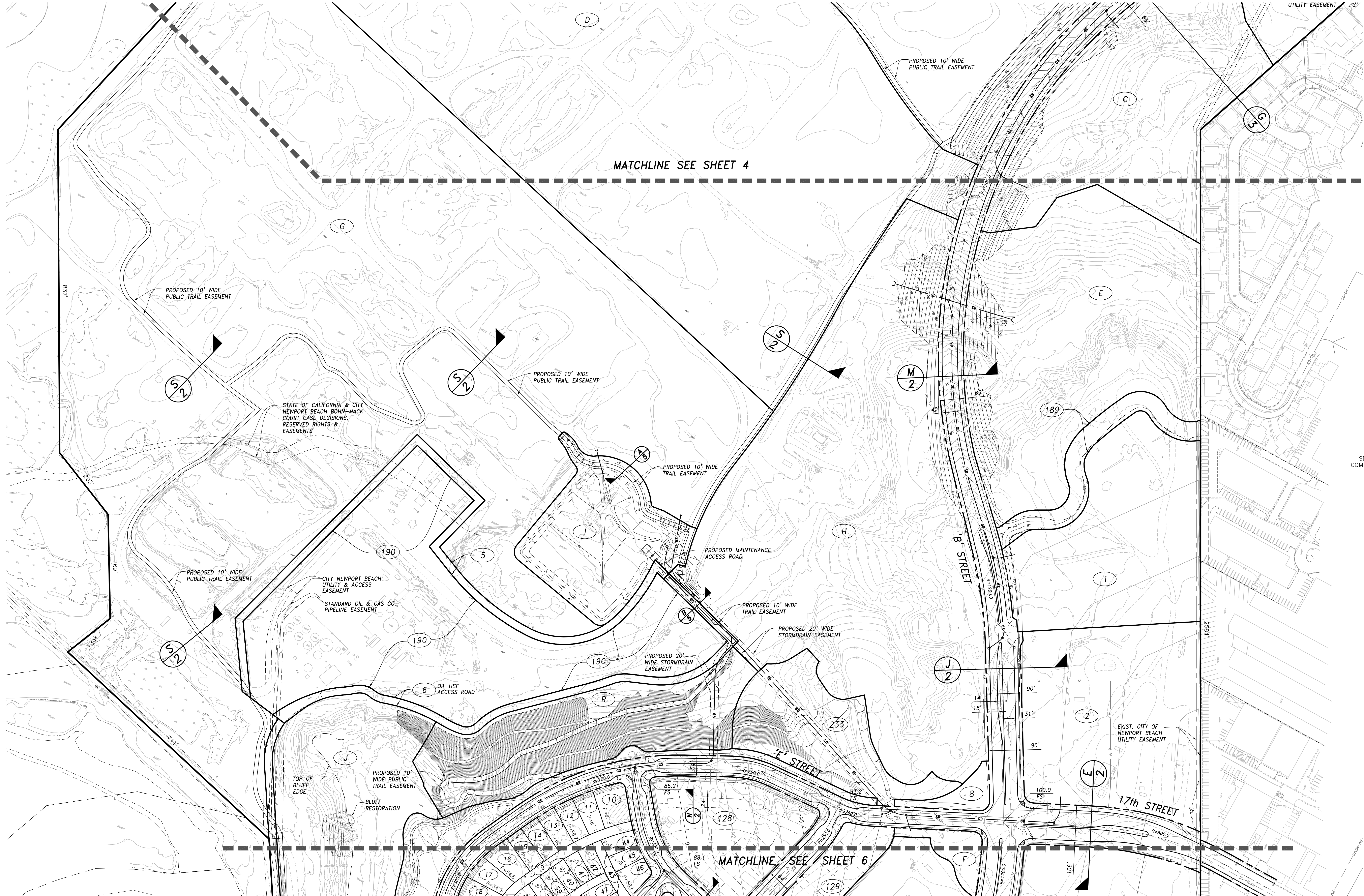
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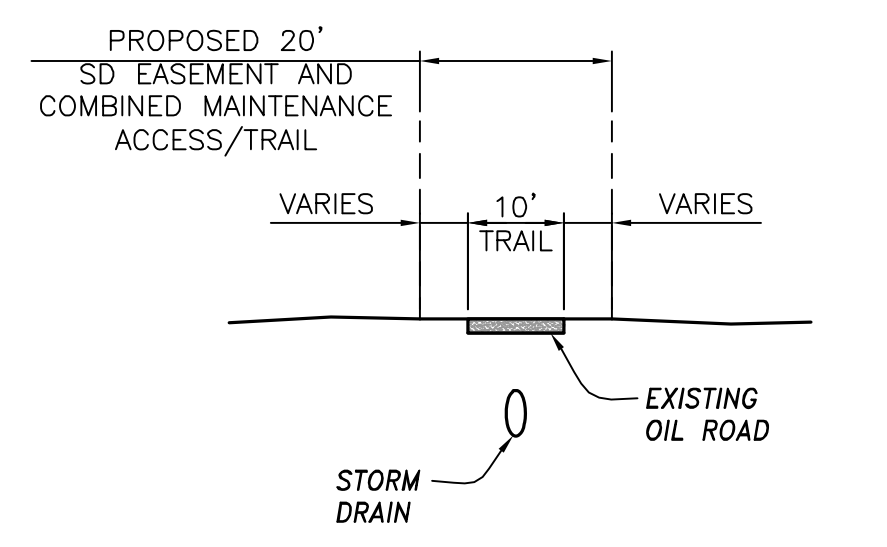


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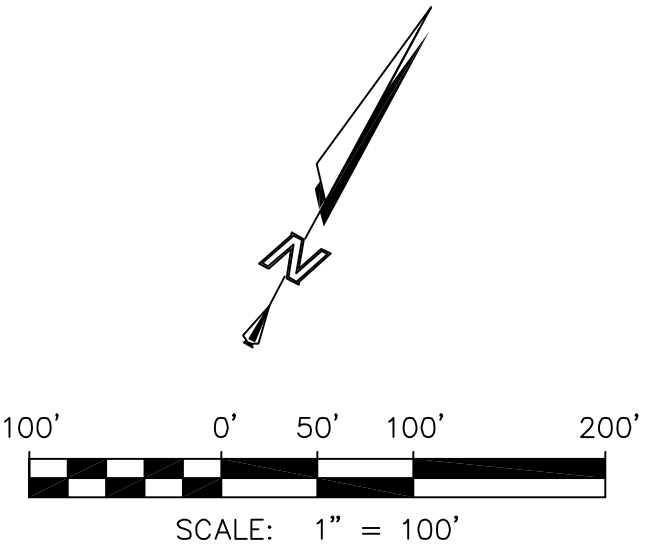
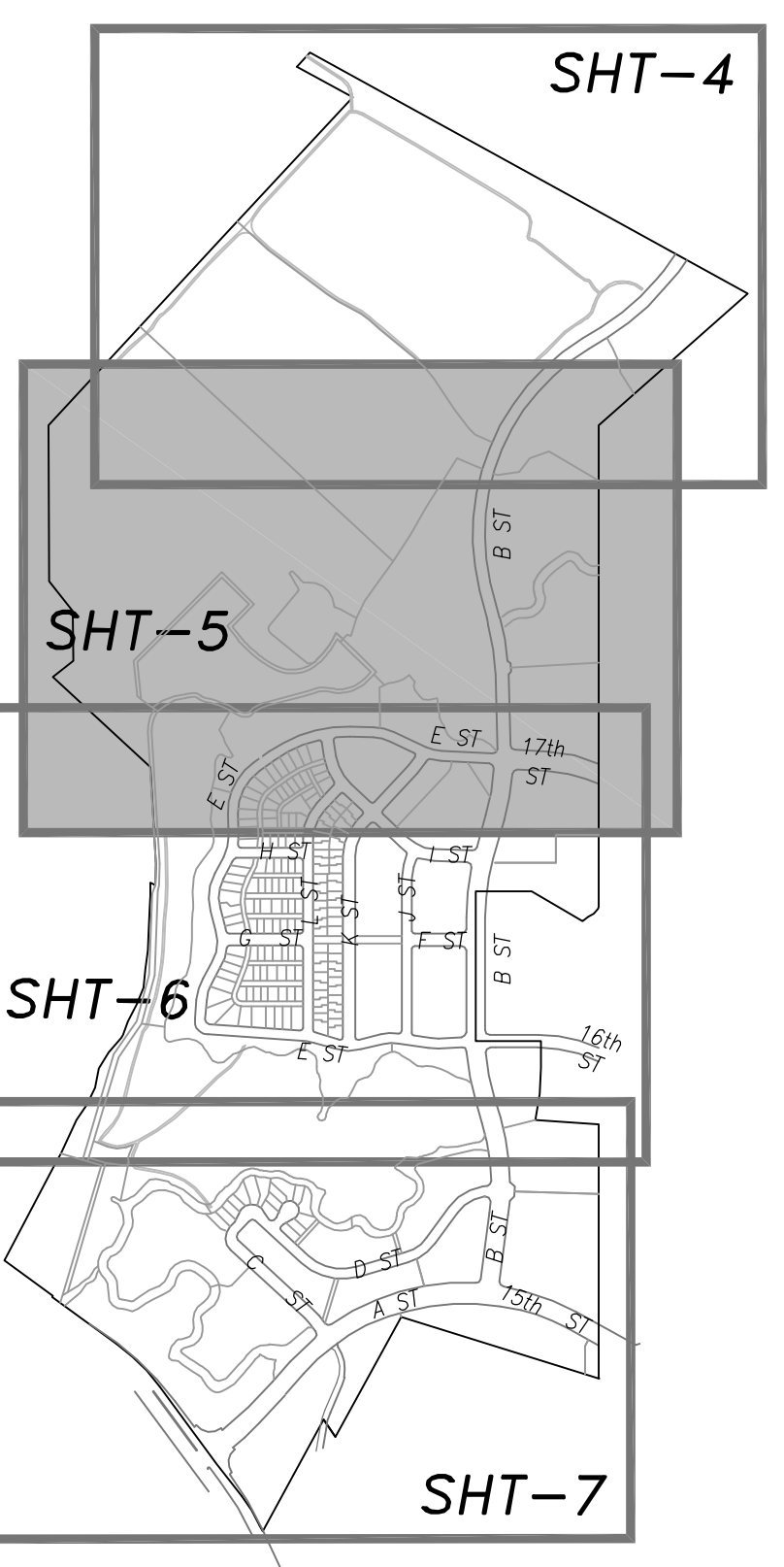




**SECTION A** A  
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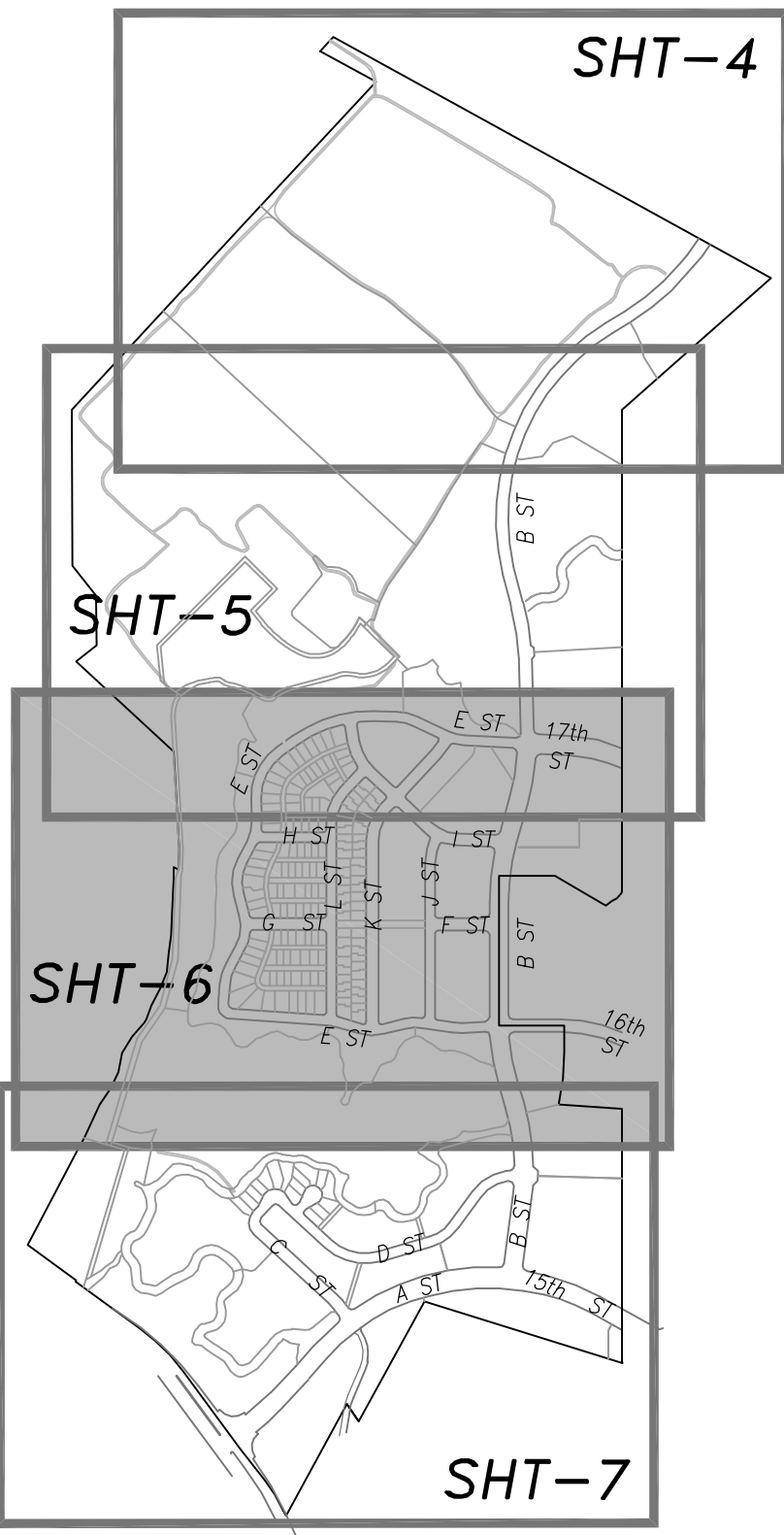
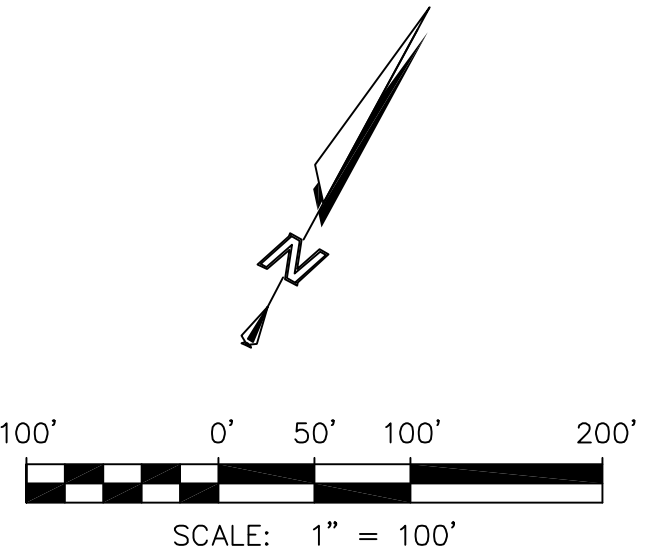
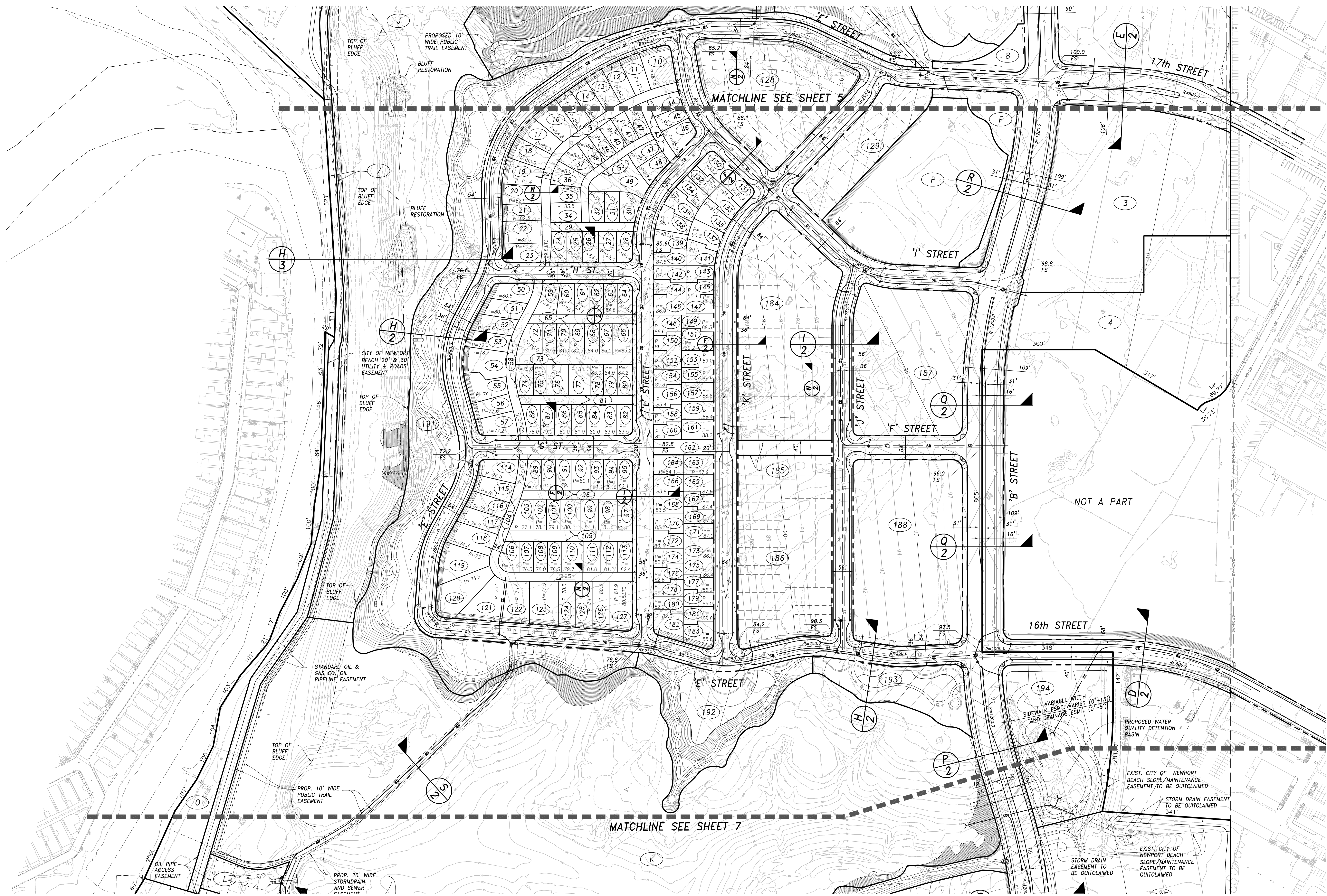


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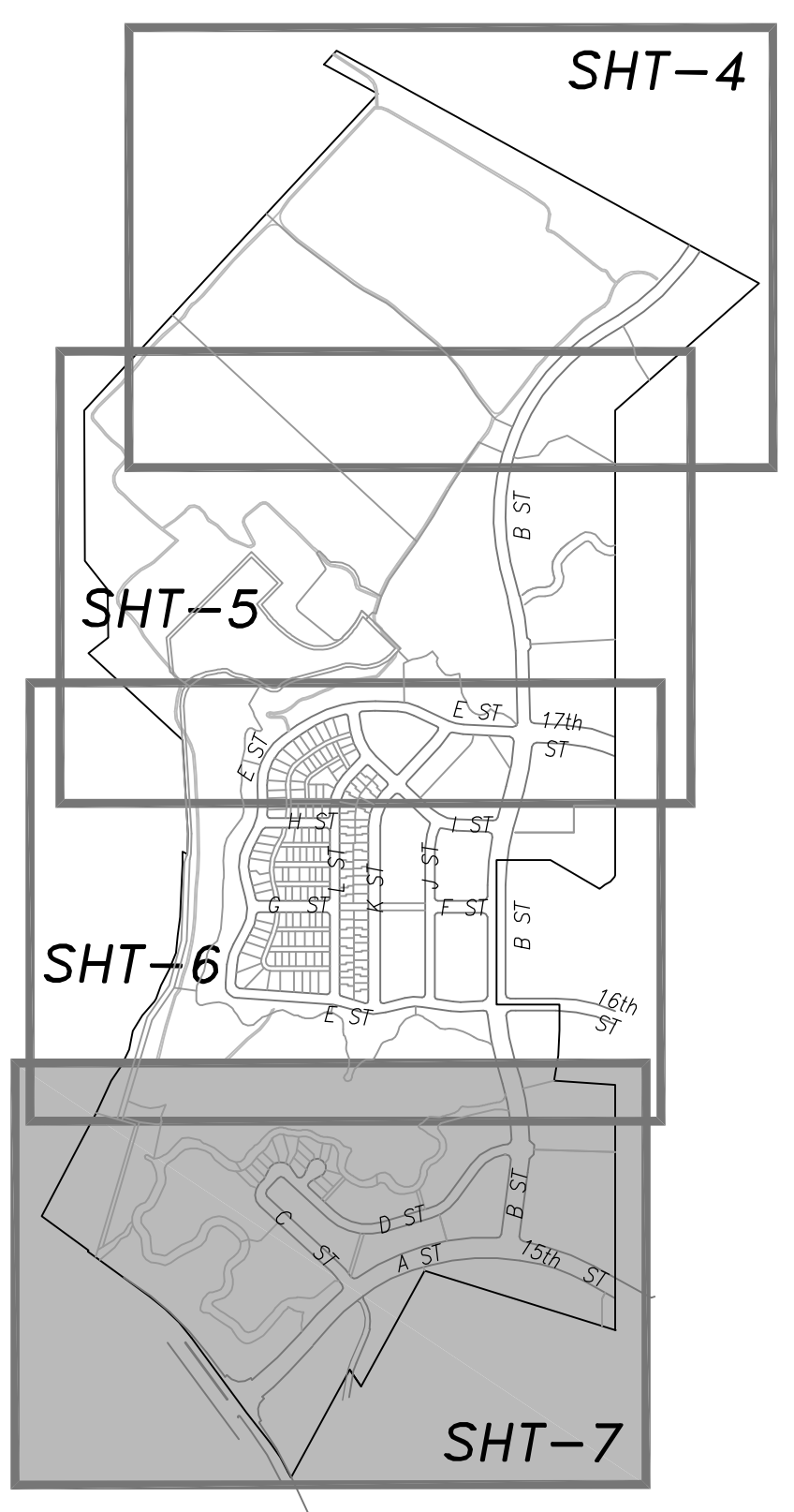
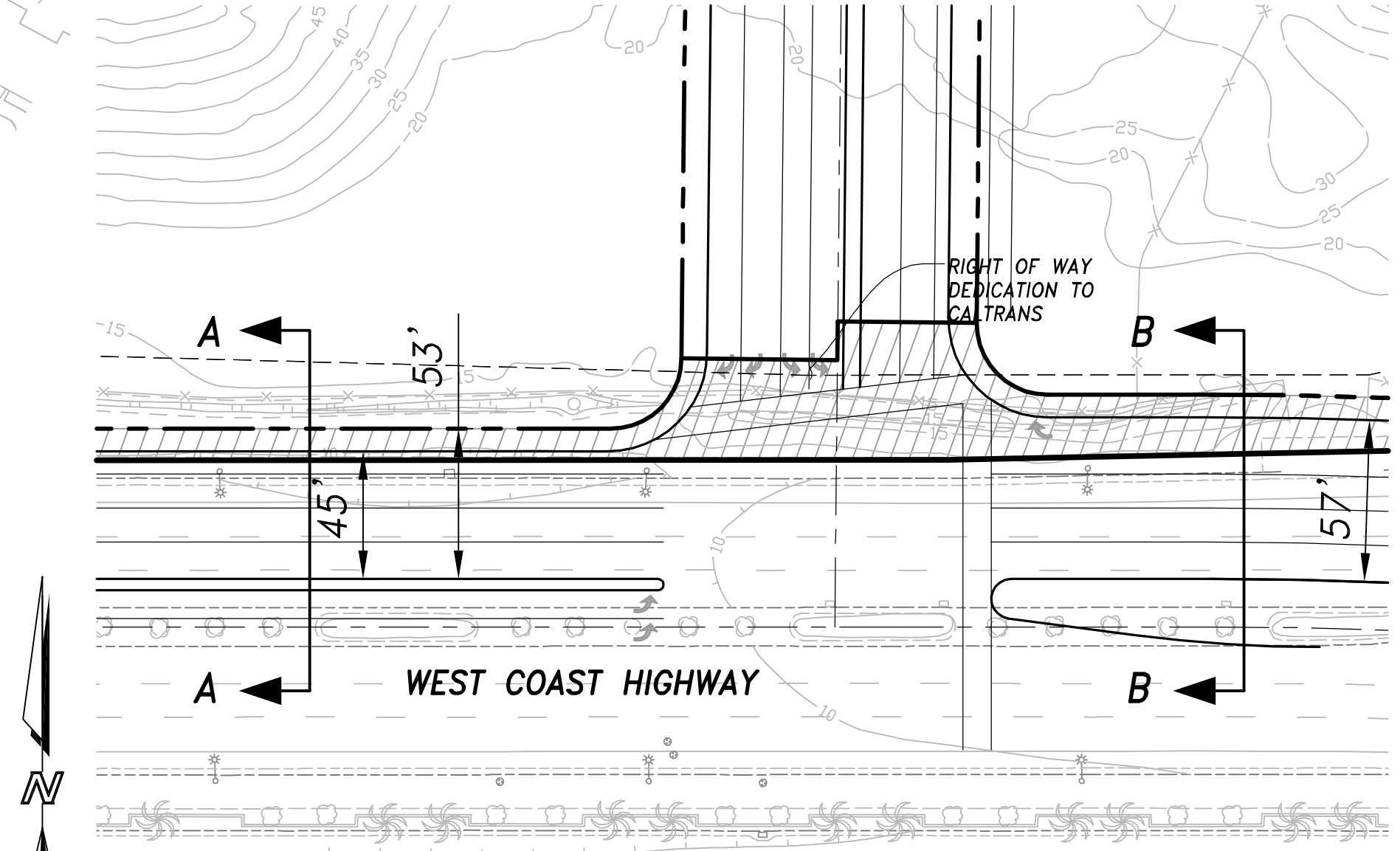
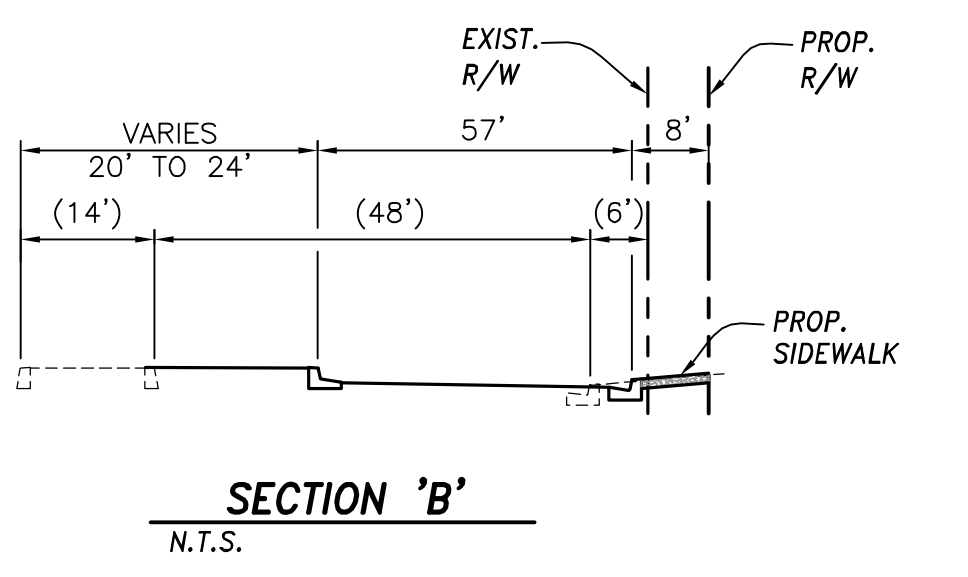
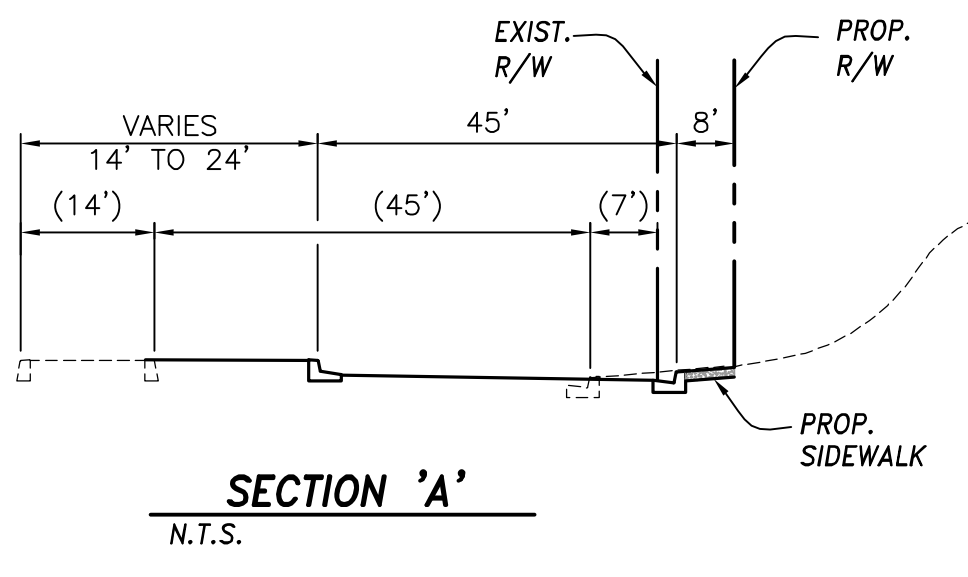
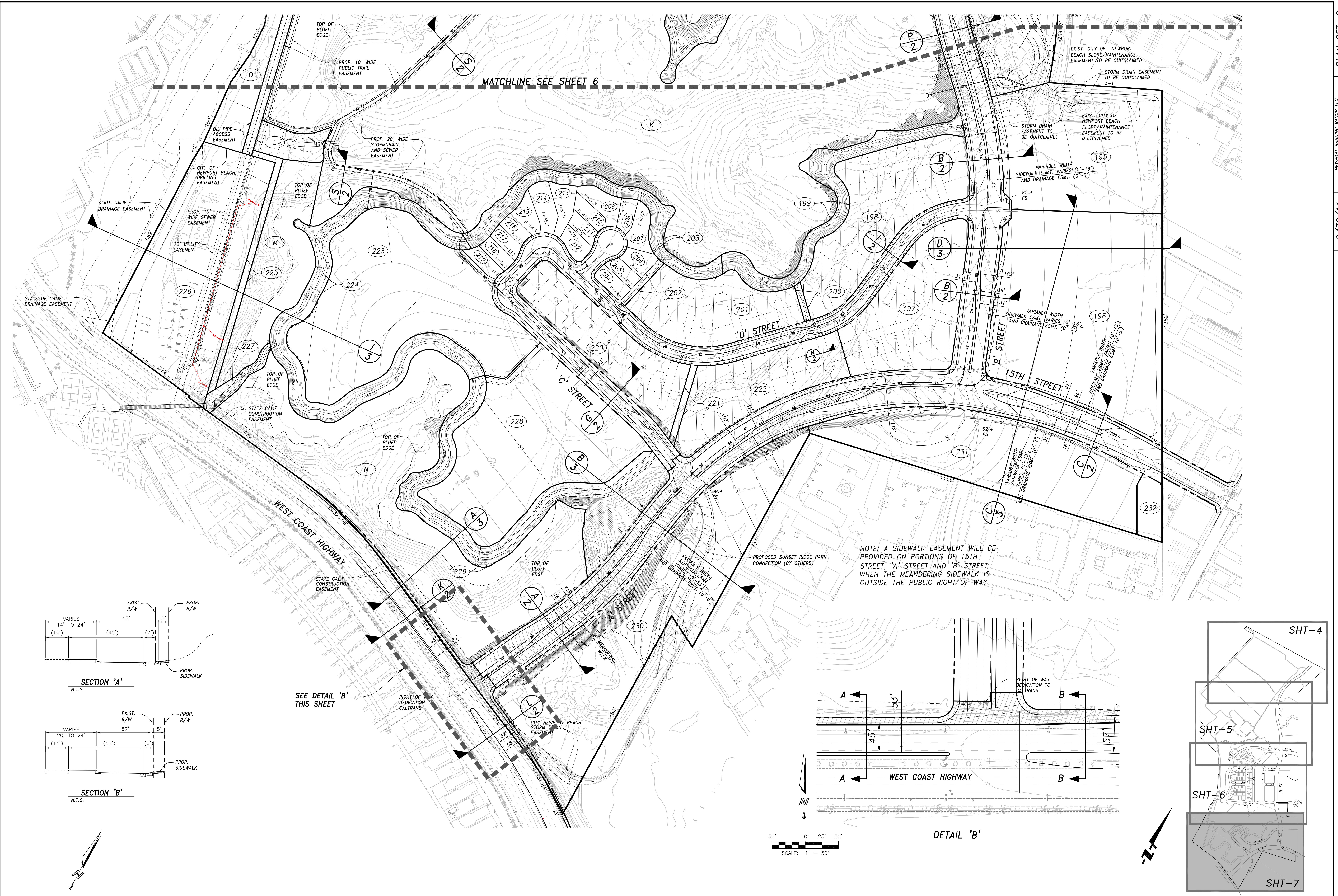
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## **CC 4 Exhibit F**

Tentative Tract Map Conditions of  
Approval



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Note:

*The following is a list of acronyms used in the Conditions of Approval for Tentative Tract Map No. 17308:*

- *DA – Development Agreement*
- *FEIR SCH No. 2009031061- Newport Banning Ranch Final Environmental Impact Report, State Clearinghouse Number 2009031061.*
- *MM – Mitigation Measure, project specific measures recommended by the FEIR and adopted as part of the approval of the project to reduce potentially significant environmental effects to a level considered less than significant and stated at the end of a condition as a reference between the condition and a mitigation measure recommended in the FEIR.*
- *MMRP – Mitigation Monitoring and Reporting Program, the monitoring and reporting procedures for the Mitigation Measures identified in the FEIR and adopted as part of project approval pursuant to Section 21081.6(a)(1) of the California Environmental Quality Act.*
- *NBMC – Newport Beach Municipal Code.*
- *NBR- Newport Banning Ranch.*
- *OCLAFCO- Orange County Local Agency Formation Commission, the agency responsible for reviewing and approving proposed jurisdictional boundary changes*
- *PDF – Project Design Feature, specific design elements proposed by the applicant that have been incorporated into the project to prevent the occurrence of, or reduce the significance of, potential environmental effects and stated at the end of a condition to reference a PDF in the FEIR.*
- *SC- Standard Condition, a condition of approval based on local, State, or federal regulations or laws that are frequently required independent of the California Environmental Quality Act review to offset or prevent specific impacts and stated at the end of a condition to reference a Standard Condition in the FEIR.*

General Conditions

1. City Council approval of Tentative Tract Map No. 17308 is in conjunction with its approval of Development Agreement No. DA2008-003 for the same project (the “DA”). Pursuant to Sections 2.2 and 2.4 of the DA and the terms used therein that are defined in Section 1 of the DA, the “Term” of the DA becomes effective on the “Effective Date” of the DA. Tentative Tract Map No. 17308 and the DA comprise parts of a single integrated action and are not severable from one another. Accordingly, notwithstanding any other provision set forth in Tentative Tract Map No. 17308 to the contrary, in no event shall the owner, lessee, or other occupant or any person or entity holding any interest in the subject property acquire any right to develop or use the subject property as authorized or provided herein unless and until the Effective Date in the DA occurs and the Term of the DA commences. In the event the DA is terminated for any reason before the Effective Date of the DA occurs, including without limitation as a result of the mutual termination of the DA by the

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Parties thereto, the occurrence of an uncured material default under the DA by either Party and a termination of the DA by the non-defaulting Party, or the failure of the Effective Date of the DA to occur prior to the deadline set forth in the DA, as said deadline may be extended by mutual agreement of the Parties to the DA, then in such event Tentative Tract Map No. 17308 automatically shall become null and void and of no further force or effect, without any need or requirement for the City to schedule any public hearings or take any affirmative action or actions to revoke or rescind the same.

2. Notwithstanding any provision expressly or impliedly to the contrary, in the event of any conflict or inconsistency between any of the terms or conditions of Tentative Tract Map No. 17308 and the DA, the terms and conditions of the DA shall control. In the event of any conflict or inconsistency between or among the conditions of Tentative Tract Map No. 17308, the Director of Community Development shall determine the controlling condition.
3. The applicant shall comply with all applicable provisions of NBMC Chapter 19.40, General Dedication Requirements.
4. The applicant shall comply with all applicable provisions of NBMC Chapter 15.38, Fair Share Traffic Contribution Ordinance, pursuant to the requirements of the Development Agreement.
5. The applicant shall comply with all applicable provisions of NBMC Chapter 15.40, Traffic Phasing Ordinance (TPO), but not limited to the following conditions:
  - a. Pursuant to NBMC Section 15.40.030(B)(2), construction of the TPO required traffic mitigation improvements shall be completed no more than 60 months from the date of final approval of the Project (as defined in General Condition 8, below). (PDF 4.9-2)
  - b. The traffic study as a part of FEIR SCH No. 2009031061 shall be valid for the duration of the term of the Development Agreement. This approval shall be deemed exercised by the issuance of a grading permit to construct the proposed project.
6. The applicant shall comply with all applicable provisions of NBMC Chapter 15.42, Major Thoroughfare and Bridge Fee Program.
7. The applicant shall comply with all applicable provisions of NBMC Chapter 19.44, General Reservation Requirements, including but not limited to the following conditions:
  - a. Subdividers are required to reserve sites, appropriate in area and location, for the North and Central Community Park including a water quality management basin, and other public facilities to be offered for dedication to the City including but not limited to roadways, water and sewer facilities, and storm drains. Subdividers are required to set aside sites appropriate in area and location for

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the open space preserve, the South Community Park, Bluff Parks, Interpretive Parks, trails, drainage devices for bluff restoration and protection, water quality management facilities, storm drains, water and sewer facilities, roadways, and other public facilities consistent with the NBR Planned Community Development Plan, NBR Master Development Plan, and the MMRP. The requirement is based on the adopted policies and standards for the above listed uses and facilities and the required reservations are in accordance with those policies and standards. (PDF 4.1-1, 4.1-2, 4.1-3, 4.1-4, 4.6-1, 4.8-1)

8. Tentative Tract Map No. 17308 shall expire 24 months from the date of approval pursuant to NBMC Chapter 19.16.010, which date of approval shall be the date of completion and approval of annexation of the project site to the City of Newport Beach by OCLAFCO, as set forth in Government Code Section 56658 and summarized in OCLAFCO's Project Processing Policies and Procedures Manual, unless:
  - a. A Final Map is recorded; or
  - b. An extension is otherwise granted by the City for the period of time provided for in the Development Agreement pursuant to the provisions of California Government Code 66452.6 (a).
9. The development of the project is subject to compliance with all applicable submittals approved by the City and all applicable City ordinances, policies, and standards, subject to modification by these Conditions of Approval.
10. Development of the project shall comply with the requirements of the NBR Planned Community Development Plan and be in substantial conformance with the approved NBR Master Development Plan and Tentative Tract Map 17308 dated June 30, 2011, except as modified by applicable conditions of approval and the DA. (PDF 4.1-5, 4.7-1, 4.8-1, PDF 4.9-1, PDF 4.9-3)
11. To the fullest extent permitted by law, the applicant shall indemnify, defend and hold harmless the City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to the City's approval of the Newport Banning Ranch project including, but not limited to, the approval of the Tentative Tract Map No. 17308, NBR Master Development Plan No. MP 2008-001, NBR Planned Community Development Plan No. PC 2008-002, General Plan Amendment No. GP2008-008, and/or the City's related California Environmental Quality Act determinations, the certification of the Final Environmental Impact Report SCH No. 2009031061, and the adoption of a Mitigation Monitoring and Reporting Program, and/or statement of overriding considerations adopted for the project. This indemnification shall include, but not be limited to, damages awarded against the City,

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if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by applicant, City, and/or the parties initiating or bringing such proceeding. The applicant shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. The applicant shall pay to the City upon demand, from time to time, any amount owed to the City pursuant to the indemnification requirements prescribed in this condition. The provisions herein shall not apply to the extent such damage, liability or claim is caused by the willful misconduct or sole active negligence of the City or the City's officers, officials, agents, employees, or representatives.

12. The applicant shall comply with all project design features, mitigation measures, and standard conditions contained within the approved MMRP of FEIR SCH No. 2009031061 for the project.
13. The applicant shall have the sole obligation to fund or arrange funding for the planning, design, engineering, construction, supervision, inspection and all other costs associated with site remediation, oil field consolidation, open space and habitat restoration, construction of the Community Park, Bluff Park, Interpretive Parks, and Open Space Interpretive Trails and all public infrastructure, as further described in subsequent conditions of approval, including but not limited to roads, water and sewer facilities, storm drain, and water quality management facilities including facilities to treat on-site and off-site flows, to serve residential, resort and commercial development and the open space preserve as defined within the NBR Master Development Plan.
14. Within 10 years following the completion of annexation of the project site into the City, all continuing surface oil operations shall be consolidated into Lots 190, 6,7, and 226 comprising the OF land use district as designated in the NBR Planned Community Development Plan. (PDF4.5-1)
15. New development within the project site shall be subject to the same General Obligation bond tax rate as already applied to other properties within the Newport-Mesa Unified School District for Measure F (approved in 2005) and Measure A (approved in 2000) based upon assessed value of the residential and commercial uses. (SC 4.14-7)
16. The applicant shall pay to the City upon demand, from time to time, a deposit in an amount acceptable to the Community Development Director for the preparation of documentation necessary to reconcile the NBR General Plan Amendment, NBR-Planned Community Development Plan, the NBR Master Development Plan, and Tentative Tract Map No. 17308 with the Newport Banning Ranch Coastal Development Permit. Documentation shall be in a form acceptable to the Director of Community Development and City Attorney, and said document shall be approved by the City prior to issuance of the first grading permit for the project.

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17. All improvements to Lots 194-196 (North Community Park) and Lots 231 and 232 (Central Community Park) shall be constructed by the applicant and approved by the City. Completion of these improvements shall be in accordance with the terms and schedule stated in the Development Agreement.
18. Prior to commencement of construction of the Central Community Park, the applicant shall seek approval from the Newport Crest Homeowners Association to install a gate at the terminus of the westerly sidewalk on Ticonderoga to provide pedestrian access from Newport Crest to a trail connection through the Central Community Park to the intersection of 15<sup>th</sup> Street/Bluff Road. Pursuant to approval by the Newport Crest Homeowners Association, the applicant shall modify or replace the existing fence at the terminus of Ticonderoga to provide secure pedestrian movement to and from Newport Crest.
19. Full width improvement of North Bluff Road from the northern boundary of Lot 1 to 19<sup>th</sup> Street and improvements to 19<sup>th</sup> Street from North Bluff Road to the easterly boundary of the project, as determined by the Director of Public Works, shall be constructed by the applicant and completed pursuant to the terms and schedule stated in the Development Agreement.

Prior to Final Map Approval

*Note: Multiple final Tract maps may be prepared by the applicant and submitted for approval by the City. Unless otherwise noted, conditions 20 through 27 apply to the project area included on the applicable map.*

20. Prior to Final Map approval the applicant shall obtain written verification of the availability of sufficient water supply from the City Municipal Operations Department consistent with the requirements of Section 66473.7 (b) of the Subdivision Map Act. The applicant shall provide a deposit of funds as identified by the Director of the Municipal Operations Department in an amount sufficient to cover the costs of any studies required by the Municipal Operations Department as part of the preparation of the written verification of water availability.
21. Prior to Final Map approval, the applicant shall submit for review by the Director of Community Development and shall obtain City Attorney approval of Covenants, Conditions and Restrictions (CC&Rs) prepared by an authorized professional and which generally provide for the following:
  - a. Creation of a Master Association, and/or Sub-associations, for the purpose of providing for control over and maintenance of common area improvements not otherwise offered for dedication to the City, which include but are not limited to the following unless otherwise approved by the Director of Public Works:

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Community walls and fencing, slopes, fuel modification zones within the interior of the tract, the South Community Park, bluff parks and interpretive parks including all park facilities, maintenance buildings and offices, trails and pedestrian paths within the bluff parks and interpretive parks, median and parkway landscaping and irrigation, pedestrian paseos and greenbelts, bioswales, common area landscaping, irrigation and sidewalks, exterior lighting, walls and fencing within the interior of the tract, off-street parking areas, trash areas and structures, private alleys, slope drains, sewer laterals, water laterals, private residential park and recreational facilities within the interior of the project, and reciprocal access areas within the cluster courtyard single family detached homes, multifamily attached homes, the resort inn and commercial uses.

- b. A statement that all homeowners and residents will be provided, upon purchase closing or signing of rental agreement, the information and requirements for water conservation pursuant to NBMC Chapter 14.16, Water Conservation and Supply Level Regulations. ( refer to SC 4.15-1)
- c. A statement that the Master Association and/or responsible Sub-Association will be responsible for funding the City's maintenance of the pedestrian bridge spanning West Coast Highway, if constructed.
- d. A statement that all homeowners be provided educational information upon purchase closing and annually after the close of escrow on mobile source emission reduction techniques, including but not limited to, alternative modes of transportation and use of zero or low emission vehicles. As part of this statement provisions shall be made that the Association provide to the Director of Community Development an annual report of conservation educational materials distributed to homeowners. (refer to MM 4.10-11)
- e. A statement that all homeowners shall be provided educational information upon purchase closing on the positive benefits of using consumer products with low or no-volatile organic compounds (VOCs) such as paint thinners and solvents.
- f. A statement that all homeowners be provided educational information upon purchase closing and annually thereafter regarding the energy saving benefits of using solar heating, automatic pool and spa covers, and efficient pumps and motors for pools and spas.
- g. A statement that all common area yards, pedestrian paseos, South Community Park, bluff parks, interpretive parks, median and parkway landscaping, greenbelts, bioswales, walls and fencing within the interior of the tract, off-street parking areas, fuel modification areas within the interior of the tract, trash areas, maintenance buildings and office structures, exterior lighting, sewer and water laterals, alleys, slopes, slope drains, reciprocal access areas within the cluster courtyard single family detached homes, multifamily attached homes, the resort inn and commercial uses and private residential park and recreation areas within the interior of the tract are private and shall be maintained by the Master Association, or Sub-Association(s) unless otherwise approved by the Director of Public Works.

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- h. A statement that the Association shall be required to advise residents that complaints about offensive odors may be reported to the City using the Quest online format on the City web site and/or to the South Coast Air Quality Management District at 1-800-CUT-SMOG (1-800-288-7664).
  - i. Information to be provided to homeowners on the established setback and height requirements for additions and accessory structures conforming to the requirements of the approved NBR Planned Community Development Plan.
  - j. A statement that all homeowners and residents within 100 feet of open space areas shall be provided written information upon close of purchase or signing of rental agreement, regarding the applicable requirements of Mitigation Measure MM 4.2-1 regarding the "dark sky" lighting program for the project. (PDF 4.6-4)
  - k. A statement indicating that Lots 8, 189,191-193,199, 203,224,227,229,230, 233, and Lettered Lot F shall be retained by deed restriction as designated public park in perpetuity and maintained by a Master Association, a Sub-Association and/or other approved and appropriate agency, and that no structures, development or encroachment shall be permitted within the designated park area except as shown on the Final Map, approved Site Development Review, approved landscape and park improvement plans, or as otherwise approved by the City.
  - l. Provisions that following recordation of each Final Map, each Association formed for the subdivision shall submit to the Director of Community Development a list of all current Officers of the Association.
  - m. A statement indicating that proposed amendments to the CC&Rs shall be submitted for review to the Director of Community Development or designee, and shall be approved by the City Attorney prior to the amendments being valid.
  - n. A statement that the City has the right, but not the obligation, to enforce any of the provisions of the CC&Rs.
  - o. An agreement between the applicant and the Association that on an annual basis by June 1 of each year reports will be furnished to the Director of Public Works in compliance with the reporting requirements of codes and ordinances adopted by the City with respect to the NPDES program.
  - p. A reference to the plan for maintenance of fuel modification zones in accordance with the approved Fire and Life Safety Program for the project.
22. Prior to Final Map approval the applicant shall reflect on the Final Map or prepare separate instruments to the satisfaction of the Director of Public Works all public access easements, deed restrictions or other instruments including but not limited to those providing for permanent public access to the open space interpretive trails including the Bluff Toe Interpretive Trail, the Southern Arroyo Interpretive Trail, the Upland Interpretive Trail, and the Lowland Interpretive Trail and those providing City access for maintenance of storm drains. (PDF 4.8-2)
23. Prior to Final Map approval, the applicant shall submit an open space management plan for approval by the Director of Community Development, for the long term funding and management of Lettered Lot Q, the Talbert Trailhead Interpretive Park, and the open space preserve within the Open Space District of the NBR Planned

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Community Development Plan which includes the right-of-way reservation for 19<sup>th</sup> Street, Lettered lots A through E, Lettered Lots G through P and R, and all public interpretive trail easements. The open space management plan shall also include provisions for the inclusion of Lots 6,7,190, and 226, which comprise the interim oil facilities area, at such time that oil operations on these lots cease and the lots are remediated and restored as permanent open space. The open space management plan shall identify all entities responsible for ownership, management and maintenance of the open space preserve and their credentials which qualify the entity as capable of management and maintenance of the open space preserve and able to implement all applicable mitigation measures identified in the MMRP. The open space management plan shall specify the timeline for commencement of implementation of the management plan by the management entity for the open space preserve. Approval by the City of the long term management plan is a condition precedent to recordation of a final map. (PDF4.6-2) The open space management plan shall include but not be limited to identification of funding, management responsibilities, and maintenance activities in perpetuity for but not limited to the following:

- a. Maintenance and periodic repair and replacement of park facilities in the Talbert Trailhead Interpretive Park, all open space interpretive trails, and associated appurtenances including but not limited to landscaping, restrooms, trail routes and surfaces, fences, benches and other facilities.
- b. Maintenance of all repaired and restored bluff slopes pursuant to the NBR Bluff Restoration Plan as described in the NBR Master Development Plan. (PDF 4.3-3)
- c. On-going habitat protection, restoration, and maintenance, including on-site supervision of trail and habitat areas by qualified personnel, operation of interpretive trails, signs and displays, and funding for any public outreach programs.
- d. Maintenance of drainage systems, water quality management systems, and other devices required to protect on-site habitat and water quality within the open space preserve. The drainage system maintenance program shall include a statement that prior to conducting any maintenance activities for the water quality treatment basin located in Lot I, the open space preserve management entity shall post a written notification of temporary trail closure dates and times at key points along the Upland Interpretive Trail to accommodate maintenance vehicles using the right of way adjacent to the trail. The written notice shall be posted at least 48 hours prior to the scheduled maintenance and shall state the hours and duration of the trail closure.
- e. Maintenance of fuel modification zones within the open space preserve in accordance with the NBR Fire and Life Safety Program approved for the project.
- f. The five year Maintenance and Monitoring Program for all restored habitat areas pursuant to the Standard Vegetation Monitoring Procedures outlined in the project FEIR SCH No. 2009031061. (PDF4.6-3)



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24. Prior to Final Map approval, the applicant shall pay all applicable development and Final Map fees associated with but not limited to Community Development Department, Public Works Department, and City Attorney review of CC&Rs, map and plan check, hydrology review, geotechnical and soils reports review, park improvement plan review, grading plan review, traffic and transportation, and construction inspection.
25. Prior to Final Map approval, the applicant shall submit to the Director of Community Development for review and shall obtain City Attorney approval of, a buyer's notification disclosure form, to be given to all buyers upon purchase closing, which indicates the location, if applicable, of any abandoned oil production facility within 10 feet of the residential lot and the existence, operations, and characteristics of continuing oil production activities within the boundaries of the project as well as notification of potential exposure to nuisance, noise, risk of upset and hazards, and/or objectionable odors of continued oil production activities.
26. Prior to Final Map approval for residential, resort, and/or commercial development the applicant shall provide separate labor and material improvement bonds or irrevocable letters of credit in a form and amount acceptable to the Director of Public Works for 100% of estimated improvement cost, as prepared by a Registered Civil Engineer and approved by the Director of Public Works, for each, but not limited to, the public and private improvements for the each of the following separately:
  - a. Street improvements, monuments, sidewalks, traffic signal, striping and signage, trail and park improvements, street lights, sewer systems, water systems, storm drain and water quality management systems, erosion control landscaping and irrigation in public rights of way, private slopes and common area recreational areas, and off-site improvements required as part of the project.
27. Prior to Final Map approval, the applicant shall complete geotechnical trenching and field investigations, consistent with all adopted state codes in effect at the time, by a qualified geologist, and shall submit a geotechnical report for review and approval by the Director of Community Development to confirm the adequacy of any proposed project development fault setback limits in accordance with the mandates of the Alquist-Priolo Earthquake Fault Zoning Act. (MM 4.3-2)

Prior to Recordation of Final Map

*Note: Multiple Final Maps may be prepared by the applicant and submitted for approval by the City. Unless otherwise noted, conditions 28 through 34 apply to the project area included on the applicable map.*

28. Prior to recordation of the Final Map(s), the applicant shall submit for review, and shall obtain County Surveyor approval of, a digitized map pursuant to applicable Orange County ordinance. The applicant shall pay for all costs of said digital

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submittals, including supplying digital copies to the City of the final County Surveyor approved digital map.

29. Prior to recordation of the Final Map, the applicant shall make an irrevocable offer of dedication of all fire protection access easements consistent with Tentative Tract Map 17308, to the City of Newport Beach.
30. Prior to recordation of the Final Map, the applicant shall submit for review and shall obtain the Director of Public Works approval of all utility maintenance easements and make an irrevocable offer of dedication of the appropriate easements to the City of Newport Beach.
31. Prior to applicable Final Map recordation the applicant shall provide documentation of acquisition or option to acquire the full right of way width of North Bluff Road between 16<sup>th</sup> Street and the southerly boundary of Lot 2 and of 16<sup>th</sup> Street between North Bluff Road and the easterly boundary of the project as identified on Tentative Tract Map No. 17308.
32. Prior to applicable Final Map recordation, the applicant shall either provide documentation of acquisition or option to acquire adequate right of way width of 15<sup>th</sup> Street from the easterly project boundary to a point east of the project boundary, as determined by the Director of Public Works or shall enter into an agreement with City pursuant to the terms of the DA for the City's acquisition of the right-of-way and applicant's payment of the entire cost of acquisition.
33. Prior to Final Map recordation the applicant shall provide an irrevocable offer of dedication to the City for the following as identified on Tentative Tract Map No. 17308:
  - a. Full right of way for Bluff Road and North Bluff Road from West Coast Highway to the northern boundary of Lot 1, right of way adjacent to the project site at West Coast Highway, and the full right of way for 15<sup>th</sup> Street, 16<sup>th</sup> Street, and 17<sup>th</sup> Street within the project boundaries.
  - b. Partial right of way as determined by the Director of Public Works for North Bluff Road from the northern boundary of Lot 1 to 19<sup>th</sup> Street (from North Bluff Road to the eastern terminus of the existing roadway.)
  - c. Lots 231 and 232 (Central Community Park), and Lots 194-196 (North Community Park).
34. Prior to applicable Final Map recordation the applicant shall establish right way reservations as identified on Tentative Tract Map No. 17308 for the southerly half section of 19<sup>th</sup> Street from the Santa Ana River to the eastern terminus of the existing roadway.

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Prior to Issuance of Demolition or Grading Permits

*Note: Grading permits as noted in this section do not apply to grading activities required for oil field remediation.*

35. Prior to the issuance of grading permits, the applicant shall pay any unpaid City administrative costs and unpaid costs incurred by City retained consultants associated with the processing of this application to the City.
36. Prior to issuance of grading permits for improvements permitted by the Director of Community Development to commence pursuant to approval of Tentative Tract Map No. 17308, the applicant shall provide separate labor and material improvement bonds or irrevocable letters of credit in a form and amount acceptable to the Director of Community Development for 100% of estimated grading cost, as prepared by a Registered Civil Engineer and approved by the Director of Community Development.
37. Prior to the issuance of grading permits the applicant shall pay all applicable City fees which may include but are not limited to map and plan check, water connection, sewer connection, hydrology review, geotechnical and soils reports review, grading plan review, traffic and transportation, and construction inspection.
38. Prior to the issuance of grading permits, the City of Newport Beach shall be provided the authority by the County of Orange to issue grading permits in the unincorporated area of the project site. If said authorization is not provided to the City, prior to issuance of grading permits, the annexation of the unincorporated area of the project site to the City of Newport Beach shall be completed and approved by OCLAFCO as set forth in Government Code Section 56658 and summarized in OCLAFCO's Processing Policies and Procedures Manual.
39. Prior to the issuance of grading permits the applicant shall obtain all necessary permits required by the California Coastal Commission pursuant to the requirements of the California Coastal Act.
40. Prior to the issuance of grading permits the applicant shall demonstrate to the satisfaction of the Director of Community Development that consultation with the U.S. Fish and Wildlife Service has been completed.
41. Prior to the issuance of grading permits within areas subject to the jurisdiction of the California Department of Fish and Game, the applicant shall demonstrate to the satisfaction of the Director of Community Development that a Section 1600 Streambed Alteration Agreement, pursuant to Section 1602 of the California Fish and Game Code, has been obtained.

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42. Prior to the issuance of grading permits within areas subject to the jurisdiction of the US Army Corps of Engineers, the applicant shall demonstrate to the satisfaction of the Director of Community Development that a Section 404 permit has been obtained.
43. Prior to the issuance of grading permits within areas subject to the jurisdiction of the Santa Ana Regional Water Quality Control Board, the applicant shall demonstrate to the satisfaction of the Director of Community Development that the Santa Ana Regional Water Quality Control Board has issued a Water Quality Certification pursuant to Section 401 of the federal Clean Water Act.
44. Prior to the issuance of demolition or grading permits, whichever is first, the applicant shall demonstrate to the satisfaction of the Director of Community Development that the Orange County Health Care Agency (OCHCA) has approved a final Remedial Action Plan for the project with the concurrence of the Regional Water Quality Control Board-Santa Ana Region.
45. Prior to the issuance of grading permits within Caltrans right of way, the applicant shall demonstrate to the satisfaction of the Director of Public Works that all Caltrans encroachment permits have been obtained for the widening and improvement of West Coast Highway as indicated on Tentative Tract Map No. 17308.
46. Prior to the issuance of grading permits the applicant shall demonstrate to the satisfaction of the Director of Public Works that all existing survey monuments are located in the field in compliance with AB 1414 for restoration by the Registered Civil Engineer or Land Surveyor in accordance with Section 8771 of the Business and Professions Code.
47. Prior to the issuance of grading permits the limits of grading shown on Tentative Tract Map No. 17308 must be verified by a Geotechnical Engineer. Grading shall not be permitted to extend beyond the limits as indicated on Tentative Tract Map No. 17308 without approval of the Director of Community Development.
48. Prior to issuance of grading permits a list of "good housekeeping" practices, consistent with the approved Water Quality Management Plan, shall be submitted by the contractor for incorporation into the long-term post-construction operation of the site to minimize the likelihood that pollutants would be used, stored, or spilled on the site that could impair water quality. These may include frequent parking area vacuum truck sweeping, removal of wastes or spills, limited use of harmful fertilizers or pesticides, and the diversion of storm water away from potential sources of pollution (e.g., trash receptacles and parking structures). The WQMP shall list and describe all structural and non-structural BMPs. In addition the WQMP must also identify the entity responsible for the long term inspection, maintenance, and funding for all structural (and if applicable treatment-control) BMPs.(SC 4.4-5)
49. Prior to issuance of grading permits, the applicant shall submit documentation in a form and of a content determined by the Director of Community Development that any

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hazardous contaminated soils or other hazardous materials removed from the project site shall be transported only by a Licensed Hazardous Waste Hauler to approved hazardous materials disposal site, who shall be in compliance with all applicable State and federal requirements, including the U.S. Department of Transportation regulations under 49 CFR (Hazardous Materials Transportation Act), California Department of Transportation (Caltrans) standards, Occupational Safety and Health Administration (OSHA) standards, and under 40 CFR 263 (Subtitle C of Resource Conservation and Recovery Act). The Director of Community Development shall verify that only Licensed Haulers who are operating in compliance with regulatory requirements are used to haul hazardous materials. (SC 4.5-2)

50. Prior to the issuance of any grading permits, the Director of Community Development shall review the grading plan for conformance with the grading shown on the approved tentative map. The grading plans shall be accompanied by geological and soils engineering reports and shall incorporate all information as required by the City. Grading plans shall indicate all areas of grading, including remedial grading, and shall extend to the limits outside of the boundaries of an immediate area of development as required by the City. Grading shall be permitted within and outside of an area of immediate development, as approved by the City, for the grading of public roads, highways, park facilities, infrastructure, and other development-related improvements. Remedial grading for development shall be permitted within and outside of an immediate development area, as approved by the City, to adequately address geotechnical or soils conditions. Grading plans shall provide for temporary erosion control on all graded sites scheduled to remain unimproved for more than 30 days. Grading plans shall incorporate contour grading techniques to minimize impacts to existing public view points from West Coast Highway. (PDF 4.2-1) If the applicant submits a grading plan that deviates from the grading shown on the approved tentative map (specifically with regard to slope heights, slope ratios, pad elevations or configurations), as determined by the Director of Community Development, the Director of Community Development shall review the plan for a finding of substantial conformance. If the Director of Community Development finds the plan not to be in substantial conformance, the applicant shall process a revised tentative map or, if a final map has been recorded, the applicant shall process a new tentative map. A determination of CEQA compliance shall also be required. (SC 4.3-1)
51. Prior to issuance of grading permits the applicant shall provide evidence satisfactory to the Director of Community Development, that the applicant shall provide for monitoring of grading activities to comply with Section 7050.5 of the *California Health and Safety Code*, regarding the discovery of human remains. If human remains are found, the County Coroner shall be notified within 24 hours of the discovery. No further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains shall occur until the County Coroner has determined, within two working days of notification of the discovery, the appropriate treatment and disposition of the human remains. If the County Coroner determines that the remains are or are believed to be Native American, s/he shall notify the Native American Heritage Commission (NAHC) in Sacramento within 24 hours. In accordance with

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Section 5097.98 of the *California Public Resources Code*, the NAHC must immediately notify those persons it believes to be the most likely descended from the deceased Native American. The designated Native American representative shall complete their inspection within 48 hours of being granted access to the site. The designated Native American representative would then make recommendations to the applicant on the disposition of the human remains. (SC4.13-1)

52. Prior to the issuance of the first grading permit and/or action that would permit project site disturbance, the applicant shall provide written evidence to the Director of Community Development that the applicant has retained a qualified Archaeologist to observe grading activities and to salvage and catalogue archaeological and historic resources, as necessary. The Archaeologist shall be present at the pre-grade conference; shall establish procedures for archaeological resource surveillance; and shall establish, in cooperation with the applicant, procedures for temporarily halting or redirecting work to permit the sampling, identification, and evaluation of the artifacts, as appropriate. If archaeological and/or historic resources are found to be significant, the Archaeologist shall determine appropriate actions, in cooperation with the City and applicant, for exploration and/or salvage. These actions, as well as final mitigation and disposition of the resources, shall be subject to the approval of the Director of Community Development. Based on their interest and concern about the discovery of cultural resources and human remains during project grading, a qualified Native American Monitor(s) shall be retained to observe the grading activities for which an archaeological monitor is present. Nothing in this condition precludes the retention of a single cross-trained observer who is qualified to monitor for both archaeological and paleontological resources. (MM 4.13-1)
53. Prior to the issuance of the first grading permit and/or action that would permit project site disturbance, the applicant shall provide written evidence to the Director of Community Development that the applicant has retained a qualified Paleontologist to observe grading activities and to conduct salvage excavation of paleontological resources as necessary. The Paleontologist shall be present at the pre-grading conference; shall establish procedures for paleontological resources surveillance; and shall establish, in cooperation with the City, procedures for temporarily halting or redirecting work to permit the sampling, identification, and evaluation of the fossils as appropriate. Any earth-moving activity associated with development, slope modification, or slope stabilization that requires moving large volumes of earth shall be monitored according to the paleontological sensitivity of the rock units that underlie the affected area. All vertebrate fossils and representative samples of megainvertebrates and plant fossils shall be collected. Productive sites that yield vertebrates should be excavated, and approximately 2,000 pounds (lbs) of rock samples should be collected to be processed for microvertebrate fossil remains. If any scientifically important large fossil remains are uncovered during earth-moving activities, the Paleontologist shall divert heavy equipment away from the fossil site until s/he has had an opportunity to examine the remains. If warranted, a rock sample shall be collected for processing. The Paleontologist shall be equipped to rapidly

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remove fossil remains and/or matrix (earth), and thus reduce the potential for any construction delays. If scientifically important fossil remains are observed and if safety restrictions permit, the Construction Contractor shall allow the Paleontologist to safely salvage the discovery. At the Paleontologist's discretion, the Grading Contractor may assist in the removal of the fossil remains and rock sample to reduce any construction delays. All fossils shall be documented in a detailed Paleontological Resource Impact Mitigation Report. Fossils recovered from the field or by processing shall be prepared; identified; and, along with accompanying field notes, maps and photographs, accessioned into the collections of a designated, accredited museum such as the Natural History Museum of Los Angeles County (LACM) or the San Diego Natural History Museum. Because of slope modification, fossil-bearing exposures of the Quaternary marine deposits may be destroyed. If feasible, a few stratigraphic sections with fossil-bearing horizons shall be preserved for educational and scientific purposes. (MM 4.13-3)

54. Prior to the issuance of the first grading permit and/or action that would allow for project site disturbance, the applicant shall provide written evidence that a paleontological survey has been conducted pursuant to the requirements of Mitigation Measure 4.13-4 of the FEIR..(MM 4.13.-4)
55. Prior to the issuance of the first grading permit and/or action that would permit project site disturbance, the applicant shall provide evidence to the City of Newport Beach Police Department that a construction security service or equivalent service shall be established at the construction site along with other measures, as identified by the Police Department and the Public Works Department, to be instituted during the grading and construction phase of the project. (SC4.14-5)
56. Prior to issuance of applicable grading permits the applicant shall submit for review and approval by the Director of the Municipal Operations Department, a 1"=200' Utilities Master Plan prepared by a Registered Civil Engineer consistent with the NBR Master Development Plan showing all existing and proposed public and private sewer pump stations, force mains, laterals, mains and manholes, domestic water service facilities including gate and butterfly valves, pressure reducing stations, pressure zones, fire hydrants, meters, storm drain facilities to include storm drain mains, laterals, manholes, catch basins, inlets, detention and retention basins, water quality basins and energy dissipaters, outlets, pipe sizes, pipe types fiber optics, electricity, gas and telephone/telecommunications and any other related facilities as identified by the Director of the Municipal Operations Department. The Master Utilities Plan shall provide for the following:
  - a. All public utilities shall be constructed within dedicated public rights of way and/or easements or as approved by the Director of Public Works.
  - b. The water quality basin and diffuser basin within the development as described on lots I and L respectively shall be maintained by the entity identified in the open space management plan. The water quality basin within the Community

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Park as described on lot 194 shall be constructed as part of the Community Park, offered for dedication to the City as part of the Community Park, and upon acceptance by the City shall be publicly maintained.

- c. Domestic water plans shall be designed to take advantage of existing City of Newport Beach water transmission facilities that connect to the project site to minimize off-site impacts. (PDF4.15-3)
  - d. Domestic water plans shall provide a level of redundancy by making a connection between the City of Newport Beach Zone 1 and Zone 2 water lines. (PDF 4.15-2)
57. Prior to issuance of applicable grading permits the applicant shall submit a Park and Trails Implementation Plan to be reviewed and approved by the Director of Community Development, Director of Public Works, and Recreation and Senior Services Director. The Park and Trails Implementation Plan shall include at a minimum:
- a. Community Park Improvement Plans for the North and Central Community Park.
  - b. A project schedule describing the sequencing of construction of park and trail improvements and the timing for the design, construction, and dedication or recordation of public easements of all parks and trails within the project.
58. Prior to issuance of applicable grading permits, the applicant shall submit a construction management and delivery plan for each phase of construction to be reviewed and approved by the Director of Public Works. Upon approval of the plan, the applicant shall be responsible for implementing and complying with the stipulations set forth in the approved plan. (SC 2.12-1) The construction management plan shall include, at a minimum, the following:
- a. Construction phasing plan.
  - b. Parking plan for construction vehicles and plan for equipment storage.
  - c. Construction area traffic management plan for the project for the issuance of a haul route permit. The traffic management plan shall be designed by a registered Traffic Engineer. The traffic management plan shall identify construction phasing and address traffic control for any temporary street closures, detours, or other disruptions to traffic circulation and public transit routes. The traffic management plan shall identify the routes that construction vehicles shall use to access the site, the hours of construction traffic, traffic controls and detours, vehicle staging areas, and parking areas for the project. Advanced written notice of temporary traffic disruptions shall be provided to emergency service providers and the affected area's businesses and the general public. This notice shall be provided at least two weeks prior to disruptions. The applicant shall ensure that construction activities requiring more than 16 truck (i.e., multiple axle vehicle) trips per hour on West Coast Highway, such as excavation and concrete pours, shall be prohibited between June 1 and September 1 to avoid traffic conflicts with beach and tourist traffic. At all other times, such activities on West Coast Highway shall be limited to 25 truck (i.e., multiple axle vehicle) trips per hour unless otherwise approved by the Director of Public Works. Haul operations shall be monitored by the Department



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of Public Works, and additional restrictions may be applied if traffic congestion problems arise. A staging area shall be designated on-site for construction equipment and supplies to be stored during construction. (SC 4.9-3)

- d. A construction and equipment staging area plan which shall be located in the least visually prominent area on the site and shall be properly maintained and/or screened to minimize potential unsightly conditions.
- e. A construction fencing plan to include installation of a six-foot-high screen and security fence to be placed around the construction site during construction.
- f. A 24 hour hotline number shall be provided at all construction sites for complaints or questions regarding construction activities. (refer to MM 4.10-9)
- g. Construction mitigation measures as required by the MMRP.
- h. A statement that all grading and construction shall comply with NBMC Section 10.28.040 (Noise Ordinance). (SC 4.12-1)
- i. A statement requiring construction contractors to sweep paved roads within and adjacent to the project site if visible soil materials are carried to the streets. Street sweepers or roadway washing trucks shall comply with SCAQMD Rule 1186 and shall use reclaimed water if available.
- j. A statement that all grading plans and specifications include temporary noise barriers for all grading, hauling, and other heavy equipment operations that would occur within 300 feet of sensitive off-site receptors and occur for more than 20 consecutive working days. The noise barriers shall be 12 feet high, but may be shorter if the top of the barrier is at least one foot above the line of sight between the equipment and the receptors. The barriers shall be solid from the ground to the top of the barrier and have a weight of at least 2.5 pounds per square foot, which is equivalent to  $\frac{3}{4}$  inch thick plywood. The barrier design shall optimize the following requirements: (1) the barrier shall be located to maximize the interruption of line of sight between the equipment and the receptor, which is normally at the top of slope when the grading area and receptor are at different elevations. However, a top of slope location may not be feasible if the top of slope is not on the project site; (2) the length and of the barrier shall be selected to block the line of sight between the grading area and the receptors; (3) the barrier shall be located as close as feasible to the receptor or as close as feasible to the grading area; a barrier is least effective when it is at the midpoint between noise source and receptor. If preferred by the applicant or contractor, the construction of a temporary earth berm may be used as the noise barrier. Earth berms provide greater noise reduction than wood or masonry walls of the same height. A temporary noise barrier shall not be required when it is demonstrated to the Director of Community Development that a barrier would not be feasible. Reasons may include, but not be limited to (1) the barrier would cause impacts more severe than the construction noise, (2) the barrier would interfere with the construction work, and (3) a property owner refuses to allow the barrier. (MM 4.12-1)
- k. A statement that contractors be required to implement the following measures:
  - i. Construction waste diversion will be increased by 50 percent from 2010 requirements.

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- ii. To the extent practical, during the oilfield clean-up and remediation process, the contractors will be required to recycle and reuse materials on site to minimize off-site hauling and disposal of materials and associated off-site traffic. (PDF4.11-5)
- I. A statement to be provided to all construction contractors that requires all construction contractors to comply with South Coast Air Quality Management District's (SCAQMD's) Rules 402 and 403 in order to minimize short-term emissions of dust and particulates. SCAQMD Rule 402 requires that air pollutant emissions not be a nuisance off site. SCAQMD Rule 403 requires that fugitive dust be controlled with Best Available Control Measures so that the presence of such dust does not remain visible in the atmosphere beyond the property line of the emission source. This requirement shall be included as notes on the contractor specifications. Table 1 of Rule 403 lists the Best Available Control Measures that are applicable to all construction projects. The measures include, but are not limited to, the following:
  - i. *Clearing and grubbing*: Apply water in sufficient quantity to prevent generation of dust plumes.
  - ii. *Cut and fill*: Pre-water soils prior to cut and fill activities and stabilize soil during and after cut and fill activities.
  - iii. *Earth-moving activities*: Pre-apply water to depth of proposed cuts; re-apply water as necessary to maintain soils in a damp condition and to ensure that visible emissions do not exceed 100 feet in any direction; and stabilize soils once earth-moving activities are complete.
  - iv. *Importing/exporting of bulk materials*: Stabilize material while loading to reduce fugitive dust emissions; maintain at least six inches of freeboard on haul vehicles; and stabilize material while transporting to reduce fugitive dust emissions.
  - v. *Stockpiles/bulk material handling*: Stabilize stockpiled materials; stockpiles within 100 yards of off-site occupied buildings must not be greater than 8 feet in height, must have a road bladed to the top of the pile to allow water truck access, or must have an operational water irrigation system that is capable of complete stockpile coverage.
- m. *Traffic areas for construction activities*: Stabilize all off-road traffic and parking areas; stabilize all haul routes; and direct construction traffic over established haul routes. Rule 403 defines large operations as projects with 50 or more acres of grading or with a daily earth-moving volume of 5,000 cubic yards at least 3 times in 1 year. The project is considered a large operation. Large operations are required to implement additional dust-control measures (as specified in Tables 2 and 3 of Rule 403), provide additional notifications, signage, and reporting, and appoint a Dust Control Supervisor. The Dust Control Supervisor is required to:
  - Be employed by or contracted with the applicant;
  - Be on the site or available on site within 30 minutes during

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working hours;

- Have the authority to expeditiously employ sufficient dust mitigation measures to ensure compliance with all Rule 403 requirements; and
- Have completed the AQMD Fugitive Dust Control Class and have been issued a valid Certificate of Completion for the class.

(SC4.10-1)

- n. A statement that all construction vehicles or equipment, fixed or mobile, shall be equipped with properly operating and maintained mufflers; mufflers shall be equivalent to or of greater noise reducing performance than manufacturer's standard. Stationary equipment, such as generators, cranes, and air compressors, shall be located as far from local residences and the Carden Hall School as feasible. Where stationary equipment must be located within 250 feet of a sensitive receptor, the equipment shall be equipped with appropriate noise reduction measures (e.g. silencers, shrouds, or other devices) to limit the equipment noise at the nearest sensitive residences to 65 dBA  $L_{eq}$ . Equipment maintenance, vehicle parking, and material staging areas shall be located as far away from local residences and the Carden Hall School as feasible. (MM 4.12-2)
  - o. A statement that contractors shall be required to provide a minimum two week notification to affected residents within 300 feet and the Carden Hall school of the start date, duration, and nature, and noise abatement measures of any grading operation or similar noise generating activity. (MM 4.12-3)
  - p. A notification for contractors that the operation of large bulldozers, vibratory rollers, and similar heavy equipment is prohibited within 25 feet of any existing off-site residence. (MM 4.12-4)
59. Prior to the issuance of a grading permit for Bluff Road and/or 15<sup>th</sup> Street, the applicant shall provide written notice to affected residents of an offer of a program (Program) for the retrofit and installation of dual pane windows/sliding doors on the façade facing the Newport Banning Ranch property. The Program offer shall only apply to the owners of the residences (Owners) with rear elevations directly adjacent to the Newport Banning Ranch property in the western and northern boundaries of Newport Crest Condominiums impacted by significant noise levels (significant being a cumulative increase over existing conditions greater than 5 dBA) associated with the Project as determined by a licensed Acoustical Engineer. Improvements shall be subject to the approval of the Newport Crest Homeowners Association (Association) and Owners. The applicant shall be responsible for the implementation of the Program pursuant to the following provisions and guidelines: (i) in order to participate in the Program and receive new windows/sliders, each participating Owner must provide written notice to the applicant within 45 days following receipt of the proposed Program from the applicant, that the owner wants to participate in the program; (ii) failure to respond within such time period shall mean the Owner desires not to participate; (iii) following receipt of written notice from participating Owners, the applicant shall obtain a cost estimate and submit written specifications from a

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licensed and bonded window contractor to the Owners and the Association for design/architectural approval; (iv) following receipt of design/architectural approval from the Owners and the Association of written specifications, the applicant shall enter into a contract with a qualified, licensed and bonded contractor for the installation of windows/sliders to the participating Owners' condominiums as part of one overall program pursuant to the contract between the applicant and the contractor; (v) the total cost of the Program shall be paid by the Applicant on behalf of the Owners in an amount not exceed the total cost identified in the cost estimate approved by the applicant. (MM 4.12-7) Nothing in this condition shall prohibit the City from issuing a grading permit for Bluff Road or 15<sup>th</sup> Street in the event any or all Owners decline to participate in the Program.

60. Prior to issuance of applicable grading permits for roadway improvements, the applicant shall submit a "dark sky" lighting plan consistent with the requirements of the NBR-PC to be reviewed and approved by the Director of Public Works. The "dark sky" lighting plan shall indicate the location of street lights which may only be utilized at key intersection locations as approved by the Public Works Department. (PDF 4.6-4)
61. Prior to issuance of grading permits, if determined necessary by the Director of Community Development, the applicant shall record a Letter of Consent from any affected property owners permitting off-site grading, cross lot drainage, drainage diversions, and/or unnatural concentrations. This process will ensure that construction activities requiring encroachment permits or having temporary effects on adjacent parcels are properly noticed and coordinated. (SC 4.3.2)
62. Prior to the issuance of grading permits, the applicant shall prepare a Storm Water Pollution Prevention Plan (SWPPP) and Notice of Intent (NOI) to comply with the Construction General Permit and submit the above to the State Water Quality Control Board for approval and made part of the construction program. The applicant shall provide the City with a copy of the NOI and their application check as proof of filing with the State Water Quality Control Board. The SWPPP shall detail measures and practices that will be in effect during construction to minimize the project's impact on water quality.
63. Prior to issuance of grading permits, the applicant shall prepare and submit a Final Water Quality Management Plan (WQMP) for the proposed project, subject to the approval of the Director of Community Development and Director of Public Works. The WQMP shall provide appropriate Best Management Practices (BMPs) to ensure that no violations of water quality standards or waste discharge requirements occur. The WQMP must also identify the entity responsible for the long-term inspection, maintenance, and funding for all structural (and if applicable Treatment Control) BMPs.

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64. Prior to issuance of precise grading permits for any residential, commercial, resort or park development area the applicant shall commence implementation of the NBR Habitat Restoration Plan as described in the NBR Master Development Plan which includes designation of a minimum of 220 gross acres as wetland restoration/water quality areas, habitat conservation, and restoration mitigation areas. (PDFs 4.6.-1 and 4.6-2)
65. Prior to the issuance of grading permits, the applicant shall submit a planting plan for the arroyos for review and approval by a qualified biologist designated by the Director of Community Development. The arroyos planting plan shall identify the use of native riparian vegetation consistent with the NBR Master Development Plan, Appendix A, Habitat Restoration Plan. (PDF4.4-4)
66. Prior to issuance of applicable grading permits adjacent to bluff slopes the applicant shall submit for review and approval by the Director of Community Development, a grading plan to implement the Bluff/Slope Restoration Plan as described in the NBR Master Development Plan that identifies eroded portions of bluff slopes to be repaired and stabilized and identifies a planting plan utilizing native vegetation that does not require permanent irrigation. (PDF-4.3-3)

Prior to Issuance of Demolition and Building Permits

67. Prior to issuance of building permits for applicable portions of the project, subject to grading permits, site remediation activities consistent with the Final RAP shall be completed to the satisfaction of all state and local agencies with oversight responsibility as identified in the Final RAP.
68. Prior to the issuance of a building permit for the construction of residential and commercial uses, the applicant shall pay the required Property Excise Tax to the City of Newport Beach, as set forth in its Municipal Code (§3.12 et seq.) for public improvements and facilities associated with the City of Newport Beach Fire Department, the City of Newport Beach Public Library, and City of Newport Beach public parks. (SC 4.14-1)
69. Prior to the issuance of building permits the applicant shall obtain approval of a plan stating that water for firefighting purposes and an all weather fire access road shall be in place before any combustible materials are placed on site. Fire access roads shall be designed to support the 75,000 pound load of fire apparatus for year round weather conditions.
70. Prior to the issuance of any residential building permit, the applicant shall submit for review and shall obtain the approval of the Director of Community Development, plans indicating the location and type of unit address lighting to be installed.
71. Prior to the issuance of building permits, the applicant shall complete that portion of the approved fuel modification plan determined to be necessary by the City of

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Newport Beach Fire Department prior to the introduction of any combustible materials into the area. This generally involves removal and thinning of plant materials indicated on the approved fuel modification plan(s). (SC 4.14-3)

72. Prior to the issuance of building permits, the applicant shall pay applicable fees to the Newport-Mesa Unified School District Pursuant to Section 65995 of the *California Government Code* Payment of the adopted fees would provide full and complete mitigation of school impacts. (SC 4.14-6)
73. Prior to the issuance of building permits for any residential unit, the applicant shall pay the City of Newport Beach the applicable portion of a fire facilities impact fee equal to its fair share of the need for a relocated Fire Station Number 2, as may be further defined in the DA. The fair share fee shall be based on total number of project dwelling units as a ratio of the total number of dwelling units within the service area of relocated Fire Station Number 2. (MM 4.14-2)
74. Prior to issuance of any demolition permit testing for all structures for presence of lead-based paint (LBP) and/or asbestos-containing materials (ACMs) shall be completed. The Asbestos-Abatement Contractor shall comply with notification and asbestos removal procedures outlined in the South Coast Air Quality Management District's (SCAQMD's) Rule 1403 to reduce asbestos-related air quality health risks. SCAQMD Rule 1403 applies to any demolition or renovation activity and the associated disturbance of ACMs. This requirement shall be included on the contractors' specifications and verified by the Director of Community Development. All demolition activities that may expose construction workers and/or the public to ACMs and/or LBP shall be conducted in accordance with applicable regulations, including, but not limited to Title 40 of the *Code of Federal Regulations* (CFR), Subchapter R (Toxic Substances Control Act); CalOSHA regulations (Title 8 of the *California Code of Regulations* §1529 [Asbestos] and §1532.1 [Lead]); and SCAQMD Rule 1403 (Asbestos Emissions from Demolition/Renovation Activities). The requirement to adhere to all applicable regulations shall be included in the contractor specifications, and such inclusion shall be verified by the Director of Community Development prior to issuance of the first grading permit. (SC 4.5-1)
75. Prior to issuance of applicable building permits, the applicant shall submit to the Director of Community Development for review and approval, architectural plans and an accompanying noise study that demonstrates that interior noise levels in the habitable rooms of residential units due to exterior transportation noise sources would be 45 dBA CNEL or less. Where closed windows are required to achieve the 45 dBA CNEL limit, project plans and specifications shall include ventilation as required by the California Building Code. (SC4.12-3)
76. Prior to issuance of applicable building permits, the applicant shall submit for review and approval by the City of Newport Beach Police Department, development plans for

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the incorporation of defensible space concepts to reduce demands on police services. Public safety planning recommendations shall be incorporated into the project plans. The applicant shall prepare a list of project features and design components that demonstrate responsiveness to defensible space design concepts. (SC 4.14-4)

77. Prior to the issuance of building permits plans shall be submitted to the satisfaction of the Director of Community Development to include requirements that all contractor specifications include a note that architectural coatings shall be selected so that the VOC content of the coatings is compliant with SCAQMD Rule 1113. (SC 4.10-2)
78. Prior to the issuance of building permits the applicant shall submit for review and approval by the Director of Community Development building plans designed to meet or exceed all State Energy Insulation Standards and City of Newport Beach codes in effect at the time of application for building permits. Commonly referred to as Title 24, these standards are updated periodically to allow consideration and possible incorporation of new energy efficiency technologies and methods. Title 24 covers the use of energy-efficient building standards, including ventilation; insulation; construction; and the use of energy-saving appliances, conditioning systems, water heating, and lighting. Plans submitted for building permits shall include written notes or calculations demonstrating compliance with energy standards. (SC 4.15-3)
79. Prior to the issuance of building permits for any residential, commercial, visitor serving, or park and recreation use, annexation of the unincorporated area of the project site approved for residential, commercial, visitor serving and park and recreation purposes to the City of Newport Beach shall be completed and approved by the OCLAFCO as set forth in Government Code Section 56658 and summarized in OCLAFCO's Processing Policies and Procedures Manual.
80. Prior to the issuance of building permits for any residential, commercial, visitor serving, or park and recreation use, the applicant shall provide evidence satisfactory to the Fire Department that adequate permanent or temporary fire protection facilities are in place on the job site and are tested prior to placing any combustible material on the job site.
81. Prior to the issuance of each building permit for multi-family residential dwelling units with subterranean parking and the resort inn, the applicant shall submit plans for approval by the Director of Community Development, that provide for the following:
  - e. The designation of a minimum of three percent of the total parking spaces provided as electric or hybrid vehicle parking spaces; and
  - f. Installation of facilities for Level 2 electric vehicle recharging, unless it can be demonstrated to the satisfaction of the Director of Community Development that the technology for these facilities or availability of the equipment current at the time renders installation of these facilities infeasible. (MM 4.11-5)

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82. Prior to the issuance of each building permit for residential dwelling units with attached garages, the applicant shall submit plans for approval by the Director of Community Development that provide for the following:
- g. Identification of a specific place or area within each residential dwelling unit where a Level 2 electric vehicle charging station could be safely installed by the homeowner after purchase;
  - h. The installation by the residential builder of the conduit necessary for the future installation of a Level 2 charging station in each residential dwelling unit; and
  - i. Evidence that the electrical load of each residential dwelling unit is designed to accommodate a Level 2 charging station. (MM 4.11-5)

**Prior to Issuance of Certificates of Use and Occupancy**

83. Prior to issuance of certificates of use and occupancy for any residential dwelling unit, the resort inn, or any commercial structure in Site Planning Area 10a (northerly block only), Site Planning Area 10b (northerly block only), and Site Planning Area 12b, Fire Station Number 2 shall be complete and operational at the existing City Hall site at 3300 Newport Boulevard or at another location that the Newport Beach Fire Department has determined is sufficient to provide fire response within the Fire Department's established response time standards. (MM 4.14-1) In the event the replacement station for Fire Station 2 is not operational in time for issuance of use and occupancy for the above stated Site Planning Areas, then prior to issuance of building permits for any combustible structure in the above Site Planning Areas, the applicant shall provide and improve a site, as defined by the Development Agreement within the Community Park, areas for a temporary facility of sufficient size to accommodate one engine company and one paramedic ambulance of at least three firefighters on a 7-day/24-hour schedule. The temporary fire station site shall be within the project limits of disturbance approved as a part of the project such that no new environmental effects would occur. (MM 4.14-3)
84. Prior to issuance of certificate of use and occupancy for any residential, resort or commercial use, the applicant shall complete construction of all applicable roadways, parkways, median and median landscaping, sidewalks, intersection street lights, streets, alleys, traffic signals and signage and utilities including but not limited to water, water quality management, sewer, storm drain, fiber optics, gas, electricity, telephone and telecommunications necessary to serve the use and the above facilities shall be operational to serve the use, the extent of which shall be determined by the Director of Public Works and the Director of the Municipal Operations Department.
85. Prior to the issuance of a certificate of use and occupancy for the 350<sup>th</sup> residential dwelling unit in the North Family Village, i) the park improvements shall be completed



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by the applicant for the Vernal Pool Interpretive Park within Lot F and for the Nature Center Interpretive Park within Lot 233, and ii) CC&Rs, deed restrictions, access easements, or other instruments providing for public access and use of the facilities in perpetuity, and including the timing for opening of the facilities for public use, shall be recorded to the satisfaction of the Director of Community Development.

86. Prior to the issuance of the 350<sup>th</sup> certificate of use and occupancy for any residential use in either the North Family Village or Urban Colony, the construction of improvements to the Talbert Trailhead Staging Area Interpretive Park ("Talbert Trailhead") within Lot Q shall be completed by the applicant, and public access easements, CC&Rs, deed restrictions or other instrument providing for public access and permanent maintenance for the Talbert Trailhead in perpetuity, and including the timing for opening of the facility for public use, shall be recorded to the satisfaction of the Director of Community Development.
87. Prior to the issuance of the first certificate of use and occupancy for Lot 1, Urban Colony the construction of all improvements to North Bluff Park, Lot 189, including all trail and recreational improvements shall be completed by the applicant, and deed restrictions, access easements, or other instruments providing for public access and use of this portion of North Bluff Park in perpetuity, and including the timing for opening of the facility for public use, shall be recorded to the satisfaction of the Community Development Director.
88. Prior to the issuance of the a certificate of use and occupancy for the 350<sup>th</sup> residential dwelling unit in either the North Family Village or the Urban Colony whichever is first, the construction of the Lowland, Upland, and Bluff Toe Interpretive Trails shall be completed by the applicant, and CC&Rs, deed restrictions, access easements, or other instruments providing for public access and use of the facilities in perpetuity, and including the timing for opening of the facilities for public use, shall be recorded to the satisfaction of the Director of Community Development.
89. Prior to the issuance of a certificate of use and occupancy for the 209<sup>th</sup> residential dwelling unit in the North Family Village, the construction of the Southern Arroyo Trail shall be completed by the applicant, and CC&R's, deed restrictions, access easements, or other instruments providing for public access and use of the facility in perpetuity, and including the timing for opening of the facility for public use, shall be recorded to the satisfaction of the Director of Community Development.
90. Prior to the issuance of certificates of use and occupancy, applicable fuel modification shall be installed and completed by the applicant and inspected by the Fire Department. This includes physical installation of features identified in the approved NBR Fire and Life Safety Program (including but not limited to plant establishment, thinning, irrigation, zone markers, and access easements, among others). If satisfactory, a Newport Beach Fire Department Official shall provide written approval of completion at the time of this final inspection. If applicable, a copy of the approved plans shall be provided to the Homeowners Association (HOA). Fuel modification

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shall be maintained as originally installed and approved. The applicable Property Owner, HOA, or other party that the City deems acceptable shall be responsible for all fuel modification zone maintenance. All areas shall be maintained in accordance with the approved Fuel Modification Plan(s). This generally includes a minimum of two growth reduction maintenance activities throughout the fuel modification areas each year (spring and fall). Other activities include maintaining irrigation systems, replacing dead or dying vegetation with approved materials, removing dead plant material, and removing undesirable species. The Fire Department shall conduct regular inspections of established fuel modification areas. Ongoing maintenance shall be conducted regardless of the date of these inspections to ensure that the landscape palette will be maintained as approved. (SC 4.14-3)

91. Prior to the issuance of certificates of use and occupancy the applicant shall demonstrate to the satisfaction of the Director of Public Works that applicable street name signs have been installed.
92. Prior to the issuance of certificates of use and occupancy permits the applicant shall demonstrate to the satisfaction of the Director of Public Works that all street improvements damaged during construction have been repaired or replaced.
93. Prior to the issuance of a certificate of use and occupancy for any model home complex, the applicant shall complete construction of roadway improvements adequate to serve the model home complex to the satisfaction of the Director of Public Works and the Director of Community Development.
94. Prior to the issuance of the first certificate of use and occupancy, (excepting model home complexes) for the South Family Village or Resort Colony, whichever is first, the construction of the following roadways shall be complete, consistent with the roadway sections indicated on Tentative Tract Map No. 17308:
  - a. West Coast Highway improvements within the full length of right of way adjacent to the project to include median reconstruction, design and installation of the traffic signal at Bluff Road and West Coast Highway, construction of full roadway improvements including sidewalk along the inland half section, and restriping of the intersection of West Coast Highway and Newport Boulevard to provide for one southbound right turn lane, one shared right turn/ left turn lane, and one left turn lane.
  - b. Full width right of way improvements for Bluff Road and North Bluff Road from West Coast Highway to 16<sup>th</sup> Street.
  - c. Full width right of way improvements for 15<sup>th</sup> Street from Bluff Road to the point approved by the Director of Public Works where 15<sup>th</sup> Street tapers to meet road improvements existing at the easterly project boundary.
  - d. Partial improvements for 15<sup>th</sup> Street from the easterly project boundary to Monrovia Avenue sufficient to provide at a minimum, a functional two lane roadway as determined by the Director of Public Works.

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- e. Full improvements if feasible, or partial improvements providing at a minimum a functional two lane roadway as determined by the Director of Public Works, for 16<sup>th</sup> Street between North Bluff Road and the existing terminus at the easterly project boundary.
  - f. Construction of a traffic signal at the intersection of 15<sup>th</sup> Street and Bluff Road.
95. Prior to the issuance of the first certificate of use and occupancy for the North Family Village and/or Urban Colony, (excepting model home complexes) whichever is first, the applicant shall complete construction of the following roadways consistent with the sections indicated on Tentative Tract Map No. 17308:
- a. Full width improvement of North Bluff Road from 16<sup>th</sup> Street to 17<sup>th</sup> Street.
  - b. Partial improvement to North Bluff Road from 17<sup>th</sup> Street to the northern boundary of Lot 1, including establishment of the eastern curb line in a location compatible with implementation of a full Primary Arterial with the extent of remaining improvements to be determined by the Director of Public Works.
  - c. Full width improvement of 16<sup>th</sup> Street from North Bluff Road to the easterly boundary of the Project.
  - d. Full width improvement of 17<sup>th</sup> Street from North Bluff Road to a point at the easterly boundary of the Project where 17<sup>th</sup> Street tapers to meet existing off-site improvements as determined by the Director of Public Works.
  - e. Construction of a traffic signal at the intersection of North Bluff Road and 17<sup>th</sup> Street.
96. Prior to the issuance of the first certificate of use and occupancy for any residential, commercial, or resort use in the project all applicable master infrastructure improvements identified in the Final SWPPP and WQMP including debris basins, bio-swales, energy dissipaters, drainage pipes, water quality basins and other improvements shall be constructed and the applicant shall provide all necessary dedications, deed restrictions, covenants or other instruments for the long term maintenance of the facilities in a manner meeting the approval of the Director of Public Works.
97. Prior to the issuance of the certificate of use and occupancy for the 101<sup>st</sup> residential dwelling unit in the South Family Village and Resort Colony combined, or prior to the issuance of the first certificate of occupancy for the Resort Inn facility, whichever comes first, the applicant shall complete construction of all improvements to South Bluff Park including all trail and recreational improvements, and deed restrictions, access easements, or other instruments providing for public access and use of the South Bluff Park, in perpetuity, and including the timing for opening of the South Bluff Park for public use, shall be recorded to the satisfaction of the Director of Community Development.

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98. Prior to the issuance of the certificate of use and occupancy for the 150<sup>th</sup> residential dwelling unit in the South Family Village and Resort Colony combined, the applicant shall complete construction of all improvements to the South Community Park including all recreational improvements, and CC&R's, deed restrictions, access easements, or other instruments providing for public access and use of South Community Park in perpetuity, and including the timing for the opening of South Community Park for public use, shall be recorded to the satisfaction of the Director of Community Development.
99. Prior to the issuance of the certificate of use and occupancy for the 209<sup>th</sup> residential dwelling unit in the North Family Village, the applicant shall complete construction of all improvements to North Bluff Park adjacent to the North Family Village including all trail and recreational improvements, and CC&R's, deed restrictions, access easements, or other instruments providing for public access and use of the North Bluff Park in perpetuity, and including the timing for opening of the North Bluff Park for public use, shall be recorded to the satisfaction of the Director of Community Development.
100. Prior to issuance of certificates of use and occupancy for Lots 1, 10-88, 128-162, 184, 185, and 187 the applicant shall construct the water quality basin located in Lot I and this facility shall be operational to the satisfaction of the Director of Public Works. (PDF 4.4-2)
101. Prior to issuance of certificates of use and occupancy for Lots 89-125, 163-183, 186 and 188 the applicant shall construct the water quality basin and a diffusing basin located in Lot L and these facilities shall be operational to the satisfaction of the Director of Public Works. (PDF4.4-2)
102. Prior to issuance of certificates of use and occupancy for the resort inn within Lot 228, the applicant shall demonstrate to the satisfaction of the Director of Public Works that the applicant has submitted an application to Caltrans for approval of all required Caltrans permits for the construction by the applicant of the pedestrian/bicycle bridge spanning West Coast Highway as indicated on Tentative Tract Map No. 17308. If the applicant receives approval from Caltrans for construction of the pedestrian bridge, the applicant shall subsequently submit improvement plans for review and approval by the Director of Public Works, Director of Community Development and Director of Recreation and Senior Services for the construction of the pedestrian bridge. (PDF4.8-3) In the event all approvals are obtained for construction of the pedestrian/bicycle bridge, the applicant shall complete construction of the bridge prior to issuance of the final certificate of use and occupancy for the resort inn. Nothing in this condition shall prohibit the City from issuing a certificate of use and occupancy for the resort inn in the event that CalTrans does not approve the applicant's request for permit approval for construction of the pedestrian bridge. Nothing in this condition shall prohibit the City from issuing a certificate of use and occupancy for Lot 228 in the event the resort

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inn is not developed, pursuant to the provisions of the NBR Planned Community Development Plan, and subsequently, applications for a pedestrian/bicycle bridge are not submitted to Caltrans.

103. Prior to the issuance of the first certificate of use and occupancy including for the first model home complex, the applicant shall submit an application for a Master Sign Program to the Director of Community Development. Approval of the Master Sign Program by the Planning Commission pursuant to the provisions of NBR Planned Community Development Plan Section 4.13, "Community Master Sign Program," is required prior to issuance of the first certificate of use and occupancy.
104. Prior to the issuance of certificates of use and occupancy for any residential, commercial, visitor serving, or park and recreation use, fire hydrants shall be installed and tested.

Subdivision Improvement Plans

105. All subdivision improvement plans shall identify the use of best management practices (BMPs) for erosion control, sediment control, wind erosion control, storm water and non-storm water management, and waste management/pollution control. The BMP's identified for implementation shall demonstrate that potential effects on local site hydrology, runoff, and water quality remain in compliance with all required permits, City policies, and the Project's Water Quality Management Plan and Storm Water Pollution Prevention Plan. (PDF4.4-6)
106. The applicant shall design and/or construct all required onsite and offsite improvements to permanent line and grade in accordance with NBMC Chapter 19.24 (Subdivision Design), with the exception of the deviations from this Chapter as described on TTM No. 17308 and approved by the Director of Public Works.
107. The applicant shall design and/or construct all required onsite and offsite improvements to permanent line and grade in accordance with NBMC Chapter 19.28 (Subdivision Improvement Requirements), with the exception of the deviations from this Chapter as described on TTM No. 17308 and approved by the Director of Public Works.
108. The applicant shall design and/or construct all required onsite and offsite improvements to permanent line and grade in accordance with Chapter 19.32(Improvement Plans).
109. Approval of improvement plans shall in no way relieve the applicant or the applicant's engineer of responsibility for the design of the improvements or from any deficiencies resulting from the design, nor from compliance with any tentative map condition of approval.

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110. The applicant shall design and/or construct all required onsite and offsite improvements to permanent line and grade in accordance with NBMC Chapter 19.36 (Completion of Improvements).
111. All subdivision improvement plans for arterial roadways within the Project and all off-site City of Newport Beach roadways shall include the use of rubberized asphalt, or pavement offering equivalent or better acoustical properties in accordance with City standards. (SC4.12-4)
112. All new utility lines to serve the project shall be installed in underground trenches.
113. Intersection design shall be approved by the Director of Public Works and comply with City's sight distance standards.
114. All subdivision improvement plans shall include the use of light emitting diode (LED) lights for street lights.
115. Subdivision improvement plans shall provide for the design and construction of Ethernet traffic signal communication network improvements linking the new traffic signal locations to the existing City traffic signal management system.
116. Subdivision improvement plans for roadway systems within the Project shall be coordinated with the Orange County Transit Authority OCTA and the City to identify locations, as applicable, for bus stops within the internal roadway system. If bus turnout locations are identified during consultation with OCTA, the subdivision improvement plans shall be designed to include the bus turnouts. (PDF 4.11-3)
117. Subdivision improvement plans for Streets A, B, C, E, F, G, I and K shall be designed to incorporate "Green Street" and other Low Impact Development features such as bioswales and bio-cells, canopy street trees, traffic calming features and minimal use of street lighting consistent with the requirements of the NBR Master Development Plan, Appendix D, "Green and Sustainable Program." (PDF4.4-3)
118. All subdivision improvement plans shall include a drainage plan approved by the Director of Public Works and Director of Community Development which is designed to ensure that runoff systems from the Project to West Coast Highway and the Semeniuk Slough will be stabilized and maintained through the Project's drainage system. (PDF 4.4-5)
119. Prior to approval of improvement plans for the pedestrian/bicycle bridge spanning West Coast Highway, the applicant shall provide separate labor and material improvement bonds or irrevocable letters of credit in a form and amount acceptable to the Director of Public Works for 100% of estimated improvement cost, as prepared by a Registered Civil Engineer and approved by the Director of Public Works, for the construction of the pedestrian bridge.

Exhibit F  
Conditions of Approval  
Tentative Tract Map No. 17308

120. All subdivision improvement plans shall conform to the following Fire Department requirements:
- a. Detailed plans of underground fire service mains shall be submitted to the Fire Department for approval prior to installation. These plans shall be a separate submittal to the Fire Department.
  - b. Blue hydrant identification markers shall be placed with new hydrants.
  - c. All weather access roads designed to support the 75,000 pound imposed load of fire apparatus for year round weather conditions shall be installed and made serviceable prior to and during time of construction for emergency personnel.
  - d. Fire apparatus access roads designed to support the 75,000 pound imposed load of fire apparatus for year round weather conditions shall be maintained and identified as per Newport Beach Guideline C.01 Emergency Fire Access and C.02 Fire Lane Identification.
  - e. All security gates shall have knox locks for after hours emergency personnel access to the construction site.

Release of Financial Security

121. Prior to the release of financial security, the applicant shall demonstrate to the satisfaction of the Director of Public Works and the Director of Community Development that the Project CC&Rs have been approved by the City Attorney and the appropriate Association(s) has been formed.
122. Prior to the release of financial security, the applicant shall demonstrate to the satisfaction of the Director of Public Works that all survey monuments damaged or destroyed are restored.
123. Prior to the release of financial security, the applicant shall submit as-built plans prepared by a Registered Civil Engineer depicting all street, traffic signal, sewer, water, and storm drain improvements and street signage and signage placements, traffic markings and painted curbing, and all other required improvements shall be completed to the satisfaction of the Director of Public Works.
124. Prior to the release of financial security, all domestic water and sewer systems shall be fully tested in the presence of a City staff representative, to verify system performance in accordance with design specifications.
125. Prior to the release of financial security the applicant shall execute an agreement to the satisfaction of the Director of Public Works and the Director of Community Development which designates the maintenance responsibilities for all landscaping and irrigation systems in the Project.
126. Prior to the release of financial security the applicant shall submit as built plans at an appropriate scale to the Director of Recreation and Senior Services showing as-

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built grading, trails, park improvements, and pedestrian bridge landing areas on both sides of West Coast Highway (if the bridge is constructed).

127. Prior to the release of financial security the applicant shall demonstrate to the satisfaction of the Director of the Municipal Operations Department that all underground public utilities necessary for the construction of residential, resort, park or commercial uses to proceed as indicated on Tentative Tract Map No. 17308 have been completed in accordance with the approved Utilities Master Plan and that the as-built plans for said improvements, prepared by a Registered Civic Engineer have been submitted and approved by the Director of the Municipal Operations Department.
128. Prior to the release of financial security, Sheet 1 of Tentative Tract Map No. 17308 shall be revised to indicate the home owner association (HOA) as responsible for the maintenance of Lot 230 (South Community Park), indicating only the HOA as responsible for the maintenance of Lot 233, and to indicate the proposed land use for Lots F and Q as "Interpretive Park."



## **CC 4 Exhibit G**

Affordable Housing Implementation Plan

## Exhibit G

### Newport Banning Ranch (NBR) Affordable Housing Implementation Plan (AHIP) July 2012

#### **1.0 Introduction**

##### 1.1 Background

This Affordable Housing Implementation Plan (AHIP) has been prepared in order to comply with the Housing Element of the Newport Beach General Plan as well as Chapter 19.54 of the Newport Beach Municipal Code, Inclusionary Housing, which provides that an AHIP must be prepared by Applicant to set forth a plan for meeting the City's goal of providing a balanced residential community comprised of a variety of housing types and opportunities for all social and economic segments of the community including very low, low and moderate income households. This AHIP is provided in fulfillment of those requirements and details Applicant's approved strategies for meeting City requirements.

Chapter 19.54.060 of the Municipal Code provides that "Residential subdivision projects of 51 dwelling units or more shall be required to submit an AHIP." Tentative Tract Map (TTM) 17308 is an element of Applicant's entitlement package. This map provides for a maximum of 1,375 dwelling units and meets the minimum threshold for submittal of a mandatory AHIP for City review and adoption.

##### 1.2 Project Description

The Newport Banning Ranch (NBR) is a 401-acre master planned community regulated by the City of Newport Beach (City) and other stakeholder governments. The master plan, following extensive community outreach and facilitation, was crafted by a multi-disciplinary team of architects, engineers, planners, and environmental specialists to implement the entitlement standards provided under the Alternative Use option of the Newport Beach General Plan as approved by voters in November, 2006.

The Alternative Use option provides for 1,375 dwelling units, 75,000 square feet of retail and convenience commercial, and a 75-room coastal inn with spa facilities and services. More than half of the property is to be set aside for open space for public parks and playgrounds as well as protected areas for environmentally sensitive and other habitats. Oil production facilities now on the site will be consolidated into two drilling and production areas.

## **2.0 Affordable Housing Plan**

### **2.1 Definitions**

The Inclusionary Housing Ordinance provides further guidance on the preparation of an AHIP and the City's published housing guidelines and rules including definitions. A number of those definitions, especially definitions about rentals, are relevant to the NBR AHIP including:

- A. Affordable Housing Agreement. The Agreement entered into is to be in compliance with Section 19.54.080, which provides legal restrictions by which the affordable units shall be restricted to ensure that the unit remains affordable to very low-, low-, or moderate-income households, as applicable. With respect to rental units, rent restrictions shall be in the form of a regulatory agreement recorded against the applicable property. With respect to owner-occupied units, resale controls shall be in the form of resale restrictions, deeds of trust, and/or other similar documents recorded against the applicable property;
- B. Affordable Housing Cost. Affordable housing cost for very low income households shall not exceed 30 percent of 50 percent of area median income adjusted for family size. Affordable housing cost for low income households shall not exceed 30 percent of 70 percent of area median income adjusted for family size. Affordable housing cost for moderate income households shall not be less than 28 percent of the gross income of the household, nor exceed 35 percent of 110 percent of area median income adjusted for family size. In determining the maximum household income for a given affordable unit, it shall be assumed that each bedroom is occupied by two persons, except for efficiency units (one person).

- C. Affordable Rent. An annual rent that does not exceed 30 percent of maximum income levels for very low-, low-, and moderate-income households, as adjusted for household size. In determining the maximum household income for a given affordable unit, it shall be assumed that each bedroom is occupied by two persons, except for efficiency units (one person).
- D. Affordable Unit. An ownership or rental housing unit, including senior housing, affordable to households with very low-, low-, and moderate income as defined in Section 9.54.020 of the Newport Beach Municipal Code.
- E. Applicant. Newport Banning Ranch LLC, including any successor(s)-in-interest.
- F. City. The City of Newport Beach.
- G. Low-Income. Income between 50% and 80% of the Orange County median income, adjusted for actual household size, as established annually by the California Department of Housing and Community Development.
- H. Moderate Income. Income between 80% and 120% of the Orange County median income, adjusted for actual household size as established annually by the California Department of Housing and Community Development.
- I. Very Low Income. Income 50% or less of the Orange County median income, adjusted for actual household size, as established annually by the California Department of Housing and Community Development.

## 2.1 Affordable Housing Obligation

- A. Number of Units/Income Levels. The City's Housing Element includes a goal that 15% of all new housing units in the City be affordable to very low, low and moderate income households. A maximum of 1,375 units are proposed<sup>1</sup>. The Affordable Units shall be comprised of either:

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<sup>1</sup> The unit count may vary based on final project approvals. The relative percentage of affordable units shall remain the same.

1. Five Percent Very Low Income (69 units); or
2. Ten Percent Low Income (138 units); or
3. Fifteen Percent Moderate Income (206 units); or
4. A combination of the above.

For the purpose of calculating the number of affordable units in the event a combination of units is to be provided, a Very Low Income Unit shall be deemed to be the equivalent of three Moderate Income Units and two Low Income Units. A Low Income Unit shall be the equivalent of 1.5 Moderate Income Units. For example if 20 Very Low Income Units are provided either 146 Moderate Income Units or 98 Low Income Unit would be required to complete the affordability requirement.

- B. If for any reason the number of approved market rate units authorized is not constructed, or cannot be constructed due to the operation of law or economic conditions, then the number of affordable units provided or the fees paid in-lieu of providing rentals shall be reduced proportionally so that Applicant's obligation does not exceed the percentage requirement.
- C. Excess Affordable Units. In the event that Applicant constructs affordable units in excess of the maximum required amount, Applicant may be entitled to such additional incentives pursuant to the City's Density Bonus ordinance codified in Newport Beach Municipal Code Chapter 20.32, as the same may be amended from time to time. Such incentives shall be proposed and approved through an Affordable Housing Implementation Agreement (See Section 2.5.A).

## 2.2 Methodology

- A. Options. Applicant shall comply with its affordable housing obligation by any combination of the following:
  1. Constructing the new Affordable Units on-site or offsite.

2. The renovation and restriction of existing housing units.
  3. The payment of the City's In-lieu Fee.
  4. The dedication of land for affordable housing.
- B. Minimum Onsite Requirement. A minimum of 50% of Affordable Housing Obligation shall be provided on Site. Applicant and City agree that regardless of the permissible measures employed by Applicant to meet Affordable housing objectives and the mandates of the AHIP, including fee payments and/or land dedications, Applicant will insure that at least 50% of the AHIP affordable housing will be constructed on site as either for sale housing or rentals.
- C. Off-site Location. Affordable units provided off-site, either through new construction or through renovation and restriction of existing housing units, shall be located within the boundaries of the City of Newport Beach.
- D. Off-Site Renovation. Renovation of existing off-site units to affordable units shall meet the following requirements:
1. The interiors and exteriors of the units shall be substantially renovated to improve the livability and aesthetics of the units for the duration of the affordability period.
  2. The units shall be returned to the City's housing supply as decent, safe and sanitary housing and meet all applicable Housing and Building Code requirements.
  3. Renovations shall include energy conserving retrofits that will contribute to reduced housing costs for future occupants of the units.
  4. The units shall not already be subject to affordability income restrictions unless such restrictions are set to expire in three years or less. In such cases, the affordability covenant shall provide for thirty (30) years in addition to any existing covenant time.

- E. In-Lieu Fee. Applicant shall, at Applicant's election, be permitted to pay an in-lieu fee for each unit constructed in order to fulfill up to 50% of the Inclusionary Housing Program requirements.
1. The per dwelling unit in-lieu fee will be paid at the time each dwelling unit building permit for market rate housing units is otherwise ready to issue.
  2. The per dwelling unit in-lieu fee will be paid in the amount in effect at the time each dwelling unit building permit for market rate housing units is otherwise ready to issue.
  3. There shall be no such Inclusionary Housing Program fees required for Commercial, Institutional, or Resort buildings, including lodging buildings.
- F. Land Dedication. In addition to the provision of on-site affordable units for eligible households provided by Applicant or Applicant's agents, Applicant may also propose to dedicate land to the City or to a City-designated housing developer for the provision of affordable units in lieu of constructing any or all of the affordable units required by City regulations.
1. The land offered for dedication shall be of sufficient size to construct the number of affordable units that Applicant would otherwise be required to construct.
  2. In the event that Applicant cannot dedicate such land in time to fulfill City requirements for a particular sequence of market rate housing, then Applicant shall post improvement security subject to approval by City guaranteeing such dedication by a time certain.
  3. Any land offered for dedication shall be assumed to accommodate 40 units per acre.
  4. Any land offered for dedication shall have suitable topography and sufficient vehicular access and infrastructure to accommodate 40 units per acre.

5. The location and size of the land to be dedicated shall be subject to the approval of the City Council, which approval shall not be unreasonably withheld.

### 2.3 Term

City and Applicant understand and acknowledge that any affordable units provided as qualified Inclusionary Housing Program units shall be restricted for a period of not less than thirty (30) years; and, that such the Affordable Housing Cost or Affordable Rent can be adjusted annually to reflect any changes to the Median Family Income for Orange County as determined by California HCD. Such requirements shall be recorded in a rental agreement or affordable housing covenant against the applicable property as provided in the Municipal Code.

### 2.4 Regional Housing Needs Assessments (RHNA)

- A. Requirements. City and Applicant agree that any units constructed and or renovated to meet City Inclusionary Housing Ordinance Requirements shall also meet Southern California Association of Governments (SCAG) Regional Housing Needs Assessments (RHNA) specifications for qualified affordable housing.
- B. Income Limits for California. The California Department of Housing and Community Development (HCD) publishes income limits for California counties adjusted for family size. The most recent edition of the Income limits was published June 13, 2011 and established an Orange County Area Median Income of \$84, 200 for a family of four (4) persons. HCD further adjusted permissible income limits for the various income categories defined by HCD including:
  - Extremely Low \$27,700
  - Very Low Income \$46,150
  - Lower Income \$73,850
  - Median Income \$84,200



- Moderate Income \$101,050

## 2.5 Implementation

- A. Affordable Housing Implementation Agreement. An Affordable Housing Implementation Agreement (AHIA) will be executed and recorded at each development phase of development for any affordable units to be constructed within that phase, or for land proposed to be dedicated, or for any in-lieu fees to be paid, or for any other permissible measure or measures for compliance with City's Inclusionary Housing Program.
- B. Authority. Each AHIA shall be approved by the Community Development Director in conjunction with the approval of any Tract Map and/or Site Development Review for NBR development phases.
- C. Timing. AHIA shall be executed and recorded at each appropriate final map.

## 2.6 Sequencing

- A. The affordable units provided or arranged for to be phased as follows:
  - 1. Certificate of use and occupancy for Fifty percent of market rate units: commence construction on, or payment for fees/dedication of lands for one-third of required units.
  - 2. Certificate of use and occupancy for Seventy Five percent of the market rate units commence construction on, or payment of fees/dedication of lands for the next one-third of required units.
  - 3. After issuance of certificate of occupancy for Seventy Five percent of the market rate unit, a reconciliation process will be created to determine the final number of affordable housing units required to be constructed and/or payment of fees/dedication of land
  - 4. At the earlier to occur of certificate of use and occupancy for the last market rate: commence construction on, or payment of fees/dedication of lands for final required units.

### **3.0 Administration**

#### **3.1 Modification of Requirements**

If the requirements of Chapter 19.54 of the Newport Beach Municipal Code are modified by the City Council during the term of the AHIP agreement to eliminate the requirement for the payment of in lieu affordable housing fees for the privilege of constructing market rate housing, then Applicant shall be entitled to a waiver of any further fee obligations for the provision of affordable housing units for fees not already paid, or for buildings not already constructed and/or renovated and occupied.

#### **3.2 Amendments**

This AHIP may be amended by mutual agreement of the City and Applicant. Such an amendment, so long as it is consistent with the Housing Element of the General Plan and with the Development Agreement, shall not require an amendment to the General Plan itself, the Coastal Development Permit or to the Development Agreement.

