

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (“Memorandum”) is entered into as of this _____ day of _____, 2011, by and between Newport Banning Ranch LLC, a California limited liability company, (“NBR”) and the Newport-Mesa Unified School District, a political subdivision of the State of California located in Orange County, California (“District”).

RECITALS

A. District is the owner of certain undeveloped property consisting of approximately 11.36 acres, a portion of which is in the City of Newport Beach and a portion of which is in the County of Orange, (the “District Property”). The District Property is described in **Exhibit A**. The District intends to reserve the District Property for future school use purposes.

B. NBR is processing a development application and environmental clearances for a master planned community in the City of Newport Beach (the “NBR Project”) for the development of certain property in the City of Newport Beach and the County of Orange (the “NBR Property”). The 402-acre NBR property is adjacent to the District Property and is described in **Exhibit B**. The development application for the NBR Project is currently undergoing review in accordance with the provisions of the California Environmental Quality Act (“CEQA”).

C. The District has considered the impacts of the proposed Project on the District and the District Property and has concluded that any impacts from the Project will be mitigated by the payment of statutory school fees, and the measures set forth in this Memorandum.

D. Included in the circulation system for the development of the NBR Property are an alignment of North Bluff Road and the extension of 16th Street that may include a portion of the District Property. The proposed alignment of North Bluff Road has been designed to avoid or minimize impacts related to biological resources on the NBR Property.

E. Based on the foregoing circumstances, it is the parties' intention to enter into an agreement on the terms and conditions set forth below upon the certification of an Environmental Impact Report and NBR Project approval by the City of Newport Beach for the NBR Project in the event the project approvals require the dedication of right-of-way for North Bluff Road and 16th Street extension by the District.

AGREEMENT

1. In consideration of the dedication of right-of-way for North Bluff Road and 16th Street extension westerly of the City of Newport Beach Utility Yard by the District comprising the District Dedicated Property at a location generally depicted on **Exhibit C** (the "Dedicated Property"), NBR agrees to convey an equivalent amount of the NBR Property (approximately 1.3 acres) adjoining the District Property at a location generally depicted on **Exhibit C** (the "Exchange Property"). The precise determination of the size, configuration and location of the Exchange Property shall be determined by the parties upon completion of the following: 1) CEQA review and certification of the environmental impact report for the NBR Project, 2) approval of the NBR Project by the City of Newport Beach and the California Coastal Commission, and 3) the final design of the portion of North Bluff Road and the extension of 16th Street comprising the Dedicated Property to be constructed on the District Property. The final mutually agreed upon size, configuration and location of the Exchange Property by the parties shall be conditioned upon the District's completion and acceptance of the condition of the

Exchange Property by the expiration of the District's Due Diligence Period. The Exchange Property will be conveyed to the District by NBR upon the sooner to occur of 1) recordation of a final tract map for the portion of the NBR Property described as the Urban Colony (Planning Area 10a), south of the proposed extension of 17th Street through the NBR Property, or 2) commencement of grading for that portion of the NBR Project that includes North Bluff Road, north of the proposed extension of 16th Street onto the NBR Property. It is the intention of the parties that upon the conveyance of the Exchange Property to the District and the District's dedication of the Dedicated Property to the City of Newport Beach, access to the District Property, including the Exchange Property, shall be available from Whittier Avenue, subject to local agency approval. The Exchange Property to be conveyed to the District and the Dedicated Property to be conveyed to the City of Newport Beach shall be "as is" without representation or warranty. The District shall be provided with copies of all environmental reports relating to the Exchange Property in the possession of NBR within 60 days of the certification of the EIR for the NBR Project. NBR shall provide access to the Exchange Property for a period not to exceed 120 days following certification of the EIR and approval of the NBR Project by the City and the California Coastal Commission and the determination of the final size, configuration and location of the Exchange Property (the "District's Due Diligence Period") for the purpose of further environmental evaluation by the District and its consultants on such terms and conditions as the parties may reasonably agree.

2. Upon receipt of the improvement plans and the District's facilitation of such improvements, and subject to City approval, along the portion of North Bluff Road and 16th Street that border the District's Property, road improvements will be made to provide access to and from the District's Property (e.g. Acceleration and deceleration lanes.)

3. As further consideration for the dedication of the Dedicated Property by the District, NBR agrees to improve North Bluff Road and to provide utility connections at the property line of the District Property along North Bluff Road at the time of the development of the balance of the North Bluff right-of-way by NBR in accordance with the specifications attached hereto as **Exhibit D**. The costs of the road and utility connection improvements described above, are estimated to be in excess of \$1 million and shall be borne by NBR.

4. In consideration of the fact that the District Property and the Exchange Property are proposed for development as a school site, NBR agrees to record a restrictive covenant against the adjoining NBR Property to the north of the District Property that is proposed for mixed used development (the "Mixed Use Site"), as shown on **Exhibit E**, limiting the use to residential and other neighborhood commercial uses that would be compatible with adjoining school uses excluding the uses outlined on **Exhibit F**. The parties agree that following the conveyance of the Exchange Property to the District and the dedication of the Dedicated Property to the City of Newport Beach, should the District Property and Exchange Property be sold, exchanged, leased or otherwise converted for use other than a school, the restrictive covenant to be recorded on the Mixed Use Site pursuant to this paragraph 4 shall be null and void and unenforceable.

5. The understanding of the parties with respect to this Memorandum is premised upon the District's use of the District Property and the Exchange Property as a school. In the event that prior to the conveyance of the Exchange Property to the District, the District determines that the District Property or the Exchange Property are surplus or are to be converted to another use, this Memorandum shall be of no force and effect and the District, or its successor in interest, shall be responsible for the dedication and improvement of North Bluff Road and the

extension of 16th Street to be constructed on the District Property to the same extent as any private developer would be.

6. Should the District decide to annex the unincorporated portion of District Property into the City of Newport Beach, NBR will coordinate with District regarding the potential inclusion of District Property with NBR Project annexation, or such other methods as may be practical.

7. This Memorandum may be executed in counterparts, and each such counterpart shall be deemed to be an original instrument, but all such counterparts together shall constitute for all purposes one agreement. Facsimiles and electronic copies of this signed Memorandum shall be effective as originals.

DISTRICT

NEWPORT-MESA UNIFIED SCHOOL DISTRICT

By: _____
Its: _____

By: _____
Its: _____

NBR

NEWPORT BANNING RANCH LLC,
a California limited liability company

By: _____
Its: _____

EXHIBIT A
DISTRICT PROPERTY

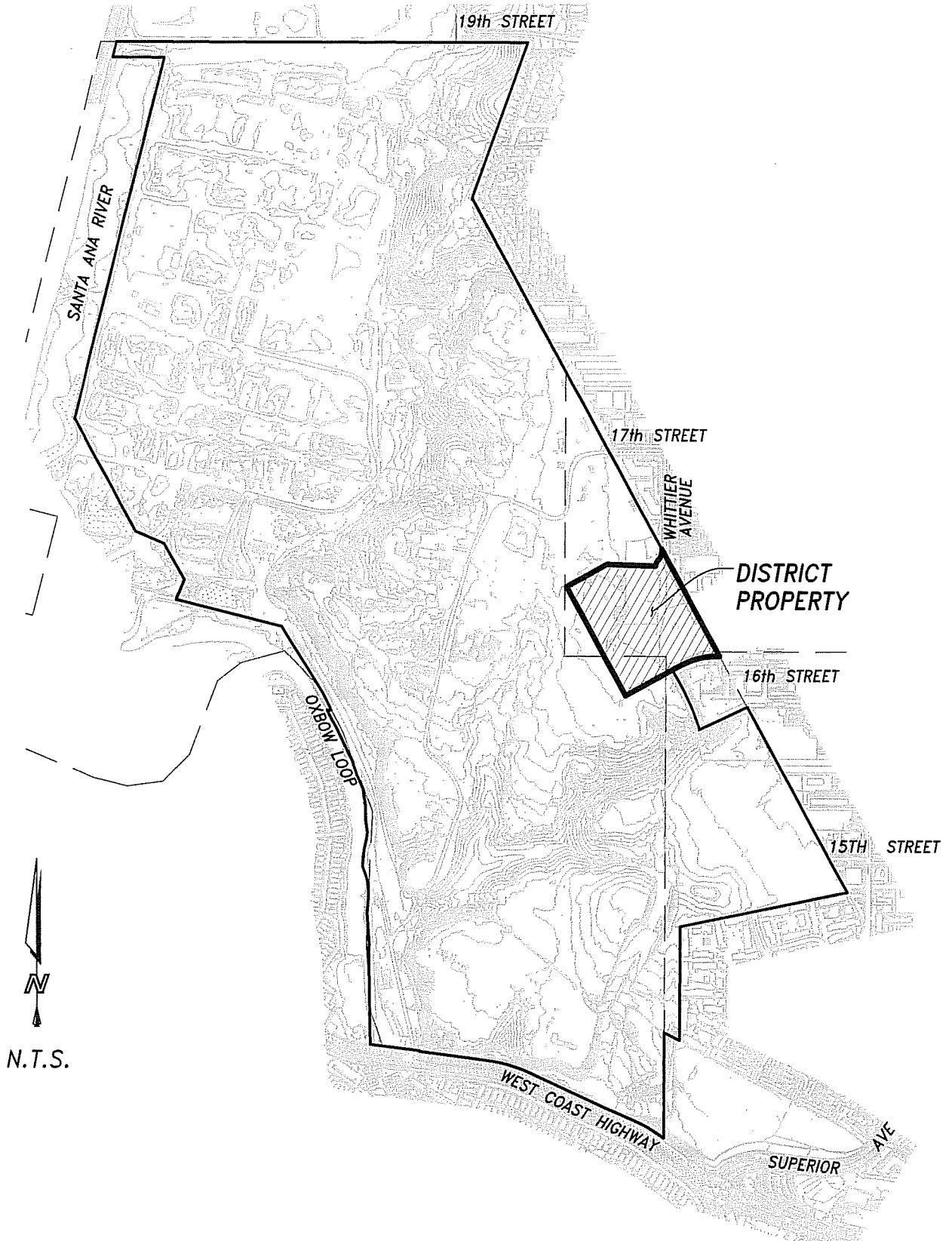


EXHIBIT B
NBR PROPERTY

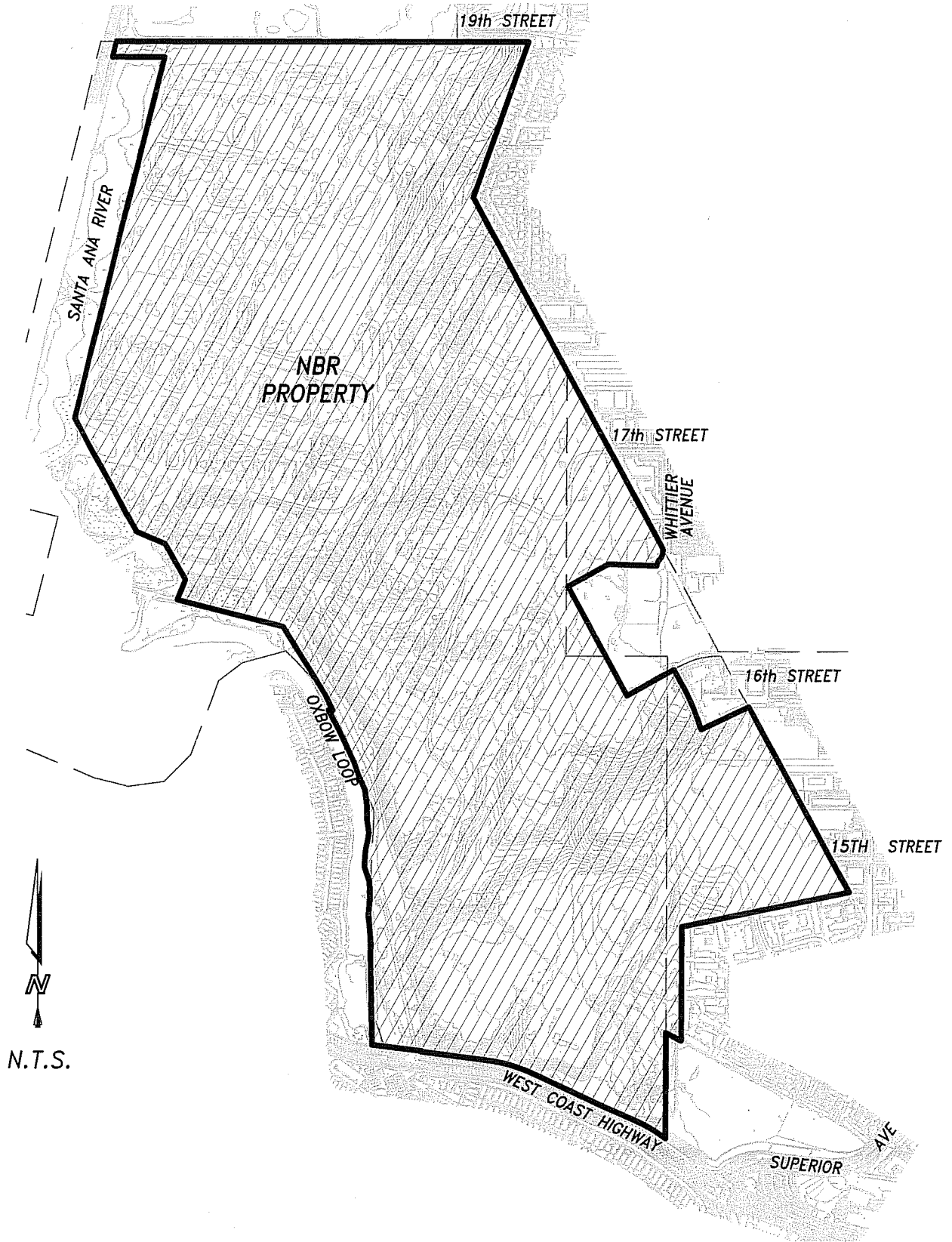


EXHIBIT C
EXCHANGE PROPERTY

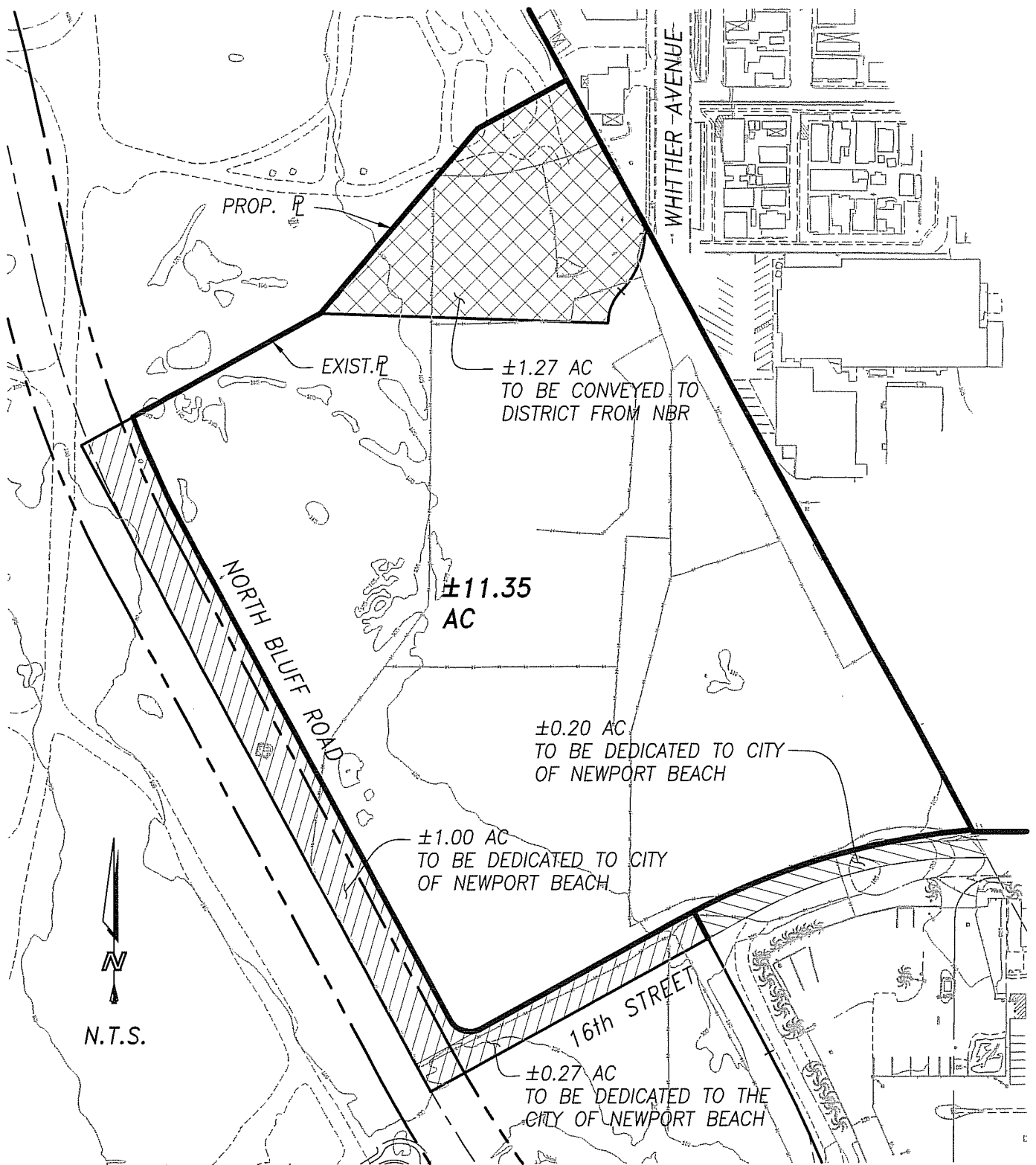
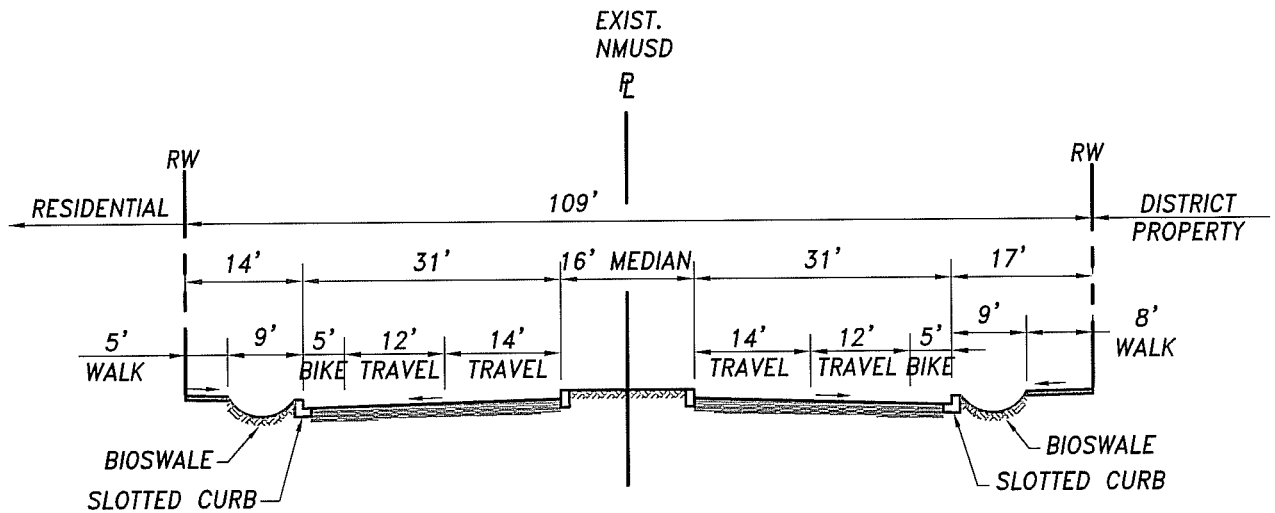


EXHIBIT D
NORTH BLUFF ROAD
SPECIFICATIONS



NORTH BLUFF ROAD

N.T.S.

EXHIBIT E
MIXED USE SITE

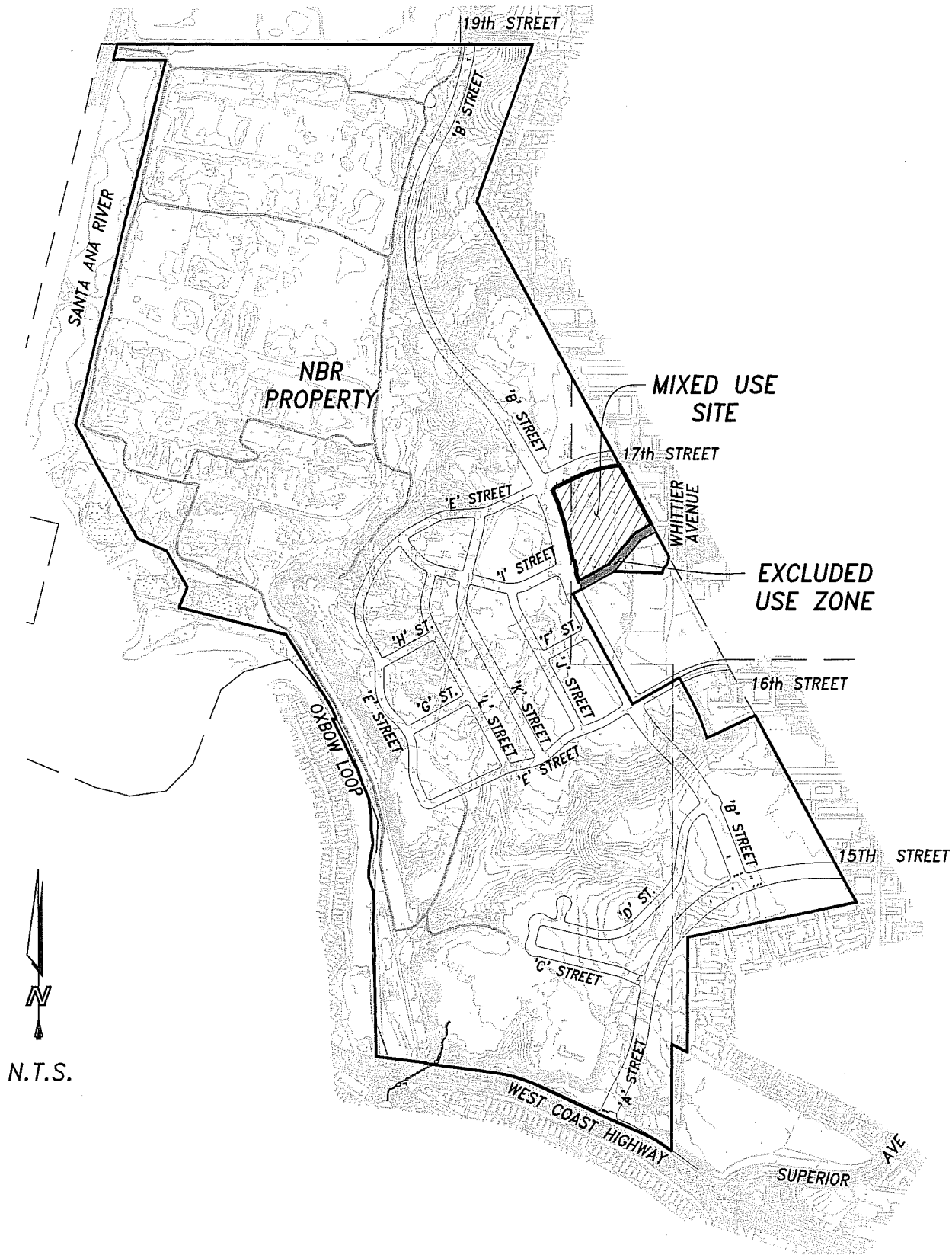


Exhibit F
Excluded Uses

Includes:

- Adult book stores
- Liquor stores
- Group Homes
- Casinos