

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO

City of Temecula
41000 Main Street
Temecula CA 92590

Attn: City Clerk

2018-0182152

05/10/2018 08:11 AM Fee: \$ 0.00

Page 1 of 21

Recorded in Official Records
County of Riverside
Peter Aldana
Assessor-County Clerk-Recorder



675

Space Above This Line for Recorder's Use

APNS 922190035

[This Instrument is for the benefit of the City of Temecula and is exempt from Recording Fees (Gov't Code § 27383), Filing Fees (Gov't Code § 6103), and Documentary Transfer Tax (Rev. & Tax. Code § 11922)]

Agreement Providing Covenants Upon Real Property Running with the Land

This Agreement Providing Covenants Upon Real Property Running with the Land ("Agreement") is made by and between Petitioner and Plaintiff Los Ranchitos Homeowners Association ("HOA") and Respondent and Defendant City of Temecula (the "City"). The HOA and the City are sometimes individually referred to herein as a "Party" and collectively as the "Parties."

Recitals

A. On October 27, 2015, the HOA filed a lawsuit in Riverside County Superior Court entitled *Los Ranchitos Homeowners Association v. City of Temecula, et al.* Case No. RIC 1512880 (the "Action"). The Action challenges the construction and operation of the Temecula Park and Ride Project ("Project"), located at 30100 Temecula Parkway (Assessor's Parcel Number 922190035), under the California Environmental Quality Act (Pub. Res. Code § 21000, et seq.) ("CEQA") and alleges breach of the "Agreement Affecting Real Property," which was recorded in the Assessor's office of the County Clerk and Recorder for the County of Riverside on November 18, 1999 (the "1999 Agreement"). The Action includes three causes of action for: (1) a peremptory writ of mandate pursuant to Code of Civil Procedure § 1094.5; (2) breach of contract; and (3) declaratory relief.

B. The City has prepared revised plans for the construction of the Project ("Revised Plans") as depicted on Exhibit "A" attached hereto.

C. The HOA and the City have developed a street improvement detail, for certain commercial properties along the south side of Vallejo Avenue, west of La Paz ("Vallejo Right of Way Improvements") as depicted on Exhibit "B" attached hereto.

D. The HOA and the City now wish to avoid the risk and expense of continued litigation, and desire to resolve any and all claims by and between them related to the Action and other matters, as set forth below.

E. City is the record fee owner of that property consisting of approximately 2.37 acres located at 30100 Temecula Parkway, Temecula, California 92592 (Assessor's Parcel Number 922190035), that is described and depicted on Exhibit "C" attached hereto and incorporated herein by this reference as though set forth in full ("Property").

F. HOA has real property interests in the properties within the HOA's boundaries established by that certain Declaration of Restrictions recorded in the Office of the County Recorder of Riverside County, California on October 11, 1966, as Document No. 100757, which was extended by document recorded on September 6, 1996 as Document No. 1996-331899, which was later amended by a document recorded on June 3, 2008, as Document No. 2008-0300969, and any other amendments, that may appear of record, all in the Official Records of Riverside County, California ("HOA Property Interests").

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals, all of which are incorporated by reference, and the following provisions, mutual promises, and agreements contained herein, the Parties agree to the following terms:

1. In consideration of the HOA's covenants herein, the City agrees to:
 - a. Pursue and develop cross-lot access to and from the Project such that no future access to the Project will ever be made from Vallejo Avenue and La Paz Road ("Cross-Lot Access");
 - b. Pledge sufficient funding for the development of Cross-Lot Access, which shall be subject to a separate Reimbursement Agreement between the City and the adjacent property owners and developers of the adjacent property (Temecula Valley Hospitality LLC), located at Assessor's Parcel Number 922-190-033;
 - c. Construct the Project and Vallejo Right of Way Improvements in conformance with Exhibits "A" and "B," to include the Project features included in this Agreement. If the City determines that changes are necessary that will affect the Project features in this Agreement, the City will provide such changes to the Association for review and approval. The Association and the City will negotiate in good faith on such changes, and the Association's approval will not be unreasonably withheld;
 - d. Permanently close any access to the Project from Vallejo Avenue, and install the necessary improvements to render the temporary access area consistent with the

remainder of the street frontage along Vallejo, including extending the earthen berm and the masonry block wall atop the berm for 3 additional 50 foot segments diminishing in height from a 6-foot wall height down to a 4-foot wall height (see Exhibit "D") (connecting to the 4-foot tall chain link fence described in 1(h) below), upon the development of Cross-Lot Access and the completion of the Wabash/Temecula Parkway traffic signal, and expeditiously pursue completion of the Temecula Parkway Access and allow its use while awaiting completion of the Wabash/Temecula Parkway traffic signal;

- e. Establish "No Parking" zones on both sides of Vallejo Avenue from Palma Drive to the easterly property line of the adjacent parcel (Parcel Number 922-190-033) no later than the date the Project is first opened and operated;
- f. Install a berm of varied height that will run the full length of Vallejo Avenue; the berm shall be no less than 36" in height, except as necessary to provide sufficient sight distance for drivers exiting the Project;
- g. Install a wall, similar to the perimeter wall constructed on the development to the west, of varied height that will run the full length of La Paz Road and extend around the corner of La Paz Road and Vallejo Avenue, along Vallejo Avenue to the Project's temporary Vallejo Avenue access point, as depicted on Exhibit "A" to this Agreement; the top of the wall shall be approximately 8 feet above street elevation, except as necessary to provide sufficient sight distance for drivers exiting the Project;
- h. Install a 4-foot tall vinyl coated chain link fence on top of the berm constructed per 1(e) above, from the location where the top of berm is approximately 6-feet above the park-n-ride pavement elevation to the easterly property line. Install a temporary chain link fence that is 6 feet in height along the eastern property line, with opening for the cross-lot access point. All fencing required under this paragraph shall be installed prior to operation of the Project. The temporary fencing may be removed, at the City's discretion, upon the adjacent property owner's completion of the Vallejo Avenue frontage improvements along the adjacent property;
- i. Construct an eight-foot-wide, multi-purpose trail, pursuant to the HOA's request in lieu of a typical concrete sidewalk such that the multi-purpose trail is the same as the trail proposed for the development to the west. The multipurpose trail shall be 8 feet wide and shall be composed of a minimum of 4" of compacted decomposed granite, edged with a $\frac{3}{4}$ " thick weed border running along both sides the full length of the trail along the Project's Vallejo Avenue frontage;
- j. Revise, pursuant to the HOA's request, the edge of the pavement on the southerly side of Vallejo Avenue along the project frontage. The edge of pavement shall have an asphalt concrete berm in lieu of a portland cement concrete curb and gutter; the typical cross-section for the Project along Vallejo Avenue shall be as depicted on Exhibit "B" to this Agreement;

- k. Relocate and reconstruct the Los Ranchitos monument sign, pursuant to the HOA's request, from the Project site to a location within the HOA and to the HOA's satisfaction; however, such relocation and reconstruction of the Los Ranchitos monument sign shall not exceed the dimensions of the Los Ranchitos monument sign that was previously on the Project site;
 - l. Issue an encroachment permit to the HOA for the installation and maintenance of vinyl equestrian fencing and multi-purpose DG trail along the Project's Vallejo Avenue frontage;
 - m. Make a one-time payment to the HOA in the amount of \$80,000 within five (5) business days of the execution of the Reimbursement Agreement contemplated in paragraph 1(b), in recognition of HOA's ancillary costs as well as HOA's agreement to install vinyl equestrian fencing, and maintain, in perpetuity, the vinyl equestrian fence and multi-purpose DG trail along the Project's Vallejo Avenue frontage as set forth herein; and
 - n. Bear its own attorneys' fees and costs.
2. In consideration of the City's covenants herein, the HOA agrees to:
- a. Allow the City to re-bid and construct the Project without any opposition from the HOA provided the Project is constructed consistent with this Agreement;
 - b. Work and cooperate with the adjacent property owners and developers of the adjacent property, located at Assessor's Parcel Number 922-190-033, to pursue Cross-Lot Access that is not located on Vallejo Avenue;
 - c. Allow the City to bid and construct the Wabash/Temecula Parkway intersection modifications and traffic signal improvements, as well as the necessary site improvements to Assessor's Parcel Number 922-190-033 ("Cross-Lot Access Improvements") without any opposition from the HOA;
 - d. Maintain the City-installed DG multi-purpose trail, referenced at paragraph 1(i) in this Agreement, at the HOA's expense;
 - e. Install and maintain equestrian fencing along the DG multi-purpose trail on Vallejo Avenue, referenced at paragraph 1(i) and (l), at the HOA's expense;
 - f. Dismiss with prejudice the current legal Action against the City within five (5) business days of the execution of the Reimbursement Agreement contemplated in paragraph 1(b); the HOA agrees that it shall provide the City's counsel of record with a signed Request for Dismissal, with prejudice, of the current Action, and further agrees that the City's counsel may file that Request for Dismissal with the Court immediately; and

- g. Bear its own attorneys' fees and costs in light of the City's monetary pledge to expedite and facilitate the development of cross-lot access and the improvements to the Project described in Paragraphs 1(a)-(n).

3. Temporary Access Period Covenants.

- a. If Cross-Lot Access to the Project cannot reasonably be developed and perfected prior to the Project completion, the Parties agree that the City may operate the Project with temporary access to and from the Project onto Vallejo Avenue for a period not to exceed 12-months from the time the Project is ready for public use (the Temporary Access Period);
- b. During the Temporary Access Period, the City shall not permit access to and from the Project on La Paz Road;
- c. The City shall monitor traffic on Vallejo Avenue during the Temporary Access Period and share the results of such traffic monitoring with the HOA;
- d. If unforeseen conditions are encountered such that Cross-Lot Access cannot reasonably be developed within the time anticipated in this Agreement, the Parties agree that the City may apply in writing to the HOA for an extension of time for the City to operate the Project with temporary access to and from Vallejo Avenue. Such application shall be granted or denied in writing by the HOA within fourteen (14) days of the HOA's receipt of any such application. The HOA shall not unreasonably withhold its approval of a time extension. If the Parties cannot agree on an extension pursuant to this paragraph, either party may apply to the Court on an ex-parte basis, for enforcement under CCP §664.6 pursuant to paragraph 18 below;
- e. Upon completion of the Temporary Access Period, and permanent closure of the Vallejo Access pursuant to 1(d) above, the City shall eliminate the westbound Vallejo Avenue right turn lane to northbound La Paz Road using delineators until such time as the City's traffic engineer determines that traffic conditions warrant its re-opening to provide for an acceptable intersection level of service.

4. This Agreement and its obligations are contingent upon the execution of the Reimbursement Agreement contemplated in paragraph 1(b).

5. City's Retention of Police and Discretionary Powers As Required By Law. The Parties understand and acknowledge that, in the context of processing any potential land use entitlements for properties adjacent to the Project Site, the City cannot guarantee the ultimate outcome of any public hearings before the City Planning Commission or the City Council and cannot prevent any opposition thereto by members of the public affected by or interested in the land use entitlements. The Parties further understand and acknowledge that City action on any proposed applications for land use entitlements on adjacent properties involves the exercise of the City's police power, and it is settled California law that a governmental entity may not contract away its right to exercise its police power in the future. *Avco Community Developers Inc. v. South Coast Regional Com.*, 17 Cal.3d 785, 800 (1976); *City of Glendale v. Superior*

Court, 18 Cal.App.4th 1768 (1993). Subject to the foregoing, the City, to the extent allowed by law, shall facilitate and pursue the proceedings necessary to develop and perfect Cross-Lot Access to the Project; will diligently seek a provision for joint access between adjacent properties and the Project Site; and will diligently process any land use application, including any necessary environmental review, as determined by the City. Nothing in this Agreement is intended, nor shall it be construed, to establish the City's acceptance or approval of any particular land use or development, and the City retains the right to act on any such applications in its sole discretion in accordance with law.

6. Resolution of Dispute. The Parties agree and understand that this Agreement resolves any and all disputes between them related to the Action and that the terms of this Agreement shall in no way be construed to be an admission of fault or liability, whatsoever.

7. Release and Discharge. In consideration of these mutually dependent promises and representations, and except for the obligations created by this Agreement, the Parties hereby fully release and forever discharge each other and each other's respective successors, assigns, boards, councils, officials, officers, directors, employees, agents, representatives, and attorneys from and against any and all claims, demands, actions, causes of action, proceedings, obligations, liabilities, damages, losses, costs, and expenses of any nature whatsoever, in law or in equity, known or unknown, foreseen or unforeseen, contingent or non-contingent, that the Parties now have or may at any time hold based upon or in any way arising out of or in connection with the matters set forth in the Action.

8. Civil Code § 1542. The Parties recognize that the release set forth in Section 8, above, shall extend to claims whether known or unknown to them and that the release is made with the understanding that it shall include unknown claims contemplated by Civil Code § 1542, which provides as follows:

“A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.”

9. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties, and their respective officers, officials, employees, agents, attorneys, successors, devisees, executors, administrators, assigns, and insurance carriers.

10. Entire Agreement. This Agreement constitutes the entire agreement between the Parties and it is expressly understood and agreed that this Agreement may not be altered, amended, modified, or otherwise changed in any respect except by a writing duly executed and authorized by each of the Parties.

11. Construction and Interpretation. This Agreement shall be construed as though each of the parties participated equally in its drafting and, it shall be interpreted, wherever possible, to make it valid and effective. The provisions of this Agreement shall be liberally construed to effectuate its purpose. The title headings of the respective paragraphs of this Agreement are inserted for convenience only, and shall not be deemed to be part of this Agreement or considered in

construing this Agreement. In the event of any dispute concerning this Agreement, the prevailing party shall be entitled to recover its court costs and attorney's fees.

12. Waiver. No provision of this Agreement may be waived unless in writing signed by each Party. Waiver of any one provision shall not be deemed to be a waiver of any other provision.

13. California Law. This Agreement shall be deemed to have been executed and delivered within the State of California, and the rights and obligations of the Parties shall be governed by, and construed and enforced in accordance with, the laws of the State of California.

14. Legal Representation. Each Party acknowledges that it has been represented by counsel, or has had counsel available to it, throughout the pendency of the negotiations of this Agreement. The Parties each agree that they are to be considered mutual authors of this Agreement.

15. Authority to Execute. Each individual executing this Settlement Agreement represents and warrants that he or she is duly authorized to execute this Agreement and that it is binding in accordance with its terms. Each of the Parties warrants that he/she/it is the true holders of all rights and remedies which he/she/it purports to release, and has not assigned or transferred any of those rights or remedies to any other individuals and/or entities.

16. Good Faith and Further Assurances. The HOA and the City agree that they will act in good faith in abiding by the terms of this Agreement, and in carrying out the obligations of each Party set forth herein. So long as authorized by applicable laws to do so, each of the Parties to this Agreement will do such further acts and execute, acknowledge, and deliver all further documents as may be necessary to fully effectuate the provisions of this Agreement.

17. Jurisdiction. The Parties agree that, pursuant to California Code of Civil Procedure section 664.6, the County of Riverside Superior Court shall retain jurisdiction over the Parties to enforce this Agreement until performance in full of the terms of the Agreement, and the Parties hereby submit to said jurisdiction. In the event any obligation imposed by this Agreement is not fulfilled as prescribed herein, the Parties may apply ex-parte to the Riverside Superior Court for a hearing to enforce the terms of this Agreement pursuant to Code of Civil Procedure section 664.6, until full performance thereof.

18. Execution. This Agreement may be executed in counterparts which, when taken together, shall constitute one original agreement. An electronic or facsimile signature shall be deemed the same as, and valid as if it were, an original signature.

19. Assignment. The City's obligations in this Agreement may be assigned by the City to a successor in interest of the 30100 Temecula Parkway (Assessor's Parcel Number 922190035) property through a sale or transfer of the property, and the City agrees that in the event of any such sale or transfer, the City will consent to the Covenants, Conditions & Restrictions¹

¹ Declaration of Restrictions recorded in the Office of the County Recorder of Riverside County, California on October 11, 1966, as Document No. 100757, which was extended by document recorded on September 6, 1996 as Document No. 1996-331899, which was later amended by a document recorded on June 3, 2008, as Document No. 2008-0300969, and any other amendments, that may appear of record, all in the Official Records of Riverside County, California.

("CC&Rs) attaching to the property and upon the completion of the sale or transfer, the City shall restore the edge of pavement and earthen shoulder condition along the Vallejo Avenue frontage of the property, including the relocation of erosion and sediment control devices and temporary fencing, to allow for an approximately eight-foot wide dirt shoulder on the Vallejo Avenue frontage. If the successor in interest or the City does not construct or operate the Project, the parties to this Agreement and the successor in interest to 30100 Temecula Parkway shall not be bound by the obligations of this Agreement with the exception of the City's consent to the CC&Rs attaching to the property and that the westbound Vallejo Avenue right-turn lane contemplated for the Project will not be constructed.

20. Effectiveness of Agreement. This Agreement shall be effective upon the execution of this Agreement by all Parties and the execution of the Reimbursement Agreement contemplated in paragraph 1(b).

21. Covenants Binding on Successors in Interest. Each and all of the covenants, terms, provisions, and agreements herein contained shall be binding upon and inure to the benefit of the heirs, executors, administrators, successors, and assigns of the respective parties hereto. These covenants, conditions, and restrictions shall run with the Property and the HOA Property Interests and shall be binding upon, and inure to the benefit of, the Property and HOA Property Interests, and all portions thereof, and any interest therein, and shall be binding upon, and inure to the benefit of, all parties having or acquiring any right, title or interest in the Property or HOA Property Interests or any portion thereof, and are imposed upon the Property and every part thereof as equitable servitudes in favor of each and every portion thereof.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, this Agreement is executed on the dates set forth below:

Los Ranchitos Homeowners Association

Dated: _____, 2018

By: _____

Name: _____

Title: _____

Dated: _____, 2018

By: _____


Name: _____

Title: _____

APPROVED AS TO FORM

Dated: 1/30, 2018

LAW OFFICES OF ABIGAIL SMITH

By: 

Abigail A. Smith
Attorneys for Petitioner
LOS RANCHITOS HOMEOWNERS
ASSOCIATION

Dated: January 30, 2018

EPSTEN GRINNELL & HOWELL, APC

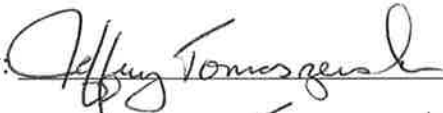
By: 

William S. Budd
Attorneys for Petitioner
LOS RANCHITOS HOMEOWNERS
ASSOCIATION


IN WITNESS WHEREOF, this Agreement is executed on the dates set forth below:

Los Ranchitos Homeowners Association

Dated: May 8, 2018, 2018

By: 
Name: JEFFREY TOMASZEWSKI
Title: President LRHOA

Dated: 5/8/18, 2018

By: 
Name: Neal H. Ziff
Title: Secretary LRHOA

APPROVED AS TO FORM

Dated: _____, 2018

LAW OFFICES OF ABIGAIL SMITH

By: _____
Abigail A. Smith
Attorneys for Petitioner
LOS RANCHITOS HOMEOWNERS
ASSOCIATION

Dated: _____, 2018

EPSTEN GRINNELL & HOWELL, APC

By: _____
William S. Budd
Attorneys for Petitioner
LOS RANCHITOS HOMEOWNERS
ASSOCIATION

ACKNOWLEDGMENT

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

State of California
County of Riverside

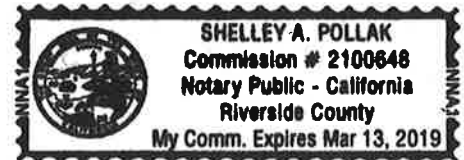
On 5-8-2018 before me, Shelley A. Pollak, Notary Public
(insert name and title of the officer)

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

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

WITNESS my hand and official seal.

Signature Shelley A. Pollak (Seal)



ACKNOWLEDGMENT

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

State of California
County of Riverside

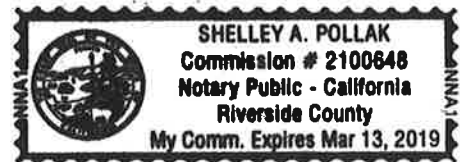
On 5-8-2018 before me, Shelley A. Pollak Notary Public
(insert name and title of the officer)

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

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

WITNESS my hand and official seal.

Signature Shelley A. Pollak (Seal)




City of Temecula, a municipal corporation

Dated: Feb 20, 2018

By: 
Matt Rahn, Mayor

Attest:


Randi Johl, City Clerk

Approved as to Form:



Ginetta L. Giovinco or
Stephen D. Lee
Attorneys for Respondent
CITY OF TEMECULA

EXHIBIT A

City of Temecula

Park-n-Ride Project Plans
with revisions dated 10/17/17

PW06-09

By Michael Baker & Associates

The plans are those on file in the Director of Public Works' office and as used to award to a construction contract to Hillcrest Contracting at the January 9, 2018 City Council meeting.

EXHIBIT B

Vallejo Right of Way Improvements

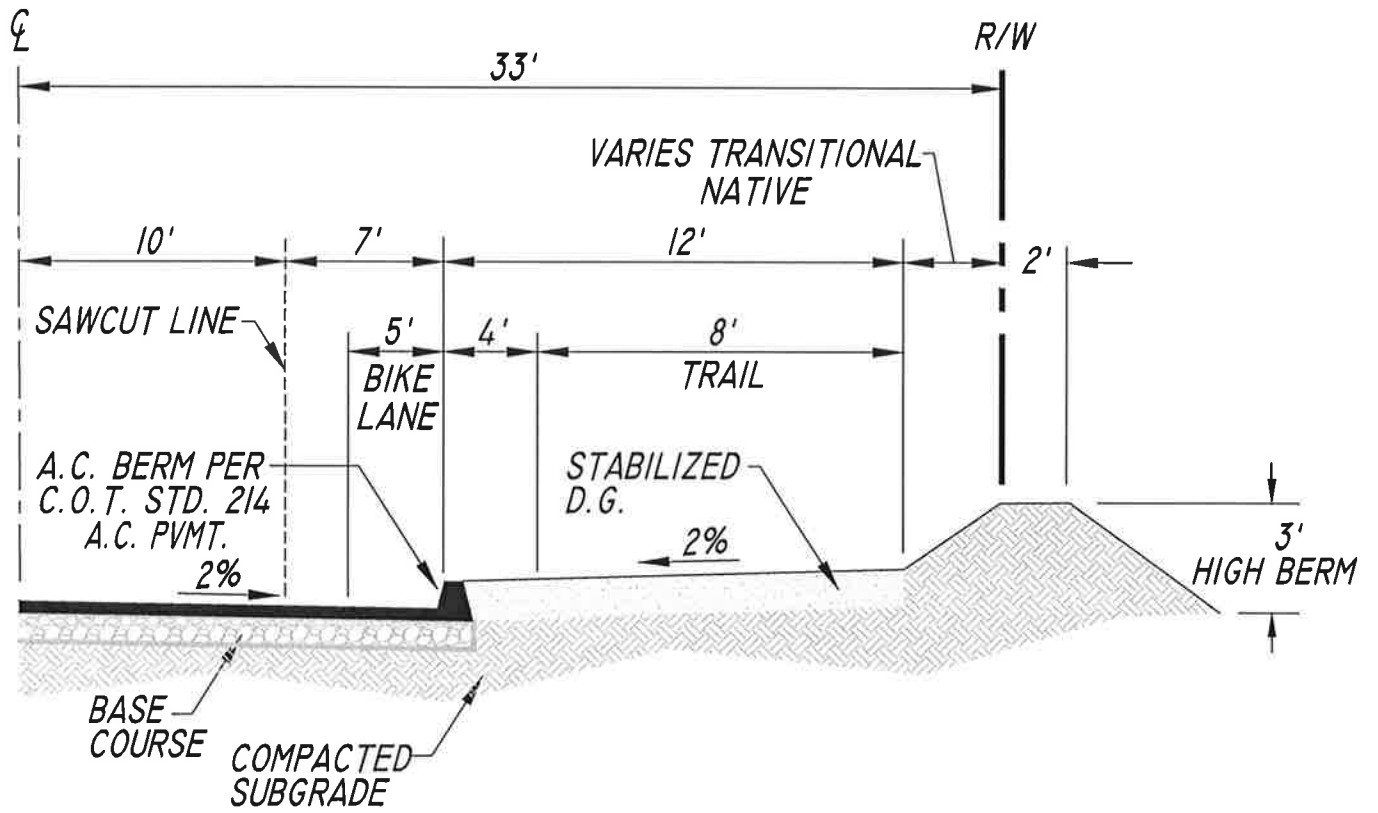
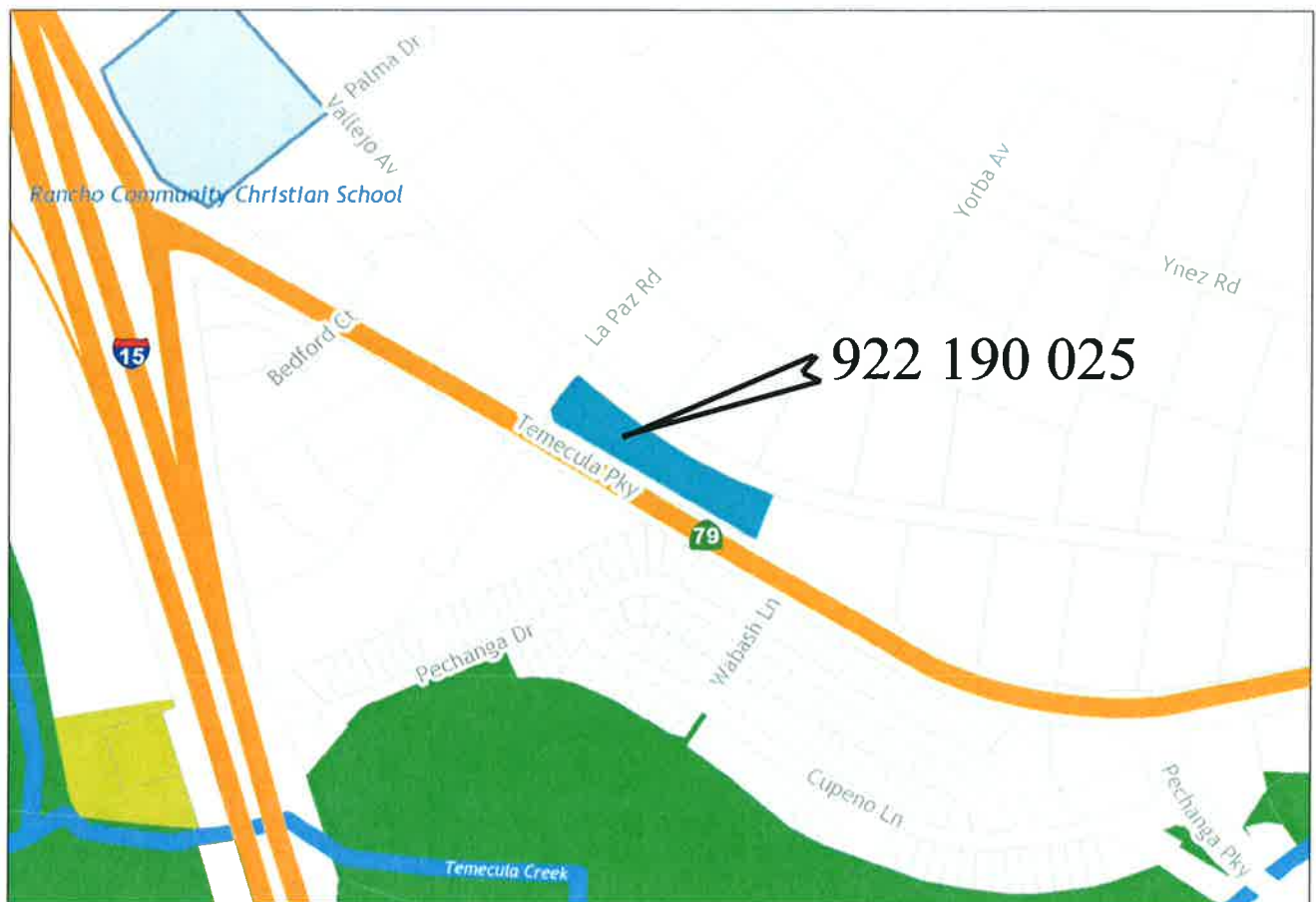


EXHIBIT C

Property Description

EXHIBIT C

PARK N RIDE PROPERTY



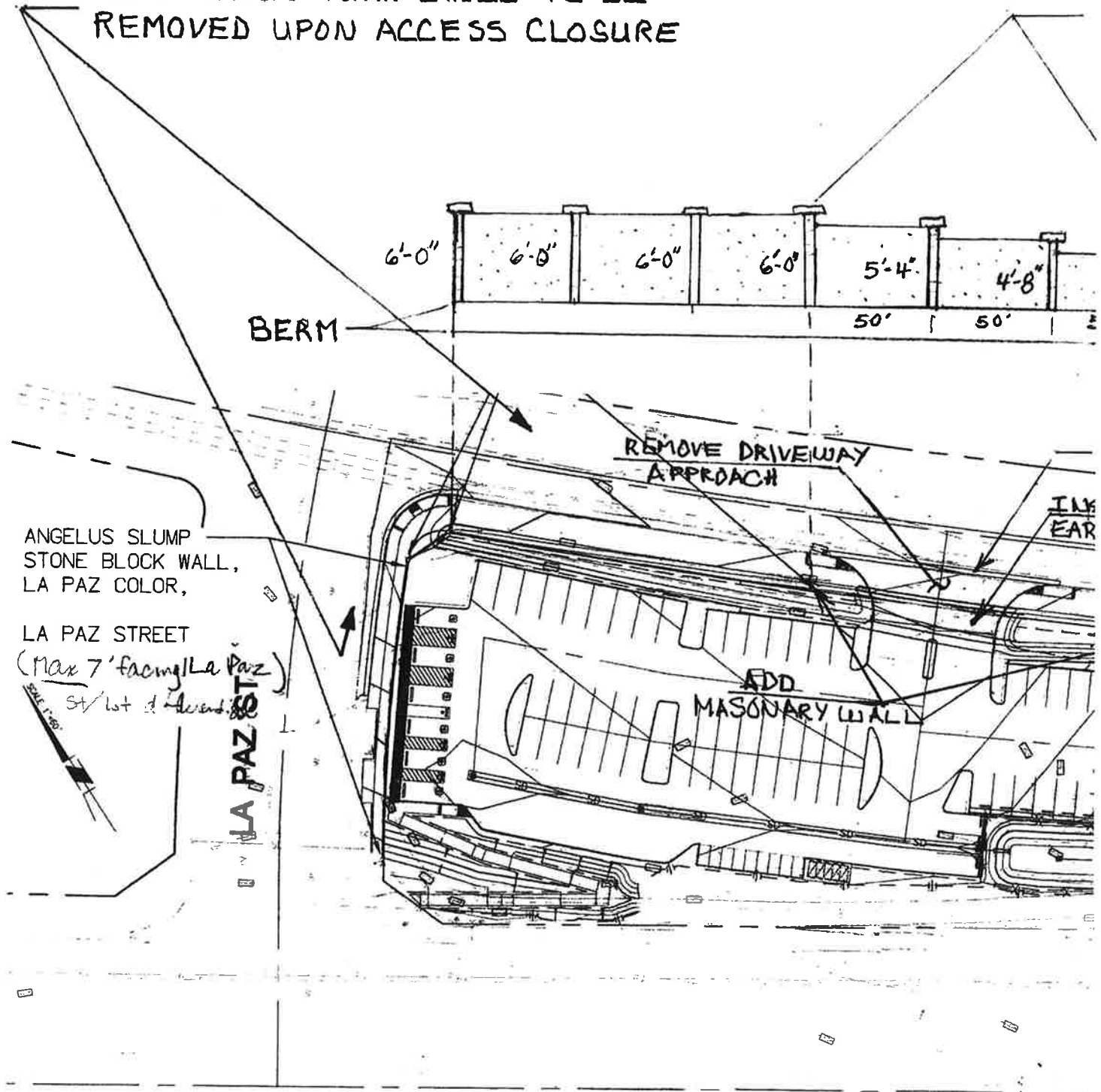
CITY OF
TEMECULA

EXHIBIT D

Vallejo Driveway Closure Improvements

WALL/FENCE ELEV
(FACING VALLEY)

DESIGNATED TURN LANES TO BE
REMOVED UPON ACCESS CLOSURE



Temecula Park and Ride

4/27/2017

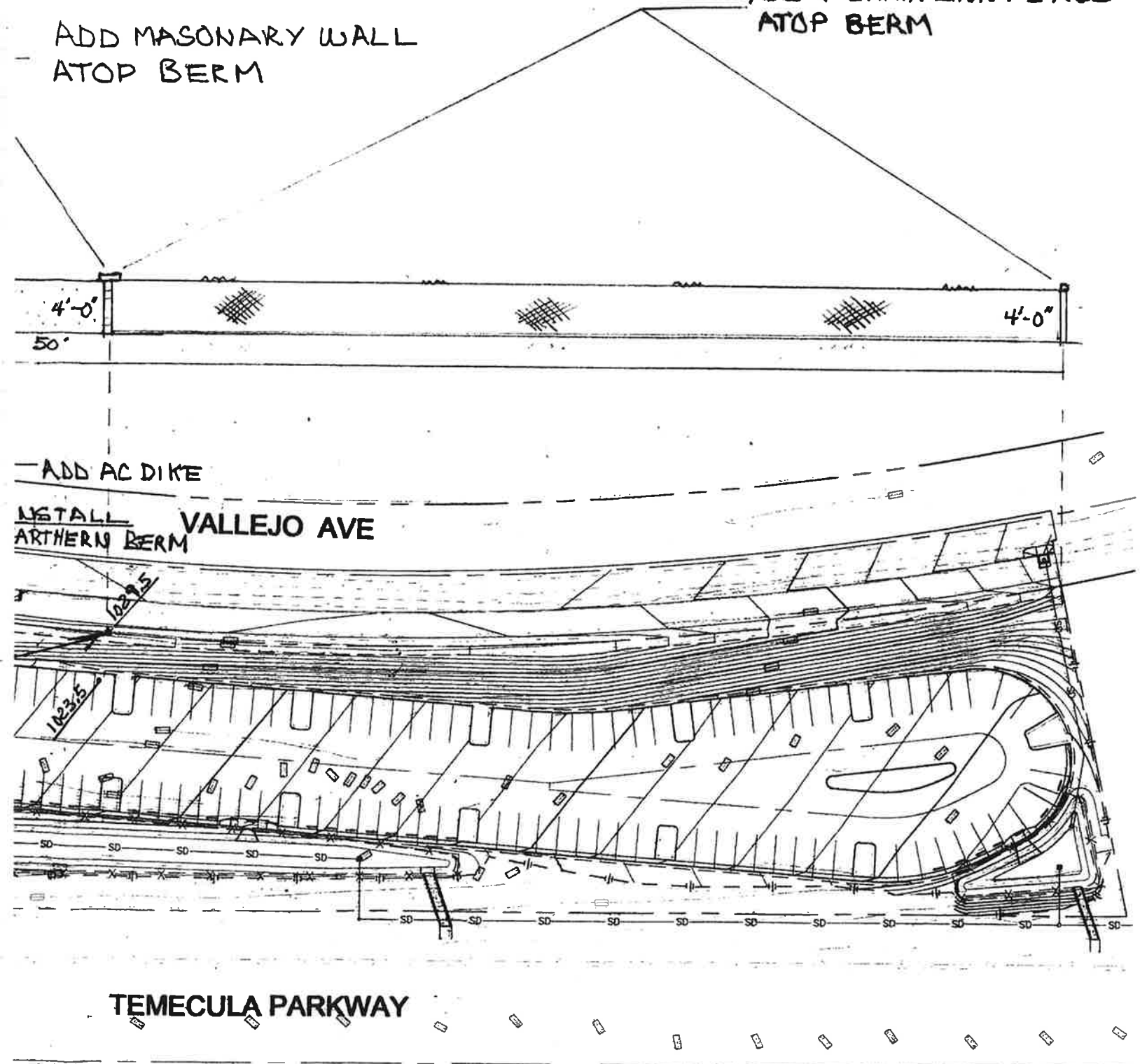
Ex. D

1 of 2

EVALUATION EXHIBIT
TO AVENUE)

ADD MASONARY WALL
ATOP BERM

ADD 4' CHAIN LINK FENCE
ATOP BERM



City of Temecula Typical Screen Wall

Exhibit D $2 \text{ of } 2$