MARINA COAST WATER DISTRICT

Water, Sewer and Recycled Water Infrastructure Agreement

for

Junsay Oaks Senior Apartments

WATER, SEWER AND RECYCLED WATER INFRASTRUCTURE AGREEMENT

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WATER, SEWER AND RECYCLED WATER INFRASTRUCTURE AGREEMENT

This Agreement made and entered into this _____Day of _____ 2017("Effective Date"), between **Marina Coast Water District**, 11 Reservation Road, Marina, CA, 93933, hereinafter called "District", and **Junsay Oaks L.P., a limited partnership**, with its principal offices at 295 Main St., Suite 100 Salinas, CA 93901, hereinafter called the "Developer" (collectively, the "parties") The name of the Developer's development that is the subject of this Agreement, is Junsay Oaks Senior Apartments.

1. Definitions; District's Role; Term of this Agreement.

1.1 Definitions, whenever used in this Agreement, the following terms shall have the following respective meanings:

a. "Agreement" means this Water, Sewer and Recycled Water Infrastructure Agreement as it may be amended from time to time in accordance with the terms and conditions hereof.

b. "City" means the City of Marina.

c. "Contractor" means any contractor with which the Developer has a direct contractual relationship to perform any work under this Agreement.

d. "Development" means that certain property located at 3098 De Forest Rd. and legally described in Exhibit "B" and shown on the map at Exhibit "C."

e. "Facilities" shall mean those certain infrastructure improvements and system provided for in this Agreement and as approved by District as part of its review of the Development plans, Facilities shall include, but not be limited to, pipes, pumps, electrical and instrumentation and controls.

f. "Procedures" means the District's *Procedure Guidelines and Design Requirements*.

g. 'Standards" means the District's *Standard Plans and Specifications for Construction of Domestic Water, Sewer, and Recycled Water Facilities*.

h. "Water Allocation" means the total water allocated by the City/Land Use Jurisdiction for the Development as documented in Exhibit "A" and described in Exhibits "B" and "C".

i. "FORA" means Fort Ord Reuse Authority.

1.2 Allocation of Water Capacity for the Development. The parties hereto expressly agree that as a condition precedent for the performance of the District's obligations hereunder, Developer

must provide proof to the satisfaction of the District that the City has approved the allocation of water capacity for the Development. _____

1.3 Sewer Capacity. The District provides sewer collection from customers and conveyance of those sewer flows to the Monterey Regional Water Pollution Control Agency's (MRWPCA) Regional Interceptor System which discharges to the MRWPCA Wastewater Treatment Plant (WWTP). Capacity within the WWTP for the Development must be coordinated with MRWPCA. To the extent possible, the District will allocate its existing pre-paid WWTP Capacity to the Development. If additional WWTP Capacity is required for the Development, the Developer shall purchase the capacity from the MRWPCA at the Developer's sole expense, and shall provide proof of payment for that capacity right to the District at the time the sewer infrastructure is conveyed. Furthermore, the Developer understands and agrees that nothing herein shall be construed as a representation of future sewer capacity by either City or District other than as currently established by the type and density of development.

1.4 District's Role. The District's role in the Development is to approve the plans for facilities, inspect the construction of the facilities, accept the transfer of the title to the facilities, to maintain and operate the systems, and to bill customers for water and sewer service at rates set for the District's Marina Service Area from time to time.

1.5 Term. This Agreement commences upon the above Effective Date and shall expire (a) two (2) years thereafter or (b) upon completion by the Developer and acceptance by the District of all facilities required by this Agreement and the required warranty period, whichever occurs first, unless terminated sooner as provided in section 17 of this Agreement.

2. Design and Construction Requirements

2.1 The facilities shall be designed, constructed and be operable in strict accordance with the District's requirements, which shall be a condition of the District's acceptance of the system facilities under this Agreement. The District's requirements include, but are not limited to the following:

2.1.1 Developer shall design and construct the facilities in strict accordance with the District's most recent Procedures and Standards in effect at the time of construction, (contained in updated Procedures) and any other applicable State Regulatory Agency requirements, whichever are most stringent. Any conflict in Development requirements shall be addressed during the plan review process or at such other times as any such conflict is discovered. A licensed civil engineer registered in the State of California shall prepare all plans and specifications for the Developer.

2.1.2 The Developer shall comply with the District's most recent Procedures and the District's most recent Standards in effect at the time of construction when submitting project plans and specifications to the District for review and consideration for approval. District's review shall commence after the District determines compliance with District's Procedures regarding the submittals and any other applicable State Regulatory Agency requirements, whichever are most stringent. District review of the Development's plans

and specifications shall commence after receipt of the initial deposit (see Paragraph 2.1.7). District may approve plans concurrent with the City's approval.

2.1.3 The Developer shall comply with most recent District Code in effect at the time of construction including, but not limited to, section 4.28 *Recycled Water*. More specifically, section 4.28.010 *Applicability* states that "[T]his chapter applies to publicly owned properties, to commercial, industrial and business properties, and to other such properties as may be specified from time to time by Marina Coast Water District … " Section 4.28 does not require the use of recycled water for irrigation to privately owned residential lots. Improvement plans for the Development must contain recycled water lines to serve common areas and other non-residential lot irrigation within the Development. The Developer and the District will cooperatively identify recycled water turnout location(s). The Developer will also install the lateral lines from each turnout. The Developer, or its successors or assignees (such as an owners association), will assist MCWD to obtain all required permits for the on-site use of recycled water. This shall include but is not limited to, complying with the California Department of Health Services, the State of California Regional Water Quality Control Board and other regulatory agency requirements prior to constructing any recycled water facilities.

2.1.4 The District shall have the right to inspect the construction of the facilities and verify that construction conforms to the Development plans and specifications. District's right to inspect extends to five (5) feet from the building exterior at the point where the utility enters the structure. The District shall also have the right to inspect special fixtures including, zero water use urinals, hot water recirculation systems, etc. The District's right to inspect does not in any way eliminate or supersede any inspection obligations by the City. The District will inform the Developer of required field changes. The Developer shall be responsible for obtaining all easements outside publicly dedicated rights of way. Upon receipt of recorded private easements to serve the Development in accordance with the plans and specifications approved by the District, the District will quitclaim any easements not required to serve the Development and not required by the District.

2.1.5 All facilities shall be tested to meet District requirements. No facilities or portion thereof will be accepted without meeting all District test requirements. The District shall have the right to inspect work in progress in the construction of either in-tract or out-of-tract water, recycled water and sewer infrastructure facilities or special fixtures, as described above.

2.1.6 Plan Review Fees. The Developer, on a phased basis, agrees to pay all fees and charges, including additional plan check fees and construction inspection fees as required by the District for the Development. These fees will be determined by the District at the time the fees are due and payable. The District may also require a prepaid fee to cover staff time before preliminary level or concept level plan check begins. (See *Procedures* section 100.6.2) If the District Engineer determines consultant assistance is required for plan check review or portion thereof, the Developer agrees to prepay the additional plan check fees if that cost exceeds the balance on the initial deposit. The District shall obtain the Developer's written approval for any costs in excess of this amount, for which approval shall not be unreasonably withheld. Upon the execution of this Agreement by both parties, the Developer shall deposit with the District the applicable administration and plan check

fees. Any surplus fees shall be returned to the Developer, or at Developer's request, held by the District and used to pay subsequent fees, e.g., construction inspection fees.

2.1.7 Construction Inspection Fees. On a phased basis, the District shall require the construction inspection fee before undertaking a construction inspection review of the proposed facilities. As a condition precedent to the District's obligation to undertake a construction inspection review of the proposed facilities, the Developer shall provide to the District the construction inspection fee, which is currently five hundred dollars ($500.00) per unit plus three percent (3%) of facilities construction costs, pursuant to Developer's Engineer's estimate. (See *Procedures* section 200.3.2) Any surplus inspection fees shall be returned to Developer.

3. Existing Water and Sewer Infrastructure

3.1 The Developer will comply with the District's *In-Tract Policy* regarding any water, recycled water and sewer mains or appurtenances within the Development. Developer, or its successors or assignees, shall assume all responsibility, and will hold District harmless, for all water/sewer infrastructures within the Development boundaries that will be removed or abandoned by Developer. Abandonment-in-place requires written approval by the District. The Developer shall be solely responsible for repair, replacement and maintenance of existing water and sewer facilities to remain within the Development boundaries during the construction of the Development, regardless of whether the facilities are for the benefit of the Development.

4. District to Serve Development

4.1 District will deliver water, recycled water and provide sewer service to the Development after final Board Acceptance of the conveyance of the facilities and final Board Acceptance of the facilities (see *Procedures* section 300.25). Thereafter, the District will bill and serve the end-user(s) directly. The Developer shall pay the prepayment of applicable meter fees and Capacity Charges, cross connection charges, and all other applicable fees and charges for service on the former Fort Ord (or City, as the case may be). Once the applicable fees and charges are determined and paid in full, the District will immediately begin water service with the installation of the water meter(s). The District shall provide sewer service upon installation of water meters and payment of all applicable fees. The District's obligations in this section are subject to District's rules, regulations, policies and ordinances, which may be updated from time to time.

5. Capacity Charge

5.1 The current capacity charges, as of January 1, 2017 for water and sewer services are $4,526 per EDU and $2,333 per EDU, respectively. These charges are due prior the installation of water meters. The District Board of Directors reserves its right to review and revise these charges from time to time subject to applicable law and the District's approval procedures for such charges. Developer agrees to pay the capacity charge in effect at the time of providing services.

6. Provision for Non-Potable Water Use

6.1 Based upon existing studies, the District does not have sufficient existing firm water supplies to meet the water demands of projected developments within the District's service area.

The District has investigated a recycled water project, a desalination project, and a combination of those projects to meet future water demands within the District. Therefore, improvement plans must be compatible with and anticipate the availability of a non-potable water supply to serve common area open spaces within the Development, as permitted by applicable laws and regulations.

6.2 Developer, and its successors or assignees (such as an owners association), agrees to take recycled water for non-potable use if and when it becomes available. The District shall establish a separate cost for recycled water in the same manner that it establishes the cost of potable water. Developer, or its successors or assignees agree that the District-established cost will be paid by the recycled water customers.

7. Licensed Contractor

7.1 The Developer, or his authorized representative (contractor, or subcontractors as the case may be) performing the work, shall be licensed under the provisions of the Business and Professions Code of the State of California to perform the specified work required for the Development. District reserves the right to waive this requirement at its sole discretion where permitted under state statute.

7.2 The Developer, or its contractor, shall be skilled and regularly engaged in the installation of water, recycled and sewer systems. The District may request evidence that the constructing party has satisfactorily installed other projects of like magnitude or comparable difficulty. Upon request, contractors must furnish evidence of their qualifications to do the work in a form suitable to the District prior to the commencement of any work on the facilities.

8. Permits, Easements, and Related Costs

8.1 Except as otherwise provided in this Agreement, the Developer shall obtain all necessary local, county and state permits (including encroachment permits) and conform to requirements thereof. Developer shall obtain all easements (excluding easements within existing public rights of way) necessary for ingress and egress to and from the facilities for the purpose of installation, operation, maintenance, replacement and removal of said facilities and for the location of the facilities. Pipeline easements shall be 20 feet in width or as otherwise agreed by the District Engineer and Developer. Easements shall be in a form approved by the District and it shall be the Developer's responsibility to have the approved easements recorded. Developer shall provide proof of recordation of the easements, in a form satisfactory to the District, prior to the District's obligation to provide any of the services contemplated by this Agreement.

9. Final Inspection and Reimbursement of District Costs

9.1 The District's Engineer must inspect completed facilities, or portion thereof. The District will not accept any facility until its Engineer has given written approval that it satisfies the District's requirements. Developer shall be responsible for all costs incurred by the District that are associated with interim and final inspection, completion, additional construction, and testing of the facilities, subject to the limitations set forth in Paragraph 2 *Design and Construction* Requirements. Developer shall reimburse District for costs to correct any damages to facilities related to the construction of the Development caused by the Developer or any authorized

representative (developer's contractor). This reimbursement obligation is limited to the warranty period described in paragraph 15 *Warranties*. Developer shall remit to District prior to the conveyance of the facilities to the District, payment of all costs due and unpaid under this Agreement over and above deposits previously paid to the District. If there are surplus deposit funds or any refunds due Developer, then District shall return to Developer the amount of such surplus or refunds upon acceptance by the District of all facilities required to be constructed under this Agreement.

10. District's Non-responsibility for Acts or Omissions of Developer, etc.; Developer Responsible for Verifying Underground Utility Lines and Surface Obstructions

10.1 The District is not responsible for, and does not assume any responsibility or liability whatsoever for, acts and omissions of the Developer, Developer's contractors or any contractor's subcontractors or suppliers at any tier during the design and construction of the facilities. Any location of underground utility lines or surface obstructions given to the Developer or placed on the project drawing by District are for the Developer's convenience, and must be verified by Developer in the field. The District assumes no responsibility for the sufficiency or accuracy of such information, lines, or obstructions.

11. As-Built Plans, Specifications, Values, Etc.

11.1 Developer shall, as a condition of District's acceptance of the facilities, provide to the District in accordance with Section 400.13 of the *Procedures* the following:

11.1.1 One set each of Mylar drawing prints and AutoCAD digitized files of the improvement plans, which show all of the facilities, and one hardcopy and one electronic copy of the specifications, and one hardcopy and one electronic copy of any contract documents used for the construction of the water, sewer and recycled water system facilities. Scanned and signed copies in Adobe Acrobat format are also required.

11.1.2 One hardcopy and one electronic copy of a complete, detailed statement of account, the form and content to be provided by the District at the time of conveyance, of the amounts expended for the installation and construction of the facilities, with values applicable to the various components thereof, together with a list of any other materials and equipment (and their values) being transferred.

11.1.3 Any other documents required by Section 400.13 of the *Procedures*.

12. Indemnity, Insurance, and Sureties

12.1 Indemnity and Insurance - The Developer agrees to have every Contractor performing work on the Facilities fully comply with the all of the requirements in Exhibit D. To the extent that any indemnity or insurance coverage provided by any such Contractor does not fully indemnify the District for any and all claims as defined in Exhibit D, Developer agrees to indemnify, hold harmless, and defend the District, its directors, officers, employees, representatives, and authorized volunteers. Coverages required by Exhibit D shall be maintained throughout the term of this Agreement. Every Contractor shall file with the District prior to the

commencement of any work under this Agreement, and as policy renewals occur, Certificates of Insurance evidencing that the insurance coverages required herein have been obtained and are currently in full force and effect.

12.2 Performance and Payment Surety - Developer or its Contractor, as the case may be, shall furnish the District with a surety to secure the completion of and payment for the facilities. The amount of the performance surety shall not be less than 100% of the District's estimate of the total cost to construct all of the facilities required under this Agreement. The amount of the payment surety shall not be less than 100% of the District's estimate of the total cost to construct all of the facilities required under this Agreement. The surety instrument shall be in a form satisfactory to the District such as a performance and payment bond, irrevocable letter of credit, cash deposit, or irrevocable construction "set-aside" letter. Such surety may include evidence that it was submitted to another public agency of an equivalent or greater amount covering the work to be done under this Agreement. Each surety must be authorized in the State of California to issue the surety instrument provided. All surety instruments signed by an agent must be accompanied by a certified copy of the agent's authority to act.

12.3 Developer shall furnish the District with a Warranty bond or other surety instrument satisfactory to the District in the amount equal to twenty percent (20%) of the actual construction costs to secure the Developer's performance under Section 15, Warranties.

12.4 Submittal of Insurance Certificates and Surety - The required insurance certificates shall be delivered prior to commencement of construction. The required performance and payment surety shall be delivered to the District prior to District approval of plans and specifications. No work may be commenced under this Agreement unless and until all required insurance certificates and performance and payment sureties are submitted to and approved by the District. The Warranty surety shall be provided prior to the District's acceptance of the facilities, and shall remain in effect for the duration specified in Section 15.1.

12.5 The performance surety shall remain in effect until final acceptance of the facilities by the District in accordance with Section 13.1. The payment surety shall remain in effect until the last of the following occur: (i) the statutory time has expired to commence a legal action on the payment surety and no legal action was filed, (ii) satisfaction of all judgments against the payment surety, and (iii) as otherwise provided by law. The warranty surety shall remain in effect until all warranties under this Agreement have expired.

13. Transfer of System Facilities to District after Completion

13.1 Developer shall execute and obtain all signatures of all other parties having any interest (including any Deed of Trust), and deliver a conveyance satisfactory in form and content to District. This conveyance shall transfer unencumbered ownership of all facilities required by this Agreement to the District together with all real property, interests in real property, easements and rights-of-ways (including any off-site easements or real property) other than those contained in public rights of way, and all overlying and other underground water rights that are a part of, appurtenant to, or belonging to the Development now or hereafter served by the water, sewer and recycled water system facilities that are necessary or appropriate in the opinion of the District for the ownership and operation of the facilities. Provided all conditions set forth in this Agreement are satisfied, the District shall accept the conveyance. All costs of construction of the facilities, for which the Developer is responsible, shall have been paid for by Developer, the time for release

of the payment surety under Section 12.5 shall have expired (or Developer shall provide other security acceptable to the District), and the title to all of the facilities and the interests in real property transferred shall be good, clear and marketable title, free and clear of all encumbrances, liens or charges. Developer shall pay costs of any title insurance deemed necessary by the District and is reasonable and customary for the insured transaction type. All construction, including final inspection punch list items must be completed prior to transfer, and the transfer shall not be completed until the conveyance transferring the water, sewer and recycled water system facilities has been formally accepted by the District. After transfer, the District shall own and be free in every respect to operate and manage the facilities and to expand or improve, or interconnect the facilities with other adjacent facilities, as the District deems appropriate in its sole discretion.

14. Developer Assistance

14.1 Developer shall, both before and after the transfer, secure and provide any information or data reasonably needed by District to take over the ownership, operation and maintenance of the facilities.

15. Warranties

15.1 Developer hereby warrants that as of the time of the District's acceptance of the conveyance of the facilities (or when Developer thereafter completes the installation of any works or components subsequently installed, repaired, or replaced) the facilities and all components thereof, will be in satisfactory working order and quality and free of any defect in equipment, material, or design furnished, or workmanship performed by the Contractor or any subcontractor or supplier at any tier; and that the facilities and all components thereof have been constructed and installed in compliance with all approved specifications and as-built plans being provided to the District, and in accordance with applicable requirements of the District and any other governmental agency having jurisdiction. Developer also warrants that as of the time of the District's acceptance of the conveyance of the facilities (or when Developer thereafter completes the installation of any works or components subsequently installed, repaired, or replaced) the facilities will operate in good and sufficient manner for the purposes intended for (a) one (1) year after the latter of (i) the date of acceptance, (ii) the expiration of all lien enforcement periods, or (iii) proof of conveyance of facilities, or (b) 180-days from the date new facilities are subsequently re-installed, repaired, or replaced and inspected and accepted by the District (hereafter *replacement facilities*), whichever of (a) or (b) occurs last. The Developer shall remedy at the Developer's expense any failure to conform with any applicable requirement of the District, by any Contractor or any subcontractor or supplier at any tier, or any defect. If the Developer fails to remedy any failure, defect, or damage within a reasonable time after receipt of notice by the District or any other person or entity, the District shall have the right to replace, repair, or otherwise remedy the failure, defect, or damage at the Developer's expense and the Developer shall indemnify District for all such costs (including District's own labor costs) incurred.

15.2 With respect to all warranties, express or implied, from subcontractors, manufacturers, or suppliers for work performed and materials furnished under this Agreement, the Contractor shall:

(1) Obtain all warranties that would be given in normal commercial practice;

(2) Require all warranties to be executed, in writing, for the benefit of the

District, if directed by the District; and

(3) Enforce all warranties for the benefit of the District, if directed by the District.

In the event any warranty under this section has expired, the District may bring suit at its expense to enforce a subcontractor's, manufacturer's, or supplier's warranty.

15.3 This Section 15 shall not limit the District's rights under the law with respect to latent defects, gross mistakes, or fraud.

16. No Water, Recycled Water and Sewer Service Prior to Completion and Transfer

16.1 The Developer shall not allow any occupant or person to commence operations or use of any part of the facilities without the express written consent of the District. Such consent may not be unreasonably withheld. District may impose conditions or restrictions upon any consent to such prior service, such as posting a surety bond. District recognizes that the Development, and hence the facilities, may be built, accepted and transferred in multiple phases. Notwithstanding any of the foregoing, Developer may use the facilities before they are accepted for fire protection and construction purposes in all phases, subject to satisfaction of applicable testing.

17. Performance

17.1 Developer agrees to promptly design and construct the facilities and, transfer the same to the District in accordance with the terms of this Agreement. If construction of the facilities have not been completed and accepted by District within twenty four (24) months from the date of execution of this Agreement (such date may be extended for delays beyond Developer's control and without the fault or negligence or of the Developer or any Contractor or subcontractor or supplier at any tier, but in no event shall such delay exceed twelve (12) additional months), the District shall have the option to terminate this Agreement. If construction on any phase is not complete within twenty-four months or as extended as provided above, then an Amendment to this Agreement will be necessary to address each such phase, which shall incorporate the policies, fees and charges of the District then in effect as of the effective date of said Amendment. Subsequent phases also may at District's discretion be addressed by Amendment(s) to this Agreement.

17.2 Responsibility for Work - Until the completion and final acceptance by the District of all the work under and implied by this Agreement, the Developer will require the work to be under the Contractor's responsible care and charge. The Contractor shall rebuild, repair, restore and make good all injuries, damages, re-erections, and repairs occasioned or rendered necessary by causes of any nature whatsoever.

18. Assignment

18.1 Neither party may assign their rights or obligations under this Agreement within its term without the written consent of the other party.

18.2 Provisions of water delivery, recycled water delivery, and sewer service will be deemed assigned to each property owner upon acquisition of his/her commercial and/or residential unit in the Development. Upon assignment, the Developer's responsibilities relating to recycled water

facilities, use and approvals will become the assignee's responsibility. This provision will cease to have any effect when the District accepts title to the water facilities or the Agreement is terminated.

19. Dispute Resolution Procedure

19.1 Disputes arising under this Agreement shall be resolved as provided in this section.

19.2 Prevention of Disputes/Meet and confer - The parties agree that they share an interest in preventing misunderstandings that could become claims against one another under this agreement. The parties agree to attempt to identify and discuss in advance any areas of potential misunderstanding that could lead to a dispute. If either party identifies an issue of disagreement, the parties agree to engage in a face-to-face discussion of the matter within three (3) calendar days of the initial request. If the dispute cannot be negotiated between the parties, the matter shall first be brought to the attention of the District's Board of Directors at the first available regularly scheduled Board Meeting. As a contract dispute, the matter shall be considered by the District Board of Directors in closed session under the Brown Act without the Developer or Contractor in attendance. If any disagreement remains unresolved for ten (10) days after consideration by the District Board of Directors, the parties agree to submit it to mediation as provided in Section 19.3 below.

19.3 Mediation - Either party may demand, and shall be entitled to, mediation of any dispute arising under this agreement at any time after completing the meet and confer process described in subsection 19.2 Mediation shall commence not more than ten (10) days after the initial mediation demand and must be concluded not more than thirty (30) days after the date of the first mediation demand. If mediation is not concluded within that time, then either party may demand arbitration as set forth in Section 19.4.

Mediation shall be submitted first to a mediator with at least ten years experience with the issues in dispute. The mediator shall be selected by mutual agreement of the parties. Failing such mutual agreement, a mediator shall be selected by the presiding judge of the Monterey County Superior Court. In the interest of promoting resolution of the dispute, nothing said, done or produced by either party at the mediation may be discussed or repeated outside of the mediation or offered as evidence in any subsequent proceeding. The parties acknowledge the confidentiality of mediation as required by Evidence Code 1152.5.

No mediator shall submit, and no arbitrator or court shall consider, any mediator recommendations, declarations, or findings unless the parties give their written consent to the proposed mediator statement.

19.4 Arbitration - If mediation fails to resolve the dispute, the parties shall select an arbitrator by mutual agreement. Failing such agreement, the arbitrator shall be selected by the Presiding Judge of the Superior Court. The decision of the arbitrator shall be final and not subject to judicial litigation.

Arbitration shall be commenced within thirty (30) days of the arbitration demand and concluded within 60 days of arbitration demand.

Arbitration shall follow the so-called "baseball arbitration" rule in which the arbitrator is required to select an award from among the final offers presented by the contending parties. The arbitrator may not render an award that compromises between the final offers.

Unless the arbitrator selects another set of rules, the arbitration shall be conducted under the J.A.M.S. Endispute Streamlined Arbitration Rules and Procedures, but not necessarily under the auspices of J.A.M.S. Upon mutual agreement, the parties may agree to arbitrate under an alternative scheme or statute. The Arbitrator may award damages according to proof. Judgment may be entered on the arbitrator's award in any court of competent jurisdiction.

NOTICE: IN AGREEING TO THE FOREGOING PROVISION, YOU ARE WAIVING YOUR RIGHT TO HAVE YOUR RIGHTS UNDER THIS AGREEMENT TRIED IN A COURT OF LAW OR EQUITY. THAT MEANS YOU ARE GIVING UP YOUR RIGHT TO TRIAL BY JUDGE OR JURY. YOU ARE ALSO GIVING UP YOUR RIGHT TO DISCOVERY AND APPEAL EXCEPT AS PROVIDED IN THE ARBITRATION RULES. IF YOU REFUSE TO ARBITRATE YOUR DISPUTE AFTER A PROPER DEMAND FOR ARBITRATION HAS BEEN MADE, YOU CAN BE FORCED TO ARBITRATE OR HAVE AN AWARD ENTERED AGAINST YOU BY DEFAULT. YOUR AGREEMENT TO ARBITRATE IS VOLUNTARY.

BY INITIALING THIS PROVISION BELOW, THE PARTIES AFFIRM THAT THEY HAVE READ AND UNDERSTOOD THE FOREGOING ARBITRATION PROVISIONS AND AGREE TO SUBMIT ANY DISPUTES UNDER THIS AGREEMENT TO NEUTRAL BINDING ARBITRATION AS PROVIDED IN THIS AGREEMENT.

MCWD s' INITIALS_____ JUNSAY OAKS, LPs' INITIALS: _____

20. Waiver of Rights

20.1 Waiver. No waiver of any breach or default by either party shall be considered to be a waiver of any other breach or default. The waiver by any party for the time for performing any act shall not constitute a waiver of the time for performing any other act or an identical act to be performed at a later time. None of the covenants or other provisions in this Agreement can be waived except by written consent of the waiving party.

21. Notices

21.1 All notices, demands, or other communications, which this Agreement contemplates or authorizes, shall be in writing and shall be personally delivered, or mailed by certified mail, return receipt requested, or delivered by reliable overnight courier, to the respective party as follows:

To District: Marina Coast Water District
Attn: General Manager
11 Reservation Road
Marina, California 93933

To Developer: **Junsay Oaks L.P.**
Attn: Norman V. Kolpin, CFO
295 Main St., Suite 100
Salinas, CA 93901

21.2 The address to which notice may be sent may be changed by written notification of each party to the other as above provided.

22. Severability

22.1 If any term or provision of this Agreement is determined to be illegal, unenforceable, or invalid in whole or in part for any reason, such illegal, unenforceable, or invalid provisions or part thereof shall be stricken from this Agreement. Stricken provisions shall not affect the legality, enforceability, or validity of the remainder of this Agreement so long as the stricken provision is replaced with a legal, enforceable and valid provision that conforms with the allocation of benefits and burdens to the respective parties and intent of the parties as expressed herein.

23. Paragraph Headings

23.1 Paragraph headings are for convenience only and are not to be construed as limiting or amplifying the terms of this Agreement in any way.

24. Successors and Assignees

24.1 This Agreement shall be binding on and benefit the assignees or successors to this Agreement in the same manner as the original parties hereto.

25. Integrated Agreement

25.1 This Agreement integrates and supersedes all prior and contemporaneous Agreements and understandings concerning the subject matter herein. This Agreement constitutes the sole agreement of the parties and correctly sets forth the rights, duties and obligations of each to the others. Future amendments must be in writing signed by the parties. Any prior agreements, promises, negotiations or representations not expressly set forth in this Agreement are of no force and effect.

26. Negotiated Agreement

26.1 This Agreement has been arrived at through negotiation between the parties. Neither party is deemed the party that prepared the Agreement within the meaning of Civil Code Section 1654.

27. Attorney Fees

27.1 If arbitration or suit is brought to enforce or interpret any part of this Agreement, the prevailing party shall be entitled to recover as an element of costs of suit, and not as damages, a reasonable attorneys' fee to be fixed by the arbitrator or Court, in addition to any other relief granted. The "prevailing party" shall be the party entitled to recover costs of suit, whether or not the suit proceeds to arbitrator's award or judgment. A party not entitled to recover costs shall not recover attorneys' fees. No sum for attorneys' fees shall be counted in calculating the amount of

an award or judgment for purposes of determining whether a party is entitled to recover costs or attorneys' fees.

27.2 If either party initiates litigation without first participating in good faith in the alternative forms of dispute resolution specified in this Agreement, that party shall not be entitled to recover any amount as attorneys' fees or costs of suit even if such entitlement is established by statute.

28. Exhibits

28.1 All exhibits referred to in this Agreement and attached to this Agreement are incorporated in this Agreement by reference.

29. Disclaimer/Indemnity Regarding Public Works

29.1 District has not determined whether the project would be considered a "Public Works" project for the purposes of California law, and makes no warranties or representations to Developer about whether the project would be considered a "Public Works" project. Developer is aware that if the project is considered a "Public Works" project, then Developer would have to pay "prevailing wages" under California Labor Code section 1771. If Developer fails to pay such prevailing wages, Developer acknowledges that it will be liable to, among other things, pay any shortfall owed as well as any penalties that might be assessed for failure to comply with the law. If Developer does not pay prevailing wages, and an action or proceeding of any kind or nature is brought against the District based on such failure, Developer will defend and indemnify District in the action or proceeding. District agrees to reasonably cooperate and assist Developer in any the defense of any such action.

30. No Third Party Beneficiaries

30.1 There are no intended third party beneficiaries to this Agreement.

31. Compliance with Laws

31.1 Developer will comply with all laws, rules and regulations in carrying out its obligations under this Agreement.

32. Counterparts

32.1 This Agreement may be executed in counterparts, and each fully executed counterpart shall be deemed an original document.

Signature Page

By: **Junsay Oaks, L.P.,**

_____

Normond V. Kolpin, CFO

By MARINA COAST WATER DISTRICT

_____

General Manager
Marina Coast Water District

EXHIBIT A

WATER ALLOCATION DOCUMENTATION

EXHIBIT A

For Water Allocation Documentation, See Page 62

CITY OF MARINA
211 Hillcrest Avenue
Marina, CA 93933
831-884-1278; FAX 831-384-9148
www.ci.marina.ca.us

CERTIFICATE OF THE CITY CLERK

I, ANITA SHARP, ACTING DEPUTY CLERK OF THE CITY OF MARINA, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of City Council **Resolution No. 2012-74,** certifying the Mitigated Negative Declaration of environmental impact for a three story, ±35,758 square foot building including 47 affordable, age restricted housing units with a ±1,200 square foot community room (and associated entitlements) on a ±1.7 acre project site located at 3098 De Forest Road (APN 032-171-036), adopted by the City Council of the City of Marina at a adjourned regular meeting duly held on the 15TH day of May 2012 and that the original appears on record in the office of the City Clerk.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MARINA

Date: May 22, 2012

Anita Sharp, Acting Deputy City Clerk

RESOLUTION NO. 2012-74

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARINA CERTIFYING THE MITIGATED NEGATIVE DECLARATION OF ENVIRONMENTAL IMPACT FOR: (1) GENERAL PLAN LAND USE MAP AMENDMENT GP 2012-01 TO CHANGE THE LAND USE DESIGNATION FROM "PUBLIC FACILITIES-CIVIC" TO "MULTI-FAMILY RESIDENTIAL"; (2) ZONING MAP AMENDMENT ZM 2012-01 TO CHANGE THE ZONING DISTRICT FROM "PUBLIC FACILITY (PF)" TO "SPECIFIC PLAN (SP)"; AND (3) SPECIFIC PLAN SP 2012-01 WHICH INCORPORATES SITE AND ARCHITECTURAL DESIGN REVIEW DR 2012-01 FOR THE SITE PLAN, BUILDING ELEVATIONS AND CONCEPTUAL LANDSCAPE PLAN FOR A THREE STORY ±35,758 SQUARE FOOT BUILDING INCLUDING 47 AFFORDABLE AGE RESTRICTED HOUSING UNITS WITH A ±1,200 SQUARE FOOT COMMUNITY ROOM, AND TREE REMOVAL PERMIT TP 2012-01 FOR THE REMOVAL OF SIXTEEN (16) TREES, ALL ON A ±1.7 ACRE PROJECT SITE LOCATED AT 3098 DE FOREST ROAD (APN 032-171-036)

WHEREAS, on December 20, 2011, the Marina City Council adopted Resolution No. 2011-216, approving a Fee Agreement between the City of Marina and Community Housing Improvement Systems and Planning Association, Inc. (CHISPA) for provision of planning, engineering and City Attorney services related to review and processing of a proposed project for a three story, ±35,758 square foot building including 47 affordable age restricted housing units with a ±1,200 square foot community room on a ±1.7 acre project site located at 3098 De Forest Road (APN 032-171-036), and;

WHEREAS, entitlements requested include a General Plan Land Use Map amendment (GP 2012-01) to change the land use designation from "Public Facilities-Civic" to "Multi-Family Residential"; a Zoning Map amendment (ZM 2012-01) to change the Zoning District from "Public Facility (PF)" to "Specific Plan (SP)"; adoption of a Specific Plan (SP 2012-01) which incorporates Site and Architectural Design Review (DR 2012-01) for the Site Plan, Building Elevations and Conceptual Landscape Plan for the project and Tree Removal Permit (TP 2012-01) for the removal of sixteen (16) trees, and;

WHEREAS, an Initial Study has been prepared in response to the requirements of the California Environmental Quality Act (CEQA), and;

WHEREAS, through the Initial Study, it has been determined that the project's potentially significant environmental impacts specifically related to impacts associated with project contributions to PM10 emissions during construction activities; impacts associated with project construction; and impacts upon cultural resources associated with project construction can be made less than significant with mitigation measures, and;

WHEREAS, a 20-day public review period for the Initial Study/ Mitigated Negative Declaration was established beginning on March 22, 2012 and ending on April 23, 2012 and no comments have been received, and;

WHEREAS, on April 26, 2012, the Planning Commission of the City of Marina conducted a duly noticed public hearing to consider the Mitigated Negative Declaration of environmental impact for the Project, which includes a Mitigation Monitoring and Reporting Program, considered all public testimony, written and oral, presented at the public hearing; and received and considered the written information and recommendation of the staff report for the April 26, 2012 meeting related to the proposed use and adopted Resolution No. 2012-05, recommending that City Council consider adopting the Mitigated Negative Declaration of environmental impact for the project, and;

WHEREAS, on May 15, 2012, the City Council of the City of Marina conducted a duly noticed public hearing to consider the Mitigated Negative Declaration of environmental impact for the Project, which includes a Mitigation Monitoring and Reporting Program, considered all public testimony, written and oral, presented at the public hearing; and received and considered the written information and recommendation of the staff report for the May 15, 2012 meeting related to the proposed use.

NOW, THEREFORE BE IT RESOLVED by the City Council of the City of Marina that it hereby certifies the Mitigated Negative Declaration of environmental impact for a proposed project for a three story ±35,758 square foot building including 47 affordable, age restricted housing units with a ±1,200 square foot community room with entitlements including a General Plan Land Use Map amendment (GP 2012-01) to change the land use designation from "Public Facilities-Civic" to "Multi-Family Residential"; a Zoning Map amendment (ZM 2012-01) to change the Zoning District from "Public Facility (PF)" to "Specific Plan (SP)"; adoption of a Specific Plan (SP 2012-01) which incorporates Site and Architectural Design Review (DR 2012-01) for the Site Plan, Building Elevations and Conceptual Landscape Plan for the project; and Tree Removal Permit (TP 2012-01) for the removal of sixteen (16) trees, all on a ±1.7 acre project site located at 3098 De Forest Road (APN 032-171-036) making the following findings:

FINDINGS

1. The Initial Study and corresponding Mitigated Negative Declaration of environmental impact were released for public review and said mitigation measures would avoid the effects or mitigate the effects to a point where clearly no significant effect on the environment would occur, and;

2. There is no substantial evidence in light of the whole record before the City of Marina that the project may have a significant effect on the environment.

PASSED AND ADOPTED by the City Council of the City of Marina at a regular meeting duly held on the 15th day of May 2012, by the following vote:

AYES: COUNCIL MEMBERS: Amadeo, Brown, Ford, O'Connell, Delgado
NOES: COUNCIL MEMBERS: None
ABSENT: COUNCIL MEMBERS: None
ABSTAIN: COUNCIL MEMBERS: None

Bruce C. Delgado, Mayor

ATTEST:

Anita Sharp, Acting Deputy City Clerk

CITY OF MARINA
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CERTIFICATE OF THE CITY CLERK

I, ANITA SHARP, ACTING DEPUTY CLERK OF THE CITY OF MARINA, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of City Council **Resolution No. 2012-75,** approving General Plan Land Use Map amendment GP 2012-01 to change the land use designation from "Public Facilities-Civic" to "Multi-Family Residential" for a ±1.7 acre project site located at 3098 De Forest Road (APN 032-171-036), adopted by the City Council of the City of Marina at a adjourned regular meeting duly held on the 15TH day of May 2012 and that the original appears on record in the office of the City Clerk.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MARINA

Date: May 22, 2012

Anita Sharp, Acting Deputy City Clerk

RESOLUTION NO. 2012-75

A RESOLUTION OF THE CIY COUNCIL OF THE CITY OF MARINA APPROVING GENERAL PLAN LAND USE MAP AMENDMENT GP 2012-01 TO CHANGE THE LAND USE DESIGNATION FROM "PUBLIC FACILITIES-CIVIC" TO "MULTI-FAMILY RESIDENTIAL" FOR A ±1.7 ACRE PROJECT SITE LOCATED AT 3098 DE FOREST ROAD (APN 032-171-036)

WHEREAS, on December 20, 2011, the Marina City Council adopted Resolution No. 2011-216, approving a Fee Agreement between the City of Marina and Community Housing Improvement Systems and Planning Association, Inc. (CHISPA) for provision of planning, engineering and City Attorney services related to review and processing of a proposed project for a three story, ±35,758 square foot building including 47 affordable age restricted housing units with a ±1,200 square foot community room on a ±1.7 acre project site located at 3098 De Forest Road (APN 032-171-036), and;

WHEREAS, entitlements requested include a General Plan Land Use Map amendment (GP 2012-01) to change the land use designation from "Public Facilities-Civic" to "Multi-Family Residential", and;

WHEREAS, on April 26, 2012, the Planning Commission of the City of Marina conducted a duly noticed public hearing to consider General Plan Land Use Map amendment GP 2012-01 to change the land use designation from "Public Facilities-Civic" to "Multi-Family Residential", considered all public testimony, written and oral, presented at the public hearing; and received and considered the written information and recommendation of the staff report for the April 26, 2012 meeting related to the proposed use, and adopted Resolution No. 2012-06, recommending that City Council consider approving GP 2012-01, and;

WHEREAS, on May 15, 2012, the City Council of the City of Marina conducted a duly noticed public hearing to consider General Plan Land Use Map amendment GP 2012-01 to change the land use designation from "Public Facilities-Civic" to "Multi-Family Residential", considered all public testimony, written and oral, presented at the public hearing; and received and considered the written information and recommendation of the staff report for the May 15, 2012 meeting related to the proposed use, and;

WHEREAS, pursuant to the requirements of the California Environmental Quality Act (CEQA) an Initial Study and Mitigated Negative Declaration have been prepared to analyze and mitigate the project's potentially significant environmental impacts.

NOW, THEREFORE BE IT RESOLVED by the City Council of the City of Marina that it hereby approves General Plan Land Use Map amendment GP 2012-01 to change the land use designation from "Public Facilities-Civic" to "Multi-Family Residential" for a ±1.7 acre project site located at 3098 De Forest Road (APN 032-171-036), making the following findings:

FINDINGS

1. General Plan Land Use Map Amendment – The General Plan Land Use Map Amendment GP 2012-01 is not detrimental to the public health, safety or general welfare of the Marina community or the surrounding area and is consistent with the following General Plan Policies:

(a) City of Marina Housing Element 2008-2014
The Housing Element of the Marina General Plan identifies the Specific Plan Area in its inventory of vacant or underutilized infill parcels in Central Marina with residential development potential.
(b) Program 1.1 of the Housing Element requires that the City provide for a minimum of 27 acres that accommodate at least 20 units per site at a density of at least 20 units per acre within downtown Marina. The development of the site with 47 age restricted apartments at a density of 27 units per acre will realize this infill potential, address the need for affordable apartments for the elderly and help the City of Marina to achieve its Housing Element goals.
(c) Policy 2.4.8 calls for construction of a broad range of housing types to be permitted and promoted in order to provide greater housing choice and diversity.
(d) Policy 2.31.6 requires that new housing shall be constructed at densities and in patterns which conserve land, reduce reliance on the private automobile and result in walkable, attractive neighborhoods.
(e) Policy 2.4.5 requires that all land development, including that involving infilling of existing neighborhoods or commercial areas shall be organized and have sufficient intensity to help ensure the longer-term feasibility of public transit for work and other purposes, and to create a pedestrian-oriented community.
(f) Policy 3.3.8 requires that the City link existing and future areas of the City with an integrated system of roads, transit, footpaths and bikeways that connects neighborhoods, commercial areas, schools, parks, and other major community-serving destinations.
(g) Policy 3.34.6 directs that new development and redevelopment within the City of Marina should be designed with a network of streets to disperse traffic loads evenly and provide route options and direct travel for pedestrians and bicyclists.
(h) Policy 3.3.5 requires that the City ensure that walking and bicycling routes are integral parts of street design and form a safe and preferred transportation network.
(i) Policy 4.73.4 seeks to provide a pedestrian/bicycle link to residences south of Reservation Road via an extension of De Forest Road.
(j) Policy 3.34.1, the City's Pedestrian Network Map identifies this link as part of the City's future pedestrian network.
(k) Policy 3.35.1 requires that adequate bicycle parking shall be provided at all existing civic and recreational destinations, including comprehensive support facilities and in all new multi-family residential projects.

PASSED AND ADOPTED by the City Council of the City of Marina at a regular meeting duly held on the 15th day of May 2012, by the following vote:

AYES: COUNCIL MEMBERS: Amadeo, Brown, Ford, O'Connell, Delgado
NOES: COUNCIL MEMBERS: None
ABSENT: COUNCIL MEMBERS: None
ABSTAIN: COUNCIL MEMBERS: None

Bruce C. Delgado, Mayor

ATTEST:

Anita Sharp, Acting Deputy City Clerk

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CERTIFICATE OF THE CITY CLERK

I, ANITA SHARP, ACTING DEPUTY CLERK OF THE CITY OF MARINA, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of City Council **Resolution No. 2012-76,** approving Specific Plan SP 2012-01 creating a document with design guidelines and development standards for a ±1.7 acre project site located at 3098 De Forest Road (APN 032-171-036)., adopted by the City Council of the City of Marina at a adjourned regular meeting duly held on the 15TH day of May 2012 and that the original appears on record in the office of the City Clerk.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MARINA

Date: May 22, 2012

Anita Sharp, Acting Deputy City Clerk

RESOLUTION NO. 2012-76

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARINA APPROVING SPECIFIC PLAN SP 2012-01 FOR A ±1.7 ACRE PROJECT SITE LOCATED AT 3098 DE FOREST ROAD (APN 032-171-036), SUBJECT TO CONDITIONS

WHEREAS, on December 20, 2011, the Marina City Council adopted Resolution No. 2011-216, approving a Fee Agreement between the City of Marina and Community Housing Improvement Systems and Planning Association, Inc. (CHISPA) for provision of planning, engineering and City Attorney services related to review and processing of a proposed project for a three story, ±35,758 square foot building including 47 affordable age restricted housing units with a ±1,200 square foot community room on a ±1.7 acre project site located at 3098 De Forest Road (APN 032-171-036), and;

WHEREAS, the subject property is located within the boundary of the Downtown Vitalization Area and General Plan Policy 2.63.51 requires that, prior to approval of any development other than temporary projects/uses or projects already entitled to be built, a specific plan shall be prepared which legally establishes development, design, and infrastructure requirements in accordance with General Plan principles and policies, and;

WHEREAS, the Specific Plan has been prepared pursuant to Government Code Sections 65450-6547, and;

WHEREAS, on April 26, 2012, the Planning Commission of the City of Marina conducted a duly noticed public hearing to consider Specific Plan SP 2012-01 for a ±1.7 acre project site located at 3098 De Forest Road (APN 032-171-036), considered all public testimony, written and oral, presented at the public hearing; and received and considered the written information and recommendation of the staff report for the April 26, 2012 meeting related to the proposed use, and adopted Resolution No. 2012-08, recommending that City Council consider approving SP 2012-01, and;

WHEREAS, on May 15, 2012, the City Council of the City of Marina conducted a duly noticed public hearing to consider Specific Plan SP 2012-01, considered all public testimony, written and oral, presented at the public hearing; and received and considered the written information and recommendation of the staff report for the May 15, 2012 meeting related to the proposed use, and;

WHEREAS, pursuant to the requirements of the California Environmental Quality Act (CEQA) an Initial Study and Mitigated Negative Declaration have been prepared to analyze and mitigate the project's potentially significant environmental impacts.

NOW, THEREFORE BE IT RESOLVED by the City Council of the City of Marina that it hereby approves Specific Plan SP 2012-01 for a ±1.7 acre project site located at 3098 De Forest Road (APN 032-171-036), making the following findings and subject to the following conditions of approval:

FINDINGS

1. Specific Plan -
The Specific Plan for the De Forest Avenue Apartments has been prepared in accordance with General Plan Policy 2.63.51 and with the requirements of the California Government Code, Sections 65450-

65457. These sections establish the Specific Plan as a legal mechanism which allows a particular area's development, design and infrastructure requirements to be established separately and to supersede any previously established zoning in a manner that is consistent with the goals, policies and implementation objectives of the City of Marina General Plan.

The Specific Plan for the De Forest Avenue Apartments is consistent with and furthers the goals, policies and implementation objectives of the Marina General Plan in that it provides details regarding the development of an infill site near the Marina transit exchange to develop the site in a manner that will enhance both the image and the fiscal base of the City of Marina.

CONDITIONS OF APPROVAL

1. Substantial Compliance - The project shall be accomplished in substantial compliance with the De Forest Apartments Specific Plan ("**EXHIBIT A**") attached to this resolution.

2. Permits - The applicant shall obtain all required building permits prior to initiating construction.

3. Indemnification - The applicant shall agree as a condition of approval of this project to defend, at its sole expense, indemnify and hold harmless from any liability the City and reimburse the City for any expenses incurred resulting from, or in connection with, the approval of the project, including any appeal, claim, suit or legal proceeding. The City may, at its sole discretion, participate in the defense of any such action, but such participation shall not relieve the applicant of its obligations under this condition.

PASSED AND ADOPTED by the City Council of the City of Marina at a regular meeting duly held on the 15th day of May 2012, by the following vote:

AYES: COUNCIL MEMBERS: Amadeo, Brown, Ford, O'Connell, Delgado
NOES: COUNCIL MEMBERS: None
ABSENT: COUNCIL MEMBERS: None
ABSTAIN: COUNCIL MEMBERS: None

Bruce C. Delgado, Mayor

ATTEST:

Anita Sharp, Acting Deputy City Clerk

Initial Study and Mitigated Negative Declaration

For

De Forest Apartments Senior Housing Project

March 19, 2012

Prepared By:

City of Marina
211 Hillcrest Avenue
Marina, CA 93933
Contact: Justin Meek, Senior Planner
Phone: (831) 884-1200
jmeek@ci.marina.ca.us

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FIGURES

TABLES

IX. HYDROLOGY AND WATER QUALITY - Would the project:	Potentially Significant Impact, even with Mitigation Incorporation	Less Than Significant Impact with Mitigation Incorporation	Less Than Significant Impact	No Impact
(i) Expose people or structures to a significant risk of loss, injury or death involving flooding, including flooding as a result of the failure of a levee or dam?	☐	☐	☐	☑
(j) Inundation by seiche, tsunami, or mudflow?	☐	☐	☐	☑

Response to IX(a): Would the project violate any water quality standards or waste discharge requirements?

Development anticipated under the Marina General Plan would entail construction activity, which could potentially have short-term, temporary adverse effects on surface water quality. This would represent a potentially significant impact associated with implementation of development anticipated under the General Plan.[44]

The proposed project would result in development of affordable senior housing on the project site, which would introduce potential sources of urban pollutants (such as oils, heavy metals, pesticides, and fertilizers) into the storm drain system.

The federal Clean Water Act established the National Pollutant Discharge Elimination System (NPDES) program. The goal of the program is to control and reduce pollutants to water bodies from point and non-point source dischargers for both long term activities and short term (construction) activities. The California Water Resources Control Board (WRCB) implements the NPDES program statewide. The Central Coast Regional Water Quality Control Board (RWQCB) issues and enforces the NPDES permits for dischargers to water bodies in the portion of Monterey County that drain to the Monterey Bay.[45]

The NPDES program requires that projects disturbing more than one acre of land are required to obtain a state NPDES general permit for storm water discharges for construction activity. The proposed project covers an area of ±1.7 acres and would likely result in the disturbance of more than one acre during construction activities. Therefore, the project applicant would be required to prepare a SWPPP to control runoff, erosion, and sedimentation from the site. As discussed in Response to VI(b), the SWPPP would include erosion control measures that are consistent with the NPDES General Construction Permit and the recommendations and policies of the City of Marina and RWQCB for discharges of storm water associated with construction activity.

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[44] *Draft Environmental Impact Report on the Draft Marina General Plan* (Marina: Lamphier & Associates, 2000), page 5-12, second paragraph.

[45] *Mitigated Negative Declaration, Imjin Office Park General Plan Amendment and Re-Zone* (EMC Planning Group, Inc., September 16, 2005), page 37, second paragraph.

Compliance with this measure would ensure the proposed project would not violate any water quality standards or waste discharge requirements.

In addition, the City of Marina has produced in partnership with other municipalities on the Central Coast guidelines for implementing a Low Impact Development (LID) program. LID is a rapidly growing approach to stormwater management that offers the opportunity for communities to develop a comprehensive natural resource and water quality protection program. The LID program for the Central Coast is intended to help facilitate the transition to new requirements being developed by RWQCB for hydromodification control. As part of this program, the City of Marina would require the project applicant to implement site planning control measures, source control measures, and runoff volume reduction measures. Furthermore, pursuant to Section 16.06.150 of the Marina Municipal Code and the City's Design Standards, the project site would have to retain 100% of runoff during a 100-year storm event. Therefore, this would be considered a less than significant impact.

Impact: Less than significant impact.

Mitigation Measure: None.

Response to IX(b): **Would the project substantially deplete groundwater supplies or interfere substantially with groundwater recharge such that there would be a net deficit in aquifer volume or a lowering of the local groundwater table level (e.g., the production rate of pre-existing nearby wells would drop to a level which would not support existing land uses or planned uses for which permits have been granted)?**

Water that serves the City of Marina is pumped from wells. The groundwater supply in the Planning Area is replenished through recharge of the basin via the Salinas River and the desalination plant. No imported water sources area available and water supplies are limited to the watershed and the Salinas Valley Groundwater Basin.

The agricultural industry is the principal user of the Basin's groundwater, which in 2010 pumped approximately 416,000 acre-feet (AF) or roughly 90 percent of all extracted groundwater. Urban users pumped approximately 44,000 AF, of which 1,765 AF was extracted for use in the City of Marina.[46] The dependence on groundwater and the growth in the demand for water by agricultural and urban users has put a strain on groundwater resources in the Salinas Valley Groundwater Basin and seawater intrusion has occurred in portions of the 180' and 400' aquifers that border the Monterey Bay coastline.

The City's potable water supply is provided by the Marina Coast Water District (MCWD). The MCWD has allocated a finite quantity of groundwater to the City of

[46] *2010 Ground Water Summary Report* (Monterey County Water Resources Agency, June 2011), page 3, Table 2 Total Extraction Data by Hydrologic Subarea and Type of Use.

Marina for future development. In accordance with Policy 3.45 of the City of Marina General Plan, the City will not permit new development requiring water allocations in excess of available supply.

The MCWD has water use factors for various land use categories, which are used to estimate the water demand. Both the Urban Water Management Plan[47] and MCWD Ordinance 37[48] were used to estimate the water demand for the proposed project. To estimate the potential water demand for the proposed project, the following assumptions were made regarding land uses:

- **Residential Use.** The proposed project would result in the development of 47 units on ±1.7 acres, for a density of roughly 27.7 units per acre. Based on Table 3.3 of the Urban Water Management Plan, residential units with a density greater than 15 units per acre would have a use factor of 0.25 acre-feet per annum (AFA) per dwelling unit (DU) for interior and exterior water demand.
- **Community Center.** Attached to the proposed apartment building would be a 1,200 square-foot community center. The MCWD does not have a water demand factor for a "community center" land use. The closest land use categories are "other commercial" and "institutional", which both have the same demand factor of 0.0003 AFA per square-foot (sf).
- **Landscaping.** The site plan for the proposed project indicates that roughly 40 percent of the site is developed with buildings or other impervious surfaces (i.e., parking lot paving). The remaining 60 percent (1.06 acres) would be landscaped.

The estimated water demand for the proposed project is summarized in Table 4. Based on the above assumptions, the estimated water use upon project buildout is approximately 14.33 AFA.

TABLE 4
Estimated Water Demand

Land Use	Units	Water Use Factor	Total Water Demand (AFA)
Residential	47 DU	0.25 AFA/DU	11.75
Community Center	1,200 sf	0.0003 AFA/sf	0.36
Landscaping	1.06 acres	2.1 AFA/acre	2.22
Total Water Demand			14.33

According to the MCWD, the existing water demand in central Marina is approximately 2,300 to 2,400 AFA (Personal communication with Brian True, Capital Projects Manager, MCWD on January 5, 2012). The estimated water demand of approximately 14.33 AFA combined with the existing water demand of approximately 2,400 AFA would not exceed MCWD's current allocation for central Marina of 3,020 AFA.

[47] *Marina Coast Water District Urban Water Management Plan* (Byron Buck & Associates, December 2005), page 3-8, Table 3-3.
[48] Ordinance 37 http://www.mcwd.org/code_app_c_watercapacity.html (visited on January 4, 2012)

According to the City of Marina General Plan (2000), buildout of the planning area, which included development of the project site, would increase the potable water demand by 5,470 AFA in the year 2020.

The water demand associated with the proposed project represents an increase in the existing water demand for central Marina of approximately 0.6 percent and represents approximately 0.3 percent of the total estimated water demand for future development as estimated in General Plan buildout. Although, the proposed project would increase water use at the project site, the proposed project would not substantially decrease the existing groundwater supplies or substantially reduce groundwater recharge since the site and its surroundings are already developed. However, prior to issuance of building permit for the proposed project, the City of Marina and Marina Coast Water District would require the final improvement plans to include water conservation measures to ensure minimal water usage occurs in accordance with Policy 3.53 of the City of Marina General Plan[49] and the MCWD's Urban Water Management Plan. Therefore, the impact on groundwater resources would be considered a less than significant impact.

Impact: Less than significant impact.

Mitigation Measure: None.

Response to IX(c): Would the project substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, in a manner that would result in substantial erosion or siltation on- or off-site?

The proposed development of the project site would result in grading and re-contouring in association with the creation of the buildings pads and related parking and landscape areas. The grading would not result in significant alterations to the existing drainage pattern, because a majority of the project site is relatively flat. The soils found on the project site are comparatively well drained due to the sandiness of the soil. In addition, General Plan policy 4.124.1[50] requires erosion control and landscape plans for all new

[49] General Plan policy 3.53 states that the City of Marina, in conjunction with MCWD, shall continue to promote and require water-saving devices. Specifically the following measures shall be required: (1) All new multi-family units shall be required to install water meters for each unit; (2) A study shall be undertaken to determine the feasibility of requiring separate metering of spaces within new commercial and industrial buildings and existing duplexes, triplexes, and other multi-family structures. Metering shall be required if found to be physically and economically feasible; (3) All new construction shall use low-flow water fixtures and ultra-low-flush toilets. The MCWD and the City of Marina should continue to require that all existing residential units and commercial properties be retrofitted with low-flow fixtures upon resale; and (4) The City shall support MCWD rebate programs to replace older, more water-consumptive fixtures.

[50] General Plan policy 4.124.1 states that the City shall continue to require erosion-control and landscape plans for all new subdivisions or major projects on sites with potentially high erosion potential. Such plans should be prepared by a licensed civil engineer or other appropriately certified professional and approved by the City Public Works Director prior to issuance of a grading permit. All erosion control plans shall incorporate Best Management Practices to protect water quality and minimize water quality impacts and shall include a schedule for the completion of erosion and sediment-control structures, which

XVII. UTILITIES AND SERVICE SYSTEMS - Would the project:	Potentially Significant Impact, even with Mitigation Incorporation	Less Than Significant Impact with Mitigation Incorporation	Less Than Significant Impact	No Impact
(a) Exceed wastewater treatment requirements of the applicable Regional Water Quality Control Board?	☐	☐	☑	☐
(b) Require or result in the construction of new water or wastewater treatment facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?	☐	☐	☑	☐
(c) Require or result in the construction of new storm water drainage facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?	☐	☐	☑	☐
(d) Have sufficient water supplies available to serve the project from existing entitlements and resources, or are new or expanded entitlements needed?	☐	☐	☑	☐
(e) Result in a determination by the wastewater treatment provider, which serves or may serve the project that it has adequate capacity to serve the project's projected demand in addition to the provider's existing commitments?	☐	☐	☑	☐
(f) Be served by a landfill with sufficient permitted capacity to accommodate the project's solid waste disposal needs?	☐	☐	☑	☐
(g) Comply with federal, state, and local statutes and regulations related to solid waste?	☐	☐	☐	☑

Response to XVII(a): Would the project exceed wastewater treatment requirements of the applicable Regional Water Quality Control Board?

According to the City of Marina General Plan, wastewater treatment for the City of Marina Plan Area is provided by the Monterey Regional Water Pollution Control Agency (MRWPCA). MRWPCA member communities are Pacific Grove, Monterey, Del Rey Oaks, Seaside, Sand City, Fort Ord, Marina, Castroville, Moss Landing, Boronda, Salinas and some unincorporated areas in northern Monterey County.

MRWPCA operates the regional wastewater treatment plant located two miles north of Marina. It also maintains 25 pump stations connected to the treatment plant. Secondary treatment discharge is 2 miles into Monterey Bay. In addition, MRWPCA operates the water recycling facility at the Regional Treatment Plant and manages the distribution system under contract from the Monterey County Water Resources Agency. Sixty percent of incoming wastewater is recycled. The treatment and distribution of recycled water is paid for by Salinas Valley agricultural growers and property owners. The recycling operations provide irrigation water to 12,000 acres of Castroville farmland.

The MRWPCA treatment plant has a design capacity of 29.6 million gallons per day (mgd) average dry weather flow and is currently receiving average flows of 20.0 mgd, down from 22.0 mgd in 1998. The plant presently serves 240,000 people and has sufficient capacity to accommodate AMBAG's projected growth in MRWPCA's service area until at least the year 2020 before plant expansion would be required (Personal communication with Garrett Haertle, P.E., Compliance Engineer, MRWPCA on February 9, 2012).

The proposed project would not result in a need for new systems or supplies or substantial alterations to power and natural gas, communications, or distribution facilities, sewer, stormwater drainage, solid waste disposal or water supplies, which will continue to be provided by the existing service providers.

Impact: Less than significant impact.

Mitigation Measure: None.

Response to XVII(b): Would the project require or result in the construction of new water or wastewater treatment facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?

See response to XVII(a), above, for a discussion of wastewater treatment facilities. As discussed in response to IX(b), the proposed project would increase water demand by approximately 14.33 acre-feet per annum (AFA).

The Marina Coast Water District (MCWD) provides potable water service to all residential, commercial, industrial, and environmental and fire protection uses within the City of Marina. In addition to potable groundwater, MCWD's available water supply is likely to be augmented by desalinized water and/or reclaimed water as identified in its Regional Urban Water Augmentation Plan project.

MCWD owns a seawater desalination plant located at the end of Reservation Road between Dunes Drive and the Monterey Bay that is presently not in operation. The desalination plant has a production capacity of about 0.27 mgd or 300 AFA, assuming an

on-line factor of 90 percent (Marina Coast Water District, *2001 Urban Water Management Plan*, December 5, 2001).

According to the MCWD, the existing water facilities have adequate capacity to accommodate the increased water demand associated with the proposed project. The MCWD currently allocates 3,020 AFA for water use in central Marina, which is where the project site is located. According to MCWD, the current demand in central Marina ranges from approximately 2,300 to 2,400 AFA. Conservatively, this leaves approximately 620 AFA (or approximately 21 percent) available for new development within central Marina. Since the existing water demand exceeds 65 percent of the remaining available allotment for central Marina, the project applicant would be required to request a "Provision of Service" letter from the MCWD in accordance with Policy 3.48.5 of the City of Marina General Plan. MCWD Ordinance 37 requires that all project applicant(s) for new residential development pay all applicable water fees, which include, but are not limited to: capacity charges, water connection fees, plan review fees, water permit fees, and backflow/cross connection control fees. These fees would contribute toward future improvements of existing water facilities.

Impact: Less than significant impact.

Mitigation Measure: None.

Response to XVII(c): Would the project require or result in the construction of new storm water drainage facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?

The proposed project would increase the amount of impervious surfaces on the project site. According to the City's General Plan, Marina's existing storm water facilities are adequate to accommodate growth from infill opportunities. The City of Marina Ordinance 78-5 and Chapter 15.36.020 of the City of Marina Municipal Code require that project applicants submit necessary improvement plans for review and approval by the City of Marina prior to issuance of building permits, and install improvements prior to final signing of building permits. In addition, as discussed in Response to IX(a), onsite drainage facilities would be required to retain 100% of runoff during a 100-year storm event.

Policy 3.57.2 of the City of Marina General Plan requires that stormwater runoff from large paved areas used by vehicles be pretreated using primary settlement structures, routing through settlement ponds, or routing through adequately long natural swales or slopes.[68] In addition, all development plans shall conform to the requirements of the

[68] General Plan policy 3.57.2 states that to avoid problems related to storm water drainage, pretreatment of storm water runoff from roads, large parking areas, and other extensive paved areas used by vehicles shall be provided using appropriate means such as primary settlement structures, routing through settlement ponds, or routing through adequately long natural swales or slopes. In addition, all development plans shall conform to the requirements of the City's National Pollution Discharge Elimination System permit and

City's National Pollution Discharge Elimination System (NPDES) permit, ordinances, and Best Management Practices (BMPs) to effectively prevent the discharge of pollutants in stormwater runoff. Therefore, the proposed project will not require construction of new storm water drainage facilities.

Impact: Less than significant impact.

Mitigation Measure: None.

Response to XVII(d): Would the project have sufficient water supplies available to serve the project from existing entitlements and resources, or are new or expanded entitlements needed?

See response to XVII(b), above.

Impact: Less than significant impact.

Mitigation Measure: None.

Response to XVII(e): Would the project result in a determination by the wastewater treatment provider which serves or may serve the project that it has adequate capacity to serve the project's projected demand in addition to the provider's existing commitments?

See response to XVII(a), above.

Impact: Less than significant impact.

Mitigation Measure: None.

Response to XVII(f): Would the project be served by a landfill with sufficient permitted capacity to accommodate the project's solid waste disposal needs?

The proposed project would result in an increase in population of approximately 131 persons within the Monterey Regional Waste Management District's (MRWMD) service area. Based on a solid waste generation rate of 1.28 tons per person per year, the proposed project would generate approximately 168 tons of solid waste per year. The MRWMD 475-acre landfill receives approximately 225,000 tons of solid waste per year and has a total capacity of 42 million tons, with an available refuse capacity of 34 million tons. According to the City of Marina General Plan, the existing MRWMD landfill has

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City ordinances, and all subdivisions and new commercial/industrial development shall identify Best Management Practices (BMP's) appropriate or applicable to uses conducted onsite to effectively prevent the discharge of pollutants in storm water runoff.

EXHIBIT B

LEGAL DESCRIPTION

LEGAL DESCRIPTION

PARCEL ONE:

PORTIONS OF LOTS 11 AND 48 AS SAID LOTS ARE SHOWN AND SO DESIGNATED UPON THE MAP ENTITLED "MAP OF LOcKE-PADDON SUBDIVISION OF MONTEREY CITY LANDS" FILED FOR RECORD JUNE 7, 1915 IN VOLUME 2 OF "MAPS AND GRANTS (OUTSIDE LANDS)" AT PAGE 10, RECORDS OF MONTEREY COUNTY, CALIFORNIA; SAID PORTIONS BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE BOUNDARY COMMON TO LOTS 10 AND 11 OF SAID LOCKE-PADDON SUBDIVISION, AND FROM WHICH THE MOST NORTHERLY CORNER OF SAID LOT 11 BEARS NORTH 30 DEGREES 18'20" EAST, 496.39 FEET DISTANT; THENCE FROM POINT OF BEGINNING, RUN ALONG THE BEFORE MENTIONED BOUNDARY COMMON TO LOTS 10 AND 11;

(1) SOUTH 30 DEGREES 18'20 · WEST, 255.54 FEET TO THE CORNER COMMON TO LOTS 10, 11, 48 AND 49 OF SAID MAP; THENCE ALONG THE BOUNDARY COMMON TO LOTS 48 AND 49

(2) SOUTH 30 DEGREES 18'20" WEST, 60 FEET; THENCE LEAVING SAID COMMON BOUNDARY

(3) SOUTH 59 DEGREES 32'30 · EAST, 20.80 FEET; THENCE

(4) NORTH 30 DEGREES 18'20" EAST, 60.00 FEET TO THE BOUNDARY COMMON TO LOTS 11 AND 48; THENCE ALONG SAID BOUNDARY

(5) SOUTH 59 DEGREES 32'30" EAST, 270.39 FEET TO THE CORNER COMMON TO LOTS 11, 12, 47, AND 48; THENCE ALONG THE BOUNDARY COMMON TO LOTS 11 AND 1 2

(6) NORTH 30 DEGREES 21 '32" EAST, 256.29 FEET; THENCE
(7) NORTH 59 DEGREES 41'40" WEST, 291.43 FEET TO THE POINT OF BEGINNING.

PARCEL TWO:

A NON-EXCLUSIVE EASEMENT FOR ROAD AND UTILITY PURPOSES OVER A TRIP OF LAND 30 FEET IN WIDTH, BEING A PORTION OF THE BEFORE MENTIONED LOT 10 AND LYING NORTHWESTERLY FROM AND CONTIGUOUS WITH COURSE NUMBERED (1) OF THE GRANT DEEDS RECORDED OCTOBER 14, 1987 IN REEL 2156, PAGES 474 AND 477 OF OFFICIAL RECORDS.

PARCEL THREE:

A NON-EXCLUSIVE EASEMENT FOR ROAD AND UTILITY PURPOSES OVER A
OF LAND 30 FEET IN WIDTH LYING SOUTHEASTERLY FROM AND I
COURSES NUMBERED 1 OF THE GRANT DEEDS RECORDED OCTOBER
REEL 2156, PAGES 474 AND 477 OF OFFICIAL RECORDS TO WIT:

SOUTH 30'18'20" WEST, 722.90 FEET, SAID TRACT BEING ALSO ;:'UD"[,!" TO THE
OFFICIAL PLAN LINES FOR DEFOREST ROAD AS SHOWN ON MAP FOR
RECORD IN VOLUME 3 OF "(OFFICIAL PLAN LINES") AT PAGE 45, RECORDS OF
SAID COUNTY.

EXCEPTING THEREFROM ANY PORTION LYING WITHIN PARCEL ONE ABOVE.

PARCEL FOUR:

A NON- EXCLUSIVE EASEMENT FOR ROAD AND UTILITIES PURPOSES DESCRIBED
AS FOLLOWS:

A STRIP OF LAND 20 FEET IN WIDTH, BEING A PORTION OF THE BEFORE
MENTIONED LOT 49 AND LYING NORTHWESTERLY FROM AND CONTIGUOUS WITH
THE BOUNDARY COMMON TO LOTS 48 AND 49 OF SAID LOCKE-PADDON
SUBDIVISION.

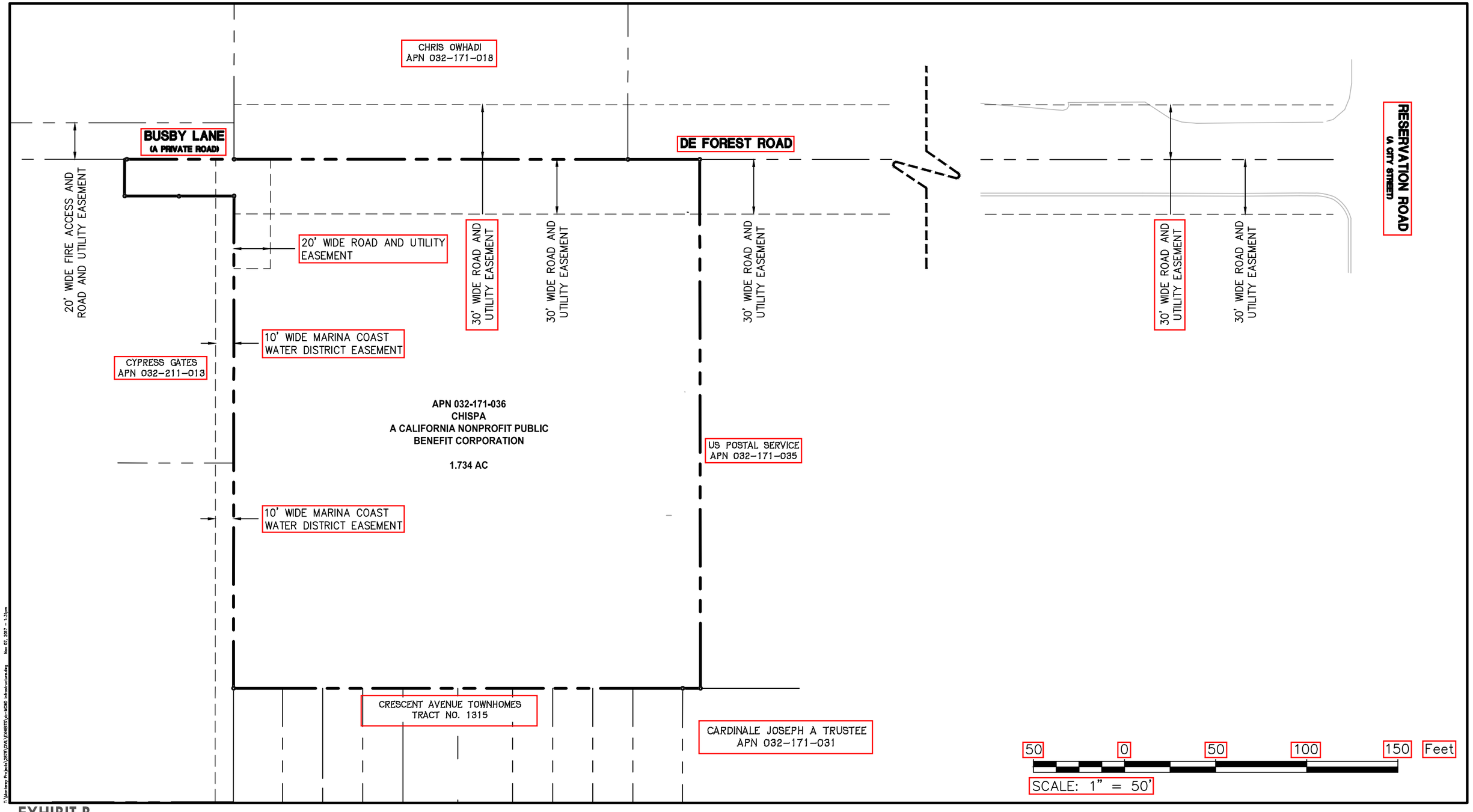

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EXHIBIT B

PLAT MAP

JUNSAY OAKS

MARINA, CALIFORNIA

Whitson Engineers
6 Harris Court | Monterey, CA 93940 | **831 649-5225 | F 831 373-5065**
CIVIL ENGINEERING ▪ LAND SURVEYING ▪ PROJECT MANAGEMENT | www.whitsonengineers.com

Project No.: 2878.00

NOV 7, 2017
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1"=50'

EXHIBIT C

MAP OF DEVELOPMENT

EXHIBIT D

INDEMNIFICATION AND INSURANCE REQUIREMENTS for Infrastructure Agreements

1. Workers' Compensation and Employer's Liability Insurance –

a. The Developer shall require every Contractor to certify that it and all of its subcontractors are aware of the provisions of Section 3700 of the California Labor Code, which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and he/she will comply with such provisions before commencing the performance of any work under this Agreement.

b. The Developer shall require every Contractor and all sub-contractors to insure (or be a qualified self-insured) under the applicable laws relating to workers' compensation insurance, all of their employees working on or about the construction site, in accordance with the "Workers' Compensation and Insurance Act," Division IV of the Labor Code of the State of California and any Acts amendatory thereof.

c. The Contractor shall provide employer's liability insurance in the amount of at least $1,000,000 per accident for bodily injury and disease.

2. Definitions – For purposes of this Exhibit, the following terms shall have the following respective meanings:
"Claim" - shall be used collectively to refer to and include any and all claims, demands, causes of action, damages, costs, attorneys' fees, expert fees, court costs, expenses, penalties, losses or liabilities, in law or in equity, of every kind and nature whatsoever.

3. Indemnification - To the fullest extent permitted by law, the Developer will require every Contractor to indemnify, hold harmless, and defend District, its directors, officers, employees, representatives, and authorized volunteers (collectively, the "indemnitees"), and each of them from and against:

a. Any claim, including, but not limited to, injury to or death of any person including District and/or Contractor, or any directors, officers, employees, or authorized volunteers of District or Contractor, and damages to or destruction of property of any person, including but not limited to, District and/or Contractor or their directors, officers, employees, or authorized volunteers, arising out of or in any manner directly or indirectly connected with the work to be performed under this agreement, however caused, regardless of any negligence of District

or its directors, officers, employees, or authorized volunteers, except to the extent caused by the sole negligence or willful misconduct or active negligence of District or its directors, officers, employees, or authorized volunteers;

b. Any claim arising out of, resulting from, or relating in any way to a violation of any governmental law or regulation, compliance with which is the responsibility of the Contractor;

c. Any claims (including damages to the work itself), attorneys' fees, and other costs, including all costs of defense, which any indemnitee may incur with respect to the failure, neglect, or refusal of Contractor to faithfully perform the work and all of the Contractor's obligations to the Developer for work to be performed under this Agreement. Such costs, expenses, and damages shall include all costs, including attorneys' fees, expert fees, and court costs, incurred by an indemnitee in any lawsuit to which the indemnitee is a party.

d. Contractor acknowledges and understands that the area in and around which the work will be performed has been identified as a possible location of munitions and explosives of concern ("MEC"). All indemnification obligations of Contractor under this Agreement shall specifically include any claim involving, arising out of or related to MEC.

The Developer will require their Contractor to pay and satisfy any judgment, award or decree that may be rendered against District or its directors, officers, employees, or authorized volunteers, relating to any claim.

The Developer will require their Contractor to reimburse District or its directors, officers, employees, or authorized volunteers, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided.

Contractor's indemnification obligation shall not be limited to the proceeds, if any, received by the District, or its directors, officers, employees or authorized volunteers from any insurance required to be provided under this Agreement.

4. Commercial General Liability and Automobile Liability Insurance - The Developer will require their Contractor to provide and maintain the following commercial general liability and automobile liability insurance:

Coverage - Coverage for commercial general liability and automobile liability insurance shall be at least as broad as the following:

1. Insurance Services Office Commercial ***General Liability*** Coverage (Occurrence Form CG 0001)

2. Insurance Services Office ***Automobile Liability*** Coverage (Form CA 0001), covering Symbol 1 (any auto) (owned, non-owned and hired automobiles)

Limits - The Consultant shall maintain limits no less than the following:

1. ***General Liability*** - Two million dollars ($2,000,000) per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit or products-completed operations aggregate limit is used, either the general aggregate limit shall apply separately to the project/location (with the ISO CG 2503, or ISO CG 2504, or insurer's equivalent endorsement provided to the District) or the general aggregate limit and products-completed operations aggregate limit shall be twice the required occurrence limit.

2. ***Automobile Liability*** - One million dollars ($1,000,000) for bodily injury and property damage each accident limit.

Required Provisions - The general liability and automobile liability policies are to contain, or be endorsed to contain the following provisions:

1. The District, its directors, officers, employees, or authorized volunteers are to be given insured status (via ISO endorsement CG 2010, CG 2033, or insurer's equivalent for general liability coverage) as respects: liability arising out of activities performed by or on behalf of the Contractors; products and completed operations of the Contractor; premises owned, occupied or used by the Contractor; or automobiles owned, leased, hired or borrowed by the Contractor. The coverage shall contain no special limitations on the scope of protection afforded to the District, its directors, officers, employees, or authorized volunteers.

2. For any claims related to this project, the Contractor's insurance shall be primary insurance as respects the District, its directors, officers, employees, or authorized volunteers. Any insurance, self-insurance, or other coverage maintained by the District, its directors, officers, employees, or authorized volunteers shall not contribute to it.

3. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the District, its directors, officers, employees, or authorized volunteers.

4. The Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

5. Each insurance policy required by this clause shall state or be endorsed to state that coverage shall not be canceled by either party, except after thirty (30) days (10 days for non-payment of premium) prior written notice by U.S. mail has been given to the District.

Such liability insurance shall indemnify the Contractor and his/her sub-contractors against loss from liability imposed by law upon, or assumed under contract by, the Contractor or his/her sub-contractors for damages on account of such bodily injury (including death), property damage,

personal injury and completed operations and products liability.

The general liability policy shall cover bodily injury and property damage liability, owned and non-owned equipment, blanket contractual liability, completed operations liability, explosion, collapse, underground excavation and removal of lateral support.

The automobile liability policy shall cover all owned, non-owned, and hired automobiles.

All of the insurance shall be provided on policy forms and through companies satisfactory to the District.

5. Deductibles and Self-Insured Retentions - Any deductible or self-insured retention must be disclosed in writing to and approved by the District.

6. Acceptability of Insurers - Insurance is to be placed with insurers having a current A.M. Best rating of no less than A-:VII or equivalent or as otherwise approved by the District.

7. Munitions and Explosives Coverage (MEC) - The Developer will require their Contractor to maintain insurance that includes coverage for services and work in or around MEC, or claims, damage or injury related in any way to this Agreement which arise from MEC. The Marina Coast Water District, its officers, directors and employees and any of its authorized representatives and volunteers shall be named as additional insureds under all insurance maintained by Contractor related in any way to work performed by it on behalf of the Marina Coast Water District.

8. Builder's Risk Insurance - The Developer or the Developer's Contractor will provide and maintain builder's risk insurance (or installation floater) covering all risks of direct physical loss, damage or destruction to the work in the amount specified by the District, to insure against such losses until final acceptance of the work by the District. Such insurance shall include[1] explosion, collapse, underground excavation and removal of lateral support. The District shall be a named insured on any such policy. The making of progress payments to the Contractor by the Developer shall not be construed as creating an insurable interest by or for the District or be construed as relieving the Contractor or his/her subcontractors of responsibility for loss from any direct physical loss, damage or destruction occurring prior to final acceptance of the work by the District.

9. Waiver of Rights of Subrogation - The Developer will require their Contractor's insurer to waive all rights of subrogation against the District, its directors, officers, employees, or authorized volunteers.

10. Evidences of Insurance - Prior to the commencement of construction activities under this Agreement, the Developer will require their Contractor to file with the District a certificate of insurance (Acord Form 25-S or equivalent) signed by the insurer's representative. Such evidence shall include an original copy of the additional insured endorsement signed by the insurer's representative. Such evidence shall also include confirmation that coverage includes or has been modified to include Required Provisions 1-5.

The Developer will require their Contractor, upon demand of the District, to deliver to the District

such policy or policies of insurance and the receipts for payment of premiums thereon.

All insurance correspondence, certificates, binders, etc., shall be mailed to:

Marina Coast Water District
11 Reservation Road
Marina, CA 93933
Attn: Management Services Administrator

11. Sub-Contractors' Required Insurance Requirements - In the event that the Contractor employs sub-contractors as part of the work to be performed under this Agreement, it shall be the Developer's responsibility to require and confirm that every Contractor requires each of its sub-contractor to meet the same minimum insurance requirements specified in this Exhibit for every Contractor.

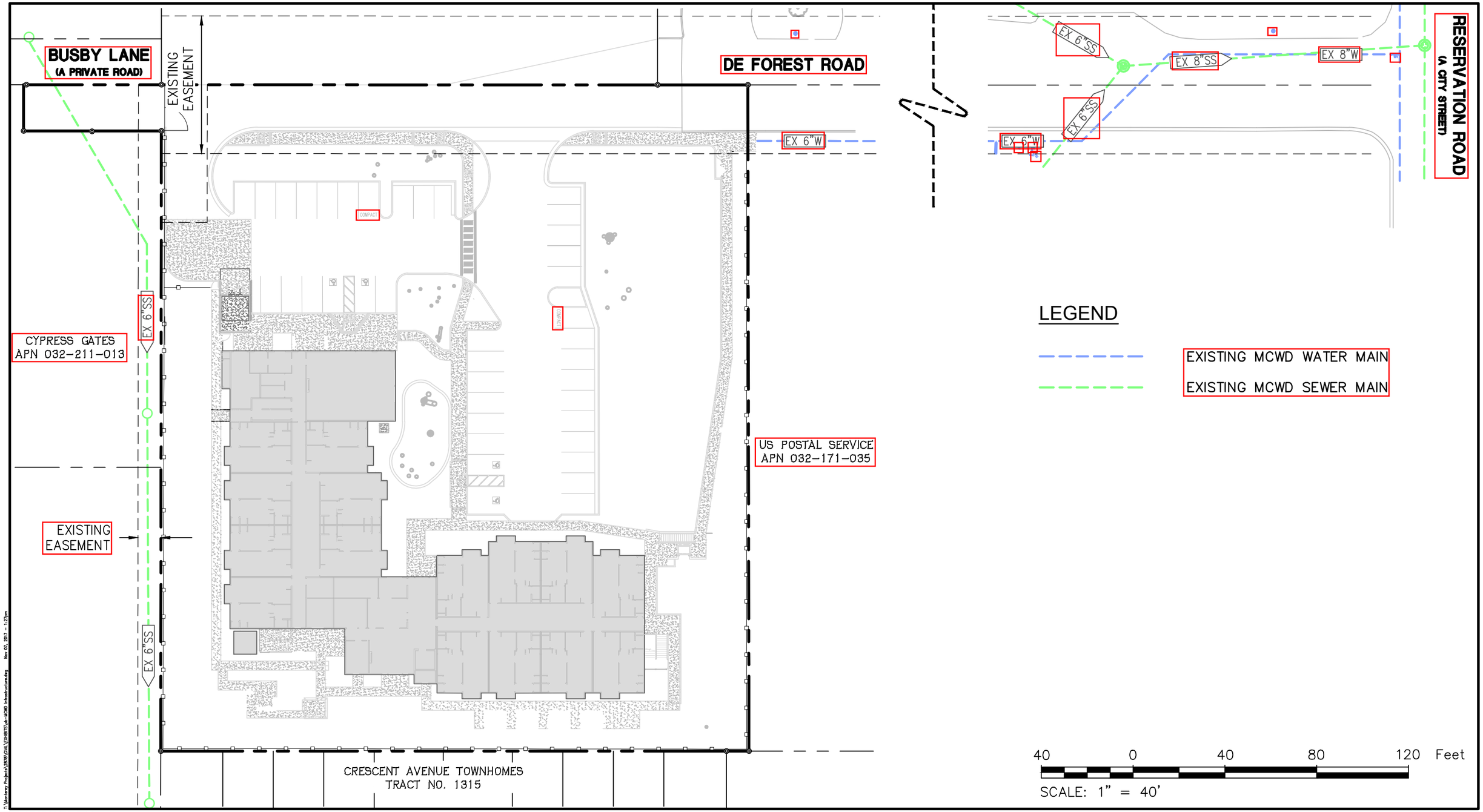

EXHIBIT C

SITE PLAN

JUNSAY OAKS

MARINA, CALIFORNIA

Whitson Engineers
6 Harris Court | Monterey, CA 93940 | **831 649-5225 | F 831 373-5065**
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Project No.: 2878.00

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1"=40'