

**SUBMITTAL TO THE FLOOD CONTROL AND WATER CONSERVATION DISTRICT BOARD
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

603B



FROM: General Manager-Chief Engineer

SUBMITTAL DATE:
October 27, 2009

SUBJECT: Paloma Wash Channel, Stages 2 and 3
Paloma Wash – Haun Road Storm Drain Laterals
Project Nos. 4-0-00111-02, 4-0-00111-03 and 4-0-00097
Parcel Map 34275 (Menifee)
Cooperative Agreement

RECOMMENDED MOTION:

Approve the Cooperative Agreement between the District, the City of Menifee and Stark Menifee Land LLC, Donahue Schriber Realty Group, L.P. and Donahue Schriber Asset Management Corporation (Developers); and authorize the Chairman to execute the Agreement documents on behalf of the District.

BACKGROUND:

The Agreement sets forth the terms and conditions by which certain flood control facilities, required as a condition for approval of Parcel Map 34275, are to be constructed by the Developers and inspected, operated and maintained by the District and City. The Agreement is necessary to formalize the transfer

Continued on Page 2

Stuart E. Mckibbin

JPS:bjj

STUART E. MCKIBBIN
Chief of Planning Division

FINANCIAL DATA	Current F.Y. District Cost:	N/A	In Current Year Budget:	N/A
	Current F.Y. County Cost:	N/A	Budget Adjustment:	N/A
	Annual Net District Cost:	N/A	For Fiscal Year:	N/A

SOURCE OF FUNDS: N/A	Positions To Be Deleted Per A-30	<input type="checkbox"/>
	Requires 4/5 Vote	<input type="checkbox"/>

C.E.O. RECOMMENDATION:

APPROVE

BY: *Alex Gann*
Alex Gann

County Executive Office Signature

FORM APPROVED COUNTY COUNSEL
BY: *NEAL R. KIPNIS* DATE

- Dept't Recomm.: Consent Policy
- Per Exec. Ofc.: Consent Policy

Prev. Agn. Ref.:

District: 3rd

Agenda Number:

11.2

ATTACHMENTS FILED
WITH THE CLERK OF THE BOARD

**FLOOD CONTROL AND WATER CONSERVATION DISTRICT BOARD SUBMITTAL
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

SUBJECT: Paloma Wash Channel, Stages 2 and 3
Paloma Wash – Haun Road Storm Drain Laterals
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Page 2

BACKGROUND (continued):

of necessary rights of way and to provide for District construction inspection of the referenced facilities associated with Parcel Map 34275.

Upon completion of the facilities' construction, the District will assume ownership, operation and maintenance of the flood control facilities. The City will assume ownership, operation and maintenance of the facilities' associated catch basins, laterals and connector pipes located within its rights of way. The City will also assume operation and maintenance of the appurtenant recreational facilities.

County Counsel has approved the Agreement as to legal form and both the City and the Developers have executed the Agreement.

The Developers are funding all construction and construction inspection costs. Future operation and maintenance costs will accrue to the District.

JPS:bjj

COOPERATIVE AGREEMENT

Paloma Wash Channel, Stages 2 and 3
 Paloma Wash – Haun Road Storm Drain Laterals
 (Project Nos. 4-0-00111-02, 4-0-00111-03 and 4-0-00097)
 (Parcel Map 34275)

The RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, hereinafter called "DISTRICT", the CITY OF MENIFEE, hereinafter called "CITY", STARK MENIFEE LAND LLC, a Wisconsin limited liability company, hereinafter called "STARK", DONAHUE SCHRIBER REALTY GROUP, L.P., a Delaware limited partnership, hereinafter called "DS REALTY", and DONAHUE SCHRIBER ASSET MANAGEMENT CORPORATION, a Delaware corporation, hereinafter called "DS ASSET", hereby agree as follows:

RECITALS

A. STARK, DS REALTY and DS ASSET are hereinafter collectively referred to as "DEVELOPERS". DEVELOPERS have submitted for approval Parcel Map 34275 in City of Menifee and as a condition for approval DEVELOPERS must construct certain flood control facilities in order to provide flood protection and drainage for DEVELOPERS' planned development; and

B. The required flood control facilities include construction of (i) approximately 5,300 lineal feet of vegetated trapezoidal channel, hereinafter called "STAGE 2 CHANNEL", as shown in concept in red on Exhibit "A" attached hereto and made a part hereof, (ii) approximately 600 lineal feet of vegetated trapezoidal channel and approximately 290 lineal feet of rip-rapped trapezoidal channel, together hereinafter called "STAGE 3 CHANNEL", as shown in concept in purple on Exhibit "A", (iii) approximately 505 lineal feet of four-cell reinforced concrete box culvert and associated inlet, hereinafter called "CHANNEL BOX", as shown in concept in yellow on Exhibit "A", and (iv) storm drain laterals which connect to

1 STAGE 2 CHANNEL, consisting of either underground storm drains greater than thirty-six
2 inches (36") in diameter or of reinforced concrete boxes, located within DISTRICT or CITY
3 held easements or rights of way, hereinafter called "LATERALS", as shown in concept in green
4 on Exhibit "A". Together, STAGE 2 CHANNEL, STAGE 3 CHANNEL, CHANNEL BOX and
5 LATERALS are hereinafter called "DISTRICT DRAINAGE FACILITIES". At its downstream
6 terminus, STAGE 3 CHANNEL connects to CHANNEL BOX, which then connects to STAGE
7 2 CHANNEL, which then connects to DISTRICT'S existing Paloma Wash Channel, as shown
8 in District Drawing No. 4-434; and

10 C. Associated with the construction of STAGE 2 CHANNEL is the
11 construction of (i) a box or arch culvert at the intersection of STAGE 2 CHANNEL with La
12 Piedra Road, hereinafter called "LA PIEDRA CULVERT", as shown in blue on Exhibit "A",
13 and (ii) the expansion and extension of an existing box culvert at the intersection of Newport
14 Road and STAGE 2 CHANNEL, hereinafter called "NEWPORT CULVERT", as shown in
15 concept in orange on Exhibit "A". Together, LA PIEDRA CULVERT and NEWPORT
16 CULVERT are hereinafter called "ROAD CULVERTS". In accordance with the existing
17 Memorandum of Understanding between CITY and DISTRICT, CITY is willing to accept
18 ownership and maintenance responsibility for the structural integrity of ROAD CULVERTS and
19 DISTRICT is willing to accept maintenance responsibility for keeping ROAD CULVERTS free
20 and clear of sediment and debris; and

22 D. Also associated with the construction of STAGE 2 CHANNEL is the
23 construction of certain catch basins, laterals and connector pipes located within both DISTRICT
24 and CITY held easements or rights of way, hereinafter called "APPURTENANCES". Also
25 associated with the construction of STAGE 3 CHANNEL is the construction of certain catch
26 basins, laterals and connector pipes located within both STAGE 3 CHANNEL right of way and
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1 CITY held easements or rights of way, hereinafter also included among "APPURTENANCES".
2 Those APPURTENANCES located within either STAGE 2 CHANNEL or STAGE 3
3 CHANNEL rights of way are included among DISTRICT DRAINAGE FACILITIES.
4 Together, ROAD CULVERTS and APPURTENANCES located within CITY held easements or
5 rights of way are hereinafter called "CITY DRAINAGE FACILITIES". Together, DISTRICT
6 DRAINAGE FACILITIES and CITY DRAINAGE FACILITIES are hereinafter called
7 "PROJECT"; and
8

9 E. Construction of PROJECT has commenced prior to execution of this
10 Agreement pursuant to the terms of two, separate Right of Entry and Inspection Agreements.
11 The first such agreement, hereinafter called "STAGE 2 INSPECTION AGREEMENT", was
12 executed January 2, 2008, between DISTRICT, DS REALTY, DS ASSET and SR
13 STRUCTURED LOT OPTIONS I LLC, a Delaware limited liability company and predecessor
14 in interest to STARK. The second such agreement, hereinafter called "STAGE 3 INSPECTION
15 AGREEMENT", was executed April 23, 2008, between DISTRICT, DS REALTY, DS ASSET
16 and SR STRUCTURED LOT OPTIONS I LLC; and
17

18 F. CITY was not officially established until October 1, 2008. Prior to that
19 date, certain responsibilities that would have been performed by CITY, had CITY been in
20 existence, were performed by either the COUNTY OF RIVERSIDE TRANSPORTATION
21 DEPARTMENT, hereinafter called "TRANSPORTATION", or the COUNTY OF RIVERSIDE
22 ECONOMIC DEVELOPMENT AGENCY, through its County Service Area No. 145,
23 hereinafter called "CSA 145"; and
24

25 G. DEVELOPERS and CITY desire DISTRICT to accept ownership and
26 responsibility for the operation and maintenance of DISTRICT DRAINAGE FACILITIES.
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1 Therefore, DISTRICT must review and approve DEVELOPERS' plans and specifications and
2 subsequently inspect the construction of DISTRICT DRAINAGE FACILITIES; and

3 H. DEVELOPERS and DISTRICT desire CITY to accept ownership and
4 responsibility for the operation and maintenance of CITY DRAINAGE FACILITIES.

5 Therefore, TRANSPORTATION, acting prior to establishment of CITY, must review and
6 approve DEVELOPERS' plans and specifications and subsequently inspect the construction of
7 APPURTENANCES; and
8

9 I. DEVELOPERS wish to construct STAGE 2 CHANNEL as a "green-belt"
10 facility that will accommodate passive public recreation activities within DISTRICT'S future
11 STAGE 2 CHANNEL right of way. DISTRICT is willing to allow public access and use of said
12 right of way for non-motorized recreation purposes provided CITY is willing to (i) accept
13 certain maintenance responsibilities within DISTRICT'S STAGE 2 CHANNEL right of way as
14 set forth herein, and (ii) indemnify and hold DISTRICT harmless from any claims arising from
15 public's use of DISTRICT'S future STAGE 2 CHANNEL right of way; and
16

17 J. DEVELOPERS and DISTRICT desire CITY to accept responsibility for
18 performing "routine" day to day maintenance activities within STAGE 2 CHANNEL right of
19 way. Therefore CSA 145, acting prior to establishment of CITY, must review and approve
20 DEVELOPERS' plans and specifications for STAGE 2 CHANNEL; and
21

22 K. DISTRICT is willing to (i) review and approve DEVELOPERS' plans and
23 specifications for PROJECT, (ii) inspect the construction of DISTRICT DRAINAGE
24 FACILITIES, (iii) accept ownership and responsibility for the operation and maintenance of
25 DISTRICT DRAINAGE FACILITIES, (iv) accept responsibility for keeping ROAD
26 CULVERTS free and clear of sediment and debris, and (v) grant CITY the right to inspect,
27 operate and maintain those portions of ROAD CULVERTS located within DISTRICT'S
28

1 STAGE 2 CHANNEL right of way, provided DEVELOPERS (i) comply with this Agreement,
2 (ii) pay DISTRICT the amounts specified herein to cover DISTRICT'S plan review and
3 construction inspection costs, (iii) construct PROJECT in accordance with plans and
4 specifications approved by DISTRICT and CITY and/or TRANSPORTATION and CSA 145,
5 acting prior to establishment of CITY, (iv) obtain all necessary permits, regulatory permits,
6 licenses and rights of entry as set forth herein, (v) accept ownership and responsibility for the
7 operation and maintenance of PROJECT following completion of PROJECT construction until
8 such time as DISTRICT accepts ownership and responsibility for the operation and maintenance
9 of DISTRICT DRAINAGE FACILITIES, CITY accepts ownership and responsibility for the
10 operation and maintenance of CITY DRAINAGE FACILITIES and CITY also accepts
11 responsibility for routine day to day maintenance of STAGE 2 CHANNEL and for maintenance
12 of any recreational amenities located within DISTRICT'S STAGE 2 CHANNEL right of way,
13 and (vi) obtain and convey to DISTRICT the necessary rights of way for the inspection,
14 operation and maintenance of DISTRICT DRAINAGE FACILITIES as set forth herein; and
15

16
17 L. DISTRICT is further willing to accept responsibility for keeping ROAD
18 CULVERTS free and clear of sediment and debris provided CITY accepts responsibility for the
19 ownership and structural integrity of ROAD CULVERTS; and
20

21 M. CITY is willing to (i) review and approve plans and specifications prepared
22 by DEVELOPERS for PROJECT, or accept plans and specifications previously reviewed and
23 approved by TRANSPORTATION acting prior to establishment of CITY, (ii) inspect the
24 construction of CITY DRAINAGE FACILITIES, or accept TRANSPORTATION'S inspection
25 thereof acting prior to the establishment of CITY as though performed by CITY, (iii) consent to
26 TRANSPORTATION'S acceptance and holding of faithful performance and payment bonds
27 submitted by DEVELOPERS for PROJECT, (iv) grant DISTRICT the right to inspect, operate
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1 and maintain DISTRICT DRAINAGE FACILITIES within CITY rights of way, (v) grant
 2 DISTRICT the necessary rights to remove sediment and debris from ROAD CULVERTS, (vi)
 3 consent to the recordation and conveyance of Irrevocable Offer(s) of Dedication furnished by
 4 DEVELOPERS as provided herein, and (vii) accept ownership and responsibility for the
 5 operation and maintenance of CITY DRAINAGE FACILITIES, provided PROJECT is
 6 constructed in accordance with plans and specifications approved by DISTRICT and CITY,
 7 and/or TRANSPORTATION and CSA 145 acting prior to establishment of CITY; and
 8

9 N. CITY is willing to (i) review and approve DEVELOPERS plans and
 10 specifications for STAGE 2 CHANNEL, or accept plans and specifications previously reviewed
 11 and approved by CSA 145 acting prior to establishment of CITY, (ii) accept responsibility for
 12 the performance of routine maintenance of STAGE 2 CHANNEL, (iii) accept sole responsibility
 13 for the operation and maintenance of STAGE 2 CHANNEL'S public access and recreational
 14 amenities provided STAGE 2 CHANNEL is constructed in accordance with plans and
 15 specifications approved by DISTRICT and CITY, and/or TRANSPORTATION and CSA 145
 16 acting prior to establishment of CITY, and (iv) indemnify and hold DISTRICT harmless from
 17 any claims arising from public's use of the proposed STAGE 2 CHANNEL right of way as set
 18 forth herein.
 19

20 NOW, THEREFORE, the parties hereto mutually agree as follows:
 21

22 SECTION I

23 DEVELOPERS shall:

24 1. Prepare PROJECT plans and specifications, as shown on District Drawing
 25 Nos. 4-967, 4-973 and 4-983, hereinafter called "IMPROVEMENT PLANS", in accordance
 26 with DISTRICT and CITY, and/or TRANSPORTATION and CSA 145 acting prior to
 27 establishment of CITY, standards, and submit to DISTRICT and CITY, and/or
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1 TRANSPORTATION and CSA 145 acting prior to establishment of CITY, for their review and
2 approval.

3 2. Continue to pay DISTRICT, within thirty (30) days after receipt of periodic
4 billings from DISTRICT, any and all such amounts as are deemed reasonably necessary by
5 DISTRICT to cover DISTRICT'S costs associated with the review of IMPROVEMENT
6 PLANS, review and approval of right of way and conveyance documents, and with the
7 processing and administration of this Agreement.
8

9 3. Deposit with DISTRICT (Attention: Business Office – Accounts
10 Receivable), at the time of providing written notice to DISTRICT of the start of DISTRICT
11 DRAINAGE FACILITIES construction as set forth in Section I.8. herein, the estimated cost of
12 providing construction inspection for DISTRICT DRAINAGE FACILITIES, in an amount as
13 determined and approved by DISTRICT in accordance with Ordinance Nos. 671 and 749 of the
14 County of Riverside, including any amendments thereto, based upon the bonded value of
15 DISTRICT DRAINAGE FACILITIES.
16

17 4. [This Section Intentionally Left Blank.]

18 5. Secure, at their sole cost and expense, all necessary licenses, agreements,
19 permits and rights of entry as may be needed for the construction, inspection, operation and
20 maintenance of DISTRICT DRAINAGE FACILITIES. DEVELOPERS shall furnish
21 DISTRICT, at the time of providing written notice to DISTRICT of the start of construction as
22 set forth in Section I.8., with sufficient evidence of DEVELOPERS having secured such
23 necessary licenses, agreements, permits and rights of entry, as determined and approved by
24 DISTRICT.
25

26 6. Furnish DISTRICT with copies of all permits, approvals or agreements
27 required by any Federal or State resource and/or regulatory agency for the construction,
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1 operation and maintenance of DISTRICT DRAINAGE FACILITIES. Such documents include
2 but are not limited to those issued by the U.S. Army Corps of Engineers, California Regional
3 Water Quality Control Board, California State Department of Fish and Game and State Water
4 Resources Control Board.

5 7. Provide TRANSPORTATION, acting prior to establishment of CITY, at
6 the time of providing written notice to DISTRICT of the start of construction as set forth in
7 Section I.8., with faithful performance and payment bonds, each in the amount of 100% of the
8 estimated cost for construction of DISTRICT DRAINAGE FACILITIES as determined by
9 DISTRICT. The surety, amount and form of the bonds shall be subject to the approval of
10 DISTRICT and TRANSPORTATION, acting prior to establishment of CITY. The bonds shall
11 remain in full force and effect until DISTRICT DRAINAGE FACILITIES are accepted by
12 DISTRICT as complete; at which time the bond amount may be reduced to 10% for a period of
13 one year to guarantee against any defective work, labor or materials.
14

15 8. Notify DISTRICT in writing (Attention: Administrative Services Section),
16 at least twenty (20) days prior to the start of construction of DISTRICT DRAINAGE
17 FACILITIES. Construction shall not begin on any element of DISTRICT DRAINAGE
18 FACILITIES, for any reason whatsoever, until DISTRICT has issued to DEVELOPERS a
19 written Notice to Proceed authorizing DEVELOPERS to commence construction of DISTRICT
20 DRAINAGE FACILITIES.
21

22 9. Grant DISTRICT, by execution of this Agreement, the right to enter upon
23 DEVELOPERS' property where necessary and convenient for the purpose of gaining access to,
24 and performing inspection service for, the construction of DISTRICT DRAINAGE
25 FACILITIES as set forth herein.
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1 10. Obtain and provide DISTRICT, at the time of providing written notice to
2 DISTRICT of the start of construction of DISTRICT DRAINAGE FACILITIES as set forth in
3 Section I.8., with duly executed Irrevocable Offers(s) of Dedication to the public for flood
4 control and drainage purposes, including ingress and egress, for the rights of way deemed
5 necessary by DISTRICT for the construction, inspection, operation and maintenance of
6 DISTRICT DRAINAGE FACILITIES, as shown in concept cross-hatched in blue, green, purple
7 or red on Exhibit "B" attached hereto and made a part hereof. The Irrevocable Offer(s) of
8 Dedication shall be in a form approved by DISTRICT and shall be executed by all legal and
9 equitable owners of the property described in the offer(s).
10

11 11. Furnish DISTRICT, when submitting the Irrevocable Offer(s) of
12 Dedication as set forth in Section I.10., with Preliminary Reports on Title dated not more than
13 thirty (30) days prior to date of submission of all the property described in the Irrevocable
14 Offer(s) of Dedication.
15

16 12. Furnish DISTRICT, at the time of providing written notice to DISTRICT of
17 the start of construction as set forth in Section I.8., with a complete list of all contractors and
18 subcontractors to be performing work on DISTRICT DRAINAGE FACILITIES, including the
19 corresponding license number and license classification of each. At such time, DEVELOPERS
20 shall further identify in writing their designated superintendent for DISTRICT DRAINAGE
21 FACILITIES construction.
22

23 13. Furnish DISTRICT, at the time of providing written notice to DISTRICT of
24 the start of construction as set forth in Section I.8., a construction schedule which shall show the
25 order and dates in which the DEVELOPERS or DEVELOPERS' contractor proposes to carry on
26 the various parts of work, including estimated start and completion dates. As construction of
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1 DISTRICT DRAINAGE FACILITIES progresses, DEVELOPERS shall update said
2 construction schedule as requested by DISTRICT.

3 14. Furnish DISTRICT with final mylar IMPROVEMENT PLANS and assign
4 their ownership to DISTRICT at the time DISTRICT approves and signs said final mylar
5 IMPROVEMENT PLANS, and prior to the start of DISTRICT DRAINAGE FACILITIES
6 construction.

7
8 15. Not permit any change to or modification of the IMPROVEMENT PLANS
9 without the prior written permission and consent of DISTRICT.

10 16. Comply with all Cal/OSHA safety regulations including regulations
11 concerning confined space and maintain a safe working environment for DEVELOPERS and
12 DISTRICT employees on the site.

13 17. Furnish DISTRICT, at the time of providing written notice to DISTRICT of
14 the start of construction as set forth in Section I.8., a confined space entry procedure specific to
15 DISTRICT DRAINAGE FACILITIES. The procedure shall comply with requirements
16 contained in California Code of Regulations, Title 8 Section 5158, Other Confined Space
17 Operations, Section 5157, Permit Required Confined Space and DISTRICT Confined Space
18 Procedures, SOM-18. The procedure shall be reviewed and approved by DISTRICT prior to the
19 issuance of a Notice to Proceed.
20

21 18. During the construction period of DISTRICT DRAINAGE FACILITIES,
22 provide Workers' Compensation Insurance in an amount required by law. A certificate of said
23 insurance policy shall be provided to DISTRICT and CITY, and/or TRANSPORTATION and
24 CSA 145 acting prior to establishment of CITY, at the time of providing written notice pursuant
25 to Section I.8.
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1 19. Commencing on the date notice is given pursuant to Section I.8. and
2 continuing until DISTRICT accepts DISTRICT DRAINAGE FACILITIES for operation and
3 maintenance:

4 (a) Provide and maintain or cause their contractor(s) to provide and
5 maintain comprehensive liability insurance coverage which shall
6 protect DEVELOPERS from claim from damages for personal
7 injury, including accidental and wrongful death, as well as from
8 claims for property damage which may arise from DEVELOPERS'
9 construction of PROJECT or the performance of their obligations
10 hereunder, whether such construction or performance be by
11 DEVELOPERS, by any of their contractors, subcontractors, or by
12 anyone employed directly or indirectly by any of them. Such
13 insurance shall name DISTRICT, the County of Riverside and CITY
14 as additional insureds with respect to this Agreement and the
15 obligations of DEVELOPERS hereunder. Such insurance shall
16 provide for limits of not less than two million dollars (\$2,000,000)
17 per occurrence.

18
19
20 (b) Cause their insurance carrier(s) or their contractor's insurance
21 carrier(s), who shall be authorized by the California Department of
22 Insurance to transact the business of insurance in the State of
23 California, to furnish DISTRICT and CITY, and/or
24 TRANSPORTATION and CSA 145 acting prior to establishment of
25 CITY, at the time of providing written notice to DISTRICT of the
26 start of construction as set forth in Section I.8., with certificate(s) of
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1 insurance and applicable policy endorsements showing that such
2 insurance is in full force and effect and that DISTRICT, the County
3 of Riverside and CITY are named as additional insureds with respect
4 to this Agreement and the obligations of DEVELOPERS hereunder.
5 Further, said certificate(s) shall state that the issuing company shall
6 give DISTRICT and CITY, and/or TRANSPORTATION and CSA
7 145 acting prior to establishment of CITY, sixty (60) days written
8 notice in the event of any cancellation, termination, non-renewal or
9 reduction in coverage of the policies evidenced by the certificate(s).
10 In the event of any such cancellation, termination, non-renewal or
11 reduction in coverage, DEVELOPERS shall, forthwith, secure
12 replacement insurance meeting the provisions of this paragraph.
13

14
15 Failure to maintain the insurance required by this paragraph shall be
16 deemed a material breach of this Agreement and shall authorize and constitute authority for
17 DISTRICT, at its sole discretion, to proceed to perform the remaining work pursuant to Section
18 V.3.

19 20. Construct, or cause to be constructed, PROJECT at DEVELOPERS' sole
20 cost and expense in accordance with DISTRICT and CITY, and/or TRANSPORTATION and
21 CSA 145 acting prior to establishment of CITY, approved IMPROVEMENT PLANS.

22
23 21. Within two (2) weeks of completing PROJECT construction, provide
24 DISTRICT with written notice (Attention: Contract Administration Section) that PROJECT
25 construction is substantially complete and requesting that DISTRICT conduct a final inspection
26 of DISTRICT DRAINAGE FACILITIES.
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1 22. Upon completion of PROJECT construction, and upon acceptance by CITY
2 of all street rights of way deemed necessary by DISTRICT and CITY for the operation and
3 maintenance of PROJECT, but prior to DISTRICT acceptance of DISTRICT DRAINAGE
4 FACILITIES for ownership, operation and maintenance, convey or cause to be conveyed to
5 DISTRICT (i) flood control easement(s), including ingress and egress, in a form approved by
6 DISTRICT, for the rights of way as shown in concept cross-hatched in green and in red on
7 Exhibit "B", (ii) ingress and egress easement(s), in a form approved by DISTRICT, for the
8 rights of way as shown in concept cross-hatched in purple on Exhibit "B", and (iii) fee simple
9 title, in a form approved by DISTRICT, for the rights of way as shown in concept cross-hatched
10 in blue on Exhibit "B".
11

12 23. At the time of recordation of the conveyance document(s) as set forth in
13 Sections I.22.(i) and I.22.(ii), furnish DISTRICT with policies of title insurance, each in the
14 amount of not less than fifty percent (50%) of the estimated fee value, as determined by
15 DISTRICT, for each easement parcel to be conveyed to DISTRICT, guaranteeing DISTRICT'S
16 interest in said property as being free and clear of all liens, encumbrances, assessments,
17 easements, taxes and leases (recorded or unrecorded), except those which, in the sole discretion
18 of DISTRICT, are deemed acceptable.
19

20 24. At the time of recordation of the conveyance document(s) as set forth in
21 Section I.22.(iii), furnish DISTRICT with policies of title insurance, each in the amount of not
22 less than one hundred percent (100%) of the estimated fee value, as determined by DISTRICT,
23 for each fee parcel to be conveyed to DISTRICT, guaranteeing DISTRICT'S interest in said
24 property as being free and clear of all liens, encumbrances, assessments, easements, taxes and
25 leases (recorded or unrecorded), except those which, in the sole discretion of DISTRICT, are
26 deemed acceptable.
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1 25. Accept ownership and sole responsibility for the operation and maintenance
2 of PROJECT until such time as (i) DISTRICT accepts ownership and responsibility for
3 operation and maintenance of DISTRICT DRAINAGE FACILITIES, and (ii) CITY accepts
4 ownership and responsibility for operation and maintenance of CITY DRAINAGE
5 FACILITIES and also accepts responsibility for the operation and maintenance of STAGE 2
6 CHANNEL'S public access and recreational amenities. Further, it is mutually understood by the
7 parties hereto that prior to DISTRICT acceptance of ownership and responsibility for the
8 operation and maintenance of DISTRICT DRAINAGE FACILITIES, PROJECT shall be in a
9 satisfactorily maintained condition as solely determined by DISTRICT.
10

11 26. Pay, if suit is brought upon this Agreement or any bond guaranteeing the
12 completion of DISTRICT DRAINAGE FACILITIES, all costs and reasonable expenses and
13 fees, including reasonable attorneys' fees, and acknowledge that, upon entry of judgment, all
14 such costs, expenses and fees shall be computed as costs and included in any judgment
15 rendered.
16

17 27. Upon completion of construction of PROJECT, but prior to DISTRICT
18 acceptance of DISTRICT DRAINAGE FACILITIES for ownership, operation and maintenance,
19 DEVELOPERS' civil engineer of record or construction civil engineer of record, duly registered
20 in the State of California, shall provide DISTRICT a redlined "as-built" copy of
21 IMPROVEMENT PLANS. After DISTRICT approval of the redlined "as-built" drawings,
22 DEVELOPERS' engineer shall schedule with DISTRICT a time to transfer the redlined changes
23 onto DISTRICT'S original mylars at DISTRICT'S office, after which the engineer shall review,
24 stamp and sign the original IMPROVEMENT PLANS "AS-BUILT".
25

26 28. Ensure that all work performed pursuant to this Agreement by
27 DEVELOPERS, their agents or contractors is done in accordance with all applicable laws and
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1 regulations, including but not limited to all applicable provisions of the Labor Code, Business
2 and Professions Code, and Water Code. DEVELOPERS shall be solely responsible for all costs
3 associated with compliance with applicable laws and regulations.

4 SECTION II

5 DISTRICT shall:

6 1. Review and approve IMPROVEMENT PLANS prior to the start of
7 DISTRICT DRAINAGE FACILITIES construction.

8 2. Provide CITY, and/or TRANSPORTATION and CSA 145 acting prior to
9 establishment of CITY, an opportunity to review and approve IMPROVEMENT PLANS prior
10 to DISTRICT'S final approval.

11 3. Upon execution of this Agreement, record or cause to be recorded, a copy
12 of this Agreement in the Official Records of the Riverside County Recorder.

13 4. Record or cause to be recorded, the Irrevocable Offer(s) of Dedication
14 provided by DEVELOPERS pursuant to Section I.10.

15 5. Inspect DISTRICT DRAINAGE FACILITIES construction.

16 6. Keep an accurate accounting of all DISTRICT costs associated with the
17 review and approval of IMPROVEMENT PLANS, the review and approval of right of way and
18 conveyance documents and the processing and administration of this Agreement.

19 7. Keep an accurate accounting of all DISTRICT construction inspection
20 costs, and within forty-five (45) days after DISTRICT acceptance of DISTRICT DRAINAGE
21 FACILITIES as being complete, submit a final cost statement to DEVELOPERS. If the deposit,
22 as set forth in Section I.3. exceeds such costs, DISTRICT shall reimburse DEVELOPERS the
23 excess amount within sixty (60) days after DISTRICT acceptance of DISTRICT DRAINAGE
24 FACILITIES as being complete. If at any time the costs exceed the deposit or are anticipated
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1 CITY, and/or TRANSPORTATION acting prior to establishment of CITY, shall:

2 1. Review and approve IMPROVEMENT PLANS prior to the start of
3 PROJECT construction.

4 2. Accept the TRANSPORTATION, acting prior to establishment of CITY,
5 and DISTRICT approved faithful performance and payment bonds submitted by
6 DEVELOPERS as set forth in Section I.7., and hold said bonds as provided herein.

7 3. Inspect construction of CITY DRAINAGE FACILITIES.

8 4. Consent, by execution of this Agreement, to the recording of any
9 Irrevocable Offer(s) of Dedication furnished by DEVELOPERS pursuant to this Agreement.
10

11 5. As requested by DISTRICT, accept the Irrevocable Offer(s) of Dedication
12 as set forth herein, and any other outstanding offers of dedication necessary for the construction,
13 inspection, operation and maintenance of DISTRICT DRAINAGE FACILITIES, and convey
14 sufficient rights of way to DISTRICT to allow DISTRICT to construct, inspect, operate and
15 maintain DISTRICT DRAINAGE FACILITIES.
16

17 6. Grant DISTRICT, by execution of this Agreement, (i) the right to construct,
18 inspect, operate and maintain DISTRICT DRAINAGE FACILITIES within CITY rights of way,
19 and (ii) the necessary rights to keep ROAD CULVERTS free and clear of sediment and debris.

20 7. Accept ownership and sole responsibility for the operation and maintenance
21 of APPURTENANCES upon completion of construction and DISTRICT acceptance of
22 DISTRICT DRAINAGE FACILITIES as being complete.
23

24 8. Upon CITY acceptance of ROAD CULVERTS construction as being
25 complete, accept ownership and responsibility for the structural integrity of ROAD
26 CULVERTS.

27 SECTION IV
28

1 CITY, and/or CSA 145 acting prior to establishment of CITY, shall:

2 1. Review and approve IMPROVEMENT PLANS for STAGE 2 CHANNEL
3 prior to the start of PROJECT construction.

4 2. Inspect construction of STAGE 2 CHANNEL.

5 3. Upon DISTRICT acceptance of STAGE 2 CHANNEL for ownership,
6 operation and maintenance, accept sole responsibility for routine day to day maintenance of
7 STAGE 2 CHANNEL including but not limited to, removal of trash and debris, performing
8 graffiti removal and vegetation control including any necessary mowing, cutting and weed
9 abatement associated therewith.

10 4. Upon DISTRICT acceptance of STAGE 2 CHANNEL for ownership,
11 operation and maintenance, accept sole responsibility for maintenance of any recreational
12 amenities located within DISTRICT'S STAGE 2 CHANNEL right of way including, but not
13 limited to, repairing and/or replacing pathways, access roads, irrigation works, landscape
14 maintenance and the routine removal of accumulated litter, trash and debris associated with
15 public's use of STAGE 2 CHANNEL right of way.

16 5. Not cause any change to or modification within DISTRICT'S STAGE 2
17 CHANNEL right of way without obtaining the prior written permission and consent of
18 DISTRICT.

19 6. Cease any interfering use within DISTRICT'S STAGE 2 CHANNEL right
20 of way upon receipt of a written notification from DISTRICT in the event DISTRICT'S General
21 Manager-Chief Engineer determines that such use of DISTRICT'S STAGE 2 CHANNEL right
22 of way in any way interferes with STAGE 2 CHANNEL primary purpose and function.
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1 2. CITY, and/or TRANSPORTATION acting prior to establishment of CITY,
2 and DEVELOPERS personnel may observe and inspect all work being done on DISTRICT
3 DRAINAGE FACILITIES but shall provide any comments to DISTRICT personnel who shall
4 be solely responsible for all quality control communications with the DEVELOPERS'
5 contractor(s) during the construction of DISTRICT DRAINAGE FACILITIES. CITY, and/or
6 CSA 145 acting prior to the establishment of CITY, personnel may observe and inspect all work
7 being done on STAGE 2 CHANNEL, but shall provide any comments to DISTRICT personnel
8 who shall be solely responsible for all quality control communications with the DEVELOPERS'
9 contractor(s) during the construction of STAGE 2 CHANNEL.
10

11 3. DEVELOPERS shall complete construction of DISTRICT DRAINAGE
12 FACILITIES within twelve (12) consecutive months after execution of this Agreement and
13 within one hundred eighty (180) consecutive calendar days after commencing work on
14 DISTRICT DRAINAGE FACILITIES. It is expressly understood that since time is of the
15 essence in this Agreement, failure of DEVELOPERS to perform the work within the agreed
16 upon time shall constitute authority for DISTRICT to perform the remaining work and require
17 DEVELOPERS' surety to pay to CITY and/or TRANSPORTATION the penal sum of any and
18 all bonds. In which case, CITY and/or TRANSPORTATION shall subsequently reimburse
19 DISTRICT for DISTRICT costs incurred.
20

21 4. DEVELOPERS shall not request DISTRICT to accept any portion or
22 portions of DISTRICT DRAINAGE FACILITIES or CITY to accept any portion or portions of
23 CITY DRAINAGE FACILITIES or CITY to accept any portion of recreational amenities for
24 ownership, operation and maintenance prior to the completion of PROJECT construction.
25

26 5. DISTRICT shall endeavor to issue DEVELOPERS a Notice to Proceed
27 within twenty (20) days of receipt of DEVELOPERS' complete written notice as set forth in
28

1 Section I.8.; however, DISTRICT'S construction inspection staff is limited and, therefore, the
2 issuance of a Notice to Proceed is subject to staff availability.

3 In the event DEVELOPERS wish to expedite issuance of a Notice to
4 Proceed, DEVELOPERS may elect to furnish an independent qualified construction inspector at
5 DEVELOPERS' sole cost and expense. DEVELOPERS shall furnish appropriate
6 documentation of the individual's credentials and experience to DISTRICT for review and, if
7 appropriate, approval. DISTRICT shall review the individual's qualifications and experience
8 and, upon approval thereof, said individual, hereinafter called "DEPUTY INSPECTOR", shall
9 be authorized to act on DISTRICT'S behalf on all DISTRICT DRAINAGE FACILITIES
10 construction and quality control matters. If DEVELOPERS' initial construction inspection
11 deposit furnished pursuant to Section I.3. exceeds ten thousand dollars (\$10,000.00), DISTRICT
12 shall refund to DEVELOPERS up to eighty percent (80%) of DEVELOPERS' initial inspection
13 deposit within forty-five (45) days of DISTRICT'S approval of DEPUTY INSPECTOR;
14 however, a minimum balance of ten thousand dollars (\$10,000.00) shall be retained on account.

15
16
17 6. DISTRICT DRAINAGE FACILITIES construction work shall be on a five
18 (5) day, forty (40) hour work week with no work on Saturdays, Sundays or DISTRICT
19 designated legal holidays, unless otherwise approved in writing by DISTRICT. If
20 DEVELOPERS feel it is necessary to work more than the normal forty (40) hour work week or
21 on holidays, DEVELOPERS shall make a written request for permission from DISTRICT to
22 work the additional hours. The request shall be submitted to DISTRICT at least seventy-two
23 (72) hours prior to the requested additional work hours and state the reasons for the overtime
24 and the specific time frames required. The decision of granting permission for overtime work
25 shall be made by DISTRICT at its sole discretion and shall be final. If permission is granted by
26 DISTRICT, DEVELOPERS will be charged the cost incurred at the overtime rates for
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1 additional inspection time required in connection with the overtime work in accordance with
2 Ordinance Nos. 671 and 749, including any amendments thereto, of the County of Riverside.

3 7. DEVELOPERS shall indemnify and hold harmless DISTRICT, the County
4 of Riverside and CITY (including their agencies, districts, special districts and departments,
5 their respective directors, officers, Board of Supervisors, elected and appointed officials,
6 employees, agents and representatives) from any liability, claim, damage, proceeding or action,
7 present or future, based upon, arising out of or in any way relating to DEVELOPERS'
8 (including their officers, employees, subcontractors and agents) actual or alleged acts or
9 omissions related to this Agreement, performance under this Agreement, or failure to comply
10 with the requirements of this Agreement, including but not limited to: (a) property damage; (b)
11 bodily injury or death; (c) liability or damage pursuant to Article I, Section 19 of the California
12 Constitution, the Fifth Amendment of the United States Constitution or any other law, ordinance
13 or regulation caused by the diversion of waters from the natural drainage patterns or the
14 discharge of drainage within or from PROJECT; or (d) any other element of any kind or nature
15 whatsoever.
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18 DEVELOPERS shall defend, at their sole expense, including all costs and
19 fees (including but not limited to attorney fees, cost of investigation, defense and settlements or
20 awards), DISTRICT, the County of Riverside and CITY (including their agencies, districts,
21 special districts and departments, their respective directors, officers, Board of Supervisors,
22 elected and appointed officials, employees, agents and representatives) in any claim, proceeding
23 or action for which indemnification is required.
24

25 With respect to any of DEVELOPERS' indemnification requirements,
26 DEVELOPERS shall, at their sole cost, have the right to use counsel of their own choice and
27 shall have the right to adjust, settle, or compromise any such claim, proceeding or action
28

1 without the prior consent of DISTRICT or the County of Riverside or CITY; provided,
2 however, that any such adjustment, settlement or compromise in no manner whatsoever limits or
3 circumscribes DEVELOPERS' indemnification obligations to DISTRICT or the County of
4 Riverside or CITY.

5 DEVELOPERS' indemnification obligations shall be satisfied when
6 DEVELOPERS have provided to DISTRICT or the County of Riverside or CITY the
7 appropriate form of dismissal (or equivalent document) relieving DISTRICT or the County of
8 Riverside or CITY from any liability for the claim, proceeding or action involved.
9

10 The specified insurance limits required in this Agreement shall in no way
11 limit or circumscribe DEVELOPERS' obligations to indemnify and hold harmless DISTRICT or
12 the County of Riverside or CITY from third party claims.

13 In the event there is conflict between this section and California Civil Code
14 Section 2782, this section shall be interpreted to comply with Civil Code Section 2782. Such
15 interpretation shall not relieve the DEVELOPERS from indemnifying DISTRICT or the County
16 of Riverside or CITY to the fullest extent allowed by law.
17

18 8. Any waiver by DISTRICT or CITY of any breach of any one or more of
19 the terms of this Agreement shall not be construed to be a waiver of any subsequent or other
20 breach of the same or of any other term hereof. Failure on the part of DISTRICT or CITY to
21 require exact, full and complete compliance with any terms of this Agreement shall not be
22 construed as in any manner changing the terms hereof, or estopping DISTRICT or CITY from
23 enforcement hereof.
24

25 9. DISTRICT and CITY each pledge to cooperate in regard to the operation
26 and maintenance of their respective facilities as set forth herein and to discharge their respective
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1 maintenance responsibilities in an expeditious fashion so as to avoid the creation of any
2 nuisance condition or undue maintenance impact upon the others' facilities.

3 10. This Agreement is to be construed in accordance with the laws of the State
4 of California.

5 11. Any and all notices sent or required to be sent to the parties of this
6 Agreement will be mailed by first class mail, postage prepaid, to the following addresses:
7

8
9 RIVERSIDE COUNTY FLOOD CONTROL
10 AND WATER CONSERVATION DISTRICT
11 1995 Market Street
12 Riverside, CA 92501

CITY OF MENIFEE
29714 Haun Drive
Menifee, CA 92117
Attn: City Manager

11 DONAHUE SCHRIBER ASSET
12 MANAGEMENT CORPORATION
13 200 E. Baker Street, Suite 100
14 Costa Mesa, CA 92626

DONAHUE SCHRIBER REALTY
GROUP, L.P.
200 E. Baker Street, Suite 100
Costa Mesa, CA 92626

14 STARK MENIFEE LAND LLC
15 c/o Regent Properties
16 11990 San Vicente Blvd., Suite 200
Los Angeles, CA 90049
Attn: Matthew Levy

17 12. Any action at law or in equity brought by any of the parties hereto for the
18 purpose of enforcing a right or rights provided for by the Agreement, shall be tried in a court of
19 competent jurisdiction in the County of Riverside, State of California, and the parties hereto
20 waive all provisions of law providing for a change of venue in such proceedings to any other
21 county.
22

23 13. This Agreement is the result of negotiations between the parties hereto, and
24 the advice and assistance of their respective counsel. The fact that this Agreement was prepared
25 as a matter of convenience by DISTRICT shall have no import or significance. Any uncertainty
26 or ambiguity in this Agreement shall not be construed against DISTRICT because DISTRICT
27 prepared this Agreement in its final form.
28

1 14. The rights and obligations of DEVELOPERS shall inure to and be binding
2 upon all heirs, successors and assignees.

3 15. DEVELOPERS shall not assign or otherwise transfer any of their rights,
4 duties or obligations hereunder to any person or entity without the written consent of the other
5 parties hereto being first obtained. In the event of any such transfer or assignment,
6 DEVELOPERS expressly understand and agree that they shall remain liable with respect to any
7 and all of the obligations and duties contained in this Agreement.

8 16. The individual(s) executing this Agreement on behalf of DEVELOPERS
9 hereby certify that they have the authority within their respective company(ies) to enter into and
10 execute this Agreement, and have been authorized to do so by any and all boards of directors,
11 legal counsel, and or any other board, committee or other entity within their respective
12 company(ies) which have the authority to authorize or deny entering this Agreement.

13 17. This Agreement is intended by the parties hereto as a final expression of
14 their understanding with respect to the subject matter hereof and as a complete and exclusive
15 statement of the terms and conditions thereof and supersedes any and all prior and
16 contemporaneous agreements and understandings, oral or written, in connection therewith. This
17 Agreement may be changed or modified only upon the written consent of the parties hereto.

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement on

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(to be filled in by Clerk of the Board)

RECOMMENDED FOR APPROVAL:

By Warren D. Williams
for WARREN D. WILLIAMS
General Manager-Chief Engineer

**RIVERSIDE COUNTY FLOOD CONTROL
AND WATER CONSERVATION DISTRICT**

By _____
MARION ASHLEY, Chairman
Riverside County Flood Control and Water
Conservation District Board of Supervisors

APPROVED AS TO FORM:

PAMELA J. WALLS
County Counsel
By Neal Kipnis
NEAL KIPNIS
Deputy County Counsel

ATTEST:

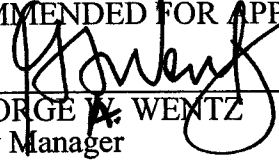
KECIA HARPER-IHEM
Clerk of the Board
By _____
Deputy

(SEAL)


Cooperative Agreement: PM 34275
6/08/09
JPS:blj

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RECOMMENDED FOR APPROVAL:

By 
GEORGE W. WENTZ
City Manager

CITY OF MENIFEE

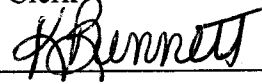
By 
WALLACE W. EDGERTON
Mayor

APPROVED AS TO FORM:

By 
ELIZABETH MARTYN
City Attorney

ATTEST:

KATHY BENNETT
City Clerk

By 

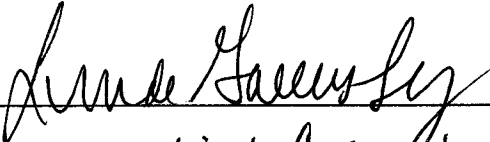
(SEAL)

Cooperative Agreement: PM 34275
6/08/09
JPS:blj

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STARK MENIFEE LAND LLC,
a Wisconsin limited liability company

By: **STARK OFFSHORE MANAGEMENT LLC,**
a Wisconsin limited liability company,
Its Manager

By 
Print Name Linda Boren Levy
Print Title Authorized Signatory

(ATTACH NOTARY WITH
CAPACITY STATEMENT)

(SIGNATURES CONTINUED ON FOLLOWING PAGE)

Cooperative Agreement: PM 34275
6/04/09
JPS:

STATE OF Wisconsin)

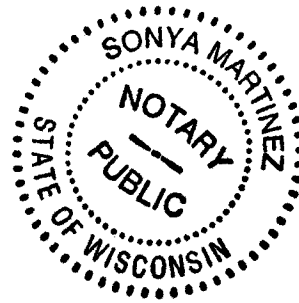
COUNTY OF Milwaukee)

On August 3, 2009, before me, Sonya Martinez Notary Public, personally appeared Linda Goren's Levy personally known to me ~~(or proved to me on the basis of satisfactory evidence)~~ to be the person(s) whose name(s) is/~~are~~ subscribed to the within instrument and acknowledged to me that ~~he/she/they~~ executed the same in ~~his/her/their~~ authorized capacity(ies), and that by ~~his/her/their~~ signature(s) on the instrument the person(s) or the entity upon behalf of which their person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Sonya Martinez
Signature

(Seal)



My Commission Expires: February 14, 2010

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DONAHUE SCHRIBER REALTY GROUP, L.P.,
a Delaware limited partnership

By: **DONAHUE SCHRIBER REALTY GROUP, INC.,**
a Maryland corporation,
Its General Partner

By Mark L. Whitfield

Print Name Mark L. Whitfield

Print Title Executive Vice President

(ATTACH NOTARY WITH
CAPACITY STATEMENT)

By Janet L. Petersen

Print Name Janet L. Petersen
~~Vice President - Development Services~~

Print Title _____

(ATTACH NOTARY WITH
CAPACITY STATEMENT)

**DONAHUE SCHRIBER ASSET
MANAGEMENT CORPORATION,**
a Delaware corporation

By Mark L. Whitfield

Print Name Mark L. Whitfield

Print Title Executive Vice President

(ATTACH NOTARY WITH
CAPACITY STATEMENT)

By Janet L. Petersen

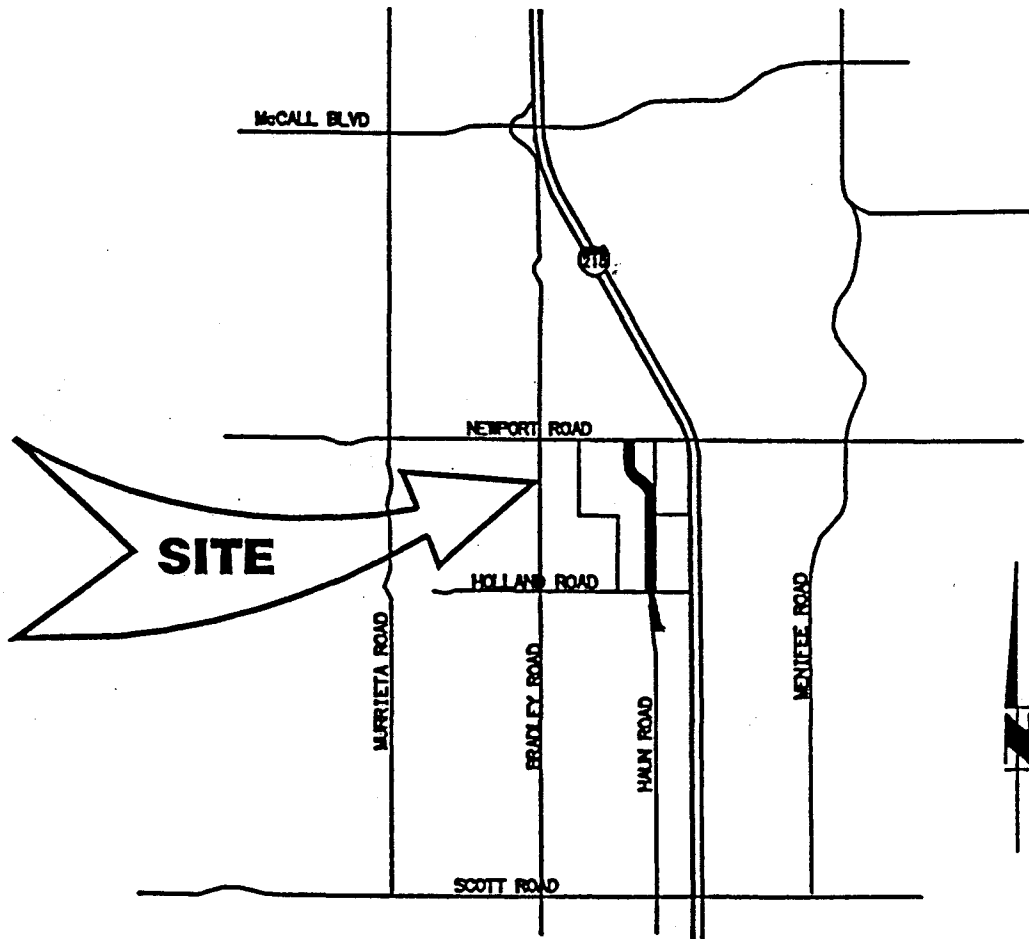
Print Name Janet L. Petersen
~~Vice President - Development Services~~

Print Title _____

(ATTACH NOTARY WITH
CAPACITY STATEMENT)

Cooperative Agreement: PM 34275
6/04/09
JPS:

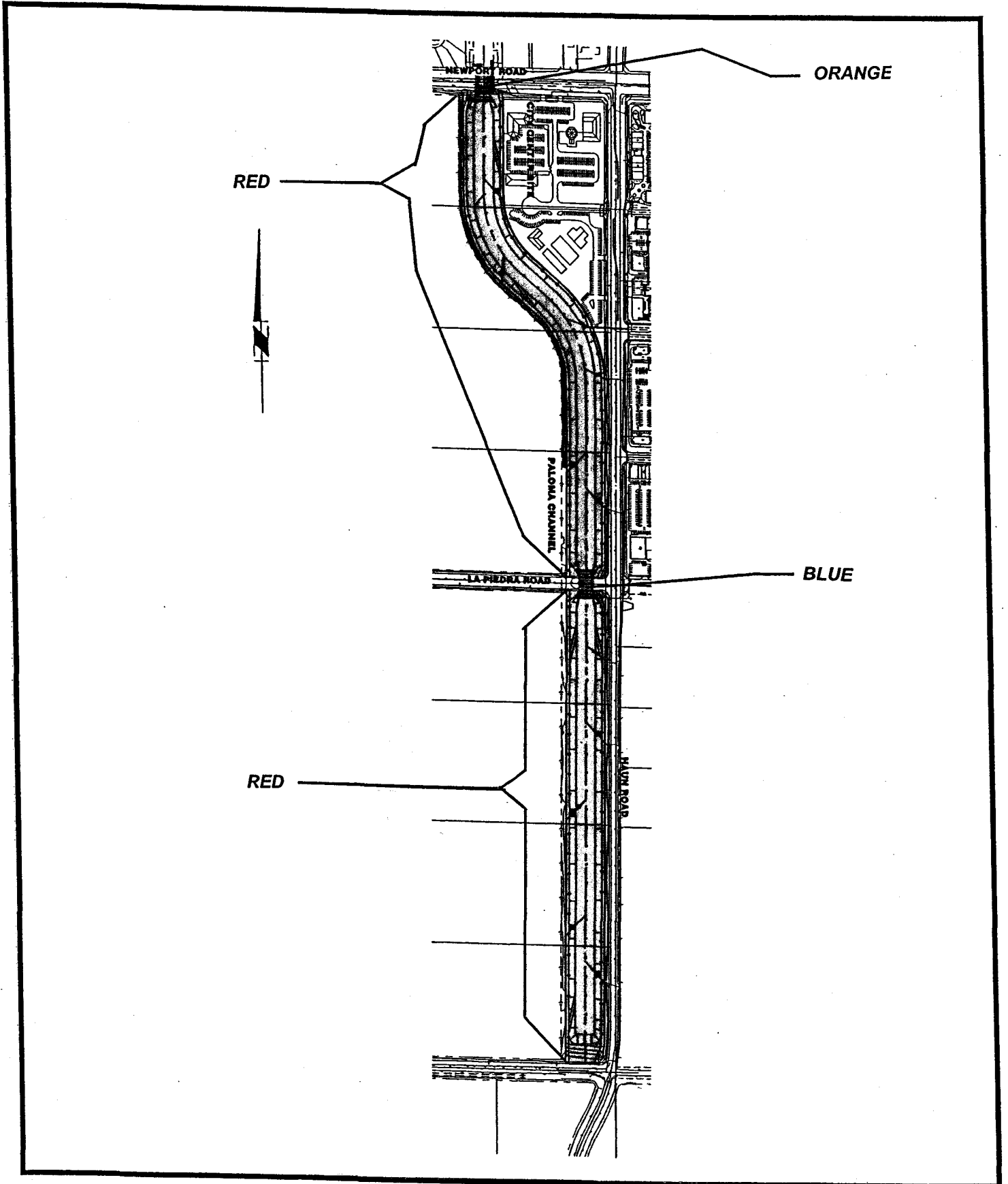
Exhibit A



VICINITY MAP

SECTION 3 TOWNSHIP 6 SOUTH RANGE 3 WEST

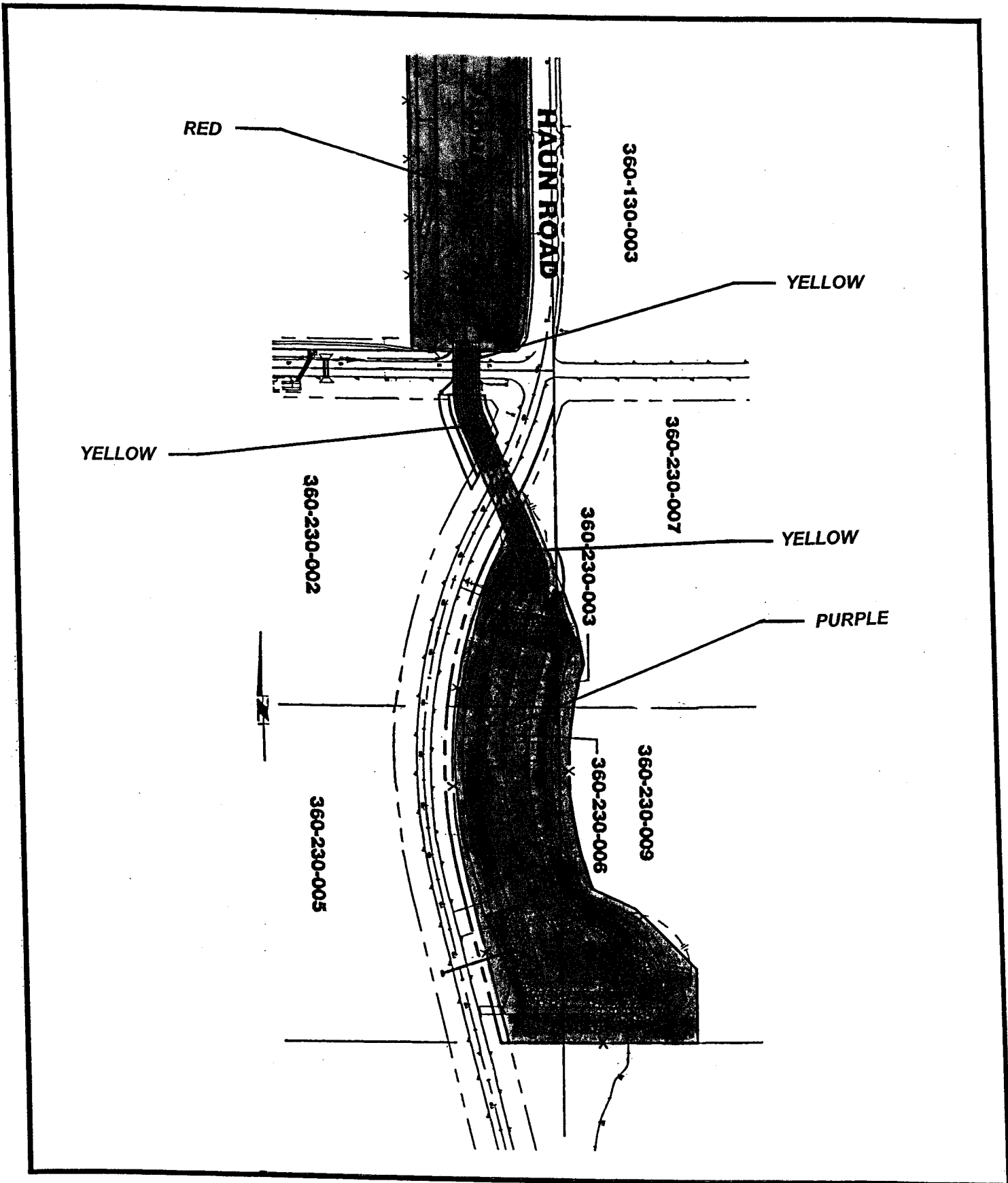
Exhibit A



Cooperative Agreement

Parcel Map 34275

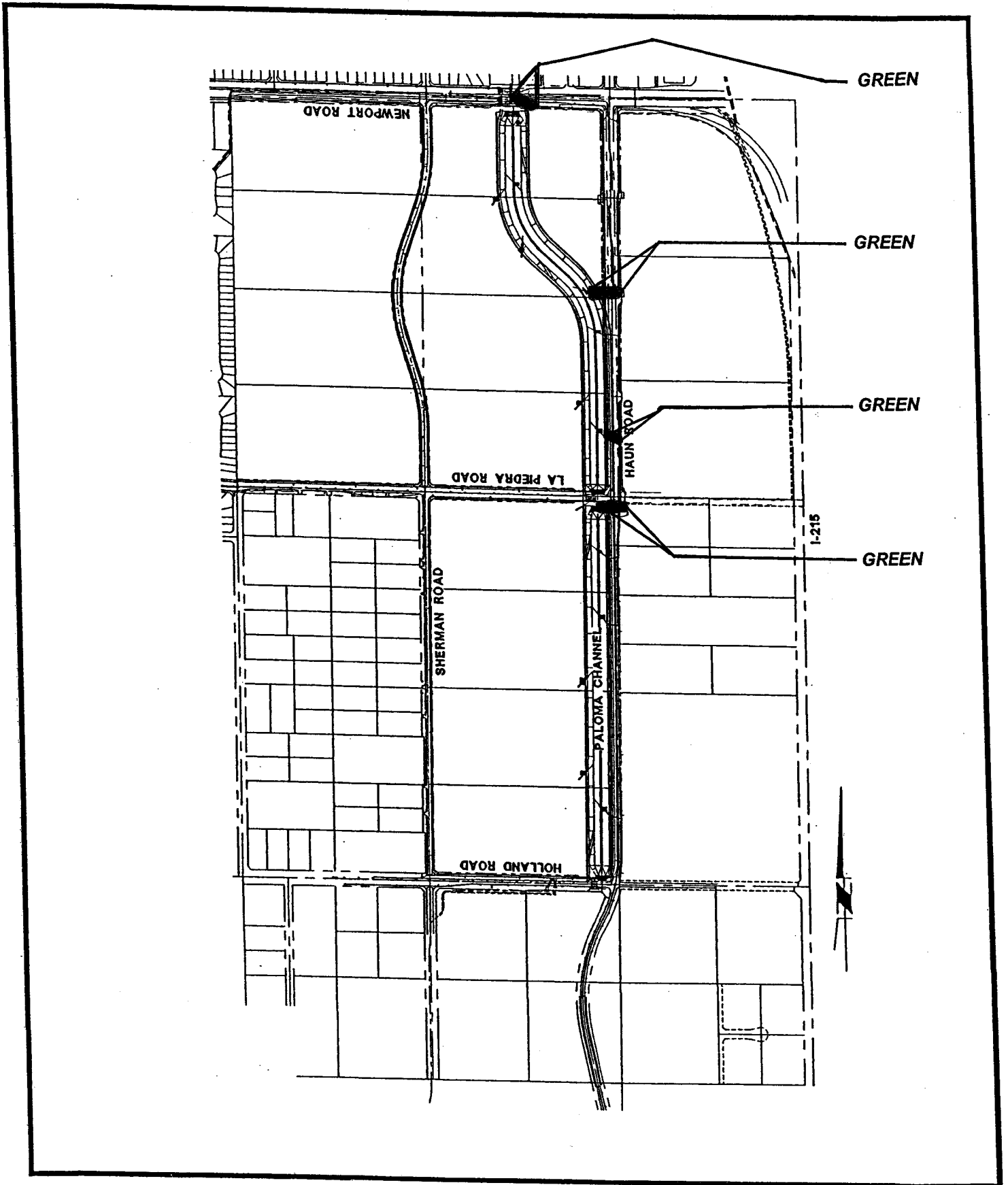
Exhibit A



Cooperative Agreement

Parcel Map 34275

Exhibit A



Cooperative Agreement

Parcel Map 34275

Exhibit B

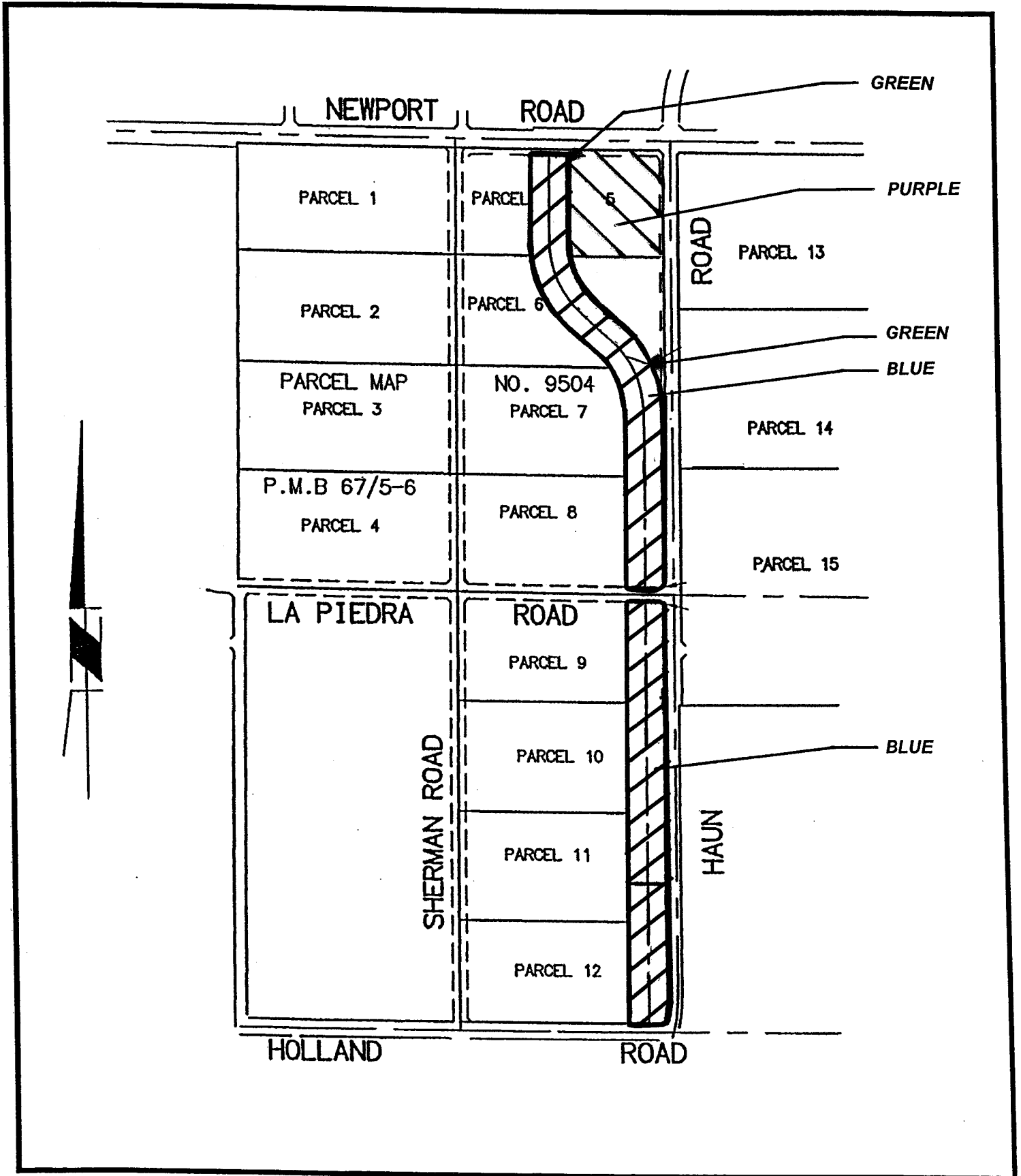


Exhibit B

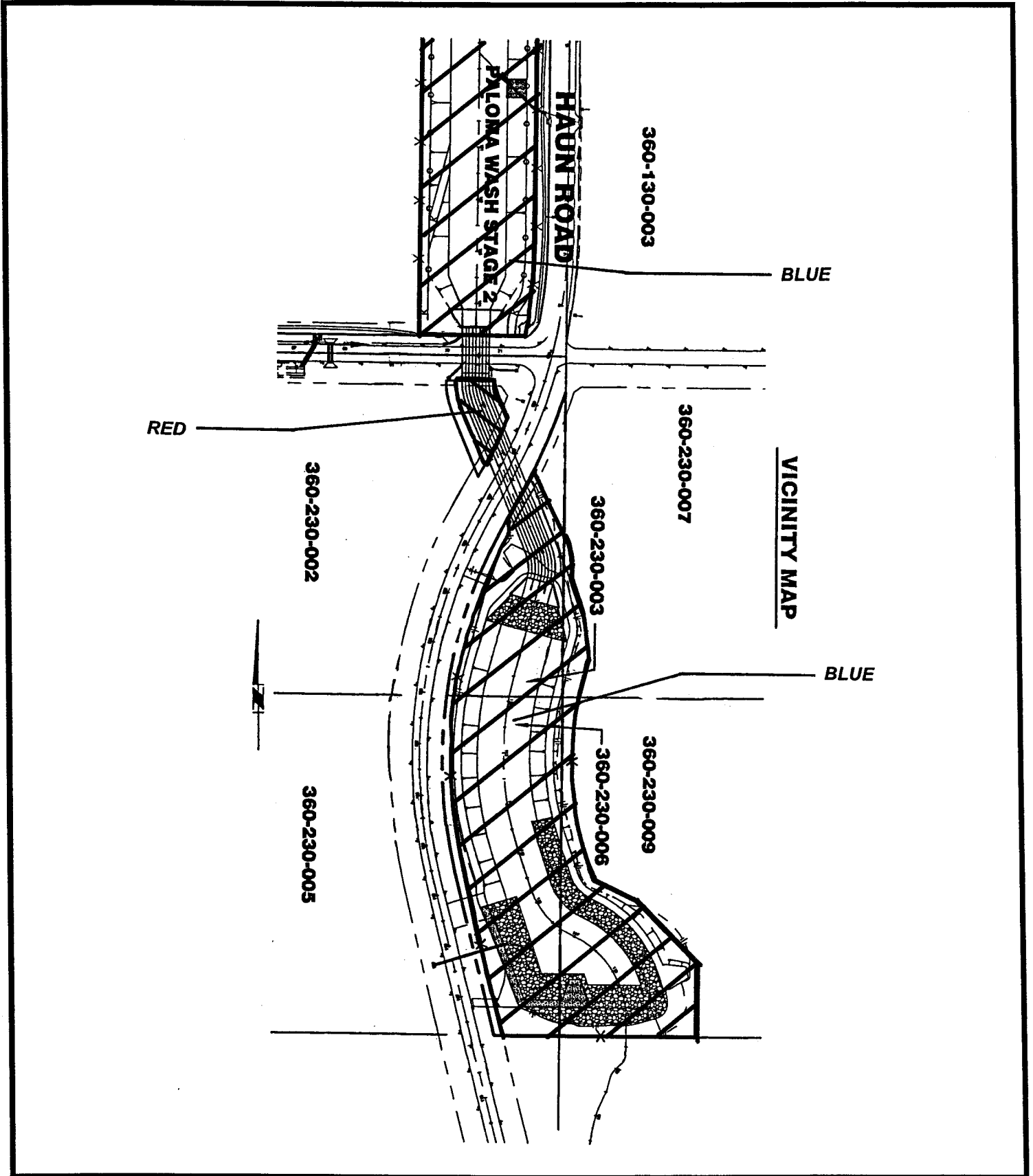


Exhibit B

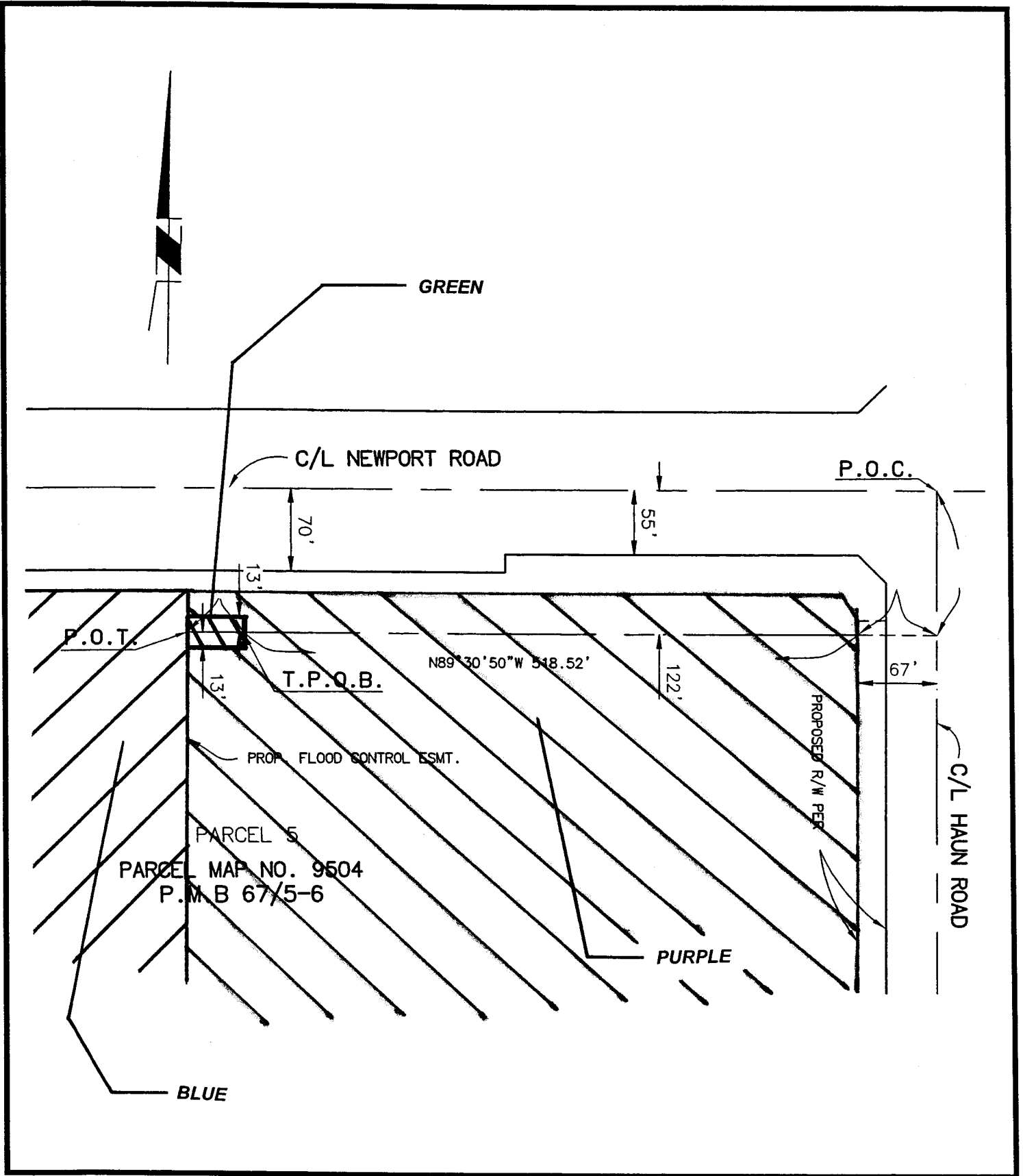


Exhibit B

