

**SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

319A



FROM: TLMA - Transportation Department


SUBMITTAL DATE:

March 15, 2012

SUBJECT: Cooperative Agreement between the County of Riverside (County), the County Flood Control and Water Conservation District (District), and KB Home Coastal, Inc. (Developer) for the Warm Springs Valley-Powderhorn Lane Storm Drain

RECOMMENDED MOTION: That the Board of Supervisors:

1. Approve the Cooperative Agreement between the County, the District, and the Developer, and;
2. Authorize the Chairman to execute the Agreement documents on behalf of the County.




 Juan C. Perez
 Director of Transportation


FK:rg
 (Continued On Attached Page)

FINANCIAL DATA	Current F.Y. Total Cost:	\$ 0	In Current Year Budget:	N/A
	Current F.Y. Net County Cost:	\$ 0	Budget Adjustment:	No
	Annual Net County Cost:	\$ 0	For Fiscal Year:	2011/12

SOURCE OF FUNDS: The Developer is funding all construction and construction inspection costs. 100%	Positions To Be Deleted Per A-30	<input type="checkbox"/>
	Requires 4/5 Vote	<input type="checkbox"/>

C.E.O. RECOMMENDATION: APPROVE
 BY: 
 Tina Grande

County Executive Office Signature

FORM APPROVED COUNTY COUNSEL
 BY:  MARSHAL VICTOR
 DATE: 3/26/12
 Departmental Concurrence

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

Prev. Agn. Ref. 01/23/07, Item 3.44 | District: 3rd/3rd | Agenda Number:

3.46

The Honorable Board of Supervisors

RE: Cooperative Agreement between the County of Riverside (County), the County Flood Control and Water Conservation District (District), and KB Home Coastal, Inc. (Developer) for the Warm Springs Valley-Powderhorn Lane Storm Drain

March 15, 2012

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BACKGROUND: The Agreement sets forth the terms and conditions by which certain stormwater drainage facilities, required as a condition for approval of Tract 30433, are to be constructed by the Developer and inspected, operated and maintained by the District and the County.

The Agreement is necessary to provide for District construction inspection of the referenced facilities associated with Tract No. 30433.

Upon completion of the facilities' construction, the District will assume ownership, operation and maintenance of the mainline stormwater drainage facilities except for the associated catch basins, laterals and connector pipes. The County will assume ownership, operation and maintenance of the inlets, outlets, catch basins, connector pipes and laterals located within its rights of way.

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

County Counsel has approved the Agreement as to legal form. There is a companion item on the District's agenda.

COOPERATIVE AGREEMENT

Warm Springs Valley-Powderhorn Lane Storm Drain
Project No. 7-0-00226
(Tract No. 30433)

The RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, hereinafter called "DISTRICT", the COUNTY OF RIVERSIDE, hereinafter called "COUNTY" on behalf of its Transportation Department, and KB HOME COASTAL, INC., a California corporation, hereinafter called "DEVELOPER", hereby agree as follows:

RECITALS

A. DEVELOPER has submitted for approval Tract No. 30433 in unincorporated western Riverside County and as a condition for approval, DEVELOPER must construct certain flood control facilities in order to provide flood protection and drainage for DEVELOPER'S planned development; and

B. The required flood control facilities include construction of (i) approximately 2,138 lineal feet of underground storm drain system and associated outlet, as shown on DISTRICT Drawing No. 7-430, and (ii) an additional approximate 525 lineal feet of underground storm drain system and an associated inlet and outlet, as shown on DISTRICT Drawing No. 7-429, collectively identified as "POWDERHORN LANE STORM DRAIN", as shown in concept in red on Exhibit "A" attached hereto and made a part hereof. Together (i) and (ii) are hereinafter called "DISTRICT DRAINAGE FACILITIES". At its downstream terminus, POWDERHORN LANE STORM DRAIN drains into an existing channel maintained by others; and

C. Associated with the construction of DISTRICT DRAINAGE FACILITIES is the construction of certain catch basins, laterals and connector pipes located within COUNTY held easements or rights of way, hereinafter called "APPURTENANCES". Together, DISTRICT DRAINAGE FACILITIES and APPURTENANCES are hereinafter called "PROJECT"; and

1 D. DEVELOPER and COUNTY desire DISTRICT to accept ownership and
2 responsibility for the operation and maintenance of DISTRICT DRAINAGE FACILITIES.
3 Therefore, DISTRICT must review and approve DEVELOPER'S plans and specifications for
4 PROJECT and subsequently inspect the construction of DISTRICT DRAINAGE FACILITIES;
5 and

6 E. DEVELOPER and DISTRICT desire COUNTY to accept ownership and
7 responsibility for the operation and maintenance of APPURTENANCES. Therefore, COUNTY
8 must review and approve DEVELOPER'S plans and specifications for PROJECT and
9 subsequently inspect the construction of APPURTENANCES; and

10 F. On or about September 1, 2009, COUNTY adopted Ordinance 460.150 to
11 allow the use of a lien upon a subject land division for the purpose of providing the security
12 needed to record a final map under certain terms and conditions. It is the intent of the
13 DEVELOPER to enter into a lien agreement with the COUNTY for Tract No. 30433.

14 NOW, THEREFORE, the parties hereto mutually agree as follows:

15 SECTION I

16 DEVELOPER shall:

17 1. Prepare PROJECT plans and specifications, hereinafter called
18 "IMPROVEMENT PLANS", in accordance with DISTRICT and COUNTY standards, and
19 submit to DISTRICT and COUNTY for their review and approval.

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

25 3. Deposit with DISTRICT (Attention: Business Office -- Accounts
26 Receivable), at the time of providing written notice to DISTRICT of the start of DISTRICT
27 DRAINAGE FACILITIES construction as set forth in Section I.8. herein, the estimated cost of
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1 providing construction inspection for DISTRICT DRAINAGE FACILITIES, in an amount as
2 determined and approved by DISTRICT in accordance with Ordinance Nos. 671 and 749 of the
3 County of Riverside, including any amendments thereto, based upon the bonded value of
4 DISTRICT DRAINAGE FACILITIES.

5 4. Pay DISTRICT, at the time of providing written notice to DISTRICT of the
6 start of construction as set forth in Section I.8., the one-time cash sum of twenty-nine thousand,
7 eight hundred and ninety dollars (\$29,890), the amount agreed upon to cover DISTRICT'S
8 estimated cost to operate and maintain DISTRICT DRAINAGE FACILITIES for a period of ten
9 (10) years (Zone 7 – Maintenance Trust Fund) commencing upon DISTRICT'S acceptance of
10 DISTRICT DRAINAGE FACILITIES as complete for ownership, operation and maintenance.

11 5. Secure, at its sole cost and expense, all necessary licenses, agreements,
12 permits and rights of entry as may be needed for the construction, inspection, operation and
13 maintenance of DISTRICT DRAINAGE FACILITIES. DEVELOPER shall furnish
14 DISTRICT, at the time of providing written notice to DISTRICT of the start of construction as
15 set forth in Section I.8., or not less than twenty (20) days prior to recordation of the final maps
16 for Tract No. 30433 or any phase thereof, whichever occurs first, with sufficient evidence of
17 DEVELOPER having secured such necessary licenses, agreements, permits and rights of entry,
18 as determined and approved by DISTRICT.

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

25 7. In connection with and prior to the recordation of the Final Map for Tract
26 No. 30433, enter into a Subdivision Improvement Agreement with COUNTY and, either, (i)
27 provide faithful performance and payment bonds, each in the amount of one hundred percent
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1 (100%) of the estimated cost for construction of DISTRICT DRAINAGE FACILITIES as
2 determined by DISTRICT, hereinafter called "BONDS", to secure its obligations under the
3 Subdivision Improvement Agreement or (ii) enter into a Lien Agreement with COUNTY,
4 hereinafter called "LIEN AGREEMENT", wherein, among other things, the COUNTY accepts
5 the LIEN AGREEMENT as security for the Subdivision Improvement Agreement under the
6 provisions of Government Code Section 66499(a)(4) and Subdivision Ordinance Section 17.3.
7 Consistent with such LIEN AGREEMENT, DEVELOPER shall substitute BONDS for the
8 LIEN AGREEMENT and commence to construct the Improvements required by the
9 Subdivision Improvement Agreement (including DISTRICT DRAINAGE FACILITIES) within
10 three (3) years following the date of the recordation of the Map. The surety, amount and form
11 of such BONDS shall be subject to the approval of DISTRICT and COUNTY. The BONDS
12 shall remain in full force and effect until the DISTRICT DRAINAGE FACILITIES are accepted
13 by DISTRICT as complete; at which time the amount of the BONDS may be reduced to ten
14 percent (10%) for a period of one (1) year to guarantee against any defective work, labor or
15 materials.

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

22 9. Grant DISTRICT, by execution of this Agreement, the right to enter upon
23 DEVELOPER'S 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.

26 10. Obtain and provide DISTRICT, at the time of providing written notice to
27 DISTRICT of the start of construction of DISTRICT DRAINAGE FACILITIES as set forth in
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1 Section I.8., or not less than twenty (20) days prior to the recordation of the final maps for Tract
2 No. 30433 or any phase thereof, whichever occurs first, with duly executed Irrevocable
3 Offers(s) of Dedication to the public for flood control and drainage purposes, including ingress
4 and egress, for the rights of way deemed necessary by DISTRICT for the construction,
5 inspection, operation and maintenance of DISTRICT DRAINAGE FACILITIES, as shown in
6 concept cross-hatched in blue, in red or outlined in green on Exhibit "B" attached hereto and
7 made a part hereof. The Irrevocable Offer(s) of Dedication shall be in a form approved by
8 DISTRICT and shall be executed by all legal and equitable owners of the property described in
9 the offer(s).

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

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

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

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1 14. Furnish DISTRICT with final mylar PROJECT plans and assign their
2 ownership to DISTRICT prior to the start of DISTRICT DRAINAGE FACILITIES
3 construction.

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

6 16. Comply with all Cal/OSHA safety regulations including regulations
7 concerning confined space and maintain a safe working environment for DEVELOPER and
8 DISTRICT employees on the site.

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

16 18. During the construction period of DISTRICT DRAINAGE FACILITIES,
17 provide Workers' Compensation Insurance in an amount required by law. A certificate of said
18 insurance policy shall be provided to DISTRICT and COUNTY at the time of providing written
19 notice pursuant to Section I.8.

20 19. Commencing on the date notice is given pursuant to Section I.8. and
21 continuing until DISTRICT accepts DISTRICT DRAINAGE FACILITIES for operation and
22 maintenance:

- 23 (a) Provide and maintain or cause its contractor(s) to provide and
24 maintain comprehensive liability insurance coverage which shall
25 protect DEVELOPER from claim for damages for personal injury,
26 including accidental and wrongful death, as well as from claims for
27 property damage which may arise from DEVELOPER'S construction
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1 of PROJECT or the performance of its obligations hereunder, whether
2 such construction or performance be by DEVELOPER, by any of its
3 contractors, subcontractors, or by anyone employed directly or
4 indirectly by any of them. Such insurance shall name DISTRICT and
5 COUNTY as additional insureds with respect to this Agreement and
6 the obligations of DEVELOPER hereunder. Such insurance shall
7 provide for limits of not less than two million dollars (\$2,000,000) per
8 occurrence.

- 9 (b) Cause its insurance carrier(s) or its contractor's insurance carrier(s),
10 who shall be authorized by the California Department of Insurance to
11 transact the business of insurance in the State of California, to furnish
12 DISTRICT and COUNTY at the time of providing written notice to
13 DISTRICT of the start of construction as set forth in Section I.8., with
14 certificate(s) of insurance and applicable policy endorsements
15 showing that such insurance is in full force and effect and that
16 DISTRICT and COUNTY are named as additional insureds with
17 respect to this Agreement and the obligations of DEVELOPER
18 hereunder. Further, said certificate(s) shall state that the issuing
19 company shall give DISTRICT and COUNTY sixty (60) days written
20 notice in the event of any cancellation, termination, non-renewal or
21 reduction in coverage of the policies evidenced by the certificate(s).
22 In the event of any such cancellation, termination, non-renewal or
23 reduction in coverage, DEVELOPER shall, forthwith, secure
24 replacement insurance meeting the provisions of this paragraph.

25 Failure to maintain the insurance required by this paragraph shall be
26 deemed a material breach of this Agreement and shall authorize and constitute authority for
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1 DISTRICT, at its sole discretion, to proceed to perform the remaining work pursuant to Section
2 IV.5.

3 20. Construct, or cause to be constructed, PROJECT at DEVELOPER'S sole
4 cost and expense in accordance with DISTRICT and COUNTY approved IMPROVEMENT
5 PLANS.

6 21. Within two (2) weeks of completing PROJECT construction, provide
7 DISTRICT with written notice (Attention: Contract Administration Section) that PROJECT
8 construction is substantially complete and requesting that DISTRICT conduct a final inspection
9 of DISTRICT DRAINAGE FACILITIES.

10 22. Upon completion of PROJECT construction, and upon acceptance by
11 COUNTY of all street rights of way deemed necessary by DISTRICT and COUNTY for the
12 operation and maintenance of PROJECT, but prior to DISTRICT acceptance of DISTRICT
13 DRAINAGE FACILITIES for ownership, operation and maintenance, convey, or cause to be
14 conveyed to DISTRICT:

15 (i) flood control easement(s), including ingress and egress, in a form
16 approved by DISTRICT, for the rights of way as shown in concept
17 cross-hatched in blue or in red on Exhibit "B", and

18 (ii) a blanket right of entry easement for the purpose of ingress and
19 egress, in a form approved by DISTRICT, for the rights of way as
20 shown in concept outlined in green on Exhibit "B".

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

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1 24. Accept ownership and sole responsibility for the operation and maintenance
2 of PROJECT until such time as DISTRICT accepts ownership and responsibility for operation
3 and maintenance of DISTRICT DRAINAGE FACILITIES and COUNTY accepts ownership
4 and responsibility for operation and maintenance of APPURTENANCES. Further, it is
5 mutually understood by the parties hereto that prior to DISTRICT acceptance of ownership and
6 responsibility for the operation and maintenance of DISTRICT DRAINAGE FACILITIES,
7 PROJECT shall be in a satisfactorily maintained condition as solely determined by DISTRICT.

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

13 26. Upon completion of construction of PROJECT, but prior to DISTRICT
14 acceptance of DISTRICT DRAINAGE FACILITIES for ownership, operation and maintenance,
15 DEVELOPER'S civil engineer of record or construction civil engineer of record, duly registered
16 in the State of California, shall provide DISTRICT with a redlined "RECORD DRAWING"
17 copy of PROJECT plans. After DISTRICT approval of the redlined "RECORD DRAWING",
18 DEVELOPER'S engineer shall schedule with DISTRICT a time to transfer the redlined changes
19 onto DISTRICT'S original mylars at DISTRICT'S office, after which the engineer shall review,
20 stamp and sign the original mylars PROJECT plans "RECORD DRAWING".

21 27. Ensure that all work performed pursuant to this Agreement by
22 DEVELOPER, its agents or contractors is done in accordance with all applicable laws and
23 regulations, including but not limited to all applicable provisions of the Labor Code, Business
24 and Professions Code, and Water Code. DEVELOPER shall be solely responsible for all costs
25 associated with compliance with applicable laws and regulations.

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SECTION II

DISTRICT shall:

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

2. Provide COUNTY an opportunity to review and approve IMPROVEMENT PLANS prior to DISTRICT'S final approval.

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

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

5. Inspect DISTRICT DRAINAGE FACILITIES construction.

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

7. Keep an accurate accounting of all DISTRICT construction inspection costs, and within forty-five (45) days after DISTRICT acceptance of DISTRICT DRAINAGE FACILITIES as being complete, submit a final cost statement to DEVELOPER. If the deposit, as set forth in Section I.3., exceeds such costs, DISTRICT shall reimburse DEVELOPER the excess amount within sixty (60) days after DISTRICT acceptance of DISTRICT DRAINAGE FACILITIES as being complete. If at any time the costs exceed the deposit or are anticipated by DISTRICT to exceed the deposit, DEVELOPER shall pay such additional amount(s), as deemed reasonably necessary by DISTRICT to complete inspection of DISTRICT DRAINAGE FACILITIES, within thirty (30) days after receipt of billing from DISTRICT.

8. Accept ownership and sole responsibility for the operation and maintenance of DISTRICT DRAINAGE FACILITIES upon (i) DISTRICT acceptance of PROJECT construction as being complete, (ii) recordation of all conveyance documents described in

1 Section I.22., and (iii) acceptance by COUNTY of all necessary street rights of way as deemed
2 necessary by DISTRICT and COUNTY for the operation and maintenance of PROJECT.

3 9. Provide COUNTY with a reproducible duplicate copy of "RECORD
4 DRAWING" PROJECT plans upon DISTRICT acceptance of DISTRICT DRAINAGE
5 FACILITIES as being complete.

6 SECTION III

7 COUNTY shall:

8 1. Review and approve IMPROVEMENT PLANS prior to the start of
9 PROJECT construction.

10 2. Accept (i) COUNTY and DISTRICT approved BONDS submitted by
11 DEVELOPER as set forth in Section I.7 and hold said BONDS as provided herein or (ii) the
12 LIEN AGREEMENT or the BONDS submitted by DEVELOPER in substitution thereof as set
13 forth in Section I.7 and hold such LIEN AGREEMENT or substituted BONDS as provided
14 herein.

15 3. Inspect construction of APPURTENANCES.

16 4. Consent, by execution of this Agreement, to the recording of any
17 Irrevocable Offer(s) of Dedication furnished by DEVELOPER pursuant to this Agreement.

18 5. As requested by DISTRICT, accept the Irrevocable Offer(s) of Dedication
19 as set forth herein, and any other outstanding offers of dedication necessary for the construction,
20 inspection, operation and maintenance of DISTRICT DRAINAGE FACILITIES, and, pursuant
21 to the authority granted by County of Riverside Resolution No. 2005-291, convey sufficient
22 rights of way to DISTRICT to allow DISTRICT to construct, inspect, operate and maintain
23 DISTRICT DRAINAGE FACILITIES.

24 6. Grant DISTRICT, by execution of this Agreement, the right to construct,
25 inspect, operate, and maintain DISTRICT DRAINAGE FACILITIES within COUNTY rights of
26 way.

1 7. Accept ownership and sole responsibility for the operation and maintenance
2 of APPURTENANCES upon DISTRICT acceptance of DISTRICT DRAINAGE FACILITIES
3 as being complete.

4 8. Not grant any occupancy permits for any units within any portion of Tract
5 No. 30433, or any phase thereof, until construction of PROJECT is complete, unless otherwise
6 approved in writing by DISTRICT.

7 SECTION IV

8 It is further mutually agreed:

9 1. All work involved with DISTRICT DRAINAGE FACILITIES shall be
10 inspected by DISTRICT and shall not be deemed complete until approved and accepted in
11 writing as complete by DISTRICT.

12 2. COUNTY and DEVELOPER personnel may observe and inspect all work
13 being done on DISTRICT DRAINAGE FACILITIES, but shall provide any comments to
14 DISTRICT personnel who shall be solely responsible for all quality control communications
15 with DEVELOPER'S contractor(s) during the construction of DISTRICT DRAINAGE
16 FACILITIES.

17 3. DEVELOPER shall commence construction of the DISTRICT
18 DRAINAGE FACILITIES within three (3) years following the date of the issuance of the first
19 of either a grading permit or building permit, provided, however, extensions of time, may be
20 granted by COUNTY and DISTRICT.

21 4. Given that DEVELOPER, pursuant to the LIEN AGREEMENT, cannot
22 commence construction of DISTRICT DRAINAGE FACILITIES for at least twenty-four (24)
23 months after the recordation of the Final Map, then DISTRICT reserves the right to withhold
24 issuance of the Notice to Proceed pending a review of the existing site conditions as they exist at
25 the time DEVELOPER provides written notification to DISTRICT of the start of construction as
26 set forth in Section I.8. In the event of a change in the existing site conditions that materially
27 affects PROJECT function or DISTRICT'S ability to operate and maintain DISTRICT
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1 DRAINAGE FACILITIES, DISTRICT may require DEVELOPER, at DEVELOPER'S sole
2 cost and expense, to modify IMPROVEMENT PLANS as deemed necessary by DISTRICT.

3 5. Upon the issuance of the Notice to Proceed, DEVELOPER shall complete
4 construction of DISTRICT DRAINAGE FACILITIES within one hundred eighty (180)
5 consecutive calendar days thereafter. It is expressly understood that failure of DEVELOPER to
6 complete the construction work within the said one hundred eighty (180) consecutive calendar
7 days shall constitute authority for DISTRICT to perform the remaining work and require
8 DEVELOPER'S surety to pay to COUNTY the penal sum of any and all bonds. In which case,
9 COUNTY shall subsequently reimburse DISTRICT for DISTRICT costs incurred.

10 6. DEVELOPER and DISTRICT knowingly and voluntarily, waive the
11 provisions of Government Code Section 65913.8, relating to fees and charges. Such waiver is
12 accomplished with the understanding that DISTRICT is voluntarily undertaking the obligation
13 to accept ownership and responsibility for the operation and maintenance of DISTRICT
14 DRAINAGE FACILITIES, and DEVELOPER is not required by DISTRICT to enter into this
15 Agreement.

16 7. DISTRICT shall endeavor to issue DEVELOPER a Notice to Proceed
17 within twenty (20) days of receipt of DEVELOPER'S complete written notice as set forth in
18 Section I.8.; however, DISTRICT'S construction inspection staff is limited and, therefore, the
19 issuance of a Notice to Proceed is subject to staff availability.

20 In the event DEVELOPER wishes to expedite issuance of a Notice to
21 Proceed, DEVELOPER may elect to furnish an independent qualified construction inspector at
22 DEVELOPER'S sole cost and expense. DEVELOPER shall furnish appropriate documentation
23 of the individual's credentials and experience to DISTRICT for review and, if appropriate,
24 approval. DISTRICT shall review the individual's qualifications and experience and, upon
25 approval thereof, said individual, hereinafter called "DEPUTY INSPECTOR", shall be
26 authorized to act on DISTRICT'S behalf on all DISTRICT DRAINAGE FACILITIES
27 construction and quality control matters. If DEVELOPER'S initial construction inspection
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1 deposit furnished pursuant to Section I.3. exceeds ten thousand dollars (\$10,000), DISTRICT
2 shall refund to DEVELOPER up to eighty percent (80%) of DEVELOPER'S initial inspection
3 deposit within forty-five (45) days of DISTRICT'S approval of DEPUTY INSPECTOR;
4 however, a minimum balance of ten thousand dollars (\$10,000) shall be retained on account.

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

17 9. DEVELOPER shall indemnify and hold harmless DISTRICT and
18 COUNTY (including their agencies, districts, special districts and departments, their respective
19 directors, officers, Board of Supervisors, elected and appointed officials, employees, agents and
20 representatives) from any liability, claim, damage, proceeding or action, present or future, based
21 upon, arising out of or in any way relating to DEVELOPER'S (including its officers, employees,
22 subcontractors and agents) actual or alleged acts or omissions related to this Agreement,
23 performance under this Agreement, or failure to comply with the requirements of this
24 Agreement, including but not limited to: (a) property damage; (b) bodily injury or death; (c)
25 liability or damage pursuant to Article I, Section 19 of the California Constitution, the Fifth
26 Amendment of the United States Constitution or any other law, ordinance or regulation caused
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1 by the diversion of waters from the natural drainage patterns or the discharge of drainage within
2 or from PROJECT; or (d) any other element of any kind or nature whatsoever.

3 DEVELOPER shall defend, at its sole expense, including all costs and fees
4 (including but not limited to attorney fees, cost of investigation, defense and settlements or
5 awards), DISTRICT and COUNTY (including their agencies, districts, special districts and
6 departments, their respective directors, officers, Board of Supervisors, elected and appointed
7 officials, employees, agents and representatives) in any claim, proceeding or action for which
8 indemnification is required.

9 With respect to any of DEVELOPER'S indemnification requirements,
10 DEVELOPER shall, at its sole cost, have the right to use counsel of their own choice and shall
11 have the right to adjust, settle, or compromise any such claim, proceeding or action without the
12 prior consent of DISTRICT and COUNTY; provided, however, that any such adjustment,
13 settlement or compromise in no manner whatsoever limits or circumscribes DEVELOPER'S
14 indemnification obligations to DISTRICT or COUNTY.

15 DEVELOPER'S indemnification obligations shall be satisfied when
16 DEVELOPER has provided to DISTRICT and COUNTY the appropriate form of dismissal (or
17 similar document) relieving DISTRICT or COUNTY from any liability for the claim,
18 proceeding or action involved.

19 The specified insurance limits required in this Agreement shall in no way
20 limit or circumscribe DEVELOPER'S obligations to indemnify and hold harmless DISTRICT
21 and COUNTY from third party claims.

22 In the event there is conflict between this section and California Civil Code
23 Section 2782, this section shall be interpreted to comply with California Civil Code Section
24 2782. Such interpretation shall not relieve the DEVELOPER from indemnifying DISTRICT or
25 COUNTY to the fullest extent allowed by law.

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1 10. DEVELOPER shall not request DISTRICT to accept any portion or
2 portions of DISTRICT DRAINAGE FACILITIES or COUNTY to accept any portion or
3 portions of APPURTENANCES prior to the completion of PROJECT construction.

4 11. Any waiver by DISTRICT or by COUNTY of any breach of any one or
5 more of the terms of this Agreement shall not be construed to be a waiver of any subsequent or
6 other breach of the same or of any other term hereof. Failure on the part of DISTRICT or
7 COUNTY to require exact, full and complete compliance with any terms of this Agreement
8 shall not be construed as in any manner changing the terms hereof, or estopping DISTRICT or
9 COUNTY from enforcement hereof.

10 12. If any provision in this Agreement (with the exception of Section IV.6.) is
11 held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining
12 provisions will nevertheless continue in full force without being impaired or invalidated in any
13 way. Should it be held by a court of competent jurisdiction that any portion of Section IV.6. is
14 invalid, void, or unenforceable, the provisions of Government Code Section 65913.8(b) shall
15 apply. It shall, therefore, be determined that this fee is extended for a period of ten years,
16 commencing upon DISTRICT'S acceptance of DISTRICT DRAINAGE FACILITIES for
17 ownership, operation and maintenance.

18 13. This Agreement is to be construed in accordance with the laws of the State
19 of California.

20 14. Any and all notices sent or required to be sent to the parties of this
21 Agreement will be mailed by first class mail, postage prepaid, to the following addresses:

22 RIVERSIDE COUNTY FLOOD CONTROL
23 AND WATER CONSERVATION DISTRICT
24 1995 Market Street
Riverside, CA 92501

COUNTY OF RIVERSIDE
Post Office Box 1090
Riverside, CA 92502-1090
Attn: Transportation Department

25 KB HOME COASTAL, INC
26 36310 Inland Valley Drive
Wildomar, CA 92595
27 Attn: Michael H. Freeman, Jr.
28

1 15. Any action at law or in equity brought by any of the parties hereto for the
2 purpose of enforcing a right or rights provided for by the Agreement, shall be tried in a court of
3 competent jurisdiction in the County of Riverside, State of California, and the parties hereto
4 waive all provisions of law providing for a change of venue in such proceedings to any other
5 county.

6 16. This Agreement is the result of negotiations between the parties hereto, and
7 the advice and assistance of their respective counsel. The fact that this Agreement was prepared
8 as a matter of convenience by DISTRICT shall have no import or significance. Any uncertainty
9 or ambiguity in this Agreement shall not be construed against DISTRICT because DISTRICT
10 prepared this Agreement in its final form.

11 17. The rights and obligations of DEVELOPER shall inure to and be binding
12 upon all heirs, successors and assignees.

13 18. DEVELOPER shall not assign or otherwise transfer any of its rights, duties
14 or obligations hereunder to any person or entity without the written consent of the other parties
15 hereto being first obtained. In the event of any such transfer or assignment, DEVELOPER
16 expressly understands and agrees that it shall remain liable with respect to any and all of the
17 obligations and duties contained in this Agreement.

18 19. The individual(s) executing this Agreement on behalf of DEVELOPER
19 hereby certify that they have the authority within their respective company(ies) to enter into and
20 execute this Agreement, and have been authorized to do so by any and all boards of directors,
21 legal counsel, and or any other board, committee or other entity within their respective
22 company(ies) which have the authority to authorize or deny entering this Agreement.

23 20. This Agreement is intended by the parties hereto as a final expression of
24 their understanding with respect to the subject matter hereof and as a complete and exclusive
25 statement of the terms and conditions thereof and supersedes any and all prior and
26 contemporaneous agreements and understandings, oral or written, in connection therewith. This
27 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:

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

By WARREN D. WILLIAMS
General Manager-Chief Engineer

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

ATTEST:

KECIA HARPER-IHEM
Clerk of the Board

By _____
Deputy

(SEAL)

RECOMMENDED FOR APPROVAL:

COUNTY OF RIVERSIDE

By JUAN C. PEREZ
Director of Transportation

By JOHN TAVAGLIONE, Chairman
County of Riverside Board of Supervisors

APPROVED AS TO FORM:

ATTEST:

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

KECIA HARPER-IHEM
Clerk of the Board

By _____
Deputy

(SEAL)

Cooperative Agreement: TR 30433
TT:KEC:blj
02/9/12
P8/144215

FORM APPROVED COUNTY COUNSEL
BY: Marshall Victor 3/26/12
MARSHAL VICTOR DATE
for County / Transportation

KB HOME COASTAL, INC,
a California corporation



By _____
MICHAEL H. FREEMAN, JR.
Vice President, Land and Forward Planning

(ATTACH NOTARY WITH
CAPACITY STATEMENT)

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Cooperative Agreement: TR 30433
TT:KEC:blj
02/9/12
P8/144215

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California }

County of Riverside }

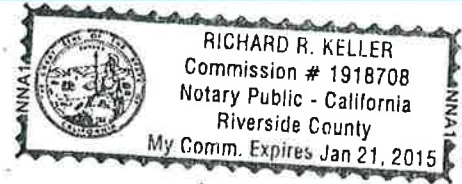
On February 28, 2012 before me, Richard R. Keller, Notary Public, personally appeared Michael H. Freeman, Jr., who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/~~she~~/they executed the same in his/~~her~~/their authorized capacity(ies), and that by his/~~her~~/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.



Richard R. Keller



(SEAL)

Exhibit A

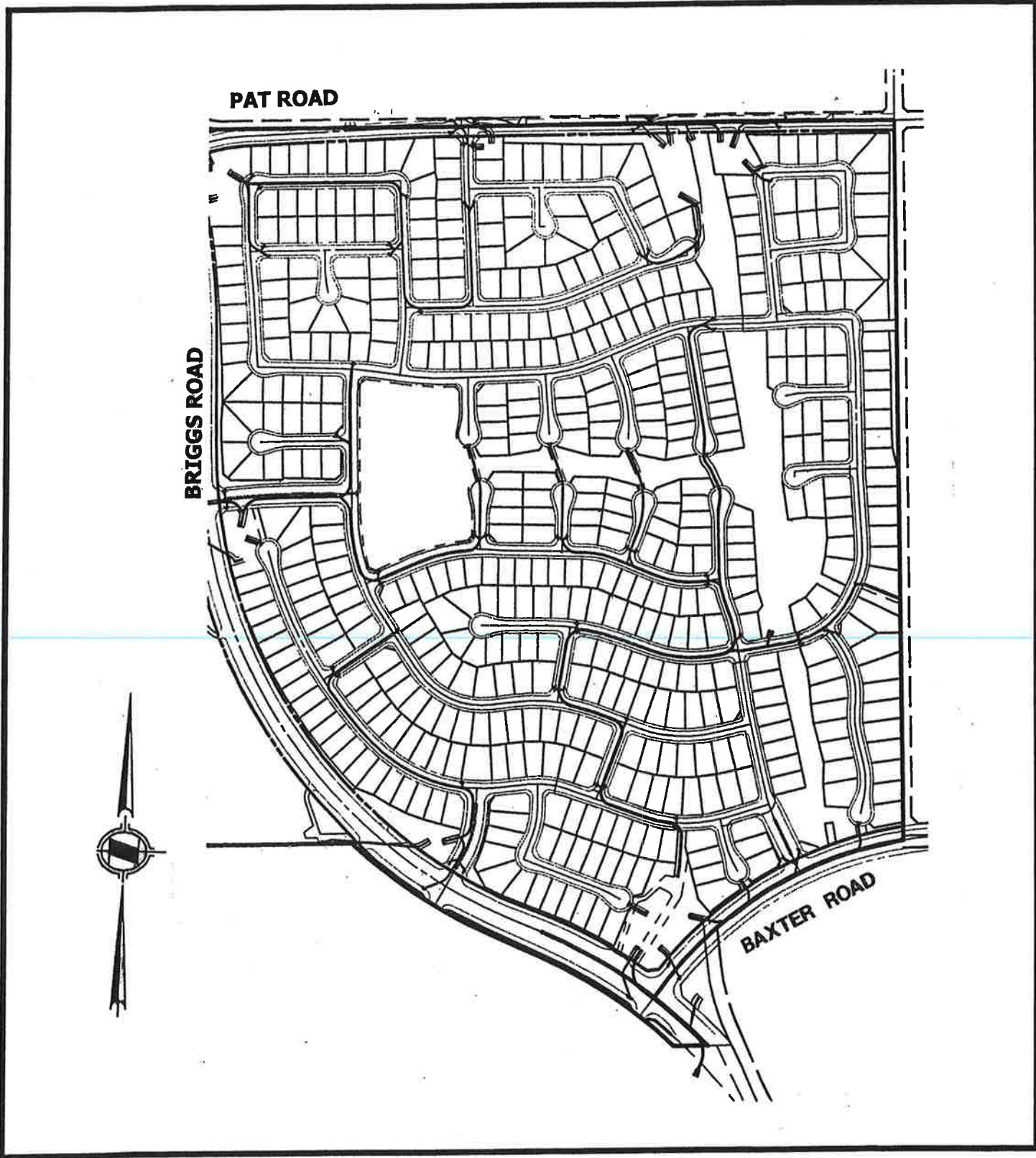


Exhibit A

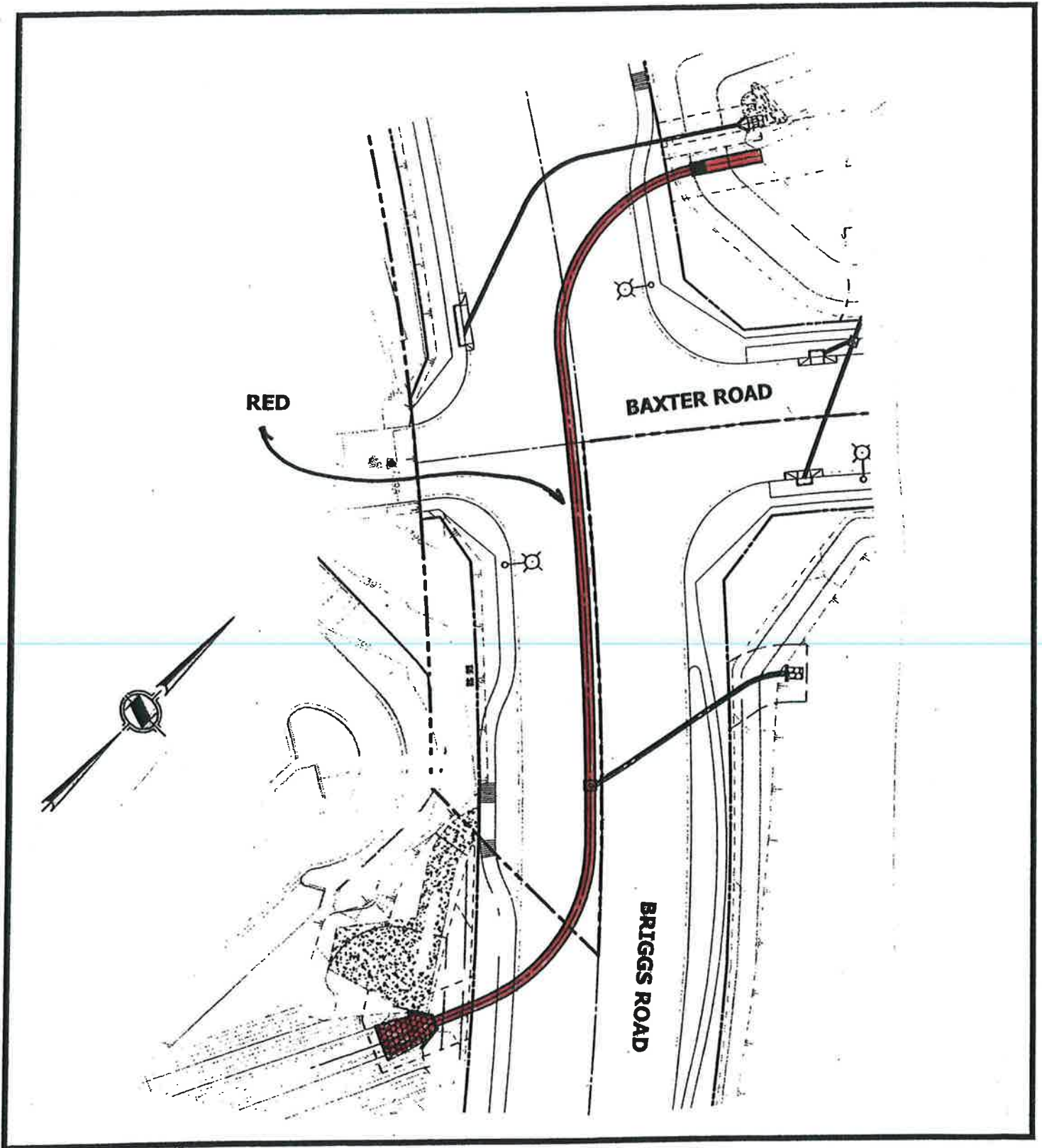


Exhibit A

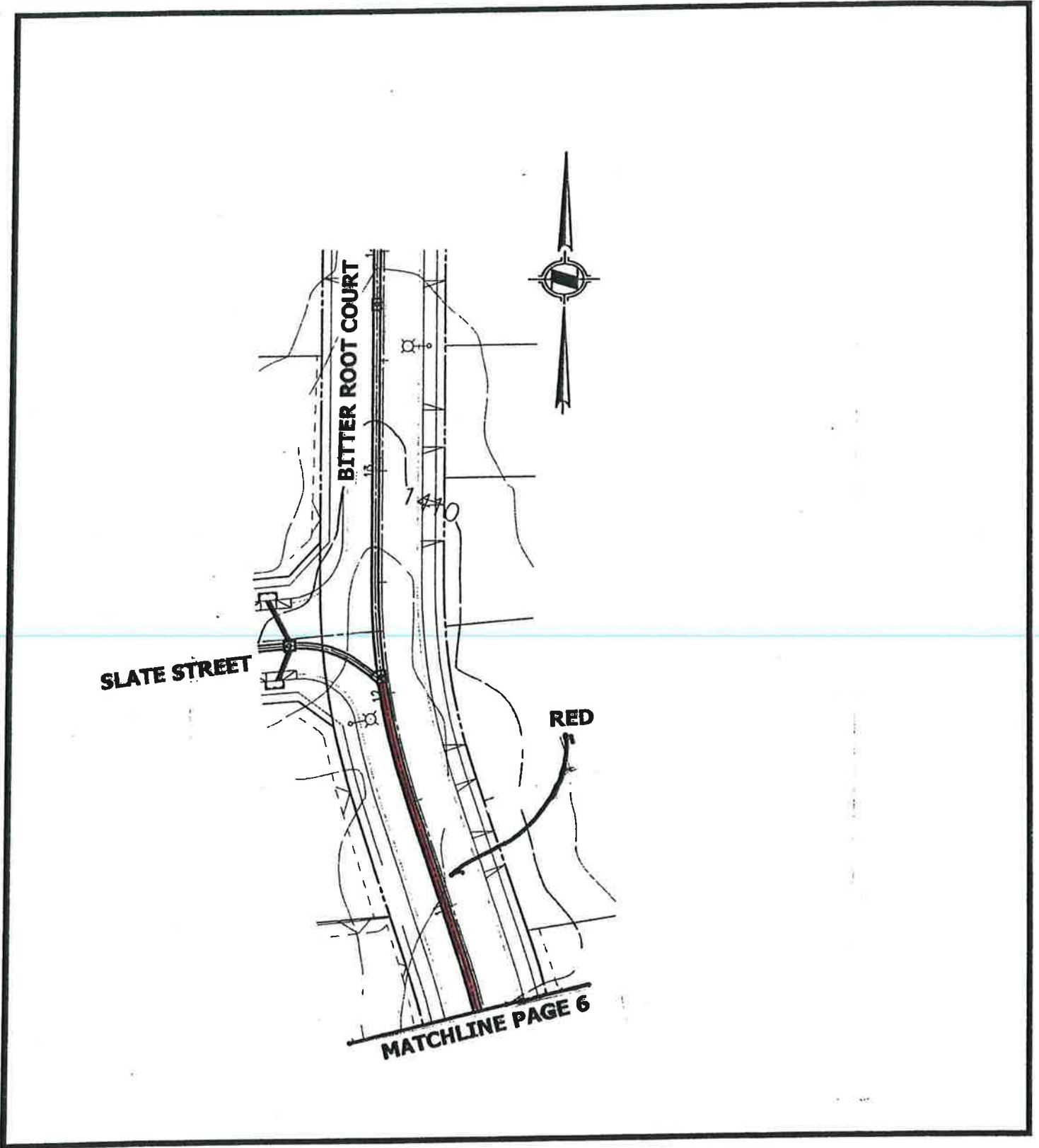


Exhibit A

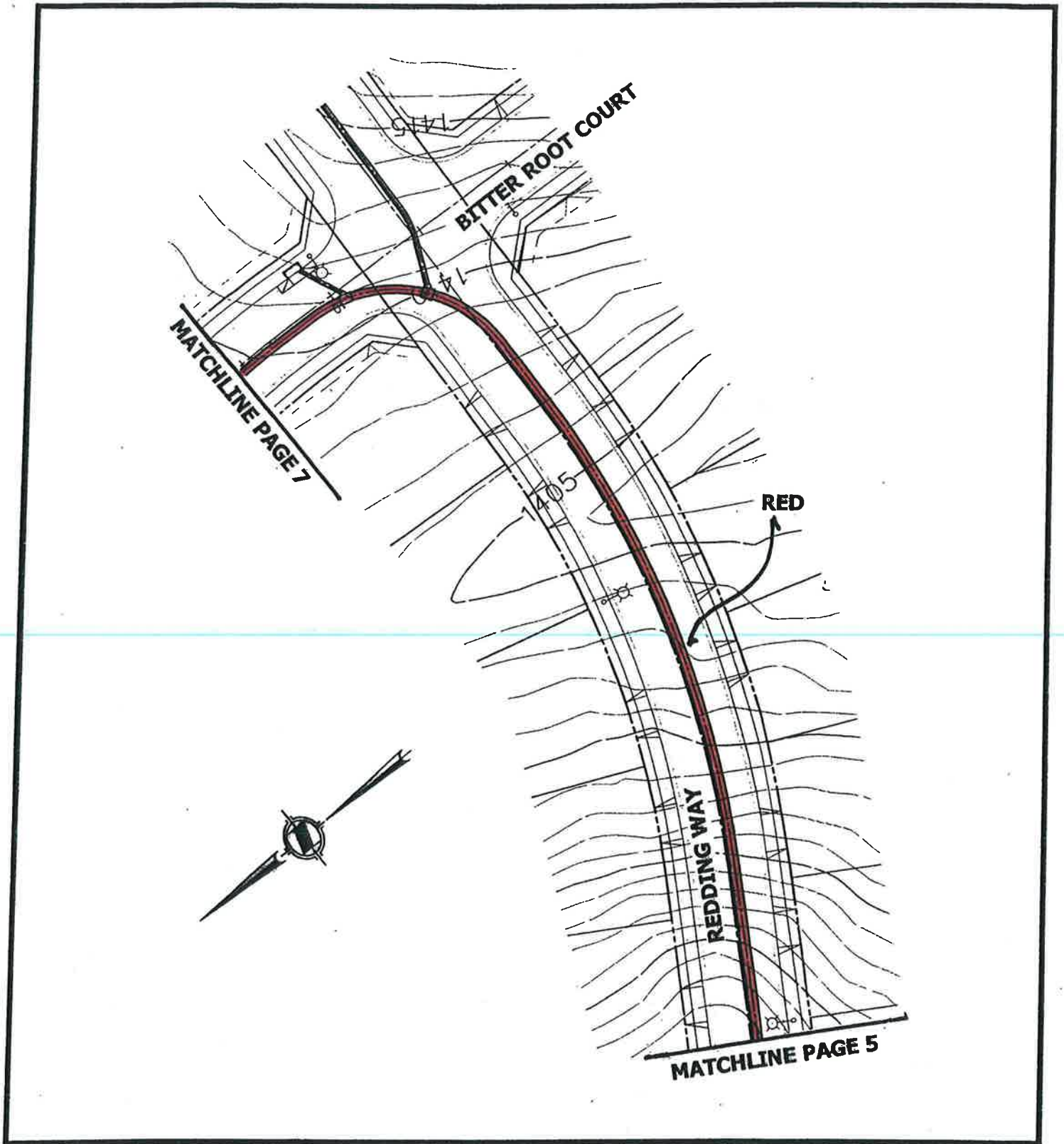


Exhibit A

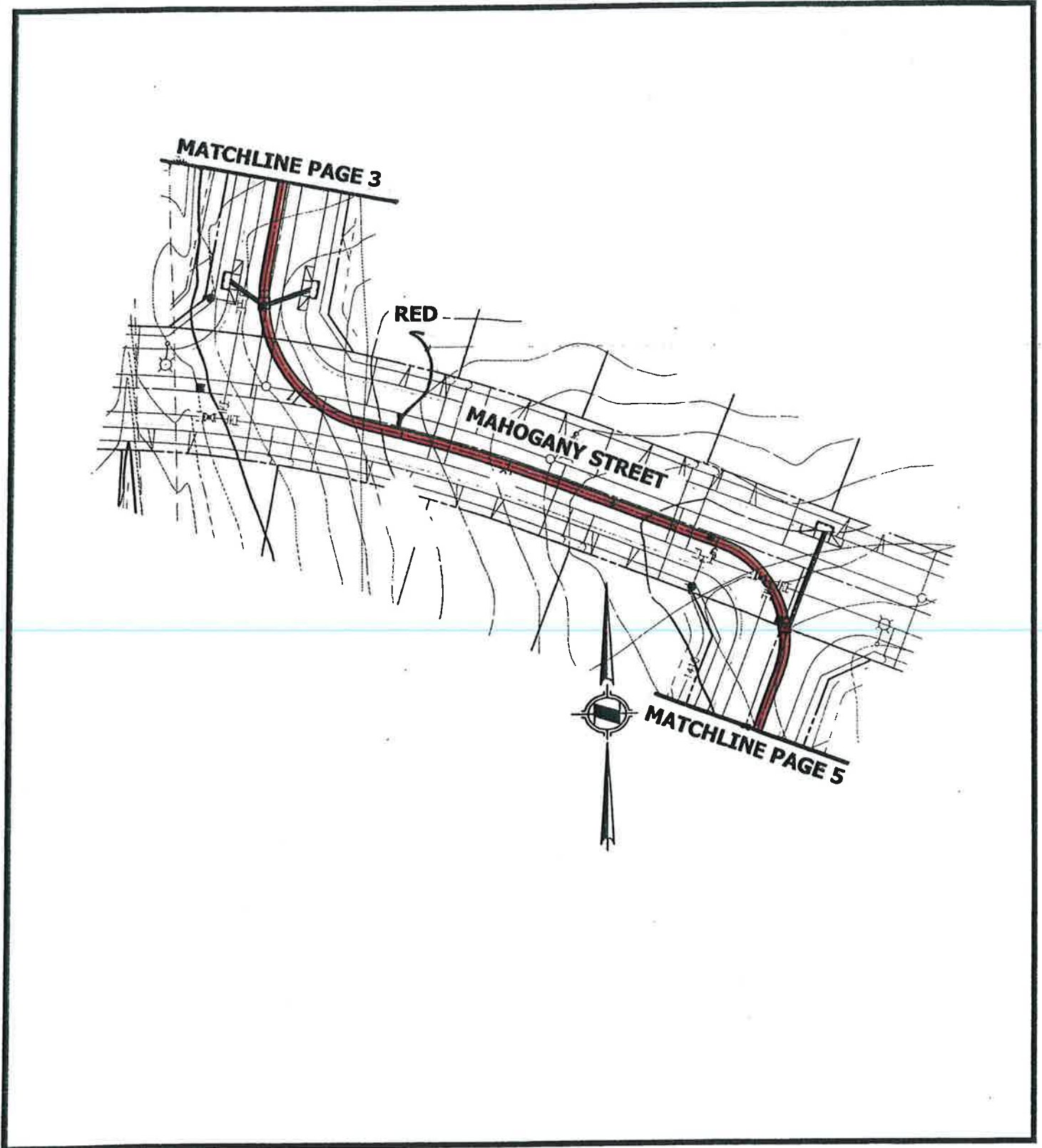


Exhibit A

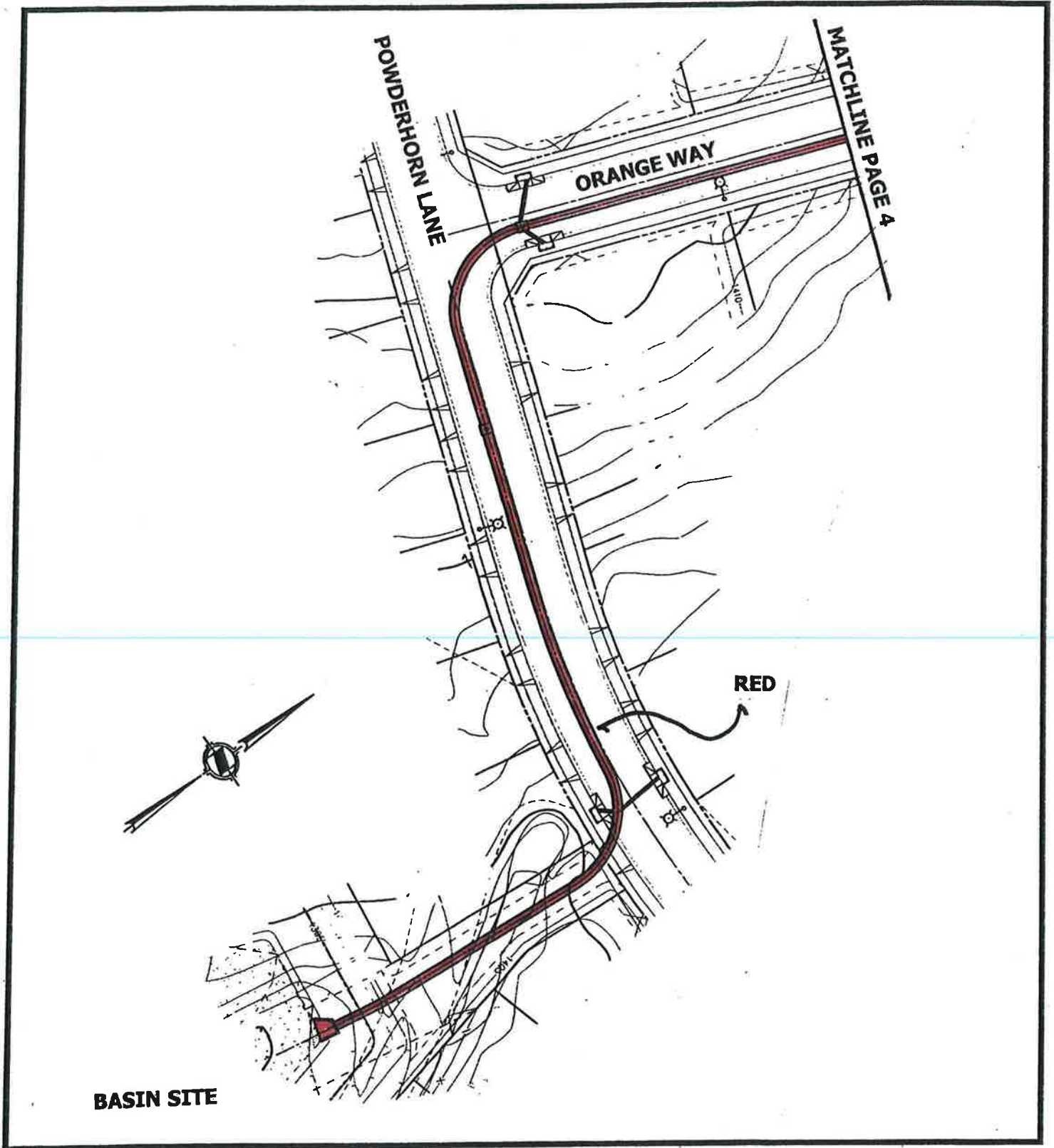


Exhibit B

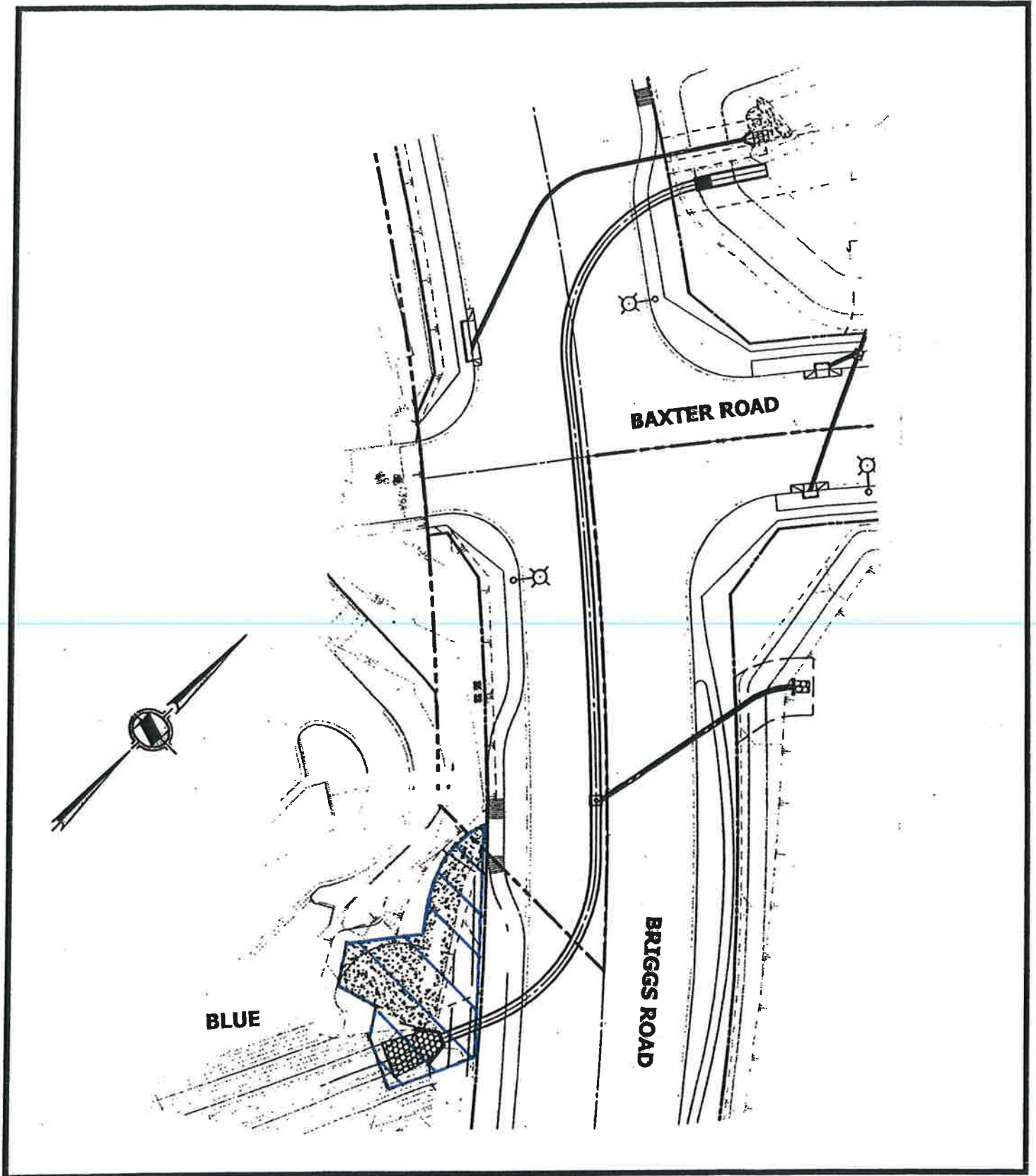


Exhibit B

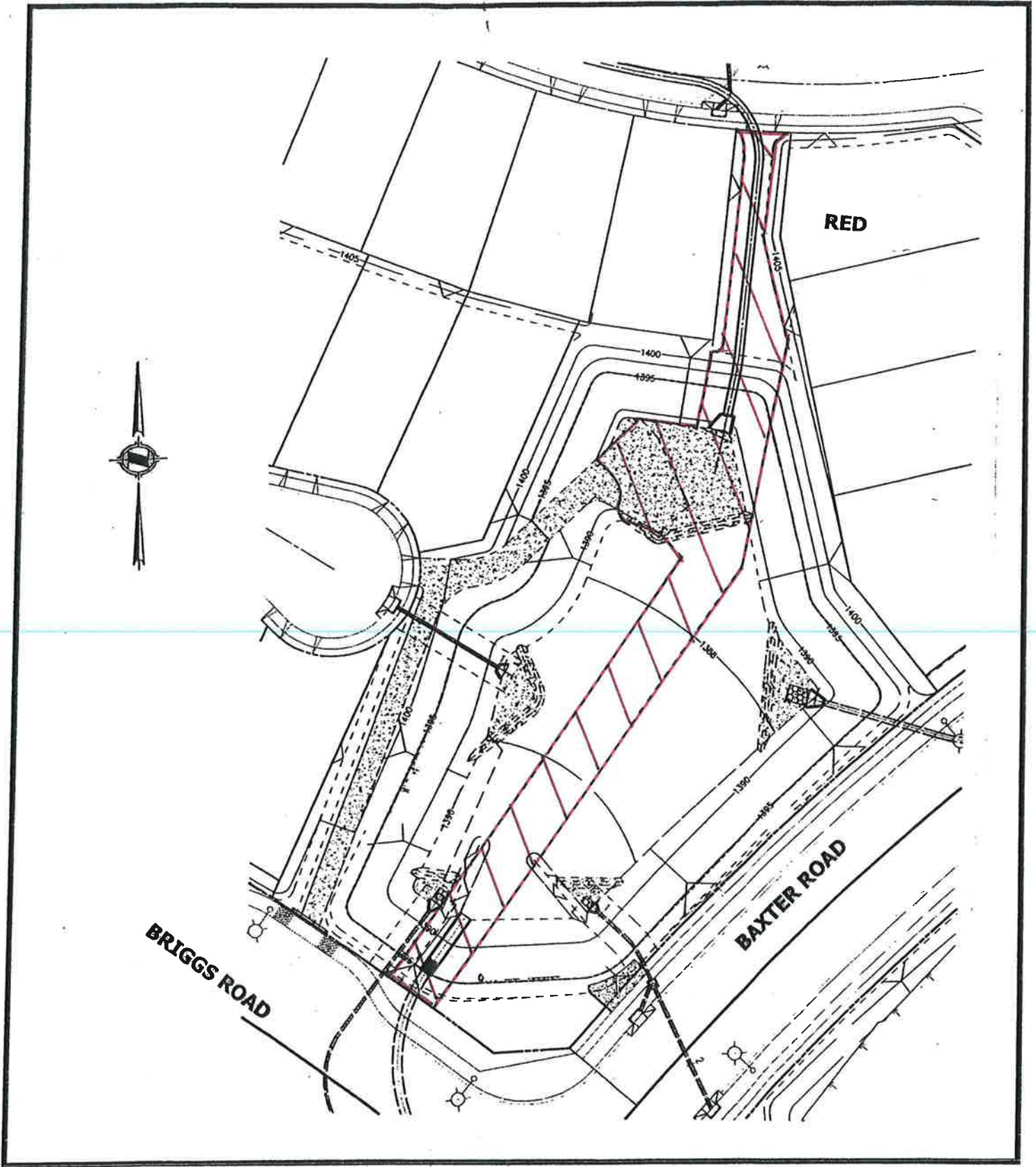
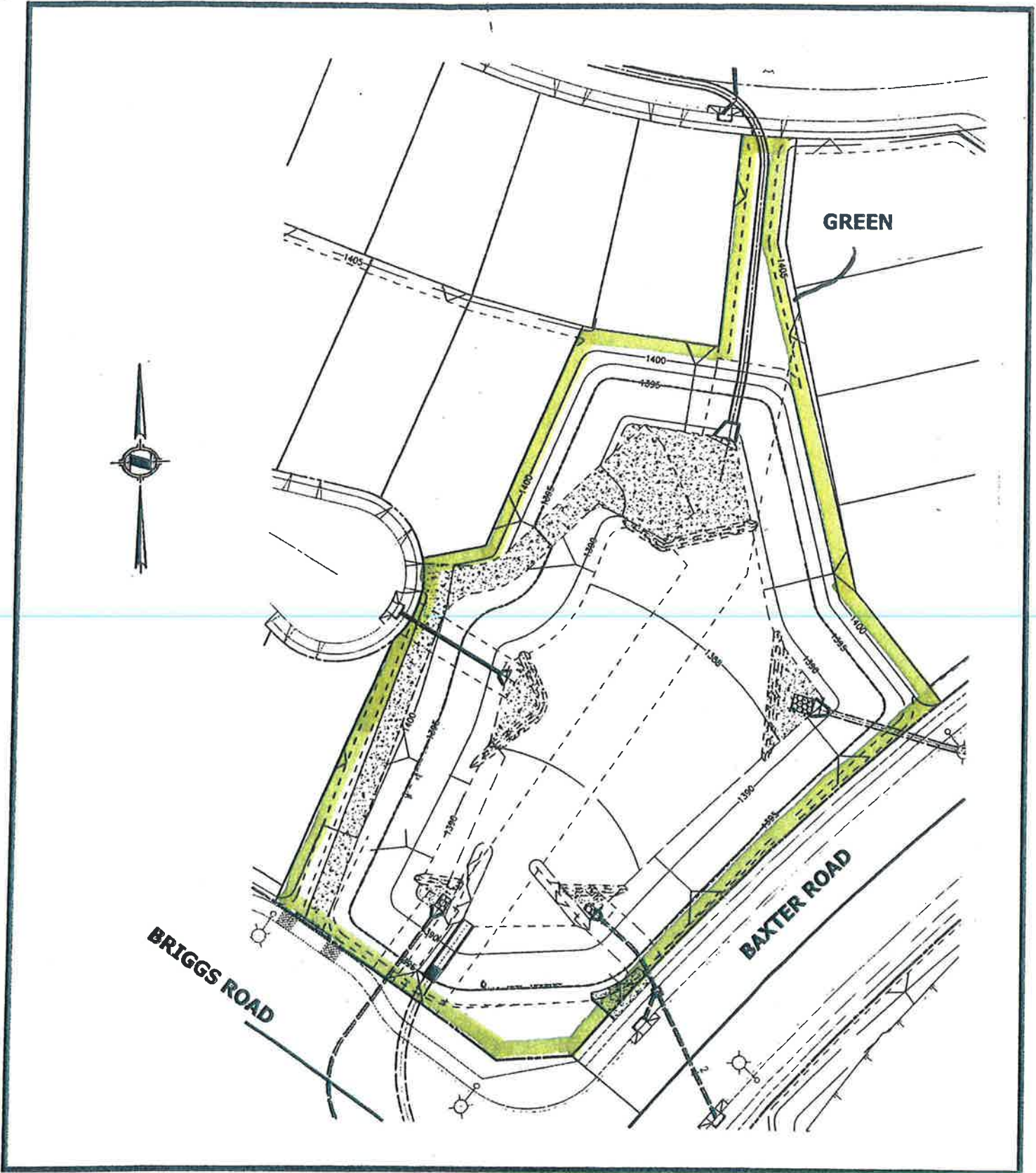


Exhibit B



Cooperative Agreement
Warm Springs Valley-Powderhorn Lane Storm Drain
Project Number: 7-0-00226