

**TOWN OF
APPLE VALLEY, CALIFORNIA**

AGENDA MATTER

Subject Item:

APPROVE AND AUTHORIZE AN AGREEMENT WITH CALTRANS FOR LANDSCAPE MAINTENANCE WITHIN THE MEDIAN AND ALONG THE NORTH SIDE OF HIGHWAY 18, BETWEEN BASS HILL ROAD AND DALE EVANS PARKWAY.

Summary Statement:

As part of the requirements for the Apple Valley Commons project to subdivide 48.6 acres into twenty-nine (29) parcels and three (3) lettered lots within the General Commercial (C-G) zone, located at the northwest corner of Highway 18 and Dale Evans, the applicant Apple Valley Commons, LLC, was conditioned to construct a landscaped center median on Highway 18, and construct parkway landscaping along the north side of Highway 18, between Bass Hill Road and Dale Evans Parkway. Lewis Retail has annexed the subject areas into the Apple Valley Landscaping and Lighting Assessment District No. 1, and the district will provide the Town financing to maintain the landscaping and street lighting adjacent to the shopping center, including those areas within Highway 18 right-of-way. In order for the Town to include the maintenance of areas of landscaping that are within the Highway 18 right-of-way, a Landscape Maintenance Agreement needs to be executed between the California Department of Transportation, (Caltrans), and the Town of Apple Valley.

(continued)

Recommended Action:

- 1) That the Town Council approve the Landscape Maintenance Agreement with Caltrans for the center median and north side parkway of Highway 18, between Bass Hill Road and Dale Evans Parkway, subject to approval as to form by the Town Attorney and as to content by the Town Manager.

Proposed by: Engineering Division **Item Number** _____

T. M. Approval: _____ **Budgeted Item** **Yes** **No** **N/A**

The attached Letter of Commitment to Maintain Landscaping, dated January 8, 2008, from the Town of Apple Valley to Caltrans, allowed Caltrans to proceed with approval of the Landscape Plans proposed by Lewis Retail, and allow construction work along Highway 18 to commence.

In order to authorize the proposed Agreement, the Town Council should proceed with the actions listed in the recommendation.

Attachments

Location Map.

Agreement for Landscape Maintenance within State Highway Right of Way on Route 18 within the Town of Apple Valley.

Exhibit A.

Letter dated January 8, 2008.



LOCATION

**AGREEMENT FOR LANDSCAPE MAINTENANCE
WITHIN STATE HIGHWAY RIGHT OF WAY
ON ROUTE 18 WITHIN THE TOWN OF APPLE VALLEY**

THIS AGREEMENT is made and executed effective this 22nd day of April, by and between the State of California, acting through its Department of Transportation, hereinafter referred to as "STATE," and the Town of Apple Valley, hereinafter referred to as "TOWN," together referred to as "PARTIES".

WITNESSETH

RECITALS:

1. PARTIES desire to work together to allocate their respective obligations relative to newly constructed or revised improvements within STATE'S right of way by a Cooperative Agreement dated April 22, 2008, Permit Number (s) 08-08-N-MC-0090.
2. This Agreement addresses TOWN responsibility for landscaping, planting, irrigation systems, litter and weed removal, and sidewalks, (collectively the "LANDSCAPING") placed within State Highway right of way on State Route 18, as shown on Exhibit A, attached to and made a part of this Agreement.

Section I

In consideration of the mutual covenants and promises herein contained, TOWN and STATE agree as follows:

- a) PARTIES have agreed to an allocation of maintenance responsibilities that includes, but is not limited to, inspection, providing emergency repair, replacement, & maintenance, (collectively hereinafter "MAINTAIN/MAINTENANCE") of LANDSCAPING as shown on said Exhibit "A."
- b) When a planned future improvement is constructed and/or a minor revision has been effected with STATE'S consent or initiation within the limits of the STATE'S right of way herein described which affects PARTIES' division of maintenance responsibility as described herein, PARTIES will agree upon and provide a new dated and revised Exhibit "A" which will be made a part hereof by an amendment to this Agreement when executed and will thereafter supersede the attached original Exhibit "A" to thereafter become a part of this Agreement.

Section II

TOWN agrees, at TOWN expense, to do the following:

- a) TOWN may install, or contract authorizing a licensed contractor with appropriate class of license in the State of California, to install {if relevant} and thereafter will MAINTAIN (section 27 of the Streets and Highways Code) LANDSCAPING conforming to those plans and specifications (PS&E) pre-approved by STATE.
- b) TOWN will submit the final form of the PS&E, prepared, stamped and signed by a licensed landscape architect, for LANDSCAPING to STATE'S District Permit Engineer for review and approval and will obtain and have in place a valid necessary encroachment permit prior to the start of any work within STATE'S right of way. All proposed LANDSCAPING must meet STATE'S applicable standards.
- c) TOWN shall ensure that LANDSCAPED areas designated on Exhibit "A" are provided with adequate scheduled routine MAINTENANCE necessary to MAINTAIN a neat and attractive appearance.
- d) TOWN will submit a one-time encroachment permit application for routine TOWN MAINTENANCE functions as required by this AGREEMENT. Individual encroachment permits shall be obtained for any substantive repair activities and changes to the scope of work allowed by this agreement prior to the start of any work within STATE'S right of way.
- e) TOWN contractors will also obtain encroachment permits prior to the start of any work within STATE'S right of way.
- f) To furnish electricity for irrigation system controls, water, and fertilizer necessary to sustain healthy plant growth in perpetuity.
- g) To replace unhealthy or dead plantings when observed within 30 days when notified by STATE that plant replacement is required.
- h) To prune shrubs, tree plantings, and trees to control extraneous growth and ensure STATE standard lines of sight to signs and corner sight distances are always maintained for the safety of the public. A separate Encroachment permit may be required.
- i) To MAINTAIN, repair and operate the irrigation systems in a manner that prevents water from flooding or spraying onto STATE highway, spraying parked and moving automobiles, spraying pedestrians on public sidewalks/bike paths, or leaving surface water that becomes a hazard to vehicular or pedestrian/bicyclist travel.
- k) To control weeds at a level acceptable to STATE. Any weed control performed by chemical weed sprays (herbicides) shall comply with all laws,

rules, and regulations established by the California Department of Food and Agriculture.

- l) To expeditiously repair any STATE facility damage ensuing from TOWN'S LANDSCAPE, and activities, including, but not limited to, damage caused by plants and plant roots and to reimburse STATE for its costs to repair STATE facility damage ensuing from TOWN'S LANDSCAPE presence and activities should STATE be required to cure a TOWN default.
- m) To remove LANDSCAPING and appurtenances and restore STATE owned areas to a safe and attractive condition acceptable to STATE in the event this Agreement is terminated as set forth herein.
- n) To furnish electricity and MAINTAIN lighting system and controls for all street lighting systems installed by and for TOWN.
- o) To inspect LANDSCAPING on a regular monthly or weekly basis to ensure the safe operation and condition of the LANDSCAPING.
- p) To expeditiously MAINTAIN, replace, repair or remove from service any LANDSCAPING system component that has become unsafe or unsightly.
- q) To MAINTAIN all sidewalks within the AGREEMENT limits of the STATE highway right of way, as shown on Exhibit A, at TOWN expense. MAINTENANCE includes, but is not limited to, concrete repair, replacement and to grind or patch vertical variations in elevation of sidewalks for an acceptable walking surface, and the removal of dirt, debris, graffiti, weeds, and any deleterious item or material on or about sidewalks or the LANDSCAPING in an expeditious manner.
- r) To MAINTAIN all parking or use restrictions signs encompassed within the area of the LANDSCAPING.
- s) To allow random inspection of LANDSCAPING, and sidewalks by a STATE representative.
- t) To keep the entire landscaped area policed and free of litter and deleterious material.
- u) All work by or on behalf of TOWN will be done at no cost to STATE.

Section III

STATE agrees to do the following:

- a) Provide TOWN with timely written notice of unsatisfactory conditions that require correction by TOWN.
- b) Issue encroachment permits to TOWN and TOWN contractors at no cost to them.
- c) Ensure that the costs of relocation, reconstruction or replacement of LANDSCAPING resulting from future public and private projects and encroachment permittees are borne by the parties responsible for these activities that result in the need to relocate, reconstruct or replace the LANDSCAPING.

Section III

Legal Relations and Responsibilities:

- a) Nothing in the provisions of this Agreement is intended to create duties or obligations to or rights in third parties not parties to this Agreement, or affect the legal liability of either PARTY to this Agreement by imposing any standard of care respecting the design, construction and MAINTENANCE of these STATE highway improvements or TOWN facilities different from the standard of care imposed by law.
- b) If during the term of this Agreement, TOWN should cease to MAINTAIN the LANDSCAPING to the satisfaction of STATE as provided by this Agreement, STATE may either undertake to perform that MAINTENANCE on behalf of TOWN at TOWN'S expense or direct TOWN to remove or itself remove LANDSCAPING at TOWN'S sole expense and restore STATE's right of way to its prior or a safe operable condition. The TOWN hereby agrees to pay said STATE expenses within thirty (30) days of receipt of billing by STATE. However, prior to STATE performing any MAINTENANCE or removing LANDSCAPING, STATE will provide written notice to TOWN to cure the default and TOWN will have thirty (30) days within which to effect that cure.
- c) Neither TOWN nor any officer or employee thereof is responsible for any injury, damage or liability occurring by reason of anything done or omitted to be done by STATE under or in connection with any work, authority or jurisdiction arising under this Agreement. It is understood and agreed that STATE shall fully defend, indemnify and save harmless the TOWN and all of its officers and employees from all claims, suits or actions of every name, kind and description brought forth under, including, but not limited to, tortious, contractual, inverse condemnation and other theories or assertions of liability occurring by reason of anything done or omitted to be done by STATE under this Agreement with the exception of those actions of STATE necessary to cure a noticed default on the part of TOWN.

d) Neither STATE nor any officer or employee thereof is responsible for any injury, damage or liability occurring by reason of anything done or omitted to be done by TOWN under or in connection with any work, authority or jurisdiction arising under this Agreement. It is understood and agreed that TOWN shall fully defend, indemnify and save harmless STATE and all of its officers and employees from all claims, suits or actions of every name, kind and description brought forth under, including, but not limited to, tortious, contractual, inverse condemnation or other theories or assertions of liability occurring by reason of anything done or omitted to be done by TOWN under this Agreement.

e) Insurance

TOWN and their contractors shall maintain in force, during the term of this agreement, a policy of general liability insurance, including coverage of bodily injury liability and property damage liability, naming the State of California, its officers, agents and employees as the additional insured in an amount of \$1 million per person and \$2 million in aggregate. Coverage shall be evidenced by a certificate of Insurance in a form satisfactory to Department that shall be delivered to Department with a signed copy of this Agreement.

f) Prevailing Wage Requirements

Workers employed in the performance of work contracted for by LOCAL AGENCY, and /or performed under encroachment permit, are covered by the prevailing wage provisions of the Labor Code in the same manner as are workers employed by STATE'S contractors.

LOCAL AGENCY shall require its contractors to include prevailing wage requirements in all subcontracts entered into to perform the work mentioned in this agreement. All the LOCAL AGENCY'S contracts with their contractors shall include a requirement that contractors and their subcontracts shall include prevailing wage requirements identical to those set forth in this Agreement.

g) Termination

This Agreement may be terminated by timely mutual written consent by the PARTIES, and TOWN'S failure to comply with the provisions of this Agreement will be grounds for a Notice of Termination by STATE.

h) Term of Agreement

This Agreement shall become effective on the date first shown on its face sheet and shall remain in full force and effect until amended or terminated at any time upon mutual consent of the parties or until terminated by STATE for cause.

IN WITNESS WHEREOF, PARTIES hereto have set their hands and seals
the day and year first above written.

TOWN of APPLE VALLEY

By _____
James L. Cox
Apple Valley Town Manager

LaVonda Pearson
Apple Valley Town Clerk

Approved as to form and
procedure:

STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION

Attorney
Department of Transportation

WILL KEMPTON
Director of Transportation

By _____
District Director

By _____
Neal Singer
Town Attorney

Approval by STATE'S Attorney is not required unless changes are made to this
form, in which case the draft will be submitted for Headquarters' review and
approval by STATE'S Attorney as to form and procedures.

Exhibit A

Annexation Overview and Landscape Area Plans

Annexation L-23 to L.M.D. No. 1

Town of Apple Valley
Parcel Map 17684, and L.L.A. 2007-002

Assessment District L-23 is established to provide landscaping and landscape maintenance within parkways and medians which primarily provide specific aesthetic benefit to the retail shopping centers that are generally located north of Highway 18, south of Thunderbird Road, west of Dale Evans Parkway and those fronting Bass Hill Road. The following is a more detailed description of the areas to be maintained under L-23:

Dale Evans Parkway

The Dale Evans Parkway landscape area is located along Dale Evans Parkway, extending from the intersection of Highway 18 and Dale Evans Parkway to the intersection of Thunderbird Road and Dale Evans Parkway. Landscaped areas include various twelve (12) foot wide parkway strips along the west side of Dale Evans Parkway, as well as twenty (20) foot wide median strips along the center of Dale Evans Parkway, as identified in the Assessment Diagram.

The twelve (12) foot wide parkway strips shall consist of a 6 foot wide sidewalk at right of way landscape improvements and a new irrigation system with a variety of shrubs and trees adapted to the climate of Apple Valley. Also included is a rock mulch pattern design.

The twenty (20) foot wide medians shall consist of an 18" maintenance strip in stamped and colored concrete at the back of curb and landscape improvements and a new irrigation system with a variety of shrub and trees adapted to the climate of Apple Valley.

Bass Hill Road

The Bass Hill Road landscape area is located along Bass Hill Road, extending from the intersection of Highway 18 and Bass Hill Road to the intersection of Dale Evans Parkway and Bass Hill Road. Landscaped areas include various twelve (12) foot wide parkway strips along the both sides of the street, as well as twenty (20) foot wide median strips along the center of Dale Evans Parkway, as identified in the Assessment Diagram.

The twelve (12) foot wide parkway shall consist of a 6 foot wide sidewalk at right of way landscape improvements and a new irrigation system with a variety of shrub and trees adapted to the climate of Apple Valley. Also included is a rock mulch pattern design.

The twenty (20) foot wide medians shall consist of an 18" maintenance strip in stamped and colored concrete at the back of curb and landscape improvements and a new irrigation system with a variety of shrub and trees adapted to the climate of Apple Valley.

Highway 18

The Highway 18 landscape area is located along Highway 18, extending from the intersection of Dale Evans Parkway and Highway 18 to the intersection of Bass Hill Road and Highway 18. Landscaped areas include three varying width parkways strips along the north side of Highway 18, as well as a twenty (20) foot wide median at the center of the Highway, as identified in the Assessment Diagram.

The parkways strips west of Dale Evans Parkway and east of Bass Hill Road shall consist of a meandering 6 foot wide sidewalk. Landscape improvements include a new irrigation system and a variety of shrubs and trees adapted to the climate of Apple Valley. Also included is a rock mulch pattern design.

The twenty (20) foot wide median shall consist of an 18" maintenance strip in stamped and colored concrete at the back of curb. The median includes landscape improvements consisting of a new irrigation system and a variety of shrubs and trees adapted to the climate of Apple Valley. Also included is a rock mulch pattern design.

For specific details relating to irrigation, planting and landscape improvements, see the approved Landscape Plans for Bass Hill Road, Dale Evans Parkway and Highway 18 on file at the Town of Apple Valley Engineering Department.

**Exhibit A
DALE EVANS PARKWAY LANDSCAPE AREAS**

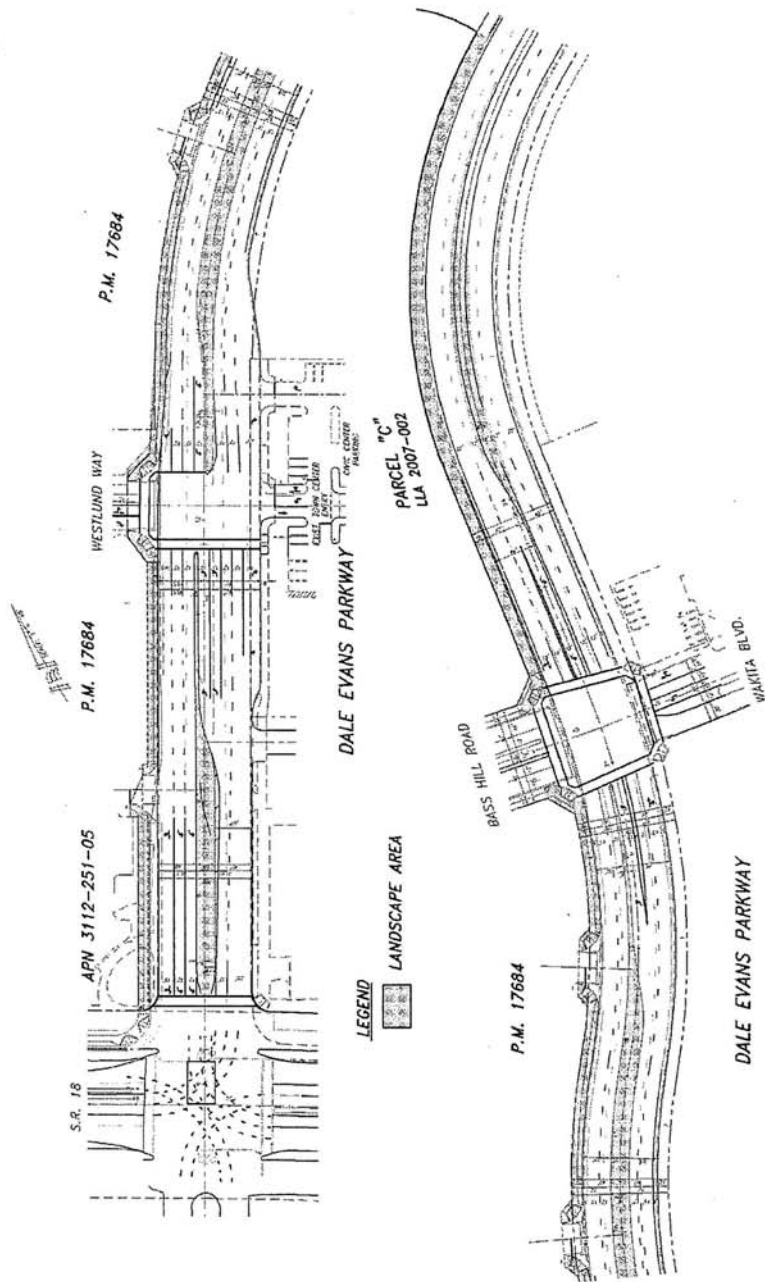
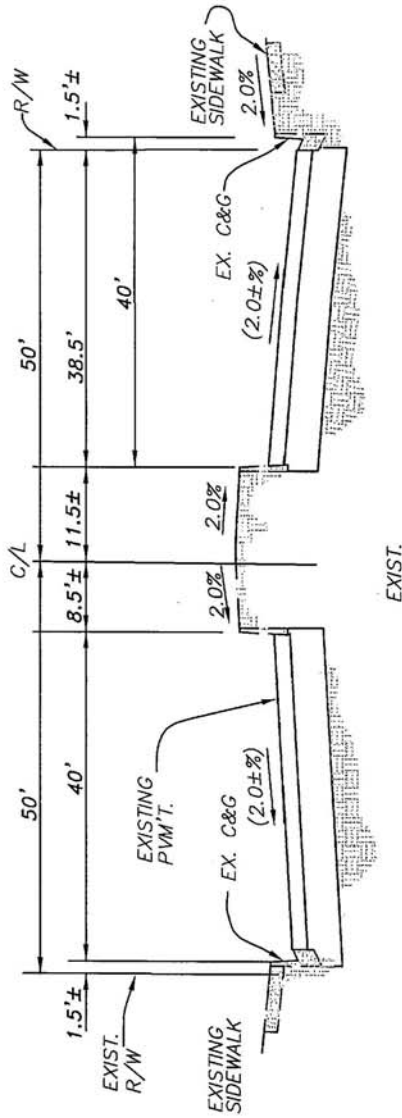


Exhibit A
DALE EVANS PARKWAY SECTION OF LANDSCAPE AREAS



DALE EVANS PARKWAY

N.T.S.

Exhibit A
BASS HILL ROAD LANDSCAPE AREAS

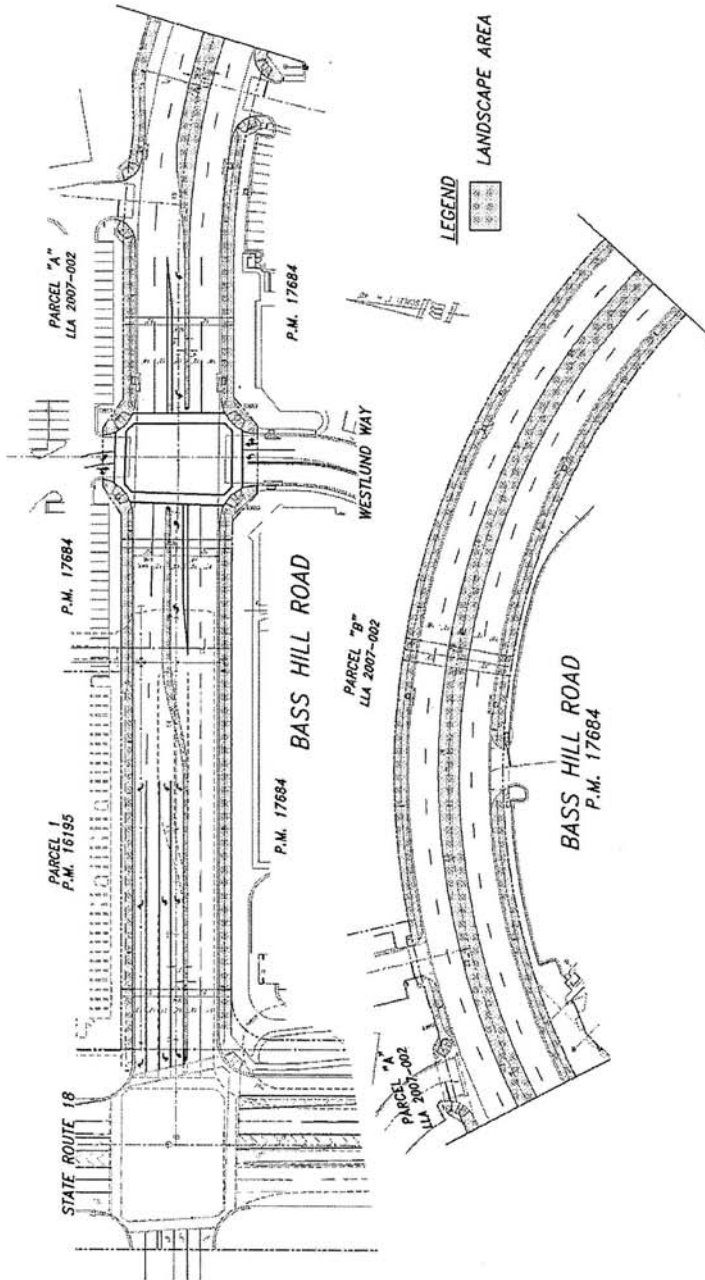
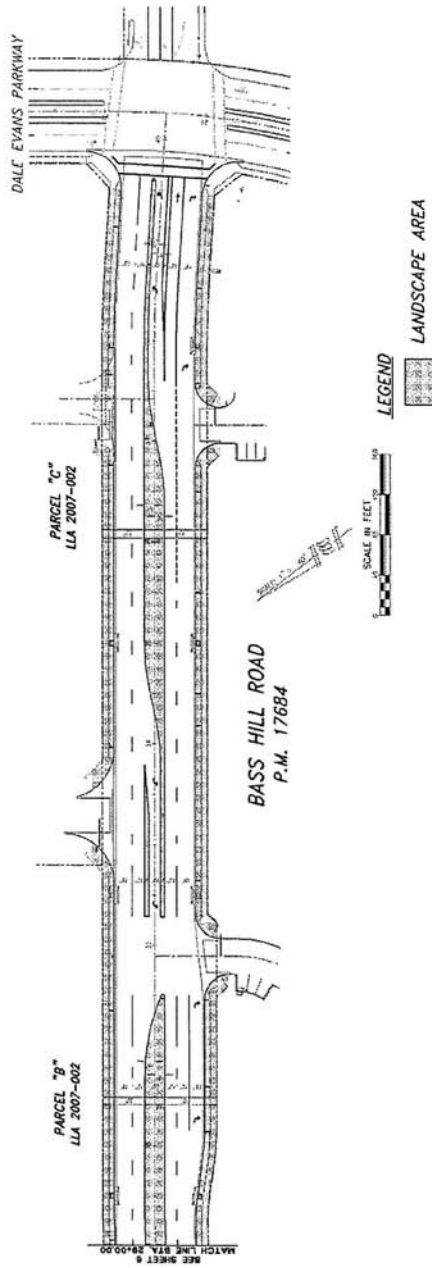
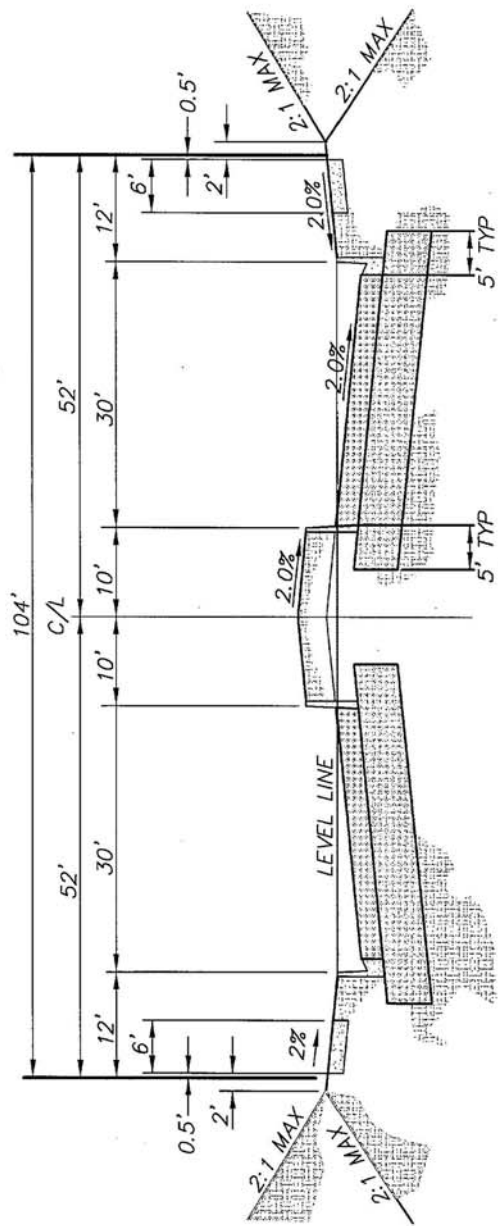


Exhibit A
BASS HILL ROAD LANDSCAPE AREAS



**Exhibit A
BASS HILL ROAD SECTION OF LANDSCAPE AREAS**

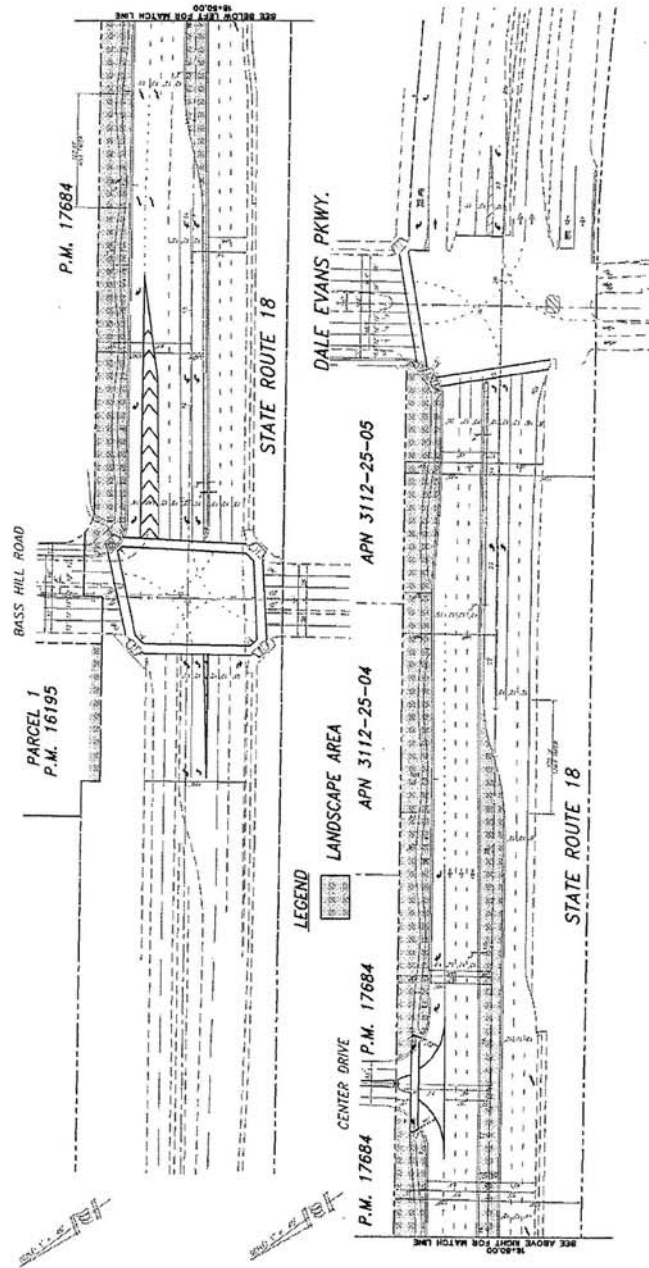


BASS HILL ROAD

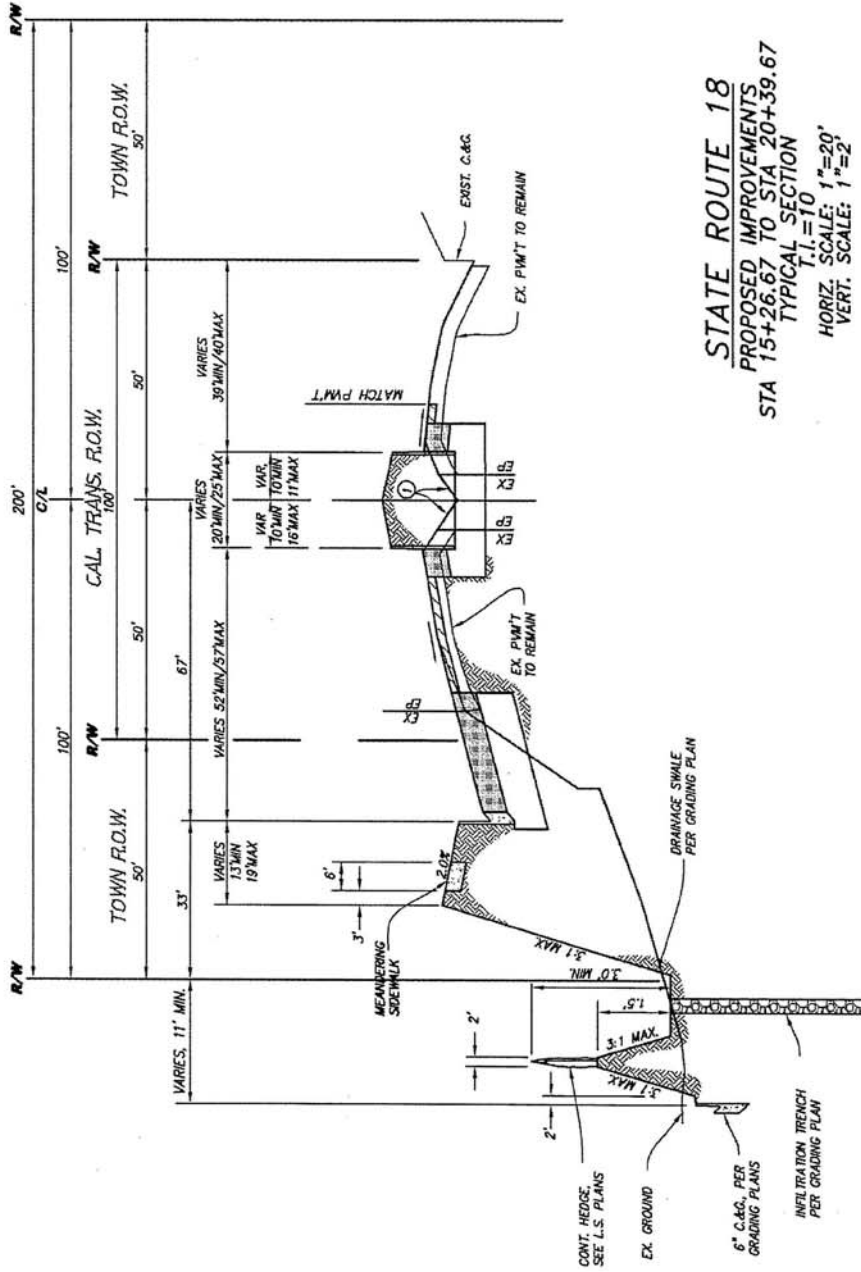
TYPICAL SECTION

N.T.S.

Exhibit A
HIGHWAY 18 LANDSCAPE AREAS



**Exhibit A
HIGHWAY 18 SECTION OF LANDSCAPE AREAS**



STATE ROUTE 18
PROPOSED IMPROVEMENTS
STA 15+26.67 TO STA 20+39.67
TYPICAL SECTION
T.I. = 10
HORIZ. SCALE: 1"=20'
VERT. SCALE: 1"=2'



Town of Apple Valley

14955 Dale Evans Parkway, Apple Valley, California 92307

January 8, 2008

Syed Raza
Deputy District Director
Traffic Operations
California Department of Transportation
464 West 4th Street
San Bernardino CA 92401

Dear Mr. Raza:

RE: Letter of Commitment to Maintain Landscaping

This letter is regarding the proposed improvements on State Route 18 (SR-18), from Bass Hill Road to Dale Evans Parkway, in the Town of Apple Valley (Town) as part of Lewis Retail Apple Valley Commons project. The scope of work for this project includes street improvements, signal modification and installation of new landscaping.

I understand that the Department of Transportation (Department) requires the Town to own and maintain all new landscaping and irrigation systems installed as part of this project. For this purpose, a Landscape Maintenance Agreement (Agreement) needs to be executed between the Department and the Town that describes the roles and responsibilities of each Agency.

Since the Agreement needs to be approved by the Apple Valley Town Council, please consider this letter as the Town's commitment to execute this Agreement as expeditiously as possible. As there is only one Town Council meeting scheduled this month, the earliest the Agreement can be approved by the Council is at its February, 2008 meeting.

The Town is committed to construct the described project to Department's satisfaction and to, thereafter, own and maintain the permitted project at no cost to the Department. I understand this includes all work required to maintain the new landscaping, irrigation system, sidewalks, provision of water and utility services as necessary in an attractive and safe condition for so long as the permit is valid and not revoked by the Department. I further understand that, if the Town fails to perform its maintenance and repair obligations, the Department may require the Town, at the Town's sole expense, to return the right-of-way to its original condition or to a permanent condition acceptable to the Department.

Mr. Syed Raza
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January 8, 2008

I trust that this letter fully conforms to our earlier discussions regarding this matter. Should you have any questions, or require additional clarification, please do not hesitate to contact me or Brad Miller, Town Engineer, at (760) 240-7000.

Sincerely,



Kenneth J. Henderson
Director of Economic and Community Development

CC: Michael McKinney, Lewis Retail
Gary Bauer, Lewis Retail

Town Manager
Town Engineer
Director of Public Services
Assistant Director of Community Development