



# TOWN OF APPLE VALLEY

## TOWN COUNCIL STAFF REPORT

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**To:** Honorable Mayor and Town Council                      **Date:** April 25, 2017

**From:** Brad Miller, Town Engineer                      **Item No:** 3  
Engineering Department

**Subject:** ACCEPTANCE OF COMPLETED IMPROVEMENTS AND RELEASE OF  
SURETY BONDS FOR A PORTION OF TRACT MAP NO. 17093-1

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

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### RECOMMENDED ACTION:

In accordance with the attached negotiated Settlement and General Release Agreement dated October 17, 2016, that Town Council accept the completed Public Improvements and authorize the release of surety bond securities for Tract Map No. 17093-1.

### SUMMARY:

This surety bond release is being requested in accordance with a negotiated Settlement and General Release Agreement with the original developer of this Tract, Corman Leigh Communities. As part of this negotiated agreement, Corman Leigh Communities has completed all required Public Improvements that serve the six (6) completed homes within this Tract and those improvements have been inspected and approved by staff for inclusion in our Town Maintained Roadway Network. The original developer no longer owns this subdivision and the intent of this release of securities is to excuse Corman-Leigh Communities from the obligation and the ongoing cost of maintaining these surety bonds. This is the sole intent of the surety bond release. Only those surety bonds which require ongoing debt service are proposed to be released. All other fees and cash deposits for faithful performance that do not involve ongoing cost will remain in trust for this subdivision. Only those securities that may be released without violating the Subdivision Map Act and State Law shall be released. All other securities shall be retained until they are eligible for release in accordance with State Law. Once the Corman Leigh Communities' surety bonds for Public Improvements have been released, a Notice of Violation shall be recorded on the remaining parcels within this subdivision. This will ensure that future owners are aware of the incomplete nature of this property and that no

permits for construction can be issued until a new Subdivision Agreement and replacement security for the completion of all Public Improvements is in place.

**BACKGROUND:**

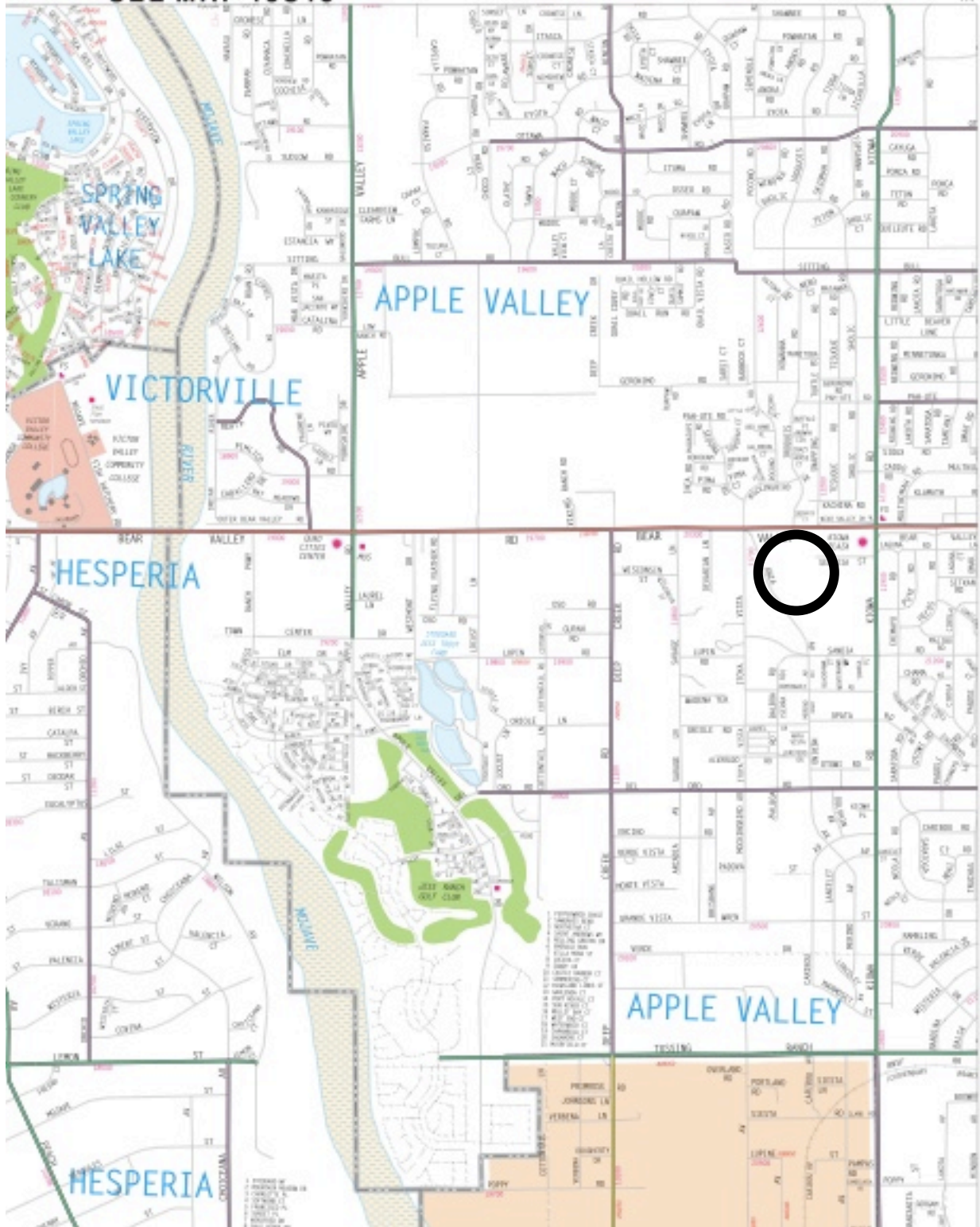
When the Town Council accepted the final map for Tract No. 17093-1, construction agreements and surety bond securities were required. The original developer, Corman Leigh Communities, is now requesting the release of those surety bond securities since they no longer own this property and they have fulfilled the terms of the negotiated Settlement and General Release Agreement to construct various improvements that benefit the six (6) completed homes within this Tract.

**FISCAL IMPACT:**

None.

**ATTACHMENTS:**

1. Location Map
2. Settlement and General Release Agreement



**SETTLEMENT AND GENERAL RELEASE AGREEMENT**

This Settlement and General Release Agreement (“Agreement”) is entered into by and between the Town of Apple Valley (“Town”) and Sky Haven Ranch, LLC (“Sky Haven”), effective as of the date it is fully executed. The Town and Sky Haven may be referred to herein as the “Settling Parties” or “Parties.”

**RECITALS**

A. On or about March 13, 2007, the Town and Sky Haven entered into those certain agreements for street improvements and landscape improvements (the “Improvement Agreements”), both related to Tract No. 17093 (the “Property”).

B. Sky Haven provided surety bonds SU5022586 and SU5022589 and a Cash/Deposit Bond of \$33,500 (Check # 1090) (the “Bonds”) to the Town, to secure Sky Haven’s obligations under the Improvement Agreements to complete the required monument, landscape, and street improvements.

C. Sky Haven completed development of six (6) homes within the Property (“Existing Homes”), but has not completed the improvements. The Existing Homes have been purchased and are occupied by residents, however, in the current condition, the Existing Homes lack finished paved access to the nearest street intersection.

D. On or about August 7, 2015, the Town received a letter (the “Letter”) from the law firm of Tyler & Bursch, LLP requesting release of the Bonds, and explaining that Sky Haven is no longer the owner of the Property, as the Property was foreclosed on and has been purchased by another party.

E. The Letter states that if the Town does not agree to release the Bonds, Sky Haven intends to file a writ to compel release of the Bonds by the Town.

F. In light of the circumstances, the Town is willing to agree to release the Bonds provided that Sky Haven complete limited street improvements to provide the Existing Homes finished paved access to the nearest street intersection, as further described herein.

G. In order to avoid the costs and uncertainty of litigation, the Settling Parties desire to enter into this Agreement.

**AGREEMENT**

The Settling Parties hereby agree as follows:

1. Recitals. The Recitals are incorporated into this Agreement.
2. Completion of Limited Street Improvements. Sky Haven shall timely complete the limited street improvements as further described and depicted in Exhibit “A” (“Street

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Improvements”). The Street Improvements shall be completed in a good and workmanlike manner, in accordance with Town standards and requirements, and with all laws, rules and regulations, including, but not limited to, California prevailing wage laws, as set forth in Labor Code Section 1720, et seq., to the extent applicable. Sky Haven shall obtain an encroachment permit from the Town for work in the Town right of way to complete the Street Improvements. The Street Improvements shall be subject to acceptance by the Town.

3. Release of Bonds. Immediately upon acceptance by the Town of the Street Improvements, which acceptance shall not be unreasonably withheld, the Town shall take all actions required to release the Bonds.

4. Cost of Street Improvements. Sky Haven shall provide information to the Town substantiating the actual cost of construction of the Street Improvements, verified with invoices and load tickets, and consistent with the Town's Engineering Cost Estimate Worksheet, attached to this Agreement as Exhibit “B” and incorporated herein by reference. Unit price costs submitted to the Town shall not exceed the units shown on the attached Engineers Estimate Worksheet. The Town shall make good faith efforts to recover the costs for the Street Improvements from the new owner of the Property (“New Owner”), at such time as the New Owner commences development of Tract 17093. If the Town recovers such costs, the Town shall remit the funds to Sky Haven. As used herein, the requirement to exercise “good faith efforts” shall not require the Town to: (i) incur legal costs, (ii) withhold building permits from the New Owner, if such action would cause the Town to incur legal costs, or (iii) pursue legal remedies against the New Owner to recover costs for the Street Improvements.

This obligation of the Town shall remain in effect for a period of ten (10) years.

5. Termination of Agreements. Upon execution of this Agreement, the Improvement Agreements shall be terminated without further action of the Settling Parties.

6. Further Action. The Settling Parties agree to execute such other documents and take such other actions as may reasonably be necessary to further the purpose of this Agreement, with each of the Settling Parties to bear their own costs for these additional actions.

7. Indemnification and Insurance. To the fullest extent permitted by law, Sky Haven shall defend, indemnify and hold free and harmless the Town, its officers, employees, and agents from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, to the extent arising out of or incident to any negligent acts, errors or omissions of Sky Haven, its officers, employees, contractors or agents in the performance of the Street Improvements, including, without limitation the payment of all consequential damages and reasonable attorneys’ fees, expert witness fees and other related costs and expenses of defense. The foregoing indemnity shall include claims related to failure by Sky Haven to comply with California prevailing wage law. Sky Haven shall maintain adequate insurance to cover all risks related to completion of the Street Improvements, in amounts approved by the Town, and shall name the Town as an additional insured on its liability insurance related to such work.

8. Mutual Releases. Excepting the provisions of this Agreement, the Settling Parties, for themselves, and for each and all of their respective agents, representatives, attorneys, successors, assigns, partners, affiliates, subsidiaries, officers, employees, associates, members, constituents, and all others claiming by, under, or through them, hereby release, remise, acquit, absolve, and forever discharge the other party and all of its agents, representatives, attorneys, successors, assigns, partners, affiliates, subsidiaries, officers, employees, associates, members, and constituents from any and all civil liabilities, damages, injuries, claims, and causes of action it has or may have, both real and purported, known and unknown, foreseen and unforeseen, expected and unexpected, of every kind, nature, and character related to the Bonds or the Improvement Agreements.

9. No Admission of Liability. This Agreement is made in connection with the compromise of a dispute. Neither this Agreement nor any action taken pursuant to it constitutes an admission by any party to another.

10. Representatives; Notices. The Settling Parties agree that the following individuals represent them in the performance and execution of this Agreement. The Settling Parties further agree that the following Representatives will be available to be contacted regarding this Agreement at all reasonable times. The Settling Parties may also be contacted and served with legal notice regarding this Agreement at the following addresses. Legal notice must be provided in writing and may only be served in person or by registered or certified mail with postage prepaid. Legal notice is considered effective when personally served or three (3) days after being mailed in accordance with this provision.

a. Town's Representative. Best Best & Krieger LLP, Attn: John Brown, Esq. – Town Attorney, 2855 E. Guasti Road, Suite 400, Ontario, California 91761, (909) 989-8584.

b. Sky Haven's Representative. DeRicci Keller, Sky Haven Ranch, LLC, 32823 Temecula Pkwy, Temecula CA 92592, (951) 491-6018.

11. Litigation Costs. Each of the Settling Parties agrees to bear their own costs associated with the drafting and execution of this Agreement. In the event legal action is required to enforce or interpret any provision of this Agreement, the prevailing party shall be entitled to recover from the losing party all reasonable costs and fees, including attorneys' fees, arising out of the litigation.

12. Choice of Law. This Agreement shall be governed and interpreted in accordance with the laws of the State of California, without regard to conflicts of law principles.

13. Choice of Forum. The venue for any disputes arising out of this Agreement shall be the Superior Court of the State of California for the County of San Bernardino.

14. Binding Power; Authority. This Agreement shall be binding upon the successors and assignees of the Settling Parties and the person signing this Agreement hereby warrants that they have the power and authority to bind the Party for which they are signing.

15. Mutual Negotiation. This Agreement is the product of the mutual negotiations of the Settling Parties and shall not be construed against or in favor of either of the Settling Parties. The Settling Parties acknowledge that they had the time and opportunity and have been advised to seek independent legal counsel regarding this Agreement and enter this Agreement on an intelligent and informed basis without any undue influence from the other party.

16. Waivers. All waivers must be in writing. Failure to insist upon strict performance of any provision, right, duty, or obligation in this Agreement is not a waiver of the right to enforcement of that provision, right, duty, or obligation, nor any other provision, right, duty, or obligation in the future.

17. Modifications. This Agreement can only be changed, modified, amended, supplemented, or rescinded in a separate writing signed by both of the Settling Parties.

18. Headings. The headings of this Agreement are for convenience and ease of reference only and shall not be used to construe, interpret, expand, or limit its terms.

19. Severability. If any of the provisions of this Agreement are found to be unenforceable, those provisions shall be reformed to prevent the unenforceable result in a manner that best preserves the original intent of the provision to the fullest extent possible, and all other provisions of this Agreement shall remain in full force and effect.

20. Integration. This Agreement constitutes the final, complete, and exclusive expression of all the terms and provisions of the settlement agreement between the Settling Parties. This Agreement supersedes any previous agreements or negotiations between the parties, whether oral or written.

21. Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.

SIGNATURES ON FOLLOWING PAGE

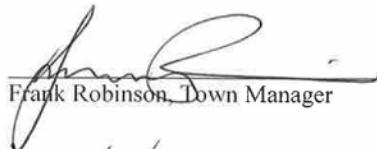
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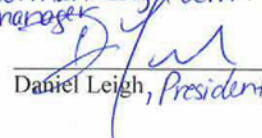
**SIGNATURE PAGE TO SETTLEMENT AND GENERAL RELEASE AGREEMENT**

By signing below, the Settling Parties hereby agree to all the terms and conditions set forth in this Agreement.

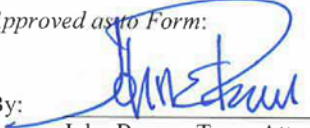
**THE TOWN OF APPLE VALLEY:**

By:   
Frank Robinson, Town Manager  
Date: 10/17/16


**SKY HAVEN RANCH, LLC:**

By: *Corman Heights Communities  
Its: manager*  
  
Daniel Leigh, President  
Date: 9-28-16

*Approved as to Form:*

By:   
John Brown, Town Attorney  
BEST BEST & KRIEGER LLP

*Approved as to Form:*

By:   
Jennifer L. Bursch, Esq.  
TYLER & BURSCH, LLP



**Exhibit "A"**

**Description and Depiction of Street Improvements**

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The Street Improvements are as follows:

Sky Haven shall complete all elements of work that are included on the approved Street Improvement Plan (on file at the offices of the Town, and incorporated herein by reference) for the segment of Sweet Grass Circle that is north of Sequoia Street, and shall complete improvements on Sequoia Street between the intersection with Sweet Grass Circle, (including the intersection), and connection with Itoya Vista Street.

Needed repairs to the existing base course paving shall be made before the final lift is applied, and a missing ADA ramp at the north east corner of Sweet Grass Circle and Sequoia Street shall be added.

All other elements that would normally be required to complete the improvements as called for on the Street Improvement Plan for these segments shall be finished, including cleanup of all public right-of-way areas, (weed abatement), re-stripping of stop legends and limit lines after paving, and final adjustment of all water valve caps and sewer manhole covers .

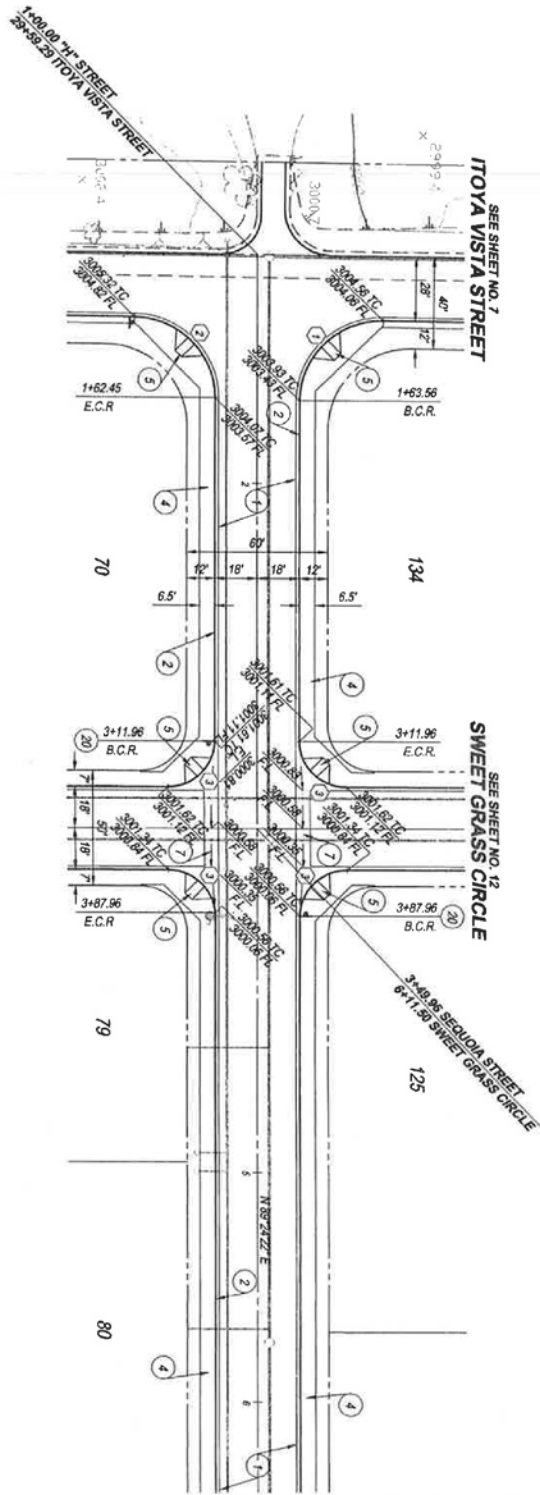
These segments of roadway shall be brought up to final completion condition so the Town can inspect and accept them into the public maintained roadway network.

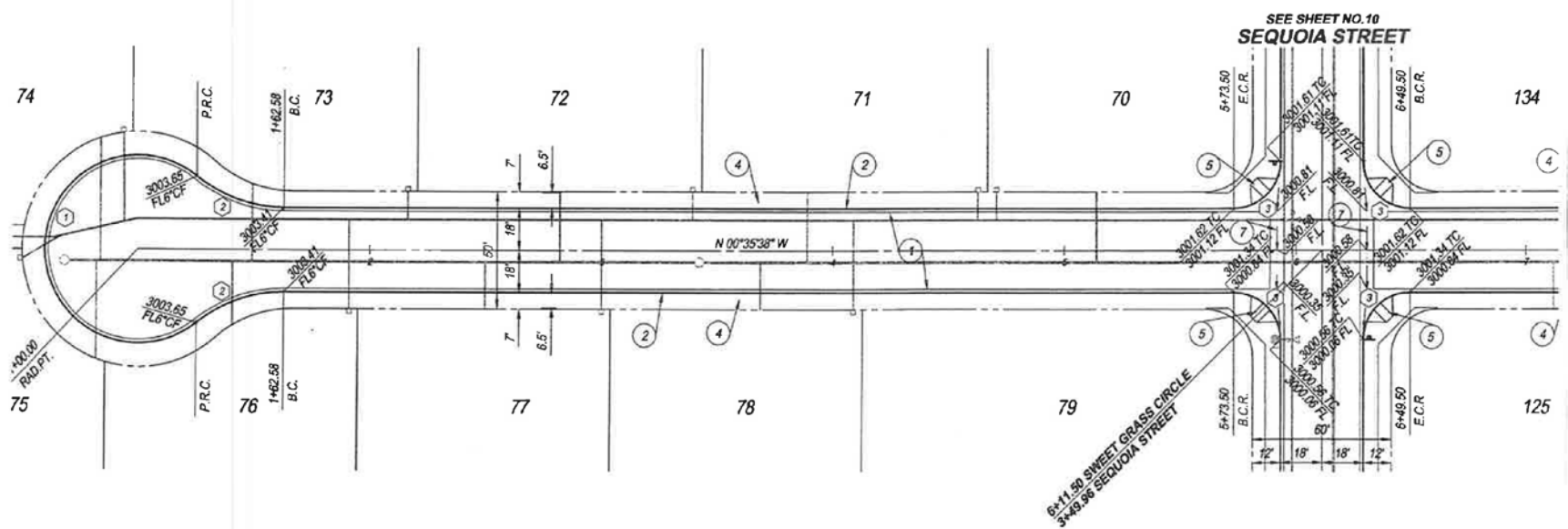
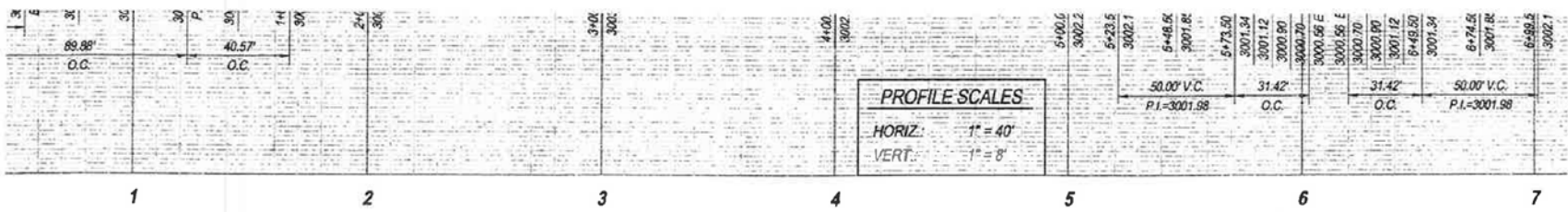
Relevant sheets of the Tract Map and the Street Improvement Plan are attached behind this page for reference.

Exhibit A

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# SEQUOIA STREET





# SWEET GRASS CIRCL

**DATA TABLE**

⊙	BEARING/DELTA	RADIUS	LENGTH	TANGENT
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IN THE TOWN OF APPLE VALLEY, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA

SHEET 6 OF 7 SHEETS

### TRACT NO. 17093-1

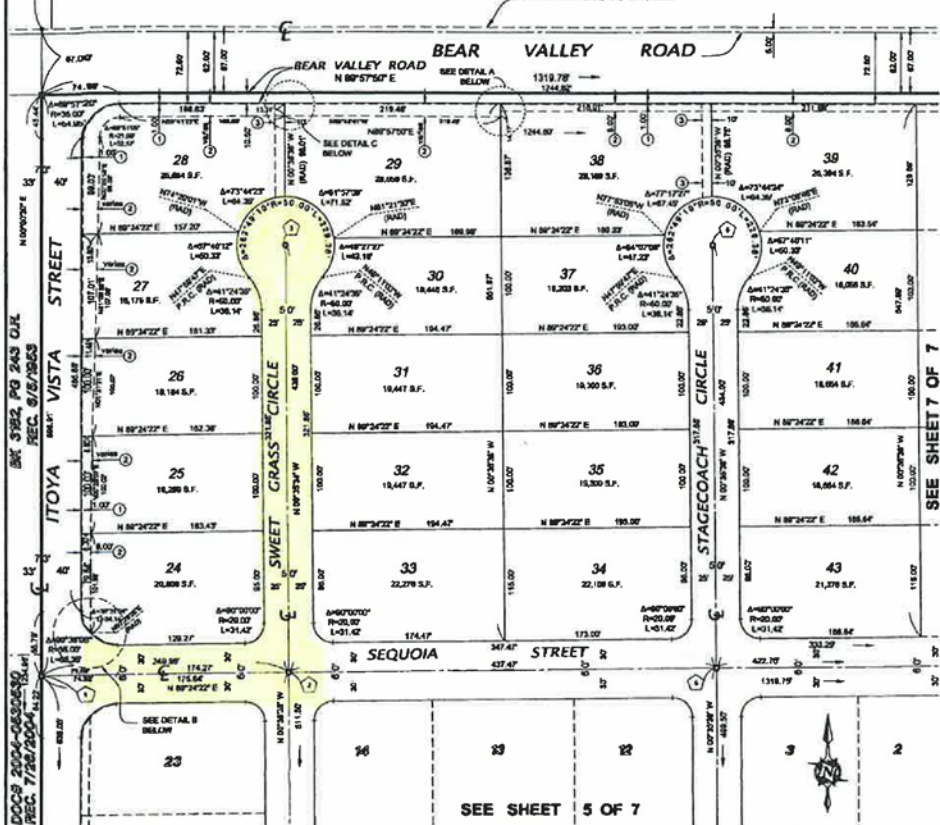
BEING A SUBDIVISION OF A PORTION OF THE NORTHEAST QUARTER OF SECTION 5, TOWNSHIP 4 NORTH, RANGE 3 WEST, SAN BERNARDINO MERIDIAN

MAYERS & ASSOCIATES CIVIL ENGINEERING, INC. MAY, 2005

FD 2" C.S.M. BRASS CAP PILLARS PER R-1, ESTABLISHED AND ACCEPTED AS THE N 1/4 COR. SEC. 5, T4N, R3W, S.B.M. PER R-4

SEE SHEET 3 OF 7 FOR BOUNDARY INFORMATION

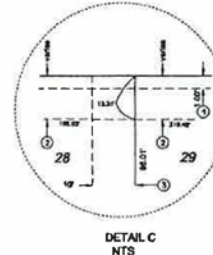
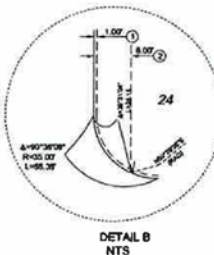
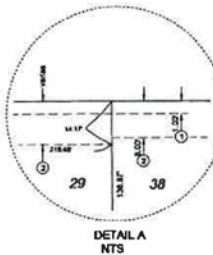
NORTH LINE SEC. 5, T.4, R.3W, S.B.M.



DOC# 2004-0630480 REC. 7/18/2004

SEE SHEET 5 OF 7

SEE SHEET 7 OF 7



**Exhibit "B"**

**Town's Engineering Cost Estimate Worksheet**

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[attached behind this page]

Exhibit B

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ENGINEER'S ESTIMATE DATA SHEET		Town of Apple Valley Engineering Department			
PROJECT:		Prepared by:			
OWNER:		Date Prepared:		Phone:	
Column1	Column2	Column3	Column4	Column5	Column6
ITEM	DESCRIPTION	QUANTITY		PRICE	TOTAL
1	CURB AND GUTTER 8"		L.F.	\$14.00	
2	CURB AND GUTTER 8" (500' or less)		L.F.	\$16.00	
3	CURB AND GUTTER 6"		L.F.	\$12.00	
4	CURB ONLY 8" (rolled)		L.F.	\$12.00	
5	A. C. DIKE 8"		L.F.	\$10.00	
6	A. C. DIKE 8" (500 l.f. or less)		L.F.	\$13.00	
7	A. C. PAVING (1500 s.f. or less)		S.F.	\$2.00	
8	A. C. PAVING ( tons)		TON	\$75.00	
9	A. C. OVERLAY		S.F.	\$0.75	
10	AGGREGATE BASE		TON	\$55.00	
11	CONCRETE (CLASS A)		C. Y.	\$570.00	
12	CONCRETE (CLASS B)		C. Y.	\$253.00	
13	DRIVEWAYS (residential)		S.F.	\$6.00	
14	DRIVEWAYS (commercial 6")		S.F.	\$8.00	
15	DRIVEWAYS (local depression 8")		S.F.	\$12.00	
16	SIDEWALK		S.F.	\$6.00	
17	EXCAVATION (MIN \$500)	(0-100)	C. Y.	\$10.00	
		(100 - 1000)	C. Y.	\$8.00	
		(1001 - 3000)	C. Y.	\$6.00	
		(3001 +)	C. Y.	\$4.00	
18	BARRICADE		L.F.	\$40.00	
19	CLEARANCE MARKER (W 60R)		EACH	\$100.00	
20	W 21 R		EACH	\$145.00	
21	C W R (road not maintained)		EACH	\$200.00	
22	STREET SIGN		EACH	\$350.00	
23	PIPES SIZE( )		L.F.	See Chart	
24	OTHER:				
25	OTHER: _____				
26	OTHER: _____				
27	OTHER: _____				
28	ROCK SLOPE PROTECTION (grouted Rip Rap)		S.F.	\$15.00	
29	RETAINING WALL 3' (8" block)		L.F.	\$65.00	
30	STANDARD WALL 6' (8" block)		L.F.	\$50.00	
31	STAKING	Subdivision and Plot Plans	EACH	\$2,000.00	
					SUBTOTAL
32	CLEAN UP (\$2,000 min)		1.00%		
33	ENGINEERING & STAKING	Of Estimate	5.00%		
					SUBTOTAL
34	CONTINGENCIES		10%		
					TOTAL ENGINEER'S ESTIMATE
	<b>3.5% of total estimate fee</b>				<b>Plan check fee:</b>
	<b>1% of Total Estimate</b>				<b>Inspection fee</b>
	<b>Estimate approved by Town Engineer:</b>				
	<b>Date:</b>				

ENGINEER'S ESTIMATE DATA SHEET		Town of Apple Valley Engineering Department	
PIPES SIZE			
24"	UNIT COST FOR CMP	\$76.00	
30"	L.F.	\$80.00	
36"	L.F.	\$90.00	
42"	L.F.	\$92.00	
48"	L.F.	\$114.00	
54"	L.F.	\$145.00	
60"	L.F.	\$158.00	
72"	L.F.	\$240.00	
80"	L.F.	\$260.00	
96"	L.F.	\$350.00	
108"	L.F.	\$400.00	
	L.F.	\$350.00	
	L.F.	\$400.00	
	L.F.		
ENGINEERING FEES			
(Applies to all road improvements required for Subdivisions, Minor Subdivisions, and Building Permits)			
Use following minimum structural sections for engineer's estimate:		BASE	
MAJOR ROADS	A.C.	1.0' CLASS II AG. BASE	
SECONDARY ROADS	0.55'	0.50' CLASS II AG. BASE	
COLLECTOR ROADS	0.45'	COMPACTED NATIVE BASE	
LOCAL ROADS	0.35'	COMPACTED NATIVE BASE	
	0.33'		
Approved		Date	
Estimate approved by Town Engineer			