

# **Development Agreement Ordinance**

**ORDINANCE NO. 2021-23**

**(Uncodified)**

**(Development Agreement for the Tassajara Parks Project)**

The Board of Supervisors of Contra Costa County ordains as follows:

**SECTION 1. Summary and Purpose.** The purpose of this ordinance is to approve a development agreement for the Tassajara Parks Project, located in the unincorporated Tassajara Valley area of unincorporated Contra Costa County.

**SECTION 2. Authority.** This ordinance is enacted pursuant to Government Code sections 65864 through 65869.5 and Contra Costa County Board of Supervisors' Resolution No. 85/412, which establishes the County's procedures for the consideration of development agreements.

**SECTION 3. Recitals.**

- (a) FT Land, LLC, ("Applicant") desires to develop the Tassajara Parks Project (the "Project") in the Tassajara Valley area of unincorporated Contra Costa County. The Project includes the preservation of an approximately 118-acre portion of the "Northern Site," and an approximately 609-acre portion of the "Southern Site." The Project also includes the development of up to approximately 125 single-family homes on an additional approximately 30 acres of the Northern Site. The Project and the location of the Project are more particularly described in the "Development Agreement by and between Contra Costa County and FT Land, LLC, Relating to the Development Commonly Known as Tassajara Parks," which is attached as Exhibit 1 (the "Development Agreement").
- (b) The following discretionary approvals (collectively, the "Discretionary Approvals") are required for the Project: a General Plan amendment to change the land use designation for the Northern Site from Agricultural Lands (AL) to a combination of Parks and Recreation (PR) and Single Family Residential High Density (SH); a General Plan amendment to change the land use designation for the Southern Site from Agricultural Lands (AL) to a combination of Parks and Recreation (PR) and Public/Semi-Public (PS); a rezoning ordinance to rezone the Northern Site and Southern Site to a Planned Unit (P-1) zoning district; a vesting tentative map to subdivide an approximately 30-acre portion of the Northern Site into 125 single-family residential parcels; preliminary and final development plans to allow for construction of the Tassajara Parks Project and associated infrastructure, utility, and roadway improvements, two staging areas, and an earthen trail; the approved removal of 19 trees on the Northern Site; and exceptions from the provisions of Title 9 of the County Ordinance Code.

- (c) An environmental impact report and its related CEQA mitigation monitoring and reporting program have been prepared for the Project.
- (d) On June 9, 2021, the Contra Costa County Planning Commission held a public hearing to consider the Applicant's application for the Development Agreement. Notice of the hearing was given in accordance with Government Code sections 65864 through 65869.5 and Board of Supervisors' Resolution No. 85/412. After the hearing, the Planning Commission recommended that the Board of Supervisors adopt this ordinance to approve the Development Agreement.
- (e) Notice of the public hearing for the Board of Supervisors to consider the Applicant's application for the Development Agreement, and to consider adopting this ordinance approving the Development Agreement, was given in accordance with Government Code sections 65864 through 65869.5, and Board of Supervisors' Resolution No. 85/412.

**SECTION 4. Findings.** The Board of Supervisors has independently reviewed the Development Agreement and finds as follows:

- (a) The provisions of the Development Agreement are consistent with the Contra Costa County 2005-2020 General Plan.
- (b) The Development Agreement satisfies the requirements of Government Code sections 65864 through 65869.5 and Board of Supervisors' Resolution No. 85/412. Government Code sections 65867.5(b) and 66473.7 do not apply to the Development Agreement because the Project does not include a "subdivision" as that term is defined in Government Code section 66473.7.

**SECTION 5. Approval of Development Agreement.** The Board of Supervisors hereby approves the Development Agreement in the form attached hereto as Exhibit 1, without modification. The Board of Supervisors authorizes the Director of Conservation and Development to execute the Development Agreement on behalf of the County.

**SECTION 6. Recording of Development Agreement.** Within 10 days after the Development Agreement is fully executed, the Clerk of the Board of Supervisors shall record the Development Agreement in the Official Records of the Contra Costa County Clerk-Recorder pursuant to Government Code section 65868.5.

**SECTION 7. Effective Date.** This ordinance shall become effective 30 days after passage. Within 15 days of passage, this ordinance shall be published once, with the names of the Supervisors voting for and against it, in the East Bay Times, a newspaper of general circulation published in this County.

PASSED and ADOPTED on \_\_\_\_\_ by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

\_\_\_\_\_  
Board Chair

ATTEST:  
MONICA NINO, Clerk of the Board  
of Supervisors and County Administrator

By \_\_\_\_\_  
Deputy

Attachment:  
Exhibit 1 – Development Agreement

SMS  
H:\Client Matters\Cons & Dev\Tassajara Parks\Ordinance 2021-23 (Tassajara Development Agreement).docx

EXHIBIT 1

RECORDING REQUESTED BY  
CONTRA COSTA COUNTY

WHEN RECORDED, RETURN TO:

Contra Costa County  
Clerk of the Board of Supervisors  
651 Pine Street  
Room 106  
Martinez, CA 94553

Record at the request and for the benefit  
of the County of Contra Costa pursuant to  
Government Code §§ 6301 and 27383

Space Above Reserved for Recorder's Use Only

**DEVELOPMENT AGREEMENT**

**BY AND BETWEEN**

**CONTRA COSTA COUNTY**

**AND**

**FT LAND, LLC**

**RELATING TO THE DEVELOPMENT COMMONLY KNOWN AS**

**TASSAJARA PARKS**

**DEVELOPMENT AGREEMENT BY AND BETWEEN  
CONTRA COSTA COUNTY AND FT LAND, LLC,  
RELATING TO THE DEVELOPMENT COMMONLY KNOWN AS TASSAJARA PARKS**

This Development Agreement (“**Agreement**”) is entered into as of the Effective Date (defined in Section 1.03), by and between Contra Costa County, a political subdivision of the State of California (“**County**”), and FT Land, LLC, a California limited liability company (“**Developer**”). The County and the Developer are sometimes referred to individually herein as a “**Party**” and collectively as the “**Parties**.”

**RECITALS**

A. To strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic risk of development, the Legislature of the State of California enacted Government Code section 65864 *et seq.* (“**Development Agreement Statute**”), which authorizes a county to enter into a development agreement with any person having a legal or equitable interest in real property regarding the development of such property and establishing certain development rights therein.

B. In accordance with the Development Agreement Statute, the County adopted Resolution No. 85/412 and Ordinance No. 92-73 establishing rules, regulations, procedures, and requirements for consideration and adoption of development agreements (“**Development Agreement Regulations**”). This Agreement has been processed, considered, and executed in accordance with the Development Agreement Regulations.

C. The Developer has a legal or equitable interest in approximately 771 acres of real property in the Tassajara Valley area of unincorporated Contra Costa County, as more particularly described in Exhibit A and shown on the map set forth in Exhibit B, both of which are attached hereto and incorporated herein (“**Subject Property**”). Approximately 155 acres of the Subject Property is commonly known as the “**Northern Site**,” while the remaining approximately 616 acres is commonly known as the “**Southern Site**.”

D. The Developer desires to develop the Subject Property with the “**Tassajara Parks Project** or **Project**” (as defined in Section 1.02). Under the terms of this Agreement, the Tassajara Parks Project conditions of approval, and other applicable requirements, the Developer shall, among other things, do all of the following:

1. As shown on attached Exhibit C, the Developer shall permanently preserve a total of approximately 727 acres of land within the Subject Property for non-urban uses, such as recreation, open space, agriculture, grazing, scenic, wetland preservation and creation, and habitat mitigation (collectively, “**Dedication Areas**”). Approximately 101 acres of the foregoing lands on the Northern Site shall be preserved by changing its general plan designation to Parks and Recreation (PR), and conveying such lands in fee title to the East Bay Regional Park District and/or the Regional Parks Foundation (collectively, “**EBRPD**”) pursuant to a dedication agreement by and between the Developer and the EBRPD (“**EBRPD Dedication Agreement**”). In addition, approximately 609 acres located on the Southern Site shall be preserved by changing its general plan designation to Parks and Recreation (PR) and Public/Semi-Public (PS) for agriculture and other non-urban uses and by conveying

fee title to that land to the EBRPD in accordance with the EBRPD Dedication Agreement, subject to a conservation easement in favor of the relevant resource agencies in accordance with the Regulatory Approvals (as defined below). As noted below, the remaining 7 acres located on the Southern Site were contingently offered for dedication on December 2, 2015 (“**Contingent Offer of Land Dedication**”) to the San Ramon Valley Fire Protection District (“**SRVFPD**”); if SRVFPD does not accept this Contingent Offer of Land Dedication, then these lands shall also be conveyed to the EBRPD in accordance with the EBRPD Dedication Agreement.

2. As more particularly described in Section 3.01 of this Agreement, the Developer shall make a non-refundable contribution of \$4,000,000 to an agricultural preservation and enhancement fund established by the County to support, develop, and implement a broad array of policies, programs, and other actions intended to enhance agriculture and to preserve open space, wetlands, parks, recreation and other non-urban uses in the Tassajara Valley.
3. As more particularly described in Section 3.02 of this Agreement and the Tassajara Parks Project conditions of approval, the Developer shall make a non-refundable contribution of \$2,500,000 to the Contra Costa Livable Communities Trust Fund.
4. As more particularly described in the Project’s conditions of approval, the Developer shall construct off-site improvements on the adjacent Tassajara Hills Elementary School parking lot to improve existing parking and circulation deficiencies, particularly during drop off and pick up times.
5. As more particularly described in the Project’s conditions of approval, the Developer shall construct and dedicate to the EBRPD a pedestrian staging area on the Northern Site.
6. As more particularly described in the Contingent offer of Land Dedication, the Developer has made a contingent offer for dedication to the SRVFPD of approximately 7 acres for potential future public use by SRVFPD.

E. By this Agreement, the Developer will receive assurance that it may proceed with the development of the Subject Property for the Tassajara Parks Project in accordance with the Applicable Law (defined in Section 2.03).

F. Consistent with Government Code section 65867 and other applicable law, and County Ordinance Code section 26-2.408, the County Planning Commission held a public hearing on an application for the Project on September \_\_, 2020. The County Planning Commission recommended that the County Board of Supervisors (“**Board**”) certify the Environmental Impact Report for the Tassajara Parks Project (SCH # 2014052089) (“**EIR**”) and approve this Agreement and the following related discretionary approvals (each an “**Approval**” and, collectively, “**Approvals**”):

1. Both of the following (together, “**General Plan Amendments**”): (a) a General Plan amendment to change the land use designation for the Northern Site from

Agricultural Lands (AL) to a combination of Parks and Recreation (PR) and Single Family Residential High Density (SH); and (b) a General Plan amendment to change the land use designation for the Southern Site from Agricultural Lands (AL) to a combination of Parks and Recreation (PR) and Public/Semi-Public (PS).

2. A rezoning ordinance to rezone the Northern Site and Southern Site to a Planned Unit (P-1) zoning district (“**Rezoning**”).
3. A vesting tentative map to subdivide an approximately 30-acre portion of the Northern Site into 125 single-family residential parcels (“**Residential Development Area**”).
4. Preliminary and final development plans to allow for construction of the Tassajara Parks Project and associated infrastructure, storm drain improvements, utilities, roadway improvements, and pedestrian staging area (“**PDP/FDP**”).
5. A tree permit (“**Tree Permit**”) to remove 19 trees on the Northern Site, as more particularly described in the Tree Permit.
6. Approval of a change to the urban limit line pursuant to Ordinance Code section 82-1.018(a)(3) to allow urban uses within the Residential Development Area (“**ULL Modification**”).

G. To comply with the California Environmental Quality Act (Cal. Pub. Res. Code § 21000 *et seq.* and 14 Cal. Code Regs. § 15000 *et seq.*; “**CEQA**”), on \_\_\_\_\_, 2020, the Board certified the EIR and approved a mitigation monitoring and reporting program (“**MMRP**”) for the Tassajara Parks Project (SCH #2014052089), and making required findings as set forth in that resolution and accompanying board order. On this same day, consistent with Government Code section 65867, Ordinance Code section 82-1.018(a)(3), and other applicable law, the Board considered and approved a preservation agreement (“**Preservation Agreement**”) to preserve the Dedication Areas.

H. Thereafter, on \_\_\_\_\_, 2020, the Board held a public hearing on an application for the Project and adopted Ordinance No. \_\_\_\_\_ to approve this Agreement. At this same hearing, the Board approved the Approvals.

I. The County anticipates that during the “**Term**” (as defined below) of this Agreement and subsequent to the Effective Date, the Developer will seek from the County and other public agencies certain other implementing approvals, entitlements, and permits that are necessary or desirable for the Tassajara Parks Project. Those “**Subsequent Approvals**” (as defined below) are any that may be necessary or desirable to develop the Tassajara Parks Project and may include, but are not limited to, annexation of portions of the Northern Site into the service area boundaries of the CCCSD and the EBMUD, as well as the GHAD, acceptance or vacation of minor portions of rights of way, lot line adjustments, encroachment permits, grading permits, site development permits, building permits, certificates of occupancy, one or more final maps, water supply will-serve letters, “**Regulatory Approvals**” (defined below), and any amendments to the foregoing (each a “**Subsequent Approval**” and, collectively, “**Subsequent Approvals**”).



J. The Board has made a finding that this Agreement is consistent with the County's General Plan and the County Ordinance Code, both as amended by the Approvals.

NOW, THEREFORE, in consideration of the promises, covenants, and provisions set forth herein, the receipt and adequacy of which consideration is acknowledged, the County and the Developer agree as follows.

## AGREEMENT

### ARTICLE I. DESCRIPTION OF SUBJECT PROPERTY, PROPOSED DEVELOPMENT, EFFECTIVE DATE, AND TERM.

**Section 1.01. Description of Subject Property.** This Agreement vests laws applicable to development of the Tassajara Parks Project on the Subject Property, as more particularly described in Exhibit A and depicted in Exhibit B.

**Section 1.02. Proposed Development.** Subject to the terms of this Agreement, the other Approvals, the EIR, and any Subsequent Approvals, the Developer may construct 125 single-family homes on the semi-flat, 30-acre portion of the Northern Site referred to in the EIR as the "Residential Development Area," along with related on-site infrastructure and improvements, including interior roadways, storm drain facilities, landscaping, utilities, a pedestrian staging area, as the project is further described in the EIR and the Approvals (the "**Tassajara Parks Project**").

**Section 1.03. Effective Date.** The rights, duties, and obligations hereunder shall be effective and the Term (as defined in Section 1.05) shall commence on the "**Effective Date**," which shall be the effective date of the ordinance adopted by the Board approving this Agreement.

**Section 1.04. Initial Term.** The term of this Development Agreement shall commence on the Effective Date and shall expire 10 years thereafter ("**Initial Term**"), unless it is sooner terminated, or unless it is extended as provided in Section 1.05 below.

**Section 1.05. Extended Term.** The Term of this Agreement may be extended beyond the Initial Term only in the manner provided in this Section 1.05. The Initial Term, together with any extensions of the Initial Term under this Section 1.05, are collectively referred to as the "**Term**."

(a) Mandatory and Discretionary Extensions.

(i) *Mandatory Extensions.*

(A) If the Developer is in compliance with the terms and conditions of this Agreement and has recorded a first final map for the Tassajara Parks Project on the Subject Property by the 180th day before the end of the Initial Term, the Initial Term shall be extended automatically for one additional five-year period ("**First Mandatory Term Extension**") that commences automatically on the day immediately following the last day of the Initial Term, and that ends five years thereafter.

(B) If the Developer is in compliance with the terms and conditions of this Agreement and has constructed, or has commenced vertical construction of,

the 75th residential unit of the Tassajara Parks Project on the Subject Property by the 180th day before the end of the First Mandatory Term Extension or the end of the “**Discretionary Term Extension**,” as defined below, the Term shall be extended automatically for an additional five-year period (“**Second Mandatory Term Extension**”) that commences automatically the day immediately following the last day of the First Mandatory Term Extension or Discretionary Term Extension, and that ends five years thereafter.

(ii) *Discretionary Extension.* If the Developer is in compliance with the terms and conditions of this Agreement but has not recorded the first final map for the Tassajara Parks Project on the Subject Property by the 180th day before the end of the Initial Term, the Developer may request that the County extend the Initial Term by one additional five-year period by giving the County a written extension request at least 120 days before the end of the Initial Term. After the County receives that written extension request, but no later than 30 days before the end of the Initial Term, the Board shall consider extending the Initial Term for one additional five-year period (“**Discretionary Term Extension**”). The Board shall have discretion to determine whether to approve the Discretionary Term Extension under this Section 1.05(a)(ii). A Discretionary Term Extension granted under this Section 1.05(a)(ii) shall be in lieu of a First Mandatory Term Extension under Section 1.05(a)(i).

(b) Additional Extensions; Tolling. In addition to Term extensions under Section 1.05(a), the Term may be further extended or tolled as provided in this Section 1.05(b).

(i) *Extension for Enforced Delay.* If the Developer encounters an Enforced Delay (as defined in this Section 1.05(b)(i)) and desires to extend the Term because of that delay, the Developer shall give the County written notice of the Enforced Delay. If that written notice does not state the duration of the Enforced Delay because the delay remains ongoing, the Developer shall give the County written notice of the date the Enforced Delay ends within 90 days after the end of the delay. Following the end of the Enforced Delay, the County Director of Conservation and Development (“**Director**”) shall provide the Developer written notice of the extension of the Term, which shall be extended for as many days as the Enforced Delay occurs, as reasonably determined by the Director. For the purposes of this Agreement, “**Enforced Delay**” means a delay or default resulting or arising only from one or more of the following: (A) a natural disaster or other force majeure event; (B) an accident that requires all development activities to stop; (C) the interruption of services by suppliers for a substantial period of time when no alternative suppliers are available; (D) the unavailability of construction materials for a substantial period of time when no substitute materials are available; (E) war, civil disturbance, or riot where martial law is declared; or (F) any other severe occurrence that is beyond the Developer’s reasonable control, as determined by the Director in his or her sole discretion.

(ii) *Tolling for Third-Party Lawsuit.* If any third-party files a lawsuit to challenge (A) this Agreement, (B) the County’s certification of the EIR, (C) the other Approvals, (D) the Subsequent Approvals, or (E) any action taken or finding made by the County in connection with the Approvals or Subsequent Approvals (each a “**Third-Party Lawsuit**”), the Developer may request that the Term be tolled during the pendency of the Third-Party Lawsuit by providing a written notice (“**Tolling Notice**”) to the County within thirty (30) days after the commencement of the lawsuit. The tolling of the Term shall automatically begin upon the County’s receipt of the Tolling Notice, and it shall end on the earliest of the following to occur: (A) the date on which a court issues a final judgment in the Third-Party Lawsuit and the expiration of all appeal periods following that judgment; or (B) the date the Third-Party Lawsuit

is dismissed. If, in a Third-Party Lawsuit, the court issues a temporary restraining order or injunction prohibiting the Developer from taking actions to proceed with the Tassajara Parks Project, the Term shall automatically be tolled beginning on the date the temporary restraining order or injunction is issued, and ending on the date the temporary restraining order or injunction is lifted or vacated.

(iii) *Tolling for Initiative or Referendum.* If the subject of an initiative petition or referendum petition would overturn, set aside, or substantially modify the Approvals or the Subsequent Approvals, or otherwise substantially impair the development of the Tassajara Parks Project, the Term of this Agreement shall be tolled under this Section 1.05(b)(iii). The Term shall be automatically tolled beginning on the date that the initiative or referendum petition is submitted to the County elections official for signature verification, and ending on the date the last of the following that occurs: (A) the date the County elections official determines the petition does not include a sufficient number of signatures; (B) the date the Board, in lieu of an election, either adopts the ordinance without alteration (initiative), or repeals the ordinance (referendum), pursuant to Elections Code section 9118 or 9145; or (C) the date of the election on the measure, if placed on the ballot and approved by a majority of the voters at the election.

## **ARTICLE II. STANDARDS, LAWS, AND PROCEDURES GOVERNING THE PROPOSED DEVELOPMENT.**

**Section 2.01. Vested Right to Develop.** The Developer shall have the right to pursue the Tassajara Parks Project in accordance with the Applicable Law (defined in Section 2.03), including the other Approvals, the Subsequent Approvals after they are granted, and the provisions of this Agreement, and including, but not limited to, the Developer's vested right to develop the Tassajara Parks Project on the Subject Property. Notwithstanding the foregoing or anything to the contrary in this Agreement, the County shall apply to the Tassajara Parks Project the then-current California Building Standards Codes (including the then-current California Fire Code), and all then-current local amendments to those codes, to the extent that the codes have been adopted by the County or the SRVFPD and are in effect. In the event of any conflict or inconsistency between this Agreement and the Applicable Law, or between this Agreement and any Subsequent Approvals, to the fullest extent legally possible, this Agreement shall prevail and control.

**Section 2.02. Development Standards.** The permitted uses of the Subject Property, the density and intensity of uses, the maximum height, bulk, and size of the proposed buildings, provisions for reservation or dedication of land for public purposes and the location of public improvements, the general location of public utilities, and other terms and conditions of development applicable to the Tassajara Parks Project shall be as set forth in the Applicable Law (defined in Section 2.03), the Approvals, and the Subsequent Approvals (collectively, "**Development Standards**").

**Section 2.03. Applicable Law.** "**Applicable Law**" consists of the rules, regulations, and official policies governing the Development Standards in Section 2.02 applicable to the Tassajara Parks Project existing as of the Effective Date, as supplemented and modified by the Approvals, the Subsequent Approvals once they are approved, and Later Enactments (defined in Section 2.05), all except as otherwise provided in this Agreement.

**Section 2.04. Fees, Charges, Exactions, and Dedications.**

(a) Processing Fees and Charges. The Developer shall pay all applicable processing, inspection, plan check, condition compliance, and building permit fees (collectively, "**Processing Fees**") required by the County under then-current regulations for processing applications and requests for permits, approvals, and other actions, and for monitoring compliance with any permits issued or approvals granted, or the performance of any conditions with respect to those permits or approvals required of the Developer under this Agreement.

(b) All impact fees, mitigation fees, connection fees, and all other fees and charges that are not Processing Fees that are in effect as of the Effective Date shall apply to the Tassajara Parks Project for a period of 10 years from the Effective Date. After expiration of this 10-year time period, the Developer shall be required to pay the amount of all applicable impact fees, mitigation fees, connection fees, and all other fees and charges then in effect at the time they are required to be paid. Notwithstanding anything to the contrary in this Section 2.04(b), if a fee or charge vested by this Section 2.04(b) is subject to a periodic increase under the ordinance that adopted the fee or charge (e.g., a periodic increase based on changes in the consumer price index or construction cost index), the periodic increase shall continue to apply to the fee or charge at issue.

**Section 2.05. No Conflicting Enactments.** The County, or the electorate through the adoption of initiatives, may enact new or modified rules, regulations, or official policies after the Effective Date (each a "**Later Enactment**" and, collectively, "**Later Enactments**"). All Later Enactments shall be applicable to the Tassajara Parks Project only to the extent that application of any Later Enactment does not modify the Tassajara Parks Project, does not prevent or impede development of the Tassajara Parks Project, and does not conflict with this Agreement. Any Later Enactment shall be deemed to conflict with this Agreement if the enactment seeks to accomplish any one or more of the following results, either with specific reference to the Tassajara Parks Project or the development of the Subject Property, or as part of a general enactment that would otherwise apply to the Subject Property:

- (a) Reduce the density or intensity of the Tassajara Parks Project under the Applicable Law;
- (b) Change any land use designation or permitted use of the Subject Property for the Tassajara Parks Project as described in the Applicable Law;
- (c) Require, for any work necessary to develop the Tassajara Parks Project on the Subject Property, the issuance of permits, approvals, or entitlements by the County other than those required by Applicable Law; or
- (d) Materially limit the processing of, the procuring of applications for, or approval of the Subsequent Approvals.

Notwithstanding the foregoing, the County shall not be precluded from applying a Later Enactment to the Tassajara Parks Project where the Later Enactment is: (a) specifically mandated by changes in state or federal laws or regulations adopted after the Effective Date, as provided in Government Code section 65869.5; (b) specifically mandated by a court of competent jurisdiction; (c) required by changes to the California Building Standards Codes (including the California Fire Code), and similar life safety regulations that may change from time to time, including all local amendments adopted by the County or the SRVFPD; or (d) required as a result of facts, events, or circumstances presently unknown or unforeseeable that

would otherwise have an immediate adverse risk on the health or safety of the surrounding community, as determined by the County in its reasonable discretion. Except as expressly provided herein, this Agreement does not restrict the County's exercise of its police powers, and the County reserves those powers to itself.

**Section 2.06. Conflict of State or Federal Laws.** In the event that state and/or federal law(s) and/or regulation(s) enacted after the Effective Date prevent or preclude compliance with one or more provisions of this Agreement, the Party identifying the conflict shall provide the other Party, as soon as practicable after the conflict becomes known to the notifying Party, written notice of the conflict, a copy of the law(s) and/or regulation(s) that give rise to the conflict, and a statement explaining the nature of the conflict. Within 30 days after that notice is given, the Parties shall meet and confer in good faith in a reasonable attempt to modify this Agreement so as to comply with the state and/or federal law(s) and/or regulation(s) giving rise to the conflict, pursuant to Government Code section 65869.5. If the Developer does not consent to an amendment that is required to make this Agreement consistent with state and/or federal law(s) and/or regulation(s) in accordance with Government Code section 65869.5, the County shall provide the Developer written notice of the immediate suspension of this Agreement, and the Agreement shall remain suspended until the date the Agreement is so amended. The Term shall not be tolled or extended for any period of suspension under this Section 2.06.

**Section 2.07. Life of Approvals; Modification of the ULL.**

(a) The term of any Approval and any Subsequent Approval for the Tassajara Park Project, including a parcel or tentative map (pursuant to Government Code section 66452.6(a)), shall be deemed extended for the longer of the Term of this Agreement or the term otherwise applicable to such Approval or Subsequent Approval.

(b) Notwithstanding anything to the contrary herein, in the other Approvals, or in the Tassajara Parks Project conditions of approval, the Developer acknowledges and agrees that if the Developer has not filed its first final map by the end of the Initial Term plus any extensions obtained under Section 1.05, then the Board shall have the right, but not the obligation, to rescind the ULL Modification, General Plan Amendments, and the Rezoning (if necessary) pursuant to the provisions of the Planning and Zoning Law (Government Code §§ 65000-66035). If the Board elects, in its discretion, to so rescind, then the Developer shall not challenge said decision in litigation. In the event that the Board elects to rescind the ULL Modification, General Plan Amendments and the Rezoning (if necessary) pursuant to this Section 2.07(b), the Developer hereby waives and releases the County and its boards, commissions, officers, employees, and agents (collectively, "**Released Entities**") from any and all claims, costs, losses, actions, fees, liabilities, expenses, and damages of any kind whatsoever (collectively, "**Liabilities**") that the Developer incurs in connection with or as a result of any rescission of the ULL Modification, General Plan Amendments, and the Rezoning under this Section 2.07(b). The Developer knowingly waives its right to make any claim against any of the Released Entities for the Liabilities discussed in this Section 2.07(b) and, as to those Liabilities, the Developer expressly waives all rights provided by section 1542 of the California Civil Code, which provides as follows: "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY." The requirements of this Section 2.07(b) shall survive the expiration or termination of this Agreement and shall be

expressly referenced in the applicable transfer document(s) for the conveyance of all or portion(s) of the Project in accordance with Article VIII below.

**Section 2.08. Timing of Construction and Completion.** Although the Developer represents that it intends to begin Tassajara Parks Project construction within two years of the Effective Date subject to the Developer obtaining all Subsequent Approvals, the Parties agree there is no requirement in this Agreement that the Developer commence or complete construction of the Tassajara Parks Project within any particular period of time during the Term and that the Developer cannot, at this time, predict when or the rate at which the Tassajara Parks Project shall be constructed. Therefore, notwithstanding anything to the contrary in County Ordinance Code sections 84-66.1406(1) and 84-66.1602, and any other provisions of the Ordinance Code, the County has ordained by adopting the ordinance approving this Agreement that the Developer may commence construction at any time during the Term of this Agreement. The Parties acknowledge that construction may be delayed by litigation, market factors, or other reasons that are not within the Developer's control. In light of the foregoing, the Parties agree that the Developer may construct the Tassajara Parks Project at the rate and time the Developer deems appropriate within the exercise of its sole subjective business judgment, subject only to the terms of this Agreement and East Bay Municipal Utility District ("**EBMUD**") Policy 3.01, which limits the cumulative number of dwelling units that may be added outside the EBMUD Ultimate Service Boundary as a result of small boundary adjustments to no more than 100 in any two-year period.

**Section 2.09. Processing Subsequent Approvals.** The Subsequent Approvals shall be deemed mechanisms to implement those final policy decisions reflected by the Approvals and other provisions of Applicable Law. Upon submission by the Developer of an application for a Subsequent Approval, the County shall cooperate and diligently and expeditiously work to promptly process and consider approving that application. Subject to the terms of this Agreement and the Developer's rights hereunder, the County shall retain its discretionary authority in its consideration of any and all Subsequent Approvals that involve discretionary decisions. The County shall consider an application for a Subsequent Approval with reference to the Applicable Law, any applicable state or federal law, Later Enactments, and this Agreement.

**Section 2.010. Actions by Third Parties Necessary to Implement the Approvals; Final Map Approval and Recordation.**

(a) In the Developer's sole discretion, but consistent with the Approvals, the Developer may apply for such other permits, grants of authority, agreements, and other approvals from other entities (together, "**Regulatory Approvals**"), including, but not limited, to the United States Fish and Wildlife Service ("**USFWS**"), the United States Army Corps of Engineers ("**ACOE**"), the California Department of Fish and Wildlife ("**CDFW**"), the San Francisco Regional Water Quality Control Board ("**RWQCB**"), the Contra Costa Local Agency Formation Commission ("**LAFCO**"), the EBMUD, the EBRPD, the Central Contra Costa Sanitary District ("**CCCSD**"), and the SRVFPD, as may be necessary to implement the Tassajara Parks Project.

(b) Notwithstanding anything to the contrary herein, the Developer understands and agrees that the County shall have no obligation to approve the final map for the Tassajara Parks Project until the Developer: (i) satisfies all relevant Project conditions of approval; (ii) provides the Director with a copy of the fully executed EBRPD Dedication Agreement; and (iii) provides the Director with a copy of an approved Acceptance of Offer of

Dedication (“**EBRPD Acceptance**”), which shall be held in escrow until its recordation concurrent with the recordation of the Project’s first final map. Upon the County’s receipt of the documents in subsections (i) through (iii) above, and subject to all other applicable requirements of this Agreement, the Tassajara Parks Project conditions of approval, the Approvals, the Subsequent Approvals, and state and federal laws and regulations, the County shall approve the final map or first final map for the Tassajara Parks Project for recording. Said recordation shall happen concurrently with the recordation of the EBRPD Acceptance.

(c) The County shall not issue a grading permit or any other construction or building permit that would allow land disturbance or construction in the Residential Development Area until after the first final map for the Tassajara Parks Project is recorded. Notwithstanding anything to the contrary herein, this provision shall not be interpreted to prevent the Developer from obtaining any required approval necessary to comply with any Project conditions of approval that may be necessary prior to the County’s approval of the first final map.

**Section 2.011. No Limitation on Future Discretionary Actions.** Except to the extent this Agreement expressly provides otherwise, nothing in this Agreement requires the County, or any of its boards or commissions, to adopt any future ordinances or resolutions, to enter into any other agreements with the Developer, or to exercise its discretion in any particular manner in the future.

**ARTICLE III. DEVELOPER OBLIGATIONS.**

**Section 3.01. Preservation and Agricultural Enhancement Contribution.** Pursuant to the requirements set forth in this Section 3.01, the Developer shall provide the County a \$4,000,000 contribution (“**\$4M Ag Contribution**”) to an agricultural enhancement and preservation fund to be established by the County to support, develop, and implement a broad range of policies, programs, and other actions intended to enhance agriculture and to preserve open space, wetlands, parks, recreation and other non-urban uses in the Tassajara Valley. The Developer shall pay the County the \$4M Ag Contribution, and any CPI increases accrued on the contribution, in up to two installment payments. For purposes of this Section 3.01, inflationary increases shall be based on any change in the Consumer Price Index for the San Francisco-Oakland-Hayward Combined Statistical Area (U.S. Bureau of Labor Statistics) (“CPI”) for the 12-month period ending on the December 31 immediately prior to the March 1 when the increase is effective. The Developer shall pay the County one-half of the principal amount of the \$4M Ag Contribution, plus all CPI increases accrued as of this first date payment is made, within five days after the recordation of the Project’s first final map. The Developer shall pay the County the principal amount of the unpaid \$4M Ag Contribution balance, plus all CPI increases accrued as of the date this second payment is made, as a condition of issuance of the first building permit (excluding models) for the Tassajara Parks Project. For purposes of this Section 3.01, beginning on March 1, 2021, and on each March 1 thereafter, the principal amount of the \$4M Ag Contribution remaining unpaid shall increase based on any change in the CPI.

**Section 3.02. Contribution to Contra Costa Livable Communities Trust Fund.** Pursuant to the requirements set forth in this Section 3.02, the Developer shall provide the County a \$2,500,000 contribution (“**\$2.5M LCTF Contribution**”) to the existing Contra Costa Livable Communities Trust Fund to be used by the County in its discretion in accordance with any adopted guidelines for the use of fund revenues. The Developer shall pay the \$2.5M LCTF Contribution, and all CPI increases to said contribution, on a per-residential unit basis of not less than \$20,000 per residential unit plus the applicable inflationary increase, which payment shall

be made at the time of issuance of a building permit for any residential unit of the Tassajara Parks Project. For purposes of this Section 3.02, beginning on March 1, 2021, and on each March 1 thereafter, the principal amount of the \$2.5M LCTF Contribution remaining unpaid, if any, shall increase based on any change in the CPI for the 12-month period ending on the December 31 immediately prior to the March 1 when the increase is effective.

**Section 3.03. County Service Area.** As a condition of the approval of the Tassajara Parks Project, the County shall require the Developer to cooperate with the County to form a county service area that includes the Subject Property to support transportation services, as more particularly described in the Tassajara Parks Project conditions of approval. The Developer shall be responsible for paying all costs and expenses to form the county service area, and shall reimburse the County for all costs and expenses that the County incurs to form the county service area, as more particularly described in the Tassajara Parks Project conditions of approval.

**Section 3.04. Offer of Dedication of Preservation Land.** Subject to all terms and conditions set forth in the EBRPD Dedication Agreement, the Developer shall be required to convey the Dedication Areas to the EBRPD. The County shall not be required to approve or record the Project's first final map until all requirements set forth in Section 2.10 above have been satisfied in order to ensure that the Dedication Areas are conveyed to the EBRPD to ensure their permanent protection and preservation as contemplated in the Approvals.

#### **ARTICLE IV. AMENDMENTS.**

**Section 4.01. Amendment of this Agreement.** This Agreement may be amended from time to time, in whole or in part, only by mutual written consent of the Parties or their successors in interest, in accordance with the provisions of Government Code sections 65867, 65867.5, and 65868, and in accordance with the Development Agreement Regulations. Following any amendment of this Agreement, the amended Agreement shall be recorded in accordance with Government Code section 65868.5.

**Section 4.02. Amendments of Approvals or Subsequent Approvals.** No Subsequent Approval that is granted pursuant to this Agreement, or amendment of an Approval or Subsequent Approval that is consented to by the Developer, shall require an amendment to this Agreement, and the Subsequent Approval or amendment of Approval or Subsequent Approval shall be deemed to be incorporated into this Agreement as of the date of the approval or amendment is effective.

#### **ARTICLE V. DEFAULTS; PERIODIC REVIEW.**

**Section 5.01. Default and Litigation.**

(a) **Default.** Any failure by either Party to perform any term or provision of this Agreement, which failure continues uncured for a period of ninety (90) days following written notice of such failure from the non-defaulting Party (unless such period is extended by written mutual consent), shall constitute a default under this Agreement. Written notice given pursuant to the preceding sentence shall specify the nature of the alleged failure and, where appropriate, the manner in which said failure may be cured. If the nature of the alleged failure is such that it cannot reasonably be cured within that 90-day period, then, within that 90-day period, the defaulting Party shall begin acting to cure the default and shall continue acting diligently through the completion of the cure. If the default is not cured as required by



this Section 5.01(a), the non-defaulting Party may pursue legal action in accordance with Section 5.01(b), or terminate this Agreement in accordance with Section 5.03, or both.

(b) Litigation. If a default is not cured in the manner required by Section 5.01(a), the non-defaulting Party shall provide the defaulting Party written notice (“**Dispute Notice**”) that specifies, in reasonable detail, the reasons that a default and dispute exists, and what, if any, reasonable actions may be taken to cure the default and resolve the dispute. Within 30 days after the Dispute Notice is given, the Parties shall meet in person and confer in good faith in an attempt to resolve the dispute. In addition to any other rights or remedies, if, following the meet and confer process, the non-defaulting Party determines that the dispute cannot be resolved informally, the non-defaulting Party may institute legal action to cure, correct, or remedy the default, enforce any covenant or agreement herein, enforce by specific performance the obligations and rights of the Parties hereto, or obtain any other remedy consistent with this Agreement.

(c) No Waiver of Tort Claims Act. Nothing in this Agreement shall relieve a non-defaulting Party from satisfying any applicable requirements of the California Government Claims Act.

**Section 5.02. Periodic Review.** No later than 10 months after the Effective Date, and no later than every 12 months thereafter, the Developer and the Director, or designee, shall meet and review this Agreement annually to ascertain the good faith compliance by the Developer with the Agreement’s terms pursuant to the Development Agreement Statute. Additionally, the County shall review this Agreement annually in accordance with the Development Agreement Statute and the Development Agreement Regulations. If, as a result of the County’s annual review of this Agreement, the County determines, on the basis of substantial evidence, that the Developer has not complied in good faith with the terms of this Agreement, the County may terminate this Agreement in accordance with the Development Agreement Statute and the Development Agreement Regulations. The Developer reserves any and all rights it may have to challenge in court the County’s termination of this Agreement under this Section 5.02 and the basis therefor.

**Section 5.03. Termination.**

(a) Termination by County for Default. Notwithstanding anything to the contrary in Section 5.01, the County may terminate this Agreement if the Developer’s default of this Agreement is not cured within the time required under Section 5.01. If the County elects to consider terminating this Agreement due to a default by the Developer, then the County shall give a notice of intent to terminate this Agreement and the matter shall be scheduled for consideration and review by the Board in the manner set forth in the Development Agreement Statute and the Development Agreement Regulations. If the Board, in its sole discretion, determines that a default has occurred and elects to terminate this Agreement, the County shall give the Developer, by certified mail, written notice of termination of this Agreement under this Section 5.03(a) and this Agreement shall be terminated on the date that notice of termination is given. The Developer reserves any and all rights it may have to challenge in court the County’s termination of this Agreement under this Section 5.03(a) and the basis therefor.

(b) Termination by Developer. The Developer may terminate this Agreement in its sole discretion at any time, provided that the Developer pays all monies, payments, and contributions due the County under this Agreement before the Developer provides notice of termination under this Section 5.03(b). The Developer shall give the County,

by certified mail, written notice of termination of this Agreement under this Section 5.03(b) and this Agreement shall be terminated 30 days after that notice is given.

(c) Automatic Termination Upon Completion and Sale of Residential Lot. With respect to each single-family residential lot within a parcel designated by the Approvals for residential use, this Agreement shall automatically terminate as to that lot, without any further action by either Party or need to record any additional document, after both of the following have occurred: (i) construction of a dwelling unit on the residential lot has been completed and the County has issued a final certificate of occupancy for the dwelling unit; and (ii) title to the single-family residential lot and improvements has been conveyed by the Developer to a bona fide, good faith purchaser.

(d) Termination for Involuntary Acts. Notwithstanding anything to the contrary in this Agreement, the County, at its sole discretion, may terminate this Agreement if any of the following occurs:

(i) The County voters approve, at an election, a referendum that repeals the ordinance that the County Board of Supervisors adopts to approve this Agreement; provided that if the Developer timely files litigation challenging the referendum or election, the County shall not terminate this Agreement unless the litigation is abandoned by the Developer, or if the final resolution of litigation results in a court ruling holding the referendum or election invalid.; or

(ii) A court determines, in any Third Party Lawsuit and following the Developer's exhaustion of any appeals and the full and final resolution of same by a court of competent jurisdiction, that:

a. Subject to Section 12.04 below, this Agreement, or any section or portion of any section under Article III of this Agreement, is invalid or unenforceable; or

b. Subject to Section 20 thereof the Preservation Agreement, or any preservation obligations contained therein with respect to the Dedication Areas, is invalid or unenforceable; or

c. Any condition of approval for the Development that materially affects Developer's obligations under the Preservation Agreement or this Agreement determined by a court to be invalid or unenforceable; or

d. Subject to severability provisions contained therein, the EBRPD Dedication Agreement, or the Contingent Offer of Land Dedication, is invalid or unenforceable; or

e. The General Plan Amendments, Rezone or the ULL Modification, is invalid or unenforceable; or

f. The Project EIR is set aside or invalidated, and the Developer fails or refuses to cooperate with the County to prepare a new or revised EIR for the Project.

**Section 5.04. Attorney's Fees.** In any legal action or other proceeding brought by either Party to enforce or interpret this Agreement, each Party shall bear its own costs and attorney's fees.

**Section 5.05. Notice of Compliance.** Within 60 days after the Developer’s written request, but no more often than once per calendar year, the County shall execute and deliver to the Developer a written “**Notice of Compliance**” in recordable form, duly executed and acknowledged by the County, that certifies the following, but only if the County, in its reasonable discretion, determines the following to be true based on the County’s actual knowledge as of the date the notice is given:

(a) This Agreement is unmodified and in full force and effect, or, if there have been modifications to this Agreement, this Agreement is in full force and effect as modified and stating the date and nature of such modifications;

(b) There are no known current uncured defaults under this Agreement or, in the alternative, specifying the dates and nature of any such default.

The Developer may, in its sole discretion, record the County’s Notice of Compliance.

**ARTICLE VI. INDEMNITY.**

The Developer shall indemnify, defend (with counsel reasonably acceptable to the County), and hold harmless the County and its boards, commissions, officers, employees, and agents from all liabilities, damages, including, but not limited to, direct, indirect, and consequential damages, claims, demands, and losses, including for personal injury, death, and property damage, costs and expenses, including attorney’s and expert’s fees (collectively, “**Liabilities**”) that arise from or are connected with activities or operations of the Developer, or its contractors, subcontractors, agents, or employees, under this Agreement, or that are related to the development of the Tassajara Parks Project. The Developer’s obligations under this Article VI apply to all Liabilities suffered or alleged to have been suffered, regardless of whether the County prepared, supplied, or approved plans or specifications for the Tassajara Parks Project. However, the obligations of this Article VI do not apply to any Liabilities that arise solely from the operation of public improvements and facilities following the County’s acceptance of those improvements and facilities. The requirements of this Article VI are in addition to the requirements of the Defense and Indemnification Agreement between the County and the Developer dated \_\_\_\_\_, 2020 (“**Indemnity Agreement**”). If this Article VI conflicts with the requirements of the Indemnity Agreement, the requirements of the Indemnity Agreement shall prevail. This Article VI shall survive the expiration or termination of this Agreement.

**ARTICLE VII. NO AGENCY, JOINT VENTURE, OR PARTNERSHIP.**

The Tassajara Parks Project is a private undertaking of the Developer. Neither Party is acting as the agent of the other in any respect hereunder. Each Party is an independent contracting entity with respect to the terms and provisions contained in this Agreement. None of the terms or provisions of this Agreement shall be deemed to create a partnership, joint venture, or joint enterprise between or among the Parties to this Agreement.

**ARTICLE VIII. SALE, ASSIGNMENT, OR TRANSFER.**

**Section 8.01. Approval of Sale, Assignment, or Transfer.** Except as expressly set forth in Section 8.02, the Developer shall have the right to sell, assign, or transfer this Agreement, and all of its rights, duties, and obligations hereunder, to any person or entity at any time during the Term, subject to the prior written approval of the Director. That notice shall

include the contact information for the proposed purchaser, assignee, or transferee, and information that enables the Director to determine the experience, qualifications, and financial resources of the proposed purchaser, assignee, or transferee. The Director must render a decision on a request for such approval within forty-five days after receipt of the Developer's written request for the County's consent to the Developer's sale, assignment, or transfer of this Agreement, and the approval shall be deemed granted if no decision is made at the end of such period. The Director shall consent to the Developer's sale, assignment, or transfer of this Agreement if he or she determines that the purchaser, assignee, or transferee possesses the experience, qualifications, and financial resources to complete and operate the Tassajara Parks Project, or applicable portions thereof, which consent and determination shall not be unreasonably withheld, delayed or conditioned. Within 10 days after a sale, assignment, or transfer of this Agreement under this Section 8.01, the County and purchaser, assignee, or transferee shall execute a writing to amend this Agreement to substitute purchaser, assignee, or transferee for the Developer, and to include purchaser's, assignee's, or transferee's contact information in Article IX. Once said purchaser, assignee or transferee assumes the rights and obligations of this Agreement as set forth in a written assignment and assumption agreement ("**Assignment and Assumption Agreement**"), and a copy of the Assignment and Assumption Agreement is provided to the County, the Developer shall thereafter be released from any further obligations under this Agreement so assumed. The Developer shall assign the Indemnity Agreement to the purchaser, assignee, or transferee that is assigned this Agreement under this Section 8.01.

**Section 8.02. Sale, Assignment, or Transfer to Affiliate.** Notwithstanding Section 8.01, the Developer, in its sole discretion, may sell, assign, or transfer this Agreement to an entity of which a majority owner is also a majority owner of the Developer (an "**Affiliate**"). The Developer shall provide the County written notice at least 45 days in advance of any sale, assignment, or transfer of this Agreement under this Section 8.02. The notice shall (a) identify the purchaser, assignee, or transferee, (b) include contact information for the purchaser, assignee, or transferee, and (c) include all relevant filings with the California Secretary of State to establish common majority ownership of the Developer and the purchaser, assignee, or transferee. Within 10 days after a sale, assignment, or transfer of this Agreement under this Section 8.02, the County and the Affiliate shall execute a writing to amend this Agreement to substitute the Affiliate for the Developer and to include the Affiliate's contact information in Article IX. Once an Affiliate assumes the rights and obligations of this Agreement as set forth in a written Assignment and Assumption Agreement, and a copy of the Assignment and Assumption Agreement is provided to the County, the Developer shall thereafter be released from any further obligations under this Agreement so assumed. The Developer shall assign the Indemnity Agreement to Affiliate that is assigned this Agreement under this Section 8.02.

**Section 8.03. Continuing Obligations.** Beginning on the date of the sale, assignment, or transfer of this Agreement by the Developer to another person or entity, that other person or entity shall be required to satisfy all of the Developer's obligations under this Agreement in accordance with the terms and conditions of the Assignment and Assumption Agreement. However, the Developer shall continue to be obligated to defend, indemnify, and hold harmless the County and its boards, commissions, officers, employees, and agents from all Liabilities that arise before the sale, assignment, or transfer of this Agreement, unless the purchaser, assignee, or transferee expressly agrees in writing to assume those defense and indemnity obligations in the Assignment and Assumption Agreement, in which the Developer shall thereafter be released from said indemnification obligations.

**ARTICLE IX.            NOTICES.**

Unless this Agreement expressly provides otherwise, any notice, demand, or communication required hereunder between the County and the Developer shall be in writing, and may be given either personally, by overnight delivery, or by registered or certified mail (return receipt requested), to the address specified below:

**Contra Costa County:**

Contra Costa County  
Attn: Director of Conservation and Development  
30 Muir Road Martinez, CA 94553

With copies to:  
Contra Costa County Counsel's Office  
651 Pine Street, 9th Floor  
Martinez, CA 94553

**FT Land, LLC:**

FT Land, LLC  
Attn: Mike Bonnifield  
2300 Clayton Road #500  
Concord, CA 94524

With copies to:  
Miller Starr Regalia  
Attn: Nadia L. Costa or Bryan W. Wenter  
1331 N. California Blvd.  
Walnut Creek, CA 94596

A Party may change its address listed above by giving the other Party written notice in accordance with this Article IX at least 10 days before the change in address becomes effective. Unless this Agreement expressly provides otherwise, a notice shall be deemed effective on the day it is given if given personally, on the next business day following the date of deposit for overnight delivery, and three business days following the date of mailing if given by registered or certified mail (return receipt requested).

**ARTICLE X.            INSURANCE.**

**Section 10.01.            Public Liability and Property Damage Insurance.** At all times that the Developer is constructing any improvements that shall become public improvements, the Developer shall maintain in effect a policy of comprehensive general liability insurance with a per-occurrence combined single limit of not less than \$5,000,000 and a deductible of not more than \$10,000 per claim. The policy so maintained by the Developer shall name the County, its boards, commissions, officers, employees, and agents as additional insureds and shall include either a severability of interest clause or cross-liability endorsement.

**Section 10.02.            Workers' Compensation Insurance.** At all times that the Developer is constructing any improvement that shall become public improvements, the Developer shall maintain workers' compensation insurance for all persons employed by the Developer for work

at the Subject Property site. The Developer shall require each contractor and subcontractor similarly to provide workers' compensation insurance for its employees. The Developer agrees to indemnify the County for any Liabilities resulting from the Developer's failure to maintain any such insurance.

**Section 10.03. Evidence of Insurance.** Before commencing construction of any improvements that are to be public improvements, the Developer shall furnish the County with certificates of insurance for the policies required under Sections 10.02 and 10.03. Each certificate of insurance must require the respective insurer to give the County at least 30 days advance written notice prior to cancellation or reduction in coverage under the respective policy.

## **ARTICLE XI. MORTGAGEE PROTECTION.**

**Section 11.01. Mortgage Protection.** This Agreement shall be superior and senior to any lien placed on the Subject Property, or any portion thereof, after the date of the recording of this Agreement, including the lien for any deed of trust or mortgage ("**Mortgage**"). Notwithstanding the foregoing, no breach hereof shall defeat, render invalid, diminish, or impair the lien of any Mortgage made in good faith and for value, but all the terms and conditions in this Agreement shall be binding on and effective against any person or entity, including any deed of trust beneficiary or mortgagee ("**Mortgagee**") who acquires title to the Subject Property, or any portion thereof, by foreclosure, trustee's sale, deed in lieu of foreclosure, or otherwise.

**Section 11.02. Mortgage Not Obligated.** Notwithstanding the provisions of Section 11.01, no Mortgagee shall have any obligation or duty under this Agreement to construct or complete the construction of improvements, or to guarantee the construction of improvements, or to pay, perform, or provide any fee, dedication, improvements, or other exaction or imposition; provided, however, that Mortgagee shall not be entitled to devote the Subject Property to any uses or to construct any improvements thereon other than those uses and improvements authorized under Approvals and Subsequent Approvals.

**Section 11.03. Notice of Default to Mortgagee and Extension of Right to Cure.** If the County receives notice from a Mortgagee, with Mortgagee's address, requesting a copy of any notice required to be given under Section 5.01, the County shall concurrently deliver notices required under Section 5.01 to both the Developer and the Mortgagee. A Mortgagee that receives a notice under Section 5.01 shall have the same rights as the Developer to cure, or cause to cure, a claimed default of the Developer under this Agreement.

## **ARTICLE XII. MISCELLANEOUS.**

**Section 12.01. Capitalized Terms.** The capitalized terms used throughout this Agreement shall have the meaning assigned to them herein or as otherwise apparent from the context in which they are used.

**Section 12.02. No Third Party Beneficiary Rights.** Except to the extent that this Agreement expressly provides otherwise, this Agreement is not intended to create, nor shall it be construed to create, any third party beneficiary rights in any person or entity that is not a Party to this Agreement.

**Section 12.03. Governing Law and Legal Remedies.** This Agreement shall be governed by and interpreted in accordance with the laws of the State of California. The Parties acknowledge that neither the County nor the Developer would have entered into this Agreement

had they been exposed to damage claims from the other party for breach hereof. As such, the Parties agree that in no event shall either Party be entitled to monetary damages in the event of a breach of this Agreement by the other Party.

**Section 12.04. Severability.** If any term of this Agreement, or its application to any situation, is held invalid or unenforceable in whole or in part for any reason, in a final judgment that is no longer subject to rehearing, review or appeal by a court of competent jurisdiction, then the invalid term is severed, and the remaining parts of this Agreement, and the application of any part of this Agreement to other situations, shall continue in full force and effect unless an essential purpose of this Agreement would be defeated by the loss of the invalid or unenforceable provisions, in which case either Party may terminate this Agreement by providing written notice thereof to the other.

**Section 12.05. Covenants Running with the Land.** This Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective heirs, successors, and assigns (including any person or entity acquiring an interest in any portion of the Subject Property or Tassajara Parks Project). All of the terms and provisions contained in this Agreement shall be enforceable as equitable servitudes and shall constitute covenants running with the land pursuant to California law including, but not limited to, California Civil Code section 1468.

**Section 12.06. Further Acts.** Each Party shall execute and deliver any and all additional documents and instruments, and perform such further acts, that the executing, delivering, or performing Party determines, in its sole discretion, to be necessary or proper to achieve the purposes of this Agreement.

**Section 12.07. Counterparts.** This Agreement, and any and all amendments and supplements to it, may be executed in counterparts, and all counterparts together shall be construed as one document.

**Section 12.08. Recordation of Agreement.** Not later than 10 days after the Parties enter into this Agreement, the Clerk of the Board of Supervisors shall cause this Agreement to be recorded in the Official Records of Contra Costa County. The Developer shall reimburse the County for the cost to record this Agreement within 30 days after the Developer receives the County's written request for reimbursement.

**Section 12.09. Appeals.** Decisions made by the Director pursuant to this Agreement may be appealed by the Developer to the Zoning Administrator. The Zoning Administrator's decisions shall be subject to appeal as provided in Article 26-2.24 of the County Ordinance Code.

**Section 12.010. Waiver.** Waiver of a breach or default under this Agreement shall not constitute a continuing waiver or waiver of a subsequent breach of the same or any other provision of this Agreement.

**Section 12.011. Signatures.** The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of the representative legal entities of the Developer and County.

In witness whereof, the Parties have entered into this Agreement as of the Effective Date.

**DEVELOPER:**

FT LAND, LLC

By: \_\_\_\_\_

Print: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**COUNTY:**

CONTRA COSTA COUNTY

By: \_\_\_\_\_

Print: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_

Print: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Exhibits

Exhibit A - Legal Description of the Subject Property

Exhibit B - Map of the Subject Property

Exhibit C – Map of Dedication Areas



# EXHIBIT A

## LEGAL DESCRIPTION

Real property in the unincorporated area of the County of Contra Costa, State of California, described as follows:

Parcel One:

A portion of the North 1/2 of Section 33, Township 1 South, Range 1 East, Mount Diablo Base and Meridian, described as follows:

Beginning at a point in the line between the North 1/2 and South 1/2 of Section 33, (said point bears West about 1347.72 feet from the 1/4 Section corner between Sections 33 and 34, Township 1 South, Range 1 East, MDB&M). From the point of beginning a White Oak Tree two feet in diameter bears North 74° West 67.98 feet distant, said point is also the Southwest corner of a tract of land containing 12.6 acres; conveyed to Manuel Enos Pereira; thence North 27° East following West line of the land of the said Pereira, 849.42 feet to station post in center of a ravine or gulch; thence meandering up and along the center of said gulch, as follows:

North 63° 1/2' West 266.64 feet to station North 49-1/2" West 66 feet to station North 74-1/4" West 132 feet to station South 86° West 112.20 feet to station, North 42-1/2" West 66 feet to station, North 74-3/4" West 66 feet to station North 64-3/4" West 122.10 feet to station North 11° West 59.40 feet to station, North 55° West 132 feet to station, North 61° West 46.86 feet to station North 4-3/4" West 101.64 feet to station, North 71-1/2" West 66 feet to station, North 54-1/2" West 330 feet to station, North 81-3/4" West, 66 feet to station, South 74-1/4" West 99 feet to Station P.A.2; thence leaving said gulch South 29-1/2" West ascend 714.12 feet a White Oak Tree 32 inches in diameter; thence South 32° West 137.28 feet to station; thence South 24° 50' West 861.30 feet to station in line of fence between the North 1/2 and South 1/2 of Section 33; thence East 1804.44 feet to place of beginning, and being the same property that was described in that certain Deed dated November 21, 1898 and recorded in Book 81 of Deeds, Page 70.

Also: Beginning at a point on the Northwesterly side of the public road leading from Tassajara to Clayton, nearly opposite the Tassajara Public Schoolhouse; thence Northerly to a bridge over a creek following Southerly, to the Southeasterly corner of the lands of Manuel Elias Pereira; thence along the Northeasterly side of said Pereira's land and following the fence thereon to the Northwesterly terminus thereof; and thence Westerly to a small stream in a gulch 175 feet, more or less. To be used as a right of way and private road by Antone Petersen, his heirs, successors and assigns, and Manuel E. Pereira, his heirs, successors and assigns. And it is distinctly understood and agreed that said road and right of way shall be at most 20 feet wide and no more. This being the same property described in that certain Deed dated October 12, 1901, and made by Peter Andersen and Emilie Andersen to Antone Petersen, and recorded October 17, 1901, in Book 90 of Deeds, Page 329. This description is taken therefrom verbatim.

Parcel Two:

A portion of the Southwest 1/4 of Section 33, Township 1 South, Range 1 East, Mount Diablo Base and Meridian, described as follows:

Beginning at the Northwest corner of the Southwest quarter of section of Section 33, Township 1 South, Range 1 East, M.D.B. & M., said point of beginning being on the line dividing lands of McPherson and T. C. Johnston; thence South 0° 50' East, 1320 feet to a point in the center of Tassajara Road; thence South 79° East along the center line of said Tassajara Road, 1657.92

feet to a station; thence South 65° 10' East 1016.40 feet to a station; thence North along the line fence dividing lands of Antone Petersen and lands of T. C. Johnston, 2066.46 feet to station in line fence dividing lands of Andersen and said T. C. Johnson; thence West along line fence dividing lands of Andersen and said T. C. Johnson, 2580.60 feet to the place of beginning and being the same property that was described in Deed dated September 30, 1910 and recorded in Book 15 of Deed, Page 149.

Excepting therefrom:

That portion that was conveyed to Contra Costa County by Deed recorded on July 20, 1992 in Book 17677, Page 236, Instrument No. 1992-182504 Official Records.

Excepting therefrom portion was conveyed to Contra Costa County, a political subdivision of the State of California by Grant Deed recorded on January 16, 2014 as Instrument No. 2014-0008430 of Official records.

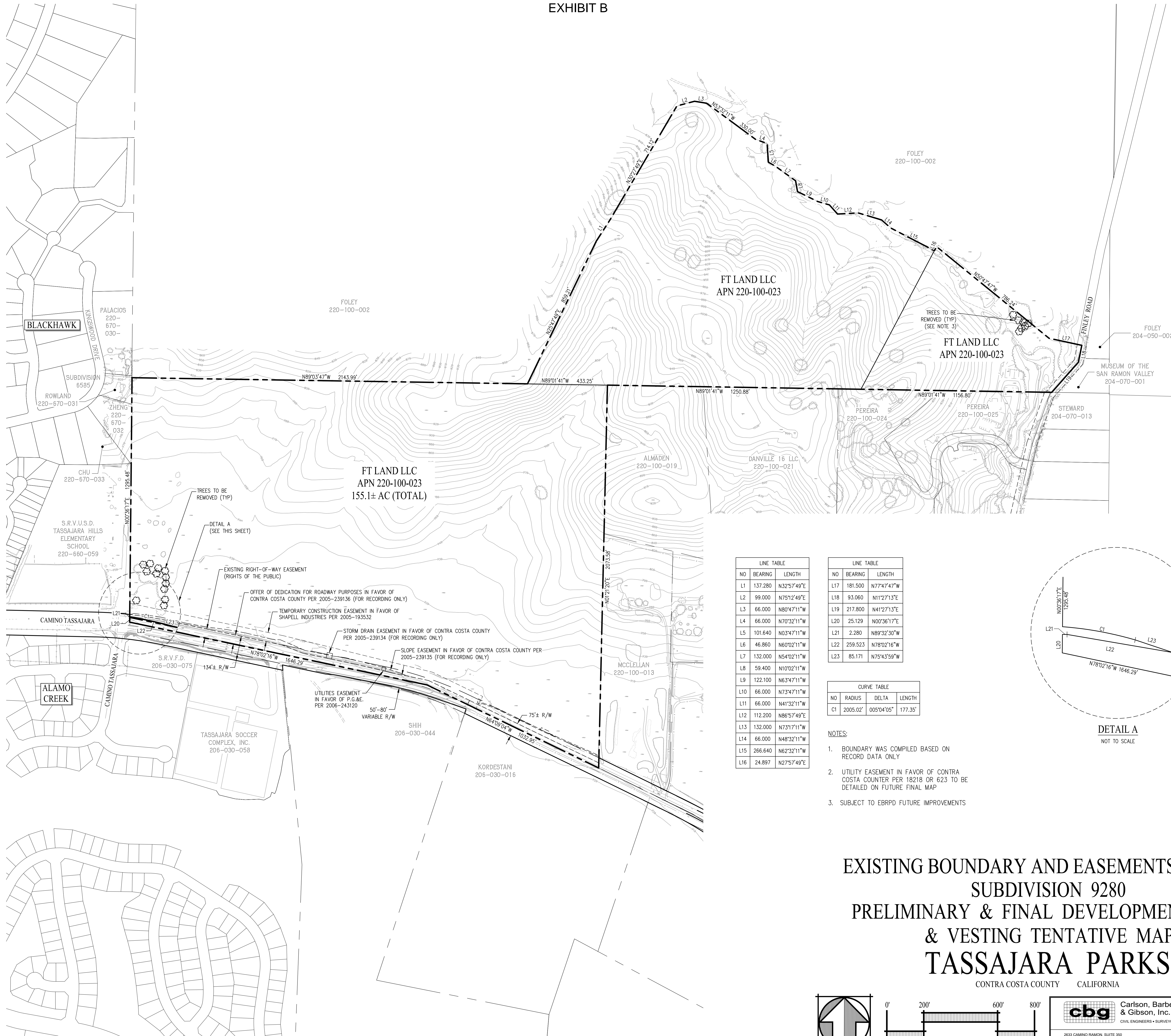
Parcel Three:

A portion of the Northeast 1/4 of Section 33, Township 1 South, Range 1 East, Mount Diablo Base and Meridian, described as follows:

Beginning at a point where the South line of said 1/4 section crosses the centerline of public road; from said point the 1/4 section corner between Sections 33 and 34 bears East about 311.52 feet; the Southeast corner of main building of Tassajara Schoolhouse bears North 73° 10" East, 260.70 feet; thence along center line of Public Road North 41-1/2° East 217.80 feet to station; thence North 11-1/2° East 93.06 feet to station in road; thence North 77-3/4" West at 24.42 feet leave road, at 33 feet bank of creek 76.56 feet White Oak Tree 6 inches in diameter on bank of creek 181.50 feet station; thence North 50-3/4° West at 174.90 feet pass 17.82 feet North of pass of house 792 feet to station; thence South 27° West at 38.28 feet brook; 821.70 feet to station in fence line of South boundary of the Northeast 1/4 section of Section 33; from said point of White Oak Tree 2 feet diameter bears North 74° West 67.98 feet; thence along fence line and along line between the Northeast and Southeast 1/4 section of Section 33 at 945.12 feet crop Tassajara Creek 1036.20 feet into place of beginning and being the same property that was described in Deed dated October 18, 1893 and recorded in Book 68 of Deeds, Page 76.

Also right of way for wagon road purposes is hereby granted from County Road across private bridge now belonging to Anderson and extending in a Westerly direction for about 300 feet to boundary line herein described.

APN: 220-100-023-5 (Portion)

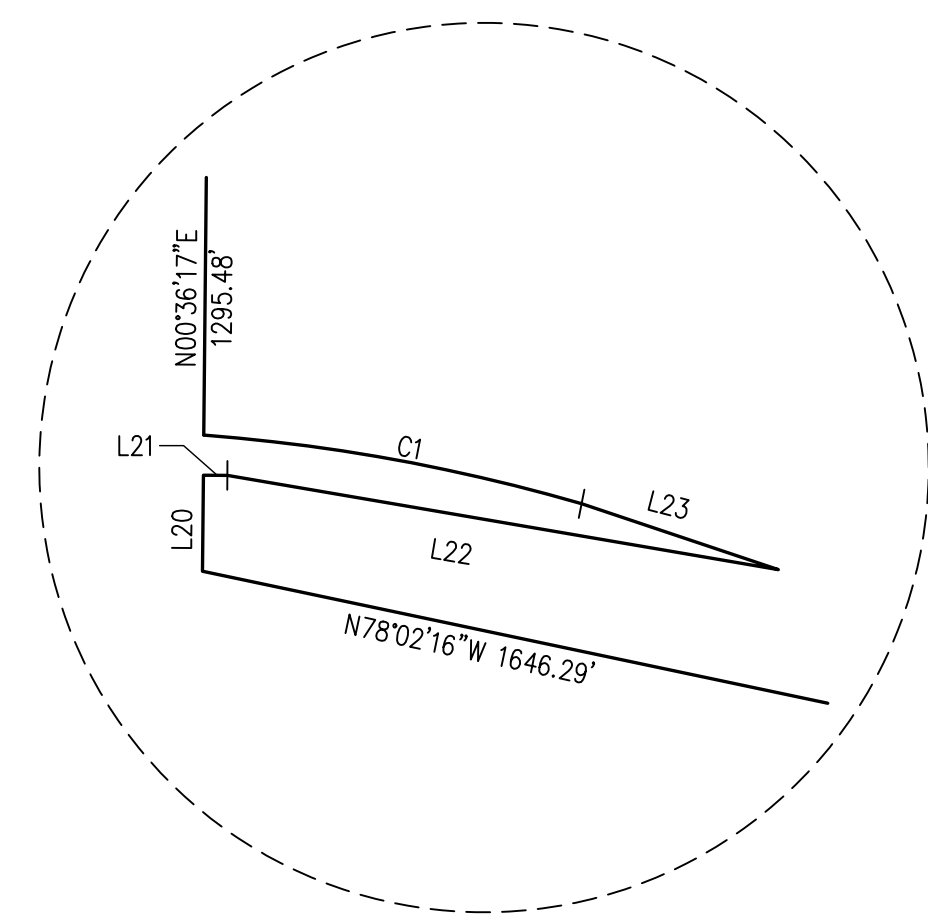


LINE TABLE		
NO	BEARING	LENGTH
L1	137.280	N32°57'49"E
L2	99.000	N75°12'49"E
L3	66.000	N80°47'11"W
L4	66.000	N70°32'11"W
L5	101.640	N03°47'11"W
L6	46.860	N60°02'11"W
L7	132.000	N54°02'11"W
L8	59.400	N10°02'11"W
L9	122.100	N63°47'11"W
L10	66.000	N73°47'11"W
L11	66.000	N41°32'11"W
L12	112.200	N86°57'49"E
L13	132.000	N73°17'11"W
L14	66.000	N48°32'11"W
L15	266.640	N62°32'11"W
L16	24.897	N27°57'49"E

LINE TABLE		
NO	BEARING	LENGTH
L17	181.500	N77°47'47"W
L18	93.060	N11°27'13"E
L19	217.800	N41°27'13"E
L20	25.129	N00°36'17"E
L21	2.280	N89°32'30"W
L22	259.523	N78°02'16"W
L23	85.171	N75°43'59"W

CURVE TABLE			
NO	RADIUS	DELTA	LENGTH
C1	2005.02'	005°04'05"	177.35'

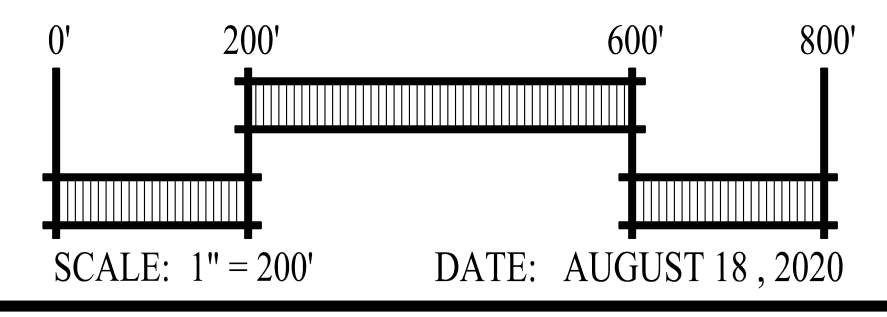
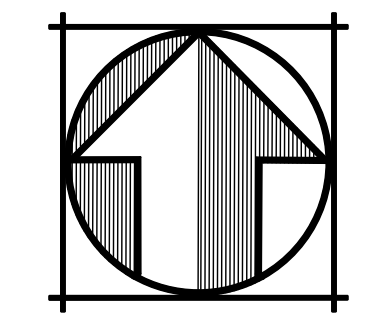
- NOTES:
- BOUNDARY WAS COMPILED BASED ON RECORD DATA ONLY
  - UTILITY EASEMENT IN FAVOR OF CONTRA COSTA COUNTY PER 18218 OR 623 TO BE DETAILED ON FUTURE FINAL MAP
  - SUBJECT TO EBRPD FUTURE IMPROVEMENTS



DETAIL A  
NOT TO SCALE

EXISTING BOUNDARY AND EASEMENTS - NORTH  
SUBDIVISION 9280  
PRELIMINARY & FINAL DEVELOPMENT PLAN  
& VESTING TENTATIVE MAP  
**TASSAJARA PARKS**

CONTRA COSTA COUNTY CALIFORNIA

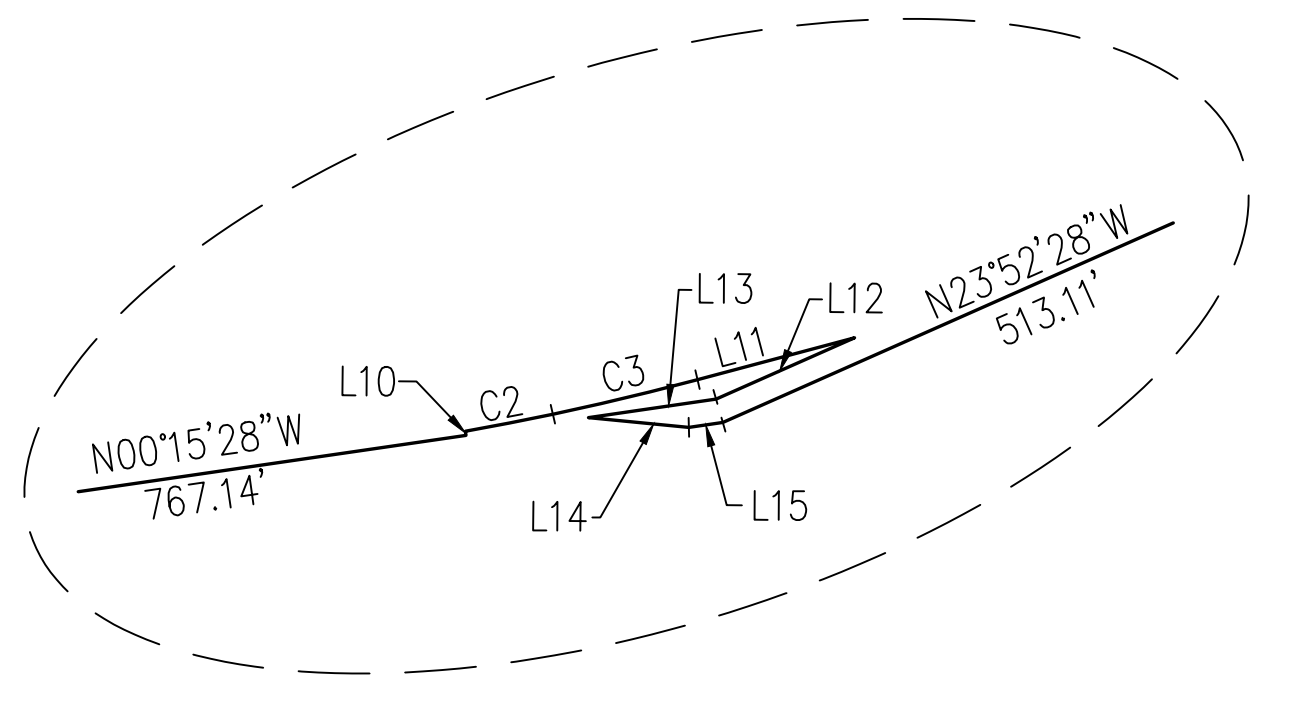
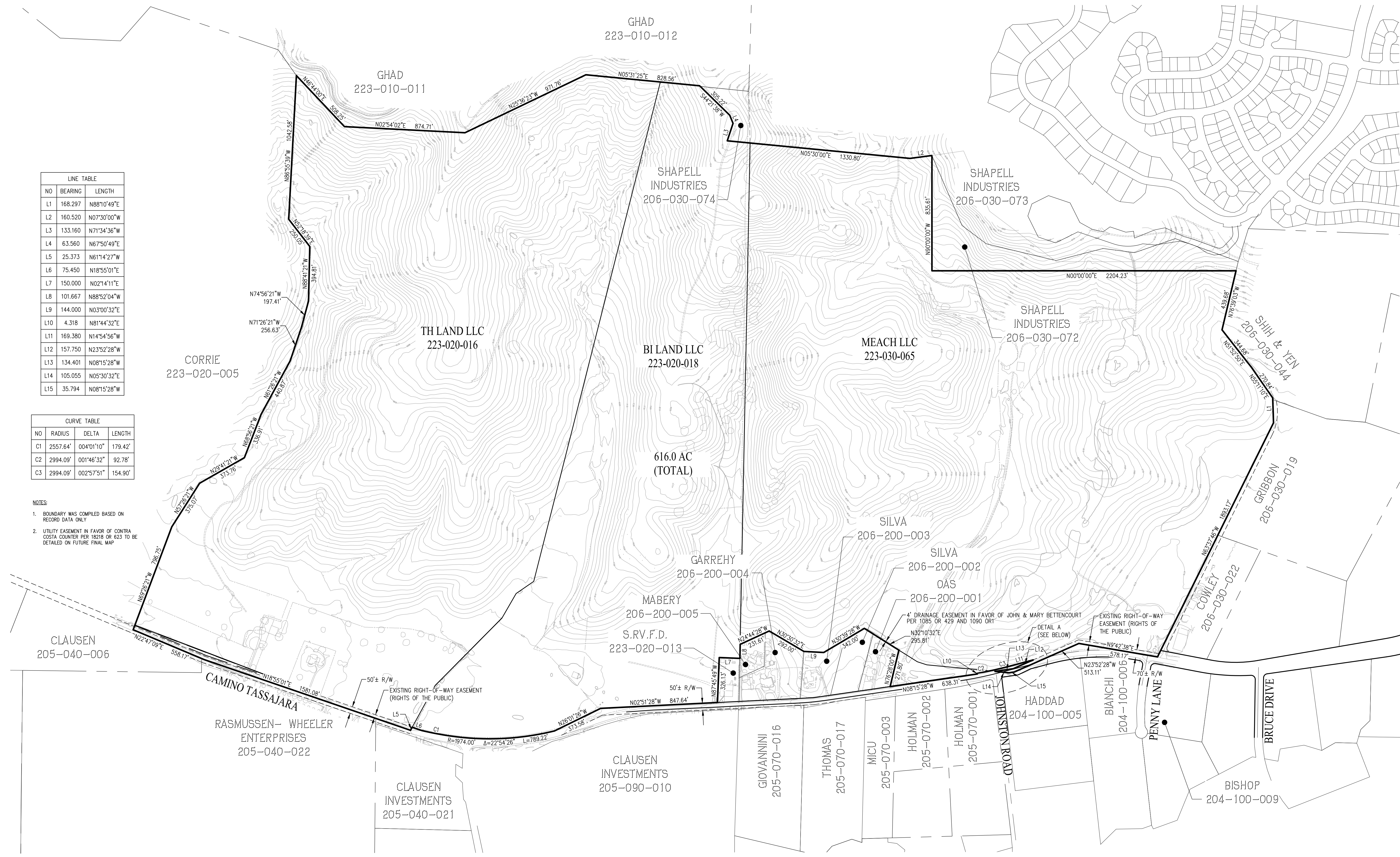


**cbg** Carlson, Barbee & Gibson, Inc.  
CIVIL ENGINEERS • SURVEYORS • PLANNERS  
2633 CAMINO RAMON, SUITE 300  
SAN RAMON, CALIFORNIA 94583  
TEL. (925) 866-0322

LINE TABLE		
NO	BEARING	LENGTH
L1	168.297	N88°10'49"E
L2	160.520	N07°30'00"W
L3	133.160	N71°34'36"W
L4	63.560	N67°50'49"E
L5	25.373	N61°14'27"W
L6	75.450	N18°55'01"E
L7	150.000	N02°14'11"E
L8	101.667	N88°52'04"W
L9	144.000	N03°00'32"E
L10	4.318	N81°44'32"E
L11	169.380	N14°54'56"W
L12	157.750	N23°52'28"W
L13	134.401	N08°15'28"W
L14	105.055	N05°30'32"E
L15	35.794	N08°15'28"W

CURVE TABLE			
NO	RADIUS	DELTA	LENGTH
C1	2557.64'	004°01'10"	179.42'
C2	2994.09'	001°46'32"	92.78'
C3	2994.09'	002°57'51"	154.90'

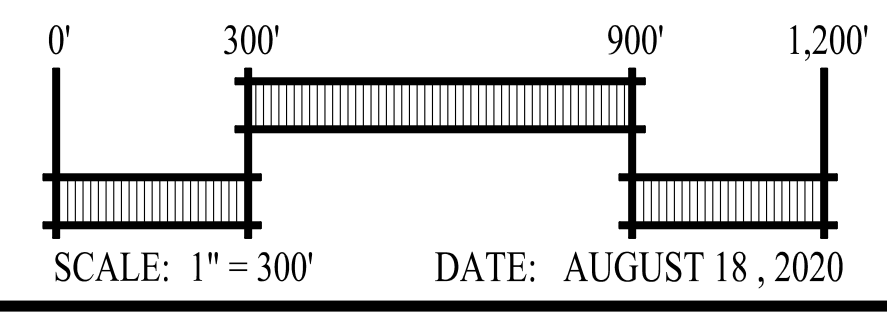
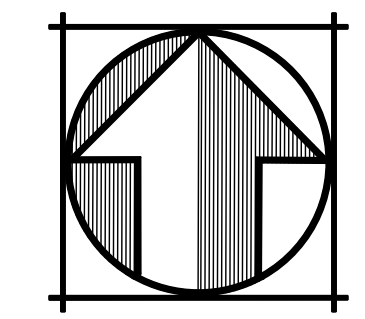
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DETAIL A  
NOT TO SCALE

EXISTING BOUNDARY AND EASEMENTS - SOUTH  
SUBDIVISION 9280  
PRELIMINARY & FINAL DEVELOPMENT PLAN  
& VESTING TENTATIVE MAP  
TASSAJARA PARKS

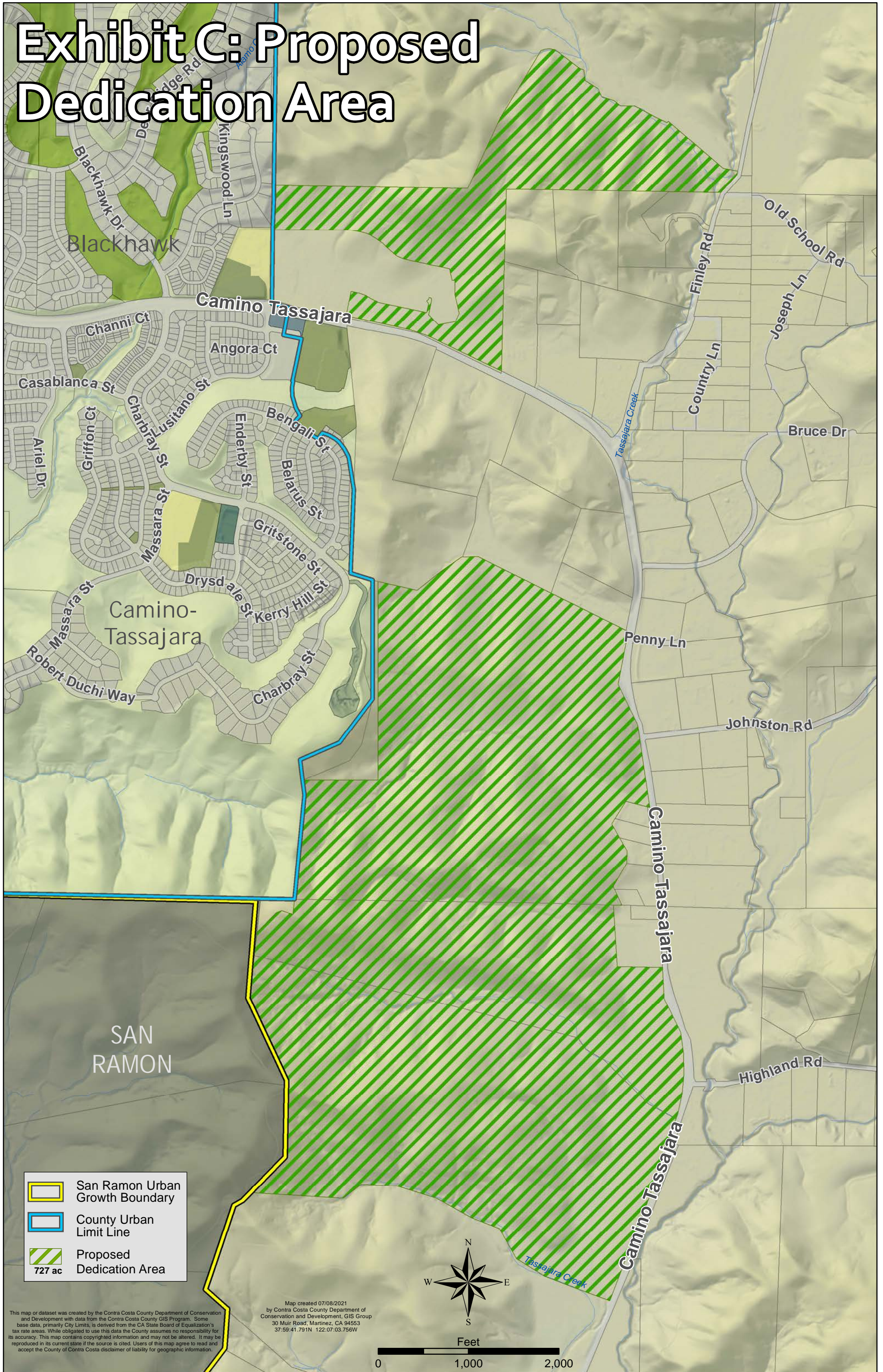
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SHEET NUMBER  
**TM 3**  
OF 10 SHEETS

# Exhibit C: Proposed Dedication Area



-  San Ramon Urban Growth Boundary
-  County Urban Limit Line
-  Proposed Dedication Area  
727 ac

This map or dataset was created by the Contra Costa County Department of Conservation and Development with data from the Contra Costa County GIS Program. Some base data, primarily City Limits, is derived from the CA State Board of Equalization's tax rate areas. While obligated to use this data the County assumes no responsibility for its accuracy. This map contains copyrighted information and may not be altered. It may be reproduced in its current state if the source is cited. Users of this map agree to read and accept the County of Contra Costa disclaimer of liability for geographic information.

Map created 07/08/2021  
by Contra Costa County Department of Conservation and Development, GIS Group  
30 Muir Road, Martinez, CA 94553  
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