



| Town of Moraga                                     | Agenda Item |
|----------------------------------------------------|-------------|
| Ordinances,<br>Resolutions,<br>Requests for Action | 10. B.      |

Meeting Date: April 27, 2022

## **TOWN OF MORAGA**

## **STAFF REPORT**

**To:** Honorable Mayor and Councilmembers

**From:** Shawn Knapp, Public Works Director / Town Engineer  
Mark Summers, Associate Civil Engineer

**Subject:** Consider Resolution \_\_\_\_ - 2022 Approving the Final Map and Subdivision Improvement Agreement for Subdivision 9051 (Hetfield Estates), a Project Being Developed by Hetfield Estates Partners, LLC, Accepting a Grant Deed of Development Rights, Approving and Authorizing a Hold Harmless Agreement, and Authorizing the Town Manager to Take Other Actions to Effectuate Recordation of the Final Map

### **Request**

All Tentative Map conditions that are required for approval of the Final Map have been satisfied by the developer and bonds are being provided. Approval of the Final Map is a ministerial action by the Town Council and does not require a public hearing. When a Final Map is approved prior to the installation of all subdivision improvements, a Subdivision Improvement Agreement (SIA) is executed between the developer and the Town to guarantee the completion of the project improvements in accordance with the approved plans and specifications. Staff recommends adoption of a resolution for the following:

1. Approving the Final Map and Subdivision Improvement Agreement for Subdivision 9051 (Hetfield Estates), a project being developed by Hetfield Estates Partners, LLC; and
2. Authorizing the Town Manager to sign the Subdivision Improvement Agreement on behalf of the Town of Moraga; and
3. Accepting a Grant Deed of Development Rights; and
4. Approving a Hold Harmless Agreement; and
5. Authorizing the Town Manager to take other actions to effectuate recordation of the Final Map.

### **Background**

The Hetfield Estates project was originally submitted to the Town in 2005 as an eight-lot clustered single-family residential subdivision on a 58.20-acre site zoned Moraga Open

Space (MOSO). Since the project site is over 10 acres, it was subject to the Town's three-step Planned Development (PD) process in accordance with Moraga Municipal Code (MMC) Section 8.48.030.

On November 17, 2008, the Planning Commission held public hearings on the project, and adopted a Mitigated Negative Declaration and approved the Conceptual Development Plan (CDP) for the project. This decision was subsequently appealed to the Town Council by a third party, which upheld the appeal and directed preparation of an Environmental Impact Report (EIR) for the project. The Planning Commission certified the EIR and approved the CDP once again on July 16, 2012.

On March 3, 2014, the Planning Commission approved the General Development Plan, Vesting Tentative Map (VTM), Conditional Use Permit (CUP), and Hillside Development Permit.

On May 21, 2014, the Town Council voted to uphold the Planning Commission approvals against two appeals, with refinements to the proposed Emergency Vehicle Access Easement (EVAE).

Since approval of the VTM, the project has received the maximum number of extensions to the VTM allowed under the Subdivision Map Act (six years total). The expiration date for the VTM is May 21, 2022.

On February 1, 2022, the Planning Commission approved the Precise Development Plan; Grading Permit; and Design Review for landscaping, bridge, retaining walls, and Project Design Guidelines.

The table below summarizes the Hetfield Estates Project approvals and extensions to date:

| Date              | Action                                                                                                                                                                                              |
|-------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| November 17, 2008 | PC adopts a Mitigated Negative Declaration (MND) and approves (CDP                                                                                                                                  |
| December, 2008    | Neighbors appeal decision.                                                                                                                                                                          |
| January 14, 2009  | Town Council overturns PC decision on the MND and requires preparation of an EIR                                                                                                                    |
| July 16, 2012     | PC certifies the Draft EIR and re-approves the CDP                                                                                                                                                  |
| March 3, 2014     | PC approves the General Development Plan, Vesting Tentative Map (VTM), Conditional Use Permit and Hillside Development Permit                                                                       |
| March 13, 2014    | PC's decision is appealed                                                                                                                                                                           |
| May 21, 2014      | Town Council upholds PC approvals, with refinements to the proposed Emergency Vehicle Access Easement (EVAE) and associated Conditions of Approval and adopts a CEQA addendum for the EVAE and VTM. |

|                   |                                                                                                                                              |
|-------------------|----------------------------------------------------------------------------------------------------------------------------------------------|
| February 24, 2016 | Town Council adopts Resolution 15-2016 approving a two-year extension of the VTM, GDP and other associated entitlements to May 21, 2018.     |
| December 4, 2017  | Applicant submits plans for review by the Town for the Final Map, Precise Development Plan and Grading Permit.                               |
| February 12, 2018 | Applicant submits application for a one-year extension of the VTM, GDP and other associated entitlements.                                    |
| August 22, 2018   | Town Council adopts Resolution 54-2018 approving a one-year extension of the VTM and associated entitlements to May 21, 2019.                |
| May 1, 2019       | Applicant submits application for a one-year extension of the VTM, GDP and other associated entitlements.                                    |
| May 22, 2019      | Town Council adopts Resolution 41-2019 approving a one-year extension of the VTM and associated entitlements to May 21, 2020.                |
| May 8, 2020       | Applicant submits application for a one-year extension of the VTM, GDP and other associated entitlements.                                    |
| May 13, 2020      | Town Council adopts Resolution 27-2020 approving a one-year extension of the VTM and associated entitlements to May 21, 2021.                |
| March 17, 2021    | Applicant submits application for another one-year extension of the VTM, GDP and other associated entitlements.                              |
| May 12, 2021      | Town Council adopts Resolution 21-2021 approving a one-year extension of the VTM and associated entitlements to May 21, 2022.                |
| February 1, 2022  | PC approves the Precise Development Plan; Grading Permit; and Design Review for Landscaping, Bridge, Retaining Walls, and Design Guidelines. |

## **Discussion**

### ***Final Map and Subdivision Improvement Agreement:***

In accordance with the Moraga Subdivision Ordinance, the State Subdivision Map Act, current Public Works and engineering practices, and the tentative map conditions of approval, staff reviewed the Final Map, improvement plans and supplemental documents for compliance and has determined that all requirements necessary for recordation of the final map have been completed.

In accordance with Section 66442 of the State Subdivision Map Act, the Town Engineer has examined the Final Map. It is in substantial conformance with the Tentative Map and any approved alterations thereof, and all provisions of the Subdivision Map Act, and local Ordinances applicable at the time of the approval have been complied with. Frank Kennedy of Kennedy & Associates Consulting Engineers, acting as Town Surveyor, has examined the Final Map and determined that it is technically correct.

Along with the Final Map, the subdivider has submitted a Subdivision Improvement Agreement (SIA) guaranteeing completion of the required public, private, and landscaping subdivision improvements, and is providing Performance and Labor and Materials bonds as required by the SIAs.

Parcel A, comprising approximately 53.75 acres, is to be owned and maintained by the Moraga Geologic Hazard Abatement District (GHAD) and is designated as GHAD open

space area. The acceptance and transfer of the property to the GHAD will occur after acceptance of the subdivision improvements.

To satisfy the Vesting Tentative Map condition of approval number 32 of Planning Commission Resolution Number 04-14, Hetfield Estates Partners, LLC, grantor, shall preserve as open space to be managed by the GHAD by recording a Conservation Easement Deed Restriction.

To satisfy the Vesting Tentative Map Condition of Approval number 90 of Planning Commission Resolution Number 04-14, Hetfield Estates Partners, LLC, grantor, submitted a recordable hold harmless agreement with the Town which states that the Applicant and the property owner and the future property owner(s) will hold harmless the Town of Moraga and the Contra Costa County Flood Control and Water Conservation District in the event of damage to the on-site and off-site improvements as a result of creek-bank failure or erosion.

To satisfy the Vesting Tentative Map condition of approval number 93 of Planning Commission Resolution Number 04-14, Hetfield Estates Partners, LLC, grantor, shall restrict development rights over that portion of the site that is within the structure setback area of Larch Creek as shown on the final map for Subdivision 9051, by granting development rights to the Town of Moraga.

### **CEQA**

An Environmental Impact Report was prepared for this project and certified by the Planning Commission on July 16, 2012 and a CEQA Addendum for the Emergency Vehicle Access Easement alignment was considered by the Town Council in its approval of the project on May 21, 2014. Since that time, the project has not changed, nor has there been a change in conditions or circumstances that would alter the findings or conclusions of the prior CEQA review. Therefore, no additional CEQA review of the extension of the Vesting Tentative Map and associated entitlements is required.

### **Fiscal Impact**

As is typical for land development projects, all costs associated with reviewing, processing, and recording a final map and subdivision improvement agreement are paid for by deposits provided by the developer.

### **Alternatives**

No alternatives if all requirements have been satisfied in order to record the Final Map.

Approval of a Final Map is a ministerial action by the Town Council, after all Tentative Map conditions that are required for approval of the Final Map will be satisfied by the developer.

1 **Recommendation**

2  
3 Adopt Resolution \_\_\_\_ - 2022 for the following:

- 4  
5 1. Approving the Final Map and Subdivision Improvement Agreement for Subdivision  
6 9051 (Hetfield Estates); and  
7 2. Authorizing the Town Manager to sign the Subdivision Improvement Agreement  
8 on behalf of the Town of Moraga; and  
9 3. Accepting Grant Deed of Development Rights;  
10 4. Approving a Hold Harmless Agreement; and  
11 5. Authorizing the Town Manager to take other actions to effectuate recordation of  
12 the Final Map.

13  
14 **Report reviewed by: Cynthia Battenberg, Town Manager**  
15 **Karen Murphy, Assistant Town Attorney**  
16

17 **Attachments:**

- 18  
19 **A.** Resolution \_\_\_\_ - 2022 Approving the Final Map and Subdivision  
20 Improvement Agreements for Subdivision 9051, a Project Being Developed  
21 by Hetfield Estates Partners, LLC, Accepting Grant Deeds of Development  
22 Rights, and Authorizing the Town Manager to Take Other Actions to  
23 Effectuate Recordation of the Final Map  
24 **B.** Final Map for Subdivision 9381  
25 **C.** Subdivision Improvement Agreement for Subdivision 9051  
26 **D.** Grant Deed of Development Rights and Establishment of No-build Area  
27 for Creek Structure Setbacks and Creek Protection  
28 **E.** Conservation Easement Deed Restriction  
29 **F.** Release and Hold Harmless Agreement

# **ATTACHMENT A**

Resolution \_\_\_\_ - 2022 Approving the Final Map  
and Subdivision Improvement Agreements for  
Subdivision 9051, a Project Being Developed by  
Hetfield Estates Partners, LLC, Accepting Grant  
Deeds of Development Rights, and Authorizing the  
Town Manager to Take Other Actions to Effectuate  
Recordation of the Final Map

BEFORE THE TOWN COUNCIL OF THE TOWN OF MORAGA

In the Matter of:

Approving the Final Map and Subdivision )  
Improvement Agreement for Subdivision )  
9051, a Project Being Developed by )  
Hetfield Estates Partners, LLC, Accepting )  
a Grant Deed of Development Rights, )  
Approving and Authorizing a Hold )  
Harmless Agreement, and Authorizing the )  
Town Manager to Take Other Actions to )  
Effectuate Recordation of the Final Map )

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Resolution No. \_\_\_\_ - 2022

**WHEREAS**, the Public Works Director presented for Town Council approval on this date, in accordance with the Moraga Subdivision Ordinance Code, the Final Map of Subdivision 9051, property located off of Hetfield Drive (the "Map"), and subdivision improvement agreements with Hetfield Estates Partners, LLC, as developer (and principal), where the developer agrees to complete all improvements as required in the agreements within two (2) years from the date of the agreements; and

**WHEREAS**, accompanying the subdivision improvement agreements, the developer has submitted a cash deposit in the amount of twenty-five thousand two-hundred thirty-four dollars (\$25,234.00), equal to one percent (1%) of the estimated cost of construction of the improvements, together with such additional performance security in the form of surety bonds, in the total amount of two-million four-hundred ninety-eight thousand one-hundred sixty-six dollars (\$2,498,166.00), issued by Intact Insurance Company, equivalent to the estimated cost of the improvements, minus the cash deposit, guaranteeing performance of all work and repair of any defect in the improvements, and payment security in the form of surety bonds, in the total amount of one-million two-hundred sixty-one thousand seven-hundred dollars (\$1,261,700.00), issued by Intact Insurance Company, equivalent to fifty percent (50%) of the estimated cost of the improvements to secure payment to the contractor, his subcontractors and to persons furnishing labor, materials or equipment to them for the improvements; and

**WHEREAS**, the developer provided a letter from the County tax collector stating that there are no unpaid taxes levied on the property included in the map; and

**WHEREAS**, to satisfy the Vesting Tentative Map condition of approval number 32 of Planning Commission (PC) Resolution Number 04-14, Hetfield Estates Partners, LLC, grantor, shall preserve as open space to be managed by the Geologic Hazard Abatement District (GHAD) by recording a Conservation Easement Deed Restriction concurrently with the Final Map; and

**WHEREAS**, to satisfy the Vesting Tentative Map condition of approval number 90 of Planning Commission (PC) Resolution Number 04-14, Hetfield Estates Partners, LLC, grantor, shall submit a recordable agreement with the Town which states that the Applicant and the property owner and the future property owner(s) will hold harmless the Town of Moraga and the Contra Costa County Flood Control and Water Conservation District in the event of damage to the on-site and off-site improvements as a result of creek-bank failure or erosion; and.

**WHEREAS**, to satisfy the Vesting Tentative Map condition of approval number 93 of Planning Commission (PC) Resolution Number 04-14, Hetfield Estates Partners, LLC, grantor, shall restrict development rights over that portion of the site that is within the structure setback area of Larch Creek as shown on the final map for Subdivision 9051, by granting development rights to the Town of Moraga.

**NOW, THEREFORE, BE IT RESOLVED** by the Town Council of the Town of Moraga that:

1. The Town Council hereby finds, with respect to Subdivision 9051, a project being developed by Hetfield Estates Partners, LLC, that:

a. The Map and subdivisions, together with the provisions for its design and improvement is determined to be consistent with the Town's general plan and the Moraga Municipal Code and Subdivision Ordinance.

b. The Map is in substantial conformance with the Vesting Tentative Map and all conditions of approval on the Map have been met.

2. The Final Map is hereby approved, and the Town Council does hereby reject on behalf of the public any streets, roads, avenues or easements shown thereon as dedicated to public use.

3. The Subdivision Improvement Agreement is approved, and the Town Council authorizes the Town Manager to execute the agreement on behalf of the Town of Moraga.

4. The Grant Deed of Development Rights and Hold Harmless Agreement are hereby accepted, and the Town Clerk is directed to have them recorded in the Office of the Contra Costa County Recorder, with minor changes as may be approved by the Town Manager in consultation with the Town Attorney.

5. The Town Manager or her/his designee is hereby authorized to record any documents and take any and all further actions to effectuate the recordation of the Map in compliance with the conditions of approval.



**PASSED AND ADOPTED** by the Town Council of the Town of Moraga at a regular meeting held on April 27, 2022 by the following vote:

**AYES:**  
**NOES:**  
**ABSTAIN:**  
**ABSENT:**

Attest:

\_\_\_\_\_  
Renata M. Sos, Mayor

\_\_\_\_\_  
Marty C. McInturf, Town Clerk

# **ATTACHMENT B**

Final Map for Subdivision 9051

OWNERS’ STATEMENT

THE UNDERSIGNED, BEING THE ONLY PARTY HAVING RECORD TITLE INTEREST IN THE LANDS DELINEATED AND EMBRACED WITHIN THE HEAVY BLACK LINES UPON THIS MAP, DOES HEREBY CONSENT TO THE MAKING AND RECORDATION OF THE SAME.

THE REAL PROPERTY DESCRIBED BELOW IS DEDICATED AS AN EASEMENT FOR PUBLIC PURPOSES:

1) THE AREA DESIGNATED AS "TRAIL EASEMENT", OR (T.E.) AS SHOWN ON THIS MAP IS DEDICATED FOR THE PURPOSE OF PUBLIC PEDESTRIAN NON–MOTORIZED ACCESS.

2) THE AREA DESIGNATED AS "EMERGENCY VEHICLE ACCESS EASEMENT" OR (E.V.A.E.) AS SHOWN ON THIS MAP IS DEDICATED TO THE PUBLIC FOR THE PURPOSE OF INGRESS AND EGRESS OF EMERGENCY VEHICLES.

3) THE AREA AS DESIGNATED "PUBLIC ACCESS EASEMENT" OR (P.A.E.) AS SHOWN ON THIS MAP IS DEDICATED TO THE PUBLIC FOR PUBLIC ACCESS, EGRESS AND PARKING TO FACILITATE ACCESS.

4) THE AREA DESIGNATED AS "PUBLIC UTILITY EASEMENT" OR (P.U.E.) AS SHOWN ON THIS MAP IS DEDICATED TO THE PUBLIC FOR PUBLIC UTILITIES, OVER, UNDER AND UPON THOSE AREAS OF LAND AS SHOWN ON THIS MAP, INCLUDING, BUT NOT LIMITED TO , THE INSTALLATION, ACCESS AND MAINTENANCE OF SANITARY AND STORM SEWERS, WATER, GAS, ELECTRICAL AND COMMUNICATION FACILITIES.

THE AREA DESIGNATED PARCEL "A" IS NOT HEREBY DEDICATED TO THE GENERAL PUBLIC, BUT IS SUBJECT TO A CONSERVATION/OPEN SPACE EASEMENT TO BE RECORDED CONCURRENTLY HEREWITH AND SHALL BE MANAGED AND PRESERVED AS OPEN SPACE. SAID PARCEL IS TO BE GRANTED TO THE GEOLOGIC HAZARD ABATEMENT DISTRICT (GHAD) CONCURRENT WITH OR SUBSEQUENT TO THE FILING OF THIS MAP.

THE AREA WITHIN THE STRUCTURE SETBACK OF LARCH CREEK IS SUBJECT TO A GRANT DEED OF DEVELOPMENT RIGHT TO BE RECORDED TO CONCURRENTLY HEREWITH, WHICH PROHIBITS DEVELOPMENT OTHER THAN PURSUANT TO APPROVED PLANS.

THE AREA DESIGNATED "SANITARY SEWER EASEMENT", OR "S.S.E.", IS OFFERED FOR THE DEDICATION TO THE CENTRAL CONTRA COSTA SANITARY DISTRICT, (CCCSO) OR ITS SUCCESSORS OR ASSIGNS IN GROSS, AS AN EXCLUSIVE SUB–SURFACE EASEMENT (OR AS A NON–EXCLUSIVE SURFACE EASEMENT FOR THE RIGHT TO CONSTRUCT, RECONSTRUCT, RENEW, ALTER, OPERATE, MAINTAIN, REPLACE (WITH THE INITIAL OR OTHER SIZE) AND REPAIR SUCH SEWER LINE OR LINES AS CCCSO SHALL FROM TIME TO TIME ELECT FROM CONVEYING SEWER OR RECYCLED WATER, AND ALL NECESSARY MAINTENANCE ACCESS STRUCTURES, LATERALS AND APPURTENANCES THERETO, OVER AND WITHIN SUCH EASEMENT AREA, TOGETHER WITH THE FREE RIGHT OF INGRESS, EGRESS AND EMERGENCY ACCESS TO SAID EASEMENT OVER AND ACROSS THE REMAINING PORTION OF THE OWNER’S PROPERTY, PROVIDED THAT SAID RIGHTS OF INGRESS, EGRESS AND EMERGENCY ACCESS SHALL BE LIMITED TO ESTABLISHED ROADWAYS, PATHWAYS, AVENUES OR OTHER ROUTES TO THE EXTENT POSSIBLE AND AS REASONABLY NECESSARY OF THE PROPER USE OF THE RIGHTS GRANTED HEREIN. THIS OFFER OF DEDICATION ALSO INCLUDES THE RIGHT TO CLEAR OBSTRUCTIONS AND VEGETATION FROM THE EASEMENT AS MAY BE REQUIRED FOR THE PROPER USE OF THE OTHER RIGHTS GRANTED GRANTED HEREIN.

THE OWNER RESERVES THE RIGHT TO LANDSCAPE OR MAKE SUCH OTHER USE OF THE LANDS INCLUDED WITHIN THE EASEMENTS WHICH ARE CONSISTENT WITH CCCSO’S USE; HOWEVER, SUCH USE BY THE OWNER SHALL NOT INCLUDE THE PLANTING OF TREES OR CONSTRUCTION OF PERMANENT STRUCTURES, INCLUDING, BUT NOT LIMITED TO HOUSES, GARAGES, OUT–BUILDINGS, SWMMING POOLS, TENNIS COURTS, RETAINING WALLS, DECKS PATIOS, ENGINEERED DRAINAGE FACILITIES (BIO–SWALES) OR OTHER ACTIVITY WHICH MAY INTERFERE WITH CCCSO’S ENJOYMENT OF THE EASEMENT RIGHTS GRANTED HEREIN.

MAINTENANCE ACCESS STRUCTURES (MANHOLES, RODDING INLETS, ETC.) CONSTRUCTED WITHIN THE EASEMENT SHALL NOT BE COVERED BY EARTH OR OTHER MATERIAL AND SHALL REMAIN IN AN EXPOSED AND ACCESSIBLE CONDITION AT ALL TIMES FOR ROUTINE AND/OR EMERGENCY MAINTENANCE THAT WILL BE DEEMED NECESSARY BY CCCSO FROM TIME TO TIME.

CCCSO, AND/OR IT’S SUCCESSORS OR ASSIGNS, SHALL INCUR NO LIABILITY WITH RESPECT TO SUCH OFFER OF DEDICATION, AND SHALL NOT ASSUME ANY RESPONSIBILITY FOR THE OFFERED EASEMENTS OR ANY IMPROVEMENTS THEREON OR THEREIN, UNTIL SUCH OFFER HAS BEEN ACCEPTED BY THE APPROPRIATE ACTION BY CCCSO, OR IT’S SUCCESSORS OR ASSIGNS. FURTHER, THE OWNER SHALL INDEMNIFY, DEFEND, SAVE AND HOLD HARMLESS CCCSO FROM ANY LIABILITY WITH RESPECT TO THE EASEMENTS, PRIOR TO THE FORMAL ACCEPTANCE OF SAID EASEMENTS BY APPROPRIATE ACTION OF CCCSO.

THE AREAS DESIGNATED "PRIVATE STORM DRAIN EASEMENT", OR (P.S.D.E.) ARE NOT HEREBY DEDICATED TO THE GENERAL PUBLIC BUT ARE RESERVED FOR THE PURPOSE OF STORM DRAIN AND WATER QUALITY USE AND ANY AND ALL IMPROVEMENTS AND APPURTENANCES INSTALLED, INCLUDING THE CONSTRUCTION, ACCESS, AND MAINTENANCE OF THESE IMPROVEMENTS AND APPURTENANCES. SAID EASEMENT IS FOR THE BENEFIT OF THE HOMEOWNERS ASSOCIATION ALL IN ACCORDANCE WITH THE SUBDIVISION RESTRICTIONS GOVERNING THIS PROJECT.

OWNERS’ STATEMENT (CONT.)

THE AREAS DESIGNATED "SLOPE EASEMENT", OR (S.E.) ARE NOT HEREBY DEDICATED TO THE GENERAL PUBLIC BUT ARE RESERVED FOR THE PURPOSE OF RIGHT TO EXCAVATE, CONSTRUCT, GRADE ,MAINTAIN AND REPAIR THE SLOPE AND RIGHT TO REMOVE TREES, BUSHES UNDERGROWTH AND OTHER OBSTRUCTIONS INTERFERING WITH THE CONSTRUCTION, MAINTENANCE, REPAIR OR REPLACEMENT OF EARTH EMBANKMENT SLOPES AND FACILITIES. SAID EASEMENT IS TO BE GRANTED TO THE GEOLOGIC HAZARD ABATEMENT DISTRICT (GHAD) CONCURRENT WITH OR SUBSEQUENT TO THE FILING OF THIS MAP.

THIS MAP SHOWS ALL EASEMENTS ON THE PREMISES OR OF RECORD.

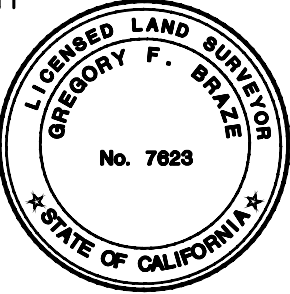
AS OWNERS:  
ERIC MANDELL, TRUSTEE OF THE HETFIELD ESTATES PARTNERS, LLC.

BY: \_\_\_\_\_ DATE  
ERIC MANDELL

SURVEYOR’S STATEMENT

I, GREGORY BRAZE, DO HEREBY STATE THAT I AM A LICENSED LAND SURVEYOR IN THE STATE OF CALIFORNIA, THAT THE SUBDIVISION SHOWN ON THIS MAP, CONSISTING OF EIGHT (8) SHEETS, AND THE SURVEY ESTABLISHING THE BOUNDARY THEREOF, WERE PREPARED UNDER MY DIRECTION DURING THE MONTH OF AUGUST 2021, IN ACCORDANCE WITH THE REQUIREMENTS OF THE SUBDIVISION MAP ACT AND LOCAL ORDINANCES AND THAT THE SURVEY IS TRUE AND CORRECT AS SHOWN. MONUMENTS OF THE CHARACTER SHOWN WILL BE SET ON OR BEFORE DECEMBER 31, 2024 AND WILL BE SUFFICIENT TO ENABLE THE SURVEY TO BE RETRACED. I HEREBY STATE THAT THIS MAP SUBSTANTIALLY CONFORMS TO THE CONDITIONALLY APPROVED TENTATIVE MAP AND ANY APPROVED ALTERATIONS THEREOF.

\_\_\_\_\_  
GREGORY F. BRAZE, L.S. 7623 DATED



TOWN SURVEYOR’S STATEMENT

I, FRANCIS J. KENNEDY, ACTING TOWN SURVEYOR OF THE TOWN OF MORAGA, COUNTY OF CONTRA COSTA, STATE OF CALIFORNIA, DO HEREBY STATE THAT I HAVE EXAMINED THIS MAP ENTITLED "SUBDIVISION 9051", AND I AM SATISFIED THAT THE MAP IS TECHNICALLY CORRECT.

\_\_\_\_\_  
FRANCIS J. KENNEDY, R.C.E. 21771 DATED  
ACTING TOWN SURVEYOR, TOWN OF MORAGA  
REGISTRATION EXPIRES SEPT. 30, 2023



TOWN CLERK’S STATEMENT

I, MARTY C. MCINTURF, TOWN CLERK AND EX–OFFICIO OF THE TOWN OF MORAGA, COUNTY OF CONTRA COSTA, STATE OF CALIFORNIA, DO HEREBY STATE THAT THIS MAP, CONSISTING OF EIGHT (8) SHEETS AND ENTITLED "HETFIELD ESTATES SUBDIVISION 9051" WAS PRESENTED TO SAID TOWN COUNCIL, AS PROVIDED BY LAW, AT A REGULAR MEETING THEREOF, HELD ON THE \_\_\_\_\_ DAY OF \_\_\_\_\_ 202\_\_\_\_. I FURTHER STATE THAT ALL BONDS AS REQUIRED BY LAW TO ACCOMPANY THE WITHIN MAP HAVE BEEN APPROVED BY THE TOWN COUNCIL OF THE TOWN OF MORAGA AND ARE FILED IN MY OFFICE.

IN WITNESS WHEREOF I HAVE HEREUNTO SET MY HAND THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 202\_\_\_\_.

\_\_\_\_\_  
TOWN CLERK AND EX–OFFICIO CLERK  
OF THE TOWN COUNCIL, TOWN OF MORAGA,  
COUNTY OF CONTRA COSTA,  
STATE OF CALIFORNIA

OWNERS’ ACKNOWLEDGMENT

A NOTARY PUBLIC OR OTHER OFFICER COMPLETING THIS CERTIFICATE VERIFIES ONLY THE IDENTITY OF THE INDIVIDUAL WHO SIGNED THE DOCUMENT TO WHICH THIS CERTIFICATE IS ATTACHED, AND NOT THE TRUTHFULNESS, ACCURACY, OR VALIDITY OF THAT DOCUMENT.

STATE OF CALIFORNIA} S.S.

COUNTY OF \_\_\_\_\_}

ON \_\_\_\_\_, 202\_\_\_\_, BEFORE ME \_\_\_\_\_, A NOTARY PUBLIC, PERSONALLY APPEARED \_\_\_\_\_ WHO PROVED TO ME ON THE BASIS OF SATISFACTORY EVIDENCE TO BE THE PERSON(S) WHOSE NAME(S) IS/ARE SUBSCRIBED TO THE WITHIN INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE/SHE EXECUTED THE SAME IN HIS AUTHORIZED CAPACITY(IES) AND THAT BY HIS/HER SIGNATURE ON THE INSTRUMENT THE PERSON(S) OR THE ENTITY UPON BEHALF OF WHICH THE PERSON(S) ACTED, EXECUTED THE INSTRUMENT.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF CALIFORNIA THAT THE FOREGOING PARAGRAPH IS TRUE AND CORRECT.

WITNESS MY HAND:

SIGNATURE: \_\_\_\_\_

\_\_\_\_\_  
NAME (PRINTED), NOTARY PUBLIC IN AND FOR  
SAID COUNTY AND STATE.

PRINCIPAL COUNTY OF BUSINESS: \_\_\_\_\_

COMMISSION EXPIRES: \_\_\_\_\_

COMMISSION # OF NOTARY: \_\_\_\_\_

TOWN ENGINEER’S STATEMENT

I, SHAWN KNAPP, TOWN ENGINEER OF THE TOWN OF MORAGA, COUNTY OF CONTRA COSTA COUNTY, STATE OF CALIFORNIA, DO HEREBY STATE THAT I HAVE EXAMINED THIS MAP ENTITLED "HETFIELD ESTATES SUBDIVISION 9051", AND SAID SUBDIVISION IS SUBSTANTIALLY THE SAME AS IT APPEARED ON THE TENTATIVE MAP AND ANY APPROVED ALTERATIONS THEREOF, AND THAT ALL PROVISIONS OF THE SUBDIVISION MAP ACT, AND LOCAL ORDINANCES APPLICABLE AT THE TIME OF THE APPROVAL HAVE BEEN COMPLIED WITH.

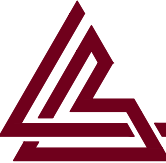
\_\_\_\_\_  
SHAWN KNAPP, R.C.E. 68223 DATED  
TOWN ENGINEER, TOWN OF MORAGA  
REGISTRATION EXPIRES SEPTEMBER 30, 2023



HETFIELD ESTATES  
SUBDIVISION 9051

PARCEL 'B' OF SUBDIVISION MS–M2002–01 RECORDED IN BOOK 189 OF PARCEL MAPS AT PAGE 15, CONTRA COSTA COUNTY RECORDS.

TOWN OF MORAGA CONTRA COSTA COUNTY CALIFORNIA  
MARCH 2022



LEA & BRAZE ENGINEERING, INC.

CIVIL ENGINEERS • LAND SURVEYORS

2495 INDUSTRIAL PARKWAY WEST  
HAYWARD, CALIFORNIA 94545  
(510) 887–4086 FAX (510) 887–3019  
WWW.LEABRAZE.COM

SHEET 1 OF 9  
JOB # 2150582C/2150581SU

**CLERK OF THE BOARD OF SUPERVISOR’S STATEMENT**

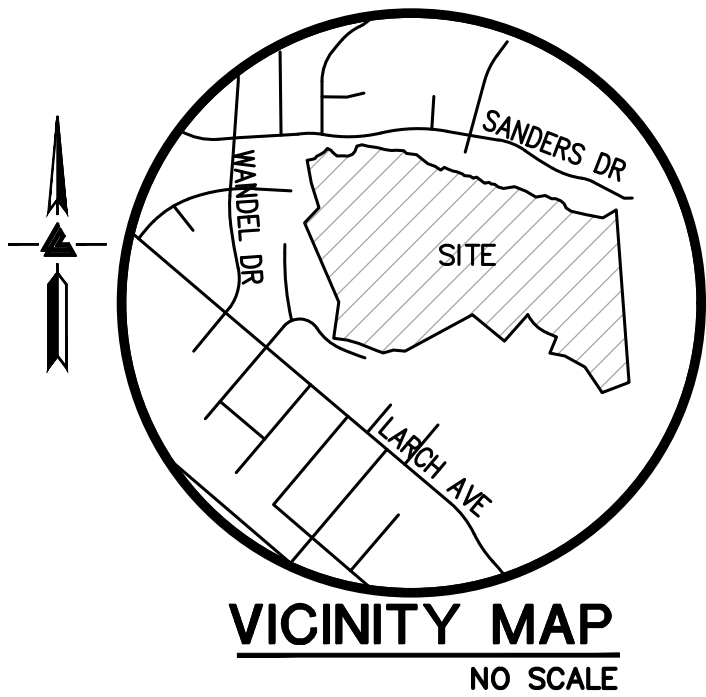
I, DAVID TWA, DO HEREBY CERTIFY, AS CHECKED BELOW, THAT:

- ☐ A TAX BOND ASSURING THE PAYMENT OF ALL TAXES WHICH ARE NOW A LIEN BUT NOT YET PAYABLE, HAS BEEN RECEIVED AND FILED WITH THE BOARD OF SUPERVISORS OF CONTRA COSTA COUNTY, STATE OF CALIFORNIA.
- ☐ ALL TAXES DUE HAVE BEEN PAID AS CERTIFIED BY THE COUNTY REDEMPTION OFFICE.

DATE: \_\_\_\_\_

DAVID TWA  
CLERK OF THE BOARD OF  
SUPERVISORS AND COUNTY  
ADMINISTRATOR FOR THE  
COUNTY OF CONTRA COSTA,  
STATE OF CALIFORNIA

BY: \_\_\_\_\_  
DEPUTY CLERK



**COUNTY RECORDER’S STATEMENT**

THE MAP ENTITLED ENTITLED "HETFIELD ESTATES SUBDIVISION 9051" IS HEREBY ACCEPTED FOR RECORDATION SHOWING A CLEAR TITLE AS PER THE LETTER AS PER THE LETTER OF TITLE MADE BY OLD REPUBLIC TITLE COMPANY DATED \_\_\_\_ DAY OF \_\_\_\_\_, 202\_\_, AND AFTER EXAMINING THE SAME, I DEEM THE MAP COMPLIES IN ALL RESPECTS WITH THE PROVISIONS OF THE SUBDIVISION MAP ACT AND LOCAL ORDINANCES GOVERNING THE FILING OF SUBDIVISION MAPS.

FILED AT THE REQUEST OF OLD REPUBLIC TITLE COMPANY AT  
\_\_\_\_\_ ON THIS \_\_\_\_ DAY OF \_\_\_\_\_, 202\_\_, IN  
BOOK \_\_\_\_\_ OF MAPS, AT PAGES \_\_\_\_\_ SERIES NO.  
\_\_\_\_\_, IN THE OFFICE OF THE COUNTY RECORDER OF THE  
COUNTY OF CONTRA COSTA, STATE OF CALIFORNIA.

DEBORAH COOPER  
COUNTY RECORDER IN AND FOR THE  
COUNTY OF CONTRA COSTA,  
STATE OF CALIFORNIA

BY: \_\_\_\_\_  
DEPUTY COUNTY RECORDER

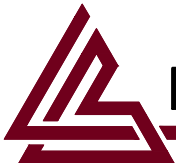
**SOILS REPORT**

A SOILS INVESTIGATION REPORT FOR THIS PROPERTY HAS BEEN PREPARED BY ENCEO, DATED JANUARY 12, 2015 AND IS ON FILE WITH THE TOWN OF MORAGA.

**HETFIELD ESTATES  
SUBDIVISION 9051**

PARCEL 'B' OF SUBDIVISION MS-M2002-01 RECORDED IN BOOK 189  
OF PARCEL MAPS AT PAGE 15, CONTRA COSTA COUNTY RECORDS.

**TOWN OF MORAGA      CONTRA COSTA COUNTY      CALIFORNIA**  
MARCH 2022



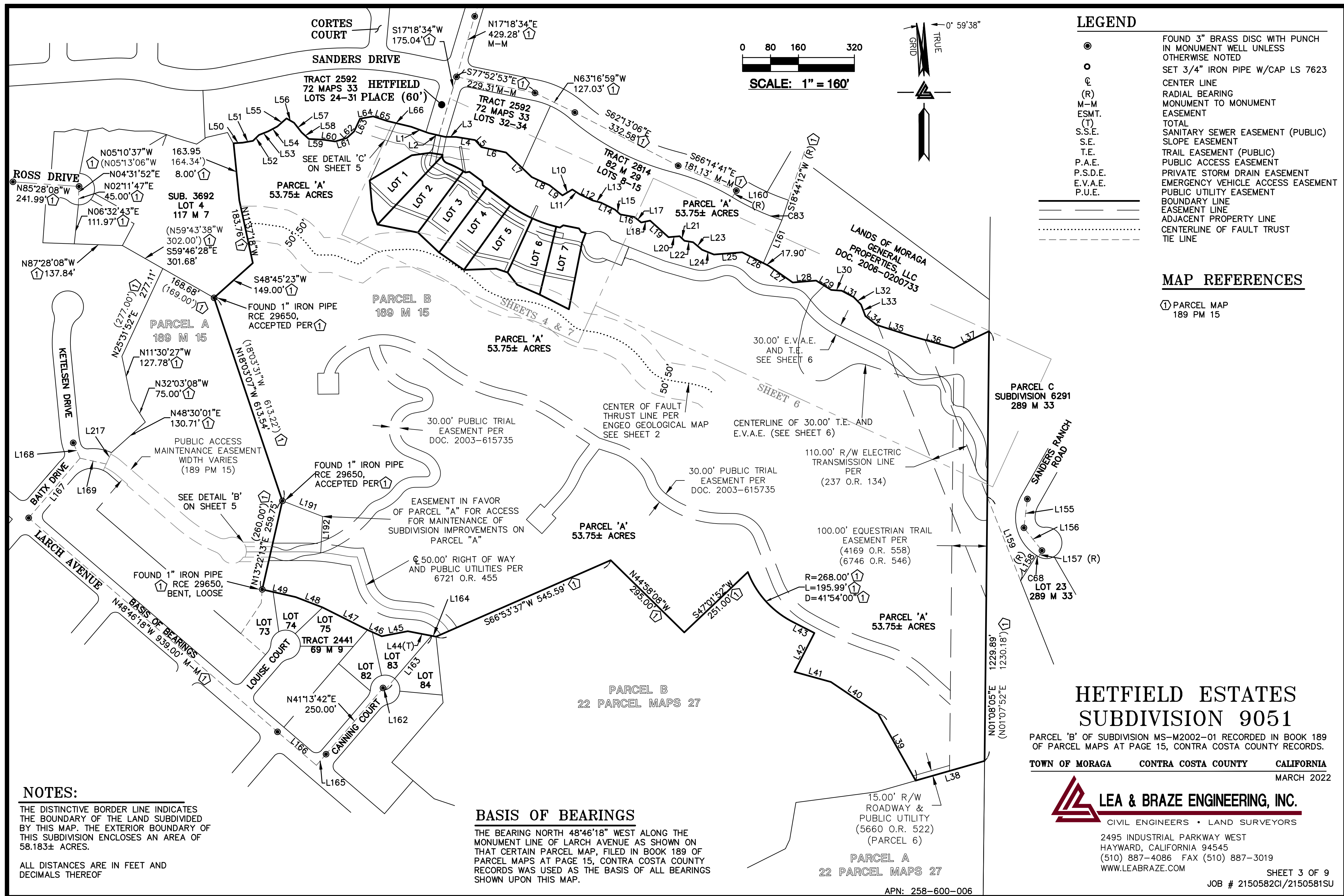
**LEA & BRAZE ENGINEERING, INC.**

CIVIL ENGINEERS • LAND SURVEYORS

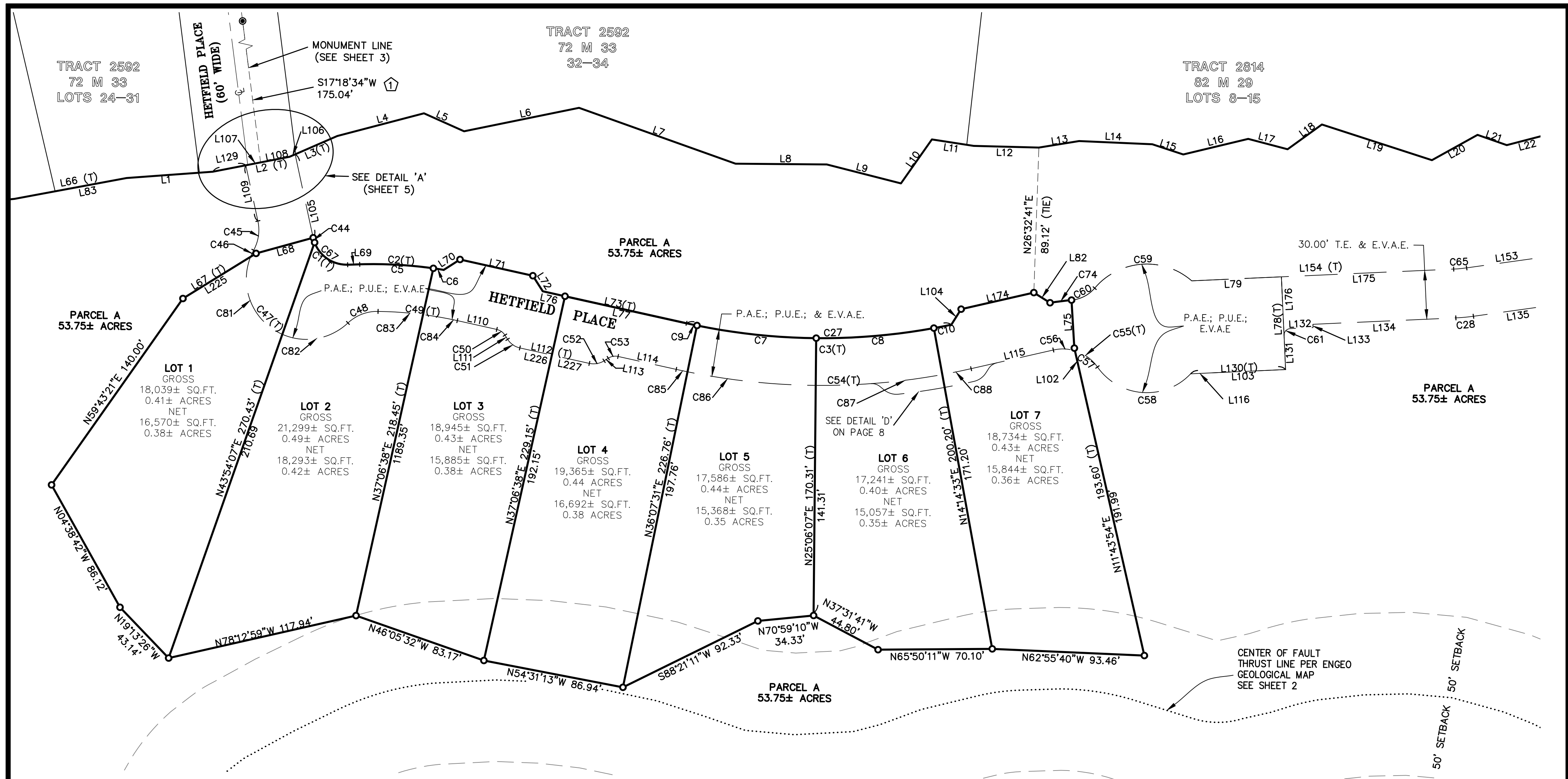
2495 INDUSTRIAL PARKWAY WEST  
HAYWARD, CALIFORNIA 94545  
(510) 887-4086 FAX (510) 887-3019  
WWW.LEABRAZE.COM

SHEET 2 OF 9  
JOB # 2150582CI/2150581SU









### LEGEND

- FOUND 3" BRASS DISC WITH PUNCH IN MONUMENT WELL UNLESS OTHERWISE NOTED
- SET 3/4" IRON PIPE W/CAP LS 7623
- ⊙ CENTER LINE
- (R) RADIAL BEARING
- M-M MONUMENT TO MONUMENT
- ESMT. EASEMENT
- (T) TOTAL
- S.S.E. SANITARY SEWER EASEMENT (PUBLIC)
- S.E. SLOPE EASEMENT
- T.E. TRAIL EASEMENT (PUBLIC)

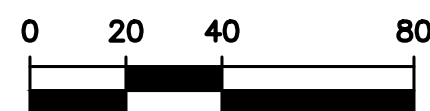
P.A.E.  
P.S.D.E.  
E.V.A.E.  
P.U.E.

PUBLIC ACCESS EASEMENT  
PRIVATE STORM DRAIN EASEMENT  
EMERGENCY VEHICLE ACCESS EASEMENT  
PUBLIC UTILITY EASEMENT  
BOUNDARY LINE  
EASEMENT LINE  
ADJACENT PROPERTY LINE  
CENTERLINE OF FAULT THRUST  
TIE LINE

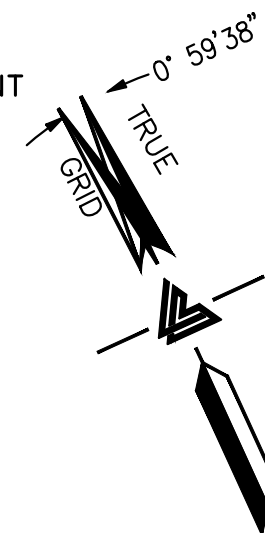
### NOTES:

THE DISTINCTIVE BORDER LINE INDICATES THE BOUNDARY OF THE LAND SUBDIVIDED BY THIS MAP. THE EXTERIOR BOUNDARY OF THIS SUBDIVISION ENCLOSSES AN AREA OF 58.183± ACRES.

ALL DISTANCES ARE IN FEET AND DECIMALS THEREOF



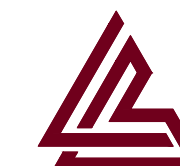
SCALE: 1" = 40'



## HETFIELD ESTATES SUBDIVISION 9051

PARCEL 'B' OF SUBDIVISION MS-M2002-01 RECORDED IN BOOK 189 OF PARCEL MAPS AT PAGE 15, CONTRA COSTA COUNTY RECORDS.

TOWN OF MORAGA CONTRA COSTA COUNTY CALIFORNIA  
MARCH 2022



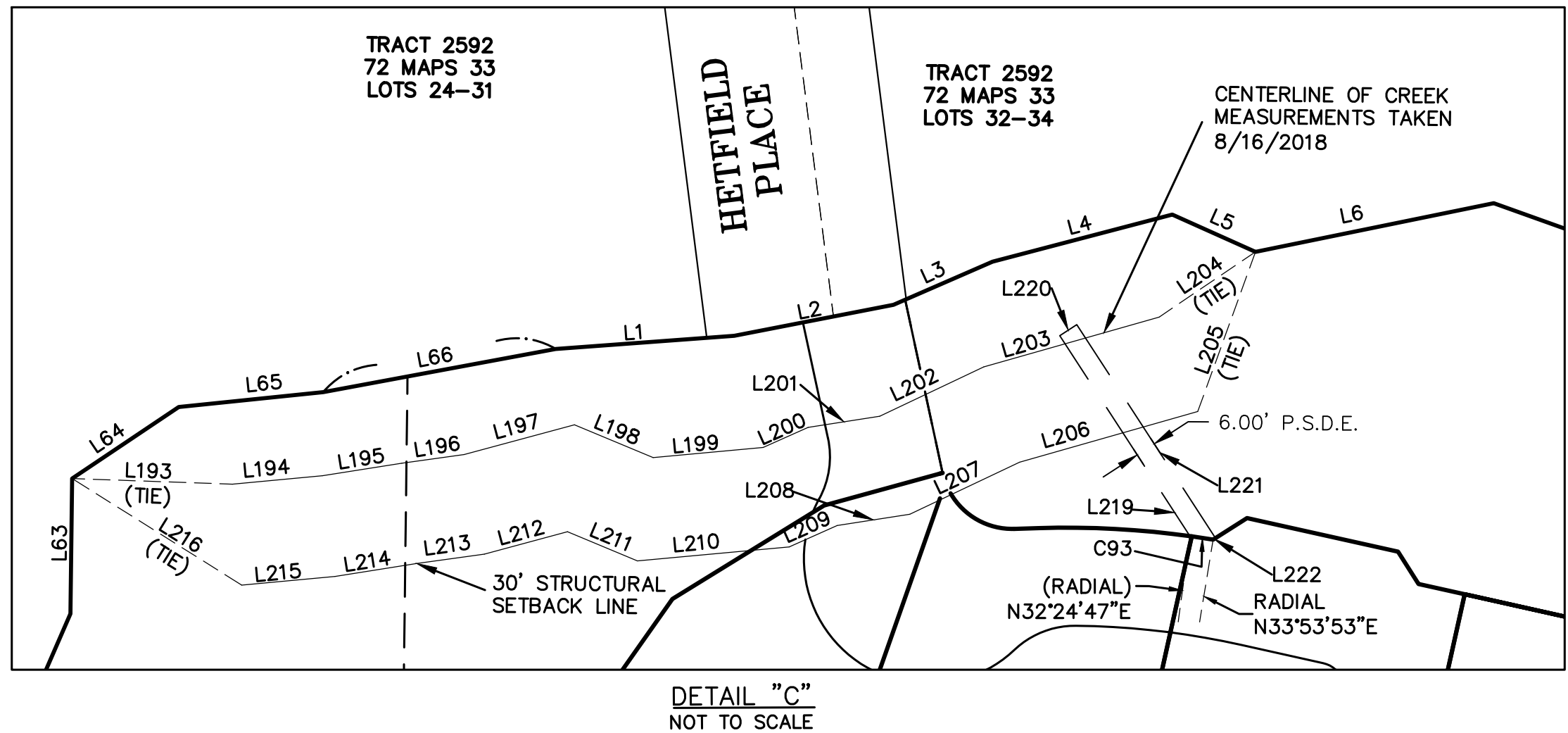
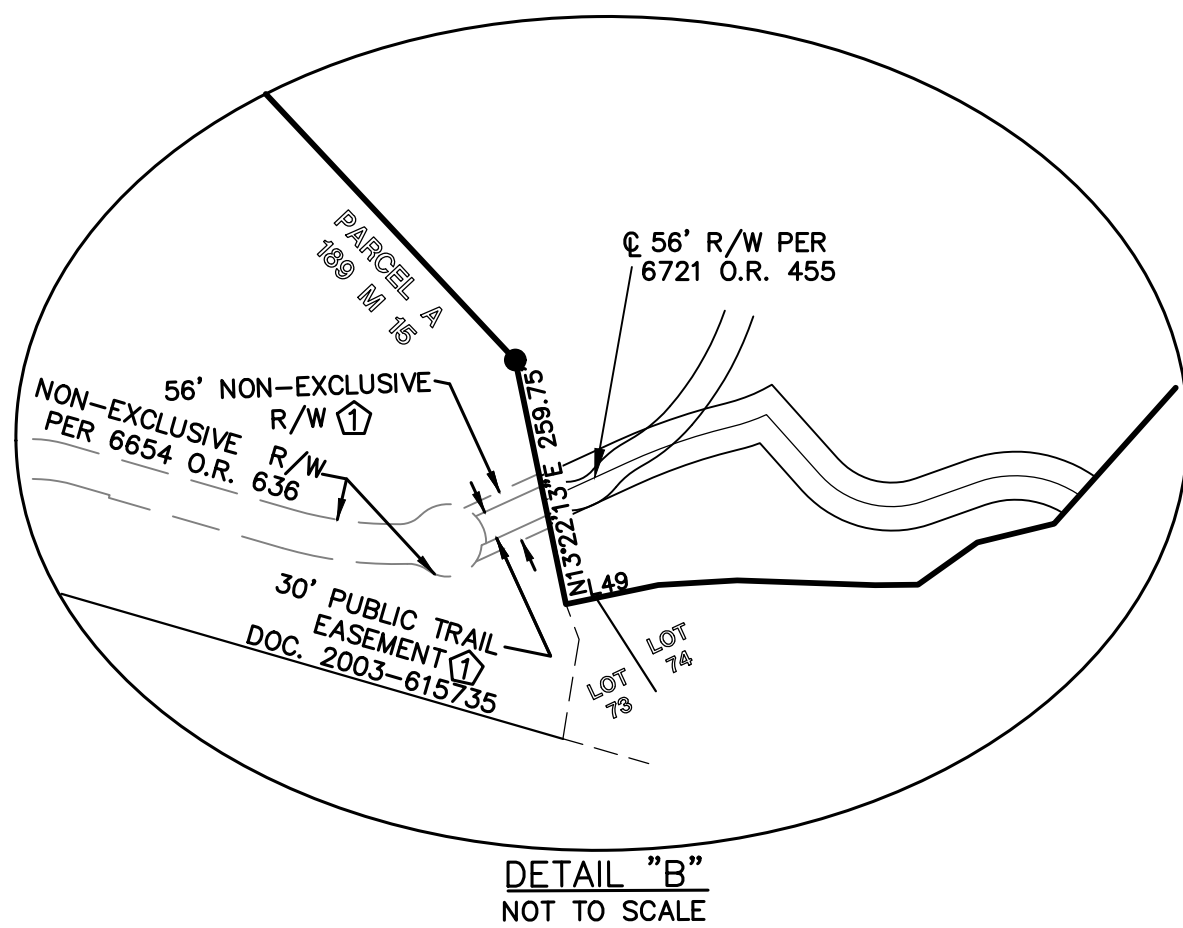
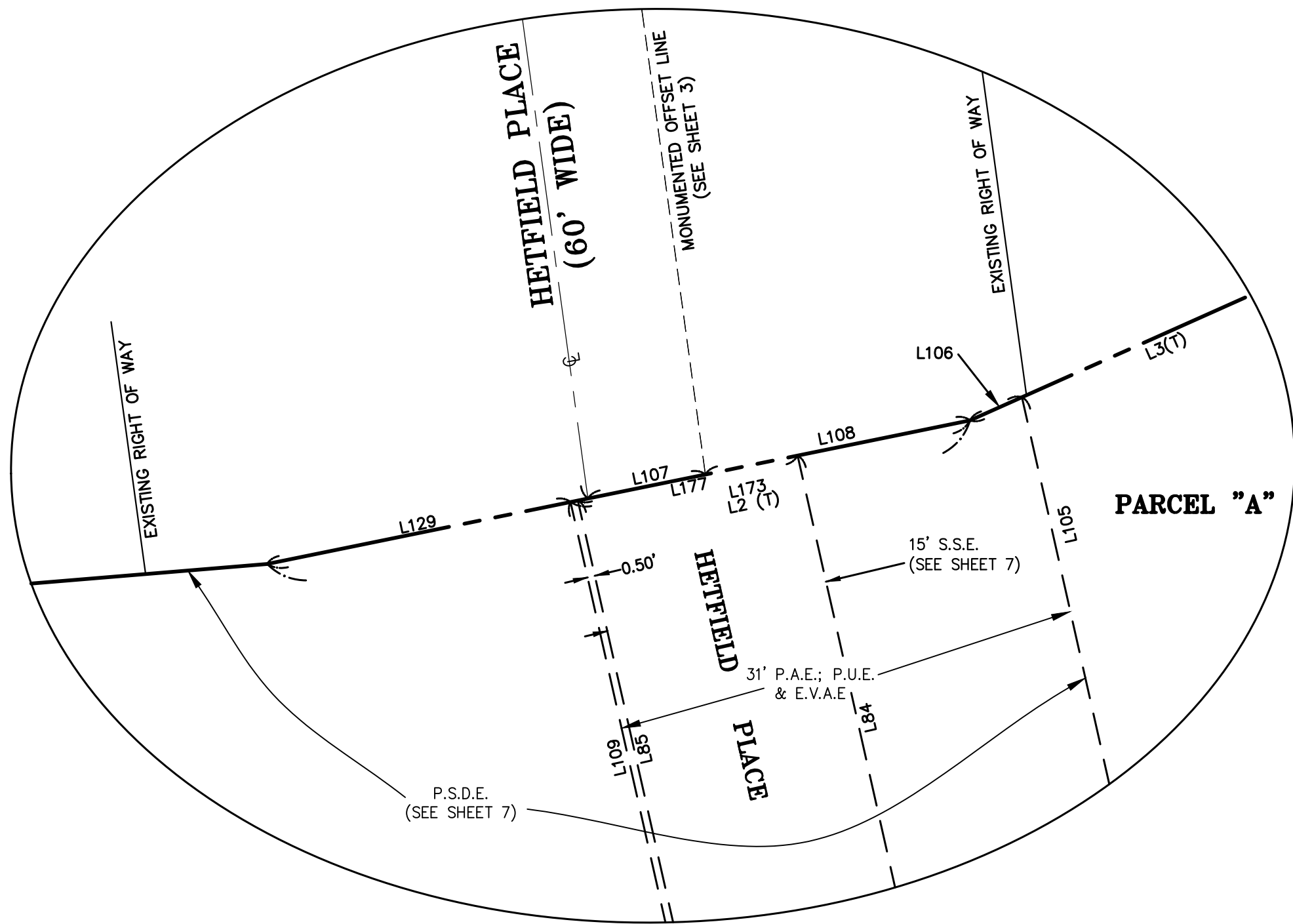
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SHEET 4 OF 9  
JOB # 2150582CI/2150581SU

APN: 258-600-006

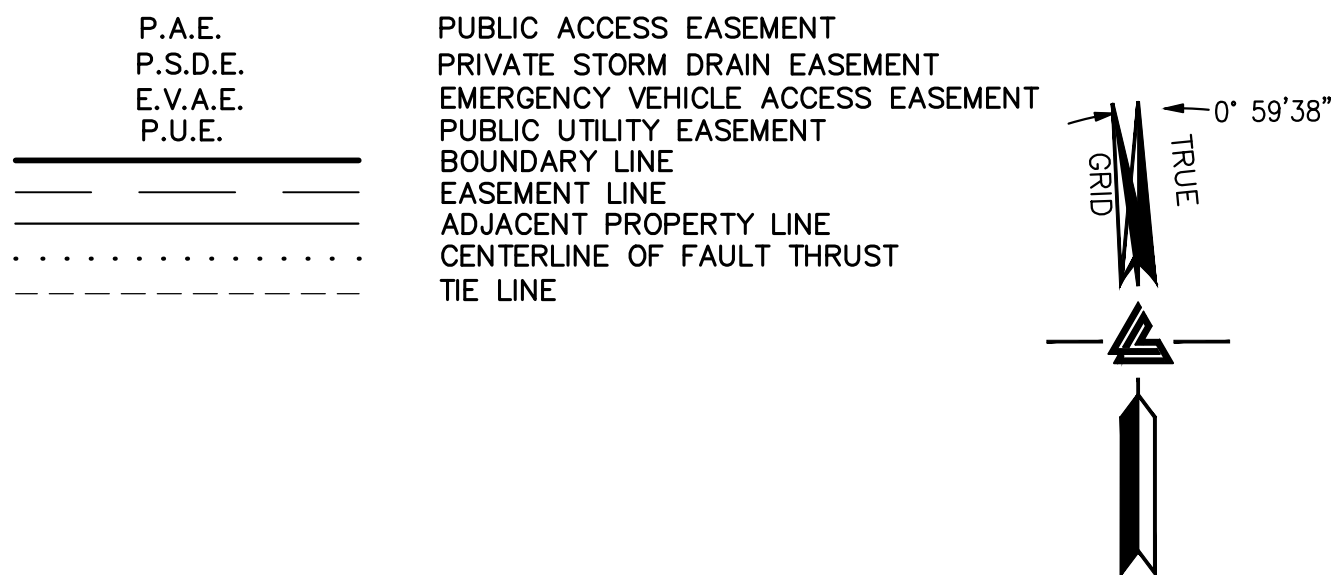


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| LEGEND |                                                                        |
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| M-M    | MONUMENT TO MONUMENT                                                   |
| ESMT.  | EASEMENT                                                               |
| (T)    | TOTAL                                                                  |
| S.S.E. | SANITARY SEWER EASEMENT (PUBLIC)                                       |
| S.E.   | SLOPE EASEMENT                                                         |
| T.E.   | TRAIL EASEMENT (PUBLIC)                                                |

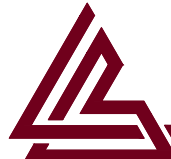


## HETFIELD ESTATES SUBDIVISION 9051

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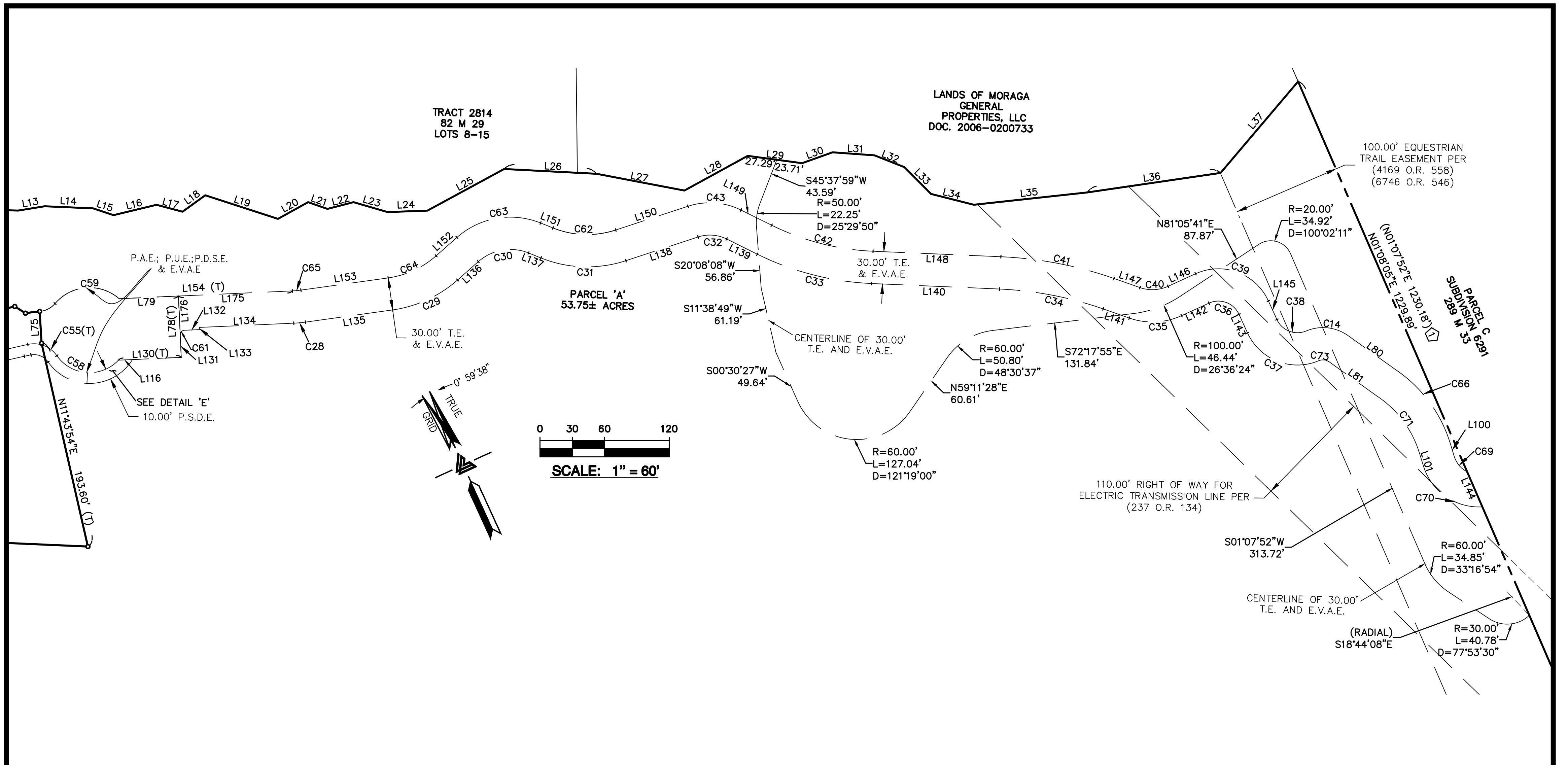
**TOWN OF MORAGA    CONTRA COSTA COUNTY    CALIFORNIA**

MARCH 2022


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SHEET 5 OF 9  
JOB # 2150582CI/2150581SU





## NOTES:

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P.A.E.  
P.S.D.E.  
E.V.A.E.  
P.U.E.

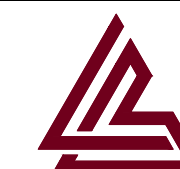
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PUBLIC ACCESS EASEMENT  
PRIVATE STORM DRAIN EASEMENT  
EMERGENCY VEHICLE ACCESS EASEMENT  
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BOUNDARY LINE  
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TOWN OF MORAGA CONTRA COSTA COUNTY CALIFORNIA  
MARCH 2022



**LEA & BRAZE ENGINEERING, INC.**

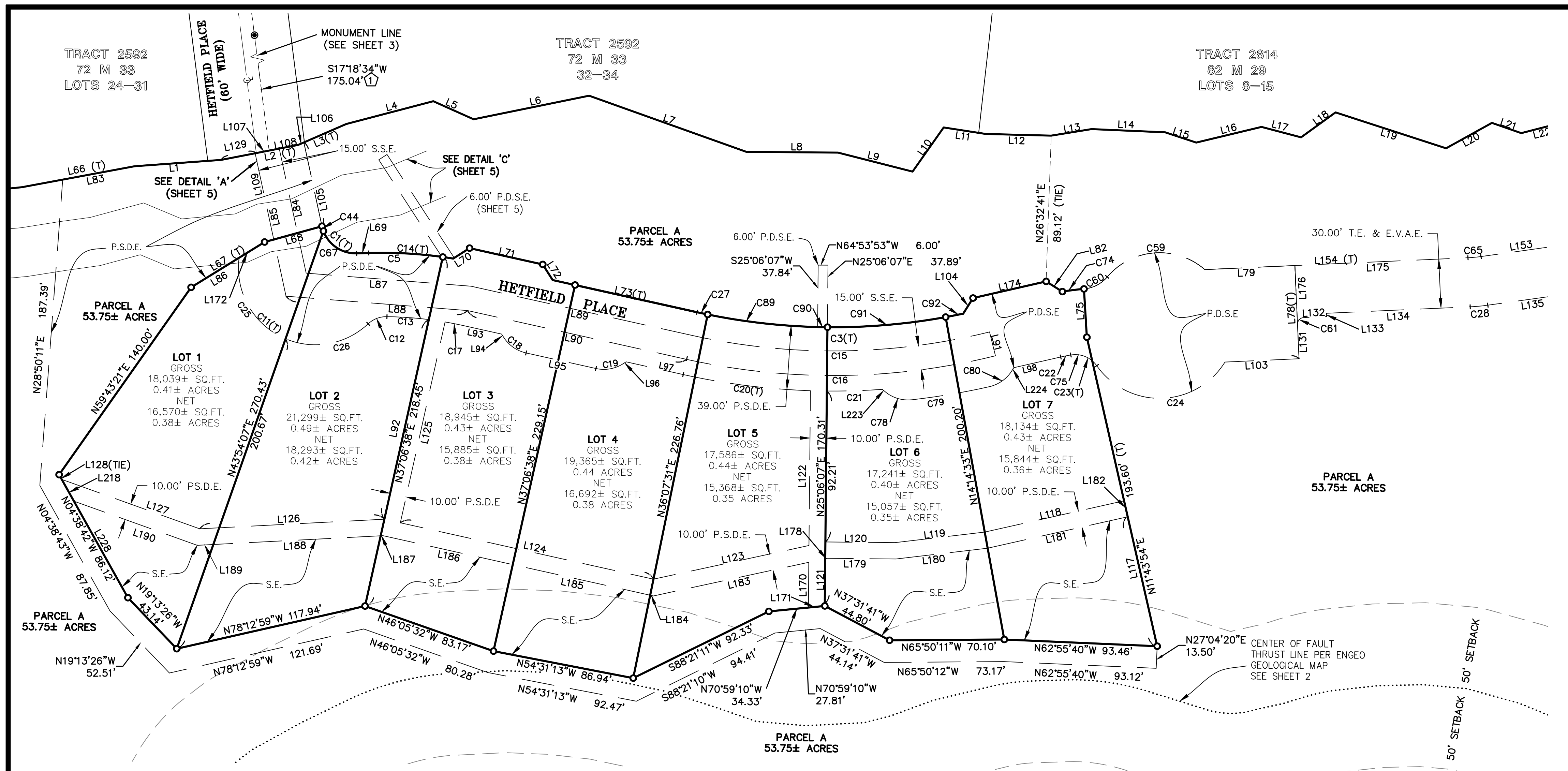
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SHEET 6 OF 9  
JOB # 2150582CI/2150581SU

APN: 258-600-006





## NOTES:

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NOTE (1): EASEMENT IN FAVOR OF PARCEL "B" OF 189 PM 15, FOR ACCESS FOR MAINTENANCE OF OPEN SPACE ON PARCEL "B" AND NON-EXCLUSIVE R/W PER 189 PM 15.

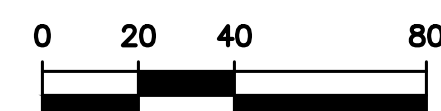
NOTE (2): EASEMENT IN FAVOR OF PARCEL "A" FOR ACCESS AND MAINTENANCE OF SUBDIVISION IMPROVEMENTS ON PARCEL "A" AS PER 189 PM 15.

## LEGEND

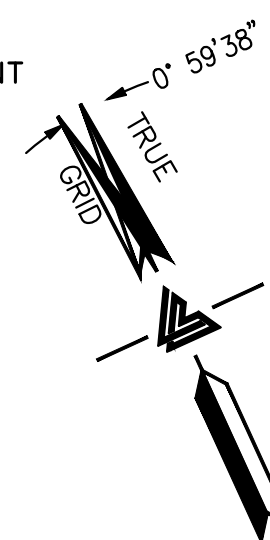
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P.A.E.  
P.S.D.E.  
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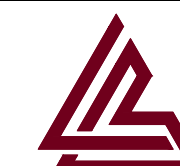
SCALE: 1" = 40'



## HETFIELD ESTATES SUBDIVISION 9051

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TOWN OF MORAGA CONTRA COSTA COUNTY CALIFORNIA  
MARCH 2022



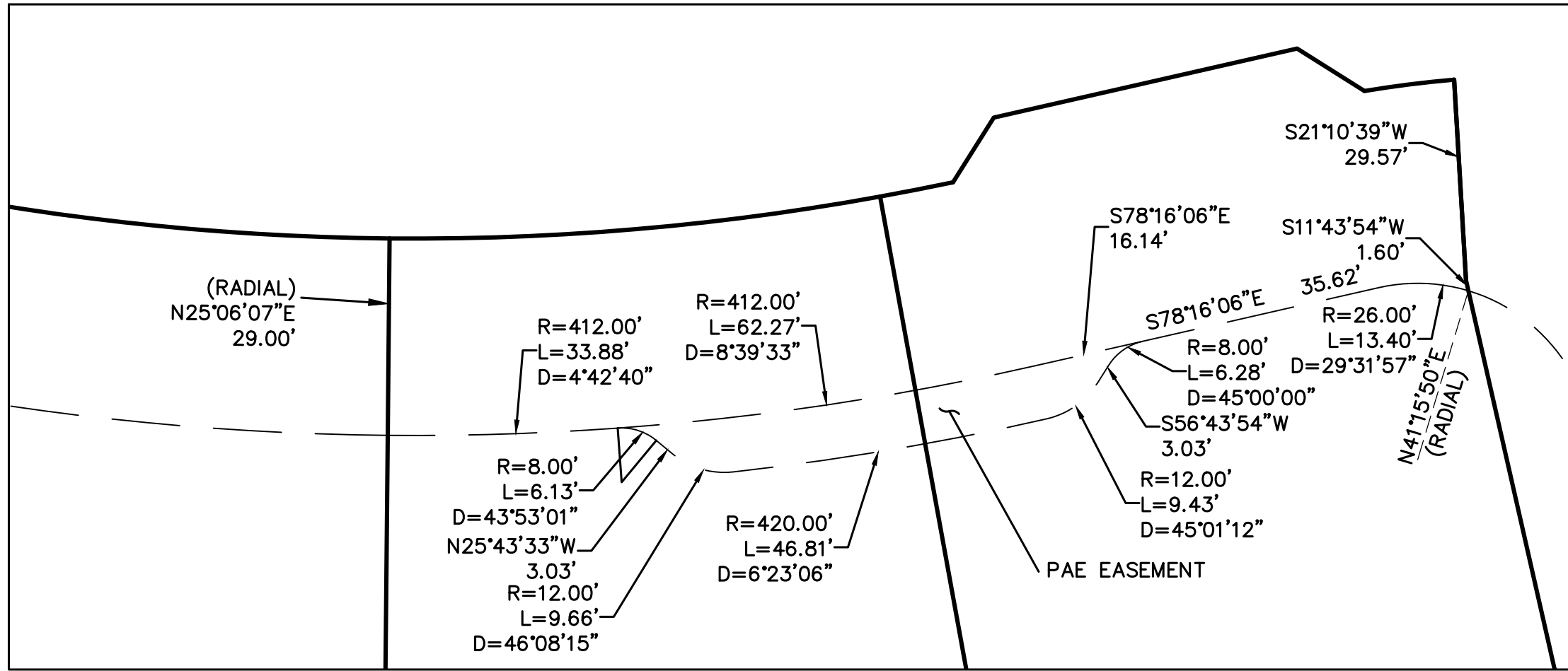
LEA & BRAZE ENGINEERING, INC.

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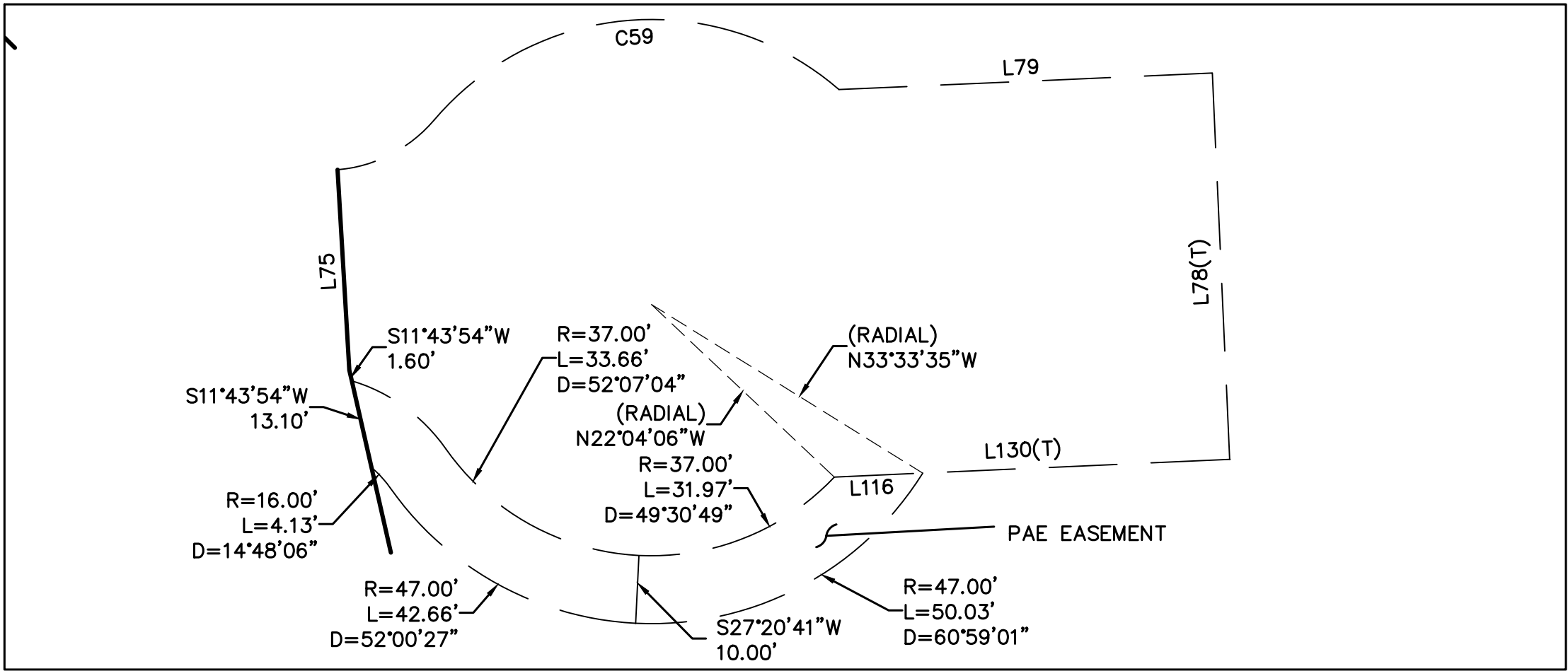
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SHEET 7 OF 9  
JOB # 2150582CI/2150581SU

APN: 258-600-006



DETAIL "D"  
NOT TO SCALE



DETAIL "E"  
NOT TO SCALE

**NOTES:**  
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|                                                                                                                             |                                                                                                                                                                                                                                             |  |
|-----------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|
| <p>P.A.E.<br/>P.S.D.E.<br/>E.V.A.E.<br/>P.U.E.</p> <p>— — — — —<br/>— — — — —<br/>— — — — —<br/>— — — — —<br/>— — — — —</p> | <p>PUBLIC ACCESS EASEMENT<br/>PRIVATE STORM DRAIN EASEMENT<br/>EMERGENCY VEHICLE ACCESS EASEMENT<br/>PUBLIC UTILITY EASEMENT<br/>BOUNDARY LINE<br/>EASEMENT LINE<br/>ADJACENT PROPERTY LINE<br/>CENTERLINE OF FAULT THRUST<br/>TIE LINE</p> |  |
|-----------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|

## HETFIELD ESTATES SUBDIVISION 9051

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TOWN OF MORAGA    CONTRA COSTA COUNTY    CALIFORNIA

MARCH 2022

**LEA & BRAZE ENGINEERING, INC.**  
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HAYWARD, CALIFORNIA 94545  
(510) 887-4086 FAX (510) 887-3019  
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APN: 258-600-006

SHEET 8 OF 8  
JOB # 2150582CI/2150581SU





# **ATTACHMENT C**

- 1) Subdivision Improvement Agreement for Subdivision  
9051 – Public Improvements
- 2) Subdivision Improvement Agreement for Subdivision  
9051 – Private Improvements
- 3) Subdivision Improvement Agreement for Subdivision  
9051 – Landscape Improvements

RECORDING REQUESTED BY )  
 AND WHEN RECORDED MAIL TO: )  
 )  
 Town of Moraga )  
 329 Rheem Boulevard )  
 Moraga, CA 94556 )  
 Attention: Town Clerk )  
 )  
 )

---

(Space Above This Line for Recorder's Use Only)  
 Exempt from recording fee per Gov. Code § 27383.

## SUBDIVISION IMPROVEMENT AGREEMENT

THIS SUBDIVISION IMPROVEMENT AGREEMENT (the “**Agreement**”) is made and entered into on this \_\_\_\_ day of \_\_\_\_\_, 2022 (the “**Effective Date**”) by and between HETFIELD ESTATES PARTNERS, LLC, a California limited liability company (“**Developer**”), and the TOWN OF MORAGA, a California municipal corporation (“**Town**”).

### R E C I T A L S

A. Developer is the owner of that certain real property located at Hetfield Place in the Town of Moraga, Contra Costa County, California, as more particularly described in Exhibit A, attached hereto and incorporated herein by this reference (the “**Property**”). Developer has submitted an application to the Town for the development of a seven (7) lot PUD subdivision on the Property (the “**Project**”).

B. On March 3, 2014, the Planning Commission of the Town of Moraga adopted Resolution No. 04-14PC, approving the tentative map for the Subdivision prepared by RMR Design Group, subject to certain conditions of approval (the “**Conditions**”).

C. The Conditions require either (1) that certain improvements be constructed prior to approval of the final map, or (2) that Developer enter into an agreement with the Town providing for the future construction of such improvements.

D. Developer has applied to Town for final map approval without having completed the required improvements and therefore will enter into an agreement with the Town providing for the future construction and installation of the improvements, as required by the Subdivision Map Act, Government Code Section 66410 *et seq.*, and Town of Moraga Ordinance Nos. 57 and 74, as may be amended from time to time (the “**Subdivision Ordinance**”).

E. Developer has submitted plans, specifications and drawings for the improvements prepared by Lea & Braze Engineering, Inc. and dated March 8, 2022 (the “**Improvement Plans**”), which Improvement Plans have been approved by the Town Engineer.

F. Town and Developer desire to enter an agreement providing for the construction and installation of the improvements in accordance with the Improvement Plans.

### A G R E E M E N T

NOW, THEREFORE, in consideration of the faithful performance of the terms and conditions set forth in this Agreement, the parties hereto agree as follows:

1. Purpose. The purpose of this Agreement is to guarantee completion of certain improvements in accordance with the Improvement Plans and ensure satisfactory performance by Developer of Developer's obligations to satisfy the Conditions.

2. Duty to Install Improvements. Developer will construct, install and complete, or cause to be constructed, installed and completed, at the Developer's sole cost and expense, all public improvements required by the Conditions and/or described in the Improvement Plans, which include certain improvements located on the Property ("**Public Improvements**") and improvements located offsite ("**Private Improvements**") (collectively, the "**Improvements**"), in accordance with such plans, all applicable federal, state and local laws and regulations, including without limitation State of California Division of Industrial Safety Construction Orders, and to the satisfaction of the Town Engineer, in his or her reasonable discretion. Developer will also supply all labor and materials therefor, all in strict accordance with the terms and conditions of this Agreement. The construction, installation and completion of the Improvements and all labor and materials furnished in connection therewith are hereinafter referred to collectively as the "**Work.**"

3. Duty to Maintain Improvements. Town shall not be responsible or liable for the maintenance or care of the Public Improvements until Town formally approves and accepts them in accordance with its policies and procedures and shall not own, maintain or be responsible for the Private Improvements. Town shall exercise no control over the Public Improvements until approved and accepted. Any use by any person of the Public Improvements, or any portion thereof, shall be at the sole and exclusive risk of the Developer at all times prior to Town's acceptance. Developer shall maintain all the Public Improvements in a state of good repair until they are completed by Developer and approved and accepted by Town. Developer shall at all times be responsible and liable for the Private Improvements and Town shall exercise no control of the Private Improvements at any time. Maintenance of the Improvements shall include, but shall not be limited to, repair of pavement, curbs, gutters, sidewalks, signals, parkways, water mains, and sewers; maintaining all landscaping in a vigorous and thriving condition reasonably acceptable to Town; removal of debris from sewers and storm drains; and sweeping, repairing, and maintaining in good and safe condition all streets and street improvements. It shall be Developer's responsibility to initiate all maintenance work, but if it shall fail to do so, it shall promptly perform such maintenance work when notified to do so by Town. If Developer fails to properly prosecute its maintenance obligation under this Section 3, Town may do all work necessary for such maintenance and the cost thereof shall be the responsibility of Developer and its surety under this Agreement. Town shall not be responsible or liable for any damages or injury of any nature in any way related to or caused by the Private Improvements, or the Public Improvements prior to acceptance.

4. Commencement and Completion Date. Developer will notify Town in writing at least 24 hours prior to the commencement of the Work. Developer will complete the Work within 24 months of the Effective Date. All Work will be completed in a good and workmanlike manner in accordance with accepted design and construction practices. This completion date may be extended by the Town Engineer in consultation with the Town Attorney in its sole and absolute discretion at the request of Developer, which request shall be accompanied by a written assurance acceptable to the Town Attorney that the securities required by Section 13 shall remain enforceable throughout the term of the extension.

5. Estimated Cost of Work. The estimated cost of the Work is Two Million Five Hundred and Twenty-Three Thousand and Four Hundred Dollars (\$2,523,400.00) as set forth in Exhibit "B" attached hereto. Notwithstanding this estimate, Developer hereby acknowledges and agrees that (a) the actual costs to complete the Work may significantly exceed this estimate, (b) this estimate in no way limits Developer's financial obligation, and (c) that Developer is obligated to complete the Work at its own cost, expense, and liability.

6. Modifications to the Plans. Approval of this Agreement by Town does not release Developer of its responsibility to correct mistakes, errors or omissions in the Improvement Plans. If, at any time, in the opinion of the Town Engineer, in his or her reasonable discretion, the Improvement Plans are deemed inadequate in any respect Developer agrees to make such modifications, changes or revisions as necessary in order to complete the Work in a good and workmanlike manner in accordance with this Agreement.

7. Repairs. Developer agrees to repair or have repaired in a timely manner at its sole cost and expense all public roads, streets, or other public or private property damaged as a result of or incidental to the Work or in connection with the development of the Property or to pay to the property owner of any damaged road, street or property the full cost of such repair. In addition, Developer shall obtain the written acceptance of such repair or payment from any owner whose private property was repaired by Developer or to whom Developer has paid the full cost of such repair in accordance with this Section 7. Town shall be under no obligation whatsoever to accept the Work completed under this Agreement until such time as all repairs have been completed or have been paid for and required written acceptances have been provided to the Town Engineer.

8. Foreman or Superintendent. Developer shall give personal attention to the Work. A competent foreman or superintendent, satisfactory to the Town Engineer, in his or her reasonable discretion, with authority to act for and on behalf of Developer, shall be named in writing by Developer prior to commencement of the Work, shall be present on the Property during the performance of the Work and may not be changed without advance notification to and approval of the Town Engineer.

9. Examination of Work. All of the Work shall be performed to the satisfaction of the Town Engineer, in his or her reasonable discretion. The Town and its authorized agents shall, at all times during the performance of the Work, have free access to the Work and shall be allowed to examine the Work and all materials used and to be used in the Work. No Work shall be performed without inspection by Town. Any Work performed without inspection is subject to rejection by Town. All Work shall be performed during the Town's normal working hours and



work days. If any Work is planned to be performed during non-working hours or work days, there must be a request made in writing to Town at least 24 hours in advance. If an inspector is available, Developer shall pay the actual costs for overtime work as provided in Section 10 below. If an inspector is not available, no Work shall be performed.

10. Town's Inspection, Administration and Testing. Developer shall pay to Town the actual cost for all inspection, administration and testing services furnished by Town in connection with this Agreement, including those performed by consultants under contract with the Town (the "**Town Costs**"). Concurrently with the execution of this Agreement, Developer shall deposit an amount equal to Ten Thousand Dollars (\$10,000.00) ("**Town Costs Deposit**") for the payment of the Town Costs. Developer shall, upon notice in writing by the Town Engineer, deposit such additional amount as may be required to pay the Town Costs. Any amount of the Town Costs Deposit or additional amounts deposited remaining after payment of all Town Costs will be returned to Developer. Town may, at its discretion, deposit such funds in an interest-bearing account and retain any and all interest earned.

11. Compliance with Laws. Developer shall fully comply with all federal, state and local laws, ordinances and regulations, including the Subdivision Ordinance, in the performance of this Agreement. Developer shall, at its own cost and expense, obtain all necessary permits and licenses for the Work, give all necessary notices, pay all fees and taxes required by law and make any and all deposits legally required by those public utilities that will serve the development on the Property. Copies and/or proof of payment of said permits, licenses, notices, fee and tax payments and deposits shall be furnished to the Town Engineer upon request.

12. Encroachment Permits. Developer shall obtain, at its sole cost and expense, any encroachment permits required by the Town in order to perform the Work.

13. Performance, Labor and Materials and Warranty Security. In accordance with the Subdivision Ordinance and the Subdivision Map Act, Developer will furnish and deliver to Town, within the times set forth below, a cash deposit and the following surety bonds, each of which must be issued by a surety company duly and regularly authorized to do general surety business in the State of California, or such other surety as may be acceptable to the Town Attorney in accordance with the Subdivision Ordinance.

13.1 Cash Deposit. Developer shall deliver a cash deposit with the Town in the amount of Twenty-Five Thousand Two Hundred Thirty-Five Dollars (\$25,234.00) for performance of the Work under this Agreement. Any unused portion of the deposit shall be returned together with release of the Performance Bond.

13.2 Performance Bond. Developer shall furnish and deliver a performance surety bond in the amount of Two Million Four Hundred and Ninety-Eight Thousand and One Hundred Sixty-Six Dollars (\$2,498,166.00), concurrently with the execution of this Agreement, which bond must meet the requirements of the Subdivision Ordinance and Government Code Section 66499.1, as may be amended, and be acceptable to the Town Attorney. The bond shall be conditioned upon the faithful performance of this Agreement with respect to the Work and shall be released by the Town effective upon the date of recordation of the notice of acceptance



of the Improvements and Developer's delivery of a Warranty Bond, as described below, or as otherwise allowed by Government Code Section 66499.7.

13.3 Labor and Materials Bond. Developer shall furnish and deliver a labor and materials surety bond in the amount of One Million Two Hundred Sixty-One Thousand Seven Hundred Dollars (\$1,261,700.00), concurrently with the execution of this Agreement, which bond must meet the requirements of the Subdivision Ordinance and Government Code Section 66499.2, as may be amended, and be acceptable to the Town Attorney. The bond shall secure payment to the contractor(s) and subcontractor(s) performing the Work and to all persons furnishing labor, materials or equipment to them. The Town shall retain the bond until both (a) the Town accepts the Work, and (b) the statute of limitations to record a claim of lien under Civil Code section 8410 *et seq.* has expired. After said date, the bond may be reduced by the Town Engineer to an amount not less than the total amount claimed by all claimants for whom claims of lien have been recorded and notice given in writing to the Town Council. The balance of the bond shall be retained until the final settlement of all such claims and obligations. If no such claims have been recorded, the bond shall be released in full by the Town Engineer.

14. Additional Security. If either upon execution of this Agreement or during the course of performance the Town considers that it is necessary to have an updated engineer's estimate prepared, the Town shall provide written notice to Developer. Developer shall provide such estimate within the timeframe set forth in the Town's notice and shall make such modifications to the estimate as may be reasonably requested by Town. Developer shall provide additional security as may be required by the updated engineer's estimate. If Developer is required to post additional security, the Town may require either a cash deposit or a surety bond guaranteeing performance in a form and signed by sureties satisfactory to Town. The condition of the security shall be that if Developer fails to perform its obligations under this Agreement, the Town may, as applicable, use the proceeds or require the sureties to perform the obligations, of the Agreement.

15. No Waiver by Town. Inspecting of the work and/or materials, or approval of work and/or materials, or a statement by an officer, agent or employee of the Town indicating the work complies with this Agreement, or acceptance of all or any portion of the work and/or materials, or payments thereof, or any combination of all of these acts shall not relieve Developer or its obligation to fulfill this Agreement; nor is the Town by these acts prohibited from bringing an action for damages arising from the failure to comply with this Agreement.

16. Completion of Work. After Developer (a) completes the Work in accordance with the Improvement Plans and the terms and conditions of this Agreement, and (b) repairs any road, street, or private or public property damaged as a result of the Work, or pays the full cost of such repair to the owner whose property was damaged, and obtains the written acceptance of such repair or payment from any owner whose private property was repaired by Developer or to whom Developer paid the full cost of such repair in accordance with Section 7 above, Developer will provide Town with a written notice of completion, together with copies of all written acceptances as described in Section 7. Town, in its sole and absolute discretion, may accept the Work in phases and allow a partial release of the bonds provided under Section 13 above.

17. Final Acceptance.

17.1 Notice of Completion. Within sixty (60) days of receipt of Developer's written notification pursuant to Section 16 above, Town Engineer shall inspect the Work and repairs and review the written acceptances, if any, and send Developer a written notice stating whether the Work and repair are complete to the satisfaction of the Town Engineer, in his reasonable discretion, and whether the written acceptances described in Section 7 have been provided. If the Work and repair are, in the opinion of the Town Engineer, not complete, not satisfactory, and/or written acceptances have not been provided, the Town Engineer will list the deficiencies that must be corrected to find the Work and repair complete and satisfactory. Upon satisfactory completion of the Work and repair and submittal of written acceptances, the Town Engineer will send Developer a written notice of satisfactory completion. The requirement for written acceptances may be waived by the Town Engineer, in his reasonable discretion, if Developer has made commercially reasonable efforts to obtain such acceptances. Town Engineer's failure to respond to Developer's written notification within sixty (60) days will not be deemed a breach or default under this Agreement.

17.2 Acceptance of Improvements. After sending Developer a written notice of satisfactory completion pursuant to Section 17.1, the Town Engineer will recommend acceptance of the Public Improvements and acceptance of completion of the Private Improvements to the Town Council. The acceptance of the Improvements shall be by resolution. Upon adoption of such resolution, the Town Engineer shall record a notice of acceptance, in a form to be approved by the Town Attorney, in the Official Records of Contra Costa County. Title to, and ownership of, all Public Improvements constructed by Developer under this Agreement shall vest in Town upon Town's acceptance of such Public Improvements. Private Improvements will be owned and maintained by the Developer.

17.3 Acceptance of Dedications. In conjunction with the recommendation to accept the Improvements, the Town Engineer will recommend the acceptance of any offers of dedication shown on the final map for, or separately recorded against, the Property ("**Dedicated Property**"). The Dedicated Property shall be conveyed free and clear of all liens, encumbrances, assessments and leases (recorded and unrecorded), except items approved by Town in writing. Town may require Developer to obtain and pay for title insurance in connection with any such approvals of title exceptions.

18. Reversion to Acreage. If Developer fails to perform its obligations under this Agreement, Developer consents to the reversion to acreage of Property pursuant to Government Code section 66499.16 at Developer's sole cost and expense.

19. Warranty Period.

19.1 Warranty; Repair and Reconstruction. Without limiting the foregoing, Developer expressly warrants and guarantees all Work and all materials used in the Work for a period of one year after the date of recordation of the notice of acceptance of the Improvements in accordance with Section 17. If, within this one-year period, any Improvement or part of any Improvement installed or constructed, or caused to be installed or constructed by Developer, or any of the Work, fails to fulfill any of the requirements of the Improvement Plans or this

Agreement, Developer shall, without delay and without cost to Town, repair, replace or reconstruct any defective or otherwise unsatisfactory part or parts of the Work or Improvement to the satisfaction of the Town Engineer. Should Developer fail to act promptly or in accordance with this requirement, or should the exigencies of the situation require repairs, replacements or reconstruction to be made before Developer can be notified, Town may, at its option, make the necessary repairs, replacements or perform the necessary reconstruction and Developer shall pay to the Town upon demand the actual cost of such repairs, replacements or reconstruction plus 25 percent.

19.2 Warranty Bond. Developer shall furnish and deliver a warranty bond in the amount of ten percent of the value of the Improvements upon acceptance of the Improvements and prior to release of the entirety of the Performance Bond. The bond shall be in a form acceptable to the Town Attorney and shall guarantee and warranty the Work for a period of one year following the date of recordation of the notice of acceptance of the Improvements against any defective work or labor done, or defective materials furnished.

20. Developer Not Agent of Town. Neither Developer nor Developer's contractors, subcontractors, agents, officers, or employees are agents, partners, joint venturers or employees of Town and the Developer's relationship to the Town, if any, arising herefrom is strictly that of an independent contractor. Developer's contractors and subcontractors are exclusively and solely under the control and dominion of Developer. Further, there are no intended third party beneficiaries of any right or obligation assumed by the Parties.

21. Indemnification. Developer agrees to indemnify, defend and hold the Town, its elective and appointed boards, commissions, officers, agents, employees and consultants, harmless from and against any and all claims, liabilities, losses, damages, injuries, penalties, fines, judgments, awards, decrees, attorneys' fees and related costs or expenses of any kind or nature (collectively, "**Claims**") arising out of this Agreement, including without limitation Developer's, or Developer's contractors', subcontractors', agents' or employees', acts, omissions, or operations under this Agreement, and the performance of the Work, whether such acts, omissions, or operations are by Developer or any of Developer's contractors, subcontractors, agents or employees. The aforementioned indemnity shall apply regardless of whether or not Town has prepared, supplied or approved plans and/or specifications for the Work or Improvements and regardless of whether any insurance required under this Agreement is applicable to any Claims. The Town does not and shall not waive any of its rights under this indemnity provision because of its acceptance of the bonds or insurance required under the provisions of this Agreement. Developer's obligation to indemnify Town shall survive the expiration or termination of this Agreement.

22. Insurance. During the term of this Agreement, Developer shall maintain at its cost and expense the following insurance coverage against Claims, including Claims for injuries to persons or damages to property that may arise from or in connection with the performance of the Work and the results of that Work by the Developer, its contractors, agents, representatives, employees or subcontractors, with insurers with an A.M. Best's rating of no less than A:VII unless otherwise accepted by the Town in writing:

22.1 Commercial General Liability (CGL). Developer shall provide or cause to be provided Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than **\$2,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to the Project and Property or the general aggregate limit shall be twice the required occurrence limit.

22.2 Automobile Liability Insurance. Developer shall provide or cause to be provided ISO Form Number CA 00 01 covering any auto (Code 1), or if Developer has no owned autos, hired (Code 8), and non-owned autos (Code 9), with limit no less than **\$1,000,000** per accident for bodily injury and property damage.

22.3 Workers' Compensation Insurance. Developer shall provide, or cause to be provided, workers' compensation insurance as required by law, and shall cause its contractors and their subcontractors, agents and representatives to maintain workers' compensation insurance as required by the State of California, with statutory limits, and employer's liability insurance with limit of no less than **\$1,000,000** per accident for bodily injury or disease. For services deemed public works, by signing this agreement, Developer is certifying, pursuant to Section 1861 of the California Labor Code, that: "I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code, and I will comply with such provisions before commencing the performance of the work of this Agreement."

22.4 Other Insurance Provisions. The insurance policies are to contain, or be endorsed to contain, the following provisions:

22.4.1 Additional Insured Status. The Town, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Developer including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Developer's insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10 and CG 20 37 if a later edition is used).

22.4.2 Primary Coverage. For any Claims related to this Agreement, the Developer's insurance coverage shall be primary insurance as respects the Town, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the Town, its officers, officials, employees, or volunteers shall be excess of the Developer's insurance and shall not contribute with it.

22.4.3 Notice of Cancellation. Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the Town.

22.4.4 Waiver of Subrogation. Developer hereby grants to Town a waiver of any right to subrogation which any insurer of said Developer may acquire against the Town by virtue of the payment of any loss under such insurance. Developer agrees to obtain any

endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the Town has received a waiver of subrogation endorsement from the insurer.

22.4.5 Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by the Town. The Town may require the Developer to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

22.5 Certificate of Insurance and Endorsements. Developer shall furnish the Town with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this Section. All certificates and endorsements are to be received and approved by the Town before the Work commences. However, failure to obtain the required documents prior to the commencement of the Work shall not waive the Developer's obligation to provide them. The Town reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

22.6 Subcontractors. Developer shall include all subcontractors as insured under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated in this Agreement, including but not limited to naming additional insureds.

22.7 Higher Limits. If the Developer maintains higher limits than the minimums shown above, the Town requires and shall be entitled to coverage for the higher limits maintained by the Developer. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the Town.

23. Payments. Developer agrees that it will pay, when due, all those furnishing labor or materials in connection with the Work. Developer further agrees that pursuant to Government Code section 66499.7, the Labor and Materials Bond provided by Developer in accordance with Section 13.2 of this Agreement shall not be released if any mechanics liens or stop notices are outstanding, unless said liens are released by bond in compliance with Civil Code section 3143.

24. Notice of Breach and Default. The occurrence of any of the following constitutes a breach and default of this Agreement:

- (1) Developer refuses or fails to complete the Work within the time set forth herein or abandons the Work;
- (2) Developer assigns the Agreement without the prior written consent of Town;
- (3) Developer is adjudged bankrupt or makes a general assignment for the benefit of creditors, or a receiver is appointed in the event of Developer's insolvency;

- (4) Developer or Developer's contractors, subcontractors, agents or employees, fail to comply with any terms or conditions of this Agreement or
- (5) There is any delay in the construction of any portion of the Work or repairs, which in the reasonable opinion of the Town Engineer, endangers public or private property.

The Town may serve written notice of breach and default upon Developer and the financial institution holding the bonds.

25. Breach of Agreement; Performance by Town; Remedies. If the Town gives Developer notice, under Section 24, of breach and default of this Agreement, the Town may pursue any and all remedies available, including but not limited to, bringing legal action to compel performance of the Work, holding the financial institutions that issued the bonds liable to complete the Work and/or for the cost of the Work and/or proceeding to complete the Work by contract or other method the Town considers advisable, at the sole expense of Developer. If Town completes the Work, Developer, immediately upon demand, shall pay the costs and charges related to the Work and any subsequent repairs. Town, without liability for doing so, may take possession of and utilize in completing the Work and repairs, if any, such materials and other property belonging to Developer as may be on or about the Property and necessary for completion of the work. In the event of default, the financial institution holding the bonds shall be liable to Town to pay the face amount of the bonds, as specified in this Agreement. As noted above, Town may bring legal action to compel performance of this Agreement and recover the costs of completing the Work and/or repairs, if any, including Town's administrative and legal costs. Developer agrees that if legal action is brought by Town under this Section of the Agreement, Developer shall pay all of the costs of suit, reasonable attorney fees, arbitration costs and such other costs as may be determined by the court or arbitrator. No failure on the part of Town to exercise any right or remedy hereunder shall operate as a waiver of any other right or remedy that Town may have hereunder.

26. Final Drawings. Upon completion of the Work and prior to final acceptance, Developer shall deliver to Town a set of "as-built" drawings. These drawings shall be in a form acceptable to the Town Engineer, shall be certified as being "as-built" and shall reflect the Work as actually constructed, with any and all changes incorporated therein. The drawings shall be signed and sealed as accurate by the engineer of record.

27. Attorneys' Fees. Should any legal action or arbitration be brought by either party because of breach of this Agreement or to enforce any provision of this Agreement, the prevailing party shall be entitled to all costs of suit, reasonable attorneys' fees, arbitration costs and such other costs as may be determined by the court or arbitrator.

28. Notices. Formal written notices, demands, correspondence and communications between Town and Developer shall be sufficiently given if: (a) personally delivered; (b) dispatched by next day delivery by a reputable carrier such as Federal Express to the offices of Town and Developer indicated below, provided that a receipt for delivery is provided; or (c) if dispatched by first class mail, postage prepaid, to the offices of Town and Developer indicated

below. Such written notices, demands, correspondence and communications may be sent in the same manner to such persons and addresses as either party may from time-to-time designate by next day delivery or by mail as provided in this Section.

Town: Town of Moraga  
329 Rheem Boulevard  
Moraga, CA 94556  
Attention: Town Manager

Developer: Hetfield Estates Partners, LLC  
98 Silver Birch Lane  
Danville, CA 94506  
Attention: \_\_\_\_\_

Notices delivered by deposit in the United States mail as provided above shall be deemed to have been served two (2) business days after the date of deposit if addressed to an address within the State of California, and three (3) business days if addressed to an address within the United States but outside the State of California.

29. Transfers; Assignments. Developer may assign its obligations under this Agreement to successor owner(s) of the Property with the prior written consent of the Town. In connection with any such assignment, Developer and its assignee shall execute and deliver to Town a written assignment and assumption agreement in a form acceptable to the Town Attorney.

30. Binding Upon Heirs, Successors and Assigns. The terms, covenants and conditions of this Agreement shall be binding upon all heirs, successors and assigns of the parties hereto; provided, however, that this Agreement shall not be binding upon a purchaser or transferee of any portion of the Property unless this Agreement has been assigned pursuant to Section 29. If this Agreement has not assigned or if the assignment has been consented to by Town, it shall remain binding on Developer.

31. Headings. Section headings in this Agreement are for convenience only and are not intended to be used in interpreting or construing the terms, covenants or conditions contained in this Agreement.

32. Severability. If any provision of this Agreement is held, to any extent, invalid, the remainder of this Agreement shall not be affected, except as necessarily required by the invalid provision, and shall remain in full force and effect.

33. Entire Agreement. The terms and conditions of this Agreement constitute the entire agreement between Town and Developer with respect to the matters addressed in this

Agreement. This Agreement may not be altered, amended or modified without the written consent of both parties.

34. Governing Law; Venue. This Agreement shall be construed and enforced in accordance with the laws of the State of California, without reference to choice of law provisions. Any legal actions under this Agreement shall be brought only in the Superior Court of the County of Contra Costa, State of California.

35. Authority. Each party executing this Agreement on behalf of a party represents and warrants that such person is duly and validly authorized to do so on behalf of the entity it purports to bind and if such party is a partnership, corporation or trustee, that such partnership, corporation or trustee has full right and authority to enter into this Agreement and perform all of its obligations hereunder.

36. Time is of the Essence. Time is of the essence of this Agreement and of each and every term and condition hereof.

37. Runs with the Land; Recordation. This Agreement pertains to and shall run with the Property. Upon execution, this Agreement shall be recorded in the Official Records of Contra Costa County.

*[Signatures follow on next page]*



IN WITNESS WHEREOF, Town and Developer have executed this Agreement as of the Effective Date.

**TOWN**

TOWN OF MORAGA, a California municipal corporation

By: \_\_\_\_\_  
Cynthia Battenberg, Town Manager

ATTEST:

\_\_\_\_\_  
Marty McInturf, Town Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Michelle Marchetta Kenyon, Town Attorney

**DEVELOPER:**

HETFIELD ESTATES PARTNERS, LLC, a  
a California limited liability company,

By: \_\_\_\_\_  
Name: Eric A. Mandell  
Its: Managing Member

By: \_\_\_\_\_  
Sridhar Pillarisetty  
Its: Managing Member

## Exhibit A

### Legal Description of the Property

#### LEGAL DESCRIPTION

Real property in the Town of Moraga, County of Contra Costa, State of California, described as follows:

##### PARCEL ONE:

PARCEL B, AS SHOWN ON THE PARCEL MAP SUBDIVISION MSM 2002-01, FILED DECEMBER 24, 2003, IN BOOK 189 OF PARCEL MAPS, PAGE 15, CONTRA COSTA COUNTY RECORDS.

##### EXCEPTING THEREFROM:

1 - RIGHTS RESERVED IN THE DEED FROM RUSSELL J. BRUZZONE, ET UX, RECORDED JULY 17, 1967, BOOK 5411, OFFICIAL RECORDS, PAGE 515, AS FOLLOWS:

"ALL OIL, GAS, PETROLEUM AND OTHER HYDROCARBON SUBSTANCES, MINERALS, AND WATER, IN, UNDER OR RECOVERABLE FROM THE PORTION OF SUBSURFACE OF THE ABOVE-DESCRIBED LAND LYING BELOW A PLANE PARALLEL TO AND 500 FEET VERTICALLY BELOW THE SURFACE OF SAID LAND, AND THE RIGHT TO REMOVE FROM, STORE IN AND INJECT INTO SAID PORTION OF THE SUBSURFACE OF SAID LAND, OIL, GAS, PETROLEUM AND OTHER HYDROCARBON SUBSTANCES, MINERALS AND WATER; AND EXCEPTING AND RESERVING TO GRANTOR, ITS SUCCESSORS AND ASSIGNS, RIGHTS-OF-WAY, EASEMENTS AND SERVITUDES IN AND THROUGH SAID PORTION OF THE SUBSURFACE OF SAID LAND FOR THE PURPOSE OF EXERCISING THE RIGHTS HEREIN EXCEPTED AND RESERVED INCLUDING BUT NOT LIMITED TO THE RIGHT FROM TIME TO TIME TO DRILL WELL HOLES, TO CASE SAME AND OTHERWISE TO COMPLETE AND MAINTAIN WELLS INTO AND THROUGH SAID PORTION OF THE SUBSURFACE OF SAID LAND FROM SURFACE LOCATIONS OUTSIDE OF SAID LAND; PROVIDED HOWEVER, THAT THE RIGHTS HEREIN EXCEPTED AND RESERVED DO NOT AND SHALL NOT INCLUDE THE RIGHT TO ENTER UPON THE SURFACE OF SAID LAND OR ANY PORTION THEREOF LYING ABOVE A PLANE PARALLEL TO AND 500 FEET VERTICALLY BELOW THE SURFACE OF SAID LAND, AND DO NOT AND SHALL NOT INCLUDE THE RIGHT TO INJECT OR STORE OIL, GAS, PETROLEUM OR OTHER HYDROCARBON SUBSTANCES, MINERALS OR WATER INTO OR IN ANY PORTION OF SAID LAND LYING ABOVE A PLANE PARALLEL TO AND 500 FEET VERTICALLY BELOW THE SURFACE OF SAID LAND."

2 - THE TRACT OF LAND DESIGNATED ON THE MAP OF SUBDIVISION 3692, FILED AUGUST 30, 1967, MAP BOOK 117, PAGE 7, CONTRA COSTA COUNTY RECORDS.

3 - THE TRACT OF LAND DESIGNATED ON THE MAP OF SUBDIVISION 3789, FILED AUGUST 28, 1968, MAP BOOK 123, PAGE 1, CONTRA COSTA COUNTY RECORDS.

4 - THOSE PORTIONS THEREOF DESCRIBED AS PARCELS TWO AND THREE, IN THE DEED TO FRANK W. LA MOGLIA, ET UX, RECORDED OCTOBER 3, 1969, BOOK 5975, OFFICIAL RECORDS, PAGE 342.

5 - PARCEL "A" AS SHOWN ON THAT CERTAIN PARCEL MAP, FILED MARCH 12, 1976 IN BOOK 43 OF PARCEL MAPS, PAGE 42, CONTRA COSTA COUNTY RECORDS.

##### PARCEL TWO:

A NON-EXCLUSIVE EASEMENT, APPURTENANT TO PARCEL ONE ABOVE, AS SHOWN ON THE PARCEL MAP, BOOK 189 OF PARCEL MAPS, PAGE 15, FOR ACCESS FOR MAINTENANCE OF OPEN SPACE, OVER AND UPON THOSE PORTIONS OF PARCEL A, THEREOF DESIGNATED AS "EASEMENT IN FAVOR OF PARCEL B FOR ACCESS FOR MAINTENANCE OF OPEN SPACE PARCEL B" ON SAID PARCEL MAP, AS RESERVED IN THE GRANT DEED, WHICH RECORDED, MAY 3, 2005, SERIES NO. 2005-156671, OFFICIAL RECORDS.

APN: 258-600-006

## **ACKNOWLEDGEMENTS**

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT - CIVIL CODE SECTION 1189

A notary public or other officer completing the certificate verifies only the identity of the individual who signed the document to which the certificate is attached and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA

COUNTY OF \_\_\_\_\_

On \_\_\_\_\_, 202\_ before me, \_\_\_\_\_, a Notary Public, personally appeared \_\_\_\_\_ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal

\_\_\_\_\_

(SEAL)

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT - CIVIL CODE SECTION 1189

A notary public or other officer completing the certificate verifies only the identity of the individual who signed the document to which the certificate is attached and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA

COUNTY OF \_\_\_\_\_

On \_\_\_\_\_, 202\_ before me, \_\_\_\_\_, a Notary Public, personally appeared \_\_\_\_\_ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal

\_\_\_\_\_

(SEAL)

# **ATTACHMENT D**

Grant of Easement for Relinquishment of  
Development Rights and Establishment of No-build  
Area for Creek Structure Setbacks and Creek  
Protection

RECORDED AT REQUEST OF:  
TOWN OF MORAGA, CALIFORNIA  
AFTER RECORDING, RETURN TO:  
TOWN OF MORAGA  
Town of Moraga  
Public Works/Engineering Dept.  
329 Rheem Blvd.  
Moraga, CA 94556

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Free recording pursuant to Government Code  
Section 27383 at the request of the Town of Moraga

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**Grant Deed of Development Rights and Establishment of No-Build Area for  
Creek Structure Setbacks and Creek Protection**

This Grant Deed of Development Rights and Establishment of No-Build Area for Creek Structure Setbacks and Creek Protection ("Grant Deed") is made as of \_\_\_\_\_, 202\_\_ by Hetfield Partners, LLC, a California limited liability company (herein the "Grantor") to the Town of Moraga, a municipal corporation (the "Town").

**Recitals**

A. Grantor has received approval from the Town to develop a residential real estate development project per Town of Moraga Conditions of Approval (Resolution No. 43-2014, Exhibit 1) for the Hetfield Estates Development Project (the "Project") for the real property described on the Subdivision Map entitled "Hetfield Estates Subdivision 9051", which map is being concurrently recorded in Book \_\_\_\_ of Maps, on pages \_\_\_\_ - \_\_\_\_, Series No. \_\_\_\_\_, Contra Costa County Official Records ("Property").

B. Condition of Approval No. 93 requires Grantor to grant and convey to the Town development rights over that portion of the Property described on Exhibit "A" (the "No-Build Area").

C. Grantor now desires to grant deed to Town the development rights over the No-Build Area as required by the conditions of approval for the Project.

**NOW THEREFORE;**

1. Grant Deed and Relinquishment of Development Rights. Grantor, as the Owner of all of the Property hereby deeds to the Town the future development rights over the No-Build Area.

The intention of this Grant Deed is that there shall be no development or improvements made in the No Build Area whatsoever, as the structure setback area of Larch Creek, except for the construction of facilities shown on the improvement plan[s] for the Project as approved by the Town, such as those associated with bridge crossings and trails. Grantor hereby specifically relinquishes all development rights except for those related to the construction of facilities shown on the improvement plans for the Project as approved by the Town.

The No-Build Area has been determined by using the criteria outlined in Chapter 914-14, "Rights of Way and Setbacks," of the Contra Costa County Subdivision Ordinance, as adopted by the Town.

The No-Build Area may be reduced by and after written request of Grantor to the Town subject to the review of the Public Works Department of the Town and the review and approval of the Planning Director of the Town, based on a hydrology and hydraulic study and geotechnical analysis of the soil which shows that the creek banks will be stable and non-erosive with the anticipated creek flows. The hydrology and hydraulic study shall be based upon the ultimate development of the watershed.

2. No Liability for Town; Maintenance. Notwithstanding the provisions of this Grant Deed, it is specifically understood that the Town is not accepting this Grant Deed for ownership or maintenance, except as may otherwise has been agreed in writing by the Town for specific properties and facilities.

3. Runs with the Land. Grantor hereby declares that the reference to and description of the No-Build Area in this Grant Deed shall not be affected by a merger of estates, but shall constitute a special restriction as to the affected Property that runs with the land. The provisions of this Grant Deed shall inure to the benefit of and be binding upon the owners of the No-Build Area and their heirs, successors or assigns, and any other person claiming an interest in the No-Build Area through them.

4. Maintenance and Repair. The Grantor, and its successors and assigns, shall at all times maintain or cause to be maintained the No-Build Area in reasonable condition and repair. The cost of maintenance and repair of the No-Build Area and improvements therein shall be the responsibility of the Grantor, and its successors and assigns. At and after such time as a homeowners association is established for the Project described herein, the obligations for such maintenance shall be assigned and delegated to such homeowners association.

5. Duration. The restrictions and limitations contained in and the easement reserved in this Grant Deed shall be perpetual, unless modified, revoked or terminated pursuant to the provisions of this Grant Deed as set forth paragraph 6 below.

6. Modification or Revocation. This Grant Deed has been recorded in order to satisfy the requirements of the Town in effect as of the date hereof and to obtain the approval by the Town of the development and construction of the Project herein described. This Grant Deed may not be modified, revoked or terminated without the written consent of Grantor and of the Town and any such modification, revocation or termination shall not be effective unless and until the Town consents thereto in writing after receiving written notice thereof from Grantor, and such modification, revocation or termination, executed by Grantor and Town, is recorded in the Official Records of the County of Contra Costa.

7. No Public Dedication. Nothing contained herein shall be deemed to be a gift or dedication to the general public or for any public purposes whatsoever, it being the intention that this Grant Deed be strictly limited to and for the purposes expressed.

8. Liability. Grantor, its successors and assigns, shall be responsible for, indemnify and save harmless the Grantee, its officers, agents, and employees from any and all liabilities, claims, demands, damages, or costs resulting from, arising out of, or in any way connected with or incident to that portion of the Property that Grantor may be found responsible for, except to the except of Grantee's active negligence or willful misconduct.



9. Waiver of Further Compensation. Grantor hereby expressly and unconditionally waives any and all right to claim, demand, or receive any further compensation for the Restricted Development Area, which Grantor may be eligible to receive under the California Relocation Assistance Act (Government Code §7260, et seq.), Article 1, § 19 of the California Constitution, the California Eminent Domain Law (Code of Civil Procedure §1230.010, et seq.), and/or the California Code of Regulations, Title 25 or other applicable local, state, or federal statute, ordinance, regulation, rule, or decisional law (collectively "Compensatory Laws"), including, but not limited to, the fair market value of the Restricted Development Area, severance damages, loss of goodwill, loss of profits, or relocation benefits and assistance, or claims for unreasonable precondemnation activities or inverse condemnation, or any other compensation as a result of the Town's requirements with respect to the Restricted Development Area. Furthermore, Grantor hereby expressly releases the Town of Moraga, and their respective officials, officers, employees, representatives, successors and assigns, from any liability, responsibility, or obligation to pay any further compensation for the Town's requirements with respect to the Restricted Development Area which Grantor may be eligible to receive under the Compensatory Laws as a result thereof

10. Disputes and Remedies. If Grantee determines that Grantor, or Grantor's successors in interest of the Property is conducting or allowing a use, activity, or condition within the No Build Area which is prohibited by the terms of this Grant Deed or that a violation is threatened, Grantee shall give at least thirty (30)-days written notice to Grantor of such violation and demand corrective action sufficient to cure the violation, and, where the violation involves injury to the Property resulting from any use or activity inconsistent with the purposes of this Grant Deed, to restore the portion of the Property so injured within a reasonable period of time.

(a) Consultations Regarding Interpretation and Enforcement of Grant Deed. When any disagreement, conflict, need for interpretation, or need for enforcement arises between the parties to this Grant Deed, each party shall first consult with the other party in good faith about the issue and attempt to resolve the issue without resorting to arbitration or legal action.

(b) Grantee's Remedies. If Grantor fails to cure the violation within thirty (30) days after receipt of notice thereof from Grantee, or under circumstances where the violation cannot be cured within the thirty (30) day period or Grantor fails to continue diligently to cure such violation until finally cured, Grantee may bring an action at law or in equity in court of competent jurisdiction to enforce the terms of this Grant Deed, to enjoin the violation, ex parte as necessary, by temporary or permanent injunction, to recover any damages to which it may be entitled for violation of the terms of this Grant Deed, and to require the restoration of the No Build Area to the condition that existed prior to injury. Without limiting Grantor's liability therefore, Grantee, in its sole discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Property. Grantee's rights under this paragraph apply equally in the event of either actual or threatened violations of the terms of this Grant Deed, and Grantor agrees that Grantee's remedies at law for any violation of the terms of this Grant Deed are inadequate and that Grantee shall be entitled to the injunctive relief described in this paragraph, both prohibitive and mandatory, in addition to such other relief to which Grantee may be entitled. Grantee's remedies described in this paragraph 9 shall be cumulative and shall be in addition to all remedies now or hereinafter existing at law or in equity.

(c) Costs of Enforcement. Should either party hereto institute any action or proceeding in court to enforce any provision hereof or for damages or for declaratory or other relief hereunder, the prevailing party shall be entitled to receive from the losing party, in addition to court costs, such amount as the court may adjudge to be reasonable as attorneys' fees, expert witness fees, and related costs, for services rendered to said prevailing party, and said amount may be made a part of the judgment against the losing party. The prevailing party shall be determined under Civil Code Section 1717(b)(1) or any successor statute.

(d) Acts Beyond Grantor's Control. Nothing contained in this Grant Deed shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Property resulting from causes beyond Grantor's control, including without limitation, fire, flood, storm, and earth movement, or from any reasonable action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes.

#### 10. General Provisions.

(a) Controlling Law. The interpretation and performance of this Grant Deed shall be governed by the laws of the State of California, except as to choice of laws principles.

(b) Severability. If any provision of this Grant Deed, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this Grant Deed, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby so long as the purposes of this Grant Deed can still be carried out.

(c) No Forfeiture. Nothing contained herein is intended to result in a forfeiture or reversion of Grantor's fee title in any respect. Grantor specifically reserves the right to convey fee title to the Property subject to this Grant Deed.

(d) Successors. The covenants, terms, conditions, and restrictions of this Grant Deed shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns, and shall continue as a servitude running in perpetuity with the Property.

(e) Captions. The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK – SIGNATURES ARE CONTAINED ON FOLLOWING PAGES]

[SIGNATURES]

GRANTOR:

Hetfield Partners, LLC, a California limited liability company

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

Its: \_\_\_\_\_

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

A notary public or other officer completing the certificate verifies only the identity of the individual who signed the document to which the certificate is attached and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA

COUNTY OF \_\_\_\_\_

On \_\_\_\_\_, 202\_\_ before me, \_\_\_\_\_, a Notary Public, personally appeared \_\_\_\_\_

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal

\_\_\_\_\_  
NOTARY PUBLIC

(SEAL)

APPROVED BY THE TOWN OF MORAGA

BY: \_\_\_\_\_  
NAME: \_\_\_\_\_  
TOWN MANAGER

DATE: \_\_\_\_\_

APPROVED BY TOWN ATTORNEY AS TO FORM

BY: \_\_\_\_\_  
NAME: \_\_\_\_\_  
TOWN ATTORNEY  
DATE: \_\_\_\_\_

A notary public or other officer completing the certificate verifies only the identity of the individual who signed the document to which the certificate is attached and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA  
COUNTY OF \_\_\_\_\_

On \_\_\_\_\_, 202\_\_ before me, \_\_\_\_\_, a Notary Public,  
personally appeared \_\_\_\_\_ and  
\_\_\_\_\_ who proved to  
me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are  
subscribed to the within instrument and acknowledged to me that he/she/they executed  
the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on  
the instrument the person(s), or the entity upon behalf of which the person(s) acted,  
executed the instrument.

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

WITNESS my hand and official seal

\_\_\_\_\_  
NOTARY PUBLIC  
(SEAL)

## CERTIFICATE OF ACCEPTANCE

This is to certify that the interests in real property conveyed by Grant Deed dated \_\_\_\_\_, 2022, from Hetfield Partners, LLC, a California limited liability company, as grantor, to the Town of Moraga, as grantee, are hereby accepted by the Town Manager of the Town of Moraga pursuant to authority conferred by Resolution No. \_\_\_\_\_ of the Town Council adopted on \_\_\_\_\_, and the Town of Moraga, as grantee, consents to recordation of said Grant Deed.

Dated: \_\_\_\_\_, 2022

By: \_\_\_\_\_  
Town Manager  
[Signature Must Be Notarized]

A notary public or other officer completing the certificate verifies only the identity of the individual who signed the document to which the certificate is attached and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA  
COUNTY OF \_\_\_\_\_

On \_\_\_\_\_, 202\_\_ before me, \_\_\_\_\_, a Notary Public, personally appeared \_\_\_\_\_ and \_\_\_\_\_ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal

\_\_\_\_\_  
NOTARY PUBLIC  
(SEAL)

**EXHIBIT "A"**  
**No Build Area**

All that property within the area between the centerline of the Creek and the 30' structural setback line described on sheet 5 of 8 of the Subdivision Map described in Recital A.

# **ATTACHMENT E**

Conservation Easement Deed Restriction

**RECORDING REQUESTED BY AND )**  
**WHEN RECORDED MAIL TO: )**  
)  
)  
)  
)  
)  
)  
)

Space Above Line for Recorder's Use Only

### CONSERVATION EASEMENT DEED RESTRICTION

THIS CONSERVATION EASEMENT DEED RESTRICTION ("Easement") has been executed as of \_\_\_\_\_, 20\_\_\_\_, by HETFIELD PARTNERS, LLC, a California limited liability company ("Declarant"), with respect to that certain real property containing approximately 55.24 acres, located in the Town of Moraga, County of Contra Costa, State of California, more particularly described in Exhibit A attached hereto and incorporated herein by this reference (the "Property").

### RECITALS

A. Declarant is the sole owner in fee simple of the Property. Declarant and the Moraga Geologic Hazard Abatement District, a political subdivision of the State of California ("District"), anticipate that Declarant will at a future time transfer Declarant's interest in the Property to the District in accordance with the Approval Documents (defined below) and subject to this Easement.

B. This Easement is being executed, delivered, and recorded in the Official Records of Contra Costa County ("Official Records") to satisfy certain conditions of approval imposed by the Town of Moraga ("Approving Agency"), requiring the permanent preservation and management of the Property for open space and habitat purposes as part of the Hetfield Estates subdivision development project, as set forth in Resolution No. 04-14PC of the Town of Moraga Planning Commission, File No. CDP-02-05, adopted March 3, 2014 ("Approval Document").

C. This Easement constitutes a Conservation Easement under California law, pursuant to California Civil Code Section 815.1 in that it imposes limitations in the form of a restriction or covenant, executed by the owner of the land, that is binding upon successive owners of such land, and that has as its purpose retaining land predominantly in its natural or open-space condition.

D. A management plan for the Property, entitled "Hetfield Estates Open Space Management Plan" and dated \_\_\_\_\_ has been developed in accordance with the applicable requirements of the Approval Documents (the "Management Plan").



The Management Plan is included within the Plan of Control for the District, adopted in accordance with sections 26500–26654 of the Public Resources Code. The District will manage the Property in accordance with the requirements of this Easement, the Management Plan and the Plan of Control.

E. The Property possesses open space, wildlife and habitat values (the “Conservation Values”), as further described in the Management Plan.

### AGREEMENTS

NOW, THEREFORE, in consideration of the above and mutual covenants, terms, conditions and Restrictions contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and pursuant to the laws of the State of California, Declarant hereby declares that the Property, and every part thereof or interest therein, is now held and shall hereafter, in perpetuity (subject to termination only pursuant to Section 5(b) below), be held, managed, occupied, transferred, sold, leased, and conveyed subject to the Restrictions (collectively, the “Restrictions”) set forth herein. The Restrictions shall burden and run with the Property, and every part thereof or interest therein, and shall be binding on all persons or entities having or acquiring any right, title or interest in the Property, or any part thereof. The Restrictions are intended to be a covenant running with the land in accordance with California Civil Code Section 1461 *et seq.* and shall only be terminated in accordance with Section 5(b) below.

1. **Purposes.** The purposes of the Restrictions are to ensure that the existing open space, wildlife and habitat values of the Property will be forever protected by preventing any use of the Property that would significantly impair or interfere with the Conservation Values (the “Purposes”).

2. **Prohibited Uses.** Any activity on or use of the Property inconsistent with the Purposes of the Restrictions is prohibited. Without limiting the generality of the foregoing, Declarant, and its personal representatives, heirs, successors, assigns, employees, agents, lessees, licensees and invitees are expressly prohibited from doing or permitting any of the following uses and activities on the Property, unless, and only to the extent that, a generally prohibited activity is specified as an approved management practice or permitted use in the Management Plan, as amended from time to time:

(a) Except as permitted in the Management Plan, unseasonal watering; use of fertilizers, pesticides, biocides, herbicides or other agricultural chemicals; weed abatement activities; incompatible fire protection activities; and any and all other activities and uses which may adversely affect the Purposes of the Restrictions;

(b) Except as permitted in the Management Plan, use of off-road vehicles and use of any other motorized vehicles;

(c) Grazing and agricultural activity of any kind, except for those grazing and/or other agricultural practices and uses consistent with the Management Plan;

(d) Except as permitted in the Management Plan, recreational activities including, but not limited to, hunting or fishing;

- (e) Commercial or industrial uses;
- (f) Any legal or de facto division, subdivision or partitioning of the Property or any fee transfer of less than the entire Property;
- (g) Except as permitted in the Management Plan, construction, reconstruction or placement of any building, or any other structure or improvement of any kind;
- (h) Depositing or accumulation of soil, trash, ashes, refuse, waste, bio-solids or any other materials;
- (i) Except as permitted in the Management Plan, planting, introduction or dispersal of non-native or exotic plant or animal species;
- (j) Except as permitted in the Management Plan, filling, dumping, excavating, draining, dredging, mining, drilling, removing or exploring for or extraction of minerals, loam, soil, sands, gravel, rocks or other material on or below the surface of the Property, and granting or authorizing any surface entry for any of these purposes;
- (k) Except as permitted in the Management Plan, altering the surface or general topography of the Property, including building of roads, paving or otherwise covering the Property with concrete, asphalt, or any other impervious material;
- (l) Removing, destroying, or cutting of native trees, shrubs or other vegetation, except as permitted in the Management Plan, and/or as required for fire breaks, maintenance of existing foot trails or roads, prevention or treatment of disease, utility line clearance, or control of non-native or exotic plants.;
- (m) Except as permitted in the Management Plan, manipulating, impounding or altering any natural water course, body of water or water circulation on the Property, and activities or uses detrimental to water quality, including but not limited to, degradation or pollution of any surface or sub-surface waters; and
- (n) Transferring or abandoning any water or air rights necessary to protect, sustain, maintain or restore the Conservation Values.

**3. Declarant's Reserved Rights.** Declarant reserves to itself, and to its personal representatives, heirs, successors, and assigns, all rights accruing from its ownership of the Property, including the right to engage in or to permit or invite others to engage in all uses of the Property that are not expressly prohibited or limited by, and are consistent with, the Purposes of the Restrictions and the terms and conditions of this Easement.

**4. Required Notice to Future Lessees and Licensees.** Any lease, license, easement, or other rental or use agreement subsequently entered into or made with respect to any portion of the Property, whether written or oral, shall contain an express provision informing the lessee, tenant, licensee or other contracting party of the Restrictions and this Easement and shall require such lessee, tenant, licensee or other contracting party to comply with all such Restrictions and the terms of this Easement throughout the term of such lease, license or rental or use agreement.

## 5. Conveyances of Property.

(a) If Declarant conveys the fee interest in all or any portion of the Property to a governmental or quasi-governmental entity (specifically including the District), then upon such conveyance, the party receiving title to the Property, or portion thereof, shall confirm in writing the continued legal effectiveness of the terms and conditions this Easement following such conveyance and shall cause to be recorded in the Official Records such instruments as Declarant may reasonably request to effectuate such confirmation or continue the effectiveness of the Restrictions following such transfer.

(b) Before Declarant conveys the fee interest in all or any portion of the Property to any party other than a governmental or quasi-governmental entity, Declarant shall first enter into, and record in the Official Records, a conservation easement that fully satisfies all the following requirements (the "Conservation Easement"): (i) the Conservation Easement will satisfy all of the requirements under California Civil Code Section 815 *et seq.* for creating a conservation easement interest thereunder; (ii) the Conservation Easement will be held by a nonprofit conservation organization or other entity that is qualified and authorized to hold a conservation easement under California Civil Code Section 815.3, has the financial and stewardship capacity and experience to hold conservation easements of this nature, and has been approved in advance by the Approving Agency; (iii) the Conservation Easement will include terms and conditions consistent with the protection of the Conservation Values and the Purposes of the Restrictions; and (iv) the form of Conservation Easement shall be approved in advance of recordation by Approving Agency. Effective automatically upon recordation of a Conservation Easement covering all or any portion of the Property, the Restrictions and this Easement shall terminate with respect to the portion of the Property covered by such recorded Conservation Easement.

**6. Right of Inspection.** The Approving Agency, through its employees and representatives, shall be entitled to enter upon the Property on an annual basis for the limited purpose of confirming compliance with the terms and conditions contained in this Easement. Prior to any such entry for inspection purposes, the Approving Agency exercising such inspection rights shall provide fourteen (14) days written notice to Declarant or subsequent fee title owner, and Declarant or the subsequent fee title owner shall have the right, through their employees and representatives, to accompany and observe such inspections. If the Approving Agency conducting such annual inspection, or such entity's employees or agents, prepare any reports, diagrams, charts, graphs, photographs, audio or visual recordings or other writings as a result of such inspections, copies of such Easements and recordings shall be provided promptly to Declarant or the subsequent fee title owner. The Approving Agency conducting such inspection, or such entity's employees or agents, shall agree to hold harmless Declarant or the subsequent fee title owner, and their officers, directors, agents, employees, invitees (each of which is an indemnitee) from and against any and all claims, losses, damages, demands, liabilities, suits, costs, expenses (including attorneys' fees), penalties, judgments, or obligations whatsoever for or in connection with injury (including death) or damage to any person or the loss or damage of property to whomsoever belonging or pecuniary or monetary loss which Declarant or the subsequent fee title owner may sustain, incur, or suffer as a result of entry and activities upon the Property pursuant to the rights granted under this Section 6 or resulting from, arising out of, or in any way related to activity conducted by or the omission of such inspecting entity, unless the injury or damage resulted from the sole negligence or the intentional and willful misconduct of the Declarant or the subsequent fee title owner, or their officers, directors, agents or employees.

**7. Remedies.** If an Approving Agency determines there is a violation of the terms of this Easement, written notice of such violation and a demand for corrective action sufficient to cure the violation shall be given to Declarant or the subsequent fee title owner. If Declarant or the subsequent fee title owner fails to cure the violation within fifteen (15) days after receipt of written notice and demand, or if the cure reasonably requires more than fifteen (15) days to complete and Declarant or the subsequent fee title owner fails to begin the cure within such fifteen (15) day period or fails to continue diligently to complete the cure, the Approving Agency providing the notice may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Easement, to recover any damages to which notifying agency may be entitled for such violation or for any injury to the Conservation Values, to enjoin the violation, *ex parte* as necessary, by temporary or permanent injunction without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies, or for other equitable relief, including, but not limited to, the restoration of the Property to the condition in which it existed prior to any such violation or injury.

If the Approving Agency determines that circumstances require immediate action to prevent or mitigate damage to the Conservation Values, such Approving Agency may pursue its remedies under this section without prior notice to Declarant or the subsequent fee title owner or without waiting for the period provided for cure to expire. Remedies described in this section shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

(a) **Costs of Enforcement.** Should proceedings be brought to enforce or interpret any of the terms of this Easement, the prevailing party in any such proceedings shall be entitled to recover from the non-prevailing party its costs and expenses, including reasonable attorneys' and experts' fees and costs.

(b) **Enforcement Discretion.** Enforcement of the terms of this Easement shall be at the respective discretion of the Approving Agency, and any forbearance by any such party to exercise its rights under this Easement in the event of any breach of any term of this Easement shall not be deemed or construed to be a waiver by such entity of such term or of any subsequent breach of the same or any other term of this Easement or of any of such entity's rights under this Easement. No delay or omission by Approving Agency in the exercise of any right or remedy upon any breach shall impair such right or remedy or be construed as a waiver.

(c) **Acts Beyond Declarant's or Subsequent Fee Title Owner's Control.** Nothing contained in this Easement shall be construed to, or shall entitle, the Approving Agency to bring any action against the Declarant or subsequent fee title owner for any injury to or change in the Property resulting from (i) any natural cause beyond the Declarant's or subsequent fee title owner's control, including, but not limited to, fire, flood, storm, and earth movement, or any prudent action taken by the Declarant or subsequent fee title owner under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes; or (ii) acts by the Approving Agency or any of their employees or agents.

**8. Public Access.** Nothing contained in this Easement shall give or grant to the public a right to enter upon or use the Property or any portion thereof where no such right existed in the public immediately prior to execution and recordation of this Easement.

**9. Liberal Construction.** It is the intention of Declarant that the Purposes of the Restrictions shall be carried out in perpetuity. Liberal construction is expressly required for purposes of effectuating this Easement in perpetuity, notwithstanding economic hardship or changed conditions of any kind.

**10. Notices.** Any notice, demand, request, consent, approval, or communication that Declarant or the Approving Agency desires or is required to give to the others shall be in writing and be served personally or sent by recognized overnight courier that guarantees next-day delivery or by first class mail, postage fully prepaid, addressed as follows:

To Declarant:

Hetfield Partners, LLC,  
98 Silver Birch Lane  
Danville, CA 94506

To Town of Moraga:

Planning Director  
Planning Department  
329 Rheem Boulevard  
Moraga, CA 94556

or to such other address as any of the above entities shall designate by written notice to the others. Notice shall be deemed effective upon delivery in the case of personal delivery or delivery by overnight courier or, in the case of delivery by first class mail, five (5) days after deposit into the United States mail.

**11. Amendment.** This Easement may not be amended, modified or otherwise changed in any manner, except by a written amendment executed by Declarant or subsequent fee title owner, or Declarant's or subsequent fee title owner's successors in interest, and approved in advance by the Approving Agency. Any such amendment shall be consistent with the Purposes of the Restrictions and shall not affect the perpetual duration of this Easement. Any such amendment must be in writing, must refer to this Easement by reference to its recordation data, must be approved by the Approving Agency, and must be recorded in the Official Records.

**12. Controlling Law.** The interpretation and performance of this Easement shall be governed by the laws of the State of California, disregarding the conflicts of law principles of such state, and by applicable Federal law.

**13. Severability.** If a court of competent jurisdiction voids or invalidates on its face any provision of this Easement, such action shall not affect the remainder of this Easement. If a court of competent jurisdiction voids or invalidates the application of any provision of this Easement to a person or circumstance, such action shall not affect the application of the provision to other persons or circumstances.

IN WITNESS WHEREOF Declarant has executed this Easement on the day and year first above written.

Declarant:

HETFIELD PARTNERS, LLC,  
A California limited liability company

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

**EXHIBITS:**

**Exhibit A -- Legal Description of the Property**

**EXHIBIT A**  
**to**  
**Conservation Easement Deed Restriction**

**LEGAL DESCRIPTION**

Real property in the Town of Moraga, County of Contra Costa, State of California, described as follows:

**PARCEL ONE:**

PARCEL B, AS SHOWN ON THE PARCEL MAP SUBDIVISION MSM 2002-01, FILED DECEMBER 24, 2003, IN BOOK 189 OF PARCEL MAPS, PAGE 15, CONTRA COSTA COUNTY RECORDS.

**EXCEPTING THEREFROM:**

1 - RIGHTS RESERVED IN THE DEED FROM RUSSELL J. BRUZZONE, ET UX, RECORDED JULY 17, 1967, BOOK 5411, OFFICIAL RECORDS, PAGE 515, AS FOLLOWS:

"ALL OIL, GAS, PETROLEUM AND OTHER HYDROCARBON SUBSTANCES, MINERALS, AND WATER, IN, UNDER OR RECOVERABLE FROM THE PORTION OF SUBSURFACE OF THE ABOVE-DESCRIBED LAND LYING BELOW A PLANE PARALLEL TO AND 500 FEET VERTICALLY BELOW THE SURFACE OF SAID LAND, AND THE RIGHT TO REMOVE FROM, STORE IN AND INJECT INTO SAID PORTION OF THE SUBSURFACE OF SAID LAND, OIL, GAS, PETROLEUM AND OTHER HYDROCARBON SUBSTANCES, MINERALS AND WATER; AND EXCEPTING AND RESERVING TO GRANTOR, ITS SUCCESSORS AND ASSIGNS, RIGHTS-OF-WAY, EASEMENTS AND SERVITUDES IN AND THROUGH SAID PORTION OF THE SUBSURFACE OF SAID LAND FOR THE PURPOSE OF EXERCISING THE RIGHTS HEREIN EXCEPTED AND RESERVED INCLUDING BUT NOT LIMITED TO THE RIGHT FROM TIME TO TIME TO DRILL WELL HOLES, TO CASE SAME AND OTHERWISE TO COMPLETE AND MAINTAIN WELLS INTO AND THROUGH SAID PORTION OF THE SUBSURFACE OF SAID LAND FROM SURFACE LOCATIONS OUTSIDE OF SAID LAND; PROVIDED HOWEVER, THAT THE RIGHTS HEREIN EXCEPTED AND RESERVED DO NOT AND SHALL NOT INCLUDE THE RIGHT TO ENTER UPON THE SURFACE OF SAID LAND OR ANY PORTION THEREOF LYING ABOVE A PLANE PARALLEL TO AND 500 FEET VERTICALLY BELOW THE SURFACE OF SAID LAND, AND DO NOT AND SHALL NOT INCLUDE THE RIGHT TO INJECT OR STORE OIL, GAS, PETROLEUM OR OTHER HYDROCARBON SUBSTANCES, MINERALS OR WATER INTO OR IN ANY PORTION OF SAID LAND LYING ABOVE A PLANE PARALLEL TO AND 500 FEET VERTICALLY BELOW THE SURFACE OF SAID LAND."

2 - THE TRACT OF LAND DESIGNATED ON THE MAP OF SUBDIVISION 3692, FILED AUGUST 30, 1967, MAP BOOK 117, PAGE 7, CONTRA COSTA COUNTY RECORDS.

3 - THE TRACT OF LAND DESIGNATED ON THE MAP OF SUBDIVISION 3789, FILED AUGUST 28, 1968, MAP BOOK 123, PAGE 1, CONTRA COSTA COUNTY RECORDS.

4 - THOSE PORTIONS THEREOF DESCRIBED AS PARCELS TWO AND THREE, IN THE DEED TO FRANK W. LA MOGLIA, ET UX, RECORDED OCTOBER 3, 1969, BOOK 5975, OFFICIAL RECORDS, PAGE 342.

5 - PARCEL "A" AS SHOWN ON THAT CERTAIN PARCEL MAP, FILED MARCH 12, 1976 IN BOOK 43 OF PARCEL MAPS, PAGE 42, CONTRA COSTA COUNTY RECORDS.

**PARCEL TWO:**

A NON-EXCLUSIVE EASEMENT, APPURTENANT TO PARCEL ONE ABOVE, AS SHOWN ON THE PARCEL MAP, BOOK 189 OF PARCEL MAPS, PAGE 15, FOR ACCESS FOR MAINTENANCE OF OPEN SPACE, OVER AND UPON THOSE PORTIONS OF PARCEL A, THEREOF DESIGNATED AS "EASEMENT IN FAVOR OF PARCEL B FOR ACCESS FOR MAINTENANCE OF OPEN SPACE PARCEL B" ON SAID PARCEL MAP, AS RESERVED IN THE GRANT DEED, WHICH RECORDED, MAY 3, 2005, SERIES NO. 2005-156671, OFFICIAL RECORDS.

APN: 258-600-006

Exhibit "A"

# **ATTACHMENT F**

Release and Hold Harmless Agreement



RECORDING REQUESTED BY  
AND WHEN RECORDED RETURN  
TO:

Town of Moraga  
329 Rheem Blvd.  
Moraga, CA 94556  
Attention: Town Clerk

Recorded for the Benefit of  
The Town of Moraga  
*Pursuant to Government Code  
Section 27383*

*Space Above Reserved for Recorder's Use Only*

#### RELEASE AND HOLD HARMLESS AGREEMENT

THIS RELEASE AND HOLD HARMLESS AGREEMENT ("**Agreement**") is entered into as of \_\_\_\_\_, 2022 (the "**Effective Date**"), by and between the Town of Moraga, a municipal corporation ("**Town**") and Hetfield Partners, LLC, a California limited liability company ("**Owner**").

#### Recitals

A. Owner is the owner of that certain real property described on the Subdivision Map entitled "Hetfield Estates Subdivision 9051," which map is being recorded concurrently with this Agreement, as more particularly described in Exhibit A, attached hereto and incorporated herein by this reference (the "**Property**").

B. Owner has received approval from the Town to develop a residential development project known as the Hetfield Estates Development Project on the Property (the "**Project**").

C. Owner has acknowledged that the creek banks on the Property are potentially unstable.

D. Condition No. 90 of the Town's approval of the Project (Resolution No. 43-2014) requires that Owner execute a recordable agreement with the Town that states that the Owner and its successors will hold harmless the Town of the Moraga and the Contra Costa County Flood Control and Water Conservation District in the event of damage to the on-site and off-site improvements related to the Project or located on the Property as a result of creek-bank failure or erosion.

E. Town and Owner desire to enter into this Agreement to comply with the

conditions of approval.

#### Agreement

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Town and Owner hereby agree as follows:

1. Release and Hold Harmless. Owner, for itself, its assigns and successors in interest, hereby fully forever releases, discharges, indemnifies and holds harmless the Town of Moraga, the Contra Costa County Flood Control and Water Conservation District and their officers, officials, employees, volunteers, agents, consultants, attorneys, and representatives, of and from any and all claims, liens, demands, causes of action, actions, debts, damages and liabilities, and attorneys' fees and costs arising from damage to the Project or damage to the Property resulting from creek-bank failure or erosion, whether at this time known or unknown, anticipated or unanticipated, direct or indirect, fixed or contingent. Owner expressly waives and relinquishes any and all rights and benefits under Section 1542 of the Civil Code of the State of California and any similar law of any state or territory of the United States with respect to this release. Said section reads as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlements with the debtor.

2. Acknowledgment. Owner expressly states that it has read the entirety of the Agreement and understands all of its terms and provisions. The contents and effects of the Agreement have been explained to the Owner by counsel of its own choice, or Owner has had an opportunity to seek counsel of his/her own choice, and the Agreement is executed voluntarily and with full knowledge of its significance.

3. Runs with the Land. The covenants and agreements contained in this Agreement shall run with the Property and be binding upon and inure to the successors to the Property.

4. Notification upon Conveyance or Transfer. Upon the conveyance or transfer of the Property, Owner shall advise the purchaser or transferee of the existence of this Agreement.

6. Integration. This Agreement constitutes a single integrated written document expressing the entire agreement of the parties regarding this subject matter, and supersedes any and all prior written and oral agreements between them. Any statement, promise, or commitment about this subject matter which is not contained in this Agreement shall be void and invalid.

7. Governing Law. This Agreement shall be construed in accordance with, and be governed by, the laws of the State of California, without reference to its choice of law provisions.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

**OWNER:**

HETFIELD PARTNERS, LLC, a California  
limited liability company

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

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

**TOWN:**

TOWN OF MORAGA, a municipal corporation

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

Name: \_\_\_\_\_

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

*[signatures must be notarized]*

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA

COUNTY OF

Contra Costa

} SS.

On March 23, 2022, before me, M. Diwa, a Notary Public, personally appeared Erica A. Mandell who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

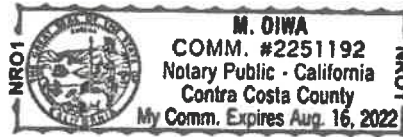
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

**WITNESS** my hand and official seal.

Signature

Signature of Notary

(This area for official notarial seal)



## **EXHIBIT "A"**

### **Legal Description of the Property**

That certain property located in the Town of Moraga, County of Contra Costa, State of California, described in the map entitled "Tract No. \_\_\_\_", filed for record in the Office of the Recorder of the County of Contra Costa, State of California, on the \_\_\_\_ day of \_\_\_\_\_ 2022, in Book \_\_\_\_ of Maps, page(s) \_\_\_\_.