

**SANTA BARBARA COUNTY
BOARD AGENDA LETTER**



Clerk of the Board of Supervisors
105 E. Anapamu Street, Suite 407
Santa Barbara, CA 93101
(805) 568-2240

Agenda Number:
Prepared on: 9/12/05
Department Name: County Counsel
Department No.: 013
Agenda Date: 9/20/05
Placement: Departmental
Estimate Time:
Continued Item: NO
If Yes, date from:

TO: Board of Supervisors and Board of Directors of the Laguna County Sanitation District

FROM: Shane Stark, County Counsel
Phillip M. Demery, Public Works Director

STAFF CONTACT: Alan Seltzer, Chief Assistant County Counsel
568-2950

SUBJECT: Approval and Acquisition of Orcutt Community Plan Regional Retention Basin "B," Bradley-Solomon Trunk Line Extension, and Multi-Use trail, Orcutt Community Plan Key Site 8, Fourth Supervisorial District

Recommendation(s):

That the Board of Supervisors and the Board of Directors of the Laguna County Sanitation District ("LCSD") either:

Option A. Approve the Memorandum of Understanding ("MOU") between the County, the LCSD, Thomas California Investments, LP ("Thomas California"), and Wellmack, LLC ("Wellmack") providing for approval of and a protocol for acquisition of the Regional Retention Basin "B," Bradley-Solomon Trunk Line Extension, and Class I bike path/multi-use trail [Orcutt Community Plan Key Site 8, Fourth Supervisorial District]; or

Option B.

1. Accept the Addendum to 95-EIR-01 for the Regional Retention Basin "B," Bradley-Solomon Trunk Line Extension, and Class I bike path/multi-use trail projects ("Projects") in Exhibit 1.
2. Approve the Projects as set forth in Exhibits 2 and 3 subject to the applicable conditions of approval found in the Jensen's Crossing/Cobblestone Creek project (TM14,429/97-DP-018), the Harp Springs project (TM14,478/98-DP-017) and Mesa Verde Residential Project (TM 14,303/93-DPF-011).

Alignment with Board Strategic Plan:

The recommendation is primarily aligned with Goal No. 1, "An Efficient Government Able to Anticipate and Respond Effectively to the Needs of the Community," and Goal No. 2, "A Safe and Healthy Community in Which to Live, Work, and Visit."

Executive Summary and Discussion:

This is the companion agenda item to the Resolutions of Necessity regarding acquisition of infrastructure required by the Orcutt Community Plan ("OCP") pursuant to Cooperative Agreements for the Regional Retention Basin "B and Multi-Use trail, and the Bradley-Solomon Trunk Line Extension on that portion of Orcutt Community Plan Key Site 8 owned by Thomas California Investments (also known as the Worsley property).

The set hearing Board letter for the September 13, 2005 meeting describes the background for this item. In brief, the OCP requires the County to construct and maintain a regional retention basin system for the purpose of accommodating both increased storm water flows associated with new development and flows from existing private basins. The OCP identifies a series of regional retention basins along the Orcutt Creek corridor, including Regional Retention Basin "B." The intended purpose of Basin "B" is to receive drainage from surrounding and upstream residential developments in southeast Orcutt. In addition to Basin "B", the OCP requires the County to construct and maintain a regional Class I bike path/multi-use trail system along the Orcutt Creek corridor. The OCP locates a section of the Class I bike path/multi-use trail on a portion of the Worsley portion on Key Site 8. Finally, buildout of the OCP in southeast Orcutt requires the extension of sewage transmission lines into the area for the purpose of serving new development. The OCP identifies the Bradley/Solomon Sewer Trunk Line Extension as the sewage transmission facility that will serve residential developments located along Orcutt Creek in southeast Orcutt.

In order to facilitate recordation of a final map for Jensen's Crossing/Cobblestone Creek, Wellmack (its developer) entered into two Cooperative Agreements (the "Cooperative Agreements") with the County, whereby Wellmack agreed to fund acquisition of the necessary interests in land for Basin "B," the Bradley-Solomon Trunk Line Extension, and the Class I bike path/multi-use trail, and build both Basin "B" and the Bradley/Solomon Extension. After adoption of the Cooperative Agreements, on May 28, 2004, Thomas California filed suit against the County, LCSD and Wellmack, in the Superior Court of Santa Barbara County (SBSC Case No. 01157798), challenging the adequacy of environmental review undertaken pursuant to CEQA in connection with the Cooperative Agreements. In response to the litigation, Wellmack, Thomas California and County Counsel negotiated the attached MOU for Board consideration and approval.

The attached MOU would (1) eliminate the pending litigation; (2) eliminate the potential for future litigation or delayed implementation of the Redesigned Basin "B" Project and/or the Sewer Realignment Project; (3) eliminate the potential for future litigation regarding the County's right to acquire through eminent domain those portions of the Worsley property necessary for the Redesigned Basin "B" Project and/or the Sewer Realignment Project; (4) have approved the Redesigned Basin "B" Project; (5) have approved the Sewer Realignment Project; (6) provide a protocol for acquiring the land and interests necessary for construction and dedication of the Redesigned Basin "B" Project; (7) provide a protocol for acquiring an easement in gross that is adequate for purposes of the Sewer Realignment Project; and (8) provide a protocol, that reserves the County's police power, for County initiation and processing of a

proposed change in the land use designation applicable to the portion of the Worsley property not acquired by the County for the Redesigned Basin “B” Project.

Wellmack has agreed to the MOU, Thomas California has not yet signed the document. In the event Thomas California does not agree to the MOU, staff recommends that your Board proceed with the approval of the Basin B, Multi-use trail and Sewer realignment projects by approving Option B.

Mandates and Service Levels: There are no changes to service levels with this action.

Fiscal and Facilities Impacts: The costs of acquisition of the Regional Retention Basin "B," Bradley-Solomon Trunk Line Extension, and Multi-Use trail on Orcutt Community Plan Key Site 8 is being paid by Wellmack under the terms of the Cooperative Agreements.,

Special Instructions: The Clerk should retain the original MOU in the Board’s file and return a certified copy of the MOU and Minute Order to County Counsel, attention Alan Seltzer.

Concurrence: General Services

Attachments:

- Memorandum Of Understanding
- Exhibit 1 - Addendum for the Revised Orcutt Regional Retention Basin “B” Project (Including Class I Bike Path/Multi-Use Trail) and the Revised Bradley-Solomon Sewer Extension Project
- Exhibit 2 – Regional Basin “B” and Class I Bike Path/Multi-Use Trail Project
- Exhibit 3 - Bradley-Solomon Sewer Realignment Project

\\als\orcutt\mou-BoardAgenda\tr-9-20-05.doc

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding ("MOU") is made and entered into as of the _____ day of _____, 2005 (the "Effective Date") by and between the County of Santa Barbara ("County"), Laguna County Sanitation District ("LCSD"), Thomas California Investments, LP ("Thomas California"), and Wellmack, LLC ("Wellmack") hereinafter collectively the "Parties".

RECITALS

A. Thomas California owns certain real property (hereinafter the "Worsley property") in the unincorporated area of the County known as South Orcutt. The Worsley property consists of four contiguous unimproved assessor parcels (APN 103-200-067 and -045, and 103-361-012 and -013), totaling approximately 40 acres, located on both sides of the Orcutt Creek corridor, roughly 1,000 feet southeast of the Clark Avenue/Bradley Road intersection in southeast Orcutt. The Worsley property is designated REC-OS and zoned REC. The property comprises a portion of a larger 78.24 acre site known as Key Site 8 under the Orcutt Community Plan ("OCP").

B. The OCP requires the County to construct and maintain a regional retention basin system for the purpose of accommodating both increased storm water flows associated with new development and flows from existing private basins. The OCP identifies a series of regional retention basins along the Orcutt Creek corridor, including Regional Retention Basin "B" (hereinafter "Basin "B"). The OCP locates Basin "B" on the Worsley portion of Key Site 8, specifically APN 103-200-067. The intended purpose of Basin "B" is to receive drainage from surrounding and upstream residential developments in southeast Orcutt.

C. The OCP requires the County to construct and maintain a regional Class I bike path/multi-use trail system along the Orcutt Creek corridor in southeast Orcutt. The paved multi-use trail is intended to accommodate recreational bicyclists and commuters, hikers and equestrians. The trail is also intended to enable emergency and flood control vehicles to access portions of properties and the creek which are currently inaccessible. The OCP locates a section of the Class I bike path/multi-use trail on the Worsley portion on Key Site 8, specifically APN 103-200-067.

D. The OCP requires LCSD to construct and maintain a regional sewer system for the purpose of accommodating increased sewer flows resulting from new development. Buildout of the OCP in southeast Orcutt will require the extension of new sewage transmission lines into the area for the purpose of serving new development. The OCP identifies the Bradley/Solomon Sewer Trunk Line Extension (hereinafter the "Bradley/Solomon Extension") as the sewage transmission facility that will serve residential developments located along Orcutt Creek in southeast Orcutt. The OCP

locates a section of the Bradley/Solomon Extension on the Worsley portion on Key Site 8, specifically APN 103-200-067.

E. On March 1, 2000, the County Planning Commission approved the Jensen's Crossing/Cobblestone Creek project (TM 14,429 and Development Plan 97-DP-018, hereinafter "Jensen/Cobblestone"), the first of several residential subdivisions situated along the Orcutt Creek corridor in southeast Orcutt. Wellmack is the current owner/developer of Jensen/Cobblestone, located on Key Site 5 approximately 3,000 feet upstream of Key Site 8. The subdivision was approved subject to a set of conditions requiring the developer to, among other things, purchase capacity in and connect to Basin "B", build a segment of the Class I bike path/multi-use trail, and connect to the planned Bradley/Solomon Extension. Similar conditions have been imposed on other more recently approved Orcutt Creek residential projects, including the Mesa Verde project (Key Site 6) and the Harp Springs project (Key Site 8).

F. In order to facilitate recordation of a final map for Jensen/Cobblestone, Wellmack entered into two Cooperative Agreements, one with the County and the other with LCSD, whereby Wellmack agreed to fund the acquisition and complete construction of Basin "B", a portion of the multi-use trail, and the Bradley/Solomon Extension. The first agreement, entitled "Cooperative Agreement Regarding Regional Retention Basin "B", established a funding mechanism for County acquisition of the permanent and temporary easements needed over and across the Worsley property (APN 103-200-067) for both Basin "B" and the Class I bike path/multi-use trail. The agreement also ensured that Wellmack would complete or have completed all work necessary for construction and dedication of Basin "B" and the trail. The Cooperative Agreement Regarding Regional Retention Basin "B" was approved and adopted by the County Board of Supervisors on December 2, 2003.

G. The second agreement, entitled "Cooperative Agreement Regarding Bradley/Solomon Sewer Trunk Line Extension," established a funding mechanism for LCSD acquisition of the permanent and temporary easements over several parcels held in private ownership (including the Worsley parcel APN 103-200-067) necessary for construction of the Bradley/Solomon Extension. Similarly, the second agreement ensured that Wellmack would complete or have completed all work necessary for construction and dedication of the sewer line improvements to LCSD. The Cooperative Agreement Regarding Bradley/Solomon Sewer Trunk Line Extension was approved and adopted by the LCSD Board of Directors on December 2, 2003.

H. Since adoption of the Cooperative Agreements, a series of disputes have arisen between Thomas California, the County, LCSD and Wellmack regarding (1) the level of environmental review undertaken pursuant to CEQA in connection with the Cooperative Agreements; (2) the County's ability to acquire through eminent domain the permanent and temporary easements necessary for construction and dedication of the

public improvements identified in the agreements, and (3) the amount of compensation to be paid for the permanent and temporary easements needed for these public improvements. On May 28, 2004, Thomas California filed suit against the County, LCSD and Wellmack, in the Superior Court of Santa Barbara County (SBSC Case No. 01157798). The suit challenged the adequacy of environmental review undertaken pursuant to CEQA in connection with the Cooperative Agreements.

I. In response to the litigation, the Parties initiated a series of settlement discussions to try and resolve all outstanding issues regarding future use of the Worsley property (not simply issues specifically pled and raised as a result of SBSC Case No. 01157798). The discussions focused on design modifications and changes to the proposed size of Basin “B” and the location of the Class I bike path/multi-use trail. In addition, the Parties discussed utilization of an existing private easement and sewer line already in place on the Worsley property for purposes of completing the Bradley/Solomon Extension without the need for further construction. The Parties’ negotiations culminated in the preparation of final plans for a revised Regional Retention Basin “B” Project and Class I bike path/multi-use trail (hereinafter the “Basin Project”), attached hereto and made a part hereof as Exhibit 2, and a revised Bradley/Solomon Sewer Extension Project (hereinafter the “Sewer Project”), attached hereto and made a part hereof as Exhibit 3.

J. The Parties hereto desire to resolve all outstanding issues regarding future use of the Worsley property for the Basin Project and the Sewer Project. Consequently, the scope of this Memorandum of Understanding (hereinafter this “MOU”) necessarily extends beyond the issues specifically pled and raised as a result of SBSC Case No. 01157798. In this regard, and through approval and implementation of this MOU, the Parties intend to (1) eliminate the pending litigation; (2) eliminate the potential for future litigation or delayed implementation of the Basin Project and/or the Sewer Project; (3) eliminate the potential for future litigation regarding the County’s right to acquire through eminent domain those portions of the Worsley property necessary for the Basin Project and/or the Sewer Project; (4) have approved the Basin Project; (5) have approved the Sewer Project; (6) provide a protocol for acquiring the land and interests necessary for construction and dedication of the Basin Project and the Sewer Project; and (7) provide a protocol for County initiation and processing of a proposed change in the land use designation applicable to the portion of the Worsley property not acquired by the County for the Basin Project.

NOW, THEREFORE, in consideration of the mutual promises, covenants and conditions contained herein, the Parties agree as follows:

1. APPROVAL OF THE BASIN PROJECT”

The Santa Barbara County Flood Control District (hereinafter “County

Flood Control”) proposes to modify the design and reduce the size of Basin “B” to collect runoff from the existing Oak Knolls residential neighborhood located to the south and southwest of Key Sites 5, 6, and 8. County Flood Control has determined, based on hydrologic analysis, that runoff from the existing Oak Knolls neighborhood is approximately equal to the runoff expected from future upstream development located on Orcutt Creek at buildout. Under the revised plan for Basin “B”, drainage will flow to from the Oak Knolls neighborhood to Basin “B” via an existing storm drain system and drainage pipe outlet already constructed in the Bradley Road right-of-way. Drainage from new upstream residential development on Orcutt Creek will flow directly into the creek and bypass Basin “B”. The revised Basin “B” design will minimize site vegetation and soil disturbance while creating a more efficient storm water retardation system for the southeast Orcutt area.

To accommodate changes to the size and shape of Basin “B”, the segment of the Class I bike path/multi-use trail sited on the Worsley property will commence from a point on Bradley Road immediately north of the proposed County Flood Control access road. From Bradley Road, the trail will follow a route along the southern and eastern perimeter of Basin “B” to a point where it will merge with the existing private sewer line easement at the northeast corner of Basin “B”. From there, the trail will follow the sewer easement route in an easterly direction before departing the eastern boundary of the Worsley parcel (APN 103-200-067) south of Orcutt Creek.

The final plans and accompanying approval documentation for the Basin Project, including the design modifications to Basin “B” and realignment of the Class I bike path/multi-use trail, are attached hereto and made a part hereof as Exhibits 1 and 2. Based on the consistency of the Basin Project with the Comprehensive Plan, and based on the County’s finding of said consistency, the Board of Supervisors hereby:

(a) Accepts the Addendum attached as Exhibit 1 hereto to Environmental Impact Report 95-EIR-01.

(b) Approves the Basin Project attached as Exhibit 2 subject to the applicable conditions of approval found in the Jensen’s Crossing/Cobblestone Creek project (TM14,429/97-DP-018), the Harp Springs project (TM14,478/98-DP-017) and Mesa Verde Residential Project (TM 14,303/93-DPF-011).

2. APPROVAL OF THE SEWER PROJECT

The Bradley/Solomon Sewer Trunk Line Extension, once complete, will extend sewer service to residential developments along Orcutt Creek between Bradley and Stillwell Roads in southeast Orcutt. A majority of the trunk line has been installed and is already complete across the Jensen/Cobblestone project (Key Site 5), the Mesa Verde project (Key Site 6), Key Site B, the Jones parcel of Key Site 8 (APN 103-200-

011), and several smaller individual homesites. The only remaining uncompleted portion of the trunk line exists between the eastern boundary of the Worsley property (APN 103-200-067) and Bradley Road. No public sewer easement currently exists across the Worsley property enabling connection of the trunk line to the main in Bradley Road. However, a private sewer easement and sewer line exists across the Worsley property that completes the connection. The private easement and sewer line exists for the benefit of the neighboring property. The Sewer Project proposes to purchase the existing private easement and right-of-way for purposes of converting it to a public sewer easement. Purchase of the easement and dedication of the existing sewer line to LCSD will complete the last piece of the Bradley/Solomon Extension, without the need for further soil disturbance or construction.

The final plans and accompanying approval documentation for the Sewer Project are attached hereto and made a part hereof as Exhibits 1 and 3. Based on the consistency of the Sewer Project with the Comprehensive Plan, and based on LCSD's finding of said consistency, the LCSD, by its Board of Directors, hereby:

(a) Accepts the Addendum attached as Exhibit 1 hereto to Environmental Impact Report 95-EIR-01.

(b) Approves the Sewer Project attached as Exhibit 3 subject to the applicable conditions of approval found in the Jensen's Crossing/Cobblestone Creek project (TM14,429/97-DP-018), the Harp Springs project (TM14,478/98-DP-017) and Mesa Verde Residential Project (TM 14,303/93-DPF-011).

3. PROTOCOL FOR ACQUIRING INTERESTS IN LAND NECESSARY FOR THE BASIN PROJECT AND THE SEWER PROJECT

(a) Appraisal and Statutory Offer. The County and LCSD shall obtain appraisals of the land and/or interests in land needed for construction and dedication of the Basin Project and the Sewer Project. Within fourteen (14) days of obtaining the appraisals, the County and LCSD shall make statutory offers pursuant to Code of Civil Procedure section 1250.410, for purposes of acquiring the land and/or interests so appraised. The statutory offers shall include a reasonable time period for response. In the event one or more of the statutory offers is accepted within the prescribed response period, the Parties shall immediately prepare, execute, and have filed with the County Recorder's Office the appropriate documentation necessary to consummate the transfer(s).

(b) Resolution of Necessity. In the event one or more of the statutory offers is not accepted within the prescribed time period for response, the Board of Supervisors (and/or Board of Directors for LCSD) shall, as soon as reasonably

practicable, but in no event more than four (4) weeks following lapse or rejection of the statutory offer(s), hold a public hearing to consider the adoption of a Resolution of Necessity pursuant to Code of Civil Procedure section 1245.235. Consistent with the waiver provisions set forth in Section 6 below, Thomas California specifically waives the right to protest or oppose, or judicially challenge pursuant to Code of Civil Procedure section 1245.255, the adoption of a Resolution of Necessity by the Board of Supervisors (and/or Board of Directors).

(c) Commencement of Action for Condemnation, Deposit, and Order of Possession. If, following the public hearing, the Board of Supervisors (and/or Board of Directors for LCSD) adopts a Resolution of Necessity, then pursuant to Chapter 5 of the Eminent Domain Law, commencing with Code of Civil Procedure section 1250.020, the County and/or LCSD shall immediately proceed with preparation and filing of an action for condemnation of the land and/or interests in land needed for construction and dedication of the Basin Project and/or the Sewer Project. Concurrently with the filing of a complaint, the County and/or LCSD shall deposit with the State Treasury, pursuant to Chapter 6, Article 1 of the Eminent Domain Law, commencing with Code of Civil Procedure section 1255.010, the probable amount of compensation, based on the appraisal, that will be awarded in the eminent domain proceeding. Concurrently with filing the complaint and making the deposit, the County and/or LCSD shall, in addition, pursuant to Chapter 6, Article 3 of the Eminent Domain Law, commencing with Code of Civil Procedure section 1255.410, apply ex parte to the court for an order of possession of the land and/or interests in land being condemned.

(d) Waiver of Challenge or Protest. Consistent with the waiver provisions set forth in Section 6 below, Thomas California specifically waives the right to challenge or protest, by means of the procedures set forth in Chapter 5, Article 5 of the Eminent Domain Law, commencing with Code of Civil Procedure section 1250.350, and Chapter 8, Article 2 of the Eminent Domain Law, commencing with Code of Civil Procedure section 1260.110, or otherwise, the County's and/or LCSD's right to take the land and/or interests in land needed for construction and dedication of the Basin Project and/or the Sewer Project. Furthermore, Thomas California specifically waives the right to challenge or protest, by means of the procedures set forth in Chapter 6, Article 3 of the Eminent Domain Law, commencing with Code of Civil Procedure section 1255.420, or otherwise, the County's and/or LCSD's application for an order of possession, or the order of possession itself, once issued by the court. Nothing herein shall effect or otherwise require Thomas California to waive the procedures set forth in Chapter 8, Article 3 of the Eminent Domain Law, commencing with Code of Civil Procedure section 1260.210, relating to a determination of compensation for the take.

(e) Negotiation/Mediation of "Value". The Parties agree to participate in a process for negotiation/mediation of the amount of compensation to be paid for the land and/or interests in land needed for construction and dedication of the Basin Project and/or

the Sewer Project. The Parties agree to pursue this process in an effort to reach agreement on an appropriate compensation amount and avoid the time and expense of a trial on the issue. The Parties' efforts to reach an agreement on compensation will begin as soon as reasonably practicable following the Board of Supervisors' (or Board of Directors') adoption of the Resolution of Necessity. If a voluntary agreement cannot be reached on the amount of compensation through negotiation/mediation, the Parties will proceed to trial on the limited issue of compensation, consistent with the waiver provisions set forth in Section 6 below. The requirements of this section are not subject to the provisions of Code of Civil Procedure §1250.420.

4. PROTOCOL FOR PROCESSING REZONE APPLICATION AND REQUEST FOR CHANGE IN LAND USE DESIGNATION

County hereby agrees, subject to its reserved police power and Thomas California's payment of processing fees, to initiate upon request and process to final decision a proposed change in the land use designation applicable to that portion of the Worsley property not conveyed to County for purposes of the Basin Project.

(a) Application Submittal; Request for Change in Land Use Designation; Processing Fees and Costs. At any time following the approval and execution of this MOU, Thomas California may file an application for rezone, together with a request for change in land use designation, applicable to that portion of the Worsley property not conveyed to County for purposes of the Basin Project. Subject to the conditions and procedures set forth below, the County shall act upon said application and request by processing the same to a final decision and vote of the Board of Supervisors. Thomas California shall be responsible for payment of all County fees, costs and charges related to processing the rezone application and proposed change in land use designation, and Thomas California shall pay all said fees, costs and charges as a condition precedent to the County fulfilling its obligation to bring said matters to a final decision and vote of the Board of Supervisors.

(b) Application Review. Thomas California shall submit all information and reports needed to allow expeditious processing of the rezone application and request for change in land use designation. The County shall expedite, to the maximum extent legally practical, the review and processing of the rezone application and proposed change in land use designation, and consideration of any alternatives. The County shall endeavor to accomplish all things necessary so that the Board of Supervisors may take final action on the rezone application and proposed change no later than twelve months after formal action has been taken to initiate the change.

(c) Reservation of Police Power. This MOU is entered into by the Parties to, among other things, provide a protocol for the initiation and processing of a rezone application and proposed change in land use designation applicable to the Worsley

property to a final decision of the Board of Supervisors. This MOU does not create in Thomas California any entitlements, rights or approvals for a rezone or change in land use designation applicable to the Worsley property. The processing and final decision related to the rezone and proposed change in land use designation will be separate and apart from the approval of this MOU, and will require complete and legally sufficient environmental analysis as well as compliance with all applicable planning and zoning laws. The County cannot and does not prejudge or make any commitments regarding ultimate approval of a rezone application or proposed change in land use designation, which shall be processed in accordance with all applicable ordinances, resolutions, policies and statutes. Nothing herein shall be deemed to be a waiver or infringement of the County's police power, including the authority of the County and/or LCSD to seek future or additional condemnation of the Worsley property, nor shall any part or all of this MOU be construed on the part of the County as an obligation to grant any permits, entitlements or approvals.

(d) Requests to Facilitate Development. In the event a rezone application and request for change in land use designation is approved, this MOU shall not effect or otherwise limit Thomas California's ability to request connection to the sewer line, relocation of the Class I bike path/multi-use trail, and/or relocation of the Basin "B" access road, for purposes of facilitating future development of the Worsley property. Any future proposals for development of the Worsely property will require complete and legally sufficient environmental analysis, as well as compliance with all applicable federal, state and local planning, zoning and environmental laws. Requests to connect to the sewer line, to relocate the Class I bike path/multi-use trail, and/or to relocate the Basin "B" access road, shall be processed and decided in accordance with the statutes, ordinances, resolutions and policies in effect at the time. Nothing in this MOU shall prohibit these requests from being made, or otherwise influence the outcome of decisions thereon.

5. DISMISSAL OF SBSC CASE NO. 01157798

Immediately following approval and execution of this MOU, Thomas California shall file with the court and serve on all parties a dismissal with prejudice of SBSC Case No. 01157798. The County's obligation under this MOU to initiate and process to final decision a proposed change in the land use designation applicable to that portion of the Worsley property not conveyed to County for purposes of the Basin Project shall be subject to the foregoing condition precedent, and shall not become effective until Thomas California has dismissed with prejudice the entirety of SBSC Case No. 01157798.

6. WAIVER OF ALL CLAIMS OTHER THAN CLAIMS RELATED TO DETERMINING COMPENSATION FOR TAKE

This MOU is entered into by the Parties to, among other things, eliminate the potential for future challenge or litigation regarding implementation, construction and dedication of both the Basin Project and the Sewer Project, including the potential for future challenge or litigation regarding the County's and/or LCSD's right to take through eminent domain those portions of the Worsley property necessary for said public improvements. As such, and except as otherwise expressly provided in this MOU, Thomas California hereby waives the right to pursue, separately, or in the context of eminent domain proceedings, any further legal process or proceeding, or take any action before the County Board of Supervisors (or Board of Directors for LCSD), or otherwise, which could prevent or delay implementation, construction or dedication of the Basin Project and/or the Sewer Project. In this regard, Thomas California specifically waives the following:

(a) The right to protest or oppose, or judicially challenge pursuant to Code of Civil Procedure section 1245.255, of the Board of Supervisors' adoption of a Resolution of Necessity for the Basin Project, and/or the Board of Directors' adoption of a Resolution of Necessity for the Sewer Project.

(b) The right to challenge or protest, by means of the procedures set forth in Chapter 5, Article 5 of the Eminent Domain Law, commencing with Code of Civil Procedure section 1250.350, and Chapter 8, Article 2 of the Eminent Domain Law, commencing with Code of Civil Procedure section 1260.110, or otherwise, the County's right to take the land and/or interests in land needed for construction and dedication of the Basin Project and/or the Board of Directors' right to take the land and/or interests in land needed for the Sewer Project .

(c) The right to challenge or protest, by means of the procedures set forth in Chapter 6, Article 3 of the Eminent Domain Law, commencing with Code of Civil Procedure section 1255.420, or otherwise, the County's and/or LCSD's application for an order of possession, or the order of possession itself once issued by the court.

(d) The right to protest or oppose, or judicially challenge pursuant to Code of Civil Procedure sections 1085 and/or 1094.5, or Public Resources Code sections 21167, 21168 and 21168.5, or otherwise, the amendment of one or both Cooperative Agreements by the County and/or LCSD, as may be necessary for purposes of facilitating implementation of this MOU or the construction and dedication of the Basin Project and/or the Sewer Project.

Provided, however, that nothing herein shall effect or otherwise require Thomas California to waive the procedures set forth in Chapter 8, Article 3 of the Eminent Domain Law, commencing with Code of Civil Procedure section 1260.210, relating to a determination of compensation for any land or interests in land the County and/or LCSD proposes to take. In this regard, Thomas California expressly reserves the

right to protest or oppose, or challenge judicially the County's and/or LCSD's "valuation" of its property under eminent domain. Furthermore, the waivers provided for in this MOU apply only to the actions proposed under this MOU. Nothing herein shall effect or otherwise require Thomas California to waive any rights it may have to challenge or oppose future efforts by the County and/or LCSD unrelated to this MOU, the Basin Project and/or the Sewer Project.

7. EFFECT ON PRIOR AGREEMENTS. This MOU shall have the effect of substituting the Basin Project and the Sewer Project for the public improvement projects identified and referenced in the Cooperative Agreements. Provided, however, that nothing in this MOU is intended to effect or otherwise modify Wellmack's obligations under the Cooperative Agreements to fund acquisition of the necessary interests in land and/or construction of the Basin Project and the Sewer Project, as substituted by this MOU.

8. COSTS AND ATTORNEY'S FEES. The parties hereto shall each pay their own attorney's fees, costs and expenses incurred in connection with SBSC Case No. 01157798, including the negotiation and preparation of this MOU.

9. GENERAL PROVISIONS. California law shall govern the construction, interpretation and enforcement of this agreement.

(a) Captions. The captions of the sections of this agreement are for convenience and reference only, and shall not effect in any way the meaning or interpretation of this MOU.

(b) Further Assurances. Each party agrees to perform any further acts and execute any documents that may be reasonably necessary to effect the purpose of this agreement.

(c) Entire Agreement. This writing constitutes the entire understanding of the parties as to the matter set forth herein. No modification of this agreement shall be valid or binding unless executed in writing by the parties and none of the parties shall be bound by any representations, warranties, provisions and statements as to the matter set forth herein unless such matters are specifically set forth.

IN WITNESS WHEREOF, the parties hereto have caused this MOU to be executed as of the Effective Date.

THOMAS CALIFORNIA INVESTMENTS, LP

Date: _____

By: _____

APPROVED AS TO FORM: LEON & LEON

Date: _____

By: _____

Jeffrey A. Leon, Attorney for
Thomas California Investments, LP

WELLMACK, LLC

Date: _____

By: _____

APPROVED AS TO FORM: HOLLISTER & BRACE

Date: _____

By: _____

Peter L. Candy, Attorney for
Wellmack, LLC

COUNTY OF SANTA BARBARA

Date: _____

By: _____

Chair, Board of Supervisors

LAGUNA COUNTY SANITATION DISTRICT

Date: _____

By: _____
Chair, Board of Directors

APPROVED AS TO FORM:

STEPHEN SHANE STARK
COUNTY COUNSEL

Date: _____

By: _____
Alan Seltzer, Chief Assistant

TO: Santa Barbara County Board of Supervisors and
Laguna County Sanitation District Board of Directors

FROM: Kathy Kefauver, Senior Engineering Environmental Planner
Public Works Department

DATE: September 8, 2005

RE: CEQA Determination: Addendum for the Revised Orcutt Regional Retention Basin “B” Project (Including Class I Bike Path/Multi-Use Trail) and the Revised Bradley-Solomon Sewer Extension Project: Finding that Section 15164 of the State CEQA Guidelines applies to the Revised Orcutt Regional Retention Basin “B” Project (Including Class I Bike Path/Multi-Use Trail) and the Revised Bradley-Solomon Sewer Extension Project. CEQA Section 15164 allows an addendum to be prepared when only minor technical changes or changes that do not create new significant impacts would result. This addendum to the environmental documents for the Orcutt Community Plan including Environmental Impact Report 95-EIR-01, (SCH #95031055), Mesa Verde Residential Project (TM 14,303/93-DPF-011) addendum dated July 7, 1999, Jensen’s Crossing/Cobblestone Creek subdivision (TM 14,429/97-DP-018) addendum dated December 1, 1999, and Harp Springs (TM 14,478/98-DP-017/98-RN-010) addendum dated April 2, 2002, addendum for the Orcutt Community Plan Flood Control Basin “B” and Bradley-Solomon Trunk Sewer Line Extension dated July 29, 2004 are hereby amended by this 15164 letter for the Revised Orcutt Regional Retention Basin “B” Project (including Class I Bike Path/Multi-Use Trail) and the Revised Bradley-Solomon Sewer Extension Project.

The documents and other materials which constitute the record of proceedings upon which this decision is based are in the custody of the Clerk of the Board, Santa Barbara County Board of Supervisors, located at 105 E. Anapamu St., Fourth Floor, Santa Barbara, CA 93101.

Location: The projects involve Assessor’s Parcel Number 103-200-067 located in the Orcutt area, Fourth Supervisorial District.

1.0 EXECUTIVE SUMMARY

The Orcutt Regional Retention Basin “B” Project and the Bradley-Solomon Sewer Trunk Line Extension Project were approved as part of the Orcutt Community Plan (95-EIR-01), Jensen’s Crossing/Cobblestone Creek (Key Site 5, Addendum to 95-EIR-01 July 1997), Mesa Verde (Key Site 6, Addendum to 95-EIR-01 July 1997) and Harp Springs (Key Site 8, Addendum to 95-EIR-01 July 1997) subdivision approvals (Figure 1). The Orcutt Community Plan (OCP) locates Regional Retention Basin “B” on APN 103-200-067. The OCP also locates a portion of the Class I bike path/multi-use trail, and a portion of the Bradley-Solomon Sewer Extension on APN 103-200-067. In December 2003, two separate Cooperative Agreements were approved for purposes of establishing a funding mechanism for Regional Retention Basin “B” (including the bike path/multi-use trail) and the Bradley-Solomon Sewer Extension. A lawsuit was subsequently filed by Thomas California Investments challenging the

adequacy of environmental review undertaken pursuant to CEQA in connection with the Cooperative Agreements. Thomas California holds fee title to APN 103-200-067.

In response to the litigation, the parties initiated a series of settlement discussions to try and resolve outstanding issues regarding future use of APN 103-200-067. The discussions focused on design modifications and changes to the proposed size of Basin “B”, and the location of the Class I bike path/multi-use trail on APN 103-200-067. In addition, the parties discussed utilization of an existing private easement and sewer line already in place across APN 103-200-067 for purposes of completing the Bradley/Solomon Extension. The negotiations culminated in the preparation of final plans for a Revised Regional Retention Basin “B” Project, including Class I bike path/multi-use trail (hereinafter the “Basin Project”), and a Revised Bradley/Solomon Sewer Extension Project (hereinafter the “Sewer Project”).

Under the Basin Project, storm water runoff mitigation will continue to be provided via the construction of Regional Retention Basin “B”. However, Basin “B” is no longer designed to collect runoff from upstream development on Orcutt Creek, but instead will collect runoff from the existing Oak Knolls residential neighborhood located to the south and southwest of Key Sites 5, 6, 7 and 8. Drainage will flow from the Oak Knolls neighborhood to Basin “B” via an existing storm drain system and drainage pipe outlet already constructed in the Bradley Road right-of-way. Drainage from new upstream residential development on Orcutt Creek will flow directly into the creek and bypass Basin “B”.

The Class I bike path/multi-use trail proposed for APN 103-200-067 has been realigned to accommodate the proposed changes to Basin “B”. The bike path/multi-use trail will begin at Bradley Road and follow the southern and eastern perimeter of Basin “B”. At the northeast corner of the Basin, the bike path/multi-use trail will turn east and ultimately exit the eastern boundary of APN 103-200-067 south of Orcutt Creek. The bike path/multi-use trail proposed for APN 103-200-067 would continue to serve area developments in south Orcutt (Figures 2 and 3).

Under the Sewer Project, Laguna County Sanitation will acquire an existing private sewer easement and sewer line already in place across APN 103-200-067 for purposes of converting it to a public sewer easement and sewer line. Purchase of the easement and dedication of the existing sewer line to LCSD will complete the last piece of the Bradley/Solomon Extension, without the need for soil disturbance or construction. Acquisition of the existing private sewer line easement and sewer line, and conversion to a public easement and sewer line, would serve the surrounding area.

The Basin Project and the Sewer Project would serve only the development anticipated under the Orcutt Community Plan, analyzed in 95- EIR-01, and are consistent with Basin “B”, the bike path/multi-use trail and Bradley-Solomon sewer line extension evaluated in 95-EIR-01, addenda for the Orcutt Community Plan and Key sites 5, 6 and 8 and for acquisition and construction of the projects.

The Basin Project and the Sewer Project are located within the unincorporated community of Orcutt. Development of the projects was evaluated under 95-EIR-01 for the Orcutt Community Plan. As noted above, the EIR and previous addenda included evaluation of environmental impacts resulting from build-out of the entire Orcutt Community Plan, as well as site-specific evaluation of residential build-out of the development sites in the vicinity (known as Key Sites 5, 6 and 8 of 95-EIR-01). The Board of Supervisors certified the EIR on July 22, 1997.

In approving the Orcutt Community Plan, the Board adopted a Statement of Overriding Considerations for those identified environmental impacts, which could not be fully mitigated (i.e., residual impacts after mitigation which were determined to be significant and unavoidable [Class I impacts]). Many mitigation measures identified in the EIR were adopted as policies and development standards in the Orcutt Community Plan. Projects are required by State law to be consistent with general plan policies.

2.0 DESCRIPTION OF PROJECTS

The Santa Barbara County Flood Control District proposes to modify the design and reduce the size of Basin “B” to collect runoff from the existing Oak Knolls residential neighborhood located to the south and southwest of Key Sites 5, 6, 7 and 8. County Flood Control has determined, based on hydrologic analysis, that runoff from the existing Oak Knolls neighborhood is approximately equal to the runoff expected from future upstream development located on Orcutt Creek and its tributaries at buildout. Under the revised plan for Basin “B”, drainage will flow from the Oak Knolls neighborhood to Basin “B” via an existing storm drain system and drainage pipe outlet already constructed in the Bradley Road right-of-way. Drainage from new upstream residential development on Orcutt Creek will flow directly into the creek and bypass Basin “B”. The revised Basin “B” design will minimize site vegetation and soil disturbance while creating a more efficient storm water retardation system for the southeast Orcutt area. The size of Basin “B” will be reduced, and its shape modified slightly, but the general location of Basin “B” on APN 103-200-067 will not change from what was previously reviewed and approved.

To accommodate changes to the size and shape of Basin “B”, that portion of the Class I bike path/multi-use trail sited on APN 103-200-067 will commence from a point on Bradley Road immediately north of the proposed County Flood Control access road. From Bradley Road, the trail will follow a route along the southern and eastern perimeter of Basin “B” to a point where it will merge with the existing private sewer line easement at the northeast corner of Basin “B”. From there, the trail will follow the sewer easement route in an easterly direction before departing the eastern boundary of APN 103-200-067 south of Orcutt Creek. The revised bike path/multi-use trail alignment does not differ in any significant way from what was previously reviewed and approved. It follows generally the same route except that it is now contiguous with the southern and eastern perimeter of the Basin for roughly half its length.

The portion of the Class I bike path/multi-use trail between Bradley and Stillwell Roads was approved as part of the Orcutt Community Plan (95-EIR-01), Jensen’s Crossing/Cobblestone Crossing (Key Site 5, Addendum to 95-EIR-01 July 1997), Mesa Verde (Key Site 6, Addendum to 95-EIR-01 July 1997) and Harp Springs (Key Site 8, Addendum to 95-EIR-01 July 1997) subdivision approvals (Figures 1 and 2).

The Bradley/Solomon Sewer Trunk Line Extension, once complete, will extend sewer service to residential developments along Orcutt Creek between Bradley and Stillwell Roads in southeast Orcutt. Pursuant to previous approval, a majority of the trunk line has been installed and is already complete across the Jensen/Cobblestone project (Key Site 5), Key Site B, and the Jones parcel of Key Site 8 (APN 103-200-011). The only remaining uncompleted portion of the trunk line exists between the eastern and western boundaries of APN 103-200-067. No public sewer easement currently exists across APN 103-200-067 enabling connection of the trunk line to the main in Bradley Road. However, a private sewer easement and sewer line, adequate in size and capacity, exists across APN 103-200-067 that completes

the connection. The private easement and sewer line exists for the benefit of the neighboring property (APN 103-200-026). The Sewer Project proposes to purchase the existing private easement and right-of-way for purposes of converting it to a public sewer easement. Purchase of the easement and dedication of the existing sewer line to LCSD will complete the last piece of the Bradley/Solomon Extension, without the need for soil disturbance or construction. The Sewer Project would serve development anticipated in 95-EIR-01 and is consistent with the Bradley-Solomon Sewer Trunk Line Extension evaluated in 95-EIR-01.

The retention basin, bike path/multi-use trail and sewer line extension would serve only the development anticipated under 95-EIR-01 and is consistent with Basin “B”, bike path/multi-use trail and Bradley-Solomon sewer line extension evaluated in 95-EIR-01 and addenda for the Orcutt Community Plan and Key Sites 5, 6 and 8. Requirements for a regional retention basin, a bike path/multi-use trail and sewer line extension within the Key sites were made conditions of approval for Jensen’s Crossing/Cobblestone Crossing (Key Site 5, Addendum to 95-EIR-01 July 1997), Mesa Verde (Key Site 6, Addendum to 95-EIR-01 July 1997) and Harp Springs (Key Site 8).

3.0 BACKGROUND – PREVIOUS ANALYSIS AND MITIGATION

The previous environmental documents for the Orcutt Community Plan including Environmental Impact Report 95-EIR-01, (SCH #95031055), Mesa Verde Residential Project (TM 14,303/93-DPF-011) addendum dated July 7, 1999, Jensen’s Crossing/ Cobblestone Creek subdivision (TM 14,429/97-DP-018) addendum dated December 1, 1999, and Harp Springs (TM 14,478/98-DP-017/98-RN-010) addendum dated April 2, 2002, addendum for the Orcutt Community Plan Flood Control Basin “B” and Bradley-Solomon Trunk Sewer Line Extension dated July 29, 2004 discussed impacts that are applicable to the proposed project. All mitigation measures are herein incorporated by reference.

4.0 FINDINGS

In approving the Orcutt Community Plan, the Board adopted a Statement of Overriding Considerations for those identified environmental impacts that could not be fully mitigated (i.e., residual impacts after mitigation which were determined to be significant and unavoidable [Class I impacts]) such as cumulative growth inducing impacts and biological resource impacts. Many mitigation measures identified in the EIR were adopted as policies and development standards in the Community Plan. Projects are required by State law to be consistent with general plan policies.

In approving the Orcutt Community Plan, the Board of Supervisors also adopted a Mitigation Monitoring and Reporting Plan to reduce significant impacts for issue areas. Many mitigation measures identified in the EIR were adopted as policies and development standards in the Community Plan. Retention Basin “B”, the bike path/multi-use trail and sewer line extension would provide flood protection for development anticipated under the Orcutt Community Plan, recreational opportunities, and provide adequate waste water disposal, respectively. The Project elements (retention basin, bike path/multi-use trail and sewer line extension easement) are intended to fulfill the specific requirements of these mitigation measures.

Additionally, the retention basin, bike path/multi-use trail and sewer line extension were made conditions of approval for the Jensen’s Crossing/Cobblestone Creek, Harp Springs and Mesa Verde

residential developments and all potential for impacts of the projects were studied in the addenda that were performed for those development projects.

95-EIR-01 analyzed and identified the general, overall impacts resulting from anticipated build out of the Orcutt Community Plan including infrastructure requirements (flood control retention basins, parks/trail/bikepath, sewer lines, water lines, etc.). Mitigation measures resulting from the EIR analysis have been adopted as policies and development standards that are part of the Orcutt Community Plan. Subsequent development on parcels within the Orcutt Community Planning Area, such as Key Sites #5, 6, and 8 are subject to design and construction in compliance with the Orcutt Community Plan policies and development standards, are also subject to site-specific analysis under CEQA and, if required, subsequent mitigation measures.

The general location, area of disturbance, and service area of Retention Basin B, the bike path/multi-use trail and sewer line extension and easement have not changed from what was studied in the certified Orcutt Community Plan EIR and addendum dated July 29, 2004 and is therefore consistent with the Orcutt Community Plan. Basin “B” has been reduced in size over the basin design reviewed in the previous addendum dated July 29, 2004. The pipe to carry runoff from the existing neighborhood exists in the Bradley Road right-of-way. The proposed basin design would result in minimizing vegetation and soil disturbance while creating a more efficient flood control system for the area. The area proposed for the Class I bike path/multi-use trail is wholly within the area of disturbance reviewed in the previous addendum dated July 29, 2004. Converting the private easement for the sewer line on Key Site #8 from private to public would not create any new significant impacts other than what was analyzed in the previous environmental documents. There are no other changes or additions to the projects that would create new environmental impacts or increase the severity of previously identified impacts.

There have been no other substantial changes to the circumstances under which the projects are being undertaken since the Orcutt Community Plan EIR was performed. No other changed circumstances that could give rise to the need for additional review have occurred and no new information has become known that would affect the analysis of the Orcutt Community Plan EIR and previous addenda. No projects have been approved in the Orcutt Planning Area that were not contemplated and studied in the Orcutt Community Plan EIR or that are different than what was studied in that EIR in a way that could change the impacts identified for the proposed projects. Since the proposed projects will only serve a portion of the Orcutt Community Plan planning area as anticipated in the Orcutt Community Plan EIR and no additional development, there are no new growth inducing impacts associated with the projects beyond the growth that was already studied in the Orcutt Community Plan EIR.

Therefore, it is the finding of the Santa Barbara County Board of Supervisors that the previous environmental documents, amended by this 15164 addendum are adequate and appropriate for the redesigned Regional Retention Basin “B”, bike path/multi-use trail and Bradley-Solomon Sewer line extension easement meets the conditions for the application of the State CEQA Guidelines Section 15164, preparation of a new EIR or ND is not necessary.

Figure 1 –Orcutt Community Plan Key Sites

Figure 2 – Flood Retention Basin B Vicinity Map

Figure 3 – Orcutt Community Plan Parks, Recreation and Bike path/multi-use trail Map (southeast Orcutt portion)

Figure 4 – Flood Control Retention Basin B Site Plan

Figure 5 – Bradley-Solomon Sewer Trunk Line Extension Alignment

FIGURES

Figure 1 – Orcutt Community Plan Key Sites

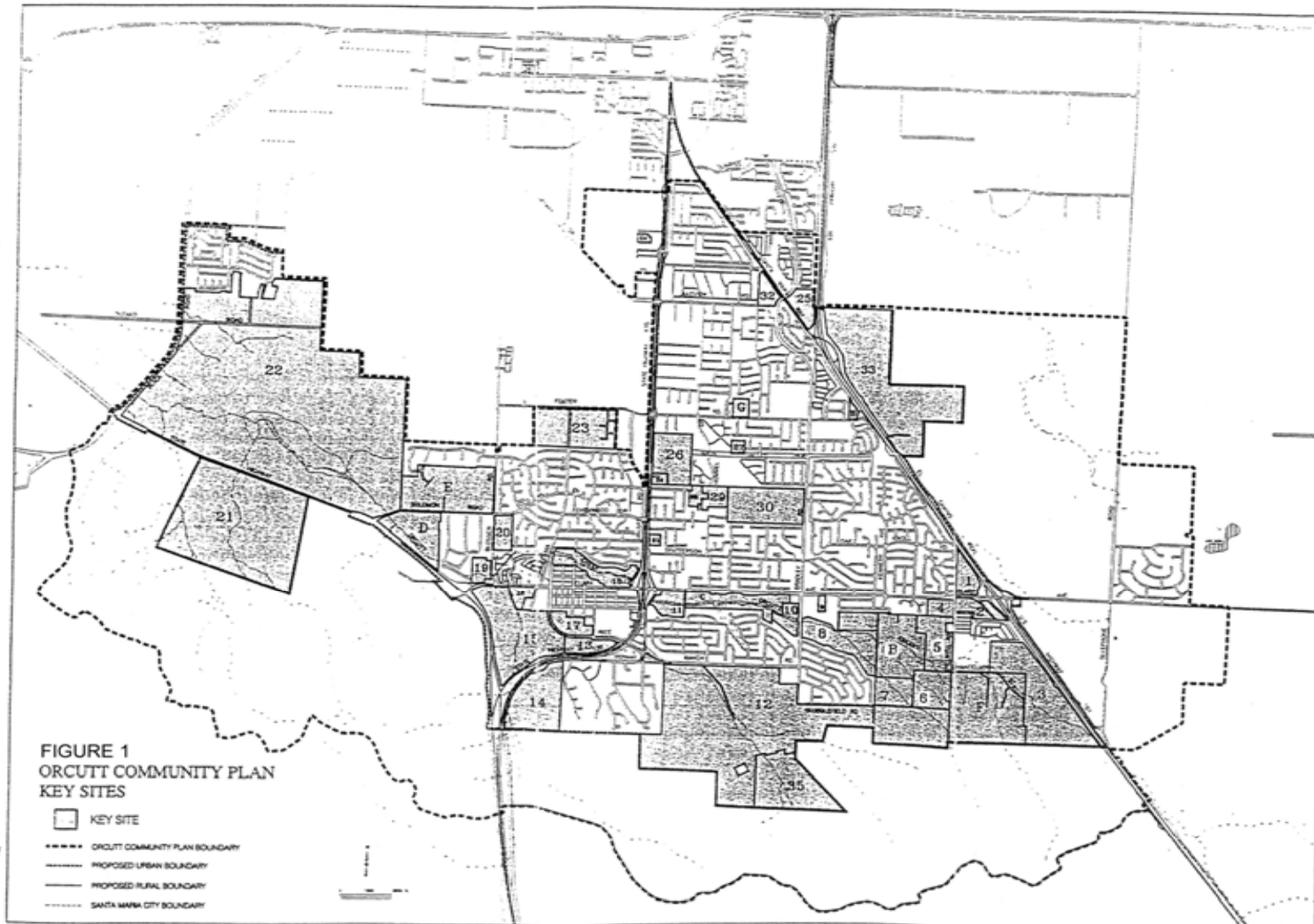


Figure 2 – Flood Control Retention Basin B

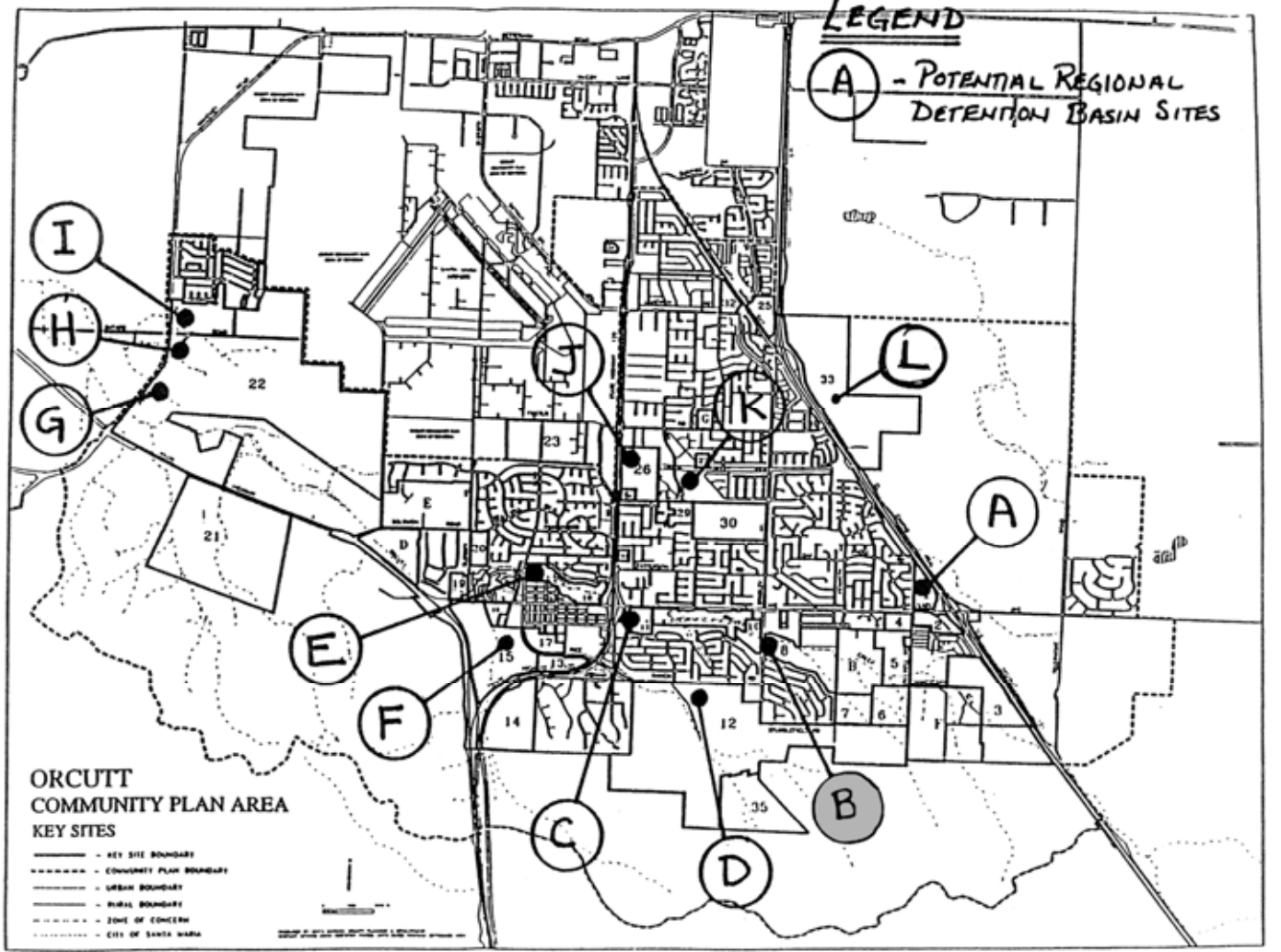
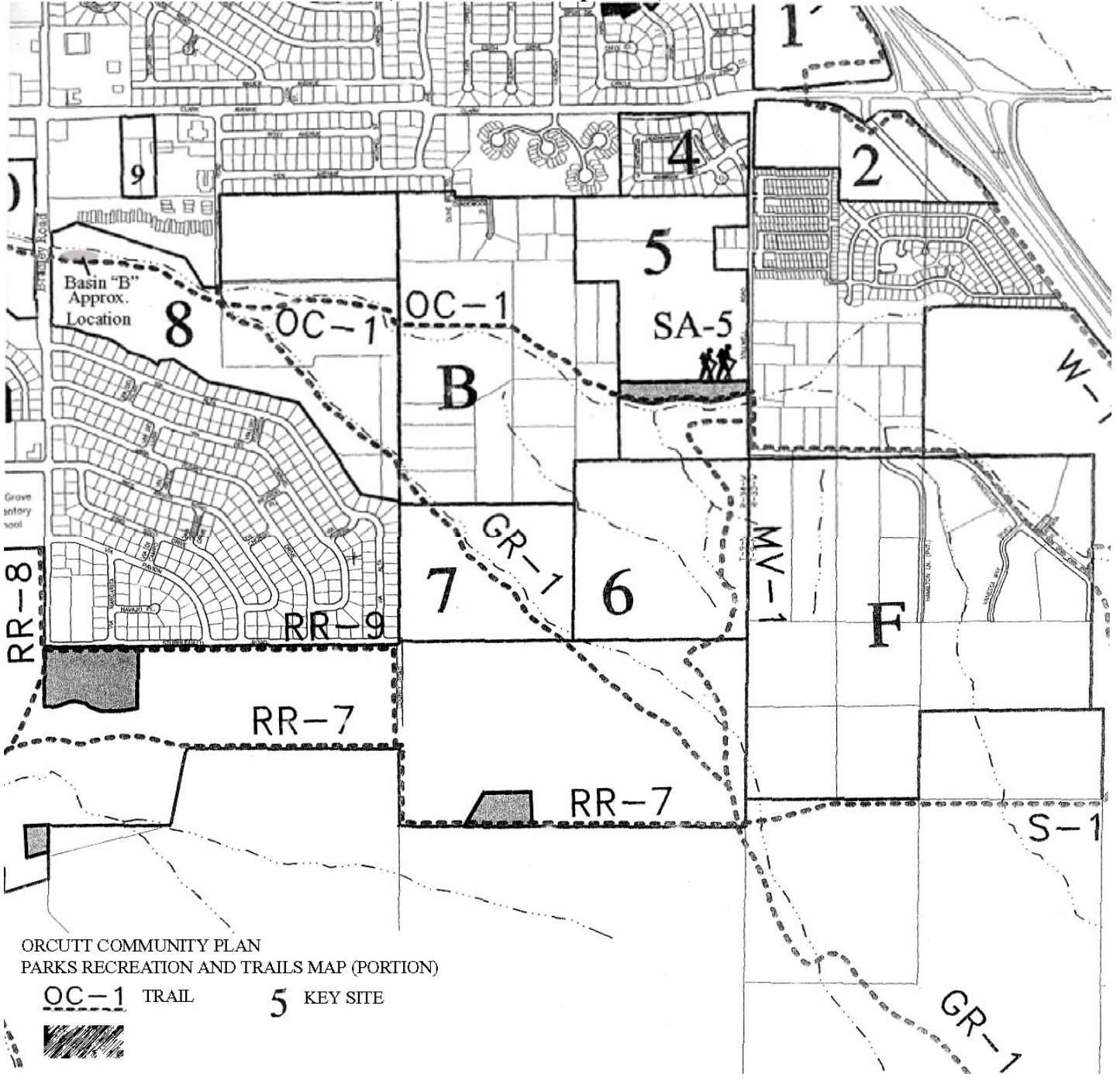


FIGURE 3
 REGIONAL FLOOD RETENTION BASIN B



POTENTIAL BASIN SITES
 ORCUTT COMMUNITY PLAN UPDATE
 (Prepared by Penfield & Smith)

Figure 3 – Orcutt Community Plan Parks, Recreation and Bike path/multi-use trail Map (Southeast Orcutt portion)



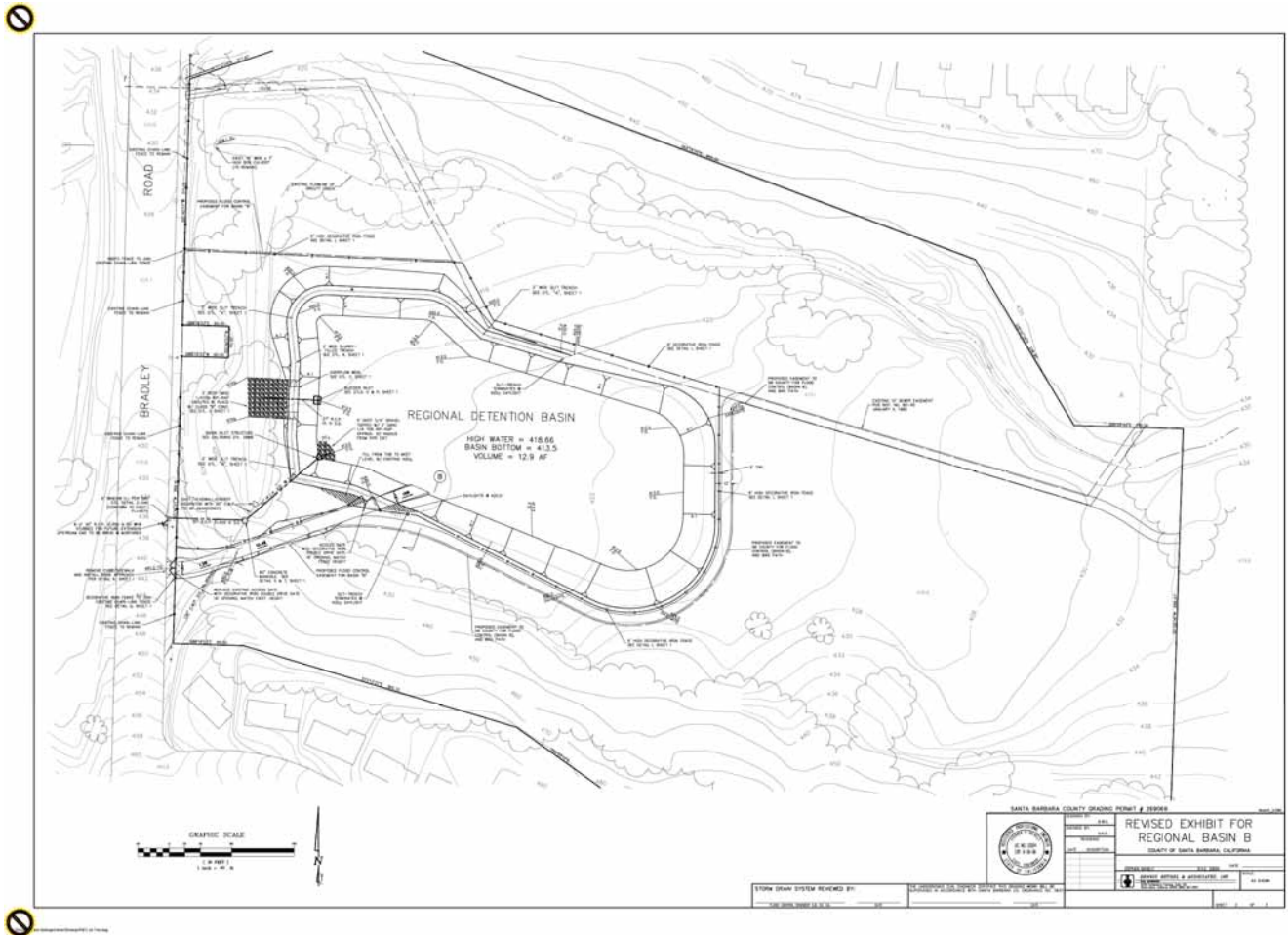
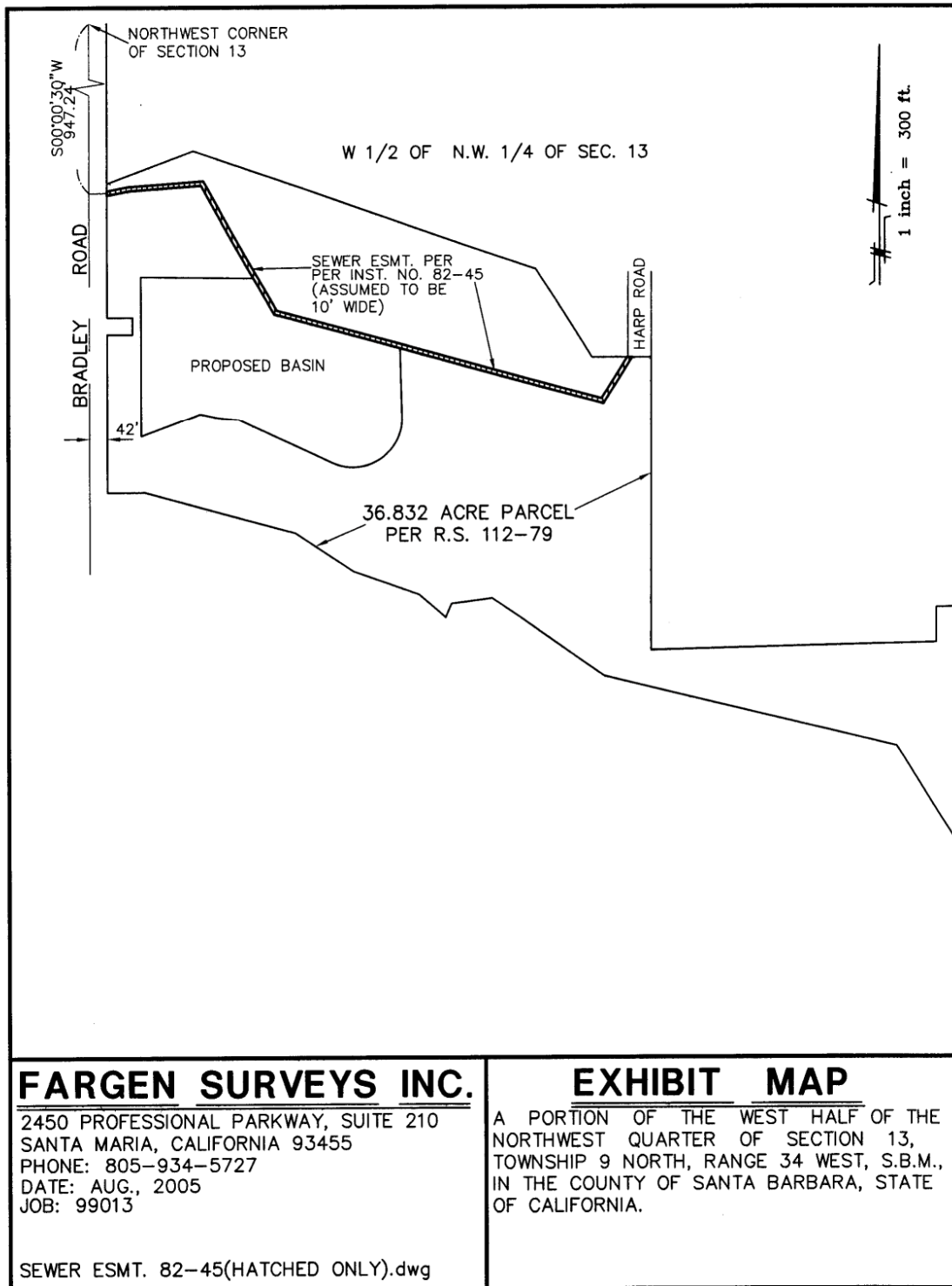
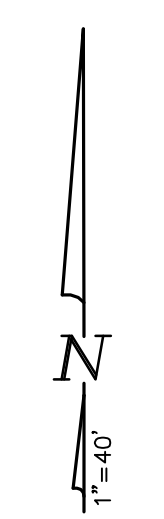
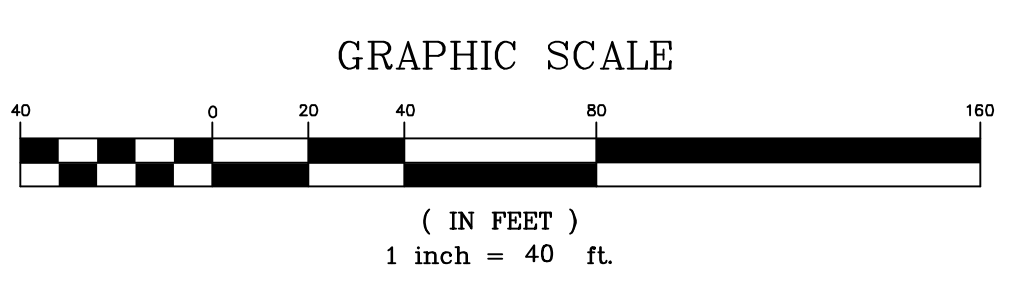
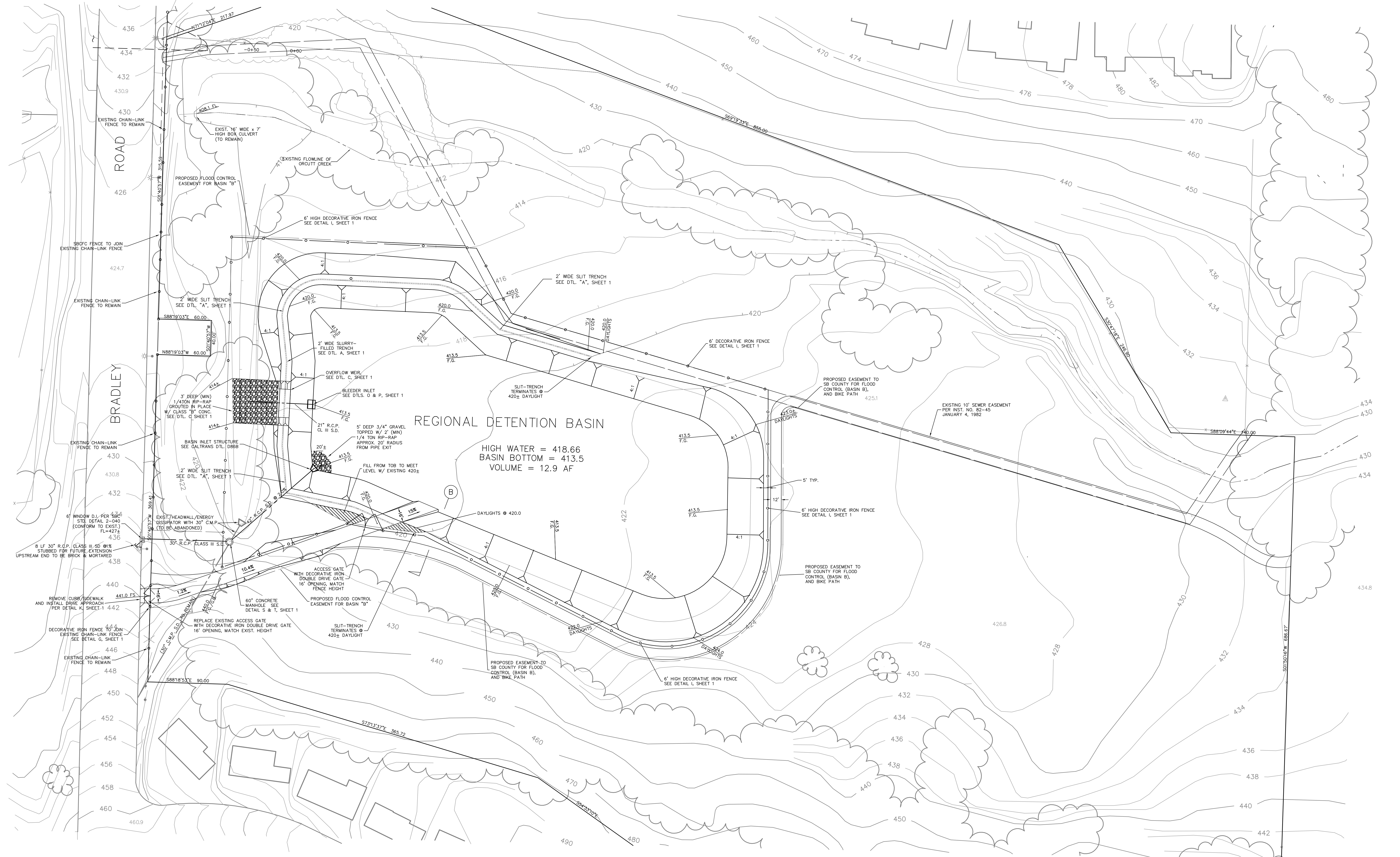
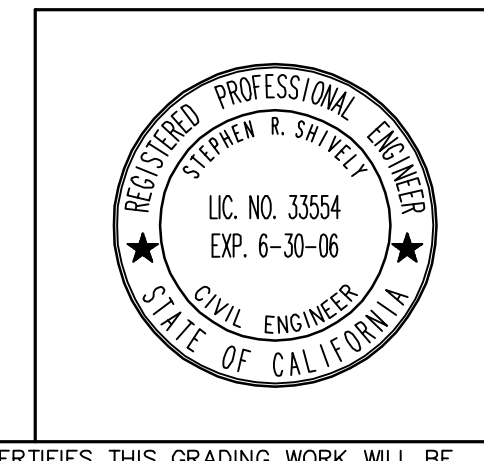


Figure 5 – Bradley-Solomon Sewer Trunk Line Extension Alignment





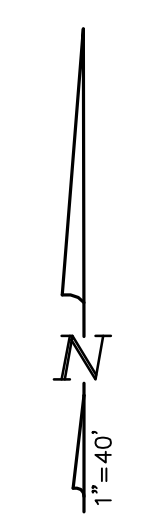
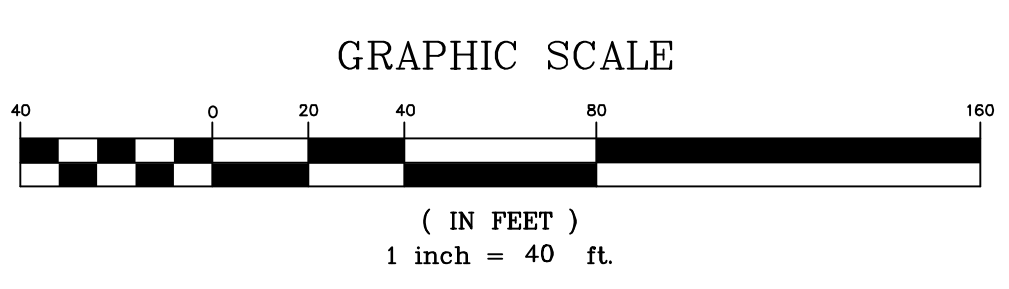
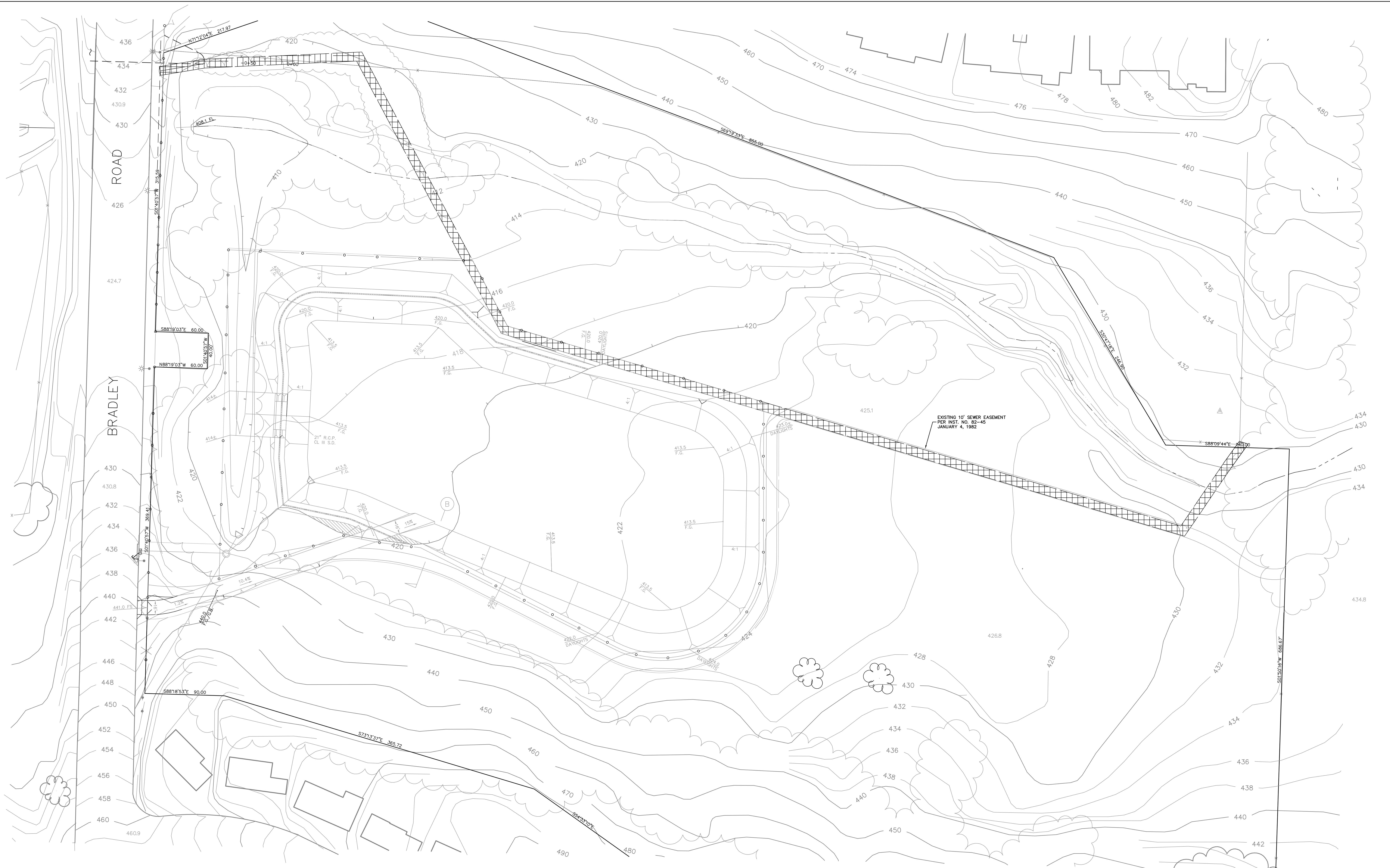
SANTA BARBARA COUNTY GRADING PERMIT # 269069 BasinB_4.DWG 9/28/05



DESIGNED BY:	B.W.D.	EXHIBIT FOR REVISED REGIONAL BASIN "B" AND CLASS I BIKE PATH/MULTI-USE TRAIL ON APN 103-200-067 COUNTY OF SANTA BARBARA, CALIFORNIA	
CHECKED BY:	S.R.S.		
REVISIONS			
DATE DESCRIPTION			
DESIGNED BY:	STEPHEN SHIVELY	R.C.E. 33554	DATE
DATE			
SCALE:	AS SHOWN		

STORM DRAIN SYSTEM REVIEWED BY:	THE UNDERSIGNED CIVIL ENGINEER CERTIFIES THIS GRADING WORK WILL BE SUPERVISED IN ACCORDANCE WITH SANTA BARBARA CO. ORDINANCE NO. 3937
FLOOD CONTROL ENGINEER S.B. CO. CA.	DATE

12/20/05 10:50 AM C:\Users\shively\Documents\269069\BasinB_4.DWG



SANTA BARBARA COUNTY GRADING PERMIT # 269069 BasinB_4.DWG (SEWER) 9/28/05



DESIGNED BY:	B.W.D.	EXHIBIT FOR REVISED BRADLEY-SOLOMON SEWER ROUTE ACROSS APN 103-200-067 COUNTY OF SANTA BARBARA, CALIFORNIA
CHECKED BY:	S.R.S.	
REVISIONS		
DATE	DESCRIPTION	
STEPHEN SHIVELY R.C.E. 33554 DATE		SCALE:
DENNIS BETHEL & ASSOCIATES, INC. <small>2450 Hollister Parkway, Suite 120 Santa Maria, California 93458 (805) 934-9367</small>		AS SHOWN

STORM DRAIN SYSTEM REVIEWED BY:
 FLOOD CONTROL ENGINEER S.B. CO. CA. _____ DATE _____

THE UNDERSIGNED CIVIL ENGINEER CERTIFIES THIS GRADING WORK WILL BE SUPERVISED IN ACCORDANCE WITH SANTA BARBARA CO. ORDINANCE NO. 3937
 _____ DATE _____