

CITY OF FIFE, WASHINGTON

RESOLUTION NO. 1721

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FIFE, WASHINGTON, AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT GRANTING DCT FREEMAN ROAD LLC A SLOPE EASEMENT ON A PORTION OF THE PROPERTY LOCATED AT 3820 FREEMAN ROAD EAST

WHEREAS, the City owns the property located at 3820 Freeman Road East; and

WHEREAS, DCT Freeman Road LLC owns the adjoining property to the north located at 3602 Freeman Road East; and

WHEREAS, DCT is developing its property for warehouse use and has requested that the City grant it a slope easement to place fill on a strip of the City property on the north boundary line, north of the City's existing fence, ranging in width from four feet to seven feet; and

WHEREAS, the City is not currently using the strip, and it is difficult to maintain due to its location north of the City property's existing fence; and

WHEREAS, the City has no foreseeable need for the strip; and

WHEREAS, City staff has negotiated an agreement attached hereto as Exhibit A, granting DCT Freeman Road LLC a slope easement on the strip subject to certain terms and conditions set forth therein; and

WHEREAS, the City finds that the agreement attached hereto as Exhibit A is in the City's interest; now therefore

BE IT RESOLVED that the Council hereby authorizes the city manager to execute the Easement Agreement with DCT Freeman Road LLC in the form attached hereto as Exhibit A.

ADOPTED by the City Council at the open public meeting held on the 10th day of May, 2016.


Winston E. Marsh, Jr., Mayor

Attest:


Carol Etgen, City Clerk

RESOLUTION NO. 1721

Page 1 of 1

After Recording Please Return To:

Public Works Director
City of Fife
5411 23rd Street East
Fife, WA 98424

EASEMENT AGREEMENT

Grantor: CITY OF FIFE, a Washington municipal corporation

Grantee: DCT FREEMAN ROAD LLC, a Delaware limited liability company

Abbreviated Legal Description: Ptn SW $\frac{1}{4}$ of NE $\frac{1}{4}$, Sec. 17, T. 20 N, R. 4 E., W.M.

Complete legal description is attached as Exhibit A.

Tax Parcel No.: 0420171064

1. Date and Parties. This Easement Agreement, for reference purposes, is dated the ___ day of May, 2016, and is entered into by and between City of Fife, a Washington municipal corporation (“Grantor”), and DCT FREEMAN ROAD LLC, a Delaware limited liability company (“Grantee”).

2. General Recitals.

2.1 Grantor owns the real property identified as Pierce County Tax Parcel No. 0420171064 and legally described as follows:

That portion of the Southwest quarter of the Northeast quarter of Section 17, Township 20 North, Range 4 East of the W.M., in Pierce County, Washington, described as follows:

Beginning at a point 285.50 feet South of the Northeast corner of said Southwest quarter of the Northwest quarter; THENCE West, 900 feet, more or less, to the centerline of Wapato Creek; THENCE Southeasterly, along the centerline of said creek, 450 feet, more or less, to the Easterly line of a tract of land conveyed to Arthur J. Stephens and Glee Stephens, husband and wife by deed recorded under Recording No. 1378318, records of Pierce County, Washington; THENCE Southwesterly, along said Easterly line of Stephens Tract, 70 feet to the intersection with the Easterly line of Pacific Highway; THENCE Southeasterly, along said highway to the South line of said Southwest quarter of the Northeast quarter; THENCE East, to the Southeast corner of said Southwest quarter of the Northeast quarter;

THENCE North, to the Point of Beginning;
EXCEPT the North 263 feet thereof;
ALSO EXCEPT that portion thereof, described as follows:
Commencing at the Northeast corner of said Southwest quarter of the Northeast quarter; THENCE South, along the East line of said subdivision, 1,155 feet to the Point of Beginning; THENCE North 66°55'00" West, 483.30 feet;
THENCE South 22°17'04" West, 186.60 feet to the Northerly line of Valley Avenue East; THENCE Southeasterly, along said Northerly line, to the South line of said Southwest quarter of the Northeast quarter; THENCE Easterly, to the Southeast corner of said Southwest quarter of the Northeast quarter; THENCE North, to the Point of Beginning, pursuant to the Stipulation and Judgment Quieting Title by Pierce County Superior Court Case No. 09-2-10160-0, recorded under Recording No. 201203160277, records of Pierce County, Washington;
AND EXCEPT that portion within Freeman County Road (82nd Avenue East,) as described in that survey recorded under Recording No. 9709190172, records of Pierce County, Washington;
AND ALSO EXCEPT that portion thereof conveyed to the City of Fife by deed recorded under Recording No. 200812220592, records of Pierce County, Washington.
SITUATE in the County of Pierce, State of Washington.

Tax Parcel Number: 0420171064

("Grantor's Property").

2.2 Grantee owns the real property identified as Pierce County Tax Parcel Nos. 0420171085, 0420171086, and 0420171087, and legally described as follows:

Parcels A, B, and C of City of Fife Lot Line Adjustment No. LLA15-0002, recorded June 30, 2015 under Pierce County Auditor's File No. 201506305001.

("Grantee's Property")

2.3 The purpose of this Agreement is to grant Grantee a slope easement under the terms and conditions set forth herein.

3. Grant of Easement. Grantor hereby grants and conveys to Grantee a non-exclusive slope easement over, upon and across the real property legally described in Exhibit A and graphically depicted in Exhibit B attached hereto, situated in Pierce County, State of Washington. The purpose of this Slope Easement is to allow the Grantee, its officers, employees, agents and contractors the right to import fill, grade, compact, cut and slope the easement area at such depth and compaction as approximately shown on Exhibit C attached hereto. The Grantor may use the Slope Easement area for any use not inconsistent with the rights of the Grantee granted herein.

4. Consideration. As consideration for the Slope Easement, Grantee shall install and maintain to City of Fife standards, a landscape buffer area in accordance with the landscape plan attached hereto as Exhibit D ("Landscape Buffer Area"), and a gate in the existing fence on Grantor's Property at a location and design accepted by the Grantor to allow Grantor access to the easement area. Plantings shall be maintained in a healthy growing condition. Dead, diseased, damaged or stolen plantings shall be replaced on a one to one basis within five months or during the next planting season if the loss does not occur in a planting season.

5. Default. If Grantee fails to maintain the Landscape Buffer Area, as required hereunder, then the Grantor shall notify the Grantee in writing that the maintenance must be performed within 30 days from the date of the notice or such larger time period as the Fife community development director may determine. If the maintenance is not performed within the time period specified, then the Grantor may enter the Landscape Buffer Area and perform the maintenance. All costs incurred by the Grantor to perform the maintenance, including, attorneys' fees, consultant fees, labor and materials shall be a personal obligation of owner of the Grantee's Property and shall be a lien against the Grantee's Property which lien can be foreclosed and enforced by a civil action in Pierce County Superior Court in the manner prescribed for the judicial foreclosure of a mortgage.

6. Termination. The Grantor may terminate the Slope Easement at any time after this Easement Agreement has been in affect ten years, by giving the Grantee written notice of termination, at least 120 days prior to the termination date. Upon receipt of such notice, Grantee shall have until the termination date to return the slope easement area to the prior grade as shown in Exhibit C and install an appropriate retaining structure on Grantee's Property. If the Grantee does not return the slope easement area to prior grade and install an appropriate retaining wall structure on Grantee's Property by the termination date, then the Grantor may enter the Landscape Buffer Area and perform such work. All costs incurred by the Grantor to perform the work, including, attorneys' fees, consultant fees, labor and materials, shall be a personal obligation of owner of the Grantee's Property and shall be a lien against the Grantee's Property which lien can be foreclosed and enforced by a civil action in Pierce County Superior Court in the manner prescribed for the judicial foreclosure of a mortgage.

7. Indemnification/Hold Harmless. Grantee shall defend, indemnify, and hold harmless the Grantor, its officers, officials, employees and volunteers from and against any and all claims, suits, actions, or liabilities for injury or death of any person, or for loss or damage to property, which arises out of Grantee's use of slope easement area, or from any activity, work or thing done by or on behalf of Grantee in or about the easement area, except only such injury or damage as shall have been occasioned by the sole negligence of the Grantor. , In the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Grantee and the Grantor, the Grantee's liability hereunder shall be only to the extent of the Grantee's negligence

8. No Green Factor. The easement area shall not count toward green area factor or

minimum landscaping requirements for the Grantee's Property.

9. Compensation for Tree Removal. As compensation for Grantee's unauthorized removal of trees on the Grantor's Property, Grantee shall pay Grantor the market value for replacement trees of the same species on a 3-1 ratio, with each tree being a minimum of two inch caliper and minimum of six feet tall. Market value shall be based on quotes from area nurseries, including planting costs, and shall be paid to Grantor within 10 days of execution of this Agreement.

10. Covenant Running With the Land. This Easement Agreement shall run with the Grantor's Property and the Grantee's Property, and will inure to the benefit of and be binding upon Grantor, Grantee and their successors, grantees and assigns.

11. Enforcement and Attorneys' Fees. This Easement Agreement may be specifically enforced in equity in addition to any other remedy provided by law. The prevailing party in any suit to enforce this Agreement, including lien foreclosure, shall be entitled to costs and reasonable attorneys' fees incurred in that action.

12. Notices. All notices required to be sent under this Lease Agreement shall either be personally delivered or mailed, US postage prepaid, to the Pierce County Assessor's taxpayer mailing address of record for the respective property.

13. Governing Law and Venue. Any action for claims arising out of or relating to this Agreement shall be governed by the laws of the State of Washington. Venue shall be in Pierce County Superior Court.

GRANTOR:
CITY OF FIFE

GRANTEE:
DCT FREEMAN ROAD LLC

By: _____
Subir Mukerjee, City Manager

By: _____

Approved as to Form:

Gregory F. Amann
Assistant City Attorney

STATE OF WASHINGTON)
)
County of Pierce) ss.

I certify that I know or have satisfactory evidence that Subir Mukerjee is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath, stated that he was authorized to execute the instrument and acknowledged it as the city manager of the City of Fife to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: _____.

NOTARY PUBLIC
Print Name: _____
My appointment expires: _____

STATE OF WASHINGTON)
)
County of Pierce) ss.

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath, stated that he was authorized to execute the instrument and acknowledged it as the _____ of DCT Freeman Road LLC, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: _____.

NOTARY PUBLIC
Print Name: _____
My appointment expires: _____

LEGAL DESCRIPTION

SLOPE EASEMENT

That portion of the Southwest quarter of the Northeast quarter of Section 17, Township 20 North, Range 4 East, Willamette Meridian, In Pierce County, Washington, more particularly described as follows:

COMMENCING at the Southeast corner of Parcel C, Lot Line Adjustment No. 15-0002, recorded under Pierce County Auditor's File No. 201506305001;
THENCE North 88°21'37" West, 17.16 feet along the South line of said Parcel C to the future right-of-way line of Freeman Road East and the TRUE POINT OF BEGINNING;
THENCE CONTINUING North 88°21'37" West, 168.00 feet along said South line;
THENCE South 01°38'23" West, 7.00 feet;
THENCE South 88°21'37" East, 168.00 feet to said future right-of-way line;
THENCE North 01°39'06" East, 7.00 feet along said future right-of-way line to the TRUE POINT OF BEGINNING.

AND

That portion of the Southwest quarter of the Northeast quarter of Section 17, Township 20 North, Range 4 East, Willamette Meridian, In Pierce County, Washington, more particularly described as follows:

COMMENCING at the Southeast corner of Parcel C, Lot Line Adjustment No. 15-0002, recorded under Pierce County Auditor's File No. 201506305001;
THENCE North 88°21'37" West, 610.69 feet along the South line of said Parcel C to the TRUE POINT OF BEGINNING;
THENCE CONTINUING North 88°21'37" West, 65.00 feet along said South line;
THENCE South 01°38'23" West, 4.00 feet;
THENCE South 88°21'37" East, 65.00 feet;
THENCE North 01°38'23" East, 4.00 feet to the TRUE POINT OF BEGINNING.

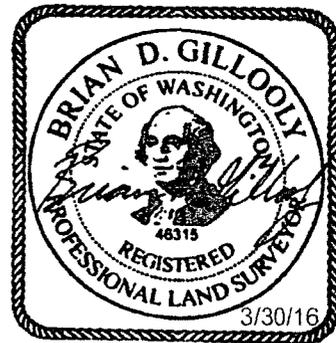
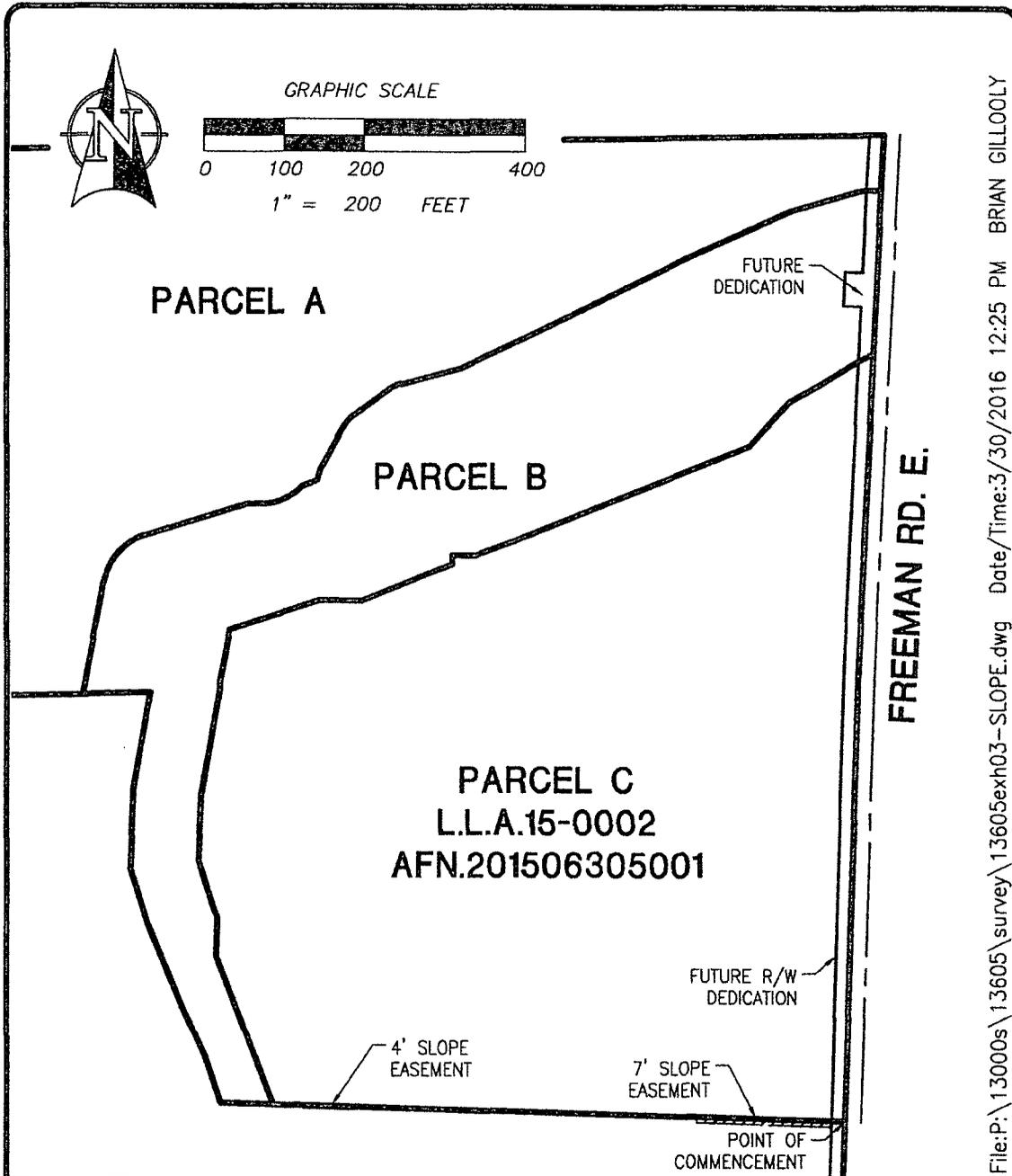


EXHIBIT
" A "

Project Name: DCT Fife
March 30, 2016

BDG
13605L.016.doc

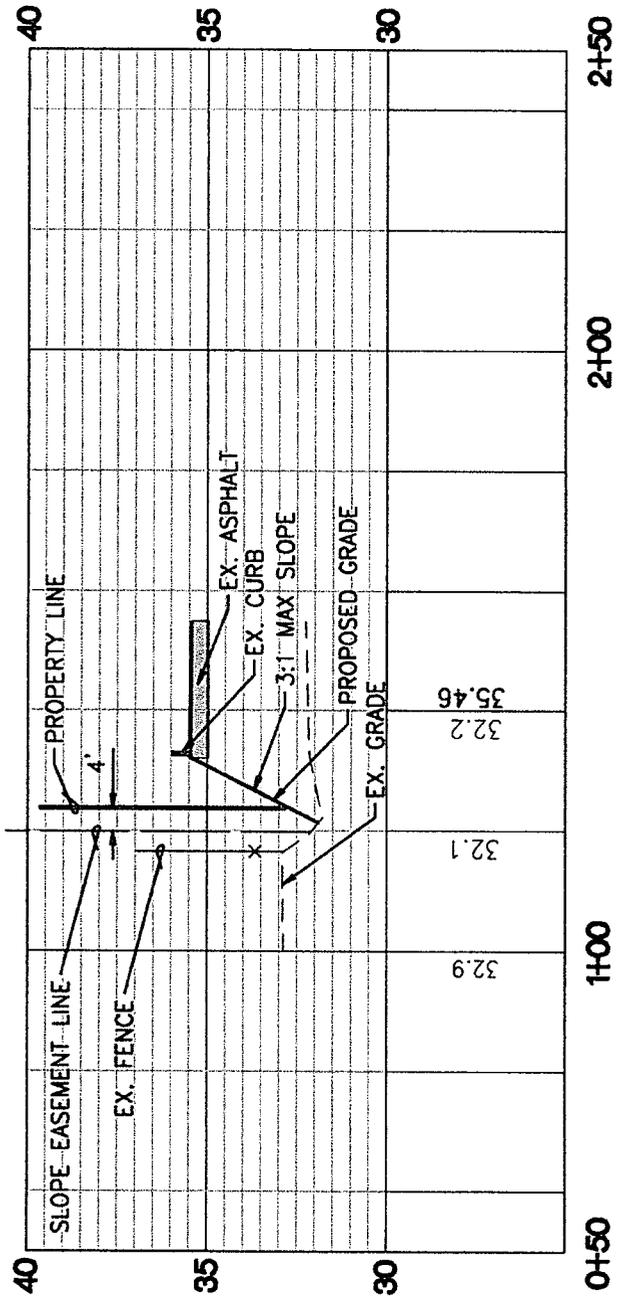


File:P:\13000s\13605\survey\13605exh03-SLOPE.dwg Date/Time:3/30/2016 12:25 PM BRIAN GILLOOLY

<p>SCALE: HORIZONTAL 1"=200' VERTICAL N/A</p>	<p>For: DCT SUMNER</p>	<p>JOB NUMBER 13605</p>
<p>BARGHAUSEN CONSULTING ENGINEERS, INC.</p>	<p>18215 72ND AVENUE SOUTH KENT, WA 98032 (425)251-6222 (425)251-8782 FAX</p>	<p>13605L.016.DOC</p>
<p>CIVIL ENGINEERING, LAND PLANNING, SURVEYING, ENVIRONMENTAL SERVICES</p>	<p>Title: SLOPE EASEMENT EXHIBIT B</p>	<p>SHEET 1 of 1</p>
<p>DESIGNED</p>	<p>DRAWN <u>BDG</u></p>	<p>CHECKED <u>BDG</u></p>
<p>APPROVED <u>BDG</u></p>	<p>DATE <u>3/30/15</u></p>	

EXHIBIT

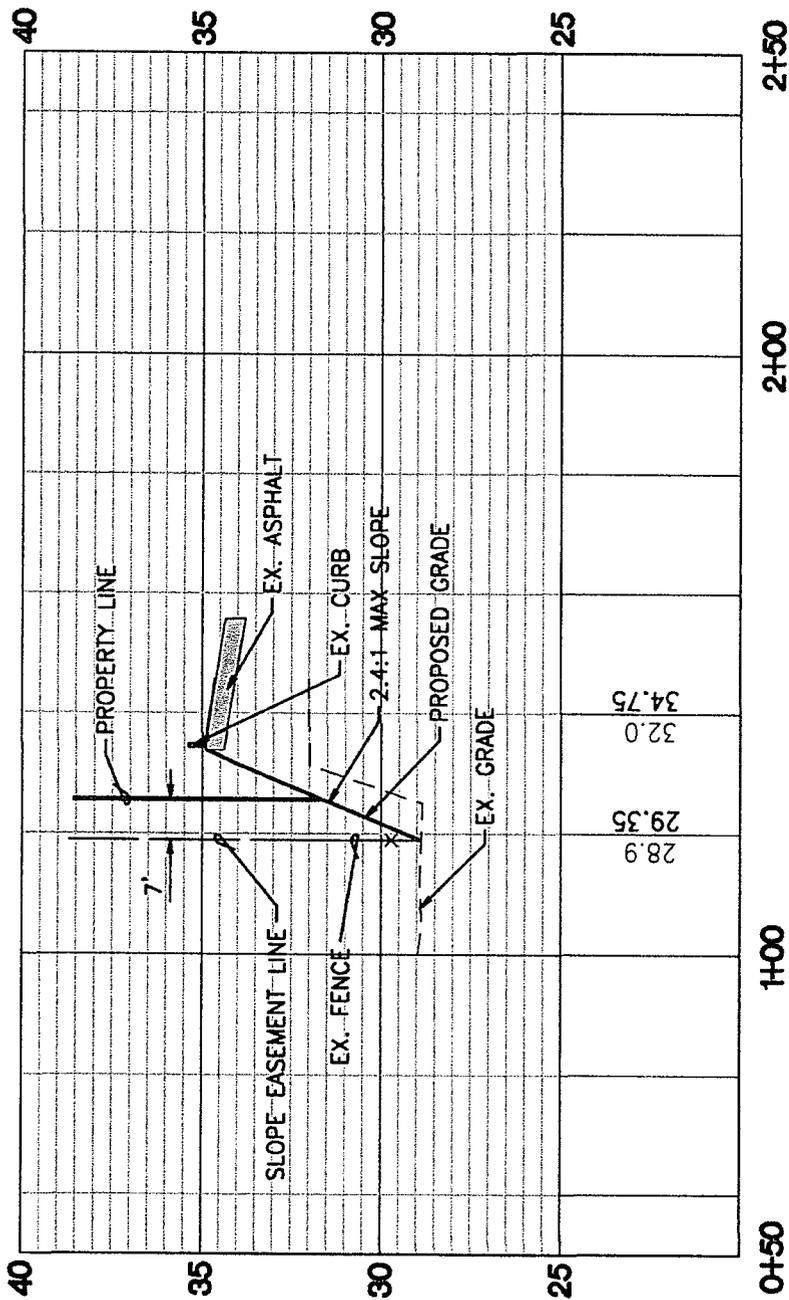
C
1 of 2



WEST SLOPE EASEMENT

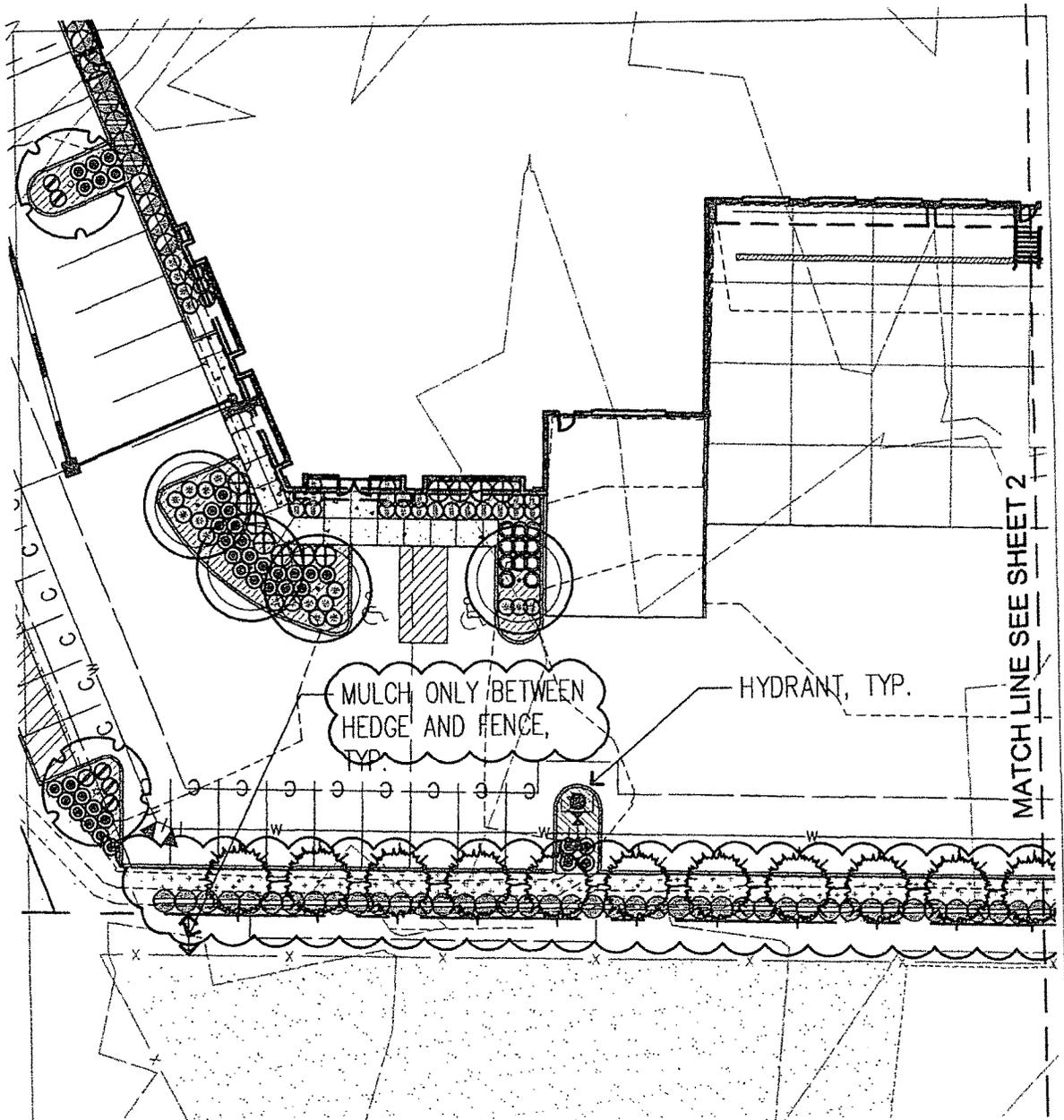
1" = 30' HOZ 1" = 5' VERT

2 of 2



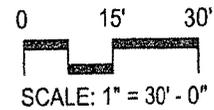
EAST SLOPE EASEMENT

1"=30' HOZ 1"=5' VERT



LANDSCAPE PLAN

EXHIBIT
" D "



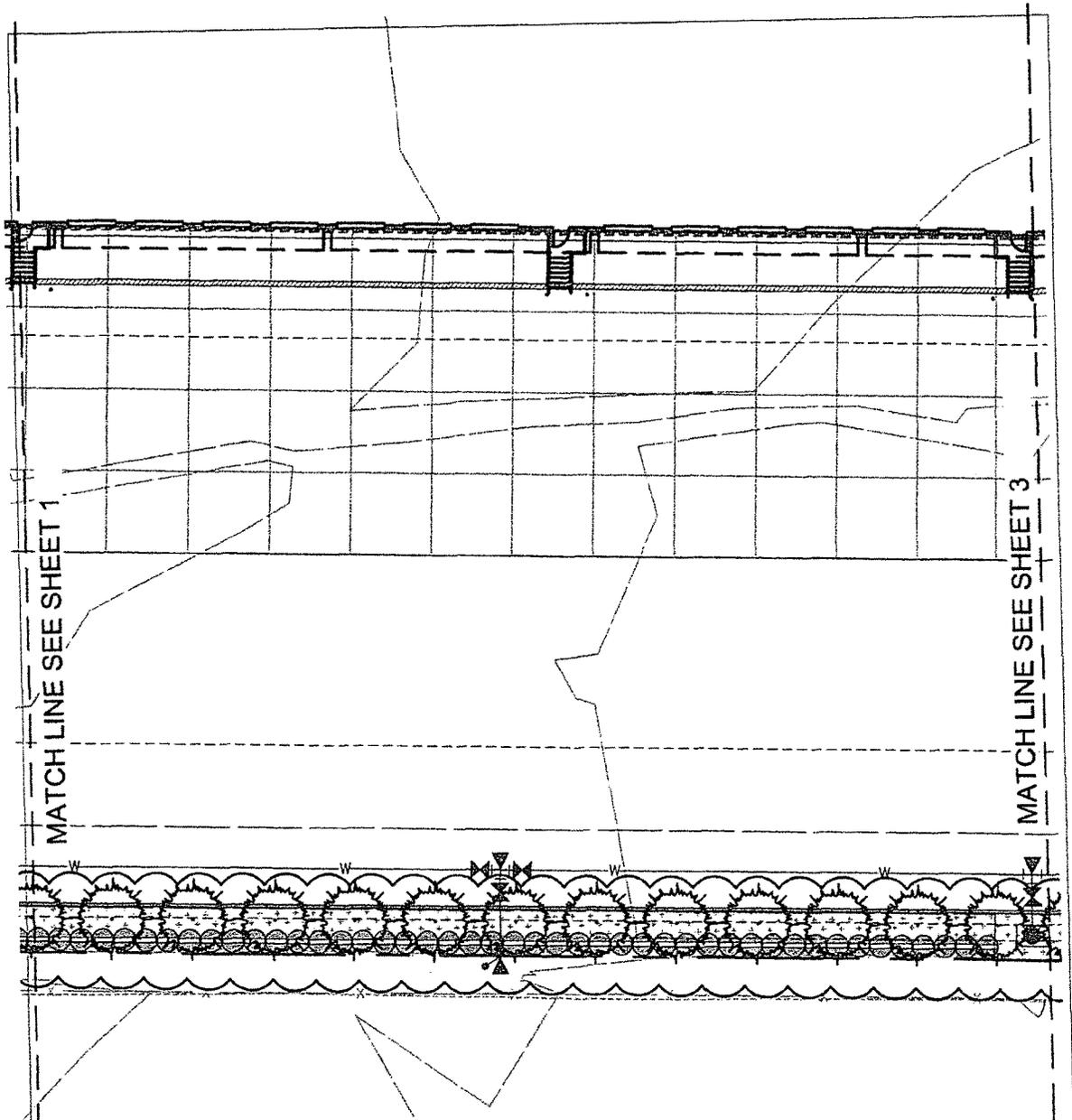
Landscape Architecture
Site Planning Irrigation
16630 30th Dr. S.E.
Bothell, WA 98012
phone (425) 417-4609

PROJECT:
FIFE DC SOUTH - SLOPE EASEMENT AGREEMENT

CLIENT:
DCT INDUSTRIAL 12 CORPORATE PLAZE, SUITE 150
NEWPORT BEACH, CA 92660

DATE:
03.28.2016

SHEET:
1 OF 4



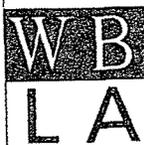
LANDSCAPE PLAN



0 15' 30'



SCALE: 1" = 30' - 0"

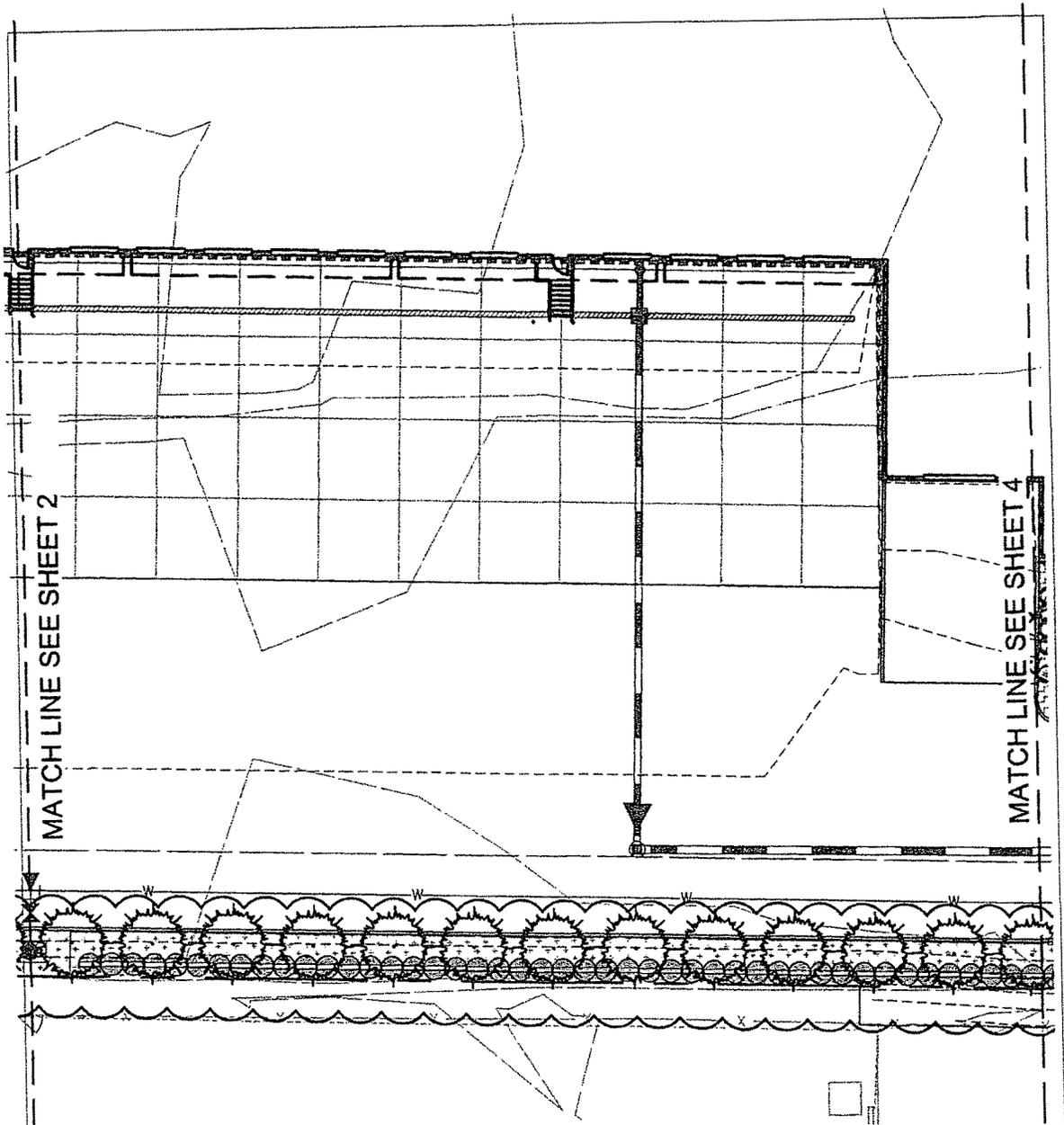


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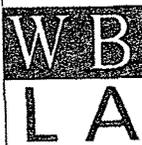
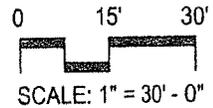
PROJECT:
FIFE DC SOUTH - SLOPE EASEMENT AGREEMENT
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DCT INDUSTRIAL 12 CORPORATE PLAZE, SUITE 150
NEWPORT BEACH, CA 92660

DATE:
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SHEET:
2 OF 4



LANDSCAPE PLAN

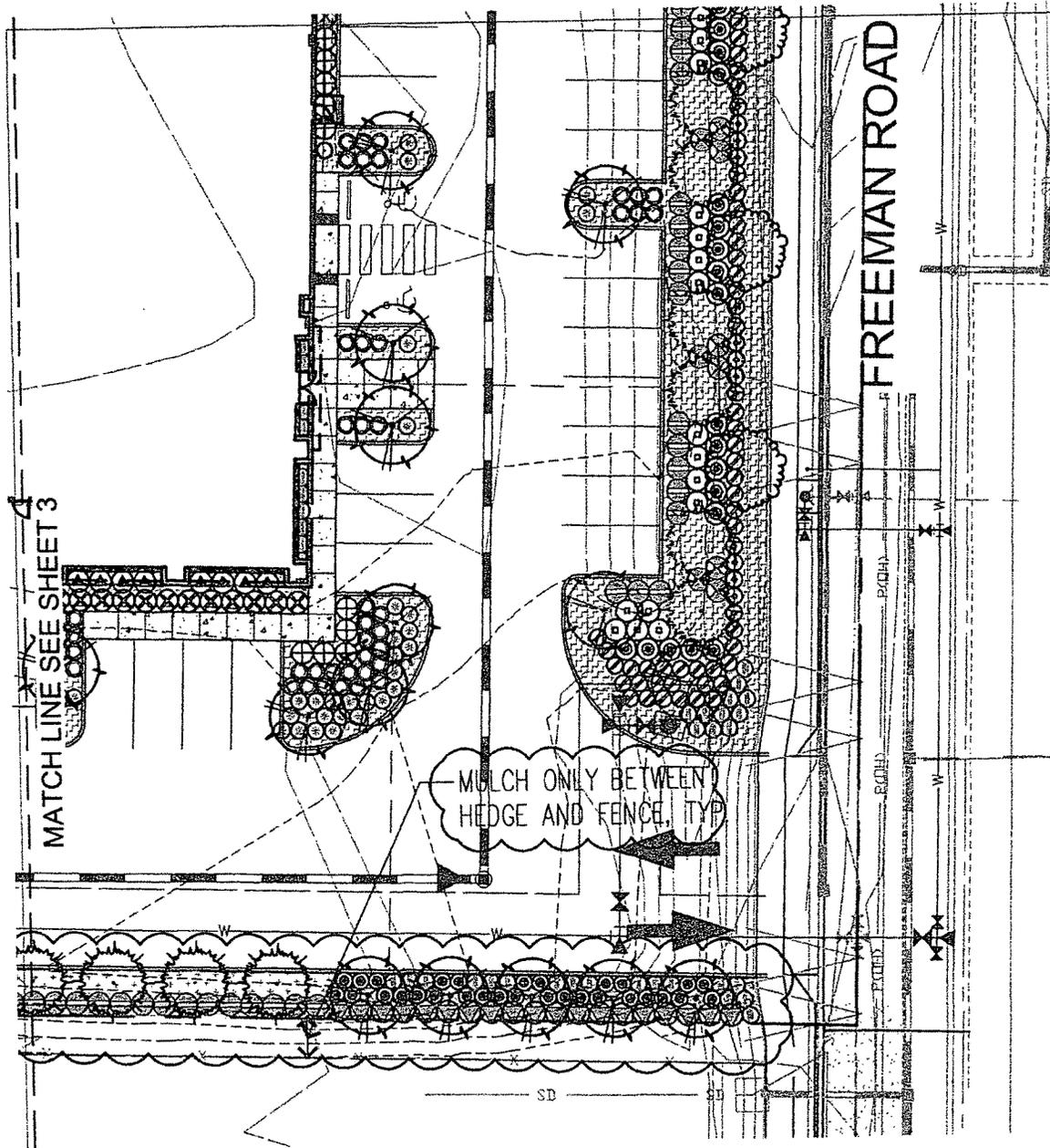


Landscape Architecture
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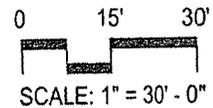
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NEWPORT BEACH, CA 92660

DATE:
03.28.2016

SHEET:
3 OF 4



LANDSCAPE PLAN



Landscape Architecture
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DATE:
 03.28.2016

SHEET:
 4 OF 4