

Santa Cruz Port District
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PORT COMMISSIONERS:
Toby Goddard
Dennis Smith
Reed Geisreiter
Stephen Reed
Darren Gertler

TO: Port Commission
FROM: Marian Olin, Port Director
DATE: August 4, 2021
SUBJECT: Resolution Declaring the Santa Cruz Port District's Intent to Transition from an At-Large Port Commission Election Process, to a District-Based Election Process

Recommendation: ***Approve Resolution 21-03, and provide direction on funding for this unbudgeted expenditure.***

BACKGROUND

Santa Cruz Port District received a letter dated January 22, 2021, from attorney Micah D. Fargey, on behalf of his client and registered voter, Avraham Sabaduqui, alleging that the Port District's current at-large election system violates the California Voting Rights Act ("CVRA") (Elections Code Sections 14025-14032 (Attachment B)).

The Port District currently utilizes an at-large election system in accordance with State of California Harbors and Navigation Code Section 6240.5 which states the Port District "...shall be governed by a board of port commissioners consisting of five members, elected by the district at large,..." The statute further provides that the Uniform District Election Law (Election Code Section 10500 et seq.) governs all district elections for Port Commissioners, and the Elections Code provides guidance when there is a conflict between the elections law and specific statutes. The general election laws, of which the CVRA is a part, applies and controls in this case. Section 10650 of the Elections Code provides that the governing body of a special district may decree, by resolution, that the members of its governing body be elected using district-based elections, as defined in subdivision (b) of Election Code Section 14026, without being required to submit the resolution to the voters for approval.

The CVRA, which was signed into law in 2002, disfavors the at-large method of election, if that method harms the ability of a protected class to elect preferred candidates, or reduces the ability of a protected class to influence the outcome of an election. The threshold to establish liability under the CVRA is extremely low, and the CVRA mandates the award of attorneys' fees to prevailing plaintiffs. Under the CVRA, a plaintiff need only to statistically show the existence of "racially polarized voting" to establish liability. Proof of intent on the part of voters or elected officials to discriminate against a protected class is not required. With the exception of the City of Santa Monica (which is still litigating their case and has reportedly spent more than \$20 million on legal fees), all public entities that have tried to contest the conversion have either lost or have agreed to make the transition.

ANALYSIS

State law provides a “safe harbor” to protect agencies from litigation. Under the Elections Code, a public agency can adopt a resolution of intention to transition from an at-large election system to a district-based election system. Although the law requires a short timeline of 45 days to adopt a resolution of intention, Governor Newsom’s Executive Order of April 9, 2020, temporarily suspended the statutory deadline during the pandemic. The Governor’s order was lifted as of July 1, 2021, restarting the “safe harbor” clock to transition to district-based elections.

After considerable analysis regarding the impact and outcome of potential litigation under the CVRA, District Counsel Barbara Choi recommends that the Port Commission adopt a resolution declaring its intention to transition from at-large to district-based elections by no later than August 16, 2021. This recommendation stems from the extraordinary costs of defending against a CVRA lawsuit and the fact that no public entity has successfully prevailed against a CVRA lawsuit.

On July 27, 2021, the Port Commission met in closed session to consider the threatened CVRA litigation. After weighing the legal implications, potential costs of such litigation and the experiences of, and processes followed, by other public agencies, the Port Commission directed staff to prepare a resolution of intent to transition from at-large to district-based elections. If the resolution is adopted by the Port Commission, there will be significant staff time needed to transition to district-based elections and administer the process with assistance from a demographer and legal counsel.

The process to transition to district-based elections is an intensive public process requiring five public hearings and community outreach, including development of a webpage dedicated to the district election issue that must be updated throughout the process. Additionally, updated census data necessary for districting is not expected to be available until late-September 2021. Though the Elections Code requires that district boundaries be established no more than six months before the next regular election, other entities have established boundaries beyond the 6-month period. In light of the above, and to ensure adequate time for a full and deliberate public process, the Commission expressed majority support for a 2024 transition.

Alternatively, the Port District can choose to retain the current at-large Port Commission election system. This would allow Mr. Fargey and his client to then initiate a lawsuit under the CVRA to attempt to force the Port District to convert to by-district elections. If the Port District were to lose that litigation, a judge would then decide on what district map to impose on the Port Commission, and the Port District would be subject to paying the plaintiff’s legal fees.

IMPACT ON PORT DISTRICT RESOURCES

There is currently no funding budgeted in FY22 for a transition to district-based elections.

Legal and labor costs to date total approximately \$9,562. Demographer services are estimated to be \$25,000, with additional services available. Plaintiff’s fees are estimated to be \$31,930 (including CPI adjustment), and there will be associated legal fees, in-house labor, mailing, publishing, printing and other costs. Staff estimates that the total cost to transition to district-based will be

approximately \$100,000, though this figure could be less depending on the level of legal consultation and additional demographer services required.

The Commission can elect to cover current unbudgeted expenditures out of any surplus funding from the FY22 budget and/or unreserved cash, and provide funding for anticipated expenditures in future budget cycles.

Another option is to utilize the reserve fund which currently has a balance of \$1,964,831. Use of reserve funding is limited to unanticipated, non-recurring needs and requires a Port Commission resolution authorizing such use. However, the Port District's reserve policy states that use of reserves shall only occur after exhausting the current year's budgetary flexibility, and it seems unlikely that expenses would exhaust the current year's budget flexibility, making this option impractical.

ATTACHMENTS: A. Santa Cruz Port District Commission Resolution 21-03
B. Elections Code Sections 14025-14032

Santa Cruz Port District
Resolution 21-03

August 10, 2021

On the motion of _____

Duly seconded by _____

A resolution of the Santa Cruz Port District Declaring its Intention to Transition from At-Large to District-Based Elections and Setting Forth the Specific Steps for Transitioning to District-Based Elections by November of 2024.

WHEREAS, the Santa Cruz Port District (“Port District”) is a public corporation created for municipal purposes and is a political subdivision of the State of California, organized and operating pursuant to California Harbors and Navigation Code Section 6200, *et seq.*; and

WHEREAS, the Board of Port Commissioners (“Port Commissioners”) of the Port District are currently elected in “at-large” elections, in which each Port Commissioner is elected by the registered voters of the entire district pursuant to Harbors and Navigation Code Section 6240.5; and,

WHEREAS, California Elections Code Section 10650 permits the governing body of a special district to adopt a resolution that requires members of the governing body to be elected using district-based elections without being required to submit the resolution to the voters for approval; and,

WHEREAS, on January 22, 2021, the Port Director received by certified mail a letter (“Notice”) from Attorney Micah D. Fargey, on behalf of Avraham Sabaduquia (“Prospective Plaintiff”), alleging that the Port District’s at-large Port Commissioner electoral system violates the California Voting Rights Act (“CVRA”) and threatening litigation if the Port District declines to voluntarily change to a district-based election system for electing Port Commissioners; and,

WHEREAS, under the Elections Code Section 14028(a), a CVRA violation is established if it is shown that racially polarized voting occurs in elections. “Racially polarized voting” means voting in which there is a difference in the choice of candidates or other electoral choices that are preferred by voters in a protected class, and in the choice of candidates and electoral choices that are preferred by voters in the rest of the electorate (Elections Code Section 14026(e)); and,

WHEREAS, the CVRA allows Prospective Plaintiff to file a lawsuit against the Port District if the Port District does not adopt a resolution of intent to institute district-based elections within forty-five days of receiving such letter (Elections Code Section 10010(3)); and;

WHEREAS, the Notice states that if the Port District declines to timely adopt a resolution of intent to transition to district-based elections, Prospective Plaintiff will commence a lawsuit to compel district-based elections; and

WHEREAS, On April 9, 2020, in response to the COVID-19 pandemic and State of Emergency, Governor Gavin Newsom issued Executive Order N-48-20 suspending the timeframes set forth in Elections Code Section 10010, which included a suspension of the timeframe for political subdivisions to adopt a resolution of intent to transition to district-based elections; and

WHEREAS, On June 11, 2021, in light of the improved circumstances surrounding the COVID-19 pandemic, Governor Gavin Newsom issued Executive Order N-08-21 rescinding a number of prior Executive Order provisions, including those suspending the timeframes set forth in Elections Code Section 10010, effective on July 1, 2021; and

WHEREAS, the COVID-19 pandemic significantly delayed the 2020 U.S. Census Bureau's operations and data collection activities, with results now anticipated in late September of 2021; and

WHEREAS, to adequately consider the 2020 U.S. census data in drawing district boundaries, to allow for public outreach, and to avoid significant time and expense associated with a potential CVRA lawsuit, the Port District will begin the process set forth in Elections Code 10010 to transition to district-based elections for Port Commissioners by November 2024; and,

WHEREAS, the Port District denies that its at-large election system violates the CVRA or any other provision of law and asserts that the Port District's election system is legal in all respects; and

WHEREAS, the Port District has nevertheless determined that due to the extraordinarily high cost to defend against a CVRA lawsuit, including the payment of plaintiff's attorneys' fees should the Port District lose such lawsuit, that the public interest is better served by initiating a process for transition to a district-based election system in order to avoid the cost associated with defending a potential lawsuit under the CVRA; and

WHEREAS, the reimbursable costs and attorneys' fees would be capped at a maximum of \$30,000 plus a Consumer Price Index adjustment, by following the procedures set forth in Elections Code Section 10010; and

WHEREAS, the adoption of a district-based elections system will not affect the terms of any sitting Port Commissioner, each of whom will serve out his or her current term.

NOW, THEREFORE, BE IT RESOLVED by the Santa Cruz Port District Commission as follows:

1. The above recitals are true and correct.

2. Before the November 2024 regular election, the Board of Port Commissioners will consider adoption of a resolution to institute a district-based elections system, as authorized by Elections Code Section 10650.
3. Prior to considering a resolution to establish district boundaries for a district-based election system, the Port District will take the following actions pursuant to Elections Code Section 10010:
 - a. Hire a qualified consultant to provide demographic services and assist in the preparation of proposed district maps;
 - b. Conduct public outreach, including to non-English speaking communities, to explain the districting process and to encourage public participation;
 - c. Before drawing a draft map or maps of the proposed division boundaries, hold at least two public hearings at which the public is invited to provide input regarding the composition of the districts and to consider district boundaries;
 - d. After drawing a draft map or maps, publish the draft map(s) and the potential sequence of the district elections and hold at least two public hearings at which the public is invited to provide input regarding the content of the draft map or maps and the proposed sequence of elections; and
 - e. Hold a public hearing at which the Port District will consider the adoption of a resolution establishing district-based elections, including a district boundary map and the sequence of the district elections.
4. This resolution will take effect upon its adoption and wherein the Port District declares that the change in method of election is being made in furtherance of the purposes of the California Voting Rights Act.

PASSED AND ADOPTED, by the Santa Cruz Port District Commission this 10th day of August 2021, by the following vote:

AYES: _____

NOES: _____

ABSENT: _____

Approved by:

Toby Goddard, Chairman

ELECTIONS CODE - ELEC

DIVISION 14. ELECTION DAY PROCEDURES [14000 - 14443]

(Division 14 enacted by Stats. 1994, Ch. 920, Sec. 2.)

CHAPTER 1.5. Rights of Voters [14025 - 14032]

(Chapter 1.5 added by Stats. 2002, Ch. 129, Sec. 1.)

14025.

This act shall be known and may be cited as the California Voting Rights Act of 2001.

(Added by Stats. 2002, Ch. 129, Sec. 1. Effective January 1, 2003.)

14026.

As used in this chapter:

(a) "At-large method of election" means any of the following methods of electing members to the governing body of a political subdivision:

(1) One in which the voters of the entire jurisdiction elect the members to the governing body.

(2) One in which the candidates are required to reside within given areas of the jurisdiction and the voters of the entire jurisdiction elect the members to the governing body.

(3) One that combines at-large elections with district-based elections.

(b) "District-based elections" means a method of electing members to the governing body of a political subdivision in which the candidate must reside within an election district that is a divisible part of the political subdivision and is elected only by voters residing within that election district.

(c) "Political subdivision" means a geographic area of representation created for the provision of government services, including, but not limited to, a general law city, general law county, charter city, charter county, charter city and county, school district, community college district, or other district organized pursuant to state law.

(d) "Protected class" means a class of voters who are members of a race, color, or language minority group, as this class is referenced and defined in the federal Voting Rights Act of 1965 (52 U.S.C. Sec. 10301 et seq.).

(e) "Racially polarized voting" means voting in which there is a difference, as defined in case law regarding enforcement of the federal Voting Rights Act of 1965 (52 U.S.C. Sec. 10301 et seq.), in the choice of candidates or other electoral choices that are preferred by voters in a protected class, and in the choice of candidates and electoral choices that are preferred by voters in the rest of the electorate. The methodologies for estimating group voting behavior as approved in applicable federal cases to enforce the federal Voting Rights Act of 1965 (52 U.S.C. Sec. 10301 et seq.) to establish racially polarized voting may be used for purposes of this section to prove that elections are characterized by racially polarized voting.

(Amended by Stats. 2016, Ch. 86, Sec. 121. (SB 1171) Effective January 1, 2017.)

14027.

An at-large method of election may not be imposed or applied in a manner that impairs the ability of a protected class to elect candidates of its choice or its ability to influence the outcome of an election, as a result of the dilution or the abridgment of the rights of voters who are members of a protected class, as defined pursuant to Section 14026.

(Added by Stats. 2002, Ch. 129, Sec. 1. Effective January 1, 2003.)

14028.

(a) A violation of Section 14027 is established if it is shown that racially polarized voting occurs in elections for members of the governing body of the political subdivision or in elections incorporating other electoral choices by the voters of the political subdivision. Elections conducted prior to the filing of an action pursuant to Section 14027 and this section are more probative to establish the existence of racially polarized voting than elections conducted after the filing of the action.

(b) The occurrence of racially polarized voting shall be determined from examining results of elections in which at least one candidate is a member of a protected class or elections involving ballot measures, or other electoral choices that affect the rights and privileges of members of a protected class. One circumstance that may be considered in determining a violation of Section 14027 and this section is the extent to which candidates who are members of a protected class and who are preferred by voters of the protected class, as determined by an analysis of voting behavior, have been elected to the governing body of a political subdivision that is the subject of an action based on Section 14027 and this section. In multiseat at-large election districts, where the number of candidates who are members of a protected class is fewer than the number of seats available, the relative groupwide support received by candidates from members of a protected class shall be the basis for the racial polarization analysis.

(c) The fact that members of a protected class are not geographically compact or concentrated may not preclude a finding of racially polarized voting, or a violation of Section 14027 and this section, but may be a factor in determining an appropriate remedy.

(d) Proof of an intent on the part of the voters or elected officials to discriminate against a protected class is not required.

(e) Other factors such as the history of discrimination, the use of electoral devices or other voting practices or procedures that may enhance the dilutive effects of at-large elections, denial of access to those processes determining which groups of candidates will receive financial or other support in a given election, the extent to which members of a protected class bear the effects of past discrimination in areas such as education, employment, and health, which hinder their ability to participate effectively in the political process, and the use of overt or subtle racial appeals in political campaigns are probative, but not necessary factors to establish a violation of Section 14027 and this section.

(Added by Stats. 2002, Ch. 129, Sec. 1. Effective January 1, 2003.)

14029.

Upon a finding of a violation of Section 14027 and Section 14028, the court shall implement appropriate remedies, including the imposition of district-based elections, that are tailored to remedy the violation.

(Added by Stats. 2002, Ch. 129, Sec. 1. Effective January 1, 2003.)

14030.

In any action to enforce Section 14027 and Section 14028, the court shall allow the prevailing plaintiff party, other than the state or political subdivision thereof, a reasonable attorney's fee consistent with the standards established in *Serrano v. Priest* (1977) 20 Cal.3d 25, 48-49, and litigation expenses including, but not limited to, expert witness fees and expenses as part of the costs. Prevailing defendant parties shall not recover any costs, unless the court finds the action to be frivolous, unreasonable, or without foundation.

(Added by Stats. 2002, Ch. 129, Sec. 1. Effective January 1, 2003.)

14031.

This chapter is enacted to implement the guarantees of Section 7 of Article I and of Section 2 of Article II of the California Constitution.

(Added by Stats. 2002, Ch. 129, Sec. 1. Effective January 1, 2003.)

14032.

Any voter who is a member of a protected class and who resides in a political subdivision where a violation of Sections 14027 and 14028 is alleged may file an action pursuant to those sections in the superior court of the county in which the political subdivision is located.

(Added by Stats. 2002, Ch. 129, Sec. 1. Effective January 1, 2003.)



TO: Port Commission

FROM: Marian Olin, Port Director

DATE: August 5, 2021

SUBJECT: Approval of Resolution 21-04, Approving the Possession and Use Agreement Between the City of Santa Cruz and Santa Cruz Port District for Purposes of Constructing the Murray Street Bridge Seismic Retrofit and Barrier Replacement Project

Recommendation: *Approve Resolution 21-04, approving the Possession and Use Agreement (“Agreement”) and Memorandum of Possession and Use Agreement (“Memorandum”) between the City of Santa Cruz and the Santa Cruz Port District; and, authorize the Port Director to execute the Agreement and Memorandum documents.*

BACKGROUND

The City of Santa Cruz (“City”) has updated its appraisal for the Murray Street Bridge Seismic Retrofit and Barrier Replacement Project (“Project”), and the City’s consultant, Bender Rosenthal, Inc. (“BRI”), has prepared a draft settlement agreement based on the appraisal. The settlement amount offered, which is approximately \$5.1 million, is based on cost estimates, not actual project costs.

The Port District has not accepted the settlement agreement offer from BRI. The Port District will be obtaining an independent appraisal and negotiating with the City and its consultants based on the District’s appraisal findings. However, the timeline for delivery of an independent appraisal is 60 to 120 days out from contract. Staff is currently in discussions with an appraisal firm qualified for this type of work; however, as of this writing, receipt of a proposal pends.

On June 22, 2021, the Port Commission authorized the Port Director to execute a Memorandum of Understanding (“MOU”) between the City and Port District to memorialize interagency cooperation between the entities during the Murray Street Bridge retrofit project. The City had indicated the MOU was needed in order to secure \$1.9 million in state and federal funding. However, in subsequent meetings between the City and Port District it became evident that the MOU, while desired by the City, wasn’t critical for Caltrans’ funding purposes. Accordingly, I suggested holding off on executing the MOU until such time that agreement is reached between the parties on a Possession and Use Agreement. The MOU will be signed in tandem with the Agreement and Memorandum documents.

ANALYSIS

The City needs to secure all available funding and has indicated it is up against tight deadlines. To avoid unnecessarily delaying the Project, a Possession and Use Agreement is needed in lieu of a settlement agreement between the City and Port District. The Possession and Use Agreement is

essentially an agreement between the parties to negotiate in good faith on a future settlement agreement and grants possession and use of portions of the Port District's property to accommodate the Project.

The Agreement is based on a Caltrans' template, and includes edits from the City of Santa Cruz, District counsel and staff. The Memorandum is for recording purposes. As outlined in item #7 of the Agreement, the Agreement is entered into with the understanding that the City and Port District will continue to negotiate in good faith on settlement agreements for the permanent and temporary construction easements.

IMPACT ON PORT DISTRICT RESOURCES

While it is the intent of the City and Port District to ensure the Port District is fully reimbursed for actual expenditures, relocation and services provided (such as parking and visitor berthing), as well as temporary and permanent easements, the amounts are ultimately subject to the appraisal, negotiation between the parties, and Caltrans' approval.

While the City has developed a plan for mitigating impacts by staging work and planning for temporary relocation, the project will impact facilities and inconvenience employees, businesses and users alike. The project will also consume staff resources as the construction project will require daily administration, communication, contractor coordination and management.

There have been and will continue to be costs incurred by the Port District associated with this project that have not and will not be reimbursable (e.g., a portion of the appraisal costs; legal fees to protect the District's interests, etc.). Additionally, any temporary negative impacts this construction project may have on operating revenue (e.g., concession revenue, boatyard revenue, slip rental revenue) are not quantified at this time.

- ATTACHMENTS:
- A. Resolution 21-04
 - B. Possession and Use Agreement
 - C. Memorandum of Possession and Use Agreement

Santa Cruz Port District
Resolution 21-04

August 10, 2021

On the motion of _____

Duly seconded by _____

A resolution authorizing the Port Director to execute a Possession and Use Agreement and Memorandum of Possession and Use Agreement between the City of Santa Cruz and the Santa Cruz Port District ("Port District") for the Murray Street Bridge Seismic Retrofit and Barrier Replacement Project ("Project").

WHEREAS, the City of Santa Cruz ("City") and Caltrans are completing a state-mandated seismic retrofit of the Murray Street Bridge which spans Santa Cruz Harbor, and,

WHEREAS, it is the City's intent to be under construction in approximately one year; and,

WHEREAS, the City requires immediate possession and use of portions of the Port's real property for the purpose of constructing the Project; and,

WHEREAS, the City and Port District acknowledge and agree that any delay in the start of construction of the project is contrary to the public interest; and,

WHEREAS, the City has made a firm written offer to the Port District based on the City's appraised fair market value of the permanent and temporary easements totaling \$5,149,000 (Five Million, One Hundred Forty-Nine Thousand Dollars); and,

WHEREAS, the Port has not accepted this offer and has informed the City it intends to seek its own appraisal pursuant to Civil Code of Procedures Section 1263.025; and,

WHEREAS, in lieu of a settlement agreement, the City and the Port District need to enter into a Possession and Use Agreement ("Agreement") to grant immediate possession and use of portions of the Port District's real property to construct the Project and a Memorandum of Possession and Use Agreement ("Memorandum") for recording purposes; and,

WHEREAS, the Agreement and Memorandum have been reviewed by Port District, the City and its consultants, as well as attorneys representing each agency, and,

WHEREAS, the Agreement and Memorandum have been reviewed by Caltrans and meets Caltrans' standards.

NOW, THEREFORE, BE IT RESOLVED that the Santa Cruz Port District Commission hereby authorizes the Port Director to execute the Agreement and Memorandum between the City of Santa Cruz and the Santa Cruz Port District, and,

BE IT FURTHER RESOLVED that the Port District will continue to negotiate in good faith with the City until a settlement agreement is reached.

PASSED AND ADOPTED, by the Santa Cruz Port District Commission this 10th day of August 2021, by the following vote:

AYES: _____

NOES: _____

ABSENT: _____

Approved by:

Toby Goddard, Chairman
Santa Cruz Port District Commission

POSSESSION AND USE AGREEMENT

DATE

010-262-70, 010-311-02, 011-181-02, 011-181-03, 010-311-08
APNs

This Possession and Use Agreement (“Agreement”) is made on _____, 2021, by and between the **City of Santa Cruz** (“City”), and **Santa Cruz Port District** (“Port”), who shall be collectively referred to as the “Parties.”

RECITALS

A. City requires immediate possession and use of portions of Port’s real property for the purpose of constructing the Murray Street Bridge Seismic Retrofit and Barrier Replacement Project (the “Project”). Port’s real property affected by the Project including the City’s acquisition of permanent and temporary construction easements on portions of Port’s real property, are identified below by assessor’s parcel numbers, is located in Santa Cruz, California, legally described in the attached Exhibits “A and C” and identified on the attached Exhibit Maps “B and D.”

B. Port’s real property subject to this Agreement and relevant to the City’s Project is designated by City as Parcel No[s]. 010-262-70, 010-311-02, 011-181-02, 011-181-03, 010-311-08 (collectively, the “Parcels”). The purpose of this Agreement is to allow the City to proceed with construction of the Project without delay.

C. The Parties acknowledge and agree that any delay in the start of construction of the Project is contrary to public interest. It is the intent of City to offer fair-market compensation to Port for permission to enter the Parcels and to construct the Project, and as consideration for the rights set forth in the paragraph entitled “Possession,” below. City has made a firm written offer to pay the total sum of \$5,149,000 (Five Million, One Hundred Forty-Nine Thousand Dollars) to Port and any other persons having an interest in the Parcels. This amount does not include the actual final construction costs to be performed by the Port related to the Project, compensation for any loss of business goodwill, pre-condemnation damages, loss of rent or any other claims for just compensation except for the City’s appraised fair market value of the Parcel (and, if applicable, severance damages). This amount does not include reimbursement for relocation benefits which will be handled pursuant to state and federal regulations and policies. The Port has not accepted this offer of the City’s appraised fair market value of the permanent and temporary easements on portions of these Parcels and has informed City it intends to seek its own appraisal for the Parcels pursuant to Civil Code of Procedures Section 1263.025.

OPERATIVE PROVISIONS

In consideration of the sum offered to be paid to Port and in consideration of the foregoing recitals and the promises, covenants and any other conditions set forth in this Agreement, City and Port agree as follows:

Possession

1. Port grants to City and its contractors, agents, representatives, employees and all others deemed necessary by City, the irrevocable right to exclusive possession and use of portions of the Parcels as required during the construction of the Project and as agreed to by the Port and City, including but not limited to, the right to remove and dispose of any and all improvements within and/or straddling the right of way, and restore and/or reconstruct all improvements removed within the right of way, except for any portion of the Parcels wherein less than an exclusive interest is being acquired, and as it relates to those portions, the irrevocable right to nonexclusive possession and use of the property. Possession by the City to temporary construction easement areas shall extend from September 1, 2021 until March 31, 2024 and shall not otherwise extend beyond the date the Notice of Project Completion is filed. In consideration for this irrevocable grant of possession and use, City will tender into escrow the sum of \$5,149,000 (Five Million, One Hundred Forty-Nine Thousand Dollars) (\$345,818 to acquire $\pm 37,657$ square feet of Permanent Easement and $\pm 56,081$ square feet of Temporary Construction easement, and \$4,803,182 as compensation for curative work (to be finalized between the parties) that will be completed by the Port. Following payment into escrow, City shall have the right to possess the Parcel and begin construction of the Project in accordance with all regulatory permits obtained by and issued to the City for bridge construction and dock demolition and replacement work on September 1, 2021 with prior notice to the Port.

Just Compensation and Appraisal

2. Port acknowledges that the sum referenced in paragraph 1 represents the full amount of the City-approved appraisal of what City believes is just compensation owed for the acquisition of the Parcel. It is understood and agreed by and between the parties that the curative work amounts (\$4,803,182) are based on current estimates that may not represent all costs, materials or labor required to effect the work and in the event that actual costs exceed said amounts, contract between City and Port shall be amended to compensate the Port for actual costs. It is hereby agreed and understood that Port shall provide receipts to the City for reimbursements in the event that the amounts allocated for curative work items exceed \$4,803,182. It is further understood that the Port is obtaining an independent appraisal for the purpose of determining just compensation for the temporary and permanent construction easements which the City's appraisal valued at \$345,818, and that actual compensation for the temporary and permanent construction easements will be negotiated and agreed to between the parties. Should the Parties fail to reach a settlement and it becomes necessary for City to file a condemnation action to acquire the Parcels, the Parties agree the amount deposited into escrow shall not be admissible as evidence of value in such condemnation proceeding. The Parties agree that the deposit and payment under this Agreement shall be equivalent to a deposit and payment under California Code of Civil Procedure section 1255.010 and that the basis for such deposit and payment, including but not limited to any appraisal, shall be governed by Code of Civil Procedure section 1255.060. Accordingly, the Parties agree that the amount deposited or withdrawn under this Agreement may not be given in evidence or referred to in any trial on the issue of compensation.

Escrow

3. This transaction will be handled through an escrow with First American Title Company, Escrow No. 4408-6211881. City shall pay all escrow fees incurred in this transaction. Port shall be entitled to the sum referred to in paragraph 1, less any amounts payable to any other persons having an interest in the Parcel. Any unearned rents will be prorated in escrow and City shall be credited with any outstanding security deposits. Port shall not be entitled to receive any proceeds until:

- a. All holders of liens and encumbrances on the Parcels have received full payment for all principal and interest due to them and have executed a reconveyance of their interests in the Parcels;
- b. All other parties having interests in the Parcels have received payment or have consented to a payment to Port; and
- c. City has acknowledged in writing that it concurs that all other parties having interests in the Parcels have received full payment or have consented to Port's withdrawal.
- d. This escrow shall remain open until either a final settlement, or until termination of this Agreement, or until a Final Order of Condemnation under section 1268.030 of the California Code of Civil Procedure is entered by the court and recorded by City. Any sum disbursed to Port from this escrow shall be deducted from the ultimate amount received by Port as a result of any settlement, award, or verdict of just compensation for the Parcels.

Indemnification

4. City agrees to indemnify, defend, and hold harmless Port from any claims or liability, including attorneys' fees and costs, arising out of City's acts or omissions or operations related to the Project under this Agreement. City further agrees to assume responsibility for any damages proximately caused by reason of City's acts or omissions or operations related to the Project under this Agreement and City will, at its option, either repair or pay for such damage.

Effective Date

5. This Agreement is effective as of the date the sum is paid into escrow as set forth in Section 1 above (the "Effective Date"). From and after the Effective Date, Port shall not assign, sell, encumber or otherwise transfer all or any portion of their interest in the Parcel, or the property, without first obtaining City's prior written consent.

Taxes

6. Port agrees to submit payment, when due, to the County tax collector for all taxes and special assessments on the Parcels that are due during the period from the date of possession (as set forth in paragraph 1 of this Agreement) to the date title transfers to the City. Title transfers to the City on the date the Grant Deed or Final Order of Condemnation is recorded in the office of the County recorder. Port shall not be required to pay taxes or special assessments on the Parcels on or after the date title transfers to the City. After the date title transfers to the City, the City will request that the County tax collector cancel taxes and/or special assessments for the period from the date of possession to the date title transferred to the City. After the tax cancellation request is made by the City, Port may file a claim with the County tax collector for a refund of any tax overpayment. Notwithstanding any other provision of this Agreement, no cancellation shall be made of all or any portion of any taxes that were due prior to the date of possession but which were unpaid; escrow shall pay in a timely manner all delinquent property taxes due from the sums deposited into escrow. (California Revenue and Taxation Code section 5084.)

Eminent Domain Proceedings

7. This Agreement is made with the understanding that City will continue to negotiate in good faith with Port to acquire its interest in the Parcels by direct purchase.

8. If City begins proceedings in eminent domain, it is understood and agreed that this Agreement shall continue in effect until either a settlement is reached or a Final Order of Condemnation under section 1268.030 of the California Code of Civil Procedure is entered by the court and recorded by the City.

Waiver Notice Pursuant to Code of Civil Procedure Section 1245.235

9. Section 1245.235 of the California Code of Civil Procedure requires the City of Santa Cruz, to give each person whose property is to be acquired by eminent domain notice and a reasonable opportunity to appear before the Santa Cruz City Council and be heard on the matters referred to in section 1240.030 of the Code of Civil Procedure, which provides:

The power of eminent domain may be exercised to acquire property for a proposed project only if all of the following are established:

- a. The public interest and necessity require the project.
- b. The project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury.
- c. The property sought to be acquired is necessary for the project.
- d. The offer required by section 7267.2 of the Government Code has been made to the Port or others of record.

10. By granting this irrevocable right to possession and use of the relevant portions of the Parcels to City, Port agrees to the following:

- a. Port specifically waives the notice required by Code of Civil Procedure section 1245.235 of the hearing on the matters referred to in Code of Civil Procedure section 1240.030, and Port shall not object to the adoption of the resolution of necessity by the California Transportation Commission authorizing the taking of the property described in Exhibit "A."
- b. Port shall not object to the filing of an eminent domain proceeding to acquire the property described in Exhibit "A."
- c. In any eminent domain action filed by City to acquire the property described in Exhibit "A," Port shall not challenge City's right to acquire such property, and the only issue shall be the amount of just compensation for the property.

Refund

11. Port agrees that in the event the ultimate amount of any settlement, award, or verdict is less than the total of the sums paid to and withdrawn by Port, the Port shall refund the difference

including interest at the apportionment rate of interest as provided in Code of Civil Procedure section 1268.350 to City.

Waiver

12. Port waives any right to challenge City's right to possess, acquire, and use the relevant portions of the Parcels in any subsequent eminent domain proceedings filed by City. Port also waives all claims and defenses in its favor in any subsequent eminent domain proceeding, except a claim for greater compensation.

Date of Valuation

13. In the event proceedings in eminent domain begun, the date of valuation for determining the amount of just compensation for the relevant portions of the Parcels shall be the date the City deposits the funds identified in Section 1 above into escrow.

Interest

14. Compensation awarded in an eminent domain proceeding shall draw interest as prescribed by section 1268.350 of the California Code of Civil Procedure. Port shall be entitled to receive interest on any sum received as compensation for its interest in the Parcels, whether pursuant to this Agreement, a subsequent settlement or court judgment, beginning on the date City takes possession of the Parcel pursuant to this Agreement and ending on the earliest of the dates as provided in Code of Civil Procedure section 1268.320.

Hazardous Materials

15. If any hazardous materials or waste (as defined by California Health and Safety Code section 25100, et. seq., and/or 42 U.S.C. §9601, et. seq.) are present on the Parcels on the date City takes possession of the Parcels, Port shall be responsible for and bear the entire cost of all removal, disposal, cleanup and decontamination which may be required because of these hazardous materials.

Port shall further hold City, its officers and employees harmless from all responsibility, liability and claims for damages to persons or property resulting from the existence or use of hazardous materials which are present on the Parcels on the date City takes possession under this Agreement.

Upon taking possession, City, at its sole cost and expense, shall comply with all applicable laws and assume responsibility relating to the storage, placement, use, and disposal of hazardous materials by City, its agents, employees, invitees or contractors on any of the Parcels.

Abandonment of Proceeding

16. Under section 1268.510 of the California Code of Civil Procedure, at any time after the commencement of proceedings in eminent domain, City reserves the right to abandon the proceeding in whole or in part.

Authority to Execute and Bind

17. Each of the Parties represents and warrants that each of the persons executing this Agreement has full and complete legal authority to do so and thereby binds the party to this Agreement.

Governing Law

18. This Agreement is made and entered into in the State of California, and shall in all respects be interpreted, enforced and governed under the laws of said state. The language of all parts of this Agreement shall in all cases be construed as a whole, according to its fair meaning and not strictly for or against any of the Parties.

Successors in Interest

19. This Agreement shall be binding upon and inure to the benefit of the heirs, devisees, executors, administrators, legal representatives, successors and assigns of the Parties.

Understanding of Agreement

20. This Agreement has been negotiated in good faith and each party warrants and represents that in executing this Agreement, they are not relying upon any representation, promise, inducement or statement made in negotiation that has not been included in the terms of this Agreement.

Fees and Costs

21. Except as otherwise provided in this Agreement, each party shall bear all costs (including but not limited to expert and appraisal fees) (excluding appraisal fees not to exceed \$5,000 pursuant to section 1263.025 of the California Code of Civil Procedure) and attorneys' fees individually incurred in connection with negotiating the matters described in this Agreement.

Severability

22. In case any part, term, portion or provision of this Agreement is determined to be illegal, invalid or unenforceable, the remaining parts, terms, portions and provisions shall remain valid, enforceable, and in full force and effect.

Amendment to Agreement

23. This Agreement may only be amended by written agreement, executed by all Parties.

Counterparts

24. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The parties agree that a scanned, electronic, facsimile or other copy of a party's signature shall be accepted and valid as an original.

Memorandum of Agreement

25. City shall record a memorandum of this Agreement.

In Witness Whereof, the Parties hereto have executed this Agreement on _____ day of _____ 2021.

Grantor: Santa Cruz Port District,
A Public Corporation

By: _____

Name: _____

Its: _____

Approved as to Form:

Attorney for the Port District

Grantee: The City of Santa Cruz,
a Municipal Corporation

By: _____

Name: _____

Its: _____

Recommended for Approval:

Suzzan Hunt Arnold
Senior Right of Way Agent

Approved as to Form:

City Attorney

EXHIBIT A

PERMANENT EASEMENT

SANTA CRUZ PORT DISTRICT

to the

CITY OF SANTA CRUZ

SITUATE in the City of Santa Cruz, State of California; and

BEING a portion of the lands granted by the State of California to the Santa Cruz Port District, by Grant Deed dated May 21, 1974, recorded in Volume 2412, at Page 273, Official Records of Santa Cruz County; and being more particularly described as follows:

BEGINNING at a point on the Easterly boundary of Parcel B the lands granted to the United States of America by Grant Deed recorded in Volume 2522, at Page 248, Official Records of Santa Cruz County, also being a point on the Westerly boundary of said lands granted to the Santa Cruz Port District; from which said point of beginning the Northeasterly corner of said Parcel B bears North 04° 33' 44" West, 1.50 feet distant; thence leaving said Westerly boundary the following courses:

1. S 88° 42' 04" E, a distance of 204.14 feet, to an angle point; thence
2. S 01° 17' 56" W, a distance of 1.00 feet, to an angle point; thence
3. S 88° 42' 04" E, a distance of 10.00 feet, to an angle point; thence
4. N 01° 17' 56" E, a distance of 1.00 feet, to an angle point; thence
5. S 88° 42' 04" E, a distance of 166.00 feet, to an angle point; thence
6. S 01° 17' 56" W, a distance of 9.50 feet, to an angle point; thence
7. S 88° 42' 04" E, a distance of 17.00 feet, to an angle point; thence
8. N 01° 17' 56" E, a distance of 9.41 feet, to an angle point; thence
9. S 88° 42' 01" E, a distance of 54.69 feet, to an angle point; thence
10. S 01° 04' 40" W, a distance of 3.90 feet, to an angle point; thence
11. S 88° 42' 04" E, a distance of 10.62 feet, to the beginning of a tangent curve Southeasterly to the right
12. Of radius 386.51 feet, through a central angle of 10° 32' 59", for an arc length of 71.17 feet, thence
13. S 78° 09' 05" E, a distance of 5.76 feet, to an angle point; thence
14. S 63° 05' 00" E, a distance of 27.31 feet, to an angle point on the Easterly boundary of said lands of the Santa Cruz Port District; thence along said boundary
15. N 30° 37' 21" W, a distance of 48.88 feet, to an angle point on the Southerly boundary ; thence along the Southerly, Easterly, Northerly and Westerly boundaries
16. N 84° 52' 39" E, a distance of 24.85 feet, to an angle point; thence
17. N 05° 07' 21" W, a distance of 55.00 feet, to an angle point; thence
18. S 84° 52' 39" W, a distance of 134.18 feet, to an angle point at the Northwest corner of said parcel, designated Point "A" for reference; thence
19. S 30° 37' 21" E, a distance of 4.74 feet, to an angle point; thence leaving said boundary
20. N 88° 42' 04" W, a distance of 28.25 feet, to an angle point; thence
21. N 01° 17' 52" E, a distance of 8.56 feet, to an angle point; thence
22. N 78° 42' 25" W, a distance of 5.40 feet, to an angle point; thence
23. N 88° 42' 04" W, a distance of 11.68 feet, to an angle point; thence
24. S 01° 17' 56" W, a distance of 9.50 feet, to an angle point; thence

25. N 88° 42' 04" W, a distance of 375.65 feet, to an angle point, (Point "B" at 217.16 feet) thence
26. S 86° 14' 54" W, a distance of 78.36 feet, to an angle point; thence
27. S 05° 13' 10" E, a distance of 48.39 feet, to an angle point at the Northwesterly corner of said Parcel B of the lands of U.S.A.; thence along the Northerly boundary of said lands
28. S 88° 40' 40" E, a distance of 67.92 feet, to an angle point at the Northeast corner of said land; thence along the Easterly boundary of said land
29. S 04° 33' 44" E, a distance of 1.50 feet, to the Point of Beginning.

Contains 37,657 sq. ft., a little more or less

A.P.N. 010-262-70 (Portion), 010-311-08 (Portion), and 010-311-02

The basis of bearings of this description is Zone 3 of the California Coordinate System, Grid North.

Description prepared by Hogan Land Services, Inc., Soquel, California, in February, 2021.



April 9, 2021

4431 PE SCPD to CITY

EXHIBIT B

PERMANENT EASEMENT MAP



**EASEMENT DIAGRAM
PERMANENT EASEMENT
S. C. PORT DISTRICT
to
CITY OF SANTA CRUZ**

HLS#4431 3-11-21
SHEET 1 OF 2

EXHIBIT C

TEMPORARY CONSTRUCTION EASEMENTS

SANTA CRUZ PORT DISTRICT

to the

CITY OF SANTA CRUZ

SITUATE in the City of Santa Cruz, County of Santa Cruz, State of California; and

BEING a portion of the lands granted by the State of California to the Santa Cruz Port District, by Grant Deed dated May 21, 1974, recorded in Volume 2412, at Page 273, Official Records of Santa Cruz County; and

BEING portions of Parcels 61, 62, 65, 6, and 48 as described in said Grant Deed, and being more particularly described as follows:

BEGINNING at a point on the Easterly boundary of Parcel B the lands granted to the United States of America by Grant Deed recorded in Volume 2522, at Page 248, Official Records of Santa Cruz County, also being a point on the Westerly boundary of said lands granted to the Santa Cruz Port District; from which said point of beginning the Northeasterly corner of said Parcel B bears North 04° 33' 44" West, 1.50 feet distant; thence leaving said Westerly boundary and continuing along the Southerly line of the Permanent Easement, Santa Cruz Port District to the City of Santa Cruz, the following courses:

S C PORT ICE ONE:

1. S 88° 42' 04" E, a distance of 204.14 feet, to an angle point; thence
2. S 01° 17' 56" W, a distance of 1.00 feet, to an angle point; thence
3. S 88° 42' 04" E, a distance of 10.00 feet, to an angle point; thence
4. N 01° 17' 56" E, a distance of 1.00 feet, to an angle point; thence
5. S 88° 42' 04" E, a distance of 166.00 feet, to an angle point; thence
6. S 01° 17' 56" W, a distance of 9.50 feet, to an angle point; thence
7. S 88° 42' 04" E, a distance of 17.00 feet, to an angle point; thence
8. N 01° 17' 53" E, a distance of 9.41 feet, to an angle point; thence
9. S 88° 42' 01" E, a distance of 54.69 feet, to an angle point; thence
10. S 01° 04' 40" W, a distance of 3.90 feet, to an angle point; thence
11. S 88° 42' 04" E, a distance of 10.62 feet, to the beginning of a tangent curve Southeasterly to the right
12. Of radius 386.51 feet, through a central angle of 10° 32' 59", for an arc length of 71.17 feet, thence
13. S 78° 09' 05" E, a distance of 5.76 feet, to an angle point; thence
14. S 63° 05' 00" E, a distance of 27.31 feet, to an angle point on the Easterly boundary of said lands of the Santa Cruz Port District; thence leaving the Southerly boundary of said Permanent Easement and continuing along said Easterly boundary
15. S 30° 37' 21" E, a distance of 31.59 feet, to an angle point; thence leaving said Easterly boundary and continuing

16. S 80° 04' 08" W, a distance of 147.06 feet, to an angle point; thence
17. S 88° 45' 09" W, a distance of 68.69 feet, to an angle point; thence
18. N 88° 59' 41" W, a distance of 155.03 feet, to an angle point; thence
19. S 85° 38' 06" W, a distance of 65.64 feet, to an angle point; thence
20. S 05° 20' 31" W, a distance of 36.35 feet, to an angle point; thence
21. S 85° 09' 16" W, a distance of 122.28 feet, to an angle point; thence
22. N 04° 18' 57" W, a distance of 107.97 feet. to an angle point; thence
23. N 86° 05' 38" W, a distance of 16.00 feet, to an angle point on the Westerly boundary of said lands of the United States of America; thence along said Easterly boundary
24. N 04° 33' 44" W, a distance of 30.33 feet: to the Point of Beginning

Contains 48,431 sq. ft., a little more or less

A.P.N. 010-262-70 (Portion) and 010-311-08 (Portion)

SC PORTICE TWO:

BEGINNING at the Northwest corner of said Parcel 48 as described in the Grant Deed recorded in Volume 2412, at Page 273, Official Records of Santa Cruz County, designated as POINT "A" in the description of the Permanent Easement grant to the City of Santa Cruz; thence along the Westerly boundary of said Parcel 48

1. S 30° 37' 21" E, a distance of 4.74 feet to an angle point; thence leaving said Westerly boundary and continuing along the Northerly boundary of said Permanent Easement
2. N 88° 42' 04" W, a distance of 28.25 feet, to an angle point; thence
3. N 01° 17' 52" E, a distance of 8.56 feet, to an angle point; thence
4. N 78° 42' 25" W, a distance of 5.40 feet, to an angle point; thence
5. N 88° 42' 04" W, a distance of 11.68 feet, to an angle point; thence
6. S 01° 17' 56" W, a distance of 9.50 feet, to an angle point; thence
7. N 88° 42' 04" W, a distance of 375.65 feet, to an angle point hereinafter designated as Point "B"; thence leaving said Northerly boundary of said Permanent Easement and continuing
8. N 86° 14' 54" E, a distance of 44.69 feet, to an angle point; thence
9. N 26° 56' 40" W, a distance of 4.94 feet, to an angle point; thence
10. N 89° 18' 20" E, a distance of 107.62 feet, to a point hereinafter designated as Point "C"; thence
11. N 01° 49' 01" E, a distance of 53.64 feet, to an angle point; thence
12. S 86° 44' 22" E, a distance of 7.93 feet, to an angle point; thence
13. N 02° 37' 36" E, a distance of 24.33 feet, to an angle point; thence
14. S 87° 01' 30" E, a distance of 10.41 feet, to an angle point; thence
15. N 04° 27' 46" E, a distance of 18.87 feet, to an angle point; thence
16. S 87° 42' 26" E, a distance of 16.22 feet, to an angle point; thence
17. S 01° 50' 15" W, a distance of 94.70 feet, to an angle point; thence
18. N 89° 18' 20" E, a distance of 150.77 feet, to an angle point; thence
19. S 70° 42' 25" E, a distance of 83.50 feet, to the Point of Beginning.

Contains 7,650 sq. ft., a little more or less

A.P.N. 011-181-02 (Portion) and 011-181-03 (Portion)

The basis of bearings of this description is Zone 3 of the California Coordinate System, Grid North.

Description prepared by Hogan Land Services, Inc., Soquel, California, in March, 2021.

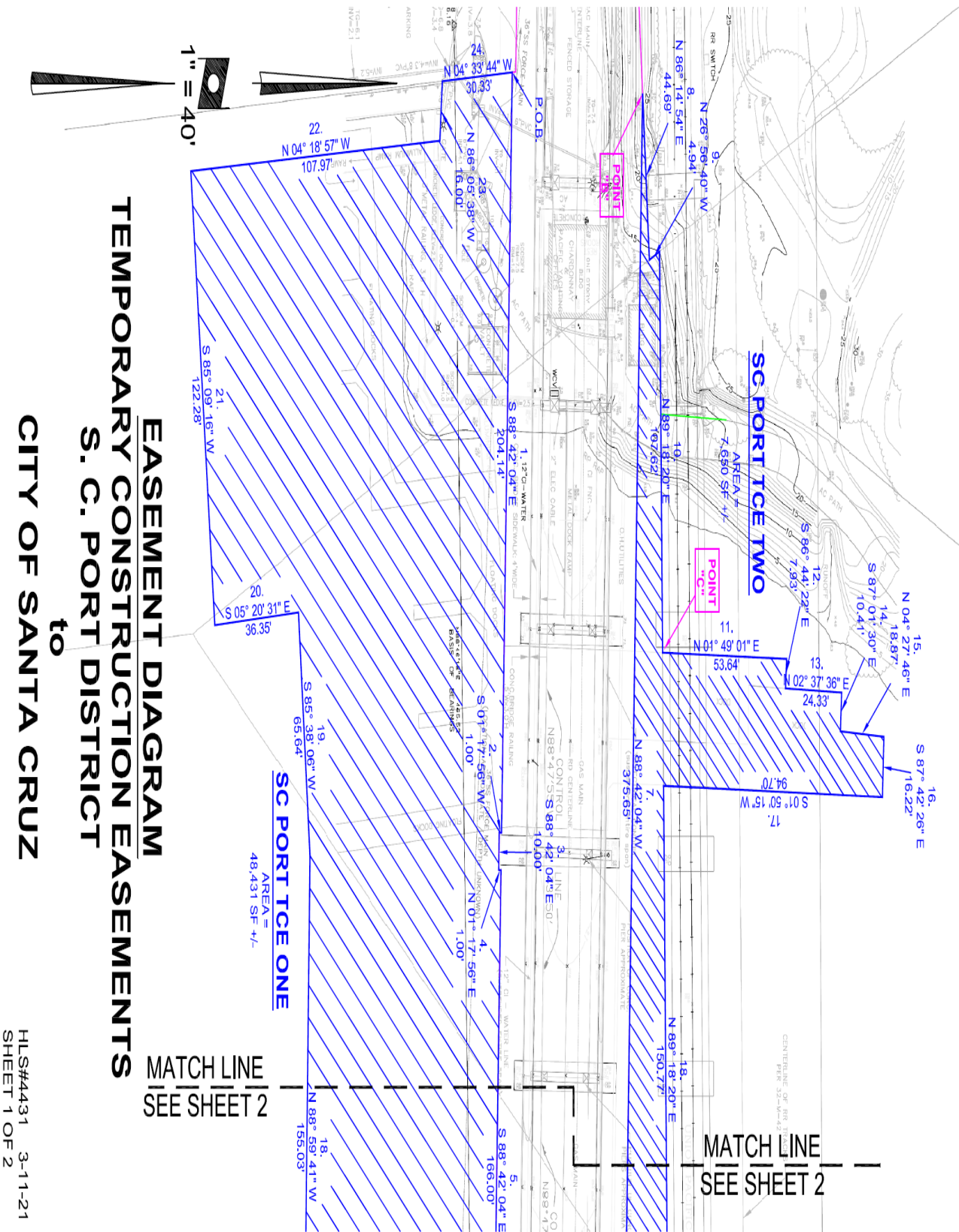


April 9, 2021

4431 TCE SCPD to CITY

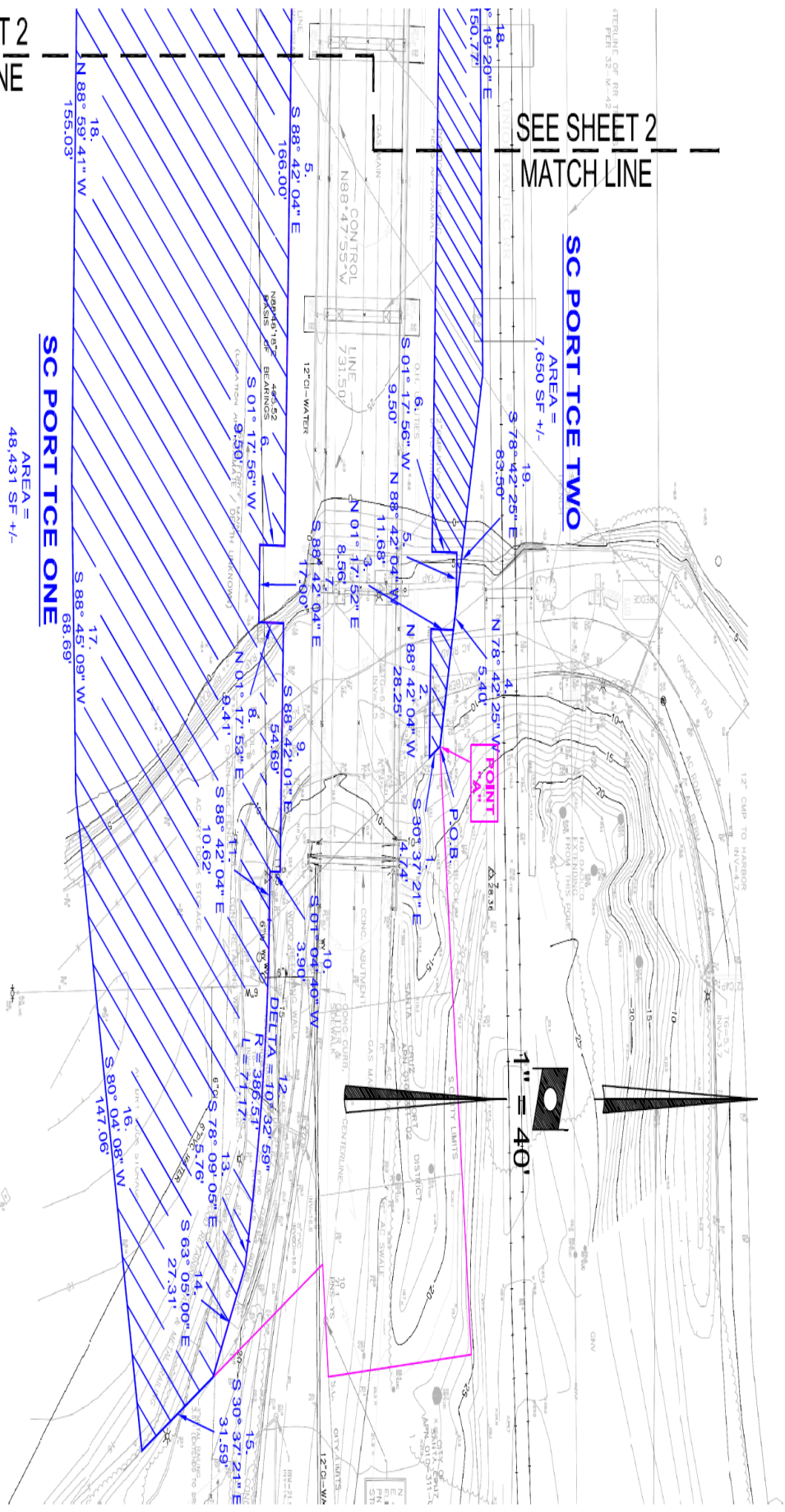
EXHIBIT D

TEMPORARY CONSTRUCTION EASEMENTS MAP



EASEMENT DIAGRAM
TEMPORARY CONSTRUCTION EASEMENTS
S. C. PORT DISTRICT
to
CITY OF SANTA CRUZ

HLS#4431 3-11-21
 SHEET 1 OF 2



SEE SHEET 2
MATCH LINE

SC PORT TCE TWO

AREA =
7,650 SF +/-

SEE SHEET 2
MATCH LINE

SC PORT TCE ONE

AREA =
48,431 SF +/-

EASEMENT DIAGRAM
TEMPORARY CONSTRUCTION EASEMENTS
S. C. PORT DISTRICT
to
CITY OF SANTA CRUZ

HLS#4431 3-11-21
 SHEET 2 OF 2

MEMORANDUM OF POSSESSION AND USE AGREEMENT

This Memorandum of Possession and Use Agreement is made on _____, 2021, by and between the City of Santa Cruz (“City”), and Santa Cruz Port District (“Port”), who shall be collectively referred to as the “Parties.”

The Parties acknowledge and agree as follows:

1. **Premises:** Port grants City the permission to enter and use Port’s real property to construct the City’s Murray Street Bridge Seismic Retrofit and Barrier Replacement Project (the “Project”). Port’s property affected by the Project including the City’s acquisition of permanent and temporary construction easements on portions of Port’s real property, are identified below by assessor’s parcel numbers, is located in Santa Cruz, California, legally described in the attached Exhibits “A and C” and identified on the attached Exhibit Maps “B and D.”

Property subject to the Possession and Use Agreement and relevant to the Project is designated by City as Parcel No[s]. 010-262-70, 010-311-02, 011-181-02, 011-181-03, 010-311-08 (the “Parcels”).

2. **Term:** Port grants to City and its contractors, agents, representatives, employees and all others deemed necessary by City, the irrevocable right to exclusive possession and use of the portions of the Parcels, including but not limited to, the right to remove and dispose of any and all improvements within and/or straddling the right of way, except for any portion of the Parcels wherein less than an exclusive interest is being acquired, and as it relates to those portions, the irrevocable right to nonexclusive possession and use of the property. This Agreement shall be binding and inure to the benefit of the heirs, devisees, executors, administrators, legal representatives, successors and assigns of the Parties.

3. **Other Terms and Conditions:** The effective date of the Possession and Use Agreement is _____. All covenants, promises and conditions set forth in the unrecorded Possession and Use Agreement are incorporated by reference into this Memorandum.

4. **Purpose of Memorandum of Possession and Use Agreement:** The purpose of this Memorandum is for recordation and it in no way modifies the terms and conditions of the Possession and Use Agreement.

In Witness Whereof, the Parties hereto have executed this Agreement on _____ day
of _____ 2021.

Grantor: Santa Cruz Port District,
A Public Corporation

By : _____

Name : _____

Its : _____

Approved as to Form:

Attorney for the Port District

Grantee: The City of Santa Cruz,
a Municipal Corporation

By : _____

Name : _____

Its : _____

Approved as to Form:

Office of the City Attorney

EXHIBIT A

PERMANENT EASEMENT

SANTA CRUZ PORT DISTRICT

to the

CITY OF SANTA CRUZ

SITUATE in the City of Santa Cruz, State of California; and

BEING a portion of the lands granted by the State of California to the Santa Cruz Port District, by Grant Deed dated May 21, 1974, recorded in Volume 2412, at Page 273, Official Records of Santa Cruz County; and being more particularly described as follows:

BEGINNING at a point on the Easterly boundary of Parcel B the lands granted to the United States of America by Grant Deed recorded in Volume 2522, at Page 248, Official Records of Santa Cruz County, also being a point on the Westerly boundary of said lands granted to the Santa Cruz Port District; from which said point of beginning the Northeasterly corner of said Parcel B bears North 04° 33' 44" West, 1.50 feet distant; thence leaving said Westerly boundary the following courses:

1. S 88° 42' 04" E, a distance of 204.14 feet, to an angle point; thence
2. S 01° 17' 56" W, a distance of 1.00 feet, to an angle point; thence
3. S 88° 42' 04" E, a distance of 10.00 feet, to an angle point; thence
4. N 01° 17' 56" E, a distance of 1.00 feet, to an angle point; thence
5. S 88° 42' 04" E, a distance of 166.00 feet, to an angle point; thence
6. S 01° 17' 56" W, a distance of 9.50 feet, to an angle point; thence
7. S 88° 42' 04" E, a distance of 17.00 feet, to an angle point; thence
8. N 01° 17' 56" E, a distance of 9.41 feet, to an angle point; thence
9. S 88° 42' 01" E, a distance of 54.69 feet, to an angle point; thence
10. S 01° 04' 40" W, a distance of 3.90 feet, to an angle point; thence
11. S 88° 42' 04" E, a distance of 10.62 feet, to the beginning of a tangent curve Southeastery to the right
12. Of radius 386.51 feet, through a central angle of 10° 32' 59", for an arc length of 71.17 feet, thence
13. S 78° 09' 05" E, a distance of 5.76 feet, to an angle point; thence
14. S 63° 05' 00" E, a distance of 27.31 feet, to an angle point on the Easterly boundary of said lands of the Santa Cruz Port District; thence along said boundary
15. N 30° 37' 21" W, a distance of 48.88 feet, to an angle point on the Southerly boundary ; thence along the Southerly, Easterly, Northerly and Westerly boundaries
16. N 84° 52' 39" E, a distance of 24.85 feet, to an angle point; thence
17. N 05° 07' 21" W, a distance of 55.00 feet, to an angle point; thence
18. S 84° 52' 39" W, a distance of 134.18 feet, to an angle point at the Northwest corner of said parcel, designated Point "A" for reference; thence
19. S 30° 37' 21" E, a distance of 4.74 feet, to an angle point; thence leaving said boundary
20. N 88° 42' 04" W, a distance of 28.25 feet, to an angle point; thence
21. N 01° 17' 52" E, a distance of 8.56 feet, to an angle point; thence
22. N 78° 42' 25" W, a distance of 5.40 feet, to an angle point; thence
23. N 88° 42' 04" W, a distance of 11.68 feet, to an angle point; thence
24. S 01° 17' 56" W, a distance of 9.50 feet, to an angle point; thence

25. N 88° 42' 04" W, a distance of 375.65 feet, to an angle point, (Point "B" at 217.16 feet) thence
26. S 86° 14' 54" W, a distance of 78.36 feet, to an angle point; thence
27. S 05° 13' 10" E, a distance of 48.39 feet, to an angle point at the Northwesterly corner of said Parcel B of the lands of U.S.A.; thence along the Northerly boundary of said lands
28. S 88° 40' 40" E, a distance of 67.92 feet, to an angle point at the Northeast corner of said land; thence along the Easterly boundary of said land
29. S 04° 33' 44" E, a distance of 1.50 feet, to the Point of Beginning.

Contains 37,657 sq. ft., a little more or less

A.P.N. 010-262-70 (Portion), 010-311-08 (Portion), and 010-311-02

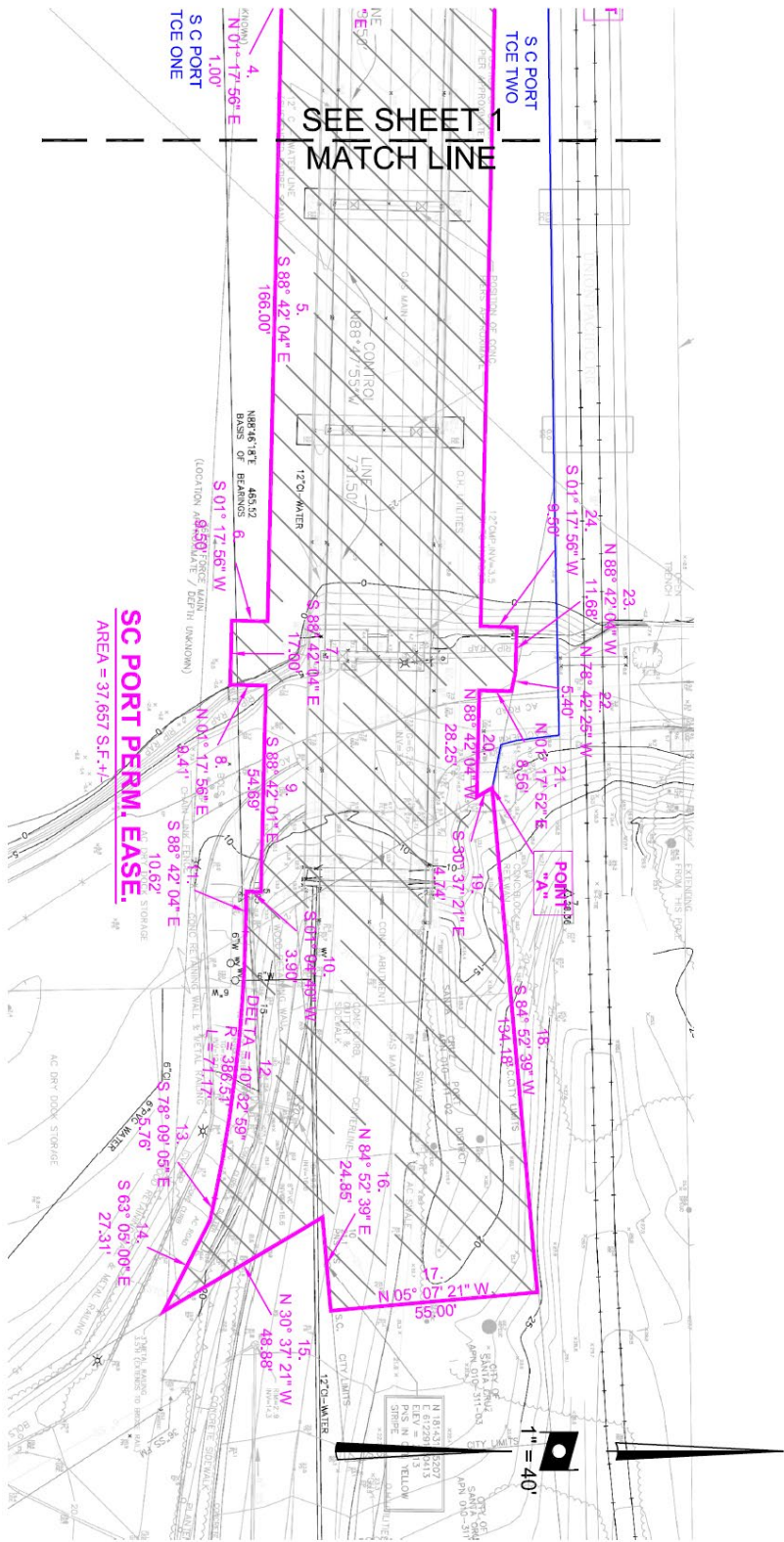
The basis of bearings of this description is Zone 3 of the California Coordinate System, Grid North.

Description prepared by Hogan Land Services, Inc., Soquel, California, in February, 2021.



April 9, 2021

4431 PE SCPD to CITY



**EASEMENT DIAGRAM
PERMANENT EASEMENT
S. C. PORT DISTRICT
to
CITY OF SANTA CRUZ**

SC PORT PERM. EASE.
AREA = 37,657 S.F. +/-

HL S#4431 3-11-21
SHEET 2 OF 2

EXHIBIT C

TEMPORARY CONSTRUCTION EASEMENTS

SANTA CRUZ PORT DISTRICT

to the

CITY OF SANTA CRUZ

SITUATE in the City of Santa Cruz, County of Santa Cruz, State of California; and

BEING a portion of the lands granted by the State of California to the Santa Cruz Port District, by Grant Deed dated May 21, 1974, recorded in Volume 2412, at Page 273, Official Records of Santa Cruz County; and

BEING portions of Parcels 61, 62, 65, 6, and 48 as described in said Grant Deed, and being more particularly described as follows:

BEGINNING at a point on the Easterly boundary of Parcel B the lands granted to the United States of America by Grant Deed recorded in Volume 2522, at Page 248, Official Records of Santa Cruz County, also being a point on the Westerly boundary of said lands granted to the Santa Cruz Port District; from which said point of beginning the Northeasterly corner of said Parcel B bears North 04° 33' 44" West, 1.50 feet distant; thence leaving said Westerly boundary and continuing along the Southerly line of the Permanent Easement, Santa Cruz Port District to the City of Santa Cruz, the following courses:

S C PORT TCE ONE:

1. S 88° 42' 04" E, a distance of 204.14 feet, to an angle point; thence
2. S 01° 17' 56" W, a distance of 1.00 feet, to an angle point; thence
3. S 88° 42' 04" E, a distance of 10.00 feet, to an angle point; thence
4. N 01° 17' 56" E, a distance of 1.00 feet, to an angle point; thence
5. S 88° 42' 04" E, a distance of 166.00 feet, to an angle point; thence
6. S 01° 17' 56" W, a distance of 9.50 feet, to an angle point; thence
7. S 88° 42' 04" E, a distance of 17.00 feet, to an angle point; thence
8. N 01° 17' 53" E, a distance of 9.41 feet, to an angle point; thence
9. S 88° 42' 01" E, a distance of 54.69 feet, to an angle point; thence
10. S 01° 04' 40" W, a distance of 3.90 feet, to an angle point; thence
11. S 88° 42' 04" E, a distance of 10.62 feet, to the beginning of a tangent curve Southeasterly to the right
12. Of radius 386.51 feet, through a central angle of 10° 32' 59", for an arc length of 71.17 feet, thence
13. S 78° 09' 05" E, a distance of 5.76 feet, to an angle point; thence
14. S 63° 05' 00" E, a distance of 27.31 feet, to an angle point on the Easterly boundary of said lands of the Santa Cruz Port District; thence leaving the Southerly boundary of said Permanent Easement and continuing along said Easterly boundary
15. S 30° 37' 21" E, a distance of 31.59 feet, to an angle point; thence leaving said Easterly boundary and continuing

16. S 80° 04' 08" W, a distance of 147.06 feet, to an angle point; thence
17. S 88° 45' 09" W, a distance of 68.69 feet, to an angle point; thence
18. N 88° 59' 41" W, a distance of 155.03 feet, to an angle point; thence
19. S 85° 38' 06" W, a distance of 65.64 feet, to an angle point; thence
20. S 05° 20' 31" W, a distance of 36.35 feet, to an angle point; thence
21. S 85° 09' 16" W, a distance of 122.28 feet, to an angle point; thence
22. N 04° 18' 57" W, a distance of 107.97 feet. to an angle point; thence
23. N 86° 05' 38" W, a distance of 16.00 feet, to an angle point on the Westerly boundary of said lands of the United States of America; thence along said Easterly boundary
24. N 04° 33' 44" W, a distance of 30.33 feet: to the Point of Beginning

Contains 48,431 sq. ft., a little more or less

A.P.N. 010-262-70 (Portion) and 010-311-08 (Portion)

S C PORT TCE TWO:

BEGINNING at the Northwest corner of said Parcel 48 as described in the Grant Deed recorded in Volume 2412, at Page 273, Official Records of Santa Cruz County, designated as POINT "A" in the description of the Permanent Easement grant to the City of Santa Cruz; thence along the Westerly boundary of said Parcel 48

1. S 30° 37' 21" E, a distance of 4.74 feet to an angle point; thence leaving said Westerly boundary and continuing along the Northerly boundary of said Permanent Easement
2. N 88° 42' 04" W, a distance of 28.25 feet, to an angle point; thence
3. N 01° 17' 52" E, a distance of 8.56 feet, to an angle point; thence
4. N 78° 42' 25" W, a distance of 5.40 feet, to an angle point; thence
5. N 88° 42' 04" W, a distance of 11.68 feet, to an angle point; thence
6. S 01° 17' 56" W, a distance of 9.50 feet, to an angle point; thence
7. N 88° 42' 04" W, a distance of 375.65 feet, to an angle point hereinafter designated as Point "B"; thence leaving said Northerly boundary of said Permanent Easement and continuing
8. N 86° 14' 54" E, a distance of 44.69 feet, to an angle point; thence
9. N 26° 56' 40" W, a distance of 4.94 feet, to an angle point; thence
10. N 89° 18' 20" E, a distance of 107.62 feet, to a point hereinafter designated as Point "C"; thence
11. N 01° 49' 01" E, a distance of 53.64 feet, to an angle point; thence
12. S 86° 44' 22" E, a distance of 7.93 feet, to an angle point; thence
13. N 02° 37' 36" E, a distance of 24.33 feet, to an angle point; thence
14. S 87° 01' 30" E, a distance of 10.41 feet, to an angle point; thence
15. N 04° 27' 46" E, a distance of 18.87 feet, to an angle point; thence
16. S 87° 42' 26" E, a distance of 16.22 feet, to an angle point; thence
17. S 01° 50' 15" W, a distance of 94.70 feet, to an angle point; thence
18. N 89° 18' 20" E, a distance of 150.77 feet, to an angle point; thence
19. S 70° 42' 25" E, a distance of 83.50 feet, to the Point of Beginning.

Contains 7,650 sq. ft., a little more or less

A.P.N. 011-181-02 (Portion) and 011-181-03 (Portion)

The basis of bearings of this description is Zone 3 of the California Coordinate System, Grid North.

MEMORANDUM OF POSSESSION AND USE AGREEMENT

(Form #)

Description prepared by Hogan Land Services, Inc., Soquel, California, in March, 2021.

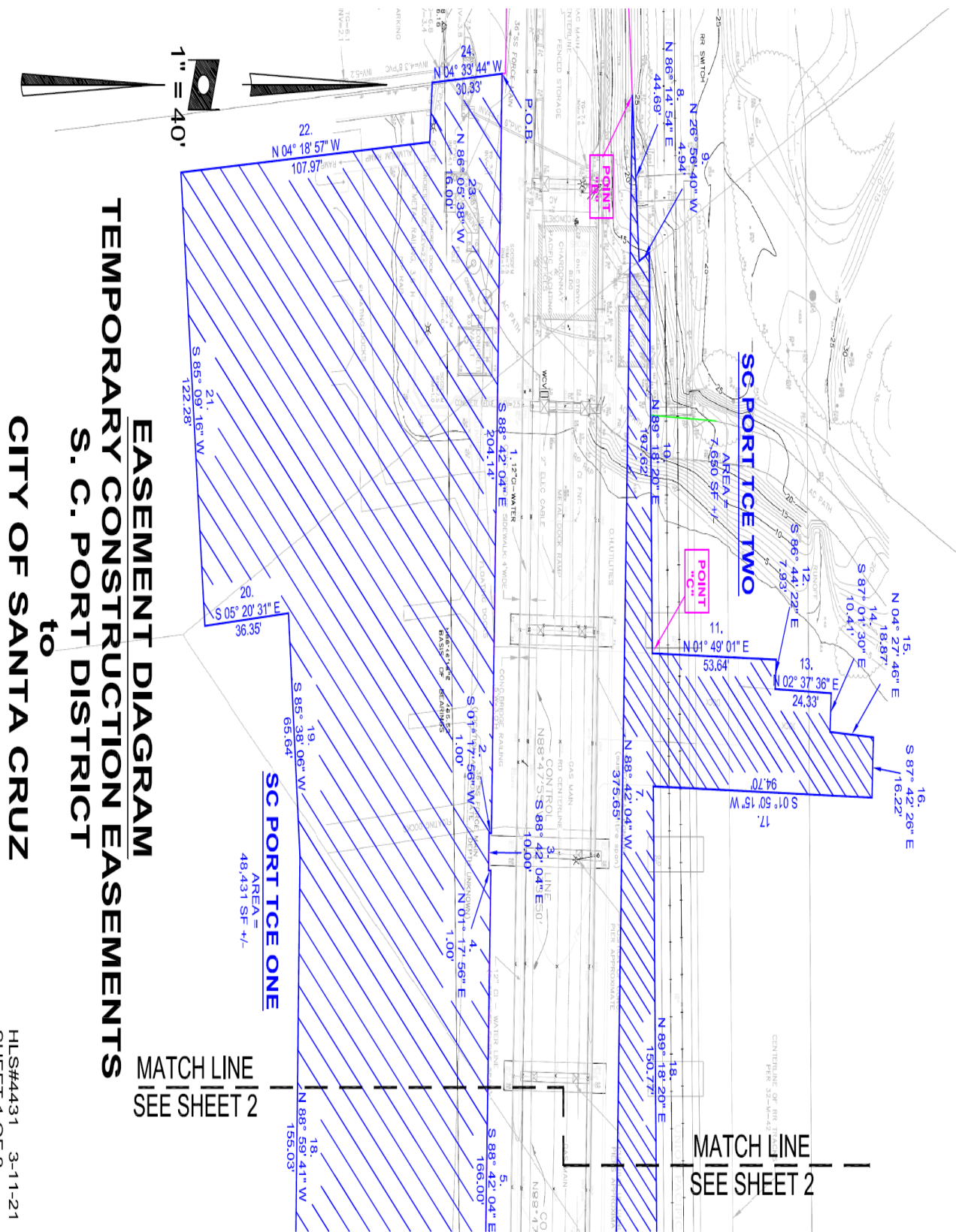


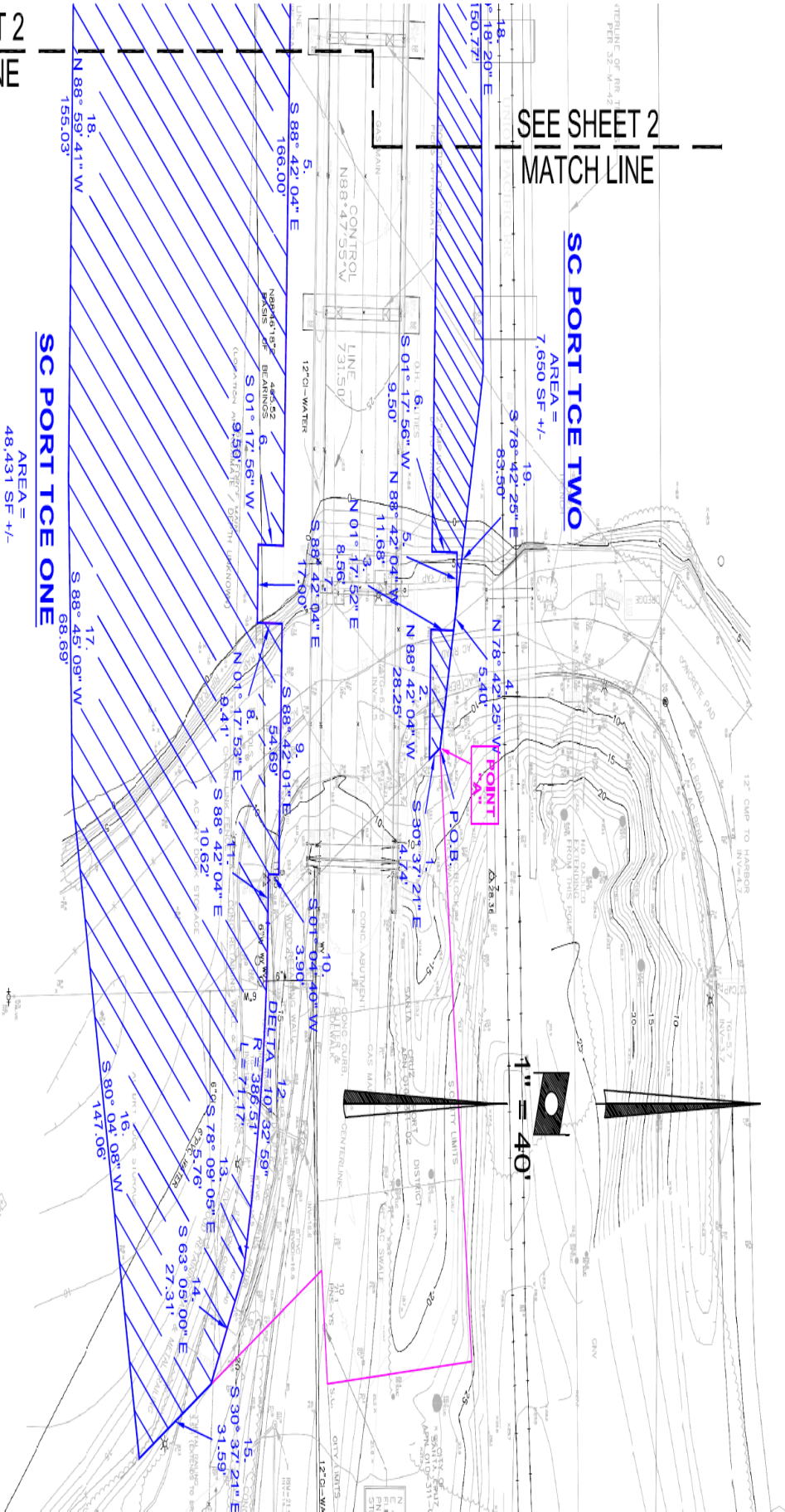
April 9, 2021

4431 TCE SCPD to CITY

EXHIBIT D

TEMPORARY CONSTRUCTION EASEMENTS MAP





EASEMENT DIAGRAM
TEMPORARY CONSTRUCTION EASEMENTS
S. C. PORT DISTRICT
 to
CITY OF SANTA CRUZ

HLS#4431 3-11-21
 SHEET 2 OF 2

SEE SHEET 2
 MATCH LINE

SEE SHEET 2
 MATCH LINE