



HEARING NOTICE

LAND USE REQUEST AFFECTING THIS AREA

There is a development proposal for the property listed in this notice and shown on the attached map. The City is seeking input from neighbors on the proposal. If you have questions or comments about the proposal, contact the case manager.

Esta carta es un aviso sobre una propuesta de desarrollo para la propiedad enumerada y que se muestra en el mapa adjunto. La ciudad está buscando la opinión de los vecinos sobre la propuesta. Si tiene preguntas o comentarios sobre la propuesta, póngase en contacto con nosotros al 503-588-6213

CASE NUMBER:	APPEAL of Phased Tentative Subdivision Case No. SUB22-04
PROPERTY LOCATION:	3600 Block of Boone Rd SE, Salem OR 97317
SUMMARY:	A proposal for a subdivision to divide approximately 79 acres into 12 lots.
HEARING INFORMATION:	<p>Planning Commission, Tuesday, August 2, 2022, at 5:30 p.m. held virtually on Zoom</p> <p>To view the meeting LIVE on YouTube please visit this link with any computer, tablet, or smart phone: http://bit.ly/planningpublicmeetings</p>
HOW TO PROVIDE TESTIMONY:	<p>Both written and oral testimony will be accepted on this case. Only those participating by submitting written testimony, or by testifying virtually at the hearing, have the right to appeal the decision.</p> <p>To provide written testimony: Direct written comment to the case manager listed below. Staff recommends emailing your comments to ensure receipt before the public hearing.</p> <p><i>Note: Comments submitted are <u>public record</u>. This includes any personal information provided in your comment such as name, email, physical address and phone number.</i></p> <p>To provide testimony digitally at the public hearing: Sign up by contacting Shelby Guizar at SGuizar@cityofsalem.net or 503-540-2315 by <u>the date of the hearing at 3:00 p.m.</u> to receive instructions.</p>
CASE MANAGER:	Aaron Panko, Planner III , City of Salem Planning, 555 Liberty Street SE, Room 305, Salem, OR 97301. Telephone: 503-540-2356; E-mail: APanko@cityofsalem.net .
NEIGHBORHOOD ASSOCIATION:	<p><i>Neighborhood associations are volunteer organizations of neighbors coming together to make neighborhoods the best they can be. They receive notice of land use applications within their boundaries, and they often submit comments on the applications to the City. Neighborhood association meetings are open to everyone. Contact your neighborhood association to get involved:</i></p> <p>Southeast Mill Creek Association (SEMCA), Alan Rasmussen, Land Use Chair; Phone: 503-930-1968; Email: arasmussen@modernbuildingsystems.com.</p>
STAFF REPORT:	The Staff Report will be available seven (7) days prior to the hearing and will thereafter be posted on the Community Development website: https://www.cityofsalem.net/notice .
ACCESS:	The Americans with Disabilities Act (ADA) accommodations will be provided on request.
CRITERIA:	<p>Salem Revised Code (SRC) Chapter 205.015(d) – Phased Subdivision</p> <p>Salem Revised Code (SRC) is available to view at this link: http://bit.ly/salemorcode. Type in the chapter number(s) listed above to view the applicable criteria.</p>

OWNER(S):	John Eld, MWSH Boone Road Property LLC (Kelley D. Hamilton)
APPLICANT / AGENT(S):	Brandie Dalton on behalf of MWSH Boone Road Property LLC
APPELLANT:	MWSH Boone Road Property LLC
PROPOSAL / REQUEST:	<p>An industrial phased subdivision tentative plan to divide approximately 79 acres into a total of 12 lots ranging in size from 107,483 square feet to 499,672 square feet in size, in two phases of development. The applicant is requesting alternative street standards to increase the street spacing and connectivity standards in SRC Chapter 803 to allow the following proposed streets to exceed the 600-foot block length and 600-foot street connectivity standards in SRC Chapter 803:</p> <ul style="list-style-type: none"> a) Northerly block between 32nd Avenue and 36th Avenue Increase to approximately 1,785 feet with mid-block pedestrian connection and public access easement. b) Easterly block between Boone Road and proposed 32nd Avenue Increase to approximately 712 feet. c) Easterly block between proposed 32nd Avenue and southerly boundary of property Increase to approximately 705 feet. d) Southerly portion of property between A Drive and 36th Avenue Increase to approximately 1,875 feet. <p>The subject property is approximately 79 acres in size, zoned IC (Industrial Commercial), and located at the 3600 Block of Boone Road SE - 97317 (Marion County Assessors Map and Tax Lot numbers: 083W13A / 00100, 00200, and 00300).</p>
HEARING PROCEDURE:	<p>The hearing will be conducted with the staff presentation first, followed by the applicant's case, neighborhood organization comments, testimony of persons in favor or opposition, and rebuttal by the applicant, if necessary. The applicant has the burden of proof to show that the approval criteria can be satisfied by the facts. Opponents may rebut the applicant's testimony by showing alternative facts or by showing that the evidence submitted does not satisfy the approval criteria. A hearing is not a venue to ask questions of staff, the applicant, or the decision maker(s) on this case but rather an opportunity to provide testimony to the decision maker(s) on the merits of the land use case; questions about the application, the recommended conditions of approval, or the Planning Administrator's recommendation, should be directed to the Case Manager prior to the hearing.</p> <p>Any participant may request an opportunity to present additional evidence or testimony regarding the application. A ruling will then be made to either continue the Public Hearing to another date or leave the record open to receive additional written testimony. Failure to raise an issue in person or by letter prior to the close of the Public Hearing with sufficient specificity to provide the opportunity to respond to the issue, precludes appeal to the Land Use Board of Appeals (LUBA) on this issue. A similar failure to raise constitutional issues relating to proposed conditions of approval precludes an action for damages in circuit court.</p> <p>Following the close of the Public Hearing a decision will be issued and mailed to the applicant, property owner, affected neighborhood association, anyone who participated in the hearing, either virtually or in writing, and anyone who requested to receive notice of the decision.</p>
MORE INFORMATION:	All documents and evidence submitted by the applicant are available on the City's online Permit Application Center at https://permits.cityofsalem.net . You can use the search function without registering and enter the permit number listed here: 22 102354. Paper copies can be obtained for a reasonable cost.
NOTICE MAILING DATE:	July 8, 2022

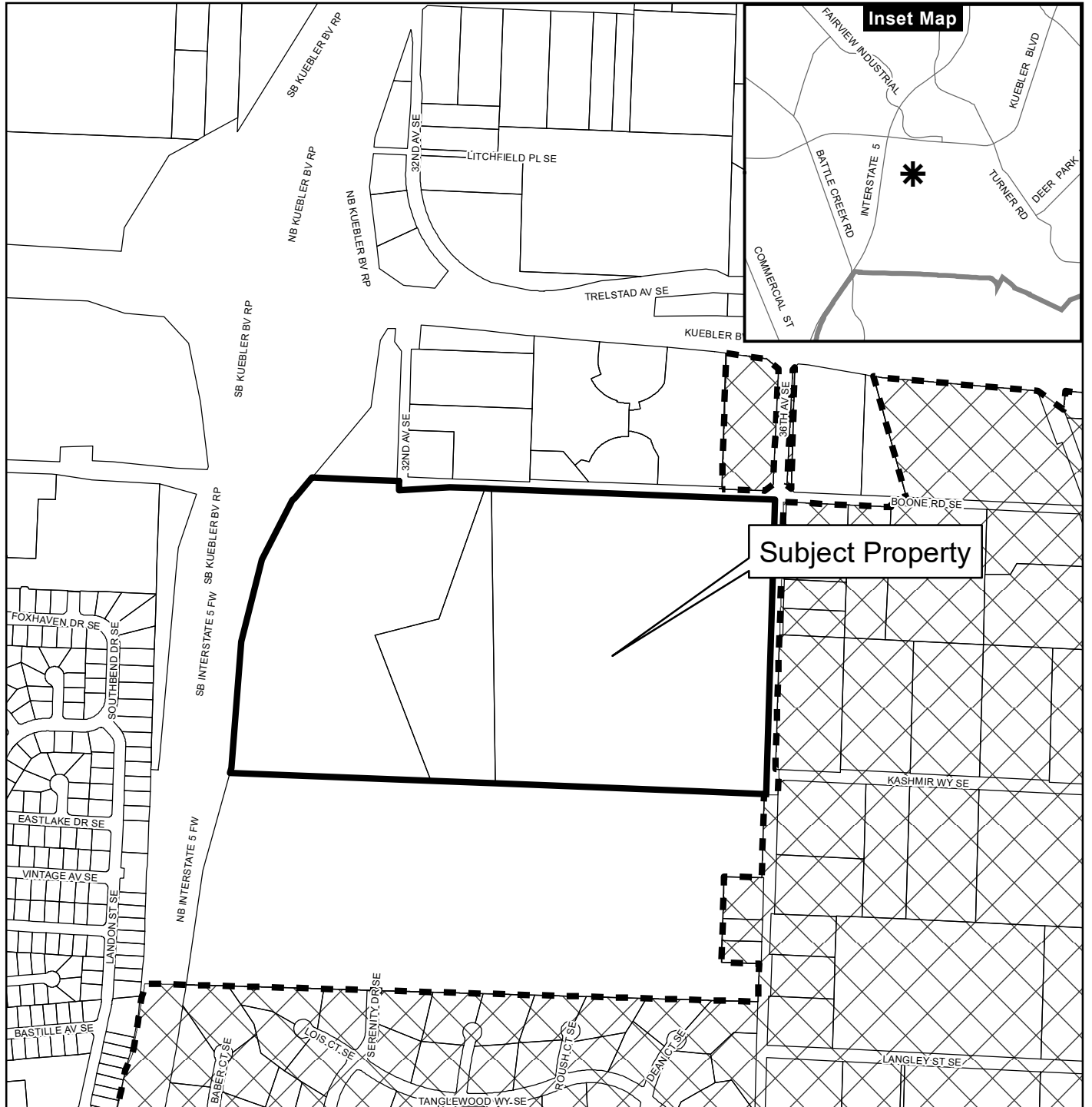
PLEASE PROMPTLY FORWARD A COPY OF THIS NOTICE TO ANY OTHER OWNER, TENANT OR LESSEE.
For more information about Planning in Salem: <http://www.cityofsalem.net/planning>

It is the City of Salem's policy to assure that no person shall be discriminated against on the grounds of race, religion, color, sex, marital status, familial status, national origin, age, mental or physical disability, sexual orientation, gender identity and source of income, as provided by Salem Revised Code Chapter 97. The City of Salem also fully complies with Title VI of the Civil Rights Act of 1964, and related statutes and regulations, in all programs and activities. Disability-related modification or accommodation, including auxiliary aids or services, in order to participate in this meeting or event, are available upon request. Sign language and interpreters for languages other than English are also available upon request. To request such an accommodation or interpretation, contact the Community








*Development Department at 503-588-6173 at least three business days before this meeting or event.
TTD/TTY telephone 503-588-6439 is also available 24/7*

Vicinity Map

3200-3600 Block of Boone Road SE



Legend

-  Taxlots
-  Urban Growth Boundary
-  City Limits
-  Outside Salem City Limits
-  Historic District
-  Schools
-  Parks


CITY OF Salem
 AT YOUR SERVICE
 Community Development Dept.

0 100 200 400 Feet



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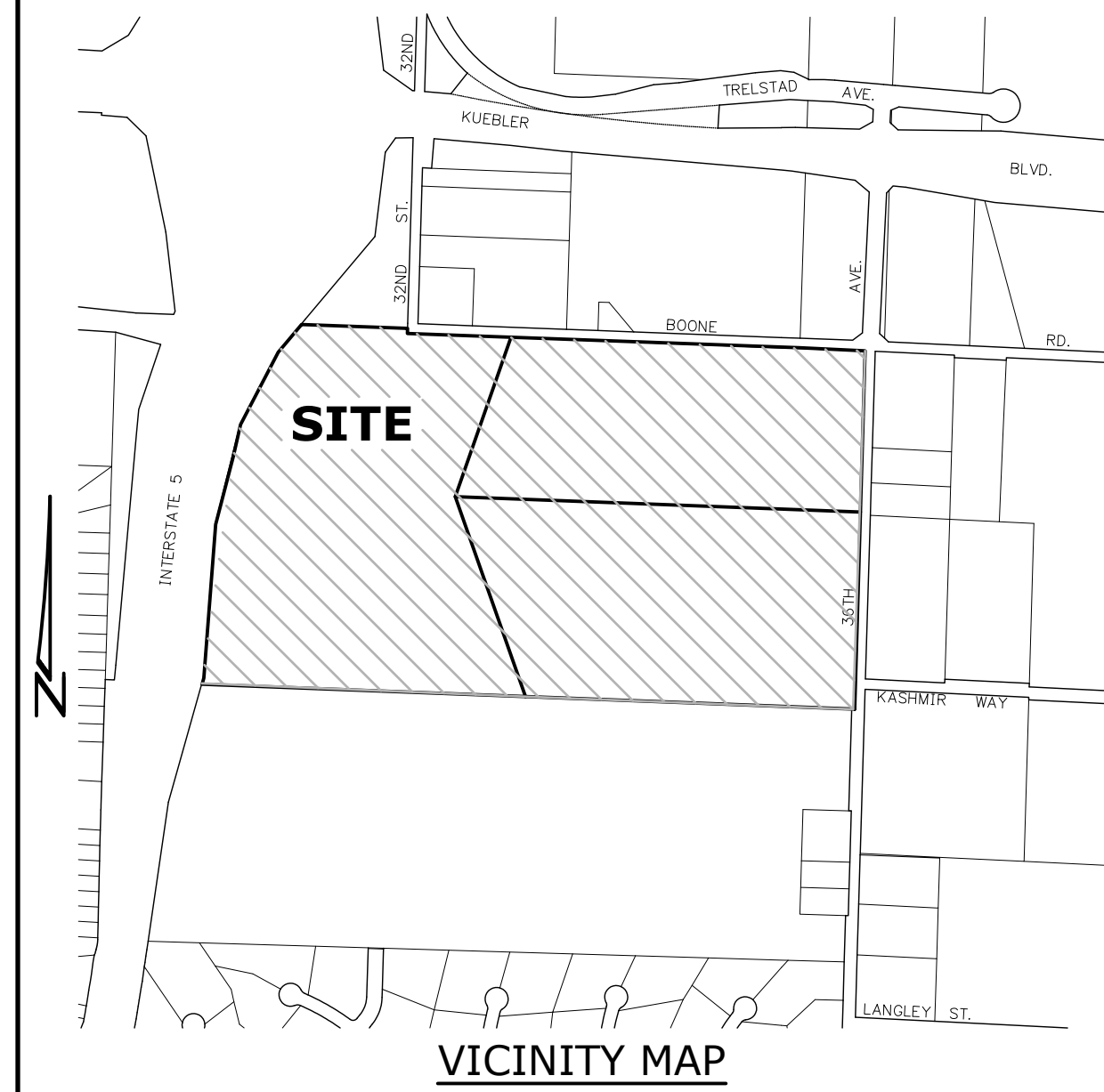
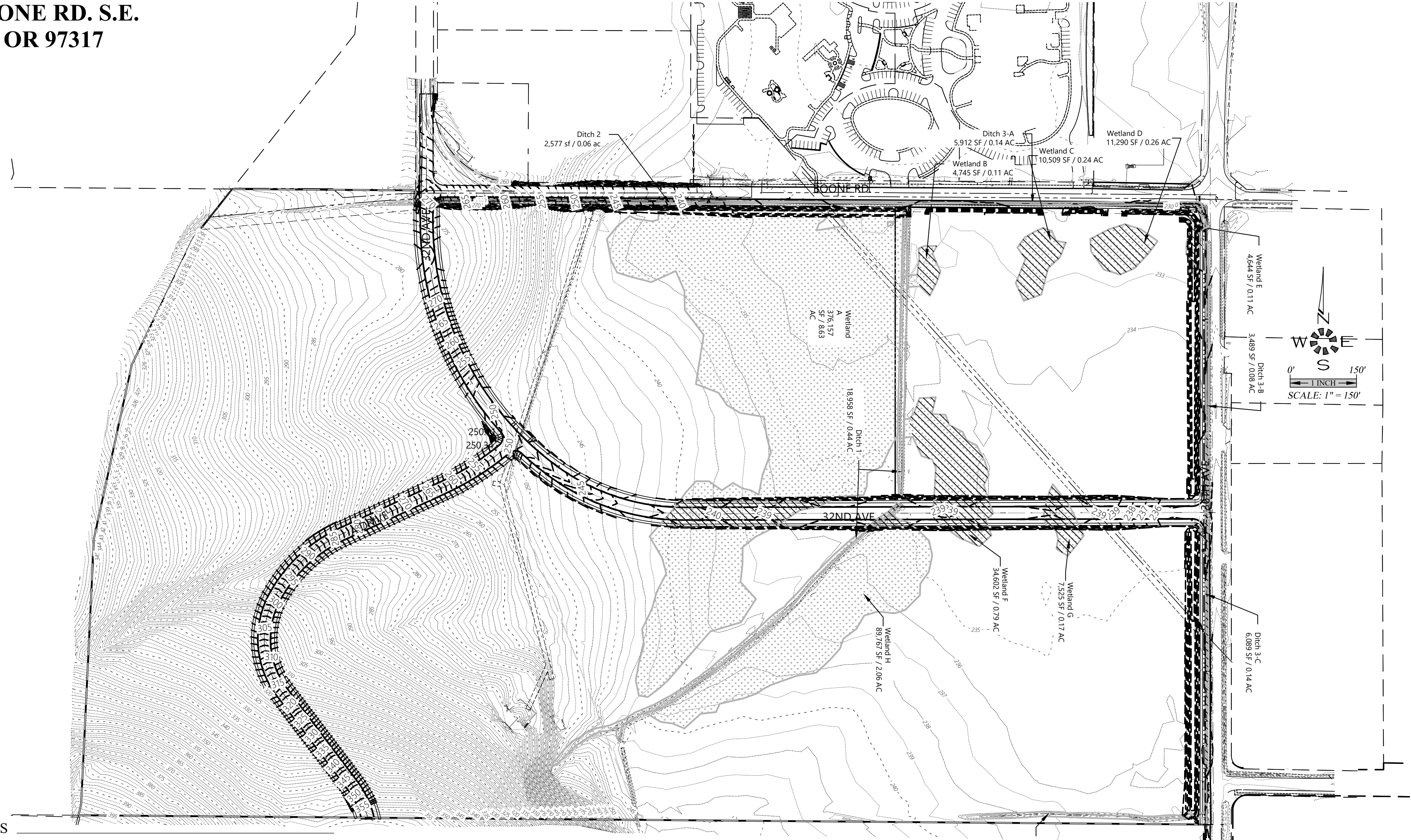
Owner / Developer:

MWSH BOONE ROAD PROPERTY, LLC

3425 BOONE RD. S.E.
SALEM, OR 97317

BOONE ROAD INDUSTRIAL SUBDIVISION

SEC. 13, T. 8 S., R. 3 W., W.M.
CITY OF SALEM
MARION COUNTY, OREGON



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ABBREVIATIONS

A.C.	ASPHALTIC CONCRETE	L.P.	LIGHT POLE
ACMP	ALUMINIZED CMP	M	METER, MAIN
ASSY.	ASSEMBLY	M.H.	MANHOLE
B.O.	BLOW OFF	MTL.	METAL
B.F.V.	BUTTERFLY VALVE	O.H.	OVERHEAD
C & G	CURB & GUTTER	PC	POINT OF CURVE
CATV	CABLE TELEVISION	PCC	POINT OF CONTINUING CURVE
C.B.	CATCH BASIN	PED.	PEDESTAL
C.B.C.O.	CATCH BASIN CLEANOUT	PRC	POINT OF REVERSE CURVE
C.B.I.	CATCH BASIN INLET	PROP.	PROPOSED
C.L.	CENTERLINE	PT	POINT OF TANGENCY
CMP	CORRUGATED METAL PIPE	PUB.	PUBLIC
C.O.	CLEANOUT	PUE	PUBLIC UTILITY EASMT.
CONC.	CONCRETE	PVC	POLYVINYL CHLORIDE
CONST.	CONSTRUCT	PVT.	PRIVATE
D.I.	DUCTILE IRON	P.P.	POWER POLE
DIA.	DIAMETER	P.L.	PROPERTY LINE
DWG.	DRAWING	R	RADIUS
EASMT.	EASEMENT	R	RIM
E.G.	EXIST. GRADE / GROUND	RD	ROAD
EOP, E.P.	EDGE OF PAVEMENT	R.O.W.	RIGHT-OF-WAY
ELEC.	ELECTRIC	SAN.S. or S.S.	SANITARY SEWER
ELEV. or EL.	ELEVATION	S	SLOPE
EX. or EXIST.	EXISTING	STA.	STATION
FT.	FEET	STD.	STANDARD
F.F.	FINISH FLOOR	STL.	STEEL
F.G.	FINISH GRADE	STM.DRN. or S.D.	STORM DRAIN
F.H.	FIRE HYDRANT	SVC.	SERVICE
F.M.	FORCE MAIN	SW	SIDEWALK
GUT. or GTR.	GUTTER	T.C.	TOP OF CURB
G.V.	GATE VALVE	TEL.	TELEPHONE
IMP.	IMPROVEMENT	TYP.	TYPICAL
INST.	INSERT	U.G.	UNDERGROUND
INV. or I-	INVERT	VL.	VAULT
L	LENGTH, LINE	W.M.	WATER MAIN

SYMBOLS

	BLOW OFF ASSY.		MANHOLE SAN. SEWER
	CATCH BASIN		MANHOLE STORM DRAIN
	CATCH BASIN CLEANOUT		2' DIA. C.O. / M.H.
	CATCH BASIN INLET		MANHOLE TELEPHONE
	CATV PED. / BOX		MANHOLE WATER
	CLEANOUT		REDUCER / INCREASER
	ELEC. PED. / BOX		TEL. PED. / BOX
	FIRE HYDRANT		TRAFFIC PED. / BOX
	GAS LOCATION MARKER		UTILITY / POWER POLE
	GAS VALVE		WATER METER
	MAIL BOX		WATER VALVE
	CABLE TELEVISION		SANITARY SEWER EXIST.
	CENTERLINE		SANITARY SEWER PROP.
	DITCH C.L.		STORM DRAIN EXIST.
	ELECTRICAL LINE		STORM DRAIN PROP.
	GAS MAIN		WATER MAIN EXIST.
	TELEPHONE LINE		WATER MAIN PROP.

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COVER SHEET

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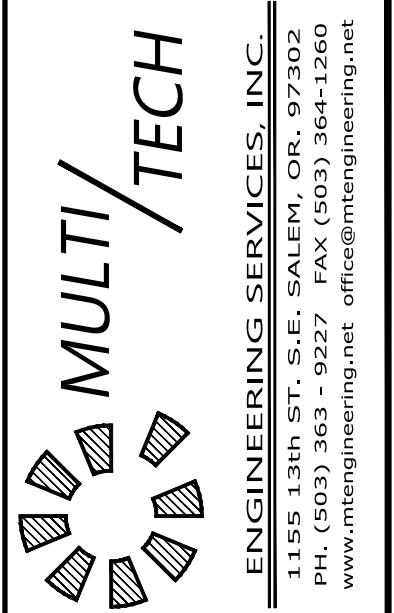
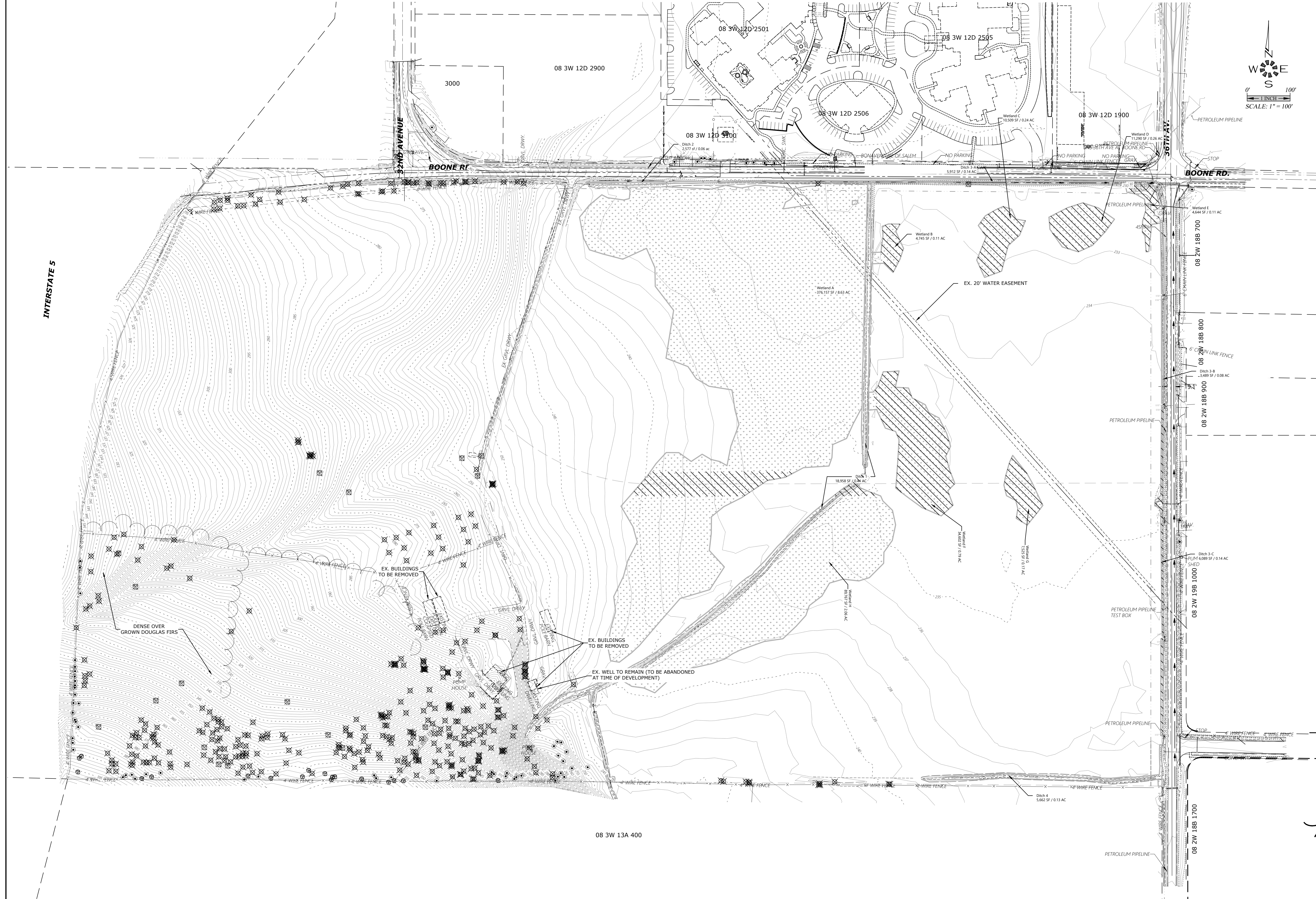
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MARK D. GRANT

EXPIRES: 06-30-2023

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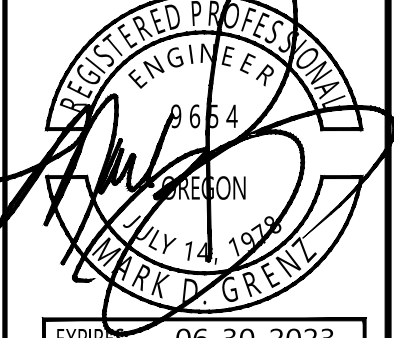


EXISTING CONDITIONS

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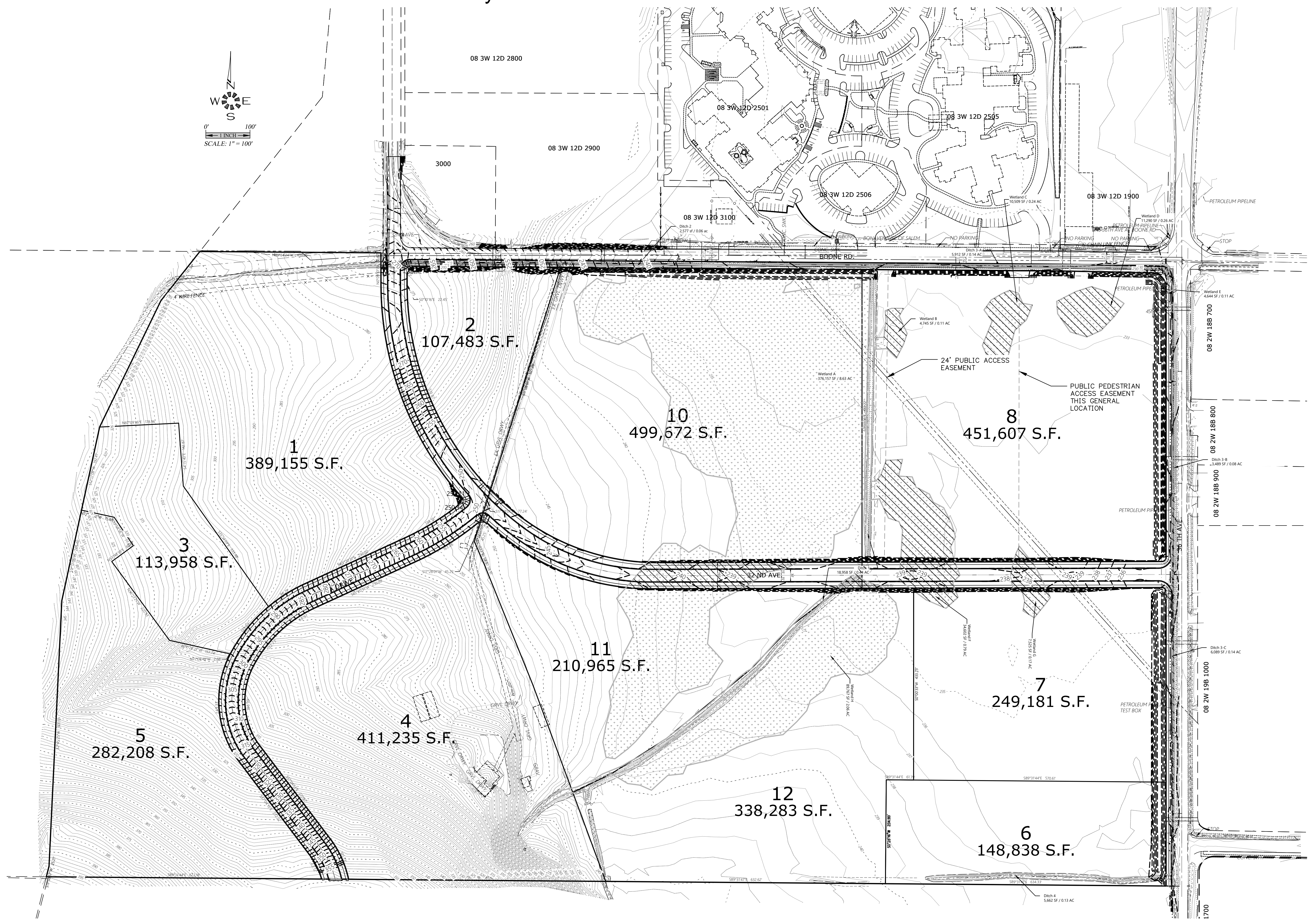
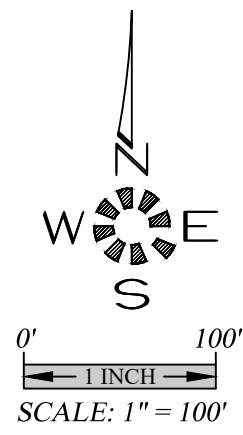
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BRIP Subdivision - Exhibit 60a Revised Preliminary Subdivision Plat



OVERALL SITE PLAN

BOONE ROAD INDUSTRIAL SUBDIVISION

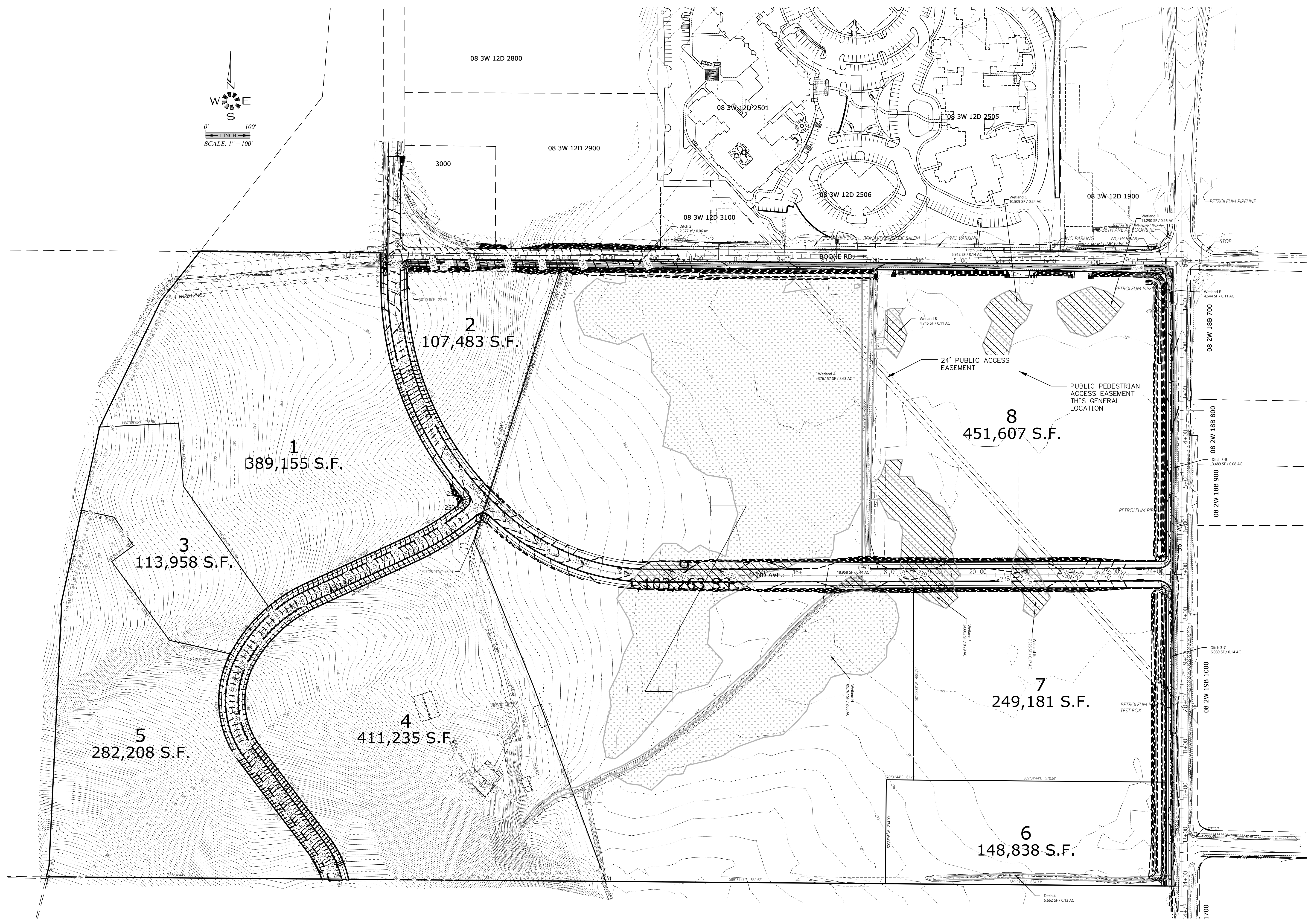
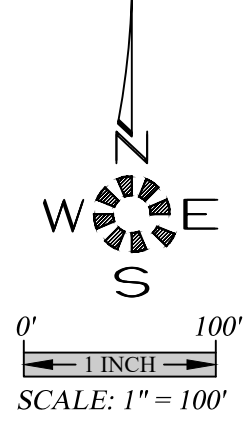
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PHASE 1 LOTS

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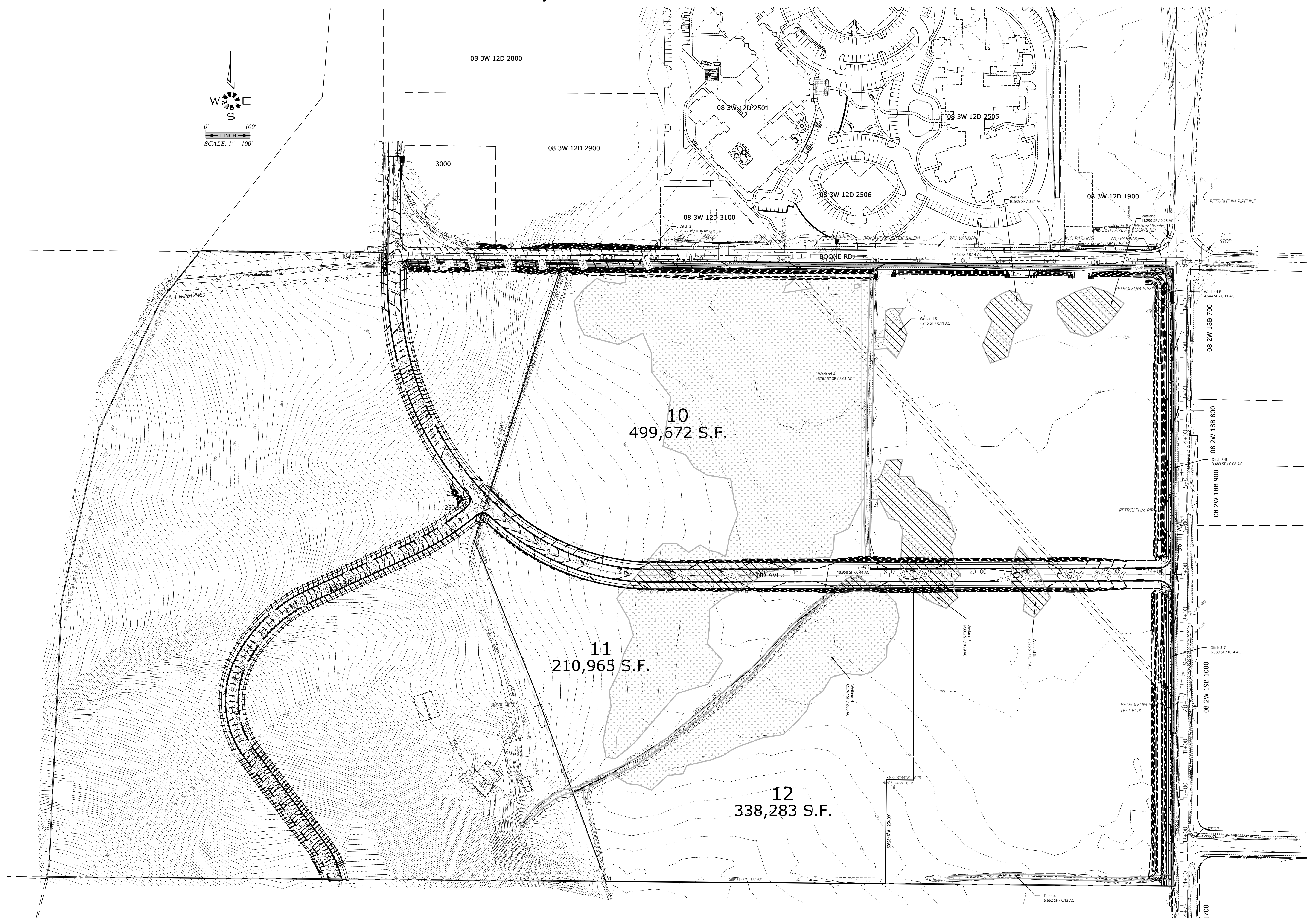
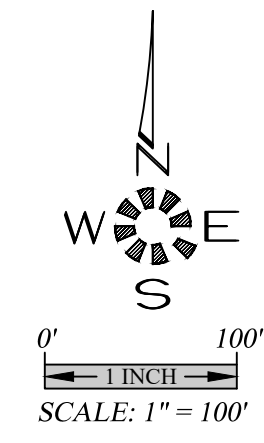
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BRIP Subdivision Phase II Exhibit 60c Revised Preliminary Subdivision Plat



PHASE 2 LOTS

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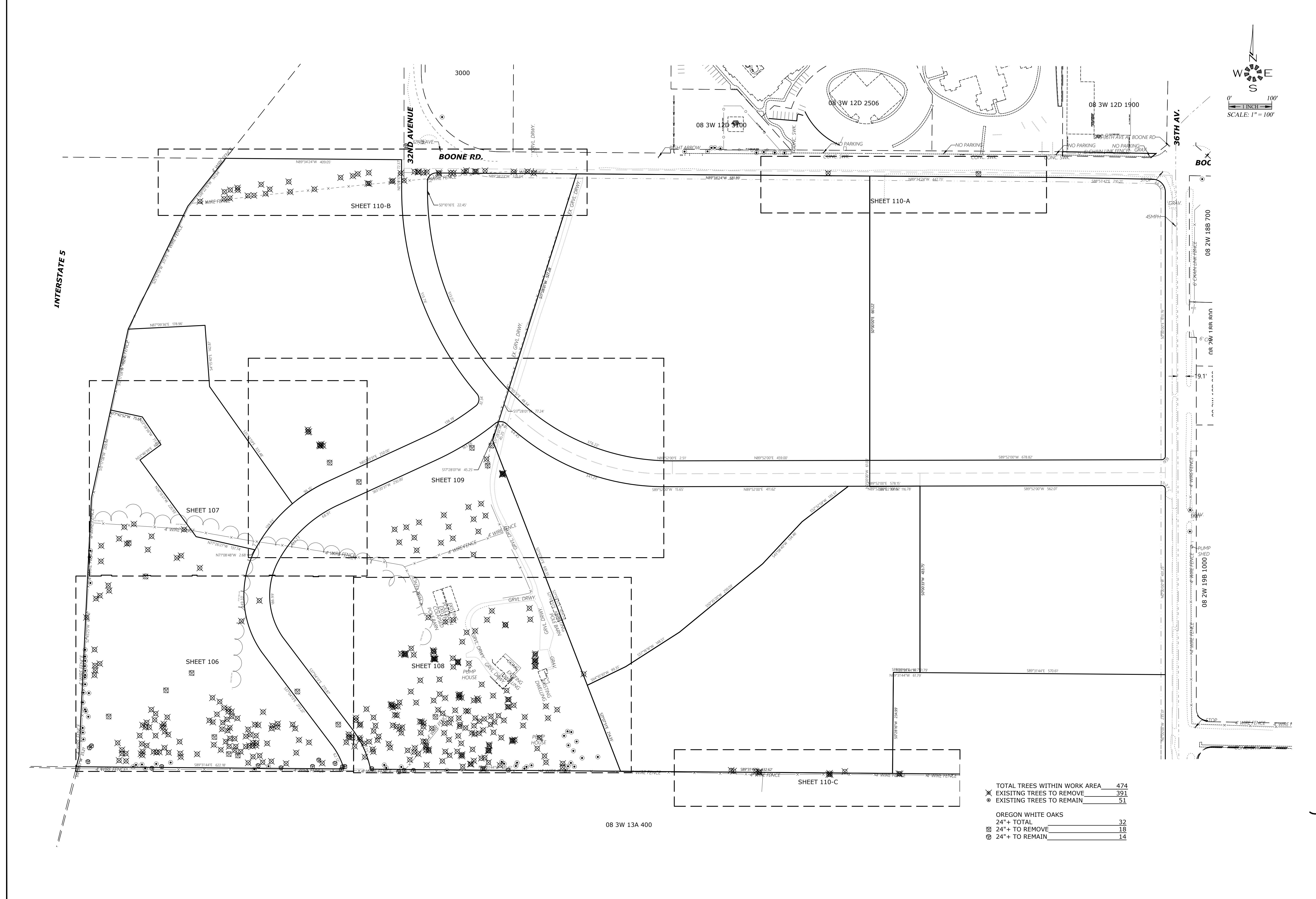
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TOTAL TREES WITHIN WORK AREA	474
⊗ EXISTING TREES TO REMOVE	391
⊙ EXISTING TREES TO REMAIN	51
OREGON WHITE OAKS	
⊗ 24"+ TOTAL	32
⊗ 24"+ TO REMOVE	18
⊙ 24"+ TO REMAIN	14

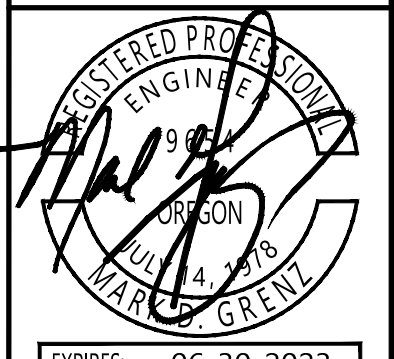


TREE PLAN OVERALL

BOONE ROAD INDUSTRIAL SUBDIVISION

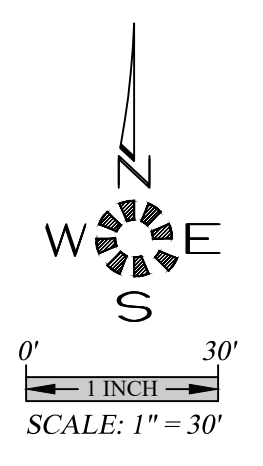
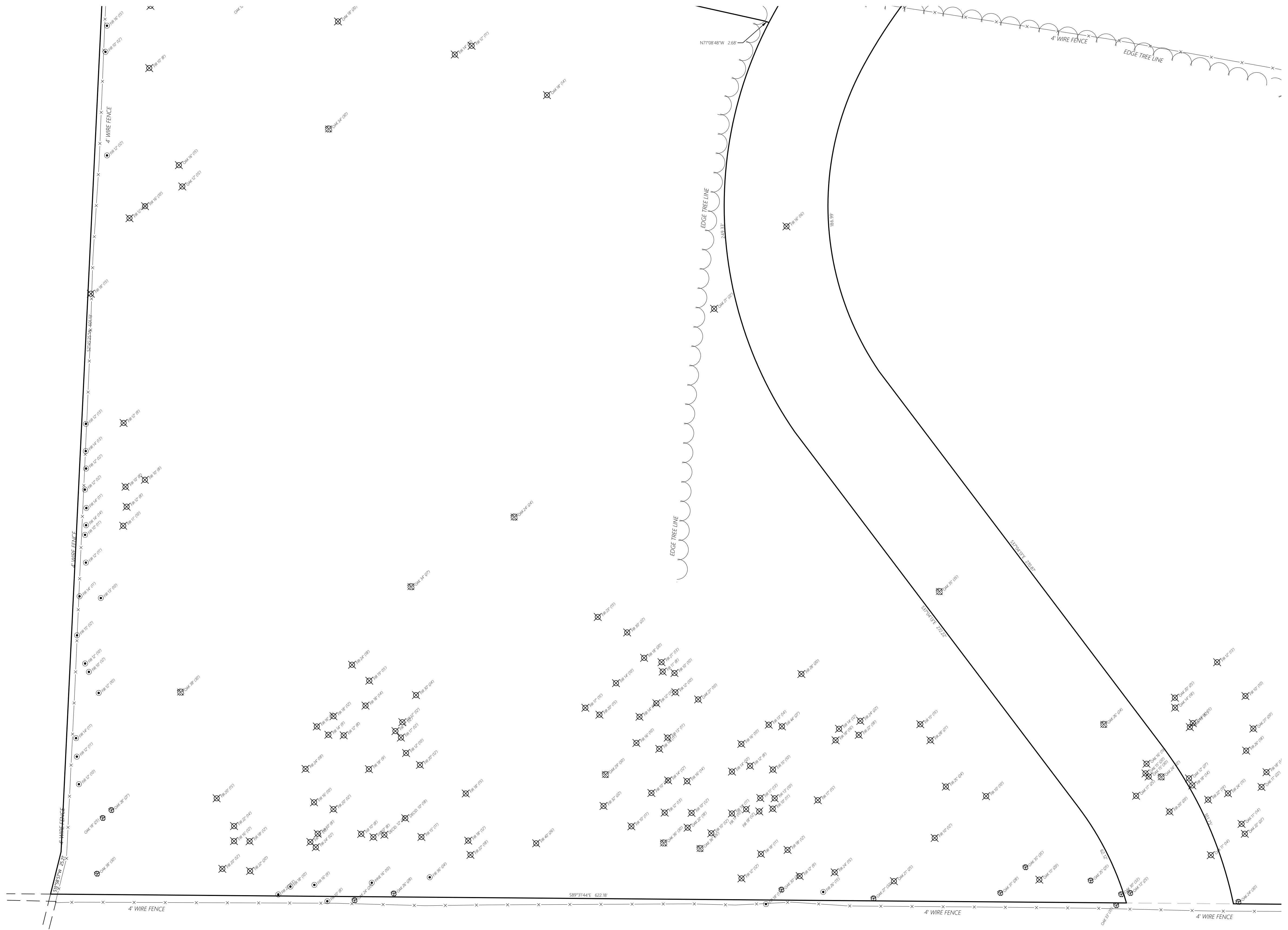
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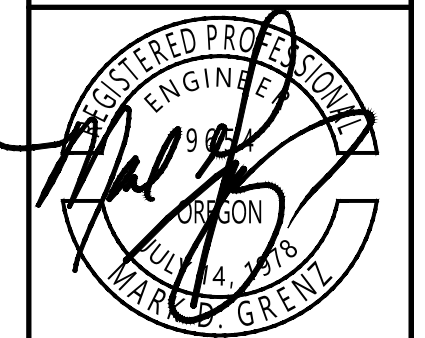


TREE PLAN

BOONE ROAD INDUSTRIAL SUBDIVISION

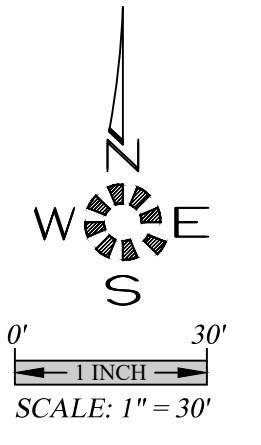
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TREE PLAN

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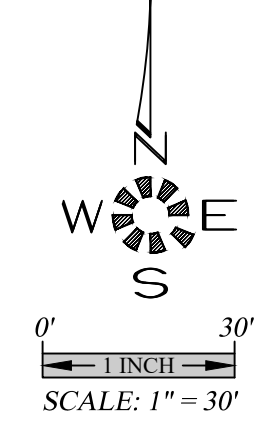
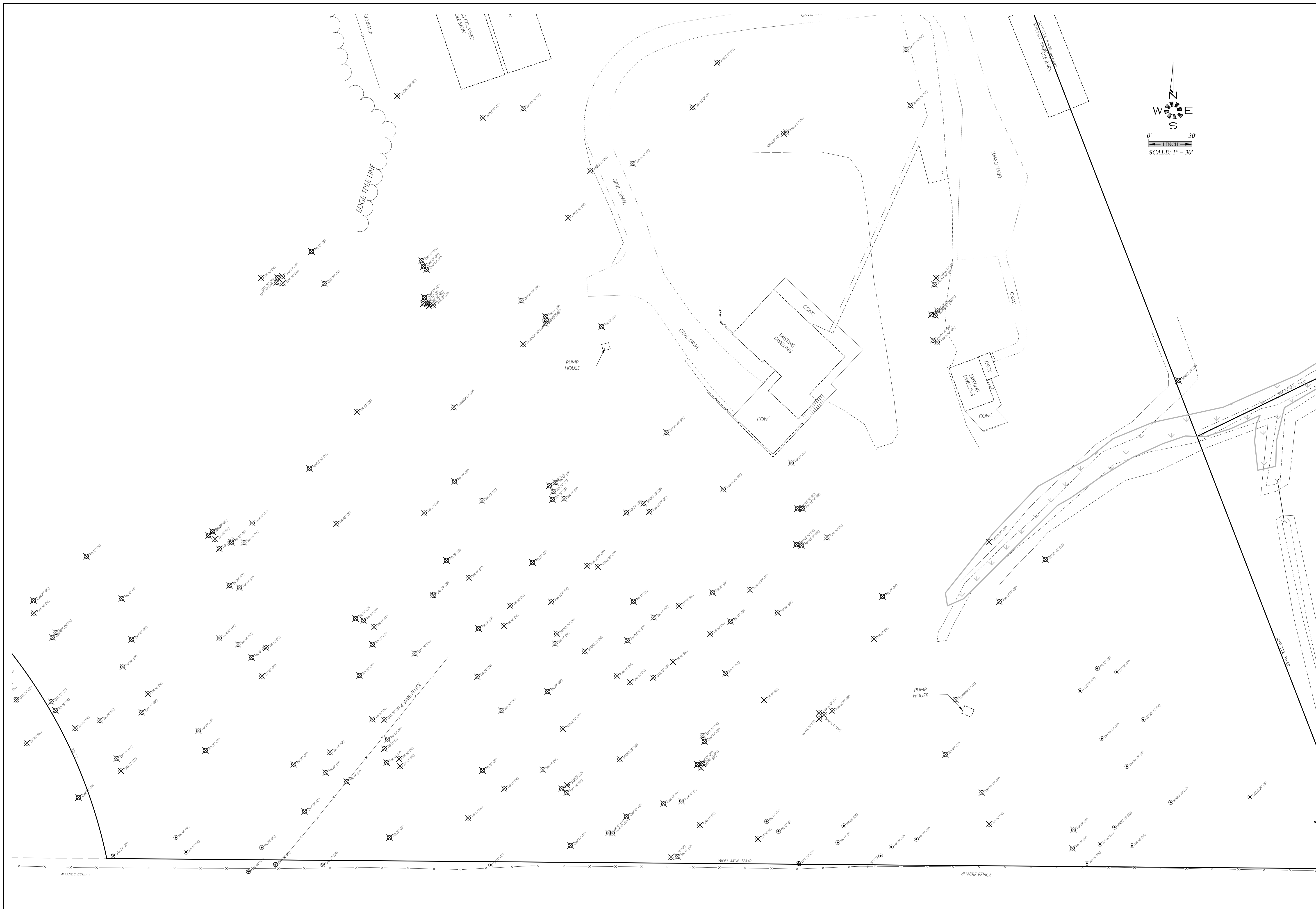
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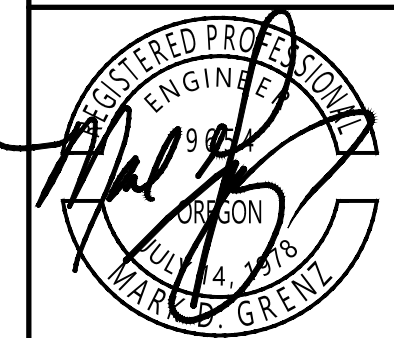
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TREE PLAN

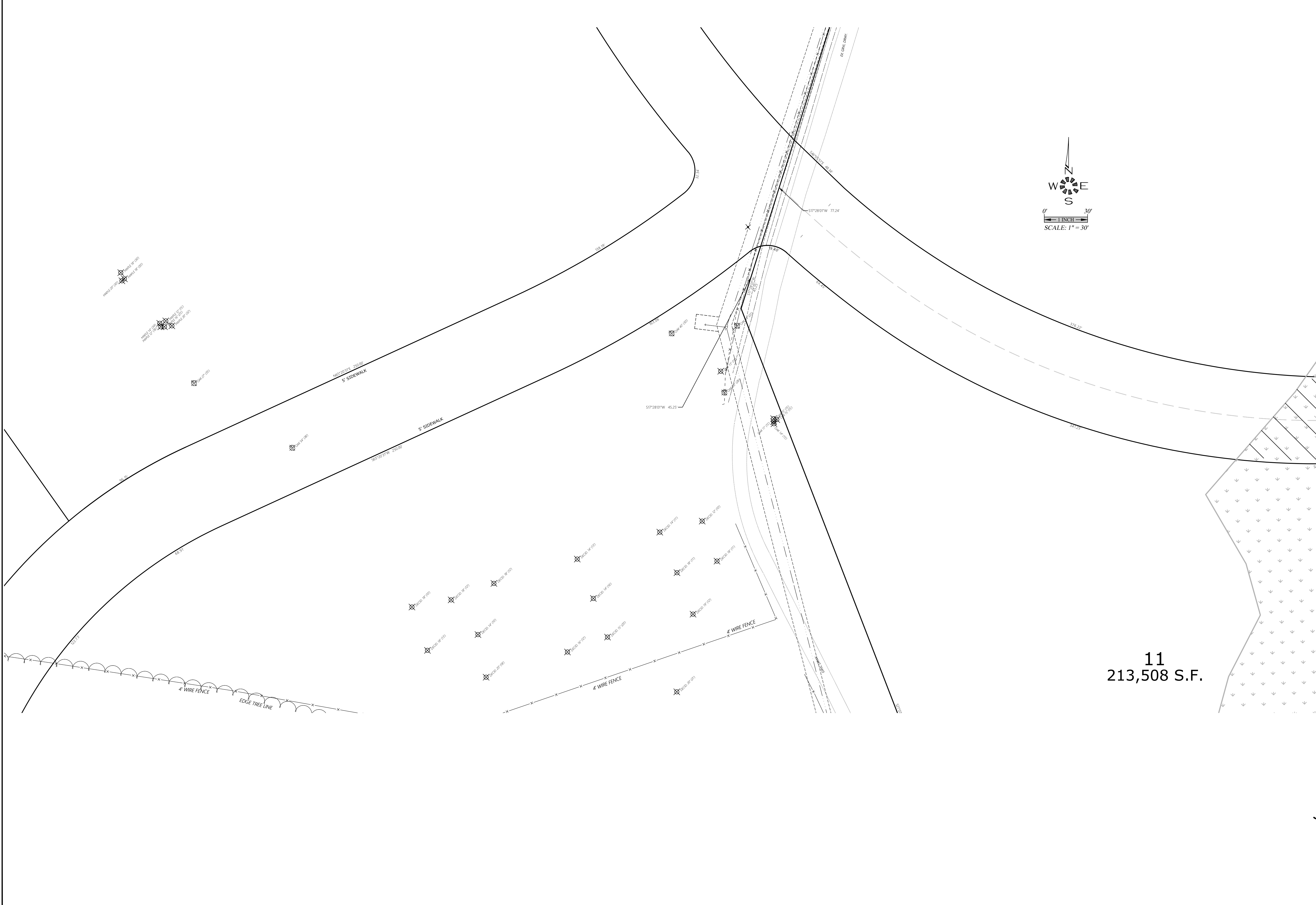
BOONE ROAD INDUSTRIAL SUBDIVISION

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 DIMENSIONS & NOTES TAKE PRECEDENCE OVER GRAPHICAL REPRESENTATION.

6754-100V 108-TREE
 Design: M.D.G.
 Drawn: C.D.S.
 Checked: M.D.G.
 Date: AS SHOWN
 Scale: AS SHOWN
 As-Built: _____



EXPIRES 06-30-2023
 JOB # 6754



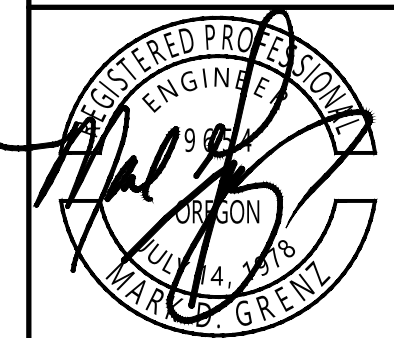
MULTI/TECH
 ENGINEERING SERVICES, INC.
 1155 13TH ST. S.E. SALEM, OR, 97302
 PH. (503) 363 - 9227 FAX (503) 364-1260
 www.mtengineering.net office@mtengineering.net

TREE PLAN

BOONE ROAD INDUSTRIAL SUBDIVISION

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6754-100V 100'-TREE
 Design: M.D.G.
 Drawn: C.D.S.
 Checked: M.D.G.
 Date: AS SHOWN
 Scale: AS SHOWN
 As-Built: _____



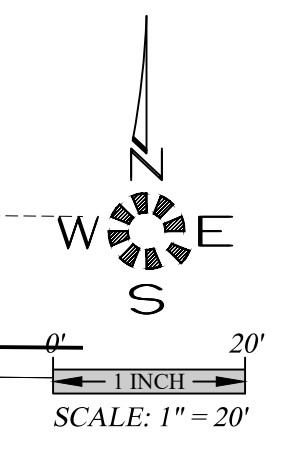
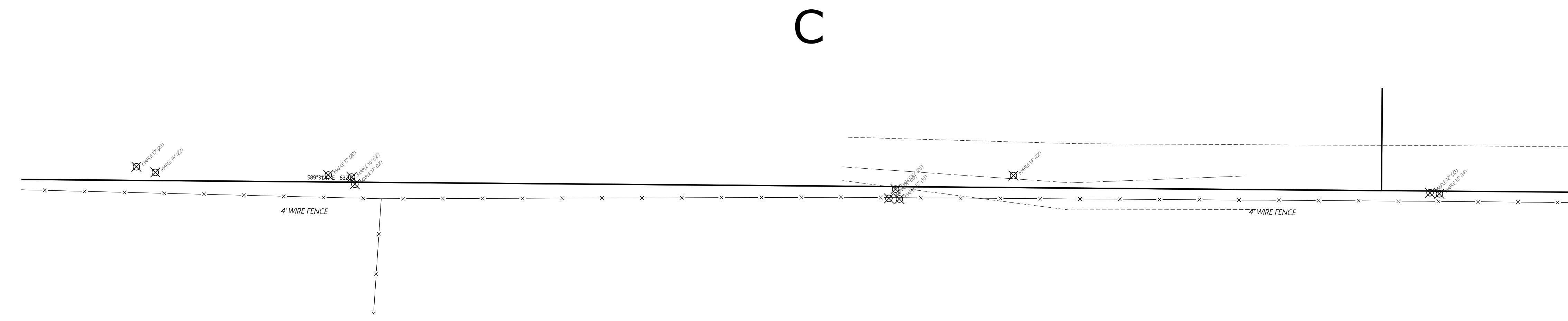
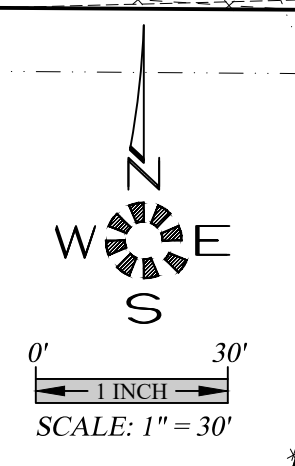
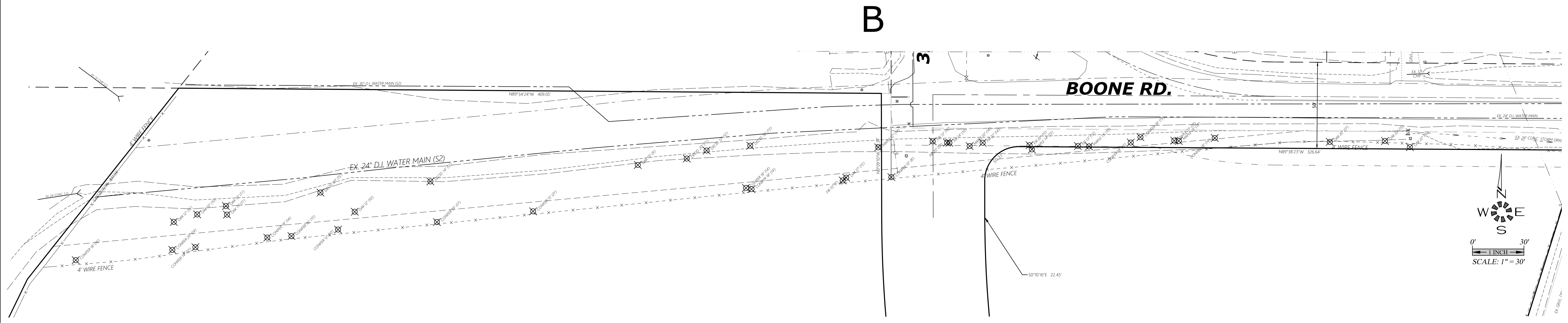
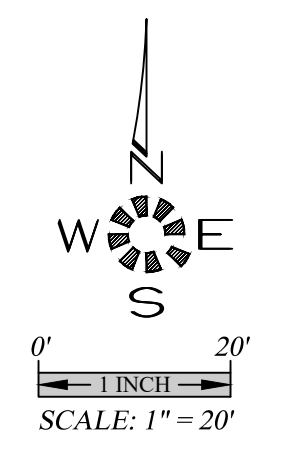
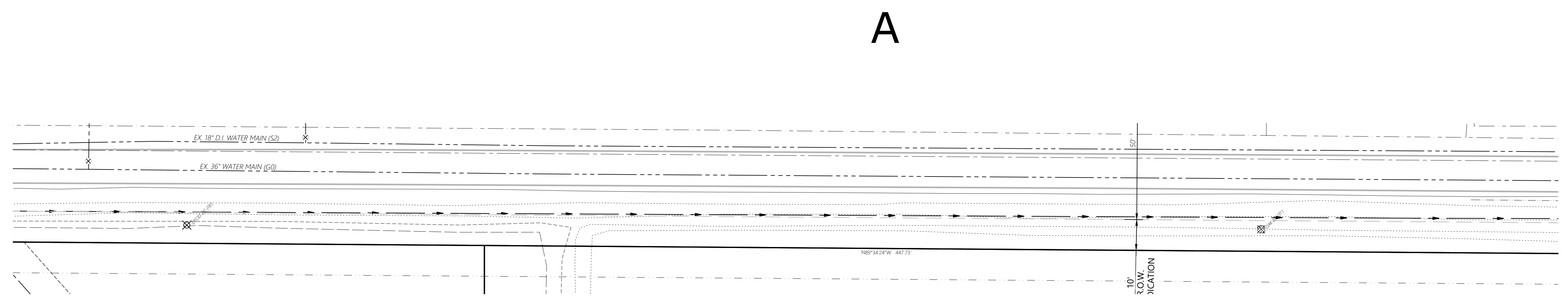
EXPIRES: 06-30-2023

JOB # 6754

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TREE PLAN

BOONE ROAD INDUSTRIAL SUBDIVISION



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 DIMENSIONS & NOTES TAKE PRECEDENCE OVER GRAPHICAL REPRESENTATION.

6754-100W 110'TREE
 Design: M.D.G.
 Drawn: C.D.S.
 Checked: M.D.G.
 Date: 11/11/2021
 Scale: AS SHOWN
 As-Built: _____



EXPIRES: 06-30-2023
 JOB # 6754

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SUB22-04 Appeal
Boone Road Industrial Park Subdivision
3600 Block Boone Road

BACKGROUND:

On June 14, 2022, Planning Administrator for the City of Salem issued and mailed the decision for SUB22-94. The deadline for filing the appeal is 15 days following the date the City mailed the Decision, which is June 29, 2022.

The applicant was MWSH Boone Road Property, LLC. Therefore, the applicant and the applicant's representative have standing to appeal SUB22-04 decision.

APPEAL REQUEST:

The applicant is appealing the Planning Administrators denial of the Class 2 Adjustment request to eliminate a requirement for a 60-foot right of way to provide an additional north south local street connection. Per SRC Sec. 803.030. Street spacing and requests the elimination of Condition #19.

Condition 19: *Construct a local street within a 60-foot-wide right-of-way to provide an additional north-south local street connection from 32nd Avenue to the southern property boundary within lot 11 or 12.*

Summary of Reasons for Appeal:

1. *The Planning Administrator's Decision regarding the need for Condition No. 19 is based on misinterpretations of the applicable criteria, is not based on substantial evidence, and is not supported by adequate findings.*

Proposed Lots 11 (4.92 acres) and Lot 12 (7.75 acres) (herein collectively the "**Lots**") are affected by substantial jurisdictional wetlands on and around the Lots. A jurisdictional waterway bisects the Lots, and a second jurisdictional waterway is located south of Lot 12. Any proposed southerly roadway connections from 32nd Avenue SE would require crossing multiple wetlands and one or more jurisdictional waterway. Development of such a roadway would require Oregon Department of State Lands permitting and United States Army Corps permitting. No mitigation for wetlands on these lots have been proposed other than for the improvement of the 32nd Avenue SE right of way due to scale and complexity of these wetlands and waterways. Therefore, meeting condition #19 may be impossible since there is no assurance of acquiring the necessary permitting and approvals in the reasonable future.

SRC 803.030(a)(1) provides the standards for modification of the City's general street standards applicable to this request. It states:

- (a) Connectivity. Local streets shall be oriented or connected to existing or planned streets, existing or planned schools, parks, shopping areas, transit stops, and employment centers

located within one-half-mile of the development. Local streets shall be extended to adjoining undeveloped properties for eventual connection with the existing street system. Connections to existing or planned streets and adjoining undeveloped properties for eventual connection with the existing street system shall be provided at no greater than 600-foot intervals unless one or more of the following conditions exist:

- (1) Physical conditions or the topography, including, but not limited to, freeways, railroads, steep slopes, wetlands, or other bodies of water, make a street or public accessway connection impracticable.

Staff explained its reasoning for rejecting the request for alternative street standards by finding “The topography of Lots 11 and 12 and adjacent property to the south **would not prohibit** one additional north-south street connection (**emphasis added**).” Staff misinterprets the standard. Applicant’s burden is not to establish that compliance with the street standards is **prohibited**, but that the physical conditions make the proposed accessway connection “**impractical**.” Staff have misinterpreted the applicable standard. Staff’s findings that the additional accessway would “disperse traffic, it also encourages a mix of travel modes” is not based on any evidence in the record. Staff’s denial of Applicant’s request for alternative street standards, are based on a misinterpretation of the local development code, are inadequate, and are not based on substantial evidence.

2. *The Planning Administrator’s Decision violates ORS 197.195.*

The Planning Administrator’s Decision regarding the need for Condition No. 19 is based on SRC 205.010(d)(4), which requires evidence that the street system in and adjacent to the tentative subdivision plan conforms to the Salem Transportation System Plan. Under ORS 197.195(1), local governments must incorporate all comprehensive plan standards applicable to limited land use decisions (including tentative plat approvals) into their land use regulations via post-acknowledgment amendments before September 29, 1993. The law also provides that, if a local government does not do so, those plan provisions may not be a basis for local government decisions. SRC 205.010(d)(4) purports to incorporate by reference the entire TSP as a development standard. Incorporation by reference of the entire City’s TSP does not satisfy the incorporation standards of ORS 197.195(1). *Oster v. City of Silverton*, LUBA Case No. 2018-103 (May 7, 2019).

3. *The Planning Administrator’s Decision violates ORS 197.307.*

The Decision is a land division in needed for the development of multifamily housing to be located on Lots 3, 4 & 5. A local government “may adopt and apply only clear and objective standards, conditions and procedures regulating the development of housing, including needed housing. ORS 197.307(4)¹. Such standards, conditions, and procedures “[m]ay not have the effect, either

¹ (4) Except as provided in subsection (6) of this section, a local government may adopt and apply only clear and objective standards, conditions and procedures regulating the development of housing, including needed housing.

The standards, conditions and procedures:

- (a) May include, but are not limited to, one or more provisions regulating the density or height of a development.
- (b) May not have the effect, either in themselves or cumulatively, of discouraging needed housing through unreasonable cost or delay.

in themselves or cumulatively, of discouraging needed housing through unreasonable cost or delay.”

Local code provisions are clear and objective if they do not impose “subjective, value-laden analyses that are designed to balance or mitigate impacts.” *Rogue Valley Assoc. of Realtors v. City of Ashland*, 35 Or LUBA 139, 158 (1998). A local code is ambiguous if it is capable of more than one plausible interpretation supporting either approval or denial. *Group B, LLC v. City of Corvallis*, 2015 WL 5184591, at 3-5 (finding a setback standard was ambiguous because it could be interpreted in manner that would either prohibit or allow a proposed development).

The Planning Administrator adopted Condition No. 19 to satisfy SRC 205.010(d)(4), which is an ambiguous standard. The proposed condition of approval will require further approvals from Oregon Department of State Lands and United States Army Corps of Engineers to address impacts on the above-described wetlands and waterways. The development associated with compliance of Condition No. 19 can add additional years of delay and hundreds of thousands of dollars in additional costs (perhaps more). Therefore, Condition No. 19 violates ORS 197.307.

4. *The Planning Administrator’s Decision violates the Takings Clause of the Fifth Amendment of the United States Constitution and Article I, Section 18 of the Oregon Constitution*

Requiring the right of way and future development of a north-south connection is an unconstitutional taking violating the Takings Clause of the Fifth Amendment of the United States Constitution and Article I, Section 18 of the Oregon Constitution.

The City may not condition approval based on an unconstitutional exaction and may not deny an application in lieu of such an approval under *Dolan v. City of Tigard*, 512 US 374, 114 S Ct 2309, 120 L Ed 2d 304 (1994) and *Koontz v. St. Johns River Water Mgmt. Dist.*, 570 US 595, 133 S Ct 2586, 186 L Ed 2d 697 (2013). The City has failed to satisfy its burden of adopting findings that demonstrate that its proposed condition is proportional to Appellant’s impact on the surrounding transportation systems. On appeal, it is the City’s burden of demonstrating compliance with the constitutional requirements. If the City affirms the Decision, it will be subject to claims under ORS 197.796, including mandatory attorney fees to the prevailing party.