

**DEVELOPMENT AGREEMENT
BY AND BETWEEN THE CITY OF OLYMPIA
AND FORTIS DEVELOPMENT LLC, FOR THE DEVELOPMENT OF CERTAIN PROPERTY**

THIS DEVELOPMENT AGREEMENT is effective as of the date of the last authorizing signature affixed hereto. The parties to this Agreement are the City of Olympia, Washington municipal corporation, hereinafter the "City," and Fortis Development, a limited liability company organized under the laws of the State of Washington, hereinafter "Developer."

RECITALS

1. The Washington State Legislature has authorized the execution of a development agreement between a local government and a person having ownership or control of real property within its jurisdiction pursuant to RCW 36.70B.170(1).
2. A development agreement made pursuant to that authority must set forth the development standards and other provisions that shall apply to, govern, and vest the development, use, and mitigation of the development of the real property for the duration specified in the agreement.
3. The City and the Developer recognize development agreements must be consistent with the applicable development regulations adopted by a local government planning under chapter 36.70A RCW.
4. This Development Agreement, hereinafter the "Development Agreement"), which will be by and between the City of Olympia and the Developer, (relates to the development known as Martin Way Residential, which consists of two tax parcels located at 3333 Martin Way East (hereinafter the "Property").

Now, therefore, the parties hereto agree as follows:

General Provisions

Section 1: *The Project.* The Project is the development and use of the Property, consisting of approximately 6.71 acres (tax parcels 41700100000 and 41700100001) in the City of Olympia. The proposal describes the Project as a multi-use, residential/commercial project. It is anticipated that the Developer will be seeking

approval of a land use development application and associated building and other permits upon execution of this development agreement.

Section 2: *The Subject Property.* The Project site is legally described in Exhibit A, attached hereto and incorporated herein by this reference.

Section 3: *Definitions.* As used in this Development Agreement, the following terms, phrases and words shall have the meanings and be interpreted as set forth in this Section.

“Adopting Ordinance” means the Ordinance which approves this Development Agreement, pursuant to RCW 36.70B.200.

“Certificate of occupancy” means either a certificate issued after inspections by the City authorizing a person(s) in possession of property to dwell or otherwise use a specified building or dwelling unit, or the final inspection if a formal certificate is not issued.

“Council” means the duly elected legislative body governing the City of Olympia.

“Director” means the City’s Community Planning and Development Director.

“Effective Date” means the effective date of the Adopting Ordinance.

“EDDS” means the Engineering Design and Development Standards” adopted by the City of Olympia. See OMC 12.02.020.

“Existing Land Use Regulations” means the ordinances adopted by the City Council of Olympia in effect on the Effective Date, including the adopting ordinances that govern the permitted uses of land, the density and intensity of use, and the design, improvement, construction standards, and specifications applicable to the development of the Subject Property, including, but not limited to the Comprehensive Plan, the City’s Official Zoning Map and development standards, SEPA, Concurrency Ordinance, the EDDS, and all other ordinances, codes, rules, and regulations of the City establishing standards in relation to the development of the subject property; and the division of land, whether through the subdivision process, the binding site plan process, or otherwise. This does not include any building or fire code that is state-mandated (See RCW 19.27.031); any other regulations resulting from superseding state or federal law; impact fees, mitigation fees, or any other fees or charges, except as specifically described in this agreement.

“Landowner” is the party who has acquired any portion of the Subject Property from the Developer who, unless otherwise released as provided in this Agreement, shall be subject to the applicable provisions of this Agreement. The “Developer” is Fortis Development, LLC.

“Project” means the anticipated development of the Subject Property, as specified in Section 1 and as provided for in all associated permits/approvals, and all incorporated exhibits.

Section 4: *Exhibits.* Exhibits to this Agreement are as follows:

Exhibit A – Legal description of the Subject Property.

Exhibit B – Illustration showing Development Phases, including design of improvements consistent with current requirements of the City. This development agreement does not certify or pre- approve exhibit B as a binding site plan or for any other land use review or permits.

Exhibits C through G – Drawings showing cross-sections of improvements to the Martin Way East right of way adjacent to the Project, which will be constructed by the Developer as described in this development agreement and conveyed to the City.

Section 5: *Parties to Development Agreement.* The parties to this Agreement are:

The “City” is the City of Olympia, the mailing address of which is P. O. Box 1967, Olympia, Washington 98507-1967.

As indicated above, the “Developer” or Owner is a private enterprise which owns the Subject Property, and whose mailing address is 211 Dexter Avenue North, Seattle, WA 98109.

The “Landowner.” From time to time, as provided in this Agreement, the Developer may sell or otherwise lawfully dispose of a portion of the Subject Property to a Landowner who, unless otherwise released, shall be subject to the applicable provisions of this Agreement related to such portion of the Subject Property.

Section 6: *Project is a Private Undertaking.* It is agreed among the parties that the Project is a private development and that the City has no interest therein except as authorized in the exercise of its governmental functions.

Section 7: *Term of Agreement.* This Agreement shall commence upon the effective date of the Adopting Ordinance approving this Agreement, and shall continue in force for a period of 10 years, unless extended or terminated as provided herein. Following the expiration of the term or any extension thereof, or if sooner terminated, this Agreement shall have no force and effect, subject however, to post-termination obligations of the Developer or Landowner.

Section 8: *Vested Rights of Developer.* During the term of this Agreement, unless sooner terminated in accordance with the terms hereof, in developing the Subject Property consistent with the Project described herein, Developer is assured, and the City agrees, that the development rights, obligations, terms and conditions specified in this Agreement, are fully vested in the Developer under the existing land use regulations and may not be changed or modified by the City, except as may be expressly permitted by, and in accordance with, the terms and conditions of this Agreement, including the Exhibits hereto, or as expressly consented thereto by the Developer. This does not include any building or fire code that is state-mandated (See RCW 19.27.031); any other regulations resulting from superseding state or federal law impact fees; mitigation fees, or any other fees or charges, except as specifically described in this agreement.

Section 9: *Permitted Uses, Development Standards, & Phasing.*

9.1 Whether developed in one phase or a series of phases as anticipated by Section 13, the following uses and standards shall be those in effect as of the date of this Agreement, whether set forth in this Agreement, or in the permits and approvals, if any, identified herein, and all exhibits incorporated herein: (a) the permitted uses, (b) the density and intensity of use, (c) the maximum height and size of proposed buildings, (d) provisions for reservation and dedication of land, (e) as noted above, the existing Land Use Regulations relating to among other items, the construction, installation and extension of public improvements, (f) the EDDS, (g) critical areas regulations, and (h) development guidelines and standards for and applicable to the development of the Subject Property. This does not include any building or fire code that is state-mandated (See RCW 19.27.031); any other regulations resulting from superseding state or federal law impact fees; mitigation fees, or any other fees or charges, except as specifically described in this agreement.

9.2 It is the intent of this Agreement that the Developer shall submit application to the City for a Boundary Line Adjustment (BLA) to segregate Phase 1 and Phase 2 as shown in Exhibit B. The BLA application will be reviewed by the City in accordance with the provisions of the City's code and under the existing Land Use Regulations.

Section 10: *Modifications.* Any modifications from the approved permits or the exhibits attached hereto requested by Developer may be approved in accordance with the provisions of the City's code and under the existing Land Use Regulations, and shall not require an amendment to this Agreement.

Section 11: *Financing of Public Facilities.*

Developer acknowledges and agrees that it shall participate in the funding of its pro-rata share of the costs of public improvements in accordance with the city code and under the existing Land Use Regulations.

Section 12: *Land Use Fees and Impact Fees.*

12.1 Land use fees and impact fees adopted by the City by ordinance as of the Effective Date of this Agreement may be increased by the City, and applicable to permits and approvals for the Subject Property, as long as such fees apply to similar applications and projects in the City. All impact fees shall be paid as set forth in the approved permit or approval, or as addressed in the Olympia Municipal Code.

12.2 Notwithstanding the provisions of Section 12.1, the following credits shall be applied by the City in calculating transportation impact fees, general facility charges, and capacity development charges applicable to permits and approvals on the Subject Property received by the City during the term of this agreement. The following credits are calculated based on impacts of previously existing development on the Subject Property prior to demolition accomplished according to Section 14 of this agreement:

- a. Transportation Impact Fees – future development permits and approvals on the Subject Property shall be credited with 975 daily vehicle trips or 77 p.m. peak hour vehicle trips.
- b. General Facilities Charges and Capacity Development Charges - future development permits and approvals on the Subject Property shall be credited with 48.237 Equivalent Residential Units for sanitary sewer service, and 1.5-inch water meter capacity for potable water service.

12.3 During the term of this agreement, the credits defined in Section 12.2 shall be applied by the City first to future development permits and approvals on Phase 1. Any remaining portion of the credits that are not applied to Phase 1 shall be applied to Phase 2. The credits defined in Section 12.2 shall expire upon termination of this agreement, and are not applicable to any future development permit applications received by the City after termination of this agreement.

Section 13: *Phasing of Development.* The parties acknowledge that, because the Development will be phased, certain improvements associated with the Project must be available to all phases of the Project, in order to address health, safety and welfare of the residents. Therefore, the parties agree that the improvements associated with the Project shall be constructed and developed according to this Agreement and as set forth in its Exhibits.

Section 14: *Demolition of Existing Buildings.* Prior to or immediately following the effective date of this agreement, the Developer will submit a permit application for demolition of all existing buildings on both Phase 1 and Phase 2 of the site. All buildings shall be demolished within 90 days of the effective date of this agreement.

Section 15: *Dedication and Improvement of Public Lands.* The Developer shall dedicate all public lands required in the permits/approvals. Rights-Of-Way shall be improved and dedicated to the City as required in the permits/approvals for each phase of the development, as follows:

Phase 1 :

- Provide full frontage improvements on Martin Way across Phase 1 as required by the EDDS to include a 5-lane arterial cross-section consistent with Olympia Standard Plan 4-2B, which includes widening the existing 4-lane section to 5 lanes, two-way left-turn lane, curb, 10 foot planter strip with street trees, 8 foot sidewalk and street lighting.
- The Martin Way frontage west of Phase 1 and adjacent to the wetland will be designed to a 4-lane arterial cross-section per EDDS Standard Plan 4-2B. As part of its land use development application, the developer will submit a request to the City Engineer consistent with Page 1 of Exhibits C and D for deviation from the full frontage requirements to avoid impacts to the adjacent wetlands. Such deviation approval may include reducing or eliminating the planter strip if it is demonstrated that the sidewalk and planter strip cannot fit within the existing fill-section prism and mitigating street lighting if wetland impacts are identified.

The frontage improvement design will account for a lane transition to a future westbound left-turn lane (5-lane section) on Martin Way at Ensign Road.

- Construct a temporary sidewalk across the Phase 2 frontage linking Phase 1 sidewalk to the existing sidewalk to the east as shown in Exhibit G. The temporary sidewalk shall be 8 feet wide and shall be separated from the travel lanes (including a 5-foot bicycle lane) by a temporary curb reveal as shown in Exhibit G.
- There will be one vehicular driveway access from Martin Way for Phase 1. All other vehicular driveway access points from Martin Way, including those currently accessing the Phase 2 lot, will be closed permanently.

Phase 2

- Construct full frontage improvements across Phase 2 frontage east of Phase 1 as shown on Page 2 of Exhibit F. Phase 2 shall be consistent with Phase 1 improvements (5-lane arterial).
- Extend Stoll Road to Martin Way and construct as a 2-lane Major Commercial Collector per Olympia Standard Plan 4-2E with bulb-outs at the intersection of Martin Way and Stoll Road.
- The westbound approach on Martin Way to Stoll Road extended will be striped with a left-turn lane (5-lane section). Martin Way will be re-striped east of Stoll Road to accommodate a minimum 100-foot left-turn pocket and appropriate taper lengths that transition for a four to five-lane section.
- The developer may submit a request to the City Engineer for a deviation from these standards at the time of submittal of a land use application for Phase 2 land development.

Other Requirements

- No certificate of occupancy shall be issued for any building until all frontage improvements are installed by the developer in accordance with this Development Agreement and accepted by the City. Issuance of a certificate of occupancy for any building and/or improvements to the property during Phase 1 shall not rely upon the undertaking or completion of Phase 2 frontage improvements.

Section 16: Default. Subject to extensions of time by mutual consent in writing, failure or delay by either party or Landowner not released from this Agreement to perform any term or provision of this Agreement shall constitute a default. In the event of alleged default or breach of any terms or conditions of this Agreement, the party alleging such default or breach shall give the other party or Landowner not less than thirty (30) days notice in writing, specifying the nature of the alleged default and the manner in which said default may be cured. During this thirty (30) day period, the party or Landowner charged shall not be considered in default for purposes of termination or institution of legal proceedings.

After notice and expiration of the thirty (30) day period, if such default has not been cured or is not being diligently cured in the manner set forth in the notice, the other party or Landowner to this Agreement may, at its option, institute legal proceedings pursuant to this Agreement. In addition, the City may decide to file an action to enforce the City's Codes, and to obtain penalties and costs as provided in the Olympia Municipal Code or state law for violations of this Development Agreement and the Code.

Section 17: Waiver of Local Improvement District (LID). Developer, property owner and all of their successors, heirs, or assigns of any type or character to the property waive objection, waive protest and agree to support the imposition on all or part of the property subject to this agreement to construct the improvements listed in this agreement including frontage improvements and extension of Stoll Road if the public improvements are not constructed as set forth in this agreement. This section survives the term of this agreement and is perpetual.

After full completion of the public improvements and applicable bonds, the Public Works Director or designee is authorized to acknowledge that the public improvements have been fully constructed and have satisfactorily survived the time required by applicable bonds and therefore this waiver of LID in section 17 is prospectively no longer in effect after the acknowledgment by the Public Works Director.

Section 18. Termination. This Agreement shall expire and/or terminate as provided below:

18.1. This Agreement shall expire and be of no further force and effect if the development contemplated in this Agreement and all of the permits and/or approvals issued by the City for such development are not substantially underway prior to

expiration of such permits and/or approvals. Nothing in this Agreement shall extend the expiration date of any permit or approval issued by the City for any development.

18.2. This Agreement shall expire and be of no further force and effect if the Developer does not construct the Project substantially as contemplated by the design documents identified in this Agreement, and submits applications for development of the Property that are inconsistent with such permits, approvals and with this agreement.

18.3. This Agreement shall terminate upon the expiration of the term identified in Section 7 or when the Subject Property has been fully developed, whichever first occurs, and all of the Developer's obligations in connection therewith are satisfied as determined by the City. Upon termination of this Agreement, the City shall record a notice of such termination in a form satisfactory to the City Attorney that the Agreement has been terminated.

18.4. If not earlier terminated, it shall terminate as provided upon the passage of the time periods set forth in Section 7.

Section 19: *Effect upon Termination on Developer Obligations.* Termination of this Agreement as to the Developer of the Subject Property or any portion thereof shall not affect any of the Developer's obligations to comply with the City Comprehensive Plan and the terms and conditions or any applicable zoning code(s) or subdivision map or other land use entitlements approved with respect to the Subject Property, any other conditions of any other development specified in the Agreement to continue after the termination of this Agreement or obligations to pay assessments, liens, fees or taxes.

Section 20: *Effects of Termination on City.* Upon any termination of this Agreement as to the Developer of the Subject Property, or any portion thereof, the entitlements, conditions of development, limitations on fees and all other terms and conditions of this Agreement shall no longer be vested hereby with respect to the property affected by such termination.

Section 21: *Assignment and Assumption.* The Developer shall have the right to sell, assign, or transfer this Agreement with all their rights, title, and interests therein to any person, firm or corporation at any time during the term of this Agreement.

Section 22: *Covenants Running with the Land.* The conditions and covenants set forth in this Agreement and incorporated herein by the Exhibits shall run with the land and the benefits and burdens shall bind and inure to the benefit of the parties. The Developer, Landowner and every purchaser, assignee or transferee of an interest in the Subject Property, or any portion thereof, shall be obligated and bound by the terms and conditions of this Agreement, and shall be the beneficiary thereof and a party thereto, but only with respect to the Subject Property, or such portion thereof, sold, assigned or transferred to it. Any such purchaser, assignee or transferee shall observe and fully perform all of the duties and obligations of a Developer contained in this Agreement, as such duties and obligations pertain to the portion of the Subject Property sold, assigned or transferred to it.

Section 23: *Amendment to Agreement; Effect of Agreement on Future Actions.*

23.1. This Agreement may be amended by mutual consent of all of the parties, provided that any such amendment shall follow the process established by law for the adoption of a development agreement.

23.2. Nothing in this Agreement shall prevent the City Council from making any amendment to its Comprehensive Plan, Zoning Code, Official Zoning Map or development regulations affecting the Subject Property during term of this agreement to the extent required by a serious threat to public health and safety, or as a result of superseding state or federal law.

23.3. So long as mutually agreed upon, nothing in this Development Agreement shall prevent the City Council from making any amendments of any type to the Comprehensive Plan, Zoning Code, Official Zoning Map or development regulations relating to the Subject Property upon bases other than those set out in 23.2. In the absence of such mutual agreement by the Parties, any such amendment may not become effective earlier than the termination date of this agreement.

Section 24: *Releases.* Developer, and any subsequent Landowner, may free itself from further obligations relating to the sold, assigned, or transferred property, provided that the buyer, assignee or transferee expressly assumes the obligations under this Agreement as provided herein.

Section 25: *Notices.* Notices, demands, correspondence to the City and Developer shall be sufficiently given if dispatched by pre-paid first-class mail to the addresses of the parties as designated in Section 5. Notice to the City shall be to the attention of both the City Manager and the Director of Community Planning and

Development. Notices to subsequent Landowners shall be required to be given by the City only for those Landowners who have given the City written notice of their address for such notice. The parties hereto may, from time to time, advise the other of new addresses for such notices, demands or correspondence.

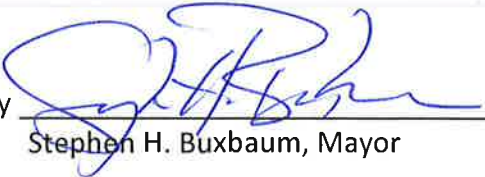
Section 26: *Applicable Law and Attorneys' Fees.* This Agreement shall be construed and enforced in accordance with the laws of the State of Washington. Venue for any action shall lie in Thurston Superior Court or the U.S. District Court for Western Washington.

Section 27: *Third Party Legal Challenge.* In the event any legal action or special proceeding is commenced by any person or entity other than a party or a Landowner to challenge this Agreement or any provision herein, the City and the Developer will each bear their own cost of defense and all expenses incurred in the defense of such actions, including but not limited to, attorneys' fees and expenses of litigation, and damages awarded to the prevailing party or parties in such litigation.

Section 28: *Specific Performance.* The parties specifically agree that damages are not an adequate remedy for breach of this Agreement, and that the parties are entitled to compel specific performance of all material terms of this Development Agreement by any party in default hereof.

Section 29: *Severability.* If any phrase, provision or section of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, or if any provision of this Agreement is rendered invalid or unenforceable according to the terms of any statute of the State of Washington which became effective after the effective date of the ordinance adopting this Development Agreement, and either party in good faith determines that such provision or provisions are material to its entering into this Agreement, that party may elect to terminate this Agreement as to all of its obligations remaining unperformed.

CITY OF OLYMPIA:


By 
Stephen H. Buxbaum, Mayor

Date 9/15/15

ATTEST:

By 
Jane Kirkemo, City Clerk

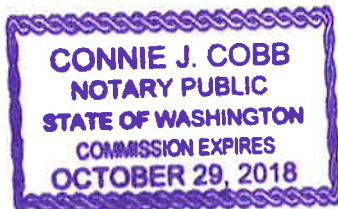
APPROVED AS TO FORM:

By 
Darren Nienaber, Deputy City Attorney

STATE OF WASHINGTON)
) ss.
COUNTY OF THURSTON)

On the 15th day of September 2015, before me, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared STEPHEN H. BUXBAUM, to me known to be the Mayor of the City of Olympia, a municipal corporation, who executed the foregoing instrument and acknowledged the said instrument to be the free and voluntary act and deed of said municipal corporation for the uses and purposes therein mentioned and on oath states that he is authorized to execute the said instrument.

WITNESS my hand and official seal the day and year first above written.





Signature
Print Name: Connie J. Cobb
NOTARY PUBLIC in and for the State of
Washington, residing at Olympia
My commission expires 10/29/18

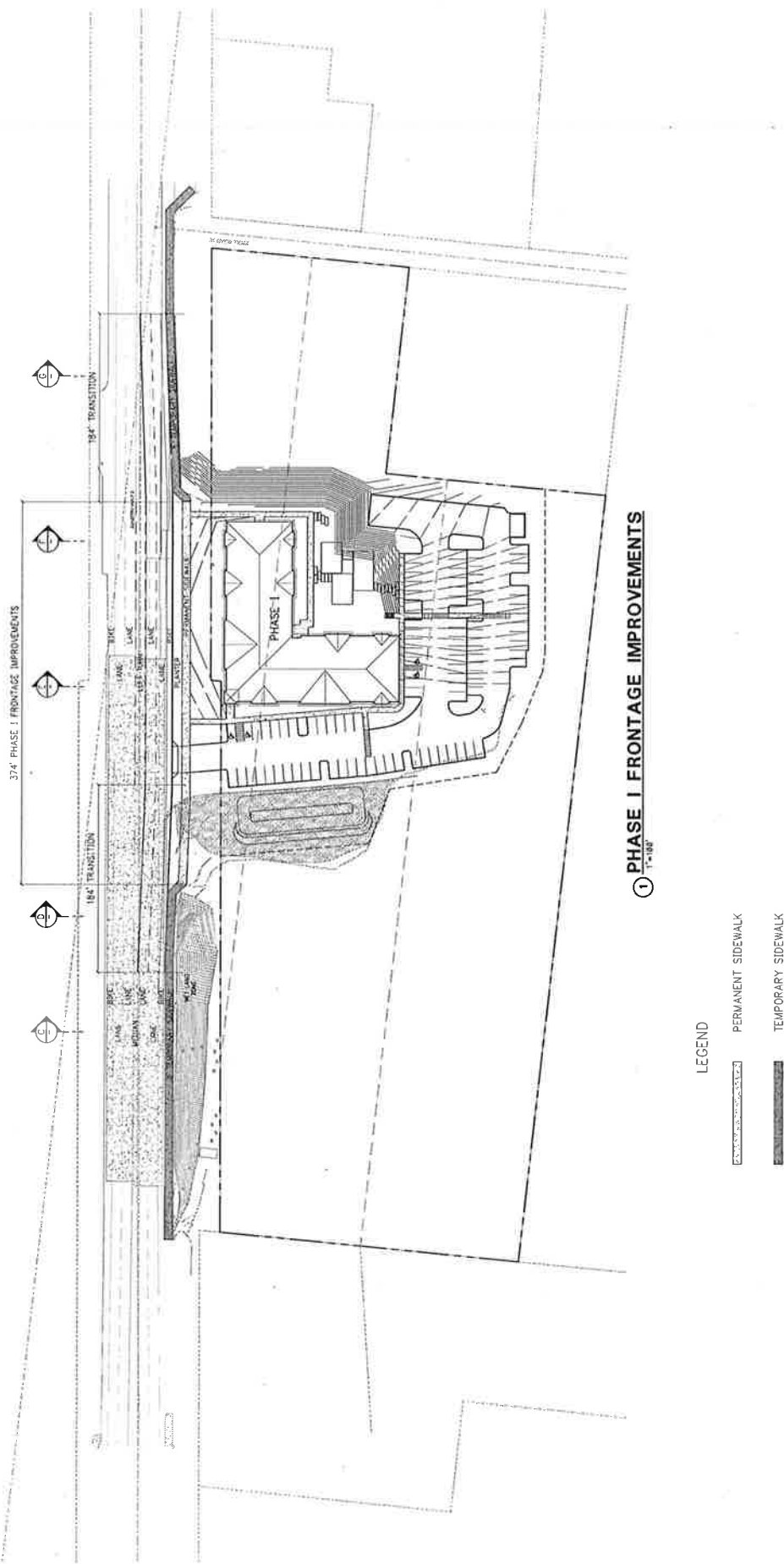
EXHIBIT A

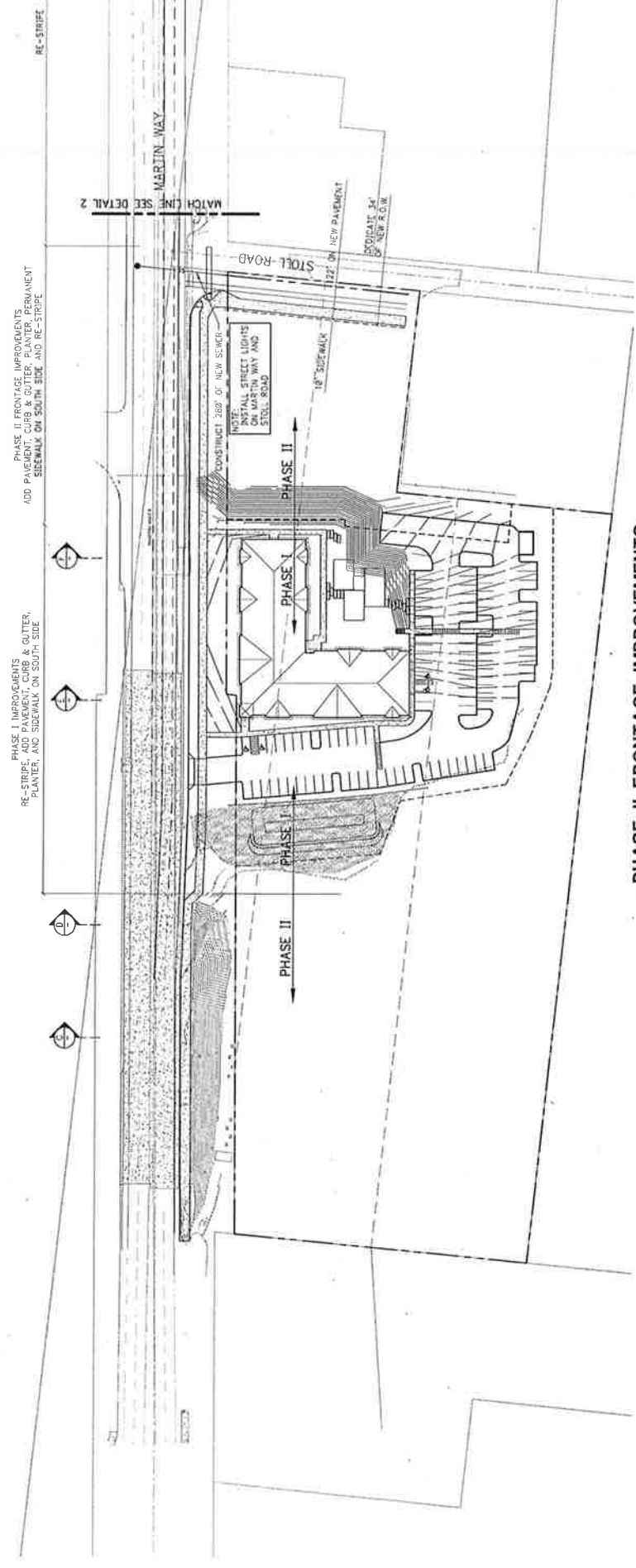
Legal Description

That part of Tracts 1, 2, and 3, College City Berry Tracts, as recorded in Volume 9 of Plats, page 7, lying Southerly of Martin Way as deeded in Instrument recorded January 3, 1934 under Auditor's File No. 254563.

EXCEPT THEREFROM the East 203 feet of Tract 3 and EXCEPT the South 61.163 feet of the East 203 feet of said Tract 2.

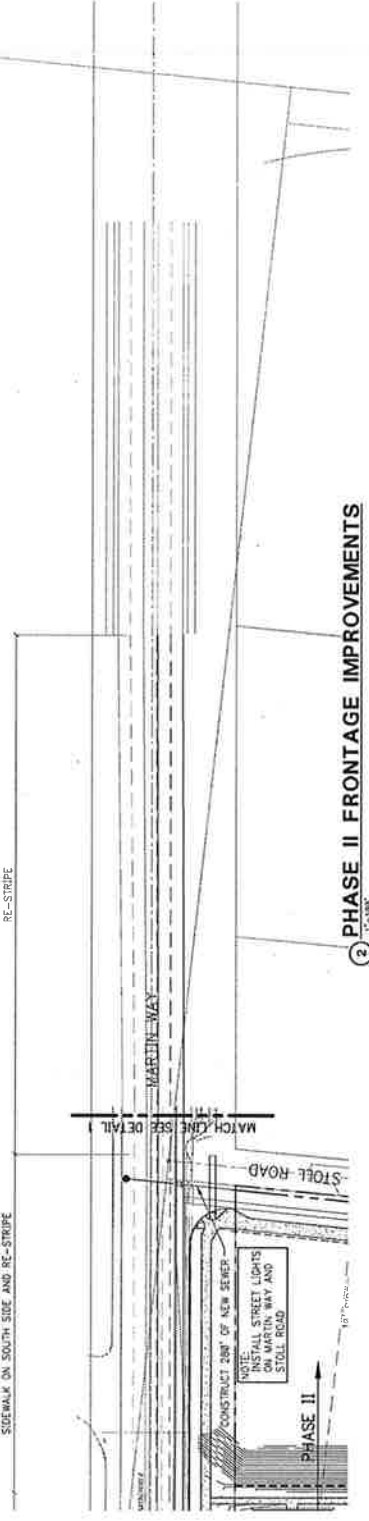
In Thurston County, Washington.



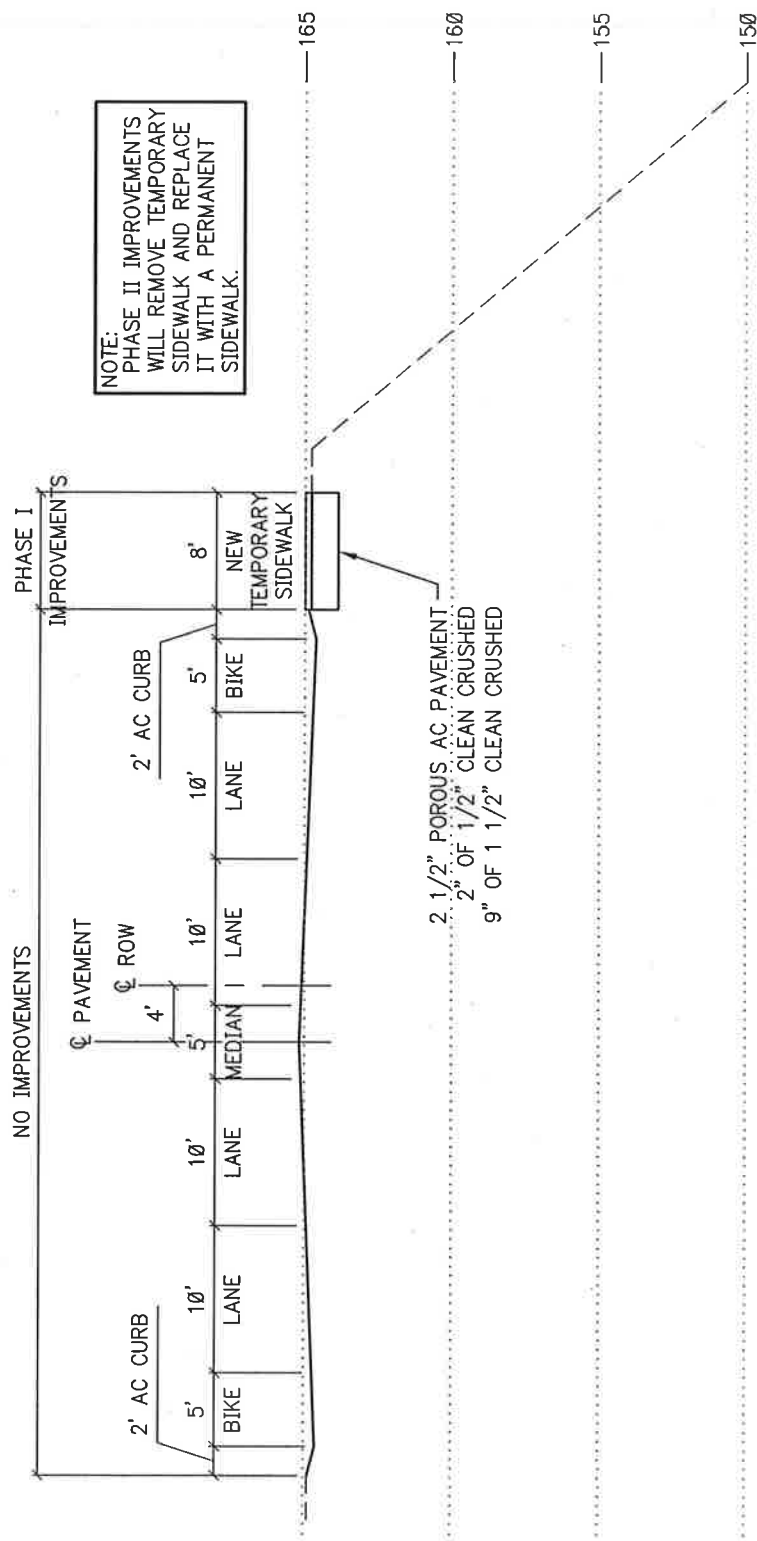


① PHASE II FRONTAGE IMPROVEMENTS
1"=100'
RE-STRIPE

PHASE II FRONTAGE IMPROVEMENTS
ADD PAVEMENT, CURB & GUTTER, PLANTER, PERMANENT
SIDEWALK ON SOUTH SIDE AND RE-STRIPE



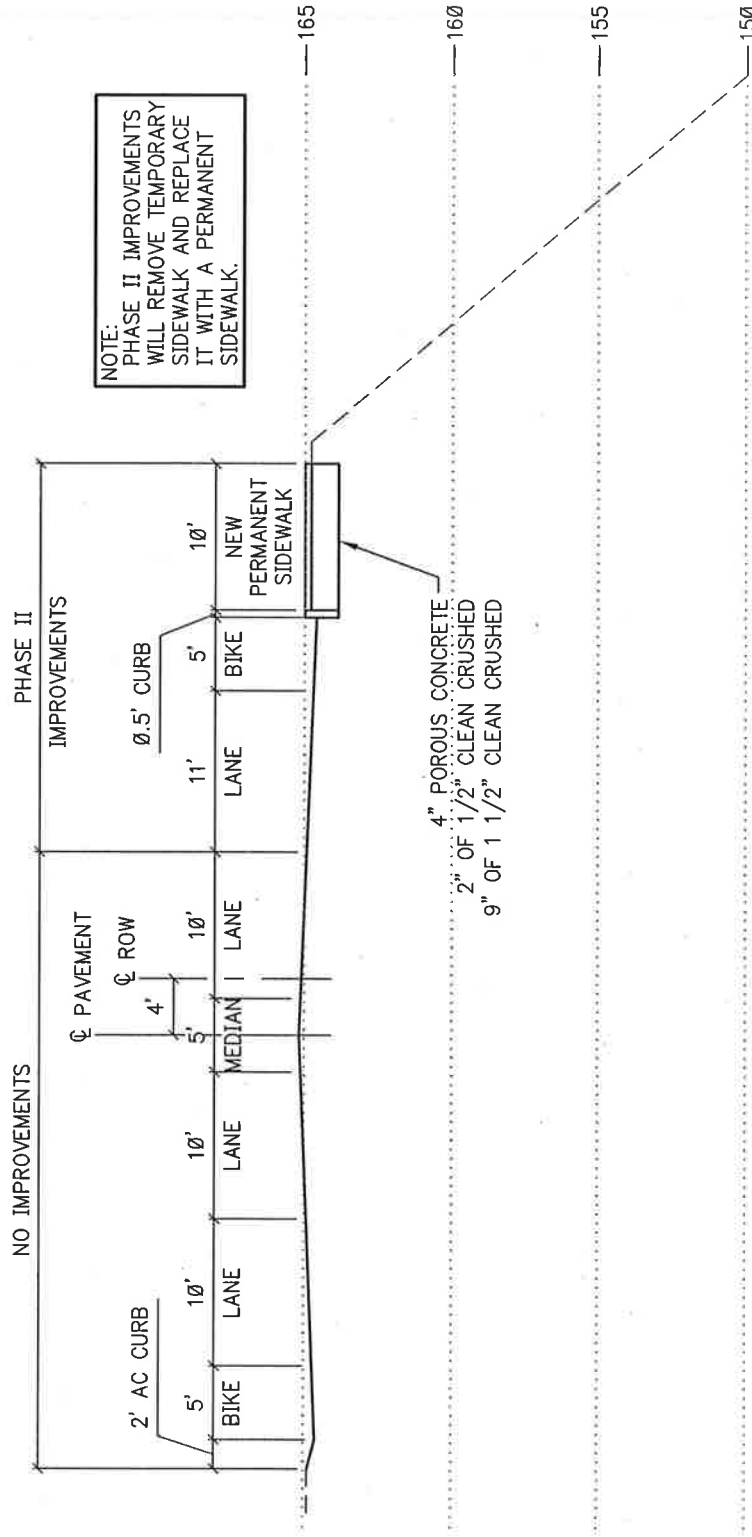
② PHASE II FRONTAGE IMPROVEMENTS
1"=100'



ROADWAY SECTION PHASE I

SCALE: HORIZ. 1"=10' VERT. 1"=5'
APPROX STA. 2+00

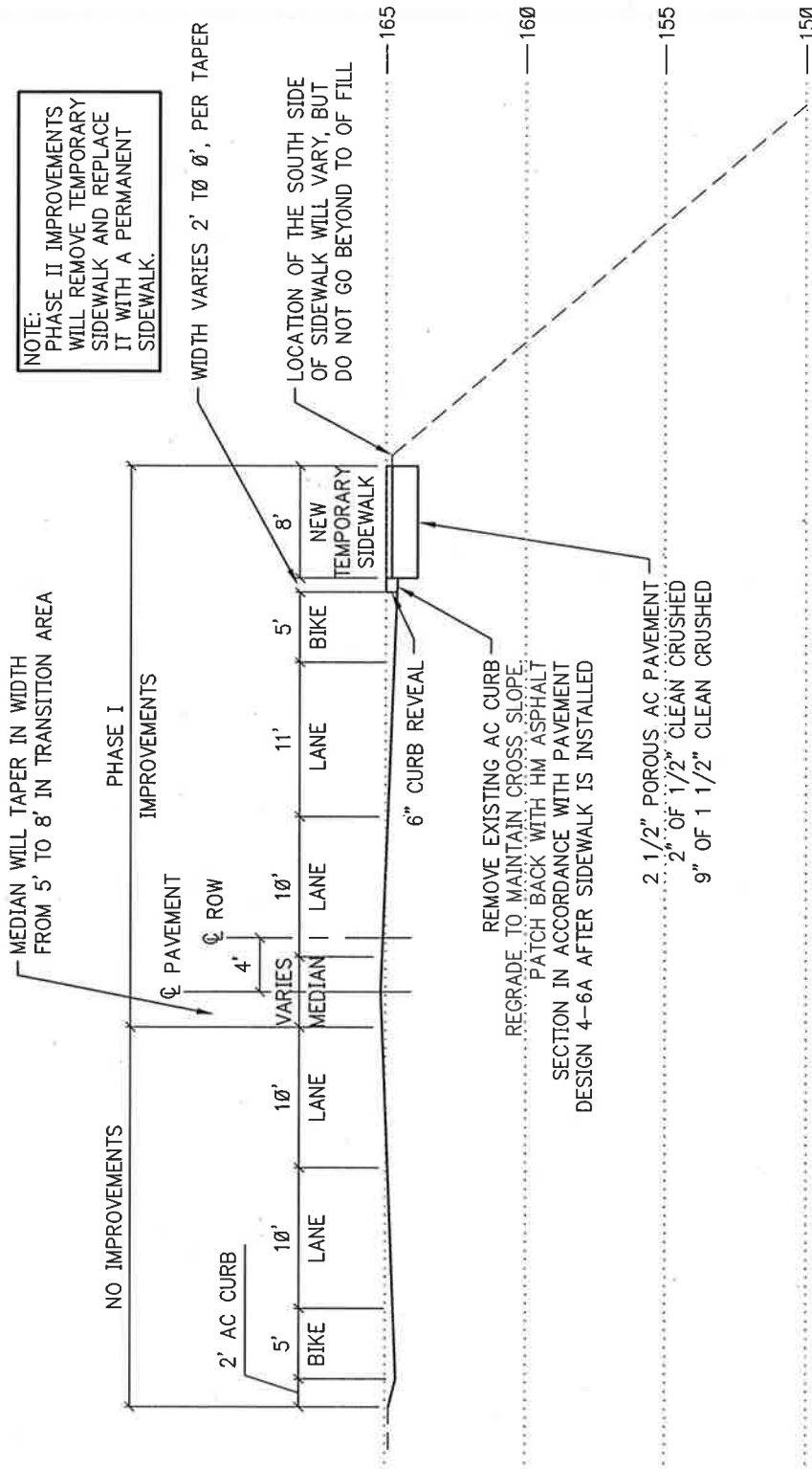
MARTIN WAY RESIDENTIAL
MAY 2015



ROADWAY SECTION PHASE II

SCALE: HORIZ. 1"=10' VERT. 1"=5'
APPROX STA. 2+00

MARTIN WAY RESIDENTIAL
MAY 2015



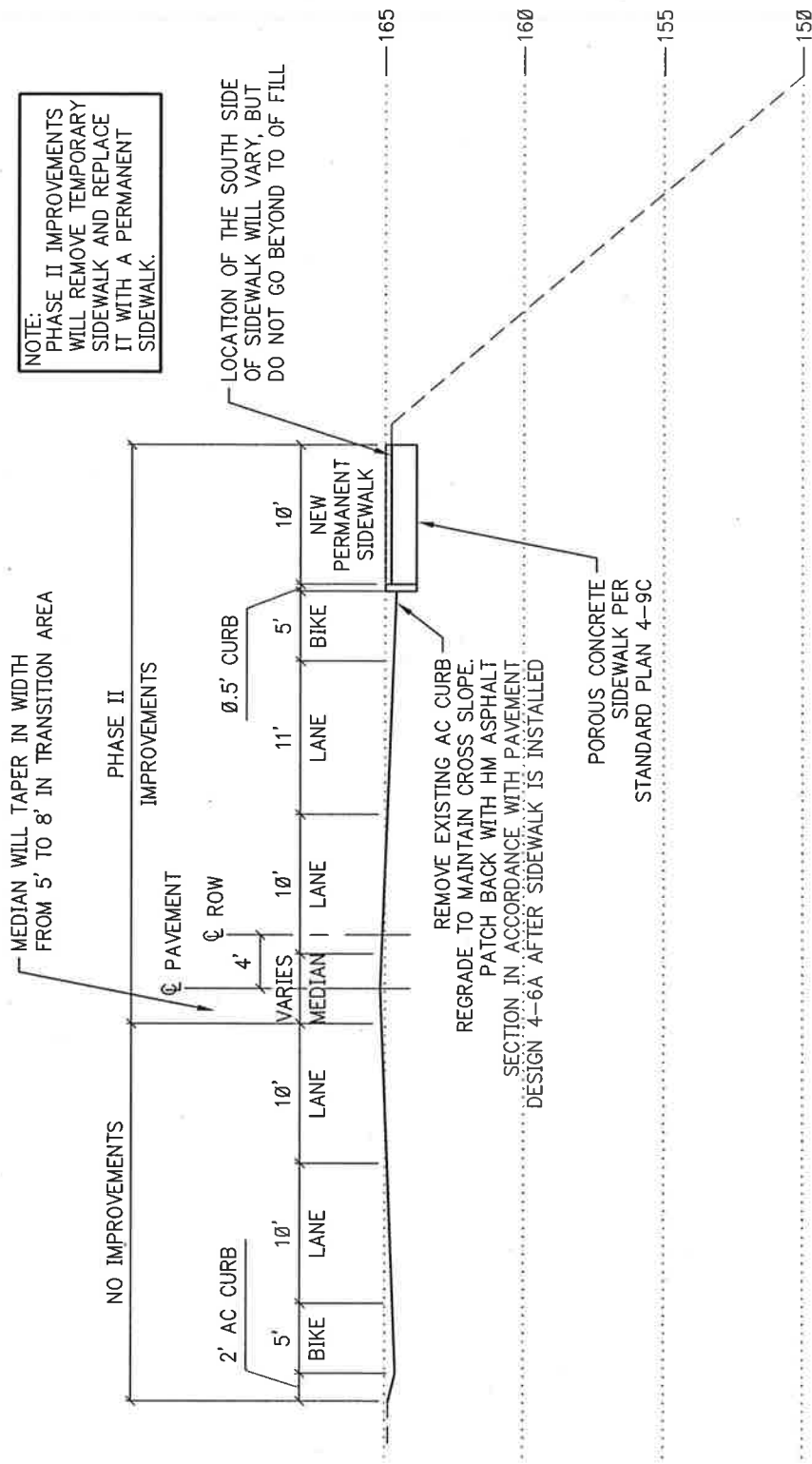
D ROADWAY SECTION PHASE I

SCALE: HORIZ. 1"=10' VERT. 1"=5'

TAPER SECTION STA. 2+71 TO STA. 3+33

MARTIN WAY RESIDENTIAL
MAY 2015

EXHIBIT D
PAGE 1



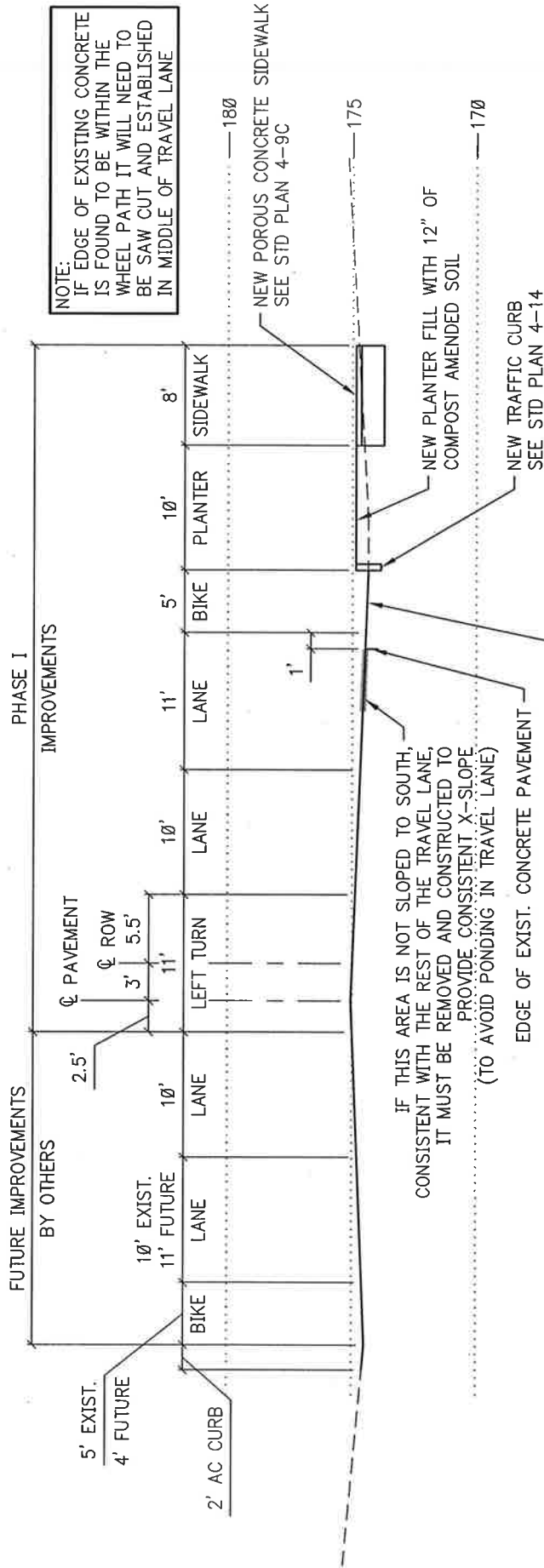
D ROADWAY SECTION PHASE II

SCALE: HORIZ. 1"=10' VERT. 1"=5'

TAPER SECTION STA. 2+71 TO STA. 3+33

MARTIN WAY RESIDENTIAL
MAY 2015

EXHIBIT D
PAGE 2



NOTE:
IF EDGE OF EXISTING CONCRETE IS FOUND TO BE WITHIN THE WHEEL PATH IT WILL NEED TO BE SAW CUT AND ESTABLISHED IN MIDDLE OF TRAVEL LANE

NOTE:
PHASE I IMPROVEMENTS INCLUDE STREET LIGHTING AND STREET TREES
NO PHASE II IMPROVEMENTS IN THIS AREA

ROADWAY SECTION PHASE I

SCALE: HORIZ. 1"=10' VERT. 1"=5'
APPROX STA. 5+50

MARTIN WAY RESIDENTIAL
MAY 2015

EXHIBIT E
PAGE 1

