

REQUEST FOR CITY COUNCIL CONSIDERATION

Meeting Date: August 15, 2022

Agenda Item: 6B	Prepared by: Chris Noury, City Attorney
Agenda Section: Unfinished Business: Ordinance. Second Reading	Date: August 8, 2022
Subject: An ordinance on second reading regarding the Separate and Independent Amendment to the Parkway PDD Development Agreement regarding the Village at Waterway Hills	Division: Legal

Improvements to Water Tower Road: The developer shall extend the paved section of Water Tower Road, within the existing public ROW for Water Tower Road, to accommodate turning movements (acceleration and deceleration lanes) concurrently with the sitework improvements for the single-family neighborhood and the multi-family neighborhood. The improvements shall be built or bonded at or prior to the issuance of the CO for the twentieth building within the single-family neighborhood OR at or prior to the issuance of a CO for the second building with the multi-family section of the amended site plan.

Riparian Trailhead Site: Within 90 days of the effective date of the Agreement, the developer shall convey to the City a parcel comprised of approximately 2.41 acres (80% of which shall be upland acres) as a trailhead for the riparian buffer.

Beach Access Parking Fee: The developer shall pay a fee in the amount of \$1,100 for each single family and multi-family dwelling unit to be paid at the time of issuance of a building permit.

Park Enhancement Fee: The developer shall pay a fee in the amount of \$300 for each multi-family unit to be paid at the time of issuance of a building permit for a total of \$88,000. (The park enhancement fee will not apply to any single-family units because the landowner has agreed to convey 2 acres for a trail head connected to the East Coast Greenway as part of the approval for the Palmetto Coast Industrial Park.)

Amenity Centers: Construction for the onsite amenity center for the multi-family section of the development will begin prior to the issuance of the 5th multi-family building permit and completed prior to the issuance of the building permit for the 7th multi-family building.

Construction of the amenity center for the single-family section of the development shall begin prior to the issuance of building permit for the 140th single-family dwelling unit and completed prior to the issuance of a building permit for the 160th single-family dwelling unit.

Recommended Action:

Approve or deny the ordinance on second reading

Reviewed by City Manager		Reviewed by City Attorney
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Council Action:
Motion By _____ 2nd By _____ To _____

AN ORDINANCE

AN ORDINANCE TO APPROVE THE SEPARATE AND INDEPENDENT AMENDMENT TO THE MASTER DEVELOPMENT AGREEMENT FOR THE PARKWAY PDD REGARDING THE HENRY ROAD TRACT AND THE APACHE TRACT (IDENTIFIED AS THE VILLAGE AT WATERWAY HILLS) AND TO AUTHORIZE THE CITY MANAGER TO SIGN THE DOCUMENT ON BEHALF OF THE CITY OF NORTH MYRTLE BEACH.

WHEREAS, the City of North Myrtle Beach and Henry Road West, LLC and Apache Properties, LLC desire to enter into the Separate and Independent Amendment to the Master Development Agreement regarding the Henry Road Tract and the Apache Tract within the Parkway PDD; and

WHEREAS, that certain document identified as the Separate and Independent Amendment to the Master Development Agreement (The Village at Waterway Hills), as agreed upon by the Parties, has been prepared and is presented to City Council for approval.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL FOR THE CITY OF NORTH MYRTLE BEACH, SOUTH CAROLINA:

Section 1: The document identified as the Separate and Independent Amendment to the Master Development Agreement (The Village at Waterway Hills) is hereby approved.

Section 2: The City Manager is authorized to sign the above referenced document on behalf of the City of North Myrtle Beach.

Section 3: This ordinance shall become effective upon the date of passage.

DONE, RATIFIED AND PASSED THIS _____ DAY OF _____, 2022.

ATTEST:

Mayor Marilyn Hatley

City Clerk

APPROVED AS TO FORM:

City Attorney

FIRST READING: 6.20.2022

SECOND READING: 8.15.2022

REVIEWED:

City Manager

ORDINANCE: 22-34

STATE OF SOUTH CAROLINA)
)
)
COUNTY OF HORRY)

**SEPARATE AND INDEPENDENT
AMENDMENT TO THE MASTER
DEVELOPMENT AGREEMENT
(The Village at Waterway Hills)**

THIS SEPARATE AND INDEPENDENT AMENDMENT TO THE MASTER DEVELOPMENT AGREEMENT (this "Agreement") entered into by and among the **CITY OF NORTH MYRTLE BEACH, SOUTH CAROLINA** (the "City"), a South Carolina municipal corporation, **HENRY ROAD WEST, LLC**, a South Carolina limited liability company ("Henry Road") **APACHE PROPERTIES, LLC**, a South Carolina limited liability company ("Apache") and **THIRD LAKE DEVELOPMENT, LLC**, Delaware limited liability company ("Developer").

RECITALS:

WHEREAS, the City, Henry Road, Reach 9, LLC, a South Carolina limited liability company ("Reach 9"), Apache Properties, LLC, a South Carolina limited liability company ("Apache"), RW Hills, LLC, a South Carolina limited liability company ("RW"), CW Hills, LLC, a South Carolina limited liability company ("CW"), JW Holiday Family, LLC, a South Carolina limited liability company ("Holiday"), Myrtle Beach National Company ("MB National"), Seashore Farms, LLC, a South Carolina limited liability company ("Seashore") and LL Chestnut, LLC, a purported South Carolina limited liability company ("LL Chestnut") entered into that certain Master Development Agreement, dated January 9, 2009, recorded January 20, 2009 in Deed Book 3382 at Page 3357, and re-recorded in Deed Book 3383 at Page 1662 to include signature pages, all in the public records of Horry County, South Carolina (the "Master Development Agreement"); and

WHEREAS, the Master Development Agreement as amended, by the City and the then current owners of all of the Land which is subject to the Master Development Agreement, by that certain First Amendment to Master Development Agreement, dated March 23, 2020 and effective December 16, 2019, recorded March 24, 2020 in Deed Book 4298 at Page 2823 to include all signature pages, in the public records of Horry County, South Carolina (the "First Master Amendment"), which First Master Amendment provided, among other things, for the negotiation by and between the City and any of the then current Landowners, of amendments to certain public benefits agreed to by the City and the Landowners, at the time of any proposed amendment to the Master Site Plan, or the PDD, by and individual Landowner, which amendments would be separate and independent of any other amendments, and applicable only to the portions of the Land owned by the Landowner, or its successors and assigns, proposing such amendment to the Master Site Plan or the PDD, which separate and independent amendment would be evidenced by a written amendment; and

WHEREAS, the Master Development Agreement and the First Master Amendment are hereinafter sometimes collectively referred to as the "Development Agreement"; and

WHEREAS, the Development Agreement, unless deemed extended by executive order of the Governor of South Carolina, was executed on January 9, 2009, and expires on January 9, 2029; and

WHEREAS, as a result of a scrivener's error, LL Chestnut, which was never organized as a South Carolina limited liability company, and did not appear in the chain of title for any of the properties subject to the Master Development Agreement, should have instead been referred to as J.B. Chestnut Limited Liability Company, a South Carolina limited liability company ("**JB Chestnut**"), which was the owner of record of the tract referred to in the Master Development Agreement as the "LL Chestnut Tract"; and

WHEREAS, the real property owned by Henry Road at the time of the Master Development Agreement and the First Master Amendment is herein referred to as the "**Henry Road Tract**"; and

WHEREAS, the real property owned by Apache at the time of the Master Development Agreement and the First Master Amendment is herein referred to as the "**Apache Tract**"; and

WHEREAS, Henry Road and Apache, acting together with Developer, have proposed an amendment to the Master Site Plan and the PDD (collectively the "**PDD Amendment**"), for a portion of the real property owned by Henry Road and a portion of the real property owned by Apache, East of S.C. Highway 31, within the PDD, consisting of Three (3) separate parcels, the first an unrecorded map of which is attached hereto as **Exhibit "A"** (the "**Amended Site Plan Parcel**") which PDD Amendment is approved by the City simultaneously with the approval of this Agreement; and

WHEREAS, in addition, in lieu of a previously identified park site of approximately 13 acres, Apache has proposed a trailhead over a portion of the Apache Tract, connecting an upland acreage parcel of approximately 3 acres +/- to form the basis of a pedestrian connection to the riparian buffers of Two (2) separate outfalls within the PDD (the "**Riparian Trailhead Site**"), in order to assure connectivity of the paths within the PDD to the riparian buffer along Long Branch, extending to the Atlantic Intracoastal Waterway, the alignment of which is shown on **Exhibit "C"** attached hereto; and

WHEREAS, any portion of the Henry Road Tract or the Apache Tract which is not included in the Amended Site Plan Parcel, the Riparian Trailhead Site shall remain subject to the terms and provisions set forth in the Master Development Agreement, as amended by the First Master Amendment, shall not be subject to this Agreement, without further amendment except by one or more separate and independent amendments for the portions of the Henry Road Tract or the Apache Tract which are not included in the Amended Site Plan Parcel or the Riparian Trailhead Site;

WHEREAS, the Parties now desire to enter into a separate and independent amendment to the Development Agreement, in order to specify certain fees and obligations imposed by the City pursuant to the Development Agreement, as amended, which would only be applicable to the Amendment Site Plan Parcel portion of the PDD, in the manner set forth below.

NOW, THEREFORE, for and in consideration of the covenants and conditions herein, and the sum of Five and No/100 (\$5.00) Dollars, to each party by the other paid, the parties agree as follows:

1. **Continuing Encumbrance.** Despite any change in ownership and/or the configuration and boundaries of the various tracts subjected to the Development Agreement, as amended, and the Exhibits to the Development Agreement, previously subjected to the Development Agreement, as amended, by this Agreement, except as hereby expressly amended or supplemented, shall remain in full force and effect. Notwithstanding any change in ownership and/or the configuration or boundaries of the Henry Road Tract and the Apache Tract subjected to the Development Agreement, as amended, and the Exhibits attached to the Development Agreement, including the obligations regarding the Traffic Circle, which was dedicated as a public road as of August 2021, whether previously and currently encumbered by the Development Agreement, as amended by this Agreement, except as hereby expressly amended or supplemented, all terms and provisions of the Development Agreement relating to the Henry Road Tract or the Apache Tract, including any portion of the Henry Road Tract or the Apache Tract which is included in the Amended Site Plan Parcel, and the Riparian Trailhead Site, shall remain in full force and effect (the “***Continuing Encumbrance***”).

2. **Amendment to Section 2.13.** In accordance with the Continuing Encumbrance provision contained herein and solely with respect to the Amended Site Plan Parcel, Section 2.13 of the Development Agreement, as amended, is further amended to acknowledge the Traffic Circle, as defined in Section 2.13, has been dedicated as a public road as of August 2021.

3. **Party Obligations Run with the Land/Cross Default by Owner of Multiple Parcels.** For purposes of this Agreement, the obligations hereunder shall run with the land, such that the owner of the portion of the real property which is subject to any particularly provisions hereof shall be obligated to fulfill such obligations. Further to the extent that any owner of real property which is subject to the terms and conditions of this Agreement owns more than One (1) parcel of real property which is subject to the terms and conditions of this Agreement, a default under the obligations with regards to any one of such parcels of real property shall also constitute a default with regards to any of the other parcels of real property also owned by such owner. Provided, however, that no owner of any portion of the real property which is subject to this Agreement shall be responsible for the obligations of any other owner, or accountable to the City or the other owners for the obligations of any other owner.

4. **Wetland/Wetland Buffer Maintenance.** In accordance with the Continuing Encumbrance provision contained herein, Henry Road acknowledges and agrees that the Amended Site Plan Parcel includes those areas identified by the United States Army Corps of Engineers (“***Corps***”) and/or the South Carolina Department of Health and Environmental Control (“***DHEC***”) or any other applicable governmental authority as wetland areas subject to the regulation of the Corps and/or DHEC (“***Jurisdictional and Non-Jurisdictional Waters of the State of South Carolina and the United States***”) which are located adjacent to Water Tower Road. Unless and until such Jurisdictional and Non-Jurisdictional Waters of the State of South Carolina and the United States are filled or otherwise mitigated to no longer remain classified as Jurisdictional and Non-Jurisdictional Waters of the State of South Carolina and the United States, Henry Road agrees that all on-site Jurisdictional and Non-Jurisdictional Waters of the State of South Carolina and the United States shall be surrounded with a

minimum 20-foot wide water quality buffer within which no building shall occur. These buffer areas and the Jurisdictional and Non-Jurisdictional Waters of the State of South Carolina and the United States they surround shall be maintained in common ownership, shall remain natural except to the extent vegetation is mulched in accordance with applicable permits.

5. **Improvements Off-site and within the Amended Site Plan Parcel.** In accordance with the Continuing Encumbrance provision contained herein, Henry Road, or its successor in title to the Amended Site Plan Parcel only, as a condition to the improvement of the Amended Site Plan Parcel, shall, at the expense of the owner of the Amended Site Plan Parcel:

(A) Extend the paved section of Water Tower Road, within the existing public right-of-way of Water Tower Road, to accommodate turning movements (both acceleration and deceleration lanes), concurrently with the site work improvements for the Single Family Neighborhood portion of the Amended Site Plan Parcel, as defined in the PDD Amendment (the “**Single Family Neighborhood**”), as shown on **Exhibit “B-1”** attached hereto, and the Multi-Family Neighborhood portion of the Amended Site Plan Parcel, as defined in the PDD Amendment (the “**Multi-Family Neighborhood**”), as shown on **Exhibit “B-2”** attached hereto, and the Commercial Zone, as defined in the PDD Amendment (the “**Commercial Zone**”), as shown on **Exhibit “B-3”** attached hereto, such improvements being either (i) complete; or (ii) bonded in accordance with the City’s typically roadway improvement bonding standards, for the earlier of the (i) at or prior to the issuance of a certificate of occupancy for the twentieth building within the Single Family Neighborhood portion of the Amended Site Plan Parcel; or (ii) at or prior to the issuance of a certificate of occupancy for the second building within the Multi-Family Neighborhood portion of the Amended Site Plan Parcel. For purposes of delineating which roadway improvements the Developer is responsible for, **Exhibit “D”** (the “**Road Improvement Exhibit**”) has been attached to this Agreement.

(B) Install sidewalks and street trees during the development of the Amended Site Plan Parcel, in accordance with the Complete Streets portion of the City’s land development regulations, along the boundary of the Project with Water Tower Road, and with Reach 9 Road such installments to be complete (i) on or before the issuance of the twentieth building permit for the Single Family Neighborhood portion of the Amended Site Plan Parcel for that portion of the Project; and (ii) on or before the issuance of the second building permit for the Multi-Family Neighborhood portion of the Amended Site Plan Parcel for that portion of the Project; and (iii) on or before the issuance of the first certificate of occupancy for the Commercial Zone portion of the Amended Site Plan Parcel for that portion of the Project.

(C) Apache shall convey to the City, within Ninety (90) days of the Effective Date of this Agreement, in fee simple, a portion of the Apache Tract, connecting a parcel of approximately 2 acres +/-, not less than 80% of which shall be upland acres at the time of conveyance, to form the basis of a pedestrian connection to the riparian buffers of Two (2) separate outfalls within the PDD (the “**Riparian Trailhead Site**”), in order to assure connectivity of the paths within the PDD to the riparian buffer along Long Branch, extending to the Atlantic Intracoastal Waterway, the alignment of which is shown on **Exhibit “C”** attached hereto. To the extent the Riparian Trailhead Site consists of less than 80% upland acres, the preliminary plat of such new Riparian Trailhead Site being subject to the approval of the City, not to be unreasonably withheld. Further the costs of surveying, platting,

recording and conveying the modified Riparian Trailhead Site shall be the sole expense of Apache, the City bearing no expense in such conveyance.

(D) For the Multi-Family Neighborhood portion of the Amended Site Plan Parcel, the on-site amenity, as shown on the Master Site Plan, shall be commenced prior to the date on which the building permit is issued for the 5th multi-family building within the Multi-Family Neighborhood portion of the Amended Site Plan, and the on-site amenity as shown on the Master Site Plan shall be completed prior to the date on which the building permit is issued for the 7th multi-family building within the Multi-Family Neighborhood portion of the Amended Site Plan.

(E) For the Single Family Neighborhood portion of the Amended Site Plan Parcel, the on-site amenity, as shown on the Master Site Plan, shall be commenced prior to the date on which the building permit is issued for the 140th residential unit within the Single Family Neighborhood portion of the Amended Site Plan, and the on-site amenity as shown on the Master Site Plan shall be completed prior to the date on which the building permit is issued for the 160th residential unit within the Single Family Neighborhood portion of the Amended Site Plan.

(F) For the Commercial Zone portion of the Amended Site Plan Parcel, site work shall have commenced for the initial building within such Commercial Zone, as shown on the Master Site Plan, prior to the date on which the building permit is issued for the final residential unit within the Single Family Neighborhood portion of the Amended Site Plan. Notwithstanding the above, in the event commercial development, or mixed-use development including both commercial and residential in the Commercial Zone proves to be infeasible, the Commercial Zone portion of the Amended Site Plan Parcel may not be further amended for an exclusively residential use without the approval of a major amendment to the PDD.

(G) Pursuant to Title 6, Chapter 31, Section 120 of the Code of Laws for the State of South Carolina, this Agreement shall be recorded in the public records of Horry County, on or before the date which is Fourteen (14) days following the date on which the City Council of the City approves this Agreement at second and final reading.

6. **Additional Enhancement Fees and Public Benefits.** Henry Road, Apache and Developer, and their respective successors and assigns agree that the then current owner of the Amended Site Plan Parcel, or any portion thereof, shall pay to the City, the enhancement fees, as set forth below (collectively the “**Enhancement Fees**”). Developer further agrees that the Enhancement Fees shall be subject to annual increase, beginning January 1, 204, in an amount equal to the lesser of (i) the increase in the Consumer Price Index, published by the U.S. Bureau of Labor Statistics (“**CPI**”) between the beginning and end of the most recent calendar year; or (ii) Two (2%) percent per annum, which increase is intended to ensure that the Enhancement Fees continue to reflect the City’s ongoing increases in the costs of services provided. Developer will provide the Enhancement Fees, together with any additional public benefits, as follows:

(A) For the Multi-Family Neighborhood within the Amended Site Plan Parcel, the Developer, or the then current owner, shall pay to the City, as to each Residential Unit within the Multi-Family Neighborhood portion of the Amended Site Plan Parcel, a park enhancement fee (the “**Park Enhancement Fee**”) in an amount equal to \$300.00 for each Residential Unit, paid at the time

of issuance of each respective building permit. The Single Family Neighborhood is exempt from the Park Enhancement Fee as a result of a prior agreement in regards to a property donation by Henry Road to the City.

(B) For the Amended Site Plan Parcel, including both the Single Family Neighborhood and the Multi-Family Neighborhood, the Developer, or the then current owner, shall pay to the City, as to each Residential Unit within the Amended Site Plan Parcel, a beach parking enhancement fee (the “***Beachfront Parking Enhancement Fee***”) in an amount equal to \$1,100.00 for each Residential Unit, paid at the time of issuance of each respective building permit.

(C) For the Amended Site Plan Parcel, including both the Single Family Neighborhood and the Multi-Family Neighborhood, the Developer, or the then current owner, shall pay to the City, as to each Residential Unit within the Amended Site Plan Parcel, a public safety enhancement fee (the “***Public Safety Enhancement Fee***”) in an amount equal to \$2,600.00 for each Residential Unit, paid at the time of issuance of each respective building permit.

(D) Developer, or the then current owner of the Amended Site Plan Parcel agree that the minimum term of any rental agreement for Residential Units constructed upon the Amended Site Plan Parcel shall be Six (6) months, provided that following any such initial Six (6) month period, residential leases may be extended for periods of less than Six (6) months to the same tenant, provided such extensions are for successive periods of not less than Thirty (30) days. No sub-lease or assignment shall be permitted which would result in a party occupying a Residential Unit for a period of less than Six (6) months, the express intent of this provision being to prohibit short-term and/or overnight rentals.

(E) Notwithstanding any provision within the PDD, Developer agrees that the maximum density for the Amended Site Plan Parcel shall not exceed Five Hundred Eighty Eight (588) Residential Units, as such Residential Units are located within the Single Family Neighborhood and the Multi-Family Neighborhood, but exclusive of the Commercial Zone.

7. **Master Site Plan.** The master site plan for the Amended Site Plan Parcel, which includes each of the Site Plans for the Single Family Neighborhood, the Multi-Family Neighborhood and the Commercial Zone, is the same site plan incorporated in the PDD, as amended, is attached hereto as **Exhibit “B”** (collectively the “**Master Site Plan**”).

8. **Independent Amendment.** In accordance with the Continuing Encumbrance provision contained herein, this Separate and Independent Amendment to Master Development Agreement is intended to be applicable only to the Amended Site Plan Parcel, the Single Family Neighborhood which is located on a portion of the Henry Road Tract, the Riparian Trailhead Site, which is located on a portion of the Apache Tract, the Multi-Family Neighborhood, which is located on a portion of the Apache Tract, and shall not be deemed applicable to any other portion of the Land which is subject to the Development Agreement, as amended, or to any other Landowner within the PDD, who is not a successor or assign of Henry Road and/or Apache, respectively. Notwithstanding the above, to the extent more that one parcel of real property within the Amended Site Plan Parcel is owned by the same owner, a default as to the obligations of that owner with regards to one parcel shall also constitute a default as to the obligations of that same owner as to any other parcels owned by such

owner. For purposes of clarity, a default by any owner of real property within the Amended Site Plan Parcel shall constitute a default owner as to that particular owner, and a default by one owner shall not be deemed to create a default by any other owner with the Amended Site Plan Parcel.

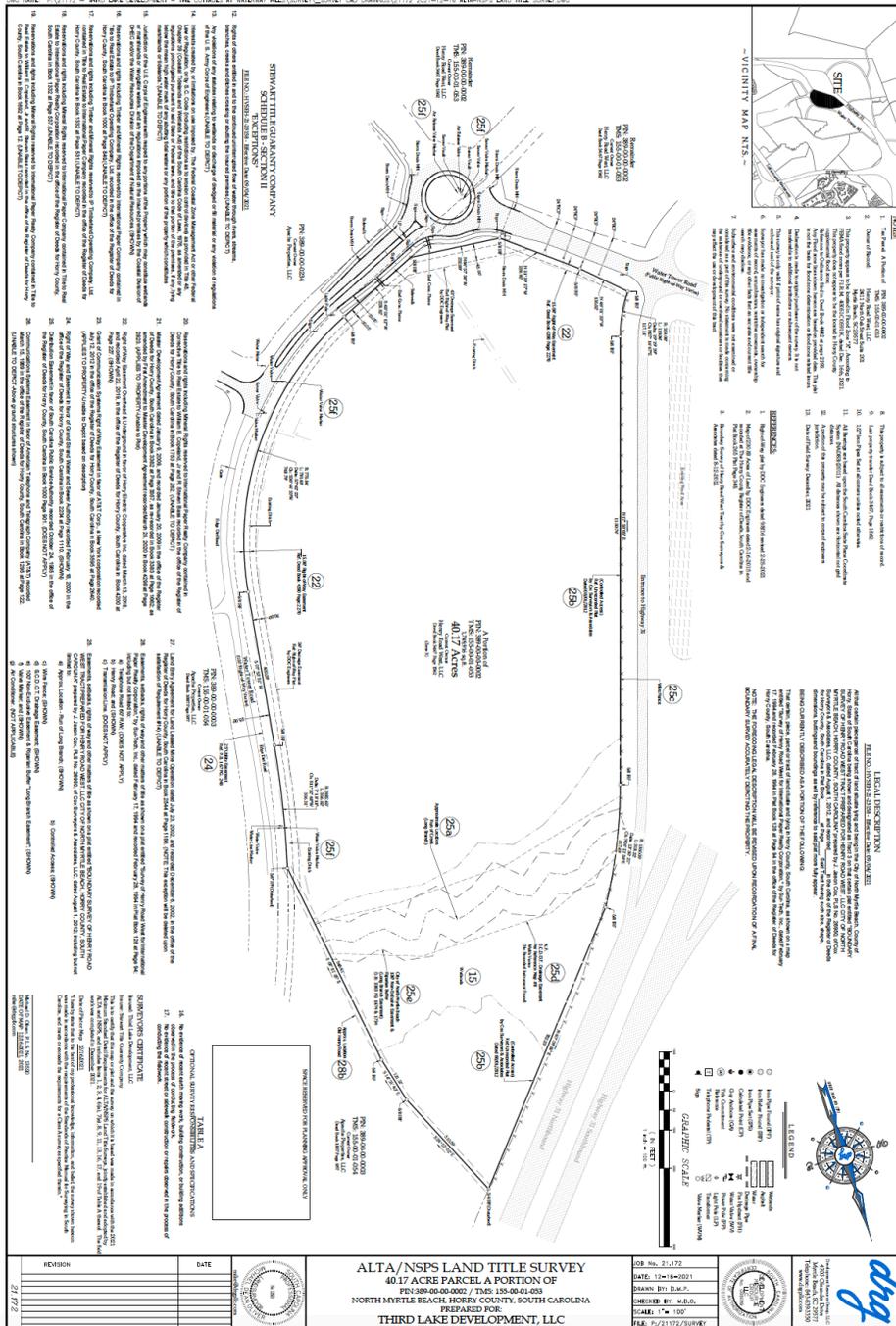
8. **No Further Amendment.** In accordance with the Continuing Encumbrance provision contained herein, except as specifically amended by this Separate and Independent Amendment to Master Development Agreement all of the terms and conditions of the Development Agreement as amended, shall remain in full force, unless and until amended in a writing signed by all of the parties.

IN WITNESS WHEREOF, the Parties have executed this Agreement the date below their respective signatures.

[Individual signature pages follow for each of the Parties]

EXHIBIT "A"

Map of Amended Site Plan Parcel (Portion of the Henry Road Tract and a Portion of the Apache Tract)



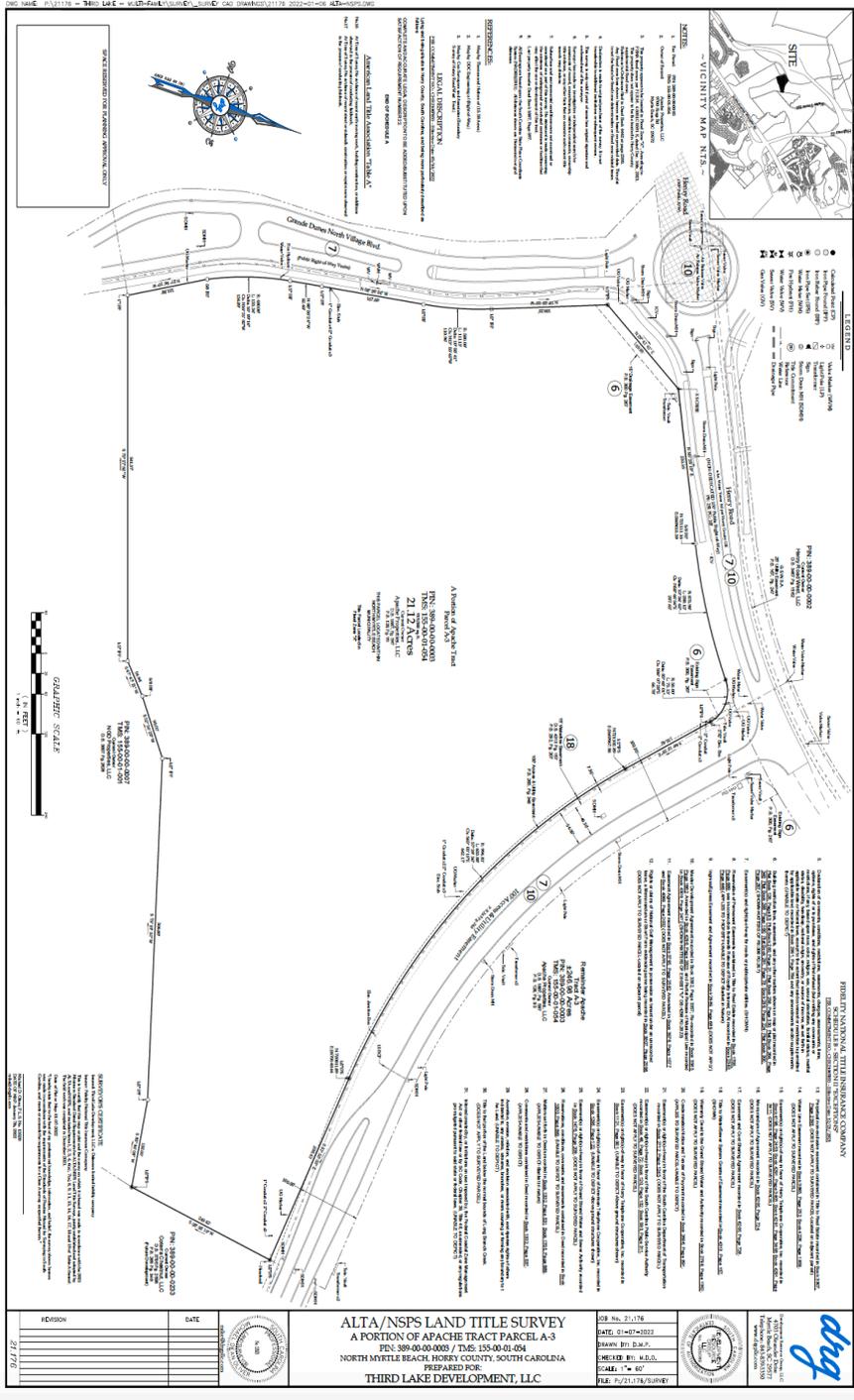


EXHIBIT "B"

Overall Master Site Plan

[To be attached]



EXHIBIT "B-1"

Single Family Neighborhood Site Plan

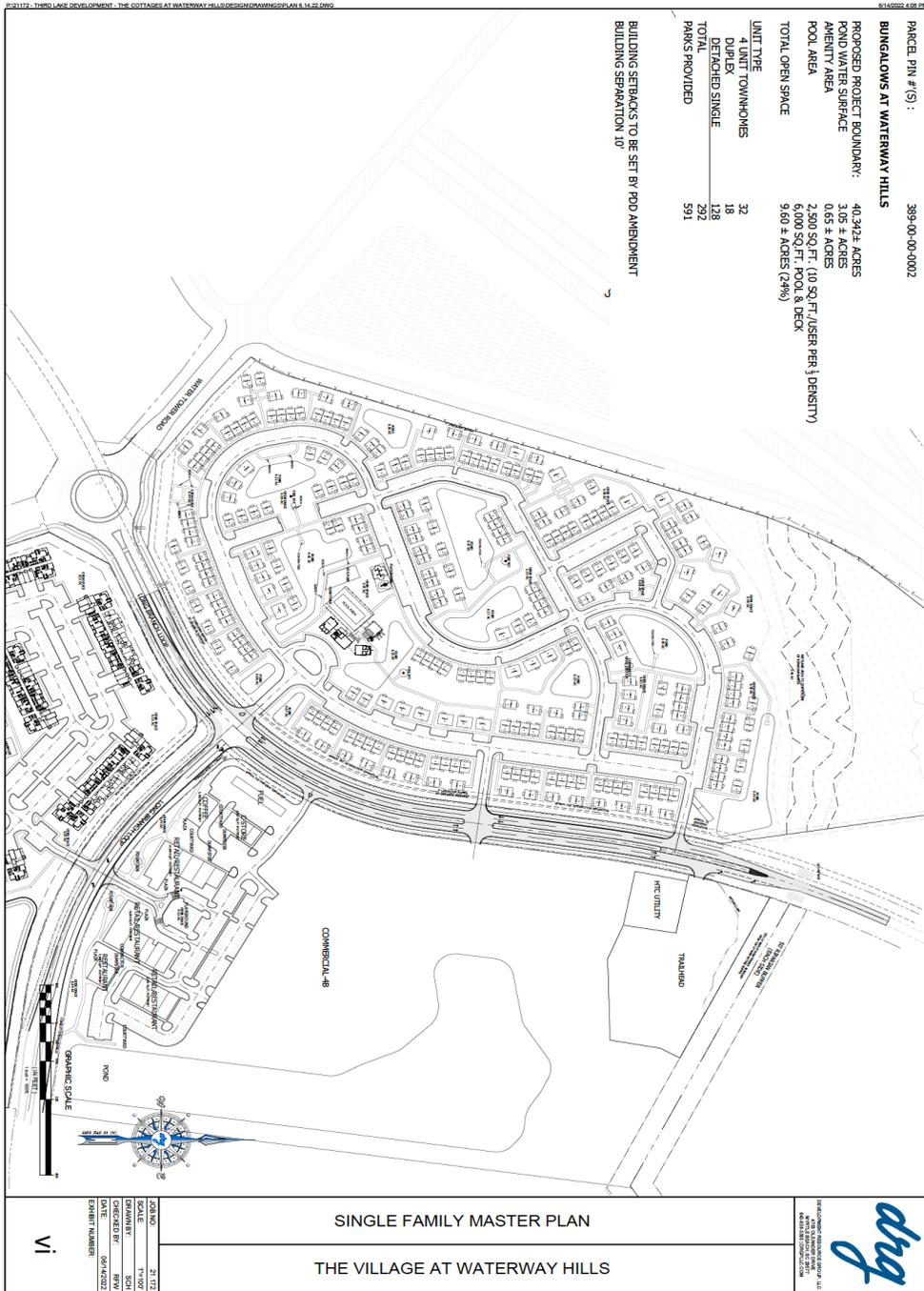


EXHIBIT "B-2"

Multifamily Neighborhood Site Plan

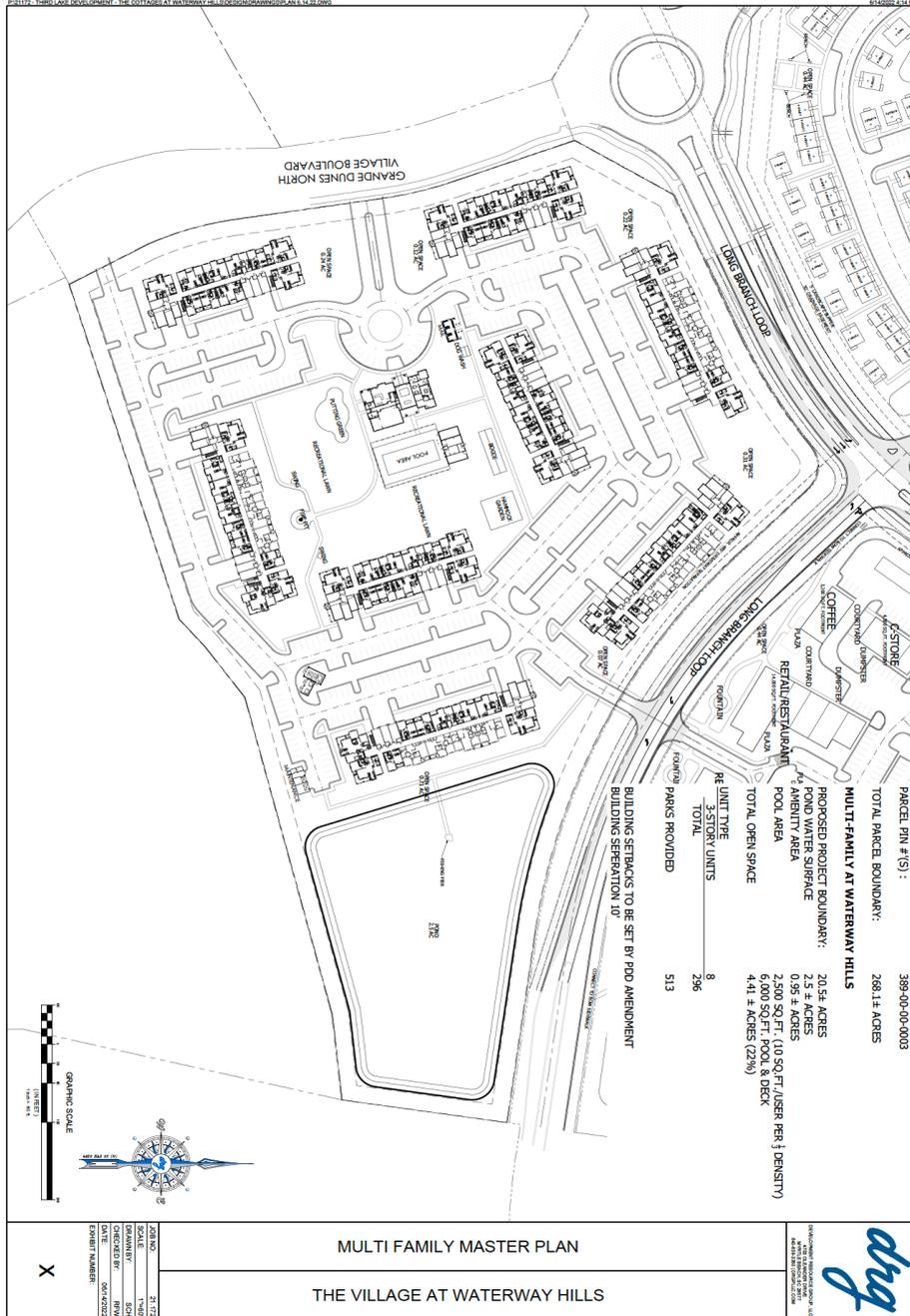


EXHIBIT "B-3"

Commercial Zone Site Plan

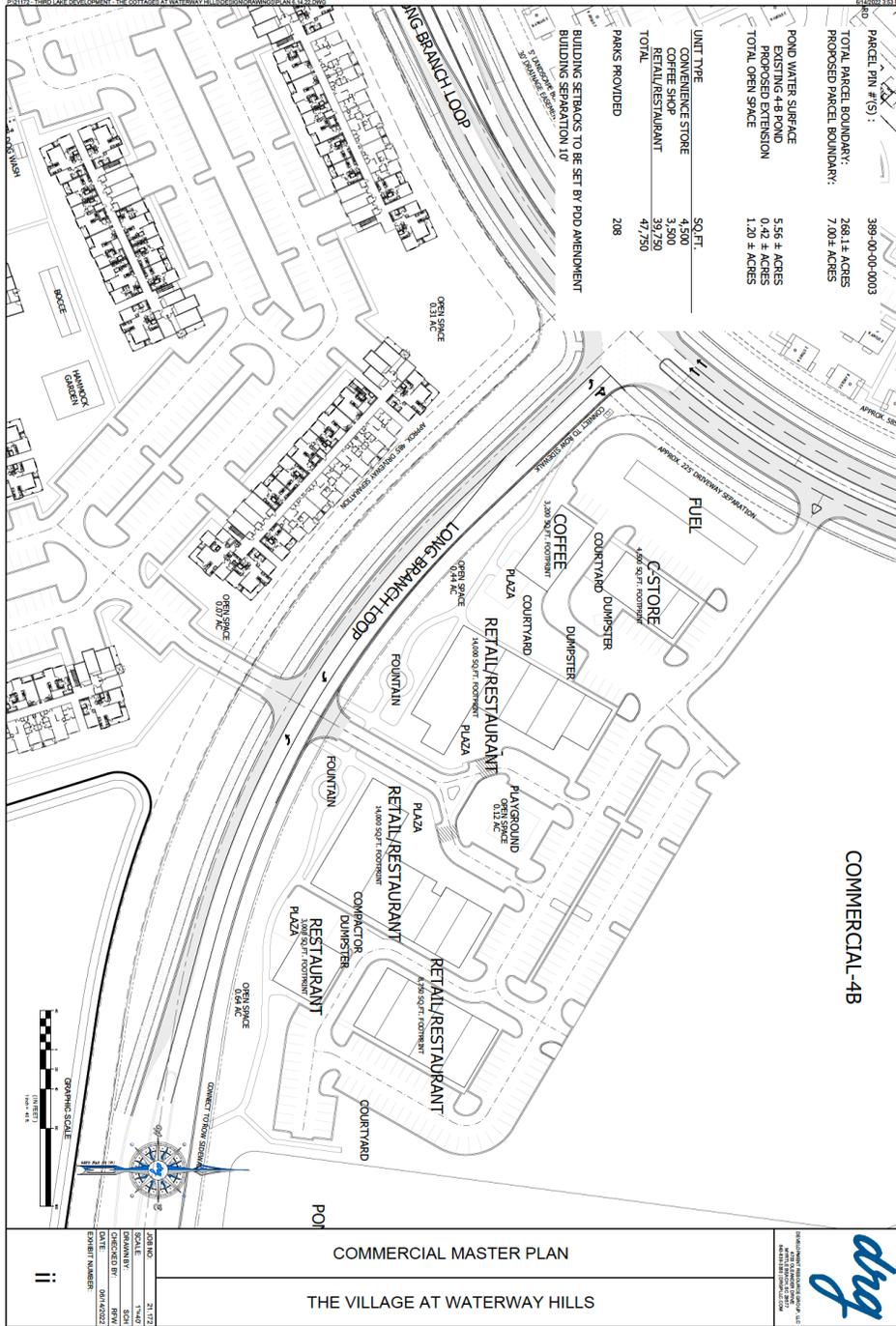


EXHIBIT "C"

Route for Riparian Trailhead Site Location

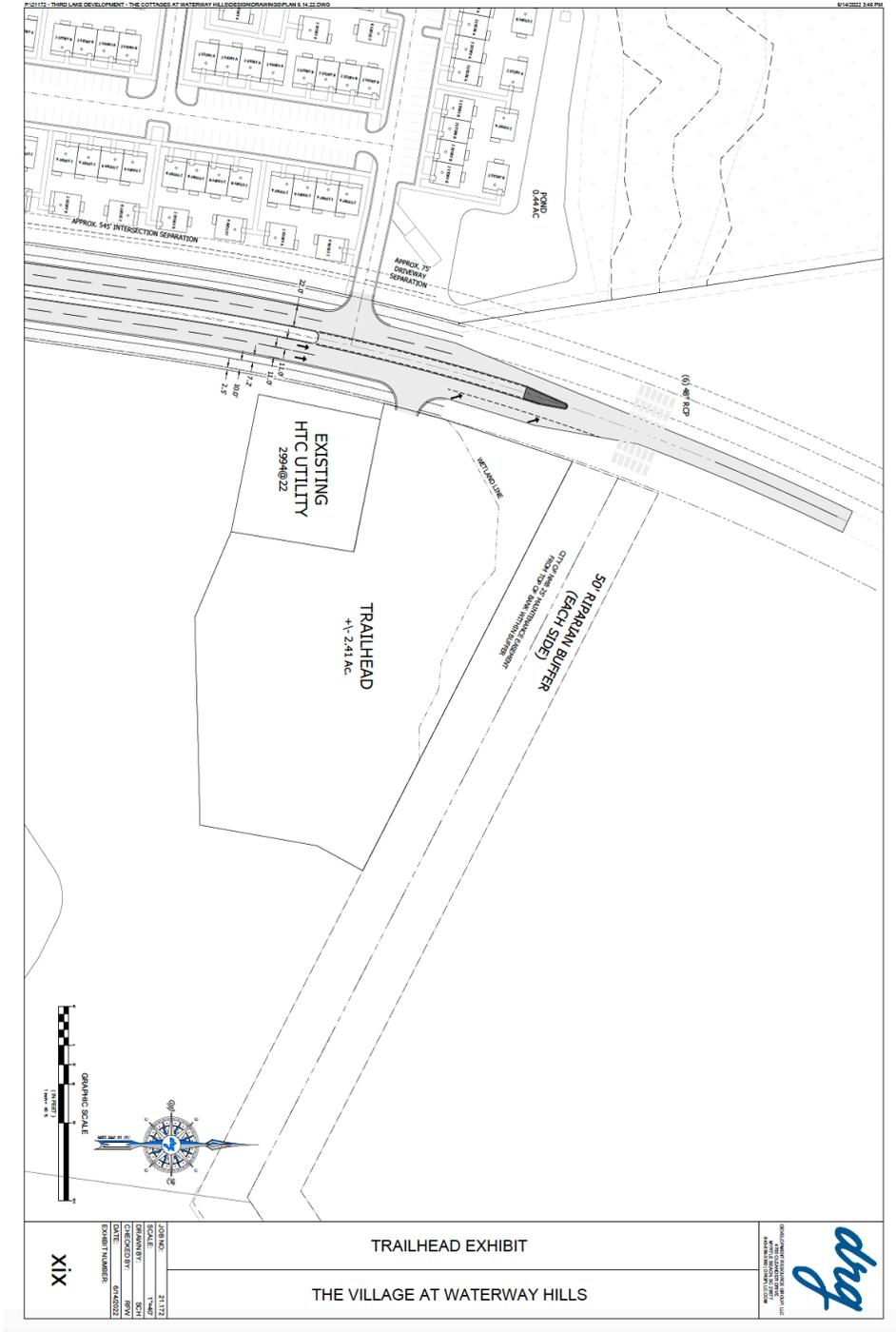


EXHIBIT "D"

Road Improvement Exhibit

